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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046–AB03

Adjusting the Penalty for Violation of Notice Posting Requirements

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, this final rule adjusts for inflation the civil monetary penalty for violation of the notice-posting requirements in Title VII of the Civil Rights act of 1964, the Americans with Disabilities Act, and the Genetic Information Non-Discrimination Act.

DATES: This final rule is effective July 5, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Ashley M. Martin, General Attorney, (202) 663–4695, Office of Legal Counsel, 131 M St. NE., Washington, DC 20507. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY), or to the Publications Information Center at 1–800–669–3362 (toll free).

SUPPLEMENTARY INFORMATION:

I. Background

Under section 711 of the Civil Rights Act of 1964 (Title VII), which is incorporated by reference in section 105 of the Americans with Disabilities Act (ADA) and section 207 of the Genetic Information Non-Discrimination Act (GINA), and 29 CFR 1601.30(a), every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by Title VII, ADA, or GINA must post notices describing the pertinent provisions of Title VII, ADA, or GINA. Such notices must be posted in prominent and accessible places where notices to employees, applicants, and members are customarily maintained.

The EEOC first adjusted the civil monetary penalty for violations of the notice posting requirements in 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA Act), 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, Sec. 31001(s)(1), 110 Stat. 1373. A final rule was published in the **Federal Register** on May 16, 1997, at 62 FR 26934, which raised the maximum penalty per violation from $100 to $110. The EEOC's second adjustment, made pursuant to the FCPIA Act, as amended by the DCIA, was published in the **Federal Register** on March 19, 2014, at 79 FR 15220 and raised the maximum penalty per violation from $110 to $210.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, Sec. 701(b), 129 Stat. 599, further amended the FCPIA Act, to require each federal agency, not later than July 1, 2016, and not later than January 15 of every year thereafter, to issue regulations adjusting for inflation the maximum civil penalty that may be imposed pursuant to each agency's statutes. The purpose of the adjustment is to maintain the remedial impact of civil monetary penalties and promote compliance with the law. These periodic adjustments to the penalty are to be calculated pursuant to the inflation adjustment formula provided in section 5(b) of the 2015 Act and, in accordance with section 6 of the 2015 Act, the adjusted penalty will apply only to penalties assessed after the effective date of the adjustment.

Generally, the periodic inflation adjustment to a civil monetary penalty under the 2015 Act will be based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the date of adjustment and the prior year's October CPI–U. The initial adjustment made to a civil monetary penalty under the 2015 Act, however, will be based on the percentage change between the CPI–U for the month of October 2015 and the CPI–U for the month of October of the calendar year during which the amount of such civil monetary penalty was established or last adjusted other than pursuant to the FCPIA Act. For the first adjustment made by an agency under the 2015 Act, the maximum amount of the increase in civil monetary penalty may not exceed 150 percent of the amount of that civil monetary penalty as it was on the date of enactment of 2015 Act.

II. Mathematical Calculation

The adjustment set forth in this final rule was calculated by comparing the CPI–U for October 2015 with the CPI–U for October 1964, the calendar year during which the amount of the civil monetary penalty was established, resulting in an inflation adjustment factor of 7.64752. Once the inflation adjustment factor is determined, the first step of the calculation is to multiply the inflation adjustment factor (7.64752) by the civil penalty amount ($100) in the year that the penalty was established to calculate the inflation-adjusted penalty level ($764.752). The second step is to round this inflation-adjusted penalty to the nearest dollar ($765). The third step is to compare the new inflation-adjusted penalty amount ($765) with the penalty amount ($210) reported in the prior year's Agency Financial Report (AFR). Under the 2015 Act, the adjustment amount cannot exceed 150 percent of the last reported penalty ($210). To achieve an increase of 150 percent, multiply the penalty amount ($210) last reported in the AFR by 2.5, and round to the nearest dollar ($525). The final step is to compare the inflation-adjusted penalty amount ($765) with the penalty amount that is 150 percent more than the last reported penalty level ($525). The 2015 Act specifies that if the inflation-adjusted penalty amount ($765) is larger, the 150 percent limit applies, and the increase is limited to 150 percent. Accordingly, we are adjusting the maximum penalty per violation specified in 29 CFR 1601.30(a) from $210 to $525.

III. Regulatory Procedures

Administrative Procedure Act

The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures where an agency finds good cause for dispensing with such procedures, on the basis that they are impracticable, unnecessary, or contrary to the public interest. EEOC finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule because this adjustment of the civil monetary penalty is required by the 2015 Act, the formula for calculating the adjustment to the penalty is prescribed by statute, and the Commission has no discretion in determining the amount of the published adjustment. Accordingly, we are issuing this revised regulation as a final rule without notice and comment.

Executive Order 13563 and 12866

In promulgating this final rule, EEOC has adhered to the regulatory philosophy and applicable principles set forth in Executive Order 13563. Pursuant to Executive Order 12866, the EEOC has coordinated with the Office of Management and Budget (OMB). Under section 3(f) of Executive Order 12866, the EEOC and OMB have determined that this final rule will not have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The great majority of employers and entities covered by these regulations comply with the posting requirement, and, as a result, the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who fail to post required notices in violation of the regulation and statue. The rule only increases the penalty by $315 for each separate offense, nowhere near the $100 million figure that would amount to a significant regulatory action.[1]

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This final rule contains no new information collection requirements, and therefore, will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) only requires a regulatory flexibility analysis when notice and comment is required by the Administrative Procedure Act or some other statute. As stated above, notice and comment is not required for this rule. For that reason, the requirements of the Regulatory Flexibility Act do not apply.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (CRA) requires that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EEOC will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the effective date of the rule. Under the CRA, a major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by the CRA at 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure.

For the Commission.

Dated: May 25, 2016.

Jenny R. Yang,

Chair.

Accordingly, the Equal Employment Opportunity Commission amends 29 CFR part 1601 as follows:

PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11.

■ 2. Section 1601.30 is amended by revising paragraph (b) to read as follows:

§ 1601.30 Notices to be posted.

* * * * *

(b) Section 711(b) of Title VII and the Federal Civil Penalties Inflation Adjustment Act, as amended, make failure to comply with this section punishable by a fine of not more than $525 for each separate offense.

[FR Doc. 2016–12999 Filed 6–1–16; 8:45 am]

BILLING CODE 6570–01–P

[1] In the last ten years, the highest number of charges alleging notice posting violations occurred in 2010. In that year, only 114 charges of the 90,837 Title VII, ADA, and GINA charges (.13%) contained a notice posting violation.

POSTAL SERVICE

39 CFR Part 20

International Product Changes

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: On April 22, 2016, the Postal Service published in the **Federal Register** a final rule concerning revisions to the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect classification changes to Competitive Services. Due to subsequent circumstances, it has become necessary to reschedule the effective date of that final rule. This document establishes a new effective date.

DATES: The effective date for the rule published on April 22, 2016 (81 FR 23634), is delayed until August 28, 2016.

FOR FURTHER INFORMATION CONTACT: Paula Rabkin at 202–268–2537.

SUPPLEMENTARY INFORMATION: On April 22, 2016, the United States Postal Service® filed a final rule (81 FR 23634) revising the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), making classification changes to Competitive Services to support the shift of Priority Mail International® Flat Rate Envelopes and Small Flat Rate Priced Boxes from the letter-post stream to the air-parcel stream, with an effective date of June 3, 2016. Due to subsequent circumstances, the stated effective date will need to be changed. This document establishes a new effective date of August 28, 2016.

In rule FR Doc. 2016–09213 published on April 22, 2016 (81 FR 23634), the

effective date is delayed until August 28, 2016.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–13080 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0014; FRL–9947–13–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to Wyoming Air Quality Standards and Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on November 6, 2015. This submittal revises the Wyoming Air Quality Standards and Regulations (WAQSR) that pertain to the issuance of Wyoming air quality permits for major sources in nonattainment areas. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective July 5, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2016–0014. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode SP AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin @epa.gov*.

I. Background

In this final rulemaking, we are taking action to approve the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, Wyoming Air Quality Standards and Regulations (WAQSR) to the Wyoming SIP. These provisions were submitted by the Wyoming Department of Environmental Quality (WDEQ) on November 6, 2015, to address certain CAA requirements related to ozone nonattainment areas.

On March 27, 2008 , the EPA promulgated a revised National Ambient Air Quality Standard (NAAQS) for ozone with an 8-hour concentration limit of 0.075 parts per million ("8-Hour Ozone NAAQS"). Effective July 20, 2012, the EPA designated the Upper Green River Basin (UGRB) area of Wyoming as "nonattainment" for the 8-Hour Ozone NAAQS. For nonattainment areas, states are required to submit SIP revisions, including a nonattainment NSR permitting program for the construction and operation of new or modified major stationary sources located in the nonattainment area.

On May 10, 2011, before the formal designation of the UGRB area as nonattainment for the 8-Hour Ozone NAAQS, the WDEQ submitted a nonattainment new source review (NSR) permitting program SIP revision to EPA. This new section incorporated by reference 40 CFR 51.165 in its entirety, with the exception of paragraphs (a) and (a)(1), into Wyoming's Chapter 6 Permitting Requirements. On February 20, 2015 (80 FR 9194), the EPA took final action to disapprove the portion of Wyoming's May 10, 2011 submittal that added this new section to the permitting requirements in WAQSR Chapter 6. As explained in 80 FR 9194, the method Wyoming used to create a nonattainment NSR program was not consistent with the CAA and EPA regulations.

Our final disapproval started a two-year clock under CAA section 110(c)(1) for our obligation to promulgate a federal implementation plan (FIP) to correct the deficiency and the 18-month clock for sanctions, as required by CAA section 179(a)(2). These deadlines will be removed by the approval of this SIP revision addressing the deficiency in Wyoming's nonattainment NSR permitting requirements. Under section 110(c)(1), the EPA must promulgate a FIP addressing the deficiencies unless the state corrects the deficiencies, and the EPA approves the plan or plan revision, before the EPA promulgates the FIP. Under section 179(a), sanctions apply unless the deficiency has been corrected within 18 months. See also 40 CFR 52.31(d). With our approval of the November 6, 2015 submittal, we are affirmatively determining that the deficiencies identified in our February 20, 2015 notice have been corrected, and as a result the deadlines for a FIP and sanctions have been removed.

The SIP revisions submitted by the WDEQ on November 6, 2015, involve Chapter 6, Permitting Requirements, Section 13, Nonattainment new source review permit requirements, and Section 14, Incorporation by reference. The revisions to Section 13 establish specific nonattainment new source review permitting requirements. In Section 13, the WDEQ has incorporated federal regulatory language from 40 CFR 51.165 and reformatted it into state specific language that effectively imposes requirements on major sources in Wyoming. Additionally, the WDEQ has revised language within the rule to maintain consistency with the State's Prevention of Significant Deterioration (PSD) regulations (WAQSR Chapter 6, Section 4). In addition to the revisions to Chapter 6, Section 13, the November 6, 2015, submittal also updates Chapter 6, Section 14, Incorporation by reference, to adopt by reference the CFR as published on July 1, 2014. The State previously submitted SIP revisions for Chapter 6, Section 14 on May 28, 2015 that requested adoption by reference of the CFR as published on July 1, 2013.

II. What are the changes that EPA is taking final action to approve?

In our March 1, 2016 proposed action (81 FR 10559), we proposed to approve the following revisions to the WASQR: Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP. As explained in 81 FR 10559, these changes are consistent with CAA and EPA regulations and address the deficiencies identified in our February 20, 2015 disapproval.

Instead of incorporating 40 CFR 51.165 by reference, the November 6, 2015 submittal adapts the language in 40 CFR 51.165 to remove phrases such as "the plan shall provide" and "the plan may provide," and specifies the procedures to be used. In addition, the submittal revises language in 40 CFR 51.165 to specify that the WDEQ is the reviewing authority. In one place, the submittal modifies the term "building, structure, facility, or installation" to "structure, building, facility, equipment, installation, or operation," without

modifying the substance of the definition of the term, which is permissible. These changes are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include "a program to provide for . . . the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter."

2. CAA section 172(c)(5), provides that the plan "shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173]." By removing language such as "the plan shall provide," the submittal avoids any ambiguity as to whether permits are required.

3. CAA section 173, lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. Wyoming's Chapter 6, Section 13 rules impose these requirements on sources, and the State's proposed plan clearly satisfies the requirements of these statutory provisions.

4. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, Section 13 creates enforceable obligations for sources by removing phrases such as "the plan shall provide" and "the plan may provide."

5. CAA section 110(i), (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. By eliminating unspecified procedures that were referenced in the May 10, 2011 submittal, the November 6, 2015 submittal addresses this issue.

6. CAA section 172(c)(7), requires that nonattainment plans, including nonattainment NSR programs required by section 172(c)(5), meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures.

7. CAA section 110(1), provides that EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act. As described above, the addition of Chapter 6, Section 13 to the Wyoming SIP would not interfere with sections 110(a)(2) and 110(i) of the Act.

8. Wyoming's SIP revision complies with the requirements of 40 CFR 51.165 as the plan imposes the regulatory requirements on individual sources, as required by the regulatory provisions. The crosswalk table in the docket details how the submittal addresses specific requirements in 40 CFR 51.165.

Wyoming's submittal also addresses the potential conflicts with the State's approved minor NSR and PSD programs that existed in the May 5, 2011 submittal. First, Section 13(c)(i) provides that the exemptions in the minor NSR program (Section 2(k)) shall not apply with regards to applicability of the nonattainment NSR program. Second, Section 13(d)(iv) states that lowest achievable emissions rate (LAER), not best available control technology (BACT), applies to sources subject to nonattainment NSR. Finally, Section 13(f)(iii) clarifies that Section 13 does not apply in the Sheridan PM_{10} nonattainment area; instead the construction ban in Section 2(c)(ii)(B) continues to apply. We also note that Wyoming will have permitting authority for new major sources and major modifications in the Sheridan coarse particulate matter (PM_{10}) nonattainment area, if Wyoming submits and we approve the removal of the construction ban from the SIP. Wyoming has had a construction ban in place and approved into the SIP for over 20 years (See WAQSR, Chapter 6, Section 2(c)(ii)(B)).

EPA's final approval of Wyoming's nonattainment permitting program allows Wyoming to apply WAQSR Chapter 6, Section 13 as permitting authority in the UGRB ozone nonattainment area for new major sources and major modifications of nitrogen oxide (NO_X) and volatile organic ompounds (VOCs) as ozone precursors.

Finally, as explained in our proposal notice, the November 6, 2015 submittal treats sulfur dioxide (SO2) as a precursor to PM2.s, and presumes that NO_X is also a precursor to PM2.s. The State of Wyoming has no nonattainment areas for the PM2.s standards. Accordingly, the EPA finds it reasonable to conclude that major sources of VOCs and ammonia do not contribute significantly to PM2.s nonattainment within the State. Thus, there is no need at this time for the State to regulate VOCs or ammonia as PM2.s precursors in the State's nonattainment NSR permitting program, and so we are approving the submittal 's PM2.s precursor provisions. Should the EPA in the future designate an area in Wyoming as nonattainment for PM2.s, the State would have the obligation to ensure that the nonattainment NSR program met all applicable requirements for PM2.s, including appropriate control of precursors. See CAA sections 172(c)(5) and 189(a)(l)(A).

We provided a detailed explanation of the basis of approval in our proposed rulemaking (see 79 FR 65362). We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on March 31, 2016.

III. Response to Comments

We received one comment letter during the public comment period. The comment letter was submitted by Nancy E. Vehr, Air Quality Division (AQD) Administrator for the State of Wyoming.

Comment: The comment expresses the AQD's support for the EPA's proposed approval of the addition of Chapter 6, Section 13, Nonattainment permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP.

Response: We have received the comment and acknowledge the support.

IV. What action is EPA taking today?

The EPA is taking final action to fully approve Wyoming's November 6, 2015, submittal. As discussed in our proposal and this notice, our action is based on an evaluation of Wyoming's rules against the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(A), 110(i), 110(1), 172(c)(5), 172(c)(7), 173, and regulations at 40 CFR 51.165.

As described in our proposed rulemaking, and in Section II of this notice, the EPA is approving the addition of Chapter 6, Section 13, Nonattainment new source review permit requirements, and updated Section 14, Incorporation by reference, WAQSR to the Wyoming SIP submitted by Wyoming on November 6, 2015. We are also determining that the November 6, 2015 submittal addresses the deficiencies identified by the EPA in Wyoming 's prior submittal of Section 13; as a result the deadlines for a FIP and sanctions are removed.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference.

In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the WDEQ rules as described in the amendments to 40 CFR part 52 set forth in this document. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office

(see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.);*
- is certified as not having a significant economic impact in a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.);*
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 11, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart ZZ—Wyoming

■ 2. In § 52.2620, in the table in paragraph (c), under "Chapter 06. Permitting Requirements." add an entry for "Section 13" and revise the entry for "Section 14" to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective	EPA effective date	Final rule citation/date	Comments
	Chapter 06. Permitting Requirements				
*	* * *	*		*	*
Section 13	Nonattainment new source review permit requirements.	10/13/2015	7/5/2016	6/2/2016 [insert **Federal Register** citation].	
Section 14	Incorporation by reference	10/13/2015	7/5/2016	6/2/2016 [insert **Federal Register** citation].	
*	* * *	*		*	*

[FR Doc. 2016–12725 Filed 6–1–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[PS Docket No. 14–174, FCC 15–98]

Ensuring Continuity of 911 Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction of announcement of compliance date.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of April 7, 2016, an announcement that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Ensuring Continuity of 911 Communications Report and Order's (*Order*) consumer disclosure requirement. We inadvertently announced the wrong compliance date for providers with fewer than 100,000 domestic retail subscriber lines as April 1, 2017. This document changes the date to February 1, 2017.

DATES: Effective June 2, 2016 the compliance date for the rule published April 7, 2016 (81 FR 20258) is corrected from April 1, 2017 to February 1, 2017.

FOR FURTHER INFORMATION CONTACT: Linda M. Pintro, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–7490, or email: *linda.pintro@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of April 7, 2016, (81 FR 20258) announcing that, on March 21, 2016, OMB approved, for a period of three years, the information collection requirements relating to the subscriber notification rules contained in the Commission's *Order,* FCC 15–98, published at 80 FR 62470, October 16, 2015. The OMB Control Number is 3060–1217. The Commission published this document as an announcement of the effective date of the rules. This document inadvertently announced the compliance date for providers with fewer than 100,000 domestic retail subscriber lines as April 1, 2017. This correction replaces this compliance date with February 1, 2017.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–12946 Filed 6–1–16; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 81, No. 106
Thursday, June 2, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–135734–14]

RIN 1545–BM45

Inversions and Related Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) that were published in the **Federal Register** on Friday, April 8, 2016 (81 FR 20588). The proposed regulations relate to transactions that are structured to avoid the purposes of sections 7874 and 367 of the Internal Revenue Code (the Code) and certain post-inversion tax avoidance transactions.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 81 FR 20588, April 8, 2016 are still being accepted and must be received by July 7, 2016.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under sections 304, 367, and 7874, Shane M. McCarrick or David A. Levine, (202) 317–6937; concerning the proposed regulations under sections 956 and 770 (l), Rose E. Jenkins (202) 317–6934; concerning submissions or comments or requests for a public hearing, Regina Johnson 202–317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) that is the subject of this correction is under sections 304, 367, 956, 7701(l), and 7874 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–135734–14) that was the subject of FR Doc. 2016–07299 is corrected as follows:

■ 1. On page 20588, in the preamble, in the "Background" paragraph, in the fifth line, the language "954, 956, 7701(l), and 7874 of the" is corrected to read "956, 7701(l), and 7874 of the".

§ 1.7874–4 [Corrected]

■ 2. On page 20590, second column, seventh line of paragraph (c)(1)(ii), the language "(ii) [Reserved]." is corrected to read "(ii) introductory text through (ii)(A) [Reserved].".

■ 3. On page 20590, second column, second line of paragraph (i)(7), the language "(i)(7)(iii) introductory text [Reserved]." is corrected to read "(i)(7)(iii)(B) [Reserved].".

■ 4. On page 20590, third column, first and second line of paragraph (j), the language "(j) introductory text through (j)(6) [Reserved]." is corrected to read "(i)(8) through (j)(6) [Reserved]".

Martin V. Franks,

Chief, Publications and Regulations Branch, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–13015 Filed 6–1–16; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2015–0607; FRL–9943–55]

RIN 2025–AA42

Addition of Hexabromocyclododecane (HBCD) Category; Community Right-to-Know Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). EPA is proposing to add this chemical category to the EPCRA section 313 list because EPA believes HBCD meets the EPCRA section 313(d)(2)(B) and (C) toxicity criteria. Specifically, EPA believes that HBCD can reasonably be anticipated to cause developmental and reproductive effects in humans and is highly toxic to aquatic and terrestrial organisms. In addition, based on the available bioaccumulation and persistence data, EPA believes that HBCD should be classified as a persistent, bioaccumulative, and toxic (PBT) chemical and assigned a 100-pound reporting threshold. Based on a review of the available production and use information, members of the HBCD category are expected to be manufactured, processed, or otherwise used in quantities that would exceed a 100-pound EPCRA section 313 reporting threshold.

DATES: Comments must be received on or before August 1, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2015–0607, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/where-send-comments-epa-dockets#hq.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT:
For technical information contact: Daniel R. Bushman, Toxics Release Inventory Program Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0743; email: *bushman.daniel@epa.gov.*
For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 412–9810 in Virginia and Alaska; or toll free, TDD (800) 553–7672; or go to *http://www.epa.gov/superfund/contacts/infocenter/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use HBCD. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*.

* Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).
- Federal facilities.

To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What action is the Agency taking?

EPA is proposing to add a hexabromocyclododecane (HBCD) category to the list of toxic chemicals subject to reporting under EPCRA section 313 and PPA section 6607. As discussed in more detail later in this document, EPA is proposing to add this chemical category to the EPCRA section 313 list because EPA believes HBCD meets the EPCRA section 313(d)(2)(B) and (C) toxicity criteria.

C. What is the Agency's authority for taking this action?

This action is issued under EPCRA sections 313(d) and 328, 42 U.S.C. 11023 *et seq.*, and PPA section 6607, 42 U.S.C. 13106. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

Section 313 of EPCRA, 42 U.S.C. 11023, requires certain facilities that manufacture, process, or otherwise use listed toxic chemicals in amounts above reporting threshold levels to report their environmental releases and other waste management quantities of such chemicals annually. These facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the PPA, 42 U.S.C. 13106. Congress established an initial list of toxic chemicals that comprised 308 individually listed chemicals and 20 chemical categories.

EPCRA section 313(d) authorizes EPA to add or delete chemicals from the list and sets criteria for these actions. EPCRA section 313(d)(2) states that EPA may add a chemical to the list if any of the listing criteria in EPCRA section 313(d)(2) are met. Therefore, to add a chemical, EPA must demonstrate that at least one criterion is met, but need not determine whether any other criterion is met. Conversely, to remove a chemical from the list, EPCRA section 313(d)(3) dictates that EPA must demonstrate that none of the following listing criteria in EPCRA section 313(d)(2)(A)–(C) are met:

- The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
- The chemical is known to cause or can reasonably be anticipated to cause in humans: Cancer or teratogenic effects, or serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects.
- The chemical is known to cause or can be reasonably anticipated to cause, because of its toxicity, its toxicity and persistence in the environment, or its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

EPA often refers to the EPCRA section 313(d)(2)(A) criterion as the "acute human health effects criterion;" the EPCRA section 313(d)(2)(B) criterion as the "chronic human health effects criterion;" and the EPCRA section 313(d)(2)(C) criterion as the "environmental effects criterion."

EPA published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2), a statement clarifying its interpretation of the EPCRA section 313(d)(2) and (d)(3) criteria for modifying the EPCRA section 313 list of toxic chemicals.

II. Background Information

A. What is HBCD?

HBCD is a cyclic aliphatic hydrocarbon consisting of a 12-membered carbon ring with 6 bromine atoms attached (molecular formula $C_{12}H_{18}Br_6$). HBCD has 16 possible stereoisomers. Technical grades of HBCD consist predominantly of three diastereomers, α-, ß- and γ-HBCD (Ref. 1). HBCD may be designated as a non-specific mixture of all isomers (hexabromocyclododecane, Chemical Abstracts Service Registry Number (CASRN) 25637–99–4) or as a mixture of the three main diastereomers (1,2,5,6,9,10-hexabromocyclododecane, CASRN 3194–55–6) (Ref 1). The main use of HBCD is as a flame retardant in expanded polystyrene foam (EPS) and

extruded polystyrene foam (XPS) (Ref. 2). EPS and XPS are used primarily for thermal insulation boards in the building and construction industry. HBCD may also be used as a flame retardant in textiles including: upholstered furniture, upholstery seating in transportation vehicles, draperies, wall coverings, mattress ticking, and interior textiles, such as roller blinds (Ref. 2). In addition, HBCD is used as a flame retardant in high-impact polystyrene for electrical and electronic appliances such as audio-visual equipment, as well as for some wire and cable applications (Ref. 2).

Concerns for releases and uses of HBCD have been raised because it is found world-wide in the environment and wildlife and has also been found in human breast milk, adipose tissue and blood (Ref. 1). HBCD is known to bioaccumulate and biomagnify in the food chain and has been detected over large areas and in remote locations in environmental monitoring studies (Ref. 1).

B. How is EPA proposing to list HBCD under EPCRA section 313?

HBCD is identified through two primary CASRNs 3194–55–6 (1,2,5,6,9,10-hexabromocyclododecane) and 25637–99–4 (hexabromocyclododecane) (Ref. 1). EPA is proposing to create an HBCD category that would cover these two chemical names and CASRNs. The HBCD category would be defined as: Hexabromocyclododecane and would only include those chemicals covered by the following CAS numbers:

- 3194–55–6; 1,2,5,6,9,10-Hexabromocyclododecane.
- 25637–99–4; Hexabromocyclododecane.

As a category, facilities that manufacture, process or otherwise use HBCD covered under both of these names and CASRNs would file just one report.

In addition to listing HBCD as a category, EPA is proposing to add the HBCD category to the list of chemicals of special concern. There are several chemicals and chemical categories on the EPCRA section 313 chemical list that have been classified as chemicals of special concern because they are PBT chemicals (see 40 CFR 372.28(a)(2)). In a final rule published in the **Federal Register** of October 29, 1999 (64 FR 58666) (FRL–6389–11), EPA established the PBT classification criteria for chemicals on the EPCRA section 313 chemical list. For purposes of EPCRA section 313 reporting, EPA established persistence half-life criteria for PBT chemicals of 2 months in water/sediment and soil and 2 days in air, and established bioaccumulation criteria for PBT chemicals as a bioconcentration factor (BCF) or bioaccumulation factor (BAF) of 1,000 or higher. Chemicals meeting the PBT criteria were assigned 100-pound reporting thresholds. With regards to setting the EPCRA section 313 reporting thresholds, EPA set lower reporting thresholds (10 pounds) for those PBT chemicals with persistence half-lives of 6 months or more in water/sediment or soil and with BCF or BAF values of 5,000 or higher, these chemicals were considered highly PBT chemicals. The data presented in this proposed rule support classifying the HBCD category as a PBT chemical category with a 100-pound reporting threshold.

III. What is EPA's evaluation of the toxicity, bioaccumulation, and environmental persistence of HBCD?

EPA evaluated the available literature on the human health toxicity, ecological toxicity, bioaccumulation potential, and environmental persistence of HBCD (Ref. 1). Unit III.A. provides a review of the human health toxicity studies and EPA's conclusions regarding the human health hazard potential of HBCD. Unit III.B. discusses the ecological toxicity of HBCD, Unit III.C. contains information on the bioaccumulation potential of HBCD, and Unit III.D. provides information on the environmental persistence of HBCD.

A. What is EPA's review of the human health toxicity data for HBCD?

1. *Toxicokinetics.* HBCD is absorbed via the gastrointestinal tract and metabolized in rodents (Refs. 3, 4, 5, and 6). Once absorbed, HBCD is distributed to a number of tissues, including fatty tissue, muscle, and the liver (Refs. 7, 8, 9, 10, 11, and 12). Elimination of HBCD is predominantly via feces (as the parent compound), but it is also eliminated in urine (as secondary metabolites) (Refs. 3, 4, and 5). HBCD has been detected in human milk, adipose tissue, and blood (Refs. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24). The composition of HBCD isomers in most rodent toxicity studies resembles that of industrial grade HBCD, which may differ from human exposure to certain foods that have been shown to contain elevated fractions of α-HBCD (Ref. 25).

2. *Effects of acute exposure.* HBCD was not found to be highly toxic in acute oral, inhalation, and dermal studies in rodents. One study reported an oral median lethal dose (LD_{50}) of >10,000 milligrams per kilogram (mg/kg) in Charles River rats (Ref. 26). Another study by the same researchers, however, reported an LD_{50} of 680 mg/kg for females and 1,258 mg/kg for males in Charles River CD rats (Ref. 27). Two other studies reported an oral LD_{50} of >5,000 mg/kg in Sprague-Dawley rats and >10,000 mg/kg in NR rats (Refs. 28 and 29). An oral study in NR mice reported an LD_{50} of >6,400 mg/kg (Ref. 30). Acute inhalation studies in rats have generally concluded that HCBD is not highly toxic, with a median lethal concentration (LC_{50}) reported by Gulf South Research Institute of >200 milligrams per liter (mg/L) (Refs. 26, 27, 29, 31). Acute dermal toxicity studies have generally shown HBCD not to be highly toxic in rabbits (Refs. 27, 29, 31, and 32). One dermal study reported an LD_{50} of 3,969 mg/kg (Ref. 27). Additionally, HBCD is not a dermal irritant in rabbits (Refs. 27, 29, and 31), but it is a mild skin allergen in guinea pigs (Ref. 32). Acute eye irritation studies have concluded that HBCD is a primary eye irritant (Ref. 27) and a mild, transient ocular irritant (Ref. 29).

3. *Effects of short-term and subchronic exposure.* In subacute and subchronic studies, HBCD demonstrated effects on the thyroid and liver (Refs. 8, 33, 34, and 35). In a subacute study, van der Ven *et al.* (Ref. 8) exposed Wistar rats (5/sex/dose) by gavage to a mixture of HBCD dissolved in corn oil at concentrations resulting in doses of 0.3, 1.0, 3.0, 10, 30, 100, and 200 milligrams per kilogram per day (mg/kg/day) for 28 days. The isomeric composition of the HBCD was 10.3% α, 8.7% β, and 81.0% γ. The authors reported a benchmark dose lower bound confidence limit (BMDL) of 29.9 mg/kg/day for an increase in pituitary weight, a BMDL of 1.6 mg/kg/day for an increase in thyroid weight, and a BMDL of 22.9 mg/kg/day for an increase in liver weight. The increase in thyroid weight was the most sensitive end point observed and, according to research by EPA, is considered relevant to humans (Ref. 36). Additionally, histopathology of the thyroid demonstrated that thyroid follicles were smaller, depleted, and had hypertrophied epithelium in female rats.

In another subacute study, HBCD was administered orally by gavage in corn oil to Sprague-Dawley Crl:CD BR rats for 28 days at doses of 0, 125, 350, or 1,000 mg/kg/day (6 rats/sex/dose in 125 and 350 mg/kg/day groups and 12 rats/sex/dose in the control and 1,000 mg/kg/day groups) (Ref. 33). At the end of 28 days, 6 rats/sex/dose were necropsied, while the remaining rats in the control and 1,000 mg/kg/day groups were untreated for a 14-day recovery period prior to necropsy. The authors reported

increased absolute and liver to body weight ratios in females, but the authors considered the findings to be adaptive and not adverse. This study also identified a no-observed-adverse-effect level (NOAEL) of 1,000 mg/kg/day.

In an older subacute study (Ref. 37), an HBCD product was administered to Sprague-Dawley rat (10/sex/group) at doses of 0, 1, 2.5, and 5% of the diet for 28 days. Doses were calculated to be 0, 940, 2,410, 4,820 mg/kg/day. Mean liver weight (both absolute and relative) was increased in all dose groups, but no microscopic pathology was detected. Thyroid hyperplasia was observed in some animals at all doses in addition to slight numerical development of the follicles and ripening follicles in the ovaries at the high dose. The authors concluded that these observed effects were not pathologic and reported a NOAEL of 940 mg/kg/day (Ref. 37).

In a subchronic study, Chengelis (Refs. 34 and 35) administered HBCD by oral gavage in corn oil daily to Crl:CD(SD)IGS BR rats (15/sex/dose) at dose levels of 0, 100, 300, or 1,000 mg/kg/day for 90 days. At the end of 90 days, 10 rats/sex/dose were necropsied, while the remaining rats were untreated for a 28-day recovery period prior to necropsy. The authors reported significant treatment-related changes in rats, including decreased liver weight and histopathological changes, but the authors considered these changes mild, reversible, and adaptive. Decreased liver weight accompanied by the observed histopathological changes, however, can be considered an adverse effect. Therefore, EPA identified a lowest-observed-adverse-effect level (LOAEL) of 100 mg/kg/day based on these changes.

In an older subchronic study (Ref. 38) an HBCD product was administered to Sprague-Dawley rats (10/sex/group) at doses of 0, 0.16, 0.32, 0.64, and 1.28% of the diet for 90 days. Doses were calculated to be 0, 120, 240, 470, and 950 mg/kg/day. An increase in relative liver weight was observed and was accompanied by fatty accumulation. The pathology report concluded that although fat was visible microscopically in treated rats, the change was not accompanied by any pathology, and therefore could not be defined as "fatty liver." No histological changes were found in any other organ. The authors concluded that the increased liver weight and the fat deposits, both of which were largely reversible when administration of HBCD was stopped, were the result of a temporary increase in the activity of the liver. They identified a NOAEL of 950 mg/kg/day.

4. *Carcinogenicity*. No adequate studies were found evaluating the carcinogenicity of HBCD in animals or humans. One non-guideline study (Ref. 39) was cited in the U.S. EPA's Flame Retardant Alternatives for Hexabromocyclododecane (HBCD): Final Report (Ref. 40), but this study was not adequate to draw conclusions regarding carcinogenicity.

5. *Developmental and reproductive toxicity*. The developmental and reproductive toxicity of HBCD have been investigated in several studies. In a 1-generation study that included additional immunological, endocrine and neurodevelopmental endpoints, van der Ven *et al.* (Ref. 9) exposed Wistar rats (10/sex/dose) to a composite mixture of technical-grade HBCD (10.3% α, 8.7% β, and 81.0% γ) in the diet at concentrations resulting in doses of 0.1, 0.3, 1.0, 3.0, 10, 30, or 100 mg/kg/day. In the highest dose group (100 mg/kg/day) body weight decreases of 7–36% in males and 10–20% in females were observed in first generation (F1) pups. The authors observed decreases in kidney and thymus weight in both F1 males and females. Decreases in testes, adrenal, prostate, heart, and brain weights in F1 males were also observed. No histopathological changes, however, were observed in any of these organs. Other developmental effects were observed, including: Immune system effects, indications of liver toxicity, and decreases in bone mineral density at very low doses (*i.e.*, <1.3 mg/kg/day). The authors noted that the vehicle used (corn oil) may have affected some observations at higher doses, including: Increased mortality during lactation, decreased liver weight in males, decreased adrenal weight in females, decreased plasma cholesterol in females, and other immunological markers of toxicity. Increased anogenital distance was observed in males at 100 mg/kg on postnatal day (PND) 4, but not on PND 7 or 21. There was no effect on preputial separation. The time to vaginal opening was delayed in females at the 100 mg/kg dose. There were no effects of HBCD exposure on thyroid hormones triiodothyronine (T3) and thyroxine (T4) in either the parental or F1 animals. There were no effects on thyroid weight or thyroid pathology in the F1 animals (parents were not examined). The most sensitive endpoints with valid benchmark dose (BMD)/BMDL ratios for female rats were decreased bone mineral density with a BMDL of 0.056 mg/kg/day (BMD of 0.18 mg/kg/day) at a benchmark response (BMR) of 10% and decreased concentrations of apolar retinoids in the liver with a BMDL of 1.3 mg/kg/day (BMD = 5.1 mg/kg/day) at a BMR of 10%. The most sensitive endpoint with a valid BMD/BMDL ratio for male rats was an increased IgG response to sheep red blood cells with a BMDL of 0.46 mg/kg/day (BMD = 1.45 mg/kg/day) at a BMR of 20%. There were no significant effects of HBCD exposure on any measure of reproduction, including: Mating success, time to gestation, duration of gestation, number of implantation sites, pup mortality (at birth and throughout lactation), or sex ratios within a litter. Therefore, a BMDL for reproductive toxicity could not be derived for this study.

Saegusa *et al.* (Ref. 41) exposed pregnant Sprague-Dawley rats (10/sex/dose) to HBCD from gestation day 10 until PND 20 at dietary concentrations of 0, 100, 1,000, or 10,000 parts per million (ppm) in a soy-free diet. The authors observed increased relative thyroid weight and decreased T3 levels in F1 male Sprague-Dawley rats at postnatal week (PNW) 11 following dietary exposure to 1,000 ppm (approximately 146.3 mg/kg/day) HBCD. The authors also reported a significant reduction in the number of CNPase-positive oligodendrocytes at 10,000 ppm (approximately 1,504.8 mg/kg/day). EPA identified a maternal LOAEL of 10,000 ppm (about 1,504.8 mg/kg/day) based on increased incidence of thyroid follicular cell hypertrophy, and a developmental LOAEL of 1,000 ppm (about 146.3 mg/kg/day) based on increased relative thyroid weight and decreased T3 levels in F1 males at PNW 11. Changes in reproductive endpoints (*e.g.*, the number of implantation sites, live offspring, sex ratio) were not observed. Therefore, a LOAEL for reproductive toxicity could not be determined for this study.

Ema *et al.* (Ref. 42) administered HBCD to groups of male and female Crl:CD(SD) rats (24/sex/dose, as a mixture of α-HBCD, β-HBCD, and γ-HBCD with proportions of 8.5, 7.9, and 83.7%, respectively) in the diet at concentrations of 0, 150, 1,500, or 15,000 ppm from 10 weeks prior to mating through mating, gestation, and lactation. The authors reported a decrease in the number of primordial follicles in F1 female rats at 1,500 ppm (approximately 138 mg/kg/day) and a significant increase in the number of litters lost in the F1 generation at 15,000 ppm (approximately 1,363 mg/kg/day). These authors reported no other significant treatment-related effects in any generation for indicators of reproductive health, including: Estrous cyclicity, sperm count and morphology, copulation index, fertility index,

gestation index, delivery index, gestation length, number of pups delivered, number of litters, or sex ratios. The authors reported a reduced viability index on day 4 and day 21 of lactation among second generation (F2) offspring at 15,000 ppm (approximately 1,363 mg/kg/day). They observed additional developmental effects at doses as low as 1,500 ppm (approximately 115 and 138 mg/kg/day for F1 males and females, respectively), including: An increase in dihydrotestosterone (DHT) in F1 males and an increased incidence of animals with decreased thyroid follicle size in both sexes and generations. These authors reported no effects on sexual development indicated by anogenital distance, vaginal opening, or preputial separation among F1 or F2 generations. The percentage of pups with completed eye opening on PND 14 was significantly decreased compared to controls in F2 females at 1,500 ppm and in F2 males and females at 15,000 ppm. Fewer F2 females exposed to 15,000 ppm HBCD completed the mid-air righting reflex (76.9%) than control F2 females (100%). These findings were not consistent over generations or sexes and were not considered treatment related. No other effects of HBCD exposure on the development of reflexes were observed in either F1 or F2 progeny. EPA identified a maternal LOAEL of 150 ppm (about 14 mg/kg/day) based on increased thyroid-stimulating hormone (TSH). A reproductive LOAEL of 1,500 ppm (about 138 mg/kg/day) was identified based on a decreased number of primordial follicles in the ovary observed in F1 females. A developmental LOAEL of 15,000 ppm (about 1,142 mg/kg/day for males and 1,363 mg/kg/day for females) was identified based on increased pup mortality during lactation in the F2 generation.

Murai *et al.* (Ref. 43) fed female Wistar rats HBCD in the diet at concentrations of 0, 0.01, 0.1, or 1% throughout gestation (Days 0–20). Dams in the high-dose group demonstrated a statistically significant decrease (8.4%) in food consumption and increase in liver weight (13%) in comparison with controls. There were no treatment-related effects on maternal or fetal body weight. There were no effects on the number of implants; number of resorbed, dead, or live fetuses; body weight of live fetuses; or incidence of external or visceral abnormalities. A few skeletal variations were present but were also observed in controls and not considered significant. There were no effects on weaning or survival. The European Commission (Ref. 44) used the study's data to calculate the doses to be 0, 7.5, 75, and 750 mg/kg/day (based on the assumption of a mean animal weight of 200 grams (g) and food consumption of 15 g/day). They concluded that the offspring NOAEL was 750 mg/kg/day and the maternal LOAEL was 750 mg/kg/day based on a 13% liver weight increase in the high dose group.

Eriksson *et al.* (Ref. 45) conducted a study that examined behavior, learning, and memory in adult mice following exposure to HBCD on PND 10. The authors administered a single oral dose of HBCD (mixture of, α-, β-, and γ-diastereoisomers) dissolved in a fat emulsion at 0, 0.9, or 13.5 mg/kg/day on PND 10 to male and female NMRI mice. The authors concluded that exposure on PND 10 affected spontaneous motor behavior, learning, and memory in adult mice in a dose-dependent manner. The authors identified the lowest exposure level, 0.9 mg/kg, as the LOAEL based on significantly reduced mean locomotor activity compared with controls during the first 20-minute interval of testing. EPA, however, identified a LOAEL of 13.5 mg/kg/day based on decreased habituation, locomotion, and rearing during all intervals. This study was not conducted according to current guidelines (Ref. 46) and Good Laboratory Practices; therefore, EPA reserves judgment on the significance of these findings.

6. *Genotoxicity.* A limited number of studies investigated the genotoxicity of HBCD. These studies indicate that HBCD is not likely to be genotoxic (Refs. 47, 48, 49, 50, 51, 52, 53, and 54).

7. *Conclusions regarding the human hazard potential of HBCD.* The available evidence indicates that HBCD has the potential to cause developmental and reproductive toxicity at moderately low to low doses. While there were some indications of liver toxicity in some short-term and subchronic studies, the evidence for these effects is not sufficient to support listing. The available evidence for developmental and reproductive toxicity, however, is sufficient to conclude that HBCD can be reasonably anticipated to cause moderately high to high chronic toxicity in humans based on the EPCRA section 313 listing criteria published in the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL–4922–2).

B. What is EPA's review of the ecological toxicity of HBCD?

HBCD can cause effects on survival, growth, reproduction, development, and behavior in aquatic and terrestrial species. Observed acute toxicity values as low as 0.009 mg/L for a 72-hour EC_{50} (*i.e.*, the concentration that is effective in producing a sublethal response in 50% of test organisms) based on reduced growth in the marine algae *Skeletonema costatum* (Ref. 55) indicate high acute aquatic toxicity. Observed chronic aquatic toxicity values as low as 0.0042 mg/L (maximum acceptable toxicant concentration (MATC)) for reduced size (length) of surviving young in water fleas (*Daphnia magna)* (Ref. 56) indicate high chronic aquatic toxicity. Reduced chick survival in Japanese quails (*Coturnix coturnix japonica*) fed a 15 parts per million (ppm) HBCD diet (2.1 mg/kg/day) (Ref. 57 as cited in Ref. 58) and altered reproductive behavior (reduced courtship and brood-rearing activity) and reduced egg size in American kestrels (*Falco sparverius*) fed 0.51 mg/kg/day (Refs. 59, 60, 61, and 62) indicate high toxicity to terrestrial species as well.

Assessment of HBCD's aquatic toxicity is complicated by its low water solubility and differences in the solubility of the three main HBCD isomers, which makes testing difficult and interpretation uncertain for studies conducted above the water solubility. Studies conducted at concentrations above the water solubility of HBCD are essentially testing the effects at the maximum HBCD concentration possible. In some acute and chronic aquatic toxicity studies conducted using methods, test species, and endpoints recommended by EPA, no effects were reported at or near the limit of water solubility. However, water solubility is not considered a limiting factor for hazard determination for aquatic species since there are studies showing adverse effects at or below the water solubility of HBCD. In addition, the potential for HBCD to bioaccumulate, biomagnify, and persist in the environment, significantly increases concerns for effects on aquatic organisms.

A wide range of effects of HBCD have been reported in fish (*e.g.*, developmental toxicity, embryo malformations, reduced hatching success, reduced growth, hepatic enzyme and biomarker effects, thyroid effects, deoxyribonucleic acid (DNA) damage to erythrocytes, and oxidative damage) and in invertebrates (*e.g.*, degenerative changes, morphological abnormalities, decreased hatching success, and altered enzyme activity) (Refs. 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74). Reduced thyroid hormone (triiodothyronine, T3, and thyroxine, T4) levels in rainbow trout (*Oncorhynchus mykiss*) (Refs. 68 and 69), are similar to those observed in mammals. Reduced T4 levels were also

reported in birds exposed to HBCD (Ref. 61).

1. *Acute aquatic toxicity.* Adverse effects observed following acute exposure were found in studies with marine algae, including EPA-recommended estuarine/marine algae species *Skeletonema costatum* (Ref. 75 as cited in Refs. 44 and 76, Refs. 55 and 77), a series of short-term (72 to 120-hour) early life stage tests with zebrafish (*Danio rerio*) embryos (Refs. 64, 65, 67, and 72), and short-term (72-hour) results from an early life stage test with sea urchin embryos (Ref. 63). Effects in these studies, reported at concentrations as low as 0.009 mg/L (measured) in algae, 0.01 mg/L (nominal) in zebrafish embryos, and 0.064 mg/L (nominal) in sea urchin embryos, indicate high acute toxicity. Walsh *et al.* (Ref. 55) reported measured 72-hour EC_{50} values in *Skeletonema costatum* ranging from 0.009 to 0.012 mg/L based on reduced growth rate in five different types of saltwater media (0.010 mg/L in seawater itself). The study tested two other marine algal species, *Chlorella sp.* and *Thalassiosira pseudonana,* that were also found to be inhibited by HBCD, albeit at higher concentrations than *Skeletonema costatum.* EC_{50} values for reduced growth in these species were 0.05–0.37 mg/L (0.08 mg/L in seawater) for *Thalassiosira pseudonana* and >1.5 mg/L for *Chlorella sp.*

Subsequent studies by Desjardins *et al.* (Ref. 75) confirmed the high acute toxicity of HBCD to *Skeletonema costatum.* In these studies, single concentrations were tested, but the assays were conducted without solvent and the concentrations were measured. Desjardins *et al.* (Ref. 75) reported approximately 10% inhibition of growth in *Skeletonema costatum* exposed to 0.041 mg/L for 72 hours. Desjardins *et al.* (Ref. 77) found that a saturated solution of 0.0545 mg/L resulted in 51% growth inhibition after 72 hours of exposure. The latter result corresponds to an approximate EC_{50} of 0.052 mg/L.

Zebrafish embryo studies reported a variety of effects on embryos and larvae at low HBCD concentrations. In the Deng *et al.* (Ref. 64) study, developmental toxicity endpoints were assessed at 96 hours post-fertilization in embryos/larvae exposed to HBCD starting 4 hours post-fertilization. Survival of embryos/larvae was significantly reduced at all tested concentrations, making the low concentration of 0.05 mg/L the lowest-observed-effect-concentration (LOEC) in this study; a no-observed-effect-concentration (NOEC) was not established. Embryonic malformation rate was significantly increased and larval growth significantly decreased at ≥0.1 mg/L. Malformations included epiboly deformities, yolk sac and pericardial edema, tail and heart malformations, swim bladder inflation, and spinal curvature. Embryo hatching rate was reduced only at the high concentration of 1 mg/L. Heart rate, a marker for cardiac developmental toxicity, was significantly decreased at all tested concentrations. Associated mechanistic studies suggest the mechanism for developmental toxicity involves the generation of reactive oxygen species (ROS) and the consequent triggering of apoptosis genes. Increased ROS formation (indicative of oxidative stress) was observed at a nominal concentration of 0.1 mg/L. In the same study, zebrafish embryos exposed to HBCD exhibited increased expression of pro-apoptotic genes (Bax, P53, Puma, Apaf-1, caspase 3, and caspase-9), decreased expression of anti-apoptotic genes (Mdm2 and Bcl-2), and increased activity of enzymes involved in apoptosis (caspase-3 and caspase-9) with LOECs of 0.05–1 mg/L.

Hu *et al.* (Ref. 67) found that hatching of zebrafish embryos was delayed at 0.002 mg/L, the lowest concentration tested, and other concentrations up to and including 0.5 mg/L, but not the two high concentrations of 2.5 and 10 mg/L. The same authors observed an increase in heat shock protein (Hsp70) at 0.01 mg/L and an increase in malondialdehyde activity, used as a measure of lipid peroxidation, at 0.5 mg/L. The activity of superoxide dismutase was increased at 0.1 mg/L, but decreased at 2.5 and 10 mg/L. The authors concluded that HBCD can cause oxidative stress and over expression of Hsp70 in acute exposures of zebrafish embryos.

Du *et al.* (Ref. 65) exposed zebrafish embryos 4 hours post-fertilization to each of three diastereomers of HBCD (α-, β-, and γ-HBCD) individually at nominal concentrations of 0.01, 0.1, and 1.0 mg/L. Hatching success was reduced after 68 hours of exposure to γ-HBCD at the lowest concentration (0.01 mg/L), but a higher concentration of α- or β-HBCD (0.1 mg/L) was necessary to reduce hatching success. After 92 hours, survival was reduced at concentrations of 0.01, 0.1, and 1 mg/L of γ-, β-, and α-HBCD, respectively. Growth, measured as body length of larvae after 92 hours of exposure, was reduced at 0.1 mg/L of β- and γ-HBCD and at 1 mg/L of α-HBCD. After 116 hours of exposure, malformations were observed at all test concentrations of β- and γ-HBCD and at 0.1 mg/L and above for α-HBCD. Effects on heart rate varied depending upon the length of exposure; reduced heart rate was observed at 0.1 mg/L of β- and γ-HBCD or 1 mg/L of α-HBCD at 44 hours and at 0.1 mg/L of α- and β-HBCD at 92 hours, whereas γ-HBCD resulted in an increase in heart rate at 1 mg/L at 92 hours. An increase in generation of ROS was observed after 116 hours at 0.1 mg/L of β- and γ-HBCD and at 1 mg/L of α-HBCD. Activities of caspase-3 and caspase-9 enzymes, indicative of apoptosis, were increased after 116 hours at 0.1 mg/L of γ-HBCD and at 1 mg/L of α- and β-HBCD. The authors ranked the HBCD diastereomers in the following order for developmental toxicity to zebrafish: γ-HBCD > β HBCD > α-HBCD.

Effects indicative of oxidative stress, as seen in the zebrafish embryo studies, were also found in clams. Zhang *et al.* (Ref. 74) measured parameters indicative of antioxidant defenses and oxidative stress after 1, 3, 6, 10, and 15 days of exposure to low nominal concentrations of HBCD ranging from 0.000086 to 0.0086 mg/L in the clam *Venerupis philippinarum.* Increases in ethyoxyresorufin-o-deethylase (EROD) activity, glutathione (GSH) content, and DNA damage were observed in clams exposed to 0.00086 mg/L, while increased lipid peroxidation (LPO) was observed at 0.0086 mg/L. These same effects were observed at lower concentrations as the length of exposure increased.

Anselmo *et al.* (Ref. 63) exposed sea urchin (*Psammechinus miliaris*) embryos to HBCD in an early life stage test. Newly-fertilized embryos were exposed to HBCD at nominal concentrations of 0, 9, 25, 50, and 100 nanomolar (nM) (0, 0.0058, 0.016, 0.032, and 0.064 mg/L, respectively) in dimethyl sulfoxide solvent and evaluated at 72 hours post-fertilization. A significant increase in morphological abnormalities was found at a nominal concentration of 100 nM HBCD (0.064 mg/L), the highest concentration tested. Observed malformations included short or deformed larval arms and slight edema around the larval body. The NOEC for this effect at 72 hours was 0.032 mg/L.

2. *Chronic aquatic toxicity.* A measured MATC of 0.0042 mg/L, based on reduced size (length) of surviving young water fleas (*Daphnia magna*), indicates high chronic toxicity (Ref. 56). This study reported additional effects, including decreased reproductive rate and decreased mean weight of surviving young at 0.011 mg/L. Other effects reported following chronic exposure to HBCD included degenerative changes in the gills of clams (*Macoma balthica*), manifested by the increased frequency

of nuclear and nucleolar abnormalities and the occurrence of dead cells, at nominal concentrations of ≥0.1 mg/L (50-day LOEC) (Ref. 71), a nominal MATC of 0.045 mg/L for increased morphological abnormalities in sea urchin (*P. miliaris*) embryos exposed to HBCD for up to 16 days in an early life stage test (Ref. 63), and a nominal MATC of 0.03 mg/L for increased malformation rate in marine medaka (*Oryzias melastigma*) embryos exposed to HBCD for 17 days in an early life stage test (Ref. 66). The developmental abnormalities in medaka included yolk sac edema, pericardial edema, and spinal curvature (Ref. 66). Mechanistic findings in this study included increases in heart rate and sinus venosus-bulbus arteriosus (SV–BA) distance, which are markers for cardiac development, induction of oxidative stress and apoptosis, and suppression of nucleotide and protein synthesis.

Thyroid effects were reported in juvenile rainbow trout (*Oncorhynchus mykiss*) following dietary exposure to HBCD (Refs. 68 and 69). Each of the diastereomers of HBCD (administered separately via diet at concentrations of 5 ng/g of α-, β-, or γ-HBCD for up to 56 days) disrupted thyroid homeostasis, as indicated by lower free circulating T3 and T4 levels.

The mechanisms of the effects on fish and invertebrates following chronic exposure were similar to those found in acute studies. Effects observed in fish include increased formation of ROS resulting in oxidative damage to lipids, proteins, and DNA, decreased antioxidant capacities in fish tissue (*e.g.*, brains, hepatocytes, or erythrocytes), and increasing levels of EROD (detoxification enzyme) and PentoxyResorufin-O-Deethylase (PROD, detoxification enzyme) levels in hepatocytes of fish exposed to the nominal concentration of ≥0.1 mg/L (corresponds to ~0.2 mg/g whole fish (wet weight)) for 42 days (Ref. 73). Ronisz *et al.* (Ref. 70) found a significant increase in hepatic cytosolic catalase activity in rainbow trout (*Oncorhynchus mykiss*) 5 days after a single intraperitoneal injection of 50 mg/kg was administered. The same authors observed reductions in liver somatic index (LSI) and EROD activity in a 28-day study in which rainbow trout were injected intraperitoneally with HBCD on days 1 and 14 at a dose somewhat less than 500 mg/kg. Zhang *et al.* (Ref. 74) observed the following signs of oxidative stress in clams (*V. philippinarum*) after 15 days of exposure to HBCD: The activities of antioxidant enzymes (EROD, superoxide dismutase (SOD), and glutathione-S-transferase (GST)), as well as GSH content, were increased at 0.000086 mg/L, the lowest concentration tested. In addition, LPO was increased at 0.00086 mg/L and DNA damage was increased at 0.0086 mg/L.

3. *Terrestrial toxicity and phytotoxicity.* Japanese quail (*Coturnix coturnix japonica*) exposed for 6 weeks to an isomeric mixture of HBCD in the diet experienced a reduction in hatchability at all tested concentrations (12–1,000 ppm) (Ref. 57). Additional effects included a significant reduction in egg shell thickness starting at 125 ppm, decreases in egg weights and egg production rates starting at 500 ppm, increases in cracked eggs starting at 500 ppm, and adult mortality at 1,000 ppm. A subsequent test, conducted at lower dietary concentrations, determined LOAEL and NOAEL values of 15 and 5 ppm, respectively, based on significant reduction of survival of chicks hatched from eggs of quails fed HBCD (Ref. 57).

Several studies have been conducted examining effects of HBCD on American kestrels (*Falco sparverius*). Kobiliris (Ref. 78) reported a reduced "corticosterone response" (where "corticosterone response" was defined as a stimulation of the adrenal cortex to produce and release corticosterone into the bloodstream), reduced flying activities of juvenile males during hunting behavior trials, and delayed response times of juvenile females during predator avoidance behavior trials in American kestrels exposed in ovo to 164.13 ng/g wet weight. Kestrels exposed via the diet to 0.51 mg/kg/day beginning 3 weeks prior to pairing and continuing until the first chick hatched began to lay eggs 6 days earlier than controls and laid larger clutches of smaller eggs (Ref. 59). Although the technical mixture of HBCD stereoisomers contained predominantly γ-HBCD (80% of the mixture), the main isomer found in eggs was α-HBCD (>90% of the total HBCD in eggs). In a subsequent study, Marteinson *et al.* (Ref. 61) exposed kestrels to dietary HBCD at the same dose (0.51 mg/kg/day) and found increased testes weight in unpaired males, a marginally significant effect on testis histology in unpaired males (increased number of seminiferous tubules containing elongated spermatids; $p = 0.052$), marginally increased testosterone levels in breeding males (increased at the time the first egg was laid; $p = 0.054$), and no significant effect on sperm counts. Plasma T4 levels were reduced in breeding males throughout the study, which the authors took to suggest that thyroid disruption that may have contributed to the observed increase in testes weight. Marteinson *et al.* (Ref. 62) found altered reproductive behavior in both sexes of kestrels fed 0.51 mg/kg/day, including reduced activity in both sexes during courtship and in males during brood rearing, which may have contributed to the observed reduction in incubation nest temperature and also to the reduced egg size reported previously by Fernie *et al.* (Ref. 58). In a 22-day study of chickens (*Gallus gallus domesticus*) exposed to HBCD in ovo, reduced pipping success was observed at 100 ng/g egg (Ref. 79).

The accumulation and toxicity of α-, β-, and γ-HBCDs in maize have been studied (Ref. 80). The order of accumulation in roots was β-HBCD > α-HBCD > γ-HBCD and in shoots it was β-HBCD > γ-HBCD > α-HBCD. In maize exposed to 2 μg/L HBCD, the inhibitory effect of the diastereomers on the early development of maize as well as the intensities of hydroxyl radical and histone H2AX phosphorylation followed the order α-HBCD > β-HBCD > γ-HBCD, which indicates diastereomer-specific oxidative stress and DNA damage in maize. The study confirmed that for maize exposed to HBCDs, the generation of reactive oxygen species was one, but not the only, mechanism for DNA damage.

4. *Conclusions regarding the ecological hazard potential of HBCD.* HBCD has been shown to cause acute toxicity to aquatic organisms at concentrations as low as 0.009 mg/L and chronic toxicity at concentrations as low as 0.0042 mg/L. Toxicity to terrestrial species has been observed at doses as low as 0.51 mg/kg/day. The available evidence shows that HBCD is highly toxic to aquatic and terrestrial species.

C. What is EPA's review of the bioaccumulation data for HBCD?

HBCD has been shown in numerous studies to bioaccumulate in aquatic species and biomagnify in aquatic and terrestrial food chains (Ref. 1). BCFs for HBCD in fish in the peer-reviewed literature range as high as 18,100 (Refs. 81, 82, and 83). Some of the bioaccumulation values for fish species and a freshwater food web are shown in Table 1. The complete listing of the available bioaccumulation data and more details about the studies can be found in the ecological assessment (Ref. 1).

TABLE 1—HBCD BCF AND BAF DATA FOR FISH AND FRESHWATER FOOD WEB

Species	Duration and test endpoint	Value	Reference
Rainbow trout (*Oncorhynchus mykiss*)	35-day BCF	8,974 and 13,085	Ref. 81.
Fathead minnow (*Pimephales promelas*)	32-day BCF	18,100	Ref. 82.
Mirror carp (*Cyprinus carpio morpha noblis*)	30-day exposure and 30-day depuration BCF.	α-HBCD: 5,570–11,500 β-HBCD: 187–642 γ-HBCD: 221–584	Ref. 83.
Mud carp (*Cirrhinus molitorella*), nile tilapia (*Tilapia nilotica*), and suckermouth catfish (*Hypostomus plecostomus*).	Log BAF	4.8–7.7 for HBCD isomers (α-HBCD had higher BAFs than β- and γ-HBCD) (BAFs ranged from ~63,000 to 50,000,000).	Ref. 84.
Freshwater food web	Log BAF	α-HBCD: 2.58–6.01 β-HBCD: 3.24–5.58 γ-HBCD: 3.44–5.98 ΣHBCDs: 2.85–5.98 (BAFs range from ~700 to 950,000)	Ref. 85.

Drottar and Kruger (Ref. 81) provided strong evidence that HBCD bioaccumulates in a study conducted according to established guidelines (OECD Test Guideline (TG) 305 and Office of Prevention, Pesticides and Toxic Substances (OPPTS) 850.1730). In this study, BCFs of 13,085 and 8,974 were reported in rainbow trout (*O. mykiss*) exposed to 0.18 and 1.8 μg/L, respectively. Concentrations of HBCD in tissue reached steady-state at day 14 for fish exposed to 1.8 μg/L and, during the subsequent depuration stage, a 50% reduction of HBCD from edible and non-edible tissue and whole fish was reported on days 19 and 20 post-exposure. In fish exposed to 0.18 μg/L, an apparent steady-state was reached on day 21, but on day 35, the tissue concentration of HBCD in fish increased noticeably; thus, steady-state was not achieved according to study authors, and BCF values (for the exposure concentration of 0.18 μg/L) were calculated based on day 35 tissue concentrations. Clearance of 50% HBCD from tissue of 0.18 μg/L exposed fish occurred 30–35 days post-exposure.

Veith *et al.* (Ref. 82) further supports the conclusion that HBCD bioaccumulates in a study conducted prior to the establishment of standardized testing guidelines for bioconcentration studies. The study reported a BCF of 18,100 following exposure of fathead minnows to 6.2 μg/L; the BCF was identified as a steady-state BCF, but the report does not indicate the time when steady-state was reached. A depuration phase was not included in this study. Zhang *et al.* (Ref. 83) calculated BCFs for each HBCD diastereomer in mirror carp and found strong evidence that α-HBCD (BCF of 5,570–11,500) is much more bioaccumulative than β- and γ-HBCD (BCF of 187–642); BCF values that were normalized to lipid content were much higher (30,700–45,200 for α-HBCD, 1,030–1,900 for β-HBCD, and 950–1,730 for γ-HBCD) than non-normalized BCFs.

BAFs, which capture accumulation of HBCD from diet as well as water and sediment, were calculated for freshwater food webs in industrialized areas of Southern China in two separate field studies. He *et al.* (Ref. 84) calculated log BAFs of 4.8–7.7 (corresponding to BAFs of 63,000–50,000,000) for HBCD isomers in carp, tilapia, and catfish, and found higher BAFs for α-HBCD than β- and γ-HBCD. In a pond near an e-waste recycling site, Wu *et al.* (Ref. 85) calculated log BAFs of 2.85–5.98 for HBCD (corresponding to BAFs of 700–950,000) in a freshwater food web. Log BAFs for each diastereomer in this study were comparable to one another (see Table 1). La Guardia *et al.* (Ref. 86) calculated log BAFs in bivalves and gastropods collected downstream of a textile manufacturing outfall; these ranged from 4.2 to 5.3 for α- and β-HBCD (BAFs of 16,000–200,000), and from 3.2 to 4.8 for γ-HBCD (BAFs of 1,600–63,000).

In general, α-HBCD bioaccumulates in organisms and biomagnifies through food webs to a greater extent than the β- and γ- diastereomers. Uncertainty remains as to the balance of diastereomer accumulation in various species and the extent to which bioisomerization and biotransformation rates for each isomer affect bioaccumulation potential. Some authors (*e.g.*, Law *et al.*, Ref. 87) have proposed that γ-HBCD isomerizes to α-HBCD under physiological conditions, rather than uptake being diastereisomer-specific. To test this theory, Esslinger *et al.* (Ref. 88) exposed mirror carp (*Cyprinus carpio morpha noblis*) to only γ-HBCD and found no evidence of bioisomerization. In contrast, when Du *et al.* (Ref. 89) exposed zebrafish (*Danio rerio*) to only γ-HBCD, they found detectable levels of α-HBCD in fish tissue, suggesting that bioisomerization occurred. Marvin *et al.* (Ref. 90) hypothesized that differences in accumulation could also be due in part to a combination of differences in solubility, bioavailability, and uptake and depuration kinetics.

Zhang *et al.* (Ref. 91) calculated diastereomer-specific BCFs in algae and cyanobacteria ranging from 174 to 469. For the cyanobacteria (*Spirulina subsalsa*), the BCF for α-HBCD (350) was higher than the BCFs for β-HBCD (270) and γ-HBCD (174). However, for the tested alga (*Scenedesmus obliquus*), the BCF for β-HBCD (469) was higher than that for the other isomers (390–407).

In summary, HBCD has been shown in numerous studies to be highly bioaccumulative in aquatic species and biomagnify in aquatic and terrestrial food chains; however, diastereomer- and enantiomer-specific mechanisms of accumulation are still unclear.

D. What is EPA's review of the persistence data for HBCD?

There are limited data available on the degradation rates of HBCD under environmental conditions. A short summary of the environmental fate and persistence data for HBCD is presented in Table 2; additional details about this data can be found in the HBCD hazard assessment (Ref. 1).

TABLE 2—ENVIRONMENTAL DEGRADATION OF HBCD

Property	Value	Reference
Air		
Photodegradation	Photo-induced isomerization of γ-HBCD to α-HBCD in indoor dust with a measured decrease in HBCD concentration concurrent with an increase of pentabromocyclododecenes (PBCDs) in indoor dust.	Ref. 9.2.
	Indirect photolysis half-life: 26 hours AOPWIN v1.92 (estimated)	Ref. 93.
Water		
Hydrolysis	Not expected due to lack of functional groups that hydrolyze under environmental conditions and low water solubility (estimated).	Ref. 44.
Sediment		
Aerobic conditions	No biodegradation observed in 28-day closed-bottle test	Refs. 76 and 94.
	Half-life: 128, 92, and 72 days for α-, γ-, and β-HBCD, respectively (estimated), based on a 44% decrease in total initial radioactivity in viable freshwater sediment.	Ref. 95.
	Half-life: >120 days (estimated), based on a 15% decrease in total initial radioactivity in abiotic freshwater sediment.	
	Half-life: 11 and 32 days (estimated) in viable sediment collected from Schuylkill River and Neshaminy creek, respectively.	Ref. 96.
	Half-life: 190 and 30 days (estimated) in abiotic sediment collected from Schuylkill River and Neshaminy creek.	
Anaerobic conditions	Half-life: 92 days (estimated), based on a 61% decrease in total initial radioactivity in viable freshwater sediment.	Ref. 95.
	Half-life: >120 days (estimated), based on a 33% decrease in total initial radioactivity in abiotic freshwater sediment.	
	Half-life: 1.5 and 1.1 days (estimated) in viable sediment collected from Schuylkill River and Neshaminy creek.	Ref. 96.
	Half-life: 10 and 9.9 days (estimated) in abiotic sediment collected from Schuylkill River and Neshaminy creek.	
Soil		
Aerobic conditions	Half-life: >120 days (estimated), based on a 10% decrease in total initial radioactivity in viable soil.	Ref. 95.
	Half-life: >120 days (estimated), based on a 6% decrease in total initial radioactivity in abiotic soil.	
	Half-life: 63 days (estimated) in viable soil amended with activated sludge	Ref. 96.
	Half-life: >120 days (estimated) in abiotic soil..	
Anaerobic conditions	Half-life: 6.9 days (estimated) in viable soil amended with activated sludge	Ref. 96.
	Half-life: 82 days (estimated) in abiotic soil using a nominal HBCD concentration of 0.025 mg/kg dry weight.	

1. *Abiotic degradation.* HBCD is not expected to undergo significant direct photolysis since it does not absorb radiation in the environmentally available region of the electromagnetic spectrum that has the potential to cause molecular degradation (Ref. 97). Although HBCD is expected to exist primarily in the particulate phase in the atmosphere, a small percentage may also exist in the vapor phase based on its vapor pressure (Refs. 22, 90, 98, and 99). HBCD in the vapor phase will be degraded by reaction with photochemically produced hydroxyl radicals in the atmosphere. An estimated rate constant of 5.01×10^{-12} cubic centimeters (cm^3)/molecules-second at 25 °C for this reaction corresponds to a half-life of 26 hours, assuming an atmospheric hydroxyl radical concentration of 1.5×10^6 molecules/cm^3 and a 12-hour day (Refs. 93 and 100).

Photolytic isomerization of HBCD has been described in both indoor dust samples and in samples of HBCD standards dissolved in methanol using artificial light (Ref. 92). After 1 week in the presence of light, indoor dust containing predominantly γ-HBCD was found to decrease in γ-HBCD and increase in α-HBCD concentration. There was a measured decrease in HBCD concentration concurrent with an increase in PBCDs in the indoor dust exposed to artificial light. The three diastereomerically-pure HBCD standards (α-, β-, and γ-HBCD) that were dissolved in methanol also began to interconvert within 1 week, resulting in a decrease in γ-HBCD concentration and an increase in α-HBCD concentration.

HBCD is not expected to undergo hydrolysis in environmental waters due to lack of functional groups that hydrolyze under environmental conditions and the low water solubility of HBCD (Ref. 44).

Observed abiotic degradation of HBCD during simulation tests based on Organisation for Economic Cooperation and Development (OECD) methods 307 and 308 was approximately 33% in anaerobic freshwater sediment, 15% in aerobic freshwater sediment, and 6% in aerobic soil after 112–113 days (Refs. 44 and 95). The results from these studies correspond to estimated half-lives >120 days in soil and sediment due to minimal degradation being observed. Initial concentrations of ^{14}C radiolabeled HBCD (α-, β-, and γ-^{14}C-HBCD in a ratio of 7.74:7.84:81.5) were 3.0–4.7 mg/kg dry weight in the sediment and soil systems. HBCD degradation observed under abiotic conditions was attributed to abiotic reductive dehalogenation (Refs. 44, 76, and 95). Degradation proceeded through a stepwise process to form

tetrabromocyclododecene, dibromocyclododecadiene (DBCD), and 1,5,9-cyclododecatriene (Refs. 44 and 95). Further degradation of 1,5,9-cyclododecatriene was not observed. In this study, HBCD degradation occurred faster in sediment than in soil and faster under anaerobic conditions compared to aerobic conditions (Refs. 44 and 95).

Previous OECD 308 and 307 based simulation tests from the same authors (Davis *et al.* 2005, Ref. 96) presented results suggesting faster abiotic degradation, particularly in sediment under anaerobic conditions, but were performed at much lower HBCD concentrations and measured only γ-HBCD (Refs. 44, 76, 90, 96, and 101). In this study, abiotic degradation half-lives in freshwater sediments were 30–190 days under aerobic conditions and 9.9–10 days under anaerobic conditions. Estimated half-lives in abiotic soil were >120 days under aerobic conditions and 82 days under anaerobic conditions. This study evaluated γ-HBCD only and did not address interconversion of HBCD isomers or α- and β-HBCD degradation. The initial concentrations of HBCD were 0.025–0.089 mg/kg dry weight in the sediment and soil systems, nearly 100 times less than the HBCD concentrations used in the subsequent Davis *et al.* 2006 study (Ref. 95). Higher concentrations of HBCD (3.0–4.7 mg/kg dry weight) in the Davis *et al.* 2006 study (Ref. 95) allowed for quantification of individual isomers, metabolite identification and mass balance evaluation (Refs. 95 and 101). Additionally, the Davis *et al.* 2005 study (Ref. 96) was considered to be of uncertain reliability for quantifying HBCD persistence because of concerns regarding potential contamination of sediment samples, an interfering peak corresponding to γ-HBCD in the liquid chromatography/mass spectrometry (LC/MS) chromatograms, and poor extraction of HBCD leading to HBCD recoveries of 33–125% (Refs. 44 and 101).

2. *Biotic degradation.* A few studies on the biodegradation of HBCD were located. A closed bottle screening-level test for ready biodegradability (OECD Guideline 301D, EPA OTS 796.3200) was performed using an initial HBCD concentration of 7.7 mg/L and an activated domestic sludge inoculum (Refs. 76 and 94). No biodegradation was observed (0% of the theoretical oxygen demand) over the test period of 28 days under the stringent guideline conditions of this test.

Degradation of HBCD during simulation tests with viable microbes, based on OECD methods 307 and 308, was approximately 61% in anaerobic freshwater sediment, 44% in aerobic freshwater sediment, and 10% in aerobic soil after 112–113 days (Refs. 44 and 95). The results from this study correspond to estimated HBCD half-lives of 92 days in anaerobic freshwater sediment, 128, 92, and 72 days for α-, γ-, and β-HBCD, respectively in aerobic freshwater sediment, and >120 days in aerobic soil. An initial total ^{14}C-HBCD concentration of 3.0–4.7 mg/kg dry weight in the sediment and soil systems was used, allowing for quantification of individual isomers, metabolite identification, and mass balance evaluation (Refs. 95 and 101). Although very high spiking rates can be toxic to microorganisms in biodegradation studies and lead to unrealistically long estimated half-lives, the results of this study did not suggest toxicity to microorganisms. Tests with viable microbes demonstrated increased HBCD degradation compared to the biologically-inhibited control studies. In combination, these studies suggest that HBCD will degrade slowly in the environment, although faster in sediment than in soil, faster under anaerobic conditions than aerobic conditions, faster with microbial action than without microbial action, and at different rates for individual HBCD diastereomers (slower for α-HBCD than for the γ- and β-stereoisomers).

The same researchers (Ref. 76) previously conducted a water-sediment simulation test for commercial HBCD based on OECD guideline 308 using nominal HBCD concentrations of 0.034–0.089 mg/kg dry weight (Refs. 44, 76, and 102). Aerobic and anaerobic microcosms were pre-incubated at 20 °C for 49 days and at 23 °C for 43–44 days, respectively. HBCD was then added to 14–37 g dry weight freshwater sediment samples in 250 ml serum bottles (water:sediment ratio of 1.6–2.9) and the microcosms were sealed and incubated in the dark at 20 °C for up to 119 days. For the aerobic microcosms, the headspace oxygen concentration was kept above 10–15%. This study evaluated only γ-HBCD and did not address interconversion of HBCD isomers or α- and β-HBCD degradation. Disappearance half-lives of HBCD with sediment collected from Schuylkill River and Neshaminy creek were 11 and 32 days in viable aerobic sediments, respectively (compared to 190 and 30 days in abiotic aerobic controls, respectively), and 1.5 and 1.1 days in viable anaerobic sediments, respectively (compared to 10 and 9.9 days in abiotic anaerobic controls).

Data from these tests suggest that anaerobic degradation is faster than aerobic degradation of HBCD in viable and abiotic sediments and that degradation is faster in viable conditions than abiotic conditions. While these findings are consistent with Davis *et al.* 2006 (Ref. 95), the actual degradation rates in this study are much faster. However, results from this study do not provide a reliable indication of HBCD persistence. A mass balance could not be established because only γ-HBCD was used to quantify HBCD concentrations, ^{14}C-radiolabelled HBCD was not used, and degradation products were not identified; therefore, apparent disappearance of HBCD in this study may not reflect biodegradation. In addition, there were concerns that contaminated sediment may have been used, HBCD extraction was incomplete (HBCD recovery varied from 33 to 125%), and an interfering peak was observed in the LC/MS chromatograms corresponding to γ-HBCD (Refs. 44 and 101).

Similarly, a soil simulation test was conducted based on OECD guideline 307 for commercial HBCD using 50 g dry weight sandy loam soil samples added to 250 ml serum bottles (Refs. 44, 76, 96, and 103). The moisture content was 20% by weight. Aerobic and anaerobic microcosms were pre-incubated at 20 °C for 35 days and at 23 °C for 43 days, respectively. Activated sludge was added to the soil at 5 mg/g, and HBCD was added to the soil to achieve a nominal concentration of 0.025 mg/kg dry weight. The microcosms were then incubated in the dark at 20 °C for up to 120 days. The disappearance half-lives were 63 days in viable aerobic soil (compared to >120 days in abiotic aerobic controls) and 6.9 days in viable anaerobic soil (compared to 82 days in abiotic anaerobic controls). As in the sediment studies, HBCD degradation in soil occurred faster under anaerobic conditions compared to aerobic conditions, and faster in viable conditions than abiotic conditions. The disappearance half-lives in soil were slower than those in sediment.

Biological processes were suggested to be responsible for the increased degradation of HBCD in this study using viable conditions, relative to abiotic conditions; however, degradation was not adequately demonstrated in soil because no degradation products were detected and only γ-HBCD was used to quantify HBCD concentrations, making it impossible to calculate a mass balance. HBCD recoveries on day 0 of the experiment were well below (0.011–0.018 mg/kg dry weight) the nominal test concentrations (0.025 mg/kg dry weight), suggesting rapid adsorption of HBCD to soil and poor extraction methods (Refs. 44 and 101).

In studies using 0.025–0.089 mg/kg HBCD (Davis *et al.* 2005, Ref. 96), the estimated half-life values were shorter than studies using 3.0–4.7 mg/kg HBCD (Davis *et al.* 2006, Ref. 95) by approximately one order of magnitude for aerobic viable sediment (11–32 days compared to72–128 days) and anaerobic viable sediment (1.1–1.5 days compared to 92 days). The viable aerobic soil half-life using lower concentrations of HBCD (Davis *et al.* 2005, Ref. 96) was less than half of the half-life based on the higher HBCD concentration (63 days compared to >120 days) (Davis *et al.* 2006, Ref. 95). Both Davis *et al.* studies (Refs. 95 and 96) suggest that HBCD degrades faster in sediment than in soil, faster under anaerobic conditions than aerobic conditions, and faster with microbial action than without microbial action. HBCD is poorly soluble, and it was suggested that at higher concentrations of HBCD, degradation is limited by mass transfer of HBCD into microbes. However, results from the Davis *et al.* 2005 study (Ref. 96) likely overestimate the rate of HBCD biodegradation, for the reasons noted previously (primarily, failure to use ^{14}C-radiolabelled HBCD, quantify isomers other than γ-HBCD, identify degradation products, or establish a mass balance, but also procedural problems with contamination of sediment, incomplete HBCD extraction, and occurrence of an interfering peak in the LC/MS chromatograms corresponding to γ-HBCD).

It is important to note that the rapid biodegradation rates from Davis *et al.* 2005 (Ref. 96) are not consistent with environmental observations. HBCD has been detected over large areas and in remote locations in environmental monitoring studies (Refs 1 and 104). Dated sediment core samples indicate slow environmental degradation rates (Refs. 44, 90, 96, and 101). For example, HBCD was found at concentrations ranging from 112 to 70,085 μg/kg dry weight in sediment samples collected at locations near a production site in Aycliffe, United Kingdom two years after the facility was closed down (Ref. 44). Monitoring data do not provide a complete, quantitative determination of persistence because HBCD emission sources, rates, and quantities are typically unknown, and all environmental compartments are not considered. However, the monitoring data do provide evidence in support of environmental persistence. In addition, the widespread presence of HBCD in numerous terrestrial and aquatic species indicates persistence in the environment sufficient for bioaccumulation to occur (Ref. 1).

IV. Rationale for Listing HBCD and Lowering the Reporting Threshold

A. What is EPA's rationale for listing the HBCD category?

HBCD has been shown to cause developmental effects at doses as low as 146.3 mg/kg/day (LOAEL) in male rats. Developmental effects have also been observed with a BMDL of 0.056 mg/kg/day (BMD of 0.18 mg/kg/day) based on effects in female rats and a BMDL of 0.46 mg/kg/day (BMD of 1.45 mg/kg/day) based on effects in male rats. HBCD also causes reproductive toxicity at doses as low 138 mg/kg/day (LOAEL) in female rats. Based on the available developmental and reproductive toxicity, EPA believes that HBCD can be reasonably anticipated to cause moderately high to high chronic toxicity in humans. Therefore, EPA believes that the evidence is sufficient for listing the HBCD category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and reproductive toxicity data.

HBCD has been shown to be highly toxic to both aquatic and terrestrial species with acute aquatic toxicity values as low as 0.009 mg/L and chronic aquatic toxicity values as low as 0.0042 mg/L. HBCD is highly toxic to terrestrial species as well with observed toxic doses as low as 0.51 and 2.1 mg/kg/day. In addition to being highly toxic, HBCD is also bioaccumulative and persistent in the environment, which further supports a high concern for the toxicity to aquatic and terrestrial species. EPA believes that HBCD meets the EPCRA section 313(d)(2)(C) listing criteria on toxicity alone but also based on toxicity and bioaccumulation as well as toxicity and persistence in the environment. Therefore, EPA believes that the evidence is sufficient for listing the HBCD category on the EPCRA section 313 toxic chemical list pursuant to EPCRA section 313(d)(2)(C) based on the available ecological toxicity data as well as the bioaccumulation and persistence data.

HBCD has the potential to cause developmental and reproductive toxicity at moderately low to low doses and is highly toxic to aquatic and terrestrial organisms; thus, EPA considers HBCD to have moderately high to high chronic human health toxicity and high ecological toxicity. EPA does not believe that it is appropriate to consider exposure for chemicals that are moderately high to highly toxic based on a hazard assessment when determining if a chemical can be added for chronic human health effects pursuant to EPCRA section 313(d)(2)(B) (see 59 FR 61440–61442). EPA also does not believe that it is appropriate to consider exposure for chemicals that are highly toxic based on a hazard assessment when determining if a chemical can be added for environmental effects pursuant to EPCRA section 313(d)(2)(C) (see 59 FR 61440–61442). Therefore, in accordance with EPA's standard policy on the use of exposure assessments (See November 30, 1994 (59 FR 61432, FRL–4922–2), EPA does not believe that an exposure assessment is necessary or appropriate for determining whether HBCD meets the criteria of EPCRA section 313(d)(2)(B) or (C).

B. What is EPA's rationale for lowering the reporting threshold for HBCD?

EPA believes that the available bioaccumulation and persistence data for HBCD support a classification of HBCD as a PBT chemical. HBCD has been shown to be highly bioaccumulative in aquatic species and to also biomagnify in aquatic and terrestrial food chains. While there is limited data on the half-life of HBCD in soil and sediment, the best available data supports a determination that the half-life of HBCD in soil and sediment is at least 2 months. This determination is further supported by the data from environmental monitoring studies, which indicate that HBCD has significant persistence in the environment. The widespread presence of HBCD in numerous terrestrial and aquatic species also supports the conclusion that HBCD has significant persistence in the environment. Therefore, consistent with EPA's established policy for PBT chemicals (See 64 FR 58666, October 29, 1999) (FRL–6389–11) EPA is proposing to establish a 100-pound reporting threshold for the HBCD category.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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VI. What are the Statutory and Executive Orders reviews associated with this action?

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any new information collection requirements that require additional approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2025–0009 and 2050–0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350- 2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. Since the HBCD category would be classified a PBT category, it is designated as a chemical of special concern, for which Form A reporting is not allowed. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322, 42 U.S.C. 11042, 40 CFR part 350.

OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2025–0009 (EPA Information Collection Request (ICR) No. 1363) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations are listed in 40 CFR part 9 or 48 CFR chapter 15, and displayed on the information collection instruments (*e.g.*, forms, instructions).

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are small manufacturing facilities. The Agency has determined that of the 55 entities estimated to be impacted by this action, 42 are small businesses; no small governments or small organizations are expected to be affected by this action. All 42 small businesses affected by this action are estimated to incur annualized cost impacts of less than 1%. Thus, this action is not expected to have a significant adverse economic impact on a substantial number of small entities. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis (Ref. 2).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action is not subject to the requirements of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements. EPA's economic analysis indicates that the total cost of this action is estimated to be $372,973 in the first year of reporting (Ref. 2).

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action adds an additional chemical to the EPCRA section 313 reporting requirements. By adding a chemical to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low income populations) with access to data which they may use to seek lower exposures and consequently reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to

reduce any potential risks to human health and the environment. Therefore, the informational benefits of the action will have positive human health and environmental impacts on minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: May 16, 2016.

Gina McCarthy,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.28, amend the table in paragraph (a)(2) as follows:

■ a. Revise the heading for the second column, and

■ b. Alphabetically add the category "Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)" and list "3194–55–6 (1,2,5,6,9,10-Hexabromocyclododecane)" and "25637–99–4 (Hexabromocyclododecane)"

The additions to read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

(a) * * *

(2) * * *

Category name	Reporting threshold (in pounds unless otherwise noted)
* * * * * * *	
Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)	100
3194–55–6 1,2,5,6,9,10-Hexabromocyclododecane	
25637–99–4 Hexabromocyclododecane	
* * * * * * *	

* * * * *

■ 3. In § 372.65, paragraph (c) is amended by adding alphabetically an entry for "Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)" to the table to read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(c) * * *

Category name	Effective date
* * * * * * *	
Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here)	1/1/17
3194–55–6 1,2,5,6,9,10-Hexabromocyclododecane	
25637–99–4 Hexabromocyclododecane	
* * * * * * *	

[FR Doc. 2016–12464 Filed 6–1–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150316270–5270–01]

RIN 0648–XE520

Fisheries Off West Coast States; Modifications of the West Coast Commercial Salmon Fisheries; Inseason Actions #1 Through #5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of fishing seasons; request for comments.

SUMMARY: NMFS announces five inseason actions in the ocean salmon fisheries. These inseason actions modified the commercial salmon fisheries in the area from Cape Falcon, OR to Point Arena, CA.

DATES: The effective dates for the inseason actions are set out in this document under the heading Inseason Actions. Comments will be accepted through June 17, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2016–0007, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0007,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

• *Mail:* William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA. 98115–6349.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Peggy Mundy at 206–526–4323.

SUPPLEMENTARY INFORMATION:

Background

In the 2015 annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), NMFS announced the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, beginning May 1, 2015, and 2016 salmon fisheries opening earlier than May 1, 2016. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Pacific Fishery Management Council (Council) and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions). The state management agencies that participated in the consultations described in this document were: California Department of Fish and Wildlife (CDFW) and Oregon Department of Fish and Wildlife (ODFW).

Management of the salmon fisheries is generally divided into two geographic areas: north of Cape Falcon (U.S./Canada border to Cape Falcon, OR) and south of Cape Falcon (Cape Falcon, OR, to the U.S./Mexico border). The inseason actions reported in this document affected fisheries south of Cape Falcon. Within the south of Cape Falcon area, the Klamath Management Zone (KMZ) extends from Humbug Mountain, OR, to Humboldt South Jetty, CA, and is divided at the Oregon/California border into the Oregon KMZ to the north and California KMZ to the south. All times mentioned refer to Pacific daylight time.

Inseason Actions

Inseason Action #1

Description of action: Inseason action #1 modified the commercial salmon fishery from Cape Falcon to Humbug Mountain, previously scheduled to open March 15, 2016, to remain closed through March 31, 2016.

Effective dates: Inseason action #1 took effect on March 15, 2016, and remained in effect until superseded by inseason action #4 on April 1, 2016.

Reason and authorization for the action: The purpose of this action was to conserve fishery impacts on the Klamath River fall Chinook stock (KRFC). The Council's Salmon Technical Team (STT) presented stock abundance forecasts for 2016. On the basis of these forecasts, the Regional Administrator (RA) determined that fisheries south of Cape Falcon will be constrained in 2016 to meet conservation objectives specified in the Pacific Coast Salmon Fishery Management Plan (FMP) for KRFC, as well as ESA consultation standards for California coastal Chinook for which KRFC is used as a proxy. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #1 occurred on March 10, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

Inseason Action #2

Description of action: Inseason action #2 modified the commercial salmon fishery from Humbug Mountain to the Oregon/California Border (Oregon KMZ), previously scheduled to open March 15, 2016, to remain closed through March 31, 2016.

Effective dates: Inseason action #2 took effect on March 15, 2016, and remained in effect until superseded by inseason action #4 on April 1, 2016.

Reason and authorization for the action: The purpose of this action was to conserve fishery impacts on the KRFC. The STT presented stock abundance forecasts for 2016. On the basis of these forecasts, the RA determined that fisheries south of Cape Falcon will be constrained in 2016 to meet conservation objectives specified in the FMP for KRFC, as well as ESA consultation standards for California coastal Chinook for which KRFC is used as a proxy. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #2 occurred on March 10, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

Inseason Action #3

Description of action: Inseason action #3 cancelled the commercial salmon fishery from Horse Mountain, CA to Point Arena, CA (Fort Bragg management area), previously scheduled to open April 16–30.

Effective dates: Inseason action #3 took effect on April 16, 2016, and remained in effect through April 30, 2016.

Reason and authorization for the action: The purpose of this action was to conserve fishery impacts on the KRFC. The STT presented stock abundance forecasts for 2016. On the basis of these forecasts, the RA determined that fisheries south of Cape Falcon will be constrained in 2016 to meet conservation objectives specified in the FMP for KRFC, as well as ESA consultation standards for California coastal Chinook for which KRFC is used as a proxy. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #3 occurred on March 10, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

Inseason Action #4

Description of action: Inseason action #4 modified the commercial salmon fishery from Cape Falcon, OR, to Humbug Mountain, OR, to remain closed April 1–7, 2016, and open April 8–30, 2016. Seven days per week. All salmon except coho. Chinook minimum size limit of 28 inches total length. All vessels fishing in the area must land their fish in the state of Oregon. Gear restrictions same as in 2015.

Effective dates: Inseason action #4 superseded inseason action #1 on April 1, 2016, and remained in effect through April 30, 2016.

Reason and authorization for the action: The purpose of this action was to conserve fishery impacts on KRFC while allowing access to more abundant stocks. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #4 occurred on March 13, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

Inseason Action #5

Description of action: Inseason action #5 modified the commercial salmon fishery from Humbug Mountain, OR, to the Oregon/California Border (Oregon

KMZ), to remain closed April 1–7, 2016, and open April 8–30, 2016. Seven days per week. All salmon except coho. Chinook minimum size limit of 28 inches total length. All vessels fishing in the area must land their fish in the state of Oregon. Gear restrictions same as in 2015.

Effective dates: Inseason action #5 superseded inseason action #2 on April 1, 2016, and remained in effect through April 30, 2016.

Reason and authorization for the action: The purpose of this action was to conserve fishery impacts on KRFC while allowing access to more abundant stocks. Inseason action to modify quotas and/or fishing seasons is authorized by 50 CFR 660.409(b)(1)(i).

Consultation date and participants: Consultation on inseason action #5 occurred on March 13, 2016. Participants in this consultation were staff from NMFS, CDFW, and ODFW. Council staff was unavailable to participate in the consultation, but was advised of the RA's decision after the consultation concluded.

All other restrictions and regulations remain in effect as announced for the 2015 ocean salmon fisheries and 2016 salmon fisheries opening prior to May 1, 2016 (80 FR 25611, May 5, 2015) and as modified by prior inseason actions.

The RA determined that the best available information indicated that Chinook salmon abundance forecasts and expected fishery effort supported the above inseason actions recommended by the states of Oregon and California. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the action was effective, by telephone hotline numbers 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (80 FR 25611, May 5, 2015), the FMP, and regulations implementing the FMP, 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook salmon catch and effort projections were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best available scientific information, ensuring that conservation objectives and ESA consultation standards are not exceeded. The AA also finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3), as a delay in effectiveness of these actions would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13035 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 106
Thursday, June 2, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–SC–16–0027]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for an extension and revision of a currently approved information collection for Specialty Crops Market News Division. (This information collection was previously known as Fruit and Vegetable Market News Division. The Agency re-named the Division to Specialty Crops to more accurately reflect the range of commodities reported).

DATES: Comments must be received by August 1, 2016.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to Specialty Crops Market News Division, AMS, USDA, 1400 Independence Avenue SW., Room 1529 South, Stop 0238, Washington, DC 20250–0238. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Terry C. Long, Director; Specialty Crops Market News Division, (202) 720–2175, Fax: (202) 720–0011.

SUPPLEMENTARY INFORMATION:

Title: Specialty Crops Market News Division.

OMB Number: 0581–0006.

Expiration Date of Approval: December 31, 2016.

Type of Request: Revision of a currently approved information collection.

Abstract: Collection and dissemination of information for specialty crops production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The specialty crops industry provides information on a voluntary basis that is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supply, demand, and price information of over 330 fresh fruit, vegetable, nut, ornamental, and other specialty crops, such as honey. The information is collected, compiled, and disseminated by Specialty Crops Market News Division in its critical role as an impartial third party. It is collected and reported in a manner which protects the confidentiality of the respondent and their operations.

The Specialty Crops Market News Division reports are used by academia and various government agencies for regulatory and other purposes, but are primarily used by the specialty crops trade, which includes packers, processors, brokers, retailers, producers, and associated industries. Members of the specialty crops industry regularly make it clear that they need and expect the Department of Agriculture to issue price and supply market reports for commodities of regional, national and international significance in order to assist in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel. In addition, the Agricultural Marketing Service buys hundreds of millions of dollars of specialty crops products each year for domestic feeding programs, and Specialty Crops Market News Division data is a critical component of the decision making process.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .098 hours per response.

Respondents: Specialty crops industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 4,359.

Estimated Number of Responses per Respondent: 197.

Estimated Total Annual Burden on Respondents: 84,155 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 27, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–12987 Filed 6–1–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

May 26, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by July 5, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Almonds Grown in California (7 CFR part 981).

OMB Control Number: 0581–0242.

Summary of Collection: Marketing Order No. 981 (7 CFR part 981) regulates the handling of almonds grown in California and emanates from the Agricultural Marketing Agreement Act of 1937, (Act) Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674) to provide the respondents the type of service they request, and to administer the California almond marketing order program. The board has developed forms as a means for persons to file required information with the board relating to the treatment of almonds to reduce the potential for Salmonella bacteria prior to shipment.

Need and Use of the Information: Almond handlers are required to submit annual treatment plans to the board and inspection agency to ensure such plans are complete and auditable regarding how they plan to treat their almonds to reduce the potential for Salmonella. The plan will be approved by the Board and must address specific parameters for the handler to ship almonds. The Board also gathers information from entities interested in being almond process authorities that validate technologies, to accept and further process untreated almonds and entities interested in being auditors. The information collected would be used only by authorized representatives of USDA, including the Agricultural Marketing Service, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized employees and agents of the board.

Description of Respondents: Business or other for-profit; Individuals.

Number of Respondents: 175.

Frequency of Responses: Recordkeeping; Reporting: Annually; On occasion.

Total Burden Hours: 4,200.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–12991 Filed 6–1–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LPS–16–0035]

Notice of Request for Extension of a Currently Approved Information Collection for the National Sheep Industry Improvement Center

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection 0581–0263: National Sheep Industry Improvement Center (NSIIC).

DATES: Comments must be received by August 1, 2016.

Additional Information or Comments: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at *www.regulations.gov*. Comments received will be posted without change, including any personal information provided. All comments should reference docket number AMS–LPS–16–0035 and note the date of submission and the page number of this issue in the **Federal Register**. Comments may also be sent to Kenneth R. Payne, Director, Research and Promotion Division, Livestock, Poultry, and Seed Program, AMS, USDA, 1400 Independence Ave. SW., Room 2610–S, STOP 0249, Washington, DC 20250–0249; or by telephone (202) 720–5705 or fax: (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Web site at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Research and Promotion Division, Livestock, Poultry, and Seed Program, AMS, USDA; 1400 Independence Ave. SW., Room 2610–S, STOP 0249, Washington, DC 20250–0249; or by telephone to (202) 720–5705 or fax to (202) 720–1125.

SUPPLEMENTARY INFORMATION:

Title: National Sheep Industry Improvement Center.

OMB Number: 0581–0263.

Expiration Date of Approval: September 30, 2016.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the NSIIC. The NSIIC was initially authorized under the Consolidated Farm and Rural Development Act (Act), whose primary objective was to assist the U.S. sheep industry by strengthening and enhancing the production and marketing of sheep and their products in the United States. The information collection requirements in the request are essential to carry out the intent of the enabling legislation. The Act, as amended, was passed as part of the 1996 Farm Bill (Pub. L. 104–127, 110 Stat. 888). The initial legislation included a provision that privatized the NSIIC 10 years after its ratification or once the full appropriation of $50 million was disbursed. Subsequently, the NSIIC was privatized on September 30, 2006, and the NSIIC's office was closed in early 2007.

In 2008, the NSIIC was re-established under Title XI of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), also known as the 2008 Farm Bill. The 2008 Farm Bill

repealed the requirement in section 375(e)(6) of the Act to privatize the NSIIC. Additionally, the 2008 Farm Bill provided for $1 million in mandatory funding for fiscal year 2008 from the Commodity Credit Corporation for the NSIIC to remain available until expended. NSIIC has expended the $1 million authorized under the 2008 Farm Bill.

On October 7, 2014, as provided under the Agricultural Act of 2014 (Pub. L. 113–79), also known as the 2014 Farm Bill, NSIIC was awarded $1.475 million under the Sheep Production and Marketing Grant Program.

Currently, NSIIC awards funds annually to organizations designed to strengthen and enhance the production and marketing of sheep and sheep products in the United States including the improvement of infrastructure business, resource development, and the development of innovative approaches to solve long-term needs.

AMS accepts nominations for membership on the NSIIC Board of Directors (Board) from national organizations that (1) consist primarily of active sheep or goat producers in the United States, and (2) have the primary interest of sheep or goat production in the United States.

The forms used in this collection are: Nominations for Appointments; AD–755 Background Information Form (OMB No. 0505–0001); and Nominee's Agreement to Serve.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.21 hour per response.

Respondents: National organizations submitting nominations to the Board who (1) consist primarily of active sheep or goat producers in the United States, and (2) have the primary interest of sheep or goat production in the United States.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1 per year per form.

Estimated Total Annual Responses: 30.

Estimated Total Annual Burden: 6.25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 27, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–13019 Filed 6–1–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Online Registration for FSA-Hosted Events and Conferences

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on an extension with a revision of the information collection associated with online registration for FSA-hosted events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the Internet to make payment and reservations to attend any FSA-hosted conferences and events.

DATES: We will consider comments that we receive by August 1, 2016.

ADDRESSES: We invite you to submit comments on the notice. In your comments, include date, OMB control number, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: Go to http://regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Farm Service Agency, USDA, Stakeholder Engagement Specialist, Shayla Watson, 1400 Independence Avenue, Mail Stop 0539, SW., Washington, DC 20250.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained from Shayla Watson at the above address.

FOR FURTHER INFORMATION CONTACT: Shayla Watson; (202) 690–2350. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Online Registration for FSA-hosted Events and Conferences.

OMB Number: 0560–0226.

Expiration Date of Approval: August 31, 2016.

Type of Request: Extension with a Revision.

Abstract: The collection of information is necessary for people to register online to make payment and reservations to attend conferences and events. They can register on FSA's Online Registration site on the Internet. Respondents who do not have access to the Internet can register by mail or fax. The information is collected by the FSA employees who host the conferences and events. FSA is collecting common elements from interested respondents such as name, organization, address, country, phone number, email address, State, city or town, payment options (credit card, check), special accommodations requests and how the respondent learned of the conference. The information collection element also include race, ethnicity, gender and veteran status. The respondents are mainly individuals who will attend the FSA-hosted conferences or events. The information is used to collect payment, if applicable, from the respondents and make hotel reservations and other special arrangements as necessary. There are no changes to the burden hours since the last OMB approval. FSA is adding new elements in the online registration format to assist individuals and to gather information to provide an appropriate FSA-hosted conference and events. The new elements include: Specifying a request for a type of disability services, identifying how they learned about the event, providing additional names to invite to the event, waiver for liability, and demographic information including gender, race, and ethnicity. The new elements will not increase the burden hours because it is all self-explanatory for the respondent to complete the online format.

The formula used to calculate the total burden hour is estimated average time per responses hours times total responses.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Number of Respondents: 900.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 900.

Estimated Average Time per Responses: 0.25.

Estimated Total Annual Burden on Respondents: 225 hours.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Val Dolcini,

Administrator, Farm Service Agency.

[FR Doc. 2016–12947 Filed 6–1–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Submission for OMB Review; Comment Request

May 26, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 5, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Vegetable Surveys.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production, prices and disposition. The Vegetable Surveys Program obtains basic agricultural statistics for fresh market and processing vegetables in major producing States. The vegetable program has two types of utilization: Some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed in August for acreage contracted and estimated yield. In late November, processors are asked for final acreage harvested, production, and value. The fresh market vegetable program consists of specialized growers who are surveyed at the conclusion of the growing season for estimates of crop production. Producers of onions, strawberries, and asparagus are surveyed in August to obtain forecasted acreage and production. NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to estimate acreage intended to plant, acreage planted, acreage harvested, yield/production, price, and utilization for the various crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 19,000.

Frequency of Responses: Reporting: Annually; Other (seasonally).

Total Burden Hours: 5,838.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–12989 Filed 6–1–16; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business Cooperative Service

Submission for OMB Review; Comment Request

May 26, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 5, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail

Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Service

Title: 7 CFR 4287–B, Servicing Business and Industry Guaranteed Loans.

OMB Control Number: 0570–0016.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended (the Act). The purpose of the B&I program, as authorized by the Act, is to improve economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans, which will provide lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State. RBS will collect information using various forms from the lender and the borrower. This information is vital for making prudent financial decisions.

Need and Use of the Information: RBS will collect information to monitor the guaranteed loan portfolio to ensure that the lenders are adequately servicing the loans. RBS through its respective Business Programs Divisions in Washington, DC and its 47 State Offices throughout the United States will be the primary users of the information collected. If the information is not collected, RBS would not be able to make prudent credit decisions nor would the Agency be able to effectively monitor the lender's servicing activities and thus minimize losses under the program.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 4,126.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 25,997.

Rural Business Service

Title: 7 CFR 4279–B, Guaranteed Loan Making—Business and Industry Loans.

OMB Control Number: 0570–0017.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits. The B&I program is administered by the Rural Business Service (RBS) through Rural Development State and sub-State offices serving each State.

Need and Use of the Information: RBS will collect information needed by the Agency including completed forms, financial statements and various other documents used by the lender, borrower and Agency to determine program eligibility and creditworthiness of the loan proposal. The information is used by RBS loan officers and approved officials to determine program eligibility and for program monitoring.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 450.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 14,730.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–12988 Filed 6–1–16; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–75–2016]

Foreign-Trade Zone 154—Baton Rouge, Louisiana; Application for Subzone; Westlake Chemical Corporation; Geismar, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Baton Rouge Port Commission, grantee of FTZ 154, requesting subzone status for the facility of Westlake Chemical Corporation located in Geismar, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 25, 2016.

The proposed subzone (185 acres) is located at 36045 Highway 30 in Geismar and would include four pipelines totaling 4.9 miles in length. The proposed subzone would be subject to the existing activation limit of FTZ 154. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 27, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 25, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–12961 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2016]

Foreign-Trade Zone 87—Lake Charles, Louisiana; Application for Subzone; Westlake Chemical Corporation; Sulphur, Louisiana

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Lake Charles Harbor & Terminal District, grantee of FTZ 87, requesting subzone status for the facilities of Westlake Chemical Corporation located in Sulphur, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u),

and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 25, 2016.

The proposed subzone would consist of the following sites: *Site 1* (583.88 acres)—Petro Operations, 900 Highway 108, Sulphur; *Site 2* (70.83 acres)—Poly Operations, 3525 Cities Services Highway, Sulphur; and, *Site 3* (691.78 acres)—Marine Terminal Operations, 1820 PAK Tank Road, Sulphur. The proposed subzone would also include several pipelines. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 27, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 25, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–12958 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–8–2016]

Approval of Subzone Status; Thoma-Sea Marine Constructors, L.L.C.; Houma and Lockport, Louisiana

On January 28, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Houma-Terrebonne Airport Commission, grantee of FTZ 279, requesting subzone status subject to the existing activation limit of FTZ 279 on behalf of Thoma-Sea Marine Constructors, L.L.C., in Houma and Lockport, Louisiana.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 5707, February 3, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 279A is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 279's 2,000-acre activation limit.

Dated: May 25, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–12960 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–37–2016]

Foreign-Trade Zone 261—Alexandria, Louisiana; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the England Economic & Industrial Development District, grantee of FTZ 261, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 25, 2016.

FTZ 261 was approved by the FTZ Board on April 21, 2004 (Board Order 1325, 69 FR 26066, May 11, 2004). The current zone includes the following sites: *Site 1* (1,594 acres)—England Airpark complex, 1611 Arnold Drive, Alexandria; *Site 2* (124 acres)—Port of Alexandria, 600 Port Road, Alexandria; and, *Site 3* (110 acres)—Central Louisiana Eco Business Park, 7636 Highway 1 South, Alexandria.

The grantee's proposed service area under the ASF would be Rapides Parish, Louisiana, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The application indicates that the proposed service area is adjacent to the Morgan City Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include existing Sites 1 and 2 as "magnet" sites. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting to remove Site 3 from the zone. No subzones/usage-driven sites are being requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is August 1, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 16, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: May 25, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–12954 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–583–857]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Taiwan: Final Negative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are not being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from Taiwan.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Cindy Robinson, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1168 and (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Petitioners in this investigation are the United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation. This investigation covers 26 alleged government subsidy programs. The mandatory respondents in this investigation are (1) Prosperity Tieh Enterprise Co., Ltd. (PT), and its crossed-own affiliates: Hong-Ye Steel Co., Ltd. (HY), Prosperity Did Enterprise Co., Ltd. (PD), and Chan Lin Enterprise Co., Ltd. (CL) (collectively the Prosperity Companies) and (2) Yieh Phui Enterprise Co., Ltd. (Yieh Phui), and its crossed-own affiliates: Yieh Corporation Limited (YCL); Shin Yang Steel Co., Ltd. (Shin Yang); and Synn Industrial Co., Ltd (Synn) (collectively the Yieh Phui Companies).

On November 6, 2015, the Department published its *Preliminary Determination.*[1] For a description of the events that have occurred since the *Preliminary Determination,* see the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

Scope Comments

In accordance with the Preliminary Scope Determination,[2] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted on the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[3]

Scope of the Investigation

The products covered by this investigation are corrosion-resistant steel products from Taiwan. For a complete description of the scope of the investigation, *see* Appendix II.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs submitted by parties in this investigation are addressed in the Issues and Decision Memorandum, dated concurrently with this notice.[4] A list of subsidy programs and the issues that parties raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix I.

We determine the total estimated net countervailable subsidy rates to be:

Producer/Exporter	Subsidy rate
Prosperity Tieh Enterprise Co., Ltd. (PT); Hong-Ye Steel Co., Ltd. (HY); Prosperity Did Enterprise Co., Ltd. (PD); and Chan Lin Enterprise Co., Ltd. (CL) (collectively Prosperity Companies).	0.00 percent *ad valorem.*
Yieh Phui Enterprise Co., Ltd. (Yieh Phui); Yieh Corporation Limited (YCL); Shin Yang Steel Co., Ltd. (Shin Yang); and Synn Industrial Co., Ltd (Synn) (collectively Yieh Phui Companies).	0.00 percent *ad valorem.*

Because the total estimated net countervailable subsidy rates are zero, we determine that countervailable subsidies are not being provided to producers or exporters of corrosion-resistant steel from Taiwan. We have not calculated an all-others rate pursuant to sections 705(c)(1)(B) and (c)(5) of the Tariff Act of 1930, as amended (the Act) because we have not reached an affirmative final determination. Because our final determination is negative, this proceeding is terminated in accordance with section 705(c)(2) of the Act.

In the *Preliminary Determination,* the total net countervailable subsidy rates for the individually examined respondents were zero and, therefore, we did not suspend liquidation of entries of corrosion-resistant steel from Taiwan.[5] Because the estimated subsidy rates for both examined companies are zero in this final determination, we are not directing U.S. Customs and Border Protection to suspend liquidation of entries of corrosion-resistant steel from Taiwan.

[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Negative Countervailing Duty Determination,* 80 FR 68852 (November 6, 2015) *(Preliminary Determination).*

[2] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 (Preliminary Scope Decision Memorandum). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[4] *See* Issue and Decision Memorandum.

[5] *See Preliminary Determination,* 80 FR 68852.

United States International Trade Commission (USITC) Notification

In accordance with section 705(d) of the Act, we will notify the USITC of our final determination. Because our final determination is negative, this investigation is terminated.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

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X. Conclusion

Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090,

7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12977 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after June 2016, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its "Opportunity to Request Administrative Review" notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of June 2016,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Antidumping Duty Proceedings	
Japan: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850 (Over 4½ Inches)	6/1/15–5/31/16
Japan: Carbon and Alloy Seamless Standard, Line and Pressure Pipe, A–588–851 (Under 4½ Inches)	6/1/15–5/31/16
Mexico: Prestressed Concrete Steel Rail Tie Wire, A–201–843	6/1/15–5/31/16
Spain: Chlorinated Isocyanurates, A–469–814	6/1/15–5/31/16
Taiwan: Helical Spring Lock Washers, A–583–820	6/1/15–5/31/16
The People's Republic of China: Artist Canvas, A–570–899	6/1/15–5/31/16
The People's Republic of China: Chlorinated Isocyanurates, A–570–898	6/1/15–5/31/16
The People's Republic of China: Furfuryl Alcohol, A–570–835	6/1/15–5/31/16
The People's Republic of China: High Pressure Steel Cylinders, A–570–977	6/1/15–5/31/16
The People's Republic of China: Polyester Staple Fiber, A–570–905	6/1/15–5/31/16
The People's Republic of China: Prestressed Concrete Steel Rail Tie Wire, A–570–990	6/1/15–5/31/16
The People's Republic of China: Prestressed Concrete Steel Wire Strand, A–570–945	6/1/15–5/31/16
The People's Republic of China: Silicon Metal, A–570–806	6/1/15–5/31/16
The People's Republic of China: Tapered Roller Bearings, A–570–601	6/1/15–5/31/16
Countervailing Duty Proceedings	
The People's Republic of China: High Pressure Steel Cylinders, C–570–978	1/1/15–12/31/15

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS") on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov.*[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of June 2016. If the Department does not receive, by the last day of June 2016, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 24, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–12953 Filed 6–1–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that certain corrosion-resistant steel products ("corrosion-resistant steel") from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is April 1, 2014, through March 31, 2015. The final estimated weighted-average dumping margins are listed below in the "Final Determination" section of this notice.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–2316, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary determination on January 4, 2016.[1] A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Issues and Decision Memorandum.[2]

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[3] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the Republic of Korea. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[4] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted on the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Final Issues and Decision Memorandum, which is hereby adopted by this notice.[6] A list of the issues raised is attached to this notice as Appendix I. The Final Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Final Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Final Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, in January, February, and April 2016, the Department verified the sales

[1] *See Certain Corrosion-Resistant Steel Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 78 (January 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Affirmative Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China," (Final Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

[3] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" dated January 27, 2016.

[4] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[6] *See* Final Issues and Decision Memorandum.

and cost data reported by the mandatory respondents Hyundai Steel Company (Hyundai) and Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd. (Dongkuk/Union Steel), pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by respondents.

Changes to the Margin Calculations Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Hyundai and Dongkuk/Union Steel. For a discussion of these changes, *see* the Final Issues and Decision Memorandum. We have also revised the all-others rate.

Final Affirmative Determination of Critical Circumstances, in Part

Prior to the *Preliminary Determination*, the Department found that critical circumstances exist with respect to imports of corrosion-resistant steel from Korea produced or exported by Hyundai and "all-others." [7] As discussed in the Final Issues and Decision Memorandum, we no longer find critical circumstances with respect to Hyundai. We continue to find that critical circumstances exist with respect to "all-others" companies.[8] Thus, in accordance with section 735(a)(3) of the Act, we find that critical circumstances exist with respect to imports produced or exported by all other producers/exporters, but do not exist for Hyundai and Dongkuk/Union Steel.

All-Others Rate

Consistent with sections 735(c)(1)(B)(i)(II) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis*, or based entirely on facts otherwise available, section 735(c)(5)(B) of the Act instructs the Department to establish an "all others" rate using "any reasonable method."

In this investigation, we calculated weighted-average dumping margins for Hyundai and Dongkuk/Union, that are above *de minimis* and which are not based on total facts available. We calculated the all-others rate using a simple average of the dumping margins calculated for the mandatory respondents.[9]

Final Determination Margins

The Department determines that the following estimated weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margins (percent)	Cash deposit rate (percent)
Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd.	8.75	8.75
Hyundai Steel Company	47.80	47.79
All Others [10]	28.28	28.27

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of corrosion-resistant steel from Korea, which were entered, or withdrawn from warehouse, for consumption on or after October 6, 2015 (for those entities for which we found critical circumstances exist) or on or after January 4, 2016, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination* (for all entities for which we did not find critical circumstances exist). Because we find in this final determination that critical circumstances do not exist for Hyundai, we will terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required during that period, consistent with section 735(c)(3) of the Act.

As noted above, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to constitute any export subsidies. Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on corrosion-resistant steel from the Korea, the Department will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the weighted-average margin column in the rate chart, above.

[7] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

[8] For a full description of the methodology and results of our analysis, *see* the Final Issues and Decision Memorandum.

[9] With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was unavailable, we based the all-others rate on a simple average of the two calculated margins.

[10] *See* Footnote 9.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from Korea no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders ("APO")

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Changes Since the Preliminary Determination
VI. Use of Adverse Facts Available
VII. Discussion of the Issues
Comment 1: Whether Critical Circumstances Exist for Hyundai and for POSCO, as Part of "all other producers/exporters"
Comment 2: Whether the Department Should Exclude Hyundai's Sales of TWBs and Auto Parts Pursuant to Section 772(e) of the Act
Comment 3: Whether the Department Erred in Applying Facts Otherwise Available and Surreptitiously Used an Adverse Inference With Respect to its Sales of TWBs and Auto Parts in the Preliminary Determination
Comment 4: Whether the FMG Data Submitted by Hyundai for its Sales of TWBs, Auto Parts, Sheet, Skelp and Blanks Should Be Used in the Final Determination
Comment 5: Whether the Department Should Apply Adverse Facts Available to Calculate the Final Dumping Margin for Hyundai
Comment 6: Whether the Department Should Adjust Hyundai's G&A Expenses for Subject Merchandise
Comment 7: Whether the Department Should Adjust Hyundai's Costs to Account for Non-Prime Merchandise
Comment 8: Whether the Department Should Adjust' Ocean Freight Expenses to Reflect Arm's Length
Comment 9: The Department Should Disallow Certain Billing Adjustments for Home Market and U.S. Sales
Comment 10: Whether the Department's Adjustment to Marine Insurance is Unwarranted
Comment 11: Whether the Department Should Adjust HSA's Indirect Spelling Expense Ratio
Comment 12: Whether the Department Failed to Deduct Further Manufacturing Resulting in Overstating CEP Profit
Comment 13: Use of the Average-to-Transaction Method With Zeroing
Comment 14: Whether the Major Input Rule Analysis Should Be Conducted
Comment 15: Whether Application of AFA Is Warranted With Regard to Home Market Sales and Production Cost of Processed CORE
Comment 16: Whether to Recalculate Home Market Credit Expense
Comment 17: Whether to Adjust Inland Freight in Korea for U.S. Sales
Comment 18: Whether to Adjust Inland Freight in Korea for Home Market Sales
Comment 19: Whether Application of AFA Is Warranted With Regard to U.S. Warranty Expenses
Comment 20: Whether the Application of AFA Is Warranted for Dongkuk's Failure to Report Home Market Sales by an Affiliate
Comment 21: Application of the Average-to-Transaction Method to all U.S. Sales
VIII. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5060, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12979 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Rescission of 2013–2014 Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is conducting a new shipper review ("NSR") of the antidumping duty order on multilayered wood flooring ("MLWF") from the People's Republic of China ("PRC"). The NSR covers one exporter and producer of subject merchandise, Qingdao Barry Flooring Co., Ltd ("Qingdao Barry"). The period of review ("POR") is December 1, 2013 through November 30, 2014. The Department preliminarily determines that Qingdao Barry's sale to the United States is not *bona fide*, as required by section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("the Act").[1] Therefore, we are preliminarily rescinding this NSR. Interested parties are invited to comment on the preliminary results of this review.

DATES: Effective June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2015, the Department published a notice of initiation of a new shipper review of the antidumping duty order on MLWF from the PRC.[2] The Department subsequently issued an antidumping duty questionnaire, and supplemental questionnaires, to Qingdao Barry and received timely responses thereto. Also, Qingdao Barry submitted comments on surrogate country and surrogate value selection.[3] No other party submitted comments. The Department extended the deadline for issuing the preliminary results of this review until May 20, 2016.[4]

Scope of the Order

The merchandise covered by the order is multilayered wood flooring, which is composed of an assembly of two or more layers or plies of wood veneers[5] in combination with a core.[6] Merchandise covered by this review is classifiable under subheadings 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111;

[1] On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125 (Feb. 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

[2] *See Multilayered Wood Flooring From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 80 FR 65200 (October 26, 2015) ("*Initiation Notice*"). In that notice, we explained that the review was being initiated in accordance with an order entered by the U.S. Court of International Trade, wherein the Court authorized the Department to initiate and conduct this new shipper review based on Qingdao Barry's December 19, 2014, review request.

[3] *See* "Multilayered Wood Flooring from the People's Republic of China: Submission of Comparable Surrogate Country Comments," dated February 16, 2016; *see also* "Multilayered Wood Flooring from the People's Republic of China: Submission of Surrogate Value Information," dated February 23, 2016.

[4] *See* the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Maisha Cryor, Office IV, Antidumping and Countervailing Duty Operations, entitled, "Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Review" dated April 14, 2016.

[5] A "veneer" is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. Veneer is referred to as a ply when assembled.

[6] For a complete description of the scope of the order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Preliminary Rescission of the 2013–2014 Antidumping Duty New Shipper Review: Multilayered Wood Flooring from the People's Republic of China" issued concurrently with and hereby adopted by this notice ("Preliminary Decision Memorandum").

4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/enforcement/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of the Antidumping New Shipper Review of Qingdao Barry

As discussed in the *Bona Fide* Sales Analysis Memorandum,[7] the Department preliminarily finds that the sale made by Qingdao Barry to the United States is not a *bona fide* sale. The Department reached this conclusion based on the totality of circumstances surrounding the reported sale, including, among other things, the price of the sale and Qingdao Barry's failure to provide evidence that the subject merchandise was resold at a profit. Because the non-*bona fide* sale was the only reported sale of subject merchandise during the POR, and thus there are no reviewable transactions on this record, we are preliminarily rescinding the instant NSR. Because much of the factual information used in our analysis of Qingdao Barry's sale involves business proprietary information, a full discussion of the basis for our preliminary determination is set forth in the *Bona Fide* Sales Analysis Memorandum, which is on the record of this proceeding.

Public Comment

Interested parties may submit case briefs no later than 14 days after the date of publication of the preliminary results of review.[8] Rebuttals to case briefs may be filed no later than five days after the briefs are filed.[9] All rebuttal comments must be limited to comments raised in the case briefs.[10]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement & Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[11] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral argument presentations will be limited to issues raised in the briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[12] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time ("ET") on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with the APO/Dockets Unit in Room 18022, and stamped with the date and time of receipt by 5 p.m. ET on the due date.[13]

The Department intends to issue the final results of this NSR, which will include the results of its analysis of issues raised in any briefs received, no later than 90 days after the date these preliminary results of review are issued pursuant to section 751(a)(2)(B)(iii) of the Act.

Assessment Rates

If the Department proceeds to a final rescission of Qingdao Barry's NSR, the assessment rate to which Qingdao Barry's shipments will be subject will remain unchanged. However, the Department initiated an administrative review of the antidumping duty order on MLWF from the PRC covering numerous exporters, including Qingdao Barry, and the period December 1, 2013 through November 30, 2014, which encompasses the POR of this NSR.[14] Thus, if the Department proceeds to a final rescission, we will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend entries during the period December 1, 2013, through November 30, 2014 of subject merchandise exported by Qingdao Barry until CBP receives instructions relating to the administrative review of this order covering the period December 1, 2013 through November 30, 2014.

If the Department does not proceed to a final rescission of this new shipper review, pursuant to 19 CFR 351.212(b)(1), we will calculate an importer-specific (or customer) assessment rate based on the final results of this review. However, pursuant to the Department's refinement to its assessment practice in NME cases, for entries that were not reported in the U.S. sales database submitted by Qingdao Barry, the Department will instruct CBP to liquidate such entries at the PRC-wide rate.[15]

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of this NSR, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash

[7] *See* Memorandum from Maisha Cryor, Office IV AD/CVD Operations, to Abdelali Elouaradia, Director, Enforcement and Compliance, Office IV entitled "Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Preliminary *Bona Fide* Sale Analysis for Qingdao Barry Flooring Co., Ltd., dated concurrently with and hereby adopted by this notice ("*Bona Fide* Sales Analysis Memorandum").

[8] Note that the Department is altering the time limit for the submission of case briefs. *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d)(1).

[10] *See* 19 CFR 351.309(d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

[14] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 6041, 6044–45 (February 4, 2015).

[15] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

deposit for entries of subject merchandise by Qingdao Barry. If the Department proceeds to a final rescission of this new shipper review, the cash deposit rate will continue to be the PRC-wide rate for Qingdao Barry because the Department will not have determined an individual margin of dumping for Qingdao Barry. If the Department issues final results for this new shipper review, the Department will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope
2. Bona Fide Sales Analysis

[FR Doc. 2016–12951 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–027]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from the People's Republic of China (the PRC) as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For information on the estimated subsidy rates, *see* the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Halle or David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0176 or (202) 482–3870, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on November 6, 2015.[1] A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Decision Memorandum.[2] The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Final Decision Memorandum and the electronic version are identical in content.

Period of Investigation

The period of investigation for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the PRC. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Final Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Final Decision Memorandum, is attached to this notice at Appendix I.

Use of Adverse Facts Available

The Department, in making these findings, relied, in part, on facts available and, because one or more respondents failed to cooperate by not acting to the best of their ability, we made adverse inferences.[5] For the final determination, we are basing the countervailing duty (CVD) rates for Angang Group Hong Kong Company Ltd. (Angang), Baoshan Iron & Steel Co., Ltd. (Baoshan), Duferco S.A. (Duferco), Changshu Everbright Material Technology (Everbright), and Handan Iron & Steel Group (Handan) on facts otherwise available, pursuant to sections 776(a)(2)(A) and (C) of the

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[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China: Preliminary Affirmative Determination,* 80 FR 68843 (November 6, 2015) (*Preliminary Determination*).

[2] *See* Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China," (Final Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

[3] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 (Preliminary Scope Decision Memorandum). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," January 29, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[5] *See* sections 776(a) and (b) of the Act.

Tariff Act of 1930, as amended (the Act). Further, because Angang, Baoshan, Duferco, Everbright and Handan did not cooperate to the best of their ability in this investigation, we also determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences," in the Final Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination*. For a discussion of these changes, *see* the Final Decision Memorandum and the Final Analysis Memorandum.[6]

Final Affirmative Determination of Critical Circumstances, in Part

Prior to the *Preliminary Determination*, the Department found that critical circumstances exist with respect to imports of corrosion-resistant steel from the PRC for Angang, Baoshan, Duferco, Everbright and Handan.[7] Upon further analysis of the data and comments submitted by interested parties following the *Preliminary Determination*, we are not modifying our findings for the *Final Determination*.[8] Specifically, in accordance with section 705(a)(2) of the Act, we find that critical circumstances exist with respect to imports from Angang, Baoshan, Duferco, Everbright and Handan, but do not exist for Yieh Phui (China) Technomaterial Co., Ltd. (YPC) and all other producers or exporters.

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we established rates for YPC (the only individually investigated exporter/producer of the subject merchandise that participated in this investigation), and for Angang, Baoshan, Duferco, Everbright and Handan (which were assigned a rate based on adverse facts available (AFA)).

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A)(i) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weight averaging the subsidy rates of the individual companies selected for individual examination with those companies' export sales of the subject merchandise to the United States, excluding any zero and *de minimis* rates calculated for the exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act. Consistent with section 705(c)(5)(A)(i) of the Act, we therefore have excluded the AFA rate assigned to Angang, Baoshan, Duferco, Everbright, and Handan from the all-others rate.

Because the only individually calculated rate that is not zero, *de minimis*, or based on facts otherwise available is the rate calculated for YPC, in accordance with section 705(c)(5)(A)(i) of the Act, the rate calculated for YPC is assigned as the "all-others" rate. The estimated countervailable subsidy rates are summarized in the table below.

Company	Subsidy rate (percent)
Yieh Phui (China) Technomaterial Co., Ltd	39.05
Angang Group Hong Kong Company Ltd	241.07
Baoshan Iron & Steel Co., Ltd	241.07
Duferco S.A., Hebei Iron & Steel Group, and Tangshan Iron and Steel Group Co., Ltd	241.07
Changshu Everbright Material Technology	241.07
Handan Iron & Steel Group	241.07
All-Others	39.05

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from the PRC that were entered or withdrawn from warehouse, for consumption, on or after August 8, 2015 (for those entities for which we found critical circumstances exist) or on or after November 6, 2015, the date of publication of the *Preliminary Determination* in the **Federal Register** (for all entities for which we did not find critical circumstances exist). In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 4, 2016, but to continue the suspension of liquidation of all entries from August 8, 2015, or November 6, 2015, as the case may be, through March 3, 2016.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice serves as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

[6] *See* Final Decision Memorandum; *see also* Memorandum, "Final Determination Analysis for Yieh Phui (China) Technomaterial Co., Ltd.," dated concurrently with this determination and hereby adopted by this notice.

[7] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

[8] For a full description of the methodology and results of our analysis, *see* the Final Decision Memorandum.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Final Determination of Critical Circumstances, in Part
IV. Scope of the Investigation
V. Application of the Countervailing Duty Law to Imports From the PRC
VI. Subsidies Valuation Information
VII. Benchmarks and Discount Rates
VIII. Use of Facts Otherwise Available and Adverse Inferences
IX. Analysis of Programs
X. Analysis of Comments
Comment 1: Whether Respondent's Producers of Inputs Are "Authorities"
Comment 2: Whether Inputs for LTAR Are Specific
Comment 3: Whether To Use a Tier One Benchmark To Determine the Adequacy of Remuneration for Inputs for LTAR
Comment 4: Whether the Provision of Electricity for LTAR Is Countervailable
Comment 5: Whether the GOC Provided Policy Loans to YPC During the POI
Comment 6: Whether the Export Buyer's Credit Program Was Used by Respondent
Comment 7: Correcting VAT in the Hot-Rolled Steel and Primary Aluminum Benchmarks
Comment 8: Whether To Apply AFA to YCL's Sales From Other PRC Producers of Corrosion-Resistant Steel
XI. Recommendation

Appendix II

Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12962 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–879]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from the Republic of Korea (Korea) as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For

information on the estimated subsidy rates, *see* the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2371 or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on November 6, 2015.[1] A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Decision Memorandum.[2] The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Final Decision Memorandum and the electronic version are identical in content.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the Korea. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Final Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Final Decision Memorandum, is attached to this notice at Appendix I.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to the respondents' subsidy rate calculations since the *Preliminary Determination*. For a discussion of these changes, *see* the Final Decision Memorandum.[5]

Final Affirmative Determination of Critical Circumstances, in Part

Prior to the *Preliminary Determination*, the Department preliminarily found that critical circumstances exist with respect to imports of corrosion-resistant steel from Korea for all other companies, excepting mandatory respondents Union Steel Manufacturing Co. Ltd./Dongkuk Steel Mill Co., Ltd. (Union/Dongkuk) and Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd. (Dongbu).[6] Upon further analysis of the data following the *Preliminary Determination*, we are not modifying our findings for the *Final Determination*.[7] Specifically, in accordance with section 705(a)(2) of the Act, we continue to find that critical circumstances exist with respect imports from all other producers or exporters, but do not exist for Union/Dongkuk and Dongbu.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Union/Dongkuk and Dongbu, the two exporters/producers of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents with those companies' export sales of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act. We therefore have excluded the rate for Union/Dongkuk from the all-others rate.

Because the only individually calculated rate that is not zero, *de minimis*, or based on facts otherwise available is the rate calculated for Dongbu, in accordance with section 705(c)(5)(A)(i) of the Act, the rate calculated for Dongbu is assigned as the "all-others" rate. The estimated countervailable subsidy rates are as follows:

Company	Subsidy rate
Union Steel Manufacturing Co. Ltd./Dongkuk Steel Mill Co., Ltd.	0.72 percent (*de minimis*).

[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015) (*Preliminary Determination*).

[2] *See* Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea," (Final Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

[3] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 (Preliminary Scope Decision Memorandum). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," January 29, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[5] *See* Final Decision Memorandum.

[6] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015). Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) is not listed in this notice; however, we preliminarily determined that Dongbu Incheon is a wholly-owned subsidiary of Dongbu Steel Co., Ltd. and calculated a single countervailing duty rate for both companies. Thus, we stated that the suspension of liquidation for both companies would begin on the date of publication of the *Preliminary Determination*. *See Preliminary Determination*, 80 FR at 68842.

[7] For a full description of the methodology and results of our analysis, *see* the Final Decision Memorandum.

Company	Subsidy rate
Dongbu Steel Co., Ltd./ Dongbu Incheon Steel Co., Ltd.	1.19 percent.
All-Others	1.19 percent.

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Korea, other than subject merchandise produced/exported by Union/Dongkuk which received a *de minimis* countervailable subsidy rate in the *Preliminary*.

Determination

Pursuant to section 703(d) of the Act, we subsequently instructed CBP to suspend liquidation of all entries of merchandise under consideration from Korea, with the exception of Union/Dongkuk, that were entered or withdrawn from warehouse, for consumption, on or after August 8, 2015 (for those entities for which we found critical circumstances exist) or on or after November 6, 2015, the date of publication of the *Preliminary Determination* in the **Federal Register** (for those entities for which we did not find critical circumstances exist). In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 4, 2016, but to continue the suspension of liquidation of all entries from August 8, 2015, or November 6, 2015, as the case may be, through March 3, 2016.

If the U.S. International Trade Commission (the ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above that are not *de minimis*. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Final Determination of Critical Circumstances, in Part
IV. Scope of the Investigation
V. Subsidies Valuation Information
VI. Benchmarks and Discount Rates
VII. Analysis of Programs
VIII. Analysis of Comments
Comment 1: Whether the Department Should Find the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Countervailable Based on Adverse Facts Available
Comment 2: Whether the Provision of Electricity Provides a Benefit
Comment 3: Whether the Department Should Use Other Submitted Data to Measure the Adequacy of Remuneration for Electricity
Comment 4: Whether Benefits Received From Dongbu's Voluntary Debt Restructuring are Countervailable
Comment 5: Whether Benefits Should Be Calculated for Loans and Bonds Which Were Issued to Dongbu by GOK-Owned Banks Prior to Its Voluntary Restructuring
Comment 6: Whether Dongbu was Creditworthy in 2014 and Whether the Department Should Recalculate Benefits Using Creditworthy Benchmarks
Comment 7: Whether Nonghyup Bank is an "Authority" and Loans Received From Nonghyup Bank are Countervailable
Comment 8: Whether the Department Should Find That the Provision of Natural Gas for LTAR is Countervailable
IX. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or

• 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

• Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

• Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

• Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12978 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") determines that certain corrosion-resistant steel products ("corrosion-resistant steel") from Taiwan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is April 1, 2014, through March 31, 2015. The final dumping margins of sales at LTFV are listed below in the "Final Determination" section of this notice.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Shanah Lee or Paul Stolz, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6386 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2016, the Department published the *Preliminary Determination* of this antidumping duty ("AD") investigation and invited parties to comment.[1] As provided in section 782(i) of the Act, in January and April 2016, the Department verified the sales and cost data reported by Prosperity Tieh Enterprise Co., Ltd. ("PT"), Yieh Phui Enterprise Co., Ltd. ("YP"), and Synn Industrial Co., Ltd. ("Synn"). In April 2016, Petitioner,[2] YP, and PT submitted case briefs and rebuttal briefs. For a complete discussion of the events that occurred since the *Preliminary Determination, see* the Issues and Decision Memorandum.[3]

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[4] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from Taiwan. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[5] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal

[1] *See Certain Corrosion-Resistant Steel Products from Taiwan: Negative Preliminary Determination of Sales at Less Than Fair Value,* 81 FR 72 (January 4, 2016) ("*Preliminary Determination*"). *See also Antidumping Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to Preliminary Antidumping Determinations,* 81 FR 6236 (February 5, 2016) ("*Scope Correction Notice*").

[2] Petitioners are United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc. AK Steel Corporation was the only Petitioner to file comments in this case.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan," dated concurrently with this notice ("Issues and Decision Memorandum").

[4] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" dated January 27, 2016.

[5] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[6] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is incorporated by reference and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum. We have also revised the all-others rate.

Final Determination of Affiliation and Collapsing

We continue to find that YP and Synn are affiliated pursuant to section 771(33)(E) of the Act and should be collapsed together and treated as a single company, pursuant to the criteria laid out in 19 CFR 351.401(f).[7] Additionally, for these final results, we have determined that PT is also affiliated with Synn, pursuant to section 771(33)(E) of the Act[8] and the three companies should be collapsed together and treated as a single company (collectively, "PT/YP/Synn"), pursuant to the criteria laid out in 19 CFR 351.401(f).[9]

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. In this case, we found the mandatory respondents to be collapsed as a single company, PT/YP/Synn, whose margin is calculated from its own sales and production data and which is not zero or *de minimis* or based entirely on facts available. Therefore, we are assigning PT/YP/Synn's calculated margin as the all-others rate in accordance with section 735(c)(5)(A) of the Act.

Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Prosperity Tieh Enterprise Co., Ltd., Yieh Phui Enterprise Co., Ltd., and Synn Industrial Co., Ltd. (collectively, "PT/YP/Synn")	3.77
All-Others	3.77

Disclosure

We intend to disclose the calculations performed within five days of the publication of this notice to interested parties, in accordance with 19 CFR 351.224(b).

Final Affirmative Determination of Critical Circumstances, in Part

On October 29, 2015, the Department found that critical circumstances do not exist for merchandise exported by PT and YP, but do exist for "all others."[10] Based on the final sales data submitted by PT/YP/Synn and further analysis following the *Preliminary Critical Circumstances Determination,* we are not modifying our findings for the final determination.[11] We continue to find that critical circumstances do not exist for PT/YP/Synn, but that critical circumstances do exist for the "all others." For a complete discussion of this issue, *see* the "Final Determination of Critical Circumstances, In Part" section of the Issues and Decision Memorandum.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) and (C) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of corrosion-resistant steel from Taiwan, as described in Appendix II of this notice, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final determination. Because of our affirmative determination of critical circumstances for "all others," in accordance with section 735(a)(3) and (c)(4)(C) of the Act, suspension of liquidation of corrosion-resistant steel from Taiwan, as described in the "Scope of the Investigation" section, shall apply, for "all others," to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered for "all others."

Further, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) For the exporters/producers listed in the table above, the cash deposit rates will be equal to the dumping margin which the Department determined in this final determination;[12] (2) if the exporter is

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[7] *See Preliminary Determination,* 81 FR at 73 and Memorandum to Erin Begnal, Director, Office III, "Less Than Fair Value Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Affiliation and Collapsing Memorandum for Yieh Phui Enterprise Co., Ltd.," dated December 21, 2015. *See also* Issues and Decision Memorandum at Comment 3.

[8] We have also determined that PT and YP are affiliated under section 771(33)(A) of the Act.

[9] *See* Memorandum to Eric Greynolds, Acting Director, Office III, "Less Than Fair Value Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Affiliation and Collapsing Memorandum," dated concurrently with this notice. *See also* Issues and Decision Memorandum at Comment 3.

[10] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determination of Critical Circumstances,* 80 FR 68504, (November 5, 2015) ("*Preliminary Critical Circumstances Determination*").

[11] As explained in the Issues and Decision Memorandum, however, YP did not report sales for December 2015. We have used the highest total reported export figure for a single month for YP and PT as adverse facts available for December 2015. Even with this adverse facts assumption, we still find that PT/YP/Synn, which are collapsed together, did not have massive imports in the comparison period.

[12] Because the Department is making a negative determination in the companion countervailing duty ("CVD") investigation of corrosion-resistant steel from Taiwan, we are not adjusting the cash deposit rate for export subsidies given that there will be no cash deposit rates collected in the companion CVD investigation. *See* section 772(c)(1)(C) of the Act.

not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 3.77 percent. These instructions suspending liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from Taiwan no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders ("APO")

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
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V. List of Comments
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Comment 1: Whether To Apply AFA to PT's and Synn's Misclassified Sales
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Comment 4: Whether To Adjust YP's Coil Costs
Comment 5: Whether To Offset YP's G&A Expenses for Insurance Proceeds
Comment 6: Whether To Offset PT's G&A Expense Ratio by Including Additional Non-operating Income Items
VII. Recommendation

Attachment II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000,

7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12975 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for July 2016

The following Sunset Reviews are scheduled for initiation in July 2016 and will appear in that month's Notice of Initiation of Five-Year Sunset Review ("Sunset Review").

	Department contact
Antidumping Duty Proceedings	
Stainless Steel Plate in Coils from Belgium (A–423–808) (3rd Review)	Jacqueline Arrowsmith, (202) 482–5255.
Heavy Forged Hand Tools, With or Without Handles from China (A–570–803) (3rd Review)	Matthew Renkey, (202) 482–2312.
Stainless Steel Sheet and Strip in Coils from Japan (A–588–845) (3rd Review)	David Goldberger, (202) 482–4136.
Stainless Steel Sheet and Strip in Coils from the Republic of Korea (A–580–834) (3rd Review)	David Goldberger, (202) 482–4136.
Ammonium Nitrate from Russia (A–821–811) (3rd Review)	David Goldberger, (202) 482–4136.
Stainless Steel Plate in Coils from South Africa (A–791–805) (3rd Review)	Jacqueline Arrowsmith, (202) 482–5255.
Stainless Steel Plate in Coils from Taiwan (A–583–830) (3rd Review)	Jacqueline Arrowsmith, (202) 482–5255.
Stainless Steel Sheet and Strip in Coils from Taiwan (A–583–831) (3rd Review)	David Goldberger, (202) 482–4136.
Countervailing Duty Proceedings	
Stainless Steel Sheet and Strip in Coils from the Republic of Korea (C–580–835) (3rd Review)	David Goldberger, (202) 482–4136.
Stainless Steel Plate in Coils from South Africa (C–791–806) (3rd Review)	David Goldberger, (202) 482–4136.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in July 2016.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 24, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–12952 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–026]

Certain Corrosion-Resistant Steel Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of certain corrosion-resistant steel products (corrosion-resistant steel) from the People's Republic of China (PRC) are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted-average dumping margins of sales at LTFV are listed in the "Final Determination Margins" section of this notice. The period of investigation is October 1, 2014, through March 31, 2015.

DATED: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0196 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on January 4,

2016.[1] A summary of the events that occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Decision Memorandum.[2] The Final Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Final Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the PRC. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Final Decision Memorandum accompanying this notice. A list of the issues raised and to which the Department responded is attached to this notice as Appendix I.

Verification

As provided in section 782(i) of the Act, in January 2016, the Department verified the sales and cost data reported by the mandatory respondent Yieh Phui (China) Technomaterial Co., Ltd. (Yieh Phui), pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by respondents.

Changes to the Margin Calculations Since the Preliminary Determination

Based on the Department's analysis of the comments received and our findings at verification, we made certain changes to our margin calculations. For a discussion of these changes, *see* the Final Decision Memorandum.[5]

Combination Rates

As stated in the *Initiation Notice*,[6] the Department calculated combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[7]

Final Affirmative Determination of Critical Circumstances, in Part

Prior to the *Preliminary Determination*, the Department found that critical circumstances exist with respect to imports of corrosion-resistant steel from the PRC produced or exported by the PRC-wide entity (which, as noted below, includes Hebei Iron & Steel Co., Ltd. (Tangshan Branch) (Tangshan) and Baoshan Iron & Steel Co., Ltd. (Baoshan)).[8] We are not modifying our findings for this final determination.[9] Thus, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h)(1)–(2), we find that critical circumstances exist with respect to subject merchandise produced or exported by the PRC-wide entity, but do not exist for Yieh Phui and the other producers/exporters entitled to a separate rate.

Separate Rate

Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, we calculated a weighted-average dumping margin for Yieh Phui (the only cooperating mandatory respondent) which is not zero, *de minimis*, or based entirely on facts available. Accordingly, we determine to use Yieh Phui's weighted-average dumping margin as the margin for the separate rate companies.

PRC-Wide Rate

In our *Preliminary Determination*, we found that the PRC-wide entity, which includes Baoshan, Tangshan, and other PRC exporters and/or producers that did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. As a result, we preliminarily determined to calculate the PRC-wide rate on the basis of adverse facts available (AFA). We examined whether the highest petition margin was less than or equal to the

[1] *See Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from the People's Republic of China," (Final Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

[3] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[5] *See Final Decision Memorandum.*

[6] *See Certain Corrosion-Resistant Steel Products From Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015) (*Initiation Notice*).

[7] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[8] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

[9] For a full description of the methodology and results of our analysis, *see* the Final Decision Memorandum.

highest calculated margin, and determined that the highest calculated margin of 255.80 percent was the higher of the two. Thus, for the *Preliminary Determination,* we assigned to the PRC-wide entity a dumping margin of 255.80 percent, the highest calculated margin. This rate was Yieh Phui's preliminary calculated margin. For this final determination, Yieh Phui's calculated margin changed to 209.97 percent, and it is still the highest calculated margin. Consistent with our practice, the Department selected Yieh Phui's highest calculated margin, as AFA, because this rate is higher than the highest petition rate in this investigation and therefore, sufficiently adverse to serve the purposes of facts available.[10] Therefore, we assigned this rate to the PRC-wide entity for this final determination. Furthermore, there is no need to corroborate the selected margin because it is based on information submitted by Yieh Phui in the course of this investigation, *i.e.,* it is not secondary information.[11]

Final Determination Margins

The Department determines that the following weighted-average dumping margins, and cash deposit rates reflecting adjustments to the weighted-average dumping margins to account for export subsidies exist:

Exporter	Producer	Weighted-average dumping margin (percent)	Cash deposit rate (percent) [12]
Yieh Phui (China) Technomaterial Co., Ltd.	Yieh Phui (China) Technomaterial Co., Ltd.	209.97	199.43
Jiangyin Zongcheng Steel Co. Ltd.	Jiangyin Zongcheng Steel Co. Ltd.	209.97	199.43
Union Steel China	Union Steel China	209.97	199.43
PRC-Wide Entity	209.97		199.43

As detailed in the Preliminary Decision Memorandum, Baoshan and Tangshan, mandatory respondents in this investigation, did not respond to our questionnaire and, thus, did not demonstrate that they were entitled to separate rates. We continue to find these companies to be part of the PRC-Wide Entity. Furthermore, because we did not receive quantity and value questionnaire responses or separate rate applications from numerous companies, the PRC-wide entity also includes these non-responsive companies.[13]

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of corrosion-resistant steel from the PRC, which were entered, or withdrawn from warehouse, for consumption on or after October 6, 2015 (for those entities for which we found critical circumstances exist) or on or after January 4, 2016, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination* (for all entities for which we did not find critical circumstances exist). Further, pursuant to section 735(c)(1)(B)(ii) of the Act, the Department will instruct CBP to require a cash deposit[14] equal to the weighted-average amount by which the normal value exceeds U.S. price, adjusted where appropriate for export subsidies,[15] as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate will be equal to the dumping margin which the Department determined in this final determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the dumping margin established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. The suspension of liquidation instructions will remain in effect until further notice.

As noted above, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to constitute any export subsidies.[16] Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on corrosion-resistant steel from the PRC, the Department will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the weighted-average margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the

[10] *See* Final Decision Memorandum for a detailed discussion.

[11] *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Act.

[12] *See* "Continuation of Suspension of Liquidation" section below.

[13] *See* Memorandum to the File, "Quantity and Value Questionnaire Recipients" (July 16, 2015).

[14] *See* Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

[15] *See* section 772(c)(1)(C) of the Act.

[16] In the companion countervailing duty (CVD) investigation, the Department preliminarily found that Yieh Phu did not receive export subsidies. As a result, we did not adjust any of the companies' AD cash deposit rates for export subsidies. In the concurrent final CVD investigation, we determined that the Yieh Phui did receive export subsidies. In addition, pursuant to section 777A(f) of the Act, we normally adjust preliminary cash deposit rates for estimated domestic subsidy pass-through, where appropriate. However, in this case in the *Preliminary Determination,* we did not grant a domestic subsidy pass-through adjustment. *See* Preliminary Decision Memorandum. We received no comments on this issues, and we have not changed this decision for this final determination.

Act, the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Final Determination of Critical Circumstances, in Part
IV. Scope Comments
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VI. Changes Since the Preliminary Determinations
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VIII. Discussion of the Issues
Comment 1: Ocean Freight Surrogate Value
Comment 2: Byproduct Offset
Comment 3: Hot-Rolled Steel Surrogate Value
Comment 4: Surrogate Financial Ratios
IX. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12965 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–832]

Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that certain corrosion-resistant steel products ("corrosion-resistant steel") from Italy is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is April 1, 2014, through March 31, 2015. The final dumping margins of sales at LTFV are listed below in the "Final Determination" section of this notice.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1394 or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2016, the Department published the *Preliminary Determination* of this antidumping duty ("AD") investigation.[1] The following events occurred since the *Preliminary Determination* was issued.

Between January and April 2016, the Department received supplemental questionnaire responses and revised databases from Acciaieria Arvedi SPA ("Arvedi") and Marcegaglia SpA ("Marcegaglia"), the mandatory respondents in this investigation.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.[2]

Between April 19, and April 20, 2016, Petitioners[3] submitted timely, properly filed case briefs.[4] Between April 25, and April 28, 2016, Arvedi, and Petitioners submitted timely, properly filed rebuttal briefs.[5] Additionally, on April 27, 2016, Marcegaglia submitted a timely, properly filed case brief.[6] Moreover, on May 2, 2016, Marcegaglia submitted a timely, properly filed rebuttal brief.[7]

Additionally, on May 3, 2016, the Department held a public hearing on this antidumping duty investigation.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from Italy. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[8] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[9] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice, which is hereby adopted by this notice.[10] A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The signed and electronic versions of the Issues and

[1] *See Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 69 (January 4, 2016) ("*Preliminary Determination*").

[2] *See* Memorandum for the Record, from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas," dated January 27, 2016.

[3] United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc., (collectively "Petitioners").

[4] *See* Letter to the Secretary of Commerce from Petitioners "Case Brief Submitted on behalf of Petitioners: Brief on Arvedi," (April 19, 2016) ("Petitioners' Case Brief on Arvedi"); Letter to the Secretary of Commerce from Petitioners "Case Brief Submitted on Behalf of Petitioners: Brief on Marcegaglia," (April 20, 2016) ("Petitioners' Case Brief on Marcegaglia").

[5] *See* Letter to the Secretary of Commerce from Petitioners "Rebuttal Brief on Marcegaglia Submitted on behalf of Petitioners," (April 28, 2016) ("Petitioners' Rebuttal Brief on Marcegaglia"); Letter to the Secretary of Commerce from Arvedi "Arvedi's Rebuttal Brief," (April 25, 2016) ("Arvedi's Rebuttal Brief"); Letter to the Secretary of Commerce from Marcegaglia, "Marcegaglia's Rebuttal Brief," (April 28, 2016) ("Marcegaglia's Rebuttal Brief")..

[6] *See* Letter to the Secretary of Commerce from Marcegaglia, "Revised Case Brief of Marcegaglia," (April 27, 2016) ("Marcegaglia's Revised Case Brief"). We note that this is a refiled and redacted case brief. *See* Letter to Marcegaglia from Paul Walker, Program Manager, Office V, Re: Corrosion-Resistant Steel Products from Italy: Rejection of New Factual Information, (April 26, 2016); Letter to the Secretary of Commerce from Marcegaglia, "Corrosion-Resistant Steel Products from Italy: Objection to the Department's Rejection of Marcegaglia's Case Brief," (April 27, 2016).

[7] *See* Letter to the Secretary of Commerce from Marcegaglia, "Revised Rebuttal Brief of Marcegaglia," (May 2, 2016) ("Marcegaglia's Revised Rebuttal Brief"). We note that this is a refiled and redacted rebuttal brief. *See* Letter to Marcegaglia from Paul Walker, Program Manager, Office V, Re: Corrosion-Resistant Steel Products from Italy: Rejection of New Factual Information in Rebuttal Brief, (April 29, 2016).

[8] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

[9] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[10] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy" (May 24, 2016) ("Issues and Decision Memorandum").

Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, between January and March 2016, the Department verified the sales and cost data reported by Arvedi and Marcegaglia. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Arvedi and Marcegaglia.[11]

Changes Since the Preliminary Determination and Use of Adverse Facts Available

Based on our analysis of the comments received and our findings at verification, we revised the margin for Marcegaglia to reflect the application of facts available with an adverse inference, pursuant to sections 776(a)(2)(A)–(D) and 776(b) of the the Act. Additionally, we made certain changes to the margin calculation for Arvedi and applied partial facts available with an adverse inference to Arvedi for its non-prime sales in the home market and affiliated prime sales in the home market, pursuant to sections 776(a)(2)(A)–(D) and 776(b) of the Act. We have also revised the all-others rate. For a discussion of these changes, *see* the "Margin Calculations" section and Comments 1–11 of the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely under section 776 of the Act. Because Arvedi is the only respondent in this investigation for which the Department calculated a company-specific rate which is not zero, *de minimis* or based entirely on facts available, pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Arvedi as the estimated weighted-average dumping margin assigned to all other producers and exporters of the merchandise under consideration.[12]

Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Acciaieria Arvedi S.p.A	12.63
Marcegaglia S.p.A	92.12
All-Others	12.63

Disclosure

We will disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

Final Affirmative Determination of Critical Circumstances, in Part

On November 5, 2015, the Department issued its preliminary critical circumstances determination. Pursuant to this determination, the Department determined that critical circumstances did not exist for imports of subject merchandise from Arvedi, Marcegaglia, and "all-others."[13] Based on Arvedi's and Marcegaglia's final dumping margins, and further analysis following the *Preliminary Determinations of Critical Circumstances,* we are modifying our findings for the final determination and finding critical circumstances exist for Marcegaglia. For a complete discussion of this issue, *see* the "Affirmative Finding of Critical Circumstances, In Part" section of the Issues and Decision Memorandum.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all appropriate entries of corrosion-resistant steel from Italy, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 8, 2016, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**. However, because prior to this final determination provisional measures were not in effect for Marcegaglia, the Department reached a negative critical circumstances determination at the *Preliminary Determination,* and has reached an affirmative critical circumstances determination with respect to Marcegaglia for this final determination, pursuant to section 735(c)(4)(C) of the Act, the Department will instruct CBP to suspend liquidation of all entries of corrosion-resistant steel from Italy from Marcegaglia which were entered, or withdrawn from warehouse, for consumption on or after 90-days prior to the date of publication of this final determination in the **Federal Register**, and require a cash deposit for such entries as noted above.

Further, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific

[11] *See* Memorandum to the File, through Paul Walker, Program Manager, Office V, from Julia Hancock and Susan Pulongbarit, Senior International Trade Analysts, and Omar Qureshi, International Trade Analyst, "Verification of Home Market Sales of Arvedi in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy," (March 29, 2016); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Susan Pulongbarit and Julia Hancock, Senior International Trade Analysts, and Omar Qureshi, International Trade Analyst, "Verification of Home Market Sales of Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy," (April 8, 2016); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Susan Pulongbarit and Julia Hancock, Senior International Trade Analysts, "Verification of U.S. Sales of Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy," (April 7, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from Christopher Zimpo and James Balog, Accountants, " Verification of the Cost of Production and Constructed Value Data Submitted by Arvedi in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy" (April 7, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, "Verification of the Cost of Production and Constructed Value Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy" (April 12, 2016); Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, "Verification of the Cost of Production and Constructed Value Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy" (April 12, 2016) ; Memorandum to the File, through Neal Halper, Director, Office of Accounting, from James Balog, Accountant, "Verification of the Further Manufacturing Data Submitted by Marcegaglia in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy" (April 12, 2016).

[12] With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[13] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances,* 80 FR 68504 (November 5, 2015) ("*Preliminary Determinations of Critical Circumstances*").

weighted-average dumping margin determined in this final determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be 12.63 percent. The instructions suspending liquidation will remain in effect until further notice.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above,[14] adjusted where appropriate for export subsidies.[15] The Department has determined in its companion countervailing duty investigation of corrosion-resistant steel from Italy that subject merchandise exported by Arvedi and Marcegaglia did not benefit from export subsidies.[16] As a result, the Department will make no adjustment to Arvedi's or Marcegaglia's cash deposit rates. The rate for all other producers or exporters when adjusted for export subsidies is 12.48 percent.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from Italy no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders ("APO")

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness

[14] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

[15] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[16] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Final Affirmative Determination*, dated concurrently with this notice.

and of a width which exceeds 150 mm and measures at least twice the thickness; and

• Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Changes Since the Preliminary Determination
V. Application of Total Adverse Facts Available With Regard to Marcegaglia
VI. Selection of AFA Rate and Corroboration
VII. Affirmative Finding of Critical Circumstances, In Part
VIII. List of Comments
IX. Discussion of Comments
Comment 1: Application of Total Adverse Facts Available ("AFA") to Marcegaglia
A. Misclassified Export Price ("EP") Sales
Comment 2: Corporate Name Change of Marcegaglia
Comment 3: Application of Adverse Facts Available ("AFA") to Arvedi's Non-Prime Sales
Comment 4: Application of AFA to Arvedi's Packing Revenue
Comment 5: Treatment of Arvedi's Cost of Manufacturing ("COM")
A. Other Operating Costs
B. Net Extraordinary Charges
C. Bad Debt Expenses
D. Offset of Electricity Sales to COM
E. Adjust Variable Manufacturing Cost Based on Sales Quantities
F. Disallow Insurance Claim as "Indirect Damages" As An Offset to Fixed Overhead Costs
Comment 6: Programming Errors in Arvedi's Margin Program
A. Net U.S. Price Variable
B. Marine Insurance
Comment 7: Revised U.S. Sales Data for Arvedi
Comment 8: Adjustments to Arvedi's Cost Data Based on Verification

[FR Doc. 2016–12969 Filed 6–1–16; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–864]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Final Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products ("corrosion-resistant steel") from India as provided in section 705 of the Tariff Act of 1930, as amended (the "Act"). For information on the subsidy rates, see the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Devine, Paul Walker, or Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–0238, 202–482–0413, or 202–482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on November 6, 2015,[1] and placed the Post-Preliminary Memorandum on the record of this investigation on March 9, 2016.[2] A summary of the events that occurred since the post-preliminary analysis, as well verification and a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memo.[3] The Issues and Decision Memo is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://trade.gov/enforcement.* The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.[4]

Scope of the Investigation

The products covered by this investigation are corrosion-resistant steel products from India. For a complete description of the scope of this investigation, *see* Appendix II. The Department did not receive comments regarding the scope of this investigation.

Scope Comments

In accordance with the Preliminary Scope Determination,[5] the Department

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[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination,* 80 FR 68854 (November 6, 2015) ("*Preliminary Determination*").

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: "Post-Preliminary Analysis for the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from India," dated March 9, 2016 ("Post-Preliminary Memorandum").

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from India," dated concurrently with this notice ("Issues and Decision Memo").

[4] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

[5] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[6] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Methodology

The Department is conducting this countervailing duty ("CVD") investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memo.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memo. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memo, is attached to this notice at Appendix I.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because JSW Steel Limited did not act to the best of its ability to respond to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[8] For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memo.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to the subsidy program rate calculations since the *Preliminary Determination*. For a discussion of these changes, *see* the Issues and Decision Memo.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated. In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis*, or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using "any reasonable method." Where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on total AFA, the Department's practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on total AFA. Pursuant to section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department's practice, for the "all-others" rate, we calculated a simple average of the two responding firms' rates.[9]

Exporter/Producer	Subsidy rate (percent)
JSW Steel Limited and JSW Steel Coated Products Limited	29.46
Uttam Galva Steels Limited and Uttam Value Steels Limited	8.00
All Others	18.73

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection ("CBP") to suspend liquidation of entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after November 6, 2015, which is the publication date in the **Federal Register** of the *Preliminary Determination*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 5, 2016.

If the U.S. International Trade Commission (the "ITC") issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* sections 776(a) and (b) of the Act.

[9] *See, e.g., Countervailing Duty Investigation of Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 5089 (January 30, 2015), unchanged in *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 64745 (October 24, 2015).

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

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X. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) Where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs

purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12967 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–833]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Final Affirmative Determination and Final Affirmative Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products ("corrosion-resistant steel") from Italy as provided in section 705 of the Tariff Act of 1930, as amended (the "Act"). For information on the estimated subsidy rates, see the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, Irene Gorelik, and Katie Marksberry, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202.482.9068, 202.482.6905, and 202.482.7906, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on November 6, 2015,[1] published the *Preliminary Critical Circumstances* on November 5, 2015,[2] and placed the Post-Preliminary Analysis on the record of this investigation on April 13, 2016.[3] A summary of the events that occurred since the post-preliminary analysis, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memo.[4] The Issues and Decision Memo is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://trade.gov/enforcement.* The signed Issues and Decision Memo and the electronic versions of the Issues and Decision Memo are identical in content.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.[5]

Scope of the Investigation

The products covered by this investigation are corrosion-resistant steel products from Italy. For a complete description of the scope of this investigation, *see* Appendix II.

Scope Comments

In accordance with the Preliminary Scope Determination,[6] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[7] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Methodology

The Department is conducting this countervailing duty ("CVD") investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our conclusions, *see* the Issues and Decision Memo.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memo. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memo, is attached to this notice at Appendix I.

Adverse Facts Available

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) Necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a

[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination,* 80 FR 68839 (November 6, 2015) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum ("Prelim Decision Memo").

[2] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances,* 80 FR 68504 (November 5, 2015) ("*Preliminary Critical Circumstances*").

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: "Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Corrosion Resistant Steel from Italy," dated April 13, 2016 ("Post-Preliminary Analysis").

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Certain Corrosion Resistant Steel from Italy," dated concurrently with this notice ("Issues and Decision Memo").

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

[6] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, the Department twice requested information with respect to the *Industrial Development Grants Under Law 488/92, Technological Innovation Grants and Loans Under Law 46/82, Certain Social Security Reductions and Exemptions ("Sgravi" Benefits),* and *Equalization Fund* from the Government of Italy. The Government of Italy withheld necessary information with respect to each of these programs, failed to provide information in the form and manner requested, and did not provide requested information by the deadlines for submission of the information, as explained in more detail in the Prelim Decision Memo and the Issues and Decisions Memo. Furthermore, the Department has concluded that the Government of Italy did not cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a) and (b) of the Act, we have determined that for each of these programs, the application of adverse facts available is warranted. For the *Industrial Development Grants Under Law 488/92* and *Technological Innovation Grants and Loans Under Law 46/82,* and *Equalization Fund* programs, we have determined as adverse facts available that these programs are *de facto* specific, in accordance with section 771(5A)(D)(iii) of the Act. For the *Sgravi Benefits,* we have determined that the reduced tax revenue due to the Government of Italy under these provisions constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act as revenue forgone. We have also determined that the revenue forgone under the *Sgravi Benefits,* is either *de facto* specific, in accordance with section 771(5A)(D)(ii) of the Act, or regionally specific, in accordance with section 771(5A)(D)(iv) of the Act. More specifically, we find that Laws 53/2000 and 167/2011 are *de facto* specific accordance with 771(5A)(iii) of the Act, and that Law 223/91 is regionally specific, in accordance with section 771(5A)(D)(iv).[9]

In addition, one company selected as a mandatory respondent, Ilva S.p.A. ("Ilva"), did not respond to the Department's questionnaires or participate in the investigation. Accordingly, as adverse facts available, pursuant to sections 776(a) and (b), we have determined that Ilva benefitted from certain countervailable programs during the POI and calculated a rate for Ilva based on those programs.[10] For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memo.

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, we made certain changes to Ilva's subsidy rate calculations since the *Preliminary Determination.* Additionally we have modified our analysis of the Equalization Fund and now determine that an adverse inference is warranted in determining whether the program is specific. For a discussion of these changes, *see* the Issues and Decision Memo.

Final Affirmative Determination of Critical Circumstances, in Part

On July 23, 2015, Petitioners [11] filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of corrosion-resistant steel from Italy.[12] We preliminarily determined that critical circumstances did not exist for Acciaieria Arvedi S.p.A. ("Arvedi"), Marcegaglia S.p.A. ("Marcegaglia"), and the all-others companies, but did exist for Ilva. That determination remains unchanged and a discussion of our final critical circumstances determination can be found in the Issues and Decision Memo at the section, "Final Determination of Critical Circumstances, In Part."

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise individually investigated. In accordance with section 705(c)(5)(A)(i) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using "any reasonable method." Where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on AFA, the Department's practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on AFA. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the "all-others" rate by weight averaging the rates of the two individually investigated respondents and the rate based on AFA, because Ilva failed to report volume data that would enable the Department to determine the all-others rate based on a weighted-average. Therefore, and consistent with the Department's practice, for the "all-others" rate, we calculated a simple average of the two responding firms' *de minimis* rates and the AFA rate for the non-responsive company.[13]

[9] *See* Prelim Decision Memo.

[10] *See* sections 776(a) and (b) of the Act.

[11] United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation (collectively, "Petitioners").

[12] *See* Letter from Petitioners, "Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Critical Circumstances Allegations," July 23, 2015.

[13] *See, e.g., Countervailing Duty Investigation of Chlorinated Isocyanurates from the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Determination,* 79 FR 10097 (February 24, 2014); *see also, Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination,* 79 FR 61602 (October 14, 2014) and accompanying Issues and Decision Memo at VIII. Calculation of the All Others Rate.

Exporter/producer	Subsidy rate (percent)
Acciaieria Arvedi S.p.A., Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl., collectively, the Arvedi Group.	0.48 (*de minimis*).
Marcegaglia S.p.A. and Marfin S.p.A., the Marcegaglia Group	0.07 (*de minimis*).
Ilva S.p.A	38.51
All Others	13.02

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection ("CBP") to suspend liquidation of appropriate entries of merchandise under consideration from Italy [14] that were entered or withdrawn from warehouse, for consumption, on November 6, 2015, or after August 7, 2015 (for those entities for which we found critical circumstances exist), which is 90 days before the publication date in the **Federal Register** of the *Preliminary Determination*. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 5, 2016, but to continue the suspension of liquidation of all entries from August 7, 2015 or November 6, 2015, as relevant, through March 4, 2016.

If the U.S. International Trade Commission (the "ITC") issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above, other than those produced and/or exported by Arvedi and Marcegaglia because those companies rates are *de minimis*. Because Arvedi and Marcegaglia were found to receive *de minimis* subsidies, they would be excluded from the CVD order. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

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X. Analysis of Comments
  Comment 1: Whether White Certificates Are Countervailable
  Comment 2: Whether the Program To Purchase Ferriera Di Servola Is Not Countervailable or Not Used During the POI
  Comment 3: Whether To Include Countervailable Programs From the Post-Preliminary Memo in Ilva's AFA Rate
XI. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or

[14] Other than entries produced and/or exported by Arvedi and Marcegaglia for which we calculated *de minimis* rates in the *Preliminary Determination*.

- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–12971 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863]

Certain Corrosion-Resistant Steel Products From India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that certain corrosion-resistant steel products ("corrosion-resistant steel") from India is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is April 1, 2014, through March 31, 2015. The final dumping margins of sales at LTFV are listed below in the "Final Determination" section of this notice.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta or Ryan Mullen, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593 or (202) 482–5260, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2016, the Department published the *Preliminary Determination* of this antidumping duty ("AD") investigation.[1] The following events occurred since the *Preliminary Determination* was issued.

In April 2016, the Department received revised databases from JSW[2] and Uttam Galva Steels Ltd. ("Uttam Galva"), the mandatory respondents in this investigation.

Additionally, in April 2016, Petitioners,[3] JSW, and Uttam Galva submitted case briefs[4] and rebuttal briefs.[5] A hearing was held on May 4, 2016.

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[6] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results is now May 24, 2016.

Scope of the Investigation

The product covered by this investigation is corrosion-resistant steel from the India. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[7] the Department

[1] *See Certain Corrosion-Resistant Steel Products from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 63 (January 4, 2016) ("*Preliminary Determination*").

[2] We refer to JSW Steel Ltd. ("JSWSL") and its wholly-owned affiliate JSW Steel Coated Products Limited ("JSCPL") collectively as "JSW."

[3] Petitioners are United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc.

[4] *See* Letter to the Secretary of Commerce from Petitioners, "Case Brief of Petitioners" (April 18, 2016); Letter to the Secretary of Commerce from JSW, "JSW's Resubmitted Case Brief" (April 21, 2016); and Letter to the Secretary of Commerce from Uttam Galva, "Uttam Galva Steels Limited's Case Brief" (April 19, 2016).

[5] *See* Letter to the Secretary of Commerce from Petitioners, "Petitioners' Rebuttal Brief" (April 25, 2016); Letter to the Secretary of Commerce from JSW, "JSW's Rebuttal Brief" (April 25, 2016); and Letter to the Secretary of Commerce from Uttam Galva, "Uttam Galva Steels Limited's Rebuttal Brief" (April 25, 2016) .

[6] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" dated January 27, 2016.

[7] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Scope Comments Decision Memorandum for the Preliminary Determinations," dated December 21, 2015 ("Preliminary Scope Decision Memorandum"). *See also* Memorandum to the File, "Certain Corrosion-Resistant Steel Products From the People's Republic

Continued

set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[8] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[9] A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, in January, February, and March 2016, the Department verified the sales and cost data reported by the mandatory respondents, pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by Respondents.[10]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for JSW and Uttam Galva. For a discussion of these changes, *see* the "Margin Calculations" and "Comparisons to Fair Value" sections of the Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. Therefore, we calculated the all-others rate based on a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration.[11]

Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
JSW:[12]	4.44
JSW Steel Ltd	
JSW Coated Products Limited	
Uttam Galva:[13]	3.05
Uttam Galva Steels Limited	
Uttam Value Steels Limited	
Atlantis International Services Company Ltd	
Uttam Galva Steels, Netherlands, B.V	
Uttam Galva Steels (BVI) Limited	
All-Others	3.86

Disclosure

We will disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

Final Negative Determination of Critical Circumstances

On October 29, 2015, the Department found that critical circumstances do not exist for imports exported by JSW, Uttam Galva, and "all others."[14] Based

of China, India, Italy, the Republic of Korea, and Taiwan: Correction to Preliminary Determination Scope Memorandum," dated January 29, 2016.

[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice.

[9] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (May 24, 2016) ("Issues and Decision Memorandum").

[10] *See* Memorandum to the File, through Neal Halper, Office Director, and Peter Scholl, Lead Accountant, from Ji Young Oh, Senior Accountant, "Verification of the Cost Response of JSW Steel Limited and JSW Steel Coated Products Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India" (April 7, 2016); Memorandum to the File, through Neal Halper, Office Director, and Peter Scholl, Lead Accountant, from Alma Sepulveda, Senior Accountant, and Laurens van Houten, Senior Accountant, "Verification of the Cost Response of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Flat Products from India" (March 23, 2016); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Kabir Archuletta, Senior International Trade Analyst, Ryan Mullen, International Trade Analyst, and Jessica Weeks, International Trade Analyst, "Verification of JSW Steel Ltd. and JSW Coated Steel Products in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel from India" (April 7, 2016); Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, "Verification of Home Market and U.S. Sales of Uttam Galva Steels Limited in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (April 7, 2016); and Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, "Verification of U.S. Sales of Uttam Galva North America in the Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products from India" (April 7, 2016).

[11] With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

[12] We find JSWSL and its wholly-owned affiliated JSCPL, (collectively "JSW") are affiliated and have met the criteria to be collapsed. *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Enforcement and Compliance, Office V, from Kabir Archuletta, Senior International Trade Analyst, Enforcement and Compliance, Office V, "Antidumping Duty Investigation of Certain Corrosion Resistant Steel Products from India: JSW Affiliation and Collapsing Memorandum," dated concurrently with this determination. Therefore, we will assign one rate to these companies.

[13] We find Uttam Galva to be affiliated with these companies and that they have met the criteria to be treated as a single entity. For further discussion of this issue, which includes business proprietary information, see Memorandum to James C. Doyle, Director, Office V, through Catherine Bertrand, Program Manager, Office V, from Ryan Mullen, International Trade Analyst, Office V, "Antidumping Duty Investigation of Certain Corrosion Resistant Steel Products from India: Uttam Galva Affiliation and Single Entity Memorandum," dated concurrently with this determination. Therefore, we will assign one rate to these companies.

[14] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determination of Critical Circumstances*, 80 FR 68504, (November 5, 2015).

on the final dumping margins of JSW and Uttam Galva and further analysis following the *Preliminary Critical Circumstances Determination*, we are not modifying our findings for the final determination. For a complete discussion of this issue, *see* the "Negative Finding of Critical Circumstances" section of the Issues and Decision Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all appropriate entries of corrosion-resistant steel from India, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 4, 2016, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Further, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) For the exporters/producers listed in the table above, the cash deposit rates will be equal to the dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.03 percent. These instructions suspending liquidation will remain in effect until further notice.

Pursuant to section 733 (d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above,[15] adjusted where appropriate for export subsidies,[16] as follows: (1) The rate for JSW, when adjusted for export subsidies, is 0.49 percent; (2) the rate for Uttam Galva, when adjusted for export subsidies, is 0.00 percent; (3) the rate for all other producers or exporters, when adjusted for export subsidies, is 0.00 percent.

The instructions suspending liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of corrosion-resistant steel from India no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders ("APO")

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: May 24, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels ("AHSS") and Ultra High Strength Steels ("UHSS"),

[15] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

[16] *See* section 772(c)(1)(C) of the Act. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

• Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

• Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

• Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Margin Calculations
5. Comparisons to Fair Value
6. List of Comments
7. Discussion of Comments
   - Comment 1: Duty Drawback
   - Comment 2: Date of Sale
   - Comment 3: Revision of Uttam Galva's Yield Strength Product Characteristics
   - Comment 4: JSW's Sales Below Cost
   - Comment 5: Export Subsidy Offset Deduction for Duty Drawback Subsidy Rates
   - Comment 6: JSW's Forward Exchange Rate Contracts
   - Comment 7: Treatment of JSW's Domestic Brokerage and Handling
   - Comment 8: Adjustments for JSW Verification Findings
   - Comment 9: JSW's POI Material Costs
   - Comment 10: Uttam Galva's Cost of Production Minor Corrections
   - Comment 11: JSW Royalty Expense
   - Comment 12: Ministerial Errors
   - Comment 13: Uttam Galva's Differential Pricing Analysis
8. Negative Finding of Critical Circumstances
9. Conclusion

[FR Doc. 2016–12986 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–040]

Truck and Bus Tires From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Andre Gziryan, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–2201, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2016, the Department of Commerce (the Department) initiated the antidumping duty investigation of truck and bus tires from the People's Republic of China.[1] The *Initiation Notice* stated that the Department would issue its preliminary determination for this investigation no later than 140 days after the date of the initiation in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), unless postponed.[2]

Period of Investigation

The period of investigation is July 1, 2015, through December 31, 2015.

Postponement of Preliminary Determination

Section 733(c)(1)(A) of the Act permits the Department to postpone the time limit for the preliminary determination if it receives a timely request from the petitioner for postponement. The Department may postpone the preliminary determination under section 733(c)(1) of the Act no later than 190 days after the date on which the administering authority initiates an investigation.

On May 20, 2016, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (the petitioner) made a timely request under 19 CFR 351.205(e) for a 50-day postponement of the preliminary determination of this investigation.[3] The petitioner states that a postponement is necessary given a very large number of separate rate applications and the need for additional time to analyze responses from the two selected respondents.[4]

For the reasons stated above, and because there are no compelling reasons to deny the petitioner's request, the Department is fully postponing the preliminary determination of this investigation in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) to August 26, 2016. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 26, 2016.

Paul Piquado,

Assistant Secretary For Enforcement and Compliance.

[FR Doc. 2016–13044 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the

[1] *See Truck and Bus Tires From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 81 FR 9434 (February 25, 2016) (*Initiation Notice*).

[2] *Id.*, 81 FR at 9438.

[3] *See* Truck and Bus Tires from the People's Republic of China (A–570–040): Petitioner's Request to Extend the Preliminary Determination dated May 20, 2016.

[4] *Id.*

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Quantitative Assessment of Spatially-Explicit Social Values Relative to Wind Energy Areas: Outer Continental Shelf Offshore North Carolina.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 3,225 (300 for a pretest; 2,925 for the final survey).

Average Hours per Response: 20 minutes.

Burden Hours: 1,075.

Needs and Uses: This request is for a new information collection.

Pursuant to the Outer Continental Shelf Land Act, the National Environmental Policy Act and the Coastal Zone Management Act, this request is for a new data collection to benefit the National Oceanic and Atmospheric Administration (NOAA), Bureau of Ocean Energy Management (BOEM), and policy-makers on the state and local level in North Carolina. BOEM has identified three wind energy areas for potential development on the outer continental shelf of North Carolina. The National Ocean Service (NOS) proposes to collect data on the knowledge, beliefs, social values, and attitudes of North Carolina and South Carolina residents relative to marine and coastal landscapes, alternative energy production options, and offshore wind energy development. Respondents will be sampled from households in eight to ten coastal counties.

The required information will be used to objectively assess the level of support and/or opposition for offshore wind energy development in the region, as well as identify the relevant issues and concerns most salient to residents. The information will be used by BOEM, NOAA, and others to improve agency understanding about the beliefs, social values, attitudes, and concerns of people potentially affected by offshore wind energy development. Such information will be used to ascertain the possible sociocultural outcomes of offshore wind energy development in the region, such as an enhancement or reduction in enjoyment of the coastal landscape/seascape. Additionally, information collected will be used to improve communication efforts targeted to residents, enabling agencies to more effectively and efficiently direct outreach and community inclusion activities.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: May 26, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–12912 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE661

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, June 20, 2016 at 10 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will receive a Plan Development Team report on analyses of whiting fleet history data for developing Amendment 22 limited access qualification alternatives. The committee will also consider whether to continue work on developing limited access alternatives for Amendment 22 to meet the purpose and need in the public scoping document. The committee will review and consider law enforcement priorities as they pertain to the whiting fishery. They will also address other business as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13016 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Paperwork Submissions Under the Coastal Zone Management Act Federal Consistency Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 1, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Kaiser, 603–862–2719 or *David.Kaiser@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

A number of paperwork submissions are required by the Coastal Zone Management Act (CZMA) federal consistency provision, 16 U.S.C. 1456, and by NOAA to provide a reasonable, efficient and predictable means of complying with CZMA requirements. The requirements are detailed in 15 CFR part 930. The information will be used by coastal states with federally-approved Coastal Zone Management Programs to determine if Federal agency activities, Federal license or permit activities, and Federal assistance activities that affect a state's coastal zone are consistent with the states' programs. Information will also be used by NOAA and the Secretary of Commerce for appeals to the Secretary by non-federal applicants regarding State CZMA objections to federal license or permit activities.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0411.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: State, local, or tribal government; business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 2,334.

Estimated Time per Response: Applications/certifications and state preparation of objection or concurrence letters, 8 hours each; state requests for review of unlisted activities, 4 hours; public notices, 1 hours; remedial action and supplemental review, 6 hours; listing notices, 1 hour; interstate listing notices, 30 hours; mediation, 2 hours; appeals to the Secretary of Commerce, 210 hours.

Estimated Total Annual Burden Hours: 35,799.

Estimated Total Annual Cost to Public: $9,024 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–13034 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE659

Pacific Fishery Management Council (Pacific Council); Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet June 21–28, 2016. The Pacific Council meeting will begin on Thursday, June 23, 2016 at 8 a.m., reconvening each day through Tuesday, June 28, 2016. All meetings are open to the public, except a closed session will be held from 8 a.m. to 12 p.m. on Thursday, June 23 and 8 a.m. to 9 a.m. on Tuesday, June 28 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Council and its advisory entities will be held at the Hotel Murano, 1320 Broadway Plaza, Tacoma, WA 98402; telephone: (253) 238–8000.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Acting Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll-free; or access the Pacific Council Web site, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The June 23–28, 2016 meeting of the Pacific Council will be streamed live on the Internet. The broadcasts begin initially at 1 p.m. Pacific Time (PT) Thursday, June 23, 2016 and continue at 8 a.m. daily through Tuesday, June 28, 2016. Broadcasts end daily at 6 p.m. PT or when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion is listen-only; you will be unable to speak to the Pacific Council via the broadcast. To access the meeting online please use the following link: *http://www.gotomeeting.com/online/webinar/join-webinar* and enter the June Webinar ID, 157–423–659 and your email address. You can attend the webinar online using a computer, tablet, or smart phone, using the GoToMeeting application. It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio portion only of the meeting. The audio portion may be attended using a telephone by dialing the toll number 1–562–247–8422 (not a toll-free number), audio access code 409–877–303, and enter the audio pin shown after joining the webinar.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as "Final Action" refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the Secretary of Commerce, under sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, advisory entity meeting times, and meeting rooms are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance June 2016 briefing materials and posted on the Council Web site at *www.pcouncil.org*.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Acting Executive Director's Report
4. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Habitat

1. Current Habitat Issues

D. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. International Issues Including Eastern Pacific Ocean Swordfish Status, Report of the North Pacific Albacore Management Strategy Evaluation Workshop, and Recommendations for the 12th Northern Committee Meeting
3. Preliminary Approval of New Exempted Fishing Permits (EFPs)
4. Initial Scoping of Biennial Specifications Including Management Reference Points and Management Measures
5. Deep-Set Buoy Gear and Federal Permit Update

E. Pacific Halibut Management

1. Scoping of Pacific Halibut Catch Sharing Plan Allocation Changes

F. Administrative Matters

1. Legislative Matters
2. Western Region Climate Change Action Plan
3. Fiscal Matters
4. Approval of Council Meeting Record
5. Membership Appointments and Council Operating Procedures
6. Future Council Meeting Agenda and Workload Planning

G. Groundfish Management

1. National Marine Fisheries Service Report
2. Amendment 21 At-Sea Sector Allocation Revisions
3. Final Action on Exempted Fishing Permit Approval for 2017–2018
4. Final Action To Adopt Management Measures for 2017–2018 Fisheries
5. Preliminary Plans for Review of the West Coast Trawl Catch Share Program and Intersector Allocations Including Comments on Draft Guidance for Catch Share Program Revisions
6. Omnibus Groundfish Workload Planning
7. Final Action on Inseason Adjustments
8. Final Action on Stock Assessment Plans and Terms of Reference (TOR) for Groundfish and Coastal Pelagic Species
9. Final Action on Trawl Catch Share Program Gear Use Regulations for Fishing and Multiple Management Areas

H. Salmon Management

1. Sacramento River Winter Chinook Harvest Control Rule Update

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Council Web site *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Thursday, June 9, 2016.

Schedule of Ancillary Meetings

Day 1—Tuesday, June 21, 2016

Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.

Day 2—Wednesday, June 22, 2016

Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Habitat Committee 8:30 a.m.
Budget Committee 1 p.m.
Groundfish Advisory Subpanel 1 p.m.
Legislative Committee 2:30 p.m.

Day 3—Thursday, June 23, 2016

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Enforcement Consultants 3 p.m.

Day 4—Friday, June 24, 2016

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants Ad hoc

Day 5—Saturday, June 25, 2016

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants Ad hoc

Day 6—Sunday, June 26, 2016

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants Ad hoc

Day 7—Monday, June 27, 2016

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Enforcement Consultants Ad hoc

Day 8—Tuesday, June 28, 2016

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 27, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13018 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE660

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a five-day meeting to consider actions affecting the Gulf of Mexico

fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will take place on Monday, June 20 through Friday, June 24, 2016, starting at 8:30 a.m. daily.

ADDRESSES: The meeting will be held at the Hilton Clearwater Beach hotel, located at 400 Mandalay Avenue, Clearwater, FL 33767; telephone: (727) 461–3222.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, June 20, 2016; 8:30 a.m.–5:30 p.m.

The Gulf Council will begin with updates and presentations from administrative and management committees. The Data Collection Administrative Committee will discuss the Commercial Electronic Reporting Pilot Program and Timeline Update; and review recommendations for the For-Hire Electronic Reporting Program from the Technical Committee. They will also discuss the 2016 Appropriations for Gulf of Mexico Reef Fish Research. The Outreach and Education Administrative Committee will receive a report from the Outreach and Education Technical Committee's meeting. The Gulf SEDAR Administrative Committee will review the SEDAR Steering Committee Report; the Scientific and Statistical Committees (SSC) review and recommendations on Research Track; and the SEDAR Schedule Review. After lunch, the Spiny Lobster Management Committee will review the Panel Summary; receive a summary from the Joint South Atlantic and Gulf of Mexico Fishery Management Council's Spiny Lobster Advisory Panel (AP) meeting; and a summary from the Special and Standing SSC recommendations. The Shrimp Management Committee will give an overview of Modifications to the Bycatch Reduction Device (BRD) Testing Manual; review Options in Shrimp Amendment 17B Options Document; and review of the Special and Standing SSC Recommendations. The Reef Fish Management Committee will review Draft Amendment 36A: Red Snapper Individual Fishing Quota (IFQ) Modifications; Draft Amendment 46: Modify Gray Triggerfish Rebuilding Plan; and, Framework Action Options Paper: Mutton Snapper Acceptable Catch Limits (ACL) and Management Measures, and Commercial Gag Minimum Size Limit.

Tuesday, June 21, 2016; 8:30 a.m.–5:30 p.m.

The Reef Fish Management Committee will continue to review and discuss Draft Amendment 41: Red Snapper Management for Federally Permitted Charter Vessels; Draft Amendment 42: Federal Reef Fish Headboat Management. The Committee will review the Ad Hoc Reef Fish Headboat Advisory Panel Summary. The Committee will also discuss Final Action—Amendment 43: Hogfish Stock Definition, Status Determination Criteria (SDC), Annual Catch Limits (ACL) and Minimum Size Limit. The Committee will review Final Action—Amendment 45: Extend or Eliminate the Sunset Provision on Sector Separation. The Committee will discuss implementing an Ad Hoc Advisory Panel for Recreational Red Snapper Management; and review of Standing and Special SSC recommendations.

During lunch break Tuesday, June 21, 2016; 12 p.m.–1:25 p.m. the Personnel Committee will meet in Closed Session.

Wednesday, June 22, 2016; 8:30 a.m.–5 p.m.

The Joint Habitat/Coral Committee will receive and update on Gulf Activities Supported by NOAA Coral Reef Conservation Program; receive reports from the Deep-sea Coral Workshop, and 5-year Review Essential Fish Habitat Status. The Committee will receive updates on Recommended Coral Habitat Areas of Particular Concern (HAPCs) and receive an update on the Flower Garden Banks National Marine Sanctuary Draft Environmental Impact Statement. The Mackerel Management Committee will review Options Paper—CMP Amendment 29: Allocation Sharing and Accountability Measures for Gulf King Mackerel, and Options Paper—Framework Amendment 5: Modifications to Commercial King Mackerel Permit Restrictions in the Gulf.

The Full Council will convene after lunch (1:15 p.m.) with a Call to Order, Announcements and Introductions; Adoption of Agenda and Approval of Minutes; and will review Exempt Fishing Permit (EFPs) Applications, if any. The Council will receive public testimony from 1:45 p.m. until 5 p.m. on Agenda Testimony Items: Final Action—Reef Fish Amendment 43: Hogfish Stock Definition, Status Determination Criteria, Annual Catch Limit, and Minimum Size Limit; Final Action—Reef Fish Amendment 45: Extend or Eliminate the Sunset Provision; and hold an open public testimony period regarding any other fishery issues or concern. Anyone wishing to speak during public comment should sign in at the registration station located at the entrance to the meeting room.

Thursday, June 23, 2016; 8:30 a.m.–5 p.m.

The Council will receive presentations on U.S. Fish and Wildlife Foundation Restoration Activities; the Florida RESTORE Act Centers of Excellence Program; Joint Law Enforcement; Draft Gulf of Mexico Climate Science Action Plan and Draft Comment Letter and, NMFS–SERO Landing Summaries. The Council will also receive a summary from the Council Coordination Committee meeting.

The Council will receive committee reports from the Shrimp and Spiny Lobster Management Committees. After lunch, the Council will receive committee reports from the Data Collection, Outreach and Education, Joint Habitat/Coral, Reef Fish Management Committees.

Friday, June 24, 2016; 8:30 a.m.–11:30 a.m.

The Council will continue to review and discuss committee reports as follows: Mackerel, Gulf SEDAR, and Personnel Committee; and, vote on Exempted Fishing Permits (EFP) applications, if any. The Council will receive Supporting Agencies Summary Reports from the South Atlantic Council; Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and, the Department of State.

Lastly, Other Business, if any.

Meeting Adjourns

The timing and order in which agenda items are addressed may change as required to effectively address the issue. The latest version will be posted on the Council's file server, which can be accessed by going to the Council's Web site at *http://www.gulfcouncil.org* and clicking on FTP Server under Quick Links. For meeting materials, select the "Briefing Books/Briefing Book 2016–06" folder on Gulf Council file server. The username and password are both "gulfguest". The meetings will be webcast over the Internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those

issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 27, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13017 Filed 6–1–16; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Proposed Order and Request for Comment on a Proposal To Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing to permit Federal Reserve Banks to hold money, securities, and property deposited into a customer account by a systemically important derivatives clearing organization in accordance with the standards to which Federal Reserve Banks are held, as specified below. Thus, the Commission is proposing to exempt Federal Reserve Banks that provide customer accounts and other services to systemically important derivatives clearing organizations from Sections 4d and 22 of the Commodity Exchange Act ("CEA" or the "Act").

DATES: Comments must be received by July 5, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one of these methods.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in § 145.9 of the Commission's regulations, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Deputy Director, 202–418–5096, *edonovan@cftc.gov;* M. Laura Astrada, Associate Director, 202–418–7622, *lastrada@cftc.gov;* or Parisa Abadi, Attorney-Advisor, 202–418–6620, *pabadi@cftc.gov,* in each case, at the Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; or Joe Opron, Special Counsel, 312–596–0653, *jopron@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, IL 60661.

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I. Introduction

In 2013, in response to significant segregated account shortfalls experienced by futures customers, the Commission adopted rules that aimed to improve the protection of customer funds.[1] Recognizing that such protection is critical to the sound functioning of the futures and swaps markets, the Commission reiterated that money, securities, and other property deposited by customers must be carefully safeguarded and segregated at all times.

That same year, the Commission adopted enhanced risk management standards[2] and additional requirements for compliance with the derivatives clearing organization ("DCO") core principles set forth in the CEA[3] for DCOs that are designated as systemically important ("SIDCOs") by the Financial Stability Oversight Council.[4] The Commission adopted these requirements in part because of the critical role SIDCOs play in fostering

[1] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013).

[2] Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 FR 49663 (Aug. 15, 2013).

[3] *See* Section 5b(c)(2) of the CEA; *see also* Derivatives Clearing Organizations and International Standards, 78 FR 72476 (Dec. 2, 2013).

[4] Under Commission Regulation 39.2, a SIDCO is defined as a financial market utility that is a registered DCO under Section 5b of the Act, which has been designated by the Financial Stability Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to Section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). 17 CFR 39.2. "Supervisory Agency" is defined as the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws. Section 803(8)(A) of the Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act is available at *http://www.cftc.gov/idc/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

financial stability[5] and because the "failure of a SIDCO to complete core clearing and settlement functions within a rapid period could create systemic liquidity and credit dislocations on a global scale."[6] Accordingly, these additional requirements were designed to promote a SIDCO's financial strength, operational integrity, security, and reliability.[7] By requiring a SIDCO's liquidity arrangements to be highly reliable in stressed market conditions, the Commission sought to bolster a SIDCO's ability to promptly meet its cash obligations to its members in order to help avoid the loss of market confidence and cascading defaults.[8]

Title VIII of the Dodd-Frank Act, entitled "Payment, Clearing, and Settlement Supervision Act of 2010,"[9] also included provisions aimed at safeguarding the U.S. financial system. One example of this is Section 806(a), which expressly permits the Board of Governors of the Federal Reserve System ("Board") to authorize a Federal Reserve Bank to establish and maintain a deposit account for a SIDCO and provide certain services to the SIDCO, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.[10]

The Commission believes that establishing SIDCO segregated customer accounts at a Federal Reserve Bank and enabling SIDCOs to access related services there would both augment a SIDCO's liquidity arrangements and enhance the protection of customer funds.[11] The Commission recognizes, however, that Section 4d of the CEA was not developed with a particular focus on the Federal Reserve Banks.[12] As a result, the unique role that the Federal Reserve Banks play in the financial system was not expressly taken into account when the Commission's standard of liability was developed for depositories. The Commission notes that Federal Reserve financial services provided by the Federal Reserve Banks are governed by the terms and conditions that are set forth in various federal rules, Federal Reserve Board policies, and Federal Reserve Bank operating circulars, which have been carefully developed over several decades. The Commission further recognizes that the Federal Reserve Banks could be exposed to liability under Sections 4d and 22[13] of the CEA, which could have disparate impact on the treatment of deposits at the Federal Reserve Banks and ultimately harm U.S. taxpayers. Accordingly, to facilitate SIDCOs' use of Federal Reserve Banks as depositories for customer funds, the Commission is proposing, pursuant to its authority under Section 4(c) of the CEA, to exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA.[14] The exemption would enable the Federal Reserve Banks to maintain SIDCO customer accounts in accordance with the standards set forth in the relevant Federal Reserve Bank governing documents, as specified below.

II. Background

A. Customer Protection

The protection of customers—and the safeguarding of money, securities, or other property deposited by customers—is a fundamental component of the regulatory and oversight framework of the futures and swaps markets. Section 4d of the CEA requires a futures commission merchant ("FCM") to segregate from its own assets all money, securities, and other property deposited by futures or cleared swaps customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets, and cleared swaps. Section 4d further requires an FCM to treat customer funds as belonging to the customer, and prohibits an FCM from using the funds deposited by a customer to margin or extend credit to any person other than the customer that deposited the funds. Similarly, Section 4d of the CEA prohibits a DCO and any depository that has received such funds from holding, disposing of, or using such funds as belonging to the depositing FCM or any person other than the customers of such FCM.

The importance of this statutory mandate to protect customer funds—to treat them as belonging to customers and not use the funds inappropriately—was reinforced in light of the FCM insolvency proceedings involving MF Global, Inc. ("MF Global") and Peregrine Financial Group, Inc. ("Peregrine"). In October 2011, MF Global, which was dually-registered as an FCM with the Commission and as a securities broker-dealer with the U.S. Securities and Exchange Commission, was placed into a liquidation proceeding under the Securities Investor Protection Act by the Securities Investor Protection Corporation. At the time, the trustee appointed to oversee the liquidation of MF Global reported a potential $900 million shortfall of funds necessary to repay the account balances due to customers trading futures on designated contract markets, and an approximately $700 million shortfall in funds immediately available to repay the account balances of customers trading on foreign futures markets. The shortfall in customer segregated accounts was attributed by the MF Global trustee to significant transfers of funds out of the customer accounts that were used by MF Global, Inc. for various purposes other than to meet obligations to or on behalf of customers.[15]

Shortly thereafter, in 2012, the Commission filed a civil injunctive complaint in federal district court against Peregrine and its Chief Executive Officer and sole owner, Russell R. Wasendorf, Sr. ("Wasendorf"), alleging that Peregrine and Wasendorf misappropriated customer funds, violated customer fund segregation laws, and made false statements regarding the amount of funds in customer segregated accounts in financial statements filed with the Commission. According to the complaint, Peregrine falsely represented that it held in excess of $220 million of customer funds, when it actually held only approximately $5.1 million.[16] Spurred in part by these shocking failures, the Commission promulgated several rules aimed at strengthening the protection of customer funds and the U.S. financial markets.[17]

In an effort to further strengthen customer protection, the Commission has also examined the current

[5] *See, e.g.*, 78 FR at 49672.

[6] *Id.* at 49674.

[7] *See id.* at 49668–49669; *see also* 78 FR at 72509.

[8] *See* 78 FR at 72509.

[9] Section 801 of the Dodd-Frank Act.

[10] *See* Section 806(a) of the Dodd-Frank Act.

[11] *See* discussion *infra* Part VI.

[12] Section 4d of the CEA permits customer funds to be deposited with a bank, trust company, or DCO. 7 U.S.C. 6d.

[13] As discussed in further detail below, Section 22 of the CEA would typically provide for private rights of action for damages against persons who violate Section 4d, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of Section 4d. *See* discussion *supra* Part VI.

[14] 7 U.S.C. 6(c); 7 U.S.C. 25.

[15] *See Report of the Trustee's Investigation and Recommendations, In. re MF Global, Inc.*, No. 11–2790 (MG) SIPA (Bankr. S.D.N.Y. Jun. 4, 2012). Customer claims were eventually paid in full after customer funds were recovered through bankruptcy proceedings and the Commission's enforcement action.

[16] *See* Complaint, *U.S. Commodity Futures Trading Commission* v. *Peregrine Financial Group, Inc., and Russell R. Wasendorf, Sr.*, No. 12–cv–5383 (N.D. Ill. July 10, 2012).

[17] *See* discussion *supra* Part I; *see also, e.g.*, Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011) (revising the types of investments that an FCM or DCO could make with customer funds under Regulation 1.25 to minimize the exposure of such funds to liquidity, credit, and market risks).

regulatory framework through a series of roundtables and other public meetings. The Commission held a public roundtable to solicit input on customer protection issues from a broad cross-section of the derivatives industry, including market participants, FCMs, DCOs, self-regulatory organizations, securities regulators, and academics.[18] The Commission also hosted a public meeting of the Technology Advisory Committee to discuss potential technological solutions directed at enhancing the protection of customer funds.[19]

Customer protection continues to be a bedrock guiding principle for the Commission, as the protection of customer funds is paramount to a trusted marketplace.

B. Designation of Financial Market Utilities Under Title VIII of the Dodd-Frank Act

Title VIII of the Dodd-Frank Act was enacted to mitigate risk in the financial system and promote financial stability.[20] Accordingly, Section 804 of the Dodd-Frank Act requires the Financial Stability Oversight Council ("Council")[21] to designate those financial market utilities ("FMUs") that the Council determines are, or are likely to become, systemically important.[22] An FMU includes any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.[23] As noted by the Council, FMUs are vital to the nation's financial infrastructure, and "their smooth operation is integral to the soundness of the financial system and the overall economy."[24]

In determining whether an FMU is systemically important, the Council follows a detailed two-stage designation process, using statutory considerations[25] and other metrics to assess, among other things, "whether possible disruptions [to the functioning of an FMU] are potentially severe, not necessarily in the sense that they themselves might trigger damage to the U.S. economy, but because such disruptions might reduce the ability of financial institutions or markets to perform their normal intermediation functions."[26] Thus, if a systemically important FMU fails to perform, this failure could pose significant risk to its participants and to the U.S. financial system more broadly. For example, if a systemically important FMU fails to complete timely settlement, there could be significant credit and/or liquidity problems for its participants and participants' customers. On July 18, 2012, the Council designated eight FMUs as systemically important under Title VIII.[27] Two of these designated FMUs, Chicago Mercantile Exchange, Inc. and ICE Clear Credit LLC, are SIDCOs.

C. Access to Federal Reserve Bank Accounts and Services

As noted above, Section 806(a) of the Dodd-Frank Act permits the Board to authorize a Federal Reserve Bank to establish and maintain an account for a SIDCO and provide to the SIDCO the services listed in Section 11A(b) of the Federal Reserve Act, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.[28] In adopting regulations pursuant to Section 806(a) of the Dodd-Frank Act, the Board noted that the "terms and conditions for access to Federal Reserve Bank accounts and services are intended to facilitate the use of [Federal] Reserve Bank accounts and services by a designated FMU in order to reduce settlement risk and strengthen settlement processes, while limiting the risk presented by the designated FMU to the [Federal] Reserve Banks."[29] Accordingly, the Board "expects that [Federal] Reserve Banks would provide services that are consistent with a designated FMU's need for safe and sound settlement processes under account and service agreements generally consistent with the provisions of existing [Federal] Reserve Bank operating circulars for such services."[30] Highlighting the importance of Federal Reserve Bank operating circulars in this regard, the Board further requires that designated FMUs be in compliance with existing operating circulars.[31]

III. Standards of Depository Liability

A. Depository Liability Under Section 4d of the CEA

Under Section 4d of the CEA, a depository, which may be a bank, trust company, or a DCO, will be held liable for the improper transfers of customer funds by an FCM or DCO if it knew or should have known that the transfer was improper.[32] While a depository has no affirmative obligation to police or monitor an FCM or DCO account holder's compliance with the CEA or Commission regulations, a depository cannot ignore signs of wrongdoing.[33]

To ensure that a depository that holds customer funds has been informed that

[18] Further information on the public roundtable, including video recordings and transcripts of the discussions, are available on the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff022912* (relating to Feb. 29, 2012); *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff030112* (relating to Mar. 1, 2012).

[19] Additional information, including documents submitted by meeting participants, is available on the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_tac072612.*

[20] *See* Section 802(b) of the Dodd-Frank Act.

[21] The Council was established by Section 111 of the Dodd-Frank Act. In general, the Council is tasked with identifying risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace, promoting market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure, and responding to emerging threats to the stability of the United States financial system. Section 112(a)(1) of the Dodd-Frank Act.

[22] *See* Section 804(a) of the Dodd-Frank Act. The term "systemically important" means a situation where the failure of or a disruption to the functioning of a financial market utility could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. Section 803(9) of the Dodd-Frank Act; *see also* Authority to Designate Financial Market Utilities as Systemically Important, 76 FR 44763, 44774 (July 27, 2011).

[23] Section 803(6)(A) of the Dodd-Frank Act.

[24] 76 FR at 44763.

[25] Under Section 804(a)(2) of the Dodd-Frank Act, in determining whether an FMU is or is likely to become systemically important, the Council must take into consideration the following: (A) The aggregate monetary value of transactions processed by the FMU; (B) the aggregate exposure of the FMU to its counterparties; (C) the relationship, interdependencies, or other interactions of the FMU with other FMUs or payment, clearing, or settlement activities; (D) the effect that the failure of or a disruption to the FMU would have on critical markets, financial institutions, or the broader financial system; and (E) any other factors the Council deems appropriate.

[26] 76 FR at 44766.

[27] *See* Press Release, Financial Stability Oversight Council, Financial Stability Oversight Council Makes First Designations in Effort to Protect Against Future Financial Crises (July 18, 2012), *available at http://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx.*

[28] The services listed in Section 11A(b) of the Federal Reserve Act include wire transfers, settlement, and securities safekeeping, as well as services regarding currency and coin, check clearing and collection, and automated clearing house transactions. *See* 12 U.S.C. 248a(b). Section 806(a) of the Dodd-Frank Act also permits the Board to authorize a Federal Reserve Bank to establish deposit accounts under the first undesignated paragraph of Section 13 of the Federal Reserve Act, 12 U.S.C. 342.

[29] Financial Market Utilities (Regulation HH), 78 FR 14024, 14025 (Mar. 4, 2013).

[30] *Id.*

[31] *See* 12 CFR 234.5(b)(2) (setting forth rules to govern Federal Reserve Bank accounts held by designated FMUs).

[32] *See* CFTC Interpretative Letter No. 79–1, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,835 (May 29, 1979). Section 4d of the CEA covers customer funds only; it does not relate to proprietary funds of clearing members.

[33] *See* 78 FR at 68539.

the deposited funds are those of customers being held in accordance with Section 4d of the CEA, the Commission requires an FCM or DCO to obtain from each depository with which it deposits customer funds a written acknowledgment in this regard.[34] Commission regulations require FCMs and DCOs to use a template acknowledgment letter in order to promote a uniform understanding among FCMs, DCOs, and depositories as to their obligations under the CEA and Commission regulations with respect to the proper treatment of customer funds. The template acknowledgment letter contains a provision that reflects the Commission's expectation that a depository will engage in its customary practices and will be held liable for a violation of Section 4d if it knew or should have known of the violation.[35]

It is important to note that as the aforementioned standard of liability was developed, the unique nature of the Federal Reserve Banks was not taken into account. Indeed, until recently, there was no statutory authority permitting a SIDCO to hold customer funds at a Federal Reserve Bank. However, and as discussed below, the standard of liability for Federal Reserve Banks acting as depositories has been carefully developed by the Board and not the Commission.

B. Federal Reserve Bank Liability Under Federal Reserve Bank Governing Documents

The Federal Reserve System, which serves as the nation's central bank, was created by an act of Congress in 1913. The Federal Reserve System consists of a seven member Board, and twelve Federal Reserve Banks. The Federal Reserve Banks operate under the general supervision of the Board, although each Bank has a Board of Directors that oversees its operations. Federal Reserve Banks generate their own income, which is generally from interest earned on U.S. government securities that are acquired in the course of Federal Reserve monetary policy actions and from the provision of priced services to depository institutions. Federal Reserve Banks do not, however, operate for a profit. Indeed, each year they return to the U.S. Department of Treasury all earnings in excess of Federal Reserve Bank operating and other expenses. Federal Reserve Banks are, in essence, the operating arms of the United States' central banking system. In addition to their many responsibilities, Federal Reserve Banks operate as a bank for depository institutions and the U.S. government.[36]

Some of the services provided by Federal Reserve Banks include the provision of funds and book-entry securities accounts, as well as certain financial services, such as wire transfers, book-entry securities transfers, and multilateral settlement services. These accounts and services are governed by account agreements, operating circulars issued by Federal Reserve Banks for each service, the Federal Reserve Act, and Federal Reserve regulations and policies, and, with respect to book-entry securities services, the regulations of the domestic issuer of the securities or the issuer's regulator ("Federal Reserve Bank Governing Documents").[37] Additionally, one or more Federal Reserve Banks have established proprietary accounts for SIDCOs[38] pursuant to Section 806 of the Dodd-Frank Act. These proprietary accounts are also governed by the Federal Reserve Bank Governing Documents.

The Federal Reserve Banks' standard of liability for the financial services it offers to depository institutions has been developed over the 100-plus years of Federal Reserve Bank operations, in many cases hand-in-hand with the development of federal and state statutory and regulatory provisions, as well as common law governing securities transfers, funds transfers, and other payment mechanisms. The operating circulars of the Federal Reserve Banks began having uniform terms and conditions across Federal Reserve Bank districts as of January 2, 1998. The 1998 version of the uniform Operating Circular 1 (Account Relationships) sets out the Federal Reserve Banks' standard and scope of liability that limits a Federal Reserve Bank's liability to only damages suffered by the account holder that are caused by the Federal Reserve Bank's failure to exercise ordinary care, and does not include lost profits, claims by third parties, or consequential or incidental damages.[39]

The Commission understands that, in accordance with the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are authorized to act on the instructions received through the use of procedures agreed upon with the account holders, without any liability or obligation to inquire as to the legitimacy or accuracy of the instruction or the transaction. By agreement with the respective account holders, the procedures for accepting an instruction are not used to detect an error in the transmission or content of the instruction, or compliance by the account holder with its legal obligations. In addition to limiting the areas of liability, the Commission understands that the Federal Reserve Bank Governing Documents limit a Federal Reserve Bank's liability in maintaining an account or acting on such an instruction to actual damages that are incurred solely by the account holder[40] and that are proximately caused by the Federal Reserve Bank's failure to exercise ordinary care or act in good faith in accordance with the Federal Reserve Bank Governing Documents.

IV. Features Specific to the Federal Reserve Banks

As noted above, Federal Reserve Banks play a unique role in the U.S. banking and payment system as compared to commercial banks and other depositories and payment service providers.[41] The standards set forth in the Federal Reserve Bank Governing Documents are reflective of this unique role and have been developed over the years to capture the distinctive nature of

[34] *See* 17 CFR 1.20, Appendices A and B.

[35] *See* 78 FR at 68535; *see also* 17 CFR 1.20(g)(4)(ii).

[36] For example, Federal Reserve Banks provide checking accounts for the U.S. Department of Treasury, issue and redeem U.S. government securities, and act in other ways as a fiscal agent for the U.S. government. *See* Federal Reserve Board, The Structure of the Federal Reserve System (Apr. 17, 2009), *http://www.federalreserve.gov/pubs/frseries/frseri3.htm.*

[37] *See, e.g.,* Federal Reserve Bank Operating Circular No. 6 (governing funds transfers through the Fedwire Funds Service); Federal Reserve Bank Operating Circular No. 7 (governing the maintenance of and transfer services for book-entry securities accounts); 12 CFR part 210, subpart B (governing funds transfers through the Fedwire Funds Service); 31 CFR part 357, subpart B (setting forth the Department of the Treasury's regulations governing book-entry treasury bonds, notes, and bills).

[38] A SIDCO's proprietary account holds the proprietary funds of its clearing members.

[39] *See* Federal Reserve Board, Financial Services, *https://web.archive.org/web/19990125095428/http://www.frbservices.org/* (last visited Apr. 28, 2016). Prior to 1998, each Federal Reserve Bank had its own system with different numbered operating circulars; as a result, the circular language was not necessarily uniform.

[40] Under the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are not liable to third parties.

[41] Federal Reserve Banks " 'are not operated for the profit of shareholders;' rather, they 'were created and are operated in furtherance of the national fiscal policy.' " *See Starr Int'l Co.* v. *Fed. Reserve Bank of New York,* 742 F.3d 37, 40 (2d Cir. 2014) (*quoting Fed. Reserve Bank of Bos.* v. *Comm'r of Corps. & Taxation of the Commonwealth of Mass.,* 499 F.2d 60, 62 (1st Cir. 1974)). "Because Federal Reserve Banks 'conduct important governmental functions regarding' matters including the 'general fiscal duties of the United States,' they are 'instrumentalities of the federal government.' " *See id.* (*quoting Fed. Reserve Bank of St. Louis* v. *Metrocentre Improvement Dist. #1,* 657 F.2d 183, 185–186 (8th Cir. 1981)).

the Federal Reserve Banks. In addition to the accounts and services that Federal Reserve Banks provide to the government and to other depository institutions, the Federal Reserve Banks supervise and examine member banks for safety and soundness. They also participate in the setting of U.S. monetary policy, an activity that is the primary responsibility of the Federal Reserve System. Moreover, in an effort to reduce U.S. taxpayer burden, Congress requires that the residual earnings of each Federal Reserve Bank be distributed to the U.S. Treasury's general fund.[42] In fact, the Federal Reserve Banks have sent to the U.S. Treasury approximately $98.7 billion in residual earnings in 2014 and about $500 billion on a cumulative basis since 2008.[43]

Federal Reserve Banks also do not provide financial services to businesses generally; rather, they serve only account holders authorized by statute, such as depository institutions and the U.S. government.[44] In addition, Federal Reserve Banks may engage in a set range of services and only with the respective account holder. As such, Federal Reserve Banks do not provide the range of related account services that a commercial bank might provide, such as offering services to executives of the account holder as an additional incentive to do business with the bank. Therefore, the Commission believes that the Federal Reserve Banks do not have the potential conflict of interest that may arise when a commercial bank provides such services.

Moreover, Federal Reserve Banks play a distinctive, dual role with respect to SIDCOs, as they may be both account service providers and participants in the supervision of SIDCOs. Under Title VIII of the Dodd-Frank Act, the Board may participate in any Commission examination of a SIDCO and otherwise consult and share information with the Commission regarding SIDCOs. Federal Reserve Banks may be delegated authority to assist the Board in fulfilling this function.[45]

Further, Title VIII of the Dodd-Frank Act expressly permits the Commission and the Board to provide confidential supervisory information to, among others, the Federal Reserve Banks.[46] Although a Federal Reserve Bank may have access to confidential supervisory information regarding a particular SIDCO, Board staff has represented that it has a long-standing "Wall Policy" that generally prohibits, subject to the limitations contained therein, the sharing of confidential supervisory information with Federal Reserve Bank account services staff, and requires that care be exercised to avoid actual or apparent conflict between a Federal Reserve Bank's role as a provider of financial services and its role as a regulator, supervisor, and lender.[47] The Board has adopted certain standards regarding the organization, operations, and business practices of Federal Reserve Bank financial services which, among other things, generally prohibit Federal Reserve Bank personnel involved in day-to-day monetary policy, bank supervision, or the lending function from providing confidential information obtained in the course of their duties to Federal Reserve Bank personnel involved in day-to-day account services. In addition, the Wall Policy would generally prohibit Board supervisory staff from sharing any confidential supervisory information they receive about a SIDCO with the Federal Reserve Bank staff responsible for managing the SIDCO's account and financial services. Accordingly, given the unique role that Federal Reserve Banks play in the U.S. financial system, Federal Reserve Bank account services staff are unlikely to face conflicts of interest that would motivate them to overlook information that would otherwise raise suspicion of wrongdoing.

V. Section 4(c) of the CEA

Section 4(c) of the CEA provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission, by rule, regulation, or order, after notice and opportunity for hearing, may exempt any agreement, contract, or transaction, or class thereof, including any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirements of Section 4(a) of the CEA, or any other provision of the CEA other than certain enumerated provisions, if the Commission determines that the exemption would be consistent with the public interest.[48]

VI. Proposed Exemption From Sections 4d and 22 of the CEA

The Commission proposes to exempt Federal Reserve Banks that provide customer accounts and other services to SIDCOs from Sections 4d and 22 of the CEA. The Commission further proposes to permit SIDCOs to maintain customer accounts with a Federal Reserve Bank pursuant to the standard of liability set forth in the Federal Reserve Bank Governing Documents. The proposed exemption would, however, require a Federal Reserve Bank to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO, and to reply to any request from Commission staff for confirmation of account balances or for provision of any other information regarding the SIDCO account.

As discussed above, Title VIII of the Dodd-Frank Act supports Federal Reserve Banks acting as depositories for SIDCOs. A Federal Reserve Bank, in its capacity as an instrument of the U.S. central bank, does not present the same types of risks as traditional commercial banks. Federal Reserve Banks are an integral part of the Federal Reserve System, serving the public interest and helping to maintain stability in the U.S. financial markets. Further, deposits at a Federal Reserve Bank have the lowest

[42] The current congressional mandate requires that Federal Reserve Banks transfer their residual earnings in excess of $10 billion to the U.S. Treasury. *See* FAST Act, Pub. L. 114–94, 129 Stat. 1312 (2015). For prior congressional mandates in this regard, *see, e.g.*, District of Columbia Appropriations Act, Pub. L. 106–113, 113 Stat. 1501 (1999) (requiring that, in fiscal year 2000, Federal Reserve Banks transfer their residual earnings in the amount of $3,752,000,000 to the U.S. Treasury's general fund); Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, 107 Stat. 312 (requiring that, during fiscal years 1997 and 1998, Federal Reserve Banks transfer their residual earnings in excess of 3 percent of the total paid-in capital and surplus to the U.S. Treasury's general fund).

[43] *See* Press Release, Board of Governors of the Federal Reserve System, Reserve Bank Income and Expense Data and Transfers to the Treasury for 2014 (Jan. 9, 2015), *available at http://www.federalreserve.gov/newsevents/press/other/20150109a.htm;* Annual Report, Board of Governors of the Federal Reserve System (2014), *available at http://www.federalreserve.gov/publications/annual-report/files/2014-annual-report.pdf.*

[44] *See, e.g.*, Federal Reserve Bank of Richmond, Consumer Issues and Information, *available at https://www.richmondfed.org/faqs/consumer/* (last visited Feb. 26, 2016) (stating that "Federal Reserve Banks are not authorized to open accounts for individuals[; rather, o]nly depository institutions and certain other financial entities may open an account at a Federal Reserve Bank"); *see also* Section 806(a) of the Dodd-Frank Act (authorizing accounts at a Federal Reserve Bank for designated FMUs).

[45] *See* Federal Reserve Board, The Structure of the Federal Reserve System (Apr. 17, 2009), *http://www.federalreserve.gov/pubs/frseries/frseri3.htm* (noting that some supervisory responsibilities are delegated to the Federal Reserve Banks by the Board).

[46] *See* Section 809(e)(2) of the Dodd-Frank Act.

[47] Federal Reserve's Key Policies for the Provision of Financial Services: Standards Related to Priced-Service Activities of the Federal Reserve Banks (1984), *available at http://www.federalreserve.gov/paymentsystems/pfs_standards.htm.* The policy permits certain limited exceptions in cases where such disclosure fulfills an important supervisory objective, preserves the integrity of the payment mechanism, or protects the assets of the Federal Reserve Banks. In such cases, information will be provided on a need-to-know basis and only with the approval of senior management.

[48] 7 U.S.C. 6(c).

credit risk. The Board and, through their role in the Federal Reserve System, Federal Reserve Banks are also the source of liquidity with regard to U.S. dollar deposits. A SIDCO would, therefore, face much lower credit and liquidity risk with a deposit at a Federal Reserve Bank than it would with a deposit at a commercial bank.

Moreover, customer funds held at a Federal Reserve Bank would not be exposed to the risks associated with a commercial bank insolvency. As a result, the Commission believes that customer funds would be protected in an account held by a Federal Reserve Bank and would continue to be required to be segregated from the funds deposited in the SIDCO's proprietary account. The Commission notes that the standard of liability as set forth in the Federal Reserve Bank Governing Documents appears to be appropriate in the context of Federal Reserve Banks because this standard has been developed over the years to more appropriately reflect the unique nature of the Federal Reserve Banks. At this time, the Commission does not have any reason to believe that holding a Federal Reserve Bank to this standard would have the potential to harm futures and cleared swaps customers.

The Federal Reserve Banks would also be exempt from liability under Section 22 of the CEA. Section 22 of the CEA provides for private rights of action for damages against persons who violate the CEA, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of the CEA.[49] The proposed exemption would preclude a third party from succeeding in a private right of action under Section 22 for a violation of Section 4d.[50] The Commission believes that an exemption from Section 22 is appropriate because, for those requirements from which the Federal Reserve Banks are exempt, it follows that there should be no claim under Section 22 of the CEA with respect to those requirements. The Commission further notes that under the Federal Reserve Bank Governing Documents, the Federal Reserve Banks are currently insulated from third-party claims. While the Commission continues to believe that private claims empower injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf, and the prospect of such claims serves the public interest in deterring misconduct, the Commission believes that, for the reasons discussed herein, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest.

Federal Reserve Banks were created and are operated in furtherance of the national interest; they are not for-profit enterprises. Moreover, as discussed above, Federal Reserve Banks return all earnings in excess of operating and other expenses to the U.S. Treasury. All such amounts transferred to the U.S. Treasury's general fund inure to the benefit of U.S. taxpayers. In this case, private claims against a Federal Reserve Bank would reduce the amount of excess earnings that could be returned to the U.S. Treasury. In the Commission's view, the benefits afforded customers by holding SIDCO customer funds at a Federal Reserve Bank exceed the benefits of preserving the ability to bring any private claims under Section 22 of the CEA.

Furthermore, the Commission recognizes that Title VIII of the Dodd-Frank Act permits a Federal Reserve Bank to have access to confidential supervisory information. Specifically, Section 809(e)(2) provides that the Board of Governors or any Supervisory Agency may provide confidential supervisory information and other information obtained under Title VIII to each other and to the Federal Reserve Banks, State financial institution supervisory agencies, and foreign financial supervisors, provided, however, that no person or entity receiving information pursuant to this section may disseminate such information to entities or persons other than those listed in this paragraph without complying with applicable law, including section 8 of the CEA (7 U.S.C. 12). By permitting the Federal Reserve Banks to receive confidential supervisory information, Congress recognized the unique role of Federal Reserve Banks in the U.S. financial system, as distinguished from the role of commercial banks and other depository institutions. The Commission further recognizes, however, that the fact that Board supervisory staff may have access to confidential supervisory information about a SIDCO could create the false perception that Federal Reserve Bank staff responsible for managing the SIDCO's account and financial services would gain special knowledge about the SIDCO. Accordingly, and notwithstanding the Wall Policy described above, the Commission recognizes that a Federal Reserve Bank acting as a depository for customer funds could face greater scrutiny than a commercial bank acting as such. As a result, the proposed exemption would specify that: (1) Pursuant to the Wall Policy, information obtained by the Board supervisory staff during the course of supervising SIDCOs or any counterparty to a SIDCO will not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to SIDCO account holders; and (2) a Federal Reserve Bank acting as a depository for SIDCO customer funds or otherwise providing account services to a SIDCO would continue to be held to the standard of liability set forth in the Federal Reserve Bank Governing Documents.

Finally, the unique role that the Federal Reserve Banks play in the Federal Reserve System was not expressly taken into account when the Commission's standard of liability was developed for depositories. In fact, as described above, it was the Dodd-Frank Act that, for the first time, authorized designated FMUs (including SIDCOs) that are not banks or trust companies to open deposit accounts with a Federal Reserve Bank. However, while the Federal Reserve Banks may establish deposit accounts for SIDCOs, such accounts are subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.[51] The Commission notes that the Board has prescribed detailed rules and standards that govern account services provided to SIDCOs by the Federal Reserve Banks.[52] These rules and standards have been carefully developed to provide clarity surrounding the provision of Federal Reserve financial services and to promote consistency in the treatment of deposit accounts at the Federal Reserve Banks for the benefit of the U.S. financial system. The Commission is concerned that exposing the Federal Reserve Banks to the standard of liability set forth in Section 4d of the CEA, as well as to potential third-party claims under Section 22 of the CEA, could disrupt these goals and ultimately

[49] 7 U.S.C. 25. By enacting Section 22, Congress provided private rights of action as a means for addressing violations of the Act as an alternative or supplement to Commission enforcement action. Specifically, Congress found that private damages actions are "critical to protecting the public and fundamental to maintaining the credibility of the futures market." H.R. Rep. No. 97–565, at 57 (1982).

[50] *Cf.* Effective Date for Swap Regulation, 76 FR 42508, 42517 (July 19, 2011) (stating that "exemptive relief would, in effect, preclude a person from succeeding in a private right of action under CEA section 22(a)"). However, for the avoidance of doubt, the Commission believes that an express exemption from Section 22 of the CEA for the Federal Reserve Banks is appropriate.

[51] *See* Section 806(a) of the Dodd-Frank Act.

[52] *See* 12 CFR 234.5 (setting forth the conditions and requirements for Federal Reserve Banks to open and maintain accounts for and provide financial services to designated FMUs); *see also* discussion *supra* Part III.B (discussing the Federal Reserve Bank Governing Documents).

harm the U.S. financial system and, by extension, U.S. taxpayers.

For the reasons discussed above, the Commission believes that the proposed exemption would promote the safeguarding of futures and cleared swaps customer funds in a manner that would also benefit U.S. taxpayers. In light of the foregoing, the Commission believes the proposed exemption would promote responsible economic and financial innovation and fair competition, and would be consistent with the "public interest," as that term is used in Section 4(c) of the CEA.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [53] requires that agencies consider whether the proposed exemption will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. The Commission believes that the proposed exemption will not have a significant economic impact on a substantial number of small entities. The exemption proposed by the Commission will impact SIDCOs and Federal Reserve Banks. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its actions on small entities in accordance with the RFA.[54] The Commission has previously determined that DCOs, including SIDCOs, are not small entities for purposes of the RFA.[55] Similarly, the Commission believes that Federal Reserve Banks are not small entities for purposes of the RFA.

Accordingly, the Commission does not expect the proposed exemption to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed exemption would not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on whether the entities covered by this proposed exemption should be considered small entities for purposes of the RFA, and, if so, whether there is a significant impact on a substantial number of small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 ("PRA") [56] are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government. The PRA applies to all information, "regardless of form or format," whenever the government is "obtaining, causing to be obtained [or] soliciting" information, and requires "disclosure to third parties or the public, of facts or opinions," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." The PRA would not apply in this case given that the exemption would not impose any new recordkeeping or information collection requirements, or other collections of information on ten or more persons that require approval of the Office of Management and Budget.

C. Cost and Benefit Considerations

1. Costs

The proposed exemption would exempt the Federal Reserve Banks from Sections 4d and 22 of the CEA. The Commission recognizes that such relief could represent a cost to a SIDCO, its FCM clearing members, and the FCMs' customers in the event of a loss of the deposited customer funds. For instance, if customer funds were lost due to the fault of a Federal Reserve Bank, the SIDCO, FCM clearing member, or customer would not have a cause of action under the CEA. Rather, as discussed above, the Federal Reserve Banks would be held to the standard of liability set forth in the Federal Reserve Bank Governing Documents.[57] This cost, however, will never be realized if an incident does not occur. Therefore, given the resilience of the Federal Reserve Banks and the standards set forth in the Federal Reserve Bank Governing Documents, the Commission estimates that the circumstances that may give rise to such costs would be remote. Similarly, as discussed above, while the Commission continues to believe that private claims empower injured parties to seek compensation for damages where the Commission lacks the resources to do so on their behalf, and the prospect of such claims serves the public interest in deterring misconduct, the Commission believes that, for the reasons discussed herein, exempting the Federal Reserve Banks from liability under Section 22 of the CEA would also serve the public interest. The Commission further believes that the condition in the proposed exemption that would require Federal Reserve Banks to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO and the benefits of facilitating SIDCOs' use of these accounts mitigate any costs that would flow from the loss of protection under Section 4d of the CEA.

As described above, the Commission has reinforced and enhanced the provisions of Section 4d of the CEA in order to further protect customer funds, and this proposal represents a limited exception to those provisions.

2. Benefits

The proposed exemption would benefit market participants by permitting SIDCOs to deposit customer funds at the Federal Reserve Banks. Whereas commercial banks present credit and liquidity risks to a SIDCO, its FCM clearing members, and the FCMs' customers, the Federal Reserve Banks are substantially insulated from such risks. As discussed in greater detail above, Title VIII of the Dodd-Frank Act was enacted to mitigate systemic risk in the financial system and to promote financial stability, in part, through an enhanced supervisory framework for SIDCOs. In addition to this framework, Title VIII, and more specifically, Section 806(a) of the Dodd-Frank Act, permits the Board to authorize a Federal Reserve Bank to establish and maintain an account for a SIDCO and provide to the SIDCO certain financial services. By enacting Title VIII in general, and Section 806(a) in particular, Congress recognized the importance of reducing systemic risk and providing SIDCOs with a potential safeguard during an extraordinary liquidity event. The proposed exemption would therefore help promote Congress's goal of better preparing the U.S. financial system for potential future liquidity events. A SIDCO's access to Federal Reserve Bank deposit accounts is also consistent with the international standards set forth in the Principles for Financial Market Infrastructures ("PFMIs"), which acknowledge the protections afforded by central banks from such credit and liquidity risks.[58]

[53] 5 U.S.C. 601 *et seq.*

[54] *See* 47 FR 18618, 18618–21 (Apr. 30, 1982).

[55] *See* New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609 (Aug. 29, 2001).

[56] 44 U.S.C. 3501 *et seq.*

[57] For a more detailed discussion of the standard of liability set forth in the Federal Reserve Bank Governing Documents, *see* discussion *supra* Part IV.

[58] *See, e.g.*, CPSS–IOSCO, PFMIs, ¶ 3.9.3 (noting that "[c]entral banks have the lowest credit risk and

Continued

Moreover, the Federal Reserve Banks' standard of liability, as set forth in the Federal Reserve Bank Governing Documents, is better suited for the Federal Reserve Banks than Section 4d of the CEA, which was designed to govern customer funds deposited with a commercial bank, trust company, or DCO. Unlike commercial banks, Federal Reserve Banks do not operate for profit and serve only account holders authorized by statute, such as depository institutions and the U.S. government. Indeed, each year they return to the U.S. Department of Treasury all earnings in excess of Federal Reserve Bank operating and other expenses, such as litigation expenses. By exempting the Federal Reserve Banks from certain potential enforcement actions and private suits, the proposed exemption would reduce the Federal Reserve Banks' exposure to litigation. Because the Federal Reserve Banks return their earnings to the U.S. Department of Treasury's general fund, U.S. taxpayers may benefit from the proposed exemption. Therefore, the Commission believes that it is appropriate to apply the Federal Reserve Bank's standard of liability in order to facilitate the use of these accounts.

3. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA.[59] By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

a. Protection of Market Participants and the Public

The proposed exemption would serve to facilitate SIDCOs' use of Federal Reserve Banks as depositories for customer funds. As the Federal Reserve System is the nation's central bank, such accounts would provide SIDCOs with the lowest possible credit risk in the event of a market disruption. Moreover, as Federal Reserve Banks are the source of liquidity with regard to U.S. dollar deposits, SIDCOs with access to a deposit account at a Federal Reserve Bank would also be better equipped to handle a liquidity event. As SIDCOs have been so designated because of their importance to the broader financial system, reducing these risks would protect market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity

A temporary or permanent disruption to the operations of a SIDCO could cause wide-spread and significant damage to the financial integrity of derivatives markets as a whole. Therefore, by facilitating a SIDCO's use of Federal Reserve Banks as depositories for customer funds, the proposed exemption would reduce liquidity and credit risk to the SIDCO, which would, in turn, promote the financial integrity of the derivatives markets.

The Commission does not anticipate the proposed exemption to have a significant impact on the efficiency and competitiveness of the derivatives markets.

c. Price Discovery

The Commission does not anticipate the proposed exemption to have an impact on the price discovery process.

d. Sound Risk Management Practices

The Commission believes that establishing SIDCO segregated customer accounts and enabling SIDCOs to access related services at a Federal Reserve Bank would improve a SIDCO's ability to manage liquidity risk and protect customer funds. Additionally, the Commission believes that the availability of a Federal Reserve Bank account could allow a SIDCO to reduce its concentration risk by adding an additional creditworthy depository in which to diversify funds. Accordingly, the proposed exemption promotes sound risk management practices.

The Commission further notes that, notwithstanding the proposed exemption from Section 4d of the CEA, the Federal Reserve Banks would still be required to segregate customer funds deposited by a SIDCO from the proprietary funds deposited by a SIDCO and adhere to the longstanding standards of liability that govern the Federal Reserve Banks.

e. Other Public Interest Considerations

The Commission believes that facilitating a SIDCO's access to Federal Reserve Bank accounts will promote the public interest by bolstering a SIDCO's ability to conduct settlements with a high degree of confidence under a wide range of stress scenarios, thereby increasing the likelihood of the SIDCO being able to provide its customers with access to their funds in times of market distress.

VIII. Request for Comment

The Commission requests comment on all aspects of the proposed exemption, including, without limitation, the Commission's determination that the proposed exemption is consistent with the public interest, and the Commission's consideration of the costs and benefits of the proposed exemption.

The Commission requests comment regarding whether the proposed exemption should be expanded to include those customer accounts that are established pursuant to the CEA and that are held at Federal Reserve Banks by designated FMUs for which the Commission is not the Supervisory Agency.

IX. Proposed Order of Exemption

After considering the above factors, the Commission proposes to issue the following:

Proposed Order

Pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the Commodity Futures Trading Commission ("Commission") is the supervisory agency for certain derivatives clearing organizations ("DCOs") that have been designated by the Financial Stability Oversight Council as systemically important. Under Section 806(a) of the Dodd-Frank Act, the Board of Governors ("Board") of the Federal Reserve System is permitted to authorize a Federal Reserve Bank to establish and maintain a deposit account for a systemically important DCO ("SIDCO") and provide certain services to the SIDCO, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board.

DCOs, including SIDCOs, are required to hold funds belonging to customers of their clearing members in accounts subject to

are the source of liquidity with regard to their currency of issue"); *see also* PFMIs, Key Consideration 8 (specifying that a financial market infrastructure "with access to central bank accounts, payment services, or securities services should use these services, where practical, to enhance its management of liquidity risk").

[59] 7 U.S.C. 19(a).

Section 4d of the Commodity Exchange Act ("CEA"). In addition, Section 22 of the CEA would typically provide for private rights of action for damages against persons who violate Section 4d, or persons who willfully aid, abet, counsel, induce, or procure the commission of a violation of Section 4d. However, the Commission understands that deposit accounts maintained by any Federal Reserve Bank would also be governed by applicable account agreements, operating circulars issued by Federal Reserve Banks for each service, the Federal Reserve Act, and Federal Reserve regulations and policies, and, with respect to book-entry securities services, the regulations of the domestic issuer of the securities or the issuer's regulator ("Federal Reserve Bank Governing Documents"). The Federal Reserve Bank Governing Documents, as may be amended from time to time, include, but are not limited to, Federal Reserve Bank Operating Circular No. 6 (governing funds transfers through the Fedwire Funds Service); Federal Reserve Bank Operating Circular No. 7 (governing the maintenance of and transfer services for book-entry securities accounts); 12 CFR part 210, subpart B (governing funds transfers through the Fedwire Funds Service); and 31 CFR part 357, subpart B (setting forth the U.S. Department of the Treasury's regulations governing book-entry treasury bonds, notes, and bills).

The Commission understands that under the Federal Reserve Bank Governing Documents, a Federal Reserve Bank has no requirement or obligation to inquire as to the legitimacy or accuracy of the instructions, or the transactions related to those instructions, or compliance by the SIDCO with its obligations under the CEA. To the extent that liability may accrue under the Federal Reserve Bank Governing Documents, the Commission understands that the Federal Reserve Bank may be held liable only for actual damages that are (i) incurred solely by the SIDCO account holder, and (ii) proximately caused by the Federal Reserve Bank's failure to exercise ordinary care or act in good faith in accordance with the Federal Reserve Bank Governing Documents. The Commission proposes to exempt the Federal Reserve Banks in order to facilitate Federal Reserve Banks' ability to accept SIDCO customer accounts.

Therefore, *it is ordered*, pursuant to Section 4(c) of the CEA, 7 U.S.C. 6(c), that the Federal Reserve Banks are granted an exemption from Sections 4d and 22 of the CEA, subject to the terms and conditions specified herein:

1. *Segregation.* Money, securities, and property deposited into a customer account established pursuant to the CEA by a SIDCO with a Federal Reserve Bank shall be separately accounted for and segregated from the money, securities, and property deposited into a proprietary account of the SIDCO depositing such funds and from the money, securities, and property deposited into the account of any person other than the customers for whom the money, securities, or property is held.

2. *Information Requests.* Federal Reserve Banks must reply promptly and directly to any request for confirmation of account balances or provision of any other information regarding or related to the SIDCO customer account(s) that are established pursuant to the CEA from the director of the Division of Clearing and Risk of the Commission, or any successor division, or such director's designees.

3. *Applicability to Federal Reserve Banks.* Subject to the conditions contained herein, the order applies to all Federal Reserve Banks that provide customer accounts and other services to SIDCOs. In addition, pursuant to the Federal Reserve's Key Policies for the Provision of Financial Services: Standards Related to Priced-Service Activities of the Federal Reserve Banks, information obtained by the Board of Governors of the Federal Reserve System or its designees during the course of supervising SIDCOs, pursuant to Title VIII of the Dodd-Frank Act, or any counterparty to a SIDCO under any authority, shall not be attributed by the Commission to any Federal Reserve Bank providing accounts and financial services to SIDCO account holders.

4. *Reservation of Rights.* This order is based upon the analysis set forth above. Any material change in law or circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the exemption contained herein is appropriate and/or consistent with the public interest and purposes of the CEA. Further, the Commission reserves the right, in its discretion, to revisit any of the terms and conditions of the relief provided herein, including but not limited to, making a determination that certain entities described herein should be subject to the Commission's full jurisdiction, and to condition, suspend, terminate, or otherwise modify or restrict the exemption granted in this order, as appropriate, upon its own motion.

Issued in Washington, DC, on May 27, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Appendix to Notice of Proposed Order and Request for Comment on a Proposal To Exempt, Pursuant to the Authority in Section 4(c) of the Commodity Exchange Act, the Federal Reserve Banks From Sections 4d and 22 of the Commodity Exchange Act—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2016–13055 Filed 6–1–16; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Service Trust Voucher and Payment Request Form/National Service Trust Manual Payment Request Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202–606–6753 or email to *njarrett@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on February 12, 2016, at 81 FR

7512. This comment period ended April 12, 2016. No public comments were received from this Notice.

Description: CNCS seeks to renew the current information collection request.

After an AmeriCorps member completes a period of national service, the individual receives an education award that can be used to pay against qualified student loans or pay for current post-secondary educational expenses. The *National Service Trust Voucher and Payment Request Form/ National Service Trust Manual Payment Request Form* is the document that a member uses to access his or her account in the National Service Trust.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Voucher & Payment Request Form/National Service Trust Manual Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: Individuals using a Segal AmeriCorps Education Award, authorized school officials and qualified student loan holders.

Total Respondents: 162,000.

Frequency: One or more per education award.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 13,500.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintenance): None.

Dated: May 25, 2016.

Maggie Taylor-Coates,

Chief of Trust Operations.

[FR Doc. 2016–13047 Filed 6–1–16; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled CNCS Forbearance Request for National Service Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202–606–6753 or email to *njarrett@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 10, 2016, at 81 FR 12719. This comment period ended May 9, 2016. No public comments were received from this Notice.

Description: CNCS seeks to renew the current information collection request *CNCS Forbearance Request for National Service Form*, which certifies that AmeriCorps members are eligible for forbearance based on their enrollment in a national service position. AmeriCorps members use the form to request forbearance from their loan servicer. CNCS also seeks to continue using the current application until the revised application is approved by OMB.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: CNCS Forbearance Request for National Service Form.

OMB Number: 3045–0030.

Agency Number: None.

Affected Public: AmeriCorps members and alumni that wish to request forbearance on qualified student loans and qualified loan servicers.

Total Respondents: 69,300.

Frequency: One or more per education award.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 5,775.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintenance): None.

Dated: May 25, 2016.

Maggie Taylor-Coates,

Chief of Trust Operations.

[FR Doc. 2016–13046 Filed 6–1–16; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Interest Payment Form/ AmeriCorps—Manual Interest Payment Request Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Nahid Jarrett, at 202–606–6753 or email to *njarrett@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within July 5, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 10, 2016, at 81 FR 12719. This comment period ended May 9, 2016. No public comments were received from this Notice.

Description: CNCS seeks to renew the current information collection request. After an AmeriCorps member completes a period of national and community service, the individual receives an education award that can be used to pay against qualified student loans or pay for current post-secondary educational expenses. AmeriCorps members use the *AmeriCorps Interest Payment Form/ AmeriCorps—Manual Interest Payment Request Form* to request a payment of accrued interest on qualified student loans and to authorize the release of loan information to the National Service Trust; schools and lenders verify eligibility for the payments; and both parties verify certain legal requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Interest Payment Form/AmeriCorps—Manual Interest Payment Request Form.

OMB Number: 3045–0053.

Agency Number: None.

Affected Public: AmeriCorps Members/Alum that have completed a term of national service who seek to have the interest that has accrued on their qualified student loans during their service term repaid and qualified loan servicers.

Total Respondents: 13,200.

Frequency: One or more per education award.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 1,100.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/ maintenance): None.

Dated: May 25, 2016.

Maggie Taylor-Coates,

Chief of Trust Operations.

[FR Doc. 2016–13048 Filed 6–1–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

Requests To Exhume and Repatriate Native American Burials From Carlisle Indian Industrial School Cemetery; Public Listening Sessions

AGENCY: Department of the Army, DoD.

ACTION: Notice of public listening sessions.

SUMMARY: The Army National Military Cemeteries (ANMC) announces that it will hold two public listening sessions to solicit information on tribal requests for exhumation of Native American human remains from the former Carlisle Indian Industrial School Cemetery located on Carlisle Barracks, PA. ANMC has received requests from two tribes to disinter and repatriate the remains of tribal children buried at this cemetery. The listening sessions will be held in conjunction with the National Council of the American Indian mid-year conference in Spokane, WA and the United South and Eastern Tribes annual meeting in Cherokee, NC. The listening sessions are intended to provide any tribe that may have tribal members buried in this cemetery with an opportunity to share their views on this topic with Agency representatives, along with any data or analysis they may have. All comments will be transcribed and available upon request from Mr. Art Smith, whose contact information is listed below in this notice. We encourage tribes to participate in these listening sessions.

DATES: The listening sessions will be held on Monday, June 27, 2016, from 9:00 a.m. to 5 p.m., Local Time, and on Wednesday, October 26, 2016, from 1:30 p.m. to 5:00 p.m., Local Time. If all interested parties have had the opportunity to comment, the sessions may conclude early.

ADDRESSES: The June 27th listening session will be held at the Spokane Convention Center, Room 301, 334 West Spokane Falls Blvd., Spokane, WA 99201. The October 26th session will be held at the Harrah's Cherokee Hotel and Casino, 777 Casino Dr., Cherokee, NC 28719. In addition to attending the session in person, the Agency offers several ways to provide comments, as enumerated below.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Smith, Army National Military Cemeteries at: *usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil.*

SUPPLEMENTARY INFORMATION:

Submitting Comments: ANMC is accepting public comments through October 30, 2016. You may submit your comments and material by mail, or email, but please use only one of these means. ANMC recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that ANMC can contact you if there are questions regarding your submission.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. Choose whether you are submitting your comment as a representative of a known individual buried at Carlisle cemetery or as a representative of a tribal government and then submit.

We will consider all comments and material received during the comment period, October 30, 2016.

You may submit comments identified by:

Mail: Army National Military Cemeteries, 1 Memorial Drive, Arlington, VA 22211.

Email: usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil.

Background: In January 2016, Army received requests from two tribes to exhume the remains of tribal

individuals buried in the Carlisle Indian Industrial School cemetery and repatriate those remains to the tribe. Historic records indicate that the School and cemetery were operated from 1879 until 1918, under the direction of the Indian Bureau. In 1918, the Army regained control of the property and established a hospital to care for the large number of wounded returning from the European battlefield. The exact number of Native Americans interred in the cemetery is uncertain as the cemetery includes a number of non-Natives and unknown burials. Army is working with the Bureau of Indian Affairs to obtain school records which may provide additional details on those buried in this cemetery.

Army Regulation 210–190 requires specific documentation to establish the identity of the living relatives with closest familial ties and the legal authority to represent the family. The Army recognizes that since the deceased were children and it is unlikely that there are direct descendants, tracing other relatives may be a more involved process.

Meeting Participation and Information ANMC seeks from the public: ANMC would like to know the views of the affected tribes and families on the issue of disinterment from the Carlisle cemetery. The listening session is open to the public. Speakers should try to limit their remarks to 3–5 minutes. No preregistration is required. Attendees may submit material to the ANMC staff at the session or through other means provided above.

Patrick K. Hallinan,

Executive Director, Army National Military Cemeteries.

[FR Doc. 2016–12910 Filed 6–1–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Intelligence University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: National Intelligence University, Defense Intelligence Agency, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors has been scheduled. The meeting is closed to the public.

DATES: Tuesday, June 14, 2016 (7:30 a.m. to 5:15 p.m.) and Wednesday, June 15, 2016 (7:30 a.m. to 2:00 p.m.).

ADDRESSES: Defense Intelligence Agency, 7400 Pentagon, ATTN: NIU, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Intelligence University, Washington, DC 20340–5100, Phone: (202) 231–3344.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the National Intelligence University Board of Visitors is unable to provide public notification, as required by 41 CFR 102–3.150(a), for its meeting scheduled for June 14 through June 15, 2016. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose: The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Intelligence University.

Agenda: The following topics are listed on the National Intelligence University Board of Visitors meeting agenda: Welcome/Plan of Action; Faculty Conversation; Bethesda Campus Update; Strategic Implementation Plan Update; BOV Succession Planning Update; Academic Program Review; Faculty Workload; Accreditation Update; Program/Budget Rationalization; Executive Session; Alumni .edu address; Analytic Methodologies and Tools; Faculty Senate; Research Update/Presentations; Working Lunch with IC Senior Leaders; and Executive Session. The entire meeting is devoted to the discussion of classified information as defined in 5 U.S.C. 552b(c)(1) and therefore will be closed. Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors. All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Dated: May 27, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–12957 Filed 6–1–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0028]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Annual and Final Performance Report Data Collection for Arts in Education Grantees

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 5, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0028. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E–115, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Doug Herbert, 202–401–3813.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C.

3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual and Final Performance Report Data Collection for Arts in Education Grantees.

OMB Control Number: 1855–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 98.

Total Estimated Number of Annual Burden Hours: 3,920.

Abstract: The Government Performance and Results Act (GPRA) requires all federally funded agencies to develop and implement an accountability system based on performance measurement. This regulation applies to grantees receiving funds from the Dept. of ED's Office of Innovation and Improvement Arts in Education—Model Development and Dissemination (AEMDD), Professional Development for Arts Educators (PDAE), and Arts in Education National Program (AENP) programs. Each grantee is required to report on performance and progress towards GPRA measures as a condition of the grant. Data for GPRA performance measures are collected through the Annual Performance Report (APR) completed by grantees. The APR also collects budget information and data on project-specific performance measures. The forms being submitted for OMB review are APR templates that expand on the ED 524–B form to gather additional data on performance from Arts in Education grantees in a streamlined manner. Performance data are used to help make decisions about continued funding for grantees and to show overall program progress by aggregating GPRA data across grantees. GPRA data may be also be used by Congress to determine future program funding.

Dated: May 27, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–13045 Filed 6–1–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR11–108–000.

Applicants: Atlanta Gas Light Company.

Description: Tariff filing per 284.123(b)(1) + (g): Five-Year Rate Review Certification to be effective N/A.

Filed Date: 5/17/16.

Accession Number: 201605175129.

Comments Due: 5 p.m. ET 6/7/16.

284.123(g) Protests Due: 5 p.m. ET 7/18/16.

Docket Number: PR16–54–000.

Applicants: Public Service Company of Colorado.

Description: Tariff filing per 284.123/.224: 20160523_Compliance in PR16–36–000 March 1, 2016 Eff. Date to be effective 4/16/2016.

Filed Date: 5/23/16.

Accession Number: 201605235159.

Comments/Protests Due: 5 p.m. ET 6/13/16.

Docket Number: PR16–55–000.

Applicants: Service Company of Colorado.

Description: Tariff filing per 284.123(b)(1) + (g): 20160524_SOR GRSA Refund Eff 5–1–2016 to be effective 5/1/2016.

Filed Date: 5/24/16.

Accession Number: 201605245141.

Comments Due: 5 p.m. ET 6/14/16.

284.123(g) Protests Due: 5 p.m. ET 7/25/16.

Docket Numbers: RP16–967–000.

Applicants: Dominion Transmission, Inc.

Description: Section 4(d) rate filing per 154.204: DTI—May 25, 2016 Nonconforming Service Agreement to be effective 6/1/2016.

Filed Date: 5/25/16.

Accession Number: 20160525–5059.

Comments Due: 5 p.m. ET 6/6/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 25, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12992 Filed 6–1–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–609–000.

Applicants: Texas Gas Transmission, LLC.

Description: Report Filing: 2015 Operational Purchases and Sales Report to be effective N/A.

Filed Date: 4/29/16.

Accession Number: 20160429–5073.

Comments Due: 5 p.m. ET 6/3/16.

Docket Numbers: RP13–212–000.

Applicants: Boardwalk Storage Company, LLC.

Description: Report Filing: 2015 Operational Purchases and Sales Report to be effective N/A.

Filed Date: 4/29/16.

Accession Number: 20160429–5077.

Comments Due: 5 p.m. ET 6/3/16.

Docket Numbers: RP16–968–000.

Applicants: Texas Eastern Transmission, LP.

Description: Section 4(d) rate filing per 154.204: Negotiated Rates—June 2016 Chevron TEAM 2014 Releases to be effective 6/1/2016.

Filed Date: 5/26/16.

Accession Number: 20160526–5047.

Comments Due: 5 p.m. ET 6/7/16.

Docket Numbers: RP16–969–000.

Applicants: Equitrans, L.P.

Description: Section 4(d) rate filing per 154.204: FTSS and GSS Rate Schedule Clarifications to be effective 6/26/2016.

Filed Date: 5/26/16.

Accession Number: 20160526–5071.

Comments Due: 5 p.m. ET 6/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–12993 Filed 6–1–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–21–Region 3]

Clean Water Act: Availability of List Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and initial request for public input.

SUMMARY: The Clean Water Act (CWA) requires that states periodically submit, and EPA approve or disapprove, lists of waters (called "Section 303(d) lists") for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared. Waters identified on Section 303(d) lists are called "water quality-limited segments." This notice announces EPA's proposal to include in West Virginia's 2014 Section 303(d) list certain water quality-limited segments and requests public comment.

On May 11, 2016, EPA partially approved West Virginia's 2014 Section 303(d) list of water quality-limited segments and associated pollutants and partially disapproved West Virginia's submission to the extent that West Virginia did not evaluate certain water quality information and therefore did not identify certain water quality-limited segments. EPA has evaluated the information and proposes to identify these additional water quality-limited segments for inclusion on the State's 2014 Section 303(d) list. The proposed water quality-limited segments are identified in Enclosure 3 of the decision document available at the Web site link provided below.

EPA is providing the public the opportunity to review its decision to add these water quality-limited segments to West Virginia's 2014 Section 303(d) list. EPA will consider public comments before transmitting its final listing decision to the State.

DATES: Comments must be submitted in writing to EPA on or before July 5, 2016.

ADDRESSES: Comments on the proposed decision should be sent to Bill Richardson, Water Protection Division (3WP30), U.S. Environmental Protection Agency Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, or emailed to *Richardson.william@epa.gov.* Oral comments will not be considered. Copies of EPA's letter concerning West Virginia's 2014 Section 303(d) list that explains the rationale for EPA's decision and EPA's proposed list of waters to be added to West Virginia's 2014 Section 303(d) list can be obtained at EPA Region 3's Web site at *https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-3* or by writing Mr. Richardson at the above address. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Mr. Richardson to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Bill Richardson at (215) 814–5675.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act requires that each State identify those waters (called "water quality-limited segments") for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared. For those waters, States are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (*40 CFR 130.7*). The regulations require States to assemble and evaluate existing and readily-available water quality data and to identify water quality-limited segments still requiring TMDLs every two years. The list of waters still needing TMDL development must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, EPA received West Virginia's submittal of its listing decisions under Section 303(d)(2) on April 13, 2015. On May 11, 2016, EPA partially approved West Virginia's 2014 list of water quality-limited segments and associated priority ranking and partially disapproved West Virginia's submission to the extent that West Virginia did not list sixty-one (61) water quality-limited segments based upon existing data and public input. EPA solicits public comment on the addition of these waters to the State's list, as required by *40 CFR 130.7*(d)(2).

Dated: May 24, 2016.

Jon M. Capacasa,

Director, Water Protection Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2016–13030 Filed 6–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9946–41]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before July 5, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol or EPA

Registration Number of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*, Susan Lewis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Numbers:* 100–739, 100–1262, 100–1312, 100–1313, 100–1476, and 100–1554. *Docket ID number:* EPA–HQ–OPP–2016–0254. *Applicant:* Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* Difenoconazole. *Product type:* Fungicide. *Proposed uses:* Rice; wild rice; and cotton (crop subgroup 20C). *Contact:* RD.

2. *EPA Registration Number:* 2724–804. *Docket ID number:* EPA–HQ–OPP–2016–0128. *Applicant:* Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173. *Active ingredient:* Etofenprox. *Product type:* Insecticide. *Proposed use:* Fungi, edible, group 21. *Contact:* RD.

3. *EPA Registration Number:* 67702–49. *Docket ID number:* EPA–HQ–OPP–2016–0256. *Applicant:* W. Neudorff GmbH KG, An der Mühle 3, 31860 Emmerthal, Germany (c/o Walter G. Talarek, PC, 1008 Riva Ridge Dr., Great Falls, VA 22066–1620). *Active ingredient:* Iron phosphate. *Product type:* Biochemical molluscicide. *Proposed use:* Broadcast application to crops under flooded conditions to control golden apple snails. *Contact:* BPPD.

4. *EPA Registration Numbers:* 71512–21, 71512–22, and 71512–23. *Docket ID number:* EPA–HQ–OPP–2016–0263. *Applicant:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Isofetamid. *Product type:* Fungicide. *Proposed uses:* Bushberries (subgroup 13–07B); caneberries (subgroup 13–07A); pome fruit (group 11–10); small vine climbing fruit (subgroup 13–07E); stone fruit (subgroups 12–12A, 12–12B, 12–12C); legume vegetable pea and bean, succulent and dried, except soybeans (subgroups 6A, 6B, 6C); ornamental plants. *Contact:* RD.

5. *EPA Registration Number:* 86203–4. *Docket ID number:* EPA–HQ–OPP–2016–0128. *Applicant:* Mitsui Chemicals Agro, Inc. (c/o Landis International, Inc., P.O. Box 5126; Valdosta, GA 31603. *Active ingredient:* Etofenprox. *Product type:* Insecticide. *Proposed use:* Fungi, edible, group 21. *Contact:* RD.

6. *File Symbol:* 89186–R. *Docket ID number:* EPA–HQ–OPP–2016–0258. *Applicant:* ConidioTec, 2610 Sleepy Hollow Drive, State College, PA 16803. *Active ingredient: Beauveria bassiana* Strain GHA. *Product type:* Insecticide. *Proposed use:* Indoor use in buildings and structures to control and prevent bedbug infestations. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 19, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–13029 Filed 6–1–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0023; FRL–9946–86]

Certain New Chemicals; Receipt and Status Information for April 2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to

manufacture those chemicals. This document covers the period from April 1, 2016 to April 29, 2016.

DATES: Comments identified by the specific case number provided in this document, must be received on or before July 5, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0023, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division, 7407M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This document provides receipt and status reports, which cover the period from April 1, 2016 to April 29, 2016, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. What is the Agency's authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.*, EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a "new" chemical, while those that are on the TSCA Inventory are classified as an "existing" chemical. For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.*

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

IV. Receipt and Status Reports

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that the information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

For the 58 PMNs received by EPA during this period, Table 1 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016

Case No.	Date received	Projected end date for EPA review	Manufacturer/ Importer	Use(s)	Chemical identity
P–16–0095	4/11/2016	7/10/2016	CBI	(G) Flame retardant additive	(G) Phenol-formaldehyde resin.
P–16–0119	4/20/2016	7/19/2016	CBI	(G) Intermediate	(G) Chlorofluorocarbon.
P–16–0150	4/26/2016	7/25/2016	CBI	(G) Intermediate	(G) Chlorofluorocarbon.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer/ Importer	Use(s)	Chemical identity
P–16–0267	4/20/2016	7/19/2016	Allnex USA, Inc	(S) Electro-deposition primer	(G) Fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkanoate, lactates (salts).
P–16–0277	4/1/2016	6/30/2016	Organic Dyestuffs Corporation.	(S) Metalized dye for dyeing wool with good fastness properties.	(S) Chromate(1-), hydroxy[2-(hydroxy-ko)-3-[2-[2-(hydroxy-ko)-1-naphthalenyl]diazenyl-kn1]-5-nitrobenzenesulfonato(3-)]-, sodium (1:1).
P–16–0279	4/4/2016	7/3/2016	Akzo Nobel Surface Chemistry, LLC.	(G) Component in paints	(S) Hexanamide, n,-[3-(dimethylamino)propyl]-, compd, with 2-methyloxirane polymer with oxirane mono (2-ethylhexyl) ether phosphate.
P–16–0281	4/11/2016	7/10/2016	CBI	(G) Reactive polyol	(G) Fatty alcohols—dimers, trimmers, polymers.
P–16–0287	4/1/2016	6/30/2016	CBI	(G) Hardener for epoxy coating	(G) Alkanoic acid, 2-substituted-methyl ester, reaction products with aromatic diamine-[alkanediylbis(oxymethylene)]bis[oxirane] polymer.
P–16–0289	4/1/2016	6/30/2016	CBI	(G) Extrusion compounding resin molding resin.	(G) Semi-aromatic polyamide.
P–16–0290	4/1/2016	6/30/2016	CBI	(G) Fuel additive	(G) Copolymer of maleic acid and olefin.
P–16–0291	4/3/2016	7/2/2016	CBI	(G) Curing agent	(G) 1,3-cyclohexanedimethanamine adduct.
P–16–0292	4/5/2016	7/4/2016	CBI	(S) Intermediate for use in the manufacture of polymers.	(G) Depolymerized waste plastics.
P–16–0293	4/13/2016	7/12/2016	Charkit Chemical Corporation.	(S) Compounding of fragrance for industrial cleaners/janitorial compounds, detergents, etc.	(S) Octanoic acid, phenylmethyl ester.
P–16–0299	4/20/2016	7/19/2016	CBI	(S) Reactive (meth)acrylate oligomer for ultra violet cured 3d printed parts.	(G) Polyurethane, methacrylate-blocked.
P–16–0300	4/6/2016	7/5/2016	H.B. Fuller Company.	(G) Industrial adhesive	(G) Oxirane, 2-methyl-, polymer with 1,3-xylylene diisocyanate and oxirane, 3-(trimethoxysilyl)propyl isocyanate.
P–16–0301	4/6/2016	7/5/2016	CBI	(G) Intermediate	(G) Propyl silsesquioxanes, hydrogen-terminated.
P–16–0302	4/6/2016	7/5/2016	CBI	(G) Plastic additive	(G) Organic modified propyl silsesquioxane.
P–16–0303	4/7/2016	7/6/2016	CBI	(G) Use for the production of acrylic resin for waterborne exterior coatings composition.	(G) Alkyl methyacrylate polymer with styrene, amino acrylate and acrylic acid, ammonium salt.
P–16–0304	4/7/2016	7/6/2016	CBI	(G) Industrial adhesive	(G) Polyurea grease.
P–16–0305	4/7/2016	7/6/2016	CBI	(G) Industrial Adhesive	(G) Polyurea grease.
P–16–0307	4/8/2016	7/7/2016	CBI	(G) Open non dispersive use	(G) Heteropolycycliccarboxylic acid, 1,3-dihydro-disubstituted-, polymer with 1,1'-methylenebis[4-isocyanatobenzene], reaction products with silica.
P–16–0308	4/8/2016	7/7/2016	Itaconix Corporation.	(G) Reactive Monomer	(S) Butanedioic acid, 2-methylene-, 1,4-bis (2-methylpropyl) ester.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer/ Importer	Use(s)	Chemical identity
P–16–0309	4/8/2016	7/7/2016	CBI	(G) PMN substances are intended for use as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.	(G) Bisamide mixture.
P–16–0310	4/8/2016	7/7/2016	CBI	(G) PMN substances are intended for use as rheological or thixotropic agents used in the production of solvent based industrial coatings, high solid aromatic paints, adhesives, sealants, and other types of paints and topcoats.	(G) Bisamide mixture.
P–16–0311	4/8/2016	7/7/2016	CBI	(S) Coatings for wood metal and plastic.	(G) Aromatic dicarboxylic acid, polymer with alkyl dicarcoxylic acid, alkyl diol, hydroxy(hydroxyalkyl)alkylcarboxylic acid, methylenebis(isocyanato cycloalkane) and alkyle thylidene bis(phenyleneoxy) bis[alkyl alcohol].
P–16–0312	4/8/2016	7/7/2016	CBI	(S) Coatings for wood metal and plastic.	(G) Aromatic dicarboxylic acid, polymer with cycloalkanemethanol, alkanediamine, alkanedioic acid, hydroxy-2-(hydroxyalkyl)-2-alkylcarboxylic acid, methyl enebis[isocyanatocycloalkane] and [(methylethylidene)bis (phenyleneoxy)]bis[alkanol].
P–16–0313	4/11/2016	7/10/2016	Honeyol, Inc	(S) Use in production of resins (raw material used in the production of resins).	(S) Tar acids (shale oil), c6–9-fraction, alkylphenols, low-boiling.
P–16–0314	4/11/2016	7/10/2016	Firmenich, Inc	(G) As part of a fragrance formula	(S) Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-
P–16–0315	4/11/2016	7/10/2016	CBI	(S) Industrial rubber formulation	(G) Alkyldiene, polymer, terminated alkoxysilylalkylcarbamate.
P–16–0316	4/11/2016	7/10/2016	CBI	(G) Drilling chemical	(G) Aliphatic polyester.
P–16–0317	4/11/2016	7/10/2016	CBI	(G) Drilling chemical	(G) Aliphatic polyester.
P–16–0322	4/22/2016	7/21/2016	CBI	(G) Pulp bleaching catalyst	(G) Manganese cyclic (tri)amine chloride complex.
P–16–0322	4/22/2016	7/21/2016	CBI	(G) Textile bleaching catalyst	(G) Manganese cyclic (tri)amine chloride complex.
P–16–0323	4/13/2016	7/12/2016	Allnex USA, Inc	(G) Coating resin	(G) Alkylaldehyde, reaction products with substituted carbomonocycle-substituted heteromonocycle-alkylene glycol bis [[[substituted (oxoneoalky)oxy]alkyl]amino]alky] ether polymer and alkyl substituted alkanediamine, acetate salts.
P–16–0324	4/13/2016	7/12/2016	CBI	(G) Adhesive for open non-descriptive use.	(G) Ultra violet-curable urethane acrylate.
P–16–0325	4/13/2016	7/12/2016	CBI	(G) Oil & Gas extraction	(G) Polymer of substituted acrylic acid and bromohexane.
P–16–0326	4/27/2016	7/26/2016	Firmenich, Inc	(G) As part of a fragrance formula	(S) Propanoic acid, 2,2-dimethyl-,1-methyl-2-(1-methylethoxy)-2-oxoethyl ester.
P–16–0327	4/14/2016	7/13/2016	CBI	(G) Additive in rubber tires	(G) Alkenoic acid, polymer with alkylalkenoate, sodium salt.

TABLE 1—PMNS RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016—Continued

Case No.	Date received	Projected end date for EPA review	Manufacturer/ Importer	Use(s)	Chemical identity
P–16–0328	4/19/2016	7/18/2016	CBI	(G) Intermediate	(G) Terephthalic acid, polymer with alkanepolycarboxylic acids, alkanepolyols, isophthalic acid, polyetherpolyol, 1,1-methylenebis [isocyanatobenzene], phthalic anhydride and a substituted alkanepolyol.
P–16–0329	4/19/2016	7/18/2016	CBI	(G) Adhesive component	(G) Polymer of alkanepolycarboxylic acids, alkanepolyols, isophthalic acid, polyetherpolyols, 1,1-methylenebis[isocyanatobenzene], terephthalic acid, phthalic anhydride and a substituted alkanepolyol.
P–16–0330	4/19/2016	7/18/2016	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hydroxy functional triglyceride polymer with glycerol monoester and 1,1'-methylenebis[4-isocyanatobenzene].
P–16–0331	4/19/2016	7/18/2016	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hydroxy functional triglyceride polymer with glycerol monoester and 1,1'-methylenebis [isocyanatobenzene].
P–16–0332	4/21/2016	7/20/2016	CBI	(G) Component of coating	(G) Carbomonocycle phosphate metal salt.
P–16–0334	4/22/2016	7/21/2016	Lamberti USA, Inc.	(G) Additive for industrial purposes.	(G) Polymeric amide.
P–16–0335	4/22/2016	7/21/2016	Lamberti USA, Inc.	(G) Additive for industrial purposes.	(G) Polymeric amide.
P–16–0336	4/22/2016	7/21/2016	CBI	(G) Fuel additive—destructive use	(G) Polyolefin ester.
P–16–0337	4/25/2016	7/24/2016	CBI	(S) Monomer	(G) Aliphatic acrylate.
P–16–0338	4/26/2016	7/25/2016	CBI	(G) Dyestuff	(G) Substituted xanthene derivative.
P–16–0339	4/26/2016	7/25/2016	CBI	(G) Dyestuff	(G) Azo derivatives.
P–16–0340	4/26/2016	7/25/2016	Solazyme, Inc	(G) Feedstock for oleochemical industry.	(G) Glycerides, c8–18 and c18 unsaturated, from fermentation.
P–16–0340	4/26/2016	7/25/2016	Solazyme, Inc	(G) Renewable oil source for fuels.	(G) Glycerides, c8–18 and c18 unsaturated, from fermentation.
P–16–0341	4/27/2016	7/26/2016	Perstorp Polyols	(G) Elastomer	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P–16–0341	4/27/2016	7/26/2016	Perstorp Polyols	(S) Industrial coatings	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P–16–0341	4/27/2016	7/26/2016	Perstorp Polyols	(S) Adhesive components	(S) 2-oxepanone, homopolymer, ester with 1,6-hexanediol.
P–16–0342.	4/27/2016	7/26/2016	CBI	(S) Modified acrylic polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified acrylic polymer.
P–16–0343	4/27/2016	7/26/2016	CBI	(S) Modified urethane polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified urethane polymer.
P–16–0344	4/27/2016	7/26/2016	CBI	(S) Modified acrylic polymer used as a dispersant for deflocculation of pigments in industrial paints and coatings.	(G) Modified urethane polymer.
P–16–0345	4/28/2016	7/27/2016	CBI	(G) Processing aid	(G) Acrylamide, polymer with methacrylic acid derivatives.

For the 31 NOCs received by EPA during this period, Table 2 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the NOC; the date the NOC was received by EPA; the projected date of commencement provided by the submitter in the NOC; and the chemical identity.

TABLE 2—NOCs RECEIVED FROM APRIL 1, 2016 TO APRIL 29, 2016

Case No.	Date received	Projected date of commencement	Chemical identity
P–05–0522	4/26/2016	3/31/2016	(S) [1,1'-biphenyl]-4-carboxaldehyde.
P–11–0243	4/1/2016	3/12/2016	(G) Alkanedioic acid polymer with alkanediol and diisocyanatohexane.
P–13–0670	4/25/2016	4/4/2016	(G) Alkyl-[4-(carbomonocyclesubstituted)carbomonocycle]-(dialkylhydroxycarbomonocycle)alkane derivative.
P–13–0671	4/25/2016	4/4/2016	(G) Alkyl-[4-(carbomonocyclesubstituted)carbomonocycle]-(dialkylhydroxycarbomonocycle)alkane derivative.
P–14–0166	4/4/2016	3/3/2016	(G) Fatty acid amide.
P–14–0185	4/4/2016	3/5/2016	(G) Fatty acid amide acetate.
P–14–0800	4/22/2016	4/11/2016	(G) Solvent red 252.
P–15–0046	4/12/2016	4/1/2016	(S) Propanol, oxybis, polymer with bis(isocyanatomethyl)cyclohexane and alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl).
P–15–0074	4/8/2016	3/30/2016	(G) Trisiloxane alkoxylate.
P–15–0329	4/12/2016	3/12/2016	(S) Urea, n, n''-1,6-hexanediylbis[n'-[(1s)-1-phenylethyl]-.
P–15–0382	4/29/2016	4/20/2016	(G) Polyitaconic acid, sodium zinc salt.
P–15–0409	4/5/2016	3/24/2016	(G) Substituted alkanolamine ether.
P–15–0515	4/19/2016	4/7/2016	(G) 2-propenoic acid, 2-methyl, methyl ester, polymer with ethenylbenzene, ethyl 2-propenoate, 2-oxiranylmethyl 2-methyl-2-propenoate and 1,2-propanediol mono(2-methyl-2-propenoate), reaction products with dialkylamine, carboxylate salt.
P–15–0567	4/8/2016	3/10/2016	(S) Hexanedioic acid, polymer with 1,?6-?hexanediol, 1,?3-?isobenzofurandione, 5-?isocyanato-?1-?(isocyanatomethyl)?-?1,?3,?3-?trimethylcyclohexane and 1,?2,?3-?propanetriol, 2-?hydroxyethyl acrylate-?blocked.
P–15–0623	4/18/2016	4/14/2016	(G) Fatty acids, polymers with bisphenol a, nutshell liq., epichlorohydrin, alkylenediamine, formaldehyde and polyalkylenepolyamine.
P–15–0733	4/4/2016	3/13/2016	(G) Alkane carboxylic acid, hydroxy, hydroxyalkyl-alkyl, polymer with .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) ether with alkyl-(hydroxyalkyl)-alkanediol (x:1), .alpha.-hydro-.omega.-hydroxypoly[oxy(alkyl-alkyldiyl)] and alkylenebis [isocyanatoalkane],-blocked.
P–15–0737	4/12/2016	4/7/2016	(G) Diammonium salt of phosphate methacrylate.
P–15–0737	4/12/2016	4/7/2016	(G) Monoammonium salt of phosphate methacrylate.
P–15–0769	4/14/2016	4/4/2016	(G) Polyurethane silane.
P–16–0009	4/1/2016	3/9/2016	(S) Fatty acids, castor-oil, esters with polyethylene glycol ether with glycerol (3:1).
P–16–0026	4/11/2016	4/3/2016	(G) Amine functional epoxy, organic acid salt.
P–16–0100	4/5/2016	3/23/2016	(G) Substituted heteropolycyclic derivs.
P–16–0107	4/14/2016	3/27/2016	(G) Aromatic polycarboxylic acid, polymer with alkyldiol, alkylidioic acid, aromatic polyisocyanate, substituted alkyldiol, compd. with alkylamine.
P–16–0108	4/28/2016	3/17/2016	(G) Carbonic acid, polymer with, 5-isocyanato-1-(isocyanatomethyl)- 1,3,3-trimethylcyclohexane, 2-hydroxyethyl acrylate-blocked.
P–16–0115	4/6/2016	3/27/2016	(G) 2-propanediol, polymer with 2-ethyloxirane, oxirane and cycloaliphatic anhydride, polymer with 2,2???-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane].
P–16–0121	4/18/2016	4/13/2016	(G) Acrylic acid polymer with polyethylene glycol.
P–16–0142	4/26/2016	4/20/2016	(G) Amine salted polyacrylate.
P–16–0149	4/18/2016	4/15/2016	(G) 2-alkenoic acid, alkyl ester, polymer with ethenyl benzene, alkyl 2-alky alkenoate and alkene carboxylic acid.
P–16–0159	4/25/2016	3/31/2016	(G) Hexasodium 5-{4-[3-(8-benzoylamino-1-hydroxy-3,6-disulfonatonaphthalene-2-yldiazenyl)-4-sulfonatoanilino]-6-(2-sulfonatoethylamino)-1,3,5-triazine-2-ylamino}benzene-1,3-dicarboxylate.
P–16–0174	4/29/2016	4/19/2016	(S) Butanedioic acid, 2-methylene-, telomer with phosphinic acid and sodium 4-ethenylbenzenesulfonate (1:1), sodium salt.
P–16–0175	4/28/2016	4/18/2016	(S) Naphthalene, eicosyl-.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: May 25, 2016.

Pamela Myrick,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–13028 Filed 6–1–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, May 31, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Richard Cordray (Director, Consumer Financial Protection Bureau), seconded by Vice Chairman Thomas M. Hoenig, concurred in by Paul M. Nash (Acting in the place and stead of Director Thomas J. Curry (Comptroller of the Currency)), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice

to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: May 31, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13159 Filed 5–31–16; 4:15 pm]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10325 First Commercial Bank of Florida, Orlando, FL

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10325 First Commercial Bank of Florida, Orlando, FL (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Commercial Bank of Florida (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 1, 2016 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: May 25, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–12956 Filed 6–1–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10310, Western Commercial Bank Woodland Hills, CA

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Western Commercial Bank, Woodland Hills, CA ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Western Commercial Bank on November 5, 2010. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: May 25, 2016.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–12955 Filed 6–1–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012355–001.

Title: CMA CGM/SL Gulf Bridge Express Slot Charter Agreement.

Parties: CMA CGM, S.A. and Maersk Line A/S DBA Sealand.

Filing Party: Draughn B. Arbona, Esq; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment changes the name of the Maersk entity participating in the Agreement and reduces the number of slots being chartered.

Agreement No.: 012413.

Title: MOL/ELJSA Slot Exchange Agreement.

Parties: Mitsui O.S.K. Lines, Ltd and Evergreen Line Joint Service Agreement.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

Synopsis: The agreement authorizes the parties to exchange slots in the trade between the U.S. East Coast on the one hand, and the People's Republic of China (including Hong Kong), Taiwan, Vietnam, Singapore, Sri Lanka, Egypt, and Panama, on the other hand.

Agreement No.: 012414.

Title: LGL/Glovis Space Charter Agreement.

Parties: Liberty Global Logistics LLC and Hyundai Glovis Co., Ltd.

Filing Party: Wayne R. Rohde, Esq., Cozen O'Conner; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The agreement authorizes the parties to charter space for ro/ro cargo to/from each other in the trade between the U.S. East Coast on the one hand, and Portugal, Spain, France, Italy, Greece, Turkey, Lebanon, Egypt, Jordan, Saudi Arabia, Oman, UAE, Bahrain and Kuwait on the other hand.

By Order of the Federal Maritime Commission.

Dated: May 27, 2016.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–13027 Filed 6–1–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 31, 2016.

TIME AND DATE: 2:00 p.m., Monday, June 13, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania

Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor on behalf of McGary, et al.* v. *The Marshall County Coal Company, et al.*, Docket Nos. WEVA 2015–583–D, et al. (Issues include whether the Judge erred in ruling that certain statements by mine management constituted an interference with miners' safety rights.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–13117 Filed 5–31–16; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

May 31, 2016.

TIME AND DATE: 2:00 p.m., Tuesday, June 14, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor on behalf of McGary, et al.* v. *The Marshall County Coal Company, et al.*, Docket Nos. WEVA 2015–583–D, *et al.* (Issues include whether the Judge erred in ruling that certain statements by mine management constituted an interference with miners' safety rights.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–13118 Filed 5–31–16; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 2016.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528. Comments can also be sent electronically to *Comments.applications@rich.frb.org:*

1. *Blue Ridge Bankshares, Inc.*, Luray, Virginia; to merge with River Bancorp, Inc., and thereby indirectly acquire River Community Bank, National Association, both in Martinsville, Virginia.

Board of Governors of the Federal Reserve System, May 27, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–13005 Filed 6–1–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 16, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Michael William Mathis, Sr., Sharon L. Mathis, Michael William Mathis, Jr., Mark Coppage Mathis, Victoria Lynn Mathis, and Norman Van Lambert*, all of Rome, Georgia, to retain voting shares of RCB Financial Corporation, and thereby indirectly retain voting shares of River City Bank, both in Rome, Georgia.

Board of Governors of the Federal Reserve System, May 27, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–13007 Filed 6–1–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2016–03; Docket No. 2016–0002, Sequence No. 12]

Federal Travel Regulation (FTR); Relocation Allowances—Requirement To Report Agency Payments for Relocation

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The purpose of this notice is to inform agencies that FTR Bulletin 16–04, pertaining to the Requirement to Report Agency Payments for Relocation, is now available online at *www.gsa.gov/ftrbulletin.*

DATES: *Effective:* June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Office of Asset and Transportation Management (MA), Office of Government-wide Policy, GSA, at 202–501–3822 or via email at *rodney.miller@gsa.gov.* Please cite FTR Bulletin 16–04.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5707(c), as implemented in the Federal Travel Regulation, Part 300–70, Subpart A—Requirement To Report Agency Payments for Employee Travel and Relocation, the Administrator of General Services is required to collect data on total agency payments for travel, transportation, and relocation expenses every year. This bulletin provides guidance to agencies that spent more than $5 million on travel and transportation payments, including relocation costs, and the requirement procedures to report the data to GSA. FTR Bulletin 16–04 and all other FTR Bulletins can be found at *www.gsa.gov/ftrbulletin.*

Troy Cribb,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2016–12888 Filed 6–1–16; 8:45 am]

BILLING CODE 6820–14–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Submission for OMB Review; Proposed Collection; Comment Request for Unmodified Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The U.S. Office of Government Ethics (OGE) is publishing this second round notice and requesting comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). OGE is proposing no changes to these forms at this time.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received on or before July 5, 2016.

ADDRESSES: You may submit comments on this paperwork notice to the Office of Management and Budget, Attn: Desk Officer for OGE, via fax at 202–395–6974 or email at *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Paul D. Ledvina, Agency Clearance Officer at the U.S. Office of Government Ethics; telephone: 202–482–9247; TTY: 800–877–8339; FAX: 202–482–9237; Email: *pledvina@oge.gov.* The model Certificate of Independence and model Certificate of Compliance for qualified trusts are codified in appendixes A and B to 5 CFR part 2634. Appendix C of 5 CFR part 2634 provides the Privacy Act Statement, Public Burden Statement and Paperwork Reduction Act Statement for the model certificates. Copies of the ten qualified trust model documents may be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics intends to submit, shortly after this second round notice, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a three-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). The current paperwork approval for the model certificates and model trust documents, last granted by OMB in 2013, is scheduled to expire at the end of November 2016. OGE is proposing no changes to the two model qualified trust certificates and the ten model trust documents at this time. OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (EIGA). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for EIGA qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics in Government Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. Qualified trust certifications—5 CFR 2634.404(f) and (g), 2634.405(c) and (d), 2634.407, 2634.408(d)(4), 2634.410, 2634.414 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes); and

ii. Qualified trust communications and model provisions and agreements—5 CFR 2634.404(f), 2634.407(a), 2634.408(a)–(c), 2634.407 and 2634.414 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities)).

The communications formats and the confidentiality agreements (items ii.(A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive,

confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are retained and made publicly available based upon a proper request under EIGA (by filling out an OGE Form 201 access form) until the periods for retention of all other reports (usually the OGE Form 278 Public Financial Disclosure Reports) of the individual establishing the trust have lapsed (generally six years after the filing of the last other report). See 5 CFR 2634.603(g)(2) of OGE's executive branch financial disclosure regulation.

The U.S. Office of Government Ethics administers the qualified trust program for the executive branch. At the present time, there are no active filers using the trust model certificates and documents. However, OGE intends to submit to OMB a request for extension of approval for two reasons. First, under OMB's implementing regulations for the Paperwork Reduction Act, at 5 CFR 1320.3(c)(4)(i), any recordkeeping, reporting or disclosure requirement contained in a sponsoring agency rule of general applicability is deemed to meet the minimum threshold of ten or more persons. Second, OGE does anticipate possible limited use of these forms during the forthcoming three-year period 2016–2019. Therefore, the estimated burden figures, representing branchwide implementation of the forms, will remain the same as previously reported by OGE in its prior first and second round paperwork renewal notice for the trust forms (77 FR 76293–76294 (December 27, 2012) and 78 FR 40144–40146 (July 3, 2013)). The estimate is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: Total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: Total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year); private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: Total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. Of the five remaining model qualified trust documents: Total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. Of the two model confidentiality agreements: Total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is $1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish such qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The $1,000,000 annual cost figure is based on OGE's estimate of an average of five possible active trusts anticipated to be under administration for each of the next three years with combined total assets of $100,000,000. However, OGE notes that the $1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full $1,000,000 estimate for paperwork clearance purposes.

On March 4, 2016, OGE published a first round notice of its intent to request paperwork clearance for the proposed unmodified qualified trust certificates and modified model trust documents. See 81 FR 11566–11567. OGE did not receive any responses to that notice.

In this second notice, public comment is again invited on the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents. The comments will also become a matter of public record.

Approved: May 27, 2016.

Walter M. Shaub, Jr.

Director, Office of Government Ethics.

[FR Doc. 2016–13008 Filed 6–1–16; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Informational Meeting: The Importation and Exportation of Infectious Biological Agents, Infectious Substances and Vectors; Public Webcast

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public webcast.

SUMMARY: The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) is hosting a public webcast to address import and export permit regulations for infectious biological agents, infectious substances, and vectors; and import and export permit exemptions. Presenters for this webcast will include representatives from the U.S. Department of Transportation (DOT), United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), CDC Division of Global Migration and Quarantine, U.S. Customs and Border Protection, U.S. Department of Commerce, U.S. Food and Drug Administration, HHS/Office of the Assistant Secretary for Preparedness and Response/Biomedical Advanced Research and Development Authority (BARDA), U.S. Fish and Wildlife

Service, and the Public Health Agency of Canada.

DATES: The webcast will be held over two days, August 3, 2016 from 12 p.m. to 4 p.m. EDT and August 4, 2016 from 12:00 p.m. to 4:00 p.m. Registration instructions are found on the HHS/CDC Import Permit Program Web site, *http://www.cdc.gov/od/eaipp/importApplication/agents.htm.*

ADDRESSES: The webcast will be broadcast from the Centers for Disease Control and Prevention, 1600 Clifton Road NE., Atlanta, Georgia 30329.

FOR FURTHER INFORMATION CONTACT: Von McClee, Division of Select Agents and Toxins, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS A–46, Atlanta, GA 30333; phone: 404–718–2000; email: *lrsat@cdc.gov.*

SUPPLEMENTARY INFORMATION: This webcast is an opportunity for all interested parties (*e.g.*, academic institutions and biomedical centers, commercial manufacturing facilities, federal, state, and local laboratories, including clinical and diagnostic laboratories, research facilities, exhibition facilities, and educational facilities) to obtain specific guidance and information regarding import and export permit regulations. The webcast will also provide assistance to those interested in applying for an import or export permit (or license) from federal agencies within the United States.

Instructions for registration are found on the HHS/CDC Import Permit Program Web site, *http://www.cdc.gov/od/eaipp/importApplication/agents.htm.* Participants must register by July 15, 2016. This is a webcast only event and there will be no on-site participation at the HHS/CDC broadcast facility.

Dated: May 27, 2016.

Veronica Kennedy,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–13053 Filed 6–1–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; University Centers for Excellence in Developmental Disabilities Education, Research, and Service—Annual Report

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL) is announcing an opportunity to comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice collects comments on the information collection requirements relating to the continuation of an existing collection for University Centers for Excellence in Developmental Disabilities Education, Research, and Service.

DATES: Submit written comments on the collection of information by August 1, 2016.

ADDRESSES: Submit written comments on the collection of information by email to *Valerie.Bond@acl.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Valerie Bond by email at *Valerie.Bond@acl.hhs.gov* or 202.795–7311.

SUPPLEMENTARY INFORMATION: Section 104 (42 U.S.C. 15004) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act of 2000) directs the Secretary of Health and Human Services to develop and implement a system of program accountability to monitor the grantees funded under the DD Act of 2000. The program accountability system shall include the National Network of University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) authorized under Part D of the DD Act of 2000. In addition to the accountability system, Section 154(e) (42 U.S.C. 15064) of the DD Act of 2000 includes requirements for a UCEDD Annual Report.

ACL estimates the burden of this collection of information as follows:

Annual Burden Estimates

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UCEDD Annual Report	67	1	1,412	94,604

Estimated Total Annual Burden Hours: 94,604.

Dated: May 25, 2016.

Kathy Greenlee,

Administrator & Assistant Secretary for Aging.

[FR Doc. 2016–13020 Filed 6–1–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Senior Medicare Patrol (SMP) Program Outcome Measurement

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 5, 2016.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov.* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Phillip McKoy at 202.795.7397 or email: *phillip.mckoy@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. Grantees are required by Congress to provide information for use in program monitoring and for Government Performance and Results Act (GPRA) purposes. This information collection reports the number of active volunteers, issues and inquiries received, other SMP program outreach activities, and the number of Medicare dollars recovered, among other SMP performance outcomes. This information is used as the primary method for monitoring the SMP Projects. ACL estimates the burden of this collection of information as follows: Respondents: 54 SMP grantees at 23 hours per month (276 hours per year, per grantee). Total Estimated Burden Hours: 7,452 hours per year.

Dated: May 25, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–12868 Filed 6–1–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Collaborating To Strengthen Food, Drug, and Medical Device Safety Systems; Notice of Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of conference.

SUMMARY: The Food and Drug Administration (FDA) Philadelphia District Office, in co-sponsorship with the Association of Food and Drug Officials (AFDO), and the North Central Association of Food and Drug Officials, is announcing a conference entitled "Collaborating to Strengthen Food, Drug, and Medical Device Safety Systems." This conference is intended to provide information about FDA drug and device regulation to the regulated industry.

DATES: The conference will be held on June 25 to June 29, 2016. See **SUPPLEMENTARY INFORMATION** for meeting times.

ADDRESSES: The Omni William Penn Hotel, 530 William Penn Pl., Pittsburgh, PA 15219. Attendees are responsible for their own accommodations.

FOR FURTHER INFORMATION CONTACT: Randy Young, Association of Food and Drug Officials, 2550 Kingston Rd., Suite 311, York, PA 17402, 717–757–2888, FAX: 717–650–3650, *ryoung@afdo.org.*

SUPPLEMENTARY INFORMATION: FDA has made education of the food, feed, drug, and device manufacturing community a high priority to help ensure the quality of FDA-regulated products. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information for stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government Agencies to small businesses.

The conference helps fulfill the U.S. Department of Health and Human Services' and FDA's important mission to protect the public health. The conference will provide FDA-regulated drug and device entities with information on a number of topics concerning FDA requirements related to the production and marketing of drugs and/or devices. Topics for discussion include, but are not limited to the following:

- FDA Program Alignment
- Recalls from the Perspective of the District
- Inspection of Licensed Producers under the Marijuana for Medical Purposes Regulations (Health Canada)
- Foreign inspections
- Regulatory Intelligence
- FDA Inspections: Challenges and Opportunities (Working Luncheon)
- Drug Shortages
- Drug Supply Chain Act: Wholesale Drug Distributor and 3rd Party Logistics Provider
- Medical Device Single Audit Program
- Compliance Questions Panel

The Conference Web site is: *http://afdo.org/conference.* The meeting times are as follows:

Date	Meeting time
June 25	8 a.m. to 5 p.m.
June 26	8 a.m. to 6 p.m.
June 27	8 a.m. to 5:30 p.m.
June 28	8 a.m. to 5 p.m.
June 29	8 a.m. to 11:30 a.m.

Registration: The AFDO registration fees cover the cost of facilities, materials, and breaks. Seats are limited and registration will close after the course is filled; therefore, please submit your registration as soon as possible. Conference space will be filled in order of receipt of registration; those accepted will receive confirmation. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the conference, beginning at 7:30 a.m. The cost of registration follows:

Category	Cost of registration
Member	$475
Non-Member	575
Additional Fee for Registration Postmarked After June 1, 2016	100

To register, please complete and submit an AFDO conference registration form, available at *http://pitt.afdo.org/registration.html,* along with a check, money order payable to "AFDO"; the registrar will also accept Visa and MasterCard credit cards. Please mail your completed registration form and payment to: AFDO, 2550 Kingston Rd., Suite 311, York, PA 17402. To register online, please visit *http://pitt.afdo.org/registration.html* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register.**) For more information on the conference, or for questions about registration, please contact Randy Young (see **FOR FURTHER INFORMATION CONTACT**), email inquiries will also be accepted at *afdo@afdo.org,* or visit *http://www.afdo.org.*

If you need special accommodations due to a disability, please contact Randy Young (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the conference.

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12942 Filed 6–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–P–0378]

Determination That TRIVARIS (Triamcinolone Acetonide) Injectable Suspension, 80 Milligrams/Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has

determined that TRIVARIS (triamcinolone acetonide) injectable suspension, 80 milligrams/milliliters (mg/mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for triamcinolone acetonide injectable suspension, 80 mg/mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Linda Jong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6288, Silver Spring, MD 20993–0002, 301–796–3977.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is known generally as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, is the subject of NDA 22–220, held by Allergan, and initially approved on June 16, 2008. TRIVARIS is indicated for sympathetic ophthalmia, temporal arteritis, uveitis, and ocular inflammatory conditions unresponsive to topical corticosteroids. TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, is currently listed in the "Discontinued Drug Product List" section of the Orange Book.

The Weinberg Group submitted a citizen petition dated January 28, 2016 (Docket No. FDA–2016–P–0378), under 21 CFR 10.30, requesting that the Agency determine whether TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to TRIVARIS (triamcinolone acetonide) injectable suspension, 80 mg/mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12949 Filed 6–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0055]

Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance entitled "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods." The draft guidance, when finalized, will describe our views on voluntary short-term and long-term goals for sodium reduction in a variety of identified categories of foods that are commercially processed, packaged, or prepared. These goals are intended to address the excessive intake of sodium in the current population and promote improvements in public health.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on Issues 1 through 4 listed in section IV of this document by August 31, 2016. Submit either electronic or written comments on Issues 5 through 8 listed in section IV of this document by October 31, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are

solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–D–0055 for "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Kasey Heintz, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1376.

SUPPLEMENTARY INFORMATION:

I. Introduction

Many expert advisory panels have concluded that scientific evidence supports the value of reducing sodium intake in the general population (Ref. 1). Recent analysis, including the findings of the 2013 Institute of Medicine (IOM) report, "Sodium Intake in Populations: Assessment of Evidence" (IOM report), continue to support this conclusion (Ref. 2). The 2013 IOM report confirmed a positive relationship between higher levels of sodium intake and the risk of heart disease, and found substantial evidence of population benefit and no evidence of negative health effects associated with reductions in sodium intake down to 2,300 milligrams of sodium per day (mg/day) (Ref. 2). Members of the committee which authored the 2013 IOM report also clarified in a subsequent publication that different groups using a variety of methods and data have obtained results consistent with the committee's analysis that current U.S. intake is excessive, that it should be reduced, and that reduction is expected to have significant public health benefit (Ref. 3). Moreover, the 2015 Dietary Guidelines Advisory Committee Sodium Working Group examined the relationship between sodium and blood pressure and other cardiovascular outcomes in adults, as well as sodium and blood pressure in children. The Committee's recommendations concurred with previous reports that sodium intake among the U.S. population remains high and that higher levels of sodium intake are associated with increased blood pressure and risk of cardiovascular disease (Ref. 4).

Multiple researchers have estimated the public health benefits associated with broad reduction in sodium intakes in the United States (Ref. 1). Reasonable reductions in average intake (modeled at a variety of intake levels below current intake, down to an average level of roughly 2,200 mg/day) have been estimated to result in tens of thousands fewer cases of heart disease and stroke each year, as well as billions of dollars in health care savings over time. A recent study (Ref. 5) used three epidemiological datasets to forecast the separate public health benefits of reducing the population's average sodium intake to 2,200 mg/day over 10 years. (This 2,200 mg/day final mean intake level was derived from intake values embedded in the sources of evidence used for the study.) Researchers found that this pattern of reduction would save between 280,000 and 500,000 premature deaths over 10 years; sustained sodium reduction would prevent additional premature deaths.

FDA is not conducting rulemaking with regard to sodium, and these goals are voluntary. Given the potentially significant benefits to public health, as well as FDA's role in safeguarding America's food supply and enabling consumers to choose healthy diets, we are committed to exploring effective and efficient strategies to promote sodium reduction in the food supply. We believe that these voluntary goals can be an effective means to achieve significant benefits to public health through sodium reduction in commercially processed, packaged, and prepared foods.

II. Background

We are announcing the availability of a draft guidance for industry entitled "Voluntary Sodium Reduction Goals: Target Mean and Upper Bound Concentrations for Sodium in Commercially Processed, Packaged, and Prepared Foods." (For purposes of this draft guidance, "commercially processed, packaged, and prepared foods" refers to processed, multiple-ingredient foods that have been packaged by a member of the food industry for direct sale to consumers or for use in restaurants and similar retail food establishments including, but not limited to, restaurants, or for resale to other members of the food industry, as well as foods that are prepared by food establishments for direct consumption.) The draft guidance provides information to the food industry on sodium reduction, expressed as measurable voluntary goals for sodium content (from sodium chloride, commonly called "salt," as well as other sodium-containing ingredients) in commercially processed, packaged, and prepared foods. Approximately 75 percent of sodium consumed by Americans is added to foods before they are sold (Ref. 6). Thus, the goals are intended to promote reductions in the amount of sodium added during processing, manufacturing, and preparation, especially for uses not necessary for microbial safety, stability, and/or physical integrity. We particularly encourage attention by food manufacturers whose products make up a significant proportion of national sales in one or more categories and restaurant chains that are national or regional in scope.

Broad adoption of these voluntary recommendations by the industry members would create a meaningful reduction in population intake over time and support adjustment of consumer taste preferences. We recognize that many companies have initiated sodium reduction efforts and have made commitments on their own. The voluntary goals are intended to support ongoing efforts, including progress that has already been made by industry. This approach also builds on other efforts such as an initiative by New York City in partnership with local and State health departments and health organizations and international approaches from foreign governments such as Canada and the United Kingdom. The voluntary goals are intended to provide a shared framework for describing and analyzing the success of voluntary reduction efforts by various industry stakeholders and to promote continued discussion on sodium reduction opportunities. The guidance is intended to help achieve public health goals and see safe, gradual, and broadly distributed change over time across the full range of commercially processed, packaged, and prepared foods. To accomplish these goals, discussion and collaboration among FDA, Federal partners, the food industry, consumers, and other stakeholders will be essential.

We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of the FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You may use an alternate approach to reducing sodium as long as these approaches satisfy the requirements of the applicable statutes and regulations.

The draft guidance provides our tentative views with respect to identifying challenging, yet feasible, target mean and upper bound concentrations of sodium (referred to in this document as "sodium concentration goals") across a wide variety of food categories. Our targets are based on our analysis of the current minimum and upper bound levels of sodium in a variety of identified food categories, available literature on the amount of salt needed for different functions in food, and discussions with experts on different food categories. Our milestone date for the short-term goals is the second year after publication of the final guidance. Our milestone date for the long-term goals is the 10th year after publication of the final guidance. The short-term targets are intended to be more easily achievable and as many as half of all products may already have achieved these interim targets. We recognize that the longer term targets are more difficult to achieve. We are aware that new ingredients capable of replacing some salt as well as other innovative strategies are being explored and more research and development may be needed. We also want to make clear that broader public health goals and maintenance of nutritional quality are important considerations in developing sodium reduction or reformulation strategies. For example, sodium reduction that relies on increases in added sugars would not be consistent with the public health goals of this guidance.

The sodium concentration goals in this voluntary draft guidance are intended to:

- Support increased food choice for consumers seeking to consume a diverse diet that is consistent with recommendations of the 2015–2020 Dietary Guidelines for Americans;
- support the 2015–2020 Dietary Guidelines and the Healthy People 2020 recommendations of less than 2,300 mg per day for many individuals;
- provide shared goals as metrics (mg/100g) for voluntary reduction efforts by various industry stakeholders;
- support successful efforts already underway in the private sector to reduce sodium content;
- focus on total amount of sodium in a given food as opposed to any individual sodium-containing ingredient; and
- support and extend industry's voluntary efforts to reduce sodium across the range of commercially processed, packaged, and prepared foods.

This guidance does not:

- Recommend specific methods and technologies for sodium reduction;
- prescribe how much of any individual sodium-containing ingredient, such as salt or sodium nitrite, should be used in a formulation (in other words, we focus on the total amount of sodium in a given food);
- focus on foods that contain only naturally occurring sodium (*e.g.*, milk); or
- address salt that individuals add to their food.

As described in the notice "Approaches to Reducing Sodium Consumption; Establishment of Dockets; Request for Comments, Data, and Information" (76 FR 57050, September 15, 2011, referred to in this document as the 2011 request for comment), current sodium intake is substantially higher than what scientific and public health agencies and organizations have recommended in recent years. There have been a number of public and industry initiatives to reduce sodium intake, as well as initiatives in other countries (76 FR 57050 at 75051). In April 2010, IOM released a report titled "Strategies to Reduce Sodium Intake in the United States" which concluded that sodium intake, with the greatest contribution from salt, remains well above recommended levels (Ref. 1).

We recognize that a successful effort to reduce sodium intake requires information on a wide variety of topics, resulting from a genuine dialogue with all interested persons. To begin this dialogue, in 2011, FDA and the U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) opened parallel dockets for public comment and described the rationale for sodium intake reduction and identified 15 specific issues for

comment by all interested persons (76 FR 57050). These issues concerned multiple aspects of sodium reduction, including technical challenges and opportunities, implementation of reduction targets, and potential unintended consequences of reduction.

In November 2011, FDA and FSIS, in conjunction with other Federal agencies interested in sodium reduction efforts, including the Centers for Disease Control and Prevention and USDA's Agricultural Research Service and Center for Nutrition Policy and Promotion, sponsored a public meeting to provide a forum for discussion of the issues raised in the 2011 request for comment. FDA and FSIS together received approximately 1,500 comments, which addressed the following key themes:

- The need for slow and gradual change;
- the importance of acknowledging technical and regulatory constraints;
- the need for consumer acceptance and market viability of new or reformulated products;
- the critical importance of maintaining a safe food supply;
- the potential health consequences of broad sodium reduction;
- the costs associated with broad reductions in sodium;
- the potential for positive incentives to promote reformulation; and
- reports of successful reduction efforts.

We reviewed the comments submitted to the 2011 request for comments as well as other available information. In particular, we have considered the 2013 IOM report, "Sodium Intake in Populations: Assessment of Evidence." The IOM report concluded that evidence from studies on direct health outcomes associated with sodium intake was sufficient to support reducing excessive sodium intake, noting a benefit for cardiovascular disease outcomes if population sodium intake came down to a level of 2,300 mg/day. Ultimately, this report reaffirmed the association between sodium intake and health outcomes, which supports the need to engage in population-based efforts to lower excessive dietary sodium intakes (Ref. 2).

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 101 have been approved under OMB control number 0910–0381. The collections of information in 21 CFR 101.11 have been approved under OMB control number 0910–0783.

IV. Issues for Consideration

We developed the sodium targets using the best available representation of sodium in the food supply, based on product nutrition data from manufacturers and widely used sales data. We welcome comment on any issues related to the methods for developing the sodium targets and for implementation of this guidance. In particular, we are interested in comments on collecting and organizing these data into food categories, our methods for quantifying sodium content, refinements to the specific mean and upper bound targets based on adjustments of our category structures and data, and any challenges of implementing the voluntary goals. Please provide the reasoning behind your comments, including, where available, any data you may have.

1. Are there categories where foods have been grouped together that should be separated on the basis of different manufacturing methods or technical effects relating to the potential for sodium reduction? Conversely, are there categories which could be merged due to similar sodium functionality and potential for reduction? Are there foods that contribute to sodium intake that we have not effectively captured? Are the categories amenable for use by restaurant chains and if not, how should they be modified to make them amenable for use by restaurant chains?

2. Are the baseline sodium concentration values reasonably representative of the state of the food supply in 2010? For categories that do not appear representative, what food products are not adequately represented? Are there situations in which our method of quantification could lead to unrepresentative baseline values?

3. Are there categories for which the 2-year target concentration goals are infeasible? If so, why are these targets not feasible, *e.g.*, for technical reasons? What goals would be feasible in the short-term (2-year), and why? For reference, a supplementary memorandum to the docket is provided to further describe the type of information needed, "Target Development Example: Supplementary Memorandum to the Draft Guidance" (Ref. 7).

4. Are the short-term (2-year) timeframes for these goals achievable? If the timeframes are not achievable, what timeframes would be challenging, but still achievable?

5. Are there categories for which the 10-year target concentration goals are infeasible? If so, why are these targets not feasible, *e.g.*, for technical reasons? What goals would be feasible in the long-term (10-year), and why? For reference, a supplementary memorandum to the docket is provided to further describe the type of information needed, "Target Development Example: Supplementary Memorandum to the Draft Guidance" (Ref. 7).

6. Are the long-term (10-year) timeframes for these goals achievable? If the timeframes are not achievable, what timeframes would be challenging, but still achievable?

7. What specific research needs or technological advances (if any) could enhance the food industry's ability to meet these goals? What are possible innovations in the area of sodium reduction and are there any unintended consequences associated with their use?

8. What amendments to FDA's standard of identity regulations in 21 CFR parts 130–169 are needed to facilitate sodium reduction by permitting alternative ingredients to be used in standardized foods? For example, amendments could include revisions to specific standards (*e.g.*, cheese or cheese products) and to the general requirements for foods named by use of a nutrient content claim (*e.g.*, "reduced sodium") and a standardized term under 21 CFR 130.10.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances*, or *http://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

VI. References

The following references are on display in FDA's Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to Web sites after this document publishes in the **Federal Register**.

1. IOM. "Strategies to Reduce Sodium Intake in the United States," Washington DC: The National Academies Press (2010).

2. IOM. "Sodium Intake in Populations: Assessment of Evidence Institutes of

Medicine (IOM) Report," Washington DC: The National Academies Press (2013).

3. Strom, B. L., C. A. M. Anderson, and J. H. Ix. "Sodium Reduction in Populations: Insights From the Institute of Medicine Committee." *Journal of the American Medical Association.* July 3, 2013; 310(1): 31–32.

4. "Scientific Report of the 2015 Dietary Guidelines Advisory Committee," Part B, Chapter 6. *http://www.health.gov/dietaryguidelines/2015-scientific-report/.* Accessed March 9, 2015.

5. Coxson, P. G., N. R. Cook, M. Joffres, Y. Hong, et al. "Mortality Benefits From U.S. Population-Wide Reduction in Sodium Consumption." *Hypertension.* March 2013; 61:564–570.

6. Mattes, R. D. and D. Donnelly. "Relative Constitutions of Dietary Sodium Sources." *Journal of the American College of Nutrition.* August 1991;10(4):383–93.

7. FDA. "Memo: Target Development Example: Supplementary Memorandum to the Draft Guidance (2016)."

Dated: May 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12950 Filed 6–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1543]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Nonproprietary Naming of Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 5, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title "Nonproprietary Naming of Biological Products." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Nonproprietary Naming of Biological Products OMB Control Number 0910–NEW

The guidance entitled "Guidance for Industry on Nonproprietary Naming of Biological Products" describes FDA's current thinking on the need for biological products licensed under the Public Health Service Act (PHS Act) to bear a nonproprietary name that includes an FDA-designated suffix. There is a need to clearly identify biological products to facilitate pharmacovigilance and, for the purposes of safe use, to minimize inadvertent substitution. Accordingly, for biological products licensed under the PHS Act, FDA intends to designate a nonproprietary name that includes a core name and a distinguishing suffix. This naming convention is applicable to biological products previously licensed and newly licensed under section 351(a) or 351(k) of the PHS Act (42 U.S.C. 262(a) or 262(k)).

The guidance includes information collection by requesting that applicants propose a suffix composed of four lowercase letters for use as the distinguishing identifier included in the proper name designated by FDA at the time of licensure for biological products licensed under the PHS Act. The suffix will be incorporated in the nonproprietary name of the product. The guidance recommends that applicants should submit up to 10 proposed suffixes, in the order of the applicant's preference. We also recommend including supporting analyses demonstrating that the proposed suffixes meet the factors described in the guidance for FDA's consideration.

As indicated in table 1, we estimate that we will receive a total of 40 requests annually for the proposed proper name for biological products submitted under section 351(a) of the PHS Act, and 6 requests annually for the proposed proper name for biosimilar products and interchangeable products submitted under section 351(k) of the PHS Act. The average burden per response (hours) is based on our experience with similar information collection requirements for applicants to create and submit suffix proposals to FDA and in consideration of comments received in response to our 60-day notice.

In the **Federal Register** of August 28, 2015 (80 FR 52296), we published a 60-day notice requesting public comment on the proposed collection of information. Most comments supported our proposal to designate a suffix. Many comments suggested that a meaningful, distinguishable suffix may help to improve pharmacovigilance, enhance safety, and facilitate identification between biological products. Some comments supported use of a random suffix to avoid creating an unfair advantage for specific manufacturers. Several comments stated that the current practices of FDA and non-FDA entities for identifying biosimilar and interchangeable products is sufficient for the purpose of pharmacovigilance, and designation of a suffix is not needed. One comment stated that FDA's estimate of 6 hours to submit proposed suffixes is based only on the time needed to prepare the submission itself after the multiple suffixes have been selected. The comment further stated that because FDA suggests that each respondent submit three suggested suffixes for consideration, the time needed to do an analysis of each suffix would exceed 720 hours per suffix (based on their own company experience) or 2,160 hours total for the three suffixes.

In response to the comments we note that our estimated annual reporting burden results from information that would be submitted to us by applicants in order to facilitate Agency designation of a suffix as part of the proper name of a biological product. We estimated that sponsors would spend 2 hours completing the submission for each of the three suffixes, resulting in 6 hours as the average burden. This estimate is an annualized figure based on the average number of responses per respondent and the average burden per response over a 3-year period. We understand that there is a certain amount of research and other costs that an applicant might encounter in analyzing any proposed name for a biological product. We also recognize that the burden may be higher for some applicants and lower for other applicants based on a variety of factors specific to the applicant.

The comment suggesting that it will take 720 hours to complete an analysis

and submission for each suffix does not provide a basis by which the estimate was calculated or whether it is broadly applicable. We find this figure rather high and retain our original estimate of 6 hours. The latter figure is based on our familiarity with the average amount of time required by similar submissions to FDA. At the same time, the comment also suggested that we failed to adequately account for the time spent on creating proposed suffixes. In consideration, therefore, we have revised our estimate upward to account for burden associated with creating and submitting up to 10 proposed suffixes for designation, as reflected in table 1.

FDA estimates the information collection burden as follows:

Description of Respondents: Respondents to the collection are sponsors of biological product applications.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Information for the Proposed Proper Name for Biological Products Submitted Under Section 351(a) of the PHS Act	20	2	40	420	16,800
Information for the Proposed Proper Name for Biosimilar Products and Interchangeable Products Submitted Under Section 351(k) of the PHS Act	3	2	6	420	2,520
Total					19,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information for the submission of a biologics license application (BLA) and changes (supplements) to an approved application under 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information for the submission of a BLA under section 351(k) of the PHS Act (biosimilar products and interchangeable products) have been approved under OMB control number 0910–0719.

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–12885 Filed 6–1–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps (NACNHSC).

Dates and Times: June 22, 2016 11:00 a.m.–5:00 p.m. EST.

Place: U.S. Department of Health and Human Services, Health Resources and Services Administration, Conference Room #5E29, 5600 Fishers Lane, Rockville, Maryland 20857, Webinar and Conference Call Format.

Status: This advisory council meeting will be open to the public.

Purpose: The NACNHSC provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and, by designation, the Administrator of the Health Resources and Services Administration (HRSA) on a range of issues including identifying the priorities for the National Health Service Corps (NHSC) and policy revisions.

Agenda: The NACNHSC will refine the Council's top priorities for the NHSC and will continue to work on the draft of formal recommendations to submit to the HHS Secretary and the HRSA Administrator. During the March 2016 NACNHSC meeting, the Council identified its priorities for the NHSC. The Council will continue the discussion on how the priorities meet the goals of the 2016 Bureau of Health Workforce Strategic Plan. The priority areas include, but are not limited to, telehealth, Medication Assisted Treatment (MAT) certification, mentorship and NHSC discipline expansion, specifically for mental and behavioral and oral health providers. The content of the agenda is subject to change prior to the meeting. The NACNHSC final agenda and call-in information will be available 3 days in advance of the meeting at *http://nhsc.hrsa.gov/corpsexperience/aboutus/nationaladvisorycouncil/meetingsummaries/index.html.*

FOR FURTHER INFORMATION CONTACT: Please send requests for information to Dawn Smith, Bureau of Health Workforce, HRSA, in one of two ways: (1) Send a request to the following address: Dawn Smith, Bureau of Health Workforce, Health Resources and Services Administration, Room 14N70B, 5600 Fishers Lane, Rockville, Maryland 20857; or (2) send an email to *dsmith3@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Further information regarding the NACNHSC, including the roster of members and past meeting summaries, is available at: *http://nhsc.hrsa.gov/corpsexperience/aboutus/nationaladvisorycouncil/meetingsummaries/index.html.*

Members of the public and interested parties may request to participate in the meeting by contacting Dawn Smith via email at *dsmith3@hrsa.gov* to obtain access information. Access will be granted on a first come, first served basis. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting. If you would like to provide oral public comment during the meeting, please register with Dawn Smith. Public comment will be limited to 3 minutes per speaker. Statements and comments can be addressed to Dawn Smith by emailing her at *dsmith@hrsa.gov.*

In addition, please be advised that committee members are given copies of all written statements submitted from the public. Any further public

participation will be solely at the discretion of the Chair, with approval of the Designated Federal Official. Registration through the designated contact for the public comment session is required.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–13052 Filed 6–1–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: June 12–14, 2016.

Time: 6:00 p.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room GF144, Bethesda, MD 20892, (301) 435–2232, *koretskya@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: May 26, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12895 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel—Research Support Services for NIDA AIDS Program (1209).

Date: June 21, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: May 26, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12894 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Population Assessment of Tobacco and Health (PATH) Study (NIDA)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 11, 2016, pages 12913–12914 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project, contact: Dr. Kevin P. Conway, Deputy Director, Division of Epidemiology, Services, and Prevention Research, NIDA, NIH, 6001 Executive Boulevard, Room 5185, Rockville, MD 20852; or call non-toll-free number (301) 443–8755 or Email your request, including your address to: *PATHprojectofficer@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Methodological Studies for the Population Assessment of Tobacco and Health (PATH) Study (NIDA), 0925–0675, expiration date 5/31/2016—Reinstatement Without Change—NIDA, NIH, in partnership

with the Food and Drug Administration (FDA).

Need and Use of Information Collection: This is a request to continue the Population Assessment of Tobacco and Health (PATH) Study's conduct of methodological studies in support of improvements in the Study's approaches for data and biospecimen collection. The PATH Study is a national longitudinal cohort study of tobacco use behavior and health among the U.S. household population of adults age 18 and older and youth ages 12 to 17; the Study conducts annual or biannual interviews and collects biospecimens from adults and youth to inform FDA's regulatory actions under the Family Smoking Prevention and Control Act. The methodological studies under this reinstatement will continue to enhance the approaches used by the PATH Study for data and biospecimen collections to obtain high quality and useful data; minimize respondent burden; and achieve and maintain high response, retention, and follow-up rates.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total annualized burden hours are 29,750.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
In-person and telephone surveys	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Web and smartphone/mobile phone surveys	Adults	5,000	1	90/60	7,500
	Youth	3,500	1	90/60	5,250
Focus groups and individual in-depth qualitative interviews	Adults	1,000	1	2	2,000
	Youth	1,000	1	2	2,000
Biospecimen collection	Adults	1,000	1	15/60	250
Total		20,000	20,000		29,750

Dated: May 27, 2016.

Genevieve deAlmeida-Morris,

Project Clearance Liaison, NIDA, NIH.

[FR Doc. 2016–12994 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW., Washington, DC 20036.

Contact Person: Mei Qin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, *qinmei@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–052 Fogarty NDC R21.

Date: June 27–28, 2016.

Time: 7:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Fungai Chanetsa, MPH, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Academic Industrial Partnership.

Date: June 27, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Informatics.

Date: June 27, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Claire E Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Macromolecular Structure and Function.

Date: June 27, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: William A Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: ACL Injury, Biomechanics and Osteoarthritis.

Date: June 27, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

Date: June 27, 2016

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: May 27, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12996 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel Fellowship Training Grants.

Date: June 9, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yujing Liu, Ph.D., MD., Chief, Office of Review, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 710, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 26, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12896 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

Date: June 21–22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Kathy Salaita, Sc.D., Chief, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Blvd., Rm. 818, Bethesda, MD. 20892, 301–594–5033, *Kathy.Salaita@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12893 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA SEP for Medications Development.

Date: June 22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, *ruizjf@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Systems Biology Approaches in HIV/AIDS and Substance Use (R01).

Date: July 7, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Blvd., Room 4238, MSC 9550, Bethesda, MD 20892–9550, 301–402–6626, *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 27, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12998 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c) (6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–280: Program Project: Mechanisms of Membrane Fusion.

Date: June 14, 2016.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David R Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)-435–1722, *jollieda@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroplasticity and Neurotransmitters Study Section.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: June 23–24, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Mechanisms of Antimicrobial Resistance.

Date: June 23, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John C Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 26, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12898 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT: Licensing information may be obtained by emailing the indicated licensing contact at the National Heart, Lung, and Blood, Office of Technology Transfer and Development Office of Technology Transfer, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479; telephone: 301–402–5579. A signed Confidential Disclosure Agreement may be required to receive any unpublished information.

SUPPLEMENTARY INFORMATION: Technology description follows.

Albumin Binding Immunomodulatory Compositions

The invention relates to molecules wherein Evan's Blue dye is chemically conjugated to CpG Oligonucleotides that elicit anti-tumoral or infection fighting immunity. Evans Blue, a symmetric azo dye, has high binding affinity to albumin. Albumin binding ability of Evans blue is utilized with CpGs and tumor-specific antigens, in order to leverage endogenous albumin that increases the safety and the potency of molecular vaccines. As such, the molecular entities provided here enable efficient delivery and prolonged retention in lymph nodes and reduce systemic toxicity of Evans Blue and enhanced the therapeutic potency of molecular vaccines.

Potential Commercial Applications:

- Cancer therapeutics
- Infectious disease therapeutics
- Lymph node specificity
- Higher stability/Lower toxicity

Development Stage:

- Early stage

Inventors: Xiaoyuan Chen and Guizhi Zhu (both of NIBIB).

Intellectual Property: HHS Reference No. E–149–2016/0; U.S. Provisional Patent Applications 62/331,890 filed May 4, 2016.

Licensing Contact: Michael Shmilovich, Esq, CLP; 301–435–5019; *shmilovm@mail.nih.gov.*

Dated: May 26, 2016.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute, Office of Technology Transfer and Development.

[FR Doc. 2016–12892 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; The Study of Center of Global Health's (CGH) Workshops (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Instititue, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2016 and page 10638 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute, NCI, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact*: Sudha Sivaram, National Cancer Institute Center for Global Health, 9609 Medical Center Dr., Rm 3W528, Rockville, MD 20850 or call non-toll-free number (240) 276–5815 or Email your request, including your address to: *sudha.sivaram@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: The Study of the Center of Global Health's (CGH) Workshops (NCI), 0925–0722, Expiration Date 06/30/2018, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This study is collecting stakeholder feedback from past and future workshops; to assess the effectiveness of the Center of Global Health (CGH) workshops, which seek to assess abilities of the workshop attendees and respective countries to implement national cancer control programs; inform content and improve delivery of future workshops, and to systematically assess CGH's contribution. The workshops to be studied are the Symposiums on Global Cancer Research, Workshops in Cancer Control Planning and Implementation, the Summer Curriculum in Cancer Prevention, Women's Cancer Program Summit, Regional Grant Writing and Peer Review Workshops, and Workshops on Tobacco Control. While these workshops differ in content and delivery style, their underlying goals are the same; they intend to initiate and enhance cancer control efforts, increase capacity for cancer research, foster new partnerships, and create research and cancer control networks. The proposed study requests information about the outcomes of each of these workshops including (1) new cancer research partnerships and networks (2) cancer control partnerships and networks, (3) effects on cancer research, and (4) effect on cancer control planning and implementation efforts. Information will be collected in two phases where Phase 1 will collect information from attendees of past workshops (1998–2015) and Phase 2 will collect information from attendees of future workshops over the next three years. The surveys will enable CGH to better understand the impact the workshops have had on their partnerships and networks, research, and cancer control planning and implementation efforts.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 941.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Chief Executives, Medical Scientists, Health Educators, Family/General Practitioners, Registered Nurses, Medical and Health Services Managers.	Phase 1: Symposium on Global Cancer Research.	500	1	20/60	167
	Phase 2: Symposium on Global Cancer Research.	250	1	20/60	84
	Phase 1: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants.	70	1	20/60	23
	Phase 2: Workshop in Cancer Control Planning and Implementation for non-Ministry of Health participants.	70	1	20/60	23
	Phase 1: Workshop in Cancer Control Planning and Implementation for Ministry of Health.	70	1	20/60	23

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents per year	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
	Phase 2: Workshop in Cancer Control Planning and Implementation for Ministry of Health.	70	1	20/60	23
	Phase 1: Summer Curriculum in Cancer Prevention (Attach 3D).	500	1	30/60	250
	Phase 2: Summer Curriculum in Cancer Prevention.	27	1	30/60	14
	Phase 1: Women's Cancer Program Summit.	140	1	20/60	47
	Phase 2: Women's Cancer Program Summit.	140	1	20/60	47
	Phase 1: Regional Grant Writing and Peer Review Workshop.	150	1	30/60	75
	Phase 2: Regional Grant Writing and Peer Review Workshop.	60	1	30/60	30
	Phase 1: Workshops on Tobacco Control.	180	1	30/60	90
	Phase 2: Workshops on Tobacco Control.	90	1	30/60	45
Totals		2,317	2,317		941

Dated: May 26, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–12995 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Sensory and Cognitive Processes.

Date: June 21–22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5213, Bethesda, MD 20892, *jdrgonova@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: June 27, 2016.

Time: 8:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pregnancy and Neonatology Study Section.

Date: June 28–29, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular and Cellular Substrates of Complex Brain Disorders.

Date: June 28, 2016.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Deborah L. Lewis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Nephrology.

Date: June 28–29, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: June 28, 2016.

Time: 8:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW., Washington, DC 20037.

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, 301–755–4335, *greg.shelness@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

Date: June 28, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal Rehabilitation Sciences.

Date: June 28, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Musculoskeletal Rehabilitation Sciences.

Date: June 28, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hormonal Regulation of Bone Metabolism.

Date: June 28, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychosocial Development, Risk and Prevention.

Date: June 28, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal Inflammation and Development.

Date: June 28, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 27, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–12997 Filed 6–1–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2016–0142]

Towing Safety Advisory Committee; June 2016 Teleconference

AGENCY: Coast Guard, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The Towing Safety Advisory Committee will meet, via teleconference, to receive two additional tasks: One on the implementation of 46 Code of Federal Regulations subchapter M and the other on training requirement for firefighting equipment for inland towing vessels. This meeting will be open to the public.

DATES: The full committee will meet by teleconference on Tuesday, June 22, 2016, from 1 p.m. until 3 p.m. Eastern Daylight Time. Please note that this meeting may close early if the Committee has completed its business. To join the teleconference, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to obtain the needed information no later than 1 p.m. on June 15, 2016. The number of teleconference lines is limited and will be available on a first-come, first-served basis. Written comments for distribution to Committee members before the meeting must be submitted no later than June 15, 2016.

ADDRESSES: Written comments may be submitted to the docket for this notice, USCG–2016–0142, using the Federal eRulemaking Portal at *http://www.regulations.gov.* To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the "Agenda" section below. If you encounter technical difficulties, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: All submissions must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management system in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2016–0142 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Abernathy, Alternate Designated Federal Officer of the Towing Safety Advisory Committee, 2703 Martin Luther King Jr Ave. SE., Stop 7509, Washington, DC 20593–7509, telephone 202–372–1363, fax 202–372–8382 or *william.j.abernathy@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting via teleconference is in compliance with the Federal Advisory Committee Act, (Title 5 U.S.C. Appendix). As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters related to shallow-draft inland and coastal waterway navigation and towing safety.

Agenda of Meeting

The agenda for the June 22, 2016, teleconference is as follows:

(1) Assignment of new tasking to the Committee for "Recommendations on the Implementation of 46 Code of Federal Regulations Subchapter M—Towing Vessels" (Short Title:

Subchapter M Implementation). Work on this task is to begin after the Inspection of Towing Vessels final rule publishes.

(2) Assignment of new tasking to the Committee for "Recommendation Regarding Firefighting Training Requirements for Officer Endorsements for Master or Mate (Pilot) of Towing Vessels, Except Utility Towing and Apprentice Mate (Steersman) of Towing Vessels, in Inland Service" (Short title: "Firefighting Training Requirements").

During the June 22, 2016 meeting via teleconference, a public comment period will be held from approximately 2:45 p.m. to 3 p.m. Speakers are requested to limit their comments to three minutes. Please note that this public comment period may start before 2:45 p.m. if all other agenda items have been covered and may end before 3 p.m. if all of those wishing to comment have done so.

Minutes

Minutes from the meeting will be available for public review and copying within 30 days following the meeting at *https://homeport.uscg.mil/tsac.*

Notice of Future 2016 Towing Safety Advisory Committee Meetings

To receive automatic email notices of any future Towing Safety Advisory Committee meetings in 2016, go to the online docket, USCG–2016–0142 (*http://www.regulations.gov/1B!docketDetail;D=USCG-2016-0142*), and select the sign-up-for-email-alerts option. We plan to use the same docket number for all Towing Safety Advisory Committee meeting notices in 2016, so if another 2016 meeting notice is published you will receive an email alert from *www.regulations.gov* when the notice appears in this docket.

Dated: May 26, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–12963 Filed 6–1–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21118; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before May 14, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by June 17, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 14, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

ALABAMA

Colbert County

Florence, Alabama Music Enterprises (FAME) Recording Studios, 603 Avalon Ave., Muscle Shoals, 16000397

Conecuh County

Evergreen School, 100 City School Dr., Evergreen, 16000398

Jefferson County

North Lakeview Industrial District, 2801–3211 2nd & 2810–3130 3rd Aves. S., 216–31 29th, 130 30th, 230 31st & 205 32nd Sts., S., Birmingham, 16000399

Mobile County

Automobile Alley Historic District, 156–157 N. Cedar, 108 N. Dearborn, 100–101 N. Franklin, 156 N. Hamilton, 163 N. Lawrence, 453–701 St. Anthony Sts., Mobile, 16000400

ALASKA

Juneau Borough-Census Area

X'unaxi, Address Restricted, Juneau, 16000401

ARKANSAS

Carroll County

Berryville Commercial Historic District, Public Square, Berryville, 16000402

KANSAS

Atchison County

Martin, John A., Grade School, (Public Schools of Kansas MPS) 507 Division, Atchison, 16000403

Brown County

Iowa Tribe Community Building, (New Deal-Era Resources of Kansas MPS) 330th Rd., White Cloud, 16000404

Neosho County

Oak Grove School, District 20, (Public Schools of Kansas MPS) 20505 20th Rd., St. Paul, 16000405

Scott County

Steele, Herbert and Eliza, House, W. Scott Lake Dr., Scott City, 16000406

Sedgwick County

Colorado—Derby Building, 201 N. Water St., Wichita, 16000407

MARYLAND

Caroline County

Chambers Park Log Cabin, Liberty Rd., Federalsburg, 16000408

MASSACHUSETTS

Suffolk County

Francis Street—Fenwood Road Historic District, Roughly bounded by Huntington Ave., Francis, Vining & Fenwood Sts., St. Albans Rd., Boston, 16000409

MICHIGAN

Kalamazoo County

Fountain of the Pioneers, (Kalamazoo MRA) Bronson Park, bounded by Academy, Rose, South & Park Sts., Kalamazoo, 16000417

MONTANA

Blaine County

Ervin Homestead—Gist Bottom Historic District, River Mile 122.3 Left, Hays, 16000410

NEW YORK

Columbia County

Columbia Turnpike East Tollhouse, NY 23, Hillsdale, 16000411

Rensselaer County

Methodist Episcopal Church of Lansingburgh, 600 3rd Ave., Lansingsburgh, 16000412

OREGON

Josephine County

Grey, Zane, Cabin, N. bank of Rogue R., Galice, 16000413

SOUTH CAROLINA

Berkeley County

Gippy Plantation, 366 Avenue of Oaks, Moncks Corner, 16000414

SOUTH DAKOTA

Clay County

Bluff Historic District, Oak Pl., Court, Kidder, Church & Bloomingdale Sts., Vermillion, 16000415

TENNESSEE

Davidson County

Fire Hall for Engine Company No. 18, 1220 Gallatin Ave., Nashville, 16000416

UTAH

Salt Lake County

Bourne, Ernie and Irmgard, House, (Mount Olympus—Millcreek Community MPS) 3460 E. Ranch View Dr., Millcreek Township, 16000418

Butler, Donald and Erma, House, (Mount Olympus—Millcreek Community MPS) 3450 E. Ranch View Dr., Millcreek Township, 16000419

Fish—Baughman House, (Mount Olympus—Millcreek Community MPS) 3436 E. Ranch View Dr., Millcreek Township, 16000420

WISCONSIN

Sheboygan County

Downtown Plymouth Historic District, Generally bounded by the 100, 200, 300 & 400 blks. of E. Mill St., Plymouth, 16000421

Authority: 60.13 of 36 CFR part 60

Dated: May 18, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–12982 Filed 6–1–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21141; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before May 21, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by June 17, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 21, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

CALIFORNIA

Santa Clara County

Willow Glen Trestle over Los Gatos Creek, On former Western Pacific RR. approx. 1/4 mi. N. of jct. of Coe Ave. & Leona Ct., San Jose, 16000422

FLORIDA

Orange County

Laughlin, James, House, 5538 Sydonie Dr., Mount Dora, 16000423

MASSACHUSETTS

Hampden County

Chapin School, 40 Meadow St., Chicopee, 16000424

OREGON

Clackamas County

Willamette National Cemetery, 11800 SE. Mt. Scott Blvd., Portland, 16000426

PENNSYLVANIA

Philadelphia County

Delaware Station of the Philadelphia Electric Company, The, 1325 Beach St., Philadelphia, 16000427

Times Finishing Works, 1136–1148 N. American St., Philadelphia, 16000428

WISCONSIN

Dane County

Willow Drive Mounds and Habitation Site Complex, (Late Woodland Stage in Archeological Region 8 MPS) N. end of Willow Dr., Madison, 16000430

Marathon County

Dells of the Eau Claire County Park, P2150 Cty. Rd. Y, Plover, 16000429

A request for removal was received for the following resource:

TENNESSEE

Marion County

Marion Memorial Bridge, US 41 at Nickajack Lake, Haletown, 07000930

Authority: 60.13 of 36 CFR part 60.

Dated: May 23, 2016.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2016–12984 Filed 6–1–16; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–959]

Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same; Commission Determination To Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 42) of the presiding administrative law judge ("ALJ") granting complainant's motion for summary determination of violation of section 337.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), on June 25, 2015, based on a complaint filed by Pacific Bioscience Laboratories, Inc. of Redmond, Washington ("PBL"). 80 FR 36576–77 (Jun. 25, 2015). The amended complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electric skin care devices, brushes and chargers therefor, and kits containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,320,691 and 7,386,906, and U.S. Design Patent No. D523,809. The complaint further alleges violations of section 337 by reason of trade dress infringement, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The complaint named numerous respondents. The Commission's Office of Unfair Import Investigations was named as a party.

During the course of the investigation, eight of the respondents were terminated by consent order: Nutra-Luxe M.D., LLC of Fort Myers, Florida (Order No. 10) (consent order issued Jan. 5, 2016); SkincarebyAlana of Dana Point, California (Order No. 11) (consent order issued Oct. 6, 2015); Unicos USA, Inc. of LaHabra, California (Order No. 15) (consent order issued Oct. 20, 2015); H2PRO Beautylife, Inc. of Placentia, California (Order No. 19) (consent order issued Oct. 22, 2015); Jewlzie of New York, New York (Order No. 20) (consent order issued Oct. 22, 2015); Home Skinovations Inc. of Richmond Hill, Ontario, Canada, and Home Skinovations Ltd. of Yokneam, Israel (Order No. 30) (consent order issued Dec. 23, 2015); and Accord Media, LLC of New York, New York (Order No. 31) (consent order issued Dec. 23, 2015). Respondent RN Ventures Ltd. of London, United Kingdom, was terminated based on a settlement agreement (Order No. 36) (*not reviewed* Feb. 4, 2016). Respondents Michael Todd LP and MTTO LLC, both of Port St. Lucie, Florida, were also terminated based on a settlement agreement (Order No. 37) (*not reviewed* Mar. 3, 2016).

The remaining ten respondents were found in default: Coreana Cosmetics Co., Ltd. of Chungcheongnam-do, Republic of Korea; Flageoli Classic Limited of Las Vegas, Nevada; Serious Skin Care, Inc. of Carson City, Nevada; Shanghai Anzikang Electric Co., Ltd. of Shanghai, China; and Wenzhou Ai Er Electrical Technology Co., Ltd. of ZheJiang, China (Order No. 13) (*not reviewed,* as modified by Order No. 15, Oct. 20, 2015); ANEX Corporation of Seoul, Republic of Korea; Korean Beauty Co., Ltd. of Seoul, Republic of Korea; and Our Family Jewels, Inc. of Parker, Colorado (Order No. 18) (*not reviewed* Oct. 22, 2015); Beauty Tech, Inc. of Coral Gables, Florida (Order No. 24) (*not reviewed* Nov. 13, 2015); and Xnovi Electronic Co., Ltd. of Shenzhen, China (Order No. 32) (*not reviewed* Dec. 23, 2015) (collectively, "the defaulting Respondents").

On February 18, 2016, complainant PBL filed a motion for summary determination of violation of Section 337 by the defaulting Respondents. The Commission investigative attorney ("IA") filed a response in support of the motion. No other responses were filed.

On April 11, 2016, the ALJ issued an ID (Order No. 42) granting complainant's motion and making recommendations regarding remedy and bonding. The IA filed a timely petition for review-in-part of the ID. No other party petitioned for review of the ID. Complainant PBL filed a response in support of the IA's petition. No other responses were filed.

The Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's findings on the economic prong of the domestic industry requirement as to the patent-based allegations, all issues related to violation of the asserted trade dress, and to correct certain minor typographical errors. The Commission does not request any submissions on the issues under review.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration dates of each of the asserted patents, and state the HTSUS subheadings under which the accused articles are imported. Complainant is also requested to supply the names of known importers of the infringing articles. The written submissions and proposed remedial orders must be filed no later than the close of business on June 9, 2016. Reply submissions must be filed no later than the close of business on June 16, 2016. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 42. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to

the investigation number ("Inv. No. 337–TA–959") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 26, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12923 Filed 6–1–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–946]

Certain Ink Cartridges and Components Thereof; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue: (1) A general exclusion order ("GEO") barring entry of certain ink cartridges and components thereof that infringe the patents asserted in this investigation; and (2) cease and desist orders ("CDOs") directed against two domestic defaulting respondents. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), on January 27, 2015, based on a complaint filed by Epson Portland Inc., Epson America, Inc. and Seiko Epson Corporation (collectively, "Epson," or Complainants). 80 *FR* 4314–16 (Jan. 27, 2015). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent No. 8,366,233 ("the '233 patent"); U.S. Patent No. 8,454,116 ("the '116 patent"); U.S. Patent No. 8,794,749 ("the '749 patent"); U.S. Patent No. 8,801,163 ("the '163 patent"); and U.S. Patent No. 8,882,513 ("the '513 patent") (collectively, the "Asserted Patents") by numerous respondents. *Id.* In particular, the notice of investigation named the following nineteen entities as respondents: Zhuhai Nano Digital Technology Co., Ltd. of Zhuhai, China; Nano Business & Technology, Inc. of Lake Oswego, Oregon; Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Zhuhai, China; Huebon Co. Ltd. of Hong Kong; Chancen Co., Ltd. of Hong Kong; Zhuhai Rich Imaging Technology Co., Ltd. of Zhuhai, China; Shanghai Orink Infotech International Co., Ltd. of Shanghai, China; Orink Infotech International Co., Ltd. of Hong Kong; Zinyaw LLC of Houston, Texas; Yotat Group Co., Ltd. of Hong Kong; Yotat (Zhuhai) Technology Co., Ltd. of Zhuhai, China; Ourway Image Co., Ltd. of Zhuhai, China; Kingway Image Co., Ltd. of Zhuhai, China; Zhuhai Chinamate Technology Co., Ltd. of Zhuhai, China; InkPro2day, LLC of Los Angeles, California; Dongguan OcBestjet Printer Consumables Co., Ltd. of Dongguan, China; OcBestjet Printer Consumables (HK) Co., Ltd. of Hong Kong; Aomya Printer Consumables (Zhuhai) Co., Ltd. of Guangdong, China; and Zhuhai Richeng Development Co., Ltd. of Zhuhai, China. The Commission's Office of Unfair Import Investigations ("OUII") was also named as a party.

On June 18, 2015, the ALJ issued an initial determination ("ID") (Order No. 9) finding in default respondents Huebon Co.; Ltd., Chancen Co., Ltd.; Yotat Group Co., Ltd.; Ourway Image Co., Ltd.; Shanghai Orink Infotech International Co., Ltd.; Orink Infotech International Co., Ltd.; Kingway Image Co., Ltd.; Zhuhai Chinamate Technology Co., Ltd.; Yotat (Zhuhai) Technology Co., Ltd.; Zhuhai Richeng Development Co., Ltd.; Dongguan OcBestjet Printer Consumables Co., Ltd.; OcBestjet Printer Consumables (HK) Co., Ltd.; Zinyaw LLC; InkPro2day; LLC, Aomya Printer Consumables (Zhuhai) Co., Ltd.; Zhuhai National Resources & Jingjie Imaging Products Co., Ltd.; and Zhuhai Rich Imaging Technology Co., Ltd. (collectively, "the Defaulting Respondents") (*not reviewed* Jul. 10, 2015). On July 8, 2015, the ALJ issued an ID (Order No. 10) terminating the investigation as to remaining named respondents Zhuhai Nano Digital Technology, Co., Ltd. (China) and Nano Business and Technology, Inc. (USA) based on a settlement agreement and consent order (*not reviewed* Aug. 5, 2015).

All of the respondents in this investigation have either defaulted or entered into consent orders that have been approved by the Commission. On September 16, 2015, the ALJ issued an ID (Order No. 11) partially terminating the investigation based on Epson's withdrawal of certain claims (*not reviewed* Oct. 15, 2015). Claims 1 and 10 of the '233 patent; claims 9, 14, 18, and 21 of the '116 patent; claims 1, 18, 49, and 60 of the '749 patent; claims 1 and 6 of the '163 patent; and claims 14, 15, and 19 of the '513 patent remain pending in this investigation. ID at 3.

On August 31, 2015, Epson filed a motion for summary determination of violation by the Defaulting Respondents. The IA filed a response in support of the motion on September 11, 2015. No respondent filed a response to the motion.

On October 28, 2015, the ALJ issued an ID (order No. 12) granting Complainants' motion for summary determination. No party petitioned for review of the ID. The Commission

determined to review-in-part the subject ID and, on review, to affirm the ID with certain modifications to the ALJ's findings regarding the importation requirement. Notice of Commission Determination To Review an ID in Part and, on Review, to Affirm a Finding of a Violation of Section 337 dated December 14, 2015 ("Commission Notice") at 2. *See* 80 *Fed. Reg.* 79097–99 (Dec. 18, 2015). The Commission's determination resulted in a finding of a violation of section 337.

The Commission requested written submissions on remedy, public interest, and bonding. *Id.* Complainants and OUII timely filed their submissions pursuant to the Commission Notice. No other parties filed submissions in response to the Commission Notice. No submissions were filed by the public.

Having reviewed the submissions filed in response to the Commission's Notice and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is: (a) A GEO prohibiting the unlicensed importation of certain ink cartridges and components thereof covered by one or more of claims 1 and 10 of the '233 patent; claims 9, 14, 18, and 21 of the '116 patent; claims 1, 18, 49, and 60 of the '749 patent; claims 1 and 6 of the '163 patent; and claims 14, 15, and 19 of the '513 patent; and (b) CDOs directed against respondents Zinyaw and InkPro2day.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The Commission has also issued an opinion explaining the basis for the remedy. The investigation is terminated.

The Commission's orders and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the orders.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 26, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12922 Filed 6–1–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Amended Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Carbon Spine Board, Cervical Collar and Various Medical Training Manikin Devices, and Accompanying Product Catalogues, Product Inserts, Literature and Components Thereof DN 3128;* the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainants' filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the amended complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Laerdal Medical Corp. and Laerdal Medical AS on March 21, 2016. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain carbon spine board, cervical collar and various medical training manikin devices, and accompanying product catalogues, product inserts, literature and components thereof. The amended complaint names as respondents Shanghai Evenk International Trading Co., Ltd. of China; Shanghai Honglian Medical Instrument Development Co., Ltd. of China; Shanghai Jolly Medical Education Co., Ltd. of China; Zhangjiagang Xiehe Medical Apparatus & Instruments Co., Ltd. of China; Zhangjiagang New Fellow Med. Co., Ltd. of China; Jiangsu Yongxin Medical Equipment Co., Ltd. of China; Jiangsu Yongxin Medical-Use Facilities Making Co., Ltd. of China; Jiangyin Everise Medical Devices Co., Ltd. of China; Medsource International Co., Ltd. and Medsource Factory, Inc. of China; and Basic Medical Supply, LLC of Richmond, TX. The complainants request that the Commission issue a general exclusion order, or in the alternative issue a limited exclusion order, and issue cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the amended complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainants in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainants,

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

their licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainants, complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3128") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Issued: May 26, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12879 Filed 6–1–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1002]

Certain Carbon and Alloy Steel Products; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 26, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of United States Steel Corporation of Pittsburgh, Pennsylvania. A supplement to the complaint was filed on May 16, 2016. The complaint alleges violations of section 337 based upon the importation into the United States, or in the sale of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 26, 2016, *ordered that* –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of certain carbon and alloy steel products by reason of: (1) A conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; or (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: United States Steel Corporation, 600 Grant Street, Pittsburgh, PA 15219–2800.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hebei Iron and Steel Group Co., Ltd.,
385 Sports South Avenue,

Shijiazhuang City, 050023 Hebei Province, China
Hebei Iron & Steel Group Hengshui Strip Rolling Co., Ltd., No. 29 Yuhua West Road, Tangcheng District, Hengshui City, 053000 Hebei Province, China
Hebei Iron & Steel (Hong Kong) International Trade Co., Ltd., Suite 2705, 27th Floor, No. 9 Queen's Road Central, Hong Kong, China
Shanghai Baosteel Group Corporation, Baoshan Iron & Steel Building, 370 Pudian, Pudong New Area, 200122 Shanghai, China
Baoshan Iron & Steel Co., Ltd., Baosteel Administrative Center, No. 885 Fujin Road, Baoshan District, 201900 Shanghai, China
Baosteel America Inc., 85 Chestnut Ridge Road, Montvale, NJ 07645
Jiangsu Shagang Group, Yongxin Road, Zhangjiagang, 215625 Jiangsu Province, China
Jiangsu Shagang International Trade Co., Ltd., 4,5/F, Shagang Building, Jinfeng Town, Zhangjiagang, 215625 Jiangsu Province, China
Anshan Iron and Steel Group, 77 Dong Shan Street, Tie Dong District, Anshan City, 114009 Liaoning Province, China
Angang Group International Trade Corporation, No. 322 South Zhonghua Road, Tiedong District, 114002 Anshan, Liaoning Province, China
Angang Group Hong Kong Co. Ltd., Room 3412–13, 34/F Convention Plaza Office Tower, 1 Harbour Road, Wanchai, Hong Kong, China
Wuhan Iron and Steel Group Corp., Changqian, Qingshan District, 430083 Hubei Province, China
Wuhan Iron and Steel Co., Ltd., 3 Yangang Road, Qingshan District, Wuhan City, 430083 Hubei Province, China
WISCO America Co., Ltd., 2006 Birch Street, Suite 300, Newport Beach, CA 92660
Shougang Group, 68 Shijingshan Road, Shijingshan District, 100041 Beijing, China
China Shougang International Trade & Engineering Corporation, 60 North Street, Xizhimen, Haidian District, Beijing, China
Shandong Iron and Steel Group Co. Ltd., 4 Shuntai Square, No. 2000 Shunhua Road, Jinan City, 250101 Shandong Province, China
Shandong Iron and Steel Co., Ltd., 21 Gongye North Road, Licheng District, Jinan City, 250101 Shandong Province, China
Jigang Hong Kong Holdings Co., Ltd., Room 4206, 42/F, Convention Plaza, 1 Harbour Road, Wan Chai, Hong Kong, China
Jinan Steel International Trade Co., Ltd., 21 Gongye North Road, Licheng District, Jinan City, 250101 Shandong Province, China
Magang Group Holding Co. Ltd., 8 Jiuhuaxi Road, Maanshan City, 243003 Anhui Province, China
Maanshan Iron and Steel Co. Ltd., 8 Jiuhuaxi Road, Maanshan City,243003 Anhui Province, China
Bohai Iron and Steel Group, No. 74 MaChang Road, Heping District, 300050 Tianjin, China
Tianjin Pipe (Group) Corporation, 396 Jintang Highway, Dongli District, 300301 Tianjin Province, China
Tianjin Pipe International Economic & Trading Corporation, 396 Jintang Highway, Dongli District, 300301 Tianjin Province, China
TPCO Enterprise, Inc., 10700 Richmond Avenue, Suite # 302, Houston, Texas 77042
TPCO America Corporation, 5431 Highway 35, Gregory, Texas 78359
Benxi Steel (Group) Co. Ltd., 16 Renmin Road, Pingshan District, Benxi City, 117000 Liaoning Province, China
Benxi Iron and Steel (Group) International Economic and Trading Co. Ltd., 8/F, 9 Dongming Avenue, Pingshan District, Benxi City, 117000 Liaoning Province, China
Hunan Valin Steel Co. Ltd., No. 222 House Road, Changsha City, 410004 Hunan Province, China
Hunan Valin Xiangtan Iron and Steel Co. Ltd., Yuetang Road, Yuetang District, Xiangtan City, 411101 Hunan Province, China
Tianjin Tiangang Guanye Co., Ltd., 1–13 Zhufangyuan, Duwang New City, Beichen District, 300400 Tianjin, China
Wuxi Sunny Xin Rui Science and Technology Co., Ltd., 21 Shixin Road, Dongbeitang, Xishan District, 214000 Wuxi Province, China
Taian JNC Industrial Co., Ltd., 666 Nantianmen Street, Hi-Tech Industry Development Zone, Tai'an City, 271000 Shandong Province, China
EQ Metal (Shanghai) Co., Ltd., Rm. 803, 86 Sibao Road, Sijing Town, Songjiang District, Shanghai, China
Kunshan Xinbei International Trade Co., Ltd., No. 351, Lvzhou Shanyu, Yushan Town, Suzhou, Jiangsu, China
Tianjin Xinhai Trade Co., Ltd., Floor 11, Tonggang Liye Building, Junliangcheng, Dongli District, 300450 Tianjin, China
Tianjin Xinlianxin Steel Pipe Co., Ltd., 8 Juhai Road, Jinghai Development Area, 301600 Tianjin, China
Tianjin Xinyue Industrial and Trade Co., Ltd., Daqiuzhuang Industrial Area, 301606 Tianjin, China
Xian Linkun Materials (Steel Pipe Supplies) Co., Ltd., Compound A8, E-Pang Road, Lianhu District, Xi'an City, 710005 Shaanxi Province, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 26, 2016

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–12935 Filed 6–1–16; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–038)]

NASA Advisory Council; Science Committee; Ad Hoc Task Force on Big Data; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National

Aeronautics and Space Administration (NASA) announces a meeting of the Ad Hoc Task Force on Big Data. This task force reports to the NASA Advisory Council's Science Committee. The meeting will be held for the purpose of soliciting and discussing, from the scientific community and other persons, scientific and technical information relevant to big data.

DATES: Tuesday, June 28, 2016, 9:00 a.m.–5:00 p.m., Wednesday, June 29, 2016, 9:00 a.m.–5:00 p.m., and Thursday, June 30, 2016, 9:00 a.m. to 12:00 noon, Local Time.

ADDRESSES: NASA Goddard Space Flight Center, Building 28, Room E210, 8800 Greenbelt Road, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll free conference call number 800–988–9663, passcode 4718658, to participate in this meeting by telephone. A toll number also is available, 1–517–308–9427 passcode 4718658. The WebEx link is *https://nasa.webex.com/*; the meeting number is 997 975 025 and the password is *BigD@T@16-2*. The agenda for the meeting includes the following topics:

—NASA's Science Data Cyber-Infrastructure
—Access to NASA Science Mission Data Repositories
—Big Data Best Practices in Government, Academia and Industry
—Federal Big Data Initiatives
—Resources and Concerns Specific to Big Data at NASA Goddard Space Flight Center

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to the Goddard Space Flight Center. Due to the Real ID Act, any attendees with drivers licenses issued from non-compliant states must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9]. Non-compliant states are: American Samoa, Arizona, Louisiana, Maine, Minnesota, New York, Oklahoma and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship and Permanent Residents (green card holders) can provide full name and citizenship status 3 working days in advance by contacting by contacting Ms. Briana E. Horton, via email at *briana.e.horton@nasa.gov* or by fax at (301) 286–1714. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–13033 Filed 6–1–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–409 and 72–046; NRC–2015–0279]

In the Matter of LaCrosse Solutions, LLC; Dairyland Power Cooperative, La Crosse Boiling Water Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the direct transfer of Possession Only License No. DPR–45 for the La Crosse Boiling Water Reactor (LACBWR) from the current holder, Dairyland Power Cooperative (DPC), to LaCrosse*Solutions*, LLC (LS) a wholly-owned subsidiary of Energy*Solutions*, LLC (ES). The NRC is also amending the facility operating license for administrative purposes to reflect the license transfer from DPC to LS. The NRC confirmed that LS met the regulatory, legal, technical, and financial obligations necessary to qualify them as a transferee, and determined that the transferee is qualified to be the holder of the license; and the transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission. The order approving the transfer of the LACBWR license to ES became effective on May 20, 2016.

DATES: The Order was issued on May 20, 2016, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2015–0279 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0279. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; or via email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at: *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at: 1–800–397–4209, 301–415–4737, or via email to: *pdr.resource@nrc.gov*. The license transfer Order, the NRC safety evaluation supporting the staff's findings, and the conforming license amendment are available in ADAMS under Accession Nos. ML16123A073, ML16123A074, and ML16123A057, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Marlayna G. Vaaler, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178, email: *Marlayna.Vaaler@nrc.gov*.

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Rockville, Maryland, this 26th day of May 2016.

For the U.S. Nuclear Regulatory Commission.

Andrea L. Kock,

Deputy Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Order Approving the Transfer of License and Conforming Amendment

United States of America

NUCLEAR REGULATORY COMMISSION

In the Matter of Dairyland Power Cooperative; La Crosse Boiling Water Reactor Docket Nos. 50–409 and 72–046

License No. DPR–45 Order Approving the Transfer of License and Conforming Amendment

I

Dairyland Power Cooperative (DPC) is the holder of Possession Only License No. DPR–45, which authorizes the possession and maintenance of the La Crosse Boiling Water Reactor (LACBWR). LACBWR permanently ceased operations on April 30, 1987, and reactor defueling was completed on June 11, 1987. In a letter dated August 4, 1987, the U.S. Nuclear Regulatory Commission (NRC) terminated DPC's authority to operate LACBWR under Provisional Operating License No. DPR–45, and a possess but not operate status was granted. By letter dated August 18, 1988, the NRC amended DPC's Provisional Operating License No. DPR–45 to Possession Only License No. DPR–45 to reflect the permanently defueled configuration at LACBWR. The NRC issued an Order to authorize decommissioning of LACBWR and approve the proposed Decommissioning Plan on August 7, 1991. Therefore, pursuant to the provisions of Section 50.82(a)(1)(iii) and Section 50.82(a)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR), operations at LACBWR are no longer authorized under the 10 CFR part 50 license, and DPC is licensed to possess, but not use or operate, LACBWR under Possession Only License No. DPR–45, subject to the conditions specified therein. The facility is located on the east bank of the Mississippi River in Vernon County, Wisconsin.

II

By letter dated October 8, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15307A310), as supplemented by letter dated December 15, 2015 (ADAMS Accession No. ML16004A147), DPC submitted an application, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 50.80, "Transfer of Licenses," requesting NRC approval for the direct transfer of DPC's Possession Only License No. DPR–45 for LACBWR to LaCrosse*Solutions*, LLC (LS).

DPC intends to transfer its licensed possession, maintenance, and decommissioning authorities to LS in order to implement expedited decommissioning at LACBWR. DPC will remain the licensed owner of LACBWR and hold title to and ownership of the real estate and lease hold interests, title to and ownership of the spent nuclear fuel, and title to and ownership of all improvements at the LACBWR site. LS will lease the above-ground LACBWR structures (other than the LACBWR independent spent fuel storage installation (ISFSI)) and will assume responsibility for all licensed activities at LACBWR, including responsibilities for decommissioning. LS will assume responsibility for the maintenance and security of the ISFSI site, while DPC will provide for operation, maintenance, and security of the ISFSI site under a Company Services Agreement with LS. DPC will retain financial responsibility for operation, maintenance, and security of the ISFSI and other related costs. LS was expressly created for the purpose of decommissioning LACBWR and releasing the site for unrestricted use, except for the ISFSI. After the transfer, LS will complete the decommissioning of the LACBWR facility.

Upon issuance of a license amendment providing for termination of the facility operating license, except for the ISFSI site, and upon receipt of a future NRC license transfer approval, LS will transfer responsibility for the LACBWR license back to DPC. Thereafter, DPC will maintain the ISFSI, and the ultimate disposition of the spent nuclear fuel will be provided for under the terms of DPC's Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste with the U.S. Department of Energy. DPC will also continue to maintain its nuclear decommissioning trust, a grantor trust in which funds are segregated from its assets and outside its administrative control, in accordance with the requirements of 10 CFR 50.75(e)(1).

The application also requested approval of a conforming amendment to the license pursuant to 10 CFR 50.80 and 10 CFR 50.90. No physical or operational changes to the facility were requested beyond those encompassed in the LACBWR Post Shutdown Decommissioning Activities Report.

Notice of the application was published in the **Federal Register** (FR) on March 18, 2016 (81 FR 14898). The December 15, 2015, letter contained clarifying information, did not expand the application beyond the scope of the original notice, and did not affect the applicability of the NRC's generic no significant hazards consideration determination. No requests for hearing or comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that LS is qualified to be the holder of the license, and that the transfer of the license to LS, as described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

Upon review of the application for a conforming amendment to the LACBWR license to reflect the transfer to LS, the NRC staff determined the following:

(1) The application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I.

(2) There is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations.

(3) The issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public.

(4) The issuance of the proposed license amendment is in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated May 20, 2016, which is available at ADAMS Accession No. ML16123A074.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the transfer of the license, as described herein, to LS is approved, subject to the following condition:

Prior to the closing of the license transfer from DPC to LS, LS shall provide the Directors of NRC's Office of Nuclear Material Safety and Safeguards (NMSS) and Office of Nuclear Reactor Regulation (NRR) satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR 140.12 and 10 CFR 50.54(w) of the Commission's regulations, consistent with the exemptions issued to LACBWR on June 26, 1986.

It is further ordered that, consistent with 10 CFR 2.1315(b), the license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject direct license transfer is approved. The amendment shall be issued and made effective at the time the proposed direct license transfer is completed.

It is further ordered that LS shall inform the Directors of NMSS and NRR in writing of the date of closing of the transfer of the DPC interests in LACBWR, at least 1 business day prior to closing. Should the transfer of the license not be completed within 1 year of this Order's date of issuance, this Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 8, 2015, as supplemented by letter dated December 15, 2015, and the associated NRC safety evaluation dated May 20, 2016, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. Persons who encounter problems with ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland this 20th day of May 2016.

For the Nuclear Regulatory Commission.

Scott Moore,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–13013 Filed 6–1–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric & Gas Company, South Carolina Public Service Authority, Consolidation of Class 1E DC and Uninterruptible Power Supply System Spare Battery Termination Boxes

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow changes to the certification information of Tier 1 of the AP1000 generic design control document (DCD) and issuing License Amendment No. 43 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric & Gas Company (SCE&G), and South Carolina Public Service Authority (together called the licensee) in March 2012, for the construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, located in Fairfield County, South Carolina.

DATES: June 2, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the amendment and exemption was submitted by letter dated December 19, 2014 (ADAMS Accession No. ML14353A126). The licensee supplemented this request by letter dated February 25, 2015 (ADAMS Accession No. ML15056A429).
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Specific information on NRC's PDR is available at *http://www.nrc.gov/reading-rm/pdr.html*.

FOR FURTHER INFORMATION CONTACT: William (Billy) Gleaves, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5848; email: *Bill.Gleaves@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Tier 1 information in the certified DCD incorporated by reference in part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix D, "Design Certification Rule for the AP1000 Design," and issuing License Amendment No. 43 to COLs, NPF–93 and NPF–94, to the licensee. The exemption is required by paragraph A.4 of Section VIII, "Processes for Changes and Departures," Appendix D to 10 CFR part 52 to allow the licensee to change Tier 1 information.

The granting of the exemption allows the changes to Tier 1 information requested in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently. Specifically, the amendments allow the implementation of changes to the Class 1E dc and Uninterruptible Power Supply System (IDS), replacing four spare termination boxes with a single spare battery termination box and minor cable raceway and cable routing changes. The exemptions allow the implementation of changes to the plant-specific Tier 1 UFSAR that are different from those in the generic Tier 1 information in the AP1000 Certified Design Control Document.

With the requested amendment, the licensee sought proposed changes related to the plant-specific Tier 1 tables related to the Class 1E dc and uninterruptible power supply system. The Tier 1 tables contain inspection, test, analysis, and acceptance criteria (ITAAC) and specifically, the licensee sought proposed changes to Tier 1 ITAAC Table 2.6.3–1 that contains lists Category I equipment and Tier 1 ITAAC Table 2.6.3–4 that contains component locations for this system. The proposed changes to plant-specific Tier 1 information also contain corresponding COL Appendix C and UFSAR Tier 2 information that would facilitate the replacement of four Class 1E DC and uninterruptible power supply system (IDS) spare termination boxes with a single spare battery termination box.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and 10 CFR 52.63(b)(1). The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML16068A149.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML16068A119 and ML16068A120, respectively. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML16068A113 and ML16068A117, respectively. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS, Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated December 19, 2014, supplemented February 25, 2015, the South Carolina Electric & Gas Company (SC&G/licensee) requested from the Nuclear Regulatory Commission (NRC/Commission) an exemption from the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, Appendix D, "Design Certification Rule for AP1000 Design," Section VIII.B.6.b, Item (4), to allow a departure from the certified information as part of license amendment request (LAR) 13–29, "Consolidation of Class 1E DC and Uninterruptible Power Supply System Spare Battery Termination Boxes."

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation that supports this license amendment, which can be found at Agencywide Documents Access and Management System (ADAMS) Accession Number ML16068A149, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption, and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption from the certified AP1000 DCD Tier 1 information, as described in the licensee's request dated December 19, 2014, supplemented February 25, 2015. This exemption is related to, and necessary for, the granting of License Amendment No. 43, which is being issued concurrently with this exemption.

3. As explained in Section 5 of the NRC staff's Safety Evaluation that supports this license amendment (ADAMS Accession Number ML16068A149), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of the date of its issuance.

III. License Amendment Request

The request for the amendment and exemption was submitted by the letter dated December 19, 2014. The licensee supplemented this request by the letter dated February 25, 2015. The proposed amendment is described in Section I, above.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on May 12, 2015 (80 FR 27200). No comments were received during the 30-day comment period.

The NRC staff has found that the amendment involves no significant hazards consideration. The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. The supplement dated February 25, 2015, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on December 19, 2014, and supplemented by the letter dated February 25, 2015. The exemption and amendment were issued on April 25, 2016, as part of a combined package to the licensee (ADAMS Accession No. ML16077A120).

Dated at Rockville, Maryland, this 24th day of May 2016.

For the Nuclear Regulatory Commission.

John McKirgan,

Acting Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–12917 Filed 6–1–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 071–9305; NRC–2016–0106]

Nuclear Waste Partnerships, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) for an exemption request from the Nuclear Waste Partnerships, LLC, (NWP) for the one-time shipment of transuranic waste in two TRUPACT–III packages from the Savannah River Site (SRS), Aiken, South Carolina, to the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico.

DATES: The EA and FONSI referenced in this document are available on June 2, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0106 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0106. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jessie Muir Quintero, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7476; email: *Jessie.Muir-Quintero@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is reviewing a request from NWP (or applicant), dated January 28, 2014 (ADAMS Accession No. ML14035A106), for an exemption—in accordance with section 71.12 of title 10 of the *Code of Federal Regulations* (10 CFR)— for the one-time transport of two Standard Large Box 2 (SLB2) waste boxes, each in a Model No. TRUPACT–III package.

Specifically, NWP requested an exemption from the requirements in 10 CFR 71.61, "Special requirements for Type B packages containing more than 10^5A_2," (*i.e.,* deep water immersion test). The applicant requested an exemption from the deep water immersion test because the design of a TRUPACT–III package containing more than 10^5A_2 has not been demonstrated to meet the deep water immersion requirements of 10 CFR 71.61, *i.e.,* the package's undamaged containment system has not been shown that it can withstand an external water pressure of 2 MegaPascal for a period of not less than 1 hour without collapse, buckling, or in-leakage of water.

Along with the exemption request, NWP also requested approval from the NRC for an increase in: (1) The A_2 limit from less than 10^5A_2 to 2.1×10^5A_2 and (2) the authorized decay heat limit from 80 watts (W) to 190W. The A_2 and decay heat limits are established in the TRUPACT–III Certificate of Compliance No. 9305, Revision No. 9 (ADAMS Accession No. ML15201A571).

The TRUPACT–III is a shipping container used to transport transuranic (TRU) waste within an SLB2. The TRUPACT–III packages are front loaded in a horizontal position on custom-designed trailers for truck transport. The two TRUPACT–III packages will be transported by truck from the SRS in South Carolina, to the U.S. Department of Energy WIPP, Carlsbad, New Mexico.

The SLB2 waste boxes have not been loaded into the TRUPACT–III packages yet and are currently sitting on a storage pad at SRS. The contents of each SLB2 waste box is primarily one half of a decommissioned tank used to process Plutonium-238.

II. Environmental Assessment Summary

Under the requirements of 10 CFR 51.21 and 51.30(a), the NRC staff developed an EA (ADAMS Accession No. ML16119A075) to evaluate the proposed federal action, which is for the NRC to grant an exemption to NWP from the deep water immersion test requirements for the one-time transport of two TRUPACT–III packages from SRS to WIPP.

The EA defines the NRC's proposed action (*i.e.,* to grant NWP's exemption request from 10 CFR 71.61) and the purpose of and need for the proposed action. Evaluations of the potential environmental impacts of the proposed action and alternatives to the proposed action were presented, followed by the NRC's conclusion. Alternatives to the proposed action considered included: The no-action alternative (*i.e.,* not granting the exemption); further segmenting the waste; using a different type of package; and storing the waste until the activity decays below 10^5A_2. None of the alternatives are preferable to the proposed action because either the impacts are greater than the proposed action or they do not meet the purpose and need of the proposed action. Therefore, the proposed action is the preferred alternative.

The EA evaluates the potential environmental impacts of granting the exemption of the two subject TRUPACT–III packages from the deep water immersion test. The only potential impacts from granting the exemption would be radiological impacts associated with an accident scenario. However, the analysis in the EA shows that there would be no radiological impacts as a result of exempting these two packages from the deep water immersion test since the packages will not cross bodies of water with depths greater than 15 meters (m) (50 feet [ft]). Any nonradiological impacts would be no greater than those for the transport of any other TRUPACT–III package and would be bounded by previous environmental analysis (NUREG–0170, ADAMS Accession No. ML12192A283). Therefore, the environmental impacts of transporting these two TRUPACT–III packages from SRS to WIPP are still bounded by those impacts documented in NUREG–0170.

III. Finding of No Significant Impact

The NRC staff has prepared an EA and FONSI in support of the proposed action. The EA is available at ADAMS Accession No. ML16119A075. The NRC staff has concluded that the proposed action, for the NRC to grant an exemption to NWP from the deep water immersion test for the transport of two SLB2 waste boxes in Model No. TRUPACT–III packages from SRS to WIPP, will not significantly impact the

quality of the human environment, and that the proposed action is the preferred alternative. The environmental impacts of the two packages are bounded by previous NRC environmental analysis since the packages will not cross bodies of water greater than 15 m (50 ft) in depth.

The NRC provided the States of South Carolina and New Mexico a draft copy of this EA for a 30-day review on April 14, 2016 (ADAMS Accession Nos. ML16032A178 and ML16032A175, respectively). The NRC did not receive any comments on the draft EA (ADAMS Accession Nos. ML16134A603 and ML16144A079, respectively).

The NRC staff has determined that the exemption from the deep water immersion test for the two subject packages would have no impact on historic and cultural resources or ecological resources and, therefore, no consultations are necessary under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act respectively.

The NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a FONSI is appropriate.

Dated at Rockville, Maryland, this 26th day of May, 2016.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Acting Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–13014 Filed 6–1–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0094]

Policy Statement for the Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised and consolidated two policy statements on NRC's Agreement State Programs: the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program." The resulting proposed single policy statement has been revised to add that public health and safety includes physical protection of agreement material.[1]

DATES: Submit comments by August 16, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0094. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN 12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Dimmick, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0694, email: *Lisa.Dimmick@nrc.gov.*

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0094 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0094.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is publicly available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0094 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The "Adequacy and Compatibility of Agreement State Programs" (62 FR 46517; September 3, 1997) presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. The "Statement of Principles and Policy for the Agreement State Program" (62 FR 46517; September 3, 1997) describes the respective roles and responsibilities of the NRC and the States in the administration of programs carried out under the 274b. State Agreement.[2] The

[1] The term 'agreement material' means the materials listed in Subsection 274b. of the Atomic Energy Act of 1954, as amended (AEA), over which the States may receive regulatory authority.

[2] Section 274 of the AEA provides a statutory basis under which the NRC discontinues portions of its regulatory authority to license and regulate

application of these two policy statements has significant influence on the safety and security of agreement material and on regulation of the more than 22,000 Agreement State and NRC materials licensees.

In the 1990s, the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program" were developed by working groups consisting of Agreement States representatives and the NRC staff. A number of workshops and meetings were also held to gather stakeholder input. The Commission approved both policy statements in the Staff Requirements Memorandum (SRM) to SECY–95–112, "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," and SECY–95–115, "Final 'Statement of Principles and Policy for Agreement State Program' and 'Procedures for Suspension and Termination of an Agreement State Program'," dated June 29, 1995 (ADAMS Accession No. ML003759325), but deferred implementation until all implementing procedures were completed and approved by the Commission. In the June 30, 1997, SRM to SECY–97–054, "Final Recommendations on Policy Statements and Implementing Procedures for: 'Statement of Principles and Policy for the Agreement State Program' and 'Policy Statement on Adequacy and Compatibility of Agreement State Programs'," the Commission approved the accompanying implementing procedures for the policy statements (ADAMS Accession No. ML051610710). The policy statements became effective on September 3, 1997 (62 FR 46517).

The NRC staff's efforts to update the Agreement State policy statements began with the Commission's direction provided in the SRM to SECY–10–0105, "Final Rule: Limiting the Quanitity of Byproduct Material in a Generally Licensed Device (RIN 3150–AI33)," issued on December 2, 2010 (ADAMS Accession No. ML103360262). The Commission directed the NRC staff to update the Commission's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and associated guidance documents to include both safety and source security considerations in the determination process. Because Agreement State adequacy and compatibility are key components of the Integrated Materials Performance Evaluation Program (IMPEP),[3] the Commission's "Statement of Principles and Policy for the Agreement State Program" was revised concurrently. As directed, the NRC staff's revisions to the policy statements added that public health and safety includes physical protection of agreement material.

The Commission approved publication of the proposed updates to the two policy statements in the revised SRM to SECY–12–0112, "Policy Statements on Agreement State Programs," dated May 28, 2013 (ADAMS Accession No. ML13148A352). The NRC staff published the two proposed policy statements on June 3, 2013 (78 FR 33122), for a 75-day comment period. After receiving requests from the Organization of Agreement States (OAS) and the State of Florida to extend the public comment period, the NRC extended the comment period to September 16, 2013 (78 FR 50118; August 16, 2013). The NRC held two public meetings (July 18 and August 6, 2013), and a topical session during the OAS annual meeting in Reno, Nevada on August 28, 2013. The NRC staff specifically solicited comment on Compatibility Category B, and whether or not the policy statements should maintain the language from the 1997 "Policy Statement on Adequacy and Compatibility of Agreement State Programs" describing the adoption and number of compatible regulations.

The NRC staff received 51 comments on the policy statements, in general, and 45 comments on Compatibility Category B from 13 commenters, including Agreement States, industry organizations, and individuals. Consistency and flexibility were underlying themes expressed in the comments. The need for consistent application of the NRC's policies and flexible implementation of these policies was mentioned in written comments, and was also expressed orally during the public meetings and OAS topical session. The NRC changed the policy statements as a result of the written comments and input from attendees to the two public meetings and the OAS topical session.

In COMSECY–14–0028, "Agreement State Program Policy Statements: Update on Recent Activities and Recommendations for Path Forward," dated July 14, 2014 (ADAMS Accession No. ML14156A277), the NRC staff proposed a plan to provide a consolidated policy statement. The Commission approved this plan in the SRM to COMSECY–14–0028, dated August 12, 2014 (ADAMS Accession No. ML14224A618). Accordingly, the NRC staff developed a single consolidated proposed policy statement for comment. In finalizing the policy statement, NRC staff identified and eliminated redundant language between the two policy statements, and removed detailed information on IMPEP and the "Principles of Good Regulation" (ADAMS Accession No. ML15083A026), as this material is not typically included in a high-level policy statement. The proposed single policy statement is included in its entirety in Section IV, "Proposed Policy Statement for the Agreement State Program," of this document.

III. Discussion of Proposed Changes

The NRC's proposed consolidated policy statement addresses the Commission direction in the SRMs to SECY–10–0105, SECY–12–0112, and COMSECY–14–0028 and reflects written public comments and input received from public meetings and the OAS topical session. The NRC staff's disposition of comments is presented in a comment resolution table (ADAMS Accession No. ML14073A549).

The Commission's proposed consolidated policy removes details on IMPEP and the "Principles of Good Regulation." The NRC added context and makes the proposed policy statement clearer and more consistent with other recent NRC policy statements. Lastly, the Commission added a description of the National Materials Program (NMP).

In response to the **Federal Register** notice (FRN) on June 3, 2013 (78 FR 33122), 45 comments were received on the description of Compatibility Category B in the proposed policy statement. In the FRN, the NRC specifically solicited comment on the following topics concerning Compatibility Category B:

1. To clarify the meaning of a "significant transboundary implication,"[4] the NRC is proposing to define a significant transboundary implication as "one which crosses regulatory jurisdictions, has a particular impact on public health and safety, and needs to be addressed to ensure uniformity of regulation on a nationwide basis." However, the NRC

byproduct materials; source materials; and quantities of special nuclear materials under critical mass. The mechanism for the transfer of NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with Subsection 274b. of the AEA.

[3] The NRC developed the IMPEP to evaluate the adequacy and compatibility of Agreement State programs and the adequacy of the NRC's nuclear materials program activities.

[4] The NRC staff solicited public comment on the phrase "significant transboundary implication" in the **Federal Register** on June 3, 2013 (78 FR 33122).

recognizes that the use of the word "particular" can be vague and cause confusion. The NRC is requesting specific comments on the proposed draft definition of "significant transboundary implication" and whether the word "particular" should be replaced with the phrase "significant and direct."

Based on comments received, the NRC staff noted that there is a wide variation on the interpretation of the description of Compatibility Category B and of the definition of significant transboundary implication. In light of this, the Commission is proposing a new description of Compatibility Category B to eliminate the phrase "significant transboundary implication." The new language, (*i.e.*, "cross jurisdictional boundaries") embodies the original description of Compatibility Category B and eliminates the confusion surrounding the language incorporated into the 1997 version of the policy statement.

2. Program elements with significant transboundary implications are illustrated by examples in the 1997 version of the policy statement. The NRC staff concluded the examples listed are not all-inclusive and could lead to misinterpretation by stakeholders, Agreement States, and the NRC staff. The NRC staff is seeking additional comment on whether or not the examples should be retained in this section of the policy statement.

The majority of commenters requested that examples of program elements considered Compatibility Category B continue to be included in the description. No changes were made to the policy statement. The Commission retained examples in Section E.2.ii.

3. The NRC is requesting comments on the description of Compatibility Category B as written in Section IV. of this notice and whether or not the movement of goods and services, which historically has been a main factor in determining whether an issue has transboundary implications, should be considered in the definition of significant transboundary implication.

Specific comments were received regarding the consideration of the movement of goods and services. The majority of the commenters felt that it was not necessary to include the consideration of the movement of goods and services in the description of Compatibility Category B. The Commission has concluded that the movement of goods and services should not be considered in assessing compatibility and made no change to the proposed policy statement.

4. The NRC is requesting comments on whether or not economic factors should be a consideration when making a Compatibility Category B determination. The NRC believes that health and safety should be the primary consideration in making a Compatibility B determination and that economic factors should not be a consideration.

The comments included several comments that differed on whether or not economic factors should be considered. Based on the comments received and in reviewing previous rationale on this topic as discussed in SECY–95–112 "Final Policy Statement on Adequacy and Compatibility of Agreement State Programs," the Commission determined that economic factors (*i.e.*, those costs incurred by the regulated community to comply with regulatory requirement(s)) should not be considered. No change to the proposed policy statement has been made.

The NRC also solicited specific comment on the use of alternative wording regarding the expectation on the number of regulatory requirements that Agreement States will be requested to adopt in an identical manner to maintain compatibility. The 1997 version of the policy statement had specific text in three places regarding the expectation for adopting requirements in an identical manner to maintain compatibility. Six commenters supported returning the wording back to the text that was originally published in 1997. Based on comments received, the Commission retained the original language from the 1997 version in the proposed policy statement.

Two commenters questioned the description of Compatibility Category D and indicated the description in the policy statement as published in the **Federal Register** on June 3, 2013 (78 FR 33122), appears to discuss compatibility in general and does not describe Compatibility Category D as it is defined in Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (ADAMS Accession No. ML041770094). The Commission agreed and moved the language listed under Compatibility Category D, in the proposed policy statement, to the introductory paragraph of Section E.2., "Compatibility," and revised the description of Compatibility Category D in Section E.2.iv.

The criteria for adequacy and compatibility as proposed in this policy statement will provide Agreement States with flexibility in the administration of their individual programs. Recognizing that Agreement States have responsibilities for radiation sources other than agreement material, this proposed policy statement would allow Agreement States to fashion their programs so as to reflect specific State needs and preferences while accomplishing a compatible national program consistent with Section 274 of the AEA.

The requirements in Compatibility Categories A, B, and C will allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the Agreement States' need for flexibility and the need for coherent and compatible regulation of agreement material across the country.

IV. Proposed Policy Statement for the Agreement State Program

A. Purpose

The purpose of this policy statement for the Agreement State Program is to describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and Agreement States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended (AEA).[5] Section 274 provides broad authority for the NRC to establish a unique Federal and State relationship in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, commercial, and research uses of agreement material. This policy statement supersedes the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" and the "Statement of Principles and Policy for the Agreement State Program."

This policy statement addresses the Federal-State interaction under the AEA to (1) establish and maintain agreements with States under Subsection 274b. that provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the safe and secure use of agreement material; (2) ensure that post-agreement interactions between the NRC and Agreement State radiation control programs are coordinated; and (3) ensure Agreement States provide adequate protection of public health and safety and maintain programs that are compatible with the NRC's regulatory program.

Although not defined in the AEA, the National Materials Program (NMP) is a

[5] Subsection 274b. of the AEA authorizes the NRC to enter into an agreement by which the NRC discontinues and the State assumes regulatory authority over some or all of these materials. The material over which the State receives regulatory authority under such agreement is termed "agreement material."

term to describe the broad collective effort within which both NRC and the Agreement States function in carrying out their respective regulatory programs for agreement material. The mission of the NMP is to provide a coherent national system for the regulation of agreement material with the goal of protecting public health and safety through compatible regulatory programs. Under the NMP, the NRC and Agreement States function as regulatory partners. The roles and responsibilities of the NRC and the Agreement States are based on their legislative authority, program needs, and expertise. Two national organizations—the Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors, Inc. (CRCPD)—which are composed of State radiation protection programs, also play important roles within the NMP.

B. Background

This policy statement is intended solely as guidance for the NRC and the Agreement States in the implementation of the Agreement State Program. This policy statement does not itself impose legally binding requirements on the Agreement States. In addition, nothing in this policy statement expands the legal authority of Agreement States beyond that already granted to them by Section 274 of the AEA and other relevant legal authority; nor does this policy statement diminish or constrain the NRC's authority under the AEA. Implementation procedures adopted pursuant to this policy statement shall be consistent with the legal authorities of the NRC and the Agreement States.

This policy statement presents the NRC's policy for determining the adequacy and compatibility of Agreement State programs. This policy statement clarifies the meaning and use of the terms "adequate to protect public health and safety" and "compatible with the NRC's regulatory program" as applied to Agreement State programs. The terms "adequate" and "compatible" represent fundamental concepts in the Agreement State programs authorized in 1959 by Section 274 of the AEA. Subsection 274d. states that the NRC shall enter into an Agreement under Subsection 274b., which discontinues the NRC's regulatory authority over specified AEA radioactive materials and activities within a State, provided that the State's program is adequate to protect public health and safety and is compatible with the Commission's regulatory program. Subsection 274g. authorizes and directs the NRC to cooperate with States in the formulation of standards to assure that State and NRC programs for protection against hazards of radiation will be coordinated and compatible. Subsection 274j.(1) requires the NRC to periodically review the Agreements and actions taken by States under the Agreements to ensure compliance with the provisions of Section 274.

The NRC and Agreement State radiation control programs maintain regulatory authority for the safe and secure handling, use, and storage of agreement material. These programs have always included the security of agreement material as an integral part of their health and safety mission as it relates to controlling and minimizing the risk of exposure to workers and the public. Following the events of September 11, 2001, the NRC's regulatory oversight has included developing and implementing enhanced security measures. For the purposes of this policy statement, public health and safety includes physical protection of agreement material.

C. Statement of Legislative Intent

In 1954, the AEA did not initially specify a role for the States in regulating the use of nuclear material. Many States were concerned as to what their responsibilities in this area might be and expressed interest in clearly defining the boundaries of Federal and State authority over nuclear material. This need for clarification was particularly important in view of the fact that although the Federal Government retained sole responsibility for protecting public health and safety from the radiation hazards of AEA radioactive materials, defined as byproduct, source, and special nuclear material, the States maintained the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and naturally occurring radioactive material.

Consequently, in 1959, Congress enacted Section 274 of the AEA to establish a statutory framework under which States could assume and the NRC could discontinue regulatory authority over byproduct, source, and small quantities of special nuclear material insufficient to form a critical mass. The NRC continued to retain regulatory authority over the licensing of certain facilities and activities including, nuclear reactors, quantities of special nuclear material sufficient to form a critical mass, the export and import of nuclear materials, and matters related to common defense and security.

The legislation did not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual, carefully considered turnover. Congress recognized that the Federal Government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the NRC to provide training, with or without charge, and other services to State officials and employees as the Commission deems appropriate. However, in rendering this assistance, Congress did not intend that the NRC would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas under their Agreement and to permit the NRC to discontinue its regulatory responsibilities in those areas.

In order to discontinue its authority, the NRC must find that the State program is compatible with the NRC program for the regulation of agreement material and that the State program is adequate to protect public health and safety. In addition, the NRC has an obligation, pursuant to Subsection 274j. of the AEA, to periodically review existing Agreement State programs to ensure continued adequacy and compatibility. Subsection 274j. of the AEA provides that the NRC may terminate or suspend all or part of its agreement with a State if the NRC finds that such termination is necessary to protect public health and safety or that the State has not complied with the provisions of Subsection 274j. In these cases, the NRC must offer the State reasonable notice and opportunity for a hearing. In cases where the State has requested termination of the agreement, notice and opportunity for a hearing are not necessary. In addition, the NRC may temporarily suspend all or part of an agreement in the case of an emergency situation.

D. Program Implementation

1. Implementation of the Agreement State Program is described below and includes (a) Principles of Good Regulation; (b) performance assessment on a consistent and systematic basis; (c) the responsibility to ensure adequate protection of public health and safety, including physical protection of agreement material; (d) compatibility in areas of national interest; and (e) sufficient flexibility in program implementation and administration to accommodate individual State needs.

i. Principles of Good Regulation

In 1991, the Commission adopted the "Principles of Good Regulation" to

serve as a guide to both agency decision making and to individual behavior of NRC employees. There are five Principles of Good Regulation: Independence, openness, efficiency, clarity, and reliability. Adherence to these principles has helped to ensure that the NRC's regulatory activities have been of the highest quality, and are appropriate and consistent. The "Principles of Good Regulation" recognize that strong, vigilant management and a desire to improve performance are prerequisites for success, for both regulators and the regulated industry. The NRC's implementation of these principles has served the public, the Agreement States, and the regulated community well. Such principles are useful as a part of a common culture of the NMP that the NRC and the Agreement States share as co-regulators. Accordingly, the NRC encourages each Agreement State to adopt a similar set of principles for use in its own regulatory program. These principles should be incorporated into the day-to-day operational fabric of the NMP.

ii. Performance Assessment

To ensure that Agreement State programs continue to provide adequate protection of public health and safety and are compatible with the NRC's regulatory program, periodic program assessment is needed. The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. The IMPEP is a performance evaluation process that provides the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement.

iii. Adequate To Protect Public Health and Safety

The NRC and the Agreement States have the responsibility to ensure adequate protection of public health and safety in the administration of their respective regulatory programs, including physical protection of agreement material. Accordingly, the NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of public health and safety.

iv. Compatible in Areas of National Interest

The NRC and the Agreement States have the responsibility to ensure that the radiation control programs are compatible. Such radiation control programs should be based on a common regulatory philosophy including the common use of definitions and standards. The programs should be effective and cooperatively implemented by the NRC and the Agreement States and also should provide uniformity and achieve common strategic outcomes in program areas having national significance.

Such areas of national significance include aspects of licensing, inspection and enforcement, response to incidents and allegations, and safety reviews for the manufacture and distribution of sealed sources and devices. Furthermore, communication using a nationally accepted set of terms with common understanding, ensuring an adequate level of protection of public health and safety that is consistent and stable across the nation, and evaluation of the effectiveness of the NRC and Agreement State programs for the regulation of agreement material with respect to protection of public health and safety are essential to maintaining a strong NMP.

v. Flexibility

With the exception of those compatibility areas where programs should be essentially identical, Agreement State radiation control programs have flexibility in program implementation and administration to accommodate individual State preferences, State legislative direction, and local needs and conditions. A State has the flexibility to design its own program, including incorporating more stringent, or similar, requirements provided that the requirements for adequate protection of public health and safety are met and compatibility is maintained. However, the exercise of such flexibility should not preclude a practice authorized by the AEA, and in the national interest.

2. New Agreements

Section 274 of the AEA requires that once a decision to request Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State that would be covered by the proposed agreement. This certification will be provided in a letter to the NRC that includes a number of documents in support of the certification. These documents include the State's enabling legislation, the radiation control regulations, staffing plan, a narrative description of the State program's policies, practices, and procedures, and a proposed agreement.

The NRC's policy statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540, January 23, 1981; as amended by policy statements published at 46 FR 36969, July 16, 1981; and 48 FR 33376, July 21, 1983), describes the content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the **Federal Register** to provide an opportunity for public comment. After consideration of public comments, if the NRC determines that the proposed State program is adequate for protection of public health and safety and compatible with the NRC's regulatory program, the Governor and Chairman of the NRC sign a formal document memorializing the agreement.

3. Program Assistance

The NRC will offer training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare their request for entering into an Agreement and to help them prior to the assumption of regulatory authority. Following approval of the agreement and assumption of regulatory authority by a new Agreement State, to the extent permitted by resources, the NRC may provide training opportunities and offer other assistance such as review of proposed regulatory changes to help Agreement States administer their regulatory responsibilities. However, it is the responsibility of the Agreement State to ensure that they have a sufficient number of qualified staff to implement their program. If the NRC is unable to provide the training, the Agreement State will need to do so.

The NRC may also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, incident response, and limited enforcement issues. In areas where Agreement States have particular expertise or are in the best position to provide immediate assistance to the NRC or other Agreement States, they are encouraged to do so. In addition, the NRC and Agreement States will keep each other informed about relevant aspects of their programs.

If an Agreement State experiences difficulty in implementing its program, the NRC will, to the extent possible, assist the State in maintaining the effectiveness of its radiation control program. Under certain conditions, an Agreement State can also voluntarily return all or part of its Agreement State program.

4. Performance Evaluation

Under Section 274 of the AEA, the NRC retains oversight authority for ensuring that Agreement State programs provide adequate protection of public health and safety and are compatible with the NRC's regulatory program. In fulfilling this statutory responsibility, the NRC will determine whether the Agreement State programs are adequate and compatible prior to entrance into a Subsection 274b. agreement and will periodically review the program to ensure they continue to be adequate and compatible after an agreement becomes effective.

The NRC, in cooperation with the Agreement States, established and implemented the IMPEP. As described in Management Directive 5.6 "Integrated Materials Performance Evaluation Program (IMPEP)," IMPEP is a performance evaluation process that provides the NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation control programs and identification of areas needing improvement. The same criteria are used to evaluate and ensure that regulatory programs are adequate to protect public health and safety and that Agreement State programs are compatible with the NRC's program. The IMPEP process employs a Management Review Board, composed of senior NRC managers and an Agreement State liaison provided by the OAS to make a determination of program adequacy and compatibility.

As a part of the performance evaluation process, the NRC will take necessary actions to help ensure that Agreement State radiation control programs remain adequate and compatible. These actions may include more frequent IMPEP reviews of Agreement State programs and providing assistance to help address weaknesses or areas needing improvement within an Agreement State program. Monitoring, heightened oversight, probation, suspension, or termination of an agreement may be applied for certain program deficiencies or emergencies (*e.g.* loss of funding, natural or man-made events, pandemic). The NRC's actions in addressing program deficiencies or emergencies will be a well-defined predictable process that is consistently and fairly applied.

5. Program Funding

Section 274 of the AEA permits the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with the NRC. Section 274 of the AEA does not allow Federal funding for the administration of Agreement State radiation control programs. Given the importance to public health and safety of having well trained radiation control program personnel, the NRC may offer certain relevant training courses and notify Agreement State personnel of their availability. These training programs also help to ensure compatible approaches to licensing and inspection and thereby strengthen the NMP.

6. Regulatory Development

The NRC and Agreement States will cooperate in the development of both new and revised regulations and policies. Agreement States will have early and substantive involvement in the development of regulations affecting protection of public health and safety and of policies and guidance documents affecting administration of the Agreement State program. The NRC and Agreement States will keep each other informed about their individual regulatory requirements (*e.g.*, regulations, orders, or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources. In order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis, Agreement States should provide a similar opportunity to the NRC to make it aware of, and to provide the opportunity to review and comment on, proposed changes in regulations and significant changes to Agreement State programs, policies, and regulatory guidance.

Two national organizations composed of State radiation protection programs facilitate participation and involvement with the development of regulations, guidance, and policy. The OAS provides a forum for Agreement States to work with each other and with the NRC on regulatory issues, including centralized communication on radiation protection matters between the Agreement States and the NRC. The CRCPD assists its members in their efforts to protect the public, radiation workers, and patients from unnecessary radiation exposure. One product of the CRCPD is the Suggested State Regulations for use by its members. The NRC reviews Suggested State Regulations for compatibility.

E. Adequacy and Compatibilty

In accordance with Section 274 of the AEA, any State that chooses to establish an Agreement State program must provide for an acceptable level of protection of public health and safety. This is the "adequacy" component. The Agreement State must also ensure that its program serves an overall nationwide interest in radiation protection. This is the "compatibility" component.

By adopting the criteria for adequacy and compatibility as discussed in this policy statement, the NRC provides a broad range of flexibility in the administration of individual Agreement State programs. Recognizing the fact that Agreement States have responsibilities for radiation sources other than agreement material, the NRC allows Agreement States to fashion their programs to reflect specific State needs and preferences.

The NRC will minimize the number of NRC regulatory requirements that the Agreement States will be requested to adopt in an identical manner to maintain compatibility. At the same time, requirements in these compatibility categories allow the NRC to ensure that an orderly pattern for the regulation of agreement material exists nationwide. The NRC believes that this approach achieves a proper balance between the need for Agreement State flexibility and the need for an NMP that is coherent and compatible in the regulation of agreement material across the country.

Program elements [6] for adequacy focus on the protection of public health and safety within a particular Agreement State while program elements for compatibility focus on the impacts of an Agreement State's regulation of agreement material on a nationwide basis or its potential effects on other jurisdictions. Some program elements for compatibility may also impact public health and safety; therefore, they may also be considered program elements for adequacy.

In identifying those program elements for adequate and compatible programs, or any changes thereto, the NRC staff

[6] For the purposes of this policy statement, "program element" means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to implementation of that program.

will coordinate with the Agreement States.

1. Adequacy

An "adequate" program includes those program elements of a radiation control regulatory program necessary to maintain an acceptable level of protection of public health and safety within an Agreement State. An Agreement State's radiation control program is adequate to protect public health and safety if administration of the program provides reasonable assurance of protection of public health and safety in regulating the use of agreement material. The level of protection afforded by the program elements of the NRC's materials regulatory program is presumed to be adequate to provide a reasonable assurance of protection of public health and safety. Therefore, the overall level of protection of public health and safety provided by a State program should be equivalent to, or greater than, the level provided by the NRC program. To provide reasonable assurance of protection of public health and safety, an Agreement State program should contain the five essential program elements, identified in items i. through v. of this section, that the NRC and Agreement States will use to define the scope of the review of the program. The NRC and Agreement States will also consider, when appropriate, other program elements of an Agreement State that appear to affect the program's ability to provide reasonable assurance of the protection of public health and safety.

i. Legislation and Legal Authority

Agreement State statutes shall: (a) Authorize the State to establish a program for the regulation of agreement material and provide authority for the assumption of regulatory responsibility under an Agreement with the NRC; (b) authorize the State to promulgate regulatory requirements necessary to provide reasonable assurance of protection of public health and safety; (c) authorize the State to license, inspect, and enforce legally binding requirements such as regulations and licenses; and (d) be otherwise consistent with applicable Federal statutes. In addition, the State should have existing legally enforceable measures such as generally applicable rules, orders, license provisions, or other appropriate measures, necessary to allow the State to ensure adequate protection of public health and safety in the regulation of agreement material in the State. Specifically, Agreement States should adopt legally binding requirements based on those identified by the NRC because of their particular health and safety significance. In adopting such requirements, Agreement States shall implement the essential objectives articulated in the NRC requirements.

ii. Licensing

The Agreement State shall conduct appropriate evaluations of proposed uses of agreement material, before issuing a license to authorize such use, to ensure that the proposed licensee's need and proposed uses of agreement material are in accordance with the AEA and that operations can be conducted safely. Licenses shall provide for reasonable assurance of public health and safety protection in the conduct of licensed activities.

iii. Inspection and Enforcement

The Agreement State shall periodically conduct inspections of licensed activities involving agreement material to provide reasonable assurance of safe licensee operations and to determine compliance with its regulatory requirements. When determined to be necessary by the State, the State should take timely enforcement action against licensees through legal sanctions authorized by State statutes and regulations.

iv. Personnel

The Agreement State shall be staffed with a sufficient number of qualified personnel to implement its regulatory program for the control of agreement material.

v. Incidents and Allegations

The Agreement State shall respond to and conduct timely inspections or investigations of incidents, reported events, and allegations involving agreement material within the State's jurisdiction to provide reasonable assurance of protection of public health and safety.

2. Compatibility

A "compatible" program consists of those program elements necessary to sustain an orderly pattern of regulation of radiation protection. An Agreement State has the flexibility to adopt and implement program elements within the State's jurisdiction that are not addressed by the NRC, or program elements not required for compatibility (*i.e.*, those NRC program elements not assigned to Compatibility Category A, B, or C). However, such program elements of an Agreement State relating to agreement material shall (1) be compatible with those of the NRC (*i.e.*, should not create conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis); (2) not preclude a practice authorized by the AEA and in the national interest; and (3) not preclude the ability of the Commission to evaluate the effectiveness of the NRC and Agreement State programs for agreement material with respect to protection of public health and safety. For purposes of compatibility, the State shall adopt program elements assigned Compatibility Categories A, B, and C.

i. Category A—Basic Radiation Protection Standards

This category includes basic radiation protection standards that encompass dose limits, concentration and release limits related to radiation protection in part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), that are generally applicable, and the dose limits for land disposal of radioactive waste in 10 CFR 61.41.[7] Also included in this category are a limited number of definitions, signs, labels, and scientific terms that are necessary for a common understanding of radiation protection principles among licensees, regulatory agencies, and members of the public. Such State standards should be essentially identical to those of the NRC, unless Federal statutes provide the State authority to adopt different standards. Basic radiation protection standards do not include constraints or other limits below the level associated with "adequate protection" that take into account considerations such as economic cost and other factors.

ii. Category B—Cross Jurisdictional Program Elements

This category pertains to a small number of program elements that cross jurisdictional boundaries and that should be addressed to ensure uniformity of regulation on a nationwide basis. Examples include, but are not limited to, sealed source and device registration certificates, transportation regulations, and radiography certification. Agreement State program elements shall be essentially identical to those of the NRC. Because program elements used in the Agreement State Program are necessary to maintain an acceptable level of

[7] The NRC will implement this category consistent with its earlier decision in the low-level waste area to allow Agreement States the flexibility to establish pre-closure operational release limit objectives, as low as is reasonably achievable goals or design objectives at such levels as the State may deem necessary or appropriate, as long as the level of protection of public health and safety is essentially identical to that afforded by NRC requirements.

protection of public health and safety, economic factors[8] should not be considered.

iii. Category C—Other NRC Program Elements

These are other NRC program elements that are important for an Agreement State to implement in order to avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Such Agreement State program elements should embody the essential objective of the corresponding NRC program elements. Agreement State program elements may be more restrictive than NRC program elements; however, they should not be so restrictive as to prohibit a practice authorized by the AEA and in the national interest without an adequate public health and safety or environmental basis related to radiation protection.

iv. Category D—Program Elements Not Required for Compatibility

These are program elements that do not meet any of the criteria listed in Compatibility Category A, B, or C above and are not required to be adopted for purposes of compatibility.

v. Category NRC—Areas of Exclusive NRC Regulatory Authority

These are program elements over which the NRC cannot discontinue its regulatory authority pursuant to the AEA or provisions of title 10 of the *Code of Federal Regulations*. However, an Agreement State may inform its licensees of these NRC requirements through an appropriate mechanism under the State's administrative procedure laws as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

F. Conclusion

The NRC and Agreement States will continue to jointly assess the NRC and Agreement State programs for the regulation of agreement material to identify specific changes that should be considered based on experience or to further improve overall safety, performance, compatibility, and effectiveness.

The NRC encourages Agreement States to adopt and implement program elements that are patterned after those adopted and implemented by the NRC to foster and enhance an NMP that establishes a coherent and compatible nationwide program for the regulation of agreement material.

Dated at Rockville, Maryland, this 25th day of May, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 2016–13006 Filed 6–1–16; 8:45 am]

BILLING CODE 7590–01–P

[8] For the purposes of this policy statement, economic factors are those costs incurred by the regulated community to comply with regulations that impact more than one regulatory jurisdiction in the NMP.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Cancellation Notice—OPIC June 1, 2016 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 81, Number 90, Pages 28906–28907) on Tuesday, May 10, 2016. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., June 1, 2016 in conjunction with OPIC's June 9, 2016 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Catherine F.I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: May 31, 2016.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2016–13149 Filed 5–31–16; 4:15 pm]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–143 and CP2016–180; Order No. 3325]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 220 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 220 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–143 and CP2016–180 to consider the Request pertaining to the proposed Priority Mail Contract 220 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–143 and CP2016–180 to

[1] Request of the United States Postal Service to Add Priority Mail Contract 220 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13021 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–144 and CP2016–181; Order No. 3330]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 221 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 221 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–144 and CP2016–181 to consider the Request pertaining to the proposed Priority Mail Contract 221 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–144 and CP2016–181 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13026 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 221 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–145 and CP2016–182; Order No. 3326]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 222 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 222 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–145 and CP2016–182 to consider the Request pertaining to the proposed Priority Mail Contract 222 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent

[1] Request of the United States Postal Service to Add Priority Mail Contract 222 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–145 and CP2016–182 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13022 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–148 and CP2016–185; Order No. 3328]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 55 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 55 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–148 and CP2016–185 to consider the Request pertaining to the proposed First-Class Package Service Contract 55 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–148 and CP2016–185 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 3, 2016.

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 55 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13024 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–147 and CP2016–184; Order No. 3329]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Parcel Select Contract 16 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30-.35, the Postal Service filed a formal request and associated supporting information to add Parcel Select Contract 16 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification

[1] Request of the United States Postal Service to Add Parcel Select Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–147 and CP2016–184 to consider the Request pertaining to the proposed Parcel Select Contract 16 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–147 and CP2016–184 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than June 3, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13025 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–146 and CP2016–183; Order No. 3327]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 223 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 3, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 223 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–146 and CP2016–183 to consider the Request pertaining to the proposed Priority Mail Contract 223 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 3, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

[1] Request of the United States Postal Service to Add Priority Mail Contract 223 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 26, 2016 (Request).

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–146 and CP2016–183 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).
3. Comments are due no later than June 3, 2016.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13023 Filed 6–1–16; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information on the Development of the 2017 National Plan for Civil Earth Observations

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of Request for Information (RFI).

SUMMARY: On behalf of the U.S. Group on Earth Observations (USGEO), a Subcommittee of the National Science and Technology Council (NSTC) Committee on Environment, Natural Resources, and Sustainability (CENRS), the White House Office of Science and Technology Policy (OSTP) requests input from all interested parties regarding recommendations for the development of the 2017 *National Plan for Civil Earth Observations* ("National Plan", or "Plan"). An electronic template with questions will be posted at *www.usgeo.gov*. Comments of up to approximately 2,000 characters per question are requested and must be received by 11:59 p.m. (Eastern Standard Time), July 1, 2016 to be considered. The public input provided in response to this Notice will inform the Office of Science and Technology Policy (OSTP) as it works with Federal agencies and other stakeholders to develop this Plan.

DATES: Responses must be received by 11:59 p.m. (Eastern Standard Time), July 1, 2016, to be considered.

ADDRESSES: You may submit comments by any of the following methods. The first method is preferred by OSTP.

- *Downloadable form:* To aid in information collection and analysis, the

Office of Science and Technology Policy (OSTP) encourages responses to be provided by filling out the downloadable form located at *http://www.whitehouse.gov/administration/eop/ostp/library/shareyourinput* and emailing that form, as an attachment, to *env_energy@ostp.eop*. Please include "National Plan for Civil Earth Observations" in the subject line of the message.

- *Fax:* (202) 456–6071. On the cover page, please state "National Plan for Civil Earth Observations, attn: Timothy Stryker".
- *Mail:* Office of Science and Technology Policy, 1650 Pennsylvania Avenue NW., Washington, DC, 20504. Information submitted by postal mail should be postmarked by July 1, 2016.

Instructions: Response to this RFI is voluntary. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. OSTP may post responses to this RFI without change, online. OSTP therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, Director, U.S. Group on Earth Observations Program, OSTP. 202–419–3471 *tstryker@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

The U.S. Government is the world's largest single provider of civil environmental and Earth-system data. These data are derived from Earth observations collected by numerous Federal agencies and partners in support of their missions and are critical to the protection of human life and property, economic growth, national and homeland security, and scientific research.

Federal investments in Earth-observation activities ensure that decision makers, businesses, first responders, farmers, and a wide array of other stakeholders have the information they need about climate and weather; natural hazards; land-use change; ecosystem health; water; natural resources; and other characteristics of the Earth system. Taken together, Earth observations provide the indispensable foundation for meeting the Federal Government's long-term sustainability objectives and advancing the Nation's societal, environmental, and economic well-being.

As the Nation's capacity to observe the Earth system has grown, however, so has the operating complexity of sustaining and coordinating civil Earth-observation research, operations, and related activities. To address these growing complexities, in October 2010, Congress charged the Director of OSTP with establishing a mechanism to ensure greater coordination of the research, operations, and activities relating to civil Earth observations, including the development of a triennial strategic implementation plan and a process for external independent advisory input (*see* the National Aeronautics and Space Authorization Act of 2010, Public Law 111–267, Section 702). In response, OSTP coordinated the first-ever Earth Observations Assessment (EOA 2012), a snapshot of the current portfolio of Earth-observing systems and surveys used to meet key Federal civil objectives across thirteen thematic Societal Benefit Areas (SBAs), and released the National Strategy for Civil Earth Observations in April 2013 ("the National Strategy", see *http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc_2013_earthobsstrategy.pdf*).

OSTP subsequently developed and released the first National Plan for Civil Earth Observations with support of the USGEO Subcommittee in July 2014 ("the 2014 National Plan", see *https://www.whitehouse.gov/sites/default/files/microsites/ostp/NSTC/2014_national_plan_for_civil_earth_observations.pdf*). Based in large part on the results of EOA 2012, the 2014 National Plan established priorities and supporting actions for advancing our civil Earth-observations capabilities and ensuring stable, continuous, and coordinated Earth-observation capabilities for the benefit of society.

The 2016 Earth Observation Assessment (EOA 2016), the second iteration of the assessment process, is nearing completion. Conducted by the Assessment Working Group of the U.S. Group on Earth Observations (USGEO) Subcommittee, EOA 2016 will provide foundational input for OSTP to use when developing the second National Plan for Civil Earth Observations ("Plan"). In addition, other USGEO Subcommittee activities, including an interagency satellite needs-collection process, U.S. engagement in the intergovernmental Group on Earth Observations (GEO) and efforts to advance the discoverability, accessibility, and usability of Earth-observation data products across the Federal Government, will inform the development of the Plan.

As EOA 2016 nears completion, OSTP has commenced the development of the Plan and is seeking public advisory input on this process through this RFI. The public input provided in response to this RFI will inform OSTP and USGEO as they work with Federal agencies and other stakeholders to develop the Plan. Following the receipt and review of responses to this RFI, OSTP also intends to host a public meeting as an additional way to collect individual, actionable feedback. This meeting will feature Federal and non-Federal participants and allow for focused discussions on specific questions related to the priorities and supporting actions outlined in the first National Plan.

Questions To Inform Development of the National Plan

Through this RFI, OSTP seeks responses to the following questions:

1. What services do you provide or research do you do using Federal Earth observation data and information products? Please provide specific examples.
2. What decisions do you make or support using Federal Earth observation data and information products? Please provide specific examples.
3. In the areas listed below, where has the Federal Government been the most, or least, successful and why? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work.

a. Improving spatial and temporal resolution, sample density, and geographic coverage of measurements from Earth observation systems.

b. Developing and deploying new Earth observation systems that address user needs.

c. Improving the discoverability, accessibility, and usability of Earth observation data, model output, and derived information products.

4. One important policy goal for Federal agencies has been to improve external users' ability to find, access, and use Earth observation data and information products. In which of these three areas (finding, accessing, or using) have you witnessed improvements, if any? Please provide specific examples.
5. In the areas listed below, what could the Federal Government do to improve the Earth observations that you rely on? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work.

a. Maintain current observing systems.

b. Incrementally improve or upgrade current observing systems.

c. Develop new observing systems with significantly enhanced measurement capabilities.

d. Develop new agency practices to improve the discoverability, accessibility, and usability of Earth observation data.

6. On what emerging technologies, techniques, and management practices should the Federal Government focus attention in the next few years to enhance public services, research in the public interest, and fundamental scientific inquiry?

7. What types of partnerships with Federal agencies, such as those listed below, show the most promise to address current gaps in Earth observation coverage and related service provision? Please provide specific examples. You do not need to provide responses to all listed areas—please focus on those most relevant to your work. You are also free to discuss other types of partnerships that are not listed below.

a. Cooperative research and development agreements.

b. Challenges and prizes.

c. Joint ventures for Earth observation system development and operations.

d. Citizen science and crowdsourced observations.

8. Is your organization concerned about a potential shortage of workers in the United States who are trained to develop, understand, or use Earth observation data and geospatial information? Please provide specific concerns.

9. What, if any, do you believe were the key accomplishments of the first National Plan and what impact did the National Plan have, if any, on your organization? Please provide specific examples.

10. The first National Plan identified eight Supporting Actions (pp. 20–27) required to maximize the benefits derived from the Nation's Earth observations. In priority order, they are:

Action 1: Coordinate and Integrate Observations

Action 2: Improve Data Access, Management, and Interoperability

Action 3: Increase Efficiency and Cost Savings

Action 4: Improve Observation Density and Sampling

Action 5: Maintain and Support Infrastructure

Action 6: Explore Commercial Solutions

Action 7: Maintain and Strengthen International Collaboration

Action 8: Engage in Stakeholder-Driven Data Innovation

Of the actions listed above most relevant to your work, where has the Federal Government been the most, or least, successful, and why? Please provide specific examples.

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2016–13010 Filed 6–1–16; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32139]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

May 27, 2016.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of May 2016. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Jessica Shin, Attorney-Adviser, at (202) 551–5921 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

John Hancock Diversified Income Fund [811–21367]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on December 29, 2015, and amended on May 3, 2016 and May 13, 2016.

Applicant's Address: 601 Congress Street, Boston, Massachusetts 02210.

Morgan Stanley Global Infrastructure Fund [811–05415]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has transferred its assets to Global Infrastructure Portfolio, a series of Morgan Stanley Institutional Fund, Inc. and, on March 30, 2015, made a final distribution to its shareholders based on net asset value. Expenses of $135,481 incurred in connection with the reorganization were paid by applicant's investment adviser.

Filing Date: The application was filed on May 4, 2016.

Applicant's Address: 522 Fifth Avenue, New York, New York 10036.

O'Connor EQUUS [File No. 811–22937]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On April 4, 2016, applicant made a liquidating distribution to shareholders, based on net asset value. Expenses incurred in connection with the liquidation were paid by UBS O'Connor LLC, applicant's investment adviser.

Filing Date: The application was filed on April 25, 2016.

Applicant's Address: One Freedom Valley Drive, Oaks, Pennsylvania 19456.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13043 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77943; File No. SR–ICEEU–2016–004]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Additions to Permitted Cover

May 27, 2016.

I. Introduction

On February 10, 2016, ICE Clear Europe Limited ("ICE Clear Europe" or the "Clearing House") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to additions to Permitted Cover. The proposed rule change was published for comment in the **Federal Register** on March 2, 2016.[3] The Commission did not receive comments on the proposed rule change. On April 15, 2016, the Commission extended the time period in which to either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change to May 31, 2016.[4] On May 13, 2016, ICEEU filed Amendment No. 1 to the proposal.[5] For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to permit Clearing Members of ICE Clear Europe to provide additional categories of securities, including treasury bills and floating and inflation-linked government bonds (the "Additional Permitted Cover") to ICE Clear Europe to satisfy certain margin and guaranty fund requirements.

Specifically, the Additional Permitted Cover will include the following types of government securities: (i) U.S. Treasury floating-rate notes ("UST FRNs"), (ii) Canadian government treasury bills and Canadian government real return bonds, (iii) Spanish government treasury bills (*Letras del Tesoro*), (iv) Swedish government treasury bills, (v) German government inflation-linked bonds (of two types: *Deutsche Bundesrepublik* Inflation-Linked Bonds and *Bundesobligationen I/L*), (vi) Japanese government CPI-linked bonds, and (vii) Swedish government inflation index-linked bonds.

ICE Clear Europe represents that it believes that the Additional Permitted Cover is of minimal credit risk, comparable to that of other sovereign debt currently accepted by ICE Clear Europe as Permitted Cover. ICE Clear Europe also represents that other debt obligations of the same governments that issue the Additional Permitted Cover are currently eligible as Permitted Cover. According to ICE Clear Europe, the Additional Permitted Cover consisting of treasury bills is substantially similar to existing forms of treasury bill Permitted Cover currently accepted by the Clearing House. In terms of the Additional Permitted Cover consisting of inflation-linked government bonds, ICE Clear Europe represents that it currently accepts similar bonds issued by other governments. As a result, ICE Clear Europe does not believe that such bonds would pose any additional or novel risks for the Clearing House. ICE Clear Europe further believes that the Additional Permitted Cover has demonstrated low volatility, including in stressed market conditions.

ICE Clear Europe represents that it will initially apply to the Additional Permitted Cover the same valuation haircuts as currently applied to currently accepted bonds of the same issuer and within the same maturity bucket. ICE Clear Europe also asserts that it will review and modify such haircuts from time to time, in accordance with Clearing House's Collateral and Haircut Policy and will impose both absolute limits and relative limits for each type of Additional Permitted Cover (other than U.S. Treasury obligations), consistent with the existing issuer limits for Permitted Cover and the Collateral and Haircut Policy. As part of that policy, ICE Clear Europe asserts that an additional haircut will apply where Additional Permitted Cover is used to cover a margin requirement denominated in a different currency, to cover the exchange rate risk.

ICE Clear Europe represents that it will accept the Additional Permitted Cover in respect of original margin requirements for F&O Contracts and initial margin requirements for CDS Contracts. In addition, ICE Clear Europe represents that the UST FRNs will be accepted as Permitted Cover in respect of F&O and CDS guaranty fund contribution requirements and the Spanish and German securities constituting Additional Permitted Cover will also be accepted for the Euro-denominated component of the CDS guaranty fund. According to ICE Clear Europe, the other types of Additional Permitted Cover will not be accepted in respect of guaranty fund requirements and the Additional Permitted Cover cannot be used to satisfy variation margin requirements because variation margin must be paid in cash in the currency of the contract.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [6] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [7] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder applicable to ICE Clear Europe. The proposed rule change will permit Clearing Members of ICE Clear Europe to provide additional categories of securities to satisfy certain margin and guaranty fund requirements. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–77234 (February 25, 2016), 81 FR 10949 (Mar. 2, 2016).

[4] Securities Exchange Act Release No. 34–77634 (April 15, 2016), 81 FR 23531 (April 21, 2016).

[5] ICE Clear Europe filed Amendment No. 1 to clarify in its List of Permitted Cover that the operation of the relative limits applicable to certain Permitted Cover apply across an individual Clearing Member's total initial margin and guaranty fund requirement, as described in ICE Clear Europe's Collateral and Haircut Policy. The List of Permitted Cover incorrectly described the relative limit as applying only to the initial margin requirement. The amendment is intended to ensure that the description of relative limits in the List of Permitted Cover is consistent with the approach set forth in ICE Clear Europe's Collateral and Haircut Policy, but does not substantively change any policies or procedures. Amendment No. 1 is not subject to comment because it is a technical amendment that does not alter the substance of the proposed rule change or raise any novel regulatory issues.

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

Additional Permitted Cover is substantially similar to existing forms of Permitted Cover, will be subject to the same valuation haircuts as currently applied to currently accepted bonds of the same issuer and within the same maturity bucket, and will be subject to both absolute limits and relative limits, consistent with the existing issuer limits for Permitted Cover and the Collateral and Haircut Policy. The Commission believes that the proposed rule change is intended to allow Clearing Members more flexibility in meeting their margin and guaranty fund requirements without compromising ICE Clear Europe's risk management function.

The Commission therefore finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–ICEEU–2016–004) as amended by Amendment No. 1, be, and hereby is, approved.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13042 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77938; File No. SR–OCC–2016–007]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Membership Approval Process

May 27, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to: (i) Vest the authority to approve or disapprove new membership applications with OCC's Risk Committee,[3] and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) It is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to streamline OCC's membership approval process by: (i) Allowing OCC's Executive Chairman or President to approve pro forma applications for clearing membership, and (ii) to vest ultimate authority with OCC's Risk Committee, not its Board, to approve or disapprove applications for clearing membership that are not approved by either OCC's Executive Chairman or President. To this end, OCC is proposing to: (i) Vest the authority to approve or disapprove new membership applications with OCC's Risk Committee, and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) It is not recommended by the Risk Committee's designated delegates or agents that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period. The practical effect of the proposed rule change is that either OCC's Executive Chairman or President would be approving most applications for clearing membership at OCC since most applicants for clearing membership choose to have their application presented for approval only when such approval is pro forma in nature (*i.e.,* the applicant meets all of the clearing membership requirements at OCC and there is no need to impose additional membership requirements). OCC believes that the proposed rule change would better allocate the time and resources of the Board and Risk Committee and ensure applications for clearing membership are considered in a timely manner.

Background

OCC believes that its membership criteria are objective standards that are designed not to unfairly discriminate in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC's Risk Committee is a committee of OCC's Board of Directors. *See* OCC's By-Laws Article III, Section 9.

the admission of participants to OCC,[4] as well as to provide for fair and open access to OCC.[5] Currently, the authority to approve or disapprove new applications for clearing membership resides with the Board.[6] Under Article V, Section 2 of OCC's By-Laws, OCC's Risk Committee, including its designated delegates or agents, is responsible for reviewing applications for clearing membership, and the Risk Committee is responsible for making a recommendation of approval or disapproval to the Board (in part, relying on OCC's Management's review and recommendation).[7] OCC's management ("Management") performs the substantive review of applications for clearing membership on behalf of the Risk Committee. Management reviews a given application against OCC's membership criteria, which are set forth in Article V of OCC's By-Laws as well as Chapters 2 and 3 of OCC's Rules. Based on its review, Management, as the subject matter expert on OCC's membership criteria, either recommends an application for approval without conditions, recommends an application for approval with conditions (in accordance with OCC's By-Laws, Article V, Section 1, Interpretation and Policy .06), or does not recommend an application for approval. The Risk Committee, based on Management's review of the application, recommends a course of action to OCC's Board. OCC's Board then approves or disapproves applications for clearing membership based on the Risk Committee's recommendation.

Moreover, since the rules of the Commission and the Commodity Futures Trading Commission require OCC to have rules that do not unfairly discriminate in the admission of participants and provide fair and open access,[8] OCC believes that, under its rules, it is required to admit applicants for clearing membership that clearly meet OCC's membership criteria, and therefore, the Board's ultimate approval of an application for clearing membership for which Management does not recommend approval with conditions or disapproval is pro forma. From a timing perspective, applications for clearing membership often do not track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene a special meeting for the sole purpose of considering an application for clearing membership or otherwise seek [*sic*] approval via unanimous written consent, which is an inefficient use of the Board's time and resources. In an effort to better allocate the time and resources of OCC's Board and Risk Committee as well as streamline its clearing membership approval process, OCC is proposing the amendments to Articles V and VIII of its By-Laws as well as the Board and Risk Committee Charters described below. The effect of such amendments is that either OCC's Executive Chairman or President would approve most applications for clearing membership, thereby allowing the Board and the Risk Committee to better allocate their time and resources.

Changes To Vest Authority of New Applicant Approvals With the Risk Committee

OCC is proposing to amend Article V, Section 2 of its By-Laws to vest the authority to approve or disapprove new applicants for clearing membership with the Risk Committee. OCC believes that the members of the Board comprising the Risk Committee are capable of appropriately acting on membership applications. The Risk Committee is currently delegated the authority to (1) review applications for clearing membership and recommend approval or disapproval thereof to the Board, (2) conduct hearings if requested by applicants whose applications are proposed to be disapproved, and (3) review and approve or disapprove requests by clearing members to expand clearing activities.[9] Therefore, OCC believes that requiring the Board to approve or disapprove an application for clearing membership that has already been reviewed by, and received a recommendation for approval or disapproval from, the Risk Committee is redundant and represents an inefficient use of the Board's time. Accordingly, OCC believes that the Risk Committee is the appropriate governing body in which to vest ultimate authority to approve or disapprove applications for clearing membership.[10] Should the Risk Committee propose to disapprove an application for clearing membership, the Risk Committee must first provide the applicant an opportunity to be heard and present evidence on its own behalf (as is currently the case today with respect to the Board's decision to disapprove an application for clearing membership).[11]

In order to effect the foregoing, and in addition to proposed changes to Article V, Section 2 of the By-Laws, OCC is proposing conforming changes to Article V, Sections 1 and 3 of the By-Laws as well as the Board and Risk Committee Charters.[12] Such conforming changes would identify that the Risk Committee, and not the Board, would approve applications for clearing membership. Additionally, OCC is proposing changes to Article VIII, Section 2 of the By-Laws (as well as the Board and Risk Committee Charters) to identify that the Risk Committee, and not the Board, would set initial clearing fund requirements in connection with the approval of an application for clearing membership.

Delegation of Authority To Approve Applications for Membership to the Executive Chairman or President of OCC

In order to better streamline OCC's membership application approval process, and allow the Board and the Risk Committee to more efficiently allocate their time, OCC is proposing additional amendments to Article V, Section 2 of its By-Laws to allow OCC's Executive Chairman or its President to approve certain applications for clearing membership. As described above: (i) OCC believes that, based on the applicable rules of the Commission and the Commodity Futures Trading Commission, applications for clearing membership that clearly meet OCC's membership criteria must be approved,[13] and (ii) applications for clearing members do not necessarily track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene in a special meeting for the sole purpose of considering a clearing member

[4] *See* 15 U.S.C. 78q–1(b)(3)(F).

[5] *See* 7 U.S.C. 7a–1(c)(2)(C)(iii)(III).

[6] *See* OCC's By-Laws Article V, Section 2.

[7] *See* OCC's By-Laws Article V, Section 2. The Risk Committee, from a practical perspective, has designated OCC's management as its agent to review applications for clearing membership. OCC's management reviews applications for clearing membership and makes a recommendation to the Risk Committee concerning the applicant's satisfaction of OCC's membership criteria.

[8] *See* 15 U.S.C. 78q–1(b)(3)(F) and 7 U.S.C. 7a–1(c)(2)(C).

[9] *See* Section IV of the Risk Committee Charter attached hereto as Exhibit 5B.

[10] The Board would continue to oversee OCC's membership criteria and ongoing membership standards through its authority to approve changes to OCC's By-Laws and Rules (and specifically those By-Laws and Rules that concern membership). The Risk Committee would inform the Board, at the Board's next regularly scheduled meeting, of applications for clearing membership pursuant to proposed Article V, Section 2(c) of the By-Laws.

[11] *See* OCC's By-Laws Article V, Section 2. Typically, however, if OCC's due diligence review reveals issues that would prevent the Board or the Risk Committee from approving an application for clearing membership, the applicant voluntarily remediates such issues prior to the presentation of the application for clearing membership to the Risk Committee.

[12] Marked versions of the Board and Risk Committee Charters are attached as Exhibits 5A and 5B.

[13] *See* 15 U.S.C. 78q–1(b)(3)(F) and 7 U.S.C. 7a–1(c)(2)(C).

application or otherwise seek approval via unanimous written consent, which is not a good use of either the Board or the Risk Committee's time and resources. Therefore, OCC is proposing to amend Article V, Section 2 of its By-Laws to delegate the authority to approve applications for clearing membership to the Executive Chairman or President of OCC provided that: (i) It is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days from the date it is notified by its designated delegates or agents that the Executive Chairman or President intends to approve a given application to determine that such application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period. If five business days pass and no member of the Risk Committee notifies Management that a given application for clearing membership should be reviewed at a meeting of the Risk Committee, then the Executive Chairman and President shall have the authority to approve the application for clearing membership. This proposed change would have the effect of allowing either OCC's Executive Chairman or the President to approve most applications for clearing membership received by OCC. Neither the Executive Chairman nor the President would be allowed to disapprove an application for clearing membership. Instead, if either the Executive Chairman or President determined he could not approve an application for clearing membership, the application would be considered by the Risk Committee for approval or disapproval at its next regularly scheduled meeting. OCC believes that allowing the Executive Chairman or President to approve applications for clearing membership that clearly meet OCC's membership criteria would allow the Board and the Risk Committee to allocate their time to more efficiently and effectively.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) [14] of the Act because it is designed to remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions by streamlining OCC's membership approval process. By vesting the authority to approve or disapprove applications for clearing membership with the Risk Committee and by delegating authority to the Executive Chairman or the President to approve new applications provided that: (i) It is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period, OCC will not subject applicants for clearing membership to the regular meeting cycle of the Board or the Risk Committee, particularly when the approval of an application for clearing membership is pro forma in nature. Additionally, by streamlining OCC's membership approval process in this manner, OCC's Board and Risk Committee will be able to deploy their time and resources in a more efficient manner and allow the Board and Risk Committee more time to focus on other matters of significance to OCC and its role as a systemically important financial market utility. As a result, OCC believes the proposed rule change is also reasonably designed to provide for governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act [15] applicable to clearing agencies and support the objectives of owners and participants in accordance with Rule 17Ad–22(d)(8).[16] The proposed rule change is not inconsistent with any rules of OCC, including those rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impact or impose a burden on competition.[17] OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because it would apply equally to all potential users of OCC, and would not impact current users of OCC. For the foregoing reasons, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2016–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2016–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 15 U.S.C. 78q–1.

[16] 17 CFR 240.17Ad–22(d)(8).

[17] 15 U.S.C. 78q–1(b)(3)(I).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_007.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2016–007 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13039 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77931; File No. SR–ISEMercury–2016–07]

Self-Regulatory Organizations; ISE Mercury, LLC; Order Approving Proposed Rule Change Related to Market Wide Risk Protection

May 26, 2016.

I. Introduction

On March 29, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce new activity-based risk protection functionality. The proposed rule change was published for comment in the **Federal Register** on April 14, 2016.[3] No substantive comment letters were received in response to this proposal.[4] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposed to introduce two activity-based risk protection measures that will be mandatory for all members: (1) The "Order Entry Rate Protection," which prevents members from *entering* orders at a rate that exceeds predefined thresholds,[5] and (2) the "Order Execution Rate Protection," which prevents members from *executing* orders at a rate that exceeds their predefined risk settings (together, "Market Wide Risk Protection"). The Exchange will announce the implementation date of the proposed rule in a circular to be distributed to members prior to implementation.[6]

Pursuant to proposed Rule 714(d), "Market Wide Risk Protection," the Exchange's trading system (the "System") will maintain one or more counting programs on behalf of each member that will track the number of orders entered and the number of contracts traded on ISE Mercury.[7] Members may also use multiple counting programs to separate risk protections for different groups established within the member.[8] The counting programs will maintain separate counts, over rolling time periods specified by the member, for each count of: (1) The total number of orders entered; and (2) the total number of contracts traded.[9]

According to the Exchange, members will have the discretion to establish the applicable time period for each of the counts maintained under the Market Wide Risk Protection, provided that the selected period is within minimum and maximum time parameters that will be established by the Exchange and announced via circular.[10] By contrast, the Exchange's proposal does not establish minimum or maximum values for the order entry or execution parameters described in (1) and (2) above. Nevertheless, the Exchange will establish default values[11] for the time period, order entry, and contracts traded parameters in a circular to be distributed to members. The Exchange represented that such default values will apply only to members that do not submit their own parameters for the Market Wide Risk Protection measures.[12]

Under proposed Rule 714(d), the System will trigger the Market Wide Risk Protection when it determines that the member has either (1) entered a number of orders exceeding its designated allowable order rate for the specified time period, or (2) executed a number of contracts exceeding its designated allowable contract execution rate for the specified time period.[13] If the member's thresholds have been exceeded, the Market Wide Risk Protection will be triggered and the System will automatically reject all subsequent incoming orders entered by the member on ISE Mercury. In addition, if the member has opted in to this functionality, the System will automatically cancel all of the member's existing orders.[14] The Market Wide Risk Protection will remain engaged until the member manually (*e.g.*, via email)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77569 (April 8, 2016), 81 FR 22140 ("Notice").

[4] The Commission received one anonymous comment letter that read "[g]ood." *See* Letter from Anonymous, dated May 3, 2016.

[5] The Exchange stated that it will initiate the Order Entry Rate Protection pre-open, but in a manner that allows members time to load their orders without inadvertently triggering the protection. The Exchange further noted that it will establish and communicate the precise initiation time via circular and prior to implementation. *See* Notice, *supra* note 3, at 22141 n.4.

[6] *See* Notice, *supra* note 3, at 22141.

[7] Unlike similar risk protection measures available on ISE Mercury's affiliated exchanges, the Market Wide Risk Protection functionality for ISE Mercury will not apply cross-market to its affiliated exchanges. *Cf., e.g.*, Securities Exchange Act Release Nos. 77489 (Mar. 31, 2016), 81 FR 20004 (Apr. 6, 2016) (SR–ISE–2016–08) (notice describing International Securities Exchange, LLC's Market Wide Risk Protection functionality); and 77488 (Mar. 31, 2016), 81 FR 20021 (Apr. 6, 2016) (SR–ISEGemini–2016–03) (notice describing ISE Gemini, LLC's Market Wide Risk Protection functionality). *See also* Notice, *supra* note 3, at 22141 n.6.

[8] The Exchange stated that it will explain how members can go about setting up risk protections for different groups (*e.g.*, business units) in a circular issued to members. *See* Notice, *supra* note 3, at 22141 n.7.

[9] *See* proposed Rule 714(d). The Exchange clarified that a member's allowable order rate for the Order Entry Rate Protection will be comprised of parameter (1), while the allowable contract execution rate for the Order Execution Rate Protection will be comprised of parameter (2). The Exchange further explained that contracts executed on the agency and contra-side of a two-sided crossing order will be counted separately for the Order Execution Rate Protection. *See* Notice, *supra* note 3, at 22141.

[10] *See* Notice, *supra* note 3, at 22141. The Exchange stated that it anticipated setting these minimum and maximum time parameters at one second and a full trading day, respectively. *See id.* at n.9.

[11] *See* proposed Rule 714(d); *see also* Notice, *supra* note 3, at 22141.

[12] *See* Notice, *supra* note 3, at 22141.

[13] *Id.; see also* proposed Rule 714(d)(1). Specifically, after a member enters or executes an order, the System will look back over the specified time period to determine whether the member has exceeded the relevant thresholds. *See* Notice, *supra* note 3, at 22141. In the Notice, the Exchange provided examples illustrating how the Market Wide Risk Protection functionality would work both for order entry and order execution protections. *See* Notice, *supra* note 3, at 22141–42.

[14] Proposed Rule 714(d)(2).

notifies the Exchange to enable the acceptance of new orders.[15]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[16] and rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[18]

The Commission believes that the Exchange's proposed activity-based order protections will provide an additional tool to members to assist them in managing their risk exposure.[19] Specifically, the Commission believes that the Market Wide Risk Protection functionality may help members to mitigate the potential risks associated with entering and/or executing a level of orders that exceeds their risk management thresholds that may result from, for example, technology issues with electronic trading systems. Further, the Commission notes that other exchanges have established risk protection mechanisms for members and market makers that are similar in many respects to ISE Mercury's proposal.[20]

Proposed Rule 714(d) imposes a mandatory obligation on ISE Mercury members to utilize the Market Wide Risk Protection functionality. The Commission notes that, although the Exchange will establish minimum and maximum permissible parameters for the time period values, members will have discretion to set the threshold values for the order entry and order execution parameters.[21] If members do not independently set such parameters, they will be subject to the default parameters established by ISE Mercury.[22] While the Commission believes that the Exchange's proposed rule provides members flexibility to tailor the Market Wide Risk Protection to their respective risk management needs, the Commission reminds members to be mindful of their obligations to, among other things, seek best execution of orders they handle on an agency basis and consider their best execution obligations when establishing parameters for the Market Wide Risk Protection or utilizing the default parameters set by ISE Mercury.[23] For example, an abnormally low order entry parameter, set over an abnormally long specified time period should be carefully scrutinized, particularly if a member's order flow to ISE Mercury contains agency orders. To the extent that a member chooses sensitive parameters, a member should consider the effect of its chosen settings on its ability to receive a timely execution on marketable agency orders that it sends to ISE Mercury in various market conditions. The Commission cautions brokers considering their best execution obligations to be aware that the agency orders they represent may be rejected as a result of the Market Wide Risk Protection functionality.

As discussed above, ISE Mercury determined not to establish minimum and maximum permissible settings for the order entry and order execution parameters in its rule and indicated its intent to set a minimum and maximum for the time period parameters that provide broad discretion to members (*i.e.*, one second and a full trading day, respectively).[24] In light of these broad limits, the Commission expects ISE Mercury to periodically assess whether the Market Wide Risk Protection measures are operating in a manner that is consistent with the promotion of fair and orderly markets, including whether the default values and minimum and maximum permissible parameters for the applicable time period established by ISE Mercury continue to be appropriate and operate in a manner consistent with the Act and the rules thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–ISEMercury–2016–07) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12890 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[15] Proposed Rule 714(d)(3). Members who have not opted to cancel all existing orders under proposed Rule 714(d)(2), however, will still be able to interact with their existing orders entered before the Market Wide Risk Protection was triggered. For instance, such members may send cancel order messages and/or receive trade executions for those orders. *Id.; see also* Notice, *supra* note 3, at 22141.

[16] 15 U.S.C. 78f(b).

[17] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The Exchange currently provides members with limit order price protections that reject orders priced too far outside of the Exchange's best bid or offer. *See* ISE Mercury Rule 714(b)(2).

[20] *See, e.g.,* Miami International Securities Exchange, LLC Rule 519A ("Risk Protection Monitor"); BATS BZX Exchange, Inc. Rule 21.16 ("Risk Monitor Mechanism").

[21] The Exchange has represented that it anticipates that the minimum and maximum values for the applicable time period will be initially set at one second and a full trading day, respectively, which the Commission believes gives members wide latitude in establishing the applicable time periods. *See* Notice, *supra* note 3, at 22141 n.9.

[22] Proposed Rule 714(d).

[23] *See* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290, at 48323 (Sept. 12, 1996) (Order Execution Obligations adopting release); *see also* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37537–8 (June 29, 2005) (Regulation NMS adopting release).

[24] *See* Notice, *supra* note 3, at 22141 n.9; *see also supra* note 21.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77929; File No. SR–NYSE–2016–36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List

May 26, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 11, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List for equity transactions in stocks with a per share stock price more than $1.00 to: (1) Add a new fee for verbal executions by Floor brokers at the close; (2) revise the fees for Midpoint Passive Liquidity ("MPL") orders that remove liquidity from the Exchange and that are not designated with a "retail"

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

modifier as defined in Rule 13; (3) revise the requirements and credits for MPL orders that provide liquidity to the Exchange; and (4) make certain changes in the footnotes and tiers applicable to Supplemental Liquidity Providers ("SLPs") on the Exchange. The Exchange proposes to implement these changes to its Price List effective May 11, 2016.[4] The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to: (1) Add a new fee for verbal interest by Floor brokers at the close; (2) revise the fees for MPL orders that remove liquidity from the Exchange and that are not designated with a "retail" modifier as defined in Rule 13; (3) revise the requirements and credits for MPL orders that provide liquidity to the Exchange; and (4) make certain changes in the footnotes and tiers applicable to SLPs.

The proposed changes would only apply to credits in transactions in securities priced $1.00 or more.

The Exchange proposes to implement these changes effective May 11, 2016.

Verbal Interest at the Close

Currently, the Exchange does not charge a fee for verbal executions by Floor brokers at the close.[5] The Exchange proposes a fee of $0.0010 per share for verbal executions by Floor brokers at the close. The Exchange notes that the proposed fee is the same as the current fee (charged to both sides) for MOC and LOC orders (the Non-Tier MOC/LOC fee).[6]

The Exchange would also add the phrase "excluding verbal interest" to clarify that verbal interest at the close would not be counted for purposes of Floor Broker executions swept into the close that are subject to a charge of $0.00035 per share for shares executed in excess of an ADV[7] of 750,000 shares.

MPL Orders

An MPL Order is defined in Rule 13 as an undisplayed limit order that automatically executes at the mid-point of the best protected bid ("PBB") or [sic] best protected offer ("PBO"), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, "PBBO").[8]

MPL Orders That Remove Liquidity

The Exchange currently charges a fee of $0.00275 per share per transaction for MPL Orders that remove liquidity from the NYSE and that are not designated with a "retail" modifier as defined in Rule 13.[9] Floor brokers are currently charged the same price for MPL Orders that remove liquidity from the Exchange. The Exchange proposes to revise the fee for all MPL Orders that remove liquidity from the Exchange and that are not designated with a "retail" modifier as defined in Rule 13, including MPL Orders entered by Floor brokers, from $0.00275 to $0.0030. The Exchange will continue not to charge a fee for MPL Orders that remove liquidity from the Exchange and that are designated with a "retail" modifier as defined in Rule 13.

MPL Orders That Add Liquidity

The Exchange currently provides a credit of $0.0030 per share credit for MPL Orders that provide liquidity from a member organization that has Adding ADV[10] in MPL Orders that is at least 1.5 million shares, excluding any liquidity added by a Designated Market Maker ("DMM"). The Exchange provides a $0.0015 per share transaction credit for MPL Orders that provide liquidity from a member organization that does not meet the Adding ADV threshold.

The Exchange proposes that member organizations qualifying for the $0.0030 credit have an Adding ADV in MPL orders of at least 0.04% of NYSE consolidated ADV ("CADV"),[11] excluding liquidity added by a DMM. The Exchange also proposes to reduce the credit from $0.0030 to $0.00275.

Changes to Footnotes and Tiers Applicable to SLPs

Current footnote 8 applies to SLP Tiers 1, 1A, 2 and 3 and provides that in its first calendar month as an SLP, an SLP qualifies for the relevant credit regardless of whether it meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV in the applicable month. The Exchange proposes to delete footnote 8 and move the text of the footnote into the body of the Price List for SLP Tier 3, where an SLP is eligible for a credit of $0.0023 per share traded if the SLP (1) meets the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, and (2) adds liquidity for assigned SLP securities in the aggregate of an ADV of more than 0.20% of NYSE CADV or, with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),[12] more than the current 0.20% requirement after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The Exchange does not propose to move the text of current footnote 8 into the body of the Price List for SLP Tier 2, SLP Tier 1 or SLP Tier 1A. Current footnote 8 would thus no longer apply to those tiers.

The Exchange also proposes that current footnote ** would become new footnote 8. Accordingly, each reference in the Price List to footnote ** would be replaced with a reference to footnote 8. The substance of footnote ** would remain unchanged. The Exchange

[4] The Exchange originally filed to amend the Fee Schedule on May 2, 2016 (SR–NYSE–2016–32) and withdrew such filing on May 11, 2016.

[5] The Exchange charges member organizations a fee for market at-the-close ("MOC") and limit at-the-close ("LOC") orders at the close and for Floor broker executions swept into the close. Member organizations that execute during the billing month average daily volume ("ADV") in excess of 750,000 shares through orders executed at the close (except MOC and LOC orders) and Floor broker orders swept into the close, are charged $0.00035 per share per transaction (charged to both sides). Such executions are not charged if the member organization executes an ADV on the Exchange during the billing month of fewer than 750,000 shares ADV.

[6] *See* note 5, *supra*.

[7] The defined term, "ADV," is used here as defined in footnote 2 to the Price List.

[8] *See* Rule 14. *See also* 17 CFR 242.600(b)(57).

[9] MPL Orders that take liquidity do not count toward a member's or member organization's overall level of providing volume for purposes of other pricing on the Exchange that is based on such levels (*e.g.*, the Tier 1, Tier 2 and Tier 3 Adding Credits).

[10] "Adding ADV" is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

[11] NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

[12] Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

believes that this change will add greater specificity and clarity to the Exchange's Price List.

* * * * *

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Verbal Interest at the Close

The Exchange believes that charging a fee for verbal executions at the close is reasonable. The Exchange's closing auction is a recognized industry benchmark,[15] and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis. The proposed fee is also reasonable, equitable and not unfairly discriminatory because it would be the same as the current fee (charged to both sides) for MOC and LOC orders (the Non-Tier MOC/LOC fee). Further, the proposed fee change is also equitable and not unfairly discriminatory because it will apply uniformly to all Floor brokers, who are the only market participants that can enter verbal interest at the close.

MPL Orders

The Exchange believes that (1) increasing the fee for MPL Orders that remove liquidity from the Exchange and that are not designated as "retail," and (2) requiring Adding ADV in MPL orders of at least 0.04% of NYSE CADV rather than a fixed share number and offering a credit of $0.00275 for MPL Orders that add liquidity to the NYSE is reasonable. MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants.

The new credit is also reasonable because it would be similar or higher than the rates on the NASDAQ Stock Market, LLC ("NASDAQ"). For example, on NASDAQ, firms that average 1 million or more shares of midpoint liquidity receive a credit of $0.0010 per share in Tape C securities and $0.0018 in Tape A and B securities to execute against resting midpoint liquidity, which is lower than the proposed $0.00275 per share rate for MPL orders that is at least 0.04% of NYSE CADV, excluding any liquidity added by a DMM.[16]

The proposed change is equitable and not unfairly discriminatory because MPL Orders increase the quality of order execution on the Exchange's market, which benefits all market participants. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because all market participants—customers, Floor brokers, DMMs, and SLPs—may use MPL Orders on the Exchange and because all market participants that use MPL Orders may receive credits for MPL Orders, as is currently the case.

Changes to Footnotes Applicable to SLPs

The Exchange believes it is reasonable to (1) eliminate current footnote 8 and the related Tier 1, Tier 1A, and Tier 2 credits for SLPs during their first calendar month as a SLP irrespective of whether the SLP meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV, and (2) retain the Tier 3 credit for SLPs during their first calendar month irrespective of whether the the [sic] SLP meets the requirement to provide liquidity with an ADV of more than the applicable threshold percentage of NYSE CADV by moving the text of current footnote 8 to the body of the Price List in Tier 3. The Exchange believes that eliminating the higher tiers during a SLP's first calendar month without regard to the applicable requirement is reasonable because SLPs have not increased their activity to qualify for these tiers as significantly as the Exchange anticipated that they would. The Exchange notes that new SLPs can still qualify for the higher rates during their first calendar month of operation as a SLP by meeting the applicable tier volume requirements.

The Exchange also believes that retaining the $0.0023 credit for SLP Tier 3 for SLPs in their first calendar month as an SLP is reasonable because the $0.0023 credit is equal to or higher than the applicable non-Tier Adding Credit, Tier 3 Adding Credit, Tier 2 Adding Credit or Tier 1 Adding Credit for SLPs that don't meet the requirements of SLP Tier 3. The Exchange believes that the proposed changes are equitable and not unfairly discriminatory because they would apply uniformly to all SLPs during their first calendar month. The Exchange notes that there are currently no SLPs in the first calendar month of operation.

Further, the Exchange believes that the proposed change to its Price List whereby current footnote ** would become new footnote 8 is reasonable because it is designed to provide greater specificity and clarity to the Price List, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. Further, the Exchange believes that the proposed non-substantive change relating to footnote ** applicable to SLPs would not affect intermarket nor intramarket competition because the proposed change is not designed to amend any fee or rebate or alter the manner in which

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) & (5).

[15] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

[16] *See* NASDAQ Price List, available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*.

[17] 15 U.S.C. 78f(b)(8).

the Exchange assesses fees or calculates rebates. Instead, this change is intended to provide greater specificity and clarity to the Exchange's Price List for the benefit of member organizations and investors.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–36 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12876 Filed 6–1–16; 8:45 am]

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77928; File No. SR–ISE–2015–30]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 804(g)

May 26, 2016.

On November 10, 2015, International Securities Exchange, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require clearing member approval before a market maker could resume trading after the activation of a market-wide speed bump under Exchange Rule 804(g). The proposed rule change was published for comment in the **Federal Register** on November 30, 2015.[3] On January 13, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 28, 2016.[4] On February 26, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76506 (November 23, 2015), 80 FR 74829.

[4] *See* Securities Exchange Act Release No. 76893 (January 13, 2016), 81 FR 3217 (January 20, 2016).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 77246 (February 26, 2016), 81 FR 11305 (March 3, 2016).

filing of the proposed rule change.[7] The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[8] The 180th day for this filing is May 28, 2016.

The Commission is extending the time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act[9] and for the reasons stated above, the Commission designates July 27, 2016, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–ISE–2015–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12875 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77930; File No. SR–NYSE–2016–38]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 130

May 26, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 16, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 130 to specify that, unless otherwise required by rule, all transactions effected on the Exchange would be processed anonymously. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 130 to specify that, except as otherwise required by the Exchange's rules,[4] all transactions effected on the Exchange and all reports associated with such transaction would be processed anonymously and would not reveal contra-party identities.

Rule 130 currently provides that "[n]otwithstanding any other rule to the contrary, each transaction effected on the Exchange shall be compared or otherwise closed out by the close of business on the Exchange on the business day following the day of the contract." The Exchange proposes to replace "notwithstanding any other rule to the contrary" with "unless otherwise specified by rule" and add a clause to Rule 130 providing that all transactions effected on the Exchange would be processed anonymously and that transaction reports will indicate the details of the transaction, but will not reveal contra party identities.

Additionally, the Exchange proposes to add new subsection (b) to Rule 130 that provides that the Exchange would reveal contra-party identities in the following circumstances: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) when a Qualified Clearing Agency ceases to act for a member organization or the member organization's clearing firm, and determines not to guarantee the settlement of the member organization's trades; or (3) if both parties to the transaction consent.[5] The proposed changes are intended to clarify and reflect the Exchange's current practice as it relates to electronic transactions and align with the rules of other national securities exchange that preserve anonymity through the settlement process.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by furthering the important goal of post-trade anonymity. Similarly, the proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market by providing transparency to the Exchange's existing process to process trades anonymously, which is consistent with that of other national securities exchanges.[8] The Exchange believes that post-trade anonymity benefits investors because preserving anonymity through settlement limits the potential market

[4] For example, face-to-face transactions on the Trading Floor, including Crowd trades executed verbally between two Floor brokers and between a Floor broker and a Designated Market Maker ("DMM"), would continue to require submission of certain contra side information, as required by Rules 123, 132, and 134. Exchange systems and the executing brokers would continue not to have access to any information about the ultimate customer (*i.e.*, the name of the member or member organization's customer) in an order or transaction.

[5] The Exchange proposes non-substantive, technical amendments to re-number the remaining paragraphs of Rule 130 accordingly.

[6] *See* NYSE Arca Equities, Inc. ("NYSE Arca Equities") Rule 7.41, BATS BZX Exchange, Inc. ("BATS") Rule 11.15, and NASDAQ Stock Market LLC ("Nasdaq") Rule 4760.

[7] 15 U.S.C. 78f(b)(5).

[8] *See* note 6, *supra*.

impact that disclosing contra-party identities could have, which might include the ability to detect trading patterns and make assumptions about the potential direction of the market based on the identified contra party's presumed client-base. The Exchange further believes it is appropriate to carve out Floor-based face-to-face trades from the anonymity requirement because such trades are, by definition, not anonymous.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather intended to align the Exchange's practice with the rules of other national stock exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–38 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12877 Filed 6–1–16; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77927; File No. SR–ISE Gemini–2015–17]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 804(g)

May 26, 2016.

On November 12, 2015, ISE Gemini, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require clearing member approval before a market maker could resume trading after the activation of a market-wide speed bump under Exchange Rule 804(g). The proposed rule change was published for comment in the **Federal Register** on November 30, 2015.[3] On January 13, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to February 28, 2016.[4] On February 26, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act provides that proceedings to determine whether to disapprove a proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76505 (November 23, 2015), 80 FR 74824.

[4] *See* Securities Exchange Act Release No. 76894 (January 13, 2016), 81 FR 3213 (January 20, 2016).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 77247 (February 26, 2016), 81 FR 11309 (March 3, 2016).

must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change.[7] The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[8] The 180th day for this filing is May 28, 2016.

The Commission is extending the time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act[9] and for the reasons stated above, the Commission designates July 27, 2016, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR–ISE Gemini–2015–17).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12874 Filed 6–1–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77925; File No. SR–NYSEArca–2016–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees Effective June 1, 2016

May 26, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 23, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Fee Schedule"). The Exchange proposes to implement the fee changes on June 1, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on June 1, 2016.

On February 22, 2016, the Exchange commenced the implementation of Pillar, the Exchange's new technology trading platform.[4] Pillar is the integrated trading technology platform designed to use a single specification for connection to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE MKT LLC. NYSE Arca Equities was the first trading system to migrate to Pillar. Securities traded on the Exchange were migrated to Pillar in phases. The Exchange previously filed a proposed rule change to amend its Fee Schedule to adopt references that would be applicable during the migration to Pillar.[5] Specifically, the Exchange adopted language stating that the Fee Schedule would also apply to securities traded on Pillar during the migration. The migration of securities to Pillar is now complete and all securities are now traded on Pillar. Therefore, the Exchange now proposes to amend the Fee Schedule to remove references adopted in the Pillar Fee Filings.

Mid-Point Passive Liquidity Order—Securities $1.00 and Greater

The Exchange currently provides per share credits under Tier 1, Tier 2 and Basic Rates[6] for Mid-Point Passive Liquidity ("MPL") Orders that provide liquidity based on the Average Daily Volume ("ADV") of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined ("MPL Adding ADV"). Specifically, for ETP Holders and Market Makers that have MPL Adding ADV during a billing month of at least 3 million shares, the Exchange provides a credit of $0.0015 for Tape A securities and $0.0020 for Tape B and Tape C securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of at least 1.5 million shares but less than 3 million shares, the Exchange provides a credit of $0.0015 for Tape A, Tape B and Tape C securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of less than 1.5 million shares, the Exchange provides a credit of $0.0010 for Tape A, Tape B and Tape C securities. The Exchange also currently charges a fee of

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[7] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (Order) (SR–NYSEArca–2015–38) ("Pillar I Filing"); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (Order) (SR–NYSEArca–2015–56) ("Pillar II Filing"); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (Order) (SR–NYSEArca–2015–58) ("Pillar III Filing"); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) (Notice) and 76869 (Jan. 11, 2016) (Order) (SR–NYSEArca–2015–86) ("Pillar Auction Filing").

[5] *See* Securities Exchange Act Release Nos. 77124 (February 12, 2016), 81 FR 8548 (February 19, 2016) (SR–NYSEArca–2016–18); and 77588 (April 12, 2016), 81 FR 22676 (April 18, 2016) (SR–NYSEArca–2016–54) ("Pillar Fee Filings").

[6] Tier 1 applies to ETP Holders and Market Makers (1) that provide liquidity an average daily share volume per month of 0.70% or more of the US CADV. Tier 2 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV. Basic Rates apply when tier rates do not apply. Tier 3 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.20% or more, but less than 0.30% of the US CADV. Basic Rates apply when tier rates do not apply. US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

$0.0030 per share for MPL Orders in Tape A, Tape B and Tape C securities that remove liquidity from the Exchange that are not designated as "Retail Orders." [7] In addition, MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are not currently subject to a fee. On Pillar, Mid-Point Passive Liquidity Order is named Mid-Point Liquidity Order and with this proposed rule change, the Exchange proposes to replace references to Mid-Point Passive Liquidity Order with Mid-Point Liquidity Order in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees and credits for Mid-Point Liquidity Orders are described. The Exchange is not proposing any change to the fees charged or credits provides [sic] for Mid-Point Liquidity Orders in securities priced $1.00 and greater.

Orders designated as retail orders for securities traded on the Exchange would need to meet the requirements of Rule 7.44P(a)(3) and with this proposed rule change, the Exchange proposes to amend the Fee Schedule to replace the application of Rule 7.44 with Rule 7.44P to such securities.

Opening Auction—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0015 per share is charged for certain orders executed in the Opening Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders.[8] This fee is capped at $20,000 per month per Equity Trading Permit ID. On Pillar, the Opening Auction is named the Early Open Auction and with this proposed rule change, the Exchange proposes to replace references to Opening Auction with Early Open Auction in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Early Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Early Open Auction in securities priced $1.00 and greater.

Market Order Auction—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0015 per share is charged for certain orders executed in the Market Order Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders. This fee is capped at $20,000 per month per Equity Trading Permit ID. On Pillar, the Market Order Auction is named the Core Open Auction and with this proposed rule change, the Exchange proposes to replace references to Market Order Auction with Core Open Auction in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Core Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Core Open Auction in securities priced $1.00 and greater.

Market Order Auction—Securities Less Than $1.00

The Fee Schedule currently provides that a fee of 0.1% of the total dollar value will be charged for round lot and odd lot executions of securities priced below $1.00 that take place during a Market Order Auction. On Pillar, the Market Order Auction is named the Core Open Auction and with this proposed rule change, the Exchange proposes to replace references to Market Order Auction with Core Open Auction. The Exchange is not proposing any change to the fee charged for orders executed in the Core Open Auction in securities priced below $1.00.

Passive Liquidity Order—Securities $1.00 and Greater

The Fee Schedule currently provides that no fee or credit is charged for Passive Liquidity Orders that provide liquidity to the Book in Tape A, Tape B or Tape C securities. The Fee Schedule further provides that a fee of $0.0030 per share is charged for Passive Liquidity Orders that take liquidity from the Book in Tape A and Tape C securities, and a fee of $0.0028 per share is charged for such orders that take liquidity from the Book in Tape B securities. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and with this proposed rule change, the Exchange proposes to replace references to Passive Liquidity Order with Limit Non-Displayed Order in each of the Tier 1, Tier 2, Tier 3 and Basic Rates sections of the Fee Schedule in which fees for Limit Non-Displayed Orders are described. Additionally, the Exchange proposes to raise the fee for Limit Non-Displayed Orders in securities priced $1.00 and greater that take liquidity in Tape B Securities to $0.00285 per share referenced in the Tier 1, Tier 2 and Tier 3 sections of the Fee Schedule. The Exchange is not proposing any change to the fee charged for orders that take liquidity in Tape A and Tape C securities or to the rebate provided for Limit Non-Displayed Orders that add liquidity in securities priced $1.00 and greater or to the fee for Limit Non-Displayed Orders in securities priced $1.00 and greater that take liquidity in Tape B securities referenced in the Basic Rates section of the Fee Schedule.

Passive Liquidity Order—Lead Market Makers

For Lead Market Makers ("LMMs"),[9] the Exchange currently provides a $0.0015 per share credit for Passive Liquidity Orders that provide liquidity in securities for which they are registered as the LMM. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and with this proposed rule change, the Exchange proposes to replace references to Passive Liquidity Order with Limit Non-Displayed Order in the section of the Fee Schedule related to Market Maker Fees and Credits. The Exchange is not proposing any change to the credit provided to LMMs for Limit Non-Displayed Orders.

Post No Preference Blind Order—Lead Market Makers

For LMMs, the Exchange currently provides a $0.0030 per share credit for orders that provide undisplayed liquidity in Post No Preference Blind (PNP B) Orders to the Book in securities for which they are registered as LMMs. On Pillar, PNP B Order is named Arca Only Order and with this proposed rule change, the Exchange proposes to replace references to PNP B Order with Arca Only Order on the Fee Schedule. The Exchange is not proposing any change to the credit provided to LMMs that provide undisplayed liquidity in securities in which they are registered as LMMs using Arca Only Orders.

Closing Auction—Securities $1.00 and Greater

The Fee Schedule currently provides that a fee of $0.0010 per share is charged

[7] Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44P(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. *See* Rule 7.44P. *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

[8] *See* NYSE Arca Equities Rule 7.31P(c). An Auction-Only order is executable during the next auction following entry of the order. If the Auction-Only Order is not executed in the auction, the balance is cancelled. Auction-Only orders are only available for auctions that take place on the Exchange and are not routed to other exchanges.

[9] The term "Lead Market Maker" means a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market. *See* NYSE Arca Equities Rule 1.1(ccc).

for Market,[10] Market-On-Close ("MOC") [11] and Limit-On-Close ("LOC") [12] Orders executed in a Closing Auction. The Exchange also currently charges this $0.0010 per share fee for Auction-Only Orders that are executed in a Closing Auction, which are effectively equivalent to a MOC Order or LOC Order. The Exchange does not charge for Limit Orders that are executed in a Closing Auction. This fee is applicable to Tape A, Tape B and Tape C securities and is referenced in Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule. The Exchange proposes to raise this fee to $0.0012 per share for Tape A, Tape B and Tape C securities referenced in the Basic Rates section only. The fee for Tape A, Tape B and Tape C securities referenced in Tier 1 and Tier 2 of the Fee Schedule remain unchanged.

Tape B Orders

The Fee Schedule currently provides that a fee of $0.0028 per share is charged for orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2, Tier 3, and Cross-Asset Tier 2 sections of the Fee Schedule, and for Limit Non-Displayed Orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3 of the Fee Schedule. The Exchange proposes to increase this fee to $0.00285 per share.

LMM Transaction Fees

The Exchange currently charges a fee of $0.0028 per share to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book. The Exchange proposes to increase this fee to $0.00285 per share.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the Fee Schedule, which include the deletion of references to order types that have been renamed on Pillar, is reasonable, equitable and not unfairly discriminatory because the changes are intended to add clarity to the Fee Schedule and avoid investor confusion, which is in the public interest. The Exchange further believes that the proposed changes are designed to enable market participants to better understand how Exchange fees would be applicable to market participants, which should make the overall Fee Schedule more transparent and comprehensive to the benefit of the investing public. Therefore, the Exchange believes these changes will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposal to raise the fee charged for Market, MOC, LOC and Auction-Only Orders executed in a Closing Auction referenced in the Basic Rates section is reasonable because the proposed rate is within a range of fees charged by other exchanges. For example, Bats BZX Exchange ("BZX") currently charges a $0.0010 per share fee for orders in BZX listed securities executed in a Closing Auction on that exchange.[15] Additionally, NASDAQ Stock Market ("NASDAQ") charges a fee that ranges between $0.0008 and $0.0015 per share for certain orders executed during the NASDAQ Closing Cross on that exchange.[16] The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all Market, MOC, LOC and Auction-Only Orders executed in a Closing Auction in securities with a per share price of $1.00 and greater.

The Exchange believes that the proposal to increase the fee charged for orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book, and for Limit Non-Displayed Orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3, is reasonable because the proposed rate will continue to be lower than the fee charged by other exchanges. For example, Bats EDGX Exchange ("EDGX") currently charges a fee of $0.0029 per share for orders that remove liquidity in Tape B securities on that exchange,[17] while NASDAQ charges a fee of $0.0030 per share for orders that remove liquidity in Tape B securities on that exchange.[18] The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book.

The Exchange believes that it is reasonable to increase the fee charged to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book as this fee would be the same as the fee increase proposed by the Exchange to Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 ETP Holders and Market Makers that take liquidity in Tape B securities. In addition, the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated LMMs.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not [sic] impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With respect to the changes related to the renaming of order types on Pillar, the proposed changes are not designed to address any competitive issue but rather provide the public and investors with a Fee Schedule that is transparent. The proposed change to raise fees does not impose any burden on competition as the fee changes are consistent with the fees charged by other exchanges.[19]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[10] A Market Order is an unpriced order to buy or sell a stated amount of security that is to be traded at the best price obtainable without trading through the NBBO. A Market Order must be designated Day and will be rejected on arrival or cancelled if resting if there is no contra-side NBBO. *See* NYSE Arca Equities Rule 7.31P(a)(1).

[11] A MOC Order is a Market Order that is to be traded only during the Closing Auction. *See* NYSE Arca Equities Rule 7.31P(c)(4).

[12] A LOC Order is a Limit Order that is to be traded only during the Closing Auction. *See* NYSE Arca Equities Rule 7.31P(c)(3).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* BZX Fee Schedule at *http://www.bats.com/us/equities/membership/fee_schedule/bzx/*.

[16] *See* Execution Fees for the NASDAQ Closing Cross at *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*.

[17] *See* EDGX Fee Schedule at *http://www.bats.com/us/equities/membership/fee_schedule/edgx/*.

[18] *See* NASDAQ Price list at *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*.

[19] *See supra*, notes 15–18.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [20] of the Act and subparagraph (f)(2) of Rule 19b–4 [21] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [22] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–78, and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12872 Filed 6–1–16; 8:45 am]

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77934; File No. SR–NYSEArca–2016–80]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31P(e) Regarding ALO Orders

May 26, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 24, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31P(e) (Orders and Modifiers) regarding ALO Orders. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.31P(e) ("Rule 7.31P") regarding ALO Orders. These proposed changes would revise how ALO Orders would price and trade on the Pillar trading platform only.

Overview

Currently, an arriving ALO Order will trade only if its limit price crosses the working price of a non-displayed order, which for purposes of ALO Orders only, includes a displayed odd-lot sized order priced better than the Best Bid (BB) or Best Offer (BO).[4] An arriving ALO Order will not trade with the BB or BO, even if such trade would provide price improvement to the ALO Order. In addition, an arriving ALO Order that would lock the BB or BO on the NYSE Arca Marketplace will be assigned a working price and display price one minimum price variation ("MPV")

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 7.31P(e)(2)(C) (defining nondisplayed order(s) as sell (buy) orders priced below (above) the BO (BB)). The Exchange is proposing a clarifying amendment to Rule 1.1(h) to specify that the term "BBO" means the best bid or offer that is a protected quotation, which is defined in Rule 1.1(eee) as having the same meaning as that term is defined in Regulation NMS, on the NYSE Arca Marketplace. Adding the phrase "that is a protected quotation" clarifies that the terms BBO, BB, and BO does not include odd lots that do not aggregate to a round lot or more. The term "NYSE Arca Marketplace" is defined in Rule 1.1(e) as the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

worse than the BB or BO.[5] Because displayed odd lot orders are not considered the BB or BO, an arriving ALO Order to buy with a limit price equal to a resting displayed odd lot order to sell would lock the odd lot order's displayed price on the Exchange's book.[6]

The Exchange proposes to make two substantive changes to how ALO Orders would operate on Pillar:

- An ALO Order that crosses the working price of any displayed or non-displayed orders would trade with the resting order(s); and
- An ALO Order that locks the price of any-sized display order would be re-priced.

The Exchange believes that these proposed changes would simplify the display and execution of ALO Orders on Pillar by applying consistent treatment of how such orders would behave. Specifically, an ALO Order would trade regardless of whether it crosses the price of displayed *or* non-displayed interest and would be re-priced regardless of whether it locks the price of a round lot *or* odd lot displayed interest. The Exchange further believes that the proposed changes would harmonize the behavior of ALO Orders on the Exchange with the operation of similar orders on other exchanges.[7]

Proposed Rule Change

To effect the rule change, the Exchange proposes to delete current Rules 7.31P(e)(2)(B)(i) and (B)(ii) and 7.31P(e)(2)(C), (C)(i), and (C)(ii) and add new subparagraphs (i)–(iv) to Rule 7.31P(e)(2)(B) that would merge the concepts currently set forth in Rules 7.31P(e)(2)(B) and (C). The Exchange also proposes to move text from current Rule 7.31P(e)(B)(iii) and (iv) to new subsection (C), with proposed modifications described below. The proposed amendments would include both the substantive changes described above and non-substantive clarifying changes.

The Exchange proposes to amend Rule 7.31P(e)(2)(B) to describe how ALO Orders to buy (sell) that, at the time of entry, are marketable against an order of any size on the NYSE Arca Book or would lock or cross a protected quotation, in violation of Rule 610(d) of Regulation NMS, would be priced and trade. The Exchange proposes to replace the phrase "the BO (BB)" in the current rule with the phrase "an order of any size to sell (buy) on the NYSE Arca Book" to change the scope of Rule 7.31P(e)(2)(B) to describe how an ALO Order would be priced and executed when marketable against any displayed and non-displayed orders on the NYSE Arca Book, and not only when marketable against the BO or BB. The Exchange also proposes to add the clause "or trade, or both" to the current rule to specify that this section of the rule would address not only how an ALO Order is priced, but also how it may trade, or both.

Proposed new Rule 7.31P(e)(2)(B)(i) would provide that if there are no displayed or non-displayed orders on the NYSE Arca Book priced equal to or better than the PBO (PBB),[8] the ALO Order to buy (sell) would have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). Current Rule 7.31P(e)(2)(B)(i) provides that if the BO (BB) is higher (lower) than the PBO (PBB), the ALO Order to buy (sell) will have a working price of the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). The Exchange's proposal would mean that an ALO Order would have a working price at the PBO (PBB) and a display price one MPV worse than the PBO (PBB) if there are any orders on the NYSE Arca Book, even if those orders are undisplayed or odd lot orders and thus not part of the BO (BB).

Proposed new Rule 7.31P(e)(2)(B)(ii) would provide that if the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book priced equal to or better than the PBO (PBB), it would trade as the liquidity taker with such order(s). This proposed rule combines the text currently set forth in Rule 7.31P(e)(2)(C)(i), which provides that an ALO Order will trade as the liquidity taker if it crosses the working price of a non-displayed order, with the proposed substantive change that an ALO Order would also trade if it crosses the price of a displayed order. This proposed amendment would also include a substantive change that if the price of an ALO Order crosses non-displayed interest priced equal to the Exchange's BBO, the ALO Order would trade. This proposed rule text differs from current Rule 7.31P(e)(2) because currently, an ALO Order would trade with non-displayed interest only if it is priced better than the BBO. The Exchange proposes to make this change because the participant sending the ALO Order would get the benefit of potential price improvement without trading through the PBBO.[9]

Because trading with both displayed and non-displayed orders would be addressed in this proposed rule text, the Exchange proposes to delete Rule 7.31P(e)(2)(C)(i), which addresses trading with non-displayed orders only. The Exchange also proposes to add, for clarity, that any untraded quantity of the ALO Order would have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). This proposed rule text represents current functionality and clarifies that after trading with any interest that it crosses, the ALO Order would be priced consistent with proposed Rule 7.31P(e)(2)(B)(i).[10]

Proposed Rule 7.31P(e)(2)(B)(iii) would provide that if the limit price of the ALO Order locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book priced equal to or better than the PBO (PBB), it would be assigned a working price and display price one MPV worse than the price of the displayed order on the NYSE Arca Book.[11] This proposed rule text is based, in part, on current Rule 7.31P(e)(2)(B)(ii), which provides that if the BO (BB) is equal to the PBO (PBB), an ALO Order to buy (sell) will have a working price and display price one MPV below (above) the PBO (PBB). By proposing to refer to any order ranked Priority 2—Display Orders, the new rule would include the substantive change that the Exchange would re-price an ALO Order that locks a display order of

[5] *See* Rule 7.6 (Trading Differentials) (defining the MPV for quoting and entry of orders in securities traded on the NYSE Arca Marketplace).

[6] *See* Rule 7.31P(e)(2)(C)(ii).

[7] *See, e.g.*, BATS BZX Exchange, Inc. ("BZX") Rules 11.9(c)(6) (BZX Post Only Order removes contraside liquidity if the trade provides price improvement to the arriving BZX Post Only Order) and Nasdaq Stock Market LLC ("Nasdaq") Rule 4702(b)(4)(A) (Post-Only Order that locks or crosses an order on the Nasdaq Book will be either repriced or trade if it receives price improvement).

[8] *See* Rule 1.1(dd) (defining the terms "Best Protected Bid" or "PBB" as the highest Protected Bid and "Best Protected Offer" or "PBO" as the lowest Protected Offer).

[9] For all securities priced over $1.00, the price improvement that an ALO Order would receive for trading with an order under the proposed rule would be greater than any fee for trading as the liquidity taker. While this may not be true for all transactions for securities priced under $1.00, the Exchange proposes to apply consistent behavior to how an ALO Order trades, regardless of the fees that would be charged.

[10] For example, assume the PBO on an Away Market is 10.10 and the Exchange has an offer to sell 50 shares priced at 10.10 that is ranked Priority 2—Display Orders. An arriving ALO Order to buy priced at 10.11 for 200 shares would trade with the 50 share sell order at 10.10 and the remaining 150 shares of that ALO Order would be assigned a working price of 10.10 and a display price of 10.09.

[11] For example, assume the PBO is 10.10 and the Exchange has an odd-lot order to sell ranked Priority 2—Display Order priced at 10.09. An ALO Order to buy priced at 10.09 that locks the price of the odd-lot order to sell would be assigned a working price and display price of 10.08.

any size, including an odd-lot order.[12] Because the proposed rule is inclusive of how an ALO order would be priced if it locks the BB or BO, the Exchange proposes to delete current Rule 7.31P(e)(2)(B)(ii).

Proposed Rule 7.31P(e)(2)(B)(iv) would provide that if the limit price of the ALO Order locks the working price of any order ranked Priority 3—Non-Display Orders[13] on the NYSE Arca Book priced equal to or better than the PBO (PBB), it would be assigned a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB). This proposed rule text is based on current Rule 7.31P(e)(2)(C)(ii), which provides that if the limit price of the ALO Order to buy (sell) is equal to the working price of resting non-displayed order(s) to sell (buy), it will post to the NYSE Arca Book and will not trade with such order(s). By referring to orders ranked Priority 3—Non-Display Orders rather than "non-displayed orders," proposed Rule 7.31P(e)(2)(B)(iv) would not re-price ALO Orders when they lock the working price of displayed odd lot orders. This represents a substantive change from current Rule 7.31P(e)(2)(C), which re-prices ALO Orders when they lock the working price of displayed odd lot orders because such orders are not included in the BO or BB. In addition, the proposed rule text would specify how the ALO Order would be priced when it locks the non-displayed order, which is how an ALO Order would be priced currently, *i.e.*, if the resting non-displayed order to sell (buy) equals the PBO (PBB), the ALO Order to buy (sell) would be priced as provided for in proposed Rule 7.31P(e)(2)(B)(i).

Proposed Rule 7.31P(e)(2)(B)(iv)(a) would further provide that if there are any displayed orders at the working price of an order ranked Priority 3—Non-Display Orders, the ALO Order would be re-priced under proposed Rule 7.31P(e)(2)(B)(iii). This proposed rule text clarifies that if an ALO locks both displayed and non-displayed orders at the same price, the rule governing re-pricing ALO Orders off of the resting displayed order trumps displaying the ALO at the locking price.

Proposed Rule 7.31P(e)(2)(B)(iv)(b) would provide that if the resting order(s) is a Limit Non-Displayed Order or an Arca Only Order to sell (buy) that has been designated with a Non-Display Remove Modifier, the ALO Order will trade with such order(s) as the liquidity provider.[14] This rule text is based on the second clause of current Rule 7.31P(e)(2)(C)(ii) with a clarifying, non-substantive change that in such case, the ALO Order would be considered the liquidity provider.[15] Because ETP Holders have the option to include a Non-Display Remove Modifier on Arca Only or Limit Non-Displayed Orders, and therefore such orders could be eligible to trade with an arriving ALO Order, absent such designation, if such orders are locked by an ALO Order, they would not trade, even after the ALO Order rests on the book. The Exchange therefore proposes a clarifying amendment to specify that unless a resting order is designated with a Non-Display Remove Modifier, an ALO Order would trade only with arriving interest.[16] This proposed clarifying amendment is consistent with the current rule governing MPL–ALO Orders on the Pillar trading platform.[17]

Proposed Rule 7.31P(e)(v) would provide that an ALO Order to buy (sell) would not be assigned a working price or display price above (below) the limit price of such order. This proposed rule change makes clear that an ALO Order would never be priced outside of its limit price, regardless of the contra-side PBBO or orders on the Exchange book. For example, if the limit price of an ALO Order is worse than the contra-side PBBO or orders ranked Priority 2—Display Orders, the ALO Order would be assigned a display price and working price of its limit price, and would not be priced based off of the PBBO or displayed orders on the NYSE Arca Book, as provided for in proposed Rule 7.31P(e)(2)(B)(i)–(iv).

Current Rules 7.31P(e)(2)(B)(iii) and (B)(iv) describe what happens to a resting ALO Order when the PBBO re-prices. The Exchange proposes to describe re-pricing of a resting ALO Order in a separate subsection by adding a new subsection (C) to Rule 7.31P(e)(2). The Exchange also proposes to specify that this section of the Rule would also address how a resting ALO Order may trade when the PBBO re-prices. New Rule 7.31P(e)(2)(C) would provide that once resting on the NYSE Arca Book, an ALO Order would be re-priced or trade, or both, as set forth in Rules 7.31P(e)(2)(C)(i) and (ii).

Proposed Rule 7.31P(e)(2)(C)(i) is based on current Rule 7.31P(e)(2)(B)(iii), which provides that if the PBO (PBB) re-prices higher (lower), an ALO Order to buy (sell) will be assigned a new working price and display price consistent with current Rules 7.31P(e)(2)(B)(i) and (ii). The Exchange proposes to amend the rule text to make the following two substantive changes, discussed above: (1) An ALO Order that locks a displayed odd-lot would be re-priced off of that odd lot, and (2) if the limit price of an ALO Order crosses the price of any order, it would trade. Accordingly, as proposed, Rule 7.31P(e)(2)(C)(i) would provide that if orders ranked Priority 2—Display Order or the PBO (PBB) re-prices to a worse price, the ALO Order would trade or be assigned a new working price and display price, or both, consistent with Rules 7.31P(e)(2)(B)(i)–(iv). In other words, with each such re-pricing of the displayed orders on the NYSE Arca Book or PBBO, the Exchange would re-evaluate whether the ALO should trade (*e.g.*, if its limit price crosses any orders on the NYSE Arca Book) or be re-priced (*e.g.*, if its limit price locks any displayed or non-displayed orders on the NYSE Arca Book), or both.

Proposed Rule 7.31P(e)(2)(C)(ii) is based on current Rule 7.31P(e)(2)(B)(iv), which provides that if the PBO (PBB) re-prices to be equal to or lower (higher) than its last display price or if its limit price no longer locks or crosses the PBO (PBB), a resting ALO Order will be re-priced pursuant to Rule 7.31P(e)(1)(A)(iii) and (iv). The Exchange proposes a non-substantive clarifying change to replace the second reference to "it" with the phrase "the ALO Order to buy (sell)."

The Exchange proposes to amend the rules governing Day ISO ALOs to

[12] *See* Rule 7.36P(b)(1) (Odd-lot sized Limit Orders and the displayed portion of a Reserve Orders are considered displayed for ranking purposes) and 7.36P(e)(2) (Priority 2—Display Orders defined as non-marketable Limit Orders with a displayed working price).

[13] *See* Rule 7.36P(e)(3) (Priority 3—Non-Display Orders defined as Non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders).

[14] Because proposed Rule 7.31P(e)(2)(B)(iv) includes when an order ranked Priority 3—Non-Display Orders is priced equal to the contra-side PBBO, if the arriving ALO Order locks the price of contra-side PBBO, it would trade with a resting non-displayed order at that price that has been designated with the Non-Display Remove Modifier and any remaining quantity of the ALO Order would be priced consistent with proposed Rule 7.31P(e)(2)(B)(i).

[15] *See also* Rules 7.31P(d)(2)(B) (a Limit Non-Displayed Order designated with a Non-Display Remove Modifier will trade as the liquidity taker) and 7.31P(e)(1)(C) (an Arca Only Order designated with a Non-Display Remove Modifier will trade as the liquidity taker).

[16] For example, assume the PBO is 10.10 and the Exchange has a Limit Non-Displayed Order to sell at 10.09 for 100 shares (Order A) that does not include a Non-Display Remove Modifier. An arriving ALO Order to buy 200 shares priced at 10.09 will lock that Limit Non-Displayed Order. Assume the Exchange now receives another Limit Non-Display Order to sell priced at 10.09 for 100 shares (Order B). Order B, as an arriving order, will trade 100 shares with the ALO Order. The remaining 100 shares of the ALO Order will continue to lock Order A.

[17] *See* NYSE Arca Equities Rule 7.31P(d)(3)(F) ("A resting MPL–ALO Order to buy (sell) will trade with an arriving order to sell (buy) that is eligible to trade at the midpoint of the PBBO.")

conform to the proposed changes to ALO Orders discussed above. Specifically, the Exchange proposes to amend the second sentence of Rule 7.31P(e)(3)(D), which currently provides that a Day ISO ALO to buy (sell) that, at the time of entry, is marketable against the BO (BB) will not trade with orders on the NYSE Arca Book priced at the BO (BB) or higher (lower), but may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO. Consistent with the changes to ALO Orders described above, the Exchange proposes to amend this second sentence to provide instead that an arriving Day ISO ALO to buy (sell) may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO, and would be re-priced or trade, or both, as described in proposed Rules 7.31P(e)(3)(D)(i)–(iv).

The Exchange proposes to delete current Rule 7.31P(e)(3)(D)(i) and replace it with proposed Rules 7.31P(e)(3)(D)(i)–(iii), which are based on proposed Rules 7.31P(e)(2)(B)(ii)–(iv). Proposed paragraphs (e)(3)(D)(i)–(iii), unlike proposed paragraphs (e)(2)(B)(ii)–(iv), will not refer to the PBBO because a Day ISO ALO may trade through or lock a protected quotation, as follows:

- Proposed Rule 7.31P(e)(3)(D)(i) would provide that if the limit price of the Day ISO ALO crosses the working price of any displayed or non-displayed order on the NYSE Arca Book, it would trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO would have a working price and display price equal to its limit price.
- Proposed Rule 7.31P(e)(3)(D)(ii) would provide that if the limit price of the Day ISO ALO locks the display price of any order ranked Priority 2—Display Orders on the NYSE Arca Book, it would be assigned a working price and display price one MPV worse than the price of the displayed order on the NYSE Arca Book.
- Proposed Rule 7.31P(e)(3)(D)(iii) would provide that if the limit price of the Day ISO ALO locks the working price of any order ranked Priority 3—Non-Display Orders on the NYSE Arca Book, it would have a working price and display price equal to the limit price of the ALO Order. Similar to proposed Rule 7.31P(e)(2)(B)(iv)(a), proposed Rule 7.31P(e)(3)(D)(iii)(a) would provide that if there are any displayed orders at the working price of an order ranked Priority 3—Non-Display Orders, the Day ISO ALO would be priced under proposed Rule 7.31P(e)(3)(D)(ii). In addition, similar to proposed Rule 7.31P(e)(2)(B)(iv)(b), if the resting order is a Non-Displayed Limit Order or Arca Only Order that has been designated with a Non-Display Remove Modifier, the Day ISO ALO would trade with such order(s) as the liquidity provider.

Proposed Rule 7.31P(e)(3)(D)(iv) is based on current Rule 7.31P(e)(3)(D)(ii), which provides that after being displayed, a Day ISO ALO will be re-priced and re-displayed or trade, or both, based on changes to orders ranked Priority 2—Display Orders or the PBO (PBB) consistent with paragraphs (e)(2)(B)(iii) and (iv) of this Rule. The Exchange proposes a non-substantive, clarifying amendment to replace the term "it" with the term "a Day ISO ALO." The Exchange also proposes to update the cross references to provide that a Day ISO ALO would be re-priced and re-displayed based on changes to the PBO (PBB) consistent with Rule 7.31P(e)(2)(C)(i) and (ii).

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce by Trader Update the implementation date.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying the operation of ALO Orders on Pillar by applying consistent treatment of how an ALO Order would behave if it crosses the price of any displayed or non-displayed interest (*i.e.*, trade) or locks the price of any-sized displayed interest (*i.e.*, re-price). Currently, an ALO Order trades on arrival if it would cross the price of non-displayed orders. The Exchange believes that the proposed substantive change to extend similar treatment when an ALO Order crosses the price of any displayed orders that are priced equal to or better than the PBBO would remove impediments to and perfect the mechanism of a free and open market and a national market system because an ALO Order would have additional opportunities to receive price improvement. In addition, the Exchange believes that the proposed substantive change to re-price ALO Orders that lock the price of any-sized displayed orders would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating the potential for an ALO Order to lock the price of a displayed odd lot order. The Exchange further believes that the two proposed substantive changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would harmonize the operation of ALO Orders with how similar orders function on other exchanges when the limit price of an ALO Order crosses the price of resting interest.[20]

The Exchange believes that the proposed non-substantive changes to the proposed rule would remove impediments to and perfect the mechanism of a free and open market and national market system by providing greater clarity to the rule text and re-organizing the rule text along similar functional lines. Finally, the Exchange believes that the proposed amendment to the definition of BBO would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity in Exchange rules by specifying that the BBO is the Exchange's protected quotation, and therefore would not include odd lots that do not aggregate to a round lot or more.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would reduce the burden on competition for its ETP Holders because it would simplify the operation of ALO Orders on Pillar by applying consistent treatment of how an ALO Order would behave if it crosses the price of any displayed or non-displayed interest (*i.e.*, trade) or locks the price of any-sized displayed interest (*i.e.*, re-price). Currently, an ALO Order only trades if

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 7.

it crosses a non-displayed order on the NYSE Arca Book. As proposed, ALO Orders would trade if the limit price of such order crosses any displayed or non-displayed orders on the NYSE Arca Book, thus providing for similar treatment regardless of whether the contra-side order is displayed or not. In addition, currently, an ALO Order is re-priced so it would not lock the price of the BO or BB. As proposed, the Exchange would provide for similar treatment so that an ALO Order would not lock the price of a displayed order of any size. The proposed rule change would further reduce the burden on competition for its ETP Holders by harmonizing the operation of ALO Orders with how similar orders function on other exchanges.[21]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative for 30 days after the date of the filing. However Rule 19b–4(f)(6)(iii)[25] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change would consistently treat ALO Orders if they cross the price of displayed or non-displayed interest (*i.e.*, trade),[26] which would increase the potential for price improvement for ALO Orders. Also, according to the Exchange, the proposed rule change would consistently treat ALO Orders if they lock the price of any-sized displayed interest (*i.e.*, re-price), which would reduce the potential for ALO Orders to lock the displayed price of an odd lot order and therefore reduce confusion in the market. In addition, the Exchange states that it anticipates that it will be able to implement the technology changes supporting this proposed rule change in less than 30 days from the date of filing. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–80 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12891 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[21] *See supra* note 7.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] The Exchange states that this proposed change is based on the rules of BZX and Nasdaq. *See supra* note 7.

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32127; 812–14399]

Ares Capital Corporation, et al.; Notice of Application

May 26, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a) and 61(a) of the Act.

Applicants: Ares Capital Corporation (the "Company"), Ares Capital

Management LLC (the "Adviser"), Ares Venture Finance GP LLC (the "General Partner"), and Ares Venture Finance, L.P. ("Ares SBIC").

SUMMARY: *Summary of the Application:* The Company requests an order to permit it to adhere to a modified asset coverage requirement.

DATES: *Filing Dates:* The application was filed on December 12, 2014, and amended on May 11, 2015, and May 11, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 20, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Kipp deVeer, Chief Executive Officer, and Joshua M. Bloomstein, General Counsel, Ares Capital Corporation, 245 Park Avenue, 44th Floor, New York, NY 10167.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551–6773, or James M. Curtis, Branch Chief, at (202) 551–6712 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.[1] The Company's investment objective is to generate both current income and capital appreciation through debt and equity investments. The Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Adviser is registered under the Investment Advisers Act of 1940.

2. Ares SBIC, a Delaware limited partnership, received approval for a license from the Small Business Administration ("SBA") to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 ("SBIA"). Ares SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The General Partner is the sole general partner of Ares SBIC and the Company is the sole member of the General Partner. The Company is the sole limited partner of Ares SBIC. The Company, directly or indirectly through the General Partner, wholly owns Ares SBIC.

Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly-owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as an SBIC and relies on section 3(c)(7) for an exemption from the definition of "investment company" under the Act (each, an "SBIC Subsidiary").[2] Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, are subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Ares SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Ares SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from its individual asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition.

The Company will not itself issue or sell any senior security and the Company will not cause or permit Ares SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Ares SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61(a)); provided that, immediately after the issuance or sale of any such senior security by any of the Company, Ares SBIC or any other SBIC Subsidiary, the Company, individually and on a consolidated basis, shall have

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

the asset coverage required by section 18(a) (as modified by section 61(a)). In determining whether the Company, Ares SBIC and any other SBIC Subsidiary on a consolidated basis have the asset coverage required by section 18(a) (as modified by section 61(a)), any senior securities representing indebtedness of Ares SBIC or another SBIC Subsidiary if that SBIC Subsidiary has issued indebtedness that is held or guaranteed by the SBA shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–12878 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77926; File No. SR–CBOE–2016–045]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

May 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] Specifically, the Exchange proposes to allow Market-Makers to designate a Trading Permit Holder with agency operations ("Order Flow Provider" or "OFP") and Order Flow Providers to designate a Market-Maker for purposes of being able to take advantage of credits available under the Affiliate Volume Plan ("AVP").

By way of background, the Exchange currently has in place various incentive programs that benefit "affiliated" Trading Permit Holders ("TPHs"). Particularly, under AVP, if a TPH Affiliate of a Market-Maker (including a Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM")) qualifies under the Volume Incentive Program ("VIP"), that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider Sliding Scale ("Sliding Scale") transaction fees ("Liquidity Provider Sliding Scale Credit"). More specifically, if a Market-Maker's Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a Liquidity Provider Sliding Scale Credit of 10%, 20% or 30%, respectively. Additionally, if a Market-Maker's Affiliate receives a credit under VIP, that Market-Maker will also receive a credit on its Market-Maker Trading Permit fees[4] corresponding to the VIP tier reached (10% Market-Maker Trading Permit fee credit for reaching Tier 2 of the VIP, 20% Market-Maker Trading Permit fee credit for reaching Tier 3 of the VIP, and 30% Market-Maker Trading Permit fee credit for reaching Tier 4 of the VIP) ("Access Credit"). "Affiliate" for purposes of AVP (*i.e.*, the Liquidity Provider Sliding Scale Credit and Access Credit) is currently defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

The Exchange now proposes to expand the availability of the credits under AVP. Specifically, the Exchange proposes to allow any Market-Maker to designate an OFP as its "Appointed OFP" and any OFP to designate a Market-Maker to be its "Appointed Market-Maker" for purposes of qualifying for credits under AVP. TPHs would effectuate the designation by submitting a form to the Exchange.[5] The form would need to be submitted to the Exchange by 3:00 p.m. on the first business day of a month in order to be eligible to qualify for credits under AVP for that month. The Exchange would view transmittal of the completed form as acceptance of such an appointment and would only recognize one such designation for each party once every calendar month, which designation would remain [sic] automatically renew each month and remain in effect unless or until the Exchange receives an email from either party indicating that the appointment has been terminated.

The Exchange notes that the proposal would be available to all Market-Makers and OFPs, even those who already have an "Affiliate" under the current definition. More specifically, the proposed change would enable a Market-Maker without an Affiliate OFP (*i.e.*, an OFP with at least 75% common ownership between itself and that Market-Maker as reflected on each entity's Form BD, Schedule A)—or with an Affiliate OFP—to enter into a relationship with an Appointed OFP. Similarly, an OFP with or without an Affiliate Market-Maker would be able to enter into a relationship with an Appointed Market-Maker. The proposed change increases opportunities for TPHs to qualify for credits under AVP, as it would enable TPHs that are not currently eligible for AVP (*i.e.*, doesn't have an "Affiliate") to avail themselves of AVP, as well as assist TPHs that are currently eligible for AVP (*i.e.*, has an Affiliate) to potentially achieve a higher AVP tier, thus qualifying for higher credits. The Exchange notes that a Market-Maker that has both an Affiliate OFP and Appointed OFP may only qualify based upon the volume of its

[3] The Exchange initially filed the proposed fee change on May 2, 2016 (SR–CBOE–2016–044). On May 16, 2016, the Exchange withdrew that filing and submitted this filing.

[4] This credit does not apply to Market-Maker Trading Permits used for appointments in SPX, SPXpm, RUT, VIX, OEX and XEO.

[5] The Appointed Affiliate Form may be submitted to *Registration@cboe.com*.

Appointed OFP. Similarly, the volume of an OFP that has both an Affiliate Market-Maker and Appointed Market-Maker may only count towards qualifying the Appointed Market-Maker, not Affiliate Market-Maker, for credits under AVP (by virtue of the volume reaching qualifying VIP tiers). The Exchange believes enabling additional Market-Makers and OFPs to take advantage of the AVP credits will attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange lastly proposes to eliminate two references to the word "affiliated" in the Notes section of the AVP table. The Exchange believes that using the term "affiliated Market-Maker" in these locations may be confusing in light of the proposal to also allow "Appointed Market-Makers". Additionally, the Exchange believes preceding "Market-Maker" with "affiliated" is unnecessary and as such proposes to delete it in these two instances.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders.

The Exchange believes the proposed change is reasonable because it would be available to all Market-Makers and OFPs and the decision to be designated as an "Appointed OFP" or "Appointed Market-Maker" is completely voluntary and TPHs may elect to accept this appointment or not. Additionally, the proposed change increases opportunities for Market-Makers to qualify for credits under AVP, as it enables Market-Makers that are not currently eligible for AVP credits to avail themselves of AVP, as well as enables Market-Makers that are currently eligible for AVP to rely on volume that potentially achieves a higher VIP tier (and thus results in higher AVP credits). The Exchange also notes that other Exchanges have adopted a similar concept for their own affiliate-based incentive programs.[9]

The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because although only Market-Makers receive credits under AVP, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations that other market participants do not have. Additionally, the Exchange notes that incentivizing an Appointed OFP to achieve higher tiers under VIP can result in greater customer liquidity, and the resulting increased volume benefits all market participants. The Exchange also notes that the credits under AVP would be available to all Appointed Market-Makers whose Affiliate or Appointed OFP qualify. The Exchange believes enabling additional Market-Makers to take advantage of the AVP credits (not just those with "Affiliates" under the current definition) will attract more volume and liquidity to the Exchange, which will benefit all market participants.

The Exchange believes it is equitable and not unfairly discriminatory to permit only one designation of an Appointed Market-Maker and Appointed OFP per calendar month because it imposes a measure of exclusivity allowing both parties to rely upon each other's volume executed on the Exchange and potentially increase such volume to the benefit of all Exchange participants for that month. The Exchange also believes that while it encourages parties to rely upon each other's volume, limiting the exclusivity to one month also gives the parties the flexibility to make changes if the parties' circumstances change (*e.g.*, if one party terminates).

The Exchange lastly believes that eliminating the two references to the word "affiliated" in the Notes section of the AVP table reduces potential confusion, which removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for additional TPHs to qualify for AVP, which may increase intermarket and intramarket competition by incenting Appointed OFPs and Appointed Market-Makers to bring increased volume (including customer liquidity in order to reach higher VIP tiers, which results in higher AVP credits), and the resulting increased volume benefits all market participants (including Market-Makers and OFPs that do not have Affiliates or Appointed Market-Makers or OFPs) through increased trading opportunities and enhanced price discovery. The Exchange also notes that limiting AVP credits to Market-Makers does not impose an unnecessary or inappropriate burden on intermarket competition because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers also have a number of obligations, including quoting obligations that other market participants do not have.

Additionally, the Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as stated above, the proposed changes are intended to promote competition and better improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange. Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* NYSE MKT LLC, Amex Options Fee Schedule, Section D, Prepayment Program and Section E, Amex Customer Engagement ("ACE") Program. *See also* Bats EDGX Exchange, Inc., Bats EDGX Options Exchange Fees Schedule, Definitions, "Appointed MM" and "Appointed OEF".

market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–045. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–045, and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12873 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77942; File No. TP 16–8]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to SPDR Series Trust and SPDR Dorsey Wright Fixed Income Allocation ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

May 27, 2016.

By letter dated May 27, 2016 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for SPDR Series Trust (the "Trust"), on behalf of the Trust, SPDR Dorsey Wright Fixed Income Allocation ETF (the "Fund"), any national securities exchange on or through which shares issued by the Fund ("Shares") may subsequently trade, State Street Global Markets, LLC (the "Distributor"), and persons or entities engaging in transactions in Shares (collectively, the "Requestors"), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 25,000 shares ("Creation Units").

The Trust is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The SPDR Dorsey Wright Fixed Income Allocation ETF will seek results that correspond generally to the performance, before fees and expenses, of the Dorsey Wright Fixed Income Allocation Index (the "Index"). In doing so, the Fund will, under normal circumstances, invest at least 80% (but typically substantially all) of its total assets in the four ETFs that comprise the Index (the "Underlying ETFs").[1] In light of the Index's composition, the Fund intends to operate as an "ETF of ETFs." Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner substantially identical to the Underlying ETFs.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV"), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on NASDAQ Stock Market LLC or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the "Listing Exchange");
- All Underlying ETFs in which the Fund invests will either meet all conditions set forth in one or more of the ETF class relief letters,[2] will have

[1] At any given time, the underlying Index will be composed of four SPDR ETFs from a universe that currently consists of 21 eligible SPDR ETFs that each invest in a different sub-asset class in the fixed income market. While the Fund typically will invest substantially all of its assets in the four Underlying ETFs, the Fund may also invest in instruments not included in the Index, such as convertible securities, variable rate demand notes, commercial paper, structured notes, swaps, options and futures contracts, which the Fund may use in seeking performance that corresponds to its Index and in managing cash flows.

[2] *See, e.g.,* Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford

Continued

received individual relief from the Commission, will be able to rely on individual relief even though they are not named parties (for example, a no-action letter), or will be able to rely on applicable class relief for actively-managed ETFs; [3]

- All of the components of the Index will have publicly available last sale trade information;
- The intra-day proxy (or "indicative") value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Listing Exchange, the Fund's custodian, through the National Securities Clearing Corporation, will make publicly available the list of the names and the numbers of securities of the Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Listing Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Fund, and the ability to acquire such securities, as well as arbitrageurs' ability to create workable hedges; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[4] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[5]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in

Chance US LLP (October 24, 2006) regarding class relief for exchange-traded index funds; Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006) regarding commodity-based investment vehicles; Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie. Farr & Gallagher LLP (April 9, 2007) regarding class relief for fixed income exchange traded funds; or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007) regarding class relief for combination exchange-traded funds.

[3] *See* Division of Market Regulation Staff Legal Bulletin No. 9, as revised on September 10, 2010, with respect to Rules 101 and 102 of Regulation M, and Securities Exchange Act Rel. No. 67215 (June 19, 2012), with respect to Rule 10b-17.

[4] While ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

[5] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and, therefore, would not violate that rule.

adopting Rule 10b–17 will not be implicated.[6]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the Shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Listing Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Listing Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, consistent with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemptive relief are directed to the antifraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive relief.

This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13041 Filed 6–1–16; 8:45 am]

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[6] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon the representations in the Letter, that the provision of the notices as described in the Letter would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b–17.

[7] 17 CFR 200.30–3(a)(6) and (9).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77941; File No. SR–NYSEArca–2016–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of BlackRock Government Collateral Pledge Unit Under NYSE Arca Equities Rule 8.600

May 27, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 19, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): BlackRock Government Collateral Pledge Unit under NYSE Arca Equities Rule 8.600 [sic]. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of Managed Fund Shares:[5] BlackRock

[4] The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock

Continued

Government Collateral Pledge Unit ("Fund"). The Fund is a series of the BlackRock Collateral Trust (the "Trust"), a Delaware statutory trust.[6] BlackRock Fund Advisors is the investment advisor for the Fund ("Adviser"). State Street Bank and Trust Company ("State Street") is the administrator, custodian and transfer agent for the Fund. BlackRock Investments, LLC will be the Fund's distributor ("Distributor").

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer but is affiliated with two broker-dealers. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

BlackRock Government Collateral Pledge Unit

Principal Investments

According to the Registration Statement, the Fund's investment objective will be to seek to provide as high a level of current income as is consistent with liquidity and minimum volatility of principal. The Fund will seek to achieve its investment objective by investing, under normal circumstances,[8] at least 80% of its net assets in a portfolio of U.S. dollar-denominated short-term government securities and other money market securities eligible for investment by U.S. government money market funds that seek to maintain a stable net asset value (including indirect investments through the "Underlying Funds", as defined below).

Under normal circumstances, the Fund intends to invest a substantial portion of its assets in the following government money market funds (each, an "Underlying Fund" and collectively, the "Underlying Funds"), which principally invest in short-term U.S. Treasury bills, notes and other obligations issued or guaranteed as to principal and interest by the U.S. Government or its agencies or instrumentalities, and repurchase agreements secured by such obligations or cash:[9] FedFund and T-Fund (each, a series of BlackRock Liquidity Funds); and BlackRock Premier Government Institutional Fund and BlackRock Select Treasury Strategies Institutional Fund (each, a series of Funds For Institutions Series). The Adviser may add, eliminate or replace any or all Underlying Funds at any time. Any additions to or replacements for the Underlying Funds will also be government money market funds with substantially similar investment characteristics as those described herein applicable to the Underlying Funds. The Adviser or its affiliates may advise the Underlying Funds. The Fund generally will allocate and reallocate its assets among the Underlying Funds on a monthly basis on an approximate *pro rata* basis based on the amount of net assets of each Underlying Fund, subject to minimum investment amounts or other constraints on the Underlying Funds.

According to the Registration Statement, the Underlying Funds invest in securities maturing in 397 days (13 months) or less (with certain exceptions) and their portfolios will have a dollar-weighted average maturity of 60 days or less and a dollar-weighted average life of 120 days or less.

The Fund and certain Underlying Funds may invest in various types of U.S. government obligations. U.S. government obligations are a type of bond and include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies or instrumentalities. Payment of principal and interest on U.S. government obligations (i) may be backed by the full faith and credit of the United States or (ii) may be backed solely by the issuing or guaranteeing agency or instrumentality itself (as with Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac") and Federal Home Loan Bank ("FHLB") notes). In the latter case, the Fund or an Underlying Fund must look principally to the agency or instrumentality issuing or guaranteeing the obligation for ultimate repayment, which agency or instrumentality may be privately owned.

The Fund and the Underlying Funds may invest in variable and floating rate instruments.

index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On April 7, 2016, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333–210648 and 811–23154) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined below) under the 1940 Act. *See* Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601) ("Exemptive Order"). The Fund will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. The Exchange represents that the Adviser and its related personnel are subject to Investment Advisers Act Rule 204A–1. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] Each Underlying Fund is a "government money market fund," as defined in Rule 2a–7 under the 1940 Act and seeks to maintain a stable NAV of $1.00. The Fund, however, will not be a money market fund and will not seek to maintain a stable NAV of $1.00.

The Fund and the Underlying Funds may transact in securities on a when-issued, delayed delivery or forward commitment basis. The purchase or sale of securities on a when-issued or delayed delivery basis or through a forward commitment involves the purchase or sale of securities at an established price with payment and delivery taking place in the future.

The Fund and the Underlying Funds may invest in repurchase agreements that are secured by either obligations issued or guaranteed as to principal and interest by the U.S. government or agencies or instrumentalities, or by cash.

The securities purchased by the Fund will comply with the quality and eligibility requirements of Rule 2a–7 under the 1940 Act. The securities purchased by the Underlying Funds will comply with all requirements of Rule 2a–7 and other rules of the Commission applicable to money market funds that seek to maintain a stable net asset value per share ("NAV"). The Fund itself will invest only in money market securities eligible for investment for funds that comply with Rule 2a–7 but will not be subject to other requirements of Rule 2a–7 applicable to money market funds that seek to maintain a stable NAV.

Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund and the Underlying Funds may also invest in certain U.S. government obligations other than those referenced in Principal Investments above, namely Treasury receipts where the principal and interest components are traded separately under the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program.

The Fund and certain Underlying Funds may invest in reverse repurchase agreements.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted by law, regulation, exemptive order or Commission staff guidance.

Investment Restrictions

The Fund will be classified as "diversified." [10] With respect to 75% of the Fund's total assets, a "diversified" fund is limited by the 1940 Act such that it does not invest more than 5% of its total assets in securities of any one issuer and does not acquire more than 10% of the outstanding voting securities of any one issuer (excluding cash and cash items, government securities, and securities of other investment companies). The remaining 25% of the Fund's total assets may be invested in a single issuer or a number of issuers.

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a regulated investment company for purposes of the U.S. Internal Revenue Code of 1986, as amended.[11]

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each Underlying Fund may invest up to an aggregate amount of 5% of its net assets in illiquid securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[12]

The Fund will not invest in futures, options, swaps or forward contracts.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[13]

Net Asset Value

According to the Registration Statement, the NAV for the Fund's Shares will generally be calculated as of 12:00 p.m., Eastern time, on each day the New York Stock Exchange ("NYSE") is open for trading. Valuation of securities held by the Fund will be as follows.

Shares of the Underlying Funds normally will be valued at fair value based on their NAV from the prior business day, which is the most recent observable valuation of the Underlying Funds as of the time the NAV for the Fund's Shares is determined [sic]

Fixed-income securities normally will be valued based on current bid-side market quotations (if readily available), last available bid prices, or evaluated prices as of 12:00 p.m., Eastern time supplied by the Fund's approved independent third-party pricing services, each in accordance with policies and procedures approved by the Board (the "Valuation Procedures"). The amortized cost method of valuation may be used with respect to debt obligations with sixty days or less remaining to maturity unless BlackRock determines in good faith that such method does not represent fair value. Certain fixed-income investments may be valued based on valuation models that consider the estimated cash flows of each tranche of the entity, establish a benchmark yield and develop an estimated tranche-specific spread to the benchmark yield based on the unique attributes of the tranche.

Variable and floating rate instruments, repurchase agreements and reverse repurchase agreements will be valued at prices supplied by approved pricing services which is generally based on bid-side quotations.

Prices obtained from independent third-party pricing services, broker-dealers or market makers to value the Fund's securities and other assets and liabilities will be based on information available at the time the Fund values its assets and liabilities.

In the event that application of the methods of valuation discussed above result in a price for a security which is deemed not to be representative of the

[10] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[11] 26 U.S.C. 851.

[12] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

[13] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

fair market value of such security, the security will be valued by, under the direction of or in accordance with a method approved by the Board, and in accordance with the 1940 Act, as reflecting fair value.

When market quotations are not readily available or are believed in good faith by BlackRock to be unreliable, the Fund's investments will be valued at fair value ("Fair Value Assets"). Fair Value Assets will be valued by BlackRock in accordance with the Valuation Procedures. BlackRock may reasonably conclude that a market quotation is not readily available or is unreliable if, among other things, a security or other asset or liability does not have a price source due to its complete lack of trading, if BlackRock believes in good faith that a market quotation from a broker-dealer or other source is unreliable *(e.g.,* where it varies significantly from a recent trade, or no longer reflects the fair value of the security or other asset or liability subsequent to the most recent market quotation), or where the security or other asset or liability is only thinly traded or due to the occurrence of a significant event subsequent to the most recent market quotation. For this purpose, a "significant event" is deemed to occur if BlackRock determines, in its reasonable business judgment, that an event has occurred after the close of trading for an asset or liability but prior to or at the time of pricing the Fund's assets or liabilities, and that the event is likely to cause a material change to the closing market price of the assets or liabilities held by the Fund.

BlackRock, with input from the BlackRock Investment Strategy Group, will submit its recommendations regarding the valuation and/or valuation methodologies for Fair Value Assets to BlackRock's Valuation Committee. The BlackRock Valuation Committee may accept, modify or reject any recommendations. In addition, the Fund's accounting agent periodically endeavors to confirm the prices it receives from all third-party pricing services, index providers and broker-dealers, and, with the assistance of BlackRock, to regularly evaluate the values assigned to the securities and other assets and liabilities of the Fund. The pricing of all Fair Value Assets is subsequently reported to and, where appropriate, ratified by the Board. When determining the price for a Fair Value Asset, the BlackRock Valuation Committee (or BlackRock's Pricing Group) will seek to determine the price that the Fund might reasonably expect to receive upon the current sale of that asset or liability in an arm's-length transaction on the date on which the assets or liabilities are being valued, and does not seek to determine the price that the Fund might expect to receive for selling the asset, or the cost of extinguishing a liability, at a later time or if it holds the asset or liability to maturity. Fair value determinations will be based upon all available factors that the BlackRock Valuation Committee (or BlackRock's Pricing Group) deems relevant at the time of the determination, and may be based on analytical values determined by BlackRock using proprietary or third-party valuation models.

Fair value represents a good faith approximation of the value of an asset or liability. When determining the fair value of an asset, one or more of a variety of fair valuation methodologies may be used (depending on certain factors, including the asset type). For example, the asset may be priced on the basis of the original cost of the investment or, alternatively, using proprietary or third-party models (including models that rely upon direct portfolio management pricing inputs and which reflect the significance attributed to the various factors and assumptions being considered). Prices of actual, executed or historical transactions in the relevant asset and/or liability (or related or comparable assets and/or liabilities) or, where appropriate, an appraisal by a third-party experienced in the valuation of similar assets and/or liabilities, may also be used as a basis for establishing the fair value of an asset or liability.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in Creation Units of 50,000 Shares (though this number may change from time to time, including prior to the listing of the Fund) on a continuous basis through the Distributor or its agent, without a sales load, at a price based on the Fund's NAV next determined after receipt, on any business day, of an order received by the Distributor or its agent in proper form. On days when the Exchange or the bond markets close earlier than normal, the Fund may require orders to be placed earlier in the day.

The consideration for purchase of Creation Units of the Fund will generally be cash. However, in some cases the consideration consists of an in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) ("Deposit Securities") and the Cash Component computed as described below. Together, the Deposit Securities and the Cash Component will constitute the "Fund Deposit," which will be applicable (subject to possible amendment or correction) to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The "Cash Component" will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the "Deposit Amount," which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

The Adviser will make available through the NSCC on each business day prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day for the Fund). Such Fund Deposit will be applicable, subject to any adjustments as described below, to purchases of Creation Units of Shares of the Fund until the Fund's deadline for the submission of purchase orders (the Fund's "Cutoff Time").

The Fund reserves the right to permit or require the substitution of a "cash in lieu" amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company ("DTC") or the clearing process (as discussed below) or that the Authorized Participant is not able to trade due to a trading restriction. The Fund also reserves the right to permit or require a "cash in lieu" amount in certain circumstances, including circumstances in which the delivery of the Deposit Security by the "Authorized Participant" (as defined below) would be restricted under applicable securities or other local laws or in certain other situations. As noted above, Creation Units currently will be available only for cash purchases.

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be: (i) A "Participating Party," *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the "Clearing Process"), a clearing agency that is registered with the Commission, or (ii) a DTC Participant, and must have executed an agreement with the Distributor, with respect to creations

and redemptions of Creation Units ("Authorized Participant Agreement"). A Participating Party or DTC Participant who has executed an Authorized Participant Agreement is referred to as an "Authorized Participant."

Creation Units may be purchased only by or through an Authorized Participant.

To initiate an order for a Creation Unit, an Authorized Participant must submit to the Distributor or its agent an irrevocable order to purchase Shares of the Fund, in proper form, generally before 12:00 p.m., Eastern time on any business day to receive that day's NAV.

Shares of the Fund may be redeemed by Authorized Participants only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor or its agent and only on a business day.

The Fund generally will redeem Creation Units solely for cash; however, the Fund reserves the right to distribute securities in-kind as payment for Creation Units being redeemed.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an Authorized Participant. An Authorized Participant must submit an irrevocable request to redeem shares of the Fund generally before 12:00 p.m., Eastern time on any business day in order to receive that day's NAV.

The Adviser will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day ("Fund Securities"), and an amount of cash (the "Cash Amount"). Such Fund Securities and the corresponding Cash Amount (each subject to possible amendment or correction) are applicable in order to effect redemptions of Creation Units of the Fund until the Fund's Cutoff Time. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

If redemptions are not paid in cash, the redemption proceeds for a Creation Unit generally will consist of Fund Securities, plus the Cash Amount, which is an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a redemption request in proper form, and the value of Fund Securities, less a redemption transaction fee.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund: (i) For any period during which the Exchange is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the Exchange is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the shares of the Fund's portfolio securities or determination of its net asset value is not reasonably practicable; or (iv) in such other circumstance as is permitted by the Commission.

Availability of Information

The Fund's Web site (*www.blackrock.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[14] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[15]

On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding of the Fund and the Underlying Funds, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's or Underlying Fund's portfolio. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. Price information for the Underlying Funds, other money market funds, STRIPS, U.S. government obligations, variable and floating rate instruments, repurchase agreements and reverse repurchase agreements will be available from major market data vendors. In addition, the Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[16] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to

[14] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[15] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[16] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from CTA or other data feeds.

halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.[17] Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted [sic]

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [18] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio of the Fund will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[19]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the Intermarket Surveillance Group ("ISG"),[20] and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will generally be calculated as of 12:00 p.m., Eastern time, on each day the NYSE is open for trading.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [21] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the

[17] *See* NYSE Arca Equities Rule 7.12.

[18] 17 CFR 240.10A–3.

[19] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[21] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Price information for the Underlying Funds, investment company securities, STRIPS, U.S. government obligations, variable and floating rate instruments, repurchase agreements, and reverse repurchase agreements will be available from major market data vendors. In addition, the PIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds U.S. government securities and other money market securities that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds U.S. government securities and other money market securities as discussed above, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–63 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13040 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77923; File No. SR–FINRA–2016–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

May 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 19, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the Tier Size Pilot, which currently is scheduled to expire on June 10, 2016, until December 9, 2016.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the "Rule") to extend, until December 9, 2016, the amendments set forth in File No. SR–FINRA–2011–058 ("Tier Size Pilot" or "Pilot"), which currently are scheduled to expire on June 10, 2016.[4]

The Tier Size Pilot was filed with the SEC on October 6, 2011,[5] to amend the minimum quotation sizes (or "tier sizes") for OTC Equity Securities.[6] The goals of the Pilot were to simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants. During the course of the pilot, FINRA collected and provided to the SEC specified data with which to assess the impact of the Pilot tiers on market quality and limit order display.[7] On September 13, 2013, FINRA provided to the Commission an assessment on the operation of the Tier Size Pilot utilizing data covering the period from November 12, 2012 through June 30, 2013.[8] As noted in the 2013 Assessment, FINRA believed that the analysis of the data generally showed that the Tier Size Pilot had a neutral to positive impact on OTC market quality for the majority of OTC Equity Securities and tiers; and that there was an overall increase of 13% in the number of customer limit orders that met the minimum quotation sizes to be eligible for display under the Pilot tiers. In the 2013 Assessment, FINRA recommended adopting the tiers as permanent, but extended the pilot period to allow more time to gather and analyze data after the November 12, 2012 through June 30, 2013 assessment period.[9] FINRA reviewed the post-June 30, 2013 data, and believes that the impact described in the 2013 Assessment has continued to hold (and has improved in certain areas).

FINRA further extended the Pilot period until June 10, 2016.[10] The purpose of this filing is to extend the operation of the Tier Size Pilot until December 9, 2016, to provide FINRA with additional time to finalize its

[4] *See* Securities Exchange Act Release No. 76519 (November 24, 2015), 80 FR 75155 (December 1, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–051); *see also* Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR–FINRA–2011–058, as amended).

[5] *See* Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR–FINRA–2011–058).

[6] "OTC Equity Security" means any equity security that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. *See* FINRA Rule 6420.

[7] FINRA ceased collecting Pilot data for submission to the Commission on February 13, 2015.

[8] The assessment is part of the SEC's comment file for SR–FINRA–2011–058 and also is available on FINRA's Web site at: *http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615* ("Pilot Assessment").

[9] *See* Securities Exchange Act Release No. 70839 (November 8, 2013), 78 FR 68893 (November 15, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–049).

[10] *See* Securities Exchange Act Release No. 74251 (February 11, 2015), 80 FR 8741 (February 18, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–002); Securities Exchange Act Release No. 74927 (May 12, 2015), 80 FR 28327 (May 18, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–010); Securities Exchange Act Release No. 75639 (August 7, 2015), 80 FR 48615 (August 13, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–028); and Securities Exchange Act Release No. 76519 (November 24, 2015), 80 FR 75155 (December 1, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2015–051).

proposal with regard to the Tier Size Pilot.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change will be June 10, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.[12] Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the Tier Size Pilot until December 9, 2016, is consistent with the Act in that it would provide the Commission and FINRA with additional time to finalize its proposal with regard to the Tier Size Pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–016 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2016–12871 Filed 6–1–16; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78o–3(b)(11).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14728 and #14729]

Montana Disaster #MT–00095

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–4271–DR), dated 05/24/2016.

Incident: Severe Winter Storm and Straight-line Winds.

Incident Period: 04/15/2016 through 04/16/2016.

Effective Date: 05/24/2016.

Physical Loan Application Deadline Date: 07/25/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 02/24/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/24/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Glacier, Liberty, Pondera, Teton, Toole.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14728B and for economic injury is 14729B.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–12990 Filed 6–1–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2016–0005]

Supplementary Agreement Amending the Agreement on Social Security Between the United States and the Czech Republic; Entry Into Force

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Acting Commissioner of Social Security gives notice that a supplementary agreement coordinating the United States (U.S.) and the Czech Republic social security programs will enter into force on May 1, 2016. The original agreement with the Czech Republic was signed on September 7, 2007. The intent of the original agreement was that workers covered exclusively under U.S. laws while working in the Czech Republic would be exempt from the Czech health insurance contributions. A change in Czech law after the signing of the original 2007 agreement caused these workers to be liable for Czech health insurance taxes. This result was inconsistent with the purpose of the totalization agreement to eliminate duplicate taxation as permitted by 42 U.S.C. 433 and 26 U.S.C. 3101(c).

The supplementary agreement exempts a worker subject exclusively to U.S. laws from contributing to the Czech health insurance system. The supplementary agreement achieves this by placing the new Czech health insurance law, the Act on Public Health, within the scope of the 2007 U.S.-Czech Agreement.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, MD 21235–7741 or visit the Social Security Web site at *www.socialsecurity.gov/international.*

Dated: May 24, 2016.

Carolyn Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2016–13009 Filed 6–1–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9595]

Request for Comments and Suggestions for Environmental Cooperation Pursuant to the United States-Bahrain Memorandum of Understanding on Environmental Cooperation

ACTION: Notice of preparation of the 2016–2019 United States-Bahrain Environmental Cooperation Plan of Action (the "Second POA") and request for comments.

SUMMARY: The Department of State invites the members of the public, including non-governmental organizations (NGOs), educational institutions, private sector enterprises, and other interested persons, to submit written comments or suggestions regarding items for inclusion in a new Plan of Action for implementing the United States-Bahrain Memorandum of Understanding on Environmental Cooperation (MOU), signed on September 14, 2004. In preparing such comments or suggestions, we encourage submitters to refer to: (1) The United States-Bahrain MOU, (2) the United States-Bahrain Free Trade Agreement (FTA) Environment Chapter, (3) the Environmental Review of the FTA, and (4) 2006–2008 Plan of Action, dated October 1, 2006 (the "First POA"). These documents are available at: *http://www.state.gov/e/oes/eqt/trade/bahrain/.*

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than July 5, 2016.

ADDRESSES: Written comments or suggestions may be submitted in any of the following three ways:

—You may view and comment on this notice by going to *http://www.regulations.gov/#!home* and searching on docket number: DOS–2016–0039. Please note that comments you submit are not private and will not be edited to remove identifying or contact information. The State Department cautions against including any information that you would not want publicly disclosed.

—You may also send your comment by electronic mail at *CanuelET@state.gov* with the subject line "U.S.-Bahrain Plan of Action."

—You may mail your comment to Edward T. Canuel, Office of Environmental Quality and Transboundary Issues (OES/EQT), 2201 C Street NW., Suite 2726, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Edward T. Canuel, telephone (202) 647–4828

SUPPLEMENTARY INFORMATION: United States-Bahrain MOU

The United States and Bahrain negotiated the MOU in parallel with the United States-Bahrain Free Trade Agreement. In Paragraph 3 of the MOU, the Governments state that they will develop and update, as appropriate, a POA. Priority projects for environmental cooperation in POAs are guided by the following subject areas set forth in the Annex to the MOU: (i) Environmental law and regulations; (ii) environmental impact assessments; (iii) environmental incentives/voluntary programs; (iv) air

quality; (v) public participation in environmental protection; (vi) protection of water resources; (vii) coastal protection and preservation of marine resources; (viii) protection of endangered species; and (ix) environmental technology and business.

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the Second POA. There is no expectation of resources or funding associated with any comments or suggestions for the Second POA.

Dated: May 26, 2016.

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2016–13056 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9590]

Culturally Significant Objects Imported for Exhibition Determinations: "Watteau's Soldiers: Scenes From Military Life in 18th Century France" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Watteau's Soldiers: Scenes from Military Life in 18th Century France," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on about July 12, 2016, until on or about October 2, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 24, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–12981 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9591]

Review of the Designation as a Foreign Terrorist Organization of Islamic Movement of Uzbekistan, aka Islamic Movement of Turkestan, aka Islamic Party of Turkestan, aka Harakut Islamiyyah, aka Harakut ul Islamiyyah Özbeskistan, aka Islamic Movement

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: May 23, 2016.

John F. Kerry,

Secretary of State, Department of State.

[FR Doc. 2016–12980 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9592]

In the Matter of the Designation of Jama'at ul Dawa al-Qu'ran, aka JDQ, aka Jamaat al Dawa ila al Sunnah, aka Jamaat ud Dawa il al Quran al Sunnah, aka Jamaat ul Dawa al Quran, aka Jamaat-ud-Dawa al Quran wal Sunnah, aka Jama'at Da'wa al-Sunnat, aka Jama'at al-Da'wa ala-l-Quran wa-l-Sunna, aka Society for the Call/Invitation to the Quran and the Sunna, aka JDQS, aka Salafi Group, aka Jama'at ad-Da'wa as-Salafiya wa-l-Qital, aka Jamiat al-Dawa al-Quran wal-Sunna, aka Assembly for the Call of the Koran and the Sunnah as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with sec. 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Jama'at ul Dawa al-Qu'ran, also known as JDQ, also known as Jamaat al Dawa ila al Sunnah, also known as Jamaat ud Dawa il al Quran al Sunnah, also known as Jamaat ul Dawa al Quran, also known as Jamaat-ud-Dawa al Quran wal Sunnah, also known as Jama'at Da'wa al-Sunnat, also known as Jama'at al-Da'wa ala-l-Quran wa-l-Sunna, also known as Society for the Call/Invitation to the Quran and the Sunna, also known as JDQS, also known as Salafi Group, also known as Jama'at ad-Da'wa as-Salafiya wa-l-Qital, also known as Jamiat al-Dawa al-Quran wal-Sunna, also known as Assembly for the Call of the Koran and the Sunnah committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in sec. 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 6, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–12972 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9589]

Culturally Significant Objects Imported for Exhibition Determinations: "Picasso: The Line" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Picasso: The Line," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Menil Collection, Houston, Texas, from on or about September 16, 2016, until on or about January 8, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 24, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–12983 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9593]

In the Matter of the Designation of Tariq Gidar Group, aka TGG, aka Tehrik-e-Taliban (TTP)-Tariq Gidar Group, aka Tehreek-i-Taliban Pakistan (TTP) Geedar Group, aka Tariq Geedar Group, aka Commander Tariq Afridi Group, aka Tariq Afridi Group, aka Tariq Gidar Afridi Group, aka The Asian Tigers as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with sec. 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Tariq Gidar Group, also known as TGG, also known as Tehrik-e-Taliban (TTP)-Tariq Gidar Group, also known as Tehreek-i-Taliban Pakistan (TTP) Geedar Group, also known as Tariq Geedar Group, also known as Commander Tariq Afridi Group, also known as Tariq Afridi Group, also known as Tariq Gidar Afridi Group, also known as The Asian Tigers committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in sec. 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 10, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–12985 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice: 9594]

Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts: Eritrea, Iran, Democratic People's Republic of Korea (DPRK, or North Korea), Syria, Venezuela.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 10, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–12976 Filed 6–1–16; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0040]

Notice and Request for Comment on Benefit-Cost Analysis Guidance for Rail Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: Section 11313(b) of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (December 4, 2015), requires the Secretary of Transportation (Secretary) to "enhance the usefulness of assessments of benefits and costs for intercity passenger rail and freight rail projects." As directed by Section 11313, FRA is issuing benefit-cost analysis (BCA) guidance (BCA Guidance) to fulfill these requirements and is requesting comments on the BCA Guidance. The BCA Guidance is available at *https://www.fra.dot.gov/Page/P0940.*

DATES: *Written Comments:* Written comments on the BCA Guidance must be received by August 1, 2016.

ADDRESSES: *Comments:* Comments related to Docket Number FRA–2016–0040 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and the docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Stephanie Lawrence, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 493–1376.

SUPPLEMENTARY INFORMATION: Section 11313(b) of the FAST Act provides that, not later than 180 days after the date of enactment of the FAST Act, the Secretary must enhance the usefulness of assessments of benefits and costs for intercity passenger rail and freight rail projects by: (1) Providing ongoing guidance and training on developing benefit and cost information for rail projects; (2) providing more direct and consistent requirements for assessing benefits and costs across transportation funding programs, including the appropriate use of discount rates; (3) requiring applicants to clearly communicate the methodology used to calculate the project benefits and costs; and (4) ensuring that applicants receive clear and consistent guidance on values to apply for key assumptions used to estimate potential project benefits and costs.

The BCA Guidance addresses the four requirements specified in the FAST Act and is intended to provide a consistent approach for completing a BCA for intercity passenger rail and freight rail project proposals.

In addition to serving as a valuable tool for defining and narrowing investment alternatives, BCAs are also increasingly a prerequisite to receive financial assistance under Federal investment programs, including those that DOT administers. For example, the two competitive railroad infrastructure improvement grant programs authorized in the FAST Act specifically require the Secretary to consider BCA as a project selection criterion (Section 11301, Consolidated Rail Infrastructure and Safety Improvements; and Section 11302, Federal-State Partnership for State of Good Repair). Moreover, two grant programs administered by the Office of the Secretary that contain rail project eligibilities—the Transportation Investment Generating Economic Recovery (TIGER) program and the Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) program—either require or request (depending on the size and other characteristics of the project) a BCA as part of the grant application process.

FRA drafted the BCA Guidance to be consistent with the DOT BCA guidance, which covers a wide range of surface transportation projects (*e.g.,* highways, transit, rail, and ports) under the TIGER and FASTLANE grant programs. The FRA BCA Guidance is intended to provide greater granularity and specificity to benefit and cost issues associated with intercity passenger rail and freight rail projects.

The BCA Guidance is effective upon the publication of this notice. However, project sponsors and potential applicants for FRA financial assistance programs should refer to the Notice of Funding Opportunity (NOFO) announcement for further instruction regarding the applicability of the BCA Guidance to a particular application or funding program. Due to the timing of the publication of this notice, the BCA Guidance does not apply to applications to the Railroad Safety Infrastructure Improvement Grant program, for which a NOFO was published in the **Federal Register** on April 29, 2016, with applications due to FRA by June 14, 2016.

As noted, written comments on the BCA Guidance must be received by August 1, 2016. FRA will consider such comments when making potential future revisions to the BCA Guidance. However, FRA will not publically respond to comments received nor will FRA address every comment in potential future revisions to the BCA Guidance.

Issued in Washington, DC, on May 26, 2016.

Sarah E. Feinberg,

Administrator.

[FR Doc. 2016–12883 Filed 6–1–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0053]

Categorical Exclusion Survey Review

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In this notice, FRA is providing the public a review of FRA's survey of categorical exclusions (CEs) used in railroad transportation projects since 2005. FRA is soliciting public comment on the review of the CE survey, two new categories of activities that may be appropriate for categorical exclusion, and any other new categories of activities for FRA consideration as CEs.

DATES: FRA must receive written comments on or before July 5, 2016. FRA will consider comments it receives after this date to the extent practicable.

ADDRESSES: *Comments:* Persons may submit comments related to Docket FRA–2016–0053 by any of the following methods:

• *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name, docket name, and docket number for this notice. Note that FRA will post all comments received without change to *http://www.regulations.gov,* including any personal information provided.

Docket: To access the docket or read background documents or comments received, go to *http://www.regulations.gov* at any time, or to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen, Environmental and

Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at (202) 493–1310, or Mr. Chris Van Nostrand, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at (202) 493–6058.

SUPPLEMENTARY INFORMATION:

I. Background

On December 4, 2015, the President signed the Fixing America's Surface Transportation (FAST) Act into law (Pub. L. 114–94). Section 11503 of the FAST Act requires the Secretary, among other things, to: (1) Survey FRA CE use in transportation projects since 2005; and (2) publish in the **Federal Register** for notice and public comment a review of the survey that includes a description of the types of actions categorically excluded and any actions the Secretary is considering for new CEs, including those that would conform to CEs other DOT modal administrations use. CEs are actions FRA has determined do not individually or cumulatively have significant effects on the human environment and, thus, do not require it to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). *See* 40 CFR 1508.4.

FRA's Procedures for Considering Environmental Impacts (FRA Environmental Procedures), 64 FR 28545, May 26, 1999, include a list of 20 CEs. In 2013, FRA updated the FRA Environmental Procedures by adding seven new CEs. 78 FR 2713, Jan. 14, 2013.

II. Review of Survey of Categorical Exclusions Used by FRA Since 2005

To comply with the FAST Act section 11503 requirement to survey FRA's use of CEs for transportation projects since 2005, FRA focused its survey on projects funded by FRA-administered financial assistance programs, such as the High-Speed Intercity Passenger Rail and Transportation Investment Generating Economic Recovery grant programs, the Rail Line Relocation and Improvement program, and the Railroad Rehabilitation and Improvement Financing loan/loan guarantee program. As a result, not all FRA CEs used since 2005 are included in the survey. For example, FRA did not survey FRA's use of CEs for rulemakings.

Table 1 is a review of FRA's survey organized by the frequency of FRA's use of each CE.[1] In general, the survey shows the most frequently applied CEs are for the maintenance or construction of railroad infrastructure, such as maintenance activities for existing railroad infrastructure and equipment; minor rail line additions; and bridge rehabilitation, reconstruction, and replacement. Some CEs shown in Table 1 as Category 2 or 3 also cover maintenance or construction activities, but were recently added in 2013 and thus, have a smaller overall sample size. FRA will use the survey and public comments on this notice to develop proposals for new CEs or modify existing CEs.

TABLE 1—RESULTS OF FRA CE SURVEY: JANUARY, 2005–MARCH, 2016

Category 1: Most Frequently Used
(11) Maintenance of: Existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption "maintenance" means work, normally provided on a periodic basis, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs.
(16) Minor rail line additions including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right of way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.
(26) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.
(22) Bridge rehabilitation, reconstruction or replacement, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects, predominantly within existing right-of-way, that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches and/or embankments to bridges, or construction or replacement of short span bridges.
(27) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.
Category 2: Less Frequently Used
(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks.
(23) Acquisition (including purchase or lease), rehabilitation, or maintenance of vehicles or equipment that does not cause a substantial increase in the use of infrastructure within the existing right-of-way or other previously disturbed locations, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment.

[1] The number preceding the text of the CE corresponds to the number of the CE in the FRA Environmental Procedures.

TABLE 1—RESULTS OF FRA CE SURVEY: JANUARY, 2005–MARCH, 2016—Continued

Category 3: Infrequently Used
(17) Acquisition of existing railroad equipment, track and bridge structures, electrification, communication, signaling or security facilities, stations, maintenance of way and maintenance of equipment bases, and other existing railroad facilities or the right to use such facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties.
(18) Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided that such as research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line.
(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks.
(24) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.
(12) Temporary replacement of an essential rail facility if repairs are commenced immediately after the occurrence of a natural disaster or catastrophic failure.
(25) Environmental restoration, remediation and pollution prevention activities in or proximate to existing and former railroad track, infrastructure, stations and facilities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.
(21) Alterations to existing facilities, locomotives, stations and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.
(15) Financial assistance for the construction of minor loading and unloading facilities, provided that projects included in this category are consistent with local zoning, do not involve the acquisition of a significant amount of land, and do not significantly alter the traffic density characteristics of existing rail or highway facilities.

III. New Categorical Exclusions FRA Is Considering

Since updating its CE list in 2013, FRA has identified the following two classes of actions that may be appropriate for categorical exclusion:

- Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes; and
- Refinancing assistance where the project sponsor has already completed project-related construction activities.

FRA seeks input from interested parties, stakeholders, and the public on additional categories of activities appropriate for a CE that FRA should consider. FRA also seeks comment on the two CEs listed above.

Issued in Washington, DC, on May 26, 2016.

Sarah E. Feinberg,

Administrator.

[FR Doc. 2016–12884 Filed 6–1–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2016–0057]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Voluntary Tanker Agreement

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection of information is used to gather information on tanker operators who agree to contribute, either by direct charter to the Department of Defense or to other participants tanker capacity as requested by the Maritime Administrator at such times and such amounts as determined to be necessary to meet the essential needs of DOD for the transportation of petroleum and petroleum products in bulk by sea. The Voluntary Tanker Agreement is a voluntary emergency preparedness agreement in accordance with Section 708, Defense Production Act, 195, as amended (50 U.S.C. App. 2158). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by August 1, 2016.

ADDRESSES: You may submit comments identified by Docket No. DOT–MARAD–2016–0057 through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, 202–366–0688, Director, Office of Sealift Support, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2133–0505.

Title: Voluntary Tanker Agreement.

Form Numbers: MA–1060.

Type of Review: Renewal of an information collection.

Background: The collection consists of a request from the Maritime Administration (MARAD) that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered or contracted for

by the participant, their size and flags of registry and other pertinent information. There is a recommended format for this information included as part of the application. The collection of information is necessary to evaluate tanker capability and make plans for use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Respondents: Tanker companies that operate in international trade and who have agreed to participate in this agreement.

Number of Respondents: 15.

Frequency: Annually.

Number of Responses: 15 (1 per respondent).

Total Annual Burden: 15.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: May 25, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–12974 Filed 6–1–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–MARAD–2016–0055]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Generic Clearance of Customer Satisfaction Surveys

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that our programs are effective and meet our customers' needs, the Maritime Administration (MARAD) seeks to obtain OMB approval of previously approved generic clearance to collect feedback on our service delivery. By feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study.

DATES: Written comments should be submitted by August 1, 2016.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2016–0055] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Jackson, 202–366–0615, Office of Management and Administrative Services, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2133–0546.

Title: Generic Clearance of Customer Satisfaction Surveys.

Type of Review: Renewal of an information collection.

Background: Executive Order 12862 "Setting Customer Service Standards," direct Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). In order to work continuously to ensure that our programs are effective and meet our customers' needs, MARAD seeks to obtain OMB approval of a previously approved generic clearance to collect qualitative feedback from our customers on our service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that

address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results. As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Respondents: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Expected Annual Number of Activities: 15.

Estimated Annual Responses: 5,900.

Frequency of Response: Once per Request.

Estimated Annual Burden: 1,758.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: May 24, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–12973 Filed 6–1–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Finding That the Democratic People's Republic of Korea Is a Jurisdiction of Primary Money Laundering Concern

AGENCY: The Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of finding.

SUMMARY: This document provides notice that, pursuant to the authority contained in the USA PATRIOT Act, the Director of FinCEN found on May 27, 2016 that reasonable grounds exist for concluding that the Democratic People's Republic of Korea ("DPRK" or "North Korea") is a jurisdiction of primary money laundering concern.

FOR FURTHER INFORMATION CONTACT: FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, to promote prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X.

Section 311 of the USA PATRIOT Act ("Section 311") added 31 U.S.C. 5318A to the BSA, granting the Secretary of the Treasury (the "Secretary") the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and requires Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern. For purposes of the finding contained in this notice, the Secretary has delegated his authority under Section 311 to the Director of FinCEN.[1]

Taken as a whole, Section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; or can prohibit U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General. The Secretary is also required by Section 311, as amended,[2] to consider "such information as the Secretary determines to be relevant, including the following potentially relevant factors," which extend the Secretary's consideration beyond traditional money laundering concerns to issues involving, inter alia, terrorist financing and the proliferation of weapons of mass destruction ("WMD") or missiles:

- Evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of WMD or missiles, have transacted business in that jurisdiction;
- The extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;
- The substance and quality of administration of the bank supervisory and counter- money laundering laws of that jurisdiction;
- The relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;
- The extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by

[1] Therefore, references to the authority and findings of the Secretary in this document apply equally to the Director of FinCEN.

[2] 31 U.S.C. 5318A was amended by section 501 of the Iran Freedom Support Act of 2006, Public Law 109–293.

credible international organizations or multilateral expert groups;

• Whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of U.S. law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

• The extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

If the Secretary determines that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is authorized to impose one or more of the special measures in Section 311 to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed individually, jointly, and in any sequence.[3] Before imposing special measures, the statute requires the Secretary to consult with appropriate federal agencies and other interested parties[4] and to consider the following specific factors:

• Whether similar action has been or is being taken by other nations or multilateral groups;

• Whether the imposition of any particular special measures would create significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

• The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and

• The effect of the action on U.S. national security and foreign policy.

B. Democratic People's Republic of Korea

As set out in detail below, North Korea continues to advance its nuclear and ballistic missile programs in violation of international treaties, international censure and sanctions measures, and U.S. law. North Korea does this using an extensive overseas network of front companies, shell companies, joint ventures, and opaque business relationships. North Korea conducts almost no banking in true name in the formal financial system given that many of its outward facing agencies and financial institutions have been sanctioned by the United States, the United Nations, or both.

While none of North Korea's financial institutions maintain correspondent accounts with U.S. financial institutions,[5] North Korea does have access to the U.S. financial system through a system of front companies, business arrangements, and representatives that obfuscate the true originator, beneficiary, and purpose of transactions. We assess that these deceptive practices have allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts.

Moreover, although U.S. and international sanctions have served to significantly isolate North Korean banks from the international financial system, the North Korean government continues to access the international financial system to support its WMD and conventional weapons programs. This is made possible through its use of aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and North Korean embassy personnel which support illicit activities through banking, bulk cash, and trade. Front company transactions originating in foreign-based banks have been processed through correspondent bank accounts in the United States and Europe. Further, the enhanced due diligence required by United Nations Security Council Resolutions (UNSCRs) related to North Korea is undermined by North Korean-linked front companies, which are often registered by non-North Korean citizens, and which conceal their activity through the use of indirect payment methods and circuitous transactions disassociated from the movement of goods or services.[6]

The Treaty on the Non-Proliferation of Nuclear Weapons and the International Atomic Energy Agency Safeguards Agreement work together to prevent the development of nuclear weapons and promote the peaceful use of nuclear energy. Although North Korea acceded to the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT") in 1985, it withdrew from the Treaty in 2003. Subsequently, North Korea demonstrated its nuclear weapons capacity with nuclear tests in 2006, 2009, 2013, and 2016.[7]

Since 2005, North Korea has been sanctioned repeatedly for its proliferation of WMD and the development of nuclear and ballistic missile programs. Between June 2006 and 2016, the United Nations (UN) Security Council issued five UNSCRs—1718, 1874, 2087, 2094, and 2270—restricting North Korea's financial and operational activities related to its nuclear and missile programs and conventional arms sales.[8] In addition, the President of the United States has issued Executive Orders ("E.O.s") 13466, 13551, 13570, 13687, and 13722 to impose sanctions on North Korea pursuant to the International Emergency Economic Powers Act, and the Department of the Treasury has designated North Korea targets for asset freezes pursuant to other E.O.s, such as E.O. 13382, which targets WMD proliferators worldwide. A designation under any one of the targeting E.O.s generally blocks the property and interests in property in the United States or in the possession or control of a U.S. person of a designated person, and prohibits U.S. persons from engaging in transactions with, or dealing in property interests of, a designated person.

On June 28, 2005, the President issued E.O. 13382, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," which orders certain measures to be taken to address the threat posed to the United States by the proliferation of

[3] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5).

[4] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission ("SEC"), the Commodity Futures Trading Commission ("CFTC"), the National Credit Union Administration ("NCUA"), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the targeted entity.

[5] Bankers Almanac, accessed February 12, 2016.

[6] *See* "Report of the Panel of Experts established pursuant to resolution 1874 (2009)," February, 2016.

[7] *See* "IAEA and DPRK: Chronology of Key Events," (*https://www.iaea.org/newscenter/focus/dprk/chronology-of-key-events*).

[8] *See* UNSCR 1718 (*http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1718(2006)*); UNSCR 1874 (*http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1874(2009)*); UNSCR 2087 (*http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2087(2013)*); UNSCR 2094 (*http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2094(2013)*); UNSCR 2270 (*http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2270(2016)*).

WMD and their means of delivery.[9] The following two North Korean entities were sanctioned in the Annex to E.O. 13382: Korea Mining Development Trading Corporation (KOMID), North Korea's primary arms exporter; and Tanchon Commercial Bank (TCB), the financial arm of KOMID. As noted further below, additional North Korean financial institutions, including Korea Kwangson Banking Corporation (KKBC), Foreign Trade Bank (FTB), and Daedong Credit Bank (DCB), were subsequently designated pursuant to E.O. 13382.

On June 26, 2008, the President issued E.O. 13466, "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," declaring a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the existence and risk of the proliferation of weapons-usable fissile material on the Korean peninsula.[10]

On August 30, 2010, the President issued E.O. 13551, "Blocking Property of Certain Persons with Respect to North Korea," which authorized asset blockings against those determined, among other things, to have engaged in the importation or exportation of North Korean arms or the exportation to North Korea of luxury goods.[11]

On April 18, 2011, the President issued E.O. 13570, "Prohibiting Certain Transactions with Respect to North Korea," which takes additional steps to address the national emergency declared in E.O. 13466 and expanded in E.O. 13551.[12] This E.O. was designed in part to ensure implementation of the import restrictions contained in UNSCRs 1718 and 1874.

On January 2, 2015, the President issued E.O. 13687, "Imposing Additional Sanctions with Respect to North Korea," which blocks the property of persons who are determined to be officials, agencies, instrumentalities, or controlled entities of the Government of North Korea or the Workers' Party of Korea.[13]

On March 15, 2016, the President issued E.O. 13722, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea," which, among other things, blocks the property and interests in property of the Government of North Korea and the Workers' Party of Korea and authorizes further asset blockings on persons determined to be operating in industries of the North Korean economy determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be subject to the measure. To date those industries include the transportation, mining, energy and financial services industries.[14] Additionally, FinCEN issued advisories in 2005, 2009, and 2013 regarding the threat posed by the North Korean government to U.S. and international financial institutions. Specifically, these advisories have urged caution when dealing with North Korean financial institutions due to their use of front companies and other deceptive financial practices.[15]

Numerous North Korean individuals, financial institutions, and other entities facilitating financial transactions in support of North Korea's proliferation of WMD or ballistic missiles have been listed in or designated pursuant to these UNSCRs or E.O.s. In many cases, these sanctions have targeted front companies or the individual representatives of sanctioned entities who operate outside of North Korea.

II. Analysis of Factors

Based upon a review of information available to FinCEN, consultations with relevant federal agencies and departments, and in consideration of the factors enumerated in Section 311 of the USA PATRIOT Act, the Director of FinCEN has determined that reasonable grounds exist for concluding that North Korea is a jurisdiction of primary money laundering concern. While FinCEN has considered all potentially relevant factors set forth in Section 5318A, a discussion of those most pertinent to this finding follows. FinCEN has determined that North Korea (A) uses state-controlled financial institutions and front companies to conduct international financial transactions that support the proliferation of WMD and the development of ballistic missiles in violation of international and U.S. sanctions; (B) is subject to little or no bank supervision or anti-money laundering or combating the financing of terrorism ("AML/CFT") controls; (C) has no mutual legal assistance treaty with the United States; and (D) relies on the illicit and corrupt activity of high-level officials to support its government.

A. Evidence That Organized Criminal Groups, International Terrorists, or Entities Involved in the Proliferation of Weapons of Mass Destruction or Missiles, Have Transacted Business in That Jurisdiction

North Korea uses state-owned entities and banks to conduct transactions in support of North Korea's proliferation of WMD or ballistic missiles. The United States and United Nations have identified Korea Mining Development Trading Corporation (KOMID), Tanchon Commercial Bank (TCB), Korea Kwangson Banking Corporation (KKBC), and Daedong Credit Bank (DCB) as entities that conduct financial transactions in support of North Korea's proliferation of WMD or ballistic missiles; the United States has also sanctioned Foreign Trade Bank (FTB) for this activity. Directing business from North Korea, these state-owned entities and banks use front companies or covert representatives to obfuscate the true originator, beneficiary, and purpose of transactions. Doing so has allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts. Entities in North Korea involved in the proliferation of WMD or ballistic missiles conduct business in, from, or through North Korea, or at the direction of the North Korean government, have evaded the prohibitions set forth in relevant UNSCRs and E.O.s.

[9] *See* E.O. 13382 "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," (2005) (*https://www.federalregister.gov/articles/2005/07/01/05-13214/blocking-property-of-weapons-of-mass-destruction-proliferators-and-their-supporters*).

[10] *See* E.O. 13466 "Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals," (2008) (*https://www.federalregister.gov/articles/2008/06/27/08-1399/continuing-certain-restrictions-with-respect-to-north-korea-and-north-korean-nationals*).

[11] *See* E.O. 13551 "Blocking Property of Certain Persons with Respect to North Korea," (2010) (*https://www.gpo.gov/fdsys/pkg/FR-2010-09-01/pdf/X10-10901.pdf*).

[12] *See* E.O. 13570 "Prohibiting Certain Transactions with Respect to North Korea," (2011) (*https://www.federalregister.gov/articles/2011/04/20/2011-9739/prohibiting-certain-transactions-with-respect-to-north-korea*).

[13] *See* E.O. 13687 "Imposing Additional Sanctions with Respect to North Korea," (2015) (*https://www.federalregister.gov/articles/2015/01/06/2015-00058/imposing-additional-sanctions-with-respect-to-north-korea*).

[14] *See* E.O. 13722 "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea," (2016) (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-18/pdf/FR-2016-03-18.pdf*).

[15] *See* "Guidance to Financial Institutions on the Provision of Banking Services to North Korean Government Agencies and Associated Front Companies Engaged in Illicit Activities," FinCEN (2005) (*https://www.fincen.gov/statutes_regs/guidance/pdf/advisory.pdf*); "North Korea Government Agencies' and Front Companies' Involvement in Illicit Financial Activities," FinCEN (2009) (*https://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-a002.pdf*); "Update on the Continuing Illicit Finance Threat Emanating from North Korea," FinCEN (2013) (*https://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2013-A005.pdf*).

The Korea Mining Development Trading Corporation

The President subjected the Korea Mining Development Trading Corporation (KOMID) to an asset blocking by listing it in the Annex of E.O. 13382 in June 2005,[16] and the Department of the Treasury designated KOMID pursuant to E.O. 13687 in January 2015 [17] for being North Korea's primary arms dealer and its main exporter of goods and equipment related to ballistic missiles and conventional weapons.[18] The UN Security Council also listed KOMID under UNSCR 1718 in April 2009, subjecting it to a worldwide asset blocking.[19] Further, between 2013 and 2016, the Department of the Treasury designated a number of individuals under E.O. 13382 or E.O. 13687 for their roles acting on behalf of KOMID in, or as KOMID representatives to, Burma, China, Egypt, Iran, Namibia, Russia, Sudan, and Syria.[20]

Despite the sanctions placed on KOMID and its network, North Korea continues to sell weapons abroad. Between 2001 and 2007, North Korean weapons manufacturers marketed or exported North Korean weapons to Angola, Cuba, Iran, Iraq, Pakistan, Uganda, United Arab Emirates, and Yemen. As recently as 2015, KOMID marketed or exported North Korean ballistic missiles or conventional weapons through its representatives in Burma and its office in Indonesia. In 2015, KOMID also sold dual-use WMD-related equipment to Egypt, and engaged with Egypt on missile cooperation and development. Additionally, KOMID occasionally procures equipment and materials for Second Academy of Natural Sciences (SANS) research—an entity subject to an asset blocking by the U.S. under E.O. 13382 in August 2010 for using subordinate organizations to obtain technology, equipment, and information for use in North Korea's weapons and nuclear programs.[21]

Payments for weapons were often funneled through front companies operating at the direction of North Korean banks. The Department of the Treasury designated one of these front companies, Leader (Hong Kong) International Trading Limited, under E.O. 13382 in January 2013 for facilitating the shipment of machinery and equipment to customers on behalf of KOMID and directly to KOMID representatives located outside of North Korea.[22] Between January 2009 and November 2012, Leader (Hong Kong) International cleared at least $13.5 million through correspondent accounts at U.S. banks.

The Tanchon Commercial Bank

As noted above, Tanchon Commercial Bank (TCB) was listed by the President in the Annex of E.O. 13382 in June 2005, subjecting it to an asset blocking, and the UN Security Council listed TCB under UNSCR 1718 in April 2009.[23] TCB is the financial arm of KOMID and the main North Korean financial institution for the sale of conventional arms, ballistic missiles, and goods related to the assembly and manufacture of such weapons.[24] Between 2009 and 2015 the Department of the Treasury designated nine individuals under E.O. 13382 for working on behalf of TCB, including as representatives to China, Syria, and Vietnam.[25] Each of these individuals is also listed under UNSCR 1718.[26]

North Korea has a long history of using TCB and front companies to facilitate proliferation and missile-related transactions. Dating as far back as 2005, TCB, Korea Namchongang Trading Corporation ("Namchongang"), and front companies have facilitated deals that could be associated with proliferation. The U.S. Department of State designated Namchongang in June 2009 under E.O. 13382 for WMD proliferation activities; [27] the UN listed Namchongang under UNSCR 1718 in July 2009,[28] and also listed its successor organization—Namhung Trading Corporation—under UNSCR 2270 in March 2016.[29] TCB also received millions of U.S. dollars in 2009 from a China-based representative as partial payment for weapons exported to Burma, Iran, and other countries. Additionally, in 2015 TCB accounts were used to purchase technology and equipment in support of U.S.-designated SANS research and development activities.

The Korea Kwangson Banking Corporation

As noted, the Department of the Treasury sanctioned Korea Kwangson Banking Corporation (KKBC) under E.O. 13382 in August 2009 for facilitating financial transactions for E.O. 13382-sanctioned TCB and the Korea Hyoksin Trading Corporation ("Hyoksin"); [30] the UN listed KKBC under UNSCR 2270 in March 2016.[31] As noted above, TCB was sanctioned by the United States in June 2005 and listed by the UN under UNSCR 1718 in April 2009; further, in July 2009 the Department of the Treasury designated Hyoksin under E.O.

[16] *See* E.O. 13382.

[17] *See* "Issuance of new North Korea-related Executive Order; North Korea Designations," January 2, 2015 (*https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20150102.aspx*).

[18] *See* "Treasury Imposes Sanctions Against the Government of the Democratic People's Republic of Korea," January 2, 2015 (*https://www.treasury.gov/press-center/press-releases/Pages/jl9733.aspx*).

[19] *See* "Letter dated 24 April 2009 from the Chairman of the Security Council Committee established pursuant to resolution 1718 (2006) addressed to the President of the Security Council," April 24, 2009 (*http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/NKorea%20S2009%20222.pdf*).

[20] *See* "United States Sanctions Individuals Linked to North Korea Weapons of Mass Destruction Programs," March 7, 2013 (*https://www.treasury.gov/press-center/press-releases/Pages/jl1872.aspx*); "Treasury Imposes Sanctions Against the Government of the Democratic People's Republic of Korea," January 2, 2015 (*https://www.treasury.gov/press-center/press-releases/Pages/jl9733.aspx*); "Treasury Sanctions Supporters of North Korea's Weapons of Mass Destruction and Illicit Finance Networks," November 13, 2015 (*https://www.treasury.gov/press-center/press-releases/Pages/jl0269.aspx*); "Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran," January 17, 2016 (*https://www.treasury.gov/press-center/press-releases/Pages/jl0322.aspx*); "The United States Sanctions North Korean Government Officials and Organizations Tied to its Missile and Nuclear Programs," March 2, 2016 (*https://www.treasury.gov/press-center/press-releases/Pages/jl0372.aspx*).

[21] *See* "United States Designates North Korean Entities and Individuals for Activities Related to North Korea's Weapons of Mass Destruction Program," August 30, 2010 (*https://www.treasury.gov/press-center/press-releases/Pages/tg840.aspx*).

[22] *See* "Treasury Sanctions Company And Individuals Linked To North Korean Weapons Of Mass Destruction Program," January 24, 2013 (*https://www.treasury.gov/press-center/press-releases/Pages/tg1828.aspx*).

[23] *See* UNSCR 1718.

[24] *See* E.O. 13382; *see also* Footnote 28.

[25] *See* "Treasury Designates North Korean Bank and Banking Official as Proliferators of Weapons of Mass Destruction," October 23, 2009 (*https://www.treasury.gov/press-center/press-releases/Pages/tg330.aspx*); "Treasury Sanctions Company And Individuals Linked To North Korean Weapons Of Mass Destruction Program," January 24, 2013 (*https://www.treasury.gov/press-center/press-releases/Pages/tg1828.aspx*); "Treasury Targets North Korea's Global Weapons Proliferation Network," December 8, 2015 (*https://www.treasury.gov/press-center/press-releases/Pages/jl0295.aspx*); "Non-proliferation Designations," March 7, 2013 (*https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130307.aspx*).

[26] *See* "The List Established and Maintained by the 1718 (2006) Committee," (*https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/1718.pdf*).

[27] *See* "State Designation of North Korean Nuclear Entity," June 30, 2009 (*www.state.gov/r/pa/prs/ps/2009/06a/125505.htm*).

[28] *See* "Security Council Committee Determines Entities, Goods, Individuals, Subject to Measures Imposed on Democratic People's Republic of Korea by Resolution 1718 (2006)," July 16, 2009 (*www.un.org/press/en/2009/sc9708.doc.htm*).

[29] *See* UNSCR 2270.

[30] *See* "Treasury Designates Financial Institution Tied to North Korea's WMD Proliferation," August 11, 2009 (*https://www.treasury.gov/press-center/press-releases/Pages/tg260.aspx*).

[31] *See* UNSCR 2270.

13382, and the UN listed Hyoksin under UNSCR 1718 for WMD proliferation activity.[32] In spite of its designation, KKBC has continued to evade sanctions and process financial transactions that support the proliferation of WMD and ballistic missiles by using front companies to clear U.S. dollar transactions through U.S. correspondent accounts. In 2013, senior North Korean leadership utilized a KKBC front company to open accounts at a major Chinese bank under the names of Chinese citizens, and deposited millions of U.S. dollars into the accounts. The same KKBC front company processed transactions through U.S. correspondent accounts as recently as 2013.

The Foreign Trade Bank

The Department of the Treasury designated Foreign Trade Bank (FTB) under E.O. 13382 in March 2013 for facilitating transactions on behalf of actors linked to North Korea's nuclear proliferation networks.[33] Headquartered in Pyongyang, FTB acts as North Korea's primary foreign exchange bank and has provided financial support to KOMID and KKBC. As noted above, KOMID was sanctioned by the United States in July 2005 under E.O. 13382, and listed by the UN in April 2009 under UNSCR 1718; the Department of the Treasury designated KKBC under E.O. 13382 in August 2009, and the UN listed KKBC under UNSCR 2270 in March 2016.

The following examples are representative of the activities of FTB and its front companies. Between 2008 and 2012, FTB used front companies in multiple countries to make and receive payments equivalent to tens of millions of U.S. dollars. In 2011, an FTB front company was involved with U.S.-designated KKBC and Korea 5 Trading Corporation, a subordinate of U.S. and UN-designated Korea Ryonbong General Corporation, in financial dealings totaling several millions of U.S. dollars. The same FTB front company processed transactions through U.S. correspondent accounts as recently as April 2014.

The Daedong Credit Bank

The Department of the Treasury designated Daedong Credit Bank (DCB) under E.O. 13382 in June 2013 for managing millions of dollars of transactions in support of the North Korean regime's nuclear proliferation and missile-related activities.[34] The UN listed DCB under UNSCR 2270 in March 2016. DCB has demonstrated through its activity that it is willing to facilitate transactions at the direction of, and in coordination with, the government of North Korea. Since at least 2007, DCB has facilitated hundreds of financial transactions worth millions of dollars on behalf of designated actors, KOMID and TCB. Some of these transactions involved deceptive practices that include the use of front companies located outside of North Korea to process cross-border payments. DCB also directed a front company, DCB Finance Limited, to carry out international financial transactions as a means to avoid scrutiny by financial institutions. DCB Finance Limited has conducted transactions through correspondent accounts at U.S. banks.

Based upon the information above, the North Korean government, through entities and financial institutions based in North Korea, facilitates financial transactions in support of the proliferation of WMD and ballistic missiles in violation of UNSCR 1718. Additionally, by creating and using front companies with the intent to obfuscate the true originator, beneficiary, or purpose of transactions, these state-owned entities and financial institutions have engaged in a pattern of deceptive financial activity to evade international sanctions, circumvent U.S. sanctions and AML controls, and penetrate the U.S. financial system when such activity would otherwise be prohibited. This activity represents a direct threat to the integrity of the U.S. financial system.

B. The Substance and Quality of Administration of the Bank Supervisory and Counter-Money Laundering Laws of That Jurisdiction

The Financial Action Task Force (FATF) is an inter-governmental body that sets international standards and promotes the implementation of legal, regulatory, and operational measures for combatting money laundering, terrorist financing, WMD proliferation financing, and other related threats to the integrity of the international financial system.[35] The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and countermeasures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. Due to North Korea's ongoing failure to address its AML/CFT deficiencies, the FATF has publicly identified substantial money laundering and terrorist financing risks emanating from the jurisdiction and has identified North Korea as one of only two jurisdictions in the world subject to FATF counter-measures since 2011.

In FATF's Public Statement dated February 19, 2016, the FATF reiterated its concern about North Korea's failure to address the significant deficiencies in its AML/CFT regime, and the serious threat such deficiencies pose to the integrity of the international financial system. The FATF called on its members and urged all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with North Korea, including North Korean companies and financial institutions. The FATF also warned that jurisdictions should protect against correspondent relationships being used to bypass or evade countermeasures and risk mitigation practices, and take into account AML/CFT risks when considering requests by North Korean financial institutions to open branches and subsidiaries in their jurisdiction.[36] While steps may have been taken by North Korea to engage with the FATF, including becoming an observer to the Asia Pacific Group, a FATF-style regional body, North Korea lacks basic AML/CFT controls and has failed to address the deficiencies in its AML/CFT regime identified by FATF.[37]

[32] *See* "Treasury Designates North Korean Entity Tied to Weapons of Mass Destruction Development," July 30, 2009 (*https://www.treasury.gov/press-center/press-releases/Pages/tg247.aspx*); "Security Council Determines Entities, Goods, Individuals Subject To Measures Imposed on Democratic People's Republic of Korea by Resolution 1718 (2006)," July 16, 2009 (*http://www.un.org/press/en/2009/sc9708.doc.htm*).

[33] *See* "Treasury Sanctions Bank and Official Linked to North Korean Weapons of Mass Destruction Programs," March 11, 2013 (*https://www.treasury.gov/press-center/press-releases/Pages/jl1876.aspx*).

[34] *See* "Treasury Sanctions Bank, Front Company, and Official Linked to North Korean Weapons of Mass Destruction Programs," June 27, 2013 (*https://www.treasury.gov/press-center/press-releases/Pages/jl1994.aspx*).

[35] *See* Financial Action Task Force Web site (*http://www.fatf-gafi.org/*).

[36] *See* "FATF Public Statement—19 February 2016," (2016) (*http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html*).

[37] *See* "North Korea Adopts Anti-Money Laundering Law," NK News, May 18, 2016 (*https://www.nknews.org/2016/05/north-korea-adopts-anti-money-laundering-law/*).

C. Whether the United States Has a Mutual Legal Assistance Treaty With That Jurisdiction, and the Experience of U.S. Law Enforcement Officials and Regulatory Officials in Obtaining Information About Transactions Originating in or Routed Through or to That Jurisdiction

The United States and North Korea do not have diplomatic relations. North Korea has no mutual legal assistance treaty with the United States and does not cooperate with U.S. law enforcement officials and regulatory officials in obtaining information about transactions originating in, or routed through or to, North Korea.[38]

D. The Extent To Which That Jurisdiction Is Characterized by High Levels of Official or Institutional Corruption

The North Korean government has long demonstrated institutional and official corruption. According to Transparency International's Corruption Perceptions Index, which ranks countries and territories based on how corrupt their public sectors are perceived to be, North Korea ranks 167 out of 168.[39] As noted above, UNSCRs 1718, 2094, and 2270 require UN member states to prohibit the provision to North Korea of luxury goods, which are used by North Korean leaders to consolidate power and appease members of the political elite by increasing their personal wealth. North Korea has also utilized Office 39 of the Korean Workers' Party (KWP) to influence and maintain the support of North Korea's elite citizens.[40]

Office 39 was listed for an asset blocking by the President in the Annex to E.O. 13551 in August 2010,[41] and is the branch of the North Korean Government that provides illicit economic support to North Korean leadership, including managing slush funds for North Korean government officials.[42] The UN listed Office 39 under UNSCRs 1718 and 2270 in March 2016.[43] Examples of Office 39 activity include collecting a significant portion of loyalty funds paid by DPRK officials to the regime annually, and using deceptive financial practices such as smuggling U.S. dollars into North Korea.

To support its efforts, Office 39 controls Korea Daesong Bank (KDB), which is used to facilitate financial transactions supporting the procurement of luxury goods. Treasury designated KDB under E.O. 13551 in November 2010 as an instrumentality of Office 39.[44] In spite of its designation, KDB continues to conduct illicit transactions on behalf of the regime, including by operating front companies on behalf of organizations such as Office 39 abroad; by using an overseas branch office to both pay a number of overseas companies that provide labor and services on behalf of North Korea, and to remit funds to Pyongyang; and by utilizing KDB representatives abroad to make payments for goods imported into North Korea.

Jamal El-Hindi,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2016–13038 Filed 6–1–16; 8:45 am]

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[38] *See* "U.S. Relations with North Korea," (*www.state.gov/r/pa/ei/bgn/2792.htm*).

[39] *See* "North Korea: Facts & Figures," Transparency International (*https://www.transparency.org/country/#PRK*).

[40] *See* "Defectors Detail How North Korea's Office 39 Feeds Leader's Slush Fund: Private Fund Underwrites Comfortable Lifestyles for Pyongyang's Elite," Wall Street Journal, September 15, 2014 (*www.wsj.com/articles/defectors-detail-how-north-koreas-office-39-filters-money-to-kims-private-slush-fund-1410823969*); *see also* "Criminal Sovereignty: Understanding North Korea's Illicit International Activities," Strategic Studies Institute, March 2010. (*www.strategicstudiesinstitute.army.mil/pdffiles/pub975.pdf*)

[41] *See* E.O. 13551.

[42] "Treasury Designates Key Nodes of the Illicit Financing Network of North Korea's Office 39," November 18, 2010 (*https://www.treasury.gov/press-center/press-releases/Pages/tg962.aspx*).

[43] *See* UNSCR 1718; UNSCR 2270.

[44] *See* "Treasury Designates Key Nodes of the Illicit Financing Network of North Korea's Office 39," November 18, 2010 (*https://www.treasury.gov/press-center/press-releases/Pages/tg962.aspx*).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

DATES: Written comments should be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

OMB Number: 1545–0159.

Form Number: Form 3520.

Abstract: U.S. persons who create a foreign trust or transfer property to a foreign trust must file Form 3520 to report the establishment of the trust or the transfer of property to the trust. Form 3520 must also be filed by U.S. persons who are treated as owners of any part of the assets of a trust under subpart E of Part I or subchapter J of Chapter 1; who received a distribution from a foreign trust; or who received large gifts during the tax year from a foreign person.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,320.

Estimated Time per Respondent: 54 hours 35 minutes.

Estimated Total Annual Burden Hours: 71,742.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2016.

Sara Covington,

IRS Tax Analyst.

[FR Doc. 2016–13001 Filed 6–1–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting for the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Meeting notice.

SUMMARY: An open meeting of the Electronic Tax Administration Advisory Committee (ETAAC) will be conducted at the Internal Revenue Service Building in Washington, DC. The ETAAC will discuss recommendations for electronic tax administration which will be published in their Annual Report to Congress by June 30, 2016. The IRS will respond to these recommendations.

Meeting Date: The meeting will be held on Tuesday, June 21, 2016, beginning at 9:00 a.m. eastern time, ending at approximately 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Sean Parman at 202–317–6247 or Rose Smith at 202–317–6559, or email *etaac@irs.gov* to receive the meeting information. Please spell out all names if you leave a voice message.

SUPPLEMENTARY INFORMATION:

Background: The Internal Revenue Service established the Electronic Tax Administration Advisory Committee (ETAAC) in 1998 as a result of the Restructuring and Reform Act of 1998 (RRA'98). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members convey the public's perceptions of the IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC's duties are to research, analyze, consider, and make recommendations on a wide range of electronic tax administrative issues and to provide input into the development and implementation of the strategic plan for electronic tax administration.

Meeting Access: The meeting will be open to the public. Interested members of the public may attend ETAAC's discussion of their recommendations. The public may also submit written comments about issues in electronic tax administration for the committee to consider analyzing later this fall to *etaac@irs.gov* no later than 12 p.m. eastern on June 15, 2016. Written statements received after this date may not be provided to or considered by the ETAAC until its next meeting.

Dated: May 24, 2016.

Vicki L. Price,

Acting Director, Strategic and Analytic Services, Office of Online Services.

[FR Doc. 2016–13002 Filed 6–1–16; 8:45 am]

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Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 95 and Chapter III
Comprehensive Child Welfare Information System; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Administration for Children and Families

45 CFR Chapter XIII and Parts 1355 and 1356

RIN 0970–AC59

Comprehensive Child Welfare Information System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule replaces the Statewide and Tribal Automated Child Welfare Information Systems (S/TACWIS) rule with the Comprehensive Child Welfare Information System (CCWIS) rule. The rule also makes conforming amendments in rules in related requirements. This rule will assist title IV–E agencies in developing information management systems that leverage new innovations and technology in order to better serve children and families. More specifically, this final rule supports the use of cost-effective, innovative technologies to automate the collection of high-quality case management data and to promote its analysis, distribution, and use by workers, supervisors, administrators, researchers, and policy makers.

DATES: This final rule is effective: August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Terry Watt, Director, Division of State Systems, Children's Bureau, Administration on Children, Youth, and Families, (202) 690–8177 (not a toll-free call) or by email at *Terry.Watt@acf.hhs.gov*. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

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I. Background

Statutory Authority

The statute at 42 U.S.C. 674(a)(3)(C) and (D) provides the authority for title IV–E agencies to access funding authorized under Title IV–E of the Social Security Act (title IV–E) for the planning, design, development, installation, and operation of a data collection and information retrieval system. The statute at 42 U.S.C. 674(c) includes the requirements a title IV–E agency must meet to receive federal financial participation (FFP) and further specifies the expenditures eligible for FFP.

Regulatory History

ACF published the existing rule at 45 CFR 1355.50 through 1355.57 in December 1993. In January 2012, ACF amended the SACWIS rule in response to passage of the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Pub. L. 110–351) (Fostering Connections). Among many other provisions, Fostering Connections amended title IV–E of the Social Security Act (the Act) to include federally-recognized Indian tribes, tribal organizations and tribal consortia operating an approved title IV–E program. Through these amendments, the Tribal Automated Child Welfare Information System (TACWIS) became the designation for tribal systems meeting the requirements of §§ 1355.50 through 1355.57.

In the years since the SACWIS rule was published in 1993, child welfare practice changed considerably. It is challenging for state and tribal title IV–E agencies (as defined at § 1355.20) to support practices that may vary within a jurisdiction with a single comprehensive information system. Additionally, information technology (IT) has advanced. The advancements in IT provide state and tribal title IV–E agencies with tools to rapidly share data among systems supporting multiple health and human service programs with increased efficiency. To address these practice challenges and IT changes, and allow agencies to improve their systems, this rule no longer requires agencies to use a single comprehensive system and instead, supports the use of improved technology to better support current child welfare practice. With this flexibility, state and tribal title IV–E agencies, as defined in § 1355.20, can build less expensive modular systems that more closely mirror their practice models while supporting quality data. Furthermore, IT tools now can be effectively scaled to support smaller jurisdictions such as federally-recognized Indian tribes, tribal organizations, and tribal consortia (tribes) at a reasonable cost.

II. Notice of Proposed Rulemaking

In developing the rule we engaged in an extensive consultation process. Starting in 2009, the Children's Bureau (CB) initiated a detailed analysis of the S/TACWIS rule to assess if there was a need to change it to better utilize newer technology and support the changing child welfare program. We examined approaches to encourage the implementation of information systems consistent with ACF's technology strategy of promoting program interoperability through data sharing; rapid, modular system development at lower costs; and greater efficiency through the adoption of industry standards. Our analysis also considered whether modifications were necessary to address changing business practice models, including the expanded use of private case managers, and approaches to provide flexibility to state and tribal title IV–E agencies in implementing child welfare systems. We solicited ideas from the public through a **Federal Register** notice on July 23, 2010 (75 FR 43188) and conducted a series of conference calls with interested stakeholder groups. We again solicited feedback through a **Federal Register** notice on April 5, 2011 and held a series of conference calls with interested stakeholder groups. Public comments in response to the 2010 and 2011 FR Notices are available for review at: *http://www.regulations.gov*. We issued a **Federal Register** notice on January 5, 2012 to announce that two tribal consultations concerning the S/TACWIS rule would be held on February 15 and 16, 2012. A full summary of the tribal consultation on child welfare automation can be found at: *https://www.acf.hhs.gov/programs/cb/resource/tribal-consultation-on-title-iv-e-information-systems-regulations*.

After gathering the information from consultation and conducting further internal deliberations, we published a notice of proposed rulemaking (NPRM) on August 11, 2015 (80 FR 48200–748229) outlining our CCWIS proposal. We publicized the NPRM through CB's Web site and announcements distributed to tribes, states, vendors, advocacy groups, and other associations. We conducted three

conference calls to provide these interested parties with an overview of the NPRM and encouraged them to submit comments. We received 40 substantive and unduplicated submissions containing approximately 309 comments and questions on the proposal. The commenters included representatives from 20 state child welfare agencies and 9 national child welfare organizations, other organizations, associations and advocacy groups, among others. We did not receive any comments from federally recognized Indian tribes, tribal consortia or tribal organizations.

The public comments conveyed support for many of the general CCWIS concepts, particularly increased flexibility in the design and configuration of systems to support different child welfare practices, the emphasis on data and data quality instead of specific functions, and support for modular, standardized designs. The most prevalent comments we received were requests for more specific guidance on what data elements must be maintained in CCWIS and exchanged with other agencies; additional details regarding the data quality standards and the scope, burden, and cost of data quality reviews; and requests for increased flexibility for required data exchanges. We address all substantive comments in the section IV, Section-by-Section Discussion of Comments and Regulatory Provisions.

III. Overview of Final Rule

We did not significantly change the rule from the proposal in most areas. Although many of the thoughtful comments led us to reconsider aspects of the proposed CCWIS rule, we found compelling reasons to retain key elements of the proposed CCWIS rule. An overview of this final CCWIS rule, the changes made in response to comments and implementation timeframes follows. A more detailed discussion of the public comments and resulting changes is in section IV of the preamble.

A. Overview of the Rule and Changes Made in Response to Comments

This rule sets forth the requirements for an optional CCWIS. The major provisions of this rule include: (1) Providing title IV–E agencies with flexibility to determine the size, scope, and functionality of their information system; (2) allowing the agency to build a CCWIS to obtain required data from external information systems so that a copy of that data is then stored and managed in the CCWIS; (3) emphasizing data quality and requiring a new data quality plan; (4) requiring new bi-directional data exchanges and use of electronic data exchange standards that strengthen program integrity; and (5) promoting more efficient and less expensive development of reliable systems that follow industry design standards including development of independent, reusable modules. This rule also includes other provisions that provide title IV–E agencies with flexibility. Compliance with the provisions in this rule are determined through ACF review and approval of a state's or tribe's Advance Planning Documents (APD) or a Notice of Intent, where applicable, and through the use of federal monitoring.

First, this rule provides title IV–E agencies with flexibility to build systems that align more closely to their business needs and practices by allowing each title IV–E agency to determine the size, scope, and functionality of their information system. The new CCWIS may: Contain all the functions required to collect and maintain CCWIS data (similar to a current S/TACWIS), be little more than a data repository that collects and exchanges data captured in other systems, or fall somewhere in between these two extremes. As discussed in section IV, these provisions of the rule remain unchanged from the NPRM.

Second, data may be obtained from external information systems so that a copy of that data is then stored and managed in CCWIS. Although this rule requires CCWIS to maintain (store and manage) the required data, it allows CCWIS to obtain required data that is captured in external information systems. The rule also requires that CCWIS be the source of data for federally required and other agency reports. The most prevalent comments we received regarding these provisions were requests for more specific guidance on what data elements must be maintained in CCWIS and exchanged with other agencies. However, as discussed in section VI, these provisions of the rule remain unchanged from the NPRM.

Third, this rule requires title IV–E agencies to develop and maintain a comprehensive data quality plan to monitor the title IV–E agency, and if applicable, child welfare contributing agency (CWCA) system(s) and processes to support complete, timely, accurate, and consistent data. The IV–E agency must also actively monitor, manage, and enhance data quality. This rule also includes new requirements to ensure that a CCWIS supports data quality by requiring agency reviews of automated and manual data collection processes, and by requiring the title IV–E agency to provide continuous data quality improvement, based on its review findings. As a result of comments we received, we clarified the regulatory language in § 1355.52(d)(1)(i) of this rule that if two or more data quality standards apply to the same data (such as a federal standard and a state or tribal standard), ACF will expect the system to measure the more rigorous standard. In addition, to further clarify what data the title IV–E agency requests from CWCAs, in § 1355.52(d)(2)(iii), we specify in the regulatory language that the title IV–E agency request "current and historical CCWIS data" rather than "current and historical data." A number of commenters expressed concern about the burden associated with annual data quality reviews. Although we do not agree that requiring annual data quality reviews imposes any substantial burden, we changed § 1355.52(d)(3) to instead require biennial title IV–E agency data quality reviews to provide title IV–E agencies with flexibility to maintain their current processes for such reviews, to the extent possible. We discuss these changes in detail in section IV.

Fourth, this rule requires a CCWIS to include new bi-directional data exchanges and use of electronic data exchange standards that strengthen program integrity. This rule also requires title IV–E agencies to use an electronic data exchange standard to improve efficiency, reduce duplicate data collection, and promote a common understanding of data elements. The most frequent comments we received requested increased flexibility for required data exchanges. As a result of comments we received, we changed the regulatory language in § 1355.52(e)(1) permitting only a single data exchange with each of the systems specified, to instead allow multiple data exchanges. In addition, to provide increased flexibility, we removed the requirement in § 1355.52(f)(2), which proposed to require that the data exchange standard must apply to internal data exchanges between CCWIS automated functions where at least one of the automated functions meets the requirements of § 1355.53(a). Finally, to correct an inconsistency between two paragraphs we made clarifying changes to § 1355.57(a)(2)(ii) and (b)(2)(ii). We discuss these changes in detail in section IV.

Fifth, the rule prioritizes more efficient and less expensive development of reliable systems that follow industry design standards. This rule requires CCWIS automated functions to be built as independent modules that may be reused in other

systems or be replaced by newer modules with more capabilities. The title IV–E agency must follow industry standards when designing and building the automated modules. As discussed in section IV, these provisions of the rule remain unchanged from the NPRM.

This rule also includes other provisions that provide title IV–E agencies with flexibility, such as a waiver process for title IV–E agencies to propose new approaches to designing IT systems and a transition period of 24 months. As discussed in section IV, these provisions of the rule remains unchanged from the NPRM.

Finally, compliance with provisions in this rule are determined through ACF review and approval of a state's or tribe's APD or a Notice of Intent, where applicable, and through the use of federal monitoring. As a result of comments we received, § 1355.58(a) further clarifies our intent that for development of a CCWIS only, ACF may suspend title IV–B and IV–E funding approved in the APD if ACF determines that the title IV–E agency fails to comply with the APD requirements. Some commenters were also concerned that the Notice of Intent required for projects under the $5 million threshold was excessively burdensome. To clarify that we don't intend the Notice of Intent as requiring extensive planning, we revised § 1355.52(i)(1)(i) to clarify that an agency only needs to provide a narrative outlining the agency's approach instead of a detailed project plan including tasks, schedules, and resources. We discuss these changes in detail in section IV.

This rule will assist title IV–E agencies in developing systems that further contribute to improving outcomes for children and families with more flexible, modernized systems that support the efficient, economical, and effective administration of the plans approved under titles IV–B and IV–E of the Act.

B. Implementation Timeframe

This rule provides a transition period of 24 months from the effective date of the rule, which ends on August 1, 2018. During the transition period, the title IV–E agency with a S/TACWIS or non-S/TACWIS project must indicate whether it will: (1) Transition the S/TACWIS or non-S/TACWIS to a CCWIS; (2) become a non-CCWIS; or (3) build a new CCWIS. The title IV–E agency does not need to finish the transition within the 24 months to be a CCWIS. A new CCWIS may be built at any time. The requirements that title IV–E agencies must comply with during the transition period are set forth in § 1355.56. As discussed in section IV, the transition period set forth in the rule remains unchanged from the NPRM.

IV. Section-by-Section Discussion of Comments and Regulatory Provisions

We did not significantly change the CCWIS final rule from the NPRM. Although many of the thoughtful comments led us to reconsider aspects of our proposal and make several technical revisions, we found compelling reasons to retain our proposal's provisions of the CCWIS proposed rule. Public comments and our responses are discussed below, with general comments first followed by comments organized by the section of the rule that they address.

General Comments

Comment: One commenter asked that we specify the scope of flexibility provided title IV–E agencies to tailor CCWIS to meet their administrative, programmatic, and technical environments.

Response: We would like to clarify that we cannot specify the scope of flexibility as each title IV–E agency's decisions and requirements determine the flexibility provided to a specific project. We provide more detail in our responses in the following sections concerning the flexibility provided by this rule. We note that we will review and respond to agency plans submitted with the documentation required per § 1355.52(i)(1) on a case-by-case basis.

Comment: One commenter noted that it may be difficult in states where different counties have different capabilities to implement a CCWIS all at once. The commenter recommended the rule permit states to build CCWIS in stages.

Response: We would like to clarify that the APD rules permit title IV–E agencies to build CCWIS in stages.

Comment: One commenter noted that they were unable to identify a reduction in system development effort between SACWIS and CCWIS.

Response: We would like to clarify that S/TACWIS required title IV–E agencies to build a system with automated functions to support all child welfare business practices. This rule permits title IV–E agencies to use automated functions in other existing systems to provide CCWIS data rather than building automated functions to collect the data.

Purpose. (§ 1355.50)

We specify in § 1355.50 that the purpose of §§ 1355.50 through 1355.59 is to set forth the requirements for receiving FFP as authorized under section 474(a)(3)(C) and (D) and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a CCWIS.

Comment: One commenter requested that we require all title IV–E agencies to implement a CCWIS.

Response: We did not make changes to this provision in response to this comment because the enabling statute at section 474(a)(3)(C) and (D) and 474(c) of the Act does not provide authority to require title IV–E agencies to implement a data collection and information retrieval system.

Definitions Applicable to Comprehensive Child Welfare Information Systems (CCWIS). (§ 1355.51)

We specify in § 1355.51 definitions applicable to §§ 1355.50 through 1355.59.

Case Management

Comment: A number of commenters requested we define the term "case management" because CCWIS requires case management data and information on case management activities. One commenter recommended we limit the definition to the development and oversight of case plans for children and families. Another commenter noted that that state's law mandated that only state or county employees could provide case management services.

Response: We did not make any changes to address these comments. ACF has not defined the term "case management" because states and tribes define "case management" differently due to varying laws, policies, and practices. The rule continues this flexibility.

Although title IV–E agencies have their own definitions and describe case management activities in a cost allocation plan (CAP) or cost allocation methodology (CAM), in the NPRM we identified activities considered "case management" to include information such as child and family histories, assessments, contact notes, calendars, services recommended and delivered, eligibility for programs and services, and client outcomes. In addition, commenters may look to other examples of case management activities provided in ACF guidance, including:

- The S/TACWIS rule published in 1993 described case management to include: Determining eligibility and supporting the caseworker's determination of whether continued service is warranted, the authorization and issuance of appropriate payments, the preparation of service plans, determining whether the agency can

provide services, authorizing services and managing the delivery of services. (80 FR 26832)

• Section 106 of CAPTA provides examples of "case management" including "ongoing case monitoring, and the delivery of services and treatment provided to children and their families."

• The title IV–E quarterly financial reporting form (the CB–496), provides examples of case management activities including referral to services, preparation for and participation in judicial proceedings and placement of the child, and accessing the Federal Parent Locator Service to search for relatives.

Child Welfare Contributing Agency

We define "child welfare contributing agency" as a public or private entity that, by contract or agreement with the title IV–E agency, provides child abuse and neglect investigations, placements, or child welfare case management (or any combination of these) to children and families.

Comment: A few commenters requested changes in the definition of child welfare contributing agency (CWCA). Some suggested narrower definitions, such as a definition to exclude foster family agencies that provide for the daily care and supervision of foster children as well as provide supportive services because some of these foster family agencies may not have the capacity to collect child welfare service data and this may result in greater costs to agencies.

Response: We did not make any changes to the definition of CWCA to exclude foster family agencies from the definition to the extent they provide child abuse and neglect investigations, placements, and child welfare case management. This is because the data related to these activities conducted by a foster family agency is CCWIS data (as required by § 1355.52(b)) needed for the efficient, economical, and effective administration of the title IV–B and title IV–E programs.

We understand that, in addition to child welfare services, some CWCAs may provide other supportive services such as substance abuse treatment and parent training. Title IV–E agencies are not required to maintain in a CCWIS supportive service data from CWCAs. We also note that title IV–E agencies may support CWCA data collection capacity with CCWIS rather than requiring CWCAs to develop a separate system at additional cost.

Comment: Some commenters want an expanded definition of CWCA to include agencies providing services other than child abuse and neglect investigations, placements, or child welfare case management. One commenter suggested we expand the definition of CWCA to include agencies providing services such as substance abuse treatment and parenting classes. Other commenters suggested the definition accommodate adding, at the title IV–E agency's discretion, other programs and systems.

Response: We did not expand the definition in response to these comments. While many title IV–E agencies work with agencies providing other services such as substance abuse treatment and parenting classes, expanding the definition to include agencies providing services other than child abuse and neglect investigations, placements, or child welfare case management would increase the burden on title IV–E agencies by requiring them to collect this data electronically from an expanded array of service providers. However, title IV–E agencies may, at their discretion, collect other data electronically from CWCAs or other entities and include it in CCWIS per our rule authorizing title IV–E agencies to implement optional data exchanges (§ 1355.54).

Comment: One commenter requested that the rule clarify how the definition of child welfare contributing agency applies to county administered states in which county public entities (County Children and Youth Agencies) provide child abuse and neglect investigations, placements, or child welfare case management services or may contract with private agencies for these services.

Response: We would like to clarify that counties are political subdivisions of the state and that the single state title IV–E agency designated in the state's title IV–B and IV–E plan supervises the administration of county administered IV–B and IV–E programs. Therefore, counties in county administered states are not considered CWCAs. Section 471(a)(2) of the Act and 45 CFR 205.100 provides the authority and parameters by which a single state title IV–E agency may delegate the administration of the title IV–E program to the state's political subdivisions and local agencies or offices. We recognize that political subdivisions and organizational structures within states and tribes vary, and we will provide further technical assistance on a case-by-case basis.

We received no comments on other definitions in § 1355.51and do not make any changes to the definitions in the final rule.

CCWIS Project Requirements (§ 1355.52)

In paragraph (a), we specify that the system must support the efficient, economical, and effective administration of the title IV–B and IV–E plans.

Comment: Several commenters recommended supplementing this requirement with language indicating that CCWIS should support outcomes for families and children, improved practice, and meeting agency needs.

Response: We did not make a change to this paragraph because this requirement reiterates statutory language. However, we agree with the commenter that CCWIS should support outcomes for families and children, improved practice and meeting agency needs, and thus the rule supports this requirement. For example, see the requirements under § 1355.52(b), (c) and (e) which require that data, reporting, and data exchanges support these goals by collecting, reporting, and exchanging data to support child safety, permanency, and well-being.

Comment: One commenter noted we used the terms "efficient," "reasonable" and "appropriate" in the NPRM and asked how we will measure these qualities.

Response: We would like to clarify that we determine "efficient," "reasonable" and "appropriate" as described in each title IV–E agency's APD.

In paragraph (a)(1), we specify that the system must improve program management and administration by maintaining all program data required by federal, state, or tribal law or policy.

Comment: We received one comment requesting clarification on the phrase "maintaining all program data required by federal, state or tribal law or policy."

Response: We consolidated this clarification with related questions about CCWIS data. Please see our responses in paragraph (b).

In paragraph (a)(2), we proposed that the system must appropriately apply computer technology.

Comment: One commenter recommended revising our proposed language in the NPRM to remove the term "computer" from this paragraph and elsewhere in the rule, as the term does not accurately reflect the technologies available or anticipated for the future.

Response: We agree that the preferable terminology to the term "computer" is "information" and have made the change in this paragraph. This is the only revision we find necessary as the term does not appear elsewhere in §§ 1355.50 through 1355.59. It appears

once in 45 CFR 95.625, however, we are not changing the term here to preserve consistency with the other references to "computer" in Part 95.

In paragraph (a)(3), we specify that the project must not require duplicative application system development or software maintenance.

We received no comments on this paragraph and are not making changes in the rule.

In paragraph (a)(4), we specify that project costs must be reasonable, appropriate, and beneficial.

We received no comments on this paragraph and are not making changes in the rule.

In paragraph (b), we specify the data the title IV–E agency's CCWIS must maintain.

Comment: Several commenters recommended modifying the requirement to permit the use of a centralized data warehouse (in addition to a CCWIS production database) that is part of the overall CCWIS design.

Response: We would like to clarify that the title IV–E agency may maintain CCWIS data in a CCWIS production database (which is a database processing CCWIS transactions) and a data warehouse (which is a database used for reporting and data analysis) provided all CCWIS automated functions seamlessly access data from both the database and data warehouse. For example, when generating a report or completing a task that requires data from both the database and data warehouse, CCWIS must be able to immediately access needed data.

Comment: Some commenters noted it was burdensome to store all CCWIS data in the CCWIS and recommended allowing CCWIS data to be stored in other systems, such as CWCA systems.

Response: Storing data within CCWIS ensures the title IV–E agency controls and safeguards the data. We are not making a change in response to this comment because CCWIS data that only resides in CWCA systems could be lost under a variety of circumstances, such as if the CWCA goes out of business, or the contract with the title IV–E agency ends abruptly. Data maintained in other systems could also be lost if the system is upgraded or replaced. Also, storing data in the CCWIS instead of in other systems facilitates continuity of care because CCWIS can share the CCWIS data collected by one CWCA with others as children and families move between jurisdictions and providers. This requirement is less burdensome than the S/TACWIS rules, which required all CWCAs to use the S/TACWIS, because it provides title IV–E agencies the option to allow CWCAs to use systems other than CCWIS.

Comment: Commenters expressed concerns about the increased data collection burden due to the amount of data the title IV–E agency's CCWIS must maintain. For example, some commenters cited the challenges in collecting required consistent and uniform data from CWCAs.

Response: We are not making a change in response to this comment. The requirement for a CCWIS to maintain the specific data described in the paragraph is unchanged from the data captured by the S/TACWIS required functions. We believe burden is reduced because, unlike S/TACWIS, CCWIS is not required to directly capture all CCWIS data. Title IV–E agencies may either include the data capturing functions in CCWIS or permit other systems to capture the data and provide it to CCWIS via data exchanges per § 1355.52(e). We will provide technical guidance to assist agencies with implementing the new flexibility to capture required consistent and uniform data from CWCAs.

We would like to clarify that the paragraphs (b)(1)(i) through (iv) and paragraphs (b)(2) through (4) define categories of data that may overlap, and are not mutually exclusive lists of data. For example, some of the federally required Adoption and Foster Care Analysis and Reporting System (AFCARS) and National Youth in Transition Database (NYTD) data (such as client demographic data) may be required by states and tribes to meet agency-specific needs. This reuse of data across multiple requirements reduces burden.

Comment: A number of commenters requested clarification on how a CCWIS is required to "maintain" data.

Response: In the NPRM preamble, we explained that maintaining CCWIS data (which is data needed for federal or agency purposes, as defined in this paragraph) includes storing and sharing data while monitoring data quality. Storing data within CCWIS ensures the title IV–E agency controls and safeguards the data. CCWIS storage may include a data warehouse. CCWIS must share the stored data, if permissible, with other systems as needed. Sharing CCWIS data helps other programs and providers coordinate services to children and families. CCWIS must monitor the quality of stored data as described in paragraph (d)(2). High quality data supports the delivery of effective, economical, and effective services, which support improved outcomes for clients.

In paragraph (b)(1) we specify that the CCWIS maintain all federal data required to support the efficient, effective, and economical administration of the programs under titles IV–B and IV–E of the Act. In paragraphs (b)(1)(i) through (iv), we specify that CCWIS must maintain data required for: Ongoing federal child welfare reports, title IV–E eligibility determinations, authorizations of services and other expenditures that may be claimed for reimbursement under titles IV–B and IV–E; supporting federal child welfare laws, regulations, and policies; supporting federal audits, reviews, and other monitoring activities.

Comment: A few commenters were concerned that CCWIS data and the rules associated with the data may not be consistent with federal reporting requirements.

Response: We would like to clarify that CCWIS data needed for federal reporting must comply with, and thereby be consistent with, federal reporting requirements.

Comment: Many commenters requested we specify the federal data that CCWIS must maintain in paragraphs (b)(1)(i) through (iv). Some commenters suggested we work with agencies to establish a set of required data and provide agencies with the flexibility to determine what additional data to collect.

Response: We are not making any changes in response to these comments because the federal data that title IV–E agencies must maintain in CCWIS is already defined in federal child welfare laws, regulations, and policies. The data requirements list categories of data rather than specifying a comprehensive set of federal data because we determined that such specificity would require CCWIS regulatory amendments each time there is a change in federal law and policy. This paragraph already provides title IV–E agencies with the flexibility to design CCWIS to meet specific state and tribal needs by collecting data, in addition to the required federal data, the agency requires to fulfill its mission and efficiently, economically, and effectively administer its child welfare programs.

Although we are not making any changes in response to these comments, we would like to clarify the types of data included in paragraphs (b)(1)(i) through (iv).

In paragraph (b)(1)(i), we specify that CCWIS maintain data required for ongoing federal child welfare reports. However, the federal report data CCWIS must maintain varies depending on the requirements for the federal report as

shown in the following three examples: (1) All AFCARS data must be maintained in CCWIS per section 474(a)(3)(C)(i) of the Act; (2) NYTD outcomes information may be maintained in external systems as described in Program Instruction ACYF–CB–PI–10–04, although CCWIS must maintain NYTD case management data; (3) Financial information for the CB–496, such as training costs, demonstration project costs, and administrative costs, may be maintained in a separate financial system that exchanges data with CCWIS per paragraph (e)(1)(i). Other data, such as the average monthly number of children receiving title IV–E Foster Care maintenance assistance payments, may be derived from CCWIS case management and placement records.

In paragraph (b)(1)(ii), we specify that CCWIS maintain data for title IV–E eligibility determinations, authorizations of services, and expenditures under title IV–B and IV–E. We would like to clarify that data necessary for title IV–E eligibility determinations includes data such as the factors used to demonstrate the child would qualify for AFDC under the 1996 plan, placement licensing and background check information, and court findings. Data required for authorizations of services and other expenditures under titles IV–B and IV–E includes data such as documentation of services authorized, records that the services were delivered, payments processed, and payment status, including whether the payment will be allocated to one or more federal, state, or tribal programs for reimbursement, and the payment amount allocated. As noted in our response to paragraph (b)(1)(i), financial information may be maintained in a financial system exchanging data with CCWIS.

In paragraph (b)(1)(iii), which requires CCWIS to maintain data documenting interactions with and on behalf of clients that the title IV–E agency determines is needed to support federal child welfare laws, regulations, and policies, we would like to clarify that this includes data such as case management information, recommended services, placement data, and licensing information on foster care providers. We are not requiring CCWIS to maintain policy documents, program assessments, and program-wide reports such as title IV–E plans. However, we encourage title IV–E agencies to supplement such reports with CCWIS data as needed. For example, agencies may incorporate demographic profiles of the child welfare population into the Child and Family Service Plan or use data on delivered services in the Annual Progress and Services Report.

In paragraph (b)(1)(iv), which specifies case management data, we would like to clarify that this includes data such as case management data collected in the course of case work with clients (such as abuse and neglect reports, case plans, and placement histories) that may be needed for a Child and Family Services Review (CFSR). However, CCWIS is not required to maintain the supplemental information reviewers use such as client surveys, focus group results, pilot data manually collected, and interview narratives.

Finally, we would like to clarify that a federal review may lead to requirements to collect new data elements. For example, if a CFSR review finds that the title IV–E agency must collect certain child welfare data to effectively monitor cases, this would become required data for that agency's CCWIS.

We will use the federal laws, regulations, and polices effective at the time of a CCWIS review to determine compliance with paragraph (b) and paragraphs (b)(1)(i) through (iv). We will provide technical assistance as federal data requirements change.

In paragraph (b)(2), we specify that the CCWIS maintain the data to support state or tribal laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews.

Comment: Commenters expressed concern with the burden associated with the requirements for the CCWIS to maintain specific state and tribal data identified in the paragraph.

Response: We do not agree that the burden will necessarily increase under this rule. Although this rule permits title IV–E agencies to maintain additional data in the CCWIS that the state or tribe feels is needed to administer its child welfare programs, the requirements under this rule do not exceed the burden currently required in a S/TACWIS. We encourage title IV–E agencies to reduce the data burden by verifying that all data maintained in the CCWIS is required to support a clearly defined federal, state, or tribal purpose.

Comment: Several comments asked how we would determine compliance with this requirement.

Response: We will determine compliance with this requirement by reviewing state and tribal laws, regulations, policies, and practices in consultation with title IV–E agency representatives. For example, to determine if CCWIS maintains the data necessary to support state or tribal practices, we will consider the information needs of CWCAs and other title IV–E systems external to CCWIS, as described in paragraph (e)(1)(iv). If we document a pattern of CWCAs re-entering information clients provided to other CWCAs, that may suggest that the data should be in CCWIS and shared with CWCAs to prevent the duplicate entry of needed data. In such circumstances, we will work with the title IV–E agency to determine if the data should be classified as CCWIS data and exchanged with the IV–E agency's CCWIS.

Comment: Some commenters recommended specific data that we should require title IV–E agencies to maintain in the CCWIS, including data concerning treatment for substance abuse, mental health, other forms of treatment, and treatment outcomes.

Response: We are not making changes as a result of these comments. We would like to clarify that title IV–E agencies may maintain treatment data in its CCWIS as long as it supports a state or tribal agency need. However, we are not requiring all title IV–E agencies to maintain this data to preserve agency flexibility to implement a CCWIS tailored to their needs.

Comment: Some commenters requested that the CCWIS rule state that we support the continuous improvement and evolution of child welfare practice with flexible child welfare systems.

Response: We agree that this paragraph's requirement that CCWIS support state and tribal laws, regulations, polices, and practices promotes the continuous improvement and evolution of child welfare practice.

In paragraph (b)(3), we specify that, for states, the CCWIS maintain data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the Indian Child Welfare Act.

Comment: One commenter recommended that states use electronic data exchanges with tribes to improve Indian Child Welfare Act (ICWA) compliance.

Response: ACF is committed to offering technical assistance to states regarding the implementation of ICWA. We agree that electronic data exchanges between states and tribes are beneficial. However, we are not making a change to this paragraph because we want to maintain flexibility to permit states and tribes to determine the data sharing approach appropriate for different circumstances. However, we note that optional electronic data exchanges between CCWIS and tribal systems are permitted per § 1355.54.

Comment: One commenter recommended we define specific data elements to address ICWA protections for children served by tribal child welfare systems and strengthen data related to ICWA eligibility.

Response: On April 7, 2016, ACF published a supplemental notice of proposed rulemaking (SNPRM) focused on the collection and reporting of additional ICWA-related data elements in AFCARS (81 FR 20283). Based on this separate rulemaking process that has yet to be finalized, we are not making changes to this paragraph. However, it is important to emphasize that CCWIS must maintain data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the Indian Child Welfare Act and AFCARS regulations. As AFCARS regulations are updated to include ICWA-related data elements or other changes, the CCWIS regulations require title IV–E agencies to update their data collection systems to meet new standards, per section 474(a)(3)(C)(i) of the Act.

In paragraph (b)(4), we specify that the CCWIS maintain, for each state, data for the National Child Abuse and Neglect Data System (NCANDS).

We received no comments on this paragraph and made no changes in the rule.

In paragraph (c), we specify requirements for using the CCWIS data in paragraph (b) for required reports.

Comment: Several commenters asked if the reporting requirements limited CCWIS to a single production database. They recommended that we modify the requirement to permit the use of a data warehouse to support data analysis and reporting functions.

Response: We did not change this requirement because this rule does not prohibit maintaining CCWIS data in a data warehouse.

In paragraph (c)(1), we specify that the system generate, or contribute to, title IV–B and IV–E federal reports according to applicable formatting and submission requirements using data maintained in the CCWIS.

Comment: One commenter requested we incorporate key elements from AFCARS into this rule because it would help match up AFCARS requirements with CCWIS requirements.

Response: We did not make a change in response to this comment because paragraph (c) already requires CCWIS to support federal reports that support programs and services described in title IV–B and title IV–E of the Act, including AFCARS. This approach allows for AFCARS rules to change, without also requiring the CCWIS rules to change. On February 9, 2015, ACF published a Notice of Proposed Rulemaking to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E subsidized adoption or guardianship agreement. On April 7, 2016, ACF published a Supplemental Notice of Proposed Rulemaking that proposed to require that state title IV–E agencies collect and report additional data elements related to the Indian Child Welfare Act of 1978 (ICWA) in the AFCARS.

In paragraph (c)(2), we specify that the system generate or contribute to reports that support programs and services described in title IV–B and title IV–E of the Act and are needed to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews using data maintained in CCWIS.

Comment: Some commenters interpreted this paragraph as requiring CCWIS to produce reports that are not needed for child welfare case management, such as title IV–B reports and title IV–E quarterly financial reporting and expenditures. Commenters expressed concern that the reporting requirements were too expansive.

Response: We did not change the reporting requirements to address this comment. We would like to clarify that while we require CCWIS to provide CCWIS data as needed for reports specified in paragraphs (c)(1) and (2), CCWIS is not required to produce every agency report. If CCWIS maintains a subset of a required report's data, CCWIS is not required to generate the complete report, but must provide the data maintained in the CCWIS for incorporation into the report. Agencies may decide how to provide the data. For example:

- CCWIS may transmit available NYTD data to a system that collects NYTD survey data and generates the federal report.
- CCWIS may support financial audits by providing data on authorized placements and services to a data warehouse where it is merged with data on related expenditures to create audit trails.
- CCWIS may provide a hardcopy summary of demographic and placement statistics that staff add to a narrative report demonstrating progress on CFSR goals.
- Data analysts may use a spreadsheet of CCWIS data to develop reports on trends in child welfare.

If CCWIS maintains all the data required for a report, the report must be generated entirely from that data. For example, even if CWCAs collect AFCARS data, the AFCARS report must be generated from the data provided by CWCAs and maintained in CCWIS.

In paragraph (d), we describe the data quality requirements for CCWIS.

In paragraph (d)(1) we specify the CCWIS data quality and confidentiality requirements applicable to CCWIS data described in § 1355.52(b).

Comment: We received a general comment requesting that we specify the data quality standards so that title IV–E agencies can estimate the effort to meet the data quality standards.

Response: We did not make any changes as a result of this comment. We discuss data quality standards in our responses below. However, we agree that title IV–E agencies should evaluate the effort needed to develop a fully complaint CCWIS. To provide sufficient time for this evaluation, we allow a 2-year transition period as described in § 1355.56. We also intend to provide technical assistance and guidance regarding data quality to assist title IV–E agencies.

Comment: A few commenters asked that we clarify the expectations for managing the quality of data received via a bi-directional data exchange.

Response: We did not make any changes as a result of this comment. Title IV–E agencies may take into account data sources when establishing data quality standards and how data should be verified and used. Different standards may be appropriate for different sources. For example, title IV–E agencies can establish data quality standards applicable to CWCAs in contracts or agreements and require CWCAs to conform to the standard. IV–E agencies should follow their state or tribal governance procedures for defining expectations for data quality standards between CCWIS and other agencies such as title IV–D, title IV–A, education, and the courts. While we encourage programs to collaborate to improve data quality, we do not have the authority to require other programs to comply with title IV–E agency data quality standards and defer to the state or tribe's governance structures to address issues with the quality of data received via a bi-directional data exchange. We intend to offer technical assistance related to bi-directional data exchanges to assist program interoperability.

Comment: One commenter recommended that the rule specify data security requirements. A few commenters asked if CCWIS, like S/TACWIS, established archiving and purging requirements.

Response: We did not make any changes to paragraph (d) because the data security, archiving, and purging requirements are addressed in the APD rule at 45 CFR 95.621(f) and the program rule at 45 CFR 92.42. The rule at § 1355.30 applies the requirements at 45 CFR 92.42 amd 95.621(f) to programs funded under titles IV–B and IV–E of the Act.

In paragraph (d)(1)(i), we proposed that CCWIS data meet the applicable federal, and state or tribal standards for completeness, timeliness and accuracy.

Comment: A number of commenters requested that ACF define the data quality standards for CCWIS data elements. Some recommended that ACF partner with title IV–E agencies and other stakeholders to define the standards.

Response: We did not make changes to the rule as a result of these comments. We would like to clarify that the federal data quality standards are defined in federal laws, regulations, and policies including, but not limited to, the AFCARS rule at § 1355.40 and the NYTD rule at § 1356.80. These national standards apply to all title IV–E agencies. We will not define the data quality standards for state or tribal data as those standards are determined by each state's or tribe's laws, regulations, policies, and practices. Imposing national data quality standards for state and tribal data would prevent a title IV–E agency from implementing a CCWIS tailored to its needs.

Comment: A number of commenters requested additional information on how ACF will evaluate and measure data quality. One commenter noted that without this information it would be difficult to define expectations for the program staff.

Response: We made a change to the rule to address this comment by inserting the phrase "the most rigorous of" after "meet" so the paragraph reads that the CCWIS data described in paragraph (b) of this section must: "Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy."

This means if two or more standards apply to the same data (such as a federal standard and a state or tribal standard), ACF will expect the system to measure the more rigorous standard. For example, if one timeliness standard required updating certain CCWIS data in seven days and a second standard sets a two-day limit, ACF will expect that the system apply the two-day standard when evaluating the quality of the required data. Designing the CCWIS to measure or support a more rigorous standard will allow the IV–E agency to build systems to support their need without affecting federal reviews that focus on a less rigorous standard.

Concerning the standards we will apply, we would like to clarify that we will use the more rigorous standards upon which the system was designed. We will provide technical assistance as needed to clarify these data quality standards.

Title IV–E agencies must submit their proposed data quality standards in the data quality plan required in paragraph (d)(5). ACF will approve the standards or note needed changes.

Comment: A commenter asked if we were continuing the SACWIS requirements concerning auditability and data freezing.

Response: We would like to clarify that freezing data to preserve data at a specific point in time for later audits (such as freezing child abuse and neglect reports that may be subject to internal or judicial review) is an example of maintaining complete and accurate data that is covered by this requirement.

Comment: One commenter asked for clarification on how data quality standards would apply in circumstances where data is missing or unknown, such as when a reporter of a child abuse or neglect incident does not know certain information.

Response: We would like to clarify that the title IV–E agency may specify conditions where data is not required or to indicate data is unknown in the data quality standard.

In paragraph (d)(1)(ii), we specify that data be consistently and uniformly collected by CCWIS and, if applicable, child welfare contributing agency systems.

In paragraph (d)(1)(iii), we specify that the title IV–E agency must exchange and maintain CCWIS data in accordance with the confidentiality requirements of applicable federal and state or tribal laws.

In paragraph (d)(1)(iv), we specify that the CCWIS data described in revised § 1355.52(b) must support child welfare policies, goals, and practices.

We did not make any changes to paragraphs (d)(1)(ii) through (iv) in the rule. We received no comments other than comments requesting we specify the data supporting child welfare policies and practice, which we responded to in our responses to paragraph (b).

In paragraph (d)(1)(v), we specify that the CCWIS data described in revised § 1355.52(b) must not be created by default or inappropriately assigned.

Comment: One commenter requested we modify this requirement to permit default data that is accurate in all cases. The commenter gave examples of pre-filling: (1) The state name with the state in which the case worker resides; (2) pre-populating a worker's supervisor's name; and (3) pre-filling other fields based on previously entered data.

Response: We are not making a change based on this comment because all examples demonstrate the automatic calculation of data based on information previously known to the system, which is allowable, rather than an automatic creation of the same default data in all circumstances, which is prohibited.

In paragraph (d)(2), we specify that the title IV–E agency implement and maintain automated functions in CCWIS to maintain data quality.

Comment: One commenter noted that the required automation support for data quality contradicted the rule's goals of requiring outcomes but not requiring functionality.

Response: We would like to clarify that while the rule emphasizes outcomes, paragraph (d) and the following sub-paragraphs require certain automated functionality, including automated functions to support data quality. Supporting data quality is critical to improved outcomes for children and families.

Comment: A few commenters noted that the rule should not mandate specific automated functions but permit title IV–E agencies to implement automated functions that most efficiently and effectively meet data quality goals.

Response: We are not making changes in response to this comment because the requirements in paragraphs (d)(2)(i) through (v) do not mandate specific automated functions but provide flexibility by allowing agencies to determine the most efficient and effective methods to support data quality.

In paragraph (d)(2)(i), we specify that CCWIS regularly monitor CCWIS data quality through automated functions.

Comment: Several commenters requested we specify the metrics and standards we will use when auditing title IV–E agency compliance with this requirement and if those metrics and standards go beyond what is included in the agency's state plan. Commenters recommended audits focus on the most critical data elements.

Response: We would like to clarify that we will use the title IV–E agency's data quality plan as the basis for the metrics and standards when determining agency compliance with the data quality requirements, including this requirement. We encourage agencies to propose efficient, economical, effective strategies in their plans, such as targeting critical data elements for greater data quality efforts.

ACF will assess the effectiveness of the agency's data quality plan in a variety of ways including review of the data quality status reports described in paragraph (d)(5)(ii) and on-site reviews described in § 1355.55.

Comment: One commenter asked us to clarify the anticipated impact of the requirement to actively monitor data.

Response: We anticipate that active automated data quality monitoring will increase the efficiency of the data quality reviews and reduce the need for manual monitoring by staff. Information technology efficiently supports data quality by performing routine tasks quicker and more consistently than staff. CCWIS can proactively review all data and flag potential data quality problems requiring further investigation. This increases worker effectiveness by enabling workers to focus on solving data quality problems rather than sifting through data to identify errors.

The improved data quality will support more accurate reporting and help agencies better assess and serve children and families.

In paragraph (d)(2)(ii), we specify that the CCWIS supports data quality with automated functions to alert staff to collect, update, correct, and enter CCWIS data.

Comment: Several commenters recommended we delete the specific requirements for title IV–E agencies to develop "alerts, reports, and other appropriate tools" and replace it with language that supports state discretion and flexibility.

Response: We did not make any changes as a result of these comments because paragraph (d)(2)(ii) requires only that the agency use automated functions to alert staff for certain actions.

The NPRM preamble language commenters quoted serves merely as examples of how agencies may choose to implement the requirement. Title IV–E agencies may use other methods to alert staff.

In paragraph (d)(2)(iii), we require that the IV–E agency's CCWIS includes automated functions to send electronic requests to child welfare contributing agency systems to submit current and historical CCWIS data to the CCWIS.

Comment: Commenters requested we specify the data the title IV–E agency requests from CWCAs. Some commenters suggested this data focus on NCANDS, AFCARS, and NYTD data related to safety, permanency, and well-being.

Response: We made a change to the rule to address this comment and specify that the title IV–E agency request "current and historical CCWIS data" rather than "current and historical data." We define CCWIS data in paragraph (b).

Comment: One commenter noted that some CWCA systems may not have the capacity to receive an automated notification of missing data.

Response: We recognize that some CWCA systems may not have the capacity to receive automated notifications from CCWIS as required by this paragraph. As such, we would like to clarify that the title IV–E agency may require CWCAs to use CCWIS if a CWCA system does not have the capacity to receive automated notifications from CCWIS as required by this paragraph.

In paragraph (d)(2)(iv), we specify that a title IV–E agency implement and maintain automated functions in the CCWIS that prevent, to the extent practical, the need to re-enter data already captured or exchanged with the CCWIS.

Comment: One commenter requested a definition of duplicate data entry.

Response: We would like to clarify that duplicate data entry is the manual reentry of data already captured by either the CCWIS or another system required to provide the data to CCWIS. We note that this is the same definition used during S/TACWIS reviews.

In paragraph (d)(2)(v), we specify that CCWIS must generate reports of continuing or unresolved CCWIS data quality problems.

Comment: One commenter recommended removing this paragraph and replacing it with language supporting agency discretion and flexibility to support data quality.

Response: We are not making any changes to this requirement in response to the comment because automated CCWIS reports are an efficient method to monitor and improve data quality. We also note that this requirement already provides sufficient latitude for title IV–E agencies to decide how best to identify continuing or unresolved CCWIS data quality problems. As an example, the agency may determine report formats, frequency, distribution or other specifications that support reporting mechanisms tailored to their needs.

In paragraph (d)(3), we proposed annual title IV–E agency data quality reviews and what the reviews would entail.

Comment: In the context of the CCWIS data quality reviews, a commenter asked if there would be other reviews and if so, what would be the frequency of those reviews.

Response: This is the only required CCWIS data quality review.

Comment: A number of commenters asked if the data quality reviews are conducted by ACF, the title IV–E agency, or another party.

Response: We would like to clarify that the title IV–E agency conducts the data quality review.

Comment: A number of commenters asked for clarification on what activities and processes are required to be part of the data quality review.

Response: We would like to clarify that the title IV–E agency defines the review scope, activities, and processes in the data quality plan submitted to ACF for approval per paragraph (d)(5).

The activities and processes for the data quality review established by the title IV–E agency and approved by ACF must meet the requirements of paragraph (d)(3). The data quality review may include activities such as reviewing a sample of case records, interviews with select state and child welfare contributing agency staff, an evaluation of automated edit checks, and a review of data quality reports. Some data quality activities, such as automated processes, may be continuous while other activities may occur one time during the biennial review period.

Comment: Some commenters asked if ACF assumptions about child welfare practices, such as the scope of child welfare case management, determine the data quality and data quality review requirements.

Response: We would like to clarify that we avoid making general assumptions about child welfare practices because those practices vary among title IV–E agencies. We agree that child welfare practices determine the data requirements, which is why the rule requires that the title IV–E agency define CCWIS data and data quality standards and activities to support child welfare practices within the title IV–E agency's jurisdiction.

Comment: Many commenters asked how the data quality reviews are related to other federal child welfare reviews.

Response: We would like to clarify that the reviews complement and support one another. The CCWIS data

quality reviews examine the systems and processes that collect, process, and report the data and manage data quality. The system focused data quality reviews complement other federal child welfare program reviews that evaluate program practice and outcomes. For example, while a CFSR review may examine the effectiveness of family team meetings, a data quality review determines if a CCWIS maintains complete, timely, and accurate data about the family team meetings. Another example is that we encourage agencies to develop an efficient review process by incorporating their existing AFCARS and NYTD data quality activities into their CCWIS data quality plan.

Comment: One commenter recommended requiring data conversion and migration (DCM) activities to improve data quality.

Response: While we agree with the commenter that DCM activities improve data quality, we are not adding this specific requirement to this rule. A data quality review will identify factors contributing to poor data quality including, if applicable, DCM. However, as noted above, we are providing title IV–E agencies with the flexibility to select the review processes most suitable for their circumstances. We intend to provide technical assistance to title IV–E agencies on this topic, as needed.

Comment: A number of commenters asked for clarification on funding available for the data quality reviews, including staff time.

Response: We would like to clarify that the data quality review is an approved activity as defined at § 1355.51 and may qualify for CCWIS cost allocation per § 1355.57(c).

Comment: Some commenters requested we provide a higher FFP rate to support data quality review activities.

Response: We are not making a change to the rule because ACF does not have statutory authority to provide a higher FFP rate.

Comment: Some commenters were concerned that there may not be adequate federal resources to support title IV–E agency needs for technical support for the data quality reviews.

Response: We would like to clarify that title IV–E agencies submit their approach for data quality reviews with the data quality plan in an annual or operational APD per paragraph (d)(5). ACF will respond to APDs (and the associated data quality plan) within 60 days.

Comment: Several commenters were concerned with the burden associated with an annual data quality review. One commenter requested we conduct a cost/benefit analysis to evaluate the burden of the data quality review on the state agency. Some commenters, while agreeing the rule should include a data quality component, expressed concern that a prescriptive and extensive data quality review was burdensome. One commenter suggested reducing burden by classifying state and tribal data quality standards as optional. A number of commenters expressed concern that conducting data quality reviews as frequently as annually would be burdensome.

Response: We are making one change to the data quality reviews as a result of public comments and have revised the rule to require agencies to conduct biennial rather than annual reviews. In general, we believe that the requirements for data quality reviews in this rule are consistent with current title IV–E agency practices that reflect the importance of high quality data. All title IV–E agencies, recognizing that high quality data is essential for the administration of child welfare programs, have integrated data quality review processes into on-going system operations. Agencies also use data quality reviews to determine if systems are producing the expected data, identify weaknesses, and to guide the continuous quality improvement of their systems. We have observed that all title IV–E agencies with operational S/TACWIS projects (34 states) have data quality reviews that will likely meet the rule's data quality requirements. We note that title IV–E agencies without a S/TACWIS must minimally meet the required federal data quality standards for reports such as AFCARS and NYTD. In addition, we understand that agencies with non-S/TACWIS systems do institute processes to monitor non-federal data required by the agency. We have observed that even title IV–E agencies with limited resources have established procedures for extensive monitoring of data quality. Successful strategies of these agencies include using automated data quality reports and audits of sample cases to review all data and then targeting identified problematic data for improvement. We did not prescribe specific review activities, as we expect agencies to largely continue or improve upon their current data quality activities. We therefore determined that the burden to title IV–E agencies will be minimal.

However, because existing data quality review practices vary, we changed the proposed requirement in paragraph (d)(3) for annual data quality reviews to instead require biennial title IV–E agency data quality reviews to provide title IV–E agencies with flexibility to maintain their current processes for such reviews, to the extent possible. However, we encourage title IV–E agencies that currently conduct annual data quality reviews to continue this practice.

Comment: Some commenters are concerned that the data quality reviews and the correction of findings as required by paragraph (d)(4) will divert staff resources away from other program activities. One commenter suggested the costs will increase exponentially as agencies try to achieve increasingly higher data quality goals.

Response: We did not make any changes in response to these comments because we believe that complete, timely, and accurate data supports the goals of child safety, wellbeing, and permanency. High quality data informs actions and guides decisions at all levels of the agency. Workers use data to manage cases, monitor services, and assess client progress while supervisors and administrators use it to monitor and direct work, manage resources, evaluate program effectiveness, control costs, and estimate funding needs. Data quality reviews support the collection, management, and dissemination of high quality data. The requirement in paragraph (d)(4) to address review findings with corrective action establishes a repeatable cycle of continuous quality improvement. Each successive review measures the impact of past corrective actions. This enables title IV–E agencies to determine the effectiveness of those actions and make adjustments leading to further improvements and enhance CCWIS's ability to support the efficient, economical, and effective administration of the child welfare program.

Title IV–E agencies with S/TACWIS projects have established data quality review processes and staff assigned to these tasks. We encourage title IV–E agencies to manage data quality staffing needs with automation supporting data quality per paragraph (d)(2).

We disagree that data quality review costs will increase exponentially. We would like to clarify that data quality reviews will require fewer resources in successive years. The rule provides title IV–E agencies with the flexibility to incrementally improve data quality over time. We expect many agencies to continue their practice of prioritizing data quality efforts by focusing first on correcting the most critical data elements and build on their progress so that with each review fewer problems remain.

We would also like to clarify that data quality enhancements are an established

and necessary system maintenance practice. Without regular data quality monitoring, systems decline in reliability and usefulness and may require replacement at costs significantly higher than ongoing maintenance activities.

We have also observed that as systems age they accumulate data that is no longer needed to support improved practices. By aligning data needs to current program practice, as required by this rule, agencies will identify and purge systems of irrelevant screens and fields thereby simplifying the system and increasing worker efficiency.

In paragraph (d)(3)(i), we specify that the data quality reviews determine if the title IV–E agency and, if applicable, child welfare contributing agencies, meet the new requirements of § 1355.52(b), (d)(1), and (2).

In paragraph (d)(3)(ii), we specify that the title IV–E agency's data quality reviews determine whether bi-directional data exchanges meet applicable requirements.

Comment: A number of commenters expressed concern that requiring the review of child welfare contributing agency systems and data collection activities was burdensome.

Response: We did not make changes based on these comments because these requirements for data quality reviews do not prescribe the procedures title IV–E agencies must follow when reviewing CWCAs. We encourage agencies to consider approaches to review CWCAs and their data efficiently, economically, and effectively. Approaches may include a mix of review techniques, including:

- Randomly sampling CWCA data to review.
- Automatically evaluating CWCA data quality, alerting CWCAs to data quality failures, and establishing timeframes for corrective action.
- Contractually obligating CWCAs to regularly review their data quality and correct errors.
- Establishing a schedule of on-site reviews for a subset of CWCAs during each biennial review.
- Tailoring review procedures for specific CWCAs. Experienced CWCAs with a history of submitting high quality data may be reviewed through an examination of data quality reports. Reviews of new CWCAs with uneven data quality may be more intensive and include interviews with staff, observation of data collection training, and analysis of the CWCA's automated system.

We also note that data quality reviews will vary depending on the flexibility title IV–E agencies grant CWCAs. For example, if a title IV–E agency requires CWCAs to use CCWIS, no CWCA systems are reviewed. In any case, the reviews must consider the CWCA data collection processes and training that affect data quality.

In paragraph (d)(4), we specify that the title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges, or both, to correct findings from the data quality reviews described at paragraph (d)(3).

Comment: A few commenters asked what the title IV–E agency must do with the results of the data quality reviews and whether title IV–E agencies were required to correct the system, the data or both.

Response: We would like to clarify that title IV–E agencies must correct the factors contributing to poor quality data, such as data collection procedures and training, CCWIS errors, or problems with bi-directional data exchanges. Agencies may propose how they will address findings in their data quality plans. In the case of numerous findings, we encourage title IV–E agencies to prioritize the issues and address critical findings first. We do not require that agencies address all findings within a specified timeframe. For example, an agency may decide to focus on enhancements to automated edit checks as a first step, and then if necessary make improvements to staff training as a second step if data quality does not improve.

ACF expects successive reviews to demonstrate the effectiveness of actions taken per this paragraph to improve data quality. We do not expect that all data meet all standards all the time, but instead that the status reports submitted per paragraph (d)(5)(ii) demonstrate continuous improvement in data quality.

This rule permits, but does not require, agencies to correct previously collected data, thereby minimizing any burden on title IV–E agencies.

Comment: Several commenters asked if there were established timeframes for correcting findings.

Response: We would like to clarify that the title IV–E agency will propose timeframes for ACF approval as part of the data quality plan or APD. As is the practice with S/TACWIS compliance issues, complex enhancements may require a longer timeframe to correct.

Comment: One commenter recommended that the rule provide title IV–E agencies the ability to obtain waivers for failing to meet data quality standards due to extraordinary circumstances.

Response: We are not making changes to this paragraph in response to this comment because the flexibility we provide makes a formal waiver process unnecessary. We will continue the practice we have refined over 20 years of S/TACWIS implementations to encourage title IV–E agencies to report extraordinary circumstances to us so that we can address the issue on a case-by-case basis for resolution. We also note title IV–E agencies may report schedule changes in an APD Update per 45 CFR 95.610(c).

In paragraph (d)(5), we specify that the title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of the Annual or Operational APD as required in 45 CFR 95.610.

Comment: A few commenters asked how title IV–E agencies will know that their data quality plans are adequate.

Response: We would like to clarify that ACF will review the data quality plan provided with the APD and either approve it or continue to work with the title IV–E agency to address concerns so that ACF can approve the plan.

Comment: One commenter recommended that we integrate the data quality plan into the title IV–E agency's continuous quality improvement protocols.

Response: We are not making a change to require title IV–E agencies integrate their data quality plans into integrated continuous quality improvement plans because requiring this integration would limit agency flexibility to develop and implement both plans to best meet their needs. However, we agree that reliable data provided by data quality efforts is necessary to measure program quality improvements and encourage this integration, at the agency's option.

Comment: Some commenters recommended we provide more guidance on the required components of a data quality plan. A few requested we provide a data quality plan template for agencies to complete.

Response: We would like to clarify that we will provide additional guidance on data quality plan components after publication of this rule.

Comment: One commenter asked how the data quality plan would affect an existing AFCARS program improvement plan.

Response: We would like to clarify that the AFCARS rule governs the AFCARS program improvement plan. However, as noted in our previous response, we encourage agencies to incorporate existing data quality activities into the CCWIS data quality plan.

Comment: Several commenters asked if states that do not implement a CCWIS are required to develop a data quality plan.

Response: We would like to clarify that, except for the rule at § 1355.56(d) and (e), this rule does not apply to non-CCWIS systems.

In paragraph (d)(5)(i), we specify that the data quality plan describes the comprehensive strategy to promote quality data including the steps to meet the requirements at § 1355.52(d)(1) through (3).

In paragraph (d)(5)(ii), we specify that the data quality plan must report the status of compliance with paragraph (d)(1).

We received no comments concerning these paragraphs and made no changes.

In paragraph (e), we specify requirements for mandatory bi-directional data exchanges.

Comment: Several commenters requested that ACF provide an enhanced FFP rate (such as the 90 percent rate provided by the Centers for Medicare & Medicaid Services (CMS) for systems supporting title XIX eligibility determinations) for title IV–E agencies and partner agencies to develop and maintain the required bi-directional data exchanges.

Response: We are not making a change to this paragraph because ACF does not have statutory authority to provide an enhanced FFP rate. We note that CMS corrected an obsolete reference to an enhanced FFP rate in a rule issued on December 4, 2015 (80 FR 75843). Therefore, we did not make a technical revision to § 95.611(a)(2) in this rule.

Comment: A commenter noted that CCWIS planning should be part of enterprise-wide systems planning to achieve the interoperability envisioned in the NPRM.

Response: We are not making a change to this paragraph because requiring title IV–E agencies to include CCWIS planning as part of an enterprise-wide system would limit agencies' flexibility to develop systems meeting their needs. However, we agree that programs should coordinate system development efforts for greater interoperability and encourage health and human service programs to work together to develop data exchanges meeting the needs of all partners.

Comment: A few commenters asked if there are limits to the number of bi-directional data exchanges. One commenter expressed concern that the mandatory bi-directional data exchanges precluded the development of uni-directional data exchanges.

Response: We would like to clarify that there are no limits on the number of bi-directional data exchanges. While paragraph (e) defines eleven mandatory bi-directional data exchanges, title IV–E agencies may propose additional optional data exchanges, including uni-directional data exchanges, per § 1355.54. Optional data exchanges are discussed in greater detail in § 1355.54.

Comment: One commenter recommended we require title IV–E agencies to track the source of data provided by data exchanges as this would help improve data quality and resolve instances of different systems reporting conflicting data.

Response: We are not making a change to this paragraph because we want to retain state and tribal flexibility to define relevant data for the data exchanges. However, we agree with the commenter that tracking data sources is a best practice for improving data quality and resolving data conflicts.

Comment: One commenter asked if we would designate a CCWIS as noncompliant with the data exchange requirements if other priorities prevented the timely creation of a data exchange.

Response: We would like to clarify that we will follow the process used under current APD rules. The APD process allows title IV–E agencies to identify the reasons for schedule slippages in the APD and propose revised schedules in an APD Update. We will review the APD and either approve the revised schedule or work with the agency to correct barriers to timely completion.

Comment: One commenter asked if current data exchanges between existing systems can be retained if they conform to CCWIS requirements.

Response: We would like to clarify that title IV–E agencies may need to enhance exchanges between CCWIS and both CWCA and external title IV–E systems as described in paragraphs (e)(1)(ii) and (iv) of this section. However, the title IV–E agencies may continue to use existing data exchange methods established between a transitioning title IV–E system and its other current exchange partners. As is the case with all data exchanges, title IV–E agencies may need to change what data is exchanged to meet changing needs.

Comment: One commenter recommended that it would be helpful to states if we provided guidance on data exchange mechanisms, include preferred security standards and transmission protocols.

Response: We are not making a change to this paragraph to specify data exchange mechanisms because we want to preserve title IV–E agency flexibility to implement approaches best suited to their circumstances. Requiring certain technologies may also preclude agencies from using newer, better, and unanticipated technologies. However, we intend to provide technical assistance on all data exchanges.

Comment: One commenter requested that, to support the data exchanges and interoperability, ACF add models of CCWIS data exchanges to the National Information Exchange Model (NIEM).

Response: We agree with the commenter that NIEM promotes data exchanges and interoperability. We would like to clarify that ACF is actively working to expand NIEM resources for human service agencies with our involvement in the NIEM Human Service Domain.

In paragraph (e)(1), we proposed that CCWIS must support one bi-directional data exchange to exchange relevant data with each of the systems in paragraphs (e)(1)(i) through (iv), if CCWIS data is generated by a system outside of CCWIS.

Comment: A number of commenters requested we change the requirement to permit multiple data exchanges. Some commenters noted that technological advances may eliminate the value of a single data exchange. Other commenters noted it would be difficult to accommodate a wide range of agencies with one bi-directional data exchange.

Response: We made a change to the rule to address this comment and specify that the CCWIS must support efficient, economical, and effective bi-directional data exchanges rather than one bi-directional data exchange. This change offers title IV–E agencies greater flexibility to build data exchanges to accommodate different circumstances and systems, provided the agency's approach is efficient, economical, and effective.

In reference to data exchanges, "efficient, economical, and effective" means that title IV–E agencies should consider meeting data exchange requirements with (preferably) one or a limited number of data exchanges that address common business needs. Such an approach results in well-defined data exchanges. For example, if a title IV–E agency exchanges data with twenty CWCAs conducting child abuse and neglect investigations and thirty CWCAs providing placement and case management services, the agency may build two data exchanges—one supporting investigations and the other supporting placement and case management services. These two exchanges would be less expensive for

the title IV–E agency to maintain and quicker to update than separate data exchanges with all fifty CWCAs. The two exchanges also provide the specific data to support different business needs whereas combining the two into one data exchange means each of the CWCA groups would have to build larger and more costly data exchanges to process data irrelevant to their business needs.

This rule also supports agency requirements to exchange different data with the same CWCA at different times to support business needs. For example, the title IV–E agency and CWCAs may need to first establish new cases, then request client services, follow-up with data corrections, and finally, request and provide AFCARS data. We consider these four separate communications to be part of a single data exchange supporting a common business need, provided the two agencies exchange all data using the same communication protocols.

Comment: One commenter asked if data obtained from a data warehouse could satisfy one or more of the data exchange requirements.

Response: We would like to clarify that data obtained from a data warehouse may satisfy a data exchange requirement provided that the data warehouse provides the relevant data to CCWIS and the program defined in the requirement.

Comment: Some commenters requested we explain the rationale for changing the S/TACWIS term "interface" to "exchange." They noted that some agencies have used "look-up" capabilities via an interface to view data in other systems rather than exchange data and asked if this capability would meet data exchange requirements.

Response: We would like to clarify that we replaced "interface" with "data exchange" for three reasons:

1. To clarify that we do not require CCWIS to have real-time direct access to other systems to collect data, although that is permitted. CCWIS (and the partner system in a data exchange) may create and transmit data files. The processing of, and response to a data file is not required to be done in real time.

2. To be consistent with the increased use of the phrase "data exchange" in recent federal statutes applicable to programs such as foster care and adoption assistance under title IV–E, Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP) and programs operated by the Department of Labor.

3. To convey that CWCAs must provide copies of relevant data to CCWIS. CCWIS must have data copies in case there is a need to share the data with other systems as well as to preserve historical records if data sharing between CCWIS and the other agency ends. A look-up capability is not sufficient because the data would be lost if the provider went out of business. Please see our response below clarifying the phrase "to the extent practicable" for more information on whether a look-up capability meets the data exchange requirements described in paragraph (e)(2).

Comment: Some commenters proposed we conduct a cost/benefit analysis on the burden to states and data exchange partners for paragraphs (e)(1)(i) through (iv). Commenters cited the need to make significant changes to data exchange partner systems without significant financial assistance from ACF and the title IV–E agency.

Response: We are not conducting a cost/benefit analysis because the requirements in paragraphs (e)(1)(i) through (iv) do not create additional burden on title IV–E agencies. First, exchange partners are not required to change their existing systems to accommodate the data exchange. As we noted in the proposal, it was a common misunderstanding that title IV–E agencies were required to modify S/TACWIS to accommodate data provided to or received from other systems. We agree it would be inefficient to modify, and difficult to maintain CCWIS (and other systems) to accommodate the data definitions, formats, values, and other specifications of every data exchange. Instead, we strongly encourage partners to map, wherever possible, their existing data to the data exchange specifications rather than modifying their systems to match the specifications.

Second, paragraphs (e)(1)(i) and (iii) do not impose additional burden because they are not new. In paragraph (e)(1)(i), we specify that CCWIS exchange data with systems generating financial payments and claims for title IV–B and IV–E, per paragraph (b)(1)(ii). This requirement incorporates the S/TACWIS rule at § 1355.53(b)(7) and policy in Action Transmittal ACF–OISM–001. In paragraph (e)(1)(iii), we specify that CCWIS must have a bi-directional data exchange with each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii), if applicable. This requirement is consistent with the S/TACWIS rule at § 1355.53(b)(5) and policy in Action Transmittal ACF–OSS–005.

Finally, we note that data exchanges with CWCAs (paragraph (e)(1)(ii)) and with external systems used by agency staff to collect CCWIS data (paragraph (e)(1)(iv)) are only required "if applicable." Similar to the requirements under the S/TACWIS rule, if the title IV–E agency continues to require all CWCAs to use CCWIS and does not permit external systems to supplement CCWIS, data exchanges are not needed. CCWIS provides the option to use data exchanges to provide title IV–E agencies with the flexibility to determine the most efficient, economical, and effective approaches for collecting CCWIS data.

Comment: One commenter asked if systems that currently exchange data with S/TACWIS must be modernized to accommodate enhancements made to transition a S/TACWIS to CCWIS.

Response: We would like to clarify that we are not requiring other agencies to modernize their systems.

Comment: One commenter asked if the purpose of the bi-directional data exchanges was to send data to and receive data from multiple systems so that CCWIS can manage reporting.

Response: We would like to clarify that sending and receiving data from multiple systems so that CCWIS can manage reporting is one of the purposes of the bi-directional data exchanges.

Comment: Some commenters requested that we define the "relevant data" for each data exchange.

Response: We would like to clarify that by "relevant data," we mean data collected in an information system that, in compliance with applicable confidentiality requirements, may be shared with a program that considers the data useful for meeting goals or objectives. Relevant data may be different for different data exchanges or for different title IV–E agencies. We did not require specific data in order to provide title IV–E agencies with flexibility to determine, in consultation with their data exchange partners, the data each partner has that is useful and can be shared.

The NPRM provided examples of relevant data for several of the data exchanges on pages 48213 and 48214. Action Transmittal ACF–OSS–05 provides additional examples. We plan to issue additional guidance on the bi-directional data exchanges.

Comment: A number of commenters cited the cost of making changes as an impediment to meeting this requirement.

Response: We would like to clarify that CCWIS is an option and we encourage title IV–E agencies to evaluate if CCWIS is appropriate for their circumstances. We encourage title IV–E agencies to implement a CCWIS only if it is a cost-effective approach to meeting agency business needs.

Comment: One commenter recommended incentives to make it compelling for exchange partners, such as the CWCA and non-child welfare agencies to participate in data exchanges.

Response: We would like to clarify that we do not have statutory authority to provide incentives beyond the CCWIS cost allocation described in § 1355.57. However, we have observed that title IV–E agencies will often fund CWCA's costs through contracts or agreements. Additionally, as is the case under S/TACWIS, states or tribes may require providers to use the CCWIS.

Comment: One commenter asked how the mandatory bi-directional data exchanges affect developmental and operational funding.

Response: We would like to clarify that the bi-directional data exchange requirements do not affect the CCWIS funding requirements at § 1355.57. We note that the funding for CCWIS data exchanges is unchanged from the funding for S/TACWIS interfaces.

Comment: A commenter recommended ACF encourage title IV–E agencies use master-person indexes to assist with matching individuals across programs and systems linked by bi-directional data exchanges to support improved data quality and client outcomes.

Response: We are not making a change to address this comment. Although we agree master-person indexes may support improved data quality and client outcomes, we are not requiring master-person indexes so that title IV–E agencies may develop solutions appropriate for their child welfare business practices and information technology environment.

In paragraph (e)(1)(i), we specify that CCWIS exchange data with systems generating financial payments and claims data for titles IV–B and IV–E, per § 1355.52(b)(1)(ii), if applicable.

We received no comments on this paragraph and made no changes.

In paragraph (e)(1)(ii), we specify that the CCWIS must have a bi-directional data exchange with systems operated by child welfare contributing agencies that are collecting or using data described in § 1355.52(b), if applicable.

Comment: One commenter asked if this requirement and any related funding applies equally to private vs. public CWCAs.

Response: We would like to clarify that the bi-directional data exchange requirement applies equally to private and public CWCAs. However, funding under this rule applies to the title IV–E agency for the CCWIS and its costs. Costs related to the CWCA's side of an exchange may be eligible as an administrative cost to the IV–E agency.

Comment: One commenter recommended we permit bi-directional data feeds between existing SACWIS and CWCA systems.

Response: We note that as of the effective date of this rule the S/TACWIS rule is no longer in effect. Bi-directional data exchanges between CCWIS and CWCAs are required, if applicable. Bi-directional data exchanges between non-CCWIS and CWCAs are allowed.

Comment: A number of commenters noted it would be burdensome for all CWCAs to have an electronic data exchange with CCWIS and asked for additional flexibility, such as a waiver of this requirement.

Response: A CWCA must have a bi-directional data exchange with CCWIS only if, as noted in the NPRM, a CWCA is using a system or module other than CCWIS to collect or generate CCWIS data. However, a data exchange is not required if the agency uses CCWIS to collect or generate CCWIS data. Under S/TACWIS rules, child welfare contributing agencies were required to use S/TACWIS. This provision is different from S/TACWIS in that it permits CWCAs to use CCWIS as an option, but provides the data exchange as an alternative if a title IV–E agency permits CWCAs to use a system other than CCWIS.

Comment: One commenter suggested that the rule's prohibition on duplicate application development and software maintenance prevents county administered states relying on CWCAs using other systems from complying with this rule.

Response: We would like to clarify that while the rule does not prohibit duplicate application development and software maintenance, it does not allow CCWIS funding for it. Components of the CCWIS that are duplicated in other CWCA or title IV–E agency systems may qualify for non-CCWIS cost allocation.

Comment: A few commenters were concerned that it may be difficult for some CWCAs to develop data exchanges with the title IV–E agency if they are not eligible for funding to enhance their systems and participate in the data exchange.

Response: We did not make any changes to this paragraph in response to the comments. We would like to clarify that we have observed that title IV–E agencies address CWCA administrative costs, including system costs, through their contracts with CWCAs. Additionally, the title IV–E agency may require a CWCA that is unable to exchange data to use the CCWIS.

Comment: One commenter asked if CWCA databases must be viewable by the title IV–E agency in real-time.

Response: We would like to clarify that via a bi-directional data exchange CWCAs must provide a copy of the CCWIS data for the title IV–E agency to maintain in the CCWIS. This rule does not require that CCWIS have the capability to view CWCA databases in real-time.

Comment: One commenter asked how ACF would govern the quality of CWCA data.

Response: We would like to clarify that the title IV–E agency is responsible for governing data quality in compliance with the requirements described in paragraph (d).

Comment: A few commenters requested we clarify if the "to the extent practicable" language applies to this paragraph and paragraph (e)(1)(iv), which are the external systems used by title IV–E agency staff to collect CCWIS data.

Response: We would like to clarify that the "to the extent practicable" language does not apply to these two paragraphs. Both requirements are "if applicable." This means, for paragraph (e)(1)(ii), that CCWIS must have a data exchange with a CWCA if that CWCA uses a system other than CCWIS for child abuse and neglect investigations, placements, or child welfare case management. It is not applicable if a CWCA is using CCWIS. For paragraph (e)(1)(iv), "if applicable" means that CCWIS must have a data exchange with any external system used by agency staff to collect CCWIS data, however, it is not applicable if there are no such external systems. We emphasize that it is a state or tribal decision to build external systems or permit CWCAs to use systems other than CCWIS.

Comment: One commenter proposed that ACF provide a clearinghouse of information on CCWIS interoperability for CWCAs.

Response: We would like to clarify that we will continue to provide technical assistance to promote interoperability, although we have not determined if we will use clearinghouses as a means of distributing technical assistance.

In paragraph (e)(1)(iii), we specify that the CCWIS must have a bi-directional exchange with each system used to calculate one or more components of title IV–E eligibility determinations per § 1355.52(b)(1)(ii), if applicable.

We received no comments on this paragraph and made no changes.

In paragraph (e)(1)(iv), we specify that CCWIS must have a bi-directional data exchange with each system external to

CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

Comment: A commenter asked for guidance on identifying these other systems and determining if a data exchange with CWCAs meets this requirement.

Response: We would like to clarify that title IV–E agencies identify, per the requirement, systems other than CCWIS used by title IV–E agency staff to collect CCWIS data. Examples include county child welfare systems and specialized applications such as databases used to track case management tasks, conduct assessments, or perform home studies. As with all data exchanges described in paragraph (e), the data exchange must exchange relevant data to meet the requirement.

In paragraph (e)(2), we specify that, to the extent practicable, the IV–E agency must support one bi-directional data exchange to exchange relevant data with specified state or tribal systems. These are exchanges with the systems used by titles IV–D and IV–A programs, title XIX mechanized claims processing and information retrieval systems (including the eligibility determination components of such systems), and systems used by courts, education, and the child abuse and neglect programs.

Comment: Some commenters requested we encourage other federal agencies to allow other entities, such as educational agencies and courts, to use FFP to build their portion of the bi-directional data exchanges. Commenters noted the since data exchanges provide benefits to all partners those partners should receive FFP. One commenter specifically mentioned that it would be challenging for the Medicaid program, courts, and education programs to obtain funding for the data exchanges.

Response: We would like to clarify that we will continue to encourage other federal agencies to provide FFP, however, we only have statutory authority to provide FFP for systems supporting the administration of the title IV–B, title IV–E and CAPTA programs. We agree the data exchanges provide benefits to all partners and that increasing awareness of these benefits may encourage other partners to participate. For example, because child welfare program eligibility information is necessary for proper determination of some types of Medicaid eligibility, and can facilitate rapid enrollment into Medicaid, we anticipate working with CMS to provide technical assistance on data exchanges.

Comment: A number of commenters asked for clarification on the meaning of "to the extent practicable." Commenters wanted to know the reasons ACF would accept for a data exchange being impracticable and if ACF requires a cost/benefit analysis to demonstrate a data exchange is impracticable. Several commenters wanted an estimate of conducting such a cost/benefit analysis. One commenter wanted to know if we used the terms "practicable" and "practical" interchangeably in the NPRM.

Response: We would like to clarify that the terminology "to the extent practicable" was specified in the original legislation authorizing these types of systems and is not new.

We are continuing the requirement that these data exchanges be implemented "to the extent practicable" from the S/TACWIS rules that have been in effect since 1993. Consistent with the S/TACWIS rule, this rule allows title IV–E agencies to present a business case in an APD describing the circumstances rendering a data exchange impracticable. These circumstances are not limited to the examples given in the NPRM, which are: (1) The other system is not capable of conducting an exchange; and (2) the exchange is not feasible due to cost constraints. Title IV–E agencies may cite any circumstances they deem relevant for ACF's consideration. The APD rule includes burden estimates for providing a business case for any purpose, including explaining why a data exchange is impracticable.

ACF does not require a cost/benefit analysis to demonstrate a data exchange is impracticable.

We also would like to clarify that title IV–E agencies may explain that a partial data exchange is "to the extent practicable." For example, if some courts participated in the data exchange while others did not, ACF would consider a business case explaining that the partial exchange met the "to the extent practicable" requirement. If a state or tribal agency's rules forbid transferring data to CCWIS but permitted CCWIS users to view the data, ACF would consider a business case that a data view was the only practicable solution.

Finally, we would like to clarify that we reviewed the NPRM and made changes to eliminate inconsistencies in the use of the terms "practicable" and "practical."

Comment: One commenter asked if the data exchange must be bi-directional if the other program, such as the MMIS, does not need any CCWIS data.

Response: We would like to clarify that this is another example where the bi-directional data exchange may not be practicable. The title IV–E agency would describe such situations in the applicable APD.

However, we believe all bi-directional data exchanges benefit both partners and intend to provide guidance on the mutual benefits.

Comment: One commenter recommended we execute memoranda of understanding or interagency agreements with other entities, including courts, the Department of Education and the Office of Child Support Enforcement establishing the data exchange expectations for state or tribal counterparts.

Response: We would like to clarify that we have issued joint guidance with other federal partners. One example is our joint issuance to states with the Office of Child Support Enforcement, Information Memorandum ACYF–CB–IM–12–06, providing guidelines on data sharing. We intend to continue this practice of working with federal entities to promote collaboration between state, tribal, and local agencies. If title IV–E agencies have any challenges, we encourage states and tribes to reach out to ACF.

In paragraph (e)(2)(i), we specify that CCWIS must have one bi-directional data exchange with the child abuse and neglect system(s), to the extent practicable.

In paragraph (e)(2)(ii), we specify that CCWIS must have one bi-directional data exchange with the system(s) operating under title IV–A of the Act, to the extent practicable.

We received no comments on these paragraphs and made no changes.

In paragraph (e)(2)(iii), we specify that CCWIS must have bi-directional data exchanges with Medicaid systems operated under title XIX of the Act, to the extent practicable.

Comment: One commenter asked if we consulted with CMS on these requirements. The commenter noted that guidance from CMS to state agencies encouraging data exchanges with title IV–E agencies would be helpful.

Response: We would like to clarify that we worked collaboratively with CMS to develop this CCWIS final rule, as well as on the final rule for Mechanized Claims Processing and Information Retrieval Systems published by CMS in the **Federal Register** on December 4, 2015 (80 FR 75817). According to CMS, the Mechanized Claims Processing and Information Retrieval Systems final rule at 42 CFR 433.112(b)(16) requires that any state Medicaid system funded with an enhanced federal match must allow for interoperability with various entities, including human service

agencies. With our history of working with CMS on regulations and other tasks such as zONE (an initiative to facilitate the sharing of state project documents), providing technical assistance to states on the OMB Circular A–87 cost allocation waiver, encouraging enterprise development projects, and development of statewide health passports for children in foster care, we will work with CMS to develop joint guidance, as needed.

In paragraph (e)(2)(iii)(A), we specify that CCWIS must have one bi-directional data exchange with systems used to determine Medicaid eligibility, to the extent practicable.

Comment: One commenter recommended we encourage states to avail themselves of the 90 percent FFP match under what is commonly called the "A–87 exception" to pay for the building of this bi-directional data exchange.

Response: We would like to clarify that the OMB Circular A–87 cost allocation waiver was extended through December 2018 and allows states to access the 90 percent Medicaid FFP match to the extent appropriate for developing shared eligibility services and making systems integration investments. We are available to provide technical assistance to states as needed.

In paragraph (e)(2)(iii)(B), we specify that CCWIS must have a bi-directional data exchange with the MMIS as defined at 42 CFR 433.111(b), to the extent practicable.

Comment: Several commenters requested clarification on the data expected from the data exchange with the MMIS. Several commenters noted that MMIS typically does not contain a client's complete Medicaid history. One commenter asked if CCWIS is required to maintain a foster child's entire medical record.

Response: We would like to clarify that this paragraph requires title IV–E agencies to maintain in CCWIS the available medical record information received from the MMIS (which would include the Medicaid claims history or, for those enrolled in managed care, provider encounter data), however we do not require CCWIS to maintain a foster child's entire medical history. We do encourage title IV–E agencies to collect health information as needed from other sources, including an available Health Information Exchange. We note that title IV–E agencies may propose optional data exchanges to other health systems that may qualify for CCWIS funding per § 1355.54.

Comment: Some commenters requested that we assure title IV–E agencies that, where applicable, Health Insurance Portability and Accountability Act (HIPAA) rules do not preclude state agencies from sharing data. One commenter was concerned that the costs to bring CCWIS into compliance with HIPAA rules might prevent their state from implementing this required data exchange and hence complying with CCWIS requirements.

Response: We would like to clarify that in § 1355.52(d)(1)(iii), we require that the title IV–E agency exchange and maintain CCWIS data in accordance with the confidentiality requirements of applicable federal and state or tribal laws. This is not an entirely new requirement as data maintained under a SACWIS are subject to federal, state, and tribal confidentiality requirements, and current S/TACWIS are required to interface with systems used by the Medicaid program to determine eligibility. The requirement that the title IV–E agency support one bi-directional data exchange with the eligibility and enrollment system used to determine Medicaid eligibility, and one bi-directional data exchange with the MMIS used to process Medicaid claims and perform other management functions (as those systems are described in 42 CFR 433.111(b)(2)(ii)), to the extent practicable, does not mean that any and all information is exchanged—only information that each agency is permitted to exchange in accordance with applicable confidentiality rules. Finally, we note that a number of states have already implemented such exchanges to the benefit of the children in foster care.

ACF will consider, as noted above, cost constraints as a reason that a data exchange in paragraph (e)(2) is not practicable.

Comment: One commenter noted that much of the health data may be new and unfamiliar to workers and recommended we provide guidance on the data's most effective uses.

Response: We would like to clarify that the effective use of the data is determined by each agency, but we intend to provide technical assistance on all the required data exchanges.

Comment: One commenter recommended that the rule include and encourage Affordable Care Act related provisions that impact foster care.

Response: We are not making a change in response to this comment because this paragraph already supports the Affordable Care Act related provisions that affect foster care. We also note that ACF issued guidance on the provisions of the Affordable Care Act that affect foster care in Program Instruction ACYF–CB–PI–10–10.

Comment: One commenter noted that states should not be held accountable for the quality of MMIS claims data since the agencies have no control over its collection.

Response: We would like to clarify that, as noted in our response to paragraph (d)(1) that title IV–E agencies may take into account data sources when establishing data quality standards.

Comment: One commenter recommended we establish a Technical Advisory Group of experienced states to assist other agencies in implementing data exchanges as required by this paragraph.

Response: We would like to clarify that we currently support a Technical Working Group, monthly webinars, and national conference calls on various topics and will continue this technical assistance. We have supported peer-to-peer networks to promote sharing of best practices and intend to continue promoting state-to-state networking. We also intend to work with the Capacity Building Center for Tribes to identify tribal concerns.

In paragraph (e)(2)(iv), we specify that CCWIS must have one bi-directional data exchange with systems operated under title IV–D of the Act, to the extent practicable.

In paragraph (e)(2)(v), we specify that CCWIS must have one bi-directional data exchange with systems operated by the court(s) of competent jurisdiction of the title IV–E foster care, adoption, and guardianship programs, to the extent practicable.

We received no comments on these paragraphs and made no changes.

In paragraph (e)(2)(vi), we specify that CCWIS must have one bi-directional data exchange with the systems operated by the state or tribal education agency, or school districts, or both, to the extent practicable.

Comment: One commenter asked if we consulted with the Department of Education on this requirement. The commenter noted that guidance from the Department of Education to state agencies encouraging data exchanges with title IV–E agencies would be helpful.

Response: We would like to clarify that we consulted with the Department of Education and have developed technical assistance materials in collaboration with the Department of Education. For example, we jointly issued a letter to Chief State School Officers and Child Welfare Directors on Implementing the Fostering Connections Act, which is available here: *https://www.acf.hhs.gov/programs/cb/resource/fostering-*

connections-letter. We also provide materials related to data sharing with education here: *http://www.nrcpfc.org/is/education-and-child-welfare.html#data*. We intend to continue developing technical assistance materials with the Department of Education.

In paragraph (f), we specify that title IV–E agencies use a single data exchange standard for CCWIS data exchanges described in § 1355.52(f)(1) and (2) upon implementing a CCWIS.

Comment: Some commenters noted that the variety of systems, partners, and technological platforms makes it difficult to have a single data exchange standard applicable in all cases. One noted that requiring a single data exchange standard for CWCAs, internal data exchanges within CCWIS, and all the electronic systems external to CCWIS used by title IV–E staff to collect data limited title IV–E agency flexibility, imposed undue burdens on agencies, and impeded agencies from developing economical and workable child welfare systems.

Response: We made a change in response to this comment by removing proposed paragraph (f)(2), in which we proposed to require that the data exchange standard must apply to internal data exchanges between CCWIS automated functions where at least one of the automated functions meets the requirements of § 1355.53(a). We agree that a data exchange standard applicable to the data exchanges described in the rest of paragraph (f) may not be appropriate for CCWIS modules.

However, we disagree that the requirement to use a single data exchange standard for CCWIS electronic bi-directional data exchanges limits agency flexibility and imposes undue burdens on agencies. We note that the S/TACWIS rule required CWCAs to use S/TACWIS and did not allow external systems. Although the CCWIS rule permits CWCAs to use their systems and exchange data with CCWIS, title IV–E agencies may still require CWCAs to use CCWIS. Likewise, CCWIS rules permit workers to use external systems that exchange data with CCWIS, but the agency may require workers to use CCWIS. If the title IV–E agency requires these entities to use CCWIS, then data exchanges (and the supporting data exchange standard) are not needed.

We also disagree that a data exchange standard prevents the development of workable, economical child welfare systems. We agree that it may be challenging to implement a single data exchange standard. However, once implemented, a single standard is easier to maintain than multiple standards, facilitates a common understanding of the data among all partners, simplifies data exchanges, and supports consistent and improved service delivery to children and families. We also note that the rule does not require system modifications to support the standard. Instead, we encourage developers to reduce costs by mapping their system's data to the agreed-upon standard so that data is transformed when using the data exchange.

We intend to provide additional guidance on data exchange standards.

Comment: One commenter noted that other state agencies may be unwilling to conform to the data exchange standard.

Response: We would like to clarify that the data exchange standard requirement only applies to the data exchanges described in paragraphs (f)(1) and (2), which are respectively CWCA systems described in paragraph (e)(1)(ii) and external systems described in paragraph (e)(1)(iv). Although we encourage the use of a standard in data exchanges with other agencies, this rule does not require it.

Comment: Several commenters asked if the data exchange standard applies to data exchanges implemented before the rule's effective date, such as data exchanges already in place due to state statutory requirements.

Response: Yes, upon implementation of a CCWIS, the title IV–E agency must use a single data exchange standard with CWCAs and external systems as described in this paragraph, including exchanges that were implemented before the rule's effective date.

Comment: One commenter suggested that software module reuse, as encouraged by the CCWIS design requirements at § 1355.54, may be hampered by the flexibility this paragraph provides title IV–E agencies to select the data exchange standard applicable to their CCWIS project. The commenter noted that modules designed to one data exchange standard's specifications may not be reusable by a project with a different data exchange standard. This problem may be resolved by establishing a national data exchange standard for all title IV–E agencies.

Response: We are not making a change in response to this comment. We agree that a national data exchange standard would facilitate software reuse by different title IV–E agencies. However, we have observed that a number of title IV–E agencies must follow standards established by the state or tribe. Specifying a national data exchange standard for CCWIS may prevent agencies with a different standard from implementing a CCWIS. At the same time, ACF intends to provide guidance and technical assistance on data standards that may help promote reuse.

Comment: Several comments asked for clarity on the definition of "one data exchange standard." One commenter asked if the data exchange standard must specify a single communication protocol or multiple protocols. Another commenter asked us to confirm that this definition did not include the technology to transfer the data.

Response: We are not making a change in response to this comment because, although paragraph (f) specifies that the standard describe the data, definitions and formats, we are providing flexibility for title IV–E agencies to define the "other specifications" of their data exchange standard.

We would like to clarify that data exchange standards that permit multiple communication protocols are acceptable. We note that some standards, such as the NIEM, permit the use of any electronic communication protocol for data exchanges. We do not recommend that the standard specify the data transfer technology so that the standard is usable in different technical environments.

Comment: One commenter asked if the rule would provide further details of the phrase "support interoperability through standard exchange protocols."

Response: We would like to clarify that we will provide further guidance in subsequent policy issuances.

Comment: One commenter asked whether it is the state or tribe that selects the data exchange standard.

Response: We would like to clarify that it is the state or tribe that is implementing the CCWIS that selects the data exchange standard for its CCWIS project.

Comment: One commenter recommended we encourage the use of existing data exchange standards such as those mandated by the Office of the National Coordinator for Health Information Technology because these standards can provide immediate interoperability.

Response: While we agree that there are advantages to existing standards, we would like to clarify that our rule preserves flexibility for title IV–E agencies to select or develop a data exchange standard most suitable for their circumstances.

Comment: One commenter asked if the title IV–E agency's data exchange standard could change over time.

Response: We would like to clarify that the data exchange standard can change over time. For example,

standards often add nuanced and precise conditions to accommodate new and varied circumstances or expand to standardize new areas to address changing policies or practices.

The title IV–E agency may change standards consistent with APD rules at 45 CFR 95.610(c)(2). For example, the title IV–E agency may select one data exchange standard but state or tribal authorities may later impose a different standard.

In paragraph (f)(1), we specify that a single data exchange standard be used for electronic bi-directional data exchanges between CCWIS and each child welfare contributing agency.

Comment: One commenter noted that CWCAs may have established data exchange standards that are different from the title IV–E agency selected data exchange standard.

Response: We are not making a change in response to this comment. We encourage title IV–E agencies to promote uniform standards in contracts and agreements with CWCAs. We also remind title IV–E agencies that they may require CWCAs to use CCWIS, which makes a bi-directional data exchange and the use of a data exchange standard in this situation unnecessary.

In paragraph (f)(2), we specify that the data exchange standard must apply to data exchanges with external systems described under paragraph (e)(1)(iv)). We received no comments on paragraph (f)(2).

In paragraph (g), we specify requirements for automated support for title IV–E eligibility determinations.

Comment: One commenter recommended we mandate that the title IV–E agency only conduct the title IV–E eligibility process within CCWIS and that CCWIS be the system of record for eligibility determinations.

Response: We are not making a change in response to this comment. This requirement has been in place for the past 20 years and has provided title IV–E agencies with the flexibility to design title IV–E eligibility determination processes that fit their business model. This requirement also allows agencies to take advantage of shared eligibility services developed by other health and human service programs.

We would also like to clarify that the data requirements in paragraph (b)(1)(ii) require CCWIS to be the system of record for the calculated outcome of the title IV–E eligibility determination process.

In paragraph (g)(1), we specify that a state title IV–E agency must use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

Comment: A commenter recommended we provide an exemption to paragraph (g)(1) to permit states to align CCWIS design with their practice models, existing systems, and geography. Other commenters thought that this requirement was inconsistent with the ACF's encouragement to use independent and reusable modules.

Response: We are not making a change in response to these comments. We are not providing an exemption because over the past twenty years, states have been able to automate varied title IV–E eligibility determination processes with the flexibility provided by this requirement.

We would like to clarify that the requirement that the same automated function or group of automated functions process all title IV–E eligibility determinations permits agencies to build independent modules responsible for defined steps of the title IV–E eligibility determination process. Agencies can reuse these well-defined modules in other similar processes.

In paragraph (g)(2), we specify that tribal title IV–E agencies, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

We received no comments on this paragraph and made no changes.

In paragraph (h), we specify that the title IV–E agency must provide a copy of agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository upon ACF's request.

Comment: Some commenters requested we clarify that this requirement only applies to new software developed once an agency implements a CCWIS or transitions another system to CCWIS.

Response: We would like to clarify that we may request software from legacy systems developed with FFP per 45 CFR 95.617(b). However, we intend to place modules that are candidates for reuse by title IV–E agencies in the federal repository, rather than entire legacy S/TACWIS or non-S/TACWIS systems.

Comment: One commenter asked if counties and consortiums serving children eligible for title IV–E would be able to access the federal repository.

Response: We would like to clarify that with federal approval, title IV–E agencies may provide software and associated documentation from the federal repository to counties and consortiums serving children receiving title IV–E.

Comment: Some commenters asked if title IV–E agencies would be required to submit commercial off-the-shelf (COTS) products, third party utilities, and automated functions that support multiple operations within an agency.

Response: We would like to clarify that since ACF is not granted a license to COTS products or third party utilities that are not owned by the title IV–E agency per 45 CFR 95.617, these products are excluded from the federal repository. However, ACF is granted a license to automated functions designed, developed, or installed with any FFP, so we may place the modules that are candidates for reuse by title IV–E agencies in the federal repository.

Comment: One commenter recommended we permit states to seek exceptions to this requirement due to the cost effectiveness of providing the software.

Response: We are not making a change to this requirement in response to the comment because our authority for requesting software is provided by the APD rule at 45 CFR 95.617. We also note that the authority to request state or tribal owned software is not new and the cost savings available to IV–E agencies for the re-use of software will outweigh the cost of sharing a copy of the software.

In paragraph (i)(1), we specify that before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent.

In paragraph (i)(1)(i), we specify that the title IV–E agency include in the APD or Notice of Intent a project plan describing how the CCWIS will meet the requirements in § 1355.52(a) through (h) and, if applicable, CCWIS options as described in § 1355.54.

Comment: Some commenters noted that the APD process discouraged rapid incremental CCWIS enhancements. They recommended we specifically encourage agile and iterative practices as outlined in the U.S. Digital Services Playbook.

Response: We disagree that the APD process discourages rapid incremental enhancements and note that we have worked with states that have used an agile development process. Furthermore, changes to the APD process and rule are outside the scope of this rule. We support the principles outlined in the U.S. Digital Services Playbook to help agencies build effective digital systems.

Comment: Some commenters were concerned that the Notice of Intent required for projects under the $5 million threshold was excessively burdensome. They noted that there did not appear to be a substantive distinction between the submission requirements for these below-threshold projects and projects in excess of $5 million. The commenters recommended we reduce the burden to under threshold projects and recalculate the impact analysis for title IV–E agencies submitting a Notice of Intent.

Response: We are making a change to these requirements in response to these comments to reduce burden on title IV–E agencies. We acknowledge that, as required by paragraph (i)(1)(i), developing "A project plan describing how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable, § 1355.54" could be interpreted as requiring extensive planning. Therefore, we revised paragraph (i)(1)(i) to require "A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable § 1355.54;". This revision permits an agency to provide a narrative outlining the agency's approach instead of a detailed project plan including tasks, schedules, and resources.

We intend to provide a Notice of Intent template that title IV–E agencies may complete to meet the requirements of paragraph (i)(1). Use of this template will not be required, however, it will simplify the completion of the Notice of Intent, thereby significantly reducing burden.

We are not making changes to the burden estimate as requested. We considered the reduced burden (from the revised requirement and Notice of Intent template) when we reviewed our impact analysis. We believe that the impact analysis accurately estimates the agency's burden for completing a Notice of Intent.

Finally, we would also like to clarify that the submission requirements for projects under the $5 million threshold are substantially less than the requirements for projects over $5 million. While all projects must meet the submission requirements of paragraph (i) and submit Operational APDs, projects over $5 million must also meet all the requirements of 45 CFR part 95, subpart F, including the requirements for Planning, Implementation, and As-Needed APDs as well as APD Updates.

In paragraph (i)(1)(ii), we specify that the APD or Notice of Intent include a list of all automated functions that will be included in the CCWIS.

We received no comments on these paragraphs and made no changes.

In paragraph (i)(1)(iii), we specify that the APD or Notice of Intent provide a notation whether each automated function listed in paragraph (i)(1)(ii) meets, or when implemented will meet, the requirements of § 1355.52(i)(1)(iii)(A) through (C).

In paragraph (i)(1)(iii)(A), we specify that the title IV–E agency report in the APD or Notice of Intent whether an automated function supports (or when implemented will support) at least one of the CCWIS requirements listed at § 1355.52 or, if applicable, CCWIS options as described in § 1355.54.

We did not receive any comments on paragraph (i)(1)(iii)(A) and made no changes.

In paragraph (i)(1)(iii)(B), we specify that the title IV–E agency report in the APD or Notice of Intent whether an automated function is not (or when implemented will not be) duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare workers responsible for the area supported by the automated function.

Comment: One commenter asked if the requirement would apply to a "contract service provider." The commenter noted the title IV–E agency may be unaware of duplicate functionality in a contract service provider's system since federal funds were not used for that system and therefore the title IV–E agency does not monitor them.

Response: We would like to clarify that if a "contract service provider" is a CWCA and its system has automated functions that are duplicated by CCWIS, CCWIS funding is not available for those automated functions. We believe that title IV–E agencies would be able to discover duplicate functionality in a CWCA system. As CWCAs are established by agreement or contract with the title IV–E agency to provide specific services, the title IV–E agency will know what activities that agency supports. Furthermore, if the CWCA is providing the CCWIS data related to those activities that are also performed in the CCWIS, the function is duplicated.

We remind title IV–E agencies they have options to address the issue of CWCA systems duplicating CCWIS automated functions. For example, the title IV–E agency may:

- Require some or all CWCAs to use CCWIS.
- Monitor agency systems for duplicate automated functions. Agencies have tools other than system audits to detect duplicated functionality. For example, duplicate functionality may be indicated if a CWCA submits CCWIS data that is also generated by a CCWIS automated function.
- Claim non-CCWIS cost allocation for CCWIS automated functions duplicated by a CWCA system.

Finally, we remind title IV–E agencies that the existence of duplicated functionality will not cause ACF to classify a system as non-CCWIS. The agency may claim non-CCWIS cost allocation for the duplicated function. The system may remain a CCWIS.

In paragraph (i)(1)(iii)(C), we specify that the title IV–E agency report in the APD or Notice of Intent whether an automated function complies (or when implemented will comply) with CCWIS design requirements described under § 1355.53(a), unless exempted in accordance with § 1355.53(b).

We received no comments on this paragraph and made no changes.

In paragraph (i)(2), we require title IV–E agencies to submit new information in their annual Operational APDs and Annual APD Updates for all CCWIS projects. The new information required by this paragraph includes an updated list of automated functions incorporated in CCWIS, a notation of whether each automated function listed in § 1355.52(i)(2)(i) meets (or when implemented will meet) the requirements of § 1355.52(i)(1)(iii)(B), and a description of any changes to the scope or the design criteria described at § 1355.53(a) for any automated function listed in § 1355.52(i)(2)(i).

We received no comments on these paragraphs and made no changes.

In paragraph (j), we specify that a title IV–E agency claiming title IV–E FFP for a CCWIS project below the APD submission thresholds at 45 CFR 95.611, will be subject to certain portions of the APD rules that we have determined are necessary for effective project management.

We received no comments on this paragraph and made no changes.

CCWIS Design Requirements (§ 1355.53)

In paragraph (a), we specify the design requirements for a CCWIS.

Comment: Several commenters expressed concern that currently approved and non-approved S/TACWIS systems would have to be completely rebuilt because they do not comply with the CCWIS design requirements.

Response: As noted in our proposal, we encourage title IV–E agencies to consider using an existing S/TACWIS or non-S/TACWIS as the foundation of a CCWIS. This allows the agency to

preserve information technology investments in a S/TACWIS or non-S/TACWIS system because large portions of such a system probably meet some CCWIS requirements, and the title IV–E agency may enhance the system to meet the remaining CCWIS requirements. In paragraph § 1355.53(b)(1), we exempt CCWIS automated functions from one or more of the CCWIS design requirements in § 1355.53(a) if the CCWIS project meets the requirements of § 1355.56(b) (submission requirements during the transition period) or § 1355.56(f)(1) (submission of APD or Notice of Intent during the transition period). We allow this exemption so that title IV–E agencies do not have to replace existing automated functions of S/TACWIS and non-S/TACWIS projects transitioning to CCWIS if the automated functions do not meet the proposed design requirements of § 1355.53(a). This will reduce the costs of transitioning these systems to CCWIS.

Comment: One commenter noted that it may be difficult to transition a S/TACWIS to a CCWIS meeting the CCWIS design requirements. The commenter noted that designs that separated business rules from core programming could not be built on a S/TACWIS that had not met this requirement.

Response: We would like to clarify that a title IV–E agency is not required to follow the CCWIS design requirements for enhancements to their existing system per § 1355.57(a)(1).

Comment: Several commenters noted that if title IV–E agencies are responsible for the quality of data provided from other programs and if the data exchange requirements of § 1355.52(e) are not clarified, it will be difficult to comply with the CCWIS design requirements.

Response: We would like to clarify that the CCWIS data quality review process will identify problems with "relevant" data exchanged with other systems and prioritize changes to improve the data. We disagree that data quality problems in the system exchanges make it difficult to comply with the CCWIS design requirements. Our responses to comments under § 1355.52(e) provide relevant clarifications to the data exchange requirements. We encourage title IV–E agencies to contact us if additional clarifications are needed.

Comment: One commenter asked if we have established minimum standards title IV–E agencies must follow when selecting vendors or proprietary products.

Response: We would like to clarify that all products, like other modules, must be able to communicate reliably with other CCWIS modules. This includes vendor or proprietary products. Products must also meet the specific requirements of the state, tribal, or industry standard selected by the title IV–E agency per paragraph (a)(3).

In paragraph (a)(1), we specify that CCWIS automated functions must follow a modular design that includes the separation of business rules from core programming.

Comment: Several commenters recommended that, to promote reusability, we specify each module's functions, inputs and outputs as well as diagramming the relationships between modules. One commenter recommended adding a definition of "reusable module" to describe the components. Another commenter recommended we set national standards for the most common data exchanges as this would eliminate potential incompatibilities and assist states in developing reusable modules.

Response: We are not making changes in response to these comments. While we agree that requiring all title IV–E agencies to build modules to the same set of specifications would promote reusability, such specifications would reduce agency flexibility to design systems tailored to their policies and business processes. We are not adding a definition of "reusable module" in order to provide title IV–E agencies, in collaboration with the industry, the flexibility to design modules best suited to agency business needs.

We continue to work with the NIEM Human Service Domain to develop common data exchanges. Although we will not establish these data exchanges as a required national standard, we encourage their use as agencies develop CCWIS systems, if it is suitable for the agency.

Comment: A number of commenters recommended we not require the separation of business rules from core programming where a state's best judgment is that such a separation does not make sense. While acknowledging that states could seek a waiver per paragraph (b), commenters thought it was not efficient and economical to require waivers for this requirement. Several commenters also requested we evaluate the burden of separating business rules from core processing in existing SACWIS systems.

Response: We are not making a change in response to this comment because the separation of business rules from core programming promotes reusability by simplifying re-work needed to modify modules for use by title IV–E agencies with different business rules.

We are not evaluating the burden of separating business rules from core processing in existing S/TACWIS systems because an existing SACWIS system that is used as the basis of a CCWIS system is not required to meet the design requirements at § 1355.53 (a)(1). Even then, automated functions developed after the transition period may be exempted if the agency submits an alternative design that is approved by ACF per § 1355.53(b). We also note that the waiver process for an existing system transitioning to a CCWIS is categorically defined in these rules and therefore is not onerous to establish.

Comment: A commenter noted that modularity provides benefits, but depending upon how it is designed and implemented, can increase costs and complexity. The commenter recommended that states select modular approaches that are cost effective.

Response: We agree that the design approach affects CCWIS costs and the complexity of the software. However, the savings realized by decreased operational costs of well-designed systems and the reusability of these modules should offset the initial modular development costs. We note that this paragraph does not require a specific design approach so that a title IV–E agency can select an efficient, economical, and effective approach suitable to the agency's business processes and technological environment.

Comment: One commenter asked that we define "core programming" and provide our vision of separating business rules from core programming.

Response: We are not adding a definition of "core programming" beyond distinguishing it from business rules per the requirement, to provide title IV–E agencies with the flexibility to design modules in a cost effective manner that may be shared and reused.

Comment: One commenter asked if this requirement applies only to new development. The commenter also asked what the benefit of this requirement is to states that are already modular and SACWIS compliant.

Response: We would like to clarify that the CCWIS design requirements only apply to new development on a S/TACWIS transitioning to CCWIS regardless of whether the existing S/TACWIS is modular or not. The requirement provides the benefits of modularity to all systems.

Comment: Several commenters, while indicating support for the rule's definition of modularity, expressed

concern that industry may not be able to support this definition.

Response: We would like to clarify that information technology commenters on the NPRM did not express concern with the definition. We note that the information technology industry has long promoted modular design and developed many successful products based on these principles. Some federal government agencies encourage modular design in policy issuances and established rules, such as in the CMS rule at 42 CFR 433.112(b)(10).

Comment: One commenter asked if this requirement applied to Software as a Service systems owned or maintained by vendors.

Response: We would like to clarify that this requirement does not apply to Software as a Service systems owned or maintained by vendors.

In paragraph (a)(2), we specify that title IV–E agencies must document CCWIS automated functions with plain language.

Comment: Several commenters recommended we incorporate the time and cost of training staff to document automated functions in plain language and the cost of this translation into the impact analysis. They recommended that to save time, staffing, and resources the requirement should be for "concise and effective" documentation. Commenters also asked if this requirement would apply retroactively.

Response: We are not increasing impact analysis costs in response to this comment because this requirement is an industry standard best practice proven to reduce overall system development and maintenance costs.

We are not changing the requirement because "concise and effective documentation" is consistent with this paragraph.

Finally, we would like to clarify that this is not a retroactive requirement applicable to automated functions in existing systems. It applies to documentation associated with new automated functions developed for a CCWIS.

In paragraph (a)(3), we specify that automated functions contained in CCWIS must adhere to a state, tribal, or industry defined standards that promotes efficient, economical, and effective development of automated functions and produce reliable systems.

Comment: Several commenters asked if the state must use one standard for all functions or if it is permissible to use different standards for different functions. The commenters were concerned that it would limit state flexibility if only one standard is permitted.

Response: We would like to clarify that the requirement is for a single standard. However, we encourage title IV–E agencies to select or design a standard that accommodates variations in their development approach. It is acceptable for the documented standard to apply certain requirements for one set of conditions and other requirements for other conditions.

Comment: Several commenters recommended we include the cost of drafting a waiver request per paragraph (b) for this requirement in the impact analysis.

Response: We would like to clarify that the APD rule included the burden estimate of providing a business case for any purpose, including requesting rule waivers. We also note that the waiver process for an existing system transitioning to a CCWIS is categorically defined in paragraph (b)(1) and is not onerous to establish.

In paragraph (a)(4), we specify that CCWIS automated functions must be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

Comment: Several commenters requested we clarify the process by which states would be able to share components, including all relevant scenarios.

Response: We would like to clarify the two general processes by which title IV–E agencies may share components. First, ACF may request software and associated documents for the federal repository per requirements at § 1355.52(h). ACF may then share these products with title IV–E agencies at the agency's request. Second, title IV–E agencies may directly share products with other agencies.

We acknowledge there may be variations on these processes and encourage title IV–E agencies to contact us for guidance. The requirement for sharing federally funded software between states has been required in the APD rule prior to 1993.

Comment: One commenter asked if this paragraph implied that the automated functions must be "plug and play".

Response: We would like to clarify that the automated functions are not required to adapt to different hardware configurations without manual configuration (plug and play).

Comment: One commenter noted that the variation between state and tribal child welfare programs might limit the reuse of CCWIS automated functions designed for a specific title IV–E agency's requirements.

Response: We would like to clarify that this paragraph requires automated functions to be reusable. We expect that title IV–E agencies will reuse modules when it is efficient, economical, and effective to do. We do not require modules be reused when it is not appropriate, such as when a module does not support an agency's business processes.

In paragraph (b), we specify that CCWIS automated functions may be exempted from one or more of the CCWIS design requirements in § 1355.53(a) under certain conditions.

In paragraph (b)(1), we specify that CCWIS automated functions may be exempted from one or more of the CCWIS design requirements in § 1355.53(a) if the CCWIS project meets the requirements of § 1355.56(b) or (f)(1).

Comment: One commenter asked if existing data exchanges are included in the exemption provided by paragraph (b)(1).

Response: We would like to clarify that automated functions, including data exchanges, that have been implemented in a system meeting the requirements of § 1355.56(b) or (f)(1) may be exempted from one or more of the CCWIS design requirements under certain conditions.

In paragraph (b)(2), we specify that CCWIS automated functions may be exempted from one or more of the CCWIS design requirements in § 1355.53(a) if ACF approves, on a case-by-case basis, an alternative design proposed by a title IV–E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a).

Comment: Several commenters asked us to clarify our process for reviewing exemption requests received in accordance with paragraph (b)(2).

Response: We would like to clarify that the review process for exemption requests will be clarified in later technical assistance and will include the submission of a business case explaining the rationale for the alternative design.

Comment: Several commenters recommended we clarify the criteria or the sufficient evidence and the burden of proof necessary to grant an exemption in accordance with these requirements.

Response: We would like to clarify that we cannot anticipate how technology might change and so cannot provide specific criteria that unknown innovations must satisfy to quality for an exemption. However, we would like to reiterate that the review process for exemption requests is governed by the

existing APD rules at 45 CFR part 95, subpart F.

CCWIS Options (§ 1355.54)

We specify in § 1355.54 that if a project meets, or when completed will meet, the requirements of § 1355.52, then ACF may approve CCWIS funding described at § 1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV–E or IV–B program goals.

Comment: A number of commenters were concerned that the CWCA definition precluded agencies from implementing exchanges with entities that did not conform to the definition. Another commenter emphasized the importance of service data, particularly substance abuse, mental health, and other treatment data in order to increase child safety and well-being.

Response: We would like to clarify that § 1355.54 permits title IV–E agencies to implement optional data exchanges in addition to the mandatory data exchanges specified in § 1355.52(e). These optional data exchanges may include entities that are not CWCAs. For example, title IV–E agencies may implement data exchanges with service providers, such as providers of substance abuse, mental health, and other treatment services. Another example of optional data exchanges includes an exchange between tribes and states to support state efforts to comply with ICWA and share case-level information. Yet another example is an exchange between title IV–E agencies and Social Security Administration to support timely automated verification of Social Security Numbers and identification of client benefit information.

Comment: One commenter asked if all data exchanges must be bi-directional. The commenter noted there may be circumstances where either the title IV–E agency or another agency, but not both, would benefit from a data exchange.

Response: We would like to clarify that while § 1355.52(e) uses the express term "bi-directional data exchange" when referring to required data exchanges, § 1355.54 does not, and the term "data exchange" here includes both uni-directional and bi-directional data exchanges. Therefore, CCWIS may include uni-directional optional data exchanges.

However, § 1355.54 requires that the data exchange benefit title IV–B or title IV–E programs to receive CCWIS funding. Therefore, exchanges benefiting the title IV–E agency may be eligible for CCWIS funding, but exchanges not benefiting the title IV–E agency must be cost allocated to the benefiting program or programs.

Comment: One commenter noted that the rule should not provide a "wish list" but provide states with the option (but not the mandate) to go beyond minimum requirements.

Response: We would like to clarify that this rule establishes the minimum requirements. This section provides title IV–E agencies with the option to implement data exchanges and automated functions that are not covered by the minimum requirements.

Review and Assessment of CCWIS Projects (§ 1355.55)

In § 1355.55, we specify that ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54.

Comment: Several commenters asked us to clarify how ACF will conduct reviews on a "continuing basis" and requested we update the impact analysis to reflect the additional work required of state staff.

Response: We would like to clarify this is not a new requirement. We have conducted continuing reviews of S/TACWIS in collaboration with title IV–E agencies for the past 20 years in accordance with § 1355.55(a). While some reviews are comprehensive and determine compliance with all requirements, most reviews target a subset of requirements or specific implementation topics or project issues.

Comment: Some commenters asked for clarification on ACF's approach for reviewing CCWIS projects and recommended we clarify the criteria for reviews, such as in a published checklist. They note that such guidance may reduce delays and costs. One commenter asked if the reviews would be similar to SACWIS reviews.

Response: We would like to clarify that our reviews will evaluate aspects of CCWIS such as: System functionality, CCWIS design requirements, data quality requirements, and compliance with data exchange standards, as well as the requirements specific to new CCWIS projects and projects transitioning to CCWIS as described in the proposed sections on funding, cost allocation, and submission requirements. The reviews will measure compliance with requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54. If a title IV–E agency builds a CCWIS similar to a full-functioned S/TACWIS, the CCWIS review may be similar to a S/TACWIS review. However, if the CCWIS has a different configuration, we will tailor the review to evaluate the configuration.

We agree that guidance may reduce delays and costs. Just as we published a review guide for comprehensive S/TACWIS reviews, we will also publish a CCWIS review guide and provide additional technical assistance. Similar to S/TACWIS reviews, we will work collaboratively with the title IV–E agency prior to a review to clarify expectations, answer questions, and provide technical assistance.

Comment: Several commenters asked that the rule clarify any differences between the scope of reviews for:

(a) projects over the $5 million threshold requiring an APD; and

(b) projects under the $5 million threshold requiring the submission of a Notice of Intent.

Response: We would like to clarify that the review requirements are the same for all CCWIS projects. The extent and scope may vary depending upon the factors such as the size of the CCWIS, the child welfare policies supported by the CCWIS, and whether CWCAs use CCWIS.

Comment: One commenter asked if the CCWIS reviews would be like SACWIS reviews or solely based on the state's data quality plan.

Response: We would like to clarify that we intend to continue the practice established under the S/TACWIS rule of conducting monitoring as well as comprehensive reviews. CCWIS reviews may include, but not be limited to, the title IV–E agency's data quality plan.

Comment: A number of commenters asked what data quality metrics ACF would use during the reviews.

Response: As we noted in our response under § 1355.52(d)(1), we will use the standards in federal laws, regulations, and policies for evaluating data quality for federally required data described in § 1355.52(b)(1). We will apply the standards established by the state or tribe when evaluating the quality of required state or tribal data described in § 1355.52(b)(2). If these two standards apply to the same data, ACF will apply the more rigorous standard. For example, if one standard required updating certain CCWIS data in seven days and a second standard set a two-day limit, the two-day limit applies.

Comment: One commenter asked if we required an independent verification and validation (IV&V) for CCWIS design, implementation, and data quality reviews.

Response: We would like to clarify that ACF may require an IV&V per 45 CFR 95.626. This rule does not specify additional IV&V requirements.

Requirements for S/TACWIS and Non-S/TACWIS Projects During and After the Transition Period (§ 1355.56)

In this section, we outline the requirements during and after the transition period for S/TACWIS and non-S/TACWIS projects. We received several general comments on this section as follows:

Comment: Several commenters asked that we clarify the requirements that must be met by: (1) States building a new system; (2) states transitioning their S/TACWIS to a CCWIS; and (3) states wanting to enhance their S/TACWIS, but not develop a CCWIS.

Response: We would like to provide the following clarifications: (1) A title IV–E agency building a new CCWIS must meet the requirements at paragraph (c) or paragraph (f)(2), as applicable. In addition, an agency building a new CCWIS must also meet the requirements of §§ 1355.52, 1355.53, and, if applicable 1355.54.

(2) A title IV–E agency transitioning their S/TACWIS to a CCWIS must meet the requirements at paragraph (b). In addition, an agency with a S/TACWIS transitioning to CCWIS must also meet the requirements of § 1355.52, and, if applicable § 1355.53 for new development and § 1355.54.

(3) A title IV–E agency that wants to enhance their S/TACWIS, but not develop a CCWIS must meet the requirements at paragraph (d). ACF will classify these systems as non-CCWIS. No other requirements of this rule apply to non-CCWIS systems. However, title IV–E agencies with a S/TACWIS that do not meet the requirements of paragraph (d) may be subject to funding recoupment as described under paragraph (e).

We also clarify that none of the requirements of the rule apply to title IV–E agencies without a S/TACWIS that decide not to build a CCWIS. In these circumstances, the title IV–E agency continues to follow the rule at 45 CFR part 95, subpart F for developing, implementing, and operating their non-S/TACWIS as a non-CCWIS.

Comment: One commenter was concerned that their state would be unable to meet the CCWIS requirements with available funding in the timeframe specified. Another commenter asked if there is a deadline for completing a S/TACWIS to CCWIS transition.

Response: We would like to clarify that the timeframe specified in this section is the 24-month "transition period" for a title IV–E agency with a S/TACWIS or non-S/TACWIS to determine whether the agency will transition that system to CCWIS. This rule does not establish the timeframe for meeting CCWIS requirements with a new CCWIS or a system transitioning to CCWIS. The title IV–E agency must propose a timeframe in the applicable APD.

In paragraph (a), we specify that during the transition period, a title IV–E agency with a S/TACWIS project may continue to claim title IV–E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

Comment: One commenter asked if title IV–E agencies must use the existing cost allocation methodology or if a new methodology is required.

Response: We would like to clarify that S/TACWIS projects may use their existing S/TACWIS cost allocation methodology during the 24-month transition period, per this paragraph. After the transition period, CCWIS and non-CCWIS projects follow the cost allocation rules in § 1355.57. A S/TACWIS project may also elect to immediately move to a non-CCWIS cost allocation methodology. Finally, all title IV–E agencies may elect to immediately start a new CCWIS project and use a new cost allocation methodology approved by ACF for that project.

Comment: One commenter noted their state is continually enhancing their mature SACWIS and asked if the state is expected to get ACF approval before implementation of enhancements.

Response: We would like to clarify that the APD rule continues to apply to all child welfare systems. We will continue to respond to APDs within 60 days.

In paragraph (b), we specify that a S/TACWIS project must meet the submission requirements of § 1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in § 1355.57(a) after the transition period.

Comment: Several commenters asked for additional guidance on the implications of transitioning a S/TACWIS to CCWIS.

Response: We would like to clarify that a S/TACWIS that is compliant with the S/TACWIS requirements may be able to achieve CCWIS compliance by developing the new bi-directional data exchanges required by § 1355.52(e) and documenting their data quality procedures in the data quality plan required by § 1355.52(d)(5). However, we caution readers that this is general guidance and is not applicable in every situation. We encourage title IV–E agencies to review their information system and consult with us during the 24-month transition period to assess the effort to comply with CCWIS requirements.

Comment: A commenter requested that the rule provide title IV–E agencies with the flexibility to develop or revise existing systems to collect required data. Another commenter noted that states and jurisdictions may not have the resources to build a new system.

Response: We would like to clarify that this paragraph permits title IV–E agencies to develop or revise (*i.e.*, transition) their existing S/TACWIS to CCWIS. It may be less costly to develop new bi-directional data exchanges required by § 1355.52(e) and documenting data quality procedures in the data quality plan required by § 1355.52(d)(5) than it would be to implement this same activities along with developing a new system.

Comment: One commenter recommended that the 24-month transition period should not begin until ACF issues sub-regulatory guidance with further clarifications because this additional guidance is needed for states to decide if they want to transition a S/TACWIS or non-S/TACWIS to CCWIS.

Response: We are not making a change in response to this comment as the rule adequately defines the scope of CCWIS. Although, as noted in other responses, we do intend to issue additional guidance, this guidance is not necessary during the transition stage when agencies review their policies, practices, and IT capabilities to assess whether CCWIS is appropriate to support their business practices. We encourage title IV–E agencies to contact us to review issues specific to their agency.

We also note that title IV–E agencies may start a new CCWIS project at any time. The 24-month transition period (including a decision and the submission of certain documentation) only applies to: (1) a S/TACWIS transitioning to a CCWIS; (2) a S/TACWIS not transitioning to a CCWIS; or (3) a non-S/TACWIS transitioning to CCWIS.

Comment: A few commenters recommended we change the 24-month transition period to provide states with more time. One commenter requested we extend the transition period while another commenter recommended we permit states to transition to CCWIS at any time.

Response: We are not making a change to this paragraph because we do not require agencies to complete the

transition during the 24-month period. This paragraph requires title IV–E agencies transitioning a S/TACWIS to CCWIS to submit the required documentation notifying ACF of this plan during the 24-month transition period. We believe that 24 months is sufficient time for this decision. We note that agencies may build a new CCWIS, or modify an existing S/TACWIS to meet CCWIS requirements at any time, although the agency will be subject to the funding requirements of § 1355.57(b) instead of § 1355.57(a).

Comment: A few commenters asked what happens to SACWIS action plans and SACWIS Assessment Review Guide updates if a state decides to transition a SACWIS to CCWIS.

Response: Title IV–E agencies that notify ACF pursuant to the requirements at paragraph (b) that they are transitioning a S/TACWIS to CCWIS are not required to complete S/TACWIS action plans or provide S/TACWIS Assessment Review Guide updates. While S/TACWIS action plans will be closed, it is possible that the S/TACWIS issue identified during a S/TACWIS Assessment Review will also be a CCWIS compliance issue that will be identified during a subsequent CCWIS Assessment Review.

In paragraph (c), we specify that a title IV–E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in § 1355.57(b) by meeting the submission requirements of § 1355.52(i)(1).

Comment: One commenter recommended that the rule provide states and jurisdictions with the option to build a new CCWIS within an extended timeframe to provide them with sufficient time to plan strategically.

Response: We are not making a change in response to this comment because there is no deadline for title IV–E agencies to elect to build a new CCWIS.

Comment: One commenter asked if title IV–E agencies that transition a S/TACWIS to CCWIS retain the option to build a new CCWIS later.

Response: We would like to clarify that a title IV–E agency may initiate a new CCWIS project at any time. If a title IV–E agency transitions a S/TACWIS to CCWIS and then decides to develop a new CCWIS, the agency would inform ACF via the APD process described in 45 CFR 95.610(c)(2) or the Notice of Intent described in this rule.

In paragraph (d), we specify requirements for a title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project. In paragraph (d)(1), we specify that a title IV–E agency must notify ACF in an APD or Notice of Intent submitted during the transition period of this election not to transition a S/TACWIS project to a CCWIS project. In paragraph (d)(2), we specify that the title IV–E agency that elects not to transition its S/TACWIS must continue to use S/TACWIS throughout its life expectancy in accordance with 45 CFR 95.619.

Comment: Several commenters asked us to clarify the requirements of paragraph (d)(1) by providing specific language for notifying ACF that a state does not intend to transition a S/TACWIS to CCWIS.

Response: We would like to clarify that APD rules include reporting changes in an APD Update per 45 CFR 95.610(c)(2), but do not specify the specific language title IV–E agencies must use. In this case, an APD Update, or a Notice of Intent for a project under the $5 million threshold, notifying ACF that the title IV–E agency is not transitioning a S/TACWIS to CCWIS is sufficient.

Comment: A few commenters asked us to clarify the funding implications for states deciding to remain a SACWIS. One asked if SACWIS would be "decommissioned" and, if so, what would be the impact upon funding.

Response: We would like to clarify that 24 months after the effective date of the rule (transition period) title IV–E agency child welfare information systems are classified as CCWIS or non-CCWIS. If a title IV–E agency decides not to transition their S/TACWIS to CCWIS, the system will be classified as a non-CCWIS and receive non-CCWIS funding. ACF will not "decommission" a S/TACWIS that is following the requirements of paragraph (d). If the title IV–E agency does not follow the requirements of paragraph (d), the S/TACWIS may be subject to recoupment of FFP per paragraph (e).

Comment: One commenter asked if SACWIS may establish data exchanges with external systems per the waiver provisions of 45 CFR 95.627.

Response: As noted above, after the transition period, ACF will classify all S/TACWIS systems as CCWIS or non-CCWIS. We would like to clarify that non-CCWIS systems may build data exchanges with external systems without a waiver but must follow the applicable APD rule. The non-CCWIS system may receive non-CCWIS funding to build data exchanges.

Comment: One commenter noted that the state does not have the resources at this time to implement a CCWIS.

Response: We would like to clarify that, per this paragraph, title IV–E agencies with a S/TACWIS may decide not to transition to CCWIS. We note that agencies may implement a new CCWIS at any time.

In paragraph (e), we specify that a title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under § 1355.58(d).

Comment: One commenter asked if there were financial penalties for using a SACWIS beyond the 24-month transition period.

Response: There is no penalty for using a S/TACWIS beyond the 24 month transition period. However, we would like to clarify that S/TACWIS systems that do not transition to CCWIS do not maintain S/TACWIS level cost allocation after the 24-month transition period. After the transition period, the rule classifies these systems as non-CCWIS and they may qualify for non-CCWIS cost allocation.

In paragraph (f), we specify that a title IV–E agency with a non-S/TACWIS (as defined in § 1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirement of § 1355.52(i)(1). In paragraph (f)(1), we specify that the APD or Notice of Intent must be submitted during the transition period to qualify for a CCWIS cost allocation as described at § 1355.57(a). In paragraph (f)(2), we specify that a title IV–E agency may submit an APD or, if applicable, a Notice of Intent at any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at § 1355.57(b).

We received no comments on these paragraphs and made no changes.

Cost Allocation for CCWIS Projects (§ 1355.57)

Comment: Some commenters noted that the funding may not be sufficient for states to transition to a CCWIS or build a new CCWIS. Several commenters noted that it is more costly for title IV–E agencies to implement systems with the current 50 percent FFP rate as compared to the 75 percent FFP rate offered through Federal Fiscal Year 1997.

Response: We are not making a change in response to this comment because we do not have the statutory authority to provide a 75 percent FFP rate for CCWIS. The rate of FFP is set by section 474(a)(3)(C) and (D) of the Act.

Comment: A few commenters noted that the rule only offers FFP for systems determined to be in development and not for operational costs. Additionally, one commenter also cited the costs of

technology upgrades and changes to meet new federal reporting requirements as operational costs that should qualify for the federal financial participation.

Response: We would like to clarify that FFP is available for both development and operation costs. As noted in the table on page 48220 of the NPRM, the CCWIS development and operational cost allocation methodologies both allocate to title IV–E programs the costs benefiting state or tribal funded participants of programs and activities described in title IV–E. In addition, CCWIS post-implementation costs may qualify for CCWIS developmental or operational cost allocation. While technology upgrade costs may qualify for CCWIS operational cost allocation, new federal reporting requirements may also meet the definition of "development" at 45 CFR 95.605 so as to qualify for CCWIS development cost allocation. We encourage title IV–E agencies to contact us for technical assistance regarding whether specific upgrades meet the regulatory definition of "development."

Comment: One commenter asked us to clarify the cost allocation methodologies so that states can more accurately estimate the budgetary impact of a decision to build a CCWIS. The commenter also asked why an operational CCWIS or non-CCWIS cannot allocate costs supporting title IV–B to title IV–E.

Response: The cost allocation methodologies for CCWIS and non-CCWIS systems are provided in the table on page 48220 of the NPRM. We would like to clarify that federal statute does not allow CCWIS operational or non-CCWIS costs benefiting title IV–B to be allocated to title IV–E.

Comment: A few commenters noted that building a CCWIS may require states to reallocate staff providing direct services to the CCWIS project. To avoid a reduction in direct services, the commenter recommended we either provide teams of technical experts or provide funds for states to hire or contract for additional experts.

Response: We agree that the participation of child welfare program staff is needed to build any child welfare information system, including CCWIS. We would like to clarify that agencies may request FFP for experts to assist with CCWIS projects. We also note that title IV–E agencies may build a CCWIS in stages, which may reduce the need to reallocate staff.

Comment: One commenter asked what project documentation must be submitted to qualify for CCWIS cost allocation.

Response: We would like to clarify that § 1355.52(i)(1) specifies the required documentation. The required documentation is (1) a project plan and (2) a list of CCWIS automated functions specifying which automated functions meet certain criteria. The title IV–E agency submits the required documentation with an APD or, if the project is below APD thresholds, a Notice of Intent.

Comment: One commenter recommended that CCWIS funding be made available to support other programs developing data exchanges with CCWIS.

Response: We are not making a change based on these comments because sections 474(a)(3)(C) and (D) of the Act only provide the authority for title IV–E funding for the planning, design, development, installation, and operation of a data collection and information retrieval system and the requirements a title IV–E agency must meet to receive federal financial participation (FFP).

In paragraph (a), we specify cost allocation requirements for projects transitioning to CCWIS.

In paragraph (a)(1), we specify that all automated functions developed after the transition period for projects meeting the submission requirements in § 1355.56(b) or (f)(1) must meet the CCWIS design requirements described under § 1355.53(a), unless exempted by § 1355.53(b)(2). In paragraph (a)(2), we specify two requirements an automated function of a project transitioning to CCWIS must meet in order for the Department to consider approving the applicable CCWIS cost allocation.

In paragraph (b), we specify cost allocation requirements for new CCWIS projects. In paragraph (b)(1), we specify that unless ACF grants the title IV–E agency an exemption in accordance with § 1355.53(b)(2), all automated functions of a new CCWIS project must meet all the CCWIS design requirements described under § 1355.53(a) to qualify for CCWIS cost allocation.

In paragraph (b)(2), we specify the requirements an automated function must meet to qualify for CCWIS cost allocation. In paragraph (b)(2)(i), we specify that an automated function must support programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54.

In paragraph (b)(2)(ii), we specify that an automated function must not be duplicated within the CCWIS or systems supporting child welfare contributing agencies and be consistently used by all child welfare users responsible for the area supported by the automated function.

We received several comments that address both paragraphs (a) and (b) simultaneously, and therefore, respond to comments from both paragraphs (a) and (b) below.

Comment: Several commenters recommended we add a new category of "enhancement" to the existing categories of "development" and "operation" defined at 45 CFR 95.605 to provide additional funding to encourage the agile and iterative improvement of CCWIS.

Response: We would like to clarify that "enhancement" is defined at 45 CFR 95.605 and that an enhancement to a system may be classified as either development or operations. We are not making a change to 45 CFR 95.605.

Comment: One commenter asked if title IV–E agencies could use CCWIS funds for the development of modules that are not case management related but improve the case management process.

Response: We would like to clarify that CCWIS funds may be used for the development of automated functions in the CCWIS that support the requirements of paragraphs (a)(2)(i) and (ii). These requirements may include automated functions that improve the case management process.

Comment: A commenter asked if states could use CCWIS funding only for the required areas of intake, title IV–E eligibility, case management, financial management, resource management, court processing, reporting, interfaces, administrative support, and security. The commenter also asked if states could purchase modules supporting CCWIS functions.

Response: We would like to clarify that CCWIS data is required but title IV–E agencies have the flexibility to collect the data using automated functions that may or may not qualify for CCWIS funding. We also note that title IV–E agencies may request a waiver to purchase COTS products per Program Instruction ACYF–CB–PI–11–08.

Comment: Several commenters suggested that, per paragraph (b)(2)(ii), precluding federal funding for any "other systems supporting child welfare agencies" is overly broad.

Response: We would like to clarify that this rule does not preclude non-CCWIS title IV–E funding for title IV–E external or child welfare contributing agency systems. However, this comment identified an inconsistency between (a)(2)(ii) and (b)(2)(ii) and we are making two changes to align these two sections. First in (a)(2)(ii) we are deleting the term "either" in the phrase

"is not duplicated within *either* the CCWIS or systems supporting child welfare agencies . . . ." Second, in (b)(2)(ii) we are deleting the term "other" in the phrase "is not duplicated within the CCWIS or *other* systems supporting child welfare agencies . . . ." These changes will align (a)(2)(ii) and (b)(2)(ii).

Comment: A number of commenters noted that this requirement may be difficult to implement in county-administered states where similar functions may be performed at the state and county level. As an example, one commenter noted that their state's statutory requirements led to the development of business processes that required duplicative functionality at the state and county level for supporting child abuse investigations.

Response: We would like to clarify that the CCWIS rule provides greater flexibility than the S/TACWIS rule. The S/TACWIS rule required no duplicate functionality. A single duplicated function, such as for child abuse investigations, could prevent a system from receiving any S/TACWIS funding, even for non-duplicated functions. Under this CCWIS rule, duplicated functionality may qualify for non-CCWIS cost allocation while other automated functions that are not duplicated may qualify for CCWIS cost allocation.

Comment: Several commenters were concerned that the phrase "is consistently used by all child welfare users responsible" for the supported area was unclear and so broad as to be unenforceable because states cannot guarantee the actions of all users. Commenters noted that, for example, a bed vacancy control function may be used by large CWCAs but not be needed by small CWCAs.

Response: We are not making a change to this requirement because it is not new. We would like to clarify that this paragraph does not require title IV–E agencies to guarantee the actions of all users, but rather determine the child welfare system or systems that staff must use for their work. For example, if some workers did not need a bed vacancy control function, they would not be required to use it. We also note that title IV–E agencies may permit multiple bed vacancy control functions, which may qualify for non-CCWIS cost allocation.

Comment: One commenter asked us to define when a new CCWIS project "starts."

Response: We would like to clarify that "project" is defined at 45 CFR 95.605. For the purposes of this rule, a CCWIS project begins when a title IV–E agency submits documentation per § 1355.52(i)(1) indicating that it is beginning the activities consistent with the definition of a project.

In paragraph (c), we specify that the Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of § 1355.57(a) (transitioning projects) or (b) (new CCWIS projects).

We received no comments on this paragraph and made no changes.

In paragraph (d), we specify that the title IV–E agency must allocate project costs in accordance with applicable HHS regulations and guidance.

We received no comments on this paragraph and made no changes.

In paragraph (e), we specify cost allocation requirements for CCWIS development and operational costs.

In paragraph (e)(1), we specify that a title IV–E agency may allocate CCWIS development and operational costs to title IV–E for approved system activities and automated functions that meet three requirements as described in § 1355.57(e)(1)(i), (ii), and (iii).

Comment: One commenter asked if FFP for the maintenance costs for COTS products is available.

Response: We would like to clarify that FFP for the maintenance costs for COTS products may be available, per Program Instruction ACF–OA–13–01.

In paragraph (e)(1)(i), we specify that the costs are approved by the Department. In paragraph (e)(1)(ii), we specify that the costs must meet the requirements of § 1355.57(a) (transitioning projects), (b) (new CCWIS projects), or (c) (approved activities). In paragraph (e)(1)(iii), we specify that the share of costs for system approved activities and automated functions that benefit federal, state or tribal funded participants in programs and allowable activities described in title IV–E of the Act may be allocated to the title IV–E program.

Comment: One commenter provided a list of programs (including alternative response to child protective services interventions, juvenile justice, and adult protective services) and asked us to identify the programs applicable for funding under this paragraph.

Response: We are not identifying programs applicable for funding under this paragraph because we do not want to limit CCWIS cost allocation to a specified list. We would like to clarify that we will continue to determine appropriate system costs per APD rules. This approach provides title IV–E agencies with the flexibility to provide a business case in the APD for allocating costs to support specific programs to CCWIS, including programs unanticipated at this time.

In paragraph (e)(2), we specify that title IV–E agencies may allocate additional CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements in paragraphs (e)(1)(i) and (ii). These additional costs are described in new paragraphs (e)(2)(i) and (ii). In paragraph (e)(2)(i), we specify that CCWIS development costs benefiting title IV–B programs may be allocated to title IV–E. In paragraph (e)(2)(ii), we specify that CCWIS development costs benefiting both title IV–E and child welfare related programs may be allocated to title IV–E.

We received no comments on these paragraphs and made no changes.

In paragraph (f), we specify that title IV–E costs not previously described in this section may be charged to title IV–E at the regular administrative rate but only to the extent that title IV–E eligible children are served under that program.

Comment: Several commenters asked if S/TACWIS systems that do not implement CCWIS will be able to maintain their current funding level after the 24-month transition period.

Response: We would like to clarify that S/TACWIS systems that do not transition to CCWIS do not maintain S/TACWIS level cost allocation after the 24-month transition period. After the transition period, the rule classifies these systems as non-CCWIS and they may qualify for non-CCWIS cost allocation. Please see the NPRM for a discussion of CCWIS and non-CCWIS cost allocation methodologies at 80 FR 48220.

Comment: A number of commenters asked us if county, consortia, or private agency systems that collect data and exchange it with CCWIS are eligible for FFP. One commenter asked if we considered these potential costs in the impact analysis.

Response: We would like to clarify that, per this paragraph, costs for county, consortia, or private agency systems that collect and exchange CCWIS data with CCWIS may be eligible as an administrative cost for the title IV–E agency. We will work with title IV–E agencies on a case-by-case basis to determine how to include these costs in an APD.

We also note that we accounted for all CCWIS costs in the impact analysis.

Failure To Meet the Conditions of the Approved APD (§ 1355.58)

In paragraph (a) and in accordance with 45 CFR 75.371 to 75.375 and 45 CFR 95.635, we specify that ACF may

suspend title IV–B and IV–E funding for a CCWIS approved in the APD if ACF determines that the title IV–E agency fails to comply with the APD requirements in 45 CFR part 95, subpart F or fail to meet the CCWIS requirements at § 1355.52 or, if applicable, §§ 1355.53, 1355.54, or 1355.56.

Comment: One commenter was concerned that if they planned to modernize their current SACWIS but did not want to transition it to a CCWIS, they may be a risk for "failure to comply" and subject to project suspension.

Response: We made a change to paragraph (a) in response to this comment to clarify that § 1355.58 applies only to CCWIS by revising the rule to read: "In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV–B and title IV–E funding approved in APD for a CCWIS . . ."

Please see § 1355.56(d) for requirements for S/TACWIS systems that do not transition to CCWIS.

Comment: One commenter asked that we clearly state the specific conditions that could lead to a finding of "failure to comply."

Response: We would like to clarify that there are many conditions that could lead to a finding of "failure to comply" with APD requirements. Therefore, we are unable to list all possible scenarios. We intend to continue our practice of working with title IV–E agencies at risk of suspension or recoupment so that they may take proactive corrective action to avoid the suspension or recoupment activities.

In paragraph (b), we specify that the suspension of funding for a CCWIS under this section begins on the date that ACF determines that the agency failed to comply with or meet either the requirements of § 1355.58(b)(1) or (2).

In paragraph (b)(1), we specify that a suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to comply with APD requirements in 45 CFR part 95 subpart F.

In paragraph (b)(2), we specify that a suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to meet the requirements at § 1355.52 or, if applicable, §§ 1355.53, 1355.54, or 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

We received no comments on this paragraph and made no changes.

In paragraphs (c) introductory text, (c)(1) and (2) we specify that the suspension of funding will remain in effect until the date that ACF determines, in accordance with § 1355.58(c)(1), that the title IV–E agency complies with 45 CFR part 95, subpart F; or, in accordance with § 1355.58(c)(2), until ACF approves the title IV–E agency's plan to change the application to meet the requirements at § 1355.52 and, if applicable, §§ 1355.53, 1355.54, or 1355.56.

Comment: One commenter asked that we specify the corrective measures required to end a suspension and reinstate funding. The commenter asked if the title IV–E agency must submit a corrective action plan.

Response: We are not making a change to this paragraph as a result of the comment because the specific steps required of an agency will be determined on a case-by-case basis depending on the reasons for the suspension. In some cases it may include a corrective action plan per paragraph (c)(2).

In paragraph (d), we specify that if ACF suspends an APD, or the title IV–E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV–E funds claimed for the CCWIS project.

Comment: One commenter recommended that we permit a state to reinvest any proposed financial penalties in enhancing its system when the state makes a strong business case showing the financial and social return of any already received funding and the impact the system has on statewide operations and services to children.

Response: We are not making a change to this paragraph as a result of the comment because we are not proposing to issue financial penalties, rather to recoup IV–E funds approved for a CCWIS as specified. Further, it is not an efficient, economical, or effective use of federal funds to allow title IV–E agencies to claim FFP using the CCWIS cost allocation for projects that do not meet the APD or CCWIS requirements. This requirement is not new, rather it incorporates the S/TACWIS requirements at 45 CFR 1355.56(b)(4), with a modification to allow ACF to recoup all FFP approved for the CCWIS consistent with the October 28, 2010 (45 FR 66341) changes in the APD rules at § 95.635.

Reserved (§ 1355.59)

We reserve § 1355.59 for future regulations related to CCWIS.

Fiscal Requirements (Title IV–E) (§ 1356.60)

In § 1356.60, we made a conforming change to the title of § 1356.60(e) from "Federal matching funds for SACWIS/TACWIS" to "Federal matching funds for CCWIS and Non-CCWIS." We also made a technical revision to describe that federal matching funds are available at the rate of fifty percent (50%) and that the cost allocation of CCWIS and non-CCWIS project costs are at § 1355.57 of this chapter. These changes clarify that while the same matching rate applies to CCWIS and non-CCWIS, the proposed cost allocation requirements at § 1355.57 apply.

We received no comments on this conforming change and made no changes.

Submission of Advance Planning Documents (§ 95.610)

We made a conforming change to § 95.610(b)(12) so that it conforms with our rule at §§ 1355.50 through 1355.58. We also made a technical change to remove the references to §§ 1355.54 through 1355.57, which is a title IV–E rule, since statutory authority for enhanced funding for information systems supporting the title IV–E program expired in 1997. We also made a conforming change to § 95.610(b)(12) by adding the phrase "or funding, for title IV–E agencies as contained at § 1355.52(i)" because our rule at § 1355.52(i) adds new requirements for CCWIS APDs.

We received no comments on these conforming changes.

Disallowance of Federal Financial Participation (FFP) (§ 95.612)

We made a conforming change to § 95.612 which provides guidance on conditions that may lead to a disallowance of FFP for APDs for certain information systems. We replaced the phrase "State Automated Child Welfare Information System" with "Comprehensive Child Welfare Information System (CCWIS) project and, if applicable the transitional project that preceded it." We also made a technical change to the identified CCWIS rule from "§ 1355.56" to "§ 1355.58."

We received no comments on this paragraph and made no changes.

Increased FFP for Certain ADP Systems (§ 95.625)

We made technical revisions to § 95.625(a) and (b) to remove the references to title IV–E enhanced funding since statutory authority for enhanced funding for information systems supporting the title IV–E program expired at the end of Federal Fiscal Year 1997.

We received no comments on these technical revisions and made no changes.

V. Impact Analyses

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is consistent with these priorities and principles, and represents the best and most cost effective way to achieve the regulatory and program objectives of CB. This rule meets the criteria for a significant regulatory action under EO 12866 and has been reviewed by OMB.

We determined that the costs to states and tribes as a result of this rule will not be significant. First, CCWIS is an optional system that states and tribes may implement; therefore, we have determined that the rule will not result in mandatory increased costs to states and tribes. Second, most if not all of the costs that states and tribes will incur will be eligible for FFP, depending on the cost category and each agency's approved cost allocation plan. States and tribes may be reimbursed 50 percent of allowable costs, applying the cost allocation rate authorized under section 474(a)(3)(C) and (D) of the Act, and section 474(c) of the Act, or at the 50 percent administrative rate authorized under section 474(a)(3)(E) of the Act.

Costs will vary considerably depending upon a title IV–E agency's decision to either: (1) Build a new CCWIS; or (2) transition an existing system to meet CCWIS requirements. Furthermore, the cost of the system will be affected by the optional functions an agency elects to include in the CCWIS. As discussed in the NPRM, we estimate the average historical cost to design, develop, and implement a SACWIS as $65 million, and the cost to transition an operational system to a CCWIS will be $34 million.

Costs. Several commenters felt the reasonable cost for the creation and development of a CCWIS was, based on their state's experience, significantly higher than the $65 million estimate provided in the NPRM and requested we revise the estimate. However, no commenters provided estimates to assist in calculating costs, therefore, no changes were made as a result of these comments. ACF maintains the estimate provided in the NPRM that uses the best available information, which is a $65 million estimate representing an average of five recent SACWIS implementations for mid-to-large sized states. As we explained in the NPRM, we expect actual CCWIS costs to be lower than this S/TACWIS-based estimate because CCWIS has fewer functional requirements than SACWIS, and therefore title IV–E agencies may build a new CCWIS at a lower cost. Also, CCWIS requirements permit title IV–E agencies to use less expensive commercial-off-the-shelf software (COTS) as CCWIS modules, and the requirement to build CCWIS with reusable modules reduces overall costs as newer projects benefit from software modules shared by mature CCWIS projects. Finally, we anticipate lower tribal costs as most tribes serve smaller populations with fewer workers than states.

Another commenter noted that costs would also be higher because states with existing systems will need either to start over or make extensive revisions to their existing systems to qualify for federal funding. However, we disagree that states will need to make extensive revisions to their existing systems to qualify for federal funding. As we noted in our response in section IV under § 1355.56(b), a S/TACWIS that is compliant with the S/TACWIS requirements may be able to achieve CCWIS compliance by developing the new bi-directional data exchanges required by § 1355.52(e) and documenting data quality procedures in the data quality plan required by § 1355.52(d)(5).

Alternatives Considered: We considered alternatives to the approach described in this rule. As discussed in the NPRM, we determined that alternative approaches such as: (1) Leaving the current rules in place; or (2) providing even greater flexibility than what we proposed in the NPRM, would not adequately improve the administration of the programs under titles IV–B and IV–E of the Act and improve overall outcomes for the children and families served by title IV–E agencies. We received no comments on the alternatives we considered, and therefore made no changes in this rule.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact of this rule is on state and tribal governments, which are not considered small entities under the Act.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Public Law 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $151 million. CCWIS is an option for states and tribes, therefore the Department has determined that this rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of $151 million or more.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. Ch. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or rule. Collection of APD information for S/TACWIS projects is currently authorized under OMB number 0970–0417 and will be applicable to CCWIS projects. This rule does not make a substantial change to those APD information collection requirements; however, it contains new information collection activities, including submission of an automated function list, data quality plan and Notice of Intent if applicable, which are subject to review.

Burden Hour Estimate

As a result of the new information collection activities in this rule, we estimated the reporting burden, over and above what title IV–E agencies already do for the APD information collection requirements, as follows: (1) 550 hours for the automated function list requirement; (2) 2,200 hours for the first submission of the data quality plan; and (3) 80 hours for the one-time Notice of Intent submission by states and tribes not submitting an APD. The following are estimates:

Collection	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
Automated Function List § 1355.52(i)(1)(ii) and (iii) and (i)(2)	55	1	10	550
Data Quality Plan § 1355.52(d)(5) (first submission)	55	1	40	2,200
Notice of Intent § 1355.52.(i)(1) (one-time submission)	12	1	8	96
One-time Total				2,296
Annual Total				550

We considered comments by the public regarding the burden hour estimate for providing a list of automated functions, a data quality plan, and an APD or Notice of Intent associated with the requirements we propose in § 1355.52(i)(1)(ii) and (iii) and (i)(2)(i) and (ii). Many of the comments regarding burden hours are discussed in section IV of the preamble. As discussed there, we did not make changes to the burden hour estimate above as a result of public comments.

Total Burden Cost

Based on the estimated burden hours, we developed an estimate of the associated cost for states and tribes to conduct these activities, as applicable. We made one change from the NPRM in this rule to double the mean hourly wage estimate for the job role of Management Analyst (13–111) from $43.26 to $86.52 ($43.26 × 2 = $86.52) in order to ensure we took into account overhead costs associated with labor costs. Therefore, the Data Quality Plan and Notice of Intent represent a one-time cost of $198,649 (2,296 hours × $86.52 hourly cost = $198,649). We estimate that the average annual burden increase of 550 hours for the Automated Function List will cost $47,586 (550 hours × $86.52 hourly cost = $47,586). Dividing these costs by the number of estimated respondents, ACF estimated the average cost per title IV–E agency to be $2,965 one-time and $865 annually. Federal reimbursement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a result of this rule, depending on each agency's cost allocation plan, information system, and other factors. The following are estimates:

	Hours	Average hourly labor rate	Total cost nationwide	Number of respondents	Net average cost per respondent
Total One-Time Burden Data Quality Plan and Notice of Intent.	2,296	$86.52	$198,650	67	$2,965 One-Time.
Total Annual Automated Function List	550	$86.52	$47,586	55	$865 Annually.

We considered comments by the public regarding the total burden cost estimate for providing a list of automated functions, a data quality plan, and an APD or Notice of Intent associated with the requirements we propose in § 1355.52(i)(1)(ii) and (iii) and (i)(2)(i) and (ii). Many of the comments regarding the cost of specific provisions are discussed in section IV of the preamble. However, in response to a commenter that estimated that the annual cost would be much higher than the $23,793 figure provided in the impact statement, we would like to clarify that $23,793 is the annual estimate for all of the 55 title IV–E agencies collectively to provide only their automated function list to ACF, per § 1355.52(i)(1)(ii) and (iii) and (i)(2). As discussed both in section IV and below, we did not make changes to the burden hour estimate above as a result of public comments.

Congressional Review

This rule is not a major rule as defined in the Congressional Review Act or CRA (5 U.S.C. Ch. 8). The CRA defines a major rule as one that has resulted in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. HHS has determined that this final rule does not meet any of these criteria.

Assessment of the Impact on Family Well-Being

Section 654 of the Treasury and General Government Appropriations Act, 2000 (Public Law 106–58) requires federal agencies to determine whether a proposed policy or rule may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This rule will not have an impact on family well-being as defined in the law.

Executive Order 13132

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. We did not receive any public comments.

Tribal Consultation Statement

A full summary of the tribal consultation on child welfare automation, conducted on February 15 and 16, 2012 can be found at *https://www.acf.hhs.gov/programs/cb/resource/tribal-consultation-on-title-iv-e-information-systems-regulations.*

After publication of the NPRM, ACF held an information conference call for tribal stakeholders on August 27, 2015. We received no written comments from Indian tribes, tribal consortia or tribal organizations in response to the NPRM.

List of Subjects

45 CFR Part 95

Automatic data processing equipment and services—conditions for federal financial participation (FFP).

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions grant programs—social programs.

45 CFR Part 1356

Administrative costs, Adoption and foster care, Child welfare, Fiscal requirements (title IV–E), Grant programs—social programs, Statewide information systems.

Dated: March 9, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: April 27, 2016.

Sylvia M. Burwell, Secretary.

For the reasons set out in the preamble, HHS and the Administration for Children and Families amend 45 CFR chapters I and XIII as follows:

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE, MEDICAL ASSISTANCE AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS)

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 5 U.S.C. 301, 42 U.S.C. 622(b), 629b(a), 652(d), 654A, 671(a), 1302, and 1396a(a).

■ 2. Amend § 95.610 by revising paragraph (b)(12) to read as follows:

§ 95.610 Submission of advance planning documents.

* * * * *

(b) * * *

(12) Additional requirements, for acquisitions for which the State is requesting enhanced funding, as contained at § 307.15 and 42 CFR subchapter C, part 433 or funding for title IV–E agencies as contained at § 1355.52(i) of this title.

* * * * *

■ 3. Amend § 95.612 by revising the last sentence to read as follows:

§ 95.612 Disallowance of Federal Financial Participation (FFP).

* * * In the case of a suspension of the approval of an APD for a Comprehensive Child Welfare Information System (CCWIS) project and, if applicable the transitional project that preceded it, *see* § 1355.58 of this title.

■ 4. Amend § 95.625 by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 95.625 Increased FFP for certain ADP systems.

(a) *General.* FFP is available at enhanced matching rates for the development of individual or integrated systems and the associated computer equipment that support the administration of state plans for titles IV–D and/or XIX provided the systems meet the specifically applicable provisions referenced in paragraph (b) of the section.

(b) * * * The applicable regulations for the title IV–D program are contained in 45 CFR part 307. The applicable regulations for the title XIX program are contained in 42 CFR part 433, subpart C.

CHAPTER XIII—ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 5. Under the authority of 42 U.S.C. 1302(a), the heading for 45 CFR chapter XIII is revised to read as set forth above.

PART 1355—GENERAL

■ 6. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1301 and 1302.

■ 7. Revise § 1355.50 to read as follows:

§ 1355.50 Purpose.

Sections 1355.50 through 1355.59 contain the requirements a title IV–E agency must meet to receive Federal financial participation authorized under sections 474(a)(3)(C) and (D), and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a comprehensive child welfare information system.

■ 8. Add § 1355.51 to read as follows:

§ 1355.51 Definitions applicable to Comprehensive Child Welfare Information Systems (CCWIS).

(a) The following terms as they appear in §§ 1355.50 through 1355.59 are defined as follows—

Approved activity means a project task that supports planning, designing, developing, installing, operating, or maintaining a CCWIS.

Automated function means a computerized process or collection of related processes to achieve a purpose or goal.

Child welfare contributing agency means a public or private entity that, by contract or agreement with the title IV–E agency, provides child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families.

Data exchange means the automated, electronic submission or receipt of information, or both, between two automated data processing systems.

Data exchange standard means the common data definitions, data formats, data values, and other guidelines that the state's or tribe's automated data processing systems follow when exchanging data.

New CCWIS project means a project to build an automated data processing system meeting all requirements in § 1355.52 and all automated functions meet the requirements in § 1355.53(a).

Non-S/TACWIS project means an active automated data processing system or project that, prior to the effective date of these regulations, ACF had not classified as a S/TACWIS and for which:

(i) ACF approved a development procurement; or

(ii) The applicable state or tribal agency approved a development procurement below the thresholds of 45 CFR 95.611(a); or

(iii) The operational automated data processing system provided the data for at least one AFCARS or NYTD file for submission to the federal system or systems designated by ACF to receive the report.

Notice of intent means a record from the title IV–E agency, signed by the governor, tribal leader, or designated state or tribal official and provided to ACF declaring that the title IV–E agency plans to build a CCWIS project that is below the APD approval thresholds of 45 CFR 95.611(a).

S/TACWIS project means an active automated data processing system or project that, prior to the effective date of these regulations, ACF classified as a S/TACWIS and for which:

(i) ACF approved a procurement to develop a S/TACWIS; or

(ii) The applicable state or tribal agency approved a development procurement for a S/TACWIS below the thresholds of 45 CFR 95.611(a).

Transition period means the 24 months after the effective date of these regulations.

(b) Other terms as they appear in §§ 1355.50 through 1355.59 are defined in 45 CFR 95.605.

■ 9. Revise § 1355.52 to read as follows:

§ 1355.52 CCWIS project requirements.

(a) *Efficient, economical, and effective requirement.* The title IV–E agency's CCWIS must support the efficient, economical, and effective administration of the title IV–B and IV–

E plans pursuant to section 474(a)(3)(C)(iv) of the Act by:

(1) Improving program management and administration by maintaining all program data required by federal, state or tribal law or policy;

(2) Appropriately applying information technology;

(3) Not requiring duplicative application system development or software maintenance; and

(4) Ensuring costs are reasonable, appropriate, and beneficial.

(b) *CCWIS data requirements.* The title IV–E agency's CCWIS must maintain:

(1) Title IV–B and title IV–E data that supports the efficient, effective, and economical administration of the programs including:

(i) Data required for ongoing federal child welfare reports;

(ii) Data required for title IV–E eligibility determinations, authorizations of services, and expenditures under IV–B and IV–E;

(iii) Data to support federal child welfare laws, regulations, and policies; and

(iv) Case management data to support federal audits, reviews, and other monitoring activities;

(2) Data to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews;

(3) For states, data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the state's compliance with the Indian Child Welfare Act; and

(4) For each state, data for the National Child Abuse and Neglect Data System.

(c) *Reporting requirements.* The title IV–E agency's CCWIS must use the data described in paragraph (b) of this section to:

(1) Generate, or contribute to, required title IV–B or IV–E federal reports according to applicable formatting and submission requirements; and

(2) Generate, or contribute to, reports needed by state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews that support programs and services described in title IV–B and title IV–E.

(d) *Data quality requirements.* (1) The CCWIS data described in paragraph (b) of this section must:

(i) Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy;

(ii) Be consistently and uniformly collected by CCWIS and, if applicable, child welfare contributing agency systems;

(iii) Be exchanged and maintained in accordance with confidentiality requirements in section 471(a)(8) of the Act, and 45 CFR 205.50, and 42 U.S.C. 5106a(b)(2)(B)(viii) through (x) of the Child Abuse Prevention and Treatment Act, if applicable, and other applicable federal and state or tribal laws;

(iv) Support child welfare policies, goals, and practices; and

(v) Not be created by default or inappropriately assigned.

(2) The title IV–E agency must implement and maintain automated functions in CCWIS to:

(i) Regularly monitor CCWIS data quality;

(ii) Alert staff to collect, update, correct, and enter CCWIS data;

(iii) Send electronic requests to child welfare contributing agency systems to submit current and historical CCWIS data to the CCWIS;

(iv) Prevent, to the extent practicable, the need to re-enter data already captured or exchanged with the CCWIS; and

(v) Generate reports of continuing or unresolved CCWIS data quality problems.

(3) The title IV–E agency must conduct biennial data quality reviews to:

(i) Determine if the title IV–E agency and, if applicable, child welfare contributing agencies, meet the requirements of paragraphs (b), (d)(1), and (d)(2) of this section; and

(ii) Confirm that the bi-directional data exchanges meet the requirements of paragraphs (e) and (f) of this section, and other applicable ACF regulations and policies.

(4) The title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges or both to correct any findings from reviews described at paragraph (d)(3) of this section.

(5) The title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of Annual or Operational APDs submitted to ACF as required in 45 CFR 95.610. The CCWIS data quality plan must:

(i) Describe the comprehensive strategy to promote data quality including the steps to meet the requirements at paragraphs (d)(1) through (3) of this section; and

(ii) Report the status of compliance with paragraph (d)(1) of this section.

(e) *Bi-directional data exchanges.* (1) The CCWIS must support efficient, economical, and effective bi-directional data exchanges to exchange relevant data with:

(i) Systems generating the financial payments and claims for titles IV–B and IV–E per paragraph (b)(1)(ii) of this section, if applicable;

(ii) Systems operated by child welfare contributing agencies that are collecting or using data described in paragraph (b) of this section, if applicable;

(iii) Each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii) of this section, if applicable; and

(iv) Each system external to CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

(2) To the extent practicable, the title IV–E agency's CCWIS must support one bi-directional data exchange to exchange relevant data, including data that may benefit IV–E agencies and data exchange partners in serving clients and improving outcomes, with each of the following state or tribal systems:

(i) Child abuse and neglect system(s);

(ii) System(s) operated under title IV–A of the Act;

(iii) Systems operated under title XIX of the Act including:

(A) Systems to determine Medicaid eligibility described in 42 CFR 433.111(b)(2)(ii)(A); and

(B) Medicaid Management Information Systems as defined at 42 CFR 433.111(b)(2)(ii)(B);

(iv) Systems operated under title IV–D of the Act;

(v) Systems operated by the court(s) of competent jurisdiction over title IV–E foster care, adoption, and guardianship programs;

(vi) Systems operated by the state or tribal education agency, or school districts, or both.

(f) *Data exchange standard requirements.* The title IV–E agency must use a single data exchange standard that describes data, definitions, formats, and other specifications upon implementing a CCWIS:

(1) For bi-directional data exchanges between CCWIS and each child welfare contributing agency; and

(2) For data exchanges with systems described under paragraph (e)(1)(iv) of this section.

(g) *Automated eligibility determination requirements.* (1) A state title IV–E agency must use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(2) A tribal title IV–E agency must, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(h) *Software provision requirement.* The title IV–E agency must provide a copy of the agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository within the Department upon request.

(i) *Submission requirements.* (1) Before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent that includes:

(i) A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable § 1355.54;

(ii) A list of all automated functions included in the CCWIS; and

(iii) A notation of whether each automated function listed in paragraph (i)(1)(ii) of this section meets, or when implemented will meet, the following requirements:

(A) The automated function supports at least one requirement of this section or, if applicable § 1355.54;

(B) The automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

(C) The automated function complies with the CCWIS design requirements described under § 1355.53(a), unless exempted in accordance with § 1355.53(b).

(2) Annual APD Updates and Operational APDs for CCWIS projects must include:

(i) An updated list of all automated functions included in the CCWIS;

(ii) A notation of whether each automated function listed in paragraph (i)(2)(i) of this section meets the requirements of paragraph (i)(1)(iii)(B) of this section; and

(iii) A description of changes to the scope or the design criteria described at § 1355.53(a) for any automated function listed in paragraph (i)(2)(i) of this section.

(j) *Other applicable requirements.* Regulations at 45 CFR 95.613 through 95.621 and 95.626 through 95.641 are applicable to all CCWIS projects below the APD submission thresholds at 45 CFR 95.611.

■ 10. Revise § 1355.53 to read as follows:

§ 1355.53 CCWIS design requirements.

(a) Except as exempted in paragraph (b) of this section, automated functions contained in a CCWIS must:

(1) Follow a modular design that includes the separation of business rules from core programming;

(2) Be documented using plain language;

(3) Adhere to a state, tribal, or industry defined standard that promotes efficient, economical, and effective development of automated functions and produces reliable systems; and

(4) Be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

(b) CCWIS automated functions may be exempt from one or more of the requirements in paragraph (a) of this section if:

(1) The CCWIS project meets the requirements of § 1355.56(b) or (f)(1); or

(2) ACF approves, on a case-by-case basis, an alternative design proposed by a title IV–E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a) of this section.

■ 11. Revise § 1355.54 to read as follows:

§ 1355.54 CCWIS options.

If a project meets, or when completed will meet, the requirements of § 1355.52, then ACF may approve CCWIS funding described at § 1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV–E or IV–B programs goals.

■ 12. Revise § 1355.55 to read as follows:

§ 1355.55 Review and assessment of CCWIS projects.

ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54.

■ 13. Revise § 1355.56 to read as follows:

§ 1355.56 Requirements for S/TACWIS and non-S/TACWIS projects during and after the transition period.

(a) During the transition period a title IV–E agency with a S/TACWIS project may continue to claim title IV–E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

(b) A S/TACWIS project must meet the submission requirements of § 1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in § 1355.57(a) after the transition period.

(c) A title IV–E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in § 1355.57(b) by meeting the submission requirements of § 1355.52(i)(1).

(d) A title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project must:

(1) Notify ACF in an APD or Notice of Intent submitted during the transition period of this election; and

(2) Continue to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

(e) A title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under § 1355.58(d).

(f) A title IV–E agency with a non-S/TACWIS (as defined in § 1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirements of § 1355.52(i)(1):

(1) During the transition period to qualify for a CCWIS cost allocation as described at § 1355.57(a); or

(2) At any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at § 1355.57(b).

■ 14. Revise § 1355.57 to read as follows:

§ 1355.57 Cost allocation for CCWIS projects.

(a) *CCWIS cost allocation for projects transitioning to CCWIS.* (1) All automated functions developed after the transition period for projects meeting the requirements of § 1355.56(b) or § 1355.56(f)(1) must meet the CCWIS design requirements described under § 1355.53(a), unless exempted by § 1355.53(b)(2).

(2) The Department may approve the applicable CCWIS cost allocation for an automated function of a project transitioning to a CCWIS if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(b) *CCWIS cost allocation for new CCWIS projects.* (1) Unless exempted in

accordance with § 1355.53(b)(2), all automated functions of a new CCWIS project must meet the CCWIS design requirements described under § 1355.53(a).

(2) An automated function of a CCWIS project described in paragraph (b)(1) of this section may qualify for a CCWIS cost allocation if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(c) *CCWIS cost allocation for approved activities.* The Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of paragraph (a) or (b) of this section.

(d) *Project cost allocation.* A title IV–E agency must allocate project costs in accordance with applicable HHS regulations and other guidance.

(e) *CCWIS cost allocation.* (1) A title IV–E agency may allocate CCWIS development and operational costs to title IV–E for the share of approved activities and automated functions that:

(i) Are approved by the Department;

(ii) Meet the requirements of paragraphs (a), (b), or (c) of this section; and

(iii) Benefit federal, state or tribal funded participants in programs and allowable activities described in title IV–E of the Act to the title IV–E program.

(2) A title IV–E agency may also allocate CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements (e)(1)(i) and (ii) of this section and:

(i) Benefit title IV–B programs; or

(ii) Benefit both title IV–E and child welfare related programs.

(f) *Non-CCWIS cost allocation.* Title IV–E costs not previously described in this section may be charged to title IV–E in accordance with § 1356.60(d) .

■ 15. Add § 1355.58 to read as follows:

§ 1355.58 Failure to meet the conditions of the approved APD.

(a) In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV–B and title IV–E funding approved in the APD for a CCWIS if ACF determines that the title IV–E agency fails to comply with APD requirements in 45 CFR part 95, subpart F, or meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(b) Suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to:

(1) Comply with APD requirements in 45 CFR part 95, subpart F; or

(2) Meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

(c) The suspension will remain in effect until the date that ACF:

(1) Determines that the title IV–E agency complies with 45 CFR part 95, subpart F; or

(2) Approves a plan to change the application to meet the requirements at § 1355.52 and, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(d) If ACF suspends an APD, or the title IV–E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV–E funds claimed for the CCWIS project.

■ 16. Add reserved § 1355.59.

§ 1355.59 [Reserved]

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E

■ 17. The authority citation for part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.;* 42 U.S.C. 1302.

■ 18. Amend § 1356.60 by revising paragraph (e) to read as follows:

§ 1356.60 Fiscal requirements (title IV–E).

* * * * *

(e) *Federal matching funds for CCWIS and Non-CCWIS.* Federal matching funds are available at the rate of fifty percent (50%). Requirements for the cost allocation of CCWIS and non-CCWIS project costs are at § 1355.57 of this chapter.

[FR Doc. 2016–12509 Filed 5–26–16; 8:45 am]

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Part III

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, et al.

Hazardous Materials: Miscellaneous Amendments (RRR); Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 175, 176, 177, 178, 179, and 180

[Docket No. PHMSA–2013–0225 (HM–218H)]

RIN 2137–AF04

Hazardous Materials: Miscellaneous Amendments (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR) to make miscellaneous amendments in order to update and clarify certain regulatory requirements. These amendments are designed to promote safer transportation practices, address petitions for rulemaking, respond to National Transportation Safety Board (NTSB) Safety Recommendations, facilitate international commerce, make editorial corrections, and simplify the regulations. The amendments in this rulemaking include, but are not limited to, removing the packing group (PG) II designation for certain organic peroxides, self-reactive substances, and explosives; incorporating requirements for trailers of manifolded acetylene cylinders; providing requirements to allow for shipments of damaged wet electric batteries; and revising the requirements for the packaging of nitric acid, testing of pressure relief devices on cargo tanks, and shipments of black or smokeless powder for small arms.

DATES:

Effective Date: This rule is effective July 5, 2016.

Voluntary Compliance Date: Voluntary compliance with all amendments is authorized June 2, 2016.

Incorporation by reference Date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 5, 2016.

FOR FURTHER INFORMATION CONTACT: Aaron Wiener or Michael Ciccarone, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

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I. Background

On January 23, 2015, PHMSA published a notice of proposed rulemaking (NPRM) [Docket No. PHMSA–2013–0225 (HM–218H); 80 FR 3787] that proposed amendments to update and clarify existing requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). Both the NPRM and this final rule are part of the Department of Transportation's Retrospective Regulatory Review (RRR) process designed to identify ways to improve the HMR through the extensive review of both the HMR and previously issued letters of interpretation. In addition, the NPRM proposed regulatory requirements in response to seven (7) petitions for rulemaking and two (2) NTSB Safety Recommendations. The changes proposed in the NPRM are summarized below:

Petitions for Rulemaking

The following table provides a brief summary of the petitions addressed in the NPRM and the affected sections. These petitions are included in the docket for this proceeding:

Petition	Petitioner	Summary and affected section(s)
P–1590	Dangerous Goods Advisory Council (DGAC).	Remove the packing group (PG) II designation for certain organic peroxides, self-reactive substances, and explosives in the § 172.101 Hazardous Materials Table (HMT).
P–1591	Air Products and Chemicals, Inc	Amend the marking requirements for poisonous-by-inhalation shipments transported in accordance with the International Maritime Dangerous Goods (IMDG) Code or Transport Canada's Transport of Dangerous Goods (TDG) Regulations (§ 171.23).
P–1597	DGAC	Require that emergency response telephone numbers be displayed on shipping papers numerically (§ 172.604).
P–1601	United Parcel Service (UPS)	Amend the packaging instructions for certain shipments of nitric acid by requiring intermediate packaging for glass inner packagings (§ 173.158).
P–1604	National Propane Gas Association (NPGA).	Extend the pressure test and internal visual inspection test period to 10 years for certain MC 331 cargo tanks in dedicated propane delivery service (§ 180.407).
P–1605	Compressed Gas Association (CGA)	Incorporate by reference in § 171.7 CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems,* Seventh Edition, copyright 2011 (§§ 171.7 and 173.301).
P–1609	Truck Trailer Manufacturers Association (TTMA).	Clarify the requirements applicable to the testing of pressure relief devices for cargo tank motor vehicles (§ 180.407).

NTSB Safety Recommendations

The following table provides a brief summary of the NTSB recommendations addressed in the NPRM and the affected sections. These recommendations are included in the docket for this proceeding:

Recommendation	Summary and affected section
H–09–01	Modify 49 CFR 173.301 to clearly require (1) that cylinders be securely mounted on mobile acetylene trailers and other trailers with manifolded cylinders to reduce the likelihood of cylinders being ejected during an accident and (2) that the cylinder valves, piping, and fittings be protected from multidirectional impact forces that are likely to occur during highway accidents, including rollovers.
H–09–02	Require fail-safe equipment that ensures that operators of mobile acetylene trailers can perform unloading procedures only correctly and in sequence (§ 173.301).

Amendments Based on PHMSA Review

• Revise § 107.402(d)(1)(i) to replace the term "citizen" with the term "resident."

• Revise § 107.402(e) to require that a (cigarette) lighter certification agency submits a statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship.

• Revise § 107.402(f) to require portable tank and multi-element gas container (MEGC) certification agencies to submit a statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor.

• Revise § 107.807 to require a cylinder inspection agency to be independent of and not owned by a cylinder manufacturer, owner, or distributor.

• Remove the entry for CGA Pamphlet C–1.1 in Table 1 to § 171.7.

• Revise the § 172.101 HMT to add Special Provision B120 to Column (7) for the entry "Calcium nitrate, UN1454."

• Revise the § 172.101 HMT to remove vessel stowage provision 24E from Column (10B) for the entry for "Propellant, solid, UN0501."

• Revise the § 172.101 HMT entry for "Corrosive liquids, flammable, n.o.s., UN2920, PG II" for consistency with the United Nations (UN) Model Regulations, International Maritime Dangerous Goods (IMDG) Code, and the International Civil Aviation Organization Technical Instructions (ICAO TI) such that this entry is eligible for the limited quantity exceptions.

• Revise the § 172.101 HMT entry for "Oxidizing solid, corrosive, n.o.s., UN3085, PG II" for consistency with the UN Model Regulations, IMDG Code, and the ICAO TI such that this entry is eligible for the limited quantity exceptions.

• Revise the § 172.101 HMT entries for "Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass,* UN3364" and "Trinitrophenol, wetted *with not less than 30 percent water, by mass,* UN1344" to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI to clarify that the 500 gram limit per package does not apply to UN1344 but does apply to UN3364.

• Revise § 172.102, Special Provision 136 assigned to the proper shipping name "Dangerous goods in machinery or apparatus, UN3363" to include reference to subpart G of part 173.

• Remove reference to obsolete Special Provision 18 for the § 172.101 HMT entry "Fire extinguishers, UN1044" and in § 180.209(j) and provide correct cross reference to § 173.309.

• Correct a reference in § 172.201 to exceptions for the requirement to provide an emergency response telephone number on a shipping paper.

• Revise §§ 172.301(f), 172.326(d), and 172.328(e) to include the clarification that the "NOT–ODORIZED" or "NON–ODORIZED" marking may appear on packagings used for both non-odorized and odorized liquefied petroleum gas (LPG) and remove the effective date of October 1, 2006 or "after September 30, 2006," if it appears in these paragraphs, as the effective date has passed.

• Amend § 172.406(d) by clearly authorizing the use of labels described in part 172, Subpart E with a dotted or solid line outer border on a surface background of contrasting color.

• Update a mailing address in § 172.407(d)(4)(ii).

• Clarify the § 172.514(c) marking size requirements for an intermediate bulk container (IBC) that is labeled instead of placarded by replacing the bulk package marking reference with the non-bulk marking reference, specifically § 172.301(a)(1).

• Revise § 173.4a(a) to clarify that articles (including aerosols) are not eligible for excepted quantity reclassification under § 173.4a, although some are eligible to be shipped as small quantities by highway and rail in § 173.4.

• Clarify that the § 173.24a(c)(1)(iv) requirements do not apply to limited quantities packaged in accordance with § 173.27(f)(2).

• Clarify the § 173.27(f)(2) quantity limits for mixed contents packages.

• Clarify the requirements applicable to bulk transportation of combustible liquids by adding a new subparagraph § 173.150(f)(3)(xi) stating that the registration requirements in subpart G of part 107 are applicable and revising § 173.150(f)(3)(ix) and (x) for punctuation applicable to a listing of requirements.

• Add a new paragraph (k) in § 173.159 to allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries.

• Revise § 173.166(e)(6) to add the words "or cargo vessel."

• Revise §§ 173.170 and 173.171 by changing the term "motor vehicle" to "transport vehicle" to allow for motor vehicles comprised of more than one cargo-carrying body to carry 100 pounds of black or smokeless powder reclassed as Division 4.1 in each cargo-carrying body instead of 100 pounds total in the motor vehicle.

• Revise § 173.199(a)(4) by removing the reference to the steel rod impact test in § 178.609(h).

• Clarify the § 173.225 Packing Method table for organic peroxide materials.

• Amend the § 172.101 HMT bulk packaging section reference in Column (8C) from § 173.240 to § 173.216 for the entries "Asbestos, NA2212," "Asbestos, amphibole *amosite, tremolite, actinolite, anthophyllite, or crocidolite,* UN2212," and "Asbestos, chrysotile, UN2590." In addition, we proposed to revise paragraph (c)(1) in § 173.216 by authorizing the use of bulk packages prescribed in § 173.240.

• Add a new paragraph (h) to § 173.314 to require odorization of liquefied petroleum gas when contained in rail cars and revise § 173.315(b)(1) to address odorant fade and under-odorization in certain cargo tanks.

• Amend § 173.306(k)(1) to clarify that aerosols shipped for recycling or disposal by motor vehicle containing a limited quantity are afforded the applicable exceptions provided for ORM–D materials granted under §§ 173.306(i) and 173.156(b).

• Create a new paragraph (d) in § 175.1 stating that the HMR does not apply to dedicated air ambulance, firefighting, or search and rescue operations.

• Correct § 175.8 by adding the appropriate 14 CFR part 125 citations.

• Clarify the § 175.10 exceptions for passengers, crewmembers, and air operators in paragraphs (a)(18), (22), and (24) for the carriage of hazardous materials aboard a passenger aircraft.

• Clarify § 175.75(e)(2) by replacing the word "located" with "certificated."

• Clarify § 176.30(a)(4) by replacing the word "packaging" with "package."

• Clarify that the loading restrictions in § 177.835(c)(1) through (4) are applicable to § 177.848(e).

• Revise § 178.65(i)(1) to correctly reference the manufacturer's report requirements in § 178.35(g).

• Clarify § 178.337–17(a) to eliminate confusion of the name plate and specification plate requirements.

• Correct an editorial error in the formula in § 178.345–3(c)(1).

• Include provisions consistent with the non-bulk packaging and IBC approval provisions for Large Packagings in § 178.955.

• Clarify the requirements for Federal Railroad Administration (FRA) approval of tank car designs in § 179.13.

II. Incorporation by Reference Discussion Under 1 CFR Part 51

The CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems, Seventh Edition, copyright 2011* and the *AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000* are available for interested parties to purchase in either print or electronic versions through the parent organization Web sites. The price charged helps to cover the cost of developing, maintaining, hosting, and accessing these standards. The specific standards are discussed in greater detail in the Comment Discussion (*Mobile Acetylene Trailer Systems (P–1605) and NTSB Safety Recommendations H–09–01 and H–09–02)* and Section-by-Section Review of § 171.7.

III. Comment Discussion

In response to PHMSA's January 23, 2015 NPRM [80 FR 3787], PHMSA received comments from the following organizations and individuals (we include the referenced docket number in numerical order for each comment):

Commenter	Docket ID No.
Anonymous	PHMSA–2013–0225–0013
Aaron Adamczyk	PHMSA–2013–0225–0014
Girard Equipment, Inc	PHMSA–2013–0225–0019
Truck Trailer Manufacturers Association (TTMA)	PHMSA–2013–0225–0020, PHMSA–2013–0225–0068
Peter Weis	PHMSA–2013–0225–0021
Massachusetts Department of Fire Services	PHMSA–2013–0225–0022
Air Products and Chemicals, Inc	PHMSA–2013–0225–0023
National Association of State Fire Marshalls (NASFM)	PHMSA–2013–0225–0024
Paul Berland	PHMSA–2013–0225–0029
Adrian Mendoza	PHMSA–2013–0225–0025
Mary Shesgreen	PHMSA–2013–0225–0026
Betts Industries, Inc	PHMSA–2013–0225–0027
New Hampshire Office of the State Fire Marshall	PHMSA–2013–0225–0028
Shelley Brown	PHMSA–2013–0225–0030
Mary M Lane	PHMSA–2013–0225–0031
American Trucking Associations (ATA)	PHMSA–2013–0225–0032
National Transportation Safety Board (NTSB)	PHMSA–2013–0225–0033
URS Corporation	PHMSA–2013–0225–0034
The Compressed Gas Association (CGA)	PHMSA–2013–0225–0035
Marnelle Curtis	PHMSA–2013–0225–0036, PHMSA–2013–0225–0052
Frack Free Illinois	PHMSA–2013–0225–0037
Battery Council International (BCI)	PHMSA–2013–0225–0038
Riki Ott	PHMSA–2013–0225–0039
Anonymous	PHMSA–2013–0225–0040
Stephanie Bilenko	PHMSA–2013–0225–0041
Doug Ower	PHMSA–2013–0225–0042
Beverley	PHMSA–2013–0225–0043
Gloria Charland	PHMSA–2013–0225–0044
Institute of Makers of Explosives (IME)	PHMSA–2013–0225–0045
National Association of Chemical Distributors (NACD)	PHMSA–2013–0225–0046
Utility Solid Waste Activities Group (USWAG)	PHMSA–2013–0225–0047
Public.Resource.Org, Greenpeace USA	PHMSA–2013–0225–0048, PHMSA–2013–0225–0069
Chlorine Institute	PHMSA–2013–0225–0049
American Coatings Association (ACA)	PHMSA–2013–0225–0050
American Chemistry Council (ACC)	PHMSA–2013–0225–0051
International Association of Fire Chiefs (IAFC)	PHMSA–2013–0225–0053
Dangerous Goods Advisory Council (DGAC)	PHMSA–2013–0225–0054
Dow Chemical Company	PHMSA–2013–0225–0055
United Parcel Service (UPS)	PHMSA–2013–0225–0056
Veolia ES Technical Solutions, LLC (Veolia)	PHMSA–2013–0225–0057
Council on Safe Transportation of Hazardous Articles (COSTHA)	PHMSA–2013–0225–0058
James Scott	PHMSA–2013–0225–0059
National Propane Gas Association (NPGA)	PHMSA–2013–0225–0060
Anonymous	PHMSA–2013–0225–0061
Association of American Railroads (AAR)	PHMSA–2013–0225–0062
Harv Teitelbaum	PHMSA–2013–0225–0063
	PHMSA–2013–0225–0064

Commenter	Docket ID No.
Marvin Feil	PHMSA–2013–0225–0065
Reusable Industrial Packaging Association (RIPA)	PHMSA–2013–0225–0066
Jones Chemical, Inc	PHMSA–2013–0225–0067
Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI)	PHMSA–2013–0225–0070
Trammo, Inc	PHMSA–2013–0225–0073

A discussion of the comments and PHMSA's position regarding action in this final rule is provided below. We begin with a discussion of comments on the proposals to revise the HMR based on petitions for rulemaking and NTSB Safety Recommendations. Note that additional comments are addressed in the Section-by-Section Review. Further, we discuss comments and proposals not adopted under this final rule, later discussing comments that are outside the scope of the proposals of this rulemaking.

A. Petitions for Rulemaking and NTSB Safety Recommendations

Amendments to the HMR for Organic Peroxides, Self-Reactive Substances and Explosives (P–1590)

The DGAC submitted a petition (P–1590) requesting that PHMSA amend the HMR by removing the PG II designation in Column (5) of the § 172.101 HMT for all organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1). The DGAC states that organic peroxides, self-reactive substances, and explosives are not assigned a packing group in accordance with either the HMR or international regulations. Despite the absence of regulatory language for determining a packing group assignment for these materials, proper shipping names for these materials listed in the HMT are assigned a default PG II. The DGAC asserts that the presence of a PG assignment for these entries is a constant source of confusion that leads to frustration of shipments, further indicating that the frustration typically occurs when shipping papers are inspected by carrier staff and enforcement personnel along the transport chain with respect to the § 172.202(a)(4) requirement to include the "packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table."

The DGAC notes that while § 172.202(a)(4) also excepts organic peroxides, self-reactive substances, and explosives from the requirement to provide a PG as part of the required description, a great deal of confusion is created given that, irrespective of this exception, PGs are provided for these materials in the § 172.101 HMT. Furthermore, the DGAC also states that the HMR are inconsistent with international regulations, as a PG is not indicated for these materials in their respective hazardous materials (dangerous goods) tables. In addition, those regulations restrict the provision of a PG in the transport document basic description to materials where a PG has been assigned in accordance with classification requirements: Thus, with no PG indicated for these substances in the respective lists, it is inappropriate to provide a PG in the hazardous materials description on a shipping paper under international regulations. Consequently, provision of a PG for domestic transportation would constitute a violation of international regulations for international transportation.

The DGAC states that removing the PG for these materials from the HMT would impose no additional costs and would, in fact, result in a net savings since many unnecessary delays in hazardous material shipments would be avoided. However, the DGAC did not provide a specific figure for the anticipated net savings.

The DGAC also states that the packaging provisions in Part 173 for these materials indicate the level of performance required. Therefore, although certain packagings must meet PG II performance levels, they do not indicate a degree of danger or the variation to PG I or PG III packagings.

In the NPRM, PHMSA proposed to remove the PG II designation from Column (5) of the HMT for organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1) as requested in the petition. We agree with the petitioner that, when the PG does not relate to the degree of hazard of the material based on classification criteria but rather is broadly assigned to an entire group of materials for purposes of applying regulatory requirements, there is limited value in requiring an indication of the PG on a shipping paper. PHMSA solicited comment on the safety implications and net benefits of such a change and, as a result, received three comments from ACA, IME, and DGAC in support of the proposed revision. The ACA commented that international harmony is vitally important and will help maintain the exemplary safety record for the transport of hazardous materials. In its comments, IME stated that in a letter to PHMSA dated June 20, 2012, it supported the petition submitted by DGAC, acknowledging that "IME has encountered enforcement officials' confusion over not showing the packing group on Class 1 shipping papers, as is allowed by regulation. Shipping paper violations can lead to out-of-service orders and have serious consequences to IME members' ability to operate as a motor carrier or hold special permits and approvals." IME noted that its "experience has not changed in the intervening time period, and we continue to support the position advocated by DGAC. We believe that the action being contemplated by PHMSA will eliminate the confusion that is engendered by the current default assignment." IME further commented that the removal of the PG II designation would not result in the incorrect packaging of Class 1 explosives in other than an approved package because of the § 173.60(a) requirement that a packaging used for Class 1 (explosives) materials must meet the PG II requirements. In addition to its supporting comments, IME requested that shippers who currently include the PG designation on shipping papers continue to be able to do so without risk of incurring a violation.

Taking into account the reasons for the removal of the PG II designation from Column (5) of the HMT for organic peroxides, self-reactive substances, and explosives, PHMSA disagrees with IME that shippers should be provided the option of electively indicating a PG on a shipping paper for a HMT entry that is no longer assigned a PG designation. PHMSA believes that allowing this practice would continue to perpetuate confusion and result in the continued frustration of shipments. Further, allowing a PG on a shipping paper for a HMT entry that is not assigned a PG designation for domestic transportation would not be in alignment with, and would continue to constitute a violation of, international regulations for international transportation. For these reasons, we are revising Column (5) of the HMT as proposed in the NPRM without an exception to voluntarily apply the PG II designation on a shipping paper.

Marking Requirements for Poison-by-Inhalation Materials (P–1591)

Air Products and Chemicals, Inc. submitted a petition (P–1591) requesting that PHMSA amend the marking requirements for poison-by-inhalation hazard (PIH) materials that are shipped in accordance with the IMDG Code or Transport Canada's Transportation of Dangerous Goods (TDG) Regulations. Specifically, the petitioner requested that PHMSA modify § 171.23(b)(10)(iv)(A) and (B) to remove the phrase "regardless of the total quantity contained in the transport vehicle or freight container" in both paragraphs to align part 171, subpart C requirements for use of international regulations with the poisonous hazardous material marking requirements in § 172.313(c), which offers exceptions based on Hazard Zone, quantity, and number of distinct materials.

Subpart C of part 171 specifies requirements for shipments offered for transportation or transported in the United States under international regulations. For PIH material, subparagraphs (A) and (B) of § 171.23(b)(10)(iv) require that the transport vehicle or freight container must be marked with the identification numbers for the hazardous material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) [*i.e.*, the HMR] and placarded as required by subpart F of part 172. The petitioner stated that the phrase "regardless of the total quantity contained in the transport vehicle or freight container" gives the appearance that the identification number marking requirement is applicable to any quantity, the remainder of the sentence states that the marking must be "in the manner specified in § 172.313(c) of this subchapter," which provides an entirely different requirement.

Section 172.313(c) specifies marking requirements for non-bulk packages of PIH material contained in transport vehicles or freight containers subject to certain provisions and limitations. Section 172.313(c)(2) states, the transport vehicle or freight container is loaded at one facility with 1,000 kg (2,205 pounds) or more aggregate gross weight of the material in non-bulk packages marked with the same proper shipping name and identification number, meaning that unless this criteria is met, marking the identification number on the transport vehicle or freight container is not required. The petitioner indicated that the inconsistency of §§ 171.23(b)(10)(iv)(A) and (B) and 172.313(c) is a source of confusion.

Air Products and Chemicals, Inc. also identified a potential discrepancy when transporting internationally to or from the United States in accordance with § 171.23, as the requirement to mark all quantities of PIH material is more restrictive and costly than the current marking requirements for the same materials when transported domestically under the HMR in accordance with § 172.313(c). The petitioner points out that under both the IMDG and the TDG there are no additional marking requirements for transport units carrying PIH materials in non-bulk packages similar to the provisions found in § 172.313(c). Therefore, for quantities of PIH materials in non-bulk packages (less than 1,000 kg per UN number), all three regulations are not aligned.

The petitioner states that it has had numerous shipments of PIH materials frustrated because of this confusing requirement and that the additional marking causes economic hardship and transit delays due to additional labor necessary to apply the extra UN identification numbers at the port. Air Products and Chemicals, Inc. provided neither a specific cost figure for these frustrated shipments nor the anticipated net savings of a regulatory change.

In the NPRM, PHMSA stated that the intent of the requirements in § 171.23(b)(10)(iv) is to provide hazard communication for international shipments of PIH materials transiting the United States under either the IMDG Code or the TDG equivalent to those established in the HMR, not to impose more restrictive requirements. The removal of the phrase referring to a "total quantity" will reduce potential confusion due to differences in inspection interpretations, handling costs, and transit time while maintaining an acceptable level of hazard communication for PIH materials. Therefore, PHMSA proposed to amend § 171.23(b)(10)(iv)(A) and (B) by removing the phrase "regardless of the total quantity contained in the transport vehicle or freight container" from each subparagraph.

In the NPRM, PHMSA solicited comment on the safety implications of such a change, as well as the net benefit (*e.g.*, a decrease in the number of frustrated shipments). We received only positive comments on this proposal. Air Products and Chemicals, Inc. supported the proposed change and commented:

> The safety of transporting PIH materials will actually be improved with this proposed regulation change. The effectiveness of hazard communication will not be reduced as the current UN marking requirement (for all quantities) provides no additional benefit from a hazard communication or emergency response perspective. What we do see is elimination of confusion and a requirement that would be much more consistent with the IMDG and TDG regulations, as well. We understand the importance of consistency between the regulations. Consistency goes a long way in eliminating confusion, especially in an emergency response situation when effective accurate communication is extremely important. The display of UN ID numbers on a transport vehicle for small individual quantities falsely gives the impression that there are large amounts of the hazardous material. In an Emergency Response situation, it is not wise to cause reactions that are based on a representation of a large quantity, when in fact, there is no large quantity. Effective emergency response is based both on knowledge of the hazards and knowledge of the quantity. The more consistency we have for hazard communication processes, the better.

The DGAC also supported the proposed change and commented:

> This revision will eliminate confusion between the requirements for domestic shipments and international shipments. In addition, this revision is consistent with the goal to harmonize domestic regulations with the international requirements.

For these reasons, we are revising § 171.23(b)(10)(iv)(A) and (B) as proposed in the January 23, 2015 NPRM.

Emergency Response Telephone Number (P–1597)

The DGAC submitted a petition (P–1597) requesting that PHMSA amend the emergency response telephone number requirements to prohibit the use of alphanumeric telephone numbers and only permit numeric telephone numbers since, currently, the HMR does not specifically limit the telephone numbers to be numeric under § 172.604(a). The DGAC stated that although telephone faces historically associated integers with letters (*e.g.*, 2^{ABC}), this is no longer the case in all instances. As a result, emergency response telephone numbers presented alphanumerically could cause undesirable delays in acquiring emergency response information in time-sensitive situations as the first responder would have to first convert letters to numbers.

The DGAC further noted that PHMSA issued a letter of interpretation (Ref. No. 04–0032) confirming that alphanumeric presentation of an emergency response telephone number was acceptable but expressing concern about the delays it may cause.

In the NPRM, PHMSA proposed the revision to § 172.604(a) as outlined in

the petition and noted that the continued use of alphanumeric telephone numbers could cause unnecessary delays in emergency response situations. Additionally, PHMSA solicited comment on the cost implications of the proposed revision and, as a result, received four comments from AAR, ACA, ATA, and DGAC in support of this revision. The ATA commented that this revision will decrease chances of death or injury to transporters and emergency responders and that any minimal costs associated with transposing a number from its corresponding letter will be more than outweighed by the safety benefits. The ATA also noted that this revision will be beneficial to both non-English speakers and those unfamiliar with the traditional correspondence between numbers and letters on a telephone keypad. For these reasons, in this final rule we are revising § 172.604(a) as proposed in the January 23, 2015 NPRM.

Packaging Requirements for Nitric Acid (P–1601)

The UPS submitted a petition (P–1601) requesting that PHMSA revise the packaging requirements for ground shipments of nitric acid basing the petition on four loading and sorting operation incidents that occurred over a six-month period. The incidents did not result in any casualties, but varying degrees of property damage were assessed in each situation. The UPS noted that each incident involved the same packaging configuration—glass inner packagings within fiberboard outer packagings—and in each case, a breach of one or more inner packagings caused leakage, resulting in fumes, followed by the initiation of a fire involving the fiberboard outer packaging material. The UPS believes that the packaging requirements of the HMR applicable to ground shipments of nitric acid do not adequately address the hazards present.

As provided in § 173.158, packaging for ground shipments of nitric acid prescribe either outer packaging that is not reactive to contents or a combination packaging that includes non-reactive intermediate packaging and absorbent material. However, for concentrations of less than 90 percent nitric acid, the HMR permits the use of glass inner packagings of less than 2.5 L placed inside UN Specification 4G, 4C1, 4C2, 4D, or 4F outer packagings. This latter configuration is associated with the four incidents referenced by UPS in its petition for rulemaking.

The UPS proposed that PHMSA change § 173.158(e) to enhance the packaging requirements applicable to nitric acid in concentrations less than 90 percent. Under the proposal in P–1601, when in wooden or fiberboard outer packaging, glass inner packagings used in the configuration prescribed in § 173.158(e) would be required to be packed in tightly-closed, non-reactive intermediate packagings and cushioned with a non-reactive absorbent material. The UPS feels that the addition of this intermediate packaging would properly address the hazards present in this concentration of nitric acid and would have prevented the above incidents from occurring.

In the NPRM, PHMSA proposed to require in § 173.158(e) that when nitric acid, in concentrations less than 90 percent, is placed in glass inner packagings to be packaged in wooden or fiberboard outer packaging, the glass inner packagings must be packed in tightly-closed, non-reactive intermediate packagings and cushioned with a non-reactive absorbent material. In addition, PHMSA solicited comment on whether or not the proposed packaging should be applied to other similar materials as well as on cost burdens from the increase in packaging requirements. PHMSA received four comments from ATA, James Scott, UPS, and Veolia in support of the proposed revision. Veolia commented that it is company policy to place the inner 2.5 L glass bottles in a poly pail intermediate packaging or the outer container must include a leak-proof poly liner, further stating that they have implemented the use of the additional intermediate packages as an additional precautionary safety measure to contain leaking nitric acid, should the inner glass bottle fail. After implementing these packaging procedures, Veolia has not had any incidents of leaking nitric acid initiating a fire, of fumes, or of leaking material breaching the outer packaging. James Scott commented that this packaging requirement would be a cost burden for companies that still pack nitric acid in glass and further noted that the addition of intermediate packagings and absorbent material may require current combination packagings to be modified. Mr. Scott suggested that this impact can be minimized if flexible intermediate packagings are allowed and that the word "rigid" should not appear as part of the requirement.

PHMSA received only positive comments on this proposal. As proposed in the NPRM, the revised § 173.158(e) requires that when placed in wooden or fiberboard outer packagings, the glass inner packagings must be packed in tightly-closed, non-reactive intermediate packagings, cushioned with a non-reactive absorbent material. The use of a flexible intermediate packaging is authorized, provided it can be tightly-closed and is non-reactive to the nitric acid. A "rigid" intermediate packaging was not proposed. Therefore, in this final rule, PHMSA is adopting the revision to § 173.158(e) as proposed in the January 23, 2015 NPRM. PHMSA notes that we did not receive any comments in response to the NPRM solicitation asking that proposed packaging be applied to any other specific hazardous materials and therefore, we are limiting the revision to nitric acid as proposed.

Pressure Test and Internal Visual Inspection Requirements for MC 331 Cargo Tanks (P–1604)

The NPGA submitted a petition (P–1604) requesting that PHMSA modify the pressure test and visual inspection test requirements applicable to certain MC 331 specification cargo tanks in dedicated propane delivery service, commonly known as bobtails, found in § 180.407(c). Currently, the HMR requires periodic pressure testing and visual inspection every five years to remain in service; however, the NPGA petitions PHMSA to extend the requalification period for certain MC 331 cargo tanks from five years to ten years and provides a technical case for this change.

The NPGA states in its petition that the five-year requalification period for bobtails is a burden to the propane industry further stating that these cargo tanks must be taken out of service for a period of up to a week and that water is introduced into the tank during the requalification process, which can be detrimental to both the tank and the contents. Before a tank can be returned to service, it must be completely free of any water. The NPGA states that this removal from service hinders a propane company's operations.

In 2001, the NPGA conducted a survey to determine whether companies that performed the five-year hydrostatic test requirement had experienced any failures. None of the 203 survey respondents reported a hydrostatic test failure for tanks of less than 3,500 gallons water capacity. Based on the results of this survey, the NPGA sponsored a study by the Battelle Memorial Institute (Battelle), a non-profit research and development organization, to determine whether a change to the requalification period would be technically feasible. Battelle developed crack growth models to estimate the time to failure of a tank that has undergone several pressure cycles. They also analyzed effects on the MC

331 cargo tank under the delivery service load conditions to determine the estimated life of the tank.

Based on the results of this study, the NPGA and Battelle recommend that PHMSA modify the requalification period from five years to ten years for MC 331 cargo tanks that: (1) Are used in dedicated propane service; (2) have a water capacity less than 3,500 gallons; and (3) are constructed of non-quenched and tempered (NQT) SA–612 steel and NQT SA–202 or SA–455 steels, provided the materials have full-size equivalent (FSE) Charpy Vee notch energy test data that demonstrates 75 percent shear-area ductility at 32 °F with an average of three (3) or more samples greater than 15 ft-lb FSE, and none with less than 10 ft-lb FSE. A copy of this study is in the docket for this rulemaking.

After considering the NPGA survey results, which cite no reported incidents, and the study commissioned by the NPGA, PHMSA determined that the petition merited consideration of a rulemaking change. The NPGA notes there is a strong safety record amongst its members regarding this issue and the cost savings to the industry would be significant. The NPGA commented in support of the proposed revision to the requalification requirements for MC 331 or bobtail cargo tanks and provided cost estimates as requested by PHMSA. They provide that requalification pressure tests can cost as much as $3,000 when factoring in the downtime of the bobtail as well as the labor and fuel required to drive it to the testing shop or facility. In addition, the NPGA estimates that there are approximately 18,000 bobtails in service that would be eligible for the extension to the requalification period. This represents a total industry cost of about $54 million to requalify these vehicles by hydrostatic test. If the proposed requirements are extended to ten years, it would reduce the industry's costs by half, resulting in approximately $5.4 million on an annual basis.

PHMSA received one anonymous comment concerning the provisions in Note 5 to the § 180.407(c) table. In addition to MC 331 cargo tanks constructed of nonquenched and tempered NQT SA–612 steel, Note 5 authorizes a ten-year inspection interval period applicable to cargo tanks constructed of NQT SA–202 or NQT SA–455 steel. This ten year interval applies if the materials have full-size equivalent (FSE) Charpy vee notch (CVN) energy test data that demonstrated 75 percent shear-area ductility at 32 °F with an average of three (3) or more samples greater than 15 ft-lb FSE with no sample less than 10 ft-lb FSE. The commenter states that Note 5 contains very specific information that is not available to most cargo tank owners or enforcement personnel. As such, the commenter states that there will be no way to determine that the cargo tank satisfies the Note 5 requirements on the roadside or at the cargo tanks owner's place of business without the paperwork to verify compliance. The commenter also states that PHMSA needs to make clear that if a cargo tank owner cannot document this information, then the cargo tank is not eligible for the ten-year requalification period and would be subject to a five-year requalification interval.

PHMSA agrees that if a cargo tank owner cannot produce documentation that a MC 331 cargo tank meets the requirements for a ten-year requalification interval, they are subject to the five-year requalification interval. Section 178.337–2(a)(3) requires that a MC 331 fabricator shall record the heat, and slab numbers, as well as the certified Charpy impact values where required, of each plate used in each cargo tank on a sketch showing the location of each plate in the shell and heads of the cargo tank. Copies of each sketch shall be provided to the owner, retained for at least five years by the fabricator, and made available to duly identified representatives of the Department of Transportation. PHMSA received no other comments on this issue and therefore, we are adopting as proposed to revise the pressure test and internal visual inspection requirements found in § 180.407(c) for certain MC 331 specification cargo tanks from a five-year requalification period to a ten-year period.

Mobile Acetylene Trailer Systems (P–1605) and NTSB Safety Recommendations H–09–01 and H–09–02

The CGA submitted a petition (P–1605) requesting that PHMSA amend the HMR to incorporate a reference to CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems,* Seventh Edition, copyright 2011. This standard provides minimum requirements necessary for the design, construction, and operation of mobile acetylene trailer systems, which consist of acetylene cylinders mounted and manifolded for the purposes of charging, transporting, and discharging acetylene. It also covers ground-mounted auxiliary equipment used with mobile acetylene trailers such as piping, meters, regulators, flash arrestors, and fire protection equipment.

This petition coincides with two NTSB recommendations (H–09–01 and H–09–02) issued to PHMSA based on incidents involving mobile acetylene trailers.[1] In response to the petition and recommendations, PHMSA determined that it would consider a rulemaking change. Further detailed discussion of this issue can be found in the Section-by-Section Review for § 173.301.

Pressure Relief Devices for Cargo Tanks (P–1609)

The TTMA submitted a petition (P–1609) requesting that PHMSA amend the requirements of § 180.407 applicable to pressure relief devices (PRDs). Specifically, TTMA requests that PHMSA revise the HMR to more clearly establish the set pressure of a PRD for each of the DOT specification cargo tank motor vehicles. The TTMA states that the wording of § 180.407(d)(3) and (g)(1)(ii), applicable to the testing requirements for PRDs, creates issues for persons performing the testing.

The TTMA points out two specific issues with these paragraphs: The first is the term "set-to-discharge." On April 9, 2009, PHMSA published a final rule [Docket No. PHMSA–2006–25910 (HM–218E); 74 FR 16135; effective May 11, 2009], where in an attempt to harmonize with international standards, PHMSA replaced the phrase "set-to-discharge" with "start-to-discharge." The TTMA explains that this is an issue because the discharge pressure referenced is used to figure the minimum pressure at which the PRD should reseat. By changing the wording from "set" to "start," the reseating pressure changed from a design requirement to one based on what a given vent actually does under test. Therefore, instead of testing a PRD knowing its reseating requirements, testers must perform the test of a given PRD, calculate the reseating pressure of that particular PRD, and then, retest from that pressure. Essentially, testers of PRDs could test identical products at different pressures because the reseat pressure is no longer a fixed design requirement. This creates inconsistencies between the reseating pressures of comparable PRDs authorized for identical hazardous materials service. The TTMA states that this change compromises safety, instead of promoting it.

The second issue TTMA points out in its petition is in regards to the term "the required set pressure." This term is problematic in relation to the continuing operation of existing cargo tanks made to older specifications in § 180.405(c). As the codes for the older

[1] *http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/H_09_1_2_Original.pdf*

specifications of cargo tanks are no longer published, determining "the required set pressure" is problematic. This is an issue for current specifications of cargo tanks as well. There are pressure allowances during the retesting of pressure relief devices of no more than 110 percent of the required set pressure (§ 180.407(d)(3)) and the same 10 percent allowance for DOT–400 series cargo tanks (§ 178.345–10(d)) creates confusion for current specification cargo tanks. The TTMA believes this will create an unsafe condition for tanks, as a PRD is no longer functioning as designed by the manufacturer; thus the PRD may actually open at higher pressures (near a cargo tank's test pressure) as opposed to the appropriate lower design pressure.

The TTMA petitioned that PHMSA revise the HMR for testing of PRDs by replacing the current requirements found in § 180.407(d)(3) and (g)(1)(ii) with a reference to a new paragraph (j) that would detail the PRD test requirements. The TTMA believes this change will eliminate confusion for testers by clarifying the requirements for opening and reseating pressures when beginning the tests, while simultaneously enhancing the enforcement of these requirements by creating consistency in the testing requirements for cargo tank PRDs of the same design.

PHMSA determined that TTMA's petition merited consideration of a rulemaking change based on the need for consistent and clear testing requirements for PRDs on DOT specification cargo tanks, and as a result, PHMSA received five comments in support of the proposed revision. Girard Equipment, Inc., TTMA, Mr. Peter Weis, Betts Industries Inc., and Dow Chemical Company commented in support of the amendment. One anonymous commenter believed the proposed amendment is not in the best interest of safety, stating that the revision will allow for PRDs intended for the DOT–400 series of cargo tanks to be installed on DOT–300 series cargo tanks, therefore opening at well over the maximum allowable working pressure (MAWP) of the DOT–300 series. The TTMA responded to this commenter in a follow-up comment stating that the anonymous commenter is incorrect, further stating that the proposed amendment keeps PRDs on upgraded DOT–300 series cargo tanks functioning according to the requirements for DOT–400 series cargo tanks and that this represents an improvement in safety, which is why they are required on current construction and why provision is made for upgrading older construction tanks. Due to the overwhelming support to TTMA's petition and the NPRM, PHMSA is adopting the revisions to both § 180.407(d)(3) and (g)(1) as proposed to reference a new paragraph (j), which will outline the testing requirements applicable to PRDs.

Application for Designation as a Certification Agency

An anonymous commenter stated that § 107.402(f) incorrectly cites the requirements for inspection and test marking in § 180.605(k) and further suggests that § 107.402(f) should cite the pressure test procedures in § 180.605(h). PHMSA disagrees, believing instead that § 107.402(f) should be revised to correctly reference Approval of Specification UN Portable Tanks, which would be consistent with § 107.402(f)(2). Therefore, in this final rule, PHMSA will revise § 107.402(f) to reference § 178.273 instead of § 180.605(k).

B. Provisions Not Adopted in This Final Rule

Based on an assessment of the proposed changes and the comments received, PHMSA identified four provisions that we are not adopting in this final rule: (1) The incorporation by reference into § 171.7 of the proposed edition of the Association of American Railroads (AAR) *Manual of Standards and Recommended Practices, Section C–III, Specifications for Tank Cars, Specification M–1002* (Specifications for Tank Cars); (2) the revision to the forbidden material requirements in § 173.21(e); (3) the odorization of cylinders and certain cargo tanks containing liquefied petroleum gas (LPG); and (4) the revision to the definition of "person" in § 180.401. Below is a summary of the amendments proposed, the comments received, and PHMSA's rationale for not adopting these proposed amendments.

Incorporation by Reference of AAR Specifications for Tank Cars (M–1002)

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Section 171.7 lists all standards incorporated by reference into the HMR and informational materials not requiring incorporation by reference. One particular incorporation by reference is the *AAR's Specifications for Tank Cars*, October 2000 edition for various tank car design, manufacture, inspection and testing, and qualification regulations set forth in parts 173, 179, and 180 of the HMR. As currently incorporated by reference, all sections refer to the October 2000 edition of this document.

AAR frequently updates the specifications for tank cars; however, PHMSA has not formally received a petition for rulemaking to revise the HMR to reflect more current versions of the AAR Specifications for Tank Cars.

In the NPRM, we proposed to revise the incorporation by reference for this document to include the 2007 edition of the AAR Specifications for Tank Cars and certain subsequent amendments. PHMSA also proposed to revise § 179.24(a)(2) to remove the reference to the December 2000 edition of this document and instead replace it with a generic reference to the AAR Specifications for Tank Cars. Additionally, we proposed to revise § 180.503 to replace the reference to the "AAR Tank Car Manual" with "AAR Specifications for Tank Cars" for consistency with references to this document elsewhere in the HMR. PHMSA also notes that the FRA had reviewed the 2007 standard and the subsequent amendments and determined not to incorporate the 2007 standard in its totality.

PHMSA received three negative comments to this direct proposal for incorporation by reference. The Chlorine Institute (CI) commented that it is PHMSA's assertion that FRA does not support certain amendments of a given chapter or appendix [of the Specifications for Tank Cars] due to "safety concerns," furthermore stating that those concerns should be explained in the rulemaking. If FRA has determined that specific standards or practices are unsafe, CI questions if it should be required to comply with a different version of the M-1002 Tank Car Manual, per AAR requirements, as opposed to simply complying with what is currently in the HMR. The AAR requests that the final rule include the latest edition of the AAR Specification for Tank Cars that was published in November 2014 and that PHMSA provide it with a list of these "safety concerns" in reference to the AAR Specifications for Tank Cars. Moving forward AAR strongly supports working together with PHMSA and FRA on a scheduled implementation plan to evaluate and incorporate amendments made by the AAR to the incorporation by reference of the AAR Specifications for Tank Cars. Dow Chemical Company had concerns with PHMSA's approach and believes the HMR should simply incorporate by reference the most

current version of the AAR Specifications for Tank Cars. They go on to state that referencing certain previous amendments of older versions of the standards into the HMR will cause confusion and unnecessary burden. If, as PHMSA states in the NPRM, the FRA does not support specific current AAR standards or practices and deems them unsafe, then Dow Chemical Company believes those "safety concerns" should further be explained.

After consideration of the comments received, PHMSA in consultation with FRA agrees with commenters and will not adopt the incorporation by reference as proposed. PHMSA and FRA agree that the safety concerns raised by FRA are not adequately explained and that a more current version of the AAR Specifications for Tank Cars is available and thus good cause reasons exist for not adopting the proposed amendment. The FRA will continue to evaluate amendments made to the AAR Specifications for Tank Cars and will update the effective dates for referenced chapters or appendices, as appropriate, when such amendments are supported by FRA. PHMSA and FRA agree with AAR that future collaborative efforts to update both the AAR Specifications for Tank Cars and the corresponding incorporation by reference into the HMR would be beneficial to stakeholders.

PHMSA further notes that we received a negative joint comment from PublicResource.org and Greenpeace regarding our general practice of incorporating by reference. They did not comment on the substantive merits of the proposed rule. Instead, they ask PHMSA to recognize that it has acted illegally and arbitrarily at the NPRM stage in not making the standards—which are integral parts of the rule—available to the public for review without having to pay for them. They go on to state that the unwarranted action by PHMSA places an unreasonable burden on members of the public who wish to review the entire rule in order to fully understand it and to make appropriate comments. PHMSA disagrees with the basis for the joint comment as we have complied with the requirements in 1 CFR part 51 for incorporation by reference. However, as discussed above, we are not adopting the revision to the incorporation by reference of the AAR Specifications for Tank Cars as proposed.

It is noted that the editorial revisions to §§ 179.24(a)(2) and 180.503 are being adopted as proposed as clarifying amendments.

Prohibition of Materials in the Same Transport Vehicle

Section 173.21 outlines forbidden materials and packages, with paragraph (e) of this section forbidding the transport of a material in the same packaging, freight container, or overpack with another material, that if mixed would likely cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or the production of corrosive materials. While this prohibition prevents incidents from occurring within a freight container, overpack, or the same container, there is no prohibition on this type within a transport vehicle (*e.g.*, a truck with single trailer).

In May 2013, PHMSA received a request for a letter of interpretation (Ref. No. 13–0111) describing a potentially dangerous situation whereby a company offers for transportation "UN1908, Chlorite Solution, Class 8, Packing Group (PG) II," "UN1791, Hypochlorite Solutions, Class 8, PG III" and "UN1789, Hydrochloric Acid Solution, Class 8, PG II" in separate intermediate bulk containers (IBCs) in the same transport vehicle. While there are no formal segregation requirements per § 177.848 of the HMR, data accompanying the letter indicated that in the event of co-mingling, these materials would create chlorine dioxide gas. "Chlorine dioxide (not hydrate)" is forbidden for transportation per the § 172.101 HMT. Thus, the transportation of these materials in the same transport vehicle would create a situation where the mixing of the materials would produce a poisonous gas and highly corrosive material, which happens to also be forbidden from transport; yet, under the current construct of § 173.21, there is no prohibition against this transport scenario.

In the NPRM, PHMSA proposed to prohibit the transportation or offering for transportation of materials in the same transport vehicle (*e.g.*, a trailer, a rail car) with another material that is likely to cause a dangerous evolution of heat, flammable or poisonous gases or vapors, or produce corrosive materials upon mixing for both rail and highway transport.

PHMSA received 13 comments on the proposed amendment from AAR, ACC, ATA, CI, COSTHA, DGAC, IME, Jones Chemical, NACD, RIPA, UPS, USWAG, and Veolia. All of the comments strongly opposed the proposed amendment. The commenters addressed topics related to the proposed amendment such as the difficulty in implementing the prohibition; the impact on shipper and carrier operations; the economic implications; and the safety benefit, or lack thereof. An overview of these comments is provided below, and the complete list of comments pertaining to this amendment is available in the docket for this rulemaking.

The majority of commenters stated that carriers, offerors, and other hazardous materials employees typically have neither sufficient information available nor the technical expertise to make the assessments necessary to comply with the proposed amendment. As such, a carrier cannot be expected to identify and evaluate each individual package consigned for carriage to determine whether the materials in those packages would be compatible with each other in the unlikely event they were to be unintentionally mixed. Further, shippers cannot possibly know what other packaged materials will be transported in the vehicle carrying their products and cannot be expected to determine whether any of the materials onboard the vehicle, if inadvertently mixed, would create a hazard. The DGAC commented that this prohibition would apply not only to materials identified as hazardous materials, but also to non-hazardous materials.

The majority of commenters stated that the proposed prohibitions would result in increased costs as offerors and carriers would need to further segregate hazardous materials, thus creating the need for separate trucks to carry materials presently authorized for carriage in a single truck. Several of the commenters indicated that this would increase highway traffic as well as the probability of highway accidents. Veolia commented that many of their customers generate waste materials that would be deemed to be incompatible for shipment together if this new restriction is adopted further stating that this would result in the need to ship the wastes off-site for disposal using more than one transport vehicle to accommodate the proposed restrictions. Another commenter, NACD, notes there would be an increase in distributor costs, as distributors would need to purchase more trucks to increase their fleets.

Several commenters stated their belief that the segregation provisions of § 177.848 already sufficiently address the danger associated with co-loading incompatible materials and that these provisions have a proven and long-standing safety record. COSTHA commented that the § 177.848 segregation table clearly indicates when certain hazard classes or divisions are known to react dangerously and,

therefore, when they must be segregated. COSTHA further noted that the segregation table was developed on the basis that the current classification system is an adequate and appropriate manner to classify materials. Furthermore, Veolia pointed out PHMSA's own words in letter Ref. No. 13–0111: "[w]e recognize the concerns that you have regarding the transport of Chlorite and Hypochlorite Solutions with Hydrochloric Acid in the same transport vehicle. However, we believe that the packaging requirements for these materials mitigate the potential for comingling and subsequent dangerous evolution of gas."

Based on the comments received, PHMSA will not be adopting any changes to the forbidden materials provisions specified in § 173.21(e). It was not PHMSA's intent to propose an amendment that would impose a significant operational and economic burden on the regulated community; rather PHMSA's intention was to address a safety issue identified through a request for a letter of interpretation. Based on further review and the rationale presented by commenters, PHMSA believes the current packaging and segregation requirements adequately address the unlikely scenario of a dangerous situation caused by the unintentional and unlikely mixing of materials during transport.

Odorization of Cylinders and Certain Cargo Tanks Containing Liquefied Petroleum Gas (LPG)

Section 172.304a prescribes the filling requirements for cylinders containing compressed gases. In the NPRM, PHMSA proposed to add new § 173.304a(d)(5) in addition to the proposed revised text in §§ 173.314(h) and 173.315(b)(1) that addresses the odorization of LPG in rail tank car tanks and cargo tanks, respectively. We also proposed to revise the existing § 173.315(b)(1) to add a performance standard to address the issues of "under-odorization" and "odor fade." PHMSA received comments from the NPGA in opposition to extending the odorization standards proposed to cylinders and revision of the requirement to cargo tanks. They state that, while it may seem intuitive to simply apply the requirements to these additional containers, PHMSA was unaware of the impact this will have on retail propane marketers further downstream in the distribution chain, and as proposed, they believe the requirement would place an undue burden on retail propane marketers, particularly for the more than 90 percent of NPGA members designated as small businesses.

On June 26, 2015, PHMSA met with representatives of NPGA and their membership, as well as the National Association of State Fire Marshalls (NASFM) to discuss the odorization provisions in the NPRM. In this meeting, NPGA and NASFM outlined in further detail their concerns with the proposed requirements. The NPGA reiterated the downstream consequences of the proposed requirement to fillers, distributors, and sellers of cylinders and smaller cargo tanks under 3,500 gallons capacity (previously mentioned as "bobtails"). As stated in their comment, NPGA provides cost information associated with the proposed requirements, estimating that with 200,000 cylinder fillings daily, quantitative testing requirements for cylinders would likely exceed $480 million per year to the industry. Bobtails that experience high turnover (three to five fills per day) would be subject to the proposed odorant performance standard as well. These distributors of propane do not have the odorant chemical (ethyl mercaptan) on site, nor the trained personnel and experience to comply with the proposed requirement. They went on to state that applying the requirement to rail tank cars is the most effective means of addressing odorant fade as it is the furthest upstream transportation. If a rail tank car is effectively odorized, all movement downstream would meet the odorant requirements and presumably not fade. The NASFM commented in the meeting in support of NPGA on this issue. Furthermore, the NPGA claimed that odorant fade is most likely to occur in mixed-use rail tank cars as they are not used in "dedicated service" and are cleaned prior to filling with propane. Meanwhile, bobtails and bulk storage tanks are in "dedicated service" so they experience less odorant fade due to being "seasoned"—*i.e.*, there is less absorption of odorant into the tank walls and, thus, more odorant remains mixed with the LPG.

In the meeting, the NPGA stated that the National Fire Protection Association (NFPA) already requires a "sniff-test" for odorized LPG and provided cost information on the existing "sniff test." While this test is not in the HMR, the cost data provided by NPGA estimates an annual total of $9 million to the industry. The NPGA cost information, as well as the meeting notes can be found in the docket for this rulemaking.

PHMSA recognizes the NPGA's concerns and does not intend to place an undue economic burden on retail distributors of LPG. With an understanding of the propane industry's supply chain, we hope to address odorization further up the transportation stream to avoid odorant fade or under-odorization occurring downstream. It is not our intent to require retail distributors offering for transport or transporting propane from their bulk storage facilities to end users in cylinders or bobtail cargo tanks to qualitatively test odorant levels in the LPG. Instead, our goal with the revisions adopted would be to require this testing for larger packages of LPG (rail tank cars or certain cargo tanks) from a refinery, gas plant, or pipeline terminal destined for those retail distributors. While provisions requiring odorization and measures to address odorant fade or under-odorization for cylinders, cargo tanks, or portable tanks not originating from a refinery, gas plant, or pipeline terminal are not being adopted in this rule, amendments addressing rail tank cars and other point-of-origin transportation are discussed further in the preamble.

Applicability of the Word "person" § 180.401

In the NPRM, PHMSA proposed to revise the term "person" to "hazardous materials employee or hazardous materials employer." The proposed revision was an attempt to clarify that subpart E of part 180 qualification and maintenance of cargo tank requirements applies not only to persons offering hazardous materials for transportation or transporting a hazardous material, but also to those involved with qualification, maintenance, or periodic testing of cargo tanks. PHMSA received an anonymous comment pointing out that the proposed revision is unnecessary because the definition for "person" in § 171.8 already applies to a person that designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. We agree with the commenter that the definition for "person" in § 171.8 already adequately and accurately addresses the applicability of subpart E of part 180. Therefore, PHMSA will not be adopting the proposed revision to § 180.401.

Reference to the Manufacturer's Report Requirements in § 178.65(i)(1)

In the NPRM, we proposed to revise § 178.65(i)(1) to correctly reference the manufacturer's report requirements in § 178.35(g). A final rule published July 20, 2011 [Docket No. PHMSA–2009–

0151 (HM–218F)] removed paragraph (h) and moved the manufacturer's report retention requirements into paragraph (g). Although PHMSA did not receive any comments on this proposed revision, PHMSA did identify a letter of interpretation (Ref No. 01–0125) that noted an error in what is referenced in § 178.65(i)(1). In the letter, PHMSA agreed that § 178.65(i)(1) should include an exception from the marking requirements provided in § 178.35(f), not the manufacturer's report requirements in paragraph (h) (and subsequently paragraph (g)), and noted that it warranted a rulemaking change. In light of the letter of interpretation, PHMSA believes that further review is needed to determine the full intent of the exception provided in § 178.65(i)(1). Thus, PHMSA will not be adopting the revision to § 178.65(i)(1) as proposed.

C. Comments Outside the Scope of This Rulemaking

PHMSA received eighteen (18) comments that were either outside the scope of the proposed rulemaking or not specifically addressing the proposed regulatory changes. Mr. Adrian Mendoza generally supported PHMSA's rulemaking efforts in the interest of public health and safety. Mr. Aaron Adamczyk submitted a list of materials to be incorporated by reference but did not respond directly to any provisions in the NPRM. An anonymous commenter stated that the issue that caused the revision proposed in §§ 173.170 and 173.171 is also found in § 173.6 for materials of trade, and the term "motor vehicle," which includes both the truck and trailer, limits the exception; the commenter further requested that we consider changing the term "motor vehicle" to "transport vehicle" to allow the materials of trade exception to apply to each unit. While PHMSA finds value in this comment, we did not propose this revision and therefore will not adopt the commenter's suggestion.

Another anonymous commenter stated that the definitions of cargo tank in §§ 171.8 and 178.320 do not match and further requests revising the definition in § 171.8 to be consistent with the definition in § 178.320, which includes solids and semi-solids. This revision was also not proposed in the NPRM, and therefore, PHMSA is not adopting the change.

The remaining fourteen (14) comments addressed our August 1, 2014, "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (HM–251)," proposed rule. That rulemaking covered several key issues related to the safe transport of crude oil and other flammable liquids by rail and its comment period closed on September 30, 2014 under Docket No. PHMSA–2012–0082. As these issues raised by commenters under the docket for HM–218H were not proposed in HM–218H, PHMSA will not address the comments in this final rule and consider the comments as outside the scope of the rulemaking.

IV. Section-by-Section Review

Part 107

Section 107.402

Section 107.402 sets forth the application requirements for designation as a certification agency to issue certificates and certifications for packagings designed, manufactured, tested, or maintained in conformance with the HMR and standards set forth in the UN Model Regulations. This section also sets forth the application requirements for designation as a certification agency to issue certificates and certifications for lighters, portable tanks, multi-element gas containers, and Division 1.4G consumer fireworks.

PHMSA is revising § 107.402(d)(1)(i) to indicate that a fireworks certification agency applicant must be a U.S. resident or, for a non-U.S. resident, must have a designated U.S. agent representative as specified in § 105.40. The criteria for fireworks certification agencies were added to the HMR in a final rule published April 2, 2015 [Docket No. PHMSA–2010–0320 (HM–257); 78 FR 42457]. PHMSA intended for § 107.402(d)(1)(i) to correspond with the requirements of § 105.40, which specifies designated agents for non-residents; however, the term "citizen" was inadvertently substituted for "resident," thus PHMSA is revising § 107.402(d)(1)(i) by replacing the term "citizen" with the term "resident."

PHMSA is also revising § 107.402(e) to require that a lighter certification agency submit a statement to the Associate Administrator explaining that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship. Further, we are revising § 107.402(f) to require that a portable tank and MEGC certification agency submit a statement to the Associate Administrator indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor. This language was included in § 107.402 and pertained to all certification agencies, but it was removed inadvertently as a result of changes made to the HMR in rulemaking HM–257.

Section 107.402(f) sets forth the requirements for portable tank and MEGC certification agencies prior to inspecting for compliance with the HMR. PHMSA is revising § 107.402(f) to reference Approval of Specification Portable Tanks as provided in § 178.273, rather than § 180.605(k). This would be consistent with § 107.402(f)(2).

Section 107.807

Section 107.807 sets forth the requirements for authorizing chemical analyses and tests for non-domestic manufacturers of DOT specification or special permit cylinders. To maintain consistency with requirements of other independent inspection agencies, PHMSA is revising § 107.807(b)(3) to require that the agency submit a statement indicating that the inspection agency is independent of and not owned by a cylinder manufacturer, owner, or distributor.

Part 171

Section 171.7

As previously stated, the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. Section 171.7 lists all standards incorporated by reference into the HMR and informational materials not requiring incorporation by reference. The informational materials not requiring incorporation by reference are noted throughout the HMR and provide best practices and additional safety measures that, while not mandatory, may enhance safety and compliance. Table 1 in § 171.7 lists informational materials that are not incorporated by reference. In a final rule published on January 28, 2008 [Docket No. 2005–21812 (HM–218D); 73 FR 4699, effective October 1, 2008], PHMSA added in Table 1 (formerly paragraph (b) of the section) an entry for the CGA publication, CGA C–1.1, *Personnel Training and Certification Guidelines for Cylinder Requalification by the Volumetric Expansion Method.* Following the publication of HM–218D, PHMSA received an appeal from Hydro-Test Products, Inc. (PHMSA–2005–21812–0025) asking us to either remove the reference to CGA C–1.1 or add examples of other training materials that may be used. Hydro-Test noted that referencing only the CGA publication in the HMR could suggest that other training materials are not acceptable.

PHMSA added CGA C–1.1 as an example of guidance material that may be used to assist requalifiers in creating their cylinder training procedures and recordkeeping requirements. The publication is not a standalone tool for training persons on how to perform requalification of cylinders using the volumetric expansion test method. To alleviate confusion for cylinder requalifiers, PHMSA intended to remove the reference to CGA C–1.1 in §§ 171.7 and 180.205 in a previous editorial final rule published on October 1, 2008 [Docket No. PHMSA–2008–0227 (HM–244A); 73 FR 57001, effective October 1, 2008]. However, PHMSA removed reference to the document only in § 180.205(g)(6) and inadvertently failed to remove the reference in § 171.7. In this final rule, PHMSA is amending Table 1 to § 171.7 by removing the entry for CGA C–1.1 to align the regulatory text with previous rulemaking actions.

Additionally, as described in the Comment Discussion for petition for rulemaking P–1605 and more fully discussed in the Section-by-Section Review for § 173.301, PHMSA is amending the HMR to incorporate by reference CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems,* Seventh Edition, copyright 2011.

Section 171.7(k) incorporates The *AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000.* This standard prescribes approval requirements, general design and test requirements, structural requirements, valves and fittings, marking, recommended maintenance practice, and certification of tank car facilities. In this final rule, PHMSA is amending paragraph (k) of this section to list sections §§ 179.24 and 180.503 that reference this standard but were inadvertently omitted in a final rule published June 25, 2012 [Docket No. PHMSA–2010–0018 (HM–216B); 77 FR 37961].

Section 171.22

In a May 3, 2007 final rule [Docket No. PHMSA–2005–23141 (HM–215F); 72 FR 25162], the importer responsibility requirements were transitioned from § 171.12(a) to § 171.22(f). When transitioning the requirement that a person importing a hazardous material into the United States must provide the shipper and forwarding agent with information required under the HMR, the shipper notification was inadvertently omitted. As a result, only the forwarding agent is presently required to be provided with information as to the requirements of the HMR applicable to the particular shipment. In this final rule, PHMSA is reinstating text in § 171.22(f) to clearly state that both the shipper and forwarding agent at the place of entry must be provided with written information on the requirements of the HMR applicable to the particular shipment. PHMSA received two comments from ACA and DGAC providing general support for the amendment as proposed.

Part 172

Section 172.101

Section 172.101 contains the HMT and explanatory text for using the table information and each of the columns. In this final rule, PHMSA is making a number of revisions to the § 172.101 HMT: including the special provisions listed in Column (7) and specified in § 172.102; removing the PG II designation from Column (5) of the HMT for organic peroxides (Division 5.2), self-reactive substances (Division 4.1), and explosives (Class 1) as requested in P–1590; and clarifying the regulations and correct inadvertent errors. Changes to the § 172.101 HMT will appear as a "revise," and include changes to the following table entries: "Calcium nitrate, UN1454," "Corrosive liquids, flammable, n.o.s., UN2920," "Fire extinguishers, UN1044," "Oxidizing solid, corrosive, n.o.s., UN3085," "Propellant solid, UN0501," "Trinitrophenol (picric acid), wetted, with not less than 10 percent water by mass, UN3364," and "Trinitrophenol, wetted with not less than 30 percent water, by mass, UN1344."

The entry for "Calcium nitrate, UN1454" is being revised to reflect a change that was intended to be made when PHMSA published a final rule on January 7, 2013 [Docket No. PHMSA–2012–0027 (HM–215L); 78 FR 987]. Special Provision B120 was inadvertently not assigned to the entry for "Calcium nitrate, UN1454" when several other HMT entries were revised to include it. Special Provision B120 indicates that the material, when offered in conformance with the applicable requirements of part 178 and general packaging requirements in part 173, may be offered for transportation in a flexible bulk container. PHMSA is revising the HMT to add Special Provision B120 to Column (7) for the entry "Calcium nitrate, UN1454."

The entry for "Corrosive liquids, flammable, n.o.s., UN2920" is being revised to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI by means of providing limited quantity exceptions for the PG II entry. Therefore, PHMSA is revising the entry for "Corrosive liquids, flammable, n.o.s., UN2920, PG II" to remove the word "None" from Column (8A) of the HMT and add "154." This change will be consistent with similar PG II materials that are also provided the limited quantity exception.

The entry for "Fire extinguishers, UN1044" is being revised to eliminate reference to Special Provision 18, which is no longer in the HMR. Special Provision 18 was removed from § 172.102(c)(1) in a January 7, 2013 final rule [Docket No. PHMSA–2009–0126 (HM–215K); 78 FR 1101] and combined into revised § 173.309(a). We did not make a conforming amendment to remove Special Provision 18 from this entry in the HMT; thus, in this final rule, we are to revising the entry for "Fire extinguishers, UN1044" by deleting the special provision.

The NPRM proposed to revise the entry for "Oxidizing solid, corrosive, n.o.s., UN3085" to harmonize with the UN Model Regulations, IMDG Code, and the ICAO TI by means of providing limited quantity exceptions for the PG II entry. However, in between the publishing of the NPRM and this final rule, PHMSA inadvertently revised this entry as proposed in a previous final rule [Docket No. PHMSA–2015–0103 (HM–260); 80 FR 72914]. Therefore, PHMSA will not be revising this entry in this final rule.

PHMSA received four comments on the proposed revisions to the UN3085 (as well as UN2920) in Column (8A). In their comments, ACA, Veolia, and URS supported the revision of these two entries to harmonize with UN Model Regulations, IMDG Code, and the ICAO TI. The URS provided a list of nine (9) additional PG II entries for which a limited quantity exception is provided under international standards but not in the HMR and requested the same revision made to UN2920 and UN3085 be made to these additional entries. An anonymous commenter requested that PHMSA make the same limited quantity exception revision to the UN3084, PG II entry. PHMSA agrees with the commenters that the HMR is not completely in alignment with the with UN Model Regulations, IMDG Code, and the ICAO TI limited quantity exceptions with regard to these additional PG II entries. However, given the lack of historical context and the need for a technical review of each entry, PHMSA will only be revising the limited quantity exception for the entries that have been proposed. PHMSA may consider the revision to additional entries offered by the commenters under

a future rulemaking. Additionally, PHMSA encourages the commenters to submit a petition for rulemaking in accordance with §§ 106.95 and 106.100 for entries that they believe should also be revised.

The entry for "Propellant, solid, UN0501" is being revised to eliminate a reference to a requirement that is no longer in the HMR. Column (10B) of this entry lists vessel stowage provision 24E; however, vessel stowage provision 24E was removed from § 176.84(c)(2) when the Research and Special Programs Administration (RSPA), PHMSA's predecessor, published a final rule on June 21, 2001 [Docket No. RSPA–2000–7702 (HM–215D); 66 FR 33316, effective October 1, 2001] that revised the table of provisions applicable to vessel transportation of Class 1 (explosive) materials. As this provision is no longer in the HMR, PHMSA is revising the entry for "Propellant, solid, UN0501" to remove vessel stowage provision 24E from Column (10B) of the HMT.

The HMT entries for "Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass,* UN3364" and "Trinitrophenol, wetted *with not less than 30 percent water, by mass,* UN1344" are being revised to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI. Presently, Special Provision 162 is applied to UN3364 (*not less than 10 percent water)* and Special Provision 23 is applied to UN1344 (*not less than 30 percent water*). Special Provision 162 outlines a provision for transport of the material as Division 4.1: The material must be packed such that at no time during transport will the percentage of diluent fall below the percentage that is stated in the shipping description. Special Provision 23 is similar in that it also outlines this provision but includes an additional condition that quantities of not more than 500 grams per package with not less than 10 percent water by mass may also be classed in Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria.

The special provisions are assigned in the reverse manner to the trinitrophenol entries in the UN Model Regulations, IMDG Code, and the ICAO TI. Special Provision 23 is applied to UN3364 with the lower minimum diluent percent of water while the 500 gram limit per package for 10 percent diluent does not apply to UN1344 with the larger minimum diluent percentage of water (*i.e.,* 30 percent). Thus the special provision was incorrectly assigned in the HMR. For the entry "Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass,* UN3364," we are replacing Special Provision 162 in Column (7) of the HMT with Special Provision 23. Conversely, for the entry "Trinitrophenol, wetted, *with not less than 30 percent water, by mass,* UN1344," we are replacing Special Provision 23 from Column (7) of the HMT with Special Provision 162.

PHMSA is revising Column (8C) of the HMT for "Asbestos, NA2212," "Blue asbestos *(Crocidolite) or* Brown asbestos *(amosite, mysorite),* UN2212," and "White asbestos *(chrysotile, actinolite, anthophyllite, tremolite),* UN2590," to refer to packaging instructions in § 173.216, instead of § 173.240.

In a final rule published on November 23, 2015 [Docket No. PHMSA–2015–0103 (HM–260); 80 FR 72913], PHMSA revised the HMT entry "NA1993, Combustible liquid, n.o.s." by removing special provision T4. In a subsequent final rule published on December 21, 2015 [Docket No. PHMSA–2011–0345 (HM–233D); 80 FR 79423] the same entry was revised by adding Special Provision 148. In making the addition of Special Provision of 148, the previously removed Special Provision T4 was inadvertently reinstated. This final rule corrects that error by removing Special Provision T4 from the entry for NA1993.

In a final rule published on January 21, 2016 [Docket No. PHMSA–2013–0042 (HM–233F); 81 FR 3635], PHMSA did the following:

- Inadvertently revised the "Corrosive liquids, n.o.s., UN1760" entry by assigning it the incorrect NA prefix and inserting Special Provision 386 to the Packing Group II and III entries. The HM–233F final rule should have revised the "Compounds, cleaning liquid, NA1760" entry by adding Special Provision 386 to the Packing Group II and III entries. This final rule corrects those errors by removing Special Provision 386 from the "Corrosive liquids" entry and adding them to the "Compounds, cleaning liquid" entry, and re-assigning the "Corrosive liquids" entry the correct prefix of UN.
- Inadvertently revised Column (10B) of the "Coating solution *(includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining),* UN1139" entry by removing the vessel stowage provision E and replacing with the letter B. Consequently, PHMSA is restoring the letter E in Column (10B) for this entry.
- Inadvertently revised Column (8B) of the "Printing ink, *flammable* or Printing ink related material *(including printing ink thinning or reducing compound), flammable, UN1210"* entry by changing the packaging section for Packing Group I from § 173.173 to § 173.201. Consequently, PHMSA is restoring § 173.173 in Column (8B) for this entry. Further, in this final rule, PHMSA is correcting the roman and italicized text for this entry in Column (2) of the HMT.
- Inadvertently revised Column (7) of "Self-heating solid, organic, n.o.s., UN3088" by removing UN portable tank code T1 from the Packing Group III entry. Consequently, PHMSA is restoring the code to Column (7) of the HMT.
- Inadvertently revised Column (10B) of the "Potassium, UN2257", "Sodium, UN1428", and "Water reactive solid, n.o.s., UN2813" entries by removing vessel stowage provisions 13 and 148. Consequently, PHMSA is restoring the codes to Column (10B) of the HMT for each entry.

Section 172.102

Section 172.102 outlines special provisions that are listed in Column (7) of the § 172.101 HMT. Special Provision 136 is listed for the entry "Dangerous Goods in Machinery *or* Dangerous Goods in Apparatus, UN3363." PHMSA received a request for a letter of interpretation (Ref. No. 12–0037) that sought confirmation that a material classed as a Class 2 gas that has packaging exceptions listed in Column (8A) of the HMT may be described as "Dangerous Goods in Apparatus, UN3363." The requestor pointed out that the provisions in Special Provision 136 are inconsistent: Special Provision 136 currently states that except when approved by the Associate Administrator, machinery or apparatus may only contain hazardous materials for which exceptions are referenced in Column (8) of the HMT and are provided in part 173, subpart D. Subpart D contains the definitions, classification, packing group assignments, and exceptions for hazardous materials other than Class 1 and Class 7. However, preparation, packaging, and exceptions for Class 2 gases are located in subpart G of part 173. This should be indicated in Special Provision 136 to eliminate confusion that gases prepared in accordance with subpart G of part 173 would not be eligible to be described as "Dangerous Goods in Apparatus, UN3363." It was not PHMSA's intention to exclude Class 2 gases from using this proper shipping name, therefore, PHMSA is revising Special Provision 136 in § 172.102 to include reference to part 173, subpart G.

Section 172.201

Section 172.201 prescribes the requirements for the preparation and retention of shipping papers. This paragraph requires that, except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number. The reference in this paragraph to § 172.604(c) is inaccurate. The requirements in § 172.604 applicable to emergency response telephone numbers were changed when PHMSA published a final rule on October 19, 2009 [Docket No. PHMSA–2006–26322 (HM–206F); 74 FR 53413, effective November 18, 2009]. This rulemaking action moved the exceptions regarding the requirement to provide an emergency response telephone number to a new paragraph (d). PHMSA received one comment from the American Coatings Association (ACA) in support of this change without further issue. In this final rule, PHMSA is revising § 172.201(d) to accurately reference the exception from the emergency response telephone number requirement found in § 172.604(d).

Sections 172.301, 172.326, 172.328, and 172.330

Sections 172.301, 172.326, 172.328, and 172.330 prescribe marking requirements for non-bulk packagings, portable tanks, cargo tanks, tank cars, and multi-unit tank car tanks, respectively. Each of these sections contains a paragraph (specifically, §§ 172.301(f), 172.326(d), 172.328(e), and 172.330(c)) prescribing requirements for packages containing unodorized LPG to be legibly marked with "NON-ODORIZED" or "NOT-ODORIZED." PHMSA received a request for a letter of interpretation (Ref. No. 06–0235) requesting clarification that the "NON-ODORIZED" or "NOT-ODORIZED" mark may also appear on a package containing odorized LPG. In the response letter, we noted that PHMSA addressed this issue in part in a final rule published by its predecessor agency, RSPA, on November 4, 2004 [RSPA–03–15327 (HM–206B); 69 FR 64462, effective October 1, 2006]. Final rule HM–206B changed the hazard communication requirements applicable to certain packages containing unodorized LPG, including the requirement to mark with "NON-ODORIZED" or "NOT-ODORIZED." Specifically, it also clarified that the "NON-ODORIZED" or "NOT-ODORIZED" marking may appear on a tank car or multi-unit tank car tanks used for both unodorized and odorized LPG. This was implemented to address the concerns expressed by a commenter about the logistics of tracking, inspecting, and stenciling tank cars to ensure proper marking. However, this clarification was not extended to cylinders, cargo tanks, and portable tanks containing LPG in that final rule. We further noted in the response letter that we intended to revisit this issue in a future rulemaking to extend this clarification to other packaging types that are filled with unodorized or odorized LPG.

PHMSA received negative comments from the NASFM, the NTSB, the IAFC, and the New Hampshire Office of the State Fire Marshall. The NTSB disagrees with the proposed exception, citing a 2005 railroad incident involving the release of diesel fuel from a locomotive and Safety Recommendation R–07–4 as grounds for their dissent.[2] The NTSB disagrees with both the proposed exception to expand eligible packaging types and the existing exception for tanks cars, stating that it is concerned that the "NON-ODORIZED" or "NOT-ODORIZED" package markings would be rendered meaningless by the proposal to allow such a marking on a tank containing odorized LPG. It believes it is poor policy to allow "mislabeling" of LPG tanks merely for logistical convenience, further stating that while the HMR does not require odorization in all cases, the requirement to properly mark these packages as "ODORIZED" or "NOT-ODORIZED" based on the actual condition of the LPG being transported (odorized or not odorized) should be a fundamental tenet to emergency response planning and execution involving hazardous materials in transportation. Therefore, the NTSB urged PHMSA not to approve the proposed rule changes and suggests that instead, PHMSA approve an acceptable means for the "NON-ODORIZED" or "NOT-ODORIZED" marking to be temporarily covered whenever the container is used to transport odorized LPG. PHMSA disagrees with this comment and is puzzled as to how the incident cited in NTSB's comment, which involved a collision of two trains and a release of diesel fuel from locomotives, is relevant to the proposed language from the NPRM. The allowance for the marking to remain on a package already exists for tank cars, so PHMSA simply proposed to extend this exception to other packaging types. We also disagree that the marking would be rendered meaningless if allowed to remain on odorized tanks of LPG. If the contents were to undergo odorant fade during the course of transportation, this marking would provide an additional level of safety. Additionally, we fail to see how extending the requirement to existing package types is a detriment to the safety benefit provided by that mark existing on non-odorized packages of LPG.

The NASFM, IAFC, and the New Hampshire Office of the State Fire Marshall also provided negative comment; however, they did not comment on the proposed exception, instead focusing on the existing regulatory allowance for the marking to remain on tank cars and multi-unit tank car tanks. The three commenters all stated that the allowance of the marking to remain on odorized packages will create confusion for first responders when looking for leaks from containers with odorized LPG. They state that if the mark is seen on a tank that is actually odorized, they will skip over that tank and may miss a leak. PHMSA disagrees with the commenters and while we fully appreciate the benefit that odorization has for leak detection in an emergency response situation, we do not feel that it is the sole method to detect such leaks.

Thus, PHMSA is revising §§ 172.301(f), 172.326(d) and 172.328(e) to include the clarification that the marking may appear on these packagings used for both unodorized and odorized LPG and to remove the effective date of October 1, 2006. PHMSA is also removing the effective date referenced in paragraph § 172.330(c) for consistency.

Section 172.406

Section 172.406 specifies the placement of labels on a package. Paragraph (d) of this section prescribes requirements that labels be printed or affixed to a background of contrasting color, or they must have a dotted or solid line outer border. Further, § 172.407(b)(2) provides that the dotted line border on each label shown in §§ 172.411 through 172.448 is not part of the label specification, except when used as an alternative for the solid line outer border to meet the requirements of § 172.406(d). Based on this language, it appears that labels with a dotted or solid line outer border are permitted only if the surface of the package is not a contrasting color, thus causing confusion.

In this rulemaking, we are amending § 172.406(d) by expressly authorizing the use of labels described in part 172, subpart E with a dotted or solid line

[2] R–07–4: With the assistance of the Federal Railroad Administration, require that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.

outer border on a background of contrasting color. There is no reduction in hazard communication with this revision, and it will provide cost savings to shippers by eliminating the need to acquire and store two types of labels (one with a border and the other without) depending on the surface color of the package. PHMSA received one comment from ACA providing support for this amendment as proposed.

Section 172.407

Section 172.407 contains label specifications. Paragraph (d) of this section contains color specifications for labels including a requirement for color tolerances according to color charts referenced in appendix A to part 172 of the HMR. Paragraph (d)(4)(ii) states that the color charts are on display at the Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, Room 8422, Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. This address does not reflect the current address of the Office; thus PHMSA is amending the address in § 172.407(d)(4)(ii) to read Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 2nd Floor, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Section 172.514

Section 172.514 prescribes the placarding requirements and exceptions for a bulk packaging containing a hazardous material. Paragraph (c)(4) provides an exception for an IBC that is labeled in accordance with part 172, subpart E, instead of placarded. IBCs that are labeled instead of placarded are authorized to display the proper shipping name and UN identification number in accordance with the bulk package marking size requirements of § 172.302(b)(2) in place of the UN number on an orange panel, placard, or white square-on-point. Section 172.302(b)(2) requires that for IBCs, markings have a width of at least 4.0 mm (0.16 inch) and a height of at least 25 mm (one inch). This is inconsistent with the UN Model Regulations, IMDG Code, and ICAO TI, which all require a height of 12 mm (0.47 inch). The international size requirement is equivalent to the non-bulk marking size requirement provided in § 172.301(a)(1). In addition, the reference to the bulk packaging marking requirements of § 172.302(b)(2) in § 172.514(c)(4) conflicts with § 172.336(d) identification number marking requirements, which states that when a bulk packaging is labeled instead of placarded in accordance with § 172.514(c), identification number markings may be displayed on the package in accordance with the marking requirements of § 172.301(a)(1).

In the NPRM, we proposed to clarify that the proper shipping name and identification number marking size for an IBC that is labeled instead of placarded is at least 12 mm (0.47 inch), doing so by replacing the bulk package marking reference in § 172.514(c) with the non-bulk marking reference, specifically, § 172.301(a)(1). PHMSA received four comments from ACA, DGAC, DOW, and URS providing support for this international harmonization action. In their comments DGAC, DOW, and URS all correctly point out that the UN Model Regulations, IMDG Code, and ICAO TI require a 12 mm (0.47 inch) minimum height requirement for the identification number on an IBC that is labeled rather than placarded, although, a minimum height for the proper shipping name is not prescribed. The DGAC and DOW suggested § 172.514(c) be revised by removing the words "size requirements" from the proposed text which currently reads ". . . the IBC may display the proper shipping name and UN identification number markings in accordance with the size requirements of § 172.301(a)(1) . . ." Additionally, URS suggested that § 172.301(a)(1) should be revised to clarify that the size of the proper shipping name marking is not prescribed by the regulations.

The intent of the proposed action was to clarify that IBCs that are labeled instead of placarded can be marked in accordance with the non-bulk size requirements in § 172.301(a)(1) consistent with international standards. As § 172.301(a)(1) does not prescribe a size requirement for the proper shipping name, only the UN identification number would need to meet the 12 mm requirement. In the § 172.514 preamble we inadvertently stated, "[I]n this rulemaking, we are proposing to clarify that the marking size requirement, for both the proper shipping name and identification number, is at least 12 mm (0.47 inch) for an IBC that is labeled instead of placarded." We agree with the comments from DGAC, DOW, and URS; thus, in this final rule, PHMSA is revising § 172.514(c)(4) for clarity as suggested by both DGAC and DOW. As § 172.301(a)(1) does not impose a size requirement for a proper shipping name, the removal of the words "size requirements" from § 172.514(c) clarifies that the 12 mm (0.47 inch) size requirement prescribed in § 172.301(a)(1) applicable to UN identification numbers does not also apply to the proper shipping name. The reduced minimum marking size will alleviate the existing discrepancy between §§ 172.514(c)(4) and 172.336(d) and decrease frustration of shipments by harmonizing with international regulations, thus ensuring IBCs marked in accordance with these regulations are consistent with the HMR.

Part 173

Section 173.4a

Section 173.4a prescribes the requirements for excepted quantities of hazardous materials. The excepted quantities provisions were added to the HMR under an international harmonization final rule published on January 14, 2009 [Docket Nos. PHMSA–2007–0065 (HM–224D) and PHMSA–2008–0005 (HM–215J); 74 FR 2254, effective February 13, 2009]. Excepted quantities provisions in § 173.4a are intended to be consistent with the existing exception in the ICAO TI. Paragraph (a) states that excepted quantities of materials other than articles transported in accordance with this section are not subject to any additional requirements of this subchapter except for. The language is unclear as to whether articles (including aerosols) may use the excepted quantities provisions. As a result, PHMSA is revising this paragraph to clarify that articles (including aerosols) are not eligible for excepted quantity reclassification under § 173.4a, although some aerosols are eligible to be shipped as small quantities by highway and rail in § 173.4. This will eliminate confusion as to the status of articles (including aerosols) in the context of this exception, while providing consistent language structure with Part 3, Chapter 5, Section 5.1 of the ICAO TI.

Section 173.24a

Section 173.24a prescribes additional general requirements for non-bulk packages. Paragraph (c)(1)(iv) provides the quantity limits for mixed contents packages (when multiple hazardous materials are packed within the same package) transported by aircraft. In this rulemaking, we are clarifying that the requirements provided in paragraph (c)(1)(iv) do not apply to limited quantity materials packaged in accordance with § 173.27(f)(2). This change is for clarification purposes only. Misapplication of § 173.24a(c)(1)(iv) would be duplicative and, in certain cases, would place unintended restrictions on the net quantity of hazardous materials per package.

Section 173.27

Section 173.27 prescribes general requirements for the transportation of hazardous material by aircraft. Paragraph (f)(2) contains the provisions for limited quantities but does not expressly address limited quantity packages of mixed contents. PHMSA received a request for a letter of interpretation (Ref. No. 13–0094) to clarify, for transportation by aircraft, the applicable section to reference. Specifically, the requester asked whether Table 3 in § 173.27(f)(3) or the general provisions in § 173.24a(c)(1)(iv) should be used when determining the maximum net quantity of each inner and outer packaging for limited quantity packages of mixed contents. In response, we stated that, as provided in § 173.27(f)(2), when a limited quantity of a hazardous material is packaged in a combination packaging and is intended for transportation aboard an aircraft, the inner and outer packagings must both conform to the quantity limitations set forth in Table 3, which provides the maximum net quantity of each inner and outer packaging for materials authorized for transportation as a limited quantity by aircraft. For mixed contents of limited quantities by air, the shipper must comply with the maximum authorized net quantity of each outer package (Column 4 of 5 in Table 3) and ensure that the total net quantity does not exceed the lowest permitted maximum net quantity per package as shown by hazard class or division for the hazardous materials in the mixed contents package.

In this rulemaking, we are revising § 173.27(f)(2)(i) to clarify that the maximum net quantity for limited quantity packages of mixed contents must conform to the quantity limitations provided in Table 3 of § 173.27(f)(3). PHMSA received one comment from UPS providing support for this revision.

Section 173.150

Section 173.150 provides exceptions for Class 3 (flammable and combustible liquid) hazardous materials. The requirements for combustible liquids in bulk packagings are found in § 173.150(f)(3). Although placarding under subpart F of part 172 is specified as a requirement in § 173.150(f)(3)(iv), registration requirements of § 107.601 are not included among the subject requirements. Given that § 173.150(f)(3) provides a list of subject requirements for combustible liquids in bulk packaging, PHMSA is revising this section through additions of a new subparagraph § 173.150(f)(3)(xi) stating that the registration requirements in subpart G of part 107 are also applicable, for bulk packagings only. PHMSA is also revising § 173.150(f)(3)(ix) and (x) for punctuation applicable to the listing of requirements. PHMSA received one comment from ACA providing support for the amendments as proposed.

Section 173.159

Section 173.159 prescribes requirements applicable to the transportation of electric storage batteries containing electrolyte acid or alkaline corrosive battery fluid (*i.e.*, wet batteries). This section outlines packaging requirements, exceptions for highway or rail transport, and tests that batteries must be capable of withstanding to be considered as non-spillable. However, there is no authorization to transport nor are there any requirements or instructions for shippers of damaged or leaking wet batteries on how to prepare these items for transport. PHMSA received a request for a letter of interpretation (Ref. No. 06–0031) to clarify whether a shipper of a damaged wet battery may utilize the exception from full regulation provided in § 173.159(e). In response, we stated that a damaged battery may be shipped in accordance with § 173.159(e) provided: (1) It has been drained of battery fluid to eliminate the potential for leakage during transportation; (2) it is repaired and/or packaged in such a manner that leakage of battery fluid is not likely to occur under conditions normally incident to transportation; or (3) the damaged or leaking battery is transported under the provisions of § 173.3(c).

PHMSA proposed adding a new paragraph (j) to § 173.159 to address this provision. However, a final rule published January 21, 2016 [Docket No. PHMSA–2013–0042 (HM–233F); 81 FR 3635] added a paragraph (j) to account for nickel cadmium batteries containing liquid potassium hydroxide. Therefore, all references to the previously proposed paragraph (j) will be to the new paragraph (k).

PHMSA received positive feedback from commenters with the ATA, the UPS, the USWAG, and Veolia voicing general support for this amendment. Veolia requested that "cargo vessel" be added as a mode of transportation; however, as this was not proposed and that inclusion would need an analysis from both PHMSA and the USCG, and we will not be authorizing vessel transportation in this final rule.

The Battery Council International (BCI) also commented on this provision. While they voiced strong support for the creation of a new paragraph to address damaged wet batteries, they had concerns that the proposed regulatory text was unclear, did not take into account the industry standard, and may inadvertently eliminate existing exceptions for wet batteries. To supplement their comments, a meeting was requested by representatives of BCI with PHMSA to clarify their comments. Notes from that August 11 meeting can be found in the docket for this rulemaking. The BCI's primary concern is that a different packaging method referenced in previous PHMSA letters of interpretation (Ref. Nos. 09–0227 and 06–0062) that utilizes leak-proof packaging in other than an intermediate/outer configuration (*i.e.*, single polyethylene bag) is absent from paragraph (j). BCI asserts that the single polyethylene bag method is sufficient to prevent leakage of the battery acid during transportation and that changing this standard industry practice will be highly disruptive, costly, and likely to result in considerable confusion. During the meeting, it emphasized that this was the predominant method of transporting damaged wet batteries by a vast majority of industry.

PHMSA agrees with BCI's concerns and it was not our intent to undo progress made to address safety concerns by industry and PHMSA in the past by not allowing for this packaging configuration. Therefore, we are amending paragraph (k) (*i.e.*, previously proposed paragraph (j)) to allow for this packing method. PHMSA believes that public safety would be better served by allowing the use of a method that is known and widely used by industry, that has a strong safety record for transporting damaged wet batteries, and on which affected hazmat employees are trained. The BCI further points out confusion in the proposed regulatory text in paragraphs (j)(2) and (3), stating that it is unclear how a shipper could comply with the packaging requirement in § 173.159(j)(2) without also complying with § 173.159(j)(3). PHMSA agrees with this comment; although, paragraphs (j)(2) and (3) are intended to be used in tandem, they currently appear to be separate conditions for transport. Therefore, we are amending the regulatory text to consolidate the previously proposed (j)(2) and (3) into one paragraph, now (k)(2). Lastly, BCI requests that clarification be added to ensure that there is no confusion that the batteries shipped under this paragraph are still eligible to be shipped using the exception found in § 173.159(e). PHMSA agrees. It was never our intent to prohibit the use of this exception, and it was an oversight

in the NPRM not to specify this. Therefore, we are including a provision to clarify the eligibility of damaged wet batteries for exception under paragraph (e) when transported in accordance with § 173.159(k).

PHMSA is adding a new paragraph (k) in § 173.159 to address the need for provisions that allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries for purposes of recycling. Note that in addition to the conditions listed in paragraph (k), damaged wet electric storage batteries must also meet requirements of § 173.159(a).

PHMSA is reinserting language into § 173.159(e)(4) of the HMR indicating that the transport vehicle may not carry material shipped by any person other than the shipper of the batteries. This language was inadvertently deleted from the HMR when PHMSA published a final rule titled "Hazardous Materials: Reverse Logistics" under Docket HM–253 (81 FR 18527; March 31, 2016). As revised by HM–253, § 173.159(e)(4) now states that a carrier may accept shipments of batteries from multiple locations for the purpose of consolidating shipments of batteries for recycling, which creates confusion in the context of the section. The intent of the HM–253 final rule was to allow carriers to consolidate shipments of batteries from multiple locations for the purpose of recycling. To correct this inadvertent deletion, in this final rule we are revising § 173.159(e)(4) by retaining the previous text and providing a clear exception when batteries are consolidated for recycling.

Section 173.166

Section 173.166 prescribes requirements applicable to the transportation of safety devices. In a final rule published on July 30, 2013 [Docket No. PHMSA–2010–0201 (HM–254); 78 FR 45880], PHMSA revised the requirements applicable to these materials. Among the changes made was the adoption of Special Permit DOT–SP 12332 into the HMR. This special permit excepted Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number (*i.e.*, the approval number) on the shipping paper.

Under § 173.166, paragraph (e)(6) authorizes packaging alternatives for air bag inflators, air bag modules, and seat-belt pretensioners that have been removed from, or were intended to be used in, a motor vehicle, as well as those devices that meet the requirements for use in the United States and are being transported to recycling or waste disposal facilities. When adopted in HM–254, a provision in § 173.166(e)(6) stated "for domestic transportation by highway," thereby limiting the use of this exception to ground transport, yet DOT–SP 12332 specifically permitted transport by "cargo vessel" as an authorized mode of transportation. For greater consistency with the special permit language adopted in HM–254, PHMSA is revising paragraph (e)(6) to add the words "or cargo vessel," and as a result, PHMSA received one comment from Veolia providing support for this revision. Veolia noted that this revision will remove the administrative burden from both PHMSA and the Special Permit holders necessary for maintaining the special permit.

Sections 173.170 and 173.171

Sections 173.170 and 173.171 prescribe exceptions for the transportation of black powder for small arms classed as a Division 1.1 explosive and the transportation of smokeless powder for small arms classed as a Division 1.3 or Division 1.4 explosive. These exceptions permit these materials to be reclassed as Division 4.1 flammable solid material for domestic transportation. In both sections, the total quantity of black or smokeless powder for small arms is limited to 45.4 kg (100 pounds) net mass in a motor vehicle (other modes are authorized as well). PHMSA believes the exception should be updated to account for modern highway transportation. Currently, the HMR defines "motor vehicle" in § 171.8 to include a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof. The use of the term in this exception limits a carrier with multiple trailers to 100 pounds total of black or smokeless powder, reclassed as Division 4.1. Carriers who commonly transport double- or triple-trailer loads by highway may find it difficult to ensure that each trailer contains an amount of black or smokeless powder, reclassed as Division 4.1 that would keep the total quantity in all trailers under 100 pounds.

PHMSA believes the term "motor vehicle" should be replaced with "transport vehicle" in the context of this exception and that doing so will not decrease the level of safety for the transport of these materials. The term "transport vehicle" is defined in § 171.8 as a cargo-carrying vehicle, such as an automobile, van, tractor, truck, semitrailer, tank car, or rail car, used for the transportation of cargo by any mode. Each cargo-carrying body (a trailer, a rail car, etc.) is a separate transport vehicle. Changing the term "motor vehicle" to "transport vehicle" would reflect a consistency in the ability to use exceptions for black or smokeless powder with the other modes, such as rail and vessel, whereby each rail car or freight container is permitted to have 100 pounds total.

In the NPRM, PHMSA solicited comment from stakeholders on this issue and requested any available data relating to incidents involving transport of black or smokeless powder for small arms reclassed as Division 4.1 by motor vehicle. PHMSA received four comments from ATA, DGAC, SAAMI, and UPS in support of this revision. The SAAMI, noted,, "[w]e are aware of no incidents involving transporting black or smokeless powder for small arms reclassed as Division 4.1 by motor vehicle. These products are subject to a testing regime to ensure that they meet the rigid requirements for transport as a flammable solid." Thus, in this final rule, PHMSA is revising §§ 173.170 and 173.171 as proposed in the January 23, 2015 NPRM to replace the term "motor vehicle" with "transport vehicle."

Section 173.199

Section 173.199 prescribes the packaging requirements for Category B infectious substances. Paragraph (a)(4) of this section requires that the packaging be capable of successfully passing the drop test in § 178.609(d) and the steel rod impact test in § 178.609(h) at a drop height of at least 1.2 meters (3.9 feet).

PHMSA received a request for a letter of interpretation (Ref. No. 07–0018) regarding the test requirements in § 173.199(a)(4). The request pointed out that in the preamble to the final rule published on June 2, 2006 [Docket No. PHMSA–2004–16895 (HM–226A); 71 FR 32244] states that Category B packagings must be capable of passing a drop test, but need not be capable of passing a puncture or other performance test. The requester asked if the regulatory text requiring the steel rod impact test for this packaging was an error.

As we clarified in our response, PHMSA did not intend to require the steel rod impact test in § 178.609(h) for a packaging used to transport a Category B infectious substance. Therefore, in this rulemaking, we are revising the provisions in § 173.199(a)(4) by removing the reference to the steel rod impact test in § 178.609(h).

Section 173.216

Section 173.216 establishes the transportation requirements for asbestos. Paragraph (c) of this section

provides packaging requirements for asbestos including both "bulk" and "non-bulk" packaging options.

PHMSA received a request for a letter of interpretation (Ref. No. 11–0169) regarding the applicability of bulk and non-bulk packaging instructions for asbestos. The letter expressed confusion regarding whether § 173.216 should apply to both "bulk" and "non-bulk" packages of asbestos, because as the requester noted in the letter, the § 172.101 HMT entry for "Asbestos," NA2212 refers to packaging instructions specified in § 173.216 for non-bulk packaging requirements and § 173.240 for bulk packaging requirements. It was also noted in the letter that some of the packaging options specified in § 173.216 are considered bulk packagings.

PHMSA acknowledged that some of the packaging options provided in § 173.216(c) meet the bulk packaging definition specified in § 171.8 and, therefore, would be considered a bulk packaging for transportation purposes. In this rulemaking, we are revising the bulk packaging section reference in Column (8C) of the HMT to add a reference to "216" for the table entries associated with the following identification numbers: NA2212, UN2212, and UN2590. This revision will: (1) Eliminate the confusion pertaining to authorized bulk packaging specifications contained in a section previously only referenced in the authorized non-bulk Column (8B) of HMT and (2) allow for the continued use of bulk packages in § 173.240.

Section 173.225

Section 173.225 contains the packaging requirements and other provisions applicable to the transportation of organic peroxides. Paragraph (d) of this section contains the Packing Method table, which provides packagings authorized for organic peroxides and the maximum quantity permitted in each package or packaging. The table is missing pertinent information, so PHMSA is revising the table to add a reference to Note 1 for OP2, which states that if two values are given, the first applies to the maximum net mass per inner packaging and the second to the maximum net mass of the complete package. Additionally, PHMSA is revising the maximum quantity for solids and combination packagings (liquid and solid) for OP4 to read as "5/25" kg instead of only "5."

Section 173.301

Section 173.301 applies to general requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles, and spherical pressure vessels. Paragraph (g) of this section describes the requirements to manifold cylinders in transportation. A manifold system is a single pipe or chamber connected to a group of cylinders, which allows for a single point of loading and unloading.

Incidents investigated by the NTSB have highlighted potential risks when transporting manifolded acetylene trailers.[3] These incidents included overturned vehicles and two unloading releases. As a result of the impact caused by ejection of the cylinders from the vehicle during overturn incidents, cylinders have shown signs of broken valves, burst heads, burst walls, as well as bulging and denting of the walls. The impact resulting from the ejection of the cylinders from the vehicle also can cause the valves to break, which may ignite the acetylene. The NTSB's investigation also concluded that the unloading sequence is occasionally done out of order from what is specified in the standard operating procedures and that this can be a contributing factor to incidents.

The NTSB has issued two Safety Recommendations[4] to PHMSA based on recent incidents involving manifolded acetylene trailers:

H–09–01: Modify 49 CFR 173.301 to clearly require (1) that cylinders be securely mounted on mobile acetylene trailers and other trailers with manifolded cylinders to reduce the likelihood of cylinders being ejected during an accident and (2) that the cylinder valves, piping, and fittings be protected from multidirectional impact forces that are likely to occur during highway accidents, including rollovers.

H–09–02: Require fail-safe equipment that ensures that operators of mobile acetylene trailers can perform unloading procedures only correctly and in sequence.

Given the results of the NTSB investigations, as well as the associated safety risks of mobile acetylene trailer overturns and unloading operations, PHMSA proposed in the NPRM to incorporate by reference in § 171.7 of the HMR the CGA G–1.6–2011, *Standard for Mobile Acetylene Trailer Systems,* Seventh Edition, copyright 2011. CGA G–1.6 would serve to address the NTSB Safety Recommendations specific to mobile acetylene trailers. This pamphlet was updated by the CGA with input from both PHMSA and the industry to address cylinder securement under accident conditions, valve protection from multidirectional impact forces, and unloading procedures specific to mobile acetylene trailers.

Specifically, PHMSA proposed to incorporate the CGA pamphlet into § 171.7 and to revise § 173.301(g)(1)(iii) to indicate that mobile acetylene trailers must be maintained, operated, and transported in accordance with CGA Pamphlet G–1.6. In addition, PHMSA sought specific comment on the inclusion of CGA Technical Bulletin (TB) TB–25 to address structural integrity requirements. PHMSA also proposed to revise § 177.840 by adding paragraph (a)(3) to state that cylinders containing acetylene and manifolded as part of a mobile acetylene trailer system must be transported in accordance with § 173.301(g) to ensure that this requirement is addressed in the carriage by highway portion of the HMR.

PHMSA received two comments on this provision. The CGA, who petitioned to incorporate by reference CGA Pamphlet G–1.6, stated continued support for the adoption of this provision. Additionally, they comment that TB–25 ought not to be included in the adopted regulations, stating that it would be incorrectly applied. TB–25 addresses tubes that are mounted horizontally on a trailer chassis whereas acetylene cylinders are required to be mounted vertically with individual valve protection. Thus, while tubes are permanently mounted onto a trailer chassis, acetylene cylinders are not permanently attached to the trailer to allow for periodic maintenance (*i.e.,* resolventing).

In its comment, the NTSB agrees with PHMSA's intent to address mobile acetylene trailers but states that CGA Pamphlet G–1.6 does not fully address accident impact protection from multidirectional forces that are likely to be encountered during highway accidents, including rollover. Additionally, they believe TB–25 should be included to address manifolded acetylene cylinders and state that a revision to TB–25 to include vertically-mounted, manifolded cylinders would provide a standard for accurate and verifiable performance testing, analytical methods, or a combination thereof, to prove the adequacy of mobile acetylene trailer designs in both normal operation and accident conditions. The NTSB also disagrees with PHMSA that the proposed changes address cylinder securement, vehicle accident impact, or rollover protection as recommended in Safety Recommendation H–09–01. Lastly, it states that CGA Pamphlet G–1.6 does not mandate operator

[3] *https://www.ntsb.gov/doclib/safetystudies/SIR0901.pdf.*

[4] *http://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/NTSB%20Files/H_09_1_2_Original.pdf.*

equipment that would require them to perform unloading procedures in the correct sequence and that it only requires that instructions are readily available to the operator.

PHMSA appreciates both CGA and NTSB's comments on this provision. We recognize NTSB's concerns regarding the nature of its recommendations and what was proposed in the NPRM. Its comments demonstrate that further examination of this issue regarding performance in accident conditions is necessary. While we cannot adopt additional provisions at this time as they are beyond the scope of this rulemaking, we will work with both the NTSB and the CGA to address remaining concerns and additional action may be taken in a future rulemaking. However, at this time PHMSA is adopting as proposed the incorporation by reference of CGA Pamphlet G–1.6.

Section 173.306

Section 173.306 provides exceptions from the HMR for compressed gases, including aerosols, when transported in limited quantities. In a final rule published May 14, 2010 [Docket No. PHMSA–2009–0289 (HM–233A); 75 FR 27205], PHMSA added a new paragraph (k) to § 173.306 adopting provisions from DOT–SP 12842. These provisions authorized an increase in gross weight per package for the purpose of packaging discarded empty, partially used, and full aerosol containers to be transported to a recycling or disposal facility.

PHMSA received a request for a letter of interpretation (Ref. No. 12–0004) seeking confirmation that aerosols shipped for disposal or recycling in compliance with § 173.306(k) are permitted the same exceptions (*i.e.*, the marking and labeling requirements of part 172, subparts D and E, respectively, and shipping paper requirements, unless it is a hazardous waste or hazardous substance, of part 172, subpart C) granted under §§ 173.306(i) and 173.156(b) without being reclassified as an ORM–D material. The requester also pointed out that under DOT–SP 12842, aerosols shipped for disposal or recycling were excepted from the marking, labeling, and shipping paper requirements, unless they were considered a hazardous waste or hazardous substance, without being reclassified as an ORM–D material.

In response to the NPRM, PHMSA received three comments on this proposed change. Two commenters, the USWAG and Veolia voiced general support for the revision. However, both Veolia and ACA noted a mistake in the preamble language of the NPRM and believe the applicable marking section referenced in the discussion was in error and should be § 172.315(a)—for modes other than air transport, not paragraph (b). Though, Veolia does note that the proposed revised text included by PHMSA in § 173.306(k)(3) is correct by referencing § 172.315(a). PHMSA appreciates the comment from Veolia and agrees that they are correct. Additionally, in its comment, ACA questions the need for the proposed marking requirement in § 173.306(k)(4) requiring that limited quantity packages containing aerosols for recycling or disposal conforming to the provisions of paragraph (a)(3), (a)(5), or (b)(1) must also be marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS" in addition to marking in accordance with § 172.315(a). The ACA commented that the "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS" marking is explicitly not required by § 173.306(i) and therefore an original (not for recycling or disposal) shipment of aerosols meeting the requirements of a limited quantity is not required to be marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS". The ACA contends that when an aerosol is ready for disposal or recycling it is presumably empty or less than full and that the risk is lower, and as such, it questions the need for this additional marking. The ACA commented that this situation is somewhat confusing and will likely lead to mistakes and in addition, will require shippers of aerosols to stock two different boxes or a roll of labels for the disposal or recycling shipments, incurring additional costs for very low-risk commodities.

PHMSA agrees that the proposed marking of packages with "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS" is not necessary, as the presence of a § 172.315(a) limited quantity mark on a package prepared in accordance with § 172.306(k) sufficiently communicates conformance with applicable requirements, and although PHMSA does not necessarily agree that the risk of empty or partially full aerosols is lower due to the much larger quantity authorized per package (*i.e.*, 500 kg gross) compared to the standard limitation of 30 kg gross, we believe the safety concern of the larger quantity is offset by the conditions of the exception in § 172.306(k), specifically, protecting or removing the valve stem of the aerosols and limiting carriage to private or contract carriers, or under exclusive use service by common carriers. The former protects against the release of contents and while the latter prevents introduction into common transportation channels where transport personnel do not have as much expertise and knowledge of the package and its contents. Therefore, in this rulemaking, we are revising § 173.306(k) by clarifying that aerosols shipped for recycling or disposal by motor vehicle, under the specific conditions provided in § 173.306(k), are afforded the applicable exceptions provided for ORM–D materials granted under §§ 173.306(i) and 173.156(b). In addition, § 173.306(k) packages must be marked in accordance with § 172.315(a).

Sections 173.314(h) and 173.315(b)(1)

Section 173.314 establishes requirements for compressed gases in tank cars and multi-unit tank cars, and § 173.315 establishes requirements for compressed gases in cargo tanks and portable tanks. PHMSA is aware of several incidents possibly attributed to either the under-odorization or odorant fade of LPG. Although not transportation related, most notable of these incidents is one that happened in Norfolk, MA on July 30, 2010, where an explosion occurred at a residential condominium complex that was under construction. Emergency responders from 21 cities and towns deployed personnel to the accident site. The accident resulted in seven injuries and one fatality.

The subsequent investigation raised questions as to whether there was a sufficient level of odorant in the LPG contained in the on-site storage tanks. In accordance with Federal and State laws and regulations, LPG intended for use by non-industrial entities is generally required to be odorized, or stenched, to enable the detection of any unintended release or leak of the gas. LPG is highly flammable, and is dangerous to inhale in large quantities; thus the addition of an odorant is a safety precaution that helps warn those in the area that a release of gas has occurred. In the Norfolk incident, there was no noticeable evidence of odorant that would indicate a leaking. PHMSA has consulted with stakeholders from industry, fire fighter associations, and other regulatory agencies in order to better understand the root cause of incidents like the one in Norfolk. Although additional research may be necessary in order to come to more definitive conclusions, PHMSA has identified the following situations in which the risks of under-odorization or odorant fade are more likely to occur:

Injection Process: On December 13, 2012, PHMSA met with representatives from the NPGA to gain a better understanding of the LPG odorization process. During this meeting, representatives from the NPGA stated that the most common method for the odorization of LPG is through an automated system. However, the NPGA also noted there are situations where the odorization process is manually performed. Preliminary investigations into the Norfolk, MA incident suggest that the lack of sufficient odorization rendered the LPG undetectable when the on-site storage tank began to leak. In situations where the injection process is not fully automated, the potential for human error may increase the possibility of under-odorization. We believe that the insufficient level of odorant in the LPG contained in the on-site storage tank involved in the Norfolk, MA incident was likely a major contributing factor in limiting the ability of on-site personnel to readily detect the leak.

New Tanks or Freshly Cleaned Tanks: During our meetings with various stakeholders, several indicated that a phenomenon known as "odor fade" may be a problem when new or recently cleaned tanks are used. New or recently cleaned tanks may absorb the odorant into the metal shell of these tanks leading to an "odorant fade," thus limiting the effectiveness of the remaining odorant in the LPG.

Odorization Standards: The odorization of LPG is addressed by Federal and State laws and regulations, as well as by generally accepted industry standards and practices. When offered and transported in commerce, the HMR specifies that all LPG in cargo and portable tanks be effectively odorized using either 1.0 pound of ethyl mercaptan, 1.0 pound of thiopane, or 1.4 pounds of amyl mercaptan per 10,000 gallons of LPG, in the event of an unintended release or leak to indicate the presence of gas. The HMR does not, however, require LPG to be odorized if odorization would be harmful in the use or further processing of the LPG, or if odorization will serve no useful purpose as a warning agent in such use or further processing. Essentially, this exception applies to LPG being transported to industrial end-users.

In response to the NPRM, PHMSA received comments from the Massachusetts Department of Fire Services, the NASFM, the NTSB, the IAFC, the NPGA, Trammo Inc., and the New Hampshire Office of the State Fire Marshall on the proposed odorization requirements. All of the commenters supported the development of an odorization standard for rail tank cars as it exists for cargo tanks and portable tanks. Additionally, support for qualitative testing to address under-odorization or odorant fade was voiced.

The Massachusetts Department of Fire Services generally support PHMSA's proposal to address odorization of LPG in both cylinders and rail cars, as well as the creation of a performance standard to address issues of under-odorization and odorant fade of LPG in transportation. They believe that the proposals could be strengthened in two ways: (1) Mandate qualitative testing equivalent to the Code of Massachusetts Regulations, which specifies the tests that can be used to satisfy this requirement; and (2) mandate recordkeeping requirements that can be made available upon request. Records should include: The process of odorization, testing and test results, and if necessary, remediation by injection of additional odorant. The odorization in cylinders is not being adopted as proposed. While PHMSA appreciates the prescriptive additional requirements for odorization offered in the comment from the Massachusetts Department of Fire Services we disagree with specifying the tests that can be used and requiring recordkeeping. These measures were not proposed in the NPRM and PHMSA sees specifying the tests as a limiting factor to addressing odorization qualitative testing. While we do not take issue with using the tests outlined in the Code of Massachusetts Regulations, we are not prescribing specific tests. In addition, the requirement for recordkeeping was not proposed in the NPRM, so obligatory paperwork burdens were not accounted for: PHMSA is required by Federal law to reduce the paperwork burdens it imposes on private citizens and businesses. Accordingly, we do not agree that the safety benefits achieved by requiring recordkeeping are justified. These comments by the Massachusetts Department of Fire Services were echoed by the NASFM, the IAFC, and the New Hampshire Office of the State Fire Marshall.

As discussed in the section referencing the Provisions Not Adopted in This Final Rule, the NPGA opposed an odorization testing requirement for cylinders and cargo tanks. Although PHMSA disagrees with NPGA that cargo tanks should be excluded from the requirements to address odorant fade or under-odorization, we agree with its comment that it should be addressed "upstream" in transportation. Therefore, we are only applying the revised text in § 173.315(b)(1) to cargo tanks and portable tanks being offered for transport from a refinery, gas plant, or pipeline terminal.

The NPGA also provided suggestions to improve the proposed § 173.314(h) language. It suggests deleting the references to thiophane and amyl mercaptan as these materials are no longer used as odorant in LPG. PHMSA agrees with this comment and will remove those references. Due to universal support by commenters for requiring an odorant performance standard as well as measures to address odorant fade and under-odorization in rail tank car tanks, we are adopting new § 173.314(h) provisions with minor changes.

Trammo Inc. generally supported the proposed changes, but expressed concern about the odorization requirements regarding exporting propane. They note that odorized propane cannot be shipped internationally because it may be sold for industrial purposes for which odorization may be harmful, and that a small specialized fleet of refrigerated gas carriers refuse to carry odorized products because of persistent cargo residue and contamination. Trammo Inc. notes that receiving odorized propane would have negative consequences for the company and its customers. PHMSA notes these concerns; however, PHMSA points out that §§ 173.314(h) and 173.315(b)(1) provide an exception that addresses this scenario indicating that odorization is not required if harmful in the use or further processing of the liquefied petroleum gas or if odorization will serve no useful purpose as a warning agent in such use or further processing. This exception would apply to the exportation and further distribution of liquefied propane gas internationally if it cannot be offered as odorized.

Part 175

Sections 175.1 and 175.9

Section 175.1 describes the purpose, scope, and applicability of part 175 to air operations, specifically, the transportation of hazardous materials in commerce by air. Section 175.9 provides exceptions from regulation under the HMR for certain special aircraft operations. Specifically, paragraph (b)(4) of § 175.9 excepts hazardous materials carried and used during dedicated air ambulance, firefighting, or search and rescue operations. To clarify that these operations are not subject to the HMR when in compliance with applicable Federal Aviation Regulations (FAR; 14 CFR) and any additional Federal Aviation Administration (FAA)

requirements, PHMSA is adding a new paragraph (d) in § 175.1 stating that the HMR does not apply to dedicated air ambulance, firefighting, or search and rescue operations. This will eliminate any confusion that these air operations would otherwise be subject to requirements in the HMR (*e.g.*, passenger notification requirements). PHMSA is also removing § 175.9(b)(4) for consistency.

As with other conditional exceptions to the HMR, non-compliance with the FAR could subject operators to enforcement under the HMR, but PHMSA does not anticipate any adverse safety consequences with this proposed revision due to the existing training requirements in the FAR on the proper handling and stowage of hazardous materials carried onboard aircraft.

The FAA and PHMSA recognize that certain operators do not solely utilize their aircraft for purposes under § 175.9(b)(4). Normal transport operations (*i.e.*, the transport of passengers or cargo not required for performance of, or associated with, the specialized emergency function) would continue to be subject to the HMR. However, staging operations and other operations related to dedicated air ambulance, firefighting, or search and rescue operations are intended to be excepted from the HMR when in compliance with the FAR. We note the following definitions in FAA Order 8900.1 (Vol. 3, Chapter 14, Section 1, 3–529(C)):

(1) Firefighting. This term includes the drop of fire retardants, water, and smoke jumpers. It also includes the transport of firefighters and equipment to a fire or to a base camp from which they would be dispersed to conduct the firefighting activities.

(2) Search and Rescue. Search and rescue is a term of art meaning aircraft operations that are flown to locate people who cannot be located from the ground. The term includes operations where the aircraft is indispensable to the search, or is the only feasible means of reaching the victim. Victims would be considered to be "associated with" the search and rescue operation. The term "search and rescue" does not include routine medical evacuation of persons due to traffic accidents and other similar incidents.

Air ambulance operators are required by the FAR to utilize either Operational Specification (OpSpec) A021 (Helicopter Emergency Medical Services (HEMS) Operations) or A024 (Air Ambulance Operations—Airplane) and must obtain and adhere to the appropriate OpSpec to be excepted from the HMR.

Section 175.8

Section 175.8 provides exceptions from certain regulations for air carrier operator equipment and items of replacement. Paragraph (b)(1) provides that oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with certain FAR (14 CFR) requirements is not subject to the requirements of the HMR. The provisions of the FAR, at § 125.219, Oxygen for medical use by passengers, was inadvertently left out of paragraph (b)(1). In this rulemaking, we are revising paragraph (b)(1) by adding the appropriate FAR, part 125 citation.

Section 175.10

Section 175.10 provides exceptions for passengers, crewmembers, and air operators. Paragraph (a) of this section lists a number of hazardous materials that are permitted for carriage by passengers or crewmembers provided the requirements of §§ 171.15 and 171.16 and the conditions of this section are met. PHMSA is proposing revisions to some of these provisions to promote clarity.

In paragraph (a)(6), hair curlers (curling irons) containing a hydrocarbon gas, such as butane, and carried in carry-on or checked baggage, are excepted from the requirements of the HMR. However, gas refills for such curlers are not permitted in carry-on or checked baggage. In this final rule, PHMSA is prohibiting such hair curlers in checked baggage due to the risk posed by flammable gases in an inaccessible compartment on a passenger-carrying aircraft. Flammable gases will burn if mixed with an appropriate amount of air and confined burning of a flammable gas can lead to detonation. As a result, we remain concerned with the flammability hazard posed by butane and other flammable gases and the ability of such gases to propagate or contribute to a fire in the cargo compartment of an aircraft. This concern is particularly relevant to carriage in checked baggage, where damage to the curling iron and the subsequent release of a flammable gas may occur if the baggage is mishandled or the article itself is compromised.

Because of the risks posed by flammable gas, a number of safety requirements apply to cargo shipments of flammable gas on passenger-carrying aircraft. Most Division 2.1 flammable gas substances and articles are generally forbidden from transportation as cargo aboard passenger-carrying aircraft, and PHMSA's prohibition of the carriage of butane-powered curling irons in checked baggage is consistent with this provision. In the area of aviation safety, where the high volume of travel and the catastrophic consequences of failure lead to a very low tolerance for risk, we firmly believe the known risks of flammable gas are sufficient basis for our decision. In the NPRM, we solicited public comment on any impact our proposed action may impose upon passengers, crew members, and air operators; however, PHMSA did not receive any comments.

In paragraph (a)(22) of this section, non-infectious specimens transported in accordance with § 173.4b(b) (de minimus quantities) are permitted for carriage by passengers or crewmembers. PHMSA is clarifying this exception to include the phrase "in preservative solutions" to clarify the intended use of this exception. Non-infectious substances would not be subject to the HMR if they did not otherwise meet the definition of any other hazard classes. This clarification signals that the exception refers to specimens in solutions that may contain preservatives that are hazardous materials, such as formaldehyde and alcohol solutions.

Additionally, PHMSA is revising paragraph (a)(24) of this section, which refers to small cartridges of carbon dioxide or other suitable gas of Division 2.2. The exception states that small cartridges fitted into devices with no more than four small cartridges are permitted. This is inconsistent with the ICAO TI, which permits cartridges for other devices indicating that spares are permitted. As § 175.10(a)(24) currently reads, there is no mention of spare cartridges. The HMR currently permits up to four small cartridges, and therefore, PHMSA is revising this paragraph to state that small cartridges fitted into or securely packed with devices with no more than four small cylinders of carbon dioxide or other suitable gas in Division 2.2 are permitted for carriage by passengers or crewmembers. This change harmonizes the exception with international standards to clarify that spares are permitted in addition to the cartridges already fitted into the device, provided they are securely packed with the devices for intended use.

Section 175.75

Section 175.75 describes the quantity limitations and cargo locations for carriage by aircraft. Paragraph (e)(2) excepts packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved

in writing by the FAA Regional or Field Security Office in the region where the operator is located, from the requirements of paragraphs (c) and (d) of § 175.75. PHMSA is revising this paragraph by removing the word "located" and replacing it with "certificated." The words "or Field Security" are also removed. This amendment ensures that operators interact with the Hazardous Materials Division Manager (HMDM) who has already reviewed and recommended for approval the certificate's hazmat-related manual(s) required under FAR § 121.135. The HMDM (or designee) will already have an understanding of the certificate's operations and, as needed, will interact with the local resources and/or the operator's certificate management team to assess the impracticability or lack of availability of other cargo operations—as well as what alternative procedures should be prescribed.

Part 176

Section 176.30

Section 176.30 prescribes the information required on dangerous cargo manifests for vessel transport. Paragraph (a)(4) requires "the number and description of packages (*e.g.*, barrels, drums, cylinders, boxes, etc.) and gross weight for each type of packaging." In this final rule, PHMSA is replacing the word "packaging" with "package," as the term "packaging" refers to the means of containment and not the completed package.

Part 177

Section 177.834

Section 177.834 establishes general operational requirements for hazardous materials transportation by highway. Section 177.934(i) prescribes attendance requirements for loading and unloading operations. In a final rule published on January 21, 2016 [Docket No. PHMSA–2013–0042 (HM–233F); 81 FR 3635], PHMSA codified DOT Special Permits 9874, 13190, 13424, 13959, 14141, 14150, 14680, 14822, 14827, and 14840 into § 177.834(i) that authorize "attendance" of the loading or unloading of a cargo tank by a qualified person observing all loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station. In the same final rule, PHMSA codified DOT Special Permits 13484 and 14447 also into § 177.834(i) that authorize "attendance" of the loading or unloading of a cargo tank through the use of hoses equipped with cable connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation. The SPs prescribe inspection requirements and operational controls for use of the hoses. In the final rule, however, PHMSA inadvertently omitted the word "or" between each of the four acceptable methods of determining compliance with the attendance requirements adopted by the codification of the 12 special permits. Thus, in this final rule, PHMSA is inserting the word "or" between each acceptable method in § 177.834(i) as proposed in the January 30, 2015 NPRM.

Section 177.848

Section 177.848 addresses segregation requirements for hazardous materials transported by motor carrier. PHMSA received a request for a letter of interpretation (Ref. No. 09–0268) requesting clarification whether "Boosters, 1.1D, UN0042, PG II" and "Ammonium nitrate, 5.1, UN1942, PG III" can be transported in the same vehicle. The requester noted seemingly conflicting requirements in §§ 177.835 and 177.848 applicable to the segregation of ammonium nitrate fertilizer and explosive materials.

Section 177.848(e) provides instructions for using the segregation table in § 177.848(d). Presently, under § 177.848(e)(5) assignment of note "A" authorizes ammonium nitrate (UN1942) and ammonium nitrate fertilizer to be loaded or stored with Division 1.1 or Division 1.5 (explosive) materials. However, § 177.835(c) provides that Division 1.1 or 1.2 (explosive) materials may not be loaded into or carried on any vehicle or a combination of vehicles under certain conditions outlined in paragraphs (c)(1) through (4). PHMSA clarified in the response letter that a Division 1.1 or 1.2 explosive may not be loaded into or carried on any vehicle or a combination of vehicles that does not conform to §§ 177.835(c)(1) through (4), regardless of the note "A" exception for UN1942 in § 177.848(e)(5). In this rulemaking, we are clarifying that the loading restrictions in § 177.835(c)(1) through (4) are applicable to § 177.848(e).

Part 178

Section 178.65

Section 178.65 applies to the manufacture of DOT Specification 39 non-reusable (non-refillable) cylinders. Paragraph (i) of this section describes the required markings for DOT 39 cylinders. The reference to § 178.35(h) in § 178.65(i)(1) is incorrect, as § 178.35(h) was removed under a final rule published July 20, 2011 [Docket No. PHMSA–2009–0151 (HM–218F); 76 FR 43509], which consolidated the inspector's report requirements found in § 178.35(g) into paragraph (c)(4) of that section, moved the manufacturer's report retention requirements into paragraph (g) and removed paragraph (h). In this final rule, PHMSA is revising § 178.65(i)(1) to correctly reference the manufacturer's report requirements in § 178.35(g).

Section 178.337–17

Section 178.337–17 prescribes the marking requirements applicable to MC 331 cargo tank motor vehicles. Paragraph (a) of this section outlines general requirements for marking of MC 331 cargo tank motor vehicles. PHMSA received a request for a letter of interpretation (Ref. No. 04–0206) to clarify the applicability of these markings in § 178.337–17(a). The request pointed out an incorrect use of the term cargo tank as it applies to the requirement for specification plates found in paragraph (a), which states that each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate) and specification plate permanently attached to the cargo tank by brazing, welding or other suitable means on the left side near the front, in a place accessible for inspection.

In response, we stated that an MC 331 cargo tank must have a metal name plate (also referred to as an ASME plate) permanently attached to the cargo tank. In addition, an MC 331 cargo tank motor vehicle certified after October 1, 2004, must have a specification plate that includes the information specified in § 178.337–17(c). In this final rule, PHMSA is revising § 178.337–17(a) to eliminate confusion of the name plate and specification plate requirements.

Section 178.345–3

Section 178.345–3 prescribes general requirements for the structural integrity of specification cargo tanks. Paragraph (c)(1) of this section addresses stress in the cargo tank shell resulting from normal operating loadings. PHMSA published a final rule on October 2, 2013 [Docket No. PHMSA–2013–0158 (HM–244F); 78 FR 60745; effective October 1, 2013] intending to correct the formula presented in paragraph (c)(1) for the figure "S_S2" to read "SS^2." This correction correctly adjusted the

standard "2" in the term to be a superscript "^{2}" but inadvertently adjusted the second "S" from a subscript "$_s$" to a standard "S." This is incorrect, and in this final rule, PHMSA is revising this portion of the formula in § 178.345–3(c)(1) to read "S_s^2".

Section 178.955

Section 178.955 prescribes the design and testing criteria for Large Packagings. Presently, if a manufacturer of a Large Packaging wishes to construct a Large Packaging that differs from a listed specification, there is no Associate Administrator approval provision outlined in the HMR. However, the HMR alludes to the need for an approval in the Large Packaging marking requirements in § 178.910(a)(1)(ii). The HMR have approval provisions in Part 178 for manufacturers of both non-bulk packagings and IBCs when constructing packagings that differ from listed specifications. In this rulemaking, we are proposing to include provisions consistent with the non-bulk packaging and IBC approval provisions for Large Packagings in § 178.955. Such Large Packagings must be shown to be equally as effective, and the testing methods used must be equivalent. This change resolves the issue with § 178.910(a)(1)(ii) and is consistent with both the UN Model Regulations and the IMDG Code, which prescribe approval provisions for non-bulk packagings, IBCs, and Large Packagings.

Part 179

Section 179.13

Section 179.13 includes limitations on rail tank car capacity and gross weight. With certain exceptions, this section generally limits the gross weight on rail of tank cars to 263,000 pounds. However, this section has been revised numerous times over the last several years. On January 13, 2009 [74 FR 1770], PHMSA added paragraph (b) to this section authorizing tank cars designed to transport poisonous-by-inhalation (PIH) materials and built with certain mandated safety improvements (tank cars meeting the specifications of § 173.244(a)(2) or (3) or § 173.314(c) or (d)) to have a gross weight on rail of up to 286,000 pounds provided any weight increase was not used to increase product capacity. Subsequently, in an effort to incorporate several widely used special permits providing relief from the gross weight limitations of § 179.13, PHMSA revised the section on May 14, 2010 [75 FR 27205], to provide FRA with the authority to approve the operation of tank cars containing materials other than PIH materials at gross weights of up to 286,000 pounds. FRA published notice of its approvals under this section on January 25, 2011 [76 FR 4250].

In 2011 [76 FR 51324; 51331], noting that the agency's stated intent in the 2010 rule was to incorporate into the HMR existing special permits related to tank car gross weight for tank cars carrying both non-PIH materials and PIH materials by giving FRA authority to approve tank car weights up to 286,000 pounds for both types of tank cars, PHMSA proposed to revise § 179.13 to correct the omission of PIH material tank cars from FRA's approval authority. However, when adopted as a final rule on June 25, 2012 [(HM–216B); 77 FR 37962; 37985], the regulatory language did not correct this inadvertent omission. Instead, in the final HM–216B rule, § 179.13 was revised to provide that tank cars designed to transport PIH materials and built with the required safety improvements set forth in § 173.244(a)(2) or (3) or § 173.314(c) or (d)) "may have a gross weight on rail of up to 286,000 pounds upon approval by the Associate Administrator for Railroad Safety, FRA."

As clearly demonstrated by the 2009 and 2010 rules, it was not the intent of either PHMSA or FRA to require FRA approval of tank cars built to the enhanced standards of §§ 173.244(a)(2) or (3) or 173.314(c) or (d) for those cars to operate at a gross rail load of 286,000 pounds. Accordingly, in this final rule PHMSA is revising § 179.13 to correct this error by (1) making it clear that tank cars containing PIH materials built to the enhanced standards of § 173.244(a)(2) or (3) or § 173.314(c) or (d) do not need FRA approval to operate at gross rail loads of up to 286,000 pounds and (2) providing for FRA approval of tank cars containing PIH materials that do not meet the enhanced standards to operate at gross rail loads of up to 286,000 pounds. PHMSA received one comment from The Chlorine Institute in support of this revision.

Part 180

Section 180.209

Section 180.209 prescribes requalification requirements for DOT specification cylinders. Paragraph (j) contains a reference to an obsolete special provision. In a January 7, 2013 final rule [Docket No. PHMSA–2009–0126 (HM–215K); 78 FR 1101], we removed and relocated regulatory text from § 172.102(c)(1) Special Provision 18 to § 173.309(a), which prescribes the conditions when specification cylinders may be described, offered, and transported in commerce as fire extinguishers. In relocating the text, PHMSA did not update this section to reflect the change. In this final rule, we are correcting this inconsistency by replacing the reference to § 172.102(c)(1) Special Provision 18 with § 173.309(a).

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

The Federal Hazardous Materials Transportation Law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." The Secretary delegated this authority to PHMSA in 49 CFR 1.97(b). If adopted as proposed, this final rule would make miscellaneous amendments to the HMR, correct errors in the § 172.101 HMT and corresponding special provisions, and respond to NTSB Safety Recommendations related to the safe transportation of manifolded acetylene cylinders.

Additionally, this final rule will respond to petitions for rulemaking related to the allowable format for emergency telephone numbers on shipping papers; relax the pressure test interval for certain cargo tanks in dedicated propane service; enhance the safe packaging for nitric acid; clarify the testing requirements for specification cargo tank pressure relief devices; harmonize the hazard communication requirements for poisonous-by-inhalation materials transported by vessel; and eliminate a potentially confusing packing group designation for certain organic peroxides, self-reactive materials, and explosives. These amendments clarify regulatory requirements and, where appropriate, decrease the regulatory burden without compromising the safe transportation of hazardous materials in commerce.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action within the meaning of Executive Order 12866 ("Regulatory Planning and Review") and the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034].

In this final rule, we amend miscellaneous provisions in the HMR for clarification and relaxation of overly burdensome requirements, with the intent of, thereby, increasing voluntary compliance while reducing compliance

costs. As a result, PHMSA anticipates the amendments contained in this rule will have economic benefits to the regulated community. Executive Order 13563 ("Improving Regulation and Regulatory Review") is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 ("Regulatory Planning and Review") of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

In this final rule, PHMSA has involved the public in the regulatory process in a variety of ways: Specifically, PHMSA is addressing issues and errors that were identified for future rulemaking both through letters of interpretation and other correspondence with PHMSA stakeholders who brought editorial errors in the HMR to our attention. In addition, PHMSA has responded to seven petitions for rulemaking and two NTSB Safety Recommendations. PHMSA asked for public comments based on the proposals in this NPRM, and upon receipt of public comment, PHMSA has addressed all substantive comments in this rulemaking action.

The amendments in the final rule promote simplification and harmonization through interagency coordination. In this final rule, PHMSA is revising 49 CFR part 175, in a collaborative effort with the Federal Aviation Administration (FAA), to: clarify the applicability of the HMR to certain aircraft operators, clarify exceptions for passengers and crewmembers, correct inaccurate references to title 14 of the CFR, and make minor editorial corrections applicable to air operations to improve overall clarity. There are minimal additional costs associated with these proposals; however, increased clarity will result in net benefits.

This final rule also promotes harmonization with international standards, such as the IMDG Code, Canada's TDG requirements, and the ICAO TI. These efforts include:

- Harmonizing hazard communication for poisonous-by-inhalation materials with the IMDG Code and TDG regulations;
- Removing the packing group II designation for certain organic peroxides, self-reactive substances, and explosives to be consistent with the UN Recommendations, IMDG Code, and ICAO TI, thus facilitating international transport;
- Harmonizing entries in the HMT with the above listed international standards;
- Revising the passenger exceptions applicable to small cartridges containing Division 2.2 gas with the ICAO TI;
- Harmonizing the excepted quantities requirements to mirror language employed in the ICAO TI as they apply to articles.

These revisions to the § 172.101 HMT will eliminate errors, reduce ambiguity, harmonize the HMR with international regulations, and improve clarity. Although these revisions are minor, they are expected to produce a safety benefit derived from the increased clarity and accuracy of the text in the § 172.101 HMT.

This final rule permits flexibility in achieving compliance when transporting damaged wet electric storage batteries; extends the requalification interval for certain MC 331 cargo tanks in dedicated propane service from five years to ten years for a pressure test and internal visual inspection, therefore, fostering greater regulatory flexibility without compromising transportation safety; clarifies the regulations to provide flexibility in the ability to use the "NOT-ODORIZED" or "NON-ODORIZED" marking on cargo tanks, cylinders, and portable tanks containing odorized or unodorized LPG. Additionally, by allowing 100 pounds of black or smokeless powder for small arms reclassed as Division 4.1 in each transport vehicle, instead of each motor vehicle, the regulated community can reduce the number of motor vehicles needed to transport these goods.

Where PHMSA identified potential costs to stakeholders, specific comment was requested to clarify such costs. We requested and responded to specific comments on potential cost impacts of the proposals in § 172.604.

A majority of the amendments in this rulemaking are simple clarifications and do not require significant scientific or technological information. However, when necessary in this final rule, PHMSA used scientific or technological information to support its regulatory action. Specifically, such data was considered when structuring alternatives on how to best deal with issues regarding the testing of pressure relief devices for cargo tank motor vehicles, as well as with issues regarding the extension of the pressure test and internal visual inspection test interval from five to ten years for certain MC 331 cargo tanks in dedicated propane delivery service. This information was used in the evaluation of alternative proposals, and ultimately this information determined how best to promote retrospective analysis to modify and streamline existing requirements that are outmoded, ineffective, insufficient, or excessively burdensome.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal Hazardous Material Transportation Law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are as follows:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials;

(v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This final rule concerns the classification, packaging, and handling of hazardous materials, among other covered subjects. If adopted, this rule would preempt any State, local, or Indian tribe requirements concerning

these subjects unless the non-Federal requirements are "substantively the same" (See 49 CFR 107.202(d) the Federal requirements.)

The Federal Hazardous Materials Transportation Law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be 90 days from publication of a final rule on this matter in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. In addition, the Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so while still meeting the objectives of applicable regulatory statutes. However, in the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

As this final rule would clarify provisions based on PHMSA's initiatives and correspondence with the regulated community, the impact that it will have on small entities is not expected to be significant. The changes are generally intended to provide relief and, as a result, marginal positive economic benefits to shippers, carriers, and packaging manufactures and testers, including small entities. These benefits are not at a level that can be considered economically significant. Consequently, this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's Procedures and Policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0557, entitled "Approvals for Hazardous Materials." This final rule does not make any changes that would affect the burden for this or any other information collection.

Prior to the publication of a final rule entitled "Hazardous Materials: Revisions to Fireworks Regulation" published in the **Federal Register** on July 6, 2013 [Docket No. PHMSA–2010–0320 (HM–257); 78 FR 42457], the HMR contained a requirement that all certification agencies provide a statement confirming that it would perform its functions independent of the owners and manufacturers of the packagings in its field. The burden for this requirement was accounted for under OMB Control Number 2137–0557. However, the HM–257 final rule inadvertently removed this language from the HMR. Therefore, in this final rule, PHMSA is reinserting the language for certification agencies to confirm that they are independent and not owned by a company in its field. For ease of the reader, this language is to be inserted as follows:

- PHMSA is revising § 107.402(f) to require that a portable tank and MEGC certification agency submit a statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor as part of the Portable tank and MECG Certification Agency application.
- PHMSA is revising § 107.402(e) to require that a lighter certification agency submit a statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship as part of the Lighter Certification Agency application.
- PHMSA is revising § 107.807 to require that a person who seeks to manufacture DOT specification cylinders and special permit cylinders, or perform chemical analysis and tests of those cylinders outside the United States submits a statement, as part of the application, indicating that the inspection agency is independent of and not owned by a cylinder manufacturer, owner, or distributor.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141,300,000 or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and it is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. In accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), which implement NEPA, an agency may prepare an Environmental Assessment (EA) when it does not anticipate that the final action will have significant environmental effects. They must consider the following: (1) The need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process (40 CFR 1508.9(b)).

1. Purpose and Need

The purpose of this final rule is to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by making miscellaneous revisions to update and clarify certain regulatory requirements, to respond to seven petitions for rulemaking submitted to PHMSA by various stakeholders, and to address two NTSB recommendations. These amendments, which were identified through an internal review of the HMR as well as in response to communications with various stakeholders, are intended to promote safety, regulatory relief, and clarity. This action is necessary in order to: (1) Fulfill

our statutory directive to promote transportation safety; (2) fulfill our statutory directive under the Administrative Procedure Act (APA) that requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)); (3) support governmental efforts to provide regulatory relief to the regulated community; (4) address safety concerns raised by the NTSB and remove regulatory ambiguity identified by the regulated community; and (5) simplify and clarify the regulations in order to promote understanding and compliance.

The intended effect of this action is to enhance the safe transportation of hazardous materials and, in conjunction, clarify, simplify, and relax certain regulatory requirements for carriers, shippers, and other stakeholders. These regulatory revisions will offer more efficient and effective ways of achieving safe and secure transportation of hazardous materials in commerce.

2. Alternatives

The alternatives considered in this Environmental Assessment include the following:

Alternative 1: No Action

Alternative 1 would not result in any rulemakings on this subject, leaving the current regulatory standards to remain in effect. As a result, this option would not address outstanding petitions for rulemaking or NTSB Safety Recommendations. While this alternative would not impose any new costs or change any environmental impacts, neither would it account for the outstanding petitions for rulemaking, NTSB Safety Recommendations, and regulatory concerns reviewed by PHMSA; thus, we have rejected the no action alternative.

Alternative 2: Go Forward With the Proposed Amendments to the HMR in This NPRM

Alternative 2 revises the HMR as proposed in the NPRM and, accounting for public comment, applies to transportation of hazardous materials by various modes (highway, rail, vessel and aircraft). The amendments encompassed in this alternative are more fully addressed in the preamble and regulatory text sections. However, they generally include the following changes to the HMR, grouped below for ease of discussion:

Incorporation by Reference and Use of International Standards:

- Remove the entry for CGA Publication C–1.1 in Table 1 to § 171.7.
- Incorporate by reference in § 171.7 CGA Publication G–1.6, *Standard for Mobile Acetylene Trailer Systems,* Seventh Edition (responds to petition P–1605 and two NTSB Safety Recommendations, H–09–01 and H–09–02).
- Amend § 171.7(k) to include §§ 179.24 and 180.503.
- Amend the marking requirements for poisonous-by-inhalation shipments transported in accordance with the IMDG Code or TDG Regulations (responds to petition for rulemaking P–1591).

§ 172.101 Hazardous Materials Table and § 172.102 Special Provisions:

- Remove the Packing Group (PG) II designation for certain organic peroxides, self-reactive substances and explosives (responds to petition for rulemaking P–1590).
- Revise the § 172.101 table to add Special Provision B120 to Column 7 for the entry "Calcium nitrate, UN1454."
- Revise the entry for "Propellant, solid, UN0501" to remove vessel stowage provision 24E from Column (10B) of the HMT.
- Revise the PG II HMT entry for "Corrosive liquids, flammable, n.o.s., UN2920," to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI by adding a reference to § 173.154 to Column (8A) of the HMT.
- Revise the entry for "Oxidizing solid, corrosive, n.o.s., UN3085, PG II" to harmonize the HMR with the UN Model Regulations, the IMDG Code, and the ICAO TI by adding a reference to § 173.152 to Column (8A) of the HMT.
- Revise the HMT entries for "Trinitrophenol (picric acid), wetted, with not less than 10 percent water by mass, UN3364" and "Trinitrophenol, wetted with not less than 30 percent water, by mass, UN1344" to harmonize the HMR with the UN Model Regulations, IMDG Code, and the ICAO TI to clarify that the 500 gram limit per package does not apply to UN1344 but does apply to UN3364.
- Revise Special Provision 136, for Dangerous goods in machinery or apparatus, in § 172.102 to include reference to Subpart G of Part 173.
- Remove the reference to obsolete Special Provision 18 in the HMT entry "Fire extinguishers, UN1044," and in § 180.209(j).

Hazard Communication (Marking, Labeling, Placarding, Emergency Response):

- Correct a reference in § 172.201 to exceptions for the requirement to provide an emergency response telephone number on a shipping paper.
- Revise §§ 172.301(f), 172.326(d), and 172.328(e) to include the clarification that the "NOT-ODORIZED" or "NON-ODORIZED" marking may appear on packagings used for both unodorized and odorized LPG, and remove the effective date of October 1, 2006, if it appears these paragraphs, as the effective date has passed.
- Amend § 172.406(d) by expressly authorizing the use of labels described in subpart E with a dotted or solid line outer border on a surface background of contrasting color.
- Amend the address in § 172.407(d)(4)(ii) to read Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 2nd Floor, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- Clarify the marking size requirements for an IBC that is labeled instead of placarded by replacing the bulk package marking reference in § 172.514(c) with the non-bulk marking reference, § 172.301(a)(1).
- Require that emergency response telephone numbers be displayed on shipping papers numerically (responds to petition for rulemaking P–1597).

Shipper Requirements:

- Revise § 173.4a(a) to clarify that articles (including aerosols) are not eligible for excepted quantity reclassification under § 173.4a, although some are eligible to be shipped as small quantities by highway and rail in § 173.4.
- Clarify that the requirements provided in paragraph § 173.24a(c)(1)(iv) do not apply to limited quantities packaged in accordance with § 173.27(f)(2).
- Clarify the quantity limits for mixed contents packages prepared in accordance with § 173.27(f)(2).
- Clarify the requirements applicable to bulk transportation of combustible liquids by adding § 173.150(f)(3)(xi) stating that the registration requirements in subpart G of part 107 is applicable and revising § 173.150(f)(3)(ix) and (x) for punctuation applicable to a listing of requirements.
- Require that certain shipments of nitric acid utilizing glass inner packagings be contained in intermediate packaging (responds to petition for rulemaking P–1601).
- Add a new paragraph (k) in § 173.159 to address the need for provisions that allow shippers to prepare for transport and offer into transportation damaged wet electric storage batteries.
- Revise § 173.166(e)(6) to add the words "or cargo vessel."

• Revise §§ 173.170 and 173.171 by changing the term "motor vehicle" to "transport vehicle" to allow for motor vehicles comprised of more than one cargo-carrying body to carry 100 pounds of black or smokeless powder reclassed as Division 4.1 in each cargo-carrying body instead of 100 pounds total in the motor vehicle.

• Revise the provisions in § 173.199(a)(4) by removing the reference to the steel rod impact test in § 178.609(h).

• Amend the bulk packaging section reference in Column (8C) of the HMT from § 173.240 to § 173.216 for the entries NA2212, UN2212, and UN2590. In addition, we are proposing to revise paragraph (c)(1) in § 173.216 by authorizing the use of bulk packages prescribed in § 173.240.

• Amend § 173.306(k) to clarify that aerosols shipped for recycling or disposal by motor vehicle containing a limited quantity are afforded the applicable exceptions provided for ORM–D materials granted under §§ 173.306(i) and 173.156(b).

Modal Requirements (Air, Vessel, and Highway):

• Create a new paragraph (d) in § 175.1, stating that this subchapter does not apply to dedicated air ambulance, firefighting, or search and rescue operations.

• Correct § 175.8 by adding the appropriate 14 CFR part 125 citations.

• Clarify exceptions for passengers, crewmembers, and air operators in paragraphs (a)(18), (22), and (24) of § 175.10.

• Clarify § 175.75(e)(2) by replacing the word "located" with "certificated."

• Clarify § 176.30(a)(4) by replacing the word "packaging" with "package."

• Clarify that the loading restrictions in § 177.835(c)(1) through (4) area applicable to § 177.848(e).

Packaging design and requalification:

• Clarify § 178.337–17(a) to eliminate confusion of the name plate and specification plate requirements.

• Correct an inadvertent editorial error in the formula in § 178.345–3(c)(1).

• Include provisions consistent with the non-bulk packaging and IBC approval provisions for Large Packagings in § 178.955.

• Extend the pressure test and internal visual inspection test interval to ten years for certain MC 331 cargo tanks in dedicated propane delivery service (responds to petition for rulemaking P–1604).

• Clarify the requirements applicable to the testing of pressure relief devices for cargo tank motor vehicles (responds to petition for rulemaking P–1609).

1. Probable Environmental Impacts of the Alternatives

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (*e.g.* wildlife habitats) and the contamination of air, aquatic environments, and soil.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the following: The risk of release of hazmat and resulting environmental impact; the risk to human safety, including any risk to first responders; the longevity of the packaging; and the circumstances in which the regulations would be carried out (*i.e.*, the defined geographic area, the resources, any sensitive areas) and how they could thus be impacted.

PHMSA has determined that most of the regulatory changes proposed in this rulemaking are editorial in nature. As such, these amendments have no impact on the risk of release and resulting environmental impact, human safety, longevity of the packaging, and none of these amendments would be carried out in a defined geographic area. General possible environmental benefits, and detriments, are discussed below.

Alternative 1

The no-action alternative would result in no changes. The current regulations would remain in place, and no new provisions would be added. However, this option would not address outstanding petitions for rulemaking, NTSB Safety Recommendations or consider amendments based on PHMSA's own initiatives intended to update, clarify, or provide relief from certain existing regulatory requirements. Foregone efficiencies in the Alternative 1 also include freeing up limited resources to concentrate on hazardous materials transportation issues of potentially much greater environmental impact.

Not adopting the proposed environmental and safety requirements in the final rule under the Alternative 1 would result in a lost opportunity for reducing environmental and safety-related incidents.

In addition, greenhouse gas emissions would remain the same under the Alternative 1.

Alternative 2

If PHMSA selects the provisions as amended in this final rule, we believe that safety and environmental risks would be reduced and that protections to human health and environmental resources would be increased.

Alternative 2 will enhance environmental protection through more targeted and effective training. This set of amendments will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. By maintaining consistency between these international regulations and the HMR, shippers and carriers are able to train their hazardous materials employees in a single set of requirements for classification, packaging, hazard communication, handling, and stowage, thereby minimizing the possibility of improperly preparing and transporting a shipment of hazardous materials because of differences between domestic and international regulations.

In addition, Alternative 2 will create more streamlined hazardous regulations, resulting in compliance training efforts which facilitate the regulated community's ability to comply with the HMR. Potential environmental impacts of each group of amendments in Alternative 2 (selected for this final rule) are discussed individually below:

Incorporation by Reference and Use of International Standards:

PHMSA believes that this set of amendments, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from origin to destination, and consistent emergency response in the event of a hazardous materials incident. Incorporation of the *CGA Publication G–1.6, Standard for Mobile Acetylene Trailer Systems,* will mitigate acetylene release and enhance environmental protection during overturn incidents and unloading.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

§ 172.101 Hazardous Materials Table and § 172.102 Special Provisions:

PHMSA believes that this set of amendments, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. As previously stated, consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident. New and revised entries to the HMT reflect emerging technologies and the need to better describe or differentiate between existing entries. These changes mirror those in the Dangerous Goods list of The 18th Revised Edition of the UN Model Regulations, the 2013–2014 ICAO TI and the 37–14 amendments to the IMDG Code. It is extremely important for the domestic HMR to mirror the UN Model Regulations, the ICAO TI, and the IMDG Code with respect to the entries in the HMT to ensure consistent naming conventions across modes and international borders.

The packing group assignment reflects a degree of danger associated with a particular material and identifies appropriate packaging. However, assignment of a packing group is not appropriate in all cases (*e.g.* explosives, gases, radioactive material). In such cases the packing group does not indicate a degree of danger, and the packaging requirements for those materials are specified in the appropriate section in part 173. The change to eliminate a packing group designation for materials classified as explosives and organic peroxides specifically listed in the HMT provides a level of consistency, without diminishing environmental protection and safety.

Current greenhouse gas emissions would be unaffected under this set of amendments.

Hazard Communication (Marking, Labeling, Placarding, Emergency Response):

PHMSA believes that this set of amendments, which will provide for enhanced hazard communication (hazcom), will result in greater protection of human health and the environment. The proposed changes communicate the nature of various specialized packaging configurations to package handlers and emergency responders. The amendments would ensure that hazard markings are visible, universally recognizable, and that they contain all information needed by emergency responders, thus resulting in fewer incidents with impacts to the environment and safety.

Similar to the above sets of amendments, PHMSA believes consistency between U.S. and international regulations enhances the safety and environmental protection of international hazardous materials transportation through better understanding of the regulations, an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and consistent emergency response in the event of a hazardous materials incident.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

Shipper Requirements:

PHMSA believes that this amendment, which will revise, clarify and enhance current regulations, will result in greater protection of human health and the environment. Shippers and transporters of hazardous materials will more easily be able to comply with the HMR through regulations that are easier to understand and more streamlined.

Specific to this set of amendments, improving the packaging requirements applicable to glass packages of nitric acid reduces the occurrences of fires caused by broken inner containers and enhances human health and environmental protection. PHMSA believes that the additional intermediate packaging required by this particular amendment will add another layer of protection in preventing breakage, leakage, and fires. Additionally, this particular amendment creates a more streamlined and efficient HMR through incorporation of a petition for rulemaking (P–1601), whic allows both regulators and the regulated community to target limited resources at the most pressing hazmat compliance issues.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

Modal Requirements (Air, Vessel, and Highway):

PHMSA believes that this amendment, which will revise, clarify, and enhance current regulations, will result in greater protection of human health and the environment. Air, vessel, and highway shippers and transporters of hazardous materials will more easily be able to comply with the HMR through regulations that are easier to understand and more streamlined. Additionally, the revisions include emphasis being placed in areas requiring more attention.

Current greenhouse gas emissions would be unaffected under this proposed set of amendments.

Packaging Design and Requalification:

PHMSA believes that this amendment, which will revise, clarify, and enhance current regulations, will result in greater protection of human health and the environment. Shippers and transporters of hazardous materials will more easily be able to comply with the HMR through regulations which are easier to understand and more streamlined. Additionally, the revisions include emphasis being placed in areas requiring more attention.

Specific to this set of amendments, decreasing the required frequency for pressure testing and visual inspection of certain cargo tanks in dedicated propane service by extending the requalification period from five years to ten years will ease the burden on regulators and the regulated community. This test, which requires significant equipment down-time and man-hours to perform, has been shown to achieve no additional safety or environmental protection when performed at a five- versus a ten-year interval. In addition, pressure testing requires a significant amount of water usage. Decreasing the testing frequency by half will result in significant volumes of water being conserved. Additionally, this particular amendment creates a more streamlined and efficient HMR through incorporation of a petition for rulemaking (P–1609). A more streamlined and efficient HMR allows both regulators and the regulated community to target limited resources at the most pressing hazmat compliance issues.

Current greenhouse gas emissions would be unaffected under these amendments.

1. Agencies Consulted

This final rule would affect some PHMSA stakeholders, including hazardous materials shippers and carriers by highway, rail, vessel, and aircraft, as well as package manufacturers and testers. PHMSA sought comment on the environmental assessment contained in the NPRM. In addition, PHMSA specifically coordinated with the following Federal agencies and modal partners:

- Department of Justice

- Environmental Protection Agency
- Health and Human Services
- Occupational Safety and Health Administration
- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

2. Conclusion

PHMSA is adopting miscellaneous amendments to the HMR based on comments from the regulated community, NTSB recommendations, and PHMSA's own rulemaking initiatives. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; facilitate international commerce; and make these requirements easier to understand. These clarifications of regulatory requirements will foster a greater level of compliance with the HMR and, thus, diminish levels of hazardous materials transportation incidents affecting the health and safety of the environment. Therefore, the net environmental impact of this proposal will be positive.

J. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*. The electronic form of these written communications and comments can be searched by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). The DOT's complete Privacy Act Statement is available at *http://www.dot.gov/privacy*.

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, establishing standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. This statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA notes the purpose is to ensure the safety of the American public and has assessed the effects of this rule to ensure that it does not exclude imports that meet this objective. As a result, this final rule is not considered as creating an unnecessary obstacle to foreign commerce.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Loading and unloading, Segregation and separation.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we amend 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; Pub. L. 112–141 section 33006; 49 CFR 1.81 and 1.97.

■ 2. In § 107.402, revise paragraphs (d)(1)(i), (e), and (f) to read as follows:

§ 107.402 Application for designation as a certification agency.

* * * * *

(d) * * *

(1) * * *

(i) Be a U.S. resident, or for a non-U.S. resident, have a designated U.S. agent representative as specified in § 105.40 of this subchapter;

* * * * *

(e) *Lighter certification agency.* Prior to examining and testing lighters (UN1057) for certification of compliance with the requirements of § 173.308 of this chapter a person must submit an application to, and be approved by, the Associate Administrator to act as a lighter certification agency. In addition to paragraph (b) of this section, the application must include the following information:

(1) The name and address of each facility where lighters are examined and tested;

(2) A detailed description of the applicant's qualifications and ability to, examine and test lighters and certify that the requirements specified by § 173.308 of this chapter have been met; and

(3) A statement that the agency is independent of and not owned by a lighter manufacturer, distributor, import or export company, or proprietorship.

(f) *Portable tank and MEGC certification agencies.* Prior to inspecting portable tanks or multi-element gas containers (MEGCs) for certification of compliance with the requirements of §§ 178.273 and 178.74 of this chapter, respectively, a person must submit an application to, and be approved by, the Associate Administrator to act as a certification agency. In addition to paragraph (b) of

this section, the application must provide the following information:

(1) The name and address of each facility where the portable tank or MEGC, as applicable, is examined and tested;

(2) A detailed description of the applicant's qualifications and ability to examine and test portable tanks or MEGCs, as applicable, and certify that the requirements specified by § 178.273 of this chapter for the approval of UN portable tanks, or § 178.74 of this chapter for the approval of MEGCs have been met; and

(3) A statement indicating that the agency is independent of and not owned by a portable tank or MEGC manufacturer, owner, or distributor.

■ 3. In § 107.807, revise paragraph (b)(3) to read as follows:

§ 107.807 Approval of non-domestic chemical analyses and tests.

* * * * *

(b) * * *

(3) The name of the independent inspection agency to be used to certify the analyses and tests and a statement from the agency indicating that it is independent of and not owned by a cylinder manufacturer, owner, or distributor; and

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410, section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 5. In § 171.7:

■ a. Revise paragraph (k)(1);

■ b. Redesignate paragraphs (n)(13) through (21) as paragraphs (n)(14) through (22), respectively, and add new paragraph (n)(13); and

■ c. In Table 1 to 49 CFR 171.7, remove the entry for "Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151" and the associated entry for document "CGA C–1.1, Personnel Training and Certification Guidelines for Cylinder Requalification By the Volumetric Expansion Method, 2004, First Edition".

The revision and addition read as follows:

§ 171.7 Reference material.

* * * * *

(k) * * *

(1) AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000, §§ 173.31; 179.6; 179.7; 179.15; 179.16; 179.20; 179.22; 179.24; 179.100–9; 179.100–10; 179.100–12; 179.100–13; 179.100–14; 179.100–18; 179.101–1; 179.102–1; 179.102–4; 179.102–17; 179.103–5; 179.200–7; 179.200–9; 179.200–10; 179.200–11; 179.200–13; 179.200–17; 179.200–22; 179.201–6; 179.220–6; 179.220–7; 179.220–10; 179.220–11; 179.220–14; 179.220–18; 179.220–26; 179.300–9; 179.300–10; 179.300–15; 179.300–17; 179.400–5; 179.400–6; 179.400–8; 179.400–11; 179.400–12; 179.400–15; 179.400–18; 179.400–20; 179.400–25; 180.503; 180.509; 180.513; 180.515; 180.517.

* * * * *

(n) * * *

(13) CGA G–1.6–2011, Standard for Mobile Acetylene Trailer Systems, Seventh Edition, copyright 2011, into § 173.301.

* * * * *

■ 6. In § 171.22, revise paragraph (f)(1) to read as follows:

§ 171.22 Authorization and conditions for the use of international standards and regulations.

* * * * *

(f) *Complete information and certification.* (1) Except for shipments into the United States from Canada conforming to § 171.12, each person importing a hazardous material into the United States must provide the shipper, and the forwarding agent at the place of entry into the United States, timely and complete written information as to the requirements of this subchapter applicable to the particular shipment.

* * * * *

■ 7. In § 171.23, paragraphs (b)(10)(iv)(A) and (B) are revised to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(b) * * *

(10) * * *

(iv) * * *

(A) For a package transported in accordance with the IMDG Code in a closed transport vehicle or freight container, a label or placard conforming to the IMDG Code specifications for a "Class 2.3" or "Class 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter.

(B) For a package transported in accordance with the Transport Canada TDG Regulations in a closed transport vehicle or freight container, a label or placard conforming to the TDG Regulations specifications for a "Class 2.3" or "Class 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter. While in transportation in the United States, the transport vehicle or freight container may also be placarded in accordance with the appropriate TDG Regulations in addition to being placarded with the POISON GAS or POISON INHALATION HAZARD placards.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 9. In § 172.101, the Hazardous Materials Table is amended by revising entries under "[REVISE]" in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

BILLING CODE 4910–60–P

§ 172.101 HAZARDOUS MATERIALS TABLE

Sym-bols	Hazardous materials descrip-tions and proper shipping names	Hazard class or division	Identi-fication Numbers	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air-craft only	Loca-tion	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*		*		*		*		*
	[REVISE]												
	*		*		*		*		*		*		*
D	Ammonium nitrate-fuel oil mixture containing only prilled ammonium nitrate and fuel oil	1.5D	NA0331		1.5D	148	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*		*		*		*		*		*
	Ammonium nitrate, with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance	1.1D	UN0222		1.1D	370	None	62	None	Forbidden	Forbidden	04	25, 19E
	*		*		*		*		*		*		*
	Ammonium perchlorate	1.1D	UN0402		1.1D	107	None	62	None	Forbidden	Forbidden	04	25, 19E
	*		*		*		*		*		*		*
	Ammonium picrate, dry or wetted with less than 10 percent water, by mass	1.1D	UN0004		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E, 19E
	*		*		*		*		*		*		*
	Ammunition, illuminating with or without burster, expelling charge or propelling charge	1.2G	UN0171		1.2G			62	62	Forbidden	Forbidden	03	25
	Ammunition, illuminating with or without burster, expelling charge or propelling charge	1.3G	UN0254		1.3G			62	62	Forbidden	Forbidden	03	25

	Ammunition, illuminating with or without burster, expelling charge or propelling charge	1.4G	UN0297		1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, incendiary liquid or gel, with burster, expelling charge or propelling charge	1.3J	UN0247		1.3J			62	None	Forbidden	Forbidden	05	25, 23E
	*		*		*		*		*		*		*
	Ammunition, incendiary, white phosphorus, with burster, expelling charge or propelling charge	1.2H	UN0243		1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, incendiary, white phosphorus, with burster, expelling charge or propelling charge	1.3H	UN0244		1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, incendiary with or without burster, expelling charge, or propelling charge	1.2G	UN0009		1.2G			62	62	Forbidden	Forbidden	03	25
	Ammunition, incendiary with or without burster, expelling charge, or propelling charge	1.3G	UN0010		1.3G			62	62	Forbidden	Forbidden	03	25
	Ammunition, incendiary with or without burster, expelling charge or propelling charge	1.4G	UN0300		1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, practice	1.4G	UN0362		1.4G			62	62	Forbidden	75 kg	02	25
	Ammunition, practice	1.3G	UN0488		1.3G			62	62	Forbidden	Forbidden	03	25
	Ammunition, proof	1.4G	UN0363		1.4G			62	62	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Ammunition smoke, white phosphorus with burster, expelling charge, or propelling charge	1.2H	UN0245		1.2H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, smoke, white phosphorus with burster, expelling charge, or propelling charge	1.3H	UN0246		1.3H			62	62	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	Ammunition, smoke with or without burster, expelling charge or propelling charge	1.2G	UN0015		1.2G			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, smoke with or without burster, expelling charge or propelling charge	1.3G	UN0016		1.3G			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, smoke with or without burster, expelling charge or propelling charge	1.4G	UN0303		1.4G			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
	*		*		*		*		*		*		*

	Ammunition, tear-producing with burster, expelling charge or propelling charge	1.2G	UN0018		1.2G, 8, 6.1			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, tear-producing with burster, expelling charge or propelling charge	1.3G	UN0019		1.3G, 8, 6.1			62	62	Forbidden	Forbidden	03	25, 17E
	Ammunition, tear-producing with burster, expelling charge or propelling charge	1.4G	UN0301		1.4G, 8, 6.1			62	62	Forbidden	75 kg	02	25, 14E, 15E, 17E
	*		*		*		*		*		*		*
G	Ammunition, toxic with burster, expelling charge, or propelling charge	1.2K	UN0020		1.2K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
G	Ammunition, toxic with burster, expelling charge, or propelling charge	1.3K	UN0021		1.3K, 6.1			62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	*		*		*		*		*		*		*
	Articles, explosive, extremely insensitive or Articles, EEI	1.6N	UN0486		1.6N		None	62	None	Forbidden	Forbidden	03	25
G	Articles, explosive, n.o.s.	1.4S	UN0349		1.4S	101, 148, 382	None	62	None	25 kg	100 kg	01	25
G	Articles, explosive, n.o.s.	1.4B	UN0350		1.4B	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s.	1.4C	UN0351		1.4C	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s.	1.4D	UN0352		1.4D	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s.	1.4G	UN0353		1.4G	101	None	62	None	Forbidden	75 kg	02	25
G	Articles, explosive, n.o.s.	1.1L	UN0354		1.1L	101	None	62	None	Forbidden	Forbidden	02	25, 14E, 15E
G	Articles, explosive, n.o.s.	1.2L	UN0355		1.2L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s.	1.3L	UN0356		1.3L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Articles, explosive, n.o.s.	1.1C	UN0462		1.1C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.1D	UN0463		1.1D	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.1E	UN0464		1.1E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.1F	UN0465		1.1F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s.	1.2C	UN0466		1.2C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.2D	UN0467		1.2D	101	None	62	None	Forbidden	Forbidden	04	25

G	Articles, explosive, n.o.s.	1.2E	UN0468		1.2E	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.2F	UN0469		1.2F	101	None	62	None	Forbidden	Forbidden	05	25
G	Articles, explosive, n.o.s.	1.3C	UN0470		1.3C	101	None	62	None	Forbidden	Forbidden	04	25
G	Articles, explosive, n.o.s.	1.4E	UN0471		1.4E	101	None	62	None	Forbidden	75 kg	03	25
G	Articles, explosive, n.o.s.	1.4F	UN0472		1.4F	101	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Articles, pyrophoric	1.2L	UN0380		1.2L		None	62	None	Forbidden	Forbidden	05	25, 14F, 15E, 17E
	Articles, pyrotechnic for technical purposes	1.1G	UN0428		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic for technical purposes	1.2G	UN0429		1.2G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic for technical purposes	1.3G	UN0430		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Articles, pyrotechnic for technical purposes	1.4G	UN0431		1.4G	381	None	62	None	Forbidden	75 kg	02	25
	Articles, pyrotechnic for technical purposes	1.4S	UN0432		1.4S		None	62	None	25 kg	100 kg	01	25
D	Asbestos	9	NA2212	III	9	156, IB8, IP2, IP4	155	216	216, 240	200 kg	200 kg	A	34, 40
G I	Asbestos, amphibole amosite, tremolite, actinolite, anthophyllite, or crocidolite	9	UN2212	II	9	156, IB8, IP2, IP4, T3, TP33	155	216	216, 240	Forbidden	Forbidden	A	34, 40
I	Asbestos, chrysotile	9	UN2590	III	9	156, IB8, IP2, IP3, T1, TP33	155	216	216, 240	200 kg	200 kg	A	34, 40
	*		*		*		*		*		*		*
	Barium azide, dry or wetted with less than 50 percent water, by mass	1.1A	UN0224		1.1A, 6.1	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Black powder, compressed or Gunpowder, compressed or Black powder, in pellets or Gunpowder, in pellets	1.1D	UN0028		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Black powder or Gunpowder, granular or as a meal	1.1D	UN0027		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Bombs, photo-flash	1.1F	UN0037		1.1F			62	None	Forbidden	Forbidden	05	25

	Bombs, photo-flash	1.1D	UN0038		1.1D			62	62	Forbidden	Forbidden	04	25
	Bombs, photo-flash	1.2G	UN0039		1.2G			62	62	Forbidden	Forbidden	03	25
	Bombs, photo-flash	1.3G	UN0299		1.3G			62	62	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Bombs, with bursting charge	1.1F	UN0033		1.1F			62	None	Forbidden	Forbidden	05	25
	Bombs, with bursting charge	1.1D	UN0034		1.1D			62	62	Forbidden	Forbidden	04	25
	Bombs, with bursting charge	1.2D	UN0035		1.2D			62	62	Forbidden	Forbidden	04	25
	Bombs, with bursting charge	1.2F	UN0291		1.2F			62	None	Forbidden	Forbidden	05	25
	Bombs with flammable liquid, with bursting charge	1.1J	UN0399		1.1J			62	None	Forbidden	Forbidden	05	25, 23E
	Bombs with flammable liquid, with bursting charge	1.2J	UN0400		1.2J			62	None	Forbidden	Forbidden	05	25, 23E
	Boosters with detonator	1.1B	UN0225		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Boosters with detonator	1.2B	UN0268		1.2B		None	62	None	Forbidden	Forbidden	05	25
	Boosters, without detonator	1.1D	UN0042		1.1D	148	None	62	None	Forbidden	Forbidden	04	25
	Boosters, without detonator	1.2D	UN0283		1.2D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Bursters, explosive	1.1D	UN0043		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Calcium nitrate	5.1	UN1454	III	5.1	34, B120, IB8, IP3, T1, TP33	152	213	240	25 kg	100 kg	A	
	*		*		*		*		*		*		*
	Cartridges, flash	1.1G	UN0049		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Cartridges, flash	1.3G	UN0050		1.3G		None	62	None	Forbidden	75 kg	03	25
	Cartridges for weapons, blank	1.1C	UN0326		1.1C		None	62	None	Forbidden	Forbidden	04	25

	Cartridges for weapons, blank	1.2C	UN0413		1.2C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, blank or Cartridges, small arms, blank	1.3C	UN0327		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, blank or Cartridges, small arms, blank	1.4C	UN0338		1.4C		None	62	None	Forbidden	75 kg	02	25
	Cartridges for weapons, blank or Cartridges, small arms, blank or Cartridges for tools, blank	1.4S	UN0014		None		63	62	None	25 kg	100 kg	01	25
	Cartridges for weapons, inert projectile	1.2C	UN0328		1.2C		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, inert projectile or Cartridges, small arms	1.4S	UN0012		None		63	62	None	25 kg	100 kg	01	25
	Cartridges for weapons, inert projectile or Cartridges, small arms	1.4C	UN0339		1.4C		None	62	None	Forbidden	75 kg	02	25
	Cartridges for weapons, inert projectile or Cartridges, small arms	1.3C	UN0417		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Cartridges for weapons, with bursting charge	1.1F	UN0005		1.1F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, with bursting charge	1.1E	UN0006		1.1E		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, with bursting charge	1.2F	UN0007		1.2F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, with bursting charge	1.2E	UN0321		1.2E		None	62	62	Forbidden	Forbidden	04	25
	Cartridges for weapons, with bursting charge	1.4F	UN0348		1.4F		None	62	None	Forbidden	Forbidden	05	25
	Cartridges for weapons, with bursting charge	1.4E	UN0412		1.4E		None	62	62	Forbidden	75 kg	03	25
	Cartridges, oil well	1.3C	UN0277		1.3C		None	62	62	Forbidden	Forbidden	04	25
	Cartridges, oil well	1.4C	UN0278		1.4C		None	62	62	Forbidden	75 kg	02	25
	Cartridges, power device	1.3C	UN0275		1.3C		None	62	62	Forbidden	75 kg	04	25
	Cartridges, power device	1.4C	UN0276		1.4C	110	None	62	62	Forbidden	75 kg	02	25
	Cartridges, power device	1.4S	UN0323		1.4S	110, 347	63	62	62	25 kg	100 kg	01	25
	Cartridges, power device	1.2C	UN0381		1.2C		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Cartridges, signal	1.3G	UN0054		1.3G		None	62	None	Forbidden	75 kg	03	25

	Cartridges, signal	1.4G	UN0312		1.4G		None	62	None	Forbidden	75 kg	02	25
	Cartridges, signal	1.4S	UN0405		1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Cases, cartridge, empty with primer	1.4S	UN0055		1.4S	50	63	62	None	25 kg	100 kg	01	25
	Cases, cartridges, empty with primer	1.4C	UN0379		1.4C	50	None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer	1.4C	UN0446		1.4C		None	62	None	Forbidden	75 kg	02	25
	Cases, combustible, empty, without primer	1.3C	UN0447		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Charges, bursting, plastics bonded	1.1D	UN0457		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded	1.2D	UN0458		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, bursting, plastics bonded	1.4D	UN0459		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, bursting, plastics bonded	1.4S	UN0460		1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, demolition	1.1D	UN0048		1.1D		None	62	62	Forbidden	Forbidden	04	25
	Charges, depth	1.1D	UN0056		1.1D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Charges, explosive, commercial without detonator	1.1D	UN0442		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial without detonator	1.2D	UN0443		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, explosive, commercial without detonator	1.4D	UN0444		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, explosive, commercial without detonator	1.4S	UN0445		1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, propelling	1.1C	UN0271		1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.3C	UN0272		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling	1.2C	UN0415		1.2C		None	62	None	Forbidden	Forbidden	04	25

	Charges, propelling	1.4C	UN0491		1.4C		None	62	None	Forbidden	75 kg	02	25
	Charges, propelling, for cannon	1.3C	UN0242		1.3C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon	1.1C	UN0279		1.1C		None	62	None	Forbidden	Forbidden	04	25
	Charges, propelling, for cannon	1.2C	UN0414		1.2C		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, flexible, linear	1.4D	UN0237		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, shaped, flexible, linear	1.1D	UN0288		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, without detonator	1.1D	UN0059		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, without detonator	1.2D	UN0439		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Charges, shaped, without detonator	1.4D	UN0440		1.4D		None	62	None	Forbidden	75 kg	02	25
	Charges, shaped, without detonator	1.4S	UN0441		1.4S	347	None	62	None	25 kg	100 kg	01	25
	Charges, supplementary explosive	1.1D	UN0060		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Coating solution (includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining)	3	UN1139	I	3	T11, TP1, TP8, TP27	150	201	243	1 L	30 L	E	
				II	3	149, IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B	
				III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
D G	Combustible liquid, n.o.s.	Comb liq	NA1993	III	None	148, IB3, T1, TP1	150	203	241	60 L	220 L	A	
G	Components, explosive train, n.o.s.	1.2B	UN0382		1.2B	101	None	62	None	Forbidden	Forbidden	05	25
G	Components, explosive train, n.o.s.	1.4B	UN0383		1.4B	101	None	62	None	Forbidden	75 kg	05	25
G	Components, explosive train, n.o.s.	1.4S	UN0384		1.4S	101	None	62	None	25 kg	100 kg	01	25
G	Components, explosive train, n.o.s.	1.1B	UN0461		1.1B	101	None	62	None	Forbidden	Forbidden	05	25

	*		*		*		*		*		*		*
D G	Compounds, cleaning liquid	8	NA1760	I	8	A7, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40
				II	8	386, B2, IB2, N37, T11, TP2, TP27	154	202	242	1 L	30 L	B	40
				III	8	386, IB3, N37, T7, TP1, TP28	154	203	241	5 L	60 L	A	40
	*		*		*		*		*		*		*
G	Contrivances, water-activated, with burster, expelling charge or propelling charge	1.2L	UN0248		1.2L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15F, 17E
G	Contrivances, water-activated, with burster, expelling charge or propelling charge	1.3L	UN0249		1.3L		None	62	None	Forbidden	Forbidden	05	25, 14E, 15E, 17E
	*		*		*		*		*		*		*
	Cord, detonating, flexible	1.1D	UN0065		1.1D	102, 148	63(a)	62	None	Forbidden	Forbidden	04	25
	Cord, detonating, flexible	1.4D	UN0289		1.4D	148	None	62	None	Forbidden	75 kg	02	25
	Cord detonating or Fuse detonating metal clad	1.2D	UN0102		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Cord, detonating or Fuse, detonating metal clad	1.1D	UN0290		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cord, detonating, mild effect or Fuse, detonating, mild effect metal clad	1.4D	UN0104		1.4D		None	62	None	Forbidden	75 kg	02	25
	Cord, igniter	1.4G	UN0066		1.4G		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
G	Corrosive liquids, flammable, n.o.s.	8	UN2920	I	8, 3	A6, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	C	25, 40
				II	8, 3	B2, IB2, T11, TP2, TP27	154	202	243	1 L	30 L	C	25, 40
G	Corrosive liquids, n.o.s	8	UN1760	I	8	A6, A7, B10, T14, TP2, TP27	None	201	243	0.5 L	2.5 L	B	40
				II	8	B2, IB2, T11, TP2, TP27	154	202	242	1 L	30 L	B	40
				III	8	IB3, T7, TP1, TP28	154	203	241	5 L	60 L	A	40
	*		*		*		*		*		*		*

	Cutters, cable, explosive	1.4S	UN0070		1.4S		None	62	62	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Cyclotetramethylenetetranitramine, desensitized or Octogen, desensitized or HMX, desensitized	1.1D	UN0484		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotetramethylenetetranitramine, wetted or HMX, wetted or Octogen, wetted with not less than 15 percent water, by mass	1.1D	UN0226		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Cyclotrimethylenetrinitramine, desensitized or Cyclonite, desensitized or Hexogen, desensitized or RDX, desensitized	1.1D	UN0483		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Cyclotrimethylenetrinitramine, wetted or Cyclonite, wetted or Hexogen, wetted or RDX, wetted with not less than 15 percent water by mass	1.1D	UN0072		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Deflagrating metal salts of aromatic nitroderivatives, n.o.s.	1.3C	UN0132		1.3C		None	62	None	Forbidden	Forbidden	04	25, 5L
	*		*		*		*		*		*		*
	Detonator assemblies, non-electric for blasting	1.1B	UN0360		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonator assemblies, non-electric, for blasting	1.4B	UN0361		1.4B	103, 148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonator assemblies, non-electric, for blasting	1.4S	UN0500		1.4S	148, 347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators, electric, for blasting	1.1B	UN0030		1.1B	148	63(f), 63(g)	62	None	Forbidden	Forbidden	05	25
	Detonators, electric, for blasting	1.4B	UN0255		1.4B	103, 148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, electric for blasting	1.4S	UN0456		1.4S	148, 347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	Detonators for ammunition	1.1B	UN0073		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition	1.2B	UN0364		1.2B		None	62	None	Forbidden	Forbidden	05	25
	Detonators for ammunition	1.4B	UN0365		1.4B	103	None	62	None	Forbidden	75 kg	05	25
	Detonators for ammunition	1.4S	UN0366		1.4S	347	None	62	None	25 kg	100 kg	01	25

	Detonators, non-electric, for blasting	1.1B	UN0029		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Detonators, non-electric, for blasting	1.4B	UN0267		1.4B	103	63(f), 63(g)	62	None	Forbidden	75 kg	05	25
	Detonators, non-electric, for blasting	1.4S	UN0455		1.4S	148, 347	63(f), 63(g)	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Diazodinitrophenol, wetted with not less than 40 percent water or mixture of alcohol and water, by mass	1.1A	UN0074		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Diethylenglycol dinitrate, desensitized with not less than 25 percent non-volatile water-insoluble phlegmatizer, by mass	1.1D	UN0075		1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*		*		*		*		*
	Dinitroglycoluril or Dingu	1.1D	UN0489		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Dinitrophenol, dry or wetted with less than 15 percent water, by mass	1.1D	UN0076		1.1D, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Dinitrophenolates alkali metals, dry or wetted with less than 15 percent water, by mass	1.3C	UN0077		1.3C, 6.1		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Dinitroresorcinol, dry or wetted with less than 15 percent water, by mass	1.1D	UN0078		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Dinitrosobenzene	1.3C	UN0406		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Dipicryl sulfide, dry or wetted with less than 10 percent water, by mass	1.1D	UN0401		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Explosive, blasting, type A	1.1D	UN0081		1.1D	148	None	62	None	Forbidden	Forbidden	04	25, 19E, 21E

	Explosive, blasting, type B	1.1D	UN0082		1.1D		None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type B or Agent blasting, Type B	1.5D	UN0331		1.5D	105, 106, 148	None	62	None	Forbidden	Forbidden	03	25, 19E
	Explosive, blasting, type C	1.1D	UN0083		1.1D	123	None	62	None	Forbidden	Forbidden	04	25, 22E
	Explosive, blasting, type D	1.1D	UN0084		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Explosive, blasting, type E	1.1D	UN0241		1.1D	148	None	62	None	Forbidden	Forbidden	04	25, 19E
	Explosive, blasting, type E or Agent blasting, Type E	1.5D	UN0332		1.5D	105, 106, 148	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*		*		*		*		*		*
	Fire extinguishers *containing compressed or liquefied gas*	2.2	UN1044		2.2	110	309	309	None	75 kg	150 kg	A	
	*		*		*		*		*		*		*
	Fireworks	1.1G	UN0333		1.1G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.2G	UN0334		1.2G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.3G	UN0335		1.3G	108	None	62	None	Forbidden	Forbidden	03	25
	Fireworks	1.4G	UN0336		1.4G	108, 200	None	62	None	Forbidden	75 kg	02	25
	Fireworks	1.4S	UN0337		1.4S	108	None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Flares, aerial	1.3G	UN0093		1.3G		None	62	None	Forbidden	75 kg	03	25
	Flares, aerial	1.4G	UN0403		1.4G		None	62	None	Forbidden	75 kg	02	25
	Flares, aerial	1.4S	UN0404		1.4S		None	62	None	25 kg	100 kg	01	25
	Flares, aerial	1.1G	UN0420		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flares, aerial	1.2G	UN0421		1.2G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Flares, surface	1.3G	UN0092		1.3G		None	62	None	Forbidden	75 kg	03	25

	Flares, surface	1.1G	UN0418		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flares, surface	1.2G	UN0419		1.2G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Flash powder	1.1G	UN0094		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Flash powder	1.3G	UN0305		1.3G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*
	Fracturing devices, explosive, without detonators for oil wells	1.1D	UN0099		1.1D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Fuse, igniter tubular metal clad	1.4G	UN0103		1.4G		None	62	None	Forbidden	75 kg	02	25
	Fuse, non-detonating instantaneous or quickmatch	1.3G	UN0101		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuse, safety	1.4S	UN0105		1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Fuzes, detonating	1.1B	UN0106		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.2B	UN0107		1.2B		None	62	None	Forbidden	Forbidden	05	25
	Fuzes, detonating	1.4B	UN0257		1.4B	116	None	62	None	Forbidden	75 kg	05	25
	Fuzes, detonating	1.4S	UN0367		1.4S	116	None	62	None	25 kg	100 kg	01	25
	Fuzes, detonating, with protective features	1.1D	UN0408		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, with protective features	1.2D	UN0409		1.2D		None	62	None	Forbidden	Forbidden	04	25
	Fuzes, detonating, with protective features	1.4D	UN0410		1.4D	116	None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.3G	UN0316		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Fuzes, igniting	1.4G	UN0317		1.4G		None	62	None	Forbidden	75 kg	02	25
	Fuzes, igniting	1.4S	UN0368		1.4S		None	62	None	25 kg	100 kg	01	25

	*		*		*		*		*		*		*
	Grenades, hand or rifle, with bursting charge	1.1D	UN0284		1.1D			62	None	Forbidden	Forbidden	04	25
	Grenades, hand or rifle, with bursting charge	1.2D	UN0285		1.2D			62	None	Forbidden	Forbidden	04	25
	Grenades, hand or rifle, with bursting charge	1.1F	UN0292		1.1F			62	None	Forbidden	Forbidden	05	25
	Grenades, hand or rifle, with bursting charge	1.2F	UN0293		1.2F			62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Grenades, practice, hand or rifle	1.4S	UN0110		1.4S			62	None	25 kg	100 kg	01	25
	Grenades, practice, hand or rifle	1.3G	UN0318		1.3G			62	None	Forbidden	Forbidden	03	25
	Grenades, practice, hand or rifle	1.2G	UN0372		1.2G			62	None	Forbidden	Forbidden	03	25
	Grenades practice, hand or rifle	1.4G	UN0452		1.4G			62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Guanyl nitrosaminoguanylidene hydrazine, wetted with not less than 30 percent water, by mass	1.1A	UN0113		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Guanyl nitrosaminoguanyltetrazene, wetted or Tetrazene, wetted with not less than 30 percent water or mixture of alcohol and water, by mass	1.1A	UN0114		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Hexanitrodiphenylamine or Dipicrylamine or Hexyl	1.1D	UN0079		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Hexanitrostilbene	1.1D	UN0392		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Hexolite, or Hexotol dry or wetted with less than 15 percent water, by mass	1.1D	UN0118		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Hexotonal	1.1D	UN0393		1.1D		None	62	None	Forbidden	Forbidden	04	25

	*		*		*		*		*		*		*
	Igniters	1.1G	UN0121		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Igniters	1.2G	UN0314		1.2G		None	62	None	Forbidden	Forbidden	03	25
	Igniters	1.3G	UN0315		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Igniters	1.4G	UN0325		1.4G		None	62	None	Forbidden	75 kg	02	25
	Igniters	1.4S	UN0454		1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
D	Jet perforating guns, charged oil well, with detonator	1.1D	NA0124		1.1D	55, 56	None	62	None	Forbidden	Forbidden	04	25
D	Jet perforating guns, charged oil well, with detonator	1.4D	NA0494		1.4D	55, 56	None	62	None	Forbidden	Forbidden	02	25
	Jet perforating guns, charged, oil well, without detonator	1.4D	UN0494		1.4D	55, 114	None	62	None	Forbidden	300 kg	02	25
	Jet perforating guns, charged oil well, without detonator	1.1D	UN0124		1.1D	55	None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Lead azide, wetted with not less than 20 percent water or mixture of alcohol and water, by mass	1.1A	UN0129		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Lead styphnate, wetted or Lead trinitroresorcinate, wetted with not less than 20 percent water or mixture of alcohol and water, by mass	1.1A	UN0130		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Lighters, fuse	1.4S	UN0131		1.4S		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Mannitol hexanitrate, wetted or Nitromannite, wetted with not less than 40 percent water, or mixture of alcohol and water, by mass	1.1D	UN0133		1.1D	121	None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*

	5-Mercaptotetrazol-1-acetic acid	1.4C	UN0448		1.4C		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Mercury fulminate, wetted with not less than 20 percent water, or mixture of alcohol and water, by mass	1.1A	UN0135		1.1A	111, 117	None	62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
	Mines with bursting charge	1.1F	UN0136		1.1F			62	None	Forbidden	Forbidden	05	25
	Mines with bursting charge	1.1D	UN0137		1.1D			62	62	Forbidden	Forbidden	04	25
	Mines with bursting charge	1.2D	UN0138		1.2D			62	62	Forbidden	Forbidden	04	25
	Mines with bursting charge	1.2F	UN0294		1.2F			62	None	Forbidden	Forbidden	05	25
	*		*		*		*		*		*		*
D	Model rocket motor	1.4C	NA0276		1.4C	51	None	62	None	Forbidden	75 kg	02	25
D	Model rocket motor	1.4S	NA0323		1.4S	51	None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Nitro urea	1.1D	UN0147		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	5-Nitrobenzotriazol	1.1D	UN0385		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrocellulose, dry or wetted with less than 25 percent water (or alcohol), by mass	1.1D	UN0340		1.1D		None	62	None	Forbidden	Forbidden	04	25, 27E
	*		*		*		*		*		*		*
	Nitrocellulose, plasticized with not less than 18 percent plasticizing substance, by mass	1.3C	UN0343		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrocellulose, unmodified or plasticized with less than 18 percent plasticizing substance, by mass	1.1D	UN0341		1.1D		None	62	None	Forbidden	Forbidden	04	25, 27L

	Nitrocellulose, wetted with not less than 25 percent alcohol, by mass	1.3C	UN0342		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitroglycerin, desensitized with not less than 40 percent non-volatile water insoluble phlegmatizer, by mass	1.1D	UN0143		1.1D, 6.1	125	None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*		*		*		*		*
	Nitroglycerin, solution in alcohol, with more than 1 percent but not more than 10 percent nitroglycerin	1.1D	UN0144		1.1D		None	62	None	Forbidden	Forbidden	04	25, 21E
	*		*		*		*		*		*		*
	Nitroguanidine or Picrite, dry or wetted with less than 20 percent water, by mass	1.1D	UN0282		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrostarch, dry or wetted with less than 20 percent water, by mass	1.1D	UN0146		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Nitrotriazolone or NTO	1.1D	UN0490		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Octolite or Octol, dry or wetted with less than 15 percent water, by mass	1.1D	UN0266		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
G	Organic peroxide type B, liquid	5.2	UN3101		5.2, 1	53	152	225	None	Forbidden	Forbidden	D	12, 25, 52, 53
G	Organic peroxide type B, liquid, temperature controlled	5.2	UN3111		5.2, 1	53	None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type B, solid	5.2	UN3102		5.2, 1	53	152	225	None	Forbidden	Forbidden	D	12, 25, 52, 53
G	Organic peroxide type B, solid, temperature controlled	5.2	UN3112		5.2, 1	53	None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type C, liquid	5.2	UN3103		5.2		152	225	None	5 L	10 L	D	12, 25, 52, 53
G	Organic peroxide type C, liquid, temperature controlled	5.2	UN3113		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type C, solid	5.2	UN3104		5.2		152	225	None	5 kg	10 kg	D	12, 25, 52, 53

G	Organic peroxide type C, solid, temperature controlled	5.2	UN3114		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type D, liquid	5.2	UN3105		5.2		152	225	None	5 L	10 L	D	12, 25, 52, 53
G	Organic peroxide type D, liquid, temperature controlled	5.2	UN3115		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type D, solid	5.2	UN3106		5.2		152	225	None	5 kg	10 kg	D	12, 25, 52, 53
G	Organic peroxide type D, solid, temperature controlled	5.2	UN3116		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type E, liquid	5.2	UN3107		5.2	A61	152	225	None	10 L	25 L	D	12, 25, 52, 53
G	Organic peroxide type E, liquid, temperature controlled	5.2	UN3117		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type E, solid	5.2	UN3108		5.2		152	225	None	10 kg	25 kg	D	12, 25, 52, 53
G	Organic peroxide type E, solid, temperature controlled	5.2	UN3118		5.2		None	225	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type F, liquid	5.2	UN3109		5.2	A61, IP5	152	225	225	10 L	25 L	D	12, 25, 52, 53
G	Organic peroxide type F, liquid, temperature controlled	5.2	UN3119		5.2	IP5	None	225	225	Forbidden	Forbidden	D	2, 25, 52, 53
G	Organic peroxide type F, solid	5.2	UN3110		5.2	TP33	152	225	225	10 kg	25 kg	D	12, 25, 52, 53
G	Organic peroxide type F, solid, temperature controlled	5.2	UN3120		5.2	TP33	None	225	225	Forbidden	Forbidden	D	2, 25, 52, 53
	*		*		*		*		*		*		*
	Pentaerythrite tetranitrate or Pentaerythritol tetranitrate or PETN, with not less than 7 percent wax by mass	1.1D	UN0411		1.1D	I20	None	62	None	Forbidden	Forbidden	04	25
	Pentaerythrite tetranitrate, wetted or Pentaerythritol tetranitrate, wetted, or PETN, wetted with not less than 25 percent water, by mass, or Pentaerythrite tetranitrate, or Pentaerythritol tetranitrate or PETN, desensitized with not less than 15 percent phlegmatizer by mass	1.1D	UN0150		1.1D	I21	None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Pentolite, dry or wetted with less than 15 percent water, by mass	1.1D	UN0151		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Potassium	4.3	UN2257	I	4.3	A7, A19, A20, B27, IB4, IP1,	151	211	244	Forbidden	15 kg	D	13, 52, 148

						N6, N34, T9, TP7, TP33							
	*		*		*		*		*		*		*
	Powder cake, wetted or Powder paste, wetted with not less than 17 percent alcohol by mass	1.1C	UN0433		1.1C		None	62	None	Forbidden	Forbidden	04	25
	Powder cake, wetted or Powder paste, wetted with not less than 25 percent water, by mass	1.3C	UN0159		1.3C		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Powder, smokeless	1.1C	UN0160		1.1C		None	62	None	Forbidden	Forbidden	04	25, 26E
	Powder, smokeless	1.3C	UN0161		1.3C		None	62	None	Forbidden	Forbidden	04	25, 26E
	Powder, smokeless	1.4C	UN0509		1.4C	16	171	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Primers, cap type	1.4S	UN0044		None		None	62	None	25 kg	100 kg	01	25
	Primers, cap type	1.1B	UN0377		1.1B		None	62	None	Forbidden	Forbidden	05	25
	Primers, cap type	1.4B	UN0378		1.4B		None	62	None	Forbidden	75 kg	05	25
	*		*		*		*		*		*		*
	Primers, tubular	1.3G	UN0319		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Primers, tubular	1.4G	UN0320		1.4G		None	62	None	Forbidden	75 kg	02	25
	Primers, tubular	1.4S	UN0376		None		None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Printing ink, flammable or Printing ink related material (including printing ink thinning or reducing compound), flammable	3	UN1210	I	3	367, T11, TP1, TP8	150	173	243	1 L	30 L	E	
				II	3	149, 367, IB3, IB2, T4, TP1, TP8	150	173	242	5 L	60 L	B	
				III	3	367, B1, IB3, T2, TP1	150	173	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Projectiles, inert with tracer	1.4S	UN0345		1.4S			62	62	25 kg	100 kg	01	25
	Projectiles, inert, with tracer	1.3G	UN0424		1.3G			62	62	Forbidden	Forbidden	03	25
	Projectiles, inert, with tracer	1.4G	UN0425		1.4G			62	62	Forbidden	75 kg	02	25
	Projectiles, with burster or expelling charge	1.2D	UN0346		1.2D			62	62	Forbidden	Forbidden	04	25

	Projectiles, with burster or expelling charge	1.4D	UN0347		1.4D			62	62	Forbidden	75 kg	02	25
	Projectiles, with burster or expelling charge	1.2F	UN0426		1.2F			62	None	Forbidden	Forbidden	05	25
	Projectiles, with burster or expelling charge	1.4F	UN0427		1.4F			62	None	Forbidden	Forbidden	05	25
	Projectiles, with burster or expelling charge	1.2G	UN0434		1.2G			62	62	Forbidden	Forbidden	03	25
	Projectiles, with burster or expelling charge	1.4G	UN0435		1.4G			62	62	Forbidden	75 kg	02	25
	Projectiles, with bursting charge	1.1F	UN0167		1.1F			62	None	Forbidden	Forbidden	05	25
	Projectiles, with bursting charge	1.1D	UN0168		1.1D			62	62	Forbidden	Forbidden	04	25
	Projectiles, with bursting charge	1.2D	UN0169		1.2D			62	62	Forbidden	Forbidden	04	25
	Projectiles, with bursting charge	1.2F	UN0324		1.2F			62	None	Forbidden	Forbidden	05	25
	Projectiles, with bursting charge	1.4D	UN0344		1.4D			62	62	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Propellant, liquid	1.3C	UN0495		1.3C	37	None	62	None	Forbidden	Forbidden	04	25
	Propellant, liquid	1.1C	UN0497		1.1C	37	None	62	None	Forbidden	Forbidden	04	25
	Propellant, solid	1.1C	UN0498		1.1C		None	62	None	Forbidden	Forbidden	04	25, 26E
	Propellant, solid	1.3C	UN0499		1.3C		None	62	None	Forbidden	Forbidden	04	25, 26F
	Propellant, solid	1.4C	UN0501		1.4C		None	62	None	Forbidden	Forbidden	02	25
	*		*		*		*		*		*		*
	RDX and HMX mixtures, wetted with not less than 15 percent water by mass or RDX and HMX mixtures, desensitized with not less than 10 percent phlegmatizer by mass	1.1D	UN0391		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Release devices, explosive	1.4S	UN0173		1.4S		None	62	62	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Rivets, explosive	1.4S	UN0174		1.4S		None	62	62	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Rocket motors	1.3C	UN0186		1.3C	109	None	62	62	Forbidden	220 kg	04	25
	Rocket motors	1.1C	UN0280		1.1C	109	None	62	62	Forbidden	Forbidden	04	25
	Rocket motors	1.2C	UN0281		1.2C	109	None	62	62	Forbidden	Forbidden	04	25

	Rocket motors, liquid fueled	1.2J	UN0395		1.2J	109	None	62	None	Forbidden	Forbidden	05	25, 23E
	Rocket motors, liquid fueled	1.3J	UN0396		1.3J	109	None	62	None	Forbidden	Forbidden	05	25, 23E
	Rocket motors with hypergolic liquids with or without an expelling charge	1.3L	UN0250		1.3L	109	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
	Rocket motors with hypergolic liquids with or without an expelling charge	1.2L	UN0322		1.2L	109	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
	Rockets, line-throwing	1.2G	UN0238		1.2G		None	62	None	Forbidden	Forbidden	03	25
	Rockets, line-throwing	1.3G	UN0240		1.3G		None	62	None	Forbidden	75 kg	03	25
	Rockets, line-throwing	1.4G	UN0453		1.4G		None	62	None	Forbidden	75 kg	02	25
	Rockets, liquid fueled with bursting charge	1.1J	UN0397		1.1J		None	62	None	Forbidden	Forbidden	05	25, 23E
	Rockets, liquid fueled with bursting charge	1.2J	UN0398		1.2J		None	62	None	Forbidden	Forbidden	05	25, 23E
	Rockets, with bursting charge	1.1F	UN0180		1.1F		None	62	None	Forbidden	Forbidden	05	25
	Rockets, with bursting charge	1.1E	UN0181		1.1E		None	62	62	Forbidden	Forbidden	04	25
	Rockets, with bursting charge	1.2E	UN0182		1.2E		None	62	62	Forbidden	Forbidden	04	25
	Rockets, with bursting charge	1.2F	UN0295		1.2F		None	62	None	Forbidden	Forbidden	05	25
	Rockets, with expelling charge	1.2C	UN0436		1.2C		None	62	62	Forbidden	Forbidden	04	25
	Rockets, with expelling charge	1.3C	UN0437		1.3C		None	62	62	Forbidden	Forbidden	04	25
	Rockets, with expelling charge	1.4C	UN0438		1.4C		None	62	62	Forbidden	75 kg	02	25
	Rockets, with inert head	1.3C	UN0183		1.3C		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
G	Self-heating solid, organic, n.o.s.	4.2	UN3088	II	4.2	IB6, IP2, T3, TP33	None	212	241	15 kg	50 kg	C	
				III	4.2	B116, B130, IB8, IP3, T1, TP33	None	213	241	25 kg	100 kg	C	
	*		*		*		*		*		*		
G	Self-reactive liquid type B	4.1	UN3221		4.1	53	151	224	None	Forbidden	Forbidden	D	25, 52, 53, 127
G	Self-reactive liquid type B, temperature controlled	4.1	UN3231		4.1	53	None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive liquid type C	4.1	UN3223		4.1		151	224	None	5 L	10 L	D	25, 52, 53
G	Self-reactive liquid type C, temperature controlled	4.1	UN3233		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive liquid type D	4.1	UN3225		4.1		151	224	None	5 L	10 L	D	25, 52, 53
G	Self-reactive liquid type D, temperature controlled	4.1	UN3235		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53

G	Self-reactive liquid type E	4.1	UN3227		4.1		151	224	None	10 L	25 L	D	25, 52, 53
G	Self-reactive liquid type E, temperature controlled	4.1	UN3237		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive liquid type F	4.1	UN3229		4.1		151	224	None	10 L	25 L	D	25, 52, 53
G	Self-reactive liquid type F, temperature controlled	4.1	UN3239		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type B	4.1	UN3222		4.1	53	151	224	None	Forbidden	Forbidden	D	25, 52, 53, 127
G	Self-reactive solid type B, temperature controlled	4.1	UN3232		4.1	53	None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type C	4.1	UN3224		4.1		151	224	None	5 kg	10 kg	D	25, 52, 53
G	Self-reactive solid type C, temperature controlled	4.1	UN3234		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type D	4.1	UN3226		4.1		151	224	None	5 kg	10 kg	D	25, 52, 53
G	Self-reactive solid type D, temperature controlled	4.1	UN3236		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type E	4.1	UN3228		4.1		151	224	None	10 kg	25 kg	D	25, 52, 53
G	Self-reactive solid type E, temperature controlled	4.1	UN3238		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
G	Self-reactive solid type F	4.1	UN3230		4.1		151	224	None	10 kg	25 kg	D	25, 52, 53
G	Self-reactive solid type F, temperature controlled	4.1	UN3240		4.1		None	224	None	Forbidden	Forbidden	D	2, 25, 52, 53
	*		*		*		*		*		*		*
	Signal devices, hand	1.4G	UN0191		1.4G	381	None	62	None	Forbidden	75 kg	02	25
	Signal devices, hand	1.4S	UN0373		1.4S	381	None	62	None	25 kg	100 kg	01	25
	Signals, distress, ship	1.1G	UN0194		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Signals, distress, ship	1.3G	UN0195		1.3G		None	62	None	Forbidden	75 kg	03	25
	*		*		*		*		*		*		*
	Signals, railway track, explosive	1.1G	UN0192		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Signals, railway track, explosive	1.4S	UN0193		1.4S	381	None	62	None	25 kg	100 kg	01	25
	*		*		*		*		*		*		*
	Signals, smoke	1.1G	UN0196		1.1G		None	62	None	Forbidden	Forbidden	03	25
	Signals, smoke	1.4G	UN0197		1.4G		None	62	None	Forbidden	75 kg	02	25
	Signals, smoke	1.2G	UN0313		1.2G		None	62	None	Forbidden	Forbidden	03	25
	Signals, smoke	1.3G	UN0487		1.3G		None	62	None	Forbidden	Forbidden	03	25
	*		*		*		*		*		*		*

	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP7, TP33, TP46	151	211	244	Forbidden	15 kg	D	13, 52, 148
	*		*		*		*		*		*		*
	Sodium dinitro-o-cresolate, dry or wetted with less than 15 percent water, by mass	1.3C	UN0234		1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Sodium picramate, dry or wetted with less than 20 percent water, by mass	1.3C	UN0235		1.3C		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Sounding devices, explosive	1.2F	UN0204		1.2F		None	62	62	Forbidden	Forbidden	05	25
	Sounding devices, explosive	1.1F	UN0296		1.1F		None	62	62	Forbidden	Forbidden	05	25
	Sounding devices, explosive	1.1D	UN0374		1.1D		None	62	62	Forbidden	Forbidden	04	25
	Sounding devices, explosive	1.2D	UN0375		1.2D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
G	Substances, explosive, n.o.s.	1.1L	UN0357		1.1L	101	None	62	None	Forbidden	Forbidden	05	25, 14L, 15E
G	Substances, explosive, n.o.s.	1.2L	UN0358		1.2L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.3L	UN0359		1.3L	101	None	62	None	Forbidden	Forbidden	05	25, 14E, 15E
G	Substances, explosive, n.o.s.	1.1A	UN0473		1.1A	101, 111	None	62	None	Forbidden	Forbidden	05	25
G	Substances, explosive, n.o.s.	1.1C	UN0474		1.1C	101	None	62	None	Forbidden	Forbidden	04	25
G	Substances, explosive, n.o.s.	1.1D	UN0475		1.1D	101	None	62	None	Forbidden	Forbidden	04	25
G	Substances, explosive, n.o.s.	1.1G	UN0476		1.1G	101	None	62	None	Forbidden	Forbidden	03	25
G	Substances, explosive, n.o.s.	1.3C	UN0477		1.3C	101	None	62	None	Forbidden	Forbidden	04	25
G	Substances, explosive, n.o.s.	1.3G	UN0478		1.3G	101	None	62	None	Forbidden	Forbidden	03	25
G	Substances, explosive, n.o.s.	1.4C	UN0479		1.4C	101	None	62	None	Forbidden	75 kg	02	25
G	Substances, explosive, n.o.s.	1.4D	UN0480		1.4D	101	None	62	None	Forbidden	75 kg	02	25
G	Substances, explosive, n.o.s.	1.4S	UN0481		1.4S	101	None	62	None	25 kg	75 kg	01	25
G	Substances, explosive, n.o.s.	1.4G	UN0485		1.4G	101	None	62	None	Forbidden	75 kg	02	25
G	Substances, explosive, very insensitive, n.o.s. or Substances, EVI, n.o.s.	1.5D	UN0482		1.5D	101	None	62	None	Forbidden	Forbidden	03	25
	Substituted nitrophenol pesticides, liquid,	3	UN2780	I	3, 6.1	T14, TP2,	None	201	243	Forbidden	30 L	B	40

	flammable, toxic, flash point less than 23 degrees C					TP13, TP27							
				II	3, 6.1	IB2, T11, TP2, TP13, TP27	150	202	243	1 L	60 L	B	40
	*		*		*		*		*		*		*
	Tetranitroaniline	1.1D	UN0207		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Tetrazol-1-acetic acid	1.4C	UN0407		1.4C		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Torpedoes, liquid fueled, with inert head	1.3J	UN0450		1.3J			62	None	Forbidden	Forbidden	05	25, 23E
	Torpedoes, liquid fueled, with or without bursting charge	1.1J	UN0449		1.1J			62	None	Forbidden	Forbidden	05	25, 23E
	Torpedoes with bursting charge	1.1E	UN0329		1.1E			62	62	Forbidden	Forbidden	04	25
	Torpedoes with bursting charge	1.1F	UN0330		1.1F			62	None	Forbidden	Forbidden	05	25
	Torpedoes with bursting charge	1.1D	UN0451		1.1D			62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
D	Toy Caps	1.4S	NA0337		1.4S		None	62	None	25 kg	100 kg	01	25
	Tracers for ammunition	1.3G	UN0212		1.3G		None	62	None	Forbidden	Forbidden	03	25
	Tracers for ammunition	1.4G	UN0306		1.4G		None	62	None	Forbidden	75 kg	02	25
	*		*		*		*		*		*		*
	Trinitro-m-cresol	1.1D	UN0216		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Trinitroaniline or Picramide	1.1D	UN0153		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitroanisole	1.1D	UN0213		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrobenzene, dry or wetted with less than 30 percent water, by mass	1.1D	UN0214		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Trinitrobenzenesulfonic acid	1.1D	UN0386		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	Trinitrobenzoic acid, dry or wetted with less than 30 percent water, by mass	1.1D	UN0215		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Trinitrochlorobenzene or Picryl chloride	1.1D	UN0155		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Trinitrofluorenone	1.1D	UN0387		1.1D		None	62	None	Forbidden	Forbidden	04	25

	*		*		*		*		*		*		*
	Trinitronaphthalene	1.1D	UN0217		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrophenetole	1.1D	UN0218		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrophenol (picric acid), wetted, *with not less than 10 percent water by mass*	4.1	UN3364	I	4.1	23, A8, A19, N41, N84	None	211	None	0.5 kg	0.5 kg	L	28, 36
	Trinitrophenol or Picric acid, dry or wetted with less than 30 percent water, by mass	1.1D	UN0154		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	Trinitrophenol, wetted with not less than 30 percent water, by mass	4.1	UN1344	I	4.1	162, A8, A19, N41	None	211	None	1 kg	15 kg	L	28, 36
	*		*		*		*		*		*		*
	Trinitrophenylmethylnitramine or Tetryl	1.1D	UN0208		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitroresorcinol or Styphnic acid, dry or wetted with less than 20 percent water, or mixture of alcohol and water, by mass	1.1D	UN0219		1.1D		None	62	None	Forbidden	Forbidden	04	25, 5E
	Trinitroresorcinol, wetted or Styphnic acid, wetted with not less than 20 percent water, or mixture of alcohol and water by mass	1.1D	UN0394		1.1D	385	None	62	None	Forbidden	Forbidden	04	25, 5E
	*		*		*		*		*		*		*
	Trinitrotoluene and Trinitrobenzene mixtures or TNT and trinitrobenzene mixtures or TNT and hexanitrostilbene mixtures or Trinitrotoluene and hexanitrostilbene mixtures	1.1D	UN0388		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrotoluene mixtures containing Trinitrobenzene and Hexanitrostilbene or TNT mixtures containing trinitrobenzene and hexanitrostilbene	1.1D	UN0389		1.1D		None	62	None	Forbidden	Forbidden	04	25
	Trinitrotoluene or TNT, dry or wetted with less than 30 percent water, by mass	1.1D	UN0209		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Tritonal	1.1D	UN0390		1.1D		None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Urea nitrate, dry or wetted with less than 20 percent water, by mass	1.1D	UN0220		1.1D	119	None	62	None	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
	Warheads, rocket with burster or expelling charge	1.4D	UN0370		1.4D		None	62	62	Forbidden	75 kg	02	25
	Warheads, rocket with burster or expelling charge	1.4F	UN0371		1.4F		None	62	None	Forbidden	Forbidden	05	25
	Warheads, rocket with bursting charge	1.1D	UN0286		1.1D		None	62	62	Forbidden	Forbidden	04	25

	Warheads, rocket with bursting charge	1.2D	UN0287		1.2D		None	62	62	Forbidden	Forbidden	04	25
	Warheads, rocket with bursting charge	1.1F	UN0369		1.1F		None	62	None	Forbidden	Forbidden	05	25
	Warheads, torpedo with bursting charge	1.1D	UN0221		1.1D		None	62	62	Forbidden	Forbidden	04	25
	*		*		*		*		*		*		*
G	Water reactive solid, n.o.s.	4.3	UN2813	I	4.3	IB4, N40, T9, TP7, TP33	None	211	242	Forbidden	15 kg	E	13, 40, 148
				II	4.3	B132, IB7, IP2, T3, TP33	151	212	242	15 kg	50 kg	E	13, 40, 148
				III	4.3	B132, IB8, IP4, T1, TP33	151	213	241	25 kg	100 kg	E	13, 40, 148
	*		*		*		*		*		*		*
	Zirconium picramate, dry or wetted with less than 20 percent water, by mass	1.3C	UN0236		1.3C		None	62	None	Forbidden	Forbidden	04	25, 51
	*		*		*		*		*		*		*

* * * * *

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■ 10. In § 172.102, in paragraph (c)(1), revise special provision 136 to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

136 This entry only applies to machinery and apparatus containing hazardous materials as an integral element of the machinery or apparatus. It may not be used to describe machinery or apparatus for which a proper shipping name exists in the § 172.101 Table. Except when approved by the Associate Administrator, machinery or apparatus may only contain hazardous materials for which exceptions are referenced in Column (8) of the § 172.101 Table and are provided in part 173, subparts D and G, of this subchapter. Hazardous materials shipped under this entry are excepted from the labeling requirements of this subchapter unless offered for transportation or transported by aircraft and are not subject to the placarding requirements of subpart F of this part. Orientation markings as described in § 172.312(a)(2) are required when liquid hazardous materials may escape due to incorrect orientation. The machinery or apparatus, if unpackaged, or the packaging in which it is contained shall be marked "Dangerous goods in machinery" or "Dangerous goods in apparatus," as appropriate, with the identification number UN3363. For transportation by aircraft, machinery or apparatus may not contain any material forbidden for transportation by passenger or cargo aircraft. The Associate Administrator may except from the requirements of this subchapter equipment, machinery and apparatus provided:

a. It is shown that it does not pose a significant risk in transportation;

b. The quantities of hazardous materials do not exceed those specified in § 173.4a of this subchapter; and

c. The equipment, machinery or apparatus conforms with § 173.222 of this subchapter.

* * * * *

■ 11. In § 172.201, revise paragraph (d) to read as follows:

§ 172.201 Preparation and retention of shipping papers.

* * * * *

(d) *Emergency response telephone number.* Except as provided in § 172.604(d), a shipping paper must contain an emergency response telephone number and, if utilizing an emergency response information telephone number service provider, identify the person (by name or contract number) who has a contractual agreement with the service provider, as prescribed in subpart G of this part.

* * * * *

■ 12. In § 172.301, revise paragraph (f) to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(f) *NON-ODORIZED marking on cylinders containing LPG.* No person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, containing unodorized liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED or NOT ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section. The NON-ODORIZED or NOT ODORIZED marking may appear on a cylinder used for both unodorized and odorized LPG.

■ 13. In § 172.326, paragraph (d) is revised to read as follows:

§ 172.326 Portable tanks.

* * * * *

(d) *NON-ODORIZED marking on portable tanks containing LPG.* No person may offer for transportation or transport a portable tank containing unodorized liquefied petroleum gas (LPG) as authorized in § 173.315(b)(1) of this subchapter unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraph (a) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a portable tank used for both unodorized and odorized LPG.

■ 14. In § 172.328, revise paragraph (e) to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(e) *NON-ODORIZED marking on cargo tanks containing LPG.* No person may offer for transportation or transport a cargo tank containing unodorized liquefied petroleum gas (LPG) as authorized in § 173.315(b)(1) of this subchapter unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name as specified in paragraph (b)(1) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a cargo tank used for both unodorized and odorized LPG.

■ 15. In § 172.330, revise paragraph (c) to read as follows:

§ 172.330 Tank cars and multi-unit tank car tanks.

* * * * *

(c) No person may offer for transportation or transport a tank car or multi-unit tank car tank containing unodorized liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED or NOT ODORIZED on two opposing sides near the marked proper shipping name required by paragraphs (a)(1) and (2) of this section, or near the placards. The NON-ODORIZED or NOT ODORIZED marking may appear on a tank car or multi-unit tank car tank used for both unodorized and odorized LPG.

■ 16. In § 172.406, revise paragraph (d) to read as follows:

§ 172.406 Placement of labels.

* * * * *

(d) *Contrast with background.* Each label must be printed on or affixed to a background color contrasting to the color specification of the label as required by § 172.407(d)(1), or must have a dotted or solid line outer border, to enhance the visibility of the label. However, the dotted or solid line outer border may also be used for backgrounds of contrasting color.

* * * * *

■ 17. In § 172.407, revise paragraph (d)(4)(ii) to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(4) * * *

(ii) Color charts conforming to appendix A to this part are on display at the Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 2nd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

* * * * *

■ 18. In § 172.514, paragraph (c)(4) is revised to read as follows:

§ 172.514 Bulk Packagings.

* * * * *

(c) * * *

(4) *An IBC.* For an IBC labeled in accordance with subpart E of this part, the IBC may display the proper shipping name and UN identification number markings in accordance with § 172.301(a)(1) in place of the UN number on an orange panel, placard or white square-on-point configuration as prescribed in § 172.336(d); and

* * * * *

■ 19. In § 172.604, revise paragraph (a) introductory text to read as follows:

§ 172.604 Emergency response telephone number.

(a) A person who offers a hazardous material for transportation must provide a numeric emergency response telephone number, including the area code, for use in an emergency involving the hazardous material. For telephone numbers outside the United States, the international access code or the "+" (plus) sign, country code, and city code, as appropriate, that are needed to complete the call must be included. The telephone number must be—

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 20. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 21. In § 173.4a, revise paragraph (a) introductory text to read as follows:

§ 173.4a Excepted quantities.

(a) Excepted quantities of materials, other than articles (*e.g.*, aerosols), are not subject to requirements of this subchapter except for:

* * * * *

■ 22. In § 173.24a, paragraph (c)(1)(iv) is revised to read as follows:

§ 173.24a Additional general requirements for non-bulk packagings and packages.

* * * * *

(c) * * *

(1) * * *

(iv) For transportation by aircraft, the total net quantity does not exceed the lowest permitted maximum net quantity per package as shown in Column (9a) or (9b), as appropriate, of the § 172.101 Table of this subchapter. The permitted maximum net quantity must be calculated in kilograms if a package contains both a liquid and a solid. These requirements do not apply to limited quantity hazardous materials packaged in accordance with § 173.27(f)(2).

* * * * *

■ 23. In § 173.27, revise the paragraph (f)(2)(i) introductory text to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(f) * * *

(2) * * *

(i) Unless otherwise specified in this part, or in subpart C of part 171 of this subchapter, when a limited quantity of hazardous material packaged in a combination packaging is intended for transportation aboard an aircraft, the inner and outer packagings must conform to the quantity limitations set forth in Table 3 of this paragraph (f). Materials and articles must be authorized for transportation aboard a passenger-carrying aircraft (see Column (9A) of the § 172.101 Hazardous Materials Table of this subchapter). Not all unauthorized materials or articles may be indicated in this table. For mixed content packages of limited quantity material, the total net quantity must not exceed the lowest permitted maximum net quantity (for each of the hazard classes or divisions represented in the package) per outer package set forth in Table 3 of this paragraph (f). The permitted maximum net quantity must be calculated in kilograms for a package that contains both a solid and a liquid. Unless otherwise excepted, packages must be marked and labeled in accordance with this section and any additional requirements in subparts D and E, respectively, of part 172 of this subchapter. Materials or articles not authorized as limited quantity by aircraft are:

* * * * *

■ 24. In § 173.150, revise paragraphs (f)(3)(ix) and (x) and add paragraph (f)(3)(xi) to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(ix) The training requirements of subpart H of part 172 of this subchapter;

(x) Emergency response information requirements of subpart G of part 172; and

(xi) For bulk packagings only, registration requirements of subpart G of part 107 of this subchapter.

* * * * *

■ 25. In § 173.158, revise paragraph (e) to read as follows:

§ 173.158 Nitric acid.

* * * * *

(e) Nitric acid of less than 90 percent concentration, when offered for transportation or transported by rail, highway, or water may be packaged in 4A, 4B, or 4N metal boxes, 4G fiberboard boxes or 4C1, 4C2, 4D or 4F wooden boxes with inside glass packagings of not over 2.5 L (0.66 gallon) capacity each. When placed in wooden or fiberboard outer packagings, the glass inner packagings must be packed in tightly-closed, intermediate packagings, cushioned with an absorbent material. The intermediate packaging and absorbent material must be compatible with the nitric acid. See § 173.24(e).

* * * * *

■ 26. In § 173.159, revise (e)(4) and add paragraph (k) to read as follows:

§ 173.159 Batteries, wet.

* * * * *

(e) * * *

(4) Except for the purpose of consolidating shipments of batteries for recycling, the transport vehicle may not carry material shipped by any person other than the shipper of the batteries; and

* * * * *

(k) *Damaged wet electric storage batteries.* (1) Damaged batteries incapable of retaining battery fluid inside the outer casing during transportation may be transported by highway or rail provided the batteries are transported in non-bulk packaging, meet the requirements of paragraph (a) of this section, and are prepared for transport under one or more of the following conditions:

(i) Drain the battery of fluid to eliminate the potential for leakage during transportation;

(ii) Individually pack the battery in a leak proof intermediate package with sufficient compatible absorbent material capable of absorbing the release of any electrolyte and place the intermediate packaging in a leakproof outer packaging that conforms to the general packaging requirements of subpart B of this part;

(iii) Pack the battery in a salvage packaging in accordance with the provisions of § 173.3(c); or

(iv) When packaged with other batteries or materials (*e.g.*, on pallets or non-skid rails) and secured to prevent movement during transport, pack the battery in leakproof packaging to prevent leakage of battery fluid from the packaging under conditions normally incident to transportation.

(2) Shipment of damage batteries in accordance with this paragraph is eligible for exception under paragraph (e) of this section.

■ 27. In § 173.166, revise the paragraph (e)(6) introductory text to read as follows:

§ 173.166 Safety devices.

* * * * *

(e) * * *

(6) *Safety devices removed from a vehicle.* When removed from, or were intended to be used in, a motor vehicle that was manufactured as required for

use in the United States and offered for domestic transportation by highway or cargo vessel to Recycling or Waste Disposal facilities, a serviceable safety device classed as Class 9 UN3268 may be offered for transportation and transported in the following additional packaging:

* * * * *

■ 28. In § 173.170, revise paragraph (b) to read as follows:

§ 173.170 Black powder for small arms.

* * * * *

(b) The total quantity of black powder in one transport vehicle or freight container may not exceed 45.4 kg (100 pounds) net mass. No more than four freight containers may be on board one cargo vessel;

* * * * *

■ 29. In § 173.171, revise paragraph (b)(1) to read as follows:

§ 173.171 Smokeless powder for small arms.

* * * * *

(b) * * *

(1) One transport vehicle or cargo-only aircraft; or

* * * * *

■ 30. In § 173.199, revise paragraph (a)(4) to read as follows:

§ 173.199 Category B infectious substances.

(a) * * *

(4) The completed package must be designed, constructed, maintained, filled, its contents limited, and closed so that under conditions normally encountered in transportation, including removal from a pallet or overpack for subsequent handling, there will be no release of hazardous material into the environment. Package effectiveness must not be substantially reduced for minimum and maximum temperatures, changes in humidity and pressure, and shocks, loadings and vibrations normally encountered during transportation. The packaging must be capable of successfully passing the drop test in § 178.609(d) of this subchapter at a drop height of at least 1.2 meters (3.9 feet). Following the drop test, there must be no leakage from the primary receptacle, which must remain protected by absorbent material, when required, in the secondary packaging. At least one surface of the outer packaging must have a minimum dimension of 100 mm by 100 mm (3.9 inches).

* * * * *

■ 31. In § 173.225, revise the table in paragraph (d)(4) to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(d) * * *

(4) * * *

MAXIMUM QUANTITY PER PACKAGING/PACKAGE

[For packing methods OP1 to OP8]

Maximum quantity	Packing method							
	OP1	OP2 [1]	OP3	OP4 [1]	OP5	OP6	OP7	OP8
Solids and combination packagings (liquid and solid) (kg)	0.5	0.5/10	5	5/25	25	50	50	[2] 400
Liquids (L)	0.5	.....	5	.....	30	60	60	[3] 225

[1] If two values are given, the first applies to the maximum net mass per inner packaging and the second to the maximum net mass of the complete package.

[2] 60 kg for jerricans/200 kg for boxes and, for solids, 400 kg in combination packagings with outer packagings comprising boxes (4C1, 4C2, 4D, 4F, 4G, 4H1, and 4H2) and with inner packagings of plastics or fiber with a maximum net mass of 25 kg.

[3] 60 L for jerricans.

* * * * *

■ 32. In § 173.301, revise paragraph (g)(1)(iii) to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(g) * * *

(1) * * *

(iii) Acetylene as authorized by § 173.303. Mobile acetylene trailers must be maintained, operated and transported in accordance with CGA G–1.6 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 33. In § 173.306, revise paragraph (k)(1) to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(k) * * *

(1) Aerosols conforming to paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are excepted from the labeling requirements of subpart E of part 172 this subchapter, the specification packaging requirements of this subchapter when packaged in accordance with this paragraph, the shipping paper requirements of subpart C of part 172 of this subchapter (unless the material meets the definition of a hazardous substance or hazardous waste), and the 30 kg (66 pounds) gross weight limitation, when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(i) The aerosols must be packaged in a strong outer packaging. The strong outer packaging and its contents must not exceed a gross weight of 500 kg (1,100 pounds);

(ii) Each aerosol must be secured with a cap to protect the valve stem or the valve stem must be removed;

(iii) Each completed package must be marked in accordance with § 172.315(a); and

(iv) The packaging must be offered for transportation or transported by—

(A) Private or contract motor carrier; or

(B) Common carrier in a motor vehicle under exclusive use for such service.

* * * * *

■ 34. In § 173.314, adding paragraph (h) to read as follows:

§ 173.314 Compressed gases in tank cars and multi-unit tank cars.

* * * * *

(h) *Special requirements for liquefied petroleum gas*—(1) *Odorization.* All liquefied petroleum gas must be odorized as required in this paragraph to indicate positively, by a distinctive odor, the presence of gas down to a concentration in air of not over one-fifth the lower limit of combustibility; however, odorization is not required if it is harmful in the use or further processing of the liquefied petroleum gas or if it will serve no useful purpose as a warning agent in such use or further processing.

(i) The lower limits of combustibility of the more commonly used liquefied

petroleum gases are: Propane, 2.15 percent; butane, 1.55 percent. These figures represent volumetric percentages of gas-air mixtures in each case.

(ii) The use of 1.0 pound of ethyl mercaptan per 10,000 gallons of liquefied petroleum gas is considered sufficient to meet the requirements of this paragraph. Use of another odorant is not prohibited so long as there is enough to meet the requirements of this paragraph (h).

(2) *Odorant fade.* In addition to paragraph (h)(1)(i) of this section, the offeror must ensure that enough odorant will remain in the tank car during the course of transportation. The shipper must have procedures in place to:

(i) Ensure quantitative testing methods are used to measure the amount of odorant in the liquefied petroleum gas;

(ii) Ensure that, when the odorization of liquefied petroleum gas is manually injected, the required amount of odorant is added;

(iii) Ensure that, when odorization of liquefied petroleum gas is automatically injected, equipment calibration checks are conducted to ensure the required amount of odorant is consistently added;

(iv) Ensure quality control measures are in place to make sure that persons who receive tank cars that have been subjected to any condition that could lead to corrosion of the tank car or receive new or recently cleaned tank cars are notified of this information and that a person filling these packagings implement quality control measures so that potential odorant fade is addressed;

(v) Inspect a tank car for signs of oxidation or corrosion; and

(vi) Take corrective action needed to ensure enough odorization remains in the tank car during the course of transportation, such as increasing the amount of odorant added to the liquefied petroleum gas.

* * * * *

■ 35. In § 173.315, revise paragraph (b)(1) and add paragraph (b)(2) to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(b) * * *

(1) *Odorization.* All liquefied petroleum gas must be odorized as required in this paragraph to indicate positively, by a distinctive odor, the presence of gas down to a concentration in air of not over one-fifth the lower limit of combustibility; however, odorization is not required if it is harmful in the use or further processing of the liquefied petroleum gas or if it will serve no useful purpose as a warning agent in such use or further processing.

(i) The lower limits of combustibility of the more commonly used liquefied petroleum gases are: Propane, 2.15 percent; butane, 1.55 percent. These figures represent volumetric percentages of gas-air mixtures in each case.

(ii) The use of 1.0 pound of ethyl mercaptan per 10,000 gallons of liquefied petroleum gas is considered sufficient to meet the requirements of this paragraph (b). Use of any other odorant is not prohibited so long as there is enough to meet the requirements of this paragraph.

(2) *Odorant fade.* For cargo tanks or portable tanks being transported from a refinery, gas plant or pipeline terminal and in addition to paragraph (b)(1)(i) of this section, the offeror must ensure that enough odorant will remain in the cargo tank or portable tank during the course of transportation. The shipper must have procedures in place to:

(i) Ensure quantitative testing methods are used to measure the amount of odorant in the liquefied petroleum gas;

(ii) Ensure that, when the odorization of liquefied petroleum gas is manually injected, the required amount of odorant is being added;

(iii) Ensure that, when odorization of liquefied petroleum gas is automatically injected, equipment calibration checks are conducted to ensure the required amount of odorant is consistently added;

(iv) Ensure that quality control measures are in place to make sure that persons who receive cargo tanks or portable tanks that have been subjected to any condition that could lead to corrosion of the packaging or receive new or recently cleaned cargo tanks or portable tanks are notified of this information and that a person filling these packagings implement quality control measures to ensure that potential odorant fade is addressed;

(v) Inspect a cargo tank or portable tank for signs of oxidation or corrosion; and

(vi) Take corrective action needed to ensure enough odorant remains in the cargo tank or portable tank during the course of transportation, such as increasing the amount of odorant added to the liquefied petroleum gas.

* * * * *

PART 175—CARRIAGE BY AIR

■ 36. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 37. In § 175.1, add paragraph (d) to read as follows:

§ 175.1 Purpose, scope and applicability.

* * * * *

(d) The requirements of this subchapter do not apply to transportation of hazardous material in support of dedicated air ambulance, firefighting, or search and rescue operations performed in compliance with the operator requirements under federal air regulations, title 14 of the CFR.

■ 38. In § 175.8, revise paragraph (b)(1) to read as follows:

§ 175.8 Exceptions for operator equipment and items of replacement.

* * * * *

(b) * * *

(1) Oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with 14 CFR 121.574, 125.219, or 135.91. For the purposes of this paragraph (b)(1), an aircraft operator that does not hold a certificate under 14 CFR parts 121, 125, or 135 may apply this exception in conformance with 14 CFR 121.574, 125.219, or 135.91 in the same manner as required for a certificate holder. See § 175.501 for additional requirements applicable to the stowage of oxygen.

* * * * *

§ 175.9 [Amended]

■ 39. In § 175.9, remove and reserve paragraph (b)(4).

■ 40. In § 175.10, revise paragraphs (a)(6), (23), and (25) to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(6) Hair curlers (curling irons) containing a hydrocarbon gas such as butane, no more than one per person, in carry-on baggage only. The safety cover must be securely fitted over the heating element. Gas refills for such curlers are not permitted in carry-on or checked baggage.

* * * * *

(23) Non-infectious specimens in preservative solutions transported in accordance with § 173.4b(b) of this subchapter.

* * * * *

(25) Small cartridges fitted into or securely packed with devices with no more than four small cartridges of carbon dioxide or other suitable gas in Division 2.2, without subsidiary risk

with the approval of the operator. The water capacity of each cartridge must not exceed 50 mL (equivalent to a 28 g cartridge).

* * * * *

■ 41. In § 175.75, revise paragraph (e)(2) to read as follows:

§ 175.75 Quantity limitations and cargo location.

* * * * *

(e) * * *

(2) Packages of hazardous materials transported aboard a cargo aircraft, when other means of transportation are impracticable or not available, in accordance with procedures approved in writing by the FAA Regional Office in the region where the operator is certificated.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 42. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 43. In § 176.30, revise paragraph (a)(4) to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) * * *

(4) The number and description of packages (barrels, drums, cylinders, boxes, etc.) and gross weight for each type of package;

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 44. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; sec. 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994); sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); 49 CFR 1.81 and 1.97.

■ 45. In § 177.834, revise paragraphs (i)(3) and (4) to read as follows:

§ 177.834 General requirements.

* * * * *

(i) * * *

(3) A qualified person "attends" the loading or unloading of a cargo tank only if, throughout the process:

(i) Except for unloading operations subject to §§ 177.837(d) and 177.840(p) and (q), the qualified person is within 7.62 m (25 feet) of the cargo tank. The qualified person attending the unloading of a cargo tank must be alert and have an unobstructed view of the cargo tank and delivery hose to the maximum extent practicable during the unloading operation; or

(ii) The qualified person observes all loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station, and the loading or unloading system is equipped as follows:

(A) For a video monitoring system used to meet the attendance requirement, the camera must be mounted so as to provide an unobstructed view of all equipment involved in the loading or unloading operations, including all valves, hoses, domes, and pressure relief devices;

(B) For an instrumentation and signaling system used to meet the attendance requirement, the system must provide a surveillance capability at least equal to that of a human observer;

(C) Upon loss of video monitoring capability or instrumentation and signaling systems, loading or unloading operations must be immediately terminated;

(D) Shut-off valves operable from the remote control station must be provided;

(E) In the event of a remote system failure, a qualified person must immediately resume attending the loading or unloading of the cargo tank as provided in paragraph (i)(3)(i) of this section;

(F) A containment area must be provided capable of holding the contents of as many cargo tank motor vehicles as might be loaded at any single time; and

(G) A qualified person must personally conduct a visual inspection of each cargo tank motor vehicle after it is loaded, prior to departure, for any damage that may have occurred during loading; or

(iii) Hoses used in the loading or unloading operations are equipped with cable-connected wedges, plungers, or flapper valves located at each end of the hose, able to stop the flow of product from both the source and the receiving tank within one second without human intervention in the event of a hose rupture, disconnection, or separation.

(A) Prior to each use, each hose must be inspected to ensure that it is of sound quality, without defects detectable through visual observation; and

(B) The loading or unloading operations must be physically inspected by a qualified person at least once every sixty (60) minutes.

(4) A person is "qualified" if he has been made aware of the nature of the hazardous material which is to be loaded or unloaded, has been instructed on the procedures to be followed in emergencies, and except for persons observing loading or unloading operations by means of video cameras and monitors or instrumentation and signaling systems such as sensors, alarms, and electronic surveillance equipment located at a remote control station and persons inspecting hoses in accordance with paragraph (i)(3)(iii) of this section, is authorized to move the cargo tank, and has the means to do so.

* * * * *

■ 46. In § 177.840, add paragraph (a)(4) to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(a) * * *

(4) *Cylinders for acetylene.* Cylinders containing acetylene and manifolded as part of a mobile acetylene trailer system must be transported in accordance with § 173.301(g) of this subchapter.

* * * * *

■ 47. In § 177.848, revise paragraph (e)(5) to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(e) * * *

(5) The note "A" in the second column of the table means that, notwithstanding the requirements of the letter "X", ammonium nitrate (UN1942) and ammonium nitrate fertilizer may be loaded or stored with Division 1.1 (explosive) or Division 1.5 materials, unless otherwise prohibited by § 177.835(c).

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 48. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 49. In § 178.337–17, revise paragraph (a) introductory text to read as follows:

§ 178.337–17 Marking.

(a) *General.* Each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate); and each cargo tank motor vehicle certified after October 1, 2004 must have a specification plate, permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. If the specification plate is attached directly to the cargo tank wall by welding, it must be welded to the tank before the cargo tank is postweld heat treated.

* * * * *

■ 50. In § 178.345–3, revise the paragraph (c)(1) introductory text and formula to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(c) * * *

(1) *Normal operating loadings.* The following procedure addresses stress in the cargo tank shell resulting from normal operating loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm [0.25(S_y - S_x)^2 + S_S{}^2]^{0.5}$$

* * * * *

■ 51. In § 178.955, redesignate paragraphs (h) and (i) as paragraphs (i) and (j), respectively, and add new paragraph (h) to read as follows:

§ 178.955 General requirements.

* * * * *

(h) *Approval of equivalent packagings.* A Large Packaging differing from standards in subpart P of this part, or tested using methods other than those specified in this subpart, may be used if approved by the Associate Administrator. The Large Packagings and testing methods must be shown to have an equivalent level of safety.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 52. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 53. In § 179.13, revise paragraph (b) to read as follows:

§ 179.13 Tank car capacity and gross weight limitation.

* * * * *

(b) Tank cars containing poisonous-by-inhalation material meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3) or § 173.314(c) or (d) of this subchapter may have a gross weight on rail of up to 286,000 pounds (129,727 kg). Tank cars containing poisonous-by-inhalation material not meeting the specifications listed in § 173.244(a)(2) or (3) or § 173.314(c) or (d) may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) only upon approval of the Associate Administrator for Safety, Federal Railroad Administration (FRA). Any increase in weight above 263,000 pounds may not be used to increase the quantity of the contents of the tank car.

■ 54. In § 179.24, revise the paragraph (a)(2) introductory text to read as follows:

§ 179.24 Stamping.

* * * * *

(a) * * *

(2) Each plate must be stamped, embossed, or otherwise marked by an equally durable method in letters 3/16 inch high with the following information (parenthetical abbreviations may be used, and the AAR form reference is to the applicable provisions of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter):

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 55. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 56. In § 180.209, revise the paragraph (j) introductory text to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(j) *Cylinder used as a fire extinguisher.* Only a DOT specification cylinder used as a fire extinguisher and meeting the requirements of § 173.309(a) of this subchapter may be requalified in accordance with this paragraph (j).

* * * * *

■ 57. In § 180.407:

■ a. In the table in paragraph (c), revise the entries for "Internal Visual Inspection" and "Pressure Test" and the notes to table;

■ b. Revise paragraphs (d)(3) and (g)(1)(ii) introductory text; and

■ c. Add paragraph (j).

The revisions and addition read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(c) * * *

COMPLIANCE DATES—INSPECTIONS AND TEST UNDER § 180.407(c)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see Note 1)	Interval period after first test
* * * * *	*	*
Internal Visual Inspection:		
All insulated cargo tanks, except MC 330, MC 331, MC 338 (see Note 4)	September 1, 1991	1
All cargo tanks transporting lading corrosive to the tank	September 1, 1991	1
MC 331 cargo tanks less than 3,500 gallons water capacity in dedicated propane service constructed of nonquenched and tempered NQT SA–612 steel (see Note 5).	September 1, 2016	10
All other cargo tanks, except MC 338	September 1, 1995	5
* * * * *	*	*
Pressure Test (Hydrostatic or pneumatic) (See Notes 2 and 3):		
All cargo tanks which are insulated with no manhole or insulated and lined, except MC 338	September 1, 1991	1
All cargo tanks designed to be loaded by vacuum with full opening rear heads	September 1, 1992	2
MC 330 and MC 331 cargo tanks in chlorine service	September 1, 1992	2
MC 331 cargo tanks less than 3,500 gallons water capacity in dedicated propane service constructed of nonquenched and tempered NQT steel (See Note 5).	September 1, 2017	10
All other cargo tanks	September 1, 1995	5
* * * * *	*	*

Note 1: If a cargo tank is subject to an applicable inspection or test requirement under the regulations in effect on December 30, 1990, and the due date (as specified by a requirement in effect on December 30, 1990) for completing the required inspection or test occurs before the compliance date listed in table I, the earlier date applies.

Note 2: Pressure testing is not required for MC 330 or MC 331 cargo tanks in dedicated sodium metal service.

Note 3: Pressure testing is not required for uninsulated lined cargo tanks, with a design pressure MAWP 15 psig or less, which receive an external visual inspection and lining inspection at least once each year.

Note 4: Insulated cargo tanks equipped with manholes or inspection openings may perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

Note 5: A 10-year inspection interval period also applies to cargo tanks constructed of NQT SA–202, NQT SA–455, or NQT SA–612 steels provided the materials have full-size equivalent (FSE) Charpy vee notch (CVN) energy test data that demonstrated 75% shear-area ductility at 32 °F with an average of 3 or more samples >15 ft-lb FSE with no sample <10 ft-lb FSE.

(d) * * *

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must be tested according to the requirements set forth in paragraph (j) of this section.

* * * * *

(g) * * *

(1) * * *

(ii) All self-closing pressure relief valves, including emergency relief vents and normal vents, must be removed from the cargo tank for inspection and testing according to the requirements in paragraph (j) of this section.

* * * * *

(j) *Pressure vent bench test.* When required by this section, pressure relief valves must be tested for proper function as follows:

(1) Each self-closing pressure relief valve must open and reseat to a leaktight condition at the pressures prescribed for the applicable cargo tank specification or at the following pressures:

(i) For MC 306 cargo tanks:

(A) With MC 306 reclosing pressure relief valves, it must open at not less than 3 psi and not more than 4.4 psi and must reseat to a leak tight-condition at no less than 2.7 psi.

(B) With reclosing pressure relief valves modified as provided in § 180.405(c) to conform with DOT 406 specifications, according to the pressures set forth for a DOT 406 cargo tank in § 178.346–3 of this subchapter.

(ii) For MC 307 cargo tanks:

(A) With MC 307 reclosing pressure relief valves, it must open at not less than the cargo tank MAWP and not more than 110% of the cargo tank MAWP and must reseat to a leak tight-condition at no less than 90% of the cargo tank MAWP.

(B) With reclosing pressure relief valves modified as provided in § 180.405(c) to conform with DOT 407 specifications, according to the pressures set forth for a DOT 407 cargo tank in § 178.347–4 of this subchapter.

(iii) For MC 312 cargo tanks:

(A) With MC 312 reclosing pressure relief valves, it must open at not less than the cargo tank MAWP and not more than 110% of the cargo tank MAWP and must reseat to a leak tight-condition at no less than 90% of the cargo tank MAWP.

(B) With reclosing pressure relief valves modified as provided in § 180.405(c) to conform with DOT 412 specifications, according to the pressures set forth for a DOT 412 cargo tank in § 178.348–4 of this subchapter.

(iv) For MC 330 or MC 331 cargo tanks, it must open at not less than the required set pressure and not more than 110% of the required set pressure and must reseat to a leak-tight condition at no less than 90% of the required set pressure.

(v) For DOT 400-series cargo tanks, according to the pressures set forth for the applicable cargo tank specification in §§ 178.346–3, 178.347–4, and 178.348–4, respectively, of this subchapter.

(vi) For cargo tanks not specified in this paragraph, it must open at not less than the required set pressure and not more than 110% of the required set pressure and must reseat to a leak-tight condition at no less than 90% of the required set pressure or the pressure prescribed for the applicable cargo tank specification.

(2) Normal vents (1 psig vents) must be tested according to the testing criteria established by the valve manufacturer.

(3) Self-closing pressure relief devices not tested or failing the tests in paragraph (j)(1) of this section must be repaired or replaced.

§ 180.503 [Amended]

■ 58. In § 180.503, under the definition of "Qualification", "AAR Tank Car Manual" is removed and "AAR Specifications for Tank Cars" is added in its place.

Issued in Washington, DC, on May 17, 2016, under authority delegated in 49 CFR part 1.97.

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BlueCrest Alaska Operating, LLC Drilling Activities at Cosmopolitan State Unit, Alaska, 2016; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE497

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to BlueCrest Alaska Operating, LLC Drilling Activities at Cosmopolitan State Unit, Alaska, 2016

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from BlueCrest Alaska Operating, LLC (BlueCrest) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting an oil and gas production drilling program in lower Cook Inlet, AK, on State of Alaska Oil and Gas Lease 384403 under the program name of Cosmopolitan State during the 2016 open water season. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to BlueCrest to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than July 5, 2016.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Youngkin@noaa.gov*. NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application, NMFS' Draft Programmatic Environmental Assessment (EA) for activities in Cook Inlet, and a list of the references used in this document may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. In case of problems accessing these documents, please call the contact listed below. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking; other means of effecting the least practicable impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

Summary of Request

On September 28, 2015 NMFS received an IHA application from BlueCrest for the taking of marine mammals incidental to an oil and gas production drilling program in lower Cook Inlet, AK, during the 2016 open water season. Typically, the open water (*i.e.*, ice-free) season is mid-April through October; however, BlueCrest would only operate during a portion of this season, from August 1, 2016 through October 31, 2016. NMFS determined that the application was adequate and complete on April 12, 2016.

BlueCrest proposes to conduct and oil and gas production drilling program using the *Spartan 151* drill rig (or similar rig) in lower Cook Inlet. This work would include drilling up to three wells with a total operating time of approximately 91 days during the 2016 open-water season, (August 1 through October 31). In 2013, BlueCrest, then in partnership with Buccaneer Energy, conducted exploratory oil and gas drilling at the Cosmopolitan State #A–1 well site (then called Cosmopolitan State #1). Beginning in 2016, BlueCrest intends to drill two more wells (Cosmopolitan State #A–2 and #A–3). These directionally drilled wells have top holes located a few meters from the original Cosmopolitan State #A–1, and together would feed to a future single offshore platform. Both #A–2 and #A–3 may involve test drilling into oil layers. After testing, the oil horizons will be plugged and abandoned, while the gas zones will be suspended pending platform construction. A third well (#B–1) will be located approximately 1.7 kilometers (km; 1 mile [mi]) southeast of the other wells. This well will be drilled into oil formations to collect geological information. After testing, the oil horizon will be plugged and abandoned, while the gas zones will be suspended pending platform construction. All four wells (one existing and up to three new) would be located within Lease 384403. Specific locations (latitude and longitude and depth) of each well is provided in Table 1–1 and depicted in Figure 1–1 of BlueCrest's application.

The following specific aspects of the proposed activities are likely to result in the take of marine mammals: (1) Impact hammering of the drive pipe at the well prior to drilling, and (2) vertical seismic profiling (VSP). Underwater noise associated with drilling and rig operation associated with the specified activity has been determined to have little effect on marine mammals (based on Marine Acoustics, Inc.'s [2011] acoustical testing of the *Spartan 151* while drilling). Take, by Level B harassment only, of nine marine mammal species is anticipated to result from the specified activity.

Description of the Specified Activity

Overview

BlueCrest proposes to conduct oil and gas production drilling operations at up to three sites in lower Cook Inlet during the 2016 open water (ice-free) season (August 1 through October 31), using the *Spartan 151* jack-up drill rig, depending on availability. The activities of relevance to this IHA request include: Impact hammering of the drive pipe and VSP seismic operations. BlueCrest proposes to mobilize and demobilize the drill rig to and from the well locations, and will utilize both helicopters and vessels to conduct resupply, crew change, and other logistics during the drilling program. These mobilization/demobilization activities, and actual drilling/operation of the rig, are also part of the proposed activity but are not considered activities of relevance to this IHA because take is not being authorized for those activities. More information regarding these activities and why they are/are not considered activities of relevance to this IHA can be found in the Detailed Description of Activities section below.

Dates and Duration

The 2016 drilling program (which is the subject of this IHA request) would occur during the 2016 open water season (August 1 through October 31). BlueCrest estimates that the drilling period could take up to 91 days in the above time period. The exact start date is currently unknown, and dependent on the scheduling availability of the proposed drill rig. It is expected that each well will take approximately 30 days to complete, including well testing time.

During this time period, drive pipe hammering would only occur for a period of 1 to 3 days at each well site (although actual sound generation would occur only intermittently during this time period), and VSP seismic operations would only occur for a period of less than 1 to 2 days at each well site. This IHA (if issued) would be effective for 1 year, beginning on August 1, 2016.

Specified Geographic Region

BlueCrest's proposed program would occur at Cosmopolitan State #B–1 (originally Cosmopolitan #2), Cosmopolitan State #A–1 (originally Cosmopolitan State #1), #A–2, and #A–3 in lower Cook Inlet, AK. The exact location of BlueCrest's well sites can be seen in Figure 1–1 in BlueCrest's IHA application and location information (latitude/longitude and water depth) is provided in Table 1–1 in the IHA application.

Detailed Description of Activities

1. Drill Rig Mobilization and Towing

BlueCrest proposes to conduct its production and exploratory drilling using the *Spartan 151* drill rig or similar rig (see Figure 1–2 of the IHA application). The *Spartan 151* is a 150 H class independent leg, cantilevered jack-up drill rig, with a drilling capability of 25,000 ft but can operate in maximum water depths up to only 150 ft. The rig will be towed by ocean-going tugs licensed to operate in Cook Inlet. While under tow, the rig operations will be monitored by BlueCrest and the drilling contractor management, both aboard the rig and onshore.

The *Spartan 151* is currently moored at the Seward Marine Industrial Center, directly across Resurrection Bay from the City of Seward. The intention is to move the drill rig to the Cosmopolitan Site #B–1 well site in July, a distance of approximately 314 km (195 miles [mi]). It is anticipated that this tow would be accomplished within three days. Any move post-project will be controlled by the owner of the drilling rig. The rig will be towed between locations by ocean-going tugs that are licensed to operate in Cook Inlet. Move plans will receive close scrutiny from the rig owner's tow master as well as the owner's insurers, and will be conducted in accordance with state and federal regulations. Rig moves will be conducted in a manner to minimize any potential risk regarding safety as well as cultural or environmental impact.

The rig will be wet-towed by two or three ocean-going tugs licensed to operate in Cook Inlet. Ship strike of marine mammals during tow is not an issue of major concern. Most strikes of marine mammals occur when vessels are traveling at speeds between 24 and 44 km/hr (13 and 24 knots [kt]) (*http://www.nmfs.noaa.gov/pr/pdfs/shipstrike/ss_speed.pdf*), well above the 1.9- to 7.4-km/hr (1- to 4-kt) drill rig tow speed expected. However, noise from towing was considered as a potential impact. Tugs generate their loudest sounds while towing due to propeller cavitation. While these continuous sounds have been measured at up to 171 dB re 1 μPa-m (rms) at 1-meter source (broadband), they are generally emitted at dominant frequencies of less than 5 kHz (Miles *et al.*, 1987; Richardson *et al.*, 1995a, Simmonds *et al.*, 2004). For the most part, the dominant noise frequencies from propeller cavitation are significantly lower than the dominant hearing frequencies for pinnipeds and toothed whales, including beluga whales (Wartzok and Ketten, 1999), so towing activities are not considered an activity that would 'take' marine mammals.

2. Drive Pipe Hammering

A drive pipe is a relatively short, large-diameter pipe driven into the sediment prior to the drilling of oil wells. This section of tubing serves to support the initial sedimentary part of the well, preventing the looser surface layer from collapsing and obstructing the wellbore. Drive pipes are usually installed using pile driving techniques. The term 'drive pipe' is often synonymous to the term 'conductor pipe'; however, a 50.8-centimeter (cm; 20-inch [in]) conductor pipe will be drilled (not hammered) inside the drive pipe, and will be used to transport (conduct) drillhead cuttings to the surface. Therefore, there is no noise concern associated with the conductor pipe drilling, and the potential for acoustical harassment of marine mammals is due to the hammering of the drive pipe. BlueCrest proposes to drive approximately 200 ft (60 m) below mudline of 30-inch drive pipe at each of the well sites prior to drilling using a Delmar D62–22 impact hammer. This hammer has impact weight of 13,640 pounds (6,200 kg) and reaches maximum impact energy of 165,215 foot-pounds (224 kilonewton-meters) at a drop height of 12 ft (3.6 m).

Blackwell (2005) measured the noise produced by a Delmar D62–22 driving 36-inch steel pipe in upper Cook Inlet and found sound pressure levels (SPLs) to exceed 190 dB re 1μPa-m (rms) at about 200 ft (60 m), 180 dB re 1μPa-m (rms) at about 820 ft (250 m), and 160 dB re 1μPa-m (rms) at just less than 1.2 mi (1.9 km). Illingworth and Rodkin (2014) measured the hammer noise operating from another rig, the *Endeavour*, in 2013 and found SPLs to exceed 190 dB re 1μPa-m (rms) at about 180 ft (55 m), 180 dB re 1μPa-m (rms) at about 560 ft (170 m), and 160 dB re 1μPa-m (rms) at 1 mi (1.6 km). The drive pipe driving event is expected to last 1 to 3 days at each well site, although actual sound generation (pounding) would occur only intermittently during this period.

3. Drilling and Standard Operation

The *Spartan 151* was hydro-acoustically measured by Marine Acoustics, Inc. while operating in 2011. The survey results showed that continuous noise levels exceeding 120 dB re 1μPa (NMFS' current threshold for estimating Level B harassment from continuous underwater noise) extended

out only 164 ft (50 m), and that this sound was largely associated with the diesel engines used as hotel power generators.

Deep well pumps were not identified as a sound source by Marine Acoustics, Inc. (2011) during their acoustical testing of the *Spartan 151*, and are not considered an activity that would 'take' marine mammals.

4. Vertical Seismic Profiling

Once a well is drilled, accurate follow-up seismic data can be collected by placing a receiver at known depths in the borehole and shooting a seismic airgun at the surface near the borehole. These gathered data not only provide high resolution images of the geological layers penetrated by the borehole but can be used to accurately correlate (or correct) the original surface seismic data. The procedure is known as vertical seismic profiling (VSP).

BlueCrest intends to conduct VSP operations at the end of drilling each well using an array of airguns with total volumes of between 600 and 880 cubic inches (in^3). The VSP operation is expected to last less than 1 or 2 days at each well site. Assuming a 1-meter source level of 227 dB re 1μPa (based on manufacturer's specifications) for an 880 in^3 array and using Collins *et al.*'s (2007) transmission loss model for Cook Inlet ($227 - 18.4 \text{Log}(R) - 0.00188$), the 190 dB radius from the source was estimated at 330 ft (100 m), the 180 dB radius at 1,090 ft (332 m), and the 160 dB radius at 1.53 mi (2.46 km). 190 dB and 180 dB are the current NMFS thresholds for estimating Level A harassment from underwater noise exposure for pinnipeds and cetaceans, respectively, and 160 dB is the current NMFS threshold for estimating Level B harassment from exposure to underwater impulse noises. Therefore, VSP operations are considered an activity that has the potential to 'take' marine mammals.

Illingworth and Rodkin (2014) measured the underwater sound levels associated with a July 2013 VSP operation using a 750 in^3 array and found sound levels exceeding 160 dB re 1 μPa (rms) extended out 1.54 mi (2.47 km), virtually identical to the modeled distance. The measured radius to 190 dB was 394 ft (120 m) and to 180 dB was 787 ft (240 m).

5. Helicopter and Supply Vessel Support

Helicopter logistics for project operations will include transportation for personnel, groceries, and supplies. Helicopter support will consist of a twin turbine Bell 212 (or equivalent) helicopter certified for instrument flight rules land and over water operations. Helicopter crews and support personnel will be housed in existing Kenai area facilities. The helicopter will be based at the Kenai Airport to support rig crew changes and cargo handling. Fueling will take place at these facilities. No helicopter refueling will take place on the rig.

Helicopter flights to and from the rig are expected to average two per day. Flight routes will follow a direct route to and from the rig location, and flight heights will be maintained 1,000 to 1,500 feet above ground level to avoid take of marine mammals (Richardson *et al.*, 1995a). At these altitudes, there are not expected to be impacts from sound generation on marine mammals, and are not considered an activity that would 'take' marine mammals. The aircraft will be dedicated to the drilling operation and will be available for service 24 hours per day. A replacement aircraft will be available when major maintenance items are scheduled.

Major supplies will be staged onshore at the Kenai OSK Dock. Required supplies and equipment will be moved from the staging area by contracted supply vessels and loaded aboard the rig when the rig is established on a drilling location. Major supplies will include fuel, drilling water, mud materials, cement, casing, and well service equipment. Supply vessels also will be outfitted with fire-fighting systems as part of fire prevention and control as required by Cook Inlet Spill Prevention and Response, Inc. The specific supply vessels have not been identified; however, typical offshore drilling support work vessels are of steel construction with strengthened hulls to give the capability of working in extreme conditions. Additional information about logistics and fuel and waste management can be found in Section 1.2 of BlueCrest's IHA application.

Description of Marine Mammals in the Area of the Specified Activity

Several marine mammal species occur in lower Cook Inlet. The marine mammal species under NMFS's jurisdiction include: Beluga whale (*Delphinapterus leucas*); harbor porpoise (*Phocoena phocoena*); killer whale (*Orcinus orca*); gray whale (*Eschrichtius robustus*); minke whale (*Balaenoptera acutorostrata*); Dall's porpoise (*Phocoenoides dalli*); humpback whale (*Megaptera novaeangliae*); harbor seal (*Phoca vitulina richardsi*); and Steller sea lion (*Eumetopias jubatus*).

Data collected during marine mammal monitoring at Cosmopolitan State #A–1 during summer 2013 recorded at least 154 harbor porpoise (152 within 1.2 mi (2 km) of operation, 12 of which were observed inside 853 ft (260 m) of the rig); 77 harbor seals (18 of these within 853 ft [260 m] of the active drill rig); 42 minke whales (all except for three recorded over 984 ft (300 m) from the active drill rig; 19 Dall's porpoise (none in close proximity to the active drill rig); 12 gray whales (observed offshore of Cape Starichkof; none closely approached drilling operations); seven Steller sea lions (none in close proximity to the active drill rig); 18 killer whales (17 within 1.2 mi (2 km) of operations); and one beluga whale (observed at a distance well beyond 1.8 mi (3 km) between May and August 2013 (112 days of monitoring). Based on their seasonal patterns, gray whales could be encountered in low numbers during operations. Minke whales have been considered migratory in Alaska (Allen and Angliss, 2014) but have recently been observed off Cape Starichkof and Anchor Point, including in winter. The remaining species could be encountered year-round. Humpback whales are common in the very southern part of Cook Inlet and typically do not venture north of Kachemak Bay (B. Mahoney, NMFS, pers. comm., August 2014), which is south of the proposed Cosmopolitan drilling site. Therefore, while it is unlikely that humpback whales, gray whales, or minke whales would be encountered during the proposed project, it is still a possibility based on observations from past monitoring efforts, and therefore take of these species was requested.

Of these marine mammal species, Cook Inlet beluga whales, humpback whales, and the western distinct population segment (DPS) of Steller sea lions are listed as endangered under the Endangered Species Act (ESA). The eastern DPS of Steller sea lions was recently removed from the endangered species list (78 FR 66139, November 4, 2013) but currently retains its status as "depleted" under the MMPA along with the western DPS, Cook Inlet beluga whales, and humpback whales.

Despite these designations, Cook Inlet beluga whales and the western DPS of Steller sea lions have not made significant progress towards recovery. Data indicate that the Cook Inlet population of beluga whales decreased at a rate of 0.6 percent annually between 2002 and 2012 (Allen and Angliss, 2014). The NMFS 2014 Stock Assessment Report (SAR) estimated 312 Cook Inlet beluga whales, which is a three-year average. However, the most

recent abundance estimate is 340 beluga whales (Shelden *et al.*, 2015).

Regional variation in trends in Western DPS Steller sea lion pup counts in 2000–2012 is similar to that of non-pup counts (Johnson and Fritz, 2014). Overall, there is strong evidence that pup counts in the western stock in Alaska increased (1.45 percent annually). Between 2004 and 2008, Alaska western non-pup counts increased only 3%: Eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson and Fritz (2014) analyzed western Steller sea lion population trends in Alaska and noted that there was strong evidence that non-pup counts in the western stock in Alaska increased between 2000 and 2012 (average rate of 1.67 percent annually). However, there continues to be considerable regional variability in recent trends across the range in Alaska, with strong evidence of a positive trend east of Samalga Pass and strong evidence of a decreasing trend to the west (Allen and Angliss, 2014).

The Central North Pacific humpback whale stock, consisting of winter/spring populations of the Hawaiian Islands which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands (Baker *et al.*, 1990; Perry *et al.*, 1990; Calambokidis *et al.*, 1997), has increased over the past two decades. Different studies and sampling techniques in Hawaii and Alaska have indicated growth rates ranging from 4.9–10 percent per year in the 1980s, 1990s, and early 2000s (Mobley *et al.*, 2001; Mizroch *et al.*, 2004; Zerbini *et al.*, 2006; Calambokidis *et al.*, 2008). It is also clear that the abundance has increased in Southeast Alaska, though a trend for the Southeast Alaska portion of this stock cannot be estimated from the data because of differences in methods and areas covered (Allen and Angliss, 2013). On April 21, 2015, NMFS published a notice in the **Federal Register** requesting comments on a proposal to revise the listing status of humpback whales by delineating the species into 14 DPS, changing the Central North Pacific stock of humpback whales to become the Hawaii DPS. NMFS also proposed to delist the Hawaii DPS (80 FR 22304).

Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The proposed drilling program does not fall within critical habitat designated in Cook Inlet for beluga whales or within critical habitat designated for Steller sea lions. The Cosmopolitan State unit is nearly 100 miles south of beluga whale Critical Habitat Area 1 and approximately 27 miles south of Critical Habitat Area 2. It is also located about 25 miles north of the isolated patch of Critical Habitat Area 2 found in Kachemak Bay. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011). No critical habitat has been designated for humpback whales.

BlueCrest is requesting take of belugas, humpback whales and Steller sea lions, which have been observed in close proximity to the Cosmopolitan site (G. Green, Owl Ridge, personal communication). In addition, BlueCrest is requesting take of gray, minke, and killer whales, harbor and Dall's porpoise, and harbor seals. See Table 1 below for more information on the habitat, range, population, and status of these species.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS

Species	Habitat	Range	Best Population Estimate (Minimum) [1]	ESA [2]	MMPA [3]
Humpback whale (*Megaptera novaeangliae*).	Coastal and inland waters	Worldwide in all ocean basins.	10,103—Central N. Pacific Stock.	EN	D, S.
Minke Whale (*Balaenoptera acutorostra*).	Coastal and inland waters	Bering and Chukchi Seas south to near the Equator.	1,233 [2]—Alaska stock	NL	NC.
Gray Whale (*Eschrichtius robustus*).	Coastal and inland waters	North Pacific from Alaska to Mexico.	20,990 [3]—E. North Pacific Stock.	NL	NC.
Beluga Whale (*Delphinapterus leucas*).	Offshore waters in winter; coastal/estuarine waters in spring.	Ice-covered arctic and subartic waters of the Northern Hemisphere.	340—Cook Inlet stock	EN	D, S.
Killer Whale (*Orcinus orca*)	Offshore to inland waterways.	Throughout North Pacific; along west coast of North America; entire Alaskan coast.	2,347—Alaska resident stock/587 Alaska transient stock.	NL	NC.
Harbor Porpoise (*Phocoena phocoena*).	Coastal	Point Barrow, Alaska to Point Conception, California.	31,046—Gulf of Alaska stock.	NL	S.
Dall's Porpoise (*Phocoenoides dalli*).	Over continental shelf adjacent to slope and over deep oceanic waters.	Throughout North Pacific	83,400—Alaska stock	NL	NC.
Pacific harbor seal (Phoca vitulina richardii).	Coastal and Estuarine	Coastal temperate to polar regions in Northern Hemisphere.	22,900—Cook Inlet/Shelikof stock.	NL	NC.
Steller Sea Lion (*Eumetopias jubatus*).	Coastal	Northern Pacific Rim from northern Japan to California.	55,422—W. U.S. stock	NL	D, S.

NA = Not available or not assessed.
[1] Allen and Angliss (2015).
[2] Zerbini *et al.* (2006).
[3] Caretta *et al.* (2015).
[4] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.
[5] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

Cetaceans

Beluga Whale *(Delphinapterus leucas)*

The Cook Inlet beluga whale DPS is a small geographically isolated population that is separated from other beluga populations by the Alaska Peninsula. The population is genetically (mtDNA) distinct from other Alaska populations suggesting the Peninsula is an effective barrier to genetic exchange (O'Corry-Crowe *et al.* 1997) and that these whales may have been separated from other stocks at least since the last ice age. Laidre *et al.* (2000) examined data from more than 20 marine mammal surveys conducted in the northern Gulf of Alaska and found that sightings of belugas outside Cook Inlet were exceedingly rare, and these were composed of a few stragglers from the Cook Inlet DPS observed at Kodiak Island, Prince William Sound, and Yakutat Bay. Several marine mammal surveys specific to Cook Inlet (Laidre *et al.* 2000, Speckman and Piatt 2000), including those that concentrated on beluga whales (Rugh *et al.* 2000, 2005a), clearly indicate that this stock largely confines itself to Cook Inlet. There is no indication that these whales make forays into the Bering Sea where they might intermix with other Alaskan stocks.

The Cook Inlet beluga DPS was originally estimated at 1,300 whales in 1979 (Calkins 1989) and has been the focus of management concerns since experiencing a dramatic decline in the 1990s. Between 1994 and 1998 the stock declined 47 percent which was attributed to overharvesting by subsistence hunting. Subsistence hunting was estimated to annually remove 10 to 15 percent of the population during this period. Only five belugas have been harvested since 1999, yet the population has continued to decline, with the most recent estimate at only 312 animals (Allen and Angliss 2014). NMFS listed the population as "depleted" in 2000 as a consequence of the decline, and as "endangered" under the Endangered Species Act (ESA) in 2008 when the population failed to recover following a moratorium on subsistence harvest. In April 2011, NMFS designated critical habitat for the beluga under the ESA (Figure 1).

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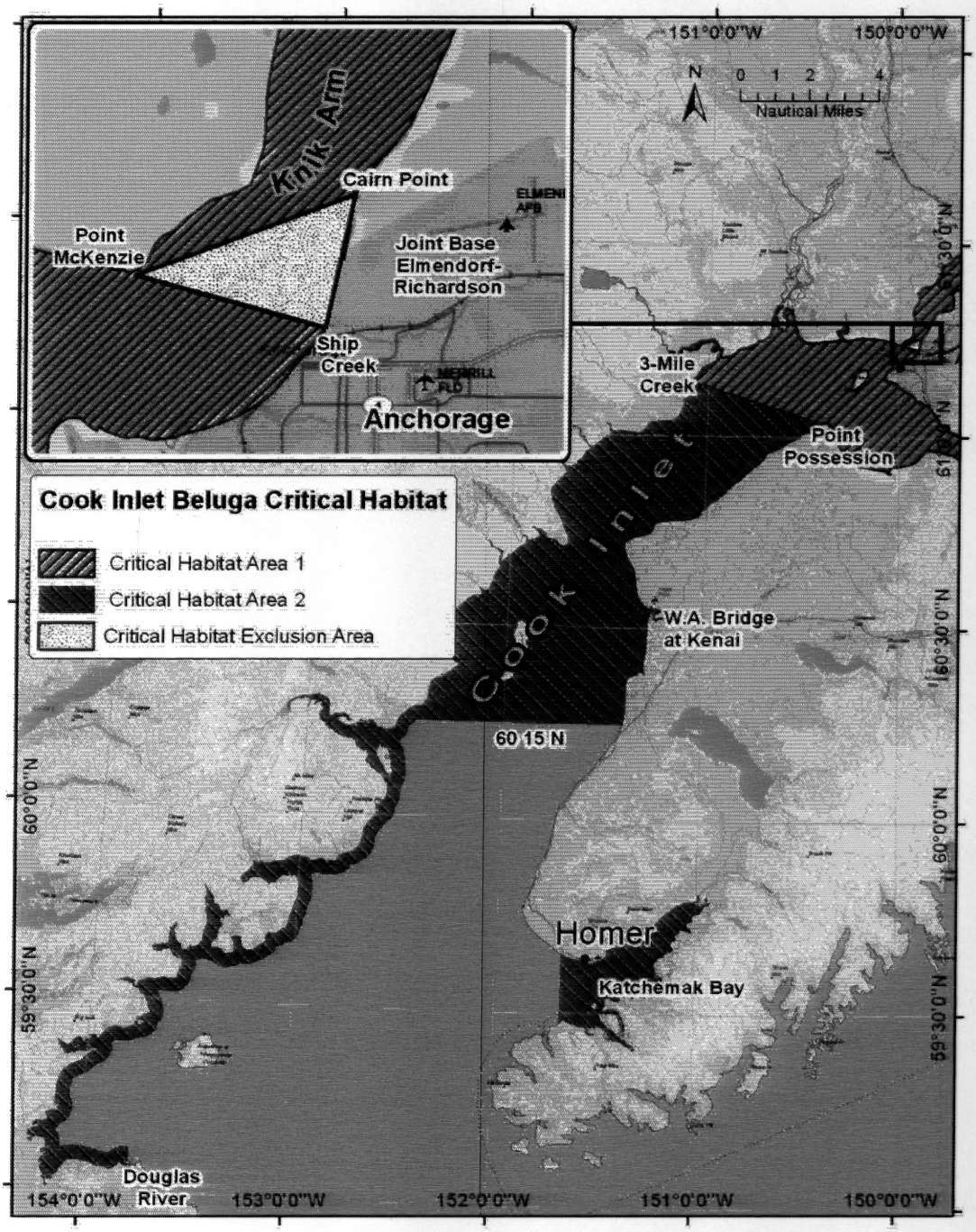
Figure 1. Cook Inlet Beluga Critical Habitat.



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Prior to the decline, this DPS was believed to range throughout Cook Inlet and occasionally into Prince William Sound and Yakutat (Nemeth *et al.* 2007). However the range has contracted coincident with the population reduction (Speckman and Piatt 2000). During the summer and fall beluga whales are concentrated near the Susitna River mouth, Knik Arm, Turnagain Arm, and Chickaloon Bay (Nemeth *et al.* 2007) where they feed on migrating eulachon (*Thaleichthys pacificus*) and salmon (*Onchorhyncus spp.*) (Moore *et al.* 2000). Critical Habitat Area

1 reflects this summer distribution (Figure 1). During the winter, beluga whales concentrate in deeper waters in the mid-inlet to Kalgin Island, and in the shallow waters along the west shore of Cook Inlet to Kamishak Bay (Critical Habitat Area 2; Figure 1). Some whales may also winter in and near Kachemak Bay.

The Cosmopolitan State lease does not fall within beluga whale critical habitat. Based on Goetz et al. (2012) beluga whale densities, both along the route from Port Graham and at the well site, are very low (<0.01 whales/km²). In the past, beluga whales have been observed in Kachemak Bay, which presumably could have travelled between the bay and upper Cook Inlet following a route past the current location of the Cosmopolitan State lease. Reported observations since 1975 show most whale activity in Kachemak Bay occurred prior to 2000. However, in 2013 a single beluga was sighted a few kilometers from Cosmopolitan State well site #A–1 (Owl Ridge 2014).

Killer Whales (*Orcinus orca*)

Two different killer whale stocks inhabit the Cook Inlet region of Alaska: the Alaska resident stock (resident stock) and the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock (transient stock) (Allen and Angliss, 2014). The Alaska resident stock occurs from Southeast Alaska to the Bering Sea (Allen and Angliss, 2014) and feeds exclusively on fish, while transient killer whales feed primarily on marine mammals (Saulitis *et al.*, 2000). Killer whales are occasionally observed in lower Cook Inlet, especially near Homer and Port Graham (Shelden *et al.*, 2003; Rugh *et al.*, 2005). A concentration of sightings near Homer and inside Kachemak Bay may represent high killer whale use or high observer-effort given most records are from a whale-watching venture based in Homer. During aerial surveys conducted between 1993 and 2004, killer whales were only observed on three flights, all in the Kachemak Bay and English Bay area (Rugh *et al.*, 2005). Eighteen killer whales (it is unknown which stock these belonged to) were recorded during the May to August 2013 marine mammal monitoring activities at Cosmopolitan State #A–1 (Owl Ridge 2014). Based on these sightings, it is possible that killer whales will occur in the vicinity of the proposed drilling activity.

Harbor Porpoise (*Phocoena phocoena*)

The most recent estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km² (Dahlheim *et al.*, 2000) indicating that only a small number use Cook Inlet. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.*, 2005). Harbor porpoises are found primarily in coastal waters less than 328 ft deep (Hobbs and Waite, 2010) where they feed primarily on Pacific herring, other schooling fish, and cephalopods. The diet of harbor porpoise within Cook Inlet is unknown, although seasonal distribution patterns of porpoise (Shelden et al. 2014) coincident with eulachon, longfin smelt, capelin, herring, and salmon concentrations (Moulton 1997) suggest these fish are important prey items for Cook Inlet harbor porpoise. Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October, except for a recent survey that recorded higher than usual numbers (Prevel Ramos *et al.*, 2008). In addition, recent passive acoustic research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory (NMML) have indicated that harbor porpoises occur more frequently than previously thought, particularly in the West Foreland area in the spring (NMML, 2011); however overall numbers are still unknown at this time. Also, harbor porpoises were the most frequently sighted marine mammal species during monitoring in 2013 at the Cosmopolitan State #A–1 well. At least 154 harbor porpoises were recorded during the 2013 monitoring, but only 12 were observed inside 853 ft (260 m) of the drill rig.

Humpback whale (*Megaptera novaeangliae*)

Although there is considerable distributional overlap in the humpback whale stocks that use Alaska, the whales seasonally found in lower Cook Inlet are probably of the Central North Pacific stock. Listed as endangered under the Endangered Species Act (ESA), this stock has recently been estimated at 7,469, with the portion of the stock that feeds in the Gulf of Alaska estimated at 2,845 animals (Allen and Angliss 2014). The Central North Pacific stock winters in Hawaii and summers from British Columbia to the Aleutian Islands (Calambokidis *et al.* 1997), including Cook Inlet.

In the North Pacific, humpback whiles feed primarily on krill (especially euphausiids) and small schooling fish such including herring, sand lance, capelin, and eulachon (Clapham 2002). Based on both fecal samples and isotope analysis, Witteveen et al. (2011) found humpback whales near Kodiak Island to feed largely on euphausiids, capelin, Pacific sand lance, and juvenile walleye pollock. It is unknown what humpback whales seasonally occurring in Kachemak Bay and near Anchor Point are feeding on, but Cook Inlet seabird and forage fish studies (Piatt and Roseneau 1997) found large concentrations of sand lance in this region. Humpback use of Cook Inlet is largely confined to lower Cook Inlet. They have been regularly seen near Kachemak Bay during the summer months (Rugh *et al.* 2005a), and there is a whale-watching venture in Homer capitalizing on this seasonal event. There are anecdotal observations of humpback whales as far north as Anchor Point, with very few records to the latitude of the Cosmopolitan State lease area. However, 29 sightings of 48 humpback whales were recorded by marine mammal observers during the 2013 monitoring program at Cosmopolitan State well site #A–1 (Owl Ridge 2014), although nearly all of these animals were observed at a distance well south of the well site, many records were repeat sightings of the same animals, and none were recorded inside an active harassment zone. Due to these sightings, humpback whales may be encountered in the vicinity of the project and were included in the application for incidental take.

Gray Whale (*Eschrichtius robustus*)

The gray whale is a large baleen whale known to have one of the longest migrations of any mammal. This whale can be found all along the shallow coastal waters of the North Pacific Ocean. The Eastern North Pacific stock, which includes those whales that travel along the coast of Alaska, was delisted from the ESA in 1994 after a distinction was made between the western and eastern populations (59 FR 31094, June 16, 1994). The most recent estimate of abundance for the Eastern North Pacific stock of gray whales is 19,126, based on the 2006/2007 southbound survey (Laake *et al.*, 2009).

Gray whales typically do not feed during their northward migration through Alaskan waters until they reach the Chukchi Sea where they spend the summer feeding mostly on ampeliscid amphipods, a benthic crustacean (Rice and Wolman 1971, Highsmith and Coyle 1992, Nelson et al. 1994). However, small groups of whales may opportunistically feed along route (Nerini 1984), with some groups actually becoming "resident" at areas of high localized prey densities (Calambokidis et al. 2004, Estes 2006). One "resident" group, known as the Kodiak group, has been observed year-round at Ugak Bay (Kodiak Island)

feeding on dense populations of hooded shrimp or cumaceans (Diastylidae), a benthic crustacean (Moore et al. 2007). Groups of gray whales were recorded at the Cosmopolitan State lease site in 2013 (Owl Ridge 2014), mostly in July, but it was noted that these may have been repeated sightings of the same one or two small groups, suggesting seasonal foraging use of the Anchor Point area by a few whales. There is no information the diet of gray whales using lower Cook Inlet, but available prey could be similar to that found at Ugak Bay.

Although observations of gray whales are rare within Cook Inlet, marine mammal observers noted individual gray whales on nine occasions in upper Cook Inlet in 2012 while conducting marine mammal monitoring for seismic survey activities under an IHA NMFS issued to Apache Alaska Corporation: Four times in May; twice in June; and three times in July (Apache, 2013). Annual surveys conducted by NMFS in Cook Inlet since 1993 have resulted in a total of five gray whale sightings (Rugh *et al.*, 2005). Although Cook Inlet is not believed to comprise either essential feeding or social ground, there may be some encounters in lower Cook Inlet. Small numbers of summering gray whales have been noted by fishermen near Kachemak Bay and north of Anchor Point. Further, summer gray whales were recorded a dozen times offshore of Cape Starichkof by observers monitoring BlueCrest's Cosmopolitan #A–1 drilling program between May and August 2013. However, as noted above, these may have been repeat sightings of the same one or two small groups.

Minke Whale (*Balaenoptera acutorostrata*)

Minke whales are the smallest of the rorqual group of baleen whales. There are no population estimates for the North Pacific, although estimates have been made for some portions of Alaska. Zerbini *et al.* (2006) estimated the coastal population between Kenai Fjords and the Aleutian Islands at 1,233 animals. During Cook Inlet-wide aerial surveys conducted from 1993 to 2004, minke whales were encountered only twice (1998, 1999), both times off Anchor Point 16 mi northwest of Homer. A minke whale was also reported off Cape Starichkof in 2011 (A. Holmes, pers. comm.) and 2013 (E. Fernandez and C. Hesselbach, pers. comm.), suggesting this location is regularly used by minke whales, including during the winter. There are no records north of Cape Starichkof. However, 42 minke whales were recorded at Cosmopolitan State site #A–1 between May and August 2013 in patterns suggesting the presence of a small, yet conspicuous summer population (at least) within the Cosmopolitan State unit. All but three of the minke whales observed during the 2013 monitoring season were recorded over 984 ft (300 m) from the active drill rig.

Minke whales have a very catholic diet feeding on preferred prey most abundant at a given time and location (Leatherwood and Reeves 1983). In the southern hemisphere they feed largely on krill, while in the North Pacific they feed on schooling fish such as herring, sandlance, and walleye pollock (Reeves et al. 2002). There is no dietary information specific to Alaska although anecdotal observations of minke whales feeding on shoaling fish off Anchor Point have been reported to NMFS (Brad Smith, pers. comm.).

Dall's Porpoise (*Phocoenoides dalli*)

Dall's porpoise are widely distributed throughout the North Pacific Ocean including Alaska, although they are not found in upper Cook Inlet and the shallower waters of the Bering, Chukchi, and Beaufort Seas (Allen and Angliss, 2014). The Alaskan population has been estimated at 83,400 animals (Allen and Angliss, 2014), making it one of the more common cetaceans in the state. Dall's porpoise prefer the deep offshore and shelf slope waters where they feed largely on mesopelagic fish and squid, but also herring in more nearshore waters (Jefferson 2002). There is no diet information specific to Cook Inlet. Dall's porpoise have been observed in lower Cook Inlet, including Kachemak Bay and near Anchor Point (Glenn Johnson, pers. comm.), but sightings there are rare, as expected, given they prefer waters exceeding 180 meters deep. During 112 days of monitoring during the Cosmopolitan State #1 drilling operation between May and August 2013, 19 Dall's porpoise were recorded (all during the month of August), but none were observed in close proximity of the drill rig (*i.e.*, they were greater than 853 ft [260 m away]).

Pinnipeds

Harbor Seals (*Phoca vitulina*)

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet and are one of the more common marine mammal species in Alaskan waters. Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet, and their presence in the upper inlet coincides with seasonal runs of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS, 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km (15 to 60 mi) south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh *et al.*, 2005). Montgomery *et al.* (2007) recorded over 200 haulout sites in lower Cook Inlet alone. Montgomery *et al.* (2007) also found seals elsewhere in Cook Inlet to move in response to local steelhead and salmon runs. However, aerial surveys conducted in June 2013 for the proposed Susitna Dam project noted nearly 700 harbor seals in the Susitna Delta region (Alaska Energy Authority, 2013). During the marine mammal monitoring associated with the 2013 drilling activities at Cosmopolitan State, 77 harbor seals were recorded. Harbor seals may be encountered during BlueCrest's lower Cook Inlet proposed drilling program.

Steller Sea Lion (*Eumetopias jubatus*)

The Western Stock of the Steller sea lion is defined as all populations west of longitude 144° W. to the western end of the Aleutian Islands. The most recent estimate for this stock is 45,649 animals (Allen and Angliss 2014), considerably less than that estimated 140,000 animals in the 1950s (Merrick *et al.* 1987). Because of this dramatic decline, the stock was listed as threatened under ESA in 1990, and was relisted as endangered in 1997. Critical habitat was designated in 1993, and is defined as a 20-nautical-mile radius around all major rookeries and haulout sites. The 20-nautical-mile buffer was established based on telemetry data that indicated these sea lions concentrated their summer foraging effort within this distance of rookeries and haul outs.

Steller sea lions inhabit lower Cook Inlet, especially in the vicinity of Shaw Island and Elizabeth Island (Nagahut Rocks) haulout sites (Rugh *et al.* 2005a), but are rarely seen in upper Cook Inlet (Nemeth *et al.* 2007). Of the 42 Steller sea lion groups recorded during Cook Inlet aerial surveys between 1993 and 2004, none were recorded north of Anchor Point and only one in the vicinity of Kachemak Bay (Rugh *et al.* 2005a). Marine mammal observers associated with Buccaneer's drilling project off Cape Starichkof did observe seven Steller sea lions during the summer of 2013 (Owl Ridge 2014).

The upper reaches of Cook Inlet may not provide adequate foraging conditions for sea lions for establishing

a major haul out presence. Steller sea lions feed largely on walleye pollock (*Theragra chalcogramma*), salmon (*Onchorhyncus spp.*), and arrowtooth flounder (*Atheresthes stomias*) during the summer, and walleye pollock and Pacific cod (*Gadus macrocephalus*) during the winter (Sinclair and Zeppelin 2002), none which, except for salmon, are found in abundance in upper Cook Inlet (Nemeth *et al.* 2007). Small numbers of Steller sea lions are likely to be encountered during BlueCrest's planned operations in 2016 based on the observations of sea lions made at the lease site in 2013 (Owl Ridge 2014), but on of which was observed within 50m of the drill rig during the 2013 monitoring program.

Summary

BlueCrest's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2014 SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2014_final.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.*, impact hammering of the drive pipe and VSP) has been observed to, or are thought to, impact marine mammals. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

The likely or possible impacts of the proposed drilling program in lower Cook Inlet on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment and personnel. Petroleum development and associated activities introduce sound into the marine environment. Impacts to marine mammals are expected to primarily be acoustic in nature. Potential acoustic effects on marine mammals relate to impact hammering of drive pipe and the VSP airgun array.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 25 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz;
- Phocid pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 100 kHz; and
- Otariid pinnipeds in Water: functional hearing is estimated to occur between approximately 100 Hz and 48 kHz.

As mentioned previously in this document, nine marine mammal species (seven cetacean and two pinniped species) may occur in the drilling area of BlueCrest's lower Cook Inlet project. Of the seven cetacean species likely to occur in the proposed project area and for which take is requested, three are classified as low-frequency cetaceans (*i.e.*, humpback, minke, and gray whales), two are classified as a mid-frequency cetacean (*i.e.*, beluga and killer whales), and two are classified as high-frequency cetaceans (*i.e.*, harbor and Dall's porpoises) (Southall *et al.*, 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

1. Tolerance

Numerous studies have shown that underwater sounds from industry activities are often readily detectable by marine mammals in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response to industry activities of various types (Miller *et al.*, 2005; Bain and Williams, 2006). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound such as airgun pulses or vessels under some conditions, at other times mammals of all three types have shown no overt reactions (*e.g.*, Malme *et al.*, 1986; Richardson *et al.*, 1995a; Madsen and Mohl, 2000; Croll *et al.*, 2001; Jacobs and Terhune, 2002; Madsen *et al.*, 2002; Miller *et al.*, 2005). Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.*, active versus silent). The airgun arrays used in the Weir (2008) study were much larger than the array proposed for use during the limited VSP (total discharge volumes of 600 to 880 in^3 for 1 to 2 days). In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995a) found that vessel noise does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995a) went on to explain that seals on haul-outs sometimes respond strongly to the presence of vessels and at other times appear to show considerable tolerance of vessels.

2. Masking

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations in situations where the temporal and spatial scope of the masking activities is extensive.

Masking occurs when anthropogenic sounds and signals (that the animal utilizes) overlap at both spectral and temporal scales. The sounds generated by the proposed equipment for the drilling program will consist of low frequency sources (most under 500 Hz). Lower frequency man-made sounds are more likely to affect detection of communication calls of low-frequency specialists and other potentially important natural sounds such as surf and prey noise. There is less concern regarding masking of conspecific vocalizations near the jack-up rig during drilling operations, as the species most likely to be found in the vicinity are mid- to high-frequency cetaceans or pinnipeds and not low-frequency cetaceans. Additionally, masking is not expected to be a concern from airgun usage due to the brief duration of use (less than a day to up to 2 days) and the low-frequency sounds that are produced by the airguns. However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be "stretched" to seconds with long decays (Madsen *et al.*, 2006), although the intensity of the sound is greatly reduced.

The "stretching" of sound described above could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Foote *et al.*, 2004; Holt *et al.*, 2009); however, only low numbers of baleen whales are expected to occur within the proposed action area. Marine mammals are thought to sometimes be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark, 2010). The North Atlantic right whales (Eubalaena glacialis) exposed to high shipping noise increase call frequency (Parks *et al.*, 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller el al., 2000). Additionally, beluga whales have been known to change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.*, 1985; Lesage *et al.*, 1999; Scheifele *et al.*, 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995a). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

3. Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Many different variables can influence an animal's perception of and response to (in both nature and magnitude) an acoustic event. An animal's prior

experience with a sound or sound source affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately pre-disposed to respond to certain sounds in certain ways; Southall *et al.*, 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.*, calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.*, 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (*i.e.*, proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Exposure of marine mammals to sound sources can result in (but is not limited to) no response or any of the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; avoidance; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.*, 2007). The biological significance of many of these behavioral disturbances is difficult to predict.

The following sub-sections provide examples of the variability in behavioral responses that could be expected given the different sensitivities of marine mammal species to sound.

Baleen Whales—Richardson *et al.* (1995b) reported changes in surfacing and respiration behavior and the occurrence of turns during surfacing in bowhead whales exposed to playback of underwater sound from drilling activities. These behavioral effects were localized and occurred at distances up to 1.2–2.5 mi (2–4 km).

Richardson *et al.* (2008) reported a slight change in the distribution of bowhead whale calls in response to operational sounds on BP's Northstar Island. The southern edge of the call distribution ranged from 0.47 to 1.46 mi (0.76 to 2.35 km) farther offshore, apparently in response to industrial sound levels. However, this result was only achieved after intensive statistical analyses, and it is not clear that this represented a biologically significant effect.

Richardson *et al.* (1995a) and Moore and Clarke (2002) reviewed a few studies that observed responses of gray whales to aircraft. Cow-calf pairs were quite sensitive to a turboprop survey flown at 1,000 ft (305 m) altitude on the Alaskan summering grounds. In that survey, adults were seen swimming over the calf, or the calf swam under the adult (Ljungblad *et al.*, 1983, cited in Richardson *et al.*, 1995a and Moore and Clarke, 2002). However, when the same aircraft circled for more than 10 minutes at 1,050 ft (320 m) altitude over a group of mating gray whales, no reactions were observed (Ljungblad *et al.*, 1987, cited in Moore and Clarke, 2002). Malme *et al.* (1984, cited in Richardson *et al.*, 1995a and Moore and Clarke, 2002) conducted playback experiments on migrating gray whales. They exposed the animals to underwater noise recorded from a Bell 212 helicopter (estimated altitude = 328 ft [100 m]), at an average of three simulated passes per minute. The authors observed that whales changed their swimming course and sometimes slowed down in response to the playback sound but proceeded to migrate past the transducer. Migrating gray whales did not react overtly to a Bell 212 helicopter at greater than 1,394 ft (425 m) altitude, occasionally reacted when the helicopter was at 1,000–1,198 ft (305–365 m), and usually reacted when it was below 825 ft (250 m; Southwest Research Associates, 1988, cited in Richardson *et al.*, 1995a and Moore and Clarke, 2002). Reactions noted in that study included abrupt turns or dives or both. Green *et al.* (1992, cited in Richardson *et al.*, 1995a) observed that migrating gray whales rarely exhibited noticeable reactions to a straight-line overflight by a Twin Otter at 197 ft (60 m) altitude. Overflights are likely to have little or no disturbance effects on baleen whales. Any disturbance that may occur would likely be temporary and localized.

Southall *et al.* (2007, Appendix C) reviewed a number of papers describing the responses of marine mammals to non-pulsed sound, such as that produced during drilling operations. In general, little or no response was observed in animals exposed at received levels from 90–120 dB re 1 μPa (rms). Probability of avoidance and other behavioral effects increased when received levels were from 120–160 dB re 1 μPa (rms). Some of the relevant reviews contained in Southall *et al.* (2007) are summarized next.

Baker *et al.* (1982) reported some avoidance by humpback whales to vessel noise when received levels were 110–120 dB (rms) and clear avoidance at 120–140 dB (sound measurements were not provided by Baker but were based on measurements of identical vessels by Miles and Malme, 1983).

Malme *et al.* (1983, 1984) used playbacks of sounds from helicopter overflight and drilling rigs and platforms to study behavioral effects on migrating gray whales. Received levels exceeding 120 dB induced avoidance reactions. Malme *et al.* (1984) calculated 10%, 50%, and 90% probabilities of gray whale avoidance reactions at received levels of 110, 120, and 130 dB, respectively. Malme *et al.* (1986) observed the behavior of feeding gray whales during four experimental playbacks of drilling sounds (50 to 315 Hz; 21-min overall duration and 10% duty cycle; source levels of 156–162 dB). In two cases for received levels of 100–110 dB, no behavioral reaction was observed. However, avoidance behavior was observed in two cases where received levels were 110–120 dB.

Richardson *et al.* (1990) performed 12 playback experiments in which bowhead whales in the Alaskan Arctic were exposed to drilling sounds. Whales generally did not respond to exposures in the 100 to 130 dB range, although there was some indication of minor behavioral changes in several instances.

McCauley *et al.* (1996) reported several cases of humpback whales responding to vessels in Hervey Bay, Australia. Results indicated clear avoidance at received levels between 118 to 124 dB in three cases for which response and received levels were observed/measured.

Palka and Hammond (2001) analyzed line transect census data in which the orientation and distance off transect line were reported for large numbers of minke whales. The authors developed a method to account for effects of animal movement in response to sighting platforms. Minor changes in locomotion speed, direction, and/or diving profile were reported at ranges from 1,847 to 2,352 ft (563 to 717 m) at received levels of 110 to 120 dB.

Biassoni *et al.* (2000) and Miller *et al.* (2000) reported behavioral observations for humpback whales exposed to a low-frequency sonar stimulus (160- to 330-Hz frequency band; 42-s tonal signal repeated every 6 min; source levels 170 to 200 dB) during playback experiments. Exposure to measured received levels

ranging from 120 to 150 dB resulted in variability in humpback singing behavior. Croll *et al.* (2001) investigated responses of foraging fin and blue whales to the same low frequency active sonar stimulus off southern California. Playbacks and control intervals with no transmission were used to investigate behavior and distribution on time scales of several weeks and spatial scales of tens of kilometers. The general conclusion was that whales remained feeding within a region for which 12 to 30 percent of exposures exceeded 140 dB.

Frankel and Clark (1998) conducted playback experiments with wintering humpback whales using a single speaker producing a low-frequency "M-sequence" (sine wave with multiple-phase reversals) signal in the 60 to 90 Hz band with output of 172 dB at 1 m. For 11 playbacks, exposures were between 120 and 130 dB re 1 μPa (rms) and included sufficient information regarding individual responses. During eight of the trials, there were no measurable differences in tracks or bearings relative to control conditions, whereas on three occasions, whales either moved slightly away from (n = 1) or towards (n = 2) the playback speaker during exposure. The presence of the source vessel itself had a greater effect than did the M-sequence playback.

Finally, Nowacek *et al.* (2004) used controlled exposures to demonstrate behavioral reactions of northern right whales to various non-pulse sounds. Playback stimuli included ship noise, social sounds of conspecifics, and a complex, 18-min "alert" sound consisting of repetitions of three different artificial signals. Ten whales were tagged with calibrated instruments that measured received sound characteristics and concurrent animal movements in three dimensions. Five out of six exposed whales reacted strongly to alert signals at measured received levels between 130 and 150 dB (*i.e.*, ceased foraging and swam rapidly to the surface). Two of these individuals were not exposed to ship noise, and the other four were exposed to both stimuli. These whales reacted mildly to conspecific signals. Seven whales, including the four exposed to the alert stimulus, had no measurable response to either ship sounds or actual vessel noise.

Baleen whale responses to pulsed sound (*e.g.*, seismic airguns) have been studied more thoroughly than responses to continuous sound (*e.g.*, drill rigs). Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much greater distances (Miller *et al.*, 2005). However, baleen whales exposed to strong noise pulses often react by deviating from their normal migration route (Richardson *et al.*, 1999). Migrating gray and bowhead whales were observed avoiding the sound source by displacing their migration route to varying degrees but within the natural boundaries of the migration corridors (Schick and Urban, 2000; Richardson *et al.*, 1999; Malme *et al.*, 1983). Baleen whale responses to pulsed sound however may depend on the type of activity in which the whales are engaged. Some evidence suggests that feeding bowhead whales may be more tolerant of underwater sound than migrating bowheads (Miller *et al.*, 2005; Lyons *et al.*, 2009; Christie *et al.*, 2010).

Results of studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 2.8–9 mi (4.5–14.5 km) from the source. For the much smaller airgun array used during the VSP survey (total discharge volume between 600 and 880 in^3), the distance to a received level of 160 dB re 1 μPa rms is estimated to be 1.53 mi (2.47 km). Baleen whales within those sound isopleths may show avoidance or other strong disturbance reactions to the airgun array.

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50% of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10% of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast and on observations of the distribution of feeding Western Pacific gray whales off Sakhalin Island, Russia, during a seismic survey (Yazvenko *et al.*, 2007).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises do not necessarily provide information about long-term effects. While it is not certain whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years, certain species have continued to use areas ensonified by airguns and have continued to increase in number despite successive years of anthropogenic activity in the area. Behavioral responses to noise exposure are generally highly variable and context dependent (Wartzok *et al.* 2004). Travelling blue and fin whales (*Balaenoptera physalus*) exposed to seismic noise from airguns have been reported to stop emitting redundant songs (McDonald *et al.* 1995; Clark & Gagnon 2006). By contrast, Iorio and Clark (2010) found increased production of transient, non-redundant calls of blue whales during seismic sparker operations. In any event, the brief exposures to sound pulses from the proposed airgun source (the airguns will only be fired for a few hours at a time over the course of 1 to 2 days) are highly unlikely to result in prolonged effects.

Toothed Whales—Most toothed whales have their greatest hearing sensitivity at frequencies much higher than that of baleen whales and may be less responsive to low-frequency sound commonly associated with oil and gas industry exploratory drilling activities. Richardson *et al.* (1995b) reported that beluga whales did not show any apparent reaction to playback of underwater drilling sounds at distances greater than 656–1,312 ft (200–400 m). Reactions included slowing down, milling, or reversal of course after which the whales continued past the projector, sometimes within 164–328 ft (50–100 m). The authors concluded (based on a small sample size) that the playback of drilling sounds had no biologically significant effects on migration routes of beluga whales migrating through pack ice and along the seaward side of the nearshore lead east of Point Barrow in spring.

At least six of 17 groups of beluga whales appeared to alter their migration path in response to underwater playbacks of icebreaker sound (Richardson *et al.*, 1995b). Received levels from the icebreaker playback were estimated at 78–84 dB in the ⅓-octave band centered at 5,000 Hz, or 8–14 dB above ambient. If beluga whales reacted to an actual icebreaker at received levels of 80 dB, reactions would be expected to occur at distances on the order of 6.2 mi (10 km). Finley *et al.* (1990) also reported beluga avoidance of icebreaker activities in the Canadian High Arctic at distances of 22–31 mi (35–50 km). In addition to avoidance, changes in dive behavior and pod integrity were also noted. However,

under 5.27;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under E.1, Method of Test for Measuring Thermal Efficiency.

The following basic models are included in Thermal Solutions' petition:

EV(A,S,O)0750W**-*A*
EV(A,S,O)1000W**-*A*
EV(A,S,O)1500W**-*A*
EV(A,S,O)2000W**-*A*

IV. Summary and Request for Comments

Through this notice, DOE announces receipt of and is publishing Thermal Solutions' petition for waiver from the DOE test procedure for commercial water heaters for its EV(A,S,O)0750W**-*A*, EV(A,S,O)1000W**-*A*, EV(A,S,O)1500W**-*A*, and EV(A,S,O)2000W**-*A* commercial instantaneous water heater models, which contain 10 gallons or more of water. The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the thermal efficiency and standby loss of Thermal Solutions' specified basic models of commercial instantaneous water heaters containing 10 gallons or more of water. DOE is considering including this alternate test procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Randy Witmer, Engineering Manager, Thermal Solutions Products, LLC, P.O. Box 3244, Lancaster, PA 17604–3244. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document marked "confidential" with all of the information believed to be confidential included, and one copy of the document marked "non-confidential" with all of the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on May 31, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

March 9, 2015
U.S. Department of Energy
Building Technologies Program
Test Procedure Waiver
1000 Independence Avenue SW.
Washington, DC 20585–0121

Re: Waiver for Test Procedure for Commercial Water Heating Equipment

To Whom It May Concern:

Pursuant to the provisions of 10 CFR 431.401, Thermal Solutions Products, LLC is hereby applying for a waiver of the standby loss test procedure of 10 CFR 431.106 for the following basic models of commercial instantaneous water heaters containing 10 gallons or more of water (sold under the Thermal Solutions brand name):

- EV(A,S,O)0750W**-*A*
- EV(A,S,O)1000W**-*A*
- EV(A,S,O)1500W**-*A*
- EV(A,S,O)2000W**-*A*

The current Department of Energy efficiency test procedure for commercial water heaters references the relevant test procedures for measuring thermal efficiency and standby loss specified in the standard, ANSI Z21.10.3–2011. The identified basic models rely on flow of water through the heater to activate the burner. As will be explained below, the current test procedure does not provide a proper representation of the standby loss of these models.

The current standby loss test procedure is described in Exhibit G.2 of ANSI Z21.10.3–2011. This procedure is designed to test tank-type water heaters which are thermostatically operated. The basic steps of the procedure are to heat the water within the water heater, turn off the burner or element and then measure all the energy consumption that occurs while the water heater is "standing by" for approximately 24 hours with no water being withdrawn from it. The key measurement of the test procedure is the energy consumed by the burner or heating element when the thermostat senses that the water in the tank has cooled down to the point where it needs to be reheated. The current test does not address water heaters that have no means to activate the burner or heating element if no heated water is being drawn from the unit, *i.e.* the standby condition.

The models for which Thermal Solutions Products, LLC is seeking this test procedure waiver employ tube type heat exchangers and are designed to be flow activated. That is, the burner does not turn on until water flow through the unit is sensed. Under the current standby loss test procedure, the burner on these models will not fire at any time during the test, and the resulting standby loss measurement would be nearly zero. That measurement is not representative of the standby loss characteristics of these models. Thermal Solutions Products, LLC believes that the current test procedure evaluates the standby loss of the identified basic models in a manner so unrepresentative of the true energy consumption as to provide materially inaccurate comparative data.

A list of manufacturers of all other basic models marketed in the United States known to Thermal Solutions Products, LLC to incorporate similar design characteristics is included as Attachment A.

An alternative procedure for measuring the standby loss of tube type instantaneous water heaters is included as Attachment B. This alternative procedure is presented as a proposed revision to the ANSI Z21.10.3-*2013* standard, with modified and additional wording to address testing of these particular models. Thermal Solutions Products, LLC believes this alternative provides a representative measure of the standby loss of these models. Thermal Solutions Products, LLC requests that DOE grant it a waiver to use this alternative procedure in lieu of the standby loss procedure specified in the current DOE efficiency test procedures for commercial water heaters.

Respectfully submitted,

Randy Witmer
Engineering Manager
Thermal Solutions Products, LLC

Attachment A: Manufacturers of Commercial Tube Type Water Heaters Containing 10 Gallons of Water or More

A.O. Smith Corporation
11270 W Park Place
PO Box 245008
Milwaukee, WI 53224–3623

HTP, Inc.
120 Braley Rd
P.O. Box 429
East Freetown, MA 02717–1125

Laars Heating Systems Company
20 Industrial Way
Rochester, NH 03867–4296

Lochinvar LLC
300 Maddox Simpson Pkwy
Lebanon, TN 37090–5366

Attachment B: Proposed Alternate Standby Loss Test Procedure for Commercial Tube Type Water Heaters Containing 10 Gallons of Water or More

Note: The following alternate test procedure is presented in the context of proposed changes to the referenced portions of ANSI Z21.10.3–2013.

5.26 Capacities Of Storage Vessels

For a water heater including a storage vessel, or any water heater having an input rating of less than 4000 Btu/hr per gallon (1112 kJ/L) of capacity, the storage capacity shall be within ± 5.0 percent of the manufacturer's rated volume.

Method of Test

The storage capacity shall be determined by weighing the system when dry and empty and reweighing it when full or by filling the system with water, the weight of which has

been predetermined. The capacity shall then be computed in gallons and compared with the manufacturer's rated volume.

5.27 Capacities of Tube Type Water Heaters

The amount of water contained in a tube type water heater or in a water heater which has not been tested under 5.26 shall be determined if it is 10 gallons or more.

Method of Test

The volume of water contained within the water heater shall be determined. This determination shall include all water contained within the unit from the inlet connection to the outlet connection but not the capacity of any separate storage vessels. The volume of water contained within the water heater shall then be computed in gallons.

Note: The following proposed wording would be added to *Annex E: Efficiency Test Procedures* of ANSI Z21.10.3–2013.

Standby Loss for tank type water heaters shall be determined using Appendix E.2.

Standby Loss for tube type water heaters that contain 10 or more gallons within the water heater, as determined under 5.27, shall be determined using Appendix E.3.

E.3 Method of Test for Measuring Standby Loss for Tube Type Instantaneous Water Heaters With 10 or Greater Gallons of Storage

The appliance shall be installed as specified in E.1, Method of Test for Measuring Thermal Efficiency. This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise the water heater shall be put into operation under the same test conditions specified in E.1 and the outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2 °F (21 ± 1°C) above the supply temperature. After the outlet temperatures becomes constant, as indicated by no variation in excess of 2 °F (1°C) over a 3 minute period, shut down the main burner(s) and, if applicable, wait for the water pump to shut down, and then start the test.

At the start of the test, record the time, ambient temperature, outlet water temperature, supply water temperature and begin measuring the fuel and electric consumption.

During the first hour, outlet water temperature, supply water temperature and the ambient air temperature shall be measured at the end of each 5 minute interval. For the remainder of the test, these measurements shall be made at the end of every 15 minute interval. The duration of this test shall be 24 hours. If the main burner is firing at 24 hours, continue the test until the main burner and the water pump, if applicable, have shut down.

Immediately after the conclusion of the test, record the total fuel flow and electrical energy consumption, the final ambient air temperature and the final outlet water temperature.

Calculate the average of the ambient air temperatures and the supply water temperatures taken at the end of each time interval, including the initial and final values.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [(Cs(Qs)(H) + Ec)/t] - [(\Delta T_4)/(\Delta T_3)(t)E_t]$$

Where

Cs = correction applied to the heating value of a gas H, when it is metered at temperature and/or pressure conditions other than the standard conditions for which the value of H is based;

H = higher heating value of gas, Btu per cu. ft. (MJ/m3);

Qs = total fuel flow as metered, cu. ft. (m3);

ΔT_3 = difference between the outlet temperature and the average value of the ambient air temperature, °F (°C);

ΔT_4 = difference between the average supply water temperature and the outlet temperature, °F (°C);

t = duration of test, hrs.;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under E.1, Method of Test for Measuring Thermal Efficiency

If the main burner(s) does not cycle on during this test, the hourly average standby loss calculation simplifies to:

$$S = \{(K(Va)(\Delta T_4)/E_t) + E_c\}/t$$

For water heaters that will not initiate or cause actions that will initiate burner operation, the following simplified procedure may be used to measure the hourly standby loss.

This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise, provide the electrical connection as specified in E.1, Method of Test for Measuring Thermal Efficiency, and start the test.

At the start of the test, record the time and begin measuring the electric consumption for one hour. Record the duration of the test and the total electrical consumption during the test.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [(((\Delta T_5)\ k\ V_a/(E_t))/24) + E_c]$$

Where:

ΔT_5 = 70 °F (38.9°C), difference between the supply and outlet water temperatures;

k= 8.25 Btu/gallon °F (4147.6331 J/l°C), the nominal specific heat of water;

V_a = water contained in the water heater expressed in gallons (L), as determined under 5.27;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under E.1, Method of Test for Measuring Thermal Efficiency.

[FR Doc. 2016–13251 Filed 6–3–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. WH–004]

Notice of Petition for Waiver of Raypak Inc. From the Department of Energy Commercial Water Heater Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and request for public comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Raypak Inc. (Raypak) seeking an exemption from specified provisions applicable to standby loss of the U.S. Department of Energy (DOE) test procedure for commercial water heating equipment. The waiver request pertains to Raypak's specified models of commercial instantaneous water heaters containing 10 gallons or more of water. In its petition, Raypak contends that its specified water heater models that employ tube-type heat exchangers and are designed to be flow activated cannot be accurately tested using the currently applicable DOE test procedure. Consequently, Raypak seeks to use an alternate test procedure to address certain issues involved in testing the specific basic models identified in its petition. DOE solicits comments, data, and information concerning Raypak's petition and its suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the Raypak Petition until July 6, 2016.

ADDRESSES: You may submit comments, identified by case number WH–004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. WH–004] in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. WH–004, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

For further information on how to submit a comment, or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6311–6317, as codified), added by Pub. L. 95–619, established the Energy Conservation Program for Certain Industrial Equipment, which includes commercial water heaters, the focus of this notice.[2] Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) EPCA also directs DOE to consider amending the existing test procedure for each type of equipment listed each time the industry test procedure is amended for such equipment. (42 U.S.C. 6314(a)(4)) The test procedure for commercial water heaters is contained in the Code of Federal Regulations (CFR) at 10 CFR part 431, subpart G.

DOE's regulations set forth at 10 CFR 431.401 contain provisions that permit a person to seek a waiver from the test procedure requirements for covered equipment if at least one of the following conditions is met: (1) The basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 431.401(l).

II. Petition for Waiver of Test Procedure

On May 5, 2015, Raypak filed a petition for waiver from the DOE test procedure at 10 CFR 431.106 to measure standby loss of commercial water heating equipment. This petition addresses Raypak's specified models of commercial instantaneous water heaters containing 10 gallons or more of water. The current DOE efficiency test procedure for commercial water heaters incorporates by reference the relevant industry test standard for measuring thermal efficiency and standby loss, as specified in American National Standards Institute (ANSI) ANSI Z21.10.3–2011, *Gas-Fired Water Heaters, Volume III, Storage Water Heaters, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous*. In its petition, Raypak contends that its identified basic models rely on flow of water through the heater to activate the burner, but because the current DOE test procedure does not take into account such units, it does not provide a proper representation of the standby loss of these models. The current standby loss test procedure is designed to test tank-type water heaters which are thermostatically operated. The models for which Raypak is seeking this test procedure waiver employ tube-type heat exchangers and are designed to be flow activated. To address the apparent shortcomings of ANSI Z21.10.3–2011, Raypak has submitted to DOE an alternate test procedure for measuring the standby loss of tube-type instantaneous water heaters, as addressed in sections E.1 and E.3 of ANSI Z21.10.3–2012, *Gas-Fired Water Heaters, Volume III, Storage Water Heaters, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous*. Raypak believes this alternative provides a representative measure of the standby loss of these models.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of products and equipment covered by the statute. (42 U.S.C. 6293(c); 6314(d)) Consistent representations about the energy efficiency of covered products and equipment are important for consumers evaluating products when making purchasing decisions and for manufacturers to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 431.401, DOE will consider setting an alternate test procedure for Raypak in a subsequent Decision and Order.

Raypak has submitted to DOE an alternate test procedure for measuring the standby loss of tube-type instantaneous water heaters as addressed in ANSI Z21.10.3–2012 sections E.1 and E.3. Specifically, Raypak has submitted the following alternate test procedure to accurately represent the standby loss of its commercial instantaneous water heaters containing 10 gallons or more of water:

Z21.10.3–2012 Exhibit E Efficiency Test Procedures

E.1 Method of Test for Measuring Thermal Efficiency

A water heater for installation on combustible floors shall be placed on ¾ in (1.9 cm) plywood platform supported by three 2 x 4 runners. If the water heater is for installation on noncombustible floors, suitable noncombustible material shall be placed on the platform. When the use of the platform for a large water heater is not practical, the water heater may be placed on any suitable flooring. A wall mounted water heater shall be mounted to a simulated wall section.

Placement in the test room shall be in an area protected from drafts.

Inlet and outlet piping shall be immediately turned vertically downward from the connections on a tank-type water heater so as to form heat traps. Any factory supplied heat traps shall be installed per the installation instructions. Thermocouples for measuring inlet and outlet water temperatures shall be installed before the inlet heat trap piping and after the outlet heat trap piping.

Water-tube water heaters shall be installed as shown in Figure 3, Arrangement for Testing Water-tube Type Instantaneous and Circulating Water Heaters.

a. Piping Insulation

Insulate the water piping, including heat traps, for a length of 4 ft (1.22 m) from the connection at the appliance with material having a thermal resistance (R) value of not less than 4 [F·ft ·hr/Btu (0.7 K·m/W)]. Care should be taken so the insulation does not contact any appliance surface except at the location where the pipe connections penetrate the appliance jacket.

b. Temperature and Pressure Relief Valve Insulation

If the manufacturer has not provided a temperature and pressure relief valve, one shall be installed and insulated as specified above.

c. Vent Requirements

1. Appliance Equipped With Draft Hoods

All tests shall be conducted with the natural draft established by the following vent pipe arrangements:

A vertically discharging vent connection shall have attached to and vertically above it, 5 ft (1.52 m) of vent pipe the same size as the outlet. If the vent does not discharge vertically, a suitable elbow shall be installed first.

2. Direct Vent Appliances and Mechanically Vented

The appliance shall be installed with the venting arrangement specified in the manufacturer's instructions. The water heater shall be installed with the manufacturer's specified minimum venting length venting arrangement.

d. Water Supply

During conduct of this test, the temperature of the supply water shall be maintained at 70 ± 2 °F (21 ± 1 °C). The pressure of the water supply shall be maintained between 40 psi (275.8 kPa) and the maximum pressure specified by the manufacturer for the appliance under test. The accuracy of the pressure measuring devices shall be ±1.0 psi (6.9 kPa). For a water-tube water heater, the inlet water temperature shall be maintained at the supply water temperature or as specified by the manufacturer (see 2.1.8).

A tank-type water heater shall be isolated by use of a shutoff valve in the supply line with an expansion tank installed in the supply line downstream of the shutoff valve. There shall be no shutoff means between the expansion tank and the appliance inlet.

e. Gas Supply

The gas rate shall be adjusted as specified in 2.3.3. The outlet pressure of the gas appliance pressure regulator shall be within ± 10 percent of that recommended by the manufacturer. The higher heating value of the gas burned shall be obtained.

f. Installation of Temperature Sensing Means

For tank-type water heaters, six (6) temperature sensing means shall be installed inside the storage tank on the vertical center of each of 6 nonoverlapping sections of approximately equal volume from the top to the bottom of the tank. Each temperature sensing means is to be located as far as possible from any heat source or other irregularity, anodic protective device, or water tank or flue wall. The anodic protective device may be removed in order to install the temperature sensing means and all testing may be carried out with the device removed.

If the temperature sensing means cannot be installed as specified above, placement of the temperature sensing means shall be made at the discretion of the testing agency so comparable water temperature measurements may be obtained.

A temperature sensing means, shielded against direct radiation and positioned at the vertical midpoint of the water heater at a perpendicular distance of approximately 24 in (610 mm) from the surface of the jacket, shall be installed in the test room.

g. Setting Tank Thermostat

Before starting testing of a tank-type water heater, the setting of the thermostat shall first be obtained by starting with the water in the system at 70 ± 2 °F (21 ± 1 °C) and noting the maximum mean temperature of the water after the thermostat reduces the gas supply to a minimum. The temperature shall be 140 ± 5 °F (60 ± 3 °C).

h. Energy Consumption

Instrumentation shall be installed which determines, within ± 1 percent:

1. The quantity and rate of gas consumed.

2. The quantity of electricity consumed by factory supplied water heater components, and of the test loop recirculating pump, if used.

i. Room Ambient Temperature

The ambient air temperature of the test room shall be maintained at 75 ± 10 °F (24 ± 5.5 °C), as measured by the test room temperature sensing means described in "-f" above.

The ambient air temperatures shall be measured at 15 minute intervals during conduct of this test. The room temperature shall not vary more than ± 7.0 °F (± 4 °C) from the average during the test, temperature readings being taken by means of a recording thermometer at 15 minute intervals and averaged at the end of the test.

j. Efficiency Measurement

The outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2 °F (21 ± 1 °C) above the supply temperature. After the outlet temperature has become constant, as indicated by no variation in excess of 2 °F (1 °C) over a 3 minute period, the outlet water shall be diverted from the waste line to a weighing container. A scale with an error no greater than 1 percent of the total draw shall be used. Water shall be allowed to flow into the weighing container for exactly 30 minutes. The gas consumption and electrical power consumption of factory supplied heater components and of the test loop-recirculating pump, if used, shall be measured for the 30 minute period. At this time, the outlet water shall be diverted back into the waste

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Pub. L. 114–11 (April 30, 2015).

line, the meter readings noted, and the weight of heater water recorded. Throughout the period of test, supply and outlet water temperatures shall be recorded every minute. The temperature, pressure and heating value of the gas metered and barometric pressure shall be obtained.

A water meter with an error no greater than 1 percent of the total draw may be used instead of the scale and weighing container.

Thermal efficiency, Et, shall be computed by use of the following formula:

$$E_t = (KW(\theta_2 - \theta_1)/[(CF \times Q \times H) + E_c]) \times 100$$

Where:

K = 1.004 Btu per pound mass degree F (4184 J/kg °C), nominal specific heat of water at 105 °F;

W = total weight of water heated, lbs. (kg);

θ_1 = average temperature of supply water, °F (°C);

θ_2 = average temperature of outlet water, °F (°C);

Q = total gas consumed as metered, cu. ft. (m^3);

C_s = correction applied to the heating value H, when it is metered at temperature and/or pressure conditions other than the standard conditions. At which the heating value of gas is specified [normally 30 inches mercury column (101.3 kPa) and 60 °F (15.5 °C)];

H = total heating value of gas, Btu per cu. ft. (MJ/m_3); and

E_c = electrical consumption of the water heater and, when used, the test setup recirculating pump, specified in Btu (kJ).

Standby Loss for tank type water heaters shall be determined using Appendix E.2

Standby Loss for tube type water heaters that contain 10 or more gallons within the water heater, as determined under 5.27, shall be determined using Appendix E.3

E.3 Method of Test For Measuring Standby Loss for Tube Type Instantaneous Water Heaters With 10 or Greater Gallons of Storage

The appliance shall be installed as specified in G.1, Method of Test for Measuring Thermal Efficiency. This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise, the water heater shall be put into operation under the same test conditions specified in G.1, and the outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2 °F (21 ± 1 °C) above the supply temperature. After the outlet temperatures becomes constant, as indicated by no variation in excess of 2 °F (1 °C) over a 3 minute period, shut down the main burner(s) and, if applicable, wait for the water pump to shut down, and then start the test.

At the start of the test, record the time, ambient temperature, outlet water temperature, supply water temperature, and begin measuring the fuel and electric consumption.

During the first hour, outlet water temperature, supply water temperature and the ambient air temperature shall be measured at the end of each 5 minute interval. For the remainder of the test, these measurements shall be made at the end of every 15 minute interval. The duration of this test shall be 24 hours. If the main burner is firing at 24 hours, continue the test until the main burner and the water pump, if applicable, have shut down.

Immediately after the conclusion of the test, record the total fuel flow and electrical energy consumption, the final ambient air temperature, and the final outlet water temperature.

Calculate the average of the ambient air temperatures and the supply water temperatures taken at the end of each time interval, including the initial and final values.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [(Cs(Qs)(H) + Ec)/t] - [(\Delta T4)/(\Delta T3)(t)Et]$$

Where:

Cs = correction applied to the heating value of a gas H, when it is metered at temperature and/or pressure conditions other than the standard conditions for which the value of H is based;

H = higher heating value of gas, Btu per cu. ft. (MJ/m3);

Qs = total fuel flow as metered, cu. ft. (m3);

ΔT3 = difference between the outlet temperature and the average value of the ambient air temperature, °F (°C);

ΔT4 = difference between the average supply water temperature and the outlet temperature, °F (°C);

t = duration of test, hrs.;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under G1, Method of Test for Measuring Thermal Efficiency

If the main burner(s) does not cycle on during this test, the hourly average standby loss calculation simplifies to:

$$S = \{(K(Va)(\Delta T4)/Et) + Ec\}/t$$

For water heaters that will not initiate or cause actions that will initiate burner operation, the following simplified procedure may be used to measure the hourly standby loss.

This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise provide the electrical connection as specified in G.1, Method of Test for Measuring Thermal Efficiency, and start the test.

At the start of the test, record the time and begin measuring the electric consumption for one hour. Record the duration of the test and the total electrical consumption during the test.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [((\Delta T5\ k\ Va/Et)/24) + Ec]$$

Where:

ΔT_5 = 70 °F (38.9 °C), difference between the supply and outlet water temperatures;

k= 8.25 Btu/gallon °F (4147.6331 J/l °C), the nominal specific heat of water;

Va = water contained in the water heater expressed in gallons (L), as determined under 5.27;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under G1, Method of Test for Measuring Thermal Efficiency.

The following basic models are included in Raypak's petition:

XTherm Model WH7–1005*
XTherm Model WH7–1505*
XTherm Model WH7–2005*
XTherm Model WH7–2505*
XTherm Model WH7–3005*
XTherm Model WH7–3505*
XTherm Model WH7–4005*
MVB Model WH7–2503*
MVB Model WH7–3003*
MVB Model WH7–3503*
MVB Model WH7–4003*

IV. Summary and Request for Comments

Through this notice, DOE announces receipt of and is publishing Raypak's petition for waiver from the DOE test procedure for commercial water heaters for its above-referenced commercial instantaneous water heater models, which contain 10 gallons or more of water. The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the thermal efficiency and standby loss of Raypak's specified basic models of commercial instantaneous water heaters containing 10 gallons or more of water. DOE is considering including this alternate test procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also

send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Robert Glass, Sr. Staff Engineer, Raypak Inc., 2151 Eastman Avenue, Oxnard, CA 93030. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document marked "confidential" with all of the information believed to be confidential included, and one copy of the document marked "non-confidential" with all of the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on May 31, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Raypak, A Rheem Company

May 5, 2015

U.S. Department of Energy, Building Technologies Program, MS EE–2J, Test Procedure Waiver, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Re: Waiver for Test Procedure for Commercial Water Heating Equipment

To Whom It May Concern: Pursuant to the provisions of 10 CFR 431.401, Raypak Inc. is hereby applying for a waiver of the standby loss test procedure of 10 CFR .431.106 for the following basic model(s) of commercial instantaneous water heaters containing 10 gallons or more of water:

Model	Water capacity (gal.)
XTherm Model WH7–1005*	11.8
XTherm Model WH7–1505*	12.4
XTherm Model WH7–2005*	15.6
XTherm Model WH7–2505*	25.0
XTherm Model WH7–3005*	26.0
XTherm Model WH7–3505*	26.9
XTherm Model WH7–4005*	33.8
MVB Model WH7–2503*	10.9
MVB Model WH7–3003*	11.6
MVB Model WH7–3503*	12.2
MVB Model WH7–4003*	12.8

The current Department of Energy efficiency test procedure for commercial water heaters references the relevant test procedures for measuring thermal efficiency and standby loss specified in the standard, ANSI Z21.10.3–2011. The identified basic models rely on flow of water through the heater to activate the burner. As will be explained below, the current test procedure does not provide a proper representation of the standby loss of these models.

The current standby loss test procedure is included as Attachment A. This procedure is designed to test tank-type water heaters which are thermostatically operated. The basic steps of the procedure are to heat the water within the water heater, turn off the burner or element and then measure all the energy consumption that occurs while the water heater is "standing by" for approximately 24 hours with no water being withdrawn from it. The key measurement of the test procedure is the energy consumed by the burner or heating element when the thermostat senses that the water in the tank has cooled down to the point where it needs to be reheated. The current test does not address water heaters that have no means to activate the burner or heating element if no heated water is being drawn from the unit, *i.e.* the standby condition.

The models for which Raypak Inc. is seeking this test procedure waiver employ tube type heat exchangers and are designed to be flow activated. That is, the burner does not come on until water flow through the unit is sensed. Under the current standby loss test procedure, the burner on these models will not fire at any time during the test and the resulting standby loss measurement would be nearly zero. That measurement is not representative of the standby loss characteristics of these models. Raypak Inc. believes that the current test procedure evaluates the standby loss of the identified basic models in a manner so unrepresentative of the true energy consumption as to provide materially inaccurate comparative data.

The manufacturers of other basic models marketed in the United States known to Raypak Inc. to incorporate similar design characteristics is included as Attachment B.

An alternative procedure for measuring the standby loss of tube type instantaneous water heater is included as Attachment C. Raypak Inc. believes this alternative provides a representative measure of the standby loss of these models. Raypak Inc. requests that DOE grant it a waiver to use this alternative procedure in lieu of the standby loss procedure specified in the current DOE efficiency test procedures for commercial water heaters.

Respectfully submitted,

Robert Glass
Sr. Staff Engineer
Raypak Inc.
2151 Eastman Avenue,
Oxnard, CA 93030
(805) 278–5300
FAX (800) 872–9725
www.raypak.com

Attachments—Attachment A—Current Standby Loss Test Procedure
Attachment B—Other Affected Manufacturers
Attachment C—Proposed Alternative Procedure for Measuring the Standby Loss of Tube Type Instantaneous Water Heaters Containing More than 10 Gallons

C: Karen Meyers—Rheem Manufacturing Co.
Russell Pate—Rheem Manufacturing Co.

Attachment A: Current Standby Loss Test Procedure

E.2 Method of test for measuring standby loss

The appliance shall be installed as specified in E.1, Method of test for measuring thermal efficiency. The gas to the main burner(s) shall be turned on and the appliance put into operation. After the first cutout, allow the water heater to remain in the standby mode until the next cutout. At this time record the time, ambient temperature and begin measuring the fuel and electric consumption. Record the maximum mean tank temperature that occurs after cutout.

At the end of the first 15 minute interval and at the end of each subsequent 15 minute interval, the mean tank temperature and the ambient air temperature shall be recorded. The duration of this test shall be until the first cutout that occurs after 24 hours or 48 hours, whichever comes first.

Immediately after the conclusion of the test, record the total fuel flow and electrical energy consumption, the final ambient air temperature, and the time duration of the standby loss test (t) in hours rounded to the nearest one hundredth of an hour and the maximum

mean tank temperature that occurs after cutout. Calculate the average of the recorded values of the mean tank temperatures and of the ambient air temperatures taken at the end of each time interval, including the initial and final values.

Determine the difference (ΔT_3) between these two averages by subtracting the latter from the former, and the differences (ΔT_4) between the final and initial mean tank temperatures by subtracting the latter from the former.

The ratio of the average hourly energy consumption to the heat content of the stored water above room temperatures, in percent, rounded to the nearest one hundredth shall be determined by the formula:

$$S = \left\{ \left[\frac{(Cs)(Qs)(H) + Ec}{(K)(Va)(\Delta T3)(t)} \right] - \left[\frac{(\Delta T4)}{(\Delta T3)(t)\left(\frac{Et}{100}\right)} \right] \right\} x\ 100$$

Where

Cs = correction applied to the heating value of a gas H, when it metered at temperature and/or pressure conditions other than the standard conditions for which the value of H is based;

K = 8.25 Btu per gallon °F (4147.6331 J/l °C), the nominal specific heat of water;

Va = tank capacity expressed in gallons (L), as determined under 5.26, Capacities of storage vessels;

H = higher heating value of gas, Btu per cu. Ft. (MJ/m³);

Qs = total fuel flow as metered, cu. Ft. (m³);

ΔT3 = difference between the average value of the mean tank temperature and the average value of the ambient air temperature, °F (°C);

ΔT4 = difference between the final and initial mean tank temperature, °F (°C);

t = duration of test, hrs.;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under E.1, Method of test for measuring thermal efficiency.

Attachment B:

Manufacturers of Commercial Tube Type Water Heaters containing 10 gallons or more

A.O. Smith Corporation, 11270 W Park Place, P.O. Box 245008, Milwaukee, WI 53224–3623

HTP, Inc., 120 Braley Rd., P.O. Box 429, East Freetown, MA 02717–1125

Laars Heating Systems Company, 20 Industrial Way, Rochester, NH 03867–4296

Lochinvar LLC, 300 Maddox Simpson Pkwy., Lebanon, TN 37090–5366

Thermal Solutions Products, LLC, a Subsidiary of Burnham Holdings, P.O. BOX 3244, Lancaster, PA 17604–3244

Attachment C

AHRI Recommended Standby Loss Test Procedure For Commercial Tube-Type Instantaneous Water Heaters And Hot Water Supply Boilers That Contain At Least 10 Gallons Of Water

Z21.10.3–2012

Exhibit E Efficiency Test Procedures

E.1 Method Of Test For Measuring Thermal Efficiency

A water heater for installation on combustible floors shall be placed on ¾ in (1.9 cm) plywood platform supported by three 2 x 4 runners. If the water heater is for installation on noncombustible floors, suitable noncombustible material shall be placed on the platform. When the use of the platform for a large water heater is not practical, the water heater may be placed on any suitable flooring. A wall mounted water heater shall be mounted to a simulated wall section.

Placement in the test room shall be in an area protected from drafts.

Inlet and outlet piping shall be immediately turned vertically downward from the connections on a tank-type water heater so as to form heat traps. Any factory supplied heat traps shall be installed per the installation instructions. Thermocouples for measuring inlet and outlet water temperatures shall be installed before the inlet heat trap piping and after the outlet heat trap piping.

Water-tube water heaters shall be installed as shown in Figure 3, Arrangement for Testing Water-tube Type Instantaneous and Circulating Water Heaters.

a. Piping Insulation

Insulate the water piping, including heat traps, for a length of 4 ft (1.22 m) from the connection at the appliance with material having a thermal resistance (R) value of not less than

4 [F·ft ·hr/Btu (0.7 K·m/W)]. Care should be taken so the insulation does not contact any appliance surface except at the location where the pipe connections penetrate the appliance jacket.

b. Temperature and Pressure Relief Valve Insulation

If the manufacturer has not provided a temperature and pressure relief valve, one shall be installed and insulated as specified above.

c. Vent Requirements

1. Appliance Equipped With Draft Hoods

All tests shall be conducted with the natural draft established by the following vent pipe arrangements:

A vertically discharging vent connection shall have attached to and vertically above it, 5 ft (1.52 m) of vent pipe the same size as the outlet. If the vent does not discharge vertically, a suitable elbow shall be installed first.

2. Direct Vent Appliances and Mechanically Vented

The appliance shall be installed with the venting arrangement specified in the manufacturer's instructions. The water heater shall be installed with the manufacturer's specified minimum venting length venting arrangement.

d. Water Supply

During conduct of this test, the temperature of the supply water shall be maintained at 70 ± 2 °F (21 ± 1 °C). The pressure of the water supply shall be maintained between 40 psi (275.8 kPa) and the maximum pressure specified by the manufacturer for the appliance under test. The accuracy of the pressure measuring devices shall be ±1.0 psi (6.9 kPa). For a water-tube water heater, the inlet water temperature shall be maintained at the supply water temperature or as specified by the manufacturer (see 2.1.8).

A tank-type water heater shall be isolated by use of a shutoff valve in the supply line with an expansion tank installed in the supply line downstream of the shutoff valve. There shall be no shutoff means between the expansion tank and the appliance inlet.

e. Gas Supply

The gas rate shall be adjusted as specified in 2.3.3. The outlet pressure of the gas appliance pressure regulator shall be within ± 10 percent of that recommended by the manufacturer. The higher heating value of the gas burned shall be obtained.

f. Installation of Temperature Sensing Means

For tank-type water heaters, six (6) temperature sensing means shall be installed inside the storage tank on the vertical center of each of 6 nonoverlapping sections of approximately equal volume from the top to the bottom of the tank. Each temperature sensing means is to be located as far as possible from any heat source or other irregularity, anodic protective device, or water tank or flue wall. The anodic protective device may be removed in order to install the temperature sensing means and all testing may be carried out with the device removed.

If the temperature sensing means cannot be installed as specified above, placement of the temperature sensing means shall be made at the discretion of the testing agency so comparable water temperature measurements may be obtained.

A temperature sensing means, shielded against direct radiation and positioned at the vertical midpoint of the water heater at a perpendicular distance of approximately 24 in (610 mm) from the surface of the jacket, shall be installed in the test room.

g. Setting Tank Thermostat

Before starting testing of a tank-type water heater, the setting of the thermostat shall first be obtained by starting with the water in the system at 70 ± 2 °F (21 ± 1 °C) and noting the maximum mean temperature of the water after the thermostat reduces the gas supply to a minimum. The temperature shall be 140 ± 5 °F (60 ± 3 °C).

h. Energy Consumption

Instrumentation shall be installed which determines, within ± 1 percent:

1. The quantity and rate of gas consumed.

2. The quantity of electricity consumed by factory supplied water heater components, and of the test loop recirculating pump, if used.

i. Room Ambient Temperature

The ambient air temperature of the test room shall be maintained at 75 ± 10 °F (24 ± 5.5 °C), as measured by the test room temperature sensing means described in "-F" above.

The ambient air temperatures shall be measured at 15 minute intervals during conduct of this test. The room temperature shall not vary more than ± 7.0 °F (± 4°C) from the average during the test, temperature readings being taken by means of a recording thermometer at 15 minute intervals and averaged at the end of the test.

j. Efficiency Measurement

The outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ±2 °F (21 ± 1 °C) above the supply temperature. After the outlet temperature has become constant, as indicated by no variation in excess of 2 °F (1 °C) over a 3 minute period, the outlet water shall be diverted from the waste line to a weighing container. A scale with an error no greater than 1 percent of the total draw shall be used. Water shall be allowed to flow into the weighing container for exactly 30 minutes. The gas consumption and electrical power consumption of factory supplied heater components and of the test loop-recirculating pump, if used, shall be measured for the 30 minute period. At this time, the outlet water shall be diverted back into the waste line, the meter readings noted, and the weight of heater water recorded. Throughout the period of test, supply and outlet water temperatures shall be recorded every minute. The temperature, pressure and heating value of the gas metered and barometric pressure shall be obtained.

A water meter with an error no greater than 1 percent of the total draw may be used instead of the scale and weighing container.

Thermal efficiency, E_t, shall be computed by use of the following formula:

$E_t = [KW\ (\theta_2 - \theta_1)/[(CF \times Q \times H) + E_c]] \times 100$

where

K = 1.004 Btu per pound mass degree F (4184 J/kg °C), nominal specific heat of water at 105 °F;

W = total weight of water heated, lbs. (kg);

θ_1 = average temperature of supply water, °F (°C);

θ_2 = average temperature of outlet water, °F (°C);

Q = total gas consumed as metered, cu. ft. (m³);

C_F = correction applied to the heating value H, when it is metered at temperature and/or pressure conditions other than the standard conditions. At which the heating value of gas is specified [normally 30 inches mercury column (101.3 kPa) and 60 °F (15.5 °C)];

H = total heating value of gas, Btu per cu. ft. (MJ/m₃); and

E_c = electrical consumption of the water heater and, when used, the test setup recirculating pump, specified in Btu (kJ).

Standby Loss for tank type water heaters shall be determined using Appendix E.2

Standby Loss for tube type water heaters that contain 10 or more gallons within the water heater, as determined under 5.27, shall be determined using Appendix E.3

E.3 Method Of Test For Measuring Standby Loss For Tube Type Instantaneous Water Heaters With 10 or Greater Gallons of Storage

The appliance shall be installed as specified in G.1, Method of Test for Measuring Thermal Efficiency. This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise, the water heater shall be put into operation under the same test conditions specified in G.1, and the outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2 °F (21 ± 1 °C) above the supply temperature. After the outlet temperatures becomes constant, as indicated by no variation in excess of 2 °F (1 °C) over a 3 minute period, shut down the main burner(s) and, if applicable, wait for the water pump to shut down, and then start the test.

At the start of the test, record the time, ambient temperature, outlet water temperature, supply water temperature, and begin measuring the fuel and electric consumption.

During the first hour, outlet water temperature, supply water temperature and the ambient air temperature shall be measured at the end of each 5 minute interval. For the remainder of the test, these measurements shall be made at the end of every 15 minute interval. The duration of this test shall be 24 hours. If the main burner is firing at 24 hours, continue the test until the main burner and the water pump, if applicable, have shut down.

Immediately after the conclusion of the test, record the total fuel flow and electrical energy consumption, the final ambient air temperature, and the final outlet water temperature.

Calculate the average of the ambient air temperatures and the supply water temperatures taken at the end of each time interval, including the initial and final values.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$S = [(Cs(Qs)(H) + Ec)/t] - [(\Delta T4)/(\Delta T3)(t)Et]$

where

Cs = correction applied to the heating value of a gas H, when it is metered at temperature and/or pressure conditions other than the standard conditions for which the value of H is based;

H = higher heating value of gas, Btu per cu. ft. (MJ/m3);

Qs = total fuel flow as metered, cu. ft. (m3);

ΔT3 = difference between the outlet temperature and the average value of the ambient air temperature, °F (°C);

ΔT4 = difference between the average supply water temperature and the outlet temperature, °F (°C);

t = duration of test, hrs.;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under G1, Method of Test for Measuring Thermal Efficiency

If the main burner(s) does not cycle on during this test, the hourly average standby loss calculation simplifies to:

$S = \{(K(Va)(\Delta T4)/Et) + Ec\}/t$

For water heaters that will not initiate or cause actions that will initiate burner operation, the following simplified procedure may be used to measure the hourly standby loss.

This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise provide the electrical connection as specified in G.1, Method of Test for Measuring Thermal Efficiency, and start the test.

At the start of the test, record the time and begin measuring the electric consumption for one hour. Record the duration of the test and the total electrical consumption during the test.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$S = [((\Delta T5\ k\ Va\ /\ Et)/24) + Ec]$

Where:

ΔT_5 = 70 °F (38.9 °C), difference between the supply and outlet water temperatures;

k= 8.25 Btu/gallon °F (4147.6331 J/l °C), the nominal specific heat of water;

Va = water contained in the water heater expressed in gallons (L), as determined under 5.27;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under G1, Method of Test for Measuring

Thermal Efficiency.

[FR Doc. 2016–13252 Filed 6–3–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. WH–002]

Notice of Petition for Waiver of HTP, Inc. From the Department of Energy Commercial Water Heater Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and request for public comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from HTP, Inc. (HTP) seeking an exemption from specified provisions applicable to standby loss of the U.S. Department of Energy (DOE) test procedure for commercial water heating equipment. The waiver request pertains to HTP's specified models of commercial instantaneous water heaters containing 10 gallons or more of water. In its petition, HTP contends that its specified water heater models that employ tube-type heat exchangers and are designed to be flow activated cannot be accurately tested using the currently applicable DOE test procedure. Consequently, HTP seeks to use an alternate test procedure to address certain issues involved in testing the specific basic models identified in its petition. DOE solicits comments, data, and information concerning HTP's petition and its suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the HTP Petition until July 6, 2016.

ADDRESSES: You may submit comments, identified by case number WH–002, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. WH–002] in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Petition for Waiver Case No. WH–002, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

For further information on how to submit a comment, or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, established the Energy Conservation Program for Certain Industrial Equipment, which includes commercial water heaters, the focus of this notice.[2] Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs during a representative average-use cycle, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) EPCA also directs DOE to consider amending the existing test procedure for each type of equipment listed each time the industry test procedure is amended for such equipment. (42 U.S.C. 6314(a)(4)) The test procedure for commercial water heaters is contained in the Code of Federal Regulations (CFR) at 10 CFR part 431, subpart G.

DOE's regulations set forth at 10 CFR 431.401 contain provisions that permit a person to seek a waiver from the test procedure requirements for covered equipment if at least one of the following conditions is met: (1) The basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 431.401(l).

II. Petition for Waiver of Test Procedure

On February 17, 2015, HTP filed a petition for waiver from the DOE test procedure at 10 CFR 431.106 to measure standby loss of commercial water heating equipment. This petition addresses HTP's specified models of commercial instantaneous water heaters containing 10 gallons or more of water. The current DOE efficiency test procedure for commercial water heaters incorporates by reference the relevant industry test standard for measuring thermal efficiency and standby loss, as specified in American National Standards Institute (ANSI) ANSI Z21.10.3–2011, *Gas-Fired Water Heaters, Volume III, Storage Water Heaters, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous.* In its petition, HTP contends that its identified basic models rely on flow of water through the heater to activate the burner, but because the current DOE test procedure does not take into account such units, it does not provide a proper representation of the standby loss of these models. The current standby loss test procedure is designed to test tank-type water heaters which are thermostatically operated. The models for which HTP is seeking this test procedure waiver employ tube-type heat exchangers and are designed to be flow activated. To address the apparent shortcomings of ANSI Z21.10.3–2011, HTP has submitted to DOE an alternate test procedure for measuring the standby loss of tube-type instantaneous water heaters, as addressed in sections E.1 and E.3 of ANSI Z21.10.3–2012, *Gas-Fired Water Heaters, Volume III, Storage Water Heaters, With Input Ratings Above 75,000 Btu Per Hour, Circulating and Instantaneous.* HTP believes this alternative provides a representative measure of the standby loss of these models.

III. Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of products and equipment covered by the statute. (42 U.S.C. 6293(c); 6314(d)) Consistent representations about the energy efficiency of covered products and equipment are important for consumers evaluating products when making purchasing decisions and for manufacturers to demonstrate compliance with applicable DOE energy conservation standards. Pursuant to its regulations applicable to waivers and interim waivers from applicable test procedures at 10 CFR 431.401, DOE will consider setting an alternate test procedure for HTP in a subsequent Decision and Order.

HTP has submitted to DOE an alternate test procedure for measuring the standby loss of tube-type instantaneous water heaters as addressed in ANSI Z21.10.3–2012 sections E.1 and E.3. Specifically, HTP has submitted the following alternate test procedure to accurately represent the standby loss of its commercial instantaneous water heaters containing 10 gallons or more of water:

Z21.10.3–2012 Exhibit E Efficiency Test Procedures

E.1 Method of Test For Measuring Thermal Efficiency

A water heater for installation on combustible floors shall be placed on ¾ in (1.9 cm) plywood platform supported by three 2 × 4 runners. If the water heater is for installation on noncombustible floors, suitable noncombustible material shall be placed on the platform. When the use of the platform for a large water heater is not practical, the water heater may be placed on any suitable flooring. A wall mounted water heater shall be mounted to a simulated wall section.

Placement in the test room shall be in an area protected from drafts.

Inlet and outlet piping shall be immediately turned vertically downward from the connections on a tank-type water heater so as to form heat traps. Any factory supplied heat traps shall be installed per the installation instructions. Thermocouples for measuring inlet and outlet water temperatures shall be installed before the inlet heat trap piping and after the outlet heat trap piping.

Water-tube water heaters shall be installed as shown in Figure 3, Arrangement for Testing Water-tube Type Instantaneous and Circulating Water Heaters.

a. Piping Insulation

Insulate the water piping, including heat traps, for a length of 4 ft (1.22 m) from the connection at the appliance with material having a thermal resistance (R) value of not less than 4 [F·ft ·hr/Btu (0.7 K·m/W)]. Care should be taken so the insulation does not contact any appliance surface except at the location where the pipe connections penetrate the appliance jacket.

b. Temperature and Pressure Relief Valve Insulation

If the manufacturer has not provided a temperature and pressure relief valve, one shall be installed and insulated as specified above.

c. Vent Requirements

1. Appliance Equipped With Draft Hoods

All tests shall be conducted with the natural draft established by the following vent pipe arrangements:

A vertically discharging vent connection shall have attached to and vertically above it, 5 ft (1.52 m) of vent pipe the same size as the outlet. If the vent does not discharge vertically, a suitable elbow shall be installed first.

2. Direct Vent Appliances and Mechanically Vented

The appliance shall be installed with the venting arrangement specified in the manufacturer's instructions. The water heater shall be installed with the manufacturer's specified minimum venting length venting arrangement.

d. Water Supply

During conduct of this test, the temperature of the supply water shall be maintained at 70 ± 2 °F (21 ± 1 °C). The pressure of the water supply shall be maintained between 40 psi (275.8 kPa) and the maximum pressure specified by the manufacturer for the appliance under test. The accuracy of the pressure measuring devices shall be ±1.0 psi (6.9 kPa). For a water-tube water heater, the inlet water temperature shall be maintained at the supply water temperature or as specified by the manufacturer (see 2.1.8).

A tank-type water heater shall be isolated by use of a shutoff valve in the supply line with an expansion tank installed in the supply line downstream of the shutoff valve. There shall be no shutoff means between the expansion tank and the appliance inlet.

e. Gas Supply

The gas rate shall be adjusted as specified in 2.3.3. The outlet pressure of the gas appliance pressure regulator shall be within ± 10 percent of that recommended by the manufacturer. The higher heating value of the gas burned shall be obtained.

f. Installation of Temperature Sensing Means

For tank-type water heaters, six (6) temperature sensing means shall be installed inside the storage tank on the vertical center of each of 6 nonoverlapping sections of approximately equal volume from the top to the bottom of the tank. Each temperature sensing means is to be located as far as possible from any heat source or other irregularity, anodic protective device, or water tank or flue wall. The anodic protective device may

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015 (EEIA 2015), Public Law 114–11 (April 30, 2015).

be removed in order to install the temperature sensing means and all testing may be carried out with the device removed.

If the temperature sensing means cannot be installed as specified above, placement of the temperature sensing means shall be made at the discretion of the testing agency so comparable water temperature measurements may be obtained.

A temperature sensing means, shielded against direct radiation and positioned at the vertical midpoint of the water heater at a perpendicular distance of approximately 24 in (610 mm) from the surface of the jacket, shall be installed in the test room.

g. Setting Tank Thermostat

Before starting testing of a tank-type water heater, the setting of the thermostat shall first be obtained by starting with the water in the system at 70 ± 2 °F (21 ± 1 °C) and noting the maximum mean temperature of the water after the thermostat reduces the gas supply to a minimum. The temperature shall be 140 ± 5 °F (60 ± 3 °C).

h. Energy Consumption

Instrumentation shall be installed which determines, within ± 1 percent:

1. The quantity and rate of gas consumed.

2. The quantity of electricity consumed by factory supplied water heater components, and of the test loop recirculating pump, if used.

i. Room Ambient Temperature

The ambient air temperature of the test room shall be maintained at 75 ± 10 °F (24 ± 5.5 °C), as measured by the test room temperature sensing means described in "-F" above.

The ambient air temperatures shall be measured at 15 minute intervals during conduct of this test. The room temperature shall not vary more than ± 7.0 °F (± 4 °C) from the average during the test, temperature readings being taken by means of a recording thermometer at 15 minute intervals and averaged at the end of the test.

j. Efficiency Measurement

The outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2 °F (21 ± 1 °C) above the supply temperature. After the outlet temperature has become constant, as indicated by no variation in excess of 2 °F (1 °C) over a 3 minute period, the outlet water shall be diverted from the waste line to a weighing container. A scale with an error no greater than 1 percent of the total draw shall be used. Water shall be allowed to flow into the weighing container for exactly 30 minutes. The gas consumption and electrical power consumption of factory supplied heater components and of the test loop-recirculating pump, if used, shall be measured for the 30 minute period. At this time, the outlet water shall be diverted back into the waste line, the meter readings noted, and the weight of heater water recorded. Throughout the period of test, supply and outlet water temperatures shall be recorded every minute. The temperature, pressure and heating value of the gas metered and barometric pressure shall be obtained.

A water meter with an error no greater than 1 percent of the total draw may be used instead of the scale and weighing container.

Thermal efficiency, Et, shall be computed by use of the following formula:

$$E_t = (KW\ (\theta_2 - \theta_1)/[(CF \times Q \times H) + Ec]) \times 100$$

Where:

K = 1.004 Btu per pound mass degree F (4184 J/kg °C), nominal specific heat of water at 105 °F;

W = total weight of water heated, lbs. (kg);

θ_1 = average temperature of supply water, °F (°C);

θ_2 = average temperature of outlet water, °F (°C);

Q = total gas consumed as metered, cu. ft. (m^3);

C_s = correction applied to the heating value H, when it is metered at temperature and/or pressure conditions other than the standard conditions. At which the heating value of gas is specified [normally 30 inches mercury column (101.3 kPa) and 60 °F (15.5 °C)];

H = total heating value of gas, Btu per cu. ft. (MJ/m_3); and

E_c = electrical consumption of the water heater and, when used, the test setup recirculating pump, specified in Btu (kJ).

Standby Loss for Tank Type Water Heaters Shall Be Determined Using Appendix E.2

Standby Loss for Tube Type Water Heaters That Contain 10 or More Gallons Within the Water Heater, as Determined Under 5.27, Shall Be Determined Using Appendix E.3

E.3 Method of Test for Measuring Standby Loss for Tube Type Instantaneous Water Heaters With 10 or Greater Gallons of Storage

The appliance shall be installed as specified in G.1, Method of Test for Measuring Thermal Efficiency. This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise, the water heater shall be put into operation under the same test conditions specified in G.1, and the outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2 °F (21 ± 1 °C) above the supply temperature. After the outlet temperatures becomes constant, as indicated by no variation in excess of 2 °F (1 °C) over a 3 minute period, shut down the main burner(s) and, if applicable, wait for the water pump to shut down, and then start the test.

At the start of the test, record the time, ambient temperature, outlet water temperature, supply water temperature, and begin measuring the fuel and electric consumption.

During the first hour, outlet water temperature, supply water temperature and the ambient air temperature shall be measured at the end of each 5 minute interval. For the remainder of the test, these measurements shall be made at the end of every 15 minute interval. The duration of this test shall be 24 hours. If the main burner is firing at 24 hours, continue the test until the main burner and the water pump, if applicable, have shut down.

Immediately after the conclusion of the test, record the total fuel flow and electrical energy consumption, the final ambient air temperature, and the final outlet water temperature.

Calculate the average of the ambient air temperatures and the supply water temperatures taken at the end of each time interval, including the initial and final values.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [(Cs(Qs)(H) + Ec)/t] - [(\Delta T4)/(\Delta T3)(t)Et\ ]$$

Where:

Cs = correction applied to the heating value of a gas H, when it is metered at temperature and/or pressure conditions other than the standard conditions for which the value of H is based;

H = higher heating value of gas, Btu per cu. ft. (MJ/m3);

Qs = total fuel flow as metered, cu. ft. (m3);

ΔT3 = difference between the outlet temperature and the average value of the ambient air temperature, °F (°C);

ΔT4 = difference between the average supply water temperature and the outlet temperature, °F (°C);

t = duration of test, hrs.;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under G1, Method of Test for Measuring Thermal Efficiency

If the main burner(s) does not cycle on during this test, the hourly average standby loss calculation simplifies to:

$$S = \{(K(Va)(\Delta T4)/Et) + Ec\}/t$$

For water heaters that will not initiate or cause actions that will initiate burner operation, the following simplified procedure may be used to measure the hourly standby loss.

This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise provide the electrical connection as specified in G.1., Method of Test for Measuring Thermal Efficiency, and start the test.

At the start of the test, record the time and begin measuring the electric consumption for one hour.

Record the duration of the test and the total electrical consumption during the test.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [((\Delta T5\ k\ Va\ /\ Et)/24) + Ec]$$

Where:

ΔT5 = 70 °F (38.9 °C), difference between the supply and outlet water temperatures;

k = 8.25 Btu/gallon °F (4147.6331 J/l °C), the nominal specific heat of water;

Va = water contained in the water heater expressed in gallons (L), as determined under 5.27;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under G1, Method of Test for Measuring Thermal Efficiency.

The following basic models are included in HTP's petition:

ModCon1000VWH
ModCon1700VWH

IV. Summary and Request for Comments

Through this notice, DOE announces receipt of and is publishing HTP's petition for waiver from the DOE test procedure for commercial water heaters for its ModCon 1000VWH and ModCon 1700VWH commercial instantaneous water heater models, which contain 10 gallons or more of water. The petition contains no confidential information. The petition includes a suggested alternate test procedure to determine the thermal efficiency and standby loss of HTP's specified basic models of commercial instantaneous water heaters containing 10 gallons or more of water. DOE is considering including this alternate test procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Aleksandr Kovalenko, Director of Engineering, HTP, Inc., P.O. Box 429, 120 Braley Road, East Freetown, MA 02717. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document marked "confidential" with all of the information believed to be confidential included, and one copy of the document marked "non-confidential" with all of the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on May 31, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

HTP
Advanced Heating and Hot water Systems
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120 Braley Road
East Freetown, MA 02717
508–763–8071
FAX: 508–763–3769

February 17, 2015

U.S. Department of Energy
Building Technologies Program, MS EE–2J
Test Procedure Waiver
1000 Independence Avenue SW.
Washington, DC 20585–0121

Re: Waiver for Test Procedure for Commercial Water Heating Equipment

To Whom It May Concern:

Pursuant to the provisions of 10 CFR 431.401, HTP, Inc. is hereby applying for a waiver of the standby loss test procedure of 10 CFR .431.106 for the following basic model(s) of commercial instantaneous water heaters containing 10 gallons or more of water.

ModCon1000VWH
ModCon1700VWH

The current Department of Energy efficiency test procedure for commercial water heaters references the relevant test procedures for measuring thermal efficiency and standby loss specified in the standard, ANSI Z21.10.3–2011. The identified basic model(s) rely on flow of water through the heater to activate the burner. As will be explained below, the current test procedure does not provide a proper representation of the standby loss of these models.

The current standby loss test procedure is included as Attachment A. This procedure is designed to test tank-type water heaters which are thermostatically operated. The basic steps of the procedure are to heat the water within the water heater, turn off the burner or element and then measure all the energy consumption that occurs while the water heater is "standing by" for approximately 24 hours with no water being withdrawn from it. The key measurement of the test procedure is the energy consumed by the burner or heating element when the thermostat senses that the water in the tank has cooled down to the point where it needs to be reheated. The current test does not address water heaters that have no means to activate the burner or heating element if no heated water is being drawn from the unit, *i.e.* the standby condition.

The models for which HTP, Inc. is seeking this test procedure waiver employ tube type heat exchangers and are designed to be flow activated. That is, the burner does not come on until water flow through the unit is sensed. Under the current standby loss test procedure, the burner on these models will not fire at any time during the test and the resulting standby loss measurement would be nearly zero. That measurement is not representative of the standby loss characteristics of these models. HTP, Inc. believes that the current test procedure evaluates the standby loss of the identified basic model(s) in a manner so unrepresentative of the true energy consumption as to provide materially inaccurate comparative data.

The manufacturers of all other basic models marketed in the United States known to HTP, Inc. do incorporate similar design characteristics is included as Attachment B.

An alternative procedure for measuring the standby loss of tube type instantaneous water heater is included as Attachment C. HTP, Inc. believes this

alternative provides a representative measure of the standby loss of these models. HTP, Inc. requests that DOE grant it a waiver to use this alternative procedure in lieu of the standby loss procedure specified in the current DOE efficiency test procedures for commercial water heaters.

Respectfully submitted,

Aleksandr Kovalenko
Director of Engineering
HTP, Inc.

Attachment A: [Excerpts from DOE's current commercial water heater regulations at 10 CFR 431.100–110. Not reproduced here.]

Attachment B:

Manufacturers of Commercial Tube Type Water Heaters containing 10 gallons or more

A.O. Smith Corporation
11270 W Park Place
PO Box 245008
Milwaukee, WI 53224–3623

Laars Heating Systems Company
20 Industrial Way
Rochester, NH 03867–4296

Lochinvar LLC
300 Maddox Simpson Pkwy
Lebanon, TN 37090–5366

Thermal Solutions Products, LLC, a Subsidiary of Burnham Holdings
PO BOX 3244
Lancaster, PA 17604–3244

Attachment C

AHRI Recommended Standby Loss Test Procedure for Commercial Tube-Type Instantaneous Water Heaters and Hot Water Supply Boilers That Contain At Least 10 Gallons of Water

Z21.10.3–2012 Exhibit E Efficiency Test Procedures

E.1 Method of Test for Measuring Thermal Efficiency

A water heater for installation on combustible floors shall be placed on ¾ in (1.9 cm) plywood platform supported by three 2 x 4 runners. If the water heater is for installation on noncombustible floors, suitable noncombustible material shall be placed on the platform. When the use of the platform for a large water heater is not practical, the water heater may be placed on any suitable flooring. A wall mounted water heater shall be mounted to a simulated wall section.

Placement in the test room shall be in an area protected from drafts.

Inlet and outlet piping shall be immediately turned vertically downward from the connections on a tank-type water heater so as to form heat traps. Any factory supplied heat traps shall be installed per the installation instructions. Thermocouples for measuring inlet and outlet water temperatures shall be installed before the inlet heat trap piping and after the outlet heat trap piping.

Water-tube water heaters shall be installed as shown in Figure 3, Arrangement for Testing Water-tube Type Instantaneous and Circulating Water Heaters.

a. Piping Insulation

Insulate the water piping, including heat traps, for a length of 4 ft (1.22 m) from the connection at the appliance with material having a thermal resistance (R) value of not less than 4 [F·ft ·hr/Btu (0.7 K·m/W)]. Care should be taken so the insulation does not contact any appliance surface except at the location where the pipe connections penetrate the appliance jacket.

b. Temperature and Pressure Relief Valve Insulation

If the manufacturer has not provided a temperature and pressure relief valve, one shall be installed and insulated as specified above.

c. Vent Requirements

1. Appliance Equipped With Draft Hoods

All tests shall be conducted with the natural draft established by the following vent pipe arrangements:

A vertically discharging vent connection shall have attached to and vertically above it, 5 ft (1.52 m) of vent pipe the same size as the outlet. If the vent does not discharge vertically, a suitable elbow shall be installed first.

2. Direct Vent Appliances and Mechanically Vented

The appliance shall be installed with the venting arrangement specified in the manufacturer's instructions. The water heater shall be installed with the manufacturer's specified minimum venting length venting arrangement.

d. Water Supply

During conduct of this test, the temperature of the supply water shall be maintained at 70 ± 2°F (21 ± 1°C). The pressure of the water supply shall be maintained between 40 psi (275.8 kPa) and the maximum pressure specified by the manufacturer for the appliance under test. The accuracy of the pressure measuring devices shall be ±1.0 psi (6.9 kPa). For a water-tube water heater, the inlet water temperature shall be maintained at the supply water temperature or as specified by the manufacturer (see 2.1.8).

A tank-type water heater shall be isolated by use of a shutoff valve in the supply line with an expansion tank installed in the supply line downstream of the shutoff valve. There shall be no shutoff means between the expansion tank and the appliance inlet.

e. Gas Supply

The gas rate shall be adjusted as specified in 2.3.3. The outlet pressure of the gas appliance pressure regulator shall be within ± 10 percent of that recommended by the manufacturer. The higher heating value of the gas burned shall be obtained.

f. Installation of Temperature Sensing Means

For tank-type water heaters, six (6) temperature sensing means shall be installed inside the storage tank on the vertical center of each of 6 nonoverlapping sections of approximately equal volume from the top to the bottom of the tank. Each temperature sensing means is to be located as far as possible from any heat source or other irregularity, anodic protective device, or water tank or flue wall. The anodic protective device may be removed in order to install the temperature sensing means and all testing may be carried out with the device removed.

If the temperature sensing means cannot be installed as specified above, placement of the temperature sensing means shall be made at the discretion of the testing agency so comparable water temperature measurements may be obtained.

A temperature sensing means, shielded against direct radiation and positioned at the vertical midpoint of the water heater at a perpendicular distance of approximately 24 in (610 mm) from the surface of the jacket, shall be installed in the test room.

g. Setting Tank Thermostat

Before starting testing of a tank-type water heater, the setting of the thermostat shall first be obtained by starting with the water in the system at 70 ± 2°F (21 ± 1°C) and noting the maximum mean temperature of the water after the thermostat reduces the gas supply to a minimum. The temperature shall be 140 ± 5°F (60 ± 3°C).

h. Energy Consumption

Instrumentation shall be installed which determines, within ± 1 percent:

1. The quantity and rate of gas consumed.

2. The quantity of electricity consumed by factory supplied water heater components, and of the test loop recirculating pump, if used.

i. Room Ambient Temperature

The ambient air temperature of the test room shall be maintained at 75 ± 10°F (24 ± 5.5°C), as measured by the test room temperature sensing means described in "–f" above.

The ambient air temperatures shall be measured at 15 minute intervals during conduct of this test. The room temperature shall not vary more than ± 7.0°F (± 4°C) from the average during the test, temperature readings being taken by means of a recording thermometer at 15 minute intervals and averaged at the end of the test.

j. Efficiency Measurement

The outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2°F (21 ± 1°C) above the supply temperature. After the outlet temperature has become constant, as indicated by no variation in excess of 2°F (1°C) over a 3 minute period, the outlet water shall be diverted from the waste line to a weighing container. A scale with an error no greater than 1 percent of the total draw shall be used. Water shall be allowed to flow into the weighing container for exactly 30 minutes. The gas consumption and electrical power consumption of factory supplied heater components and of the test loop-recirculating pump, if used, shall be measured for the 30 minute period. At this time, the outlet water shall be diverted back into the waste line, the meter readings noted, and the weight of heater water recorded. Throughout the period of test, supply and outlet water temperatures shall be recorded every minute. The temperature, pressure and heating value of the gas metered and barometric pressure shall be obtained.

A water meter with an error no greater than 1 percent of the total draw may be used instead of the scale and weighing container.

Thermal efficiency, Et, shall be computed by use of the following formula:

$$E_t = (KW(\theta_2 - \theta_1)/[(CF \times Q \times H) + Ec]) \times 100$$

Where

K = 1.004 Btu per pound mass degree F (4184 J/kg °C), nominal specific heat of water at 105°F;

W = total weight of water heated, lbs. (kg);

θ_1 = average temperature of supply water, °F (°C);

θ_2 = average temperature of outlet water, °F (°C);

Q = total gas consumed as metered, cu. ft. (m^3);

C_s = correction applied to the heating value H, when it is metered at temperature and/or pressure conditions other than the standard conditions. At which the heating value of gas is specified [normally 30 inches mercury column (101.3 kPa) and 60 °F (15.5 °C)];

H = total heating value of gas, Btu per cu. ft. (MJ/m_3); and

E_c = electrical consumption of the water heater and, when used, the test setup recirculating pump, specified in Btu (kJ).

Standby Loss for tank type water heaters shall be determined using Appendix E.2

Standby Loss for tube type water heaters that contain 10 or more gallons within the water heater, as determined under 5.27, shall be determined using Appendix E.3

E.3 Method of Test for Measuring Standby Loss for Tube Type Instantaneous Water Heaters With 10 or Greater Gallons of Storage

The appliance shall be installed as specified in E.1, Method of Test for Measuring Thermal Efficiency. This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise the water heater shall be put into operation under the same test conditions specified in E.1 and the outlet water temperature shall be adjusted by varying the rate of flow until temperature is constant at 70 ± 2°F (21 ± 1°C) above the supply temperature. After the outlet temperatures becomes constant, as indicated by no variation in excess of 2°F (1°C) over a 3 minute period, shut down the main burner(s) and, if applicable, wait for the water pump to shut down, and then start the test.

At the start of the test record the time, ambient temperature, outlet water temperature, supply water temperature and begin measuring the fuel and electric consumption.

During the first hour, outlet water temperature, supply water temperature and the ambient air temperature shall be measured at the end of each 5 minute interval. For the remainder of the test, these measurements shall be made at the end of every 15 minute interval. The duration of this test shall be 24 hours. If the main burner is firing at 24 hours, continue the test until the main burner and the water pump, if applicable, have shut down.

Immediately after the conclusion of the test, record the total fuel flow and electrical energy consumption, the final ambient air temperature and the final outlet water temperature.

Calculate the average of the ambient air temperatures and the supply water temperatures taken at the end of each time interval, including the initial and final values.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [(Cs(Qs)(H) + Ec)/t] - [(\Delta T_4)/(\Delta T_3)(t)E_c]$$

Where

Cs = correction applied to the heating value of a gas H, when it is metered at temperature and/or pressure conditions other than the standard conditions for which the value of H is based;

H = higher heating value of gas, Btu per cu. ft. (MJ/m3);

Qs = total fuel flow as metered, cu. ft. (m3);

ΔT_3 = difference between the outlet temperature and the average value of the ambient air temperature, °F (°C);

ΔT_4 = difference between the average supply water temperature and the outlet temperature, °F (°C);

t = duration of test, hrs.;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under E.1, Method of Test for Measuring Thermal Efficiency

If the main burner(s) does not cycle on during this test the hourly average standby loss calculation simplifies to:

$$S = \{(K(Va)(\Delta T_4)/E_t) + E_c\}/t$$

For water heaters that will not initiate or cause actions that will initiate burner operation, the following simplified procedure may be used to measure the hourly standby loss.

This test may be conducted immediately following the thermal efficiency test. In this case, start the test after the main burner(s) has shut down and, if applicable, the water pump has shut down. Otherwise, provide the electrical connection as specified in E.1 Method of Test for Measuring Thermal Efficiency and start the test.

At the start of the test record the time and begin measuring the electric consumption for one hour. Record the duration of the test and the total electrical consumption during the test.

The average hourly standby loss, S, rounded to the nearest Btu per hour, shall be determined by the formula:

$$S = [((\Delta T_5\ k\ V_a/E_t)/24) + E_c]$$

Where:

ΔT_5 = 70 °F (38.9 °C), difference between the supply and outlet water temperatures;

k= 8.25 Btu/gallon °F (4147.6331 J/° C), the nominal specific heat of water;

V_a = water contained in the water heater expressed in gallons (L), as determined under 5.27;

Ec = electrical energy consumption expressed in Btu (kJ); and

Et = thermal efficiency as determined under E.1, Method of Test for Measuring Thermal Efficiency.

[FR Doc. 2016–13245 Filed 6–3–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9926–58–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Oklahoma's request to revise/modify its General Pretreatment Regulations For Existing And New Sources Of Pollution and State Sludge Management Program Regulations EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective June 6, 2016.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements. Once an authorized program has EPA's approval to accept electronic documents under certain programs, CROMERR § 3.1000(a)(4) requires that the program keep EPA apprised of any changes to laws, policies, or the electronic document receiving systems that have the potential to affect the program's compliance with CROMERR § 3.2000.

On October 27, 2014, the Oklahoma Department of Environmental Quality (OK DEQ) submitted a modification to their amended application titled "Electronic Document Receiving System" for revision/modification to its EPA-approved pretreatment and sludge management programs under title 40 CFR to allow new electronic reporting. EPA reviewed OK DEQ's request to revise/modify its EPA-authorized Part 403—General Pretreatment Regulations For Existing And New Sources Of Pollution and 501—State Sludge Management Program Regulations and, based on this review, EPA determined that the application met the standards for approval of authorized program revision/modification set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Oklahoma's request to revise/modify its Part 403—General Pretreatment Regulations For Existing And New Sources Of Pollution and 501—State Sludge Management Program Regulations to allow electronic reporting under 40 CFR parts 403–471, 501, and 503 is being published in the **Federal Register**.

OK DEQ was notified of EPA's determination to approve its application with respect to the authorized program listed above.

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2016–13270 Filed 6–3–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0794; FRL–9945–06]

Atrazine, Simazine, and Propazine Registration Review; Draft Ecological Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft ecological risk assessments for the registration review of atrazine, propazine, and simazine and opens a public comment period on these documents. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft ecological risk assessments for all atrazine, propazine, and simazine uses. After reviewing comments received during the public comment period, EPA may issue revised risk assessments, explain any changes to the draft risk assessments, respond to comments, and may request public input on risk mitigation before completing proposed registration review decisions for atrazine, propazine, and simazine. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before August 5, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0794, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager listed in Table 1 of Unit III.

For general questions on the registration review program, contact: Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager listed in Table 1 of Unit III.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of atrazine, simazine, and propazine pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for atrazine, simazine, and propazine to ensure that they continue to satisfy the FIFRA standard for registration—that is, that atrazine, simazine, and propazine can still be used without unreasonable adverse effects on human health or the environment.

TABLE 1—DRAFT RISK ASSESSMENTS BEING MADE AVAILABLE FOR PUBLIC COMMENT—TRIAZINES

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Atrazine 0062	EPA–HQ–OPP–2013–0266	Marianne Mannix, *mannix.marianne@epa.gov*, (703) 347–0275.
Simazine 0070	EPA–HQ–OPP–2013–0251	Steven Snyderman, *snyderman.steven@epa.gov*, (703) 347–0249.
Propazine, 0230	EPA–HQ–OPP–2013–0250	Steven Snyderman, *snyderman.steven@epa.gov*, (703) 347–0249.

Atrazine. Draft Ecological Risk Assessment (EPA–HQ–OPP–2013–0266). Atrazine is one of the most widely used agricultural pesticides in the United States. It is used primarily on corn, sorghum, and sugarcane to control broadleaf and grassy weeds in the Midwest. The draft atrazine ecological risk assessment evaluates risk to animals and plants. An endangered species assessment has not been completed for atrazine at this time. Atrazine was evaluated for its potential to affect endocrine systems in mammals and wildlife and the results of the Agency's review are found in the Weight of Evidence review in this Registration Review docket.

Simazine. Draft Ecological Risk Assessment (EPA–HQ–OPP–2013–0251). Simazine is an herbicide used to control broadleaf and grassy weeds on corn, citrus, tree nuts, pome fruits, stone fruits, berries, and grapes. The draft simazine ecological risk assessment evaluates risk to animals and plants. An endangered species assessment has not been completed for simazine at this time. Simazine was evaluated for its potential to affect endocrine systems in mammals and wildlife and the results of the Agency's review are found in the Weight of Evidence review in this Registration Review docket.

Propazine. Ecological Risk Assessment (EPA–HQ–OPP–2013–0250). Propazine is an herbicide used mainly to control broadleaf and grassy weeds on sorghum. The draft propazine ecological risk assessment evaluates risk to animals and plants. An endangered species assessment has not been completed for propazine at this time. Propazine has not been evaluated for its potential to affect endocrine systems in mammals and wildlife.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft ecological risk assessments for atrazine, simazine, and propazine. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as

applied to these draft risk assessments. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft ecological risk assessments. After reviewing comments received during the public comment period, EPA may issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments, and may request public input on risk mitigation before completing a proposed registration review decision for the identified pesticides.

1. *Other related information.* Additional information specific to atrazine is available on the Pesticide Registration Review Status Web page for this pesticide, *https://www.epa.gov/ingredients-used-pesticide-products/atrazine-background-and-updates.* Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/oppsrrd1/registration_review.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 31, 2016.

Michael Goodis,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–13299 Filed 6–3–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0233; FRL–9947–12]

Stakeholder Workshop To Discuss Interim Scientific Methods Used in Draft Biological Evaluations; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs, the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS) (collectively, the Services), and the U.S. Department of Agriculture (USDA) are holding a 2-day workshop to discuss potential refinements to the interim scientific methods used in the first nationwide draft biological evaluations for chlorpyrifos, diazinon, and malathion, released for public comment on April 11, 2016. These interim scientific methods were developed by EPA and the Services, with collaboration from USDA on crop production, pesticide use, and the spatial footprint of agricultural use patterns, in response to the 2013 National Academy of Sciences (NAS) report entitled, "Assessing Risks to Endangered and Threatened Species from Pesticides." This workshop builds upon public meetings held in November 2013, April and October 2014, and April 2015, and provides a forum for stakeholders to offer scientific and technical feedback on three topics of interest: (1) Improving aquatic modeling, (2) refinements to Step 1 (making "may affect" or "no effect" determinations) and Step 2 (making "likely to adversely affect" or "not likely to adversely affect" determinations), and (3) the weight of evidence approach. The workshop is not designed, or intended, to be a decision-making forum; consensus will not be sought, or developed at the meeting. This meeting is intended to further the agencies' goal of developing a sustainable methodology and process as part of the consultation process for assessing pesticide impacts on threatened and endangered (listed) species that is efficient, inclusive, and transparent.

DATES: The meeting will be held on June 29, 2016 from 8:00 a.m. to 5:30 p.m. and June 30, 2016 from 8:30 a.m. to 5:00 p.m. There will be a teleconference line and webinar available for those interested in calling in for introductory and concluding plenary sessions at the beginning and the end of the workshop. Attendees must register by June 22, 2016 to attend either in person or via teleconference/webinar.

To request accommodation of a disability, please contact the person(s) listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA and the Services as much time as possible to process your request.

ADDRESSES: The meeting will be held at FWS Skyline Bldg. 7, 5275 Leesburg Pike, Bailey's Crossroads, VA 22041–3803, in the Rachel Carson Room. See Unit III for additional information.

Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPP–2014–0233, may be submitted to the persons listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For general information and to register to attend, contact: Khue Nguyen, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 703–347–0248; email address: *nguyen.khue@epa.gov.*

For meeting logistics and special accommodations, contact: Leona Laniawe, U.S. Fish and Wildlife Service Headquarters, Ecological Services, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone: (703) 358–2640; email address: *leona_laniawe@fws.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you develop, manufacture, formulate, sell, and/or apply pesticide products, and if you are interested in the potential impacts of pesticide use on listed species. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop Production (NAICS code 111).

• Animal Production (NAICS code 112).

• Food Manufacturing (NAICS code 311).

• Pesticide Manufacturing (NAICS code 32532).

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket ID number EPA–HQ–OPP–2014–0233, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

This workshop is an opportunity for stakeholders and agencies to continue their dialogue on the technical aspects of implementing the NAS recommendations in the context of ongoing interagency efforts to develop a method for assessing risks to endangered species. This workshop builds upon implementation of the enhanced stakeholder engagement process that was finalized in March 2013, and public meetings held in November 2013, April and October 2014, and April 2015. The workshop is not designed, or intended to be a decision-making forum; consensus will not be sought, or developed at the meeting. Stakeholders are invited to provide feedback and suggest ideas for further refinement in three topic areas related to the draft biological evaluations for the three pilot chemicals (chlorpyrifos, diazinon, and malathion): (1) Improving aquatic exposure modeling, (2) refinements to the interim method for Step 1 (making "may affect" or "no effect" determinations) and Step 2 (making "likely to adversely affect" or "not likely to adversely affect" determinations), and (3) the approach to the weight of evidence.

The structure of this workshop differs from the structure of previous workshops. Only the opening and concluding plenary sessions of the workshop will be open to the general public. The rest of the workshop is divided into 6 breakout groups. Each breakout group will discuss technical questions related to the three main topics of interest: (1) Improving aquatic modeling, (2) refinements to Step 1 and Step 2, and (3) the approach to the weight of evidence. Because of the highly technical nature of these topics, the breakout groups will be by invitation only during initial registration. Invitees with specialized expertise in the three topic areas will be identified by the workshop Steering Committee composed of members from EPA, FWS, NMFS, and representatives from industry, grower groups, and environmental non-governmental organizations (NGOs). After initial registration, each breakout group will be open to the public on a first-come-first-served basis until maximum capacity is reached. Maximum capacity is 20 people per breakout group.

The agencies' interim approach document entitled, "Interagency Approach for Implementation of the National Academy of Sciences Report", dated November 13, 2013, and the presentation materials from the November 2013 stakeholder workshop are available at: *http://www.epa.gov/oppfead1/endanger/2013/nas.html.* Presentations supporting the previous stakeholder workshops held in April and October 2014 are available in the docket EPA–HQ–OPP–2014–0233. Presentations supporting the stakeholder workshop in April 2015 and the draft biological evaluations for chlorpyrifos, diazinon, and malathion are available at: *https://www.epa.gov/endangered-species/implementing-nas-report-recommendations-ecological-risk-assessment-endangered-and.*

Representatives from the federal agencies will participate in the breakout groups and plenary sessions to guide the discussion and answer clarifying questions regarding the need for refinement of the current interim methods. The agencies see this workshop as an integral component of the stakeholder engagement process developed for pesticide consultations that contributes to the agencies' commitment to adapt and refine the interim approaches as we progress through the initial pesticide consultations for chlorpyrifos, diazinon, and malathion.

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person(s) listed under **FOR FURTHER INFORMATION CONTACT.** Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2014–0233, must be received on or before June 22, 2016.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 31, 2016.

Michael Goodis,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–13301 Filed 6–3–16; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: Date and Time: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 9, 2016, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

• May 12, 2016

B. Reports

• Annual Report on the Farm Credit System's Young, Beginning, and Small Farmer Mission Performance: 2015 Results

• Quarterly Report on Economic Conditions and FCS Conditions

• Semi-Annual Report on Office of Examination Operations

Closed Session*

• Office of Examination Quarterly Report

* Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

Dated: June 2, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–13450 Filed 6–2–16; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10418, Central Florida State Bank, Belleview, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10418, Central Florida State Bank, Belleview, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Central Florida State Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective June 01, 2016 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 1, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13243 Filed 6–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10450, First Cherokee State Bank, Woodstock, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10450, First Cherokee State Bank, Woodstock, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Cherokee State Bank (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 01, 2016 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 1, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13244 Filed 6–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0169)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995. On January 5, 2016, (81 FR 239), the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before July 6, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/.*

• *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room MB–3016, or Manny Cabeza, (202.898.3767), Counsel, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collections of information:

1. *Title:* Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Form Numbers: None.

Affected Public: Private sector, insured state nonmember banks and state savings associations.

ESTIMATED BURDEN

	No. of respondents	Average hours per response	Responses per year	Total hours
Investor Reports on Affiliates (reporting burden)	10	2	12	240
Maintenance of Business Books (record keeping burden)	3	2	4	24
Disclosures Regarding Investors and Entities in Ownership Chain (reporting burden)	10	4	4	160
Total Burden Hours				424

General Description: Among other things, the Federal Deposit Insurance Act (FDIA) sets forth the duties and responsibilities of the FDIC in providing for and maintaining a system of deposit insurance for the nation's insured depository institutions and in resolving troubled insured depository institutions in a manner that presents the least cost to the Deposit Insurance Fund. Section 6 of the FDIA sets forth a number of factors to be considered before an institution is permitted by the FDIC to obtain federal deposit insurance. Among these factors are the financial history of the institution; the adequacy of the institution's capital structure; the further earnings prospects; the convenience and needs of the community; the institution's corporate powers, and, not insignificantly, the risk presented to the Deposit Insurance Fund. (Similarly, provisions of the Change in Bank Control Act, found in section 7 of the FDIA, permit the FDIC—or another appropriate federal banking agency—to refuse to permit a proposed change in bank control if the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.) Section 8 of the FDIA authorizes the FDIC to assess the safety and soundness of the practices, operations, and conditions of insured depository institutions, and permits the FDIC to terminate deposit insurance or to take other appropriate actions if the institution operates in an unsafe and unsound manner. Finally, section 13 of the FDIA authorizes the FDIC to resolve troubled insured depository institutions and to dispose of the assets of such institutions using the method that is least costly to the Deposit Insurance Fund, maximizes the return from the sale of such assets, and minimizes any loss to the Deposit Insurance Fund.

The FDIC's policy statement on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected pursuant to the policy statement allows the FDIC to evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase resolution costs, or operate in a manner that conflict with statutory safety and soundness principles and compliance requirements.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of June, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13235 Filed 6–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10287, Bank of Ellijay, Ellijay, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10287, Bank of Ellijay, Ellijay, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Bank of Ellijay (Receivership Estate); The Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds. Effective June 01, 2016 the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Date: June 1, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13242 Filed 6–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10159, Valley Capital Bank, Mesa, Arizona

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Valley Capital Bank, Mesa, Arizona ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Valley Capital Bank on December 11, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: June 1, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13234 Filed 6–3–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking

companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291.

1. *TCB Mutual Holding Company, Tomahawk, Wisconsin, and its wholly owned savings and loan holding company subsidiary, TCB Financial, Inc.,* Tomahawk, Wisconsin, to indirectly acquire Merrill Federal Savings & Loan Association, Merrill, Wisconsin, a mutual institution, through the merger of Merrill Federal Savings & Loan Association with and into Tomahawk Community Bank S.S.B., Tomahawk, Wisconsin, a wholly owned subsidiary of TCB Mutual Holding Company and TCB Financial, Inc.

Board of Governors of the Federal Reserve System, May 31, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13187 Filed 6–3–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088; Docket 2016–0053; Sequence 15]

Submission for OMB Review; Travel Costs

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Travel Costs.

DATES: Submit comments on or before July 6, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0088, Travel Costs." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0088, Travel Costs" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0088, Travel Costs.

Instructions: Please submit comments only and cite Information Collection 9000–0088, Travel Costs, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn Hopkins, Procurement Analyst, Office of Acquisition Policy, GSA, 202–969–7226 or via email at *kathlyn.hopkins@gsa.gov.*

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel.

These requirements are set forth in the Federal Travel Regulation for travel in the conterminous 48 United States; in the Joint Travel Regulation for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; and in the Department of State Standardized Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used. A notice was published in the **Federal Register** at 81 FR 13368 on March 14, 2016.

B. Discussion and Analysis

One respondent submitted public comments on the extension of the previously approved information collection.

Comment on the policy: The respondent expressed support for the requirement that Federal contractors justify any methods that result in reimbursements exceeding the per diem rates. The respondent stated that FAR 31.205 applies the same standard to Federal employees; the burden is fairly imposed upon contractors.

Response: The Government appreciates and acknowledges the comment.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

C. Annual Reporting Burden

Respondents: 5,800.
Responses per Respondent: 10.
Total Responses: 58,000.
Hours per Response: .25.
Total Burden Hours: 14,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: May 31, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–13222 Filed 6–3–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10148]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 5, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10148 HIPAA Administrative Simplification Complaint Form

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* HIPAA Administrative Simplification Complaint Form; *Use:* The Health Insurance Portability and Accountability Act (HIPAA) became law in 1996 (Pub. L. 104–191). Subtitle F of Title II of HIPAA, titled "Administrative Simplification," (A.S.) requires the Secretary of HHS to adopt national standards for certain information-related activities of the health care industry. The HIPAA provisions, by statute, apply only to "covered entities" referred to in section 1320d–2(a) (1) of this title. Responsibility for administering and enforcing the HIPAA A.S. Transactions, Code Sets, Identifiers has been delegated to the Centers for Medicare & Medicaid Services (CMS). This updated information collection will be used to initiate enforcement actions.

This reinstatement request clarifies the removal of the HIPAA Security complaint category. Specifically, the information collection revisions clarify the "Identify the HIPAA Non-Privacy/Security complaint category" section of the complaint form. In this section, complainants are given an opportunity to check the "Unique Identifiers" and "Operating Rules" option to additionally categorize the type of HIPAA complaint being filed. The revised form now includes an option for identifying Unique Identifier and Operating Rules complaints. It also requests email information about filed against entities, if available. *Form Number:* CMS–10148 (OMB control number: 0938–0948); *Frequency:* Occasionally; *Affected Public:* Individuals; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 500. (For policy questions regarding this collection contact Kevin Stewart at 410–786–6149.)

Dated: June 1, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–13289 Filed 6–3–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Performance Standards.

OMB No.: 0970–0148.

Description: Please note that this submission does not reflect proposed changes in the Notice of Proposed Rule Making to update Head Start program performance standards published on June 15, 2015. ACF is only requesting for an extension without change of a currently approved collection.

Head Start Performance Standards are the result of a legislative mandate to administer a high quality comprehensive child development program that serves low-income pregnant women, infants and toddlers, preschoolers and their families. The information collection aspects of the Performance Standards are a part of the many actions that local agencies must take to ensure they administer quality programs for Head Start children and families. The information collection items included in the Performance Standards are almost entirely record-keeping requirements for local Head Start programs; these records are intended to act as a tool for grantees and delegate agencies to be used in their day-to-day operations. Such records are maintained by the grantees and delegate agencies and are not part of a standard information collection submitted to the Federal government. Local programs are monitored for overall compliance with the Performance Standards, including the record-keeping aspects.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Records	2,865	16	41.9	1,920,696

Estimated Total Annual Burden Hours: 1,920,696.

Cost per respondent is $10,290.64 estimated at 16 responses × 41.9 hours × $15.35 per hour. Monetary costs associated with information collection requirements for Head Start are the salaries of the staff performing the duties. These costs are assumed by the Federal Government through the provision of program operating costs.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–13172 Filed 6–3–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.568]

Reallotment of FY 2015 Funds for the Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Notice of determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given of a preliminary determination that funds from the fiscal year (FY) 2015 Low Income Home Energy Assistance Program (LIHEAP) are available for reallotment to states, territories, tribes, and Tribal Organizations that received FY 2016 direct LIHEAP grants. No subgrantees or other entities may apply for these funds.

Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), (42 U.S.C. 8626(b)(1)) requires that, if the Secretary of the U.S. Department of Health and Human Services (HHS) determines that, as of September 1 of any fiscal year, an amount in excess of 10 percent of the amount awarded to a grantee for that fiscal year (excluding Leveraging, REACH, and reallotted funds) will not be used by the grantee during that fiscal year, then the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. No funds may be allotted to entities that are not direct LIHEAP grantees during FY 2016.

DATES: Submit comments on or before July 6, 2016.

ADDRESSES: Comments may be submitted to: Jeannie L. Chaffin, Director, Office of Community Services, 330 C Street SW., 5th Floor, Mail Room 5425, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Lauren Christopher, Director, Division of Energy Assistance, Office of Community Services, 330 C Street SW., 5th Floor, Mail Room 5425, Washington, DC 20201; telephone (202) 401–4870; email: *lauren.christopher@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: It has been determined that approximately $1,230,022 in LIHEAP funds may be available for reallotment during FY 2016. This determination is based on FY 2015 Carryover and Reallotment Reports that showed that seven grantees reported reallotment funds (Tennessee, Puerto Rico, Coyote Valley Band of Pomo Indians, Eastern Shoshone Tribe, Passmaquoddy Tribe at Pleasant Point, Poarch Band of Creek Indians, and The Klamath Tribes). Grantees submitted the FY 2015 Carryover and Reallotment Reports to the Office of Community Services (OCS), as required by regulations applicable to LIHEAP at 45 CFR 96.82. This amount, however, may increase because, as of April 1, 2016, the report for 68 grantees remains pending.

The statute allows grantees who have funds unobligated at the end of the federal fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next federal fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment under section 2607(b)(1) of the Act (42 U.S.C. 8626(b)(1)). The amount described in this notice was reported as unobligated FY 2015 funds in excess of the amount that these grantees could carry over to FY 2016.

OCS contacted each of the grantees to confirm that the FY 2015 funds indicated in the chart may be reallotted. In accordance with section 2607(b)(3) of the Act (42 U.S.C. 8626(b)(3)), comments will be accepted for a period of 30 days from the date of publication of this notice.

After considering any comments submitted, the Chief Executive Officers of LIHEAP grantees will be notified of the final reallotment amount. This decision will be published in the **Federal Register.**

If funds are reallotted, they will be allocated in accordance with section 2604 of the Act (42 U.S.C. 8623) and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 2016. As FY 2016 funds, they will be subject to all requirements of the Act, including section 2607(b)(2) (42 U.S.C. 8626(b)(2)), which requires that a grantee obligate at least 90 percent of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 2016.

ESTIMATED REALLOTMENT AMOUNTS OF FY 2015 LIHEAP FUNDS

Grantee name	FY 2015 reallotment amount
Tennessee	$271,910
Puerto Rico	818,566
Coyote Valley Band of Pomo Indians	9,025
Eastern Shoshone Tribe	37,413
Passmaquoddy Tribe at Pleasant Point	33,602
Poarch Band of Creek Indians	50,978
The Klamath Tribes	8,528
Total	1,230,022

Statutory Authority: 42 U.S.C. 8626.

Mary M. Wayland,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016–13217 Filed 6–3–16; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3432]

Organon USA et al.; Withdrawal of Approval of 67 New Drug Applications and 128 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of October 13, 2015 (80 FR 61426). The document announced the withdrawal of approval of 67 new drug applications (NDAs) and 128 abbreviated new drug applications from multiple applicants, effective November 12, 2015. The document indicated that FDA was withdrawing approval of the following two NDAs after receiving a request from the NDA holder, Merck Sharp & Dohme Corp. (Merck), 1 Merck Dr., P.O. Box 100, Whitehouse Station, NJ 08889: NDA 016096, MINTEZOL (thiabendazole) Tablets, and NDA 016097, MINTEZOL (thiabendazole) Oral Suspension. Before withdrawal of these NDAs became effective, Merck informed FDA that it did not want approval of the NDAs withdrawn. Because Merck timely requested that approval of these NDAs not be withdrawn, the approval of NDAs 016096 and 016097 is still in effect.

FOR FURTHER INFORMATION CONTACT: Florine Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Tuesday, October 13, 2015, appearing on page 61426 in FR Doc. 2015–25922, the following correction is made:

On page 61426, in table 1, the entries for NDAs 016096 and 016097 are removed.

Dated: May 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13182 Filed 6–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0797]

Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for human tissue intended for transplantation.

DATES: Submit either electronic or written comments on the collection of information by August 5, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0797 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Human Tissue Intended for Transplantation." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Human Tissue Intended for Transplantation—21 CFR Part 1270 (OMB Control Number 0910–0302)—Extension

Under section 361 of the Public Health Services Act (42 U.S.C. 264), FDA issued regulations under part 1270 (21 CFR part 1270) to prevent the transmission of human immunodeficiency virus, hepatitis B, and hepatitis C, through the use of human tissue for transplantation. The regulations provide for inspection by FDA of persons and tissue establishments engaged in the recovery, screening, testing, processing, storage, or distribution of human tissue. These facilities are required to meet provisions intended to ensure appropriate screening and testing of human tissue donors and to ensure that records are kept documenting that the appropriate screening and testing have been completed.

Section 1270.31(a) through (d) requires written procedures to be prepared and followed for the following steps: (1) All significant steps in the infectious disease testing process under § 1270.21; (2) all significant steps for obtaining, reviewing, and assessing the relevant medical records of the donor as prescribed in § 1270.21; (3) designating and identifying quarantined tissue; and (4) for prevention of infectious disease contamination or cross-contamination by tissue during processing. Sections 1270.31(a) and (b) also requires recording and justification of any deviation from the written procedures. Section 1270.33(a) requires records to be maintained concurrently with the performance of each significant step required in the performance of infectious disease screening and testing of human tissue donors. Section 1270.33(f) requires records to be retained regarding the determination of the suitability of the donors and of the records required under § 1270.21. Section 1270.33(h) requires all records to be retained for at least 10 years beyond the date of transplantation if

known, distribution, disposition, or expiration of the tissue, whichever is the latest. Section 1270.35(a) through (d) requires specific records to be maintained to document the following: (1) The results and interpretation of all required infectious disease tests; (2) information on the identity and relevant medical records of the donor; (3) the receipt and/or distribution of human tissue, and (4) the destruction or other disposition of human tissue.

Respondents to this collection of information are manufacturers of human tissue intended for transplantation. Based on information from the Center for Biologics Evaluation and Research's (CBER's) database system, FDA estimates that there are approximately 383 tissue establishments of which 262 are conventional tissue banks and 121 are eye tissue banks. Based on information provided by industry, there are an estimated total of 2,141,960 conventional tissue products and 130,987 eye tissue products distributed per year with an average of 25 percent of the tissue discarded due to unsuitability for transplant. In addition, there are an estimated 29,799 deceased donors of conventional tissue and 70,027 deceased donors of eye tissue each year.

Accredited members of the American Association of Tissue Banks (AATB) and Eye Bank Association of America (EBAA) adhere to standards of those organizations that are comparable to the recordkeeping requirements in part 1270. Based on information provided by CBER's database system, 90 percent of the conventional tissue banks are members of AATB (262 × 90% = 236), and 95 percent of eye tissue banks are members of EBAA (121 × 95% = 115). Therefore, recordkeeping by these 351 establishments (236 + 115 = 351) is excluded from the burden estimates as usual and customary business activities (5 CFR 1320.3(b)(2)). The recordkeeping burden, thus, is estimated for the remaining 32 establishments, which is 8.36 percent of all establishments (383 − 351 = 32, or 32/383 = 8.36%).

FDA assumes that all current tissue establishments have developed written procedures in compliance with part 1270. Therefore, their information collection burden is for the general review and update of written procedures estimated to take an annual average of 24 hours, and for the recording and justifying of any deviations from the written procedures under § 1270.31(a) and (b), estimated to take an annual average of 1 hour. The information collection burden for maintaining records concurrently with the performance of each significant screening and testing step and for retaining records for 10 years under § 1270.33(a), (f), and (h) include documenting the results and interpretation of all required infectious disease tests and results and the identity and relevant medical records of the donor required under § 1270.35(a) and (b). Therefore, the burden under these provisions is calculated together in table 1 of this document. The recordkeeping estimates for the number of total annual records and hours per record are based on information provided by industry and FDA experience.

FDA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1270.31(a), (b), (c), and (d) [2]	32	1	32	24	768
1270.31(a) and 1270.31(b) [3]	32	2	64	1	64
1270.33(a), (f), and (h), and 1270.35(a) and (b)	32	6,198.84	198,363	1.0	198,363
1270.35(c)	32	11,876.12	380,036	1.0	380,036
1270.35(d)	32	1,454.50	47,504	1.0	47,504
Total					626,735

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Review and update of standard operating procedures (SOPs).
[3] Documentation of deviations from SOPs.

Dated: May 27, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13224 Filed 6–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1284]

Determination That APRESOLINE (Hydralazine Hydrochloride) Injectable and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the following table are no longer being marketed.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 008303	APRESOLINE	Hydralazine Hydrochloride;	20 milligrams (mg)/milliliter 10 mg; 25 mg; 50 mg; 100 mg.	Injectable; Injection Tablet; Oral.	Novartis Pharmaceuticals Corp.
NDA 017853	PROVENTIL	Albuterol Sulfate	Equivalent to (EQ) 2 mg base; EQ 4 mg base.	Tablet; Oral	Schering-Plough Corp.
NDA 019439	K-Dur	Potassium Chloride	10 milliequivalents (meq); 20 meq.	Extended-Release Tablet; Oral.	Merck Sharp & Dohme, Corp.
ANDA 060572	MYCOLOG–II	Nystatin; Triamcinolone Acetonide.	100,000 units/gram; 0.1%	Ointment; Topical	Delcor Asset Corp.
ANDA 084343	KENALOG	Triamcinolone Acetonide	0.025%; 0.1%	Lotion; Topical	Delcor Asset Corp.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13181 Filed 6–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0643]

Labeling for Biosimilar Products; Draft Guidance for Industry; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or Agency) is extending the comment period for the notice entitled "Labeling for Biosimilar Products; Draft Guidance for Industry; Availability" that appeared in the **Federal Register** of April 4, 2016. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period for the notice that published on April 4, 2016 (81 FR 19194) by an additional 60 days. Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to permit the Agency to consider your comments before issuing the final version of the guidance, submit either electronic or written comments on the draft guidance by August 2, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–0643 for "Labeling for Biosimilar Products; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6340, Silver Spring, MD 20993–0002, 301–796–1042; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 4, 2016 (81 FR 19194), FDA published a notice with a 60-day comment period to request comments on the draft guidance for industry entitled "Labeling for Biosimilar Products." FDA is extending the comment period for an additional 60 days, until August 2, 2016. The Agency believes that a 60-day extension will allow adequate time for interested persons to submit comments without compromising timely publication of the final guidance.

II. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov*.

Dated: May 31, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13223 Filed 6–3–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 16–17, 2016.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Rd., Bethesda, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13200 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts and Continuous Submission: Ischemia and HDL.

Date: June 22–23, 2016.
Time: 10:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hematology and Vascular Biology.
Date: June 27–28, 2016.
Time: 10:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR PANEL: Innovative Therapies and Tools for Screenable Disorders in Newborns (R01, R21, R03).
Date: June 28, 2016.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Richard Panniers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immune Mechanism and Vaccine Development.
Date: June 29–30, 2016.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.
Date: June 29–30, 2016.
Time: 8:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130.
Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 16–064: R21 Grants for New Investigators to Promote Diversity in Health-Related Research.
Date: June 29, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.
Date: June 29–30, 2016.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.
Date: June 29, 2016.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR13–309–311: Translational Research in Pediatric and Obstetric Pharmacology and Therapeutics.
Date: June 29, 2016.
Time: 1:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Hormones, Stress and Sleep.
Date: June 29, 2016.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4214 MSC 7814, Bethesda, MD 20892–7814, 301–435–1787, *borzanj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Interventions and Mechanisms for Addictions.
Date: June 29, 2016.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Marc Boulay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, (301) 300–6541, *boulaymg@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: May 31, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13192 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–306: Lymphatics in Health and Disease in the Digestive System, Kidney and Urinary Tract.

Date: June 8, 2016.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 31, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13194 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Health Information National Trends Survey V (HINTS V) (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Bradford W. Hesse, Ph.D., Project Officer, National Cancer Institute, 9609 Medical Center Drive, 3E610, Bethesda, MD 20892–9760, or call non-toll free number 240–276–6721 or email your request, including your address, to *hesseb@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Health Information National Trends Survey V (HINTS V) (NCI) (OMB 0925–0538–Reinstatement with Change. National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: HINTS V will provide NCI with a comprehensive assessment of the American public's current access to and use of information about cancer across the cancer care continuum from cancer prevention, early detection, diagnosis, treatment, and survivorship. The content of the survey will focus on understanding the degree to which members of the general population understand vital cancer prevention messages. More importantly, this NCI survey will couple knowledge-related questions with inquiries into the communication channels through which understanding is being obtained, and assessment of cancer-related behavior.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,017.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Individual—main study	3,500	1	30/60	1,750
Individual—pilot study	533	1	30/60	267
Total	4,033	4,033		2,017

Dated: May 27, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–13191 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel BRAIN Initiative: New Concepts and Early-Stage Research for Large-Scale Recording and Modulation in the Nervous System (R21).
Date: June 23, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 27, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13196 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel—Pregnenolone and Depression.

Date: June 29, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeannette L. Johnson, Ph.D., National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13197 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA PAR on Mechanisms of Behavioral Change.

Date: June 22, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of INIA Applications (RFA–AA–16–004, 005 & 006).

Date: November 4, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Conference Room, 5635 Fishers Lane, Rockville MD, MD 20851.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: May 27, 2016.

Melanie J. Gray-Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13198 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–213: Outcome Measures for Use in Treatment Trials for Individuals with IDD.

Date: June 29, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: June 30–July 1, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Clara M. Cheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170 MSC 7892, Bethesda, MD 20817, 301–435–1041, *chengc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Bioanalytical Chemistry, Biophysics and Assay Development.

Date: June 30, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Vonda K. Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Urologic and Urogynecologic Applications.

Date: June 30, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental and Occupational Safety.

Date: June 30–July 1, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tatiana V. Cohen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5213, Bethesda, MD 20892, 301–455–2364, *tatiana.cohen@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vascular and Hematology.

Date: June 30, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery and Nanotechnology.

Date: June 30–July 1, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Surgical Sciences and Bioengineering.

Date: June 30, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Memory, Attention and Social Development.

Date: June 30, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wind Cowles, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3172, Bethesda, MD 20892, *cowleshw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–080: Accelerating the Pace of Drug Abuse Research Using Existing Data.

Date: June 30, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 31, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13193 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, NIAAA Member Conflict Reviews—Clinical Sciences and Epidemiology.

Date: July 11, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health—NIAAA, 5635 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Richard A Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel NIAAA Fellowship Review.

Date: July 26, 2016.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Level Conference Room 508, 5635 Fishers LN, Rockville, MD 20892.

Contact Person: Richard A. Rippe, Ph.D. Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599 *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13199 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: July 11, 2016.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, C-Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5665, *wojcikb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 27, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13195 Filed 6–3–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0036]

Committee Name: Homeland Security Academic Advisory Council

AGENCY: Department of Homeland Security

ACTION: Committee management; request for applicants for appointment to the Homeland Security Academic Advisory Council.

SUMMARY: The Department of Homeland Security (DHS) is requesting qualified individuals who are interested in serving on the Homeland Security Academic Advisory Council (HSAAC) to apply for appointment as identified in this notice. Under the Secretary's authority in title 6, U.S.C., sec. 451, the Council is a discretionary committee established in accordance with and operates under the provisions of the *Federal Advisory Committee Act* (FACA) (title 5, U.S.C., appendix). The HSAAC is composed of up to twenty-three (23) members, representing a diverse group of university and college presidents and academic association leaders who advise the Secretary and senior leadership on matters related to homeland security and the academic community, including: Academic research and faculty exchange; campus resilience; cybersecurity; homeland security academic programs; international students; and student and recent graduate recruitment.

The Department seeks to appoint individuals to eight (8) vacant positions on the Council, including three (3) Representative members and five (5) Special Government Employee (SGE) members. If other positions are vacated during the application process, candidates may be selected from the pool of applicants to fill the vacated positions.

DATES: Applications will be accepted until 11:59 p.m. EST June 17, 2016.

ADDRESSES: The preferred method of submission is via email. However, applications may also be submitted by fax or mail. Please only submit by ONE of the following methods:

- *Email: AcademicEngagement@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–447–3713.
- *Mail:* Academic Engagement; Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW; Washington, DC 20528–0440.

FOR FURTHER INFORMATION CONTACT: Lindsay Burton, Office of Academic Engagement/Mailstop 0440; Department of Homeland Security; 245 Murray Lane SW; Washington, DC 20528–0440, email: *AcademicEngagement@hq.dhs.gov,* telephone: 202–447–4686 and fax: 202–447–3713.

SUPPLEMENTARY INFORMATION: The HSAAC is an advisory committee established to provide advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students; academic research; campus and community resiliency, security and preparedness; faculty exchanges; and cybersecurity. The duties of the Council are solely advisory in nature.

The Department is requesting individuals who are interested in serving on the Council to apply for appointment. Individuals selected for appointment will serve as either a SGE or Representative member. Specific vacancies by membership type include the following:

- Representative Members: Three (3) vacancies for members representing the specific viewpoints of their respective academic institution or organization:
  - ○ One (1) Representative from a women's college or university, or a representative organization of these institutions;
  - ○ One (1) Representative from a DHS Center of Excellence; and
  - ○ One (1) Representative from a college, university or academic association with countering violent extremism focused programs or research initiatives.
- SGEs/Non-representative Members: Five (5) vacancies for SGEs that will be selected based on their area of expertise as aligned to the HSAAC focus areas: Academic research and faculty exchange; campus resilience; cybersecurity; homeland security academic programs; international students; and student and recent graduate recruitment.

More information about member composition can be found in the HSAAC Charter: *https://www.dhs.gov/publication/hsaac-charter-0.*

If you are interested and qualified, please apply for consideration of appointment by submitting an application package to the Office of Academic Engagement (OAE) as listed in the **ADDRESSES** section of this notice. Current HSAAC members whose terms are ending should notify OAE of their interest in reappointment in lieu of submitting a new application, and if desired, provide updated application materials for consideration. There is no application form; however, each

application package MUST include the following information:

- Cover letter, addressed to the Office of Academic Engagement, that indicates why you are interested in serving on the Council and includes the following information: The position (*i.e.,* Representative or SGE) being applied for, current position title and organization, home and work addresses, a current telephone number and email address; and
- Resume or Curriculum Vitae (CV).

Incomplete applications will not be considered. Applicants that do not meet the following criteria will not be considered: (1) Represent an academic institution or organization, and (2) serve in the highest role in that organization (*i.e.,* president, chancellor, Chief Executive Officer). Applicants will then be reviewed on the following criteria: (1) Relevance of experience to HSAAC focus areas; (2) institution or association represented; and (3) alignment to current HSAAC membership composition.

The appointment shall be for a term ranging from two (2) to four (4) years. Individuals selected for appointment as SGEs, defined in sec. 202(a) of title 18, U.S.C., will be required to complete a Confidential Financial Disclosure Form (Office of Government Ethics (OGE) Form 450). Individuals selected for appointment as Representative Members are selected to represent the viewpoint of their respective academic institution or organization and are not SGEs.

The HSAAC is expected to meet two (2) times each year. Additional meetings may be held with the approval of the Designated Federal Officer (DFO). Members may be reimbursed for travel and per diem, and all travel for HSAAC business must be approved in advance by the DFO. HSAAC meetings are open to the public, unless a determination is made by the appropriate DHS official in accordance with DHS policy and directives, that the meeting should be closed in accordance with title 5, U.S.C., subsec. (c) of sec. 552b. Additionally, members are asked to serve on any number of HSAAC Subcommittees, which meet at least once a year via teleconference.

DHS does not discriminate on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions. Current DHS employees, contractors and potential contractors will not be considered for membership. Federally registered lobbyists may apply for positions designated as Representative appointments but are not eligible for positions that are designated as SGE appointments.

Responsible DHS Official: Alaina Clark, *AcademicEngagement@hq.dhs.gov,* 202–447–4686.

Dated: June 1, 2016.

Alaina Clark,

Acting Designated Federal Officer, Homeland Security Academic Advisory Council.

[FR Doc. 2016–13286 Filed 6–3–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X.LLID9570000.L14400000.BJ0000. 241A.X.4500081115]

Filing of Plats of Survey: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land are scheduled to be officially filed in the Bureau of Land Management, Idaho State Office, Boise, ID, in 30 days from the date of this publication.

These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 15 and 17, T. 34 N., R. 4 E., of the Boise Meridian, Idaho, Group Number 1425, was accepted May 13, 2016.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of sections 3 and 10, T. 8 N., R. 3 W., of the Boise Meridian, Idaho, Group Number 1430, was accepted May 25, 2016.

These surveys were executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of portions of the north boundary of the Nez Perce Indian Reservation, west boundary, and subdivisional lines, and the subdivision of sections 19, 21, and 31, T. 37 N., R. 3 W., of the Boise Meridian, Idaho, Group Number 1426, was accepted May 17, 2016.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 25 and 34, T. 37 N., R. 4 W., of the Boise Meridian, Idaho, Group Number 1434, was accepted May 25, 2016.

These surveys were executed at the request of the U.S. Fish and Wildlife Service to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, subdivision of section 11, and the original 1885 meanders of Grays Lake in sections 11, 14, and 23, and the subdivision of sections 11, 12, 13, 14, and 23, and certain metes-and-bounds surveys in sections 11, 12, 13, 14, and 23, T. 4 S., R. 43 E., of the Boise Meridian, Idaho, Group Number 1323, was accepted May 13, 2016.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, upon required payment.

FOR FURTHER INFORMATION CONTACT: Stanley G. French, (208) 373–3981 Branch of Cadastral Survey, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657. Persons who use a telecommunitcations device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Idaho State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Idaho State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration to the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2016–13232 Filed 6–3–16; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14400000.BJ0000.LXSSF2210000.241A; 13–08807; MO# 4500093537; TAS: 14X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Unless otherwise stated filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Michael O. Harmening, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on May 16, 2016.

The plat, in 3 sheets, representing the dependent resurvey of the south boundary, a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of certain sections, in Township 14 South, Range 69 East, of the Mount Diablo Meridian, Nevada, under Group No. 910, was accepted May 12, 2015. This survey was executed at the request of Clark County to identify certain boundaries, as shown on the request for cadastral survey, dated July 5, 2011.

2. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on May 3, 2016:

The plat, in 10 sheets, representing the dependent resurvey of a portion of the subdivisional lines and portions of certain mineral surveys, the subdivision of sections 5 and 6, and metes-and-bounds surveys of certain Gold Hill Townsite lots, Township 16 North, Range 21 East, Mount Diablo Meridian, under Group No. 937, was accepted April 29, 2016. This survey represented on these plats was executed to determine the official boundaries of the parcel called "Lot 51" that is the subject of a Color of Title Act Class I claim by Northern Comstock, LLC.

The surveys listed above are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: May 27, 2016.

Michael O. Harmening,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2016–13238 Filed 6–3–16; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF02000.L16100000.DP0000.16x]

Notice of Intent To Amend the Resource Management Plan for the Taos Field Office, New Mexico, and Prepare an Associated Environmental Assessment for the Proposed Acceptance of the Rimrock Rose Ranch Donation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Taos Field Office, Taos, New Mexico intends to prepare a Resource Management Plan (RMP) amendment with an associated Environmental Assessment (EA) for the Taos Field Office and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP amendment with an associated EA. Comments on issues may be submitted in writing until July 6, 2016 In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period. The date(s) and locations(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and BLM Web site at: *http://www.blm.gov/nm/taos*. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Rimrock Rose Ranch Donation Acceptance EA and RMP amendment by any of the following methods:

- Web site: *http://www.blm.gov/nm/st/en/fo/Taos_Field_Office.html.*
- Email: *blm_nm_tafo_comments@blm.gov.*
- Fax: 575–758–1620.
- Mail: Bureau of Land Management, Attention: Brad Higdon, 226 Cruz Alta Road, Taos NM 87571.

Documents pertinent to this proposal may be examined at the Taos Field Office at 226 Cruz Alta Road in Taos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Brad Higdon, Planning and Environmental Specialist, telephone 575–751–4725; address 226 Cruz Alta Road, Taos, New Mexico 87571; email *bhigdon@blm.gov*. Contact Mr. Higdon to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Taos Field Office, New Mexico, intends to prepare an RMP amendment with an associated EA for the Taos Field Office planning area, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located within San Miguel County, New Mexico, and encompasses approximately 19,780 acres of public land. This RMP amendment proposes to make two allotments unavailable for livestock grazing. This action is part of a larger proposal by the BLM to accept a donation of approximately 3,576 acres

to be added to the Sabinoso Wilderness under the provisions of Section 6 (a) of the Wilderness Act of 1964 (Act), which will provide for public access to the wilderness for the first time. The Rimrock Rose Ranch previously served as base property for the two livestock grazing allotments (00735 and 00736) within or near Sabinoso Wilderness, and as part of the conditions of the donation, provided for under Section 6 (a) of the Act, the property cannot be used for purposes of livestock grazing. Furthermore, the ranch property offered for donation contains important riparian resources critical for supporting a diverse population of aquatic and terrestrial wildlife species in this arid environment where riparian resources are scarce. The long history of grazing practices on the ranch property has substantially compromised the riparian resources and their function. To protect and restore riparian resources, as well as to conform to current BLM management prescriptions for the area, livestock grazing is proposed to be eliminated from the two livestock grazing allotments because of their dependence on these riparian areas as a supplemental water source and for purposes of trailing. The proposal also includes the purchase of the remaining approximate 600 acres of the Rimrock Rose Ranch not offered as part of the donation. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel and include potential impacts to wilderness quality; riparian resources; cultural resources; livestock grazing; and opportunities for recreation. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the "ADDRESSES" section above. To be most helpful, you should submit comments by the close of the 30-day scoping period.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the draft RMP amendment/draft EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, riparian resources, wilderness, outdoor recreation, archaeology, visual resources, and realty.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Jim Stovall,

Acting Associate State Director, BLM New Mexico.

[FR Doc. 2016–13273 Filed 6–3–16; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Renewals of Information Collections Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is seeking comments on the renewal of information collections for the following activities: (i) Compliance and enforcement actions under the Indian Gaming Regulatory Act as authorized by Office of Management and Budget (OMB) Control Number 3141–0001; (ii) approval of tribal ordinances, and background investigation and issuance of licenses as authorized by OMB Control Number 3141–0003; (iii) National Environmental Policy Act submissions as authorized by OMB Control Number 3141–0006; and (iv) issuance to tribes of certificates of self-regulation for Class II gaming as authorized by OMB Control Number 3141–0008. These information collections all expire on October 31, 2016.

DATES: Submit comments on or before August 5, 2016.

ADDRESSES: Comments can be mailed, faxed, or emailed to the attention of: Tim Osumi, National Indian Gaming Commission, 1849 C Street NW., MS 1621, Washington, DC 20240. Comments may be faxed to (202) 632–7066 and may be sent electronically to *info@nigc.gov*, subject: PRA renewals.

FOR FURTHER INFORMATION CONTACT: Tim Osumi at (202) 632–7054; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Request for Comments

You are invited to comment on these collections concerning: (i) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and cost) of the proposed collections of information, including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate

automated, electronic, mechanical, or other collection techniques or forms of information technology. Please note that an agency may not conduct or sponsor and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is the Commission's policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask in your comment that the Commission withhold your personal identifying information from public review, the Commission cannot guarantee that it will be able to do so.

II. Data

Title: Indian Gaming Compliance and Enforcement.

OMB Control Number: 3141–0001.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 *et seq.*, governs the regulation of gaming on Indian lands. Although IGRA places primary responsibility with the tribes for regulating their gaming activities, § 2706(b) directs the Commission to monitor gaming conducted on Indian lands on a continuing basis. Amongst other actions necessary to carry out the Commission's statutory duties, the Act authorizes the Commission to access and inspect all papers, books, and records relating to gross revenues of a gaming operation. The Act also requires tribes to provide the Commission with annual independent audits of their gaming operations, including audits of all contracts in excess of $25,000. 25 U.S.C. 2710(b)(2)(C), (D); 2710(d)(1)(A)(ii). In accordance with these statutory mandates, Commission regulations require Indian gaming operations to keep and maintain permanent financial records, and to submit to the Commission independent audits of their gaming operations on an annual basis. This information collection is mandatory and allows the Commission to fulfill its statutory responsibilities under IGRA to regulate gaming on Indian lands.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 898.

Estimated Annual Responses: 898.

Estimated Time per Response: Depending on the type of information collection, the range of time can vary from 20.5 burden hours to 1506.75 burden hours for one item.

Frequency of Responses: 1 per year.

Estimated Total Annual Burden Hours on Respondents: 878,274.

Estimated Total Non-hour Cost Burden: $47,948,291.

Title: Approval of Class II and Class III Ordinances, Background Investigations, and Gaming Licenses.

OMB Control Number: 3141–0003.

Brief Description of Collection: The Act sets standards for the regulation of gaming on Indian lands, including requirements for the approval or disapproval of tribal gaming ordinances. Section 2705(a)(3) requires the NIGC Chair to review all Class II and Class III tribal gaming ordinances. In accordance with this statutory provision, Commission regulations require tribes to submit: (i) a copy of the gaming ordinance, or amendment thereof, to be approved, including a copy of the authorizing resolution by which it was enacted by the tribal government, and a request for approval of the ordinance or resolution; (ii) designation of an agent for service of process; (iii) a description of procedures the tribe will employ in conducting background investigations on primary management officials (PMOs) and key employees; (iv) a description of procedures the tribe will use to issue licenses to PMOs and key employees; (v) copies of all gaming regulations; (vi) a copy of any applicable tribal-state compact; (vii) a description of dispute resolution procedures for disputes arising between the gaming public and the tribe or management contractor; and (viii) identification of the law enforcement agency that will take fingerprints and a description of the procedures for conducting criminal history checks. The Commission also requires a tribal ordinance to provide that the tribe will perform background investigations and issue licenses for PMOs and key employees according to requirements that are as stringent as those contained in Commission regulations. The NIGC Chair will use the information collected to approve or disapprove the ordinance or amendment thereof.

Commission regulations also require tribes to perform background investigations and issue licenses for PMOs and key employees using certain information provided by applicants, such as names, addresses, previous employment records, previous relationships with either Indian tribes or the gaming industry, licensing related to those relationships, any convictions, and any other information that a tribe feels is relevant to the employment of the individuals being investigated. Tribes are then required to keep complete application files. Tribes are also required to create and keep investigative reports, and to submit to the Commission notices of results (licensing eligibility determinations) on PMOs and key employees. Tribes must notify the Commission if they issue or do not issue licenses to PMOs and key employees, and if they revoke said licenses. The Commission uses this information to review the eligibility and suitability determinations that tribes make and advises them if it disagrees with any particular determination. These information collections are mandatory and allow the Commission to carry out its statutory duties.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 1,580.

Estimated Annual Responses: 193,745.

Estimated Time per Response: Depending on the type of information collection, the range of time can vary from 1.0 burden hour to 1,419 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 1,392,405.

Estimated Total Non-hour Cost Burden: $3,333,573.

Title: NEPA Compliance.

OMB Control Number: 3141–0006.

Brief Description of Collection: The National Environmental Policy Act (NEPA) requires federal agencies to analyze proposed major federal actions that significantly affect the quality of the human environment. The Commission has identified one type of action that it undertakes that requires review under NEPA—approving third-party management contracts for the operation of gaming activity under IGRA. Depending on the nature of the subject contract and other circumstances, approval of such management contracts may be categorically excluded from NEPA, may require the preparation of an Environmental Assessment (EA), or may require the preparation of an Environmental Impact Statement (EIS). In any case, the proponents of a management contract will be expected to submit information to the Commission and assist in the development of the required NEPA documentation.

Respondents: Tribal governing bodies, management companies.

Estimated Number of Respondents: 3.

Estimated Annual Responses: 3.

Estimated Time per Response: Depending on whether the response is an EA or an EIS, the range of time can vary from 2.5 burden hours to 12.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours on Respondents: 26.5.

Estimated Total Non-hour Cost Burden: $14,846,686.

Title: Issuance of Certificates of Self-Regulation to Tribes for Class II Gaming.

OMB Control Number: 3141–0008.

Brief Description of Collection: The Act allows any Indian tribe that has conducted Class II gaming for at least three years to petition the Commission for a certificate of self-regulation for its Class II gaming operation(s). The Commission will issue the certificate if it determines that the tribe has conducted its gaming activities in a manner that has: resulted in an effective and honest accounting of all revenues; a reputation for safe, fair, and honest operation of the gaming activities; and an enterprise free of evidence of criminal or dishonest activity. The tribe must also have adopted and implemented proper accounting, licensing, and enforcement systems, and conducted the gaming operation on a fiscally or economically sound basis. Commission regulations require a tribe interested in receiving a certificate to file with the Commission a petition generally describing the tribe's gaming operations, its regulatory process, its uses of net gaming revenue, and its accounting and recordkeeping systems. The tribe must also provide copies of various documents in support of the petition. Tribes who have been issued a certificate of self-regulation are required to submit to the Commission certain information on an annual basis, including information that establishes that the tribe continuously meets the regulatory eligibility and approval requirements and supporting documentation that explains how tribal gaming revenues were used in accordance with the requirements in 25 U.S.C. 2710(b)(2)(B). Submission of the petition and supporting documentation is voluntary. The Commission will use the information submitted by the tribe in determining whether to issue the certificate of self-regulation. Once a certificate of self-regulation has been issued, the submission of certain other information is mandatory.

Respondents: Tribal governments.

Estimated Number of Respondents: 8.

Estimated Annual Responses: 8.

Estimated Time per Response: Depending on the information collection, the range of time can vary from 0.75 burden hour to 1,940 burden hours for one item.

Frequency of Responses: Varies.

Estimated Total Annual Burden Hours on Respondents: 4,088.

Estimated Total Non-hour Cost Burden: $172,450.

Dated: May 24, 2016.

Shannon O'Loughlin,

Chief of Staff.

[FR Doc. 2016–13276 Filed 6–3–16; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–ISRO–20587; PPMWMWROW3/ PPMPSPD1Y.YM0000]

Amended Notice of Intent To Prepare an Environmental Impact Statement To Address the Presence of Wolves at Isle Royale National Park

AGENCY: National Park Service, Interior.

ACTION: Amended Notice of Intent.

SUMMARY: The National Park Service (NPS) is amending its July 10, 2015, Notice of Intent (NOI) to prepare an environmental impact statement (EIS) and Management Plan for Moose, Wolves, and Vegetation for Isle Royale National Park, Michigan (Isle Royale). The NPS is revising the scope of the EIS to focus on the question of whether to bring wolves to Isle Royale in the near term, and if so, how to do so. This amended NOI describes a range of alternatives for bringing wolves to the Island.

Authority: 42 U.S.C. 4321–4347; 40 CFR parts 1500–1508; 43 CFR part 46.

DATES: The public scoping comment period will conclude 30 days following the date this NOI is published in the **Federal Register**. All comments must be postmarked or transmitted by this date.

ADDRESSES: Information, including a copy of the new public scoping brochure, is available for public review online at *http://parkplanning.nps.gov/ISROwolves*. Limited copies of the brochure will also be available at Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan and by request.

FOR FURTHER INFORMATION CONTACT: Superintendent Phyllis Green, Isle Royale National Park, ISRO Wolves, 800 East Lakeshore Drive, Houghton, Michigan 49931–1896, or by telephone at (906) 482–0984.

SUPPLEMENTARY INFORMATION: Although wolves have not always been part of the Isle Royale ecosystem, they have been present for more than 65 years, and have played a key role in the ecosystem, affecting the moose population and other species during that time. The average wolf population on the island over the past 65 years has been about 22, but there have been as many as 50 wolves on the Island and as few as three. Over the past five years the population has declined steeply, which has given rise to the need to determine whether the NPS should bring additional wolves to the island. There were three wolves documented on the Island as of March 2015 and only two wolves have been confirmed as of February 2016. At this time, natural recovery of the population is unlikely. The potential absence of wolves raises concerns about possible effects to Isle Royale's current ecosystem, including effects to both the moose population and Isle Royale's forest/vegetation communities.

The NPS published a NOI to prepare an EIS and Management Plan for Moose, Wolves, and Vegetation for Isle Royale National Park on July 10, 2015, (80 FR 39796), and held scoping meetings July 27–30, 2015. However, based on the public comments we received and additional internal deliberations, the NPS has determined that it will revise and narrow the scope of this EIS to focus on the question of whether to bring wolves to Isle Royale in the near term, and if so, how to do so.

The revised purpose of the plan is to determine whether and how to bring wolves to Isle Royale to function as the apex predator in the near term within a changing and dynamic island ecosystem. The NPS will evaluate alternative approaches for bringing wolves to Isle Royale, as well as the alternative of not bringing wolves to Isle Royale (the no-action alternative), which remains a viable option. Following this evaluation and additional input from you on the EIS, an alternative will be selected for implementation and documented in a record of decision. Based on the revised purpose statement, the NPS is now considering the following alternatives.

Under Alternative A, the no-action alternative, the NPS would not intervene and would continue current management. Wolves may come and go through natural migration, although the current population of wolves may die out. Under Alternative B, the NPS would bring wolves to Isle Royale as a one-time event within a defined period of time (*e.g.*, over a 36 month period) to increase the longevity of the wolf population on the island. This action would occur as soon as possible following a signed record of decision. Under Alternative C, the NPS would bring wolves to Isle Royale as often as needed in order to maintain a

population of wolves on the island for at least the next 20 years, which is the anticipated life of the plan. The wolf population range and number of breeding pairs to be maintained on the island would be determined based on best available science and professional judgement. This action would occur as soon as possible following a signed record of decision. Under Alternative D, the NPS would not take immediate action and would continue current management, allowing natural processes to continue. One or more resource indicators and thresholds would be developed to evaluate the condition of key resources, which could include moose or vegetation-based parameters. If a threshold is met, wolves would be brought to Isle Royale as a one-time event (per alternative B) or through multiple introductions (per alternative C). The NPS will not select an alternative for implementation until after a final EIS is completed.

Given the revised scope of the EIS, actions to manage moose, such as culling or translocation of moose, as well as actions to manage vegetation, such as fire, direct restoration, or other tools, will not be considered in this EIS. After a decision is made regarding whether and how to bring wolves to Isle Royale, the NPS will monitor conditions on the island, and will initiate additional planning processes to address other aspects of the island ecosystem, such as the moose population and forest community, if such planning processes are deemed necessary.

All comments received during the scoping period that was announced in the July 2015 NOI are available online at *http://parkplanning.nps.gov/ISROwolves* and will be considered. If you would like to provide additional comments regarding the revised scope of the plan, you may do so through the following methods.

The preferred method for submitting comments is on the NPS PEPC Web site at *http://parkplanning.nps.gov/ISROwolves*. You may also mail or hand-deliver your comments to Superintendent Phyllis Green, Isle Royale National Park, ISRO Wolves, 800 East Lakeshore Drive, Houghton, Michigan 49931–1896. The NPS will consider all additional comments received or postmarked no later than 30-days from the date this NOI is published in the **Federal Register**. Comments submitted after that date will be considered to the extent practicable.

Comments will not be accepted by fax, email, or any other way than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Cameron H. Sholly,

Regional Director, Midwest Region.

[FR Doc. 2016–13184 Filed 6–3–16; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2012–0006; DS63642000 DR2PS0000.CH7000 167D0102R2]

Agency Information Collection Activities: Federal Oil and Gas Valuation; Comment Request

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice of an extension.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), ONRR is inviting comments on a collection of information requests that we will submit to the Office of Management and Budget (OMB) for review and approval. This Information Collection Request (ICR) covers the paperwork requirements in the regulations under title 30, *Code of Federal Regulations* (CFR), parts 1202, 1204, and 1206. This ICR pertains to Federal oil and gas valuation regulations, which include transportation and processing regulatory allowance limits and accounting and auditing relief for marginal properties. Also, there is one form (ONRR–4393) associated with this information collection.

DATES: Submit written comments on or before August 5, 2016.

ADDRESSES: You may submit comments on this ICR to ONRR by using one of the following three methods (please reference "ICR 1012–0005" in your comments):

1. Electronically go to *http://www.regulations.gov*. In the entry titled "Enter Keyword or ID," enter "ONRR–2012–0005" and then click "Search." Follow the instructions to submit public comments. ONRR will post all comments.

2. Email comments to Mr. Luis Aguilar, Regulatory Specialist, at *luis.aguilar@onrr.gov*.

3. Hand-carry or mail comments, using an overnight courier service, to ONRR. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For any questions, contact Mr. Luis Aguilar, telephone (303) 231–3418, or email at *luis.aguilar@onrr.gov*. You may also contact Mr. Aguilar to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require us to collect the information.

SUPPLEMENTARY INFORMATION:

I Abstract

The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary's responsibility, according to various laws, is to manage mineral resource production from Federal and Indian lands and the OCS, collect the royalties and other mineral revenues due, and distribute the funds collected under those laws. We have posted those laws pertaining to mineral leases on Federal and Indian lands and the OCS at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm*.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

You can find the information collections covered in this ICR at 30 CFR parts:

- 1202, subparts C and D, which pertain to Federal oil and gas royalties.
- 1204, subpart C, which pertains to accounting and auditing relief for marginal properties.
- 1206, subparts C and D, which pertain to Federal oil and gas product valuation.

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The mineral lease laws require the lessee, or his designee, to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals.

Information Collections

ONRR uses the information that we collect in this ICR to ensure that lessees accurately value and appropriately pay royalties on oil and gas produced from Federal onshore and offshore leases. Please refer to the chart for all reporting requirements and associated burden hours. All data submitted is subject to subsequent audit and adjustment.

A. Federal Oil and Gas Valuation Regulations

The valuation regulations at 30 CFR part 1206, subparts C and D, mandate that companies collect and submit information used to value their Federal oil and gas, including (1) transportation and processing allowances and (2) regulatory allowance limit information. Companies report certain data on form ONRR–2014, Report of Sales and Royalty Remittance. The information that we request is the minimum necessary to carry out our mission and places the least possible burden on respondents. If ONRR does not collect this information, both Federal and State governments may incur a loss of royalties.

Transportation and Processing Regulatory Allowance Limits: Lessees may deduct actual costs of transportation and processing from Federal royalties. The lessees report these allowances on form ONRR–2014. For oil and gas, regulations establish the allowable limit on transportation allowance deductions at 50 percent of the value of the oil or gas. For gas only, regulations establish the allowable limit on processing allowance deductions at 66⅔ percent of the value of each gas plant product.

Request to Exceed Regulatory Allowance Limitation, form ONRR–4393: Lessees may request to exceed regulatory limitations. Upon proper application from the lessee, ONRR may approve oil or gas transportation allowance in excess of 50 percent or gas processing allowance in excess of 66⅔ percent on Federal leases. Lessees use form ONRR–4393 for both Federal and Indian leases to request to exceed allowance limitations. This ICR covers only Federal leases; therefore, we have not included burden hours of form ONRR–4393 for Indian leases in this ICR. We include burden hours for form ONRR–4393 for Indian leases in OMB Control Number 1012–0002.

B. Accounting and Auditing Relief for Marginal Properties

In 2004, we amended our regulations to comply with section 7 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. These regulations provide guidance for lessees and designees seeking accounting and auditing relief for qualifying Federal marginal properties. Under the regulations, both ONRR and the State concerned must approve any relief granted for a marginal property.

OMB Approval

We will request OMB approval to continue to collect, from companies, lessees, and designees, information used (1) to value their Federal oil and gas, including (a) transportation and processing allowances and (b) regulatory allowance limit information and (2) to request accounting and auditing relief approval for qualifying Federal marginal properties. If ONRR does not collect this information, this would limit the Secretary's ability to discharge fiduciary duties and may also result in loss of royalty payments. ONRR protects the proprietary information that we receive, and we do not collect items of a sensitive nature.

ONRR requires lessees to respond to information collections relating to valuation requirements.

II. Data

Title: 30 CFR parts 1202, 1204, and 1206, Federal Oil and Gas Valuation.

OMB Control Number: 1012–0005.

Bureau Form Number: Form ONRR–4393.

Frequency: Annually and on occasion.

Estimated Number and Description of Respondents: 120 Federal lessees/designees and 7 States for Federal oil and gas.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 9,518 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered as usual and customary. We display the estimated annual burden hours by CFR section and paragraph in the following chart:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
PART 1202—ROYALTIES				
Subpart C—Federal and Indian Oil				
1202.101	Standards for reporting and paying royalties Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60 °F . . .	Burden covered under OMB Control Number 1012–0004.		
Subpart D—Federal Gas				
1202.152(a) and (b)	Standards for reporting and paying royalties on gas (a)(1) If you are responsible for reporting production or royalties you must: (i) Report gas volumes and British thermal unit (Btu) heating values, if applicable, under the same degree of water saturation; (ii) Report gas volumes in units of 1,000 cubic feet (mcf); and	Burden covered under OMB Control Number 1012–0004.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(iii) Report gas volumes and Btu heating value at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F . . . (b) Residue gas and gas plant product volumes shall be reported as specified in this paragraph . . .			
	PART 1204—ALTERNATIVES FOR MARGINAL PROPERTIES			
	Subpart C—Accounting and Auditing Relief			
1204.202(b)(1)	What is the cumulative royalty reports and payments relief option? (b) To use the cumulative royalty reports and payments relief option, you must do all of the following: (1) Notify ONRR in writing by January 31 of the calendar year for which you begin taking your relief . . .	40	1	40
1204.202(b)(2) and (b)(3)	(b)(2) Submit your royalty report and payment . . . by the end of February of the year following the calendar year for which you reported annually . . . If you have an estimated payment on file, you must submit your royalty report and payment by the end of March of the year following the calendar year for which you reported annually; (3) Use the sales month prior to the month that you submit your annual report and payment . . . for the entire previous calendar year's production for which you are paying annually . . .	Burden covered under OMB Control Number 1012–0004.		
1204.202(b)(4), (b)(5), (c), (d)(1), (d)(2), (e)(1), and (e)(2).	(b)(4) Report one line of cumulative royalty information on Form ONRR–2014 for the calendar year . . . And (5) Report allowances on Form ONRR–2014 on the same annual basis as the royalties for your marginal property production. (c) If you do not pay your royalty by the date due in paragraph (b) of this section, you will owe late payment interest . . . from the date your payment was due under this section until the date ONRR receives it . . . (d) If you take relief you are not qualified for, you may be liable for civil penalties. Also you must: (1) Pay ONRR late payment interest determined under 30 CFR 1218.54 . . . (2) Amend your Form ONRR–2014 . . . (e) If you dispose of your ownership interest in a marginal property for which you have taken relief . . . you must: (1) Report and pay royalties for the portion of the calendar year for which you had an ownership interest; and. (2) Make the report and payment by the end of the month after you dispose of the ownership interest in the marginal property. If you do not report and pay timely, you will owe interest . . . from the date the payment was . . .	Burden covered under OMB Control Number 1012–0004.		
1204.203(b), 1204.205(a) and (b), and 1204.206(a)(3)(i) and (b)(1).	What is the other relief option? (b) You must request approval from ONRR . . . before taking relief under this option.	200	1	200
1204.208(c)(1), (d)(1), and (e)	May a State decide that it will or will not allow one or both of the relief options under this subpart? (c) If a State decides . . . that it will or will not allow one or both of the relief options . . . within 30 days . . . the State must: (1) Notify the Director for Office of Natural Resources Revenue, in writing, of its intent to allow or not allow one or both of the relief options . . . (d) If a State decides in advance . . . that it will not allow one or both of the relief options . . . the State must: (1) Notify the Director for Office of Natural Resources Revenue, in writing, of its intent to allow one or both of the relief options . . .	40	7	280

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	(e) If a State does not notify ONRR . . . the State will be deemed to have decided not to allow either of the relief options . . .			
1204.209(b)	What if a property ceases to qualify for relief obtained under this subpart? (b) If a property is no longer eligible for relief . . . the relief for the property terminates as of December 31 of that calendar year. You must notify ONRR in writing by December 31 that the relief for the property has terminated . . .	6	1	6
1204.210(c) and (d)	What if a property is approved as part of anonqualifying agreement? (c) . . . the volumes on which you report and pay royalty . . . must be amended to reflect all volumes produced on or allocated to your lease under the nonqualifying agreement as modified by BLM. . . . Report and pay royalties for your production using the procedures in § 1204.202(b). (d) If you owe additional royalties based on the retroactive agreement approval and do not pay your royalty by the date due in § 1204.202(b), you will owe late payment interest determined under § 1218.54 from the date your payment was due under § 1204.202(b)(2) until the date ONRR receives it.	Burden covered under OMB Control Number 1012–0004.		
1204.214(b)(1) and (b)(2)	Is minimum royalty due on a property for which I took relief? (b) If you pay minimum royalty on production from a marginal property during a calendar year for which you are taking cumulative royalty reports and payment relief, and: (1) The annual payment you owe under this subpart is greater than the minimum royalty you paid, you must pay the difference between the minimum royalty you paid and your annual payment due under this subpart; or (2) The annual payment you owe under this subpart is less than the minimum royalty you paid, you are not entitled to a credit because you must pay at least the minimum royalty amount on your lease each year.	Burden covered under OMB Control Number 1012–0004.		
Accounting and Auditing Relief Subtotal.			10	526
	Part 1206—Product Valuation			
	Subpart C—Federal Oil			
1206.102(e)(1)	How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract? (e) If you value oil under paragraph (a) of this section: (1) ONRR may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.	AUDIT PROCESS. See note.		
1206.103(a)(1), (a)(2), and (a)(3).	How do I value oil that is not sold under an arm's-length contract? This section explains how to value oil that you may not value under § 1206.102 or that you elect under § 1206.102(d) to value under this section. First determine whether paragraph (a), (b), or (c) of this section applies to production from your lease, or whether you may apply paragraph (d) or (e) with ONRR approval. (a) Production from leases in California or Alaska. Value is the average of the daily mean ANS spot prices published in any ONRR-approved publication during the trading month most concurrent with the production month . . . (1) To calculate the daily mean spot price . . . (2) Use only the days . . . (3) You must adjust the value . . .	45	5	225

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.103(a)(4)	(a)(4) After you select an ONRR-approved publication, you may not select a different publication more often than once every 2 years, . . .	8	2	16
1206.103(b)(1)	(b) *Production from leases in the Rocky Mountain Region* . . . (1) If you have an ONRR-approved tendering program, you must value oil . . .	400	2	800
1206.103(b)(1)(ii)	(b)(1)(ii) If you do not have an ONRR-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section . . .	400	2	800
1206.103(b)(4)	(4) If you demonstrate to ONRR's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the ONRR Director may establish an alternative valuation method.	400	2	800
1206.103(c)(1)	(c) *Production from leases not located in California, Alaska or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 1206.112.	50	10	500
1206.103(e)(1) and (e)(2)	(e) *Production delivered to your refinery and the NYMEX price or ANS spot price is an unreasonable value.* (1) . . . you may apply to the ONRR Director to establish a value (2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. . . . representing the market at the refinery if: . . .	330	2	660
1206.105	What records must I keep to support my calculations of value under this subpart? If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value . . .	Burden covered under OMB Control Number 1012–0004.		
1206.107(a)	How do I request a value determination? (a) You may request a value determination from ONRR . . .	40	10	400
1206.109(c)(2)	When may I take a transportation allowance in determining value? (c) Limits on transportation allowances. (2) You may ask ONRR to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section . . . Your application for exception (using Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination . . .	8	2	16
1206.110(a)	How do I determine a transportation allowance under an arm's-length transportation contract? (a) . . . You must be able to demonstrate that your or your affiliate's contract is at arm's length. . . .	AUDIT PROCESS. See note.		
1206.110(d)(3)	(d) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined . . . (3) You may propose to ONRR a cost allocation method . . .	20	2	40
1206.110(e)	(e) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to ONRR.	20	1	20

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.110(e)(1) and (e)(2)	(e)(1) . . . If ONRR rejects your cost allocation, you must amend your Form ONRR–2014 . . . (2) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form ONRR–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.110(g)(2)	(g) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, . . . (2) You must obtain ONRR approval before claiming a transportation factor in excess of 50 percent of the base price of the product.	5	1	5
1206.111(g)	How do I determine a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff? (g) To compute depreciation, you may elect to use either . . . After you make an election, you may not change methods without ONRR approval . . .	30	1	30
1206.111(k)(2)	(k)(2) You may propose to ONRR a cost allocation method on the basis of the values . . .	30	1	30
1206.111(l)(1) and (l)(3)	(l)(1) Where you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to ONRR . . . (3) You must submit your initial proposal, including all available data, within 3 months after first claiming the allocated deductions on Form ONRR–2014.	20	1	20
1206.111(l)(2)	(l)(2) . . . If ONRR rejects your cost allocation, you must amend your Form ONRR–2104 for the months that you used the rejected method and pay any additional royalty and interest due.	Burden covered under OMB Control Number 1012–0004.		
1206.112(a)(1)(ii)	What adjustments and transportation allowances apply when I value oil production from my lease using NYMEX prices or ANS spot prices? (a)(1)(ii) . . . under an exchange agreement that is not at arm's length, you must obtain approval from ONRR for a location and quality differential . . .	80	1	80
1206.112(a)(1)(ii)	(a)(1)(ii) . . . If ONRR prescribes a different differential, you must apply . . . You must pay any additional royalties owed . . . plus the late payment interest from the original royalty due date, or you may report a credit . . .	20	2	40
1206.112(a)(3) and (a)(4)	(a)(3) If you transport or exchange at arm's length (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the adjustment between the lease and the market center for the oil that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows: . . . (4) If you transport or exchange (or both transport and exchange) less than 20 percent of your crude oil produced from the lease between the lease and a market center, you must propose to ONRR an adjustment between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. . . . If ONRR prescribes a different adjustment. . . . You must pay any additional royalties owed . . . plus the late payment interest from the original royalty due date, or you may report a credit . . .	80	4	320

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.112(b)(3)	(b)(3) . . . you may propose an alternative differential to ONRR. . . . If ONRR prescribes a different differential. . . . You must pay any additional royalties owed . . . plus the late payment interest from the original royalty due date, or you may report a credit . . .	80	4	320
1206.112(c)(2)	(c)(2) . . . If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 5.0 cents per one-tenth percent difference in sulfur content, unless ONRR approves a higher adjustment.	80	2	160
1206.114	What are my reporting requirements under an arm's-length transportation contract? You or your affiliate must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1012–0004.		
	ONRR may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents . . .	AUDIT PROCESS. See note.		
1206.115(a)	What are my reporting requirements under a non-arm's-length transportation arrangement? (a) You or your affiliate must use a separate entry on Form ONRR–2014 to notify ONRR of an allowance based on transportation costs you or your affiliate incur.	Burden covered under OMB Control Number 1012–0004.		
1206.115(c)	(c) ONRR may require you or your affiliate to submit all data used to calculate the allowance deduction . . .	AUDIT PROCESS. See note.		
	Subpart D—Federal Gas			
1206.152(b)(1)(i) and (b)(1)(iii)	Valuation standards—unprocessed gas (b)(1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length. . . . (iii) . . . When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
1206.152(b)(2)	(b)(2) . . . The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; . . .	80	1	80
1206.152(b)(3)	(b)(3) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.	AUDIT PROCESS. See note.		
1206.152(e)(1)	(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value . . .	Burden covered under OMB Control Number 1012–0004.		
1206.152(e)(2)	206.152(e)(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Office of the Inspector General of the department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.	AUDIT PROCESS. See note.		
1206.152(e)(3)	(e)(3) A lessee shall notify ONRR if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section . . .	10	10	100

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.152(g)	(g) The lessee may request a value determination from ONRR . . . The lessee shall submit all available data relevant to its proposal . . .	40	5	200
1206.153(b)(1)(i) and (b)(1)(iii)	Valuation standards—processed gas (b)(1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length . . . (iii) . . . When ONRR determines that the value may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.	AUDIT PROCESS. See note.		
1206.153(b)(2)	(b)(2) . . . The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; . . .	80	1	80
1206.153(b)(3)	(b)(3) ONRR may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.	AUDIT PROCESS. See note.		
1206.153(e)(1)	(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value . . .	Burden covered under OMB Control Number 1012–0004.		
1206.153(e)(2)	(e)(2) Any Federal lessee will make available upon request to the authorized ONRR or State representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.	AUDIT PROCESS. See note.		
1206.153(e)(3)	(e)(2) A lessee shall notify ONRR if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section . . .	10	2	20
1206.153(g)	206.153(g) The lessee may request a value determination from ONRR . . . The lessee shall submit all available data relevant to its proposal . . .	80	15	1,200
1206.154(c)(4)	Determination of quantities and qualities for computing royalties. (c)(4) . . . A lessee may request ONRR approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease . . .	40	1	40
1206.156(c)(3)	Transportation allowances—general (c)(3) Upon request of a lessee, ONRR may approve a transportation allowance deduction in excess of the limitation prescribed by paragraphs (c)(1) and (c)(2) of this section . . . An application for exception (using Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for ONRR to make a determination. . . .	40	7	280
1206.157(a)(1)(i)	Determination of transportation allowances (a) *Arm's-length transportation contracts.* (1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length . . .	AUDIT PROCESS. See note.		
	The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form ONRR–2014.	Burden covered under OMB Control Number 1012–0004.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.157(a)(1)(iii)	(a)(1)(iii) . . . When ONRR determines that the value of the transportation may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	AUDIT PROCESS. See note.		
1206.157(a)(2)(ii)	(a)(2)(ii) . . . the lessee may propose to ONRR a cost allocation method on the basis of the values of the products transported . . .	40	1	40
1206.157(a)(3)	(a)(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR . . . The lessee shall submit all relevant data to support its proposal . . .	40	1	40
1206.157(a)(5)	(a)(5) . . . The transportation factor may not exceed 50 percent of the base price of the product without ONRR approval.	10	3	30
1206.157(b)(1)	(b) *Non-arm's-length or no contract.* (1) The lessee must claim a transportation allowance by reporting it on a separate line entry on the Form ONRR–2014 . . .	Burden covered under OMB Control Number 1012–0004.		
1206.157(b)(2)(iv) and (b)(2)(iv)(A).	(b)(2)(iv) . . . After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the ONRR. (A) . . . After an election is made, the lessee may not change methods without ONRR approval . . .	100	1	100
1206.157(b)(3)(i)	(b)(3)(i) . . . Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without ONRR approval.	100	1	100
1206.157(b)(3)(ii)	(b)(3)(ii) . . . the lessee may propose to the ONRR a cost allocation method on the basis of the values of the products transported . . .	100	1	100
1206.157(b)(4)	(b)(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to ONRR . . . The lessee shall submit all relevant data to support its proposal . . .	100	1	100
1206.157(b)(5)	(b)(5) You may apply for an exception from the requirement to compute actual costs under paragraphs (b)(1) through (b)(4) of this section.	100	1	100
1206.157(c)(1)(i)	(c) *Reporting Requirements.* (1) *Arm's-length contracts.* (i) You must use a separate entry on Form ONRR–2014 to notify ONRR of a transportation allowance.	Burden covered under OMB Control Number 1012–0004.		
1206.157(c)(1)(ii)	(c)(1)(ii) ONRR may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents . . .	AUDIT PROCESS. See note.		
1206.157(c)(2)(i)	(c)(2) *Non-arm's-length or no contract.* (i) You must use a separate entry on Form ONRR–2014 to notify ONRR of a transportation allowance.	Burden covered under OMB Control Number 1012–0004.		
1206.157(c)(2)(iii)	(c)(2)(iii) ONRR may require you to submit all data used to calculate the allowance deduction . . .	AUDIT PROCESS. See note.		

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.157(e)(2), (e)(3), and (f)(1).	(e) *Adjustments.* (2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form ONRR–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR. (3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form ONRR–2014 to reflect actual costs, together with its payments, in accordance with instructions provided by ONRR . . . (f) Allowable costs in determining transportation allowances . . . (1) Firm demand charges paid to pipelines . . . if you receive a payment or credit from the pipeline for penalty refunds, rate case refunds, or other reasons, you must reduce the firm demand charge claimed on the Form ONRR–2014 by the amount of that payment. You must modify Form ONRR–2014 by the amount received or credited for the affected reporting period and pay any resulting royalty and late payment interest due;	Burden covered under OMB Control Number 1012–0004.		
1206.158(c)(3)	Processing allowances—general (c)(3) Upon request of a lessee, ONRR may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section . . . An application for exception (using Form ONRR–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and supporting documentation for ONRR to make a determination . . .	80	10	800
1206.158(d)(2)(i)	(d)(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to ONRR for an allowance for those costs . . .	80	1	80
1206.158(d)(2)(ii)	(d)(2)(ii) . . . to retain the authority to deduct the allowance the lessee must report the deduction to ONRR in a form and manner prescribed by ONRR.	Burden covered under OMB Control Number 1012–0004.		
1206.159(a)(1)(i)	Determination of processing allowances.			
	(a) *Arm's-length processing contracts* (1)(i) . . . The lessee shall have the burden of demonstrating that its contract is arm's-length . . .	AUDIT PROCESS. See note.		
	The lessee must claim a processing allowance by reporting it on a separate line entry on the Form ONRR–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(a)(1)(iii)	(a)(1)(iii) . . . When ONRR determines that the value of the processing may be unreasonable, ONRR will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.	AUDIT PROCESS. See note.		
1206.159(a)(3)	(a)(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to ONRR . . . The lessee shall submit all relevant data to support its proposal . . .	20	1	20
1206.159(b)(1)	(b) *Non-arm's-length or no contract.* (1) . . . The lessee must claim a processing allowance by reflecting it as a separate line entry on the Form ONRR–2014 . . .	Burden covered under OMB Control Number 1012–0004.		
1206.159(b)(2)(iv) and (b)(2)(iv)(A).	(b)(2)(iv) . . . When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the alternative without approval of the ONRR. (A) . . . After an election is made, the lessee may not change methods without ONRR approval . . .	100	1	100

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR 1202, 1204, 1206, and 1210	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1206.159(b)(4)	(b)(4) A lessee may apply to ONRR for an exception from the requirements that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section . . .	100	1	100
1206.159(c)(1)(i)	(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate line entry on the Form ONRR–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(c)(1)(ii)	(c)(1)(ii) ONRR may require that a lessee submit arm's-length processing contracts and related documents . . .	AUDIT PROCESS. See note.		
1206.159(c)(2)(i)	(c)(2) *Non-arm's-length or no contract.* (i) The lessee must notify ONRR of an allowance based on incurred costs by using a separate line entry on the Form ONRR–2014.	Burden covered under OMB Control Number 1012–0004.		
1206.159(c)(2)(iii)	(c)(2)(iii) Upon request by ONRR, the lessee shall submit all data used to prepare the allowance deduction . . .	AUDIT PROCESS. See note.		
1206.159(e)(2) and (e)(3)	(e) *Adjustments* . . . (2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form ONRR–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by ONRR. (3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form ONRR–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by ONRR . . .	Burden covered under OMB Control Number 1012–0004.		
Oil and Gas Valuation Subtotal.			123	8992
TOTAL			133	9518

Note: AUDIT PROCESS—The Office of Regulatory Affairs determined that the audit process is exempt from the Paperwork Reduction Act of 1995 because ONRR staff asks non-standard questions to resolve exceptions.

This 60-day **Federal Register** notice burden chart shows an adjustment increase of +320 burden hours. This adjustment is based on analyzed historical data since 2013 for the transportation and processing allowances (1206.156(c)(3) and 1206.158(c)(3)). The transportation processing allowance increased from 120 to 280 burden hours and the processing allowance increased from 640 to 800 burden hours for a total increase of +320 annual burden hours.

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have not identified a "non-hour" cost burden associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person does not have to respond to, a collection of information unless it displays a currently valid OMB control number.

III. Request for Comments

Section 3506(c)(2)(A) of the PRA requires each agency to "* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information that ONRR collects; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or record-keepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods that you use to estimate (1) major cost factors, including system and technology acquisition, (2) expected useful life of capital equipment, (3) discount rate(s), and (4) the period over which you incur costs. Capital and startup costs include, among other items, computers and software that you purchase to prepare for collecting information and monitoring, sampling, and testing equipment, and record storage facilities. Generally, your estimates should not include equipment or services purchased (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Federal Government; or (iv) as part of customary and usual business, or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you, without charge, upon request. We also will post the ICR at *http://www.onrr.gov/Laws_R_D/FRNotices/ICR0136.htm.*

Public Comment Policy: ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comment(s), you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: May 26, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–13206 Filed 6–3–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0019; DS63642000 DR2000000.CH7000 167D0102R2]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of Natural Resources Revenue (ONRR).

ACTION: Withdrawal.

SUMMARY: On April 28, 2016, ONRR published (at 81 FR 25419) a notice of the due date for industry to pay additional royalties based on the major portion prices, titled "Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated with an Index Zone." Unfortunately, due to an incorrect date in said notice, it is necessary to withdraw the notice and re-publish a corrected version. This notice withdraws the April 28, 2016, notice in question.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Mr. Luis Aguilar, Regulatory Specialist, ONRR, telephone (303) 231–3418, or email *Luis.Aguilar@onrr.gov.*

Dated: May 25, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–13207 Filed 6–3–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0027; MMAA104000]

Atlantic Wind Lease Sale 6 (ATLW–6) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New York—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM or "the Bureau"), Interior.

ACTION: Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore New York.

SUMMARY: This document is the Proposed Sale Notice (PSN) for the sale of one commercial wind energy lease on the Outer Continental Shelf (OCS) offshore New York, pursuant to 30 CFR 585.216. BOEM proposes to offer Lease OCS–A 0512 for sale using an ascending bidding auction format. In this PSN, you will find information pertaining to the area available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites public comment during a 60-day comment period following publication of this notice. The issuance of a lease resulting from this proposed sale would not constitute an approval of project-specific plans to develop offshore wind energy resources. Such plans, expected to be submitted by the auction winner, will be subject to subsequent environmental and technical reviews prior to a decision to proceed with development.

DATES: Comments should be submitted electronically or postmarked no later than August 5, 2016. All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

All entities interested in participating in the lease sale who have not previously been qualified by BOEM to participate in this lease sale must submit the required qualification materials by the end of the 60-day comment period for this notice. All qualification materials must be postmarked no later than August 5, 2016. Entities that have already been qualified to participate in this lease sale are not required to take any additional action to affirm their interest.

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry entitled, "Enter Keyword or ID", enter BOEM–2016–0027 then click "search." Follow the instructions to submit public comments.

2. *Written Comments:* In written form, delivered by hand or by mail, enclosed in an envelope labeled, "Comments on New York PSN" to: BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320.

3. *Qualifications Materials:* Those submitting qualifications materials should contact Erin C. Trager, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320, or *Erin.Trager@boem.gov.* If you wish to protect the confidentiality of your qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption "Contains Confidential Information" and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this PSN entitled "Protection of Privileged or Confidential Information." Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Erin C. Trager, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320 or *Erin.Trager@boem.gov.*

Authority: This PSN is published pursuant to subsection 8(p) of the OCS Lands Act (43

U.S.C. 1337(p)) (OCSLA) and the implementing regulations at 30 CFR part 585, including 30 CFR 585.211 and 585.216.

Background

The area described for leasing in this PSN is the same as the area described in the New York Call for Information and Nominations (79 FR 30645) and announced as the New York Wind Energy Area (WEA) on March 16, 2016. This Area Identification (Area ID) announcement is available at: *http://www.boem.gov/New-York/*. Detailed information regarding the lease area is provided in the section entitled, "Proposed Area for Leasing."

Call for Information and Nominations

On May 28, 2014, BOEM published a Call for Information and Nominations (Call) to seek additional nominations from companies interested in commercial wind energy leases within the Call Area offshore New York. BOEM also sought public input on the potential for wind development in the Call Area, including comments on site conditions, resources, and existing uses of the area that would be relevant to BOEM's wind energy development authorization process. In response to the Call, BOEM received three expressions of interest and 27 comment submissions, links to which are available at *http://www.boem.gov/New-York/*. Topics addressed in the comments included mitigation measures to protect wildlife and habitat; support for offshore wind's potential for job creation and as mitigation for climate change; concern about the potential impact of future development on maritime navigation, regional fisheries, and other competing uses; and desire for analysis at the leasing stage of potential environmental impacts of construction and operation of a wind facility, rather than just site assessment and characterization. BOEM considered these comments carefully during the Area ID process. To date, seven entities have expressed commercial interest in developing all or parts of the New York WEA.

Environmental Reviews

On May 28, 2014, BOEM published a Notice of Intent (NOI) to Prepare an Environmental Assessment (EA) for commercial wind lease issuance and approval of site assessment activities on the Atlantic OCS offshore New York with a 45-day public comment period (79 FR 30643). In response to the NOI, BOEM received 32 comment submissions, a link to which is available at *http://www.boem.gov/New-York/*. The comments addressed the same general topic categories as those addressed in the comment submissions in response to the Call. BOEM considered these comments in determining the scope of issues and alternatives analyzed in the EA.

Concurrent with the publication of this notice, BOEM is publishing the EA for public comment. The EA is available at: *http://www.boem.gov/New-York/*.

For the issuance of a commercial lease, BOEM considers the environmental consequences of associated site characterization activities (*e.g.*, biological, archeological, geological and geophysical surveys, and core samples) and site assessment activities (*i.e.*, installation of a meteorological tower and/or buoy on the lease). Mitigation measures designed to reduce or eliminate impacts from survey activities are included as the terms, conditions, and stipulations in Addendum "C" of the proposed lease (OCS–A 0512). Given ongoing development of the EA and associated consultations described below, the terms and conditions included in Addendum "C" are primarily based on the best available science and BOEM's prior consultations, and may be amended or revised and/or additional stipulations may be included as a result of our ongoing environmental review and consultations. Additional mitigation measures related to the installation and operation of meteorological towers and/or buoys will be included as terms and conditions of the eventual lessee's Site Assessment Plan (SAP) approval. BOEM will continue to work with affected stakeholders and assess ongoing and future research relating to potential survey and site assessment impacts, including possible mitigation measures.

BOEM will complete consultations for lease issuance under the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) to inform the New York lease sale prior to publishing the FSN. BOEM will initiate consultations with the States of New York and New Jersey under the Coastal Zone Management Act (CZMA) concurrent with the publication of this PSN.

BOEM has determined that the issuance of a commercial lease and subsequent approval, approval with modification, or disapproval of a lessee's plans constitute undertakings subject to review under Section 106 of the National Historic Preservation Act. BOEM is currently in consultation with the State Historic Preservation Officers of New York and New Jersey, the Advisory Council on Historic Preservation, the Shinnecock Indian Nation, and the National Park Service to draft and execute a Programmatic Agreement (PA) to fulfill the bureau's obligations under Section 106 for renewable energy activities offshore New Jersey and New York. This PA will provide for consultation to continue throughout BOEM's staged decision-making process, and will establish the process to determine and document the area of potential effects for each undertaking; identify historic properties within the area of potential effects; assess potential adverse effects; and avoid, reduce, or mitigate any such effects through the process set forth in the agreement.

As the effort to execute the PA is ongoing and BOEM has not yet initiated consultation for the issuance of a commercial lease, the draft lease stipulations included in Addendum "C" of the proposed lease (OCS–A 0512) may be amended or revised and/or additional stipulations may be included as a result of this consultation. BOEM will continue to consult with affected tribes government to government.

Once BOEM has completed the EA and associated consultations, and if the EA concludes that the proposed action will not cause significant environmental impacts, BOEM will publish a Finding of No Significant Impact (FONSI) and may proceed with a FSN. If BOEM concludes that the proposed action would cause significant environmental impacts to the human environment, then BOEM will prepare an Environmental Impact Statement (EIS) before proceeding with a FSN. If a lease is issued, BOEM will prepare additional environmental reviews upon receipt of the lessee's SAP and Construction and Operations Plan (COP).

Additional Participation in the Lease Sale: Any parties that have not already been legally, financially and technically qualified to hold a lease for commercial wind development offshore New York must submit the required qualification materials by the end of the 60-day comment period for this notice if they wish to participate in the proposed New York lease sale. Guidelines to prospective lessees on meeting BOEM's requirements to qualify for and hold a renewable energy lease on the OCS—and the type of information that should be submitted to demonstrate your legal, technical and financial qualifications—can be found at: *http://www.boem.gov/National-and-Regional-Guidelines-for-Renewable-Energy-Activities/*. Any submitted documentation must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a storage

media device to be an acceptable format for submitting an electronic copy.

Please note: that it may take a number of weeks for BOEM to assess a potential bidder's legal, technical, and financial qualifications. BOEM advises potential bidders who plan to participate in a sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. BOEM cannot determine a potential bidder to be qualified without a complete qualification package. Potential bidders, whom BOEM has not determined to be qualified before the FSN is published, will not be allowed to participate in the sale.

Deadlines and Milestones for Bidders: This section describes the major deadlines and milestones in the auction process from publication of this PSN to lease execution, should BOEM decide to proceed with a sale for Lease OCS–A 0512. This process is organized into five stages: (1) The PSN comment period; (2) from the end of PSN comment period to publication of the FSN; (3) the FSN waiting period; (4) conducting the Auction; and (5) from the Auction to Lease Execution.

The PSN Comment Period:

- *Submit Comments:* The public is invited to submit comments during this 60-day period, which will expire on August 5, 2016.
- *Public Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM Web site at *http://www.boem.gov/New-York/*. No registration or RSVP is required to attend.
- *Submit Qualifications Materials:* All qualifications materials must be received by BOEM by the end of the 60-day PSN comment period, August 5, 2016. This includes materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.106 and 107.

End of PSN Comment Period to FSN Publication

- *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.
- *Finalize Qualifications Reviews:* BOEM will complete any outstanding reviews of bidder qualifications materials submitted during the PSN comment period prior to the publication of the FSN. The final list of eligible bidders will be published in the FSN.
- *Prepare the FSN:* If BOEM continues with the lease sale, BOEM will prepare the FSN, and will update information contained in the PSN where necessary.
- *Publish FSN:* If BOEM continues with the lease sale, BOEM will publish the FSN in the **Federal Register**.

FSN Waiting Period: During this period, qualified bidders must take several steps before participating in the Auction.

- *Bidder's Financial Form (BFF):* BOEM must receive each qualified bidder's completed and signed BFF no later than the date listed in the FSN. Typically, this deadline is approximately 14 calendar days after publication of the FSN in the **Federal Register**. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. Blank BFFs can be found at: *http://www.boem.gov/New-York/*. Once the BFF has been processed, bidders may log into *pay.gov* and submit bid deposits. BOEM will only accept an originally executed paper copy of the BFF, and will not consider for this auction BFFs submitted for previous lease sales. The BFF must be executed by an authorized representative as shown on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).
- *Bid Deposits:* Each qualified bidder must submit a bid deposit of $450,000 no later than the date listed in the FSN. Typically, this deadline is approximately 30 calendar days after the publication of the FSN. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.
- *Mock Auction:* BOEM will hold an online Mock Auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. Final details of the Mock Auction will be provided in the FSN.

Conduct the Auction: BOEM, through its contractor, will hold an auction as described in the FSN. The auction will take place no sooner than 30 days following publication of the FSN in **Federal Register**. The estimated timeframes described in this PSN assume the auction will take place approximately 45 days after publication of the FSN.

From Auction to Lease Execution. There are several steps between the conclusion of the auction and execution of the lease.

- *Bid Deposit Refund:* BOEM will refund the bid deposit of any bidder that did not win the lease. BOEM will provide a written explanation as to why the bidder did not win.
- *Department of Justice (DOJ) Review:* The Department of Justice (DOJ) has 30 days to conduct an antitrust review of the auction in consultation with the Federal Trade Commission, pursuant to 43 U.S.C 1337(c).
- *Delivery of the Lease:* BOEM will send three lease copies to the winner, with instructions on how to sign the lease. The first year's rent is due 45 days after the winner receives the lease copies for execution.
- *Return the Lease:* Within 10 business days of receiving the lease copies, the auction winner must post financial assurance, pay any outstanding balance of their bonus bid (*i.e.*, winning monetary bid minus bid deposit), and sign and return the three signed lease copies.
- *Execution of the Lease:* Once BOEM has received the lease copies and verified that it has received all other required materials, BOEM will execute the lease, if appropriate.

Area Proposed for Leasing: The area available for sale will be auctioned as one lease, Lease OCS–A 0512. The proposed New York lease area consists of approximately 81,130 acres. A description of the proposed New York lease area can be found in Addendum "A" of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/New-York/*.

Map of the Area Offered for Leasing: A map of the proposed New York lease area, GIS spatial files, and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's Web site at: *http://www.boem.gov/New-York/*.

A large-scale map of the area, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, Phone: (703) 787–1300, Fax: (703) 787–1708.

Potential Mitigation Measures and Restrictions on Development

During the Area ID process, BOEM analyzed three potential concerns associated with development of the New York WEA: (1) Navigational safety, (2) commercial fishing, and (3) visual impacts to historic properties. Although BOEM did not remove any areas from

leasing consideration during Area ID, potential bidders should be aware that future analysis of these issues could result in required mitigation measures and/or development restrictions within the proposed New York lease area. In addition, mitigation measures and/or development restrictions could result from future BOEM environmental reviews and consultations (*e.g.*, future consultations under the Section 106 of the National Historic Preservation Act or future government-to-government consultations with federally recognized tribes). It is possible that some mitigation measures/development restrictions could have the same effect as removal of areas from leasing.

Navigational Safety: Potential bidders should note that future mitigation measures may be applied to development within all or portions of the New York proposed lease area to ensure navigation safety and the U.S. Coast Guard's ability to maintain mission readiness.

The New York proposed lease area has been delineated to accommodate a setback of 1 nautical mile (nmi) from the adjacent Traffic Separation Schemes (TSSs) for the Port of New York and New Jersey. This setback is consistent with BOEM's delineation of other lease areas that are in close proximity to TSSs (*e.g.*, the areas offshore Massachusetts, Rhode Island/Massachusetts, Delaware, and Maryland; and the Wilmington West area offshore North Carolina), and is based on input provided by the U.S. Coast Guard (USCG) as a member of the BOEM New York Renewable Energy Task Force during development of the 2013 Request for Interest (RFI). As noted in the RFI, the proposed lease area includes aliquots that are transected by the 1 nmi setback line, and BOEM will require that no structures be installed on portions of those aliquots located within the setback.

In September 2015, BOEM received additional input from USCG recommending a larger setback of 2 nmi from the TSSs. USCG's correspondence to BOEM, which explains the recommendation, is available on BOEM's Web site at *http://www.boem.gov/New-York/*. In addition, on March 22, 2016, USCG released the Final Report for its Atlantic Coast Port Access Route Study (ACPARS), available for review at *http://www.uscg.mil/lantarea/acpars*. The USCG's Marine Planning Guidelines, included as Enclosure 2 of the ACPARS, are consistent with their September 2015 recommendation to BOEM. Although BOEM did not adopt the USCG's recommendation during Area ID, BOEM may determine at a later stage in the process (*e.g.*, after evaluating a Navigational Safety Risk Assessment that is submitted as a part of a COP) that portions of the proposed lease area would be inappropriate for the installation of wind facilities due to navigational safety concerns.

Commercial Fishing: Potential bidders should note that future mitigation measures/development restrictions may be applied to development within all or portions of the proposed New York lease area due to the use of the area as a fishery.

BOEM received fishery-related comments in response to the RFI, Call, and NOI from National Marine Fisheries Service (NMFS); New England Fishery Management Council (NEFMC); and the Fisheries Survival Fund (FSF), a group representing members of the sea scallop fishery. BOEM also received comments from commercial squid fishery operators during BOEM's November 2015 fisheries workshops. A meeting summary of BOEM's November 2015 fisheries workshops and comments associated with these workshops are available on BOEM's Web site at *http://www.boem.gov/New-York/*, along with those comments received in response to BOEM's **Federal Register** notices relating to commercial fishing activities within the proposed New York lease area.

Through a joint study with NMFS, BOEM has also gathered information regarding the use of the lease area as a fishery. This data, specific to the proposed New York lease area, is available on BOEM's Web site at *http://www.boem.gov/Fishing-Revenue-NY-Call-Area/*. The full dataset is available at *http://www.boem.gov/Renewable-Energy-GIS-Data/*. Potential bidders should be aware that BOEM will be gathering additional data and may develop plan-specific mitigation measures/development restrictions to mitigate, minimize, or avoid impacts.

In addition, between 2012 and 2016, BOEM collaborated with numerous stakeholders in the fishing and offshore wind industries to develop best management practices (BMPs) in furtherance of its goal of eliminating or minimizing potential multiple use conflicts between offshore renewable energy developers and the fishing industry. As a result of this effort, BOEM recommends that lessees facilitate cooperation with the fishing industry by utilizing a fisheries liaison and fisheries representative during the development of their plans. BOEM has issued guidance to lessees for providing information on fisheries social and economic conditions for renewable energy development on the Atlantic Outer Continental Shelf: *http://www.boem.gov/Social-and-Economic-Conditions-Fishery-Communication-Guidelines/*.

Visual Impacts to Historic Properties: Potential bidders should note that the National Park Service (NPS) and New York State Historic Preservation Office (NY SHPO) have expressed concern regarding the potential for wind energy development within the New York WEA to cause adverse effects to onshore historic properties. Correspondence outlining these concerns is available for reference on BOEM's Web site at *http://www.boem.gov/New-York/*.

During the summer and fall of 2015, OREP conducted stakeholder outreach with the NPS, NY SHPO, and the New Jersey State Historic Preservation Office. OREP also completed a study entitled, "Renewable Energy Viewshed Analysis and Visualization Simulation for the New York Outer Continental Shelf Call Area" to assist in this outreach effort and to provide scientific and technical information about visual impacts to inform the Area ID decision. Results from this study are available under the header "Visual Simulations" at the following link: *http://www.boem.gov/New-York/*.

Withdrawal of Blocks: BOEM reserves the right to withdraw portions of the proposed lease area prior to its execution of the lease, based upon relevant information provided to the Bureau.

Lease Terms and Conditions: BOEM has made available proposed terms, conditions, and stipulations for the OCS commercial wind lease to be offered through this sale. After the lease is issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a SAP or COP. The proposed lease is on BOEM's Web site at: *http://www.boem.gov/New-York/*.

The lease includes the following seven attachments:

- Addendum "A" (Description of Leased Area and Lease Activities);
- Addendum "B" (Lease Term and Financial Schedule);
- Addendum "C" (Lease Specific Terms, Conditions, and Stipulations);
- Addendum "D" (Project Easement);
- Addendum "E" (Rent Schedule post COP approval);
- Appendix A to Addendum "C": (Incident Report: Protected Species Injury or Mortality); and
- Appendix B to Addendum "C": (Required Data Elements for Protected Species Observer Reports).

Addenda "A," "B," and "C" provide detailed descriptions of lease terms and

conditions. As discussed above, given ongoing development of the EA and associated consultations, the mitigation measures included in Addendum "C" may be amended or revised, and/or additional stipulations may be included prior to publication of the FSN. Addendum "D" will be completed at the time of COP approval or approval with modifications. Addendum "E" will be completed after COP approval or approval with conditions.

BOEM is soliciting comments on the provisions of Addendum "C" that require the submission of SAP and COP survey plans. Specifically, BOEM is interested in whether potential lessees and other stakeholders find the timeframes associated with those requirements to be reasonable, and whether those provisions could be written in a manner that better describes the realities associated with offshore wind survey efforts (*e.g.*, referring to survey mobilizations as opposed to "SAP" surveys and "COP" surveys specifically).

Plans: Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 12 months of lease issuance and a COP at least 6 months before the end of the site assessment term of the lease.

Financial Terms and Conditions: This section provides an overview of the annual payments required of a lessee that are described in the proposed lease, and the financial assurance requirements that will be associated with the lease if it is awarded.

Rent: Pursuant to 30 CFR 585.224(b) and 585.503, the first year's rent payment of $3 per acre is due within 45 days of the date the lessee receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease (the "Lease Anniversary"). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease not authorized for commercial operations, *i.e.*, not generating electricity. However, instead of geographically dividing the lease area into acreage that is "generating" and "non-generating," the fraction of the lease accruing rent will be based on the fraction of the total nameplate capacity of the project that is not yet in operation. This fraction is calculated by dividing the nameplate capacity not yet authorized for commercial operations at the time payment is due by the anticipated nameplate capacity after full installation of the project (as described in the COP). The annual rent due for a given year is then derived by multiplying this fraction by the amount of rent that would have been due for the lessee's entire lease area at the rental rate of $3 per acre.

For example, an 81,130 acre lease (the size of the entire proposed New York lease area) will have a rent payment of $243,390 per year if no portion of the leased area is authorized for commercial operations. If 300 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and the approved COP specifies a maximum project size of 500 MW, the rent payment will be $97,356. This payment is based on the 200 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows: 200MW/500MW × ($3/acre × 81,130 acres) = $97,356.

If the lessee submits an application for relinquishment of a portion of its lease area within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on that relinquished portion of the lease area. Later relinquishments of any portion of the lease area will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee also must pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable is $70 per statute mile. For any additional acreage required, the lessee must also pay the greater of $5 per acre per year or $450 per year.

Operating Fee: For purposes of calculating the initial annual operating fee payment and pursuant to 30 CFR 585.506, an operating fee rate is applied to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first twelve months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production for the project. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), the capacity factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, the annual operating fee for a 100 MW wind facility operating at a 40% capacity (*i.e.*, capacity factor of 0.4) with a regional wholesale power price of $50/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8{,}760\,\frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$50}{\text{MWh}}\,\text{Power Price} \times 0.02 = \$350{,}400$$

Operating Fee Rate: The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to BOEM as an annual operating fee. For the proposed New York lease area, BOEM will set the fee at 0.02 (*i.e.*, 2%) during the entire life of commercial operations.

Nameplate Capacity: Nameplate capacity is the maximum rated electric output, expressed in MW, that the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The lessee will specify in its COP the nameplate capacity available at the start of each year of commercial operations on the lease. For example, if the lessee specifies 20 turbines in its COP, and each is rated by the design manufacturer at 5 MW, the nameplate capacity of the wind facility would be 100 MW.

Capacity Factor: The capacity factor compares the amount of energy delivered to the grid during a period of time to the amount of energy the wind facility would have produced at full capacity. The amount of power delivered will always be less than the theoretical 100% capacity, largely because of the variability of wind speeds, transmission line loss, and down time for maintenance or other purposes.

The capacity factor is expressed as a decimal between zero and one, and represents the share of anticipated generation of the wind facility that is delivered to the interconnection grid (*i.e.*, where the lessee's facility interconnects with the electric grid) relative to the wind facility's generation at continuous full power operation at nameplate capacity. For the proposed lease area, BOEM has set the capacity factor for the year in which commercial operations commence and the six full years thereafter at 0.4 (*i.e.*, 40%). At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index: Pursuant to 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the NYC Zone J (NYISO) electric region for the most recent year of spot price data available. The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due, based on the Lease Anniversary and using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis.

BOEM proposes to use the NYC Zone J power price as the price in its operating fee formula due to its geographic proximity to the proposed lease area. BOEM is soliciting further comments on the merits of other electric power prices, including Long Island Zone K, that may be used in lieu of or in combination with the current proposed power price. In particular, BOEM would like to know if and why other electric power prices may be preferred over NYC Zone J.

Financial Assurance: Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515–.516, the provisional winner of the New York lease area must provide an initial lease-specific bond or other approved means of meeting the lessor's initial financial assurance requirements. The provisional winner may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages the provisional winner to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum "B" of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/New-York/*.

Bid Deposit: A bid deposit is an advance cash payment submitted to BOEM in order to participate in the auction. Each qualified bidder must submit a bid deposit of $450,000 no later than the deadline provided in the FSN. Any qualified bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov*.

Following the auction, bid deposits will be applied against bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to non-winners.

Bidder Financial Form: Each bidder must fill out the BFF referenced in this PSN. BOEM has also made a copy of the form available with this notice on its Web site at: *http://www.boem.gov/New-York/*. BOEM recommends that each bidder designate an email address in its BFF that the bidder will then use to create an account in *pay.gov* (if it has not already done so). Bidders may then use the BFF on the *pay.gov* Web site to leave a deposit.

BOEM will not consider BFFs submitted by qualified bidders for previous lease sales to satisfy the requirements of the proposed New York lease sale. BOEM will also only consider BFFs submitted after the deadline if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed by an authorized representative who has been identified in the qualifications package on file with BOEM as authorized to bind the company.

Minimum Bid: The minimum bid is the lowest price BOEM will accept as a winning bid. BOEM has established a minimum bid per acre of $2.00, or $162,260, for the proposed lease sale.

Auction Procedures: Following is a summary of the auction procedures that BOEM intends to use if it proceeds with the proposed New York lease sale.

Summary of Auction Format

As authorized under 30 CFR 585.220(a)(2) and 585.221(a)(1), BOEM intends to conduct the proposed lease sale using an ascending format with cash as the bid variable. Using an online bidding system to host the auction, BOEM sets an initial asking price for Lease OCS–A 0512 and increases that price incrementally based on the number of active bidders in each round until no more than one active bidder remains in the auction. A bid submitted at the full asking price for the lease in a particular round is referred to as a live bid. During each round, active bidders may: (1) Submit a live bid indicating that they are interested in acquiring the lease at the current round's stated asking price, (2) submit an exit bid (see below for discussion of exit bids), or (3) exit the auction. All bids are considering binding until BOEM has determined the winning bid.

A bidder remains active in the auction as long as it continues to meet BOEM's asking price in each round. If more than one live bid is received in a round, BOEM increases the asking price incrementally and conducts another auction round. BOEM plans to raise the asking price following any round in which two or more bidders submitted live bids. The auction concludes at the end of the round in which the number of live bids received falls to one or zero.

Asking price increments are in BOEM's sole discretion. They will be determined round-by-round, based on a number of factors, including, but not necessarily limited to, the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments as necessary.

Between rounds, BOEM will disclose to all bidders eligible to bid in the next round: (1) The number of live bids in the previous round of the auction (*i.e.*, the level of demand); and (2) the asking price in the upcoming round of the auction.

If a bidder is not willing to meet the asking price in the upcoming round, the bidder may submit an exit bid and then exit the auction. Bidders exiting the auction are allowed to submit one exit bid at an offer price greater than the

asking price in the previous round but less than the asking price in the current round. Exit bids allow bidders to express precisely the maximum price they are willing to offer and minimize the chance of ties. If a bidder exits the auction by placing an exit bid or by not submitting a live bid in the current round, it will no longer be allowed to submit bids in any subsequent round. If a bidder leaves the auction without submitting an exit bid, BOEM will treat the previous round's asking price as the bidder's exit bid in the current round. BOEM will not consider exit bids for the purpose of determining whether to increase the asking price or to end the auction.

BOEM will determine the provisionally winning bidder to be the bidder with the highest bid, whether the bid was a live bid or an exit bid. If there is a tie, BOEM will resolve the tie by randomized means. The provisional winner may be disqualified if it is subsequently found to have violated auction rules or otherwise engaged in conduct detrimental to the integrity of the competitive auction.

The auction winner for the proposed lease sale will have 10 business days from receiving the lease copies in which to post financial assurance, pay any outstanding balance of its bonus bid, and sign and return three copies of the lease. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to timely sign and pay for the lease or otherwise fails to comply with applicable regulations or terms of the FSN. In that case, that bidder will forfeit its bid deposit. BOEM may consider failure of a bidder to timely pay the full amount due an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107. If a winning bidder does not sign the lease pursuant to the proposed lease sale, BOEM reserves the right to identify the next best bid submitted during the proposed lease sale and offer the lease pursuant to this next highest bid.

Additional Information Regarding the Auction Format

Bidder Authentication

For the proposed online auction, BOEM will require two-factor authentication. Prior to the auction, the Auction Manager will send several bidder authentication packages to the bidders shortly after BOEM has processed the BFFs. One package will contain digital authentication tokens for each authorized individual allowing access to the auction Web site. The tokens will be mailed to the Primary Point of Contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. *Bidders are to ensure that each token is returned within three business days following the auction.* An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the proposed auction, BOEM will de-activate that bidder's token and login information, and the bidder will be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703–787–1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

Timing of Auction

The FSN will provide specific information regarding when bidders can enter the auction system and when the proposed auction will start. Once bidders have logged in they should review the auction schedule, which lists the start, end, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding ends and the recess begins;
- During the recess, the number of live bids received in the previous round and the next round's asking price are posted;
- Bidders review the previous round results and prepare their next round bids (or exit bids, as applicable);
- Next round bidding begins.

The first round will last about 30 minutes, though subsequent rounds may be shorter. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included in the PSN and FSN are tentative. Bidders should consult the auction schedule on the bidding Web site just before and during the auction for updated times. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the proposed auction. BOEM will use the messaging system for auction schedule changes and other updates during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled ending time to place bids. Bidders should bid according to the procedures described in both the FSN and the Auction System Technical Supplement. No information about bidding during the round is available until the round has closed and results have been posted, so there is no tactical advantage to placing bids early or late in the round.

The timing of the auction will be elaborated on and clarified in the Auction System Technical Supplement available on BOEM's Web site at: *http://www.boem.gov/New-York/* if and when the FSN is published in the **Federal Register**. The Auction System Technical Supplement will describe auction procedures that are incorporated by reference into the FSN. All bidders are required to comply with any rules or instructions in the Auction System Technical Supplement, except in the unexpected circumstance that any of the information in the Auction System Technical Supplement is inconsistent with the FSN, in which case, the provisions of the FSN will take precedence.

Alternate Bidding Procedures

Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via fax using an Alternate Bidding Form available on BOEM's Web site at: *http://www.boem.gov/New-York/*.

In order to be authorized to use an Alternative Bidding Form, a bidder must call the help desk number listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain the reasons for which he/she cannot place a bid using the online bidding platform. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.

If Bidders Need To Submit an Alternate Bidding Form, They Are Strongly Encouraged To Do so Before the Round Ends

Consideration of Potential Non-Monetary Factor

BOEM has received a request to recognize a non-monetary credit for any bidder who has an executed power purchase agreement (PPA) term sheet with a potential power purchaser involving offshore wind energy generated from the proposed New York lease area. While a PPA term sheet is not typically a fully binding contract and may differ in that respect from other non-monetary factors that BOEM has credited to date, BOEM is considering whether to add this element to the auction in a fashion similar to prior BOEM offshore wind lease sales (*e.g.*, Maryland, New Jersey). It is BOEM's policy to offer non-monetary credits in an auction only for factors that (1) can be simply and objectively identified, and (2) reflect a true development advantage for the recipient. BOEM is soliciting comments on the merits of adopting a PPA term sheet as a non-monetary credit for this auction, as well as the specific parameters of such an instrument.

In particular, BOEM would like to know what key commercial terms should be included in a qualifying PPA term sheet to qualify for a credit; whether BOEM should only provide a credit for PPA term sheets that are executed with specific types of entities (*e.g.*, electric utility, municipality, government agency); whether the public utility commission of New York or a nearby state should be a party to or otherwise endorse a qualifying PPA term sheet; and whether and to what extent such a qualifying PPA term sheet should be binding on the signatories. BOEM is also soliciting comments on what percentage of the monetary bid would be appropriate for this bidding credit. At this time, should BOEM find it appropriate to add this element to the auction, BOEM would potentially consider offering a 5% credit for a qualifying PPA term sheet. BOEM is interested in receiving feedback on whether a 5% credit would sufficiently reflect the value of an executed PPA term sheet. Based on the comments that BOEM receives, BOEM will decide whether, and in what amount, to provide for this type of non-monetary credit in the FSN.

Rejection or Non-Acceptance of Bids: BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the proposed auction, the FSN, or applicable regulations and statutes.

Anti-Competitive Review: This sale is subject to Federal antitrust laws. Accordingly, following the auction but before the acceptance of the bid and the issuance of the lease, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale." 43 U.S.C. 1337(c). If a provisionally winning bidder is found to have engaged in anti-competitive practices in connection with this sale, BOEM may reject its bid.

Anti-competitive practices may include, but are not limited to:

- An express or tacit agreement among bidders to not bid in an auction, or to bid at a particular price;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the potential to affect the final auction price.

BOEM will decline to award the lease if the Attorney General, in consultation with the Federal Trade Commission, determines that doing so would be inconsistent with the antitrust laws. *See* 43 U.S.C. 1337(c).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see *http://www.justice.gov/atr/public/business-resources.html,* or consult legal counsel.

Process for Issuing the Lease: Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to the provisionally winning bidder. Within 10 business days after receiving the lease copies, the provisionally winning bidder must:

1. Sign the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515–537; and
3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov,* the Web site bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's Web site at: *http://www.boem.gov/New-York/.*

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisionally winning bidder's payment.

If BOEM determines the delay was caused by events beyond the provisional winning bidder's control, BOEM may extend the ten business day deadline for executing the lease on the bidder's behalf, filing the required financial assurance, and/or paying the balance of the bonus bid.

If the provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right to not issue the lease to that bidder. In such a case, the provisionally winning bidder will forfeit its bid deposit.

Within 45 days of the date that the provisionally winning bidder receives copies of the lease, it must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form, available at: *https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604.* Subsequent annual rent payments must be made following the detailed instructions contained in the "Instructions for Making Electronic Payments," available on BOEM's Web site at: *http://www.boem.gov/New-York/.*

Non-Procurement Debarment and Suspension Regulations: Pursuant to regulations at 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease, by including this term as a condition in their contracts and other transactions.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: Natural disasters (*e.g.*, earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.* Bidders should call 703–787–1320 if they have concerns.

Appeals: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

Protection of Privileged or Confidential Information: BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to "trade secrets and commercial or financial information that you submit that is privileged or confidential." 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it "Contains Privileged or Confidential Information" and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential aggregate summaries of otherwise confidential information or comments not containing such information. Additionally, BOEM will not treat as confidential the legal title of the commenting entity (*e.g.*, the name of your company).

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–13164 Filed 6–3–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0038]

Environmental Assessment for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore New York; MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability.

SUMMARY: BOEM is announcing the availability of an Environmental Assessment (EA) for commercial wind lease issuance, site characterization activities (geophysical, geotechnical, archaeological, and biological surveys), and site assessment activities (including the installation and operation of a meteorological tower and/or buoys) on the Atlantic OCS offshore New York. The EA considers the potential impacts of the proposed action and an analysis of reasonable alternatives to the proposed action (excluding the area within two nautical miles of the traffic separation schemes, and no action). This Notice of Availability (NOA) also serves to announce the beginning of the public comment period on the EA. The EA and associated information are available on BOEM's Web site at *http://www.boem.gov/New-York/.*

Should a lessee propose to construct a commercial wind facility through submission of a Construction and Operations Plan, BOEM would conduct a separate site- and project-specific National Environmental Policy Act (NEPA) analysis, likely an Environmental Impact Statement, and would provide additional opportunities for public involvement pursuant to NEPA and the CEQ regulations at 40 CFR parts 1500–1508.

DATES: Comments on this EA will be accepted until July 6, 2016. See public meeting dates in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1340 or *michelle.morin@boem.gov.*

SUPPLEMENTARY INFORMATION:

Public Availability: BOEM will consider public comments on the EA in determining whether to issue a Finding of No Significant Impact, or conduct additional analysis under NEPA. Federal, state, tribal, and local governments and/or agencies and the public may submit written comments on this EA through the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the field entitled "Enter Keyword or ID," enter BOEM–2016–0038, and then click "search." Follow the instructions to submit public comments and view supporting and related materials available for this notice;
2. In written form, delivered by hand or by mail, enclosed in an envelope labeled "Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New York Environmental Assessment" and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166. Comments must be received or postmarked no later than July 6, 2016.

Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Meetings: BOEM will also hold public meetings to explain the proposed activities analyzed in the EA and to provide additional opportunity for public comment on the EA. The meetings are scheduled as follows:

- Monday June 20, 2016; Long Branch Middle School (Auditorium), 404 Indiana Avenue, Long Branch, New Jersey 07740; 6:00–8:00 p.m.
- Tuesday June 21, 2016; Hofstra University (MPR Room), 900 Fulton Avenue, Hempstead, New York 11549; 6:00–8:00 p.m.
- Wednesday, June 22, 2016; Westhampton Beach High School, 49 Lilac Road, Westhampton Beach, New York 11978; 6:00–8:00 p.m.
- Thursday, June 23, 2016; University of Rhode Island, Narragansett Bay Campus, Coastal Institute Building (Hazard Rooms A & B), 215 S Ferry Road, Narragansett, Rhode Island 02882; 6:00–8:00 p.m.

Authority: This Notice of Availability (NOA) is published pursuant to the regulations (43 CFR 46.305) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)).

Dated: May 31, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–13170 Filed 6–3–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 167R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation

(Reclamation) and are new, discontinued, or completed since the last publication of this notice on February 19, 2016 (81 FR 8537). This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of *1939*, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
OM&R Operation, maintenance, and replacement
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

PACIFIC NORTHWEST REGION: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract action:

16. Clean Water Services and Tualatin Valley ID, Tualatin Project, Oregon: Long-term water service contract that provides for the District to allow Clean Water Services to beneficially use up to 6,000 acre-feet annually of stored water for water quality improvement.

MID-PACIFIC REGION: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

The Mid-Pacific Region has no updates to report for this quarter.

LOWER COLORADO REGION: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

Completed contract actions:

15. La Paz County and Ehrenberg Improvement Association, BCP, Arizona: Review and approve a proposed partial assignment to the Association of 150 acre-feet per year of La Paz County's Arizona fourth priority water entitlement amount of 500 acre-feet per year and execute the associated amendments to La Paz County's and the Association's contracts. Contract executed on December 22, 2015.

17. San Carlos Apache Tribe and the Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease in order for the San Carlos Apache Tribe to lease 790 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2016. Contract executed on March 17, 2016.

18. Chandler Heights Citrus ID and Central Arizona Water Conservation District, CAP, Arizona: Execute a proposed assignment to Central Arizona Water Conservation District of Chandler Heights Citrus ID's 315 acre-foot annual CAP water entitlement. Contract executed on March 14, 2016.

20. Mohave County Water Authority, BCP, Arizona: Amend Exhibit D to the Authority's Colorado River water delivery contract to update the list of subcontractors with the Authority. Contract executed on February 29, 2016.

UPPER COLORADO REGION: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

26. Ephraim Irrigation Company, Sanpete Project, Utah: The Company proposes to enclose the Ephraim Tunnel with a 54-inch pipe. A supplemental O&M agreement will be necessary to obtain the authorization to modify Federal facilities.

27. Eden Valley Irrigation and Drainage District, Eden Project, Wyoming: The District proposes to raise the level of Big Sandy Dam to shore up its water rights. A supplemental O&M agreement will be necessary to obtain the authorization to modify Federal facilities.

28. Uintah Water Conservancy District, Central Utah Project—Vernal Unit, Utah: Due to sloughing on the face of Steinaker Dam north of Vernal, Utah, a SOD fix authorized under the SOD Act of 1978 may be necessary to perform the various functions necessary to bring Steinaker Reservoir back to full capacity. This will require a repayment contract with the United States.

29. Navajo-Gallup Water Supply Project: Pursuant to legislation and Section 10602(h) of Pub. L. 111–11, project facilities may be used to treat and convey nonproject water. Before delivery of project water from the San Juan River, a need will exist for nonproject water to be delivered to the Navajo Nation. A carriage contract has been drafted and is currently under internal review (Reclamation) then will be negotiated with the Navajo Nation in a public setting.

30. Jicarilla Apache Nation, Navajo Project, New Mexico: Water service agreement between the Jicarilla Apache Nation and the San Juan Basin Water Haulers Association for delivery of 200 acre-feet of M&I water from the Jicarilla's settlement water from the Navajo Reservoir Supply. This agreement will have a term of 5 years (2016–2020) and will replace the expired previous agreement which was in place for 10 years.

31. North Fork Water Conservancy District and Ragged Mountain Water Users Association, Paonia Project, Colorado. An existing contract for 2,000 acre-feet will expire on December 31, 2016. The parties have requested a 5-year contract that will begin when the existing contract expires. The new contract will be for up to 2,000 acre-feet of water with up to 200 acre-feet available for M&I uses.

Modified contract action:

14. South Cache Water Users Association, Hyrum Project, Utah: The Association desires to pipe approximately 2,100 linear feel of the Hyrum-Mendota Canal to combat seepage issues below Hyrum Dam. A supplemental O&M agreement is necessary for Reclamation to provide consent to the modification of the Federal facilities.

Completed contract actions:

5. Uintah Water Conservancy District; Vernal Unit, CUP; Utah: Proposed carriage contract to both store up to 35,000 acre-feet of nonproject water in Steinaker Reservoir and carry nonproject water in the Steinaker Service and Feeder Canals. Contract executed on February 12, 2016.

21. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Requested a water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554). Contract executed on January 14, 2016.

GREAT PLAINS REGION: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

New contract actions:

39. South Chester County Water District; Lower Marias Unit, P–SMBP; Montana: Consideration to renew of long-term M&I water service contract No. 14–06–600–2022A.

40. Nathan D. and Kindra Young; Canyon Ferry Unit, P–SMBP; Montana: Consideration to renew short-term M&I water service contract No. 129E670093.

41. Central Oklahoma Master Conservancy District, Norman Project, Oklahoma: Consideration of a contract for a supply of water made possible when infrequent and otherwise unmanageable flood flows of short duration create a temporary supply of water.

Modified contract action:

22. Helena Valley ID; Helena Valley Unit, P–SMBP; Montana: Consideration of a contract to allow for delivery of up to 500 acre-feet of water for M&I purposes.

Completed contract action:

29. Larry TenBensel; Frenchman Cambridge, P–SMBP; Nebraska: Consideration of a long-term Warren Act contract. Contract executed on March 15, 2016.

Dated: April 14, 2016.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2016–13237 Filed 6–3–16; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. BBA Aviation plc, et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States of America* v. *BBA Aviation plc, et al.*, Civil Action No. 1:16–cv–00174, together with the Response of the United States to Public Comment.

Copies of the comment and the United States' Response are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr*, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States Of America, Plaintiff, v. *BBA Aviation PLC, Landmark U.S. Corp LLC,* and *LM U.S. Member LLC, Defendants.*

Case: 1:16–cv–00174
Judge: Amy Berman Jackson

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

Pursuant to Sections 2(b)–(h) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), Plaintiff, the United States of America ("United States") hereby files the single public comment received concerning the proposed Final Judgment in this case and the United States's response to the comment. After careful consideration of the submitted comment, the United States continues to believe that the proposed Final Judgment ("PFJ") provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this Response have been published in the

Federal Register pursuant to 15 U.S.C. 16(d).

I. BACKGROUND

On February 3, 2016, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Defendant BBA Aviation plc ("Signature") of Defendants Landmark U.S. Corp LLC and LM U.S. Member LLC ("Landmark"), announced on September 23, 2015, would be likely to substantially lessen competition in the provision of full-service fixed-based operator ("FBO") services at six airports in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint further alleged that, as a result of the acquisition as originally proposed, prices for these services in the United States would likely have increased and customers would have received services of lower quality.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate Order"); a Proposed Final Judgment ("PFJ"); and a Competitive Impact Statement ("CIS") that explains how the PFJ is designed to remedy the likely anticompetitive effects of the proposed acquisition. As required by the Tunney Act, the United States published the PFJ and CIS in the **Federal Register** on February 10, 2016. In addition, the United States ensured that a summary of the terms of the PFJ and CIS, together with directions for the submission of the written comments, were published in *The Washington Post* on seven different days during the period of February 6, 2016 to February 12, 2016. *See* 15 U.S.C. 16)(c). The 60-day waiting period for public comments ended on April 12, 2016. Following expiration of that period, the United States received one comment, which is described below and attached hereto as Exhibit 1.

II. STANDARD OF JUDICIAL REVIEW

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day public comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see also United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1, 10–11 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.*, No. 08-cv-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (discussing nature of review of consent judgment under the Tunney Act; inquiry is limited to "whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the Complaint, whether the decree is sufficiently clear, whether the enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)). Instead, courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement in "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).

In determining whether a proposed settlement is in the public interest, "the court 'must accord deference to the government's predictions about the efficacy of its remedies.'" *United States* v. *U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 76 (D.D.C. 2014) (quoting *SBC Commc'ns*, 489 F. Supp. at 17). *See also Microsoft*, 56 F.3d at 1461 (noting that the government is entitled to deference as to its "predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' "prediction as to the effect of the proposed remedies, its perception of the market structure, and its views of the nature of the case"); *United States* v. *Morgan Stanley*, 881 F. Supp. 2d 563, 567–68 (S.D.N.Y. 2012) (explaining that the government is entitled to deference in choice of remedies).

Courts "may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17. Rather, the ultimate question is whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461. Accordingly, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also United States* v. *Apple, Inc.* 889 F. Supp. 2d 623, 631 (S.D.N.Y. 2012). And, a "proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of the public interest." *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations and internal quotations omitted); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

In its 2004 amendments to the Tunney Act,[1] Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of the Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11; *see also United States* v. *Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) ("[T]he Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to public comments alone."); *US Airways*, 38 F. Supp. 3d at 76 (same).

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

Continued

III. SUMMARY OF PUBLIC COMMENT AND THE UNITED STATES'S RESPONSE

The United States received one public comment from the City of Dallas ("Dallas"). Though the comment was submitted after the deadline for comments had passed, the United States has nevertheless issued a full response. Dallas submitted the comment to express concern about the possible anticompetitive effects of Signature's acquisition of Landmark at Love Field Airport ("Love Field"), which Dallas operates. Combined, Signature and Landmark have 54 percent of the FBO market and lease nearly 70 percent of the FBO facilities at Love Field. Dallas submitted the comment to provide additional information about the situation at Love Field and highlight what Dallas believes to be competitive concerns the PFJ does not address. In particular, Dallas is concerned that the PFJ would not require Signature to report future FBO acquisitions at Love Field to the United States. Dallas does not, however, argue in favor of a divesture of FBO assets at Love Field.

The United States appreciates Dallas's advocacy efforts on behalf of competition at Love Field. The United States carefully considered the effects of the acquisition at Love Field and chose not to take enforcement action against such acquisition. Over the course of a five-month investigation, the United States reviewed party and third-party documents, conducted economic data analysis, and talked with dozens of industry participants including the Aviation Director for the City of Dallas. As a result of this investigation, the United States did not allege a violation of the Clayton Act resulting from the acquisition of Love Field in its Complaint. Therefore, the comment submitted by Dallas is not a comment addressing the question before the Court, which is whether the proposed remedy will cure the antitrust violations alleged in the Complaint. Should any future acquisitions by Signature at Love Field raise a possibility of competitive harm, Dallas or any other affected party may raise those concerns with the United States to be evaluated at such future date.

IV. CONCLUSION

After reviewing the public comment, the United States continues to believe that the PFJ, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the PFJ soon after the comment and this response are published in the **Federal Register**.

Dated: May 27, 2016

Respectfully submitted,

/s/Patricia L. Sindel

Patricia L. Sindel, (D.C. Bar #997505),

Trial Attorney, Networks & Technology Enforcement Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 7100, Washington, DC 20530, Telephone: (202) 598–8300, Facsimile: (202) 616–8544, Email: patricia.sindel@usdoj.gov.

KAPLAN KIRSCH ROCKWELL

April 20, 2016

James J. Tierney, Chief
Networks & Technology Enforcement Section
United States Department of Justice
Antitrust Division
450 Fifth Street NW., Suite 7100
Washington, DC 20530

Re: BBA Aviation, PLC and Landmark U.S. Corp LLC
Case No. 1:16-cv-00174

Dear Mr. Tierney:

As counsel to the City of Dallas ("City"), Kaplan Kirsch & Rockwell LLP ("Firm") submits these comments in the matter of *United States* v. *BBA Aviation, et al.,* case no. 1:16-cv-00174, concerning the merger of BBA Aviation (parent corporation to Signature Flight Support Corporation ("Signature")), and Landmark U.S. Corp LLC ("Landmark"). The Firm and the City recognize that the deadline for comments on this matter has passed, but respectfully request that the Department of Justice accept these comments despite their tardiness.[1]

The City owns and operates Dallas Love Field Airport ("Love Field"). The City is concerned about the possible anticompetitive effects of the merger between Landmark and Signature at Love Field, where both Landmark and Signature currently operate.

Presently, there are six (6) fixed base operator ("FBO") locations at Love Field, operated by five different FBO entities. Landmark operates one (1) of the FBO locations, and Signature operates two (2) of the locations.[2] In 2015, Signature's two (2) locations combined sold 40 percent of the total aviation fuel[3] at Love Field (by FBOs), and Landmark's single location sold 14 percent of the total aviation fuel. This, after the proposed merger, would result in 54 percent of the fuel at Love Field being provided by the "new" Signature.

The remaining three (3) FBOs sold 46 percent of the fuel, with two smaller locations selling approximately 9 percent each, and one larger entity selling 28 percent. In addition to conducting a majority of the fuel sales, Landmark and Signature together lease nearly *70 percent* of the total hangar, general aviation terminal facilities, and office space at Love Field. A chart with a breakdown of the data used to calculate these percentages is enclosed with this letter as Attachment A.

Under the Department of Justice and Federal Trade Commission's *Horizontal Merger Guidelines,* markets with an initial score over 2500 on the Herfindahl-Hirschman Index ("HHI") are considered "highly concentrated."[4] When a prospective merger in a highly concentrated market would result in an HHI increase of 200 or more, the transaction "will be presumed to be likely to enhance market power."[5] Such increases in HHI are considered indicators of transactions "for which it is particularly important to examine whether other competitive factors confirm, reinforce, or counteract the potentially harmful effects of increased concentration."[6]

At Love Field, the fuel flowage data suggests that the existing market is already highly concentrated, and that a merger of Signature and Landmark would increase the HHI by well over 200 points.[7] Despite this potential effect, there are no indications that the Department of Justice examined any of the competitive effects of the merger at Love Field. In fact, it appears that the Department of Justice failed to consider the impact on Love Field whatsoever, or, alternatively, failed to adequately explain why it chose to ignore those impacts.

These facts and the Department's own guidelines demonstrate the need to carefully scrutinize the merger's potential effects at Love Field. Yet, the materials published by the Department of Justice in the **Federal Register** and filed with the United States District Court for the District of Columbia make no reference to operations at Love Field.

[1] *See* 81 Fed. Reg. 7144 (Feb. 10, 2016) (setting 60-day comment period).

[2] Signature operates both Signature Flight Support (also known as Signature North) and Dalfort Fueling.

[3] 100LL and Jet-A.

[4] Horizontal Merger Guidelines § 5.3.

[5] *Id.*

[6] *Id.*

[7] The City recognizes that HHI is typically calculated using revenue data, but such information is proprietary and unavailable to the City.

The proposed consent decree requires Signature and Landmark to divest their assets from six airports where both currently operate, but there is not even an acknowledgement that both firms operate FBOs at Love Field.[8] While the City does not necessarily advocate for a divestiture of Signature or Landmark's assets at Love Field, the lack of discussion or findings on the issue is troubling, especially when such an absence is inconsistent with the Department's own guidance on this issue.

The proposed consent decree not only imposes no constraints on Signature-Landmark operations at Love Field, but would effectively allow Signature-Landmark to acquire another FBO at Love Field. The proposal allows such an acquisition at "an airport where [the merged entity] is already providing FBO Services in the United States *unless* (1) the assumption or acquisition is valued at less than $20 million dollars, or (2) at least two Full-Service FBOs not involved in the transaction provide FBO Services at the airport where the assumption or acquisition will take place."[9] This provision will be insufficient to protect the competitive environment at Love Field[10] because BBA could acquire the remaining FBOs without Department of Justice scrutiny or permission. The new Signature-Landmark entity could acquire the next-largest FBO at Love Field because of the exception allowing such acquisition when there are two other FBOs at the airport, and could then acquire the other entities if they are valued below $20 million.[11] By failing to address this potential issue now, the Department of Justice leaves open the possibility that BBA could later acquire an exclusive right at Love Field.

The City urges the Department of Justice to include more specific protections for Love Field and other airports that are not proposed for divestiture, but where the market power of the merged entity could pose a serious threat of further market concentration. Specifically, the City suggests including provisions that would serve to prevent the future purchase of FBOs at any airport where Signature and Landmark both operated prior to the merger, regardless of the value of the transaction or presence of additional FBOs. As explained above, the current provision in the proposed consent decree is too narrow to adequately protect Love Field. A broader provision would better protect Love Field and other airports from potential anticompetitive environments.

Thank you for your time and consideration in this matter. If you have any questions about any of the comments in this letter, please do not hesitate to contact me.

Sincerely,

/s/

Peter J. Kirsch by Nicholas M. Clabbers,

On behalf of: City of Dallas, Department of Aviation, 8008 Herb Kelleher Way, LB16, Dallas, Texas 75235.

ATTACHMENT A

FBO fuel sales at Dallas Love Field
(2015 totals)

FBO	100 LL (gals)	Jet A (gals)	Total
Signature Flight Support	9,992	4,126,136	4,136,128
Signature Dalfort	8,335	3,935,851	3,944,186
Landmark Aviation	37,380	2,881,685	2,919,065
Total Signature + Landmark	55,707	10,943,672	10,999,379
All Other FBOs	101,600	9,238,107	9,339,707
S+L Market Share Post-Merger[1]	35.4%	54.2%	54%

FBO Facility Leaseholds at Dallas Love Field
(as of 2015)

FBO	Hangars (sqft)	Terminal and offices (sqft)	Total
Signature Flight Support	220,500	97,688	318,188
Signature Dalfort	400,703	14,212	414,915
Landmark Aviation	106,890	79,848	186,738
Total Signature + Landmark	728,093	191,748	919,841
All Other FBOs[2]	N/A	N/A	432,108
S + L Percentages Post-Merger	Unknown	Unknown	68%

[1] The calculations of approximate market share are based solely on the fuel quantities sold, as the City does not have access to proprietary revenue data.

[2] The data available for the other FBOs does not delineate between hangar and office space.

[8] The City also notes that there is no discussion of San Antonio International Airport or Teterboro Airport, the two other U.S. airports where both Signature and Landmark presently operate.

[9] 81 FR at 7155 (emphasis added).

[10] The City is also concerned that even greater concentration of FBO business at Love Field may result in violations of the Federal Aviation Administration Grant Assurances, which specifically prohibit the granting of "exclusive rights" to aeronautical service providers. *See* FAA Order 5.190.6B, ¶8.1. The City has an affirmative obligation to ensure that an exclusive right is not created at Love Field.

[11] The City presently has no information about the value of any of the other FBOs at Love Field, but all are small entities that operate only at Love Field.

[FR Doc. 2016–13185 Filed 6–3–16; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 27, 2016, the Department of Justice ("DOJ") lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States* v. *Pilkington North America, Inc.*, Civil Action No. 16–5654.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). The Complaint seeks reimbursement of response costs and injunctive relief under CERCLA for hazardous substance contamination at the Ottawa Township Flat Glass Site ("Site").

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Pilkington North America, Inc.*, D.J. Ref. No. 90–11–3–11237. All comments must be submitted no later than thirty (30) days after the publication date of this Notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at the following DOJ Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $94.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $16.50.

Randall M. Stone,

Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–13188 Filed 6–3–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 004–2016]

Privacy Act of 1974; Systems of Records; Extension of Comment Period

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Notice of a modified system of records notice; extension of comment period.

SUMMARY: The Department of Justice (Department or DOJ), Federal Bureau of Investigation (FBI), is extending the comment period for its proposal to modify an existing FBI system of records notice titled, "Fingerprint Identification Records System (FIRS)," JUSTICE/FBI–009, which would be retitled, "The Next Generation Identification (NGI) System," JUSTICE/FBI–009, published in the **Federal Register** on May 5, 2016 (81 FR 27284). The original comment period is scheduled to expire on June 6, 2016. The Department is now extending the time period for public comments by 30 days. The updated comment period is scheduled to expire on July 6, 2016. This action will allow interested persons additional time to analyze the proposal and prepare their comments.

DATES: Comments on the notice published May 5, 2016 (81 FR 27284) must be submitted on or before July 6, 2016.

ADDRESSES: Submit comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530, or by facsimile at 202–307–0693. To ensure proper handling, please reference either this CPCLO Order No., or the CPCLO Order No. from the notice of modified system of records notice (CPCLO Order No. 002–2016) on your correspondence.

FOR FURTHER INFORMATION CONTACT: Roxane M. Panarella, Criminal Justice Information Services Division (CJIS), Privacy Attorney, 1000 Custer Hollow Road, Clarksburg WV 26306.

SUPPLEMENTARY INFORMATION: On May 5, 2016, the Department requested comments on its proposal to modify an existing FBI system of records notice titled, "Fingerprint Identification Records System (FIRS)," JUSTICE/FBI–009, and its proposal to amend the Department's Privacy Act regulations by establishing an exemption for records in this system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k).

Both the notice of a modified system of records notice and notice of proposed rulemaking for this system of records originally provided that comments must be received by June 6, 2016. The Department has received requests to extend these comment periods. The Department believes that extending the comment periods would be appropriate in order to provide the public additional time to consider and comment on the proposals addressed in these notices. Therefore, the Department is extending both public comment periods for 30 days, until July 6, 2016. Elsewhere in the **Federal Register**, the Department is extending the comment period for the accompanying notice of proposed rulemaking.

Dated: June 1, 2016.

Erika Brown Lee,

Chief Privacy and Civil Liberties Officer, U.S. Department of Justice.

[FR Doc. 2016–13353 Filed 6–3–16; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for the Evaluation of the Disability Employment Initiative Round 5 and Future Rounds; Correction

AGENCY: Office of Disability Employment Policy, Department of Labor.

ACTION: Notice; correction.

SUMMARY: The Department of Labor, published a document in the **Federal Register** of January 12, 2016, concerning a request for comments for information collection for the evaluation of the Disability Employment Initiative round 5 and future rounds. The document contained a comment period of 30 days instead of the required 60 days. This correction notice reopens the comment period for an additional 30 days.

FOR FURTHER INFORMATION CONTACT: Cherise Hunter by telephone at 202–693–4931 (this is not a toll-free number) or by email at *hunter.cherise@dol.gov.*

Correction

In the **Federal Register** of January 12, 2016, in FR Document Number 2016–00460, on page 1446, in the second column, correct the "Dates" caption to read:

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 6, 2016.

Dated: May 26, 2016.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy, U.S. Department of Labor.

[FR Doc. 2016–13333 Filed 6–3–16; 8:45 am]

BILLING CODE 4510–FK–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet telephonically on June 17, 2016. The meeting will commence at 3:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

Public Observation: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-In Directions for Open Sessions

- *Call toll-free number:* 1–866–451–4981;
- *When prompted, enter the following numeric pass code:* 5907707348;
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS OF MEETING: Open.

Matters To Be Considered

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of April 17, 2016
3. Public comment regarding LSC's fiscal year 2016 budget request
   - Presentation by a representative of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants
   - Presentation by a representative of National Legal Aid and Defender Association
   - Other Interested Parties
4. Public comment
5. Consider and act on other business
6. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 2, 2016.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2016–13404 Filed 6–2–16; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–035]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by July 6, 2016. Once NARA completes appraisal of the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update

previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after a thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records or notes that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of the Army, Agency-wide (DAA–AU–2016–0023, 1 item, 1 temporary item). Master files of an electronic information system that contains military and civilian personnel visa and passport transactions.
2. Department of Defense, Defense Information Systems Agency (DAA–0371–2014–0016, 1 item, 1 temporary item). Records relating to the test and evaluation of electronic information systems.
3. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0015, 1 item, 1 temporary item). Records relating to policies, procedures, and administration of secure facilities for the purposes of continuity of operations.
4. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0033, 1 item, 1 temporary item). Copies of records regarding administration and maintenance of critical materials stockpiles.
5. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0044, 1 item, 1 temporary item). Records relating to warehouse management of parts used by the nuclear industry, including purchase, shipping, tracking, and delivery documents.
6. Department of Defense, Office of the Secretary of Defense (DAA–0330–2014–0010, 4 items, 4 temporary items). Master files of an electronic information system used by customers to rate products and services provided by DoD offices and facilities.
7. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0003, 1 item, 1 temporary item). Master files of an electronic information system used by victims of sexual assault to anonymously request help or assistance.
8. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0004, 1 item, 1 temporary item). Master files of an electronic information system used to track help or assistance provided to victims of sexual assaults.
9. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0005, 1 item, 1 temporary item). Master files of an electronic information system used to track inquiries for information on sexual assault cases.
10. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0015, 2 items, 2 temporary items). Records relating to the audit process of the National Child Support Program, including audit findings, correspondence, and interim reports.
11. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0005, 8 items, 8 temporary items). Applications for employment authorizations.
12. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0009, 1 item, 1 temporary item). Master files of an electronic information system used to track and process applications, petitions, and requests for benefits and services.
13. Department of Justice, Drug Enforcement Administration (DAA–0170–2015–0003, 1 item, 1 temporary item). Audit report files.
14. Department of the Navy, Agency-wide (DAA–NU–2015–0001, 42 items, 31 temporary items). Records relating to military personnel including program planning and management, recruiting, training, confinement of prisoners, routine communications traffic, and related matters. Proposed for permanent retention are personnel files, personnel information system master files, student records, visual information, and records relating to policy, personnel accounting, awards, casualties, education, review boards, and corrections management.
15. Department of the Navy, United States Marine Corps (DAA–0127–2013–0009, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to risk assessments of Marine Corps facilities, including asset location, asset names, asset missions and risk mitigation planning.
16. Department of State, Bureau of Counterterrorism (DAA–0059–2014–0024, 2 items, 1 temporary item). Records include staff program files of the Front Office. Proposed for permanent retention are program files of the Front Office, including those of the Coordinator and Principal Deputy Coordinator.
17. Department of Transportation, Federal Railroad Administration (DAA–0399–2014–0001, 8 items, 6 temporary items). Records relating to railroad policy and development, including completed and canceled project case files, environmental records, maps, subject files, and routine analysis records. Proposed for permanent retention are Amtrak Board of Directors records and landmark analysis records.
18. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0003, 3 items, 3 temporary items). Records relating to tax return preparer registration, renewal, and payment processing.
19. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2016–0004, 2 items, 2 temporary items). Records relating to health care worker training.
20. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2015–0001, 6 items, 4 temporary items). Records relating to NASA building designs for the headquarters facility and centers located throughout the nation, including preliminary design files, drawings, and records of cancelled projects. Proposed for permanent retention are final design files of

architecturally, historically, and technologically significant facilities.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–13190 Filed 6–3–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Payments on Shares by Public Units and Nonmembers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before August 5, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0114.

Title: Payments on Shares by Public Units and Nonmembers.

Abstract: Under section 107(6) of the Federal Credit Union Act (Act) and § 701.32 of the NCUA Rules and Regulations, a Federal Credit Union may receive from public units and political subdivisions (as defined in § 754.1) and nonmember credit unions, payments on shares. Limitations on nonmember and public unit deposits in federally insured credit unions is 20 percent of their shares or $3 million, whichever is greater. This collection of information is necessary to protect the National Credit Union Share Insurance Fund ("Fund"). The NCUA Board has determined that deposits in excess of 20 percent of shares or $3 million can cause an undue risk to the Fund and a loss of confidence in the credit union system. The NCUA must be made aware of and be able to monitor those credit unions seeking an exemption from the requirement.

The information collection requirements is for those credit unions seeking an exemption from the nonmember deposit limit must adopt a specific written plan concerning the intended use of those shares and submit along with their lending and investment policies to the NCUA Regional Director. NCUA uses this information to determine whether or not a particular credit union will be granted an exemption to the limit on nonmember and public unit deposits. This collection of information is necessary to protect the National Credit Union Share Insurance Fund.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Non-for-profit institutions.

Estimated No. of Respondents/Recordkeepers: 20.

Estimated Annual Frequency: 2.1.

Estimated Annual No. of Responses: 42.

Estimated Burden Hours per Response: 1.95.

Estimated Total Annual Burden Hours: 82.

Adjustment are being made to included additional information collections requirements of § 701.32 that were omitted in the previous submission.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 1, 2016.

Dated: June 1, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13240 Filed 6–3–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 6, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0061.

Type of Review: Reinstatement, with change, of a previously approved collection.

Title: Central Liquidity Facility, 12 CFR part 725

Form: NCUA Forms 7000, 7001, 7002, 7003, 7004, and CLF Forms 8702, and 8703.

Abstract: Part 725 contains the regulations implementing the National Credit Union Central Liquidity Facility Act, subchapter III of the Federal Credit Union Act. The NCUA Central Liquidity Facility is a mixed-ownership Government corporation within NCUA. It is managed by the NCUA Board and is owned by its member credit unions.

The purpose of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encourage savings, support consumer and mortgage lending and provide basic financial resources to all segments of the economy. The Central Liquidity Facility achieves this purpose through operation of a Central Liquidity Fund (CLF).

The forms covered under this collection of information are necessary to implement the requirements associated with membership in the CLF and extension of credit to CLF members.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 175.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 1, 2016.

Dated: June 1, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13281 Filed 6–3–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Corporate Credit Union Monthly Call Report

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The purpose of this notice is to allow for 60 days of public comment.

This action relates to the monthly submission of information by corporate credit unions. This information is used by the NCUA to monitor the financial conditions of those credit unions.

DATES: Comments will be accepted until August 5, 2016.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8595; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0067.

Title: Corporate Credit Union Monthly Call Report.

Abstract: NCUA is modifying the instrument for collecting call report data from corporate credit unions. This information is currently collected through a standalone application that requires manual input of data by respondents. NCUA is updating its systems to allow this information to be provided through an online portal in a way that allows respondents to automate the submission of this data. This will significantly reduce the burden associated with this collection.

Through this action, the NCUA is also combining two currently approved collections—the monthly call report (OMB Number 3133–0067) and the annual report of officials (OMB Number 3133–0053). These collections will both be submitted through the same online portal and the combination of the two collections under a single control number is consistent with the treatment of this data for natural person credit unions (OMB Number 3133–0004).

Type of Review: Revision of a currently approved collection.

Affected Public: Private sector: not-for-profit institutions.

Estimated No. of Respondents: 12.

Frequency of Response: 13 responses per year per respondent.

Estimated Burden Hours per Response: 4.

Estimated Total Annual Burden Hours: 624 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 1, 2016.

Dated: June 1, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13283 Filed 6–3–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; NRC–2016–0078]

Waterford Steam Electric Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Intent to conduct scoping process and prepare environmental impact statement; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission will conduct a scoping process to gather the information necessary to prepare an environmental impact statement (EIS) to evaluate the environmental impacts for the renewal of the operating license for Waterford Steam Electric Station, Unit 1 (Waterford). The NRC is seeking stakeholder input on this action and has scheduled a public meeting.

DATES: Submit comments by August 1, 2016. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0078. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop OWFN–12 H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elaine Keegan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–

0001; telephone: 301–415–8517, email: *Elaine.Keegan@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0078 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document by any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0078.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for renewal of the Waterford license can be found in ADAMS under Accession No. ML16088A324.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0078 in the subject line of your comment submission in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comments submissions into ADAMS.

II. Discussion

On March 23, 2016, Entergy Operations, Inc. (Entergy) submitted to the NRC an application for renewal of Facility Operating License NPF–38 for an additional 20 years of operation at Waterford. Waterford is located in Killona, LA. The current operating license for Waterford expires on expires on December 18, 2024. The application for renewal was submitted pursuant to part 54 of title 10 of the *Code of Federal Regulations* (10 CFR) and included an environmental report (ER). A separate notice of receipt and availability of the application was published in the **Federal Register** on April 14, 2016 (81 FR 22128). A notice of acceptance for docketing of the application and opportunity for hearing regarding renewal of the facility operating license was published in the **Federal Register** on May 31, 2016.

III. Request for Comments

This notice informs the public of the NRC's intention to prepare an EIS related to the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

The regulations in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," allows agencies to use their National Environmental Policy Act of 1969 (NEPA) process to fulfill the requirements of Section 106 of the National Historic Preservation Act (NHPA). Therefore, pursuant to 36 CFR 800.8(c), the NRC intends to use its process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Entergy submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is publicly available in ADAMS under Accession No. ML16088A324. The ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*. In addition, paper copies of the ER are available to the public near the site at the St. Charles Parish Library—East Regional Library, 160 W. Campus Drive, Destrehan, Louisiana 70047.

The NRC intends to gather the information necessary to prepare a plant-specific supplement to the NRC's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) related to the review of the application for renewal of the Waterford operating license for an additional 20 years.

Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found at 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action, which is to be the subject of the supplement to the GEIS;

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement to the GEIS will be prepared and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Entergy;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene.

IV. Public Scoping Meeting

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold one public meeting for the Waterford license renewal supplement to the GEIS. The scoping meeting will be held on Wednesday, June 8, 2016. The meeting will be held from 7:00 p.m. to 9:00 p.m. at the St. Charles Parish Emergency Operation Center, 15026 River Road, Hahnville, Louisiana, 10057. There will be a registration period from 6:30 p.m. to 7:00 p.m. for members of the public to sign in to speak.

The meeting will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed in the **ADDRESSES** section of this notice.

Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Project Manager, Ms. Elaine Keegan, by telephone at 800–368–5642, extension 8517, or by email at *Elaine.Keegan@nrc.gov* no later than June 3, 2016. Members of the public may also register to speak during the registration period prior to the start of meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Please contact Ms. Keegan no later than June 3, 2016, if accommodations or special equipment are needed to attend or present information at the public meeting so that the NRC staff can determine whether the request can be accommodated.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting. The notice of acceptance for docketing of the application and a description of the hearing process will be published separately in the **Federal Register**.

Dated at Rockville, Maryland, this 1st day of June, 2016.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Environmental Review and Project Management Branch, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–13228 Filed 6–3–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0099]

Report to Congress on Abnormal Occurrences; Fiscal Year 2015; Dissemination of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–0090, Volume 38, "Report to Congress on Abnormal Occurrences: Fiscal Year 2015." The report describes a total of 17 events for Fiscal Year (FY) 2015. Fifteen events involved Agreement State licensees and two events involved NRC licensees.

DATES: NUREG–0090, Volume 38, is available June 6, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0099 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0099. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Minh-Thuy Nguyen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5163, email: *MinhThuy.Nguyen@nrc.gov*.

SUPPLEMENTARY INFORMATION: Section 208 of the Energy Reorganization Act of 1974, as amended (Pub. L. 93–438), defines an "abnormal occurrence" (AO) as an unscheduled incident or event that the NRC determines to be significant from the standpoint of public health or safety. The report describes those events that the NRC identified as AOs during FY 2015, based on the criteria defined in Appendix A of the report, "Abnormal Occurrence Criteria and Guidelines for Other Events of Interest."

The report describes 15 events at Agreement State-licensed facilities and two events at NRC-licensed facilities. One NRC-licensee event occurred in a medical facility and involved radiation exposure to an embryo/fetus. The 15 Agreement State-licensee events and the other NRC-licensee event were medical events as defined in part 35 of title 10 of the *Code of Federal Regulations*, "Medical Use of Byproduct Material." Agreement States are the 37 States that currently have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act of 1954, as amended (AEA), to regulate certain quantities of AEA-licensed

material at facilities located within their borders.

The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–68) requires that the NRC report AOs to Congress annually. The full report, NUREG–0090, Volume 38, "Report to Congress on Abnormal Occurrences: Fiscal Year 2015," is available electronically at the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*, and in ADAMS under Accession No. ML16145A026.

Dated at Rockville, Maryland, this 26th day of May, 2016.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Acting, Secretary of the Commission.

[FR Doc. 2016–13274 Filed 6–3–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77950; File No. SR–NYSE–2016–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending the Definition of "Block" for Purposes of Rule 72(d) and the Size of a Proposed Cross Transaction Eligible for the Cross Function in Rule 76

May 31, 2016.

On April 12, 2016, New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. The proposed rule change was published for comment in the **Federal Register** on April 29, 2016.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 13, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates July 28, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSE–2016–30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13210 Filed 6–3–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77701 (Apr. 25, 2016), 81 FR 25748.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77952; File No. SR–NYSEArca–2016–83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change to the Benchmark Index Applicable to the WisdomTree Managed Futures Strategy Fund

May 31, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 27, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the benchmark index applicable to the WisdomTree Managed Futures Strategy Fund. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved the listing and trading of the shares ("Shares") of the Fund on the Exchange under NYSE Arca Equities Rule 8.600,[4] which governs the listing and trading of "Managed Fund Shares," on the Exchange.[5] The Fund is an actively-managed exchange traded fund. WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund. WisdomTree Investments, Inc. ("WisdomTree Investments") is the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 200.30–3(a)(31).

[3] 15 U.S.C.78s(b)(1).

[4] 15 U.S.C. 78a.

[5] 17 CFR 240.19b–4.

[4] NYSE Arca Equities Rule 8.600 (c)(1) provides that, among other criteria, a Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] *See* Securities Exchange Act Release No. 63598 (December 22, 2010), 75 FR 82106 (December 29, 2010)(SR–NYSEArca–2010–98) ("Prior Order"). *See also* Securities Exchange Act Release No. 63292 (November 9, 2010), 75 FR 70319 (November 17, 2010) ("Prior Notice", and with the Prior Order, the "Prior Releases").

parent company of WisdomTree Asset Management. Mellon Capital Management Corporation ("Mellon" or "Sub-Adviser") serves as the sub-adviser for the Fund. State Street Bank and Trust Company is the administrator, custodian and transfer agent for the Fund. Foreside Fund Services, LLC ("Distributor") serves as distributor for the Fund.[6] The Shares are offered by the Trust, which is registered with the Commission as an investment company.[7]

The Prior Releases stated that the Adviser would manage the Fund using a strategy designed to correspond to the performance of the Diversified Trends Indicator™ ("Original Benchmark"). In this proposed rule change, the Exchange proposes to reflect a change to the benchmark index applicable to the Fund. The new benchmark will be the WisdomTree Managed Futures Index ("New Benchmark," and together with the Original Benchmark, the "Benchmarks"), a proprietary index developed by WisdomTree Investments.[8] Upon implementation of the proposed rule change, the Adviser will manage the Fund using a strategy designed to correspond to the performance of the New Benchmark. The Adviser anticipates investing Fund assets through the Sub-Adviser based on the New Benchmark on or around June 30, 2016.

The Adviser believes that it is in the best interest of the Fund and its shareholders to replace the Original Benchmark with the New Benchmark while keeping the Fund's asset exposure and investment strategies similar, and without changing the Fund's investment objective. The Adviser believes that the New Benchmark will serve to optimize the Fund's investment strategy, while seeking to provide enhanced risk-adjusted returns over time.

Description of the Shares, the Benchmark and the Fund

According to the Prior Releases, the WisdomTree Managed Futures Strategy Fund seeks to provide investors with positive total returns in rising or falling markets that are not directly correlated to broad market equity or fixed income returns. The Fund is currently managed using a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the Original Benchmark. The Original Benchmark is a widely used indicator designed to capture the economic benefit derived from rising or declining price trends in commodity, currency, and U.S. Treasury futures markets.

Under this proposed rule change, the Exchange seeks to permit the Fund to be managed using a different, quantitative, rules-based strategy, described below, that is designed to provide returns that correspond to the New Benchmark. The New Benchmark is a proprietary index, developed and owned by WisdomTree Investments that is also designed to capture the economic benefit derived from rising or declining price trends in commodity, currency, and U.S. Treasury futures markets.

Differences between the Original Benchmark and the New Benchmark are described below.

The Benchmarks

The Original Benchmark is a rules-based indicator designed to capture rising and falling price trends in the commodity, currency and U.S. Treasury futures markets through long and short positions on U.S. listed futures contracts. The Original Benchmark consists of U.S. listed futures contracts on 16 tangible commodities and 8 financial futures. The 16 commodity futures contracts are: Light crude oil, natural gas, RBOB gas ("Gasoline"), heating oil, soybeans, corn, wheat, gold, silver, copper, live cattle, lean hogs, coffee, cocoa, cotton and sugar. The 8 financial futures contracts are: the Australian dollar ("AUD"), British pound sterling ("GBP"), Canadian dollar ("CAD"), Euro ("EUR"), Japanese yen ("JPY"), Swiss franc ("CHF"), 10-year U.S. Treasury note and 30-year U.S. Treasury bond. Each contract is sometimes referred to as a "Component" of the Original Benchmark.

The New Benchmark also is a rules-based indicator designed to capture rising and falling price trends in the commodity, currency and U.S. Treasury futures markets through long and short positions on U.S. listed futures contracts. The New Benchmark consists of U.S. listed futures contracts on 16 tangible commodities and 8 financial futures. The 16 commodity futures contracts are: Light crude oil, natural gas, Gasoline, heating oil, soybeans, corn, wheat, gold, silver, copper, live cattle, lean hogs, coffee, cocoa, cotton and sugar. The 8 financial futures contracts are: the AUD, GBP, CAD, EUR, JPY, CHF, 10-year U.S. Treasury note and 30-year U.S. Treasury bond. Each contract is sometimes referred to as a "Component" of the New Benchmark.

(1) Asset Treatment

Under the Original Benchmark, Components that are similar in nature (such as gas and oil or gold and silver) are aggregated into "Sectors." There are nine commodity Sectors in the Original Benchmark: Energy (light crude oil, natural gas, Gasoline, and heating oil), Grains (soybeans, corn), Precious Metals (gold and silver), Industrial Metals (copper), Livestock (live cattle, lean hogs), Coffee, Cocoa, Cotton, and Sugar. Each financial futures contract is considered to be its own Sector. As a result, there are eight financial Sectors in the Original Benchmark: The AUD, GBP, CAD, EUR, JPY, CHF, 10-year U.S. Treasury note and 30-year U.S. Treasury bond.

Under the New Benchmark, there are no Sectors, but rather each of the 24 Components is treated separately for weighting and long, short or flat position determinations. The twenty Components with the lowest 36-month rolling volatility are included. All Components may be long, short or flat, except for Energy futures (*i.e.*, light crude oil, natural gas, Gasoline and heating oil), which are held either long or flat.

(2) Weighting Methodology

Within the Original Benchmark, Components may be positioned as long or short, except that the Energy Sector and its Components may never be positioned short. The Original Benchmark's methodology provides that, due to significant levels of continuous consumption, limited reserves and other factors, the Energy Sector can only be long or flat (*i.e.*, no exposure).

At the beginning of each calendar year and month, the Original Benchmark is weighted evenly (*i.e.*, 50/50) between commodity futures contracts and

[6] The Prior Releases identified The Bank of New York Mellon as the administrator, custodian and transfer agent for the Fund and ALPS Distributors, Inc. as the distributor for the Fund.

[7] The Trust is registered under the 1940 Act. The Trust intends to file a prospectus supplement with the Commission or a post-effective amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333–132380 and 811–21864) (the "Registration Statement"), to reflect the changes in this proposed rule change upon effectiveness of such proposed rule change. The descriptions of the operation of the Trust and the Fund will be reflected in any such filing. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812–13458) ("Exemptive Order"). Investments by the Fund will comply with the conditions in the Exemptive Order. Share [sic] of the Fund are currently listed and traded on the Exchange in compliance with all original and continued listing standards of the Exchange and requirements of the Prior Releases.

[8] The changes described herein will be effected contingent upon filing of a prospectus supplement or upon effectiveness of the Trust's most recent post-effective amendment to its Registration Statement. *See* note 7, *supra*. The Adviser represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

financial futures contracts. If the Energy Sector is flat, financial futures represent approximately 61.5% of the weight of the original Benchmark and commodity futures represent approximately 38.5% of weighting of the Original Benchmark. When Energy is long, financial futures and commodity futures each represent 50% of the weight of the Original Benchmark.

If the Energy Sector is flat then the weighting of the other Sectors and Components within the Benchmark is increased on a pro-rata basis.[9] As a result, at the beginning of each calendar year and month, if Energy is flat, financial futures will represent approximately 61.5% of the weight of the Original Benchmark and commodities will represent approximately 38.5% of the weight of the Original Benchmark.

At the beginning of each calendar year and month, each Component and Sector within the Original Benchmark also has a "Base Weight," depending on whether the Energy Sector is long or flat. If the Energy Sector is flat, then the Base Weight of the other Sectors and Components within the Original Benchmark is increased on a pro-rata basis. Commodity Sector weights are based on, but not exactly proportional to, historical world production levels. Commodity Sectors that have higher historical production levels are weighted higher in the Original Benchmark. Weightings of the financial futures Sectors are based on, but not directly proportional to, historical gross domestic product ("GDP"). Larger economic regions (*i.e.,* Europe as measured by the Euro) should get a higher weighting than smaller regions (*i.e.,* Australia as measured by AUD).[10]

Under the New Benchmark, the 20 Components with the lowest realized 36 month rolling volatility will be included.[11] If Energy futures are flat, then Energy assets will be excluded. The remaining assets will be weighted equally prior to the "Composite Momentum Signal" (described below) being applied.

The New Benchmark determines a Composite Momentum Signal for each asset, based on the 3-month, 6-month, and 12-month returns (each, a "Signal") for the asset, based on its rolling schedule. If the return is positive, the New Benchmark will assign positive one (+1) to it; if the return is negative, the New Benchmark will assign a negative one (−1) to it. The three Signals are aggregated by the New Benchmark, and if all signals are in the same direction, the Fund will invest the assigned weight. Otherwise, the Fund will invest two-thirds of the assigned weight. The direction of the trade (*i.e.,* long or short) will be based on the direction of the majority of the Signals.[12]

(3) Rebalancing

The weight of each Component and Sector in the Original Benchmark changes throughout each month based upon performance. At the end of each month, each Sector is reset back to its applicable Base Weight depending on whether the Energy Sector is long or flat. Within Sectors that have multiple Components, the weight of each Component relative to the others is allowed to fluctuate throughout the year and Component weights are reset back to their respective Base Weights only at year-end.

Under the New Benchmark, each month, the 20 assets with the lowest 36-month volatility on a rolling basis are included. If an asset within the Energy group is short, the value of that asset is flat and allocated proportionately to the included assets. Weighing is then determined as discussed above.

(4) Long/Short/Flat Determination

As stated in the Prior Releases, in order to capture both rising and falling price trends, at the end of each month each Sector in the Original Benchmark (other than the Energy Sector) is positioned as either "long" or "short." This determination is made using an algorithm that compares the Sector's monthly return to the Sector's historic weighted moving average returns. If the Sector's returns are above its moving average returns, the Sector is positioned as "long" throughout the following month. If the Sector's returns are below its moving average, the Sector is positioned as "short" throughout the following month (with the exception of the Energy Sector, which would be positioned flat). All Components within a Sector are held in the same direction. The value of a Sector and the value of the Original Benchmark should increase if a long position increases in value or if a short position decreases in value. For example, if a Sector is long in the Original Benchmark and the value of its Components goes up intra-month, the return of the Sector (and therefore the Original Benchmark) should increase. If a Sector is short in the Original Benchmark, and the value of its Components goes down intra-month, the return of the Sector (and therefore the Original Benchmark) should increase.

Under the New Benchmark, the Fund will be rebalanced each month based on the Composite Momentum Signal framework described above. Just as under the Original Benchmark, the New Benchmark should increase if a long position increases in value or if a short position decreases in value. For example, if a Component is long in the New Benchmark and its value goes up intra-month, the return of the Component (and therefore the New Benchmark) should increase. If a Component is short in the New

[9] To arrive at the Sector weightings when Energy is flat, divide the Sector Base Weight by one minus the Energy Sector Base Weight (*i.e.,* Sector Base Weight/1—0.1875)).

[10] The Adviser represents that, as of March 31, 2016, the Fund's investment in the Components of the Original Benchmark are as follows: (i) Silver, corn, wheat and coffee were not selected into the portfolio for April (Nominal exposure, 0.00%) due to their high realized volatilities, and (ii) although selected into the portfolio, crude oil, natural gas, heating oil and Gasoline were not given any weight (nominal exposure, 0.00%) as short positions in those commodities were not allowed. The selected commodities were given equal nominal weight (6.25%): Copper, soybeans, cocoa, lean hogs, CHF and CAD were not fully invested due to lack of total conviction based on the Composite Momentum Signal methodology. Only ⅔ of the nominal exposure was invested into their respective futures contract (effective weight: 4.17%). Gold, sugar, cotton, live cattle, EUR, JPY, GBP, AUD, 30-year Treasury bond and 10-year Treasury note were fully invested (effective weight: 6.25%).

[11] The Adviser represents that the commodity futures contracts included in the New Benchmark (and therefore anticipated to be included in the Fund) are heavily traded and are based on some of the world's most liquid and actively-traded commodities. According to the Adviser, as of January 1, 2016, the 3-month average daily trading volume ("ADTV") of the commodity futures contracts representing Components in the New Benchmark were as follows: Crude oil: $20,402,707,680; natural gas: $3,613,649,760); heating oil: $2,489,853,660; Gasoline: $3,367,039,200; copper: $434,060,000; sugar: $707,097,600; cotton: $285,940,000; wheat: $1,085,637,500; corn: $3,619,192,500; soybeans: $3,826,910,000; gold: $14,866,492,080; silver: $3,122,181,600; cocoa: $429,350,900; coffee: $452,838,750; live cattle: $1,786,550,000; and lean hogs: $437,824,000.

The listed financial futures contracts included in the New Benchmark (and therefore anticipated to be included in the Fund) are heavily traded and represent six of the world's most liquid and actively-traded currencies (as well as the U.S. dollar through futures on 30-year Treasury bonds and 10-year Treasury notes). According to the Adviser, as of January 1, 2016, the 3-month ADTV of the financial futures contracts representing Components in the New Benchmark were as follows: EUR: $33,014,630,700; AUD: $7,428,685,500; CAD: $6,686,911,000; GBP: $8,644,461,188; CHF: $9,904,476,250; 10-year Treasury note: $148,389,752,565; and 30-year Treasury bond: $38,918,903,603.

[12] The current weighting of the New Benchmark as of January 1, 2016, is as follows. Silver, corn, wheat and coffee were not selected due to high volatility. The Energy group is flat as Signals indicate a short position. The weight of the Energy group is therefore proportionately assigned to the included assets. Each of copper, gold, soybeans, sugar, cotton, cocoa, live cattle, lean hogs, EUR, JPY, GBP, CHF, AUD, CAD, 30-year Treasury bond, and 10-year Treasury note futures were therefore weighted at 6.25%.

Benchmark, and its value goes down intra-month, the return of the Component (and therefore the New Benchmark) should increase.[13]

The Adviser represents that the Sub-Adviser will continue to invest the Fund in the same assets as are contained in the Prior Releases and will remain subject to, and invest the Fund assets, in accordance [sic] all of the other requirements and limitations identified in the Prior Releases. As a condition to continued listing and trading Shares of the Fund on the Exchange, the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Releases are unchanged.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[14] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Adviser is changing the representation that it will seek investment returns that correspond to the Original Benchmark to that it will seek investment returns that correspond to the New Benchmark.

The Adviser represents that there is no change to the Fund's investment objective or to the securities or other assets identified in the Prior Releases that the Fund utilizes in seeking to achieve its investment objective. The Fund's use of such securities and other assets will remain subject to all requirements and applicable limitations identified in the Prior Releases. As a condition to the continued listing and trading of the Shares on the Exchange, the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Adviser represents that the allocations of the Fund's portfolio will remain consistent with the allocation limitations discussed in the Prior Releases, and that the Fund may invest in the same instruments as are contained in the Original Benchmark, as discussed in the Prior Release. However, the Adviser now represents that the Fund will use portfolio management strategies in seeking to achieve its investment objective in a manner that allocates the Fund's investments in those same instruments in a manner to correspond to the New Benchmark, rather than the Original Benchmark.

All statements and representations made in this filing and the Prior Releases regarding (a) the description of the Fund's portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The Adviser has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[15] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Rule 8.600. The proposed rule change will permit the Fund to continue to operate in a manner similar to other Managed Fund Shares that invest primarily in futures contracts, and will permit continued listing on the Exchange for the Fund after it begins to utilize the quantitative, rules-based strategy designed to seek performance that corresponds to the New Benchmark, which will enhance competition among issues Managed Fund Shares currently trading on the Exchange. Except for the changes noted above, all other representations made in the Prior Releases are unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The proposed rule change will permit the continued listing on the Exchange of the Fund after it begins to utilize the quantitative, rules-based strategy designed to correspond to the New Benchmark, which will enhance competition among issues of Managed Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

[13] Because the New Benchmark does not classify Components into Sectors, the above explanation of the impact of changes in the value of long or short assets in the New Benchmark is discussed with respect to Components, rather than with respect to Sectors.

[14] 15 U.S.C. 78f(b)(5).

[15] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust), *available at: http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf.* In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[18] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–83. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–83 and should be submitted on or before June 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13212 Filed 6–3–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77947; File No. SR–NYSEARCA–2016–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing the Quoting and Trading Provisions of the Plan To Implement a Tick Size Pilot Program Submitted to the Commission Pursuant to Rule 608 of Regulation NMS Under the Act

May 31, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 20, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS[4] under the Act (the "Plan"). The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)–(e), which also implemented the quoting and trading provisions of the Plan.[5] Therefore, the Exchange has designated this proposal as "non-controversial" and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6] The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish rules to require its ETP Holders[7] to comply with the requirements of the Plan to Implement a Tick Size Pilot Program (the "Plan"),[8] which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two year pilot to begin on October 3, 2016.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.608.

[5] *See*, Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR–NYSE–2015–46), as amended by Partial Amendments No. 1 and No. 2 to the Quoting & Trading Rules Proposal. *See*, Securities Exchange Act Release No. 77703 (April 25, 2016), 81 FR 25725 (April 29, 2016) (SR–NYSE–2015–46).

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] The term ETP Holder is defined in NYSE Arca Equities Rule 1.1(n) to mean a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. An ETP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of NYSE Arca Equities, and by all applicable rules and regulations of the Commission.

The term ETP is defined in NYSE Arca Equities Rule 1.1(m) to mean an equity trading permit issued by NYSE Arca Equities for effecting approved securities transactions on NYSE Arca Equities' trading facilities.

[8] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) ("Tick Plan Approval Order"). *See*, also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657), 80 FR 70284 (File No. 4–657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, the Exchange and NYSE MKT LLC (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[9] and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.[10] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[11] The Plan[12] was published for comment in the **Federal Register** on November 7, 2014,[13] and approved by the Commission, as modified, on May 6, 2015.[14]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its ETP Holders, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[15] As described more fully below, the proposed rules would require ETP Holders to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Pilot Program will consist of a control group of approximately 1,400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[16] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[17] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[18] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[19] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS[20] will apply to the Trade-at requirement.

The Tick Pilot Program also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Tick Pilot Program will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[21]

Proposed NYSE Arca Equities Rule 7.46 ("Rule 7.46")

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[22] Accordingly, the Exchange is proposing new Rule 7.46 to require its ETP Holders to comply with the quoting and trading provisions of the Plan. The proposed Rule is also designed to ensure the Exchange's compliance with the Plan.

Proposed paragraph (a)(1) of new Rule 7.46 would establish the following defined terms:

- "Plan" means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act;
- "Pilot Test Groups" means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- "Retail Investor Order" would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.[23]

[9] 15 U.S.C. 78k–1.

[10] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[11] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[12] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[13] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[14] *See* Tick Plan Approval Order, *supra* note 8. *See*, also, Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

[15] The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

[16] See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[17] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[18] *See* Section VI(C) of the Plan.

[19] *See* Section VI(D) of the Plan.

[20] 17 CFR 242.611.

[21] *See* Section VII of the Plan.

[22] The Exchange was also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. *See*, Securities Exchange Act Release No. 77484 (March 31, 2016), 81 FR 20024 (April 6, 2016) (SR–NYSEArca–2016–52).

[23] This definition is the approved definition for "Retail Investor Order" as contemplated by the Plan. It is also the same definition as given to "Retail Orders" pursuant to the approved rules of other national securities exchanges. *See*, NYSE Arca Equities Rule 7.44(a)(3). *See*, also NYSE MKT Rule 107C(a)(3), NYSE Rule 107C(a)(3), BATS Y-Exchange, Inc. Rule 11.24(a)(2) and NASDAQ Stock Market LLC Rule 4780(a)(2). The Retail Investor

• Trade-at Intermarket Sweep Order" [24] would mean a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

• Paragraph (a)(1)(E) would provide that all capitalized terms not otherwise defined in this rule shall have the meanings set forth in the Plan, Regulation NMS under the Act, or Exchange rules, as applicable.

Proposed Paragraph (a)(2) would state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require ETP Holders to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its ETP Holders with the provisions of the Plan, as required pursuant to Section II(B) of the Plan.

In addition, Paragraph (a)(4) would provide that Exchange systems would not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.[25]

The Exchange also proposes to add Rule 7.46(a)(5) to provide for the treatment of Pilot Securities that drop below a $1.00 value during the Pilot Period.[26] The Exchange proposes that if the price of a Pilot Security drops below $1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below that necessitate ETP Holders to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the Pilot Security had not dropped below $1.00. However, if the Closing Price of a Pilot Security on any given business day is below $1.00, such Pilot Security would be moved out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which are enumerated in Rule 7.46(b).

The Exchange proposes Rules 7.46(c)–(e), which would require ETP Holders to comply with the specific quoting and trading obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed Rule 7.46(c) would provide that no ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer ("NBBO") or Best Protected Bid and Best Protect Offer ("PBBO") and orders entered in the Exchange's Retail Liquidity Program as Retail Price Improvement Orders ("Retail Price Improvement Order") [27] may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by NYSE Arca Equities Rule 7.6.[28]

With regard to Pilot Securities in Test Group Two, proposed Rule 7.46(d)(1) would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 7.46(d)(2) would provide that, absent one of the listed exceptions in proposed Rule 7.46(d)(3) enumerated below, no ETP Holder may execute orders in any Pilot Security in Test Group Two in

Order definition includes any order originating from a natural person and is not limited to orders submitted to the Exchange under the Exchange's retail liquidity program rule (NYSE Arca Equities Rule 7.44). Therefore, any ETP Holder that operates a Trading Center may execute against a Retail Investor Order otherwise than on an exchange to satisfy the retail investor order exception proposed in Rule 7.46.

[24] The Plan defines a Trade-at Intermarket Sweep Order ("ISO") as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs. *See* Plan, Section I(MM). Since the Plan allows (i) an order that is identified as an ISO to be executed at the price of a Protected Quotation (*see*, Plan, Section VI(D)(8) and proposed Rule 7.46(a)(e)(4)(C)(ix)) and (ii) an order to execute at the price of a Protected Quotation that "is executed by a trading center that simultaneously routed Trade-at ISO to execute against the full displayed size of the Protected Quotation that was trade at" (*see*, Plan, Section VI(D)(9) and proposed Rule 7.46(a)(e)(4)(C)(x)), the Exchange proposes to clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 7.46(a)(1), a comprehensive definition of "Trade-at ISO." As set forth in the Plan and as noted above, the definition of a Trade-at ISO used in the Plan does not distinguish ISOs that are compliant with Rule 611 or Regulation NMS from ISOs that are compliant with Trade-at. The Exchange therefore proposes the separate definition of Trade-at ISO contained in proposed Rule 7.46(a). The Exchange believes that this proposed definition will further clarify to recipients of ISOs in Test Group Three securities whether the ISO satisfies the requirements of Rule 611 of Regulation NMS or Trade-at.

[25] The Exchange is still evaluating its internal policies and procedures to ensure compliance with the Plan, and plans to separately propose rules that would address violations of the Plan.

[26] New York Stock Exchange LLC, on behalf of the Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. *See* letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 (the "October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 (the "February Exemption Request," and together with the October Exemption Request, the "Exemption Request Letters"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted New York Stock Exchange LLC a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the Exemption Request Letters and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Sherry Sandler, Associate General Counsel, New York Stock Exchange LLC, dated April 25, 2016 (the "Exemption Letter"). The Exchange is seeking the same exemptions as requested in the Exemption Request Letters, including without limitation, an exemption relating to proposed Rule 7.46(a)(5).

[27] A Retail Price Improvement Order consists of non-displayed interest in NYSE Arca, Inc.-listed securities that is priced better than the Best Protected Bid or Best Protected Offer, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. *See* NYSE Arca Equities Rule 7.44(a)(4).

[28] NYSE Arca Equities Rule 7.6 describes the minimum price variation for quoting and entry of orders in equity securities admitted to dealings on the Exchange.

price increments other than $0.05. The $0.05 trading increment would apply to all trades, including Brokered Cross Trades.

Paragraph (d)(3) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, ETP Holders trading Pilot Securities in Test Group Two would be allowed to trade in increments less than $0.05 under the following circumstances:

(A) Trading may occur at the midpoint between the NBBO or PBBO;

(B) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the Best Protected Bid or the Best Protected Offer;

(C) Negotiated Trades may trade in increments less than $0.05; and

(D) Execution of a customer order to comply with NYSE Arca Equities Rule 5320 [29] following the execution of a proprietary trade by the ETP Holder at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.[30]

Paragraph (e)(1)–(e)(3) would set forth the requirements for Pilot Securities in Test Group Three. ETP Holders quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Test Group Two Pilot Securities. In addition, proposed Paragraph (e)(4) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the "Trade-at Prohibition." [31] Paragraph (e)(4)(B) would provide that, absent one of the listed exceptions in proposed Rule 7.46(e)(4)(C) enumerated below, no ETP Holder may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 7.46(e)(4)(C) would allow ETP Holders to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(i) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,[32] of a Trading Center within an ETP Holder that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received,[33] but only up to the full displayed size of that independent trading unit's previously displayed quote; [34]

(ii) The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within an ETP Holder that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal [35]) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent unit's previously displayed quote; [36]

(iii) The order is of Block Size [37] at the time of origin and may not be:

A. an aggregation of non-block orders;

B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or

C. executed on multiple Trading Centers; [38]

[29] NYSE Arca Equities Rule 5320 is the Exchange's Prohibition Against Trading Ahead of Customer Orders rule and states:

(a) Except as provided herein, an ETP Holder that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) An ETP Holder must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and NASD Rule 2320. An ETP Holder also must ensure that this methodology is consistently applied.

[30] The Exchange proposes to add this exemption to permit ETP Holders to fill a customer order in a Pilot Security at a non-nickel increment to comply with NYSE Arca Equities Rule 5320 under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the ETP Holder at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to NYSE Arca Equities Rule 5320, where the triggering proprietary trade was permissible pursuant to an exception under the Plan. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See*, the Exemption Letter, supra note 26. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters. The Exchange believes such an exception best facilitates the ability of ETP Holders to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

[31] Proposed Rule 7.46(e)(4)(A) would define the "Trade-at Prohibition" to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

[32] The Exchange is proposing that, for proposed Rules 7.46(e)(4)(C)(i) and (ii), a Trading Center operated by a broker-dealer would mean an independent trading unit, as defined under Rule 200(f) of Regulation SHO, within such broker-dealer. *See*, 17 CFR 242.200.

Independent trading unit aggregation is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, a Trading Center cannot rely on quotations displayed by that broker dealer from a different independent trading unit. As an example, an agency desk of a broker-dealer cannot rely on the quotation of a proprietary desk in a separate independent trading unit at that same broker-dealer.

[33] The Exchange is proposing to adopt this limitation to ensure that a Trading Center does not display a quotation after the time of order receipt solely for the purpose of trading at the price of a protected quotation without routing to that protected quotation.

[34] This proposed exception to Trade-at would allow a Trading Center to execute an order at the Protected Quotation in the same capacity in which it has displayed a quotation at a price equal to the Protected Quotation and up to the displayed size of such displayed quotation.

[35] As described above, proposed Rule 7.46(e)(4)(C)(i) would establish the circumstances in which a Trading Center displaying an order as riskless principal would be permitted to Trade-at the Protected Quotation. Accordingly, the Exchange proposes that proposed Rule 7.46(e)(4)(C)(ii) would exclude such circumstances.

[36] The display exceptions to Trade-at set forth in proposed Rules 7.46(e)(4)(C)(i) and (ii) would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that matches orders in the over-the-counter market shall be deemed to have "executed" such orders as a Trading Center for purposes of proposed Rule 7.46. Accordingly, if a broker-dealer is not displaying a quotation at a price equal to the Protected Quotation, it could not submit matched trades to an alternative trading center ("ATS") that was displaying on an agency basis the quotation of another ATS subscriber. However, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the protected bid, could internalize a customer sell order up to its displayed size. The display exceptions would not permit a non-displayed Trading Center to submit matched trades to an ATS that was displaying on an agency basis the quotation of another ATS subscriber and confirmed [sic] that a broker-dealer would not be permitted to trade on the basis of interest that it is not responsible for displaying.

[37] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[38] Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the Trade-at exemption provided under proposed Rule 7.46(e)(4)(C)(iii), unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan (*see* footnote 36). For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would only be able to execute 3,000 shares and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve. The same analysis would hold true at the next price point, if the size of the incoming order

(iv) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(v) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(vi) The order is executed as part of a transaction that was not a "regular way" contract;

(vii) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

(viii) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;

(ix) The order is identified as a Trade-at Intermarket Sweep Order; [39]

(x) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at; [40]

(xi) The order is executed as part of a Negotiated Trade;

(xii) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

(xiii) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

A. The stopped order was for the account of a customer;

B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security in Test Group Three at the time of execution, as long as such order is priced at an acceptable increment; [41]

(xiv) The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

(xv) The order is to correct a bona fide error, which is recorded by the Trading Center in its error account.[42] A bond fide error is defined as:

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of

would exceed all available shares at the first price, and the remaining shares to be executed would be 5,000 shares or more.

[39] In connection with the definition of a Trade-at ISO proposed in Rule 7.46(a)(1)(D), this exception refers to the ISO that is received by a Trading Center.

The Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs to clarify that an ISO that is received by a Trading Center (and which could form the basis of an execution at the price of a Protected Quotation pursuant to Section VI(D)(8) of the Plan), is identified as a Trade-at ISO. Depending on whether Rule 611 of Regulation NMS or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced Protected Quotations, so that the recipient of that ISO may trade through the price of the Protected Quotation (Rule 611 of Regulation NMS), or it could mean that the sender of the ISO has swept Protected Quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the Protected Quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 of Regulation NMS and Trade-at, the Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, *e.g.*, the recipient of that ISO could permissibly trade at the price of the Protected Quotation.

[40] In connection with the definition of a Trade-at ISO proposed in Rule 7.46(a)(1)(D), this exception refers to the Trading Center that routed the ISO.

[41] The stopped order exemption in Rule 611 of Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution" (*see*, 17 CFR 242.611(b)(9)). The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution" (*see*, Plan, Section VI(D)(12)).

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid is $10.00 and another protected quote is at $9.95. Under Rule 611 of Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the National Best Bid. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Rule 611 of Regulation NMS exception than under the Trade-at exception in the Plan, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception in the Plan to ensure that the application of this exception would produce a consistent result under both Regulation NMS and the Plan. Therefore, the Exchange proposes in this proposed Rule 7.46(e)(4)(C)(xiii) to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See*, the Exemption Letter, supra note 26. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

[42] The exceptions to the Trade-at requirement set forth in the Plan and in the Exchange's proposed Rule 7.46(e)(4)(C) are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611 of Regulation NMS, including exceptions for an order that is executed as part of a transaction that was not a "regular way" contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center (*see*, 17 CFR 242.611(b)(2) and (b)(3)). Following the adoption of Rule 611 of Regulation NMS and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 of Regulation NMS for certain error correction transactions. *See*, Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007); Securities Exchange Act Release No. 55883 (June 8, 2007), 72 FR 32927 (June 14, 2007). The Exchange has determined that it is appropriate to incorporate this additional exception to the Trade-at Prohibition, as this exception is equally applicable in the Trade-at context.

Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at Prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of Regulation NMS. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See*, the Exemption Letter, supra note 26. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

As with the corresponding exception under Rule 611 of Regulation NMS, the bona fide error would have to be evidenced by objective facts and circumstances, the Trading Center would have to maintain documentation of such facts and circumstances and record the transaction in its error account. To avail itself of the exemption, the Trading Center would have to establish, maintain, and enforce written policies and procedures reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center would have to regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures. *See*, Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

Finally, Proposed Rule 7.46(e)(4)(D) would prevent ETP Holders from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[43] in general, and furthers the objectives of Section 6(b)(5) of the Act,[44] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its ETP Holders would be in compliance with a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.[45] Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its ETP Holders with the provisions of the Plan would help promote liquidity in the marketplace and perfect the mechanism of a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [46] and Rule 19b–4(f)(6) thereunder.[47] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [48] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[49] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [50] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[43] 15 U.S.C. 78f(b).

[44] 15 U.S.C. 78f(b)(5).

[45] 15 U.S.C. 78k–1.

[46] 15 U.S.C. 78s(b)(3)(A)(iii).

[47] 17 CFR 240.19b–4(f)(6).

[48] 17 CFR 240.19b–4(f)(6).

[49] 17 CFR 240.19b–4(f)(6)(iii).

[50] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR–NYSEARCA–2016–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–76 and should be submitted on or before June 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13208 Filed 6–3–16; 8:45 am]

BILLING CODE 8011–01–P

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77951; File No. SR–NYSEMKT–2016–49]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending the Definition of "Block" for Purposes of Rule 72(d)—Equities and the Size of a Proposed Cross Transaction Eligible for the Cross Function in Rule 76—Equities

May 31, 2016.

On April 22, 2016, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to pre-opening indications and opening procedures. The proposed rule change was published for comment in the **Federal Register** on May 3, 2016.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 17, 2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates August 1, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEMKT–2016–49).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13211 Filed 6–3–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77734 (Apr. 27, 2016), 81 FR 26598.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77949; File No. SR–NYSEMKT–2016–56]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing the Quoting and Trading Provisions of the Plan To Implement a Tick Size Pilot Program Submitted to the Commission Pursuant to Rule 608 of Regulation NMS Under the Act

May 31, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 20, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement the quoting and trading provisions of the Plan to Implement a Tick Size Pilot Program submitted to the Commission pursuant to Rule 608 of Regulation NMS[4] under the Act (the "Plan"). The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by New York Stock Exchange LLC to adopt NYSE Rules 67(a) and 67(c)–(e), which also implemented the quoting and trading provisions of the Plan.[5] Therefore, the Exchange has designated this proposal as "non-controversial" and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[6] The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.608.

[5] *See*, Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015) (SR–NYSE–2015–46), as amended by Partial Amendments No. 1 and No. 2 to the Quoting & Trading Rules Proposal. *See*, Securities Exchange Act Release No. 77703 (April 25, 2016), 81 FR 25725 (April 29, 2016) (SR–NYSE–2015–46).

[6] 17 CFR 240.19b–4(f)(6)(iii).

and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish rules to require its member organizations to comply with the requirements of the Plan to Implement a Tick Size Pilot Program (the "Plan"),[7] which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two year pilot to begin on October 3, 2016.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of Bats BZX Exchange, Inc. (f/k/a BATS Exchange, Inc.), Bats BYX Exchange, Inc. (f/k/a BATS Y-Exchange, Inc.), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, the Exchange and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[8] and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.[9] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the "June 2014 Order").[10] The Plan[11] was published for comment in the **Federal Register** on November 7, 2014,[12] and approved by the Commission, as modified, on May 6, 2015.[13]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to assess whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[14] As described more fully below, the proposed rules would require member organizations to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Pilot Program will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[15] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[16] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[17] Pilot Securities in the third test group ("Test Group Three") will be subject to the same terms as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a person not displaying at a price of a Trading Center's "Best Protected Bid or "Best Protected Offer," unless an enumerated exception applies.[18] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that closely resemble those under Rule 611 of Regulation NMS[19] will apply to the Trade-at requirement.

The Tick Pilot Program also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Tick Pilot Program will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[20]

Proposed Rule 67—Equities

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[21]

[7] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) ("Tick Plan Approval Order"). *See*, also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4–657), 80 FR 70284 (File No. 4–657) (November 13, 2015), which extended the pilot period commencement date from May 6, 2015 to October 3, 2016.

[8] 15 U.S.C. 78k–1.

[9] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[10] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[11] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[12] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[13] *See* Tick Plan Approval Order, *supra* note 7. *See*, also, Securities Exchange Act Release No. 77277 (March 3, 2016), 81 FR 12162 (March 8, 2016) (File No. 4–657), which amended the Plan to add National Stock Exchange, Inc. as a Participant.

[14] The Operating Committee is required under Section III(C)(2) of the Plan to "monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate." The Operating Committee is also required to "establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan."

[15] See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[16] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[17] *See* Section VI(C) of the Plan.

[18] *See* Section VI(D) of the Plan.

[19] 17 CFR 242.611.

[20] *See* Section VII of the Plan.

[21] The Exchange was also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. *See*, Securities Exchange Act Release No. 77478 (March 30, 2016), 81 FR 19665 (April 5, 2016) (SR–NYSEMKT–2016–40.

Accordingly, the Exchange is proposing new Rule 67—Equities to require its member organizations to comply with the quoting and trading provisions of the Plan. The proposed Rule is also designed to ensure the Exchange's compliance with the Plan.

Proposed paragraph (a)(1) of new Rule 67—Equities would establish the following defined terms:

- "Plan" means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act;
- "Pilot Test Groups" means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- "Retail Investor Order" would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail member organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.[22]
- Trade-at Intermarket Sweep Order"[23] would mean a limit order for a Pilot Security that meets the following requirements:

(i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and

(ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders.

- Paragraph (a)(1)(E) would provide that all capitalized terms not otherwise defined in this rule shall have the meanings set forth in the Plan, Regulation NMS under the Act, or Exchange rules, as applicable.

Proposed Paragraph (a)(2) would state that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require member organizations to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its member organizations with the provisions of the Plan, as required pursuant to Section II(B) of the Plan.

In addition, Paragraph (a)(4) would provide that Exchange systems would not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.[24]

The Exchange also proposes to add Rule 67(a)(5)—Equities to provide for the treatment of Pilot Securities that drop below a $1.00 value during the Pilot Period.[25] The Exchange proposes that if the price of a Pilot Security drops below $1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below that necessitate member organizations to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the Pilot Security had not dropped below $1.00. However, if the Closing Price of a Pilot Security on any given business day is below $1.00, such Pilot Security would be moved out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which are enumerated in Rule 67(b)—Equities.

The Exchange proposes Rules 67(c)–(e)—Equities, which would require member organizations to comply with the specific quoting and trading

[22] This definition is the approved definition for "Retail Investor Order" as contemplated by the Plan. It is also the same definition as given to "Retail Orders" pursuant to the approved rules of other national securities exchanges. *See* Rule 107C(a)(3)—Equities. *See* also NYSE Rule 107C(a)(3), NYSE Arca, Inc. Rule 7.44(a)(3), BATS Y-Exchange, Inc. Rule 11.24(a)(2) and NASDAQ Stock Market LLC Rule 4780(a)(2). The Retail Investor Order definition includes any order originating from a natural person and is not limited to orders submitted to the Exchange under the Exchange's retail liquidity program rule (Rule 107C—Equities). Therefore, any member organization that operates a Trading Center may execute against a Retail Investor Order otherwise than on an exchange to satisfy the retail investor order exception proposed in Rule 67—Equities.

[23] The Plan defines a Trade-at Intermarket Sweep Order ("ISO") as a limit order for a Pilot Security that, when routed to a Trading Center, is identified as an ISO, and simultaneous with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid (in the case of a limit order to sell) or the full displayed size of any protected offer (in the case of a limit order to buy) for the Pilot Security with a price that is equal to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs. *See* Plan, Section II(MM). Since the Plan allows (i) an order that is identified as an ISO to be executed at the price of a Protected Quotation (*see*, Plan, Section VI(D)(8) and proposed Rule 67(a)(e)(4)(C)(ix)—Equities) and (ii) an order to execute at the price of a Protected Quotation that "is executed by a trading center that simultaneously routed Trade-at ISO to execute against the full displayed size of the Protected Quotation that was trade at" (*see*, Plan, Section VI(D)(9) and proposed Rule 67(a)(e)(4)(C)(x)—Equities), the Exchange proposes to clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 67(a)(1)—Equities, a comprehensive definition of "Trade-at ISO." As set forth in the Plan and as noted above, the definition of a Trade-at ISO used in the Plan does not distinguish ISOs that are compliant with Rule 611 or Regulation NMS from ISOs that are compliant with Trade-at. The Exchange therefore proposes the separate definition of Trade-at ISO contained in proposed Rule 67(a)—Equities. The Exchange believes that this proposed definition will further clarify to recipients of ISOs in Test Group Three securities whether the ISO satisfies the requirements of Rule 611 of Regulation NMS or Trade-at.

[24] The Exchange is still evaluating its internal policies and procedures to ensure compliance with the Plan, and plans to separately propose rules that would address violations of the Plan.

[25] New York Stock Exchange LLC, on behalf of the Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. *See* letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 (the "October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 (the "February Exemption Request," and together with the October Exemption Request, the "Exemption Request Letters"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted New York Stock Exchange LLC a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the Exemption Request Letters and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Sherry Sandler, Associate General Counsel, New York Stock Exchange LLC, dated April 25, 2016 (the "Exemption Letter"). The Exchange is seeking the same exemptions as requested in the Exemption Request Letters, including without limitation, an exemption relating to proposed Rule 67(a)(5)—Equities.

obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed Rule 67(c)—Equities would provide that no member organization may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer ("NBBO") or Best Protected Bid and Best Protect Offer ("PBBO") and orders entered in the Exchange's Retail Liquidity Program as Retail Price Improvement Orders ("Retail Price Improvement Order")[26] may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Rule 62.10—Equities.[27]

With regard to Pilot Securities in Test Group Two, proposed Rule 67(d)(1)—Equities would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 67(d)(2)—Equities would provide that, absent one of the listed exceptions in proposed Rule 67(d)(3)—Equities enumerated below, no member organization may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment would apply to all trades, including Brokered Cross Trades.

Paragraph (d)(3) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, member organizations trading Pilot Securities in Test Group Two would be allowed to trade in increments less than $0.05 under the following circumstances:

(A) Trading may occur at the midpoint between the NBBO or PBBO;

(B) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the Best Protected Bid or the Best Protected Offer;

(C) Negotiated Trades may trade in increments less than $0.05; and

(D) Execution of a customer order to comply with Rule 5320—Equities[28] following the execution of a proprietary trade by the member organization at an increment other than $0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.[29]

Paragraph (e)(1)–(e)(3) would set forth the requirements for Pilot Securities in Test Group Three. Member organizations quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Test Group Two Pilot Securities. In addition, proposed Paragraph (e)(4) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the "Trade-at Prohibition."[30] Paragraph (e)(4)(B)—Equities would provide that, absent one of the listed exceptions in proposed Rule 67(e)(4)(C)—Equities enumerated below, no member organization may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 67(e)(4)(C)—Equities would allow member organizations to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(i) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO,[31] of a Trading Center within a member organization that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received,[32] but only up to the full displayed size of that independent trading unit's previously displayed quote;[33]

(ii) The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member organization that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal[34]) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the

[26] A Retail Price Improvement Order consists of non-displayed interest in NYSE MKT-listed securities that is priced better than the Best Protected Bid or Best Protected Offer, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. *See* Rule 107C(a)(4)—Equities.

[27] Rule 62.10—Equities describes the minimum price variation for quoting and entry of orders in equity securities admitted to dealings on the Exchange.

[28] Rule 5320—Equities is the Exchange's Prohibition Against Trading Ahead of Customer Orders rule and states:

(a) Except as provided herein, a member organization that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) A member organization must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and NASD Rule 2320. A member organization also must ensure that this methodology is consistently applied.

[29] The Exchange proposes to add this exemption to permit member organizations to fill a customer order in a Pilot Security at a non-nickel increment to comply with Rule 5320—Equities under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the member organization at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Rule 5320—Equities, where the triggering proprietary trade was permissible pursuant to an exception under the Plan. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See*, the Exemption Letter, supra note 25. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters. The Exchange believes such an exception best facilitates the ability of member organizations to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

[30] Proposed Rule 67(e)(4)(A)—Equities would define the "Trade-at Prohibition" to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

[31] The Exchange is proposing that, for proposed Rules 67(e)(4)(C)(i) and (ii)—Equities, a Trading Center operated by a broker-dealer would mean an independent trading unit, as defined under Rule 200(f) of Regulation SHO, within such broker-dealer. *See*, 17 CFR 242.200.

Independent trading unit aggregation is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, a Trading Center cannot rely on quotations displayed by that broker dealer from a different independent trading unit. As an example, an agency desk of a broker-dealer cannot rely on the quotation of a proprietary desk in a separate independent trading unit at that same broker-dealer.

[32] The Exchange is proposing to adopt this limitation to ensure that a Trading Center does not display a quotation after the time of order receipt solely for the purpose of trading at the price of a protected quotation without routing to that protected quotation.

[33] This proposed exception to Trade-at would allow a Trading Center to execute an order at the Protected Quotation in the same capacity in which it has displayed a quotation at a price equal to the Protected Quotation and up to the displayed size of such displayed quotation.

[34] As described above, proposed Rule 67(e)(4)(C)(i)—Equities would establish the circumstances in which a Trading Center displaying an order as riskless principal would be permitted to Trade-at the Protected Quotation. Accordingly, the Exchange proposes that proposed Rule 67(e)(4)(C)(ii)—Equities would exclude such circumstances.

order was received, but only up to the full displayed size of that independent unit's previously displayed quote;[35]

(iii) The order is of Block Size[36] at the time of origin and may not be:

A. An aggregation of non-block orders;

B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or

C. executed on multiple Trading Centers;[37]

(iv) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(v) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(vi) The order is executed as part of a transaction that was not a "regular way" contract;

(vii) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

(viii) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;

(ix) The order is identified as a Trade-at Intermarket Sweep Order;[38]

(x) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;[39]

(xi) The order is executed as part of a Negotiated Trade;

(xii) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

(xiii) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:

A. The stopped order was for the account of a customer;

B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security in Test Group Three at the time of execution, as long as such order is priced at an acceptable increment;[40]

(xiv) The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

(xv) The order is to correct a bona fide error, which is recorded by the Trading Center in its error account.[41] A bond fide error is defined as:

[35] The display exceptions to Trade-at set forth in proposed Rules 67(e)(4)(C)(i) and (ii)—Equities would not permit a broker-dealer to trade on the basis of interest it is not responsible for displaying. In particular, a broker-dealer that matches orders in the over-the-counter market shall be deemed to have "executed" such orders as a Trading Center for purposes of proposed Rule 67—Equities. Accordingly, if a broker-dealer is not displaying a quotation at a price equal to the Protected Quotation, it could not submit matched trades to an alternative trading center ("ATS") that was displaying on an agency basis the quotation of another ATS subscriber. However, a broker-dealer that is displaying, as principal, via either a processor or an SRO Quotation Feed, a buy order at the protected bid, could internalize a customer sell order up to its displayed size. The display exceptions would not permit a non-displayed Trading Center to submit matched trades to an ATS that was displaying on an agency basis the quotation of another ATS subscriber and confirmed [sic] that a broker-dealer would not be permitted to trade on the basis of interest that it is not responsible for displaying.

[36] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[37] Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the Trade-at exemption provided under proposed Rule 67(e)(4)(C)(iii)—Equities, unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan (*see* footnote 35). For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would only be able to execute 3,000 shares and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve. The same analysis would hold true at the next price point, if the size of the incoming order would exceed all available shares at the first price, and the remaining shares to be executed would be 5,000 shares or more.

[38] In connection with the definition of a Trade-at ISO proposed in Rule 67(a)(1)(D)—Equities, this exception refers to the ISO that is received by a Trading Center.

The Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs to clarify that an ISO that is received by a Trading Center (and which could form the basis of an execution at the price of a Protected Quotation pursuant to Section VI(D)(8) of the Plan), is identified as a Trade-at ISO. Depending on whether Rule 611 of Regulation NMS or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced Protected Quotations, so that the recipient of that ISO may trade through the price of the Protected Quotation (Rule 611 of Regulation NMS), or it could mean that the sender of the ISO has swept Protected Quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the Protected Quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 of Regulation NMS and Trade-at, the Exchange proposed an exemption to the Trade-at Prohibition for Trade-at ISOs so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, *e.g.*, the recipient of that ISO could permissibly trade at the price of the Protected Quotation.

[39] In connection with the definition of a Trade-at ISO proposed in Rule 67(a)(1)(D)—Equities, this exception refers to the Trading Center that routed the ISO.

[40] The stopped order exemption in Rule 611 of Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution" (*see*, 17 CFR 242.611(b)(9)). The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution" (*see*, Plan, Section VI(D)(12)).

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of Regulation NMS and as it is currently proposed for Trade-at, assume the National Best Bid is $10.00 and another protected quote is at $9.95. Under Rule 611 of Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the National Best Bid. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Rule 611 of Regulation NMS exception than under the Trade-at exception in the Plan, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception in the Plan to ensure that the application of this exception would produce a consistent result under both Regulation NMS and the Plan. Therefore, the Exchange proposes in this proposed Rule 67(e)(4)(C)(xiii)—Equities to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the National Best Bid, and for a stopped sell order, is equal to or greater than the National Best Offer, as long as such order is priced at an acceptable increment. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See*, the Exemption Letter, supra note 25. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

[41] The exceptions to the Trade-at requirement set forth in the Plan and in the Exchange's proposed

Continued

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

Finally, Proposed Rule 67(e)(4)(D)—Equities would prevent member organizations from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[42] in general, and furthers the objectives of Section 6(b)(5) of the Act,[43] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its member organizations would be in compliance with a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.[44] Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its member organizations with the provisions of the Plan would help promote liquidity in the marketplace and perfect the mechanism of a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[45] and Rule 19b–4(f)(6) thereunder.[46] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

Rule 67(e)(4)(C)—Equities are, in part, based on the exceptions to the trade-through requirement set forth in Rule 611 of Regulation NMS, including exceptions for an order that is executed as part of a transaction that was not a "regular way" contract, and an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center (*see*, 17 CFR 242.611(b)(2) and (b)(3)). Following the adoption of Rule 611 of Regulation NMS and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 of Regulation NMS for certain error correction transactions. *See*, Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007); Securities Exchange Act Release No. 55883 (June 8, 2007), 72 FR 32927 (June 14, 2007). The Exchange has determined that it is appropriate to incorporate this additional exception to the Trade-at Prohibition, as this exception is equally applicable in the Trade-at context.

Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at Prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of Regulation NMS. The Commission granted New York Stock Exchange LLC an exemption from Rule 608(c) related to this provision. *See*, the Exemption Letter, supra note 25. The Exchange is seeking the same exemptions as requested in the Exemption Request Letters.

As with the corresponding exception under Rule 611 of Regulation NMS, the bona fide error would have to be evidenced by objective facts and circumstances, the Trading Center would have to maintain documentation of such facts and circumstances and record the transaction in its error account. To avail itself of the exemption, the Trading Center would have to establish, maintain, and enforce written policies and procedures reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center would have to regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures. *See*, Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78k–1.

[45] 15 U.S.C. 78s(b)(3)(A)(iii).

[46] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[47] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[48] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[49] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–56 and should be submitted on or before June 27, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13209 Filed 6–3–16; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 240.19b–4(f)(6).

[48] 17 CFR 240.19b–4(f)(6)(iii).

[49] 15 U.S.C. 78s(b)(2)(B).

[50] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14730 and #14731]

Oklahoma Disaster #OK–00103

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 05/26/2016.

Incident: Tornadoes, Severe Storms, Flooding and Straight-line Winds.

Incident Period: 05/09/2016 through 05/13/2016.

Effective Date: 05/26/2016.

Physical Loan Application Deadline Date: 07/25/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 02/27/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Murray.

Contiguous Counties:

Oklahoma: Carter, Garvin, Johnston, Pontotoc.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.250
Homeowners Without Credit Available Elsewhere	1.625
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14730 B and for economic injury is 14731 0.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Number 59008)

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–13174 Filed 6–3–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2016–0025]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2016–0025].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 5, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Waiver of Your Right to Personal Appearance before an Administrative Law Judge—20 CFR 404.948(b)(l)(i) and 416.1448(b)(l)(i)–0960–0284. Applicants for Social Security, Old Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments have the statutory right to appear in person, or through a representative, and present evidence about their claims at a hearing before an administrative law judge (ALJ). If claimants wish to waive this right to appear before an ALJ, they must do so in writing. Form HA–4608 serves as a written waiver for the claimant's right to a personal appearance before an ALJ. The ALJ uses the information we collect on Form HA–4608 to continue processing the case, and makes the completed form a part of the documentary evidence of record by placing it in the official record of the proceedings as an exhibit. Respondents are applicants or claimants for OASDI and SSI, or their representatives, who request to waive their right to appear in person before an ALJ.

Type of Request: Revision of an approved-OMB information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4608	12,000	1	2	400

2. Letter to Custodian of Birth Records/Letter to Custodian of School Records—20 CFR 404.704, 404.716, 416.802, and 422.107—0960–0693. When individuals need help in obtaining evidence of their age in connection with Social Security number (SSN) card applications and claims for benefits, SSA can prepare the SSA–L106, Letter to Custodian of School Records, or SSA–L706, Letter to Custodian of Birth Records. SSA uses the SSA–L706 to determine the existence of primary evidence of age of SSN applicants. SSA uses both letters to verify with the issuing entity, when necessary, the authenticity of the record submitted by the SSN applicant or claimant. The respondents are schools, State and local bureaus of vital statistics, and religious entities.

Type of Request: Revision of an OMB-approved information collection.

SSA–L106

Respondent type	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Private Sector	1,800	1	10	300
State/Local/Tribal Government	1,800	1	10	300
Total	3,600			600

SSA–L706

Respondent type	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Private Sector	1,800	1	10	300
State/Local/Tribal Government	1,800	1	10	300
Total	3,600			600
Grand Total	7,200			1,200

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 6, 2016. Individuals can obtain copies of

the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov*.

Waiver of Supplemental Security Income Payment Continuation—20 CFR 416.1400–416.1422—0960–0783. SSI recipients who wish to discontinue their SSI payments while awaiting a determination on their appeal complete Form SSA–263–U2, Waiver of Supplemental Security Income Payment Continuation, to inform SSA of this decision. SSA collects the information to determine whether the SSI recipient meets the provisions of The Social Security Act regarding waiver of payment continuation and as proof respondents no longer want their payments to continue. Respondents are recipients of SSI payments who wish to discontinue receipt of payment while awaiting a determination on their appeal

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–263–U2	3,000	1	5	250

Dated: May 31, 2016.

Naomi R. Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2016–13202 Filed 6–3–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 9597]

Notice of Public Meeting

The Department of State will conduct an open meeting at 10:00 a.m. on Thursday, July 14, 2016, in room 5Y23–21, U.S. Coast Guard Headquarters, 2703 Martin Luther King, Jr. Ave SE., Washington, DC 20593–7213. The primary purpose of the meeting is to prepare for the third Session of the International Maritime Organization's (IMO) Sub-Committee on Implementation of IMO Instruments (III 3) to be held at the IMO Headquarters, United Kingdom, on July 18–22, 2016.

The agenda items to be considered include:

—Decisions of other IMO bodies;
—Consideration and analysis of reports on alleged inadequacy of port reception facilities;
—Lessons learned and safety issues identified from the analysis of marine safety investigation reports;
—Measures to harmonize port state control (PSC) activities and procedures worldwide;
—Identified issues related to the implementation of IMO instruments from the analysis of PSC data;
—Analysis of consolidated audit summary reports;
—Updated survey guidelines under the Harmonized System of Survey and Certification (HSSC);
—Non-exhaustive list of obligations under the instruments relevant to the IMO Instruments Implementation Code (III Code); and
—Unified interpretation of provisions of IMO safety, security, and environment related conventions.

The public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Mr. Christopher Gagnon, by email at *christopher.j.gagnon@uscg.mil* or by phone at (202) 372–1231, or in writing at 2703 Martin Luther King Jr. Ave. SE. Stop 7213, Washington DC 20593–7509 not later than July 5, 2016. Requests made after July 5, 2016 might not be able to be accommodated, and same day requests will not be accommodated due to the building's security process. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to Coast Guard Headquarters. It is recommended that attendees arrive to the Headquarters building no later than 30 minutes ahead of the scheduled meeting for the security screening process. The Headquarters building is accessible by taxi and public transportation. Parking in the vicinity of the building is extremely limited and not guaranteed. Due to the size of the room and security protocols at Coast Guard Headquarters, members of the public are encouraged to participate via teleconference. The access number for this teleconference line will be posted online at *http://www.uscg.mil/imo/iii/default.asp*. Additional information regarding this and other IMO public meetings may be found at: *www.uscg.mil/imo*.

Dated: May 28, 2016.

Jonathan W. Burby,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2016–13162 Filed 6–3–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9598]

60-Day Notice of Proposed Information Collection: Application for a U.S. Passport: Corrections, Name Change Within 1 Year of Passport Issuance, and Limited Passport Holders

AGENCY: Department of State.

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to August 5, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering "Docket Number: DOS–2016–0022" in the Search field. Then click the "Comment Now" button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov*.

You must include the DS form number, information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L 44132 Mercure

Cir, P.O. Box 1227, Sterling, VA 20166–1227, or at *PPTFormsOfficer@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for a U.S. Passport: Correction, Name Change Within 1 Year of Passport Issuance, And Limited Passport Holders.
- *OMB Control Number:* 1405–0160.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L).
- *Form Number:* DS–5504.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 136,833.
- *Estimated Number of Responses:* 136,833.
- *Average Time per Response:* 40 minutes per response.
- *Total Estimated Burden Time:* 91,222 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Under 22 United States Code (U.S.C.) Section 211a *et seq.* and Executive Order 11295 (August 5, 1966), the Secretary of State issues U.S. passports to U.S. citizens and non-citizen nationals. When the bearer of a valid U.S. passport applies for a new passport with corrected personal data or when the bearer of a limited validity passport applies for a fully-valid replacement passport, the Department must confirm the applicant's identity and eligibility before the Department can issue the new passport to the applicant. Form DS–5504 requests information needed to determine whether the applicant is eligible to receive this service in accordance with the requirements of Title III of the Immigration and Nationality Act (INA) (U.S.C. 1402–1504), the regulations at 22 CFR parts 50 and 51, and other applicable treaties and laws.

Methodology

Passport applicants can either download the DS–5504 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's valid U.S. passport and supporting documents for corrective action.

Additional Information

The Privacy Act statement has been amended to clarify that an applicant's failure to provide his or her Social Security number may result in the denial of an application, consistent with Section 32101 of the Fixing America's Surface Transportation Act (Pub. L. 114–94) which authorizes the Department to deny U.S. passport applications when the applicant failed to include his or her Social Security number. It also makes clear that failure to include one's Social Security number may also subject the applicant to a penalty enforced by the International Revenue Service. These requirements and the underlying legal authorities are further described on page 3 of the instructions titled "Federal Tax Law" which has also been amended to include a reference to Public Law 114–94.

Dated: May 24, 2016.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–13347 Filed 6–3–16; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub-No. 7)]

2015 Tax Information for Use in the Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board is publishing, and providing the public an opportunity to comment on, the 2015 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: Comments are due by July 6, 2016. If any comment opposing AAR's calculation is filed, AAR's reply will be due by July 26, 2016. If no comments are filed by the due date, AAR's calculation of the 2015 weighted average state tax rates will be automatically adopted by the Board, effective July 7, 2016.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site at *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. EP 682 (Sub-No. 7) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe, (202) 245–0376. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007),[1] as further revised in *Simplified Standards for Rail Rate Cases–Taxes in Revenue Shortfall Allocation Method*, EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its "potentially captive traffic" (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (*i.e.*, earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards–Taxes in RSAM*, slip op. at 1. In *Simplified Standards–Taxes in RSAM*, slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB*, 568 F.3d 236 (D.C. Cir. 2009), *and vacated in part on reh'g, CSX Transp., Inc.* v. *STB*, 584 F.3d 1076 (D.C. Cir. 2009).

Board's annual RSAM calculation. *Id.* at 5–6.

In *Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method,* EP 682 (STB served Feb. 26, 2010), the Board adopted rules to require AAR—a national trade association—to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad. *See* 49 CFR 1135.2(a). On May 27, 2016, AAR filed its calculation of the weighted average state tax rates for 2015, listed below for each Class I railroad:

WEIGHTED AVERAGE STATE TAX RATES

[In percent]

Railroad	2015	2014	% Change
BNSF Railway Company	5.271	5.478	−0.207
CSX Transportation, Inc.	5.247	5.398	−0.151
Grand Trunk Corporation	7.767	8.058	−0.291
The Kansas City Southern Railway	5.430	5.746	−0.316
Norfolk Southern Combined	5.501	5.713	−0.212
Soo Line Corporation	8.083	8.092	−0.009
Union Pacific Railroad Company	5.655	5.885	−0.230

Any party wishing to comment on AAR's calculation of the 2015 weighted average state tax rates should file a comment by July 6, 2016. *See* 49 CFR. 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due by July 26, 2016. *Id.* If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 6, 2016, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 7, 2016. *Id.*

Decided: June 1, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2016–13268 Filed 6–3–16; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Tennessee Valley Authority.

ACTION: Notice; correction.

SUMMARY: The Tennessee Valley Authority published a document in the **Federal Register** of May 26, 2016, concerning a proposed information collection that will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). This correction adds additional contact information.

FOR FURTHER INFORMATION CONTACT: Christopher A. Marsalis, (865) 632–2467 or by email at *camarsalis@tva.gov.*

Correction

In the **Federal Register** of May 26, 2016, in FR Doc. 2016–12401, on page 33577, in the first column, correct the "Addresses" caption to read:

ADDRESSES: Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Senior Privacy Program Manager: Christopher A. Marsalis, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5D), Knoxville, Tennessee 37902–1401; telephone (865) 632–2467 or by email at *camarsalis@tva.gov;* or to Joy L. Lloyd, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5A), Knoxville, Tennessee 37902–1401; telephone (865) 632–8370 or by email at *jlloyd@tva.gov;* or to the Agency Clearance Officer: Philip D. Propes, Tennessee Valley Authority, 1101 Market Street (MP 2C), Chattanooga, Tennessee 37402–2801; telephone (423) 751–8593 or email at *pdpropes@tva.gov.*

Dated: May 26, 2016.

Philip D. Propes,

Director, Enterprise Information Security and Policy.

[FR Doc. 2016–13214 Filed 6–3–16; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property at the Ankeny Regional Airport, Ankeny, Iowa.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Ankeny Regional Airport, Ankeny, Iowa, under the provisions of 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before July 6, 2016.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Polk County Aviation Authority, Jeff Wangsness, President, C/O Brick Gentry P.C. 6701 Westown Parkway Suite 100, West Des Moines, IA 50266, 515–274–1450.

FOR FURTHER INFORMATION CONTACT: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 10.42 acres of airport property at the Ankeny Regional Airport (IKV) under the provisions of 49 U.S.C. 47107(h)(2). On March 16, 2016, the Airport Authority at the Ankeny Regional Airport requested from the FAA that approximately 10.42 acres of property be released for sale to Mr. and Mrs. Darryl Bresson for use as an agriculture operation with future business prospects. On March 16, 2016, the FAA determined that the request to release property at the Ankeny Regional Airport (IKV) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Ankeny Regional Airport (IKV) is proposing the release of one parcel, of 10.42 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Ankeny Regional Airport (IKV) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Ankeny Regional Airport.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Ankeny Regional Airport.

Issued in Kansas City, MO on May 24, 2016.

Jim A. Johnson,

Manager, Airports Division.

[FR Doc. 2016–13183 Filed 6–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Ralph Wenz Field, Pinedale, Wyoming

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Ralph Wenz Field under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before July 6, 2016.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. John P. Bauer, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Parker, Jr., Airport Manager, Ralph Wenz Field, Pinedale, Wyoming, at the following address: Mr. James C. Parker, Jr., Airport Manager, Ralph Wenz Field, P.O. Box 1766, Pinedale, Wyoming 82941.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Lyman, Wyoming State Engineer, Federal Aviation Administration, Northwest Mountain Region, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Ralph Wenz Field under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On May 23, 2016, the FAA determined that the request to release property at Ralph Wenz Field submitted by The Town of Pinedale meets the procedural requirements of the FAA. The FAA may approve the request, in whole or in part, no later than July 6, 2016.

The following is a brief overview of the request:

The Town of Pinedale, Wyoming, is proposing the release from the terms, conditions, reservations, and restrictions on a 0.76 acre parcel of property acquired by the Town of Pinedale on November 9, 2004, with the assistance of Airport Improvement Program (AIP) Grant No. 3–56–0021–11. This parcel is outside of the Runway Protection Zone and is considered a non-economic remnant. The parcel in question has been part of a long-standing lawsuit regarding a property line dispute with the adjacent landowners. A settlement has been reviewed and approved by the district court to deed this parcel of land back to the adjacent landowners. As the property was purchased with AIP funds, the fair market value of the property will be reinvested in future AIP eligible projects and will be used to offset future AIP grants.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at Ralph Wenz Field.

Issued in Denver, Colorado, on May 23, 2016.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2016–13179 Filed 6–3–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2015–0341]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 40 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on February 17, 2016. The exemptions expire on February 17, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

II. Background

On January 14, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 40 individuals and requested comments from the public (81 FR 1987. The public comment period closed on February 16, 2016, and 1 comment was received.

FMCSA has evaluated the eligibility of the 40 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 40 applicants have had ITDM over a range of 1 to 41 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the January 14, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Jayme Dehner stated that, in her opinion, drivers with diabetes manage their health better than other drivers and is in favor of granting the exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 40 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Kevin D. Aaron (PA)
Juan Acevedo (FL)
Philip K. Allen (NY)
Marvin L. Attaway (NM)
Lewis M. Belcher (WV)
Walter E. Boles (OH)
Eugene O. Carr, Jr. (DE)
Tracy R. Clark (KY)
Jerry L. Coward (NC)
Wesley N. Cubby (NJ)
Robert C. Davis (MI)
Michael G. Deschenes (MN)
James C. Detwiler (PA)
Jay E. Diller (PA)
Thomas M. Ellis (PA)
Jose N. Escobar (MD)
James C. Gilkerson (OH)
Frank J. Gogno (PA)
Michael D. Hashem (MA)
George W. Hauck (LA)
Aseneka K. Igambi (TX)
Hayward G. Jinright (AL)
James S. Kauffman (PA)
Kevin M. Kemp (NJ)
Anthony M. Lopez (TX)
Carlos A. Montano (NY)
Patrick O. Parent (DE)
Michael J. Payne (MD)
Charles B. Perry (OR)
Christopher M. Seals (MS)
Robert Sienkiewicz (MI)
Craig A. Sines (OR)
Joel K. Spencer (AL)
Michael J. Sweeney (NY)
Kendall W. Unruh (MO)
Daniel R. Vilart (WA)
Billy F. Wallace (AL)
Travis J. Womack (NC)
Logan D. Yoder (IN)
Landon L. Zimmerman (PA)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 31, 2016

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–13263 Filed 6–3–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2015–0061]

Request for Approval of a New Information Collection

ACTION: Notice and request for comments .

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on October 29, 2016.

DATES: Written comments should be submitted on or before July 6, 2016.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Ritchie Huang, Crash Avoidance and Electronic Controls Division, NHTSA, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone (202) 366–5586; Facsimile: (202) 366–8546; email address: *ritchie.huang@dot.gov*.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB. In the October 29, 2015 **Federal Register** [1], NHTSA published a 60-day notice requesting public comment on the proposed collection of information. We received zero comments.

OMB Control Number: To be issued at time of approval.

Title: Heavy Vehicle Collision Warning Interfaces.

Form Numbers: None.

Type of Review: New information collection.

Abstract: Crash warning systems (CWSs) for commercial motor vehicles have been available for more than 20 years. CWSs can include features such as forward collision and lane departure warnings and use a variety of sensor technologies (*e.g.*, radar) to determine the crash risk of a collision. CWSs are designed to warn the driver to take action to avoid or mitigate a potential crash.

CWSs are available as both options from OEMs and as aftermarket/retrofit devices. While there are certain similarities between offerings within a particular CWS product class (*e.g.*, forward collision warning (FCW)), there are also differences in how suppliers present collision warnings, including the design of visual displays and auditory alerts. Typically, suppliers will use a combination of visual and audio modalities to convey a potential crash situation to the driver. However, their implementations vary across factors such as the visual interface, auditory alert, and the salience of alerts. While CWS implementations change and evolve, it is likely that certain warning interfaces are more effective than others during crash-imminent situations. This research seeks to examine the impact of CWSs as they pertain to commercial motor vehicle safety. The primary goal of this effort is to evaluate CWSs and assess the effectiveness of these driver-vehicle interfaces for heavy trucks and motorcoaches.

Respondents: Virginia, West Virginia, North Carolina, and Tennessee drivers with a valid Class A commercial driver license.

Estimated Number of Respondents: It is estimated that up to 60 Class A CDL drivers will participate; however, it is estimated that up to 100 Class A CDL drivers will complete the eligibility questionnaire in order to obtain 60 Class A CDL drivers that meet the criteria to participate.

Estimated Time per Response: Completion of the eligibility questionnaire is expected to take 10 minutes while the demographics questionnaire is expected to take two minutes. The mid-study questionnaires 10 minutes total and the post study questionnaire will take 15 minutes.

Total Estimated Burden: 37 minutes per respondent (44 hours total).

Frequency of Collection: Onetime for the eligibility, post study, and demographic questionnaire; three times for the mid study questionnaire.

NHTSA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED BURDEN HOURS

Instrument	Number of respondents [1]	Frequency of responses	Number of questions	Estimated individual burden (minutes)	Total estimated burden hours	Total annualize cost to respondents [2]
Eligibility questionnaire	100	1	26	10	17	$ 414.80
Demographic questionnaire	60	1	7	2	2	48.80
Mid-study questionnaires	60	3	9	10	10	244.00
Post study questionnaire	60	1	12	15	15	366.00
Total					44	1,073.60

[1] The number of respondents in this table includes drop-out rates.
[2] Estimated based on the mean hourly rate for Virginia (all occupations) is $24.40 as reported in the May 2014 Occupational Employment and Wage Estimates, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_va.htm.*

[1] 80 FR 24314 (April 30, 2015).

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator, Office of Vehicle Safety Research.

[FR Doc. 2016–13186 Filed 6–3–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0053]

Establishment of Interim National Multimodal Freight Network

AGENCY: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Maritime Administration (MARAD), Saint Lawrence Seaway Development Corporation (SLSDC), and U.S. Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: Section 70103 of title 49, United States Code (U.S.C.), which was established in section 8001 of the Fixing America's Surface Transportation (FAST) Act, directs the Under Secretary of Transportation for Policy (Under Secretary) to establish a National Multimodal Freight Network (NMFN) to: (1) Assist States in strategically directing resources toward improved system performance for the efficient movement of freight on the NMFN; (2) inform freight transportation planning; (3) assist in the prioritization of Federal investment; and (4) assess and support Federal investments to achieve the national multimodal freight policy goals described in section 70101(b) of title 49, U.S.C., and the national highway freight program goals described in section 167 of title 23, U.S.C.

Within 180 days of the enactment of the FAST Act, the Under Secretary is directed to establish an Interim NMFN. This notice establishes an Interim NMFN per the statutory requirements and solicits public comment to help inform the Final NMFN that will be designated by December 4, 2017, per the statutory requirement.

DATES: Comments must be received on or before September 6, 2016 to receive consideration by DOT with respect to the final designation of the NMFN.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ryan Endorf, 202–366–4835 or email *freight@dot.gov.*

SUPPLEMENTARY INFORMATION:

Additional Information

Background: Each day, our roads, rails, bridges, seaports, airports, and waterways transport 55 million tons of goods, worth more than $49 billion. Freight travels over an extensive multimodal network of highways, railroads, ports, waterways, pipelines, and airways. A significant portion of the freight moved on this network requires multiple modes of transportation and intermodal connections to reach its final destination. Thus, the reliable movement of freight in the United States depends on all modes working together such that the multimodal freight system functions smoothly and without costly delays.

In a transportation law passed in July, 2012—the Moving Ahead for Progress in the 21st Century Act (MAP–21)—Congress directed DOT to develop a National Freight Strategic Plan and a National Freight Network (NFN) of highways. The NFN was to include the designation of a Primary Freight Network (PFN) of 27,000 centerline miles. On November 19, 2013, DOT published a draft PFN for comment in the **Federal Register**. In developing the PFN and reviewing the resulting public comments, DOT determined that efforts to incorporate all of the criteria required by MAP–21 did not yield a network that could comprehensively represent the most critical elements of the national freight system. Among other factors, the effort to link qualifying PFN segments to achieve a contiguous network, and to ensure sufficient connections to Mexico and Canada, would require the designation of many thousands of miles beyond the 27,000 centerline miles allowed by MAP–21. Significantly, the draft PFN also did not reflect the location of non-truck freight modes including rail, water and pipeline, which play an essential role in long-distance movement of freight.

In October 2015, DOT released a draft Multimodal Freight Network (MFN) as part of its draft National Freight Strategic Plan (NFSP).[1] That draft network addressed the deficiencies of the PFN by identifying 65,000 centerline miles of road, more than 28 percent of the mileage of the National Highway System (NHS) and approximately 1.6 percent of the nation's total public road mileage; 49,900 route miles of railways representing 35 percent of the nation's rail route miles; 78 ports that accounted for approximately 90 percent of total 2013 U.S. tonnage; and 56 airports that accounted for approximately 90 percent by weight of the nation's landed air cargo in 2013.

Section 70103 of title 49, U.S.C., which was established in section 8001 of the FAST Act, directs the Under Secretary to establish a NMFN that will be used to: (1) Assist States in strategically directing resources toward improved system performance for the efficient movement of freight on the NMFN; (2) inform freight transportation planning; (3) assist in the prioritization of Federal investment; and (4) assess and support Federal investments to achieve the national multimodal freight policy goals described in section 70101(b) of title 49, U.S.C., and the national highway freight program goals described in section 167 of title 23, U.S.C.

Within 180 days of the enactment of the FAST Act, the Under Secretary is directed to establish an Interim NMFN that includes the following components: (1) The National Highway Freight Network (NHFN), as established under section 167 of title 23, U.S.C.; (2) the freight rail systems of Class I railroads as designated by the Surface Transportation Board; (3) the public ports of the United States that have total annual foreign and domestic trade of at least 2,000,000 short tons, as identified by the Waterborne Commerce Statistics Center of the Army Corps of Engineers (USACE), using the data from the latest year for which such data are available; (4) the inland and intracoastal waterways of the United States, as described in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804); (5) the Great Lakes, the St. Lawrence Seaway, and coastal and ocean routes along which domestic freight is transported; (6) the 50 airports

[1] *https://www.transportation.gov/freight/MFNOct2015*

located in the United States with the highest annual landed weight, as identified by the FAA; and (7) other strategic freight assets, including strategic intermodal facilities and freight rail lines of Class II and Class III railroads, designated by the Under Secretary as critical to interstate commerce.

Not later than 1 year after the enactment of the FAST Act, the Under Secretary is directed, after soliciting input from stakeholders[2] through a public process and providing notice and an opportunity for comment on a draft NMFN, to designate a Final NMFN with the goal of (1) improving network and intermodal connectivity; and (2) using measurable data as part of the assessment of the significance of freight movement, including consideration of points of origin, destinations, and linking components of domestic and international supply chains. The Interim NMFN will serve as the draft NMFN.

Interim National Multimodal Freight Network Establishment: The Interim NMFN is based on the statutory requirements identified in 49 U.S.C. 70103(b)(2).[3] Maps and tables that provide details of this Interim NMFN can be found at *https://www.transportation.gov/freight/InterimNMFN.* This section will describe the factors used to establish the Interim NMFN.

The NHFN is established under 23 U.S.C. 167 and includes: (1) The Primary Highway Freight System (PHFS), which Congress designated in the FAST Act to replace the PFN (the new PHFS is a 41,518-mile network identified during the designation process for the PFN); (2) the critical rural freight corridors established under 23 U.S.C. 167(e); (3) the critical urban freight corridors established under 23 U.S.C. 167(f); and (4) the portions of the Interstate System not designated as part of the PHFS. States have the authority to designate critical rural freight corridors. Critical urban freight corridors may be designated by the relevant States or Metropolitan Planning Organization (MPOs), in consultation with each other, depending on population size. As no State or MPO has yet designated a critical rural or urban freight corridor as part of the NHFN, the highway portion of the Interim NMFN will consist of the 41,518-mile PHFS and the other portions of the Interstate System not designated as part of the PHFS. The current total mileage of the NHFN shown on the maps for the Interim NMFN is 51,029 miles, however, this mileage will continue to fluctuate as there are some Interstate System segments that have been recently constructed or converted to Interstate System designation and, as such, are automatically included in the NHFN. These additional segments are not yet shown on our NHFN maps or calculated in the 51,029 miles.

As specified by the FAST Act, the Interim NMFN contains the freight rail systems of the Class I railroads as designated by the Surface Transportation Board (STB), totaling more than 95,000 route miles. Compared to the draft MFN released by DOT in October 2015, the rail network provided for in the FAST Act is much more expansive. Additionally, the statute specifically references other strategic freight assets, including other intermodal facilities and freight rail lines of Class II and Class III railroads, designated by the Under Secretary as critical to interstate commerce.

DOT has included (as strategic freight assets) routes critical to interstate commerce which encompassed any rail connections to ports that are included on the Interim NMFN. In addition, those routes critical to national defense, which are designated by the U.S. Department of Defense's (DOD) Strategic Rail Corridor Network (STRACNET), are included in the Interim NMFN. These additional designations, which draw extensively from the Class II and Class III railroads, are necessary to promote network connectivity, which is vital for interstate commerce and national defense. The designation of the Interim NMFN consists of 104,296 rail route miles, which includes the entire Class I network of 95,200 route miles and 9,096 route miles of Class II and Class III railroad.[4] Of these, the Class II and Class III rail lines account for 9 percent of the rail network by mileage in the Interim NMFN. Class IIs comprise 1,235 route miles while Class IIIs are represented by 7,861 route miles.

Similarly, the 116 ports listed for the Interim NMFN exceed the 78 ports identified in the October 2015 draft MFN proposed by DOT. Using the latest available data obtained from the USACE's Waterborne Commerce Statistics Center (calendar year 2014), DOT has determined that 113 U.S. ports satisfy the 2,000,000 short ton threshold criterion specified in the FAST Act.[5] DOT also included (as strategic freight assets) three additional ports (Portsmouth, VA, San Diego, CA, and Apra Harbor, Guam) in the Interim NMFN that did not satisfy the 2,000,000 short ton threshold but which were strategic ports as of April 1, 2016 as designated by the DOD, bringing the total ports included in the Interim NMFN to 116 ports.[6] The 116 ports included in the Interim NMFN collectively handled more than 95 percent of the nation's domestic and foreign cargo in 2014. The total national waterborne traffic for 2014 was more than 2.3 billion short tons, of which 937 million were domestic traffic.

The maritime component of the Interim NMFN also includes navigable waterways that are used to transport domestic and international freight. The locations and dimensions of these waterways are based on data contained in the published USACE Waterway Network files (Waterway Network).[7] As required by the FAST Act, the Interim NMFN includes U.S. inland and intracoastal waterways specified in section 206 of the Inland Waterways Revenue Act of 1978 (codified at 33 U.S.C. 1804), which provides explicit descriptions of the portions of waterways that are covered under it. DOT used these descriptions to spatially identify those inland and intracoastal waterway links on the Waterway Network that are shown on the NMFN map. As further directed by the FAST Act, other maritime routes on the Waterway Network commonly used for the transport of domestic freight are also depicted in the Interim NMFN,

[2] These stakeholders include the following: multimodal freight system users, transportation providers, Metropolitan Planning Organizations (MPOs), local governments, ports, airports, railroads, and States.

[3] Note that pipelines are not identified specifically in title 49 as a network component to include on the Interim NMFN. DOT considered the inclusion of pipelines in the draft MFN released in October 2015 and concluded that mapping this system or identifying its most important components would likely not yield an enriched level of field information. Additionally, the inclusion of high volume pipelines would likely raise security concerns as pipelines carry valuable energy products that could be potential targets for acts of domestic terrorism and key pipeline networks stretch across miles of remotely populated areas that may not necessarily be monitored regularly. Moreover, pipelines carry only a limited number of product types and are primarily privately owned and operated. For all of these reasons, DOT has not included pipelines in the Interim NMFN.

[4] Note that the entire combined network of Class II and Class III railroad route miles is slightly over 43,200.

[5] The 2014 calendar year tonnage by port for calendar year 2014 published by the U.S. Army Corps of Engineers Waterborne Commerce Statistics Center can be found at *http://www.navigationdatacenter.us/wcsc/portton14.html.*

[6] The U.S. Army Military Surface Deployment and Distribution Command (SDDC) of the DOD currently has 17 commercial seaports designated as strategic ports, 14 of which handle more than 2,000,000 short tons and are included in the 113 ports described above.

[7] The U.S. Army Corps of Engineers Waterway Network can be found at *http://www.navigationdatacenter.us/data/datanwn.htm.*

including routes on the Great Lakes, U.S. components of the St. Lawrence Seaway, and coastal and open ocean areas.[8]

In all cases, links between designated Interim NMFN ports and the Waterway Network are provided to show continuity. In total, the Interim NMFN includes approximately 26,000 miles of inland, intracoastal, Great Lakes, St. Lawrence Seaway, coastal, and open-ocean waterways. This total does not include the waterway mileage in international waters or foreign waters from the U.S. Mainland to our nation's non-contiguous states (Alaska and Hawaii) or to the territories of Puerto Rico, Guam, and other locations, although waterway routes at and around these locations are included where significant domestic trade takes place.

Collectively, the routes described above also encompass the entire America's Marine Highways route system as designated by the Secretary of Transportation (46 U.S.C. 55601).[9] Marine Highways are available to provide additional freight transportation capacity between U.S. ports, supplementing highway and rail systems. Routes on the inland waterways, intracoastal waterways, Great Lakes, St. Lawrence Seaway, coastal, and open-ocean that are officially designated as Marine Highways are labeled as such in the Interim NMFN map.

In addition, DOT notes that the section 70103 of the FAST Act requires the Interim NMFN to include the top 50 airports by landed weight as identified by the FAA. The FAA identified the top 50 airports by landed weight using the Air Carrier Activity Information System (ACAIS), an FAA database that reflects the certificated maximum gross landed weight of all-cargo aircraft as required by 49 U.S.C. 47102(10) and 49 U.S.C. 47114(2). The ACAIS data, however, do not reflect the actual weight of the cargo being transported on all-cargo aircraft and do not account for other manner of cargo operations, such as belly cargo on passenger operations.

Because the FAA's ACAIS database excludes belly cargo, which is a significant source of freight movement, DOT also considered Bureau of Transportation Statistics (BTS) data that capture cargo weight reported on DOT Form 41, Schedules T–100 [U.S. carriers] and T–100(f) [foreign carriers], which reflects the weight of cargo being transported on both passenger and cargo aircraft.

When considering the top 50 airports in the BTS' Form 41 market data for 2014 (excluding mail and attributing weight by destination to be consistent with the cargo data in ACAIS), there are a total of six airports that are not in the top 50 using the FAA's ACAIS database for 2014, presumably because these airports receive a large amount of belly cargo activity that is not captured by the FAA's ACAIS database.

1. Charlotte Douglas International Airport (CLT)—Charlotte, NC
2. McCarran International Airport (LAS)—Las Vegas, NV
3. Huntsville International Airport (HSV)—Huntsville, AL
4. Spokane International Airport (GEG)—Spokane, WA
5. Tampa International Airport (TPA)—Tampa, FL
6. Pittsburgh International Airport (PIT)—Pittsburgh, PA

DOT has included these six additional airports on the Interim NMFN as "other strategic freight assets" that are critical to the movement of interstate commerce. Including these six airports on the Interim NMFN provides a more complete picture of how air freight (including belly cargo) is moving through the airports in the United States.

Final National Multimodal Freight Network Designation: Not later than 1 year after the enactment of the FAST Act, the Under Secretary is directed, after soliciting input from stakeholders (listed in 49 U.S.C. 70103(c))[10] through a public process and providing notice and an opportunity for comment on a draft NMFN, to designate a Final NMFN with the goal of: (1) Improving network and intermodal connectivity; and (2) using measurable data as part of the assessment of the significance of freight movement, including consideration of points of origin, destinations, and linking components of domestic and international supply chains. The Interim NMFN will serve as the draft NMFN. In designating the route miles and facilities on the Final NMFN, the Under Secretary shall have considered the following factors:

1. Origins and destinations of freight movement within, to, and from the United States;
2. Volume, value, tonnage, and the strategic importance of freight;
3. Access to border crossings, airports, seaports, and pipelines;
4. Economic factors, including balance of trade;
5. Access to major areas for manufacturing, agriculture, or natural resources;
6. Access to energy exploration, development, installation, and production areas;
7. Intermodal links and intersections that promote connectivity;
8. Freight choke points and other impediments contributing to significant measurable congestion, delay in freight movement, or inefficient modal connections;
9. Impacts on all freight transportation modes and modes that share significant freight infrastructure;
10. Facilities and transportation corridors identified by a multi-State coalition, a State, a State freight advisory committee, or an MPO, using national or local data, as having critical freight importance to the region;
11. Major distribution centers, inland intermodal facilities, and first- and last-mile facilities;[11] and
12. The significance of goods movement, including consideration of global and domestic supply chains.

During this designation process, the Under Secretary shall: (1) Use, to the extent practicable, measurable data to assess the significance of goods movement, including the consideration of points of origin, destinations, and linking components of the United States global and domestic supply chains; (2) consider the 12 factors listed above and any changes in the economy that affect freight transportation network demand; and (3) provide the States with an opportunity to submit proposed designations.[12]

DOT seeks comments on corridors or facilities (across all modes) not included in the Interim NMFN that address one or more of the 12 factors noted above, including a discussion of why additional components should be considered for inclusion on the Final NMFN. In particular, DOT seeks public comment on intermodal facilities and border crossings that are not included on the Interim NMFN. DOT requests that any proposed corridors or facilities be supported with data from the most

[8] See 49 U.S.C. 70103(b)(2)(E).

[9] The short sea transportation routes authorized by 46 U.S.C. 55601 are implemented under the America's Marine Highways program, with specific routes referred to as Marine Highways or Connectors.

[10] Stakeholders listed in 49 U.S.C. 70103(c)(1) include multimodal freight system users, transportation providers, MPOs, local governments, ports, airports, railroads, and States. States are assigned additional requirements described in 49 U.S.C. 70103(c)(4).

[11] DOT proposes that the definition for major distribution centers, inland intermodal facilities, and first- and last-mile facilities include both those specific points, such as manufacturers, distribution points, rail intermodal, and port facilities, that handle high volumes of freight, and specific transportation assets, such as roadways, rail lines, or inland waterways, that provide the primary means of transport in the case of first mile, or to the final delivery point in the case of last mile.

[12] See 49 70103(c)(3).

recent year available that demonstrate one or more of the above factors. DOT also requests that any proposed corridors or facilities be submitted with shapefiles, to the extent possible. Below, there is a list of specific questions or data requests pertaining to each mode of transportation reflected on the Interim NMFN.

Highway: DOT seeks input on both the size and composition of the highway portion of the Final NMFN. DOT is also looking for input on what should be the relevant factors for including a land border crossing and roads at that crossing; on whether to include the entire Strategic Highway Network (STRAHNET)[13] or some subset of its routes, such as STRAHNET connectors; and which specific roadway segments (including intermodal connectors and border crossings) should be added to or deleted from the Interim NMFN, with a fact-based or data-driven rationale. State-proposed additions should follow the statutory requirements identified below, under "State Input."

DOT also seeks input on whether the 65,000-mile highway network included in the draft MFN released in October 2015 (as part of the draft NFSP)—with or without additional modification for STRAHNET, border crossings, urban or rural connectors, etc.—should be designated as the Final highway portion of the NMFN instead of the highway portion of the Interim NMFN. When proposed last fall, the draft MFN was uncapped and data-driven, featured a lower threshold for truck volumes to capture last and first mile connectors and reflected improved linkages to intermodal facilities compared to the PHFS in the NHFN. The additional continuity and connectivity of the 65,000-miles of the highway portion of the draft MFN provides a more complete representation of the multimodal system that is required to efficiently and effectively move freight in the U.S. For more information on the characteristics and methodology of the larger draft MFN, see the following links to maps, draft MFN, and **Federal Register** notice:

https://www.transportation.gov/sites/dot.gov/files/docs/DRAFT_NFSP_for_Public_Comment_508_10%2015%2015%20v1.pdf (See discussion of methodology in Appendix D beginning on p.138).

https://www.transportation.gov/freight/NationalMFN

https://www.transportation.gov/freight/StateMFNs

https://www.transportation.gov/freight/MFN

https://www.transportation.gov/sites/dot.gov/files/docs/FHWA-151002-013_F%20PFN.pdf

Rail: DOT specifically requests comments relating to the proposed rail network. By statute, the Interim NMFN requires all Class I rail lines to be included. This type of designation does not consider the traffic density and volume across the Class I network, and that some Class II and III systems and segments can handle more traffic than lighter density Class I branch lines. Prior to the implementation of the FAST Act, DOT proposed a draft MFN and defined the rail network using traffic density and volume, among other factors.

In this approach, FRA used the 2013 Carload Waybill Sample and the designated STRACNET coded within the FRA network to determine the rail components of the draft MFN map. Based on the Waybill Sample, FRA developed the following three categories of rail service for potential inclusion in the draft MFN:

- Intermodal rail traffic, which includes trailer on flatcar, container on flatcar, and rail double stack;
- Bulk shipments, which FRA defined to include all non-intermodal moves that consisted of 50 cars or more of the same commodity on the same waybill;
- General merchandise shipments, which include moves that are not intermodal and did not meet the bulk traffic criteria.

All intermodal rail routes are included in the draft MFN. For bulk and general merchandise shipments, FRA allocated the waybill data into three volume tiers and relied on the natural breaks in the volume data to determine those parts of the network that had the greatest volumes, removing those lines on the network with the lowest tier of tons for bulk and general merchandise. All STRACNET lines were included in the draft rail MFN map.

The rail component of the draft MFN map consists of 49,900 route miles, representing 35 percent of the nation's rail route miles. Of this, approximately 94 percent belong to Class I railroads, with the balance belonging to Class II and Class III railroads. Collectively, the rail routes on the draft MFN map account for 60 percent of all rail freight traffic as measured by tons of freight.

FRA also used the 2013 Surface Transportation Board Carload Waybill Sample to determine which rail connectors (interchange points with other modes) should be identified within the draft MFN map. FRA selected the top 50 bulk origination/destination markets (100 locations) and the top 25 intermodal origination/destination markets (50 locations). Since there are duplicates in the 150 total locations, FRA consolidated these to 53 unique locations. This process gave FRA a narrow accounting of the rail connectors, since the waybill sample is not totally structured to identify multimodal connectors. DOT is seeking public comment on any other key factors that should be considered to better capture and identify freight moving on multiple modes. DOT seeks public input on FRA's methodology to structure the rail component of the Final NMFN. This approach would designate routes based primarily on traffic density and volume. Commenters should also address what density levels should be used to determine those lines which should be included in the network. Commenters should also consider Class II and Class III lines with particular attention focused on the statutory language identifying those lines that are critical to interstate commerce. Commenters should also note what criteria are used for determining critical to interstate commerce. Finally, DOT requests alternative methodologies and/or datasets to identify rail lines and the rail connection locations to construct a more robust rail component of the NMFN.

Maritime: DOT requests public comment on the maritime component of the Interim NMFN. As specified by the FAST Act, the Interim NMFN depicts public ports that handle at least 2,000,000 short tons of domestic and foreign trade, annually.

DOT seeks public input regarding the 2,000,000 short ton and strategic port standards that DOT was required to use as the selection criteria for U.S. ports in the Interim NMFN. Specifically, DOT requests comment on whether this standard should be maintained in the Final NMFN or if there are other selection criteria that would more appropriately identify commercial ports that are critical to the NMFN. DOT notes that special considerations (such as status as strategic ports or other ports critical to moving strategic freight assets efficiently by water, such as fuel or energy commodities) will be considered. For instance, DOT requests assistance in identifying any ports that are unique in handling specialty cargoes critical to economic competitiveness and resilience. DOT recognizes that some ports that fall below the 2 million short ton threshold may become critical to movement of goods in times of national emergency and, in those times, could

[13] Note that the 63,000 mile STRAHNET includes the 47,000 mile Interstate routes and an additional 16,000 non-Interstate routes. The bulk of the STRAHNET (the Interstate Routes) is already included in the Interim NMFN.

U.S. components of the St. Lawrence Seaway, and coastal and open ocean areas.[8]

In all cases, links between designated Interim NMFN ports and the Waterway Network are provided to show continuity. In total, the Interim NMFN includes approximately 26,000 miles of inland, intracoastal, Great Lakes, St. Lawrence Seaway, coastal, and open-ocean waterways. This total does not include the waterway mileage in international waters or foreign waters from the U.S. Mainland to our nation's non-contiguous states (Alaska and Hawaii) or to the territories of Puerto Rico, Guam, and other locations, although waterway routes at and around these locations are included where significant domestic trade takes place.

Collectively, the routes described above also encompass the entire America's Marine Highways route system as designated by the Secretary of Transportation (46 U.S.C. 55601).[9] Marine Highways are available to provide additional freight transportation capacity between U.S. ports, supplementing highway and rail systems. Routes on the inland waterways, intracoastal waterways, Great Lakes, St. Lawrence Seaway, coastal, and open-ocean that are officially designated as Marine Highways are labeled as such in the Interim NMFN map.

In addition, DOT notes that the section 70103 of the FAST Act requires the Interim NMFN to include the top 50 airports by landed weight as identified by the FAA. The FAA identified the top 50 airports by landed weight using the Air Carrier Activity Information System (ACAIS), an FAA database that reflects the certificated maximum gross landed weight of all-cargo aircraft as required by 49 U.S.C. 47102(10) and 49 U.S.C. 47114(2). The ACAIS data, however, do not reflect the actual weight of the cargo being transported on all-cargo aircraft and do not account for other manner of cargo operations, such as belly cargo on passenger operations.

Because the FAA's ACAIS database excludes belly cargo, which is a significant source of freight movement, DOT also considered Bureau of Transportation Statistics (BTS) data that capture cargo weight reported on DOT Form 41, Schedules T–100 [U.S. carriers] and T–100(f) [foreign carriers], which reflects the weight of cargo being aircraft.

When considering the top 50 airports in the BTS' Form 41 market data for 2014 (excluding mail and attributing weight by destination to be consistent with the cargo data in ACAIS), there are a total of six airports that are not in the top 50 using the FAA's ACAIS database for 2014, presumably because these airports receive a large amount of belly cargo activity that is not captured by the FAA's ACAIS database.

1. Charlotte Douglas International Airport (CLT)—Charlotte, NC
2. McCarran International Airport (LAS)—Las Vegas, NV
3. Huntsville International Airport (HSV)—Huntsville, AL
4. Spokane International Airport (GEG)—Spokane, WA
5. Tampa International Airport (TPA)—Tampa, FL
6. Pittsburgh International Airport (PIT)—Pittsburgh, PA

DOT has included these six additional airports on the Interim NMFN as "other strategic freight assets" that are critical to the movement of interstate commerce. Including these six airports on the Interim NMFN provides a more complete picture of how air freight (including belly cargo) is moving through the airports in the United States.

Final National Multimodal Freight Network Designation: Not later than 1 year after the enactment of the FAST Act, the Under Secretary is directed, after soliciting input from stakeholders (listed in 49 U.S.C. 70103(c))[10] through a public process and providing notice and an opportunity for comment on a draft NMFN, to designate a Final NMFN with the goal of: (1) Improving network and intermodal connectivity; and (2) using measurable data as part of the assessment of the significance of freight movement, including consideration of points of origin, destinations, and linking components of domestic and international supply chains. The Interim NMFN will serve as the draft NMFN. In designating the route miles and facilities on the Final NMFN, the Under Secretary shall have considered the following factors:

1. Origins and destinations of freight movement within, to, and from the United States;
2. Volume, value, tonnage, and the strategic importance of freight;
seaports, and pipelines;
4. Economic factors, including balance of trade;
5. Access to major areas for manufacturing, agriculture, or natural resources;
6. Access to energy exploration, development, installation, and production areas;
7. Intermodal links and intersections that promote connectivity;
8. Freight choke points and other impediments contributing to significant measurable congestion, delay in freight movement, or inefficient modal connections;
9. Impacts on all freight transportation modes and modes that share significant freight infrastructure;
10. Facilities and transportation corridors identified by a multi-State coalition, a State, a State freight advisory committee, or an MPO, using national or local data, as having critical freight importance to the region;
11. Major distribution centers, inland intermodal facilities, and first- and last-mile facilities;[11] and
12. The significance of goods movement, including consideration of global and domestic supply chains.

During this designation process, the Under Secretary shall: (1) Use, to the extent practicable, measurable data to assess the significance of goods movement, including the consideration of points of origin, destinations, and linking components of the United States global and domestic supply chains; (2) consider the 12 factors listed above and any changes in the economy that affect freight transportation network demand; and (3) provide the States with an opportunity to submit proposed designations.[12]

DOT seeks comments on corridors or facilities (across all modes) not included in the Interim NMFN that address one or more of the 12 factors noted above, including a discussion of why additional components should be considered for inclusion on the Final NMFN. In particular, DOT seeks public comment on intermodal facilities and border crossings that are not included on the Interim NMFN. DOT requests that any proposed corridors or facilities be supported with data from the most one or more of the above factors. DOT also requests that any proposed corridors or facilities be submitted with shapefiles, to the extent possible. Below, there is a list of specific questions or data requests pertaining to each mode of transportation reflected on the Interim NMFN.

Highway: DOT seeks input on both the size and composition of the highway portion of the Final NMFN. DOT is also looking for input on what should be the relevant factors for including a land border crossing and roads at that crossing; on whether to include the entire Strategic Highway Network (STRAHNET)[13] or some subset of its routes, such as STRAHNET connectors; and which specific roadway segments (including intermodal connectors and border crossings) should be added to or deleted from the Interim NMFN, with a fact-based or data-driven rationale. State-proposed additions should follow the statutory requirements identified below, under "State Input."

DOT also seeks input on whether the 65,000-mile highway network included in the draft MFN released in October 2015 (as part of the draft NFSP)—with or without additional modification for STRAHNET, border crossings, urban or rural connectors, etc.—should be designated as the Final highway portion of the NMFN instead of the highway portion of the Interim NMFN. When proposed last fall, the draft MFN was uncapped and data-driven, featured a lower threshold for truck volumes to capture last and first mile connectors and reflected improved linkages to intermodal facilities compared to the PHFS in the NHFN. The additional continuity and connectivity of the 65,000-miles of the highway portion of the draft MFN provides a more complete representation of the multimodal system that is required to efficiently and effectively move freight in the U.S. For more information on the characteristics and methodology of the larger draft MFN, see the following links to maps, draft MFN, and **Federal Register** notice:

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In this approach, FRA used the 2013 Carload Waybill Sample and the designated STRACNET coded within the FRA network to determine the rail components of the draft MFN map. Based on the Waybill Sample, FRA developed the following three categories of rail service for potential inclusion in the draft MFN:

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[8] See 49 U.S.C. 70103(b)(2)(E).

[9] The short sea transportation routes authorized by 46 U.S.C. 55601 are implemented under the America's Marine Highways program, with specific routes referred to as Marine Highways or Connectors.

[10] Stakeholders listed in 49 U.S.C. 70103(c)(1) include multimodal freight system users, transportation providers, MPOs, local governments, ports, airports, railroads, and States. States are assigned additional requirements described in 49 U.S.C. 70103(c)(4).

[11] DOT proposes that the definition for major distribution centers, inland intermodal facilities, and first- and last-mile facilities include both those specific points, such as manufacturers, distribution points, rail intermodal, and port facilities, that handle high volumes of freight, and specific transportation assets, such as roadways, rail lines, or inland waterways, that provide the primary means of transport in the case of first mile, or to the final delivery point in the case of last mile.

[12] See 49 70103(c)(3).

[13] Note that the 63,000 mile STRAHNET includes the 47,000 mile Interstate routes and an additional 16,000 non-Interstate routes. The bulk of the STRAHNET (the Interstate Routes) is already included in the Interim NMFN.

become the cornerstone for large scale movement of goods. Further, DOT requests public input as to whether the navigable waterways included in the Interim NMFN sufficiently depict routes along which domestic waterborne freight is commonly transported.

Aviation: DOT requests feedback regarding the most appropriate data to use when determining which airports to include in the Final NMFN. As noted above, the FAST Act directed that the Interim NMFN include the top 50 airports by landed all-cargo weight as identified by the FAA. However, this dataset does not account for the amount of cargo moved in the bellies of passenger aircraft. Further, this dataset captures maximum "landed weight" of all-cargo aircraft, which is based on the weight determined by aircraft type, regardless of actual cargo carried. DOT supplemented the Interim NMFN by considering additional candidates selected from the top 50 airports using cargo data reported to BTS. These BTS data reflect the weight of cargo being transported on both passenger and cargo aircraft.

For determining how to supplement the interim network, several choices were made regarding the BTS data:

- DOT selected market data rather than segment data. We believe that market data provide a better sense of cargo moving on and off airports, which is appropriate for an intermodal network.
- DOT selected destination (landed) weight rather than origin weight, in order to be consistent with the type of data required in the interim network.
- DOT selected cargo weight only, excluding mail.

Considering the data sources used to determine the interim network, DOT seeks public input regarding what data specifically should be considered for the Final NMFN. Should DOT use only the BTS data? Should DOT continue to combine the BTS data with the ACAIS data? DOT also requests comment on additional methodologies and data sources that have not been considered for the Interim NMFN.

State Input: 49 U.S.C. 70103(c)(1) and 49 U.S.C. 70103(c)(3)(C) direct the Under Secretary to provide the States with an opportunity to submit proposed designations to the NMFN during the process of designating the Final NMFN. 49 U.S.C. 70103(c)(4)(A) requires each State that proposes additional designations to consider nominations for additional designations from a wide range of stakeholders, including MPOs, State Freight Advisory Committees (if applicable), and owners and operators of port, rail, pipeline, and airport facilities. Additionally, each State proposing additional designations is required to ensure that all additional designations are consistent with the State transportation improvement program (STIP) or freight plan. States may designate a freight facility or corridor within the borders of the State as a critical rural freight facility or corridor for the Final NMFN designation. Importantly, please note that this authority and process is unrelated to the highway-specific designation of critical rural freight corridors by States and critical urban freight corridors by States and MPOs for inclusion in the NHFN.[14] In order to qualify as a critical rural freight facility or corridor for the NMFN, the facility or corridor must meet *at least one* of the following conditions:

1. Is a rural principal arterial;
2. Provides access or service to energy exploration, development, installation, or production areas;
3. Provides access or service to—
   a. A grain elevator;
   b. An agricultural facility;
   c. A mining facility;
   d. A forestry facility; or
   e. An intermodal facility;
4. Connects to an international port of entry;
5. Provides access to a significant air, rail, water, or other freight facility in the State; or
6. Has been determined by the State to be vital to improving the efficient movement of freight of importance to the economy of the State.

There is no limitation that such critical rural freight facilities or corridors must be highways. Each State may propose additional designations that are up to 20 percent of the total mileage of modal routes designated by the Under Secretary for the State. For the purposes of this first designation, the "total mileage" will be the total mileage in each State on the Interim NMFN. If a State wishes to propose a designation of a future Interstate or NHS route, it should provide information sufficient to demonstrate that the route is critical to the future efficient movement of goods and that the State will make such designation before the end of this year (when the Final NMFN is due). States should submit a list of additional designations to the Under Secretary as part of the public comment process described below. Each State submitting additional designations should also certify that the State has satisfied the requirements of 49 U.S.C. 70103(c)(4) and that each proposed designation addresses one or more of the factors listed in 49 U.S.C. 70103(c)(2) (also listed above).

Public Comment: The DOT invites comments by all those interested in the NMFN. Comments on the Interim NMFN may be submitted and viewed at Docket Number DOT–OST–2016–0053. Comments must be received on or before September 6, 2016 to receive full consideration by DOT with respect to the final designation of the NMFN. After September 6, 2016, comments will continue to be available for viewing by the public.

The Final NMFN will be designated not later than December 4, 2016 by the Under Secretary per the statutory requirement.

Dated: May 27, 2016.

Carlos Monje Jr.,

Acting Under Secretary of Transportation for Policy.

[FR Doc. 2016–13261 Filed 6–3–16; 8:45 am]

BILLING CODE 4910–9X–P

[14] For more information on the designation of critical rural freight corridors under the NHFP program, please see FHWA's guidance located at *http://www.ops.fhwa.dot.gov/fastact/crfc/sec_1116_gdnce.htm.*

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") called for the submission of Large Position Reports by those entities whose positions in the 1⅝% Treasury Notes of May 2026 equaled or exceeded $2.3 billion as of close of business May 16, 2016.

DATES: Large Position Reports must be received by 5:00 p.m. Eastern Time on June 8, 2016.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistics Unit, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–8707.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Kurt Eidemiller, or Kevin Hawkins; Government Securities Regulations Staff, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on June 1, 2016, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose positions in the 1⅝% Treasury Notes of May 2026 equaled or exceeded $2.3 billion as of the close of business Monday, May 16, 2016. Entities whose positions in this note equaled or exceeded the $2.3 billion threshold must submit a report to the Federal Reserve Bank of New York. This call for Large Position Reports is a test pursuant to Treasury's large position reporting rules under the Government Securities Act regulations (17 CFR part 420). Entities with positions in this note below $2.3 billion are not required to file reports. Reports must be received by the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York before 5:00 p.m. Eastern Time on Wednesday, June 8, 2016, and must include the required position and administrative information. The reports may be faxed to (212) 720–8707 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 1⅝% Treasury Notes of May 2026, Series C–2026, have a CUSIP number of 912828R36, a STRIPS principal component CUSIP number of 9128202R7, and a maturity date of May 15, 2026.

The press release, a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR part 420, and supplementary formula guidance are available at *www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

Questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistics Unit of the Federal Reserve Bank of New York at (212) 720–7993 or (212) 720–8107.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1530–0064.

Daleep Singh,

Acting Assistant Secretary for Financial Markets.

[FR Doc. 2016–13348 Filed 6–2–16; 11:15 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

MyVA Federal Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2., that the MyVA Advisory Committee (MVAC) will meet July 12–13, 2016, at the Department of Veterans Affairs, VA Boston Healthcare System—West Roxbury Campus, 1400 VFW Parkway, West Roxbury, MA 02132.

The purpose of the Committee is to advise the Secretary, through the Executive Director, MyVA Task Force Office regarding the My VA initiative and VA's ability to rebuild trust with Veterans and other stakeholders, improve service delivery with a focus on Veteran outcomes, and set the course for longer-term excellence and reform of VA.

On July 12, from 8:00 a.m. to 10:00 a.m., the Committee will convene a closed session in order to protect Veteran privacy as the Committee tours the VA Boston Healthcare System—Jamaica Plain Division, 150 S. Huntington Avenue, Boston, MA 02130. From 10:30 a.m. to 5:15 p.m., the Committee will reconvene in an open session to discuss the progress on and the integration of the work in the five key MyVA work streams—Veteran Experience (explaining the efforts conducted to improve the Veteran's experience), Employees Experience, Support Services Excellence (such as information technology, human resources, and finance), Performance Improvement (projects undertaken to date and those upcoming), and VA Strategic Partnerships.

On July 13, from 8:00 a.m. to 12:30 p.m., the Committee will meet at the VA Boston Healthcare System—West Roxbury Campus, 1400 VFW Parkway, West Roxbury, MA 02132, to discuss and recommend areas for improvement on VA's work to date, plans for the future, and integration of the MyVA efforts. This session is open to the public.

Portions of these visits are closed to the public in accordance with 5 U.S.C. 552b(c)(6). Exemption 6 permits to Committee to close those portions of a meeting that is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. During the closed sessions, the Committee will discuss VA beneficiary and patient information in which there is a clear unwarranted invasion of the Veteran or beneficiary privacy.

No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Debra Walker, Designated Federal Officer, MyVA Program Management Office, Department of Veterans Affairs, 1800 G Street NW., Room 880–40, Washington, DC 20420, or email at *Debra.Walker3@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Walker. Because the meeting will be held in a Government building, anyone attending must be prepared to show a valid photo government issued ID. Please allow a minimum 15 minutes to move through the security process.

Dated: June 1, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–13229 Filed 6–3–16; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 81 Monday,
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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–IA–2013–0091; 96300–1671–0000–R4]

RIN 1018–AX84

Endangered and Threatened Wildlife and Plants; Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the rule for the African elephant promulgated under section 4(d) of the Endangered Species Act of 1973, as amended (ESA), to increase protection for African elephants in response to the alarming rise in poaching to fuel the growing illegal trade in ivory. The African elephant (*Loxodonta africana*) was listed as threatened under the ESA effective June 11, 1978, and at the same time a rule was promulgated under section 4(d) of the ESA (a "4(d) rule") to regulate import and use of specimens of the species in the United States. This final rule updates the current 4(d) rule with measures that are appropriate for the current conservation needs of the species. We adopted measures that are necessary and advisable to provide for the conservation of the African elephant as well as appropriate prohibitions from section 9(a)(1) of the ESA.

DATES: This rule is effective July 6, 2016.

FOR FURTHER INFORMATION CONTACT: Craig Hoover, Chief, Division of Management Authority; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA 22041 (telephone, (703) 358–2093).

SUPPLEMENTARY INFORMATION:

Executive Summary

Why We Need To Publish a Final Rule

When a species is listed as threatened, section 4(d) of the ESA gives discretion to the Secretary of the Interior to issue regulations that he or she "deems necessary and advisable to provide for the conservation of such species." In response to an unprecedented increase in poaching of elephants across Africa and the escalation of the illegal trade in ivory, we reevaluated the provisions of the existing ESA 4(d) rule for the African elephant, and, on July 29, 2015, we published a proposed rule to revise the 4(d) rule (80 FR 45154). We are revising the 4(d) rule by adopting measures that are necessary and advisable for the current conservation needs of the species, based on our evaluation of the current threats to the African elephant and the comments received from the public. The poaching crisis is driven by demand for elephant ivory. This final rule will allow us to more strictly regulate trade in African elephant ivory and help to ensure that the U.S. ivory market is not contributing to the poaching of elephants in Africa. This action is consistent with recommendations adopted by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) in March 2013 to help curb the illegal killing of elephants and illegal trade in ivory, issuance of Executive Order 13648 on Combating Wildlife Trafficking in July 2013, and the stated priorities in the National Strategy for Combating Wildlife Trafficking, issued by President Obama in February 2014.

What is the effect of this final rule?

We are revising the 4(d) rule for the African elephant to increase protection and benefit the conservation of African elephants by more strictly controlling U.S. trade in ivory, without unnecessarily restricting activities that have no conservation effect or are strictly regulated under other law. The final rule prohibits import and export of African elephant ivory with limited exceptions for: Musical instruments, items that are part of a traveling exhibition, and items that are part of a household move or inheritance when specific criteria are met; and ivory for law enforcement or genuine scientific purposes. With regard to import, these exceptions remain prohibited under the African Elephant Conservation Act (AfECA) import moratorium (54 FR 24758, June 9, 1989). However, under Director's Order 210, as amended on May 15, 2014, as a matter of law enforcement discretion, the Service will not enforce the AfECA moratorium with respect to these limited exceptions. Antiques (as defined under section 10(h) of the ESA) are not subject to the provisions of this rule. Antiques containing or consisting of ivory may, therefore, be imported into or exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. However, import of most African elephant ivory, including antique ivory, remains prohibited under the AfECA import moratorium. This final rule allows for import of sport-hunted trophies but limits the number of sport-hunted African elephant trophies imported into the United States to two per hunter per year. The prohibition on export of raw ivory in the current 4(d) rule is maintained in the final rule. Interstate and foreign commerce in African elephant ivory is prohibited by the final rule except for items that qualify as ESA antiques and certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory and meet specific criteria.

The final rule prohibits take of live African elephants in the United States, which will help to ensure that elephants held in captivity receive an appropriate standard of care. As stated in the proposed rule (80 FR 45154, July 29, 2015), while the taking of live African elephants held in captivity within the United States or being transported is not a threat to the species, including a prohibition against take, even for species that are not native to the United States, is a standard protection for threatened species and ensures an adequate level of care for wildlife held in captivity. (This prohibition is the same as the prohibition on take of Asian elephants, which has been in place since 1976 when the Asian elephant was listed under the ESA.) Trade in live African elephants and African elephant parts and products other than ivory is allowed under the final rule provided the requirements in 50 CFR parts 13, 14, and 23 have been met.

The Basis for Our Action

The Service reevaluated U.S. domestic controls, given the current poaching crisis in Africa and the associated increase in illegal trade in ivory, recent CITES recommendations, and evidence that substantial quantities of illegal ivory are making their way into U.S. markets. We determined that it is appropriate to take certain regulatory actions, including revision of the 4(d) rule as necessary and advisable for the conservation of the species and to include certain prohibitions from section 9(a)(1) of the ESA, to more strictly regulate U.S. trade in ivory. The final rule will regulate import, export, and commercial use of African elephant ivory and sport-hunted trophies and appropriately protect live elephants within the United States, while including certain limited exceptions for items and activities that we do not believe, based on all available evidence, are contributing to the poaching of elephants in Africa, including for certain manufactured or handcrafted items containing ivory that meet specific criteria. The final rule will

facilitate enforcement efforts within the United States and improve regulation of both domestic and foreign trade in elephant ivory by U.S. citizens. Improved domestic controls will make it more difficult to launder illegal elephant ivory through U.S. markets, which will contribute to a reduction in poaching of African elephants.

This final rule is consistent with Executive Order 13648 on Combating Wildlife Trafficking signed by President Obama on July 1, 2013, to "address the significant effects of wildlife trafficking on the national interests of the United States." The Executive Order calls on executive departments and agencies to take all appropriate actions within their authority to "enhance domestic efforts to combat wildlife trafficking, to assist foreign nations in building capacity to combat wildlife trafficking, and to assist in combating transnational organized crime." Increased control of the U.S. market for elephant ivory is also among the administrative actions called for in the National Strategy for Combating Wildlife Trafficking, issued by President Obama on February 11, 2014. Director's Order No. 210, issued by the Director of the U.S. Fish and Wildlife Service, established policy and procedures for the Service to follow in implementing the National Strategy with regard to trade in African elephant ivory and parts and products of other ESA-listed species.

Background

In the United States, the African elephant is primarily protected and managed under the ESA (16 U.S.C. 1531 *et seq.*); CITES (27 U.S.T. 1087), as implemented in the United States through the ESA; and the AfECA (16 U.S.C. 4201 *et seq.*). The ESA designates responsibility for CITES implementation to the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service.

Endangered Species Act. Under the ESA, species may be listed either as "threatened" or as "endangered." When a species is listed as endangered under the ESA, certain actions are prohibited under section 9 (16 U.S.C. 1538), as specified at 50 CFR 17.21. These include prohibitions on take within the United States, within the territorial seas of the United States, or upon the high seas; import; export; sale and offer for sale in interstate or foreign commerce; and delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity.

The ESA does not specify particular prohibitions and exceptions to those prohibitions for threatened species. Instead, under section 4(d) of the ESA, the Secretary of the Interior is given the discretion to issue such regulations as deemed necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species any act prohibited under section 9(a)(1) of the ESA for endangered species. Exercising this discretion under section 4(d), the Service has developed general prohibitions (50 CFR 17.31) and established a permitting process for specified exceptions to those prohibitions (50 CFR 17.32) that apply to most threatened species. Permits issued under 50 CFR 17.32 must be for "Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the [ESA]."

Under section 4(d) of the ESA, the Service may also develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Service issues a 4(d) rule that may include some of the prohibitions and authorizations set out at 50 CFR 17.31 and 17.32, but that also may be more or less restrictive than the general provisions at 50 CFR 17.31 and 17.32.

Convention on International Trade in Endangered Species of Wild Fauna and Flora. CITES entered into force in 1975, and currently has 182 Parties (countries or regional economic integration organizations that have ratified the Convention), including the United States. The aim of CITES is to regulate international trade in listed animal and plant species, including their parts and products, to ensure the trade is legal and does not threaten the survival of species. CITES regulates both commercial and noncommercial international trade through a system of permits and certificates that must be presented when leaving and entering a country with CITES specimens. Species are listed in one of three appendices, which provide different levels of protection. In some circumstances, different populations of a species are listed at different levels. Appendix I includes species that are threatened with extinction and are or may be affected by trade. The Convention states that Appendix-I species must be subject to "particularly strict regulation" and trade in specimens of these species should only be authorized "in exceptional circumstances." Appendix II includes species that are not necessarily threatened with extinction now, but may become so if international trade is not regulated. Appendix III includes species that a range country has identified as being subject to regulation within its jurisdiction and as needing cooperation of other Parties in the control of international trade.

Import and export of CITES species is prohibited unless accompanied by any required CITES documents. Documentation requirements vary depending on the appendix in which the species or population is listed and other factors. CITES documents cannot be issued until specific biological and legal findings have been made. CITES does not regulate take or domestic trade of listed species. It contributes to the conservation of listed species by regulating international trade and, in order to make the findings necessary for issuance of CITES permits, encouraging assessment and analysis of the population status of species in trade and the effects of international trade on wild populations.

African Elephant Conservation Act. The AfECA was enacted in 1988 to "perpetuate healthy populations of African elephants" by regulating the import and export of certain African elephant ivory to and from the United States. Building from and supporting existing programs under CITES, the AfECA called on the Service to establish moratoria on the import of raw and worked ivory from both African elephant range countries and intermediary countries (those that export ivory that does not originate in that country) that failed to meet certain statutory criteria. The statute also states that it does not provide authority for the Service to establish a moratorium that prohibits the import of sport-hunted trophies that meet certain standards.

In addition to authorizing establishment of the moratoria and prohibiting any import in violation of the terms of any moratorium, the AfECA prohibits: The import of raw African elephant ivory from any country that is not a range country; the import of raw or worked ivory exported from a range country in violation of that country's laws or applicable CITES programs; the import of worked ivory, other than certain personal effects, unless the exporting country has determined that the ivory was legally acquired; and the export of all raw (but not worked) African elephant ivory. While the AfECA comprehensively addresses the import of ivory into the United States, it does not address other uses of ivory or African elephant specimens other than ivory and sport-hunted trophies. The AfECA does not regulate the use of ivory within the United States and, other than the prohibition on the export of raw ivory, does not regulate export of ivory from the United States. The AfECA also does not regulate the import or export of live African elephants.

Regulatory Background

Ghana first listed the African elephant in CITES Appendix III on February 26, 1976. Later that year, the CITES Parties agreed to add African elephants to Appendix II, effective February 4, 1977. In October 1989, all populations of African elephants were transferred from CITES Appendix II to Appendix I (effective in January 1990), which ended much of the legal commercial trade in African elephant ivory.

In 1997, based on proposals submitted by Botswana, Namibia, and Zimbabwe and the report of a Panel of Experts (which concluded, among other things, that populations in these countries were stable or increasing and that poaching pressure was low), the CITES Parties agreed to transfer the African elephant populations in these three countries to CITES Appendix II. The Appendix-II listing included an annotation that allowed noncommercial export of hunting trophies, export of live animals to appropriate and acceptable destinations, export of hides from Zimbabwe, and noncommercial export of leather goods and some ivory carvings from Zimbabwe. It also allowed for a one-time export of raw ivory to Japan (which took place in 1999), once certain conditions had been met. All other African elephant specimens from these three countries were deemed to be specimens of a species listed in Appendix I and regulated accordingly.

The African elephant population of South Africa was transferred from CITES Appendix I to Appendix II in 2000, with an annotation that allowed trade in hunting trophies for noncommercial purposes, trade in live animals for reintroduction purposes, and trade in hides and leather goods. At that time, the Panel of Experts reviewing South Africa's proposal concluded, among other things, that South Africa's elephant population was increasing, that there were no apparent threats to the status of the population, and that the country's anti-poaching measures were "extremely effective." Since then, the CITES Parties have revised the Appendix-II listing annotation three times. The current annotation, in place since 2007, covers the Appendix-II populations of Botswana, Namibia, South Africa, and Zimbabwe and allows export of: Sport-hunted trophies for noncommercial purposes; live animals to appropriate and acceptable destinations; hides; hair; certain ivory carvings from Namibia and Zimbabwe for noncommercial purposes; and a one-time export of specific quantities of raw ivory, once certain conditions had been met (this export, to China and Japan, took place in 2009). As in previous versions of the annotation, all other African elephant specimens from these four populations are deemed to be specimens of species included in Appendix I and the trade in them is regulated accordingly.

The African elephant was listed as threatened under the ESA, effective June 11, 1978 (43 FR 20499, May 12, 1978). A review of the status of the species at that time showed that the African elephant was declining in many parts of its range and that habitat loss, illegal killing of elephants for their ivory, and inadequacy of existing regulatory mechanisms were factors contributing to the decline. At the same time the African elephant was designated as a threatened species, the Service promulgated a 4(d) rule to regulate import and certain interstate commerce of the species in the United States (43 FR 20499, May 12, 1978).

The 1978 4(d) rule for the African elephant stated that the prohibitions at 50 CFR 17.31 applied to any African elephant, alive or dead, and to any part, product, or offspring thereof, with certain exceptions. Specifically, under the 1978 rule, the prohibition at 50 CFR 17.31 against importation did not apply to African elephant specimens that had originated in the wild in a country that was a Party to CITES if the specimens had been exported or re-exported in accordance with Article IV of the Convention, and had remained in customs control in any country not party to the Convention that they transited *en route* to the United States. (At that time, the only African elephant range States that were Parties to CITES were Botswana, Ghana, Niger, Nigeria, Senegal, South Africa, and Zaire [now the Democratic Republic of the Congo].) The 1978 rule allowed for a special purpose permit to be issued in accordance with the provisions of 50 CFR 17.32 to authorize any activity otherwise prohibited with regard to the African elephant, upon submission of proof that the specimens were already in the United States on June 11, 1978, or that the specimens were imported under the exception described above.

The 4(d) rule has been amended twice in response to changes in the status of African elephants and the illegal trade in elephant ivory, and to more closely align U.S. requirements with actions taken by the CITES Parties. On July 20, 1982, the Service amended the 4(d) rule for the African elephant (47 FR 31384) to ease restrictions on domestic activities and to more closely align its requirements with provisions in CITES Resolution Conf. 3.12, *Trade in African elephant ivory*, adopted by the CITES Parties at the third meeting of the Conference of the Parties (CoP3, 1981). The 1982 rule applied only to import and export of ivory (and not other elephant specimens) and eliminated the prohibitions under the ESA against taking, possession of unlawfully taken specimens, and certain activities for the purpose of engaging in interstate and foreign commerce, including the sale and offer for sale in interstate commerce of African elephant specimens. At that time, the Service concluded that the restrictions on interstate commerce contained in the 1978 rule were unnecessary and that the most effective means of utilizing limited resources to control ivory trade was through enforcement efforts focused on imports.

Following enactment of the AfECA (in October 1988), the Service established, on December 27, 1988, a moratorium on the import into the United States of African elephant ivory from countries that were not parties to CITES (53 FR 52242). On February 24, 1989, the Service established a second moratorium on all ivory imports into the United States from Somalia (54 FR 8008). On June 9, 1989, the Service put in place the current moratorium, which bans the import of ivory other than sport-hunted trophies from both range and intermediary countries (54 FR 24758).

The 4(d) rule was revised on August 10, 1992 (57 FR 35473), following establishment of the 1989 moratorium under the AfECA on the import of African elephant ivory into the United States, and again on June 26, 2014 (79 FR 30400, May 27, 2014), associated with the update of U.S. CITES implementing regulations. In the 2014 revision of the 4(d) rule, we removed the CITES marking requirements for African elephant sport-hunted trophies. At the same time, these marking requirements were updated and incorporated into our CITES regulations at 50 CFR 23.74. The purpose of this change was to make clear what is required under CITES (at 50 CFR part 23) for trade in sport-hunted trophies and what is required under the ESA (at 50 CFR part 17).

Proposed rule and comments received. On July 29, 2015, we published a proposed rule (80 FR 45154) to revise the rule for the African elephant promulgated under section 4(d) of the ESA. We accepted public comments on the proposed rule for 60 days, until September 28, 2015.

We received more than 1,349,000 comments in response to the proposed rule, including eight petitions with more than 1,342,000 signatures (one petition also included drawings by children). All eight petitions were in strong support of strengthening elephant ivory regulatory controls. Counting each of the petitions as one substantive comment, about 500 of the comments received were substantive. We received comments from individuals, organizations, and one State natural resource agency, including substantive comments from: Musicians, musical instrument manufacturers, and music organizations; antiques dealers (including auction houses) and collectors; museums and museum groups; hunting groups and knife and gun rights organizations; scrimshanders and other artisans working with ivory; a State natural resource agency; conservation/environmental nongovernmental organizations; organizations dedicated to promoting trade in ivory; and concerned citizens.

Requests for extension of the comment period. Some commenters requested that we extend the comment period for the proposed rule beyond 60 days. Since we signaled our intent to revise the 4(d) rule in 2014, the Service has been transparent about what we expected to propose. We met with a number of individuals and groups representing a range of interests, including musicians, orchestras, instrument manufacturers, antique dealers and collectors, auction houses, museums, small businesses, and conservation, hunting, and shooting interests. We also participated in listening sessions on this proposal, hosted by the Office of Management and Budget. Because of the extensive consultation and public outreach that had already occurred, we decided not to extend the 60-day comment period.

General comments. It is clear from the comments we received that there are strongly held views in the United States on the conservation of elephants and trade in elephant ivory. Regardless of perspectives and positions on trade in ivory, there is overwhelming concern for elephant populations and a belief that the U.S. Government should take steps to protect elephants in Africa. Many commenters urged us to adopt strong regulations and to "shut down" the ivory trade to protect elephants; others argued that the U.S. ivory market is not the problem and that we should focus our efforts on combating poaching and illegal trade in Africa and Asia. Some commenters provided information in support of their positions, some offered specific suggestions and amendments to the proposed regulatory text, and others simply urged us to "do the right thing" to protect elephants. Some commenters commended the Service and the Obama Administration for taking steps to more strictly regulate trade in elephant ivory and for showing leadership in the fight against elephant poaching and wildlife trafficking; others asserted that the revisions proposed are unduly burdensome, that we have exceeded our statutory authority, and that there is no evidence that these restrictions will have any substantial effect on elephant poaching. In developing this final rule, we evaluated the comments and information received. We appreciate the careful consideration given to this proposal by so many groups and individuals. A summary and analysis of specific comments follows:

Comments on other types of ivory. We received a number of comments from individuals, including scrimshanders, who were concerned about the impact of this rule on trade in ivory other than African elephant ivory, including mammoth ivory. This final rule will regulate only African elephants and African elephant ivory. Asian elephants and parts or products from Asian elephants, including ivory, are regulated separately under the ESA. Ivory from marine species, such as walrus, is regulated separately under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). Ivory from extinct species, such as mammoth, is not regulated under statutes implemented by the Service. The only type of ivory regulated under this final rule is African elephant ivory.

Comments on legal possession of ivory. Some commenters seemed to think that this final rule would make it illegal to own ivory and would make the ivory that they currently legally own or possess subject to seizure or forfeiture. This is simply not true. Nothing in this final rule impacts a person's ability to own or possess legally acquired African elephant ivory.

Comments on the listing status of the African elephant. A number of commenters stated their belief that the African elephant should be reclassified under the ESA from a threatened species to an endangered species. Some also urged us to recognize savanna and forest elephants as two different species of African elephant. We consider these comments to be beyond the scope of this final rule. The Service has been petitioned to reclassify the African elephant as endangered and to recognize two species of African elephants and classify them both as endangered. Review of those petitions, through a process separate from this rulemaking, is ongoing.

Comments on trade in African elephant parts and products other than ivory and sport-hunted trophies. Under the final rule, African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States, and sold or offered for sale in interstate and foreign commerce, without an ESA threatened species permit, provided our CITES and general permitting and import/export requirements in 50 CFR parts 13, 14, and 23 are met. When establishing regulations for threatened species under the ESA, the Service has generally adopted restrictions on the import and export of live as well as dead animals and their parts and products, either through a 4(d) rule or through the provisions of 50 CFR 17.31. In this case, we elected not to extend the relevant section 9(a)(1) prohibitions to these activities involving live elephants and elephant parts and products other than ivory and sport-hunted trophies, and thus no separate ESA threatened species permit is required. Requiring individuals to obtain an ESA threatened species permit in addition to the required CITES documents prior to import or export of live animals and parts or products other than ivory and sport-hunted trophies would add no meaningful protection for the species and would be an unnecessary overlay of authorization on top of existing documentation that already ensures that the import or export is legal and is not detrimental to the species.

(1) *Comment:* Some commenters objected to the provisions in the proposed rule for trade in parts and products other than ivory. They argued for a ban on commercial sale of all elephant items, including non-ivory parts and products, asserting that allowing any elephant parts to remain in the market creates confusion.

Response: We disagree. The poaching crisis is driven by demand for elephant ivory. As we indicated in the preamble to the proposed rule, there is no information to indicate that commercial use of elephant parts and products other than ivory has had any effect on the rates or patterns of illegal killing of elephants and the illegal trade in ivory. Thus, we determined it is not necessary and advisable to propose additional restrictions on commercial activities related to African elephant parts and products other than ivory and sport-hunted trophies. We will continue to monitor such activities and may reevaluate these provisions in the future if needed.

Comments on import of ivory into the United States. Under the final rule, import of African elephant ivory will be limited to sport-hunted trophies (no more than two per hunter per year), ivory for law enforcement or genuine scientific purposes, and certain worked ivory that meets specific conditions and is contained in a musical instrument, is part of a traveling exhibition, or is part of a household move or inheritance.

(2) *Comment:* Many commenters believe that the provisions in the proposed rule are not strict enough and that all import of ivory should be prohibited, including sport-hunted trophies.

Response: We are strictly regulating import of African elephant ivory. However, there are circumstances under which import of African elephant ivory into the United States may benefit conservation of African elephants, including import for law enforcement purposes and for genuine scientific purposes, or have no conservation effect. We have elected to establish exceptions for those activities that we do not believe have an impact on conservation. The final rule allows the import of ivory for law enforcement and genuine scientific purposes that would benefit the conservation of elephants, as well as import of sport-hunted trophies (when the proper determinations have been made) and import of ivory that meets specific conditions and is contained in a musical instrument, is part of a museum or other exhibition, or is part of a household move or inheritance. This rule allows us to strictly limit import of ivory in the vast majority of scenarios that may be contributing to the illegal killing of elephants and the illegal trade in ivory, while allowing import in only certain narrow circumstances or purposes that have no conservation effect or that may benefit conservation. These exceptions remain prohibited under the AfECA import moratorium. However, under Director's Order 210, as amended on May 15, 2014, as a matter of law enforcement discretion, the Service will not enforce the AfECA moratorium with respect to these limited exceptions. (For further discussion on sport-hunted trophies, see *Comments on import of sport-hunted trophies*, below.)

(3) *Comment:* Commenters stated their support of the Service's proposal to ban the import of antique ivory under its AfECA authority, noting the import of these items is already banned pursuant to the AfECA. The Service proposes to allow noncommercial import of certain items, including law enforcement and scientific items, musical instruments, items as part of a household move or inheritance, and exhibition items, where it can be demonstrated that the ivory was removed from the wild prior to 1976. Technically, the import of these items is already banned pursuant to the AfECA. Understanding the Service's desire to make narrow exceptions, particularly for scientific and law enforcement purposes, if these import exemptions are maintained in the final rule, the Service should also maintain all other proposed limitations on imports (including the ban on post-1989 antique imports under AfECA and the ban on sale of antiques imported before 1982) "to constrain import and sale and much as possible."

Response: We wish to clarify that we are not invoking authority under AfECA to ban the import of antique ivory. Rather, as commenters note, this activity is already banned pursuant to AfECA. The AfECA moratorium on import of ivory other than sport-hunted trophies remains in place. Thus, noncommercial import of certain items, including law enforcement and scientific items, musical instruments, items as part of a household move or inheritance, and exhibition items, where it can be demonstrated for each such item that the ivory was removed from the wild prior to 1976, remains prohibited under the AfECA import moratorium. However, under Director's Order 210, as amended on May 15, 2014, as a matter of law enforcement discretion, the Service will not enforce the AfECA moratorium with respect to these limited exceptions.

Additionally, we have clarified in § 17.40(e)(9) that ESA antiques are exempt from the provisions of this 4(d) rule. In that same paragraph, we have also pointed to the provisions and prohibitions of the AfECA, which apply regardless of the age of the item. So, although we cannot and have not in this 4(d) rule prohibited import of African elephant ivory that qualifies as an antique under the ESA, the import of antique ivory is prohibited under the AfECA moratorium as established in our notice issued on June 9, 1989 (54 FR 24758). With regard to sale of antique ivory within the United States, Appendix 1 to Director's Order 210 clarifies how the Service implements the ESA antiques exception. Appendix 1 reminds the reader that the ESA allows the import and other activities without an ESA permit of an item that: (a) Is not less than 100 years of age; (b) is composed in whole or in part of any endangered species or threatened species listed under section 1533 of the Act; (c) has not been repaired or modified with any part of any such species on or after December 28, 1973; and (d) is entered at a port designated for the import of ESA antiques. The Appendix further clarifies that the Service will not take enforcement action against items that meet the first three elements (a, b, and c) above and were imported prior to September 22, 1982 (when the ESA antique ports were designated) or were created in the United States and never imported. Appendix 1 also reminds the reader that anyone claiming the benefit of an exemption from ESA prohibitions has the burden of proving that the exemption is applicable.

(4) *Comment:* Import of antiques should be allowed. The Service has exceeded its statutory authority by banning all ivory imports. Congress never intended to prevent legitimate antiques from entering or exiting the country, which is why it established an antique exception as part of the 1978 amendments to the ESA.

Response: See the response to (3) above.

(5) *Comment:* Import of ivory by U.S. museums should be allowed.

Response: The final rule allows the import by museums of African elephant ivory as part of a traveling exhibition when certain requirements are met (See § 17.40(e)(5)(ii).). This activity remains prohibited under the AfECA import moratorium. However, under Director's Order 210, as amended on May 15, 2014, as a matter of law enforcement discretion, the Service will not enforce the AfECA moratorium where the criteria contained in Director's Order 210 are met. See also *Comments on treatment of museums*, below.

Comments on import of sport-hunted trophies. Although some who commented on the provisions for import of sport-hunted trophies were opposed to the proposed limit on the number that can be imported by a hunter in a given year and the requirement for an ESA import permit for trophies from Appendix-II populations, most who commented on this issue expressed strong opposition to allowing import into the United States of any African elephant sport-hunted trophies.

(6) *Comment:* Many commenters stated that, while limiting import of sport-hunted African elephant trophies to two per hunter per year is an improvement over the current situation, import of sport-hunted trophies should be eliminated entirely. Others asserted that sport hunting is barbaric and that the time has come to eliminate the taking of African elephants by Americans for sport. Some commenters argued that we need to provide further explanation for our proposal to allow a hunter to import two African elephant trophies per year and that one trophy would and should suffice. Some

asserted that allowing import of two sport-hunted African elephant trophies per hunter per year is unsustainable for a species on the brink of extinction.

Response: The ESA does not prohibit U.S. hunters from traveling to other countries and taking threatened species (although authorization may be required under the ESA to import the sport-hunted trophy into the United States). AfECA specifically allows for import of sport-hunted trophies of elephants legally taken in a country that has submitted an ivory quota, and CITES provides guidance (in Resolution Conf. 10.10 (Rev. CoP16), *Trade in elephant specimens*) for trade in sport-hunted African elephant trophies, including on the establishment by range countries of an annual export quota, as part of the management of the population. Well-regulated trophy hunting is not a significant factor in the decline of elephant populations. We continue to believe that sport hunting, as part of a sound management program, can provide benefits to the conservation of the species. Before allowing import of African elephant sport-hunted trophies, we decide whether we can make the determinations necessary for import under CITES and the ESA by evaluating information provided by range countries. The Service determined in April 2014 that, based on the information available to us, import of sport-hunted trophies from Tanzania and Zimbabwe could not be allowed because the killing of African elephants for trophies in those countries does not meet the enhancement standard under the 4(d) rule. We reached the same determination based on the information available in 2015. We continue to evaluate requests for import of sport-hunted trophies carefully under CITES requirements and the ESA enhancement finding required under this and the previous 4(d) rule.

As we indicated in the preamble to the proposed rule, we are limiting the number of sport-hunted African elephant trophies that may be imported into the United States to address a small number of circumstances in which U.S. hunters have participated in elephant culling operations and imported, as sport-hunted trophies, a large number of elephant tusks from animals taken as part of the cull. This practice has resulted, in some cases, in the import of commercial quantities of ivory as sport-hunted trophies. Sport hunting is meant to be a personal, noncommercial activity, and engaging in hunting that results in acquiring quantities of ivory that exceed what would reasonably be expected for personal use and enjoyment is inconsistent with sport hunting as a noncommercial activity. In evaluating an appropriate limit for personal use, we considered actions taken by the CITES Parties in recognition of the need to ensure that imports of certain other hunting trophies are for personal use only. In three different resolutions, the CITES Parties have agreed to limit annual imports of hunting trophies of leopards (no more than two), markhor (no more than one), and black rhinoceros (no more than one). All three of the resolutions containing these annual import limits (Resolution Conf. 10.14 (Rev. CoP16), *Quotas for trade in leopard hunting trophies and skins for personal use,* Resolution Conf. 10.15 (Rev. CoP14), *Establishment of quotas for markhor hunting trophies,* and Resolution Conf. 13.5 (Rev. CoP14), *Establishment of export quotas for black rhinoceros hunting trophies*), recommend (among other things) that the Management Authority of the State of import be satisfied that the trophies are not to be used for primarily commercial purposes if they are being imported as personal items that will not be sold in the country of import and the owner imports no more than one or two (depending on the species) trophies in any calendar year. Based on past practice under CITES and the number of elephant trophies imported each year by the vast majority of U.S. hunters who engage in elephant hunts, we consider two trophies per hunter per year to be an appropriate upper limit for the personal use of the hunter and we believe that this limit addresses our concern. We do not have information to indicate that allowing the import of two trophies per hunter per year would result in import of commercial quantities of ivory or would not be appropriate for personal use. Although some commenters asserted that one trophy should be enough, they did not provide further information in support of this position (aside from the general comments that hunting is not conservation). We anticipate this change will impact fewer than 10 hunters per year. We believe it is necessary to use our authority under section 4(d) of the ESA to ensure that ivory imported into the United States as sport-hunted trophies is consistent with sport hunting as a personal, noncommercial activity and that commercial quantities of ivory are not imported under the guise of sport hunting.

(7) *Comment:* Some commenters stated that allowing continued import of ivory when it is a trophy, instead of "raw or worked" ivory, makes little sense. Some asserted that trophies consisting entirely or partially of tusks are one of the few legal methods still available for bringing ivory into the United States and that limiting the number of trophy imports does not adequately address the problem as there is nothing to stop multiple hunters from colluding to bring in just as much ivory by working in concert. One commenter stated that, with the proposed prohibitions, the value of ivory imported as part of a sport-hunted trophy will significantly increase, which could lead to an increase in trophy hunting with the intent to illegally sell the trophy after import. Setting a zero import quota on African elephant trophies is the most efficient and effective way to ensure that the system is not gamed as a cover for the illegal ivory trade.

Response: Please see the response to (6) above. Although the scenario described by these commenters is possible, we have seen no evidence that this practice is occurring and consider the risk of such collusion to be low. In addition, as the commenters correctly state, selling the trophy ivory after import into the United States would be illegal under both our CITES regulations (50 CFR 23.55) and this final rule. We believe the limitations imposed on the import of sport-hunted trophies in this rule and other laws and regulations are sufficient to ensure that the commenters' concerns are not realized. As we continue to monitor the import of sport-hunted trophies, we may reevaluate these provisions in the future, if necessary.

(8) *Comment:* The world is a different place than it was when Congress passed the AfECA, including its exemption for import of sport-hunted trophies. Political turmoil, war, terrorism, and corruption all contribute to the ability of buyers to acquire raw ivory in the form of trophies. While section 4222(e) of AfECA includes an exemption for legally taken sport-hunted trophies, section 4241 of AfECA expressly states that the Service's authority is in addition to and does not affect its legal authority under the ESA. The U.S. Fish and Wildlife Service has broad authority to regulate trophy imports.

Response: We agree that the Service has broad authority to regulate import of sport-hunted trophies of listed species, and we do regulate such imports, including through the provisions in this final rule. We believe that the restrictions on import of sport-hunted elephant trophies in this final rule are those that are necessary and advisable for the conservation of the African elephant.

(9) *Comment:* The U.S. Fish and Wildlife Service has banned the sale of sport-hunted trophy ivory for many years, but it is still available at auction, indicating that the ban is neither respected nor enforced.

Response: There is not, in fact, currently a ban on the sale of all sport-hunted African elephant ivory. The current 4(d) rule for the African elephant prohibits sale or offer for sale of "any sport-hunted trophy imported into the United States *in violation of permit conditions*" [emphasis added], and our CITES regulations (at 50 CFR 23.55) prohibit sale of sport-hunted African elephant trophies imported after January 18, 1990 (when the African elephant was listed in CITES Appendix I). With this final rule, we are prohibiting any sale of African elephant trophies in interstate or foreign commerce, with the exception of those that qualify as ESA antiques (see paragraphs (e)(6) and (e)(9) of the final rule).

(10) *Comment:* Appreciate that the Service is finally requiring an ESA import permit to import any African elephant sport-hunted trophy. It is imperative that the Service undertake an ESA enhancement analysis for sport-hunted trophies and that the public notice and comment requirements in section 10 of the ESA and the requirement that the Service make application information available to the public be retained in any 4(d) rule for African elephants.

Response: The commenter is correct that, under this final rule, an ESA import permit will be required for import of any African elephant sport-hunted trophy and that we will not issue such a permit unless we have made a positive enhancement finding. While section 10(c) of the ESA requires that we publish notice in the **Federal Register** of each application involving an exemption or permit made under section 10, this is not the case for applications involving threatened species, which are not subject to the section 9 prohibitions and thus, the notice and comment requirements in section 10(c). Nothing in this final rule changes those requirements.

(11) *Comment:* The requirements for "enhancement findings" are not the same as the requirements for CITES "non-detriment findings."

Response: We agree. The current 4(d) rule for the African elephant, at 50 CFR 17.40(e)(3)(iii), allows the import of sport-hunted trophies provided that, among other things, "a determination is made that the killing of the animal whose trophy is intended for import would enhance survival of the species." This provision has been in place since 1992 and will remain in place with this final rule. It requires that we make an ESA enhancement determination for import of any African elephant sport-hunted trophy, including those from CITES Appendix-II populations. Information on factors considered in making an ESA enhancement finding is found in 50 CFR 17.32(a). In addition to this ESA finding, for trophies from CITES Appendix-I populations we must also issue a CITES import permit. Before we can issue a CITES import permit we must be able to determine that the import is for purposes that are not detrimental to the survival of the species and that the specimen is not to be used for primarily commercial purposes. Information on factors considered in making a CITES non-detriment finding is contained in 50 CFR 23.61. Information on factors considered in determining whether a specimen is to be used for primarily commercial purposes is found in 50 CFR 23.62. The commenter is correct that the determinations needed for issuance of a CITES import permit are different from, and in addition to, the ESA enhancement finding.

(12) *Comment:* The Service has previously asserted that trophy hunting of imperiled species can have a positive overall impact on species conservation. There is minimal data showing this to be the case, particularly for elephants. Proponents of sport hunting as a conservation tool often cite two interrelated documents as alleged "proof" that sport-hunting can be a useful tool for conservation—the IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives and CITES Resolution Conf. 2.11, regarding trade in hunting trophies of Appendix-I species. The primary theory behind these documents is that hunting can directly raise funding for conservation efforts in countries with otherwise limited resources; however, this possible outcome does not overcome the long-term negative effect of hunting—allowing legalized killing of these animals continues to decrease their overall chance of survivability as a species in the wild.

Response: We continue to believe that well-managed trophy hunting can benefit conservation and disagree that there is little basis for this assertion. Trophy hunting can generate funds to be used for conservation, including for habitat protection, population monitoring, wildlife management programs, and law enforcement efforts. The IUCN Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Ver.1.0, August 2012) state that well-managed trophy hunting can "assist in furthering conservation objectives by creating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods" and, further, that well-managed trophy hunting is "often a higher value, lower impact land use than alternatives such as agriculture or tourism." When a trophy hunting program incorporates the following Guiding Principles, IUCN considers that trophy hunting can serve as a conservation tool: Biological sustainability; net conservation benefit; socio-economic-cultural benefit; adaptive management—planning, monitoring, and reporting; and accountable and effective governance. We support this approach.

Lindsey et al. (2007), in their paper on the economic and conservation significance of the trophy hunting industry in sub-Saharan Africa, state their belief that, from a conservation perspective, "the provision of incentives which promote wildlife as a land use is the single most important contribution of the trophy hunting industry." In addition, they note that trophy hunting generates revenues in areas where alternatives, such as ecotourism, may not be viable. More recently, Di Minin et al. (2016) assert that trophy hunting "strongly contributes" to conservation in sub-Saharan Africa, where large areas currently allocated to use for trophy hunting support important biodiversity. They also note that, if revenue cannot be generated from trophy hunting, these natural habitats will be converted to other forms of land use. While recognizing that the degree to which trophy hunting contributes to conservation is a subject of debate, Mallon (2013), in his report on trophy hunting of CITES-listed species in Central Asia, states that "well-run hunting concessions have an economic interest in maintaining the resource (*i.e.,* conserving the species) so will also aim to manage the area to conserve high-quality habitat that supports high numbers of the hunting species, and also to prevent unregulated use by others (poaching, overgrazing)." Naidoo et al. (2015) describe the complementary benefits of tourism and hunting to communal conservancies in Namibia.

We are, of course, aware that not all trophy hunting is part of a well-managed, well-run program, and we evaluate import of sport-hunted trophies carefully to ensure that all CITES and ESA requirements are met. As noted previously, the Service currently does not allow import of sport-hunted

African elephant trophies from Tanzania and Zimbabwe because, based on the information available, we were unable to make the necessary determinations under CITES and the ESA in 2014 and 2015. Under this final rule, we will continue to require an ESA enhancement finding for import of all African elephant sport-hunted trophies and will require issuance of a threatened species permit for all such trophies, which will allow us to carefully evaluate trophy imports in accordance with legal standards and the conservation needs of the species.

(13) *Comment:* Trophy hunting is a very big industry, and trophy imports are unquestionably commercial. Trophy hunters pay tens of thousands of dollars for hunting licenses, lodges, guides, etc., yet trophy hunting continues to be categorized as noncommercial.

Response: We recognize that trophy hunters spend money on licenses, guides, travel, lodging, etc., and agree that sport hunts are a source of income for guides, outfitters, governments, and others in many range countries (and that a portion of the money generated by these hunts is often directed to elephant conservation efforts). However, the import of sport-hunted trophies for the personal use of the hunter is, and has long been, considered a noncommercial activity both under the ESA and by the CITES Parties. With this final rule, we are prohibiting any sale of African elephant trophies in interstate or foreign commerce, with the exception of those that qualify as ESA antiques, which will ensure that these imports are not commercialized.

(14) *Comment:* Some commenters were opposed to the restriction on import of sport-hunted trophies and to the requirement for ESA import permits for African elephant sport-hunted trophies from Appendix-II populations. One commenter asserted that those populations were expressly transferred from Appendix I to Appendix II to reduce import permitting costs, burden, and delays. The same commenter expressed particular opposition to limiting the number of trophies that could be imported from Appendix-I populations, as Appendix-I import permit conditions state that the ivory may not be sold. Some commenters stated that we had not indicated that U.S. sport hunters are a source of the poaching or trafficking problems so there is no reasonable justification for our assertion that individual permit requirements will help reduce poaching and trafficking of elephants.

Response: The African elephant populations in Botswana, Namibia, South Africa, and Zimbabwe were moved from Appendix I to Appendix II because they met the criteria for downlisting to Appendix II. These criteria do not include or contemplate reduction of permitting costs or burdens. The decisions to downlist these populations occurred at a time (1997 for Botswana, Namibia, and Zimbabwe; 2000 for South Africa) when the African elephant populations in these countries were increasing and poaching was generally not a concern. As stated previously, we are imposing limits on annual imports of sport-hunted trophies to ensure that U.S. hunters are not importing commercial quantities of ivory, as has happened in the recent past. We are aware of circumstances under which U.S. hunters have participated in elephant culling operations and imported the ivory from those culls as sport-hunted trophies. We consider this practice to be inconsistent with sport hunting, which is meant to be a personal, noncommercial activity. While the commenters are correct that we do not believe that U.S. sport hunters are involved in poaching and trafficking of ivory, we are concerned about commercial quantities of ivory imported through sport-hunting contributing to the problem, particularly in light of our concerns about the status of African elephant populations and the inadequacies of conservation management programs in place in many African elephant range countries. Authorizing import of all sport-hunted trophies through threatened species enhancement permits will allow us to more carefully evaluate trophy imports in accordance with legal standards and the conservation needs of the species.

(15) *Comment:* The permit requirement will not benefit hunters, contrary to what the Service has suggested. The ability to import will become subject to the discretion of U.S. officials responsible for reviewing the paperwork involved in the permit process, and any minor, nonsubstantive inaccuracy or error could result in delays, confiscation of the trophy, bureaucratic and legal obstacles, and penalties.

Response: We disagree. See the response to (14) above. Although we are changing the process for obtaining authorization for import, we are not changing the standards for the decision or the enhancement finding. In addition, under current regulations, the import of elephant sport-hunted trophies requires the Service to make a determination regarding whether the killing of the elephant whose trophy is intended for import would enhance the survival of the species, the trophy must be declared to the Service at the time of import, and the trophy must be made available for inspection. Issuance of a permit confirming that an enhancement determination has been made is unlikely to result in any fundamental change in how trophies are treated upon import.

(16) *Comment:* The current enhancement requirement is not lawful. It is wholly based on a perceived enhancement requirement under CITES Resolution Conf. 2.11 for Appendix I sport-hunted trophies, not Appendix II as is proposed.

Response: The requirement that we make a determination regarding whether the killing of the elephant whose trophy is intended for import would enhance the survival of the species is based on our ESA implementing regulations (50 CFR 17.32), and is in addition to CITES requirements. It is not based on the recommendations in Resolution Conf. 2.11, which addresses the making of CITES non-detriment findings for trade in hunting trophies of Appendix-I species. (See the response to (11) above.)

(17) *Comment:* Sufficient reason has not been given for overriding the purpose and intent of section 9(c)(2) of the ESA, which exempts hunting trophies of threatened Appendix-II species from import permit requirements, and the provisions of the AfECA confirming specifically the favored treatment of elephant hunting trophies.

Response: We disagree. Section 9(c)(2) (16 U.S.C. 1538(c)(2)) of the ESA and our ESA implementing regulations at 50 CFR 17.8 provide a limited exemption for the import of some threatened species, which can be used by hunters to import sport-hunted trophies. Import of threatened species that are also listed under CITES Appendix II is presumed not to be in violation of the ESA if the import is not made in the course of a commercial activity, all CITES requirements have been met, and all general wildlife import requirements under 50 CFR part 14 have been met. This presumption can be rebutted, however, when information shows that the species' conservation and survival would benefit from the granting of ESA authorization prior to import.

In 1997 and 2000, when the four populations of African elephants were transferred from CITES Appendix I to CITES Appendix II, we retained the requirement for ESA enhancement findings prior to the import of sport-hunted trophies. We amended the African elephant 4(d) rule in June of 2014, again maintaining the requirement for an ESA enhancement finding prior to allowing the import of African elephant sport-hunted trophies. Requiring issuance of threatened species enhancement permits under 50 CFR 17.32 for the import of any African elephant hunting trophy is a change to the procedure for issuing ESA authorization but not a change to the requirement that an enhancement finding be made prior to import into the United States, as this finding was also required under the previous 4(d) rule.

The overall conservation status of African elephants has deteriorated in the years following the transfer of the four populations of African elephants to CITES Appendix II. The Service made a similar determination regarding the need for import permits for sport-hunted trophies of Appendix-II argali (*Ovis ammon*). In the final rule announcing the listing of the argali under the ESA (57 FR 28014, June 23, 1992), the Service determined the need for threatened species permits for import of sport-hunted trophies, noting that the "history of excessive exploitation of the argali" and "the uncertainty concerning its management" rebut the presumption that an export permit issued by the exporting country is all that is necessary to provide for the conservation of the argali in those countries. The district court upheld the Service's determination, finding no provision of the ESA indicates that "the Secretary's duty and authority to issue protective regulations is preempted, circumscribed, or modified by section 9(c)(2)." *Safari Club Int'l* v. *Babbitt*, 1993 U.S. Dist. LEXIS 21795 (W.D. Tex. Aug. 12, 1993).

As stated previously, authorizing import of all sport-hunted trophies through threatened species enhancement permits will allow us to more carefully evaluate trophy imports in accordance with legal standards and the conservation needs of the species. For example, as we noted in the preamble to the proposed rule, the issuance of threatened species enhancement permits under 50 CFR 17.32 would mean that the standards under 50 CFR part 13 would also be in effect, such as the requirement that an applicant submit complete and accurate information during the application process and the ability of the Service to deny permits in situations where the applicant has been assessed a civil or criminal penalty under certain circumstances, failed to disclose material information, or made false statements. Therefore, we have determined that the additional safeguard of requiring the issuance of threatened species enhancement permits under 50 CFR 17.32 prior to the import of sport-hunted African elephant trophies is warranted, and we are consciously supplanting the provisions of section 9(c)(2) of the ESA that would otherwise apply.

(18) *Comment:* The proposed rule violates the ESA. The Service proposes to restrict the number of sport-hunted trophies to two per hunter per year. In addition, the proposed rule requires issuance of a threatened species permit for all African elephant sport-hunted trophies, whereas now such permits are required only for trophies from CITES Appendix-I populations. The positive impact of sport hunting on wildlife management and economic development in Africa has been well documented, and the proposed rule does not detail the negative consequences the proposed revisions could have on sport hunting in Africa, nor does it offer evidence of how these negative consequences may impact conservation of elephants throughout their range. Because of this failing, the public has not been provided an opportunity to comment meaningfully, and, if finalized in its current form, this rule would constitute an arbitrary and capricious abuse of discretion.

Response: We disagree. While we have consistently acknowledged the positive impact sport hunting can have on wildlife management and economic development, we also articulated our concerns in the proposed rule with respect to the potential for commercial quantities of ivory to be imported as a result of sport hunting and provided opportunity for public comment. This rule does not limit the opportunity to hunt, only the number of trophies that an individual could import in a given year. Based on the small number (fewer than 10) of U.S. hunters who have imported more than two trophies per year over the last several years, we do not expect this to be a significant change for the vast majority of hunters. Range countries that allow sport hunting of African elephants establish annual quotas for export. Unless otherwise proscribed, a quota for 50 elephants could be filled by one hunter or 50 hunters. We do not believe, based on the information we have, that there is a shortage of hunters or that placing limits on the number of trophies that U.S. hunters can import in a given year would impact the overall number of elephants hunted. We are placing a limit on the number of trophies that can be imported to increase control of the U.S. domestic ivory market and to ensure that we are not allowing the import of commercial quantities of ivory as sport-hunted trophies. (See also the response to (12), above.)

Requiring issuance of a threatened species permit for import of all African elephant sport-hunted trophies (instead of only those from Appendix-I populations) will help us to more carefully evaluate trophy imports in accordance with legal standards and the conservation needs of the species and to ensure a conservation benefit. (See the response to (17), above.)

Comments on interstate and foreign commerce in ivory: The de minimis exception. The final rule will prohibit sale and offer for sale of ivory in interstate and foreign commerce except for antiques and certain manufactured items that contain a small (*de minimis*) amount of ivory and meet specific criteria. We received many comments on this proposed *de minimis* exception, including on the seven criteria set forth in paragraph (e)(3) to qualify for the exception. In the preamble to the proposed rule, we included a specific request for comment on the criteria proposed in paragraph (e)(3), particularly the criteria set forth in subparagraphs (iii) (the ivory is a fixed component or components of a larger manufactured item and is not in its current form the primary source of the value of the item) and (v) (the manufactured item is not made wholly or primarily of ivory), including the impact of not including these criteria and whether these criteria are clearly understandable.

Some, including some conservation organizations, expressed their preference for a complete ban on domestic commerce, but recognized our rationale for this proposed exception and asserted that the requirements to qualify should not be weakened in any way. Many others appreciated a *de minimis* exception but suggested a variety of changes to meet their particular needs, *e.g.*, bagpipers and organists believe the 200-gram weight limit should be increased to cover all types of bagpipes and keyboard instruments with multiple keyboards; others believe the weight limit should be different for different types of objects (furniture, musical instruments, etc.); some urged us to adopt a volume limit, instead of a weight limit; some suggested that the text in criterion (iii) be amended to include ivory parts that are "integral" to a manufactured item, not just "fixed components" of the item. We also received a request to amend criterion (iii) to include handcrafted items in addition to manufactured items. Some commenters urged us to extend the *de minimis* exception to commercial import and export.

(19) *Comment:* It is critical that, in the final rule, this provision remains truly

an exception only for items with minimal amounts of ivory. The criteria required for meeting the *de minimis* exception are well thought out and when taken as a whole will ensure that only a narrow category of ivory product that does not contribute to illegal trade will be permitted. Strongly discourage the removal or rollback of any of the seven criteria.

Response: We agree with the commenters.

(20) *Comment:* The broad *de minimis* exemption should be removed or significantly tightened (*i.e.,* limited to musical instruments only).

Response: While we appreciate the concern expressed, we decline to accept this suggestion. We have given considerable thought to the *de minimis* exception and the development of the criteria that must be met to qualify for the exception. It is our intent only to allow continued interstate and foreign commercial trade in products that contain a small amount of old ivory; items that we do not believe are contributing to elephant poaching or the illegal ivory trade. That group of products includes certain musical instruments but also includes, for example, household items such as baskets with ivory trim and teapots with ivory insulators, knives and guns with ivory grips, and some canes, walking sticks, and measuring tools with ivory trim or decoration, etc.

Our law enforcement experience over the last 25 years has shown that the vast majority of items in the illegal ivory trade are either raw ivory (tusks and pieces of tusks) or manufactured pieces (mostly carvings) that are composed entirely or primarily of ivory. In the preamble to the proposed rule, we described the November 2013 "ivory crush" during which the Service destroyed six tons of seized ivory that represented over 25 years of law enforcement efforts to control illegal ivory trade in the United States. The six tons of contraband ivory that was destroyed did not include any items that would be covered by this exception. Ivory traffickers are not manufacturing items with small amounts of pre-Convention ivory or dealing in such items. Rather, because the incentive to deal in illegal ivory is economic, the trade focuses on raw ivory and large pieces of carved ivory from which the highest profits can be made. We also described, in the preamble to the proposed rule, the case involving a Philadelphia-based African art dealer, which included the seizure of approximately one ton of ivory. All of the seized ivory (which was subsequently destroyed in our 2015 ivory crush in Times Square) was in the form of whole ivory carvings and did not include any items that would qualify under the *de minimis* exception in the final rule. Thus, we believe the criteria necessary to meet the *de minimis* exception will ensure that only a narrow category of ivory product that does not contribute to illegal trade will be permitted.

(21) *Comment:* Replace the word "fixed" with the phrase "fixed or integral" in criterion (iii) to cover items that have small ivory pieces that can be easily removed (like nuts or pegs on some wooden tools or musical instruments). "Integral" connotes an item that is "essential to the completeness" of a larger structure (Merriam-Webster online dictionary) and should satisfy the purpose of the criterion without artificially distinguishing between components based on how easily they can be detached.

Response: We believe this is a reasonable and useful suggestion and have revised the final rule accordingly.

(22) *Comment:* The *de minimis* exception provides an important avenue to allow sale and offer for sale of ivory objects in interstate or foreign commerce that would not contribute to illegal wildlife trade. However, the requirements as written may not exempt many objects considered works of art by U.S. art museums. The commenters suggest adding "handcrafted" to "manufactured" in the *de minimis* exception. Handcrafted would cover works that are unique and made primarily by hand that might not be considered "manufactured."

Response: We would have considered "handcrafted" items to fall under "manufactured" items, but we understand the distinction made by the commenters and have added handcrafted items to the criteria in paragraphs (e)(3)(iii), (v), and (vii) for clarity.

(23) *Comment:* Allow handcrafted objects created before February 26, 1976, to meet the *de minimis* exception, even if the ivory is a major component, so long as the ivory is not the primary source of value (*e.g.,* portrait miniatures).

Response: We appreciate that there are some items that meet most, but not all, of the criteria in the *de minimis* exception, and that some of these items may not be among those contributing to the poaching of elephants and illegal ivory trade. However, it is the criteria as a whole that we believe will minimize the possibility of the ivory contributing to either global or U.S. illegal ivory markets or that the *de minimis* exception could be exploited as a cover for illegal trade. We have crafted the *de minimis* exception to allow continued commercial trade in items that contain only a small amount of older ivory and that are not valued primarily because of the ivory they contain. We consider an item to be made wholly or primarily of ivory if the ivory component or components account for more than 50 percent of the volume of the item. Likewise, if more than 50 percent of the value of an item is attributed to the ivory component or components, we consider the ivory to be the primary source of the value of that item. Any person claiming the benefit of this exception has the burden of proving that the exception is applicable and showing that an item meets all of the criteria under the exception. Allowing interstate and foreign commerce of items for which ivory is a major component is contrary to the intent of the *de minimis* exception and would complicate implementation and enforcement of the exception. Therefore, we have not included this suggestion in the final rule. However, we note that many (possibly most) portrait miniatures, the example provided by the commenter, would likely qualify as ESA antiques and, therefore, would not need to meet the *de minimis* exception to be sold in interstate or foreign commerce.

(24) *Comment:* Allow a corresponding exception for import by U.S. art museums of works of art satisfying the stringent *de minimis* criteria.

Response: See *Comments on treatment of museums,* below.

(25) *Comment:* The Service should further restrict the date of import requirement in paragraph (e)(3)(i) so that it is consistent with the date in paragraph (e)(3)(ii), *i.e.,* February 26, 1976.

Response: The first two criteria paragraph (e)(3) to qualify for the *de minimis* exception set limits on when the ivory was either imported into the United States (if it is located in the United States) or when it was removed from the wild (if it is located outside the United States). We have chosen a different date for ivory that has been imported into the United States than for ivory located outside the United States to be consistent with our CITES regulations and standard CITES practices regarding pre-Convention specimens. Criterion (i) provides that, for items located in the United States, the ivory must either have been imported prior to January 18, 1990 (the date the African elephant was listed in CITES Appendix I), or imported under a CITES pre-Convention certificate (certifying that the ivory was removed

from the wild prior to the date the African elephant was first listed under CITES, which is February 26, 1976). This requirement is consistent with our CITES regulations at 50 CFR 23.55, which provide that CITES Appendix-I specimens may be used only for noncommercial purposes after import into the United States unless it can be demonstrated that they were imported prior to the Appendix-I listing or they were imported under a CITES pre-Convention certificate, which is issued to certify that the CITES specimen was taken from the wild prior to the date that the species was listed under CITES.

Criterion (ii) states that, for items located outside the United States, the ivory must have been removed from the wild prior to February 26, 1976. In this situation, our CITES use-after-import provisions in 50 CFR 23.55 would not apply (since the ivory has not been imported into the United States). Any African elephant specimen removed from the wild prior to February 26, 1976, is considered to be "pre-Convention" as it was acquired before it was subject to the provisions of CITES. The concept of pre-Convention CITES specimens and the process for authorizing international trade of CITES pre-Convention specimens is familiar to and widely understood by the 182 Parties to CITES. Therefore, we consider that use of the pre-Convention date as a qualifying factor for items located outside the United States is appropriate.

(26) *Comment:* Some commenters urged us to maintain the language in paragraph (e)(3) in criterion (v) that ensures that a qualifying item is not made wholly or primarily of ivory and the language in criterion (iii) stating that ivory is not the primary source of the value of the item. They also asserted that the other criteria are all reasonable elements that, if enforced, would be an improvement on the regulatory status quo. Some commenters urged us to strengthen and clarify the *de minimis* requirements, specifically criterion (v). They expressed their belief that "wholly or primarily" is subject to interpretation and could be construed to allow the sale of items made of up to 50 percent ivory. They urged us to consider a more stringent standard and noted that the State of New York requires antiques to be less than 20 percent ivory and California requires antiques to be less than 5 percent ivory and musical instruments to be less than 20 percent ivory to qualify for legal sale. These commenters encouraged the use of an equally well-defined numeric standard and low threshold amount of ivory to meet the requirements of criterion (v) of the *de minimis* exception. Some commenters suggested that, for some items, particularly furniture, we should consider a volume limit, as it allows for large antiques that use a proportionally small amount of ivory to be legally traded. Other commenters expressed uncertainty over how the primary source of value would be determined.

Response: We agree that it is important to maintain all seven of the criteria for meeting the *de minimis* exemption and that all of these criteria taken together ensure that only items containing truly small quantities of ivory will qualify for the exemption. We disagree with the assertion that using only a percentage of the total volume or weight of an item instead of a total allowable weight for the ivory contained in an item will necessarily result in a more stringent or more easily enforceable standard. Less than 20 percent, by weight or volume, of a very large or heavy piece could equal far more than 200 grams of ivory. Because all of the criteria must be met to qualify for the *de minimis* exception, both criterion (v) and criterion (vi), the two criteria that address quantity, must be met. This means that a qualifying item may not be made wholly or primarily of ivory *and* the total weight of the ivory component or components in the item must be less than 200 grams. We consider an item to be made wholly or primarily of ivory if the ivory component or components account for more than 50 percent of the volume of the item. Likewise, if more than 50 percent of the value of an item is attributed to the ivory component or components, we consider the ivory to be the primary source of the value of that item. We believe that these criteria taken together appropriately limit the amount of ivory an item may contain and still qualify for the *de minimis* exception. We will provide additional guidance on the implementation of these criteria via our Web site, including how we will estimate the weight of the ivory contained in a manufactured or handcrafted item, prior to the effective date of this rule. However, as stated above, any person claiming the benefit of this exception has the burden of proving that the exception is applicable and showing that an item meets all of the criteria under the exception. See *Comments on documentation requirements* (below).

(27) *Comment:* The 200-gram limit on the amount of ivory contained in antique objects seems unnecessarily stringent, driven by the weight of the ivory veneers on piano keys rather than a close review of the wide spectrum of antique objects that contain ivory. It is unclear how the Service would attempt to enforce the 200-gram limit (if the ivory is an integral part of the antique object, how could it be weighed separately?). If a *de minimis* limit is adopted, some commenters proposed that it be done by category of object; while 200 grams may be appropriate for musical instruments, with respect to other antique objects, particularly furniture, the Service should consider a volume limit, such as the 20 percent rule adopted in New York.

Response: To be clear, the proposed *de minimis* exemption does not apply to antiques. Items made of ivory or containing ivory that qualify as ESA antiques may be sold or offered for sale in interstate or foreign commerce regardless of the quantity of ivory they contain. The *de minimis* provision applies to activities in interstate and foreign commerce involving handcrafted or manufactured items containing small amounts of pre-Convention ivory or ivory that was imported into the United States prior to 1990 that does not qualify as antique under the ESA. The intent of the *de minimis* provision is only to allow the sale of certain older items, containing small amounts of ivory, which we do not believe are contributing to the poaching of elephants in Africa.

The commenters are correct that we chose the 200-gram limit because we believed it was large enough to accommodate most pianos and other musical instruments, as well as many other household and utilitarian items (such as baskets with ivory trim, teapots with ivory insulators, knives and guns with ivory grips, some canes and walking sticks with ivory inlay or other decoration, and measuring tools with ivory trim or decoration), but also because it was small enough to ensure that we were not allowing commercialization of substantial volumes of ivory. Because we proposed the 200-gram limit with a particular suite of existing items in mind, including certain musical instruments, we already have a good understanding of the types of items that qualify for the *de minimis* exception. We will provide additional guidance on the implementation and enforcement of the 200-gram limit. See also *Comments on documentation requirements* (below).

(28) *Comment:* For the *de minimis* exemption to function as intended, it is important that the 4(d) rule apply documentation requirements that are flexible enough to be realistic and achievable. The Service has already articulated such requirements in the "use after import" rule, and this same standard should be used for items

subject to the *de minimis* exemption; specificity can only lead to confusion.

Response: See *Comments on documentation requirements* (below).

(29) *Comment:* The New York State Department of Environmental Conservation (DEC) commends the U.S. Fish and Wildlife Service for its efforts to combat illegal wildlife trade and states that it has been proud to work alongside the Service to eliminate the illegal trade in wildlife. New York State has recently passed robust legislation banning the sale of elephant and mammoth ivory and rhinoceros horn, with limited exceptions for products such as antiques containing only a small amount of ivory. This legislation significantly curtailed the amount of elephant ivory that can be legally sold, traded, or distributed in New York State. The *de minimis* exemption in the Service's proposed rule is a significant flaw that would weaken New York State's ivory prohibitions on interstate sale. Current New York State law generally prohibits interstate sale of elephant ivory unless a person can demonstrate that the item is an antique greater than 100 years old and the person secures a permit from DEC to sell the ivory. The ESA generally preempts a State law that applies to import or export, or interstate or foreign sale of endangered or threatened species, where the State law prohibits what is authorized pursuant to an ESA exemption, permit, or implementing regulation. If the *de minimis* exemption is adopted, the State of New York must permit interstate sale of manufactured items containing *de minimis* amounts of ivory even if they are not antiques. The Service should reconsider this exemption.

Response: We agree that the revised 4(d) rule for the African elephant would likely require that the State of New York allow sale and offer for sale of ivory in interstate or foreign commerce along with delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce without a threatened species permit for manufactured items containing *de minimis* amounts of ivory, provided they meet specific criteria. While the commenters have expressed their concern that this portion of their rule may be preempted, they have not attempted to show why allowing interstate commerce of *de minimis* amounts of ivory would not adequately curtail the sale of elephant ivory or why a more restrictive approach may be necessary and advisable for the species. It is always a goal of the Service to balance the burden of regulation with conservation. Based on our more than 25 years of law enforcement efforts and input from the public, this rule strives to strike that balance. We will, of course, continue to monitor the situation, and if the balance tips, may revisit the rule as necessary.

Additional comments on interstate and foreign commerce in ivory. As noted above, the final rule will prohibit sale and offer for sale of ivory in interstate and foreign commerce except for antiques and certain manufactured items that contain a small (*de minimis*) amount of ivory and meet specific criteria. In addition to the comments on the *de minimis* exception, we received comments on other aspects of the provisions for interstate and foreign commerce.

(30) *Comment:* Some commenters, including the New York Department of Environmental Conservation, assert that the Service should require a permit for the sale, offer for sale, purchase, trade, barter, or distribution of articles containing African elephant ivory and products and parts from other endangered and threatened species in interstate or foreign commerce.

Response: This comment, as it relates to other endangered and threatened species in interstate or foreign commerce, is beyond the scope of this rulemaking. However, the Service's goal here, and in its approach to regulating wildlife trade more broadly, is to balance the burden of regulation with the impact on conservation. Where our experience indicates that this activity is not contributing to the poaching of elephants and the risk of illegal trade is low, we do not wish to impose unnecessary regulatory burden on the public or additional workload on the Service, particularly in an area where the workload is already substantial.

(31) *Comment:* The U.S. Fish and Wildlife Service should create a registry and license all ivory dealers as recommended in CITES Resolution Conf. 10.10 (Rev. CoP16). Section 9(d) of the ESA creates a mandate for the Service to track the disposition of ivory products once they enter the United States.

Response: We disagree that section 9(d) of the ESA creates a mandate for the Service to track the disposition of ivory products once they enter the United States. Section 9(d) of the ESA requires people engaged in business as importers or exporters of wildlife, including any amount of African elephant ivory, to first obtain permission from the Service. These importers and exporters are also required to keep records of their imports and exports and any subsequent disposition by them of the wildlife and to allow the Service to examine those records. Those provisions remain firmly in place. The Service requires that anyone engaged in commercial import or export of wildlife obtain an Import/Export License from our Office of Law Enforcement and provide an opportunity for us to examine inventories and required records "at all reasonable times upon notice by a duly authorized representative." We believe that the prohibitions and exceptions laid out in this rule are adequate to effectively regulate ivory trade in the United States and to ensure that the U.S. market for ivory is not contributing to elephant poaching and illegal ivory trade. A registry and licensing scheme would be unduly burdensome on both the regulated public and the Service, with little, if any, added conservation benefit beyond the restrictions already in place and those added here.

(32) *Comment:* Some commenters stated that the economic impact of the proposed rule on American craftsmen and artisans will be significant. One commenter estimated that there are about seven individuals in the United States who purchase tusks (from individuals who imported them prior to 1989) and cut them into a variety of forms, or "blanks," for U.S. craftsmen to finish. These craftsmen work the ivory pieces into finished products, including pool cues, knife handles, and piano keys. He estimated that there are about 15 individuals making pool cues with ivory ferrules and that there are a total of about 300 people in the United States creating finished products using ivory. The commenter stated that under the proposed rule all of these people would lose their livelihoods. We also received comments from craftsmen who restore ivory pieces (see (48), below).

Response: We agree that this rule will impact craftsmen working with ivory in the United States. We note, however, that the final rule does not impact intrastate (within a State) commerce so those buying and selling within the State in which they reside will be able to continue to do so (where such activity is allowed under State law). In addition, we note that these craftsmen can make use of alternative materials, including mammoth ivory or deer antlers, for example. Martin and Stiles noted in their 2008 report that the exact number of ivory craftsmen in the United States is unknown but they estimated that there were 120 to 200 craftsmen at that time, with the number decreasing over time. The authors also noted that most craftsmen work part-time with ivory and use other materials as well. The impact on individual craftsmen will depend on the diversity of materials they use (wood, bone, mammoth tusks, etc.) and may range from minimal revenue decrease to closure.

(33) *Comment:* The U.S. Fish and Wildlife Service definition of "commercial activity" is substantially narrower than the statutory definition and is, therefore, unlawful and should be amended. Section 3 of the ESA broadly defines "commercial activity" to mean "all activities of industry or trade, including, but not limited to, the buying or selling of commodities." The Service's regulations at 50 CFR 17.3 further define "industry or trade" to mean only "the actual or intended transfer of wildlife from one person to another person in the pursuit of gain or profit." The Service's definition essentially restricts covered "commercial activities" to the buying and selling of items. This definition contravenes the statutory definition, which covers both buying and selling items, as well as other commercial activities. The Service should rethink and broaden its regulatory definition [of commercial activity] and its application in the 4(d) rule.

Response: The regulatory definition of "industry or trade" with regard to commercial activity has been in place for many years and was promulgated through rulemaking conducted in accordance with the Administrative Procedure Act (APA), where the public received opportunity for notice and comment. As we know the commenter is aware, this definition has broader application than this 4(d) rule. We do not consider it appropriate to amend the definition for this specific rulemaking. In addition, as explained in the preamble to the proposed rule, we believe that taking an article across State lines for repair, for example, rightfully falls outside what is considered "commercial activity." We may revisit this issue in the future if the existing definition appears to allow activities that may be contrary to the spirit or plain language of the ESA.

Comments on documentation requirements. We received a number of comments requesting that we provide clearly understandable guidance on how to determine whether an item qualifies for the antiques or *de minimis* exemptions and what type of documentation can be used to demonstrate that an item qualifies for one of these exemptions. Many musicians asked that we clarify the documentation needed to show the provenance of ivory contained in instruments. Some commenters asked for a rigorous and clearly defined method for documenting the age and provenance of an item so that both buyers and sellers understand their duties under the law. Others asked that we clarify how to determine the weight of ivory in a manufactured or handcrafted piece (where it cannot be removed and weighed) or how to determine whether the ivory is the primary source of value of an item. Some commenters noted that, for the *de minimis* exemption to function as intended, it is important that the Service apply documentation requirements that are flexible enough to be realistic and achievable. They pointed to the requirements articulated in the "use after import" provisions of our CITES regulations at 50 CFR 23.55 as a good example and argued that the same standard should be used for items subject to the *de minimis* exemption. We appreciate this input and understand the concerns. We are developing clear guidance for the public that we will make available before the effective date of this final rule.

One commenter asked whether the Service intends to require scientific testing of all ivory. Another commenter stated that many types of forensic testing are expensive, often destructive to the object, and sometimes unavailable due to an object's small size. They noted, however, that an object whose ivory cannot be identified forensically may be identified through expert analysis of trade patterns for objects of that type, the maker of the object, and geomapping of the object. They urged us to make clear that both of these types of evidence (forensic and other expert analysis) are acceptable. Another commenter asked us to clarify that, with respect to manufactured items, contemporary evidence contained in catalogs, price lists, and similar materials showing that a particular item was not offered for sale after a given date would constitute evidence that the item was manufactured prior to that date. Some commenters provided information on nondestructive methods for determining age and species of ivory objects, including both scientific methods and methodologies employed by art historians.

Response: We agree that forensic testing is not necessarily required. Provenance may be determined through a detailed history of the item, including but not limited to, family photos, ethnographic fieldwork, art history publications, or other information that authenticates the article and assigns the work to a known period of time or, where possible, to a known artist or craftsman. A qualified appraisal or another method, including using information in catalogs, price lists, and other similar materials that document the age by establishing the origin of the item, can also be used.

With regard to the criteria for meeting the *de minimis* exception, we consider an item to be made wholly or primarily of ivory if the ivory component or components account for more than 50 percent of the volume of the item. Likewise, if more than 50 percent of the value of an item is attributed to the ivory component or components, we consider the ivory to be the primary source of the value of that item. Value can be ascertained by comparing a similar item that does not contain ivory to one that does (for example, comparing the price of a basket with ivory trim/decoration to the price of a similar basket without ivory components). Though not required, a qualified appraisal or another method of documenting the value of the item and the relative value of the ivory component, including, as noted above, information in catalogs, price lists, and other similar materials, can also be used.

We will not require ivory components to be removed from an item to be weighed. Because we proposed the 200-gram limit with a particular suite of existing items in mind, including certain musical instruments, knife and gun grips, and certain household and decorative items, we already have a good understanding of the types of items that qualify for the *de minimis* exception. Examples of items that we do not expect would qualify for the *de minimis* exception include chess sets with ivory chess pieces (both because we would not consider the pieces to be fixed or integral components of a larger manufactured item and because the ivory would likely be the primary source of value of the chess set), an ivory carving on a wooden base (both because it would likely be primarily made of ivory and the ivory would likely be the primary source of its value), and ivory earrings or a pendant with metal fittings (again both because they would likely be primarily made of ivory and the ivory would likely be the primary source of its value).

We realize that determining whether an object containing ivory complies with these requirements may sometimes be difficult for persons who are not ordinarily engaged in commercial trade of such articles. Our law enforcement focus under this rule will be to help eliminate elephant poaching by targeting persons engaged in or facilitating illegal ivory trade. While it is the responsibility of each citizen to understand and comply with the law, and that is our expectation with regard to this regulation, we do not foresee

taking enforcement action against a person who has exercised due care and reasonably determined, in good faith, that an article complies with the *de minimis* requirements.

We will provide additional guidance on the implementation of these criteria via our Web site, including how we will estimate the weight of the ivory contained in a manufactured or handcrafted item and how we will determine that an item is made "wholly or primarily" of ivory, prior to the effective date of this rule.

We have already provided guidance, in the appendix to Director's Order 210, regarding documentation to demonstrate that an item meets the definition of "antique" under the ESA. We will provide additional guidance to the regulated public regarding documentation and other evidence that may be used to demonstrate that an item meets the specific exceptions to the prohibitions in this rule. We will make that information available on our Web site in advance of the effective date of this rule.

(34) *Comment:* Some commenters noted that the Internal Revenue Service has established an Art Advisory Panel that determines age and value for all sorts of art and antiques. They suggested that the Service may want to set up a similar panel of experts who can make declarations that objects are in compliance with the ESA antiques exemption.

Response: We do not believe that a third party panel or body is necessary for the effective implementation of this rule, although we encourage the regulated public to utilize available experts to provide technical advice regarding the qualifications of an item that may qualify for an exception to this rule. We will provide additional guidance to the regulated public regarding documentation and other evidence that may be used to demonstrate that an item meets the specific exceptions to the prohibitions in this rule. We will make that information available on our Web site in advance of the effective date of this rule.

(35) *Comment:* The Service must provide a safe harbor, whereby an affidavit from a qualified art, antiques, or ivory expert that the item satisfies the ESA antiques exemption is deemed sufficient. The Service could itself certify experts or require that such experts be certified by a third party.

Response: We disagree. Anyone claiming the benefit of an exemption from ESA prohibitions has the burden of proving that the exemption is applicable. There are a variety of methods and forms of documentation that can be used to demonstrate that the exemption applies. The Service has a long history of implementing and enforcing the ESA, including the antiques exemption. We do not believe that a safe harbor, as described by the commenters, is appropriate for the effective implementation of this rule. We do, however, encourage the public to utilize available experts to provide technical advice regarding the qualifications of an item that may qualify for an exception to this rule. See the other responses under *Comments on documentation requirements,* including to (34) above.

(36) *Comment:* The American Society of Appraisers asked whether and to what extent the Service plans to pursue legal or administrative recourse against appraisers who perform "best efforts" appraisals only to discover after some time that key assumptions or determinations that underpinned the appraisal are determined to be inaccurate.

Response: In Appendix 1 to Director's Order 210, we have provided explicit information on what the Service will accept as a qualified appraisal and facts we examine in determining the reliability of the appraisal. An appraisal using appropriate professional expertise based on the best available information at that time that is later determined to be incorrect would not subject that appraiser to legal action under this rule. We expect an appraiser or other individual to be able to act in good faith in his or her professional capacity.

Comments on the U.S. role in the illegal ivory market. We received a number of comments on the U.S. role in the illegal ivory market and steps the Service should take to address ivory trafficking.

(37) Many commenters asserted that ivory trafficking is primarily a problem in Asia and Africa, not here in the United States, and that the best way to protect African elephants is to step up enforcement and conservation efforts in Africa and in China. Some commenters cited analyses of CITES Elephant Trade Information System (ETIS) data as evidence that the United States is not part of the problem.

Response: Based on all available information, we believe that ivory trafficking is a global problem, and that the United States has a duty and responsibility to work with other countries around the world to combat illegal trade in ivory and other wildlife parts and products. To that end, we are actively engaged in combating poaching in African elephant range states and wildlife trafficking in transit and consumer states. We are supporting anti-poaching efforts in parks and other protected areas, providing training to rangers, working collaboratively on international investigations, supporting demand-reduction campaigns in consumer countries, and pushing other countries to strengthen their ivory trade controls. We disagree with the assertion that the United States does not play a role in the market for illegal ivory and that we do not have a duty and responsibility to take steps to control our own domestic ivory market. Trafficking of ivory is a complex, global problem, and it will take coordinated, focused efforts by all countries involved as source, transit, or destination countries to bring it to an end. Although the primary markets are in Asia, particularly in China and Thailand, the United States continues to play a role as a destination and transit country for illegally traded elephant ivory. We made this point in the proposed rule, and it is apparent in the ETIS reports cited by some commenters. We gave an overview in the proposed rule of the seizures by Service wildlife inspectors of unlawfully imported and exported elephant specimens over the years, and we described multiple smuggling operations, investigated by Service special agents, involving the trafficking of elephant ivory for U.S. markets. We reported that, since 1990, the annual number of seizure cases involving elephant specimens at U.S. ports has ranged from over 450 (in 1990) to 60 (in 2008); in most other years the number falls between 75 and 250 cases. In 2012, the most recent year for which we have complete data, there were about 225 seizure cases involving elephant specimens, which resulted in seizure of more than 1,500 items that contained or consisted of elephant parts or products. Nearly 1,000 of those items contained or consisted of elephant ivory. In his 2013 articles "It's Not Just China, New York is Gateway for Illegal Ivory" and "The Big Ivory Apple," Daniel Stiles described a 2013 visit to New York City during which he saw what appeared to be a "massive decline" in the ivory market, compared to his visit a little more than 5 years earlier, with a 60 percent decrease in the number of outlets selling ivory and an approximately 50 percent decrease in the number of ivory items for sale. However, the author still found cause for concern and concluded that "New York and San Francisco appear to be gateway cities for illegal ivory import in the U.S. . . . China is not the only culprit promoting elephant poaching through its illegal ivory markets. The U.S. is right up there with them." In a very

recent (March 9, 2016) case, the senior auction administrator of a gallery and auction house in Beverly Hills, California, pled guilty in Federal court to conspiring to smuggle wildlife products made from rhinoceros horn, elephant ivory, and coral with a market value of approximately $1 million. He personally falsified customs forms by stating that rhinoceros horn and elephant ivory items were made of bone, wood, or plastic. We are revising the 4(d) rule for the African elephant to more strictly regulate trade in African elephant ivory and help to ensure that the U.S. ivory market is not contributing to the poaching of elephants in Africa.

(38) *Comment:* The relative importance of the United States as a destination for illegal ivory has been greatly exaggerated. This misconception is attributed to the misreading of a table in Martin and Stiles 2008 report, Ivory Markets in the USA, which identifies the United States as having the second largest retail market for ivory in the world.

Response: The United States has among the largest economies in the world and has a large market for wildlife products, including ivory. Some commenters provided information estimating the size of the legal market for ivory in the United States. Although, by their nature, illegal markets are difficult to quantify, we agree that it is not accurate to characterize the United States as having the second-largest *illegal* ivory market in the world, and to be clear, we have not done so. We are aware, as the commenter notes, that others have made this assertion. (See also the response to (56), below.)

(39) *Comment:* In describing the U.S. market in the preamble to the proposed rule, the Service cited surveys done by Daniel Stiles and stated that "Stiles estimated, in his 2014 follow-up study, that as much as one half of the ivory for sale in two California cities during his survey had been imported illegally." In his comments on the proposed rule, Mr. Stiles objected to that characterization and noted that the report in question said nothing about "imported illegally"; it only stated that there is a much higher incidence of what appears to be ivory of recent manufacture in California, roughly doubling from about 25 percent in 2006 to about half in 2014, and that no conclusions should be drawn about what percentage of ivory in the United States is legal or illegal based on visual examination.

Response: It was certainly not our intention to mischaracterize Mr. Stiles' work. In an effort to avoid any mischaracterization, we will instead present excerpts from his surveys describing the U.S. role in the illegal ivory trade. The report referred to here is titled "Elephant Ivory Trafficking in California, USA" (Stiles, 2015), and the stated purpose (on p. 1) of the study was to "ascertain the current ivory trade in California and estimate what proportion might be illegal." The author describes his methodology for determining the date of manufacture and/or import of an item and notes that it is fraught with difficulty and that it is subjective, based on the investigator's experience, knowledge of worked ivory from different regions, and clues gathered in conversations with informants or descriptions and photographs on tear sheets on Web sites. He states that the results should be considered a "rough estimate."

A summary of his results, in the abstract section, includes the following: "In Los Angeles, between 77% and 90% of the ivory seen was likely illegal under California law (*i.e.,* post-1977), and between 47% and 60% could have been illegal under federal law. There is a much higher incidence of what appears to be ivory of recent manufacture in California, roughly doubling from approximately 25% in 2006 to about half in 2014. In addition, many of the ivory items seen for sale in California advertised as antiques (*i.e.,* more than 100 years old) appear to be more likely from recently killed elephants. Most of the ivory products surveyed appear to have originated in East Asia." He also states, on p. 15, that "Based on the style of the possibly illegal worked ivory, the investigator concluded that it originated, in order of proportion, from East Asia, Africa, and Europe . . . most of it was probably smuggled in sea or air shipments mixed in with mammoth ivory, carved bone and resin pieces; shipped concealed and mislabeled with other products (*e.g.,* crafts, furniture); or carried in personal luggage. The fact that the majority of illegal ivory in the United States is coming from China makes sense, as a great deal of raw ivory is transported from Africa to China where it is carved mainly in factories in the Guangdong and Fujian provinces and then smuggled to the United States."

We recognize Mr. Stiles' experience and expertise in investigating ivory markets around the world, and we recognize the difficulties associated with estimating the age or date of manufacture or import based on visual inspection. We do, in fact, recognize his conclusions to be rough estimates. That said, his studies provide additional evidence of the role of the United States in the illegal ivory trade.

(40) *Comment:* The Service must do more than focus on large-scale smuggling of ivory and must address the rampant interstate trade in ivory, which has a substantial negative cumulative impact on elephant conservation.

Response: We agree that more holistic regulation of ivory trade is necessary to address the U.S. role in this trade. The previous 4(d) rule did not regulate sale or offer for sale in interstate commerce of African elephant ivory, unless it was illegally imported into the United States or unless it was a sport-hunted trophy imported in violation of a permit condition. This rule goes further to prohibit sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity with some limited exceptions. The final rule will improve controls on the domestic market, which will make it more difficult to launder illegal elephant ivory through the U.S. marketplace. Our target in this action is illegal ivory trade that is contributing to pushing African elephants toward extinction. Our goal is to thwart those engaged in trafficking of African elephant ivory. We will focus our enforcement efforts on people engaged in illegal activities that contribute to the poaching of elephants in Africa. We will not focus our enforcement efforts on people who legally possess and want to sell African elephant ivory under the exceptions provided and who, in the exercise of due care, have reasonably determined in good faith that an article complies with one of the available exceptions.

We believe that the restrictions and exceptions in this rule are necessary and advisable for the conservation of the African elephant while not unnecessarily regulating or prohibiting certain activities that do not contribute to elephant poaching and illegal ivory trade.

(41) *Comment:* The domestic ivory trade is not supplied by tusks taken from elephants dying in Africa today; it runs entirely on ivory that was legally imported before 1989. There is no demand for new raw ivory in the United States. There is a "glut of estate raw tusks in the U.S." that sell for about 10–15 percent of the cost of those that can be obtained in China. No informed trafficker would try to smuggle tusks into the United States.

Response: We disagree. We cited numerous examples in the proposed rule of ongoing illegal trade in ivory to the United States. Additional examples have been documented since publication of the proposed rule. Our

wildlife inspectors consistently interdict and seize illegal elephant ivory. As recently as February 17, 2016, a New York antique dealer pleaded guilty to trafficking in prohibited wildlife that included raw and carved elephant ivory. He pleaded guilty to a felony Lacey Act charge for the unlawful import of a pair of elephant tusks and subsequent sale of those and four other elephant tusks to a Massachusetts collector. He purchased the ivory in Canada and smuggled it into the United States. The total value of the seized items is in the thousands of dollars. Thus, recent law enforcement efforts demonstrate that the United States plays a role in the illegal trade and associated illegal killing of African elephants.

(42) *Comment:* U.S. demand can be adequately addressed by pre-2014 law, as the successful prosecutions demonstrate.

Response: Although we have successfully investigated and prosecuted some cases in the last several years, our law enforcement personnel have indicated that the current regulatory regime makes it extremely difficult to effectively control illegal ivory trade in the United States. See response to (39) above regarding the apparent availability of illegal ivory in U.S. markets.

(43) *Comment:* The U.S. Fish and Wildlife Service should not be fighting this battle with mostly law-abiding American citizens when Chinese speculators are buying tons of poached ivory every year. Those who wish to prohibit legal ivory trade are creating the conditions for speculators to cash in; they are cutting off supply and creating artificial scarcity. Strongly urge the Service to devote its energies to solving the real problem—speculator demand for raw ivory in eastern Asia.

Response: We agree that solving this problem requires a suite of actions both domestically and internationally. This is a global challenge requiring global solutions. The United States is working with foreign governments, international organizations, nongovernmental organizations, and the private sector to maximize impacts together. These efforts aim to strengthen enforcement, reduce demand, and increase cooperation to address these challenges. See the response to (59) on other activities and initiatives in which we are engaged to help stop the poaching of elephants and end the illegal trade in ivory.

Comments on trade in antique ivory. In the final rule, we define antique (in paragraph (e)(1)) to mean any item that meets all four criteria under section 10(h) of the ESA, and we clarify (in paragraph (e)(9)) that antiques meeting this definition are not subject to the provisions of this rule. In that same paragraph, we point to the AfECA and remind readers that the provisions and prohibitions under AfECA also apply to trade in African elephant ivory, regardless of the age of the item.

(44) *Comment:* One commenter suggested adding the word "nevertheless" into the antiques paragraph, (e)(9), at the beginning of the sentence on the African Elephant Conservation Act to clarify that, while the ESA antiques exception does allow import of antiques, the AfECA does not.

Response: We believe this is a useful suggestion and have amended paragraph (e)(9) of the final rule accordingly. Additional text has been added to make clear that nothing in this rule interprets or changes any provisions or prohibitions that may apply under AfECA.

(45) *Comment:* Close the antiques loophole. By allowing sale of antiques made largely or entirely of ivory you will leave open one of the major loopholes used by smugglers today.

Response: The ESA antiques exception is statutory language enacted by Congress. We do not have the authority to eliminate this exception.

(46) *Comment:* Some recent ivory carvings are artificially aged to make them appear to be antiques. This practice underscores the need for a greater burden of proof for genuine antiques.

Response: We believe that the prohibitions and exceptions in this final rule are appropriate and necessary for the conservation of the African elephant. With regard to elephant ivory, we agree that there have been attempts to disguise the age of elephant ivory. However, we have not, to date, had a comprehensive regulatory regime in place for African elephant ivory. We believe that the prohibitions on interstate commerce, the specific criteria to meet the exception for ESA antiques, including clarification that the person claiming the benefit of the antiques exception has the burden of demonstrating that it applies, along with specific guidance such as that contained in Director's Order 210, are adequate to ensure that the antique exception is not exploited to engage in illegal trade in non-antique ivory items.

(47) *Comment:* The Service is taking the approach that it cannot distinguish legitimate antiques from new ivory. The legislative history of the ESA demonstrates that Congress agreed that legitimate antiques were distinguishable from newly harvested items.

Response: We fully agree that antiques can be distinguished from non-antiques, and our experience in implementing the ESA has demonstrated that fact. See *Comments on documentation requirements,* above. What we are making clear in this final rule is that the burden of demonstrating that an item qualifies for the ESA antiques exemption is firmly on the person claiming the benefit of that exemption.

(48) *Comment:* One ivory restorer commented that, under this rule, ivory that has been repaired after 1973 cannot be considered an antique and, therefore, cannot be sold. He noted that he has rarely seen any quality antique ivory that has not already been repaired and that he considers this provision to be an intentional roadblock to commerce. He added that much of his repair work requires no new ivory, just rebuilding and removal of old glue and dirt.

Response: To qualify as an antique, an item must meet all four criteria under section 10(h) of the ESA, including that it has not been repaired or modified with any part of an ESA-listed species on or after the date of enactment of the ESA (December 28, 1973). This provision is contained in the statute and applies to all ESA-listed species; it is not unique to this final rule or to African elephant ivory. We note, however, that removing old glue and dirt, as described by the commenter, would not be considered a repair or modification under the ESA unless it involved the use of additional ivory or other material from other ESA-listed species.

(49) *Comment:* Some commenters provided estimates of the value of antique ivory in personal household collections in the United States and the number of Americans who own antique ivory. One study, based on information from public sources, including auction sales reports, and interviews with "over 30 important dealers, auction houses, individual collectors and antique experts" evaluated the value of "high-end, antique ivory objects" in private collections. The author stated that 8.1 percent of U.S. households (9.5 million households) have a net worth of $1 million or more, excluding their home, and that if 5 percent of these households own ivory, there are 475,000 households "likely to possess antique ivory objects." The author assigned an average value of $25,000 to the ivory in each of these households and arrived at an estimated value of $11.9 billion for the antique ivory in private collections in the United States.

Another paper on the scope of the antique ivory market in the United States stated that "5–10% of all antique decorative arts objects are made of or contain ivory or other endangered species materials." The author provided "a very rough estimate" of 400 million or more objects in the United States that contain or are made entirely of ivory. (While he stated that the majority of these objects were made "prior to World War II" it is not clear how many of these items may be antiques.) He also estimated that the total number of high-value items worth more than $10,000 each is relatively small (probably hundreds of thousands) whereas the number of more common decorative items is huge (400 million). The author also estimated that between 1.5 million and 2.5 million items made from ivory enter into commerce annually. Some commenters provided the results of a survey. The author of the survey asserted that "(i)f 13 million people own 2.4 objects that have an average real value in today's market of $240 each, then we can say that it is probable that incidental ivory possessions—excluding pianos and major ivory collections—have an aggregate value of $7.488 billion." Not all of these items would qualify as antiques, however, as the average age of these objects was estimated to be 76 years (see also the response to (57), below).

One commenter asserted that "the vast majority of ivory antiques transactions are relatively small in value (less than $500)" and argued that requiring "onerous and prohibitively expensive documentation" would effectively prevent people from taking part in such transactions. These commenters, and others, asserted that the proposed rule would impose extremely onerous and unnecessary requirements on owners of ivory to demonstrate that an object satisfies the antiques exemption, which would largely destroy the exemption and render the vast majority of legitimate ivory antiques in the United States worthless.

Response: We disagree. This rule does not impose any requirements to demonstrate the antiques exemption that do not already exist for other ESA-listed species. We regularly issue permits for ESA antiques, and there remains an active trade in antiques that contain ESA-listed species in the United States. The ESA states explicitly (in section 10(g)) that an individual seeking the benefit of an exception bears the burden of demonstrating that an item meets that exception. We note that a number of commenters provided information on nondestructive methods for determining age and species of ivory objects, including both scientific methods and methodologies employed by art historians. They stated that the arts and antiques market is grounded in the ability to determine the authenticity of items, and experts in the field are capable of distinguishing legitimate antiques from forgeries. As noted above, we encourage the regulated public to utilize available experts to provide technical advice regarding the qualifications of an item that may qualify for an exception to this rule. Appendix 1 to Director's Order 210 provides guidance on the antique exception under the ESA, including guidance on documentation that may be used to demonstrate that an item meets the exception. We will develop and communicate additional guidance on documentation and other information that may be used to demonstrate how to meet the exception for ESA antiques. See *Comments on documentation requirements,* above.

While some commenters estimated the value and age of ivory in private household collections, this rule has no impact on private household collections unless and until they are sold. We agree that the majority of ivory antiques are small in value as stated by some commenters (less than $500 per item or $240 per item).

For the purposes of estimating the impacts of the rule, we assume that ivory (antique and non-antique) will continue to enter the legal market at the same rate as prior to this rule. Therefore, we disagree that between 1.5 million and 2.5 million ivory items enter commerce annually, as estimated by one commenter. Based on our review of data sources, the number of ivory items that are sold annually in the United States is closer to 89,000 items (see economic analysis for more information).

In our economic analysis, we estimate that sales in the domestic market average $88.8 million to $1.2 billion annually. For a conservative estimate of the domestic market analysis, we employ a lower bound of $992 per item (consistent with the online auction market average value) and an upper bound of $18,000 per item (which was the highest lot sold price in live auctions).

Based on the assumption that the proportion of the value of antique ivory items in domestic commerce resembles the export market (two percent), we estimate the rule to impact from $1.8 million to $23.4 million in interstate commerce of non-antiques. Therefore, this rule will not have an impact of billions of dollars, as some commenters have asserted.

Comments on treatment of museums. After announcing our intention to revise the 4(d) rule for the African elephant and prohibit sale and offer for sale of African elephant ivory in interstate commerce, we received input from representatives of the U.S. museum community. They expressed their concern that prohibitions on interstate commerce will impact their ability to acquire items for museum collections. In the preamble to the proposed rule, we recognized that museums can play a unique role in society by curating objects that are of historical and cultural significance and sought input from the public regarding whether we should incorporate an exception to the prohibitions on interstate commerce for museums, either through this rulemaking process or through a separate rulemaking process under the ESA. Additionally, we sought comment on how best to define museums in this regard, given the diverse interests that they serve.

We received a number of suggestions for the definition of "museum," including the definition developed by the Institute of Museum and Library Services (found at 2 CFR 3187.3), the Institute of Museum and Library Services definition with some added provisions, and the definition used by the International Council of Museums, with an additional requirement that a museum must have been established for at least 10 years prior to its first attempt at interstate procurement of ivory. Some commenters urged us to defer this issue to a separate rulemaking and comment period; others believe such an exception should be included in this final rule.

(50) *Comments:* One commenter asked how museums, if there is an exception made for them, would be able to engage in interstate commerce when the proposed rule contains no such exception for other market participants. The commenter urged the Service to consider expanding the museum exception to include other reputable members of the arts and antiquities community to facilitate this commerce and ensure that pieces of cultural and historical significance are preserved for future generations.

Some commenters supported an exception for museums and urged us to consider such an exception to be expanded to include any entity that holds a Federal income tax exception under section 501(c)(3) of the Internal Revenue Code, as amended, which would allow museums to acquire culturally significant items, churches to purchase used pipe organs from other churches, and orchestras to obtain instruments for their musicians.

Some commenters urged us to allow an exception not only for interstate

commerce but also for import by U.S. art museums of works of art satisfying the *de minimis* criteria.

Other commenters expressed concern about a possible exemption for museums and noted that the range of entities considered to be "museums" is quite broad and includes a wide range of interests and purposes. Other commenters were strongly opposed to an exception to the prohibition on interstate commerce for museums. They stated their belief that it is unnecessary, given the antiques exception contained in the ESA and the *de minimis* exception included in the proposed rule. Some asserted that entities purporting to be museums could abuse a museum exception to perpetuate the trade in elephant ivory in a manner that undermines elephant conservation.

Response: We believe that this is an important issue that warrants further consideration. We received a range of ideas and opinions on how to define a "museum" and whether or not entities so defined should be treated differently than other groups under the ESA. This is a complex issue that warrants careful consideration as any such decision will have ramifications beyond trade in African elephant ivory and the scope of this rulemaking. Therefore, we will explore the treatment of museums under the ESA in a separate rulemaking process and seek comment from a broader constituency regarding the potential benefits and risks of an exemption from certain ESA prohibitions for museums. Until such time, our regulations do not contain an exception to the prohibitions on interstate and foreign commerce for museums.

Comments regarding import or export of ivory as part of a traveling exhibition. Some commenters sought clarification regarding the exception for items containing ivory that are part of a traveling exhibition. Requirements for import or export of worked ivory as part of a traveling exhibition are found in 50 CFR 17.40(e)(5)(ii).

(51) *Comment:* One commenter pointed to the requirement that items that are part of a traveling exhibition must be marked or uniquely identified and noted that marking of objects is not always practical. The commenter stated that some museums and other lenders are unlikely to permit their objects to be marked and requested that we clarify that photographs may be used, as an alternative to marking, to uniquely identify an item imported or exported as part of a traveling exhibition.

Response: As the commenter noted, the requirement is that an item be marked *or uniquely identified* (emphasis added). We agree that a photograph may be used to identify an item, in place of a mark, as long as the photograph allows a border official to verify that the certificate and the item correspond.

(52) *Comment:* Some museum directors stated that, although the CITES traveling exhibition certificate can, theoretically, work for an exhibition organized by a foreign museum, not all countries issue traveling exhibition certificates. While noting that the Service has been helpful in trying to obtain traveling exhibition certificates from these countries, the commenters identified the need for a more permanent solution. In addition, some museum directors stated that the traveling exhibition certificate is problematic for long-term loans, as the maximum duration of a traveling exhibition certificate is 3 years, which is often not sufficient. They acknowledged that this is not the sole purview of the Service, but asked that we consider ways to extend the maximum duration, remove the time limit, or allow certificates to be extended without the necessity of bringing the object back to the issuing country. It was suggested that, as an alternative, a pre-Convention certificate could be used, conditioned to state that the item is on loan from or to a U.S. museum, that it will be used for exhibition only and will not be sold or otherwise transferred while traveling internationally, and will be returned to the country that issued the certificate.

Response: It is true that not all countries issue CITES traveling exhibition certificates. As the commenters noted, we work with these countries, as the need arises, to encourage them to issue such a certificate or to find a suitable alternative. Alternatives may include the use of a CITES pre-Convention certificate with conditions specifying that international trade of the item must be under similar conditions as those for trade under a traveling exhibition certificate. We continue to work with other CITES Parties to promote the use of traveling exhibition certificates and to streamline exchanges between museums to the extent possible.

Comments on regulatory process. Some commenters expressed concern about the process the Service has undertaken to revise the 4(d) rule.

(53) *Comment:* Some commenters asserted that the proposed rule violates the APA notice-and-comment provisions because the Service failed to provide evidence supporting its rationale for the revisions and failed to estimate negative consequences to the domestic ivory market; therefore, the public is not afforded a meaningful opportunity to comment. They further assert that we have failed to establish a linkage between the U.S. market and illegal ivory trade or poaching of African elephants in the wild and have admitted that it is not possible to predict how many elephants will be saved by revising the 4(d) rule. Without being provided such evidence, they do not believe the public has the opportunity to meaningfully comment. If finalized in its current form, they believe this would also be a violation of the APA's arbitrary and capricious standards.

Response: We disagree. An agency need not justify the rules it selects in every detail, but it is required to explain the general bases for the rules chosen. See *Connecticut Light and Power* v. *NRC,* 673 F. 2d 525 (D.C. Cir. 1982). We have thoroughly explained the bases for the actions we proposed to take. In the preamble to the proposed rule, we described the unprecedented increase in the illegal killing of elephants, the alarming growth in illegal trade of elephant ivory, and U.S. involvement in the illegal ivory trade. (See *Comments on the U.S. role in the illegal ivory market,* above.)

It seems these commenters would require the Service to predict exactly how many African elephants would be conserved before they believe they can meaningfully comment pursuant to the APA. A quantitative estimate of benefits is not necessary to satisfy the purposes of the ESA. The Service finds that provisions in this 4(d) rule are necessary and advisable to provide for the conservation of the African elephant and has also included appropriate prohibitions from section 9(a)(1) of the ESA. Thus, the final rule meets the standards under section 4(d). Moreover, E.O. 12866 recognizes that some costs and benefits are difficult to quantify and instructs agencies to adopt regulations based on a reasoned determination that the benefits of the intended regulation justify the costs. We have made a reasoned determination based on a qualitative assessment of the rule's benefits.

(54) *Comment:* Some commenters asserted that Director's Order 210 (DO 210) establishes binding agency rules for enforcement of the AfECA and the ESA and is thus a legislative rule, which requires notice and comment under the APA.

Response: Although we have reflected certain provisions of DO 210 in the 4(d) rule, this final rule does not interpret or implement DO 210 or the AfECA, and we note that this rulemaking *is* being promulgated in accordance with the APA.

DO 210 is a policy statement and not subject to the notice-and-comment procedures of the APA. Notice-and-comment procedures are required only under the APA (5 U.S.C. 553) for legislative rules with the force and effect of law; "interpretive rules, general statements of policy, or rules of agency organization procedure, or practice" are exempted. 5 U.S.C. 553(b)(A) ; *see also Nat'l Ass'n of Broadcasters* v. *FCC,* 569 F.3d 416, 425–26, 386 U.S. App. DC 259 (D.C. Cir. 2009). The *Attorney General's Manual on the Administrative Procedure Act* (1947) offers "the following working definitions":

Substantive rules—rules, other than organizational or procedural rules under section 3(a)(1) and (2), issued by an agency pursuant to statutory authority and which implement the statute, as, for example, the proxy rules issued by the Securities and Exchange Commission pursuant to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n). Such rules have the force and effect of law.

Interpretative rules—rules or statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.

General statements of policy—statements issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.

DO 210 "establishes policy and procedure for [Service] employees to implement the National Strategy as it relates to the trade in elephant ivory . . ." and, thus, falls squarely within the "General statements of policy" as defined in the *Attorney General's Manual on the Administrative Procedure Act.* DO 210 is a general statement of policy, informing employees and the public as to how the Service will enforce the moratorium. Language in the DO 210 emphasizing employees' discretionary power with regard to implementation supports this position.

Further, under the Supreme Court's holding in *Heckler* v. *Chaney,* DO 210 is a statement of the Service's decision not to enforce the moratorium to the fullest extent possible. See Daniel T. Shedd & Todd Garvey, *A Primer on the Reviewability of Agency Delay and Enforcement Discretion,* CRS REPORT, 4 (Sept. 4, 2014) (quoting *Heckler,* 470 U.S. at 832) (arguing that this statement is applicable to the Director's Order). In *Heckler,* an agency's "decision not to prosecute or enforce . . . is a decision generally committed to an agency's absolute discretion." DO 210 is not a final agency action subject to judicial review.

(55) *Comment:* The proposed rule would prohibit interstate and foreign sale of currently legal ivory products, unless the item falls under the antiques exemption or the *de minimis* exception. Meeting these standards will prove burdensome and difficult. If the proposal is finalized in its present form, it would violate the dictates of justice and fairness and would result in an unconstitutional taking of legally imported ivory under the 5th Amendment.

Response: Under E.O. 12630, "significant [Constitutional] takings implications should . . . be identified and discussed" in notices of proposed rulemakings. The Service has concluded that the proposed rule does not have significant takings implications.

This 4(d) rule applies to all African elephants and their parts, including live and dead elephants, parts other than ivory, and products made from elephant parts other than ivory. Compared to the restrictions provided by statute and regulation for other ESA threatened species, this rule places relatively few restrictions on live elephants and parts and products other than ivory.

While the rule does restrict certain activities with elephant ivory, people who lawfully possesses African elephant ivory can continue to engage in many activities with their ivory. They can continue to possess their ivory. They can gift it or bequeath it to another person. They can sell it and engage in other commercial activities with the ivory within their State provided the commercial activity is allowed under other law. They can also import or export ivory, sell or offer for sale ivory in interstate or foreign commerce, and engage in other commercial activities in interstate or foreign commerce provided they meet the requirements of the rule, in most cases without first obtaining an ESA threatened species permit. The many unregulated activities that may continue under the rule with elephants and their parts and products, including ivory, as well as activities that would be allowed, provided that regulatory requirements are met, indicate that the rule proposes no significant takings implications.

Overall, this rule is comparable to provisions applicable to other commercially valuable threatened species. For nearly all other endangered and threatened species, practically all import, export, sale or offer for sale in interstate or foreign commerce, and certain activities in interstate or foreign commerce in the course of a commercial activity are prohibited, unless the activity qualifies as a particular purpose and the person obtains an ESA permit. These standard, more stringent prohibitions under the ESA have never been successfully challenged as a Constitutional taking.

For example, in *Andrus* v. *Allard,* 444 U.S. 51 (1979), an analogous scenario challenging the prohibition of commercial transaction in parts of birds legally killed before they came under the protection of the Eagle Protection Act and the Migratory Bird Treaty Act, the Supreme Court held the simple prohibition of the sale of lawfully acquired property does not effect a taking in violation of the Fifth Amendment. It noted the challenged regulations do not compel the surrender of the artifacts in question, and there is no physical invasion or restraint upon them. It found the denial of one traditional property right does not always amount to a taking, nor is the fact that the regulations prevent the most profitable use of appellees' property dispositive, since a reduction in the value of property is not necessarily equated with a taking.

(56) *Comment:* Mischaracterization by the Service of the Stiles data not only violates the APA but also the Data Quality Act (DQA). One commenter stated that "Although the FWS characterized the U.S. as the world's second largest market for illegal ivory, it bases this claim largely on a report that Stiles compiled with Esmond Martin in 2008 . . . [which] is likely due to the misreading of a table in his report. . . ." The commenter goes on to assert that, because this "evidence" is utilized by the Service in the proposed rule, the public has not been provided a true picture of the U.S. ivory market or its relation to the illegal ivory trade.

Response: Nowhere in the proposed rule did we claim that the United States is the second largest market for illegal ivory (or for legal ivory) in the world. We quoted (on p. 45159) a 2004 report by Douglas Williamson of TRAFFIC who stated that "as one of the world's largest markets for wildlife products, the [United States] has long played a significant role in the international ivory trade." In his comments on the proposed rule, Mr. Stiles states that he "would like to dispel the false claim that the U.S. is the second largest market for illegal ivory consumption in the world—repeated in NGO campaigns and media stories constantly." He attributes this misconception to an incorrect interpretation of a table in the 2008 Martin and Stiles report. The executive summary of that 2008 report states that "The USA appeared to have the second largest ivory retail market in

the world after China/Hong Kong, as determined by numbers of items seen for sale." Although we did not refer to Mr. Stiles' characterization of the size of the U.S. market (which he repeated in his 2015 report), others who commented on the proposed rule did. The commenter has incorrectly conflated the comments of others on this subject with the text of the proposed rule. See our response to Mr. Stiles' comments under (39), above.

(57) *Comment:* The Regulatory Flexibility Act (RFA) requires an agency either to certify that a proposed rule will not have a significant economic impact on a substantial number of small entities or to conduct a full analysis that describes the effect of the rule on small entities. The Service has certified that the proposed rule will not have a significant impact on a substantial number of small entities, but there is nothing in the record that supports this certification. The Service estimates a two percent decrease in domestic sales by assuming that the domestic market operates in much the same way as the export market. There is no evidence to support this assumption. The Service also states that they are proposing to take this action to increase protection for African elephants and that increased control of the domestic ivory market would benefit the conservation of the African elephant. Both of these claims cannot be true. If the proposed rule reduces domestic and export markets by two percent, the revision cannot possibly have a measureable impact on the illegal trade of African elephant ivory. Either the Service is grossly underestimating the impact of the proposed rule or is grossly overestimating the impact of the U.S. ivory market on illegal trade.

Response: We disagree. The provisions in the final rule, including the clarification that anyone claiming the benefit of an exemption under the ESA has the burden of proving that the exemption applies, allow us to more strictly regulate the U.S. ivory market, which will benefit the conservation of the African elephant by prohibiting those activities that we believe are contributing to the poaching of elephants and for which we believe the risk of illegal trade may be high. We believe the major impact will be to ongoing illegal trade, of which there remains ample evidence in the United States. As we noted in the proposed rule, there are limited data available on the domestic ivory market.

Some commenters provided estimates of the value of antique ivory in personal collections (nearly $12 billion according to one document) and the number of Americans who own antique ivory (hundreds of thousands of households). (See *Comments on trade in antique ivory*, above). Some commenters provided a study, based on an email survey sent to 167 individuals, which estimated the number of Americans who possess objects containing ivory. The author of the study states that the results of the survey indicate that there are 13 million Americans who own an average of 2.4 objects that they believe to be made from or with ivory. Most were considered family heirlooms. The average age of those objects was estimated to be 76 years, and the average value was estimated to be $240 each. These estimates were extrapolated to arrive at an aggregate value of over $7 billion for "incidental ivory possessions" (excluding pianos). We understand that there are many Americans who own ivory, including African elephant ivory. These rough estimates of the quantity, age, and value of ivory in the United States help to provide a general picture of private household collections in the United States, but this rule has no impact on private household collections unless and until they are sold. Furthermore, because most of the objects are considered family heirlooms, we expect that these items would most likely be passed from one generation to another. We assume for the purposes of our analysis that ivory (both antique and non-antique) will continue to enter the legal market at the same rate as prior to this rule. In our economic analysis, we estimate that domestic ivory sales average $88.8 million to $1.2 billion annually, with non-antique sales representing about $1.8 million to $23.4 million annually.

Some commenters provided information on the economic impact of the proposed rule on American craftsmen and artisans (See (32) above). We have used this information in the Regulatory Flexibility Analysis to describe the types of establishments that will be impacted by this rule. We used the data available to us, including the export data from our Office of Law Enforcement, to make reasonable assumptions to approximate the potential economic impact of the proposed rule, including impacts on interstate commerce. We evaluated the declared value of worked ivory exports during a recent 5-year period, which varied from $32.1 million to $175.7 million. The declared value of items containing African elephant ivory that were less than 100 years old (and, therefore, could not qualify as ESA antiques) ranged from $607,000 to $3.7 million annually during the same time period. As this rule will no longer allow the commercial export of non-antique ivory, we expect, based on the information available, that, on average, commercial export of worked ivory will decrease by about two percent.

With regard to the domestic market, while the final rule will result in prohibitions on certain activities in interstate and foreign commerce, it will have no impact on commercial activities within a State (intrastate commerce). Businesses will not be prohibited by the final rule from selling raw or worked ivory within the State in which they are located, unless prohibited under State law.

Under the final rule, certain commercial activities, such as sale in interstate or foreign commerce of raw ivory and non-antique worked ivory, with the exception of those items that qualify for the *de minimis* exception, will no longer be permitted. In our economic analysis, we estimate that domestic ivory sales range from $88.8 million to $1.2 billion annually. Using the best data available, the percentage of non-antiques in the export market (two percent) is extrapolated to the domestic market, as an upper-bound estimate of impacts, based on the assumption that the domestic market would be similar to the export market. Thus, the decrease in sales of non-antique ivory in the domestic market ranges from $1.8 million to $23.4 million annually. If those items that do not qualify as antiques constitute a greater proportion of commercial activities, the impacts could be greater. However, because we are allowing commercial activities in interstate and foreign commerce with certain items containing *de minimis* amounts of ivory, and many of these items would be precluded from export, we believe that an even smaller percentage of the legal domestic market would be impacted compared to the export market.

Contrary to the commenter's claim that it cannot be true that we are taking this action to increase protection for African elephants, but that these actions will not have a significant impact on current legal trade, we believe that these actions will substantially impact our ability to effectively control trade and that will contribute to a reduction in illegal killing of elephants. As we described in the proposed rule, there is ample evidence that the United States continues to be a market for illegal trade and that a substantial amount of ivory currently available in the United States was illegally imported. These increased controls will lead to conservation benefits for African elephants by making

it more difficult for unscrupulous actors to launder illegal ivory through the legal market.

(58) *Comment:* One commenter asserted that certification of this rule under the RFA was inappropriate and that the Service should conduct an Initial Regulatory Flexibility Analysis. They stated that the Service proposes to prohibit all commercial sale of ivory in interstate or foreign commerce with the exception of those items that could meet the *de minimis* exemption and that "there are 24,730 businesses that are either art dealers or used merchandise dealers that could be affected by the rule. These commercial vendors comprise 70% of the potentially affected businesses and over 84% of these businesses are small entities." They went on to conclude that "over 84% of small businesses in the affected industries will be impacted."

Response: The commenter's concerns are based on an incorrect assessment of what the rule would do and an unrealistic estimate of the number of small businesses that would be impacted. Under the provisions of the final rule, in addition to the exception for manufactured items that contain a small (*de minimis*) amount of ivory, interstate and foreign commerce in antiques will also still be allowed (see paragraphs (e)(3) and (e)(9) in the final rule). Table 2 in the preamble to the proposed rule (expanded and reprinted below, as Table 3, in this document) provides the number of businesses within affected industries and the percentage of those businesses that are considered small businesses, based on the North American Industry Classification System (NAICS). The table includes 7 industries and a total of 35,350 businesses within those industries. Eighty-four percent of those businesses are considered small businesses. However, it is very misleading to suggest that most of these businesses, small or otherwise, would be impacted by this rule.

The commenter has pointed to the 24,730 businesses classified under the NAICS as either used merchandise stores or art dealers. This total number includes 19,793 used merchandise stores (NAICS code 453310), 74 percent of which are considered small businesses, and 4,937 art dealers (NAICS code 453920), 95 percent of which are considered small businesses. The NAICS defines these categories as follows:

453310 Used Merchandise Stores: *This industry comprises establishments primarily engaged in retailing used merchandise, antiques, and secondhand goods (except motor vehicles, such as automobiles, RVs, motorcycles, and boats; motor vehicle parts; tires; and mobile homes). Examples include: Antique shops; Used household-type appliance stores; Used book stores; Used merchandise thrift shops; Used clothing stores; and Used sporting goods stores.* This category obviously contains a wide range of businesses selling a wide range of products.

453920 Art Dealers: *This industry comprises establishments primarily engaged in retailing original and limited edition art works. Included in this industry are establishments primarily engaged in displaying works of art for retail sale in art galleries. This category also includes art auctions.*

Extrapolating data from market surveys conducted by Martin and Stiles in 2006 and Stiles in 2014, we estimate that this rule would impact 3,200 retail outlets selling ivory products nationwide (see economic analysis) and represent 12 percent of all used merchandise stores and art dealers. Under this rule, these retail outlets would incur costs of one percent or less of total sales (see Regulatory Flexibility Act section for more detail). The other five categories of businesses in Table 2 in the preamble to the proposed rule are: Musical instrument manufacturing; sporting and recreational goods and supplies merchant wholesalers; metal kitchen cookware, utensil, cutlery, and flatware (except precious) manufacturing; jewelry and silverware manufacturing; and all other miscellaneous wood product manufacturing. Another commenter estimated that there are about 300 people in the United States creating finished products using ivory components. Of these, the commenter estimated that about 15 individuals make 10 pool cues per year with ivory ferrules. This would translate to less than one percent of the industry "All other miscellaneous wood product manufacturing" (NAICS 321999). While the commenter did not provide data regarding the industries under which the remainder of the 300 establishments would be categorized, we can estimate that the potential number of establishments represents two percent of establishments in the affected industries (excluding Used Merchandise Stores) or three percent of establishments in the affected industries (excluding Used Merchandise Stores and Sporting and Recreational Goods Stores). The 2008 Martin and Stiles report estimated that there were 120 to 200 ivory craftsmen in the United States, which would represent one to two percent of establishments in the affected industries.

We recognize that we are unable to conclusively quantify the number of small businesses within the individual industries that would be affected by the rule. The final rule prohibits sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity, except for qualifying antiques and manufactured items that contain a small (*de minimis*) amount of ivory and meet certain criteria. Our evaluation of the current market, particularly our estimate of the proportion of the trade that will continue to be allowed as antiques, indicates only about a two percent decrease in commercial exports of African elephant ivory ($2.1 million annually) and a similar two percent decrease in interstate commerce ($1.8 million to $23.4 million).

(59) *Comment:* The Service has ignored obvious alternatives to a domestic ivory ban that would be much more effective at saving elephants without depriving Americans of property rights. Among the alternatives to a ban on ivory trade that the Service failed to evaluate or consider: Increasing support for conservation and local community programs in Africa; increasing support for local African law enforcement; enforcing Pelly sanctions against China and other Asian and African countries for illegal ivory trade; bolstering embassy support in African range countries and destination countries for poached ivory to increase diplomatic pressure on governments; and rewarding African countries with effective conservation programs by allowing an international trade of ivory from those countries.

Response: The Service is actively engaged in the types of activities described by the commenter. We are supporting anti-poaching efforts in parks and other protected areas, providing training to rangers, working collaboratively on international investigations, supporting demand-reduction campaigns in consumer countries, and pushing other countries to strengthen their ivory trade controls. This final rule is in addition to other actions taken by the Service and other U.S. Government agencies to combat illegal trade in elephant ivory and other protected wildlife.

As noted in the proposed rule, on July 1, 2013, President Obama signed Executive Order 13648 on Combating Wildlife Trafficking. The Executive Order calls on executive departments and agencies to take all appropriate actions within their authority to "enhance domestic efforts to combat

wildlife trafficking, to assist foreign nations in building capacity to combat wildlife trafficking, and to assist in combating transnational organized crime." On February 11, 2014, President Obama issued the National Strategy for Combating Wildlife Trafficking, which identifies three strategic priorities for a whole-of-government approach to tackling wildlife trafficking: Strengthening enforcement; reducing demand for illegally traded wildlife; and expanding international cooperation and commitment. On February 11, 2015, the U.S. Departments of the Interior, Justice, and State, as co-chairs of the President's Task Force on Wildlife Trafficking, released the implementation plan for the National Strategy. Building upon the Strategy's three strategic priorities, the plan lays out next steps, identifies lead and participating agencies for each objective, and defines how progress will be measured. The implementation plan reaffirms our Nation's commitment to work in partnership with governments, local communities, nongovernmental organizations, and the private sector to stem the illegal trade in wildlife.

Multiple U.S. Government agencies are involved in the fight against wildlife trafficking and are engaged in activities under all three of the strategic priorities identified in the National Strategy. U.S. Government grants and initiatives in support of efforts to combat poaching of elephants and trafficking of elephant ivory include projects that provide for: Training, operating expenses, and equipment for anti-poaching patrols; purchase and maintenance of vehicles and other equipment for rangers; expenses for aerial surveillance; and training of dogs for detection and investigation of wildlife crime and protection of rangers and wildlife. U.S. Government law enforcement professionals provide training and expertise to foreign partners in Africa through the International Law Enforcement Academy (ILEA) in Botswana (created through a bilateral agreement between the governments of Botswana and the United States to provide training for representatives from countries in sub-Saharan Africa). The U.S. Government also promotes and supports the development and operation of regional Wildlife Enforcement Networks and provides training to develop capacities to investigate, prosecute, and adjudicate wildlife crimes. The U.S. Fish and Wildlife Service Office of Law Enforcement has placed special agents in U.S. embassies in key regions (including in China, Botswana, Tanzania, and Thailand) to build wildlife law enforcement capacity, coordinate investigations, and facilitate information sharing and training. The Service and other U.S. Government agencies also support research, monitoring and assessment of elephant populations, landscape and community conservation efforts, and projects to mitigate human-elephant conflict and to reduce demand for elephant ivory. All of these U.S. Government initiatives contribute to the conservation of the African elephant.

Eliminating poaching of elephants and trafficking of ivory can be achieved only through a concerted, multifaceted international effort. In issuing the National Strategy for Combating Wildlife Trafficking, President Obama recognized that "this is a global challenge requiring global solutions" and stated that we will work with foreign governments, international organizations, nongovernmental organizations, and the private sector to maximize our impacts in addressing this challenge. In addition, the National Strategy asserts that "the United States must curtail its own role in the illegal trade in wildlife and must lead in addressing this issue on the global stage." The United States is committed to doing its part to fight wildlife trafficking and to ensure the conservation of African elephants in the wild. This final rule is one component of this multifaceted effort.

Changes From the Proposed Rule to the Final Rule

All changes from the proposed rule of July 29, 2015 (80 FR 45154), to this final rule were discussed above in the responses to comments received. In summary, the provisions of this final rule are largely unchanged from those of the proposed rule, with the exception of words that have been added in response to requests in the comments:

- We added a sentence in paragraph (e) to remind readers that the provisions under AfECA also apply.
- We added the words "or handcrafted" following the word "manufactured" in paragraphs (e)(3), (5), (6), (7), and (8) to cover works that are unique and made primarily by hand that might not be considered "manufactured." We added the words "or integral" to the criterion in paragraph (e)(3) that describes the ivory being a fixed component of a larger manufactured or handcrafted item to cover items that have small ivory pieces that can be easily removed (like nuts or pegs on some wooden tools or instruments).
- We added text to the criteria in paragraphs (e)(3)(iii) and (v) to clarify that when we say "primary" or "primarily" we mean more than 50 percent.
- We added text to paragraph (e)(5)(ii)(B) to clarify that, for items that are part of a traveling exhibition, either a CITES traveling exhibition certificate or an equivalent CITES document may be used.
- We rephrased our reference to the African Elephant Conservation Act in paragraph (e)(9) where we clarify that, while the ESA antiques exception allows import of antiques, the moratorium under the AfECA does not.

The effects of this final rule on trade are set forth below in Table 1. This table is only for guidance on the revisions to the existing ESA 4(d) rule for the African elephant; see the rule text for details. All imports and exports must be accompanied by appropriate CITES documents and meet other FWS import/export requirements.

TABLE 1—HOW WILL CHANGES TO THE AFRICAN ELEPHANT 4(d) RULE AFFECT TRADE IN AFRICAN ELEPHANT IVORY?

	What activities are currently allowed/prohibited under statute, regulation, or law enforcement discretion?	What will change when the final rule goes into effect?
	In 2014, the Service revised Director's Order No. 210 (effective May 15, 2014) and U.S. CITES implementing regulations [50 CFR part 23] (effective June 26, 2014). These actions created new rules and guidance for trade in elephant ivory.	This column describes the contents of the final rule in general terms. Please refer to the final rule text for details. These provisions will go into effect 30 days after the final rule is published in the **Federal Register**.

TABLE 1—HOW WILL CHANGES TO THE AFRICAN ELEPHANT 4(d) RULE AFFECT TRADE IN AFRICAN ELEPHANT IVORY?—Continued

	What activities are currently allowed/prohibited under statute, regulation, or law enforcement discretion?	What will change when the final rule goes into effect?
Import	*Commercial* What's allowed: • No commercial imports allowed. *Noncommercial* What's allowed: • Sport-hunted trophies (no limit). • Requires issuance of a threatened species permit under 50 CFR 17.32 for import of African elephant sport-hunted trophies from Appendix-I populations. • Law enforcement and bona fide scientific specimens. • Worked elephant ivory that was legally acquired and removed from the wild prior to February 26, 1976, and has not been sold since February 25, 2014, and is either: ○ Part of a household move or inheritance (see Director's Order No. 210 for details); ○ Part of a musical instrument (see Director's Order No. 210 for details); or ○ Part of a traveling exhibition (see Director's Order No. 210 for details). What's prohibited: • Worked ivory that does not meet the conditions described above. • Raw ivory (except for sport-hunted trophies).	*Commercial* The final rule does not include any changes for commercial imports. *Noncommercial* The final rule includes the following changes for noncommercial imports: • Limits import of sport-hunted trophies to two per hunter per year. • Requires issuance of a threatened species permit under 50 CFR 17.32 for import of all African elephant sport-hunted trophies. • Removes the requirement that worked elephant ivory has not been sold since February 25, 2014. All other requirements for worked elephant ivory (listed in the previous column) must be met.
Export	*Commercial* What's allowed: • CITES pre-Convention worked ivory, including antiques. What's prohibited: • Raw ivory. *Noncommercial* What's allowed: • Worked ivory. What's prohibited: • Raw ivory.	*Commercial* The final rule further restricts commercial exports to only those items that meet the criteria of the ESA antiques exemption.* Raw ivory remains prohibited regardless of age. *Noncommercial* The final rule further restricts noncommercial exports to the following categories: • Only those items that meet the criteria of the ESA antiques exemption.* • Worked elephant ivory that was legally acquired and removed from the wild prior to February 26, 1976, and is either: ○ Part of a household move or inheritance; ○ Part of a musical instrument; or ○ Part of a traveling exhibition. • Worked ivory that qualifies as pre-Act. • Law enforcement and *bona fide* scientific specimens. Raw ivory remains prohibited regardless of age.
Foreign commerce	There are no restrictions on foreign commerce	The final rule includes the following changes for foreign commerce: • Restricts foreign commerce to: ○ items that meet the criteria of the ESA antiques exemption,* and ○ certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory. • Prohibits foreign commerce in: ○ sport-hunted trophies, and ○ ivory imported/exported as part of a household move or inheritance.
Sales across State lines (interstate commerce).	What's allowed: • Ivory lawfully imported prior to the date the African elephant was listed in CITES Appendix I (January 18, 1990) [seller must demonstrate]. • Ivory imported under a CITES pre-Convention certificate [seller must demonstrate].	The final rule includes the following changes for interstate commerce: • Further restricts interstate commerce to only: ○ items that meet the criteria of the ESA antiques exemption,* and ○ certain manufactured or handcrafted items that contain a small (*de minimis*) amount of ivory.** • Prohibits interstate commerce in: ○ ivory imported under the exceptions for a household move or inheritance, or for law enforcement or genuine scientific purposes, and ○ sport-hunted trophies.

TABLE 1—HOW WILL CHANGES TO THE AFRICAN ELEPHANT 4(d) RULE AFFECT TRADE IN AFRICAN ELEPHANT IVORY?—Continued

	What activities are currently allowed/prohibited under statute, regulation, or law enforcement discretion?	What will change when the final rule goes into effect?
Sales within a State (intrastate commerce).	What's allowed: • Ivory lawfully imported prior to the date the African elephant was listed in CITES Appendix I (January 18, 1990)—[seller must demonstrate]. • Ivory imported under a CITES pre-Convention certificate—[seller must demonstrate].	The final rule does not include any changes for intrastate commerce.
Noncommercial movement within the United States.	Noncommercial use, including interstate and intrastate movement within the United States, of legally acquired ivory is allowed.	The final rule does not include any changes for noncommercial movement within the United States.
Personal possession	Possession and noncommercial use of legally acquired ivory is allowed.	The final rule does not include any changes for personal possession.

*To qualify for the ESA antiques exemption, an item must meet all of the following criteria [seller/importer/exporter must demonstrate]:
A. It is 100 years or older.
B. It is composed in whole or in part of an ESA-listed species;
C. It has not been repaired or modified with any such species after December 27, 1973; and
D. It is being or was imported through an endangered species "antique port."
Under Director's Order No. 210, as a matter of enforcement discretion, items imported prior to September 22, 1982, and items created in the United States and never imported must comply with elements A, B, and C above, but not element D.
**To qualify for the *de minimis* exception, manufactured or handcrafted items must meet all of the following criteria:
(i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;
(ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;
(iii) The ivory is a fixed or integral component or components of a larger manufactured or handcrafted item and is not in its current form the primary source of the value of the item, that is, the ivory does not account for more than 50% of the value of the item;
(iv) The ivory is not raw;
(v) The manufactured or handcrafted item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50% of the item by volume;
(vi) The total weight of the ivory component or components is less than 200 grams; and
(vii) The item was manufactured or handcrafted before the effective date of this rule.

Required Determinations

Regulatory Planning and Review: Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it may raise novel legal or policy issues.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

A brief assessment to identify the economic costs and benefits associated with this rule follows. The Service has prepared an economic analysis, as part of our review under the National Environmental Policy Act (NEPA), which we made available for review and comment (see the paragraph in this Required Determinations section on the *National Environmental Policy Act*). This final rule revises the 4(d) rule, which regulates trade of African elephants *(Loxodonta africana)*, including African elephant parts and products. We are revising the 4(d) rule to more strictly control U.S. trade in African elephant ivory. Revision of the 4(d) rule means that African elephants are subject to some of the standard provisions for species classified as threatened under the ESA. This means that the taking of live elephants and (with certain exceptions) import, export, and commercial activities in interstate or foreign commerce of African elephant parts and products containing ivory will generally be prohibited without a permit issued under 50 CFR 17.32 for "Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the [ESA]." The final rule contains specific exceptions for certain activities with specimens containing *de minimis* quantities of ivory; ivory contained in musical instruments, traveling exhibitions, inherited items, and items that are part of a household move that meet specific conditions; ivory imported or exported for scientific or law enforcement purposes; certain live elephants; and ivory items that qualify as "pre-Act" or as antiques under the ESA. Some of these exceptions remain prohibited under the AfECA import moratorium. However, under Director's Order 210, as amended on May 15, 2014, as a matter of law enforcement discretion, the Service will not enforce the AfECA moratorium with respect to these limited exceptions meeting specific criteria.

This rule regulates only African elephants and African elephant ivory. Asian elephants and parts or products from Asian elephants, including ivory, are regulated separately under the ESA. Ivory from marine species such as walrus is also regulated separately under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). Ivory from extinct species such as mammoths is not regulated under statutes implemented by the Service.

Impacted markets include those involving U.S. citizens or other persons subject to the jurisdiction of the United States that buy, sell, or otherwise commercialize African elephant ivory products across State lines and those that buy, sell, or otherwise commercialize such specimens in international trade. Examples of products in trade containing African elephant ivory include cue sticks, pool balls, knife handles, gun grips, furniture inlay, jewelry, artwork, and musical instruments.

The market for African elephant products, including ivory, is not large enough to have major data collections or reporting requirements, which results in a limited amount of available data for economic analysis. Some import and export data are available from the Service's Office of Law Enforcement and Division of Management Authority, and from reports produced by other organizations. On the whole, the available data provide a general overview of the African elephant ivory market. Using this information, we can make reasonable assumptions to approximate the potential economic impact of revision of the 4(d) rule for the African elephant. In our proposed rule, we solicited public input on impacts to sales, percentage of revenue impacted, and the number of businesses affected, particularly with regard to interstate and foreign commerce, for which we had the least amount of information, to help quantify these costs and benefits.

Imports. A moratorium on the import of African elephant ivory other than sport-hunted trophies was established under the AfECA and has been in place since 1989. In recent years, the Service has allowed, as a matter of law enforcement discretion, the import of certain antique African elephant ivory. Director's Order No. 210, issued in February 2014, clarified that Service employees must strictly implement and enforce the AfECA moratorium on the importation of raw and worked African elephant ivory, regardless of age, while, as a matter of law enforcement discretion, allowing noncommercial import of certain items, including law enforcement and scientific items, musical instruments, items as part of a household move or inheritance, and exhibition items, where it can be demonstrated that the ivory was removed from the wild prior to 1976. We are reflecting this provision of Director's Order No. 210 in the 4(d) rule (except for antiques, which are exempt from this 4(d) rule, but remain subject to the AfECA moratorium). Import of live African elephants and non-ivory African elephant parts and products will continue to be allowed under the revisions, provided the requirements at 50 CFR parts 13, 14, and 23 are met. Import of African elephant sport-hunted trophies will be limited to two trophies per hunter per year. This may impact about seven hunters, representing about three percent to four percent of hunters importing African elephant trophies, annually.

Exports. Under the current 4(d) rule, raw ivory may not be exported from the United States for commercial purposes under any circumstances. In addition, export of raw ivory from the United States is prohibited under the AfECA. Therefore, the revisions to the 4(d) rule will have no impact on exports of raw ivory. Revision of the 4(d) rule means that export of worked African elephant ivory will be prohibited without an ESA permit issued under 50 CFR 17.32, except for specimens that qualify as "pre-Act" or as ESA antiques and certain musical instruments; items in a traveling exhibition; items that are part of a household move or inheritance; items exported for scientific purposes; and items exported for law enforcement purposes that meet specific conditions and, therefore, may be exported without an ESA permit. Export of live African elephants and non-ivory products made from African elephants will continue to be allowed, provided the requirements at 50 CFR parts 13, 14, and 23 are met.

From 2007 to 2011, the total declared value of worked African elephant ivory exported from the United States varied widely from $32.1 million to $175.7 million. The declared value of items containing African elephant ivory that were less than 100 years old (and, therefore, could not qualify as ESA antiques) ranged from $607,000 to $3.7 million annually during the same time period. As this rule will no longer permit the commercial export of non-antique ivory, we expect, based on the information currently available, that, on average, commercial export of worked ivory will decrease by about $2.1 million annually (two percent, by value, of worked ivory exports).

Domestic and Foreign Commerce. The final rule prohibits certain commercial activities such as sale in interstate or foreign commerce of African elephant ivory and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity (except for qualifying ESA antiques and certain handcrafted or manufactured items containing *de minimis* amounts of ivory) without an ESA permit issued under 50 CFR 17.32. As noted above, permits issued under 50 CFR 17.32 must be for "Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the [ESA]." Otherwise, commercial activities in interstate and foreign commerce with live African elephants and African elephant parts and products other than ivory will continue to be allowed under the revisions to the 4(d) rule. While revisions to the 4(d) rule will generally result in prohibitions on sale or offer for sale in interstate or foreign commerce as well as prohibitions on delivery, receipt, carrying, transport, or shipment in interstate or foreign commerce in the course of a commercial activity of both raw and worked African elephant ivory, the rule will not have an impact on intrastate commerce. Businesses will not be prohibited by the 4(d) rule from buying and selling raw or worked ivory within the State in which they are located. (There are, however, restrictions under our CITES regulations at 50 CFR 23.55 for intrastate sale of elephant ivory.)

As noted earlier, comprehensive data for the African elephant ivory market do not exist. Thus we estimate the value of the domestic market (including retail establishments, online auctions, and live auctions) using the best available data, which include reports that describe subsets of the domestic market along with public comments.

To extrapolate retail outlet data nationwide, assumptions are made using the best available data. Although the States of New York, New Jersey, California, and Washington have enacted stringent legislation prohibiting most ivory sales and Hawaii has new legislation ready to be signed by the governor, we have not excluded establishments in these states in order to estimate the largest potential impact. In 2006, Martin and Stiles surveyed 16 major cities across the United States to identify retail establishments trading in worked ivory (including ivory from African elephants). Using this information, along with more recent data, we have estimated that in 2016 there are 423 establishments in those 16 cities averaging 22 ivory items per outlet (see economic analysis). These establishments represent 11 percent of used merchandise stores and art dealers (423 ivory outlets of 3,996 establishments within the 16 cities). Applying this ratio (11 percent) to all used merchandise and art dealer establishments nationwide yields approximately 2,700 establishments selling 60,000 ivory items.

For online auctions, the International Fund for Animal Welfare (IFAW) reported that there are two major online

auction aggregators (*LiveAuctioneers.com* and *AuctionZip.com*) but reported sales data for only *LiveAuctioneers.com*. By extrapolating data from a 9-week period, the authors estimated that *LiveAuctioneers.com* sell about 13,200 ivory lots that average $992 per lot and are worth $13.0 million annually. To extrapolate online auction data nationwide, we considered the annual revenue of *LiveAuctioneers.com* ($2.5 million to $5 million) and *AuctionZip.com* ($500,000 to $1 million) (Manta 2016). Since *AuctionZip.com* is about 80 percent smaller than *LiveAuctioneers.com*, we assume that *AuctionZip.com* may have about 80 percent less of the ivory sales as well ($2.6 million). To determine the national annual online ivory sales and account for ivory sales on *AuctionZip.com* and any other smaller online auctions, the estimate is doubled to $26.1 million, of which non-antiques represent $574,000.

For live auctions, IFAW investigated 14 auctions and found 833 ivory lots were sold over a 3-month period. Extrapolating to an annual estimate would result in 14 auction houses selling 3,332 ivory lots annually and averaging 238 ivory lots per auction house. The highest sold lot price ranged from $1,220 to $18,000. IFAW only investigated auctions that were identified as selling ivory during the scoping process and did not tabulate how many ivory lots were ultimately sold. Therefore, the percentage of live auctions selling ivory items and the number of ivory items sold is unknown. While we recognize that the impact on non-antique ivory sales in live auctions may be greater than the range of $72,600 to $1.3 million, we do not have information regarding the underlying distribution of potentially impacted auctions. However, based on publicly available information, we can estimate that there are as many as 8,097 auction houses in the United States that may sell ivory. Therefore, we expect that more than 14 auction houses sell ivory lots in a given year, but we have no basis to estimate the number of auction houses actually selling ivory or the quantity of ivory offered for sale. Due to the data limitations for live auctions and the methodology used in the 2014 IFAW report noted above, we are unable to extrapolate the 2014 IFAW report to a national estimate.

Table 2 summarizes the estimated domestic ivory sales from online auctions, live auctions, retail stores, and exports. IFAW reported that online auction sales and live auction sales should not be summed due to potential double counting because 50 percent of the live auctions also sold items online. However, for the purpose of this analysis, because live auctions were not extrapolated nationwide, data from both online and live auctions are summed. For live auction sales, the lower bound was estimated using the average price per lot in online auction sales ($992), while the upper bound was estimated using the highest lot sold price in live auction sales ($18,000). For retail stores, the lower bound was estimated using the average price per lot in online auction sales ($992), while the upper bound was estimated using the highest lot sold price in live auctions ($18,000). By extrapolating data from a variety of sources, we estimate that domestic ivory sales are between $88.8 million and $1.2 billion annually.

Assuming that the domestic market is similar to the export market, we estimate non-antique worked ivory domestic sales will decrease by about $1.8 million to $23.4 million annually (two percent of domestic sales) under this rule. We are not aware of any other data (in published reports or public comments) that estimate a larger percentage by value of non-antiques in the marketplace. Without data for a plausible range of impacts, we cannot improve the robustness of the analysis with a sensitivity analysis (Economists Incorporated 2016). Thus, non-antique sales in the domestic market would decrease by $1.8 million and $23.4 million annually.

Because we will allow intrastate sales and domestic and foreign commercial activities with certain items containing *de minimis* amounts of ivory, and many of these items will be precluded from export, it is possible that an even smaller percentage of the domestic market will be impacted compared to the export market. Our proposed rule requested information from the public about the potential impact to the domestic market. One commenter estimated the antique ivory in private American collections is worth $11.9 billion; however, trade in items that qualify as ESA antiques will not be affected by this rule.

The total annual decrease in non-antique ivory sales from exports, U.S. auctions, and retail stores, will represent two percent of all ivory sales. Thus, we expect that total ivory sales, including exports and sales in the domestic market, will decrease by $3.9 million to $25.5 million annually under this rule (see Table 2).

TABLE 2—POTENTIAL TOTAL IMPACT TO ANNUAL IVORY SALES

Type of seller	Number of ivory items: 2016 estimate	Lower bound estimate			Upper bound estimate		
		Average price per item	Total sales ($,000)	Non-antique sales ($,000)	Average price per item	Total sales ($,000)	Non-antique sales ($,000)
Online Auctions	26,312	$992	$26,097.0	$574.1	$992	$26,097.0	$574.1
Live Auctions	3,332	992	3,302.0	72.6	18,000	59,976.0	1,319.5
Retail Stores	59,847	992	59,367.8	1,187.4	18,000	1,077,238.8	21,544.8
Total Domestic Sales	89,491	*992*	88,766.9	1,834.1	15,069	1,163,311.8	23,438.4
Total Export Sales	1,040	79,000	92,963.5	2,062.0	79,000	92,963.5	2,062.0
Total	90,531	.....	181,730.4	3,896.1	.....	1,256,275.3	25,500.4

Revising the 4(d) rule for the African elephant will improve domestic regulation of the U.S. market, as well as foreign markets where commercial activities involving elephant ivory are conducted by U.S. citizens, and facilitate enforcement efforts within the United States. We are taking this action to increase protection for African elephants in response to the alarming rise in poaching of African elephants, which is fueling the rapidly expanding illegal trade in ivory. As noted in the preamble to this final rule, the United States continues to play a role as a destination and transit country for illegally traded elephant ivory. Increased control of the U.S. domestic

market and foreign markets where commercial activities involving elephant ivory are conducted by U.S. citizens will benefit the conservation of the African elephant.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. To assess the effects of the rule on small entities, we focused on businesses that buy or sell elephant ivory. Businesses produce a variety of products from elephant ivory, including cue sticks, pool balls, knife handles, gun grips, furniture inlay, jewelry, and instrument parts. Depending on the type of product produced, these businesses could be included in a number of different industries, including (1) Musical Instrument Manufacturing (North American Industry Classification System (NAICS) 339992), where small businesses have less than $10.0 million in average annual receipts; (2) Sporting and Recreational Goods and Supplies Merchant Wholesalers (NAICS 423910), where small businesses have fewer than 100 employees; (3) All Other Miscellaneous Wood Product Manufacturing (NAICS 321999), where small businesses have fewer than 500 employees; (4) Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing (NAICS 332215), where small businesses have fewer than 500 employees; (5) Jewelry and Silverware Manufacturing, (NAICS 339910), where small businesses have fewer than 500 employees; (6) Used Merchandise Stores (NAICS 453310), where small businesses have less than $7.5 million in average annual receipts; (7) Art Dealers (NAICS 453920), where small businesses have less than $7.5 million in average annual receipts; (8) All other miscellaneous store retailers except tobacco (NAICS 453998), where small businesses have less than $7.5 million in average annual receipts; (9) All other support services, which includes independent auctioneers (NAICS 561990), where small businesses have less than $11.0 million in average annual receipts; and (10) Electronic Auctions (NAICS 454112), where small businesses have less than $35.5 million in average annual receipts. **Table 3** describes the number of businesses within each industry and the estimated percentage of small businesses. The U.S. Economic Census does not capture the detail necessary to determine the number of small businesses that are engaged in commerce with African elephant ivory products within these industries. Therefore, we utilized various sources and public comments to estimate the potential number of businesses impacted. Based on the distribution of small businesses with these industries as shown in Table 3, we expect that the majority of the entities involved with trade in African elephant ivory would be considered small as defined by the SBA.

TABLE 3—DISTRIBUTION OF BUSINESSES WITHIN AFFECTED INDUSTRIES

NAICS Code	Description	Total number of businesses	Percentage of small businesses	Percentage of businesses impacted
339992	Musical instrument manufacturing	597	73	<3
423910	Sporting and recreational goods and supplies merchant wholesalers	5,953	97	<3
321999	All other miscellaneous wood product manufacturing	1,763	100	<3
332215	Metal kitchen cookware, utensil, cutlery, and flatware (except precious) manufacturing.	188	99	<3
339910	Jewelry and silverware manufacturing	2,119	100	<3
453310	Used merchandise stores	19,793	74	10
453920	Art dealers	4,937	95	10
454112	Electronic Auctions	431	99	1
453998	All other miscellaneous store retailers except tobacco (includes auction houses).	15,475	83	.....
561990	All other support services (includes independent auctioneers)	12,940	84	.....

Source: U.S. Census Bureau, 2012 County Business Patterns.

The impact on individual businesses is dependent on the percentage of interstate and export sales that involve non-antique African elephant ivory that would not fall under the *de minimis* exception. That is, the impact depends on where businesses are located, where their customers are located, and the kinds of items containing ivory that they sell. Thus, we expect that individual businesses may face a range of impacts from closure to minimal revenue decrease. We do not have sufficient information on business profiles to determine with certainty the percent of revenues affected by the rule, but we do estimate the potential impacts using the best available data.

For auctions (NAICS 453998 and NAICS 561990), IFAW reported that "In general, ivory constituted a small part of all the respondents' overall inventories—somewhere between 1 and 5 percent." Since sale of antique ivory will still be allowed under this rule, we expect that a smaller percentage of inventories will be impacted. Thus, this rule will not have a significant impact on auctions.

For electronic auctions (NAICS 454112), IFAW reported that about five online auction aggregator Web sites may sell ivory products while noting that

eBay and Etsy no longer permit the sale of ivory products. Five establishments out of 420 small electronic auctions does not constitute a significant number of small businesses.

Table 4 shows the distribution of impacted retail outlets by size category. We assume that the impacted retail outlets will have the same size category distribution as the population of establishments. Small businesses for these industries have annual receipts less than $7.5 million. For the purpose of this analysis, we include impacted businesses that earn less than $10 million or do not operate the entire year. Under these criteria, 2,354 businesses (10 percent) would be categorized as small.

TABLE 4—DISTRIBUTION OF IMPACTED RETAIL OUTLETS BY SIZE CATEGORY

[NAICS 453310 and NAICS 453920]

Size category by sales/receipts/revenue	Total establishments	Percentage of establishments	Percentage of sales by revenue category	Number of businesses impacted (2,720 nationwide)
Less than $250,000	7,304	30	4	804
$250,000 to $499,999	3,223	13	6	355
$500,000 to $999,999	2,459	10	8	271
$1,000,000 to $2,499,999	1,922	8	12	212
$2,500,000 to $4,999,999	926	4	9	102
$5,000,000 to $9,999,999	705	3	7	78
$10,000,000 to $24,999,999	1,443	6	15	159
$25,000,000 to $49,999,999	931	4	10	400
Firms not operated for the entire year	3,635	15	3	102
$50,000,000 to $99,999,999	459	2	(D)	51
$100,000,000 to $249,999,999	366	1	(D)	40
$250,000,000 or more	1,339	5	(D)	147

(D) Data withheld by U.S. Census Bureau to avoid disclosing data for individual companies.

Table 5 shows the potential impact to retail outlets. We assume that non-antique ivory sales are distributed at the same percentage of total sales within each size category. Thus, businesses with annual receipts less than $250,000 would be allocated four percent of non-antique ivory sales (**Table 4**). Under the lower bound estimate, small businesses would incur losses of 0.02 percent to 0.06 percent of sales. Under the upper bound estimate, small businesses would incur losses of 0.3 percent to 1.1 percent of sales. Therefore, this rule does not have a significant economic impact on retail outlets.

TABLE 5—POTENTIAL IMPACT TO RETAIL OUTLETS

[NAICS 453310 and 453920 ($,000)]

Size category by sales/receipts/revenue [1]	Number of businesses impacted (2,720 nationwide)	Lower bound			Upper bound		
		Total non-antique ivory sales	Ivory sales per business	Percent of sales per business	Total non-antique ivory sales	Ivory sales per business	Percent of sales per business
Less than $250,000	804	$52.0	$0.1	0.05	$943.2	$1.2	0.94
$250,000 to $499,999	355	68.2	0.2	0.06	1,237.0	3.5	1.07
$500,000 to $999,999	271	97.9	0.4	0.05	1,775.6	6.6	0.87
$1,000,000 to $2,499,999	212	145.0	0.7	0.04	2,631.1	12.4	0.71
$2,500,000 to $4,999,999	102	102.0	1.0	0.03	1,850.1	18.2	0.48
$5,000,000 to $9,999,999	78	88.4	1.1	0.02	1,604.8	20.7	0.28
$10,000,000 to $24,999,999	159	181.5	1.1	0.01	3.294.2	20.7	0.12
Firms not operated for the entire year	400	37.5	0.1	0.07	680.0	1.7	1.36
$25,000,000 to $49,999,999	102	116.8	1.1	<0.01	2,120.0	20.7	0.06
$50,000,000 to $99,999,999	51	(D)					
$100,000,000 to $249,999,999	40						
$250,000,000 or more	147						

(D) Data withheld by U.S. Census Bureau to avoid disclosing data for individual companies.
[1] Source: U.S. Census Bureau 2012.

One commenter estimated that there are about seven people in the United States who purchase tusks (from individuals who imported them prior to 1989) and cut them into a variety of forms for U.S. craftsmen to finish. These craftsmen work the ivory pieces into finished products, including pool cues, knife handles, and piano keys. He estimated that there are about 15 individuals making pool cues with ivory ferrules and that there are a total of about 300 people in the United States creating finished products using ivory components. This rule will impact craftsmen working with ivory in the United States. While the commenter does not provide data regarding the

industries under which these 300 establishments would be categorized, we can estimate that the potential number of establishments represents two percent of establishments in the affected industries (NAICS 339992, 423910, 321999, 332215, and 339910) or three percent of establishments in the affected industries (NAICS 339992, 321999, 332215, and 339910). Therefore, this rule does not impact a significant number in the affected industries. The final rule does not impact intrastate (within a State), commerce so those buying and selling within the State in which they reside will be able to continue to do so (where such activity is allowed under State law). In addition, there are alternative materials available to craftsmen, including mammoth ivory and ivory substitutes, which may decrease some impacts.

This rule has an economic impact on U.S. craftsmen working with elephant ivory because it prohibits the interstate sale of items containing African elephant ivory manufactured after the effective date. Martin and Stiles estimated in their 2008 report that there are "a minimum of 120 craftsmen, including restorers, working in ivory at least several weeks a year" and that the "general feeling [at that time] was that the number has been decreasing over past years, with older people retiring and fewer young people replacing them." One commenter estimated that domestic ivory carvers sell $1.5 million per year in ivory blanks to other craftsmen. We did not receive from commenters, and we are not able to provide, an estimate of the total value of products produced by such craftsmen. One commenter estimated that yearly sales of cue sticks containing ivory amount to $1.7 million per year. To the extent that these craftsmen are unable to utilize alternate materials (including, for example, mammoth ivory, cow bone, or deer antler) and that their business is conducted across State lines, they will be impacted by this rule.

Overall, we estimate that worked ivory exports will decrease about $2.1 million annually, which represents about two percent of the total declared value of worked ivory exported from 2007 to 2011. This estimate is based on the total declared value of worked African elephant ivory exported from the United States. The declared value of items containing African elephant ivory that were less than 100 years old (and, therefore, could not qualify as antiques) ranged from $607,000 to $3.7 million annually. The best available information does not provide any indication that there are differences in the proportion, by value, of antiques in domestic and foreign commerce. Therefore, we also estimate that domestic sales will decrease by up to two percent annually. Based on our estimate of the domestic ivory market to be about $88.8 million to $1.2 billion, we estimate that domestic sales will decrease by $1.8 million to $23.4 million annually. This sales decrease of two percent will be incurred among the various businesses and industries, which would face a range of impacts from minimal revenue decrease to closure. Because we are allowing domestic commercial activities with certain items containing *de minimis* amounts of ivory, and many of these items will be precluded from export, it is possible that an even smaller percentage of the domestic market will be impacted compared to the export market.

Based on the available information, we do not expect these changes to have a substantial economic impact. Thus, we do not expect the rule to have a significant economic impact on a substantial number of small entities. We, therefore, certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

This rule creates no substantial fee or paperwork changes in the permitting process. The regulatory changes require issuance of ESA permits for import of all sport-hunted African elephant trophies. We estimate that we will issue 300 ESA permits per year for these sport-hunted trophies, with a fee of $100 per permit. These changes are not major in scope and would create only a modest financial or paperwork burden on the affected members of the general public. The authority to regulate activities involving ESA-listed species already exists under the ESA and is carried out through regulations contained in 50 CFR part 17.

Small Business Regulatory Enforcement Fairness Act: This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Will not have an annual effect on the economy of $100 million or more. This rule revises the 4(d) rule for African elephant, which makes the African elephant subject to the same provisions applied to other threatened species not covered by a 4(d) rule, with certain exceptions. It will allow us to effectively regulate ivory trade in the United States and to ensure that the U.S. market for ivory is not contributing to poaching of elephants in Africa and the illegal ivory trade, without unnecessarily restricting activities that have no conservation effect or are strictly regulated under other law. This rule will not have a negative effect on this part of the economy. It will affect all importers, exporters, re-exporters, and domestic and certain traders in foreign commerce of African elephant ivory equally, and the impacts will be evenly spread among all businesses, whether large or small.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The final rule imposes no unfunded mandates. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings: This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. While certain activities that were previously unregulated will now be regulated, possession and other activities with African elephant ivory such as sale in intrastate commerce will remain unregulated under Federal law. A takings implication assessment is not required.

Federalism: Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These revisions to 50 CFR part 17 do not contain significant federalism implications. A federalism summary impact statement is not required.

Civil Justice Reform: This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes: The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required. Individual tribal members must meet the same regulatory requirements as other individuals who trade in African elephants, including African elephant parts and products.

Paperwork Reduction Act: This rule contains a new information collection requirement associated with applications for permits to import sport-hunted African elephant trophies (FWS Form 3–200–19). This new requirement requires approval of the Office of Management and Budget (OMB) under the PRA.

Under current regulations, permits are required for import of sport-hunted African elephant trophies only from certain countries. OMB has reviewed and approved the collection of information under the current regulations and assigned OMB Control Number 1018–0093, which expires May 31, 2017.

This final rule increases protection for and benefits the conservation of African elephants by more strictly controlling U.S. trade in ivory, without unnecessarily restricting activities that have no conservation effect or are strictly regulated under other law. We are taking this action in response to an unprecedented increase in poaching of elephants across Africa to supply an escalating illegal trade in ivory. This rule requires permits for import of all African elephant sport-hunted trophies; *i.e.,* from both Appendix-I and Appendix-II populations. We requested that OMB approve, on an emergency basis, our request to collect information associated with permits to import African elephant sport-hunted trophies from Appendix-II populations. We asked for emergency approval because of the potential negative effects of delaying publication of this final rule. OMB approved our request and assigned OMB Control No. 1018–0164, which expires November 30, 2016.

Title: Import of Sport-Hunted African Elephant Trophies, 50 CFR 17.

OMB Control Number: 1018–0164.

Service Form Number: 3–200–19.

Type of Request: Request for a new OMB control number.

Description of Respondents: Individuals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 300.

Estimated Number of Annual Responses: 300.

Estimated Completion Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Nonhour Burden Cost: $30,000 associated with application fees.

We will publish a notice in the **Federal Register** announcing our intent to seek regular (3-year) approval for this information collection requirement and soliciting public comment for 60 days. At any time, interested members of the public and affected agencies may comment on the information collection requirements contained in this rule. Please send comments to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email).

National Environmental Policy Act (NEPA): This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we conducted an environmental assessment and reached a Finding of No Significant Impact. This finding and the accompanying environmental assessment are available online at *http://www.regulations.gov* at Docket Number FWS–HQ–IA–2013–0091.

Energy Supply, Distribution, or Use: This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This final rule revises the current regulations in 50 CFR part 17 regarding trade in African elephants and African elephant parts and products. This final rule will not significantly affect energy supplies, distribution, or use.

References Cited

A list of references cited is available online at *http://www.regulations.gov* at Docket Number FWS–HQ–IA–2013–0091.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend title 50, chapter I, subchapter B of the Code of Federal Regulations as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Section 17.40 is amended by revising paragraph (e) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(e) African elephant (*Loxodonta africana*). This paragraph (e) applies to any specimen of the species *Loxodonta africana* whether live or dead, including any part or product thereof. The African Elephant Conservation Act (16 U.S.C. 4201 *et. seq.*), and any moratorium under that act, also applies. Except as provided in paragraphs (e)(2) through (9) of this section, all of the prohibitions and exceptions in §§ 17.31 and 17.32 apply to the African elephant. Persons seeking to benefit from the exceptions provided in this paragraph (e) must demonstrate that they meet the criteria to qualify for the exceptions.

(1) *Definitions.* In this paragraph (e), *antique* means any item that meets all four criteria under section 10(h) of the Endangered Species Act (16 U.S.C. 1539(h)). *Ivory* means any African elephant tusk and any piece of an African elephant tusk. *Raw ivory* means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved. *Worked ivory* means any African elephant tusk, and any piece thereof, that is not raw ivory.

(2) *Live animals and parts and products other than ivory and sport-hunted trophies.* Live African elephants and African elephant parts and products other than ivory and sport-hunted trophies may be imported into or exported from the United States; sold or offered for sale in interstate or foreign commerce; and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided the requirements in 50 CFR parts 13, 14, and 23 have been met.

(3) *Interstate and foreign commerce of ivory.* Except for antiques and certain manufactured or handcrafted items containing *de minimis* quantities of ivory, sale or offer for sale of ivory in interstate or foreign commerce and delivery, receipt, carrying, transport, or shipment of ivory in interstate or foreign commerce in the course of a commercial activity is prohibited. Except as provided in paragraphs (e)(5)(iii) and (e)(6) through (8) of this section, manufactured or handcrafted items containing *de minimis* quantities of ivory may be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32, provided they meet all of the following criteria:

(i) If the item is located within the United States, the ivory was imported into the United States prior to January 18, 1990, or was imported into the United States under a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pre-Convention certificate with no limitation on its commercial use;

(ii) If the item is located outside the United States, the ivory was removed from the wild prior to February 26, 1976;

(iii) The ivory is a fixed or integral component or components of a larger manufactured or handcrafted item and is not in its current form the primary source of the value of the item, that is, the ivory does not account for more than 50 percent of the value of the item;

(iv) The ivory is not raw;

(v) The manufactured or handcrafted item is not made wholly or primarily of ivory, that is, the ivory component or components do not account for more than 50 percent of the item by volume;

(vi) The total weight of the ivory component or components is less than 200 grams; and

(vii) The item was manufactured or handcrafted before July 6, 2016.

(4) *Import/export of raw ivory.* Except as provided in paragraphs (e)(6) through (9) of this section, raw ivory may not be imported into or exported from the United States.

(5) *Import/export of worked ivory.* Except as provided in paragraphs (e)(6) through (9) of this section, worked ivory may not be imported into or exported from the United States unless it is contained in a musical instrument, or is part of a traveling exhibition, household move, or inheritance, and meets the following criteria:

(i) *Musical instrument.* Musical instruments that contain worked ivory may be imported into and exported from the United States without a threatened species permit issued under § 17.32 of this part provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The instrument containing worked ivory is accompanied by a valid CITES musical instrument certificate or equivalent CITES document;

(C) The instrument is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the musical instrument in question; and

(D) The instrument is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(ii) *Traveling exhibition.* Worked ivory that is part of a traveling exhibition may be imported into and exported from the United States without a threatened species permit issued under § 17.32 provided:

(A) The ivory was legally acquired prior to February 26, 1976;

(B) The item containing worked ivory is accompanied by a valid CITES traveling exhibition certificate (see the requirements for traveling exhibition certificates at 50 CFR 23.49) or equivalent CITES document;

(C) The item containing ivory is securely marked or uniquely identified so that authorities can verify that the certificate corresponds to the item in question; and

(D) The item containing worked ivory is not sold, traded, or otherwise disposed of while outside the certificate holder's country of usual residence.

(iii) *Household move or inheritance.* Worked ivory may be imported into or exported from the United States without a threatened species permit issued under § 17.32 for personal use as part of a household move or as part of an inheritance if the ivory was legally acquired prior to February 26, 1976, and the item is accompanied by a valid CITES pre-Convention certificate. It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory imported into the United States as part of a household move or inheritance. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to items imported or exported under this paragraph (e)(5)(iii) as part of a household move or inheritance.

(6) *Sport-hunted trophies.* (i) African elephant sport-hunted trophies may be imported into the United States provided:

(A) The trophy was legally taken in an African elephant range country that declared an ivory export quota to the CITES Secretariat for the year in which the trophy animal was killed;

(B) A determination is made that the killing of the trophy animal will enhance the survival of the species and the trophy is accompanied by a threatened species permit issued under § 17.32;

(C) The trophy is legibly marked in accordance with 50 CFR part 23;

(D) The requirements in 50 CFR parts 13, 14, and 23 have been met; and

(E) No more than two African elephant sport-hunted trophies are imported by any hunter in a calendar year.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce or to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any sport-hunted African elephant trophy. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(6) as part of a sport-hunted trophy.

(iii) Except as provided in paragraph (e)(9) of this section, raw ivory that was imported as part of a sport-hunted trophy may not be exported from the United States. Except as provided in paragraphs (e)(5), (e)(7), (e)(8), and (e)(9) of this section, worked ivory imported as a sport-hunted trophy may not be exported from the United States. Parts of a sport-hunted trophy other than ivory may be exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met.

(7) *Import/export of ivory for law enforcement purposes.* Raw or worked ivory may be imported into and worked ivory may be exported from the United States by an employee or agent of a Federal, State, or tribal government agency for law enforcement purposes, without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for law enforcement purposes. The exception in paragraph

(e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(7) for law enforcement purposes.

(8) *Import/export of ivory for genuine scientific purposes.* (i) Raw or worked ivory may be imported into and worked ivory may be exported from the United States for genuine scientific purposes that will contribute to the conservation of the African elephant, provided:

(A) It is accompanied by a threatened species permit issued under § 17.32; and

(B) The requirements of 50 CFR parts 13, 14, and 23 have been met.

(ii) It is unlawful to sell or offer for sale in interstate or foreign commerce and to deliver, receive, carry, transport, or ship in interstate or foreign commerce and in the course of a commercial activity any African elephant ivory that was imported into or exported from the United States for genuine scientific purposes. The exception in paragraph (e)(3) of this section regarding manufactured or handcrafted items containing *de minimis* quantities of ivory does not apply to ivory imported or exported under this paragraph (e)(8) for genuine scientific purposes.

(9) *Antique ivory.* Antiques (as defined in paragraph (e)(1) of this section) are not subject to the provisions of this rule. Antiques containing or consisting of ivory may, therefore, be imported into or exported from the United States without a threatened species permit issued under § 17.32, provided the requirements of 50 CFR parts 13, 14, and 23 have been met. Nevertheless, nothing in this rule interprets or changes any provisions or prohibitions that may apply under the African Elephant Conservation Act (16 U.S.C. 4201 *et seq.*), regardless of the age of the item. Antiques that consist of or contain raw or worked ivory may similarly be sold or offered for sale in interstate or foreign commerce and delivered, received, carried, transported, or shipped in interstate or foreign commerce in the course of a commercial activity without a threatened species permit issued under § 17.32.

* * * * *

Dated: May 27, 2016.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–13173 Filed 6–3–16; 8:45 am]

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Part III

General Services Administration

48 CFR Part 501, 511, 515, et al.

General Services Administration Acquisition Regulations; Final Rules

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517 and 552

[GSAR Change 71; GSAR Case 2007–G500; Docket No. 2008–0007; Sequence No. 3]

RIN 3090–AI51

General Services Administration Acquisition Regulation (GSAR); Rewrite of GSAR Part 517, Special Contracting Methods

AGENCIES: Office of Government-wide Policy, Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule, with editorial revisions to the second proposed rule, amending the General Services Administration Acquisition Regulation (GSAR) to update requirements for special contracting methods by eliminating out of date references and reorganizing the text to align with the Federal Acquisition Regulation (FAR).

DATES: *Effective:* July 6, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Janet Fry, General Services Acquisition Policy Division, GSA, by phone at 703–605–3167 or by email at *janet.fry@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR case 2007–G500.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update outdated statutes and remove unnecessary or duplicative language from sections of GSAR part 34126 on June 15, 2015 *http://www.gpo.gov/fdsys/pkg/FR-2015-06-15/pdf/2015-14198.pdf* due to the additional edits made to GSAR part 517 and the length of time since the proposed rule was published in 2008. No comments were received in response to the **Federal Register** Notice for the second proposed rule.

II. Discussion and Analysis

To keep the GSAR current, GSA has updated statutes, removed unnecessary or duplicative language, aligned part 517 with the FAR and made editorial revisions as described below.

A. Summary of Significant Changes

The final rule:

- Replaces "multiyear" with "multi-year" through the 517.1 subpart.
- Updates the statutes cited in GSAR 517.109.
- Deletes GSAR 517.200(b), GSAR 517.202(a)(2)(iv), GSAR 517.202(a)(2)(v) and GSAR 517.207(a), and makes conforming changes.
- Removes and reserves section 517.203 because the introduction text and paragraphs are duplicative of FAR 17.207 and GSAR 517.207.
- Replaces the content of GSAR 517.207(b) with new text, clarifying the need for the Contracting Officer to document the determination.
- Updates the program reference in GSAR 517.208(a).
- Addresses other administrative and typographical updates.

Note: The following changes proposed in the second proposed rule were not retained in the final rule:

- The proposed new text in GSAR 517.203 cross referencing the requirements in FAR 22.407 when using option provisions was not retained in the final rule as the FAR adequately addresses the inclusion of option clauses.
- The proposed new text in GSAR 517.207 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are administrative in nature. The changes merely update and reorganize existing GSAR coverage.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 517 and 552

Government procurement.

Dated: May 27, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 517 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 517 and 552 continues to read as follows:

517.200 Scope of subpart.

This subpart applies to all GSA contracts for supplies and services, including:

(a) Services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

(b) Architect-engineer services.

■ 5. Amend section 517.202 by—

■ a. Removing from the introductory text of paragraph (a)(1) "You should use options" and adding "Options may be used" in its place;

■ b. Removing from paragraph (a)(2)(i) "You anticipate a" and adding "There is an anticipated" in its place;

■ c. Revising paragraph (a)(2)(ii);

■ d. Removing paragraphs (a)(2)(iv) and (a)(2)(v); and

■ e. Removing from paragraph (a)(3) "Do not use an option" and adding "An option shall not be used" in its place.

The revision reads as follows:

517.202 Use of options.

(a) * * *

(2) * * *

(ii) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

* * * * *

517.203 [Removed and Reserved]

■ 6. Remove and reserve section 517.203.

■ 7. Revise section 517.207 to read as follows:

517.207 Exercise of options.

In addition to the requirements of FAR 17.207, the Contracting Officer must also:

(a) Document the contract file with the rationale for an extended contractual relationship if the contractor's removing from paragraph (a), in the second sentence "standard);" and adding "standard)," in its place.

The revision reads as follows:

552.217–70 Evaluations of options.

* * * * *

EVALUATION OF OPTIONS (JUL 2016)

* * * * *

[FR Doc. 2016–13113 Filed 6–3–16; 8:45 am]

BILLING CODE 6820–81–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 515, and 552

[Change 72; GSAR Case 2008–G506; Docket 2008–0007; Sequence 14]

RIN 3090–AI76

General Services Administration Acquisition Regulation (GSAR); Rewrite of GSAR Part 515, Contracting by Negotiation

AGENCY: Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule to amend the General Services Administration Acquisition Regulation (GSAR) to clarify and update the contracting by negotiation GSAR section. The rule updates GSAR part 515 by eliminating out of date references and reorganizes the text to align with the Federal Acquisition Regulation (FAR). The final rule incorporates many of the changes of the proposed rule and makes additional modifications to the text.

DATES: *Effective:* July 6, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms.

The final rule updates the text addressing GSAR part 501, General Services Administration Acquisition Regulation System, part 515, Contracting by Negotiation, and corresponding provisions and clauses in GSAR part 552, Solicitation Provisions and Contract Clauses. Streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships are also implemented with this final rule.

The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. Five comments were received in response to the **Federal Register** notice and were considered in crafting the final rule. Comments received in response to the 2008 **Federal Register** publication along with collaborative input from both Federal Acquisition Services (FAS) and Public Buildings Services (PBS) Offices of Acquisition Management were considered in drafting the final rule.

II. Discussion and Analysis

A. Summary of Significant Changes

The proposed rule published in October, 2008 moved clauses associated with GSA's Multiple Award Schedule (MAS) contracts to GSAR part 538, Federal Supply Schedule Contracting, as part of the Rewrite initiative. However, only GSAR 515.209–70(c) and (d) and its associated clause 552.215–71 have been moved to part 538 through GSAR Case 2013–G502, Administrative Changes. Therefore, the remaining MAS provisions and clauses will be retained in GSAM part 515 per the final rule until addressed in separate GSAR 538 cases.

The proposed rule also transferred

identifying the Senior Procurement Executive (SPE) as the designee per FAR 15.204(e).

• GSAR 515.204–1—Deleted paragraphs (a) and (b) were moved to other sections of GSAR Part 515.

• GSAR 515.205—Deleted. When a contracting officer uses the government-wide point of entry, such as FedBizOpps, the contracting officer need not specifically send a solicitation to anyone, including the incumbent.

• GSAR 515.209—Added paragraphs (a) through (c) to align all GSAM part 515, Solicitation provisions and contract clauses, with FAR 15.209.

○ Paragraph (a) is the prescription for clause 552.215–70, Examination of Records by GSA. Edits made to the text include deleting the subtitle "Clause for other than multiple award schedules." Replaced "$100,000" with "simplified acquisition threshold" and the word "you" with "contracting officer". Eliminated the dashes in the titles, "Assistant Inspector General-Auditing" and "Regional Inspector General-Auditing, replacing each dash with "for".

○ Paragraph (b) is the prescription for clause 552.215–73, Notice, moved from GSAM 515.204–1(b)(1) and (2), notifying the public of the assignment of OMB Control Number 3090–0163 to the information collection requirements contained in the solicitation and contract, and of GSA's hours of operation for requests of pre- or post-award debriefings.

○ Paragraph (c) is the new prescription to use GSAR clause 552.215–74, Notice about Releasing Proposals, when using non-government evaluators.

○ Paragraph (d) Clause for Multiple Award Schedules changes "Multiple Award Schedules (MAS)" to "Federal Supply Schedules (FSS);" Clause should be used in all FSS solicitations and contracts.

• GSAR 515.305—Moved from the regulatory to the non-regulatory as it is only applicable internally to GSA.

• GSAR 515.305–70—Deleted paragraph (a) was made non-regulatory, the solicitation notice in paragraph (c) was moved to 515.209–70(c) and the "Notice" itself was converted into clause 552.215–74.

• GSAR 515.70—The subpart, "Use of Bid Samples", is deleted in its entirety as it is duplicative of FAR 14.202–4.

• GSAR 552.215–70—Replaced "$100,000" with "simplified acquisition threshold".

• GSAR 552.215–73—Added a new clause, notifying the public of OMB Control Number assigned to information collection requirements contained in the solicitation and contract, and GSA's hours of operations.

• GSAR 552–215–74—Added a new clause for inclusion in solicitations when non-government evaluators will be used.

B. Analysis of Public Comments

The public comment period for GSAR Part 515 closed on December 2, 2008, five comments were received from two respondents. A discussion of these comments is provided below:

Comment 1: The respondent recommended consideration be given to providing guidance on which section of the Uniform Contract Format (UCF) the mandated paragraphs should be incorporated. GSAR 515.210–70 provides guidance to include this on GSA Form 1602 if it is used, but what if it is not used?

Response: Guidance will be added to the GSAM to clarify that the information should be placed in Section L of the solicitation.

Comment 2: GSAR 515.205: The respondent strongly recommended deleting this entire section, which requires contracting officers to issue solicitations to potential sources. The respondent stated that there is little value added, especially since we no longer maintain mailing lists. Potential offerors download the solicitations from FedBizOpps, so there is rarely written interest expressed, positive or negative. The guidance provided doesn't appear to add any real value as any contracting officer should know to do this without having it spelled out. Even if the section is not deleted, paragraph (a) needs to be deleted. This paragraph causes a problem when the follow-on acquisition strategy differs from the current and historical.

Response: Concur. This section is deleted. The GSAR text of the final rule is amended as a result of this comment.

Comment 3: GSAR 515.209–70(c): The respondent stated that this section, which requires the contracting officer to insert the clause at 552.215–71 Examination of Records by GSA (Multiple Award Schedule) in solicitations and contracts for MAS contracts, does not appear to relate to the Examination of Records clauses. The respondent recommended clearly identifying when this notice should be included. Not all solicitations will be reviewed by nongovernment evaluators, yet as currently written it appears to state this notice should always be included. The following revision was recommended:

"(c) Solicitation notice. When nongovernment evaluators will be used, include in the solicitation a notice substantially as follows:"

Response: Concur. Clause 552.215–74, Notice about Releasing Proposals is amended to include nongovernment evaluators. The prescription at 515.209–70(c) is amended to clarify that the clause is only applicable when nongovernment evaluators are used. The GSAR text of the final rule is amended as a result of this comment.

Comment 4: GSAR 515.7002(b)(1): The respondent stated that the actual prescription for use of GSAR clause 515.70 Use of Bid Samples needs to be added. Currently it just states "use the clause."

Response: Non-concur. GSAR subpart 515.70, Use of Bid Samples, is deleted in the final rule of the GSAR text as it unnecessarily duplicates the FAR. No changes were made to the GSAR text of the final rule as a result of this comment.

Comment 5: The respondent stated, both the current GSAR 515.204–1 and the proposed revision indicate that the paragraph regarding debriefing requests does not apply to leasehold interests in real property. The respondent was curious as to why this is so: are there no debriefings under leasehold acquisitions? If so, then there could be a separate Part 570 clause addressing only the OMB and Nondisclosure/Conflict of Interest requirements.

Response: Non-concur. GSAR 570.309 addresses debriefings under leasehold acquisitions. No changes were made to the GSAR text of the final rule as a result of this comment.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are administrative in nature and only update and reorganize existing GSAR coverage.

V. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0163.

List of Subjects in 48 CFR Parts 501, 515, and 552

Government procurement.

Dated: May 26, 2016.

Jeffrey A. Koses,

Office of Acquisition Policy, Senior Procurement Executive, General Services Administration.

Therefore, GSA is amending 48 CFR parts 501, 515 and 552 as set forth below:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

Authority: 40 U.S.C. 121(c).

501.106 [Amended]

■ 2. Amend section 501.106 by adding to the table, in numerical sequence, GSAR Reference "552.215–73" and its corresponding OMB control number "3090–0163".

PART 515—CONTRACTING BY NEGOTIATION

■ 3. The authority citation for 48 CFR part 515 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 4. Revise section 515.204 to read as follows:

515.204 Contract format.

(a) The uniform contract format is not required for leases of real property (See GSAM 570.116).

(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e)).

515.204–1 and 515.205 [Removed]

■ 5. Remove sections 515.204–1 and 515.205.

■ 6. Amend section 515.209–70 by—

■ a. Revising the introductory text of paragraph (a);

■ b. Redesignating paragraph (b) as paragraph (a)(9) and revising newly redesignated paragraph (a)(9); and

■ c. Adding new paragraph (b).

The revisions and addition read as follows:

515.209–70 Examination of records by GSA clause.

* * * * *

(a) *Examination of records by GSA clause for other than multiple award schedule (MAS) contracts.* Insert the clause at 552.215–70, Examination of Records by GSA, in all solicitations and contracts above the simplified acquisition threshold, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

* * * * *

(9) The contracting officer may modify the clause at 552.215–70 to define the specific area of audit (*e.g.*, the use or disposition of Government-furnished property). Office of General Counsel or the Office of Regional Counsel and the Assistant Inspector General for Auditing or Regional Inspector General for Auditing, as appropriate, must concur in any modifications to the clause.

(b) Insert the clause at 552.215–73, Notice, in all solicitations for negotiated procurements above the simplified acquisition threshold in accordance with FAR part 15.

* * * * *

515.5 and 515.70 [Removed]

■ 7. Remove subparts 515.3 and 515.70.

PART 552—SOLICITATIONS AND PROVISIONS

■ 8. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 9. Amend section 552.215–70 by revising the introductory text and the date of the clause, and removing "exceeding $100,000" and adding "exceeding the simplified acquisition threshold" in its place.

The revisions read as follows:

552.215–70 Examination of Records by GSA.

As prescribed in 515.209–70(a), insert the following clause:

Examination of Records by GSA ([JUN 2016])

* * * * *

■ 10. Add section 552.217–73 to read as follows:

552.215–73 Notice Regarding Information Collection Requirements.

As prescribed in 515.209–70(b), insert the following clause:

Notice (JUN 2016)

(a) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

(b) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. EST. Requests for pre-award debriefings postmarked or otherwise submitted after 4:30 p.m. EST will be considered submitted the following business day. Requests for post-award debriefings delivered after 4:30 p.m. EST will be considered received and filed the following business day.

(End of clause)

[FR Doc. 2016–13114 Filed 6–3–16; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 538, and 552

[GSAR Change 73; GSAR Case 2010–G511; Docket No. 2014–0008; Sequence No. 1]

RIN 3090–AJ43

General Services Administration Acquisition Regulation (GSAR); Purchasing by Non-Federal Entities

AGENCY: Office of Government-wide Policy, Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) regulation, Describing Agency Needs, to implement the Federal Supply Schedules Usage Act of 2010 (FSSUA), the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA), the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA), and the Local Preparedness Acquisition Act for Fiscal Year 2008 (LPAA). GSA is also amending the GSAR, Federal Supply Schedule Contracting, and Solicitation Provisions and Contract Clauses, in regard to this statutory implementation to clarify the application of these laws and access privileges of certain Non-Federal Entities purchasing off of Federal Supply Schedules (FSS). Additionally, prescriptions in the GSAR are amended to reflect the correct prescription numbers. This final rule

also updates the web address to correct an inoperable link.

DATES: *Effective:* July 6, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Dana Munson, General Services Acquisition Policy Division, GSA, by phone at 202–357–9652 or by email at *dana.munson@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR case 2010–G511.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule with a request for public comments in the **Federal Register** at 79 FR 21691 on April 17, 2014. This rule combined previous GSAR case 2006–G522; Federal Supply Schedule Contracts–Recovery Purchasing by State and Local Governments Through Federal Supply Schedules (Interim Rule), which published in the **Federal Register** at 72 FR 4649 on February 1, 2007 and GSAR Case 2008–G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules (Interim Rule), which published in the **Federal Register** at 73 FR 54334 on September 9, 2008.

This final rule amends the GSAR to implement section 2 of the FSSUA (Pub. L. 111–263), which added subsection 40 U.S.C. 502(e), authorizing the use of the Schedules by the American National Red Cross and other qualified organizations, which includes National Voluntary Organizations Active in Disaster (NVOAD); section 3 of the FSSUA, which added subsection 40 U.S.C. 502(f), requiring all users of the Schedules, including non-Federal users, to use the contracts in accordance with ordering guidance provided by the Administrator of General Services; and section 4 of the FSSUA to include additional purchasing authority for state or local governments.

This final rule amends the GSAR to implement section 101 of NAHASDA (Pub. L. 110–411), codified at 25 U.S.C. 4111(j), which provides that "each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency." As such, tribes or tribally designated housing entities expending funds from block grants pursuant to NAHASDA may access GSA's sources of supply, including the Schedules, at their discretion.

The final rule amends GSAR Parts 511, 538, and 552 to implement Section 833 of the NDAA, which amends 40 U.S.C. 502(d)(1) to authorize the Administrator of General Services to provide to state or local governments the use of GSA's Schedules for the purchase of goods or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

This final rule amends the GSAR to further implement section 833, which also amends 40 U.S.C. 502(d)(2) to require the Secretary of Homeland Security to determine which goods and services qualify before the Administrator provides for the use of GSA's Schedules. House Report 109–452 of the Committee on Armed Services indicates that section 833 (referred to in the House Report as section 823), builds on the implementation of the Cooperative Purchasing Program authorized in Section 211 of the E-Government Act of 2002, which permitted state or local governments to access GSA's information technology schedule, known as Schedule 70.

This final rule amends the GSAR to implement the LPAA, which amended 40 U.S.C. 502(c), by authorizing the Administrator of General Services to provide to state or local governments the use of GSA's Schedules for the acquisition of law enforcement, security, and certain other related items.

The prescriptions at GSAR 552.211–85 through 89 are incorrectly numbered. This final rule reflects the correct prescriptions for GSAR clauses 552.211–85 through 89. This final rule also updates the web address in GSAR clause 552.211–89(d) to correct an inoperable link.

The authority granted under FSSUA is available for use on a voluntary (*i.e.*, non-mandatory) basis. In other words, businesses with Schedule contracts have the option of deciding whether they will accept orders placed by state or local governments, the American National Red Cross, or other qualified organizations.

All users of GSA's Schedules, including non-Federal users, shall use the Schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in FAR subpart 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

The non-Federal ordering activity is responsible for ensuring that only authorized representatives of its organization place orders and that goods or services ordered are used only for the purposes authorized. Existing Schedule contracts may be modified only by mutual agreement of the parties. After an existing contract has been modified, a Schedule contractor still retains the right to decline orders by non-Federal entities on a case-by-case basis. This applies to future Schedule contractors, as well. Schedule contractors may decline any order from entities outside the Executive Branch (see GSAR 552.238–78). Similarly, the rule places no obligation on non-Federal buyers to use Schedule contracts. They will have full discretion to decide if they wish to make a Schedule purchase, subject however, to any limitations that may be established under state and local laws or organizational policies.

The Federal Government will not be liable for the performance or nonperformance of orders established under the authority of this rule between Schedule contractors and eligible non-Federal entities. Disputes that cannot be resolved by the parties to the new contract can be litigated in any court of competent jurisdiction over the parties.

The prices of supplies and services available on Schedule contracts include an industrial funding fee (IFF). The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee may be periodically adjusted as necessary to recover the cost of operating the program.

Two respondents submitted comments in response to the proposed rule. These comments, along with comments received from the previously published interim rules, are addressed in the Discussion and Analysis Section.

II. Discussion and Analysis

The General Services Administration has reviewed the comments received in response to the proposed rule and the previously published interim rules in the development of the final rule. Comments are grouped into categories in order to provide clarification and to better respond to the issues raised. A discussion of all comments received and the changes made to the rule as a result of those comments is provided as follows:

Comment: Asked GSA to "clarify whether the changes in the rule apply to the Federal Supply Schedule functions the General Services Administration has delegated to the U.S. Department of Veterans Affairs?"

Response: Yes, the changes apply to all Federal Supply Schedules, including those managed by the Department of Veterans Affairs. Vendors may voluntarily sell to non-Federal entities under their Schedule, in accordance with clause 552.238–78 and acceptance of orders from non-Federal entities is not mandatory. No changes were made to the GSAR text as a result of this comment.

Comment: Was directed at United States Code definitions and FAR references.

The respondent suggested the following changes to the GSAR text that included changing definitions to match definitions and terms in various parts of the Federal Acquisition Regulation (FAR) and the United States Code:

- Delete the terms "Preparedness, Recovery, Relief, and Response" found under Subpart 538.7001 Definitions and permit the definitions and legal intentions set forth throughout the FAR, in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to prevail.
- Replace references to Public Law with applicable "40 U.S.C. 502" authority;
- Remove the "Disaster Recovery Purchasing" program from eLibrary and advise contractors to register in System Award Management (SAM) for the "Disaster Response Registry;" and
- Mandate all non-federal entities use GSA Advantage! in order to track and monitor compliance with IFF and to ensure compliance with 40 U.S.C. 502 authority.

Response: The comments appear to erroneously conflate Federal acquisitions with the activities governed by this final rule. The parts of the FAR cited in the comments pertain to acquisitions by Federal agencies, and fall under a particular statutory authority, specifically the Defense Priorities and Allocations System (DPAS). That is separate from the changes in this rule, which pertains to the ability of non-Federal entities to access GSA sources of supply. These non-Federal access programs are outside of the scope of and not directly related to defense contracting under DPAS, nor are they related to Federal emergency contracting. The GSA non-Federal entity programs are all separate authorities, controlled by statute, that do not conflict or overlap with other Federal, disaster-related, programs. Under these authorities, non-Federal entities have optional access to GSA sources of supply, under the authorized scope. Therefore, purchases made by non-Federal entities are not subject to the statutes and FAR requirements cited in the comments. Thus, insofar as the comments appear to misinterpret the scope and effect of the rule, and the statutory authorities that underlie it, GSA does not concur with the recommendations contained in the comments. No change was made as a result of this comment.

Comment: Asked if the IFF paid by non-Federal entities is tracked separately from the IFF paid by Federal entities.

Response: The IFF paid by non-Federal entities is not tracked separately from the IFF paid by Federal entities. Sales are reported quarterly by the vendor and are tracked by Special Item Number (SIN) and Schedule.

The IFF is tracked separately for sales under the Disaster Purchasing and Cooperative Purchasing Programs. However, it is not tracked separately for other special programs. The Red Cross and other qualified organization sales are reported under Federal sales. GSA is able to track these sales, when made through GSA eTools.

GSA Industrial Operating Analysts and Administrative Contracting Officers work with the GSA vendor community to ensure that all GSA vendors, including authorized non-Federal Entities, are aware of the reporting requirements under the separate programs and that orders are properly tracked and reported on the quarterly 72A forms. No change was made as a result of this comment.

Comment: Raised a number of issues about GSA eTools and how orders under this rule are tracked via the eTools.

Response: GSA eTools web portal provides a one-stop resource where federal and non-federal customers learn about GSA products and services.

GSA eTools, GSA Advantage!® and eLibrary, provide a list of current contractors, products, and services available to eligible non-Federal entities. Schedule contractors that have opted to sell under these programs have agreed to do so at the contract level and their agreement is noted in the eTools with a "COOPPURCH" or "DISASTRECOV" icon.

When requested, buyers only see contractors that have agreed to participate in the program. This information displays into GSA Advantage!® and its component system eBuy, which facilitates the request for submission of quotations for commercial products and services.

Use of eTools is not mandatory for non-Federal entities and requiring mandatory use of eTools, as suggested in the comments, would be a barrier to use for some state and local government entities. Some entities require use of their own systems to process and execute orders and some entities do not support use of credit cards. Mandating the use of a system, like GSA Advantage!®, that requires credit cards, would prohibit some legally authorized users from accessing these contracts.

Comment: Suggested that ordering procedures require a FEMA disaster declaration number to place an order.

Response: Such a requirement would not take into account a non-Federal entity's ability to purchase for preparation of a disaster, which necessarily pre-dates the declaration of an emergency. However, all entities placing orders under the Disaster Purchasing Program must include the mandatory order language on the purchase order to confirm that the order is being placed under GSA's Disaster Purchasing Program and under the appropriate scope. No change was made as a result of this comment.

Comment: Included a number of statements and questions regarding the 1122 Program and Wildland Fire Program.

Response: These programs are outside the scope of the proposed rule because the laws being implemented do not cover these GSA Schedules. Therefore, these comments are not addressed. Information on these programs can be found here: *www.gsa.gov/1122program* and *www.gsa.gov/fireprogram*.

Comment: Suggested editorial updates to sections and subparts of the GSAR to address the deletion of GSAR 538.71.

Response: The GSAR text of the final rule is amended to reflect the deletion of GSAR 538.71, Submission and Distribution of Authorized FSS Schedule Pricelists by removing and reserving section 552.238–76, Definition (Federal Supply Schedules)—Recovery Purchasing.

Comment: Expressed concern in regards to the Recovery Purchasing program on topics such as advanced purchasing or qualified products.

Response: These questions are directed towards a component of the program that is no longer relevant since the Federal Supply Schedules Usage Act dictates that purchasing may be made in support of preparation for disasters in addition to disaster recovery.

Comment: Opposes the inclusion of the Veteran Administration pharmaceutical contracts because the contracts are the only ones that are set via statutorily mandated pricing system.

Response: The statutes implemented by this rule do not exclude the ability for certain non-federal entities to have access to VA pharmaceutical contracts. Vendors may voluntarily sell to non-Federal entities under their Schedule, in accordance with GSAR clause 552.238–78. Participation in the program and acceptance of orders from non-Federal entities is not mandatory.

Comment: The commenter is opposed to GSA allowing local and state governments to purchase directly off the schedules for competitive and economic reasons.

Response: The Statutes cited in this rule allow access to the Schedules. Schedules access is a direct relationship between the ordering entity and the Schedule vendor.

III. Applicability

This rule provides certain Non-Federal Entities with access to GSA Schedules under the following conditions and authorities:

1. Disaster Purchasing-Authorized under Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA) (Pub. L. 109–364) and the Federal Supply Schedules Usage Act of 2010 (FSSUA) (Pub. L. 111–263), provides State and local use of Federal Supply Schedules for the purchase of goods or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

2. Cooperative Purchasing—Authorized previously under the eGovernment Act of 2002 (Pub. L. 107–347), expanded here under the Local Preparedness Acquisition Act of 2008 (Pub. L. 110–248), provides State and local government use of Federal Supply Schedules for the acquisition of law enforcement, security, and certain other related items by State and local governments. This expansion is limited to Schedule 84, Total Solutions for Law Enforcement, Security, facilities management, fire, rescue, marine craft, and Emergency/Disaster Response. Schedule 70 for Information Technology products and Services was previously authorized under this program.

3. American National Red Cross—Authorized under the Federal Supply Schedules Usage Act of 2010 (Pub. L. 111–263), provides the American National Red Cross access to Federal Supply Schedules, when purchasing in furtherance of the purposes of the American National Red Cross set forth in section 300102 of title 36, United States Code.

4. Other Qualified Organizations—Authorized under the Federal Supply Schedules Usage Act of 2010 (Pub. L. 111–263), provides access to Federal Supply Schedules for "other qualified organizations" when purchasing in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency (FEMA). GSA, in consultation with FEMA has determined that, at this time, the National Voluntary Organizations Active in Disaster (NVOAD), may utilize Federal Supply Schedules in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief.

5. Tribal Government Access to Schedules—authorized under Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA) (Pub. L. 104–330), provides that "each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency." As such, tribes or tribally designated housing entities expending funds from block grants pursuant to NAHASDA may access GSA's sources of supply, including the Schedules, at their discretion. This Final Rule does not grant any additional authority for non-Federal entities to use Federal Supply Schedules other than those listed above.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, because implementing the authorities enumerated herein will expand or add the ability for additional other qualified organizations to procure from GSA's Schedule contracts as identified in the relevant laws. For small businesses that hold a Schedule contract their sales may increase for orders placed, by authorized non-federal entities, in order to support disaster preparation and response.

GSA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) Part 511, Describing Agency Needs, to implement the Federal Supply Schedules Usage Act of 2010 (FSSUA), the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (NAHASDA), the John Warner National Defense Authorization Act for Fiscal Year 2007 (NDAA), and the Local Preparedness Acquisition Act for Fiscal Year 2008 (LPAA), to provide non-Federal entity access to GSA's Federal Supply Schedules (Schedules).

Prior to the Federal Supply Schedules Usage Act of 2010 (hereinafter, "Act"), state and local governments and the American National Red Cross were authorized to procure from Schedules, but only for limited purposes and specific scopes. "Other qualified organizations" were not previously authorized to procure from Schedules contracts.

Under the Act, the scope of authorized users of FSS contracts is expanded to include "other qualified organizations," which is in addition to the already authorized state and local governments and the American National Red Cross (ANRC). Access to Schedules for each of these entities varies. The ANRC may access Schedules in support of their Federal charter; state and local governments may use the Schedules to prepare, respond, and recover from major disasters; and "other qualified organizations" may use the Schedules for emergency preparedness and disaster relief.

It should be noted that this is an optional program under the FSS program. This final rule applies to all FSS contractors that agree to sell goods and services to these eligible entities, under the appropriate scope of use. A modification will be issued outlining if a contractor wishes to sell to each of the 3 user groups, under the assigned scope. There are no additional compliance requirements for contractors than what is already required; therefore, there is no additional cost to small business if they decide to participate.

Further, the final rule amends the GSAR to implement section 101 of NAHASDA, codified at 25 U.S.C. 4111(j), which provides that "each Indian tribe or tribally designated housing entity shall be considered to be an Executive agency in carrying out any program, service, or other activity under this Act; and (2) each Indian tribe or tribally designated housing entity and each employee of the Indian tribe or tribally designated housing entity shall have access to sources of supply on the same basis as employees of an Executive agency." As such, tribes or tribally designated housing entities expending funds from block grants pursuant to NAHASDA may access GSA's sources of supply, including the Schedules, at their discretion.

Additionally, the final rule amends the GSAR to implement Section 833 of the NDAA, which amends 40 U.S.C. 502(d)(1) to authorize the Administrator of General Services to provide to state or local governments the use of GSA's Schedules for the purchase of goods or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

Finally, the final rule amends the GSAR to implement the LPAA, which amended 40 U.S.C. 502(c), by authorizing the Administrator of General Services to provide to state or local governments the use of GSA's Schedules for the acquisition of law enforcement, security, and certain other related items.

The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat Division.

VI. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 511, 538 and 552

Government procurement.

Dated: May 27, 2016

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 511, 538, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 511—DESCRIBING AGENCY NEEDS

■ 2. Amend section 511.204 by revising paragraphs (b)(2) and (c) to read as follows:

511.204 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(2) The contracting officer shall include the clause at 552.211–75, Preservation, Packaging, and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. The contracting officer may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. The contracting officer shall use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

* * * * *

(c) *Supply contracts.* The contracting officer shall include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for all Federal Supply Schedule Contracts.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 3. Amend section 538.273 by revising paragraphs (a)(2) and (b)(2) to read as follows:

(a) * * *

(2) 552.238–71, Submission and Distribution of Authorized FSS Schedule Pricelists.

* * * * *

(b) * * *

(2) 552.238–75, Price Reductions.

* * * * *

Subpart 538.70—Purchasing by Non-Federal Entities

■ 4. Revise the heading of subpart 538.70 to read as set forth above.

■ 5. Amend section 538.7000 by adding paragraph (d) to read as follows:

538.7000 Scope of subpart.

* * * * *

(d) Other Federal Supply Schedules as authorized in this subpart.

■ 6. Amend section 538.7001 by adding in alphabetical order, the definitions "Preparedness", "Recovery", "Relief", and "Response" to read as follows:

538.7001 Definitions.

* * * * *

Preparedness means actions that may include, but are not limited to planning, resourcing, training, exercising, and organizing to build, sustain, and improve operational disaster response capabilities. Preparedness also includes the process of identifying the personnel, training, and equipment needed for a wide range of potential incidents, and developing jurisdiction–specific plans for delivering capabilities when needed for an incident.

Recovery means actions including, but not limited to, the development, coordination, and execution of service- and site-restoration plans; the reconstitution of Government operations and services; individual, private-sector, nongovernmental, and public-assistance programs to provide housing and to promote restoration; long-term care and treatment of affected persons; additional measures for social, political, environmental, and economic restoration; evaluation of the incident to identify lessons learned; post-incident reporting; and development of initiatives to mitigate the effects of future incidents.

Relief means disaster "response" and "recovery." Please see the full definitions for these terms in this section.

Response means immediate actions taken during a disaster, or in its immediate aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to support short-term recovery.

* * * * *

■ 7. Amend section 538.7002 by revising paragraph (d); and adding paragraphs (e) through (g) to read as follows:

538.7002 General.

* * * * *

(d) Public Law 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007 authorizing state and local governments, to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate for recovery from terrorism or nuclear, biological, chemical, or radiological attack. Public Law 111–263, the Federal Supply Schedules Usage Act of 2010 authorizing state and local governments to use Federal Supply Schedule contracts to purchase products and services to be used to facilitate disaster preparedness or response.

(e) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes the American National Red Cross to use Federal Supply Schedule contracts to purchase goods or services to be used in furtherance of its purposes as set forth in its federal charter (36 U.S.C. 300102).

(f) Public Law 111–263, the Federal Supply Schedules Usage Act of 2010, authorizes other qualified organizations to use Federal Supply Schedule contracts to purchase products and services in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency. Other qualified organizations must meet the requirements of 42 U.S.C. 5152.

(g) A listing of the participating contractors and SINs for the goods and services that are available under these authorized Federal Supply Schedules, is available in GSA's e-Library at *www.gsa.gov/elibrary*.

■ 8. Amend section 538.7003 by revising the introductory text to read as follows:

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening authorized Federal Supply Schedules for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete "Government" or similar language referring to the U.S. Government and substitute "ordering activity" or similar language when preparing solicitations and contracts to be awarded under authorized Federal Supply Schedules. When such changes are made, the word "(DEVIATION)" shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

* * * * *

■ 9. Revise section 538.7004 to read as follows:

538.7004 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–77, Definition (Federal Supply Schedules)–Non-Federal Entity in solicitations and contracts for all Federal Supply Schedules.

(b) The contracting officer shall insert the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), in solicitations and contracts for all Federal Supply Schedules.

(c) The contracting officer shall insert the clause at 552.238–79, Use of Federal Supply Schedule Contracts by Non-Federal Entities, in solicitations and contracts for all Federal Supply Schedules.

(d) See 552.101–70 for authorized FAR deviations.

Subpart 538.71—[Removed and Reserved]

■ 10. Remove and reserve subpart 538.71.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.211–85 [Amended]

■ 11. Amend section 552.211–85 by removing from the introductory text "511.204(b)(5)" and adding "511.204(b)(4)" in its place.

552.211–86 [Amended]

■ 12. Amend section 552.211–86 by removing from the introductory text "511.204(b)(6)" and adding "511.204(b)(5)" in its place.

552.211–87 [Amended]

■ 13. Amend section 552.211–87 by removing from the introductory text "511.204(b)(7)" and adding "511.204(b)(6)" in its place.

552.211–88 [Amended]

■ 14. Amend section 552.211–88 by removing from the introductory text "511.204(b)(8)" and adding "511.204(b)(7)" in its place.

■ 15. Amend section 552.211–89 by:
■ a. Removing from the introductory text "511.204(b)(4)" and adding "511.204(b)(8)" in its place;
■ b. Revising the date of the clause; and
■ c. Removing from paragraph (d) "*http://www.dla.mil/j-3/j-3311/DLAD/rev5.htm*" and adding "*http://farsite.hill.af.mil/archive/Dlad/Rev5/PART47.htm*" in its place.

The revision reads as follows:

552.211–89 Non-manufactured wood packaging material for export.

* * * * *

Non-Manufactured Wood Packaging Material for Export (JUL 2016)

* * * * *

■ 16. Amend section 552.238–71 by:
■ a. Revising the date of the clause;
■ b. Removing from paragraph (a) "Federal Government" and adding "ordering activity" in its place; and
■ c. Removing Alternate I.

The revision reads as follows:

552.238–71 Submission and Distribution of Authorized FSS Schedule Pricelists.

* * * * *

Submission and Distribution of Authorized FSS Schedule Pricelists (JUL 2016)

* * * * *

■ 17. Amend section 552.238–75 by:
■ a. Revising the date of the clause and paragraph (d)(3); and
■ b. Removing Alternate I.

The revisions read as follows:

552.238–75 Price Reductions.

* * * * *

Price Reductions (JUL 2016)

* * * * *

(d) * * *

(3) Made to Eligible Ordering Activities identified in GSAR clause 552.238–78 when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR clause 552.238–78 is the agreed upon customer or category of customer that is the basis of award); or

* * * * *

552.238–76 [Removed and Reserved]

■ 18. Remove and reserve section 552.238–76.

■ 19. Amend section 552.238–77 by:
■ a. Revising the section and clause headings; and
■ b. Removing from the definition "Ordering activity" the phrase "(see 552.238–78)" and adding "(see 552.238–78)," in its place.

The revisions read as follows:

552.238–77 Definition (Federal Supply Schedules)—Non-Federal Entity.

* * * * *

Definition (Federal Supply Schedules)—Non-Federal Entity (JUL 2016)

* * * * *

■ 20. Amend section 552.238.78 by—
■ a. Revising the date of the clause;
■ b. Redesignating paragraphs (a)(7) and (8) as paragraphs (a)(8) and (9), respectively;
■ c. Adding a new paragraph (a)(7);
■ d. Revising paragraph (d);
■ e. Adding paragraph (h); and
■ f. Removing Alternate I.

The revisions and additions read as follows:

552.238–78 Scope of Contract (Eligible Ordering Activities).

* * * * *

Scope of Contract (Eligible Ordering Activities) (JUL 2016)

(a) * * *

(7) Tribes or tribally designated housing entities pursuant to 25 U.S.C. 4111(j);

* * * * *

(d) The following activities may place orders against Schedule 70 contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (36 U.S.C. 300102); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5152), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for goods or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

* * * * *

(h) All users of GSA's Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

■ 21. Amend section 552.238–79 by revising the section and clause headings to read as follows:

552.238–79 Use of Federal Supply Schedule Contracts by Non-Federal Entities

* * * * *

Use of Federal Supply Schedule Contracts by Non-Federal Entities (JUL 2016)

* * * * *

552.238–80 [Removed and Reserved]

■ 22. Remove and reserve section 552.238–80.

[FR Doc. 2016–13115 Filed 6–3–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2016–0035]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Customs and Border Protection–014 Regulatory Audit Archive System (RAAS) System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is issuing a final rule to extend the exemptions from certain provisions of the Privacy Act to the updated and reissued system of records titled, "DHS/CBP–014 Regulatory Audit Archive System (RAAS) System of Records." Specifically, the Department exempts portions of the "DHS/CBP–014 Regulatory Audit Archive System (RAAS) System of Records" from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective June 7, 2016.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: John Connors, (202) 344–1610, Privacy Officer, U.S. Customs and Border Protection, Privacy and Diversity Office, 1300 Pennsylvania Avenue NW., Washington, DC 20229. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register,** 81 FR 19932, April 6, 2016, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS reissued the DHS/CBP–014 Regulatory Audit Archive System (RAAS) System of Records in the **Federal Register** on April 6, 2016 (81 FR 19985), to provide notice to the public that DHS/CBP was updating the categories of records to include the capture of Employer Identification Numbers (EINs) or Social Security numbers (SSNs), also known as a Federal Taxpayer Identifying Number, pursuant to 19 CFR 24.5, 19 CFR 149.3, and E.O. 9397, as amended by E.O. 13748. This final rule exempts portions of the new categories of records pursuant to 5 U.S.C. 552a(k)(2).

II. Public Comments

DHS received no comments on the NPRM and will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In appendix C to part 5, revise the introductory text of paragraph 25, and paragraph 25(a), to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

25. The Department of Homeland Security (DHS)/U.S. Customs and Border Protection-014 Regulatory Audit Archive System (RAAS) System of Records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP–014 RAAS System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations; inquiries; and proceedings there under. The DHS/CBP–014 RAAS System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its Components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

* * * * *

Dated: May 23, 2016.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2016–13311 Filed 6–6–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2958; Directorate Identifier 2014–NM–248–AD; Amendment 39–18545; AD 2016–11–18]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The

Boeing Company Model 787 airplanes. This AD was prompted by the disclosure that the inner diameters of some batches of landing gear pins were not shot peened in accordance with design specifications, and need to be replaced. This AD requires inspection for improperly manufactured landing gear pins, and replacement if necessary. We are issuing this AD to detect and correct insufficient shot peening that could lead to stress corrosion cracking and failure of the landing gear pin, and cause landing gear collapse and inability to control the airplane at high speeds on the ground.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2958.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2958; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Melanie Violette, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 787 airplanes. The NPRM published in the **Federal Register** on July 23, 2015 (80 FR 43642) ("the NPRM"). The NPRM was prompted by a report indicating that the inner diameters of some batches of landing gear pins were not shot peened and need to be replaced. The NPRM proposed to require inspection for improperly manufactured landing gear pins, and replacement if necessary. We are issuing this AD to detect and correct insufficient shot peening that could lead to stress corrosion cracking and failure of the landing gear pin, and cause landing gear collapse and inability to control the airplane at high speeds on the ground.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Use Revised Service Information

One commenter, Junji Miura, found several errors in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014, and requested that we include a reference to the upcoming corrections. The commenter stated that Boeing will correct these errors in the next revision, and that referencing this revision in this AD will avoid the need for a global alternative method of compliance (AMOC).

We agree with the request. Boeing has issued Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. We have reviewed this service information, which was issued to correct typographical errors and part numbers, and to update statements, but adds no new actions. The changes in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, address the commenter's concerns. We have revised the service information references throughout this final rule to refer to Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, and we have added a new paragraph (h) to this AD to provide credit for the original service information. We have redesignated subsequent paragraphs accordingly.

Request for Correction to Paragraphs (g) and (h) of This AD

Boeing requested a correction to paragraphs (g) and (h) of the proposed AD to replace the word "or" with the word "and" in the phrase "part number or serial number."

We agree to correct the applicable paragraphs of this AD because the intent was to require replacement of the pin only if both the part number and serial number are identified in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. In paragraphs (g) and (i) of this AD, we revised the phrase "part number or serial number" to "part number and serial number."

Request for Clarification of Airplanes Affected by Inspection Requirements

One commenter, Raja Rehman, requested that we clarify the required actions for airplanes that are covered by this AD, but not listed in the "Effectivity" section of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014. The commenter asked if the inspection requirements of the proposed AD would apply to all delivered and to-be-delivered Model 787 airplanes, and if Boeing intends to issue a revision to the service bulletin that will cover the additional airplanes. The commenter also asked if an airplane that did not have the affected pins installed at production/delivery, and had never replaced the pins during service would comply with the AD.

We agree that clarification is necessary. The landing gear pin is a removable structural component (rotable part). Through maintenance action, the affected (discrepant) pins could be installed on airplanes that were initially delivered with acceptable pins. Therefore, the applicability of this AD is all Model 787 airplanes—both those that are currently delivered and future deliveries—because the affected pins could be installed on any Model 787 airplane. It is not necessary for the applicability of the AD to match the effectivity of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014, or Issue 002, dated April 6, 2016. This difference has been coordinated with Boeing.

We have modified paragraph (g) to require the inspections only for airplanes that received their original airworthiness certificate or original export certificate of airworthiness on or before the effective date of this AD. These are the airplanes that either had the affected (discrepant) pins installed in production, or may have had them installed through maintenance action. Paragraph (i), which remains applicable to all Model 787 airplanes, prohibits installation of the affected pins in the future.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. The service information describes procedures to inspect and replace certain landing gear pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 13 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	3 work-hours × $85 per hour = $255	$0	$255	$3,315

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 19 work-hours × $85 per hour = $1,615	$35,569	Up to $37,184

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–18 The Boeing Company: Amendment 39–18545; Docket No. FAA–2015–2958; Directorate Identifier 2014–NM–248–AD.

(a) Effective Date

This AD is effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by the disclosure that the inner diameters of some batches of landing gear pins were not shot peened in accordance with design specifications, and need to be replaced. We are issuing this AD to detect and correct insufficient shot peening that could lead to stress corrosion cracking and failure of the landing gear pin, and cause landing gear collapse and inability to control the airplane at high speeds on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Replacement

For airplanes on which the original airworthiness certificate or the original export certificate of airworthiness was issued on or before the effective date of this AD: At the applicable time specified in paragraph 5, "Compliance," of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, do a landing gear pin part number and serial number inspection, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. A review of airplane maintenance or delivery records is acceptable in lieu of this inspection if the part number and serial number of the installed landing gear pins can be conclusively determined from that review.

(1) If the part number and serial number do not match the list of affected pin numbers: No further action is required by this paragraph at that pin location.

(2) If the part number and serial number match the list of affected pin numbers: At the applicable time specified in paragraph 5, "Compliance," of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, replace the affected pin with a pin that does not have an affected part number and serial number, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD, using Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014. This service information is not incorporated by reference in this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane a landing gear pin having an affected part number and serial number identified in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Melanie Violette, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on May 24, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12847 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4232; Directorate Identifier 2015–CE–043–AD; Amendment 39–18538; AD 2016–11–11]

RIN 2120–AA64

Airworthiness Directives; EVEKTOR, spol. S.r.o. Gliders

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders (type certificate previously held by AEROTECHNIK s.r.o.). This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as lack of distinct color marking of the elevator drive. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 12, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4232; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact EVEKTOR, spol. s.r.o, Letecka 1008, 686 04 Kunovice, Czech Republic; phone: +420 572 537 428; email: *evektor@evektor.cz;* Internet: *http://www.evektor.cz/en/sales-and-support*. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–4232.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders. The NPRM was published in the **Federal Register** on March 4, 2016 (81 FR 11475). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> Colour marking of elevator drive is not inspected or re-painted during sailplane operation. The elevator drive is asymmetrical and improper installation causes significant elevator deflection changes.

The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4232-0003*.

A review of records revealed that the FAA inadvertently did not address this MCAI for the EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders and the BLANIK LIMITED Model L–13 AC Blanik gliders. This AD addresses this MCAI for the EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders and requires painting or re-painting the elevator drive mechanism a contrasting color to prevent the backward installation of the elevator drive bellcrank.

The FAA is addressing the BLANIK LIMITED Model L–13 AC Blanik gliders in another AD action.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 11475, March 4, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 11475, March 4, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 11475, March 4, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed AEROTECHNIK CZ s.r.o. Mandatory Service Bulletin SEH 13–003a, dated December 15, 1998. The service information describes procedures for painting the left arm of the elevator drive. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 9 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $855, or $95 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4232; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–11–11 EVEKTOR, spol. s.r.o.: Amendment 39–18538; Docket No. FAA–2016–4232; Directorate Identifier 2015–CE–043–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to EVEKTOR, spol. s.r.o. L 13 SEH VIVAT and L 13 SDM VIVAT gliders (type certificate previously held by AEROTECHNIK s.r.o.), all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as lack of distinct color marking of the elevator drive. We are issuing this AD to prevent inadvertent backward installation of the elevator drive, which could cause significant elevator deflection changes and lead to loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD.

(1) Within the next 3 calendar months after July 12, 2016 (the effective date of this AD), paint the elevator drive mechanism using a contrasting color (such as red) following the procedures in AEROTECHNIK CZ s.r.o. issued Mandatory Service Bulletin SEH 13–003a, dated December 15, 1998.

(2) As of July 12, 2016 (the effective date of this AD), only install an elevator bellcrank that has been painted as specified in paragraph (f)(1) of this AD and that has been properly oriented to make sure it is not being installed backward.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority AD CAA–AD–4–099/98, dated December 30, 1998, for related information. The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4232-0003*.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) AEROTECHNIK CZ s.r.o. issued Mandatory Service Bulletin SEH 13–003a, dated December 15, 1998.

(ii) Reserved.

(3) For service information identified in this AD, contact EVEKTOR, spol. s.r.o, Letecka 1008, 686 04 Kunovice, Czech Republic; phone: +420 572 537 428; email: *evektor@evektor.cz;* Internet: *http://www.evektor.cz/en/sales-and-support*.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4232.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on May 23, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12606 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0464; Directorate Identifier 2015–NM–046–AD; Amendment 39–18549; AD 2016–11–22]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by the need for more restrictive airworthiness limitations. This AD requires revising the maintenance or inspection program, as applicable, to incorporate certain maintenance requirement tasks, thresholds, and intervals. We are issuing this AD to reduce the potential for significant failure conditions and consequent loss of controllability of the airplane.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0464.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0464; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on February 18, 2016 (81 FR 8166) ("the NPRM"). The NPRM was prompted by the need for more restrictive airworthiness limitations. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate certain maintenance requirement tasks, thresholds, and intervals. We are issuing this AD to reduce the potential for significant failure conditions and consequent loss of controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0027, dated February 20, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The MCAI states:

> Fokker Services published issue 11 of Engineering Report SE–473, containing Certification Maintenance Requirements (CMRs). This report is Part 1 of the Airworthiness Limitations Section (ALS Part 1) of the Instructions for Continued Airworthiness, referred to in Section 06, Appendix 1, of the Fokker 70/100 Maintenance Review Board (MRB) document.
>
> The complete ALS currently consists of:
>
> Part 1—Report SE–473 (CMRs), Part 2—Report SE–623, Airworthiness Limitation Items (ALIs) and Safe Life Items (SLIs), and Part 3—Report SE–672, Fuel ALIs and Critical Design Configuration Control Limitations (CDCCLs).
>
> The instructions contained in those reports have been identified as mandatory actions for continued airworthiness.
>
> For the reasons described above, this [EASA] AD requires implementation of the maintenance actions as specified in ALS Part 1 of the Instructions for Continued Airworthiness, Fokker Services Engineering Report SE–473 at issue 11.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0464.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Changes to Paragraph Reference

We have updated paragraph (h) of this AD. In paragraph (h) of the NPRM, we inadvertently referenced paragraph (g)(2) of the NPRM. Paragraph (h) of this AD has been updated to reference paragraph (g)(1) of this AD.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed "Fokker 70/100 Certification Maintenance Requirements," of Fokker Services B.V. Engineering Report, Airworthiness Limitations Section (ALS), SE–473, Issue 11, released January 19, 2015. This service information describes certification maintenance requirements. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $680, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–22 Fokker Services B.V.: Amendment 39–18549. Docket No. FAA–2016–0464; Directorate Identifier 2015–NM–046–AD.

(a) Effective Date

This AD is effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes,

certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by the need for more restrictive airworthiness limitations. We are issuing this AD to reduce the potential for significant failure conditions and consequent loss of controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Revision of Maintenance or Inspection Program

(1) Within 12 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the certification maintenance requirements (CMR) specified in "Fokker 70/100 Certification Maintenance Requirements," of Fokker Services B.V. Engineering Report, Airworthiness Limitations Section (ALS), SE–473, Issue 11, released January 19, 2015.

(2) Do the applicable initial CMR inspection at the time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable, as specified in "Fokker 70/100 Certification Maintenance Requirements," of Fokker Services B.V. Engineering Report, ALS, SE–473, Issue 11, released January 19, 2015. If any discrepancy is found during any inspection, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency; or Fokker B.V. Service's EASA Design Organization Approval (DOA). Repair any discrepancy before further flight.

(i) For CMR inspection 783100–CM–01: Within 1 year or 3,000 flight hours after the effective date of this AD, whichever occurs first, but not later than 12,000 flight hours after accomplishing Maintenance Review Board (MRB) Task 783100–00–04.

(ii) For CMR inspection 783500–CM–01: Within 1 year or 3,000 flight hours after the effective date of this AD, whichever occurs first, but not later than 10,000 flight hours after accomplishing MRB Task 783100–01–01.

(h) No Alternative Inspections or Inspection Intervals

After accomplishment of the actions specified in paragraph (g)(1) of this AD, no alternative actions (*e.g.*, inspections) and intervals, may be used, unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Fokker Services B.V.'s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0027, dated February 20, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0464.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Services B.V. Engineering Report, Airworthiness Limitations Section (ALS), SE–473, Issue 11, released January 19, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 26, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13101 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5810; Directorate Identifier 2014–NM–116–AD; Amendment 39–18526; AD 2016–10–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by a design review that revealed that a wiring failure, external to the center wing fuel tank, could cause a hot short circuit to a maximum level sensor wire, and result in excessive heating of the maximum level sensor element. This AD requires modifying the wiring of the maximum level sensors in the center wing fuel tank, performing after-installation tests, and corrective action if necessary. This AD also requires revising the airplane maintenance or inspection program to incorporate fuel airworthiness limitation items and critical design configuration control limitations. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5810.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5810; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulation evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on November 27, 2015 (80 FR 74039) ("the NPRM").

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0138, dated May 30, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The MCAI states:

> * * * [T]he FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> The review conducted by Fokker Services on the Fokker 70/100 design, in response to these regulations, revealed that a wiring failure, external to the centre wing fuel tank, causing a hot short circuit to a maximum (max) level sensor wire may result in excessive heating of the max level sensor element.
>
> This condition, if not corrected, could create an ignition source in the centre wing fuel tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.
>
> EASA issued AD 2012–0240 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0240.pdf/AD_2012-0240*], to address this unsafe condition, which required installation of three fuses in the wiring of the max level sensor(s) in the centre wing fuel tank per Fokker Services Service Bulletin (SB) SBF100–28–073. After that AD was issued, it was found that this technical solution caused fuel spills during refueling and, consequently, EASA cancelled AD 2012–0240.
>
> More recently, Fokker Services issued SBF100–28–078, which cancelled SBF100–28–073, to correct the unsafe condition without the risk of fuel spills.
>
> For the reasons described above, this [EASA] AD requires removal of one fuse from post-SBF100–28–073 aeroplanes, and installation of only two fuses on pre-SBF100–28–073 aeroplanes and, subsequently, the implementation of the associated Critical Design Configuration Control Limitation (CDCCL) items.
>
> More information this subject can be found in Fokker Services All Operators Message AOF100.186#03.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5810.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes Made to This AD

We have made the following changes to this AD. These changes are for formatting purposes and do not affect the requirements of this AD.

- Added a new paragraph (j) to this AD to specify the required service information, and redesignated subsequent paragraphs accordingly.
- Revised paragraph (g) of this AD by referring to the document citations in paragraph (j) of this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Service Bulletin SBF100–28–078, dated January 23, 2014, and Fokker Manual Change Notification MCNM–F100–166, dated January 23, 2014.

This service information describes procedures for modifying the wiring of the maximum level sensors in the center wing fuel tank, after-installation tests, and corrective action if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 15 airplanes of U.S. registry.

We also estimate that it takes up to 9 work-hours per product to modify the wiring of the maximum level sensors in the center wing fuel tank, as specified in this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,700 per product. Based on these figures, we estimate the cost of this modification on U.S. operators to be up to $36,975, or up to $2,465 per product.

We also estimate that it takes about 1 work-hour per product to revise the maintenance or inspection program as specified in this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this revision on U.S. operators to be $1,275, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–15 Fokker Services B.V.: Amendment 39–18526. Docket No. FAA–2015–5810; Directorate Identifier 2014–NM–116–AD.

(a) Effective Date

This AD becomes effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, equipped with a center wing tank.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a design review which revealed that a wiring failure, external to the center wing fuel tank, could cause a hot short circuit to a maximum level sensor wire, and result in excessive heating of the maximum level sensor element. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Wiring Modification

Within 24 months after the effective date of this AD: Modify the wiring of the maximum level sensors of the center wing fuel tank, as specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Before further flight after accomplishing the modification, do all applicable tests and corrective actions, in accordance with Part 5 of the Accomplishment Instructions of the service information identified in paragraph (j) of this AD.

(1) For post-SBF100–28–073 configuration airplanes: Do the modification in accordance with Part 1 or Part 3, as applicable, of the Accomplishment Instructions of the service information identified in paragraph (j) of this AD.

(2) For pre-SBF100–28–073 configuration airplanes: Do the modification in accordance with Part 2 or Part 4, as applicable, of the Accomplishment Instructions of the service information identified in paragraph (j) of this AD.

(h) Revise the Maintenance or Inspection Program

Within 30 days after installing the modification specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Revise the airplane maintenance or inspection program, as applicable, to incorporate the fuel airworthiness limitation items and critical design configuration control limitations (CDCCLs) specified in paragraph 2.L.(1)(c) of Fokker Service Bulletin SBF100–28–078, dated January 23, 2014.

(i) No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (*e.g.*, inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Required Service Information

Do the actions specified in this AD in accordance with Fokker Service Bulletin SBF100–28–078, dated January 23, 2014, and Fokker Manual Change Notification MCNM–F100–166, dated January 23, 2014, as applicable.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0138, dated May 30, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5810.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Service Bulletin SBF100–28–078, dated January 23, 2014, including the attached required drawings specified in paragraphs (m)(2)(i)(A), (m)(2)(i)(B), and (m)(2)(i)(C) of this AD, as applicable.

(A) Drawing W41192, Sheet 052, Issue AW, "Retro-Fit Wiring Diagram, Tank Fueling/Defueling, Center Tank," undated;

(B) Drawing W41192, Sheet 054, Issue AW, "Retro-Fit Wiring Diagram, Tank Fueling/Defueling," undated; and

(C) Drawing W59520–405, "Cableloom Connection List," Sheet 3, Issue F, dated May 12, 2011.

(ii) Fokker Manual Change Notification MCNM–F100–166, dated January 23, 2014.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 12, 2016.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11928 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7533; Directorate Identifier 2015–NM–080–AD; Amendment 39–18528; AD 2016–11–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200 and –300 series airplanes, Model A330–200 Freighter series airplanes, and Model A340–541 and A340–642 airplanes. This AD was prompted by a report of an under-torqued forward engine mount bolt. This AD requires a one-time torque check of the forward and aft engine mount bolts and corrective actions if necessary. We are issuing this AD to detect and correct improperly torqued engine mount bolts, which could lead to detachment of the engine from the airplane during flight and consequent damage to the airplane and injury to persons on the ground.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7533.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7533; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–200 and –300 series airplanes, Model A330–200 Freighter series airplanes, and Model A340–541 and A340–642 airplanes. The NPRM published in the **Federal Register** on December 29, 2015 (80 FR 81216) ("the NPRM"). The NPRM was prompted by a report of an under-torqued forward engine mount bolt. The NPRM proposed to require a one-time torque check of the forward and aft engine mount bolts, and corrective actions if necessary. We are issuing this AD to detect and correct improperly torqued engine mount bolts, which could lead to detachment of the engine from the airplane during flight and consequent damage to the airplane and injury to persons on the ground.

The European Aviation Safety Agency, which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0082, dated May 11, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on certain Airbus Model A330–200 and –300 series airplanes, Model A330–200 Freighter series airplanes, and Model A340–541 and A340–642 airplanes. The MCAI states:

> In 2013, during a pre-delivery test on an A330 aeroplane fitted with Pratt & Whitney (PW) PW4170 engines, an issue with N1 [low pressure spool] vibrations level on [engine] ENG1 was identified. While performing an engine removal, one forward engine mount bolt was found improperly torqued. The investigation concluded this was due to a production line engine installation quality issue. Further analysis showed that some aeroplanes, delivered between June 2006 and January 2014, may have had the rear (AFT) and forward (FWD) engine mount bolts improperly torqued.
>
> This condition, if not detected and corrected, could ultimately lead to an in-flight detachment of the engine from the aeroplane, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> Prompted by these findings, Airbus issued four Alert Operators Transmissions (AOT) A71L004–14 (for A330 aeroplanes fitted PW engines), AOT A71L006–14 (for A330 aeroplanes fitted with General Electric (GE) engines), AOT A71L005–14 (for A330 aeroplanes fitted with Rolls Royce (RR) Trent 700 engines) and AOT A71L008–14 (for A340 aeroplanes fitted with RR Trent 500 engines) to provide torque check instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time torque check of the FWD and AFT engine mount bolts and, depending on findings, re-torque of the affected [engine mount] bolt(s) and/or replacement of all four [engine mount] bolts and associated nuts.
>
> Findings (or discrepancies) include one engine mount bolt that is loose or able to rotate, two or more engine mount bolts that are loose or able to rotate, or one or more engine mount bolts that are fully broken. Corrective actions include re-torqueing the affected engine mount bolt(s), and replacing all engine mount bolts and associated nuts with new engine mount bolts and nuts on the engine where the loose or fully broken engine mount bolt(s) were detected. This AD specifies reporting of all findings (including no discrepancies). The corrective actions include re-torqueing loose engine mount bolts before further flight. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7533.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Changes to the NPRM

Paragraphs (h)(1)(ii) and (i) of the proposed AD refer to the accomplishment of Airbus Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012. However, operators might also accomplish Airbus Service Bulletin A330–71–3028, Revision 02, dated August 31, 2015. Therefore, we have revised paragraphs (h)(1)(ii) and (i) of this AD to refer to the actions specified in "Airbus Service Bulletin A330–71–3028."

Paragraph (m)(1) of the proposed AD refers to Airbus AOT A71L008–14, dated September 29, 2014, and is an exception to the service information specified in paragraph (l) of the proposed AD. However, paragraph (l) of the proposed AD refers to Airbus AOT A71L008–14, Revision 01, dated December 18, 2014. We have revised paragraph (m)(1) of this AD to refer to Airbus AOT A71L008–14, Revision 01, dated December 18, 2014.

For consistency, we have also replaced the words "bolt(s)" and "pylon bolt(s)" in this AD with "engine mount bolt(s)" in order to match the language in the MCAI. In the service information referenced in this AD, the term "pylon" is also used in some sentences to describe the engine mount bolts.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD with the changes described previously and except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We have reviewed the following service information.

- Airbus AOT A71L004–14, Revision 01, dated April 7, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at four positions at the forward engine pylon 1 and pylon 2 of Airbus Model A330 series airplanes having PW engines, doing corrective actions, and reporting all findings.
- Airbus AOT A71L005–14, Revision 01, dated December 11, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at four positions at the forward engine pylon 1 and pylon 2 of Airbus Model A330 series airplanes having RR Trent 700 engines, doing corrective actions, and reporting all findings.
- Airbus AOT A71L006–14, dated July 22, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at five FWD and four AFT positions at the forward engine pylon 1 and pylon 2 of Airbus Model A330 series airplanes having GE engines, doing corrective actions, and reporting all findings.
- Airbus AOT A71L008–14, Revision 01, dated December 18, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at four positions at the forward engine pylon 1 and pylon 2 of Airbus Model A340 series airplanes having Trent 500 engines, doing corrective actions, and reporting all findings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 55 airplanes of U.S. registry.

We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD, and 1 work-hour per product to report torque check findings. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $60,755, or $1,105 per product.

In addition, we estimate that any necessary follow-on actions will take about 20 work-hours and require parts costing $90,200 for a cost of $91,900 per product. We have no way of determining the number of aircraft that might need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–01 Airbus: Amendment 39–18528. Docket No. FAA–2015–7533; Directorate Identifier 2015–NM–080–AD.

(a) Effective Date

This AD is effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes specified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, from manufacturer serial number (MSN) 0715 through MSN 1507 inclusive, and MSN 1509, except airplanes on which all engines have been removed and/or replaced since the date of the first flight of the airplane.

(1) Airbus Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Airbus Model A330–223F and –243F airplanes.

(3) Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Airbus Model A340–541 airplanes.

(5) Airbus Model A340–642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by a report of an under-torqued forward engine mount bolt. We are issuing this AD to detect and correct improperly torqued engine mount bolts, which could lead to detachment of the engine from the airplane during flight, and consequent damage to the airplane and injury to persons on the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Definition of Affected Engine

For the purpose of this AD, an affected engine is an engine that has never been removed and/or replaced since first flight of the airplane.

(h) Action for Airbus Model A330 Airplanes Equipped With Pratt and Whitney (PW) Engines

(1) For Airbus Model A330–200, –200 Freighter, and –300 series airplanes equipped with PW engines: At the earlier of the times specified in paragraph (h)(1)(i) and (h)(1)(ii) of this AD, accomplish a one-time torque check of the forward (FWD) and rear (AFT) engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, "Inspection Requirements," of Airbus Alert Operators Transmission (AOT) A71L004–14, Revision 01, dated April 7, 2014.

(i) Within 2,000 flight hours after the effective date of this AD.

(ii) During the accomplishment of actions specified in Airbus Service Bulletin A330–71–3028, if done after the effective date of this AD.

(2) If, during the torque check required by paragraph (h)(1) of this AD, only one FWD engine mount bolt is found that rotates: Do the actions specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), or (h)(2)(iv) of this AD, as applicable.

(i) For Airbus Model A330–200 and -300 series airplanes with an average flight time of greater than 132 minutes and having accumulated less than 2,350 flight cycles and less than 24,320 flight hours since first flight of the airplane: Before further flight, re-torque the affected engine mount bolt, and, within 2,350 flight cycles or 24,320 flight hours since first flight of the airplane, whichever occurs first, replace the 4 engine mount bolts and associated nuts, in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(ii) For Airbus Model A330–200 and –300 series airplanes with an average flight time of 132 minutes or lower and having accumulated less than 1,950 flight cycles and less than 20,210 flight hours since first flight of the airplane: Before further flight, re-torque the affected engine mount bolt, and within 2,350 flight cycles or 24,320 flight hours since first flight of the airplane, whichever occurs first, replace the 4 engine mount bolts and associated nuts, in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(iii) For Airbus Model A330–200 Freighter series airplanes having accumulated less than 2,140 flight cycles and less than 6,600 flight hours since first flight of the airplane: Before further flight, re-torque the affected engine mount bolt and within 2,140 flight cycles or 6,600 flight hours since first flight of the airplane, whichever occurs first, replace the 4 engine mount bolts and associated nuts, in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(iv) For airplanes identified in paragraphs (h)(2)(iv)(A), (h)(2)(iv)(B), and (h)(2)(iv)(C) of this AD: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(A) Airbus Model A330–200 and –300 series airplanes with an average flight time of greater than 132 minutes and having accumulated 2,350 flight cycles or more or 24,320 flight hours or more since first flight of the airplane.

(B) Airbus Model A330–200 and –300 series airplanes with an average flight time of 132 minutes or lower and having accumulated 1,950 flight cycles or more or 20,210 flight hours or more since first flight of the airplane.

(C) Airbus Model A330–200 Freighter series airplanes having accumulated 2,140 flight cycles or more or 6,600 flight hours or more since first flight of the airplane.

(3) If, during the torque check required by paragraph (h)(1) of this AD, two or more FWD engine mount bolts are found that rotate: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(4) If, during the torque check required by paragraph (h)(1) of this AD, one or more FWD engine mount bolts are found fully broken: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014, except as required by paragraph (m)(2) of this AD.

(5) If, during the torque check required by paragraph (h)(1) of this AD, only one AFT engine mount bolt is found that rotates: Before further flight, re-torque the affected engine mount bolt, and replace the 4 engine mount bolts and associated nuts at the next engine removal, in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(6) If, during the torque check required by paragraph (h)(1) of this AD, two or more AFT engine mount bolts are found that rotate: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(7) If, during the torque check required by paragraph (h)(1) of this AD, one or more AFT engine mount bolts are found fully broken: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, "Findings," of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014, except as required by paragraph (m)(2) of this AD.

(i) Clarification of Concurrent Actions for Airbus Model A330–223F, A330–223, A330–321, A330–322, and A330–323 Airplanes Equipped With Pratt and Whitney (PW) Engines

AD 2013–14–04, Amendment 39–17509 (78 FR 68352, November 14, 2013), requires a torque check of FWD engine mount bolts using Airbus Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012. If accomplishing the torque check of FWD engine mount bolts, as specified in Airbus Service Bulletin A330–71–3028, within the compliance times specified in paragraph (g) of AD 2013–14–04, perform the torque check of the AFT engine mount bolts at the same time as required by paragraph (h)(1) of this AD.

(j) Action for Airbus Model A330 Airplanes Equipped With General Electric (GE) Engines

(1) For Airbus Model A330–200, –200 Freighter, and –300 series airplanes equipped with GE engines: Within 2,000 flight hours after the effective date of this AD, accomplish a one-time torque check of the FWD and AFT engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection Requirements,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(2) If, during the torque check required by paragraph (j)(1) of this AD, only one FWD engine mount bolt is found that rotates: Do the actions specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 4,000 flight cycles and less than 30,800 flight hours since first flight of the airplane: Before further flight, re-torque affected FWD engine mount bolt(s), in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014, and, within 4,000 flight cycles or 30,800 flight hours since first flight of the airplane, whichever is first, replace the 5 engine mount bolts, as applicable, and their associated nuts with new engine mount bolts and nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(ii) For airplanes that have accumulated 4,000 flight cycles or more or 30,800 flight hours or more since first flight of the airplane: Before further flight, replace the 5 FWD engine mount bolts, as applicable, and their associated nuts with new engine mount bolts and nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(3) If, during the torque check required by paragraph (j)(1) of this AD, two or more FWD engine mount bolts are found that rotate: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (p)(1) of this AD.

(4) If, during the torque check required by paragraph (j)(1) of this AD, one or more FWD engine mount bolts are found fully broken: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (p)(1) of this AD.

(5) If, during the torque check required by paragraph (j)(1) of this AD, only one AFT engine mount bolt is found that rotates: Before further flight, re-torque the affected AFT engine mount bolt(s) in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014, and, at the next engine removal, replace the 4 engine mount bolts and associated nuts with new engine mount bolts and nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(6) If, during the torque check required by paragraph (j)(1) of this AD, two or more AFT engine mount bolts are found that rotate: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (p)(1) of this AD.

(7) If, during the torque check required by paragraph (j)(1) of this AD, one or more AFT engine mount bolts are found fully broken: Before further flight, do all applicable corrective actions in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014, except as required by paragraph (m)(2) of this AD.

(k) Action for Airbus Model A330 Airplanes Equipped With Rolls-Royce (RR) Trent 700 Engines

(1) For Airbus Model A330–200, –200 Freighter, and –300 series airplanes equipped with RR Trent 700 Engines: Within 2,000 flight hours after the effective date of this AD, accomplish a one-time torque check of the FWD and AFT engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection Requirements,'' of Airbus AOT A71L005–14, Revision 01, dated December 11, 2014.

(2) If, during the torque check required by paragraph (k)(1) of this AD, any discrepancy is detected (one engine mount bolt rotates, two or more engine mount bolts rotate, or one or more engine mount bolts are fully broken): Within the compliance time specified in Airbus AOT A71L005–14, Revision 01, dated December 11, 2014, accomplish all applicable corrective actions in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L005–14, Revision 01, dated December 11, 2014, except as required by paragraphs (m)(1) and (m)(2) of this AD.

(l) Action for Airbus Model A340–541 and –642 Airplanes Equipped With RR Trent 500 Engines

(1) For Airbus Model A340–541 and –642 airplanes equipped with RR Trent 500 Engines: Within 2,000 flight hours after the effective date of this AD, accomplish a one-time torque check of FWD and AFT engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection requirements,'' of Airbus AOT A71L008–14, Revision 01, dated December 18, 2014.

(2) If, during the torque check required by paragraph (l)(1) of this AD, any discrepancy is detected (one engine mount bolt rotates, two or more engine mount bolts rotate, or one or more engine mount bolts are fully broken): Within the compliance time specified in Airbus AOT A71L008–14, Revision 01, dated December 18, 2014, accomplish all applicable corrective actions, in accordance with the Instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L008–14, Revision 01, dated December 18, 2014, except as required by paragraphs (m)(1) and (m)(2) of this AD.

(m) Service Information Exceptions

(1) Where Airbus AOTs A71L005–14, Revision 01, dated December 11, 2014; A71L006–14, dated July 22, 2014; and A71L008–14, Revision 01, dated December 18, 2014; specify to contact Airbus for further actions, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) Where Airbus AOT A71L004–14, Revision 01, dated April 7, 2014; AOT A71L005–14, Revision 01, dated December 11, 2014; AOT A71L006–14, dated July 22, 2014; and AOT A71L008–14, Revision 01, dated December 18, 2014, specify actions ''if one pylon bolt fully broken,'' this AD requires that those actions be done if one or more engine mount bolt is found fully broken during any torque check required by paragraph (h)(1), (j)(1), (k)(1) or (l)(1) of this AD.

(n) Reporting

At the applicable time specified in paragraphs (n)(1) and (n)(2) of this AD: After accomplishment of any torque check required by paragraphs (h), (j), (k), and (l) of this AD, report all inspection results to Airbus, including no findings, in accordance with the ''Reporting'' section of the applicable service information specified in paragraphs (h), (j), (k), and (l) of this AD.

(1) If the torque check was done on or after the effective date of this AD: Submit the report within 30 days after the torque check.

(2) If the torque check was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(o) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71L004–14, dated April 1, 2014 (for Airbus Model A330 Airplanes Equipped with PW Engines), which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71L005–14, dated September 29, 2014 (for Airbus Model A330 Airplanes Equipped with RR Trent 700 Engines), which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71L008–14, dated September 29, 2014 (for Airbus Model A340 Airplanes Equipped with RR Trent 500 Engines), which is not incorporated by reference in this AD.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(q) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0082, dated May 11, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–7533.

(r) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(ii) Airbus AOT A71L005–14, Revision 01, dated December 11, 2014.

(iii) Airbus AOT A71L006–14, dated July 22, 2014.

(iv) Airbus AOT A71L008–14, Revision 01, dated December 18, 2014.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email airworthiness. *A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 12, 2016.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12056 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8466; Directorate Identifier 2015–NM–045–AD; Amendment 39–18542; AD 2016–11–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by the need for more restrictive fuel system airworthiness limitations. This AD requires revising the maintenance program or inspection program, as applicable, to incorporate certain fuel system airworthiness limitations. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8466.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8466; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3059) (''the NPRM''). The NPRM was prompted by the need for more restrictive fuel system airworthiness

limitations. The NPRM proposed to require revising the maintenance program or inspection program, as applicable, to incorporate certain fuel system airworthiness limitations. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0032, dated February 24, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

Fokker Services published issue 5 of Engineering Report SE–672, containing Fuel Airworthiness Limitation Items (ALIs) and Critical Design Configuration Control Limitations (CDCCLs). This report is Part 3 of the Airworthiness Limitations Section (ALS Part 3) of the Instructions for Continued Airworthiness, referred to in Section 06, Appendix 1, of the Fokker 70/100 Maintenance Review Board (MRB) document.

The complete ALS currently consists of: Part 1—Report SE–473, Certification Maintenance Requirements (CMRs), Part 2—Report SE–623, ALIs and Safe Life Items (SLIs), and Part 3—Report SE–672, Fuel ALIs and CDCCLs.

The instructions contained in those reports have been identified as mandatory actions for continued airworthiness.

For the reasons described above, this [EASA] AD requires implementation of the maintenance actions as specified in ALS Part 3 of the Instructions for Continued Airworthiness, Fokker Services Engineering Report SE–672 at issue 5.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8466.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Fokker Services B.V. Engineering Report SE–672, "Fokker 70/100 Fuel ALI's and CDCCL's," Issue 5, released December 11, 2014. The service information describes fuel system airworthiness limitation items and critical design configuration control limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $680, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–15 Fokker Services B.V.: Amendment 39–18542. Docket No. FAA–2015–8466; Directorate Identifier 2015–NM–045–AD.

(a) Effective Date

This AD is effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by the need for more restrictive fuel system airworthiness limitations. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Maintenance Program Revision

(1) Within 12 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the fuel system airworthiness limitation items (ALIs) and critical design configuration control limitations (CDCCLs) specified in Fokker Services B.V. Engineering Report SE–672, "Fokker 70/100 Fuel ALI's and CDCCL's," Issue 5, released December 11, 2014.

(2) The initial compliance times and repetitive intervals for the actions are at the applicable times specified within Fokker Services B.V. Engineering Report SE–672, "Fokker 70/100 Fuel ALI's and CDCCL's," Issue 5, released December 11, 2014. If any discrepancy is found, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). Repair any discrepancy before further flight.

(h) No Alternative Inspections, Inspection Intervals, or CDCCLs

After accomplishment of the actions specified in paragraph (g) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Fokker Services B.V.'s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0032, dated February 24, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8466.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Services B.V. Engineering Report SE–672, Fokker 70/100 Fuel ALI's and CDCCL's, Issue 5, released December 11, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com*; Internet *http://www.myfokkerfleet.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on May 23, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13050 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD; Amendment 39–18534; AD 2016–11–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt and Whitney engines. This AD was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. This AD requires doing the following actions on the left strut and right strut: A one-time cleaning of certain forward strut drain lines; installing new forward strut drain lines and insulation blankets; a leak check of the forward strut drain lines; and repair if any leak is found. This AD also requires revising the maintenance or inspection program, as applicable, to incorporate a certain airworthiness limitation. We are issuing this AD to prevent blockage of forward strut drain lines. This condition could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8130.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8130; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building

Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt and Whitney engines. The NPRM published in the **Federal Register** on December 31, 2015 (80 FR 81788) ("the NPRM"). The NPRM was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. The NPRM proposed to require doing the following actions on the left strut and right strut: A one-time cleaning of certain forward strut drain lines; installing new forward strut drain lines and insulation blankets; a leak check of the forward strut drain lines; and repair if any leak is found. The NPRM also proposed to require revising the maintenance or inspection program, as applicable, to incorporate a certain airworthiness limitation. We are issuing this AD to prevent blockage of forward strut drain lines. This condition could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM.

Support for the NPRM

Boeing, United Airlines, and Airline Pilots Association International have no objections to the NPRM.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013. This service information describes procedures for a general visual inspection for hydraulic fluid contamination of the interior of the strut forward dry bay and corrective actions.
- Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015. The service information describes procedures for installing new forward strut drain lines and insulation blankets on the left and right engines.
- Airworthiness Limitation 54–AWL–01, "Forward Strut Drain Line," as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014. This service information describes an airworthiness limitation task for the functional check of the forward strut drain line.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 54 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Cleaning strut drain lines, installing new drain lines and insulation blankets, doing a leak check, and revising the maintenance or inspection program.	16 work-hours × $85 per hour = $1,360.	$17,080	$18,440	$995,760

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–07 The Boeing Company: Amendment 39–18534; Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD.

(a) Effective Date

This AD is effective July 12, 2016.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014) ("AD 2014–20–10").

(2) AD 2015–17–13, Amendment 39–18246 (80 FR 52948, September 2, 2015) ("AD 2015–17–13").

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Pratt and Whitney engines, as identified in Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. We are issuing this AD to prevent blockage of forward strut drain lines. This condition could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Actions

Within 4,000 flight cycles or 750 days after the effective date of this AD, whichever occurs later: Accomplish the actions specified in paragraphs (g)(1) through (g)(4) of this AD on the left and right struts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and accomplish the revision specified in paragraph (g)(5) of this AD.

(1) Disconnect and remove the forward strut drain lines.

(2) Clean the left system disconnect, the strut forward lower spar, and the forward fireseal pan drain lines.

(3) Install new forward strut drain lines and insulation blankets.

(4) Do a leak check of the forward strut drain lines for any leak, and repair if any leak is found.

(5) Revise the maintenance or inspection program, as applicable, to incorporate Airworthiness Limitation 54–AWL–01, "Forward Strut Drain Line" as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014. The initial compliance time for Airworthiness Limitation 54–AWL–01 is within 2,000 flight cycles or 1,500 days, whichever occurs first, after doing the actions specified in paragraphs (g)(1) through (g)(4) of this AD.

(h) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g)(5) of this AD, no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(i) Terminating Action for Other ADs

(1) Accomplishing the actions required by paragraph (g) of this AD terminates the actions required by paragraph (g) of AD 2015–17–13 at the modified area only.

(2) Accomplishing the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD terminates the inspections required by paragraph (g) of AD 2014–20–10 at the modified area only, provided the actions are accomplished concurrently, or the actions specified in paragraph (i)(2)(ii) of this AD are done after accomplishing the actions specified in paragraph (i)(2)(i) of this AD.

(i) The actions specified in paragraphs (g)(1) through (g)(4) of this AD on the left and right struts are done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and the revision specified in paragraph (g)(5) of this AD is done.

(ii) A one-time general visual inspection for hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) of the interior of the strut forward dry bay, and all applicable related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage) are done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, except where Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, specifies to contact Boeing for repair, the repair must be done using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g)(1) through (g)(4) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–71–0055, dated June 12, 2014, which is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining

approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013.

(ii) Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015.

(iii) Airworthiness Limitation 54–AWL–01, "Forward Strut Drain Line," as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data Document Section 9, Airworthiness Limitations and Certification Maintenance Requirements, D622W001–9, dated October 2014.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on May 20, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12599 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–AD; Amendment 39–18544; AD 2016–11–17]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD was prompted by a report of wire chafing caused by a left wing spoiler actuator wire not having enough separation from a certain bracket when the spoiler is in the deployed position. This AD requires measuring the separation between a certain electro-mechanical actuator wire of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit; and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct wire chafing. Such chafing could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

DATES: This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3987.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3987; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 787–8 airplanes. The NPRM published in the **Federal Register** on October 19, 2015 (80 FR 63132) ("the NPRM"). The NPRM was prompted by a report of insufficient clearance and wire chafing between the wiring to the number 4 spoiler electro-mechanical actuator and a bracket of the flap variable camber trim unit with the spoiler fully deployed. The NPRM proposed to require measuring the separation between a certain electro-mechanical actuator wire of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct wire chafing. Such chafing could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

United Airlines stated that it agrees with the NPRM, has completed the actions specified in Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014, and has no technical findings/issues to report.

We acknowledge United Airlines' comment.

An anonymous commenter stated that it is in the airplane manufacturer's best interest to address the faulty wire as soon as possible as this safety issue may have an impact on profits because of the impact to the company's image.

We agree with the commenter in so much as the identified unsafe condition needs to be addressed on the affected airplanes. No change to this final rule was requested.

Request To Clarify the Issue That Prompted the NPRM

Boeing requested that we revise the Discussion section of the NPRM to clarify that the safety issue was prompted by a report of wire chafing caused by insufficient clearance between the wiring to the number 4 spoiler electro-mechanical actuator and a bracket of the flap variable camber trim unit with the spoiler fully deployed.

We agree with Boeing's statement regarding the action that prompted this AD. We have revised the Discussion section of this final rule accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014. The service information describes procedures for accomplishing the following actions.

- Measuring the separation between the electro-mechanical actuator wire W801182 of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit.
- Related investigative actions and corrective actions such as doing a general visual inspection for chafing of the electro-mechanical actuator wire W801182 of the left wing, spoiler 4; adjusting the electro-mechanical actuator wire W801182 of the left wing, spoiler 4; and replacing the electro-mechanical actuator wire W801182 of the left wing, spoiler 4.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 12 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Measurement	6 work-hours × $85 per hour = $510	$510	$6,120

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Related investigative and corrective actions	2 work-hours × $85 per hour = $170	$24	$194

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all the available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–17 The Boeing Company: Amendment 39–18544 ; Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–AD.

(a) Effective Date

This AD is effective July 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Unsafe Condition

This AD was prompted by a report of wire chafing caused by a left wing spoiler actuator wire not having enough separation from a certain bracket when the spoiler is in the deployed position. We are issuing this AD to detect and correct wire chafing; such chafing could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Wire Separation Measurement, Related Investigative Actions, and Corrective Actions

Within 24 months after the effective date of this AD: Measure the separation between the electro-mechanical actuator wire W801182 of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014. Do all applicable related investigative and corrective actions before further flight.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov*.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on May 20, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12842 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 160523449–6449–01]

RIN 0605–AA44

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the Department of Commerce (Commerce Department). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology effective for 2016 which provides for initial catch up adjustments for inflation in 2016, and under a revised methodology for each year thereafter. The revised methodologies provide for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. The initial catch up adjustment for inflation of a CMP in 2016 shall not exceed 150 percent of the amount of the CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015). The initial catch up adjustments for inflation to CMPs are required to be published through an interim final rule not later than July 1, 2016, and the adjustments for inflation shall take effect not later than August 1, 2016. For each year thereafter, the adjustments for inflation to CMPs shall take effect not later than January 15. These adjustments for inflation apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations.

These adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new CMP level.

DATES: This rule is effective July 7, 2016; comments must be received on or before July 7, 2016.

ADDRESSES: You may submit comments, identified by the *regulations.gov* docket number DOC–2016–0004, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=DOC-2016-0004* click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Acting Deputy Chief Financial Officer, Office of Financial Management, Department of Commerce, 1401 Constitution Ave NW., Room D200, Washington, DC 20230.

Instructions: You must submit comments by one of the above methods to ensure that Commerce Department receives the comments and considers them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Commerce Department will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Ayers, Acting Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482–1207, Department of Commerce, 1401 Constitution Avenue NW., Room D200, Washington, DC 20230. The Commerce Department Civil Monetary Penalties; Adjustment for Inflation are available for downloading from Commerce Department, Office of Financial Management's Web site at the following address: *http://www.osec.doc.gov/ofm/OFM_Publications.html*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), provided for adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, Commerce Department published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment requires agencies to: (1) Adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation to CMPs.

Agencies are required to publish interim final rules with initial catch up adjustments for inflation by July 1, 2016, and the adjustments for inflation shall take effect no later than August 1, 2016. For each year thereafter, the adjustments for inflation to CMPs shall take effect not later than January 15.

The maximum amount for an initial catch up adjustment for inflation shall not exceed 150 percent of the amount of that CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015).

These adjustments for inflation apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new CMP level.

For an initial catch up adjustment for inflation to a CMP, agencies may adjust for inflation the amount of a CMP by less than the otherwise required amount if after publishing a notice of proposed rulemaking and providing an opportunity for comment, the agency determines in a final rule that increasing that CMP by the otherwise required amount will have a negative economic impact; or the social costs of increasing that CMP by the otherwise required amount outweigh the benefits. The concurrence of the Director of the Office of Management and Budget will be required if the adjustment for inflation is less than the otherwise required amount.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of Commerce Department. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is maintained and made available to the public on the NOAA Office of the General Counsel, Enforcement Section, Web site at: *http://www.gc.noaa.gov/enforce-office3.html*.

The initial catch up adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the revised methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term "cost -of-living adjustment" is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the initial catch up adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index of October of the calendar year during which the amount of such CMP was established or adjusted under a provision of law other than the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015. For subsequent adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for the month of October preceding the date of the adjustment exceeds the Consumer Price Index for the previous month of October.

Classification

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)(1)) requires initial catch up adjustments for inflation to CMPs and to provide the new CMP levels through an interim final rulemaking, to be published by July 1, 2016. This law also requires agencies to make subsequent annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodologies used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. Commerce Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and comment are not required for this rule.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as the term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Law enforcement, Civil monetary penalties.

Dated: May 31, 2016.

Jennifer Ayers,

Acting Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.

Authority and Issuance

■ For the reasons stated in the preamble, Commerce Department revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.
§ 6.1 Definitions.
§ 6.2 Purpose and scope.
§ 6.3 Limitation on initial catch up adjustments for inflation.
§ 6.4 Adjustments for inflation.
§ 6.5 Effective date of adjustments for inflation.
§ 6.6 Subsequent adjustments for inflation.

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§ 6.1 Definitions.

(a) *Commerce Department* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

§ 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Commerce Department).

§ 6.3 Limitation on initial catch up adjustments for inflation.

The initial catch up adjustment for inflation to a civil monetary penalty shall not exceed 150 percent of the amount of that civil monetary penalty that was in effect as of November 2, 2015.

§ 6.4 Adjustments for inflation.

The civil monetary penalties provided by law within the jurisdiction of Commerce Department, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amount of such civil monetary penalties that was in effect as of November 2, 2015, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from $5,500 to $10,781.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986; newly reported penalty), violation, maximum $10,781.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from $5,500 to $10,781; maximum from $11,000 to $21,563.

(b) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from $32,500 to $44,539.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $25,000 to $36,256.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $5,000 to $7,251.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum $284,582.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from $27,500 to $29,464.

(c) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from $1,000 to $1,312; maximum per violation, from $10,000 to $13,118.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from $10,000 to $13,118.

(d) *Economics and Statistics Administration.* (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from $2,500 to $4,454; maximum from $32,500 to $44,539.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from $1,100 to $2,750.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from $130,000 to $197,869.

(f) *National Oceanic and Atmospheric Administration.* (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $10,000 to $10,874.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $10,000 to $10,874.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from $200,000 to $227,666.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from $650 to $1,625.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from $32,500 to $81,250.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from $70,000 to $175,000.

(iii) Violation of 16 U.S.C. 957(b), maximum from $1,100 to $2,750.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from $6,500 to $16,250.

(v) Violation of 16 U.S.C. 957(c), maximum from $140,000 to $350,000.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950 [1] (new penalty), violation, maximum $178,156.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950 [2] (new penalty), violation, maximum $178,156.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,[3] violation, maximum from $140,000 to $178,156.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from $350,000 to $494,672.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from $11,000 to $23,548.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from $11,000 to $27,500.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,[4] violation, maximum from $130,000 to $178,156.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from $140,000 to $167,728.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Violation as specified (1988), maximum from $32,500 to $49,467.

(ii) Violation as specified (1988), maximum from $13,200 to $23,744.

(iii) Otherwise violation (1978), maximum from $650 to $1,625.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from $140,000 to $178,156.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,[5] violation, maximum from $6,500 to $178,156.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,[6] violation, maximum from $6,500 to $178,156.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from $11,000 to $25,464.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from $275 to $637.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,[7] violation, maximum from $140,000 to $178,156.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,[8] violation, maximum from $140,000 to $178,156.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from $500 to $1,078; maximum from $6,500 to $10,781.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,[9] violation, maximum from $130,000 to $178,156.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,[10] violation, maximum from $140,000 to $178,156.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,[11] violation, maximum from $140,000 to $178,156.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from $130,000 to $154,742.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,[12] violation, maximum from $140,000 to $178,156.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,[13] violation, maximum from $140,000 to $178,156.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,[14] violation, maximum from $140,000 to $178,156.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from $11,000 to $27,500.

(ii) Subsequent violation, maximum from $32,500 to $81,250.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from $32,500 to $70,117.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from $32,500 to $70,117.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012 [15] (new penalty), violation, maximum $178,156.

(33) 16 U.S.C. 7407(b)(1), Port State Measures Agreement Act of 2015 [16] (new penalty), violation, maximum $178,156.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act [17] (new penalty), violation, maximum $178,156.

§ 6.5 Effective date of adjustments for inflation.

The adjustments for inflation made by § 6.4, of the civil monetary penalties there specified, are effective on July 7, 2016, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.4, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to July 7, 2016 as provided in § 6.6.

§ 6.6 Subsequent adjustments for inflation.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to Commerce Department's civil monetary penalties annually, which shall take effect not later than January 15, 2017,

[1] This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

[2] See footnote 1.

[3] See footnote 1.

[4] This National Oceanic and Atmospheric Administration maximum civil monetary penalty was revised by law in 2015 to be the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

[5] See footnote 4.

[6] See footnote 4.

[7] See footnote 1.

[8] See footnote 1.

[9] See footnote 4.

[10] See footnote 1.

[11] See footnote 1.

[12] See footnote 1.

[13] See footnote 1.

[14] See footnote 1.

[15] See footnote 1.

[16] See footnote 1.

[17] See footnote 1.

and for each year thereafter, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2016–13231 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–DP–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710, 745, and 774

[Docket No. 160302176–6176–01]

RIN 0694–AG88

Implementation of the February 2015 Australia Group (AG) Intersessional Decisions and the June 2015 AG Plenary Understandings

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the recommendations presented at the February 2015 Australia Group (AG) intersessional implementation meeting, and later adopted pursuant to the AG silent approval procedure, and the understandings reached at the June 2015 AG Plenary meeting. This rule amends three Commerce Control List (CCL) entries to reflect the February 2015 intersessional recommendations that were adopted by the AG. Specifically, this rule amends the CCL entry that controls chemical precursors by adding the chemical diethylamine (C.A.S. 109–89–7), which was not previously identified on the AG's "Chemical Weapons Precursors" common control list. This rule also amends the CCL entry that controls certain human and zoonotic pathogens and toxins by adding two viruses that were not previously identified on the AG "List of Human and Animal Pathogens and Toxins for Export Control" and by updating the nomenclature of certain viruses that were already identified on this AG common control list. In addition, this rule amends the CCL entry that controls equipment capable of handling biological materials to reflect the AG intersessional updates to the controls on biocontainment chambers, isolators, and biological safety cabinets and the controls on aerosol inhalation equipment described on the AG "Control List of Dual-Use Biological Equipment and Related Technology and Software." Consistent with the understandings adopted at the June 2015 AG Plenary meeting, this rule also amends the CCL entry that controls equipment capable of handling biological materials by updating the controls on freeze-drying (lyophilization) equipment.

Finally, this rule amends the EAR to reflect the addition of Angola and Burma as States Parties to the Chemical Weapons Convention (CWC) and also amends the Chemical Weapons Convention Regulations (CWCR) to reflect the addition of these two countries as States Parties.

DATES: This rule is effective June 7, 2016.

FOR FURTHER INFORMATION CONTACT: Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343, Email: *Richard.Duncan@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the recommendations presented at the Australia Group (AG) Intersessional meeting held in The Hague, Netherlands, on February 4, 2015, and adopted pursuant to the AG silent approval procedure in April 2015, and the understandings reached at the AG Plenary meeting held in Perth, Australia, from June 1–5, 2015. The AG is a multilateral forum consisting of 41 participating countries that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

Amendments to the CCL Based on the February 2015 AG Intersessional Recommendations

This rule amends three Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR), as described below, to reflect the February 2015 intersessional recommendations that were adopted by the AG.

Amendments to ECCN 1C350 (Precursor Chemicals)

This final rule amends ECCN 1C350 on the CCL, to reflect the addition of the chemical diethylamine (C.A.S. 109–89–7) to the AG's "Chemical Weapons Precursors" common control list, by adding this chemical to 1C350.d, which controls precursor chemicals identified on the AG common control list that are not also "scheduled" chemicals (*i.e.*, chemicals identified as Schedule 1, Schedule 2, or Schedule 3 chemicals) under the Chemical Weapons Convention (CWC).

Like the other precursor chemicals controlled under ECCN 1C350.d, diethylamine requires a license for chemical/biological (CB) reasons to destinations indicated under CB Column 2 on the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR) and for anti-terrorism (AT) reasons to destinations in Country Group E:1 (see Supplement No. 1 to part 742 of the EAR). Because none of the precursor chemicals controlled under ECCN 1C350.d (including diethylamine) are identified as "scheduled" chemicals under the CWC, these precursor chemicals do not require a license for chemical weapons (CW) reasons. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the sanctions that apply to Iran, North Korea, and Syria.)

Amendments to ECCN 1C351 (Human and Animal Pathogens and "Toxins")

This final rule amends ECCN 1C351 on the CCL to reflect the addition of two viruses (severe acute respiratory syndrome-related coronavirus, a.k.a. SARS-related coronavirus, and reconstructed 1918 influenza virus) that were not previously identified on the AG "List of Human and Animal Pathogens and Toxins for Export Control" and to update the nomenclature for seventeen viruses that were already identified on this AG common control list and in ECCN 1C351.a (nineteen viruses were updated on the AG common control list, but only seventeen viruses in ECCN 1C351.a required updating). Prior to the publication of this final rule, the two viruses that are being added to ECCN 1C351.a were listed under ECCN 1C351.b, which controls viruses identified on the "select agents" lists maintained by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, but not identified on the AG "List of Human and Animal Pathogens and Toxins for Export Control."

The license requirements applicable to the viruses affected by the amendments in this final rule (including the two viruses that are being moved from 1C351.b to 1C351.a) remain unchanged. Specifically, all of these viruses continue to require a license for CB reasons to destinations indicated under CB Column 1 on the Commerce Country Chart and for AT reasons to destinations indicated in AT Column 1 on the Commerce Country Chart.

This final rule also makes conforming changes to ECCN 1C351 by renumbering certain items in ECCN 1C351.a to reflect the addition of the two aforementioned viruses (*i.e.*, the SARS-related coronavirus and the reconstructed 1918 influenza virus) and the updates to the nomenclature for seventeen other viruses listed in 1C351.a. The following table lists the viruses that are controlled under ECCN 1C351.a, as a result of the amendments made by this final rule, and indicates the previous and current names and CCL designations for each of these viruses. The names and CCL designations of thirteen viruses were not affected by this rule (these viruses continue to be designated as 1C351.a.1 through .a.8 and 1C351.a.42 through .a.46, as indicated in the following table). Twenty-six additional viruses in 1C351.a, whose names are not updated by this rule, have new CCL designations. All seventeen of the viruses in 1C351.a whose names are updated by this final rule also have new CCL designations, as do the two aforementioned viruses that are being moved from 1C351.b to 1C351.a (both of whose names are updated, as well).

Previous names of AG-controlled viruses	Current names of AG-controlled viruses	Previous CCL designation	Current CCL designation
African horse sickness virus	No change	ECCN 1C351.a.1	No change.
African swine fever virus	No change	ECCN 1C351.a.2	No change.
Andes virus	No change	ECCN 1C351.a.3	No change.
Avian influenza virus	No change	ECCN 1C351.a.4	No change.
Bluetongue virus	No change	ECCN 1C351.a.5	No change.
Chapare virus	No change	ECCN 1C351.a.6	No change.
Chikungunya virus	No change	ECCN 1C351.a.7	No change.
Chocio virus	No change	ECCN 1C351.a.8	No change.
Congo-Crimean haemorrhagic fever virus	Crimean-Congo hemorrhagic fever virus	ECCN 1C351.a.9	ECCN 1C351.a.10.
Dengue fever virus	Dengue virus	ECCN 1C351.a.10	ECCN 1C351.a.11.
Dobrava-Belgrade virus	No change	ECCN 1C351.a.11	ECCN 1C351.a.12.
Eastern equine encephalitis virus	No change	ECCN 1C351.a.12	ECCN 1C351.a.13.
Ebola virus	Ebolavirus (includes all members of the Ebolavirus genus).	ECCN 1C351.a.13	ECCN 1C351.a.14.
Foot and mouth disease virus	Foot-and-mouth disease virus	ECCN 1C351.a.14	ECCN 1C351.a.15.
Goat pox virus	Goatpox virus	ECCN 1C351.a.15	ECCN 1C351.a.16.
Guanarito virus	No change	ECCN 1C351.a.16	ECCN 1C351.a.17.
Hantaan virus	No change	ECCN 1C351.a.17	ECCN 1C351.a.18.
Hendra virus (Equine morbillivirus)	No change	ECCN 1C351.a.18	ECCN 1C351.a.19.
Herpes virus (Aujeszky's disease)	Suid herpesvirus 1 (Pseudorabies virus; Aujeszky's disease).	ECCN 1C351.a.19	ECCN 1C351.a.51.
Hog cholera virus (syn.: swine fever virus)	Classical swine fever virus (Hog cholera virus).	ECCN 1C351.a.20	ECCN 1C351.a.9.
Japanese encephalitis virus	No change	ECCN 1C351.a.21	ECCN 1C351.a.20.
Junin virus	No change	ECCN 1C351.a.22	ECCN 1C351.a.21.
Kyasanur Forest virus	Kyasanur Forest disease virus	ECCN 1C351.a.23	ECCN 1C351.a.22.
Laguna Negra virus	No change	ECCN 1C351.a.24	ECCN 1C351.a.23.
Lassa fever virus	Lassa virus	ECCN 1C351.a.25	ECCN 1C351.a.24.
Louping ill virus	No change	ECCN 1C351.a.26	ECCN 1C351.a.25.
Lujo virus	No change	ECCN 1C351.a.27	ECCN 1C351.a.26.
Lumpy skin disease virus	No change	ECCN 1C352.a.28	ECCN 1C351.a.27.
Lymphocytic choriomeningitis virus	No change	ECCN 1C351.a.29	ECCN 1C351.a.28.
Machupo virus	No change	ECCN 1C351.a.30	ECCN 1C351.a.29.
Marburg virus	Marburgvirus (includes all members of the Marburgvirus genus).	ECCN 1C351.a.31	ECCN 1C351.a.30.
Monkey pox virus	Monkeypox virus	ECCN 1C351.a.32	ECCN 1C351.a.31.
Murray Valley encephalitis virus	No change	ECCN 1C351.a.33	ECCN 1C351.a.32.
Newcastle disease virus	No change	ECCN 1C351.a.34	ECCN 1C351.a.33.
Nipah virus	No change	ECCN 1C351.a.35	ECCN 1C351.a.34.
Omsk haemorrhagic fever virus	Omsk hemorrhagic fever virus	ECCN 1C351.a.36	ECCN 1C351.a.35.
Oropouche virus	No change	ECCN 1C351.a.37	ECCN 1C351.a.36.
Peste des petits ruminants virus	Peste-des-petits ruminants virus	ECCN 1C351.a.38	ECCN 1C351.a.37.
Porcine enterovirus type 9 (syn.: swine vesicular disease virus).	Swine vesicular disease virus	ECCN 1C351.a.39	ECCN 1C351.a.52.
Powassan virus	No change	ECCN 1C351.a.40	ECCN 1C351.a.39.
Rabies virus and other members of the Lyssavirus genus.	No change	ECCN 1C351.a.41	ECCN 1C351.a.40.
Reconstructed replication competent forms of the 1918 pandemic influenza virus.	Reconstructed 1918 influenza virus	ECCN 1C351.b.1	ECCN 1C351.a.41.
Rift Valley fever virus	No change	ECCN 1C351.a.42	No change.
Rinderpest virus	No change	ECCN 1C351.a.43	No change.
Rocio virus	No change	ECCN 1C351.a.44	No change.
Sabia virus	No change	ECCN 1C351.a.45	No change.
SARS-associated coronavirus (SARS-CoV)	Severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus).	ECCN 1C351.b.2	ECCN 1C351.a.47.
Seoul virus	No change	ECCN 1C351.a.46	No change.
Sheep pox virus	Sheeppox virus	ECCN 1C351.a.47	ECCN 1C351.a.48.
Sin nombre virus	Sin Nombre virus	ECCN 1C351.a.48	ECCN 1C351.a.49.

Previous names of AG-controlled viruses	Current names of AG-controlled viruses	Previous CCL designation	Current CCL designation
St. Louis encephalitis virus	No change (correction needed on AG common control list, only).	ECCN 1C351.a.49	ECCN 1C351.a.50.
Teschen disease virus	Porcine Teschovirus	ECCN 1C351.a.50	ECCN 1C351.a.38.
Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus).	No change (correction needed on AG common control list, only).	ECCN 1C351.a.51	ECCN 1C351.a.53.
Variola virus	No change	ECCN 1C351.a.52	ECCN 1C351.a.54.
Venezuelan equine encephalitis virus	No change	ECCN 1C351.a.53	ECCN 1C351.a.55.
Vesicular stomatitis virus	No change	ECCN 1C351.a.54	ECCN 1C351.a.56.
Western equine encephalitis virus	No change	ECCN 1C351.a.55	ECCN 1C351.a.57.
Yellow fever virus	No change	ECCN 1C351.a.56	ECCN 1C351.a.58.

With the transfer of two viruses (*i.e.*, severe acute respiratory syndrome-related coronavirus, a.k.a. SARS-related coronavirus, and reconstructed 1918 influenza virus) from ECCN 1C351.b to 1C351.a by this rule, only one virus continues to be controlled under 1C351.b: Tick-borne encephalitis virus (Siberian subtype, formerly West Siberian virus), which is listed in 1C351.b.3. This rule makes a conforming change to ECCN 1C351.b.3 by updating the cross reference therein to tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus) to reflect the re-designation of that virus (now listed under ECCN 1C351.a.53) by the amendments to ECCN 1C351.a described above.

Amendments to ECCN 2B352 (Equipment Capable of Use in Handling Biological Materials)

This final rule amends ECCN 2B352 on the CCL to reflect changes to the AG "Control List of Dual-Use Biological Equipment and Related Technology and Software" based on the February 2015 intersessional recommendations that were adopted by the AG. Specifically, this rule amends the controls on biocontainment chambers, isolators, and biological safety cabinets described in 2B352.g.2 to more fully identify the characteristics that such equipment must possess in order to be controlled under ECCN 2B352. As amended by this rule, ECCN 2B352.g.2 controls biocontainment chambers, isolators, or biological safety cabinets having all of the following characteristics, for normal operation: (i) A fully enclosed workspace where the operator is separated from the work by a physical barrier; (ii) the ability to operate at negative pressure; (iii) the means to safely manipulate items in the workspace; and (iv) the supply and exhaust air to and from the workspace is high-efficiency particulate air (HEPA) filtered.

Consistent with the AG intersessional changes described above, this rule also adds two notes to ECCN 2B352 to further clarify the scope of the controls in 2B352.g.2. Note 1 to ECCN 2B352.g.2 indicates that the items subject to these controls include class III biosafety cabinets, as specified in the World Health Organization (WHO) Laboratory Biosafety Manual (3rd edition, Geneva, 2004) or constructed in accordance with national standards, regulations or guidance. Note 2 to ECCN 2B352.g.2 indicates that these controls do not apply to isolators specially designed for barrier nursing or transportation of infected patients.

This rule also amends the controls on aerosol inhalation equipment described in ECCN 2B352.h to include nose-only exposure apparatus. As amended by this final rule, ECCN 2B352.h now controls the following aerosol inhalation equipment designed for aerosol challenge testing with microorganisms, viruses or toxins: (i) Whole-body exposure chambers having a capacity of 1 cubic meter or greater; and (ii) nose-only exposure apparatus utilizing directed aerosol flow and having a capacity for the exposure of 12 or more rodents, or 2 or more animals other than rodents, and closed animal restraint tubes designed for use with such apparatus.

All items controlled under ECCN 2B352 require a license for CB reasons to destinations indicated under CB Column 2 on the Commerce Country Chart and for AT reasons to destinations indicated in AT Column 1 on the Commerce Country Chart.

Amendments to the CCL Based on the June 2015 AG Plenary Understandings

Amendments to ECCN 2B352 (Equipment Capable of Use in Handling Biological Materials)

This final rule also amends ECCN 2B352 on the CCL to reflect changes to the AG "Control List of Dual-Use Biological Equipment and Related Technology and Software" based on the understandings reached at the June 2015 AG Plenary meeting. Specifically, this rule amends 2B352.e to control steam, gas or vapor sterilizable freeze-drying equipment with a condenser capacity of 10 kg of ice or greater in 24 hours (10 liters of water or greater in 24 hours) and less than 1000 kg of ice in 24 hours (less than 1,000 liters of water in 24 hours). This change is being made in recognition of the increasing viability of gas or vapor sterilizable freeze-drying equipment as an efficient and low-cost alternative to steam sterilization.

Conforming Change to ECCN 1C351 (Human and Animal Pathogens and "Toxins")

In addition to the AG plenary and intersessional changes described above, this rule amends ECCN 1C351 by adding a fifth note to the License Requirement Notes in the License Requirements section of this ECCN. This new License Requirement Note is intended to provide guidance, consistent with the AG "List of Human and Animal Pathogens and Toxins for Export Control," in determining whether a particular pathogen or "toxin" is controlled under ECCN 1C351. License Requirement Note 5 reads as follows:

Biological agents and pathogens are controlled under ECCN 1C351 when they are an isolated live culture of a pathogen agent, or a preparation of a toxin agent that has been isolated or extracted from any source or material, including living material that has been deliberately inoculated or contaminated with the agent. Isolated live cultures of a pathogen agent include live cultures in dormant form or in dried preparations, whether the agent is natural, enhanced or modified.

Addition of Angola and Burma as States Parties to the Chemical Weapons Convention (CWC)

This rule also amends the EAR to reflect the addition of Angola and Burma as States Parties to the CWC on October 16, 2015, and August 7, 2015, respectively. Specifically, this rule amends Supplement No. 2 to part 745 of the EAR (States Parties to the CWC) to add Angola and Burma in alphabetical order. Because Angola and Burma are not AG participating countries, their addition to the list of CWC States Parties in Supplement No. 2 to part 745 does not affect the CB Column 1 and CB Column 2 license requirements for these countries that are indicated in Supplement No. 1 to part 738 of the EAR (Commerce Country Chart). The CB Column 3 license requirements indicated for Burma, in the Commerce Country Chart, also continue to apply. However, a license is no longer required for CB or CW reasons for exports to Angola or Burma of mixtures and test kits controlled under ECCN 1C395.a and .b, respectively, although a license would be required if any of the end-user or end-use requirements in part 744 of the EAR apply.

In order to maintain consistency between the EAR and the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–721), with respect to those countries that are identified as States Parties to the CWC, this rule also amends Supplement No. 1 to part 710 of the CWCR (States Parties to the CWC) to add Angola and Burma in alphabetical order.

Effect of This Rule on the Scope of the CB Controls in the EAR

The changes made by this rule only marginally affect the scope of the EAR controls on precursor chemicals, human and animal pathogens/toxins, and equipment capable of use in handling biological materials.

The amendments to ECCN 1C350, which add the chemical diethylamine (C.A.S. 109–89–7), are expected to have only a small impact on the scope of the CB controls in this ECCN. This chemical has corrosive properties that, in combination with its flammable characteristics, cause it to be categorized as a hazardous substance. As such, this chemical is regulated by the Occupational Safety and Health Administration (OSHA), the Drug Enforcement Administration (DEA), and the Environmental Protection Agency (EPA) and also is listed in the Department of Transportation's (DOT) Hazardous Materials Table (see 49 CFR 171.101). For these reasons, together with the limited number of commercial applications for this chemical, there is a relatively low volume of exports of this chemical from the United States. Therefore, the addition of this chemical to ECCN 1C350 is not expected to have a significant impact on the number of export license applications that must be submitted to BIS for items controlled under this ECCN.

The scope of the CCL-based CB controls on human and animal pathogens and toxins was not affected by the addition of two viruses (*i.e.*, severe acute respiratory syndrome-related coronavirus, a.k.a. SARS-related coronavirus, and reconstructed 1918 influenza virus) to ECCN 1C351.a because these viruses were controlled under ECCN 1C351.b prior to the publication of this rule, and the license requirements that apply to items listed under 1C351.a are identical to those that apply to items listed under 1C351.b. Therefore, these changes are not expected to have a significant impact on the number of license applications that will have to be submitted for such items.

The addition of new License Requirement Note 5 to ECCN 1C351 is merely intended to provide guidance, consistent with the AG "List of Human and Animal Pathogens and Toxins for Export Control," for determining whether a particular pathogen or "toxin" is controlled under this ECCN. It does not affect the scope of the controls of this ECCN and, therefore, is not expected to have any discernable effect on the number of license applications that will have to be submitted for items controlled under ECCN 1C351.

Although the updates in this rule to the controls on freeze-drying (lyophilization) equipment (see ECCN 2B352.e), biocontainment chambers, isolators, and biological safety cabinets (see ECCN 2B352.g.2) and aerosol inhalation equipment (see ECCN 2B352.h) represent an expansion in the number of items that require a license under ECCN 2B352, the expanded controls apply to only a relatively small percentage of these types of items that were not controlled under ECCN 2B352 prior to the publication of this rule. Consequently, any increase in the number of license applications resulting from this change is not expected to be significant, when considered as a percentage of these types of items.

Finally, the amendments adding Angola and Burma to Supplement No. 2 to part 745 of the EAR (States Parties to the CWC) and Supplement No. 1 to part 710 of the CWCR are expected to have only a small impact on the scope of the controls applicable to exports to these countries of items on the CCL that are also identified on the AG common control lists. Because Angola and Burma are not AG participating countries, the CB Column 1 and CB Column 2 license requirements for these countries, as indicated in Supplement No. 1 to part 738 of the EAR (Commerce Country Chart), continue to apply. In addition, the CB Column 3 license requirements indicated for Burma, in the Commerce Country Chart, continue to apply. However, under ECCN 1C395, a license is no longer required for CB or CW reasons for exports to Angola or Burma of mixtures and test kits controlled by ECCN 1C395.a and .b, respectively. Therefore, collectively, these changes are expected to result in a small decrease in the number of license applications that will have to be submitted for these two countries.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015 (80 FR 48233 (Aug. 11, 2015)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58

minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, by email to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230 or by email to *RPD2@bis.doc.gov*.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to the Australia Group (AG). The AG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of chemical and biological weapons. The AG consists of 41 member countries that act on a consensus basis and the amendments set forth in this rule implement changes made to the AG common control lists (as a result of the adoption of the recommendations made at the February 2015 AG intersessional meeting and the understandings reached at the June 2015 AG plenary meeting) and other changes that are necessary to ensure consistency with the controls maintained by the AG. Because the United States is a significant exporter of the items in this rule, immediate implementation of this provision is necessary for the AG to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by AG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign trade, Imports, Treaties.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 710 of the Chemical Weapons Convention Regulations (15 CFR parts 710–721) and parts 745 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for Part 710 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

■ 2. Supplement No. 1 to Part 710 is amended by revising the undesignated center heading "List of States Parties as of November 1, 2013" to read "List of States Parties as of June 1, 2016" and by adding, in alphabetical order, the countries "Angola" and "Burma".

PART 745—[AMENDED]

■ 3. The authority citation for Part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 4. Supplement No. 2 to Part 745 is amended by revising the undesignated center heading "List of States Parties as of November 1, 2013" to read "List of States Parties as of June 1, 2016" and by adding, in alphabetical order, the countries "Angola" and "Burma".

PART 774—[AMENDED]

■ 5. The authority citation for Part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 6. In Supplement No. 1 to Part 774, Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," ECCN 1C350 is amended by revising paragraph d.24 and adding a new paragraph d.25 in the "Items" paragraph, under the "List of Items Controlled" section, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents (see List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

d. * * *

d.24. (C.A.S. #16893–85–9) Sodium hexafluorosilicate;

d.25. (C.A.S. #109–89–7) Diethylamine.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, "Microorganisms" and "Toxins," ECCN 1C351 is amended by adding a Note 5 to the "License Requirement Notes," under the "License Requirements" section, and by revising paragraphs a. and b. in the "Items" paragraph, under the "List of Items Controlled" section, to read as follows:

1C351 Human and animal pathogens and "toxins", as follows (see List of Items Controlled).

License Requirements

* * * * *

License Requirement Notes: * * *

5. Biological agents and pathogens are controlled under this ECCN 1C351 when they are an isolated live culture of a pathogen agent, or a preparation of a toxin agent that has been isolated or extracted from any source or material, including living material that has been deliberately inoculated or contaminated with the agent. Isolated live cultures of a pathogen agent include live cultures in dormant form or in dried preparations, whether the agent is natural, enhanced or modified.

List of Items Controlled

* * * * *

Items:

a. Viruses identified on the Australia Group (AG) "List of Human and Animal Pathogens and Toxins for Export Control," as follows:

a.1. African horse sickness virus;

a.2. African swine fever virus;

a.3. Andes virus;

a.4. Avian influenza (AI) viruses identified as having high pathogenicity (HP), as follows:

a.4.a. AI viruses that have an intravenous pathogenicity index (IVPI) in 6-week-old chickens greater than 1.2; *or*

a.4.b. AI viruses that cause at least 75% mortality in 4- to 8-week-old chickens infected intravenously.

Note: Avian influenza (AI) viruses of the H5 or H7 subtype that do not have either of the characteristics described in 1C352.a.4 (specifically, 1C352.a.4.a or a.4.b) should be sequenced to determine whether multiple basic amino acids are present at the cleavage site of the haemagglutinin molecule (HA0). If the amino acid motif is similar to that observed for other HPAI isolates, then the isolate being tested should be considered as HPAI and the virus is controlled under 1C352.a.4.

a.5. Bluetongue virus;

a.6. Chapare virus;

a.7. Chikungunya virus;

a.8. Choclo virus;

a.9. Classical swine fever virus (Hog cholera virus);

a.10. Crimean-Congo hemorrhagic fever virus;

a.11. Dengue virus;

a.12. Dobrava-Belgrade virus;

a.13. Eastern equine encephalitis virus;

a.14. Ebolavirus (includes all members of the Ebolavirus genus);

a.15. Foot-and-mouth disease virus;

a.16. Goatpox virus;

a.17. Guanarito virus;

a.18. Hantaan virus;

a.19. Hendra virus (Equine morbillivirus);

a.20. Japanese encephalitis virus;

a.21. Junin virus;

a.22. Kyasanur Forest disease virus;

a.23. Laguna Negra virus;

a.24. Lassa virus;

a.25. Louping ill virus;

a.26. Lujo virus;

a.27. Lumpy skin disease virus;

a.28. Lymphocytic choriomeningitis virus;

a.29. Machupo virus;

a.30. Marburgvirus (includes all members of the Marburgvirus genus);

a.31. Monkeypox virus;

a.32. Murray Valley encephalitis virus;

a.33. Newcastle disease virus;

a.34. Nipah virus;

a.35. Omsk hemorrhagic fever virus;

a.36. Oropouche virus;

a.37. Peste-des-petits ruminants virus;

a.38. Porcine Teschovirus;

a.39. Powassan virus;

a.40. Rabies virus and all other members of the Lyssavirus genus;

a.41. Reconstructed 1918 influenza virus;

Technical Note: 1C351.a.41 includes reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments.

a.42. Rift Valley fever virus;

a.43. Rinderpest virus;

a.44. Rocio virus;

a.45. Sabia virus;

a.46. Seoul virus;

a.47. Severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus);

a.48. Sheeppox virus;

a.49. Sin Nombre virus;

a.50. St. Louis encephalitis virus;

a.51. Suid herpesvirus 1 (Pseudorabies virus; Aujeszky's disease);

a.52. Swine vesicular disease virus;

a.53. Tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus—see 1C351.b.3 for Siberian subtype);

a.54. Variola virus;

a.55. Venezuelan equine encephalitis virus;

a.56. Vesicular stomatitis virus;

a.57. Western equine encephalitis virus; *or*

a.58. Yellow fever virus.

b. Viruses identified on the APHIS/CDC "select agents" lists (see Related Controls paragraph #2 for this ECCN), but not identified on the Australia Group (AG) "List of Human and Animal Pathogens and Toxins for Export Control," as follows:

b.1. [Reserved];

b.2. [Reserved]; *or*

b.3. Tick-borne encephalitis virus (Siberian subtype, formerly West Siberian virus—see 1C351.a.53 for Far Eastern subtype).

* * * * *

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended in the "Items" paragraph, under the List of Items Controlled section, by revising paragraph e., by revising paragraph g.2., by adding Notes 1 and 2 to paragraph g.2., and by revising paragraph h., to read as follows:

2B352 Equipment Capable of Use in Handling Biological Materials, as Follows (See List of Items Controlled).

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

e. Steam, gas or vapor sterilizable freeze-drying equipment with a condenser capacity of 10 kg of ice or greater in 24 hours (10 liters of water or greater in 24 hours) and less than 1000 kg of ice in 24 hours (less than 1,000 liters of water in 24 hours).

* * * * *

g. * * *

g.2. Biocontainment chambers, isolators, or biological safety cabinets having all of the following characteristics, for normal operation:

g.2.a. Fully enclosed workspace where the operator is separated from the work by a physical barrier;

g.2.b. Able to operate at negative pressure;

g.2.c. Means to safely manipulate items in the workspace; *and*

g.2.d. Supply and exhaust air to and from the workspace is high-efficiency particulate air (HEPA) filtered.

Note 1 to 2B352.g.2: 2B352.g.2 controls class III biosafety cabinets, as specified in the WHO Laboratory Biosafety Manual (3rd edition, Geneva, 2004) or constructed in accordance with national standards, regulations or guidance.

Note 2 to 2B352.g.2: 2B352.g.2 does not control isolators "specially designed" for barrier nursing or transportation of infected patients.

h. Aerosol inhalation equipment designed for aerosol challenge testing with microorganisms, viruses or toxins, as follows:

h.1. Whole-body exposure chambers having a capacity of 1 cubic meter or greater.

h.2. Nose-only exposure apparatus utilizing directed aerosol flow and having a capacity for the exposure of 12 or more rodents, or two or more animals other than rodents, and closed animal restraint tubes designed for use with such apparatus.

* * * * *

Dated: May 31, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–13271 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, as amended (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that *USS GERALD R. FORD* (CVN 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective June 7, 2016 and is applicable beginning May 9, 2016.

FOR FURTHER INFORMATION CONTACT: Commander Theron R. Korsak, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that *USS GERALD R. FORD* (CVN 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(g), pertaining to the placement of the sidelights above the hull; Annex I, paragraph 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship; Rule 21(a), pertaining to the placement of the masthead lights over the fore and aft centerline of the ship; and, Rule 21 (b), pertaining to the placement of the side lights arc of visibility. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table Two, adding, in alpha numerical order, by vessel number, an entry for *USS GERALD R. FORD* (CVN 78);

■ b. In Table Three, adding, in alpha numerical order, by vessel number, an entry for *USS GERALD R. FORD* (CVN 78); and

■ c. In Table Five, adding, in alpha numerical order, by vessel number, an entry for *USS GERALD R. FORD* (CVN 78).

§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	No.	Masthead lights, distance to stbd of keel in meters; rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), annex I	Forward anchor light, number of; rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; rule 21(e), rule 30(a)(ii)	AFT anchor light, number of; rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), annex I
*		*	*		*	*	*		*
USS GERALD R. FORD	CVN 78	31.57	.....	.....	.....	.....	0.13	.....	.....
*		*	*		*	*	*		*

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters; 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relation-ship of aft light to forward light in meters; 2(K) annex 1
USS GERALD R. FORD	CVN 78	.....	115.6	.....	.....	.....	.....	.....
*		*	*	*	*	*		*

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions; annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship; annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light; annex I, sec.3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS GERALD R. FORD	CVN 78	.....	X	.....	.....
*	*	*	*	*	*

Approved: May 9, 2016.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: May 31, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–13260 Filed 6–6–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0324]

RIN 1625–AA08

Special Local Regulations; Marine Events Held in the Sector Long Island Sound Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two special local regulations for two separate marine events within the Coast Guard Sector Long Island Sound (LIS) Captain of the Port (COTP) Zone. This temporary final rule is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these regulated areas is prohibited unless authorized by COTP Sector Long Island Sound.

DATES: This rule is effective without actual notice from 12:01 a.m. on June 7, 2016 until 5 p.m. on June 12, 2016. For the purposes of enforcement, actual notice will be used from the date the rule was signed, 18 May, 2016, until June 7, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0324 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Jay TerVeen, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468–4446, email *Jay.C.TerVeen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NAD 83 North American Datum 1983

II. Background Information and Regulatory History

This rulemaking establishes two special local regulations for one regatta and one air show. Each event and its corresponding regulatory history are discussed below.

Jones Beach (Air Show): A special local regulation was established in 2015 for the Jones Beach Air Show event when the Coast Guard issued a final rule entitled, "Special Local Regulations and Safety Zones; Marine Events held in the Sector Long Island Sound Captain of the Port Zone". This rulemaking was published on May 18, 2015 in the **Federal Register** (80 FR 28176).

The Harvard-Yale Regatta is a reoccurring marine event with regulatory history and is cited in 33 CFR 100.100(1.1). This event has been included in this rule due to deviation from the cite date.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. There is insufficient time to publish an NPRM, take public comments, and issue a final rule before these events take place. Thus, waiting for a comment period to run would inhibit the Coast Guard's mission to keep the ports and waterways safe.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1233.

The COTP Sector LIS has determined that the special local regulations established by this temporary final rule are necessary to provide for the safety of life on navigable waterways during these events.

IV. Discussion of the Rule

This rule establishes two special local regulations for one regatta and one air show. The locations of these regulated areas are as follows:

SPECIAL LOCAL REGULATIONS

1	Jones Beach Air Show	Location: There will be three areas created for the special local regulation. The first area, "No Entry Area", is on the navigable waterway located along the south shore of Jones Beach State Park. The second area, "Slow/No Wake Area", is located on the navigable waterway between Meadowbrook State Parkway and Wantagh State Parkway. The third area, "No Southbound Traffic Area", in the navigable waters of Zach's Bay.
2	Harvard-Yale Regatta	Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N. 072°5′14.46″ W. to Bartlett Cove 41°25′35.9″ N. 072°5′42.89″ W. (NAD 83).

This rule establishes additional vessel movement rules within areas specifically under the jurisdiction of the special local regulations during the periods of enforcement unless authorized by the COTP or designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive order and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order12866. Accordingly, it has not been reviewed by the Office of Management and Budget. The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: (1) The enforcement of these regulated areas will be relatively short in duration, (2) persons or vessels desiring entry into the "No Entry" area or a deviance from the stipulations within the "Slow/No Wake Area" may be authorized to do so by the COTP Sector Long Island Sound or designated representative, may do so with permission from the COTP Sector LIS or a designated representative; (3) vessels can operate within the regulated area provided they do so in accordance with the regulation and (4) before the effective period, public notifications will be made to local mariners through appropriate means, which may include the Local Notice to Mariners as well as Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit these regulated areas may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Orders 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves the establishment of two regulated areas. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Add § 100.T01–0324 to read as follows:

§ 100.T01–0324 Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone.

(a) *Location.* This section will be enforced at the locations listed for each event in the Table to § 100.T01–0324.

(b) *Enforcement period.* This rule will be enforced on the dates and times listed for each event in TABLE 1 to § 100.T01–0324.

(c) *Definitions.* The following definitions apply to this section: A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. "Official patrol vessels" may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 100.35 apply.

(2) Operators of vessels desiring to deviate from these regulations should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.

(3) Any vessel given permission to deviate from these regulations must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

TABLE TO § 100.T01–0324—SPECIAL LOCAL REGULATIONS

1	Jones Beach Air Show	• Date: May 26–29, 2016 • Time: (1) The "No Entry Area" will be enforced each day from the start of the air show until 30 minutes after it concludes. (2) The Slow/No Wake Area and the "No Southbound Traffic Area" will be enforced each day for six hours after the air show concludes. • Location: "No Entry Area": Waters of the Atlantic Ocean off Jones Beach State Park, Wantagh, NY contained within the following described area; Beginning in approximate position 40°34′54″ N., 073°33′21″ W., then running east along the shoreline of Jones Beach State Park to approximate position 40°35′53″ N., 073°28′48″ W.; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35′05″ N., 073°28′34″ W.; then running west to approximate position 40°33′15″ N., 073°33′09″ W.; then running north to the point of origin. "Slow/No Wake Area": All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in approximate position 40°35′49.01″ N. 73°32′33.63″ W. then north along the Meadowbrook State Parkway to its intersection with Merrick Road in approximate position 40°39′14.00″ N. 73°34′00.76″ W. then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position 40°39′51.32″ N. 73°30′43.36″ W. then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position 40°35′47.30″ N. 73°30′29.17″ W. then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin in approximate position 40°35′49.01″ N. 73°32′33.63″ W. "No Southbound Traffic Area": All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in approximate position 40°36′29.20″ N., 073°29′22.88″ W. and a point near the eastern entrance of Zach's Bay in approximate position 40°36′16.53″ N., 073°28′57.26″ W.

TABLE TO § 100.T01–0324—SPECIAL LOCAL REGULATIONS—Continued

2	Harvard-Yale Regatta	• Date: June 12, 2016 • Time: 2:00 p.m. to 5:00 p.m. • Location: "All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N. 072°5′14.46″ W. to Bartlett Cove 41°25′35.9″ N. 072°5′42.89″ W. (NAD 83). • Additional Stipulations: Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel. The last 1,000 feet of the race course near the finish line will be delineated by four temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event. Spectator craft shall not anchor: to the west of the race course, between Scotch Cap and Bartlett Point Light, or within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course. During the effective period all vessels shall proceed at a speed not to exceed six knots in the regulated area. Spectator vessels shall not follow the crews during the races. Swimming is prohibited in the vicinity of the race course during the races. A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating dry-docks.

Dated: May 18, 2016.

E.J. Cubanski, III,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2016–13414 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0355]

RIN 1625–AA08

Special Local Regulation for Marine Events; James River, Midlothian, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a special local regulation during the VBC Sprints Regatta event on the James River. The event consists of a series of crew rowing and sculling races to be held on the waters of the James River, near Robious Landing Park in Midlothian, Virginia. This regulated area will restrict vessel traffic and is necessary to provide for the safety of life on the navigable waters during the event.

DATES: This rule is effective from 8:30 a.m. through 6 p.m. on June 18, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0355 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757–668–5580, email *hamptonroadswaterway@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because information about the Regatta on June 18, 2016 not received in sufficient time to permit publication of an NPRM.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the regulated area's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this special local regulation under authority in 33 U.S.C. 1233. The Coast Guard is establishing a temporary special local regulation on specified waters of the James River near Robious Landing Park in Midlothian, Virginia. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the regulated area during the VBC Sprints Regatta.

IV. Discussion of the Rule

The Captain of the Port Hampton Roads is establishing special local regulation on the specified waters of the James River bound by the following coordinates: 37°33′35.193″ N. 077°38′51.6156″ W.; thence to 37°33′33.7608″ N./077°38′51.1044″ W.; thence to 37°33′33.75″ N./077°38′8.88″ W.; thence to 37°33′36.0174″ N./077°38′8.8008″ W. (NAD 1983), in the vicinity of Robious Landing Park in Midlothian, VA. This regulated area still allows for navigation on the waterway. This regulated area will be enforced from 8:30 a.m. to 6 p.m. on June 18, 2016. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will utilize various methods, including those listed in 33 CFR 165.7, provide notice to the affected segments of the public of the regulated area and restrictions. This includes publication in the Local Notice to Mariners Broadcast and Marine Information Broadcasts.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulated area. Vessel traffic will be able to safely transit around this regulated area which will impact a small designated area of the James River in Midlothian, VA for less than one day and in an area where vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T05–0355 to read as follows:

§ 100.35T05–0355 James River, Midlothian, VA.

(a) *Definitions:* For the purposes of this section, *Captain of the Port* means the Commander, Sector Hampton Roads. *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port. *Participants* mean individuals and vessels involved in the rowing and sculling races of the VBC Sprints Regatta.

(b) *Location.* The regulated area is established for the waters for the James River near the Robious Landing Park within the areas bounded by coordinates 37°33′35.193″ N./077°38′51.6156″ W.; thence to 37°33′33.7608″ N./077°38′51.1044″ W.; thence to 37°33′33.75″ N./077°38′8.88″ W.; thence to 37°33′36.0174″ N./077°38′8.8008″ W. (NAD 1983) in Midlothian, VA.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing special local regulations in § 100.35 of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this regulated area at the time it is implemented are to depart the area immediately, unless they are participants.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668–5555.

(5) The Coast Guard and designated security vessels enforcing the regulated area can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section does not apply to participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated area by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. to 6 p.m. on June 18, 2016.

Dated: May 17, 2016.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–13413 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0468]

Drawbridge Operation Regulation; Columbia River, Portland, OR and Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Interstate 5 (I–5) Bridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The deviation is necessary to facilitate the movement of heavier than normal roadway traffic associated with the Independence Day fireworks show near the I–5 Bridges. This deviation allows the bridges to remain in the closed-to-navigation position during the event.

DATES: This deviation is effective from 9 p.m. to 11:59 p.m. on July 4, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0468] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation has requested that the I–5 Bridges across the Columbia River remain closed to vessel traffic to facilitate heavier than normal roadway traffic volume associated with a fireworks show on July 4, 2016 near the bridges. The I–5 Bridges cross the Columbia River at mile 106.5, and provide three designated navigation channels with vertical clearances ranging from 39 to 72 feet above Columbia River Datum 0.0 while the lift spans are in the closed-to-navigation position. The normal operating schedule for the I–5 Bridges is codified at 33 CFR 117.869. This deviation period is from 9 p.m. to 11:59 p.m. on July 4, 2016. The deviation allows the lift spans of the I–5 Bridges across the Columbia River, mile 106.5, to remain in the closed-to-navigation position, and need not open for maritime traffic during that period. The bridge shall operate in accordance with 33 CFR 117.869 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft.

Vessels able to pass under the bridges in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 1, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–13360 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0469]

Drawbridge Operation Regulation; Hood Canal, Port Gamble, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hood Canal Floating Drawbridge across Hood Canal (Admiralty Inlet), mile 5.0, near Port Gamble, WA. This deviation allows the bridge to open the Main span half-way, 300 feet; as opposed to a full opening, which is 600 feet to allow for the replacement of bridge anchor cables for this section of the bridge.

DATES: This deviation is effective from 6 a.m. on August 1, 2016, until 7 p.m. on October 15, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0469] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Washington Department of Transportation (WSDOT) has requested that the Hood Canal Floating Drawbridge be allowed to only open half of the Main span from 6 a.m. on August 1, 2016 until 7 p.m. on October 15, 2016 to facilitate safe and uninterrupted bridge anchor cable replacements. The Hood Canal Floating Drawbridge crosses Hood Canal, mile 5.0, near Port Gamble, WA. The bridge has two fixed spans (East and West), and one draw span (Main). The East span provides 50 feet of vertical clearance, the West span provides 35 feet of vertical clearance and the Main span provides zero feet of vertical clearance in the closed-to-navigation position. The Main span provides unlimited vertical clearance in the open-to-navigation position. Vertical clearances are referenced to mean high-water elevation.

The deviation period allows the Main span of the Hood Canal Floating Drawbridge across Hood Canal, mile 5.0, to only open half-way from 6 a.m. on August 1, 2016 until 7 p.m. on October 15, 2016.

During the time of the deviation, the drawbridge will not be able to operate according to the normal operating schedule. The normal operating schedule for the bridge is in accordance with 33 CFR 117.1045. The bridge shall operate in accordance to 33 CFR 117.1045 at all other times. Waterway usage on this part of Hood Canal includes commercial tugs and barges, U.S. Navy vessels, and small pleasure craft. Coordination has been completed with known waterway users, and no objections to the deviation have been received.

Vessels able to pass through the East and West spans may do so at anytime. The Main span does not provide passage in the closed-to-navigation position. The bridge will be able to open half the Main span for Navy vessels during emergencies, when requested by the Department of the Navy. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 1, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–13359 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0461]

Safety Zones; Annual Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for annual marine events in the Captain of the Port Detroit zone from 9:20 p.m. on May 29, 2016 through 9:45 p.m. on September 4, 2016. Enforcement of these zones is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During each enforcement period, no person or vessel may enter the respective safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.941 will be enforced without actual notice at various dates and times between 9:20 p.m. on June 7, 2016 through 9:45 p.m. on September 4, 2016. For purposes of enforcement, actual notice will be used from June 1, 2016 until June 7, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email PO1 Todd Manow, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI, 48207; telephone (313)568–9580; email *Todd.M.Manow@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Safety Zones; Annual Events in the Captain of the Port Detroit Zone, at the following dates and times for the following events, which are listed in chronological order by date and time of the event:

(1) *Catawba Island Club Memorial Day Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(56) will be enforced from 9:20 p.m. to 9:40 p.m. on May 29, 2016.

(2) *Bay-Rama Fishfly Festival Fireworks, New Baltimore, MI.* The safety zone listed in § 165.941(a)(29), all waters of Lake St. Clair-Anchor Bay, off New Baltimore City Park, within a 300-yard radius of the fireworks launch site located at position 42°41′ N., 082°44′ W. (NAD 83), usually on an evening during the first week in June, will be enforced from 9 p.m. to 11 p.m. on June 23, 2016.

(3) *St. Clair Shores Fireworks, St. Clair Shores, MI.* The safety zone listed in § 165.941(a)(39) will be enforced from 9:45 p.m. to 11 p.m. on June 24, 2016.

(4) *Washington Township Firefighters Summerfest, Toledo, OH.* The safety zone listed in § 165.941(a)(2) will be enforced from 8:30 p.m. to 10:30 p.m. on June 25, 2016.

(5) *Sigma Gamma Fireworks, Grosse Pointe Farms, MI.* The safety zone listed in § 165.941(a)(51) will be enforced from 9:45 p.m. to 10:45 p.m. on June 27, 2016.

(6) *Ford (formerly Target) Fireworks, Detroit, MI.* The first safety zone, listed in § 165.941(a)(50)(i)(A), all waters of the Detroit River bounded by the arc of a circle with a 900-foot radius with its center in position 42°19′23″ N., 083°04′34″ W. (NAD 83), on the waterfront area adjacent to 1351 Jefferson Avenue, Detroit, Michigan will be enforced from 8 a.m. on June 24, 2016 to 8 p.m. on June 27, 2016.

The second safety zone, listed in § 165.941(a)(50)(i)(B), a portion of the Detroit River bounded on the South by the International Boundary line, on the West by 083°03′30″ W. (NAD 83), on the North by the City of Detroit shoreline and on the East by 083°01′15″ W. (NAD 83), will be enforced from 8 p.m. to 11:55 p.m. on June 27, 2016.

The third safety zone listed in § 165.941(a)(50)(i)(C), a portion of the Detroit River bounded on the South by the International Boundary line, on the

West by the Ambassador Bridge, on the North by the City of Detroit shoreline, and on the East by the downstream end of Belle Isle, will be enforced from 6 p.m. to 11:59 p.m. on June 27, 2016.

(7) *Roostertail Fireworks, Detroit, MI.* The safety zone listed in § 165.941(a)(1), all waters of the Detroit River within a 300-foot radius of the fireworks launch site on shore near the Roostertail Restaurant, will be enforced from 10 p.m. to 10:30 p.m. on June 27, 2015. In the event of inclement weather on the evening of June 27, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on June 28, 2016.

(8) *Bay City Fireworks Festival, Bay City, MI.* The safety zone listed in § 165.941(a)(53), all waters of the Saginaw River near Bay City, MI, from the Veteran's Memorial Bridge south approximately 1000-yards to the River Walk Pier, will be enforced from 8 p.m. to 10:30 p.m. on June 30, and July 1 and 2, 2016. In the case of inclement weather on any scheduled day, this safety zone will be enforced from 8 p.m. to 10:30 p.m. on July 3, 2016.

(9) *Lexington Independence Festival Fireworks, Lexington, MI.* The safety zone listed in § 165.941(a)(42), all waters of Lake Huron within a 300-yard radius of the fireworks barge located 300 yards east of the Lexington break wall, will be enforced from 10 p.m. to 10:30 p.m. on July 1, 2016. In the case of inclement weather on July 1, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 2, 2016.

(10) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(21) will be enforced from 9:30 p.m. to 09:50 p.m. on July 1, 2016.

(11) *Harrisville Fireworks, Harrisville, MI.* The safety zone listed in § 165.941(a)(7), a 450-foot radius of the fireworks launch site located at the end of the break wall at the Harrisville harbor, will be enforced from 10 p.m. to 11 p.m. on July 2, 2016.

(12) *Grosse Ile Yacht Club Fireworks, Grosse Ile, MI.* The safety zone listed in § 165.941(a)(44), all waters of the Detroit River within a 300-yard radius of the fireworks launch site located at the Grosse Ile Yacht Club at position 42°06′ N., 083°09′ W. (NAD 83), will be enforced from 9:45 p.m. to 10:30 p.m. on July 2, 2016. In the case of inclement weather on July 2, 2016, this safety zone will be enforced from 9:45 p.m. to 10:30 p.m. on July 3, 2016.

(13) *Luna Pier Fireworks Show, Luna Pier, MI.* The safety zone listed in § 165.941 (a)(16) will be enforced from 9:30 p.m. to 11 p.m. on July 2, 2016.

(14) *Red, White and Blues Bang Fireworks, Huron, OH.* The safety zone listed in § 165.941(a)(22) will be enforced between from 10:30 p.m. until 10:45 p.m. on July 2, 2016.

(15) *Bay Point Fireworks Display, Marblehead, OH.* The safety zone listed in § 165.941(a)(58) will be enforced from 10 p.m. to 10:30 p.m. on July 2 and 3, 2016.

(16) *Algonac Pickerel Tournament Fireworks, Algonac, MI.* The safety zone listed in § 165.941(a)(37), all waters of the St. Clair River, within a 300-yard radius of the fireworks barge located at position 42°37′ N., 082°32′ W. (NAD 83), North of Russell Island, will be enforced from 10 p.m. to 10:30 p.m. on July 2, 2016. In the case of inclement weather on July 2, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 3, 2016.

(17) *Port Sanilac Fireworks, Port Sanilac, MI.* The safety zone listed in § 165.941(a)(38) will be enforced from 10 p.m. to 11 p.m. on July 2, 2016.

(18) *Grosse Pointe Farms Fireworks, Grosse Pointe Farms, MI.* The safety zone listed in § 165.941(a)(35), all waters of Lake St. Clair, within a 300-yard radius of the fireworks launch site at position 42°23.85′ N., 082°53.25′ W. (NAD 83), at a private park at Harbor Hill and Lake Shore Rd, will be enforced from 10 p.m. to 10:45 p.m. on July 2, 2016.

(19) *Oscoda Township Fireworks, Oscoda, MI.* The safety zone listed in § 165.941(a)(32) will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(20) *Lakeside July 4th Fireworks, Lakeside, OH.* The safety zone listed in § 165.941(a)(20) will be enforced from 9:45 p.m. to 10:30 p.m. on July 4, 2016.

(21) *Grosse Pointe Yacht Club 4th of July Fireworks, Grosse Pointe Shores, MI.* The safety zone listed in § 165.941(a)(41), all U.S. waters of the Lake St. Clair, within a 300 yard radius of position 42°26′ N., 082°52′ W. (NAD 83), approximately 500 feet east of the Grosse Point Yacht Club, will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(22) *Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI.* The safety zone listed in § 165.941(a)(46), all U.S. waters of Lake St. Clair, within a 400 yard radius of position 42°36′30″ N., 082°47′40″ W. (NAD 83), will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(23) *Port Austin Fireworks, Port Austin, MI.* The safety zone listed in § 165.941(a)(33), all waters of Lake Huron within a 300-yard radius of the fireworks launch site, at position 42°03′ N., 082°59′ W. (NAD 83), off of the Port Austin break wall, will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(24) *City of St. Clair Fireworks, St. Clair, MI.* The safety zone listed in § 165.941(a)(31) will be enforced from 10 p.m. to 10:45 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 5, 2016.

(25) *Tawas City 4th of July Fireworks, Tawas City, MI.* The safety zone listed in § 165.941(a)(47), all U.S. waters of Lake Huron, within a 300 yard radius of position 44°16′ N., 083°30′ W. (NAD 83), 2000 feet west of the State Dock in East Tawas, will be enforced from 10 p.m. to 11 p.m. on July 4, 2016.

(26) *Huron Riverfest Fireworks, Huron, OH.* The safety zone listed in § 165.941(a)(23) will be enforced between from 10:15 p.m. until 10:30 p.m. on July 8, 2016.

(28) *Marine City Maritime Festival Fireworks, Marine City, MI.* The safety zone listed in § 165.941(a)(13), all waters of the St. Clair River within a 500-foot radius of the fireworks launch site located at position 42°43.15′ N., 082°29.2′ W. (NAD 83), approximately 500 feet offshore from the intersection of Pearl St. and N. Water St, will be enforced from 10 p.m. to 10:30 p.m. on August 5, 2016. In the case of inclement weather on August 5, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on August 6, 2016.

(29) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(28) will be enforced from 9:15 p.m. to 9:45 p.m. on September 4, 2016.

Under the provisions of § 165.23, entry into, transiting, or anchoring within these safety zones during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This document is issued under authority of § 165.941 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these safety zones need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 1, 2016.

Scott B. Lemasters,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2016–13324 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 209, 211, 215, 237, 242, 245, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective June 7, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows—

1. Directs contracting officers to DFARS Procedures, Guidance, and Information (PGI) for information on the Governmentwide moratorium on public-private competitions by adding a cross reference at DFARS 207.302 and 237.102(b);

2. Corrects a typographical error at DFARS 209.505–4(b)(ii);

3. Updates hyperlinks to information on passive radio frequency identification at DFARS 211.275–2(a)(2) and paragraphs (b)(1)(ii) and (d)(2) of DFARS clause 252.211–7006;

4. Corrects a threshold at DFARS 215.408(3)(ii)(A)(*1*)(*i*) to reflect $700,000 in lieu of $750,000 because that threshold was not subject to the inflation adjustment at DFARS Case 2014–D025 published in the **Federal Register** at 80 FR 36903;

5. Updates DFARS 237.102–75 to reference the "Defense Acquisition Guidebook, Chapter 14, Acquisition of Services" instead of the "Guidebook for the Acquisition of Services;"

6. Updates DFARS 237.102–77 to reference the "Acquisition Requirements Roadmap Tool" instead of the "Automated Requirements Roadmap Tool;"

7. Corrects a cross reference at DFARS 242.7202(a) by changing paragraph (e) to paragraph (d) of the clause at 252.242.7004; and

8. Corrects a cross reference at DFARS 245.102(4)(i) by changing PGI 245.201–71 to PGI 245.103–72.

List of Subjects in 48 CFR 207, 209, 211, 215, 237, 242, 245, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 207, 209, 211, 215, 237, 242, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 209, 211, 215, 237, 242, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 207—ACQUISITION PLANNING

■ 2. Add subpart 207.3 to read as follows:

Subpart 207.3—Contractor Versus Government Performance

Sec.
207.302 Policy.

Subpart 207.3—Contractor Versus Government Performance

207.302 Policy.

See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76.

PART 209—CONTRACTOR QUALIFICATIONS

209.505–4 [Amended]

■ 3. In section 209.505–4, amend paragraph (b)(ii) by removing "nondisclosure" and adding "non-disclosure" in its place everywhere it appears.

PART 211—DESCRIBING AGENCY NEEDS

211.275–2 [Amended]

■ 4. In section 211.275–2, amend paragraph (a)(2) introductory text by removing "*http://www.acq.osd.mil/log/rfid/*" and adding "*http://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html*" in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.408 [Amended]

■ 5. Amend section 215.408, in paragraph (3)(ii)(A)(*1*)(*i*), by removing "$750,000" and adding "$700,000" in its place.

PART 237—SERVICE CONTRACTING

■ 6. Amend section 237.102 by adding paragraph (b) to read as follows:

237.102 Policy.

(b) See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76.

* * * * *

■ 7. Revise section 237.102–75 to read as follows:

237.102–75 Defense Acquisition Guidebook.

See PGI 237.102–75 for information on the Defense Acquisition Guidebook, Chapter 14, Acquisition of Services.

237.102–77 [Amended]

■ 8. In section 237.102–77, amend the heading and the introductory text by removing "Automated" and adding "Acquisition" in both places.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

242.7202 [Amended]

■ 9. In section 242.7202, amend paragraph (a) introductory text by removing "paragraph (e)" and adding "paragraph (d)" in its place.

PART 245—GOVERNMENT PROPERTY

245.102 [Amended]

■ 10. In section 245.102, amend paragraph (4)(i) by removing "PGI 245.201–71" and adding "PGI 245.103–72" in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7006 [Amended]

■ 11. Amend section 252.211–7006 by—

■ a. Removing the clause date "(SEP 2011)" and adding "(JUN 2016)" in its place;

■ b. In paragraph (b)(1)(ii) introductory text, removing "*http://www.acq.osd.mil/log/rfid/*" and adding "*http://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html*" in its place;

■ c. In paragraph (d)(2), removing "located at *http://www.acq.osd.mil/log/rfid/tag_data.htm*" and adding "located in the DoD Suppliers' Passive RFID Information Guide at *http://www.acq.osd.mil/log/sci/ait.html*" in its place.

[FR Doc. 2016–13258 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 392

[Docket No. FMCSA–2015–0396]

RIN 2126–AB87

Driving of Commercial Motor Vehicles: Use of Seat Belts

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA revises the Federal Motor Carrier Safety Regulations (FMCSRs) by requiring passengers in property-carrying commercial motor vehicles (CMVs) to use the seat belt assembly whenever the vehicles are operated on public roads in interstate commerce. This rule holds motor carriers and drivers responsible for ensuring that passengers riding in the property-carrying CMV are using the seat belts required by the Federal Motor Vehicle Safety Standards (FMVSSs).

DATES: This rule is effective August 8, 2016.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 7, 2016.

FOR FURTHER INFORMATION CONTACT: Charles A. Horan, Director; Carrier, Driver, and Vehicle Safety Standards, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370.

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9896.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Summary of the Major Provisions

Section 393.93(b)(2)–(3) of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 393.93) requires every truck and truck tractor manufactured on or after July 1, 1971, to comply with the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) No. 208 (49 CFR 571.208), relating to the installation of seat belt assemblies. They must also comply with FMVSS No. 210 (49 CFR 571.210), dealing with the installation of seat belt assembly anchorages, and FMVSS No. 207 (49 CFR 571.207), addressing seating systems more generally. Under FMVSS No. 208, trucks and multipurpose passenger vehicles with a Gross Vehicle Weight Rating (GVWR) of more than 10,000 pounds manufactured on or after September 1, 1990, are allowed by S4.3.2.1 an option to comply by providing a "complete passenger protection system," but nearly all CMV manufacturers choose the second compliance option (S4.3.2.2) and install a "belt system." This second option requires a seat belt assembly "at each designated seating position." In short, the FMVSS and FMCSRs require seat belts at every seating position in a property-carrying CMV.

In addition, 49 CFR 392.16 requires that a CMV that has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself or herself with the seat belt assembly. In this final rule, FMCSA requires that motor carriers and drivers ensure that passengers riding in property-carrying CMVs use their seat belts when the vehicles are operated on public roads.

B. Benefits and Costs

As indicated above, NHTSA requires vehicle manufacturers to install driver and passenger seat belts in large trucks. FMCSA already requires drivers to use their seat belts. However, the FMCSRs were previously silent on the use of seat belts by passengers in trucks. This final rule requires that every passenger in a property-carrying CMV use a seat belt, if one is installed. The only quantifiable cost of the final rule is the value of the person's time necessary to buckle the seat belt, which is negligible. The benefits of this rule are any fatalities or injuries avoided or reduced in severity as a result of seat belt use; these benefits are discussed later.

II. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2015–0396 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

III. Legal Basis for the Rulemaking

This final rule is based on the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act (49 U.S.C. 31502) authorizes FMCSA to prescribe requirements for the safety of operation and equipment standards of for-hire and private motor carriers. This final rule is directly related to safe motor carrier operations. The 1984 Act (49 U.S.C. 31136) requires FMCSA to adopt regulations to ensure, among other things, that "commercial motor vehicles are maintained, equipped, loaded, and operated safely" (sec. 31136(a)(1)). This rule will increase the safety, not only of passengers, but also of CMV drivers whose control of the vehicle could otherwise be affected by unsecured passengers potentially thrown about the cab as a result of emergency steering or braking maneuvers.

A 2012 amendment to the 1984 Act requires FMCSA to ensure that CMV drivers are not coerced to violate certain provisions of the FMCSRs (sec. 31136(a)(5)). Coercion is now prohibited by 49 CFR 390.6. Given the obvious value of this final rule and the ease of compliance, the Agency believes that no one will be coerced *not* to wear a seat belt. It should be noted that the 1984 Act also authorizes FMCSA to "perform other acts [the Agency] considers appropriate" (49 U.S.C. 31133(a)(10)).

IV. Background

This final rule responds to a petition submitted by the Commercial Vehicle Safety Alliance (CVSA) on October 29, 2013 (available in the docket to this rulemaking). CVSA requested that FMCSA require all occupants in a property-carrying CMV to restrain themselves when the vehicle is being driven. The petition referred to data available from the Agency's Large Truck Crash Causation Study (LTCCS) (available at *http://www.fmcsa.dot.gov/research-and-analysis/research/large-truck-crash-causation-study*). Specifically, the petition noted that the 2011 LTCCS data indicate that 34 percent of truck occupants killed in fatal crashes were not wearing seat belts.

Today's final rule follows a Notice of Proposed Rulemaking (NPRM) with the same title, published in the **Federal Register** on December 10, 2015 (80 FR 76649). Although responding to CVSA's petition, the NPRM slightly modified some of the petitioner's requests. FMCSA used the word "occupant" in addition to "passenger" to make clear that the regulation would apply to any person in the property-carrying CMV. "Occupants" would include instructors, evaluators, or any other personnel who might be seated in a property-carrying CMV, regardless of their status. FMCSA also proposed that this requirement be applicable only if there is a seat belt assembly installed in the property-carrying CMV.

V. Discussion of Comments and Responses

FMCSA received 17 unique comments to this rulemaking. Nine were from individuals and one was from a motor carrier, Werner Enterprises Inc. (Werner). The rest came from industry and safety organizations, including the American Trucking Associations (ATA), Advocates for Highway and Auto Safety (Advocates), NAFA Fleet Management Association (NAFA), National Rural Electric Cooperative Association (NRECA), National Safety Council (NSC), the National Transportation Safety Board (NTSB), and CVSA.

Twelve of the 17 commenters, including all 7 industry and safety organizations and the motor carrier, supported requiring passengers in property-carrying CMVs to use a seat belt, though 2 of the 12 objected to holding the motor carrier responsible for compliance. One commenter asked a question, but did not state whether he supported the rulemaking. Four of the nine individuals who submitted comments did not believe a rulemaking was necessary or did not support the rulemaking because they did not believe drivers should be responsible for a passenger's seat belt use. The other four individuals supported the rulemaking. Three commenters believed the rulemaking should be more extensive.

A. Compliance Responsibilities

Comments: Three commenters opposed imposing a new responsibility on drivers to ensure passenger compliance with a seat belt regulation. An individual stated that neither the motor carrier nor the driver should be responsible for requiring passengers to use the seat belts, and mentioned that drivers deal with many other regulations already. Both ATA and Werner stated that a motor carrier could not and should not be responsible for the use of safety belts in CMVs, as they have no practicable way to monitor it.

Two commenters stated that requiring a driver to ensure that passengers were wearing their seat belts would be a distraction while driving. Another commenter stated that the driver would be required to police passengers. An individual thought that the Agency should enforce existing regulations and rules rather than develop new ones, and questioned whether this rule would actually save lives. One commenter believed the rulemaking would be applicable to drivers of passenger-carrying vehicles, which it is not.

ATA requested explicit clarification that the driver, not the motor carrier, would be responsible for passenger compliance with this regulation, stating that the NPRM correctly placed this burden on the driver. ATA said it would be impossible for a carrier to monitor actions of passengers and drivers in all of its vehicles. While acknowledging that a carrier may have some leverage with its drivers, ATA claimed it would have none over other occupants of a CMV. Werner echoed that position because a motor carrier would not have the ability to control a driver's or a passenger's use of seat belts. Werner stated, "Motor carriers should not be held liable for actions of an occupant of a CMV."

ATA also argued that the "proposed rule does not establish how carriers would be deemed to have 'permitted' drivers to violate the seat belt use requirement." ATA suggested that FMCSA seek a pattern of this type of violation or an investigation into a carrier's policies before taking action against a motor carrier over passengers not wearing seat belts.

NAFA and NRECA stated that many of their members have policies that require their passengers to use seat belt restraints. NRECA wrote that the rulemaking is consistent with its culture of safety. Werner stated that it has a policy requiring seat belt use as well.

FMCSA Response: Many States already hold automobile drivers responsible for their passengers' seat-belt use. This rule extends that principle to all property-carrying CMVs. Commercial drivers are already required to satisfy themselves that the vehicle is in good working order (49 CFR 392.7); requiring them to ensure that occupants have fastened their seat belts is a minor additional requirement.

FMCSA disagrees with ATA's argument that motor carriers should not be held responsible for the activities of their employees and any authorized passengers (including employees and non-employees). Under 49 CFR 390.11, carriers have for decades been held responsible for their drivers' regulatory compliance—for example with the hours-of-service regulations and associated logbook requirements—even though the carrier is not able to physically supervise the driver's performance of these tasks. This rule adds a small burden (with significant potential safety benefits) to the obligations of the carrier and driver.

Furthermore, the contention that a carrier would have no control over non-drivers riding in a truck contradicts the requirements of 49 CFR 392.60, which prohibits the transportation of anyone without specific written authorization from the carrier. The motor carrier, therefore, has knowledge of each occupant of the property-carrying vehicle and can easily require that authorized passengers buckle up.

With regard to driver distraction, the rule does not require that drivers continuously monitor the passenger(s) while the vehicle is in operation. However, it is expected that the driver could observe whether the seat belts were in use before the vehicle is operated on a public road and remind the occupants seat belt usage is required if he or she notices that the passenger has unfastened the seat belt.

B. Enforcement

Comments: Both NSC and ATA stated that this rule would cause the States to adopt similar regulations shortly after a final rule, and supported this outcome. NSC believed it is time to establish a new, uniform national standard. It commented that such a standard for property-carrying CMV occupants may further help improve seat belt use, particularly among long-haul trucks that often travel through more than one State.

ATA wrote that CMV enforcement officers would have the authority to cite

large truck occupants for failing to wear a seat belt in all 50 States and attributed increased seat belt usage to widespread enforcement of existing seat belt laws. ATA stated their support for the adoption of primary seat belt laws for all motor vehicles by all States and the implementation of a variety of strategies to enhance the use of seat belts.

FMCSA Response: FMCSA agrees that enforcement has encouraged the growing use of seat belts, but existing State laws are not uniform with respect to seat belt use in trucks, especially where truck passengers are concerned. This rule creates that uniformity and removes any uncertainty about regulatory requirements that may exist among motor carriers or different States. FMCSA believes that this rulemaking will address those gaps in existing laws and inconsistent enforcement; and, as a result, compliance and safety will increase even further.

C. Sleeper Berth Restraints

Comments: One individual mentioned that it would be difficult to require restraints for the second driver of a team operation who is resting in the sleeper berth. A different commenter believed that sleeper berth belt use would be a good idea for a new rulemaking.

The NTSB stated that all the reasons occupants should wear seat belts in the front of the CMV could be applied to the sleeper berth, and that restraints should be required there as well. Advocates, on the other hand, stated "*Other than co-drivers using a sleeper berth,* all CMV occupants and passengers seated in designated seating positions should be properly belted." [Emphasis supplied.]

Werner stated that it has a policy requiring sleeper berth restraints to be utilized.

FMCSA Response: The robust sleeper berth restraints required by 49 CFR 393.76(h) are designed to keep occupants from being ejected from the CMV during a violent crash. That provision does not focus on the essential function of sleeper berths, *i.e.,* to allow drivers to sleep, even while the CMV is in motion, and thus to avoid the fatigue that contributes significantly to crash risk. Because FMCSA has no information on the effectiveness of current sleeper berth restraints in reconciling crash protection with fatigue prevention, and because standard seat belts are not required to perform that dual function, the Agency chose not to delay the benefits of the NPRM while attempting to analyze the implications of requiring the use of sleeper berth restraints. Commenters provided no information that would enable the Agency to address that topic in this rulemaking.

D. Buses

Comments: A commenter believed the proposal would include passenger-carrying vehicles, and stated that safety would be compromised if a driver were held responsible for passengers' seat-belt use. This commenter thought that law enforcement should take the lead on compliance for passengers in a passenger-carrying CMV.

The NTSB stated that the logic for requiring non-passenger-carrying CMVs to use seat belts is consistent with the logic for requiring seat belt use in passenger-carrying CMVs, and requested additional action for buses. The NTSB submitted several reports of crashes to illustrate the need for an additional rulemaking focusing on passenger-carrying CMVs. The NTSB suggested that the FMSCA address seat belt use for all occupants of passenger-carrying CMVs that are equipped with seat belts and stated, "A rule to address all CMV passengers who have a restraint available would improve the use of the protective equipment already in place and save lives."

FMCSA Response: The NPRM did not propose, nor does this final rule require, the use of seat belts in passenger-carrying CMVs. The Agency believes that, in the best interest of safety, this rulemaking should be completed as proposed without further delay. For these reasons, this final rule does not address seat belt use in passenger vehicles.

The Agency, however, is committed to passenger safety. FMCSA has developed and distributed extensive pre-trip safety briefing materials, available through its Web site.[1] NHTSA published a final rule requiring lap/shoulder belts for each passenger seat on newly manufactured over-the-road buses and other larger buses, with certain exclusions, effective November 28, 2016 (78 FR 70416, November 25, 2013). As a result of this rule, FMCSA is currently updating its outreach materials to encourage seat belt use when seat belts are available.

E. Horses and Articulated Trailers

Comments: One individual asked if people caring for horses in trailers would be subject to this rulemaking.

FMCSA Response: Attendants who ride in horse trailers are not protected by all of the safety requirements applicable to passengers in the cab of a truck or truck tractor, or a bus. As such, they are not subject to this final rule. Nonetheless, if there are designated seating positions for attendants in horse trailers, and seat belts are available, they should be used when the attendant is not moving about the trailer to care for the horses.

F. Seat Belt Assembly Removed

Comments: Advocates stated "Owners and drivers of CMVs who have removed a seat belt assembly from the vehicle should not be able to evade this regulation." Advocates voiced concern about seat belts being removed in order to avoid compliance.

FMCSA Response: The likelihood that an operator of a vehicle equipped with seat belts for all occupants would remove the belts provided for non-drivers in order to avoid compliance with this rule is very remote. The quantifiable burden of compliance is essentially nil, and there is no obvious reason why anyone would remove the seat belts—it would take more work to remove the seat belts than to instruct drivers and authorized passengers to wear them.

G. Data

Comments: NSC believed the cost of the rule would be minimal, but stated that benefits could be much higher than FMCSA states in the proposal, and supported this conclusion with 2014 FARS data documenting that:

> . . . of the 337 large truck non-driver occupants involved in fatal crashes who were wearing a lap and/or shoulder belt, 6 percent were killed. Of the 186 non-driver occupants who were not wearing a lap and/or shoulder belt, 20 percent were killed. About 32 percent of these fatally injured unrestrained occupants were ejected from the truck.

The FARS data cited by NSC are consistent with the 2013 FARS data upon which FMCSA relied in its consideration of the potential safety benefits of this rule. NSC commented that "seat belt use is the most effective countermeasure to prevent ejection. In one study of passenger vehicles, complete ejection was reduced by a factor of about 600, effectively eliminating complete ejections in those vehicles."[2]

NSC also referred to the FMCSA Seat Belt Usage by Commercial Motor Vehicle Drivers Survey, noting that while 83.7 percent of CMV drivers utilize seat belts, only 72.9 percent of CMV passengers do.[3]

CVSA referred back to the data referenced in its original petition that 34 percent of truck occupants killed in fatal crashes were not wearing a seat belt (based on 2011 LTCCS data) and re-stated the importance of this rulemaking.

ATA supported the use of seat belts and pointed to data from the 2013 Seat Belt Usage by Commercial Motor Vehicle Drivers Survey[4] that show the use of seat belts is increasing

Advocates re-stated the 2013 NHTSA FARS data presented by FMCSA, both in this final rule and the NPRM, to emphasize the "grim" nature of the statistics involving fatal crashes, particularly with respect to the ejection risk of unrestrained passengers.

FMCSA Response: Although commenters reference various sources concerning seat belt use among truck occupants, FMCSA continues to rely upon 2013 NHTSA FARS data that document the increased risk of fatality and ejection involving unrestrained passengers to support the basis for issuing a final rule, and those numbers fall within the range presented by commenters. The data provided by commenters reinforces the societal and safety benefits of this rulemaking as a measure that will ensure increased seat belt use. Though the projected numbers of lives saved vary in the data, all of the calculations involve no cost and a very small amount of time spent complying with this rule.

VI. Today's Final Rule

This final rule makes no substantive changes to the 2015 NPRM. Under this final rule, 49 CFR 392.16 is revised to include requirements for seat belt usage by passengers in property-carrying CMVs.

VII. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is "significant," and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866, as supplemented by E.O. 13563, or significant within the meaning of Department of Transportation regulatory policies and procedures. This regulation will not result in an annual effect on the economy of $100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy.

According to data from NHTSA's Fatality Analysis Reporting System, available in the docket for this rulemaking,[5] in 2013, 348 non-driver occupants were in the truck at the time the vehicle was involved in a fatal crash and were wearing a lap or shoulder belt. Seventeen of those non-driver occupants were killed. Also in 2013, 122 non-driver occupants of large trucks were involved in fatal crashes and were not wearing a lap and/or shoulder belt; of these, 30 were killed. Sixteen of the 30 were totally or partially ejected from the truck. The fatality rate was five times lower for passengers who wore seat belts versus those who did not. Table 1 below presents the data described above.

TABLE 1—OUTCOMES OF NON-DRIVER TRUCK OCCUPANTS IN FATAL CRASHES

[Source: 2013 NHTSA FARS]

	N	Fatalities	Fatality rate (percent)
Non-Driver Occupants	470	47	10.0
Wearing Seat Belts	348	17	4.9
Not Wearing Seat Belts	122	30	24.6

FMCSA believes that some of these fatalities involving occupants not wearing seat belts could have been prevented if this regulation had been in place. This conclusion is indirectly supported by a recent study,[6] published by the Kentucky Injury Prevention and Research Center (KIPRC), which analyzed crash data from years 2000 to 2010. The study finds that "in a moving semi-truck collision, the odds for an injury were increased by 2.25 times for both semi-truck drivers and sleeper berth passengers who did not use occupant safety restraints" compared to those who did, with a 95 percent confidence interval ranging from an increased injury risk of 1.15 to 4.41 times to unrestrained occupants. This study provides empirical support to the safety benefits resulting from the use of occupant restraints by drivers and sleeper berth passengers—to whom the rule does not apply. FMCSA assumes that the safety benefits to passengers in property-carrying CMVs would be of similar magnitude to those noted in the KIPRC study.

While all States but one have seat belt laws, failure to use a belt may be either a primary or secondary offense and may not apply to a truck passenger. Furthermore, there may be differences in the vehicle weight threshold at which the law applies. Therefore, adopting a Federal rule applicable to non-driver

[1] *https://www.fmcsa.dot.gov/safety/passenger-safety/pre-trip-safety-information-bus-passengers.*

[2] Funk JR, Cormier JM, Bain CE, Wirth JL, Bonugli EB, Watson RA. Factors Affecting Ejection Risk in Rollover Crashes. Ann Adv Automot Med. 2012 Oct; 56: 203–211.

[3] Seat Belt Usage by Commercial Motor Vehicle Drivers, 2013 Survey; Executive Summary p. V. (Available in docket for this rule)

[4] 2013 Commercial Motor Vehicle Safety Belt Facts, Figures 1 and 2, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Safety_Belt%20Factsheet_508.pdf*

[5] *See* "Restraint Use and Ejection for Large Truck Passenger Fatalities in 2013," Docket # FMCSA–2015–0396–0002.

[6] Bunn, Slavova, Robertson. "Motor Vehicle Injuries Among Semi Truck Drivers and Sleeper Berth Passengers," *Journal of Safety Research* 44 (2013) 51–55; available at: *http://dx.doi.org/10.1016/j.jsr.2012.09.003.*

occupants of property-carrying CMVs, as defined in 49 CFR 390.5, will provide a uniform national standard. To maintain eligibility for Motor Carrier Safety Assistance Program grants, States would be required to adopt compatible seat belt rules for non-driver occupants of property-carrying CMVs within 3 years of the effective date of today's final rule.

FMCSA does not know how many trucks carry passengers or precisely how many of those passengers fail to use existing seat belts, though the Seat Belt Usage by CMV Drivers Survey indicates that, as of 2013, 73 percent of passengers in CMVs subject to this rule utilize existing seat belts, leaving a 27 percent share that do not.[7] However, given that the only quantifiable cost of the proposal is the negligible amount of time needed for occupants to buckle their seat belts,[8] the rule would benefit motor carrier employees and passengers. Seat belts have been proven to save lives. While an estimate of the number of CMV-related fatalities and injuries that could be avoided cannot be provided based on the available data, FMCSA believes motor carriers' and drivers' compliance with today's final rule requiring the use of seat belts by non-driver occupants will save lives.

In addition to the data provided in the docket during the NPRM stage of this rulemaking action, FMCSA received data from several commenters, with more extensive claims about lives saved by the use of seat belts.

FMCSA also became aware of another Federal survey on this topic, conducted by the National Institute for Occupational Safety and Health (NIOSH).[9] The NIOSH survey found that 86 percent of long-haul truck drivers self-reported regular use of seat belts, a result comparable to the FMCSA Seat Belt Usage by Commercial Motor Vehicle Drivers Survey that estimated this value to be 83.7 percent. While the NIOSH study does not speak to the frequency of passenger seat belt use, the similarity in the estimated rate of seat belt use among drivers between these surveys reinforces the Agency's confidence in the FMCSA survey's estimates of passenger seat belt use. Additionally, this did not alter the Agency's initial conclusions about data, as the final rule's findings are consistent with the proposed rule's conclusions.

The Agency believes the potential economic impact of this action is positive, because it is likely that some lives will be saved at a cost that would not begin to approach the $100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest, as there were relatively few comments to the proposed rule, and most were generally positive. This proposed rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), FMCSA does not expect the rule to have a significant economic impact on a substantial number of small entities. FMCSA believes the cost is minimal and poses no disproportionate burden to small entities.

Consequently, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million (which is the value of $100 million in 1995 after adjusting for inflation to 2014) or more in any 1 year.

D. Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

F. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed rulemaking in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

G. Executive Order 13132 (Federalism)

A rule has Federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rule under Executive Order 13132 and determined that it does not have Federalism implications.

H. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. No new information collection requirements are associated with this final rule.

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The CE under paragraph 6(bb) addresses regulations concerning vehicle operation safety standards. A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov*.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

L. Executive Order 12898 (Environmental Justice)

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this rule, nor is there any collective environmental impact that would result from its promulgation.

M. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a "significant energy action" under that executive order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the rule does not require a Statement of Energy Effects under Executive Order 13211.

N. E-Government Act of 2002

The E-Government Act of 2002, Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. FMCSA has not completed an assessment of the handling of PII in connection with today's proposal because the final rule does not involve PII.

O. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not adopt its own technical standards, there is no need to submit a statement to OMB on this matter.

P. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This rule will not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. This final rule will not result in a new or revised Privacy Act System of Records for FMCSA.

List of Subjects for 49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR part 392 as follows:

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

■ 2. Revise § 392.16 to read as follows:

§ 392.16 Use of seat belts.

(a) *Drivers.* No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly.

(b) *Passengers.* No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has seat belt assemblies installed at the seats for other occupants of the vehicle unless all other occupants are properly restrained by such seat belt assemblies.

Issued under the authority of delegation in 49 CFR 1.87.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–13099 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–EX–P

[7] Seat Belt Usage by Commercial Motor Vehicle Drivers, 2013 Survey; Executive Summary p. V. (Available in docket for this rule)

[8] FMCSA acknowledges that there is a potential cost for the lost freedom of choice to not wear a seat belt, for CMV passengers in the states where no law currently requires them to use the installed seat belts. FMCSA is unable to quantify this cost, but believes that the safety benefits described herein weigh overwhelmingly in favor of requiring the use of seat belts in this case.

[9] NIOSH National Survey of Long-Haul Truck Drivers; Injury and Safety. Available at *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4631642/pdf/nihms726279.pdf*. Accessed March 31, 2016.

Proposed Rules

Federal Register
Vol. 81, No. 109
Tuesday, June 7, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, 226, and 235

[FNS–2016–0040]

RIN 0584–AE08

Child Nutrition Program Integrity; Extension of Comment Period

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 affecting the integrity of the Child Nutrition Programs, including the National School Lunch Program (NSLP), the Special Milk Program for Children, the School Breakfast Program, the Summer Food Service Program (SFSP), the Child and Adult Care Food Program (CACFP) and State Administrative Expense Funds. The Department is proposing to establish criteria for assessments against State agencies and program operators who jeopardize the integrity of any Child Nutrition Program; establish procedures for termination and disqualification of entities in the SFSP; modify State agency site review requirements in the CACFP; establish State liability for reimbursements incurred as a result of a State's failure to conduct timely hearings in the CACFP; establish criteria for increased State audit funding for CACFP; establish procedures to prohibit the participation of entities or individuals terminated from any of the Child Nutrition Programs; establish serious deficiency and termination procedures for unaffiliated sponsored centers in the CACFP; eliminate cost-reimbursement food service management company contracts in the NSLP; and establish procurement training requirements for State agency and school food authority staff in the NSLP. In addition, this rulemaking would make several operational changes to improve oversight of an institution's financial management and would also include several technical corrections to the regulations. The proposed rule is intended to improve the integrity of all Child Nutrition Programs. The comment period is being extended until July 7, 2016, to provide additional time for interested parties to review and submit comments on this proposed rule.

DATES: The comment period for the proposed rule that was published on March 29, 2016 (81 FR 17564) has been extended from May 31, 2016 to July 7, 2016. To be assured of consideration, written comments must be postmarked on or before July 7, 2016.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. In order to ensure proper receipt, written comments must be submitted through one of the following methods only:

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Programs, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5:00 p.m., Monday through Friday.

Comments sent by other methods not listed above will not be able to be accepted and subsequently, not posted. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Duplicate comments are not considered. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Smith, Community Meal Programs Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Executive Summary

I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. We invite specific comments on various aspects of the rule as described later in this preamble. We also invite comments from State agencies, sponsors, and providers on the administrative cost of compliance with any of the provisions in the rule. Additionally, we invite comments on the potential impact of the changes in the proposed rule on Program access, particularly in areas through the country where there are a limited number of providers available to operate the Programs. Comments received after the close of the comment period (refer to **DATES**) will not be considered or included in the Administrative Record for the final rule.

We also invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.*, grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?

(4) Would the rule be easier to understand if it was divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

II. Executive Summary

Purpose of the Regulatory Action

This proposed rule would codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296, that affect the integrity of the Child Nutrition Programs, including the National School Lunch Program (NSLP), the Special Milk Program for Children (SMP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Child and Adult Care Food Program (CACFP), and State Administrative Expense Funds (SAE). In addition, this rule would incorporate policy changes resulting from several findings from recently conducted targeted management evaluations of the CACFP by the Food and Nutrition Service (FNS), and USDA Office of Inspector General audit findings, as well as other miscellaneous revisions to the regulations. The rule is intended to improve the integrity of all Child Nutrition Programs.

USDA anticipates that the provisions under this proposed rule would be implemented 90 days following publication of the final rule, with the exception of those related to CACFP audit funds and those related to assessments against State agencies and program operators. The provision granting eligible State agencies additional CACFP audit funds will be implemented upon publication of the final rule. Because States and school districts have been working diligently to implement the provisions of the Healthy, Hunger-Free Kids Act, USDA anticipates that the provision establishing criteria for assessments against State agencies and program operators would be implemented one school year following publication of the final rule to provide entities the time they need to complete successful implementation.

Summary of the Major Provisions of the Regulatory Action

The major provisions addressed in this rule are:

Section 303 of the HHFKA: Fines for Violating Program Requirements—Section 303 of the HHFKA requires the Secretary to establish criteria for the imposition of fines in the Child Nutrition Programs, referred to as assessments in this proposed rule. An assessment refers to a required payment of funds from non-Federal sources. Under section 303, the Secretary or a State agency may establish an assessment against any school food authority or school administering the Child Nutrition Programs if the Secretary or the State agency determines that the school or school food authority failed to correct severe mismanagement of any program, failed to correct repeated violations of program requirements, or disregarded a requirement of which they have been informed. Section 303 also provides the Secretary the authority to establish an assessment against any State agency if the Secretary determines the State agency has failed to correct severe mismanagement of any program, failed to correct repeated violations of program requirements, or disregarded a requirement of which they have been informed.

Section 322 of the HHFKA: SFSP Disqualification—Section 322 requires the Secretary to establish procedures for the termination and disqualification of entities participating in the SFSP, to maintain a list of entities that have been terminated or disqualified from SFSP, and to make this list available to States for use in approving or renewing service institutions' applications for SFSP participation.

Section 331(b) of the HHFKA: State Agency/Sponsor Review Requirements in the CACFP—Section 331(b) requires the Secretary to develop for State agencies additional criteria or priorities for use in choosing institutions for review, including institutions at risk of having serious management problems and institutions conducting activities other than the CACFP.

Section 332 of the HHFKA: State Liability for Payments to Aggrieved Child Care Institutions—Section 332 requires State agencies to pay all valid claims for reimbursement, from non-Federal sources, if the required timeframes for a fair hearing are not met.

Section 335 of the HHFKA: CACFP Audit Funding—Section 335 allows the Department to increase the amount of audit funds made available to a CACFP State agency if the State agency demonstrates it can effectively use the funds to improve Program management in accordance with criteria established by the Department.

Section 362 of the HHFKA: Disqualified Schools, Institutions, and Individuals—Section 362 makes any school, institution, service institution, facility, or individual that has been terminated from any Child Nutrition Program and who is on the CACFP or SFSP National Disqualified List ineligible for participation in or administration of any Child Nutrition Program.

Costs and Benefits

While all entities—school food authorities, schools, institutions, sponsors sites, sponsoring organizations, day care centers and State agencies—administering Child Nutrition Programs will be affected by this rulemaking, the economic effect is not expected to be significant as explained below.

The comment period for this proposed rule is extended until July 7, 2016 to provide additional time for interested parties to review and submit comments on this proposed rule.

Dated: June 2, 2016.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2016–13489 Filed 6–6–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 747, 748, and 762

[Docket No. 160303182–6182–01]

RIN 0694–AG89

Amendment to the Export Administration Regulations: Removal of Special Iraq Reconstruction License

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to remove the Special Iraq Reconstruction License (SIRL) from the EAR. The action, if published in final form, would further the objectives of the Retrospective Regulatory Review Initiative that directs BIS and other federal agencies to streamline regulations and reduce unnecessary regulatory burdens on the public. Specifically, the SIRL is outdated and seldom used by exporters, who now have more efficient options for exports and reexports to Iraq and transfers (in-country) in Iraq. This rule also makes conforming changes.

DATES: Comments must be received by July 7, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. The identification number for this rulemaking is BIS–2016–0017.
- *By email directly to: publiccomments@bis.doc.gov*. Include RIN 0694–AG89 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG89.

FOR FURTHER INFORMATION CONTACT: Thomas Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, Bureau of Industry and Security, by telephone at (202) 482–8016 or by email at *Thomas.Andrukonis@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In this rule, the Bureau of Industry and Security (BIS) proposes to continue to advance the President's directives in the Retrospective Regulatory Review Initiative to streamline regulations, reduce unnecessary regulatory burdens on the public and modernize export controls. (See "Improving Regulatory Review" (Executive Order 13563 of January 18, 2011). Consistent with these directives and objectives, in this rule, BIS proposes to remove the Special Iraq Reconstruction License (SIRL) from the Export Administration Regulations (EAR).

BIS established the SIRL in 2004 (69 FR 46070, July 30, 2004) to supplement options to facilitate exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other projects in Iraq funded by specified entities, including the United States government. At the time of its establishment, SIRL was intended to benefit the public by allowing for faster processing times as compared to individual license applications, and longer license validity periods, which would extend to the completion or discontinuation of the associated reconstruction project (in contrast, individual license applications generally only had a two-year validity period). However, exporters supplying items used in support of the civil reconstruction efforts in Iraq have not relied on the SIRL to advance those efforts, apparently because of its complexity and narrowness.

Since 2004, BIS has processed only three applications for the SIRL, and granted only one approval, as compared to over 400 approved individual license applications for items to Iraq between 2012 and 2015. A SIRL applicant must provide details regarding the items to be exported or reexported to or transferred within Iraq, a narrative statement to identify all parties to the transaction, and a description of the reconstruction project that formed the basis of the transaction. In addition, the applicant must provide separate written statements from all agencies providing funding, and certification that all parties to the transaction will obtain licenses prior to transferring the items on the license application within Iraq or reexporting the items to end users not authorized under the SIRL. SIRL holders must submit reports when the Iraq project is discontinued or is completed and must get approval from BIS to make specified changes to the respective SIRL. These requirements are numerous compared to the individual license application process or the use of other authorizations such as eligible license exceptions, resulting in exporters choosing to apply for or use individual licenses and other authorizations under the EAR to ship items to Iraq instead of the SIRL.

In addition, with the implementation of updates to the EAR, the relative advantages of the SIRL have been offset by changes to individual licenses and other types of authorizations offered by BIS that provide less complex alternatives to the SIRL. For example, in addition to streamlined procedures for submitting license applications and improved processing times, BIS now issues individual licenses with a four-year validity period, with agency consideration of requests to extend the validity period. Similarly, most individual licenses now do not include a requirement for reports on the authorized items exported or reexported. Additionally, license exceptions such as License Exception Temporary imports, exports, and reexports, and transfers (in-country) (TMP) (Section 740.9 of the EAR) have been expanded. (TMP now includes authorizations for temporary exports to a U.S. person's foreign subsidiary, affiliates, or facility abroad outside of Country Group B. Additionally, BIS will, upon request, authorize the retention of items abroad that were exported under License Exception TMP beyond one year and up to a total of four years.)

Thus, the SIRL has proven not to be useful. Its removal from the EAR is consistent with and would advance regulatory initiatives priorities. As part of the removal, this rule also would make conforming changes in the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule amends collections previously approved by the Office of Management and Budget (OMB) under Control Numbers 0694–0088, "Simplified Network Application Processing + System (SNAP+) and the Multi-Purpose Application," which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and 0694–0137, "License Exemptions and Exclusions."

The total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the aforementioned OMB Control Numbers would be expected to decrease as a result of this proposed removal of part 747 of the EAR and related provisions if the rule is eventually issued in final form, thereby reducing burden hours associated with approved collections related to the EAR.

Public comment is sought regarding: whether the collection of information, for the provisions BIS proposes to remove, is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce at the **ADDRESSES** above, and email to OMB at *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

Economic Impact. BIS believes this rule would have no economic impact, because, although this rule would eliminate the availability of the SIRL, entities are not using the SIRL. Moreover, they could still obtain individual validated licenses from BIS to export their product(s). The individual validated licenses that BIS issues are generally less burdensome and require fewer compliance/reporting measures than the measures required for a SIRL. For example, a SIRL applicant must provide a narrative statement to identify all parties to the transaction, and a description of the reconstruction project. In addition, the applicant must provide separate written statements for all participating agencies and certification that all parties to the transaction will obtain licenses prior to transferring items within Iraq or reexporting items outside of Iraq for end users not authorized under the SIRL. SIRL holders must submit reports when the Iraq project is discontinued or is completed and must get prior approval for any changes to their SIRL. Although these requirements may be included as conditions on an individual validated license, BIS's license applications review process for individual validated licenses includes other methods, less burdensome on the exporter, to vet the bona fides of parties to the proposed transaction and to verify compliance. Also, impacted entities would have the convenience of applying for a license via the Simplified Network Application Process-Redesign (SNAP–R) System, an updated system for electronically filing export and reexport license applications, which is not available for the submission of SIRL applications. Finally, the historical lack of usage of the SIRL does not warrant maintaining such a complex option.

Number of Small Entities. Since the SIRL's introduction in 2004, there have been only three applications for it, with only one application approved. Due to the nature of the SIRL and the complexity of its requirements, BIS expects that past applicants would be considered large entities under the Small Business Administration's size standards. However, BIS does not collect data on the size or annual revenue of these entities, and thus some of these entities may be considered small under the SBA size standards. Also, although small entities likely would not be the direct or the primary users of the SIRL, BIS acknowledges that small entities may have been parties to SIRL transactions. To assist in the evaluation of a significant economic impact of this rule on a substantial number of small entities, BIS welcomes comments to explain how and to what extent your business or organization could be affected, if your business or organization is a small entity and if adoption of any of the amendments discussed in this proposed rulemaking could have a significant financial impact on your operations.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 747

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 730, 747, 748 and 762 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

Supplement No. 1 to Part 730—[Amended]

■ 2. Supplement No. 1 to Part 730 is amended by revising the entry for Collection number "0694–0129". The revision reads as follows:

SUPPLEMENT NO. 1 TO PART 730—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

* * * * *

Collection No.	Title	Reference in the EAR
*	*	*
0694–0129	Export and Reexport Controls For Iraq	§§ 732.3, 738, 744.18, 746.3(b)(1), 750, 758, 762, 772, 774.

* * * * *

PART 747—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 747.

PART 748—[AMENDED]

■ 4. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§ 748.1—[Amended]

■ 5. Section 748.1 is amended by removing the parenthetical phrase ''(other than Special Iraq Reconstruction License applications)'' from the first sentence of paragraph (d).

§ 748.7—[Amended]

■ 6. Section 748.7 is amended by removing the parenthetical phrase ''(other than Special Iraq Reconstruction Licenses)'' from paragraphs (a) and (d).

PART 762—[AMENDED]

■ 7. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§ 762.2—[Amended]

■ 8. Section 762.2 is amended by removing and reserving paragraph (b)(17).

Dated: June 1, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–13397 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 38, 40, and 170

RIN 3038–AD52

Public Staff Roundtable on Elements of Regulation Automated Trading; Reopening of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of staff roundtable discussion; reopening of comment period.

SUMMARY: On June 10, 2016, staff of the Commodity Futures Trading Commission (CFTC or Commission) will hold a public roundtable meeting, at which invited participants will discuss specific elements of the Commission's notice of proposed rulemaking (NPRM) regarding Regulation Automated Trading (Regulation AT). The staff roundtable, which will be held at the Commission's Washington, DC, office, will commence at 9:00 a.m. and end at 4:00 p.m. Additional information, including the agenda, is available in the ''Press Room'' section of the Commission's Web site at *www.cftc.gov.* In conjunction with the staff roundtable on June 10, the Commission is reopening the comment period for specific elements of Regulation AT. This additional comment period is intended to accept public comments solely on the specific items in the agenda and that arise during the staff roundtable.

DATES: The staff roundtable will take place on Friday, June 10, 2016, commencing at 9:00 a.m. and ending at 4:00 p.m. The comment period will be reopened as of June 10, 2016, and will close on June 24, 2016.

ADDRESSES: *Roundtable:* The staff roundtable will take place in the Conference Center at the Commission's headquarters at Three Lafayette Centre, 1155 21st Street NW., Washington, DC.

Comments: Members of the public may submit comment letters, identified by RIN 3038–AD52, by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Regarding the staff roundtable, please contact the CFTC's Office of Public Affairs at (202) 418–5080. Regarding the proposed rules in Regulation AT, please contact Sebastian Pujol Schott, Associate Director, Division of Market Oversight (DMO), *sps@cftc.gov* or 202–418–5641; Marilee Dahlman, Special Counsel, DMO, *mdahlman@cftc.gov* or 202–418–5264; Mark Schlegel, Special Counsel, DMO, *mschlegel@cftc.gov* or 202–418–5055; Andrew Ridenour, Special Counsel, DMO, *aridenour@cftc.gov* or 202–418–5438; Joseph Otchin, Attorney Advisor, DMO, *jotchin@cftc.gov* or 202–418–5623; Michael Penick, Economist, Office of the Chief Economist (OCE), *mpenick@cftc.gov* or 202–418–5279; Richard Haynes, Supervisory Research Analyst, OCE, *rhaynes@cftc.gov* or 202–418–5063; Carlin Metzger, Trial Attorney, Division of Enforcement, *cmetzger@cftc.gov* or 312–596–0536; or John Dunfee, Assistant General Counsel, Office of General Counsel, *jdunfee@cftc.gov* or 202–418–5396.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's NPRM for Regulation Automated Trading was published in the **Federal Register** on December 17, 2015 (80 FR 78824). The NPRM was open for a 90-day comment period, from December 17, 2015 through March 16, 2016. The comment file for Regulation AT is available at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1646.*

II. Staff Roundtable Agenda

The staff roundtable [1] on June 10, 2016 will address the following items: (1) potential amendments to the proposed definition of ''Direct Electronic Access'' (DEA), consistent with and in furtherance of Regulation AT's proposed registration regime; (2) potential quantitative measures to establish the population of AT Persons; (3) a potential alternative to Regulation AT's requirements for AT Persons in proposed §§ 1.80, 1.81, and 1.83(a), which alternative could require that FCMs impose specific requirements on their customers and perform due diligence regarding customers' compliance; (4) AT Persons' compliance with Regulation AT's proposed requirements for Algorithmic Trading and Algorithmic Trading systems when using third-party algorithms or systems; and (5) source code access and retention.

The staff roundtable will be open to the public with seating on a first-come, first-served basis, and will take place in the Conference Center at the Commission's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC. Members of the public may also listen by telephone. Call-in participants should be prepared to provide their first name, last name, and affiliation. The information for the conference call may be found on the CFTC's Web site at *www.cftc.gov.*

[1] See ''CFTC Staff to Hold Roundtable on Certain Elements of Regulation AT,'' (May 27, 2016), available at: *http://www.cftc.gov/PressRoom/PressReleases/pr7377-16.*

III. Reopening of Comment Period

In conjunction with the staff roundtable on June 10, the Commission is also reopening the comment period for specific elements of Regulation AT. The comment period will be reopened as of June 10, 2016, and will close on June 24, 2016. The additional comment period is intended for public comments solely on the specific items in the agenda for the staff roundtable and that arise during the roundtable. Members of the public may submit comment letters, identified by RIN 3038–AD52, by any of the methods indicated in the **ADDRESSES** section of this notice. Each section of a comment letter should indicate the roundtable agenda item that such section addresses.

Please submit comments by only one method. All comments should be submitted in English or accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in 17 CFR 145.9. The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Issued in Washington, DC, on June 2, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2016–13385 Filed 6–6–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1110–P]

RIN 1120–AB10

Compassionate Release

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons (Bureau) proposes changes to its regulations on compassionate release, including changing the title to ''Reduction in Sentence in Extraordinary and Compelling Circumstances''; deleting language which indicates that the Bureau will only allow reductions in sentence for circumstances ''which could not reasonably have been foreseen by the court at the time of sentencing''; and modifying and adding language to clarify the ineligibility of certain inmates for reductions in sentence and the eligibility of District of Columbia Code felony inmates (D.C. Code felony inmates) for medical and geriatric release.

DATES: Written comments must be submitted on or before August 8, 2016.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

SUPPLEMENTARY INFORMATION: The Bureau published a proposed rule revising all of the regulations in 28 CFR Subpart G on December 21, 2006 (71 FR 76619). We also published an interim rule making a technical change to the regulations on February 28, 2013 (78 FR 13478). Subsequently, we published another interim rule on December 5, 2013 (78 FR 73083), which provides that the Bureau's General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced when considering an inmate for compassionate release. It also states that the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

We now withdraw the proposed rule published in 2006 and instead propose the following changes to the regulations on compassionate release: (1) Changing the title to ''Reduction in Sentence in Extraordinary and Compelling Circumstances''; (2) deleting language which indicates that the Bureau will only allow reductions in sentence for circumstances ''which could not reasonably have been foreseen by the court at the time of sentencing''; and (3) modifying and adding language to clarify the ineligibility of certain inmates for reductions in sentence and the eligibility of District of Columbia Code felony inmates (D.C. Code felony inmates) for medical and geriatric release.

Changing the Title to "Reduction in Sentence in Extraordinary and Compelling Circumstances."

28 CFR part 571, subpart G, is currently entitled "Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g))." 28 CFR part 572, subpart E, is likewise entitled "Compassionate Release (Procedures for the Implementation of 4205(g))." Title 18 of the United States Code, section 3582(c)(1)(A)(i), which authorizes these regulations, does not use the term "compassionate release." Instead, the statute states that "the court, upon motion of the Director of the Bureau of Prisons, may *reduce* the term of imprisonment . . . if it finds that—(i) extraordinary and compelling reasons warrant such a reduction . . . ." [Emphasis added.]

Likewise, 18 U.S.C. 4205(g) also does not use the term "compassionate release," instead stating that "upon motion of the Bureau of Prisons, the court may *reduce* any minimum term to the time the defendant has served." [Emphasis added.] We are therefore proposing to change the title of subpart G to read "Reduction in Sentence in Extraordinary and Compelling Circumstances" to more accurately conform to the language of the statutes. We also propose to replace the phrase "compassionate release" with "reduction in sentence" where it appears in § 572.40.

Deleting Language Indicating That the Bureau Will Only Allow Reductions in Sentence for Circumstances "Which Could Not Reasonably Have Been Foreseen by the Court at the Time of Sentencing"

Section 571.60 is a statement of purpose and scope of the subpart. It describes that, "[u]nder 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served." This regulation also states that "[u]nder 18 U.S.C. 3582(c)(1)(A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984."

Currently, the regulation indicates that the Bureau uses these statutes "in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing." However, neither the language regarding whether the court could reasonably foresee circumstances nor a reference to such a requirement is present in either statute. The Bureau has found it problematic and untenable to attempt to determine what the court could reasonably have foreseen at the time of sentencing and to apply this restriction in deciding whether to seek a reduction in sentence under this subpart. For that reason, we propose to delete the phrase "which could not reasonably have been foreseen by the court at the time of sentencing" throughout the subpart.

Clarifying Ineligibility of Certain Inmates for Reductions in Sentence and Eligibility of District of Columbia Code Felony Inmates for Medical and Geriatric Release

Under section 11201 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. 105–33, 111 Stat. 71 (codified at D.C. Code § 24–101(a),(b)), the Bureau has custodial responsibility for felons sentenced pursuant to the District of Columbia Code. The Bureau also houses certain military prisoners and state prisoners in its facilities. The D.C. Code contains specific provisions that govern parole or suspension of a sentence on the basis of medical or geriatric conditions. *See* D.C. Code §§ 24–461 to 468. We now propose to make the following changes to clarify for inmates and the public the availability or unavailability of reductions in sentence and other forms of release to the different types of inmates in the Bureau's facilities: (1) Revising § 571.64 to include military prisoners in that section's list of inmates ineligible for reductions in sentence under the U.S. Code; and (2) adding a new paragraph (b) to § 571.60 stating that the Bureau may seek or support medical or geriatric parole or suspension of sentence for D.C. Code inmates in its custody and making it clear that the Bureau will not seek reductions in sentence for D.C. Code inmates under the U.S. Code.

Currently, § 571.64 reads as follows: "The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of state prisoners housed in Bureau of Prisons facilities or D.C. Code offenders confined in federal institutions. The Bureau of Prisons cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable sentences." The current language does not mention military prisoners, who are also ineligible under these provisions. We propose to revise the language of § 571.64 to add military prisoners to its list of inmates for whom the Bureau will not seek reductions in sentence. The proposed language in § 571.64 would no longer refer to D.C. Code offenders, because we propose to add a new paragraph (b) to § 571.60 that explains separately what forms of early release the Bureau will or will not seek on behalf of D.C. Code inmates.

By adding a new paragraph (b) to § 571.60, the Bureau would make it clear that D.C. Code inmates who committed their offense on or after August 5, 2000, may be eligible for medical or geriatric suspension of sentence as described in sections 24–467 and 24–468 of the D.C. Code. A D.C. Code inmate in Bureau custody who meets the eligibility criteria of the D.C. Code may request that the Bureau seek such a suspension of sentence for the inmate consistent with sections 24–467 and 24–468 of the D.C. Code. The procedures set out in sections 571.61 through 571.63 will apply to the submission of such requests by inmates, and to their consideration and decision by the Bureau, consistent with the provisions of the D.C. Code.

Section 571.60(b) also would make it clear that D.C. Code inmates who committed their offense before August 5, 2000, may be eligible for medical or geriatric parole as described in sections 24–461 through 24–465 and 24–467 of the D.C. Code. A D.C. Code inmate in Bureau custody who meets the eligibility criteria of the D.C. Code for such parole may request that the Bureau forward an application and documentation to the United States Parole Commission consistent with sections 24–464 and 24–465 of the D.C. Code.

Section 571.60(b) would also make it clear that the Bureau will not seek reductions in sentence under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of D.C. Code inmates. The Bureau will consider requests from such inmates only under the conditions described in the D.C. Code for medical or geriatric parole or suspension of sentence.

Other Minor Changes

In section 571.62, Approval of request, we indicate that the "Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by" the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons. We also indicate that after obtaining the opinion of either the Medical Director (or Acting Medical Director) or the Assistant Director (or Acting Assistant Director), Correctional Programs Division, the Office of General Counsel will determine if the request warrants approval.

We propose a minor change in this section and in section 571.63 to indicate that when we refer to the General Counsel, we refer to the Office of General Counsel, in order to indicate that multiple staff will be assigned review of the requests. We also make minor changes to indicate that either the Medical Director or the Acting Medical Director and either the Assistant Director, Correctional Programs Division, or the Acting Assistant Director, Correctional Programs Division, may act under this regulation. This will expedite processing of the requests in the event of possible absences of the Medical Director or Assistant Director.

We also propose to make another minor change to the phrase "particularly extraordinary or compelling" throughout the regulations. Under 18 U.S.C. 3582(c)(1)(A)(i), the court may, upon motion of the Director, grant a reduction in sentence if it finds that "extraordinary and compelling reasons warrant such a reduction . . . ." We therefore propose to change our phrase in these regulations to "extraordinary and compelling" instead of "particularly extraordinary or compelling" to conform to the language of the statute.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this regulation is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this regulation has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

28 CFR Part 571

Prisoners.

28 CFR Part 572

Prisoners, probation and parole.

Kathleen M. Kenney,

Assistant Director/General Counsel, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR parts 571 and 572, as follows.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. The authority citation for 28 CFR part 571 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568 and 3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509 and 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10; D.C. Official Code 24–101, 24–461 through 24–468.

Subpart G—Reduction in Sentence in Extraordinary and Compelling Circumstances

■ 2. Revise the heading of subpart G to read as set forth above.

■ 3. In § 571.60, remove the phrase "particularly extraordinary or compelling" in the last sentence and add in its place the phrase "extraordinary and compelling", remove the phrase "which could not reasonably have been foreseen by the court at the time of sentencing", redesignate the text as paragraph (a), and add a new paragraph (b), to read as follows:

§ 571.60 Purpose and scope.

* * * * *

(b) The Bureau may request the sentencing court to suspend a sentence on the basis of medical or geriatric conditions on behalf of offenders in its custody who were sentenced pursuant to the D.C. Code and who are eligible under D.C. Code §§ 24–467 and 24–468. The Bureau may submit an application and accompanying documentation to the United States Parole Commission for medical or geriatric parole on behalf of offenders in its custody who were sentenced pursuant to the D.C. Code and who are eligible under D.C. Code §§ 24–461 to 24–465 and 24–467. The Bureau will not entertain requests from offenders sentenced pursuant to the D.C. Code that the Bureau file motions under 18 U.S.C. 4205(g) or 3582(c)(1)(A).

■ 4. In § 571.61, revise the heading, revise the third sentence of paragraph (a), and remove the phrase "extraordinary or compelling" in paragraph (a)(1) and add in its place "extraordinary and compelling", and revise the second sentence of paragraph (b). The revisions read as follows:

§ 571.61 Initiation of request—extraordinary and compelling circumstances.

(a) * * * An inmate may initiate a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only when there are extraordinary and compelling circumstances. * * *

* * * * *

(b) * * * Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the

Institution where the inmate is confined.

■ 5. In § 571.62, revise paragraph (a), paragraph (a)(2), and the second sentence of paragraph (b), to read as follows:

§ 571.62 Approval of request.

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the Office of General Counsel, and either the Medical Director (or Acting Medical Director) for medical referrals or the Assistant Director (or Acting Assistant Director), Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

* * * * *

(2) After obtaining the opinion of either the Medical Director (or Acting Medical Director) or the Assistant Director (or Acting Assistant Director), Correctional Programs Division, the Office of General Counsel will determine if the request warrants approval. The Office of General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced. With these opinions, the Office of General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision, subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

* * * * *

(b) * * * Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate either forthwith or as soon as his medical condition permits and transportation can be arranged.

* * * * *

■ 6. Revise § 571.63(b) and (d), to read as follows:

§ 571.63 Denial of request.

* * * * *

(b) When an inmate's request is denied by the Office of General Counsel or the Director, the inmate will receive a written notice and a statement of reasons for the denial. This denial constitutes a final administrative decision.

* * * * *

(d) Because a denial by the Office of General Counsel or Director, Bureau of Prisons, constitutes a final administrative decision, an inmate may not appeal the denial through the Administrative Remedy Procedure.

■ 7. Revise § 571.64, to read as follows:

§ 571.64 Ineligible offenders.

The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of—

(a) A state prisoner housed in a Bureau facility;

(b) A federal offender, serving a non-parolable sentence, who committed his or her offense before November 1, 1987; or

(c) A military prisoner housed in a Bureau facility.

PART 572—PAROLE

■ 8. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4205, 5015 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

Subpart E—Reduction In Sentence (Procedures for the Implementation of 18 U.S.C. 4205(g))

■ 9. Revise the heading of Subpart E to read as set forth above.

■ 10. Revise § 572.40 to read as follows:

§ 572.40 Reduction in sentence under 18 U.S.C. 4205(g).

18 U.S.C. 4205(g) was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. 3582(c)(1)(A). Procedures for reduction of sentence of an inmate under either provision are contained in 28 CFR part 571, subpart G.

[FR Doc. 2016–13294 Filed 6–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR part 165

[Docket Number USCG–2016–0347]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks Murrells Inlet, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Murrells Inlet, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0347 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On April 22, 2016, The Marsh Walk Group notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. to 9:50 p.m. on July 4, 2016. The fireworks are to be launched from the end of the Veterans Fishing Pier in Murrells Inlet, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the pier.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:15 p.m. to 10 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the Veterans pier located on the Atlantic Ocean. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 9:50 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the Veterans Pier. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0347 under the undesignated center heading Seventh Coast Guard District to read as follows:

§ 165.T07–0347 Safety Zone; Fourth of July Fireworks Murrells Inlet, SC.

(a) This rule establishes a safety zone on all Atlantic Ocean waters within a 500 yard radius of Veterans Pier, from which fireworks will be launched.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced on July 4, 2016 from 9:15 p.m. until 10 p.m.

Dated: May 31, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard Captain of the Port Charleston.

[FR Doc. 2016–13323 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0346]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks North Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Charleston, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0346 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On April 18, 2016, the City of North Charleston notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 10 p.m. on July 4, 2016. The fireworks are to be launched from a barge along the bank of the Cooper River at River Front Park in North Charleston, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 8:45 p.m. to 10:15 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the barge located at River Front Park on the Cooper River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 10 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Cooper River for 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 1 hour that would prohibit entry within 500 yards of the fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0346 under the undesignated center heading Seventh Coast Guard District to read as follows:

§ 165.T07–0346 Safety Zone; Fourth of July Fireworks North Charleston, SC.

(a) This rule establishes a safety zone on all Cooper River waters within a 500 yard radius of barge, from which fireworks will be launched.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 8:45 p.m. until 10:15 p.m.

Dated: May 31, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–13322 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0320]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Myrtle Beach, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 22, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0320 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On April 14, 2016, the North Myrtle Beach Chamber of Commerce notified the Coast Guard that it will be conducting a fireworks display from 9:30 to 9:55 p.m. on July 4, 2016. The fireworks are to be launched from the end of the Cherry Grove Fishing Pier in Myrtle Beach, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the pier.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:15 p.m. to 10 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the Cherry Grove pier located on the Atlantic Ocean. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 9:55 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the Cherry Grove Pier. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0320 under the undesignated center heading Seventh Coast Guard District to read as follows:

§ 165.T07–0320 Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC.

(a) This rule establishes a safety zone on all Atlantic Ocean waters within a 500 yard radius of Cherry Grove Pier, from which fireworks will be launched.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 9:15 p.m. until 10 p.m.

Dated: May 25, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–13326 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0241]

RIN 1625–AA00

Safety Zone, Swim Around Charleston; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina scheduled for September 25, 2016. The temporary moving safety zone is necessary to protect swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels would be prohibited from entering the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 7, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0241 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On March 17, 2016, Kathleen Wilson notified the Coast Guard that she will be sponsoring the Swim Around Charleston from 9 a.m. to 3:30 p.m. on September 25, 2016. The legal basis for the proposed rule is the Coast Guard's Authority to establish a safety zone: 33 U.S.C. 1231. The purpose of the proposed rule is to ensure safety of life on the navigable water of the United States during Swim Around Charleston.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina during Swim Around Charleston on September 25, 2016. Approximately 120 swimmers are anticipated to participate in the race. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for only seven hours; (2) the safety zone would move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone would no longer be enforced in that portion of the waterway; (3) although persons and vessels would not be able to enter or transit through the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter or transit through the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 7 hours that would prohibit entry within the safety zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

"**Authority:** 33 U.S.C. 1226, 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0241 under the undesignated center heading Seventh Coast Guard District to read as follows:

§ 100.T07–0241 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) *Regulated area.* The following regulated area is a moving safety zone: All waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N., 79°54′27″ W., crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I–526 bridge and boat landing on the Ashley River in approximate position 32°50′14″ N., 80°01′23″ W. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in the Swim Around Charleston, or serving as safety vessels.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on September 25, 2016 from 8:45 a.m. until 3:45 p.m.

Dated: May 31, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–13325 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0464; FRL–9947–36–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to disapprove the portion of a Louisiana State Implementation Plan (SIP) submittal pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards (NAAQS) in other states. Disapproval will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) for Louisiana to address the Clean Air Act (CAA) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states, unless we approve a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for Louisiana.

DATES: Comments must be received on or before July 7, 2016.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2013–0464, at *http://www.regulations.gov* or via email to *fuerst.sherry@epa.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst 214–665–6454, *fuerst.sherry@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst 214–665–6454, *fuerst.sherry@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means the EPA.

I. Background

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable "infrastructure" elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain "good neighbor" provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action reviews how the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I) were addressed in an infrastructure SIP submission from Louisiana for the 2008 ozone NAAQS. These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any emissions activity within the State from emitting air pollutants that will "contribute significantly to nonattainment" or "interfere with maintenance" of the applicable air quality standard in any other state.

Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_X) and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOCs. Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer. Increased temperature also increases emissions of VOCs and can indirectly increase NO_X emissions.[1]

We have addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to ozone in several past regulatory actions. The NO_X SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS.[2] The rule required 22 states and the District of Columbia to amend their SIPs and limit NO_X emissions that contribute to ozone nonattainment. The Clean Air Interstate Rule (CAIR), promulgated in 2005, addressed both the 1997 fine particulate matter ($PM_{2.5}$) and ozone standards under the good neighbor provision and required SIP revisions in 28 states and the District of Columbia to limit NO_X and SO_2 emissions that contribute to nonattainment of those standards.[3] CAIR was remanded to us by the D.C. Circuit in *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g*, 550 F.3d 1176. In response to the remand of CAIR, we promulgated the Cross State Air Pollution Rule (CSAPR) on July 6, 2011, to address CAA section 110(a)(2)(D)(i)(I) in the eastern[4] portion of the United States.[5] With respect to ozone, CSAPR limited ozone season NO_X emissions from electric generating units (EGUs). CSAPR addressed interstate transport as to the 1997 8-hour ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, but did not address the 2008 8-hour ozone standard.

II. Louisiana SIP Revision Addressing Interstate Transport of Air Pollution for the 2008 Ozone NAAQS

On June 4, 2013, Louisiana provided us with a SIP submittal addressing CAA section 110(a)(2) "infrastructure" requirements for the 2008 ozone NAAQS. This action concerns the portion of the SIP submittal pertaining to the CAA section 110(a)(2)(D)(i)(I) requirement to address the interstate transport of air pollution which will significantly contribute to nonattainment or interference with maintenance of the 2008 ozone NAAQS in other states. We proposed approval on other portions of the State's submittal relating to CAA section 110(a)(2) elements A, B, C, D(i)(II), D(ii), E, F, G, H, J, K, L, and M in a separate action signed on May 18, 2016.

In its SIP submittal, Louisiana provided an "Infrastructure Checklist" for the 2008 ozone NAAQS and stated that the submittal substantiates that the State has adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. The checklist states that the Louisiana Department of Environmental Quality (LDEQ) submitted and we approved CAIR SIPs for both sulfur dioxide and NO_X emissions, citing 72 FR 39741 (July 20, 2007) and 72 FR 55064 (September 28, 2007).[6] The checklist also notes that the controls installed to comply with CAIR are required by State law at Louisiana Administrative Code (LAC) 33:III.905 to be "used and diligently maintained." The checklist also provided narrative on the D.C. Circuit's 2012 decision in *EME Homer City Generation, L.P.* v. *EPA* which vacated CSAPR and the November 19, 2012, memorandum explaining the continued implementation of CAIR until a replacement rule could be implemented.

Louisiana's SIP submittal included a response to comments document which, among other things, summarized and responded to February 15, 2013, comments from us on what was then the State's proposed SIP revision. In our comments on the proposed SIP revision, we noted that the information LDEQ

[1] Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS, 80 FR 75706, 75711 (December 3, 2015).

[2] NO_X SIP Call, 63 FR 57371 (October 27, 1998).

[3] Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005).

[4] When we discuss the eastern United States we mean the contiguous U.S. states excluding the 11 western states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

[5] Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

[6] CAIR found that sulfur dioxide and NO_X emission limits were needed in Louisiana to address interstate transport of air pollution for the 1997 $PM_{2.5}$ and 1997 ozone NAAQS (70 FR 25182, May 12, 2005).

provided was based upon the old 1997 8-hour ozone NAAQS requirements and was therefore not sufficient to support a conclusion that the State's ozone emissions do not contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS. In its response, Louisiana disagreed, and accordingly chose not to revise its proposed SIP revision or provide any additional support for its conclusions. Instead, Louisiana contended in its response to comments that, "the information based on the 1997 8-hour ozone NAAQS requirements is relevant . . . through the CAIR NO_X program in that it demonstrates the state's most recent efforts in maintaining the 8-hour ozone NAAQS and to alleviate transport pollutants." A copy of the Louisiana SIP submittal, which includes our February 15, 2013, comment letter and the State's response to comments, may be accessed online at *http://www.regulations.gov,* Docket No. EPA–R06–OAR–2013–0464.

III. The EPA's Evaluation

As noted above, we informed Louisiana in our February 15, 2013, comment letter that the information provided in the SIP submittal would not itself be sufficient to conclude that the State has adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states. However, the SIP submittal provided by Louisiana cited the State's approved CAIR SIP as support for its conclusion that the State satisfied its section 110(a)(2)(D)(i)(I) obligation with respect to the 2008 ozone NAAQS.

First, CAIR was invalidated by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (2008). The D.C. Circuit held, among other things, that the CAIR rule did not "achieve[] something measureable toward the goal of prohibiting sources within the State from contributing to nonattainment or interfering with maintenance in any other State." *Id.* at 908; *see also, e.g., id.* at 916 (EPA is not exercising its authority to make measureable progress towards the goals of section 110(a)(2)(D)(i)(I) because the emission budgets were insufficiently related to the statutory mandate). In promulgating CSAPR, we corrected our prior approvals of states' CAIR SIPs, including Louisiana's approved CAIR SIPs, "to rescind any statements that the SIP submissions either satisfy or relieve the state of the obligation to submit a SIP to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone and/or 1997 $PM_{2.5}$ NAAQS or any statements that EPA's approval of the SIP submissions either relieve EPA of the obligation to promulgate a FIP or remove EPA's authority to promulgate a FIP." 76 FR 48208, 48220. In reviewing CSAPR, the D.C. Circuit concluded that our correction of the prior CAIR approvals was appropriate, explaining "when our decision in *North Carolina* deemed CAIR to be an invalid effort to implement the requirements of the good neighbor provision, that ruling meant that the initial approval of the CAIR SIPs was in error at the time it was done." *EME Homer City Generation, L.P* v. *EPA,* 795 F.3d 118, 133 (D.C. Cir. 2015). Therefore, the D.C. Circuit has clearly concluded that states cannot rely on CAIR or previously approved CAIR SIPs to satisfy the requirements of section 110(a)(2)(D)(i)(I).

Even if Louisiana could rely on its CAIR SIPs, as we stated in our comment letter, the modeling and rulemaking conducted for both CAIR and CSAPR addressed the *1997 ozone NAAQS,* not the more stringent 2008 ozone NAAQS at issue in this action. EPA-approved rules implementing a prior, less stringent NAAQS are not adequate on their own to support a demonstration regarding the impacts of in-state emissions on air quality in other states with respect to the 2008 ozone NAAQS.[7] Additionally, although we approved the Louisiana abbreviated SIP implementing the CAIR NO_X trading program, neither the states nor the EPA are currently implementing the ozone-season NO_X trading program promulgated in CAIR, as it has been replaced by CSAPR. Moreover, although the State cites to a State regulation requiring that already-installed controls be "used" and "maintained," the State does not provide any explanation as to whether the sources are subject to specific emissions limitations or how the use of the controls will impact downwind air quality.

Finally, it is no longer appropriate for Louisiana to rely on the D.C. Circuit decision vacating CSAPR as a basis for concluding that its SIP is adequate. Although the D.C. Circuit initially held that states did not have an obligation to make a SIP submission addressing section 110(a)(2)(D)(i)(I) until we first quantified a state's emission reduction obligation, *see EME Homer City,* 696 F.3d 7, on April 29, 2014, the Supreme Court reversed this decision and remanded the case to the D.C. Circuit for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). The Supreme Court explained that "nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations." *Id.* at 1601.

Because the Louisiana submittal addressed by this action concerns states' interstate transport obligations for a different and more stringent standard (the 2008 ozone NAAQS), it is not sufficient to merely cite as evidence of compliance that these older programs have been implemented by the states or the EPA.[8] The submittal lacks any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS. As such, the submittal does not provide us with a basis to agree with the conclusion that the State already has adequate provisions in the SIP to address CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS. Thus, we propose to find that the Louisiana submittal is not adequate as it did not evaluate whether emissions from the State significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

Although the Louisiana submittal contains no data or analysis to support their conclusion with respect to section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone standard, we recently shared new technical information with states to facilitate efforts to address interstate transport requirements for the 2008 ozone NAAQS. Such technical information provides further support to our determination that Louisiana is projected to significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states. We developed this technical information following the same approach used to evaluate interstate transport in CSAPR in order to support the recently proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, (80 FR 75706, December 3, 2015) ("CSAPR Update Rule").

In CSAPR, we used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered "linked" to identified downwind nonattainment and maintenance receptors and was, therefore, not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, we proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate. We evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, we compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. Our analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded. In addition, we determined that it was important to use a relatively lower one percent threshold because there are adverse health impacts associated with ambient ozone even at low levels. We also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. We determined that a "0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable."

In the final CSAPR, we determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the previous use of a one percent threshold in CAIR. We used a single "bright line" air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm. The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm. We have subsequently proposed to use the same threshold for purposes of evaluating interstate transport with respect to the 2008 ozone standard in the CSAPR Update Rule.

In 2015 we (1) provided notice of data availability (NODA) for the updated ozone transport modeling for the 2008 ozone NAAQS for public review and comment (80 FR 46271, August 4, 2015), and (2) proposed the CSAPR Update Rule to address interstate transport with respect to the 2008 ozone NAAQS (80 FR 75706, December 3, 2015). The proposed CSAPR Update Rule would further restrict ozone season NO_X emissions from EGUs in 23 states, including Louisiana, beginning in the 2017 ozone season.

The modeling data released in this NODA was also used to support the proposed CSAPR Update Rule. The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, we proposed that 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. We used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. We used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_X and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical support documents have been included in the docket for this SIP action.

The modeling data released in the NODA and the CSAPR Update Rule are the most up-to-date information we have developed to inform our analysis of upwind state linkages to downwind air quality problems. As discussed in the CSAPR Update Rule proposal, the air quality modeling (1) identified locations in the U.S. where we expect nonattainment or maintenance problems in 2017 for the 2008 ozone NAAQS (*i.e.,* nonattainment or maintenance receptors), and (2) quantified the projected contributions of emissions from upwind states to downwind ozone concentrations at those receptors in 2017 (80 FR 75706, 75720–30, December 3, 2015). Consistent with CSAPR, we proposed to use a threshold of one percent of the 2008 ozone NAAQS (0.75 parts per billion) to identify linkages between upwind states and downwind nonattainment or maintenance receptors. We proposed that eastern states with contributions to a specific receptor that meet or exceed this screening threshold are considered "linked" to that receptor and were analyzed further to quantify available emissions reductions necessary to address interstate transport to these receptors.

Table 1 is a summary of the air quality modeling results for Louisiana from Tables V.D–1, V.D–2 and V.D–3 of the proposed CSAPR Update Rule.[9] As the State's downwind contribution to proposed nonattainment and maintenance receptors exceeded the threshold, the analysis for the proposal concluded that Louisiana's emissions significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS

[7] Louisiana's citation to our July 20, 2007 action approving Louisiana's CAIR sulfur dioxide SIP revision is particularly inapplicable. 72 FR 39741. Sulfur dioxide is not a precursor or pollutant that contributes to ozone formation, and therefore, the implementation of any control requirements to address sulfur dioxide emissions is irrelevant to our analysis of the State's control requirements to address the 2008 ozone NAAQS.

[8] This is particularly true where, as here, Louisiana has failed to include any analysis of the downwind impacts of emissions originating within their borders. *See, e.g., Westar Energy Inc.* v. *EPA,* 608 Fed. Appx. 1, 3–4 (D.C. Cir. 2015).

[9] 80 FR 75706, 75727–28.

in other states. Louisiana's emissions were linked (1) to eastern nonattainment receptors in Sheboygan, Wisconsin, and the Dallas/Fort Worth and Houston areas of Texas, and (2) to eastern maintenance receptors in the Dallas/Fort Worth and Houston areas.

TABLE 1—LOUISIANA'S LARGEST CONTRIBUTION TO DOWNWIND NONATTAINMENT AND MAINTENANCE AREAS

[Proposed CSAPR Update Rule]

2008 Ozone NAAQS	Air quality threshold	Largest downwind contribution to nonattainment	Largest downwind contribution to maintenance	Downwind nonattainment receptors located in states	Downwind maintenance receptors located in states
0.075 ppm (75 parts per billion or ppb).	0.75 ppb	3.09 ppb	4.23 ppb	Wisconsin, Texas	Texas

Accordingly, the most recent technical analysis available to us contradicts Louisiana's conclusion that the SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard.

We are thus proposing to disapprove the portion of the Louisiana SIP submittal pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states—*i.e.*, element (D)(i)(I). As explained above, the Louisiana submittal did not provide an adequate technical analysis demonstrating that the SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. Moreover, our most recent modeling indicates that emissions from Louisiana are in fact projected to significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states.

IV. Proposed Action

We propose to disapprove the portion of a June 4, 2013 Louisiana SIP submittal pertaining to CAA section 110(a)(2)(D)(i)(I), the interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

Pursuant to CAA section 110(c)(1), disapproval will establish a 2-year deadline for the EPA to promulgate a FIP for Louisiana to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 2008 ozone NAAQS unless Louisiana submits and we approve a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for Louisiana pursuant to CAA section 179 because this action does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

We interpret Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that we have reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This proposed rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

We believe the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Volatile organic compounds.

Dated: May 26, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–13493 Filed 6–6–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 13–49; FCC 16–68]

Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document invites interested parties to update and refresh the record on the status of potential sharing solutions between proposed Unlicensed National Information Infrastructure (U–NII) devices and Dedicated Short Range Communications (DSRC) operations in the 5.850–5.925 GHz (U–NII–4) band. The Commission also solicits the submittal of prototype unlicensed interference-avoiding devices for testing, and seeks comment on a proposed FCC test plan to evaluate electromagnetic compatibility of unlicensed devices and DSRC. The collection of relevant empirical data will assist the FCC, the Department of Transportation, and the National Telecommunications and Information Administration in their ongoing collaboration to analyze and quantify the interference potential introduced to DSRC receivers from unlicensed transmitters operating simultaneously in the 5.850–5.925 GHz band.

DATES: Comments are due on or before July 7, 2016, and reply comments are due on or before July 22, 2016.

FOR FURTHER INFORMATION CONTACT: Howard Griboff, Office of Engineering and Technology, (202) 418–0657, email: *Howard.Griboff@fcc.gov*, or Aole Wilkins, Office of Engineering and Technology, (202) 418–2406, email: *Aole.Wilkins@fcc.gov;* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of a document in, ET Docket No. 13–49, FCC 16–68, adopted May 25, 2016, and released June 1, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Synopsis

The non-Federal Mobile Service operating on a primary basis in the 5.850–5.925 GHz band is limited to DSRC systems, a component of the Intelligent Transportation System (ITS) radio service.

In a *Notice of Proposed Rulemaking* in February 2013, the Commission explored the potential for future unlicensed operations in the 5.850–5.925 GHz band, and sought comment on technical requirements and sharing technologies and techniques that could be used by unlicensed users to protect incumbent operations, and specifically DSRC. *See Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band, ET Docket No. 13–49, Notice of Proposed Rulemaking,* 28 FCC Rcd 1769 (2013) (*NPRM*); 78 FR 21320, April 10, 2013.

In comments on the Commission's proposal, the automobile industry and the National Telecommunications and Information Administration (NTIA) on behalf the Department of Transportation (DoT) raised potential interference concerns with respect to protecting DSRC from unlicensed users. Subsequently, in August 2013, the Regulatory Standing Committee of IEEE 802.11 formed "the DSRC Coexistence Tiger Team" to investigate potential mitigation techniques that might enable sharing between the proposed unlicensed devices and DSRC equipment. The IEEE Tiger Team completed its work in March 2015, stating that it was unable to reach a consensus, but instead submitted that further analyses and testing could follow.

The IEEE Tiger Team examined two proposed sharing techniques. The "detect and avoid" approach involves detecting the presence of DSRC signals, and avoiding using the spectrum in this band when DSRC signals are present. Under this sharing proposal, unlicensed devices would monitor the existing 10 megahertz-wide DSRC channels. If an unlicensed device detects any transmitted DSRC signal, it would avoid using the entire DSRC band to assure no interference occurs to DSRC communications. After waiting a certain amount of time the unlicensed device would again sense the DSRC spectrum to determine if any DSRC channels are in use or whether it could safely transmit.

The "re-channelization" approach involves splitting the DSRC spectrum into two contiguous blocks: The upper part of the band exclusively for safety-related communications, and permitting unlicensed devices to share the lower part of the band with non-safety DSRC communications. This would be accomplished by moving the control channel and the two public safety channels to the top portion of the band, and reconfiguring the remaining four DSRC service channels in the lower end of the band as two 20 megahertz channels rather than maintaining four 10 megahertz channels. Under this approach, sharing between unlicensed devices and non-safety DSRC would occur according to the sharing protocols used by standard 802.11 devices, *i.e.*, the device would listen for an "open" channel in the 5.850–5.895 GHz band and transmit if available. Otherwise the device would wait a very short period of time, and then try again.

The Commission now seeks comment on the merits of these two approaches. What are the benefits and drawbacks of each approach? Would one approach be better than the other (*e.g.*, minimize the risks of interference to DSRC more effectively while providing a comparable degree of meaningful access to spectrum for unlicensed devices)? For either approach, is it necessary for the Commission to specify all the details of the interference avoidance mechanism in the FCC rules or can this be addressed by relying primarily on industry standards bodies to develop the specific sharing methods? If the former, what specific technical details need to be specified in the FCC rules (*e.g.*, out of bound emissions, noise tolerance, detection threshold, channel vacate time, etc.)? Has industry agreed upon performance indicators for DSRC, and if so, what are these metrics and is there a process to hold products to these performance levels?

The Commission also seeks comment on how the choice of avoidance protocol affects the deployment and performance of DSRC. Would "re-channelization" require any change in the design of the DSRC electronic components contained in DSRC prototypes or just require a change in the processing of the data? The Commission seeks comment on

whether changing the channel plan would require re-testing of DSRC and, if so, precisely what would need to be done, why, and in what timeframe? Commenters responding to this question should provide specific information about why the completed tests are not applicable to re-channelization, how any new tests will differ from those already performed, and the relevant timeframes for completing these specific tasks.

Further, any testing, studies or analyses that have been performed regarding DSRC capabilities, Wi-Fi performance, interference studies or the potential benefits or drawbacks of sharing, which are relied upon by stakeholders in this proceeding, either in the past or going forward, need to be filed in the record to be considered. Additionally, has any testing been done regarding DSRC self-interference or potential harmful interference with satellite and government co-channel or adjacent users? Any such information filed should include the test plans, results, and underlying data needed to fully evaluate the submission. If there are data or reports that are not public, parties should describe the data and reports and explain why it is necessary to submit this information confidentially.

The Commission also seeks comment on what DSRC-related use cases should be expected and permitted in this band. Commenters should provide specific information regarding what DSRC applications are anticipated, what are the projected spectrum needs for each application, and how would the commenter classify each (*i.e.*, safety, non-safety, time critical or not)? Should the DSRC offerings provided on a priority or exclusive basis be restricted to safety-of-life or crash avoidance purposes? What are the technical or policy reasons for differentiating between safety-of-life and non-safety-of-life applications? Are there meaningful distinctions between DSRC applications that are safety-related and those that are not, such as applications that are time critical? For parties that advocate for re-channelization, is there a natural bifurcation point if the Commission decides to separate safety-related and non-safety-related DSRC? For instance, while entertainment, social media, maps, and parking applications are not safety-related, what is a good definition for a feature or service to be considered truly a safety-of-life use? How does our current band plan and these sharing approaches match up with international efforts for safety-related DSRC systems?

To fully evaluate the potential effects of re-channelization, the Commission requests information on the projected timeframe for introduction of DSRC deployments under the current channel plan. What market penetration (*e.g.*, percentage of cars on the road) is needed for DSRC to reliably provide safety-of-life functions or prevent vehicle-to-vehicle collisions? What are the projected timeframes for achieving the penetration levels needed for each safety-of-life or crash avoidance function to be effective? Will these penetration levels be met by equipment that is native to the automobile or through standalone or retrofit devices? Would these timeframes change if re-channelization occurs and by how much? In the meantime, what other spectrum bands, driver-assist technologies, and commercial offerings are providing similar services to those envisioned using DSRC? Is it possible that autonomous car and other technologies could bypass DSRC safety-of-life capabilities prior to reaching a sufficient technology penetration to make this service effective?

Does the 5.850–5.895 MHz portion of the band potentially offer the most value for unlicensed operations? What are the advantages and disadvantages of combining the non-safety-related channels into larger channels? How should portions of the band not required for safety-of-life applications be shared among DSRC and unlicensed operations? For instance, should non-safety of life DSRC applications share the lower re-channelized band on an equal basis with unlicensed operators or have some priority? If commercial or other non-safety DSRC applications have priority access to the band, is a detect-and-vacate protocol necessary or does the IEEE 802.11 standard or other protocols allow for prioritization of DSRC traffic without the need to vacate non-safety channels for a pre-determined time period?

In addition, the Commission invites interested parties to suggest other approaches that would facilitate unlicensed use of the 5.850–5.925 GHz band without causing harmful interference to DSRC operations. Would a hybrid approach taking elements from both the "detect and avoid" and the "re-channelization" proposals create benefits for both DSRC and U–NII users? Are there advantages to an approach where unlicensed operators would use technologies such as the standard Wi-Fi protocol to share access to the non-safety-of-life DSRC operations in the lower 45 megahertz of spectrum, while unlicensed devices would use a "detect and avoid" approach to avoid, and thus protect, co-channel safety-of-life DSRC operations in the upper 30 megahertz of spectrum? Is it feasible to develop a "hybrid chip" that would implement a DSRC standard receiver for detection purposes to allow unlicensed use, if the spectrum is clear? Would it be viable to employ an approach based on use of a database to control access to the spectrum similar to that used for the Citizens Broadband Band Radio Service at 3.5 GHz or for White Space devices in the TV and 600 MHz Service bands? The Commission asks parties to propose mitigation techniques with adequate specificity and detail so that the Commission can compare and contrast them with the proposals already being considered. In that regard, the Commission seeks comment on the viability of any new proposal, and benefits and costs of the suggested technique, and on any trade-offs related to the proposal.

The Commission invites comment on the ramifications of any of the sharing techniques relative to indoor as well as outdoor use. For instance, is re-channelization, detect and avoid, or a hybrid approach more or less likely to allow for unlicensed indoor and outdoor deployments? Do certain sharing techniques permit more or less indoor or outdoor unlicensed use in certain geographic areas? Are there technical parameters that could be put into place to obviate interference concerns and facilitate deployment of unlicensed networks in either indoor or outdoor environments? For example, would it be feasible to tie the use of lower power levels for indoor-only devices to a less rigorous DSRC detection method in those devices, leaving the more sensitive DSRC detection methods to higher power outdoor-only units? Is it reasonable to assume that indoor-only devices are less likely to cause interference to DSRC outdoors, thus allowing for less aggressive detection sensitivity? If so, what technical characteristics would be required? The Commission seeks a full record on this technique and its specification to assess whether it is possible to share the DSRC band in this manner.

The Commission invites parties to submit 5.9 GHz prototype unlicensed, interference-avoiding devices to the Commission for testing. The Commission also request that parties provide 5.9 GHz DSRC equipment, against which to test the prototype unlicensed, interference avoiding devices. In addition, the Commission requests comment on what date is reasonable for prototype submission, and what constitutes an acceptable prototype (*e.g.*, does the device need to be able to communicate with another device, or is it sufficient for the device to only demonstrate the sharing technique?). The deadline for submission of prototypes shall be July 30, 2016; however, the Office of Engineering and Technology (OET) is delegated the authority to establish the submission requirements and grant waivers or extensions of the submission deadline or requirements, as necessary. Given the importance of this item, parties should explain in detail in any waiver or extension request why such request should be granted. Parties that would like to submit devices for testing should advise OET as soon as possible and should deliver their device at their earliest opportunity. To arrange delivery of a device, please contact Reza Biazaran at (301) 362–3052 or *reza.biazaran@fcc.gov*.

The Commission, in coordination with the DoT and NTIA, will test the prototype equipment as follows:

Phase I: Testing at the FCC Laboratory in Columbia, Maryland to determine the prototypes' technical characteristics and how they are designed to avoid causing harmful interference to DSRC.

Phase II: Basic field tests with a few vehicles at a DoT facility. The Phase II tests will determine whether the techniques to avoid interference that were evaluated in Phase I's lab tests are effective in the field.

Phase III: Tests in "real-world" scenarios, with many vehicles, more test devices, and at a suitable facility.

The Commission seeks comment on the proposed Phase I test plan as set forth below. The Phase I test plan describes an approach and methodology to empirically determine interference tolerance and thresholds associated with the DSRC receive components of the Vehicle-to-Vehicle (V2V) and Vehicle-to-Infrastructure (V2I) communication links relative to the introduction of U–NII emissions into the 5.850–5.925 GHz band, and to evaluate the effectiveness and reliability of any U–NII device interference mitigation capabilities. Since U–NII represents an unlicensed application for which any interference received from the operation of an authorized radio service must be accepted, the test plan does not assess the interference potential from DSRC transmissions to projected U–NII receivers.

The data resulting from the Commission's tests are intended to inform the Phase II and Phase III analyses in which other relevant factors can be given further consideration, and the analytical results can be validated through limited field tests.

The three phases of the test plan are interdependent. The Commission anticipates that all three phases of the test plan will be completed before reaching any conclusions as to how unlicensed devices can safely operate in the 5.850–5.925 GHz band. The Commission, however, expects that testing will be concluded and submitted into the record no later than January 15, 2017. Given the importance of this item, parties should explain in detail why any additional time should be allocated. Engineers from the FCC will carefully examine the options and mechanisms for sharing in the 5.850–5.925 GHz band and closely scrutinize the myriad interference prevention approaches.

The following section describes the Phase I technical characterization effort for evaluating the potential for electromagnetic compatibility (EMC) between U–NII Devices and DSRC operations associated with the ITS under the proposal to share the 5.850–5.925 GHz band.

Proposed Phase I Test Plan

1.0 Introduction

1.1 Objective

The objective of this test effort is to collect the data necessary to establish interference thresholds associated with key performance parameters that can then be used in subsequent scenario-based analyses to better assess the interference potential to DSRC operations that might be introduced from sharing the frequency band with unlicensed (U–NII) devices. In addition, any interference mitigation capabilities provided by the U–NII prototype test samples will be evaluated for viability, efficiency, and reliability.

1.2 Approach

It is recognized that the EMC concerns introduced by the proposal to share the DSRC frequency band with unlicensed operations are complex, primarily due to the dynamic variabilities associated with each system under consideration. For example, U–NII applications are predominately utilized to establish local area networks (LANs), typically in support of Wi-Fi access and usage, although fixed point-to-point communication links for supporting Internet backhaul applications are also likely. While the access points associated with LAN applications are typically relatively fixed in terms of location, the client devices that communicate with them can be quite mobile. Similarly, the DSRC roadside units (RSUs) are typically sited at fixed locations along roadways, but the on-board units (OBU's) that communicate with the RSU's and with other OBU's are vehicle-mounted and thus can involve high-velocity dynamic mobility. As such, it will be impractical to examine each and every potential interaction involving U–NII transmissions relative to DSRC receivers in either an empirical or analytical effort. Therefore, the approach proposed in this test plan represents an attempt to contain the myriad of variable conditions within a space bounded between "best case" (no interference) and "worst case" (maximum interference) conditions. Subsequent analytical efforts can then introduce appropriate scenario-based considerations, and examine associated subtleties such as the probability of occurrence and the maximum duration of potential interference interactions.

In an effort to deal with these complexities, the examination of compatibility between proposed U–NII transmitters and DSRC receivers sharing the same frequency band will employ a phased approach, with the various interested agencies (*i.e.*, FCC, NTIA, and DoT) collaborating in each distinct test phase. Each successive phase of the study will progressively consider additional interference interaction variabilities. The first phase of this effort will be performed at the FCC Laboratory in Columbia, Maryland and will involve bench tests in a laboratory environment assuming static conditions (*i.e.*, vehicle dynamics not considered). It is envisioned that the Phase II effort will utilize the Phase I data to support analytical efforts to assess compatibility under scenario-specific conditions and will also include some result verification through limited scenario-based field tests. The final phase (Phase III) of the study is envisioned to utilize the Phase II results, adjusted accordingly based on the verification test observations, to expand the field testing under "real world" conditions such as those proposed in Section 6.0 of the DoT Test Plan.

This test plan primarily describes the proposed Phase I effort of this study, to be performed by FCC engineers at its laboratory facility in Columbia, MD, with the support of DoT engineers.

2.0 Phase I Test Proposals

2.1 Potential Interference Mechanisms

It is anticipated that the likely interference mechanisms associated with sharing the DSRC frequency band are: (1) A potential for degrading the DSRC receiver noise floor, and thus, the link signal-to-noise ratio (SNR) due to additive noise-like interference introduced by proposed U–NII devices; (2) a potential for corruption of received data packets due to introduced interference, resulting in an increased

packet error rate (PER) and/or reduced data throughput; (3) a potential for channel access contention, resulting in an increase in the time required for DSRC channel access; and (4) a potential for receiver saturation or overload due to short-range, co-tuned interactions. These represent the potential interference mechanisms and associated metrics that will be examined as a part of this proposed Phase I test effort.

2.2 Potential Interference Mitigation Techniques

Several possible techniques and strategies have been proposed for mitigating interference interactions between projected U–NII transmitters and DSRC receivers. The IEEE Tiger Team explored two possible options: (1) The use of the existing DSRC channel plan with a clear channel assessment (CCA) capability specified for U–NII transmissions in the 10–MHz DSRC channels, and (2) the adoption of a modified DSRC channel plan (*i.e.*, bi-furcation of the DSRC frequency band) with a CCA capability specified in 20–MHz channels. The NTIA 5 GHz Report proposed more general mitigation strategies, such as several possible detection methodologies for use in implementing a CCA capability (*e.g.*, energy, matched filter, and signal detection), and a geo-location/database mitigation approach. The NTIA 5 GHz Report also identifies some of the potential inadequacies associated with each of these potential interference mitigation approaches.

The 802.11 standard under which U–NII operates currently provides for two methods of implementing a CCA capability. The first method, known as Carrier Sensing (CS), involves a determination of channel availability through the detection (reception) and decoding of the preamble of a data packet transmitted by the current channel occupant. Most 802.11 U–NII devices utilize the same basic CS technique, known as Carrier Sense Multiple Access with Collision Avoidance (CSMA/CA). The FCC does not specify nor regulate CS requirements for U–NII devices. The second CCA method specified in the 802.11 standard is known as Dynamic Frequency Selection (DFS) where a U–NII device must identify an occupied channel through the detection of the channel occupants radio-frequency (RF) energy levels relative to an established threshold value (*i.e.*, Energy Detection (ED)), without regard to signal structure specifics. This technique is required for U–NII devices that share other portions of the 5 GHz spectrum in order to preclude interference to critical Government Radar operations. DFS requirements and compliance tests were developed cooperatively between FCC, NTIA and DoD, and are enforced by the FCC.

Since U–NII device access to the spectrum is on a non-interference basis (NIB), DSRC must be accorded primacy in any channel access protocol. Such access prioritization will also likely be required for all of the seven 10–MHz channels that are assigned to DSRC. Thus, to ensure DSRC preferential access, a U–NII device must be capable of detecting an access-contending DSRC signal at energy levels that are equal to, or below, the DSRC receiver sensitivity level on each of the seven DSRC channels.

As a primary element of this Phase I effort, the FCC will perform benchtop measurements of those prototype U–NII devices submitted for testing that implement these, or other not yet proposed, interference mitigation capabilities. The actual tests to be performed will be tailored to the particular mitigation strategy employed, and will be designed to ensure the effectiveness and reliability associated with the detection and recognition of DSRC-occupied channels.

2.3 General Test Approach

It is not possible to design a detailed comprehensive plan for testing all of the components identified for examination in the Phase I test program until we have access to U–NII devices designed for operation in the 5.9 GHz frequency band and DSRC RSU and OBU equipment to test against. Therefore, what is proposed below represents a general plan for achieving the identified objectives. This plan will be adapted as necessary once more details of the devices to be tested are made available.

The first step in the Phase I effort is to solicit the devices necessary to implement the test plan, as the Commission does in this *document*. The FCC requests that industry provide prototype U–NII devices projected for operation in the 5.9 GHz frequency band, to include interference mitigation capabilities, for test and evaluation. The FCC, working cooperatively with NTIA and DoT, also request that the DSRC equipment necessary to exercise this test plan be provided. In addition, technical support must be made available to assist in configuring the devices for testing and in accessing the requisite device control and resulting data. All of the devices will be required to have appropriate software controls to perform the tests under a controlled environment.

As devices are submitted to the FCC laboratory as test samples, they will first be technically characterized through the measurement of standard RF parameters such as the occupied bandwidth (OBW), fundamental power, and unwanted emission levels associated with the transmitted signals, and the sensitivity and noise floor levels associated with the receivers. The measured parameters will be compared with appropriate specifications (*e.g.*, IEEE 802.11ac, IEEE 802.11p, ASTM E2213, FCC regulations, and other applicable rules and standards).

Once the characterization measurements are complete, DSRC links will be established to simulate simple RSU-to-OBU and OBU-to-OBU two-way wireless communication. Upon successful establishment of such communication links, and before any interference signals are introduced, measurements will be performed to establish base-line values for parameters such as SNR (signal-to-noise ratio), PER (packet error rate), network delay and the variance in network delay (also known as jitter).

After the completion of baseline testing, a single U–NII signal, or simulation thereof (*e.g.*, band-limited additive white Gaussian noise (AWGN)), will be introduced on a co-tuned basis (*i.e.*, with coincident center frequencies) initially at a very low power level. The U–NII power level will then be incremented (1–3 dB steps) while the designated performance parameters are monitored and recorded. The results of this test will provide the data necessary to determine the DSRC tolerance to U–NII interference in a "worst-case" interference interaction (*i.e.*, co-tuned operation). It is recognized that U–NII transmitters, particularly those used to provide Wi-Fi services, can utilize variable OBW's (occupied bandwidths) and are capable of implementing several combinations of data modulation and coding rate (Modulation-Coding Scheme or MCS) on a variable basis, depending on the transmission channel conditions. FCC experience gained from developing and instituting compliance measurement of U–NII transmissions suggest that there are only subtle differences in the relevant signal parameters among these combinations; however, measurements will be performed using different combinations of these variable parameters in an effort to identify a "worst-case" mode and to quantify the differential magnitude of the effect on a DSRC receiver.

The procedure described above will then be repeated with the U–NII transmit signal re-tuned to the center frequency of each of the two adjacent DSRC channels relative to the DSRC-occupied channel (*i.e.*, upper and lower first adjacent channels). This measurement will produce data that can be used to determine the adjacent-channel rejection capability of a DSRC receiver which in turn can be used to inform an assessment of EMC assuming adjacent-channel operation. Dependent upon the results of this test and time constraints, this process may be repeated with the U–NII device tuned to DSRC channels further removed (in frequency) from the DSRC-occupied channel (*i.e.*, second adjacent channel interaction).

Once these tests are complete, the potential effects of network loading (LAN and DSRC) and interference aggregation will be examined by the addition of supplementary DSCR links and U–NII devices to the test configuration as the availability of devices permit.

Similar procedures, with modifications based on the protocols implemented by the prototype U–NII sample devices, will be used to evaluate the effectiveness and reliability of any interference mitigation capabilities (*e.g.*, DSRC signal detection methods, Clear Channel Assessment capability of U–NII devices, and other mitigation methods not yet defined).

3.0 Summary

The plan presented herein represents a "high-level" approach to the Phase I testing intended to acquire the empirical data necessary to further an examination of the potential for achieving EMC between U–NII devices and DSRC operations under the FCC proposal to share the 5.9 GHz frequency band. The proposed test procedures and methodologies will be further refined as more information becomes available with respect to the U–NII and DSRC devices anticipated to share this spectrum. The FCC requests relevant technical input in the form of comments from other concerned parties in the interest of enhancing and/or improving this test plan proposal.

Conclusion

The FCC, in consultation with the DoT and NTIA, will continue to collaborate, as well as engage with other stakeholders, and may make adjustments to the plan as it evolves. Our goal is to collect the relevant empirical data for use in analyzing and quantifying the interference potential introduced to DSRC receivers from unlicensed transmitters operating simultaneously in the 5.850–5.925 GHz band. The Commission anticipates that the tests conducted to date, combined with the results of the three-phase test plan described above, will provide reliable, real-world data on the performance of unlicensed devices designed to avoid interfering with DSRC operations in the 5.850–5.925 GHz band.

Procedural Matters

Ex Parte Rules

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Filing Requirements

Comments are due on or before July 7, 2016, and reply comments are due on or before July 22, 2016. All filings must refer to ET Docket No. 13–49.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Regulatory Flexibility Analysis

The *NPRM* included an Initial Regulatory Flexibility Analysis (IRFA). That IRFA invited comment "on making available an additional 195 megahertz of spectrum in the 5.35–5.47 GHz and 5.85–5.925 GHz bands for U–NII use." This *document* seeks further comment on some of the proposals initially raised

in the *NPRM* and alternative proposals submitted into the record of this proceeding. We request supplemental comments on the IRFA in light of the details and issues raised in this *document*. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *document* as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act Analysis

The *NPRM* included a separate request for comment from the general public and the Office of Management and Budget on the information collection requirements contained therein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, and the Small Business Paperwork Relief Act of 2002, Public Law 107–198. As noted above, this *document* seeks further comment on some proposals and alternatives initially raised in the *NPRM*. We invite supplemental comment on these requirements in light of the details and issues raised in this document.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–13510 Filed 6–6–16; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 205, 212, 237, and 252

[Docket DARS–2015–0055]

RIN 0750–AI78

Defense Federal Acquisition Regulation Supplement: Food Services for Dining Facilities on Military Installations (DFARS Case 2015–D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense.

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide policy and procedures for soliciting offers, evaluating proposals, and awarding contracts for the operation of a military dining facility pursuant to the Randolph-Sheppard Act; the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; the Joint Report and Policy Statement issued pursuant to the NDAA for FY 2006; and the Committee for Purchase from People Who Are Blind or Severely Disabled statute.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 8, 2016, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS case 2015–D012 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015–D012" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015–D012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015–D012" on your attached document.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

In order to clarify the application of the Randolph-Shepard Act (R–S Act) (20 U.S.C. 107, *et seq.*) and the Committee for Purchase from People Who Are Blind or Severely Disabled (CFP) statute (41 U.S.C. 8501, *et seq.*) formerly known as the Javits-Wagner-O'Day (JWOD) Act, to the operation and management of military dining facilities, DoD is proposing to amend the DFARS to implement the provisions of the Joint Report and Policy Statement (Joint Policy Statement) issued by DoD, the Department of Education (DoED), and the CFP pursuant to section 848 of the NDAA for FY 2006.

The Joint Explanatory Statement to Accompany the NDAA for FY 2015 requested that DoD prescribe implementing regulations for the application of the R–S Act and the CFP statute to contracts awarded for the operation of military dining facilities, and that the regulations address DoD contracts not covered by section 856 of the NDAA for FY 2007.

Pursuant to the Joint Policy Statement, the R–S Act applies to contracts for the operation of a military dining facility, also known as full food services, while the CFP statute applies to contracts and subcontracts for dining support services (including mess attendant services).

The CFP statute, implemented in FAR subpart 8.7, requires Federal agencies to acquire from participating nonprofit agencies all supplies or services on the Procurement List established by the CFP. The purpose of the CFP statute is to provide employment opportunities for people who are blind or have other severe disabilities. If a product or service is on the Procurement List, 41 U.S.C. 8504(a)requires the procuring agency to procure that product or service either from a qualified nonprofit agency for the blind or a qualified nonprofit agency for the severely disabled in accordance with CFP regulations. However, 41 U.S.C. 8504(b) provides an exception to section 8504(a) for a product that is available from an industry established under 18 U.S.C. 307 (Federal Prison Industries) and shall be procured from that industry pursuant to 18 U.S.C. 4124.

Section 107(b) of the R–S Act establishes a priority authorizing blind persons, licensed by a State licensing agency (SLA) to operate one or more vending facilities, wherever feasible, on Federal properties. Section 107d–3(e) of the R–S Act requires the Secretary of Education (the Secretary) to promulgate regulations (see 34 CFR 395.33) establishing a priority for the operation of cafeterias when the Secretary determines on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of high quality comparable to that currently provided employees.

Pursuant to 34 CFR 395.33(a), the priority is afforded to the SLA when the Secretary determines, in consultation with the contracting officer, that the operation can be provided at a reasonable cost, with food of a high quality that is comparable to the food currently provided to employees. 34 CFR 395.33(b) requires Federal contracting officers to consult with the Secretary (see 395.33(a)) when the contracting officer has determined that an SLA's response to a solicitation for the operation of a cafeteria is within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award. The evaluation criteria established in a solicitation may include sanitation practices, personnel, staffing, menu pricing, and portion sizes, menu variety, budget, and accounting practices.

During the 1990s, confusion arose as to whether contracts for food services at military dining facilities should be subject to the CFP statute or the R–S Act. There was also confusion as to whether the SLA must be awarded a contract if its proposal is within the competitive range. In order for an SLA's proposal to be selected, the proposal must not only be in the competitive range, but also be ranked among those proposals which have a reasonable chance of being selected for final award. Placement in the competitive range alone does not mean an offer has been found competitive, comparable, acceptable, or reasonable for final award.

In order to resolve the confusion, section 848 of the NDAA for FY 2006 required DoD, DoED, and the CFP to issue the Joint Policy Statement, discussed below in section II.A. Since issuance of the Joint Policy Statement in 2006, the definition of "operation of a military dining facility" has been interpreted inconsistently. This rule proposes to implement the Joint Policy Statement which defines "operation of a military dining facility" to mean "the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42." We invite comments on the interpretation of this definition.

II. Discussion and Analysis

The rule proposes to locate the DFARS guidance for food services in DFARS part 237, Service Contracting, along with the current guidance for contracting for various types of services such as educational services, laundry and dry cleaning, and mortuary services. Because the food services policy emphasizes the R–S Act requirement for competition and potentially affects more than one category of contract source, the new guidance is more appropriately placed in the section on services. The proposed rule amends the DFARS to clarify the application of the R–S Act and the CFP statute to contracts for the operation and management of military dining facilities.

A. Joint Policy Statement

Paragraph 1 of the Joint Policy Statement provides that defense appropriations shall be used to accomplish the defense mission. This mission shall be carried out by providing value and accountability to the taxpayers as well as supporting socioeconomic programs to the maximum extent practicable under the law. DoD has a military mission to maintain some level of in-house food service and military dining facility managerial capabilities to enable forward deployment operations, training, rotation, and career progression for military members. Contract services must enable DoD to feed the troops high quality food at a cost effective price.

Paragraph 2 states that "the Secretaries of the Military Departments concerned, as defined in 10 U.S.C. 101(a)(9), shall have the discretion to define requirements (*e.g.,* contract statements of work, assignment of tasks and functions among workers in a facility) and make procurement decisions concerning contracting for military dining support services and the operation of a military dining facility and shall ensure that procurement decisions support the readiness of the Armed Forces."

Paragraph 3 recommends the enactment of legislation to create a "no-poaching" provision that would maintain contract opportunities current at that time. Section 856 of the NDAA for FY 2007 established the recommended "no-poaching" rule for contracts in effect at the date of enactment of section 856 (October 16, 2006).

Paragraph 4 establishes rules for new contract awards that were not covered by the "no-poaching" rule. Pursuant to subparagraph 4.a., new contracts will be competed under the R–S Act when "the [DoD] solicits a contractor to exercise management responsibility and day-to-day decision making for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42."

Subparagraph 4.b. provides that "[i]n all other cases, the contracts will be set aside for JWOD performance (or small businesses if there is no JWOD nonprofit agency capable or interested) when [DoD] needs dining support services (*e.g.,* food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess attendants, or other services that support the operation of a dining facility) where [DoD] food service specialists exercise management responsibility over and above those contract administration functions described in FAR part 42."

Subparagraph 4.c. provides that "[t]he presence of military personnel performing dining facility functions does not necessarily establish the inference that the Government is exercising management responsibility over that particular dining facility."

Paragraph 5 provides that "[i]n accordance with FAR part 8, if dining support services are on or will be placed on the Procurement List, any State licensing agency that is awarded a contract for operation of that military dining facility under the [R–S Act] shall award a subcontract for those services." DoD has implemented this requirement consistent with FAR clause 52.208–9, Contractor Use of Mandatory Sources of Supply or Services.

Paragraph 6 provides that "[i]n order to promote economic opportunities for blind vendors and to increase the number of blind persons who are self-supporting, the [R–S Act] requires that State licensing agencies provide blind persons with education, training, equipment and initial inventory suitable for carrying out their licenses to operate vending facilities in Federal buildings. Accordingly, through its rule-making procedures, [DoED] will encourage State licensing agencies who assert the [R–S Act] 'priority' for a multi-facility contract for operation of military dining facilities to assign at least one blind person per military dining facility in a management role."

Paragraph 7 provides that "[t]he DOD shall continue to be able to use the 'Marine Corps model' for regional contracts for operation of military dining facilities at several installations or across State lines. In this model, the DoD may designate individual dining facilities for subcontract opportunities under the Small Business Act, the CFP statute, or other preferential procurement programs, and may designate some facilities in which military food service specialists may train or perform cooking or other dining support services in conjunction with contractor functions. State licensing agencies are eligible under the [R–S Act] to bid on contracts based upon this model."

Paragraph 8 provides guidance for affording the R–S Act priority. DoD contracts for operation of a military dining facility shall be awarded as the result of full and open competition,

unless there is a basis for a non-competitive award to a single source and resulting direct negotiations with that source. When competing such contracts, DoD contracting officers shall give SLAs priority when: (1) The SLA has demonstrated it can provide such operation with food of high quality and at a fair and reasonable price and with food of high quality comparable to that available from other providers of cafeteria services and comparable to the quality and price of food currently provided to military service members; and (2) the SLAs final proposal revision, or initial proposal if award is made without discussions, is among the highly ranked final proposal revisions with a reasonable chance of being selected for award.

Paragraph 8 also provides that "[t]he term 'fair and reasonable price' means that the State licensing agency's final proposal revision does not exceed the offer that represents the best value (as determined by the contracting officer after applying the evaluation criteria set forth in the solicitation) by more than five percent of that offer, or one million dollars, whichever is less, over all of the performance periods required by the solicitation." For the reasons explained in section II.B. below, this dollar limitation is not included in the DFARS.

Paragraph 9 provides that "[t]he contracting officer may award to other than the State licensing agency when the head of the contracting activity determines that award to the State licensing agency would adversely affect the interests of the United States, and the Secretary of Education approves the determination in accordance with the [R–S Act]." DoED has implemented this policy in its regulations (see 34 CFR 395.30).

Paragraph 10 committed the signatory parties to implementing the Joint Policy Statement in complementary regulations.

B. Proposed Changes to DFARS.

The proposed rule proposes to amend DFARS 205.207(a) to require that the advertisement of a solicitation for the operation of a military dining facility in the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands shall state that the solicitation is subject to the R–S Act.

The rule proposes to amend DFARS 212.301 to add a new paragraph (c)(ii) to state that when issuing a solicitation for the operation of a military dining facility, as defined in 202.101, include in the evaluation criteria, factors or subfactors for determining if the SLA proposal is comparable to the quality and price available from other providers.

The proposed rule adds a new DFARS subpart 237.7X to address contracts for services that support military dining facility operation and contracts for the operation of military dining facilities. The "scope" statement in DFARS 237.7X00 explains that subpart 237.7X provides policy and procedures for soliciting and awarding contracts consistent with the R–S Act, the CFP statute, section 856 of the NDAA for FY 2007, and the Joint Policy Statement.

The definitions in DFARS 202.101 implement the Joint Policy Statement paragraphs 4.a. and 4.b., which identified when a contract is for the operation of a military dining facility as distinguished from "dining support services." "Mess attendant services" (also known as "dining facility attendant services") are a subset of "dining support services." Specifically, the definition of "military dining facility" that was enacted in section 856 of the NDAA for FY 2007 and the definition of "State licensing agency" described in the R–S Act regulations at 34 CFR 395.1(v) are incorporated in the DFARS at 202.101 and 237.7X01, respectively. The proposed rule also defines "operation of a military dining facility," which is added to DFARS 202.101.

DFARS 237.7X02(a) implements paragraph 4.a. of the Joint Policy Statement by stating that all contracts for the operation of a military dining facility in the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands are subject to the R–S Act. By use of the word "all," DFARS 237.7X02(a) means these contracts are subject to the R–S Act even if the State licensing agency does not submit a proposal. DFARS 237.7X02(a) also implements paragraph 8 of the Joint Policy Statement and states the contracts for operation of a military dining facility shall be awarded using full and open competition (see 10 U.S.C. 2305). DFARS 237.7X02(b) states that contracts for dining support services are subject to the CFP statute, which is exempt from the Competition in Contracting Act (CICA), and provides a cross reference to the implementing procedures at FAR subpart 8.7.

DFARS 237.7X03 provides guidelines for developing evaluation criteria for determining if the State licensing agency proposal is comparable to the quality and price available from other providers.

DFARS 237.7X04 adds a prescription for the proposed solicitation provision at DFARS 252.237–70XX, Operation of a Military Dining Facility. The prescription states that the provision will apply to solicitations, including solicitations using FAR part 12 procedures, for the acquisition of commercial items for operation of a military dining facility within the 50 states, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

The solicitation provision at DFARS 252.237–70XX, Operation of a Military Dining Facility, notifies offerors when a solicitation is subject to the R–S Act. The solicitation provision defines "operation of a military dining facility" and other terms necessary for notifying offerors about the applicability of the R–S Act to the solicitation. A State licensing agency will be given priority for award of the contract if it submits an offer that: (1) Demonstrates it can provide the operation with food of high quality and at a fair and reasonable price comparable to that available from other providers, and (2) has been judged to have a reasonable chance of being selected for award pursuant to the evaluation criteria in the solicitation.

In order for a SLA to receive the priority for operation of a cafeteria, 34 CFR 395.33(b) requires that: (1) The SLA's proposal must be within the "competitive range," and (2) must be ranked among those proposals that have a reasonable chance of being selected for final award.

Under FAR 15.306(c), the "competitive range" is established for the purpose of identifying those offerors with whom the procuring agency will open discussions. If discussions are to be conducted, CICA (see 10 U.S.C. 2305) requires that the procuring agency shall conduct discussions with all responsible offerors who submitted proposals determined to be in the competitive range, but as previously stated, inclusion in the competitive range is not sufficient to trigger the R–S Act priority for an SLA proposal. The SLA's proposal must also have a reasonable chance of selection for final award.

As a result, and as required by CICA and 34 CFR 395.33, each DoD solicitation for operation of a military dining facility must state its own evaluation criteria and basis for award independently derived for that individual location and acquisition. The solicitation will specify the means by which the statutory priority will be afforded to the SLA's proposal, if it satisfies the evaluation criteria, the statement of work, and the requirements of the solicitation. Because each solicitation must be developed independently, the DFARS will not arbitrarily establish a price limitation that would apply to all solicitations.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule proposes to create a new provision, DFARS 252.237–70XX, Operation of a Military Dining Facility, to notify offerors when a solicitation is subject to the R–S Act. The R–S Act is not a covered law under 41 U.S.C. 1905–1907, because it was enacted prior to October 13, 1994. Therefore, 41 U.S.C. 1905–1907 do not exempt solicitations and contracts at or below the simplified acquisition threshold and for the acquisition of commercial items from the provisions of the R–S Act.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed rule will provide policy and procedures for soliciting and awarding contracts for the operation of a dining facility on a military installation pursuant to: (1) The Randolph-Sheppard Act (R–S Act); (2) the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; (3) the Joint Report and Policy Statement issued pursuant to the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006; and (4) the Committee for Purchase from People Who Are Blind or Severely Disabled (CFP) statute (41 U.S.C. 8501, *et seq.*).

The objective of the proposed rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the application of the R–S Act and the CFP statute, formerly known as the Javits-Wagner-O'Day (JWOD) Act, to the operation and management of military dining facilities.

The R–S Act and the CFP statute have priority over the Small Business Act; therefore, the proposed rule has the potential to impact small businesses that provide these services. A review of contract awards and purchase orders in the Federal Procurement Data System for the period fiscal year 2011 through June 1, 2015, revealed that DoD made five new awards, including one purchase order, for dining services to five unique vendors. Of those awards, one award was made to a small business concern. Therefore, this proposed rule is not anticipated to impact a significant number of small entities.

The proposed rule does not impose any new reporting, recordkeeping, or other information collection requirements. The proposed rule is consistent with the DoED regulations that implement the R–S Act (see 34 CFR 395.1, *et seq.*).

Concerning dining support services (including mess attendant services), contracting officers shall follow the standard Federal Acquisition Regulation (FAR) subpart 8.7 and DFARS subpart 208.7 procedures for procuring dining support services pursuant to the CFP statute and, if applicable, the FAR part 19 and DFARS part 219 rules for small business set-asides.

Concerning the R–S Act priority for operation of a military dining facility, the proposed rule requires full and open competition. Competition is the best alternative for minimizing the impact on small entities.

DoD will consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D012), in correspondence.

VI. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 202, 205, 212, 237, and 252

Government procurement.

Jennifer L. Hawes,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 205, 212, 237, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 202, 205, 212, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding, in alphabetical order, the definitions of "Military dining facility" and "Operation of a military dining facility" to read as follows:

202.101 Definitions.

* * * * *

Military dining facility means a facility owned, operated, leased, or wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or similar dining facility operated with appropriated funds for the purpose of providing meals to members of the Armed Forces.

* * * * *

Operation of a military dining facility means the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.

* * * * *

PART 205—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 205.207 by adding paragraph (a)(ii) to read as follows:

205.207 Preparation and transmittal of synopses.

(a) * * *

(ii) When advertising for the operation of a military dining facility, as defined in 202.101, within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands, the synopsis shall state that the solicitation is subject to

the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*) (see 237.7X03).

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by—

■ a. Redesignating paragraph (c) as paragraph (c)(i);

■ b. Adding paragraph (c)(ii);

■ c. Adding paragraph (f)(xv)(C).

The additions read as follows:

212.301 Solicitation provisions and contract clauses for acquisition of commercial items.

(c)(i) * * *

(ii) When issuing a solicitation for the operation of a military dining facility, as defined in 202.101, include in the evaluation criteria factors or subfactors for determining if the State licensing agency proposal is comparable to the quality and price available from other providers (see 237.7X03).

* * * * *

(f) * * *

(xv) * * *

(C) Use the provision at 252.237–70XX, Operation of a Military Dining Facility, as prescribed in 237.7X04.

* * * * *

PART 237—SERVICE CONTRACTING

■ 5. Add subpart 237.7X to read as follows:

Subpart 237.7X—Services for Military Dining Facilities

Sec.
237.7X00 Scope.
237.7X01 Definitions.
237.7X02 Policy.
237.7X03 Procedures for Randolph-Sheppard Act contracts.
237.7X04 Solicitation provision.

Subpart 237.7X—Services for Military Dining Facilities

237.7X00 Scope.

This subpart provides policy and procedures for soliciting and awarding contracts pursuant to—

(a) The Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*);

(b) The Committee for Purchase from People Who are Blind or Severely Disabled statute (41 U.S.C. 8501, *et seq.*);

(c) Section 856 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364); and

(d) The Joint Report and Policy Statement to Congress issued pursuant to section 848 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163).

237.7X01 Definitions.

As used in this subpart—

Dining support services means food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess attendant services, or any and all other services that are encompassed by, are included in, or otherwise support the operation of a military dining facility, other than the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility.

Mess attendant services (or "dining facility attendant services") means those activities required to perform food line support such as setting up the serving lines, serving food and tearing down the serving line, preserving food for subsequent meals, and performing janitorial and custodial duties within dining facilities, including sweeping, mopping, scrubbing, trash removal, pot and pan cleaning, dishwashing, waxing, stripping, buffing, window washing, and other sanitation-related functions.

State licensing agency means the State agency designated by the Secretary of Education under 34 CFR part 395 to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

237.7X02 Policy.

(a) *Randolph-Sheppard Act (20 U.S.C. 107 et seq.).* (1) All contracts for the "operation of military dining facilities" (as defined at 202.101) within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands are subject to the Randolph-Sheppard Act. Except as provided in paragraph (a)(2) of this section, follow the procedures at 237.7X03.

(2) The procedures at 237.7X03 do not apply to any food services or related services that are identified on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

(b) *Committee for Purchase from People Who Are Blind or Severely Disabled statute (41 U.S.C. 8501 et seq.).* Contracts for dining support services (including mess attendant services) in a military dining facility where DoD food services specialists exercise management responsibility over and above those contract administration functions described in FAR part 42 are subject to the Committee for Purchase from People Who Are Blind or Severely Disabled statute. See FAR subpart 8.7.

237.7X03 Procedures for Randolph-Sheppard Act contracts.

(a) When issuing a solicitation for the operation of a military dining facility, include in the evaluation criteria factors or subfactors for determining if the State licensing agency proposal is comparable to the quality and price available from other providers.

(b) A State licensing agency shall be afforded priority for award of the contract if the State licensing agency has submitted a proposal that—

(1) Demonstrates that the operation of the military dining facility can be provided with food of a high quality and at a fair and reasonable price comparable to that available from other providers; and

(2) Has a reasonable chance of being selected for award as determined by the contracting officer after applying the evaluation criteria contained in the solicitation.

237.7X04 Solicitation provision.

(a) Except as provided in paragraph (b) of this section, use the provision at 252.237–70XX, Operation of a Military Dining Facility, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that are for operation of a military dining facility within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) Do not use the provision at 252.237–70XX in solicitations for any food services or related services that are identified on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.237–70XX to read as follows:

252.237–70XX Operation of a Military Dining Facility.

As prescribed in 237.7X04, use the following provision:

OPERATION OF A MILITARY DINING FACILITY (DATE)

This solicitation is for the operation of a military dining facility.

(a) *Definitions.* As used in this provision—

Military dining facility means a facility owned, operated, leased, or wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or similar dining facility operated with appropriated funds for the purpose of providing meals to members of the Armed Forces.

Operation of a military dining facility means the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.

State licensing agency means the State agency designated by the Secretary of Education under 34 CFR part 395 to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(b) A State licensing agency will be afforded priority for award of the contract if the State licensing agency has submitted a proposal that—

(1) Demonstrates the operation of the military dining facility can be provided with food of a high quality and at a fair and reasonable price comparable to that available from other providers; and

(2) Is judged to have a reasonable chance of being selected for award as determined by the contracting officer after applying the evaluation criteria contained in the solicitation.

(End of provision)

[FR Doc. 2016–13257 Filed 6–6–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160412328–6446–01]

RIN 0648–BF97

Atlantic Highly Migratory Species; North and South Atlantic 2016 Commercial Swordfish Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In this rule, NMFS proposes to adjust the 2016 fishing season quotas for North and South Atlantic swordfish based upon 2015 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13–02 and 13–03. The rule also discusses our intent to simplify the annual North and South Atlantic quota adjustment process when the adjustment simply applies a previously-adopted formula or measure. Finally, the proposed rule would remove extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. This proposed rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by July 7, 2016. An operator-assisted, public conference call and webinar will be held on June 29, 2016, from 2:00 p.m. to 4:00 p.m., EST.

ADDRESSES: The conference call information is phone number 1 (888) 469–1171; participant passcode 6508132. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar go to: *https://noaa-meets.webex.com/noaa-meets/j.php?MTID=mc0c72c596c13e8dde4e1d2edf8d8ebd2*, event password: swGMiC3d. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA–NMFS–2016–0051, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0051*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Presentation materials and copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for North Atlantic swordfish; the 2007 EA, RIR, and FRFA for South Atlantic swordfish; and the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan and associated documents—are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Steve Durkee by phone at 202–670–6637.

FOR FURTHER INFORMATION CONTACT: Steve Durkee by phone at 202–670–6637 or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations.

North Atlantic Swordfish Quota

At the 2013 ICCAT annual meeting, Recommendation 13–02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13–02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits underharvest carryover to 15 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest from 2015 to 2016. This proposed rule would establish the U.S. adjusted quota for the 2016 fishing year to account for the annual quota transfer to Mauritania and the 2015 underharvest.

The preliminary estimate of North Atlantic swordfish underharvest for 2015 was 2,181.6 mt dw as of December

31, 2015; therefore, NMFS is proposing to carry forward 440.6 mt dw, the maximum carryover allowed under Recommendation 13–02. The 2,937.6 mt dw baseline quota would be reduced by the 18.8 mt dw annual quota transfer to Mauritania and increased by the underharvest carryover of 440.6 mt dw, resulting in a proposed adjusted North Atlantic swordfish quota for the 2016 fishing year of 3,359.4 mt dw (2,937.6 − 18.8 + 440.6 = 3,359.4 mt dw). From that proposed adjusted quota, 50 mt dw would be allocated to the reserve category for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw (3,359.4 − 50 − 300 = 3,009.4 mt dw) for the directed category, which would be split equally between two seasons in 2016 (January through June, and July through December) (Table 1).

The preliminary landings used to calculate the proposed adjusted quota for North Atlantic swordfish are based on commercial dealer reports and reports by anglers in the HMS Non-Tournament Recreational Swordfish and Billfish Landings Database and the Recreational Billfish Survey received as of December 31, 2015, and do not include dead discards or late landings reports. The estimates are preliminary and have not yet undergone quality control and assurance procedures. NMFS will adjust the quotas in the final rule based on updated data, including dead discard data, if available. Note that the United States has carried over the full amount of underharvest allowed under ICCAT recommendations for the past several years and NMFS does not expect fishing activity to vary significantly from these past years. For the final adjusted quota to deviate from the proposed quota, the sum of updated landings data (from late reports) and dead discard estimates would need to reach or exceed 1,741.0 mt dw, which is the difference between the current estimate of the 2015 underharvest (2,181.6 mt dw) and the maximum carryover cap of 440.6 mt dw (2,181.6 − 440.6 = 1,741.0 mt dw). In 2013 (the most recent year of dead discard data), dead discards were estimated to equal 90.2 mt dw and late reports equaled 143.0 mt dw. Consequently, NMFS does not believe updated data and dead discard estimates would alter the proposed adjusted quota. Thus, while the 2016 proposed North Atlantic swordfish quota is subject to further adjustments and this rule notifies the public of that potential change, NMFS does not expect the final quota to change from the proposed quota on this basis.

For clarity, the proposed rule would remove extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. Under prior ICCAT recommendations, 25 percent of the unused annual baseline could be carried over to the subsequent year. ICCAT Recommendation 13–02 changed the allowable carryover to 15 percent from 2015 on. The proposed change would simplify the regulatory text by removing the reference to the 25 percent carryover allowance.

South Atlantic Swordfish Quota

In 2013, ICCAT Recommendation 13–03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 13–03 limits the amount of South Atlantic swordfish underharvest that can be carried forward, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13–03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

In 2015, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2015. The adjusted 2015 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2016. NMFS is proposing to carry forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota would then be reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2016 fishing year.

As with the landings and proposed quota for North Atlantic swordfish, the South Atlantic swordfish landings and proposed quota are based on dealer reports received as of December 31, 2015, do not include dead discards or late landings reports, and are preliminary landings estimates that have not yet undergone quality control and assurance procedures. NMFS will adjust the quotas in the final rule based on any updated data, including dead discard data, if available. Thus, the 2016 proposed South Atlantic swordfish quota is subject to further adjustments. However, the United States has only landed South Atlantic swordfish twice in the past several years (0.2 mt dw in April 2010 and 0.1 mt dw in April 2013) and therefore does not anticipate additional landings or discard data that would change the final quota from the proposed quota.

TABLE 1—2016 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

	2015	2016
North Atlantic Swordfish quota (mt dw)		
Baseline Quota	2,937.6	2,937.6.
International Quota Transfer	(−)18.8 (to Mauritania)	(−)18.8 (to Mauritania).
Total Underharvest from Previous Year+	1,337.4	2,181.6.
Underharvest Carryover from Previous Year+	(+) 440.6	(+) 440.6.
Adjusted Quota	3,359.4	3,359.4.
Quota Allocation		
Directed Category	3,009.4	3,009.4.
Incidental Category	300	300.
Reserve Category	50	50.
South Atlantic Swordfish quota (mt dw)		
Baseline Quota	75.2	75.2.
International Quota Transfers*	(−)75.2	(−)75.2.
Total Underharvest from Previous Year+	75.1	75.1.
Underharvest Carryover from Previous Year+	75.1	75.1.
Adjusted quota	75.1	75.1.

+ Allowable underharvest carryover is now capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. The available 2014 and 2015 underharvests are based on data current as of December 31, 2015; they do not include dead discards, late reports, or changes to the data as a result of quality control adjustments.

* Under Recommendation 13–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

Modification of the Annual Quota Adjustment Public Notification Process

In the past, NMFS annually has published proposed swordfish quota specifications, allowed for a public comment period, and then issued a final rule. We have done this whether we are adopting new quotas/otherwise altering conservation and management measures pursuant to an ICCAT recommendation or simply adjusting the swordfish quotas based on formulas or measures codified in regulations adopted through notice-and-comment rulemaking (see, *e.g.*, regulatory text at 50 CFR 635.27(c)). Where NMFS is simply administering a pre-established formula that is already embodied in regulations, it has limited discretion over implementation. Inviting public notice and comment on these actions may have unnecessarily confused the regulated community, who has not understood the scope of these actions and our limited discretion to make changes to the quota in these situations. Thus, past public comments have included requests that go well beyond the scope of these actions, including suggestions to carry over underharvests in an amount exceeding the carryover limit, which would be inconsistent with ICCAT recommendations; requests not to carry over any underharvests, which would be inconsistent with the established regulatory formulas; and requests to shut down the commercial swordfish fishery.

To address public confusion and streamline the regulatory process, NMFS notifies the public that it intends to annually adjust the North and South Atlantic swordfish quotas through a final rule without an opportunity for public comment, as appropriate, when such adjustments simply apply a previously-adopted formula and are administrative in nature. NMFS would take such action consistent with requirements of the Administrative Procedure Act.

Ecological and Socioeconomic Impacts

The proposed North Atlantic swordfish quota adjustments would result in an adjusted quota for 2016 substantially similar to that analyzed in the 2012 EA, RIR, and FRFA and implemented in 2013 and 2014, and is the same as the adjusted quota implemented in 2015. The quota analyzed in the 2012 EA, RIR, and FRFA was 3,559.2 mt dw and the proposed 2016 adjusted quota is 3,359.4 mt dw; a decrease of 199.8 mt dw. The 2016 North Atlantic swordfish proposed quota is not expected to increase fishing effort, protected species interactions, or environmental effects in a manner not considered in the 2012 EA and would, in fact, cap the quota at a level slightly lower than that analyzed in the 2012 EA and thus likely have fewer environmental effects or protected species interactions.

The 2016 proposed quota differs slightly from that quota analyzed in the 2012 EA for two reasons. First, Recommendation 13–02 reduces the underharvest carryover limit beginning in 2015 from 25 percent of the base quota to 15 percent. In the 2012 EA, the analysis took into account North Atlantic Swordfish underharvest carryovers of up to 25 percent. Since the lower underharvest carryover limit is within this range (*i.e.*, it is less than 25 percent), the quota that would be implemented consistent with the reduced carryover provision has been previously analyzed. Furthermore, once effective, the reduced underharvest carryover limit would result in a lower overall North Atlantic swordfish adjusted quota.

The second reason the 2012 quota is different than the 2016 proposed adjusted quota is Recommendation 13–02's elimination of the 112.8 mt dw quota transfer to Morocco and the introduction of a lower 18.8 mt dw quota transfer to Mauritania. No additional NEPA analysis is needed for the change in international quota transfers because—in concert with the reduction in the underharvest carryover limit—these changes are not expected to increase fishing effort, affect protected species interactions, or environmental effects beyond those considered in the existing NEPA analyses. Thus, NMFS has determined that the North Atlantic swordfish quota portion of the specifications and impacts to the human environment as a result of the proposed quota adjustments do not require additional NEPA analysis beyond that discussed in the 2012 EA.

Similarly, NMFS analyzed—in the EA, RIR, and FRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929)—the impacts of harvesting the same amount of annual baseline quota being proposed here in the 2016 South Atlantic swordfish specifications. The proposed South Atlantic swordfish quota adjustments would not change overall quotas and are not expected to increase fishing effort, protected species interactions, or environmental effects beyond those analyzed in the 2007 EA. While ICCAT SCRS conducted a stock assessment for South Atlantic swordfish in 2013, that assessment did not alter the stock status or TAC from when 2007 EA analyses were conducted and no additional information about the environment has become available that would alter the analyses. Therefore, because there would be no changes to the South Atlantic swordfish management measures in this proposed rule, and no changes to the affected environment or any environmental effects that have not been previously analyzed, NMFS has determined that the South Atlantic swordfish quota portion of the specifications and impacts to the human environment as a result of the proposed quota adjustments do not require additional NEPA analysis beyond that analyzed in the 2007 EA.

Request for Comments

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. During the comment period, NMFS will hold one conference call and webinar for this proposed rule. The conference call and webinar will be held on June 29, 2016, from 2:00–4:00 p.m. EST. Please see the **DATES** and **ADDRESSES** headings for more information.

The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (*e.g.*, all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not may be removed from the conference call.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, the Atlantic Tuna Convention Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Previously, NMFS determined that proposed rules to implement the North Atlantic swordfish quota framework (77 FR 25669, May 1, 2012) and South Atlantic swordfish quota framework (75 FR 35432, June 22, 2010) were consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic, including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish the 2016 North and South Atlantic swordfish quotas does not change the framework previously consulted upon; therefore, no additional consultation is required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the proposed quota adjustments are largely the same as in previous years and the United States is not expected to catch its entire quota in 2016.

As described above, this proposed rule would adjust the 2016 baseline quota for North Atlantic swordfish (January 1, 2016, through December 31, 2016) to account for 2015 underharvests, as allowable, and international quota transfers per § 635.27(c)(1)(i) and (c)(3)(ii) based on ICCAT Recommendation 13–02. The United States can carry over 2015 underharvest at a level not to exceed 15 percent of its baseline quota. Additionally, ICCAT Recommendation 13–02 stipulates that the United States transfer 18.8 mt dw (25 mt ww) of quota to Mauritania.

In 2015, U.S. fishermen landed 1,177.8 mt dw of North Atlantic swordfish as of December 31, 2015, leaving 2,181.6 mt dw of quota underharvest. This underharvest amount exceeds the maximum underharvest carryover of 440.6 mt dw; therefore, only the maximum amount of 440.6 mt dw of 2015 underharvest would be carried over and added to the 2016 baseline quota. The quota transfer of 18.8 mt dw to Mauritania would be deducted, leaving a proposed 2016 North Atlantic swordfish adjusted quota of 3,359.4 mt dw (Table 1).

This proposed rule would also adjust the 2016 baseline quota for South Atlantic swordfish (January 1, 2016, through December 31, 2016) to account for 2015 underharvests and international quota transfers per § 635.27(c)(1)(ii) and (c)(3)(ii) based on ICCAT Recommendation 13–03. The United States can carry over 2015 underharvest at a level not to exceed 100 percent of the baseline quota. Additionally, ICCAT Recommendation 13–03 stipulates that the United States transfer the following quota amounts to other countries: 37.6 mt dw (50 mt ww) to Namibia; 18.8 mt dw (25 mt ww) to Côte d'Ivoire; and 18.8 mt dw (25 mt ww) to Belize.

In 2015, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2015. The adjusted 2015 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2016. NMFS is proposing to carry forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota would then be reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2016 fishing year. (Table 1).

The commercial swordfish fishery is comprised of fishermen who hold one of three swordfish limited access permits (LAPs) (*i.e.*, directed, incidental, or handgear), fishermen who hold a swordfish general commercial permit, fishermen who hold an HMS incidental squid trawl permit, fishermen who hold a commercial Caribbean small boat permit, and the related industries, including processors, bait houses, and equipment suppliers. As of October 2015, there were approximately 188 vessels with a directed swordfish LAP, 72 vessels with an incidental swordfish LAP, 83 vessels with a handgear LAP for swordfish, and 651 vessels that held a swordfish general commercial permit. Additionally, there were approximately 66 HMS incidental squid trawl permit holders, which allow vessels in the Illex squid fishery to retain up to 15 incidentally-caught swordfish while trawling for squid. A total of 20 Caribbean small boat permits were issued in 2015 as of October 2015; however, 14 of these were held by vessels in Florida where the permit is not valid. NMFS considers all participants in the commercial swordfish fishery to be small entities, based on the relevant North American Industry Classification System (NAICS) codes and size standards set by the Small Business Administration (SBA).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a "small business" if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts (revenue) not in excess of $20.5 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. NAICS is the North American Industry Classification System, a standard system used by business and government to classify business establishments into industries, according to their economic activity. The United States government developed NAICS to collect, analyze, and publish data about the economy. In addition, the Small Business Administration (SBA) has defined a small charter/party boat entity (NAICS code 487210, for-hire) as one with average annual receipts (revenue) of less than $7.5 million.

On December 29, 2015, NMFS published a final rule (80 FR 81194; December 29, 2015) to establish a single small business size standard for commercial fishing businesses (NAICS 11411) of $11 million for RFA compliance purposes only. NMFS has chosen to delay the effective date of the rule to establish a small business size until July 1, 2016. Given the length of the regulatory development process, NMFS is considering this size standard for small entities for this proposed rule given that the final rule may occur after the July 1, 2016 effective date. The new size standards do not affect analyses prepared for this action.

This action is not expected to result in a significant economic impact on the small entities subject to the quota limits. Based on the 2015 average price for swordfish of $4.07/lb (based on 2015 electronic dealer data), the 2016 North and South Atlantic swordfish baseline quotas could result in gross revenues of $26,358,268 (2,937.6 mt dw (6,476,233 lbs dw) * $4.07/lb) and $674,749 (75.2 mt dw (165,786 lbs dw) * $4.07/lb), respectively, if the quotas were fully utilized. Under the adjusted quotas of 3,359.4 mt dw (7,406,133 lbs dw) for North Atlantic swordfish and 75.1 mt dw (165,565 lbs dw) for South Atlantic swordfish, the gross revenues could be $30,142,961 and $673,850, respectively, for fully utilized quotas.

Potential revenues per vessel resulting from full utilization of the adjusted quotas could be $27,910 for the North Atlantic swordfish fishery and $3,584 for the South Atlantic swordfish fishery, considering a total of 1,080 swordfish permit holders in the North Atlantic and 188 directed permit holders that can harvest South Atlantic swordfish (only limited access directed swordfish permit holders may retain South Atlantic swordfish). The North Atlantic estimate, however, represents an average across all permit types, despite permit differences in retention limits, target species, and geographical range. For North Atlantic swordfish, directed swordfish permit holders would likely experience higher than average per-vessel ex-vessel revenues due to the use of pelagic longline gear and the lack of a per-trip retention limit, although trip expenses are likely to be relatively high. HMS incidental squid trawl permit holders would likely experience per vessel ex-vessel revenues well below those received by pelagic longline vessels due to the low retention limit per trip (15 swordfish) and because these vessels do not target swordfish and only catch them incidentally. Swordfish general commercial permit holders would likely experience lower than average per-vessel ex-vessel revenues, despite higher ex-vessel prices and lower fishing expenses. Although the proposed 2016 North Atlantic swordfish adjusted quota is 199.8 mt dw lower than the quota analyzed in the 2012 EA, U.S. fishermen in recent years have not harvested the full North Atlantic swordfish quota. Thus, the 199.8 mt dw change in the total adjusted quota is unlikely to cause any economic impacts since that portion of the quota will likely be unutilized. In the future, if the North Atlantic swordfish fishery achieves full quota utilization, economic impacts will need to be reanalyzed. For South Atlantic swordfish, only directed swordfish permit holders can land these fish; therefore, potential revenue per vessel is higher than the average for these directed swordfish permit holders since the other permit types may not land swordfish. However, U.S. fishermen rarely catch South Atlantic swordfish. Over the past 6 years, 0.3 mt dw of South Atlantic swordfish catch has been reported. The proposed 2016 South Atlantic swordfish adjusted quota is unchanged from that analyzed in the 2007 EA, thus, no new economic impacts are expected.

Because the United States' commercial swordfish fishery is not expected to catch its entire quota in 2016, the adjustments to the quota and management measures proposed in this rule will not have a significant impact on a substantial number of small entities. As a result, no initial regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 27, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.27, revise paragraphs (c)(3) to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(3) Annual adjustments. NMFS will file with the Office of the Federal Register for publication notice of the following adjustments to or apportionments of the annual quota:

(i) Adjustments to the quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan consistent with the quota provisions of paragraph (c)(1).

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 15 percent of the annual baseline quota allocation. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw). Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category.

* * * * *

[FR Doc. 2016–13367 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 109
Tuesday, June 7, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee (PAC) will meet in Wenatchee, Washington. The committee is authorized pursuant to the implementation of E–19 of the Record of Decision and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and make recommendations to promote a better integration of forest management activities between Federal and non-Federal entities to ensure that such activities are complementary. PAC information can be found at the following Web site: *http://www.fs.usda.gov/main/okawen/workingtogether/advisorycommittees.*

DATES: The meeting will be held from 9 a.m. to 3 p.m. on Wednesday, June 29, 2016.

All PAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Okanogan-Wenatchee National Forest (NF) Headquarters Office, 215 Melody Lane, Wenatchee, Washington.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Okanogan-Wenatchee NF Headquarters Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robin DeMario, PAC Coordinator, by phone at 509–664–9292 or via email at *rdemario@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide updates to members on Travel Management Planning, and
2. Forest Plan monitoring interaction and advice from PAC members.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 22, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Robin DeMario, PAC Coordinator, 216 Melody Lane, Wenatchee, Washington 98801; by email to *rdemario@fs.fed.us,* or via facsimile to 509–664–9286.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 31, 2016.

Jason Kuiken,

Deputy Forest Supervisor, Okanogan-Wenatchee National Forest.

[FR Doc. 2016–13375 Filed 6–6–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Custer, South Dakota—Rushmore Connector Trail Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Forest Service (Forest Service), Black Hills National Forest, proposes to issue authorizations for the construction, operation and maintenance of a non-motorized trail connecting the existing George S. Mickelson (Mickelson) Trail near Hill City, South Dakota, to the Blackberry Trailhead at Mount Rushmore National Memorial (the Memorial). New trail construction would extend approximately 14 miles across National Forest System (NFS) land and approximately 1.4 miles across National Park Service (NPS) lands within the Memorial. The trail would be a combination of compacted tread and elevated walkway, with a trail tread of about eight feet and corridor of about twenty feet. The proposed Rushmore Connector Trail would be constructed, operated and maintained by the proponent, State of South Dakota Department of Game, Fish and Parks (SDGFP).

DATES: Comments concerning the scope of the analysis must be postmarked no later than 30 (thirty) days from date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected November 2017, and the final environmental impact statement is expected March 2018.

ADDRESSES: Send written comments to Forest Supervisor, Black Hills National Forest, ATTN: Rushmore Connector Trail, 1019 N. 5th Street, Custer, SD 57730. Comments may also be sent via email to *comments-rocky-mountain-black-hills@fs.fed.us,* with "Rushmore Connector Trail" in the subject line. Electronic comments must be submitted in Word (.doc), Rich Text (.rtf), or Adobe Acrobat (.pdf) format. Open-house-style public meetings are planned, one each in Hill City and Rapid City, South Dakota, on Tuesday, June 14, and Thursday, June 16. Times and exact locations of these meetings will be announced on the Black Hills National Forest project Web site, *http://www.fs.usda.gov/project/?project=44935.*

FOR FURTHER INFORMATION CONTACT: Anne Apodaca, Forest Recreation and Trails Program Manager, Black Hills National Forest Supervisor's Office, 1019 N. 5th Street, Custer, SD 57730, phone (605) 673–9200. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to respond to the application submitted by the State of South Dakota. The need is to evaluate the State's application to construct, operate and maintain a non-motorized recreation trail and associated corridor across NFS lands managed by the Black Hills National Forest, in order to determine effects as well as consistency with law, regulation, policy and guidance in the 1997 Revised Forest Plan for the Black Hills National Forest, as Amended (Forest Plan). This proposal would respond to Forest Plan Goal 4 (Provide for scenic quality, recreational opportunities and protection of heritage resources); Goal 7 (Emphasize cooperation with individuals, organizations, and other agencies in coordinating planning and implementing projects); and Goal 8 (Promote rural development opportunities).

Proposed Action

The proposed Rushmore Connector Trail, would be constructed, operated and maintained for non-motorized use. The proposal is based on the special use permit application and the *George S. Mickelson Trail to Mt. Rushmore National Memorial Trail Feasibility Study,* completed previously and provided by the SDGFP to the Forest Service. New trail construction would extend approximately 14 miles across NFS land and approximately 1.4 miles within the Memorial. The new trail is anticipated to be a combination of compacted tread and elevated walkway, with a trail tread width of approximately eight feet within a corridor approximately twenty feet wide. The trail would be designed to follow the Forest Service Trail Accessibility Guidelines and have grades no greater than 8–14 percent, depending on the resting interval. A right-of-way across private property would be required for a small segment of trail, approximately 0.1 mile. The proponent would secure this right-of-way at their expense, in the name of the U.S. Government.

The Rushmore Connector Trail would connect the existing Forest Service developed recreation facilities along the Peter Norbeck Scenic Byway (SD Highway 244), which it would cross at least three times. The Big Pine Trailhead would be relocated to the south side of the highway to improve trail user safety, and would provide the point for divergence of user groups. Equestrian users would be required to follow the existing Centennial National Recreation Trail (Trail 89) south for approximately 4.8 miles, of which 4.1 miles is located in the Black Elk Wilderness managed by the Forest Service. Existing management direction including party size limits would apply. Within the Memorial 0.72 miles of the existing Blackberry Trail would be utilized. Bicyclists would travel from Big Pine Trailhead on the proposed designated route, through the Horsethief Lake and Wrinkled Rock areas into the Memorial. Hikers could use either route. A Forest Plan amendment is proposed, to address several possible inconsistencies of the proposal with existing guidance regarding expansion of the recreational trail system and outfitter-guide permits in the Norbeck Wildlife Preserve, and party size limits in the Black Elk Wilderness.

If an action alternative were selected, the land beneath the trail would remain NFS land managed by the Black Hills National Forest. The trail facility itself would be constructed, operated and maintained by the State of South Dakota, under a special use permit issued by the Forest Service under authority of the Federal Land Policy and Management Act (FLPMA). The special use permit would allow the State to charge for use of the trail, as part of the general use fee for the Mickelson Trail. Any other fees proposed by the State to be implemented for portions of the proposed trail would require prior Forest Service approval with public involvement. Individual special events proposed on the trail would each require Forest Service approval with public involvement, and authorization under a special use permit.

Lead and Cooperating Agencies

Under terms of the National Environmental Policy Act (NEPA), the Forest Service is the lead agency for analysis of this proposal. The National Park Service, Mount Rushmore National Memorial, is a cooperating agency on this project. The NPS has special expertise and jurisdiction by law and would make a decision on whether to implement that portion of the proposed trail route on NPS lands. The Federal Highway Administration (FHWA) is also a cooperating agency on this project. FHWA may have a decision to make regarding funding of project work.

Responsible Officials

The Forest Service Responsible Official for this project is the Forest Supervisor, Black Hills National Forest, 1019 N. 5th Street, Custer, South Dakota 57730. Depending on the nature of the permit(s) that might be issued to implement an action alternative, the Regional Forester of the U.S. Forest Service, Rocky Mountain Region may also issue a decision on this project. The National Park Service Responsible Official for this project is the Superintendent of Mount Rushmore National Memorial. Some decisions may be required to be made by the NPS Regional Director, or through additional mandated rulemaking procedures.

Nature of Decision To Be Made

Based on the environmental analysis the Forest Supervisor of the Black Hills National Forest will make the following decisions:

- Whether to authorize construction, operation and maintenance of approximately 14 miles of non-motorized trail connecting the George S. Mickelson Trail to Mount Rushmore National Memorial near Hill City, South Dakota, as proposed, in some other manner and/or along an alternate route, or not at all;
- What if any design criteria, mitigation measures, and monitoring requirements should be required;
- Whether to amend existing Black Hills National Forest Plan direction to allow implementation of the selected alternative;
- Whether to authorize construction of a new campground in Section 33 or thereabouts, of Township 1 South, Range 5 East, Black Hills Meridian, to accommodate trail users and other Forest visitors;
- Whether to authorize reconstruction of the Highway 244 underpass near Willow Creek Campground and Palmer Gulch Campground, to facilitate use of the Rushmore Connector Trail with the existing Black Elk Wilderness and Norbeck Wildlife Preserve trail system;
- Whether to authorize construction of additional trailhead facilities north and west of the Norbeck Wildlife Preserve to provide additional access points to the Rushmore Connector Trail;
- Whether to reconstruct portions of the Centennial Trail, including sections in the Black Elk Wilderness, to address and mitigate use impacts;
- Whether to approve, in principle only, future special events within the capacity analyzed;

• Whether use limits should be imposed on trail use for segments outside of the Black Elk Wilderness;

• Whether to authorize additional outfitter-guide permits;

• Whether to authorize the implementation of use fees;

• Whether to authorize phased construction of the Rushmore Connector Trail on NFS lands prior to potential final rulemaking procedures for actions within Mount Rushmore National Memorial.

Some of these decisions may be reserved to the Regional Forester of the Rocky Mountain Region of the Forest Service. The level of individual decisions will be determined by the actions outlined through the NEPA process. If any action alternative is selected, project implementation could begin in the year 2018. The initial focus would be to issue authorizations and engineering design and layout.

Permits or Licenses Required

A special use permit issued by the Forest Service under FLPMA would be required before any action alternative could be implemented.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments may not allow the Agency to provide the respondent with subsequent environmental documents.

Dated: May 25, 2016.

Jim Zornes,

Acting Forest Supervisor.

[FR Doc. 2016–13373 Filed 6–6–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, June 16, 2016, from 2:00–4:00 p.m. Eastern Time (ET) and Friday, June 17, 2016, from 8:30 a.m.–12:00 p.m. ET. During this time, members will continue to work on various Council initiatives which include innovation, entrepreneurship, and talent development.

DATES: The meeting will be held on Thursday, June 16, 2016, from 2:00–4:00 p.m. Eastern Time (ET) and on Friday, June 17, 2016, from 8:30 a.m.–12:00 p.m. ET. Pre-clearance is required to attend the Friday portion of the meeting in person. If you wish to attend this portion of the meeting, you must notify Julie Lenzer (see contact information below) no later than 11:59 p.m. ET on Monday, June 13, 2016.

ADDRESSES: The Thursday portion of the meeting will be held at the Herbert Clark Hoover Building, Room 1894, 1401 Constitution Avenue NW., Washington, DC 20230. The Friday portion of the meeting will be held at the Eisenhower Executive Office Building, Room 210/212, 1650 Pennsylvania Avenue NW., Washington, DC 20504.

Teleconference

June 16–17, 2016.
Dial-In: +1 877 950 4778 or +1 517 244 5888.
Passcode: 4423486.

FOR FURTHER INFORMATION CONTACT: Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW., Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001; fax: +1 202 273 4781. Please reference "NACIE June 2016 Meeting" in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this meeting is to discuss the Council's planned work initiatives in three focus areas: Workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Those unable to attend the meetings in person but wishing to listen to the proceedings can do so through a conference call line accessible via +1 877 950 4778 or +1 517 244 5888 with passcode 4423486. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: June 2, 2016.

Julie Lenzer,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2016–13412 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 26, 2016, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session:
1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.

3. Industry Presentations.
4. New Business.

Closed Session:
5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than July 19, 2016.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 5, 2015 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: June 2, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–13402 Filed 6–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on June 22, 2016, 9:15 a.m. (Pacific Daylight Time), at Dorsey & Whitney LLP, 701 Fifth Avenue, Suite 6100, Seattle, WA 98104. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

Open Session

1. Opening remarks by the Chairman and Vice Chairman.
2. Presentation of papers or comments by the Public.
3. Export Control Reform Update via Video Teleconferencing.
4. Status of and Commentary on Proposed Rules via Video Teleconferencing.
5. Update on the Single Form via Video Teleconferencing.
6. Subcommittee Updates.

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than June 15, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 9, 2016, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: June 1, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–13398 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Court Decision Not In Harmony With Final Determination Under Section 129 of the Uruguay Round Agreements Act and Reinstatement of Order, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 11, 2016, the United States Court of International Trade ("the Court") issued final judgment in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 13–00168,[1] sustaining the Department of Commerce's ("the Department") voluntary final remand results concerning the Implemented *PRC Section 129 Determination.*[2] In the Final Section 129 Remand, the Department determined that it was appropriate to reinstate the partially revoked antidumping duty order ("the order") on diamond sawblades and parts thereof ("diamond sawblades") from the People's Republic of China ("PRC") with respect to Advanced Technology & Materials Co., Ltd. ("AT&M")[3] where the basis for the Implemented *PRC Section 129 Determination* was no longer valid.[4]

Consistent with the decision of the United States Court of Appeals for the

[1] *See Diamond Sawblades Manufacturer's Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 16–48 (CIT May 11, 2016) ("*DSMC*").

[2] *See* Final Results Of Redetermination Pursuant To *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 15–92 (CIT August 20, 2015), dated December 1, 2015, ("Final Section 129 Remand") available at *http://enforcement.trade.gov/remands/; Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958 (March 28, 2013) ("Implemented *PRC Section 129 Determination*").

[3] Collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd., a single entity. *See* Implemented *PRC Section 129 Determination,* 78 FR 18958, 18959 at n. 10.

[4] *See* Final Section 129 Remand.

Federal Circuit ("CAFC") in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States*, 626 F.3d 1374 (Fed. Cir. 2010) ("*Diamond Sawblades*"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's implemented final determination in a proceeding conducted under section 129 of the Uruguay Round Agreements Act (Section 129). Furthermore, the Department is reinstating the order with respect to AT&M.[5]

DATES: *Effective Date:* May 21, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Devine, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

In the less-than-fair-value ("LTFV") investigation, the Department determined that mandatory respondent AT&M was eligible for a separate rate, and calculated a separate estimated weighted-average dumping margin for it.[6] Petitioner, the Diamond Sawblades Manufacturers' Coalition ("DSMC"), challenged the Department's separate-rate determination in court.[7] Concurrently, the PRC challenged the Department's use of its "zeroing" methodology in calculating dumping margins in certain LTFV investigations before the World Trade Organization's ("WTO") Dispute Settlement Body.[8] Effective March 22, 2013, in response to the dispute settlement panel's findings and instructions by the United States Trade Representative ("USTR") to implement the Department's determination under Section 129 of the URAA, the Department recalculated AT&M's weighted-average dumping margin from the LTFV investigation without the use of zeroing.[9] Removing the zeroing methodology resulted in AT&M receiving a calculated dumping margin of zero.[10] Consequently, the Department partially revoked the order with respect to AT&M. The DSMC challenged this determination before the Court. Additionally, in the ongoing litigation relating to the Department's separate-rate determination in the LTFV investigation, the Department reconsidered AT&M's separate rate eligibility and determined that AT&M had not rebutted the presumption of state control, and thus, was not eligible for a separate rate.[11] The rate applicable to the PRC-wide entity in the LTFV investigation was based on information in the petition and did not involve zeroing.[12] On October 11, 2013, the Court sustained the Department's redetermination that AT&M failed to rebut the presumption of state control, and therefore, was not eligible for a separate rate.[13] On October 24, 2014, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the Court's decision.[14]

In light of AT&M's ineligibility for a separate rate in the LTFV investigation, and the inapplicability of the separate-rate applied to AT&M in the LTFV investigation which served as the basis of the Department's Implemented *PRC Section 129 determination*, in the litigation concerning the Implemented *PRC Section 129 determination*, the United States moved for a voluntary remand to reconsider its partial revocation of the dumping order. The Court granted the United States' motion.[15]

On December 1, 2015, the Department issued the final results of redetermination in this section 129 remand and filed this remand with the Court.[16] On May 11, 2016, the Court entered judgment sustaining the remand results.[17]

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's May 11, 2016, judgment sustaining the Final Section 129 Remand constitutes a final decision of the Court that is not in harmony with the Department's Implemented *PRC Section 129 Determination*.[18] This notice is published in fulfillment of the publication requirement of *Timken*.

Reinstatement of the Order

In the Final Section 129 Remand, sustained by the Court,[19] the Department determined that reinstatement of the order with regard to AT&M was appropriate.[20] Accordingly, consistent with the Final Section 129 Remand and the decision by the Court sustaining that redetermination, the Department hereby reinstates the order as it applies to AT&M. Consistent with the Department's stated intention in the Final Section 129 Remand, this reinstatement of the order with regard to AT&M is effective as of March 22, 2013, which was the effective date of the partial revocation.[21]

Cash Deposit Requirements

The Department will instruct U.S. Customs and Border Protection to require cash deposits at 82.05 percent, the current rate established for the PRC-wide entity.[22] Pursuant to the Court's finding that the Department should have issued those instructions upon filing the redetermination with the Court, those instructions will be effective as of December 1, 2015, the date the remand redetermination was filed with the Court.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e) and 777(i)(1) of the Act and section 129(c)(2)(A) of the Uruguay Round Agreements Act.

Dated: June 1, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13534 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–DS–P

[5] Who, was stated in the Implemented *PRC Section 129 Determination* was, collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd., a single entity.

[6] *See* Implemented *PRC Section 129 Determination* at 29306.

[7] *See Advanced Technology & Materials Co.* v. *United States*, 938 F. Supp. 2d 1342 (CIT 2013).

[8] *See* WTO Panel Report, United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China, WT/DS422/R (June 8, 2012).

[9] *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958, 18960 (March 28, 2013).

[10] *Id.*

[11] *See* Final Results of Redetermination Pursuant to Remand Order Diamond Sawblades and Parts Thereof from the People's Republic of China, *Advanced Tech. & Material Co.* v. *United States*, CIT Ct. No. 09–511 (May 6, 2013) ("Advanced Tech. Remand") available at *http://enforcement.trade.gov/remands/12-147.pdf*.

[12] *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 70 FR 77121, 77129 (December 29, 2005) unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).

[13] *See Advanced Technology & Materials Co.* v. *United States*, 938 F. Supp. 2d 1342 (CIT 2013).

[14] *See Advanced Technology & Materials Co.* v. *United States*, 581 Fed. Appx. 900 (CAFC 2014) (Rule 36).

[15] *See Diamond Sawblades Manufacturers Coalition* v. *United States*, Court No. 13–00168, Slip op. 15–92 (August 20, 2015).

[16] *See* Final Section 129 Remand.

[17] *See* Final Sustained Remand.

[18] *See DSMC.*

[19] *See DSMC* at 5–6.

[20] *See* Final Section 129 Remand; *see also DSMC.*

[21] *See* Final Section 129 Remand, at 6.

[22] *See Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 32344, 32345 (June 8, 2015).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Rip Current Visualization Survey and Focus Groups

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 8, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nicole Kurkowski, National Weather Service, ((301) 427–9104), *nicole.kurkowski@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new collection of information. The objective of the survey and focus groups is to collect information on the current use and knowledge of NOAA's National Weather Service (NWS) products and perceptions of various rip current products. The focus groups will ask participants to explain their responses. This information will help create better rip current products used by the National Weather Service (NWS) to protect lives and prevent injury from rip currents.

II. Method of Collection

The primary data collection vehicles will be an internet-based, public survey and face to face focus groups. The focus groups will target lifeguards and decision makers. Telephone and personal interviews may be employed to supplement and verify survey responses.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Members of the public.

Estimated Number of Respondents: 500 for the survey and 80 for the focus groups.

Estimated Time per Response: 30 minutes for the survey and 1.5 hours for the focus groups.

Estimated Total Annual Burden Hours: 250 hours for the survey and 120 hours for the focus groups.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–13368 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE663

Marine Mammals; File No. 18769

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sea World, LLC., 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 [Christopher Dold, D.V.M., Responsible Party], has applied in due form for a permit to continue enhancement activities on three currently held non-releasable Guadalupe fur seals (*Arctocephalus townsendi*) with the option of holding up to six non-releasable furs seals at any given time.

DATES: Written, telefaxed, or email comments must be received on or before July 7, 2016.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 18769 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. 18769 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore and Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended

(MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests authorization for the continued maintenance of three non-releasable Guadalupe fur seals at Sea World of California (and other Sea World facilities if relocation is necessary) for enhancement purposes. These animals were taken into captivity by the Marine Mammal Health and Stranding Network and were deemed non-releasable. Thus, release of these animals would not be in the best interest of their individual welfare and that of the wild population. These animals are currently held by Sea World of California under Permit No. 14186–01. Furthermore, the applicant has agreed to provide additional space for future non-releasable Guadalupe fur seals, if necessary (up to 6 total animals at any given time). These animals would be provided with daily husbandry care and treatment for current medical conditions, routine veterinary care, and would be made available for opportunistic research. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 1, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–13351 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 16–C0004]

Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions containing a civil penalty in the amount of four million, five hundred thousand dollars ($4,500,000) within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 22, 2016.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 16–C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Alexander W. Dennis, Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7817.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order [1] appears below.

Dated: June 2, 2016.

Todd A. Stevenson,

Secretary.

Commissioner Mohorovic filed a statement regarding this matter. The statement is available at the Office of the Secretary or the CPSC Web site, *www.cpsc.gov.*

[1] The Commission voted (3–2) to provisionally accept the Settlement Agreement and Order regarding Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions. Chairman Kaye, Commissioner Adler, Commissioner Robinson voted to provisionally accept the Settlement Agreement and Order. Commissioner Buerkle and Commissioner Mohorovic voted to reject the Settlement Agreement and Order.

United States of America Consumer Product Safety Commission

In the Matter of:
Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions
CPSC Docket No.: 16–C0004

SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 ("CPSA") and 16 CFR 1118.20, Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions ("the Firm"), and the United States Consumer Product Safety Commission ("Commission"), through its staff, hereby enter into this Settlement Agreement ("Agreement"). The Agreement, and the incorporated attached Order, resolve staff's charges set forth below.

THE PARTIES

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions is a Delaware corporation with its principal corporate offices in Boca Raton, FL.

STAFF CHARGES

4. From 2010 to 2012 the Firm manufactured, imported, distributed, and sold about 520,000 Mr. Coffee Single Cup Brewing System BVMC–KG1 series coffee makers ("Coffee Makers" or "Subject Products").

5. The Coffee Makers are "consumer products" "distributed in commerce," as those terms are defined or used in section 3(a)(5) and (8) of the CPSA, 15 U.S.C. 2052(a)(5) and (8). The Firm is a "manufacturer" of the Subject Products, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. 2052(a)(11).

6. The Firm had information reasonably supporting the conclusion that the Coffee Makers are defective or created an unreasonable risk of serious injury or death in that a build-up of steam pressure can force the brewing chamber open and expel hot water and hot coffee grounds towards consumers, creating a burn risk to consumers.

7. Between 2011 and 2012 the Firm received numerous complaints of the Subject Products' chamber opening and expelling hot water and hot coffee grounds towards consumers. The complaints included reports of at least 32 consumers being burned by the Subject Products.

8. Despite having information reasonably supporting the conclusion that the Coffee Makers contain a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, the Firm did not immediately notify the Commission, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

9. In failing to inform the Commission immediately about the Coffee Makers, the Firm knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

10. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, the Firm is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

RESPONSE OF SUNBEAM PRODUCTS, INC. D/B/A JARDEN CONSUMER SOLUTIONS

11. The Firm's settlement of this matter does not constitute an admission that it had reportable information as set forth in paragraphs 4 through 10.

12. The Firm conducted an investigation about consumer complaints relating to the Subject Products' brewing chamber opening to try to determine the cause of these events. After an extensive investigation, the Firm eventually determined that these incidents were related to circumstances that it had not anticipated, *i.e.*, a buildup of steam within the Subject Products' hot water tank, which the Firm believes was caused by brewing a second cup of coffee with four ounces or less of water added to the hot water tank immediately after an initial eight ounce brew, without changing the coffee pod. The Subject Products' instructions provided that coffee be brewed by filling the brewing chamber to its fill line (*i.e.* eight ounces of water). When filled to the fill line, the Subject Products did not create steam and thus did not result in the chamber opening. After its investigation, the Firm voluntarily filed a report under Section 15(b) of the CPSA with the Commission. 15 U.S.C. 2064(b).

13. The Firm has agreed to pay this civil penalty because the CPSA defines a "knowing" violation of section 19(a)(4), 15 U.S.C. 2069(d), to include a party that is "presumed [to] have[] knowledge deemed to be possessed by a reasonable man who acts in the circumstances . . ." and has agreed to the terms in paragraphs 20 and 21 to enhance the Firm's continued and future compliance with the CPSA.

AGREEMENT OF THE PARTIES

14. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products described herein and over the Firm.

15. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by the Firm or a determination by the Commission that the Firm violated the CPSA's reporting requirements.

16. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, the Firm shall pay a civil penalty in the amount of four million, five hundred thousand dollars ($4,500,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.*

17. After staff receives this Agreement executed on behalf of the Firm, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) The Commission's final acceptance of this Agreement and service of the accepted Agreement upon the Firm, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

19. Effective upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon the Firm, and (ii) and the date of issuance of the final Order, for good and valuable consideration, the Firm hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether the Firm failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

20. The Firm shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm, and which shall contain the following elements:

(i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance (including information obtained by quality control personnel) is conveyed effectively to personnel responsible for CPSA compliance;

(ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;

(iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;

(iv) the Firm's senior management responsibility for, and general board oversight of, CPSA compliance; and

(v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon reasonable request.

21. The Firm has, and shall maintain and enforce, a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed or sold by the Firm: (i) Information required to be disclosed by the Firm to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (iii) prompt disclosure is made to the Firm's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, the Firm's ability to record, process and

report to the Commission in accordance with applicable law.

22. Upon reasonable request of staff, the Firm shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. The Firm shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate the Firm's compliance with the terms of the Agreement.

23. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

24. The Firm represents that the Agreement: (i) Is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of the Firm, enforceable against the Firm in accordance with its terms. The Firm will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by the Firm pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of the Firm represent and warrant that they are duly authorized by the Firm to execute the Agreement.

25. The Agreement is governed by the laws of the United States.

26. The Agreement and the Order shall apply to, and be binding upon, the Firm and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject the Firm, and each of its successors, transferees and assigns, to appropriate legal action.

27. The Agreement and the Order constitute the complete agreement between the parties regarding the Firm's obligation to file a report about the Subject Products under sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

29. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

30. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and the Firm agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

SUNBEAM PRODUCTS, INC. D/B/A JARDEN CONSUMER SOLUTIONS

By: _____
Date: May 25, 2016
Kyle E. Kaiser
Senior Vice President Operations
Sunbeam Products, Inc., d/b/a/ Jarden Consumer Solutions
2381 NW Executive Center Drive
Boca Raton, FL 33431

By: _____
Date: May 25, 2016
David P. Callet, Esq.
CalletLaw, LLC
5335 Wisconsin Ave. NW., Suite 440
Washington, DC 20015

U.S. CONSUMER PRODUCT SAFETY COMMISSION

By: _____
Mary T. Boyle
Acting General Counsel
Melissa V. Hampshire
Assistant General Counsel

By: _____
Date: May 25, 2016
Alexander W. Dennis
Attorney
Division of Enforcement and Information
Office of the General Counsel

United States of America Consumer Product Safety Commission

In the Matter of:
Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions
CPSC Docket No.: 16–C0004

ORDER

Upon consideration of the Settlement Agreement entered into between Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions (the "Firm") and the U.S. Consumer Product Safety Commission ("Commission"), and the Commission having jurisdiction over the subject matter and over the Firm, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of four million, five hundred thousand dollars ($4,500,000) within thirty (30) days after service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.* Upon the failure of the Firm to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by the Firm at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If the Firm fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 2nd day of June, 2016.

BY ORDER OF THE COMMISSION:

_____
Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2016–13362 Filed 6–6–16; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Honor and Remember Subcommittees Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meetings.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meetings of the Honor and Remember Subcommittees of the Advisory Committee on Arlington National Cemetery (ACANC). The meetings are open to the public. For more information about the Committee and the Subcommittees, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Subcommittees will meet on 6 July, 2016. The Remember Subcommittee will meet from 9:00 a.m. to 10:00 a.m. and the Honor Subcommittee will meet from 1:30 p.m. to 3:00 p.m. on, 6 July, 2016.

ADDRESSES: Arlington National Cemetery Welcome Center, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea Yates; Designated Federal Officer for the Committee and the Subcommittees, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 1–877–907–8585.

SUPPLEMENTARY INFORMATION: These subcommittee meetings are being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The Subcommittees are directed to provide independent recommendations of methods to address the long-term future of Arlington National Cemetery, including how best to extend the active burials and on what ANC should focus once all available space has been used, the placement of commemorative monuments and the manner in which to ensure the living history of the cemetery is preserved.

Proposed Agenda: The Subcommittees will discuss cemetery master planning, current eligibility and interment trends, the proposed placement of commemorative monuments and the World War I commemoration displays.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,
Army Federal Register Liaison Officer.

[FR Doc. 2016–13253 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Training Land Expansion at Fort Benning, Georgia and Alabama, Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent; Withdrawal.

SUMMARY: The Department of the Army is announcing withdrawal of its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for Fort Benning Training Land Expansion as well as the subsequent Draft EIS. The original NOI was published in the **Federal Register** on June 4, 2010 (75 FR 31770). The Notice of Availability for the Draft EIS was published in the **Federal Register** on May 13, 2011 (76 FR 28005). The Army has determined that the proposed land acquisition will no longer be pursued due to a reduction in requirements. This was the result of a combination of force structure realignment decisions affecting Fort Benning and actions taken to relocate maneuver training for Fort Benning's Army Reconnaissance Course (ARC). This ends the National Environmental Policy Act (NEPA) process for this action.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Manganaro, Fort Benning Public Affairs Office: at (706) 545–3438, Monday through Friday, 8:00 a.m. to 5:00 p.m. E.S.T.; by email to *monica.l.manganaro.civ@mail.mil;* or postal service mail to PAO, Ste 141–W McGinnis-Wickam Hall, 1 Karker Street, Fort Benning, GA 31905.

SUPPLEMENTARY INFORMATION: Fort Benning, home to the Maneuver Center of Excellence (MCoE), is the Army's premier basic training installation, training Infantry, Armor, and Cavalry Soldiers in basic and advanced combat skills, as well as Airborne Soldiers and Rangers.

Training Land Expansion at Fort Benning met two requirements. The first was to secure additional maneuver area consistent with doctrinal training requirements. The second purpose was a time-sensitive 2009 Biological Opinion (BO) that required movement of ARC heavy maneuver training to an area outside the current Fort Benning without Red-Cockaded Woodpeckers (a listed species under the Endangered Species Act).

The Army published a Draft EIS on May 13, 2011 to study the potential environmental impacts of acquisition and use of up to approximately 82,800

acres of additional land. The study area for land acquisition consisted of areas neighboring Fort Benning capable of supporting military training. The Army held public meetings and received numerous comments on the Draft EIS.

In July, 2015, Fort Benning completed an Environmental Assessment (EA) for Enhanced Training, which considered converting the Armor Brigade Combat Team (BCT) to an Infantry BCT; and relocating the ARC heavy mechanized training to the Good Hope Maneuver Training Area (GHMTA), an area on the current Fort Benning without Red-Cockaded Woodpeckers. These changes would allow the Infantry BCT and the ARC to train without the need to acquire additional training land. In July 2015, the Army announced the decision to convert the Armor BCT to an Infantry Battalion Task Force (a smaller unit than a BCT). In October 2015, the Army signed a Finding of No Significant Impact based on the July EA, selecting the conversion and ARC relocation alternative. In December 2015, the U.S. Fish and Wildlife Service issued a BO finding that the relocation of the ARC heavy mechanized training to the GHMTA was the "equivalent" of moving the training off Fort Benning, as called for by the 2009 BO. Since an Infantry BCT (and the smaller task force) can train on the current Fort Benning, and there is no longer a need to find land off the installation to comply with the BO, the requirement for additional training land has been greatly reduced. Therefore Army is withdrawing the NOI and the Draft EIS for the proposed training land expansion. This ends the NEPA process for this action. The Army's most recent Fiscal Year 2017 budget submission and associated future years defense program for the next five fiscal years (thru Fiscal Year 2021) does not include any programmed funds to acquire land at Fort Benning. If land acquisition at Fort Benning were ever to be pursued in the future, a new NOI would be published.

Brenda S. Bowen,

Army Federal Register Liaisons Officer.

[FR Doc. 2016–13389 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0068]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DSCA 05, entitled "Defense Institute of Security Assistance Management (DISAM) Information System Mission (DISM)." The DISAM Information Mission System is a web based portal designed to hold several applications for the purposes of efficient administration of students, and the effective management of DISAM personnel and guest lecturers. The portal also provides DISAM personnel the ability to submit travel requests and travel arrangements. Finally, the web based portal uses a relational database to record, manage and report information about students, personnel, and travel, including reports of annual training. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

DATES: Comments will be accepted on or before July 7, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 18, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 2, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSCA 05

SYSTEM NAME:

Defense Institute of Security Assistance Management (DISAM) Information System Mission (DISM)

SYSTEM LOCATION:

Defense Institute of Security Assistance Management (DISAM), 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian, military, and contractor personnel, U.S. Federal agency employees, students, and guest speakers.

CATEGORIES OF RECORDS IN THE SYSTEM:

DISAM Personnel data including: Full name, DoD Identification Number (DoD ID) number, gender, date of birth, home address, personal cell phone and work numbers, work domain name, work email address, arrival and departure dates, duty hours, emergency name and contact information, position title, funding source, directorate and office names, employment status, academic rank and degree, salary, job series, civilian grade, military Joint Manpower Program rank and number, date of rank, service branch, occupational specialty code and description, military evaluation dates, tour completion date, recall order, DoD billet manning document number, height and weight, arrival date, security clearance type, issue and expiration dates, investigation type and date, IT level, supervisor name, list of DoD annual training requirements, training completion dates and year required, faculty member, function and program type.

DISAM Personnel Travel data including: Traveler's name, government point of contact information, request number, agency directorate, priority and requirement types, purpose of travel, group and class type, order and voucher numbers, voucher check and Military Interdepartmental Purchase Request (MIPR) dates, funding source, source organization, departure and arrival information, travel location cost information, DoD status of travel request, administrative notes and comments.

Student data including: Full name, student and DoD ID Number, gender, date of birth, nationality, organization and mailing addresses, work number, position title, hotel confirmation number, country name, combatant command, student type, area of expertise and duty type, civilian grade, service branch, military rank, diploma, test scores, supervisor name, email address, and work number, course type, registration date, level and status, certificates, student and registrar comments, administrative notes and emergency point of contact information.

Guest Speaker data including: Full name, position title, gender, social security number (SSN), DoD ID Number, home, cell phone, and work numbers, fax number, email and mailing address, employment status, security clearance type, military rank, civilian grade, course information, honorarium, DISAM host name, and funding information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 134, Under Secretary of Defense for Policy; DoD Directive 5105.65, Defense Security Cooperation Agency (DSCA); DSCA Security Assistance Management Manual, Chapter 10, International Training; DoD Directive 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; Army Regulation 12–15, SECNAVINST 4950.4B, AFI 16–105, Joint Security Cooperation Education and Training ; Public Law 97–195, Foreign Assistance and Arms Export Act of 1961, as amended; E.O. 9397, (SSN), as amended.

PURPOSE(S):

The DISAM Information Mission System is a web based portal designed to hold several applications for the purposes of efficient administration of students, and the effective management of DISAM personnel and guest lecturers. The portal also provides DISAM personnel the ability to submit travel requests and travel arrangements. Finally, the web based portal uses a relational database to record, manage and report information about students, personnel, and travel, including reports of annual training. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records may specifically be disclosed outside the DoD as follows to:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures Required by International Agreements Routine Use:

A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense/Joint Staff (OSD/JS) Privacy Office's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By name of individual, DoD ID number, student ID, or SSN.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, and is accessible only to authorized personnel. Access to records is also limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to electronic data is restricted by centralized access control to include the use of Common Access Cards (CACs), passwords (which are changed

periodically), file permissions, and audit logs.

RETENTION AND DISPOSAL:

Records are cut off annually, destroy when 25 years old.

SYSTEM MANAGER(S) AND ADDRESS:

DISM System Administrator; Defense Institute of Security Assistance Management, 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Institute of Security Assistance Management, ATTN: Director of Academic Support, 2475 K Street, Wright-Patterson AFB, OH 45433–7641.

Signed, written requests should include the full name, SSN (last four digits) or DoD ID number, current address and telephone number, and the number of this system of records notice.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name, SSN (last four digits) or DoD ID number, current address and telephone number, and the number of the system of records notice.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2016–13379 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0038]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program (DL) Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 7, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0038. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program (DL) Regulations.

OMB Control Number: 1845–0021.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 8,698,789.

Total Estimated Number of Annual Burden Hours: 709,521.

Abstract: The William D. Ford Direct Loan Program regulations cover areas of program administration. These regulations are in place to minimize administrative burden for program participants, to determine eligibility for and provide program benefits to borrower, and to prevent fraud and abuse of program funds to protect the taxpayers' interests. This request is for a revision of the current OMB approval of reporting and record-keeping related to the administrative requirements of the Direct Loan program.

Dated: June 2, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–13399 Filed 6–6–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0037]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program Regs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 7, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0037. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Health Education Assistance Loan (HEAL) Program Regs.

OMB Control Number: 1845–0125.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 144,930.

Total Estimated Number of Annual Burden Hours: 26,409.

Abstract: The Health Education Assistance Loan (HEAL) Program regulatory requirements for reporting, record-keeping and notification are approved under OMB 1845–0125 after the transfer from the U.S. Department of Health and Human Services to the U.S. Department of Education in 2014. The HEAL program provided federally insured loans to students for certain health programs. No new loans have been made since 1998. However, loans are still outstanding and being collected, therefore the regulatory requirements for reporting, record-keeping and notification continue to be needed to administer the program. These regulations work to ensure that participants in the program follow sound management procedures in the administration of the federal loan program.

Dated: June 2, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–13380 Filed 6–6–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0040]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NCES System Clearance for Cognitive, Pilot, and Field Test Studies

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 7, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: NCES System Clearance for Cognitive, Pilot, and Field Test Studies.

OMB Control Number: 1850–0803.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 600,000.

Total Estimated Number of Annual Burden Hours: 240,000.

Abstract: This is a request for a 3-year renewal of the generic clearance to

allow the National Center for Education Statistics (NCES) to continue to develop, test, and improve its survey and assessment instruments and methodologies. The procedures utilized to this effect include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Dated: June 1, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–13291 Filed 6–6–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD16–12–000]

Alta Ski Area; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On May 16, 2016, as supplemented on May 20, 2016, Alta Ski Area filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Alta Micro-Hydro Project would have an installed capacity of 75 kilowatts (kW), and would be located along an existing pipeline adjacent to the existing Wildcat Pump House. The project would be located in Alta, Salt Lake County, Utah.

Applicant Contact: Lindsay George, P.O. Box 1144, Salida, CO 81201, Phone No. (970) 456–2414.

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, email: *Christopher.Chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new powerhouse, approximately 20 feet by 12 feet, along an existing 6-inch-diameter water supply pipeline; (2) one turbine/generating unit with an installed capacity of 75 kW; (3) a new approximately 20-foot-long, 6-inch-diameter intake pipe; (4) a new approximately 20-foot-long, 12-inch-diameter discharge pipe; and (5) appurtenant facilities.

The proposed project would have a total installed capacity of 75 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA.	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA.	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA.	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA.	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed addition of the hydroelectric project along the existing water supply pipeline will not alter its primary consumptive purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions To Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

[1] 18 CFR 385.2001–2005 (2015).

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number (*i.e.,* CD16–12) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: May 26, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13422 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–252]

El Dorado Irrigation District; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend license to remove project facilities.

b. *Project No.:* 184–252.

c. *Date Filed:* April 15, 2016.

d. *Applicant:* El Dorado Irrigation District.

e. *Name of Project:* El Dorado Hydroelectric Project.

f. *Location:* The project is located on the South Fork American River and several tributaries in Alpine, Amador, and El Dorado counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brian Deason, Hydroelectric Compliance Analyst, 2890 Mosquito Road, Placerville, CA 95667, (530) 642–4064.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, or *steven.sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the date of issuance of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–184–252) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The applicant requests that the Commission authorize the removal of the Carpenter Creek and Mill Creek diversion structures from the project. The applicant states that it has already physically removed the Carpenter Creek facilities and intends to demolish the Mill Creek diversion structure in 2017.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 26, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13423 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13563–003–Alaska]

Juneau Hydropower, Inc.; Notice of Availability of the Final Environmental Impact Statement for the Sweetheart Lake Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for an original license for the Sweetheart Lake Hydroelectric Project (FERC No. 13563) and prepared a final environmental impact statement (EIS) for the project.

The proposed project would be located on Sweetheart Lake and Sweetheart Creek in the City and

Borough of Juneau, Alaska. The proposed project, if licensed, would occupy 2,058.24 acres of federal lands within the Tongass National Forest, administered by the U.S. Department of Agriculture, Forest Service.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for licensing the Sweetheart Lake Hydroelectric Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "e-Library" link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact John Matkowski at (202) 502–8576 or at *john.matkowski@ferc.gov.*

Dated: May 31, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13355 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Prohibited:

Docket No.	File date	Presenter or requester
1. CP16–21–000	5–12–2016	Diana Carroll.
2. CP16–21–000	5–16–2016	Mass Mailing.[1]
3. OR13–25–001; OR13–26–001	5–17–2016	FERC Staff.[2]
4. CP16–21–000	5–18–2016	Mass Mailing.[3]
5. CP16–21–000	5–18–2016	Mass Mailing.[4]
6. CP16–21–000	5–18–2016	Wildred Wollheim.
7. CP16–21–000	5–20–2016	Mary Tyler.
8. CP15–554–000	5–23–2016	Jessica E. Pitkin.
9. CP15–500–000	5–23–2016	Luc Novovitch.
10. CP16–21–000	5–23–2016	Maria Niswonler.
11. CP16–21–000	5–23–2016	John Puffer.
12. CP16–21–000	5–18–2016	Mass Mailing.[5]

[1] Two letters have been sent to FERC Commissioners and staff under this docket number.

[2] Memorandum dated May 6, 2016 reporting communication with Richard Powers of Venable LLP, David Berg and Rob Myrben of Airlines of America, and Jeffrey Petrash of National Propane Gas Association.

[3] Two letters have been sent to FERC Commissioners and staff under this docket number.

[4] Two letters have been sent to FERC Commissioners and staff under this docket number.

[5] Four letters have been sent to FERC Commissioners and staff under this docket number.

Exempt:

Docket No.	File date	Presenter or requester
1. P–1256–000	5–13–2016	FERC Staff.[6]
2. CP16–21–000	5–13–2016	Town of Knox, NY.
3. CP13–483–000; CP13–492–000	5–13–2016	U.S. House Representative Sam Graves.
4. CP13–492–000; CP13–493–000	5–13–2016	Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians.
5. CP16–21–000	5–18–2016	State of New Hampshire House Representative Jack Flanagan.
6. P–2232–522	5–20–2016	U.S. Congress.[7]
7. CP16–21–000	5–20–2016	Town of Fitzwilliam, New Hampshire Board of Selectmen.
8. P–13015–001	5–20–2016	U.S. House Representative William R. Keating.
9. CP13–483–001; CP13–492–001	5–20–2016	Jackson County, Oregon Board of Commissioners.
10. ER15–2563–002; EL15–95–002	5–23–2016	U.S. Congress.[8]
11. CP14–96–000; PF16–1–000; PF15–12–000	5–23–2016	Town of Freetown, Massachusetts Board of Selectmen.
12. EL15–2563–002; EL15–95–002	5–24–2016	State of Delaware Governor Jack A. Markell.
13. CP14–517–000	5–24–2016	FERC Staff.[9]
14. CP13–483–000	5–27–2016	FERC Staff.[10]

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13409 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–463–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on May 20, 2016 Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, Nebraska 68124, filed a prior notice request pursuant to sections 157.205, 157.213(b) and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA). Northern Natural seeks authorization to convert an existing observation well to a withdrawal well. Northern Natural will also install related surface facilities within its existing Redfield Storage Field located in Dallas County, Iowa. Northern Natural proposes to perform these activities under its blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Michael T. Loeffler, Senior Director, Certificate and External Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103; FAX (402) 398–7592; email *mike.loeffler@nngco.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of

[6] Email dated April 15, 2016 with Neal Suess of Loup Power District.

[7] Senators Lindsey Graham, Tim Scott, Richard Burr, and Thom Tillis. House Representatives James Clyburn, Joe Wilson, Patrick McHenry, Jeff Duncan, Trey Gowdy, Richard Hudson, Robert Pittenger, David Rouzer, Walter B. Jones, Virginia Foxx, Mick Mulvaney, Renee Ellmers, George Holding, Mark Meadows, Tom Rice, and Mark Walker.

[8] Senators Thomas R. Carper and Christopher Coons. House Representative John Carney.

[9] Meeting Summary from May 18, 2016 meeting with representatives for the Gold Pass LNG Export Project.

[10] Memo forwarding letter dated May 24, 2016 from U.S. Army Corps of Engineers (COE) to Jordan Cove and letter dated May 24, 2016 from COE to the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians.

environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13405 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc.

The New York Independent System Operator, Inc. Joint Electric System Planning Working Group and Transmission Planning Advisory Subcommittee Meeting

June 7, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-06-07.*

The New York Independent System Operator, Inc. Management Committee Meeting

June 14, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2016-06-14.*

The New York Independent System Operator, Inc. Business Issues Committee Meeting

June 15, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2016-06-15.*

The New York Independent System Operator, Inc. Operating Committee Meeting

June 16, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2016-06-16.*

The New York Independent System Operator, Inc. Joint Electric System Planning Working Group and Transmission Planning Advisory Subcommittee Meeting

June 22, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-06-22.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Independent System Operator, Inc., Docket No. ER16–120.

New York Independent System Operator, Inc., Docket No. ER13–1942.

New York Transco, LLC, Docket No. ER15–572.

New York Independent System Operator, Inc., Docket No. ER16–966.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13411 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–015–AL]

Alabama Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380, the Office of Energy Projects has reviewed Alabama Power Company's application for a new license for the 46.9-megawatt (MW) Holt Hydroelectric Project (FERC Project No. 2203). The project is located at the U.S. Army Corps of Engineers' (Corps) Holt Lock and Dam on the Black Warrior River near the City of Tuscaloosa, in Tuscaloosa County, Alabama. The project occupies 36.81 acres of federal land administered by the Corps.

Staff has prepared an environmental assessment (EA) that analyzes the potential environmental effects of continued project operation. Based on staff's analysis with appropriate environmental protective measures, relicensing the project would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include Holt Hydroelectric Project No. 2203–015.

For further information, contact Jeanne Edwards by telephone at 202–502–6181 or by email at *jeanne.edwards@ferc.gov.*

Dated: May 31, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13354 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Windham Solar LLC, Allco Finance Limited; Notice of Petition for Enforcement

Docket Nos.	
EL16–69–000	QF16–375–001
QF16–362–001	QF16–376–001
QF16–363–001	QF16–377–001
QF16–364–001	QF16–378–001
QF16–365–001	QF16–379–001
QF16–366–001	QF16–380–001
QF16–367–001	QF16–381–001
QF16–368–001	QF16–382–001
QF16–369–001	QF16–383–001
QF16–370–001	QF16–384–001
QF16–371–001	QF16–385–001
QF16–372–001	QF16–386–001
QF16–373–001	QF16–387–001
QF16–374–001	

Take notice that on May 25, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), Windham Solar LLC and Allco Finance Limited filed amendment to its May 19, 2016 filing of Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Connecticut Public

Utilities Regulatory Authority to remedy its implementation of PURPA, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file

electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 15, 2016.

Dated: May 26, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13421 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Planning Committee

June 9, 2016, 9:30 a.m.–12:00 p.m. (EST)

PJM Transmission Expansion Advisory Committee

June 9, 2016, 11:00 a.m.–3:00 p.m. (EST)

The above-referenced meetings will be held at: PJM Conference and Training Center, PJM Interconnection 2750 Monroe Boulevard Audubon, PA 19403.

The above-referenced meetings are open to stakeholders. Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER16–453, *PJM Interconnection, L.L.C. and Northeast Transmission Development, LLC*

Docket No. ER16–736, *PJM Interconnection, L.L.C.*

Docket No. ER14–972, *PJM Interconnection, L.L.C.*

Docket No. ER14–1485, *PJM Interconnection, L.L.C.*

Docket Nos. ER13–1944, *et al., PJM Interconnection, L.L.C., et al.*

Docket No. ER15–1344, *PJM Interconnection, L.L.C.*

Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*

Docket No. ER15–2562, *PJM Interconnection, L.L.C.*

Docket No. ER15–2563, *PJM Interconnection, L.L.C.*

Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*

Docket No. EL15–41, *Essential Power Rock Springs, LLC, et. al.* v. *PJM Interconnection, L.L.C.*

Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*

Docket No. EL15–79, *TransSource, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. EL15–95, *Delaware Public Service Commission, et. al.,* v. *PJM Interconnection, L.L.C., et. al.*

Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER13–198, *PJM Interconnection, L.L.C.*

Docket No. ER16–1335, *PJM Interconnection, L.L.C.*

Docket No. ER16–1232, *PJM Interconnection, L.L.C.*

Docket No. ER16–1499, *PJM Interconnection, L.L.C.*

For more information, contact the following: Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604 *Jonathan.Fernandez@ferc.gov;* Alina Halay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, *Alina.Halay@ferc.gov.*

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13407 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL16–74–000; QF99–56–004]

North Hartland, LLC; Notice of Petition for Enforcement

Take notice that on May 31, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), North Hartland, LLC filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Vermont Public Service Board to remedy its implementation of PURPA, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 21, 2016.

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13406 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No 848–037]

Wells Rural Electric Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* P–848–037.

c. *Date filed:* May 18, 2016.

d. *Applicant:* Wells Rural Electric Company.

e. *Name of Project:* Trout Creek Hydroelectric Project.

f. *Location:* On Trout Creek, near the Town of Wells, Elko County, Nevada. The project's intake structure, pipeline, debris collection box, surge tank and approximately 1,500 feet of penstock are located on federal land managed by the United States Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lonnie Abbott, Manager of Loss Control and Risk Services, Wells Rural Electric Company, P.O. Box 365, Wells, Nevada 89835, (775) 752–1516 or *labbott@wrec.coop.*

FERC Contact: Joseph Hassell, 202–502–8079 or *joseph.hassell@ferc.gov.*

j. Cooperating agencies: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 18, 2016.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–848–037.

m. The application is not ready for environmental analysis at this time.

n. The existing Trout Creek project consists of: (1) An intake structure on a spring feeding Trout Creek; (2) a 14-inch-diameter, 715-foot-long steel pipe; (3) a debris collection box; (4) a 15-inch-diameter, 1900-foot-long PVC pipe; (4) an 8-foot-diameter, 20-foot high surge tank; (5) a 16-inch-diameter, 2,125-foot-long penstock; (6) a powerhouse with a 125-kilowatt turbine-generator unit (7) a 5 to 7-foot-wide, 30-foot-long tailrace; (8) a 4,412-foot-long, 24.9-kV transmission line; and, (9) appurtenant facilities. The project is estimated to generate an average of 325,000 kilowatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. Procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance	May 2016.
Issue Scoping Document 1 for comments	June 2016.
Comments on Scoping Document 1	July 2016.
Issue Scoping Document 2	October 2016.
Issue notice of ready for environmental analysis	October 2016.
Commission issues EA, draft EA, or draft EIS	April 2017.
Comments on EA or draft EA or draft EIS	May 2017.
Commission issues final EA of final EIS	July 2017.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 26, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13424 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–462–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 20, 2016 Columbia Gas Transmission, LLC (Columbia), 1300 Main Street, Houston, Texas 77002 filed a prior notice request pursuant to sections 157.205, 157.208(c), 157.213(b) and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA). Columbia seeks authorization to abandon and modify certain storage facilities in the Majorsville-Heard Storage Complex (Storage Complex) in Marshall County, West Virginia. The authorizations proposed in this proceeding do not relate to mining activities, thus as Columbia's blanket authorization issued in Docket No. CP95–61–000 is limited to those activities related to coal mining activities in the Storage Complex, Columbia is seeking abandonment authority under its blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Matthew J. Agen, Senior Counsel, Columbia Gas Transmission, LLC, 5151 San Felipe Suite 2400, Houston, Texas 77056; telephone (713) 386–3619; or by email *magen@cpg.com* .

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13410 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3127–023]

Ware River Power, Inc.; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend 5 MW exemption from licensing.

b. *Project No.:* 3127–023.

c. *Date Filed:* January 27, 2016.

d. *Applicant:* Ware River Power, Inc.

e. *Name of Project:* Ware River Project.

f. *Location:* The project is located on the Ware River in Hampshire County, Massachusetts.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Lucus Wright, Ware River Power, Inc., 48 Allen Drive, P.O. Box 512, Barre, MA 01005 (508) 355–4575.

i. *FERC Contact:* Mr. Mark Pawlowski, (202) 502–6052, or *Mark.Pawlowski@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is July 1, 2016. This notice extends the due date of the notice issued on May 24, 2016. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–3127–023) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The Ware River Project consists of an Upper and Lower development. The applicant proposes to replace the lower development's single 250-kilowatt (kW) turbine with a 280-kW turbine and install a new 110-kW minimum flow turbine. The lower development's installed capacity would increase by 140 kW and the hydraulic capacity would increase by 94 cubic feet per second. In addition, the applicant proposes replace the lower development's existing 30-foot-wide by 10-foot-deep trashrack structure with a new 50-foot-wide by 10-foot deep trashrack structure. The new trashrack would maintain the current 1.5-inch spacing between the trashrack bars. To facilitate the trashrack replacement the applicant proposes to draw down the 10-acre lower development's impoundment from May 2016 through September 2016.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 1, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13408 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9944–30 OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of Arizona's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective July 7, 2016 for the State of Arizona's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on June 7, 2016 for the State of Arizona's other authorized programs.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 12, 2016, the Arizona Department of Environmental Quality (ADEQ) submitted an application titled myDEQ for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed ADEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Arizona's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 50–52, 61–65, 70, 122, 124, 141, 240–259, 260–270, 272–279, 262, 280, 403–471, 501, and 503 is being published in the **Federal Register**:

Part 52—Approval and Promulgation of Implementation Plans;
Part 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants;
Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories;
Part 70—State Operating Permit Programs;
Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;
Part 142—National Primary Drinking Water Regulations Implementation;
Part 239—Requirements for State Permit Program Determination of Adequacy;
Part 271—Requirements for Authorization of State Hazardous Waste Programs;
Part 281—Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks;
Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution Reporting; and
Part 501—State Sludge Management Program Regulations.

ADEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Arizona's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Arizona's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Matthew Leopard,

Director, Office of Information Collection.

[FR Doc. 2016–13289 Filed 6–6–16; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: *Date and Time:* The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 9, 2016, from 1:00 p.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov*. See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Closed Session

- FCSIC Report on System Performance and Liquidity

Open Session

A. Approval of Minutes

- March 10, 2016—Regular Meeting

B. Business Reports

- FCSIC Financial Report
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Mid-Year Review of Insurance Premium Rates

Dated: June 2, 2016.

Dale L. Aultman,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2016–13479 Filed 6–6–16; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination, 10227, Champion Bank, Creve Coeur, Missouri

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10227, Champion Bank, Creve Coeur, Missouri (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Champion Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 1, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13297 Filed 6–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10118, Brickwell Community Bank, Woodbury, MN

Notice is hereby given that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for Brickwell Community Bank, Woodbury, Minnesota ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of Brickwell Community Bank on September 11, 2009. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: June 1, 2016.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13296 Filed 6–6–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

FY 2015 Service Contract Inventory

AGENCY: Federal Maritime Commission.

ACTION: Notice of release of the Federal Maritime Commission's FY 2015 Service Contract Inventory.

SUMMARY: Acting in compliance with Sec. 743 of Division C of the Consolidated Appropriations Act 2010 (Pub. L. 111–117), the Federal Maritime Commission (Commission) is publishing this notice to advise the public of the availability of its FY 2015 Service Contract Inventory. The FY 2015 Service Contract Inventory includes the Service Contract Inventory Analysis (Executive Summary) and the Service Contract Inventory (Inventory Detail, Inventory Summary, Special Interest Functions and Total Service Contract Obligations).

This inventory was developed in accordance with guidance issued on November 5, 2010, December 19, 2011, November 25, 2014, and September 8, 2015, by the Office of Management and Budget (OMB), Office of Procurement Policy (OFPP). The Federal Maritime Commission has posted its FY 2015 Service Contract Inventory and FY 2015 Service Contract Inventory Analysis at the following links: *http://www.fmc.gov/assets/1/Page/ServiceContractInventory2015FINAL.pdf* and *http://www.fmc.gov/assets/1/Page/ServiceContractInventorySummaryFY15.pdf.*

DATES: The inventory is available on the Commission's Web site as of May 5, 2016.

FOR FURTHER INFORMATION CONTACT: Kristian Jovanovic, Director, Office of Management Services, 202–523–5900, *KJovanovic@fmc.gov.*

Karen V. Gregory,

Secretary.

[FR Doc. 2016–13337 Filed 6–6–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Sequatchie Valley Bancshares, Inc.,* Dunlap, Tennessee; to acquire 100 percent of the outstanding shares of Franklin County United Bancshares, Inc., and thereby indirectly acquire Franklin County United Bank, both of Decherd, Tennessee.

Board of Governors of the Federal Reserve System, June 2, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13400 Filed 6–6–16; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket 2016–0001; Sequence 9]

Information Collection; Nondiscrimination in Federal Financial Assistance Programs, GSA Form 3702

AGENCY: Office of Civil Rights, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new request for an OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No: 3090–XXXX; Nondiscrimination in Federal Financial Assistance Programs, GSA 3702. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

DATES: Submit comments on or before: August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Evelyn Britton, Director, External Programs Division, Office of Civil Rights, at telephone 202–603–1645 or via email to *evelyn.britton@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702.

Instructions: Please submit comments only and cite Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal financial assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole, or in part, by GSA.

These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

B. Annual Reporting Burden

Respondents: 1200.
Responses per Respondent: 1.
Total Responses: 1200.
Hours per Response: 2.
Total Burden Hours: 2400.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702, in all correspondence.

Dated: May 31, 2016.

David A. Shive,

Chief Information Officer.

[FR Doc. 2016–13396 Filed 6–6–16; 8:45 am]

BILLING CODE 6820–34–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 106072016–1111–03]

Proposed Amendment to Initial Funded Priorities List

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Proposed amendment to Initial Funded Priorities List.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) seeks public and Tribal comment on a proposal to amend its Initial Funded Priorities List (FPL) to approve implementation funding for the Apalachicola Bay Oyster Restoration project in Florida (Project). The Council is proposing to approve $3,978,000 in implementation funding for this Project. The Council is also proposing to reallocate $702,000 from project planning to project implementation, after any remaining planning expenses have been met. The total amount available for implementation of the Project would thus be $4,680,000. These funds would be used to restore approximately 251 acres of oyster beds,

which is an increase from the 219 acres originally proposed in the FPL.

To comply with the National Environmental Policy Act (NEPA) and other applicable laws, the Council is proposing to adopt an existing Environmental Assessment (EA) that addresses the activities in the Project. In so doing, the Council would expedite project implementation, reduce planning costs and increase the ecological benefits of this Project by using savings in planning funds to expand the Project by approximately 32 acres. The Council looks forward to public and Tribal comment on this proposal.

DATES: Comments on this proposed amendment are due July 7, 2016.

ADDRESSES: Comments on this proposed amendment may be submitted as follows:

By Email: Submit comments by email to *frcomments@restorethegulf.gov*. Email submission of comments ensures timely receipt and enables the Council to make them available to the public. In general, the Council will make such comments available for public inspection and copying on its Web site, *www.restorethegulf.gov*, without change, including any business or personal information provided, such as names, addresses, email addresses and telephone numbers. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

By Mail: Send comments to Gulf Coast Ecosystem Restoration Council, 500 Poydras Street, Suite 1117, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: Please send questions by email to *frcomments@restorethegulf.gov* or contact Will Spoon at (504) 239–9814.

SUPPLEMENTARY INFORMATION:

I. Background

The *Deepwater Horizon* oil spill led to passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act), which dedicates 80 percent of all Clean Water Act administrative and civil penalties related to the oil spill to the Gulf Coast Restoration Trust Fund (Trust Fund). The RESTORE Act also created the Council, an independent Federal entity comprised of the five Gulf Coast states and six Federal agencies. Among other responsibilities, the Council administers a portion of the Trust Fund known as the Council-Selected Restoration Component in order to "undertake projects and programs, using the best available science, which would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast." Additional information on the Council can be found here: *https://www.restorethegulf.gov*.

On December 9, 2015, the Council published the FPL, which includes projects and programs approved for funding under the Council-Selected Restoration Component, along with activities that the Council identified as priorities for potential future funding. Activities approved for funding in the FPL are included in "Category 1"; the priorities for potential future funding are in "Category 2." In the FPL the Council approved approximately $156.6 million in Category 1 restoration and planning activities, and prioritized twelve Category 2 activities for possible funding in the future, subject to environmental compliance and further Council and public review. The Council included planning activities for the Project in Category 1 and implementation activities for the Project in Category 2 of the FPL.

The Council reserved approximately $26.6 million for implementing priority activities in the future. These reserved funds may be used to support some, all or none of the activities included in Category 2 of the FPL and/or to support other activities not currently under consideration by the Council. As appropriate, the Council intends to review each activity in Category 2 in order to determine whether to: (1) Move the activity to Category 1 and approve it for funding, (2) remove it from Category 2 and any further consideration, or (3) continue to include it in Category 2. A Council decision to amend the FPL to move an activity from Category 2 into Category 1 must be approved by a Council vote after consideration of public and Tribal comments.

II. Environmental Compliance

Prior to approving an activity for funding in FPL Category 1, the Council must comply with NEPA and other Federal environmental laws. At the time of approval of the FPL, the Council had not complied with NEPA and other applicable laws with respect to implementation of the Project. The Council did, however, recognize the potential ecological value of the Project, based on review conducted as part of the FPL process. For this reason, the Council approved $702,000 in planning funds for this Project, a portion of which would be used to complete any needed environmental compliance activities. As noted above, the Council placed the implementation portion of this Project into FPL Category 2, pending the outcome of this environmental compliance work and further Council review. The estimated cost of the Project's implementation component was listed at $3,978,000, which would fund the restoration of approximately 219 acres of oyster beds in Apalachicola Bay. Inclusion of the Project's implementation activities into Category 2 did not in any way commit the Council to subsequently approve those implementation activities for funding.

Since approval of the FPL, Florida has collaborated with the U.S. Army Corps of Engineers (USACE) to identify an existing EA that could be used to support Council approval of implementation funding for this Project. This EA was prepared by USACE in association with a Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act of 1899 programmatic general permit (PGP) that authorizes the Florida Department of Agricultural and Consumer Services to conduct aquaculture of live rock and marine bivalves in navigable waters of the U.S. which are within the jurisdiction of the State of Florida, provided that such activities comply with the terms and conditions of the PGP.

The Council has reviewed this EA and associated documents, including an August 13, 2015, letter from the National Oceanic and Atmospheric Administration regarding compliance with the Endangered Species Act (ESA). In addition to ESA, the EA addresses compliance with other Federal environmental laws, including the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act and more. Based on this review, the Council is proposing to adopt this EA to support the proposed approval of implementation funds for the Project, provided that the Project is implemented in accordance with the terms and conditions of the PGP and the design criteria set forth in the associated ESA programmatic consultation. This EA and the associated ESA documentation can be found here: *https://www.restorethegulf.gov/funded-priorities-list*. (See *Apalachicola Bay Oyster Restoration Project—Implementation*.)

Apalachicola Bay Oyster Restoration Project

If approved for implementation funding, this Project would include the placement of approximately 50,258 cubic yards of suitable oyster reef substrate through the use of barges and high-pressure water. Areas to be restored would be marked with buoys or clearly marked stakes. Following the completion of the planting, oyster density sampling would be conducted and analyzed at a minimum of six months, one year and two years after clutching at each restoration site.

Ecological benefits associated with the Project would be realized through an array of ecological services in the form of increased fishery and wildlife habitat; increased biodiversity and trophic dynamics; increased filtering capacity to improve water quality and recycle nutrients; increased structural stability to reduce coastal erosion and to protect near shore resources; protection of water quality; and the protection of healthy, diverse and sustainable living coastal marine resources. Beyond the fact that oysters and oyster reef communities represent important food sources for many species of commercially important fish and invertebrates, functioning oyster reefs are also recognized as critical structural and community components which stabilize and sustain a broad array of ecological relationships. Additional outcomes include economic benefits through harvesting, processing, and marketing fishery products locally and regionally by all who enjoy high-quality seafood.

Additional information on this Project, including metrics of success, response to science reviews and more is available in an activity-specific appendix to the FPL, which can be found here: *https://www.restorethegulf.gov*. (Please see the table on page 24 of the FPL and click on *Apalachicola Bay Oyster Restoration*, Implementation.)

Justin R. Ehrenwerth,
Executive Director, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2016–13356 Filed 6–6–16; 8:45 am]
BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Clinical Laboratory Improvement Advisory Committee (CLIAC) and Request for Suggested Meeting Topics for CLIAC

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on CLIAC and soliciting suggestions for topics to be considered for future Committee deliberation. CLIAC provides scientific and technical advice and guidance to the Secretary, Department of Health and Human Services (HHS); the Assistant Secretary for Health, HHS; the Director, Centers for Disease Control and Prevention (CDC); the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare & Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine. In addition, the Committee provides advice and guidance on specific questions related to possible revision of the CLIA standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

CLIAC consists of 20 members including the Chair, and represents a diverse membership across laboratory specialties, professional roles (laboratory management, technical specialists, physicians, nurses) and practice settings (academic, clinical, public health), and includes a consumer representative. In addition, the Committee includes three ex officio members (or designees), including the Director, CDC; the Administrator, CMS; and the Commissioner, FDA. A nonvoting representative from the Advanced Medical Technology Association (AdvaMed) serves as the industry liaison. The Designated Federal Officer (DFO) or their designee and the Executive Secretary are present at all meetings to ensure meetings are within applicable statutory, regulatory and HHS General Administration manual directives.

Request for Candidates: Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to accomplishing CLIAC's objectives. Nominees will be selected by the HHS Secretary or designee from authorities knowledgeable across the fields of microbiology (including bacteriology, mycobacteriology, mycology, parasitology, and virology), immunology (including histocompatibility), chemistry, hematology, pathology (including histopathology and cytology), or genetic testing (including cytogenetics); representatives from the fields of medical technology, public health, and clinical practice; and consumer representatives. Members may be invited to serve for terms of up to four years.

The U.S. Department of Health and Human Services policy stipulates that Committee membership be balanced in terms of professional training and background, points of view represented, and the committee's function. Consideration is given on the basis of geographic, ethnic and gender representation. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for CLIAC membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July, or as soon as the HHS selection process is completed. Note that the need for different expertise and individuals to maintain the appropriate demographic balance varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items to be considered for nomination. The deadline for receipt of materials for the 2017 term is August 1, 2016:

- Current *curriculum vitae*, including complete contact information (name, affiliation, mailing address, telephone number, email address).
- Letter(s) of recommendation from person(s) not employed by the U.S. Department of Health and Human Services.

Request for Suggested Meeting Topics: Consideration of topics for meeting agendas begins approximately four months prior to each meeting. The agendas are developed by CDC in collaboration with CMS, FDA, and the CLIAC Chair. Topics within the scope of

the Committee's charge are selected and questions for CLIAC deliberation are developed to align with the agenda. The agenda is published in the **Federal Register** not less than 15 days before the meeting date and is posted on the CLIAC Web site (*http://wwwn.cdc.gov/cliac/default.aspx*). Suggested meeting topics are invited at any time for consideration at future meetings.

Submission of Candidate Information or Suggestions for Meeting Topics: Candidate suggestions and potential meeting topics may be submitted by:

- Email in care of the CLIAC Secretariat at *CLIAC@cdc.gov*.
- U.S. Postal Service: Attention: CLIAC Secretariat, 1600 Clifton Road NE., Mailstop F–11, Atlanta, GA 30329.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329–4018; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov*. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13438 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Office for State, Tribal, Local and Territorial Support (OSTLTS)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, CDC/Agency for Toxic Substances and Disease Registry (ATSDR), announces the following meeting and Tribal Consultation Session:

Name: Tribal Advisory Committee (TAC) Meeting and 15th Biannual Tribal Consultation Session.

Times and Dates:

8:00 a.m.–6:30 p.m., August 2, 2016, (TAC Meeting)

8:00 a.m.–12:00 p.m., PDT, August 3, 2016, PDT (TAC Meeting & 15th Biannual Tribal Consultation Session)

Place: The TAC Meeting and Tribal Consultation Session will be held at Rincon's Harrah, 77 Harrah's Rincon Way, Valley Center, California 92082, telephone (760) 362–8990.

Status: The meetings are being hosted by CDC/ATSDR in-person only and are open to the public. Attendees must pre-register for the event by Wednesday, July 13, 2016, at the following link: *http://www.cdc.gov/tribal/meetings.html*.

Purpose: The purpose of these recurring meetings is to advance CDC and ATSDR support for and collaboration with American Indian and Alaska Native (AI/AN) tribes, and to improve the health of AI/AN tribes by pursuing goals that include assisting in eliminating the health disparities faced by AI/AN tribes; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of AI/ANs; and promoting health equity for all Indian people and communities. To advance these goals, CDC and ATSDR conducts government-to-government consultations with elected tribal officials or their authorized representatives. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension.

Matters for Discussion: The Summer 2016 TAC Meeting and Biannual Tribal Consultation Session will provide opportunities for tribal leaders to speak openly about the public health issues affecting their tribes. These meetings will include, but are not limited to, discussions about building tribal public health capacity, intimate partner violence, and reducing opioid dependence and overdose in Indian country.

Tribes will also have an opportunity to present testimony about tribal health issues. All Tribal leaders are encouraged to submit written testimony by 5:00 p.m., EDT, Wednesday, July 13, 2016, to LCDR Jessica Damon, Public Health Advisor for the Tribal Support Unit, OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341–3717 or email to *TribalSupport@cdc.gov*.

Based on the number of tribal leaders giving testimony and the time available, it may be necessary to limit the time for each presenter.

The agenda is subject to change as priorities dictate. Information about the TAC, CDC/ATSDR's Tribal Consultation Policy, and previous meetings can be found at *http://www.cdc.gov/tribal*.

Contact person for more information: LCDR Jessica Damon, Public Health Advisor, CDC/OSTLTS, 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341–3717; email: *TribalSupport@cdc.gov* or telephone (404) 498–0563.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13439 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–0770; Docket No. CDC–2016–0047]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the National HIV Behavioral Surveillance (NHBS) system. CDC is requesting a 3-year approval for revision to the previously approved project to continue collecting standardized HIV-related behavioral data from persons at risk for HIV systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States.

DATES: Written comments must be received on or before August 8, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0047 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

National HIV Behavioral Surveillance System (NHBS)—(0920–0770, Expiration 03/31/2017)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this data collection is to monitor behaviors of persons at high risk for infection that are related to Human Immunodeficiency Virus (HIV) transmission and prevention in the United States. The primary objectives of the NHBS system are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community based organizations, community planning groups and other stakeholders.

By describing and monitoring the HIV risk behaviors, HIV seroprevalence and incidence, and HIV prevention experiences of persons at highest risk for HIV infection, NHBS provides an important data source for evaluating progress towards national public health goals, such as reducing new infections, increasing the use of condoms, and targeting high risk groups.

The Centers for Disease Control and Prevention requests approval for a 3-year extension of this information collection. Data are collected through anonymous, in-person interviews conducted with persons systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States; these 25 MSAs were chosen based on having high HIV prevalence. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), injecting drug users (IDU), and heterosexuals at increased risk of HIV (HET). A brief screening interview will be used to determine eligibility for participation in the behavioral assessment.

The data from the behavioral assessment will provide estimates of (1) behavior related to the risk of HIV and other sexually transmitted diseases, (2) prior testing for HIV, (3) and use of HIV prevention services.

All persons interviewed will also be offered an HIV test, and will participate in a pre-test counseling session. No other federal agency systematically collects this type of information from persons at risk for HIV infection. These data have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that NHBS will involve, per year in each of the 25 MSAs, eligibility screening for 50 to 200 persons and eligibility screening plus the behavioral assessment with 500 eligible respondents, resulting in a total of 37,500 eligible survey respondents and 7,500 ineligible screened persons during a 3-year period. Data collection will rotate such that interviews will be conducted among one group per year: MSM in year 1, IDU in year 2, and HET in year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group.

Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Persons Screened	Eligibility Screener	15,000	1	5/60	1,250
Eligible Participants	Behavioral Assessment MSM	4,167	1	30/60	2,084
Eligible Participants	Behavioral Assessment IDU	4,167	1	54/60	3,750

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Eligible Participant	Behavioral Assessment HET	4,167	1	39/60	2,709
Peer Recruiters	Recruiter Debriefing	4,167	1	2/60	139
Total Annualized Burden					9,932

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13293 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), PAR 16–098 Cooperative Research Agreements to the World Trade Center Health Program (U01).

Times and Dates: 8:00 a.m.–5:00 p.m., EDT, June 28, 2016 (Closed); 8:00 a.m.–12:00 p.m., EDT, June 29, 2016 (Closed).

Place: Atlanta Marriott Century Center, 2000 Century Boulevard NE., Atlanta, Georgia 30345, Telephone: (404) 325–0000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Cooperative Research Agreements to the World Trade Center Health Program (U01)", PAR 16–098.

Contact Person for More Information: Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26505, Telephone: (304) 285–5975.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13442 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA–CE–16–005, Evaluating Practice-based Sexual Violence Primary Prevention Approaches from CDC's Rape Prevention and Education (RPE) Program.

Times and Dates: 08:00 a.m.–5:00 p.m., EDT, June 28–29, 2016 (Closed).

Place: The Georgian Terrace, 659 Peachtree St. NE., Atlanta, GA 30308.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Evaluating Practice-based Sexual Violence Primary Prevention Approaches from CDC's Rape Prevention and Education (RPE) Program", RFA–CE–16–005.

Contact Person for More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13440 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, has been renewed for a 2-year period through May 21, 2018.

For information, contact William Cibulas, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, 4770 Buford Highway, Mailstop F61, Chamblee, Georgia 30341, telephone (770) 488–0662 or fax (770) 488–3385.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13436 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA OH16–001, Extension of the World Trade Center Health Registry (U50).

Time and Date: 1:00 p.m.–2:30 p.m., EDT, June 29, 2016 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters for Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Extension of the World Trade Center Health Registry (U50) Request For Application", RFA OH16–001.

Contact Person for More Information: Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26505, Telephone: (304) 285–5975.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13441 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16AMV; Docket No. CDC–2016–0048]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project entitled "Survey of Musculoskeletal Disorders Prevention Tools/Methods: 10-year Follow-Up". The purpose of this study is to administer a survey of ergonomics practitioners (those holding professional certification) to gather information on the basic tools, direct and observational measurement techniques, and software used at work sites to assess risk factors for musculoskeletal disorders.

DATES: Written comments must be received on or before August 8, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0048 by any of the following methods:

Federal eRulemaking Portal: Regulations.gov. Follow the instructions for submitting comments.

Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov.*

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and

maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Survey of Musculoskeletal Disorders Prevention Tools/Methods: 10-year Follow-Up—New—National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970), NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH proposes to administer a survey of ergonomics professionals as a 10-year follow-up to a survey conducted of U.S. Certified Professional Ergonomists (CPEs) by Dempsey et al. and published in 2005 (A survey of tools and methods used by certified professional ergonomists. *Applied Ergonomics, 36,* 489–503). NIOSH is requesting a one year approval period for this data collection.

The project is planned to extend the original survey in two ways: (1) The sample will be broadened to include international ergonomics practitioners (in Canada, the United Kingdom, New Zealand, and Australia), and, (2) the queried tools and methods have been updated to reflect new and emerging technologies not included in the original survey. The purpose of the survey will be unchanged—to gather information on the types of basic tools, direct and observational measurement techniques, and software used in the field by ergonomics practitioners to assess workplace risk factors for musculoskeletal disorders and to evaluate workplace interventions.

The motivation for the original 2005 survey was to better understand the types of tools and methods practitioners use, their opinions of these tools, and to potentially gain an understanding of the constraints or preferences that influence this selection. At the time of the 2005 survey, there were many tools reported in the literature, but little information on the extent to which these different tools were used by practitioners. Similarly, there was little published information on users' experiences with these different tools. There has been considerable interest in the findings and the Dempsey et al (2005) publication has been widely cited. The program anticipates that a follow-up effort will result in even greater interest as changes in the practice of ergonomics and prevention of soft tissue MSDs can be inferred from comparisons between the two surveys time points.

Since publication of the initial survey findings there has been a proliferation of smart phone/smart device-embedded inertial and acceleration sensors and related "apps" for human motion and activity logging. Little is known about the extent to which ergonomics practitioners are using these newer technologies towards assessing workplace physical activity (and now, workplace inactivity and "sedentarism") and other job demands. Thus, the survey will provide a contemporary perspective on the scope of use of assessment tools and methods by these professionals. This project will involve the collection of non-sensitive data via web-based survey questionnaire methods. Survey data relate only to respondents' professional practice within the OS&H discipline of ergonomics and prevention of musculoskeletal disorders.

Only certified ergonomics professionals from five countries with specific certification credentials will be eligible and invited to participate. Their participation will be voluntary. The program has assumed an optimistic 80% response rate to estimate the number of respondents at 938 in the estimation of annualized burden hours.

In summary, this study will update information collected and published in 2005 on the methods and tools used by practicing ergonomists. NIOSH expects to complete data collection in 2017. The total estimated burden hours is 469. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Certified Ergonomics professionals ..	Practicing Ergonomist Survey of Tools and Methods.	938	1	30/60	469
Total	.....	.....	.....	.....	469

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13292 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–4:30 p.m., EDT, June 28, 2016; 8:30 a.m.–11:30 a.m., EDT, June 29, 2016.

Place: CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters for Discussion: The agenda items for the BSC Meeting will include NCEH/ATSDR Office of the Director updates; update on Climate and Health; NCEH/ATSDR Program Responses to BSC Guidance and Action Items; NCEH/ATSDR Support for the Public Health Emergency in Flint; Rethinking the Strategy for the NCEH Lead Surveillance Program; CDC's Blood Reference Value for Lead; NCEH/ATSDR's Strategy for PFCs in the Environment; NCEH/ATSDR's Safe Drinking Water Program: Developing a Public Health Strategy; updates from the National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health, the US Department of Energy and the US Environmental Protection Agency.

Agenda items are subject to change as priorities dictate.

Supplemental Information: The public comment period is scheduled on Tuesday, June 28, 2016 from 3:15 p.m. until 3:30 p.m., and on Wednesday, June 29, 2016 from 10:30 a.m. until 10:45 a.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–45, Atlanta, Georgia 30341; Telephone 770/488–0575 or 770/488–0577, Fax: 770/488–3377; Email: *smalcom@cdc.gov.* The deadline for notification of attendance is June 21, 2016.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–13437 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.092]

Announcement of a Single-Source Award to Healthy Families San Angelo, San Angelo, TX

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: Notice of award of a Single-Source Award under the Competitive Personal Responsibility Education Program (Competitive PREP) to Healthy Families of San Angelo (HFSA) in San Angelo, Texas to support continued participation in the federal PREP impact evaluation.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), announces a single-source award in the amount of $750,000 to HFSA in San Angelo, TX for the purpose of continued participation in the federal impact evaluation. The award allows sufficient time to complete evaluation related activities of the Steps to Success program. Steps to Success is a comprehensive, culturally appropriate intervention that seeks to postpone subsequent pregnancies and increase safe sex behaviors for high-risk pregnant and parenting teens.

DATES: The period of support under this single-source award is February 1, 2016, through June 30, 2017.

FOR FURTHER INFORMATION CONTACT: LeBretia White, Manager, Adolescent Pregnancy Prevention Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 330 C Street SW., Washington, DC 20024. Telephone: 202–205–9605; Email: *LeBretia.White@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: HFSA was selected as a site for the PREP federal impact evaluation as a result of a strong program design. The impact evaluation addresses significant gaps in the teen pregnancy prevention evidence base. Currently, there is little rigorous evidence on strategies effective in reducing repeat pregnancies among adolescent mothers. HFSA's program will help fill that gap due to its focus on reducing subsequent pregnancies and long acting reversible contraception. If impacts are found, the HFSA program can be added to the U.S. Department of Health and Human Services teen pregnancy evidence review list. This award allows time for evaluation activities to be completed including the collection and analysis of data.

Statutory Authority: Section 2953 of the Patient Protection and Affordable Care Act of 2010, Pub. L. 111–148, added Section 513 to Title V of the Social Security Act, codified at 42 U.S.C. 713, authorizing the Personal Responsibility Education Program.

Christopher Beach,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2016–13415 Filed 6–6–16; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee Microenterprise and Refugee Home-Based Child Care Microenterprise Development.

OMB No.: New.

Description: New data collection tool for refugee microenterprise and Refugee Home-Based Child Care Microenterprise Program.

Respondents: Refugee Microenterprise Development Grantees and Refugee Home-Based Child Care Microenterprise Development.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Refugee Microenterprise Development	22	8	4	704
Refugee Home-Based Child Care Microenterprise Development	23	7	4	644
Total Burden				1340

Estimated Total Annual Burden Hours: (1340 hours x $30 per hour) $40,440 per year.

Explanation

The Refugee Microenterprise Development Program

• Currently, there are twenty two grantees (respondents) in the program and the semi-annual progress, which includes the data and information required, is submitted twice per year.

• The request covers one form (Form I. attached) which includes eight data points. Based on experience (the information was provided by technical assistance service provider in the past), it takes about two hours per respondent per six months (*i.e.*, four hours per year per grantee (respondent) or 88 hours per year for all respondents) to complete the form.

• No survey will be undertaken since the collection of this data (information) is part of the implementation process of the project and its collection and reporting does not constitute a separate and additional cost to the grantees (respondents). The cost is covered by the grant the grantee receives. The grantees have Down Home database which captures and stores the data required for reporting. The grantee uploads the semi-annual report in Grant Solution where it is stored. ORR derives the data it requires for reporting and management decision from Grant Solution.

The Refugee Home-Based Child Care Microenterprise Development Group

• Currently, there are twenty three grantees (respondents) in the program and the semi-annual progress.

• The request covers one form (Form II. attached) which includes seven data points. It takes about two hours per respondent per six months (*i.e.*, four hours per year grantee (respondent) or 92 hours per year for all respondents) to complete the form.

• The collection of this data (information) is part of the process and its collection and reporting does not include separate and additional cost to the grantees (respondents). The cost is covered by the grant the grantee receives. The grantees have database which captures and stores the data required for reporting. The grantee uploads the data required in Grant Solution where it is stored. ORR derives the data it requires for reporting and management decision from Grant Solution.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–13401 Filed 6–6–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0579]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing; Forms FDA 3486 and 3486A

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the reporting of biological product deviations in manufacturing and human cells, tissues, and cellular and tissue-based product (HCT/P) deviations, and Forms FDA 3486 and 3486A.

DATES: Submit electronic or written comments on the collection of information by August 8, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0579 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing; Forms FDA 3486 and 3486A." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A

OMB Control Number 0910–0458—Extension

Under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards, including those prescribed in the FDA regulations, designed to ensure the continued safety, purity, and potency of such products. In addition under section 361 of the PHS Act (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States or possessions. Further, section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the FD&C Act. Establishments manufacturing biological products, including human blood and blood components, must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)) and current good tissue practice (CGTP) regulations (part 1271 (21 CFR part 1271)) as appropriate. FDA regards biological product deviation (BPD) reporting and HCT/P deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 (21 CFR 600.14), in brief, requires the manufacturer who

holds the biological product license, for other than human blood and blood components, and who had control over a distributed product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171, in brief, requires licensed manufacturers of human blood and blood components, including Source Plasma, unlicensed registered blood establishments, and transfusion services, who had control over a distributed product when the deviation occurred, to report to CBER as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Similarly, § 1271.350(b), in brief, requires HCT/P establishments that manufacture non-reproductive HCT/Ps described in § 1271.10 to investigate and report to CBER all HCT/P deviations relating to a distributed HCT/P that relates to the core CGTP requirements, if the deviation occurred in the establishment's facility or in a facility that performed a manufacturing step for the establishment under contract, agreement, or other arrangement. Form FDA 3486 is used to submit BPD reports and HCT/P deviation reports.

Respondents to this collection of information are: (1) Licensed manufacturers of biological products other than human blood and blood components, (2) licensed manufacturers of blood and blood components including Source Plasma, (3) unlicensed registered blood establishments, (4) transfusion services, and (5) establishments that manufacture non-reproductive HCT/Ps regulated solely under section 361 of the PHS Act as described in § 1271.10. The number of respondents and total annual responses are based on the BPD reports and HCT/P deviation reports FDA received in fiscal year 2015. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for BPD reports submitted to both CBER and CDER. Based on the information from industry, the estimated average time to complete a deviation report is 2 hours, which includes a minimal one-time burden to create a user account for those reports submitted electronically. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER has developed a Web-based addendum to Form FDA 3486 (Form FDA 3486A) to provide additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested includes information not contained in the Form FDA 3486 such as: (1) Distribution pattern; (2) method of consignee notification; (3) consignee(s) of products for further manufacture; (4) additional product information; (5) updated product disposition; and (6) industry recall contacts. This information is requested by CBER through email notification to the submitter of the BPD report. This information is used by CBER for recall classification purposes. At this time, Form FDA 3486A is being used only for those BPD reports submitted under § 606.171. CBER estimates that 5 percent of the total BPD reports submitted to CBER under § 606.171 would need additional information submitted in Form FDA 3486A. CBER further estimates that it would take between 10 to 20 minutes to complete Form FDA 3486A. For calculation purposes, CBER is using 15 minutes.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under parts 211 (approved under OMB control number 0910–0139), part 606 (approved under OMB control number 0910–0116), part 820 (approved under OMB control number 0910–0073), and part 1271 (approved under OMB control number 0910–0543) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
600.14	3486	102	5.99	611	2	1,222
606.171	3486	1,738	26.34	45,774	2	91,548
1271.350(b)	3486	97	2.64	256	2	512
Web-based Addendum	[2] 3486A	87	26.31	2,289	.25 (15 minutes)	572
Total						93,854

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of the number of respondents (1,738 × 0.05 = 87) and total annual responses to CBER (45,774 × 0.05 = 2,289).

Dated: May 26, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13366 Filed 6–6–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Pilot Effectiveness Trials for Treatment, Preventive and Services Interventions (R34)

Date: June 24, 2016.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowship and Dissertation Grants Review Meeting.

Date: June 30, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Services Conflicts (Teleconference).

Date: June 30, 2016.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 1, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13310 Filed 6–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-day Comment Request, U.S. Nuclear Medicine Technologists Study (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 28, 2016 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact*: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, 9609 Medical Center Drive, Room 7E566, Rockville, MD 20850, or call non-toll-free number 301–414–0308. Or Email your request, including your address to: *doodym@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: U.S. Nuclear Medicine Technologists Study, 0925–0656, Expiration Date 04/30/2015—REINSTATEMENT WITH CHANGE, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: We propose to collect from U.S. nuclear medicine technologists (USNMT) certified after 1980 historical information about nuclear medicine procedures performed, radioisotopes used, related work and safety practices, and places of employment. The primary objectives of the current feasibility effort are: (a) To identify a cohort of nuclear medicine technologists certified after 1980 by the American Registry of Radiologic Technologists (ARRT) and/or the Nuclear Medicine Technologist Certification Board (NMTCB); and (b) to characterize individual organ-specific occupational radiation doses from radioisotope procedures. More recently certified technologists, who specialized in nuclear medicine, are expected to have greater exposures to radioisotopes than the general radiologic technologists in the U.S. Radiologic Technologist (USRT) cohort owing to performing such procedures with greater frequency. The proposed USNMT study would be a direct follow-on to the USRT Study to assess health risks associated with occupational exposure to these much higher-energy radiopharmaceuticals.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 125.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Instrument	Number of respondents	Frequency of response	Average time per response (hours)	Annual hour burden
Nuclear Medicine Technologists	Nuclear Medicine Questionnaire	250	1	30/60	125
Total		250	250		125

Dated: May 31, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–13308 Filed 6–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 23, 2016, 08:00 a.m. to June 24, 2016, 06:00 p.m., Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on May 16, 2016, 81 FR 30318.

The meeting notice is amended to change the Committee name from National Cancer Institute, Special Emphasis Panel; NCI Omnibus R03 SEP–1 to National Cancer Institute, Special Emphasis Panel; NCI R03 SEP–2. The meeting is closed to the public.

Dated: June 1, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13309 Filed 6–6–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council will meet on June 13, 2016, 1:30 p.m.–2:30 p.m., via teleconference.

The meeting will include the review, discussion, and evaluation of grant applications reviewed by the Initial Review Group, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, these meetings will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4) and (c)(6); and 5 U.S.C. App. 2, Section 10(d).

Committee Name: Substance Abuse and Mental Health Services, Administration Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: June 13, 2016, 1:30 p.m.–2:30 p.m. (CLOSED).

Place: SAMHSA Building, 5600 Fishers Lane, Rockville, MD 20857.

Contact: Matthew J. Aumen, Designated Federal Officer, SAMHSA/CSAP National Advisory Council, 5600 Fishers Lane, Rockville, MD 20857, Email: *Matthew.Aumen@samhsa.hhs.gov.*

Summer King,

Statistician, SAMHSA.

[FR Doc. 2016–13369 Filed 6–6–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension

These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or significant (severe) emotional impairment (children/youth) as defined by 42 U.S.C. 10802(4) and 10804(d). Only entities designated by the governor of each State, including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Mayor of the District of Columbia, and the tribal councils for the American Indian Consortium (the Hopi and Navajo Nations in the Four Corners region of the Southwest), to protect and advocate the rights of persons with developmental disabilities are eligible to receive PAIMI Program grants [the Act at 42 U.S.C. at 10802(2)]. These grants are based on a formula prescribed by the Secretary [42 U.S.C. at 10822(a)(1)(A)].

On January 1, each eligible state protection and advocacy (P&A) system is required to prepare a report that describes its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI Program allotments during the most recently completed fiscal year. The PAIMI Act at 42 U.S.C. 10824(a) requires that each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA/CMHS) and to the State Mental Health Agency where the system is located. These annual PAIMI Program Performance Reports (PPR) to the Secretary must include the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;
- A description of the accomplishments resulting from such activities;
- A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI Program allotments;
- A description of activities conducted by States to protect and advocate such rights;
- A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,
- A description of the coordination among such systems, activities and mechanisms;
- Specification of the number of public and nonprofit P&A systems established with PAIMI Program allotments;
- Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the State P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

The PAIMI Rules [42 CFR part 51] mandate that each State P&A system may place restrictions on either its case or client acceptance criteria developed as part of its annual PAIMI priorities. Each P&A system is required to inform prospective clients of any such restrictions when they request a service [42 CFR 51.32(b)].

The PAIMI PPR summary must include a separate section, prepared by the PAIMI Advisory Council (PAC), that describes the council's activities and its assessment of the State P&A system's operations [PAIMI Act at 42 U.S.C. 10805(7)].

The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

42 CFR citation	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total annual burden
51.8(a)(2) Program Performance Report	57	1	26.0	[1] 1,482
51.8(a)(8) Advisory Council Report	57	1	10.0	[1] 570
51.10 Remedial Actions:				
Corrective Action Plans	7	1	8.0	56
Implementation Status Report	7	3	2.0	42
51.23(c) Reports, materials and fiscal data provided to the PAC	57	1	1.0	57
51.25(b)(2) Grievance Procedures	57	1	.5	29
Total	126	8	47.5	184

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Written comments and recommendations concerning the proposed information collection should be sent by July 7, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2016–13382 Filed 6–6–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0013, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves surveying travelers to measure customer satisfaction of aviation security in an effort to manage airport performance more efficiently.

DATES: Send your comments by August 8, 2016.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey. TSA, with OMB's approval, has conducted surveys of passengers at airports nationwide and now seeks approval to continue this effort. The surveys are administered using an intercept methodology. The intercept methodology uses TSA personnel who are not in uniform to hand deliver business card style forms to passengers immediately following the passenger's experience with the TSA's checkpoint security functions. Passengers are invited, though not required, to complete and return the survey using either an online portal or by responding in writing to the survey questions on the customer satisfaction card and depositing the card in a drop-box at the airport or using U.S. mail; prior to each survey collection at an airport, TSA personnel select the method by which all passengers surveyed on that particular occasion will be asked to complete and return the survey. TSA uses the intercept methodology to randomly select passengers to complete the survey in an effort to gain survey data representative of all passenger demographics—including passengers who—

- Travel on weekdays or weekends;
- Travel in the morning, mid-day, or evening;

• Pass through each of the different security screening locations in the airport;

• Are subject to more intensive screening of their baggage or person; and

• Experience different volume conditions and wait times as they proceed through the security checkpoints.

Each survey includes 10 to 15 questions, and each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

TSA collects this information in order to continue to assess customer satisfaction in an effort to manage TSA employee performance more efficiently. OMB has previously approved 82 questions. TSA is requesting an extension of the approval for the information collection.

TSA personnel have the capability to conduct this survey at 25 airports each year. Based on prior survey data and research, TSA estimates 384 responses from the passengers at each airport. The average number of respondents is estimated to be 9,600 per year (384 passengers × 25 airports). TSA estimates that the time it takes to complete the survey either online or by writing on the form ranges from 3 to 7 minutes, an average of 5 minutes (0.083 hrs.) per respondent. Therefore, the annual burden is 800 hours (9,600 responses × 0.083 hours).

June 2, 2016.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–13416 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0013]

Agency Information Collection Activities: Application for Travel Document, Form I–131; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2016.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0013 in the subject box, the agency name and Docket ID USCIS–2007–0045. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0045;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0045 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS) and aliens abroad seeking humanitarian parole, in need to apply for a travel document to lawfully enter or reenter the United States; eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–131 is 519,090 and the estimated hour burden per response is 1.9 hours; 71,665 respondents providing biometrics at 1.17 hours; and 317,773 respondents providing passport-style photographs at .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,228,986 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $155,789,790.

Dated: June 2, 2016.

Samantha Deshommes,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–13386 Filed 6–6–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5936–N–01]

Notice of National Disaster Resilience Competition Grant Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice lists the awardees of Phase 2 of the National Disaster Resilience Competition (NDRC). The NDRC was conducted in accordance with Notice of Funding Availability (NOFA) FR–5800–N–29A2, published on grants.gov (Primary CFDA Number 14.272, last modified June 25, 2015). Awardees have been allocated $999,108,000 made available pursuant to the Disaster Relief Appropriations Act, 2013, Public Law 113–2 (Appropriations Act). This notice also updates and republishes Appendix A to the NOFA, which states the requirements applicable to NDRC grant recipients, including applicable waivers and alternative requirements. HUD is publishing the post-award requirements of Appendix A in the **Federal Register** because the Appropriations Act requires HUD to publish waivers and alternative requirements in the **Federal Register** no later than 5 days before their effective date. The requirements of Appendix A will also be incorporated into the grant agreement between the Grantees and HUD. The updates to Appendix A included in this notice reflect necessary revisions to citations and requirements that have changed since the NOFA's publication, as a result of the Department's implementation of the Office of Management and Budget's (OMB) final guidance, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,* through amendments to 24 CFR parts 84, 85, and 570.

DATES: *Effective Date:* June 7, 2016.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Fax inquiries may be sent to Mr. Gimont at 202–401–2044.

SUPPLEMENTARY INFORMATION:

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Section 1: Program Background and Purpose:

NDRC awardees identified in this notice were allocated Community Development Block Grant National Resilient Disaster Recovery (CDBG–NDR) grant funds on a competitive basis. These funds were made available by the Appropriations Act for disaster recovery from major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act) in 2011, 2012, and 2013. The Appropriations Act made available $16 billion in Community Development Block Grant Disaster Recovery (CDBG–DR) funds. On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG disaster recovery grants under the Appropriations Act to $15.18 billion.

HUD has not allocated other Appropriations Act funds competitively. As of September 2014, HUD had allocated or set aside approximately $13 billion–$14 billion in response to Hurricane Sandy, and Tropical Storms Irene and Lee; $514 million in response to disasters occurring in 2011 or 2012; and $654 million in response to other 2013 disasters. The Department determined that the data available for the earliest disasters eligible under the Appropriations Act no longer credibly represented additional current unmet needs (beyond those for which HUD had already allocated funding by formula) to support a formula allocation method for the remaining funding. No other reasonably current data sources common to all possible eligible jurisdictions existed at the time of the allocation. Because the law directs that CDBG–DR assistance must flow to the Most Impacted and Distressed areas with unmet recovery and revitalization needs related to the effects of a covered major disaster, HUD decided that a competition framework would work best to elicit the data needed to inform allocation choices, and ensure that the unmet disaster recovery and revitalization needs of communities around the country were appropriately considered.

To comply with statutory direction that CDBG–NDR funds be used for disaster-related expenses in the Most Impacted and Distressed areas related to the Qualified Disaster, HUD has required that Grantees address unmet needs in areas identified in the Grantee's approved application and accepted by HUD as "Most Impacted

and Distressed" as a result of the effects of the Qualified Disaster.

The Appropriations Act requires funds to be used only for specific disaster recovery related purposes. The Appropriations Act also requires that, prior to the obligation of CDBG–NDR funds, a Grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed areas. This Action Plan is discussed in section 3.I.B, "Action Plan, Amendments, and Benefit Cost Analysis," below.

Allowable costs for CDBG–NDR funds under this appropriation include only those expenses necessary to meet the Unmet Recovery Needs of the Most Impacted and Distressed target area(s), but once the necessary Tie-Back is established for a Project, it could be designed to also meet other community development objectives and economic revitalization needs, including greater Resilience to address the negative effects of climate change. Tie-Back to the Qualifying Disaster was established for CDBG–NDR projects by demonstrating a logical link to addressing Unmet Recovery Needs from the Qualifying Disaster. Under this competition, HUD awarded points for leverage, long-term commitments, and regional coordination. The most competitive proposals, however, brought other resources and commitments to bear beyond the CDBG–NDR request to enhance Resilience beyond the Most Impacted and Distressed target areas with Unmet Recovery Needs (MID–URN target areas).

Summary of Competition Details

HUD has established six goals for the NDRC: First, to fairly allocate remaining Appropriation Act funds; second, to create multiple examples of local disaster recovery planning that apply science-based and forward-looking risk analysis to address recovery, Resilience, and revitalization needs; third, to leave a legacy of institutionalizing, in as many States and local jurisdictions as possible, the implementation of thoughtful, innovative, and resilient approaches to addressing future risks; fourth, to provide resources to help communities plan and implement disaster recovery that makes them more resilient to future threats or hazards, including extreme weather events and climate change, while also improving quality of life for existing residents and making communities more resilient to economic stresses or other shocks; fifth, to fully inform and engage community stakeholders about the current and projected impacts of climate change and to develop pathways to Resilience based on sound science; and sixth, to leverage investments from the philanthropic community to help communities define problems, set policy goals, explore options, and craft solutions to inform their own local and regional resilient recovery strategies. As with all CDBG assistance, the priority is on serving low- and moderate-income people.

The NDRC applied elements of the Hurricane Sandy Task Force's rebuilding strategy to support Grantee efforts to build back stronger and more resilient through integrating comprehensive planning and investing in meaningful efforts in their recovery and revitalization. The Task Force was established by Executive Order 13632 (published in the **Federal Register** on December 14, 2012, at 77 FR 74341) to: (1) Ensure governmentwide and regionwide coordination was available to assist communities make decisions about long-term rebuilding and (2) develop a comprehensive rebuilding strategy.

The NDRC bears some similarities to other Federal programs that address disaster recovery and threat and hazard mitigation. This similarity (and the distinctions noted below) is deliberate. The similarity allows States and local governments to invest CDBG–NDR funds to support or fill gaps to address unmet needs inaccessible or unaffordable to other Federal programs, and for which insurance and State, local, and other resources are unavailable. In addition, any similarity in program structure will enable lessons learned from the competition to potentially be transferable to other Federal programs. The distinctions, on the other hand, spring from the CDBG nature of the funding source, as directed in the congressional appropriation. Among major disaster recovery programs, CDBG is notable in its statutory focus on determining and meeting the unmet needs of vulnerable lower-income people and communities and targeting the Most Impacted and Distressed areas. CDBG is also singular in its ability to consider a wide range of local community development objectives related to recovery and economic revitalization, including integrally related Resilience objectives. HUD intends that the most successful proposals from the competition will take advantage of these CDBG similarities and distinctions to envision and implement recovery Projects that serve multiple purposes and position recovering communities for a prosperous and more resilient future. To ensure programs harmonize and do not duplicate benefits, HUD required all Applicants to describe how they consult with or coordinate with funders of other proposed recovery and Resilience investments in the Most Impacted and Distressed target area and region. The CDBG context also leads naturally to requiring Resilience elements within recovery projects because it creates stability. Reducing current and future risk is essential to the long-term economic well-being of communities and businesses. When a disaster chills local and regional economies, investments in anchor Projects to reduce risk and stimulate economic revitalization can be an essential part of any disaster recovery.

Eligible Applicants. Eligible Applicants in Phase 1 were States with Qualified Disasters and units of general local government who received CDBG–DR funding from HUD for disasters occurring in 2011—2013 (including Grantees under prior disaster recovery supplemental funding)—a total of 67 potential Applicants (See Appendix B to the NOFA for a list of eligible Applicants). HUD set aside $181 million for applications serving Hurricane Sandy Qualified Disasters in the States of New York and New Jersey and in New York City, due to the catastrophic level of damage caused in those areas from Hurricane Sandy and tropical storms in 2011. Note that HUD reserved the right to fund applications out of rank order to ensure geographic diversity of funding. For the same reason, HUD also reserved the right to partially fund an application(s). To ensure HUD had complete understanding on how to scale down Projects, each Phase 2 Applicant was required to identify any phasing or scalability inherent in its proposal. Those invited to submit applications for Phase 2 should have developed proposals with scalable options to the degree possible and practicable, and were required to ensure that each component proposed for CDBG–NDR funding had independent utility.

Successful completion of Phase 1 was a threshold requirement for eligible Applicants for Phase 2.

Phase 1: Framing Unmet Recovery Needs, Vulnerabilities, and Community Development Objectives (Closed). During Phase 1 (the framing phase) of the NDRC, Applicants consulted with stakeholders and comprehensively framed the recovery needs, relevant risks and vulnerabilities (current and future), and related community development opportunities in the target geographic areas. Every fundable application had to first demonstrate a logical link, or Tie-Back, to addressing Unmet Recovery Needs stemming from the effects of the community's presidentially declared major disaster from 2011, 2012, or 2013. The other objectives, needs, or issues a Project would address were unique to the Applicant's community. For example, a community that suffered a flood might want to offer flood buyouts and property acquisition in the Most Impacted and Distressed areas, followed by restoration of a wetland to limit future flooding and provide a nature preserve or recreation area. A community that lost housing and a road during a mudslide might not only want to construct housing in a safer area for survivors, but also to find a financing mechanism for affected downstream businesses to survive the effects of the last event and be prepared for and recover more quickly from future hazards. Once the community framed the recovery need(s), identified current and future risks and vulnerabilities and noted community development opportunities, the Applicant had to identify and seek commitments from the public and private Partners it needs to develop and implement a solution, and develop a high level implementation idea. The Applicant's responses in Phase 1 described this framing process and its results, identified the Partners and other resources, and described the resulting resilient recovery concept or idea.

The Phase 1 CDBG–NDR NOFA included criteria and deadlines for both this initial "framing" phase and the later "implementation" phase of the competition. Applicants had approximately 180 days from the Phase 1 CDBG–NDR NOFA publication to complete the framing process and to submit initial proposals stating in general terms the Applicant's vulnerability(ies), issue(s), community development objectives, team (meaning the Applicant, all Partners, and any other supporting entities), required threshold items, known obstacles, substantial consultation and citizen engagement (particularly with affected and Vulnerable Populations), and general information about Unmet Recovery Needs.

After the 180-day deadline, HUD reviewed, rated, and provided detailed comments on each initial application that met all threshold requirements. HUD then ranked the applications by score and selected the qualifying Applicants for the Phase 2 application round.

Phase 2: From Framing to Implementation (Closed). In the second phase of the competition (the implementation phase), the highest scoring Applicants from the first phase were invited to fully articulate a Resilience-enhancing disaster recovery or revitalization Project or program that addressed as many of the Phase 1 identified risks, vulnerabilities, and community development opportunities as feasible and compete for implementation funding. The best Projects demonstrated how the proposal or Project would help the community recover from the effects of the covered disaster, advance community development objectives such as economic revitalization, and improve the community's ability to absorb or rapidly recover from the effects of a future extreme event, stress, threat, hazard, or other shocks. The proposed Phase 2 Project could be a pilot for the overall Phase 1 solution, could be limited to the CDBG–NDR-eligible portion of a Phase 1 concept that would benefit a geography larger than the Most Impacted and Distressed target area, or could be a stand-alone portion of a Project idea envisaged in Phase 1 that could take years or decades to completely realize. In any case, the Phase 2 Project could not be contingent on actions outside the scope of the Project to provide a defined level of protection against the threat(s) and hazard(s) identified, meet a CDBG–NDR national objective, or comply with program requirements as described in this notice. The Applicant was asked to explain how the Phase 2 proposal logically arises from the Phase 1 framing.

In Phase 2, each Applicant completed a benefit cost analysis (BCA) for any Covered Project(s), as described in the NOFA. Although the required completion of a BCA is new to CDBG disaster recovery, Rebuild by Design competitors completed BCAs and the analysis process helped improve the final proposals. The Federal Emergency Management Agency (FEMA) and U.S. Department of Transportation (DOT) also employ BCAs in reviewing applications for major Projects, and cost efficiency analysis is employed in reviews of environmental impact and consideration of alternatives. The CDBG–NDR BCA provided a sense of the cost efficiency of the proposal, but the BCA score was not used alone to rate soundness of approach. HUD recognizes that the benefits and costs may be difficult or impossible to comprehensively quantify, but, regardless of a proposed Project's scale, HUD did not fund any Phase 2 activities for which the benefits to the Applicant's community, and to the United States as a whole, were not demonstrated by the evidence submitted to justify the costs. Appendix H to the NOFA provided guidance on completing an acceptable BCA. Note that quantifying or otherwise accounting for social and ecological benefits and costs were a critical component, as was consideration of all related resources, including leverage, and the benefits and costs of long-term commitments under Factor 5.

Some of the resources provided to CDBG Grantees to support completion of the environmental reviews required under 24 CFR part 58 are also useful sources of information for a benefit-cost analysis. Consideration of these resources at an early stage in a Project may help speed the required environmental reviews. Applicants were strongly encouraged to integrate general and Project planning with the environmental review process, and to coordinate these reviews under the Unified Federal Review (UFR) process, where possible and as appropriate. The Applicant could have used public outreach meetings not only to seek Phase 1 planning input and Phase 2 Project comments or to meet the consultation requirement of the NDRC competition, but also to inform the public about environmental effects of different design approaches or of a proposed Project and its alternatives. Examples of required outreach included scoping for the National Environmental Policy Act, notices and evaluation in compliance with Executive Orders 11988 and 11990 (the 8-step decision process for floodplain management and wetlands protection), and consultation for section 106 of the National Historic Preservation Act (54 U.S.C. 306108). The Applicant engagement plan was to include strategies to ensure that vulnerable and underserved populations are involved throughout the planning and decisionmaking processes, including outreach and engagement of low-income and minority populations in furtherance of the Department's environmental justice obligations under Executive Order 12,898. This informs decisionmakers of the widest possible range of needs and options. Meaningful engagement and participation ensures the highest probability of success for all stakeholders.

After HUD provided comments on the initial Phase 1 submissions, each continuing Applicant had approximately 120 days in Phase 2 to develop a final submission. HUD considered soundness of approach, needs, capacity, leverage, and long-term commitment at this phase. Leverage in this phase could have included

traditional financial and some types of in-kind contributions. The application must also have included the supporting actions undertaken by the Applicant locally (*e.g.,* building code updates, executive orders, zoning revisions, comprehensive and mitigation plan linkages, interagency partnerships, financing mechanisms, or completing and adopting a forward-looking communitywide Resilience assessment and plan) to better position the Applicant to be more resilient to future threat(s) and hazard(s).

Following submission of the Phase 2 applications, HUD and Federal agency partners reviewed, rated, and ranked the applications in accordance with the published criteria. HUD then determined the Phase 2 awards as published in this notice.

Selection of Awardees

HUD considered for funding any completed Phase 2 application that met all thresholds and received at least 75 percent of the total points available in Phase 2. The applicable postaward requirements that were included in Appendix A to the NOFA are updated in this notice and apply to awards described herein. These postaward grant management requirements are, insofar as feasible, identical to those imposed under the notices published for grants made under the formula allocations under the Appropriations Act.

In both phases, HUD required thoughtful, evidence-based practice, incorporating consideration of the latest findings regarding the range of possible effects of climate change and other risks on the target geography during the useful life of any proposed Project. Many of the communities eligible to apply had already been subject to repetitive or increasingly severe disaster events and their community and regional plans, built environment, building codes, and design/construction practices may not yet have adjusted to enhance community Resilience to expected threat(s) and hazard(s) based on the best available data and science. Planning for an investment in a structure or improvement intended to endure and remain in service through its useful life must involve detailed consideration of the context in which the structure will be placed: The expected intensity and frequency of wind, rain, fire, flooding, snow loads, earthquake, drought conditions, and effects of climate change, for example and as relevant, should all influence community investment and policy decisions.

States and local governments were strongly encouraged to take or commit to Resilience-enhancing actions to protect their communities from threat(s) and hazard(s), as well as to ensure the useful life of their Projects under changing conditions, including future risk caused by climate change. Taking or committing to actions enhanced the competitiveness of Phase 1 and 2 proposals. HUD only invited an Applicant to Phase 2 if it had at least committed to taking a permanent Resilience-enhancing action, and HUD awarded points in Phase 2 to Applicants that have or will implement significant Resilience-enhancing action(s), such as updating State and local building codes, zoning, hazard mitigation, consolidated or comprehensive plans (including area-specific plans), and other ordinances or matters within the span of control of the Applicant and public sector Partners. Such improvements may have included coordination or merger of local plans or requirements in a way that will clearly enhance Resilience, such as hazard mitigation assessments and plans incorporated into forward-looking comprehensive plans updated to consider future impacts from climate change. Only significant updates made or major actions taken after the date of the Qualified Disaster were considered in responding to Factor 5: Regional Coordination and Long-Term Commitment. If such changes were planned for completion within one year of grant award, Applicants could include them in this factor only if they also submitted, as an attachment to their application, a hard commitment to complete the changes by a specified date (see the Long-term Commitment Factor of Phase 2 for details). Applicants were required to identify leveraging funds to pay for costs attributable to any portion of a proposed Project (including any mitigating action) that was not necessary to meet Unmet Recovery Needs in the Most Impacted and Distressed area resulting from a Qualified Disaster.

Section 2: NDRC Awards

The following awards have been made to Applicants for funding a portion of their Application. The components of the Applications for which CDBG–NDR funds may be used will be identified in grant agreements between HUD and the following CDBG–NDR awardees:

NDRC awardees	Total CDBG–NDR award
Connecticut	$54,277,359
New Orleans, LA	141,260,569
Iowa	96,887,177
New York City, NY	176,000,000
Louisiana	92,629,249
Springfield, MA	17,056,880
Tennessee	44,502,374
Virginia	120,549,000
Shelby County, TN	60,445,163
Minot, ND	74,340,770
California	70,359,459
New York State	35,800,000
New Jersey	15,000,000
Total	999,108,000

Section 3: CDBG–NDR Program Requirements

This notice contains the postaward requirements applicable to CDBG funds made available by the Appropriations Act and awarded under the NDRC as CDBG–NDR grants. This notice supersedes Appendix A to the NOFA and updates the CDBG–NDR program requirements to reflect HUD's recent regulatory amendments to implement Federal uniform requirements.

The Appropriations Act provides that funds shall be awarded directly to a State or unit of general local government (local government) at the discretion of the Secretary. A State or local government recipient of a CDBG–NDR grant is a "Grantee," as defined by the NOFA. Other terms in this notice are defined in the NOFA, and the definitions in the NOFA are expressly incorporated and made a part of this notice and continue to apply in the post-award period.

I. Use of Funds

A. General

The Appropriations Act made funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed areas resulting from a major disaster declared pursuant to the Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The Appropriations Act requires funds to be used only for these specific disaster-related purposes.

B. Action Plan, Amendments, and Benefit Cost Analysis

The Appropriations Act requires that, prior to the obligation of funds by HUD, a Grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization in the Most Impacted and Distressed areas. For purposes of awards made in response to Phase 2 submissions under the NOFA, the Grantee's Phase 1 and Phase 2 submissions for this competition, constitute, together, the action plan required by the Appropriations Act.

Following execution of a grant agreement, the Grantee will publish on its Web site the action plan (DRGR Action Plan) contained in HUD's Disaster Recovery and Grant Reporting system (DRGR) that reflects the components funded through the CDBG–NDR grant. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan, which will help ensure clear communication of CDBG–NDR activities to the public.

A Grantee may amend the Action Plan, but must receive prior HUD approval for substantial amendments to the plan. Before making any substantial amendment to the Action Plan, a Grantee must follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application. Additionally, HUD must agree in writing that the substantially amended Application would still score in the fundable range for the competition based on the rating factors in the NOFA. Additional information about substantial amendments can be found in section 3.V.A.3 below.

With the exception of general administration of the CDBG–NDR grant, the Grantee may only use CDBG–NDR funds to carry out or plan for the HUD approved components of a Grantee's Phase 2 activities for which the Grantee has submitted to HUD, and HUD has approved, an analysis of the activity's benefits and costs. For Covered Projects, as described in the NOFA, HUD has not approved the analysis if the benefits to the Applicant's community, and to the United States as a whole, are not demonstrated by the evidence submitted to justify the costs. Appendix H to the NOFA and the CDBG–NDR NOFA provided guidance on completing an acceptable BCA. For Applicants proposing a program rather than a specific Covered Project, HUD's acceptance of such a program-level BCA was *not* an approval of the Project- or activity-level analysis itself, which HUD will reserve the right to review after award through the Grant Terms and Conditions. A "program" for purposes of the BCA refers to a set of related measures or activities with a particular long-term goal or objective. A program is implemented by a specified agency that uses defined policies and procedures to select Projects or activities to assist.

C. Applicable Statutory and Regulatory Requirements

1. General. All recipients of CDBG–NDR grants are subject to: (1) The requirements of the Appropriations Act; (2) portions of the Fiscal Year (FY) 2014 General Section of the Department's broader NOFA (as amended) and the NOFA (including appendices) made applicable by the grant agreement and this notice; and (3) applicable regulations governing the CDBG program at 24 CFR part 570, unless modified by waivers and alternative requirements published in this notice or other applicable **Federal Register** notices and; (4) the requirements of the grant agreement governing the CDBG–NDR award.

2. Uniform Requirements. Grantees are subject to the revised Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements). On December 26, 2013, the OMB published (at 78 FR 78608) the final Uniform Requirements, which are codified at 2 CFR part 200. HUD adopted the Uniform Requirements at 2 CFR part 2400. HUD published conforming changes to its CDBG program regulations on December 7, 2015 (80 FR 75931), that updated CDBG program regulations to reflect references to appropriate sections of 2 CFR part 200. The effective date of HUD's conforming rule is January 6, 2016.

3. Other PostAward Requirements, including incorporated sections of the Fiscal Year 2014 General Section of the Department's Broader NOFA, as Amended:

• Incorporated Sections of the General Section. HUD is incorporating portions of the FY 2014 General Section to the Department's FY 2014 NOFAs for Discretionary Programs (General Section), as amended by the technical correction to HUD's General Section to the Department's FY 2014 NOFAs for Discretionary Programs (technical correction), relevant to the award of CDBG–NDR funds. Grantees must adhere to the requirements of the sections of the General Section, as amended by the technical correction, identified in the NOFA under the heading "1. Applicable Requirements of the General Section (as modified by the Technical Correction to the General Section)." Other requirements of the General Section are superseded by the requirements applicable to the use of CDBG–NDR funds identified in this notice and in the grant agreement.

• System for Award Management. Grantees must have a valid, active registration in the System for Award Management (SAM).

• False Statements. A false statement in an application is grounds for denial or termination of an award and possible punishment, as provided in 18 U.S.C. 1001.

• Conducting Business in Accordance with Ethical Standards/Code of Conduct. Grantees must adhere to the conflict of interest requirements of 2 CFR part 570. In addition, local governments and States that have adopted the Uniform Requirements are required to develop and maintain a written standards of conduct as required by 2 CFR 200.318.

• Equal Access to HUD-assisted or HUD-insured Housing. The Department is committed to ensuring that its programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. HUD funding recipients and subrecipients must comply with 24 CFR 5.105(a)(2) in connection with determining eligibility for housing assisted with HUD funds or subject to an FHA-insured mortgage, and in connection with making such housing available. This includes making eligibility determinations and making housing available regardless of actual or perceived sexual orientation, gender identity, or marital status, and prohibiting inquiries about sexual orientation or gender identity for the purpose of making eligibility determinations or making housing available. Applicants are encouraged to become familiar with these requirements, HUD's definitions of sexual orientation and gender identity at 24 CFR 5.100, clarifications to HUD's definition of family at 24 CFR 5.403, and other regulatory changes made through HUD's Equal Access Rule, published in the **Federal Register** on February 3, 2012 at 77 FR 5662.

• Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a State that are using assistance under a program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity

acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Please refer to 2 CFR 200.322 and to *www.epa.gov/osw/conserve/tools/cpg/pdf/rcra-6002.pdf* for complete text and requirements of section 6002.

• Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) (Transparency Act), as Amended. Prime Grant Awardee Reporting. Prime recipients of the Department's financial assistance are required to report certain subawards in the Federal Funding Accountability and Transparency Act Subaward System (FSRS) Web site located at *https://www.fsrs.gov/* or its successor system for all prime awards listed on the FSRS Web site. Starting with awards made October 1, 2010, prime financial assistance awardees receiving funds directly from the Department were required to report subawards and executive compensation information both for the prime award and subaward recipients, including awards made as pass-through awards or awards to vendors, if the initial prime grant award is $25,000 or greater, or the cumulative prime grant award will be $25,000 or greater if funded incrementally, as directed by HUD in accordance with OMB guidance; and the subaward is $25,000 or greater, or the cumulative subaward will be $25,000 or greater. For reportable subawards, if executive compensation reporting is required and subaward recipients' executive compensation is reported through the SAM system, the prime recipient is not required to report this information. The reporting of award and subaward information is in accordance with the requirements of the Transparency Act, as amended by section 6202 of Public Law 110–252, and OMB Guidance issued to Federal agencies on September 14, 2010 (75 FR 55669), and in OMB policy guidance. Please refer to *www.fsrs.gov* for complete information on requirements under the Transparency Act and OMB guidance.

• Compliance with Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), (Section 872). Section 872 requires the establishment of a governmentwide data system (currently designated the Federal Awardee Performance and Integrity Information System) to contain information related to the integrity and performance of entities awarded Federal financial assistance. Federal officials will make use of this information in making awards. OMB published final guidance to implement this requirement on July 22, 2015, at 80 FR 43301, for Federal awards issued on or after January 1, 2016, that meet the thresholds described in the preamble to the OMB guidance. Grantees are required to comply with any guidance issued by HUD to implement OMB's rule.

II. Timely Expenditure of Funds and Prevention of Waste, Fraud, Abuse, and Duplication of Benefits

A. Statutory Expenditure Deadline and Period of Availability

1. Expenditure Deadline and Extensions

The Appropriations Act requires that HUD obligate all CDBG–NDR funds not later than September 30, 2017. To further ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act, requires that all funds be expended within 2 years of the date HUD obligates funds to a Grantee, unless the Grantee requests and HUD approves an extension to the deadline. Funds are obligated to a Grantee upon HUD's signing of the Grantee's CDBG–NDR grant agreement, or amended grant agreement, obligating funds. Grantees may request to obligate awarded funds in phases as established in a schedule submitted by the Grantee, provided all funds are obligated prior to September 30, 2017. Grantees must not draw down funds in advance of need, to attempt to comply with the expenditure deadline.

2. Extensions of the Expenditure Deadline

For any portion of funds that the Grantee believes will not be expended by the deadline and that it desires to retain, the NOFA required the Grantee to submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. Appendix E to the NOFA also required Applicants to submit extension requests with the application if the Applicant submitted a schedule that indicated time needed for completion of the proposal exceeds 24 months. Some Applicants submitted extension requests to HUD within their applications and such extensions were considered within the application review process. If granted, any extensions will be published in the **Federal Register** in a subsequent notice. Grantees that did not submit an extension request with their Applications may still submit a request. As required by Appendix E to the NOFA, the extension request must justify the need for the extension, detail the compelling legal, policy, or operational challenges necessitating the extension, and identify the date when the funds covered by the extension will be expended. The Grantee must justify how, under the proposed schedule, the Project will proceed in a timely manner. For example, large and complex infrastructure Projects are likely to require more than 24 months to complete. An extension request for such a Project should justify the new timeline for any proposed extension by comparing it to completion timelines for other, similarly sized Projects.

Grantees are advised that extensions of the 2-year expenditure deadline may not be granted. Any funds not expended by the deadline (or extended deadline, if an extension is approved) will be recaptured.

3. Cancelation of Grant Funds

Although HUD has authority to grant extensions of the 24-month expenditure deadline, Grantees are advised that 31 U.S.C. 1552(a) continues to apply to funds appropriated under the Appropriations Act. Specifically, CDBG–DR funds are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act, including those subject to an extension of the expenditure deadline, must be expended by September 30, 2022. Any grant funds that have not been disbursed by September 30, 2022, will be canceled and will no longer be available for disbursement to the Grantee or for obligation or expenditure for any purpose.

B. Secretary's Certifications and Grantee Submissions

The Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the awardee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

To provide a basis for the Secretary to make the certification, each awardee submitted the certification required in Appendix F of the NOFA, related to the requirements of Public Law 113–2. In addition, before HUD executes a grant agreement, each awardee will satisfactorily complete a Certification Checklist and submit required documentation that, in HUD's determination, is sufficient to support the Secretary's certification. The Certification Checklist will be posted by HUD and sent to awardees following award announcement. A HUD representative will review the awardee's submission and complete the HUD portion of the Certification Checklist. Failure to submit the checklist and documentation within 30 days of the effective date of this notice may result in the cancellation of the award selection.

To enable the Secretary to make the certification, each awardee must submit the items listed below to their designated HUD representative, in addition to submitting the Certification Checklist. Grant agreements will not be executed until HUD has issued a certification in response to the awardee's submission.

(1) Financial Control Checklist. An awardee has in place proficient financial controls at the time of the Secretary's certification if each of the following criteria is satisfied.

(a) The awardee submits its most recent single audit and annual financial statement, and the submission indicates that the awardee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the single audit or annual financial statement identified weaknesses or deficiencies, the awardee must provide documentation showing how those weaknesses have been removed or are being addressed; and

(b) With its completed checklist, the awardee must submit the Guide for Review of Financial Management, as modified, to support the financial controls certification required for Grantees by Public Law 113–2 (Pub. L. 113–2 Financial Management Guide). The completed Public Law 113–2 Financial Management Guide must demonstrate that the financial standards are complete and conform to the requirements of the guide. The awardee must identify which sections of its financial standards address each of the questions in Public Law 113–2 Financial Management Guide and which personnel or unit is responsible for each checklist item.

(2) Procurement. An awardee has in place a proficient procurement process if:

(i) *For local governments:* The grantee will follow the specific applicable procurement standards identified in 2 CFR 200.318–200.326 (subject to 2 CFR 200.110, as applicable). The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate these provisions. The procedures should also indicate which personnel or unit is responsible for each item.

(ii) *For States:* The grantee has adopted 2 CFR 200.318–200.326 (subject to 2 CFR 200.110, as applicable), or the effect of grantee's procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318–200.326, meaning that they operate in a manner providing fair and open competition. The grantee must provide its procurement standards and indicate how the sections of its procurement standards align with the provisions of 2 CFR 200.318–200.326, so that HUD may evaluate the overall effect of the grantee's procurement standards. The procedures should also indicate which personnel or unit is responsible for the task. Guidance on the procurement rules applicable to States is provided in section 3.V.A.21, of this notice. HUD will review this information and determine whether the standards, taken as a whole, are equivalent to the standards at 2 CFR part 200, subpart D.

(3) Duplication of Benefits. An awardee has adequate procedures to prevent the duplication of benefits if they contain uniform procedures for each of the following: verifying all sources of disaster assistance; determining a beneficiary's unmet need(s) before awarding assistance; and ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. The procedures should also indicate which personnel or unit is responsible for the task. Duplication of benefits requirements applicable to the use of CDBG–NDR funds are discussed in section 3.II.C of this notice.

(4) Adequate Procedures to Determine Timely Expenditures. An awardee has adequate procedures to determine timely expenditures if they contain uniform procedures that indicate how the awardee will track expenditures each month; how it will monitor expenditures of its recipients; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures. The procedures should also indicate which personnel or unit is responsible for the task.

(5) Procedures to Maintain Comprehensive Web sites Regarding All Disaster Recovery Activities Assisted with These Funds. An awardee has adequate procedures to maintain comprehensive Web sites regarding all disaster recovery activities if its procedures indicate that the awardee will have a separate page dedicated to its disaster recovery that will contain links to all Action Plans, including the DRGR Action Plan and portions required to be posted for citizen comment; Action Plan amendment; performance reports; citizen participation requirements; and activity/program information for activities described in the Action Plan. The procedures should also indicate the frequency of Web site updates and which personnel or unit is responsible for the task.

(6) Procedures to Detect Fraud, Waste, and Abuse of Funds. An awardee has adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the awardee will verify the accuracy of information provided by applicants; provide a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and indicate that the internal auditor has affirmed and described its role in detecting fraud, waste, and abuse.

(7) Awardee Certification. As part of the submission of a complete Certification Checklist, the awardee is required to attest to the proficiency and adequacy of its controls.

(8) Design. This notice amends the NOFA to clarify that prior to the Grantee's obligation of funds for construction, the Grantee will demonstrate that the engineering design for a Project is feasible, prior to obligation of funds by the Grantee for construction. This demonstration is satisfied if a registered professional engineer (or other design professional) certifies that the design meets the appropriate code or industry design and construction standards.

(9) Continuing Obligation Related to Certification. After submitting materials necessary to support the Secretary's certification and the grant agreement is signed, Grantees have continuing obligations. HUD may request an update to the Grantee's certification submission each time the Grantee submits a substantial Action Plan amendment, or if HUD has reason to believe the Grantee has made material changes to the Grantee's support for its certifications.

Grantees must submit to the Department, for approval, an update to the program schedule (projection of expenditures) and milestones (outcomes) included in the application response to the Phase 2, Factor 3, Soundness of Approach rating. The projections must be based on each quarter's expected performance—beginning the quarter in which funds are available to the Grantee and continuing each quarter until all funds are expended. Each Grantee must also include these projected expenditures

and outcomes in activity set-up in the DRGR system within 90 days of the grant award letter. The information in the DRGR system (contained in the DRGR Action Plan) must be amended to reflect any subsequent changes, updates, or revision of the projections. Any subsequent changes, updates, or revision of the projections must receive written approval from HUD. Amending Action Plans solely to accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD's Web site under the heading Office of Community Planning and Development Disaster Recovery Assistance (commonly known as the CPD Disaster Recovery Web site). The projections will enable HUD, the public, and the Grantee, to track proposed versus actual performance. HUD will make the DRGR Action Plan and performance reports available on the DRGR Public Data Portal at *https://drgr.hud.gov/public/*.

Additionally, following execution of a grant agreement, the DRGR Action Plan that reflects the components funded through the CDBG–NDR grant must be posted on the Grantee's Web site.

Additional information on the DRGR system requirements can be found in section V.A.2 below.

Grantees are also required to ensure all contracts (with subrecipients, recipients, and contractors) clearly stipulate the period of performance or the date of completion. In addition, Grantees must enter expected contract completion dates for each activity in the DRGR system. When target dates are not met, Grantees are required to explain why in the activity narrative in the system.

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section 3.V.A of this notice. The Department will institute risk analysis and on-site monitoring of Grantee management, as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

C. Duplication of Benefits Requirements

Duplication of benefits requirements in section 312 of the Stafford Act and in the Appropriations Act apply to the use of CDBG–NDR funds. To help prevent the duplication of benefits, HUD published a notice in the **Federal Register** on November 16, 2011, at 76 FR 71060. The Department published additional guidance on July 25, 2013, titled "Guidance on Duplication of Benefit Requirements and Provision of CDBG–DR Assistance." The steps and actions described in the November 2011 and the July 2013 guidance documents are mandatory requirements applicable to the use of CDBG–NDR funds.

III. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974, as amended (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

IV. Overview of Grant Process

To begin expenditure of CDBG–NDR funds, the following expedited steps are necessary:

- If the application is selected for award, HUD sends an initial allocation letter notifying the Applicant that it has been selected for funding. HUD subsequently sends a grant award letter outlining next steps before the award is effective, and transmitting the unsigned grant agreement and grant conditions.
- Within 30 days of the effective date of this notice, awardee submits evidence, as described in section 3.II of this notice, that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act; ensure timely expenditure of funds; maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds; and detect and prevent waste, fraud, and abuse of funds.
- Once the Certification Checklist is completed and HUD determines that submissions are sufficient, the Secretary makes the certification required by the Appropriations Act.
- Grantee signs and returns the grant agreement.
- HUD signs the grant agreement and establishes the proper amount in a line of credit for the Grantee (this triggers the 2-year expenditure deadline for any funds obligated by this grant agreement).
- Grantee requests and receives DRGR system access (if the Grantee does not already have it).
- Grantee enters the activities from its application into the DRGR system that reflect the components funded through the CDBG–NDR grant (as contained in the DRGR Action Plan), submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR System, and publishes on its Web site the DRGR Action Plan.
- The Grantee may draw down funds from the line of credit after the responsible entity completes applicable environmental review(s) pursuant to 24 CFR part 58 (or section 3.V.A.20 of this notice) and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification.
- Grantee begins to draw down funds within 60 days of receiving access to its line of credit.
- Grantee amends its published Action Plan to include any updates to its projection of expenditures and outcomes within 90 days of the date of the grant award letter.

V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements imposed by the Appropriations Act, applicable waivers, and alternative requirements. For each waiver and alternative requirement described in this notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act.

The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift resilient disaster recovery, while meeting the unique requirements of the Appropriations Act. The following requirements apply only to the CDBG–NDR funds awarded under the NOFA, and not to funds provided under any other component of the CDBG program, such as the annual formula Entitlement or State and Small Cities programs, Section 108 Loan Guarantee Program, the Neighborhood Stabilization Program, any prior CDBG disaster recovery appropriation, or any formula award under the Appropriations Act.

The NOFA required Applicants to submit waiver requests necessary to carry out an activity described in their applications (Phase 1 or Phase 2). HUD anticipates that Grantees may encounter changing conditions or other good cause that justifies requesting a new or modified waiver or alternative requirement after the award. Therefore, Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities.

An overall benefit waiver request may be made by submitting a detailed justification that, at a minimum: (a) Identifies how the disaster-related needs of the low- and moderate-income population in the declared disaster area were sufficiently addressed by other means, or that the needs of non-low- and non-moderate-income persons are disproportionately greater by a significant margin, and that the jurisdiction lacks other resources to serve the needs of non-low- and non-moderate-income individuals; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the Grantee's long-term disaster recovery plan; and (c) describes how the activities/programs identified in (b) prevent the Grantee from meeting the 50 percent requirement. For any other waiver or alternative requirement request, Grantees must submit a written request that includes: the requirement to be waived and, if applicable, the alternative requirement to be added (meaning how the current requirement should be altered); a detailed statement of how the request is necessary to address Unmet Recovery Needs; the demographics of the population to be assisted; and a statement of alternative approaches considered to eliminate the need for a waiver.

Except where noted, waivers and alternative requirements described below apply to all Grantees under this notice. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

Except as described in this notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State Grantee, while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to local government Grantees. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement regulations can be found at 24 CFR part 570.

All references in the NOFA and in this notice pertaining to timelines and/or deadlines are in terms of calendar days, unless otherwise noted. All references to "substantial improvement" shall be as defined in the HUD regulations at 24 CFR 55.2, unless otherwise noted.

A. Grant Administration

1. Application for CDBG–NDR Waiver and Alternative Requirement. The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), and 24 CFR 91.220 and 91.320 are waived for funds provided under the NOFA. Instead, HUD required each Grantee to submit an application for CDBG–NDR, and the Applicant's Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under Public Law 113–2. HUD notes that 24 CFR 570.304 and 24 CFR 570.485, to the extent they govern annual formula CDBG grant approvals, do not apply to National Disaster Resilience Competition (NDRC) allocations, but the standard of review of certifications continues to apply to Grantee certifications. HUD will monitor the Grantee's activities and use of funds for consistency with its approved Action Plan and all other requirements, including performance and timeliness. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove a substantial amendment to an Action Plan (application) if it is determined that the amended application does not satisfy all of the required elements identified in the NOFA, including in this notice, or the application would not score in the fundable range based on the rating factors in the NOFA. However, in reviewing substantial amendments, HUD will not penalize Grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process.

a. Action Plan-related Requirements. The application was required to meet the criteria of the NOFA and identify the proposed use(s) of the Grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. Because HUD may not obligate Appropriations Act funds after September 30, 2017, the last date that Grantees may submit an amendment that would involve obligation of awarded funds by HUD is June 1, 2017. The requirement to expend funds within 2 years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable. All proposed amendments must address an unmet need in a Most Impacted and Distressed area, as established in the Action Plan or the proposed amendment, using the methodology required by the NOFA. The Grantee must develop a policy describing (a) how it will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency.

In addition, grantees must adopt and meet the following minimum elevation or floodproofing requirements, applicable to all grantees receiving funds pursuant to the Appropriations Act. In order to better ensure a sustainable long-term recovery, grantees must elevate (or may, for certain nonresidential structures as described below, floodproof) new construction and substantially improved structures one foot higher than the latest Federal Emergency Management Agency (FEMA) issued base flood elevation. This standard was made after considering the history of FEMA flood mitigation efforts. This higher elevation also takes into account projected sea level rise, which is not considered in current FEMA maps and National Flood Insurance Program premiums, which will potentially rise as FEMA Flood Insurance Rate Maps that take Hurricane Sandy into account are issued.

Each grantee must not use grant funds for any activity in an area delineated as a special flood hazard area, or equivalent, in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain. At a minimum, actions to minimize harm must include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Executive Order 11988, on floodplain management, requires that Federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data must be used to determine requirements for reconstruction, and the elevation of structures for grants funding (in whole or part) new construction and substantial improvements, as defined at 24 CFR 55.2(b)(8). If a new construction

or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. If higher elevations are required by locally adopted code or standards, those higher standards would apply.

Instead of elevating nonresidential structures that are not critical actions as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that, below the flood level, the structure is floodproofed using the best available flood data plus one foot. Floodproofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program, as well as State and locally adopted codes. All mixed-use structures must be floodproofed consistent with the latest FEMA guidance.

Additionally, the Grantee will encourage, where appropriate, construction methods that emphasize high quality, durability, energy efficiency, a healthy indoor environment, sustainability, and water or mold resistance, including how it will support adoption and enforcement of modern building codes and reduction of hazard risk, including possible sea level rise, storm surge, and flooding. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, Resilience, and mitigating the impact of future disasters. Whenever feasible, Grantees should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: Professional Certifications and Standard Work Specifications. Grantees rebuilding housing in areas prone to high winds are especially encouraged to consider inclusion of construction methods from the Resilient Star demonstration underway by the Department of Homeland Security.

At a minimum, HUD is requiring the following construction standards:

(a) Green Building Standard for Replacement and New Construction of Residential Housing. Grantees must meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (*i.e.*, demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load bearing interior or exterior walls.

(b) Certification Standards. For purposes of this notice, the Green Building Standard means the Grantee will require that all construction covered by subparagraph (a), above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High Rise); (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iv) ICC–700 National Green Building Standard; (v) EPA Indoor airPLUS (ENERGY STAR a prerequisite); or (vi) any other equivalent comprehensive green building program, including regional programs such as those operated by the New York State Energy Research and Development Authority or the New Jersey Clean Energy Program.

(c) Standards for Rehabilitation of Nonsubstantially Damaged Residential Buildings. For rehabilitation other than that described in subparagraph (a), above, Grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available on the CPD Disaster Recovery Web site. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP) designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (*e.g.*, faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

(d) Implementation. For construction Projects completed, under construction, or under contract prior to the date that assistance is approved for the Project, the Grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required. For specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

(e) Policies. HUD encourages Grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's (EPA) water Web site; Indoor airPLUS Web site; Healthy Indoor Environment Protocols for Home Energy Upgrades Web site; and ENERGY STAR Web site, *www.epa.gov/greenbuilding*.

(f) Housing Related Information.

(i) Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG–NDR funds to assist public housing. Information on the public housing agencies impacted by the disaster is available on the Department's Web site.

(ii) To the extent the Grantee undertakes housing activities, the Grantee will encourage the provision of housing, for all income groups, that is disaster-resistant, including transitional housing and permanent supportive housing. Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and promote the availability of affordable housing in low-poverty, nonminority areas where appropriate and in response to disaster-related impacts.

(iii) The Grantee shall minimize displacement of persons or entities, and assist any persons or entities displaced.

(iv) Any safe room construction, reconstruction, or rehabilitation is required to meet at least consistent with the requirements of FEMA P–320 or FEMA P–361.

(v) Wind retrofit construction, reconstruction, or rehabilitation activities funded under CDBG–DR are required to be implemented in conformance with FEMA P–804.

(g) Funds Awarded to a State. For each program or activity that will be carried out by the State, the application as entered into the DRGR Action Plan must describe: (1) The Projected use of the CDBG–NDR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or Applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the Projected use will meet CDBG eligibility criteria and a national objective; (4) how the Projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (*i.e.*, a performance measure) relative to the identified unmet need.

If a State, in its application, uses a method of distribution to allocate funds to local governments, its Action Plan must describe all criteria used to determine the distribution, including the relative importance of each criterion. If this information was not included in the application, the Action Plan must be amended to include this information prior to drawing funds (this amendment is not a substantial amendment if the method of distribution has not changed since the submission of the application).

(h) Funds Awarded Directly to a Local Government. The local government's application as entered into the DRGR Action Plan, shall describe: (1) The Projected use of the CDBG–DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or Applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the Projected use will meet CDBG eligibility criteria and a national objective; (4) how the Projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (*i.e.*, a performance measure) relative to the identified unmet need.

b. General Grant Oversight.

(a) The Grantee must put in place mechanisms and/or procedures to detect and prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest).

(b) The Grantee must maintain adequate capacity of its administering agency(ies) and staffs, and the capacity of any local government or other organization or Partner expected to carry out disaster recovery programs. The Grantee will plan and provide for increasing the capacity of local governments or other organizations, as needed and where capacity deficiencies (*e.g.*, outstanding Office of Inspector General audit findings) have been identified. Grantees are responsible for providing adequate technical assistance to Partners, subrecipients, or subgrantees to ensure the timely, compliant, and effective use of funds. Although local governments or other organizations may carry out disaster recovery programs and Projects, each Grantee under the NOFA and this notice remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight (also see section 3.V.A.10 of this notice), policy development, and financial management.

(c) The Grantee will manage program income (*e.g.*, including, in agreements, whether subrecipients may retain it), and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in paragraphs A.2(d) and A.17 of section 3.V of this notice;

(d) The Grantee must establish monitoring standards and procedures that are sufficient to ensure program requirements, including preventing duplication of benefits, are met and that provide for continual quality assurance and investigation. Some of this information may be adopted from the Grantee's submission of information that is required for the Department's certification. Grantees must also operate a robust internal audit function with an organizational diagram showing that responsible audit staff report independently to the chief officer or board of the organization designated to administer the CDBG–NDR award (typically, the organization is designated by a chief, elected official);

c. Clarification of Disaster-related Activities. Each CDBG–NDR activity must be CDBG-eligible (or permissible under a waiver or alternative requirement published in an applicable **Federal Register** notice), meet a national objective, and Tie-back to the Qualifying Disaster by demonstrating a logical link to addressing Unmet Recovery Needs from the Qualifying Disaster. Additional details on disaster-related activities are provided under section 3.V.B of this notice.

(a) Ineligible Business Assistance. Local and regional economic recoveries are typically driven by small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to prohibit Grantees from assisting businesses, including privately owned utilities, that do not meet the definition of a small business as defined by SBA at 13 CFR part 121.

(b) Tie-Back to the Qualified Disaster and Ineligible Projects for Temporary Measures.

(i) Tie-Back to the Disaster. Each Grantee must document Tie-Back, to show how each activity is connected to the Qualified Disaster for which it is receiving CDBG assistance. The Grantee must ensure that each activity reasonably ties back to addressing demonstrated direct and indirect effects of the Qualified Disaster. In regard to physical losses, damage or insurance estimates may demonstrate the connection to the direct effects of the disaster. For economic, social, or other nonphysical losses, post-disaster analyses or assessments, using the most rigorous methods feasible, may document the relationship between the disaster and the related effects. If Tie-back has been sufficiently documented in the application, the Grantee does not need to maintain additional documentation (although additional information documenting Tie-back may be necessary to support a substantial amendment).

(ii) Temporary Measures. The Appropriations Act states that funds shall be used for recovering from a Presidentially declared major disaster. As such, all activities must respond to the effects of the declared disaster. HUD requires CDBG–NDR Grantees to incorporate resiliency measures into all activities, to ensure that communities recover to be safer, stronger, and more resilient. Incorporation of these measures also reduces costs in recovering from future disasters. However, Projects for temporary measures, including those that are designed solely to prepare for future needs and not to address a recovery need of the Qualified Disaster (*e.g.*, sandbags, bladders, geotubes, newly established emergency operation centers) are ineligible for CDBG–NDR assistance. Equipment is generally ineligible for CDBG–NDR assistance unless necessary in the provision of an eligible public service or special economic development activity. Resilience measures that are not incorporated into rebuilding activities must Tie back to the Qualified Disaster and be a necessary expense related to disaster relief, long-term recovery, restoration of infrastructure, and housing, or economic revitalization. HUD has determined that, generally, designing a Project that improves Resilience to negative effects of climate change while meeting an Unmet Recovery Need is a necessary and reasonable cost of recovery.

(iii) Grantees are not limited in their recovery to returning to pre-disaster conditions. HUD encourages Grantees to carry out activities that not only address disaster-related effects, but leave communities sustainably positioned to meet the needs of their post-disaster populations and to further prospects for stability and growth.

(iv) Use of Funds for Disasters Not Covered by The Appropriations Act. CDBG–DR funds awarded under the NOFA and this notice are limited to activities that respond to the Qualified Disaster(s) for which HUD made the

award. However, if the Grantee addresses an unmet need that arose from a previous disaster or a previous community development need that was exacerbated by a Qualified Disaster, and this use of funds was described in the Grantee's application that was approved for funding by HUD, and included in the grant agreement, the Grantee's activity may meet the remaining unmet need. If an impact or need originating from a Qualified Disaster identified in the NOFA is subsequently exacerbated by a future disaster, in some cases funds under the NOFA and this notice may be used to address the resulting exacerbated unmet need, with prior HUD approval.

d. Use of the Urgent Need National Objective. The certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this notice until two years after the date HUD obligates funds to a Grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department has only selected Grantees for CDBG–NDR awards with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and Applicants), each Grantee is limited to spending funds only in counties identified in the Action Plan as the Most Impacted and Distressed area.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, each Grantee receiving a CDBG–NDR award was required to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the Grantee. This waiver and alternative requirement allows Grantees to more effectively and quickly implement disaster recovery programs. For activities that meet the urgent need national objective, Grantees were required to reference in their Action Plan the type, scale, and location of the disaster-related impacts that each Project, program, and/or activity is addressing (Action Plans must be amended, as necessary, to ensure that this information is included for each Project, Program, or CDBG-eligible activity undertaken with CDBG–NDR funds). As a reminder, at least 50 percent of each Grantee's CDBG–NDR grant award must be used for activities that benefit low- and moderate-income persons, unless waived.

e. Obligation and Expenditure of Funds. Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the Grantee. Funds will be obligated based on the schedule described by the Grantee in its application or later requested by the Grantee and approved by HUD. In addition, HUD will establish the line of credit and the Grantee will receive DRGR system access (if it does not have access already). The Grantee must also enter its application activities into the DRGR system before it may draw funds, as described in paragraph A.2 below.

f. Environmental Requirements. Each activity must meet the applicable environmental requirements. After the responsible entity completes an environmental review(s) pursuant to 24 CFR part 58, as applicable (or paragraph A.20, as applicable), and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the Grantee may draw down funds from the line of credit for the activity. Note that the disbursement of grant funds must begin no later than 60 days after the Grantee has received access to its line of credit.

g. Action Plan Amendments, Submission to HUD, Treatment of Leverage, Partners, and BCA. A Grantee is encouraged to work with its HUD representative before making any amendment to its Action Plan. HUD can help determine whether the amendment would constitute a substantial amendment, and help ensure the proposed change complies with the NOFA and all applicable requirements.

(i) Substantial Amendments. The following modifications constitute a substantial amendment requiring HUD approval: Any change to the funded portions of the Phase 1 or Phase 2 application that would result in a change of more than 5 points in the score for Capacity or Soundness of Approach factors, any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA), any change in program benefit, beneficiaries, or eligibility criteria, the allocation or reallocation of more than $1 million, or the addition or deletion of an eligible activity. Amendments to the Action Plan that do not fall within the definition of a substantial amendment are referred to as "nonsubstantial amendments."

For substantial amendments, Grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. HUD will only approve a substantial amendment if the new score is still within the competitive range. If the substantial amendment criteria are triggered, HUD will review the proposed change against the rating factors and threshold criteria and consider whether the application, inclusive of the proposed change, would continue to score in the fundable range. This review is not limited to the Capacity and Soundness of Approach factors. In reviewing substantial amendments, HUD will not penalize Grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process. Additionally, in re-rating and re-ranking any substantial amendment, the Grantee's initial leverage score will remain unchanged if the Grantee will meet the amount of leverage included in its grant terms. As indicated in the NOFA, if a Grantee makes or proposes to make a substantial amendment to its Project, HUD reserves the right to amend the Grantee's award and reduce the grant amount or recapture the grant, as necessary.

(ii) Information for Substantial and Nonsubstantial Amendments. If the Grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the funded portions of the application and be submitted to HUD. All amendments must comply with provisions of this notice, including Tie-back requirements. Grantees may not amend an Action Plan to include funding for ineligible activities identified in section C.2 of the NOFA. The beginning of every proposed amendment must include a section that identifies exactly what content is being added, deleted, or changed and whether it is believed that the change would affect the scoring under the rating factors, and, thus, potentially trigger a substantial amendment. This section must also include a chart or table that clearly illustrates where funds are coming from and to where they are moving. The amendment must include a revised budget allocation table that reflects the entirety of all funds, as amended. A Grantee's most recent version of its application and its DRGR Action Plan must be accessible for viewing as a single document, at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments. The requirement for each Grantee to expend funds within 2 years of the date of obligation will be enforced relative to the date activities are funded under each obligation, as applicable, even if the Action Plan is amended. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the Grantee's Web site. The Department will acknowledge receipt of the proposed amendment via email or letter within 5 business days of receipt. HUD may seek additional information from the Grantee to determine whether a proposed amendment is a substantial amendment.

(iii) Amendments that may affect the BCA accepted by HUD. If requested by HUD, a Grantee must submit an update to its BCA to support a request for a substantial amendment.

(iv) Leverage Accepted by HUD. Grantees are required to show, through quarterly reports as the Project proceeds, evidence that firmly committed leverage resources in the amount required by the grant terms and conditions were actually received and used for their intended purposes. The Grantee may not propose an amendment to reduce the amount of leverage pledged once a final amount is identified in the grant agreement. In re-rating and re-ranking any substantial amendment, the Grantee's initial leverage score will remain unchanged if the Grantee will meet the amount of leverage included in its grant terms. Sources of leverage funds may be substituted after grant award without affecting a Grantee's leverage score in any re-rating and re-ranking, as long as the dollar amount of leverage is equal to or greater than the total amount of leverage required by the grant terms and conditions. Substitution of a leverage source in the same amount committed and identified in the grant terms and conditions is a nonsubstantial amendment. Section 3.V.A.2.e describes additional DRGR leverage reporting requirements.

(v) Partners Accepted by HUD. The NOFA permitted a Grantee to identify a Partner in its application that the Grantee would be otherwise required by program requirements to competitively procure. A Grantee is not required to secure the services of any Partner by competitive procurement if the Partner is duly documented and identified in the application. The Department has granted permission for single source procurement of these Partners, pursuant to 2 CFR 200.320(f)(3) (cited in the NOFA as 24 CFR 85.36(d)(4)(i)(C), which has since been superseded by the Uniform Requirements) and advised State Grantees that have not adopted the local government procurement requirements in part 200 to review State requirements associated with single source procurement and to follow all applicable procurement requirements. In many cases, this will entail the Grantee undertaking a cost analysis prior to making payments to such a Partner, and the Grantee will be responsible for ensuring compliance with requirements that all CDBG–NDR costs be necessary and reasonable (for local government Grantees, see 2 CFR 200.323, for State governments that have not adopted 2 CFR 200.323, see State procurement requirements applicable to single source procurements). If a Partner dissolves the partnership after award and before activities are complete, the Grantee should make its best effort to replace the Partner with a similarly skilled Partner, if the Grantee's application was rated and ranked based on the capacity of the dissolved Partner. The Grantee's application may have to be re-rated and re-ranked based on the lost capacity unless the Grantee follows a contingency plan included in its application to address such a loss. If a Grantee wants to add a Partner that would otherwise have to be procured as a contractor after the award or if the Partner was identified in the application but was found by HUD to lack sufficient documentation, through HUD's application review process, then that selection would not be covered by the single-source permission above and would be subject to procurement requirements under 2 CFR part 200 or State law, as applicable. Additionally, as required by Appendix D to the NOFA, the Grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with each Partner regarding the use of the CDBG–NDR funds, before disbursing any CDBG–NDR funds to the Partner. The written agreement must conform with all CDBG–NDR requirements and shall require the Partner to comply with all applicable CDBG–NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2), title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5302 *et seq.*), the CDBG program regulations at 24 CFR part 570, this notice and any other applicable **Federal Register** notice, and commitments made in the grantee's Phase 1 and Phase 2 applications.

2. HUD Performance Review Authorities and Grantee Reporting Requirements in the Disaster Recovery Grant Reporting System (DRGR).

a. Performance Review Authorities. Section 5304(e) of 42 U.S.C. requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the Grantee has carried out its activities in a timely manner, whether the Grantee's activities and Grantee certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the Grantee has the continuing capacity to carry out those activities in a timely manner. Applicants were informed by section VI.A.4 of the General Section of the Department's broader NOFA (as amended, and made applicable by the NOFA) that the Department expects Grantees to fulfill performance promises made as part of their application. This notice waives the requirements for submission of a performance report, pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. In the alternative, and to ensure consistency between grants allocated under the Appropriations Act and prior CDBG disaster recovery appropriation laws, HUD is requiring that Grantees enter information in the DRGR system in sufficient detail to permit the Department's review of Grantee performance on a quarterly basis and to enable remote review of Grantee data to allow HUD to assess compliance and risk.

b. DRGR Action Plan. Each Grantee must enter the components of its Action Plan funded through the CDBG–NDR grant into the DRGR system, including performance measures. This is referred to as the DRGR Action Plan. As more detailed information about uses of funds is identified by the Grantee, the Grantee must enter this information into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, HUD review of compliance requirements, and citizen understanding of progress. The information must also be entered into the DRGR system so that the Grantee is able to draw its CDBG–NDR funds from the line of credit. To enter an activity into the DRGR system, the Grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for any entity carrying out a CDBG–NDR funded activity, including the Grantee, recipient(s) and subrecipient(s), contractor(s), and developers. Additionally, following execution of a grant agreement, Grantees must publish on their Web sites the DRGR Action Plan. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan, which will help ensure clear communication of CDBG–NDR activities to the public.

c. Tracking Oversight Activities in the DRGR System; Use of DRGR Data for HUD Review and Dissemination. Each Grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits,

and technical assistance it conducts as part of its oversight of its disaster recovery programs. The Grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of Grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR Action Plan and the QPR, transactional data from the DRGR system, and other information provided by the Grantee to: (1) Provide reports to Congress and the public; as well as to (2) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (3) reconcile budgets, obligations, funding draws, and expenditures; (4) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (5) analyze the risk of Grantee programs to determine priorities for the Department's monitoring.

d. Tracking Program Income in the DRGR System. Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds. If a Grantee permits local governments or subrecipients to retain program income, the Grantee must establish program income accounts in the DRGR system. The DRGR system requires Grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. DRGR System Quarterly Performance Report (QPR). Each Grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the Grantee's official Web site. HUD will also post the reports via the DRGR Public Web site. The Grantee's first QPR is due after the first full calendar quarter after the grant award. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until the grant program is completed and meets the criteria for closeout. During the grant closeout process, a final QPR may be required by HUD to ensure complete reporting. HUD will close out CDBG–NDR grants in accordance with this notice (or other applicable **Federal Register** notice) and notice CPD 2014–02, Closeout Instructions for Community Development Block Grant (CDBG) Programs Grants, as amended, insofar as the notice applies to CDBG–DR grants.

Each QPR will include information about the uses of funds for activities identified in the DRGR Action Plan during the applicable quarter. This includes, but is not limited to, the: Project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG–DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system. In addition, leveraged funds shall be identified for each activity, as applicable, in the DRGR system, and use of leverage funds required by the Grantee's grant agreement shall be included in the Grantee's QPR.

3. Citizen Participation Waiver and Alternative Requirement. To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 91.105(b) and (c), and 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below.

Note that the citizen participation process is distinct from consultation requirements. The streamlined requirements mandate at least one public hearing at the Applicant's level of government for each substantial amendment, and require providing a reasonable opportunity (at least 15 days for any substantial amendment) for citizen comment and ongoing citizen access to information about the use of grant funds.

The streamlined citizen participation requirements for CDBG–NDR grants are:

a. Publication of the Action Plan, Access to Information, and Substantial Amendments: At all times, the Grantee must maintain a public Web site that contains the latest versions of its Action Plan, including the DRGR Action Plan and the version as submitted to HUD for the competition and including the following portions: Executive summary; Factor narratives; Eligibility; national objective; overall benefit; and schedule responses, threshold requirements documentation, and all exhibits (A–G) (but of the attachments, only Attachments D and F must be published); and opportunity for public comment, hearing, and substantial amendment criteria. Before the Grantee submits a proposed substantial amendment, the Grantee must publish the proposed submission, including a section that identifies exactly what content is being added, deleted, or changed, and whether it believes that the change would affect the scoring under the rating factors, and, thus, potentially trigger a substantial amendment; a chart or table that clearly illustrates where funds are coming from and to where they are moving; and a revised budget allocation table that reflects the entirety of all funds, as amended.

The manner of publication of a proposed substantial amendment must include prominent posting on the Grantee's official Web site, and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery must, for citizens, be navigable from the Grantee's homepage. Grantees are required to hold at least one public hearing to solicit public comments before finalizing each substantial amendment submission.

Grantees are also encouraged to notify affected citizens of proposed amendments and public hearings, through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with organizations located in or serving the target area or neighborhood.

Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each Grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction and the appropriate format for persons with disabilities.

For assistance in ensuring that this information is available to LEP populations, recipients should consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of any proposed substantial amendment, the Grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the submission. A summary by topic of all comments received on the amended submission and a list of commenters by name or organization must be submitted to HUD along with the submission.

Following execution of a grant agreement, the Grantee must post on its Web site the DRGR Action Plan that reflects the components funded through CDBG–NDR funds. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan that will help ensure clear communication of CDBG–NDR activities to the public. Subsequent to award, a Grantee may substantially amend the Action Plan if it follows the citizen participation requirements in this notice, and HUD agrees in writing that the initial application, inclusive of the proposed amendment, would still score in the fundable range for the competition.

b. Nonsubstantial Amendment. The Grantee is not required to undertake public comment when it makes any Action Plan amendment that is not substantial. The Grantee must impose an effective date 5 business days after submission to HUD.

c. Physical Accessibility. Meetings must be held in facilities that are physically accessible to persons with disabilities, or where physical accessibility is not achievable, Grantees and Partners must give priority to alternative methods of product or information delivery regarding programs and activities to qualified individuals with disabilities in the most integrated setting appropriate, in accordance with HUD's implementing regulations for section 109 of the HCD Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) at 24 CFR part 8 and all applicable laws and regulations. In addition, all notices of and communications during all training sessions and public meetings shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities, or provide other means of accommodation for persons with disabilities, consistent with section 504 of the Rehabilitation Act of 1973 and HUD's section 504 regulations. See 24 CFR part 8.6.

d. Additional Post-Award Requirements. The Grantee must update its citizen participation plan for CDBG–NDR grants to reflect the requirements of this notice. The purpose of this plan is to inform citizens of the citizen complaint process and the Grantee's response policy, the methods through which the public can learn about the grant and activity status, and the process the city will use to amend the Action Plan. The plan must satisfy the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant).

(1) Web site. The topic of disaster recovery must be navigable by citizens from the Grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

(2) Availability and Accessibility of the Application/Action Plan and the DRGR Action Plan. The Grantee must make the previously published portions of the Application, the Application as submitted to HUD, the DRGR Action Plan, any Action Plan amendments, and all performance reports available to the public on its Web site and on request. In addition, the Grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the Grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Application and to the Grantee's use of grant funds.

(3) Citizen Complaints. The Grantee will provide a timely written response to every citizen complaint. As required by law, the Grantee will provide a response within 15 working days of the receipt of the complaint, if practicable.

4. Direct Grant Administration and Means of Carrying Out Eligible Activities.

a. Requirements Applicable to State Grantees. Requirements at 42 U.S.C. 5306 are waived, to the extent necessary, to allow a State to directly carry out eligible activities with CDBG–NDR funds, rather than distribute all funds to local governments. Experience in administering CDBG supplemental disaster recovery funding demonstrates that this practice can expedite recovery. Pursuant to this waiver, the standard at section 570.480(c), the provisions at 42 U.S.C. 5304(e)(2), and the CDBG State program regulations will also include activities that the State carries out directly. In addition, activities eligible under the NOFA may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients, so long as the State is consistent with its Action Plan, including description of capacity and commitments to work with Partners. Notwithstanding this waiver, State Grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements contained in the HCD Act and 24 CFR part 570, as well as ensuring such compliance by subgrantees.

b. Requirements for All Grantees — Direct Administration and Assistance to Neighborhood Organizations Described in 42 U.S.C 5305(a)(15) of the HCD Act. Activities made eligible at 42 U.S.C. 5305(a)(15) may only be undertaken by the eligible entities described in that section, whether the assistance is provided to such an entity from the State or from a local government.

5. Consolidated Plan Waiver. To the extent that the Grantee did not receive points for consistency with the Consolidated Plan for the jurisdiction in which the Most Impacted and Distressed area is located, HUD is waiving the requirement for consistency with the consolidated plan, for no longer than 6 months (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 91.225(a)(5), 91.325(b)(3), and 91.225(b)(3)), because the effects of a major disaster alter a Grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review Grantee performance under the consistency criteria, is also waived for 6 months. All applications that did not submit the Certification of Consistency with the Consolidated Plan (form HUD–2991) in the attachments must update the Consolidated Plan within 6 months of grant award. At a minimum, the updated consolidated plan must include the criteria discussed in this notice. If not completed since the Qualified Disaster that led to the Grantee's eligibility under the NOFA, a Grantee must update its Analysis of Impediments to Fair Housing Choice in coordination with its post-waiver consolidated plan update or within the 18 months after the consolidated plan update, so that it more accurately reflects conditions following the disaster.

6. Requirement for Consultation During Plan Preparation. Currently, the statute and regulations require States to consult with affected units of local

government in nonentitlement areas of the State in determining the State's proposed method of distribution. Because Grantees complied with the extensive consultation requirements of the NOFA, including Appendix I to the NOFA, HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), and 24 CFR 91.325(b) and 91.110, to permit Grantees to rely on the consultation completed during Phase 1 and Phase 2 of the competition. No additional consultation is necessary to carry out the Project or program for which the Grantee received an allocation of CDBG–NDR funds.

7. Overall Benefit Waiver and Alternative Requirement. The primary objective of the HCD Act is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that 70 percent of the aggregate of a CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many Grantees affected by the Qualified Disasters. CDBG–NDR Grantees experienced disaster impacts that affected entire communities—regardless of income—and the existing requirement may prevent Grantees from providing assistance to damaged areas of need. Therefore, this notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A),and 24 CFR 570.484 and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides Grantees with greater flexibility to carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

A Grantee may seek a waiver to reduce the overall benefit requirement below 50 percent of the total grant (see instructions to request waivers in section 3.V), but overall benefit waivers are uncommon and Grantees, generally, must have submitted a request and justification for this waiver with its application. The 50 percent overall benefit requirement will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold.

8. Use of the "Upper Quartile" or "Exception Criteria" for Low- and Moderate-Income Area Benefit Activities. Per the requirements at 42 U.S.C. 5305(c)(2)(A), certain communities are allowed to use a percentage of less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile." For entitlement communities that meet the regulatory exception criteria, the State (or its subgrantee, if permitted by the State) may apply the criteria if acting directly in that community.

9. Use of "Uncapped" Income Limits. The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently "capped' under HUD's low- and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use "uncapped" income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its Web site identifying which grantees may use uncapped limits. The uncapped limits apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State, if the State permits the use.

10. Grant Administration Responsibilities and General Administration Cap.

a. Grantee responsibilities. Per the Appropriations Act, each Grantee shall administer its award directly, in compliance with all applicable laws and regulations. Each Grantee shall be financially accountable for the use of all funds provided in this notice and may contract for administrative support, but Grantees may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy approval or adoption, and financial management.

b. General administration Cap. For grants under this notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant award, inclusive of any program income, to be used for general administration costs, by the Grantee, by local governments, or by subrecipients. Thus, the total of all costs charged to the grant and classified as general administration must be less than or equal to the 5 percent cap. (See Notice CPD 13–07 for additional guidance regarding classification of general administration costs.)

(1) Alternative Requirements. For State Grantees under this notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) will not apply to the extent that they specify a cap on general administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000. Thus, 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for general administrative and technical assistance expenditures must not exceed 5 percent. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and general administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

(2) Local Government Grantees Are Also Subject to the 5 Percent Administrative Cap. This 5 percent applies to all general administration costs, whether incurred by the Grantee or its subrecipients. Local government Grantees also remain limited to spending 20 percent of the total CDBG–NDR award on a combination of planning and general administration costs.

(3) Planning and Administrative Costs Pledged as Leverage: Grantees cannot charge to the grant any administrative and planning costs pledged as leverage.

11. Planning-Only Activities—Applicable to State Grantees Only. The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual Project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-Project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that effective CDBG disaster recoveries have relied on some form of areawide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State Grantees receiving an award under this notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 570.208(d)(4) when funding disaster recovery-assisted, planning-only activities, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or administer are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

12. Waiver And Alternative Requirement for Distribution to CDBG Metropolitan Cities and Urban Counties—Applicable to State Grantees Only. Section 5302(a)(7) of 42 U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit or restrict a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a) and 570.486(c) (revised April 23, 2012). Instead, the State may distribute funds to local governments and Indian tribes.

13. Use of Subrecipients—Applicable to State Grantees Only. The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls "subrecipients." The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly through a subrecipient, the requirements at 24 CFR 570.503, 570.500(c), and 570.489(m) apply, except only the specific references to 2 CFR part 200 made applicable by the State CDBG regulations must be included in subrecipient agreements. Pursuant to 24 CFR 570.489(p) (revised December 7, 2015), a State Grantee must ensure that its costs and those of its State recipients and subrecipients are in conformance with 2 CFR part 200, subpart E, as may be amended, where carrying out activities directly, including through the use of a subrecipient.

14. Recordkeeping.

(a) State Grantees. When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD under 24 CFR 570.493 of the State's administration of CDBG–NDR funds. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: Enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; ensure compliance with requirements of this notice and any other notice governing the use of CDBG–NDR grants; and show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, disability, and gender characteristics of persons who are Applicants for, participants in, or beneficiaries of the program.

b. Local Government Grantees. Entitlement Grantees remain subject to the recordkeeping requirements of 24 CFR 570.506.

15. Change of Use of Real Property—Applicable to State Grantees Only. This waiver conforms to the change of the use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to "unit of general local government" in 24 CFR 570.489(j) shall be read as "unit of general local government or State."

16. Responsibility for Review and Handling of noncompliance—Applicable to State Grantees Only. This change is in conformance with the waiver allowing the State to carry out activities directly. Section 570.492 of 24 CFR is waived and the following alternative requirement applies for any State receiving a direct award under this notice: The State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

17. Program Income Alternative Requirement. The Department is waiving applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this notice. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds.

a. Definition of Program Income.

(1) For the purposes of this subpart, "program income" is defined as gross income generated from the use of CDBG–NDR funds and received by a State, local government, or tribe, or a subrecipient of a State, local government, or tribe, unless excluded from the definition as described in paragraph 17.a.(2) and paragraph 17.d below. When income is generated by an activity that is only partially assisted with CDBG–NDR funds, the program income to the CDBG–NDR grant shall be prorated to reflect the percentage of CDBG–NDR funds used (*e.g.*, a single loan supported by CDBG–NDR funds and other funds; a single parcel of land purchased with CDBG–NDR funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–NDR funds;

(b) Proceeds from the disposition of equipment purchased with CDBG–NDR funds;

(c) Gross income from the use or rental of real or personal property acquired with CDBG–NDR funds by a State, local government, or tribe, or subrecipient of a State, local government, or tribe, less costs incidental to generation of the income (*i.e.*, net income);

(d) Net income from the use or rental of real property owned by a State, local government, or tribe or subrecipient of a State, local government, or tribe, that was constructed or improved with CDBG–NDR funds;

(e) Payments of principal and interest on loans made using CDBG–NDR funds;

(f) Proceeds from the sale of loans made with CDBG–NDR funds;

(g) Proceeds from the sale of obligations secured by loans made with CDBG–NDR funds;

(h) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(i) Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover

all or part of the CDBG–NDR portion of a public improvement; and

(j) Gross income paid to a State, local government, or tribe, or paid to a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–NDR assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds which is less than $25,000 received in a single year and retained by a State, local government, tribe, or retained by a subrecipient thereof;

(b) Amounts generated by activities both eligible and carried out by an entity under the authority of section 105(a)(15) of the HCD Act;

b. Retention of Program Income. Per 24 CFR 570.504(c), a local government Grantee receiving a direct CDBG–NDR award may permit a subrecipient to retain program income. State Grantees may permit a local government or tribe, which receives or will receive program income, to retain the program income, but are not required to do so.

c. Program Income—Use, Closeout, and Transfer.

(1) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–NDR grant funds subject to the requirements of this notice and must be used in accordance with the Grantee's Action Plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph d of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, modified by this notice, the following rules apply: A Grantee may transfer program income before closeout of the CDBG–NDR grant that generated the program income to its annual CDBG program. In addition, a State Grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government or Indian tribe within the State, including a local government that is an Entitlement CDBG grantee if that Entitlement grantee received CDBG disaster recovery assistance from the State or from HUD under Public Law 113–2.

Program income received by a Grantee, or received and retained by a subgrantee, after closeout of the grant that generated the program income, may also be transferred to a Grantee's annual CDBG award. In all cases, any program income received, and not used to continue disaster recovery activities, will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the Grantee's non-disaster formula CDBG program rules.

d. Revolving Loan Funds. Entitlement Grantees, State Grantees, and local governments or tribes (as permitted by a State Grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State Grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Lastly, note that no revolving fund established per this notice, shall be directly funded or capitalized with an advance of CDBG–NDR grant funds.

18. Reimbursement of Disaster Recovery Expenses. Grantees may not use CDBG–NDR grant funds to pay for any activities carried out on or before the date of the letter notifying the grantee of the award of the grant, except that grant funds may be used to reimburse CDBG–NDR eligible costs of grant application preparation, including planning and citizen outreach activities. The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable application-related costs incurred by itself or its recipients, subgrantees or subrecipients (including public housing authorities) on or after the date of publication of the initial CDBG–NDR NOFA. An entitlement Grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable application-related costs incurred on or after the publication date of the initial CDBG–NDR NOFA. Section 570.200(h)(1)(i) of 24 CFR will not apply to the extent that it requires preagreement activities to be included in a consolidated plan. The Department expected Grantees to include all preagreement activities in their applications. The provisions at 24 CFR 570.200(h) and 570.489(b), as modified by this paragraph, apply to Grantees reimbursing application-related costs incurred by itself or its recipients or subrecipients prior to signing a grant agreement with HUD.

19. One-for-One Replacement, Relocation, and Real Property Acquisition Requirements. Activities and Projects assisted by CDBG–NDR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA) and section 104(d) of the HCD Act (42 U.S.C. 5304(d))(Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the purposes of promoting the availability of decent, safe, and sanitary housing and expediting disaster recovery and rehousing efforts, HUD is waiving the following URA and Section 104(d) requirements for CDBG–NDR Grantees:

a. One-for-One Replacement. One-for-one replacement requirements at section 104(d)(2)(A)(i)–(ii) and (d)(3) and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The Section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units.

This waiver exempts disaster-damaged units that meet the Grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out a program or activity which may be subject to the one-for-one replacement requirements, the Grantee must define "not suitable for rehabilitation" in its application or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD regional relocation specialist responsible for their State.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirements may discourage Grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and may impede economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type, amount, and location of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970, neither of which is waived by this notice.

b. Relocation Assistance. The Section 104(d) relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.*, buyouts and relocation). Both FEMA and HUD funds are subject to the URA; however, HUD's CDBG Funds are also subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. Arm's Length Voluntary Purchase. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses CDBG–NDR funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of Grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that any tenants occupying real property that is acquired through voluntary purchase may be eligible for relocation assistance.

d. Rental Assistance to a Displaced Person. The requirements at sections 204(a) and 206 of the URA, and 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the Grantee to use 30 percent of a low-income displaced person's household income in computing a rental assistance payment if the person had been paying more than 30 percent of household income in rent/utilities without "demonstrable hardship" before the Project. Thus, if a tenant has been paying rent/utilities in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance payment would not be required. Before carrying out a program or activity in which the Grantee will provide rental assistance payments to displaced persons, the Grantee must define "demonstrable hardship" in its application or in the policies and procedures governing these programs and activities. The Grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. Tenant-Based Rental Assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a Grantee to meet all or a portion of a Grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.*, Section 8 Housing Choice Voucher Program), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a), where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives Grantees an additional relocation resource option.

f. Moving Expenses. The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a Grantee offer a displaced person the option to receive a fixed moving cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the Grantee must establish and offer the person a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

Without this waiver and alternative requirement, disaster recovery may be impeded by requiring Grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established "moving expense and dislocation allowance."

g. Optional Relocation Policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the Grantee or State recipient level. Unlike the annual formula CDBG program, States receiving CDBG–NDR funds may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver also makes clear that local governments receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and local governments with maximum flexibility in developing optional relocation policies with CDBG–NDR funds.

20. Environmental Requirements.

a. Clarifying Note on the Process for Environmental Release of Funds When a State Carries Out Activities Directly. In the CDBG program, a State distributes CDBG Funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For State Grantees under this notice, HUD allows the State to carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

b. Adoption of Another Agency's Environmental Review. In accordance with the Appropriations Act, recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The Grantee must notify

HUD in writing of its decision to adopt another agency's environmental review. The Grantee must retain a copy of the review in the Grantee's environmental records.

c. Release of Funds. In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a request for release of funds and certification, immediately approve the release of funds for an activity or Project assisted with CDBG–NDR funds if the recipient has adopted an environmental review, approval or permit under subparagraph b, above, or the activity or Project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

d. Historic Preservation Reviews. To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), HUD strongly encourages Grantees to allocate general administration funds to support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review CDBG–NDR Projects.

21. Procurement.

a. State Grantees. Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Additionally, States and State subgrantees (Units of General Local Governments) and subrecipients) shall follow requirements of 24 CFR 570.489(g). HUD is imposing a waiver and alternative requirement to require the State to establish requirements for procurement policies and procedures based on full and open competition for subrecipients, in addition to units of general local government.

The State can comply with the requirement under 24 CFR 570.489(g) to follow its procurement policies and procedures and establish procurement requirements for its UGLGs and subrecipients in one of three ways (subject to 2 CFR 200.110, as applicable):

(i) A State can follow its existing procurement policies and procedures and establish requirements for procurement policies and procedures for units of general local government and subrecipients, based on full and open competition, that specify methods of procurement (*e.g.*, small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability;

(ii) A State can adopt 2 CFR 200.317, which requires the State to follow the same policies and procedures it uses for procurements from its non-Federal funds and comply with 2 CFR 200.322 (procurement of recovered materials) and 2 CFR 200.326 (required contract provisions), but requires the State to make its subrecipients and UGLGs follow 2 CFR 200.318 through 200.326; or

(iii) A State can adopt the provisions that apply to CDBG entitlement grantees (2 CFR 200.318 through 2 CFR 200.326) for itself and its subgrantees (subrecipients and units of general local government).

b. Direct Grants to Local Governments. Any unit of general local government receiving a direct grant from HUD is subject to procurement requirements in the Uniform Administrative Requirements at 2 CFR 200.318 through 2 CFR 200.326 (subject to 2 CFR 200.110, as applicable).

c. Additional Requirements Related to Procurement (States and Local Governments). HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a procurement process to perform specific functions, consistent with the procurement requirements in the CDBG program regulations. A subrecipient is not a contractor (see 2 CFR 200.330). Grantees are also required to ensure all contracts and agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or date of completion. Grantees must incorporate performance requirements and penalties into each contract or agreement. The Appropriations Act requires HUD to provide Grantees with technical assistance on contracting and procurement processes.

22. Public Web site. The Appropriations Act requires Grantees to maintain a public Web site that provides information accounting for how all grant funds are used and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each Grantee must make the following items available on its Web site: The Action Plan (including the latest version of its Action Plan, the latest version of its DRGR Action Plan, the version as submitted to HUD for the competition, and all amendments, as described in section 3.V.A.3 of this notice); each QPR (as created using the DRGR system) detailing expenditures for each contractor; procurement policies and procedures; executed CDBG–NDR contracts; and the status of services or goods currently being procured by the Grantee (*e.g.*, phase of the procurement, requirements for proposals, etc.).

23. Timely Distribution of Funds. The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the following alternative requirement: Grantees must adhere to the requirement in section 904(c) of the Appropriations Act, which requires that all funds be expended within 2 years of the date HUD obligates funds to a Grantee, as described in section 3.II.A.1.a in this notice. HUD expects each Grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner to ensure this deadline is met.

Additionally, to track Grantees' progress, HUD will evaluate timeliness in relation to each Grantee's established projection schedules (see section 3.II. B and section 3.V.A.1.j of this notice). The Department will, absent substantial evidence to the contrary, deem a Grantee to be carrying out its programs and activities in a timely manner if the schedule for carrying out its activities is substantially met. In determining the appropriate corrective action pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the Grantee and its subrecipients for specific activities at the time the finding is made and other relevant information. As stated in the NOFA, if a Grantee does not proceed within a reasonable time frame, HUD reserves the right to withdraw any funds the Grantee has not obligated under their award. If funds are withdrawn prior to September 30, 2017, HUD shall redistribute any withdrawn amounts to one or more other jurisdictions eligible for CDBG–DR funding.

24. Review of Continuing Capacity to Carry Out CDBG-Funded Activities in a Timely Manner. If HUD determines at any time that the Grantee has not carried out its CDBG–NDR activities and certifications in accordance with the requirements and criteria described in this notice, HUD will undertake a further review to determine whether or not the Grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the following alternative requirements to provisions under 42 U.S.C. 5304(e): The nature and extent of the Grantee's performance deficiencies, types of corrective actions the Grantee has undertaken, and the success or likely success of such actions.

25. Corrective and Remedial Actions. To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG–NDR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to impose the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement Grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Before determining appropriate corrective actions, HUD will notify the Grantee of the procedures applicable to its review. As in the annual CDBG program, in accordance with 24 CFR 570.300, the policies and procedures set forth in subpart O apply to local governments receiving direct grants from HUD.

26. Reduction, Withdrawal, or Adjustment of a Grant or Other Appropriate Action. Prior to a reduction, withdrawal, or adjustment of a grant, or other appropriate action, taken pursuant to this notice, the Grantee shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation. Consistent with the procedures described in this notice, the Secretary may adjust, reduce or withdraw the grant, or take other actions, as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.

B. Common Eligibility Waivers and Alternative Requirements and Other Provisions: Housing, Floodplain Issues, Infrastructure, Economic Revitalization

1. Housing-Related Eligibility Waivers. The broadening of 42 U.S.C. 5305(a)(24) is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this notice. Thus, 42 U.S.C. 5305(a) is waived to the extent necessary to allow: Homeownership assistance for households with up to 120 percent of the area median income, down payment assistance for up to 100 percent of the down payment (an increase from the limit in 42 U.S.C. 5305(a)(24)(D)), and new housing construction. While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

2. Housing incentives. Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a Grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area. Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Grantees providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Incentives to relocate individuals outside of a floodplain, when combined with acquisition that would lead to redevelopment in the floodplain, is not permissible if it does not increase Resilience. When assessing compliance under this alternative requirement, HUD will look closely at how those activities that include housing incentives are necessary and reasonable, are consistent with the BCA submitted with the application, and increase Resilience. In addition, the incentives must be in accordance with the Grantee's Action Plan and any other program policies. Note that this waiver does not permit a compensation program. Additionally, a Grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

3. Limitation on Emergency Grant Payments Interim Mortgage Assistance. 42 U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months, for up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond 3 months. Thus, interim assistance is critical for many households facing financial hardship during this period. A Grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

4. Acquisition of Real Property and Flood Buyouts. Grantees under this notice and the NOFA are able to carry out property acquisition for a variety of purposes. However, the term "buyouts," as referenced in this notice refers, to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

a. Buyout Requirements.

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the Project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices.

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space (*e.g.*, a park, campground, or outdoor recreation area), (b) a rest room, (c) a flood control structure, or (d) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure.

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance, for any purpose, will be made by the recipient to any Federal entity in perpetuity.

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG–NDR funds for buyouts, the Grantee must uniformly apply whichever valuation method it chooses.

(5) All buyout activities must be classified using the "buyout" activity type in the DRGR system.

(6) Any State Grantee implementing a buyout program or activity must consult with affected local governments.

b. Redevelopment of Acquired Properties.

(1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. See subparagraph a.(2), above.

(2) Grantees may redevelop an acquired property if: (a) The property is not acquired through a buyout program, and (b) the purchase price is based on the property's post-flood fair market

value (the pre-flood value may not be used). In addition to the purchase price, Grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the Grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

(3) In carrying out acquisition activities, the Grantee must ensure compliance with its long-term redevelopment plans.

5. Alternative Requirement for Housing Rehabilitation—Assistance for Second Homes. The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: A "second home", as defined in IRS Publication 936 (Home Mortgage Interest Deductions), is not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG–NDR buyout program (as defined by this notice).

6. Floodplains and Flood Insurance. Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the Field Environmental Officer in the local HUD Field Office, or review the guidance on flood insurance requirements on HUD's Web site. Additional requirements for flood insurance, future Federal disaster assistance, and flood control structures are included below.

a. Flood Insurance Purchase Requirements. HUD does not prohibit the use of CDBG–NDR funds for existing residential buildings in a Special Flood Hazard Area (SFHA) (or "100-year" floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in an SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within an SFHA.

b. Future Federal Assistance to Owners Remaining in a Floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person, at any time, has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has, subsequently, failed to obtain and maintain flood insurance, as required under applicable Federal law, on such property. This means that a Grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a Grantee that receives CDBG–NDR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in subparagraph (5), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(5) The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(6) The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." The term "flood disaster area" is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

c. Floodplain Management. HUD CDBG–NDR grants must conform to Executive Orders 11988, on Floodplain Management, and 11990, on Wetlands, as well as HUD's regulations at 24 CFR parts 55 and 58, which may include identifying alternate locations, and, as necessary, modifying the Project.

d. Federally Funded Levees, Floodwalls, and Other Flood Control Structures. The requirements in this section apply to new structures and improvements to existing structures.

(1) Operation and Maintenance. HUD expects the Grantee or one of its Partners to take responsibility for operating and maintaining any levee, floodwall, or other flood control structure.

(2) Purpose. One function of such a structure must be for the purpose of providing flood protection for existing structures at risk of flooding, although the CDBG–NDR Project incorporating such a structure must also meet an Unmet Recovery Need and may include co-benefits that meet other community development objectives, but must not be created to reduce flooding to currently undeveloped land.

(3) Special Requirements for Levees. A levee or levee system (new or existing) proposed under this NOFA must be technically sound (*i.e.*, levee is tied off to high ground, is geotechnically stable, etc.), well maintained, and provide reliable flood protection. Any levee Project carried out as a CDBG–NDR activity must meet FEMA accreditation standards upon completion and the Sources and Uses statement must identify, and the Leverage response commit to providing a source of funding for operations and maintenance of the levee in perpetuity.

If HUD provides funding for such a structure under this notice, the grant terms and conditions will require the Grantee to upload into the DRGR system (and, if directed by HUD, the National Levee Database) shape files or other geographic information system data delineating the exact location of the assisted structure and of the area served and protected by the structure (meaning the area subject to inundation to any depth in the event of a levee breach at any location), and to provide additional data for input to the National Levee Database, including the status of the levee under the U.S. Army Corps of Engineers Public Law 84–99 Program (Levee Rehabilitation and Improvement Program), accreditation status under the National Flood Insurance Program; levee owner/operator, and public party that is legally responsible for the maintenance of the levee; number of all structures, and of people that reside, in the leveed area; critical structures and facilities in the leveed area, as-built plans sealed by a licensed professional engineer; levee cross-section plots and coordinates; levee features (*i.e.*, gravity drains, pump stations relief wells, boreholes, etc.); levee design flow; levee design frequency; level of freeboard being no less than 3 vertical feet; and points of contact for public safety/emergency management and repository for the Levee Emergency Action Plan, levee operations and maintenance, and flood risk/floodplain management plan for the levee.

Information provided to HUD for submission to the National Levee Database (or to the database, as directed by HUD) is to be updated on an annual basis or any time that there is a change in the status of the levee, including updates to the inspection date, inspection type, and inspection rating of the levee. This information will be shared with FEMA, the U.S. Army Corps of Engineers, members of the House and Senate appropriations committees, and any other interested Federal agencies and affected parties, as appropriate. This information is intended to be used to ensure that no additional Federal resources are used for operations and maintenance of the structure in the future.

(4) Public Notification. In addition, because occupants in the floodplain behind flood control structures are at risk when the levee or other structure is overtopped or fails, the grant terms and conditions governing HUD funding for any levee, floodwall, or other flood control structure will require the Grantee to provide, to all property owners, businesses, and residents in the leveed area, notification of the presence, condition, and level of protection of the levee, on no less than an annual basis. This notification must include messages regarding public safety information and evacuation procedures, promotion of flood insurance, family and business evacuation planning, and point of contact for reports of any problems, questions, and additional information related to the structure.

7. Use of CDBG–NDR as Match and Order of Assistance Between FEMA, U.S. Army Corps of Engineers, and CDBG–NDR. As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–NDR activity. This includes programs or activities administered by FEMA or the U.S. Army Corps of Engineers. By law, the amount of CDBG–NDR funds that may be contributed to a U.S. Army Corps of Engineers Project is $250,000 or less. However, the Appropriations Act prohibits use of funds for any activity reimbursable by, or for which funds are made available by, FEMA or the U.S. Army Corps of Engineers.

8. National Objective Documentation for Economic Development Activities. Sections 570.483(b)(4)(i) and 570.208(a)(4)(i) of 24 CFR are waived to allow the Grantees under this notice to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement in which Grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.*, number of persons). Thus, it streamlines the documentation process by allowing the collection of wage data from the assisted business for each position created or retained, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG disaster recovery Grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons. The Department has determined that, in the context of disaster recovery, this waiver is consistent with the HCD Act.

9. Public Benefit for Certain Economic Development Activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the Grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4) for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure Projects). However, Grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

10. Clarifying note on Section 3 Resident Eligibility and Documentation Requirements. The definition of "low-income persons" in 12 U.S.C. 1701u and 24 CFR 135.5, is the basis for eligibility as a Section 3 resident. This notice authorizes Grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

11. Waiver and Modification of the Job Relocation Clause to Permit Assistance to Help a Business Return. Traditional CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another, if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved.

This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h) are waived to allow a Grantee to provide assistance to any eligible business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since

moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business. 12. Alternative Requirement for Assistance to Businesses, Including Privately-Owned Utilities. The Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) as follows: When CDBG–NDR Grantees provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG–NDR funds may not be used to directly assist a privately owned utility for any purpose. Note that a private utility may be a Partner to the Applicant for purposes of implementing a CDBG–NDR program.

C. Certifications and Collection of Information

1. Certifications Waiver and Alternative Requirement. Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived, and as an alternative requirement, each State or local government that applied for an award under the NOFA are held to the certifications required by Appendix F to the NOFA and submitted with its Phase 1 and its Phase 2 applications as a requirement for funding.

a. As required by the NOFA, an Applicant signing the SF–424 cover page, either through electronic submission or in paper copy submission (for those Applicants granted a waiver to submit in paper), affirms that the certifications and assurances associated with the Application are material representations of the facts upon which the Department will rely when making an award to the Applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the Applicant, the Applicant may be subject to criminal prosecution, and the Department may terminate the award to the Applicant organization or pursue other available remedies.

b. Affirmatively Furthering Fair Housing Certification. All activities under this notice shall be carried out in a manner that affirmatively furthers fair housing, as required by section 808(e)(5) of the Fair Housing Act, as amended (42 U.S.C. 3608(e)(5)). Each Applicant made the required certification for CDBG–NDR activities included in Appendix F of the NOFA.

Grantees shall adhere to the certifications included in Appendix F of the NOFA and 24 CFR 570.601, and take appropriate actions to support and document compliance with the certification.

2. Information Collection Approval Note. The information collection requirements contained in this document were approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number [Paperwork Reduction Act Number 2506–0203]. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The public reporting burden for the collection of information following the award of funds is estimated to average 56.2 hours per annum, per respondent, for grant set-up and administration. This includes the time for executing the grant agreement, establishing the grant within the DRGR system, voucher submissions, and quarterly reports. The information will be used for monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Section 4: Duration of Funding

CDBG–NDR funds are subject to 31 U.S.C. 1552(a), and, therefore, are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act must be expended by September 30, 2022. In addition, the Appropriations Act requires that HUD obligate all CDBG–NDR funds by September 30, 2017. The Appropriations Act (Section 904(c) of title IX in division A) also requires that all funds be expended within 2 years of the date HUD obligates funds. For more information, including information on extensions, see section 3.II of this notice.

Section 5: Catalog of Federal Domestic Assistance

The primary Catalog of Federal Domestic Assistance (CFDA) number for the disaster recovery grants under this notice is 14.272. Additional supporting CFDAs are 14.218 and 14.228.

Section 6: Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made on the NDRC NOFA, in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to the NDRC and this notice. It is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: June 1, 2016.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–13430 Filed 6–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–12]

60-Day Notice of Proposed Information Collection: Pay for Success Pilot Application Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment. The Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units (Pay for Success Pilot) authorizes HUD to establish a competitive process for selecting one or more qualified intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program. These retrofits are authorized at properties participating in the project-based rental assistance (PBRA) program under section 8 of the United States Housing Act of 1937; supportive housing for the elderly program operating under section 202 of the Housing Act of 1959; and supportive housing for persons with disabilities under section 811(d)(2) of the Cranston-Gonzalez National Affordable Housing Act. The documents that are the subject of this notice are those used by applicants applying to participate in this program.

DATES: *Comments Due Date:* August 8, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Mark Kudlowitz, Director, Program Administration Office, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Mark.A.Kudlowitz@hud.gov* or telephone (202) 402–3372. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

I. Evaluation of Proposed Information Collection

HUD will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected parties concerning the collection of proposed information on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. Description of Proposed Information Collection

Title of Information Collection: Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units (Pay for Success Pilot).

Description of the need for the information and proposed use: The Pay for Success (PFS) Pilot authorizes HUD to establish a competitive process for selecting one or more qualified intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program at select assisted multifamily housing properties. Participation in the program is voluntary. Participating applicants are required to submit application information for the purpose of putting together a proposal for evaluation. Through this application information, HUD evaluates whether applicants have met all of the requirements necessary to apply and be selected to participate in the PFS Pilot.

OMB Approval Number: N/A.

Type of Request: New information collection request.

Form Number: N/A.

Respondents (i.e. affected public): Businesses or other for-profits, nonprofit organizations, and State, Local, or Tribal Government entities.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 15.

Frequency of Response: Once.

Average Hours per Response: 20.

Total Estimated Burden: 300 hours.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 1, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–13427 Filed 6–6–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2016–N090; FXES11130100000–167–FF01E00000]

Endangered Species; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by July 7, 2016.

ADDRESSES: Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife

species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following application. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–054395

Applicant: Bureau of Land Management, Medford, Oregon.

The applicant requests a permit renewal to remove and reduce to possession from Federal lands *Fritillaria gentneri* (Gentner's fritillary) and *Lomatium cookii* (Cook's lomatium) in conjunction with recovery efforts in Jackson and Josephine Counties, Oregon and Siskiyou County, California for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: May 27, 2016.

Theresa E Rabot,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–13370 Filed 6–6–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC000000.16XL1109AF.L11200000 .MR0000.241A.00; 4500093609]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Coeur d'Alene District RAC will meet July 7, 2016, at the Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, ID 83815. The meeting will begin at 9:00 a.m. and end no later than 4:00 p.m. The public comment period will take place from 1:00 p.m. until 1:30 p.m.

FOR FURTHER INFORMATION CONTACT: Suzanne Endsley, Coeur d'Alene District, Idaho, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815, (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The meeting agenda will include updates from the Cottonwood and Coeur d'Alene Field Offices; presentations on hazardous fuels reduction and forestry projects; overviews of improvements planned at various recreation sites and general district project information. Additional agenda topics or changes to the agenda will be announced in local press releases. More information is available at *http://www.blm.gov/id/st/en/get_involved/resource_advisory/coeur_d_alene_district.htmlRAC* meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Suzanne Endsley, RAC Coordinator, Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, ID 83815. Telephone: (208) 769–5004. Email: *sendsley@blm.gov.*

Authority: 43 CFR 1784.4–1.

Dated: May 26, 2016.

Linda Clark,

BLM Coeur d'Alene District Manager.

[FR Doc. 2016–13371 Filed 6–6–16; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–953]

Certain Wireless Standard Compliant Electronic Devices, Including Communication Devices and Tablet Computers, Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of Settlement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 48) granting the joint motion of complainants Ericsson Inc. of Plano, Texas, and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively, "Ericsson") and respondent Apple Inc. of Cupertino, California ("Apple") to terminate the above-referenced investigation on the basis of a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 3, 2015, based on a complaint filed by Ericsson. 80 FR 18255–56 (Apr. 3, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless standard compliant electronic devices, including communication devices and tablet computers by reason of infringement of certain claims of U.S. Patent Nos. 8,717,996; 8,660,270; 6,058,359; 6,301,556; 8,102,805; 8,607,130; 8,837,381; and 8,331,476. The complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation names Apple as respondent. The Office of Unfair Import Investigations was also named as a party.

On January 19, 2016, Ericsson and Apple filed a second amended joint motion ("joint motion") to terminate the Investigation on the basis of a settlement agreement. On January 22, 2016, the ALJ issued show cause Order No. 44, identifying several deficiencies with the motion. On January 29, 2016, Ericsson and Apple responded to Order No. 44 and filed a copy of their settlement agreement on January 29, 2016. Also on January 29, 2016, the Commission investigative attorney ("IA") filed a response to the joint motion, supporting the motion to terminate with certain reservations regarding the filing of the settlement agreement and the redacted settlement agreement. On February 3, 2016, Ericsson and Apple filed a reply brief, addressing certain issues in the IA's response. Proceedings to resolve issues surrounding the scope of the redactions followed and the complaint agreement was filed.

On May 5, 2016, the ALJ issued the subject ID, granting the joint motion for termination of the investigation. The ALJ found that the joint motion complied with the requirements of Commission Rule 210.21(b)(1) and that granting the motion would not be contrary to the public interest. No petitions for review of the subject ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 1, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–13350 Filed 6–6–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application and Permit for Importation of Firearms, Ammunition, and Implements of War, ATF F 6 (5330.3A) Part I

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree M. Dickinson IOI/Industry Liaison, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405, at email: *desiree.dickinson@atf.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83–I): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition, and Implements of War.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF F 6 (5330.3A) Part I Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Other (if applicable): Individuals or households, Federal Government, State, Local or Tribal Government.

Abstract: The application and subsequent permit are used to bring firearms, ammunition and defense articles into the United States.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,000 respondents will take 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,500 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and

Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: June 1, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13305 Filed 6–6–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0055]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Identification of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226 at email: *eipb-informationcollection@atf.gov*. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection* (check justification or form 83–I): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Identification of Explosive Materials.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,205 respondents will take 3 seconds to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 956 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: June 1, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13349 Filed 6–6–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under the Clean Water Act

On June 1, 2016, the United States Department of Justice filed, on behalf of the Environmental Protection Agency, a proposed Modification to the 2002 Consent Decree in *United States and the State of Maryland* v. *Mayor and the City Council of Baltimore, Maryland*, Civil Action No. 1:02–CV–01524–JFM, with the United States District Court for the District of Maryland ("proposed Modified Consent Decree.")

On September 30, 2002, the Court entered the 2002 Consent Decree between the parties resolving Plaintiffs' claims that the City of Baltimore violated the Clean Water Act (the "CWA"), 33 U.S.C. 1319(b) and (d), resulting from Baltimore's operation of its sewer system and wastewater control plant. Under the 2002 Consent Decree, Baltimore was required to eliminate any remaining combined sewers in the collections system, eliminate structures for sanitary sewer overflows (SSO), conduct thorough evaluations of the City's eight sewersheds, propose rehabilitation measures for each sewershed and implement such measures after approval. The 2002 Consent Decree provides for implementation completion by January 2016.

Baltimore did not meet the January 2016 deadline for all of the rehabilitation measures. This proposed Modified Consent Decree allows Baltimore more time to conduct the SSO work using a two-phased approach. Under the proposed Modified Consent Decree, the Phase I work is required to be completed by January 2021, and then Baltimore is required to submit a Phase II Plan for EPA approval by December 2022. The Phase II Plan must propose a schedule for work to be completed no later than December 2030. After the Phase II work Baltimore will conduct two years of post-implementation monitoring. If after the Phase II work is complete the Plaintiffs determine that additional work is necessary, they can require Baltimore to undertake additional remedial measures.

The publication of this notice opens a period for public comment on the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, *United States and State of Maryland* v. *Mayor and the City Council of Baltimore, Maryland*, Civil Action No. 1:02–CV–01524–JFM., D.J. Ref. No. DJ # 90–5–1–1–4402/1. All comments must be submitted no later than sixty (60) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Modified Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees*. We will provide a paper copy of the proposed Modified Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–13330 Filed 6–6–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act, Clean Water Act, and Emergency Planning and Community Right-To-Know Act

On June 1, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Rhode Island in the lawsuit entitled *United States* v. *Newport Biodiesel, Inc.*, Civil Action No. 1:16–cv–00242.

The United States filed this lawsuit under the Clean Air Act, the Clean Water Act, and the Emergency Planning and Community Right-to-Know Act. The United States' complaint seeks injunctive relief and civil penalties for alleged violations at Newport Biodiesel, Inc.'s biodiesel manufacturing facility in Newport, Rhode Island. Alleged violations include Newport Biodiesel Inc.'s failure to comply with regulations that govern emissions of hazardous air pollutants (specifically methanol); failure to design and maintain a safe facility and take steps to prevent accidental releases; failure to prepare and implement a spill prevention control and countermeasure plan; and failure to file chemical inventory forms. The consent decree requires the defendant to perform injunctive relief and pay a $396,000 civil penalty.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Newport Biodiesel, Inc.*, D.J. Ref. No. 90–5–2–1–11301. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees*. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–13327 Filed 6–6–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 29, 2016 through May 20, 2016*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
90,066	Guardian Industries Corp., Floreffe Facility, Aerotek Staffing, Allegiance, Express Employment.	Jefferson Hills, PA	January 1, 2014.
90,081	Johnson Crushers International, Inc., Astec Industries, Inc., Staffing Partners.	Eugene, OR	January 1, 2014.
90,249	Atlas Tube, JMC Steel Group	Blytheville, AR	January 1, 2014.
90,302	Interfor, Inc., Interfor Corporation, Gliss General Labor & Industry	Molalla, OR	January 1, 2014.
91,136	FiberMark North America, Inc., Crocker Technical Papers, Neenah Paper, Inc.	Fitchburg, MA	November 13, 2014.
91,176	Tronox Worldwide LLC	Hamilton, MS	November 19, 2014.
91,353	Chemours Chemical Company, Titanium Technologies, The Chemours Company, KBR, KBR Design, etc.	Edge Moor, DE	January 18, 2015.
91,460	Cascade Steel Rolling Mills, Inc., Schnitzer Steel Industries, Inc., Express Employment Professionals.	McMinnville, OR	February 11, 2015.
91,496	Rough and Ready Lumber LLC	Cave Junction, OR	June 1, 2015.
91,510	ArcelorMittal Plate LLC, Conshohocken Division, ArcelorMittal USA LLC, Adecco, BSI, etc.	Conshohocken, PA	February 4, 2015.
91,532	Ingersoll Rand, Compression Technologies and Services, Strom Engineering, etc.	Cheektowaga, NY	March 1, 2015.
91,672	Connor Manufacturing Services, Inc., Express Employment Professionals and Cody Staffing.	Fairview, OR	April 6, 2015.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,373	GE Industrial Solutions Service Engineering Organization	Plainville, CT	June 11, 2013.

TA–W No.	Subject firm	Location	Impact date
90,001	Midland Credit Management, San Diego Call Center, Encore Capital Group.	San Diego, CA	January 1, 2014.
90,153	Ericsson, Inc., Service Assurance, Apeiron, Apex Systems, The Ash Group, etc.	Overland Park, KS	January 1, 2014.
90,153A	Ericsson, Inc., Fulfillment & Provisioning, Apeiron, Apex Systems, The Ash Group, etc.	Overland Park, KS	January 1, 2014.
90,153B	Ericsson, Inc., Processes, Systems, Tools & Methods (PST&M), Apeiron, Apex Systems, etc.	Overland Park, KS	January 1, 2014.
90,182	Convergys Corporation	Wichita, KS	January 1, 2014.
91,069	SuperValu, Inc., Finance Shared Service Division	Boise, ID	October 22, 2014.
91,123	3M Brookville, Abrasives Division, 3M, Volt	Brookville, OH	November 5, 2014.
91,133	Verizon Corporate Resources Group, LLC, Order Management	San Antonio, TX	November 11, 2014.
91,133A	Verizon Business Networks Services, Inc., Senior Analyst-Order Management, Voice Over Internet Protocol, etc.	San Antonio, TX	January 19, 2015.
91,135	ShopKo Stores Operating Co., LLC, Merchandise Support and Supply Chain Departments, SKO Group, etc.	Green Bay, WI	November 12, 2014.
91,139	Leggett & Platt Springs Manufacturing, LLC, Leggett & Platt, Inc., Aerotek.	Colorado Springs, CO	November 13, 2014.
91,149	Time Customer Service, Inc., Information Technology Department, Time, Inc.	Tampa, FL	November 17, 2014.
91,186	Daikin Applied Americas, Inc., Commercial HVAC Equipment Manufacturer Div., ISSI Technology Professionals.	Auburn, NY	December 28, 2015.
91,223	Maquet Cardiovascular, Vascular Interventions Division, Paramount Staffing.	Wayne, NJ	December 14, 2014.
91,246	Carlisle Industrial Brake & Friction, Carlisle Brake and Friction, Adecco and Employment Plus.	Bloomington, IN	December 1, 2014.
91,247	ESCO Corporation, Madden Industrial Craftsmen, Inc. and Aerotek Staffing.	Portland, OR	December 16, 2014.
91,261	New York Life Insurance Company, Technology and Finance, Asset Staffing, Collabera, Custom Staffing, etc.	Sleepy Hollow, NY	December 11, 2014.
91,282	ALM Media LLC, National Underwriter Company, Finance, Customer Service, etc.	Erlanger, KY	July 24, 2015.
91,286	Zodiac Pool Systems, Inc., Aerotek	Vista, CA	January 5, 2015.
91,309	Quadion LLC, Quadion Holdings LLC	Watertown, SD	January 16, 2016.
91,309A	Quadion LLC, Quadion Holdings LLC, Celarity	Plymouth, MN	January 7, 2015.
91,323	Leggett & Platt Spring Manufacturing, LLC, Leggett & Platt, Inc	Delano, PA	January 8, 2015.
91,340	Newmont Mining Corporation, IT, Supply Chain, Human Resources, and Financial Services, etc.	Greenwood Village, CO	January 12, 2015.
91,350	TE Connectivity, Aerospace, Defense and Marine Division	Mount Joy, PA	January 14, 2015.
91,378	Alcoa, Inc., Global Primary Products Division, CCC Group Inc., Feguson Enterprises, etc.	Point Comfort, TX	January 25, 2015.
91,383	MSSL Wiring System, Inc., Stoneridge, Inc., Motherson	Warren, OH	February 5, 2015.
91,383A	Adecco Staffing, MSSL Wiring System, Inc., Stoneridge, Inc., Motherson.	Warren, OH	January 22, 2015.
91,389	Cambia Health Solutions, Claims Processing and Sales Department.	Medford, OR	January 26, 2015.
91,389A	Virtual Communication, Cambia Health Solutions, Claims Processing and Sales Department.	Medford, OR	January 26, 2015.
91,396	Southern Graphic Systems LLC, SGS—Battle Creek Division	Battle Creek, MI	January 27, 2015.
91,471	Flowserve Corporation, Adecco Staffing	Dayton, OH	February 16, 2015.
91,494	Thorco Industries LLC, Marmon Group/Berkshire Hathaway, Penmac Staffing Services.	Lamar, MO	February 19, 2015.
91,499	Saginaw Machine Systems, Inc., SMS Holding Co. Inc., RPM Industrial, Ray Beebe, ITH Staffing, etc.	Saginaw, MI	February 22, 2015.
91,531	Royal Appliance Manufacturing Company, TTI Floor Care N.A	North Canton, OH	March 1, 2015.
91,544	BKFS I Services, LLC, Data & Analytics, Black Knight Financial Services, Appleone Employment, etc.	Glendale, CA	March 3, 2015.
91,570	EigenLight Corporation, Neophotonics Corporation, Adecco	Somersworth, NH	February 25, 2015.
91,576	URS Corporation, A Nevada Corporation, IPREP Group, Aecom, Accountemps.	Austin, TX	March 10, 2015.
91,578	QBE Americas, Inc., QBE Holdings, Inc	Eden Prairie, MN	March 10, 2015.
91,580	The Bank of New York Mellon, The Bank of New York Mellon Corporation, Information Technology, etc.	Syracuse, NY	March 5, 2015.
91,592	Hewlett Packard Enterprise, ES Applications Delivery Management Services Division.	North Quincy, MA	March 14, 2015.
91,605	StatCorp Medical, Spacelabs Healthcare, OSI Systems, Inc., Adecco, Trueblue, etc.	Jacksonville, FL	March 17, 2015.
91,609	Kim Lighting, Hubbell Lighting, Inc., Select Staffing	City of Industry, CA	March 18, 2015.
91,614	Littelfuse, Inc., ABU/CVP Division, Robert Half Technology	Boston, MA	March 21, 2015.
91,633	Maersk Agency USA, Inc., Marine Operations Division	Charlotte, NC	March 25, 2015.
91,650	LCC International, Inc., TechMahindra	Overlook Park, KS	March 31, 2015.
91,651	DME Co., LLC, Milacron, LLC, Accounts Payable Division	Madison Heights, MI	March 31, 2015.
91,654	WKW Roof Rail Systems, LLC, WKW-Erbslioeh Automotive, Inc., Aeroteck, Manpower.	Battle Creek, MI	March 31, 2015.

TA–W No.	Subject firm	Location	Impact date
91,657	Hewlett Packard Enterprise, ES ITO Midrange Delivery	Tulsa, OK	April 1, 2015.
91,667	Standard Motor Products, Inc., Temperature Control Division, Regal Temporary Services, Inc., etc.	Grapevine, TX	April 5, 2015.
91,671	DB Schenker, AXO Temporary Staffing, Select Staffing	El Paso, TX	April 6, 2015.
91,674	Xerox HR Solutions, LLP, Human Capital Services Division, Xerox Business Services, LLC.	Cherry Hill, NJ	April 6, 2015.
91,675	Toys"R"Us—Delaware, Inc., Ajilon Finance, Amerit Consulting, Inc., Creative Circle, LLC, etc.	Wayne, NJ	April 6, 2015.
91,676	Talentwise, A SterlingBackcheck Company, MRI Network Contract Staffing, etc.	Winchester, VA	April 6, 2015.
91,680	Ketchum, Inc., Omnicom Group, Inc., Finance Department	Pittsburgh, PA	April 8, 2015.
91,682	Recreational Equipment Inc. (REI), IT Operations Services, Apex Systems.	Kent, WA	April 9, 2015.
91,684	Abbott Laboratories, Global Information Services Division, Apex Systems, Inc, etc.	Abbott Park, IL	April 11, 2015.
91,685	Sulzer Pumps (US), Inc., Pumps Equipment, Staffing Partners, Opti Staffing, etc.	Portland, OR	April 11, 2015.
91,693	Hudson Clothing, LLC, DBG Corporation, Warehouse Division	Commerce, CA	April 12, 2015.
91,694	Transtector Systems, Smiths Microwave Telecoms Division, Humanix and Express Employment, etc.	Hayden, ID	April 12, 2015.
91,697	Oracle America, Inc., Oracle Corporation, J.D. Edwards Development Division.	Denver, CO	April 13, 2015.
91,703	Polar Tank Trailer, American Industrial Partners	Springfield, MO	April 13, 2015.
91,708	Cambridge Metals & Plastics, Water Works Manufacturing, Aerotek, Avenue Staffing, etc.	Cambridge, MN	April 14, 2015.
91,720	Caterpillar Track Components, Industrial Solutions, Components and Distribution (ISCD), Necso, etc.	Danville, KY	February 15, 2015.
91,722	Labinal, LLC, Safran USA, Inc., Aerotek	Everett, WA	April 20, 2015.
91,729	ACI Worldwide Corporation, ACI Worldwide, Inc., KBACE, Tallgrass Technologies, Ernst & Young, etc.	Elkhorn, NE	April 22, 2015.
91,730	Assembled Products, Inc., Jason Incorporated, Accurate Personnel Services, Quality Labor, etc.	Buffalo Grove, IL	April 22, 2015.
91,737	Alex Apparel Group Inc., Pay2Staff LLC	New York, NY	April 25, 2015.
91,739	The L.S. Starrett Company, Workforce Unlimited	Mount Airy, NC	April 22, 2015.
91,781	Magnetics Division of Spang & Company, Magnetics Division, Spang & Company.	East Butler, PA	January 15, 2016.
91,781A	Magnetics Division of Spang & Company, Magnetics Division, Spang & Company.	Pittsburgh, PA	January 15, 2016.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,210	General Security Services Corporation	Minneapolis, MN	December 9, 2014.
91,252	Joy Global Suface Mining, Inc., Joy Global, Inc., Worldwide Labor Support, Inc., Manpower, etc.	Virginia, MN	December 21, 2014.
91,277	Hammerlund Construction, Inc	Grand Rapids, MN	December 31, 2014.
91,345	Champion Charter Sales & Service, Gundlach Champion, Inc	Hibbing, MN	January 14, 2015.
91,438	Neovia Logistics, Randstad, Laser Spot Inc., and G4S	Normal, IL	February 4, 2015.
91,493	Matric Limited, Matric Group LLC	Seneca, PA	February 22, 2016.
91,493A	Leased Workers from Career Concepts, Matric Limited	Seneca, PA	February 19, 2015.
91,530	Progress Metal Reclamation Company, Recycling Division, Caterpillar, Inc.	Ashland, KY	March 1, 2015.
91,585	Zeigler Inc., Mining Division	Buhl, MN	March 11, 2015.
91,599	Range Steel Fabricators, Inc	Hibbing, MN	March 15, 2015.
91,603	SSSI, Inc., d/b/a Songer Steel Services, Inc., Kforce	Washington, PA	March 16, 2015.
91,696	Jasper Engineering & Equipment Company	Hibbing, MN	April 13, 2015.
91,706	General Fasteners Company	Riverton, IA	April 14, 2015.
91,726	Chemtrade Performance Chemical LLC, Chemtrade Logistics	Kalama, WA	April 21, 2015.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,695	Galey and Lord LLC, Patriarch Partners	Society Hill, SC	April 12, 2015.
91,698	Texas & Northern Railroad Company, Transtar, Inc	Lone Star, TX	April 13, 2015.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
90,171	Hewlett Packard Enterprise Services, Hewlett-Packard Company, Enterprise Services, etc.	Vancouver, WA.	
90,310	Hewlett Packard, Treasury Group, Credit and Collections Division	Colorado Springs, CO.	
91,328	Diamond Bar Outdoors, Administrative Services, Nova Lifestyle	Commerce, CA.	
91,356	Paul Ecke Ranch	Encinitas, CA.	
91,553	Bank of America, Global Engagement Team, Process Governance and Controls Team, etc.	Charlotte, NC.	
91,558	Continental Casualty Company, Special Funds Unit	Syracuse, NY.	
91,568	Hewlett Packard Enterprise, Engineering Group, Storage Division, Utility Development Unit, etc.	Colorado Springs, CO.	
91,643	Ethnotek, LLC	Eagan, MN.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
90,183	Milestone AV Technologies	Wichita, KS.	
90,215	Chase Industries Inc., Chem-Pruf Division, Express Employment Professionals.	Brownsville, TX.	
91,073	Imperial Sugar Company, Imperial-Savannah LP, Louis Dreyfus Commodities LLC, etc.	Gramercy, LA.	
91,272	L–3 Communications Integrated Systems, L.P., C3 ISR Division, L–3 Communications Corporation.	Beale Air Force Base, CA.	
91,534	EVRAZ Oregon Steel, EVRAZ Oregon Steel Tubular Division, EVRAZ Inc. NA, etc.	Portland, OR.	
91,686	Custom Stamping and MFG. Co	Portland, OR.	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
90,337	Wilson Trailer Company	Sioux City, IA.	
91,036	Halliburton Energy Services	Duncan, OK.	
91,096	EC Manufacturing, LLC, Aerotek, Pro Staff, Grafton Staffing Company.	Shawnee, KS.	
91,141	U.S. Security Associates, U.S. Security Holdings, Inc	Courtland, AL.	
91,170	Enovation Controls, LLC, Key Personnel	Tulsa, OK.	
91,183	Baker Hughes Incorporated, Artificial Lift Division, Kelly Temporary Services.	Tulsa, OK.	
91,263	Halliburton Energy Services, Wireline Operations	Montgomery, PA.	
91,264	Shenango Incorporated, DTE Energy Services, Steel City and Safety Supply, MK Technologies, etc.	Pittsburgh, PA.	
91,273	The Boeing Company, Vertical Lift Division, American Cybersystems, Apex Systems, etc.	Ridley Park, PA.	
91,384	Norfolk Southern Railway Company, Ashtabula Coal Dock	Ashtabula, OH.	
91,408	Michigan South Central Power Agency, Endicott Generating Station, Mapower.	Litchfield, MI.	
91,450	SuperValu Inc., Infrastructure Services Group	Boise, ID.	
91,524	Cameron International Corporation, Valves and Measurement Division, Micro-Tech Staffing.	Millbury, MA.	
91,658	Coyne International Enterprises Corporation, Coyne Textile Services.	Syracuse, NY.	
91,688	Ceres Crystal Industries, Inc., Coastal Staffing, Durham Staffing	Niagara Falls, NY.	
91,764	QVC St. Lucie, Inc., QVC, Inc	Port Saint Lucie, FL.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
91,048	Seventy Seven Energy Inc	Oklahoma City, OK.	
91,220	Crisp Manufacturing Co., Inc	Rural Retreat, VA.	
91,229	American Process, Inc., Star Staff	Alpena, MI.	
91,236	IAC Acoustics, fka GT Exhaust, IAC Acoustics, Aurstaff, Express, Celebrity, and Aerotek.	Lincoln, NE.	
91,236A	IAC Acoustics, fka Maxim Silencers, IAC Acoustics	Stafford, TX.	
91,371	Rivergate Scrap Metals, Bors, Inc., TCMI, Inc., OPTI Staffing	Portland, OR.	
91,437	Hoquiam Plywood Products	Hoquiam, WA.	
91,560	General Cable, General Cable Corporation, Staffmark	Malvern, AR.	
91,719	American Light Bulb MFG	Mullins, SC.	
91,733	H.C. Haynes Inc	Winn, ME.	
91,779	MTE Corporation	Menomonee Falls, WI.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
90,323	Hewlett Packard Enterprise Services, Hewlett Packard Enterprise, Midrange Server Services Division.	Plano, TX.	
90,332	LexisNexis, Aelpo Team, Matthew Bender, Populus Group, Linium Consulting.	Albany, NY.	
91,281	CareFusion Resources, LLC, Vital Signs, Inc. Division, Carefusion Corporation.	Englewood, CO.	
91,409	Southern Graphic Systems LLC	Battle Creek, MI.	
91,647	Ingersoll Rand, Compression Technologies and Services Division	Cheektowaga, NY.	
91,780	Newmont Mining Corporation, IT, Supply Chain, Human Resources, and Financial Services, etc.	Greenwood Village, CO.	

I hereby certify that the aforementioned determinations were issued during the period of *April 29, 2016 through May 20, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 24th day of May 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–13343 Filed 6–6–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than June 17, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of May 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[78 TAA petitions instituted between 4/29/16 and 5/20/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91755	Kraft-Heinz (Workers)	Allentown, PA	04/29/16	04/28/16
91756	Schlumberger Technology Corporation (Workers)	Bakersfield, CA	04/29/16	04/28/16
91757	Lewis Bakery (Union)	Vincennes, IN	04/29/16	04/28/16
91758	Hawaiian Commercial & Sugar Company (HC&S) (Union).	Puunene, HI	04/29/16	04/26/16
91759	Dynegy Midwest Generation (Union)	Alton, IL	05/02/16	04/29/16
91760	Four Seasons Residence Club (State/One-Stop)	Carlsbad, CA	05/02/16	04/29/16
91761	Agility Logistics (State/One-Stop)	Irvine, CA	05/02/16	04/29/16
91762	RR Donnelley (State/One-Stop)	Portland, OR	05/02/16	04/29/16
91763	Cigna (State/One-Stop)	Bloomfield, CT	05/03/16	05/02/16
91764	QVC St. Lucie, Inc (State/One-Stop)	Port Saint Lucie, FL	05/03/16	05/02/16
91765	St. Peter's Health Partners-Transcription Unit (State/One-Stop).	Albany, NY	05/03/16	05/02/16
91766	Berwick Offray, LLC (State/One-Stop)	Lansing, IA	05/03/16	05/02/16
91767	Mount Vernon Mills Cuero Plant (Company)	Cuero, TX	05/03/16	04/13/16
91768	Accuri Cytometers, Inc. (Workers)	Ann Arbor, MI	05/03/16	04/26/16
91769	Eaton Aurora (Company)	Aurora, OH	05/03/16	04/15/16
91770	US Synthetics (Workers)	Orem, UT	05/04/16	05/03/16
91771	QBE North America (State/One-Stop)	Jacksonville, FL	05/04/16	05/03/16
91772	Blount International (State/One-Stop)	Portland, OR	05/04/16	05/03/16
91773	CH2M Hill (State/One-Stop)	Bellington, WA	05/04/16	05/03/16
91774	Honeywell International PMT Customer Service Division (Union).	Des Plaines, IL	05/05/16	05/04/16
91775	Honeywell International PMT Customer Service Division (State/One-Stop).	McCook, IL	05/05/16	05/04/16
91776	Honeywell International PMT Customer Service Division (State/One-Stop).	Saraland, AL	05/05/16	05/04/16
91777	UTC Aerospace Systems (Company)	Cleveland, OH	05/05/16	05/04/16
91778	Fujitsu America Inc. (State/One-Stop)	Richardson, TX	05/05/16	05/04/16
91779	MTE Corporation (Company)	Menomonee Falls, WI	05/06/16	05/05/16
91780	Newmont Mining Corporation (State/One-Stop)	Greenwood Village, CO	05/06/16	05/05/16
91781A	Magnetics Division of Spang & Company (Company).	Pittsburgh, PA	05/06/16	05/05/16
91781	Magnetics Division of Spang & Company (Company).	East Butler, PA	05/06/16	05/05/16
91782	Veris Industries/Schneider Electric SE (State/One-Stop).	Portland, OR	05/06/16	05/05/16
91783	Iron Mountain (State/One-Stop)	Cerritos, CA	05/06/16	05/05/16
91784	All State Sales and Administrative Services (State/One-Stop).	Syracuse, NY	05/06/16	05/05/16
91785	Campbell Global, LLC (State/One-Stop)	Fort Bragg, CA	05/06/16	05/05/16
91786	Irathane Systems, Industrial Rubber Applicators (Union).	Hibbing, MN	05/06/16	05/05/16
91787	Jersey Shore Steel Company (Company)	Jersey Shore, PA	05/09/16	05/06/16
91788	Cyrus Hosiery (State/One-Stop)	Vernon, CA	05/09/16	05/06/16
91789	Genpact (State/One-Stop)	Parsippany, NJ	05/09/16	05/09/16
91790	Cenntro Motors USA (State/One-Stop)	Sparks, NV	05/09/16	05/05/16
91791	Woodard & Curran (State/One-Stop)	Madison, ME	05/09/16	05/06/16
91792	Vindex Energy Corporation (State/One-Stop)	Oakland, MD	05/10/16	05/09/16
91793	ATI Cast Products (State/One-Stop)	Albany, OR	05/10/16	05/09/16
91794	Borets Co LLC (Workers)	Tulsa, OK	05/10/16	04/29/16
91795	Johnson Controls Inc. (Union)	Milwaukee, WI	05/12/16	05/11/16
91796	Remington Outdoor Company (Workers)	Hickory, KY	05/12/16	05/11/16
91797	Toshiba America Information Systems Inc. (State/One-Stop).	Irvine, CA	05/12/16	05/11/16
91798	Eaton Corporation (State/One-Stop)	Hutchinson, KS	05/12/16	05/11/16
91799	Bushell Ribon Corporation (State/One-Stop)	Santa Fe Springs, CA	05/12/16	05/11/16
91800	MBA Health Group (Company)	South Burlington, VT	05/12/16	05/12/16
91801	Allegheny Techologies Incorporated (Union)	Latrobe, PA	05/13/16	05/12/16
91802	Sage Biopharma—Coopers Surgical Inc. (State/One-Stop).	Pasadena, CA	05/13/16	05/12/16
91803	VF Contemporary Brands, Inc. (State/One-Stop)	Vernon, CA	05/13/16	05/12/16
91804	American Grass Seed Producers, Inc. (State/One-Stop).	Tangent, OR	05/13/16	05/12/16
91805	Green Willow Grains (State/One-Stop)	Tangent, OR	05/13/16	05/12/16
91806	Stalford Seed Farm (State/One-Stop)	Tangent, OR	05/13/16	05/12/16
91807	Cardone Industries (Company)	Philadelphia, PA	05/13/16	05/12/16
91808	Resolute Forest Products (Company)	Augusta, GA	05/13/16	05/12/16
91809	Sprint (State/One-Stop)	Overland Park, KS	05/13/16	05/12/16
91810	National Oilwell Varco (State/One-Stop)	Houston, TX	05/16/16	05/13/16

APPENDIX—Continued

[78 TAA petitions instituted between 4/29/16 and 5/20/16]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
91811	Sykes Enterprises, Incorporated (Company)	Langhorne, PA	05/16/16	05/13/16
91812	Trinity Railcar Industries (Workers)	Longview, TX	05/16/16	05/13/16
91813	Xerox (State/One-Stop)	Webster, NY	05/16/16	05/13/16
91814	Weatherford ALS (Workers)	Longview, TX	05/16/16	05/13/16
91815	Verizon Enterprise Services (Verizon Business Network Services, Inc.) (State/One-Stop).	Rochester, NY	05/16/16	05/13/16
91816	Nike Foundation (State/One-Stop)	Beaverton, OR	05/17/16	05/16/16
91817	Veritas (State/One-Stop)	Springfield, OR	05/17/16	05/16/16
91818	Johnson Controls (State/One-Stop)	West Allis, WI	05/17/16	05/16/16
91819	Condor Flugdienst GmbH, A division of Thomas Cook Group (State/One-Stop).	Itasca, IL	05/18/16	05/17/16
91820	Verizon Conferencing/Verizon Enterprise Solutions (State/One-Stop).	Cedar Rapids, IA	05/18/16	05/17/16
91821	Siemens Medical Solutions USA, Inc. (Company)	Wood Dale, IL	05/19/16	05/18/16
91822	The Google Store (Retail Store) (State/One-Stop)	Mountain View, CA	05/19/16	05/18/16
91823	The News & Observer (Owned by The McClatchy Company) (Workers).	Raleigh, NC	05/19/16	05/18/16
91824	Paso Del Norte Publishing, Inc. (Workers)	El Paso, TX	05/19/16	05/18/16
91825	Mondelez International (Workers)	East Hanover, NJ	05/19/16	04/25/16
91826	US Synthetic Corp & Subs (Workers)	Orem, UT	05/20/16	05/19/16
91827	Chandler Industries (State/One-Stop)	Montevideo, MN	05/20/16	05/19/16
91828	Waste Management Nat'l Services (Workers)	Phoenix, AZ	05/20/16	05/19/16
91829	Jive Software (State/One-Stop)	Portland, OR	05/20/16	05/19/16
91830	ADS Alliance Data Systems, Inc./Epsilon Data Mgmt. LLC (State/One-Stop).	Irvine, TX	05/20/16	05/16/16
91831	Vesta Corp. (State/One-Stop)	Portland, OR	05/20/16	05/19/16

[FR Doc. 2016–13344 Filed 6–6–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–91,132]

Century Aluminum of South Carolina, Inc., Including On-Site Leased Workers From MAU Workforce Solutions, Goose Creek, South Carolina, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 12, 2016, applicable to workers and former workers of Century Aluminum of South Carolina, Inc., Goose Creek, South Carolina (subject firm). The Department's notice of determination was published in the **Federal Register** on January 11, 2016 (81 FR 1231). The workers were engaged in the activities related to the production of primary aluminum.

At the request of a company official, the Department reviewed the certification applicable to workers and former workers of the subject firm.

The company reports that workers leased from MAU Workforce Solutions were employed on-site at the Goose Creek, South Carolina location of Century Aluminum of South Carolina, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from MAU Workforce Solutions, working on-site at the Goose Creek, South Carolina, location of Century Aluminum of South Carolina, Inc.

The amended notice applicable to TA–W–91,132 is hereby issued as follows:

All workers of Century Aluminum of South Carolina, Inc., including on-site leased workers from MAU Workforce Solutions, Goose Creek, South Carolina, who became totally or partially separated from employment on or after November 11, 2014 through February 12, 2018, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May 2016.

Jeesica Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–13345 Filed 6–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Placement Verification and Follow-Up of Job Corps Participants

AGENCY: Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Placement Verification and Follow-up of Job Corps Participants," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 7, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1205-008* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Placement Verification and Follow-up of Job Corps Participants information collection. The collection consists of three primary and two secondary data collection instruments used to collect follow-up data on individuals no longer actively participating in a Job Corps training program. The instruments are comprised of modules that include questions designed to obtain the following information: Re-verification of initial job and/or school placements, employment and educational experiences, job search activities of those who are neither working nor in school, and information about former participants satisfaction with services received. This information collection has been classified as a revision, because the Workforce Innovation and Opportunity Act (WIOA) requires surveying all program participants; the former Workforce Investment Act requirement was to survey only placed graduates and former enrollees. WIOA sections 116(b)(2)(A)(ii) and 159(c)(4) authorize this information collection. *See* 29 U.S.C. 3141(2)(2)(A) and 3209(c)(4).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0426. The current approval is scheduled to expire on May 31, 2019; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 1, 2016 (81 FR 10664).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0426. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL-ETA.

Title of Collection: Placement Verification and Follow-up of Job Corps Participants.

OMB Control Number: 1205–0426.

Affected Public: Individuals or Households; Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 93,400.

Total Estimated Number of Responses: 93,400.

Total Estimated Annual Time Burden: 21,700 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 1, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–13365 Filed 6–6–16; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notification of Employee Rights Under Federal Labor Laws

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Labor Management Standards (OLMS) sponsored information collection request (ICR) titled, "Notification of Employee Rights under Federal Labor Laws," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 7, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1245-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free

numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Notification of Employee Rights under Federal Labor Laws information collection. President Barack Obama signed Executive Order 13496 (E.O. 13496) on January 30, 2009, requiring certain Government contractors and subcontractors to post notices informing their employees of their rights as employees under Federal labor laws. Regulations 29 CFR 471.11 provides for DOL to accept a written complaint alleging that a contractor doing business with the Federal government has failed to post the notice required by E.O. 13496. The section establishes that no special complaint form is required; however, a complaint must be in writing. In addition, the complaint must contain certain information, including the name, address, and telephone number of the person submitting the complaint and the name and address of the Federal contractor alleged to have violated the rule. The section also establishes that a written complaint may be submitted to either the Office of Federal Contract Compliance Programs or the OLMS. E.O. 13496 section 3 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1245–0004.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 11, 2016 (81 FR 7375).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1245–0004. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL-OLMS.

Title of Collection: Notification of Employee Rights under Federal Labor Laws.

OMB Control Number: 1245–0004.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 13 hours.

Total Estimated Annual Other Costs Burden: $5.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: June 1, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–13306 Filed 6–6–16; 8:45 am]

BILLING CODE 4510–CP–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2016–4]

Section 108: Draft Revision of the Library and Archives Exceptions in U.S. Copyright Law

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The United States Copyright Office is inviting interested parties to discuss potential revisions relating to the library and archives exceptions in the Copyright Act, 17 U.S.C. 108, in furtherance of the Copyright Office's policy work in this area over the past ten years and as part of the current copyright review process in Congress. The Copyright Office has led and participated in major discussions on potential changes to section 108 since 2005, with the goal of updating the provisions to better reflect the facts, practices, and principles of the digital age and to provide greater clarity for libraries, archives, and museums. To finalize its legislative recommendation, the Copyright Office seeks further input from the public on several remaining issues, including, especially, provisions concerning copies for users, security measures, public access, and third-party outsourcing. The Copyright Office therefore invites interested parties to schedule meetings in Washington, DC to take place during late June through July 2016, using the meeting request form referenced below.

DATES: Written meeting requests must be received no later than 11:59 p.m. Eastern Time on July 7, 2016.

ADDRESSES: Please fill out the meeting request form found at *www.copyright.gov/policy/section108*, being sure to indicate which topics you would like to discuss. Meetings will be held at the U.S. Copyright Office, 101 Independence Ave. SE. (Madison Building, Library of Congress), Washington, DC 20540, or as necessary, by phone.

FOR FURTHER INFORMATION CONTACT: Chris Weston, Attorney-Advisor, Office of the General Counsel, *cwes@loc.gov*, 202–707–8380; Emily Lanza, Counsel, Office of Policy and International Affairs, *emla@loc.gov*, 202–707–1027; or Aurelia J. Schultz, Counsel, Office of Policy and International Affairs, *aschu@loc.gov*, 202–707–1027.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted section 108 of title 17 in 1976, authorizing libraries and archives to reproduce and distribute certain copyrighted works on a limited basis for the purposes of preservation, replacement, and research, placing these excepted activities outside the scope of exclusive rights set forth in section 106.[1] Before 1976, these institutions relied on a combination of common law and professional practices to help determine the scope of permissible activities under the law, including non-binding agreements between libraries and publishers.[2] As libraries and archives increasingly employed photocopying in the 1950s and 1960s,[3] however, Congress began to explore the need for clearer guidance for all involved. In 1966, the House Judiciary Committee noted that past efforts to come to a reasonable arrangement on library photocopying had failed and urged "all concerned to resume their efforts to reach an accommodation under which the needs of scholarship and the rights of authors would both be respected."[4] Several years later, the Senate Judiciary Committee also noted photocopying's role in the "evolution in the functioning and services of libraries" and the need for Congress to respond to these changes in technology with a statutory exception.[5]

Crafting an appropriate statutory exception for libraries and archives was part of a larger revision process undertaken and enacted by Congress as part of the 1976 Copyright Act. A key characteristic of section 108 is that it provides specific exceptions pertaining to frequent library and archives activities, such as preservation copying and making and distributing copies for users, but does not preclude these institutions from relying upon the more general fair use exception of section 107 as well. In fact, Congress enacted an express savings clause for fair use, thereby ensuring that courts could look to both provisions.[6]

As demonstrated by its focus on photocopying, section 108 was designed to address the prevalent use of print-based analog technology occurring at the time of enactment. Despite some minor adjustments in the Digital Millennium Copyright Act of 1998,[7] which partially took account of digital reproduction capabilities, the exceptions in section 108 therefore are stuck in time. They did not anticipate and no longer address the ways in which copyrighted works are created, distributed, preserved, and accessed in the twenty-first century.[8] Additionally, over time the structure and wording of section 108 have proven to be difficult to implement for both lawyer and layperson. Ultimately, section 108 "embodies some now-outmoded assumptions about technology, behavior, professional practices, and business models"[9] that require revision and updating.

The key aspects of section 108 and the policy work conducted to date are summarized below.

A. Overview of Section 108

Section 108 applies only to libraries and archives (terms that are not defined) that are either open to the general public or to unaffiliated researchers in the relevant specialized field.[10] Activities covered by the section cannot be undertaken for "any purpose of direct or indirect commercial advantage,"[11] and copies must contain the copyright notice as it appears on the source copy, or if there is no such notice, bear a legend stating that the work may be protected by copyright.[12]

Section 108 includes two provisions for libraries and archives to make reproductions in order to maintain the works in their collections; these provisions apply to all categories of copyrighted works. The first such provision allows a library or archives to reproduce three copies of an *unpublished* work in its collections for purposes of preservation, security, or deposit for research in another eligible institution.[13] Digital copies made under this provision cannot be made available to the public outside the premises of the library or archives.[14] The second maintenance exception allows the reproduction of three copies of a *published* work for replacement purposes, but only if the source copy of the work is "damaged, deteriorating, lost, or stolen" or the copy is stored in an obsolete format, and the library or archives cannot locate an unused copy of the work at a fair price after a reasonable effort to do so.[15] The replacement exception contains the same restriction prohibiting distribution of digital copies outside the premises of the library or archives.[16]

Section 108 also contains a set of provisions concerning the reproduction and distribution of materials in an eligible institution's collections for users, either upon direct request or as part of interlibrary loan. These exceptions do not apply to musical works; pictorial, graphic, or sculptural works (other than illustrations or similar adjuncts to literary works); and most audiovisual works, including motion pictures.[17] Libraries and archives may reproduce and distribute for a user one copy of an article or contribution to a collection, or a small part of a larger work.[18] They may also reproduce and distribute entire or substantial portions of works for users, but only if a reasonable investigation shows that a copy is not otherwise obtainable at a fair price.[19] Additionally, section 108 states that, in making and distributing copies for users, a library or archives may not

[1] *See* H.R. Rep. No. 94–1476, at 74–79 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5688–92.

[2] *See* Register of Copyrights, Library Reproduction of Copyrighted Works (17 U.S.C. 108) 14 (1983) (discussion of the "Gentlemen's Agreement" of 1935, a voluntary agreement negotiated between publishers and libraries that set a standard of acceptable conduct for reproduction of copyrighted materials by libraries).

[3] A 1959 copyright study prepared at the request of Congress noted that the "various methods of photocopying have become indispensable to persons engaged in research and scholarship, and to libraries that provide research material in their collections to such persons." Borge Varmer, U.S. Copyright Office at the Library of Congress, Study No. 15: Photoduplication of Copyright Material by Libraries, at 49 (1959), *reprinted in* Staff of S. Comm. on the Judiciary, 86th Cong., Copyright Law Revision: Studies Prepared for the Subcomm. on Patents, Trademarks, and Copyrights of the Comm. on the Judiciary, United States Senate: Studies 14–16 (Comm. Print 1960).

[4] H.R. Rep. No. 89–2237, at 65 (1966).

[5] S. Rep. No. 93–983, at 123 (1974).

[6] 17 U.S.C. 108(f)(4) ("Nothing in this section . . . in any way affects the right of fair use as provided by section 107 . . .").

[7] Digital Millennium Copyright Act, Public Law 105–304, 404, 112 Stat. 2860, 2889 (1998) (expanding the number of copies and phonorecords permitted for purposes of preservation and security, for deposit for research use in another library or archives, and for replacement, from one to three; and restricting digital copies and phonorecords to the premises of the library or archives).

[8] Section 108 Study Group, The Section 108 Study Group Report i (2008), *www.section108.gov/docs/Sec108StudyGroupReport.pdf* ("Study Group Report").

[9] *Id.*

[10] 17 U.S.C. 108(a)(2).

[11] *Id.* at 108(a)(1).

[12] *Id.* at 108(a)(3).

[13] *Id.* at 108(b).

[14] *Id.* at 108(b)(2).

[15] *Id.* at 108(c).

[16] *Id.* at 108(c)(2).

[17] *Id.* at 108(i).

[18] *Id.* at 108(d).

[19] *Id.* at 108(e).

engage in "related or concerted reproduction or distribution of multiple copies" of the same material,[20] and that, when making interlibrary loan copies, an institution cannot "do so in such aggregate quantities as to substitute for a subscription to or purchase of such a work."[21]

In addition to its provisions governing internal maintenance copies and reproduction and distribution of copies for users, section 108 also provides libraries and archives with a safe harbor from liability for the unsupervised use of its on-premises reproducing equipment, provided that they post notices stating that making copies may be subject to copyright law.[22] Another provision gives libraries and archives the ability to reproduce, distribute, display, or perform any work in its last 20 years of copyright protection for preservation, scholarship, or research, provided the work is not being commercially exploited by its owner.[23]

Finally, subsection (f)(4) of section 108 contains two provisions that govern the exceptions' overall applicability. It first states that nothing in section 108 "in any way affects the right of fair use as provided by section 107."[24] Subsection (f)(4) also provides that any contractual obligation assumed by a library or archives upon obtaining a work for its collections supersedes the institution's privileges under section 108.[25]

B. Revision Work to Date

As Congress has reviewed the copyright law in recent years, the Copyright Office has noted consistently that exceptions and limitations are critical to the digital economy and must be calibrated by Congress as carefully and deliberatively as provisions governing exclusive rights or enforcement. Section 108, in particular, has been a long-standing focus of the Copyright Office because, properly updated, it can provide professionals in libraries, archives, and museums with greater legal certainty regarding the permissibility of certain core activities.

In 2005, the Copyright Office and the National Digital Information Infrastructure and Preservation Program of the Library of Congress sponsored and administered an independent study group charged with producing a report and set of recommendations on potential improvements to section 108. The study group members included distinguished and experienced librarians, copyright owners, archivists, academics, and other memory institution specialists and copyright lawyers.[26] The "Section 108 Study Group"[27] made note of a number of ways in which digital technologies have impacted copyright law, including "(1) opportunities for new revenue sources derived from new distribution methods, (2) increased risks of lost revenue and control from unauthorized copying and distribution, (3) essential changes in the operations of libraries and archives, [and] (4) changing expectations of users and the uses made possible by new technologies."[28] Over the course of nearly three years, the Study Group engaged in analysis, review, and discussion of the best ways in which to update section 108 to address the digital age.

The Study Group issued its report in March 2008, calling for an extensive revision to update section 108.[29] The report also pointed out several areas where section 108 required amendment but where the members of the Study Group could not agree on a solution.[30] The Study Group unanimously recommended revising section 108 in nine separate areas, plus a general recommendation for re-organizing the section's provisions. Among the more significant recommendations were to:

- Allow museums to be eligible along with libraries and archives.[31]
- Add new eligibility criteria, such as having a public service mission, employing a professional staff, and providing professional services.[32]
- Allow libraries and archives to outsource some of the activities permitted by section 108 to third parties, under certain conditions.[33]
- Replace the three-copy limits in the preservation, security, deposit for research, and replacement provisions with conceptual limits allowing a limited number of copies as reasonably necessary for the given purpose.[34]
- Revise the prohibition on making digital preservation and replacement copies publicly available off-premises, so that it does not apply when the source and the new copy are in physical formats, such as CDs or DVDs.[35]
- Allow specially qualified institutions to preemptively reproduce publicly disseminated works at special risk of loss for preservation purposes only, with limited access to the copies.[36]
- Create a new provision for the capture, reproduction, and limited re-distribution of "publicly available online content," *e.g.*, Web sites and other works freely available on the internet.[37] Rights-holders would be allowed to opt out of having their content captured or re-distributed.[38]
- Apply the safe harbor from liability for copies made on unsupervised reproduction equipment to user-owned, portable equipment, as well as equipment residing on the library's or archives' premises.[39]

The Study Group also made note of several areas of section 108 that all members agreed required revision, but could not come to a unanimous decision on what the revision should look like.[40] The issues identified by the Study Group in this section of the Report concerned copies made at the request of users, specifically:

- The need to replace the single-copy limit with a "flexible standard more appropriate to the nature of digital materials."[41]
- Explicitly permitting electronic delivery of copies for users under certain conditions.[42]
- Allowing copies for users to be made of musical works; pictorial, graphic, or sculptural works; and motion pictures and other audiovisual works, under conditions that limit the risk of market substitution.[43]

Following the issuance of the Study Group's report, the Copyright Office, led by the then-Register of Copyrights, comprehensively reviewed the underlying analyses of the Study Group and examined a number of questions left unresolved due to lack of consensus amongst disparate Study Group members. On April 5, 2012, the current Register and senior staff met with Study Group members to review the 2008 report and discuss subsequent developments. Most Study Group members agreed that updating section 108 remained a worthwhile goal, and some suggested that the Report did not go far enough, particularly in recommending changes to the provisions regarding copies for users. Additionally, several members described an increasing practice of librarians and archivists more frequently relying upon fair use as the legal basis for their activities, making section 108 more urgent or less urgent as a revision matter, depending on one's perspective.

In February 2013, the Copyright Office co-sponsored with Columbia Law School a public conference on section 108, entitled "Copyright Exceptions for Libraries in the Digital Age: Section 108 Reform." The all-day conference served as a valuable and comprehensive adjunct to the Study Group Report. Among other issues, it addressed such topics as the current landscape of similar exceptions in the United States and internationally, the recommendations of the Study Group, what changes should be made to section 108 in terms of its scope, and whether and how mass digitization by libraries and archives should be permitted.[44]

More recently, section 108, along with the issues of orphan works and mass digitization, was the subject of a hearing on "Preservation and Reuse of Copyrighted Works" held by the House Subcommittee on Courts, Intellectual Property, and the Internet on April 2, 2014.[45] At the hearing, there was disagreement among the six witnesses over whether or not section 108 reform is advisable as a legal matter or possible as a practical matter. One librarian-member of the Section 108 Study Group told Congress that the existing framework does not require amendment[46] and anticipated great difficulty in translating the Study Group's (limited) recommendations into effective legislation.[47] However, the co-chair of the Section 108 Study Group, the former general counsel to a book publisher, advocated for revisions, emphasizing the clarity that a "workable, up-to-date and balanced" section 108 could bring to both libraries and copyright owners "in specific situations."[48] Another witness, an audiovisual conservation expert at the Library of Congress, testified that it is important to "[m]odernize Sec[tion] 108 so that the Library of Congress can fulfill its mission to preserve audiovisual and other materials,"[49] and recommended specific changes to the preservation, replacement, copies for users, and other provisions.[50]

Most recently, in her April 29, 2015, testimony to the House Judiciary Committee regarding the universe of copyright policy issues, the Register of Copyrights stated that section 108 is among the matters ready for Congressional consideration.[51] "Based on the entirety of the record to date," the Register explained,

> the Office has concluded that Section 108 must be completely overhauled. One enduring complaint is that it is difficult to understand and needlessly convoluted in its organization. The Office agrees that the provisions should be comprehensive and should be related logically to one another, and we are currently preparing a discussion draft. This draft will also introduce several substantive changes, in part based upon the recommendations of the Study Group's 2008 report. It will address museums, preservation exceptions and the importance of "web harvesting" activities.[52]

C. The International Perspective

Many other countries have recognized the global significance of copying and preservation exceptions for libraries and archives and are also reviewing their relevant exceptions at this time. As of June 2015, 156 World Intellectual Property Organization (WIPO) member states had at least one statutory library exception, addressing issues such as making copies of works for readers, researchers, and other library users as well as copies for preservation.[53] The most recent WIPO study on copyright limitations and exceptions for libraries and archives observed that "exceptions for libraries and archives are fundamental to the structure of copyright law throughout the world, and that the exceptions play an important role in facilitating library services and serving the social objective of copyright law."[54]

Some countries have also recently considered updating and amending their statutory library exceptions to address the digital landscape. For example, Canada in 2012 amended its copyright statute to permit libraries, archives, and museums to provide digital copies of certain works to persons requesting the copies through another institution.[55] Similarly, the European Union has stated that in 2016 it would examine legislative proposals that would allow cultural heritage institutions to use digital technologies for preservation.[56]

For many years, WIPO has considered a treaty proposal on copyright limitations and exceptions for libraries and archives that would mandate a right of preservation for library and archival materials, enabling these institutions to reproduce for preservation purposes as

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[20] *Id.* at 108(g)(1).

[21] *Id.* at 108(g)(2). Initial guidance as to the practical limits indicated by this phrase was provided by the National Commission on New Technological Uses of Copyrighted Works (CONTU), which in 1976 formulated guidelines for how many copies of a particular article or periodical could be made for interlibrary loan purposes without risking market substitution. H.R. Rep. No. 94–1733, at 72–73 (1976) (Conf. Rep.), *as reprinted in* 1976 U.S.C.C.A.N. 5809, 5813–14. Congress, while incorporating the CONTU guidelines into the Conference Committee Report to the Copyright Act of 1976, cautioned that they would require "continuous reevaluation and adjustment." *Id.* at 71.

[22] 17 U.S.C. 108(f)(1).

[23] *Id.* at 108(h).

[24] *Id.* at 108(f)(4).

[25] *Id.*

[26] *See* Members of the Section 108 Study Group, *http://www.section108.gov/members.html* (last visited May 25, 2016).

[27] Referred to as the Study Group in this notice.

[28] Study Group Report at 28.

[29] *Id.* at iii.

[30] *Id.* at 95–112.

[31] *Id.* at 31–33.

[32] *Id.* at 34–38.

[33] *Id.* at 39–42.

[34] *Id.* at 52–54, 61–65.

[35] *Id.* at 52, 57, 61, 66.

[36] *Id.* at 69–79. The Report also recommended replacing the published/unpublished distinction with the more practical publicly disseminated/not publicly disseminated binary, wherein works made available to the public, but not via distribution of material copies (as is required for publication), would fall into the publicly disseminated category. *See id.* at 47–51.

[37] *Id.* at 80–87.

[38] *Id.* at 85–87.

[39] *Id.* at 91–92.

[40] *Id.* at 95–112. Additionally, a third section of the Report discussed issues that some, but not all, of the Study Group members thought merited statutory revision, including whether to allow certain exceptions to override contrary contractual agreements. *Id.* at 113–124.

[41] *Id.* at 98–101.

[42] *Id.* at 98, 101–103.

[43] *Id.* at 106–112.

[44] *See Symposium Issue: Section 108 Reform*, 36 Colum. J.L. & Arts 527 (2013); the program and videos of the program are available at *Section 108 Reform*, Kernochan Ctr. for Law, Media, and the Arts, *http://web.law.columbia.edu/kernochan/symposia/section-108-reform* (last visited May 10, 2016).

[45] *Preservation and Reuse of Copyrighted Works: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. (2014); the official transcript of the hearing is available at *https://judiciary.house.gov/wp-content/uploads/2016/02/113-88-87423.pdf.*

[46] *Id.* at 32 (testimony of James G. Neal, Vice President for Information Services and University Librarian, Columbia University) ("[T]he existing statutory framework, which combines the specific library exceptions in section 108 with the flexible fair use right, works well for libraries and does not require amendment.").

[47] *Id.* at 42 (statement of James G. Neal, Vice President for Information Services and University Librarian, Columbia University) (noting, for example the difficulty of resolving issues as simple as ". . . how museums should be defined, and the need to define libraries and archives, currently undefined in Section 108.").

[48] *Id.* at 30 (statement of Richard S. Rudick, Co-Chair, Section 108 Study Group).

[49] *Id.* at 11 (statement of Gregory Lukow, Chief, Packard Campus for Audio Visual Conservation, Library of Congress).

[50] *Id.* at 15–18 (for example, "[r]evise subsections 108(b) and (c), which govern the reproduction of unpublished and published works, to allow for the use of current technology and best practices in the preservation of film, video, and sound recordings").

[51] *Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 5 (2015) (testimony of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office) ("[L]ibrary exceptions or the exceptions for persons who are blind or visually impaired . . . are outdated to the point of being obsolete . . . [; these outdated exceptions] do not serve the public interest, and it is our view that it is untenable to leave them in their current state.").

[52] *Id.* at 20–21 (statement of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office) (citations omitted).

[53] Kenneth D. Crews, WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives, WIPO Doc. SCCR/30/3, at 6 (June 10, 2015).

[54] *Id.*

[55] Copyright Act, R.S.C. 1985, c C–42, ss. 5.02, 30.2 (Can.).

[56] European Commission Press Release MEMO/15/6262, Making EU copyright rules fit for the digital age — Questions & Answers (Dec. 9, 2015), *http://europa.eu/rapid/press-release_MEMO-15-6262_en.htm.*

many copies of works that are needed in accordance with best professional practices.[57] Advocating a more "soft law" approach, the United States government instead has encouraged member states to adopt national statutory library exceptions that are consistent with their current international obligations[58] and that further the broad objectives of preservation and public service.[59]

II. Revision of Section 108—Current Discussion Draft Proposals

The Copyright Office notes that, since the enactment of the Copyright Act of 1976, the views of the library and archives community regarding section 108 have become less uniform and more complicated, particularly as courts have supported newer applications of the fair use doctrine vis-à-vis a number of digitization and access activities. Indeed, fair use clearly supports a wider range of reproduction activities than it did when section 108 was first codified.[60] The ever-evolving nature of the law is instructive and important. Among other things, it underscores the advisability of allowing section 108 and section 107 to co-exist, while ensuring that each provision is positioned for the future, free from the analog restrictions of a bygone era.

As noted by the Study Group, updating section 108 would provide libraries and archives with a clear and unequivocal basis for their digital preservation, distribution, and other activities, notwithstanding that some of these activities may also be permissible under fair use.[61] Congress specifically drafted section 108 to include a fair use savings clause in acknowledgement of the importance of fair use, noting in the 1976 Act's legislative history that "[n]o provision of section 108 is intended to take away any rights existing under the fair use doctrine."[62] Indeed, almost forty years later, the Chair of the House Judiciary Committee has recognized that a specific, and separate, library exception is still an important supplement to fair use because "fair use is not always easy to determine, even to those with large legal budgets[, and t]hose with smaller legal budgets or a simple desire to focus their limited resources on preservation may prefer to have better statutory guidance than exists today."[63] In fact, there is no reasonable question that the fair use doctrine should or will continue to be available to libraries and archives as an essential provision and planning tool, or that section 108 has proved valuable and should continue to set forth a list of excepted activities for the benefit of library professionals. If there is a lingering debate, it is more accurately about whether these excepted activities should be updated for the digital age or left in their increasingly irrelevant state, a question that is less about the importance of providing clear guidance to library, archives, and museum professionals and more about how sections 108 and 107 will operate together in the future.[64]

As a matter of public policy, the Copyright Office agrees with the House Chairman and the Study Group and observes further that maintaining provisions drafted in, and applicable primarily to, the analog era is antithetical to the purpose of a well-functioning copyright law. More specifically, the Copyright Office agrees in principle with and plans to incorporate many of the Study Group's recommendations, including:

- Adding museums as eligible institutions.
- Expanding the preservation, security, and deposit for research exceptions to include published/publicly disseminated works.
- Creating a new exception to permit the reproduction and distribution of publicly available internet content for preservation and research purposes, with an opt-out provision.
- Allowing the outsourcing of certain section 108 activities to third-party contractors.
- Removing or revising the three-copy limitation for preservation and security, deposit for research, and replacement copies.

Finally, as noted above, it is widely known that section 108 suffers from fundamental problems with organization and clarity, hampering the practical ability of librarians and archivists to utilize the exceptions. In fact, while the Study Group suggested reorganizing section 108 rather than re-drafting it,[65] the Copyright Office believes that redrafting is the better approach.

III. Subjects of Public Inquiry

The Copyright Office invites interested parties to schedule a time to provide in-person input on the specific subjects below. Note that while the Copyright Office will provide a comprehensive recommendation to Congress, we are only revisiting a select number of discrete issues at this time. A party choosing to respond to this notice of inquiry need not plan to address every subject listed, but the Copyright Office requests that each responding party clearly identify each subject that it plans to discuss.

[57] *See* The Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL and INNOVARTE, WIPO Doc. SCCR/23/3 (Nov. 15, 2011).

[58] Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works provides that signatory counties may permit the reproduction of works "in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as last revised July 24, 1971, 25 U.S.T. 1341, 828 U.N.T.S. 221. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty apply the same standard outlined in Article 9(2) of the Berne Convention for all rights granted under those treaties. WIPO Copyright Treaty art. 10(2), Dec. 20, 1996, S. Treaty Doc. No. 105–17, 36 I.L.M. 65 (1997); WIPO Performances and Phonograms Treaty art. 16(2), Dec. 20, 1996, S. Treaty Doc. No. 105–17, 36 I.L.M. 76 (1997).

[59] Objectives and Principles for Exceptions and Limitations for Libraries and Archives, WIPO Doc. SCCR/26/8 (Jan. 10, 2014).

[60] *See, e.g., Authors Guild* v. *Google, Inc.*, 804 F.3d 202 (2d Cir. 2015), *cert. denied*, 136 S.Ct. 1658 (mem.) (2016); *Authors Guild, Inc.* v. *HathiTrust*, 755 F.3d 87 (2d Cir. 2014); *see also* Library Copyright Alliance, Before the House Committee on the Judiciary: Recommendations of the Library Copyright Alliance on Copyright Reform 4 (May 8, 2015), *http://www.librarycopyrightalliance.org/storage/documents/lca-copyright-reform-amendments.pdf* ("[A]s the recent decision in *Authors Guild* v. *HathiTrust* . . . makes clear, fair use supplements Section 108 and thus provides a sufficient mechanism for updating it when necessary.").

[61] *See* Study Group Report at 21–22; *see also* 17 U.S.C. 108(f)(4); *HathiTrust*, 755 F.3d at 94 n.4 ("[W]e do not construe § 108 as foreclosing our analysis of the libraries' activities under fair use.").

[62] H.R. Rep. No. 94–1476, at 74 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5687–88; *see also S. Rep. No. 91–1219*, at 6 (1970) ("The rights given to the libraries and archives by this provision of the bill are in addition to those granted under the fair-use doctrine."). Further, the court in *HathiTrust* expressly rejected plaintiffs' argument that fair use did not apply to the activities at issue in the case because section 108 alone governs reproduction of copyrighted works by libraries and archives, finding that because "section 108 also includes a 'savings clause' . . . . we do not construe § 108 as foreclosing our analysis of the Libraries' activities under fair use . . ." *HathiTrust*, 755 F.3d at 94 n.4.

[63] *Preservation and Reuse of Copyrighted Works: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 6 (2014) (statement of Rep. Bob Goodlatte, Chairman, H. Comm. on the Judiciary).

[64] *See, e.g., id.* at 26 (testimony of Richard S. Rudick, Co-Chair, Section 108 Study Group) (noting that "reliance on section 107 for purposes that go far beyond those originally conceived or imagined invites, as we have seen, expensive litigation with uncertain results."); *see also The Scope of Fair Use: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary*, 113th Cong. 7 (2014) (testimony of Peter Jaszi, Professor, Faculty Director, Glushko-Samuelson Intellectual Property Clinic, Washington College of Law, American University) (noting that specific exceptions like those found in section 108 can be highly valuable to particular groups of users even in static form because, "even though never comprehensive and often not up to date," they are supplemented by fair use).

[65] Study Group Report at 93–94.

Eligibility

1. The attributes that an institution should possess in order to be eligible for the section 108 exceptions, and how to prescribe and/or regulate them.

Rights Affected

2. Limiting section 108 to reproduction and distribution activities, or extending it to permit public performance and display as well.

Copies for Preservation, Security, Deposit in Another Institution, and Replacement

3. Restricting the number of preservation and security copies of a given work, either with a specific numerical limit, as with the current three-copy rule, or with a conceptual limit, such as the amount reasonably necessary for each permitted purpose.

4. The level of public access that a receiving institution can provide with respect to copies of both publicly disseminated and non-publicly disseminated works deposited with it for research purposes.

Copies for Users

5. Conditioning the unambiguous allowance of direct digital distribution of copies of portions of a work or entire works to requesting users, and whether any such conditions should be statutory or arrived at through a rulemaking process.

Preservation of Internet Content

6. Conditioning the distribution and making available of publicly available internet content captured and reproduced by an eligible institution.

Relation to Contractual Obligations

7. How privileging some of the section 108 exceptions over conflicting contractual terms would affect business relationships between rights-holders and libraries, archives, and museums.

Outsourcing

8. What activities (*e.g.*, digitization, preservation, interlibrary loan) to allow to be outsourced to third-party contractors, and the conditioning of this outsourcing.

Other

9. Whether the conditions to any of the section 108 exceptions would be better as regulations that are the product of notice-and-comment rulemaking or as statutory text.

10. Whether and how the use of technical protection measures by eligible institutions should apply to section 108 activities.

11. Any pertinent issues not referenced above that the Copyright Office should consider in relation to revising section 108.

Dated: June 2, 2016.

Karyn A. Temple Claggett,

Associate Register of Copyrights and Director of Policy and International Affairs, U.S. Copyright Office.

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BILLING CODE 1410–30–P

NATIONAL AERONAUTUICS AND SPACE ADMINISTRATION

[Notice (16–039)]

Notice of Intent To Grant an Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Non-Provisional Patent Application, Serial No. 13/573920, titled "System and Method for Air Launch from a Towed Aircraft," NASA Case No. DRC–012–011, and Provisional Patent Application, Serial No. 15/046789, titled "System and Method for Air Launch from a Towed Aircraft" NASA Case No. DRC–012–011B and any issued patents or continuations in part resulting therefrom, to Kelly Space & Technology Inc., having its principal place of business in San Bernardino, California. Certain patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S 180–800C, Pasadena, CA 91109, (818) 854–7770 (phone), 818–393–2607 (fax).

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S 180–800C, Pasadena, CA 91109, (818) 854–7770 (phone), 818–393–2607 (fax). Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2016–13429 Filed 6–6–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Government Information Services (OGIS)

[NARA 2016–034]

Freedom of Information Act Advisory Committee

AGENCY: National Archives and Records Administration.

ACTION: Charter Renewal of the Freedom of Information Act Advisory Committee.

SUMMARY: The National Archives and Records Administration (NARA) is renewing the charter for the Freedom of Information Act (FOIA) Advisory Committee, a Federal advisory committee we established to study the current FOIA landscape across the executive branch and to advise NARA's Office of Government Information Services, the Government's FOIA ombudsman, on improvements to the FOIA.

DATES: We filed the renewed charter on May 20, 2016. It remains in effect for two years from that date, unless otherwise extended.

ADDRESSES: You may access the charter and other information about the FOIA Advisory Committee online at *http://www.ogis.archives.gov/foia-advisory-committee.htm.*

FOR FURTHER INFORMATION CONTACT: Kate Gastner by phone at 202–741–5770, by

mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road; College Park, MD 20740–6001, or by email at *foia-advisory-committee@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA operates the FOIA Advisory Committee in accordance with provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., App. 2) and implementing regulations at 41 CFR 102–3.5, *et seq.* The FACA formalizes a process for establishing, operating, overseeing, and terminating Federal advisory committees, and we review, at least annually, the need to continue each existing advisory committee. In accordance with the Government in the Sunshine Act (5 U.S.C. 552b(c)), the FOIA Advisory Committee meetings are open to the public, and we announce them in the **Federal Register** at least 15 days prior to each meeting.

Patrice Murray,

Committee Management Officer.

[FR Doc. 2016–13384 Filed 6–6–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Modernizing Data Collection for Regulatory Oversight of Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice; Request for Information (RFI).

SUMMARY: The National Credit Union Administration (NCUA) is conducting a comprehensive review of two vehicles used to collect information for regulatory oversight of federally insured credit unions (FICUs)—the 5300 Call Report (Call Report) and Form 4501A Profile (Profile). The overarching goal is modernizing content to (i) strengthen on-site examination and off-site monitoring by NCUA and state supervisory authorities, (ii) facilitate richer comparisons of institution and industry trends by other parties, and (iii) minimize the burden on reporting FICUs. NCUA plans a diverse outreach to inform modernization efforts with both general and specific input from all interested stakeholders. This RFI represents the first step.

Specifically, this RFI announces NCUA's desire for assistance in identifying the interrelated considerations and challenges associated with improving the Call Report and Profile. Input with be gathered through an open public review-and-comment process featuring a range of possible forums (such as workshops, focus groups, online surveys, etc.). Target participants include credit unions, leagues, trades, regulators, industry-related persons, and academics.

DATES: Comments must be received by 5:00 p.m. Eastern time on August 1, 2016.

ADDRESSES: Comments may be submitted using *one* of the methods below (Please do not send comments via multiple methods.). Include "[Your name and company name (if any)]—Call Report/Profile Content Modernization" in all correspondence.

- *Mail:* Please direct written comments related to Call Report/Profile content modernization to Mark Vaughan, National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314.
- *Email:* Address to *CallReportMod@ncua.gov.* Any of the following formats is acceptable: HTML, ASCII, Word, RTF, or PDF.

NCUA will post all material received by the deadline on the agency Web site (*www.ncua.gov*) without alteration or redaction, so commenters should not include information they do not wish public (*e.g.,* personal or confidential business information). SPAM or marketing materials will be discarded without publication.

FOR FURTHER INFORMATION CONTACT: Mark Vaughan, National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314, telephone (703) 518–6622, email *mvaughan@ncua.gov.* Media inquiries should be directed to the NCUA Office of Public and Congressional Affairs at (703) 518–6671 or *pacamail@ncua.gov.*

SUPPLEMENTARY INFORMATION: NCUA uses the Call Report and Profile to collect financial and non-financial information from federally insured credit unions (FICUs). The resulting data are integral to risk supervision at the institution and industry levels, which is central to safeguarding the integrity of the National Credit Union Share Insurance Fund (NCUSIF).

The credit-union industry is dynamic, with FICUs growing larger and more complex every year. To keep pace, NCUA has modernized a variety of regulations, such as those governing member business loans and risk-based capital. The agency is also studying extension of the examination cycle, which would require compensating enhancements in off-site monitoring. In such an environment, NCUA must ensure its data-collection vehicles evolve with industry practices, prudential regulations, and examination/supervision procedures so: (i) All material FICU risk exposures are captured; (ii) data offering little insight into these exposures are no longer solicited; (iii) the reporting burden on supervised institutions—particularly small or non-complex credit unions—is minimized.

This RFI represents an initial NCUA step to collaborate with the public to modernize its systems for collecting, storing, and analyzing regulatory data. NCUA will use information furnished by individuals and organizations to enhance data utility, improve user experiences, and reduce regulatory burden without compromising the agency's ability to safeguard the NCUSIF. In addition to this step, the agency plans to seek clearance from the Office of Management and Budget to form workgroups to help improve vehicles for storing and analyzing data.

NCUA invites credit unions, leagues, trade organizations, financial-data aggregators, academia, insurers, other regulators, and other interested parties to respond.

Request for Comment

NCUA is providing questions about major aspects of the Call Report and Profile to target issues the public would like addressed by the modernization effort. These questions are not intended to limit discussion. Indeed, responders may explore any issue relevant to Call Report and Profile content. Information received will not be used for statistical purposes.

Responses containing references to studies, research, or data not widely available to the public should include copies of referenced materials. A description of the commenter's organization and its interest in the Call Report and Profile will help NCUA use the input provided.

Call Report/Profile Content Questions

1. What specific areas of the Call Report/Profile forms do you find challenging to complete? Please describe the nature of those challenges.

2. What sections/schedules/items on the Call Report/Profile could be made optional for small or non-complex credit unions without complicating assessments of risk?

3. What specific items would you like to see added to the Call Report/Profile to enhance analysis of local, regional and national performance trends or improve comparisons of individual credit unions with peer institutions?

4. Are current Call Report account categories (database fields) reasonably aligned with your internal accounting? If not, what changes would improve the alignment?

5. Are the Call Report and Profile instructions adequate? If not, what improvements (overall and peculiar to specific items/schedules) would improve clarity and reduce reporting burden?

6. Could re-organization of the Call Report or Profile reduce reporting burden? If so, please describe the needed changes. Does the Call Report contain elements that should be moved to the Profile? If so, please detail these elements. Does the Profile contain element that should be moved to the Call Report? If so, please detail these elements.

7. Do you have any concerns or ideas about NCUA schedules/forms for collecting financial and non-financial information not addressed above?

Dated: June 1, 2016.

Gerard S. Poliquin,

Secretary of the Board.

[FR Doc. 2016–13332 Filed 6–6–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0096]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of five amendment requests. The amendment requests are for Palisades Nuclear Plant (PNP); Donald C. Cook Nuclear Plant, Units 1 and 2; Fort Calhoun Station, Unit No. 1; Diablo Canyon Nuclear Power Plant, Units 1 and 2; and Hope Creek Generating Station. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by July 7, 2016. A request for a hearing must be filed by August 8, 2016. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by June 17, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0096 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0096.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0096, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity to Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii). If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 8, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 8, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding U.S. government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity to Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii). If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition

Commission by August 8, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 8, 2016.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding U.S. government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

Date of amendment request: March 3, 2016. A publicly-available version is in ADAMS under Accession No. ML16075A103.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the PNP Technical Specifications (TS), Section 5.5.8, "Steam Generator (SG) Program," and Section 5.6.8, "Steam Generator Tube Inspection Report." Specifically, the licensee requested to implement an alternate repair criteria (ARC), that invokes a C-Star inspection length (C*), on a permanent basis for the cold-leg side of the SGs' tubesheet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Previously evaluated accidents are initiated by the failure of plant structures, systems, or components. The proposed change alters the SG cold leg repair criteria by limiting tube inspections length in the cold leg tubesheet, to the safety significant section, C* length, and, as such, does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. Therefore, the proposed change has no significant effect upon previously evaluated accident probabilities or consequences.

The proposed amendment to revise the PNP SG tube repair criteria in TS 5.5.8c, does not involve a significant increase in the probability of an accident previously evaluated. Alternate repair criteria are being proposed for the cold leg side of the SGs that duplicate the current alternate repair criteria for the hot leg side of the SGs, in TS 5.5.8c.1. The proposed SG tube inspection length maintains the existing design limits of the SGs and therefore does not increase the probability or consequences of an accident involving a tube rupture or primary to secondary accident-induced leakage, as previously evaluated in the PNP Updated Final Safety Analysis Report (UFSAR). Also, the Nuclear Energy Institute (NEI) *Steam Generator Program Guidelines* (NEI 97–06) [(ADAMS Accession No. ML111310708)] performance criteria for structural integrity and accident-induced leakage, which are incorporated in PNP TS 5.5.8, would continue to be satisfied.

Implementing an alternate repair criteria would allow SG tubes with flaws below the C* length to remain in service. The potential consequences to leaving these flawed tubes inservice are tube burst, tube pullout, and accident induced tube leakage. Tube burst is prevented for a tube with defects within the tubesheet region because of the constraint provided by the tubesheet. Tube pullout could result from the axial forces induced by primary to secondary differential pressures that occur during the bounding event of the main steam line break. A joint industry test program report, WCAP–16208–P, *NDE Inspection Length for CE Steam Generator Tubesheet Region Explosive Expansions*, Revision 1, May 2005 [(Non-proprietary version under ADAMS Accession No. ML051520417)], has defined the non-degraded tube to tubesheet joint length (C*) required to preclude tube pullout and maintain acceptable primary to secondary accident-induced leakage, conservatively assuming a 360 degree circumferential through wall crack exists immediately below this C* length.

The PNP UFSAR Sections 14.14, *Steam Line Rupture Incident*, 14.15, *Steam Generator Tube Rupture with a Loss of Offsite Power*, and 14.16, *Control Rod Ejection*, primary coolant system leakage limit is 0.3 gallon per minute (gpm) (432 gallons per day) in the unaffected SG. For the tube rupture accident, this 0.3 gpm leakage is in addition to the break flow rate associated with the rupture of a single SG tube. The WCAP–16208–P report used a primary to secondary accident-induced leakage criteria value of 0.1 gpm to derive the C* length. Use of 0.1 gpm ensures that the PNP TS limiting accident-induced leakage of 0.3 gpm is met.

For PNP, the derived C* length for the cold leg side of the SGs is 12.5 inches, which is the same C* length, as the current TS, for the hot leg side of the SGs. Any degradation below the C* length is shown by test results and analysis to meet the NEI 97–06 performance criteria, thereby precluding an increased probability of a tube rupture event or an increase in the consequences of a steam line rupture incident or control rod ejection accident.

Therefore, the C* lengths for the SG hot and cold legs provide assurance that the NEI 97–06 requirements for tube burst and leakage are met and that they conservatively derived maximum combined leakage from both tubesheet joints (hot and cold legs) is less than 0.2 gpm at accident conditions. This combined leakage criterion of 0.2 gpm in the faulted loop retains margin against the PNP TS allowable accident-induced leakage of 0.3 gpm per SG.

In summary, the proposed changes to the PNP TS maintain existing design limits, meet the performance criteria of NEI 97–06 and Regulatory Guide 1.121 [ADAMS Accession No. ML003739366], and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment provides for an alternate repair criteria that excludes the lower portion of the steam generator cold leg tubes from inspection below a C* length by implementing an alternate repair criteria. It does not affect the design of the SGs or their method of operation. It does not impact any other plant system or component. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in the accident analysis.

The proposed amendment does not introduce any new equipment, change existing equipment, create any new failure modes for existing equipment, nor introduce any new malfunctions resulting from tube degradation. SG tube integrity is shown to be maintained for all plant conditions upon implementation of the proposed alternate repair criteria for the SG cold leg tubesheet region.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because SG tube leakage limits and structural integrity would continue to be maintained during all plant conditions upon implementation of the proposed alternate repair criteria to the PNP TSs. The alternate repair criteria does not introduce any new mechanisms that might result in a different kind of accident from those previously evaluated. Even with the limiting circumstances of a complete circumferential separation (360 degree through wall crack) of a tube below the C* length, tube pullout is precluded and leakage is predicted to be maintained with the TS and accident analysis limits during all plant conditions.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides an alternate repair criteria for the SG cold leg that invokes a C* inspection length criteria. The proposed amendment does not involve a significant reduction in a margin of safety since design SG primary to secondary leakage limits have been analyzed to continue to be met. This will ensure that the SG cold legs tubes continue to function as a primary coolant system boundary by maintaining their integrity. Tube integrity includes both structural and leakage integrity. The proposed cold leg tubesheet inspection C* depth, of 12.5 inches below the bottom of the cold-leg expansion transition or top of the cold-leg tubesheet, which is lower, would ensure tube integrity is maintained during normal and accident conditions because any degradation below C* is shown by test results and analyses to be acceptable.

Operation with potential tube degradation below the proposed C* cold leg inspection length within the tubesheet region of the SG tubing meets the recommendation of NEI 97–06 SG program guidelines. Additionally, the proposed changes also maintain the structural and accident-induced leakage integrity as required by NEI 97–06.

The total leakage from an undetected flaw population below the C* inspection length for the cold leg tubesheet under postulated accident conditions is accounted for, in order to assure it is within the bounds of the accident analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mrs. Jeanne Cho, Senior Counsel, Entergy Services, Inc., 440 Hamilton Ave., White Plains, New York 10601.

NRC Branch Chief: David J. Wrona.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

Date of amendment request: March 14, 2016. A publicly-available version is in ADAMS under Accession No. ML16077A029.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the operating license to extend the completion date for full implementation of the CNP Cyber Security Plan (CSP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The amendment proposes a change to the CNP Unit 1 and Unit 2 CSPs Milestone 8 full implementation date as set forth in the CNP CSP Implementation Schedule. The revision of the full implementation date for the CNP CSP does not involve modifications to any safety-related structures, systems or components (SSCs). Rather, the implementation schedule provides a timetable for fully implementing the CNP CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are adequately protected from cyber attacks. The revision of the CNP CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

A revision to the CSP Implementation Schedule does not require any plant modifications. The proposed revision to the CSP Implementation Schedule does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Revision of the CNP CSP Implementation Schedule does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed amendment does not alter the way any safety-related SSC functions and does not alter the way the plant is operated. The CSP, as implemented by milestones 1–7, provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, Michigan 49106.

NRC Branch Chief: David J. Wrona.

Omaha Public Power District (OPPD), Docket No. 50–285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16103A348.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would modify License Condition D, Fire Protection Program. License Amendment No. 275, issued June 16, 2014 (ADAMS Accession No. ML14098A092), implemented the licensee's transition to a risk-informed, performance-based fire protection program based on National Fire Protection Association Standard (NFPA) 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001

Edition." As part of the Transition License Conditions included in Amendment No. 275, the licensee committed to implement certain plant modifications as stated in Paragraph 3.D.(3)(b) of Renewed Facility Operating License No. DPR–40. Based on updated fire modeling assumptions, the licensee is proposing to withdraw the commitments in REC–119 and REC–120 due to the fact that they are not necessary to meet the performance requirements of the risk-informed fire protection standard.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Updated Safety Analysis Report (USAR) documents the analyses of design basis accidents (DBA) at FCS. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, or components (SSCs) to perform their design functions. SSCs required to safely shutdown the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The proposed amendment makes no physical changes to the plant and does not change the manner in which plant systems are controlled. Therefore, the implementation of the proposed amendment does not increase the probability of any accident previously evaluated.

Equipment required to mitigate an accident remains capable of performing the assumed function. The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The applicable radiological dose criteria will continue to be met. Therefore, the consequences of any accident previously evaluated are not increased with the implementation of the proposed amendment.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of FCS in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with off-site dose was included in the evaluation of DBAs documented in the USAR. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the proposed amendment will not change the previous conclusion that the fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in [Regulatory Guide (RG)] 1.205, Revision 0 [Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants, May 2006, available under ADAMS Accession No. ML061100174], will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shutdown the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to modify a commitment made as a licensing condition under Amendment No. 275 which implemented OPPD's transition to NFPA 805. The proposed amendment is not intended to reduce or, in any way, adversely affect compliance with NFPA 805 and is supported by engineering analyses that continue to demonstrate compliance with 10 CFR 50.48(a) and (c) and the guidance in RG 1.205, Revision 0.

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated. Based on this, the implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety related system as a result of this amendment. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation of FCS in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the USAR. This amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shutdown the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Robert J. Pascarelli.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCPP), San Luis Obispo County, California

Date of amendment request: October 26, 2011, as supplemented by letters dated December 20, 2011; April 2, April 30, June 6, August 2, September 11, November 27, and December 5, 2012; March 7, March 25, April 30, May 9, May 30, and September 17, 2013; April 24 and April 30, 2014; February 2 and June 22, 2015; and January 25 and February 11, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML113070457, ML113610541, ML12094A072, ML12131A513, ML121700592, ML122220135, ML12256A308, ML130040687, ML12342A149, ML13267A127, ML130930344, ML13121A089, ML13130A059, ML131540159, ML13261A354, ML14205A031, ML14121A002, ML15062A386, ML15173A469, ML16049A006, and ML16061A481, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the facility operating licenses to allow the permanent replacement of the current DCPP Eagle 21 digital process protection system (PPS) with a new digital PPS that is based on the Invensys Operations Management Tricon Programmable Logic Controller (PLC), Version 10, and the CS Innovations, LLC (a Westinghouse Electric Company), Advanced Logic System. The amendments would also incorporate a revised definition of Channel Operational Test in Technical Specification (TS) 1.1, "Definitions."

The license amendment request was originally noticed in the **Federal Register** on June 5, 2012 (77 FR 33243). The notice is being reissued in its entirety to include a revised description of the amendment request (change to TS 1.1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow Pacific Gas and Electric Company to permanently replace the Diablo Canyon Power Plant Eagle 21 digital process protection system with a new digital process protection system that is based on the Invensys Operations Management Tricon Programmable Logic Controller, Version 10, and the CS Innovations Advanced Logic System. The process protection system replacement is designed to applicable codes and standards for safety-grade protection systems for nuclear power plants and incorporates additional redundancy and diversity features and therefore, does not result in an increase in the probability of inadvertent actuation or probability of failure to initiate a protective function. The process protection system replacement does not introduce any new credible failure mechanisms or malfunctions that cause an accident. The process protection system replacement design will continue to perform the reactor trip system and engineered safety features actuation system functions assumed in the Final Safety Analysis Report within the response time assumed in the Final Safety Analysis Report Chapter 6 and 15 accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change is to permanently replace the current Diablo Canyon Power Plant Eagle 21 digital process protection system with a new digital process protection system. The process protection system performs the process protection functions for the reactor protection system that monitors selected plant parameters and initiates protective action as required. Accidents that may occur due to inadvertent actuation of the process protection system, such as an inadvertent safety injection actuation, are considered in the Final Safety Analysis Report accident analyses.

The protection system is designed with redundancy such that a single failure to generate an initiation signal in the process protection system will not cause failure to trip the reactor nor failure to actuate the engineered safeguard features when required. Neither will such a single failure cause spurious or inadvertent reactor trips [n]or engineered safeguard features actuations because coincidence of two or more initiation signals is required for the solid state protection system to generate a trip or actuation command. If an inadvertent actuation occurs for any reason, existing control room alarms and indications will notify the operator to take corrective action.

The process protection system replacement design includes enhanced diversity features compared to the current process protection system to provide additional assurance that the protection system actions credited with automatic operation in the Final Safety Analysis Report accident analyses will be performed automatically when required should a common cause failure occur concurrently with a design basis event.

The process protection system replacement does not result in any new credible failure mechanisms or malfunctions. The current Eagle 21 process protection system utilizes digital technology and therefore the use of digital technology in the process protection system replacement does not introduce a new type of failure mechanism. Although extremely unlikely, the current Eagle 21 process protection system is susceptible to a credible common-cause software failure that could adversely affect automatic performance of the protection function. The process protection system replacement contains new, additional diversity features that prevent a common-cause software failure from completely disabling the process protection system.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The reactor protection system is fundamental to plant safety and performs reactor trip system and engineered safety features actuation system functions to limit the consequences of Condition II (faults of moderate frequency), Condition III (infrequent faults), and Condition IV (limiting faults) events. This is accomplished by sensing selected plant parameters and determining whether predetermined instrument settings are being exceeded. If predetermined instrument settings are exceeded, the reactor protection system sends actuation signals to trip the reactor and actuate those components that mitigate the severity of the accident.

The process protection system replacement design will continue to perform the reactor trip system and engineered safety features actuation functions assumed in the Final Safety Analysis Report within the response time assumed Final Safety Analysis Report Chapter 6 and 15 accident analyses. The use of the process protection system replacement does not result in a design basis or safety limit being exceeded or changed. The change to the process protection system has no impact on the reactor fuel, reactor vessel, or containment fission product barriers. The reliability and availability of the reactor protection system is improved with the process protection system replacement, and the reactor protection system will continue to effectively perform its function of sensing plant parameters to initiate protective actions to limit or mitigate events.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Robert J. Pascarelli.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 21, 2015, as supplemented by letter dated November 19, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML15265A223 and ML15323A268, respectively.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would allow for the replacement and upgrade of the existing analog Average Power Range Monitor (APRM) sub-system of the Neutron Monitoring System with General Electric-Hitachi digital Nuclear Measurement Analysis and Control (NUMAC) Power Range Neutron Monitoring (PRNM) system. The PRNM upgrade also includes Oscillation Power Range Monitor (OPRM) capability and will allow full APRM, Rod Block Monitor (RBM), Technical Specification Improvement Program implementation, and will include application of Technical Specification Task Force Traveler-493, "Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Setting] Functions," to affected PRNM functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of accidents occurring is not affected by the PRNM system, as the PRNM system is not the initiator of any accident and does not interact with equipment whose failure could cause an accident. The transition from flow-biased to power-biased RBM does not increase the probability of an accident; the RBM is not involved in the initiation of any accident. The regulatory criteria established for the APRM, OPRM, and RBM systems will be maintained with the installation of the upgraded PRNM system. Therefore, the

proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of accidents are not affected by the PRNM system, as the setpoints in the PRNM system will be established so that all analytical limits are met. The unavailability of the new system will be equal to or less than the existing system and, as a result, the scram reliability will be equal to or better than the existing system. No new challenges to safety-related equipment will result from the PRNM system modification. The change to power biased RBM allows for Rod Withdrawal Error (RWE) analyses performed for each future reload to take credit for rod blocks during the rod withdrawal transients. The results of the RWE event analysis will be used in establishing the cycle specific operating limits for the fuel. The proposed change will also replace the currently installed and NRC approved Asea Brown Boveri (ABB) OPRM Option III long-term stability solution with an NRC approved General Electric-Hitachi (GEH) Detect and Suppress Solution—Confirmation Density (DSS–CD) stability solution [reviewed and approved by the NRC in Reference 2, Licensing Topical Report]. The OPRM meets the GDC [General Design Criteria] 10, "Reactor Design," and 12, "Suppression of Reactor Power Oscillations," requirements by automatically detecting and suppressing design basis thermal hydraulic oscillations to protect specified fuel design limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The components of the PRNM system will be supplied to equivalent or better design and qualification criteria than is currently required for the plant. Equipment that could be affected by [the] PRNM system has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or system interaction mode was identified. Therefore, the upgraded PRNM system will not adversely affect plant equipment.

The new PRNM system uses digital equipment that has software controlled digital processing points and software controlled digital processing compared to the existing PRNM system that uses mostly analog and discrete component processing (excluding the existing OPRM). Specific failures of hardware and potential software common cause failures are different from the existing system. The effects of potential software common cause failure are mitigated by specific hardware design and system architecture as discussed in Section 6.0 of the NUMAC PRNM LTR [Licensing Topical Report], and supported by a plant specific evaluation. The transition from a flow-biased RBM to a power dependent RBM does not change its function to provide a control rod block when specified setpoints are reached. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. Failure(s) of the system have the same overall effect as the present design. No new or different kind of accident is introduced. Therefore, the PRNM system will not adversely affect plant equipment.

The currently installed APRM System is replaced with a NUMAC PRNM system that performs the existing power range monitoring functions and adds an OPRM to react automatically to potential reactor thermal-hydraulic instabilities.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes associated with the NUMAC PRNM system implement the constraints of the NUMAC PRNM system design and related stability analyses. The NUMAC PRNM system change does not impact reactor operating parameters or the functional requirements of the PRNM system. The replacement equipment continues to provide information, enforce control rod blocks, and initiate reactor scrams under appropriate specified conditions. The power dependent RBM will continue to prevent rod withdrawal when the power-dependent RBM rod block setpoint is reached. The MCPR [Minimum Critical Power Ratio] and Linear Heat Generation Rate (LHGR) thermal limits will be developed on a cycle specific basis to ensure that fuel thermal mechanical design bases remain within the licensing limits during a control rod withdrawal error event and to ensure that the MCPR SL [Safety Limit] will not be violated as a result of a control rod withdrawal error event.

The proposed change does not reduce safety margins. The replacement PRNM equipment has improved channel trip accuracy compared to the current analog system, and meets or exceeds system requirements previously assumed in setpoint analysis. The power dependent RBM will support cycle specific RWE analysis ensuring fuel limits are not exceeded. Thus, the ability of the new equipment to enforce compliance with margins of safety equals or exceeds the ability of the equipment which it replaces.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, New Jersey 08038.

NRC Branch Chief: Douglas A. Broaddus.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1]

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 19th day of May, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+ 25 Answers to petition for intervention; + 7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/Activity
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt + 30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt + 25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt + 7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016–12484 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATES: June, 6, 13, 20, 27, July 4, 11, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 6, 2016

There are no meetings scheduled for the week of June 6, 2016.

Week of June 13, 2016—Tentative

There are no meetings scheduled for the week of June 13, 2016.

Week of June 20, 2016—Tentative

Monday, June 20, 2016

9:00 a.m. Meeting with Department of Energy Office of Nuclear Energy (Public Meeting); (Contact: Albert Wong: 301–415–3081).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 23, 2016

9:00 a.m. Discussion of Security Issues (Closed Ex. 3).

Week of June 27, 2016—Tentative

Tuesday, June 28, 2016

9:30 a.m. Briefing on Human Capital and Equal Opportunity Employment (Public Meeting); (Contact: Kristin Davis: 301–287–0707).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 4, 2016—Tentative

Thursday, July 7, 2016

9:30 a.m. Strategic Programmatic Overview of the Reactors Operating Business Line (Public Meeting); (Contact: Trent Wertz: 301–415–1568).

Week of July 11, 2016—Tentative

There are no meetings scheduled for the week of July 11, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 2, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–13563 Filed 6–3–16; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0097]

Consequential SGTR Analysis for Westinghouse and Combustion Engineering Plants With Thermally-Treated Alloy 600 and 690 Steam Generator Tubes

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2195, "Consequential SGTR Analysis for Westinghouse and Combustion Engineering Plants with Thermally Treated Alloy 600 and 690 Steam Generator Tubes." This report summarizes severe accident-induced consequential steam generator tube rupture (C–SGTR) analyses recently performed by the NRC's Office of Nuclear Regulatory Research. The analyses described in this report include risk assessment, thermal-hydraulic analyses, and materials behavior analyses.

DATES: Submit comments by August 8, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0097. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Selim Sancaktar, Office of Nuclear Regulatory Research; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2391; email: *Selim.Sancaktar@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0097 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0097.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft NUREG–2195 can be found in ADAMS under at Accession No. ML16134A029.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0097 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

This report summarizes severe accident-induced consequential steam generator tube rupture (C–SGTR) analyses recently performed by the NRC's Office of Nuclear Regulatory Research. The C–SGTRs are potentially risk-significant events because thermally-induced steam generator (SG) tube failures caused by hot gases from a damaged reactor core can result in a containment bypass event and a large release of fission products to the environment. The main accident scenarios of interest are those that lead to core damage with high reactor pressure, dry SG, and low SG pressure (high-dry-low) conditions. A typical example of such an accident scenario is a station blackout with loss of auxiliary feedwater. The analyses described in this report include risk assessment, thermal-hydraulic analyses, and materials behavior analyses. This work builds on, and updates, previous NRC work.

The current analyses evaluate replacement SGs with thermally-treated Alloy 600 and Alloy 690 heat exchange tubes and use the latest tube flaw data available in the 2010 time frame. A main focus of this work was to compare C–SGTR results for the different SG geometries associated with Westinghouse and Combustion Engineering plant designs. It has been previously understood that the geometry of the SG reactor coolant inlet plenum region and the hot-leg (HL) influences the temperature of the gases reaching the steam generator tubes during closed-loop-seal natural circulation conditions. Hotter gases reaching the SG tube reduce the time before tube failure, which increases the likelihood of containment bypass. However, if a thermally-induced failure sufficient to depressurize the reactor coolant system (RCS) develops in another location, fission product release through failed SG tubes may be prevented or minimized. Therefore, the possibility of an earlier failure of other RCS components (such as the reactor coolant HL) is also considered. Pressure-induced steam generator tube rupture (SGTR) scenarios, which also may lead to tube failure and subsequent containment bypass, were also studied, but are deemed to be of lesser potential impact on overall plant risk.

The methods developed were intended to address the contribution of thermally-induced SGTR during severe accidents and pressure-induced SGTR during a number of design-basis accidents. The methods and the pilot applications were developed in a manner that can establish the framework to perform a more comprehensive Probabilistic Risk Assessment that can address the C–SGTR at a level of detail suitable for other NRC needs.

Dated at Rockville, Maryland, this 26th day of May 2016.

For the Nuclear Regulatory Commission.

Kevin Coyne,

Branch Chief, Probabilistic Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2016–13387 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0108]

Changes to Aging Management Guidance for Various Steam Generator Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft license renewal interim staff guidance; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on the draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2016–01, "Changes to Aging Management Guidance for Various Steam Generator Components." The draft LR–ISG describes changes to the aging management guidance for steam generator components in NUREG–1801, "Generic Aging Lessons Learned (GALL) Report," Revision 2, and NUREG–1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants" (SRP–LR), Revision 2. This draft LR–ISG includes changes to GALL Report aging management program (AMP) XI.M19, "Steam Generators," and the aging management review (AMR) items in the GALL Report and SRP–LR for the steam generator components.

DATES: Submit comments by July 7, 2016. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0108. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dr. Seung Min, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2045; email: *Seung.Min@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0108 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0108.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft LR–ISG–2016–01 is available in ADAMS under Accession No. ML16102A268. The GALL Report, NUREG–1801, Revision 2 (December 2010), and the SRP–LR, NUREG–1800, Revision 2 (December 2010), are available in ADAMS under Accession Nos. ML103490041 and ML103490036, respectively. The draft GALL Report for Subsequent License Renewal (GALL–SLR), NUREG–2191 (December 2015), Volumes 1 and 2, and draft Standard Review Plan for Subsequent License Renewal (SRP–SLR), NUREG–2192 (December 2015), are available in ADAMS under Accession Nos. ML15348A111, ML15348A153, and ML15348A265, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's License Renewal Guidance Web site: Guidance for license renewal documents are also available online at *http://www.nrc.gov/reactors/operating/licensing/renewal/guidance.html.*

B. Submitting Comments

Please include Docket ID NRC–2016–0108 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

This draft LR–ISG describes changes to the aging management guidance for steam generator components in NUREG–1801 (GALL Report), Revision 2, and NUREG–1800 (SRP–LR), Revision 2. The draft LR–ISG revises GALL Report AMP XI.M19, "Steam Generators," and SRP–LR Sections 3.1.2.2.11 and 3.1.3.2.11, "Cracking Due to Primary Water Stress Corrosion Cracking." Specifically, this LR–ISG addresses the changes to aging management guidance for managing: (a) cracking due to primary water stress corrosion cracking in divider plate assemblies and tube-to-tubesheet welds, and (b) loss of material due to boric acid corrosion in steam generator heads and tubesheets. In addition, changes are made to the associated AMR items in the GALL Report and SRP–LR. This draft LR–ISG also revises the Final Safety Analysis Report supplement for the AMP that is documented in Table 3.0–1, "FSAR Supplement for Aging Management of Applicable Systems" of the SRP–LR.

These changes provide one acceptable approach for managing the associated aging effects for steam generator components within the scope of the license renewal rule (part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), "Requirements for Renewal of Operating Licenses for Nuclear Power Plants"). A licensee may cite LR–ISG–2016–01 in its license renewal application until the guidance in this LR–ISG is incorporated into the license renewal guidance documents (*i.e.,* GALL Report and SRP–LR).

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISGs in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC also plans to consider the information in this LR–ISG and make corresponding changes when finalizing the draft aging management guidance for the subsequent license renewal period (*i.e.,* up to 80 years of operation), which is documented in draft NUREG–2191, "Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report," and draft NUREG–2192, "Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants," if it is practicable to do so in terms of the guidance development schedule.

III. Proposed Action

By this action, the NRC is requesting public comments on draft LR–ISG–2016–01. This LR–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR part 54. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

IV. Backfitting

Issuance of this LR–ISG in final form would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule). As discussed in the "Backfitting" section of draft LR–ISG–2016–01, the LR–ISG is directed to holders of operating licenses who are currently in the license renewal process. The LR–ISG is not directed to holders of operating licenses or combined licenses until they apply for license renewal. The LR–ISG also is not directed to licensees who already hold renewed operating licenses. However, the NRC could also use the LR–ISG in evaluating voluntary, licensee-initiated changes to previously-approved AMPs.

Dated at Rockville, Maryland, this 31st day of May, 2016.

For the Nuclear Regulatory Commission.

Dennis C. Morey,

Acting Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–13388 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0107]

Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 10, 2016, to May 23, 2016. The last biweekly notice was published on May 24, 2016 (81 FR 32800).

DATES: Comments must be filed by July 7, 2016. A request for a hearing must be filed by August 8, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0107. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov* and Lynn Ronewicz, Office of Nuclear Reactor Regulation, telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0107 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0107.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0107, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that

they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii). If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 8, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 8, 2016.

Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or

expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: March 22, 2016. A publicly-available version is in ADAMS under Accession No. ML16082A309.

Description of amendment request: The proposed amendment would allow for permanent extension of the Type A primary containment integrated leak rate test interval to 15 years and extension of the Type C test interval up to 75 months. The amendment also proposes two administrative changes to remove text that is no longer applicable. The first change revises technical specification (TS) 5.5.12 to remove a one-time extension of the Type A test frequency. The second change would revise the Fermi 2 Operating License, Section D, to remove a reference to an exemption regarding Appendix J testing of containment air locks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of Fermi 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The current Type A test interval of 10 years would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions. The proposed amendment does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators. RG [Regulatory Guide] 1.174 [sic] [ADAMS Accession No. ML023240437] provides guidance for determining the risk impact of plant-specific changes to the licensing basis. RG 1.174 defines very small changes in risk as resulting in increases of CDF [core damage frequency] below 1.0E–06/yr and increases in LERF [large early release frequency] below 1.0E–07/yr. Since the ILRT [integrated leak rate test] does not impact CDF, the relevant criterion is LERF. The increase in LERF resulting from a change in the Type A ILRT test interval from three in ten years to one in fifteen years is very conservatively estimated as 1.27E–08/yr using the EPRI [Electric Power Research Institute] guidance as written. As such, the estimated change in LERF is determined to be "very small" using the acceptance guidelines of RG 1.174.

RG 1.174 also states that when the calculated increase in LERF is in the range of 1.0E–06 per reactor year to 1.0E–07 per reactor year, applications will be considered only if it can be reasonably shown that the total LERF is less than 1.0E–05 per reactor year. An additional assessment of the impact from external events was also made. In this case, the total LERF increase was conservatively estimated (with an external event multiplier of 15) as 1.90E–07 for Fermi 2 (the baseline total LERF for this case is 7.88E- 06/yr). This is well below the RG 1.174 acceptance criteria for total LERF of 1.0E–05.

The change in Type A test frequency to once per 15 years, measured as an increase to the total integrated plant risk for those accident sequences influenced by Type A testing, is 1.14E–4 person-rem/yr (a 0.00184% increase). EPRI Report No. 1009325, Revision 2–A, states that a very small population dose is defined as an increase of ≤1.0 person-rem per year or ≤1% of the total population dose, whichever is less restrictive for the risk impact assessment of the extended ILRT intervals. Moreover, the risk impact when compared to other severe accident risks is negligible.

The increase in the CCFP [conditional containment failure probability] from the three in 10 year [sic] interval to one in 15 year interval is 0.73%. EPRI Report No. 1009325, Revision 2–A, states that increases in CCFP of less than or equal to 1.5 percentage points are very small. Therefore, this increase judged to be very small.

The other two changes, to TS 5.5.12, item a, and Operating License, Provision D, are administrative in nature to remove old text that is no longer applicable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment to the TS involves the extension of the Fermi 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*e.g.*, no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

The other two changes to TS 5.5.12, item a, and Operating License, Provision D, are administrative in nature to remove old text that is no longer needed. Therefore, these changes have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment to TS 5.5.12 involves the extension of the Fermi 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed surveillance interval extension is bounded by the 15 year ILRT interval and the 75 month Type C test interval currently authorized within NEI 94–01, Revision 3–A. Industry experience supports the conclusion that Type B and Type C testing detects a large percentage of containment leakage paths and the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections preformed in accordance with ASME [American Society of Mechanical Engineers] Section XI, Maintenance Rule, and TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods, and acceptance criteria for Type A, Type B, and Type C containment leakage tests specified in applicable codes and standards would continue to be met with the acceptance of this proposed change since these are not affected by the changes to the Type A and Type C test intervals.

The other two changes to TS 5.5.12, item a, and Operating License, Provision D, are administrative in nature to remove old text that is no longer needed. Therefore, these changes have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

NRC Branch Chief: David J. Wrona.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 24, 2016. A publicly available version is in ADAMS under Accession No. ML16089A228.

Description of amendment request: The amendments would modify Technical Specification 3.6.13, "Ice Condenser Doors," to revise Condition B for an ice condenser lower inlet door invalid open alarm to preclude plant shutdown caused by an invalid "OPEN" alarm from the "Inlet Door Position Monitoring System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change will not increase the probability of accident previously evaluated. The Ice Condenser performs an entirely mitigative function. The proposed change does not result in any physical change to the plant which would affect any accident initiators. No structures, systems, or components (SSCs) involved in the initiation of postulated accidents will be operated in any different manner. The probability of occurrence of a previously evaluated accident will not be significantly increased. The proposed change involves use of an alternate method of verifying that the lower inlet doors to the ice condenser are closed. This proposed change has no effect on the ability of the ice condenser to perform its function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design function or operation of any SSC that may be involved in the initiation of an accident. The Ice Condenser will not become the source of a new type of accident. No new accident causal mechanisms will be created. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their intended functions. These barriers include the fuel cladding, the reactor coolant system pressure boundary, and the containment barriers. The proposed change involves use of a method to verify the lower inlet doors to the ice condenser are closed when an invalid alarm is providing indication of an open door. This proposed change has no effect on the ability of the ice condenser to perform its function. Hence, the proposed change will not affect containment barriers. Nor does the proposed change have any effect on fuel cladding or the reactor coolant pressure boundary.

Therefore, existing safety margins will be preserved, and the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: April 13, 2016. A publicly-available version is in ADAMS under Accession No. ML16111B203.

Description of amendment request: The amendments would revise the Allowable Values (AVs) of Surveillance Requirements (SRs) contained in Technical Specification 3.3.8.2, "RPS Electric Power Monitoring," by amending the Reactor Protection System electric power monitoring assembly AVs for overvoltage and undervoltage contained within SRs 3.3.8.2.2 and 3.3.8.2.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change to the Allowable Values of Surveillance Requirements contained in Technical Specifications 3.3.8.2 does not impact the physical function of plant structures, systems, or components (SSC) or the manner in which SCCs [sic] perform their design function. The proposed change does not authorize the addition of any new plant equipment or systems, nor does it alter the assumptions of any accident analyses. The Electrical Protection Assemblies are not accident initiators. They operate in response to off-normal voltage conditions on Class 1E buses to protect the connected loads. The proposed change does not adversely affect accident initiators or precursors, nor does it alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change to the Allowable Values of Surveillance Requirements contained in Technical Specifications 3.3.8.2 does not require any modification to the plant (*i.e.,* other than the setpoint changes) or change equipment operation or testing. The proposed change will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. The proposed change does not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The proposed change to the Allowable Values of Surveillance Requirements contained in Technical Specifications 3.3.8.2 does not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions or the safety limits that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by the proposed change and the applicable requirements of 10 CFR 50.36(c)(2)(ii) and 10 CFR 50, Appendix A will continue to be met.

Therefore, the proposed change does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kathryn B. Nolan, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte NC 28202.

NRC Branch Chief: Benjamin G. Beasley.

Entergy Operations, Inc. (Entergy), Docket No. 50–368, Arkansas Nuclear One, Unit No. 2 (ANO–2), Pope County, Arkansas

Date of amendment request: March 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16088A186.

Description of amendment request: The amendment will revise the Technical Specifications (TSs) to eliminate TS 6.5.8, "Inservice Testing Program." A new defined term, "Inservice Testing [IST] Program," will be added to TS 1.0, "Definitions," section. The licensee has noted that while the request is consistent with TS Task Force (TSTF)–545, Revision 3, "TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing," there are various deviations from the TSTF–545, Revision 3. ANO–2 TSs are of an older standard version and have not been converted to the improved standard TSs (ISTSs) based on NUREG 1432, "Standard Technical Specifications—Combustion Engineering Plants," Revision 4. As such, Entergy stated there are several administrative-type variations (TS numbering, wording, etc.) but these variations do not result in any technical conflict with the intent of TSTF–545, Revision 3 or the associated model safety evaluation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, with NRC edits in [brackets], which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 6, "Administrative Controls," Section 6.5, "Programs and Manuals," by eliminating the "Inservice Testing Program" specification. Most requirements in the IST Program are removed, as they are duplicative of requirements in the ASME [American Society of Mechanical Engineers] OM Code [ASME Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, "Inservice Test Frequency." The remaining requirements in the Section 6.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, "Inservice Testing Program," is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS Surveillance Requirement (SR) 4.0.3 (referenced as SR 3.0.3 in the ISTS) allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Meena K. Khanna.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16088A181.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to eliminate TS Section 5.5.8, "Inservice Testing [IST] Program." A new defined term, "Inservice Testing Program," will be added to TS 1.1, "Definitions." This amendment request is consistent with TS Task Force (TSTF)–545, Revision 3, "TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing," under the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, with NRC edits in [brackets], which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS Chapter 5, "Administrative Controls," Section 5.5, "Programs and Manuals," by eliminating the "Inservice Testing Program" specification. Most requirements in the IST Program are removed, as they are duplicative of requirements in the ASME [American Society of Mechanical Engineers] OM Code [ASME Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, "Inservice Test Frequency." The remaining requirements in the Section 5.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, "Inservice Testing Program," is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS Surveillance Requirement (SR) 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Meena K. Khanna.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: March 24, 2016, as supplemented by letter dated May 11, 2016. A publicly-available version is in ADAMS under Accession Nos. ML16084A567 and ML16132A440.

Description of amendment request: The amendments would revise the frequency for cycling of the recirculation pump discharge valves as specified in Technical Specification (TS) Surveillance Requirement (SR) 3.5.1.5. Specifically, SR 3.5.1.5 requires verification that each recirculation pump discharge valve cycles through one complete cycle of full travel or is de-energized in the closed position. Currently, this SR needs to be performed once each plant startup prior to exceeding 23 percent rated thermal power (RTP), if the SR had not been performed within the previous 31 days. The amendments would change the frequency for the SR such that it is performed in accordance with the Inservice Testing Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the frequency for cycling the recirculation pump discharge valves from "Once each startup prior to exceeding 23% RTP," as modified by a Note stating, "Not required to be performed if performed within the previous 31 days" to "In accordance with the Inservice Testing Program". Testing of the recirculation pump discharge valves is not an initiator of any accident previously evaluated. As the recirculation pump discharge valves are still required to be Operable, the ability to mitigate any accident previously evaluated is not affected. The proposed change does not adversely affect the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function.

Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the frequency for cycling the recirculation pump discharge valves from "Once each startup prior to exceeding 23% RTP," as modified by a Note stating, "Not required to be performed if performed within the previous 31 days" to "In accordance with the Inservice Testing Program". This revision will not impact the accident analysis. The change will not alter the methods of operation of the recirculation pump discharge valves. No new or different accidents result. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the frequency for cycling the recirculation pump discharge valves from "Once each startup prior to exceeding 23% RTP," as modified by a Note stating, "Not required to be performed if performed within the previous 31 days" to "In accordance with the Inservice Testing Program." The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The frequency of testing the recirculation pump discharge valves will be consistent with the frequency of testing other valves in the Emergency Core Cooling System.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

NRC Branch Chief: Douglas A. Broaddus.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No.1, DeWitt County, Illinois

Date of amendment request: April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16095A285.

Description of amendment request: The proposed changes would revise technical specification (TS) limiting condition for operation (LCO) 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than 200 degrees Fahrenheit as a consequence of in-service leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an in-service leak or hydrostatic test, while considering operational conditions to be in Mode 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at greater than 200 degrees F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Technical Specifications currently allow for operation at greater than 200 degrees F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Technical Specifications currently allow for operation at greater than 200 degrees F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an in-service leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: G. Ed Miller (Acting)

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16095A275.

Description of amendment request: The amendments would revise the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) system actuation instrumentation Technical Specification (TS) requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes involve the addition of clarifying footnotes to the HPCI and RCIC actuation instrumentation TS to reflect the as-built plant design and operability requirements of HPCI and RCIC instrumentation as described in the LGS Updated Final Safety Analysis Report (UFSAR).

HPCI and RCIC are not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. In addition, the automatic start of HPCI on high drywell pressure, and the manual initiation of HPCI and RCIC, are not credited to mitigate the consequences of design basis accidents, transients or special events within the current LGS design and licensing basis.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not alter the protection system design, create new failure modes, or change any modes of operation. The proposed changes do not involve a physical alteration of the plant, and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes have no adverse effect on plant operation. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses.

There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Acting Branch Chief: Andrew Hon.

Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: April 29, 2016. A publicly-available version is in ADAMS under Accession No. ML16125A253.

Description of amendment request: The amendments would revise Appendix B (Environmental Protection Plan (EPP)) of the Unit 1 and Unit 2 Operating Licenses to incorporate the revised Section 8.4, "Terms and Conditions" of the currently applicable Biological Opinion issued by the National Marine Fisheries Service (NMFS) on March 24, 2016. In addition, the amendments would clarify in the EPP that the licensee must adhere to the currently applicable Biological Opinion. This clarification would preclude the need for a new license amendment in the event that NMFS issues a new Biological Opinion.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Facility in Accordance With the Proposed Amendments Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The changes are administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the St. Lucie Unit 1 or Unit 2 accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. Use of the Modified Specification Would Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The changes are administrative in nature and would in no way impact or alter the configuration or operation of the facilities and would create no new modes of operation. We conclude that the proposed changes would not create the possibility of a new or different kind of accident.

3. Use of the Modified Specification Would Not Involve a Significant Reduction in a Margin of Safety

The changes are administrative in nature and would in no way affect plant or equipment operation or the accident analysis. We conclude that the proposed changes would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.

NRC Branch Chief: Benjamin G. Beasley.

Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16099A097.

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.8.4, "DC Sources—Operating," Surveillance Requirement (SR) 3.8.4.2 to increase the required 125 Volt (V) Direct Current (DC) subsystems battery charger output current and to remove the second method specified to perform the surveillance. The first proposed change is to increase the required 125 Volt VDC battery charger output current specified as the first option under SR 3.8.4.2 to resolve a non-conservative TS condition. The second proposed change is to remove from SR 3.8.4.2 an alternative option for meeting the surveillance requirement. This alternative requires verifying each battery charger can recharge the battery to the fully charged state within the required time period, 24 hours for the 250 VDC and 8 hours for the 125 VDC subsystems, respectively, while supplying the largest combined continuous steady state loads, after a battery discharge to the bounding design basis event discharge state.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes revise the battery charger surveillance requirements in SR 3.8.4.2. The DC electrical power system, including associated battery chargers, is not an initiator of any accident sequence analyzed in the Updated Safety Analysis Report (USAR). Rather, the DC electrical power system supports operation of equipment used to mitigate accidents. Operation in accordance with the proposed TS continues to ensure that the DC electrical power system is capable of performing its specified safety functions as described in the USAR. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis.

Accidents are initiated by the malfunction of plant equipment, or the catastrophic failure of plant structures, systems, or components (SSCs). Performance of battery testing is not a precursor to any accident previously evaluated, nor does it change the manner in which the batteries and battery chargers are operated. The proposed testing requirements will not contribute to the failure of the batteries nor any plant SSC. NSPM has determined that the proposed TS changes provide an equivalent level of assurance that the batteries and battery chargers are capable of performing their intended safety functions. Thus, the proposed changes do not affect the probability of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The DC electrical power system, including the associated battery chargers, is not an initiator of any accident sequence analyzed in the USAR. The proposed TS changes do not involve operation of the DC electrical power system in a manner or configuration different from those previously evaluated. Performance of battery testing is not a precursor to any accident previously evaluated. NSPM has determined that the proposed TS changes provide an equivalent level of assurance that the batteries and battery chargers are capable of performing their intended safety functions. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed in the safety analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the equipment design, the operating parameters, and the setpoints at which automatic actions are initiated. The equipment margins will be maintained in accordance with the plant-specific design bases as a result of the proposed changes. The proposed changes do not adversely affect operation of plant equipment. The proposed TS changes do not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment continues to be ensured. The equipment fed by the DC electrical sources will continue to provide adequate power to safety-related loads in accordance with safety analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: David J. Wrona.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: April 7, 2016. A publicly-available version is in ADAMS under Accession No. ML16104A027.

Description of amendment request: The amendment would revise the Emergency Feedwater System pump performance testing requirements in Technical Specification (TS) 3/4.7.1.2, "Emergency Feedwater System," Surveillance Requirements 4.7.1.2.a.1 and 4.7.1.2.a.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Do the proposed changes [sic] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change deletes an allowed outage time that is no longer applicable and revises the Surveillance Requirements (SRs) that confirm the Emergency Feedwater (EFW) pump performance to be more consistent with the STS [Standard Technical Specifications—Westinghouse Plants]. The change has been determined not to adversely affect the safe operation of the plant. The affected TS requirements are not initiating conditions for any accident previously evaluated. In addition, changes that are consistent with the STS have been previously evaluated by plants adopting the STS and found not to adversely affect the safe operation of Westinghouse NSSS [Nuclear Steam Supply System] plants. Based on the conclusions of the plant specific evaluation associated with the change and the evaluations performed in developing the STS, the proposed change does not result in operating conditions that will significantly increase the probability of initiating an analyzed event. The proposed change was also evaluated to assure that it does not alter the safety analysis assumptions relative to mitigation of an accident or transient event and that the resulting TS requirements continue to ensure the necessary equipment is operable consistent with the safety analyses or that the plant is placed in an operating Mode where the system is no longer required operable. As such the proposed change also does not result in operating conditions that will significantly increase the consequences of an analyzed event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change includes the deletion of an expired allowed outage time extension and the revision of the SRs that confirm the EFW pump performance to be more consistent with the corresponding STS SR. Consistent with the STS SR, the proposed change would remove the specific pump head and flow values from the current SRs and require that the SR be performed in accordance with the Inservice Testing Program. The removal of the specific pump head and flow values from the SR is necessary to support the implementation of a plant modification that would change the current EFW pump head and flow values in the SR. The plant modification is being performed under the provisions of 10CFR50.59. The proposed TS change does not involve a change in the methods governing normal plant operation. The proposed change also does not change any system functions nor does the proposed TS change affect any safety analysis or design basis requirements. The proposed TS change will continue to ensure the EFW System is operable in a similar manner as before. As such, the proposed change does not create new failure modes or mechanisms that are not identifiable during testing, and no new accident precursors are generated.

Therefore, the proposed changes do [sic] not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this [proposed] change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change does not physically alter safety-related systems, nor does it affect the way in which safety related systems perform their functions. The setpoints at which protective actions are initiated are not altered by the proposed change. Therefore, in a similar manner as before, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. The proposed change results in TS requirements that are consistent with the plant safety analyses. As such, the change does not result in operating conditions that significantly reduce any margin of safety.

Therefore, the proposed changes do [sic] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia; City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: August 11, 2015, as supplemented by letters dated March 16, 2014, and April 4, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML15226A276, ML16076A453, and ML16095A373, respectively.

Description of amendment request: The amendments would revise the technical specification (TS) requirements related to direct current (DC) electrical systems in TS Limiting Condition for Operation (LCO) 3.8.4, "DC Sources—Operating"; LCO 3.8.5, "DC Sources—Shutdown"; and LCO 3.8.6, "Battery Cell Parameters." A new battery monitoring and maintenance program is being proposed for Section 5.5, "Administrative Controls—Programs and Manuals."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed changes restructure the Technical Specifications (TS) for the direct current (DC) electrical power system and are consistent with TSTF–500, Revision 2. The proposed changes modify TS Actions relating to battery and battery charger inoperability. The DC electrical power system, including associated battery chargers, is not an initiator of any accident sequence analyzed in the Final Safety Analysis Report (FSAR). Rather, the DC electrical power system supports equipment used to mitigate accidents. The proposed changes to restructure TS and change surveillances for batteries and chargers to incorporate the updates included in TSTF–500, Revision 2, will maintain the same level of equipment performance required for mitigating accidents assumed in the FSAR. Operation in accordance with the proposed TS would ensure that the DC electrical power system is capable of performing its specified safety function as described in the FSAR. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis.

The relocation of preventive maintenance surveillances, and certain operating limits and actions, to a licensee-controlled Battery Monitoring and Maintenance Program will not challenge the ability of the DC electrical power system to perform its design function. Appropriate monitoring and maintenance that are consistent with industry standards will continue to be performed. In addition, the DC electrical power system is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the DC electrical power system.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the FSAR will not be affected by the proposed changes. Therefore, the consequences of previously analyzed accidents will not increase by implementing these changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes involve restructuring the TS for the DC electrical power system. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the FSAR. Rather, the DC electrical power system supports equipment used to mitigate accidents. The proposed changes to restructure the TS and change surveillances for batteries and chargers to incorporate the updates included in TSTF–500, Revision 2, will maintain the same level of equipment performance required for mitigating accidents assumed in the FSAR. Administrative and mechanical controls are in place to ensure the design and operation of the DC systems continues to meet the plant design basis described in the FSAR.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The equipment margins will be maintained in accordance with the plant-specific design bases as a result of the proposed changes. The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new Battery Monitoring and Maintenance Program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical sources will continue to provide adequate power to safety-related loads in accordance with analysis assumptions.

TS changes made in accordance with TSTF–500, Revision 2, maintain the same level of equipment performance stated in the FSAR and the current TSs. Therefore, the proposed changes do not involve a significant reduction of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Iverness Center Parkway, Birmingham, AL 35242.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: April 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16120A294.

Description of amendment request: The license proposed three changes to

modifications specified in the March 10, 2015, NFPA [National Environmental Policy Act]–805 amendment, Attachment S, Table S–2, ''Plant Modifications Committed.'' The three proposed modifications are: (1) Delete Fire Area 1–041 information from Table S–2, (2) add information on item 11, Pyro Panel modification, and, (3) change cable 2VCHAL07P to cable 2VCFARK2P.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The licensee's analysis is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment updates Attachments M, S, and W of the previously approved NFPA–805 LAR [license amendment request] submittal for FNP. The attachment revisions are based on the three changes to Table S–2 proposed in this LAR. One of the changes is justified based on negligible risk impact to Core Damage Frequency or Large Early Release Frequency associated with not performing the committed modification. The other two changes have no impact on accident analysis as they are clarifying or administrative in nature.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not increase the probability or consequence of an accident as verified by the risk analysis performed.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously identified.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment updates Attachments M, S, and W of the previously approved NFPA–805 LAR submittal for FNP. The attachment revisions are based on the three changes to Table S–2 proposed in this LAR. One of the changes is justified based on negligible risk impact to Core Damage Frequency or Large Early Release Frequency associated with not performing the committed modification. The other two changes have no impact on accident analysis as they are clarifying or administrative in nature. The proposed change relates to the availability of fire PRA [probabilistic risk analysis] credited component in given fire scenarios.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment updates Attachments M, S, and W of the previously approved NFPA–805 LAR submittal for FNP. The attachment revisions are based on the three changes to Table S–2 proposed in this LAR. One of the changes is justified based on negligible risk impact to Core Damage Frequency or Large Early Release Frequency associated with not performing the committed modification. The other two changes have no impact on accident analysis as they are clarifying or administrative in nature.

The proposed change does not increase the probability or consequence of an accident and does not reduce the margin of safety as verified by the risk analysis performed.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, 40 Iverness Center Parkway, Birmingham, AL 35201.

NRC Branch Chief: Michael T. Markley.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 29, 2015.

Brief description of amendment: The amendment approved a change to the Waterford Steam Electric Station, Unit 3, Cyber Security Plan Implementation Schedule Milestone 8 full implementation date and a related change to the existing operating license physical protection license condition.

Date of issuance: May 10, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 247. A publicly-available version is in ADAMS under Accession No. ML16077A270; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–38: The amendment revised the facility operating license.

*Date of initial notice in **Federal Register**:* September 1, 2015 (80 FR 52805).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 18, 2015, as supplemented by letter dated April 14, 2016.

Brief description of amendments: The amendments revised the reactor steam dome pressure specified in the technical specification safety limits.

Date of issuance: May 11, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 209, 250, 243, 262, and 257. A publicly-available versions is in ADAMS under Accession No. ML16111A104. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. : NPF–62, DPR–19, DPR–25, DPR–29, and DPR–30. Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* October 27, 2015 (80 FR 65812). The supplemental letter dated April 14, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 11, 2016.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 16, 2015.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.4.1, ''RCS [Reactor Coolant System] Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' to delete current Tables 3.4.1–1, ''Reduction in Percent RATED THERMAL POWER for Reduced RCS Flow Rate, Unit 1,'' and 3.4.1–2, ''Reduction in Percent RATED THERMAL POWER for Reduced RCS Flow Rate, Unit 2,'' and add RCS thermal design flow (TDF) values to the requirements of TS 3.4.1. The change also relocates the RCS minimum measured flow (MMF) values to the DCPP, Units 1 and 2, core operating limits reports (COLR) with a reference to the MMF values in TS 3.4.1 and Surveillance Requirements 3.4.1.3 and 3.4.1.4. Figure 2.1.1–1, ''Reactor Core Safety Limit,'' has been revised to delete a footnote with references to Tables 3.4.1–1 and 3.4.1–2. The change is consistent with NUREG–1431, Volume 1, Revision 4.0, ''Standard Technical Specifications, Westinghouse Plants,'' April 2012; NRC-approved Technical Specification Task Force (TSTF) Change Traveler 339–A, Revision 2, ''Relocate TS Parameters to COLR,'' dated June 13, 2000; and NRC-approved WCAP–14483–A, ''Generic Methodology for Expanded Core Operating Limits Report,'' January 1999.

The change is necessary to correct a non-conservative TS 3.4.1 total RCS flow rate value for DCPP, Unit 1. The change also ensures that the TS stays conservative, if the cycle-specific minimum RCS flow is higher than the minimum TDF.

Date of issuance: May 19, 2016.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1—226; Unit 2—228. A publicly-available version is in ADAMS under Accession No. ML16117A252; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* November 10, 2015 (80 FR 69714).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2016.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 27, 2014, as supplemented by letters dated October 31, 2014; February 12, May 12, September 10, and November 5, 2015; and January 14 and March 4, 2016.

Brief description of amendment: The amendment approved a change to the Virgil C. Summer Nuclear Station licensing basis to incorporate a supplemental analysis for the steam generator tube rupture accident.

Date of issuance: May 16, 2016.

Effective date: As of the date of issuance and shall be implemented within120 days of issuance.

Amendment No.: 205. A publicly-available version is in ADAMS under Accession No. ML15231A605; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–12: Amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register**:* October 14, 2014 (79 FR 61661). The supplemental letters dated October 31, 2014; February 12, May 12, September 10, and November 5, 2015; and January 14 and March 4, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2016.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: August 31, 2015, as supplemented by letters dated January 28, 2016, and March 11, 2016.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.4.14, ''RCS Pressure Isolation Valve (PIV) Leakage,'' to eliminate the requirements for the residual heat removal system suction valve auto closure interlock function.

Date of issuance: May 17, 2016.

Effective date: As of the date of issuance and shall be implemented as follows: Unit 1—prior to the first entry into Mode 4, following the end-of-cycle refueling outage 27 (scheduled for fall 2016), and Unit 2—prior to the first entry into Mode 4, following the end-of-cycle refueling outage 25 (scheduled for fall 2017).

Amendment Nos.: 201 (Unit 1) and 197 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16083A265; documents related

to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–2 and NPF–8: The amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* October 27, 2015 (80 FR 65815). The supplemental letters dated January 28, 2016, and March 11, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2016.

No significant hazards consideration comments received: No.

Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station (SSES), Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 27, 2014, as supplemented by letters dated July 2, 2015; September 21, 2015; November 11, 2015; and January 29, 2016.

Brief description of amendments: The amendments modified the SSES technical specifications (TSs). Specifically, the amendments modified the TSs by relocating specific surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program, with implementation of Nuclear Energy Institute (NEI) 04–10, Revision 1, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies." The changes are consistent with NRC-approved Technical Specification Task Force Improved Standard Technical Specifications Change Traveler (TSTF)–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b." The **Federal Register** notice published on July 6, 2009 (74 FR 31996), announced the availability of this TSTF improvement and included a model no significant hazards consideration and safety evaluation (SE).

This license amendment request was submitted by PPL Susquehanna, LLC; however, on June 1, 2015, the NRC staff issued an amendment changing the name on the SSES license from PPL Susquehanna, LLC to Susquehanna Nuclear, LLC (ADAMS Accession No. ML15054A066). These amendments were issued subsequent to an order issued on April 10, 2015, to SSES, approving an indirect license transfer of the SSES license to Talen Energy Corporation (ADAMS Accession No. ML15058A073).

Date of issuance: May 20, 2016.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment Nos.: 266 (Unit 1) and 247 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16005A234; documents related to these amendments are listed in the SE enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–14 and NPF–22: Amendments revised the Renewed Facility Operating Licenses and TSs.

Date of initial notice in ***Federal Register****:* March 3, 2015 (80 FR 11479). The supplemental letters dated July 2, 2015; September 21, 2015; November 11, 2015; and January 29, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in an SE dated May 20, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 27th day of May, 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–13255 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–149 and CP2016–188; Order No. 3335]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services 6 Contracts to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 8, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On May 31, 2016, the Postal Service filed notice that it has entered into a Global Expedited Package Services 6 (GEPS 6) negotiated service agreement (Agreement).[1]

To support its Request, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–149 and CP2016–188 for consideration of matters raised by the Request.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 8, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–149 and CP2016–188 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 8, 2016.

[1] Request of the United States Postal Service to Add Global Expedited Package Services 6 Contracts to the Competitive Product List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, May 31, 2016 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13336 Filed 6–6–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–189; Order No. 3334]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 6 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 8, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On May 31, 2016, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 6 (GEPS 6) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 6 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 31, 2016 (Notice).

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–189 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 8, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–189 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 8, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2016–13335 Filed 6–6–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meeting; Temporary Emergency Committee of the Board of Governors

TIME AND DATE: Tuesday, June 21, 2016, at 1 p.m.

PLACE: Las Vegas, Nevada, and via Teleconference.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Tuesday, June 21, 2016, at 1 p.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Executive Session—Discussion of prior agenda items.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone: (202) 268–4800.

Julie S. Moore.

Secretary.

[FR Doc. 2016–13488 Filed 6–3–16; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77958; File No. SR–BatsBZX–2016–01]

Self-Regulatory Organizations; BatsBZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Under BZX Rule 14.11(c)(4) Shares of the Following Series of Market Vectors ETF Trust: Market Vectors 6–8 Year Municipal Index ETF; Market Vectors 8–12 Year Municipal Index ETF; and Market Vectors 12–17 Year Municipal Index ETF

June 1, 2016.

On March 29, 2016, Bats BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade under BZX Rule 14.11(c)(4) the shares of the Market Vectors 6–8 Year Municipal Index ETF; Market Vectors 8–12 Year Municipal Index ETF; and Market Vectors 12–17 Year Municipal Index ETF. The proposed rule change was published for comment in the **Federal Register** on April 18, 2016.[3] The Commission received one comment on the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77596 (April 18, 2016), 81 FR 22681 ("Notice").

[4] *See* Letter from Anonymous dated May 3, 2016, available at: *http://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-1.htm*.

[5] 15 U.S.C. 78s(b)(2).

disapproved. The 45th day after publication of the notice for this proposed rule change is June 2, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[6] designates July 15, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BatsBZX–2016–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13315 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77963; File No. SR–FINRA–2016–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

June 1, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to clarify the application of the rule in four respects: (1) The consent requirement for institutional debt research reports distributed to non-U.S. investors by non-U.S. affiliates of members; (2) the consent requirement for institutional debt research reports distributed to specified persons for informational purposes unrelated to investing in debt securities; (3) the scope of the institutional debt research report exemption when distributing third-party debt research reports to eligible institutional investors; and (4) the disclosure requirements for debt research analysts in public appearances.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2240. CONFLICTS OF INTEREST

* * * * *

2242. Debt Research Analysts and Debt Research Reports

(a) through (i) No Change.

(j) Exemption for Debt Research Reports Provided to Institutional Investors

(1) Except as provided in paragraphs (j)(2) *and (j)(3)* of this Rule, the provisions of this Rule shall not apply to the distribution of a debt research report to:

[A) through (B) No Change.

(2) Notwithstanding paragraph (j)(1) of this Rule, a member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest described in paragraphs (b)(2)(A)(i), (b)(2)(H) (with respect to pressuring), (b)(2)(I), (b)(2)(K), (b)(2)(L), (b)(2)(M), (b)(2)(N) and Supplementary Material .02(a) of this Rule.

(3) Notwithstanding paragraph (j)(1) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must establish, maintain and enforce written policies and procedures reasonably designed to comply with paragraphs (g)(1), (g)(2), (g)(4) and (g)(6) of this Rule.

[(3)] *(4)* Debt research reports provided to institutional investors pursuant to this exemption ("institutional debt research") must disclose prominently on the first page that:

(A) "This document is intended for institutional investors and is not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors."

(B) If applicable, "The views expressed in this report may differ from the views offered in [Firm's] debt research reports prepared for retail investors."

(C) If applicable, "This report may not be independent of [Firm's] proprietary interests. [Firm] trades the securities covered in this report for its own account and on a discretionary basis on behalf of certain clients. Such trading interests may be contrary to the recommendation(s) offered in this report."

(5) Notwithstanding paragraph (j)(4) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must disclose prominently the disclosures required by paragraphs (j)(4)(A) and (j)(4)(C) of this Rule.

[(4)] *(6)* A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors. A member may not rely on this exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor.

[(5)] *(7)* This paragraph (j) does not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.

(k) No Change.

• • • *Supplementary Material:*

.01 through .11 No Change.

.12 Distribution of Institutional Debt Research to Non-U.S. Investors. The requirements of paragraphs (j)(1)(A) and (B) of this Rule shall not apply to the distribution of an institutional debt research report by a non-U.S. affiliate of a member to a non-U.S. investor, provided that:

(a) The non-U.S. investor is not a customer of the member;

(b) The non-U.S. investor is a customer of the non-U.S. affiliate of the member; and

(c) The non-U.S. affiliate of the member has a reasonable basis to believe that the customer meets the definition of "institutional account" in Rule 4512(c).

.13 Distribution of Institutional Debt Research for Informational Purposes

(a) A member may distribute institutional debt research reports to the persons described in paragraph (c) of this Supplementary Material .13 for informational purposes unrelated to investing in debt securities, provided that the member does not distribute the reports prior to their publication and the member has disclosed that:

(1) The member may provide the recipient debt research reports that were prepared for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors; and

(2) The institutional debt research reports would be provided only for informational purposes and not for the purpose of making an investment decision related to debt securities.

(b) If the person receiving institutional debt research pursuant to this Supplementary Material .13 does not contact the member to request that such institutional debt research not be provided, the member may reasonably conclude that the person has consented to receiving debt institutional research according to the terms of this Supplementary Material .13.

(c) Institutional debt research may be distributed for informational purposes unrelated to investing in debt securities pursuant to this Supplementary Material .13 to:

(1) Regulators for regulatory purposes;

(2) Academics for academic purposes;

(3) Issuers for the purpose of enhancing knowledge of their industry and competitors and market and economic factors; and

(4) Media organizations for news gathering purposes.

.14 Public Appearances by Research Analysts. A member or debt research analyst will not be required to make a disclosure required by paragraph (d) of this Rule where attendance at the public appearance is limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Members must maintain records of public appearances by debt research analysts sufficient to demonstrate that attendance at the public appearance was limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Such records must be maintained for at least three years from the date of the public appearance.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 14, 2014, FINRA filed SR–FINRA–2014–048 to adopt new Rule 2242 to address conflicts of interest relating to the publication and distribution of debt research reports.[4] On February 19, 2015, FINRA filed Amendment No. 1 responding to the comments received to the proposal as well as to propose amendments in response to these comments.[5] The proposed rule change, as modified by Amendment No. 1 thereto, was approved by the Commission on July 16, 2015.[6]

Consistent with the proposed rule change, FINRA announced an effective date for Rule 2242 of February 22, 2016 in a *Regulatory Notice* published on August 26, 2015.[7] FINRA subsequently delayed implementation of the Rule until July 16, 2016 to give members additional time to implement the requirements of the Rule, including incorporating some guidance published by FINRA in some Frequently Asked Questions.[8]

Distribution to Non-U.S. Investors by Non-U.S. Affiliates of Members

Rule 2242(j) exempts debt research reports distributed solely to eligible institutional investors from most of the provisions regarding supervision, coverage determinations, budget and compensation determinations, and all of the disclosure requirements applicable to debt research reports distributed to retail investors. Rule 2242(j)(2) sets out the provisions of the Rule to which institutional debt research remains subject, and Rule 2242(j)(3) specifies a "health warning" that must be prominently disclosed on the first page of institutional debt research, alerting recipients that, among other things, the research report is not subject to all of the protections of retail debt research. Rule 2242(j)(1) requires either negative or affirmative written consent for eligible institutional investors to receive institutional debt research pursuant to the exemption.

FINRA is proposing to clarify the application of Rule 2242(j) to non-U.S. investors that are customers of a member's U.S. affiliate but not customers of the member. Specifically, FINRA is proposing to amend Rule 2242 to include Supplementary Material providing that the requirements of paragraphs (j)(1)(A) and (B) of the Rule[9] shall not apply to the distribution of an institutional debt research report by a non-U.S. affiliate of a member to a non-U.S. investor, provided that: (a) The non-U.S. investor is not a customer of the member; (b) the non-U.S. investor is a customer of the non-U.S. affiliate of the member; and (c) the non-U.S. affiliate of the member has a reasonable basis to believe that the customer meets the definition of "institutional account" in Rule 4512(c). A member's research reports, including globally branded research reports, may be distributed by a non-U.S. affiliate of the member to its non-U.S. customers pursuant to proposed Supplementary Material .12.

FINRA drafted the institutional debt research exemption with U.S. customers in mind. FINRA is concerned that, absent the proposed amendment, the exemption may be impractical for some U.S. member firms with global operations. These firms typically have non-U.S. affiliates that distribute the member research to those affiliates' non-U.S. customers. In many cases, the U.S. member and its non-U.S. affiliates will produce a single globally branded research product, which the non-U.S.

[4] *See* Securities Exchange Act Release No. 73623 (November 18, 2014), 79 FR 69905 (November 24, 2014) (Notice of Filing of File No. SR–FINRA–2014–048).

[5] *See* Securities Exchange Act Release No. 74490 (March 12, 2015), 80 FR 14198 (March 18, 2015) (Notice of Filing of Amendment No. 1 to File No. SR–FINRA–2014–048).

[6] *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[7] *See Regulatory Notice* 15–31 (August 2015).

[8] *See* Securities Exchange Act Release No. 77158 (February 17, 2016), 81 FR 9065 (February 23, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–008). *See also* Securities Exchange Act Release No. 77726 (April 27, 2016), 81 FR 26593 (May 3, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–013).

[9] Rule 2242(j)(1)(A) allows distribution of institutional debt research via negative written consent to a person who meets the definition of a qualified institutional buyer (QIB) and where, pursuant to FINRA Rule 2111(b): (1) The member or associated person has a reasonable basis to believe that the QIB is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and (2) the QIB has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to FINRA Rule 2111 and such affirmation is broad enough to encompass transactions in debt securities. Rule 2242(j)(1)(B) allows distribution of institutional debt research via affirmative written consent to a person who meets the definition of "institutional account" in FINRA Rule 4512(c).

affiliates will distribute to their own customers. Rule 2242(j)(4) states that a member may not rely on the institutional debt research exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor. Thus, to the extent these member firms with global research operations cannot obtain the required consents from all non-U.S. customers of their non-U.S. affiliates, they would lose the ability to use the exemption with respect to institutional debt research distributed to their U.S. customers—the intended purpose of the Rule. Alternatively, the non-U.S. affiliates would be required to cut off distribution of such research to non-U.S. customers that could not or would not give the required consent,[10] notwithstanding that receipt of the research is permitted and subject to applicable regulations in the home jurisdiction. Under these circumstances, FINRA believes where these customers are not also customers of the U.S. broker-dealers, the regulatory concerns addressed by the consent requirements of the exemption are far more attenuated.

Importantly, the proposed rule change would have no investor protection impact on either U.S. institutional investors or non-U.S. customers of the U.S. broker-dealer, as the consent requirements would continue to apply under those circumstances. Moreover, FINRA believes the proposed rule change would have minimal investor protection impact on the non-U.S. institutional investors, as the institutional debt research they would receive would still be subject to all other aspects of Rule 2242(j), including notably the "health warning" that identifies the intended institutional audience and highlights the key conflicts associated with the research report.

Distribution to Persons for Informational Purposes

The requirements of Rule 2242 are premised on the idea that debt research reports are distributed to investors that may base their investment decisions on the debt research reports or may incorporate elements of the debt research reports into their investment decisions. FINRA is aware that some members make their research reports available to some persons for specific informational purposes unrelated to investing in debt securities. The institutional exemption in Rule 2242(j) does not currently expressly contemplate distributing institutional debt research reports to these "non-investors." FINRA believes that it is appropriate to permit members to distribute institutional debt research reports to these persons, provided that the persons negatively consent to receiving institutional debt research with the understanding that the research is not being provided for investment purposes.

The proposed rule change would amend Rule 2242 to include Supplementary Material .13 permitting a member to distribute institutional debt research reports to specified persons for informational purposes unrelated to investing in debt securities, provided that the member does not distribute the reports prior to their publication and the member has disclosed that: (1) The member may provide to institutional investors debt research reports that are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors; and (2) the debt research reports would be provided only for informational purposes and not for the purpose of making an investment decision related to debt securities. The proposed Supplementary Material would also provide that, if the person receiving institutional debt research does not contact the member to request that such institutional debt research reports not be provided, the member may reasonably conclude that the person has consented to receiving debt institutional research reports according to the terms of the Supplementary Material.

The proposed Supplementary Material sets out the circumstances where institutional debt research may be distributed for informational purposes unrelated to investing in debt securities: (1) Regulators for regulatory purposes; (2) academics for academic purposes; (3) issuers for the purpose of enhancing knowledge of their industry and competitors and market and economic factors; and (4) media organizations for news gathering purposes.

FINRA believes that permitting the provision of institutional debt research to these persons for the specified informational purposes serves the public interest without investor protection implications.

Distribution of Third-Party Debt Research Reports to Institutional Investors

FINRA previously stated that the institutional exemption in Rule 2242(j) applies to the content and disclosure requirements for third-party debt research reports.[11] FINRA is proposing to amend Rule 2242 to clarify the requirements applicable to the distribution of third-party debt research reports pursuant to the institutional debt research exemption.

The proposed rule change would amend Rule 2242 to clarify that a member that distributes third-party debt research reports to institutional investors pursuant to the exemption must establish, maintain and enforce written policies and procedures reasonably designed to comply with paragraphs (g)(1), (g)(2), (g)(4) and (g)(6) of the Rule.[12] The review requirements in paragraphs (g)(2) and (g)(4) for third-party debt research reports and independent third-party debt research reports, respectively, would apply to reports distributed to retail investors or to institutional investors. Accordingly, third-party debt research reports distributed pursuant to the exemption would be subject to the same review requirements as third-party debt research reports distributed to retail investors.[13]

With respect to disclosures, the proposed rule change would clarify that third-party debt research reports distributed pursuant to the institutional exemption are not required to carry the specific disclosures applicable to retail debt research set forth in paragraph (g)(3) of the Rule. FINRA believes that it is consistent with the exemption not to require specific disclosures when distributing third-party research reports, but instead to require a "health warning." Accordingly, the proposed rule change would amend Rule 2242 to clarify that third-party debt research reports distributed to institutional investors must disclose prominently: (A) "This document is intended for institutional investors and is not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors"; and (B) if applicable, "This report may not be independent of [Firm's] proprietary interests. [Firm] trades the securities covered in this report for its own account and on a discretionary basis on behalf of certain clients. Such trading interests may be contrary to the recommendation(s) offered in this report." [14]

FINRA has not proposed requiring that third-party debt research reports distributed to institutional investors disclose prominently the disclosure required by paragraph (j)(4)(B) of the Rule.[15] FINRA intended the disclosure in paragraph (j)(4)(B) of the Rule to apply only when the research report was produced by the member.[16] FINRA notes that the Rule does not require similar disclosure for third-party research reports distributed to retail investors, nor is there such a requirement in Rule 2241 with respect to third-party equity research reports. FINRA believes that it is commonly understood that the views in third-party research reports may differ from the views of the member or from other third-party research reports. For these reasons, FINRA believes that it is appropriate not to require third-party debt research reports distributed to institutional investors to disclose prominently the disclosure required by paragraph (j)(4)(B) of the Rule.

In addition, FINRA has not proposed to include paragraph (g)(5) of the Rule in the list of applicable paragraphs of the Rule set forth in proposed paragraph (j)(3). Paragraph (g)(5) of the Rule dictates the circumstances in which paragraph (g)(3) of the Rule does not apply to third-party research reports.[17] Because FINRA is proposing not to require the specific disclosures set forth in paragraph (g)(3) of the Rule when distributing third-party research reports, but instead to require a "health warning," FINRA believes that paragraph (g)(5) of the Rule should not apply to third-party debt research reports distributed via the exemption to institutional investors.

Public Appearances by Debt Research Analysts

Rule 2242(d) requires disclosures from debt research analysts in public appearances, including debt research analysts that only prepare debt research reports pursuant to the institutional debt research exemption. FINRA has previously stated that it would be inconsistent with the rationale of the institutional exemption—*i.e.,* that all recipients of debt research have sufficient sophistication to understand the conflicts of interest without the specific disclosures and other protections afforded retail debt research—to allow debt research analysts to make public appearances before an audience that could include retail investors.[18]

However, based on the same rationale, FINRA believes that it is consistent with the institutional exemption in paragraph (j) of the Rule to exempt public appearances by debt research analysts from the disclosure requirements in paragraph (d) of the Rule where attendance is limited to institutional investors eligible to receive institutional debt research reports. Accordingly, FINRA is proposing new Supplementary Material .14 to clarify that the public appearance disclosure requirements do not apply in those circumstances. The proposed rule change would require that the member maintain records sufficient to demonstrate that attendance at the public appearance was limited to institutional investors eligible to receive institutional debt research. The proposed rule change would require that the records be maintained for at least three years from the date of the public appearance.

The disclosure requirements of paragraph (d) of the Rule would apply where attendance at the public appearance was not limited to institutional investors eligible to receive institutional debt research reports.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be July 16, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act in that it clarifies the requirements of Rule 2242, which addresses conflicts of interest relating to the publication and distribution of debt research reports. Specifically, FINRA believes the proposed rule change is consistent with the Act in that it clarifies: (1) The consent requirement for institutional debt research reports distributed to non-U.S. investors by non-U.S. affiliates of members; (2) the consent requirement for institutional debt research reports distributed to specified persons for informational purposes unrelated to investing in debt securities; (3) the scope of the exemption for third-party debt research reports distributed via the exemption to institutional investors and the applicable requirements; and (4) the disclosure requirements for debt research analysts in public appearances. FINRA further believes that the proposed rule change would facilitate the flow of valued information to sophisticated U.S. investors, while maintaining the investor protections intended by the Rule for those investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The clarifications in the proposed rule change will result in reduced burdens for members to comply with the requirements of Rule 2242. The proposed rule change does not impose any material new obligations on members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[10] FINRA understands that firms have had difficulty obtaining consents from non-U.S. entities for several reasons, including the absence of the QIB standard in other jurisdictions and confusion from the customer as to why it must provide affirmative written consent under a U.S.-based rule regime to continue to receive a valued product from the non-U.S. affiliate of which it is a customer.

[11] *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[12] *See* proposed Rule 2242(j)(3).

[13] FINRA notes that, consistent with FINRA Rule 2210(b)(3) (Communications with the Public), third-party debt research reports that are subject to review under Rule 2242(g)(2) (*i.e.,* non-independent third-party debt research reports) do not require a registered principal to approve the communication prior to distribution, provided that the firm establishes and implements written procedures for the supervision and review of such communications. *See* FINRA Rule 2210 Questions and Answers at *http://www.finra.org/industry/finra-rule-2210-questions-and-answers.*

[14] *See* proposed Rule 2242(j)(5).

[15] Rule 2242(j)(4)(B) requires that debt research reports provided to institutional investors pursuant to the exemption disclose prominently on the first page, if applicable, that "[t]he views expressed in this report may differ from the views offered in [Firm's] debt research reports prepared for retail investors."

[16] FINRA has previously stated that the disclosure is required only if the member produces both retail and institutional debt research reports that sometimes differ in their views. *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[17] Rule 2242(g)(5) states that "[a] member shall not be considered to have distributed a third-party debt research report for the purposes of paragraph (g)(3) where the research is an independent third-party debt research report and made available by a member (a) upon request; (b) through a member-maintained Web site; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent debt research on the solicited debt security and the customer requests such independent debt research."

[18] *See* FINRA Research Rules Frequently Asked Questions at *https://www.finra.org/industry/faq-research-rules-frequently-asked-questions-faq.*

[19] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–017, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13318 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77960; File No. SR–BatsBZX–2016–20]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 14.13, Company Listing Fees

June 1, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 20, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,[5] which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products ("ETPs") [6] on the Exchange,[7] which it subsequently modified again on June 4, 2014.[8] On October 16, 2014, the Exchange modified Rule 14.13, entitled "Company Listing Fees" to eliminate the annual fees for ETPs not participating in the Exchange's Competitive Liquidity Provider Program pursuant to Rule 11.8, Interpretation and Policy .02 (the "CLP Program").[9] On May 22, 2015, the Exchange further modified Rule 14.13 to eliminate the $5,000 application fee for ETPs, effectively eliminating any compulsory fees for both new ETP issues and transfer listings in ETPs on the Exchange [10] and on September 30, 2015, the Exchange began offering an incentive payment to ETPs that are listed on the Exchange based on the consolidated average daily volume (the "CADV") of the ETP (the "Issuer Incentive Program").[11]

The Exchange is now proposing to make an administrative change to the Issuer Incentive Program such that an ETP must be enrolled by completing the Issuer Incentive Program Enrollment Form with the Exchange in order to receive payment under the Issuer Incentive Program. Practically, the Exchange cannot provide payment to an ETP that is eligible to receive payment under the Issuer Incentive Program without certain bank information from the issuer and the ETP cannot accept payments from the Exchange without confirming that there are no issuer- and fund-specific issues that are created through receipt of the payment. All ETPs will be eligible for enrollment in the Issuer Incentive Program and, as noted above, this proposed change is only an administrative change. As part of this proposal, the Exchange also notes that where an ETP is not enrolled with the Exchange on the last day of a quarter for which the ETP is eligible to receive payments under the Issuer Incentive Program, any such payment is forfeited by the ETP.

The Exchange proposes to implement the amendments to Rule 14.13(b)(2)(C) effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.[12] Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(4) and 6(b)(5) of the Act,[13] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that requiring enrollment with the Exchange in order to receive payment under the Issuer Incentive Program is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because, as noted above, the Exchange cannot provide payment to an ETP that is eligible to receive payment under the Issuer Incentive Program without bank information from the issuer and the ETP cannot receive payments from the Exchange without confirming that there are no issuer- and fund-specific issues that are created through receipt of the payment. Thus, the proposal will provide a mechanism to ensure that both the Exchange and the ETP are prepared to provide and receive the payment, respectively. Additionally, such requirement will apply equally to all ETPs eligible for payment under the Issuer Incentive Program.

Similarly, the Exchange believes that requiring an ETP to be enrolled with the Exchange on at least the last day of the quarter for which the ETP is eligible to receive payments under the Issuer Incentive Program in order to receive the payment is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because an ETP can be enrolled as part of the application process prior to the ETP even listing on the Exchange and even where the ETP is enrolled after listing on the Exchange, the process is very simple and involves only standard bank account information. Further, to the extent that an ETP is not enrolled on the last day of the quarter but would otherwise be eligible to receive payment, the Exchange believes that it is reasonable, fair and equitable, and not unfairly discriminatory for the ETP to forfeit such payment because, as noted above, the ETP can be enrolled as part of the application process prior to listing on the Exchange and the forfeiture of such payments (rather than allowing the payments to carry over for multiple quarters) provides the Exchange with financial certainty about the costs associated with the Issuer Incentive Program and will allow the Exchange to better approximate its operational costs.

Based on the foregoing, the Exchange believes that the proposed amendment to Rule 14.13(b)(2)(C) to implement the Issuer Incentive Program is a reasonable, equitable, and non-discriminatory allocation of fees to issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange does not believe that the proposed change burdens competition, but instead, enhances competition, as it is intended to increase the competitiveness of the Exchange's listings program by making clear the requirements for the Exchange to provide ETPs with quarterly payments based on the CADV of the ETP. As such, the proposal is a competitive proposal that is intended to further clarify the Issuer Incentive Program and attract additional ETP listings, which will, in turn, benefit the Exchange and all other BZX-listed ETPs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [14] and paragraph (f) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–20 on the subject line.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[6] As defined in Rule 11.8(e)(1)(A), the term "ETP" means any security listed pursuant to Exchange Rule 14.11.

[7] *See* Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR–BATS–2012–010).

[8] *See* Securities Exchange Act Release No. 72377 (June 12, 2014), 79 FR 34822 (June 18, 2014) (SR–BATS–2014–024).

[9] *See* Securities Exchange Act Release No. 73414 (October 23, 2014), 79 FR 64434 (October 29, 2014) (SR–BATS–2014–050).

[10] *See* Securities Exchange Act Release No. 75085 (June 1, 2015), 80 FR 32190 (June 5, 2015) (SR–BATS–2015–39).

[11] *See* Securities Exchange Act Release No. 76113 (October 8, 2015), 80 FR 62142 (October 15, 2015) (SR–BATS–2015–80).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–20, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13314 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension: Form F–1, SEC File No. 270–249, OMB Control No. 3235–0258

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–1 (17 CFR 239.31) is used by certain foreign private issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–1 takes approximately 1,709 hours per response and is filed by approximately 63 respondents. We estimate that 25% of the 1,709 hours per response (427.25 hours) is prepared by the registrant for a total annual reporting burden of 26,917 hours (427.25 hours per response × 63 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 1, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13320 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension: Form S–1, SEC File No. 270–058, OMB Control No. 3235–0065

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–1 (17 CFR 239.11) is used by domestic issuers who are not eligible to use other forms to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form S–1 takes approximately 667 hours per response and is filed by approximately 901 respondents. We estimate that 25% of the 667 hours per response (166.75 hours) is prepared by the registrant for a total annual reporting burden of 150,242 hours (166.75 hours per response × 901 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 1, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13321 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77957; File No. SR–MIAX–2016–12]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 506

June 1, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 506, Collection and Dissemination of Quotations.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 506, Collection and Dissemination of Quotations, to state that the Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a designated percentage of the previously disseminated bid (offer) size (the "percentage size increase").

Current Rule 506(b) states that the Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer when: (i) The Exchange's disseminated bid or offer price increases or decreases; (ii) the size associated with the Exchange's disseminated bid or offer decreases; or (iii) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage of the size associated with the previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on a class-by-class basis by the Exchange and announced to the Membership through a Regulatory Circular.[3]

Current Rule 506(b)(1)(iii) does not include a minimum percentage size increase that must be equaled or exceeded before the Exchange's System[4] will update the Exchange's disseminated bid and offer when the bid or offer price remains the same.[5] The Exchange is proposing to add a minimum percentage size increase to Rule 506(b)(1)(iii) that must be met in order for the System to update the Exchange's disseminated quotation. Specifically, the Rule would state that such percentage shall never be less than 10% or greater than the current 20%. Thus, under the proposed Rule, the percentage size increase must be at least 10% before the System will update the Exchange's disseminated quotation at the same price, and the Exchange may never establish a percentage size increase that is greater than 20%.

The Exchange will continue to determine the level of the required percentage size increase on a class-by-class basis and announce this to the Membership through a Regulatory Circular. As stated in the current Rule, the percentage size increase shall never exceed 20%, meaning that in all cases where the Exchange's disseminated size at the same price increases by 20% or more, the System will update the Exchange's disseminated bid and offer.

The purpose of the proposed rule change is to mitigate quote traffic by establishing a minimum percentage size increase at the same price which must be met before the System will disseminate an updated bid and offer. In order for the System to update the size of the disseminated bid and offer at the previously disseminated price, the size of the bid or offer must increase by at least 10%, or no update will occur.

The Exchange currently lists 318,280 option series overlying 2,390 underlying securities[6] for which it must publish the highest bid, lowest offer, and the aggregate quotation size available for each, under Rule 602 of Regulation NMS.[7] Given the number of series and the number of quote updates submitted by Members on a continual basis throughout the trading day, the Exchange believes there is a benefit in establishing a minimum percentage size increase at the same price that must be met before the Exchange will disseminate an updated quotation. The minimum percentage size will ensure that only quotations at the same price with a meaningful percentage size increase are disseminated by the System.

The Exchange believes that the proposed minimum percentage size increase required for the System to update the Exchange's disseminated bid and offer at the previously disseminated price will reduce the dissemination of quotations that do not represent a material change in size from the previously disseminated quotation, thus making the System and the marketplace as a whole more efficient. Further, the Exchange believes the proposed rule change will alleviate the potential burden on quotation vendors in handling excessive quote updates that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 506(b)(1).

[4] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] The System automatically disseminates an updated bid and offer price, together with the size associated with such bid and offer each time the Exchange's disseminated bid or offer price increases or decreases, and when the size associated with the Exchange's disseminated bid or offer decreases. *See* Exchange Rules 506(b)(1)(i) and (ii). The instant proposed rule change addresses only the circumstance where the Exchange's disseminated size increases at the same price as the prior disseminated price.

[6] Data as of May 2, 2016.

[7] 17 CFR 242.602.

provide minimal value due to relatively small incremental changes in the aggregate size of bids and offers available on the Exchange.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(5) of the Act [9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open national market system by reducing the frequency and number of extraneous quotation updates disseminated by the System. This would enable quotation vendors to who the Exchange disseminates quotations to operate more efficiently, which in turn would allow the national market system to operate more efficiently.

Further, the proposed rule change is designed to protect investors and the public interest and to promote just and equitable principles of trade by ensuring only quotation updates that represent a meaningful increase in the aggregate size available on the Exchange are disseminated, thereby reducing the frequency and number of quotation updates that are disseminated by the System, that quotation vendors must handle, making the market as a whole more efficient.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will not impose any burden on intra-market competition because it applies to all MIAX participants equally, thus placing all MIAX participants on an equal playing field.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–MIAX–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–12 and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13313 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension: Rules 7a–15 thru 7a–37, SEC File No. 270–115, OMB Control No. 3235–0132

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rules 7a–15 through 7a–37 (17 CFR 260.7a–15–260.7a–37) under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) set forth the general requirements as to form and content of applications, statements and reports that must be filed under the Trust Indenture Act. The respondents are persons and entities subject to requirements of the Trust Indenture Act. Trust Indenture Act Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The rules are assigned only one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 1, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13329 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77956; File No. SR–CFE–2016–001]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Proposed Rule Change Regarding the Reporting Time for Exchange of Contract for Related Position Transactions and Block Trades That Involve Trade at Settlement Transactions

June 1, 2016.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 12, 2016 CBOE Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission ("CFTC"). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act ("CEA")[2] on May 12, 2016.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE Rule 404A (Trade at Settlement Transactions) defines a TAS transaction as a transaction in a CFE contract at a price equal to the daily settlement price, or a specified differential above or below the daily settlement price, for the contract on a trading day. The actual amount is determined subsequent to the transaction based upon the daily settlement price of the contract.

CFE is submitting this amendment in conjunction with CFE's submission of a separate rule certification to the CFTC to change the end of trading hours for TAS transactions in CBOE Volatility Index ("VX") futures from three minutes prior to the close of regular trading hours at the end of a business day to two minutes prior to the close of regular trading hours at the end of a business day.[3] This change to TAS trading hours in VX futures means that the trading hours for TAS transactions in VX futures will end at 3:13 p.m.[4] instead of 3:12 p.m.

CFE currently permits TAS transactions only in VX futures. Extending the TAS trading hours in VX futures by one minute will provide market participants that engage in TAS transactions toward the end of TAS trading hours a better sense of the likely daily settlement price and how many contracts need to be traded utilizing TAS transactions in order to execute hedging and roll strategies.

As a result of the change in TAS trading hours described above, the Exchange proposes a corollary change to amend its rules related to the reporting time for Exchange of Contract for Related Position ("ECRP") transactions and Block Trades that involve TAS transactions. The scope of this filing is limited solely to the application of the rule amendments to security futures that may be traded on CFE. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As previously mentioned, he Exchange has submitted a rule filing certification to the CFTC to extend the trading hours for TAS transactions in VX futures from 3:12 p.m. to 3:13 p.m. As such, the Exchange is proposing to amend CFE Rules 414 and 415, which set forth the reporting requirements for ECRP transactions and Block Trades that involve TAS transactions, in order to align the reporting time frames with the revised trading hours for VX TAS transactions. Although the revisions to these reporting time frames are being made as a result of the change in trading hours for VX TAS transactions, the revised reporting time frames in the

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] *See* CFE Rule Certification Submission Number CFE–2016–006 submitted to the CFTC on May 12, 2016.

[4] All times referenced are Chicago time.

proposed rule change would apply to any product listed on CFE, including a security future, in the event that CFE were to amend its rules to permit TAS transactions in that product.

Reporting Time Frame for ECRP Transactions That Involve TAS Transactions

Paragraph (i) of CFE Rule 414 (Exchange of Contract for Related Position) currently provides (i) that the CFE legs of TAS ECRP transactions which are reported to CFE after 3:12 p.m. Monday through Thursday will be submitted for clearing for the next business day and (ii) that TAS ECRP transactions may not be reported after 3:12 p.m. on Friday. The proposed rule change changes the references in Rule 414(i) from 3:12 p.m. to 3:13 p.m. to be consistent with the change in TAS trading hours.

CFE believes this extension is justified because it will allow CFE to align its ECRP transaction reporting requirements with the revised trading hours for VX TAS transactions.

Reporting Time Frame for Block Trades That Involve TAS Transactions

Paragraph (g) of CFE Rule 415 (Block Trades) currently provides (i) that TAS Block Trades which are reported to CFE after 3:12 p.m. Monday through Thursday will be submitted for clearing for the next business day and (ii) that TAS Block Trades may not be reported after 3:12 p.m. on Friday. The proposed rule change changes the references in Rule 415(g) from 3:12 p.m. to 3:13 p.m. to be consistent with the change in TAS trading hours.

CFE believes this extension is justified because it will allow CFE to align its Block Trade reporting requirements with the revised trading hours for VX TAS transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(5)[6] and 6(b)(7)[7] in particular in that it is designed:

- To foster coordination of the Exchange's reporting provisions relating to TAS ECRP and Block Trades with the revised trading hours for VX TAS transactions; and
- to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(5).
[7] 15 U.S.C. 78f(b)(7).

The Exchange believes that the proposed rule change would benefit market participants because it would provide them with additional time to report ECRP transactions and Block Trades that involve TAS transactions that market participants wish to have cleared on the same business day as the calendar day of the transaction to align with the revised trading hours for TAS transactions in VX futures.

In addition, the proposed rule change benefits market participants by allowing the reporting of ECRP transactions and Block Trades that involve TAS transactions on Fridays to be done during the entire time period that TAS transactions in VX futures are permitted in order to be consistent with the change in TAS trading hours for VX futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will not burden competition because the new reporting time provisions for ECRP transactions and Block Trades that involve TAS transactions will align with the revised trading hours for VX TAS transactions and will apply to equally all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective on or after May 26, 2016, on a date to be announced by the Exchange through the issuance of a circular. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CFE–2016–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CFE–2016–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2016–001, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13312 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77961; File No. SR–C2–2016–005]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Senior Management Authority

June 1, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Bylaws and Rules with respect to delegations of certain authorities to senior management. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

[FOURTH] *FIFTH* AMENDED AND RESTATED

BYLAWS OF

C2 OPTIONS EXCHANGE, INCORPORATED

* * * * *

ARTICLE VI Advisory Board

Section 6.1. Advisory Board.

The Board will establish an Advisory Board which shall advise the Board and [the Office of the Chairman] *management* regarding matters of interest to Trading Permit Holders. It shall consist of such number of members as set by the Board from time to time, including at least two members who are Trading Permit Holders or persons associated with Trading Permit Holders. The Chief Executive Officer, or his or her designee, shall be the Chairman of the Advisory Board. The members of the Advisory Board shall be recommended by the Nominating and Governance Committee for approval by the Board. There shall be a Trading Permit Holders Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Trading Permit Holders or persons associated with Trading Permit Holders, which shall act as the Representative Director Nominating Body if and to the extent required by these Bylaws.

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C2 Options Exchange, Incorporated

Rules

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Table of Contents

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Chapter 16 Summary Suspension [by Chairman of the Board or Vice Chairman of the Board]

* * * * *

Rule 6.33. Authority to Take Action Under Emergency Conditions

The [Chairman of the Board] *Chief Executive Officer*, the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, natural disaster, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. The person taking the action shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Bylaws and Rules as it relates to certain references to senior management. The Exchange notes that historically, the C2 Chairman of the Board also held the title of Chief Executive Officer ("CEO"). Currently, however, the roles of Chairman of the Board, CEO, and President are now occupied by three different individuals. As such, the Exchange has conducted a review of its rules relating to the authorities delegated to senior management and seeks to make changes to its rules to more accurately reflect its senior management structure.

First, the Exchange proposes to amend section 6.1. (Advisory Board), of the Exchange's Bylaws. Section 6.1 currently provides that the Board will establish an Advisory Board which shall advise the Board and the Office of the Chairman regarding matters of interest to Trading Permit Holders ("TPHs"). The Exchange notes that the Advisory Board's Charter however, provides that the Advisory Board shall advise the Board and "management" regarding matters of interest to TPHs. In order to conform the language in section 6.1 to the Advisory Board Charter, the Exchange proposes to replace the reference to "Office of the Chairman" with "management". The Exchange believes the proposed change would alleviate confusion and maintain consistency between the Exchange's governance documents. Additionally, the title of the Bylaws would be changed to Fifth Amended and Restated Bylaws of C2.

Next, the Exchange proposes to amend the title of chapter 16 in the C2 Rule's Table of Contents. Currently, the title of chapter 16 is "Summary Suspension by Chairman of the Board or

Vice Chairman of the Board." The Exchange notes that rules contained within CBOE chapter XVI are incorporated into C2's chapter 16. CBOE Chapter 16 currently provides that the Chairman of the Board or President may summarily suspend a TPH and limit or prohibit any person with respect to access to services offered by the Exchange. The Exchange notes however, that CBOE is concurrently proposing to amend its rules to provide that the CEO (rather than Chairman) or President may summarily suspend a TPH.[3] Additionally, the Exchange notes that it no longer maintains the role of Vice Chairman of the Board. As such, the Exchange proposes to amend the chapter 16 title to simply state "Summary Suspension" to avoid confusion and maintain clarity in the rules.

Lastly, the Exchange proposes to amend Rule 6.33 (Authority to Take Action Under Emergency Conditions). Rule 6.33 currently provides that the Chairman of the Board, the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances. The Exchange notes that the CEO's responsibility is that of general charge and supervision of the business of the Corporation,[4] whereas the Chairman of the Board's responsibility is that of the presiding officer at all meetings of the Board and stockholders, as well as of other powers and duties as are delegated to him or her by the Board.[5] The Exchange believes the responsibilities currently delegated to the Chairman of the Board under Rule 6.33 pertains to the general charge and supervision of the Exchange's business and therefor fall within the scope of the CEO's stated responsibilities, instead of the Chairman's. Accordingly, the Exchange proposes to eliminate the reference to "Chairman of the Board" and replace with "Chief Executive Officer."

[3] *See* SR–CBOE–2016–047.
[4] *See* Section 5.2 of the Bylaws.
[5] *See* Section 3.6 of the Bylaws.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule changes will more accurately reflect the current management structure and ensure that rules relating to senior management authority are clear and transparent, which reduces confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants.

In particular, the Exchange believes the proposed change to section 6.1 of C2's Bylaws eliminates an outdated and potentially confusing term (*i.e.,* Office of the Chairman) and conforms the language to the C2 Advisory Board Charter, thereby reducing confusion, which removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants. The Exchange believes the proposal to transfer the authorities under Rule 6.33 from the Chairman of the Board to the CEO is appropriate and protects investors and the public interest of market participant [sic] as those authorities relate to the general charge and supervision of the Exchange business, which responsibility is delegated to the CEO. Additionally, the Exchange notes that while delegation of the authority is being modified, the substantive practices of the Exchange will remain the same. The Exchange believes renaming the chapter 16 title alleviates confusion in light of CBOE's concurrent proposed rule change to chapter 16 and also in light of the fact that it currently references a role no longer used (*i.e.,* Vice Chairman).

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).
[8] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change imposes any burden on intramarket competition because it applies to all TPHs and is not designed to address any competitive issues. Additionally, as noted above, while the delegation of authority is being modified, the substantive practices of the Exchange will remain the same. C2 does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely relates to the delegation of authorities to senior management and only affects C2.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2016–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–005, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13316 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, June 9, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Adjudicatory matters;
Opinion; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: June 2, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13478 Filed 6–3–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77962; File No. SR–CBOE–2016–047]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Senior Management Authority

June 1, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Bylaws and Rules with respect to delegations of certain authorities to senior management. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

[SIXTH] SEVENTH AMENDED AND RESTATED

BYLAWS OF

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

* * * * *

ARTICLE VI Advisory Board

Section 6.1. Advisory Board.

The Board will establish an Advisory Board which shall advise the Board and [the Office of the Chairman] *management* regarding matters of interest to Trading Permit Holders. It shall consist of such number of members as set by the Board from time to time, including at least two members who are Trading Permit Holders or persons associated with Trading Permit Holders. The Chief Executive Officer, or his or her designee, shall be the Chairman of the Advisory Board. The members of the Advisory Board shall be recommended by the Nominating and Governance Committee for approval by the Board. There shall be a Trading Permit Holders Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Trading Permit Holders or persons associated with Trading Permit Holders, which shall act as the Representative Director Nominating Body if and to the extent required by these Bylaws.

* * * * *

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

Chicago Board Options Exchange, Incorporated

Rules

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Rule 2.15. Divisions of Exchange

The divisions of the Exchange shall include any such divisions as the [Chairman of the Board] *Chief Executive Officer,* with the approval of the Board, may establish. The [Chairman of the Board] *Chief Executive Officer* shall appoint a head of every division, provided that the [Chairman of the Board] *Chief Executive Officer* shall be the head of the Executive Division. Any official action taken by the [Chairman of the Board] *Chief Executive Officer* or the President shall, for purposes of the hearing and review provided for in Chapter XIX, be deemed to be action of the Executive Division.

* * * * *

Rule 4.10. Other Restrictions on Trading Permit Holders

(a) In General. Whenever the [Chairman] *Chief Executive Officer* or President shall find, on the basis of a report of the Department of Compliance or otherwise, that a Trading Permit Holder has failed to perform his contracts or is insolvent or is in such financial or operational condition or is otherwise conducting his business in such a manner that he cannot be permitted to continue in business with safety to his customers or creditors or the Exchange, the [Chairman] *Chief Executive Officer* or the President may summarily suspend the Trading Permit Holder in accordance with Chapter XVI or may impose such conditions and restrictions upon his being a Trading Permit Holder as he considers reasonably necessary for the protection of the Exchange and the customers of such Trading Permit Holder.

(b) Firms Clearing Market-Maker Trades.

* * * * *

(2) A proposed SBT of a Trading Permit Holder as enumerated in subsection (b)(1)(i) through (iii) is subject to the prior approval of the [Exchange's Office of the Chairman ("OOC")] *Chief Executive Officer or President,* when the Trading Permit Holder's Market-Maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters:

(i) 15% of cleared Exchange Market-Maker contract volume for the most recent three (3) months;

(ii) an average of 15% of the number of Exchange registered Market-Makers as of each month and for the most recent three (3) months, or

(iii) 25% of Market-Maker gross deductions (haircuts) defined by SEC Rule 15c3–1 (a)(6) or (c)(2)(x) carried by the Clearing Trading Permit Holder(s) in relation to the aggregate of such haircuts carried by all other Market-Maker clearing organizations for any month end within the most recent three (3) months.

The Exchange shall notify in writing each Trading Permit Holder that clears Market-Maker trades within ten (10) business days from the close of each month of that Trading Permit Holder's proportion of the market making clearing business, whether or not such business exceeds the parameters described in (i), (ii), and (iii) of this subsection (b)(2). Trading Permit Holders subject to this subsection (b)(2) must provide thirty (30) calendar days notice of the proposed SBT, as enumerated in subsection (b)(1)(i) through (iii), to the President or his designee. The [OOC] *Chief Executive Officer or President* may disapprove a Trading Permit Holder's proposed SBT, or approve such SBT subject to certain conditions, within the thirty (30) day period. The [OOC] *Chief Executive Officer or President* may disapprove or condition a Trading Permit Holder's SBT within the thirty (30) day period if the [OOC] *Chief Executive Officer or President* determines that such SBT has the potential to threaten the financial or operational integrity of Exchange Market-Maker transactions.

(3) In addition, at any time, the [OOC] *Chief Executive Officer or President* may impose additional financial and/or operational requirements on a Trading Permit Holder that clears Market-Maker trades when the [OOC] *Chief Executive Officer or President* determines that the Trading Permit Holder's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange Market-Maker transactions.

* * * * *

(6) In considering a proposed SBT, the [OOC] *Chief Executive Officer or President* may consider, among other relevant matters, the following criteria:

* * * * *

(7) In the event the [OOC] *Chief Executive Officer or President* determines, prior to the expiration of the thirty (30) day period set forth in subsection (1) hereof, that a proposed SBT may be approved without conditions, the [OOC] *Chief Executive Officer or President* shall promptly so advise the Trading Permit Holder. All [OOC] *Chief Executive Officer or President* decisions to disapprove or condition a proposed SBT pursuant to subsection (b)(2) hereof or to impose extraordinary requirements pursuant to subsection (b)(3) hereof shall be in writing, shall include a statement setting forth the grounds for the [OOC's] *Chief Executive Officer or President's* decision, and shall be served on the Trading Permit Holder. Notwithstanding any other provisions of the Rules of the Exchange, the Trading Permit Holder may appeal such decision directly to the Board of Directors of the Exchange by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. The application for review shall be in the form prescribed by Rule 19.5(a), and the Board's review shall be conducted in the manner prescribed by Rule 19.5(b), except that the Trading Permit Holder may waive the making of a record. Review by the Board shall be the exclusive method of reviewing a decision of the [OOC] *Chief Executive Officer or President* pursuant to this subsection (b). The appeal to the Board of a decision of the [OOC] *Chief Executive Officer or President* shall not operate as a stay of that decision during the pendency of the appeal. The Exchange shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Securities Exchange Act of all final decisions to disapprove or condition a proposed SBT pursuant to subsection (b)(2) hereof, or to impose extraordinary requirements pursuant to subsection (b)(3) hereof.

* * * * *

(9) The [OOC] *Chief Executive Officer or President* may exempt a Trading Permit Holder from the requirements of subsection (b)(1) hereof, either generally or in respect of specific types of transactions, based on the limited proportion of Market-Maker trades on the Exchange that are cleared by the Trading Permit Holder or on the limited importance that the clearing of Market-Maker trades bears to the total business of the Trading Permit Holder.

* * * * *

Rule 4.14. Liquidation of Positions

Whenever the President *or his designee* shall find, on the basis of a report of the Department of Market Regulation or otherwise, that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all option contracts of one or more classes or series dealt in on the Exchange in excess of the applicable position limit established pursuant to Rule 4.11, he *or his designee* may order all Trading Permit Holders carrying a position in option contracts of such classes or series for such person or persons to liquidate such position as expeditiously as possible consistent with the maintenance of an orderly market. Whenever such an order is given by the President *or his designee,* no Trading Permit Holder shall accept any order to purchase, sell or exercise any option contract for the account of the person or persons named in the order, unless and until the President *or his designee* expressly approves such person or persons for options transactions.

* * * * *

Rule 6.17. Authority To Take Action Under Emergency Conditions

The [Chairman of the Board] *Chief Executive Officer,* the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, natural disaster, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. The person taking the action shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

* * * * *

Rule 6.20. Admission to and Conduct on the Trading Floor; Trading Permit Holder Education

(a) *Admission to Trading Floor.* Unless otherwise provided in the Rules, no one but a Trading Permit Holder, an Order Book Official designated by the Exchange pursuant to Rule 7.3, or PAR Official designated by the Exchange pursuant to Rule 7.12 shall make any transaction on the floor of the Exchange. Admission to the floor shall be limited to Trading Permit Holders, employees of the Exchange, clerks employed by Trading Permit Holders and registered with the Exchange, service personnel and Exchange visitors authorized admission to the floor pursuant to Exchange policy, and such other persons permitted admission to the floor by the President of the Exchange *or his designee.*

* * * * *

Rule 10.2. Contracts of Suspended Trading Permit Holders

When a Trading Permit Holder, other than a Clearing Trading Permit Holder, is suspended pursuant to Chapter XVI of these Rules, all open short positions of the suspended Trading Permit Holder in option contracts and all open positions resulting from exercise of option contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all TPH organizations carrying such positions for the account of the suspended Trading Permit Holder; provided that the [Chairman] *Chief Executive Officer* or President may cause the foregoing requirement to be temporarily waived for such period as he may determine if he shall deem such temporary waiver to be in the interest of the public or the other Trading Permit Holder. No temporary waiver hereunder by the [Chairman] *Chief Executive Officer* or President shall relieve the suspended Trading Permit Holder of its obligations or of damages, nor shall it waive the close out requirements of any other Rule. When a Clearing Trading Permit Holder is suspended pursuant to Chapter XVI of these Rules, the positions of such Clearing Trading Permit Holder shall be closed out in accordance with the Rules of the Clearing Corporation.

* * * * *

Rule 16.1. Imposition of Suspension

A Trading Permit Holder or person associated with a Trading Permit Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a Trading Permit Holder of any self-regulatory organization, or a Trading Permit Holder which is in such financial or operating difficulty that the [Chairman of the Board] *Chief Executive Officer* or the President determines that the Trading Permit Holder cannot be permitted to continue to do business as a Trading Permit Holder with safety to investors, creditors, other Trading Permit Holders, or the Exchange, may be summarily suspended by the [Chairman of the Board] *Chief Executive Officer* or the President. In addition, the [Chairman of the Board] *Chief Executive Officer* or the President may limit or prohibit any person with respect to access to services offered by the Exchange if any of the criteria or the foregoing sentence is applicable to such person or, in the case of a person who is not a Trading Permit Holder, if the [Chairman of the Board] *Chief Executive Officer* or the President determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Trading Permit Holders, or the Exchange. In the event a determination is made to take summary action, as described above, notice thereof will be sent to the Securities and Exchange Commission. Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by the Exchange in accordance with the provisions of Chapter XIX. In addition, the Securities and Exchange Commission may on its own motion order or such a person may apply to the Securities and Exchange Commission for a stay of such summary action pending the results of a hearing pursuant to Chapter XIX.

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Rule 18.31. Awards

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(g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If such a motion has been filed, either party may request the [Office of the Chairman] *Chief Executive Officer or President* to direct that the award be paid to an escrow account maintained by the Exchange. Such request shall be filed with the Secretary of the Exchange within thirty-five days of receipt of such award.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Bylaws and Rules as it relates to references to senior management. The Exchange notes that historically, the CBOE Chairman of the Board also held the title of Chief Executive Officer ("CEO"). Currently, however, the roles of Chairman of the Board, CEO, and President are now occupied by three different individuals. As such, the Exchange has conducted a review of its rules relating to the authorities delegated to senior management and seeks to make conforming changes to its rules to more accurately reflect its senior management structure.

First, the Exchange proposes to amend Rule 2.15 (Divisions of Exchange), Rule 4.10 (Other Restrictions on Trading Permit Holders), Rule 6.17 (Authority to Take Action Under Emergency Conditions), Rule 10.2 (Contracts of Suspended Trading Permit Holders) and Rule 16.1 (Imposition of Suspension) to eliminate references to "Chairman of the Board" and replace those references with "Chief Executive Officer." By way of background, Rule 2.15 currently provides that the Chairman of the Board, with the approval of the Board, may establish divisions of the Exchange and shall appoint a head of every division, provided that the Chairman of the Board is to be the head of the Executive Division. Additionally, Rule 2.15 provides that any official action taken by the Chairman of the Board or the President shall, for purposes of the hearing and review provided for in Chapter XIX, be deemed to be action of the Executive Division. Rule 4.10 currently provides that the Chairman of the Board or President may summarily suspend a Trading Permit Holder ("TPH") or impose conditions and restrictions upon a TPH being a TPH if the Chairman of the Board or President considers it reasonably necessary for the protection of the Exchange and the customers of the TPH based upon certain findings made by the Department of Compliance. Rule 6.17 currently provides that the Chairman of the Board, the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances. Rule 10.2 provides the Chairman of the Board or President may waive the requirement that a TPH Organization that carries short positions for the account of a TPH that is subject to a summary suspension close those positions. Finally Rule 16.1 provides that the Chairman of the Board or President may summarily suspend a TPH and limit or prohibit any person with respect to access to services offered by the Exchange.

The Exchange notes that the CEO's responsibility is that of general charge and supervision of the business of the Corporation,[3] whereas the Chairman of the Board's responsibility is that of the presiding officer at all meetings of the Board and stockholders, as well as of other powers and duties as are delegated to him or her by the Board.[4] The Exchange believes the responsibilities currently delegated to the Chairman of the Board under Rules 2.15, 4.10, 6.17, 10.2 and 16.1 pertain to the general charge and supervision of the Exchange's business and therefor fall within the scope of the CEO's stated responsibilities, instead of the Chairman's. Accordingly, the Exchange proposes to eliminate the references to "Chairman of the Board" in the abovementioned [sic] rules and replace those references with "Chief Executive Officer."

Next, the Exchange proposes to eliminate the terms "Office of the Chairman" ("OOC") [sic] in Rule 4.10 (Other Restrictions on Trading Permit Holders) and Rule 18.31 (Awards) and replace these references with "Chief Executive Officer or President." Under Rule 4.10, the OOC (*i.e.*, Office of the Chairman) is delegated certain authority relating to proposed Significant Business Transactions ("SBTs") including, among other things, approving or disapproving a SBT. Under Rule 18.31, a party to an Arbitration may request the OOC to direct that an award be paid into an escrow account maintained by the Exchange in the event a motion to vacate has been filed. The Exchange notes that historically, the OOC was considered to be the management committee of the Exchange and consisted of the Chairman (who at the time was also the CEO), the Vice-Chairman (which role no longer exists) and the President. Given the Exchange's current management structure, the Exchange believes the term is antiquated and seeks to eliminate the reference to it in its rules. In its place, the Exchange seeks to provide that the powers and responsibilities delegated to the OOC as a whole, now be delegated to either the CEO or President. Although the Chairman will no longer possess the authorities delineated in Rules 4.10 and 18.31, the Exchange believes those authorities fall more squarely within the scope of the CEO's or President's roles and responsibilities.[5] The Exchange believes the proposed rule change will also provide clarity as to who going forward has certain authority under the rules.

Similarly, the Exchange proposes to eliminate the reference to the Office of the Chairman in Section 6.1 (Advisory Board) of the Exchange's Bylaws. Section 6.1 currently provides that the Board will establish an Advisory Board which shall advise the Board and the Office of the Chairman regarding matters of interest to TPHs. The Exchange notes that the Advisory Board's Charter however, provides that the Advisory board shall advise the Board and "management" regarding matters of interest to TPHs. As the term Office of the Chairman is outdated, as described above, and in order to conform the language in Section 6.1 to the Advisory Board Charter, the Exchange proposes to replace the reference to "Office of the Chairman" with "management." The Exchange also notes that the proposed change would alleviate confusion and maintain consistency between the Exchange's governance documents. Additionally, the title of the Bylaws would be changed to Seventh Amended and Restated Bylaws of CBOE.

The Exchange lastly proposes to amend Rules 4.14 (Liquidation of Positions) and 6.20 (Admission to and Conduct on the Trading Floor; Trading Permit Holder Education) to provide that in addition to the President, a designee of the President may act in accordance with the authority delegated by the Rule. Rule 4.14 provides authority to the President to order the liquidation of positions and Rule 6.20 allows the President to permit admission to the floor of persons other than those expressly allowed by rule. Providing that such authorities may also be delegated to a designee provides the President and the Exchange additional flexibility (*e.g.*, if the President were unavailable, the authorities provided by rule could still be carried out, need be, by an alternative Exchange official). The proposed change is consistent with other Exchange rules and policies that permit the President to delegate certain authority upon a designee.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule changes will more accurately reflect the current management structure and ensure that rules relating to senior management authority are clear and transparent, which reduces confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants.

More specifically, the Exchange believes the authorities being transferred from the Chairman of the Board to the CEO are appropriate as they relate to the general charge and supervision of the Exchange business, which responsibility is currently delegated to the CEO.

The Exchange believes the proposal to transfer the powers and responsibilities currently delegated to the Office of the Chairman as a whole to the CEO or President is appropriate as it is more aligned with the scope of the CEO's and President's roles than the Chairman's. The Exchange believes it also reduces confusion as the term "Office of the Chairman" (and "OOC") incorporate a no-longer valid role ("Vice-Chairman") and is not widely used anymore. The proposed change also clarifies which officers are being referenced, which is not currently clear or explicit. Additionally, the Exchange notes that while delegation of authority is being modified, the substantive practices of the Exchange will remain the same. Similarly, the Exchange believes the proposed change to Section 6.1 of CBOE's Bylaws also eliminates an outdated and potentially confusing term (*i.e.*, Office of the Chairman) and also conforms the language to the CBOE Advisory Board Charter.

Lastly, the Exchange believes allowing the President to delegate the authorities under Rules 4.14 and 6.20 upon a designee protects investors and [sic] public interest by providing additional flexibility to the President and Exchange (*e.g.*, if the President were unavailable, the authorities provided by rule could still be carried out, need be, by an alternative Exchange official). Additionally, the proposed change is consistent with other Exchange rules and policies that permit the President to delegate certain authority upon a designee.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change imposes any burden on intramarket competition because it applies to all TPHs and is not designed to address any competitive issue. Additionally, as noted above, while certain delegation of authority is being modified, the substantive practices of the Exchange will remain the same. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely relates to the delegation of authorities to senior management and only affects CBOE.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[3] *See* Section 5.2 of the Bylaws.

[4] *See* Section 3.6 of the Bylaws.

[5] *See* Sections 5.2 and 5.3 of the Bylaws, respectively.

[6] *See e.g.*, CBOE Rules 4.11, 4.12, 4.16.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See e.g.*, CBOE Rules 4.11, 4.12, 4.16.

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–047, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13317 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77970; File No. SR–Phlx–2016–60]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1000A(b)(8)

June 1, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend section (b)(8) of Rule 1000A, Applicability and Definitions. The rule applies to index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending Rule 1000A(b)(8) which defines the term "closing index value" to provide greater clarity. Currently Rule 1000A(b)(8) defines "closing index value" to mean the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise (P.M.-settled), unless the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.-settled).

Accordingly, the definition of "closing index value" applicable to P.M.-settled options—the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise—clearly does not apply to options where the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.-settled).

It is understood that the "closing index value" for such options is to be "the settlement value of the index based on the opening price of each component issue on the primary market," but the Exchange believes the provision could be more tightly drafted and less awkward. Therefore, the Exchange proposes to redefine "closing index value" separately for P.M.-settled options and A.M.-settled options as (a) with respect to P.M.-settled options, the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise, or (b) with respect to A.M.-settled options, the opening price of each component issue on the primary market on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise. The rule amendment is intended to improve readability and provide greater clarity. No substantive change is intended.

Additionally, the Commentary to Rule 1009A(b)(8) [sic] is proposed to be updated. Currently, the Commentary recites that for any series of index options first opened after March 30, 1987, the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration. The Exchange is deleting the words "first opened after March 30, 1987" as archaic and no longer necessary.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5) of the Act,[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the readability and clarity of its definition of closing index value and the related commentary. The change benefits members by providing better access to clear rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the rule merely clarifies the defined term "closing index value" which is not a substantive change, and removes archaic language from the Rule 1009A(b)(8) [sic] Commentary. Neither proposed change has an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–60 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–60, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13319 Filed 6–6–16; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(a)(iii).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9588]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d), and in compliance with section 36(f), of the Arms Export Control Act.

DATES: As shown on each of the 19 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa V. Aguirre, Directorate of Defense Trade Controls, Department of State, telephone (202) 663–2830; email *DDTCResponseTeam@state.gov*. ATTN: Congressional Notification of Licenses.

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (22 U.S.C. 2778) mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Following are such notifications to the Congress:

February 8, 2016

Honorable Joseph R. Biden, *President of the Senate.*

Dear Mr. President: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the design, development, and production of T–50 Advanced Pilot Trainer aircraft, the development and manufacture of A–50 Lead-in Fighter Trainer aircraft, and the F–50 Light Attack aircraft for end-use by the Government of Iraq.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–050.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Egypt, Bahrain, Qatar, and the United Arab Emirates for the maintenance and upgrade of turbojet engines for end use by the Government of Egypt.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–061.

February 24, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Government of Saudi Arabia, related to the evaluation, qualification, integration, operation, repair, overhaul, maintenance, modification, logistics, test, and quality control support of the UTAS VVR–3/S Laser Detecting Set for end use on tracked and wheeled armored combat vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–086.

March 31, 2026

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea to support the integration, installation, operation, training, testing, and maintenance of the E–737 Airborne Early Warning and Control (AEW&C) System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–088.

February 26, 2016

Honorable Paul Ryan, *Speaker of the House of Representative.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 9mm semi-automatic pistols and .45 caliber semi-automatic pistols for resale to authorized law enforcement and military end-users in Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–100.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56x45 NATO caliber rifles, M4 Commando Rifles, and accessories to the Bahrain Defense Forces for the national defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–103.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the design, development, integration, training, assembly, disassembly, testing, performance, qualification, failure analysis, modification, operation, repair, and demonstration of the Talon Laser Guided Rocket, Unguided Rocket, and Smart Interfaced Launcher.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–107.

March 30, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the integration, installation, operation, training, testing, maintenance, and repair of the DB–110 Reconnaissance System for use on F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–113.

February 2, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts, and

components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of MAG58 (7.62x51) fully automatic machine guns and barrels to Government of the Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–120.

February 4, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more

The transaction contained in the attached certification involves the export of machine guns and grenade launchers to the Government of Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–122.

February 16, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles to the United Arab Emirates for Paveway II Plus Laser Guided Bomb (LGB) Guidance Kits.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–123.

March 4, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of 50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the integration, installation, operation, training, testing, maintenance, and repair of SNIPER Advanced Targeting Pods for end use on the F–16 Block 60 Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–124.

March 29, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data, defense services, and manufacturing know-how to Japan to support the manufacture and repair of the AN/APX–68 Transponder Set and Control Box.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–128.

February 2, 2016

Honorable Paul Ryan, *Speaker for the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of various rifles and pistols to Canada for commercial resale.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–129.

February 2, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M–134 7.62x51mm machine guns to the Army of Pakistan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–130.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense

articles, including technical data, and defense services and manufacturing know-how to Japan to support the manufacture and repair of the AN/TPX–46(v) Identification Friend or Foe (IFF) Interrogator.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Acting Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–133.

February 26, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of upper receiver assemblies to the Government of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–134.

March 30, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M16A4 rifles 5.56x45mm NATO, barrels, upper receiver and barrel assemblies, and accessories to the Government of Brunei.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–136.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of Aero Survival rifles and barrel assemblies to Canada for commercial resale.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 15–148.

Dated: May 12, 2016.

Lisa V. Aguirre,

Managing Director, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2016–13453 Filed 6–6–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2016–4000]

Recommendations for Facilities Realignments To Support Transition to NextGen as Part of Section 804 of the FAA Modernization and Reform Act of 2012—Part 2; Request for Comments

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability; request for comments.

SUMMARY: This document announces the availability of the FAA National Facilities Realignment and Consolidation Report, Part 2. The report was developed in response to Section 804 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). The report and recommendations contained therein have been developed collaboratively with the National Air Traffic Controllers Association (NATCA) and the Professional Aviation Safety Specialists (PASS) labor unions and with input from stakeholders. The FAA seeks comments on this report.

DATES: Send comments on or before July 22, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–4000 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or visit Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Pasto, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *Section804-Public-Comments@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 804 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95) requires the FAA to develop a plan for realigning and consolidating facilities in an effort to support the transition to NextGen and reduce costs where such cost reductions can be implemented without adversely affecting safety. To address Section 804 requirements, the FAA formed a collaborative workgroup of representatives from the FAA and NATCA and PASS labor unions to develop a comprehensive process to analyze different realignment and consolidation scenarios. The collaborative process takes into account the following factors and criteria when prioritizing facilities for realignment analysis: NextGen readiness; the Terminal Automation program schedule; operational and airspace factors; existing facility conditions and workforce impacts; industry stakeholder input; costs and benefits associated with each potential realignment alternative; facilities and engineering planning and priorities; and employee career development.

The collaborative workgroup developed the guiding principles and criteria for evaluating existing Terminal Radar Approach Control (TRACON) operations. The principles support the goals of developing operationally viable realignment and consolidation scenarios, capturing recommendations, and outlining next steps. The workgroup has developed a repeatable and defensible four-step process to evaluate facility TRACON operations and prioritize for analysis; determine an initial set of realignment scenarios and a set of alternatives for each scenario; collect facility and operational data and document system requirements; document facility, equipment, infrastructure, operational and safety data; capture qualitative workforce considerations, including training, transition, facility, and potential workforce impacts of potential realignments; consider potential impacts on operations, airspace modifications, route/fixes changes, arrival/departure procedures, intra/inter-facility coordination, and pilot community interaction; collect and consider industry stakeholder input; quantify benefits and cost of potential realignments; and develop a recommendation for each realignment scenario. The recommendations contained in the report entitled "FAA National Facilities Realignment and Consolidation Report, Part 2" primarily consist of legacy sites. Legacy sites are those sites that were determined by the FAA to be realigned prior to enactment of Section 804 of the FAA Modernization and Reform Act of 2012 and workgroup establishment. A copy of this report has been placed in the docket for this notice. The docket may be accessed at *http://www.regulations.gov.* A copy of the report has also been made available on the FAA's Web site at *http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

The realignment recommendations outlined in the Part 2 report are the result of a collaborative process that involved a multi-disciplinary team of FAA management, labor, field facilities, finance, and subject matter experts. The Section 804 process serves as a stable foundation for future realignment analyses and recommendations. The process aims to maximize operational, administrative, and maintenance efficiencies, support transition to NextGen, and deliver the highest value to stakeholders.

The FAA is requesting comments on this report pursuant to Section 804 of the FAA Modernization and Reform Act of 2012. The agency will consider all comments received on or before July 22, 2016. Following a 60-day comment review period, the final report along with public comments will be submitted to Congress. The FAA continues to analyze data collected from facilities across the United States and evaluate possible realignment scenarios.

Issued in Washington, DC, on May 31, 2016.

Jim Pasto,

Terminal Facilities Execution Team, Implementation Manager, Federal Aviation Administration.

[FR Doc. 2016–13331 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC); Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: FMCSA announces that its MCSAC will meet on Tuesday and Wednesday, June 14–15, 2016, to provide recommendations to the Agency concerning implementation of section 5203 of the Fixing America's Surface Transportation Act (FAST Act) to: (1) Prioritize regulatory guidance that should be incorporated into the safety regulations to promote clear, consistent, and enforceable rules; (2) identify regulatory guidance that appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; and (3) identify guidance that should remain in place. The meeting is open to the public and there will be a period of time at the end of each day for the public to submit oral comments.

DATES: The meeting will be held Tuesday–Wednesday, June 14–15, 2016, from 9:15 a.m. to 4:30 p.m., Eastern Daylight Time (EDT), at the Westin Washington, DC City Center, 1400 M Street NW., Washington, DC 20005. Members of the public may submit written comments on the topics to be considered during the meeting by Thursday, June 9, 2016, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC between 9 a.m. and 5 p.m., E.D.T. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Eran Segev at (617) 494–3174 or *eran.segev@dot.gov,* by Thursday, June 9, 2016.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

MCSAC was established to provide FMCSA with advice and recommendations on motor carrier safety programs and motor carrier safety regulations. MCSAC is composed of 20 voting representatives from safety

advocacy, safety enforcement, labor, and industry stakeholders of motor carrier safety. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. The Committee operates as a discretionary committee under the authority of the U.S. Department of Transportation (DOT), established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. See FMCSA's MCSAC Web site for additional information about the Committee's activities at *http://mcsac.fmcsa.dot.gov/*.

Task 16–01: Review of Regulatory Guidance

FMCSA has tasked MCSAC with providing recommendations to the Agency concerning implementation of section 5203 of the FAST Act to: (1) Prioritize regulatory guidance that should be incorporated into the safety regulations to promote clear, consistent, and enforceable rules; (2) identify regulatory guidance that appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; and (3) identify guidance that should remain in place.

Currently, FMCSA's Web site provides interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs). The guidance is presented in question and answer form for each part of the FMCSRs. A significant percentage of the guidance was published by the Federal Highway Administration on November 17, 1993 (58 FR 60734), with an updated publication on April 4, 1997 (62 FR 16370). Since 1997, FMCSA has issued new guidance documents periodically, revised guidance, or rescinded guidance based on changes to the FMCSRs. The Agency has not undertaken a comprehensive review of the full set of its regulatory guidance since the 1997 publication.

Section 5203 of the FAST Act provides new requirements for FMCSA's management of guidance documents. A "guidance document" is defined for purposes of section 5203 as a "document . . . that (1) provides and interpretation of a regulation of the Administration; or [sic] (2) includes an enforcement policy of the Administration available to the public." Not later than December 4, 2016, the Administrator must conduct an initial review of all FMCSA guidance documents in effect on December 4, 2015, to ensure that the documents are current, readily accessible to the public, and meet the standards of section 5203(c)(1)(A)–(C) (consistent and clear; uniformly and consistently enforced; and still necessary). § 5203(b).

The Agency requests that the MCSAC consider the set of regulatory guidance for each part of the FMCSRs and determine which sets of guidance should be prioritized for review. The MCSAC should conduct of review of the regulatory guidance for those sets to identify regulatory guidance that should be (1) incorporated into the safety regulations to promote clear, consistent and enforceable rules; (2) eliminated because it appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; or (3) retained because it is more appropriate as guidance rather than regulatory text. Copies of the MCSAC Task Statement and an agenda for the entire meeting will be made available in advance of the meeting at *https://www.fmcsa.dot.gov/advisory-committees/mcsac/welcome-fmcsa-mcsac*.

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close.

Issued on: May 31, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–13376 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 20, 2016.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, July 20, 2016, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202)317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: June 1, 2016.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–13418 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 21, 2016.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, July 21, 2016, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: June 1, 2016.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–13420 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Theresa Singleton at 1–888–912–1227 or 202–317–3329.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, July 27, 2016, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: June 1, 2016.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–13419 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 13, 2016.

FOR FURTHER INFORMATION CONTACT: Otis Simpson at 1–888–912–1227 or 202–317–3332.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Wednesday, July 13, 2016, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact: Otis Simpson at 1–888–912–1227 or 202–317–3332, TAP Office, 1111 Constitution Avenue NW., Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: June 1, 2016.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–13433 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 27, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, July 27, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave., Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: June 1, 2016.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–13432 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving

customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Thursday, July 14, 2016, at 1:00 p.m.. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: June 1, 2016.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2016–13431 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 5, 2016.

FOR FURTHER INFORMATION CONTACT: Kim Vinci at 1–888–912–1227 or 916–974–5086.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, July 5, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various special topics with IRS processes.

Dated: June 1, 2016.

Otis Simpson,

Acting Director Taxpayer Advocacy Panel.

[FR Doc. 2016–13434 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2016–29.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2016–29, Changes in accounting periods and methods of accounting.

DATES: Written comments should be received on or before August 8, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in accounting periods and in methods of accounting.

OMB Number: 1545–1551.

Revenue Procedure Number: Revenue Procedure 2016–29.

Abstract: The information collected in the revenue procedure is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

Current Actions: Revenue Procedure 2016–29 provides the list of automatic changes to which the automatic change procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067,and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B.1 (or successor) apply.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 27,336.

Estimated Time per Respondent: 1 hour, 15 minutes.

Estimated Total Annual Burden Hours: 30,580.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2016.

Sara Covington,

IRS Tax Analyst.

[FR Doc. 2016–13435 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee June 27, 2016 Public Meeting

AGENCY: United States Mint, Treasury.

ACTION: Announcement of meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 27, 2016.

Date: June 27, 2016.

Time: 6:00 p.m. to 9:00 p.m. (Public Meeting followed by Public Forum).

Location: Gaylord Hall in the Worner Center, Campus of Colorado College, 902 N. Cascade Ave., Colorado Springs, CO 80903.

Subject: Review and discussion of the candidate designs for the 2018 America the Beautiful Quarters Program; review and discussion of candidate designs for the President Obama Presidential Medals (Terms One and Two); discussion of future palladium coin program; and election of jurors for the Breast Cancer Awareness Commemorative Coin Competition.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Immediately following the public meeting the CCAC will be holding a public forum to receive input from collectors and the general public.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: June 2, 2016.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2016–13403 Filed 6–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of altered Privacy Act system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled, "Readjustment Counseling Service (RCS) Vet Center Program-VA," (64VA15) as set forth in the **Federal Register** 74 FR 29019. VA is amending the system by revising the System Number, System Location, Categories of Individuals Covered by the System, Category of Records in the System, Purpose, Storage, Retrievability, Safeguard, Retention and Disposal, System Manager and Address, Notification Procedure, and Record Source Categories. VA is republishing the system notice in its entirety.

DATES: Comments on this new system of records must be received no later than July 7, 2016. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective July 7, 2016.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or email to *http://www.Regulations.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The system number is changed from 65VA15 to 65VA10RCS to reflect the current organizational alignment.

The System Location has been amended to replace sections (a) Counseling Folder and (b) Client Information File with the amended section (a) which will read: Vet Center Client Record: Starting in fiscal year 2010 the location of the Client Record was transitioned from paper files maintained at each individual Vet Center to being electronically maintained in the national computerized intra-net database (RCSNet). The Readjustment Counseling Service Net (RCSNet) servers are located in Philadelphia, PA in a secure, protected, and approved VA Office of Information and Technology (OI&T) Service Delivery and Engineering (SDE) site maintained by OI&T personnel. Full confidentiality for RCS Veteran client information is maintained by limiting access to RCS qualified personnel with the appropriate authority to administer RCS program data systems. Section (b) will state that authorized RCS staff will have access to the Client Record via stand-alone computers located in locked RCS facilities: Vet Centers, District Director Offices, and VA Central Office. Section (c) will be added to state that all paper Client Records established prior to 2010 are being archived and scanned copies have been are uploaded into RCSNet.

Categories of Individuals Covered by the System has been amended to add Servicemembers. Also added is that the Vet Center eligibility will also include any Veteran or Servicemember who provided direct emergency medical or mental health care, or mortuary services, to the casualties of combat operations, but whose service at the time was outside of the combat theater. Additionally, eligibility under this authority includes any Veteran or Servicemember who engaged in combat with an enemy by remotely controlling any aspect of unmanned aerial vehicle operations, regardless of whether the location of such operations was outside the combat theater.

The Category of Records in the System is being amended by deleting both sections (a) Counseling Folder and (b) Client Information File to more accurately represent the nature of the Category of Records in the System as the Client Record. There is only the Client Record therefore this section will now state the following: The Client Record contains demographic personally identifiable information (PII) such as unique Veteran identification number, name, address, social security number, marital status, gender, birth date, military service information, Veteran eligibility information, referral source, and other identifying statistical information. The Vet Center Client Record also contains protected health information (PHI) such as psychosocial assessment, military history, treatment plans, and ongoing case progress notes documenting the course of service delivery.

The Purpose section is being amended to remove the statement that information is collected to conduct a psychological assessment, to include a military history, and provide quality readjustment counseling to assist Veterans resolve war trauma and improve their level of post-war functioning. This section will now state that the purpose of this system of records is to collect and maintain all demographic and clinical information required by Vet Center counselors to provide quality readjustment counseling to eligible Veterans, Services members and their families.

The Storage section is being amended to remove section (a) Counseling Folder: Paper documents stored in file folders, and section (b) Client Information File: Stored on stand-alone personal computer hard drives and any backup media. The Storage section will now state: Vet Center Client Record Storage: (a) Client Records established during and after 2010 are electronically stored in the national computerized RCSNet servers located in Philadelphia, PA, in a secure, protected, and approved VA OI&T Service Delivery and Engineering (SDE) environment maintained by OI&T personnel; (b) Paper Client Records established prior to 2010 are stored in locked facilities at each individual Vet Center providing readjustment counseling throughout the country.

The Retrievability section is being amended to replace sections (a) Counseling Folder: Filed or indexed alphabetically by last name or unique Client Number and, (b) Client Information File: Indexed by Vet Center Number in conjunction with unique Client Number and SSN. This section will now state that the Vet Center Client Record is indexed by the Vet Center number in conjunction with the Veteran's name, social security number (SSN) and unique Veteran client number.

The Safeguard section is being amended to replace Sections (a) Counseling Folder and (b) Client Information File. The new language will state the following: (a) Access to the Vet Center Client Record is limited to authorized RCS staff (Vet Center, District Director Office, and/or the Office of the Chief Readjustment Counseling Officer in VACO) with a legitimate need to know connected to direct service delivery and/or the quality oversight of services provided. RCS staff access to the electronic Vet Center Client Record is via standalone computers located in locked RCS facilities. RCS program computers are user name and password protected. Computer security is in compliance with RCS and VA computer security policy and protocol; (b) RCS staff access to the paper Client Record will be controlled by staff during working hours. During after hours, records will be maintained in locked file cabinets. In higher crime areas, Vet Center offices are equipped with alarm systems; (c) Access to Veterans' and/or Servicemember's counseling records by elements outside of RCS (VA or non-VA) is contingent upon the Veteran or Servicemember's signed authorization, or to one of the routine uses identified above.

The Retention and Disposal section is being amended to remove the counseling folder and to add that all information maintained in the Client Record of obsolete Vet Center paper client records are being archived through VA Records Management and will be retained at one or more of the authorized Department of Veterans Affairs Records Center Vaults for 50 years after the date of last activity.

Section (b) will state the Client Record will be maintained electronically for the duration of the program. This section will also remove the statement that the RCS national data RCS support center stand-alone personal computers contain the computers database. This section will add that destruction of data will be conducted by deleting all sensitive information on all RCS national data support center servers and all stand-alone personal computers connected to the program electronic database located at all RCS Vet Centers, regional management offices, and RCS VACO.

The System Manager and Address and Notification Procedure are being amended to replace Chief Readjustment Counseling Officer (10RCS) with Chief Readjustment Counseling Officer (10RCS).

The Notification Procedure section is being amended to replace Regional Manager with District Director.

The Record Source Categories section is being amended to add item (3) Relevant Veteran data protocols completed by Vet Center staff to document the course of readjustment counseling provided.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Synder, Chief of Staff, approved this document on May 23, 2016, for publication.

Dated: June 2, 2016.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

64VA10RCS

SYSTEM NAME:

Readjustment Counseling Service (RCS) Vet Center Program-VA.

SYSTEM LOCATION:

(a) Vet Center Client Record: Starting in fiscal year 2010 the location of the Client Record was transitioned from paper files maintained at each individual Vet Center to being electronically maintained in the national computerized intra-net database (RCSNet). The RCSNet servers are located in Philadelphia, PA in a secure, protected, and approved VA OI&T Service Delivery and Engineering (SDE) site maintained by OI&T personnel. Full confidentiality for RCS Veteran client information is maintained by limiting access to RCS qualified personnel with the appropriate authority to administer RCS program data systems.

(b) Authorized RCS staff will have access to the Client Record via stand-alone computers located in locked RCS facilities: Vet Centers, District Director Offices, and VA Central Office.

(c) All paper Client Records established prior to 2010 are being archived and scanned copies have been are uploaded into RCSNet.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 1712A.

PURPOSE(S):

The purpose of this system of records is to collect and maintain all demographic and clinical information required by Vet Center counselors to provide quality readjustment counseling to eligible Veterans, services members and their families.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered include eligible Veterans and Servicemembers who request and/or are provided readjustment counseling, including the family members of eligible Veterans and Servicemembers. Eligibility for readjustment counseling at Vet Centers includes any Veteran or Servicemember who served in the military in a theater of combat operations. Vet Center eligibility also includes any Veteran or Servicemember who provided direct emergency medical or mental health care, or mortuary services, to the casualties of combat operations, but whose service at the time was outside of the combat theater. Additionally, eligibility under this authority includes any Veteran or Servicemember who engaged in combat with an enemy by remotely controlling any aspect of unmanned aerial vehicle operations, regardless of whether the location of such operations was outside the combat theater.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Client Record contains demographic personally identifiable information (PII) such as unique Veteran identification number, name, address, social security number, marital status, gender, birth date, military service information, Veteran eligibility information, referral source, and other identifying statistical information. The Vet Center Client Record Client Record also contains protected health information (PHI) such as psychosocial assessment, military history, treatment plans and ongoing case progress notes documenting the course of service delivery.

RECORD SOURCE CATEGORIES:

(1) Relevant forms to be filled out by Vet Center team members on first contact and each contact thereafter; counseling sessions with Veterans and other eligible counselees. (2) Other VA and Federal agency systems. (3) Relevant Veteran data protocols completed by Vet Center staff to document the course of readjustment counseling provided.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

3. Records from a system of records may be disclosed to the Department of Justice (DOJ), including U.S. Attorneys, or in a proceeding before a court, adjudicative body, or other administrative body when litigation or the adjudicative or administrative process is likely to affect VA, its employees, or any of its components is a party to the litigation or process, or has an interest in the litigation or process, and the use of such records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with the purpose for which the records were collected.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. Disclosure of information may be made when: (1) It is suspected or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is to agencies, entities, and persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosure by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Vet Center Client Record Storage:

(a) Client Records established during and after 2010 are electronically stored in the national computerized RCSNet servers located in Philadelphia, PA, in a secure, protected, and approved VA OI&T Service Delivery and Engineering (SDE) environment maintained by OI&T personnel.

(b) Paper Client Records established prior to 2010 are stored in locked facilities at each individual Vet Center providing readjustment counseling throughout the country.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

The Vet Center Client Record is indexed by the Vet Center number in conjunction with the Veteran's name, social security number (SSN) and unique Veteran client number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

(a) All obsolete Vet Center paper client records are being archived through VA Records Management and will be retained at one or more of the authorized Department of Veterans Affairs Records Center Vaults for 50 years after the date of last activity. Destruction of paper counseling folders will be by shredding.

(b) The Client Record will be maintained for the duration of the program. Destruction will be by deleting all sensitive information on all RCS national data support center servers and all stand-alone personal computers connected to the program electronic database located at all RCS Vet Centers, regional management offices, and RCS VACO.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

(a) Access to the Vet Center Client Record is limited to authorized RCS staff (Vet Center, District Director Office, and/or the Office of the Chief Readjustment Counseling Officer in VACO) with a legitimate need to know connected to direct service delivery and/or the quality oversight of services provided. RCS staff access to the electronic Vet Center Client Record is via standalone computers located in locked RCS facilities. RCS program computers are user name and password protected. Computer security is in compliance with RCS and VA computer security policy and protocol.

(b) RCS staff access to the paper Client Record will be controlled by staff during working hours. During after hours, records will be maintained in locked file cabinets. In higher crime areas, Vet Center offices are equipped with alarm systems.

(c) Access to Veterans' or Servicemember's counseling records by elements outside of RCS, VA or non-VA, is contingent upon the Veteran or Servicemember's signed authorization, or to one of the routine uses identified above.

SYSTEM MANAGER(S):

Chief Readjustment Counseling Officer (10RCS), VA Central Office, 810 Vermont Ave. NW., Washington, DC 20420.

RECORD ACCESS PROCEDURE:

An individual (or duly authorized representative of such individual) who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the individuals listed under Notification Procedure below.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

A Veteran who wishes to determine whether a record is being maintained by the Readjustment Counseling Service Vet Center Program under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to: (1) The Team Leader of the Vet Center, or the RCS District Director having supervisory responsibility for the Vet Center, with whom he or she had contact, or (2) the Chief Readjustment Counseling Officer (10RCS), VA Central Office, 810 Vermont Ave. NW., Washington, DC 20420. Inquiries should include the individual's full name and social security number.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

[FR Doc. 2016–13378 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0003]

Proposed Information Collection (Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21P–530); Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0003" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21P–530.

OMB Control Number: 2900–0003.

Type of Review: Revision of a Currently Approved Collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. Information is requested by this form under the authority of 38 U.S.C. Chapter 23 "Burial Benefits," including 38 U.S.C. 2302, 2303, 2304, 2307, and 2308.

VA uses the information provided on the form to evaluate the respondent's eligibility for monetary burial benefits, including the burial allowance, plot or

internment allowance, and transportation reimbursement.

Affected Public: Individuals or households.

Estimated Annual Burden: 33,750 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 135,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13392 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Agency Information Collection (Request for Details of Expenses, VA Form 21P–8049) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0138" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to "OMB control No. 2900–0138."

SUPPLEMENTARY INFORMATION:

Title: Request for Details of Expenses, VA Form 21P–8049.

OMB Control Number: 2900–0138.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses the information collected on this form as evidence of additional circumstances which may affect entitlement determinations pursuant to 38 U.S.C. 1522. The information is used as a counterbalance to a claimant's substantial estate and/or annual income.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 28, 2016, at 81 FR 17245.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst,

VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13393 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0652]

Proposed Information Collection (Request for Nursing Home Information in Connection With Claim for Aid and Attendance (VA Form 21–0779)); Activity: Comment Request.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Form 21–0779 is used to gather the necessary information to determine eligibility for pension and aid and attendance benefits based on nursing home status. The form also requests information regarding Medicaid status and nursing home care charges, so VA can determine the proper rate of payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0652" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Nursing Home Information in Connection with Claim for Aid and Attendance (VA Form 21–0779).

OMB Control Number: 2900–0652.

Type of Review: Revision of an approved collection.

Abstract: VA Form 21–0779 is used to gather the necessary information to

determine eligibility for pension and aid and attendance benefits based on nursing home status. The form also requests information regarding Medicaid status and nursing home care charges, so VA can determine the proper rate of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,188 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 61,125.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13391 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the Research Advisory Committee on Gulf War Veterans' Illnesses will conduct a telephone conference call meeting from 3:00 p.m. to 5:30 p.m. (EDT) on June 25, 2016. The toll-free number for the meeting is (800) 767–1750, and the access code is 56978#. All sessions are open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of Operations during the Gulf War in 1990–1991.

The Committee will discuss draft recommendations regarding future VA research directions and other Committee business.

A 30-minute period will be reserved at 5:00 p.m. (EDT) for public comments. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Victor Kalasinsky via email at *victor.kalasinsky@va.gov*. Any member of the public seeking additional information should contact Dr. Kalasinsky, Designated Federal Officer, at (202) 443–5600.

Dated: June 2, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–13383 Filed 6–6–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0086]

Agency Information Collection—Request for a Certificate of Eligibility VA Form 26–1880; Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0086" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–0086."

SUPPLEMENTARY INFORMATION:

Title: Request for a Certificate of Eligibility.

OMB Control Number: 2900–0086.

Type of Review: Revision of a currently approved collection.

Abstract: Under title 38, U.S.C., section 3702, authorizes collection of this information to help determine a Veteran's qualification for a VA-guaranteed home loan. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 18, 2016, at page 8359.

Affected Public: Individuals or households.

Estimated Annual Burden: 80,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 321,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13390 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Alternate Signer Certification) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email, *cynthia.harvey-pryor@va.gov*. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Alternate Signer Certification.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA Form 21–0972 will be used to collect the alternate signer information necessary for VA to accept benefit application forms signed by individuals on behalf of Veterans and claimants. The information collected will be used to contact the alternate signer for verification purposes.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 58 on March 25, 2016, pages 16282 and 16283.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13395 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Agency Information Collection (Marital Status Questionnaire, 21P–0537) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 7, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to "OMB Control No. 2900–0495" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov*. Please refer to "OMB control No. 2900–0495."

SUPPLEMENTARY INFORMATION:

Title: Marital Status Questionnaire, VA Form 21P–0537.

OMB Control Number: 2900–0495.

Type of Review: Revision of an approved collection.

Abstract: VA Form 21P–0537 is used to verify a surviving spouse's current marital status to determine his or her continuing entitlement to Dependency and Indemnity Compensation (DIC) benefits. The form letter is automatically generated and mailed to DIC beneficiaries. Agency action depends on the information provided by the beneficiary. If the information provided supports the beneficiary's continued entitlement to benefits, no action is taken. If the information provided by the beneficiary does not support continued entitlement to benefits, VA will take action to terminate benefit payments, based on the facts found.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on Friday, March 25, 2016, at 81 FR 16283.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,484 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 17,808.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13394 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Incidental Take During Specified Activities; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

[Docket No. FWS–R7–ES–2016–0060; FF07CAMM00FXFR133707REG01167]

RIN 1018–BA99

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service, propose incidental take regulations (ITR) that authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses (*Odobenus rosmarus divergens*) and polar bears (*Ursus maritimus*) during oil and gas industry activities in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations include similar types of activities covered by the previous 5-year Beaufort Sea ITR effective from August 3, 2011, through August 3, 2016; this rule would also be effective for 5 years. If this rule is finalized, we will issue Letters of Authorization, upon request, for specific proposed activities in accordance with the regulations. We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we request comments or suggestions on these proposed regulations.

DATES: We will consider comments we receive on or before July 7, 2016.

ADDRESSES: You can view this proposed rule and the associated draft environmental assessment at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2016–0060. You may submit comments on the proposed rule by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2016–0060, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.
- *Electronic submission:* Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2016–0060.

We will post all comments at *http://www.regulations.gov*. You may request that we withhold all personal identifying information from public review. However, we cannot guarantee that we will be able to do so. See Public Comments below for more information.

FOR FURTHER INFORMATION CONTACT: Christopher Putnam, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road MS–341, Anchorage, AK 99503, Telephone 907–786–3844, or Email: *christopher_putnam@fws.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Executive Summary

In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service or we), propose incidental take regulations (ITR) that authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses (*Odobenus rosmarus divergens*) and polar bears (*Ursus maritimus*) during oil and gas industry (Industry) activities in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations include similar types of activities covered by the previous 5-year Beaufort Sea ITR effective from August 3, 2011, through August 2, 2016, and found in title 50 of the Code of Federal Regulations (CFR) in part 18, subpart J. If adopted as proposed, this rule would be effective for 5 years from the date of issuance of the final rule.

This proposed rule is based on our finding that the total takings of Pacific walruses (walruses) and polar bears during proposed Industry activities will impact small numbers of animals, will have a negligible impact on these species, and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. We base our finding on data from monitoring the encounters and interactions between these species and Industry; research on these species; oil spill risk assessments; potential and documented Industry effects on these species; information regarding the natural history and conservation status of walruses and polar bears; and data reported from Alaska Native subsistence hunters. We have prepared a draft environmental assessment (EA) in conjunction with this rulemaking, and it is available for public review.

The proposed regulations include permissible methods of nonlethal taking; mitigation measures to ensure that Industry activities will have the least practicable adverse impact on the species, their habitat, and the availability of these species for subsistence uses; and requirements for monitoring and reporting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to during all previous ITRs for this area. These costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations.

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (Service). According to the MMPA, the Service shall allow this incidental taking if we make a finding that the total of such taking for the 5-year regulatory period:

(1) Will affect only small numbers of individuals of these species;

(2) will have no more than a negligible impact on these species;

(3) will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives; and

(4) we issue regulations that set forth:

(a) permissible methods of taking,

(b) means of effecting the least practicable adverse impact on the species, their habitat, and the availability of the species for subsistence uses, and

(c) requirements for monitoring and reporting.

If regulations allowing such incidental taking are issued, we may then subsequently issue Letters of Authorization (LOAs), upon request, to authorize incidental take during specified activities.

The term "take," as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government, means "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild" (the MMPA calls this Level A harassment);

or "(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering" (the MMPA calls this Level B harassment).

The terms "negligible impact" and "unmitigable adverse impact" are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows. "Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. "Unmitigable adverse impact" means an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Also defined in 50 CFR 18.27 is the term "small numbers," however, we do not rely on that definition here as it conflates "small numbers" with "negligible impacts." We recognize "small numbers" and "negligible impacts" as two separate and distinct requirements for promulgating ITRs under the MMPA. Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals, and evaluate if that take is small relative to the size of the population or stock.

In these proposed ITRs, the term "Industry" includes individuals, companies, and organizations involved in exploration, development, production, extraction, processing, transportation, marketing, research, monitoring, and support services of petroleum products, and other substantially similar activities. Industry activities may result in the taking of walruses and polar bears. The MMPA does not require that Industry must obtain incidental take authorization; however, any taking that occurs without authorization is a violation of the MMPA. Since 1993, the oil and gas industry operating in the Beaufort Sea and the adjacent northern coast of Alaska has requested, and we have issued, ITRs for the incidental take of walruses and polar bears in specified areas during specified activities. For a detailed history of our recent Beaufort Sea ITRs, refer to the **Federal Register** at, 76 FR 47010, August 3, 2011; 71 FR 43926, August 2, 2006; and 68 FR 66744, November 28, 2003. These regulations are at 50 CFR part 18, subpart J (§§ 18.121 to 18.129).

Summary of Current Request

On May 5, 2014, the Service received a petition from the Alaska Oil and Gas Association (AOGA) on behalf of its members and other participating companies to promulgate regulations for nonlethal incidental take of small numbers of walruses and polar bears in the Beaufort Sea and adjacent northern coast of Alaska for a period of 5 years (2016–2021). The anticipated incidental takes would be limited to Level B harassment. We received an amendment to the petition on July 1, 2015. The petition and previous regulations are available at: *http://www.fws.gov/alaska/fisheries/mmm/itr_beaufort.htm*. The petition is also available at *www.regulations.gov* at Docket No. FWS–R7–ES–2016–0060.

The AOGA application requests regulations that will be applicable to any company conducting oil and gas exploration, development, and production activities as described within the application. This includes AOGA members and other non-member companies planning to conduct oil and gas operations in the specified geographic region. Members of AOGA represented in the petition include Alyeska Pipeline Service Company, Apache Corporation, BP Exploration (Alaska) Inc. (BPXA), Caelus Energy Alaska, LLC, Chevron USA, Inc., Eni Petroleum; ExxonMobil Production Company, Flint Hills Resources, Inc., Hilcorp Alaska, LLC, Petro Star Inc., Repsol, Shell Exploration & Production Company (Shell), Statoil, Tesoro Alaska Company, and XTO Energy, Inc.

Non-AOGA companies include ConocoPhillips Alaska, Inc. (CPAI), Brooks Range Petroleum Corporation (BRPC), and Arctic Slope Regional Corporation (ASRC) Energy Services. The activities and geographic region specified in AOGA's request, and considered in these regulations, are described in the following sections titled Description of Activities and Description of Geographic Region.

In response to this request, prior to issuing regulations at 50 CFR part 18 subpart J, we have evaluated the level of proposed activities, their associated potential effects upon walruses and polar bears, and their effects on the availability of these species for subsistence use. The information provided by the petitioners indicates that projected oil and gas activities over this period will encompass onshore and offshore exploration, development, and production activities. The Service's task is to analyze the impacts that the proposed lawful activities will have on walruses and polar bears. In addition, we will evaluate the potential for oil spills and associated impacts on walruses and polar bears.

Description of Proposed Regulations

These proposed regulations will not authorize, or "permit," the proposed Industry activities. Rather, they will authorize the nonlethal incidental, unintentional take of small numbers of walruses and polar bears associated with those activities based on standards set forth in the MMPA. The Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), the U.S. Army Corps of Engineers, and the Bureau of Land Management (BLM) are responsible for permitting activities associated with Industry activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting Industry activities on State lands and in State waters. The proposed regulations include:

- Permissible methods of nonlethal taking;
- Measures to ensure the least practicable adverse impact on walruses and polar bears and the availability of these species for subsistence uses; and
- Requirements for monitoring and reporting.

Description of LOAs

If these proposed ITRs are made final, companies, groups, or individuals conducting an Industry, or other substantially similar, activity within the specified geographic region may request an LOA for the authorized nonlethal, incidental, Level B take of walruses and polar bears. We must receive requests for LOAs in writing at least 90 days before the proposed activity is to begin. Requests must include an operations plan for the activity, a walrus and polar bear interaction plan, and a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the proposed activities on walruses and polar bears. We will evaluate each request for an LOA, including plans of operation and interaction plans, based on the proposed activity and location. We will condition each LOA depending on specific circumstances for the proposed activity and location to ensure the activity and level of take are consistent with our findings in the ITRs. We will issue an LOA if we evaluated the proposed activity in the ITRs and the level of take caused by the activity is consistent with the findings of the ITRs. We must receive an after action report on the monitoring and mitigation activities within 90 days after the LOA expires.

The monitoring and mitigation conditions included in each LOA will minimize interference with the normal behavior and movements of walruses and polar bears to ensure that the effects of Industry activity are negligible. For example, conditions include, but are not limited to: (1) A reminder that LOAs do not authorize intentional taking of walruses or polar bears, nor lethal incidental take; (2) measures to protect pregnant polar bears during denning activities (*e.g.*, den selection, birthing, nurturing of cubs, and departing the den site); and (3) the requirement of a site-specific plan of operation and a site-specific interaction plan. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27.

Description of Plans of Cooperation (POCs)

A POC is a documented plan with potentially affected subsistence hunting communities that describes measures to mitigate potential conflicts between proposed Industry activities and subsistence hunting. To ensure that Industry activities do not adversely impact subsistence hunting opportunities, applicants requesting an LOA must provide the Service documentation of communication and coordination with potentially affected Alaska Native communities potentially affected by the proposed Industry activity and, as appropriate, with the Eskimo Walrus Commission, the Alaska Nanuuq Commission (ANC), and the North Slope Borough (NSB). As part of the POC process, Industry representatives engage with Native communities to provide information and respond to questions and concerns. Industry representatives inquire whether their proposed activities will adversely affect the availability of walruses and polar bears for subsistence use. If community concerns suggest that Industry activities may have an impact on the subsistence uses of these species, the POC must document the procedures for how Industry will cooperate with the affected subsistence communities and what actions Industry will take to mitigate adverse impacts on the availability of walruses and polar bears for subsistence uses. We will review these plans and provide guidance to ensure compliance with the MMPA. We will not accept POCs if they fail to provide adequate measures to ensure that Industry activities will not have an unmitigable adverse impact on the availability of walruses and polar bears for subsistence uses.

Description of Geographic Region

The geographic region covered by the requested ITRs (Beaufort Sea ITR region (Figure 1)) encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (71°23′29″ N., −156 °28′30″ W., BGN 1944), and extending approximately 322 kilometers (km) (~200 miles (mi)) north, including all Alaska State waters and Outer Continental Shelf (OCS) waters, and east of that line to the Canadian border. The offshore boundary of the Beaufort Sea ITR region matches the boundary of the BOEM Beaufort Sea Planning area, approximately 322 km (~200 mi) offshore. The onshore region is the same north/south line through Point Barrow, extending 40.2 km (25 mi) inland and east to the Canning River. The Arctic National Wildlife Refuge (ANWR) is not included in the Beaufort Sea ITR region. The geographical extent of the proposed Beaufort Sea ITR region (approximately 29.8 million hectares (ha) (~73.6 million acres (ac))) is similar to the region covered in previous regulations (approximately 29.9 million ha (~68.9 million ac)) (76 FR 47010, August 3, 2011). An increase in the geographic area of the proposed Beaufort Sea ITR region versus the region set forth in previous ITRs (approximately 1.9 million ha (~4.7 million ac)) is the result of matching the offshore boundary with that of the BOEM Beaufort Sea Planning area boundary.

Description of Activities

This section summarizes the type and scale of Industry activities proposed to occur in the Beaufort Sea ITR region from 2016 to 2021. Year-round onshore and offshore Industry activities are anticipated. Planned and potential activities considered in our analysis include activities described by the petitioners (AES Alaska 2015) and other potential activities identified by the Service and deemed substantially similar to the activities requested in the petition. During the 5 years that the proposed ITRs will be in place, Industry activities are expected to be generally similar in type, timing, and effect to activities that have been evaluated under the prior ITRs. Due to the large number of variables affecting Industry activities, prediction of exact dates and locations of activities is not possible. However, operators must provide specific dates and locations of proposed activities prior to receiving an LOA. Requests for LOAs for activities and impacts that exceed the scope of analysis and determinations for these proposed ITRs will not be issued. Additional information is available in the AOGA petition for ITRs at: *http://www.fws.gov/alaska/fisheries/mmm/Beaufort_Sea/Beaufort%20Sea%20ITR%20Petition_2015.pdf* and at *www.regulations.gov* in Docket No. FWS–R7–ES–2016–0060.

Exploration Activities

In the Beaufort Sea ITR region, oil and gas exploration occurs onshore, in coastal areas, and in the offshore environment. Exploration activities may include geological and geophysical surveys consisting of: Geotechnical site investigations, reflective seismic exploration, vibratory seismic data collection, airgun and water gun seismic data collection, explosive seismic data collection, vertical seismic profiling, and subsea sediment sampling. Exploratory drilling involves construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-supported or bottom-founded structures such as the steel drilling caisson, or floating drill vessels. Exploratory drilling and associated support activities and features may include: Transportation to site; setup and relocation of lodging camps and support facilities (such as lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, landing strips, aircraft support, health and safety facilities, data recording facilities, and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection; construction of ice islands, pads, and ice roads; gravel hauling; gravel mining; road building; road maintenance; operating heavy equipment; digging trenches; burying and covering pipelines; security operations; dredging; moving floating drill units; helicopter support; and conducting ice, water, and flood management. Support facilities include pipelines, electrical lines, water lines, buildings and facilities, sea lifts, and large and small vessels. Exploration activities could also include the development of staging facilities; oil spill prevention, response, and cleanup activities; and site restoration and remediation. The level of proposed exploration activities is similar to levels during past regulatory periods, although exploration projects may shift to different locations, particularly to the National Petroleum Reserve—Alaska (NPR–A). During the proposed

regulatory period, exploration activities are anticipated to occur in the offshore environment and to continue in the existing oilfield units.

BOEM Outer Continental Shelf Lease Sales

BOEM manages oil and gas leases in the Alaska OCS region, which encompasses 242 million ha (600 million ac). Of that acreage, approximately 26 million ha (~65 million ac) are within the Beaufort Sea Planning Area and within the scope of the proposed ITRs. Ten lease sales have been held in this area since 1979, resulting in 147 active leases, where 32 exploratory wells were drilled. Production has occurred on one joint Federal/State unit, with Federal oil production accounting for more than 28.7 million barrels (bbl) (1 bbl = 42 U.S. gallons or 159 liters) of oil since 2001 (BOEM 2015). Details regarding availability of future leases, locations, and acreages are not yet available, but exploration of the OCS is expected to continue. Lease Sale 242 previously planned in the Beaufort Sea during 2017 (BOEM 2012) was cancelled in 2015. A Draft Programmatic Environmental Impact Statement (EIS) for the 2017–2022 OCS Oil and Gas Leasing Program is planned for public comment in early 2016 and is expected to propose Beaufort Sea Lease Sale 255 for the year 2020 (BOEM 2015).

Shell Exploration and Production Company (Shell) is the majority lease holder of BOEM Alaska OCS leases. In 2015 Shell announced that it would cease exploration activities on its BOEM Alaska OCS leases for the foreseeable future. Nevertheless, it is possible that Shell may pursue some sort of exploration activities on its Beaufort Sea BOEM Alaska OCS leases or State of Alaska offshore leases during the 5-year period of these proposed ITRs. Shell may conduct exploration and/or delineation drilling during the open-water Arctic drilling season from a floating drilling vessel along with attendant ice management and oil spill response (OSR) equipment. For the winter drilling season, Shell may conduct drilling from an ice island or bottom-founded structure, along with attendant OSR equipment. Shell will provide a detailed exploration plan prior to conducting any activities in the Beaufort Sea BOEM Alaska lease area.

National Petroleum Reserve—Alaska

The BLM manages the 9.2-million-ha (22.8-million-ac) NPR–A of which 1.3 million ha (3.2 million ac) occur within the Beaufort Sea ITR region. Within this area, the BLM has offered approximately 4.7 million ha (~11.8 million ac) for oil and gas leasing (BLM 2013a). Between 1999 and 2014, 2.1 million ha (5.1-million ac) were sold in 10 lease sales. As of January 2015, there were 205 leases amounting to over 0.6 million ha (1.7 million ac) leased (BLM 2015). From 2000 to 2013, Industry drilled 29 wells in federally managed portions of the NPR–A and 3 in adjacent Native lands (BLM 2013b). ConocoPhillips Alaska, Inc. (CPAI) currently holds a majority of the leased acreage and is expected to continue exploratory efforts, especially seismic work and exploratory drilling, within the Greater Mooses Tooth and Bear Tooth Units of the NPR–A. Other operators, including Anadarko E&P Onshore LLC and NORDAQ Energy, Inc. also hold leases in the NPR–A. Caelus Energy Alaska, LLC (Caelus) has recently announced acquisition of leases and intentions to pursue exploratory drilling near Smith Bay in the Tulimaniq prospect. This project would include construction of ice pads, ice roads, temporary camps, and a temporary ice airstrip.

Area-Wide Lease Sales

The State of Alaska Department of Natural Resources (ADNR), Oil and Gas Division, holds annual lease sales of State lands available for oil and gas development. Lease sales are organized by planning area. The approximately 0.8 million ha (~2 million ac) Beaufort Sea planning area occurs in coastal land and shallow waters along the shoreline of the North Slope between the NPR–A and the ANWR (State of Alaska 2015a). It is entirely within the boundary of the Beaufort Sea ITR region. The North Slope planning area includes tracts located to the south and inland from the Beaufort Sea planning area. Of the approximately 2.1 million ha (~5.1-million ac), 0.8 million ha (2 million ac) occur within the Beaufort Sea ITR region. As of August 2015, there were 1,253 active leases on the North Slope, encompassing 1.1 million ha (2.8 million ac), and 261 active leases in the State waters of the Beaufort Sea, encompassing 284,677 ha (703,452 ac; State of Alaska 2015b). The number of acres leased has increased by 25 percent on the North Slope and 14 percent in the Beaufort Sea planning areas since 2013. Although most of the existing oil and gas development in the Southern Beaufort ITR region is concentrated in these State planning areas, the increase in leased acreage suggests that exploration on State lands and waters will continue during the 2016–2021 ITR period.

Development Activities

Industry operations during oil and gas development may include construction of roads, pipelines, waterlines, gravel pads, work camps (personnel, dining, lodging, and maintenance facilities), water production and wastewater treatment facilities, runways, and other support infrastructure. Activities associated with the development phase include transportation activities (automobile, airplane, and helicopter); installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation work. Industry development activities are often planned or coordinated by unit. A unit is composed of a group of leases covering all or part of an accumulation of oil or gas. Alaska's North Slope oil and gas field primary units include Prudhoe Bay, Kuparuk River, Greater Point McIntyre, Milne Point, Endicott, Badami, the Alpine oilfields of the Colville River Unit, Greater Mooses Tooth (GMT), Northstar, Oooguruk, Nikaitchuq, Liberty, Beechey Point and Point Thomson. In addition, some of these fields are associated with satellite oilfields: Tarn, Palm, Tabasco, West Sak, Meltwater, West Beach, North Prudhoe Bay, Niakuk, Western Niakuk, Kuparuk, Schrader Bluff, Sag River, Eider, Sag Delta North, Qannik, and others.

Alpine Satellites and Greater Mooses Tooth Units

Continued expansion of the existing Alpine oilfield within the Colville River Unit is planned for the 2016–2021 ITR period. Three new drill sites, Colville Delta drill site 5 (CD5, also known as Alpine West), GMT–1 (Lookout prospect, formerly CD6), and GMT–2 (Rendezvous prospect, formerly CD7) are located in the Northeast NPR–A. The GMT–1 project would facilitate the first production of oil from Federal lands in the NPR–A (although within NPR–A, CD5 is not on Federal land). These facilities will connect to existing infrastructure at Alpine via a gravel road and four bridges over the Colville River (BLM 2014). Development of CD5 is currently under way, and commercial oil production began in October 2015. The GMT–1 project has received permits, and road, pad, pipeline, and facilities construction is anticipated for 2017–2018, but due to permitting delays and low oil prices, CPAI has slowed construction plans that would have begun production by late 2017 (CPAI 2015). Permitting for GMT–2 has not yet been completed, but construction and first production is tentatively scheduled

for 2019 and 2020. In addition to new drill site development in the NPR–A, expansion of existing drill sites in the Colville River Unit are also being considered. Additional development infrastructure in the area is planned with construction of the Nuiqsut spur road. Although the road is not specifically proposed for Industry purposes, it will provide access to Alpine workers living in Nuiqsut.

The Colville-Kuparuk Fairway Units

The region between the Alpine field and the Kuparuk Unit has been called the Colville-Kuparuk Fairway (NSB 2014). Within this region, Brooks Range Petroleum Corporation (BRPC) has proposed development of 3 drill sites by 2020 as part of the 13-well Mustang development. An independent processing center is proposed at the hub of the Mustang Development, but production pipelines will tie into the Kuparuk facilities. Approximately 32.2 km (~20 mi) of gravel road and pipeline will need to be constructed to tie in the drill sites back to the Mustang development and provide year-round access. First production of oil is planned for mid-2016. BRPC has also proposed development within the Tofkat Unit southeast of the Alpine oilfield for the years 2020–2021. If constructed, the Tofkat gravel pad will cover approximately 6.07 ha (~15 ac) and will connect to Alpine infrastructure via an 8-km (5-mi) gravel road and pipeline.

Caelus has begun development of the Nuna prospect within the fairway. This project is located at the northeast end, within the Oooguruk Unit. Estimated date of first production from the Nuna prospect is 2017. Development activities include seismic surveys, continued exploratory drilling, drilling production wells, and construction of drill pads, roads, and pipeline connections to Kuparuk infrastructure. Spanish oil company, Repsol, has submitted plans for development of five potential well locations beginning in winter 2016 with a three-well exploration program just northwest of the Alpine field. If deemed commercial, a spine-and-spur road system expanded from these drill sites to existing Kuparuk facilities is easily envisaged, along with multiple new drill sites, a centralized processing facility, and a network of flow lines tied into the Alpine Pipeline System.

Kuparuk River Unit

CPAI has pursued ongoing infield and peripheral development at the existing Kuparuk River Unit over the past decade and is likely to do so into the foreseeable future. Efforts have focused on improving technologies, expanding current production, and developing new drill sites. Technological advancements have included hydraulic fracturing, enhanced oil recovery, coil-tube drilling, and 4–D seismic surveys. Two new drill rigs will be brought online in 2016. As of 2015, a new drill site "2S" in the southwest "Shark Tooth" portion of the unit is under construction. It will require approximately 3.2 km (2 mi) of additional gravel road, pipelines, and power lines. Oil production from this well is planned for 2016. The proposed "Northeast West Sak" expansion of the existing "1H" drill site is also under way. The 3.8-ha (9.3-ac) project will accommodate additional wells and is planned to be complete in 2017. Oil from these facilities would be routed through the Kuparuk facilities to the Trans-Alaska pipeline. Other pad expansions and two additional drill sites in the eastern portion of the Kuparuk Unit may be developed later this decade to access additional oil resources.

Prudhoe Bay Unit

New development within the Prudhoe Bay Unit is planned to help offset declining production from older wells. The newer wells employ horizontal and multilateral drilling, improved water and miscible gas injection techniques, multi-stage fracturing, and other technologies to access oil from sediments with low permeability at the periphery of the main oilfield. The BPXA has discussed the possibility of development of as many as 200 new wells within the Greater Prudhoe Bay Unit area during the upcoming decade. Much of this expansion is planned to occur as part of the "West End Development Program." Proposed activities in this program include drilling 16 new wells, improving capacity of existing facilities, adding 25 additional miles of pipeline, construction of the first new pad in more than a decade, adding 2 drill rigs to the fleet, and expanding 2 additional pads within the unit. This program of development has been under way since 2013 and is expected to be completed in 2017 or later.

Beechey Point/East Shore Units

The Beechey Point Unit lies immediately north of the Prudhoe Bay Unit near the shore of Gwydyr Bay. The unit operator, BRPC, is planning to produce oil from several small hydrocarbon accumulations in and near this unit as part of the East Shore Development Project. Existing Prudhoe Bay infrastructure will be incorporated with new development to access the estimated 26 million bbl of recoverable reserves in the Central North Slope region. The proposed East Shore pad will cover approximately 6.07 ha (~15 ac). An 8.9-km (5.5-mi) gravel road will be constructed to provide year-round access to production facilities. Oil will be transported via a 1.6-km (1-mi) pipeline from the East Shore pad to existing pipelines. Gravel construction is expected to begin in 2018 with first oil planned for 2020.

Liberty Unit

Hilcorp Alaska, LLC (Hilcorp) recently assumed operation of the Liberty Unit, located in nearshore Federal waters in Foggy Island Bay about 17 km (11 mi) west of the Prudhoe Bay Unit. Initial development of the Liberty Unit began in early 2009 but was suspended following changes in production strategy. The current project concept involves production from a gravel island over the reservoir with full on-island processing capacity. Support infrastructure would include a 12.9-km (8-mi) subsea pipeline connecting to the existing Badami pipeline. Pending permit approvals, first oil production is expected by 2020 or later. This project concept supersedes the cancelled Liberty ultraextended-reach drilling project.

Point Thomson Unit

The Point Thomson Unit is located approximately 25 km (~20 mi) east of the Liberty Unit and 97 km (60 mi) east of Prudhoe Bay. The reservoir straddles the coastline of the Beaufort Sea. It consists of a gas condensate reservoir containing up to 8 trillion cubic feet (ft^3) of gas and hundreds of millions of bbl of gas liquids and oil. This amount is an estimated 25 percent of the North Slope's natural gas reserves and is critical to any major gas commercialization project. Operator ExxonMobil is actively pursuing development of a processing facility capable of handling 10,000 bbl per day, a pipeline with a design capacity of 70,000 bbl per day, a camp, an airstrip, and other ancillary facilities. Production is estimated to begin in 2016. All proposed wells and supporting infrastructure are located onshore. No permanent roads connecting with Prudhoe Bay are currently proposed, but gravel roads will connect the infield facilities. Ice roads and barges are used seasonally to provide equipment and supplies. Potential full field development may include two satellite drill sites, additional liquids production, and sale of gas. The timing and nature of additional expansion will depend upon initial field performance

and potential construction of a gas pipeline to export gas from the North Slope.

Natural Gas Pipeline

Two proposals currently exist for construction of a natural gas pipeline to transport natural gas from the Point Thomson and Prudhoe Bay production fields. The Alaska Liquefied Natural Gas (LNG) project is an Industry-sponsored partnership whose members include BP Alaska LNG LLC; ConocoPhillips Alaska LNG Company; and ExxonMobil Alaska LNG LLC. The Alaska LNG project proposes to build a large-diameter (45–106 centimeters (cm), 18–42 inch (in)) natural gas pipeline from the North Slope to Southcentral Alaska. In 2014, the State of Alaska joined in the project as a 25 percent co-investor. Since then, the project has begun the preliminary front end engineering and design phase, which is expected to extend into 2016 with gross spending of more than $500 million. The routing of the proposed Alaska LNG project pipeline is from Prudhoe Bay, generally paralleling the Dalton Highway corridor from the North Slope to Fairbanks. An approximately 56.3-km (~35-mi) lateral pipeline will take off from the main pipeline and end at Fairbanks. The main pipeline would continue south, terminating at a natural gas liquefaction plant near Nikiski. There the remaining hydrocarbons will be condensed for export to national and international markets.

The second partnership, the Alaska Stand Alone Gas Pipeline (ASAP) project, was originally planned as a 24-in diameter natural gas pipeline with a natural gas flow rate of 500 million ft^3 per day at peak capacity, and is currently considered by many as a backup plan for the larger Alaska LNG project. The Alaska Gasline Development Corporation in partnership with TransCanada Corp. has led the planning effort for ASAP. Production from this pipeline would emphasize in-State distribution, although surplus gas would also likely be condensed and exported.

Either project would include an underground pipeline with elevated bridge stream crossings, compressor stations, possible fault crossings, pigging facilities, and off-take valve locations. Both pipelines would be designed to transport a highly conditioned natural gas product, and would follow the same general route. As currently proposed, approximately 40 km (~25 mi) of pipeline would occur within the Beaufort ITR region. A gas conditioning facility would need to be constructed near Prudhoe Bay and will likely require one or more large equipment modules to be off-loaded at the West Dock loading facility. The West Dock facility is a gravel causeway stretching 4 km (2.5 mi) into Prudhoe Bay. Shipments to West Dock will likely require improvements to the dock facilities including installing breasting dolphins to facilitate berthing and mooring of vessels, and raising the height of the existing dockhead to accept the large shipments. Dredging will be needed to deepen the navigational channel to the dockhead. Continued preconstruction project engineering and design work involving site evaluations and environmental surveys on the North Slope is likely to occur in the 2016–2021 period. Additional early-phase construction work could occur during this time but would likely be limited to expansion of West Dock beginning in 2020, gravel extraction and placement for pads and roads near Prudhoe Bay beginning in 2019, and ice-road construction in 2018–2021.

Production Activities

North Slope production facilities occur between the oilfields of the Alpine Unit in the west to Badami and Point Thomson in the east. Production activities include building operations, oil production, oil transport, facilities maintenance and upgrades, restoration, and remediation. Production activities are permanent, year-round activities, whereas exploration and development activities are usually temporary and seasonal. Alpine and Badami are not connected to the road system and must be accessed by airstrips, barges, and seasonal ice roads. Transportation on the North Slope is by automobile, airplanes, helicopters, boats, rolligons, tracked vehicles, and snowmobiles. Aircraft, both fixed wing and helicopters, are used for movement of personnel, mail, rush-cargo, and perishable items. Most equipment and materials are transported to the North Slope by truck or barge. Much of the barge traffic during the open water season unloads from West Dock. Maintenance dredging of up to 220,000 cubic yards per year of material is performed at West Dock to ensure continued operation.

Oil pipelines extend from each developed oilfield to the Trans-Alaska Pipeline System (TAPS). The 122-cm (48-in) diameter TAPS pipeline extends 1,287 km (800 mi) from the Prudhoe Bay oilfield to the Valdez Marine Terminal. Alyeska Pipeline Service Company conducts pipeline operations and maintenance. Access to the pipeline is primarily from established roads, such as the Spine Road and the Dalton Highway, or along the pipeline right-of-way.

Colville River Unit

The Alpine oilfield within the Colville River Unit was discovered in 1994 and began production in 2000. CPAI maintains a majority interest and is the primary operator. Alpine is currently the westernmost production oilfield on the North Slope, located 50 km (31 mi) west of the Kuparuk oilfield and 14 km (9 mi) northeast of the village of Nuiqsut. Facilities include a combined production pad/drill site and 3 additional drill sites with a total of approximately 180 wells. Pads, gravel roads, an airstrip, and processing facilities cover a total surface area of 66.8 ha (165 ac). Crude oil from Alpine is transported 34 mi through a 14-in pipeline to the Trans-Alaska Pipeline System. An ice road is constructed annually between Alpine and the Kuparuk oilfield to support major resupply activities. Small aircraft are used year-round to provide supplies and crew changeovers; camp facilities can support up to approximately 630 personnel.

Oooguruk Unit

The Oooguruk Unit, operated by Caelus, is located at the north end of the Colville-Kuparuk fairway, adjacent to the Kuparuk Unit in shallow waters of Harrison Bay. The Oooguruk drillsite is located on a 6 ac artificial island in the shallow waters of Harrison Bay. A 9.2-km (5.7-mi) system of subsea flowlines, power cables, and communications cables connects the island to onshore support facilities. Production began in 2008. Expansion of the drill site in 2015 and 2016 will increase the working surface area from 2.4 ha (6 ac) to 3.8 ha (9.5 ac). Drilling of additional production wells are planned and new injection well technology will be employed. Cumulative production was estimated to be 9.8 million bbl as of 2011 (AOGCC 2013)

Kuparuk River Unit

The Kuparuk oilfield, operated by CPAI, is Alaska's second-largest producing oilfield behind Prudhoe Bay. The gross volume of the oilfield has been estimated to be 6 billion bbl; more than 2.5 billion bbl have been produced as of 2014 (CPAI 2014). Nearly 900 wells have been drilled in the Greater Kuparuk Area, which includes the satellite oilfields of Tarn, Palm, Tabasco, West Sak, and Meltwater. The total development area in the Greater Kuparuk Area is approximately 603 ha (~1,508 ac), including 167 km (104 mi) of gravel roads, 231 km (144 mi) of pipelines, 6 gravel mine sites, and over 50 gravel pads. The Kuparuk operations center and construction camp can accommodate up to 1,200 personnel.

Nikaitchuq Unit

The Nikaitchuq Unit, operated by Eni, is north of the Kuparuk River Unit. The offshore portion of Nikaitchuq, the Spy Island Development, is located south of the barrier islands of the Jones Island group and 6.4 km (4 mi) north of Oliktok Point. In 2007, Eni became the operator in the area and subsequently constructed an offshore gravel pad and onshore production facilities at Spy Island and Oliktok Point. The offshore pad is located in shallow water (*i.e.*, 3 meters (m) (10 feet (ft) deep)). A subsea flowline was constructed to transfer produced fluids from shore. The wells require an electrical submersible pump to produce oil because they are not capable of unassisted flow. The flow can be stopped by turning off the pump. Production began in 2011 at Oliktok Point and in 2012 at Spy Island. Cumulative production at the end of 2011 was approximately 2 million bbl. As of 2015, a program to expand production is under way, including drilling of 20 or more new wells to recover oil from the nearby Schrader Bluff reservoirs.

Milne Point Unit

The Milne Point Unit, operated by Hilcorp, is located approximately 56 km (~35 mi) northwest of Prudhoe Bay and immediately east of the Nikaitchuq Unit. This field consists of more than 220 wells drilled from 12 gravel pads. Milne Point produces oil from three main fields: Kuparuk, Schrader Bluff, and Sag River. Cumulative oil production as of the end of 2012 was 308 million bbl of oil equivalent per day (BOE, the amount of hydrocarbon product containing the energy equivalent of a barrel of oil). Average daily production rate in 2012 was 17,539 BOE with 114 production wells online. The total gravel footprint of Milne Point and its satellites is 182 ha (450 ac). The Milne Point Operations Center has accommodations for up to 180 people. An expansion program is under way for the Milne Point Unit. It is likely to improve technology of existing wells and may also include building a new drill pad, roads, and associated wells.

Prudhoe Bay Unit

The Prudhoe Bay Unit, operated by BPXA, is one of the largest oilfields by production in North America and ranks among the 20 largest oilfields worldwide. Over 12 billion bbl have been produced from a field originally estimated to have 25 billion bbl of oil in place. The Prudhoe Bay oilfield also contains an estimated 26 trillion ft^3 of recoverable natural gas. More than 1,100 wells are currently in operation in the Prudhoe Bay oilfields, approximately 830 of which are producing oil (others are for gas or water injection). Average daily production in 2012 was around 255,500 BOE.

The Prudhoe Bay Unit encompasses several oilfields, including the Point McIntyre, Lisburne, Niakuk, Western Niakuk, West Beach, North Prudhoe Bay, Borealis, Midnight Sun, Polaris, Aurora, and Orion reservoirs. Of these, the largest field by production is the Point McIntyre oilfield, which lies about 11 km (7 mi) north of Prudhoe Bay. Cumulative oil production between 1993 and 2011 was 436 million bbl (AOGCC 2013). In 2014, production at Point McIntyre averaged about 18,700 bbl of oil per day. The Lisburne field is largest by area. It covers about 80,000 ac just northwest of the main Prudhoe Bay field. Production was reported as 7,070 bbl per day in 2011, and cumulative production was approximately 182 million BOE as of 2014. The Niakuk fields have also reached high cumulative yields among the Greater Prudhoe Bay area oilfields. Between 1994 and 2011, these fields produced about 157 million bbl. In 2014, the combined Niakuk fields yielded about 1,200 bbl per day. Orion, Aurora, Polaris, Borealis and Midnight Sun are considered satellite fields and were producing more than 22,500 bbl per day combined in 2014 (BPXA 2015). In total, Prudhoe Bay satellite fields have produced more than 184 million BOE.

The total development area in the Prudhoe Bay Unit is approximately 2,785 ha (~6,883 ac) within an area of about 86,418 ha (213,543 ac). On the east side of the field the main construction camp can accommodate up to 625 people, the Prudhoe Bay operations center houses up to 449 people, and the Tarmac Camp houses 244 people. The base operations center on the western side of the Prudhoe Bay oilfield can accommodate 474 people. Additional personnel are housed at facilities in nearby Deadhorse industrial center or in temporary camps placed on existing gravel pads. Activities in the Prudhoe Bay Unit are likely to emphasize greater production of natural gas if a gas pipeline is approved during the 2016–2021 ITR period.

Northstar Unit

The Northstar oilfield, currently operated by Hilcorp, is located 6 km (4 mi) northwest of the Point McIntyre and 10 km (6 mi) north of the Prudhoe Bay Unit in approximately 10 m (~33 ft) of water. It was developed by BPXA in 1995, and began producing oil in 2001. The 15,360 ha (38,400 ac) reservoir lies offshore in waters up to 40 ft deep. A 2-ha (5-ac) artificial island supports 24 operating wells and all support facilities for this field. A subsea pipeline connects facilities to the Prudhoe Bay oilfield. As of 2013, production had surpassed 158.26 million bbl. The onsite base operations center houses 50 people. Access to Northstar is via helicopter, hovercraft, boat, and seasonal ice road. Of the existing offshore facilities Northstar is located the farthest from shore.

Duck Island Unit

The Endicott oilfield, operated by Hilcorp, is located in the Duck Island Unit approximately 16 km (~10 mi) northeast of Prudhoe Bay. In 1986 it became the first continuously producing offshore field in the U.S. Arctic. The Endicott oilfield was developed from two man-made gravel islands connected to the mainland by a gravel causeway. The operations center and processing facilities are located on the 24-ha (58-ac) main production island approximately 4.8 km (~3 mi) offshore. As of August 2013, 501 million BOE have been produced from Endicott. Production is from the Endicott reservoir in the Kekiktuk formation and two satellite fields (Eider and Sag Delta North) in the Ivishak formation. All wells were drilled from Endicott's main production island. The total area of development is 210 ha (522 ac) of land (including the Liberty satellite drilling island) with 24 km (15 mi) of roads, 43 km (24 mi) of pipelines, and 1 gravel mine site. Approximately 85 people can be housed at Endicott's Liberty camp.

Badami and Point Thomson Units

The Badami and Point Thomson units are located in the eastern portion of the North Slope and Beaufort Sea planning areas. Production from the Badami oilfield began in 1998 and from Point Thomson in 1983, but has not been continuous from either unit. The Badami field is located approximately 56 km (~35 mi) east of Prudhoe Bay and is the most easterly oilfield currently in production on the North Slope. Point Thomson, located 4 km (2.5 mi) east of Badami, was not in production as of 2015. The Badami development area is approximately 34 ha (~85 ac) of tundra including 7 km (4.5 mi) of gravel roads, 56 km (35 mi) of pipeline, 1 gravel mine site, and 2 gravel pads with a total of eight wells. As of 2011, cumulative production had reached 5.7 million bbl.

There is no permanent road connection from Badami to Prudhoe Bay. A pipeline connecting the Badami oilfield to the common carrier pipeline system at Endicott was built from an ice road.

Other Activities

Gas Hydrate Exploration and Research

Growing interest in the North Slope's methane gas hydrate resources is expected to continue in the upcoming 5 years. The U.S. Geological Survey (USGS) has estimated the volume of technically recoverable undiscovered methane gas hydrate on the North Slope is approximately 85 trillion ft³ (with a range of 25–158 trillion ft³ (USGS 2013)). Recent gas hydrate test wells drilled on the North Slope have confirmed the presence of viable reservoirs and buoyed interest in long-term testing. International and Gulf of Mexico test well simulations have generated production-level gas yields. Gas hydrate research on the North Slope is supported by Federal funding and State initiatives. In 2013, the State of Alaska temporarily set aside 11 tracts of unleased State lands on the North Slope for methane hydrate research. This support is expected to result in a continued interest in gas hydrate research and exploration, but development of this nonconventional hydrocarbon resource is yet unproven and uncertainties regarding economic feasibility, safety, and environmental impact remain unresolved. For these reasons, a relatively low, but increasing level of gas hydrate exploration and research is expected during the regulatory period.

Barrow Gas Fields

The NSB operates the Barrow Gas Fields located south and east of the city of Barrow. The Barrow Gas Fields include the Walakpa, South, and East Gas Fields; of these, the Walakpa Gas Field and a portion of the South Gas Field are located within the boundaries of the Chukchi Sea geographical region and, therefore, not discussed here. The East Field and part of the South Field are included in the Beaufort Sea ITR region.

The Barrow Gas Fields provide a source of heat and electricity for the Barrow community. Drilling and testing of the East Barrow Field began in 1974, and regular gas production from the pool began in December 1981. Production peaked at about 2.75 million ft³ of gas per day in 1983, and then began to decline. In 2011 and 2012, NSB increased production by drilling five new wells, upgrading pipelines, and installing modern wellhead housings. In the winter of 2013, production was about 350 million ft³ per day. Cumulatively, the field produced more than 8.8 billion ft³ through July 2013, surpassing the original estimate of 6.2 billion ft³ of gas in place.

Although activities within the Barrow Gas Fields were not specifically identified by the Applicants, the petition did include this area as part of the request for ITRs. Additionally, a portion of the Barrow Gas Fields are similarly described in ITRs for the Chukchi Sea (78 FR 35364, June 12, 2013), while the remainder is located in the Beaufort Sea geographic region. Therefore, as part of this analysis, we have included the Barrow Gas Fields in the event that LOAs for activities on the Beaufort Sea side of the field are requested. Gas production is expected to continue at its current rate during the next 5 years, and will be accompanied by maintenance and support activities, including possible access by air or over land, ice road construction, survey work, or on-pad construction.

Evaluation of the Nature and Level of Activities

Based on the Industry request, we assume that the proposed activities will increase the area of the industrial footprint with the addition of new facilities, such as drill pads, pipelines, and support facilities at a rate consistent with prior 5-year regulatory periods. However, oil production volume is expected to continue a long-term decline during this 5-year regulatory period despite new development. This prediction is due to declining production from currently producing fields. During the period covered by the regulations, we assume the annual level of activity at existing production facilities, as well as levels of new annual exploration and development activities, will be similar to that which occurred under the previous regulations, although exploration and development may shift to new locations and new production facilities will add to the overall industry footprint. Additional onshore and offshore production facilities are being considered within the timeframe of these regulations, potentially adding to the total permanent activities in the area. The rate of progress is similar to prior production schedules, but there is a potential increase in the accumulation of the industrial footprint, with an increase mainly in onshore facilities.

Biological Information

Pacific Walrus

Pacific walruses constitute a single panmictic population inhabiting the shallow continental shelf waters of the Bering and Chukchi seas (Lingqvist *et al.* 2009, Berta and Churchill 2012). The distribution of walruses is largely influenced by the extent of the seasonal pack ice and prey densities. From April to June, most of the walrus population migrates from the Bering Sea through the Bering Strait and into the Chukchi Sea. Walruses tend to migrate into the Chukchi Sea along lead systems that develop in the sea-ice. Walruses are closely associated with the edge of the seasonal pack ice during the open-water season. By July, thousands of animals can be found along the edge of the pack ice from Russian waters to areas west of Point Barrow, Alaska. The pack-ice usually advances rapidly southward in late fall, and most walruses return to the Bering Sea by mid- to late-November. During the winter breeding season walruses are found in three concentration areas of the Bering Sea where open leads, polynyas, or thin ice occur (Fay *et al.* 1984, Garlich-Miller *et al.* 2011a). While the specific location of these groups varies annually and seasonally depending upon the extent of the sea-ice, generally one group occurs near the Gulf of Anadyr, another south of St. Lawrence Island, and a third in the southeastern Bering Sea south of Nunivak Island into northwestern Bristol Bay.

Although most walruses remain in the Chukchi Sea throughout the summer months, a few occasionally range into the Beaufort Sea in late summer. Industry monitoring reports have observed no more than 35 walruses in the area of these proposed ITRs between 1995 and 2012, with only a few instances of disturbance to those walruses (AES Alaska 2015, Kalxdorff and Bridges 2003, USFWS unpubl. data). Beginning in 2008, the USGS, and since 2013 the Alaska Department of Fish and Game (ADF&G), have fitted about 30 – 60 walruses with satellite transmitters each year during spring and summer. In 2014, a female tagged by ADF&G spent about 3 weeks in Harrison Bay (ADF&G 2014). The USGS tracking data indicates that at least one instrumented walrus ventured into the Beaufort Sea for brief periods in all years except 2011. Most of these movements extend northeast of Barrow to the continental shelf edge north of Smith Bay (USGS 2015). All available information indicates that few walruses enter the Beaufort Sea and those that do spend little time there. The Service and

USGS are conducting multiyear studies on the walrus population to investigate movements and habitat use patterns. It is possible that as sea-ice diminishes in the Chukchi Sea beyond the 5-year period of this rule, walrus distribution and habitat use may change.

Walruses are generally found in waters of 100 m (328 ft) or less although they are capable of diving to greater depths. They use sea-ice as a resting platform over feeding areas, as well as for giving birth, nursing, passive transportation and avoiding predators (Fay 1982, Ray *et al.* 2006). They feed almost exclusively on benthic invertebrates. Native hunters have also reported incidences of walruses preying on seals, and other items such as fish and birds are occasionally taken (Sheffield and Grebmeier 2009, Seymour *et al.* 2014). Foraging trips may last for several days with walruses diving to the bottom nearly continuously. Most foraging dives last between 5 and 10 minutes, with a 1–2-minute surface interval. The disturbance of the sea floor by foraging walruses releases nutrients into the water column, provides food for scavenger organisms, contributes to the diversity of the benthic community, and is thought to have a significant influence on the ecology of the Bering and Chukchi seas (Ray *et al.* 2006).

Walruses are social and gregarious animals. They travel and haul-out onto ice or land in groups. Walruses spend approximately 20 – 30 percent of their time out of the water. Hauled-out walruses tend to be in close physical contact. Young animals often lie on top of adults. The size of the hauled out groups can range from a few animals up to several thousand individuals. The largest aggregations occur at land haulouts. In recent years, the barrier islands north of Point Lay, Alaska, have held large aggregations of walruses (20,000 – 40,000) in late summer and fall (Monson *et al.* 2013).

The size of the walrus population has never been known with certainty. Based on large sustained harvests in the 18th and 19th centuries, Fay (1957) speculated that the pre-exploitation population was represented by a minimum of 200,000 animals. Since that time, population size following European contact is believed to have fluctuated markedly in response to varying levels of human exploitation. Large-scale commercial harvests are believed to have reduced the population to 50,000–100,000 animals in the mid-1950s (Fay *et al.* 1989). The population increased rapidly in size during the 1960s and 1970s in response to harvest regulations that limited the take of females. The population likely reached or exceeded the food-based carrying capacity (K) of the region by 1980 (Fay *et al.* 1989, Fay *et al.* 1997, Garlich-Miller *et al.* 2006, MacCracken *et al.* 2014).

Between 1975 and 1990, aerial surveys conducted jointly by the United States and Russia at 5-year intervals produced population estimates ranging from about 200,000 to 255,000 individuals, with large confidence intervals. Efforts to survey the walrus population were suspended by both countries after 1990 because problems with survey methods produced population estimates with unknown bias and unknown variances that severely limited their utility. In 2006, the United States and Russia conducted another joint aerial survey in the pack ice of the Bering Sea using thermal imaging systems to more accurately count walruses hauled out on sea-ice and satellite transmitters to account for walruses in the water. The number of walruses within the surveyed area was estimated at 129,000 with 95 percent confidence limits of 55,000 to 507,000 individuals. This estimate should be considered a minimum, as weather conditions forced termination of the survey before large areas of the Bering Sea were surveyed (Speckman *et al.* 2011).

Taylor and Udevitz (2015) used both the aerial survey population estimates described above and ship-based age and sex composition counts that occurred in 1981–1984, 1998, and 1999 (Citta *et al.* 2014) in a Bayesian integrated population model to estimate population trend and vital rates from 1975–2006. They recalculated the 1975–1990 aerial survey estimates based on a lognormal distribution for inclusion in their model. Their results generally agreed with the large-scale population trends identified by the previous efforts, but with slightly different population estimates in some years along with more precise confidence intervals. They were careful to note that all of the demographic rates in their model were estimated based on age structure data from 1981 to 1999, when the population was in decline, and that projections outside those years are extrapolations of demographic functions that may not accurately reflect dynamics for different population trends. Ultimately, they concluded (i) that though their model provides improved clarity on past walrus population trends and vital rates, it cannot overcome the large uncertainties in the available population size data, and (ii) that the absolute size of the Pacific walrus population will continue to be speculative until accurate empirical estimation of the population size becomes feasible.

A detailed description of the Pacific walrus stock can be found in the Pacific Walrus (*Odobenus rosmarus divergens*) Stock Assessment Report (announced at 79 FR 22154, April 21, 2014). A digital copy of the Stock Assessment Report is available at: *http://www.fws.gov/alaska/fisheries/mmm/stock/Revised_April_2014_Pacific_Walrus_SAR.pdf.*

Polar bears are known to prey on walruses, particularly calves, and killer whales *(Orcinus orca)* have been known to take all age classes of walruses (Frost *et al.* 1992, Melnikov and Zagrebin 2005). Predation rates are unknown but are thought to be highest near terrestrial haulout sites where large aggregations of walruses can be found. However, few observations exist of predation upon walruses farther offshore.

Walruses have been hunted by coastal Natives in Alaska and Chukotka for thousands of years. Exploitation of the walrus population by Europeans has also occurred in varying degrees since beginning with the arrival of exploratory expeditions, but ceased in 1972 in the United States with the passage of the MMPA and in 1990 in Russia. Presently, walrus hunting in Alaska and Chukotka is restricted to subsistence use by aboriginal peoples. Harvest mortality from 2000 – 2014 for both the United States and Russian Federation averaged 3,207 (SE = 194) walruses per year. This mortality estimate includes corrections for under-reported harvest (U.S. only) and struck and lost animals. Harvests have been declining by about 3 percent per year since 2000 and were exceptionally low in the United States in 2012 – 2014. Resource managers in Russia have concluded that the population has declined and reduced harvest quotas in recent years accordingly (Kochnev 2004; Kochnev 2005; Kochnev 2010; pers. comm.; Litovka 2015, pers. comm.), based in part on the lower abundance estimate generated from the 2006 survey. However, Russian hunters have never reached the quota (Litovka 2015, pers. comm.).

Intra-specific trauma at coastal haulouts is also a known source of injury and mortality (USFWS 2015). Disturbance events can cause walruses to stampede into the water and have been known to result in injuries and mortalities. The risk of stampede-related injuries increases with the number of animals hauled out. Calves and young animals are particularly vulnerable to trampling injuries and mortality. Management and protection programs in both the United States and Russian Federation have been successful in

reducing disturbances and large mortality events at coastal haulouts (USFWS 2015).

The Service announced a 12-month petition finding to list the Pacific walrus as endangered or threatened and to designate critical habitat on February 10, 2011 (76 FR 7634). The listing of walruses was found to be warranted, but precluded due to higher priority listing actions and, the Pacific walrus was added to the list of candidate species under the Endangered Species Act (ESA; 16 U.S.C. 1533 *et seq.*). We will make any determination on critical habitat during development of the proposed listing rule.

Polar Bear

Polar bears are found throughout the ice-covered seas and adjacent coasts of the Arctic with a current population estimate of approximately 26,000 individuals (95 percent Confidence Interval (CI) = 22,000–31,000) (Wiig *et al.* 2015). Polar bears live up to 30 years, have no natural predators, though cannibalism is known to occur, and they do not often die from diseases or parasites. Polar bears typically occur at low densities throughout their circumpolar range (DeMaster and Stirling 1981). They are generally found in areas where the sea is ice-covered for much of the year; however, polar bears are not evenly distributed throughout their range. They are typically most abundant on sea-ice, near the ice edges or openings in the ice, over relatively shallow continental shelf waters with high marine productivity (Durner *et al.* 2004). Their primary prey is ringed *(Pusa hispida)* and bearded *(Erignathus barbatus)* seals, although diet varies regionally with prey availability (Thiemann *et al.* 2008, Cherry *et al.* 2011). Polar bears use the sea-ice as a platform to hunt seals. Over most of their range, polar bears remain on the sea-ice year-round or spend only short periods on land. They may, however, be observed throughout the year in the onshore and nearshore environments, where they will opportunistically scavenge on beached marine mammal carcasses (Kalxdorff and Fischbach 1998). Their distribution in coastal habitats is often influenced by the movement of seasonal sea-ice.

Females can initiate breeding at 5 to 6 years of age. Females without dependent cubs breed in the spring. Pregnant females enter maternity dens by late November, and the young are usually born in late December or early January. Only pregnant females den for an extended period during the winter; other polar bears may excavate temporary dens to escape harsh winter winds. On average two cubs are born per reproductive event, and, therefore, reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is 3 to 4 years, and a female polar bear can produce 8–10 cubs in her lifetime, in healthy populations, and 50–60 percent of the cubs will survive.

In late March or early April, the female and cubs emerge from the den. If the mother moves young cubs from the den before they can walk or withstand the cold, mortality to the cubs increases. Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. Radio and satellite telemetry studies elsewhere indicate that denning can occur in multiyear pack ice and on land. In the Southern Beaufort Sea (SBS) population the proportion of dens on pack ice declined from approximately 60 percent from 1985 through 1994 to 40 percent from 1998 through 2004 (Fischbach *et al.* 2007). This change is likely in response to reductions in stable old ice, increases in unconsolidated ice, and lengthening of the melt season (Fischbach *et al.* 2007). If sea-ice extent in the Arctic continues to decrease and the amount of unstable ice increases, a greater proportion of polar bears may seek to den on land (Durner *et al.* 2006, Fischbach *et al.* 2007).

In Alaska, maternal polar bear dens appear to be less densely concentrated than those in Canada and Russia. In Alaska, certain areas, such as barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat, receive proportionally greater use for denning than other areas. Maternal denning occurs on tundra-bearing barrier islands along the Beaufort Sea and also in the large river deltas, such as those associated with the Colville and Canning rivers.

During the late summer/fall period (August through October), polar bears are most likely to be encountered along the coast and barrier islands. They use these areas as travel corridors and hunting areas. Based on Industry observations, encounter rates are higher during the fall (August to October) than any other time period. The duration of time the bears spend in these coastal habitats depends on a variety of factors including storms, ice conditions, and the availability of food. In recent years, polar bears have been observed in larger numbers than previously recorded during the fall period. The remains of subsistence-harvested bowhead whales at Cross and Barter islands provide a readily available food source for bears in these areas and appear to play a role in this increase (Schliebe *et al.* 2006). Based on Industry observations and coastal survey data acquired by the Service, up to 125 individuals of the SBS bear population have been observed annually during the fall period between Barrow and the Alaska-Canada border.

In 2008, the Service listed polar bears as threatened under the ESA due to the loss of sea-ice habitat caused by climate change (73 FR 28212, May 15, 2008). The Service later published a final rule under section 4(d) of the ESA for the polar bear, which was vacated then reinstated when procedural requirements were satisfied (78 FR 11766, February 20, 2013). This special rule provides for measures that are necessary and advisable for the conservation of polar bears. Specifically, the 4(d) rule: (a) Adopts the conservation regulatory requirements of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions, in most instances; (b) provides that incidental, nonlethal take of polar bears resulting from activities outside the bear's current range is not prohibited under the ESA; (c) clarifies that the special rule does not alter the Section 7 consultation requirements of the ESA; and (d) applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption.

The Service designated critical habitat for polar bear populations in the United States effective January 6, 2011 (75 FR 76086, December 7, 2010). On January 13, 2013, the U.S. District Court for the District of Alaska issued an order that vacated and remanded the polar bear critical habitat final rule to the Service (*Alaska Oil and Gas Association and American Petroleum Institute* v. *Salazar, Case No. 3:11–cv–0025–RRB*). On February 29, 2016, the United States Court of Appeals for the 9th Circuit reversed that order and remanded it back to the U.S. District Court for the District of Alaska for entry of judgment in favor of FWS (*Alaska Oil and Gas Association* v. *Jewell, Case No. 13–35619*).

Critical habitat identifies geographic areas that contain features that are essential for the conservation of a threatened or endangered species and that may require special management or protection. Under section 7 of the ESA,

if there is a Federal action, we will analyze the potential impacts of the action upon polar bear critical habitat. Polar bear critical habitat units include: Barrier island habitat, sea-ice habitat (both described in geographic terms), and terrestrial denning habitat (a functional determination). Barrier island habitat includes coastal barrier islands and spits along Alaska's coast; it is used for denning, refuge from human disturbance, access to maternal dens and feeding habitat, and travel along the coast. Sea-ice habitat is located over the continental shelf, and includes water 300 m (~984 ft) or less in depth. Terrestrial denning habitat includes lands within 32 km (~20 mi) of the northern coast of Alaska between the Canadian border and the Kavik River and within 8 km (~5 mi) between the Kavik River and Barrow. The total area designated covers approximately 484,734 km² (~187,157 mi²), and is entirely within the lands and waters of the United States. Polar bear critical habitat is described in detail in the final rule that designated polar bear critical habitat (75 FR 76086, December 7, 2010). A digital copy of the final critical habitat rule is available at: *http://alaska.fws.gov/fisheries/mmm/polarbear/pdf/federal_register_notice.pdf.*

Management and conservation concerns for the SBS and Chukchi/Bering Seas (CS) polar bear populations include sea-ice loss due to climate change, bear-human conflict, oil and gas industry activity, oil spills and contaminants, increased marine shipping, increased disease, and the potential for overharvest. Research has linked declines in sea-ice to reduced physical condition, growth, and survival of polar bears (Bromaghin *et al.* 2015). Projections indicate continued climate warming at least through the end of this century (IPCC 2013). The associated reduction of summer Arctic sea-ice is expected to be a primary threat to polar bear populations (Amstrup *et al.* 2008, Stirling and Derocher 2012).

Stock Definition, Range, and Status

Polar bears are distributed throughout the circumpolar Arctic region. In Alaska, polar bears have historically been observed as far south in the Bering Sea as St. Matthew Island and the Pribilof Islands (Ray 1971). A detailed description of the SBS and CS polar bear stocks can be found in the Polar Bear *(Ursus maritimus)* Stock Assessment Reports (announced at 74 FR 69139, December 30, 2009). Digital copies of the Stock Assessment Reports are available at: *http://www.fws.gov/alaska/fisheries/mmm/stock/final_sbs_polar_bear_sar.pdf* and *http://www.fws.gov/alaska/fisheries/mmm/stock/final_cbs_polar_bear_sar.pdf.* A summary of the Alaska polar bear stocks are described below.

Southern Beaufort Sea

The SBS polar bear population is shared between Canada and Alaska. Radio-telemetry data, combined with eartag returns from harvested bears, suggest that the SBS population occupies a region with a western boundary near Icy Cape, Alaska, and an eastern boundary near Pearce Point, Northwest Territories, Canada (USFWS 2010).

Early estimates from the mid-1980s suggested the size of the SBS population was approximately 1,800 polar bears, although uneven sampling was known to compromise the accuracy of that estimate. A population analysis of the SBS stock was completed in June 2006 through joint research coordinated between the United States and Canada. That analysis indicated the population of the region between Icy Cape and Pearce Point was approximately 1,500 polar bears (95 percent confidence intervals approximately 1,000–2,000). Although the confidence intervals of the 2006 population estimate overlapped the previous population estimate of 1,800, other statistical and ecological evidence (*e.g.*, high recapture rates encountered in the field) suggest that the current population is actually smaller than has been estimated for this area in the past. The most recent population estimate for the SBS population was produced by the USGS in 2015. Bromaghin *et al.* (2015) developed mark-recapture models to investigate the population dynamics of polar bears in the SBS from 2001 to 2010. They estimated that in 2010 there were approximately 900 polar bears (90 percent CI 606–1212) in the SBS population (Bromaghin *et al.* 2015). That study showed a 25 to 50 percent decline in abundance of SBS bears due to low survival from 2004 through 2006. Though survival of adults and cubs began to improve in 2007, and abundance was comparatively stable from 2008 to 2010, survival of subadult bears declined throughout the entire period.

Chukchi/Bering Seas

The CS polar bear population is shared between Russia and Alaska. The CS stock is widely distributed on the pack-ice in the Chukchi Sea, northern Bering Sea, and adjacent coastal areas in Alaska and Chukotka, Russia. Radio-telemetry data indicate that the northeastern boundary of the CS population is near the Colville Delta in the central Beaufort Sea and the western boundary is near the Kolyma River in northeastern Siberia (Garner *et al.*1990; Amstrup 1995; Amstrup *et al.* 2005). The population's southern boundary is determined by the extent of annual sea-ice in the Bering Sea. There is an extensive area of overlap between the SBS and CS populations roughly between Icy Cape, Alaska, and the Colville Delta (Garner *et al.* 1990; Garner *et al.* 1994; Amstrup *et al.* 2000; Amstrup *et al.* 2004; Obbard *et al.* 2010; Wiig *et al.* 2015).

It has been difficult to obtain a reliable population estimate for this stock due to the vast and inaccessible nature of the habitat, movement of bears across international boundaries, logistical constraints of conducting studies in the Russian Federation, and budget limitations (Amstrup and DeMaster 1988; Garner *et al.* 1992; Garner *et al.* 1998; Evans *et al.* 2003).

Estimates of the stock have been derived from observations of dens and aerial surveys (Chelintsev 1977; Stishov 1991a; Stishov 1991b; Stishov *et al.* 1991); however, those estimates have wide confidence intervals and are outdated. The most recent estimate of the CS stock was approximately 2,000 animals, based on extrapolation of aerial den surveys (Lunn *et al.* 2002; USFWS 2010; Wiig *et al.* 2015). However, accurate estimates of the size and trend of the CS stock are difficult to obtain and not currently available. Ongoing and planned research studies for the period 2016–2018 will result in improved information, although the wide distribution of polar bears on sea ice, the vast size of the region, and the lack of infrastructure to support research studies will continue to make it difficult to obtain up-to-date and accurate estimates of vital rates and population size. More information about polar bears can be found at: *http://www.fws.gov/alaska/fisheries/mmm/polarbear/pbmain.htm.*

Climate Change

As atmospheric greenhouse gas concentrations increase so will global temperatures (Pierrehumbert 2011). The Arctic has warmed at twice the global rate (IPCC 2007), and long-term data sets show that substantial reductions in both the extent and thickness of Arctic sea-ice cover have occurred over the past 40 years (Meier *et al.* 2014, Frey *et al.* 2015). Stroeve *et al.* (2012) estimated that, since 1979, the minimum area of fall Arctic sea-ice declined by over 12 percent per decade through 2010. Record minimum areas of fall Arctic sea-ice extent were recorded in 2002,

2005, 2007, and 2012 (lowest on record). The overall trend of continued decline of Arctic sea-ice is expected to continue for the foreseeable future (Stroeve *et al.* 2007, Amstrup *et al.* 2008, Hunter *et al.* 2010, Overland and Wang 2013, 73 FR 28212, May 15, 2008).

For walruses, climate-driven trends in the Chukchi Sea have resulted in seasonal fall sea-ice retreat beyond the continental shelf over deep Arctic Ocean waters. Reasonably foreseeable impacts to walruses as a result of diminishing sea-ice cover include potential shifts in range, habitat use, local abundance, increased frequency and duration at coastal haulouts, increased vulnerability to predation and disturbance, and localized declines in prey. It is unknown if walruses will utilize the Beaufort Sea more in the future due to climate change effects. Currently, and for the next 5 years, it appears that walruses will remain uncommon in the Beaufort Sea.

For polar bears, sea-ice habitat loss due to climate change has been identified as the primary cause of conservation concern. Amstrup *et al.* (2007) projected a 42 percent loss of optimal summer polar bear habitat by 2050. They concluded that, if current Arctic sea-ice declines continue, polar bears may eventually be excluded from onshore denning habitat in the Polar Basin Divergent Ecoregion, where ice is formed and then drawn away from near-shore areas, especially during the summer minimum ice season. The SBS and CS polar bear populations inhabit this ecoregion, and Amstrup *et al.* (2008) projected that these populations may be extirpated within the next 45–75 years if sea-ice declines continue at current rates.

Climate change is likely to have serious consequences for the worldwide population of polar bears and their prey (Amstrup *et al.* 2007, Amstrup *et al.* 2008, Hunter *et al.* 2010). Climate change is expected to impact polar bears in a variety of ways including increased movements, changes in bear distributions, changes to the access and allocation of denning areas, increased energy expenditure from open-water swimming, and possible decreased fitness. The timing of ice formation and breakup will impact seal distributions and abundance and, consequently, how efficiently polar bears can hunt seals. Reductions in sea-ice are expected to require polar bears to use more physiological energy, as moving through fragmented sea-ice and open water requires more energy than walking across consolidated sea-ice (Cherry *et al.* 2009, Pagano *et al.* 2012, Rode *et al.* 2014).

Decreased sea-ice extent may impact the reproductive success of denning polar bears. In the 1990s, approximately 50 percent of the maternal dens of the SBS polar bear population occurred annually on the pack-ice in contrast to terrestrial sites (Amstrup and Gardner 1994). The proportion of dens on sea-ice declined from 62 percent in 1985–1994 to 37 percent in 1998–2004 (Fischbach *et al.* 2007) causing a corresponding increase in terrestrial dens. This trend in terrestrial denning appears to have continued. Polar bears require a stable substrate for denning. As sea-ice conditions deteriorate and become less stable, coastal dens become vulnerable to erosion from storm surges. Polar bear dens on land, especially on the North Slope of Alaska, are also at greater risk of conflict with human activities.

Polar bear use of Beaufort Sea coastal areas in Alaska during the fall open-water period (June through October) have increased over time. The Service anticipates that polar bear use of the Beaufort Sea coast will continue to increase during the open-water season. This change in distribution has been correlated with the distance of the pack-ice from the coast at that time of year (*i.e.,* the farther from shore the leading edge of the pack-ice, the more bears observed onshore) (Schliebe *et al.* 2006). The current trend for sea-ice in the region will result in increased distances between the ice edge and land, likely resulting in more bears coming ashore during the open-water period. More polar bears on land for a longer period of time may increase human-bear interactions during this time period.

Potential Effects of Oil and Gas Industry Activities on Subsistence Uses of Pacific Walruses and Polar Bears

Pacific Walrus

Few walruses are harvested in the Beaufort Sea along the northern coast of Alaska since their primary range is in the Bering and Chukchi seas. Walruses constitute a small portion of the total marine mammal harvest for the village of Barrow. Hunters from Barrow harvested 451 walruses in the past 20 years with 78 harvested since 2009. Walrus harvest from Nuiqsut and Kaktovik is opportunistic. They have reported taking four walruses since 1993. Less than 1.5 percent of the total walrus harvest for Barrow, Nuiqsut, and Kaktovik from 2009 to 2014 has occurred within the geographic range of the incidental take regulations.

Polar Bear

Based on subsistence harvest reports, polar bear hunting is less prevalent in communities on the north coast of Alaska than it is in west coast communities. There are no quotas under the MMPA for Alaska Native polar bear harvest in the Southern Beaufort Sea; however, there is a Native-to-Native agreement between the Inuvialuit in Canada and the Inupiat in Alaska, created in 1988. This agreement, referred to as the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of take. Although this Agreement does not have the force of law from either the Canadian or the U.S. Governments, the users have abided by its terms. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Inuvialuit-Inupiat Agreement set the original quota at 76 bears in 1988, split evenly between the Inuvialuit in Canada and the Inupiat in the United States. In July 2010, the quota was reduced to 70 bears per year.

The Alaska Native subsistence harvest of polar bears from the SBS population has remained relatively consistent since 1980 and averages 36 bears annually. From 2005 through 2009, Alaska Natives harvested 117 bears from the SBS population, an average of approximately 23 bears annually. From 2010 through 2014, Alaska Natives harvested 98 polar bears from the SBS population, an average of approximately 20 bears annually. The reason for the decline of harvested polar bears from the SBS population is unknown. Alaska Native subsistence hunters and harvest reports have not indicated a lack of opportunity to hunt polar bears or disruption by Industry activity.

Evaluation of Effects of Activities on Subsistence Uses of Pacific Walruses and Polar Bears

Barrow and Kaktovik are expected to be affected to a lesser degree by Industry activities than Nuiqsut. Nuiqsut is located within 5 mi of ConocoPhillips' Alpine production field to the north and ConocoPhillips' Alpine Satellite development field to the west. However, Nuiqsut hunters typically harvest polar bears from Cross Island during the annual fall bowhead whaling. Cross Island is approximately 16 km (~10 mi) offshore from the coast of Prudhoe Bay. We have received no evidence or reports that bears are altering their habitat use patterns, avoiding certain areas, or being affected in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use.

Changes in activity locations may trigger community concerns regarding the effect on subsistence uses. Industry will need to remain proactive to address potential impacts on the subsistence uses by affected communities through consultations, and where warranted, POCs. Open communication through venues such as public meetings, which allow communities to express feedback prior to the initiation of operations, will be required as part of an LOA application. If community subsistence use concerns arise from new activities, appropriate mitigation measures are available and will be applied, such as a cessation of certain activities at certain locations during specified times of the year, *i.e.,* hunting seasons.

No unmitigable concerns from the potentially affected communities regarding the availability of walruses or polar bears for subsistence uses have been identified through Industry consultations with the potentially affected communities of Barrow, Kaktovik, and Nuiqsut. Based on Industry reports, aerial surveys, direct observations, community consultations, and personal communication with hunters, it appears that subsistence hunting opportunities for walruses and polar bears have not been affected by past Industry activities, and we do not anticipate that the proposed activities for this ITR will have different effects.

Potential Effects of Oil and Gas Industry Activities on Pacific Walruses, Polar Bears, and Prey Species

Individual walruses and polar bears can be affected by Industry activities in numerous ways. These include (1) noise disturbance, (2) physical obstructions, (3) human encounters, and (4) effects on prey. In order to evaluate effects to walruses and polar bears, we analyzed both documented and potential effects, including those that could have more than negligible impacts. The effects analyzed included the loss or preclusion of habitat, harassment, lethal take, and exposure to oil spills.

Pacific Walrus

Walruses do not utilize the Beaufort Sea frequently and the likelihood of encountering walruses during Industry operations is low. During the time period of these regulations, Industry operations may occasionally encounter small groups of walruses swimming in open water or hauled out onto ice floes or along the coast. Industry monitoring data have reported 35 walruses between 1995 and 2012, with only a few instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). From 2009 through 2014 no interactions between walrus and Industry were reported in the Beaufort Sea ITR region. We have no evidence of any physical effects or impacts to individual walruses due to Industry activity. If an interaction did occur, it could potentially result in some level of disturbance. The response of walruses to disturbance stimuli is highly variable. Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances. In the Chukchi Sea disturbance events are known to cause walrus groups to abandon land or ice haulouts and occasionally result in trampling injuries or cow-calf separations, both of which are potentially fatal. Calves and young animals at terrestrial haulouts are particularly vulnerable to trampling injuries.

Noise Disturbance

Walruses hear sounds both in air and in water. Kastelein *et al.* (1996) tested the in-air hearing of a walrus from 125 hertz (Hz) to 8 kilohertz (kHz) and determined the walrus could hear all frequency ranges tested but the best sensitivity was between 250 Hz and 2 kHz. Kastelein *et al.* (2002) tested underwater hearing and determined that range of hearing was between 1 kHz and 12 kHz with greatest sensitivity at 12 kHz. The small sample size warrants caution; other pinnipeds can hear up to 40 kHz. Many of the noise sources generated by Industry activities, other than the very high frequency seismic profiling, are likely to be audible to walruses.

Seismic operations, pile driving, ice breaking, and various other Industry activities introduce substantial levels of noise into the marine environment. Greene *et al.* (2008) measured underwater and airborne noise from ice road construction, heavy equipment operations, auguring, and pile driving during construction of a gravel island at Northstar. Underwater sound levels from construction ranged from 103 decibels (dB) at 100 m (328 ft) for auguring to 143 dB at 100 m (328 ft) for pile driving. Most of the energy of these sounds was below 100 Hz. Airborne sound levels from these activities ranged from 65 dB at 100 m (328 ft) for a bulldozer and 81 dB at 100 m (328 ft) for pile driving. Most of the energy for in-air levels was also below 100 Hz. Airborne sound levels and frequencies typically produced by Industry are unlikely to cause hearing damage unless marine mammals are very close to the sound source, but may cause disturbance.

Typical source levels associated with underwater marine 3D and 2D seismic surveys are 230–240 dB. Airgun arrays produce broadband frequencies from 10 Hz to 2 kHz with most of the energy concentrated below 200 Hz. Frequencies used for high-resolution oil and gas exploration surveys are typically 200 Hz–900 kHz. Commercial sonar systems may also generate lower frequencies audible to marine mammals (Deng et al 2012). Some surveys use frequencies as low as 50 Hz or as high as 2 MHz. Broadband source levels for high-resolution surveys can range from 210 to 226 dB at 1 m. Sound attenuates in air more rapidly than in water, and underwater sound levels can be loud enough to cause hearing loss in nearby animals and disturbance of animals at greater distances.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb walruses. Marine mammals in general have variable reactions to noise sources, particularly mobile sources such as marine vessels. Reactions depend on the individuals' prior exposure to the disturbance source, their need, or desire to be in the particular habitat or area where they are exposed to the noise, and visual presence of the disturbance source. Walruses are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Potential impacts of Industry-generated noise include displacement from preferred foraging areas, increased stress, energy expenditure, interference with feeding, and masking of communications. Any impact of Industry noise on walruses is likely to be limited to a few individuals due to their geographic range and seasonal distribution. Walruses typically inhabit the pack-ice of the Bering and Chukchi seas and do not often move into the Beaufort Sea.

In the nearshore areas of the Beaufort Sea, stationary offshore facilities could produce high levels of noise that has the potential to disturb walruses. These include Endicott, BPXA's Saltwater Treatment Plant (located on the West Dock Causeway), Oooguruk, and Northstar facilities. The Liberty project will also have this potential when it commences operations. From 2009 through 2014 there were no reports of walruses hauling out at Industry facilities in the Beaufort Sea ITR region. Previous observations have been

reported of walruses hauled out on Northstar Island and swimming near the Saltwater Treatment Plant. In 2007, a female and a subadult walrus were observed hauled-out on the Endicott Causeway. In instances where walruses have been seen near these facilities, they have appeared to be attracted to them, possibly as a resting area or haulout.

In the open waters of the Beaufort Sea, seismic surveys and high-resolution site-clearance surveys will be the primary source of high levels of underwater sound. Such surveys are typically carried out away from the edge of the seasonal pack-ice. This scenario will minimize potential interactions with large concentrations of walruses, which typically favor sea-ice habitats. The most likely response of walruses to acoustic disturbances in open water will be for animals to move away from the source of the disturbance. Displacement from a preferred feeding area may reduce foraging success, increase stress levels, and increase energy expenditures. Potential adverse effects of Industry noise on walruses can be reduced through the implementation of the monitoring and mitigation measures identified in this ITR.

Potential acoustic injuries from high levels of sound such as those produced during seismic surveys may manifest in the form of temporary or permanent changes in hearing sensitivity. The underwater hearing abilities of the Pacific walrus have not been studied sufficiently to develop species-specific criteria for preventing harmful exposure. Sound pressure level thresholds have been developed for other members of the pinniped taxonomic group, above which exposure is likely to cause behavioral responses and injuries (Finneran 2015).

Historically, the National Oceanic and Atmospheric Administration (NOAA) has used 190 dB_{rms} as a threshold for predicting injury to pinnipeds and 160 dB_{rms} as a threshold for behavioral impacts from exposure to impulse noise (NMFS 1998, HESS 1999). The behavioral response threshold was developed based primarily on observations of marine mammal responses to airgun operations (*e.g.,* Malme *et al.,* 1983a, 1983b; Richardson *et al.,* 1986, 1995). Southall *et al.* 2007 assessed relevant studies, found considerable variability among pinnipeds, and determined that exposures between ~90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds in water, but an increasing probability of avoidance and other behavioral effects exists in the 120 to 160 dB range.

The NOAA 190-dB_{rms} injury threshold is an estimate of the sound level likely to cause a permanent shift in hearing threshold (permanent threshold shift or PTS). This value was modelled from temporary threshold shifts (TTS) observed in pinnipeds (NMFS 1998, HESS 1999). More recently, Kastak *et al.* (2005) found exposures resulting in TTS in pinniped test subjects ranging from 152 to 174 dB (183 to 206 dB SEL). Southall *et al.* (2007) reviewed the literature and derived behavior and injury thresholds based on peak sound pressure levels of 212 dB (peak) and 218 dB (peak) respectively. Because onset of TTS can vary in response to duration of exposure, Southall *et al.* (2007) also derived thresholds based on sound exposure levels (SEL). Sound exposure level can be thought of as a composite metric that represents both the magnitude of a sound and its duration. The study proposed threshold SELs weighted at frequencies of greatest sensitivities for pinnipeds of 171 dB (SEL) and 186 dB (SEL) for behavioral impacts and injury respectively (Southall *et al.* 2007). Reichmuth *et al.* (2008) demonstrated a persistent TTS, if not a PTS, after 60 seconds of 184 dB SEL. Kastelein (2012) found small but statistically significant TTSs at approximately 170 dB SEL (136 dB, 60 min) and 178 dB SEL (148 dB, 15 min).

Based on these data, and applying a precautionary approach in the absence of empirical information, we assume it is possible that walruses exposed to 190-dB or greater sound levels from underwater activities (especially seismic surveys) could suffer injury from PTS. Walruses exposed to underwater sound pressure levels greater than 180 dB could suffer temporary shifts in hearing thresholds. Repeated or continuous exposure to sound levels between 160 and 180 dB may also result in TTS, and exposures above 160 dB are more likely to elicit behavioral responses than lower level exposures. The Service's underwater sound mitigation measures include employing protected species observers (PSOs) to establish and monitor 160-dB, 180-dB, and 190-dB isopleth mitigation zones centered on any underwater sound source greater than 160 db. The 160-dB zone must be monitored; walruses in this zone will be assumed to experience Level B take. The 180-dB and 190-dB zones shall be free of marine mammals before the sound-producing activity can begin and must remain free of marine mammals during the activity. The proposed ITRs incorporate slight changes in the mitigation zones when compared to previous ITRs for the region. Previous ITRs have required separate actions for groups of greater than 12 walruses. Industry activities are unlikely to encounter large aggregations of walruses in the Beaufort Sea. This stipulation was originally developed for and is more applicable to mitigation of impacts to walruses in the Chukchi Sea and is not likely to be applicable in the Beaufort Sea.

The acoustic thresholds for marine mammals under NOAA's jurisdiction are currently being revised (NOAA 2015, NOAA 2016). New thresholds will estimate PTS onset levels for impulsive (*e.g.,* airguns, impact pile drivers) and nonimpulsive (*e.g.,* sonar, vibratory pile drivers) sound sources. Thresholds will be specific to marine mammal functional hearing groups; separate thresholds for otariid and phocid pinnipeds will be adopted. Auditory weighting functions will be incorporated into calculation of PTS threshold levels. The updated acoustic thresholds will also account for accumulation of injury due to repeated or ongoing exposure by adopting dual metrics of sound (cumulative sound exposure level and peak sound pressure level). The updated criteria will not provide specification for modeling sound exposures from various activities. They will not update thresholds for preventing behavioral responses, nor will they provide any new information regarding the Pacific walrus.

Once NOAA's new criteria for preventing harm to marine mammals from sound exposure are finalized, the Service will evaluate the new thresholds for applicability to walruses. In most cases, the Service's existing thresholds for Pacific walrus will result in greater separation distances or shorter periods of exposure to Industry sound sources than would NOAA's new pinniped thresholds. Assuming walrus hearing sensitivities are similar to other pinnipeds, the Service's sound exposure thresholds are, in some situations, likely to be more conservative than necessary to prevent injury from PTS and TTS. However, animals may be exposed to multiple stressors beyond acoustics during an activity, with the possibility of additive or synergistic effects (*e.g.,* Crain *et al.* 2008). The Service's mitigation measures will prevent acoustic injury as well as minimize noise exposures that may cause biologically significant behavioral reactions in walruses.

To reduce the likelihood of Level B harassment, and prevent behavioral responses capable of causing Level A harassment, the Service has established an 805-m (0.5-mile) operational exclusion zone around groups of

walruses feeding in water or any walrus observed on land or ice. As mentioned previously, walruses show variable reactions to noise sources. Relatively minor reactions, such as increased vigilance, are not likely to disrupt biologically important behavioral patterns and, therefore, do not reach the level of harassment, as defined by the MMPA. However, more significant reactions have been documented in response to noise. Industry monitoring efforts in the Chukchi Sea suggest that icebreaking activities can displace some walrus groups up to several kilometers away (Brueggeman *et al.* 1990). Approximately 25 percent of walrus groups on pack-ice responded by diving into the water, and most reactions occurred within 1 km (0.6 mi) of the ship (Brueggeman *et al.* 1991). Reactions such as fleeing a haulout or departing a feeding area have the potential to disrupt biologically significant behavioral patterns, including nursing, feeding, and resting, and may result in decreased fitness for the affected animal. These reactions meet the criteria for Level B harassment under the MMPA. Industry activities producing high levels of noise or occurring in close proximity also have the potential to illicit extreme reactions (Level A harassment) including separation of mothers from young or instigation of stampedes. However, most groups of hauled out walruses showed little reaction to icebreaking activities beyond 805 m (0.5 mi; Brueggeman *et al.* 1990).

Because some seismic survey activities are expected to occur in nearshore regions of the Beaufort Sea, impacts associated with support vessels and aircraft are likely to be locally concentrated, but distributed over time and space. Therefore, noise and disturbance from aircraft and vessel traffic associated with seismic surveys are expected to have relatively localized, short-term effects. The mitigation measures stipulated in these ITRs will require seismic survey vessels and associated support vessels to apply acoustic mitigation zones, maintain an 805-m (0.5-mile) distance from Pacific walrus groups, introduce noise gradually by implementing ramp-up procedures, and to maintain a 457-m (1,500-ft) minimum altitude above walruses. These measures are expected to reduce the intensity of disturbance events and to minimize the potential for injuries to animals.

With the low occurrence of walruses in the Beaufort Sea and the adoption of the mitigation measures required by this ITR, the Service concludes that the only anticipated effects from Industry noise in the Beaufort Sea would be short-term behavioral alterations of small numbers of walruses.

Vessel Traffic

Although seismic surveys and offshore drilling operations are expected to occur in areas of open water away from the pack ice, support vessels and aircraft servicing seismic and drill operations may encounter aggregations of walruses hauled out onto sea-ice. The sight, sound, or smell of humans and machines could potentially displace these animals from any ice haulouts. Walruses react variably to noise from vessel traffic; however, it appears that low-frequency diesel engines cause less of a disturbance than high-frequency outboard engines. In addition, walrus densities within their normal distribution are highest along the edge of the pack-ice, and Industry vessel traffic typically avoids these areas. The reaction of walruses to vessel traffic is dependent upon vessel type, distance, speed, and previous exposure to disturbances. Walruses in the water appear to be less readily disturbed by vessels than walruses hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open water and avoid large ice floes or land where walruses are likely to be found. In addition, walruses can use a vessel as a haul-out platform. In 2009, during Industry activities in the Chukchi Sea, an adult walrus was found hauled out on the stern of a vessel. It eventually left once confronted.

Drilling operations are expected to involve drill ships attended by icebreaking vessels to manage incursions of sea-ice. Ice management operations are expected to have the greatest potential for disturbances since walruses are more likely to be encountered in sea-ice habitats and ice management operations typically require the vessel to accelerate, reverse direction, and turn rapidly, thereby maximizing propeller cavitation and producing significant noise. Previous monitoring efforts in the Chukchi Sea suggest that icebreaking activities can displace some walrus groups up to several kilometers away; however, most groups of hauled-out walruses showed little reaction beyond 805 m (0.5 mi).

Monitoring programs associated with exploratory drilling operations in the Chukchi Sea since 1990 noted that approximately 25 percent of walrus groups encountered in the pack-ice during icebreaking responded by diving into the water, with most reactions occurring within 1 km (0.6 mi) of the ship. The monitoring report noted that: (1) Walrus distributions were closely linked with pack-ice; (2) pack-ice was near active prospects for relatively short time periods; and (3) ice passing near active prospects contained relatively few animals. The report concluded that effects of the drilling operations on walruses were limited in time, geographical scale, and the proportion of population affected.

When walruses are present, underwater noise from vessel traffic in the Beaufort Sea may "mask" ordinary communication between individuals by preventing them from locating one another. It may also prevent walruses from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea-ice cover alter northern shipping lanes.

Because offshore exploration activities are expected to move throughout the Beaufort Sea, impacts associated with support vessels and aircrafts are likely to be distributed in time and space. Therefore, the only effect anticipated would be short-term behavioral alterations impacting small numbers of walruses in the vicinity of active operations. Adoption of mitigation measures that include an 805-m (0.5-mi) exclusion zone for marine vessels around walrus groups observed on ice are expected to reduce the intensity of disturbance events and minimize the potential for injuries to animals.

Aircraft Traffic

Aircraft overflights may disturb walruses. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walruses tend to be more sensitive to aircraft disturbance. Fixed-winged aircraft are less likely to elicit a response than helicopter overflights. Walruses are particularly sensitive to changes in engine noise and are more likely to stampede when planes turn or fly low overhead. Researchers conducting aerial surveys for walruses in sea-ice habitats have observed little reaction to fixed-winged aircraft above 457 m (1,500 ft) (USFWS unpubl. data). Although the intensity of the reaction to noise is variable, walruses are probably most susceptible to disturbance by fast-moving and low-flying aircraft (100 m (328 ft) above ground level) or aircraft that change or alter speed or direction. In the Chukchi Sea there are recent examples of walruses being disturbed by aircraft flying in the vicinity of haulouts. It appears that walruses are

more sensitive to disturbance when hauled out on land versus sea-ice.

Physical Obstructions

Based on known walrus distribution and the very low numbers found in the Beaufort Sea, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar Island or causeway-linked Endicott complex, or by vessel traffic. There is no indication that the few walruses that used Northstar Island as a haulout in the past were displaced from their movements. Vessel traffic could temporarily interrupt the movement of walruses, or displace some animals when vessels pass through an area. This displacement would probably have minimal or no effect on animals and would last no more than a few hours.

Human Encounters

Human encounters with walruses could occur in the course of Industry activities, although such encounters would be rare due to the limited distribution of walruses in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled-out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before it disappeared in stormy seas. Additionally, a walrus calf was observed for 15 minutes during an exploration program 60 ft from the dock at Cape Simpson in 2006. From 2009 through 2014, Industry reported no similar interactions with walruses.

Effect on Prey Species

Walruses feed primarily on immobile benthic invertebrates. The effect of Industry activities on benthic invertebrates most likely would be from oil discharged into the environment. Oil has the potential to impact walrus prey species in a variety of ways including, but not limited to, mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates. Relatively few walruses are present in the central Beaufort Sea. It is important to note that, although the status of walrus prey species within the Beaufort Sea are poorly known, it is unclear to what extent, if any, prey abundance plays in limiting the use of the Beaufort Sea by walruses. Further study of the Beaufort Sea benthic community as it relates to walruses is warranted. The low likelihood of an oil spill large enough to affect prey populations (see the section titled Risk Assessment of Potential Effects Upon Polar Bears From a Large Oil Spill in the Beaufort Sea) combined with the fact that walruses are not present in the region during the ice-covered season and occur only infrequently during the open-water season indicates that Industry activities will likely have limited indirect effects on walruses through effects on prey species.

Polar Bear

Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could disturb polar bears. The impact of noise disturbances may affect bears differently depending upon their reproductive status (*e.g.,* denning versus non-denning bears). The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include construction, maintenance, repair and remediation activities, operations at production facilities, gas flaring, and drilling operations from either onshore or offshore facilities. Mobile sources include vessel and aircraft traffic, open-water seismic exploration, winter vibroseis programs, geotechnical surveys, ice road construction, vehicle traffic, tracked vehicles and snowmobiles, drilling, dredging, and ice-breaking vessels.

Noise produced by stationary activities could elicit variable responses from polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities, especially exploration facilities in the coastal or nearshore environment, could result in human-bear encounters, unintentional harassment, intentional hazing, or lethal take of the bear.

Industry activities may potentially disturb polar bears at maternal den sites. The timing of potential Industry activity compared with the timing of the maternal denning period can have variable impacts on the female bear and her cubs. Disturbance, including noise, may negatively impact bears less during the early stages of denning when the pregnant female has less investment in a den site before giving birth. She may abandon the site in search of another one and still successfully den and give birth. Premature den site abandonment after the birth of cubs may also occur. If den site abandonment occurs before the cubs are able to survive outside of the den, or if the female abandons the cubs, the cubs will die.

An example of a den abandonment in the early stages of denning occurred in January 1985, where a female polar bear appears to have abandoned her den in response to Rolligon traffic within 500 m (1,640 ft) of the den site. In spring 2002, noise associated with a polar bear research camp in close proximity to a bear den is thought to have caused a female bear and her cub(s) to abandon their den and move to the ice prematurely. In spring 2006, a female with two cubs emerged from a den 400 m (1,312 ft) from an active river crossing construction site. The den site was abandoned within hours of cub emergence, and 3 days after the female had emerged. In spring 2009, a female with two cubs emerged from a den within 100 m (328 ft) of an active ice road with heavy traffic and quickly abandoned the site. In January 2015 a freshly dug polar den was discovered in an active gravel pit adjacent to an active landfill and busy road. The bear abandoned the den after 56 days. During the time the bear occupied the den, Industry activity in the area was restricted, and the den was constantly monitored. A subsequent investigation of the den found no evidence that the bear gave birth. It is unknown if or to what extent Industry activity contributed to the bear leaving the den. While such events may have occurred, information indicates they have been infrequent and isolated. It is important to note that the knowledge of these recent examples occurred because of the monitoring and reporting program established by the ITRs.

Conversely, during the denning seasons of 2000–2002, two dens known to be active were located within approximately 0.4 km and 0.8 km (~0.25 mi and ~0.5 mi) of remediation activities on Flaxman Island in the Beaufort Sea with no observed impact to the polar bears. This observation suggests that polar bears exposed to routine industrial noises may habituate to those noises and show less vigilance than bears not exposed to such stimuli. This observation came from a study that occurred in conjunction with industrial activities performed on Flaxman Island in 2002 and a study of undisturbed dens in 2002 and 2003 (N = 8) (Smith *et al.* 2007). Researchers assessed vigilant behavior with two potential measures of disturbance: (1) The proportion of time scanning their surroundings; and (2) the frequency of observable vigilant behaviors. The two bears exposed to the industrial activity spent less time scanning their surroundings than bears in undisturbed areas and engaged in vigilant behavior significantly less often.

The potential for disturbance increases once the female emerges from the den. She is more vigilant against perceived threats and easier to disturb. As noted earlier, in some cases, while the female is in the den, Industry activities have progressed near den site with no observed disturbance. In the 2006 denning example previously discussed, it was believed that Industry activity commenced in the area after the den had been established. Industry activities occurred within 50 m (164 ft) of the den site with no apparent disturbance while the female was in the den. Ongoing activity most likely had been occurring for approximately 3 months in the vicinity of the den.

Likewise, in 2009, two bear dens were located along an active ice road. The bear at one den site appeared to establish her site prior to ice road activity and was exposed to approximately 3 months of activity 100 m (328 ft) away and emerged at the appropriate time. The other den site was discovered after ice road construction commenced. This site was exposed to ice road activity, 100 m (328 ft) away, for approximately 1 month. Known instances of polar bears establishing dens prior to the onset of Industry activity within 500 m (1,640 ft) or less of the den site, but remaining in the den through the normal denning cycle and later leaving with her cubs, apparently undisturbed despite the proximity of Industry activity, occurred in 2006, 2009, 2010, and 2011.

Industry observation data suggests that, with proper mitigation measures in place, activities can continue in the vicinity of dens until the emergence by the female bear. Mitigation measures such as activity shutdowns near the den and 24-hour monitoring of the den site can minimize impacts to the animals and allow the female bear to naturally abandon the den when she chooses. For example, in the spring of 2010, an active den site was observed approximately 60 m (197 ft) from a heavily used ice road. A 1.6-km (1-mi) exclusion zone was established around the den, closing a 3.2 km (2-mi) section of the road. Monitors were assigned to observe bear activity and monitor human activity to minimize any other impacts to the bear group. These mitigation measures minimized disturbance to the bears and allowed them to abandon the den site naturally.

Mobile sources of sound, *e.g.,* vessel-based exploration activities, seismic surveys, or geophysical surveys, may disturb polar bears. In the open-water season, Industry activities are generally limited to relatively ice-free, open water. During this time in the Beaufort Sea, polar bears are typically found either on land or on the pack ice, which limits the chances of the interaction of polar bears with offshore Industry activities. Though polar bears have been observed in open water, miles from the ice edge or ice floes, the encounters are relatively rare. However, if bears come in contact with Industry operations in open water, the effects of such encounters may include short-term behavioral disturbance. Bears in the water could be affected by sound in the water, but received sound in the water would be attenuated near the surface due to the pressure release effect of airgun sounds near the water's surface (Greene and Richardson 1988, Richardson *et al.* 1995). Because polar bears generally do not dive far or for long below the surface and they normally swim with their heads above the surface, it is likely that they would be exposed to very little sound in the water. Exposure to sound in the water would also be short term and temporary for only the time a bear's head was below the surface. It is likely that offshore seismic exploration activities or other geophysical surveys during the open-water season would result in no more than short-term and temporary behavioral disturbance to polar bears, similar to that discussed earlier.

In 2012, during the open-water season, Shell vessels encountered a few polar bears swimming in ice-free water more than 70 mi (112.6 km) offshore in the Chukchi Sea. In those instances the bears were observed to either swim away from or approach the Shell vessels. Sometimes a polar bear would swim around a stationary vessel before leaving. In at least one instance a polar bear approached, touched, and investigated a stationary vessel from the water before swimming away.

Polar bears are more likely to be affected by on-ice or in-ice Industry activities versus open-water activities. From 2009 through 2014 there were a few Industry observation reports of polar bears during on-ice activities. Those observations were primarily of bears moving through an area during winter seismic surveys on near-shore ice. The disturbance to bears, if any, was minimal, short-term, and temporary due to the mobility of such projects and limited to small-scale alterations to bear movements.

Vessel Traffic

During the open-water season, most polar bears remain offshore associated with the multiyear pack ice and are not typically present in the ice-free areas where vessel traffic occurs. Barges and vessels associated with Industry activities travel in open water and avoid large ice floes. As demonstrated in the 2012 Shell example previously, encounters between vessels and polar bears would most likely result in short-term and temporary behavioral disturbance only.

Aircraft Traffic

Routine Industry aircraft traffic should have little to no effect on polar bears, though frequent and chronic aircraft activity may cause more significant disturbance. Observations of polar bears during fall coastal surveys, which flew at much lower altitudes than is required of Industry aircraft (see mitigation measures), indicate that the reactions of non-denning polar bears should be limited to short-term changes in behavior ranging from no reaction to running away. Such disturbance should have no more than short-term, temporary, and minor impacts on individuals and no discernible impacts on the polar bear population, unless it was chronic and long-term. In contrast, denning bears could prematurely abandon their dens in response to repeated aircraft overflight noise. Mitigation measures, such as minimum flight elevations over polar bears, habitat areas of concern, and flight restrictions around known polar bear dens, will be required, as appropriate, to reduce the likelihood that polar bears are disturbed by aircraft.

Physical Obstructions

Industry facilities may act as physical barriers to movements of polar bears. Most facilities are located onshore and inland where polar bears are less frequently found. The offshore and coastal facilities are more likely to be approached by polar bears. The majority of Industry bear observations occur within 1.6-km (1-mi) of the coastline as bears use this area as travel corridors. As bears encounter these facilities, the chances for human-bear interactions increase. The Endicott and West Dock causeways, as well as the facilities supporting them, have the potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. However, polar bears have frequently been observed crossing existing roads and causeways and appear to traverse the human-developed areas as easily as the undeveloped areas. Offshore production facilities, such as Northstar, Spy Island, and Oooguruk, have frequently been approached by polar bears, but appear to present only a small-scale, local obstruction to the

bears' movement. Of greater concern is the increased potential for polar bear-human interaction at these facilities.

Human Encounters

Historically, polar bear observations are seasonally common, but close encounters with Industry personnel are uncommon. These encounters can be dangerous for both polar bears and humans.

Encounters are more likely to occur during the fall at facilities on or near the coast. Polar bear interaction plans, training, and monitoring required by the ITRs have proven effective at reducing polar bear–human encounters and the risks to bears and humans when encounters occur. Polar bear interaction plans detail the policies and procedures that Industry facilities and personnel will implement to avoid attracting and interacting with polar bears as well as minimizing impacts to the bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel.

Industry has also developed and uses technology to aid in detecting polar bears, including bear monitors, closed-circuit television (CCTV), video cameras, thermal cameras, radar devices, and motion-detection systems. In addition, some companies take steps to actively prevent bears from accessing facilities using safety gates and fences.

Known polar bear dens around the oilfield, discovered opportunistically, or as a result of planned surveys, such as tracking marked bears or den detection surveys, are monitored by the Service. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year Industry coordinates with the Service to conduct surveys to determine the location of Industry's activities relative to known dens and denning habitat. Industry activities are required to avoid known polar bear dens by 1 mi. There is the possibility that an unknown den may be encountered during Industry activities. When a previously unknown den is discovered in proximity to Industry activity, the Service implements mitigation measures such as the 1.6-km (1-mi) activity exclusion zone around the den and 24-hour monitoring of the site.

Effect on Prey Species

The effects of Industry activity upon polar bear prey, primarily ringed seals, will be similar to that of effects upon walruses, and primarily through noise disturbance or exposure to an oil spill. Seals may be displaced by disturbance from habitat areas such as pupping lairs or haulouts and abandon breathing holes near Industry activity. However, these disturbances appear to have minor, short-term, and temporary effects (NMFS 2013). Effects of contamination from oil discharges for seals are described in the following section.

Evaluation of Effects of Oil and Gas Industry Activity on Pacific Walruses and Polar Bears

Pacific Walrus

Proposed Industry activities may result in some incremental cumulative effects to the relatively few walruses exposed to these activities through the potential exclusion or avoidance of walruses from resting areas and disruption of associated biological behaviors. However, based on the habitat use patterns of walruses and their close association with seasonal pack-ice, relatively few animals are likely to be encountered during the open-water season when marine activities are expected to occur. Required monitoring and mitigation measures designed to minimize interactions between Industry activities and walruses are also expected to limit these impacts. Hunting pressure, climate change, and the increase of other human activities in walrus habitat all have potential to impact walruses. But those activities and their impacts are mostly a concern in the Bering and Chukchi seas where large numbers of walruses are found. Therefore, we conclude that in the Beaufort Sea, Industry activities during the 5-year period covered by these regulations, as mitigated through the regulatory process, are not expected to add significantly to the cumulative impacts on the walrus population.

Polar Bear

The effects of Industry activity are evaluated, in part, through information gained in monitoring reports, which are required for each LOA issued. Information from these reports provides a history of past effects on polar bears from interactions with Industry activities. In addition, information used in our effects evaluation includes published and unpublished polar bear research and monitoring reports, information from the 2008 ESA polar bear listing, stock assessment reports, status reviews, conservation plans, Alaska Native traditional knowledge, anecdotal observations, and professional judgment.

Since 1993, the documented impacts of incidental take by Industry activity in the Beaufort Sea ITR region affected only small numbers of bears, were primarily short-term changes to behavior, and had no long-term impacts on individuals and no impacts on the polar bear population. Industry monitoring data has documented various types of interactions between polar bears and Industry. The most significant impacts to polar bears from Industry activity have been the result of close bear-human encounters, some of which have led to deterrence events.

For the analysis of Industry take of polar bears, we included both incidental and intentional takes that occurred from 2010 through 2014. We included intentional takes to provide a transparent and complete analysis of Industry-related polar bear takes on the North Slope of Alaska. Intentional take of polar bears is a separate authorization under sections 101(a)(4)(A), 109(h), and 112(c) of the MMPA and is distinct from the ITRs. Intentional take authorizations allow citizens conducting activities in polar bear habitat to take polar bears by nonlethal, noninjurious harassment for the protection of both human life and polar bears. The purpose of the intentional take authorization is to deter polar bears prior to a bear-human encounter escalating to the use of deadly force against a polar bear. The Service provides guidance and training as to the appropriate harassment response necessary for polar bears. The MMPA-specific authorizations have proven to be successful in preventing injury and death to humans and polar bears.

From 2010 through 2014, a total of 107 LOAs were issued to Industry, and polar bear observations were recorded for 36.4 percent (39) of those LOAs. Industry reported 1,234 observations of 1,911 polar bears. The highest number of bears was observed during the months of August and September. Industry polar bear observations have increased from previous regulatory time periods. The higher number of bear sightings was most likely the result of an increased number of bears using terrestrial habitat as a result of changes in sea-ice, multiple vessel-based projects occurring near barrier islands, and the increased compliance and improved monitoring of Industry projects. This trend in observations is consistent with the anticipation that polar bears will increase their use of coastal habitats during the months when sea-ice is far from shore and over deep water. Because some of the reports were repeat observations of the same bears on different dates, the actual number of individual bears encountered is lower than reported. However, due to the nature of the information in the Industry

observation reports, we must accept the information "as is" while acknowledging that it collectively over-reports bear numbers.

When we compared the reported bear numbers to the SBS population (*i.e.*, 900 bears), we found that 42 percent of the SBS polar bear population may have been observed by Industry personnel from 2010 to 2014. When we evaluated the effects upon the 1,911 bears observed, we found that 81 percent (1,549) resulted in instances of non-taking. Of the remaining 362 encounters, 78 resulted in Level B takes by incidental disturbance, 260 Level B takes by deterrence, 23 instances of unknown effect, and 1 Level A take associated with Industry activity. Over those 5 years, 338 Level B takes of polar bears occurred, which is approximately 18 percent of the observed bears, or 7.5 percent of the SBS population.

For the 2011–2016 ITR, the Service estimated that takes of polar bears by all Level B harassment events would not exceed 150 per year. Our analysis of Industry polar bear observation reports shows that from 2010 through 2014 an average of 68 Level B harassment events occurred per year, well below our estimated value. Industry activities that occur on or near the Beaufort Sea coast continue to have the greatest potential for encountering polar bears rather than Industry activities occurring inland or far offshore.

From 2010 through 2014, intentional harassment by deterrence of 260 polar bears (14 percent of the observed 1,911) resulted in Level B take. The percentage of polar bear deterrence events that result in Level B take has decreased over time from a high of 39 percent of observed bears in 2005. The Service attributes this long-term decrease in deterrence events to increased polar bear safety and awareness training of Industry personnel as well as our ongoing deterrence education, training, and monitoring programs. We have no indication that nonlethal, noninjurious harassment by deterrence, which temporarily alters the behavior and movement of some bears, has an effect on survival and recruitment in the SBS polar bear population.

Lethal take of polar bears by Industry activity is very rare. Since 1968, three documented cases of lethal take of polar bears associated with oil and gas activities have occurred. In winter 1968–1969, an Industry employee shot and killed a polar bear in defense of human life. In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay, also in defense of human life. Since the beginning of the incidental take program in 1993, which includes measures that minimize impacts to the species, one polar bear has been killed due to encounters associated with current Industry activities on the North Slope. In August 2011, a female polar bear was accidentally killed on the Endicott causeway when an attempt to nonlethally deter the bear was not conducted properly. After the 2011 lethal take incident, the Service reviewed the circumstances that contributed to the death of the bear and implemented a series of corrective actions with Industry. The Service believes that the corrective actions significantly reduce the potential for a similar situation to arise in the future. Therefore, we do not anticipate any lethal take of polar bears during the 5-year period of these proposed ITRs.

The activities proposed by Industry are likely to result in incremental cumulative effects to polar bears during the 5-year regulatory period. Based on Industry monitoring information, for example, deflection from travel routes along the coast appears to be a common occurrence, where bears move around coastal facilities rather than traveling through them. Incremental cumulative effects could also occur through the potential exclusion or temporary avoidance of polar bears from feeding, resting, or denning areas and disruption of associated biological behaviors. However, based on monitoring results acquired from past ITRs, the level of cumulative effects, including those of climate change, during the 5-year regulatory period would result in negligible effects on the bear population.

Mitigation measures required for all projects will include a polar bear interaction plan, training of personnel, a record of communication with potentially affected communities, and a POC when appropriate. Mitigation measures that may be used on a case-by-case basis include the use of trained marine mammal monitors associated with marine activities, the use of den habitat maps developed by the USGS, surveys to locate polar bear dens, timing of the activity to limit disturbance around dens, the 1.6-km (1-mi) buffer surrounding known dens, and suggested work actions around known dens. The Service implements certain mitigation measures based on need and effectiveness for specific activities based largely on timing and location. For example, the Service will implement different mitigation measures for a 2-month-long exploration project 20 mi inland from the coast, than for an annual nearshore development project in shallow waters.

An example of the application of this process would be in the case of Industry activities occurring around a known bear den, where a standard condition of an LOA requires Industry projects to have developed a polar bear interaction plan and to maintain a 1.6-km (1-mi) buffer between Industry activities and any known denning sites. In addition, we may require Industry to avoid working in known denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens through the use of remote sensing techniques, such as maps of denning habitat along the Beaufort Sea coast and FLIR imagery.

FLIR imagery, as a mitigation tool, is used in cooperation with coastal polar bear denning habitat maps. Industry activity areas, such as coastal ice roads, are compared to polar bear denning habitat, and transects are then created to survey the specific habitat within the Industry area. FLIR heat signatures within a standardized den location protocol are noted, and further mitigation measures are placed around these locations. FLIR surveys are more effective at detecting polar bear dens than visual observations. The effectiveness increases when FLIR surveys are combined with site-specific, scent-trained dog surveys. These techniques will continue to be required as conditions of LOAs when appropriate.

Industry has sponsored cooperative research evaluating how polar bears perceive and respond to various types of disturbance. This information has been useful to refine site-specific mitigation measures. Using current mitigation measures, Industry activities have had no known polar bear population-level effects during the period of previous regulations. We anticipate that, with continued mitigation measures, the impacts to denning and non-denning polar bears will be at the same low level as in previous regulations.

The Service believes that the required mitigation measures will be effective in minimizing the impacts of Industry activity upon polar bears during the 5-year timeframe of this proposed ITR as they have in the past.

For further information on the cumulative effects of oil and gas development on polar bears in Alaska, refer to the Service's 2008 "Range-Wide Status Review of the Polar Bear (*Ursus maritimus*)" at: *http://www.fws.gov/alaska/fisheries/mmm/polarbear/pdf/Polar_Bear_%20Status_Assessment.pdf.*

Potential Effects of Oil Spills on Pacific Walruses and Polar Bears

Walrus and polar bear ranges overlap with many active and planned Industry activities. There is a risk of oil spills from facilities, ships, and pipelines in both offshore and onshore habitat. To date, no major offshore oil spills have occurred in the Alaska Beaufort Sea. Though numerous small onshore spills have occurred on the North Slope, there have been no documented effects to polar bears.

Oil spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oilfields. Although most spills have been small by Industry standards (less than 50 bbl), larger spills (more than 500 bbl) accounted for much of the annual volume. Seven large spills occurred between 1985 and 2009 on the North Slope. The largest spill occurred in the spring of 2006 when approximately 6,190 bbl leaked from flow lines near an oil gathering center. More recently, several large spills have occurred. In 2012, 1,000 bbl of drilling mud and 100 bbl of crude were spilled in separate incidents, in 2013, approximately 166 bbl of crude oil was spilled, and in 2014, 177 bbl of drilling mud was spilled. Those spills occurred primarily in the terrestrial environment in heavily industrialized areas not utilized by walruses or polar bears and posed little risk to the animals.

Walruses and polar bears could encounter spilled oil from exploratory operations, existing offshore facilities, pipelines, or from marine vessels. The shipping of crude oil, oil products, or other toxic substances, as well as the fuel for the shipping vessels, increases the risk of a spill. Future reductions in Arctic sea-ice extent are expected to improve access to Arctic shipping lanes and extend the Arctic shipping season, also increasing the risk of a spill.

Oil spills in the sea-ice environment, at the ice edge, in leads, polynyas, and similar areas of importance to walruses and polar bears, are of particular concern. Oil spilled in those areas presents an even greater challenge because of both the difficulties associated with cleaning oil in sea-ice, and the presence of wildlife in those areas. As additional offshore Industry projects are planned, the potential for large spills in the marine environment increases.

Oiling of food sources, such as ringed seals, may result in indirect effects on polar bears, such as a local reduction in ringed seal numbers, or a change to the local distribution of seals and bears. More direct effects on polar bears could occur from: (1) Ingestion of oiled prey, potentially resulting in reduced survival of individual bears; (2) oiling of fur and subsequent ingestion of oil from grooming; (3) oiling and fouling of fur with subsequent loss of insulation, leading to hypothermia; and (4) disturbance, injury, or death from interactions with humans during oil spill response activities. Polar bears may be particularly vulnerable to disturbance when nutritionally stressed and during denning. Cleanup operations that disturb a den could result in death of cubs through abandonment, and perhaps death of the sow as well. In spring, females with cubs of the year that denned near or on land and migrate to contaminated offshore areas may encounter oil following a spill (Stirling in Geraci and St. Aubin 1990).

In the event of an oil spill, the Service follows oil spill response plans to respond to the spill, coordinate with partners, and reduce the impact of a spill on wildlife. Several factors will be considered when responding to an oil spill. They include the location of the spill, the magnitude of the spill, oil viscosity and thickness, accessibility to spill site, spill trajectory, time of year, weather conditions (*i.e.*, wind, temperature, precipitation), environmental conditions (*i.e.*, presence and thickness of ice), number, age, and sex of walruses and polar bears that are (or are likely to be) affected, degree of contact, importance of affected habitat, cleanup proposal, and likelihood of human-bear interactions. Response efforts will be conducted under a three-tier approach characterized as: (1) Primary response, involving containment, dispersion, burning, or cleanup of oil; (2) secondary response, involving hazing, herding, preventative capture/relocation, or additional methods to remove or deter wildlife from affected or potentially affected areas; and (3) tertiary response, involving capture, cleaning, treatment, and release of wildlife. If the decision is made to conduct response activities, primary and secondary response options will be vigorously applied. Tertiary response capability has been developed by the Service and partners, though such response efforts would most likely only be able to handle a few animals at a time. More information is available in the Service's oil spill response plans for walruses and polar bears in Alaska is located at: *http://www.fws.gov/alaska/fisheries/contaminants/pdf/Polar%20Bear%20WRP%20final%20v8_Public%20website.pdf* and *https://dec.alaska.gov/spar/ppr/plans/uc/Annex%20G%20(Oct%202012).pdf.*

BOEM has acknowledged that there are difficulties in effective oil-spill response in broken-ice conditions, and the National Academy of Sciences has determined that "no current cleanup methods remove more than a small fraction of oil spilled in marine waters, especially in the presence of broken ice." BOEM advocates the use of nonmechanical methods of spill response, such as in-situ burning, during periods when broken-ice would hamper an effective mechanical response (MMS 2008b). An in-situ burn has the potential to rapidly remove large quantities of oil and can be employed when broken-ice conditions may preclude mechanical response. However, the resulting smoke plume may contain toxic chemicals and high levels of particulates that can pose health risks to marine mammals, birds and other wildlife, as well as to humans. Smoke trajectories must be considered before making the decision to burn spilled oil. Another potential nonmechanical response strategy is the use of chemical dispersants to speed dissipation of oil from the water surface and disperse it within the water column in small droplets. Dispersant use presents environmental trade-offs. While walruses and polar bears would likely benefit from reduced surface or shoreline oiling, dispersant use could have negative impacts on the aquatic food chain. Oil spill cleanup in the broken-ice and open-water conditions that characterize Arctic waters is problematic.

Evaluation of Effects of Oil Spills on Pacific Walruses and Polar Bears

The MMPA does not authorize the incidental take of marine mammals as the result of illegal actions, such as oil spills. Any event that results in an injurious or lethal outcome to a marine mammal is not authorized under this ITR. However, for the purpose of determining whether Industry activity would have a negligible effect on walruses and polar bears, the Service evaluated the potential impacts of oil spills within the Beaufort Sea ITR region.

Pacific Walrus

As stated earlier, the Beaufort Sea is not within the primary range for walruses. Therefore, the probability of

walruses encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walruses unless oil moved into the offshore environment. In the event of a spill that occurs during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walruses. Oil spills from offshore platforms could also contact walruses under certain conditions. Spilled oil during the ice-covered season not cleaned up could become part of the ice substrate and be eventually released back into the environment during the following open-water season. During spring melt, oil would be collected by spill response activities, but it could eventually contact a limited number of walruses.

Little is known about the effects of oil specifically on walruses as no studies have been conducted. Hypothetically, walruses may react to oil much like other pinnipeds. Walruses are not likely to ingest oil while grooming since walruses have very little hair and exhibit no grooming behavior. Adult walruses may not be severely affected by the oil spill through direct contact, but they will be extremely sensitive to any habitat disturbance by human noise and response activities. In addition, due to the gregarious nature of walruses, an oil spill would most likely affect multiple individuals in the area. Walruses may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Walrus calves are most likely to suffer the effects of oil contamination. Female walruses with calves are very attentive, and the calf will stay close to its mother at all times, including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell, and be abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the potential mortality of both animals. Further, a nursing calf might ingest oil if the cow was oiled, also increasing the risk of injury or mortality.

Walruses have thick skin and blubber layers for insulation. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of walruses to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates into the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walruses may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis. Like other pinnipeds, walruses are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walruses were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walruses are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. Specifically, bivalve mollusks bioconcentrate polycyclic aromatic hydrocarbons (PAHs), a particularly toxic fraction of oil. PAHs may cause a variety of chronic toxic effects in exposed organisms, including enzyme induction, immune impairment, or cancer, among others. In addition, because walruses feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walruses to find other food resources or move to nontraditional areas.

The relatively few walruses in the Beaufort Sea and the low potential for a large oil spill (1,000 bbl or more), which is discussed in the following Risk Assessment Analysis, limit potential impacts to walruses to only certain events (*i.e.*, a large oil spill) and then only to a limited number of individuals. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately. A detailed discussion of oil spill prevention and response for walruses can be found at: *https://dec.alaska.gov/spar/ppr/plans/uc/Annex%20G%20(Oct%202012).pdf.*

Polar Bear

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the interest in, and the development of, offshore hydrocarbon reservoirs has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, the outcome of such a spill is uncertain. For example, in the event of a large spill equal to a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline (approximately 5,900 bbl), oil would be influenced by seasonal weather and sea conditions including temperature, winds, wave action, and currents. Weather and sea conditions also affect the type of equipment needed for spill response and the effectiveness of spill cleanup. Based on the experiences of cleanup efforts following the Exxon Valdez oil spill, where logistical support was readily available, spill response may be largely unsuccessful in open-water conditions. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions.

Small spills of oil or waste products throughout the year could potentially impact some bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short-term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, northeast of Oliktok Point. The cause of death was determined to be due to a mixture that included ethylene glycol and Rhodamine B dye (Amstrup *et al.* 1989). Again, in 2012, two dead polar bears that had been exposed to Rhodamine B were found on Narwhal Island, northwest of Endicott. While those bears' deaths were clearly human-caused, investigations were unable to identify a source for the chemicals. Rhodamine B is commonly used on the North Slope of Alaska by many people

for many uses, including Industry. Without identified sources of contamination, those bear deaths cannot be attributed to Industry activity.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. Many effects did not become evident until several weeks after the experiment (Oritsland *et al.* 1981).

Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperature. Oiled bears are also likely to ingest oil as they groom to restore the insulation value of the oiled fur.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment, and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces; some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on polar bears, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption.

Polar bears swimming in, or walking adjacent to, an oil spill could inhale toxic, volatile organic compounds from petroleum vapors. Vapor inhalation by polar bears could result in damage to the respiratory and central nervous systems, depending on the amount of exposure.

Oil may also affect food sources of polar bears. Seals that die as a result of an oil spill could be scavenged by polar bears. This food source would increase exposure of the bears to hydrocarbons and could result in lethal impacts or reduced survival to individual bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Possible impacts from the loss of a food source could reduce recruitment and/or survival.

Spilled oil can concentrate and accumulate in leads and openings that occur during spring breakup and autumn freeze-up periods. Such a concentration of spilled oil would increase the chance that polar bears and their principal prey would be oiled. To access ringed and bearded seals, polar bears in the SBS concentrate in shallow waters less than 300 m (984 ft) deep over the continental shelf and in areas with greater than 50 percent ice cover (Durner *et al.* 2004).

Due to their seasonal use of nearshore habitat, the times of greatest impact from an oil spill to polar bears are likely the open-water and broken-ice periods (summer and fall). This scenario is important because distributions of polar bears are not uniform through time. Nearshore and offshore polar bear densities are greatest in fall, and polar bear use of coastal areas during the fall open-water period has increased in recent years in the Beaufort Sea. An analysis of data collected from 2001–2005 during the fall open-water period concluded: (1) On average approximately 4 percent of the estimated polar bears in the Southern Beaufort population were observed onshore in the fall; (2) 80 percent of bears onshore occurred within 15 km (9 mi) of subsistence-harvested bowhead whale carcasses, where large congregations of polar bears have been observed feeding; and (3) sea-ice conditions affected the number of bears on land and the duration of time they spent there (Schliebe *et al.* 2006). Hence, bears concentrated in areas where beach-cast marine mammal carcasses occur during the fall would likely be more susceptible to oiling.

The persistence of toxic subsurface oil and chronic exposures, even at sublethal levels, can have long-term effects on wildlife (Peterson *et al.* 2003). Exposure to PAHs can have chronic effects because some effects are sublethal (*e.g.*, enzyme induction or immune impairment) or delayed (*e.g.*, cancer). Although it is true that some bears may be directly affected by spilled oil initially, the long-term impact could be much greater. Long-term effects could be substantial through complex environmental interactions and compromised health of exposed animals. For example, PAHs can impact the food web by concentrating in filter-feeding organisms, thus affecting fish that feed on those organisms, and the predators of those fish, such as the ringed seals that polar bears prey upon. How these complex interactions would affect polar bears is not well understood, but sublethal, chronic effects of an oil spill may affect the polar bear population due to reduced fitness of surviving animals.

Polar bears are biological sinks for some pollutants, such as polychlorinated biphenyls or organochlorine pesticides, because they are an apex predator of the Arctic ecosystem and are also opportunistic scavengers of other marine mammals. Additionally, their diet is composed mostly of high-fat sealskin and blubber (Norstrom *et al.* 1988). The highest concentrations of persistent organic pollutants in Arctic marine mammals have been found in seal-eating walruses and polar bears near Svalbard (Norstrom *et al.* 1988, Andersen *et al.* 2001, Muir *et al.* 1999). As such, polar bears would be susceptible to the effects of bioaccumulation of contaminants, which could affect their reproduction, survival, and immune systems.

In addition, subadult polar bears are more vulnerable than adults to environmental effects (Taylor *et al.* 1987). Subadult polar bears would be most prone to the lethal and sublethal effects of an oil spill due to their proclivity for scavenging (thus increasing their exposure to oiled marine mammals) and their inexperience in hunting. Because of the greater maternal investment a weaned subadult represents, reduced survival rates of subadult polar bears have a greater impact on population growth rate and sustainable harvest than

reduced litter production rates (Taylor *et al.* 1987).

Evaluation of the potential impacts of spilled Industry waste products and oil suggest that individual bears could be adversely impacted by exposure to these substances (Oritsland *et al.* 1981). The major concern regarding a large oil spill is the impact such a spill would have on the rates of recruitment and survival of the SBS polar bear population. If an oil spill killed a small number of bears, the SBS population may be able to survive and continue to sustain the current level of subsistence harvest. However, if a large oil spill killed large numbers of polar bears, the SBS population may experience reduced rates of recruitment and survival and subsistence harvest could become unsustainable. Polar bear deaths from an oil spill could be caused by direct exposure to the oil. However, indirect effects, such as a reduction of prey or scavenging contaminated carcasses, could also cause health effects, death, or otherwise affect rates of recruitment and survival. Depending on the type and amount of oil or wastes involved and the timing and location of a spill, impacts could be acute, chronic, temporary, or lethal. In order for the rates of polar bear reproduction, recruitment, or survival to be impacted, a large-volume oil spill would have to take place. The following section analyzes the likelihood and potential effects of such a large-volume oil spill.

Risk Assessment of Potential Effects Upon Polar Bears From a Large Oil Spill in the Beaufort Sea

In this section, we qualitatively assess the likelihood that polar bears may be oiled by a large oil spill. We considered: (1) The probability of a large oil spill occurring in the Beaufort Sea; (2) the probability of that oil spill impacting coastal polar bear habitat; (3) the probability of polar bears being in the area and coming into contact with that large oil spill; and (4) the number of polar bears that could potentially be impacted by the spill. Although the majority of the information in this evaluation is qualitative, the probability of all of these factors occurring sequentially in a manner that impacts polar bears in the Beaufort Sea is low. Since walruses are not often found in the Beaufort Sea, and there is little information available regarding the potential effects of an oil spill upon walruses, this analysis emphasizes polar bears.

The analysis was based on polar bear distribution and habitat use using four sources of information that, when combined, allowed the Service to make conclusions on the risk of oil spills to polar bears. This information included: (1) The description of existing offshore oil and gas production facilities previously discussed in the Description of Activities section; (2) polar bear distribution information previously discussed in the Biological Information section; (3) BOEM Oil-Spill Risk Analysis (OSRA) for the OCS, including polar bear environmental resource areas (ERAs) and land segments (LSs), which allowed us to qualitatively analyze the risk to polar bears and their habitat from a marine oil spill; and (4) the most recent polar bear risk assessment from the previous ITRs.

Development of offshore production facilities with supporting pipelines increases the potential for large offshore spills. The probability of a large oil spill from offshore oil and gas facilities and the risk to polar bears is a scenario that has been considered in previous regulations (71 FR 43926, August 2, 2006 and 76 FR 47010, August 3, 2011). With the limited background information available regarding the effects of large oil spills on polar bears in the marine Arctic environment, the impact of a large oil spill is uncertain. As far as is known, polar bears have not been affected by oil spilled as a result of North Slope Industry activities.

In order to effectively evaluate how a large oil spill may affect polar bears, we considered the following factors in developing our oil spill assessment for polar bears: The origin (location) of a large spill; the volume of a spill; oil viscosity; accessibility to spill site; spill trajectory; time of year; weather conditions (*i.e.*, wind, temperature, precipitation); environmental conditions (*i.e.*, presence and thickness of ice); number, age, and sex of polar bears that are (or likely to be) affected; degree of contact; importance of affected habitat; and mitigation measures to prevent bears from encountering spilled oil.

The oil-spill scenario for this analysis considers the potential impacts of a large oil spill (*i.e.*, 1,000 bbl or more) from one of the offshore Industry facilities: Northstar, Spy Island, Oooguruk, Endicott, or the future Liberty. Estimating a large oil-spill occurrence is accomplished by examining a wide variety of probabilities. Uncertainty exists regarding the location, number, and size of a large oil spill and the wind, ice, and current conditions at the time of a spill, but we have made every effort to identify the most likely spill scenarios and sources of risk to polar bears. Conditional probabilities analysis assumes that a large spill has occurred and that no cleanup takes place. The probability of a spill occurring would be different for each site depending upon oil type, depth, oil flow rates, etc.

BOEM Oil Spill Risk Analysis

Because the BOEM OSRA provides the most current and rigorous treatment of potential oil spills in the Beaufort Sea Planning Area, our analysis of potential oil spill impacts applied BOEM's OSRA (MMS 2008a) to help analyze potential impacts of a large oil spill originating in the Beaufort Sea ITR region to polar bears. The OSRA is a computer model that analyzes how and where large offshore spills will likely move (Smith *et al.* 1982). To estimate the likely trajectory of large oil spills, the OSRA model used information about the physical environment, including data on wind, sea-ice, and currents. As a conditional model, the OSRA is a hypothetical analysis of an oil spill.

The BOEM OSRA model was developed for the Federal offshore waters and does not include analysis of oil spills in the State of Alaska-controlled nearshore waters. Northstar, Oooguruk, Spy Island, and the Endicott/Liberty complex are located in nearshore State waters. Northstar has one Federal well, and Liberty is a Federal reservoir to be developed from State waters. Although the OSRA cannot calculate trajectories of oil spills originating from specific locations in the nearshore area, it can be used to help examine how habitat may be affected by a spill should one originate in the OCS. We can then compare the location of the affected habitat to habitat use by bears.

The OSRA model predicted where the oil trajectory would go if the oil persisted as a slick at a particular time of year. Oil spills of less than 1,000 bbl are not expected to persist on the water long enough to warrant a trajectory analysis. For this reason, we only analyzed the effects of a large oil spill. Although no large spills from oil and gas activities have occurred on the Alaska OCS to date, the large spill volume assumptions used by BOEM were based on the reported spills from oil exploration and production in the Gulf of Mexico and Pacific OCS regions. BOEM used the median spill size in the Gulf of Mexico and Pacific OCS in the period 1985–1999 as the likely large spill size for analysis purposes. The median size of a large crude oil spill from a pipeline in the period 1985–1999 on the U.S. OCS was 4,600 bbl, and the average was 6,700 bbl (Anderson and LaBelle 2000). The median large spill size for a platform on the OCS over the entire record in the period 1964–1999 is 1,500 bbl, and the average is 3,300 bbl (Anderson and LaBelle 2000).

The OSRA estimated that the statistical mean number of large spills is less than one over the 20-year life of past, present, and reasonably foreseeable developments in the Beaufort Sea Planning Area. In addition large spills are more likely to occur during development and production than during exploration in the Arctic (MMS 2008). Our oil spill assessment during a 5-year regulatory period was predicated on the same assumptions.

Between 1971 and 2007, OCS operators have produced almost 15 billion bbl of oil in the United States. During this period, 2,645 spills totaled approximately 164,100 bbl spilled (~0.001 percent of bbl produced), or about 1 bbl spilled for every 91,400 bbl produced. Between 1993 and 2007, almost 7.5 billion bbl of oil were produced. During this period, 651 spills totaled approximately 47,800 bbl spilled (~0.0006 percent of bbl produced), or approximately 1 bbl spilled for every 156,900 bbl produced.

Between July 1, 2009, and June 30, 2014, the North Slope industrial area reported an average of 59,043 gallons of spilled substances annually, with a total of 138 crude oil spills. Statewide during this period, approximately 5.6 percent of the total volume of spilled material consisted of crude oil. The volume of spilled crude on the North Slope was, therefore, estimated to be approximately 79 bbl (~1,406 × 0.056 = ~79). Recent large spills of crude oil have included a subsurface release of 166 bbl from a well at Milne Point, and a 100 bbl spill from a tank. Secondary containment retained the smaller of these spills.

Two large onshore terrestrial oil spills have occurred as a result of pipeline failures. In the spring of 2006, approximately 6,200 bbl of crude oil spilled from a corroded pipeline operated by BP Exploration (Alaska). The spill impacted approximately 0.8 ha (~2 ac). In November 2009, a spill of approximately 1,150 bbl from a "common line" carrying oil, water, and natural gas operated by BP occurred as well, impacting approximately 780 m^2 (~8,400 ft^2). None of these spills were known to impact polar bears, in part due to the locations and timing. Both sites were within or near industry facilities not frequented by polar bears, and they are not typically observed in the affected areas during the time of the spills and subsequent cleanup.

The BLM and BOEM modelled the likelihood of spills occurring during exploration and development in the NPR–A and in the Beaufort and Chukchi Sea planning area (BLM 2012 and BOEM 2011, respectively). Large (≥1,000 bbl) or very large spills (≥120,000 bbl) were considered extremely unlikely to occur during oil and gas exploration. The two sources of potential large crude oil spills are from pipelines and long-duration blowout resulting from a well-control incident. The loss of the entire volume in an onshore pipeline between two valves would also result in a large spill of crude oil. The BLM estimated a 28 percent chance that one or more large crude oil spills would occur during 50 years. Based on information on past spills, spill volumes close to the lower end of the "large spill" range (1,000 bbl) are much more likely than spill volumes in the upper end of the range (119,999 bbl). BOEM (2014) considered spill sizes of 1,700 and 5,100 bbl to be the largest spill size likely to occur from a pipeline or facility, respectively. BOEM estimated that the occurrence and frequency of large and very large spills from OCS exploratory and delineation wells at 0.003 (mean spill frequency per 1,000 years) and 2.39×10^{-5} (mean spill frequency per well), respectively (BOEM 2011). The approximate occurrence rates worldwide for very large oil spills are about one for every 270 billion bbl produced (BLM 2012). More locally (at Northstar), the statistical frequency of a blowout well leading to a very large oil spill was estimated at 9.4×10^{-7} per well drilled (for volumes >130,000 bbl (BLM 2012)). Thus, while small spills (<50 bbl) are reasonably likely to occur, very large oil spills are extremely unlikely to occur, and none have occurred on Alaska's North Slope or in the Beaufort Sea to date.

Across the United States, in the period 1971–2010, one well control incident resulted in a spill volume estimated at 4.9 million bbl (210 million gal) and that was the Deepwater Horizon event. The large oil spill estimates for the draft Environmental Impact Statement (DEIS) of the Beaufort Sea and Chukchi Sea Planning Areas are still considered valid despite the Deepwater Horizon oil spill. Geologic and other conditions in the Arctic OCS are substantially different from those in the Gulf of Mexico, including much shallower well depth and the resulting lower pressures, such that BOEM currently does not believe that the Deepwater horizon incident serves as a predictor for the likelihood or magnitude of a very large oil spill event in the Beaufort Sea. Considering the low number of exploratory wells (84) that have occurred in the Beaufort Sea Alaska OCS (BOEM 2011), the low rate of exploratory drilling blowouts per well drilled, and the low rate of well control incidents that spill fluids, it is reasonable to conclude that the chance of a large spill occurring during OCS exploration drilling in the Beaufort is small. In addition, it is important to note that Industry does not plan to conduct drilling operations at more than three exploration sites in the Beaufort Sea OCS for the duration of the 5-year regulatory period.

Trajectory Estimates of Large Offshore Oil Spills

Although it is reasonable to conclude that the chance of one or more large spills occurring during the period of these regulations on the Alaskan OCS from production activities is low, for analysis purposes, we assume that a large spill does occur in order to evaluate potential impacts to polar bears. The BOEM OSRA model analyzes the likely paths of more than two million simulated oil spills in relation to the shoreline and biological, physical, and sociocultural resource areas specific to the Beaufort Sea. The chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (launch area or pipeline segment) is termed a "conditional probability." Conditional probabilities assume that no cleanup activities take place, and that there are no efforts to contain the spill. We used the BOEM OSRA analysis from the Arctic Multi-sale DEIS to estimate the conditional probabilities of a large spill contacting sensitive ERAs pertinent to polar bears.

Oil-Spill Persistence

How long an oil spill persists on water or on the shoreline can vary, depending upon the size of the oil spill, the environmental conditions at the time of the spill, and the substrate of the shoreline. In its large oil spill analysis, BOEM assumed 1,500-bbl and 4,600-bbl spills could last up to 30 days on the water as a coherent slick based on oil weathering properties and dispersal data specific to North Slope crude oils. Therefore, we assumed that winter spills (October–June) could last up to 180 days as a coherent slick (*i.e.*, if a coherent slick were to freeze into ice over winter, it would melt out as a slick in spring).

We used three BOEM launch areas (LAs), LA 8, LA 10, LA 12, and three pipeline segments (PLs), PL 10, PL 11, and PL 12, from Appendix A of the Arctic Multi-sale DEIS (Map A.1–4) to represent the oil spills moving from hypothetical offshore areas. These LAs and PLs were selected because of their close proximity to current offshore facilities.

Oil-Spill-Trajectory Model Assumptions

For purposes of its oil spill trajectory simulation, BOEM made the following assumptions: All spills occur instantaneously; large oil spills occur in the hypothetical origin areas or along the hypothetical pipeline segments noted above; large spills do not weather for purposes of trajectory analysis; weathering is calculated separately; the model does not simulate cleanup scenarios; the oil spill trajectories move as though no oil spill response action is taken; and large oil spills stop when they contact the mainland coastline.

Analysis of the Conditional Probability Results

As noted above, the chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (LA or PL), assuming a large spill occurs and that no cleanup takes place, is termed a "conditional probability." From the DEIS, Appendix A, we chose ERAs and LSs to represent areas of concern pertinent to polar bears (MMS 2008a). Those ERAs and LSs and the conditional probabilities that a large oil spill originating from the selected LAs or PLs could affect those ERAs and LSs are presented in Table 1. From Table 1, we noted the highest chance of contact and the range of chances of contact that could occur should a large spill occur from LAs or PLs.

Table 1. Conditional oil spill probabilities (percent) in regards to Environmental Resource Areas and Land Segments for LAs and PLs offshore of four oil and gas industry sites. Values in parentheses are for pipeline segments. * = Less than one-half percent.

Launch Area (Pipeline Segment)	Season of Spill (Duration of Spill)	ERA 55	ERA 92	ERA 93	ERA 94	ERA 95	ERA 96	ERA 100	LS 85	LS 97	LS 102	LS 107	LS 138	LS 144	LS 145
LA 08 (PL 10)	Summer (60 days)	5 (3)	5(8)	*(2)	*(*)	*(*)	1(3)	*(1)	2(1)	1(2)	*(*)	*(*)	*(1)	54(34)	*(*)
	Winter (180 days)	1(1)	2(3)	*(*)	*(*)	*(*)	*(1)	*(*)	2(4)	*(1)	*(*)	*(*)	1(2)	39(29)	*(1)
LA10 (PL 10)	Summer (60 days)	3(3)	11(8)	2(2)	*(*)	*(*)	4(3)	1(1)	1(1)	5(2)	*(*)	*(*)	2(1)	33(34)	*(*)
	Winter (180 days)	1(1)	2(3)	*(*)	*(*)	*(*)	1(1)	*(*)	3(4)	2(1)	*(*)	*(*)	2(2)	29(29)	1(1)
LA 12 (PL 11)	Summer (60 days)	*(2)	12(12)	7(3)	2(1)	1(*)	13(6)	3(2)	*(*)	7(6)	1(1)	1(1)	9(3)	33(29)	1(*)
	Winter (180 days)	1(1)	11(8)	1(*)	1(*)	*(*)	12(2)	1(*)	3(3)	4(4)	*(*)	*(*)	3(2)	31(28)	2(1)
LA 12 (PL 12)	Summer (60 days)	*(*)	12(9)	7(7)	2(3)	1(1)	13(12)	3(5)	*(*)	7(5)	1(2)	1(3)	9(11)	33(32)	1(1)

Definitions of ERAs and LSs, from Tables A.1-13, A.1-20, and A.1-22 (MMS, 2008)

ERA 55: Point Barrow, Plover Islands (Aug–Nov)
ERA 92: Thetis, Jones, Cottle and Return Islands, West Dock (Jan–Dec)
ERA 93: Cross and No Name Island (Aug–Nov)
ERA 94: Maguire Islands, Flaxman Island, Barrier Islands (Jan–Dec)
ERA 95: Arey and Barter Islands and Bernard Spit (Aug–Nov)
ERA 96: Midway, Cross and Bartlett Islands (May–October)
ERA 100: Jago and Tapkaurak Spits (May–October)
Seasonal LS 85: Barrow, Browerville, Elson Lagoon (August–November)
LS 97: Beechey Point, Bertoncini, Bodfish, Cottle and, Jones Islands, Milne Point, Simpson Lagoon
LS 102: Flaxman Island, Maguire Islands, North Star Island, Point Hopson, Point Sweeney, Point Thomson, Staines River
LS 107: Bernard Harbor, Jago Lagoon, Kaktovik, Kaktovik Lagoon
Grouped LS 138: Arctic National Wildlife Refuge (Jan–Dec)
Grouped LS 144: United States Beaufort Coast (Jan–Dec)
Grouped LS 145: Canada Beaufort Coast (Jan–Dec)

Polar bears are most vulnerable to a large oil spill during the open-water period when bears form aggregations onshore. In the Beaufort Sea these aggregations often form in the fall near subsistence-harvested bowhead whale carcasses. Specific aggregation areas include Point Barrow, Cross Island, and Kaktovik. In recent years, more than 60 polar bears have been observed feeding on whale carcasses just outside of Kaktovik, and in the autumn of 2002, NSB and Service biologists documented more than 100 polar bears in and around Barrow. In order for significant impacts to polar bears to occur, (1) a large oil spill would have to occur, (2) oil would have to contact an area where polar bears aggregate, and (3) the aggregation of polar bears would have to occur at the same time as the spill. The risk of all three of these events occurring simultaneously is low.

We identified polar bear aggregations in environmental resource areas and non-grouped land segments (ERA 55, 93, 95, 96, 100; LS 85, 107). Assuming a spill occurs during summer or winter, the OSRA estimates the chance of contacting these aggregations is less than 13 percent (Table 1). The OSRA estimates for LA12 has the highest chance of a large spill contacting ERA 96 (Midway, Cross, and Bartlett islands). Some polar bears will aggregate at these islands during August–October (3 months). If a large oil spill occurred and contacted those aggregation sites outside of the timeframe of use by polar bears, potential impacts to polar bears would be reduced.

Coastal areas provide important denning habitat for polar bears, such as the ANWR and nearshore barrier islands (containing tundra habitat) (Amstrup 1993, Amstrup and Gardner 1994, Durner *et al.* 2006, USFWS unpubl. data). Considering that 65 percent of confirmed terrestrial dens found in Alaska in the period 1981–2005 were on coastal or island bluffs (Durner *et al.* 2006), oiling of such habitats could have negative effects on polar bears, although the specific nature and ramifications of such effects are unknown.

Assuming a large oil spill occurs, and extrapolating the OSRA estimates to tundra relief barrier islands (ERA 92, 93, and 94, LS 97 and 102), these areas have up to a 12 percent chance of a large spill contacting them (a range of less than 0.5 percent to 12 percent) from LA 12 (Table 1). The OSRA estimates suggest that there is an 11 percent chance that oil would contact the coastline of the ANWR (LS 138). The Kaktovik area (ERA 95 and 100, LS 107) has up to a 5 percent chance of a spill contacting the coastline, assuming spills occur during the summer season and contact the coastline within 60 days. The chance of a spill contacting the coast near Barrow (ERA 55, LS 85) would be as high as 5 percent (Table 1).

All barrier islands are important resting and travel corridors for polar bears, and larger barrier islands that contain tundra relief are also important denning habitat. Tundra-bearing barrier islands within the geographic region and near oilfield development are the Jones Island group of Pingok, Bertoncini, Bodfish, Cottle, Howe, Foggy, Tigvariak, and Flaxman islands. In addition, Cross Island has gravel relief where polar bears have denned. The Jones Island group is located in ERA 92 and LS 97. If a spill were to originate from an LA 8 pipeline segment during the summer months, the probability that this spill would contact these land segments could be as great as 8 percent. The probability that a spill from LA 10 would contact the Jones Island group would range from 1 percent to as high as 11 percent. Likewise, for LA 12, PL 11 the range would be from 4 percent to as high as 12 percent, and for LA 12, PL 12 the range would be from 3 percent to as high as 12 percent.

Risk Assessment From Prior ITRs

In previous ITRs, we used a risk assessment method that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a polar bear distribution model based on location of satellite-collared females during September and October (68 FR 66744, November 28, 2003;71 FR 43926, August 2, 2006; and 76 FR 47010, August 3, 2011). To support the analysis for this action, we reviewed the previous analysis and used the data to compare the potential effects of a large oil spill in a nearshore production facility (less than 5 mi), such as Liberty, and a facility located further offshore, such as Northstar. Even though the risk assessment of 2006 did not specifically model spills from the Oooguruk or Nikaitchuq sites, we believed it was reasonable to assume that the analysis for Liberty, and indirectly Northstar, adequately reflected the potential impacts likely to occur from an oil spill at either of these additional locations due to the similarity in the nearshore locations.

Methodology of Prior Risk Assessment

The first step of the risk assessment analysis was to examine oil spill probabilities at offshore production sites for the summer (July–October) and winter (November–June) seasons based on information developed for the original Northstar and Liberty EISs. We assumed that one large spill occurred during the 5-year period covered by the regulations. A detailed description of the methodology can be found at 71 FR 43926 (August 2, 2006). The second step in the risk assessment was to estimate the number of polar bears that could be impacted by a large spill. All modeled polar bear grid cell locations that were intersected by one or more cells of a rasterized spill path (a modeled group of hundreds of oil particles forming a trajectory and pushed by winds and currents and impeded by ice) were considered "oiled" by a spill. For purposes of the analysis, if a bear contacted oil, the contact was assumed to be lethal. This analysis involved estimating the distribution of bears that could be in the area and overlapping polar bear distributions and seasonal aggregations with oil spill trajectories. The trajectories previously calculated for Northstar and Liberty sites were used. The trajectories for Northstar and Liberty were provided by the BOEM and reported in Amstrup *et al.* (2006). BOEM estimated probable sizes of oil spills from a pinhole leak to a rupture in the transportation pipeline. These spill sizes ranged from a minimum of 125 to a catastrophic release event of 5,912 bbl. Researchers set the size of the modeled spill at the scenario of 5,912 bbl, caused by a pinhole or small leak for 60 days under ice without detection.

The second step of the risk assessment analysis incorporated polar bear densities overlapped with the oil spill trajectories. To accomplish this, in 2004, USGS completed an analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information was derived from radio and satellite locations of collared adult females. Density estimates were used to determine the distribution of polar bears in the Beaufort Sea. Researchers then created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1-km^2 grid cell. Each of the simulated oil spills were overlaid with the polar bear distribution grid. Finally, the likelihood of occurrence of bears oiled during the duration of the 5-year incidental take regulations was estimated. This likelihood was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year.

In summary, the maximum numbers of bears potentially oiled by a 5,912 bbl spill during the September open-water

season from Northstar was 27, and the maximum from Liberty was 23, assuming a large oil spill occurred and no cleanup or mitigation measures take place. Potentially oiled polar bears ranged up to 74 bears with up to 55 bears during October in mixed-ice conditions for Northstar and Liberty, respectively. Median number of bears oiled by the 5,912 bbl spill from the Northstar simulation site in September and October were 3 and 11 bears, respectively. Median numbers of bears oiled from the Liberty simulation site for September and October were 1 and 3 bears, respectively. Variation occurred among oil spill scenarios and was the result of differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. For example, in October, 75 percent of trajectories from the 5,912 bbl spill affected 20 or fewer polar bears from spills originating at the Northstar simulation site and 9 or fewer bears from spills originating at the Liberty simulation site.

When calculating the probability that a 5,912 bbl spill would oil 5 or more bears during the annual fall period, we found that oil spills and trajectories were more likely to affect fewer than 5 bears versus more than 5 bears. Thus, for Northstar, the chance that a 5,912 bbl oil spill affected (resulting in mortality) 5 or more bears was 1.0–3.4 percent; 10 or more bears was 0.7–2.3 percent; and 20 or more bears was 0.2–0.8 percent. For Liberty, the probability of a spill that would affect 5 or more bears was 0.3–7.4 percent; 10 or more bears, 0.1–0.4 percent; and 20 or more bears, 0.1–0.2 percent.

Discussion of Prior Risk Assessment

After reviewing the prior risk assessment, we have concluded that it remains a valid methodology and analysis for use in the current proposed rule. The key conditions and considerations used in the analysis remain valid today. For this reason, we find that it is appropriate to continue to rely on the results of the analysis as it was set forth in 71 FR 43926, August 2, 2006.

The location of Industry sites within the marine environment is important when analyzing the potential for polar bears to contact a large oil spill. Simulations from the prior risk assessment suggested that bears have a higher probability of being oiled from facilities located further offshore, such as Northstar. Northstar Island is nearer the active ice zone and in deeper water than Endicott/Liberty, Oooguruk, and Nikaitchuq, areas where higher bear densities were calculated. Furthermore, Northstar is not sheltered by barrier islands. By comparison through modeling, the land-fast ice inside the shelter of the barrier islands appeared to dramatically restrict the extent of most oil spills in comparison to Northstar, which lies outside the barrier islands and in deeper water. However, it should be noted that while oil spreads more in deep water and breaks up faster in deeper waters where wind and wave action are higher, oil persists longer in shallow waters and along the shore.

Based on the simulations, a nearshore island production site (less than 5 mi from shore) would potentially involve less risk of polar bears being oiled than a facility located further offshore (greater than 5 mi). For any spill event, seasonality of habitat use by bears will be an important variable in assessing risk to polar bears. During the fall season when a portion of the SBS bear population aggregate on terrestrial sites and use barrier islands for travel corridors, spill events from nearshore industrial facilities may pose more chance of exposing bears to oil due to its persistence in the nearshore environment. Conversely, during the ice-covered and summer seasons, Industry facilities located further offshore (greater than 5 mi) may increase the chance of bears being exposed to oil as bears will be associated with the ice habitat.

Conclusion of Risk Assessment

In summary, to date documented oil spill-related impacts in the marine environment to polar bears in the Beaufort Sea by the oil and gas Industry are minimal. No large spills by Industry in the marine environment have occurred in Arctic Alaska. Nevertheless, the possibility of oil spills from Industry activities and the subsequent impacts on polar bears that contact oil remain a major concern.

There has been much discussion about effective techniques for containing, recovering, and cleaning up oil spills in Arctic marine environments, particularly the concern that effective oil spill cleanup during poor weather and broken-ice conditions has not been proven. Given this uncertainty, limiting the likelihood of a large oil spill becomes an even more important consideration. Industry oil spill contingency plans describe methodologies in place to prevent a spill from occurring. For example, all current offshore production facilities have spill containment systems in place at the well heads. In the event an oil discharge should occur, containment systems are designed to collect the oil before it contacts the environment.

With the limited background information available regarding oil spills in the Arctic environment, it is unknown what the outcome of such a spill event would be if one were to occur. Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although most polar bears in the SBS population spend a large amount of their time offshore on the pack-ice, it is likely that some bears would encounter oil from a large spill that persisted for 30 days or more.

Although the extent of impacts from a large oil spill would depend on the size, location, and timing of spills relative to polar bear distributions and on the effectiveness of spill response and cleanup efforts, under some scenarios, population-level impacts could be expected. A large spill originating from a marine oil platform could have significant impacts on polar bears if an oil spill contacted an aggregation of polar bears. Likewise, a spill occurring during the broken-ice period could significantly impact the SBS polar bear population in part because polar bears may be more active during this season.

In the event that an offshore oil spill contaminated numerous bears, a potentially significant impact to the SBS population could result. This effect would be magnified in and around areas of polar bear aggregations. Bears could also be affected indirectly either by food contamination or by chronic lasting effects caused by exposure to oil. During the 5-year period of these regulations, however, the chance of a large spill occurring is low.

While there is uncertainty in the analysis, certain factors must align for polar bears to be impacted by a large oil spill occurring in the marine environment. First, a large spill must occur. Second, the large spill must contaminate areas where bears may be located. Third, polar bears must be seasonally distributed within the affected region when the oil is present. Assuming a large spill occurs, BOEM's OSRA estimated that there is up to a 13 percent chance that a large spill from the analyzed sites (LAs 8, 10, and 12 and PLs 10, 11, and 12) would contact Cross Island (ERA 96) within 60 days, as much as an 11 percent chance that it would contact Barter Island and/or the coast of the ANWR (ERA 95 and 100, LS 107 and 138), and up to a 5 percent chance that an oil spill would contact the coast near Barrow (ERA 55, LS 85) during the summer time period. Data from polar bear coastal surveys indicate that polar bears are unevenly and seasonally distributed along the coastal areas of the Beaufort Sea ITR region. Seasonally only a portion of the SBS population utilizes the coastline between the Alaska/Canada border and Barrow and only a portion of those bears could be in the oil-spill-affected region.

As a result of the information considered here, the Service concludes that the likelihood of an offshore spill from an offshore production facility in the next 5 years is low. Moreover, in the unlikely event of a large spill, the likelihood that spills would contaminate areas occupied by large numbers of bears is low. While individual bears could be negatively affected by a spill, the potential for a population-level effect is low unless the spill contacted an area where large numbers of polar bears were gathered. Known polar bear aggregations tend to be seasonal during the fall, further minimizing the potential of a spill to impact the population. Therefore, we conclude that the likelihood of a large spill occurring is low, but if a large spill does occur, the likelihood that it would contaminate areas occupied by large numbers of polar bears is also low. If a large spill does occur, we conclude that only small numbers of polar bears are likely to be affected, though some bears may be killed, and there would be only a negligible impact to the SBS population.

Take Estimates for Pacific Walruses and Polar Bears

Small Numbers Determination

The following analysis concludes that only small numbers of walruses and polar bears are likely to be subjected to Level B take by harassment incidental to the described Industry activities relative to their respective populations.

1. The number of walruses and polar bears that will be harassed by Industry activity is expected to be small relative to the number of animals in their populations.

As stated previously, walruses are extralimital in the Beaufort Sea with nearly the entire walrus population found in the Chukchi and Bering seas. Industry monitoring reports have observed no more than 35 walruses between 1995 and 2012, with only a few observed instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). Between those years, Industry walrus observations in the Beaufort Sea ITR region averaged approximately two walruses per year, although the actual observations were of a single or a few animals, often separated by several years. We do not anticipate that seasonal movements of a few walruses into the Beaufort Sea will increase. We conclude that over the 5-year period of these ITRs, Industry activities will potentially result in a small number of Level B takes of walruses.

As we stated previously, from 2010 through 2014, Industry made 1,234 reports of polar bears comprising 1,911 bears. We found that as much as 42 percent of the SBS polar bear population may have been observed by Industry personnel over that time period, though this is likely an overestimate due to the nature of the Industry observation data. When we evaluated the effects upon the 1,911 bears observed, we found that 81 percent (1,549) resulted in instances of non-taking. Over those 5 years, Level B takes of polar bears totaled 338, approximately 18 percent of the observed bears, or 7.5 percent of the SBS population. We conclude that over the 5-year period of these ITRs, Industry activities will result in a similarly small number of Level B takes of polar bears.

2. Within the specified geographical region, the area of Industry activity is expected to be small relative to the range of walruses and polar bears.

Walruses and polar bears range well beyond the boundaries of the proposed Beaufort Sea ITR region. The facts that walruses are extralimital in the Beaufort Sea and polar bears move through the areas of Industry activity seasonally suggest that Industry activities in the geographic area of this proposed rule will have relatively few interactions with walruses and polar bears. As reported by AOGA, the total area of infrastructure on the North Slope as of 2012 was approximately 7,462 ha (~18,439 ac), or approximately 0.1 percent of the Arctic Coastal Plain between the Colville and Canning rivers. The 2012 estimated area of Industry activity was approximately .025 percent of the geographic region of this proposed rule. This area is smaller when compared to the proportion of the range of walruses or the SBS polar bear population. Allowing for Industry activity area growth from 2012 through 2015, and anticipating the level of activity proposed for the 5-year period of this proposed rule, the Service concludes that the area of Industry activity will be relatively small compared to the range of walruses and polar bears.

3. Monitoring requirements and adaptive mitigation measures are expected to significantly limit the number of incidental takes of animals.

Holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce potential impacts of their operations on walruses and polar bears. For Industry activities in terrestrial environments, where denning polar bears may be a factor, mitigation measures will require that den detection surveys be conducted at least a 1.6-km (1-mi) distance from any known polar bear den. A full description of the mitigation, monitoring, and reporting requirements associated with an LOA can be found in 50 CFR 18.128.

Conclusion

We expect that only a small proportion of the Pacific walrus population or the SBS polar bear population are likely to be affected by Industry activities because: (1) Only a small proportion of the walrus or polar bear population will occur in the areas where Industry activities will occur; (2) only small numbers will be impacted because walruses are extralimital in the Beaufort Sea and SBS polar bears are widely distributed throughout their expansive range, which encompasses areas beyond the Beaufort Sea ITR region; and (3) the monitoring requirements and mitigation measures described below will further reduce potential impacts.

Negligible Impacts Determination

Based upon our review of the nature, scope, and timing of Industry activities and required mitigation measures, and in consideration of the best available scientific information, we have determined that the proposed activities will have a negligible impact on walruses and polar bears. Factors considered in our negligible effects determination include:

1. The behavior and distribution of walruses and polar bears in areas that overlap with Industry activities are expected to limit interactions of walruses and polar bears with those activities.

The distribution and habitat use patterns of walruses and polar bears indicates that relatively few animals will occur in the proposed areas of Industry activity at any particular time, and, therefore, few animals are likely to be affected. As discussed previously, only small numbers of walruses are likely to be found in the Beaufort Sea where and when offshore Industry activities are proposed. Likewise, SBS polar bears are widely distributed, are most often closely associated with pack-ice, and are unlikely to interact with open-water industrial activities, and their range is greater than the geographic region of the proposed ITRs.

2. The predicted effects of Industry activities on walruses and polar bears

will be nonlethal, temporary takes of animals.

The documented impacts of previous Industry activities on walruses and polar bears, taking into consideration cumulative effects, suggests that the types of activities analyzed for this ITR will have minimal effects and will be short-term, temporary behavioral changes. The vast majority of reported polar bear observations have been of polar bears moving through the oilfields, undisturbed by the Industry activity.

3. The footprint of the proposed Industry activities is expected to be small relative to the range of the walrus and polar bear populations.

The relatively small area of Industry activity compared to the range of walruses and polar bears will reduce the potential of their exposure to and disturbance from Industry activities.

4. Mitigation measures will limit potential effects of Industry activities.

Holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on walruses and polar bears. Seasonal restrictions, early detection monitoring programs, den detection surveys for polar bears, and adaptive mitigation and management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears and, therefore, limit potential Industry disturbance of these animals.

Conclusion

We, therefore, conclude that any incidental take reasonably likely to or reasonably expected to occur in association with the proposed Industry activities addressed under these regulations will have no more than a negligible impact on walruses and polar bears within the Beaufort Sea region. We do not expect any resulting disturbance to negatively impact the rates of recruitment or survival for the walrus and polar bear populations. These regulations do not authorize lethal take, and we do not anticipate that any lethal take will occur.

Findings

We make the following findings regarding this action:

Small Numbers

Pacific Walrus

Walruses are extralimital in the Beaufort Sea, thus, the number of walruses exposed to the impacts of the proposed Industry activities will be inherently small. Between 1995 and 2012 Industry observed no more than 35 walruses in the Beaufort Sea ITRs region, with only a few instances of disturbance to some of those walruses. We do not anticipate the potential for any lethal take from the proposed Industry activities. We estimate that there will be no more than 10 Level B harassment takes of Pacific walruses by Industry activities during the 5-year period of these ITRs.

Polar Bear

Industry observation reports from the period 2010–2014 indicate that on average 383 polar bears were observed annually during Industry activities. Some of these observations are sightings of the same bears on different occasions. While the majority of observations were sightings with no interaction between polar bears and Industry activity (~81 percent of observed bears), takes by harassment do occur. According to Industry monitoring data, the number of Level B takes has averaged 68 per year from 2010 through 2014.

Based on this information, we estimate that there will be no more than 340 Level B harassment takes of polar bears during the 5-year period of these ITRs. All takes are anticipated to be nonlethal Level B harassment involving short-term and temporary changes in bear behavior. The required mitigation and monitoring measures described in the regulations are expected to prevent injurious Level A takes, and, therefore, the number of lethal takes is estimated to be zero.

Negligible Impact

Based on the best scientific information available, the results of Industry monitoring data from the previous ITRs, the review of the information generated by the listing of the polar bear as a threatened species and the designation of polar bear critical habitat, the ongoing analysis of the petition to list the Pacific walrus as a threatened species under the ESA, the results of our modeling assessments, and the status of the population, we find that any incidental take reasonably likely to result from the effects of Industry activities during the period of the proposed ITRs, in the Beaufort Sea and adjacent northern coast of Alaska, will have no more than a negligible impact on walruses and polar bears. We do not expect that the total of these disturbances will affect rates of recruitment or survival for walruses or polar bears. In making this finding, we considered the following: The distribution of the species; the biological characteristics of the species; the nature of Industry activities; the potential effects of Industry activities and potential oil spills on the species; the probability of oil spills occurring; the documented impacts of Industry activities on the species, taking into consideration cumulative effects; the potential impacts of climate change, where both walruses and polar bears can potentially be displaced from preferred habitat; mitigation measures designed to minimize Industry impacts through adaptive management; and other data provided by Industry monitoring programs in the Beaufort and Chukchi seas.

We also considered the specific Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16305 (October. 15, 1986)).

We reviewed the effects of the oil and gas Industry activities on walruses and polar bears, including impacts from noise, physical obstructions, human encounters, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of walrus and polar bear, we conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on the walrus and polar bear populations. Furthermore, we do not expect these disturbances to affect the rates of recruitment or survival for the walrus and polar bear populations. These regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

The probability of an oil spill that will cause significant impacts to walruses and polar bears appears extremely low. We have included information from both offshore and onshore projects in our oil spill analysis. We have analyzed the likelihood of a marine oil spill of the magnitude necessary to lethally take a significant number of polar bears for offshore projects and, through a risk

assessment analysis, found that it is unlikely that there will be any lethal take associated with a release of oil. In the unlikely event of a catastrophic spill, we will take immediate action to minimize the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the MMPA.

After considering the cumulative effects of existing and future development, production, and exploration activities, and the likelihood of any impacts, both onshore and offshore, we find that the total expected takings resulting from oil and gas Industry activities will affect no more than small numbers and will have no more than a negligible impact on the walrus and polar bear populations inhabiting the Beaufort Sea area on the North Slope coast of Alaska.

Our finding of negligible impact applies to incidental take associated with the petitioner's oil and gas exploration, development, and production activities as mitigated through the regulatory process. The regulations establish monitoring and reporting requirements to evaluate the potential impacts of authorized activities, as well as mitigation measures designed to minimize interactions with and impacts to walruses and polar bears. We will evaluate each request for an LOA based on the specific activity and the specific geographic location where the proposed activities are projected to occur to ensure that the level of activity and potential take is consistent with our finding of negligible impact. Depending on the results of the evaluation, we may grant the authorization, add further operating restrictions, or deny the authorization.

Within the described geographic region of this rule, Industry effects on walruses and polar bears are expected to occur at a level similar to what has taken place under previous regulations. We anticipate that there will be an increased use of terrestrial habitat in the fall period by polar bears. We also anticipate a continued increased use of terrestrial habitat by denning bears. Nevertheless, we expect no significant impact to these species as a result of these anticipated changes. The mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distribution or denning polar bears during the 5-year timeframe of the regulations. It is likely that, due to potential seasonal changes in abundance and distribution of polar bears during the fall, more frequent encounters may occur and Industry may have to implement mitigation measures more often, possibly increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities, may be instituted more frequently during the 5-year period of the rule.

We have evaluated climate change in regard to walruses and polar bears. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter walrus and polar bear habitat and behavior. Though climate change is a pressing conservation issue for walruses and polar bears, we have concluded that the authorized taking of walruses and polar nears during the activities proposed by Industry during this 5-year rule will not adversely impact the survival of these species and will have no more than negligible effects. The Service is currently involved in research to help us understand how climate change may affect walruses and polar bears. As we gain a better understanding of climate change effects, we will incorporate the information in future actions.

Impacts on Subsistence Uses

Based on community consultations, locations of hunting areas, the potential overlap of hunting areas and Industry projects, the best scientific information available, and the results of monitoring data, we find that take caused by oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of walruses and polar bears for taking for subsistence uses during the period of the rule. In making this finding, we considered the following: Records on subsistence harvest from the Service's Marking, Tagging, and Reporting Program; community consultations; effectiveness of the POC process between Industry and affected Native communities; and anticipated 5-year effects of Industry activities on subsistence hunting.

Walruses and polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the communities of Barrow, Nuiqsut, and Kaktovik. However, the low numbers do not mean that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that community consultations have occurred or that an adequate POC has been presented to the subsistence communities. Industry will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of walruses and polar bear are minimized. Although multiple meetings for multiple projects from numerous operators have already taken place, no official concerns have been voiced by the Native communities with regard to Industry activities limiting availability of walruses or polar bears for subsistence uses. However, should such a concern be voiced as Industry continues to reach out to the Native communities, development of POCs, which must identify measures to minimize any adverse effects, will be required. The POC will ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of walruses and polar bears, as warranted.

The Service has not received any reports and is aware of no information that indicates that walruses or polar bears are being or will be deflected from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of oil and gas activity. If there is evidence during the 5-year period of the regulations that oil and gas activities are affecting the availability of walruses or polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of industrial activities on walruses and polar bears and to ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and to detect any unanticipated effects on the species. Monitoring plans document when and how bears and walruses are encountered, the number of bears and walruses, and their behavior during the encounter. This information allows the Service to measure encounter rates and trends of walrus and polar bear activity in the industrial areas (such as numbers

and gender, activity, seasonal use) and to estimate numbers of animals potentially affected by Industry. Monitoring plans are site-specific, dependent on the proximity of the activity to important habitat areas, such as den sites, travel corridors, and food sources; however, all activities are required to report all sightings of walruses and polar bears. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry onshore. Activities within the geographic region may incorporate daily watch logs as well, which record 24-hour animal observations throughout the duration of the project. Polar bear monitors will be incorporated into the monitoring plan if bears are known to frequent the area or known polar bear dens are present in the area. At offshore Industry sites, systematic monitoring protocols will be implemented to statistically monitor observation trends of walruses or polar bears in the nearshore areas where they usually occur.

Monitoring activities will be summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas Industry exploration, development, and production activities on polar bear and walruses prior to issuance of an LOA. Since production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

Public Comments

Clarity of This Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Required Determinations

Treaty Obligations

The ITRs are consistent with the 1973 Agreement on the Conservation of Polar Bears, a multilateral treaty executed in Oslo, Norway among the Governments of Canada, Denmark, Norway, Russia, and the United States. Article II of this Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat. Parties are obliged to: (1) Take appropriate action to protect the ecosystem of which polar bears are a part; (2) give special attention to habitat components such as denning and feeding sites and migration patterns; and (3) manage polar bear populations in accordance with sound conservation practices based on the best available scientific data.

This rule is also consistent with the Service's treaty obligations because it incorporates mitigation measures that ensure the protection of polar bear habitat. LOAs for industrial activities are conditioned to include area or seasonal timing limitations or prohibitions, such as placing 1.6-km (1-mi) avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den), building roads perpendicular to the coast to allow for polar bear movements along the coast, and monitoring the effects of the activities on polar bears. Available denning habitat maps are provided by the USGS.

National Environmental Policy Act (NEPA) Considerations

We have prepared a draft environmental assessment (EA) in conjunction with this rulemaking. Subsequent to the closure of the comment period for this proposed rule, we will decide whether this rulemaking is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA of 1969. For a copy of the EA, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–ES–2016–0060 or contact the individual identified above in **FOR FURTHER INFORMATION CONTACT.**

Endangered Species Act

In 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212, May 15, 2008) and later designated critical habitat for polar bear populations in the United States, effective January 6, 2011 (75 FR 76086, December 7, 2010). Section 7(a)(1) and (2) of the ESA (16 U.S.C. 1536(a)(1) and (2)) directs the Service to review its programs and to utilize such programs in the furtherance of the purposes of the ESA and to ensure that a proposed action is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of critical habitat. In addition, the status of walruses rangewide was reviewed for potential listing under the ESA. The listing of walruses was found to be warranted, but precluded due to higher priority listing actions (*i.e.*, walrus is a candidate species) on February 10, 2011 (76 FR 7634). Consistent with these statutory requirements, the Service's Marine Mammal Management Office has initiated Intra-Service section 7 consultation regarding the effects of these regulations with the Service's Fairbanks' Ecological Services Field Office. Consistent with established agency policy, we will also conduct a conference regarding the effects of these proposed regulations on the Pacific walrus. We will complete the consultation and conference prior to finalizing these proposed regulations.

Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

OIRA bases its determination upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) Whether the rule will create inconsistencies with other Federal agencies' actions; (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; (d) Whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: The development of applications for LOAs; monitoring, recordkeeping, and reporting activities conducted during Industry oil and gas operations; development of polar bear interaction plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the proposed rule is not expected to result in additional costs to Industry that it has not already borne under all previous ITRs. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations and LOA requests probably do not exceed $500,000 per year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the proposed rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

Small Business Regulatory Enforcement Fairness Act

We have determined that this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations, and these potential applicants have not been identified as small businesses. Therefore, neither a Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required. The analysis for this rule is available from the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

Takings Implications

This proposed rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of walruses and polar bears by oil and gas Industry companies and, thereby, exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

Federalism Effects

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect walruses and polar bears.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Government-to-Government Relationship With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951, May 4, 1994), Executive Order 13175, Department of the Interior Secretarial Order 3225 of January 19, 2001 (Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)), Department of the Interior Secretarial Order 3317 of December 1, 2011 (Tribal Consultation and Policy), Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), the Department of the Interior's manual at 512 DM 2, and the Native American Policy of the U.S. Fish and Wildlife Service, January 20, 2016, we readily acknowledge our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Tribes in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing wildlife conservation concerns, to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives.

Furthermore, and in accordance with Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act of 1971 (ANCSA) Corporations, August 10, 2012, we likewise acknowledge our responsibility to communicate and work directly with ANCSA Corporations.

Through the LOA process identified in the proposed regulations, Industry presents a communication process, culminating in a POC, if warranted, with the Native communities most likely to be affected and engages these

communities in numerous informational meetings.

In addition, to facilitate co-management activities, the Service maintains cooperative agreements with the EWC, the ANC, and the Qayassiq Walrus Commission (QWC). The cooperative agreements fund a wide variety of management issues, including: Commission co-management operations; biological sampling programs; harvest monitoring; collection of Native knowledge in management; international coordination on management issues; cooperative enforcement of the MMPA; and development of local conservation plans. To help realize mutual management goals, the Service, EWC, ANC, and QWC regularly hold meetings to discuss future expectations and outline a shared vision of co-management.

The Service also has ongoing cooperative relationships with the NSB and the Inupiat-Inuvialuit Game Commission where we work cooperatively to ensure that data collected from harvest and research are used to ensure that polar bears are available for harvest in the future; provide information to co-management partners that allows them to evaluate harvest relative to their management agreements and objectives; and provide information that allows evaluation of the status, trends, and health of polar bear populations.

Civil Justice Reform

The Departmental Solicitor's Office has determined that these proposed regulations do not unduly burden the judicial system and meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This proposed rule contains information collection requirements. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements included in this rule and assigned OMB control number 1018–0070, which expires March 31, 2017. This control number covers the information collection, recordkeeping, and reporting requirements in 50 CFR 18, subpart J, which are associated with the development and issuance of specific regulations and LOAs.

Energy Effects

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule provides exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration of oil and gas in the Beaufort Sea and adjacent coast of Alaska. By providing certainty regarding compliance with the MMPA, this proposed rule will have a positive effect on Industry and its activities. Although the proposed rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this proposd rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

References

For a list of the references cited in this proposed rule, see Docket No. FWS–R7–ES–2016–0060, available at *http://www.regulations.gov*.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

■ 1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Amend part 18 by revising subpart J to read as follows:

Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, Production and Other Substantially Similar Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 Specified activities covered by this subpart.
18.122 Specified geographic region where this subpart applies.
18.123 Dates this subpart is in effect.
18.124 Procedure to obtain a Letter of Authorization (LOA).
18.125 How the Service will evaluate a request for a Letter of Authorization (LOA).
18.126 Authorized take allowed under a Letter of Authorization (LOA)
18.127 Prohibited take under a Letter of Authorization (LOA).
18.128 Mitigation, monitoring, and reporting requirements.
18.129 Information collection requirements.

§ 18.121 Specified activities covered by this subpart.

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by U.S. citizens (as defined in § 18.27(c)) while engaged in oil and gas exploration, development, production, and/or other substantially similar activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.122 Specified geographic region where this subpart applies.

This subpart applies to the specified geographic region that encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (71°23′29″ N., −156 °28′30″ W., BGN 1944), and approximately 322 kilometers (km) (~200 miles (mi)) north of Point Barrow, including all Alaska State waters and Outer Continental Shelf (OCS) waters, and east of that line to the Canadian border.

(a) The offshore boundary of the Beaufort Sea incidental take regulations (ITR) region will match the boundary of the Bureau of Ocean Energy Management (BOEM) Beaufort Sea Planning area, approximately 322 km (~200 mi) offshore. The onshore region is the same north/south line at Barrow, 40.2 km (25 mi) inland and east to the Canning River.

(b) The Arctic National Wildlife Refuge is not included in the Beaufort Sea ITR region. Figure 1 shows the area where this subpart applies.

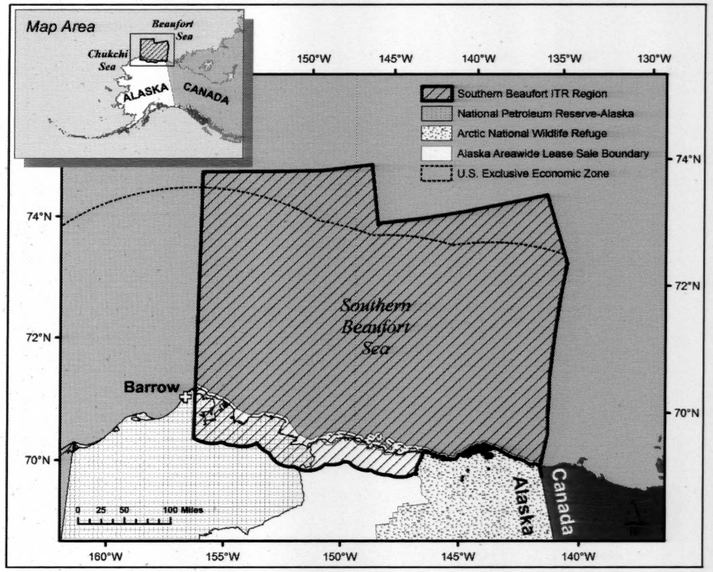

Figure 1. Map of the Beaufort Sea ITR region.

§ 18.123 Dates this subpart is in effect.

Regulations in this subpart are effective from August 3, 2016, through August 3, 2021, for year-round oil and gas exploration, development, production and other substantially similar activities.

§ 18.124 Procedure to obtain a Letter of Authorization (LOA).

(a) An applicant must be a U.S. citizen as defined in § 18.27(c).

(b) If an applicant proposes to conduct oil and gas industry exploration, development, production, and/or other substantially similar activity in the Beaufort Sea ITR region described in § 18.122 that may cause the taking of Pacific walruses and/or polar bears and wants nonlethal incidental take authorization under the regulations in this subpart J, the applicant must apply for an LOA. The applicant must submit the request for authorization to the Service's Alaska Region Marine Mammals Management Office (see § 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) The request for an LOA must include the following information and must comply with the requirements set forth in § 18.128:

(1) A plan of operations that describes in detail the proposed activity (*e.g.*, type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations of and areas affected by the activity.

(2) A site-specific marine mammal monitoring and mitigation plan to monitor and mitigate the effects of the activity on Pacific walruses and polar bears.

(3) A site-specific Pacific walrus and polar bear safety, awareness, and interaction plan. The plan for each activity and location will detail the policies and procedures that will provide for the safety and awareness of personnel, avoid interactions with Pacific walruses and polar bears, and minimize impacts to these animals.

(4) A Plan of Cooperation (POC) to mitigate potential conflicts between the proposed activity and subsistence hunting, where relevant. Applicants must provide documentation of communication with potentially affected subsistence communities along the Beaufort Sea coast (*i.e.*, Kaktovik, Nuiqsut, and Barrow) and appropriate subsistence user organizations (*i.e.*, the Eskimo Walrus Commission and the Alaska Nanuuq Commission) to discuss the location, timing, and methods of proposed activities and identify and mitigate any potential conflicts with subsistence walrus and polar bear hunting activities. Applicants must specifically inquire of relevant communities and organizations if the proposed activity will interfere with the availability of Pacific walruses and/or polar bears for the subsistence use of those groups. Applications for Letters of Authorization must include documentation of all consultations with potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter

organizations, and the applicant's responses to identified concerns.

§ 18.125 How the Service will evaluate a request for a Letter of Authorization (LOA).

(a) We will evaluate each request for an LOA based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals likely to be taken and evaluating whether there will be a negligible impact on the species or an adverse impact on the availability of the species for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that the applicant has requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of an LOA, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of polar bears or Pacific walruses.

§ 18.126 Authorized take allowed under a Letter of Authorization (LOA).

(a) An LOA allows for the nonlethal, noninjurious, incidental, but not intentional take by Level B harassment, as defined in § 18.3 and under § 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), of Pacific walruses and/or polar bears while conducting oil and gas industry exploration, development, production, and/or other substantially similar activities within the Beaufort Sea ITR region described in § 18.122.

(b) Each LOA will identify terms and conditions for each proposed activity and location.

§ 18.127 Prohibited take under a Letter of Authorization (LOA).

Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as:

(a) Intentional take, Level A harassment, as defined in § 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), and lethal incidental take of polar bears or Pacific walruses; and

(b) Any take that fails to comply with this subpart or with the terms and conditions of an LOA.

§ 18.128 Mitigation, monitoring, and reporting requirements.

(a) *Mitigation measures for all Letters of Authorization (LOAs).* Holders of an LOA must implement policies and procedures to conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on Pacific walruses and/or polar bears, their habitat, and the availability of these marine mammals for subsistence uses. Adaptive management practices, such as temporal or spatial activity restrictions in response to the presence of marine mammals in a particular place or time or the occurrence of Pacific walruses and/or polar bears engaged in a biologically significant activity (*e.g.*, resting, feeding, denning, or nursing, among others) must be used to avoid interactions with and minimize impacts to these animals and their availability for subsistence uses.

(1) All holders of an LOA must:

(i) Cooperate with the Service's Marine Mammals Management Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of oil and gas industry activities on Pacific walruses and polar bears.

(ii) Designate trained and qualified personnel to monitor for the presence of Pacific walruses and polar bears, initiate mitigation measures, and monitor, record, and report the effects of oil and gas industry activities on Pacific walruses and/or polar bears.

(iii) Have an approved Pacific walrus and polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite, and provide polar bear awareness training to certain personnel. Interaction plans must include:

(A) The type of activity and where and when the activity will occur (*i.e.*, a summary of the plan of operation);

(B) A food, waste, and other "bear attractants" management plan;

(C) Personnel training policies, procedures, and materials;

(D) Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;

(E) Walrus and polar bear avoidance and encounter procedures; and

(F) Walrus and polar bear observation and reporting procedures.

(2) All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the proposed activities and provide the Service documentation of communications as described in § 18.124.

(b) *Mitigation measures for onshore activities.* Holders of an LOA must undertake the following activities to limit disturbance around known polar bear dens:

(1) *Attempt to locate polar bear dens.* Holders of an LOA seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season (November–April) must make efforts to locate occupied polar bear dens within and near proposed areas of operation, utilizing appropriate tools, such as forward-looking infrared (FLIR) imagery and/or polar bear scent-trained dogs. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.

(2) *Observe the exclusion zone around known polar bear dens.* Operators must observe a 1.6-km (1-mi) operational exclusion zone around all known polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mi of activities, work must cease and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(3) *Use the den habitat map developed by the USGS.* A map of potential coastal polar bear denning habitat can be found at: *http://alaska.usgs.gov/science/biology/polar_bears/denning.html.* This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(4) *Restrict the timing of the activity to limit disturbance around dens.*

(c) *Mitigation measures for operational and support vessels.*

(1) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses.

(2) At all times, vessels must maintain the maximum distance possible from concentrations of walruses or polar bears. Under no circumstances, other than an emergency, should any vessel approach within an 805-m (0.5-mi) radius of walruses or polar bears observed on land or ice.

(3) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walruses

when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walruses from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walruses.

(4) The transit of operational and support vessels through the specified geographic region is not authorized prior to July 1. This operating condition is intended to allow walruses the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence walrus hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(5) All vessels must avoid areas of active or anticipated walrus or polar bear subsistence hunting activity as determined through community consultations.

(6) In association with marine activities, we may require trained marine mammal monitors on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of industry's activity on polar bear and Pacific walruses.

(d) *Mitigation measures for aircraft.*

(1) Operators of support aircraft should, at all times, conduct their activities at the maximum distance possible from concentrations of walruses or polar bears.

(2) Under no circumstances, other than an emergency, should aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of walruses or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mile) of such areas. When weather conditions do not allow a 457-m (1,500-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below this altitude. However, when weather conditions necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known walrus and polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(3) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(e) *Mitigation measures for sound-producing offshore activities.* Any offshore activity expected to produce pulsed underwater sounds with received sound levels ≥160 dB re 1 μPa will be required to establish and monitor acoustically verified mitigation zones surrounding the sound source and implement adaptive mitigation measures as follows:

(1) *Mitigation zones.*

(i) A walrus monitoring zone is required where the received pulsed sound level would be ≥160 dB re 1 μPa. Walruses in this zone are assumed to experience Level B take.

(ii) A walrus mitigation zone is required where the received pulsed sound level would be ≥180 dB re 1 μPa.

(iii) A walrus or polar bear mitigation zone is required where the received pulsed sound level would be ≥190 dB re 1 μPa.

(2) *Adaptive mitigation measures.*

(i) *Ramp-up procedures.* For all sound sources, including sound source testing, the following sound ramp-up procedures must be used to allow walruses and polar bears to depart the mitigation zones:

(A) Visually monitor the ≥180 dB re 1 μPa and ≥190 dB re 1 μPa mitigation zones and adjacent waters for walruses and polar bears for at least 30 minutes before initiating ramp-up procedures. If no walruses or polar bears are detected, ramp-up procedures may begin. Do not initiate ramp-up procedures when mitigation zones are not observable (*e.g.*, at night, in fog, during storms or high sea states, etc.).

(B) Initiate ramp-up procedures by activating a single, or least powerful, sound source, in terms of energy output and/or volume capacity.

(C) Continue ramp-up by gradually increasing sound output over a period of at least 20 minutes, but no longer than 40 minutes, until the desired operating level of the sound source is obtained.

(ii) *Power down.* Immediately power down a sound source when:

(A) One or more walruses is observed or detected within the area delineated by the pulsed sound ≥180 dB re 1 μPa walrus mitigation zone; and

(B) One or more walruses or polar bears are observed or detected within the area delineated by the pulsed sound ≥190 dB re 1 μPa walrus or polar bear mitigation zone.

(iii) *Shut down.*

(A) If the power down operation cannot reduce the received pulsed sound level to <180 dB re 1 μPa (walrus) or <190 dB re 1 μPa (walrus or polar bear), the operator must immediately shut down the sound source.

(B) If observations are made or credible reports are received that one or more walruses or polar bears within the area of the sound source activity are believed to be in an injured or mortal state, or are indicating acute distress due to received sound, the sound source must be immediately shut down and the Service contacted. The sound source will not be restarted until review and approval has been given by the Service. The ramp-up procedures must be followed when restarting.

(f) *Mitigation measures for the subsistence use of walruses and polar bears.* Holders of Letters of Authorization must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walruses and polar bears for subsistence uses.

(1) *Community consultation.* Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence walrus and polar bear hunting caused by the location, timing, and methods of proposed operations and support activities (see § 18.124 for details). If community concerns suggest that the proposed activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a POC as described in paragraph (f)(2) of this section.

(2) *Plan of Cooperation (POC).* When appropriate, a holder of an LOA will be required to develop and implement a Service-approved POC. The POC must include:

(i) A description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters; and

(ii) A description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use.

(iii) The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

(g) *Monitoring requirements.* Holders of an LOA will be required to:

(1) Develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on walruses, polar bears, and the subsistence use of these species.

(2) Provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

(3) For offshore activities, provide trained, qualified, and Service-approved observers on board all operational and support vessels to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan. Offshore observers may be required to complete a marine mammal observer training course approved by the Service.

(4) Cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of oil and gas activities on walruses and polar bears. Where information is insufficient to evaluate the potential effects of proposed activities on walruses, polar bears, and the subsistence use of these species, holders of an LOA may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable impact to these resources.

(h) *Reporting requirements.* Holders of an LOA must report the results of monitoring and mitigation activities to the Service's Marine Mammals Management Office via email at: *fw7_mmm_reports@fws.gov.*

(1) *In-season monitoring reports.*

(i) *Activity progress reports.* Holders of an LOA must:

(A) Notify the Service at least 48 hours prior to the onset of activities;

(B) Provide the Service weekly progress reports of any significant changes in activities and/or locations; and

(C) Notify the Service within 48 hours after ending of activities.

(ii) *Walrus observation reports.* Holders of an LOA must report, on a weekly basis, all observations of walruses during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(A) Date, time, and location of each walrus sighting;

(B) Number of walruses;

(C) Sex and age (if known);

(D) Observer name and contact information;

(E) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(F) Estimated range at closest approach;

(G) Industry activity at time of sighting;

(H) Behavior of animals sighted;

(I) Description of the encounter;

(J) Duration of the encounter; and

(K) Mitigation actions taken.

(iii) *Polar bear observation reports.* Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(A) Date, time, and location of observation;

(B) Number of bears;

(C) Sex and age (if known);

(D) Observer name and contact information;

(E) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(F) Estimated closest distance of bears from personnel and facilities;

(G) Industry activity at time of sighting;

(H) Possible attractants present;

(I) Bear behavior;

(J) Description of the encounter;

(K) Duration of the encounter; and

(L) Mitigation actions taken.

(2) *Notification of LOA incident report.* Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any Industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a walrus or polar bear occurs. Reports must include:

(i) All information specified for an observation report;

(ii) A complete detailed description of the incident; and

(iii) Any other actions taken.

(3) *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA, or for production LOAs, an annual report by January 15th of each calendar year. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

(i) Copies of all observation reports submitted under the LOA;

(ii) A summary of the observation reports;

(iii) A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

(iv) Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;

(v) Analysis of the effectiveness of mitigation measures;

(vi) Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and

(vii) Estimates of take in relation to the specified activities.

§ 18.129 Information collection requirements.

(a) We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the collection of information contained in this subpart and assigned OMB control number 1018–0070. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. We will use the information to:

(1) Evaluate the application and determine whether or not to issue specific Letters of Authorization; and

(2) Monitor impacts of activities and effectiveness of mitigation measures conducted under the Letters of Authorization.

(b) Comments regarding the burden estimate or any other aspect of this requirement must be submitted to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR 2.2.

Dated: May 26, 2016.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–13124 Filed 6–6–16; 8:45 am]

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Part III

Department of Energy

10 CFR Part 850

Chronic Beryllium Disease Prevention Program; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 850

[Docket No. AU–RM–11–CBDPP]

RIN 1992–AA39

Chronic Beryllium Disease Prevention Program

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE or the Department) is proposing to amend its current chronic beryllium disease prevention program regulation. The proposed amendments would improve and strengthen the current provisions and continue to be applicable to DOE Federal and contractor employees who are, were, or potentially were exposed to beryllium at DOE sites.

DATES: The comment period for this proposed rule will end on September 6, 2016. Public hearings will be held on:

1. June 28–30, 2016, in Richland, WA, from 9 a.m. to 1 p.m. and 6 p.m. to 9 p.m.;
2. July 12–14, 2016, in Oak Ridge, TN, from 9 a.m. to 1 p.m. and 6 p.m. to 9 p.m.;
3. July 27–28, 2016, in Las Vegas, NV, from 9 a.m. to 1 p.m. and 5 p.m. to 8 p.m.; and
4. August 11, 2016, in Washington, DC, from 9 a.m. to 4 p.m.

Requests to speak at any of the hearings should be made by June 24, 2016, for the Richland, WA hearing; July 8, 2016, for the Oak Ridge, TN hearing; July 25, 2016, for the Las Vegas, NV; and August 10, 2016, for the Washington, DC hearing. Each presentation is limited to 10 minutes.

ADDRESSES: You may submit comments, identified by docket number AU–RM–11–CBDPP, and/or Regulation Identification Number (RIN) 1992–AA39 in one of four ways (please choose only one of the ways listed):

1. *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: Rulemaking.850@hq.doe.gov.* Include docket number AU–RM–11–CBDPP and/or RIN 1992–AA39 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment. If you have additional information such as studies or journal articles and cannot attach them to your electronic submission, please send them on a CD or USB flash drive to the address below. The additional material must clearly identify your electronic comments by name, date, subject, and docket number AU–RM–11–CBDPP.
3. *Mail:* Address written comments to Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU–11, Docket Number AU–RM–11–CBDPP, 1000 Independence Ave. SW., Washington, DC 20585 (due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt). If possible, please submit all items on a CD or USB flash drive, in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, 1000 Independence Ave. SW., Washington, DC 20585. Telephone 202–586–4714. If possible, please submit all items on a CD or USB flash drive, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section VI of this document (Public Participation).

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. A link to the docket Web page can be found at: *http://www.energy.gov/ehss/chronic-beryllium-disease-prevention-10-cfr-850.* This Web page contains a link to the docket for this notice on the *regulations.gov* site. The *regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See Section VI of this document for further information on how to submit comments through *www.regulations.gov.*

The public hearings for this rulemaking will be held at the following addresses:

1. Richland, WA: Hammer Federal Training Facility, State Department Room, 2890 Horn Rapids Road, Richland, WA 99354;
2. Oak Ridge, TN: The Pollard Technology Conference Center, 210 Badger Avenue, Oak Ridge, TN 37830;
3. Las Vegas, NV: North Las Vegas Facility, 2621 Losee Road, Building B–03, North Las Vegas, NV 89030–4129; and
4. Washington, DC: U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585. Requests to speak at any of the hearings should be telephoned in to Meredith Harris, 301–903–6061. For more information concerning public participation in this rulemaking proceeding, see Section VI of this proposed rulemaking (Public Participation).

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU–11, 1000 Independence Ave. SW., Washington, DC 20585, telephone: (202) 586–4714, or Email: *jackie.rogers@hq.doe.gov.*

For information concerning the hearings, requests to speak at the hearings, submittal of written comments, or to obtain copies of materials referenced in this document, contact Jacqueline D. Rogers, 202–586–4714.

SUPPLEMENTARY INFORMATION:

I. Introduction
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B. Health Effects
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II. Legal Authority and Relationship to Other Programs
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I. Introduction

The U.S. Department of Energy (DOE) has a long history of beryllium use because of the element's broad application to many nuclear operations and processes. Beryllium metal and ceramics are used in nuclear weapons, as nuclear reactor moderators or reflectors, and as nuclear reactor fuel element cladding. At DOE, beryllium operations have historically included foundry (melting and molding), grinding, and machine tooling of parts.

The inhalation and exposure to the skin of beryllium particles may cause beryllium sensitization (BeS) and chronic beryllium disease (CBD). BeS is a condition in which a person's immune system becomes highly responsive (allergic) to the presence of beryllium in the body. CBD is a chronic, often debilitating, and sometimes fatal lung condition. There has long been scientific consensus that exposure to airborne beryllium is the only cause of CBD.

The current worker protection permissible exposure limit (PEL) of 2 $\mu g/m^3$, measured as an 8-hour, time-weighted average (TWA), was adopted by the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) in 1971 and codified in 29 CFR 1910.1000, Tables Z–1 and Z–2, by reference to existing national consensus standards. One of DOE's predecessor agencies, the Atomic Energy Commission, had previously established the same limit of 2 $\mu g/m^3$ for application at its facilities in 1949, and that limit has remained in effect at DOE's facilities up to the present. In 1977, the National Institute for Occupational Safety and Health (NIOSH), which is part of the U.S. Department of Health and Human Services, classified beryllium as a potential occupational carcinogen. Between the 1970s and 1984, there was a significant reduction in the incidence rate of CBD in the workplace. Coupled with its long latency period, this led to the assumption that CBD was occurring only among workers who were exposed to high levels of beryllium decades earlier; however, DOE medical screening programs continue to discover cases of CBD among workers employed at DOE facilities. These facilities are expected to maintain worker exposures to beryllium at levels below the OSHA PEL, as well as operate with an action level of 0.2 $\mu g/m^3$ that triggers a number of controls and protective measures designed to protect workers when their exposures are at or above that level.

On December 3, 1998, DOE published a notice of proposed rulemaking (NOPR) to establish a Chronic Beryllium Disease Prevention Program (CBDPP) (63 FR 66940). After considering the comments received, DOE published its final rule establishing the CBDPP on December 8, 1999 (64 FR 68854). DOE now has more than 14 years of job, exposure, and health data, as well as experience implementing the rule. New research related to BeS and CBD has been published in the years since 1999. In addition, on December 23, 2010, DOE published a Request for Information (RFI) (75 FR 80734) to request information and comments on issues related to its current CBDPP. DOE is publishing this NOPR to propose an update to its CBDPP regulations in light of the information it has obtained since December 1999, when the Final Rule was first published. The proposed amendments would strengthen the current CBDPP under 10 CFR part 850, and the worker protection programs established under 10 CFR part 851, *Worker Safety and Health Program.* Consistent with the requirements established in both rules, this proposal would continue to establish a CBDPP designed to reduce the occurrence of CBD among DOE Federal and contractor workers and any other individuals who perform work at a DOE site. The proposed amendments to the CBDPP would continue to accomplish this disease reduction mission through proposed provisions that: (1) Reduce the number of current workers who are exposed to beryllium by clearly identifying and limiting worker access to areas and operations that contain or utilize beryllium; (2) Minimize the potential for, and levels of, worker exposure to beryllium by implementing engineering and work practice controls that prevent the release of beryllium into the workplace atmosphere and/or capture and contain airborne beryllium particles before worker inhalation; (3) Establish medical surveillance to monitor the health of exposed workers and ensure early detection of disease; (4) Establish continual monitoring of the effectiveness of the program in preventing CBD and implementing program enhancements as appropriate, and (5) Require the collection of data to improve the information available to better understand the cause of CBD. The principle proposed amendments would:

- Revise the definitions of beryllium, beryllium worker, and beryllium associated worker, and add new definitions for beryllium sensitization and chronic beryllium disease.
- Lower the action level to 0.05 $\mu g/m^3$.
- Allow the use portable laboratories.
- Modify the release criteria of formerly beryllium-contaminated equipment or areas without labeling if they contain beryllium in inaccessible locations or embedded in hard-to-remove substances, provided certain levels are not exceeded.
- Allow releasing beryllium-contaminated equipment, items or areas with removable beryllium above 0.2 $\mu g/100\ cm^2$ or that have beryllium in material on the surface at levels above the natural level in soil at the point of release.
- Ensure beryllium-associated workers are notified yearly of their right to participate in the medical surveillance program.
- Require mandatory medical and periodic evaluations for beryllium workers.
- Require medical evaluations for beryllium and beryllium-associated workers showing signs and symptoms of beryllium sensitization or chronic beryllium disease when the SOMD determines an evaluation is warranted.
- Require exit medical evaluations for beryllium workers and beryllium-associated workers who voluntarily participated in the medical surveillance program
- Add medical restriction requirements for workers.
- Require mandatory medical removal for workers based on the site occupational medicine director's written opinion.
- Ensure beryllium workers are informed and understand that medical testing is mandatory.
- Revise the training requirements for beryllium-associated workers.
- Revised the wording on beryllium warning signs.
- Require labels for equipment or items containing beryllium in inaccessible locations or embedded in hard-to-remove substances.
- Revised the consent forms for beryllium and beryllium-associated workers.

The proposed rule is estimated to cost from $13.6 million to $17.2 million (annualized first year costs plus annual costs in 2014 dollars, using a 7 percent discount rate and a 10 year period lifetime of investment). This includes first year costs of $41.4 million to $42.7 million, of which $7.8 million to $11.2 million are annually recurring costs. In addition, DOE expects its sites will experience cost-savings attributable to

minor changes and clarifications in the proposed amendments to 10 CFR part 850. As discussed in the Economic Assessment, however, DOE was not able to obtain quantitative estimates of these savings, but anticipates the savings would result from:

- *Reduced controls from currently regulated areas that will no longer be regulated under the proposed definition of beryllium.*
- *Reduced surface sampling for areas that are below 0.05 μg/m3 (instead of the current requirement to conduct sampling wherever beryllium is present).*
- *Reduced turnaround time for exposure monitoring results as a result of using a portable laboratory;*
- *Relaxed requirements for transferring contaminated equipment to another area in which beryllium work is performed.*
- *Reduced costs, avoided confusion, reduced liability, and avoided disputes with employees over DOE's legal liability due to clarifications in the medical removal surveillance and removal requirements.*
- *Reduced medical evaluation costs due to allowing the SOMD to determine what exams and tests are needed for each worker.*
- *Reduced training requirements for beryllium-associated workers (who currently have the same training requirements as beryllium workers).*

DOE expects its sites, contractors and workers to experience the following benefits from the proposed amendment:

- *Reduced medical costs.*
- *Reduced mortality.*
- *Increased quality of life.*
- *Increased medical surveillance for workers at risk.*
- *Increased work-life for beryllium workers.*
- *Reduced confusion and dispute over legal liability for DOE and DOE contractors.*
- *Reduced restrictions and costs for the release and transfer of equipment or areas with potential beryllium contamination.*
- *Reduced control of areas where contamination is a result of naturally high levels of beryllium in the soil or surrounding environment.*
- *Reduced turnaround time for sample analysis due to the use of portable laboratories.*
- *Reduced medical costs for periodic evaluations due to the Site Occupational Medicine Director's ability to judge that certain medical tests may be unnecessary for some workers.*

A. Chemical Identification and Use

Beryllium (atomic number 4) is a silver-gray metallic element with a density of 1.85 g/cm³ and a high stiffness. The second lightest of the metals, beryllium also has a high melting point (1,285 °C) and high heat absorption capacity.

Beryllium occurs naturally in the earth's surface in about 30 minerals found in rocks, coal and oil, soil, and volcanic dust. Smith et al. report that the concentration of beryllium in surface soils in the United States ranges from 0.09 to 3.4 parts per million (ppm), with a median of 1.2 ppm. Trace levels are present in food, water, and ambient air (ref. 1).[1] Beryllium for industrial use is extracted from beryl and bertrandite ores as beryllium hydroxide, which is the feedstock for production of beryllium oxide, beryllium metal, and beryllium alloys and composite materials (ref. 2). Naturally occurring beryllium containing silicates are mined, processed into feed material, and cut and polished for sale as gemstones. Aquamarine and emerald are examples of gemstone forms of beryl.

Beryllium was not widely used in industry until the 1940s and 1950s. Beryllium can be used as a pure metal, mixed with other metals to form alloys, processed to salts that dissolve in water, and processed to form oxides and ceramic materials. Beryllium is primarily used to stiffen copper into alloys as strong as steel, but which retain copper's corrosion resistance and electrical and thermal conductivity (ref. 2). Copper alloy strip, rod, and wire containing 0.15 to 2.0 percent beryllium is stamped or machined into complex shapes for electrical connectors, clips, springs and molds for plastics. Copper-beryllium alloys are cast and machined into non-sparking tooling, for applications where fire and explosion are a concern, and into bushings, for bearings in landing gear of commercial and military aircraft. Its corrosion resistance has led to its use as housing for undersea cables. High-strength, light weight beryllium-aluminum alloys and composites are used for structural components in aerospace and defense applications. Nickel-beryllium alloys have niche markets as electrical connectors, in jewelry, and in dental prosthetic. The thermal conductivity and transparency to microwaves of beryllium oxide ceramic has led to its use in electronics, microwave and communication equipment.

Beryllium metal has been produced for various industrial uses, especially in the aerospace and defense industries. Both structural and instrument grade materials are manufactured, including windshield frames and other structures in high-speed aircraft and space vehicles, aircraft and space shuttles brakes, X-ray windows, neutron moderators or reflectors in nuclear reactors, and nuclear weapons components. Beryllium salts (*e.g.*, sulfate or fluoride) and beryllium hydroxide are intermediates in production processes and small quantities are sold for use as laboratory reagents. Copper-beryllium is a common substrate for gold plated electrical connectors and may be encountered during precious metal recovery. Other beryllium materials include soluble beryllium salts and oxides. Beryllium soluble salts such as beryllium fluoride, chloride and sulfate, are used in nuclear reactors, in glass manufacturer, and as catalysts for certain chemical reactions. Beryllium oxide is used to make ceramics for electronics, and other electrical equipment. Beneficial properties of beryllium oxide include hardness, strength, excellent heat conductivity, and good electrical insulation.

Beryllium is also found as a trace metal in materials such as aluminum ore, abrasive blasting grit, and coal fly ash. Abrasive blasting grits such as coal slag and copper slag contain varying concentrations of beryllium, usually less than 0.1% by weight. The burning of bituminous and sub-bituminous coal for power generation causes the naturally occurring beryllium in coal to accumulate in the coal fly ash byproduct. Scrap and waste metal for smelting and refining may also contain beryllium (ref. 3).

Occupational exposure to beryllium can occur from inhalation of dusts, fumes, and mists. Beryllium dusts are created during operations where beryllium is cut, machined, crushed, ground, or otherwise mechanically sheared. Mists can also form during operations that use machining fluids. Beryllium fumes can form while welding with or on beryllium components, and from hot processes such as those found in metal foundries.

Occupational exposure to beryllium can also occur from skin, eye, and mucous membrane contact with beryllium particulates or solutions.

B. Health Effects

Beryllium exposure is associated with a wide range of health effects such as acute beryllium disease, immune system response and sensitization (BeS), CBD, lung cancer, and other possible systemic effects. The National Toxicology Program, the International Agency for Research on Cancer (IARC) and the American Conference for Governmental Industrial Hygienists (ACGIH®) classify beryllium and beryllium compounds as human carcinogens (refs. 4, 5, 6). This section focuses, however, on BeS and CBD because they represent the critical effects for beryllium and beryllium-associated workers at DOE sites and are the focus of the CBDPP regulation and this amendment. As noted in the "Introduction" section of this NOPR "DOE now has more than 14 years of job, exposure, and health data, as well as experience implementing the rule. New research related to BeS and CBD has been published in the years since 1999." This "Health Effects" section largely highlights these newer studies, particularly epidemiological and experimental studies that provide further insights about BeS and CBD—exposure, early disease detection, and disease progression.

[1] A listing of references is included as appendix A to this SUPPLEMENTARY INFORMATION section.

1. Beryllium Sensitization (BeS)

BeS is an immune system response triggered by beryllium exposure (ref. 7). BeS can occur quickly or many years after exposure to beryllium, potentially progressing into disease (ref. 8). Only a subset of workers exposed to beryllium ever become sensitized. Reported prevalence of BeS ranges from less than 1% up to 19% (refs. 6, 7). BeS alone does not cause physical symptoms. However, individuals showing evidence of BeS may develop subclinical and clinical CBD, including disabling forms.

Sensitization to beryllium can result from both inhalation and skin exposure (refs. 5, 6, 7). The 2008 National Academy of Sciences review points to the hypothesis that "penetration of the skin by poorly soluble beryllium particles may be an immunologic route to sensitization, as can occur with skin contact and soluble beryllium salts" (ref. 7). The authors comment that some exposures may make beryllium more bioavailable to the skin (soluble metals and liquids) and others more bioavailable to the lung (respirable particles, mists and vapors). Tinkle, et al. observed that beryllium particles less than 1 micrometer in diameter, can penetrate intact human skin and reach dermal layers where sensitization can occur (ref. 9). Henneberger et al. found a contrast in chronic beryllium disease between long-term and short-term workers but not a contrast in BeS between these workers (ref. 10). The Henneberger study concludes that short-term workers may have developed beryllium sensitization from skin exposure. Day et al. published a review of the published literature, including epidemiologic, immunologic, genetic, and laboratory-based studies of *in vivo* and *in vitro* models concerning skin exposure to beryllium (ref. 11). The authors hypothesized "that skin exposure to beryllium may be sufficient to cause sensitization, while inhalation is necessary for progression to lung disease." The ACGIH® and IARC have assigned a skin notation for beryllium and compounds, with the goal of preventing dermal exposure and possible sensitization by this route, possible absorption of beryllium through open cuts or wounds, and secondary inhalation of beryllium via the re-suspension of settled dust (refs. 5, 6).

As mentioned earlier, individuals sensitized to beryllium are asymptomatic and are not physically impaired. Once sensitization has occurred, it is medically prudent to prevent additional exposure to beryllium. Physicians generally recommend removing the sensitized individual from future beryllium exposure to reduce the risk of progression, based on experience with other immunologically mediated diseases and evidence that exposure is a risk factor for developing CBD. No published research studies are available, however, examining whether the general practice of recommending removal is a benefit. Moreover, the National Academy of Sciences points out that designing a study that would randomize workers to continue or avoid exposure "would likely be considered unethical because of the potential severity of CBD" (ref. 7).

The Beryllium-Induced Lymphocyte Proliferation Test (BeLPT) is used as a diagnostic tool, as well as for medical surveillance and screening for BeS. Currently, it is the most commonly available diagnostic tool for identifying BeS.

2. Chronic Beryllium Disease (CBD)

CBD is an immune-mediated, granulomatous lung disease caused by exposure to airborne beryllium particulate (ref. 8). Granulomas are abnormal tissues that form due to a proliferation of immune system cells known as lymphocytes. In the lung, accumulations of granulomas can interfere with gas exchange between the blood and the lungs. The immune response to beryllium in the lung includes inflammation, which, if it persists, forms scar tissue (fibrosis), resulting in permanent lung damage. This beryllium-induced proliferative and granulomatous response is specific to CBD. CBD pathology is similar to sarcoidosis, a more common disease. Sarcoidosis, however, usually resolves during its normal course, whereas clinically evident CBD generally does not resolve but may reach a steady state condition and may worsen over time.

Frequently reported symptoms of CBD include one or more of the following: dyspnea (shortness of breath) on exertion, cough, fever, night sweats, chest pain, and, less frequently, arthralgias (neuralgic pain in joints), fatigue, weight loss, and appetite loss. On physical examination, a physician may find signs of CBD, such as rales (changes in lung sounds), cyanosis (lack of oxygen), digital clubbing (thickening or widening of the ends of the fingers or toes), or lymphadenopathy (enlarged lymph nodes). A radiograph (X-ray) of the lungs may show many small scars. Patients may also have abnormal breathing and pulmonary function test results. Examination of the lung tissue under the microscope may show granulomas, which are signs of damage due to the body's reaction to beryllium. In advanced cases, there may be manifestations of right-sided heart failure, including cor pulmonale (enlarged right ventricle of the heart caused by blockage in the lungs).

Individuals with CBD may experience mild to severe forms of disease. In severe cases, the affected individuals may be permanently and totally disabled. Mortality of the sensitized individuals directly attributable to CBD and its complications is estimated to be 30% (ref. 12). This estimate is based upon historical data reflecting both the higher levels of exposure that occurred in the workplace prior to regulation of workplace exposure to beryllium in the late 1940s and a tracking of the medical history of subjects of CBD over several decades. DOE's recent experience with improved diagnoses and treatments may result in a lower mortality rate for CBD cases.

The BeLPT is used as a diagnostic tool for patients who present with possible CBD, as well as for medical surveillance and screening for BeS. For individuals with abnormal blood BeLPT screening results, a positive BeLPT conducted on cells washed from a segment of the lung of an individual can help confirm the presence of CBD. In the absence of granulomata or other clinical evidence of CBD, individuals with a positive BeLPT are classified as sensitized to beryllium.

Stange et al. provided estimates of the sensitivity and specificity of the BeLPT for BeS by evaluating paired results from different testing laboratories. The authors examined 20,275 BeLPT results from medical evaluations of 7,820 current and former DOE workers over a 10-year period. The program led to the diagnosis of 117 cases of CBD and the confirmation of 184 cases of BeS

without disease for a combined prevalence of 3.85% (301/7,820) (ref. 13). With borderline BeLPT results included, the sensitivity of the test was estimated to be 68.3% and the specificity was estimated to be 96.9%. In this same population, the percentage of beryllium sensitized individuals found to have CBD by clinical evaluation (positive predictive value) ranged from 71% for 24 sensitized beryllium machinists to 9% for 11 sensitized scientists, with an overall average of 35% for 235 subjects found sensitized by this study (ref. 14).

As noted above, BeS precedes the development of CBD, but the true risk and rate of disease progression is not known based on available study data (refs. 6, 7, 15). Data suggests that CBD can occur at relatively low exposure levels and, in some cases, after relatively brief durations of exposure (ref. 14). However, CBD can take months to years after initial beryllium exposure before signs and symptoms appear (ref. 15).

The clinical course—the latency period, rate of progression, and severity—of CBD is highly variable. A 2008 National Academy of Sciences review states "CBD has a clinical spectrum that can range from evidence of BeS and granulomas of the lung without clinically significant symptoms or deficits in lung function to end-stage lung disease" (ref. 7). Individuals who only have evidence of BeS and granulomas may or may not progress to a disabling form of CBD. Some individuals deteriorate rapidly; most experience long, gradual deterioration. Treatment generally consists of oral corticosteroid therapy. If lung damage is evident, CBD is treated with anti-inflammatory medications based on the course of treatment used for sarcoidosis to try to reduce granulomas, improve lung function, and minimize permanent damage from fibrosis. Individuals with impaired gas exchange may require continuous oxygen administration.

The observed variability in the clinical progression of CBD is possibly due to variation in exposure amount, route and type, and genetic and other host susceptibility factors. The factors that affect progression are not understood well enough to allow physicians to provide patients with specific advice on their likely prognosis. Currently, there is no medical therapy to prevent possible progression of BeS to CBD. Diagnostic evaluations are required to determine whether a BeS individual has progressed to CBD. Workers are counseled to seek medical attention if they develop new or worsening respiratory symptoms.

A number of studies suggest that the rate of progression from BeS to CBD may be related to the level of exposure and the form of beryllium (ref. 16). Newman et al. evaluated a group of patients with BeS but no CBD at two-year intervals (ref. 15). Of the 55 patients, 17 (31%) progressed to CBD within an average of 3.8 years. In this group, machinists had a higher risk of progression to CBD. The group of 55 patients was a subset of patients described in a subsequent publication by Mroz et al., which examined 171 beryllium exposed workers with CBD and 229 with BeS to look at risk factors for, and progression of, surveillance-identified CBD over a 20 year period (ref. 16). In addition to being machinists, those diagnosed with CBD, as opposed to BeS only, were more likely to have been exposed in the ceramics industry and less likely to have only bystander exposures, suggesting that the form and dose of beryllium may contribute to development of CBD. It was reported that 8.8% of all workers initially identified as having BeS only developed CBD over the course of the study. The study noted that physiologic changes can occur from within one month of first exposure to beyond 30 years from first exposure. However, the authors note that clinical follow-up was incomplete for this larger cohort.

Rosenman et al. studied 577 former workers from a beryllium processing plant whose first exposure, on average, began in the 1960s (ref. 17). This study involved testing subjects more than 20 years after their last exposure to beryllium. The authors identified 7.6% to have definite or probable CBD and another 7.0% with BeS at the time of the study. Those with BeS had a shorter duration of exposure to airborne beryllium, began work later, worked with beryllium longer ago, had lower measures of cumulative and peak exposure to airborne beryllium, and had lower non-soluble beryllium exposures than those with CBD, again suggesting that exposure variables may affect progression from BeS to CBD.

Two other studies have also reported that individuals with positive blood BeLPTs were less likely to have CBD at the time of their initial evaluation if they had jobs and worked in industries with low airborne beryllium exposures. Welch et al. report a total of 75,000 construction workers potentially available for screening, of which 4,458 were initially screened. Of those, 3,842 completed beryllium testing (BeLPT) (ref. 18). The authors reported that 53 (1.4%) of those tested had two or more abnormal BeLPT results. Of the 33 workers who were clinically evaluated, 5 (15%) were diagnosed with CBD. Arjomandi et al. reported similar results among current and former workers at Lawrence Livermore National Laboratory (LLNL) (ref. 19). Among the 1,875 participants tested, 59 (3.1%) were found with BeS. Of these, 50 accepted the offer of a clinical evaluation and 40 consented to bronchoscopy and bronchoalveolar lavage. Five of the 40 (12.5%) were diagnosed with CBD. The authors compared workroom air monitoring results from LLNL and the DOE Rocky Flats Plant and found the results from LLNL were much lower than those from the DOE Rocky Flats Plant. In addition, the incidence of CBD in workers identified as being sensitized was lower at LLNL (12.5%) than Rocky Flats where 38% of BeS cases were diagnosed with CBD. Therefore, there appears to be a correlation between the level of exposure to airborne beryllium and the incidence of disease.

Studies have shown that some people who are diagnosed with CBD have never been occupationally exposed to beryllium. For example, under the direction of Dr. Thomas Mancuso, 16 cases of CBD were diagnosed by X-ray examination among 20,000 residents living in Lorain, Ohio (ref. 20). Likewise, a 1949 report described 11 patients with CBD who lived near a beryllium extraction plant (ref. 21). Ten of the 11 lived within ¾ of a mile of the plant and exposure from the plant discharges into the air was the suggested cause of their CBD. Measurements of air concentrations of beryllium at various distances from the plant provided the basis for the Environmental Protection Agency's (EPA's) community permissible exposure limit (24-hour ambient air limit of 0.01 microgram of beryllium per cubic meter of air).

In addition, CBD has been reported among family members of beryllium workers who were presumably exposed to contaminated work clothing during the 1940s and 1950s (refs. 22, 23). The virtual disappearance of CBD caused by air pollution or household exposure has been attributed to more stringent control of air emissions and improved work practices, such as mandatory work clothing exchange. However, in 1989, a woman previously diagnosed with sarcoidosis was diagnosed with CBD. The woman had no occupational exposure to beryllium, but her husband was a beryllium production worker. This was the first new case of non-occupational CBD reported in 30 years (ref. 24).

C. Beryllium Exposure at DOE Facilities

The Department's medical screening programs discovered cases of CBD among workers who were first exposed after 1970, when DOE facilities were expected to maintain workers' exposure to beryllium below the OSHA PEL. As of September 30, 2014, the DOE Former Worker Medical Screening Program has provided BeLPTs to 64,645 former DOE and DOE contractor employees at least once. Of those, 823 (1.3%) had one abnormal BeLPT; 650 (1.0%) had two abnormal BeLPTs; and 223 (0.03%) had one abnormal and one+ borderline BeLPT result (one+ borderline BeLPT means the individual had more than one borderline BeLPT). Of the 64,645 former DOE and DOE contractor employees initially screened, 19,496 were rescreened. Of those rescreened, 139 (0.7%) had one abnormal BeLPT, 163 (0.8%) had two abnormal BeLPTs, and 71 (0.4%) had one abnormal and one+ borderline BeLPT.

The final rule, issued in 1999, established a Beryllium-Associated Worker Registry (the Beryllium Registry) to gather beryllium task, exposure, and health data for use in identifying trends that inform DOE in how best to continuously improve the Department's CBDPP. In 2002, employers began submitting data to the Beryllium Registry. As of December 2013, a total of 29,869 current beryllium and beryllium-associated workers are listed in the Beryllium Registry. Of those beryllium and beryllium-associated workers, 21,921 (71%) had been screened using BeLPT and 8,416 (28%) were not screened. Of the workers screened, 20,900 (97%) had normal results while 553 (3%) had abnormal results. Of the 553 workers with abnormal results, 407 (74%) had BeS and 146 (26%) had CBD.

Table 1 shows the BeS and CBD rates at DOE sites. Genetic factors have been reported to be a risk factor in determining who will progress from BeS to CBD (ref. 25). This makes a few percent of exposed individuals more sensitive to exposure to beryllium (ref. 26). DOE assumes that the proportion of workers with a genetic predisposition to contract BeS and CBD is essentially the same among the different sites and, therefore, differences in the prevalence of sensitization and disease among the sites are due to differences in exposure levels.

TABLE 1—PREVALENCE OF SENSITIZATION (BeS) AND CHRONIC BERYLLIUM DISEASE (CBD) BY DOE SITE THROUGH 2013

Site	Employees with BeLPT results	Sensitized employees (no CBD)		CBD Employees	
Advance Mixed Waste Treatment Project	21	0	0%	0	0%
Ames Laboratory	34	2	5.9%	0	0%
Argonne National Laboratory	142	3	2.1%	0	0%
Brookhaven National Laboratory	25	1	4.0%	0	0%
DOE Oak Ridge Office	93	1	1.1%	0	0%
East Tennessee Technology Plant	399	6	1.5%	4	1.0%
Fermi National Accelerator Laboratory	20	0	0%	0	0%
Hanford Site	7,480	91	1.2%	34	0.5%
Idaho National Laboratory	355	3	0.8%	0	0%
Kansas City Plant	1,208	41	3.4%	14	1.2%
Knolls Atomic Power Laboratory	29	0	0%	0	0%
LATA Environmental Services of Kentucky, LLC (PAD LATAKY)	112	2	1.8%	0	0%
Lawrence Berkeley National Laboratory	26	1	3.8%	0	0%
Lawrence Livermore National Laboratory (LLNL)	1,337	41	3.1%	3	0.2%
LLNL-Clean Harbors Environmental Services	13	0	0%	0	0%
Los Alamos National Laboratory	2,474	21	0.8%	3	0.1%
National Strategic Protective Security Services	10	0	0%	0	0%
Nevada National Security Site	1,028	23	2.2%	4	0.4%
Oak Ridge National Laboratory	639	14	2.2%	0	0%
Pacific Northwest National Laboratory	151	0	0%	0	0%
Pantex	1,756	27	1.5%	15	0.9%
Sandia National Laboratory	604	1	0.2%	0	0%
Savannah River Site	713	15	2.1%	6	0.8%
Stanford Linear Accelerator Center	47	0	0%	1	2.1%
Y–12	2,691	114	4.2%	62	2.3%
Y–12 Navarro-Gem Joint Venture	18	0	0%	0	0%
Y–12 URS Corporation	28	0	0%	0	0%
Totals	21,453	407	1.9%	146	0.7%

Note: "Sensitized" indicates the number of individuals found sensitized from two or more peripheral blood BeLPTs or from a bronchoalveolar lavage BeLPT, and does not include individuals who have been diagnosed as having CBD.

D. Value of Early Detection

Early detection of a disease is of value if it leads to reduced exposure, earlier treatment and a better prognosis for the tested individual. Screening for CBD with the BeLPT of peripheral blood can provide less invasive, earlier detection than is possible with other tests. In some cases, this has led to diagnosis and early treatment of CBD to reduce lung damage that may not have been possible if the CBD remained undiagnosed by other tests. In addition, there is increasing evidence that removal from exposure or reduction in exposure can lower the likelihood of progression from BeS to CBD and disability.

Pappas and Newman compared the lung functions of patients with CBD who had been identified through abnormal chest X-rays or clinical symptoms to those of patients with CBD who had been identified through positive BeLPTs of peripheral blood (ref. 27). Twelve of 21 BeLPT-positive patients were subsequently found to

have lung abnormalities, including reduced exercise tolerance. Fourteen of the 15 patients identified through chest X-rays or clinical symptoms had abnormal lung function, and their abnormalities were more severe than those identified through a positive BeLPT. The authors concluded that screening with the BeLPT of peripheral blood was useful because it permitted detection of CBD earlier in the disease process, when individuals are likely asymptomatic.

Early treatment of CBD may prevent progression of disease to permanent lung damage and disability. Although not providing definitive proof, studies have concluded that the long-standing standard of care for CBD has been shown to reduce the progression of disease in some patients. Marchand-Adams et al. (ref. 28), for example, concluded:

> Corticosteroid treatment in patients suffering from serious chronic beryllium disease improved symptoms, pulmonary function tests and radiology by acting on inflammatory granulomas. The control of inflammatory granulomatosis limited the fibrotic evolution as long as doses were monitored under the control of clinical examination, serum angiotensin-converting enzyme and high resolution computed tomography scanning. However, corticosteroids seemed insufficient to stop this poor evolution for some patients.

Though a small study, the observed effectiveness of corticosteroids in suppressing the growth of granulomas and limiting progressive fibrosis in the majority of patients in the study suggests that proactive treatment may prevent the progression of disease to permanent lung damage and disability. BeS identified via BeLPT screening provides the earliest indication that working conditions and work practices are affecting the health of exposed workers. This allows for an earlier opportunity to initiate corrective actions and possibly to prevent cases of CBD.

II. Legal Authority and Relationship to Other Programs

This proposed rule continues to establish minimum requirements for the protection of beryllium and beryllium-associated workers, and is being promulgated pursuant to DOE's authority under section 161 of the Atomic Energy Act of 1954, as amended (AEA) to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, specifically including standards for the protection of health and minimization of danger to life or property (42 U.S.C. 2201(i)(3) and (p)). Also, section 3173(a) of the Bob Stump National Defense Authorization Act for 2003, Public Law 107–314, amended the AEA by adding section 234C, and required DOE to "promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 170 d. of the Atomic Energy Act of 1954," and authorized DOE to impose civil or contract penalties for violations of such regulations. Additional authority for the rule insofar as it applies to DOE Federal employees, is found in section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668) and Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees* (5 U.S.C. 7902 note), which requires Federal agencies to establish comprehensive occupational safety and health programs for their employees. The Department recognizes that OSHA published a proposed rule, *Occupational Exposure to Beryllium and Beryllium Compounds* (80 FR 47565, August 7, 2015), that may differ from the CBDPP established in 10 CFR 850. The Department published its CBDPP in December 1999, after an extensive public review and comment period that included the DOE regulated community and its stakeholders. This notice proposes amendments to the CBDPP rule that would improve and strengthen the current provisions of the rule based on DOE's more than 14 years of experience implementing the rule. DOE believes the proposed amendment represents a balanced, well thought out approach reflecting the perspective of the DOE regulated community and its stakeholders. To avoid potential confusion between the CBDPP and OSHA's proposed beryllium rule, the Department has amended 10 CFR 851, *Worker Safety and Health Program* (80 FR 69564, November 10, 2015), to clarify its intent to only apply OSHA's 8-hour time weighted average permissible exposure limit (TWA PEL) for beryllium, and that DOE and DOE contractors are not subject to any other beryllium-specific OSHA requirements, including the ancillary provisions (*e.g.*, exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) OSHA has recently proposed to add to its health standard, if adopted by OSHA.

III. Issues on Which DOE Requests Information and Seeks Comment

A. Request for Information

The Department is considering additional requirements in other areas covered by the NOPR. It is especially interested in comments supported by technical evidence, rationale, and cost whenever possible, regarding the following areas:

1. *Surface action level.* It appears that not all individuals who become sensitized progress to disease, but individuals with CBD are sensitized, which suggests that sensitization must occur before disease can occur. Preventing sensitization should, therefore, prevent disease.

DOE has found no studies that have determined a threshold of beryllium surface contamination that results in skin contact that, in turn, results in beryllium sensitization although a number of epidemiology studies and reviews of studies suggest that skin contact causes sensitization. DOE, therefore, is relying upon operational experience, rather than a demonstrated relationship between surface levels and health effects, in considering to propose a surface action level which would require employers to implement specified provisions of the rule.

DOE is considering adding in the final rule a surface action level of 1.5 μg/100 cm² as a preventive approach to control the beryllium health risk. This level is based on the assumption that surface contamination is a potential source of exposure through re-entrainment from energetic tasks. The Department requests that interested parties submit comments regarding the validity of a 1.5 μg/100 cm² surface action level. If an alternate level is suggested, provide the rationale and associated cost implications for choosing the alternate surface action level.

2. *Beryllium restricted areas.* Currently, part 850 provides for "regulated areas", which are areas demarcated by the employer in which the airborne concentration of beryllium is at or above, or can reasonably be expected to be at or above, the action level. However, part 850 contains no provision for demarcating areas designating specified *surface* levels of beryllium. The Department is considering requiring in the final rule the establishment of beryllium restricted areas where the surface levels of beryllium are at or above a surface action level of 1.5 μg/100 cm², restricting access to authorized persons, and requiring employers to demarcate and control restricted areas from the rest of the workplace in a manner that alerts workers to the boundaries of such areas. The Department requests that interested parties provide information on the feasibility and effect of requiring such restricted areas.

3. *Medical screening for individuals conditionally hired for beryllium work.* When part 850 was issued in December 1999, DOE viewed the value of medical evaluations for beryllium-induced medical conditions in informing placement decisions to be limited by the fact that sensitization could not occur prior to initial exposure to beryllium. However, DOE has learned from experience that individuals working at DOE sites often have a history of employment at several sites. Their qualifications, such as having security clearances, radiation worker training, and hazardous waste site worker training, make them attractive candidates for positions around the entire DOE complex. As a result, newly hired beryllium workers may have previously been exposed to beryllium at a different DOE site and may have already developed BeS or CBD. It is also possible that newly hired beryllium workers were previously exposed to beryllium while working for other employers.

DOE believes the early detection, made possible with medical evaluations is essential for ensuring that individuals who have been adversely affected by beryllium are not placed in a job where they will be exposed to beryllium at or above the action level. In addition, given that under this NOPR, current beryllium workers with BeS and CBD will be subject to medical removal, and current beryllium workers with another medical condition for which exposure to beryllium at or above the action level would be contraindicated will be subject to medical restriction, the Department does not believe it is reasonable to place newly hired individuals with such conditions into jobs where the airborne concentration of beryllium is at or above the action level if they too would be subject to removal or restriction once hired. Under Section 161 of the AEA, the Department has broad authority to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life. Accordingly, DOE is considering including a requirement for mandatory medical screening of individuals conditionally hired for beryllium work to determine if such individuals have a medical condition for which exposure to beryllium at or above the action level is contraindicated. An "individual conditionally hired for beryllium work" would be an individual who has been offered a job as a beryllium worker (either a new hire or a current worker being transferred into a new job as a beryllium worker), but such offer would be subject to the outcome of a medical evaluation. DOE would require as part of these provisions that the employer inform applicants that any job offer would be conditional pending outcome of a medical evaluation, thus, candidates would have the option of not accepting the conditional offer.

In those cases where the medical screening indicates the individual conditionally hired for beryllium work has CBD, BeS, or another medical condition for which exposure to airborne concentrations of beryllium at or above the action level would be contraindicated, and the employer determines that no reasonable accommodation is available to enable the conditionally hired individual to work in an area where the airborne concentration of beryllium is at or above the action level, the employer would not be permitted to retain the individual as a beryllium worker. Such conditionally hired individuals would not be eligible for medical removal benefits under 10 CFR 850.36. Currently, under 10 CFR part 851, appendix A section 8(g)(2)(i), the occupational medical provider *may* require "[a]t the time of employment entrance or transfer to a job with new functions and hazards, a medical placement evaluation of the individual's general health and physical and psychological capacity to perform work" to "establish a baseline record of physical condition and assure fitness for duty." Therefore, the Department is considering including in § 850.34(b)(1)(iii) a provision that would require employers to use the medical evaluation provided to conditionally hired individuals as the baseline medical evaluation for newly hired beryllium workers.

For consistency in the examinations provided to conditionally hired individuals, the Department is considering adding a provision requiring the identification of the elements of such examinations. In such cases, the Department is considering adding in § 850.34(c) the following:

- Employers would be required to provide individuals conditionally hired for beryllium work the required medical evaluations and procedures at no cost, and at a time and place that is reasonable and convenient for the conditionally hired individual.
- Employers would be required to inform applicants for jobs where exposure to airborne concentration of beryllium is at or above the action level, that:
  - ○ The job involves a beryllium activity at or above the action level, includes a medical qualification, and requires a medical evaluation;
  - ○ Any job offer would be conditional pending the outcome of the medical evaluation;
  - ○ The employer would not be permitted to retain the individual as a beryllium worker if the Site Occupational Medical Director (SOMD) diagnosis indicates the individual has CBD, BeS, or another medical condition for which exposure to beryllium at or above the action level would be contraindicated, and the employer determines that no reasonable accommodation is available to enable the conditionally hired individual to work in a beryllium activity; and
  - ○ Once conditionally hired, no work or training may be performed prior to the worker being cleared by the SOMD for beryllium work.
- Employers would be prohibited from asking or requiring a conditionally hired individual to have a medical evaluation performed before making the conditional job offer.
- Employers would be required to ensure both the SOMD and the conditionally hired individual complete the consent form included in an appendix, before any medical evaluations of the conditionally hired individual are performed.
- Medical evaluations for conditionally hired individuals would be required to include:
  - ○ A detailed medical and work history with emphasis on exposure or potential exposure to beryllium;
  - ○ A respiratory symptoms questionnaire;
  - ○ A physical examination, with special emphasis on the respiratory system, skin, and eyes;
  - ○ A chest radiograph (posterior-anterior, 14 x 17 inches) or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist;
  - ○ Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1);
  - ○ Two peripheral blood BeLPTs; and
  - ○ Any other tests that would be deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

The Department is considering adding a new § 850.34(d)(3), which would provide the requirements for the medical opinion and determination for individuals conditionally hired for beryllium work. This proposed new

section would require, with respect to a conditionally hired individual, that:

- The SOMD's written opinion to the employer would:
  - Be delivered within 10 working days after the SOMD received the results of the medical evaluation performed pursuant to proposed § 850.34(c)(5); and
  - Contain a determination of whether the conditionally hired individual is sensitized to beryllium, has CBD, or has another medical condition for which exposure to beryllium at or above the action level would be contraindicated.
- The employer would not be permitted to retain the conditionally hired individual as a beryllium worker, if the SOMD determines that the individual conditionally hired for beryllium work has CBD, BeS, or another medical condition for which exposure to beryllium at or above the action level would be contraindicated, and the employer determines that no reasonable accommodation is available to enable the conditionally hired individual to work in a beryllium activity.

The Department is considering including in part 850 an appendix with a new mandatory form for conditionally hired individuals to ensure they receive consistent information on the medical testing required prior to working in a beryllium area. This proposed new form would be similar to the proposed mandatory form in appendix A and entitled: *Conditionally Hired Individual Chronic Beryllium Disease Prevention Program Consent Form*, and include sections for consent, medical evaluation consent, and the physician's review of the medical evaluation results. DOE is aware that the term "informed consent" has a different meaning when used in other contexts (*e.g.*, human subject research). The Department, however, used this term in the original 10 CFR part 850 published in December 1999 to ensure beryllium associated workers were informed of the medical evaluation process before medical evaluations were performed. However, DOE is proposing to not use "informed consent" but would use the term "consent" and expand it to address consent for medical evaluations for conditionally hired individuals. See part A of the proposed mandatory form in appendix A.

The Department is requesting that interested parties provide their comments supported by technical evidence, rationale, and cost information whenever possible, on the feasibility and the effect of mandatory medical qualification for conditionally hired individuals for beryllium work. Alternatively, the Department is considering allowing conditionally hired individuals and current beryllium workers who are sensitized to beryllium but who do not have CBD to work in a beryllium job after signing an acknowledgment stating the worker has been informed of the risks of continued exposure to beryllium and has voluntarily elected to work in a beryllium job. The Department is also requesting that interested parties provide their comments supported by technical evidence, rationale, and cost information whenever possible, on the feasibility and the effect of allowing workers who are sensitized to beryllium to work in a beryllium job.

4. *Mandatory medical evaluations and removals.* DOE is proposing both mandatory medical evaluations and mandatory medical removal provisions under this proposed amendment based on its commitment to the health and safety of its workers and the understanding that early detection and removal from beryllium exposure is important to prevent harm to workers at risk for developing CBD. Based on these considerations, DOE believes that these provisions are responsible and prudent measures in protecting the health of DOE and contractor workers. DOE recognizes that its proposed lower action level may result in an increased number of activities or work areas that pose the potential for airborne concentrations of beryllium at or above the action level with a corresponding increased number of beryllium workers subject to mandatory medical evaluations and the potential for mandatory medical removals. DOE believes, however, that the additional protections (triggered by the action level) available to workers at a lower action level would result in reduced worker exposures and fewer workers developing BeS or CBD. Since medical removal would be triggered by a BeS or CBD diagnosis, this would result in fewer workers being subject to medical removal.

DOE received several comments concerning whether to continue to require a worker's consent for medical removal, or instead require mandatory medical removal in response to its RFI. The majority of commenters recommended that DOE establish a mandatory medical removal practice (see discussions on proposed § 850.34(c) in the section-by-section analysis). In this NOPR, the Department requests that interested parties provide information on proposing the use of mandatory medical evaluations and medical removal for its beryllium workers, including evidence of their effectiveness, feasibility and appropriateness relative to voluntary approaches.

5. *Site Occupational Medicine Director's written medical opinion.* DOE is aware of the increased concerns about protection of confidential medical information that have arisen since December 1999, when the current Final Rule was published. DOE is also aware that employers are not necessarily covered entities under the Health Insurance Portability and Accountability Act Privacy Rules, and that the American College of Occupational and Environmental Medicine has stated that "Physicians should disclose their professional opinion to both the employer and the employee when the employee has undergone a medical assessment for fitness to perform a specific job. However, the physician should not provide the employer with specific medical details or diagnoses unless the employee has given his or her permission." In light of this, DOE requests comment on the proposed requirement for Site Occupational Medicine Directors (SOMDs) to provide employers with a written medical opinion that includes any diagnosis of the worker's condition related to exposure to beryllium (*i.e.*, BeS, CBD or any other medical condition for which exposure to beryllium at or above the action level would be contraindicated). See proposed § 850.34, Medical Surveillance.

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the proposed the definitions of beryllium and beryllium-associated workers. See proposed § 850.3.

2. DOE is requesting comments on the proposed definition of beryllium. DOE believes that soluble forms of beryllium are not used at its beryllium sites, and is proposing to exclude soluble forms of beryllium from the definition of beryllium. See proposed § 850.3.

3. DOE requests information on the different forms of beryllium (*i.e.*, soluble and insoluble) and the health effects associated with each form. See the definition of "beryllium" in proposed § 850.3. DOE is requesting comments on and evidence to support the following statement: DOE has learned by experience that common conditions and practices at DOE facilities—such as accumulations of wind-blown dust, abrasive blasting of brick surfaces with coal slag, and drilling into and demolishing concrete structures—can result in breathing zone and surface levels at or above the proposed action level and release criteria, but with forms of beryllium that are not believed to cause BeS or CBD or with activities with work practices in place that mitigate the risks. See discussion on the definition of "beryllium" in proposed § 850.3.

5. DOE is requesting comment on its proposal to lower the action level which triggers key worker protection measures, from 0.2 μg/m³ to 0.05 μg/m³. See proposed § 850.23.

6. DOE summarized various studies to address the major adverse health effects associated with exposure to beryllium. Are there additional studies or other data DOE should consider in evaluating the health effects of beryllium exposure? What is known or not known about factors influencing disease progression (including continued exposure and varying forms of beryllium) and the reported limitations and challenges in interpreting available study data (*e.g.*, small study sizes, limited exposure data, variability in susceptibility). See Health Effects and References sections of the preamble.

7. DOE recognizes that the potential for developing contact dermatitis, chronic ulcerations, and conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds. DOE believes that soluble forms of beryllium are not used at its beryllium sites. Is DOE correct in this assumption? If soluble forms of beryllium are used, please indicate so and provide the operations where they are in use. See proposed § 850.29.

8. DOE estimated the compliance costs of the proposed rule by using data from the 1999 Economic Analysis (EA), Beryllium Registry, and an Economic Assessment Questionnaire (EAQ). The EAQ is a questionnaire administered by DOE to its sites potentially affected by the proposed rule in order to solicit the per-site cost of compliance with each provision of the proposed rule. DOE is requesting interested parties to provide comments on the per-site cost data used to prepare the EA for this proposed rule, and to provide alternate estimates where available. See Economic Assessment, section 3.

IV. Section-by-Section Analysis

Overview of the Proposed Rule

The provisions of the proposed rule are presented in three main subparts: A, B, and C. Subpart A of the proposed rule would describe the scope and applicability of the proposed rule, defines terms that are critical to the proposed rule's application and implementation, provides its proposed enforcement and dispute resolution provision. Subpart B would establish administrative requirements to develop and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP. Subpart C would establish requirements for the content and implementation of the CBDPP by focusing on protecting workers from being exposed to airborne beryllium, preventing BeS and CBD and providing benefits for workers with BeS or CBD who are or were removed from work assignments where the exposure to airborne beryllium is or was at or above the action level. Some of the proposed provisions of Subpart C apply only when it is determined that the airborne concentration of beryllium in a specific workplace or operation rises above the specified limit. Table 2 summarizes these provisions and indicates the levels of beryllium at which the provisions would apply.

TABLE 2—LEVELS AT WHICH THE PROPOSED PROVISIONS OF THE CBDPP WOULD APPLY

Proposed provisions	Worker exposure or potential exposure levels (8-Hour TWA)		
	Be operation/location [a]	≥ Proposed action level (0.05 μg/m³)	≥ PEL (8-hr TWA) (2.0 μg/m³)
Baseline Inventory (850.20)	X		
Hazard Assessment and Abatement (850.21)	X		
Initial Exposure Monitoring (850.24)	X		
Periodic Exposure Monitoring (850.24)		X	
Exposure Reduction (850.25)	X[b]	X	
Beryllium Regulated Areas (850.26)		X	
Hygiene Facilities and Practices (850.27)		X	
Respiratory Protection (850.28)		X	X[c]
Protective Clothing and Equipment (850.29)	X[d]	X	
Housekeeping (850.30)	X[e]	X	
Release and Transfer Criteria (850.31)	X[f]		
Medical Surveillance (850.34)	X[g]	X	
Medical Restriction (850.35)	X[h]	X	
Training and counseling (850.38)	X[i]		
Warning signs and labels (850.39)		X	

[a] Would apply to beryllium operations and other locations where there is a potential for beryllium contamination.
[b] Employers would be required to establish a formal hazard prevention and abatement program.
[c] Employers would be required to provide respirators that comply with 10 CFR part 851.
[d] Employers would be required to provide protective clothing and equipment where surface contamination levels are above 3 μg/100 cm².
[e] Housekeeping efforts would be required to maintain removable surface contamination at or below 3 μg/100 cm² during non-operational hours.
[f] Would establish contamination criteria for equipment, items, or areas to be removed, released, or transferred from beryllium regulated areas.
[g] Employers would be required to provide medical surveillance to beryllium and beryllium-associated workers.
[h] Employers would be required to medically restrict certain workers from working in area at or above the action level.
[i] Training would be required for all workers who could be potentially exposed. Counseling would be required for beryllium and beryllium-associated workers diagnosed with BeS or CBD.

This section-by-section analysis describes the proposed changes in subparts A, B, C and the appendixes that the Department is proposing to make to the current CBDPP regulation (10 CFR part 850) that was published in December 1999.

A. Subpart A—General Provisions

Proposed § 850.1—Scope

Proposed § 850.1 would continue to establish the CBDPP for DOE employees and DOE contractor employees and clarifies that the CBDPP would also supplement and be an integral part of the worker safety and health program requirements under 10 CFR part 851 for DOE contractor employees. The Department would continue to structure the proposed rule this way to take advantage of existing and effective comprehensive worker protection programs at DOE facilities, and to minimize the burden on DOE contractors by clarifying that contractors need not establish redundant worker protection programs to comply with the proposed rule. Proposed § 850.1 also clarifies that if there is a conflict between the requirements of this part, and part 851, this part controls.

The Department recognizes that, except at the few DOE-operated sites, DOE Federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium; however, in performing management and oversight duties, DOE Federal workers sometimes must enter areas where beryllium is handled. The health and safety provisions of 29 CFR part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters,* as well as Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees,* protect Federal workers. DOE's intent is to supplement these general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE Federal workers may have the potential for beryllium exposure at or above the action level.

Proposed § 850.2—Applicability

Proposed § 850.2(a)(1) and (2) continue to specify that the rule would apply to DOE Federal offices and DOE contractors with responsibility for operations or activities that involve present or past exposure to beryllium at DOE sites. It would also continue to apply to any current DOE employee, DOE contractor employee, or any other current worker at a DOE site who is or was exposed or potentially exposed to beryllium at a DOE site, regardless of which organization currently employs the worker.

Except at a few DOE-operated sites, DOE Federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium. However, in performing management and oversight duties, DOE Federal workers may enter sites where beryllium is handled. Federal agencies are required to ensure the protection of Federal workers under the health and safety provisions of 29 CFR part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters,* as well as Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees.* DOE's intent in proposed § 850.2(a)(1) and (2) would be to continue to supplement those general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE Federal workers may have the potential for beryllium exposure.

In the current rule the term "DOE facility" is used instead of DOE sites. DOE is proposing to delete the term "DOE facility" and use in its place "DOE sites" to be consistent with the term used in 10 CFR part 851. A DOE site would continue to mean a DOE-owned or -leased area or location controlled by DOE where activities and operations are performed at one or more facilities or locations by a contractor in furtherance of a DOE mission. This definition is provided in 10 CFR 851 and includes all sites where DOE exercises regulatory control under the AEA, even if DOE does not own or lease the site. Changing the terminology in this proposed amendment does not affect the number of potentially regulated facilities. The Department will still have 22 beryllium sites.

As proposed in the definition of "contractor," found in § 851.3 and in § 850.3 of the proposed rule, DOE's intent is that contractors covered under this rule include any entity, including affiliated entities, such as a parent corporation, under contract with DOE, and any subcontractor at any tier, that has responsibility for performing beryllium work at a DOE site in furtherance of a DOE mission. The requirements of the CBDPP would apply only to contractors and subcontractors who work in areas or on activities in which there is a potential for beryllium exposure at or above the action level.

As with the current rule, the proposed rule would not apply to former DOE Federal and contractor workers. When workers terminate their employment at a DOE site, they are eligible to have health monitoring through the Former Worker Medical Screening Program. The Former Worker Medical Screening Program was established following the issuance of the Fiscal Year (FY) 1993 National Defense Authorization Act (Pub. L. 102–484), which called for DOE to assist workers with determining whether they had health issues related to their prior work with DOE. Workers eligible for this program include all former DOE Federal, contractor, and subcontractor employees from all DOE sites. In FY 2005, DOE initiated a separate beryllium sensitization screening effort for employees who worked for now defunct DOE beryllium vendors, and who were employed with these companies while the vendor or company was under contract with DOE. These individuals typically have no other access to the beryllium sensitization screening, because their employers are no longer in business. Additional information on the Former Worker Medical Screening Program may be found on the Department's Web site located at: *http://energy.gov/hss/information-center/worker/former-worker-medical-screening-program.* The provisions of this rule would not apply to activities not conducted at a DOE site, such as the off-site laundering of beryllium-contaminated clothing from a DOE site.

DOE is proposing to add § 850.2(a)(3) to clarify that the Site Occupational Medicine Director (SOMD) would be responsible for providing the overall direction and operation of the employer's beryllium medical surveillance program.

Proposed § 850.2(b)(1) and (2) would continue to exempt activities involving beryllium articles and specify the rule would not apply to DOE laboratories that meet the definition of laboratory scale use of hazardous chemicals in OSHA's *Occupational Exposure to Hazardous Chemical in Laboratories* standard, 29 CFR 1910.1450. In § 1910.1450(b) of that standard, OSHA defines a laboratory as a workplace where relatively small qualities of hazardous chemicals are used on a nonproduction basis. Laboratory scale is defined as work with substances in which the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one person. Workplaces whose function is to produce commercial quantities of materials are excluded. Also, the term laboratory scale of hazardous chemical is defined as the handling of such chemicals where all of the following conditions are met: (1) Chemical manipulations are carried out on a laboratory scale; (2) multiple chemical procedures or chemicals are used; (3) the procedures involved are not part of a production process, nor in any way simulate a production process; and (4) protective laboratory practices and equipment are available and in common use to minimize the potential for employee exposure to hazardous chemicals.

The Department continues to believe OSHA's regulation is adequate to protect workers from beryllium exposures in facilities that meet the definition of laboratory use of hazardous chemicals. The requirements set forth in OSHA's regulation are made applicable to DOE contractors performing work on a DOE site in § 851.23(a)(3).

The exemption of laboratory use of hazardous chemicals would continue to apply only in instances where relatively small quantities of beryllium are used in a non-production activity. In addition, OSHA's laboratory standard has specific provisions to ensure protective laboratory practices are followed. Many of the provisions in OSHA's laboratory standard are the same as, or similar to, those in this proposed rule. For instance, OSHA's laboratory standard establishes provisions for identifying the presence of hazardous chemicals (baseline inventory), establishing a chemical hygiene plan (hazard assessment), performing periodic monitoring at the action level, implementing exposure reduction measures at the PEL, training employees on related hazards, and providing employees with the opportunity for medical consultation and examination. In part because each of these aspects of the proposed beryllium rule is already included in the OSHA laboratory standard, DOE is retaining the laboratory operations exemption.

Proposed § 850.3—Definitions

Proposed § 850.3(a) would continue to apply traditional industrial hygiene terminology to define key terms used throughout the proposed rule. The following discussion explains the definitions in the proposed rule.

Action level would mean the airborne concentration of beryllium at which, or above which, the implementation of certain provisions of the proposed rule would be required. Using an action level to trigger certain provisions of the proposed rule ensures additional appropriate workplace precautions are taken and training and medical evaluations are provided, in situations where worker exposures could significantly increase the risk of workers developing CBD. Additional information on the application of the action level is presented in the discussion on proposed § 850.23, *Action level,* and in the discussions of other provisions that would continue to be triggered by airborne concentration of beryllium being at or above the proposed action level. Note that several provisions of the proposed rule would continue to apply independent of the action level. Specifically, the CBDPP requirement (10 CFR 850.10), the inventory requirement (10 CFR 850.20), the voluntary protective clothing and equipment requirement (10 CFR 850.29(a)(3)), the housekeeping requirements related to the cleaning of surfaces with removable beryllium (10 CFR 850.30(b) through (d)), the release or transfer requirements (10 CFR 850.31(c)), the waste disposal requirements (10 CFR 851.32), the beryllium emergencies requirement (10 CFR 850.33), the medical surveillance and restriction requirements as they relate to beryllium associated workers (10 CFR 850.34 and 850.35), the training and counseling requirements (10 CFR 850.38), the warning labels requirements (10 CFR 850.39(b)), and the recordkeeping and use of information requirements (10 CFR 850.40).

Authorized person would continue to mean any person required by their work duties to be in a beryllium regulated area. Authorized individuals would be required to be trained and experienced in the hazards of beryllium, and the means of protecting themselves and those around them against such hazards. Proposed training requirements are specified in § 850.38 of this proposed rule. The concept of authorized person continues to be consistent with OSHA standards and with contractor practice at many DOE sites, and is intended to ensure that the population of potentially exposed individuals is reduced to the lowest possible number and that workers who are granted access to beryllium regulated areas have the knowledge they need to protect themselves and other workers.

Beryllium would be revised to mean elemental beryllium, beryllium oxide, and alloys containing 0.1 percent or greater beryllium by weight that may be released as an airborne particulate. Though uncertainty exists, studies investigating the health effects of exposures to elemental beryllium, beryllium oxide, and beryllium alloy suggest no compelling evidence that BeS or CBD is caused by exposure to particulates that contain beryllium in forms other than elemental, oxide and alloys. An important consequence of this proposed change is to exclude mineral forms of beryllium from the definition of beryllium. The American Conference of Governmental Industrial Hygienists (ACGIH®) (ref. 29) reports, for example, that: "Beryllium occurs naturally as the silicate, bertrandite, and the aluminosilicate, beryl. Exposure to bertrandite and beryl dust occurs during ore crushing and grinding; however, the ores are not considered sources of beryllium sensitization." While mineral forms of beryllium do not appear to be linked with BeS or CBD, these forms can be at or above the action level when samples are analyzed by currently available methodologies. This occurs because materials containing mineral forms of beryllium—such as clays, and concrete—are ubiquitous on many DOE sites, and the most common currently used analysis methods analyze all the beryllium in a sample without distinguishing the different forms of beryllium. DOE has learned by experience that common conditions and practices at DOE facilities—such as accumulations of wind-blown dust, abrasive blasting of brick surfaces with coal slag, and drilling into and demolishing concrete structures—frequently result in breathing zone levels at or above the proposed action level and release criteria, but with forms of beryllium that are not believed to cause BeS or CBD. Studies by Stefaniak *et al.* of dissolution rates of beryllium in various beryllium containing materials in airway and phagolysosomal fluids suggest that dissolution rates of beryllium metal and oxide in lungs are in a range that is relatively slow in lung airways fluid to prevent removal by dissolution and is sufficiently fast in phagolysosomal fluid to compete with removal by phagocytosis. The range of dissolution rates of beryllium-containing minerals (*e.g.,* beryl ore) are slow in phagolysosomal fluid, indicating the persistence of these particles until removed by mechanical clearance which may alter its capacity to influence development of CBD (ref. 30). DOE's proposal to eliminate beryllium-containing minerals from the definition of beryllium would greatly reduce the burden on its missions without diminishing worker safety and health protection.

The definition would continue to exclude soluble forms of beryllium, such as beryllium salts, from the definition of beryllium. High exposures to soluble beryllium compounds cause acute beryllium disease (*i.e.,* inflammation of the upper and lower respiratory tract), but this exposure

essentially has been eliminated by compliance with OSHA's PEL.

Cummings *et al.* reported in 2009 on two cases of production plant employees who in the 1980s were exposed to both highly and poorly soluble forms of beryllium and developed skin conditions, acute beryllium disease, and eventually CBD. The exposure monitoring results associated with these cases indicate levels were well above the OSHA PEL. Included in this article is the following statement: "More recently, insoluble beryllium metal and oxide have been shown to have dissolution lifetimes of hundreds of days to years in lung airway epithelial lung fluid and alveolar macrophage phagolysosomal fluid (ref. 31, 32). Autopsy studies have confirmed that beryllium particles are identifiable in granulomas formed in the lungs of individuals with CBD years after exposure ceased (Butnor et al. 2003; Sawyer *et al.* 2005; Williams and Wallach 1989). Thus, Stefaniak *et al.* (2003, 2008) hypothesized that exposure aerosol physical properties, chemical properties, and physicochemical properties control development of beryllium lung burdens, and that the ongoing presence of a lung reservoir of beryllium may be necessary for the development of CBD" (ref. 33). Moreover, ACGIH® states, "Exposure to soluble beryllium salts (sulfate, ammonium carbonate, beryllium carbonate, and to a lesser extent, beryllium hydroxide) may occur during extraction of the metals from the ore (Deubner *et al.*, 2001). These salts are considered the main source of beryllium sensitization during beryllium extraction" (ref. 29).

DOE recognizes that inhalation and skin exposure to soluble beryllium compounds may create risk for BeS, however, DOE believes that soluble forms of beryllium are not used at its beryllium sites and, therefore, do not warrant regulation under this rule.

Distinguishing the forms of beryllium. DOE believes it is feasible to distinguish the forms of beryllium specified in DOE's proposed definition of beryllium. The Department recognizes that the most common analytical techniques for determining the beryllium content of a sample begin with digesting all the beryllium into ions in solution. These techniques do not distinguish the form the beryllium was in before the digestion step. However, DOE believes Qualified Individuals (as defined in § 850.3 of this proposed rule) can make the determination that the beryllium at a DOE site is in a metal, oxide, or alloy form based on knowledge of the processes conducted at that site and matching the composition of certain constituents of air and surface samples with the composition of possible source materials. Another approach for distinguishing the form of beryllium is to demonstrate that the source of beryllium contamination is in infiltrated background soil. One technique that has been used successfully at DOE sites to determine if the beryllium in indoor settled particulates consists of beryllium that has infiltrated indoors, as a constituent of background soil, is to demonstrate that the concentration of beryllium in the accumulated indoor "dust" is not higher than the concentration in the outside background soil. Another technique is based on demonstrating that the ratio of atoms of beryllium to the atoms of a constituent of soil is the same in background soil and indoor dust. Other techniques may be available to determine whether beryllium is in an elemental, oxide, or alloy form. DOE believes the methods its sites use to determine the form of beryllium are technically defensible, which is important when the site determines that the source is a form of beryllium, such as background soil or coal fly ash, not included in the proposed definition of beryllium.

Beryllium activity would mean an activity taken for or by DOE at a DOE site that can expose workers to airborne concentrations of beryllium at or above the action level, including any activity involving the disturbance of legacy beryllium-containing dust.

Beryllium article would be revised to mean a "commercially available, off-the-shelf" item composed of beryllium that is formed to a specific shape or design during manufacture, has end-use functions that depend in whole or in part on its shape or design during end use, and does not release airborne beryllium at or above the action level under normal conditions of use. The proposed definition would revise the current definition from stating that it "does not release beryllium" to stating that it "does not release particulate beryllium at or above the action level under conditions of normal use."

DOE is modifying this definition since some of its sites have found surface contamination associated with items that met the definition of "articles" but were part of the weapons systems. The identification of surface contamination on "articles" or manufactured products is not new. While the risk of airborne exposure is negligible, there have been Occurrence Reporting and Processing System reports and/or Lessons Learned, which highlight the need to reexamine the article definition and use around the DOE complex.

DOE recognizes the existence of weapon components that are categorized as articles, and they are exempt from the requirements of the beryllium program. Several weapons programs include operations involving beryllium-containing components classified as articles. The components are processed during weapon assembly, dismantlement, stockpile maintenance, and other operations. The operations involve routine handling, and may include light wiping of the components with a dry disposable wipe or a disposable wipe moistened with a solvent. These operations involving those alloy components do not result in measurable concentrations of airborne beryllium and are exempted from the requirements of this rule. However, the article exemption does not apply to these parts if they are processed in a more aggressive manner that might lead to the release of beryllium from the component.

Beryllium-associated worker would be clarified to mean a current worker who was exposed or potentially exposed to airborne concentrations of beryllium at a DOE site. DOE is proposing to clarify the definition of beryllium-associated worker by removing the term "beryllium workers" (*i.e.,* workers who are currently exposed or potentially exposed to beryllium at or above the action level). DOE has learned from experience in implementing this part, as issued in 1999, that including "beryllium worker" in the definition caused confusion and different interpretations of the term by individuals responsible for implementing this provision.

The term "beryllium-associated worker" would continue to apply to current workers whose work history showed they may have been exposed to airborne concentrations of beryllium at a DOE site; or a worker who exhibits signs and symptoms of beryllium exposure. The definition clarifies that current workers who have been removed from beryllium exposure as part of the medical removal process and are receiving medical removal benefits are beryllium-associated workers under the proposed rule, but they are not "beryllium workers" (see definition of "beryllium worker"). Beryllium-associated workers may be DOE Federal or contractor workers, or employees of subcontractors to DOE contractors who perform work at DOE sites in furtherance of a DOE mission.

Beryllium emergency would continue to mean any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected and significant release of beryllium at a DOE site. This definition is particularly important when determining appropriate emergency response procedures that fall within the scope of OSHA's *Hazardous Waste Operations and Emergency Response* standard, 29 CFR 1910.120. This definition continues to be based on OSHA's use of the term "emergency" as applied in 29 CFR 1910.120 and refers to any event, such as a major spill of powdered beryllium or an unexpected upset, that results in a significant release of beryllium into the workplace atmosphere.

Beryllium-Induced Lymphocyte Proliferation Test (BeLPT) would remain unchanged from its current definition as an in vitro measure of the beryllium antigen-specific, cell-mediated immune response to beryllium. However, the Department is adding language to clarify that a split sample BeLPT (where one blood draw is split and sent to two different testing facilities) would constitute two tests for purposes of diagnosing BeS.

This test measures the extent to which lymphocytes, a class of white blood cells, respond to the presence of beryllium. Medical personnel use the blood Be-LPT to identify workers who have become sensitized to beryllium through their occupational exposure.

Beryllium-induced medical condition would be added to provide a term in the rule that refers to CBD and BeS. Other diseases may resemble CBD, but are not attributable to beryllium. Medical tests, such as the lung lavage BeLPT, can help a physician decide if a person has CBD or another disease.

Beryllium Registry would be added as a new term and refers to the DOE Beryllium-Associated Worker Registry, which is a collection of health and exposure information of individuals potentially at risk for CBD due to their work at DOE-owned or leased sites. The data from the Beryllium Registry is analyzed to better understand CBD and to identify those at risk. Reported data are cumulative through calendar year and are located at: *http://energy.gov/ehss/beryllium-associated-worker-registry*. The Beryllium Registry is also a risk management tool for sites to use in managing their CBDPP and other risk management operations. Sites are encouraged to use their Beryllium Registry data to evaluate beryllium exposure risks.

Beryllium regulated area currently known as "regulated area," would be clarified to mean an area established, demarcated, and managed by the employer where the airborne concentration of beryllium is at or above, or can reasonably be expected to be at or above, the action level. Employees working in beryllium regulated areas would be authorized by their employer to work in the area, and trained, and equipped with protective clothing and equipment. The purpose of such areas is to limit exposure to beryllium to as few workers as possible. The use of these "regulated areas" is consistent with OSHA's expanded health standards for toxic particulates.

Beryllium sensitization or sensitivity (BeS) would be added as a new term to ensure consistency within the Department in how BeS is diagnosed. BeS would mean a condition diagnosed by the SOMD based on any of the following: (1) Two abnormal blood BeLPT results; (2) One abnormal and one borderline blood BeLPT; or (3) One abnormal BeLPT test of alveolar lung lavage cells. This definition would also make clear that it is the SOMD who makes the diagnosis of BeS.

The Department recognizes that OSHA has proposed slightly different criteria for BeS diagnosis in its proposed rule, *Occupational Exposure to Beryllium and Beryllium Compounds.* Specifically, OSHA proposed a BeS diagnosis based on two abnormal tests performed after two separate blood draws. DOE does not believe this slight difference in proposed approaches will create confusion because the Department would only be subject to the permissible exposure limit established in the current OSHA beryllium standard and any new OSHA beryllium standard when promulgated, and would not be subject to the ancillary provisions (*e.g.,* definitions, exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) of the new rule. Therefore, DOE workplaces will only be subject to the DOE provisions. The Department expects DOE and DOE contractors to continue to implement the provisions of 10 CFR part 850 at DOE sites.

Beryllium worker would be revised to mean a current worker exposed or potentially exposed to airborne concentrations of beryllium that are at or above the action level in the course of the worker's employment in a DOE beryllium activity. Incorporation of the action level is necessary, as beryllium is ubiquitous in small amounts, and DOE's experience has been that "potentially exposed" has been misunderstood to refer to all workers on a site regardless of whether they were exposed to levels of beryllium of any consequence to their health.

This definition would also clarify potential confusion over what it means to be "regularly employed in a DOE beryllium activity" and to include those persons who are exposed to airborne concentrations of beryllium at or above the action level as part of their employment, such as supervisors or others who are authorized to enter beryllium regulated areas. The employer would be required under this proposed rule to provide the SOMD with a list of all beryllium workers, as well as beryllium-associated workers. Former workers would not be included in the definition of beryllium workers. The Department established the Former Worker Medical Screening Program and offers medical examinations to former (retired and separated) workers who are at risk for developing CBD due to their work at a DOE site.

Breathing zone would continue to mean the hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches. This definition applies specifically to proposed § 850.24, *Exposure Monitoring,* which requires employers to determine the worker's exposures to beryllium by monitoring for the presence of contaminants in the worker's personal breathing zone. This definition is consistent with sound and accepted industrial hygiene practices, and ensures that samples collected for personal exposure monitoring represent the air inhaled by workers while performing their duties in their work areas.

Chronic beryllium disease (CBD) would be added as a new term to ensure consistency within the Department in how CBD is diagnosed. CBD would mean a condition diagnosed by the SOMD based on the worker having the following: (1) BeS as defined in this section; and (2) a lung biopsy showing non-caseating granulomas or a lymphocytic process consistent with CBD, or radiographic (including computed tomographic (CT) scans) and pulmonary function testing results consistent with pulmonary granulomas.

Cognizant Secretarial Officer (CSO) would be added as a new term by adopting the definition from 10 CFR part 851, *Worker Safety and Health Program.* The definition would clarify that the CSO would mean, with respect to a particular situation, the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor, or any other official to whom the CSO delegates in writing a particular function under this part.

Contractor would be revised from the current term "DOE contractor" by adopting the definition from 10 CFR part 851, *Worker Safety and Health Program*, but specifying that the definition applies to contractors performing beryllium work. This change would reflect DOE's intent that contractors covered under this rule includes any entity, including affiliated entities, such as parent corporation, under contract with DOE, and any subcontractor at any tier, that has responsibilities for performing beryllium work at a DOE site in furtherance of a DOE mission.

DOE would continue to mean the United States Department of Energy, including the National Nuclear Security Administration.

DOE site would be added as a new term by adopting the definition from 10 CFR part 851, and the current term "DOE facility", would be deleted. The definition would clarify that a DOE site would mean a DOE-owned or -leased area or location or other location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission. This definition would include all locations where DOE exercises regulatory control under the Atomic Energy Act of 1954, as amended (AEA), even if DOE does not own or lease the site.

Employer would replace the term "responsible employer" because DOE recognizes that "responsible" is self-evident in the context of this part. Therefore, an employer would be, (1) for DOE contractor employees, the DOE contractor that is directly responsible for the safety and health of employees while performing a beryllium activity or other activity at a DOE site; (2) for DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal employees while performing a beryllium activity or other activity at a DOE site; or (3) any person acting directly or indirectly for the contractor or DOE office with respect to terms and conditions of employment of beryllium workers and beryllium-associated workers.

Final medical determination would be added to the definitions section and would mean the final written medical determination of the SOMD as to whether the beryllium worker should be permanently removed because of BeS or CBD. The final medical determination to permanently remove a worker must be made by the SOMD based on a diagnosis of BeS or CBD as defined in this section. If the worker is eligible, and has elected the multiple physician review or alternate physician's determination, the SOMD must issue the final medical determination at the conclusion of such process.

The current rule provides in § 850.35(a)(1)(i) that "final medical determination" is the "outcome of the multiple physician review process or the alternate medical determination process," and thus temporary removal is only available pending this independent review. This proposed rule would be intended to permit the SOMD to determine that a worker should be put on temporary medical removal based on tests, recommendations, or any other symptoms that the SOMD deems medically sufficient, pending the SOMD's final medical determination as to whether the worker should be permanently removed. For example, if a SOMD evaluates a worker and believes the worker needs to undergo additional testing before a final determination can be made, the SOMD may determine that the worker should be temporarily removed pending the outcome of that testing. In instances where the worker does not request multiple physician review or alternate physician determination, the SOMD's initial determination may also be the final determination.

Head of DOE Field Element would be revised by adopting the definition from 10 CFR part 851. This change would reflect DOE's intent that the Head of DOE Field Element is the individual who is the manager or head of the DOE operations office or field office.

High-efficiency particulate air (HEPA) filter would continue to mean a filter capable of trapping and retaining at least 99.97% of 0.3 micrometer mono-dispersed particles.

Medical removal benefits (currently medical removal protection benefits) is being revised to mean the employment benefits that would be established by § 850.36 of this proposed rule for beryllium workers temporarily or permanently removed from beryllium activities in which the workers can be exposed to airborne concentrations of beryllium at or above the action level following a recommendation by the SOMD. This proposed definition would clarify that only beryllium workers are eligible for medical removal benefits. Medical removal provisions give contractors an incentive to make reasonable efforts to find and offer alternate employment to beryllium workers who have suffered negative health effects due to exposure to beryllium. The proposed definition of medical removal benefits and the proposed requirements in proposed § 850.36 would ensure that permanently removed beryllium workers would suffer no reductions in total earnings, or other worker rights and benefits for up to two years after permanent medical removal, and up to one year for temporary removal. During this time the contractor would be required to make reasonable efforts to find alternate employment for a removed beryllium worker. Alternative employment may also be found through job retraining and out-placement programs operated by many sites during this two-year period. For workers who are removed, medical removal benefits would continue for the designated period, even where the employee has, during that period of removal, received a notice of and is subsequently laid-off.

Medical restriction would be added and refer to the outcome of the process under § 850.35 in which the worker is not suffering from CBD or has not been sensitized to beryllium, but the SOMD determines that exposure to beryllium is nonetheless contraindicated due to other medical conditions of the worker and thus, the SOMD recommends that the worker be restricted from a job that involves an exposure to beryllium at or above the action level. For beryllium workers with BeS or CBD, this proposed rule would require medical removal—not medical restriction—if the SOMD determines that a beryllium worker should be removed from a beryllium job.

Qualified Individual would be added and defined to mean an individual, designated by the employer, who possesses the knowledge, skills, and abilities needed to implement an industrial hygiene program (*i.e.*, an individual who is either a certified industrial hygienist or has a college degree in industrial hygiene or a related scientific, engineering, or technical degree); who has completed special studies and training in industrial hygiene; and who has at least five years of full-time employment in the professional practice of industrial hygiene.

Site Occupational Medical Director (SOMD) would continue to mean the licensed physician responsible for the overall direction and operation of the site occupational medicine program. However, DOE believes the physician should be qualified to diagnose beryllium-induced medical conditions. Specifically, DOE expects the medical evaluations and procedures required to diagnose CBD will be performed or validated by a specialist in pulmonary medicine or occupational medicine, or by another physician familiar with the specialized equipment and examination protocols required to definitively differentiate between CBD and other lung diseases.

Surface levels of beryllium would replace the term "removable contamination," and the definition would be revised by deleting the words "nondestructive" and "washing." The word "nondestructive" gives the erroneous impression that actions to remove contamination can be very aggressive as long as the surface is not damaged. Washing is inconsistent with casual contact. The intent of the definition of "surface levels of beryllium" would be to describe the material that could be transferred to an individual by casual contact, such as brushing by the contaminated surface.

Unique identifier would continue to mean the part of a paired set of labels used in records that contain confidential information that does not identify individuals except by using the matching label.

Worker would be revised to mean an employee of DOE or a DOE contractor, or subcontractor, at any tier, who performs work in furtherance of a DOE mission at a DOE site.

Terms and definitions deleted and not explained above. The definitions of "DOE facility," "immune response," "operational area," and "worker exposure" would be deleted, as these terms are either not used in this proposed notice or are fully explained as established in § 850.24 (Exposure monitoring).

Proposed § 850.3(b) would be amended to provide that undefined terms shall have the same meanings as used in the AEA and 10 CFR part 851, *Worker Safety and Health Program*.

§ 850.4—Enforcement

Proposed § 850.4 would continue to preserve the section as amended on February 9, 2006 (71 FR 6858, 6931). That amendment provides that DOE may take appropriate steps pursuant to 10 CFR part 851, *Worker Safety and Health Program*, to enforce compliance by contractors with this part, and any DOE-approved contractor's CBDPP. This provision would continue to allow DOE to employ contractual mechanisms such as a reduction in fees, or to assess a civil penalty when a contractor fails to comply with the provisions of the proposed rule.

§ 850.5—Dispute Resolution

Proposed § 850.5 would continue to establish that any adversely affected worker may refer a dispute regarding compliance with the rule to the Office of Hearings and Appeals (OHA) for resolution; however, employees who are represented by a labor organization are required first to exhaust any grievance-arbitration procedure that is available for resolving disputes over terms and conditions of employment. The rule would continue to provide that a worker will be deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed after the filing of a grievance and a final decision on it has not been issued. This provision is consistent with 10 CFR part 708, *DOE Contractor Employee Protection Program*, at § 708.13(a)(2). Proposed § 850.5(b) would permit OHA to "elect not to accept a petition from a worker unless the worker had requested that the employer correct the violation," rather than prohibit the petition from being accepted by OHA unless the worker had requested his employer correct the violation.

§ 850.6—Interpretations, Binding Interpretive Rulings and Requests for Information

Proposed § 850.6 would be added to establish and clarify that requests for legal interpretations under this proposed rule would be in accordance with 10 CFR 851.6, *Petitions for generally applicable rulemaking*, requests for binding interpretive rulings would be in accordance with § 851.7, *Requests for a binding interpretative ruling*, and informal requests for information would be made pursuant to 10 CFR 851.8, *Informal requests for information*. Informal requests for information and inquiries regarding technical requirements in this proposed rule would be directed to the Office of Environment, Health, Safety and Security (AU). The responses given by AU would be advisory only and would not be binding on DOE. In addition, to assist the DOE community in understanding the technical meaning or application of a specific requirement in this proposed rule, AU would continue to operate the DOE Response Line (1–800–292–8061) to provide information to DOE, DOE contractor and DOE subcontractor employees.

B. Subpart B—Administrative Requirements

Subpart B of the proposed rule would establish general and administrative requirements to develop, implement, and maintain a CBDPP and to perform all beryllium related activities according to the CBDPP.

Proposed § 850.10—Development and Approval of the CBDPP

Proposed § 850.10 would continue to establish the requirements for development and approval of the CBDPP. Proposed § 850.10(a)(1) would continue to require each employer engaged in beryllium activities at a DOE site to prepare and submit a CBDPP for review and approval as indicated in proposed § 850.10(b). DOE would expect its employers to perform the beryllium inventory and hazard assessment as would be required by proposed §§ 850.20 and 850.21 and then prepare and submit for approval a CBDPP that is warranted by the results of the beryllium inventory and hazard assessment.

Proposed § 850.10(a)(1) would also establish a 90 day timeframe from the effective date of the final rule for employers' submissions of the CBDPP. DOE is aware of the burden of documentation that can be generated by new programs. However, most employers have already developed CBDPPs in response to the current rule. DOE expects the additional effort required to refine the existing CBDPPs to meet the requirements of the proposed rule will be minimal.

Proposed § 850.10(a)(2) would require employers that employ beryllium-associated workers at a DOE site, but which are not engaged in beryllium activities, to submit a CBDPP with the provisions appropriate for its workers [*e.g.*, medical surveillance (§ 840.34), training and counseling (§ 840.38), and recordkeeping (§ 840.40)] for review and approval. This section clarifies that DOE does not expect employers to prepare and submit a CBDPP that includes all the provisions of this proposed rule if they do not employ beryllium workers. This proposed section would establish a 90-day timeframe from the effective date of the final rule for the employers' submission of a CBDPP to the appropriate Head of DOE Field Element. 10 CFR 851.26, *Recordkeeping and reporting*, requires documentation of all hazard inventory and hazard assessment results, so employers would be required to have records to support the conclusion that a CBDPP would not be required.

Proposed § 850.10(a)(3) would continue to require a single CBDPP be submitted to encompass all beryllium-related activities at a site, as currently provided in § 850.10(a)(2). Because DOE recognizes that one site may encompass multiple contractors and numerous work activities, this proposed sections would continue to clarify that the CBDPP for a given site may include specific sections for individual contractors or work tasks. DOE believes that this allowance for a segmented CBDPP structure would minimize the burden associated with the CBDPP update and approval requirements because it allows individual contractors

to update and submit for approval only the section of the CBDPP pertaining to their specific activities. If multiple contractors are involved, the DOE contractor designated by the Head of the DOE Field Element must take the lead in compiling the overall CBDPP and coordinating the input from various contractors, subcontractors, or work activities. This proposed section further clarifies that in such cases the designated contractor would be required to review the sections of the CBDPPs prepared by the other contractors engaged at the site before a consolidated CBDPP could be submitted to the Head of DOE Field Element for final review and approval.

Proposed § 850.10(a)(4) would require multiple employers at a DOE site to share relevant assessment information gathered under proposed § 850.41(a) of this proposed rule, to ensure the safety and health of their workers.

Proposed § 850.10(b)(1) would continue to require the Heads of DOE Field Elements to review and provide approval or rejection of the CBDPPs. However, the proposed section would amend the current rule by requiring that approvals or rejections of the CBDPP be provided in writing. DOE believes that its review and approval of CBDPPs is necessary to ensure that each contractor's CBDPP is consistent with the requirements and objectives of the rule. The Head of DOE Field Element is not only responsible for operations within his or her jurisdiction, but also is familiar with the operations and any related special circumstances or unique situations that may affect implementation or effectiveness of the CBDPP. Thus, DOE believes the Head of DOE Field Element is the most appropriate DOE approval authority for CBDPPs. This proposed section would establish a 90 working day period for DOE to review and either approve or reject the CBDPP or any updates to the CBDPP. During its review, DOE may direct the contractors to modify the CBDPP. DOE established this 90 working day period to facilitate timely implementation of program elements by employers and to ensure that Heads of DOE Field Elements respond to employers' submissions.

Proposed § 850.10(b)(2) would require the appropriate CSO to review and provide a written approval or rejection of the CBDPPs or any updates to the CBDPP for DOE Federal offices with beryllium workers or beryllium-associated workers. This proposed section would establish a 90 working day period for the CSO to review and either approve or reject the CBDPP. During its review, the CSO may direct the DOE Federal office to modify the CBDPP.

Proposed § 850.10(b)(3) clarifies that the CBDPP is would be deemed approved 90 working days after submission to the Head of DOE Field Element or the CSO if it has not been approved or rejected earlier.

Proposed § 850.10(b)(4) would amend § 850.10(b)(2) to require employers to give a copy of the approved CBDPP, upon request, to the Office of Environment, Health, Safety and Security, DOE program offices, affected workers, and their designated worker representatives. This section ensures that workers and their representatives have access to information related to the protection of their health.

Proposed § 850.10(c) would continue to require employers to update the written CBDPP for review and approval within 30 working days in two circumstances: (1) Whenever a significant change or addition to the CBDPP is made or warranted, and (2) whenever a contractor changes. DOE believes that such updates are appropriate to ensure that the CBDPP accurately reflects workplace conditions and addresses specific workplace beryllium exposure hazards. This section would also require the Head of DOE Field Elements, or appropriate CSO, if applicable, to review CBDPPs at least annually and, if appropriate, require the employers to update CBDPPs. DOE considers the annual review cycle to be appropriate and necessary to ensure that CBDPPs remain up-to-date and that they accurately reflect workplace conditions and required control procedures.

Proposed § 850.10(d) would continue to require employers to notify any associated labor organization of the development and implementation of the CBDPP plan and updates, and upon request, bargain with the labor organization on implementation of part 850 in a manner that is consistent with Federal labor laws and this part. This section continues to ensure that CBDPPs are developed and implemented consistently with the requirements imposed by the National Labor Relations Act (NLRA), 29 U.S.C. 151–169, and that they do not create obligations in excess of those that would be found in such circumstances under the NLRA.

Proposed § 850.11—General CBDPP Requirements

Proposed § 850.11 would continue to establish the general requirements of the CBDPP. Proposed § 850.11(a) would continue to specify that the CBDPP would be expected to address the existing and planned beryllium activities. Also, proposed § 850.11(b) continues to require employers to tailor the scope and content of the CBDPP to the specific hazards associated with the beryllium activities being performed, but would no longer require that the CBDPP augment or be integrated into existing Worker Safety and Health Programs. The existing provision is considered unnecessary because § 850.1, *Scope*, already provides that the CBDPP supplements, and is deemed an integral part of, the worker safety and health program under 10 CFR part 851, for DOE contractor employees. In addition, proposed § 850.11(b)(1) would require that the CBDPP include formal plans outlining how the employer would ensure that beryllium exposures are maintained below the level prescribed in proposed § 850.22 of this part. Proposed § 850.11(b)(2) would make clear that the plans must, at a minimum, satisfy each requirement in subpart C of the rule (*Specific Program Requirements*). Proposed § 850.11(b)(3) would clarify that the CBDPP provisions must contain provisions for minimizing the number of workers exposed to airborne levels of beryllium at or above the action level, and the instances in which workers are exposed to beryllium.

DOE proposes to delete the requirement in the existing rule at § 850.11(b)(3)(iii) to minimize the disability and lost work time of workers due to beryllium-induced medical conditions and associated medical care, because DOE recognizes that this specific requirement has no practical effect and its intent is met by the other requirements in the CBDPP regulations.

DOE also proposes to delete the requirements in the existing rule at § 850.11(b)(3)(iv), which require the CBDPP to include specific exposure reduction and minimization goals to further reduce exposures below the PEL prescribed in proposed § 850.22, *Permissible exposure limit*, DOE is proposing this change because its experience in implementing this part indicates that the open-ended expression "further reduce exposures" is problematic to implement because beryllium is ubiquitous in small amounts. In addition, DOE believes the actions required when workers are exposed to airborne levels of beryllium at or above the proposed action level are protective and expects that few workers will develop CBD from future exposures.

Proposed § 850.12—Implementation

Proposed § 850.12(a) would require employers to manage and control beryllium activities consistent with the approved CBDPP. Proposed § 850.12(b) [currently § 850.12(c)] would provide that tasks involving potential exposure to airborne levels of beryllium at or above the action level, that are not covered under the CBDPP may only proceed with the written approval from the Heads of DOE Field Elements, or appropriate CSO, as applicable.

Proposed § 850.12(c) [currently § 850.12(b)], would continue to establish that no person employed by DOE or a DOE contractor may take or cause any action that is inconsistent with the requirements specified in this part, an approved CBDPP, or any other applicable Federal statute or regulation concerning the exposure of workers to levels of beryllium at a DOE site. This section clarifies that DOE and contractor personnel would be required to follow applicable requirements of the rules as well as applicable requirements in other applicable Federal statutes and regulations concerning exposure of workers to beryllium.

As with the existing § 850.12(d), proposed § 850.12(d) would continue to recognize that, depending on the circumstance of the work, employers may choose to take additional actions to protect their workers. In implementing this part of the rule, the Department has learned that in certain instances, some sites took actions they felt were more protective of workers, but which in fact conflicted with the requirements of the rule. This provision makes it clear that while employers may take additional actions to protect their workers, employers would be required to first comply with the requirements of this part. DOE recognizes that individuals responsible for implementing CBDPP activities must use their professional judgment in protecting the safety and health of workers. Proposed § 850.12(e) would continue to provide that nothing in the rule is intended to diminish the responsibilities of DOE officials under 29 CFR part 1960 and related requirements for Federal workers.

Proposed § 850.13—Compliance

Proposed § 850.13(a) would revise existing § 850.13(a) to allow contractors or DOE offices, as applicable, who already have CBDPPs that have been approved by a Head of DOE Field Element, or appropriate CSO, as applicable, to continue to use them for one year after the effective date of the final rule. Thereafter, proposed § 850.13(b) would mandate that employers conduct beryllium activities in compliance with their approved CBDPP under this proposed rule.

Proposed § 850.13(c) would continue to require contractor employers responsible for a beryllium activity to be responsible for complying with the proposed rule. When no contractor is responsible for the beryllium activity and Federal employees perform the activity, this proposed section would require DOE to be responsible for compliance.

C. Subpart C—Specific Program Requirements

Subpart C of the proposed rule would continue to establish performance-based requirements for the CBDPP. These proposed requirements would focus on preventing CBD by requiring specified protective actions, reducing the number of workers exposed to beryllium, and continuous monitoring to ensure that workplace controls are sufficiently protective. DOE would expect implementation of the rule to continue to increase its understanding of the development, course and prevention of CBD.

Proposed § 850.20—Beryllium Inventory

Proposed § 850.20 would continue to require employers to take specific actions in order to develop a beryllium inventory, and would also provide that employers must update the inventory at least annually and when significant changes to beryllium activities occur.

DOE intended that the current version of § 850.20 include the requirement to maintain an up-to-date inventory. Proposed § 850.20(a)(1) through (4) would require employers to develop their beryllium inventory by reviewing current and historical records, interviewing workers, conducting air, surface and bulk sampling as appropriate to characterize the beryllium and its locations and documenting the locations of beryllium at or above the action level at a site. Characterizing the beryllium and identifying the locations of beryllium are necessary to assess and control beryllium workplace hazards. Employers should conduct the sampling that is appropriate for the specific workplace conditions and the suspected types and locations of beryllium contamination. Sampling techniques could include collecting area and wipe samples and collecting personal breathing zone samples.

By maintaining a beryllium inventory, employers will accomplish the following functions that are critical to the success of the CBDPP: (1) Identification of locations and operations that should be physically isolated from other areas to prevent the spread of contamination, (2) identification of areas in which worker access should be restricted to minimize the number of workers who could be exposed to beryllium at or above the action level, (3) identification of beryllium contamination that must be controlled in areas that are scheduled for decontamination and decommissioning, and (4) identification of beryllium contamination in areas that are being used for non-beryllium activities, to determine the need for cleanup.

Surface level data obtained with dry wipes before the effective date of the final rule will be acceptable for meeting the beryllium inventory requirements for conducting surface sampling in proposed § 850.20(a)(3). However, subject to § 850.20(b), employers that previously used dry wipe sampling would have to convert to wet wipe sampling for new surface exposure monitoring after the effective date of the final rule to comply with the requirements of proposed § 850.24(a)(2)(ii), unless the use of wet wipes would have an undesired effect on the surface being sampled or is not technically feasible.

DOE is proposing to delete from § 850.20(a) the requirement that employers identify workers that were exposed or potentially exposed to beryllium at the inventoried locations. DOE has found that identifying workers is more effectively accomplished by listing the identified locations, using surveys to ask workers about their activities in those locations, and looking at the work histories workers provide when undergoing medical evaluations. Also, proposed § 850.34(a)(3) and (4) would require employers to provide information related to workers' beryllium exposures, to facilitate the SOMD's determination of which workers should receive mandatory medical evaluations and which workers should be offered voluntary medical evaluations.

Proposed § 850.20(b) would permit employers to use inventory results obtained within 12 months prior to the effective date of the final rule to satisfy the requirements set forth in § 850.20(a) if a Qualified Individual determines that conditions represented by the results have not changed in a manner that would warrant changes in the beryllium inventory. While wet wipe data would replace the dry wipe beryllium data in inventories as surfaces are monitored as part of the employer's ongoing CBDPP activities, DOE believes that repeating surface measurements solely for updating the inventory as of the effective date of the final rule would not be cost-effective or justified based on

the amount of reduced risk of beryllium disease that would be realized. Proposed § 850.20(b) would also require employers to update their beryllium inventory at least annually and when significant changes occur to beryllium activities, which is consistent with the common practice at DOE sites.

Proposed § 850.20(c) would continue to require the employer to ensure that the beryllium inventory is managed by a Qualified Individual. DOE believes this provision is necessary to ensure that the inventory is accurate and complete.

Proposed § 850.21—Hazard Assessment and Abatement

Because the identification of the possible presence of beryllium in a workplace does not, in and of itself, suffice to determine whether a hazard exists or whether and, if so, what control measures must be employed, proposed § 850.21(a) would continue to require employers to conduct a beryllium hazard assessment if the inventory establishes the presence of beryllium. This section, as proposed, would limit the requirement to conduct hazard assessments to areas where the airborne concentration of beryllium is potentially at or above the action level. This requirement allows each site the flexibility to determine the appropriate risk-based approach for assessing beryllium-related hazards in its worksites. Flexibility is important because operations, conditions, and the potential for exposure may vary greatly from operation to operation and site to site.

Proposed § 850.21(b) would require employers to conduct the beryllium hazard assessment in accordance with the requirements in 10 CFR 851.21, *Hazard Identification and Assessment.* 10 CFR 851.21 establishes the employer's duty to enact procedures for identifying the hazards and assessing the related risk in the workplace. This section lists the activities employers would perform as part of their hazard and risk assessment procedures (*e.g.*, conducting workplace monitoring, evaluating operations).

Proposed § 850.21(c) would be added to require employers to abate beryllium hazards in accordance with the requirements in 10 CFR 851.22, *Hazard Prevention and Abatement.* This section requires employers to develop and implement a process for preventing, prioritizing and abating beryllium hazards using the hierarchy of controls, starting with elimination (or substitution of the hazard, if appropriate and feasible) and ending with personal protective equipment.

Proposed § 850.21(d) would be added to provide that employers ensure paragraphs (a) through (c) of this section, are managed by a Qualified Individual as defined in this proposed rule.

Proposed § 850.22—Permissible Exposure Limit

DOE received several comments in response to its Request for Information (RFI) concerning the adoption of the OSHA PEL for beryllium. Approximately two-thirds of the commenters favored DOE no longer adopting the OSHA PEL and pointed out that even OSHA recognizes that the current OSHA PEL may not be adequate to prevent the occurrence of CBD (ref. 34).

In response to the Department's RFI concerning whether DOE should adopt the 2010 ACGIH® threshold limit value (TLV®) of 0.05 μg/m³ (ref. 6) as its PEL, approximately two-thirds of the commenters rejected its adoption. Several commenters pointed out that TLVs® are not developed with technical or economic feasibility in mind and that TLVs®, quoting from the ACGIH®, "are not developed for use as legal standards and ACGIH® does not advocate their use as such." Others suggested DOE adopt the 2010 ACGIH® TLV® as its PEL because it is the most protective and conservative published level.

Proposed § 850.22(a) would continue to retain OSHA's 8-hour TWA PEL for airborne exposure to beryllium (2 μg/m³), as measured in the worker's breathing zone by personal monitoring, but allows for the adoption of a stricter standard should OSHA establish one through its rulemaking process. As in the current rule, the PEL would supplement the action level by establishing an absolute 8-hour TWA level above which, no worker may be exposed. Engineering or work practice controls would be required to bring exposures to at or below the PEL.

OSHA has published the beryllium PELs in Tables Z–1 and Z–2 of 29 CFR 1910.1000. The values in Table Z–2 were American National Standards Institute (ANSI) standards that existed when OSHA was created and were adopted by OSHA. Tables Z–1 and Z–2 both list 2 μg/m³ as an 8-hour TWA. In addition, Table Z–2 lists 5 μg/m³ as an "acceptable ceiling concentration" and 25 μg/m³ as an "acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift", where workers may be exposed above 5 μg/m³ (but never above 25 μg/m³)" for a maximum cumulative period of 30-minutes during an eight hour shift (ref. 35).

The proposed requirement in § 850.22(b) would provide that when OSHA promulgates a lower PEL, DOE would notify its contractors through a notice in the **Federal Register**.

While DOE is proposing to continue to adopt the OSHA PEL, the Department believes that provisions to minimize worker exposure to beryllium in DOE facilities by lowering the action level (proposed § 850.23) and to encourage and require regular medical monitoring of workers (proposed § 850.34) will ensure an adequate level of protection for workers engaged in beryllium activities.

DOE considered adopting a short term exposure limit (STEL) of 10 μg/m³, averaged over a 15-minute sampling period (the ACGIH STEL at the time) in its original rule in 1999, however, because the STEL of 10 μg/m³ would not provide any added protection for the worker given that the action level of 0.2 μg/m³ would be exceeded in less than 15 minutes where exposure levels are at 10 μg/m³, the Department elected not to establish a STEL. The ACGIH dropped its STEL in 2009 when it lowered its 8-hour TWA TLV to 0.05 μg/m³.

DOE recognizes that OSHA has included a STEL of 2 μg/m³ in its proposed rule, *Occupational Exposure to Beryllium and Beryllium Compounds* (80 FR 47565, August 7, 2015), however, similar to the 1999 comparisons (between the DOE action level and ACGIH STEL), DOE's proposed action level of 0.05 μg/m³ would be exceeded in less than 15 minutes where exposure levels are at 2 μg/m³. Accordingly, the Department has elected to continue to not propose a STEL in this amendment.

Proposed § 850.23—Action Level

Proposed § 850.23(a) would continue to require employers to include in their CBDPPs an 8 hour time weighted average action level for beryllium and would change the action level from 0.2 μg/m³ to 0.05 μg/m³ (8-hour TWA of 0.05 microgram of beryllium, per cubic meter of air), as measured in the worker's breathing zone by personal monitoring. Due to the number of workers who have been identified as being sensitized to beryllium or having CBD, the Department feels that it is prudent to lower the action level. The 0.05 μg/m³ action level was chosen based on the Department's review of epidemiological studies and the ACGIH® TLV® (refs. 6–28). Lowering the action level to 0.05 μg/m³ would result in greater protection for the affected work force because it would lower the trigger that requires the use of controls and protective measures designed to prevent worker exposure to beryllium. DOE does not anticipate that the lower action level will require the use of new or different types of equipment; it will just require implementation of the controls at a lower level.

Benefits of lowering the action level. As specified in this proposed rule, being at or above the action level triggers the requirements to use a number of controls and protective measures designed to protect employees from exposures to beryllium. Employers at DOE sites where exposure levels are at or above the action level would be required to implement these controls at DOE's proposed lower action level.

Lowering the action level would increase the number of workers afforded the protective measures. DOE believes there are still a number of workers exposed to concentrations of beryllium between 0.05 μg/m³ and 0.2 μg/m³, but who are never exposed to levels above 0.2 μg/m³. Under an action level of 0.2 μg/m³, these workers would not be provided the protective measures triggered by that action level. Under an action level of 0.05 μg/m³, however, these workers would be provided the additional protective measures specified in proposed § 850.23(b). These additional protective measures would potentially reduce the exposures experienced by these workers, leading to a reduction in their risk of developing a beryllium-induced medical condition.

As stated earlier, several provisions of the proposed rule would continue to apply independent of the action level. Specifically, these are the CBDPP requirement (10 CFR 850.10), the inventory requirement (10 CFR 850.20), the voluntary protective clothing and equipment requirement (10 CFR 850.29(a)(3)), the housekeeping requirements related to the cleaning of surfaces with removable beryllium (10 CFR 850.30(b) through (d)), the release or transfer requirements (10 CFR 850.31(c)), the waste disposal requirements (10 CFR 851.32), the beryllium emergencies requirement (10 CFR 850.33), the medical surveillance and restriction requirements as they relate to beryllium associated workers (10 CFR 850.34 and 850.35), the training and counseling requirements (10 CFR 850.38), the warning labels requirements (10 CFR 850.39(b)), and the recordkeeping and use of information requirements (10 CFR 850.40).

Proposed § 850.23(b) would continue to require employers to implement a number of protective measures designed to protect workers from beryllium exposures when the levels are at or above the action level, including:

- Periodic exposure monitoring (10 CFR 850.24(c));
- Additional exposure monitoring (10 CFR 850.24(d));
- Exposure reduction (10 CFR 850.25);
- Beryllium regulated areas (10 CFR 850.26);
- Hygiene facilities and practices (10 CFR 850.27);
- Respiratory protection (10 CFR 850.28);
- Protective clothing and equipment (10 CFR 850.29);
- Housekeeping (10 CFR 850.30); and
- Warning signs and labels (10 CFR 850.39).

Thus, DOE sites where exposure levels are at or above the action level would be required to implement these protective measures to provide further protection to workers exposed at or above the action level. These additional protections would reduce the exposure levels experienced by these workers, potentially reducing their risk of developing a beryllium-induced medical condition.

Proposed § 850.24—Exposure Monitoring

Proposed § 850.24 would continue to establish the worker exposure monitoring requirements of the CBDPP. The exposure monitoring provisions in this section are necessary to determine the extent of exposure at the worksite; prevent worker overexposure; identify the sources of exposure to beryllium; collect exposure data so that the employer can select the proper control methods to be used; evaluate the effectiveness of selected protective measures; and provide continual feedback on the effectiveness of the program in controlling exposures.

Exposure monitoring is important not only to determine the level of beryllium to which workers are exposed and the frequency at which workers should be monitored, but also to determine whether other protective provisions of the rule need to be implemented. The employer's obligation to provide protective clothing and equipment, for example, is triggered by monitoring results showing that a worker is exposed to airborne concentrations of beryllium at or above the action level.

Proposed § 850.24(a)(1) would continue to require employers to ensure that exposure monitoring be managed by a qualified individual, and add the requirement for monitoring to be conducted in accordance with the approved CBDPP. Proposed § 850.24(a)(2) would require employers to determine the beryllium exposure of workers by collecting personal breathing zone samples that reflect a worker's exposure to airborne concentrations of total beryllium averaged over an 8-hour period. This is a measurement of the exposure that would occur if the worker was not using respiratory protection equipment. Breathing zone is defined in § 850.3(a) as "a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches." Thus, a breathing zone sample should be taken as close as practical to the nose and mouth of the worker and must be taken within a 6 to 9 inch radius.

Surface level monitoring. DOE received several comments in response to its RFI concerning how current wipe sampling protocols aid exposure assessments and protect beryllium workers. The commenters' general view is that wipe sampling is effective at determining the presence of beryllium and can be used to define contaminated spaces, and that wipe sampling remains a valuable method to ensure that work areas are kept clean and equipment is properly released from controls. In addition, wipe samples aid in the identification of beryllium that could potentially become airborne and are therefore an important tool that should be used when assessing potential beryllium hazards. A few commenters suggested that measuring surface levels is not sufficiently exact and that surface levels do not correlate with health effects. Those commenters suggested that surface sampling should not be used to measure worker exposure or demonstrate regulatory compliance; that workers and the media have inappropriately focused attention on wipe sampling results as the indicator of what is "safe"; that DOE facilities have come under scrutiny for surface sampling results that do not accurately represent the potential for BeS or development of CBD; and that surface sampling is prohibitively expensive when used for the release of equipment.

DOE also received several comments in response to its RFI concerning how reliable and accurate current sampling and analytical methods are for beryllium wipe samples. Commenters pointed out that there is a high level of variability in measured surface loadings within and between individuals collecting wipe samples from the same surface. Studies have shown that a number of factors affect the reliability and accuracy of current wipe sampling methods, and recovery of material from surfaces is highly dependent on the skill, training, and work practices of the individual collecting the samples. Concerning analysis of wipe samples, however, commenters suggested that the

issues associated with the reliability and accuracy of analytical methods used for beryllium wipe samples are no different from those encountered in obtaining good results for airborne samples, and the current sampling and analytical protocols are reliable and accurate.

DOE has considered the commenters' suggestions, along with other available information, and proposes to amend this section by including requirements for monitoring the levels of beryllium on surfaces. Monitoring surface levels is necessary for implementing requirements applying to surfaces that have a potential for exceeding the release criteria established in proposed § 850.31.

DOE received several comments in response to its RFI concerning whether the Department should require the use of wet wipes for surface monitoring. Many of the commenters supported DOE requiring the use of wet wipes but also recommended allowing the use of dry wipes where necessary. These commenters also recommended that DOE specifically identify the standard wipe test method that employers must use. A few commenters recommended that DOE continue not to specify how surfaces are sampled for beryllium.

In the preamble to the final rule, DOE had encouraged the use of wet wipes rather than dry wipes for surface monitoring, but did not require this in the rule itself. DOE's experience with wipe testing since December 1999, when the final rule was issued, supported by the suggestions of commenters to its RFI, as well as published (ref. 36) and unpublished studies demonstrating that wet wipes recover more of the surface contamination than do dry wipes, leads to proposed § 850.24(a)(2)(ii)(A) and (B). The proposed section would require the use of wet wipes with certain exceptions. This will also allow DOE to achieve greater comparability of results across the DOE complex. DOE intends for wetting agents to be selected such that wipe test results would be representative of removable beryllium (*e.g.*, DOE would not expect employers to use aggressive solvents that would remove beryllium embedded in sticky cutting fluid on machine surfaces).

DOE recognizes that surface wipe sampling using wet wipes could have an undesirable effect on some potentially contaminated surfaces, or surfaces surrounding the target surface, and that it is not technically feasible on some textured surfaces. Proposed § 850.24(a)(2)(ii)(B) would allow dry surface wipe sampling for those situations. DOE recognizes that any type of wipe testing may not be technically feasible on highly textured surfaces and proposes in § 850.24(a)(2)(ii)(C) to allow vacuum sampling for those situations. DOE also recognizes that surface wipe testing does not recover a high proportion of heavy accumulations of materials on surfaces and is therefore not appropriate for measuring concentrations of beryllium on such surfaces. Proposed § 850.24(a)(2)(ii)(D) would allow bulk sampling for heavy accumulations of materials on surfaces.

Proposed § 850.24(a)(3) would not require surface monitoring in the interior of installed closed systems such as enclosures, glove boxes, chambers, ventilation systems, or normally inaccessible surfaces (*e.g.*, under fixed cabinets, on the tops of overhead structural beams), as beryllium in those locations normally is not accessible to workers. DOE expects that employers will consider the hazards posed by those sources of beryllium exposure in work planning or operating procedures that may involve disturbing the beryllium.

Proposed § 850.24(b)(1) would continue to require employers to perform initial exposure monitoring of workers who perform work in areas that may have airborne concentrations of beryllium, as shown by the inventory and hazard assessment that are at or above the action level, or have the potential to be at or above the action level. However, DOE is proposing to revise this section to make an exception for employers in paragraphs (b)(2) and (3) of this section. In implementing this part, as issued in December 1999, DOE has identified a great many stable situations at its sites in which beryllium has been effectively inventoried, controlled, and conditions have not changed for many years. DOE recognizes that many employers have performed initial exposure monitoring in areas that are accessible to workers and shown by the inventory and hazard assessment as part of their compliance with the current rule. DOE sees no value in repeating exposure monitoring if prior monitoring results are adequate under the proposed rule. Accordingly, proposed § 850.24(b)(2) would allow employers to use the monitoring results obtained within 12 months prior to the effective date of the final rule to satisfy this requirement when a qualified individual has determined that the conditions represented by the results have not changed in a manner that would necessitate changes in beryllium controls.

Proposed § 850.24(b)(3) would be added to clarify that no initial monitoring is required in cases where the employer has relied upon objective data that demonstrates that beryllium is not capable of being released in airborne concentrations at or above the action level under the expected conditions of processing, use, or handling.

Proposed § 850.24(c)(1)(i) would continue to require employers to conduct periodic exposure monitoring of workers in a manner and at a frequency necessary to represent workers' exposures in locations where the airborne concentration of beryllium is at or above the action level. Periodic monitoring provides employers with the assurance that workers are not experiencing higher exposures that might require the use of additional controls. In addition, periodic monitoring reminds workers and employers of the continued need to protect against the hazards associated with exposure to beryllium. Proposed § 850.24(c)(1)(ii) would require employers to conduct exposure monitoring at least quarterly for the first year of operation.

DOE is proposing to add § 850.24(c)(2) to allow employers, after the first year of conducting periodic monitoring, and subject to paragraph (d) of this section, to reduce or terminate monitoring if the employer can demonstrate for 6 months that the airborne concentration of beryllium is below the action level. Employers would be required to base their decision on an analysis of monitoring results and of any activities, controls, or other conditions that would affect beryllium levels. If the employer cannot demonstrate that the airborne concentration of beryllium is below the action level, then periodic monitoring must continue on a quarterly basis.

Proposed § 850.24(d) would require that employers conduct additional exposure monitoring whenever there has been a production, process, control or other change that may result in an exposure to beryllium at or above the action level. DOE is proposing this requirement to address a condition at several DOE sites in which beryllium controls usually keep exposure levels below the action level, but beryllium sources are still present, or could be present such as in waste streams exhumed from legacy sites—and could result in exposures if the controls fail. DOE would require periodic monitoring on a quarterly basis for those conditions so that monitoring results are available to verify the continued effectiveness of the controls.

Proposed § 850.24(e)(1) would be revised to require that samples that are collected be analyzed in a laboratory that is accredited for beryllium analysis by the American Industrial Hygiene Association's Laboratory Accreditation Programs, LLC (AIHA–LAP, LLC) or an equivalent organization. Currently, § 850.24(f) requires samples to be analyzed in a laboratory accredited for metals by the AIHA–LAP, LLC or a laboratory that demonstrates quality assurance for metals analysis that is equivalent to AIHA–LAP, LLC accreditation. The proposed language is intended to correct the problem DOE has experienced in which laboratories, currently accredited by AIHA–LAP, LLC for metals, may not be aware that a significant amount of beryllium in samples (in the form of beryllium oxide) may not be recovered in the laboratories' sample preparation processes. DOE anticipates that AIHA–LAP, LLC, and perhaps other accrediting or certifying organizations, will have proficiency testing programs specifically for beryllium oxide and potentially other forms of beryllium-containing materials of interest which are present in field samples, to ensure that a high percentage of those forms of beryllium in the sample are recovered in the sample preparation step and are included in the analysis results. Such proficiency testing programs also would assist laboratories in using some of the strategies for distinguishing forms of beryllium as discussed in this preamble regarding proposed § 850.3.

Proposed § 850.24(e)(2) would require a number of additional changes dealing with the quality assurance of the sample analysis results. DOE proposes to delete the requirement that the method of sample monitoring and analysis has an accuracy of not less than plus or minus 25%, with a confidence level of 95%, because that data quality objective is superseded by requirements of the AIHA laboratory quality assurance program. Also, proposed § 850.24(e)(2)(i) would permit employers to use a field or portable laboratory that is accredited in an AIHA or equivalent quality assurance program, to support increasing the speed with which exposure results are delivered so that employers can more quickly identify and control beryllium hazards. DOE anticipates that this will also increase mission productivity.

Proposed § 850.24(e)(2)(ii) would allow employers to use results that are below laboratory reporting limits, which would enhance the usefulness of these results for determining if specified levels are exceeded.

DOE is proposing to delete existing § 850.24(f) because its subject matter is proposed to be included in § 850.24(e). Proposed § 850.24(f) would amend the requirement in existing § 850.24(g) for notification of results to clarify DOE's intent that the employer notify all the workers in the same work area of the monitoring results that represent those workers' exposures rather than only notifying the workers that were monitored. This clarification addresses DOE's observation that some DOE sites have interpreted the notification requirement to mean that workers are notified only of their individual airborne monitoring results. When this happens, it means that the group of unmonitored workers in the same work area failed to receive useful feedback regarding potential exposures and the need for various levels of exposure controls. Accordingly, proposed § 850.24(f)(1) would require employers to notify workers of their exposure monitoring results within 10 working days after receipt of the results. Proposed § 850.24(f)(1)(i) and (ii) would require employers to provide notification of exposure monitoring in written or electronic format and posted in locations or in electronic systems that are readily accessible to workers, but not in a manner that would identify an individual or workers. Employers would be required to give directly to individuals that were sampled their results in written or electronic format.

Proposed § 850.24(f)(2)(i) and (ii) would specify the form of notification required for monitoring results at or above the action level. Employers would be required to include in the notification a statement that exposures were at or above the specified action level, a descriptions of the controls being implemented to address those exposures. In addition, proposed § 850.24(f)(3) would continue to require employers to provide a notification to the SOMD, and a notification to the Head of DOE Field Element or their designee. DOE believes that the SOMD should be informed of such exposures in order to refine, as appropriate, the medical surveillance protocol for affected workers to ensure effective monitoring and early detection of beryllium-related health effects.

Proposed § 850.25—Exposure Reduction

Proposed § 850.25 would continue to establish the exposure reduction and minimization provisions of the CBDPP that reflect DOE's goal of achieving aggressive reduction and minimization of worker exposures to airborne beryllium. However, this section would be revised to require employers, where exposures and the action level, to establish a formal exposure reduction program in accordance with 10 CFR 851.22, *Hazard Prevention and Abatement,* to reduce exposure levels to below the action level.

DOE is proposing to delete the requirement to continue reducing and minimizing exposures that already are below the action level because DOE believes that the measures required at or above the proposed action level are protective. DOE would also delete the specific exposure reduction actions that are required of responsible employers in the current version of 10 CFR 850.25 because DOE expects employers to understand how to establish a formal exposure reduction program, and listing certain specific steps could constrain employers in unproductive ways.

Proposed § 850.26—Beryllium Regulated Areas

Beryllium regulated areas typically are areas in which activities that involve beryllium are conducted. Proposed § 850.26 would continue to establish beryllium regulated areas at DOE sites. Accordingly, proposed § 850.26(a) would continue to require employers to establish beryllium regulated areas in facilities at DOE sites where the airborne concentration of beryllium is at or above the action level.

Proposed § 850.26(b)(1) would require employers to demarcate beryllium regulated areas from the other workplace areas in a manner that alerts workers to the boundaries of such areas. This would allow employers the flexibility to determine the most appropriate means of identifying each beryllium regulated area based on specific worksite conditions.

Proposed § 850.26(b)(2) would continue to require employers to limit access to beryllium regulated areas to authorized persons only. DOE intends that only individuals who are essential to the performance of work in the beryllium regulated area will be authorized to enter beryllium regulated areas. Employers will have to evaluate the affected operation and determine which personnel (including managers, supervisor, and workers) are necessary for the performance of the work and authorized to enter. Methods for preventing unauthorized persons from entering a regulated area may include posting a sign indicating that only authorized persons may enter, using locked access doors, and employing other security measures, as required by worksite conditions. DOE believes that employers are best equipped to determine whether any access control methods are needed in addition to warning signs specified in proposed § 850.39 of this part.

Proposed § 850.26(b)(3) would continue to require employers to keep record of all individuals who enter beryllium regulated areas. The record

must include the name of the person who entered, the date of entry, the time in and time out, and the type of work performed. DOE believes that recordkeeping must be adequate to permit DOE to monitor the effectiveness of each employer's compliance activities and to provide information regarding each worker's history of potential exposures. This information will assist the employer's occupational medicine staff in establishing appropriate medical evaluations and will aid in DOE's efforts to establish links between working conditions and potential health outcomes.

Proposed § 850.27—Hygiene Facilities and Practices

Proposed § 850.27 would continue to provide requirements regarding hygiene facilities and practices of the CBDPP. Accordingly, proposed § 850.27(a)(1) and (2) would continue to require employers to ensure that beryllium workers observe prohibitions on the use of cosmetics and tobacco products, and consumption of food and beverages in beryllium regulated areas. Proposed § 850.27(a)(3) would require employers to prevent beryllium workers from exiting areas that contain beryllium with contamination on their bodies or their personal clothing. DOE believes these provisions would promote sound workplace hygiene practices that may protect workers from exposure to other substances present in the workplace as well as beryllium.

Proposed § 850.27(b)(1) would continue to require employers to provide a separate changing room or area for workers to change into and store personal clothing and clean protective clothing and equipment. DOE believes that such provisions are necessary to prevent cross-contamination between work and personal clothing and the subsequent spread of beryllium into clean areas of the site and workers' private automobiles and homes. These provisions also address the need to prevent contamination of clean protective clothing and equipment, ensuring that protective clothing and equipment actually protect workers rather than contribute to their exposure.

Proposed § 850.27(b)(2) would continue to require that the changing-rooms used to remove beryllium-contaminated clothing and protective equipment be maintained under negative pressure, or be located in a manner or area that prevents dispersion of beryllium contamination into clean areas. DOE believes that providing changing rooms for workers who work in beryllium-regulated areas is the most effective method for preventing workers from carrying beryllium contamination on their work clothes and bodies from beryllium regulated areas to other areas of the DOE site, and to their private automobiles and homes.

Consistent with the goal of preventing the spread of contamination into adjacent work areas and into workers' homes and automobiles, proposed § 850.27(c) continues to require employers to provide handwashing and shower facilities for workers in beryllium regulated areas. In addition to controlling the spread of contamination, showering also reduces the worker's period of exposure to beryllium by removing any beryllium that may have accumulated on the skin and hair. Requiring workers to change out of work clothes that are segregated from their street clothes, leave work clothing at the workplace (see § 850.29), and shower before leaving the plant, significantly reduces the movement of beryllium from the workplace. These steps ensure that the duration of beryllium exposure does not extend beyond the work shift and, thus, protect workers and their families from off-site exposures.

Proposed § 850.27(d) would continue to require employers to provide beryllium workers working in beryllium regulated areas with readily accessible lunchroom facilities. Employers must also ensure that workers in beryllium regulated areas do not enter the lunchroom wearing protective clothing unless the clothing is cleaned beforehand. Employers have discretion to choose the method for removing surface beryllium from the clothing, including HEPA vacuuming, so long as the method does not disperse the dust into the air.

Proposed § 850.27(e) would continue to require change rooms or areas, showers and handwashing facilities, and lunchroom facilities to comply with 29 CFR 1910.141, *Sanitation.*

Proposed § 850.28—Respiratory Protection

Proposed § 850.28 would continue to establish the respiratory protection provisions of the CBDPP. However, proposed § 850.28(a) would be revised for consistency with part 851 to require employers to establish a respiratory program in accordance with 10 CFR 851.23, *Safety and Health Standards,* and appendix A, section 6, *Industrial Hygiene,* for workers exposed, or potentially exposed to airborne concentrations of beryllium at or above the action level. The standards listed in 10 CFR 851.23 include 29 CFR 1910.134 "Respiratory Protection" and ANSI Z88.2 "American National Standard for Respiratory Protection (1992). The requirements in appendix A, section 6, *Industrial Hygiene,* cover the DOE Respirator Acceptance Program. Note that the requirements established in 10 CFR 851.23 are set forth as minimum requirements. DOE contractors may elect to implement alternative provisions (*e.g.,* newer versions of consensus standards such as ANSI/ASSE Z88.2–2015) if they determine the alternative provisions are more appropriate and provide an equivalent or improved level of protection, and if the provisions are included in their CBDPP that has been approved by DOE.

Proposed § 850.29—Protective Clothing and Equipment

Proposed § 850.29 would continue to establish the protective clothing and equipment provisions (other than respirator use) of the CBDPP. The objectives of this section would be to provide clothing and equipment that protects workers against the hazards of skin and eye contact with dispersible forms of beryllium and to prevent the spread of contamination outside work areas that could occur from the improper handling of beryllium-contaminated clothing and equipment. In addition, the requirement for handling protective clothing and equipment used for protecting workers from beryllium exposure in beryllium regulated areas would be clarified.

The proposed rule would continue to require employers to provide protective clothing and equipment where skin or eye contact with dispersible forms of beryllium is possible. Proposed § 850.29(a) would continue to require employers to provide protective clothing and equipment to beryllium workers where dispersible forms of beryllium may contact workers skin, enter openings in workers' skin or contact workers' eyes.

An opening in workers' skin could include fissures, cuts, and abrasions. DOE recognizes that the potential for the development of contact dermatitis, chronic ulcerations, and conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds that are not included in the definition of "beryllium" in this proposed rule because DOE believes that soluble forms of beryllium are not used at its beryllium sites. Insoluble beryllium, however, has also been shown to cause chronic ulcerations if introduced into or below the skin via cuts or abrasions (ref. 37). DOE believes that it is prudent practice to avoid skin or eye contact with a material that causes chronic ulcerations and, therefore, continues to include the protection of workers' skin and eyes from contact with insoluble beryllium in proposed § 850.29(a). The protective equipment required by this proposed section could include coveralls, overalls, jackets, footwear, headwear, face shields, goggles, gloves, and gauntlets, depending on the nature of operations and the related skin and eye exposure hazard.

Proposed § 850.29(a) would continue to require employers to provide protective clothing and equipment and ensure its appropriate use and maintenance by workers where dispersible forms of beryllium may contact workers' skin or eyes or may enter openings in which workers' skin, including where:

- Exposure monitoring has established that the airborne concentration of beryllium is at or above the action level [proposed § 850.29(a)(1)];
- Surface contamination levels measured or presumed prior to initiating work are at or above the level prescribed in proposed § 850.30 of this part [proposed § 850.29(a)(2)];
- Surface contamination level results obtained to confirm housekeeping efforts are above the level prescribed in proposed § 850.30 of this part [proposed § 850.29(a)(3)]; and where;
- A worker requests the use of personal protective clothing and equipment for protection against airborne beryllium, regardless of the measured exposure level [proposed § 850.29(a)(4)].

Proposed § 850.29(b) would continue to require employers to comply with 29 CFR 1910.132, *Personal Protective Equipment General Requirements,* when workers use personal protective clothing and equipment. This requirement to comply with 29 CFR 1910.132 is consistent with the general worker protection provisions of 10 CFR part 851.

Proposed § 850.29(c) would continue to require employers to establish procedures for donning, doffing, handling, and storing protective clothing and equipment that prevent beryllium workers from exiting beryllium regulated areas with contamination on their bodies or personal clothing [proposed § 850.29(c)(1)]. Proposed § 850.29(c)(2) would require these procedures include a requirement that workers exchange their personal clothing for full-body protective clothing and footwear (work shoes or booties) before beginning work in beryllium regulated areas. This change from personal clothes into protective work clothing must occur in a changing room that protects the worker's personal clothes and clean protective clothing from beryllium contamination. DOE believes the use of full-body protective clothing in lieu of personal clothes in beryllium regulated areas is necessary to prevent the spread of beryllium contamination into adjacent work areas and to preclude the possible transport of beryllium onto workers' private property.

Proposed § 850.29(d) would require employers to ensure that workers do not remove beryllium-contaminated protective clothing and equipment from beryllium regulated areas, except for workers authorized to launder, clean, maintain or dispose of the clothing and equipment.

Proposed § 850.29(e) would require employers to prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that might disperse beryllium particulates into the air. Although DOE generally believes that employers should have the flexibility to determine the most appropriate methods to clean contaminated clothes based on their own specific worksite conditions, DOE continues to include this well-recognized and accepted industrial hygiene control to prevent the dispersion of beryllium particles into the workplace atmosphere.

Proposed § 850.29(f) would continue to require employers to ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness. This section allows employers flexibility in determining the required frequency for laundering protective clothing based on specific work conditions and the potential for contamination.

Proposed § 850.29(f)(1) would continue to require employers to ensure that protective clothing and equipment removed for laundering, cleaning, maintenance, or disposal are placed in containers that prevent the dispersion of beryllium particulates and that these containers are labeled in accordance with proposed § 850.39(b)(1). These warning labels would help ensure appropriate subsequent handling of materials contaminated with beryllium and may prevent inadvertent exposures that could result if laundry, maintenance, or disposal personnel are not aware of the contamination and the prescribed methods to prevent the release of airborne beryllium.

Proposed § 850.29(f)(2) would continue to require employers to ensure that organizations that launder or clean DOE beryllium-contaminated clothing or equipment are informed that exposure to beryllium is harmful, and that clothing and equipment should be laundered or cleaned in a manner preventing the dispersion of beryllium. This section would require informing onsite cleaning and laundry services, as well as off-site cleaning and laundry vendors because employees performing the work may not know about the presence and hazards of beryllium on the clothing and equipment unless the employer informs them.

Proposed § 850.30—Housekeeping

Proposed § 850.30 would continue to establish the housekeeping provisions of the CBDPP. Good housekeeping practices are necessary to prevent the accumulation of beryllium contamination on surfaces in operational areas where beryllium is used or handled. Such accumulations, if not controlled, may lead to the spread of beryllium contamination on surfaces and the re-suspension of beryllium particles into the air, both in the area where beryllium dust was originally generated and in other work areas. In addition, monitoring surface contamination levels is an indispensable tool for ensuring that beryllium emissions from operations are under control. The uncontrolled accumulation of beryllium-contamination on equipment in the workplace increases the potential for worker exposure to beryllium during the performance of equipment maintenance, handling, and disposal tasks. Accordingly, proposed § 850.30(a) would continue to establish that the removable contamination housekeeping level on surfaces must not exceed 3 μg/0;100 cm^2 during non-operational periods to reduce the potential for beryllium to become re-suspended in the workplace or spread to non-controlled areas. Employers must conduct routine surface sampling to determine if operational work areas are compliant with the rule. Sampling should not be carried out during a normal work shift, but rather it should be undertaken after normal clean-up and during non-operational periods. As with the current § 850.30(a), the sampling requirement would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems.

The performance of housekeeping tasks can, in and of itself, lead to worker exposures to beryllium-contaminated dust. Therefore, this section would continue to seek to prevent the spread and re-suspension of dust during housekeeping activities.

Proposed § 850.30(b) would continue to require vacuuming using HEPA filters, wet methods, or other cleaning methods that avoid the dispersion of dust, and prohibits the use of

compressed air or dry methods that may disperse beryllium particulates. The use of wet methods for reducing or minimizing the dispersal of dust during general housekeeping tasks is a common industrial hygiene practice. The purpose of using these methods is to reduce or eliminate the potential for re-suspension of beryllium dust into the air and breathing zone of the worker.

Proposed § 850.30(c) would require the use of HEPA filters in all vacuuming operations used to clean beryllium-contaminated surfaces, and further requires filter replacement, as needed, to maintain the capture efficiency of the vacuum system. HEPA filters must be used to prevent the spread of dust by effectively gathering the dust that is collected by vacuum systems. Employers should adhere to procedures for cleaning or replacing filters that ensure minimum employee exposure to beryllium dust.

The movement of contaminated equipment from a regulated area to a non-regulated area may result in the spread of beryllium contamination to the non-regulated area. To prevent the potential spread of contamination from performing housekeeping activities, proposed § 850.30(d) would continue to require that cleaning equipment used in areas where surfaces are contaminated with beryllium be labeled, controlled, and not used for other non-hazardous materials. These procedures are similar to those required under OSHA's asbestos standard for equipment used during cleanup or removal of asbestos from buildings.

Proposed § 850.31—Release and Transfer Criteria

Proposed § 850.31 would continue to establish beryllium contamination levels and other requirements that must be met before equipment and other items used in beryllium regulated areas may be released or transferred. However, DOE is proposing to amend the criteria for the release and transfer of beryllium-contaminated equipment and items, and add provisions for the release and transfer of "areas" (*i.e.*, real property, an area of a building, or a work area) at or above the specified level to this section. DOE's experience with managing beryllium-contaminated areas, as well as recent literature suggesting that surface contamination is a risk factor for BeS, motivated DOE to include release and transfer criteria for beryllium-contaminated areas.

This part, as issued in December 1999, included requirements to label decontaminated equipment and items and obtain a commitment from their recipients to implement safety controls to prevent exposure to beryllium. At that time, DOE's focus was on the typical machine shop equipment on which work with beryllium was reported to have caused cases of BeS and CBD. The machines in these shops contain many areas that were not accessible for decontamination and, therefore, considered potential sources of exposure to downstream users of the machines. DOE's wording in this part did not make allowances for equipment and items of simple construction that can be conclusively demonstrated to have all surfaces adequately decontaminated, or for equipment and items suspected but subsequently determined to not have been contaminated with beryllium, and that do not pose a risk to downstream users. Very few potentially interested parties were willing to accept equipment, items, or areas that were decontaminated, or found not to have been contaminated in the first place, that came with a warning label and required the commitment to implement controls.

DOE's proposed amendments would allow for the release without restriction of equipment, items, and areas that are demonstrably decontaminated at or below specified levels or were suspected but subsequently shown not to have been contaminated. DOE expects that potential downstream users will be more willing to accept decontaminated equipment, items, and areas that do not include these unwarranted warnings.

In this proposed section, the term "items" would be intended to cover tools, supplies, documents, etc., and any personal property in beryllium regulated areas that may not be encompassed by the term equipment. The terms "equipment" and "items" do not include real property or buildings. However, the term "area" would be intended to include real property, buildings or work areas.

Proposed § 850.31(a) would amend the requirements for releasing from beryllium regulated areas equipment, items, and areas contaminated at or below the levels specified in this subsection.

Proposed § 850.31(a)(1) would amend the existing regulation to require that, prior to the general release or transfer of equipment and items, or areas, employers ensure that for formerly beryllium-contaminated equipment and items, or areas (except those that only contain beryllium in normally inaccessible locations or embedded in hard-to-remove substances), the removable contamination level of beryllium is at or below 0.2 μg/100 cm².

Beryllium inventories of older sites that uncover records or other information indicating past beryllium activities are required by existing § 850.20(b)(4) and would be required by proposed § 850.20(a)(3) to be surveyed to determine if legacy contamination is present. Such surveys would include sampling accumulated material on the surfaces of infrequently cleaned equipment and items, and in areas that may contain beryllium because of the trace quantities in soils and building materials (*i.e.*, below 0.1% beryllium pursuant to the definition of beryllium in this proposed rule). For example, concentrations of beryllium range from 0.09 to 3.4 parts per million (ppm) in U.S. soils (ref. 18). Proposed § 850.31(a)(2) recognizes that concentrations of beryllium in accumulated indoor material that is not greater than the concentration of beryllium in surrounding soil provides convincing evidence that the area is not contaminated. A variety of approaches may be used to compare beryllium concentrations in soil collected from a reference area to the concentration in settled dust in such reference area. The National Institute for Science and Technology Engineering Statistics Handbook provides methods used to demonstrate that the difference between two sets of samples is significant (ref. 38).

In response to its RFI, DOE received several comments concerning whether the Department should establish both surface level and aggressive air sampling criteria (modeled after Environmental Protection Agency (EPA)'s aggressive air sampling criteria to clear an area after asbestos abatement) for releasing areas in a facility, or instead whether the Department should consider establishing only the aggressive air sampling criteria. Commenters' suggestions varied considerably in response to this question, with some recommending only surface sampling, some recommending only aggressive air sampling, and some recommending use of both for the area considered for release. Some commenters suggested that aggressive sampling in buildings that previously had known areas of beryllium use was not able to remove beryllium from structural beams, even though multiple fans were blowing large volumes of air. In addition, these commenters indicated that there is no need to assign a lower airborne level (*i.e.*, lower than the action level) if the surface level is below 0.2 μg/100 cm². Others suggested use of aggressive air sampling as a means to release an area where beryllium is suspected in hard to reach places, and that aggressive air sampling would be more representative than surface sampling for a worker's airborne exposure, which is the route of exposure of greater concern.

DOE has considerable experience with repeat cycles of cleaning and verifying that decontaminated equipment, items, and areas have achieved either the 0.2 μg/100 cm² or 3 μg/100 cm² release criteria by wipe testing alone. DOE's experience includes decontaminating areas, even though there were no provisions regarding the release of such areas in the final rule, as issued in December 1999. The use of wipe testing to demonstrate completeness of decontamination often is very time consuming and costly, with diminishing reduction in health risk as the cycles are repeated, especially for surfaces that are many-faceted, rough, highly textured, or difficult to access (*e.g.*, around many-faceted and complex utility surfaces). DOE's objective in this part is to establish an effective method for assuring that decontaminated surfaces no longer present a beryllium health risk of concern.

Proposed § 850.31(a)(3) would establish that the airborne concentration of beryllium in an enclosure of the smallest practical size surrounding the equipment or item, or in an isolating enclosure of the area could not exceed 0.01μg/m³. In such cases, DOE is not requiring, but believes its contractors would be able to demonstrate achieving this level by borrowing from EPA's 40 CFR part 763, subpart E, *Asbestos-Containing Materials in Schools*, approach to clearing an area after asbestos abatement. This approach involves enclosing the equipment or item, or creating an enclosure of the area, and demonstrating by aggressive air sampling that air levels in the enclosure do not exceed a specified level. Aggressive air sampling refers to the method of using leaf blower-equivalents and large fans to dislodge and keep suspended particles that were on a surface, and then sampling the air for the suspended particles. In proposed § 850.31(a)(3), DOE selected 0.01 μg/m³ as the clearance level because it is the same as EPA's limit for beryllium emissions, as specified in "*National Emission Standards for Hazardous Air Pollutants*," 40 CFR part 61. EPA's limit is a 30-day average in ambient air and is an around-the-clock exposure; therefore, applying that level to workers' hours of potential exposure provides a significant safety factor. Aggressive air sampling maximizes the amount of surface material entrained in the air and consequently, the amount of airborne material captured in the sample as well. Aggressive sampling, therefore, creates a "worst-case" contamination condition and a "best-case" for measuring the cleanliness of the equipment, item, or area.

DOE included in this proposal the provision that the enclosure surrounding equipment or items must have as small a size as practical to prevent the use of unnecessarily large enclosures that would facilitate meeting the 0.01 μg/m³ criteria simply by dilution. DOE believes clearance for release of equipment and items, and areas by aggressive air sampling would ensure that surfaces are not sufficiently contaminated to present a risk of BeS. This belief is based on the assumption that, under all realistic conditions, removable beryllium levels sufficient to present a risk of BeS would be entrained in the air and shown by the clearance air samples to exceed 0.01 μg/m³. This approach would also more directly demonstrate that removable surface beryllium does not present an inhalation hazard, as opposed to making an assumption about a possible inhalation risk caused by the re-suspension of surface contamination. Finally, this approach would allow for a potentially more cost-effective process than wipe testing for demonstrating completeness of decontamination for clearance of release of some types of surfaces.

Proposed § 850.31(b) would allow the release or transfer of equipment, items, or areas in which surface contamination is inaccessible or has been sealed with hard-to-remove substances (*e.g.*, paint), and the requirements in paragraphs (a)(1) through (3) of this section are met. In this case, the employer would be required to ensure that the labeling requirements in 850.39(b)(2) are met as specified in proposed § 850.31(b)(1). Proposed § 850.31(b)(2) would require the employer to condition the release of equipment, item, or area based on the recipients' commitment to implement controls to ensure that exposure does not occur. Such a commitment should be based on the nature and possible use of the equipment or item, the nature of the beryllium contamination, and whether exposure to beryllium is foreseeable.

Proposed § 850.31(c) would be amended to allow for conditional release or transfer of equipment, items, or areas with levels that exceed 0.2 μg/100 cm². For equipment, items, or areas that have removable beryllium above 0.2 μg/100 cm², or that have beryllium in material on the surface at levels above the levels in soil at the point of release, the employer would be required to:

- Provide the recipient with a copy of this part [proposed § 850.31(c)(1)];
- Condition the release of the equipment, item, or area on the recipient's commitment to control foreseeable beryllium exposures from the equipment, item, or area considering its future use [proposed § 850.31(c)(2)];
- Label, or post signs on, as applicable, the equipment, item, or area in accordance with proposed § 850.39(a) or (b)(1) of this part to warn recipients of potential beryllium hazards [proposed § 850.31(c)(3)];
- Place equipment or items in sealed, impermeable bags or containers, or have a sealant applied to prevent the release of beryllium during handling and transporting [proposed § 850.31(c)(4)]; and
- Ensure that the beryllium that remains removable on the surfaces in areas that are being released do not exceed the 3 μg/100 cm² surface contamination level [proposed § 850.31(c)(5)].

Proposed § 850.32—Waste Disposal

Proposed § 850.32 would continue to establish the waste disposal provisions of the CBDPP. Like many of the provisions of the rule (*e.g.*, beryllium regulated areas, protective clothing and equipment, housekeeping), the waste disposal provisions are designed to minimize the spread of beryllium contamination on the site or beyond the site boundaries.

Proposed § 850.32(a)(1) would require employers to dispose of beryllium waste in sealed, impermeable bags, containers, or enclosures to prevent the release of beryllium during handling and transportation.

Proposed § 850.32(a)(2) would require employers to label the bags, containers, or enclosures for disposal in accordance with § 850.39(b)(1) of this part.

DOE is proposing to delete existing § 850.32(a), which is the requirement for employers to control the generation of beryllium-containing waste, beryllium-contaminated equipment, and other items through the application of waste minimization principles, because waste minimization is outside the scope of this part and is addressed in the Department's environmental policy documents.

Proposed § 850.33—Beryllium Emergencies

Proposed § 850.33 would continue to establish the beryllium-related emergency provisions of the CBDPP. Such provisions continue to be particularly important in light of the possibility that a single high-level beryllium exposure may be the cause of

CBD among workers thought to have had no previous exposure or only incidental low-level exposure to beryllium. However, proposed § 850.33(a) would be revised for consistency with part 851 to require employers to establish provisions for beryllium-related emergencies in accordance with 10 CFR 851.23, *Safety and Health Standards*. The standards listed in 10 CFR 851.23 include 29 CFR 1910.120(l) for emergency response activities related to hazardous waste cleanup operations, and 29 CFR 1910.120(q) for emergency response activities related to all other operations.

Proposed § 850.34—Medical Surveillance

Proposed § 850.34 would continue to establish the medical surveillance provisions for the CBDPP. Accordingly, proposed § 850.34(a) would continue to require employers to establish and implement a medical surveillance program for beryllium and beryllium-associated workers. However, DOE proposes to make the surveillance program mandatory for beryllium workers and voluntary for beryllium-associated workers.

a. Public policy and legal issues related to mandatory medical evaluations, mandatory restrictions and mandatory removal. The Department proposes several changes in part 850 that make certain actions mandatory rather than voluntary. These include the following:

- Proposed § 850.34(a) and (b)(1)(i) would require that medical evaluations be mandatory rather than voluntary for beryllium workers. In the final rule, as issued in 1999, § 850.34(b) required employers to provide medical evaluations to beryllium-associated workers (which included beryllium workers); however, the final rule did not make participation in the medical surveillance program mandatory for those workers.
- Proposed § 850.36(a)(3) would require the SOMD to recommend temporary removal of a beryllium worker pending the outcome of the medical evaluations conducted pursuant to § 850.34(b), or pending the outcome of the multiple physician review process pursuant to § 850.34(e) or the alternate physician review process pursuant to proposed § 850.34(f), if the beryllium worker is showing signs or symptoms of BeS or CBD, and the SOMD believes that further exposure to beryllium may be harmful to the worker's health. Similarly, proposed § 850.36(a)(4) requires the SOMD to recommend permanent removal of a beryllium worker if the SOMD makes a final medical determination that the worker should be permanently removed from exposure to beryllium at or above the action level, based on a diagnosis of BeS or CBD. The SOMD may not recommend medical restriction instead of medical removal if the SOMD determines that the beryllium worker should not work in an area where the airborne concentration of beryllium is at or above the action level, due to BeS or CBD. While both medical restriction and medical removal are means to ensure a worker is not exposed further to a work environment which would be harmful to the worker's health, medical removal under part 850 was conceived as a form of medical restriction specifically for those working with beryllium and provides additional protection and benefits to such workers. Medical restriction, however, is for workers with medical conditions (other than BeS or CBD) for which, exposure to beryllium would be contraindicated and, as indicated in 10 CFR 851, appendix A, section 8(h), is intended as a provision to facilitate a workers rehabilitation and return to work. Medical restrictions would be lifted by the SOMD when determined appropriate; medical removal, however, would be temporary pending final diagnosis, or permanent upon final diagnosis of BeS or CBD. The final rule, as issued in 1999, was silent on the issue of medical restriction. As a result, the Department has learned that there was some confusion about whether the SOMD could place beryllium workers on medical restriction instead of medical removal when the SOMD determined that the beryllium worker should not work in an area where the airborne concentration of beryllium is at or above the action level. The Department would clarify in the proposed rule that medical removal must be recommended if the SOMD determines that the beryllium worker with BeS or CBD should not work in an area where the airborne concentration of beryllium is at or above the action level.
- Proposed § 850.36(c) would require an employer to remove a beryllium worker from a job that involves an activity where the airborne concentration of beryllium is at or above the action level within 15 working days after receiving the SOMD's written opinion pursuant to § 850.36(b)(2) stating that it is medically appropriate to remove the worker. Section 850.35(a) of the final rule, as issued in 1999, required the responsible employer to *offer* a beryllium-associated worker removal from exposure to beryllium if the SOMD determined in a written medical opinion that the worker should be removed from exposure to beryllium, but did not require the worker to be removed.

The changes in the requirements above are based on the Department's commitment to the health and safety of its workers, and the understanding that early detection and removal from beryllium is important to prevent harm to workers at risk for developing CBD. These proposed changes are consistent with the Department's authorities under the AEA to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life.

b. Overview of the medical surveillance program. DOE continues to believe the medical surveillance program is important for: (1) Identifying workers at higher risk of adverse health effects from exposure to beryllium; (2) linking health outcomes to the beryllium tasks; and (3) making possible the early treatment of beryllium-induced medical conditions.

The medical surveillance program is designed to ensure the prompt identification, and make possible the proper treatment and prevention of future exposures, of workers who become sensitized to beryllium or develop CBD. In addition to determining the incidence of CBD in the workforce, the medical surveillance program continues to fulfill a critical information development function, including identifying the risk factors associated with the development of CBD and beryllium sensitization. This proposed rule continues to require that medical surveillance be provided to the workers who are at the greatest risk from continued exposure. The determination that a worker should be included in the medical surveillance program should be made on the basis of the air monitoring results, the SOMD's recommendation, and any other relevant information the employer may possess, such as past medical or air monitoring records, workers' past job duties and work history, etc.

Proposed § 850.34(a)(1) would continue to require employers to designate an SOMD who will be responsible for administering the medical surveillance program.

Proposed § 850.34(a)(2) would require employers to ensure that medical evaluations and procedures are performed by, or under the supervision of, a licensed physician who is qualified to diagnose beryllium-induced medical conditions. Although a licensed physician is the appropriate person to supervise and evaluate a medical evaluation, proposed § 850.34(a)(2) would continue to permit certain required elements of the evaluation to be performed by another appropriately qualified person under the supervision of the physician. The licensed physician is required to be qualified to diagnose beryllium-induced medical conditions. DOE expects the medical evaluations and procedures required to diagnose CBD will be performed or validated by a specialist in pulmonary medicine or occupational medicine, or by another physician familiar with the specialized equipment and examination protocols required to definitively differentiate between CBD and other lung diseases. DOE believes that this is necessary due to the unusual nature of CBD and the fact that not all physicians are familiar with the evaluation of patients exposed to beryllium in their workplace.

Proposed § 850.34(a)(3) would require employers to establish and maintain a list of all beryllium and beryllium-associated workers. The list should be based on the hazard assessments, exposure records, and any other information that will identify such workers.

Proposed § 850.34(a)(4)(i)–(vii) would require employers to provide the SOMD with the information needed to administer the medical surveillance program. This information includes the list of workers required by proposed § 850.34(a)(3); hazard assessment and exposure monitoring data; the identity and nature of the activities that are covered in the CBDPP; a description of the workers' duties as they pertain to exposures to beryllium that are at or above the action level; records of the workers' beryllium exposures; a description of the personal and respiratory protective equipment used by the workers; and a copy of the final rule. DOE believes that this information is necessary to ensure that the SOMD can make informed decisions regarding the required content of the medical evaluation and the subsequent development of recommendations related to each beryllium and beryllium-associated worker.

Proposed § 850.34(a)(5) would be added to clarify that employers are required to ensure that the SOMD and beryllium or beryllium-associated workers complete the consent form in appendix A or appendix B of this part, before performing any medical evaluations for beryllium or beryllium-associated workers.

DOE has learned from implementing the rule as issued in December 1999, there was confusion regarding how often the employer should offer participation in the medical surveillance program to beryllium-associated workers, and when a worker would be eligible to participate in the program if he or she initially decline the offer. To clarify the confusion, DOE would propose to add § 850.34(a)(6) to require employers to notify beryllium-associated workers yearly of their right to participate in the medical surveillance program. If the beryllium-associated worker declines at that time, he or she may elect to participate at any time during the year, but the worker is required to notify the employer in writing of the intent to participate in the program.

Proposed § 850.34(b) would continue to require employers to provide, without cost to the worker, all of the medical evaluations and procedures required under this section. The proposed rule would add a requirement that the procedures be provided to workers without loss of pay. It is necessary that examinations and procedures be performed at a place convenient to the employee, and without loss of pay, which means the employee should not be required to use vacation or sick leave, in order to maximize the likelihood that beryllium and beryllium-associated workers will participate in the medical evaluations. This proposed provision is consistent with OSHA's health standards [*e.g.*, Asbestos, 29 CFR 1910.1001(l)(1)(ii)(A); Arsenic, 29 CFR 1910.1018(n)(1)(ii); and Cadmium 29 CFR 1910.1027(l)(1)(iii)].

c. Mandatory medical evaluations. The purposes of baseline medical evaluations are to: (1) Establish the current health status of the worker and determine whether it is appropriate to assign the worker to a job where the worker will be exposed to airborne concentrations of beryllium at or above the action level; (2) initially determine what level of medical surveillance the employer must provide to the workers; and (3) establish essential baseline data for the worker which is used to assess subsequent health changes attributable to beryllium exposure.

DOE recognizes the potential negative consequences that medical evaluations for beryllium disease may have with respect to a worker's employability and insurability; work restrictions; and risk of complications from the medical evaluation. Nonetheless, it is DOE's considered determination that the early detection possible with medical evaluations is essential for removing workers at risk for CBD from further exposure to beryllium, thereby potentially reducing risk of symptomatic beryllium disease and the magnitude of symptoms that may occur—as well as for providing early opportunities for effective treatment. In 2008, researchers in France published results of a study of corticosteroid therapy in CBD cases and confirmed that the long-standing standard of care for CBD—corticosteroid therapies—was beneficial in treating CBD (ref. 28). Corticosteroids were effective in suppressing granulomatous lesions in all cases and in stopping the evolution to pulmonary fibrosis in six of eight patients.

Physicians who diagnose a worker with BeS or CBD generally recommend that their patients stop working with beryllium. The National Academy of Sciences recently published a study for the U.S. Air Force (ref. 7) that contains the following recommendations for physicians conducting diagnostic evaluations:

> Workers with CBD should discontinue work in areas that have beryllium exposure because of concern about worsening the disease. Although the effect of continuing exposure to beryllium at relatively low concentrations has not been clearly shown, the potential for CBD to become serious suggests that, given the current state of knowledge, it is prudent to avoid further beryllium exposure. Workers with CBD should continue to receive regular medical followup. Workers with CBD who discontinue work with beryllium should receive medical removal protection.

The prudent practice to have workers with BeS or CBD avoid additional exposure is based on the knowledge that, as is the case of other immune-system mediated diseases, continued exposure to the antigen may worsen the outcome. Observation that the rate of conversion from BeS to CBD appears to vary in a consistent manner with workers' exposures supports avoidance of additional exposure. Sensitized workers with low exposures appear to have relatively low rates of conversion, and sensitized workers with high exposures appear to have relatively high rates of conversion. A study published in 2004 of DOE construction workers thought to have intermittent and presumed low exposures, provides an example of a low rate of conversion. In this study, 15% of the workers with sensitization who underwent clinical evaluations were found to have CBD (ref. 18). Examples of medium rates of conversion of workers with presumed medium exposures are provided by the findings of two studies at DOE plants. First, a DOE plant that fabricated beryllium metal components reported that of 301 sensitized workers evaluated, 117 (39%) had CBD (ref. 13). Second, a DOE plant that fabricated beryllium ceramic components reported

that 23 of 56 (41%) sensitized workers had CBD (ref. 39). Examples of high rates of conversion of workers with presumed high exposures are provided by a study of former workers at beryllium production plants in Pennsylvania in which 19 of 29 (66%) of sensitized workers were diagnosed as having CBD, and by a study of former workers at a Colorado ceramics fabrication plant in which 100% of seven sensitized workers were diagnosed with CBD (refs. 40, 41).

The importance of early detection of beryllium sensitization in workers cannot be ignored in light of the fact that the existing studies provide support for the importance of early detection of beryllium sensitization. Proposed § 850.34(b)(1)(i)(A) would require employers to make baseline medical evaluations mandatory rather than voluntary for beryllium workers. Proposed § 850.34(b)(1)(i)(B) provides that baseline medical evaluations for beryllium-associated workers are voluntary. DOE believes that participation in the medical evaluation program should not be mandatory for beryllium-associated workers because these workers are not currently performing work in beryllium regulated areas. This approach would continue to ensure the early identification of those workers most at risk for health effects from exposure to beryllium, provide the greatest protection of worker health, and provide a more complete documentation of beryllium exposures.

Proposed § 850.34(b)(1)(ii)(A) through (G) is intended to ensure consistency among baseline medical evaluations in order to detect, at an early stage, any pathological changes that could lead to CBD or be aggravated by beryllium exposure. By detecting abnormalities early, workers may be medically removed to prevent further beryllium exposure. Therefore, each baseline medical evaluation would be required to include the following:

- A detailed medical and work history, particularly emphasizing exposures to levels of beryllium [proposed § 850.34(b)(1)(ii)(A)];
- A respiratory symptoms questionnaire [proposed § 850.34(b)(1)(ii)(B)];
- A physical examination with special emphasis on the respiratory system, skin and eyes [proposed § 850.34(b)(1)(ii)(C)];
- A chest radiograph (posterior-anterior, 14 x 17 inches) or a standard digital chest radiographic image interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist, unless there is an existing baseline chest radiograph that may be used to meet this requirement. The use of a digital radiographic image is new, and reflects the development of technology [proposed § 850.34(b)(1)(ii)(D)];
- Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume (FEV_1) at one second [proposed § 850.34(b)(1)(ii)(E)];
- Two peripheral blood BeLPTs [proposed § 850.34(b)(1)(ii)(F)];
- Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions [proposed § 850.34(b)(1)(ii)(G)]. DOE believes it is important that the SOMD have such discretion because individuals may exhibit different responses to beryllium exposures.

For purposes of the medical evaluations in this part (baseline, periodic and exit), two peripheral blood BeLPTs would be required. In the final rule, as issued in December 1999, only one BeLPT is required for the baseline and periodic evaluations. The reason for this change is that in the proposed rule, a diagnosis of BeS requires either: Two abnormal blood BeLPT results; or one abnormal and one borderline blood BeLPT; or one abnormal BeLPT of alveolar lung lavage cells. Employers are required to provide two peripheral blood BeLPTs to the worker in order to permit a proper diagnosis to be made by the SOMD. As set forth in the definition of BeLPT, a split sample BeLPT (where one blood draw is split and sent to two different testing facilities) would constitute two peripheral blood BeLPTs. If the SOMD determines that additional BeLPTs or other tests are required in order to diagnosis a worker, then the SOMD may order additional tests as part of the medical evaluation.

d. Use of Beryllium-induced Lymphocyte Proliferation Test (BeLPT). DOE concludes there is a general consensus that medical surveillance that includes screening with the BeLPT on peripheral blood cells provides an opportunity for timely worker removal from exposure which may reduce the chances of progression of BeS to CBD, and from sub-clinical CBD to significant lung damage and disability. In addition, positive BeLPT results lead to increased medical monitoring and therapy. This may also reduce an individual's chance of progressing to more severe disease.

The peripheral blood BeLPT was included as a component of medical evaluations in this part of the final rule, as issued in December 1999. DOE is aware that concerns have been expressed over shortcomings of the peripheral blood BeLPT, but DOE continues to consider the test to be an effective tool for screening individuals for BeS (refs. 42, 43, 44).

A published evaluation of the commonly used blood BeLPT method used for 12,194 current and former workers at 18 DOE sites found the test to have a positive predictive value that is comparable to other widely accepted medical tests and that it was, therefore, effective in the medical surveillance of beryllium-exposed workers (ref. 13). Epidemiology researchers commonly rely on peripheral blood BeLPT results in workforce medical surveillance data as an indicator of beryllium disease risk, as exemplified by Mroz, et al.: "This longitudinal study demonstrated that workforce medical surveillance with the blood BeLPT identifies individuals at significant risk of disease progression and future impairment with sufficient time since first exposure" (ref. 16). A National Academy of Sciences' study concluded, "Despite some issues regarding the reproducibility, sensitivity, and specificity of the BeLPT, the committee judged it to be an adequate assay for use in a surveillance program" (ref. 7). The authors note that BeS is "a valuable indicator" in a medical surveillance program in identifying high risk workers, though they acknowledge that quantitative predictions on the magnitude of the risk of disease progression are not possible based on available data. Further, the United Kingdom's Health and Safety Executive (HSE) recently published a review of the use of the BeLPT for screening or surveillance of beryllium workers (ref. 45). That review concludes:

> If the intent of health surveillance is to identify early beryllium sensitisation as a marker of those at risk of progressing to CBD (or as a minimum to characterise sensitisation in a group of exposed workers), then by definition the programme must include the BeLPT with an appropriate occupational health policy to deal with positive results, including educating the workforce about the implications of a positive test. The natural history of beryllium sensitisation is not fully understood, but in theory offers an early opportunity to identify early immune responses, to decrease exposure and hence intervene to improve prognosis.

HSE ultimately concludes that BeLPT represents the currently most sensitive screening test available, samples are easy to obtain, and the test provides the potential to identify subclinical disease and allow exposures to be modified.

DOE believes that the use of the peripheral blood BeLPT in medical evaluations is justified for its workforce, even for groups with low prevalence rates of beryllium disease. This belief is based on DOE's experience in identifying and removing BeS workers from additional exposure and on the supportive findings of the literature referenced above in using BeLPT as an effective medical surveillance tool (refs. 7, 13, 16, 45).

DOE welcomes improvements to the efficacy of the peripheral blood BeLPT. DOE has published a technical standard that can be used to reduce variation among laboratories in the procedures used in performing the test (ref. 46), and the Department expects that BeLPTs will be evaluated by laboratories that are certified by the College of American Pathologists. Furthermore, researchers continue to develop alternatives to the tritiated thymidine method currently used for counting proliferated lymphocytes (*e.g.*, counting lymphocytes by flow cytometry), which may further improve the efficacy of the peripheral blood BeLPT (ref. 47).

DOE has evaluated the consistency of imposing mandatory blood BeLPTs in the medical evaluations of DOE Federal and contractor workers with public policy established in Public Law 110–233, *Genetic Information Nondiscrimination Act of 2008*. The blood BeLPT is not a "genetic test" for the purposes of that statute, as section 201(7)(B) of the statute states that "the term 'genetic test' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes."

Proposed § 850.34(b)(2), would continue to require employers to provide periodic medical evaluations. Employers would be required to provide periodic medical evaluations in order to detect, at an early stage, any pathological changes that could lead to CBD or be aggravated by beryllium exposure. By detecting abnormalities early, workers may be medically removed to prevent further beryllium exposure. Specifically, proposed § 850.34(b)(2)(i) (A)–(B) would require employers to provide periodic medical evaluations annually to beryllium workers, and every three years to beryllium-associated workers who voluntarily participate in the program. Proposed § 850.34(b)(2)(i)(C) would require employers to provide a medical evaluation to beryllium workers, or beryllium-associated workers who voluntarily participate in the program, and who exhibit signs and symptoms of BeS or CBD, if the SOMD determines that an evaluation is warranted. This change was made in recognition of the fact that a worker may show signs or symptoms of beryllium sensitization or CBD before he or she is due for a periodic review, and requires the employer to provide an evaluation if the SOMD determines that it is warranted.

Proposed § 850.34(b)(2)(ii) would continue to require employers to provide periodic medical evaluations to beryllium workers, and beryllium-associated workers who voluntarily participate in the program, which would include the following:

- A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement [proposed § 850.34(b)(2)(ii)(A)];
- Updates to the worker's medical and work history with emphasis on exposures to levels of beryllium [proposed § 850.34(b)(2)(ii)(B)];
- A respiratory symptom questionnaire [proposed § 850.34(b)(2)(ii)(C)];
- A physical examination, with special emphasis on the respiratory system, skin, and eyes [proposed § 850.34(b)(2)(ii)(D)];
- Two peripheral blood Be-LPTs [proposed § 850.34(b)(2)(ii)(E)]; and
- Any other test deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions [proposed § 850.34(b)(2)(ii)(F)].

Proposed § 850.34(b)(3) would continue to require employers to provide medical evaluations for workers when a beryllium emergency occurs as defined in proposed § 850.3 in this proposed rule. In these cases, medical evaluations would include the tests and examinations required as part of periodic medical evaluations provided pursuant to paragraph (b)(2)(ii) of this section.

Proposed § 850.34(b)(4) is being added to require employers to provide an exit medical evaluation to a beryllium worker, or offer an exit medical evaluation to a beryllium-associated worker who voluntarily participates in the medical surveillance program, if a baseline or periodic evaluation had not been performed within the previous six months at the time of separation from employment. The purpose of the exit medical evaluation is to determine and document the worker's health status at the time of separation. While 10 CFR part 851, appendix A, section 8(g)(2)(v) provides for a health evaluation at the time of separation when determined necessary by the occupational medicine provider, DOE believes that obtaining information about a beryllium or beryllium-associated worker's health status at termination is important for contributing to the information available for performance feedback about the employer's CBDPP.

Accordingly, proposed § 850.34(b)(4)(i)(A) would require employers to provide an exit medical evaluation to beryllium workers upon separation from employment, and to beryllium-associated workers who voluntarily participate in the program at the time of separation [proposed § 850.34(b)(4)(i)(B)] if a baseline or periodic evaluation has not been performed within the previous six months. The exit medical evaluation would include the following:

- A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement [proposed § 850.34(b)(4)(ii)(A)];
- Updates to the worker's medical and work history with emphasis on exposures to levels of beryllium [proposed § 850.34(b)(4)(ii)(B)];
- A respiratory symptom questionnaire [proposed § 850.34(b)(4)(ii)(C)];
- A physical examination, with special emphasis on the respiratory system, skin, and eyes [proposed § 850.34(b)(4)(ii)(D)];
- Two peripheral blood Be-LPTs [proposed § 850.34(b)(4)(ii)(E)]; and
- Any other test deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions [proposed § 850.34(b)(4)(ii)(F)].

Proposed § 850.34(c)—[Reserved]

Note that following separation, these workers would be eligible for continued health monitoring under the Former Worker Medical Screening Program. Certain current or former workers who have contracted work-related illnesses from work performed at DOE sites may be eligible to receive compensation through the Energy Employee Occupational Illness Compensation Program Act (EEOICPA).

e. Reporting the results of the medical evaluations. Proposed § 850.34(d) [currently § 850.34(e)], would be revised to clarify the requirements for the SOMD's reporting the results of the medical evaluations performed pursuant to paragraph (b) of this section. SOMDs are required to provide their written medical opinions to the worker within 15 working days after receiving the results of the evaluations performed

pursuant to paragraphs (b)(1) through (3) of this section.

Specifically, proposed § 850.34(d)(1)(i) would require the SOMD to provide a beryllium or beryllium-associated worker with:

• A written medical opinion containing the purpose and results of all medical test or procedures [proposed § 850.34(d)(1)(i)(A)];

• An explanation of any abnormal findings [proposed § 850.34(d)(1)(i)(B)];

• The basis for the SOMD's medical opinion [proposed § 850.34(d)(1)(i)(C)];

Proposed § 850.34(d)(1)(i)(D) would be added to require the SOMD to provide in this written medical opinion any determination of whether:

• In the case of a beryllium worker, temporary or permanent removal of the beryllium worker from beryllium exposure is warranted pursuant to § 850.36 [proposed § 850.34(d)(1)(i)(D)(*1*)];

• A medical restriction is appropriate for the worker pursuant to 10 CFR 851, appendix A, section 8(h) [proposed § 850.34(d)(1)(i)(D)(*2*)]; and

• The SOMD would also be required to give the worker an opportunity to ask and have answered, their questions regarding the information provided [proposed § 850.34(d)(1)(i)(E)];

Proposed § 850.34(d)(1)(ii) would require the SOMD's written medical opinion to take into account the findings, determinations and recommendations of examining physicians who have examined the worker and provided written results of the examination to the SOMD, provided that the examining physician is qualified to diagnose beryllium-induced conditions. This proposed change responds to DOE's recognition, through its experience implementing this part, that many of those working at the DOE complex received regular medical evaluations from their private physician or through the DOL managed EEOICPA. While the SOMD must make the final decision regarding the worker's fitness for duty, and issues such as restriction and removal, the SOMD must take into account the findings, determinations and recommendations of qualified physicians who have examined the worker and provided their written recommendations to the SOMD.

Proposed § 850.34(d)(1)(iii) would be added to require the SOMD to obtain the workers signature on a dated copy of the written opinion and to include this information in the worker's medical record documenting that the employee received a copy of the opinion. If the worker declines to sign the statement, then the SOMD must make a record of that fact in the worker's medical record.

Proposed § 850.34(d)(1)(iv) would be added to clarify that within 15 working days after receiving the results from an exit evaluation performed pursuant to § 850.34(b)(4) of this part, the SOMD is required to provide the worker with:

• A written medical opinion containing the purpose and results of all medical tests or procedures [proposed § 850.34(d)(1)(iv)(A)];

• An explanation of any abnormal findings [proposed § 850.34(d)(1)(iv)(B)];

• The basis for the SOMD's medical opinion [proposed § 850.34(d)(1)(iv)(C)]; and

• An opportunity to ask, and have answered, questions regarding the information provided [proposed § 850.34(d)(1)(iv)(D)].

Proposed § 850.34(d)(2)(i) would require the SOMD, within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(i) of this section to the beryllium or beryllium-associated worker, to provide to the employer a written medical opinion that includes the following:

• The diagnosis of the worker's condition relevant to occupational exposure to beryllium, and any other medical condition for which exposure to beryllium at or above the action level would be contraindicated [proposed § 850.34(d)(2)(i)(A)].

In this written medical opinion to the employer, the SOMD would be required to include a determination of whether:

• In the case of a beryllium worker, temporary or permanent removal of the worker from exposure to beryllium is warranted pursuant to § 850.36 of this part [proposed § 850.34(d)(2)(i)(B)(*1*)]. DOE is adding this requirement to clarify that the SOMD is the only individual who can medically determine when a worker is to be removed from exposures to beryllium; or

• A medical restriction pursuant to 10 CFR 851, appendix A, section 8(h) is appropriate for the worker [proposed § 850.34(d)(2)(i)(B)(*2*)].

Proposed § 850.34(d)(2)(i)(C) would continue to require the SOMD or examining physician to provide a statement that he or she has clearly explained to the worker the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that requires further evaluations or treatment.

Proposed § 850.34(d)(2)(ii) would be revised to conform with the requirements in 10 CFR part 851, appendix A, section 8(h)(1) and would require that the SOMD not include in the written medical opinion any specific records, determinations, or diagnoses that are not related to beryllium-induced medical conditions or to any other medical condition indicating the worker should not perform certain job tasks.

Proposed § 850.34(d)(2)(iii) would be added to clarify that within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(iv) of this section, for an exit evaluation performed pursuant to § 850.34(b)(4) of this part, the SOMD would be required to provide the employer with the diagnosis of the worker's condition that is relevant to occupational exposure to beryllium, or indicates the worker should not perform certain job tasks.

f. Multiple physician review process. Proposed § 850.34(e) [currently § 850.34(c)], would continue to require the establishment of a multiple physician review process for review of the initial findings, determinations, or recommendations from the medical evaluations. DOE adopted the multiple physician review mechanism as a means of providing workers with an opportunity to obtain independent review of the determinations of physicians selected by the employer. More importantly, use of this review mechanism should serve to engender worker trust and confidence in the employer-retained physician where merited. If workers distrust an employer's physician and the diagnoses of a second physician on several occasions proves there is no basis for distrust, then workers will be much more likely to trust the employer's physician in the future. If the choice of a second and third physician repeatedly results in medical determinations that greatly differ with that of the employer-retained physician, then the multiple physician review mechanism will have served the beneficial purposes of (1) correcting possibly inadequate medical determinations, and (2) exposing potential deficiencies in the employer's medical surveillance program. Therefore, DOE has identified the following benefits of providing a multiple physician review process: (1) It strengthens and broadens the basis for medical decisions that would be made in response to this rule when a beryllium or beryllium-associated worker questions the findings, recommendations, or determinations of an initial physician retained by the employer; (2) it increases workers' confidence in the soundness of medical findings, recommendations, and determinations that are made under this rule; and (3) it increases the workers' acceptance of, and participation in the medical surveillance program. These independent reviews are likely to show that either a perceived low level of confidence in the physician retained by the employer is unwarranted, or the employer should improve the quality of the medical evaluations. In either case, the multiple physician review process will have served a beneficial purpose.

Accordingly, proposed § 850.34(e)(1) [current § 850.34(c)(1)] would continue to require employers to establish a multiple physician review process for beryllium and beryllium-associated workers that allows for the review of the initial medical findings, determinations, or recommendations from any medical evaluation conducted in accordance with paragraphs (b)(1)–(3) of this section. Note that the rule as proposed would not require the employer to provide a multiple physician review process for exit evaluations which would be provided pursuant to proposed § 850.34(b)(4).

The Department recognizes the value to employers and workers alike of the process operating in an expeditious fashion, and thus has established explicit criteria for the beginning of the process. Therefore, proposed § 850.34(e)(2) would clarify that the employer must notify a beryllium or beryllium-associated worker in writing within 15 working days after receiving the written medical opinion and determination regarding removal and/or work restriction pursuant to proposed paragraph (d)(2) of this section, of the worker's right to elect the multiple physician review process.

Proposed § 850.34(e)(3) [currently § 850.34(c)(3)] would provide that the employer's participation in, and payment for the multiple physician review process or the alternative physician review process for a beryllium-associated worker would be conditioned on the worker's participation in the medical surveillance program pursuant to paragraph (b) of this section.

Proposed § 850.34(e)(4)(i) and (ii) would require the beryllium or beryllium-associated worker to notify the employer in writing within 15 working days after receiving the employer's written notification pursuant to paragraph (e)(2) of this section, of the worker's intention to seek a second medical opinion on the results of any medical evaluation conducted pursuant to paragraphs (b)(1) through (3) of this section; and the beryllium or beryllium-associated worker identifying in writing to the SOMD within 20 working days after delivering the notice pursuant to paragraph (e)(4)(i) of this section, a physician who is qualified to diagnose beryllium-induced medical condition to:

• Review all findings, determinations, or recommendation of the initial physician [proposed § 850.34(e)(4)(ii)(A)];

• Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review [proposed § 850.34(e)(4)(ii)(B)]; and

• Provide the employer and the worker with a written medical opinion within 30 working days after completing the review pursuant to paragraphs (e)(4)(ii)(A) and (B) of this section [proposed § 850.34(e)(4)(ii)(C)].

Proposed § 850.34(e)(5) would clarify that if the findings, determinations, or recommendations of the two physicians differ substantively, then the employer and the worker would be required to assist the two physicians in resolving any disagreement. DOE expects that the two physicians will communicate with each other to resolve their differences, but the rule requires the employer and worker to encourage such a resolution. In most cases, this professional interaction should resolve any differences of opinion.

If the first two physicians are unable to resolve expeditiously any significant differences of opinion with respect to a beryllium or beryllium-associated worker, then it would be necessary for a third qualified physician to resolve the dispute. It is important that this third physician be competent to resolve the dispute. Consequently, proposed § 850.34(e)(6) [currently § 850.34(c)(5)], would require the employer and the worker together, through their respective physicians, to designate a third physician. It is the responsibility of the employer and the worker to assure that a third physician is selected, but the selection is to be made by the two prior physicians. Since the third physician is chosen by the joint endorsement of the two prior physicians, the professional competence of the third physician will be assured. Proposed § 850.34(e)(6) [currently § 850.34(c)(5)], would allow the third physician a full opportunity to:

• Review the findings, determinations, and recommendations of the two prior physicians [proposed § 850.34(e)(6)(i)];

• Conduct such examinations, consultations, laboratory tests, and consultations with the other two physicians as the third physician deems necessary to resolve the disagreement among them [proposed § 850.34(e)(6)(ii)]; and

• Provide the employer and the worker with a written medical opinion within 30 working days after completing the review pursuant to paragraph (e)(5)(i) and (ii) of this section [proposed § 850.34(e)(6)(iii)].

Proposed § 850.34(e)(7) [currently § 850.34(c)(6)], would continue to require the SOMD to take action consistent with the findings, determinations, and recommendations of the third physician, unless the SOMD and the worker reach an agreement that is otherwise consistent with the recommendations of at least one of the other two physicians.

The Department's experience in implementing the final rule provisions has shown there was some confusion among employers and workers about the multiple physician review process for a worker who has been laid off or whose contract ended during the multiple physician review process. To address these situations proposed § 850.34(e)(8) would require the employer to complete the multiple physicians review process and treat the worker as though he is a current worker, even when a worker is laid off or his contract ends before the review process is complete, subject to the following conditions: (1) The worker must have elected the multiple physician review while he was in fact a current worker and in accordance with the conditions set forth in paragraph (e)(4) of this section; and (2) the worker must participate in good faith in the multiple physician review process. If a worker's job would have ended prior to the end of the multiple physician review process (*e.g.*, if the worker was hired to do a particular job which has been completed), the proposed rule provides that the employer may place the worker on unpaid leave status until the review process is completed.

Proposed § 850.34(e)(9) would be added to clarify that the employer would not be required to provide the multiple physician review process in those cases where the worker had not elected the process in accordance with the conditions specified in paragraph (e)(4) of this section before the worker was laid off or contract ended. In these cases the workers may still be eligible for medical screening through DOE's FormerWorker Medical Screening Program.

The employer would be required to pay for the expenses of the multiple physician review process when a beryllium-associated worker elects it in writing and in a timely manner. DOE does not expect the cost of this process to be burdensome to its contractor employers since DOE contractors typically receive reimbursement for the cost of complying with this process. If the employer establishes and

administers a medical surveillance program that engender worker confidence, workers should have little or no need to seek second medical opinions.

The requirement for a multiple physician review is not intended to preclude employers from establishing and implementing alternate medical protocols. DOE would continue to include language in proposed § 850.34(f) [currently § 850.34(d)] that establishes an alternate physician review process. Under this section, the employer, beryllium and beryllium-associated worker, or the worker's designated representative, would be allowed to agree on the use of any expeditious alternate physician determination process, instead of the multiple physician review process. The only condition is that the alternate process is reasonable, expeditious and adequately protects the worker's health. For example, a jointly agreed upon physician might be used in the first instance without recourse to other physicians. DOE would continue to encourage employers and workers to adopt medical determination procedures in which all parties have trust and confidence.

Proposed § 850.34(g)(1) would be revised to comply with the reporting requirements in 10 CFR part 851.23(a)(2). Proposed § 850.34(g)(2) and (3) would be added to comply with the reporting requirements for cases involving medical removal. Accordingly, proposed § 850.34(g)(2) would require employers to record each case of medical removal on the applicable OSHA form when a worker is being medically removed in accordance with proposed § 850.36 of this part. Proposed § 850.34(g)(3) would require employers to enter each case of medical removal either as a case involving days away from work (if the worker does not work during the medical removal period) or as a case involving restricted work activity (if the worker continues to work but in an area where beryllium exposures are below the action level).

DOE is proposing to delete § 850.34(h) in the final rule. This section requires employers to establish routine and systematic analyses of medical, job and exposure data. The purpose of this requirement is to collect and analyze information so that the prevalence of disease can be accurately described and conclusions reached on causes or risk factors for disease. The Department intends to rely on the data collected from the Beryllium Registry for this purpose.

Proposed § 850.35—Medical Restriction

Proposed § 850.35 would be added to establish the medical restriction provisions of the CBDPP. Part 850 is intended to address and prevent disease caused by exposure to beryllium at DOE sites. Medical removal benefits under the rule are not intended to apply in cases where beryllium is not the cause of the worker's illness. In the case where the worker is not suffering from beryllium disease or has not been sensitized to beryllium, but exposure to beryllium at or above the action level is contraindicated, medical restriction would ensure that workers with other medical conditions are not exposed to beryllium which could put them at a materially higher risk for developing serious medical problems. Other medical conditions include, but are not limited to, chronic obstructive pulmonary disease (COPD), sarcoidosis, asthma, emphysema, or any other medical condition with respect to which the SOMD may determine that exposure to beryllium at or above the action level is contraindicated.

Proposed § 850.35(a) would require medical restrictions to be conducted in accordance with 10 CFR part 851, appendix A, section 8(h). In such cases where medical restrictions appropriate, proposed § 850.35(b) would require employers to, within 15 working days after receiving the SOMD's written opinion pursuant to § 850.34(d)(2) that it is medically appropriate to restrict a worker, restrict the worker from a job that involves a beryllium activity.

The Department's experience in implementing the final rule provisions has shown there was some confusion among employers and workers about medical restriction and when to offer, or not offer, medical removal benefits. Therefore, DOE would add proposed § 850.35(c) to clarify that employers would only be required to provide the beryllium medical removal benefits specified in § 850.36 of this proposed rule to beryllium workers who have been diagnosed with BeS or CBD, or pending the outcome of medical evaluations to determine whether the worker has BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the health of the worker, or pending the alternate physician review or multiple physician review. Employers are not required to provide removal benefits to other types of workers with a medical restriction.

Proposed § 850.35(d) would be added for those situations when the SOMD determines that a beryllium worker should not work with beryllium at or above the action level due to BeS or CBD. In such cases, the SOMD would be required to recommend medical removal under § 850.36 of this proposed rule, not medical restriction.

Proposed § 850.36—Medical Removal and Benefits

Proposed § 850.36 [(currently § 850.35] would continue to require employers to implement the medical removal (currently known as "*medical removal protection*") and benefits (currently known as "*medical removal protection benefits*") provisions of the CBDPP. DOE believes medical surveillance can only be effective in detecting and preventing disease if workers: (1) Seek medical attention when they feel ill; (2) refrain from efforts to conceal their true health status; and (3) fully cooperate with examining physicians to facilitate accurate medical diagnoses and effective treatment. This type of worker participation and cooperation will occur only where no major disincentives to meaningful worker participation exists. Without such participation, it would be much more difficult to adequately monitor workers' health and to identify workers who need temporary or permanent medical removal.

Medical removal is a logical result of the medical surveillance program. Without medical removal, employees with BeS or CBD may remain undiagnosed and continue to be exposed to beryllium at or above the action level which would not be sufficiently protective of their health. Also, without medical removal benefits, workers with BeS or CBD could be terminated or transferred from higher-paying jobs where exposure to beryllium is at or above the action level to lower-paying jobs that do not include such exposure. This might be protective, but it would impair the workers' earning ability. In either case, the effectiveness and integrity of the medical surveillance program may be compromised.

With medical removal, beryllium workers with BeS or CBD would be assured of being removed to jobs where the exposure to beryllium is below the action level, if such jobs are available and if removal is determined to be necessary to protect their health. With medical removal benefits, beryllium workers with BeS or CBD would be assured that, if the results require removal from their beryllium job, their normal earnings will be protected for a pre-determined period.

Proposed § 850.36(a)(1) would clarify that, subject to the terms set forth in this proposed section, employers would be required to remove beryllium workers from jobs where the exposure to beryllium is at or above the action level. As set forth in this section, temporary or permanent removal is required when the SOMD has determined in a written medical opinion that it is appropriate to remove the beryllium worker from exposure to beryllium at or above the action level. This determination would be required to be based on a diagnosis that the worker has BeS or CBD, as defined in this proposed rule.

The Department's experience in implementing the current rule provisions has shown there was some confusion about who has the authority to recommend temporary or permanent removal of a beryllium worker. Therefore, proposed § 850.36(a)(2) would clarify that only the SOMD may recommend temporary or permanent removal of a beryllium worker from exposure to beryllium at or above the action level. DOE proposes revising the wording used in this section to clarify that the SOMD would make the final medical determination, even when a multiple physician review or alternative physician determination process is used. The SOMD, in making the final medical determination would be expected to take into account the findings, determinations and recommendations of other examining physicians who may have examined the worker, but the SOMD makes the final determination.

Mandatory medical removal of beryllium workers. In response to its RFI, DOE received several comments concerning whether to continue to require a worker's consent for medical removal, or instead require mandatory medical removal. The majority of commenters recommended that DOE establish a mandatory medical removal practice; however, many of those commenters also recommended that DOE provide enhanced medical removal benefits. Some commenters suggested that mandatory removal should be implemented by DOE complex-wide. Some commenters suggested that DOE mandate that the employer offer a vocational training program to the affected worker to assist the employee in maintaining the financial compensation and benefits from his or her previous position, and that the length of time for medical removal benefits should be increased from two to five years. A minority of commenters believed that DOE should continue to leave medical removal up to the worker, pointing out that the National Academies suggests that the worker's consent be obtained. Some commenters indicated that DOE should retain voluntary medical removal only if DOE will accept the risk of future health issues from allowing a worker to resume activities after the SOMD has recommended medical removal.

After consideration of all commenters' suggestions, DOE's experience in implementing the current rule provisions, and other available information, proposed § 850.36(c)(1) would require mandatory medical removal for beryllium workers in jobs that include a beryllium activity in cases where an employee has a diagnosis of BeS or CBD. DOE proposes this amendment because removing workers from jobs that risk additional exposure will avoid increasing their body burden of beryllium, and potentially reduce the risk of symptomatic beryllium disease, or minimize the magnitude of symptoms that may occur.

DOE recognizes that it is very difficult to establish policy that involves trade-offs between the unfettered pursuit of livelihood and other potential financial effects, such as insurability and the risk of debilitating disease; however, DOE believes that the medical removal benefits provisions in proposed § 850.36(d) and the counseling provisions in proposed § 850.38(b) of this part would be sufficient to assist workers in effectively preparing for, and responding to, possible medical removal. For these reasons, DOE believes that the proposed policy of mandatory removal is its optimal risk management strategy.

Proposed § 850.36(a)(3) [currently § 850.35(a)(1)] would clarify the requirements for temporary or permanent removal of a beryllium worker from exposure to beryllium at or above the action level. Accordingly, proposed § 850.36(a)(3) would require the SOMD to recommend to employers temporary removal of a beryllium worker:

- Pending the outcome of the medical evaluations conducted pursuant to § 850.34(b) of this part, if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the worker's health [proposed § 850.36(a)(3)(i)]; or
- Pending the outcome of the multiple physicians or alternative physician review process pursuant to proposed § 850.34(e) and (f) of this part, if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above an action level may be harmful to the worker's health [proposed § 850.36(a)(3)(ii)].

Proposed § 850.36(a)(4) would require the SOMD to recommend permanent removal of a beryllium worker from exposure to beryllium at or above the action level only when he or she makes a final medical determination that the worker should be permanently removed. The SOMD's determination to permanently remove a worker would be required to be based on a diagnosis of BeS or CDB as defined in § 850.3 of this proposed rule.

Proposed § 850.36(a)(5) would require, within 15 working days after a final medical determination has been made, the SOMD to provide the employer with a written notice to either return the temporarily removed beryllium worker to his or her previous job status, along with the steps needed to protect the workers' health including any work restrictions [proposed § 850.36(a)(5)(i)]; or, to permanently remove the beryllium worker [proposed § 850.36(a)(5)(ii)]. If a worker is temporarily removed and the final medical determination is made that the beryllium worker does not have a medical condition caused by beryllium, the temporary medical removal benefits specified in paragraph (d)(1) of this section would end, and the affected worker would be able to return to his or her normal duties, unless work restrictions would prevent the worker from doing so. If the SOMD makes a final medical determination that the worker is not sensitized to beryllium and does not have CBD, but further exposure to beryllium at or above the action level is medically contraindicated, the SOMD would be able to recommend a medical restriction for the worker.

DOE has learned through its experience implementing this part, as issued in December 1999, that a lack of explicit expectations has resulted in different understandings of how the SOMD should recommend temporary or permanent removal of a worker. Accordingly, proposed § 850.36(a)(6) would be added to clarify that the SOMD is not required to recommend temporary removal first and then permanent removal. If it is clear based on the SOMD's medical evaluation that the worker should be permanently removed, based on a diagnosis of BeS or CBD, then the SOMD may recommend permanent removal.

Proposed § 850.36(b) [currently § 850.35(a)(3)] would establish the counseling requirements for beryllium workers before they are placed on either temporary or permanent medical removal, as well as clarify the requirements for notifications to the employer. This proposed addition

would help beryllium workers understand and effectively manage the potential effects of medical removal.

DOE has learned through its experience implementing this part, as issued in December 1999, that a lack of explicit expectations has resulted in different understandings of the individual worker's medical removal status. DOE, therefore, proposes adding requirements that will help workers understand their medical removal status. Accordingly, proposed § 850.36(b)(1) would require that if the SOMD determines a beryllium worker should be temporarily or permanently removed, the SOMD would be required to perform the following when communicating the written medical opinion and determination to the worker pursuant to § 850.34(d)(1):

• Advise the beryllium worker diagnosed with BeS or CBD or suspected of having BeS or CBD of the determination that medical removal is necessary to protect his or her health, and specify whether the SOMD is recommending temporary or permanent removal from work that involves exposure to beryllium at or above the action level [proposed § 850.36(b)(1)(i)]; and

• Provide the beryllium worker with a copy of the rule, including its preamble, and information on the risks of continued exposure to beryllium at levels at or above the action level, as well as the benefits of removal [proposed § 850.36(b)(1)(ii)].

Proposed § 850.36(b)(2) would be added to clarify the notifications the SOMD gives to the employers for removal of workers. The SOMD, in communicating the written medical opinion and determination to the employer, would be required to comply with § 850.34(e)(2) of this part. In the case of a final medical determination regarding permanent removal, the SOMD would be required to provide the employer with a written notice recommending that the employer either:

• If the worker has been on temporary removal, return the temporarily removed beryllium worker to his previous job status if the SOMD determines that removal is no longer warranted [proposed § 850.36(b)(2)(i)]; or

• Permanently remove the beryllium worker [proposed § 850.36(b)(2)(ii)]; or

• Medically restrict the worker pursuant to § 850.35 of this part [proposed § 850.36 (b)(2)(iii)].

Proposed § 850.36(c) would clarify the employer's responsibilities for removal of a worker. Proposed § 850.36(c)(1) would require the employer, within 15 working days after receiving the SOMD's written opinion pursuant to paragraph (b)(2) of this section, stating that it is medically appropriate to remove a worker, to remove the beryllium worker from the job that involves a beryllium activity, regardless of whether at the time of removal a job is available into which the removed worker may be transferred.

Proposed § 850.36(c)(2) would require employers to formally notify beryllium workers in writing that they are in medical removal status when the employer receives the SOMD's determination that removal is warranted. Employers would be required to include a start date for medical removal in the written notification. This proposed addition should resolve difficulties that have occurred at DOE sites in determining when medical removal officially began.

Proposed § 850.36(c)(3) would establish that when a beryllium worker is medically removed, the employer must transfer the removed worker to a comparable job, if such a job is available, and provide removal benefits in accordance with paragraphs (d)(1) of this section, for temporary removal or (d)(2) of this section, for permanent removal.

DOE is proposing to add § 850.36(c)(4) to clarify that employers would not be able to return a worker who has been medically removed to his or her former job status unless the SOMD has determined in a written medical opinion that continued medical removal is no longer necessary to protect the worker's health.

Proposed § 850.36(d) [currently § 850.35(b)] would continue to establish the medical removal benefits that must be provided to removed workers. DOE continues to believe that medical removal benefits are critical to minimize the disability associated with CBD. Removal from exposure and effective job-placement efforts, coupled with early diagnosis and treatment, will increase the likelihood that affected beryllium workers would continue as productive members of the DOE workforce.

Proposed § 850.36(d)(1)(i) would specify that when a beryllium worker has been temporarily removed from a job pursuant to paragraph (a)(2) of this section, employers would be required to, consistent with any applicable collective bargaining agreement:

• Transfer the worker to a comparable job [proposed § 850.36(d)(1)(i)(A)]; where beryllium exposures are below the action level [proposed § 850.36(d)(1)(i)(A)(*1*)]; and for which the worker is qualified or can be trained for in 6 months or less [proposed § 850.36(d)(1)(i)(A)(*2*)];

• Maintain the worker's total normal earnings, and other employment rights, as they existed at the time of removal, on each occasion that the worker is temporarily removed. The purpose of this requirement is to ensure that a removed worker does not suffer immediate economic loss due to removal [proposed § 850.36(d)(1)(i)(B)]. Note, benefits received under the Energy Employees Occupational Illness Compensation Program (EEOICP) do not constitute wage replacement, and therefore would not offset the employee's medical removal benefits.

DOE has learned with experience implementing this part, as issued in December 1999, that a lack of explicit expectations has resulted in different understandings of what happens when a job is not available for a beryllium worker. Therefore, proposed § 850.36(d)(1)(ii) would be added to clarify the requirements for the employer. Specifically, if there is no such job for the beryllium worker, the employer would be required to provide the workers total normal earnings, seniority (to the extent allowed in an applicable bargaining agreement), and other employment rights, as if the worker were not removed. For temporary removal, the employer would be required to provide the beryllium worker's total normal earnings and other employment rights, until:

• A comparable job becomes available that meets the requirements of (d)(1)(i)(A), and the worker is placed in that job [proposed § 850.36(d)(1)(ii)(A)];

• The SOMD determines that the beryllium worker is not sensitized to beryllium and does not have CBD and medical removal is ended [proposed § 850.36(d)(1)(ii)(B)];

• The beryllium worker is permanently medically removed from the job [proposed § 850.36(d)(1)(ii)(C)]; or

• The term of the removal period has expired [proposed § 850.36(d)(1)(ii)(D)].

Proposed § 850.36(d)(1)(iii) would be added to clarify that each period of temporary removal could not exceed one year and no term of temporary removal can immediately succeed a prior term of temporary removal to extend the term beyond one year.

Proposed § 850.36(d)(1)(iv) would be added to require that periods of temporary removal received by a worker not be considered part of any permanent removal period should the employer provide the beryllium worker with temporary and then permanent removal. This clarification supports DOE's intent to provide workers with sufficient time to plan and implement changes in pursuing their livelihood as necessitated by permanent medical removal from jobs that involve beryllium activities at or above the action level.

Proposed § 850.36(d)(2) [currently § 850.35(b)(1)] would continue to provide permanent medical removal benefits of the CBDPP. Accordingly, in proposed § 850.36(d)(2)(i)(A) and (B), if a beryllium worker has been permanently removed from a job because of a beryllium-induced medical condition pursuant to paragraph (a)(4) of this section, the employer would be required to, consistent with any applicable collective bargaining agreement, transfer the worker to a comparable job [proposed § 850.36(d)(2)(i)(A)], where beryllium exposures are below the action level [proposed § 850.36(d)(2)(i)(A)(I)], and for which the worker is qualified or can be trained within a period of up to one year [proposed § 850.36(d)(2)(i)(A)(II)].

Proposed § 850.36(d)(2)(i)(B) would clarify that if a beryllium worker could not be transferred to a comparable job that meets the requirements of (d)(2)(i)(A), the employer would be required to maintain the worker's total normal earnings and benefits at the time of removal, as if the worker were not permanently removed for up to two years. DOE continues to select 2 years as the maximum period during which the employer is required to pay medical removal benefits to a worker instead of the 18-month protection period established in OSHA's lead and cadmium standards. DOE established a different protection period for beryllium because of the toxicological differences between beryllium and the two metals covered in the OSHA standards. Specifically, the early stages of the health impairments associated with exposure to lead or cadmium will reverse in time with no additional exposure, but the health effects from BeS and CBD typically do not. The objective of OSHA's 18-month period is to provide workers with sufficient recovery time so they can return to their job. The objective of DOE's two-year period, however, is to allow workers permanently medically removed sufficient time to be retrained and placed in a different job. DOE believes that this period should be long enough to enable the majority of removed workers to be retrained and placed in another job or, for those workers who can be returned to their former job status, to be returned before their medical removal benefits expire. Proposed § 850.36(d)(2)(i)(B) would also clarify that employers are not required to continue providing medical removal benefits after a worker has been permanently removed for up to two years. The removed worker who is transferred to a comparable job is not guaranteed removal benefits in the form of such job after the two-year removal period because permanent medical removal benefits consist of either the opportunity to transfer to a comparable job or to receive the earnings and benefits associated with a comparable job, if a comparable job is not available (*e.g.*, due to layoffs, illness of the worker, etc.). After the two-year benefit period expires, employers are expected to treat removed workers who have been transferred to a comparable job in a neutral and nondiscriminatory fashion, in accordance with all applicable state and Federal labor laws.

DOE does not intend for the beryllium medical removal benefit to function as a workers' compensation program. Workers' compensation and other work-related compensation for beryllium illness are provided by public or employer-funded compensation programs, including the Federal EEOICP administered by the DOL.

Proposed § 850.36(d)(3) [currently § 850.35(b)(5)] would continue to establish additional conditions for both temporary and permanent removal benefits. Proposed § 850.36(d)(3)(i) would clarify that employers providing medical removal benefits is not intended to expand upon, restrict or change any rights a worker has or would have had, absent medical removal, regarding a specific job classification or position under the terms of a collective bargaining agreement.

Proposed § 850.36(d)(3)(ii) [currently § 850.35(b)(2)] would continue to establish that during a temporary or permanent removal period, employers are required to continue to provide a worker total normal earnings and benefits.

DOE has learned from implementing this part, as issued in December 1999, that not addressing medical removal benefits when there is a change in the worker's job status, caused confusion and different implementation among DOE sites. Therefore, proposed § 850.36(d)(3)(iii) would be added to clarify and require employers to continue providing workers medical removal benefits during the removal period designated by the SOMD regardless of changes in the workers' jobs (*e.g.*, worker is laid off or the contract ends before the removal period ends) or whether workers can be transferred into comparable jobs because the workers are too sick to work, provided that:

• If the workers are on temporary removal, the employers are not required to continue the worker's benefits, as set forth in paragraph (d)(1) of this section, beyond one year [proposed § 850.36(d)(3)(iii)(A)];

• If the worker is on permanent removal, the employer is not required to continue the worker's benefits, as set forth in paragraph (d)(2) of this section, beyond two years [proposed § 850.36(d)(3)(iii)(B)].

Proposed § 850.36(d)(3)(iv) [currently § 850.35(b)(3)] would continue to establish that if a removed worker files a claim for workers' compensation payments for a beryllium-related disability, the employer must continue to provide benefits pending disposition of the claim, but no longer than a period of two years. The employer must receive no credit for the workers' compensation payments received by the worker for treatment related expenses.

Proposed § 850.36(d)(3)(v) [currently § 850.35(b)(4)] would continue to establish that the employer's obligation to provide medical removal benefits to a removed worker is reduced to the extent that the worker receives compensation for earnings lost during the period of removal from a publicly- or employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal. This provision is necessary to ensure that medical removal benefits do not result in a "windfall" to the worker who collects other compensation, including a salary from another job, while the worker is on medical removal from beryllium exposure.

Proposed § 850.36(d)(3)(vi) would be added to inform worker that they may also apply for compensation through EEOICP for any additional benefits beyond those provided in this proposed section.

DOE is proposing to delete current § 850.35(a)(4). DOE has learned through its experience implementing this part, as issued in December 1999, that it would not be a prudent practice to return a beryllium worker who has been permanently removed to a job in which the worker will be exposed to beryllium at or above the action level.

Proposed § 850.37—Medical Consent

Proposed § 850.37 [currently § 850.36], would continue to establish the medical consent provisions of the CBDPP. This section is necessary to ensure that beryllium and beryllium-associated workers receive adequate information to make an informed decision about the medical surveillance program. Accordingly, proposed

§ 850.37(a) would require that in order to provide each beryllium and beryllium-associated worker with the information necessary for the workers to make informed decisions about consenting to the medical evaluation established in proposed § 850.34 of this part, the employer must ensure that the SOMD has the worker sign and date the consent form in appendix A(for beryllium workers) or appendix B (for beryllium-associated workers) before performing any medical evaluation. The dated signature of the worker serves to document the worker consented to being tested. DOE would expect employers to make reasonable efforts to help workers understand the material.

Proposed § 850.37(b) would require employers to inform beryllium workers that testing is mandatory to transfer into or remain in a job involving exposure to beryllium at or above the action level, and that a beryllium worker who decides not to consent to the medical evaluations that would be required in § 850.34 will be removed from a beryllium activity and will not receive medical removal benefits.

Proposed § 850.38—Training and Counseling

Proposed § 850.38 [currently § 850.37], would continue to establish the worker training and counseling requirements regarding exposure to beryllium, and the potential health effects associated with such exposure. This worker training is necessary because appropriate implementation of the required workplace procedures of the CBDPP ultimately rests upon the front-line workers who will be performing work on, with, or near beryllium or beryllium-contaminated materials. These workers cannot be expected to comply with the required CBDPP procedures if they are not aware of such procedures.

DOE expects employers would conduct training in a manner that is easy to understand. Training material should be appropriate in content and vocabulary for the education level and language background of affected workers. The goal of the training would be to ensure all workers, regardless of cultural or educational background, have the knowledge necessary to reduce and minimize their exposure to beryllium.

DOE's experience in implementing the training requirements of this part, as issued in December 1999, demonstrates that greater differentiation of training requirements for different types of workers is needed. Therefore, proposed § 850.38 would continue to maintain the training requirements of the CBDPP but would clarify the training needs of beryllium workers and add training for these workers on the benefits of medical evaluations and the content of this part.

Proposed § 850.38(a)(1) [currently § 850.37(a)(1)]] would continue to require employers to develop and implement a training program for beryllium workers, beryllium-associated workers, and all other workers who work at a site where beryllium activities are conducted and ensure their participation in the program.

Proposed § 850.38(a)(2) would establish the training requirements for beryllium workers. Specifically, employers would be required to provide beryllium workers training on the following:

- The contents of the CBDPP [proposed § 850.38(a)(2)(i)];
- The potential health risks to family members and others who may come in to contact with beryllium if beryllium controls are not followed [proposed § 850.38(a)(2)(ii)]. This section relies on the workers to relay the relevant beryllium hazard information to their families. DOE encourages employers to provide beryllium workers with information about beryllium risks that is also readily understandable to family members.
- Benefits of medical evaluations for diagnosing BeS and CBD [proposed § 850.38(a)(2)(iii)]; and
- The contents of the final rule [proposed § 850.38(a)(2)(iv)].

Proposed § 850.38(a)(3) would establish the training requirements for beryllium-associated workers and other workers identified in paragraph (a)(1) of this section. The training for these individuals would continue to require general awareness about beryllium hazards and controls training for other workers at a site where beryllium activities are conducted. This training should also address the benefits of medical evaluations for early diagnosis of BeS or CBD.

Proposed § 850.38(a)(4) would continue to require employers to provide training to workers prior to or at the time of initial assignment, and at least every two years thereafter, to ensure that workers are appropriately prepared to deal with the hazards and risks of working with beryllium. The initial training requirement of this paragraph is important to ensure workers have the information they need to protect themselves before they are subject to actual or potential exposure hazards. Periodic training is necessary to reinforce and update initial training; especially with regard to the protective actions workers must take at their current jobs to reduce their potential for exposure to beryllium. DOE has established two years as the minimum frequency requirement.

Proposed § 850.38(a)(5) would require employers to provide retraining when they have reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium. The retaining would include, at a minimum, the following situations:

- To address any new beryllium hazards resulting from a change to the beryllium inventory, activities, or controls about which the worker was not previously trained [proposed § 850.38(a)(5)(i)]; or
- When a worker's performance involving beryllium activities indicates that the worker has not retained the requisite proficiency [proposed § 850.38(a)(5)(ii)].

Proposed § 850.38(b) [currently § 850.37(f)], would continue require employers to develop and implement a workers counseling program to assist workers diagnosed by the SOMD with BeS or CBD. The purpose of the counseling program is to communicate information to workers that may help them make important health- and work-related decisions and perform administrative activities, such as filing workers' compensation claims. Accordingly, proposed § 850.38(b)(1) would require employers to develop and implement a counseling program to assist beryllium and beryllium-associated workers who are diagnosed by the SOMD with BeS or CBD.

Proposed § 850.38(b)(2) would require the counseling program for beryllium workers to include communicating with the worker concerning:

- The medical surveillance program provisions and procedures [proposed § 850.38(b)(2)(i)];
- Medical treatment options [proposed § 850.38(b)(2)(ii)];
- Medical, psychological, and career counseling [proposed § 850.38(b)(2)(iii)];
- Medical removal benefits [proposed § 850.38(b)(2)(iv)];
- Administrative procedures and worker rights under EEOICPA and applicable workers' compensation laws and regulations [proposed § 850.38(b)(2)(v)]; and
- The risk of continued exposure to beryllium at or above the action level and practices to limit exposure [proposed § 850.38(b)(2)(vi)].

Proposed § 850.38(b)(3) would clarify the counseling requirements for beryllium-associated workers. For beryllium-associated workers, employers would be required to communicate information to workers concerning the following topics:

- The medical surveillance program provisions and procedures [proposed § 850.38(b)(3)(i)];
- Medical treatment options [proposed § 850.38(b)(3)(ii)];
- Medical, psychological, and career counseling [proposed § 850.38(b)(3)(iii)]; and
- Application procedures under EEOICPA and applicable workers' compensation laws and regulations [proposed § 850.38(b)(3)(iv)].

In this section, DOE would include the qualifying language "application procedures and workers rights' and "under . . . applicable workers compensation laws and regulations" to make clear that DOE still does not intend to establish any new workers' compensation obligations. DOE understands that employers may develop such counseling programs in consultation with labor organizations representing workers, and that employer may wish to advise the workers to consult their own attorneys on these matters.

Proposed § 850.39—Warning Signs and Labels

Proposed § 850.39 [currently § 850.38], would continue to require employers to post warning signs and labels to ensure that the presence of, and dangers associated with beryllium and beryllium-contaminated items or areas are communicated to workers.

DOE received several comments in response to its RFI concerning whether DOE should require warning labels for the transfer—to either another DOE entity or an entity to whom this rule does not apply—of items with surface areas that are free of removable beryllium but that might contain surface contamination that is inaccessible or has been sealed with hard-to-remove substances (*e.g.*, paint). Most of the commenters suggested that DOE should require warning labels when individuals could be exposed during the handling of an item (*e.g.*, servicing a seldom-accessed part, opening a waste container), or to warn the uninformed so as to prevent unplanned beryllium exposures. DOE pointed out that the further removed a worker is from direct DOE employment (*e.g.*, some DOE facility general contractors hire subcontractors, who in turn hire their own subcontractors, and so on), the more likely it is that verbal instructions and warnings will be insufficient. Other commenters suggested that DOE's labeling requirement should allow flexibility to convey the beryllium exposure hazard without unduly alarming downstream individuals and without preventing potential downstream users from accepting items because of unfounded health concerns.

DOE, in considering suggestions of the RFI commenters and other available information, has proposed minor changes to the wording of this section, as issued in December 1999. Proposed § 850.39(a) would continue to require the posting of warning signs demarcating beryllium regulated areas and these signs bear the following warning:

BERYLLIUM REGULATED AREA
DANGER
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

The purpose of these warning signs is to minimize the number of individuals entering a beryllium regulated area by warning workers prior to entry. The signs alert workers that they must have the appropriate authorization from their supervisor to enter the beryllium regulated area. This is especially important when regulated areas are established on a temporary basis, such as during cleanup operations. In such cases, workers who typically work in or travel through the area may not be aware of the new potential for beryllium exposures and thus, may not be appropriately equipped for or aware of the need to protect themselves from potential exposures. Warning signs also serve as a constant reminder to those who work in beryllium regulated areas that the potential for exposure to beryllium exists in the area and that appropriate controls must be used.

Proposed § 850.39(b) would continue to require employers use warning labels to ensure that individuals who come in contact with containers of beryllium, or other beryllium-contaminated items are aware of their content and the need to implement special handling precautions. Accordingly, this proposed section would add a provision requiring employers affix warning labels to all bags, containers, equipment, or items that have surface levels of beryllium that exceed 0.2 $\mu g/100\ cm^2$, or that will be released and have beryllium material on the surface at levels above the level in soil at the point of release. Because the effectiveness of the warning label is greatly dependent upon the visibility, accuracy, and understandability of the content of the labels, proposed § 850.39(b)(1) would specify that labels bear the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

Proposed § 850.39(b)(2) would add a new provision that would require employers to affix warning labels to equipment or items that contain sources of beryllium in typically inaccessible locations or embedded in hard-to-remove substances. This label is for less hazardous situations in which the beryllium is normally inaccessible but could be released with effort (*e.g.*, by disassembling machine tools that were used for processing beryllium, or by removing paint that encapsulates beryllium particulates). This proposed section would require that labels bear the following information:

CAUTION
CONTAINS BERYLLIUM IN INACCESSIBLE LOCATIONS OR EMBEDDED IN HARD-TO-REMOVE SUBSTANCES
DO NOT RELEASE AIRBORNE BERYLLIUM DUST
CANCER AND LUNG DISEASE HAZARD

Proposed § 850.40—Recordkeeping and Use of Information

Proposed § 850.40 [currently § 850.39] would continue to require employers to establish and effectively manage records that relate to the CBDPP and to periodically submit to the Office of Environment, Health, Safety and Security a registry of beryllium and beryllium-associated workers. Proposed § 850.40 would also clarify recordkeeping requirements that are not clearly defined in the current rule, and the use of such information by both DOE contractor and Federal employers. Proposed § 850.40(a) would require contractor employers to:

- Establish and maintain records in accordance with 10 CFR part 851, *Worker Safety and Health Program*, for records generated by their CBDPP, and include records of beryllium medical evaluations and training [proposed § 850.40(a)(1)]. This would revise the current requirement for consistency with 10 CFR 851.26, *Recordkeeping and reporting*.
- Maintain employees' medical records in accordance with DOE System of Records DOE–33, *Personnel Medical Records* [proposed § 850.40(a)(2)]. This requirement would be added to clarify the system of records with which employers are required to comply.
- Maintain all records required by this part in current and accessible electronic systems [proposed § 850.40(a)(3)]. This requirement, currently in § 850.39(f), is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBDPP-related data. DOE continues to use the phrase "current and accessible" in this section because DOE's experience indicates that the ability to use information held in electronic records is severely hampered if the

electronic systems are out-of-date or the records are difficult to retrieve.

• Convey all record series required by this rule to the appropriate Head of DOE Field Element, or his or her designee, if this part ceases to be applicable (*e.g.*, if the employer ceases to be a DOE contractor) [proposed § 850.40(a)(4)]. This requirement would be added to ensure that DOE has access to and ownership of such records generated during contract performance for its contractors performing beryllium activities at DOE sites and clarifies management, retention and disposal of records after contract termination.

Proposed § 850.40(b) would continue to require Federal employers to:

• Establish and maintain complete and accurate records generated by the CBDPP submitted by DOE offices, including all beryllium inventory information, hazard assessments, exposure measurements of Federal employees, exposure control, medical evaluations, and training for operations or activities implemented by DOE offices [proposed § 850.40(b)(1)].

• Maintain Federal employees' medical records in accordance with the Office of Personnel Management's OPM/GOVT–10, *Employee Medical File System Records for Federal Employees* [proposed § 850.40(b)(2)]. This requirement would be added to clarify the system of records for Federal employees.

• Maintain all records required by this part in current and accessible electronic systems. This requirement is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBDPP-related data [proposed § 850.40(b)(3); currently § 850.39(f)].

Proposed § 850.40(c) would continue to require Heads of DOE Field Elements and CSOs to designate all record series required by this rule as agency records and ensure that these records are retained for a minimum of 75 years. This practice is consistent with DOE's policy on retaining medical records. This requirement would continue to ensure that required CBDPP records that relate to workplace conditions will be available to correlate with the beryllium and beryllium-associated workers' medical records. DOE expects that Heads of DOE Field Elements will direct their DOE contracting officers to stipulate DOE ownership of these documents in those contracts.

Proposed § 850.40(d)(1) would require both contractor and Federal employers to ensure the confidentiality of all personally identifiable information in work-related records generated in response to this rule by making sure that:

• All records that are transmitted to other parties are transmitted consistent with the Privacy Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and their implementing regulations [proposed § 850.40(d)(1)(i)]. DOE recognizes that employers must take these precautions to prevent the violation of privacy laws because personal information could be obtained from transmitted records, or inferred from information other than personal identifiers in the records, unless these precautions are taken.

• Individual medical information generated by the CBDPP is [proposed § 850.40(d)(1)(ii)]:

• Either included as part of the worker's site medical records and maintained by the SOMD, or is maintained by another physician designated by the employer [proposed § 850.40(d)(1)(ii)(A)];

• Required to be maintained as confidential medical records separately from non-medical records [proposed § 850.40(d)(1)(ii)(B)]; and

• Used or disclosed in conformance with any applicable requirement of the American with Disabilities Act of 1990, HIPAA, and any other applicable law or regulation[proposed § 850.40(d)(1)(ii)(C)].

Proposed § 850.40(d)(2) would continue to require employers to maintain all records generated as required by this rule, in current and accessible electronic systems, which include the ability to readily retrieve data in a format that maintains confidentiality. This requirement is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBD-related data.

Proposed § 850.40(d)(3) would require employers to transmit all records generated by this rule to the Office of Environment, Health, Safety and Security, upon request.

Proposed § 850.40(d)(4) would continue to require employers to semi-annually transmit to the Office of Environment, Health, Safety and Security an electronic registry of beryllium and beryllium-associated workers that protects confidentiality, and the registry must include, a unique identifier for each individual, date of birth, gender, site job history, medical screening test results, exposure measurements, surface contamination levels, and results of referrals for specialized medical evaluations. The format of the information transmitted should currently comply with DOE Technical Standard 1187–2007 (DOE–STD–1187–2007), *Beryllium-Associated Worker Registry Data Collection and Management Guidance*, June 2007. Using this format would ensure consistency among DOE sites with respect to Beryllium Registry submittals. DOE expects employers to submit only the information that is already available. DOE does not propose requiring the employer to generate information solely for the purpose of submitting that information to the Beryllium Registry. DOE also believes that using the Beryllium Registry's format would implement DOE's Office of Inspector General's recommendation for CBDPPs in DOE/IG–0726, *Implementation of the Department of Energy's Beryllium-Associated Worker Registry*, April 2006, that Departmental program offices and sites adopt DOE–STD–1187–2007 in their individual CBDPPs.

Proposed § 850.41—Performance Feedback.

Proposed § 850.41 [currently § 850.40] would continue to establish the performance feedback provisions for the CBDPP. Accordingly, proposed § 850.41(a) [currently § 850.40(a)] would be revised for consistency among the sites and would require employers to conduct semi-annual assessments of the following:

• Monitoring results [proposed § 850.41(a)(1)];

• Hazard assessments [proposed § 850.41(a)(2)];

• Medical surveillance [proposed § 850.41(a)(3)]; and

• Exposure reduction efforts [proposed § 850.41(a)(4)].

DOE believes that the assessment of this data is important for the continuous improvement of the program.

Proposed § 850.41(b), would be added to require the assessments to identify any:

• Individuals at risk for beryllium-induced medical conditions and the working conditions that may be contributing to that risk [proposed § 850.41(b)(1)]; and

• Need for additional exposure controls [proposed § 850.41(b)(2)].

To ensure that workers have the information necessary to safely perform their assigned tasks, proposed § 850.41(c) [currently § 850.40(b)], would require employers to notify and make the assessment available to the appropriate Head of DOE Field Element, line managers, work planners, worker protection staff, medical staff, workers, and labor organizations representing beryllium workers performing beryllium activities. DOE believes that the requirement would improve communication among employers, managers, and others to more effectively evaluate and monitor program effectiveness.

D. Appendix A to Part 850— Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory) [Currently Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form]

Proposed appendix A would revise the Chronic Beryllium Disease Prevention Program Informed Consent Form in the current rule by adding text to reflect the proposed amendments to §§ 850.34 and 850.37 requiring mandatory medical evaluations for beryllium workers. As stated earlier, DOE is aware that the term "informed consent" has a different meaning when used in other contexts (*e.g.*, human subject research). The Department, however, used this term in the original 10 CFR part 850 published in December 1999 to ensure beryllium associated workers were informed of the medical evaluation process before medical evaluations were performed. However, DOE is proposing to not use "informed consent" but would use the term "consent" and expand it to address consent for medical evaluations for beryllium workers and beryllium associated workers.

E. Appendix B to Part 850— Beryllium-Associated Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

Proposed Appendix B would be added to reflect the proposed amendments to §§ 850.34 and 850.37 as they relate to the voluntary medical evaluations for beryllium-associated workers.

V. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

This regulatory action has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). The assessment of the potential costs and benefits of the rule required by section 6(a)(3) of the Executive Order has been made a part of the rulemaking file and is available for public review as provided in the **ADDRESSES** section of this NOPR.

Before conducting the assessment, DOE profiled the 22 sites and activities affected by the proposed CBDPP rule and estimated the number of workers affected by the proposed rule. DOE estimated that 20,444 workers may have been or be exposed or potentially exposed in the DOE complex. Based on exposure monitoring data submitted since 2002 to the Beryllium-Associated Worker Registry (BAWR), DOE estimated that 1,261 of these workers are potentially exposed at or above the proposed action level (0.05 μg/m³) or the permissible exposure limit prescribed in the CBDPP rule.

DOE estimated the compliance costs of the proposed amendments to the CBDPP rule for its 22 beryllium sites. The proposed rule is estimated to cost from 13.6 million to $17.2 million (annualized first year costs plus annual costs in 2014 dollars, using a 7 percent discount rate and a 10 year period lifetime of investment. This includes un-annualized first year costs of $41.4 million to $42.7 million, of which $7.8 million to $11.2 million are annually recurring costs. Most costs are related to establishing additional regulated areas, which are estimated to average $37.1 million in initial costs, or 84 to 87 percent of total initial costs. In addition, DOE expects its sites will experience cost-savings attributable to linguistic changes and clarifications in the proposed amendments to 10 CFR part 850.

DOE assessed potential benefits and cost-savings of the proposed amendments to the CBDPP for DOE, DOE contractors, and workers. DOE assessed the following benefits of the proposed CBDPP rule if it is adopted as a final rule: (1) Reduced medical costs; (2) reduced mortality; (3) increased quality of life; (4) increased medical surveillance for workers at risk; (5) increased work-life for beryllium workers; (6) reduced confusion and dispute over the legal liability of DOE and DOE contractors; (7) reduced restrictions and costs for the release and transfer of equipment or areas with potential beryllium contamination; (8) reduced control of areas where measured beryllium is a result of naturally high levels of beryllium in the soil or surrounding environment; (9) reduced turnaround time for sample analysis due to the use of portable laboratories; and (10) reduced medical costs for periodic evaluations due to the Site Occupational Medicine Director's ability to judge that certain medical tests may be unnecessary for some workers.

DOE also assessed the potential economic impact of the proposed rule on the provision of public goods that contain beryllium and the impact on the market for beryllium. DOE assessed each of these potential impacts and determined neither will impose a significant economic impact. DOE determined that the potential reduction in the provision of beryllium-containing public goods will be minimal and, consequently, the reduction in demand for beryllium will be small.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

This proposed rule would update DOE's regulations on CBDPP. This proposed rule applies only to activities conducted by DOE or by DOE's contractors. The contractors who manage and operate DOE facilities would be principally responsible for implementing the rule requirements. DOE considered whether these contractors are "small businesses" as the term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of small business concerns in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. DOE expects that any potential economic impact of this proposed rule on small businesses would be minimal because work performed at DOE sites is under contracts with DOE or the prime contractor at the site. DOE contractors are usually reimbursed through their contracts for the costs of complying with CBDPP requirements. Therefore, most would not be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The information collection provisions of this proposed rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by the current CBDPP rule, and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–5112. That approval covered submission to develop and submit an initial CBDPP to DOE for approval; periodically revise the CBDPP; conduct a baseline inventory of beryllium at the site; notify workers of exposure monitoring results; develop and maintain a registry of beryllium workers; require workers to sign consent forms for beryllium work and medical surveillance; establish and maintain records related to the beryllium inventory and hazard assessment, exposure monitoring, workplace controls and medical surveillance; and establish a performance feedback process for continually evaluating and improving the CBDPP. Accordingly, no additional OMB clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

D. Review Under the National Environmental Policy Act

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

E. Review Under Executive Order 12988

Section 3 of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. Executive agencies are required by section 3(a) to adhere to the following general requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism" (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal" implications and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published does not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. The proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

VI. Public Participation

A. Attendance at the Public Hearings

Public hearings will be held at the times, dates, and places indicated in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the telephone number in the **DATES** section of this NOPR. The person should provide a daytime telephone number where he or she may be reached. A person requesting an opportunity to speak will be notified as to the approximate time he or she will be speaking. Each presentation is limited to 10 minutes. A person making an oral presentation should bring a copy of their statements to the hearing on a CD or USB flash drive and submit them at the registration desk. Foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in this public hearing should advise DOE as soon as possible by contacting Ms. Rogers to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

B. Conduct of the Public Hearings

A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to select the people who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing.

A transcript of each hearing will be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, transcripts may be purchased from the transcribing reporter.

If DOE must cancel the hearings, it will make every effort to give advance notice.

C. Submission of Comments

DOE will accept comments, data and information regarding this proposed rule before or after the public hearings, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule using any of the methods described in the **ADDRESSES** section at the beginning of this notice. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s), *e.g.*, § 850.3(a), to which they refer where possible.

1. *Submitting comments via regulations.gov.* The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE's Office of Environment, Health, Safety and Security staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment. However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the

Confidential Business Information section below.

DOE processes submissions made through *regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *regulations.gov* provides after you have successfully uploaded your comment.

2. *Submitting comments via email, mail or hand delivery/courier.* Comments and documents submitted via email, mail, or hand delivery/courier, also will be posted to *regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD or USB flash drive, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

3. Confidential Business Information. Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail two well-marked copies: One copy of the document marked "CONFIDENTIAL BUSINESS INFORMATION" including all the information believed to be confidential, and one copy of the document marked "NO CONFIDENTIAL BUSINESS INFORMATION" with the information believed to be confidential deleted. Submit these documents via email or CD, if feasible. DOE will make its own determination as to the confidentiality of the information and treat it accordingly. Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

4. *Campaign form letters.* Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

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List of Subjects in 10 CFR Part 850

Beryllium, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

Issued in Washington, DC, on May 16, 2016.

Ernest J. Moniz,

Secretary of Energy.

For the reasons set forth in the preamble, the Department of Energy proposes to revise part 850 of chapter III of title 10 of the Code of Federal Regulations to read as follows:

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

Subpart A—General Provisions

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Appendix A to Part 850—Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

Appendix B to Part 850—Beryllium-Associated Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

Authority: 42 U.S.C. 2201(l)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*, E.O. 12196, as amended.

Subpart A—General Provisions

§ 850.1 Scope.

This part provides for the establishment of a chronic beryllium disease prevention program (CBDPP) for DOE employees and DOE contractor employees, and supplements and is deemed an integral part of the worker safety and health program required under part 851 of this chapter for DOE contractor employees. If there is a conflict between the requirements of this part, and part 851, this part controls.

§ 850.2 Applicability.

(a) This part applies to:

(1) DOE contractors and DOE offices responsible for operations or activities that involve present or past exposure, or the potential for exposure, to airborne concentrations of beryllium at or above the action level at DOE sites;

(2) Any current DOE contractor employee and DOE employee at a DOE site who was exposed or potentially exposed to airborne concentrations of beryllium at or above the action level at a DOE site; and

(3) The Site Occupational Medical Directors (SOMD) responsible for providing the overall direction and operation of the employer's beryllium medical surveillance program.

(b) This part does not apply to:

(1) Activities involving beryllium articles; and

(2) DOE laboratory operations that meet the definition of laboratory use of hazardous chemicals in 29 CFR 1910.1450, *Occupational Exposure to Hazardous Chemicals in Laboratories*.

§ 850.3 Definitions.

(a) As used in this part:

Action level means the airborne concentration of beryllium which, at or above, triggers the implementation of worker protection provisions as specified in § 850.23 of this part are required.

Authorized person means any person required by work duties to be in a regulated area.

Beryllium means elemental beryllium, beryllium oxide, and any alloy containing 0.1% or greater of beryllium by weight that may be released as an airborne particulate.

Beryllium activity means any activity taken for or by DOE at a DOE site that can expose workers to levels of airborne beryllium at or above the action level, including the disturbance of legacy beryllium-containing dust.

Beryllium article means a "commercially available, off-the-shelf" item composed of beryllium that is formed to a specific shape or design during manufacture, has end-use functions that depend in whole or in part on its shape or design during end use, and which does not release particulate beryllium at or above the action level under normal conditions of use.

Beryllium-associated worker means a current worker, who was exposed or potentially exposed to airborne concentrations of beryllium at a DOE site, including a worker:

(1) Whose work history shows that the worker may have been exposed to airborne concentrations of beryllium at a DOE site;

(2) Who exhibits signs or symptoms of beryllium exposure; or

(3) Who is receiving medical removal benefits under this part.

Beryllium emergency means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected and significant release of beryllium at a DOE site.

Beryllium-Induced Lymphocyte Proliferation Test (BeLPT) is an in vitro measure of the beryllium antigen-specific, cell-mediated immune response to beryllium. In this part, a split sample BeLPT (where one blood draw is split and sent to two different testing facilities) would constitute two tests for purposes of diagnosing BeS.

Beryllium-induced medical condition refers to CBD and BeS. Other diseases may resemble CBD, but are not attributable to beryllium.

Beryllium Registry refers the DOE Beryllium-Associated Worker Registry.

Beryllium regulated area means an area demarcated by the employer in which the airborne concentration of beryllium at or above, or can reasonably be expected to be at or above, the action level.

Beryllium sensitization or sensitivity (BeS) means a condition diagnosed by the SOMD based on any of the following:

(1) Two abnormal blood BeLPT results;

(2) One abnormal and one borderline blood BeLPT; or

(3) One abnormal BeLPT test of alveolar lung lavage cells.

Beryllium worker means a current worker who is exposed or potentially exposed to levels of airborne concentration of beryllium at or above the action level in the course of the worker's employment in a DOE beryllium activity.

Breathing zone is a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.

Chronic beryllium disease (CBD) means a condition diagnosed by the SOMD based on the worker having the following:

(1) BeS as defined in this section; and

(2) A lung biopsy showing non-caseating granulomas or lymphocytic process consistent with CBD; or radiographic (including computed tomographic (CT) scans) and pulmonary function testing results consistent with pulmonary granulomas.

Cognizant Secretarial Officer (CSO) means, with respect to a particular situation, the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor, or any other official to whom the CSO delegates in writing a particular function under this part.

Contractor means any entity, including affiliated entities, such as a parent corporation, under contract with DOE, or a subcontractor at any tier that has responsibilities for performing beryllium work at a DOE site in furtherance of a DOE mission.

DOE means the U.S. Department of Energy.

DOE site means a DOE-owned or -leased area or location or other area or location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission.

Employer means:

(1) For DOE contractors employees, the DOE contractor that is directly responsible for the safety and health of DOE contractor employees while performing a beryllium activity or other activity at a DOE site; or

(2) For DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal employees while performing a beryllium activity or other activity at a DOE site; or

(3) Any person acting directly or indirectly for a DOE office or contractor with respect to terms and conditions of employment of beryllium and beryllium-associated workers.

Final medical determination means the final written medical determination of the SOMD as to whether the beryllium worker should be permanently removed because of BeS or CBD as those terms are defined in this part. If the worker is eligible and has elected the multiple physician review or alternate physician's review, the SOMD issues the final medical determination at the conclusion of such process. The initial determination is also the final determination if the worker does not make a timely request for a multiple physician review or alternate physician review.

Head of DOE Field Element means an individual who is the manager or head of the DOE operations office or field office.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97% of 0.3 micrometer mono-dispersed particles.

Medical removal benefits means the employment benefits established by § 850.36 of this part for beryllium workers who are temporarily or permanently medically removed from beryllium activities at or above the action level following a determination by the SOMD that removal is warranted.

Medical restriction means the outcome of the process in which the SOMD recommends that the worker be restricted from a job that involves a beryllium activity when health evaluations indicate the worker is not suffering from CBD or has not been sensitized to beryllium, but the SOMD determines that exposure to beryllium at or above the action level is contraindicated due to other medical conditions of the worker. In addition, medical restrictions must be performed in accordance with 10 CFR part 851, appendix A, section 8.

Qualified Individual means an individual designated by the employer who possesses the knowledge, skills, and abilities needed to implement an industrial hygiene program (*i.e.*, an individual who is either a certified industrial hygienist or has a college degree in industrial hygiene or a related scientific, engineering, or technical degree); who has completed special studies and training in industrial hygiene; and who has at least five years of full-time employment in the professional practice of industrial hygiene.

Site Occupational Medical Director (SOMD) means the physician responsible for the overall direction and operation of the site occupational medicine program.

Surface levels of beryllium means the amount of beryllium easily removed from surfaces by means such as casual contact, wiping, or brushing.

Unique identifier means the part of a paired set of labels, used in records that contain confidential information that does not identify individuals except by using the matching label.

Worker means an employee of DOE, or a DOE contractor or subcontractor at any tier, who performs work in furtherance of a DOE mission at a DOE site.

(b) Terms undefined in this part that are defined in the Atomic Energy Act of 1954, as amended, or 10 CFR part 851, *Worker Safety and Health Program*, have the same meaning as under that Act and regulation, as applicable.

§ 850.4 Enforcement.

DOE may take appropriate steps pursuant to part 851 of this chapter to enforce compliance by contractors with this part and any DOE-approved contractor CBDPP.

§ 850.5 Dispute resolution.

(a) Any worker who is adversely affected by an action taken, or a failure to act, under this part may petition the Office of Hearings and Appeals for relief in accordance with 10 CFR part 1003, subpart G, *Office of Hearings and Appeals Procedural Regulations; Private Grievances and Redress*, subject to paragraphs (b) and (c) of this section.

(b) The Office of Hearings and Appeals may elect not to accept a petition from a worker unless the worker had requested that the employer correct the violation, and the employer refused or failed to take corrective action within a reasonable time.

(c) If the dispute relates to a term or condition of employment that is covered by a grievance-arbitration provision in a collective bargaining agreement, the worker must exhaust all applicable grievance-arbitration procedures before filing a petition for relief with the Office of Hearings and Appeals. A worker is deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed since the filing of a grievance and a final decision has not been issued.

§ 850.6 Interpretations, binding interpretive rulings, and requests for information.

Requests for legal interpretations, binding interpretive rulings, and requests for information regarding this part must be in accordance 10 CFR 851.6, *Petitions for generally applicable rulemaking*, 851.7, *Requests for a binding interpretative ruling*, or 851.8, *Informal requests for information*, respectively.

Subpart B—Administrative Requirements

§ 850.10 Development and approval of the CBDPP.

(a) *Preparation and submittal of CBDPP to DOE.* (1) Subject to the provisions of § 851.13 of this part, each employer engaged in beryllium activities at a DOE site must submit a CBDPP for review and approval, as indicated in § 850.10(b), no later than [date *90 days after effective date of final rule*];

(2) Each employer at a DOE site which is not engaged in beryllium activities but which employs beryllium-associated workers must submit a CBDPP with the provisions applicable to those workers (*e.g.*, medical evaluations, training, recordkeeping) for review and approval as indicated in § 850.10(b), no later than [date *90 days after effective date of final rule*];

(3) If the CBDPP has separate sections addressing the beryllium activities of multiple contractors at the site, the Head of DOE Field Element will designate a single contractor to review the sections prepared by the other contractors, so that a single consolidated CBDPP for the site is submitted to the Head of DOE Field Element for review and approval; and

(4) Employers at a multiple contractor site must share relevant information generated by the assessment required by § 850.41(a), to ensure the safety and health of their workers.

(b) *DOE review and approval.* (1) The appropriate Head of DOE Field Element must review and provide written approval or rejection of the applicable contractor's CBDPP, or any updates to the CBDPP, within 90 working days of receiving the document. The appropriate Head of DOE Field Element may direct the applicable contractor to modify the CBDPP or any updates to the CBDPP during their review.

(2) The appropriate CSO must review and provide written approval or rejection of the CBDPP, or any updates to the CBDPP submitted by DOE offices within 90 working days of receiving the document. The appropriate CSO may direct the DOE office to modify the CBDPP or any updates to the CBDPP during their review.

(3) The CBDPP and any updates are deemed approved 90 working days after submission to the Head of DOE Field Element or the CSO, if they are not specifically approved or rejected earlier.

(4) Employers must furnish a copy of the approved CBDPP to the Office of Environment, Health, Safety and Security; DOE program offices; and affected workers or their designated representative upon request.

(c) *Updates.* Employers must submit an update of the CBDPP for review and approval within 30 working days after a significant change or significant addition to the CBDPP is made or warranted, or a change in contractors occurs. The Head of DOE Field Element or appropriate CSO, as applicable, must review the CBDPP at least annually and,

if appropriate, require the employer to update the CBDPP.

(d) *Labor organizations.* If an employer employs or supervises workers who are represented for collective bargaining purposes by a labor organization, the employer must:

(1) Give the labor organization timely notice of the development and implementation of the CBDPP and any updates thereto; and

(2) Upon timely request, bargain concerning implementation of this part, consistent with Federal labor laws and this part.

§ 850.11 General CBDPP requirements.

(a) The CBDPP must specify existing and planned beryllium activities.

(b) The scope and content of the CBDPP must be commensurate with the hazard of the activities performed. In all cases it must:

(1) Include formal plans and measures for maintaining exposures to beryllium that are below the levels prescribed in § 850.22;

(2) Satisfy the requirements in subpart C, *Specific Program Requirements,* of this part; and

(3) Contain provisions for minimizing the number of:

(i) Workers exposed to airborne concentrations of beryllium at or above the action level; and

(ii) Instances in which workers are exposed to airborne concentrations of beryllium at or above the action level.

§ 850.12 Implementation.

(a) Employers must manage and control beryllium activities consistent with the approved CBDPP.

(b) Activities that are outside the scope of the approved CBDPP involving unexpected exposure to airborne concentrations of beryllium at or above the action level may only be initiated upon written approval by the Head of DOE Field Element or appropriate CSO, as applicable.

(c) No person employed by DOE or a DOE contractor may take or cause any action inconsistent with the requirements of this part, an approved CBDPP, or any other applicable Federal statute or regulation concerning the exposure of workers to levels of beryllium at a DOE site.

(d) Nothing in this part precludes an employer from taking any additional protective actions that it determines to be necessary to protect the safety and health of workers provided that the employer continues to comply with the requirements of this part.

(e) Nothing in this part is intended to diminish the responsibilities of DOE officials under the Federal Employee Occupational Safety and Health Program (29 CFR part 1960) and related DOE directives.

§ 850.13 Compliance.

(a) Employers may continue to conduct beryllium activities in compliance with their previously approved CBDPP until [*date 1 year after the effective date of the final rule*].

(b) Employers must conduct activities under their approved CBDPP in compliance with this part as issued on [*effective date of the final rule*] by *[1 year after the effective date of the final rule*].

(c) With respect to a particular beryllium activity, the contractor in charge of the activity is responsible for complying with this part. If no contractor is responsible for the beryllium activity, and Federal employees perform the activity, DOE must ensure implementation of, and compliance with, this part.

Subpart C—Specific Program Requirements

§ 850.20 Beryllium inventory.

(a) The employer must identify and develop an inventory of beryllium activities and locations of potential beryllium contamination. In developing the inventory the employer must:

(1) Review current and historical records;

(2) Interview workers;

(3) Conduct air, surface, and bulk sampling, as appropriate, to characterize the beryllium and its locations; and

(4) Document the locations of beryllium at or above the action level at the site.

(b) Inventory results obtained within 12 months prior to [*effective date of the final rule*] may be used to satisfy this requirement if a Qualified Individual determines that conditions represented by the results have not changed in a manner that warrants changes in the beryllium inventory. The employer must update the beryllium inventory at least annually and when significant changes occur to beryllium activities.

(c) The employer must ensure that the beryllium inventory is conducted and managed by a Qualified Individual as defined in this rule.

§ 850.21 Hazard assessment and abatement.

(a) Employers must conduct a beryllium hazard assessment if the inventory establishes the presence of airborne beryllium that is potentially at or above the action level.

(b) The beryllium hazard assessment must be conducted in accordance with 10 CFR 851.21, *Hazard Identification and Assessment.*

(c) Beryllium hazards must be abated in accordance with 10 CFR 851.22, *Hazard prevention and abatement.*

(d) Employers must ensure that paragraphs (a) through (c) of this section are managed by a Qualified Individual as defined in this part.

§ 850.22 Permissible exposure limit.

(a) Employers must ensure that no worker is exposed to an airborne concentration of beryllium greater than the 8-hour TWA PEL established in 29 CFR 1910.1000, as measured in the worker's breathing zone by personal monitoring, or a more stringent 8-hour TWA PEL that may be promulgated by the Occupational Safety and Health Administration (OSHA) as an expanded health standard for beryllium.

(b) DOE must inform employers through a notice in the **Federal Register** of any applicable changes to the OSHA 8-hour TWA PEL described in paragraph (a) of this section.

§ 850.23 Action level.

(a) Employers must include in their CBDPPs an action level that is no greater than 0.05 $\mu g/m^3$, calculated as an 8-hour time weighted average exposure, as measured in the worker's breathing zone by personal monitoring.

(b) If the airborne level of beryllium is at or above the level specified in paragraph (a) of this section, employers must implement §§ 850.24(c) (periodic exposure monitoring), 850.25 (exposure reduction), 850.26 (beryllium regulated areas), 850.27 (hygiene facilities and practices), 850.28 (respiratory protection), 850.29 (protective clothing and equipment),850.30 (housekeeping), and 850.39 (warning signs and labels).

§ 850.24 Exposure monitoring.

(a) *General.* (1) The employer must ensure that exposure monitoring is managed by a Qualified Individual and conducted as specified in the approved CBDPP.

(2) The employer must ensure that:

(i) Air exposure levels are determined by conducting breathing zone sampling and reported as the 8-hour time-weighted average level to which a worker would be exposed if the worker were not using respiratory protective equipment.

(ii) Surface levels of beryllium are determined by using:

(A) Wet wipes; or

(B) Dry wipes if wet wipes would have an undesirable effect on the surface being sampled or surrounding surfaces, or if it is not technically feasible because the texture of the surface is not compatible with wet wiping methods; or

(C) Vacuum surface sampling if wipes are not technically feasible because the texture of the surface is not compatible with wiping methods; or

(D) Bulk sampling where accumulations of material on a surface exceed amounts that are conducive to wipe or vacuum sampling.

(3) Surface sampling is not required for the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems, or normally inaccessible surfaces such as under fixed cabinets or on the tops of overhead structural beams, unless these surfaces will become accessible or disturbed by planned work activity.

(b) *Initial exposure monitoring.* (1) Employers, except as provided for in paragraphs (b)(2) and (3) of this section, must perform initial exposure monitoring when the inventory and hazard assessment show there is, or the potential for, airborne concentrations of beryllium at or above the action level.

(2) Monitoring results obtained within 12 months prior to [*effective date of the final rule*] may be used to satisfy this requirement if a Qualified Individual determines that conditions represented by the results have not changed in a manner that would necessitate changes in beryllium controls.

(3) Where the employer has relied upon objective data that demonstrate that beryllium is not capable of being released in airborne concentrations at or above the action level under the expected conditions of processing, use, or handling, then no initial monitoring is required.

(c) *Periodic exposure monitoring.* (1) The employer must conduct periodic exposure monitoring of workers in locations where the airborne concentration of beryllium is at or above the action level. The monitoring must be conducted:

(i) In a manner and at a frequency necessary to represent workers' exposures; and

(ii) For the first year of operation, at least quarterly (every three months).

(2) After the first year, and subject to paragraph (d) of this section, the employer may reduce or terminate monitoring if it demonstrates that the airborne concentration of beryllium is below the action level for 6 months, based on an analysis of monitoring results and of any activities, controls, or other conditions that would affect beryllium levels. If the employer cannot demonstrate that the airborne concentration of beryllium is below the action level, the employer must continue periodic monitoring on a quarterly basis.

(d) *Additional exposure monitoring.* The employer must conduct additional monitoring whenever there has been a production, process, control, or other change that may result in an exposure to beryllium that is at or above the action level. This monitoring must continue on a quarterly basis until the employer can demonstrate that the airborne concentration of beryllium is below the action level.

(e) *Analysis quality assurance.* (1) All samples collected to satisfy the monitoring requirements of this part must be analyzed in a laboratory that:

(i) Is accredited for beryllium analysis by the American Industrial Hygiene Association's Laboratory Accreditation Programs, LLC (AIHA–LAP, LLC), or

(ii) Is certified or accredited by a recognized laboratory quality assurance certifying or accrediting organization and demonstrates quality assurance for metal analysis, including beryllium, that is equivalent to AIHA–LAP, LLC accreditation for beryllium.

(2) The employer may use:

(i) Field or portable laboratories that are accredited by an AIHA–LAP, LLC or in an equivalent quality assurance program that addresses field or portable laboratory analyses of beryllium samples; and

(ii) Air exposure results below laboratory reporting limits.

(f) *Notification of monitoring results.* (1) The employer must notify workers in the same work area of the exposure monitoring results within 10 working days after receipt of the results. Notifications of exposure monitoring results must be:

(i) In written or electronic format and posted in locations or in electronic systems that are readily accessible to the workers, but in a manner that does not identify an individual worker; and

(ii) For individuals that were sampled, the results must be provided in written or electronic format directly to the individual.

(2) If the monitoring results indicate that exposures are at or above the action level, the employer's notification of exposure monitoring results must include:

(i) A statement that exposures are at or above the specified level;

(ii) A description of the controls being implemented to address those exposures.

(3) If the monitoring results indicate that worker exposure is at or above the action level, the responsible employer must also notify the appropriate Head of DOE Field Element and the SOMD of these results within 10 working days after receipt of the results.

§ 850.25 Exposure reduction.

The employer must establish a formal hazard prevention and abatement program in accordance with 10 CFR 851.22, *Hazard Prevention and Abatement,* to reduce exposures to below the action level.

§ 850.26 Beryllium regulated areas.

(a) Employers must establish a beryllium regulated area in facilities wherever the level of airborne beryllium is at or above the action level;

(b) Employers must:

(1) Demarcate beryllium regulated areas from the rest of the workplace in a manner that adequately alerts workers to the boundaries of such areas;

(2) Limit access to beryllium regulated areas to authorized persons; and

(3) Keep records of all individuals who enter beryllium regulated areas that include the name, date, time in and time out, and work activity.

§ 850.27 Hygiene facilities and practices.

(a) *General.* The employer must ensure that in beryllium regulated areas:

(1) Food or beverage and tobacco products are not consumed or used;

(2) Cosmetics are not applied, except in changing rooms or areas and shower facilities required under paragraphs (b) and (c) of this section; and

(3) Workers are prevented from exiting areas that contain beryllium with contamination on their bodies or their personal clothing.

(b) *Change rooms or areas.* The employer must:

(1) Provide separate rooms or areas for beryllium workers to change into, and store, personal clothing and clean protective clothing and equipment; and

(2) Ensure that changing rooms or areas being used to remove beryllium-contaminated clothing and protective equipment are kept under negative pressure or located so as to minimize dispersion of beryllium into clean areas.

(c) *Showers and hand washing facilities.* The employer must:

(1) Provide handwashing and shower facilities for beryllium workers who work in beryllium regulated areas; and

(2) Ensure that beryllium workers who work in beryllium regulated areas shower at the end of their work shifts.

(d) *Lunchroom facilities.* The employer must:

(1) Provide lunchroom facilities that are readily accessible to beryllium workers and in which the airborne concentration of beryllium is not at or above the action level.

(2) Ensure that beryllium workers do not enter lunchroom facilities with

protective clothing or equipment that has been used in a regulated area unless the surfaces have been cleaned by HEPA vacuuming or other method that removes beryllium without dispersing it.

(e) The change rooms or areas shower and handwashing facilities, and lunchroom facilities must comply with 29 CFR 1910.141, *Sanitation*.

§ 850.28 Respiratory protection.

(a) The employers must provide a respiratory protection in accordance with 10 CFR 851.23, *Safety and Health Standards*, and 10 CFR part 851, appendix A, section 6. *Industrial Hygiene*.

(b) [Reserved]

§ 850.29 Protective clothing and equipment.

(a) The employer must provide protective clothing and equipment to beryllium workers and ensure its appropriate use and maintenance by workers where dispersible forms of beryllium may contact workers' skin, enter openings in workers' skin, or contact workers' eyes including where:

(1) Exposure monitoring has established that the airborne concentration of beryllium is at or above the action level;

(2) Surface contamination levels measured or presumed prior to initiating work are at or above the level prescribed in § 850.30;

(3) Surface contamination levels results obtained to confirm housekeeping efforts are above the level prescribed in § 850.30; and

(4) Any worker requests the use of protective clothing and equipment for protection against airborne beryllium, regardless of the measured exposure level.

(b) Employers must comply with 29 CFR 1910.132, *Personal Protective Equipment General Requirements*, when workers use personal protective clothing and equipment.

(c) Employers must establish procedures for donning, doffing, handling, and storing protective clothing and equipment that:

(1) Prevent beryllium workers from exiting beryllium regulated areas with contamination on their bodies or clothing; and

(2) Include beryllium workers exchanging their personal clothing and footwear for protective clothing and footwear before entering beryllium regulated areas.

(d) Employers must ensure that no worker removes beryllium-contaminated protective clothing and equipment from beryllium regulated areas except for workers authorized to launder, clean, maintain, or dispose of the clothing and equipment.

(e) Employers must prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other cleaning methods that may disperse beryllium into the air.

(f) Employers must ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness. Employers must:

(1) Ensure that beryllium-contaminated protective clothing and equipment when removed for laundering, cleaning, maintenance, or disposal is placed in containers that prevent the dispersion of beryllium particulate and that the container is labeled in accordance with § 850.39(b)(1); and

(2) Inform organizations that launder or clean DOE beryllium-contaminated clothing or equipment that exposure to beryllium is harmful, and that clothing and equipment should be laundered or cleaned in a manner prescribed by the informing employer to prevent the dispersion of beryllium particulates.

§ 850.30 Housekeeping.

(a) Where beryllium is present in operational areas of DOE facilities at or above the action level, the employer must conduct routine surface sampling to determine housekeeping conditions. Surfaces contaminated with beryllium dusts and waste must not exceed a removable contamination level of 3 $\mu g/100 cm^2$ during non-operational periods. This sampling would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems.

(b) When cleaning floors and surfaces of removable beryllium, the employer must use a wet method, HEPA vacuuming, or other cleaning methods that avoid the dispersion of dust, such as wiping with sticky cloths. Compressed air or dry methods that may disperse beryllium particulates must not be used for such cleaning.

(c) The employer must use vacuum units that are equipped with HEPA filters, as defined in this part, to clean beryllium-contaminated surfaces, and change the filters as often as needed to maintain the effectiveness of the vacuum unit.

(d) The employer must ensure that the cleaning equipment that is used to clean beryllium-contaminated surfaces is labeled in accordance with § 850.39(b), controlled, and not used for non-hazardous materials.

§ 850.31 Release and transfer criteria.

(a) *Release and transfer*. Except where the beryllium is in normally inaccessible locations or embedded in hard-to-remove substances, prior to the release or transfer of equipment, items, or areas to areas that are not beryllium regulated areas, the employer must ensure that for formerly beryllium-contaminated equipment, items or areas the removable contamination level does not exceed the following:

(1) Surface level of beryllium is at or below 0.2 $\mu g/100 cm^2$; or

(2) Concentration of beryllium in bulk material on the surface is lower than the concentration in soil at the point of release; or

(3) Airborne levels of beryllium in an enclosure of the smallest practical size surrounding the equipment or item, or in an isolating enclosure of the area do not exceed 0.01 $\mu g/m^3$.

(b) *Release or transfer with inaccessible beryllium*. For the release from a beryllium regulated area of equipment, items, or areas that contain sources of beryllium in normally inaccessible locations or embedded in hard-to-remove substances, the employer must comply with paragraphs (a)(1) through (3) of this section for accessible beryllium, and the employer must ensure that:

(1) The equipment, item, or area is labeled in accordance with § 850.39(b)(2); and

(2) The release is conditioned on the recipient's commitment to implement controls that will prevent foreseeable beryllium exposure, considering the nature of the equipment or item or area and its future use.

(c) *Release or transfer with levels that exceed 0.2 $\mu g/100 cm^2$*. For equipment, items, or areas that have removable beryllium above 0.2 $\mu g/100 cm^2$; or that have beryllium in material on the surface at levels above the natural level in soil at the point of release, the employer must:

(1) Provide the recipient with a copy of this part;

(2) Condition the release on the recipient's commitment to control foreseeable beryllium exposures from the equipment, item, or area considering its future use;

(3) Label the equipment, item, or area in accordance with § 850.39(a) or (b)(1), as applicable;

(4) Place any such equipment or items in sealed, impermeable bags or containers, or have sealants applied that prevent the release of beryllium during handling and transportation; and

(5) Ensure that the beryllium that remains removable on the surfaces of areas is below 3.0 $\mu g/100 cm^2$.

§ 850.32 Waste disposal.

(a) When disposing of beryllium waste, the employer must:

(1) Use sealed, impermeable bags, containers, or enclosures to prevent the release of beryllium dust during handling and transportation; and

(2) Label the bags, containers and enclosures for disposal according to § 850.39(b)(1).

(b) [Reserved]

§ 850.33 Beryllium emergencies.

(a) The employers must provide and ensure compliance with procedures for handling beryllium emergencies as they relate to decontamination and decommissioning operations and all other operations, that are in accordance with 10 CFR 851.23, *Safety and Health Standards*.

(b) [Reserved]

§ 850.34 Medical surveillance.

(a) *General*. Employers must establish and implement a medical surveillance program which is mandatory for beryllium workers and voluntary for the beryllium-associated workers. Employers must:

(1) Designate a SOMD who is responsible for administering the medical surveillance program;

(2) Ensure that the medical evaluations and procedures required by this section are performed by, or under the supervision of, a licensed physician who is qualified to diagnose beryllium-induced medical conditions;

(3) Establish and maintain a list of all beryllium and beryllium-associated workers; and

(4) Provide the SOMD with the information needed to operate and administer the medical surveillance program, including:

(i) The list of workers established pursuant to paragraph (a)(3) of this section;

(ii) Hazard assessment and exposures monitoring data;

(iii) The identity and nature of activities that are covered under the CBDPP;

(iv) A description of the workers' duties as they pertain to exposures to levels of beryllium at or above the action level;

(v) Records of the workers' beryllium exposures;

(vi) A description of the personal and respiratory protective equipment used by the workers; and

(vii) A copy of this part.

(5) Ensure that the SOMD and beryllium or beryllium-associated workers complete the consent form in appendix A of this part for beryllium workers or appendix B of this part for beryllium-associated workers, before performing any medical evaluations for beryllium or beryllium-associated workers.

(6) Notify beryllium-associated workers on an annual basis of their right to participate in the medical surveillance program. If the beryllium-associated worker declines at that time, he or she may elect to participate at any time during the year, but must notify the employer in writing of his or her intent to participate.

(b) *Medical evaluations and procedures*. Employers must provide the medical evaluations and procedures required by this section at no cost to the worker, without loss of pay, and at a time and place that is reasonable and convenient for the worker.

(1) *Baseline medical evaluations*. (i) Employers must provide baseline medical evaluations that are:

(A) Mandatory for beryllium workers; and

(B) Voluntary for beryllium-associated workers.

(ii) Baseline medical evaluations must include:

(A) A detailed medical and work history with emphasis on exposure or the potential for exposure to beryllium;

(B) A respiratory symptoms questionnaire;

(C) A physical examination, with special emphasis on the respiratory system, skin and eyes;

(D) A chest radiograph (posterior-anterior, 14 x 17 inches) or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist, unless there is an existing baseline chest radiograph that may be used to meet this requirement;

(E) Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV_1);

(F) Two peripheral blood BeLPTs; and

(G) Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

(iii) [Reserved]

(2) *Periodic medical evaluations*. (i) Employers must provide:

(A) An annual medical evaluation to beryllium workers;

(B) A medical evaluation every three years to beryllium-associated workers who voluntarily participate in the program; and

(C) A medical evaluation to a beryllium worker or a beryllium-associated worker who voluntarily participates in the program, and when the worker exhibits signs and symptoms of beryllium sensitization or chronic beryllium diseases if the SOMD determines that an evaluation is warranted.

(ii) The periodic medical evaluation must include the following:

(A) A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement.

(B) Updates to the worker's medical and work history with emphasis on exposures to levels of beryllium;

(C) A respiratory symptoms questionnaire;

(D) A physical examination, with special emphasis on the respiratory system, skin and eyes;

(E) Two peripheral blood Be-LPTs; and

(F) Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

(3) *Emergency evaluation*. The employer must provide a medical evaluation as soon as possible to any worker who may have been exposed to beryllium because of a beryllium emergency, as defined in this part. The medical evaluation must include the tests and examinations listed in paragraph (b)(2)(ii) of this section.

(4) *Exit medical evaluation*. (i) If a baseline or periodic evaluation has not been performed within the previous six months, employers must:

(A) Provide an exit medical evaluation to beryllium workers at the time of the worker's separation from employment; and

(B) Offer an exit medical evaluation to beryllium-associated workers who voluntarily participate in the medical surveillance program at the time of the worker's separation from employment.

(ii) The exit medical evaluation must include:

(A) A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement.

(B) Updates of the workers' medical and work history with emphasis on exposures to levels of beryllium;

(C) A respiratory symptoms questionnaire;

(D) A physical examination, with special emphasis on the respiratory system, skin and eyes;

(E) Two peripheral blood Be-LPTs; and

(F) Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

(c) [Reserved]

(d) *Written medical opinions and determinations.* The SOMD must provide a written, signed medical opinion and determination after receiving the results from the medical evaluations performed pursuant to paragraph (b) of this section.

(1) *Written medical opinion and determination for beryllium and beryllium-associated workers.* (i) Within 15 working days after receiving the results from the evaluations performed pursuant to paragraph (b)(1) through (3) of this section, the SOMD must provide the beryllium or beryllium-associated worker with:

(A) A written medical opinion containing the purpose and results of all medical tests or procedures;

(B) An explanation of any abnormal findings;

(C) The basis for the SOMD's medical opinion;

(D) Any determination of whether:

(*1*) In the case of a beryllium worker, temporary or permanent removal of the beryllium worker from beryllium exposure is warranted pursuant to § 850.36; or

(*2*) A medical restriction pursuant to 10 CFR part 851, appendix A, section 8(h) is appropriate for the worker.

(E) An opportunity to ask, and have answered, questions regarding the information provided.

(ii) The written medical opinion must take into account the findings, determinations and recommendations of physicians who have examined the worker and provided written results of such examination to the SOMD, provided the examining physician is qualified to diagnose beryllium-induced conditions.

(iii) The SOMD must obtain the beryllium or beryllium-associated worker's dated signature on a copy of the written opinion and include it in the worker's medical record. If the worker declines to sign the statement, then the SOMD must make a record of that fact, the date on which the information was provided, and that the worker declined to sign the statement.

(iv) Within 15 working days after receiving the results from an exit evaluation performed pursuant to § 850.34(b)(4), the SOMD must provide the worker with:

(A) A written medical opinion containing the purpose and results of all medical tests or procedures;

(B) An explanation of any abnormal findings;

(C) The basis for the SOMD's medical opinion; and

(D) An opportunity to ask, and have answered, questions regarding the information provided.

(2) *Written medical opinion and determination for the employer.* (i) Within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(i) of this section to the beryllium or beryllium-associated worker, the SOMD must provide the employer with a written medical opinion that includes:

(A) The diagnosis of the worker with BeS or CBD, or any other medical condition for which exposure to beryllium at or above the action level would be contraindicated.

(B) A determination of whether:

(*1*) In the case of a beryllium worker, temporary or permanent removal of the worker from beryllium exposure is warranted pursuant to § 850.36 of this part; or

(*2*) A medical restriction pursuant to 10 CFR part 851, appendix A, section 8(h) is appropriate for the worker; and

(C) A statement that the SOMD has clearly explained to the worker the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that requires further evaluations or treatment.

(ii) The SOMD's written medical opinion to the employer must not reveal specific records, findings, and diagnoses that are not related to beryllium-induced conditions or other medical conditions indicating the worker should not perform certain job tasks.

(iii) Within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(iv) of this section, for an exit evaluation performed pursuant to § 850.34(b)(4) of this part, the SOMD must provide the employer with the diagnosis of the worker's condition or indicating the worker should not perform certain job tasks.

(3) [Reserved]

(e) *Multiple physician review process.* (1) The employer must establish a multiple physician review process for beryllium and beryllium-associated workers that allows for the review of initial medical findings, determinations, or recommendations from any medical evaluation conducted pursuant to paragraphs (b)(1) through (3) [*i.e.,* baseline, periodic or emergency evaluation] of this section.

(2) Within 15 working days after the employer receives the written medical determination pursuant to paragraph (d)(2) of this section, the employer must notify a beryllium or beryllium-associated worker in writing of the worker's right to elect the multiple physician review process or alternate physician review process pursuant to this section.

(3) The employer's participation in, and payment for, the multiple physician review process for a beryllium-associated worker is conditioned on the worker's participation in the medical surveillance program pursuant to paragraph (b) of this section.

(4) The beryllium or beryllium-associated worker must:

(i) Notify the employer in writing within 15 working days after receiving the employer's written notification pursuant to paragraph (e)(2) of this section, of the worker's intention to seek a second opinion on the results of any medical evaluation conducted pursuant to paragraphs (b)(1) through (3) of this section;

(ii) Identify in writing to the SOMD within 20 working days after delivering the notice pursuant to paragraph (e)(4)(i) of this section, a physician who is qualified to diagnose beryllium-induced medical conditions to:

(A) Review all findings, determinations, or recommendations of the initial physician;

(B) Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review; and

(C) Provide the employer and the worker with a written medical opinion within 30 working days after completing the review pursuant to paragraphs (e)(4)(ii)(A) and (B).

(5) If the findings, determinations, or recommendations of the two physicians differ significantly, then the employer and the beryllium or beryllium-associated worker must make efforts to encourage and assist the two physicians to resolve the disagreement.

(6) If the two physicians are unable to resolve their disagreement, then the employer and the beryllium or beryllium-associated worker, through their respective physicians, must designate a third physician to:

(i) Review any findings, determinations, or recommendations of the other two physicians;

(ii) Conduct such examinations, consultations, laboratory tests, and consultations with the other two physicians as the third physician deems necessary to resolve the disagreement among them; and

(iii) Provide the employer and the beryllium or beryllium-associated worker with a written medical opinion within 30 working days after completing the review pursuant to paragraphs (e)(6)(i) and (ii) of this section.

(7) The SOMD's written medical opinion must be consistent with the findings, determinations, and recommendations of the third physician, unless the SOMD and the beryllium or beryllium-associated worker reach an agreement that is consistent with the determinations of at least one of the other two remaining physicians.

(8) The employer must complete the multiple physician review process even in cases where the beryllium or beryllium-associated worker is laid off or his contract ends before the review process is complete, provided the worker:

(i) Elected the multiple physician review while he or she was a current worker and in accordance with the conditions set forth in paragraph (e)(4) of this section; and

(ii) Continues to participate in good faith in the multiple physician review process. If the worker's job is scheduled to end prior to the completion of the multiple physician review process, the employer may elect to place the worker on unpaid leave status until the review process is completed.

(9) The employer is not required to provide the multiple physician review process if the worker had not elected the process in accordance with the conditions set forth in paragraph (e)(4) of this section, before he or she was laid off or contract ended. In this case, the worker may still be eligible for medical screening through DOE's Former Worker Medical Screening Program;

(f) *Alternate physician review.* The employer and the beryllium or beryllium-associated worker, or the worker's designated representative, may agree on the use of an alternate form of physician opinion and recommendation in lieu of the multiple physician review process pursuant to paragraph (e) of this section, as long as the alternative is expeditious and adequately protects the worker.

(g) *Reporting.* (1) When reporting cases of CBD, employers must comply with the reporting requirements in 10 CFR 851.23(a)(2).

(2) When a worker is medically removed in accordance with § 850.36, employers must record the case on the applicable OSHA form.

(3) Employers must enter each medical removal case on the applicable OSHA form as either a case involving days away from work if the worker does not work during the removal period, or a case involving restricted work activity, if the employee continues to work, but in an area where there is no exposure to beryllium.

§ 850.35 Medical restriction.

(a) Medical restrictions must be conducted in accordance with 10 CFR part 851, appendix A, section 8(h).

(b) Within 15 working days after receiving the SOMD's written opinion pursuant to § 850.34(d)(2), that it is medically appropriate to restrict a worker, an employer must restrict a worker from a job that involves a beryllium activity.

(c) Employers must provide the medical removal benefits specified in § 850.36 of this part only to beryllium workers who are diagnosed with BeS or CBD.

(d) If the SOMD determines that a beryllium worker should not work with beryllium at or above the action level due to a diagnosis of BeS or CBD, the SOMD must recommend medical removal under § 850.36, not medical restriction.

§ 850.36 Medical removal and benefits.

(a) *Medical removal.* (1) The employer must medically remove a beryllium worker from exposure to beryllium at or above the action level, subject to the terms set forth in this section.

(2) Recommendations for medical removal of a beryllium worker from exposure to beryllium at or above the action level may be temporary or permanent, and shall be made by the SOMD in accordance with this section.

(3) The SOMD must recommend temporary removal of a beryllium worker from exposure to beryllium at or above the action level:

(i) Pending the outcome of the medical evaluations conducted pursuant to § 850.34(b), if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the worker's health; or

(ii) Pending the outcome of the multiple physician review process pursuant to § 850.34(e), or alternative physician review process pursuant to § 850.34(f), if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the worker's health.

(4) The SOMD must recommend permanent removal of a beryllium worker from exposure to beryllium at or above the action level if the SOMD makes a final medical determination that the worker should be permanently removed. The SOMD's determination to permanently remove a worker must be based on a diagnosis of BeS or CBD as defined in § 850.3 of this part.

(5) Within 15 working days after a final medical determination has been made, the SOMD must provide the employer with a notice recommending that the employer either:

(i) Return the temporarily removed beryllium worker to his previous job status, identifying any steps to be taken to protect the worker's health including any necessary work restriction pursuant to 10 CFR part 851, appendix A, section 8(h); or

(ii) Permanently remove the beryllium worker.

(6) The SOMD is not required to recommend temporary removal before recommending permanent removal. The SOMD may recommend permanent removal based on a medical evaluation which results in a determination that the worker has BeS or CBD.

(b) *Counseling before temporary or permanent medical removal and notification to the employer*—(1) *Counseling.* If the SOMD recommends that a beryllium worker should be temporarily or permanently removed, the SOMD must do the following when communicating the written medical opinion and determination to the worker pursuant to § 850.34(d)(1).

(i) Advise the beryllium worker diagnosed with or suspected of having BeS or CBD of the determination that medical removal is necessary to protect the worker's health, and specify that the SOMD is recommending either temporary or permanent removal from work that involves exposure to beryllium at or above the action level;

(ii) Provide the beryllium worker with a copy of this part, and any other information on the risks of continued exposure to beryllium at or above the action level, and the benefits of removal.

(2) *Notification to the Employer.* The SOMD, in communicating the written medical opinion and determination to the employer, must comply with § 850.34(d)(2). In the case of a final medical determination regarding permanent removal, the SOMD must provide the employer with a written notice recommending that the employer either:

(i) If the worker has been on temporary removal, return the temporarily removed beryllium worker to his previous job status if the SOMD determines that removal is no longer warranted; or

(ii) Permanently remove the beryllium worker; or

(iii) Medically restrict the worker pursuant to § 850.35.

(c) *Employer responsibility to remove worker.* (1) Within 15 working days after receiving the SOMD's written opinion pursuant to paragraph (b)(2) of this section stating that it is medically appropriate to remove the worker from jobs in areas that are at or above the action level or may potentially be at or above an action level, the employer

must remove a beryllium worker from such a job, regardless of whether, at the time of removal, a job is available into which the removed worker may be transferred.

(2) Prior to, or at the time of the removal, the employer must provide the beryllium worker with a formal written notice of removal that includes the start date of the removal period;

(3) When a beryllium worker is medically removed, the employer must transfer the removed worker to a comparable job, if such a job is available, and provide medical removal benefits in accordance with paragraphs (d)(1) of this section, for temporary removal or (d)(2) of this section, for permanent removal.

(4) The employer may not return a beryllium worker who has been medically removed to his or her former job status unless the SOMD determines in a written medical opinion that continued medical removal is no longer necessary to protect the worker's health.

(d) *Medical removal benefits*—(1) *Temporary removal benefits.* (i) When a beryllium worker has been temporarily removed from a job pursuant to paragraph (c) of this section, the employer must, consistent with any applicable collective bargaining agreement:

(A) Transfer the worker to a comparable job:

(*1*) Where beryllium exposures are below the action level; and

(*2*) For which the worker is qualified or can be trained for in 6 months or less.

(B) Maintain the worker's total normal earnings, seniority, and other rights and benefits as if the worker had not been removed, on each occasion that the worker is temporarily removed.

(ii) If there is no such job available for the beryllium worker meeting the requirements of (d)(1)(i)(A) of this section, the employer must continue to provide the worker's total normal earnings, and other benefits as if the worker had not been removed until:

(A) A comparable job becomes available, and the worker is placed in that job;

(B) The SOMD determines that the worker is not beryllium sensitized and does not have CBD and medical removal is ended;

(C) The worker is permanently medically removed from the job; or

(D) The term of the removal period has expired, as provided in (d)(1)(iii) of this section.

(iii) Each term of temporary removal must not exceed one year, and no term of temporary removal can immediately succeed a prior term of temporary removal in order to extend the term beyond one year.

(iv) Periods of temporary medical removal must not be included in the permanent medical removal benefits period.

(2) *Permanent medical removal benefits.* (i) If a beryllium worker has been permanently removed from a job because of a beryllium-induced medical condition pursuant to paragraph (a)(4) of this section, the employer must consistent with any applicable collective bargaining agreement:

(A) Transfer the beryllium worker to a comparable job:

(*1*) Where beryllium exposures are below the action level, and

(*2*) For which the worker is qualified or can be trained within one year.

(B) If the beryllium worker cannot be transferred to a comparable job meeting the requirements of (d)(2)(ii)(A), maintain the beryllium worker's total normal earnings as if the worker had not been permanently removed for a period of up to two years.

(3) *Additional Conditions of Temporary or Permanent Removal Benefits.* (i) For the purposes of this section, the requirement that an employer provide medical removal benefits is not intended to expand upon, restrict, or change any rights to a specific job classification or position under the terms of an applicable collective bargaining agreement.

(ii) During a temporary or permanent removal period, the employer must continue to provide total normal earnings and benefits as if the worker were not removed for the removal period designated by the SOMD.

(iii) Subject to paragraph (d)(3)(v) of this section, the employer must continue to provide the worker medical removal benefits throughout the term of the removal period, regardless of changes in the worker's job (*e.g.*, worker is laid off, or the worker's contract ends before the removal period ends) or because the worker cannot be transferred into a comparable job because the worker is too sick to work, provided that:

(A) If the worker is on temporary removal, the employer is not required to continue the worker benefits beyond the one-year period, as set forth in paragraph (d)(1) of this section.

(B) If the worker is on permanent removal, the employer is not required to continue the worker benefits beyond the two-year period, as set forth in paragraph (d)(2) of this section.

(iv) If a removed worker files a claim for workers' compensation payments for a beryllium-related disability, the employer must continue to provide benefits pending disposition of the claim, but no longer than a period of two years. The employer must receive no credit for the workers' compensation payments received by the worker for treatment-related expenses.

(v) The employer's obligation to provide medical removal benefits to a removed worker is reduced to the extent that the worker receives compensation for earnings lost during the period of removal from a publicly- or employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal.

(vi) The worker may also apply for compensation through the Energy Employee Occupational Illness Compensation Program, for any additional benefits beyond those provided in this section.

§ 850.37 Medical consent.

(a) In order to provide each beryllium and beryllium-associated worker with the information necessary to make an informed decision about consenting to a medical evaluation established in § 850.34, the employer must ensure that the SOMD has the worker sign and date the informed consent form in appendix A (for beryllium workers) or appendix B (for beryllium-associated workers) to this part.

(b) Employers must ensure all beryllium workers understand that testing is mandatory to transfer into or remain in a job involving beryllium activities at or above the action level. A beryllium worker who decides not to consent to the testing, will be removed from the beryllium activity and will not receive any of the medical removal benefits.

§ 850.38 Training and counseling.

(a) *Training.* (1) The employer must develop and implement a beryllium training program and ensure the participation of beryllium workers, beryllium-associated workers, and all other individuals who work at a site where beryllium activities are conducted.

(2) Beryllium workers' training must include:

(i) The contents of the CBDPP;

(ii) Potential health risks to beryllium workers' family members and others who may come in contact with beryllium on beryllium workers, beryllium workers' clothing, or other personal items as the result of a failure of beryllium control;

(iii) The benefits of medical evaluations for diagnosing BeS and CBD; and

(iv) The contents of this part.

(3) The training provided for beryllium-associated workers and other workers identified in paragraph (a)(1) of this section must consist of general awareness about beryllium hazards and controls and the benefits of medical evaluations for diagnosing BeS and CBD.

(4) The training required by this section must be provided before or at the time of initial assignment and at least every two years thereafter.

(5) Retraining must be provided when the employer has reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium, including, at a minimum, the following situations:

(i) To address any new beryllium hazards resulting from a change to the beryllium inventory, activities, or controls about which the worker was not previously trained; or

(ii) When a worker's performance involving beryllium activities indicates the worker has not retained the requisite proficiency.

(b) *Counseling.* (1) The employer must develop and implement a counseling program to assist beryllium and beryllium-associated workers who are diagnosed by the SOMD as being sensitized to beryllium or having CBD.

(2) For beryllium workers, the counseling program must include communicating with the worker concerning:

(i) The medical surveillance program provisions and procedures;

(ii) Medical treatment options;

(iii) Medical, psychological, and career counseling;

(iv) Medical removal benefits;

(v) Administrative procedures and workers' rights under EEOICPA and other applicable compensation laws and regulations; and

(vi) The risk of continued exposure to levels of beryllium that are not at or above the action level and practices to limit exposures.

(3) For beryllium-associated workers, the counseling program must include communicating with the worker concerning:

(i) The medical surveillance program provisions and procedures;

(ii) Medical treatment options;

(iii) Medical, psychological, and career counseling; and

(iv) Application procedures under the EEOICPA and other applicable compensation laws and regulations.

§ 850.39 Warning signs and labels.

(a) *Warning signs.* The employer must post warning signs at each access point to a regulated area with the following information:

BERYLLIUM REGULATED AREA
DANGER
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

(b) *Warning labels.* The employer must affix warning labels to all bags, containers, equipment, or items that have beryllium material on the surface at levels that exceed 0.2 μg/100 cm^2 or that will be released and have beryllium material on the surface at levels above the level in soil at the point of release.

(1) Warning labels must contain the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

(2) The employer must affix warning labels to equipment or items that contain sources of beryllium in normally inaccessible locations or embedded in hard-to-remove substances. These warning labels must contain the following information:

CAUTION
CONTAINS BERYLLIUM IN INACCESSIBLE LOCATIONS OR EMBEDDED IN HARD-TO-REMOVE SUBSTANCES
DO NOT RELEASE AIRBORNE BERYLLIUM DUST
CANCER AND LUNG DISEASE HAZARD

§ 850.40 Recordkeeping and use of information.

(a) *Contractor employers must:*

(1) Establish and maintain records in accordance with 10 CFR part 851, *Worker Safety and Health Program,* for the records generated by their CBDPP and include records of beryllium medical surveillance and training;

(2) Maintain employees' medical records in accordance with DOE Systems of Records DOE–33, *Personnel Medical Record;*

(3) Maintain all records required by this part in current and accessible electronic systems; and

(4) Convey all record series required under this part to the appropriate Head of DOE Field Element or designee, if this part ceases to be applicable to the contractor.

(b) *Federal employers must:*

(1) Establish and maintain complete and accurate records of information generated by the CBDPP submitted by DOE offices, including beryllium inventory information, hazard assessments, and Federal employee exposure measurements, exposure controls, medical evaluations and training for operations or activities implemented by the DOE office;

(2) Maintain Federal employees' medical records in accordance with OPM/GOVT–10, *Employee Medical File System Records for Federal Employees;* and

(3) Maintain all records required by this part in current and accessible electronic systems.

(c) Heads of DOE Field Elements and Cognizant Secretarial Officers must designate all record series as required under this part as agency records and ensure retention for a minimum of 75 years.

(d) *Contractor and Federal employers must:*

(1) Ensure the confidentiality of all personally identifiable information in work-related records generated under this part by ensuring that:

(i) All records that are transmitted to other parties are transmitted in compliance with the Privacy Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and their implementing regulations; and

(ii) Individual medical information generated by the CBDPP is:

(A) Either included as part of the worker's DOE site medical records and maintained by the SOMD or is maintained by another physician designated by the employer;

(B) Maintained as confidential medical records separate from other records; and

(C) Used or disclosed by the employer only in conformance with any applicable requirements imposed by the Americans with Disabilities Act of 1990 and any other applicable law and regulation.

(2) Maintain all records generated as required by this rule, in current and accessible electronic systems, which include the ability to readily retrieve data in a format that maintains confidentiality.

(3) Transmit all records generated as required by this rule to the Office of Environment, Health, Safety and Security upon request.

(4) Semi-annually transmit to the Office of Environment, Health, Safety and Security an electronic registry of beryllium and beryllium-associated workers that protects the confidentiality, and the registry must include, a unique identifier for each individual, date of birth, gender, site job history, medical screening test results, exposure measurements, surface contamination levels, and results of referrals for specialized medical evaluations. This information should comply with the format for the Beryllium Registry.

§ 850.41 Performance feedback.

(a) The employer must conduct semi-annual analyses and assessments of:

(1) Monitoring results;

(2) Hazard assessments;
(3) Medical surveillance; and
(4) Exposure reduction efforts.

(b) The assessments must identify any:

(1) Individuals at risk for beryllium-induced medical conditions and working conditions that may be contributing to that risk; and

(2) Need for additional exposure controls.

(c) The employer must notify, and make the assessments available to the appropriate Head of DOE Field Element, line managers, work planners, worker protection staff, medical staff, workers, and labor organizations representing workers performing beryllium activities.

Appendix A to Part 850—Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

Part A: Consent

Consistent with and subject to the provisions of 10 CFR part 850, *Chronic Beryllium Disease Prevention Program,* I ____, understand the information the Site Occupational Medical Director (SOMD) explained and discussed with me about the Beryllium-Induced Lymphocyte Proliferation Test (BeLPT), on cells obtained from peripheral blood, and the other medical tests, as specified below. I have had the opportunity to ask and have answered any questions that I may have had concerning these tests and my questions have been adequately answered.

I understand that the beryllium worker medical surveillance program is for jobs in which exposure to levels of beryllium may be at or above the action level. I understand that it is mandatory for me to participate in this medical surveillance program.

I understand the tests are confidential, but not anonymous. If the results of any test suggest a health problem, I understand the examining physician will discuss the matter with me, whether or not the result is related to my work with beryllium. I understand my employer will be notified of my diagnosis *only* if I have beryllium sensitization (BeS), chronic beryllium disease (CBD), or another condition indicating that I should not perform certain job tasks. My employer will not receive the results or diagnoses of any health condition not related to beryllium exposure and my ability to perform my job tasks safely.

For test or examination results pertaining to BeS or CBD, I understand I will have the right to seek a second medical opinion from a physician who is qualified to diagnose beryllium-induced medical conditions. My employer will condition its participation and payment for a second opinion on my informing my employer of my intent to seek a second opinion within 15 working days after receiving the employer's written notification of my right to elect the multiple physician review process or the alternate physician review process.

I understand if the results of one or more of these tests suggest I have a health problem that is related to beryllium or for which exposure to beryllium is contraindicated, additional examinations may be recommended. If I am diagnosed with a condition (other than BeS or CBD) for which exposure to beryllium would be contraindicated, the SOMD may recommend that I be medically restricted from working jobs where exposure to beryllium is at or above the action level. If the tests reveal I have CBD or I am sensitized to beryllium, the SOMD will recommend that I be removed from working in beryllium jobs where exposure to beryllium may be at or above the action level and my employer will remove me from such jobs.

I understand that if I am temporarily removed from a job where exposure to beryllium may be at or above the action level, I may be transferred to another job for which I am qualified (or for which I can be trained within six months), pending the outcome of the medical evaluations, where my beryllium exposures will in no case be at or above the action level, and I will continue to receive my total normal earnings, for up to one year from the date on each occasion that I am temporarily removed, regardless of whether I am transferred to another job.

I understand that if I am permanently removed from a job where exposure to beryllium may be at or above the action level due to a diagnosis of BeS or CBD, I may be transferred to another job for which I am qualified (or for which I can be trained within one year) where my beryllium exposures will in no case be at or above the action level, and I will continue to receive my total normal earnings, for up to two years, regardless of whether I am transferred to another job.

I understand that if I apply for another job or for insurance, there is a possibility that I may be required to release my medical records to a future employer or an insurance company.

I understand my employer will maintain all medical information separate from my personnel files, treat them as confidential medical records, and use or disclose them only as provided by the Americans with Disabilities Act of 1990, the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, or as required by a court order or under other law.

I understand the results of my medical tests for health problems related to exposure to beryllium will be included in the Beryllium Registry maintained by DOE and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the Beryllium Registry. I understand that the results of my test and examinations may be published in reports or presented at meetings, but I will not be identified.

_____
Signature of Employee

_____
Date

Part B: Medical Evaluation Consent

I, ____, consent to the following medical evaluations:

/ /Physical examination concentrating on my respiratory system, skin and eyes
/ /Chest X-ray or a standard digital chest radiographic image
/ /Spirometry (a breathing test)
/ /Two BeLPTs on peripheral blood
/ /Other test(s). Specify: _____

_____
Signature of Employee

_____
Date

I have explained and discussed any questions the employee asked concerning the medical surveillance program, BeLPT (on peripheral blood), physical examination, and other medical tests as well as the implications of those tests.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

Part C: Examining Physician Review of the Medical Evaluation Results

I have explained and discussed with, ____, the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that should receive further evaluations or treatment.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

DOE Form No. 440.1X (*Revised X, 20XX*)

Appendix B to Part 850—Beryllium-Associated Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

Part A: Consent

Consistent with and subject to the provisions of 10 CFR part 850, *Chronic Beryllium Disease Prevention Program,* I ____, understand the information the Site Occupational Medical Director (SOMD) explained and discussed with me about the Beryllium-Induced Lymphocyte Proliferation Test (BeLPT), on cells obtained from peripheral blood and the other medical tests, as specified below. I have had the opportunity to ask and have answered any questions that I may have had concerning these tests and my questions have been adequately answered.

I understand this medical surveillance program is voluntary, and I can withdraw at any time + from all or any part of the program. I understand the tests are confidential, but not anonymous. If the results of any test suggest a health problem, I understand the examining physician will discuss the matter with me, whether or not the result is related to beryllium. I understand my employer will be notified of my diagnosis *only* if I have beryllium sensitization (BeS), chronic beryllium disease (CBD), or another condition indicating that I should not perform certain job tasks. My employer will not receive the results or diagnoses of any health condition not related to my ability to perform my job tasks safely.

I understand I will have the right to seek a second medical opinion from a physician who is qualified to diagnose beryllium-induced medical conditions. My employer will condition its participation and payment for a second opinion on my informing my employer of my intent to seek a second opinion within 15 working days after receiving the employer's written notification of my right to elect the multiple physician review process or the alternate physician review process, and provided I continue to participate in the medical surveillance program.

I understand that, if the results of one or more of these tests suggest I have a health problem related to beryllium, additional examinations may be recommended. If I am diagnosed with a condition for which exposure to beryllium would be contraindicated, the SOMD may recommend that I be medically restricted from working in jobs where exposure to airborne beryllium is at or above the action level.

I understand that if I apply for another job or for insurance, there is a possibility that I may be required to release my medical records to a future employer or an insurance company.

I understand my employer will maintain all medical information separate from my personnel files, treat them as confidential medical records, and use or disclose them only as provided by the Americans with Disabilities Act of 1990, the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, or as required by a court order or under other law.

I understand the results of my medical tests for health problems related to exposure to beryllium will be included in the Beryllium Registry maintained by DOE and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the Beryllium Registry. I understand that the results of my test and examinations may be published in reports or presented at meetings, but I will not be identified.

I, ____, consent to participating in the medical surveillance program.

Part B: Medical Evaluation Consent

I, ____, consent to the following medical evaluations:

/ /Physical examination concentrating on my respiratory system, skin and eyes
/ /Chest X-ray or a standard digital chest radiographic image
/ /Spirometry (a breathing test)
/ /Two BeLPTs on peripheral blood
/ /Other test(s). Specify: _____
Signature of Employee _____

Date _____

I have explained and discussed any questions the employee asked concerning the medical surveillance program, BeLPT (on peripheral blood), physical examination, and other medical tests as well as the implications of those tests.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

Part C: Examining Physician Review of the Medical Evaluation Results

I have explained and discussed with, ____, the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that should receive further evaluations or treatment.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

DOE Form No. 440.1X (*Dated X, 20XX*)

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Zuni Bluehead Sucker; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0002; 4500030114]

RIN 1018–AZ23

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Zuni Bluehead Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Zuni bluehead sucker (*Catostomus discobolus yarrowi*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 55.7 kilometers (km) (34.6 miles (mi)) in McKinley and Cibola Counties, New Mexico, fall within the boundaries of the critical habitat designation.

DATES: This rule is effective on July 7, 2016.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and at the New Mexico Ecological Services Field Office (address below). Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov*. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, on the Service's Web site at *http://www.fws.gov/southwest/es/newmexico*, and at the New Mexico Ecological Services Field Office. Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble of this rule and at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This final rule designates critical habitat for the Zuni bluehead sucker. Under the Endangered Species Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We listed the Zuni bluehead sucker as an endangered species on July 24, 2014 (79 FR 43132). On January 25, 2013, we published in the **Federal Register** a proposed critical habitat designation for the Zuni bluehead sucker (78 FR 5351). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Zuni bluehead sucker. We are designating approximately 55.7 km (34.6 mi) of the Zuni River Watershed in one unit in in McKinley and Cibola Counties, New Mexico.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (80 FR 19941; April 14, 2015). The analysis, dated October 22, 2014, was made available for public review from April 14, 2015, through May 14, 2015 (80 FR 19941). The DEA addressed probable economic impacts of critical habitat designation for the Zuni bluehead sucker. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. We have incorporated the comments into this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from three knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information we received from the public during the comment period.

Previous Federal Actions

On January 25, 2013, we published a proposed rule to list the Zuni bluehead sucker as an endangered species and a proposed rule to designate critical habitat for the Zuni bluehead sucker (78 FR 5369 and 78 FR 5351, respectively). We proposed to designate as critical habitat approximately 475.3 km (291.3 mi) in three units in McKinley, Cibola, and San Juan Counties, New Mexico, and Apache County, Arizona.

After the publication of the proposed rules, we found there was substantial scientific disagreement regarding the taxonomic status of some populations that we considered Zuni bluehead sucker in the proposed listing rule. On January 9, 2014, we published in the **Federal Register** a document that reopened the comment period for the proposed listing rule and extended the final determination of listing status for the Zuni bluehead sucker by 6 months due to substantial disagreement regarding the Zuni bluehead sucker's taxonomic status in some locations (79 FR 1615).

On July 24, 2014, we published in the **Federal Register** a final rule to list the Zuni bluehead sucker as an endangered species (79 FR 43132). In this final listing determination, we revised the Zuni bluehead sucker's range to exclude populations from the previously identified proposed San Juan River critical habitat unit. This change was based on an error in the genetic data evaluated for the proposed listing rule (Schwemm and Dowling 2008, entire); the correct information led to the determination that the bluehead suckers in the Lower San Juan River Watershed (proposed critical habitat Unit 3; San

Juan River Unit) were bluehead suckers (*Catostomus discobolus*), not Zuni bluehead suckers (*Catostomus discobolus yarrowi*). Thus, the San Juan River Unit populations were no longer included in the range estimate provided in the final listing rule.

On April 14, 2015, we published in the **Federal Register** our revised proposed critical habitat designation of 228.4 km (141.9 mi) and reopened the public comment period until May 14, 2015 (80 FR 19941). We also announced the availability of the draft economic analysis and a draft environmental assessment prepared pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) for the proposed critical habitat designation. The draft economic analysis (IEc 2014, entire) was prepared to identify and evaluate the economic impacts of the proposed critical habitat designation.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Zuni bluehead sucker during two comment periods. The first comment period, associated with the publication of the proposed rule (78 FR 5351), opened on January 25, 2013, and closed on March 26, 2013. We also requested comments on the revised proposed critical habitat designation and associated draft economic analysis during a comment period that opened April 14, 2015, and closed on May 14, 2015 (80 FR 19941). We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, Tribal, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, draft economic analysis, and draft environmental assessment during these comment periods.

During the first comment period, we received six comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received 13 comment letters addressing the proposed critical habitat designation or the draft economic analysis. All substantive information provided during comment periods is either incorporated directly into this final determination or is addressed below. Comments received are grouped into general issues specifically relating to the proposed critical habitat designation for the Zuni bluehead sucker and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from four of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the Zuni bluehead sucker. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* Two peer reviewers suggested postponing critical habitat designations in the Kinlichee and San Juan River Units (proposed critical habitat units 2 and 3) until the taxonomic status of the catostomids (suckers) in these areas is resolved.

Our Response: In the proposed listing rule, we identified populations in the San Juan Unit (proposed critical habitat Unit 3) as Zuni bluehead sucker because previous genetic analysis (Schwemm and Dowling 2008, entire) provided evidence supporting this conclusion. However, as mentioned in the "Taxonomy and Genetics" section of our final listing rule published July 24, 2014 (79 FR 43132), this conclusion was based on inaccurate information. The San Juan River Unit was removed from critical habitat designation due to results from genetics studies, and we made the appropriate changes in this final rule to reflect the updated classifications of populations as bluehead sucker. Kinlichee Creek was retained as a population of Zuni bluehead sucker, based on the morphological evidence and the presence of unique Zuni bluehead sucker genetics in some sites within the watershed; however, we are excluding this unit from final critical habitat designation (see *Exclusions Based on Other Relevant Impacts,* below).

(2) *Comment:* One peer reviewer stated that although Zuni bluehead sucker is closely related to bluehead sucker, caution needs to be taken when assuming bluehead sucker have the same needs or attributes as Zuni bluehead sucker.

Our Response: We agree. We have added language throughout this final rule to distinguish which species or subspecies we are referencing. We used information specific to Zuni bluehead sucker whenever possible. However, because there are many information gaps (such as habitat needs for specific life stages of Zuni bluehead sucker), we relied on information available for a closely related and more thoroughly studied species, the bluehead sucker.

(3) *Comment:* One peer reviewer noted that vague terms such as "appropriate stream velocity," "very," and "recent" should be avoided.

Our Response: We used the most specific characteristics possible when describing the physical and biological features of critical habitat for the Zuni bluehead sucker. Unfortunately, information is not always available to describe these characteristics quantitatively. In these cases, we used qualitative terms to describe the characteristics of critical habitat. We clarified our language where it was appropriate and accurate to do so.

(4) *Comment:* Two peer reviewers noted that 74.2 km (46.1 mi) of proposed critical habitat in the Zuni River Headwaters (Subunit 1a) was stated to be occupied at the time of listing, but the proposed listing stated the subspecies occurs in only 4.8 km (3 mi) of habitat in these headwaters.

Our Response: We have revised this discussion and clarified the description of Subunit 1a. The most recent surveys only included the 4.8-km (3-mi) reach referred to in the proposed listing rule. We used the recent survey information in combination with both historical survey records and Geographical Information System (GIS) information indicating 74.2 km (46.1 mi) of the Zuni River Headwaters (Subunit 1a) contained the physical and biological features essential for the subspecies' conservation. We conclude the full reach was occupied based on the presence of suitable habitat and repeated positive survey data since the 1990s; this area has been regularly sampled since 2003 (Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 24).

(5) *Comment:* One peer reviewer was opposed to the exclusion of designated critical habitat of any area that is shown by available scientific information to be important to the conservation and recovery of the subspecies.

Our Response: Section 4(b)(2) of the Act (16 U.S.C. 1531 *et seq.*) states that the Secretary shall designate and make

revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

Lands excluded under section 4(b)(2) of the Act may still be considered essential to the conservation of the Zuni bluehead sucker. Such areas were identified as critical habitat because they either provide the essential physical or biological features, if occupied, or were otherwise determined to be essential, if unoccupied. Exclusion should never be interpreted as meaning that such areas are unimportant to the conservation of the subspecies. Exclusion is based upon a determination by the Secretary that the benefit of excluding an area outweighs the benefit of including an area in critical habitat.

In this case, the Secretary has chosen to exercise her discretion to exclude non-Federal lands from the final designation of critical habitat if an existing conservation agreement or partnership is in place that provides benefits that are greater than the benefits that would be provided by the designation of critical habitat. Such exclusions have only been made following a careful weighing of both the benefits of inclusion and the benefits of exclusion. We wish to emphasize that the exclusion of lands from the critical habitat designation should not be construed as a message that these lands are not important or essential for the conservation of the Zuni bluehead sucker, nor should exclusion be interpreted as some indication that these lands are now somehow subject to habitat degradation or destruction because they are not included in critical habitat. Lands excluded on the basis of conservation agreements and the recognition of conservation partnerships are fully expected to continue to make an important contribution to the conservation and recovery of the Zuni bluehead sucker absent the designation of critical habitat. Such lands are excluded only if we have evidence that such expectations for future contributions of the habitat on these lands are well-founded, as evidenced by a conservation easement, habitat conservation plan, safe harbor agreement, or other instrument, or by a proven track record of conservation by the partner in question. The details of our considered analyses of each area under consideration for exclusion are provided in the Consideration of Impacts under Section 4(b)(2) of the Act, below.

Comments From States

We received three comments from the Arizona Game and Fish Department (AGFD) and New Mexico Department of Game and Fish (NMDGF) supporting the critical habitat designation. In addition, NMDGF provided their most recent Zuni bluehead sucker annual report that was used to update habitat conditions for the Zuni bluehead sucker in the Zuni River Watershed.

(6) *Comment:* Any critical habitat designation for occupied or unoccupied habitats on private lands should be carefully weighed against the private property interests in the watershed.

Our Response: For lands meeting the definition of critical habitat, we have considered each of the potential bases for exclusion from critical habitat designation. In order to do so, we conducted an economic analysis, an environmental assessment to comply with NEPA, and a takings implications assessment. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Zuni bluehead sucker. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation.

The designation of critical habitat does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. In the event of a finding of destruction or adverse modification of critical habitat, the obligation of the Federal action agency is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply. Critical habitat designations do not affect activities by private landowners if there is no Federal nexus—that is, no Federal funding or authorization.

(7) *Comment:* Any exclusion of tribal lands should be supported by sound management plans and sufficient monitoring efforts to track the status of Zuni bluehead sucker in those areas.

Our Response: Each of the exclusions is assessed in greater detail and meets the statutory basis that the benefits of exclusion outweigh the benefits of inclusion and will not result in extinction. Navajo Nation has submitted a final fisheries management plan and the Zuni Tribe has submitted a draft fisheries management plan; the plans are described in detail below (see "Tribal Lands" under the heading *Exclusions Based on Other Relevant Impacts,* below). In addition, the Service has been assisting Navajo Nation in monitoring Zuni bluehead sucker populations on their lands, and a monitoring component is identified within their Fisheries Management Plan. The Zuni Tribe has also been integral to monitoring Zuni bluehead sucker in the Rio Nutria from the 1960s to early 2000s, and the Zuni Tribe has included a monitoring component within their Fisheries Management Plan that abides by their cultural beliefs. Although the Zuni Fisheries Management Plan is currently draft, its development, and the Tribe's coordination with us, provides evidence of our working relationship with the Zuni Tribe for conservation of the subspecies. We are excluding all tribal lands within Subunits 1a and 1b and

Unit 2 from this final designation under section 4(b)(2) of the Act. We have determined that the benefits of exclusion outweigh the benefits of inclusion and are therefore excluding these areas from the final critical habitat designation (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

(8) *Comment:* AGFD encourages the Service to work closely with Navajo Nation, the Zuni Tribe, the Cibola National Forest, NMDGF, and private landowners to develop and implement effective conservation and recovery efforts for this subspecies and its habitat.

Our Response: The Service is actively working with our stakeholders in developing fisheries management plans, developing monitoring populations, and identifying recovery streams and refugia locations. The Service recognizes the vital importance of working with our stakeholders in developing and implementing conservation measures in achieving the recovery of endangered and threatened species. However, the designation of critical habitat does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. If there is not a Federal nexus for activities taking place on private or State lands, then critical habitat designation does not restrict any actions that destroy or adversely modify critical habitat.

Tribal Comments

(9) *Comment:* During the public comment period, we met and received comments from Navajo Nation and the Zuni Tribe expressing their opposition to the designation of critical habitat. They stated that exclusion of their lands from critical habitat designation is warranted due to tribal self-governance and would help maintain cooperative working relationships.

Our Response: The portions of Subunits 1a and 1b on the Zuni Reservation and all of Unit 2 on the Navajo Nation are excluded from this final designation under section 4(b)(2) of the Act. We have determined that the benefits of exclusion outweigh the benefits of inclusion and that these exclusions will not result in the extinction of the subspecies. Therefore, we are excluding these areas from the final critical habitat designation (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

Public Comments

(10) *Comment:* One commenter stated it is unclear from the information provided that the entire proposed critical habitat area has been recently surveyed to assess whether it should be designated.

Our Response: As required by the Act, we rely upon the best scientific and commercial data available to assess the current and historical distributions of the Zuni bluehead sucker. We are not required to conduct surveys prior to critical habitat designation. However, much of the designated habitat has been regularly sampled since 2003, by either electrofishing or visual surveys in New Mexico (Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 24) and Arizona (Kitcheyan and Mata 2012, entire; Kitcheyan and Mata 2013, entire). Other sources of information include articles published in peer-reviewed journals and data collected by the Service and NMDGF, and any other data available at the time of the designation. Additional information on our data sources can be found in the final listing rule published in the **Federal Register** on July 24, 2014 (79 FR 43132) under the heading "Range and Distribution."

(11) *Comment:* One commenter suggested that if Navajo lands are excluded from the final critical habitat designation, the Service should ensure that the tribe follows through on its conservation commitments.

Our Response: We have a productive working relationship with Navajo Nation to promote the conservation of the Zuni bluehead sucker and its habitat. This working relationship provides substantial benefit to the subspecies, as Navajo Nation has submitted a final fisheries management plan, described in detail below (see "Tribal Lands" under *Exclusions Based on Other Relevant Impacts,* below). In addition, the Service has been assisting Navajo Nation in monitoring Zuni bluehead sucker populations on their lands, and a monitoring component is identified within their Fisheries Management Plan. Annual work plans in accordance with the Fisheries Management Plan will be developed with full cooperation of the Navajo Nation Department of Fish and Wildlife, Bureau of Indian Affairs (BIA), and the Service. The Fisheries Management Plan will be updated as necessary every 5 years.

(12) *Comment:* One commenter stated Tampico Springs is not native habitat for the Zuni bluehead sucker and should not be designated as critical habitat for this subspecies.

Our Response: As mentioned in the "Taxonomy and Genetics" discussion in our final listing rule (79 FR 43132; July 24, 2014), the Tampico Springs population was founded through translocation in the mid-1970s. This population is within the general historical range of the subspecies and has been self-sustaining since its founding. We find the population in Tampico Springs is essential to the conservation of the Zuni bluehead sucker.

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we considered the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Under the first part of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. Tampico Springs was occupied at the time of listing, contains the physical and biological features essential to the conservation of the subspecies, and therefore meets the definition of critical habitat.

(13) *Comment:* Tampico Springs (on private land) should be excluded as a critical habitat for the Zuni bluehead sucker, because exclusion would allow and promote the continuation of strong partnerships with State and Federal agencies, industry, and other entities, resulting in continued habitat protection.

Our Response: The area that the commenter requested that the Service exclude from critical habitat is included in the Silva Forestry Management Plan, which we reviewed for evidence of habitat protections undertaken on this portion of land. The Forestry Management Plan is focused on forest management and not conservation of Zuni bluehead sucker and its habitat in this area. We are aware of no specific conservation actions in the submitted plan that would benefit the Zuni bluehead sucker; therefore the Secretary has chosen not to enter into the discretionary 4(b)(2) exclusion analysis in this particular case.

Summary of Changes From Proposed Rule

In total, we are designating a total of approximately 55.7 km (34.6 mi) of critical habitat for the Zuni bluehead sucker, which is 172.7 km (107.3 mi) less than our proposed critical habitat designation. Our final designation of critical habitat reflects the following changes from the proposed rule:

(1) New information resulted in the removal of a portion of the proposed Zuni River Unit (Unit 1). Based upon further investigation, a section of Cebolla Creek (from Pescado Reservoir upstream on Cebolla Creek to Ramah Reservoir) is a dry wash with no running water or stream channel present except during periods of rain; this reach is unlikely to have perennial or intermittent flows. As a result, 7.9 km (4.9 mi) was removed because this section of Cebolla Creek is not essential to the conservation of the subspecies and does not meet the definition of critical habitat.

(2) We carefully considered the benefits of inclusion and the benefits of exclusion, under section 4(b)(2) of the Act, of the specific areas identified in the proposed critical habitat rule, particularly in areas where a management plan specific to the Zuni bluehead sucker are in place, and also where the maintenance and fostering of important conservation partnerships are a consideration. Based on the results of our analysis, we are excluding approximately 38.9 km (24.2 mi) of Subunit 1a, 29.4 km (18.3 mi) of Subunit 1b, and all of Unit 2 (96.5 km (60.0 mi)) from our final critical habitat designation for the Zuni bluehead sucker (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

Exclusion from critical habitat should not be interpreted as a determination that these areas are unimportant, that they do not provide physical or biological features essential to the conservation of the species (for occupied areas), or are not otherwise essential for conservation (for unoccupied areas); exclusion merely reflects the Secretary's determination that the benefits of excluding those particular areas outweigh the benefits of including them in the designation.

(3) We inadvertently omitted language from the Proposed Regulation Promulgation section of the proposed rule, although we discussed it as part of our methodology for designation in the preamble of the proposed rule. Therefore, in this final rule, we add the following language under the Regulation Promulgation section: Critical habitat includes the adjacent floodplains within 91.4 lateral meters (m) (300 lateral feet (ft)) on either side of bankfull discharge, except where bounded by canyon walls. Bankfull discharge is the flow at which water begins to leave the channel and disperse into the floodplain, and generally occurs every 1 to 2 years.

(4) In the proposed rule, we stated that the Zuni bluehead sucker needs clear, cool water with low turbidity and temperatures in the general range of 9.0 to 28.0 degrees Celsius (°C) (48.2 to 82.4 degrees Fahrenheit (°F)). New information has resulted in a change to the temperatures, and in this final rule that primary constituent element is clear, cool water with low turbidity and temperatures in the general range of 2.0 to 23.0 °C (35.6 to 73.4 °F).

(5) We added a general description of the designated critical habitat unit to the Regulation Promulgation section of this rule.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements (PCEs) are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may disperse from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

On February 11, 2016, we published a final rule in the **Federal Register** (81 FR 7413) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on March 14, 2016, but, as stated in that rule, the amendments it sets forth apply to "rules for which a proposed rule was published after March 14, 2016." We published our proposed critical habitat designation for the Zuni bluehead sucker on January 25, 2013 (78 FR 5351); therefore, the amendments set forth in the February 11, 2016, final rule at 81 FR 7413 do not apply to this final designation of critical habitat for the Zuni bluehead sucker.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Zuni bluehead sucker from studies of this subspecies' habitat, ecology, and life history as described in the proposed rule to designate critical habitat published in the **Federal Register** on January 25, 2013 (78 FR 5351), in the revisions to the proposed critical habitat designation published in the **Federal Register** on April 14, 2015 (80 FR 19941), and as described below. Habitat needs for specific life stages for the Zuni bluehead sucker have not been described; therefore, when necessary we rely on information available for the bluehead sucker, which is closely related to the Zuni bluehead sucker. Additional information can be found in the final listing rule published in the **Federal Register** on July 24, 2014 (79 FR 43132). We have determined that the Zuni bluehead sucker requires the physical or biological features described below.

Space for Individual and Population Growth and for Normal Behavior

The Zuni bluehead sucker occurs in a variety of stream habitats ranging from no shade to habitats with abundant shade from overhanging vegetation and boulders, in pools, runs, and riffles with water velocities ranging from 0 to 0.35 meters per second (m/sec) (1.15 feet per second (ft/sec)) and average water depths ranging from 0.2–2.0 m (7.9–78.7 inches (in)) (Hanson 1980, pp. 34, 42; Propst and Hobbes 1996, pp. 13, 16; NMDGF 2013, pp. 13–15). Shade provided by the overhanging vegetation buffers water temperature fluctuations in small, headwater streams, such as those occupied by the Zuni bluehead sucker (Whitledge *et al.* 2006, p. 1461). Substrate in Zuni bluehead sucker habitat ranges from silt and pebbles to cobbles, boulders, and bedrock (Hanson 1980, pp. 34, 42; Propst and Hobbes 1996, pp. 13, 16; NMDGF 2013, pp. 13–15; Ulibarri 2015, p. 12). Maddux and Kepner (1988, p. 364), observed that the bluehead sucker needed clean and loosely consolidated substrate, such as gravel, for both spawning and egg development. Similar observations were made for the Zuni bluehead sucker, where females selected spawning sites over loosely consolidated gravel (Service 2015a, entire). Excessive levels of silt can inhibit egg and juvenile fish development through the clogging of the small spaces between substrate particles, which prevents the free flow of oxygenated water. Additionally, siltation can reduce the suitability of the habitat for prey organisms. Juvenile bluehead suckers have been found near shore in slower and shallower habitats, then moving out into deeper water and faster flowing habitat as they age (Childs *et al.* 1998, p. 624).

Water temperatures in occupied habitats in Arizona and New Mexico have ranged from 2.0 to 22.3 °C (35.6 to 72.1 °F) during survey efforts (Propst *et al.* 2001, p. 163; NMDGF 2013, pp. 20–21, Ulibarri 2015, pp. 11–12).

Therefore, based on the information above, we identify the following habitat characteristics as the physical or biological features for the Zuni bluehead sucker:

- A variety of stream habitats, including riffles, runs, and pools, with appropriate flows and substrates, with low to moderate amounts of fine sediment and substrate embeddedness, as maintained by natural, unregulated flow that allows for periodic flooding or, if flows are modified or regulated, flow patterns that allow the river to mimic natural functions, such as flows capable of transporting sediment.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food. The Zuni bluehead sucker is a benthic forager (eats food from the stream bottom) that scrapes algae, insects, and other organic and inorganic material from rock surface (NMDGF 2004, p. 8). Stomach content analysis of Zuni bluehead suckers revealed small particulate organic matter, including detritus (nonliving organic material), filamentous algae, small midge (two-winged fly) larvae, caddisfly larvae, mayfly larvae, flatworms, and occasional small terrestrial insects (Smith and Koehn 1979, p. 38). In addition, Smith and Koehn (1979, p. 38) also found fish scales, snails, and insect eggs in Zuni bluehead sucker stomachs.

The primary food source for Zuni bluehead sucker is periphytic algae (algae attached to rocks), which occurs mainly on cobble, boulder, and bedrock substrates with clean flowing water. Only food found in stomach contents of adult Zuni bluehead suckers has been described. Stomach contents of larval bluehead suckers (<25 millimeters (mm) (~1 in) total length) have been analyzed (Muth and Snyder 1995, entire). Larval bluehead suckers feed on diatoms (a type of algae), zooplankton (small floating or swimming organisms that drift with water currents), and dipteran larvae (true fly larvae) in stream areas with low velocity or in backwater habitats (Muth and Snyder 1995, p. 100). Juvenile and adult bluehead suckers are reported primarily to eat a variety of inorganic material, organic material, and bottom-dwelling insects and other small organisms (Childs *et al.* 1998, p. 625; Osmundson 1999, p. 28; Brooks *et al.* 2000, pp. 66–69).

Aquatic invertebrates are a secondary component of the Zuni bluehead sucker's diet. Aquatic invertebrates have specific habitat requirements of their own. Both caddisflies and mayflies occur primarily in a wide variety of standing and running water habitats with the greatest diversity being found in rocky-bottom streams with an abundance of oxygen (Merritt and Cummins 1996, pp. 126, 309). Caddisflies and mayflies feed on a variety of detritus, algae, diatoms, and macrophytes (aquatic plants) (Merritt and Cummins 1996, pp. 126, 309). Habitat that consists of rocky bottoms with periphytic algal growth is not only important to sustain aquatic invertebrate populations, but also serves as a primary food resource of the Zuni bluehead sucker.

Water. As a purely aquatic subspecies, Zuni bluehead suckers are entirely dependent on stream habitat for all stages of their life cycle. Therefore, perennial flows are an essential feature with appropriate seasonal flows to maintain habitat conditions that remove excess sediments. Areas with intermittent flows may serve as connective corridors between occupied or seasonally occupied habitat through which the subspecies may disperse when the habitat is wetted.

There is little information on water quality requirements for the Zuni bluehead sucker. However, excessive sedimentation is the primary threat to water quality for the Zuni bluehead sucker (as discussed above), primarily due to its effects on reproduction and food resources. Turbidity (sediment suspended in the water column) can inhibit algae production through reducing sunlight penetration into the water.

Therefore, based on the information above, we identify the following prey base and water quality characteristics as physical or biological features for the Zuni bluehead sucker:

- An abundant source of algae production and an aquatic insect food base consisting of caddisflies, mayflies, midges, and various terrestrial insects;
- Streams with no harmful levels of pollutants;
- Areas with low levels of sediment deposition;
- Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the subspecies may disperse when the habitat is wetted;
- Dynamic flows that allow for periodic changes in channel morphology.

Cover or Shelter

Cover from predation (by nonnative fish and avian predators) may be in the form of deep water or physical structure. Little is known about habitat characteristics specifically relating to cover for the Zuni bluehead sucker. However, during surveys, Zuni bluehead suckers have been found in shaded pools and near boulder outcrops, which may be used for cover (Kitcheyan 2012, pers. comm.). Additionally, mature bluehead suckers are found in deeper water than larvae and in habitats with less woody cover than younger life stages, which are more vulnerable to predation (Childs *et al.* 1998, p. 624). Recent investigations on Navajo Nation have shown that Zuni bluehead suckers use aquatic macrophytes as cover, perhaps due to the lack of riparian vegetation (Ulibarri 2015, p. 12). In contrast, bluehead suckers in an adjacent drainage were found to use branches and woody debris as cover (Ulibarri 2015, p. 12).

Therefore, based on the information above, we identify the following characteristics for cover or shelter as physical or biological features for the Zuni bluehead sucker:

- Streams with large rocks, boulders, undercut banks, woody debris or aquatic macrophytes.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Zuni bluehead sucker spawn from early April to early June when water temperatures are 6 to 15 °C (43 to 59 °F), peaking around 10 °C (50 °F) (Propst 1999, p. 50; Propst *et al.* 2001, p. 164). The Zuni bluehead sucker may have two spawning periods, with the majority of the spawning effort expended early in the season (Propst *et al.* 2001, p. 158). Females in spawning condition have been found over gravel beds (Sublette *et al.* 1990, p. 210; Propst *et al.* 2001, p. 158). Clean substrates free of excessive sedimentation are essential for successful breeding (see the "Habitat and Life History" discussion in the final listing rule; 79 FR 43132, July 24, 2014). Periodic flooding removes excess silt and fine sand from the stream bottom, breaks up embedded bottom materials, and rearranges sediments in ways that promote algae production and create suitable habitats with silt-free substrates.

Therefore, based on the information above, we identify the following characteristics for breeding, reproduction, or development of offspring as physical or biological features for the Zuni bluehead sucker:

- Gravel and cobble substrates;
- Pool and run habitats;
- Slower currents along stream margins with appropriate stream velocities for larvae;
- Instream flow velocities that are less than 0.35 m/sec (1.15 ft/sec); and
- Dynamic flows that allow for periodic changes in channel morphology.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

The Zuni bluehead sucker has a restricted geographic distribution. Endemic species (species that are exclusively native to a particular location) whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain both springs and stream systems upon which the Zuni bluehead sucker depends. This means protection from disturbance caused by exposure to land management actions (logging, cattle grazing, and road construction), water contamination, water depletion, or nonnative species. The Zuni bluehead sucker must, at a minimum, sustain its current distribution for the subspecies to continue to persist.

Introduced species are a serious threat to native aquatic species (Miller 1961, pp. 365, 397–398; Lachner *et al.* 1970, p. 21; Ono *et al.* 1983, pp. 90–91; Carlson and Muth 1989, pp. 222, 234; Fuller *et al.* 1999, p. 1; Propst *et al.* 2008, pp. 1246–1251; Pilger *et al.* 2010, pp. 300, 311–312; see both *Factor C: Disease or Predation* and *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence* discussions in our final listing rule published July 24, 2014 (79 FR 43132)). Because the distribution of the Zuni bluehead sucker is so isolated and its habitat so restricted, introduction of certain nonnative species into its habitat could be devastating. Potentially harmful nonnative species include green sunfish (*Lepomis cyanellus*), northern crayfish (*Orconectes virilis*), fathead minnow (*Pimephales promelas*), and other nonnative fish-eating fishes.

The Zuni bluehead sucker typically inhabits small desert stream systems including isolated headwater springs, small headwater springs, and mainstem river habitats (Gilbert and Carman 2011, p. 2) with clean, hard substrate; flowing water; and abundant riparian vegetation. Degraded habitat consists of silt-laden substrates; high turbidity; and deep, stagnant water (Gilbert and Carman 2011, p. 6). Therefore, based on the information above, we identify the necessary physical or biological features for the Zuni bluehead sucker:

• Nondegraded habitat devoid of nonnative aquatic species, or habitat in which nonnative aquatic species are at levels that allow persistence of the Zuni bluehead sucker.

Primary Constituent Elements for the Zuni Bluehead Sucker

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Zuni bluehead sucker in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the subspecies' life-history processes, we determine that the primary constituent elements specific to the Zuni bluehead sucker are:

(1) A riverine system with habitat to support all life stages of the Zuni bluehead sucker (egg, larval, juvenile, and adult), which includes:

a. Dynamic flows that allow for periodic changes in channel morphology and adequate river functions, such as channel reshaping and delivery of coarse sediments;

b. Stream courses with perennial flows or intermittent flows that serve as connective corridors between occupied or seasonally occupied habitat through which the subspecies may disperse when the habitat is wetted;

c. Stream mesohabitat types including runs, riffles, and pools with substrate ranging from gravel, cobble, and bedrock substrates with low or moderate amounts of fine sediment and substrate embeddedness;

d. Streams with depths generally less than 2 m (3.3 ft), and with slow to swift flow velocities less than 0.35 m/sec (1.15 ft/sec);

e. Clear, cool water with low turbidity and temperatures in the general range of 2.0 to 23.0 °C (35.6 to 73.4 °F);

f. No harmful levels of pollutants; and

g. Adequate riparian shading to reduce water temperatures when ambient temperatures are high and provide protective cover from predators.

(2) An abundant aquatic insect food base consisting of fine particulate organic material, filamentous algae, midge larvae, caddisfly larvae, mayfly larvae, flatworms, and small terrestrial insects.

(3) Areas devoid of nonnative aquatic species or areas that are maintained to keep nonnatives at a level that allows the Zuni bluehead sucker to continue to survive and reproduce.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. We believe each area included in these designations requires special management and protections as described in our unit descriptions.

We need to consider special management considerations or protection for the features essential to the conservation of the species within each critical habitat area. The special management considerations or protections will depend on the threats to the essential features in that critical habitat area. For example, threats requiring special management considerations or protection include the continued spread of nonnative fish species into Zuni bluehead sucker habitat or increasing number of beavers that reduce habitat quality and foster expansion of nonnative fish and crayfish. Other threats requiring special management considerations or protection include the threat of wildfire and excessive ash and sediment following fire. Improper livestock grazing can be a threat to the remaining populations of the Zuni bluehead sucker through trampling of habitat and increasing sedimentation. Inadequate water quantity resulting from drought and water withdrawals affect all life stages of the Zuni bluehead sucker. Additionally, the construction of impoundments and water diversions can cause an increase in water depth behind the structure and a reduction or elimination of stream habitat below.

In our description below for each of the critical habitat areas for the Zuni bluehead sucker, we have included a discussion on the threats occurring in each area and the required special management considerations or protections.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after

identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the subspecies at the time of listing in 2014. We also are designating specific areas outside the geographical area occupied by the subspecies at the time of listing that were historically occupied but are presently unoccupied, because we have determined that such areas are essential for the conservation of the subspecies.

Sources of data for this subspecies include multiple databases maintained by universities and State agencies from Arizona and New Mexico, existing State recovery plans, endangered species reports, and numerous survey reports on streams throughout the subspecies' range (Propst 1999, pp. 49–51; NMDGF 2003, pp. 6–10; NMDGF 2004, pp. 1–40; David 2006, pp. 1–40; NMDGF 2007, pp. 1–27; Douglas *et al.* 2009, p. 67; Navajo Nation Heritage Program 2012, pp. 1–20, NMDGF 2013, entire). We have also reviewed available information that pertains to the habitat requirements of this subspecies. Sources of information on habitat requirements include existing State recovery plans, endangered species reports, studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Propst *et al.* 2001, pp. 159–161; NMDGF 2003, pp. 1–14; NMDGF 2004, pp. 4–7; Kitcheyan and Mata 2013, pp. 5–12).

The current distribution of the Zuni bluehead sucker is much reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as establishing populations in additional streams that more closely approximate its historic distribution in order to ensure there are adequate numbers of fish in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as wildfire, cannot simultaneously affect all known populations.

Areas Occupied at the Time of Listing

The critical habitat designation includes all streams known to have been occupied by the subspecies historically and that have retained the necessary PCEs that will allow for the maintenance and expansion of existing populations. The following streams meet the definition of areas occupied by the subspecies at the time of listing: Agua Remora, Rio Nutria, Tampico Springs, Tampico Draw, Kinlichee Creek, Black Soil Wash, and Scattered Willow Wash. There are no developed areas within the designation except for barriers constructed on streams or road crossings of streams, which do not remove the suitability of these areas for this subspecies.

Areas Outside the Geographical Area Occupied by the Species at the Time of Listing

The Zuni River, Rio Pescado, Cebolla Creek, and Red Clay Wash are within the historical range of the Zuni bluehead sucker but are not within the geographical range occupied by the subspecies at the time of listing. The Zuni River and Rio Pescado experience a high degree of river intermittency, and the Zuni bluehead sucker has not been seen in these streams in approximately 20 years. Additionally, Zuni bluehead suckers have not been observed in Cebolla Creek and Red Clay Wash in over 30 years. We consider these sites to be extirpated. For areas not occupied by the subspecies at the time of listing, we must demonstrate that these areas are essential to the conservation of the subspecies in order to include them in our critical habitat designation. To determine if these areas are essential for the conservation of the Zuni bluehead sucker, we considered: (1) The importance of the site to the overall status of the subspecies to prevent extinction and contribute to future recovery of the Zuni bluehead sucker; (2) whether special management could cause the site to contain the necessary habitat to support the Zuni bluehead sucker; (3) whether the site provides connectivity between occupied sites for genetic exchange; and (4) whether a population of the subspecies could be reestablished in the area.

Of the unoccupied streams, the Zuni River, Rio Pescado and Cebolla Creek exhibit varying degrees of intermittency; the Zuni River and Rio Pescado are generally only continuous after heavy flows in the spring (NMDGF 2004, p. 13; New Mexico Environment Department (NMED) 2004, p. 1). However, when the Zuni River, Rio Pescado, and portions of Cebolla Creek do exhibit flow, and if special management were to occur, they could allow for important population expansion in this watershed. These sites include habitat for connectivity and dispersal opportunities between occupied and occupied areas. Such opportunities for dispersal assist in maintaining the population structure and distribution of the subspecies. The current amount of habitat that is occupied is not sufficient for the recovery of the subspecies. Therefore, the unoccupied areas are essential for the conservation of the Zuni bluehead sucker.

In summary, for areas within the geographic area occupied by the subspecies at the time of listing, we delineated critical habitat unit boundaries by evaluating habitat suitability of stream segments within the geographic area occupied at the time of listing, and retaining those segments that contain some or all of the PCEs to support life-history functions essential for conservation of the subspecies.

For areas outside the geographic area occupied by the subspecies at the time of listing, we delineated critical habitat unit boundaries by evaluating stream segments not known to have been occupied at listing but that are within the historical range of the subspecies (outside of the geographic area occupied by the subspecies) to determine if they are essential to the conservation of the subspecies. Essential areas are those that:

(1) Are important to the overall status of the subspecies to prevent extinction and contribute to future recovery;

(2) Expand the geographic distribution within areas not occupied at the time of listing across the historical range of the subspecies;

(3) Serve as an extension of habitat within the geographic area of an occupied unit; and

(4) Are connected to other occupied areas, which will enhance genetic exchange between populations.

In conclusion, based on the best available information, we determined that the areas within the historical range are essential to provide for the conservation of the Zuni bluehead sucker because they include habitat for all extant populations, and they include habitat for connectivity and dispersal opportunities between the unit and occupied areas. Such opportunities for dispersal assist in maintaining the population structure and distribution of the subspecies. The current amount of habitat that is occupied is not sufficient for the recovery of the subspecies; therefore, we include unoccupied habitat in this critical habitat designation.

As a final step, we evaluated the occupied stream segments and refined the starting and ending points by evaluating the presence or absence of appropriate PCEs. We selected upstream and downstream cutoff points to omit areas that are highly degraded and are

not likely to be able to support the Zuni bluehead sucker in the future. For example, permanently dewatered areas, or areas in which there was a change to unsuitable characteristics (*e.g.*, water quality, bedrock substrate), were used to mark the start or endpoint of a stream segment proposed for designation. Critical habitat stream segments were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a Geographic Information Systems program.

Areas designated as critical habitat provide sufficient stream and spring habitat for breeding, nonbreeding, and dispersing adult Zuni bluehead suckers, as well as for the habitat needs for juvenile and larval stages of this fish. In general, the PCEs of critical habitat are contained within the riverine ecosystem formed by the wetted channel and the adjacent floodplains within 91.4 lateral m (300 lateral ft) on either side of bankfull discharge, except where bounded by canyon walls. Bankfull discharge is the flow at which water begins to leave the channel and disperse into the floodplain and generally occurs every 1 to 2 years. Areas within the lateral extent also contribute to the PCEs, including water quality and intermittent areas through which fish may disperse when wetted.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the Zuni bluehead sucker. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultations with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, on our Internet site at *http://www.fws.gov/southwest/es/NewMexico/*, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

We are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential to the conservation of the subspecies, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Zuni bluehead sucker.

Units are designated based on sufficient elements of physical or biological features being present to support the Zuni bluehead sucker's life processes. Some units contain all of the identified elements of physical or biological features and support multiple life processes. Some segments contain only some elements of the physical or biological features necessary to support the Zuni bluehead sucker's particular use of that habitat.

Final Critical Habitat Designation

We are designating one unit, the Zuni River Unit, as critical habitat for the Zuni bluehead sucker. Following our evaluation and analysis under section 4(b)(2) of the Act, Unit 2 (Kinlichee Creek Unit) is excluded in its entirety (see Consideration of Impacts under Section 4(b)(2) of the Act, below). The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Table 1 shows the occupied subunits.

TABLE 1—DESIGNATED CRITICAL HABITAT UNIT FOR ZUNI BLUEHEAD SUCKER

[Area estimates reflect all land within critical habitat unit boundaries]

Stream segment	Occupied at the time of listing	Land ownership	Length of unit in kilometers (miles)
Unit 1—Zuni River Unit			
Subunit 1a—Zuni River Headwaters			
Agua Remora	Yes	Forest Service	6.6 (4.1)
		Private	2.4 (1.5)
Rio Nutria	Yes	Forest Service	4.1 (2.6)
		State of New Mexico	1.8 (1.1)
		Private	14.2 (8.8)
Tampico Draw	Yes	Forest Service	2.3 (1.4)
		Private	3.7 (2.3)
Tampico Spring	Yes	Private	0.2 (0.1)
Total			35.4 (22.0)
Subunit 1b—Zuni River Mainstem			
Cebolla Creek	No	State of New Mexico	0.4 (0.2)
		Forest Service	6.4 (4.0)
		Private	13.5 (8.4)
Total			20.3 (12.6)

Note: Area sizes may not sum due to rounding.

Below we present brief descriptions of the unit and reasons why it meets the definition of critical habitat for the Zuni bluehead sucker.

Unit 1: Zuni River Unit

Subunit 1a—Zuni River Headwaters: Subunit 1a consists of 35.4 km (22.0 mi) along Agua Remora, Rio Nutria, Tampico Draw, and Tampico Springs in McKinley County, New Mexico. We exclude approximately 38.9 km (24.2 mi) of Subunit 1a, which was primary along the Rio Nutria on the Zuni Reservation. The land in this subunit is primarily owned by Forest Service, and private landowners with a small amount of State inholdings. At the time of listing, the Zuni bluehead sucker occupied all stream reaches in this subunit, and the subunit contains all of the physical or biological features essential to the conservation of the Zuni bluehead sucker. This unit represents the only remaining headwater spring habitats occupied by Zuni bluehead sucker.

Activities in the watershed include livestock grazing, water withdrawals, and impoundments. Livestock grazing is primarily regulated by the Forest Service in this subunit; however, trespass livestock grazing may occur. Additional special management considerations or protection may be required within Subunit 1a to address low water levels as a result of water withdrawals and drought, predation from nonnative green sunfish (*Lepomis cyanellus*), and the upstream and downstream effects of impoundments. Such special management or protection may include maintaining instream flows, nonnative species removal, and reservoir management that improves upstream and downstream habitat to benefit the Zuni bluehead sucker.

Subunit 1b—Zuni River Mainstem: Subunit 1b consists of 20.3 km (12.6 mi) of potential Zuni bluehead sucker habitat along Cebolla Creek in McKinley and Cibola Counties, New Mexico. Land within this subunit is primarily owned by private landowners, with a small amount owned by Forest Service and the State of New Mexico. We removed 7.9 km (4.9 mi) of Cebolla Creek that had been included in the proposed designation because it does not meet the definition of critical habitat. Based upon further investigation, a section of Cebolla Creek (from Pescado Reservoir upstream on Cebolla Creek to Ramah Reservoir) lacks certain morphological features of suitable Zuni bluehead sucker habitat with no running water present except during periods of rain; this reach is unlikely to have perennial or intermittent flows due to agricultural practices in the area. This section of Cebolla Creek is not essential to the conservation of the subspecies and does not meet the definition of critical habitat. Therefore, critical habitat in Cebolla Creek is the reach from Ramah Reservoir upstream for approximately 23.2 km (14.4 mi) of stream habitat.

This unit was unoccupied at the time of listing. Zuni bluehead sucker historically occupied streams (Zuni River and Rio Pescado) adjacent to Cebolla Creek but has not been found in the Zuni River or Rio Pescado since the mid-1990s (NMDGF 2004, p. 5). In addition, the Zuni bluehead sucker has been extirpated from Cebolla Creek since at least 1979 (Hanson 1980, pp. 29, 34). Cebolla Creek upstream of Ramah Reservoir has been identified as containing suitable habitat and could provide for significant population expansion. Therefore, this subunit is essential for the conservation of the Zuni bluehead sucker because it provides growth and expansion of the subspecies in this portion of its historical range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule that sets forth a new definition of "destruction or adverse modification" on February 11, 2016 (81 FR 7214); that final rule became effective on March 14, 2016. "Destruction or adverse modification" means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate

consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Zuni bluehead sucker. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of this subspecies or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Zuni bluehead sucker. These activities include, but are not limited to:

(1) Actions that could diminish flows within the active stream channel. Such activities could include, but are not limited to: Water diversion, water withdrawal, channelization, construction of any barriers or impediments within the active stream channel, construction of permanent or temporary diversion structures, and groundwater pumping within aquifers associated with the stream or springs. These activities could affect water depth, velocity, and flow patterns, all of which are essential to the different life stages of the Zuni bluehead sucker.

(2) Actions that could significantly increase sediment deposition within a stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, commercial or urban development, channel alteration, timber harvest, or other watershed and floodplain disturbances. These activities could adversely affect reproduction of the subspecies by preventing hatching of eggs through suffocation, or by eliminating suitable habitat for egg placement by the Zuni bluehead sucker. In addition, excessive levels of sedimentation reduce or eliminate algae production and can make it difficult for the Zuni bluehead sucker to locate prey.

(3) Actions that could result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the Zuni bluehead sucker. Possible actions could include, but are not limited to: Stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease, or affect the growth, reproduction, and survival of the Zuni bluehead sucker.

(4) Actions that could significantly alter channel morphology. Such activities could include, but are not limited to: Channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the Zuni bluehead, their habitats, or both. These actions can also lead to increased sedimentation and degradation of the water.

(5) Actions that could significantly alter the water chemistry of the active channel. Such activities could include release of chemicals, biological pollutants, or other substances into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source), and storage of chemicals or pollutants that can be transmitted, via surface water, groundwater, or air, into critical habitat. These actions can affect water chemistry and the prey base of the Zuni bluehead sucker.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the critical habitat designation for the Zuni bluehead sucker; therefore, we are not exempting any areas under section 4(a)(3)(B)(i) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State, Tribal, or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more

conservation than a critical habitat designation would provide.

In the case of the Zuni bluehead sucker, the benefits of critical habitat include promotion of public awareness of the presence of the Zuni bluehead sucker and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for the Zuni bluehead sucker due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the Zuni bluehead sucker:

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

Subunit	Specific area	Land ownership	Areas meeting the definition of critical habitat, in kilometers (miles)	Areas excluded from critical habitat, in kilometers (miles)
1a	Rio Nutria	Zuni Tribe	38.9 (24.2)	38.9 (24.2)
1b	Zuni River	Zuni Tribe	7.4 (4.6)	7.4 (4.6)
1b	Rio Pescado	Zuni Tribe	18.3 (11.4)	18.3 (11.4)
1b	Cebolla Creek	Zuni Tribe	3.7 (2.3)	3.7 (2.3)
2a	Black Soil Wash	Navajo Nation	21.6 (13.4)	21.6 (13.4)
2a	Kinlichee Creek	Navajo Nation	47.1 (29.3)	47.1 (29.3)
2a	Scattered Willow Wash	Navajo Nation	18.2 (11.3)	18.2 (11.3)
2b	Red Clay Wash	Navajo Nation	9.6 (6.0)	9.6 (6.0)

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2014, entire).

The analysis, dated October 22, 2014, was made available for public review from April 14, 2015, through May 14, 2015 (80 FR 19941). The DEA addressed probable economic impacts of critical habitat designation for the Zuni bluehead sucker. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Zuni bluehead sucker is summarized below and available in the screening analysis for the Zuni bluehead sucker (IEc 2014, entire), at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0002.

We prepared an incremental effects memorandum (IEM) and screening analysis which, together, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2014, entire). As required by Executive Order 12866, any rule that results in costs that exceed $100 million is considered a significant regulatory action. The purpose of the economic analysis is to provide us with the information on the potential for the proposed critical habitat rule to result in costs or benefits exceeding $100 million in any given year. The economic analysis addressed potential economic impacts of critical habitat designation for the Zuni bluehead sucker. The analysis estimates impacts to activities, including Federal lands management, roadway and bridge construction, agriculture, grazing, groundwater pumping, and instream dams and diversions, that may experience the greatest impacts in compliance with section 4(b)(2) of the Act. The economic impacts will most likely be limited to additional administrative effort resulting from a small number of future section 7 consultations, as well as minor costs of conservation efforts. This finding is based on the following information:

1. Approximately 70 percent (161.1 km (100.1 mi)) of proposed critical habitat stream reaches are considered to be occupied by the subspecies. Critical habitat designation is unlikely to result in incremental changes to conservation actions in currently occupied areas over and above those necessary to avoid jeopardizing of the subspecies. As such, only administrative costs are expected in those areas.

2. In proposed areas that are not occupied by Zuni bluehead sucker (30 percent of proposed critical habitat), few actions are expected to result in section 7 consultation or associated project modifications. In particular, Subunit 2b (9.6 km (6.0 mi)) occurs entirely on Navajo Nation lands. Our outreach efforts to Navajo Nation indicate that there would be no projects that would result in section 7 consultation within the proposed critical habitat areas on these lands. Subunit 1b (57.6 km (35.8 mi)) includes U.S. Forest Service, private, State, and Zuni Pueblo lands. Communications with affected entities indicate that critical habitat designation is unlikely to result in more than just a few consultations in this unit, with

minor conservation efforts that would result in relatively low costs.

3. We are excluding 164.8 km (102.4 mi) and removing 7.9 km (4.9 mi) of critical habitat from the final designation; therefore, the economic impacts of critical habitat designation are expected to be less than the economic analysis anticipated.

Entities most likely to incur costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities potentially subject to consultations that may involve private entities as third parties are primarily limited to residential and commercial development. The cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than $10,000 per consultation effort). Therefore, we conclude that these future costs are unknown, but appear unlikely to exceed $100 million in any single year. Therefore, we conclude that critical habitat designation for the Zuni bluehead sucker is unlikely to generate costs exceeding $100 million in a single year.

Exclusions Based on Economic Impacts

The Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Zuni bluehead sucker based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that there were no lands identified to have a national security impact. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Tribal Lands

There are several Executive Orders, Secretarial Orders, and policies that relate to working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS), Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: "Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands." In light of this instruction, when we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat, nor does it state that Tribal lands or waters cannot meet the Act's definition of "critical habitat." We are directed by the Act to identify areas that meet the definition of "critical habitat" (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the statutory authority of the Secretary of the Interior and the Secretary of Commerce.

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(1) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(3) The demonstrated implementation and success of the chosen conservation measures;

(4) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(5) The extent of public participation in the development of the conservation plan;

(6) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

(7) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(8) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

We believe that the Navajo Nation Fisheries Management Plan and Zuni Tribe's draft Fisheries Management Plan fulfill the above criteria, and, as discussed below, are excluding non-Federal lands covered by these plans that provide for the conservation of the Zuni bluehead sucker.

I. Navajo Nation

On Navajo Nation (Unit 2 in the proposed rule), we proposed 96.5 km (60.0 mi) of critical habitat along the stream channels within Apache County, Arizona. Much of the habitat was historically occupied by the subspecies with individuals detected as recently as 2015 (Crabtree and Buth 1987, p. 851; Kitcheyan and Mata 2013, p. 10; Service 2015b, entire). Subunit 2 was considered occupied at the time of listing, except for Subunit 2b (Red Clay Wash).

A. Navajo Nation Fisheries Management Plan

Navajo Nation has developed a Fisheries Management Plan (FMP), which is a joint effort between Navajo Nation Department of Fish and Wildlife (NNDFW), the Service, and the Bureau of Indian Affairs (BIA). The FMP is designed for the purpose of long-term planning and implementation of fisheries-related issues on Navajo Nation and is part of an integrated, interagency cooperative effort to manage its fisheries resources based on sound ecological management practices. The FMP serves as a guide for accomplishing the goals outlined in the management plan for managing, maintaining, enhancing, and conserving the fisheries resources on the Navajo Nation. One objective in the FMP is to identify and protect existing Zuni bluehead sucker populations and their habitats, and expand their distribution to suitable streams. This would be accomplished by the following actions:

(1) Monitoring populations of Zuni bluehead sucker and their habitat conditions to evaluate population structure, distribution, and dynamics, and to implement adaptive management programs and habitat restoration where needed.

(2) Re-establishing the Zuni bluehead sucker in reclaimed streams using existing Zuni bluehead suckers from Federal hatchery facilities, or from a donor stream.

(3) Reducing or eliminating threats from nonnative fishes and other nonnative aquatic biota (*e.g.,* crayfish), if present within recovery portions of streams using mechanical, chemical, or other effective methods.

(4) When possible, constructing fencing exclosures to minimize and/or prevent domestic livestock overgrazing and encroachment into riparian areas.

(5) Improving and restoring habitat conditions as needed to provide suitable habitat for the Zuni bluehead sucker.

(6) Evaluating the feasibility of constructing and maintaining artificial fish barriers to prevent upstream movement of nonnative fishes into protected areas.

(7) Monitoring for presence of diseases and/or causative agents, parasites, and pathogens through wild fish health surveys.

(8) Identifying facilities or refugium sites (*i.e.,* natural or hatchery) with capacity to maintain isolated populations of Zuni bluehead sucker, and establishing a broodstock program to act as a refugia population.

(9) Developing and implementing fire and drought contingency plans to formalize rescue and refugia strategy for the protection of temporarily vulnerable populations.

(10) Participating in a Zuni bluehead sucker Recovery Team, if established, or recovery planning, when initiated by the Service.

(11) Coordinating annual meetings to evaluate the subspecies' status, distribution, and potential impacts, and to inform and update agency partners of recovery actions and progress (NNDFW 2015, pp. 26–27).

In addition, NNDFW has authority over endangered and threatened species protection, and all temporary and permanent developments (*i.e.,* draining, dredging, filling, excavating, building, grazing, and pollution) within designated sensitive areas must receive a permit or other formal authorization from NNDFW. Navajo Nation evaluates a project's potential impact on protected fish and wildlife and their habitats by using their Natural Heritage Database and various tribal and Federal wildlife protection regulations (refer to the discussion under *Factor D. The Inadequacy of Existing Regulatory Mechanisms* in our final listing rule published July 24, 2014 (79 FR 43132)). Navajo Nation's regulatory process divides their land into six separate land status categories to manage actions in a way that minimize impacts to sensitive species and habitats.

The Zuni bluehead sucker critical habitat that was proposed within the Kinlichee Creek Watershed falls into areas that Navajo Nation has delineated as a highly sensitive area. Highly Sensitive Areas are areas that are the most protected on Navajo Nation and contain a high degree of habitat or resource importance for one or more protected species; these areas have been relatively undisturbed by development. Permanent development is not prohibited, but those developments must demonstrate that impacts to protected species will be minimal, and if possible, NNDFW strongly urges relocating projects to less sensitive habitats.

In the FMP, Navajo Nation recognizes that management is needed to address impacts that grazing has on riparian areas near Zuni bluehead sucker habitat. Navajo Nation can withdraw riparian habitat from grazing use and has previously worked with other Navajo agencies to reduce and eliminate grazing in important habitats along the San Juan River. Efforts are underway by Navajo policy makers and agencies to address past grazing impacts on Navajo Nation lands and to improve protection and enforcement of Navajo resources and ecosystems. For example, in 2012, the Navajo Departments of Resource Enforcement and Agriculture conducted roundups to reduce overgrazing by stray, feral, and unpermitted livestock.

Additionally, Navajo Nation and BIA conducted public outreach regarding grazing impacts and the necessity of immediate and proactive steps to be taken to reduce grazing pressure and restore productivity of Navajo Nation rangelands. More recently, Navajo Nation has developed a draft Navajo Rangeland Improvement Act of 2014 to improve the ecological health and productivity of Navajo rangelands in order to protect the interests of present and future generations of Navajo people (Navajo Nation 2014, entire). One purpose is to mandate the implementation of sound grazing management and conservation techniques and practices on Navajo rangelands (Navajo Nation 2014, p. 4). Although the Navajo Rangeland Improvement Act of 2014 is currently draft, it provides evidence of the Navajo Nation's interest in conserving habitat and minimizing impacts of grazing, a result of our positive working relationship.

B. Benefits of Inclusion

As discussed above under *Section 7 Consultation*, Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat.

Unit 2 of the proposed critical habitat for Zuni bluehead sucker is the Kinlichee Creek Unit, which contains Subunits 2a (occupied) and 2b (unoccupied). If there are Federal actions or if Federal permitting occurs in Subunit 2a, these actions would undergo section 7 consultation under the jeopardy standard, because the subunit is occupied by the subspecies. Critical habitat along Subunit 2a (Kinlichee Creek, Black Soil Wash, and Scattered Willow Wash) may not provide an additional regulatory benefit for the Zuni bluehead sucker under section 7 of the Act when there is a Federal nexus present for a project that might adversely modify critical habitat. Because the subspecies is so closely tied to its habitat, the results of consultation under the adverse modification standard are not likely to differ from the results of consultation under the jeopardy standard. It is unlikely that additional project modification would be required above and beyond those to avoid jeopardy in order to avoid adverse modification or destruction of critical habitat. However, Subunit 2b (Red Clay Wash) is unoccupied by the Zuni bluehead sucker; therefore, if a Federal action or permitting occurs, there may not be a consultation under section 7 of the Act unless critical habitat is designated. Our coordination with the Navajo Nation indicates that it is unlikely that any project will result in section 7 consultation within the areas proposed as critical habitat within Subunit 2b. Our Incremental Effects Memo provides further description of this (Service 2013, entire).

Our economic analysis found that incremental costs would mainly occur in unoccupied areas of critical habitat, specifically Subunit 2b. Based on communications with Navajo Nation, we do not anticipate a significant number of consultations in this subunit, resulting in relatively low cost. We do not anticipate that any formal consultations from urban development or recreation would occur if critical habitat were designated, primarily because there would be no Federal nexus. The types of projects we might anticipate that may have a Federal nexus (riparian habitat restoration, forest management plans, and livestock grazing activities) would all provide long-term benefits to Zuni bluehead sucker habitat, suggesting that effects to the Zuni bluehead sucker from Federal projects would likely result in insignificant and discountable impacts because conservation measures would be focused on habitat improvement and management. Because of how Navajo Nation manages and conserves their lands through establishment of policies, rules, and regulation (such as the Navajo Nation Endangered Species List, Biological Resources Land Use Clearance Policies and Procedures, Navajo Nation Water Quality Standards of 2007, Navajo Nation Aquatic Resources Protection Program, and Navajo Nation's 10-Year Forest Management Plan), and active conservation of the Zuni bluehead sucker and other imperiled species, we do not anticipate that Navajo Nation's actions would considerably change in the future. Therefore, the regulatory benefit of critical habitat designation on these lands is minimized.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, tribes, and the public regarding the potential conservation value of an area and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Zuni bluehead sucker that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also strengthen or reinforce some Federal laws such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

The educational benefits that might follow critical habitat designation, such as providing information to Navajo Nation on areas that are important for the long-term survival and conservation of the subspecies, have already been achieved. Navajo Nation is fully aware of the Zuni bluehead sucker and its habitat needs, and has demonstrated commitment to address management and recovery of other endangered and threatened species (*i.e.*, southwestern willow flycatcher (flycatcher) (*Empidonax traillii extimus*), Colorado pikeminnow (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*)). Navajo Nation was an integral partner in identifying which bluehead sucker populations were in fact Zuni bluehead sucker. Since 2013, Navajo Nation has been actively monitoring their Zuni bluehead sucker populations (Kitcheyan and Mata 2012, entire; Kitcheyan and Mata 2013, entire) and have identified additional occupied sites within the proposed critical habitat area, as well as potential new locations for population replication (NNDFW 2015, entire). Navajo Nation is also a partner on a habitat suitability study on the Zuni bluehead sucker with the University of Arizona and has actively been seeking funds for several fish passage projects on Navajo Nation. Additionally, the NNDFW has authority with regard to endangered and threatened species protection and is in the process of listing the Zuni bluehead sucker as an endangered species for added protection, which is a tribal designation by Navajo Nation different from the endangered designation under the Act. Finally, Navajo Nation has incorporated outreach and educational components regarding native fishes, including the Zuni bluehead sucker, within their FMP. The FMP provides guidance and oversight on the management of both recreational and native fish, including the Zuni bluehead sucker. We find that the Navajo Nation Fisheries Management Plan is complete, and the commitment to implement conservation activities described provides significant conservation benefit to the Zuni bluehead sucker. The FMP specifically provides periodic updates as appropriate. The assurances, protections, and conservation actions for the Zuni bluehead sucker within the Kinlichee Creek watershed on Navajo Nation lands provide extensive benefit to the subspecies. These baseline conservation efforts would minimize any regulatory benefit of critical habitat designation on these lands. For these reasons, we believe there is little educational benefit or support for other laws and regulations attributable to critical habitat beyond those benefits already achieved from listing the Zuni bluehead sucker under the Act on July 24, 2014 (79 FR 43132).

C. Benefits of Exclusion

The benefits of excluding Navajo Nation from designated critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the Zuni bluehead sucker; and

(2) the maintenance of effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat, and other species and their habitats.

We have an effective working relationship with Navajo Nation, which was reinforced when we proposed critical habitat for four endemic Colorado River basin fishes: Razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*) (59 FR 13374; March 21, 1994)) and has evolved through consultations on the flycatcher (69 FR 60706; October 12, 2004). The designation of critical habitat on Navajo Nation would be expected to adversely impact our working relationship. During our discussions with Navajo Nation, they informed us that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. We believe that continuing our positive working relationships with Navajo Nation would provide more conservation for the Zuni bluehead sucker than the regulatory designation of critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship with Navajo Nation for the mutual benefit of Zuni bluehead sucker conservation and the conservation of other endangered and threatened species.

During the development of the Zuni bluehead sucker critical habitat proposal, we met with Navajo Nation to discuss how they might be affected by the regulations associated with endangered species management, recovery, the designation of critical habitat, and measures to minimize any impacts from planned projects. As such, we established cooperative relationships for the management and conservation of endangered species and their habitats. As part of our relationship, we provided technical assistance to develop measures to conserve endangered and threatened species such as the Colorado pikeminnow, razorback sucker, humpback chub, bonytail chub, and flycatcher and their habitats. Navajo Nation has already requested similar assistance for the Zuni bluehead sucker, and we anticipate providing further assistance in their efforts to conserve the subspecies.

All of these proactive actions were conducted in accordance with Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and Secretarial Order 3317, "Department of Interior Policy on Consultation with Indian Tribes" (December 1, 2011). We believe Navajo Nation should be the governmental entity to manage and promote the Zuni bluehead sucker conservation on their lands.

D. Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of including Navajo Nation in the critical habitat designation are limited to educational awareness and projects that may result in section 7 consultation. It is unlikely that many projects will result in section 7 consultation within the proposed critical habitat areas on Navajo Nation based on section 7 consultations for other listed species and lack of a Federal nexus. However, as discussed in detail above, we believe these benefits are minimized because Navajo Nation is familiar with the Zuni bluehead sucker and its habitat needs, and has demonstrated commitment to address management and recovery for this subspecies and others (*e.g.*, flycatcher, Colorado pikeminnow, and razorback sucker).

The benefits of excluding Navajo Nation from designation as Zuni bluehead sucker critical habitat are: (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to Zuni bluehead sucker, riparian habitats, and other native species from implementation of conservation actions under the FMP; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat. Overall, these conservation actions accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. Excluding Navajo Nation from critical habitat will allow them to manage their natural resources to benefit the Zuni bluehead sucker without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to other listed species that would not otherwise be available without the Service's maintenance of a cooperative working relationship. In conclusion, we find that the benefits of excluding Navajo Nation from critical habitat designation outweigh the benefits of including these areas.

E. Exclusion Will Not Result in Extinction of the Species

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. There is a small portion of proposed critical habitat on Navajo Nation that is considered to be unoccupied; Subunit 2b (Red Clay Wash) is approximately 9.6 km (6.0 mi). The remaining 86.9 km (54.0 mi) of critical habitat on Navajo Nation is considered to be occupied. Therefore, Federal activities in these areas that may affect the Zuni bluehead sucker will still require consultation under section 7(a)(2) of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on these lands, activities that occur on these lands cannot jeopardize the continued existence of the Zuni bluehead sucker. Even so, our record demonstrates that formal section 7 consultations rarely occur on tribal lands, which is likely a result of existing conservation planning by both Navajo Nation and BIA. Second, Navajo Nation has committed to protecting and managing Zuni bluehead sucker habitat according to their management plans and natural resource management objectives. We believe this commitment accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the implementation of their natural resource management objectives, based upon strategies developed in the Fisheries management plan, we have concluded that this exclusion from critical habitat will not result in the extinction of the Zuni bluehead sucker. Accordingly, under section 4(b)(2) of the Act, we have determined that the benefit of exclusion of Navajo Nation lands in Unit 2 outweigh the benefits of their inclusion; the exclusion of these lands from the designation will not result in the extinction of the species; and therefore, we are excluding these lands from critical habitat designation for the Zuni bluehead sucker.

II. Zuni Tribe

The Zuni Tribe is a federally recognized Indian Tribe with reservation lands totaling nearly 463,271 acres. The Zuni Reservation is

located in western New Mexico, approximately 150 miles west of Albuquerque in McKinley County. On the Zuni Reservation (within Unit 1 in the proposed rule), we proposed 68.3 km (42.4 mi) of stream habitat. Much of the habitat was historically occupied, with individuals detected as recently as 1990 (Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 26); however, many areas have not been surveyed for Zuni bluehead sucker due to drought conditions or complexity of sampling due to access, variety of habitat, and visibility due to increase turbidity. We consider all portions of Subunit 1a to be occupied.

As analyzed below, we are excluding the Zuni Tribe's lands from critical habitat based on our ongoing conservation partnership where the benefits of exclusion from critical habitat outweigh the benefits of including an area in critical habitat. We believe the Zuni Tribe has demonstrated a productive working relationship on a Government-to-Government basis with us. The designation of critical habitat on the Zuni Reservation would be expected to adversely impact our working relationship with the Tribe.

Zuni Tribe has worked cooperatively with the Service on a draft Fisheries Management Plan (draft FMP), which includes the Zuni bluehead sucker. The draft FMP is a joint effort between Zuni Fish and Wildlife Department, the Service, and BIA. The draft FMP is designed for the purpose of long-term planning and implementation of fisheries-related issues on Zuni Reservation and is part of an integrated, interagency cooperative effort to manage its fisheries resources based on sound ecological management practices. The draft FMP serves as a guide for accomplishing goals outlined in the Management Plan for managing, maintaining, enhancing, and conserving the fisheries resources on Zuni Reservation. Two objectives in the draft FMP are to identify and protect existing Zuni bluehead sucker populations and their habitats and to expand distribution to suitable streams. These objectives would be accomplished by actions similar to those described in the Navajo Nation FMP. The Zuni Tribe draft FMP was based on the Navajo Nation FMP, with a few differences. The main difference in the Zuni Tribe draft FMP is that consultation is needed with the Zuni Cultural Resource Advisory Team to ensure that implementation of the Fisheries Management Plan does not affect Zuni Tribe's cultural beliefs. In addition, the Zuni Tribe identifies responsible parties that can aid in the improvement of grazing management along streams containing Zuni bluehead sucker habitat. Although this plan is currently in draft, it serves as evidence of our cooperative working relationship with Zuni Tribe.

In addition, Zuni Tribe has established conservation partnerships with the Service, NMDGF, Cibola National Forest, The Nature Conservancy, and private landowners. Zuni Tribe has participated in and implemented conservation and recovery actions for the Zuni bluehead sucker. Zuni Tribe, NMDGF, and the Service continue to work together to monitor, conserve, and protect known occupied Zuni bluehead sucker habitat on Tribal property and upstream habitat on The Nature Conservancy's lands.

A. Benefits of Inclusion

On Zuni Reservation, we proposed as critical habitat 38.9 km (24.2 mi) within Subunit 1a (Zuni River Headwaters), which is occupied by the Zuni bluehead sucker. Therefore, if a Federal action or permitting occurs, there is a section 7 nexus, and the incremental impacts due to critical habitat would be limited to administrative cost. We also proposed as critical habitat 29.4 km (18.3 mi) on Zuni Reservation within Subunit 1b (Zuni River Mainstem), which is unoccupied by the Zuni bluehead sucker; therefore, if a Federal action or permitting occurs, there may not be a consultation under section 7 of the Act unless critical habitat is designated. Our draft economic analysis found that if we designate critical habitat on Zuni Reservation, it is expected that there will be a small number of informal consultations that would incur limited administrative costs only and that no Zuni Tribe activities are expected to result in formal consultation; however, future impacts are possible.

Our section 7 consultation history for another riparian species, the flycatcher, shows that since listing in 1995, we have conducted informal consultations on the flycatcher with agencies implementing actions or providing funding. However, since listing in 1995, no formal section 7 consultations have occurred on Zuni Reservation. Effects to the flycatcher from Federal projects have all resulted in insignificant and discountable impacts because conservation measures have focused on habitat improvement and management for the flycatcher and its habitat. We anticipate a similar scenario for the Zuni bluehead sucker.

If we designate critical habitat on the Zuni Reservation, our previous section 7 consultation history for the flycatcher in riparian habitat indicates that there could be a few regulatory benefits to the Zuni bluehead sucker on Subunit 1b, which is currently unoccupied.

Formal consultation for Zuni bluehead sucker on the Zuni Reservation is unlikely. There are no projects planned within the proposed critical habitat units, and future projects that we might anticipate (riparian habitat restoration, establishment of refugia populations, construction of fish barriers and livestock exclosure fencing) are actions that provide long-term benefits to the Zuni bluehead sucker and its habitat. Therefore, effects to the Zuni bluehead sucker from Federal projects would likely result in insignificant and discountable impacts because conservation measures would be focused on habitat improvement and management. Because of how Zuni Tribe manages and conserves its lands through establishment of fish regulation, livestock grazing exclosures, and establishment of management plans and active conservation of the Zuni bluehead sucker and other imperiled species, we do not anticipate that Zuni Tribe's actions would considerably change in the future. These baseline conservation efforts would minimize any regulatory benefit of critical habitat designation on these lands. Therefore, the benefits of inclusion of the lands are minimized by the continuing conservation efforts on the Zuni Tribe lands.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Zuni bluehead sucker that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also strengthen or reinforce some Federal laws such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

The educational benefits that might follow critical habitat designation, such as providing information to Zuni Tribe on areas that are important for the long-term survival and conservation of the subspecies, have already been achieved. Zuni Tribe is familiar with the Zuni bluehead sucker and its habitat needs and has successfully worked with the Service to address Zuni bluehead sucker

management and recovery. The Zuni bluehead sucker population has been widely known since the 1960s (Merkel 1979, entire; Hanson 1980, entire; Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 24). Thus, the educational benefits that might follow critical habitat designation, such as providing information to Zuni Tribe on areas that are important for the long-term survival and conservation of the subspecies, have already been provided by decades of partnerships with NMDGF and the Service. For these reasons, we believe there is little educational benefit or support for other laws and regulations attributable to critical habitat beyond those benefits already achieved.

B. Benefits of Exclusion

The benefits of excluding the Zuni Tribe from designated critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the Zuni bluehead sucker; and (2) the fostering of our partnership with Zuni Tribe, which results in effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat, and other species and their habitats.

We have an effective working relationship with Zuni Tribe, which has evolved through consultations on the flycatcher (69 FR 60706; October 12, 2004) and through cooperative fisheries management. As part of our relationship, we have provided technical assistance to develop measures to conserve the Zuni bluehead and its habitat on the Tribe's lands, as well as conducting surveys and research investigations regarding the subspecies' needs (*e.g.*, habitat and spawning). These proactive actions were conducted in accordance with Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and Secretarial Order 3317, "Department of Interior Policy on Consultation with Indian Tribes" (December 1, 2011). We believe Zuni Tribe should be the governmental entity to manage and promote Zuni bluehead sucker conservation on their lands. During our communication with Zuni Tribe, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian habitat and fishing regulation restrictions.

During the comment periods, we received input from Zuni Tribe expressing the view that designating Zuni bluehead sucker critical habitat on tribal land would adversely affect our working relationship. They noted that the beneficial cooperative working relationship has assisted in the conservation of listed species and other natural resources. During our discussions with Zuni Tribe, they informed us that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. For this reason, we believe that our working relationships with Zuni Tribe would be better maintained if we exclude their lands from the designation of Zuni bluehead sucker critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship with Zuni Tribe for the mutual benefit of Zuni bluehead sucker conservation and the conservation of other endangered and threatened species.

We have coordinated and collaborated with Zuni Tribe on the management and recovery of the endangered species and their habitats by establishing conservation partnerships. Many tribes and pueblos recognize that their management of riparian habitat and conservation of the flycatcher and the Zuni bluehead sucker are common goals they share with the Service. Zuni Tribe's management actions are evidence of their commitment toward measures to improve riparian habitat for endangered and threatened species. Some of the common management strategies are maintaining riparian conservation areas, preserving habitat, improving habitat, protecting the species under Zuni Tribe Game and Fish Codes starting in 1968 (Zuni Tribe 1989, entire), and conducting surveys with Service since 1954.

Zuni Tribe will continue to work cooperatively with us and others to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if these lands are designated as critical habitat for the Zuni bluehead sucker.

C. Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of including Zuni Tribe in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, and educational awareness. However, as discussed in detail above, we believe these benefits are minimized because they are provided for through other mechanisms, such as (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to the Zuni bluehead sucker from implementation of baseline conservation actions through our partnership; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat.

The benefits of excluding Zuni Tribe's lands from designation as Zuni bluehead sucker critical habitat are more significant and include encouraging the continued implementation of tribal management and conservation measures such as monitoring, surveying, habitat management and protection, and recovery activities that are planned for the future or are currently being implemented. Overall, these conservation actions and management of the subspecies and its habitat likely accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis (especially when formal section 7 consultations are rare) and implementation of the draft Zuni Fisheries Management Plan. These programs will allow Zuni Tribe to manage their natural resources to benefit riparian habitat for the Zuni bluehead sucker, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to other listed species that would not otherwise be available without the Service's maintenance of a cooperative working relationship. In conclusion, we find that the benefits of excluding Zuni Tribe's lands from critical habitat designation outweigh the benefits of including these areas.

D. Exclusion Will Not Result in Extinction of the Species

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical

habitat will result in the extinction of the species concerned.

First, Federal activities on these areas that may affect the Zuni bluehead sucker will still require consultation under section 7 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on these lands, activities that occur on these lands cannot jeopardize the continued existence of the Zuni bluehead sucker. Even so, our record demonstrates that formal section 7 consultations rarely occur on tribal lands, which is likely the result of existing conservation planning. Second, Zuni Tribe is committed to protecting and managing the Zuni bluehead sucker's habitat according to the Tribe's management plans and natural resource management objectives. We believe this commitment accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the implementation of their natural resource management objectives, based upon strategies developed in the Fisheries Management Plan, we have concluded that this exclusion from critical habitat will not result in the extinction of the Zuni bluehead sucker. Accordingly, under section 4(b)(2) of the Act, we have determined the benefits of exclusion of Zuni Tribe lands in Unit 1 outweigh the benefits of their inclusion; the exclusion of these lands from the designation will not result in the extinction of the species; and, therefore, we are excluding these lands from critical habitat designation for the Zuni bluehead sucker.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Zuni bluehead sucker conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands within the designated critical habitat do not occur within the jurisdiction of small governments. This rule will not produce a Federal mandate of $100 million or greater in any year. Therefore, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Zuni bluehead sucker in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Zuni bluehead sucker. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis and described within this document, economic impacts to a property owner are unlikely to be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the Zuni bluehead sucker does not pose significant takings implications for lands within or affected by the designation. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the Zuni bluehead sucker does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Arizona and New Mexico. We received comments from Arizona and New Mexico, and have addressed them under Summary of Comments and Recommendations, above. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation

under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, the rule identifies the elements of physical or biological features essential to the conservation of the Zuni bluehead sucker. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Zuni bluehead sucker, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for a proposal when it is finished.

We performed the NEPA analysis, and the draft environmental assessment was made available for public comment on April 14, 2015 (80 FR 19941). The final environmental assessment has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment online at *http://www.regulations.gov*, by mail from the New Mexico Ecological Services Field Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/southwest/es/newmexico*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

Navajo Nation and the Zuni Tribe are the only tribes affected by this final rule. We sent notification letters in July 2012 to each tribe describing the exclusion process under section 4(b)(2) of the Act, and we have engaged in conversations with both tribes about the proposal to the extent possible without disclosing predecisional information. We sent out notification letters on April 12, 2013, notifying the tribes that the proposed rule had published in the **Federal Register** to allow for the maximum time to submit comments. On April 14, 2015, we also sent letters notifying the tribes that we had made available the draft environmental assessment and draft economic analysis in the **Federal Register**.

We had a government-to-government coordination meeting with Navajo Nation in March 2013. Additionally, we worked closely with the Zuni Tribe to develop a draft fisheries management plan for their respective land. We met on May 7, 2015, to discuss the proposed rule and their draft fisheries management plan. We considered these tribal areas for exclusion from final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act, and, subsequently, excluded the lands of Navajo Nation and the Zuni Tribe from this final designation.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for "Sucker, Zuni bluehead" under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Sucker, Zuni bluehead.	*Catostomus discobolus yarrowi.*	U.S.A. (AZ, NM)	Entire	E	839	17.95(e)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (e) by adding an entry for "Zuni bluehead sucker (*Catostomus discobolus yarrowi*)" after the entry for "Warner Sucker (*Catostomus warnerensis*)" to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Zuni bluehead sucker (Catostomus discobolus yarrowi)

(1) Critical habitat unit is depicted for Cibola and McKinley Counties, New Mexico, on the map below.

(2) Critical habitat includes the adjacent floodplains within 91.4 lateral meters (m) (300 lateral feet (ft)) on either side of bankfull discharge, except where bounded by canyon walls. Bankfull discharge is the flow at which water begins to leave the channel and disperse into the floodplain, and generally occurs every 1 to 2 years.

(3) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Zuni bluehead sucker consist of three components:

(i) A riverine system with habitat to support all life stages of the Zuni bluehead sucker, which includes:

(A) Dynamic flows that allow for periodic changes in channel morphology and adequate river functions, such as channel reshaping and delivery of coarse sediments.

(B) Stream courses with perennial flows or intermittent flows that serve as connective corridors between occupied or seasonally occupied habitat through which the subspecies may disperse when the habitat is wetted.

(C) Stream mesohabitat types including runs, riffles, and pools with substrate ranging from gravel, cobble, and bedrock substrates with low or moderate amounts of fine sediment and substrate embeddedness.

(D) Streams with depths generally less than 2 meters (3.3 feet), and with slow to swift flow velocities less than 0.35 meters per second (1.15 feet per second).

(E) Clear, cool water with low turbidity and temperatures in the general range of 2.0 to 23.0 °C (35.6 to 73.4 °F).

(F) No harmful levels of pollutants.

(G) Adequate riparian shading to reduce water temperatures when ambient temperatures are high and provide protective cover from predators.

(ii) An abundant aquatic insect food base consisting of fine particulate organic material, filamentous algae, midge larvae, caddisfly larvae, mayfly larvae, flatworms, and small terrestrial insects.

(iii) Areas devoid of nonnative aquatic species or areas that are maintained to keep nonnatives at a level that allows the Zuni bluehead sucker to continue to survive and reproduce.

(4) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 7, 2016.

(5) *Critical habitat map units.* Data layers defining map unit were developed using ESRI ArcGIS mapping software along with various spatial layers. Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset (NHD) Medium Flowline data. ArcGIS was also used to calculate river kilometers and river miles from the NHD dataset, and it was used to determine longitude and latitude coordinates in decimal degrees. Critical habitat upstream limits were delineated based on the upper limits identified in the NHD dataset for each stream. The projection used in mapping and calculating distances and locations within the unit was North American Equidistant Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/southwest/es/newmexico*), at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(6) Unit 1: Zuni River Unit, McKinley and Cibola Counties, New Mexico.

(i) *General description:* Unit 1 consists of approximately 55.7 kilometers (km) (34.6 miles (mi)) of the Zuni River watershed and the adjacent floodplains within 91.4 lateral meters (300 lateral feet) on either side of bankfull discharge, except where bounded by canyon walls in McKinley and Cibola Counties, and is composed of land ownership by the State (2.1 km (1.3 mi)), Forest Service (19.5 km (12.1 mi)) and private landowners (34.0 km (21.1 mi)).

(ii) Map of Unit 1 follows:

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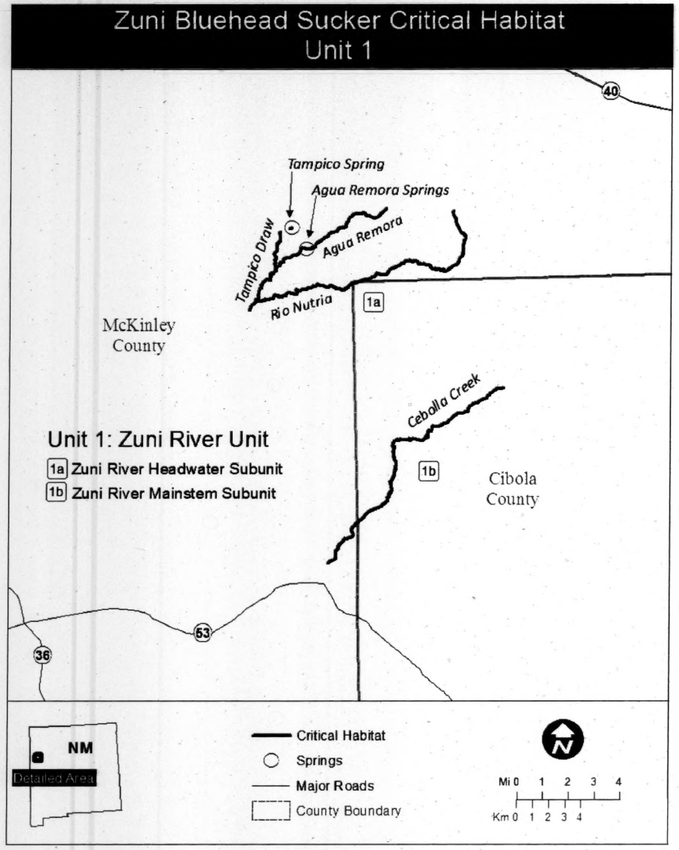

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* * * * *

Dated: May 24, 2016.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–13246 Filed 6–6–16; 8:45 am]

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Rules and Regulations

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 556, and 558

[Docket No. FDA–2016–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Changes of Sponsorship

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during March and April 2016. FDA is also informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect changes of sponsorship of applications and the voluntary withdrawals of approval of applications that occurred in January and February.

DATES: This rule is effective June 8, 2016 except for the amendments to 21 CFR 520.1696b, 520.2325a, 520.2261a, 558.248, and 558.625, which are effective June 20, 2016.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Approval Actions

FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during March and April 2016, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the CVM FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm*. Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book), at: *http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/default.htm*.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING MARCH AND APRIL 2016

File No.	Sponsor	Product name	Action	21 CFR section	FOIA summary	NEPA review
141–392	Elanco Animal Health, a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	IMRESTOR (pegbovigrastim injection).	Original approval for the reduction in the incidence of clinical mastitis in the first 30 days of lactation in periparturient dairy cows and periparturient replacement dairy heifers.	522.1684	yes	EA/FONSI[1]
141–455	Aratana Therapeutics, Inc., 11400 Tomahawk Creek Pkwy., Leawood, KS 66211.	GALLIPRANT (grapiprant tablets).	Original approval for the control of pain and inflammation associated with osteoarthritis in dogs.	510.600 520.1084	yes	CE[2][3]
141–460	ECO LLC, 344 Nassau St., Princeton, NJ 08540.	AIVLOSIN 17% (tylvalosin tartrate) Type A Medicated Article.	Original approval for control of porcine proliferative enteropathy (PPE) associated with *Lawsonia intracellularis* infection in groups of swine in buildings experiencing an outbreak of PPE.	558.633	yes	CE[2][4]

[1] The Agency has carefully considered an environmental assessment (EA) of the potential environmental impact of this action and has made a finding of no significant impact (FONSI).
[2] The Agency has determined that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not have a significant effect on the human environment.
[3] CE granted under 21 CFR 25.33(d)(1).
[4] CE granted under 21 CFR 25.33(d)(5).

II. Changes of Sponsorship

Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201 (Bayer) has informed FDA that it has transferred ownership of, and all rights and interest in, the following approved applications to Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland:

File No.	Product name	21 CFR section
099–169	Oxytocin Injection	522.1680
124–241	PVL Oxytocin Injectable Solution	522.1680
200–069	OvaCyst (gonadorelin diacetate tetrahydrate) Injection	522.1077
200–253	ProstaMate (dinoprost tromethamine) Injectable Solution	522.690

Bayer has also transferred sponsorship of NADA 141–070 for RAPINOVET (propofol) Injectable Emulsion to iVaoes Animal Health, 4300 SW 73rd Ave., suite 110, Miami, FL 33155. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these changes of sponsorship.

III. Withdrawals of Approval

In addition, during March and April 2016, the following two sponsors have requested that FDA withdraw approval of the NADAs and ANADAs listed in the following table because the products are no longer manufactured or marketed:

File No.	Sponsor	Product name	21 CFR section
007–076[1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	SULFA–NO_X Liquid (sulfaquinoxaline) 3.44% Solution	520.2325a
008–244[1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	SULFA–NO_X Concentrate (sulfaquinoxaline) 12.85% Solution.	520.2325a
041–955[1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	Erythromycin Medicated Premix	558.248
049–729[1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	PURINA Sulfa (sulfamethazine) 12.5% Solution	520.2261a
100–128[1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	Supersweet Medipak TYLAN 10	558.625
200–307[1]	Vetoquinol N.-A., Inc., 2000 chemin Georges, Lavaltrie (PQ), Canada J5T 3S5.	Penicillin G Potassium Soluble Powder	520.1696b

[1] These NADAs were identified as being affected by guidance for industry #213, "New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209," December 2013.

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 007–076, 008–244, 041–955, 049–729, 100–128, and ANADA 200–307, and all supplements and amendments thereto, is withdrawn, effective June 20, 2016. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these voluntary withdrawals of approval.

IV. Technical Amendments

FDA has noticed that the section heading for 21 CFR 520.1430 does not accurately reflect the new animal drug for which approved conditions of use are codified. At this time, we are amending the section heading to read "Mibolerone" rather than "Megestrol acetate tablets." This action is being taken to improve the accuracy of the regulations.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

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21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, parts 510, 520, 522, 556, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600:

■ a. In the table in paragraph (c)(1), alphabetically add entries for "Aratana Therapeutics, Inc." and "iVaoes Animal Health" and revise entry for "Huvepharma AD;" and

■ b. In the table in paragraph (c)(2), revise the entry for "016592" and numerically add entries for "086026" and "086064."

The additions and revisions read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Aratana Therapeutics, Inc., 11400 Tomahawk Creek Pkwy., Leawood, KS 66211	086026
* * * * * * *	
Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria	016592
* * * * * * *	
iVaoes Animal Health, 4300 SW 73rd Ave., suite 110, Miami, FL 33155	086064
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
016592	Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria
* * * * * * *	
086026	Aratana Therapeutics, Inc., 11400 Tomahawk Creek Pkwy., Leawood, KS 66211
* * * * * * *	
086064	iVaoes Animal Health, 4300 SW 73rd Ave., suite 110, Miami, FL 33155
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Add § 520.1084 to read as follows:

§ 520.1084 Grapiprant.

(a) *Specifications.* Each tablet contains 20, 60, or 100 milligrams (mg) grapiprant.

(b) *Sponsor.* See No. 086026 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 0.9 mg/lb (2 mg/kg) once daily by mouth.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 5. Revise the heading of § 520.1430 to read as follows:

§ 520.1430 Mibolerone.

* * * * *

§ 520.1696b [Amended]

■ 6. Effective June 20, 2016, in § 520.1696b, in paragraph (b), remove "059320,".

§ 520.2261a [Amended]

■ 7. Effective June 20, 2016, in § 520.2261a, in paragraph (b), remove "Nos. 016592 and 061623" and in its place add "No. 016592".

§ 520.2325a [Amended]

■ 8. Effective June 20, 2016, in § 520.2325a, remove paragraph (a)(2) and redesignate paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.690 [Amended]

■ 10. In § 522.690, in paragraph (b)(3), remove "000859" and in its place add "061623".

§ 522.1077 [Amended]

■ 11. In § 522.1077, in paragraph (b)(3), remove "000859 and 050604" and in its place add "050604 and 061623".

§ 522.1680 [Amended]

■ 12. In § 522.1680, in paragraph (b), remove "000859".

■ 13. Add § 522.1684 to read as follows:

§ 522.1684 Pegbovigrastim.

(a) *Specifications.* Each pre-filled, single-dose syringe contains 15 milligrams of pegbovigrastim.

(b) *Sponsor.* See No. 000986 in § 510.600(c) of this chapter.

(c) *Conditions of use in cattle*—(1) *Amount.* Administer the first dose (syringe) by subcutaneous injection 7 days prior to the cow's or heifer's anticipated calving date. If necessary, the first dose may be administered within a range of 4 to 10 days prior to the anticipated calving date to accommodate management schedules. Administer the second dose (syringe) by subcutaneous injection within 24 hours after calving.

(2) *Indications for use.* For the reduction in the incidence of clinical mastitis in the first 30 days of lactation in periparturient dairy cows and periparturient replacement dairy heifers.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.2005 [Amended]

■ 14. In § 522.2005, in paragraph (b)(1), remove "000859" and in its place add "086064".

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 15. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 16. In § 556.748, revise paragraph (c) to read as follows:

§ 556.748 Tylvalosin.

* * * * *

(c) *Related conditions of use.* See §§ 520.2645 and 558.633 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 17. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 18. In § 558.4, in paragraph (d), in the "Category I" table, add an entry in alphabetical order for "Tylvalosin" to read as follows:

§ 558.4 Requirement of a medicated feed mill license.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent Type A	Type B maximum (200x)	Assay limits percent Type B/C
* * * * * * *			
Tylvalosin	90–110	3.86 g/lb	85–115
* * * * * * *			

* * * * *

§ 558.248 [Amended]

■ 19. Effective June 20, 2016, in § 558.248, revise paragraphs (a) and (b) and remove and reserve paragraph (d)(1)(iii).

The revisions read as follows:

§ 558.248 Erythromycin.

(a) *Specifications.* Type A medicated articles containing 5 or 10 percent erythromycin thiocyanate.

(b) *Sponsor.* See No. 061623 in § 510.600(c) of this chapter.

* * * * *

§ 558.625 [Amended]

■ 20. Effective June 20, 2016, in § 558.625, remove paragraph (b)(3) and redesignate paragraphs (b)(4) and (5) as paragraphs (b)(3) and (4).

■ 21. Add § 558.633 to read as follows:

§ 558.633 Tylvalosin.

(a) *Specifications.* Type A medicated articles containing 77.12 grams tylvalosin per pound as tylvalosin tartrate.

(b) *Sponsor.* See No. 066916 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.748 of this chapter.

(d) *Special considerations*—(1) Federal law restricts tylvalosin medicated feeds to use under a veterinary feed directive (VFD) and the professional supervision of a licensed veterinarian. See § 558.6 of this chapter for additional requirements.

(2) VFDs for tylvalosin shall not be refilled.

(3) An expiration date of 1 week is required for tylvalosin Type C medicated swine feeds in pelleted or crumbled form.

(e) *Conditions of use in swine*—(1) *Amount.* Administer 38.6 grams tylvalosin per ton of Type C medicated feed (42.5 ppm) as the sole ration for 14 consecutive days.

(2) *Indications for use.* For the control of porcine proliferative enteropathy (PPE) associated with *Lawsonia intracellularis* infection in groups of swine in buildings experiencing an outbreak of PPE.

Dated: May 31, 2016.

Tracey Forfa,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2016–13517 Filed 6–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 558

[Docket No. FDA–2016–N–0002]

New Animal Drugs; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of five new animal drug applications (NADAs) and an abbreviated new animal drug application (ANADA). This action is being taken at the sponsors' request because these products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective June 20, 2016.

FOR FURTHER INFORMATION CONTACT: Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5761, *sujaya.dessai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The sponsors of the following applications have requested that FDA withdraw approval of the NADAs and ANADA listed in the following table because the products are no longer manufactured or marketed:

File No.	Sponsor	Product name	21 CFR section
007–076 [1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	SULFA–NOX Liquid (sulfaquinoxaline) 3.44% Solution	520.2325a
008–244 [1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	SULFA–NOX Concentrate (sulfaquinoxaline) 12.85% Solution.	520.2325a

File No.	Sponsor	Product name	21 CFR section
041–955 [1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	Erythromycin Medicated Premix	558.248
049–729 [1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	PURINA Sulfa (sulfamethazine) 12.5% Solution	522.2260a
100–128 [1]	Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland.	Supersweet Medipak TYLAN 10	558.625
200–307 [1]	Vetoquinol N.-A., Inc., 2000 chemin Georges, Lavaltrie (PQ), Canada J5T 3S5.	Penicillin G Potassium, USP, Soluble Powder	520.1696b

[1] These NADAs were identified as being affected by guidance for industry #213, "New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209," December 2013.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 007–076, 008–244, 041–955, 049–729, 100–128, and ANADA 200–307, and all supplements and amendments thereto, is hereby withdrawn, effective June 20, 2016.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: May 31, 2016.

Tracey Forfa,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2016–13518 Filed 6–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Parts 35, 103, 127, and 138

[Public Notice: 9536]

RIN 1400–AD94

Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), as amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a "catch-up" adjustment methodology prescribed by the 2015 Act, which mandates that the catch up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act requires agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget. The revised CMP adjustments in this rule will apply only to those penalties assessed after its effective date; subsequent annual adjustments are to be published not later than January 15 of each year. In keeping with guidance provided by the Office of Management and Budget, the new penalty levels will apply to all assessments made on or after August 1, 2016, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney-Adviser, Office of Management, *kottmyeram@state.gov*. ATTN: Regulatory Change, CMP Adjustments, (202) 647–2318.

SUPPLEMENTARY INFORMATION: The 1990 Act (Pub. L. 101–410) provided for the regular evaluation of CMPs by federal agencies. Periodic inflationary adjustments of CMPs ensure that the consequences of statutory violations adequately reflect the gravity of such offenses and that CMPs are properly accounted for and collected by the federal government. In April 1996, the 1990 Act was amended by the 1996 Act (Pub. L. 104–134), which required federal agencies to adjust their CMPs at least once every four years. However, because inflationary adjustments to CMPs were statutorily capped at ten percent of the maximum penalty amount, but only required to be calculated every four years, CMPs in many cases did not correspond with the true measure of inflation over the preceding four year period, leading to a decline in the real value of the penalty. To remedy this decline, the 2015 Act (section 701 of Pub. L. 114–74) requires agencies to adjust the level of CMPs with an initial "catch-up" adjustment through a rulemaking and to make subsequent annual inflationary adjustments to their respective CMPs using a methodology mandated by the legislation.

The 1990 Act defines civil monetary penalty as any penalty, fine, or other sanction that:

- Is for a specific monetary amount as provided for in federal law; or has a maximum amount provided for by federal law; and
- is assessed or enforced by an agency as pursuant to federal law; and,
- is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.

Within the Department of State (Title 22, Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801–3812;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), 2780(k)); and

(4) Part 138, which implements Section 319 of Public Law 101–221, codified at 31 U.S.C. 1352, and prohibits recipients of federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract.

The 2015 Act instructs agencies to make a one-time catch-up adjustment to CMPs using the maximum penalty level or range of minimum and maximum penalties as they were "most recently established or adjusted under a provision of law other than [the 1990] Act." Nevertheless, the 2015 Act specifies that the catch-up adjustment amount will in no case exceed 150% of the penalty amount which was in force at the enactment date of the 2015 Act on November 2, 2015; therefore, the total revised penalty amount will not exceed 250% of the total maximum penalty amount on November 2, 2015.

Specific Changes to 22 CFR Made by This Rule

I. Part 35

The PFRCA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims. The maximum liability under the PFRCA is $5,000 for each false claim, up to a maximum of $150,000, in addition to twice the amount of the claim submitted contrary to the PFRCA.

According to OMB guidance, the multiplier for the PFRCA (a 1986 statute) is 2.15628; therefore, the new maximum penalty for each false claim or statement is $10,781, up to a maximum of $323,442.

II. Part 103

The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761. A person violating 22 U.S.C. 6761(a)(1)(A), *Prohibited acts relating to inspections,* is subject to a civil penalty of an amount not to exceed $25,000 for each such violation. A person violating 22 U.S.C. 6761(a)(1)(B), *Recordkeeping violations,* is subject to a civil penalty in an amount not to exceed $5,000 for each such violation.

According to OMB Guidance, the multiplier for the CWC Act (a 1998 statute) is 1.45023. Therefore, the new maximum civil monetary penalty for prohibited acts relating to inspections is $36,256 for each violation; and the new maximum civil monetary penalty for recordkeeping violations is $7,251 for each such violation.

III. Part 127

The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC). Each of the penalty provisions of the AECA provides that the CMP for each relevant violation may not exceed $500,000.

(1) AECA Section 38(e)

The most recent statutory modification of the CMPs provided for under AECA section 38(e), 22 U.S.C. 2778(e), occurred in 1985 when the maximum penalty amount was capped at $500,000 per violation. According to OMB guidance, the multiplier for AECA section 38(e) is 2.18802; therefore, the new maximum penalty will be $1,094,010 per violation.

(2) AECA Section 39A(c)

The most recent statutory modification of the CMPs provided for under AECA section 39A(c), 22 U.S.C. 2779a(c), occurred in 1994 when the maximum penalty amount was capped at $500,000 per violation. According to OMB guidance, the multiplier for AECA section 39A(c) is 1.59089; therefore, the new maximum adjusted penalty level will be $795,445 per violation.

(3) AECA Section 40(k)

The most recent statutory modification of the CMPs provided for under AECA section 40(k), 22 U.S.C. 2780(k), occurred in 1989 when the maximum penalty amount was capped at $500,000 per violation. According to OMB guidance, the multiplier for AECA section 40(k) is 1.89361; therefore, the new maximum adjusted penalty level will be $946,805 per violation.

IV. Part 138

Section 319 of Public Law 101–121, codified at 31 U.S.C. 1352, provides penalties for recipients of federal contracts, grants, and loans who use appropriated funds to lobby the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure. The statute also requires each person who requests or receives a federal contract, grant, cooperative agreement, loan, or a federal commitment to insure or guarantee a loan, to disclose any lobbying; the penalty for failure to disclose is not less than $10,000 and not more than $100,000 for each such failure.

According to OMB guidance, the multiplier for 31 U.S.C. 1352 (a 1989 statute) is 1.89361. Therefore, the new maximum civil violations under the statute, for both improper expenditures and failure to disclose, are: Not less than $18,936 and not more than $189,361.

Effective Date of Penalties

The revised CMP amounts will go into effect on August 1, 2016. All violations for which CMPs are assessed after the effective date of this rule, regardless of whether the violation occurred before the effective date, will be assessed at the adjusted penalty level.

Future Adjustments and Reporting

The 2015 Act directs agencies to undertake an annual review of CMPs using a formula prescribed by the statute. Hereafter, annual adjustments to CMPs will be made in accordance with the guidance issued by OMB. The Department of State will publish notification of annual inflation adjustments to CMPs in the **Federal Register** no later than January 15 of each year, with the adjusted amount taking effect immediately upon publication. Furthermore, OMB Circular A–136, Financial Reporting Requirements, directs agencies to identify any changes to CMPs in the Agency Financial Report (AFR), including the affected penalties, dates and amounts of adjustments, and applicable statutes and regulations.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is publishing this rule using the "good cause" exception to the Administrative Procedure Act (5 U.S.C. 553(b)), as the Department has determined that public comment on this rulemaking would be impractical, unnecessary, or contrary to the public interest. This rulemaking is mandatory; it implements Public Law 114–74.

Regulatory Flexibility Act

Because this rulemaking is exempt from Section 553 of the Administrative Procedures Act, a Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act of 1995

This rule does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary

impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

The Department believes that benefits of the rulemaking outweigh any costs, and there are no feasible alternatives to this rulemaking. It is the Department's position that this rulemaking is not an economically significant rule under the criteria of Executive Order 12866, and is consistent with the provisions of Executive Order 13563.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 35

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 103

Administrative practice and procedure, Chemicals, Classified information, Foreign relations, Freedom of information, International organization, Investigations, Penalties, Reporting and recordkeeping requirements.

22 CFR Part 127

Arms and munitions, Exports.

22 CFR Part 138

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth above, 22 CFR parts 127, 35, 103, and 138 are amended as follows:

PART 35—PROGRAM FRAUD CIVIL REMEDIES

■ 1. The authority citation for part 35 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 3801 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

■ 2. In § 35.3:

■ a. Remove "$5,000" and add in its place "$10,781", wherever it occurs.

■ b. Add paragraph (f) to read as follows:

§ 35.3 Basis for civil penalties and assessments.

* * * * *

(f) The maximum penalty for each false claim or statement is $10,781, up to a maximum of $323,442.

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

■ 3. The authority citation for part 103 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 6701 *et seq.;* Pub. L. 114–74, 129 Stat. 584.

§ 103.6 [Amended]

■ 4. Amend § 103.6 to remove "$25,000" and add in its place "$36,256" in paragraph (a)(1), and to remove "$5,000", and add in its place $7,251" in paragraph (a)(2).

PART 127—VIOLATIONS AND PENALTIES

■ 5. The authority citation for part 127 is revised to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129; Pub. L. 114–74, 129 Stat. 584.

■ 6. Section 127.10 is amended by revising paragraph (a) to read as follows:

§ 127.10 Civil penalty.

(a)(1) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty, as follows:

(i) For each violation of 22 U.S.C. 2778, an amount not to exceed $1,094,010;

(ii) For each violation of 22 U.S.C. 2779a, an amount not to exceed $795,445; and

(iii) For each violation of 22 U.S.C. 2780, an amount not to exceed $946,805.

(2) The civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

* * * * *

PART 138—NEW RESTRICTIONS ON LOBBYING

■ 7. The authority citation for part 138 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 31 U.S.C. 1352; Pub. L. 114–74, 129 Stat. 584.

§ 138.400 [Amended]

■ 8. Amend § 138.400 by removing "$10,000" and "$100,000", and adding in their place "$18,936" and "$189,361" respectively, wherever they occur.

Dated: June 1, 2016.

Lisa Aguirre,

Managing Director, Directorate of Defense Trade Controls Department of State.

[FR Doc. 2016–13455 Filed 6–7–16; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9770]

RIN 1545–BN39

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]; Final and Temporary Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations effecting the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986 and preventing abuse of the Protecting Americans from Tax Hikes Act of 2015. The temporary regulations impose corporate level tax on certain transactions in which property of a C corporation becomes the property of a REIT. The temporary regulations affect RICs, REITs, C corporations the property of which becomes the property of a RIC or a REIT, and their shareholders. The text of these temporary regulations also serves as the text of part of the proposed regulations in the related notice of proposed rulemaking (REG–126452–15) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: These regulations are effective June 7, 2016.

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones, (202) 317–5085 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

1. The General Utilities Doctrine, Its Repeal, and Section 337(d)

In general, gain on a sale of appreciated property by a C corporation is taxed to the corporation when the sale occurs and to the shareholders when the proceeds are distributed as dividends. Historically however, a corporation generally could distribute appreciated property to its shareholders without recognition of gain to the corporation under the so-called *General Utilities* doctrine arising from interpretations of *General Utilities & Operating Co.* v. *Helvering,* 296 U.S. 200 (1935). *See* H.R. Rep. No. 99–841, at 198 (1986) (Conf. Rep.); H.R. Rep. No. 99–426, at 274–75 (1985).

Beginning in 1969, a series of statutory limitations on the *General Utilities* doctrine were enacted into law. In the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324, current section 311(b) (originally designated as section 311(d)) was added to the Internal Revenue Code (Code) and required a corporation to recognize gain on appreciated property distributed to a shareholder in redemption of shares. Legislation enacted in 1984 required gain recognition for all non-liquidating distributions. Finally, what remained of the *General Utilities* doctrine was repealed (*General Utilities* repeal) by the enactment of subtitle D of title VI of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (the Act), which amended sections 336 and 337 of the Code to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) was added to the Code by section 631(a) of the Act and subsequently amended by section 1006(e)(5)(A)(i) through (ii) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647,102 Stat. 3342 (the Technical Amendment). This document contains amendments to 26 CFR part 1 under section 337(d).

Section 337(d) directs the Secretary of the Treasury to prescribe regulations that are necessary or appropriate to carry out the purposes of *General Utilities* repeal, including "regulations to ensure that such purposes may not be circumvented through the use of any provision of law or regulations (including . . . part III of this subchapter) or through the use of a regulated investment company, real estate investment trust, or tax exempt entity. . . ." The legislative histories of the Act and the Technical Amendment underscore the broad grant of regulatory authority and Congress' expectation that the Treasury Department and the IRS would issue or amend regulations as necessary to further the purposes of *General Utilities* repeal, "includ[ing] rules to require the recognition of gain if appreciated property of a C corporation is transferred to a RIC or a REIT in a carryover basis transaction that would otherwise eliminate corporate level tax on the built-in appreciation." H.R. Rep. No. 100–391, at 1199 (1987); *see also* H.R. Rep. No. 99–841, at 204 (1986) (Conf. Rep.). Section 337(d)(1) specifically refers to ensuring that the purposes of *General Utilities* repeal are not circumvented through the use of the corporate organization and reorganization provisions of part III, subchapter C, chapter 1 of the Code, which include section 355.

2. Section 355 and the PATH Act

Section 355 generally provides that, if certain requirements are satisfied, a corporation may distribute stock (or stock and securities) of one or more controlled corporations to its shareholders and security holders without the distributing corporation, its shareholders, or its security holders recognizing income, gain, or loss on the distribution (a section 355 distribution). In the course of enacting certain amendments to section 355 as part of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388, Congress described section 355 as a "limited exception to the repeal of the *General Utilities* doctrine intended to permit historic shareholders to continue to carry on their historic corporate businesses in separate corporations" and stated that "[t]he present-law provisions granting tax-free treatment at the corporate level are particularly troublesome because they may offer taxpayers an opportunity to avoid the general rule that corporate-level tax is recognized when an asset (including stock of a subsidiary) is disposed of." 136 Cong. Rec. S15704 (daily ed. Oct 18, 1990).[1] Further, Congress noted that "[t]he bill is not intended to limit in any way the continuing Treasury Department authority to issue regulations to prevent the avoidance of the repeal of the *General Utilities* doctrine through any provision of law or regulations, including section 355." *Id.* at S15705.

On December 18, 2015, the President signed into law the Protecting Americans Against Tax Hikes Act of 2015 (PATH Act), enacted as Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422. Section 311(a) and (b) of the PATH Act added to the Code sections 355(h) and 856(c)(8), respectively. Section 355(h)(1) of the Code provides that section 355 shall not apply to a distribution if either the distributing corporation or the controlled corporation is a REIT. Section 355(h)(2) provides exceptions permitting a REIT to distribute the stock of another REIT or of a taxable REIT subsidiary under certain conditions. Section 856(c)(8) provides that a corporation may not elect REIT status during the ten-year period following a section 355 distribution if such corporation was the distributing corporation or the controlled corporation in that distribution. Section 311(c) of the PATH Act provides that sections 355(h) and 856(c)(8) apply to distributions on or after December 7, 2015, but do not apply to any distribution pursuant to a transaction described in a ruling request initially submitted to the IRS on or before such date, which request has not been withdrawn and with respect to which a ruling has not been issued or denied in its entirety as of such date.

3. Prior Regulations

In certain cases, *General Utilities* repeal could be circumvented if property of a C corporation becomes the property of a RIC or a REIT (converted property) by a transfer of the converted property from a C corporation to a RIC or a REIT or by the qualification of the C corporation as a RIC or a REIT (either, a conversion transaction). A conversion transaction could result in elimination of the corporate level of gain in the converted property, including gain from the sale of the property, because RICs and REITs generally are not subject to tax on income that is distributed to their shareholders.

The Treasury Department and the IRS issued Notice 88–19 (1988–1 C.B. 486) on February 4, 1988. Notice 88–19 announced the IRS's intention to promulgate regulations providing that a C corporation engaging in a conversion transaction would be treated, for all federal income tax purposes, as if it had sold all of its assets at their respective fair market values (deemed sale treatment) and immediately liquidated, unless the C corporation elected to be

[1] The bill that resulted in Public Law 101–508, S.3209, was brought to the floor without printing a formal report, and language from the various committees to consider the bill was printed in the Congressional Record at the request of Senator Sasser to complete the legislative record.

subject to tax under section 1374 with respect to the C corporation property (section 1374 treatment). If elected, section 1374 treatment would subject the RIC or REIT to corporate-level taxation on the built-in gain recognized during the ten-year period following the conversion transaction on the converted property. Temporary regulations under § 1.337(d)–5T (TD 8872) and a notice of proposed rulemaking cross-referencing the temporary regulations (REG–209135–88) were published in the **Federal Register** (65 FR 5775, 65 FR 5805) on February 7, 2000, and reflected the principles set forth in Notice 88–19.

Additional temporary regulations under §§ 1.337(d)–6T and 1.337(d)–7T (TD 8975) and a notice of proposed rulemaking cross-referencing the temporary regulations (REG–142299–01 and REG–209135–88) were published in the **Federal Register** (67 FR 8, 67 FR 28) on January 2, 2002. The proposed regulations cross-referencing §§ 1.337(d)–5T through –7T, with modifications, were adopted on March 18, 2003 (TD 9047), and published as final regulations in the **Federal Register** (68 FR 12817).

4. Current Regulations

The final regulations in § 1.337(d)–6 apply to conversion transactions occurring on or after June 10, 1987, and before January 2, 2002, and provide that a C corporation engaging in such a conversion transaction is subject to deemed sale treatment unless the C corporation elects section 1374 treatment with respect to the converted property. The final regulations in § 1.337(d)–7 apply to conversion transactions occurring on or after January 2, 2002, and provide that the RIC or the REIT owning the property after the conversion transaction is subject to section 1374 treatment unless the C corporation engaging in a conversion transaction elects deemed sale treatment with respect to the converted property.

In response to concerns expressed by commentators (described subsequently), the Treasury Department and the IRS published in the **Federal Register** (77 FR 22516) on April 16, 2012, a notice of proposed rulemaking (REG–139991–08) proposing amendments to § 1.337(d)–7. These amendments (the 2013 amendments) were adopted as final regulations (TD 9626) and were published in the **Federal Register** (78 FR 46805) on August 2, 2013.

The 2013 amendments address two principal areas of concern. First, the 2013 amendments provide an exception from the general rule subjecting the RIC or the REIT to section 1374 treatment in the case of a transfer of property by a C corporation to a RIC or a REIT to the extent the transfer qualifies for nonrecognition treatment under section 1031 (relating to like-kind exchanges) or section 1033 (relating to involuntary conversions). The Treasury Department and the IRS did not extend this treatment to all exchanged basis transactions, such as exchanges that would otherwise qualify for nonrecognition treatment under section 351 of the Code, out of concern that such an exception could create opportunities to avoid corporate-level tax on built-in gains. Second, the 2013 amendments provide an exception for conversion transactions in which the C corporation that owned the converted property is a tax-exempt entity to the extent that gain would not be subject to tax if a deemed sale election were made. In such circumstances, the C corporation is not required to make a deemed sale election, and the RIC or the REIT is not subject to section 1374 treatment.

5. Notice 2015–59 and Revenue Procedure 2015–43

Congress, the Treasury Department, and the IRS are aware of transactions in which a C corporation that does not qualify as a REIT distributes the stock of a controlled corporation in a transaction intended to qualify under section 355 so that either the distributing corporation or the controlled corporation can qualify as a REIT. In many cases, a C corporation that owns both assets qualifying as real estate assets for purposes of part II, subchapter M, chapter 1 of the Code (REIT-qualifying assets) and assets that do not so qualify (non-qualifying assets) transfers either the REIT-qualifying assets or the non-qualifying assets to a controlled corporation in exchange for its stock and then distributes the controlled corporation stock to its shareholders. Before or after the distribution, the corporation holding the REIT-qualifying assets elects REIT status. If the transaction satisfies the requirements of sections 368(a)(1)(D), 355, and 361, no gain is recognized on either the transfer of assets by the distributing corporation to the controlled corporation or the distribution of the controlled corporation stock to the shareholders of the distributing corporation.

Prior to the enactment of the PATH Act, the IRS issued Notice 2015–59 (2015–40 I.R.B. 467) and Revenue Procedure 2015–43 (2015–40 I.R.B. 495) on September 14, 2015, in part to respond to the transactions described in the preceding paragraph. Revenue Procedure 2015–43 provides that the IRS will not ordinarily issue a ruling relating to the qualification under section 355 and related provisions of a distribution in certain circumstances in which property owned by the distributing corporation or the controlled corporation becomes the property of a RIC or a REIT. Notice 2015–59 states that such transactions "may circumvent the purposes of Code provisions intended to repeal the Supreme Court's decision" in *General Utilities*, such as section 337(d). The Notice also requested comments with respect to the facts and circumstances relevant to whether such transactions circumvent the purposes of *General Utilities* repeal. The Treasury Department and the IRS are aware of informal commentary, but no formal comments have been received.

Explanation of Provisions

The Treasury Department and the IRS believe that section 1374 treatment imposes an appropriate regime for recognizing built-in gain for many conversion transactions. The Treasury Department and the IRS are concerned, however, that section 1374 treatment may not adequately implement the purposes of *General Utilities* repeal if a taxpayer effects a tax-free separation of REIT-qualifying assets from non-qualifying assets in a section 355 distribution (the related section 355 distribution) and the REIT-qualifying assets become the assets of a REIT. After such transactions, gain on the assets held by the REIT may not be taxed at the corporate level because such gain is unlikely to be recognized within the recognition period during which the REIT is subject to section 1374 treatment under the final regulations in § 1.337(d)–7. In contrast, without a section 355 distribution, a taxpayer generally could not separate REIT-qualifying assets from non-qualifying assets and cause one corporation to hold the REIT-qualifying assets and another corporation to hold the non-qualifying assets except by means of a sale or exchange to which section 1001 applies or a distribution to which section 311(b) applies.

Moreover, the REIT and its shareholders may realize the benefit of appreciation on converted property without a transaction subject to section 1374 treatment or otherwise taxable at the corporate level. For example, a REIT that distributes rental income on appreciated converted property to its shareholders may be entitled to a dividends paid deduction under section 562 and, therefore, effectively does not pay income tax at the REIT level on that income, which in many cases will

reflect the appreciation in the value of the property. Additionally, if the lessee is a C corporation (such as the other party to the section 355 distribution), the rental deductions reduce the C corporation's taxable income. In such circumstances, the Treasury Department and the IRS have determined that section 355 does not serve as a "limited exception to *General Utilities* repeal intended to enable historic shareholders to carry on their historic businesses in separate corporations" but rather creates an "opportunity to avoid the general rule that corporate-level tax is recognized when an asset . . . is disposed of." 136 Cong. Rec. S15704.

Section 311 of the PATH Act addresses some of the concerns just described. However, the Treasury Department and the IRS are concerned that some variations of the transactions previously described may continue to be used to circumvent the purposes of section 311 of the PATH Act. In particular, there is concern that corporations affiliated with the distributing corporation or the controlled corporation could be used to circumvent the Congressional policy implemented through section 311 of the PATH Act. The Treasury Department and the IRS thus have determined that temporary regulations are necessary to prevent abuses of sections 355(h) and 856(c)(8) and to further the purposes of *General Utilities* repeal.

Therefore, the Treasury Department and the IRS are issuing these temporary regulations providing that a C corporation engaging in a conversion transaction involving a REIT within the ten-year period following a related section 355 distribution is treated as making an election to recognize gain and loss as if it had sold all of the converted property to an unrelated party at fair market value on the deemed sale date (as defined in § 1.337(d)–7(c)(3)). Section 1374 treatment is accordingly not available in these cases as an alternative to recognizing any gain with respect to the converted property on the deemed sale date.

The temporary regulations also provide that a REIT that is a party to a section 355 distribution occurring within the ten-year period following a conversion transaction for which a deemed sale election has not been made recognizes any remaining unrecognized built-in gains and losses resulting from the conversion transaction (after taking into account the impact of section 1374 in the interim period, as described subsequently).

For the taxable year in which the related section 355 distribution occurs, the REIT's net recognized built-in gain is the amount of its net unrealized built-in gain limitation (as defined in § 1.1374–2(a)(3)) for such taxable year. For this purpose, the limitations in § 1.1374–2(a)(1) and (2) do not apply because the net unrealized built-in gain limitation generally achieves the effect of a deemed sale election, adjusted for prior recognized built-in gains and recognized built-in losses. As a result, the temporary regulations cause the REIT to recognize any built-in gains or losses attributable to time periods in which the REIT was a C corporation while ensuring that gains and losses recognized in previous taxable years during the recognition period on which taxes have been paid are accounted for appropriately. The temporary regulations provide an appropriate increase to the basis of the converted property held by the REIT.

Consistent with section 311 of the PATH Act, the temporary regulations contain two exceptions. First, the temporary regulations do not apply if both the distributing corporation and the controlled corporation are REITs immediately after the date of the section 355 distribution and at all times during the two years thereafter. Second, the temporary regulations also do not apply to certain section 355 distributions in which the distributing corporation is a REIT and the controlled corporation is a taxable REIT subsidiary. In addition, and consistent with the effective date in section 311(c) of the PATH Act, the temporary regulations under § 1.337(d)–7T(f) do not apply to distributions pursuant to a transaction described in a ruling request initially submitted to the IRS on or before December 7, 2015, which request has not been withdrawn and with respect to which a ruling has not been issued or denied in its entirety as of December 7, 2015.

To prevent avoidance, these temporary regulations apply to predecessors and successors of the distributing corporation or the controlled corporation and to all members of the separate affiliated group, within the meaning of section 355(b)(3)(B), of which the distributing corporation or the controlled corporation are members. Predecessors and successors include corporations that succeed to and take into account items described in section 381(c) of the distributing corporation or the controlled corporation, and corporations having such items to which the distributing corporation or the controlled corporation succeed and take into account.

The temporary regulations also make a clarifying amendment to the generally applicable rules of § 1.337(d)–7 in response to section 127 of the PATH Act, which amended Code section 1374(d)(7) to provide that the term "recognition period" means the 5-year period beginning with the first day of the first taxable year for which a corporation was an S corporation. The temporary regulations replace the term "10-year recognition period" with the new defined term "recognition period" and clarify that the recognition period is no longer determined by reference to section 1374(d)(7), but is the ten-year period beginning on the first day of the RIC or the REIT's first taxable year (in the case of a conversion transaction that is a qualification of a C corporation as a RIC or a REIT) or on the date the property is acquired by the RIC or the REIT. As a result, after August 8, 2016, § 1.337(d)–7 will no longer be affected by section 127 of the PATH Act, which amended section 1374(d)(7) of the Code to shorten the length of the recognition period from 10 years to 5 years with respect to C corporations that elect to be, or transfer property to, S corporations.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13653. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. chapter 5) does not apply to these regulations because good cause exists under section 553(b)(3)(B) of the APA to dispense with notice and public comment because doing so would be contrary to the public interest. These temporary regulations are necessary to prevent abuse of section 311 of the PATH Act through certain section 355 distributions that would contradict the intent of Congress. These temporary regulations are also necessary to update existing regulations under § 1.337(d)–7 to delink the determination of the recognition period from the rules of section 1374(d)(7) modified by the enactment of section 127 of the PATH Act. Accordingly, good cause exists for dispensing with notice and public

comment pursuant to section 553(b) of the APA. In addition, pursuant to 26 U.S.C. 7805(b)(3) and section 553(d)(3) of the APA, the requirements in section 553(d) of the APA for a delayed effective date are inapplicable to the temporary regulations necessary to prevent abuse of section 311 of the PATH Act. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Austin M. Diamond-Jones, Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–7T also issued under 26 U.S.C. 337(d) and 355(h).

* * * * *

■ **Par. 2.** Section 1.337(d)–7 is amended by:

■ 1. Revising paragraph (a)(1) and adding paragraphs (a)(2)(vi) and (vii).

■ 2. In paragraph (b)(1)(ii), removing the language "10-year recognition period" and adding "recognition period" in its place wherever it appears.

■ 3. Revising paragraph (b)(2)(iii).

■ 4. Redesignating paragraph (b)(4) as paragraph (b)(5) and adding a new paragraph (b)(4).

■ 5. Revising paragraph (c)(1).

■ 6. Redesignating paragraph (c)(6) as paragraph (c)(7) and adding a new paragraph (c)(6).

■ 7. In paragraph (d)(2)(iii), removing the language "10-year recognition period" and adding "recognition period" in its place wherever it appears.

■ 8. Redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f).

■ 9. In newly redesignated paragraph (g)(1), removing the language "(f)(2)" and adding "(g)(2)" in its place.

■ 10. Revising newly redesignated paragraph (g)(2).

The additions and revisions read as follows:

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General rule.* (1) [Reserved]. For further guidance, see § 1.337(d)–7T(a)(1).

(2) * * *

(vi) through (vii) [Reserved]. For further guidance, see § 1.337(d)–7T(a)(2)(vi) through (vii).

(b) * * *

(2) * * *

(iii) [Reserved]. For further guidance, see § 1.337(d)–7T(b)(2)(iii).

* * * * *

(4) [Reserved]. For further guidance, see § 1.337(d)–7T(b)(4).

* * * * *

(c) *Election of deemed sale treatment.* (1) [Reserved]. For further guidance, see § 1.337(d)–7T(c)(1).

* * * * *

(6) [Reserved]. For further guidance, see § 1.337(d)–7T(c)(6).

* * * * *

(f) [Reserved]. For further guidance, see § 1.337(d)–7T(f).

(g) * * *

(2) *Special rules*—(i) *Conversion transactions occurring on or after August 2, 2013 and certain prior conversion transactions.* Paragraphs (a)(2)(i) through (v), (d)(1), (d)(3), (d)(4), and (e) of this section apply to conversion transactions that occur on or after August 2, 2013. However, taxpayers may apply paragraphs (a)(2)(i) through (v), (d)(1), (d)(3), (d)(4), and (e) of this section to conversion transactions that occurred before August 2, 2013. For conversion transactions that occurred on or after January 2, 2002 and before August 2, 2013, see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2013.

(ii) through (iii) [Reserved]. For further guidance, see § 1.337(d)–7T(g)(2)(ii) through (iii).

■ **Par. 3.** Section 1.337(d)–7T is added to read as follows:

§ 1.337(d)–7T Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in § 1.337(d)–7(a)(2)(i)) becomes the property of a RIC or a REIT in a conversion transaction (as defined in § 1.337(d)–7(a)(2)(ii)), then section 1374 treatment will apply as described in § 1.337(d)–7(b) and paragraph (b) of this section, unless the C corporation elects, or is treated as electing, deemed sale treatment with respect to the conversion transaction as provided in § 1.337(d)–7(c) and paragraph (c) of this section. See § 1.337(d)–7(d) for exceptions to this paragraph (a).

(2)(i) through (v) [Reserved]. For further guidance, see § 1.337(d)–7(a)(2)(i) through (v).

(vi) *Section 355 distribution.* The term *section 355 distribution* means any distribution to which section 355 (or so much of section 356 as relates to section 355) applies, including a distribution on which the distributing corporation recognizes gain pursuant to sections 355(d) or 355(e).

(vii) *Converted property.* The term *converted property* means property owned by a C corporation that becomes the property of a RIC or a REIT.

(b)(1) through (2)(ii) [Reserved]. For further guidance, see § 1.337(d)–7(b)(1) through (2)(ii).

(iii) *Recognition period.* For purposes of applying the rules of section 1374 and the regulations thereunder, as modified by § 1.337(d)–7(b) and paragraph (b) of this section, the term *recognition period* means the 10-year period beginning—

(A) In the case of a conversion transaction that is a qualification of a C corporation as a RIC or a REIT, on the first day of the RIC's or the REIT's first taxable year; and

(B) In the case of other conversion transactions, on the day the property is acquired by the RIC or the REIT.

(3) [Reserved]. For further guidance, see § 1.337(d)–7(b)(3).

(4) *Section 355 distribution following a conversion transaction*—(i) *In general.* If a REIT is described in paragraph (f)(1) of this section and the related section 355 distribution (as defined in paragraph (f)(1)(i) of this section) follows a conversion transaction, then for the taxable year in which the related section 355 distribution occurs, § 1.1374–2(a)(1) and (2) (as modified by § 1.337(d)–7(b)(2)(i)) do not apply, and the REIT's net recognized built-in gain for such taxable year is the amount of its net unrealized built-in gain limitation (as defined in § 1.1374–2(a)(3)) for such taxable year.

(ii) *Basis adjustment*—(A) *In general.* If a REIT recognizes gain under paragraph (b)(4)(i) of this section, the aggregate basis of the converted

property held by the REIT at the end of the taxable year in which the related section 355 distribution occurs shall be increased by an amount equal to the amount of gain so recognized, increased by the amount of the REIT's recognized built-in loss for such taxable year, and reduced by the amount of the REIT's recognized built-in gain and recognized built-in gain carryover for such taxable year.

(B) *Allocation of basis increase.* The aggregate increase in basis by reason of paragraph (b)(4)(ii)(A) of this section shall be allocated among the converted property in proportion to their respective built-in gains on the date of the conversion transaction.

(5) [Reserved]. For further guidance, see § 1.337(d)–7(b)(5).

(c) *Election of deemed sale treatment*—(1) *In general.* Section 1.337(d)–7(b) and paragraph (b) of this section do not apply if the C corporation that qualifies as a RIC or a REIT or transfers property to a RIC or a REIT makes the election described in § 1.337(d)–7(c)(5) or is treated as making such election under paragraph (c)(6) of this section. A C corporation that makes, or is treated as making, such an election recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in § 1.337(d)–7(c)(3)). See § 1.337(d)–7(c)(4) concerning limitations on the use of loss in computing gain. Section 1.337(d)–7(c) and this paragraph (c) do not apply if their application would result in the recognition of a net loss. For this purpose, net loss is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) through (5) [Reserved]. For further guidance, see § 1.337(d)–7(c)(2) through (5).

(6) *Conversion transaction following a section 355 distribution.* A C corporation described in paragraph (f)(1) of this section is treated as having made the election under § 1.337(d)–7(c)(5) with respect to a conversion transaction if the conversion transaction occurs following the related section 355 distribution (as defined in paragraph (f)(1)(i) of this section) and the C corporation has not made such election.

(7) through (e) [Reserved]. For further guidance, see § 1.337(d)–7(c)(7) through (e).

(f) *Conversion transaction preceding or following a section 355 distribution*—(1) *In general.* A C corporation or a REIT is described in this paragraph (f)(1) if—

(i) The C corporation or the REIT engages in a conversion transaction involving a REIT during the twenty-year period beginning on the date that is ten years before the date of a section 355 distribution (the related section 355 distribution); and

(ii) The C corporation or the REIT engaging in the related section 355 distribution is either—

(A) The distributing corporation or the controlled corporation, as those terms are defined in section 355(a)(1); or

(B) A member of the separate affiliated group (as defined in section 355(b)(3)(B)) of the distributing corporation or the controlled corporation.

(2) *Predecessors and successors.* For purposes of this paragraph (f), any reference to a controlled corporation or a distributing corporation includes a reference to any predecessor or successor of such corporation. Predecessors and successors include corporations which succeed to and take into account items described in section 381(c) of the distributing corporation or the controlled corporation, and corporations having such items to which the distributing corporation or the controlled corporation succeeded and took into account.

(3) *Exclusion of certain conversion transactions.* A C corporation or a REIT is not described in paragraph (f)(1) of this section if—

(i) The distributing corporation and the controlled corporation are both REITs immediately after the related section 355 distribution (including by reason of elections under section 856(c)(1) made after the related section 355 distribution that are effective before the related section 355 distribution) and at all times during the two years thereafter;

(ii) Section 355(h)(1) does not apply to the related section 355 distribution by reason of section 355(h)(2)(B); or

(iii) The related section 355 distribution is described in a ruling request referred to in section 311(c) of Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422.

(g) *Effective/Applicability date.* (1) [Reserved]. For further guidance, see § 1.337(d)–7(g)(1).

(2) *Special rules.* (i) [Reserved]. For further guidance, see § 1.337(d)–7(g)(2)(i).

(ii) *Conversion transactions occurring on or after June 7, 2016.* Paragraphs (a)(1), (a)(2)(vi) and (vii), (b)(4), (c)(1), (c)(6), and (f) of this section apply to conversion transactions occurring on or after June 7, 2016 and to conversion transactions and related section 355 distributions for which the conversion transaction occurs before, and the related section 355 distribution occurs on or after, June 7, 2016. For conversion transactions that occurred on or after January 2, 2002 and before June 7, 2016, see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2016.

(iii) *Recognition period.* Paragraphs (b)(1)(ii), (b)(2)(iii), and (d)(2)(iii) of this section applies to conversion transactions that occur on or after August 8, 2016. For conversion transactions that occurred on or after January 2, 2002 and before August 8, 2016, see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2016.

(h) *Expiration date.* The applicability of this section expires on June 7, 2019.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: May 11, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–13443 Filed 6–7–16; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0940]

RIN 1625–AA09

Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, FL. This rule implements restrictions that allow the bridge to remain closed during peak vehicle traffic times. Bridge openings during peak vehicle traffic times cause major traffic jams that may be avoided without negatively impacting vessel traffic on the Indian Creek. Modifying the bridge operating schedule will reduce major vehicle traffic issues during rush hour times.

DATES: This rule is effective July 8, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2015–0940. In the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Rod Elkins with the Coast Guard; telephone 305–415–6989, email *Rodney.J.Elkins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On February, 18, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL in the **Federal Register** (81 FR 8168). We received 508 comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The 63rd Street Bridge across Indian Creek, mile 4.0, at Miami Beach, Florida is a single leaf bascule bridge. It has a vertical clearance of 11 feet at mean high water in the closed position and a horizontal clearance of 50 feet. Presently, in accordance with 33 CFR 117.5, the 63rd Street Bridge is required to open on signal for the passage of vessels. Traffic on the waterway includes both commercial and recreational vessels.

The City of Miami Beach and Miami Dade County determined through bridge studies, traffic logs, and public meetings that restricting bridge openings during peak traffic hours will significantly reduce vehicular traffic congestion. Based on this determination, the City of Miami Beach requested this action to alleviate additional traffic congestion created by bridge openings during peak hours.

In addition to changing the schedule to allow for limited openings during the regular work week, the Coast Guard is making a regulatory change that will apply during the annual boat show. Every year in mid-February the City of Miami Beach hosts the Yacht and Brokerage Show which creates unusually high vehicle and vessel traffic during the weeks before and after the show. The Coast Guard typically issues temporary deviations to the 63rd Street Bridge operations that help balance vessel and vehicle needs during those times. The Coast Guard is adopting the annual temporary deviation as part of this bridge regulation. The bridge owner, Florida Department of Transportation concurs with this Final Rule change.

IV. Discussion of Comments, Changes and the Final Rule

There were 508 comments received concerning the proposed rule. Of these comments, 497 were in favor of the proposed rule. Eight comments recommended various additional closure times that place more restrictions on bridge openings and do meet the reasonable needs of navigation. Two comments recommended openings on the hour and half hour at all times of day. The Coast Guard did not adopt these proposals because they are less restrictive than necessary to balance the needs of vehicle traffic during peak travel hours of the day and more restrictive than necessary to accommodate the reasonable needs of maritime navigation outside times of increased vehicle traffic. One comment recommended placing a toll system for openings on the bridge. This rulemaking seeks to set an operating schedule that will balance the needs of vehicle traffic with the reasonable needs of navigation. Therefore, the Coast Guard did not accept this proposal because it is outside the scope of this rulemaking.

The Coast Guard is adding § 117.293 as proposed without change.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the waterway during scheduled openings. Additionally, vessels that are capable of transiting under the bridge in the closed position, may do so at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels that require more than eleven feet vertical clearance that need to transit the bridge during daytime closure periods. Vessels will still be allowed to transit this waterway at all times if they can clear without an opening, or at the specified times if they need the bridge open. This change in operating schedule will still meet the reasonable needs of navigation while taking into account other modes of transportation.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 117.293 to read as follows:

§ 117.293 Indian Creek.

The draw of the 63rd Street Bridge, Indian Creek mile 4.0, at Miami Beach, shall open on signal except as follows:

(a) From 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour and half-hour.

(b) From 7:10 a.m. to 9:55 a.m. and 4:05 p.m. to 6:59 p.m., Monday through Friday except Federal holidays, the draw need not open for the passage of vessels.

(c) In February of each year during the period seven days prior to the City of Miami Beach Yacht and Brokerage Show and the four days following the show, from 10 a.m. to 4 p.m., the bridge need not open except for 10 minutes at the top of the hour. At all other times the bridge shall operate on its normal schedule.

Dated: June 2, 2016.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–13458 Filed 6–7–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0145]

Safety Zone; Cincinnati Reds Season Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Cincinnati Reds Season Fireworks on the Ohio River, from mile marker 470.1 and ending at 470.4, extending 500 feet from the State of Ohio shoreline. This rule is effective during specific home games during the Major League Baseball season. Should the Cincinnati Reds make the playoffs and have additional home games; the Coast Guard will provide notification of enforcement periods via Broadcast Notices to Mariners, Local Notices to Mariners, and/or Marine Safety Information Bulletins as appropriate. This action is needed to protect vessels transiting the area and event spectators from the hazards associated with the Cincinnati Reds Barge-based fireworks. During the enforcement period, entry into or transiting in the safety zone is prohibited to all vessels not registered with the sponsor as participants or official patrol vessels.

DATES: The regulations in 33 CFR 165.801, Table No. 1, Line no. 2 will be enforced from 9:00 p.m. through 11:30 p.m. on April 6, April 8, April 22, May 6, May 20, June 3, June 10, June 24, July 15, July 22, July 31, August 19, September 2, September 16, and September 30, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Caloeb Gandy, Sector Ohio Valley, U.S. Coast Guard at telephone 502–779–5334, email *caloeb.l.gandy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Cincinnati Reds Season Fireworks listed in 33 CFR 165.801, Table no. 1, Line no. 2. These regulations can be found in the Code of Federal Regulations, under 33 CFR 165.801 or in the **Federal Register** (77 FR 12460). As specified in § 165.801, during the enforcement period no vessel may transit this safety zone without approval from the Captain of the Port Ohio Valley (COTP). If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR part 165 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification of this enforcement period via Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNM). If the COTP Ohio Valley determines that the regulated area need not be enforced for the full duration, a BNM to grant general permission to enter the safety zone may be used.

Dated: March 24, 2016.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–13584 Filed 6–7–16; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1202

[FDMS No. NARA–16–0005; NARA–2016–021]

RIN 3095–AB91

Privacy Act of 1974; Exemptions

AGENCY: National Archives and Records Administration (NARA).

ACTION: Direct final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its Privacy Act regulations to add a new insider threat system of records to the records exempt from release under the law enforcement exemption of the Privacy Act. This action is necessary to protect investigatory information from release that could compromise or damage the investigation, result in evidence tampering or destruction, undue influence of witnesses, danger to individuals, and similar harmful effects.

DATES: This rule is effective July 18, 2016, without further action, unless NARA receives adverse comments warranting action by July 8, 2016. If NARA receives an adverse comment warranting further action, it will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3095–AB91, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Regulation_comments@nara.gov.* Include RIN 3095–AB91 in the subject line of the message.
- *Fax:* 301–837–0319. Include RIN 3095–AB91 in the subject line of the fax cover sheet.
- *Mail (for paper, disk, or CD–ROM submissions. Include RIN 3095–AB91 on the submission):* Regulations Comment Desk (External Policy Program, Strategy & Performance Division (SP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.
- *Hand delivery or courier:* Deliver comments to front desk at the address above.

Instructions: All submissions must include NARA's name and the regulatory information number for this rulemaking (RIN 3095–AB91). We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, by email at *regulation_comments@nara.gov*, or by telephone at 301–837–3151.

SUPPLEMENTARY INFORMATION: The National Archives and Records Administration (NARA) is adding a system of records to its existing inventory of systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552(a)) ("Privacy Act"). The new system is NARA 45, Insider Threat Program records (we are publishing the NARA 45 SORN concurrently with this regulation), and it comprises records gathered for purposes of investigating threats to NARA facilities, personnel, or systems, or national security. The system contains investigatory material of actual, potential, or alleged criminal, civil, or administrative violations and law enforcement actions.

The Privacy Act generally grants individuals the right to access agency records maintained about themselves, and the right to request that the agency amend those records if they are not accurate, relevant, timely, or complete. However, the Privacy Act also exempts, by means of ten specific exemptions, an agency from granting a person access to information about themselves that the agency compiles for certain types of law enforcement or investigatory actions. Specifically for the purposes of this rulemaking, the Privacy Act exempts an agency from granting access to "investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section [September 27, 1975], under an implied promise that the identity of the source would be held in confidence." 5 U.S.C. 552a(k)(2).

NARA currently exempts Office of Inspector General investigative files under the (k)(2) exemption. See 36 CFR 1202.92. For similar reasons, we are now adding the insider threat program files to the same regulation section because the Insider Threat Program Records system of records contains investigatory material of actual, potential, or alleged violations, compiled for law enforcement purposes. Under Office of Management and Budget (OMB) Guidelines on the Privacy Act, to qualify for this exemption the agency must compile the material for some investigative "law enforcement" purpose, such as a civil or criminal investigation. Multiple court decisions have upheld the exemption for investigative records covering a range of purposes from discrimination complaints (see, *e.g., Menchu* v. *HHS*, 965 F. Supp. 2d 1238, 1248 (D. Or. 2013)), fraud, waste, and abuse complaints (see, *e.g., Gowan* v. *Air Force*, 148 F.3d 1182, 1188–89 (10th Cir. 1998)), and taxpayer audits (see, *e.g., Welsh* v. *IRS*, No. 85–1024, slip op. at 2–3 (D.N.M. Oct. 21, 1986)), to civil trust fund recovery penalty investigations (see, *e.g., Berger* v. *IRS*, 487 F. Supp. 2d 482, 497–98 (D.N.J. 2007), aff'd 288 F. App'x 829 (3d Cir. 2008), cert. denied, 129 S. Ct. 2789 (2009)) and deportation investigations (see, *e.g., Shewchun* v. *INS*, No. 95–1920, slip op. at 3, 8–9 (D.D.C. Dec. 10, 1996), summary affirmance granted, No. 97–5044 (D.C. Cir. June 5, 1997)). In addition, courts have also determined that this exemption covers investigations into potential threats to national security (see, *e.g., Strang* v. *U.S. Arms Control & Disarmament Agency*, 864 F.2d 859, 862–63 n.2 (D.C. Cir. 1989) ("this case involves not a job applicant undergoing a routine check of his background and his ability to perform the job, but an existing agency employee investigated for violating national security regulations.")

Routine background investigation files are generally not exempt under the (k)(2) exemption of the Privacy Act, but in some limited cases portions of them may be exempt under (k)(2) because they also include information that would be the subject of a law enforcement investigation under the scope of the exemption (see, *e.g., Cohen* v. *FBI*, No. 93–1701, slip op. at 4–6 (D.D.C. Oct. 3, 1995) (finding that particular information within a background investigation file qualified as "law enforcement" information "withheld out of a legitimate concern for national security," and that "'[s]o long as the investigation was "realistically based on a legitimate concern that federal laws have been or may be violated or that national security may be breached" the records may be considered law enforcement records'" (quoting *Vymetalik* v. *FBI*, 785 F.2d 1090, 1098 (D.C. Cir. 1986), in turn quoting *Pratt* v. *Webster*, 673 F.2d 408, 421 (D.C. Cir. 1982)))).

NARA maintains a centralized hub for insider threat analysis to (1) manually and electronically gather, integrate, review, assess, and respond to information derived from internal and external sources, and (2) identify potential insider threat concerns and conduct an appropriate inquiry to resolve the concern. Section 811 of the Intelligence Authorization Act for FY 1995; executive orders 13587, 13526, 12333, and 10450; Presidential Memorandum, National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs, November 21, 2012; Presidential Memorandum, Early Detection of Espionage and Other Intelligence Activities through Identification and Referral of Anomalies, August 23, 1996; and Presidential Decision Directive/NSC–12, Security Awareness and Reporting of Foreign Contacts, August 5, 1993, authorize these insider threat assessment and investigation activities. As a result, the records in this system of records qualify as investigative records compiled for law enforcement purposes under the meaning of the Privacy Act's (k)(2) exemption. NARA is revising its regulations to exempt this information from disclosure under the Privacy Act so that it can prevent these investigations from being impeded or damaged by releasing the information.

Regulatory Analysis

Review Under Executive Orders 12866 and 13563

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule is not "significant" under section 3(f) of Executive Order 12866 because will not create an economic or budgetary impact, create an inconsistency or interfere with other agencies, and does not raise novel issues; it exempts certain records from certain provisions of the Privacy Act in accord with established criteria. The Office of Management and Budget (OMB) has reviewed this regulation.

Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the proposed rule. This requirement does not apply if the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this rule will not have a significant adverse economic impact on small entities because it does not create an economic impact and does not affect small entities; it exempts certain records from certain provisions of the Privacy Act.

Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)

Review under Executive Order 13132 requires that agencies review regulations for federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This rule will not have any direct effects on State and local governments within the meaning of the Executive Order. Therefore, the regulation requires no federalism assessment.

List of Subjects in 36 CFR Part 1202

Privacy.

For the reasons stated in the preamble, NARA proposes to amend 36 CFR part 1202 as follows:

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

■ 1. The authority citation for part 1202 remains as follows:

Authority: 5 U.S.C. 552(a); 44 U.S.C. 2104(a).

§ 1202.92 [Amended]

■ 2. Revise § 1202.92 to read as follows:

§ 1202.92 What NARA systems of records are exempt from release under the Law Enforcement Exemption of the Privacy Act?

(a) The Investigative Files of the Inspector General (NARA–23) and the Insider Threat Program Records (NARA–45) systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because these record systems contain investigatory material of actual, potential, or alleged criminal, civil, or administrative violations, compiled for law enforcement purposes other than within the scope of subsection (j)(2) of 5 U.S.C. 552a. If you are denied any right, privilege, or benefit to which you would otherwise be entitled by Federal law, or for which you would otherwise be eligible, as a result of the record, NARA will make the record available to you, except for any information in the record that would disclose the identity of a confidential source as described in 5 U.S.C. 552a(k)(2).

(b) The systems described in paragraph (a) of this section are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (e)(4), (G) and (H), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) of 5 U.S.C. 552a because releasing disclosure accounting could alert the subject of an investigation about the alleged violations, about the existence of the investigation, and about the fact that they are being investigated by the Office of Inspector General (OIG), the Insider Threat Office, or another agency. Releasing these records could provide significant information concerning the nature of the investigation and result in tampering with or destroying evidence, influencing witnesses, endangering individuals involved, and other activities that could impede or compromise the investigation.

(2) From the access and amendment provisions of subsection (d) of 5 U.S.C. 552a because access to the information contained in these systems of records could inform the subject of an investigation about an actual or potential criminal, civil, or administrative violation; about the existence of that investigation; about the nature and scope of the information and

evidence obtained on the person's activities; about the identity of confidential sources, witnesses, and law enforcement personnel; and about information that may enable the person to avoid being detected or apprehended. These factors present a serious impediment to effective law enforcement when they prevent investigators from successfully completing the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, or lead to improperly influencing witnesses, destroying evidence, or fabricating testimony. In addition, granting access to such records could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Amending these records could allow the subject to avoid being detected or apprehended and interfere with ongoing investigations and law enforcement activities.

(3) From subsection (e)(1) of 5 U.S.C. 552a because applying this provision could impair investigations and interfere with the law enforcement responsibilities of the OIG, the Insider Threat Office, or another agency for the following reasons:

(i) It is not possible to detect relevance or need for specific information in the early stages of an investigation, case, or matter. After the investigators evaluate the information, they may establish its relevance and need.

(ii) During an investigation, the investigating office may obtain information about other actual or potential criminal, civil, or administrative violations, including those outside the scope of its jurisdiction. The office should retain this information, as it may help establish patterns of inappropriate activity, and can provide valuable leads for Federal and other law enforcement agencies.

(iii) When interviewing individuals or obtaining other forms of evidence during an investigation, the investigator may receive information that relates to matters incidental to the primary purpose of the investigation but which may also relate to matters under the investigative jurisdiction of another office or agency. The investigator cannot readily segregate such information.

(4) From subsection (e)(4)(G) and (H) of 5 U.S.C. 552a because these systems are exempt from the access and amendment provisions of subsection (d), pursuant to subsection (k)(2) of the Privacy Act.

(5) From subsection (f) of 5 U.S.C. 552a because these systems are exempt from the access and amendment provisions of subsection (d) of 5 U.S.C. 552a, pursuant to subsection (k)(2) of the Privacy Act.

Dated: May 29, 2016.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2016–13599 Filed 6–7–16; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0300; FRL–9947–35–Region 9]

Completeness Findings for 110(a)(2)(C) State Implementation Plan Pertaining to the Fine Particulate Matter ($PM_{2.5}$) NAAQS; California; El Dorado County Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a finding that the State of California has made a complete New Source Review (NSR) State Implementation Plan (SIP) submission for the El Dorado County Air Quality Management District (EDCAQMD) to address the permitting of emissions of particulate matter 2.5 micrometers (μm) in diameter and smaller ($PM_{2.5}$) from major sources in areas designated nonattainment for the 2006 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), as required by the Clean Air Act (CAA). In addition, the EPA is making a finding that the State of California has not made the necessary NSR SIP submission for the Yolo-Solano Air Quality Management District (YSAQMD) to address the permitting of $PM_{2.5}$ emissions from major sources in areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS, as required by the EPA no later than December 31, 2014. The EPA is making these findings in accordance with section 110 and part D of Title I of the CAA.

DATES: The effective date of this rule is July 8, 2016.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Air Division (Air–3), Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105; telephone (415) 972–3534; email *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, *5 U.S.C. 553(b)(B),* provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions to meet the requirement by the statutory date. No additional fact gathering is necessary. Thus, notice and public procedure are unnecessary. The EPA finds this constitutes good cause under *5 U.S.C. 553(b)(B).*

Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

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I. Background and Overview

A. Relevant $PM_{2.5}$ NAAQS

On October 17, 2006, the EPA promulgated revisions to the NAAQS for $PM_{2.5}$ with an effective date of December 18, 2006 (71 FR 61144). With these revisions, the EPA lowered the 24-hour NAAQS for $PM_{2.5}$ from 65 μg/m³ to 35 μg/m³, and retained the existing annual $PM_{2.5}$ NAAQS of 15 μg/m³. The EPA promulgated designations for the 2006 $PM_{2.5}$ NAAQS that became effective on December 14, 2009, which designated certain areas within the jurisdiction of EDCAQMD and YSAQMD as nonattainment for the 2006 $PM_{2.5}$ NAAQS (74 FR 58688, Nov. 13, 2009).

B. Revisions to the NSR Program To Implement the 2006 $PM_{2.5}$ NAAQS

To implement the $PM_{2.5}$ NAAQS for NSR purposes, the EPA issued a final rule that established the NSR permitting requirements for $PM_{2.5}$, entitled *Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$),* on May 16, 2008 (73 FR 28321). Among other things, the final rule amended the NSR regulations to establish the minimum elements for state and local agencies implementing a nonattainment NSR program for major sources for the $PM_{2.5}$ NAAQS. The final rule required states to submit SIP revisions to address these requirements to the EPA by July 15, 2011.

In 2013, certain provisions of EPA's May 16, 2008 final rule were affected by a judicial decision, Natural Resources Defense Council (NRDC) v. EPA, 706 F.3d 428 (D.C. Cir. 2013), in which the U.S. Court of Appeals for the D.C. Circuit determined that the EPA must regulate $PM_{2.5}$ in nonattainment areas under the particulate-matter-specific provisions of subpart 4 of part D of Title I of the CAA. As a partial response to this judicial decision, the EPA finalized a rulemaking on June 2, 2014 which, among other things, set a new date of December 31, 2014 for states to submit SIP revisions to address applicable nonattainment SIP requirements for $PM_{2.5}$, pursuant to subpart 4 of part D of Title I of the CAA. 79 FR 31566. Accordingly, states are required to have submitted all elements of a nonattainment NSR SIP for the 2006 $PM_{2.5}$ NAAQS to the EPA by no later than December 31, 2014.

II. This Action

A. Completeness Determination

The EPA is making a finding that the State of California submitted an NSR SIP revision for EDCAQMD to address NSR requirements for major sources in nonattainment areas for purposes of the 2006 $PM_{2.5}$ NAAQS on March 21, 2016, which the EPA determined met the completeness criteria in 40 CFR part 51, appendix V, on March 30, 2016. This completeness finding establishes a 12-month deadline for EPA to take action upon such SIP submission in accordance with section 110(k).

B. Finding of Failure To Submit

The EPA is making a finding that, as of the date of signature for this document, the State of California has failed to submit the required NSR program SIP revision for YSAQMD to address NSR requirements for major sources in nonattainment areas for purposes of the 2006 $PM_{2.5}$ NAAQS as required by December 31, 2014. This action will be effective on July 8, 2016.

If the EPA finds that a state has failed to make a required SIP submission or that a submitted SIP submission is incomplete for elements of a part D, Title I plan for nonattainment areas as required under section 110(a)(2)(I), then CAA section 179(a) establishes specific consequences, including the imposition of mandatory sanctions for the affected area. Additionally, such a finding triggers an obligation under CAA section 110(c) for the EPA to promulgate a Federal Implementation Plan (FIP) no later than 2 years from the effective date of such finding of failure to submit, if the affected state has not submitted, and the EPA has not approved, the required SIP submission before that date.

In this case, if the EPA has not affirmatively determined that the State of California has made the required complete NSR program SIP submission for YSAQMD to address NSR requirements for major sources in nonattainment areas for purposes of the 2006 $PM_{2.5}$ NAAQS within 18 months of the effective date of this rulemaking, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment areas. In addition, if the EPA has not affirmatively determined that the State has made such a complete submission within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment areas, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The sanctions will not take effect, if, within 18 months after the effective date of this finding of failure to submit, the EPA finds that the State has made a complete SIP submission addressing the deficiency for which the finding was made. Additionally, if the State makes the required SIP submission and the EPA takes final action to approve the submission within 2 years of the effective date of this finding, the EPA is not required to promulgate a FIP for the affected nonattainment areas per CAA section 110(c).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit nonattainment NSR SIPs for major sources to satisfy certain NSR requirements under the CAA for the $PM_{2.5}$ NAAQS.

C. Regulatory Flexibility Act (RFA)

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action relates to the requirement in the CAA for states to submit nonattainment NSR SIPs for major sources to satisfy certain NSR requirements of the CAA for the $PM_{2.5}$ NAAQS.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule addresses the requirement in the CAA for states to submit nonattainment NSR SIPs for major sources to satisfy certain NSR requirements under the CAA for the $PM_{2.5}$ NAAQS. No tribe is subject to this requirement. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it provides EPA's finding that the State of California has failed to make a submission for YSAQMD that is required under the CAA to implement the $PM_{2.5}$ NAAQS, and does not directly or disproportionately affect children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that the State of California has failed to submit a SIP to address certain basic permitting requirements for the $PM_{2.5}$ NAAQS, for YSAQMD, this action does not directly affect the level of protection provided for human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 26, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–13491 Filed 6–7–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GN Docket No. 12–268, WT Docket Nos. 14–70, 05–211, RM–11395; FCC 15–80]

Updating Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) approved on May 23, 2016, an information collection for FCC Form 611–T, FCC Wireless Telecommunications Bureau Annual Report Related to Eligibility for Designated Entity Benefits and 47 CFR 1.2110(n) contained in the Report and Order, FCC 15–80. This document is consistent with the Report and Order, which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

DATES: 47 CFR 1.2110(n), published at 80 FR 56764 on September 18, 2015 and revised FCC Form 611–T, are effective on July 8, 2016.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on May 23, 2016, OMB approved the information collection requirements for FCC Form 611–T, FCC Wireless Telecommunication Bureau Annual Report Related to Eligibility for Designated Entity Benefits and 47 CFR 1.2110(n) contained in the Report and Order, FCC 15–80. The OMB Control Number is 3060–1092. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1092, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on May 23, 2016, for the information collection requirements contained in the information collection 3060–1092. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1092. The foregoing document is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1092.

OMB Approval Date: May 23, 2016.

OMB Expiration Date: January 31, 2017.

Title: Interim Procedures for Filing Applicants Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Number: FCC Form 611–T and FCC Form 609–T (only Form 611–T was revised with this submission to OMB).

Respondents: Business or other for-profit entities; Not for Profit Institutions; and State, Local or Tribal Government.

Number of Respondents and Responses: 1,100 respondents and 2,750 responses.

Estimated Hours per Response: 0.50 to 6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 7,288 hours.

Total Annual Costs: 2,223,375.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 4(i), 308(b), 309(j)(3) and 309(j)(4).

Nature and Extent of Confidentiality: There is no need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On July 20, 2015, the Commission released the *Part 1 R&O* in which it updated many of its Part 1 competitive bidding rules (*See Updating Part 1 Competitive Bidding Rules; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited Rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver; Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures,* Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, and Third Report and Order, FCC 15–80, 30 FCC Rcd 7493 (2015), modified by *Erratum,* 30 FCC Rcd 8518 (2015) (*Part 1 R&O*)). Of relevance to the information collection at issue here, the Commission amended 47 CFR 1.2110(n), which requires designated entity licensees to file with the Commission an annual report for each license it holds that was acquired using designated entity benefits and that, as of August 31 of the year in which the report is due, remains subject to designated entity unjust enrichment requirements. Because the Commission amended 47 CFR 1.2110(n), the Commission is also amending FCC Form 611–T, which is the form that is used to collect this information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–13088 Filed 6–7–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160303183–6183–01]

RIN 0648–BF58

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Tribal Usual and Accustomed Fishing Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements the decision in *United States* v. *Washington,* 2:09–sp–00001–RSM, (W.D. Wash. Sept. 3, 2015) (Amended Order Regarding Boundaries of Quinault & Quileute U&As), which set forth certain boundaries of the usual and accustomed (U&A) fishing areas in the Pacific Ocean of the Quileute Nation (Quileute) and Quinault Indian Nation (Quinault). This action also includes related changes to NMFS regulations to provide consistency for tribal U&A fishing area boundaries across all fisheries managed by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act).

DATES: This final rule is effective June 8, 2016.

ADDRESSES: Information relevant to this final rule are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Electronic copies of this final rule are also available at the NMFS West Coast Region Web site: *http://www.westcoast.fisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, phone: 206–526–6147, fax: 206–526–6736, or email: *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov.*

Background

The Magnuson Act requires that any fishery management plan approved by the Secretary of Commerce and any implementing regulations be consistent with all provisions of the Act and "any other applicable law." 16 U.S.C. 1854(b)(1). "Other applicable law" includes treaties with northwest Indian tribes reserving "the right of taking fish, at all usual and accustomed grounds and stations." *Washington State Charterboat Association* v. *Baldrige,* 702 F.2d 820, 823 (9th Cir. 1983). For many years, NMFS has recognized that it must accommodate these treaty fishing rights regardless of whether the details of those rights have been judicially determined. In 1986, NMFS's regulations first described "treaty fishing areas" of the Pacific Coast treaty Indian tribes. 51 FR 16471 (May 2, 1986). For purposes of this rule, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation. The boundary descriptions of treaty fishing areas first applied only to the Pacific halibut fishery, but in 1987 the same descriptions were adopted for the Pacific salmon fishery. 52 FR 17264 (May 6, 1987). NMFS has consistently stated that these boundaries were not intended to represent a formal determination of the boundaries of treaty fishing areas, and that they are subject to change as necessary to comport with future court orders.

In 1996, NMFS issued a final rule amending its regulations managing West Coast groundfish fisheries and describing the physical boundaries of Pacific Coast treaty Indian tribes' usual and accustomed (U&A) fishing areas. This rule described the same areas that had previously been set forth in NMFS regulations. In promulgating the rule, NMFS explained that:

> Under this rule, NMFS recognizes the same U&A areas that have been implemented in Federal salmon and halibut regulations for a number of years. The States and the Quileute tribe point out that the western boundary has only been adjudicated for the Makah tribe. NMFS agrees. NMFS, however, in establishing ocean management areas, has taken the adjudicated western boundary for the Makah tribe, and extended it south as the western boundary for the other three ocean tribes. NMFS believes this is a reasonable accommodation of the tribal fishing rights, absent more specific guidance from a court. NMFS regulations, including this regulation, contain the notation that the boundaries of the U&A may be revised by order of the court.

61 FR 28786, 28789 (June 6, 1996)

Subsequently, NMFS promulgated regulations to describe the same U&A fishing area boundaries in its regulations for coastal pelagic species and highly migratory species. 66 FR 44986 (August 27, 2001) (coastal pelagic species); 68 FR 68834 (December 10, 2003) (highly migratory species). The same boundaries are also codified in the regulations governing Pacific halibut fisheries. 50 CFR 300.64. Regulations governing Pacific salmon fisheries are not codified, but also use the same boundaries when issued on a yearly basis. *See, e.g.,* 81 FR 26157 (May 2, 2016).

Newly Adjudicated Boundaries of Pacific Coast Treaty Tribes' U&A Fishing Areas

On August 27, 2015, the United States District Court for the Western District of Washington set forth the boundaries of the U&A fishing areas for the Quileute and the Quinault. *United States* v. *Washington,* 2:09–sp–00001–RSM, (W.D. Wash. Aug. 27, 2015) (Order Regarding Boundaries of Quinault & Quileute U&As). That order was amended on September 3, 2015. *United States* v. *Washington,* 2:09–sp–00001–RSM, (W.D. Wash. Sept. 3, 2015) (Amended Order Regarding Boundaries of Quinault & Quileute U&As). This

rulemaking implements the September 3 Amended Order. These newly adjudicated boundaries differed in some respects from the boundaries that NMFS adopted in the 1996 regulations. Specifically, the adjudicated northern boundary of the Quileute's U&A fishing area and the western boundary of the Quinault's U&A fishing area differ from the 1996 regulations. Accordingly, NMFS now revises the latitude and longitude coordinates describing the tribes' U&A fishing areas, consistent with the September 3, 2015, court order. Other boundaries, and their supporting rationale as described in the June 6, 1996, rule (61 FR 28789) are not affected by this rulemaking.

Technical Revisions

The Pacific Coast treaty Indian tribal U&A fishing areas are referenced in several places within title 50, part 660. To reduce duplicative regulations and ensure consistency within title 50, part 660, regulations describing the Pacific Coast treaty Indian tribes' U&A fishing areas are consolidated and moved to § 660.4, subpart A. Cross-references to Pacific coast treaty tribes' U&A fishing areas throughout title 50, part 660 are updated. Minor changes to regulations are made to consistently refer to "U&A fishing areas" rather than "U&As."

Minor changes are also made to consistently refer to the tribes' U&A fishing areas "within the EEZ." Regulations at § 660.50(c) previously described tribal U&A fishing areas as "within the fishery management area." "Fishery management area" is defined slightly differently in the various parts and subparts within title 50, part 660, and include additional details that do not apply for the purpose of describing U&A fishing areas. The term "fishery management area" as it relates to Pacific Coast treaty Indian tribes' U&A fishing areas is therefore replaced with the term EEZ, which is defined at § 600.10.

All of the minor regulatory changes described in "Technical Revisions" are non-substantive, and intended to reduce duplicative regulations and bring consistency among the parts and subparts in title 50, part 660, regarding Pacific coast treaty Indian tribes' U&A fishing areas.

Classification

The Administrator, West Coast Region, NMFS, determined that the minor regulatory amendments associated with the Court-ordered changes to tribal U&A fishing areas, which this final rule implements, are necessary for conservation and management and are consistent with the Magnuson Act and other applicable laws.

NMFS finds good cause to waive prior public notice and comment on the revisions to regulations in this final rule under 5 U.S.C. 553(b)(3)(B) because notice and comment would be impracticable and contrary to the public interest. Affording the time necessary for notice and comment rulemaking for these changes to regulations is impracticable and contrary to the public interest because the district court has issued its final judgment and the boundaries adjudicated by the court are controlling. NMFS's regulations must be modified consistent with the court order as quickly as possible to bring them into compliance with the legal requirements. It is further necessary to act quickly to modify the tribal U&A fishing area boundaries and to make related, minor technical corrections in title 50, part 660, to prevent the confusion that arises out of conflicting boundaries, which adds complexity to the management regime and creates problems for state and Federal management and enforcement. Furthermore, NMFS is not exercising any discretion in issuing this rule, but only making the changes necessary to comply with the court order. For the same reasons, NMFS also finds good cause to waive the 30-day delay in effectiveness.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The regulations at § 660.50(d) state treaty rights "will be implemented by the Secretary" and regulations will be developed in consultation with the affected tribe(s). The minor regulatory amendments associated with the Court-ordered changes to tribal U&A fishing areas in this final rule have been developed following these procedures.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: June 2, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. A new § 660.4 is added to subpart A to read as follows:

§ 660.4 Usual and accustomed fishing areas for Pacific Coast treaty Indian tribes.

(a) The Pacific Coast treaty Indian tribes' usual and accustomed (U&A) fishing areas within the EEZ are set out below in paragraphs (a)(1) through (a)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah.* The area north of 48°02.25′ N. lat. (Norwegian Memorial) and east of 125°44′ W. long.

(2) *Quileute.* The area between 48°10.00′ N. lat. (Cape Alava) and 47°31.70′ N. lat. (Queets River) and east of 125°44.00′ W. long.

(3) *Hoh.* The area between 47°54.30′ N. lat. (Quillayute River) and 47°21.00′ N. lat. (Quinault River) and east of 125°44.00′ W. long.

(4) *Quinault.* The area between 47°40.10′ N. lat. (Destruction Island) and 46°53.30′ N. lat. (Point Chehalis) and east of 125°08.50′ W. long.

(b) [Reserved]

■ 3. In § 660.11, add a new definition for "Usual and accustomed fishing areas" in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Usual and accustomed fishing areas or U&A fishing areas for Pacific Coast treaty Indian tribes, occurring within the EEZ, are described at § 660.4, subpart A.

* * * * *

■ 4. In § 660.12, revise paragraph (a)(14) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(14) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A fishing area, described at § 660.4, subpart A, from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

* * * * *

■ 5. In § 660.50, revise paragraphs (b), (c), (e)(4), and (g)(11) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(b) *Pacific Coast treaty Indian tribes.* For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh Indian Tribe, Makah Indian Tribe, Quileute Indian Tribe and the Quinault Indian Nation.

(c) *Usual and accustomed fishing areas or U&A fishing areas.* The Pacific Coast treaty Indian tribes' U&A fishing areas within the EEZ are set out in § 660.4.

* * * * *

(e) * * *

(4) *Fishing outside the U&A fishing area or without a groundfish allocation.* Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's U&A fishing area, or for a species of groundfish not covered by an allocation, set-aside, or regulation under this section, is subject to the regulations in the other sections of subpart C through subpart G of this part. Treaty fisheries operating within tribal allocations are prohibited from operating outside the U&A fishing areas described at § 660.4, subpart A.

* * * * *

(g) * * *

(11) *EFH.* Measures implemented to minimize adverse impacts to groundfish EFH, as described in § 660.12 of this subpart, do not apply to tribal fisheries in their U&A fishing areas described at § 660.4, subpart A.

■ 6. In 660.112, revise paragraph (c)(2) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(c) * * *

(2) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A fishing area, described at § 660.4, subpart A, from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

* * * * *

■ 7. In § 660.518, revise paragraphs (a) and (b) to read as follows:

§ 660.518 Pacific Coast Treaty Indian Rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest CPS in their usual and accustomed fishing areas in the EEZ.

(b) For the purposes of this section, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation, and their "usual and accustomed fishing areas" are described at § 660.4, subpart A.

* * * * *

■ 8. In § 660.706, revise paragraphs (a), (c), (d), (f) and (h) to read as follows:

§ 660.706 Pacific Coast Treaty Indian rights.

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest HMS in their usual and accustomed (U&A) fishing areas in the EEZ.

* * * * *

(c) The Pacific Coast treaty Indian tribes' U&A fishing areas within the EEZ are set forth in § 660.4 of this chapter.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary of Commerce, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the NMFS West Coast Regional Administrator, at least 120 days prior to the time the allocation is desired to be effective, and will be subject to public review through the Council process. The Secretary of Commerce recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary of Commerce will develop tribal allocations and regulations in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

* * * * *

(f) Fishing (on a tribal allocation or under a Federal regulation applicable to tribal fisheries) by a member of a Pacific Coast treaty Indian tribe within that tribe's U&A fishing area is not subject to provisions of the HMS regulations applicable to non-treaty fisheries.

* * * * *

(h) Fishing by a member of a Pacific Coast treaty Indian tribe outside that tribe's U&A fishing area, or for a species of HMS not covered by a treaty allocation or applicable Federal regulation, is subject to the HMS regulations applicable to non-treaty fisheries.

[FR Doc. 2016–13469 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XE667

Fisheries of the Exclusive Economic Zone Off Alaska; Other Hook-and-Line Fishery by Catcher Vessels in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish or sablefish managed under the Individual Fishing Quota Program, by catcher vessels (C/Vs) using hook-and-line gear in the Gulf of Alaska (GOA). This action is necessary because the Pacific halibut bycatch allowance specified for the other hook-and-line fishery by C/Vs in the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 10, 2016, until 2400 hours A.l.t., December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance specified for the other hook-and-line fishery by C/Vs in the GOA is 129 metric tons as established by the final 2016 and 2017 harvest specifications for groundfish of the GOA (81 FR 14740, March 18, 2016).

In accordance with § 679.21(d)(6)(ii), the Administrator, Alaska Region, NMFS, has determined that the Pacific halibut bycatch allowance specified for the other hook-and-line fishery by C/Vs in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish or sablefish managed under the Individual Fishing Quota Program, by C/Vs using hook-

and-line gear in the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay closure of the other hook-and-line fishery by C/Vs in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 1, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13454 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 110
Wednesday, June 8, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–15–0012; NOP–15–06]

RIN 0581–AD44

National Organic Program (NOP); Organic Livestock and Poultry Practices Proposed Rule; Extension of Comment Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) published a proposed rule in the **Federal Register** on April 13, 2016 (71 FR 21956) on Organic Livestock and Poultry Practices. This document extends the comment period for the proposed rule for 30 days from June 13, 2016 to July 13, 2016. Multiple stakeholders requested that AMS extend the comment period due to the complexity and importance of the proposal. AMS is granting an extension.

DATES: All comments must be received on or before July 13, 2016.

ADDRESSES: Interested parties may submit written comments on the Organic Livestock and Poultry Practices proposed rule using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Paul Lewis Ph.D., Director Standards Division, National Organic Program, USDA–AMS–NOP, Room 2646–So., Ag Stop 0268, 1400 Independence Ave. SW., Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–15–0012; NOP–15–06PR, and/or Regulatory Information Number (RIN) 0581–AD44 for this rulemaking. Commenters should identify the topic and section of the proposed rule to which their comment refers. All commenters should refer to the *General Information* section in the Notice of Proposed Rulemaking for more information on preparing your comments. All comments received will be posted without change to *http://www.regulations.gov.*

Docket: For access to the docket, including background documents and comments received, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646-South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division. Telephone: (202) 720–3252; Fax: (202) 260–9151.

SUPPLEMENTARY INFORMATION: This notice extends the public comment period provided in the proposed rule published in the **Federal Register** on April 13, 2016 (71 FR 21956) on Organic Livestock and Poultry Practices. In the proposed rule, AMS solicits public comments generally and requests comments on specific topics. AMS is extending the comment period, which was set to end on June 13, 2016, to July 13, 2016.

AMS is proposing to amend the organic livestock and poultry production requirements by: Adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expanding and clarifying existing requirements covering livestock health care practices and mammalian living conditions.

To submit comments, or access the proposed rule docket, please follow the instructions provided under the **ADDRESSES** section. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 6501–6522.

Dated: June 2, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–13537 Filed 6–7–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7003; Directorate Identifier 2016–CE–015–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes that would supersede AD 2014–22–01. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to incorporate new revisions into the Limitations section, Chapter 4, of the FAA-approved maintenance program (*e.g.,* maintenance manual). We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 25, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 33 33; fax: +41 (0) 41 619 73 11; Internet: *http://www.pilatus-aircraft.com* or email: *SupportPC12@pilatus-aircraft.com* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7003; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7003; Directorate Identifier 2016–CE–015–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On October 20, 2014, we issued AD 2014–22–01, Amendment 39–18005 (79 FR 67343, November 13, 2014) ("AD 2014–22–01"). That AD required actions intended to address an unsafe condition on all PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2014–22–01, PILATUS AIRCRAFT LTD. has issued revisions to the Limitations section of the airplane maintenance manual to include repetitive inspections of the main landing gear (MLG) attachment bolts.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2016–0083, dated April 28, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The airworthiness limitations are currently defined and published in the Pilatus PC–12 Aircraft Maintenance Manual(s) (AMM) under Chapter 4, Structural, Component and Miscellaneous—Airworthiness Limitations Section (ALS) documents. The limitations contained in these documents have been identified as mandatory for continued airworthiness.
>
> Failure to comply with these instructions could result in an unsafe condition.
>
> EASA issued AD 2014–0170 requiring the actions as specified in ALS, Chapter 4 of AMM report 02049 issue 28, for PC–12, PC–12/45 and PC–12/47 aeroplanes, and Chapter 4 of AMM report 02300 issue 11, for PC–12/47E aeroplanes.
>
> Since that AD was issued, Pilatus issued Chapter 4 of PC–12 AMM report 02049 issue 31, and Chapter 4 of PC–12 AMM report 02300 issue 14 (hereafter collectively referred to as 'the applicable ALS' in this AD), to incorporate new six-year and ten-year inspection intervals for several main landing gear (MLG) attachment bolts, and an annual inspection interval for the MLG shock absorber attachment bolts, which was previously included in the AMM Chapter 5 annual inspection. After a further review of the in-service data, Pilatus issued Service Letter (SL) 186, extending the special compliance time applicable for the MLG bolts inspection.
>
> For the reasons described above, this AD retains the requirements of EASA AD 2014–0170, which is superseded, and requires the accomplishment of the new maintenance tasks, as described in the applicable ALS.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7003.

Related Service Information Under 1 CFR Part 51

PILATUS AIRCRAFT LTD. has issued Structural, Component and Miscellaneous—Airworthiness Limitations, document 12–A–04–00–00–00A–000A–A, dated September 28, 2015, and Structural and Component Limitations—Airworthiness Limitations, document 12–B–04–00–00–00A–000A–A, dated September 28, 2015. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this AD will affect 770 products of U.S. registry. We also estimate that it would take about 1.5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $98,175, or $127.50 per product. This breaks down as follows:

- Incorporating new revisions into the Limitations section, Chapter 4, of the FAA-approved maintenance program (*e.g.*, maintenance manual): .5 work-hour for a fleet cost of $32,725, or $42.50 per product.
- New inspections: MLG attachment bolts: 1 work-hour with no parts cost for fleet cost of $65,450 or $85 per product.

In addition, we estimate that any necessary corrective actions (on-condition costs) that must be taken based on the proposed inspections, would take about 1 work-hour and require parts costing approximately $100 for a cost of $185 per product. We have no way of determining the number of products that may need these necessary corrective actions. This breaks down as follows:

The only costs that would be imposed by this proposed AD over that already

required by AD 2014–22–01 is insertion of the revised Limitation section and the MLG attachment bolts inspection and replacement as necessary.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, part A, subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–18005 (79 FR 67343, November 13, 2014), and adding the following new AD:

PILATUS AIRCRAFT LTD.: Docket No. FAA–2016–7003; Directorate Identifier 2016–CE–015–AD.

(a) Comments Due Date

We must receive comments by July 25, 2016.

(b) Affected ADs

This AD replaces AD 2014–22–01, 39–18005 (79 FR 67343, November 13, 2014).

(c) Applicability

This AD applies to PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes, all manufacturer serial numbers (MSNs), certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to incorporate new revisions into the Limitations section, Chapter 4, of the FAA-approved maintenance program (*e.g.*, maintenance manual). The limitations were revised to include repetitive inspections of the main landing gear (MLG) attachment bolts. These actions are required to ensure the continued operational safety of the affected airplanes.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(6) of this AD:

(1) Before further flight after July 13, 2016 (the effective date of this AD), insert the following revisions into the Limitations section of the FAA-approved maintenance program (*e.g.*, maintenance manual):

(i) STRUCTURAL, COMPONENT AND MISCELLANEOUS—AIRWORTHINESS LIMITATIONS, Data module code 12–A–04–00–00–00A–000A–A, dated September 28, 2015, of the Pilatus Model type—PC–12, PC–12/45, PC–12/47, Aircraft Maintenance Manual (AMM), Document No. 02049, 12–A–AM–00–00–00–I, revision 31, dated November 10, 2015; and

(ii) STRUCTURAL AND COMPONENT LIMITATIONS—AIRWORTHINESS LIMITATIONS, Data module code 12–B–04–00–00–00A–000A–A, dated September 28, 2015, of the Pilatus Model type—PC–12/47E MSN–1001–UP, Aircraft Maintenance Manual (AMM), Document No. 02300, 12–B–AM–00–00–00–I, revision 14, dated November 6, 2015.

(2) The limitations section revisions listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD do the following:

(i) Establish inspections of the MLG attachment bolts,

(ii) Specify replacement of components before or upon reaching the applicable life limit, and

(iii) Specify accomplishment of all applicable maintenance tasks within certain thresholds and intervals.

(3) Only authorized Pilatus Service Centers can do the Supplemental Structural Inspection Document (SSID) as required by the documents in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD because deviations from the type design in critical locations could make the airplane ineligible for this life extension.

(4) If no compliance time is specified in the documents listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD when doing any corrective actions where discrepancies are found as required in paragraph (f)(2)(iii) of this AD, do these corrective actions before further flight after doing the applicable maintenance task.

(5) During the accomplishment of the actions required in paragraph (f)(2) of this AD, including all subparagraphs, if a discrepancy is found that is not identified in the documents listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, before further flight after finding the discrepancy, contact PILATUS AIRCRAFT LTD. at the address specified in paragraph (h) of this AD for a repair scheme and incorporate that repair scheme.

(6) Within the next 6 years time-in-service after July 13, 2016 (the effective date of this AD) or within the next 3 months TIS after July 13, 2016 (the effective date of this AD), whichever occurs later, inspect the MLG attachment bolts for cracks and corrosion take all necessary corrective actions.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

(i) Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(ii) AMOCs approved for AD 2014–22–01, 39–18005 (79 FR 67343, November 13, 2014) are not approved as AMOCs for this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority

(or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2016–0083, dated April 28, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7003. For service information related to this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 33 33; fax: +41 (0) 41 619 73 11; Internet: *http://www.pilatus-aircraft.com* or email: *SupportPC12@pilatus-aircraft.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 27, 2016.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13249 Filed 6–7–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6897; Directorate Identifier 2015–NM–187–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2015–03–01, for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. AD 2015–03–01 currently requires installing additional attaching hardware on the left and right fan cowl access panels and the nacelle attaching structures. Since we issued AD 2015–03–01, there have been updates to the weight and balance data needed to calculate the center of gravity for affected airplanes. This proposed AD would require weight and balance data to be included in the Weight and Balance Manual and applicable logbooks for airplanes modified per Bombardier Service Bulletin 601R–71–034, Revision B, dated August 1, 2014. The proposed AD would also require the weight and balance data to be used in order to calculate the center of gravity for affected airplanes. We are proposing this AD to prevent damage to the fuselage and flight control surfaces from dislodged engine fan cowl panels, and prevent incorrect weight and balance calculations. Incorrect weight and balance calculations may shift the center of gravity beyond approved design parameters and affect in-flight control, which could endanger passengers and crew.

DATES: We must receive comments on this proposed AD by July 25, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6897; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6897; Directorate Identifier 2015–NM–187–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 30, 2015, we issued AD 2015–03–01, Amendment 39–18097 (80 FR 7298, February 10, 2015) ("AD 2015–03–01"). AD 2015–03–01 requires installing additional attaching hardware on the left and right fan cowl access panels and the nacelle attaching structures. Since we issued AD 2015–03–01, we have determined it is necessary to update the weight and balance data needed to calculate the center of gravity for affected airplanes.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–20R1, dated August 12, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes The MCAI states:

> There have been a number of engine fan cowl panel dislodgement incidents reported on the Bombardier CL–600–2B19 aeroplane fleet. The dislodged panels may cause damage to the fuselage and flight control surfaces of the aeroplane. Also, the debris from a dislodged panel may result in runway contamination and has the potential of causing injury on the ground.
>
> Although the majority of the subject panel dislodgements were reported on the first or second flight after an engine maintenance task was performed that required removal and reinstallation of the subject panels, the frequency of the dislodgements indicates that the existing attachment design is prone to human (maintenance) error.

> In order to mitigate the potential safety hazard of the subject panel dislodgement, Bombardier had issued Service Bulletin (SB) 601R–71–034 to install additional fasteners for the attachment of the engine fan cowl panels to the nacelle's structure. Compliance of the above SB was mandated by the original issue of [Canadian] AD CF–2014–20 dated 9 July 2014 [which corresponded to FAA AD 2015–03–01].
>
> Bombardier has now revised the SB 601R–71–034 (to Revision C) requiring weight and balance data to be included in the Weight and Balance manual for aeroplanes modified per the subject SB. This revised [Canadian] AD is issued to mandate compliance with SB 601R–71–034, Rev C.

Required actions also include the retained actions of modifying the engine fan cowl panel. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6897.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Bombardier Service Bulletin, 601R–71–034, Revision C, dated May 8, 2015. The service information provides procedures for modifying the fan cowl access panels and the nacelle attaching structures. The service information also provides updated weight and balance data. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 497 airplanes of U.S. registry.

The actions required by AD 2015–03–01 and retained in this proposed AD take about 8 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $5,458 per product. Based on these figures, the estimated cost of the actions that are required by AD 2015–03–01 is $6,138 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $42,245, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–03–01, Amendment 39–18097 (80 FR 7298, 8February 10, 2015), and adding the following new AD:

Bombardier Inc.: Docket No. FAA–2016–6897; Directorate Identifier 2015–NM–187–AD.

(a) Comments Due Date

We must receive comments by July 25, 2016.

(b) Affected ADs

This AD replaces AD 2015–03–01, Amendment 39–18097 (80 FR 7298, February 10, 2015) ("AD 2015–03–01").

(c) Applicability

This AD applies to all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by dislodged engine fan cowl panels. We are issuing this AD to prevent damage to the fuselage and flight control surfaces from dislodged engine fan cowl panels, and prevent incorrect weight and balance calculations. Incorrect weight and balance calculations may shift the center of gravity beyond approved design parameters and affect in-flight control, which could endanger passengers and crew.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Fastener Installation, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2015–03–01, with revised service information. Within 6,000 flight hours after March 17, 2015 (the effective date of AD 2015–03–01): Install attaching hardware on the left and right fan cowl access panels and the nacelle attaching structures, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–71–034, Revision B, dated August 1, 2014; or Bombardier Service Bulletin 601R–71–034, Revision C, dated May 8, 2015. As of the effective date of this AD, only Bombardier Service Bulletin 601R–71–034, Revision C, dated May 8, 2015, may be used.

(h) Inserting Weight and Balance Data

Within 6,000 flight hours after the effective date of this AD, revise the applicable Weight and Balance Manual to include the weight and balance data specified in Bombardier Service Bulletin 601R–71–034, Revision C, dated May 8, 2015.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601R–71–034, dated March 31, 2014; or Service Bulletin 601R–71–034, Revision A, dated April 28, 2014. This service information is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) Global AMOC 15–36, dated August 28, 2015, is approved as an AMOC for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–20R1, dated August 12, 2015. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6897.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12887 Filed 6–7–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6115; Airspace Docket No. 16–AGL–14]

Proposed Establishment of Class E Airspace; Lakota, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Lakota, ND. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Lakota Municipal Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 25, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–6115 Docket No.16–AGL–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part, A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace at Lakota Municipal Airport, Lakota, ND.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6115/Airspace Docket No. 16–AGL–14." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Central Service Center, Operation Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within an 6-mile radius of Lakota Municipal Airport, Lakota, ND, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace designations are published in Section 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Section 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL ND E5 LAKOTA, ND [New]

Lakota Municipal Airport, ND

(Lat. 48°01′44″ N., long. 098°19′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Lakota Municipal Airport.

Issued in Fort Worth, TX, on May 26, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–13304 Filed 6–7–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126452–15]

RIN 1545–BN06

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations effecting the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The text of those regulations also serves as part of the text of these proposed regulations. These proposed regulations would impose corporate level tax on certain transactions in which property of a C corporation becomes the property of a REIT. The proposed regulations also make an amendment not addressed in the temporary regulations. The proposed regulations affect RICs, REITs, C corporations the property of which becomes the property of a RIC or a REIT, and their shareholders.

DATES: Comments and requests for a public hearing must be received by August 8, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–126452–15), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–126452–15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *http://*

www.regulations.gov/ (IRS REG–126452–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Austin M. Diamond-Jones, (202) 317–5085; concerning the submission of comments or to request a public hearing, Regina Johnson, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations impose corporate level tax on certain transactions in which property of a C corporation becomes the property of a REIT. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

The proposed regulations also include a modification to the definition of converted property that is not addressed in the temporary regulations. This modification treats as converted property any property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of property owned by a C corporation that becomes the property of a RIC or a REIT. The Treasury Department and the IRS believe that such property presents similar concerns with regard to the purposes of *General Utilities* repeal as other property of a C corporation that becomes the property of a RIC or REIT.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13653. Therefore, a regulatory impact assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect large corporations with a substantial number of shareholders. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. In particular, comments are requested regarding the scope of the terms predecessors and successors. In addition, although related section 355 distributions occurring before or after conversion transactions involving RICs do not present the same degree of concern regarding the purposes of *General Utilities* repeal, comments are requested as to whether the proposed regulations regarding related section 355 distributions should, like the rules of § 1.337(d)–7 generally, apply to both conversion transactions involving RICs and conversion transactions involving REITs. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Austin M. Diamond-Jones of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.337(d)–7 to read in part as follows:

Authority: 26 U.S.C. 7805 . . .

* * * * *

Section 1.337(d)–7 also issued under 26 U.S.C. 337(d) and 355(h).

* * * * *

■ **Par. 2.** Section 1.337(d)–7 is amended by:

■ 1. Revising paragraph (a)(1) and adding paragraphs (a)(2)(vi) and (vii).

■ 2. Revising paragraph (b)(2)(iii).

■ 3. Adding paragraph (b)(4).

■ 4. Revising paragraph (c)(1).

■ 5. Adding paragraph (c)(6).

■ 6. Adding paragraph (f).

■ 7. Revising paragraphs (g)(2)(ii) and (iii).

■ 8. Adding paragraph (g)(2)(iv).

The additions and revisions read as follows:

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) *General rule.* (1) [The text of the proposed amendment to § 1.337(d)–7(a)(1) is the same as the text of § 1.337(d)–7T(a)(1) published elsewhere in this issue of the **Federal Register**].

(2) * * *

(vi) [The text of the proposed amendment to § 1.337(d)–7(a)(2)(vi) is the same as the text of § 1.337(d)–7T(a)(2)(vi) published elsewhere in this issue of the **Federal Register**].

(vii) *Converted property.* The term *converted property* means property owned by a C corporation that becomes the property of a RIC or a REIT and any other property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of the property owned by a C corporation that becomes the property of a RIC or a REIT.

(b) * * *

(2) * * *

(iii) [The text of the proposed amendment to § 1.337(d)–7(b)(2)(iii) is the same as the text of § 1.337(d)–7T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4) [The text of the proposed amendment to § 1.337(d)–7(b)(4) is the same as the text of § 1.337(d)–7T(b)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) *Election of deemed sale treatment.* (1) [The text of the proposed amendment to § 1.337(d)–7(c)(1) is the same as the text of § 1.337(d)–7T(c)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) [The text of the proposed amendment to § 1.337(d)–7(c)(6) is the same as the text of § 1.337(d)–7T(c)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) [The text of the proposed amendment to § 1.337(d)–7(f) is the same as the text of § 1.337(d)–7T(f) published elsewhere in this issue of the **Federal Register**].

(g) * * *

(2) * * *

(ii) *Conversion transactions occurring on or after June 7, 2016.* Paragraphs (a)(1), (a)(2)(vi), (b)(4), (c)(1), (c)(6), and (f) of this section will apply to conversion transactions occurring on or after June 7, 2016 and to conversion transactions and related section 355 distributions for which the conversion transaction occurs before, and the related section 355 distribution occurs on or after, June 7, 2016. For conversion transactions that occurred on or after January 2, 2002 and before June 7, 2016, see § 1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2016.

(iii) [The text of the proposed amendment to § 1.337(d)–7(g)(2)(iii) is the same as the text of § 1.337(d)–7T(g)(2)(iii) published elsewhere in this issue of the **Federal Register**].

(iv) *Converted property.* Paragraph (a)(2)(vii) of this section applies to conversion transactions that occur on or after the date these regulations are published in the **Federal Register** as final regulations.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–13425 Filed 6–7–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

[Docket No. MSHA–2014–0030]

RIN 1219–AB87

Examinations of Working Places in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) is proposing to amend the Agency's standards for the examination of working places in metal and nonmetal (MNM) mines. The purpose of this proposed rule is to ensure that mine operators identify and correct conditions that may adversely affect miners' safety or health. MSHA is proposing to require that an examination of the working place be conducted before miners begin work in an area and that the operator notifies miners in the working place of any conditions found that may adversely affect their safety or health. MSHA is also proposing that the competent person conducting the examination sign and date the examination record before the end of each shift, that the record includes information regarding adverse conditions found and corrective actions taken, and that operators make such records available to miners and their representatives. The proposal would enhance the quality of working place examinations in MNM mines and help assure that violations of mandatory health or safety standards are identified and corrected, thereby improving protections for miners.

DATES: Comments must be received or postmarked by midnight Eastern Time on September 6, 2016.

Hearing Dates: July 19, 2016, July 21, 2016, July 26, 2016, and August 4, 2016. The locations are listed in the Public Hearings section in the **SUPPLEMENTARY INFORMATION** section of this document. Post-hearing comments must be received by midnight Eastern Standard Time on September 6, 2016.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB87 or Docket No. MSHA–2014–0030, by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-Mail: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.
- *Fax:* 202–693–9441.

Information Collection Requirements: Comments concerning the information collection requirements of this proposed rule must be clearly identified with RIN 1219–AB87 or Docket No. MSHA–2014–0030, and sent to both MSHA and the Office of Management and Budget (OMB). Comments to MSHA may be sent by one of the methods in the **ADDRESSES** section above. Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

Instructions: All submissions must include RIN 1219–AB87 or Docket No. MSHA–2014–0030. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change, including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* or *http://www.msha.gov/currentcomments.asp.* To read background documents, go to *http://www.regulations.gov.* Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. EST Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

E-Mail Notification: To subscribe to receive an email notification when MSHA publishes rules in the **Federal Register**, go to *http://www.msha.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Public Hearings

MSHA will hold four public hearings on the proposed rule to provide the public with an opportunity to present oral statements, written comments, and other information on this rulemaking. The public hearings will begin at 9 a.m. and end after the last presenter speaks, and in any event not later than 5 p.m., on the following dates at the locations indicated:

Date	Location	Contact number
July 19, 2016	Homewood Suites by Hilton, Salt Lake City–Downtown, 423 West 300 South, Salt Lake City, UT 84101.	(801) 363–6700

Date	Location	Contact number
July 21, 2016	Hyatt Place Pittsburgh—North Shore, 260 North Shore Drive, Pittsburgh, PA 15212.	(412) 321–3000
July 26, 2016	Mine Safety and Health Administration Headquarters, 201 12th Street, South, Rooms 7W204 & 7W206, Arlington, VA 22202.	(202) 693–9440
August 4, 2016	Sheraton Birmingham Hotel, 2101 Richard Arrington Jr. Boulevard North, Birmingham, AL 35203.	(205) 324–5000

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak; however, persons and organizations wishing to speak are encouraged to notify MSHA in advance for scheduling purposes.

Speakers and other attendees may present information to MSHA for inclusion in the rulemaking record. The hearings will be conducted in an informal manner. Formal rules of evidence or cross examination will not apply.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript may also be viewed on MSHA's Web site at *http://arlweb.msha.gov/currentcomments.asp*, under Comments on Public Rule Making. MSHA will accept post-hearing written comments and other appropriate information for the record from any interested party, including those not presenting oral statements.

B. Statutory and Regulatory History

On July 31, 1969, MSHA's predecessor, the Department of the Interior's Bureau of Mines, published a final rule (34 FR 12503) addressing health and safety standards for Metal and Nonmetallic Open Pit Mines; Sand, Gravel, and Crushed Stone Operations; and Metal and Nonmetallic Underground Mines. These standards were promulgated pursuant to the 1966 Federal Metal and Nonmetallic Mine Safety Act (MNM Act). The final rule included some mandatory standards and some advisory standards. The final rule at §§ 55.18–8, 56.18–8, and 57.18–8 set forth an advisory standard stating that each working place "should be visited by a supervisor or a designated person at least once each shift and more frequently as necessary to insure that work is being done in a safe manner."

The Federal Mine Safety and Health Act of 1977 (Mine Act) amended the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) to include MNM mines and repealed the MNM Act. The Mine Act retained the mandatory standards and regulations promulgated under the Coal Act and the MNM Act. In addition, section 301(b)(2) of the Mine Act required the Secretary of Labor to establish an advisory committee to review all advisory standards under the MNM Act and to either revoke them or make them mandatory (with or without revision). On August 17, 1979 (44 FR 48490), MSHA revised, renumbered, and made mandatory the Agency's advisory standards regarding working place examinations. This resulted in standards, set forth at §§ 55.18–2, 56.18–2, and 57.18–2, that mirrored the language that currently exists at §§ 56.18002 and 57.18002.

On January 29, 1985 (50 FR 4048), MSHA combined and recodified the standards in 30 CFR parts 55 and 56 into a single part 56 that applies to all surface MNM mines. As a part of this effort, the MNM working place examination standards were redesignated as 30 CFR 56.18002 and 57.18002. No change was made to the language of the standards.

II. Background Information

Mining continues to be one of the nation's most hazardous occupations. Mining operations have dynamic work environments where working conditions can change rapidly and without warning. Under the Mine Act, mine operators with the assistance of the miners have the primary responsibility to prevent the existence of unsafe and unhealthful conditions and practices. Compliance with safety and health standards and adoption of safe work practices provide a substantial measure of protection against hazards that cause accidents, injuries, and fatalities. MSHA has determined that effective accident prevention strategies include an examination of working places.

Under existing §§ 56.18002 and 57.18002, MSHA requires that a competent person designated by the operator examine each working place at least once each shift for conditions that may adversely affect safety or health, that the operator promptly initiate appropriate action to correct such conditions, and that the operator keep records for one year that the examinations were conducted. These standards also require the operator to withdraw persons from an area where conditions may present an imminent danger, except those persons referred to in section 104(c) of the Mine Act, until the danger is abated.

The proposal would require that operators promptly notify miners of any adverse conditions found that may adversely affect safety or health. It would also require that the examination record include additional information that MSHA believes would help assure that adverse conditions are identified and corrected, and that the record be made available to miners and their representatives so that they can be made aware of these conditions. MSHA is proposing that the record include: (1) The locations of all areas examined and a description of each condition found that could adversely affect the safety or health of miners; and (2) a description of the corrective action and date the corrective action was taken. The proposal would also require that the competent person who conducted the examination sign and date the examination record before the end of each shift.

MSHA believes that making and maintaining a record of adverse conditions found and corrective actions taken would help mine operators and miners and their representatives become more aware of potential dangers and more proactive in their approach to correcting these issues before they cause or contribute to an accident, injury, or fatality. Under this proposed rule, MSHA anticipates that improved communication at the mine site about adverse conditions and the best practices used to correct the conditions will encourage awareness and participation at all levels, fostering a culture of safety and health at the mine.

In developing the proposed rule, MSHA reviewed accident investigation reports and the Agency's enforcement data from January 2010 through mid-December 2015. During this period, 122 miners were killed in 110 accidents at MNM mines. MSHA conducted investigations into each of these 110 fatal accidents and issued 252 citations and orders for violations of 95 different mandatory safety and health standards. MSHA's analysis of the accident investigations further revealed that in more than 60 percent of the fatal accidents (67 out of 110), the Agency had issued at least one citation or order for a violation of a mandatory safety or health standard identified in MSHA's Rules to Live By (RTLB) initiative, launched in February 2010. Violations of the 19 MNM RTLB standards represent the conditions or practices that have been most frequently cited as causing or contributing to fatal accidents.

At this point, MSHA believes that most operators and miners should be familiar with the RTLB standards. Under the proposal, the additional communication that would be required by operators (1) notifying miners of conditions that violate RTLB standards and other adverse conditions and (2) recording additional information about these conditions in the examination record should further serve to educate miners, their representatives, and operators about adverse conditions and encourage prompt corrective action. In this way, MSHA believes the proposal will help prevent fatalities and other accidents.

Over the years, MSHA has issued Program Policy Letters (PPL) regarding working place examinations, including PPL No. P94–IV–5 (1994); PPL No. P96–IV–2 (1996); PPL No. P10–IV–3 (2010); PPL No. P14–IV–01 (2014); and PPL P15–IV–01 (July 22, 2015). The PPLs are MSHA's guidance and best practices regarding compliance with the existing standards. MSHA inspectors, miners, mine operators, trainers, and the mining community use these PPLs as guidance in determining how best to comply with MSHA's standards on working place examinations.

As discussed in PPL No. P15–IV–01 and other PPLs, MSHA believes that, for a record to provide meaningful information, it should contain the following: (1) The date of the examination; (2) the examiner's name; and (3) the working places examined. As reflected in the PPLs, MSHA also believes that, as a best practice, the record should include a description of the conditions found that adversely affect safety or health.

Effective working place examinations are a fundamental accident prevention tool; they allow operators to find and fix adverse conditions and violations of health and safety standards before they cause injury or death to miners. MSHA believes that notifying miners of adverse conditions in their working place allows the miner to take appropriate precautions until the adverse condition is corrected. Records alert operators to take prompt corrective action. The following are recent examples of adverse conditions that existed for more than one shift prior to causing or contributing to a fatal accident.[1] MSHA believes that, had the person making the examination noted these conditions prior to miners working in an area, had the conditions been recorded, and had the operator warned miners about these conditions, the accidents may have been prevented.

In March 2011, a contract supervisor was fatally injured when he was struck by a section of pipe. He was supervising the operation of joining two ends of pipe using a pipe-fusion machine. The positioning cylinder was defective and had been removed from the pipe-fusion machine eight days prior to the accident. Since the positioning cylinder was removed, the machine could not hold the pipe in place. MSHA believes that, had a competent person identified and recorded the adverse condition before miners used the machine, the operator could have warned miners and removed the machine from service until the cylinder was repaired and replaced, thus preventing the fatal accident.

In January 2015, a fatal accident occurred at a phosphate rock mine. A heavy equipment operator was operating an excavator near a water-filled ditch when the excavator tipped on its side, into the water, trapping the miner inside the nearly submerged cab. The equipment operator was rescued from the cab and hospitalized, but died later that day. Three days prior to the accident, several inches of rain fell in the area causing the ditch to fill with water and overflow, making the ditch invisible to persons working in the area. MSHA believes that had a competent person conducted a workplace examination before miners started working in the area the hazard would have been identified; notification to affected miners of the water-filled ditch would have made them aware of the hazardous condition; and a record of the hazardous condition would have prompted corrective action and prevented the fatality.

Another fatal accident in March 2015 involved a haul truck driver at a sand and gravel mine. The driver was driving on an elevated roadway on an embankment next to the mine's dredge pond. The roadway, which was recently established, had no berm as a barrier to the drop-off as required by MSHA standards. The truck went off the roadway into the pond. The driver was hospitalized and died two days later. MSHA believes that the operator should have recognized during a workplace examination that a berm was not in place along the banks of the elevated haul road and warned miners before miners started work in that area. MSHA also believes that a record of this hazard likely would have prompted corrective action and that these actions would have prevented the accident that occurred.

From 2013 through 2015, there were 68 fatalities at MNM mines, as compared with 54 fatalities in the preceding three years (2010–2012). To reduce fatalities at MNM mines, MSHA has engaged, and continues to share best practices and training materials with stakeholders in the MNM industry. The Agency has provided stakeholders with guidance and compliance assistance materials to help mine operators find and fix violations of mandatory safety and health standards. These efforts included stakeholder conferences, online training sessions, and a "walk and talk" safety initiative in which MSHA's inspectors and field staff provided operators and miners information about potentially hazardous tasks and conditions, as well as best mining practices to prevent accidents, injuries, and fatalities. These efforts, however, have not been sufficient to address the increase in fatalities that began in 2013.

This proposed rule is intended to strengthen MSHA's requirements for MNM working place examinations to help prevent the kind of accidents discussed above. MSHA believes that the proposed requirements that operators examine working places before miners begin work in an area and notify miners of any adverse conditions that may adversely affect safety or health would assure that miners and operators are aware of hazards and take proactive actions to correct hazards. In addition, the record required under the proposed rule would help assure that adverse conditions are identified and corrected promptly.

III. Section-by-Section Analysis

This proposed rule would help reduce common causes of accidents, injuries, and fatalities at MNM mines by enhancing the effectiveness of working place examinations.

A. Sections 56.18002(a) and 57.18002(a)—Requirements for Conducting Working Place Examinations

Proposed §§ 56.18002(a) and 57.18002(a) would require an examination of each working place at least once each shift, before work begins in an area, for conditions that may adversely affect the safety or health of miners.

[1] Examples of accidents cited may be in litigation.

Existing §§ 56.2 and 57.2 define the phrase "working place" as: "any place in or about a mine where work is being performed." In PPL No. P15–IV–01, MSHA clarifies that "working place" applies to all locations at a mine where miners work in the extraction or milling processes. The Agency further explains that this includes areas where work is performed on an infrequent basis, such as areas accessed primarily during periods of maintenance or clean-up, if miners will be performing work in these areas during the shift. As discussed in previous guidance, the "working place" would not include roads not directly involved in the mining process, administrative office buildings, parking lots, lunchrooms, toilet facilities, or inactive storage areas. Operators would be required to examine isolated, abandoned, or idle areas of mines or mills only when miners have to perform work in these areas during the shift.

The existing standards for examinations of working places in MNM mines in §§ 56.18002(a) and 57.18002(a) require that a competent person designated by the mine operator examine each working place at least once per shift for conditions that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions. While the existing standards permit the examination to be made at any time during the shift, MSHA is proposing that the examination start before work begins in an area. MSHA believes that the proposal is consistent with the remedial intent of the Mine Act and the existing standards. MSHA also believes that the proposed requirement that operators conduct an examination of working places before work begins in an area would provide better protection of miners. MSHA requests comments on whether the Agency should require that examinations be conducted within a specified time period, *e.g.*, 2 hours, before miners start work in an area. Please provide specific rationale for your position, and include the merits for your argument.

Like the existing rule, the proposed rule would require that the examination be made by a competent person designated by the mine operator. In PPL No. P15–IV–01, MSHA emphasized that the competent person designated by the operator to conduct working place examinations should be able to recognize hazards and adverse conditions that are expected or known to occur in a specific work area or that are predictable to someone familiar with the mining industry. MSHA states in various PPLs that, although a best practice is for a foreman or other supervisor to conduct the examination in most cases, an experienced non-supervisory person may also be "competent." The PPLs emphasized that a competent person designated by the operator under §§ 56.18002(a) and 57.18002(a) must already have the experience and training to be able to perform the examination and identify safety and health hazards.

MSHA requests comment on whether the Agency should require that the competent person conducting a working place examination have a minimum level of experience or particular training or knowledge to identify workplace hazards. The Agency requests information on whether a competent person should have a certain ability, experience, knowledge, or training that would enable the person to recognize conditions that could adversely affect safety or health. Please provide the rationale, including supporting documentation.

Proposed §§ 56.18002(a)(1) and 57.18002(a)(1) incorporate the existing requirements in §§ 56.18002(a) and 57.18002(a) that the mine operator promptly initiate action to correct conditions that may adversely affect safety or health that are found during the examination, and would add a new requirement that the operator promptly notify the miners in any affected areas of any adverse conditions found during the working place examination. MSHA believes that miners need to know about adverse conditions in their working place so that they can take precautions to avoid an accident or injury.

Proposed §§ 56.18002(a)(2) and 57.18002(a)(2) are substantively the same as existing §§ 56.18002(c) and 57.18002(c). These provisions would require that, if the competent person finds conditions that may present an imminent danger, these conditions must be brought to the immediate attention of the operator. The operator must immediately withdraw all persons from the affected area until the danger is abated, except persons referred to in section 104(c) of the Mine Act who are necessary to eliminate the imminent danger.

Imminent danger is defined in section 3(j) of the Mine Act as the existence of any condition or practice which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated. From January 2010 through December 2015, MSHA has issued 1,819 imminent danger orders under section 107(a) of the Mine Act in MNM mines.

B. Sections 56.18002(b) and 57.18002(b)—Requirements for Records of Working Place Examinations

MSHA believes that, to be effective, working place examinations must be timely, made by a competent person, and made in the areas where miners work. MSHA is proposing that working place examination records include additional information the Agency believes is necessary to accomplish the intent of the standards.

The proposed rule would add new requirements addressing the contents of the examination record. The introductory text to proposed §§ 56.18002(b) and 57.18002(b) would continue to require that a record of the working place examination be made. The proposed rule would add the requirement that the competent person who conducted the examination sign and date the record before the end of the shift for which the examination was made. Proposed §§ 56.18002(b)(1) and 57.18002(b)(1) would require the record to include the locations examined and a description of any adverse conditions found. MSHA believes that this proposed requirement for a description of the adverse conditions found would expedite the correction of these conditions. Proposed §§ 56.18002(b)(2)(i) through (iii) and 57.18002(b)(2)(i) through (iii) are new provisions; they would require that, if any adverse condition is found, the record must include:

- A description of the action taken to correct the adverse condition,
- The date that the corrective action was taken, and
- The name of the person who made the record of the corrective action and the date the corrective action was taken. (MSHA expects that the person taking the corrective action would make this record.)

The proposed rule would redesignate the requirement for recordkeeping in existing §§ 56.18002(b) and 57.18002(b) as proposed §§ 56.18002(b)(3) and 57.18002(b)(3). Existing §§ 56.18002(b) and 57.18002(b) require that a record that such working place examinations were conducted shall be kept by the operator for a period of one year and shall be made available for review by the Secretary or his authorized representative. The proposed rule would add new requirements that the record also be made available to miners and their representatives and that a copy be provided to the Secretary or his authorized representative or a miners' representative when they request a copy. MSHA solicits comments on these proposed requirements.

C. Request for Comments

Please provide any other data or information that would be useful to MSHA as the Agency evaluates its proposal related to working place examinations in MNM mines. Please provide the rationale and sufficient detail in your comments to enable proper Agency review and consideration. Where possible, include specific examples to support the rationale and other relevant information, including past experience, studies and articles, and standard professional practices. Include any related cost and benefit data with your submission, and information on economic and technological feasibility.

Based data reported on MSHA Form 7000–2, 90 percent of MNM mines employ fewer than 20 miners. In addition, almost all (98 percent) of MNM mines are surface operations. Over half of all MNM mines are surface sand and gravel or crushed stone operations that operate intermittently or seasonally and employ five or fewer miners. For this reason, MSHA is particularly interested in comments related to the impact of the proposed rule on small mines, particularly comments and suggestions on alternatives and best practices that small mines might use to implement more effective working place examinations.

IV. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

Under Executive Order (E.O.) 12866, the Agency must determine whether a regulatory action is "significant" and subject to review by the Office of Management and Budget (OMB). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Based on its assessment of the costs and benefits, MSHA has determined that this proposed rule would not have an annual effect of $100 million or more on the economy and, therefore, would not be an economically significant regulatory action pursuant to section 3(f) of E.O. 12866. MSHA requests comments on all cost and benefit estimates presented in this preamble and on the data and assumptions the Agency used to develop estimates.

A. Population at Risk

The proposed rule would apply to all MNM mines in the United States. In 2014, there were approximately 11,800 MNM mines employing 145,800 miners, excluding office workers, and 75,800 contractors working at MNM mines.

Table 1 presents the number of MNM mines and employment by mine size.

TABLE 1—MNM MINES AND EMPLOYMENT IN 2014

Mine size	No. of mines	Total employment at mines, excluding office workers
1–19 Employees	10,599	52,328
20–500 Employees	1,162	73,253
501+ Employees	26	20,186
Contractors		75,762
Total	11,787	221,529

Source: MSHA MSIS Data (reported on MSHA Form 7000–2) August 26, 2015.

The U.S. Department of the Interior (DOI) estimated the value of the U.S. mining industry's MNM output in 2014 to be $77.6 billion.[2] Table 2 presents the hours worked and revenue produced at MNM mines by mine size.

TABLE 2—MNM TOTAL HOURS AND REVENUES IN 2014

Mine size	Total hours reported for year	Revenue (in millions of dollars)
1–19 Employees	86,704,486	$23,539
20–500 Employees	156,402,789	$42,461
501+ Employees	42,730,947	$11,600

[2] Production revenue estimates are from DOI, U.S. Geological Survey (USGS), Mineral Commodity Summaries 2015, February 2015, page 8.

TABLE 2—MNM TOTAL HOURS AND REVENUES IN 2014—Continued

Mine size	Total hours reported for year	Revenue (in millions of dollars)
Total	285,838,222	$77,600

Source: MSHA MSIS Data (total hours worked at MNM mines reported on MSHA Form 7000–2) and estimated DOI reported mine revenues for 2014 by mine size.

B. Benefits

The proposed rule would require additional recordkeeping provisions to assure that adverse conditions are recorded and corrected. The proposed rule would provide for more detailed examination records that include essential information that the operator can use to correct recognized hazards and protect miners. The proposed provisions to record the adverse conditions found during the examinations and the corrective actions taken to mitigate the hazards, and to notify miners of the adverse conditions that may adversely affect safety or health, would better achieve the protections intended under the existing requirements. The additional information recorded in the examination records would assist MSHA, mine operators, and miners in focusing efforts on correcting hazardous conditions.

MSHA is unable to quantify the benefits from this proposed rulemaking, including the proposed provisions that an examination of the working place be conducted before miners begin work in an area; that the operator notify miners in the working place of any conditions found that may adversely affect their safety or health; and that the examination record include a description of the adverse conditions found and the corrective actions taken. MSHA anticipates, however, that there would be benefits from the proposed requirements, such as expedited correction of adverse conditions, which would be expected to result in fewer injuries and fatalities. MSHA requests information and data on the benefits from this proposed rulemaking. Please be specific to facilitate any benefits quantification that may be possible.

Net benefits under MSHA's current analysis would be negative (zero quantified benefits minus quantified costs). MSHA also believes that there would be a financial benefit to MNM mine operators who conduct working place examinations to find and fix adverse conditions and violations of health and safety standards before these conditions cause injury or death. Mine operators who conduct effective working place examinations could achieve a financial benefit from reduced penalties. From January 2010 through December 2015, penalties for MNM mine operators were $152 million for violations of all mandatory safety and health standards.

C. Compliance Costs

The quantified cost associated with this proposed rule would be the additional cost for the expanded recordkeeping requirements. Some mine operators already conduct and record working place examinations that satisfy the proposed requirements and would have little or no additional cost. Many adverse conditions found during the working place examination are corrected immediately before miners have an opportunity to encounter the condition; therefore, MSHA also believes that the cost associated with examining areas before miners begin work in that area and with notifying miners of any adverse conditions would be de minimis. MSHA requests information and data on the costs of this proposed rulemaking.

For the purpose of this analysis, MSHA estimates that the competent person making the record of the examination of working places would earn $31.14 (including benefits). The wage rate is from U.S. Metal and Industrial Mineral Mine Salaries, Wages, and Benefits—2012 Survey Results, InfoMine USA, Inc., 2012. MSHA updated rates from 2012 to 2014 for inflation using a percent change of 3.8 percent derived from the BLS Employment Cost Index (CIU2010000405000I), total compensation for private industry workers in construction, extraction, farming, fishing, and forestry occupations (Index available at *http://data.bls.gov/timeseries/CIU2010000405000I*).

MSHA also estimates that—

- Mines with 1–19 employees operate one shift per day, 300 days per year; and
- Mines with 20+ employees operate two shifts per day, 300 days per year.

MSHA recognizes that there are many seasonal and intermittent mines that would be covered by this proposed rule. MSHA requests information and data on the Agency's estimates on the number of days per year a mine operates; the number of working place examinations made each shift; the number of competent persons required to conduct multiple examinations during a single shift; the amount of time required to record the examination and record corrective actions taken; and the number of shifts per day, by mine size.

Records of Working Place Examinations

The proposed rule would revise existing §§ 56.18002(b) and 57.18002(b) by adding requirements that the record of the examination include the locations of all areas examined and a description of each adverse condition found, and that the competent person conducting the examination sign and date this record before the end of the shift for which the examination was made. Also, if an adverse condition is found, the record must include a description of the actions taken to correct the adverse condition, the date that corrective action was taken, and the name of the person updating the record as well as the date the record was updated. MSHA expects that the person taking the corrective action would update the record on completion of the corrective action. MSHA has no data on the number of corrective actions that would be recorded under this proposed rule. However, the Agency believes that the time to record the corrective actions would be minimal at best.

MSHA estimates that it will take a competent person approximately 5 additional minutes to make the record after each examination. MSHA estimates that the annual cost of making this record for all MNM mines is approximately $10.1 million:

- $8.3 million in mines with 1–19 employees (10,599 mines × 1 exam/day × 300 days/yr × 5 mins × $31.14/hr);
- $1.8 million in mines with 20–500 employees (1,162 mines × 2 exams/day × 300 days/yr × 5 mins × $31.14/hr); and
- $40,482 in mines with 501+ employees (26 mines × 2 exams/day × 300 days/yr × 5 mins × $31.14/hr).

Discounting

Discounting is a technique used to apply the economic concept that the preference for the value of money decreases over time. In this analysis, MSHA provides cost totals at zero, 3, and 7 percent discount rates. The zero percent discount rate is referred to as the undiscounted rate. MSHA used the Excel Net Present Value (NPV) function to determine the present value of costs and computed an annualized cost from the present value using the Excel PMT function.[3] The negative value of the PMT function provides the annualized cost over 10 years at a 3 and 7 percent discount rate.

Summary of Costs

MSHA estimates that the total undiscounted cost of the proposed rule over a 10-year period would be approximately $101.0 million, $86.2 million at a 3 percent rate, and $70.9 million at a 7 percent rate. The total undiscounted cost annualized over 10 years would be approximately $10.1 million per year, $9.8 million per year at a 3 percent rate, and $9.4 million per year at a 7 percent rate.

V. Feasibility

A. Technological Feasibility

The proposed rule contains recordkeeping requirements; the proposed rule is not technology-forcing. MSHA concludes that the rule is technologically feasible.

B. Economic Feasibility

MSHA has traditionally used a revenue screening test—whether the yearly impacts of a regulation are less than one percent of revenues—to establish presumptively that the regulation is economically feasible for the mining community. The proposed rule is projected to cost approximately $10.1 million per year and the MNM industry has estimated annual revenues of $77.6 billion, which is less than one percent of revenues. MSHA concludes that the proposed rule would be economically feasible for the MNM mining industry.

VI. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small entities. Based on that analysis, MSHA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The Agency, therefore, is not required to develop an initial regulatory flexibility analysis. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration's (SBA's) definition for a small entity, or after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not established an alternative definition and, therefore, must use SBA's definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

MSHA has also examined the impact of the proposed rule on mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the impact of MSHA's rules and the costs of complying with them will also tend to differ for these small mines. This analysis complies with the requirements of the RFA for an analysis of the impact on "small entities" using both SBA's definition for small entities in the mining industry and MSHA's traditional definition.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on small entities by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether further analysis is required. MSHA projects that the proposed compliance costs of $10.1 million for MNM mines with 1 to 500 employees is less than one percent of the $66 billion revenue of these mines in 2014. Proposed compliance costs for MNM mines with 1 to 19 employees is $8.3 million, which is less than one percent of the $23.5 billion revenue of these mines in 2014.

VII. Paperwork Reduction Act of 1995

A. Summary

This proposed rule contains changes that affect the burden in an existing paperwork package with OMB Control Number 1219–0089. MSHA estimates that the proposed rule will result in 324,375 additional burden hours with an associated additional cost of approximately $10.1 million annually. MSHA requests information and data on the Agency's estimates used to calculate the additional burden hours in the information collection package for this proposed rule.

Records of Working Place Examinations

Proposed §§ 56.18002(b)(1) and (2) and 57.18002(b)(1) and (2) would revise the existing provisions in §§ 56.18002(b) and 57.18002(b) by requiring competent persons to include in the record of the examination: (1) The locations of all areas examined, (2) a description of any adverse condition found, (3) a description of the actions taken to correct the adverse condition, and (4) the date that corrective action was taken. The competent person must sign and date this record before the end of the shift for which the examination was made. Also, if the record is updated, it must include the date and name of the person updating the record.

MSHA estimates that a MNM competent person who conducts working place examinations earns $31.14 an hour (includes benefits, see cost section above). MSHA estimates that—

- Mines with 1–19 employees operate one shift per day, 300 days per year;
- Mines with 20–500 employees operate two shifts per day, 300 days per year; and
- Mines with 501+ employees operate two shifts per day, 300 days per year.

MSHA's estimates of MNM mine operators' additional annual burden hours and burden hour costs for examination records are presented below.

Additional Burden Hours

- 10,599 mines (with 1–19 employees) × 1 exam × 300 days × 5 min = 264,975 hr
- 1,162 mines (with 20–500 employees) × 2 exams × 300 days × 5 min = 58,100 hr
- 26 mines (with >500 employees) × 2 exams × 300 days × 5 min = 1,300 hr
- Total Burden Hours = 324,375 hr

Additional Burden Hour Costs

- Total Burden Hour Costs = 324,375 hr × $31.14/hr = $10,101,038

There are no other associated burden hour costs because the proposed rule

[3] Office of Management and Budget, Office of Information and Regulatory Affairs, Regulatory Impact Analysis: Frequently Asked Questions, February 7, 2011. [*http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf*.]

only adds documentation requirements to a record already required by existing standards.

B. Procedural Details

The information collection package for this proposed rule has been submitted to OMB for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended. Comments on the information collection requirements should be sent to both OMB and MSHA. Addresses for both offices can be found in the **ADDRESSES** section of this preamble.

VIII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million (adjusted for inflation) in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act requires no further Agency action or analysis.

B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this proposed rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

Section 5 of Executive Order (E.O.) 12630 requires Federal agencies to "identify the takings implications of proposed regulatory actions . . . ." MSHA has determined that this proposed rule does not include a regulatory or policy action with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

D. Executive Order 12988: Civil Justice Reform

Section 3 of Executive Order (E.O.) 12988 contains requirements for Federal agencies promulgating new regulations or reviewing existing regulations to minimize litigation by eliminating drafting errors and ambiguity, providing a clear legal standard for affected conduct rather than a general standard, promoting simplification, and reducing burden. MSHA has reviewed this proposed rule and has determined that it would meet the applicable standards provided in E.O. 12988 to minimize litigation and undue burden on the Federal court system.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

MSHA has determined that this proposed rule will have no adverse impact on children. Accordingly, E.O. 13045 requires no further Agency action or analysis.

F. Executive Order 13132: Federalism

MSHA has determined that this proposed rule does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, E.O. 13132 requires no further Agency action or analysis.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

MSHA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175 requires no further Agency action or analysis.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution, or use. MSHA has reviewed this proposed rule for its energy effects because the proposed rule applies to the metal and nonmetal mining sector. Although this proposed rule will result in yearly costs of approximately $10.1 million to the metal and nonmetal mining industry, only the impact on uranium mines is applicable in this case. MSHA data show only three active uranium mines in 2014. The Energy Information Administration's annual uranium report for 2014 [4] shows 4.7 million pounds at an average price of $39.17, for sales of approximately $185.9 million. Using average annual costs, the impact to all active uranium mine operators is less than $4,000. MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

IX. References

Salzer, Krista Noyes, survey results compilation "2012 U.S. Coal Mines Salaries, Wages, and Benefits—2012, U.S. Metal and Industrial Mineral Mine Salaries, Wages, and Benefits", InfoMine USA, Inc.

U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodity Summaries 2015, February 2015, page 8.

U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index CIU2010000405000I, total compensation for private industry workers in construction, extraction, farming, fishing, and forestry occupations, Index.

U.S. Energy Information Administration, Independent Statistics & Analysis: Domestic Uranium Production Report 2014, April 2015.

U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Regulatory Impact Analysis: Frequently Asked Questions, February 7, 2011.

List of Subjects in 30 CFR Parts 56 and 57

Explosives, Fire prevention, Hazardous substances, Metals, Mine safety and health, Reporting and recordkeeping requirements.

[4] *http://www.eia.gov/uranium/production/annual/pdf/dupr.pdf*, page 6.

Joseph A. Main,
Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, MSHA is proposing to amend chapter I of title 30 of the Code of Federal Regulations as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Revise § 56.18002 to read as follows:

§ 56.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift, before miners begin work in that place, for conditions that may adversely affect safety or health.

(1) The operator shall promptly notify miners in any affected areas of any adverse conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.

(2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

(b) A record of each examination shall be made and the person conducting the examination shall sign and date the record before the end of the shift for which the examination was made.

(1) The record shall include the locations of all areas examined and a description of each condition found that may adversely affect the safety or health of miners.

(2) The record also shall include:

(i) A description of the corrective action taken,

(ii) The date that the corrective action was taken, and

(iii) The name of the person who made the record of the corrective action and the date the record of the corrective action was made.

(3) The operator shall maintain the examination records for at least one year; shall make the records available for inspection by authorized representatives of the Secretary and the representatives of miners; and shall provide these representatives a copy on request.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Revise § 57.18002 to read as follows:

§ 57.18002 Examination of working places.

(a) A competent person designated by the operator shall examine each working place at least once each shift, before miners begin work in that place, for conditions that may adversely affect safety or health.

(1) The operator shall promptly notify miners in any affected areas of any adverse conditions found that may adversely affect safety or health and promptly initiate appropriate action to correct such conditions.

(2) Conditions noted by the person conducting the examination that may present an imminent danger shall be brought to the immediate attention of the operator who shall withdraw all persons from the area affected (except persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977) until the danger is abated.

(b) A record of each examination shall be made and the person conducting the examination shall sign and date the record before the end of the shift for which the examination was made.

(1) The record shall include the locations of all areas examined and a description of each condition found that may adversely affect the safety or health of miners.

(2) The record also shall include:

(i) A description of the corrective action taken,

(ii) The date that the corrective action was taken, and

(iii) The name of the person who made the record of the corrective action and the date the record of the corrective action was made.

(3) The operator shall maintain the examination records for at least one year; shall make the records available for inspection by authorized representatives of the Secretary and the representatives of miners; and shall provide these representatives a copy on request.

[FR Doc. 2016–13218 Filed 6–7–16; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57, 70, 72, and 75

RIN 1219–AB86

[Docket No. MSHA–2014–0031]

Exposure of Underground Miners to Diesel Exhaust

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information.

SUMMARY: The Mine Safety and Health Administration (MSHA) is requesting information and data on approaches to control and monitor miners' exposures to diesel exhaust. Epidemiological studies by the National Institute for Occupational Safety and Health (NIOSH) and the National Cancer Institute (NCI) have found that diesel exhaust exposure increases miners' risk of death due to lung cancer. In June 2012, the International Agency for Research on Cancer (IARC) classified diesel exhaust as a human carcinogen. Because of the carcinogenic health risk to miners from exposure to diesel exhaust and to prevent material impairment of miners' health, MSHA is reviewing the Agency's existing standards and policy guidance on controlling miners' exposures to diesel exhaust to evaluate the effectiveness of the protections now in place to preserve miners' health.

DATES: Comments must be received or postmarked by midnight Eastern Standard Time on September 1, 2016.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB86 or Docket No. MSHA–2014–0031, by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Electronic Mail: zzMSHA-comments@dol.gov.*
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia 22202–5452.
- *Hand Delivery or Courier:* 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk in Suite 4E401.
- *Fax:* 202–693–9441.

Instructions: All submissions must include "RIN 1219–AB86" or "Docket No. MSHA–2014–0031." Do not include personal information that you do not

want publicly disclosed; MSHA will post all comments without change to *http://www.regulations.gov* and *http://arlweb.msha.gov/currentcomments.asp*, including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* or *http://arlweb.msha.gov/currentcomments.asp*. To read background documents, go to *http://www.regulations.gov*. Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk in Suite 4E401.

E-Mail Notification: To subscribe to receive an email notification when MSHA publishes rules in the **Federal Register**, go to *http://www.msha.gov*.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email), 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

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I. Background

A. Regulatory History

1. DPM in Underground Coal Mines

On October 25, 1996, MSHA published a final rule establishing revised requirements for the approval of diesel engines and related components used in underground coal mines; requirements for coal mine operators' monitoring of diesel exhaust emissions; and safety standards for the use of diesel-powered equipment in underground coal mines (61 FR 55412). The rule required clean-burning engines on diesel-powered equipment and training for persons maintaining the equipment. The rule also required sufficient ventilating air where diesel-powered equipment is operated.

On January 19, 2001, MSHA published a final rule (66 FR 5526) limiting diesel particulate matter (DPM) exposure in underground coal mines. This standard is based on laboratory analysis of engine exhaust. It requires that the exhaust of certain pieces of equipment be restricted to the following prescribed levels:

- Permissible equipment must not emit more than 2.5 grams per hour (g/hr) of DPM;
- Non-permissible heavy-duty equipment, as defined by 30 CFR 75.1908(a) and operated in underground areas of underground coal mines, must not emit more than 2.5 g/hr of DPM (30 CFR 72.501(c));
- Non-permissible light-duty equipment, as defined by 30 CFR 75.1908(b), must not emit more than 5.0 g/hr of DPM (30 CFR 72.502(a)).

These standards also require mine operators to use engineering controls to reduce DPM exposures of underground coal miners. Mine operators must provide annual training to all miners exposed to DPM and maintain an inventory of the mine's diesel-powered equipment.

Under 30 CFR 72.502(b), non-permissible, light-duty, diesel-powered equipment must be deemed in compliance with 30 CFR 72.502(a) if it uses an engine that meets or exceeds the applicable Environmental Protection Agency (EPA) particulate matter emissions requirements. In promulgating its DPM rule, which allows more particulate emissions for light-duty equipment than for heavy-duty equipment, MSHA assumed that diesel engine manufacturers would comply with EPA standards and that, when replacing vehicles in the mine's light-duty fleet, mine operators would purchase newer (new or used) vehicles that met EPA emissions standards, thus accelerating the turnover to a newer generation of technology. MSHA expected a significant reduction in the amount of DPM emitted by the underground fleet as these cleaner engines replaced or supplemented older engines in underground coal mines.

MSHA had considered establishing stricter standards for certain types of equipment and covering more light-duty equipment, but concluded that such actions would either be technologically or economically infeasible for the coal mining industry as a whole at that time. MSHA concluded that the introduction of newer and cleaner engines underground that met EPA standards, and the continued development of after-treatment and other control technologies, would allow additional reductions in DPM levels to become feasible for the industry as a whole.

For this reason, MSHA's January 2001 DPM standards incorporated EPA's then-applicable standards for light-duty diesel engine emissions. In 2004, EPA phased in even lower emissions standards for light-duty diesel engines.

All MSHA diesel equipment is classified as "nonroad" under EPA rules. EPA nonroad diesel engine regulations were structured as a 4-tiered progression. Each tier involved a phased-in lowering of emissions standards over several years based on the size (power) of the engine.

EPA published Tier 1 standards on June 17, 1994 (59 FR 31306, 40 CFR part 89) for nonroad compression-ignition engines (which include diesel engines). Under these standards, for engines at and above 130 kilowatts (kW), emissions of particulate matter could not exceed .54 g/kW and carbon monoxide could not exceed 11.4 g/kW. These standards were phased in by engine size for model years 1996 to 2000. In addition, all engines greater than or equal to 37 kW were subject to an oxides of nitrogen (NO_X, consisting of NO and NO_2) emissions limit of 9.2 g/kW-hr, phased in by engine size over model years 1998 through 2000 (59 FR 31341). However, EPA explicitly excluded engines regulated by MSHA. Id. at 31340.

On October 23, 1998, EPA published Tier 1 DPM standards for nonroad compression-ignition engines less than 37 kW (50 hp), setting a 1.2 g/kW-hr particulate matter limit phased in by engine size over model years 1999 and 2000. The rule also established a Tier 1 NO_X limit of 14.6 g/kW-hr for engines 37 kW and above, phased in by engine size over model years 1996 through 2000.

In addition, the rule required more stringent Tier 2 DPM standards for all nonroad diesel engines, ranging from 1.0 g/kW-hr for the smallest engines to .54 g/kW-hr for the largest engines, phased in by engine size over model years 2001 to 2006. Under the rule, Tier 3 DPM standards for engines 37 kW and above were the same as the Tier 2 standards, but for these engines Tier 3 introduced additional limits for other types of emissions (hydrocarbons plus NO_X). The rule also introduced Tier 3 standards for engines 37–560 kW for these same other types of emissions, phased in by engine size over model years 2006 through 2008 (40 CFR 89.112). MSHA-regulated engines continued to be exempted from the EPA rule.

On June 29, 2004, the EPA published a final rule introducing even lower Tier 4 emissions standards for new compression-ignition engines of all sizes. (69 FR 38958, 40 CFR 1039). This rule provided for "interim" Tier 4 standards applicable to engines for model years 2014 and earlier and final Tier 4 standards applicable to model years after the 2014 model year. Based on engine size, the final standards set particulate matter limits of .04 to .40 g/kW-hr, NO_X limits of .40 to 3.5 g/kW-hr, and carbon monoxide limits of 3.5 to 6.6 g/kW-hr. The final standards also imposed lower hydrocarbon limits. 40 CFR 1039.101. Again, MSHA-regulated engines were explicitly excluded from these standards. 40 CFR 1039.5(c). Tier 4 engines were expected to have 90 percent lower DPM emissions than the same types of engines under Tier 3 standards (69 FR 38958, 40 CFR 1039).

2. DPM in Underground Metal and Nonmetal Mines

In 2001, MSHA published a final rule establishing new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines (30 CFR part 57). This rule established a concentration limit for DPM and required mine operators to use engineering and work practice controls to reduce DPM to that limit. Operators were required to comply in accordance with a phase-in period, with the final limit to be in effect by January 20, 2006. In the rule, MSHA provided operators with the opportunity to obtain a special extension if engineering and work practice controls that would reduce a miner's personal exposure to the final exposure limit could not be implemented by the deadline due to technological constraints. This extension opportunity did not apply to newer mines.

MSHA published another final rule (70 FR 32868; June 6, 2005) that replaced the concentration limit for DPM exposures of MNM miners from a total carbon (TC) permissible exposure limit (PEL) to a comparable elemental carbon (EC) PEL. This was not intended to be a substantive change to the exposure limits; rather, MSHA believed that EC renders a more accurate measure of DPM exposure than does TC. The first phase of the PEL reduction would have required a PEL of 308 micrograms of EC per cubic meter of air (308_{EC} µg/m³), effective on May 20, 2006.

After publishing this 2005 rule, however, MSHA found that the engineering applications and related technological implementation issues were more complex and extensive than previously thought. In response, the Agency published a proposed rule (70 FR 53280; September 7, 2005) seeking specific comments and data on an appropriate conversion factor for the final DPM limit from TC to EC and related technological implementation issues.

On May 18, 2006, MSHA published a final rule (71 FR 28924) that reverted back to using TC to measure DPM exposure. This rule phased-in a final DPM PEL of 160 micrograms of TC per cubic meter of air (160_{TC} µg/m³) over a two-year period. MSHA believed that the industry as a whole was capable of attaining this DPM PEL within the timeframes established using existing DPM control methods and not requiring the development of new technologies.

MSHA stated that the development of high temperature disposable diesel particulate filter (HTDPF) systems would fill a critical gap in available filter technology because they demonstrated high filtration efficiency for EC, and did not increase NO_2 emissions. MSHA also anticipated that production of biodiesel fuel would increase dramatically, making it easier for mine operators to gain access to a reliable supply of this alternative fuel. In addition, MSHA anticipated that EPA-compliant engines along with other engineering and administrative controls would enable the underground MNM mining industry as a whole to resolve lingering implementation challenges relating to the 160_{TC} µg/m³ DPM final exposure limit.

In the May 18, 2006 final rule, MSHA also: (1) Finalized provisions addressing medical evaluation and transfer of miners who are unable to wear respirators for medical reasons; (2) committed the Agency to proposing a rule in the near future to convert the DPM limit from TC to EC; (3) deleted the provision that restricts newer mines from applying for an extension of time in which to meet the final concentration limit; and (4) addressed technological and economic feasibility issues and the costs and benefits of the rule. 30 CFR part 57. In accordance with the phase-in schedule, the DPM PEL was reduced to 350_{TC} µg/m³ effective January 20, 2007. The final limit of 160_{TC} µg/m³ became effective on May 20, 2008.

On May 20, 2008 (73 FR 29058), MSHA published a **Federal Register** document announcing that it had decided not to engage in rulemaking to convert the TC limit to a comparable EC limit. This decision was based on MSHA's assessment that the latest available scientific evidence regarding the variability of the TC to EC ratio, at levels below 230 µg TC, was insufficient to suggest an appropriate conversion factor. Because the Agency could not support an appropriate EC limit, MSHA's existing DPM standard presently remains at 160_{TC} µg/m³.

The existing standards are based on a miner's personal exposure to DPM and specify that, in an underground MNM mine, such exposure must not exceed an average 8-hour equivalent, full-shift airborne concentration of 160 micrograms of total carbon (TC) per cubic meter of air (160_{TC} µg/m³) when measured as an 8-hour, time-weighted average concentration (TWA_8). 30 CFR 57.5060(b)(3). These standards require mine operators to use engineering and/or workplace controls to reduce miners' exposures to a level as low as feasible and, where controls do not reduce exposure to the PEL or below, to supplement controls with respiratory protection. 30 CFR 57.5060(d). These standards also provide that a physician or other licensed health care professional conduct a medical evaluation of miners to determine the miner's ability to wear respiratory protection. 30 CFR 57.5060(d)(3).

B. Recent Research

The National Cancer Institute (NCI) (Silverman *et al.*) and the National Institute for Occupational Safety and Health (NIOSH) (Attfield *et al.*) completed the Diesel Exhaust in Miners Study in March 2012. This epidemiological study included 12,315 workers from eight nonmetal mining facilities (three potash, three trona, one limestone, and one salt (halite) facility) located in Ohio, Missouri, New Mexico, and Wyoming. The study was conducted to determine whether breathing diesel exhaust could lead to lung cancer and other health outcomes. Two evaluations of this study are published in the *Journal of the National Cancer Institute*, as follows:

D. Silverman *et al.* (2012). "The Diesel Exhaust in Miners Study: A Nested Case-Control Study of Lung Cancer and Diesel Exhaust." *Journal of the National Cancer Institute*, 104(11):855–68. doi: 10.1093/jnci/djs034

M. Attfield *et al.* (2012). "The Diesel Exhaust in Miners Study: A Cohort Mortality Study with Emphasis on Lung Cancer." *Journal of the National Cancer Institute*, 104(11):869–83. doi: 10.1093/jnci/djs035

Silverman *et al.* concluded that diesel exhaust exposure may cause lung cancer in humans and may represent a potential public health burden. Attfield *et al.* concluded that diesel exhaust increases the risk of death from lung cancer and has important public health implications.

Both the case-control study (Silverman *et al.*) and the mortality

study (Attfield *et al.*) showed a strong relationship between the levels of exposure to diesel exhaust and risk of death from lung cancer. In both studies, the relationship between lung cancer risk and diesel exhaust exposure remained after controlling for smoking and other lung cancer risk factors. The death rates were about three to five times greater for workers with the highest exposures to diesel exhaust than for workers who had the lowest exposures.

On June 12, 2012, the International Agency for Research on Cancer (IARC) [1] concluded that there is sufficient evidence of carcinogenicity in humans from diesel exhaust exposure to upgrade its classification of diesel exhaust from "probably carcinogenic" to "carcinogenic to humans".[2]

In November 2015, the Health Effects Institute [3] completed its evaluation of recent epidemiological evidence for assessing the risk of lung cancer from exposure to diesel exhaust. The evaluation concluded that the Diesel Exhaust in Miners Study and the Trucking Industry Particle Study were "well designed and carefully conducted, embodying the attributes of epidemiological studies that are considered important for quantitative risk assessment." [4]

C. Health Hazard Alerts

Following the IARC classification of diesel exhaust as a human carcinogen, MSHA issued two Health Hazard Alerts: one on diesel exhaust and DPM in underground coal and MNM mines, and one on nitrogen dioxide (NO_2) emissions in underground coal mines. The first Health Hazard Alert was issued in partnership with the Occupational Safety and Health Administration (OSHA) on January 10, 2013. It provided information about diesel exhaust and DPM in underground coal and MNM mines, occupations with potential exposure, the health hazards of exposure, engineering and workplace controls, respiratory protection, and the standards in place to protect miners from exposure.

MSHA issued a second Health Hazard Alert on August 6, 2013. The alert reinforced the dangers of platinum-based particulate filters as a source of increased concentrations of nitrogen dioxide (NO_2) in underground coal mines. MSHA had addressed these dangers before. On May 16, 2011, MSHA had published a Program Information Bulletin NO. P11–38, Re-Issue of P02–04—Potential Health Hazard Caused by Platinum-Based Catalyzed Diesel Particulate Matter Exhaust Filters, informing mine operators of a potential health hazard caused by then-available platinum-based catalyzed diesel particulate matter (DPM) exhaust filters for diesel-powered equipment. The PIB advised that the use of these filters may result in increased production of nitrogen dioxide (NO_2) gas, as compared to NO_2 emissions produced by engines operating without these filters, causing miners to be exposed to increased concentrations of NO_2.

D. State Actions

West Virginia, Pennsylvania, and Ohio require diesel-powered equipment used in underground coal mines to include an exhaust emissions control and conditioning system that meets the following requirements:

- DPM emissions that do not exceed an average concentration of 0.12 milligrams of DPM per cubic meter of air (mg/m^3) when diluted by 100 percent (West Virginia and Ohio) or by 50 percent (Pennsylvania) of the MSHA Part 7 approved ventilation rate for that diesel engine.
- An oxidation catalyst or other gaseous emissions control device capable of reducing undiluted carbon monoxide (CO) emissions to 100 parts per million (ppm) or less under all conditions of operation within the normal engine operating temperature range.
- A DPM filter capable of reducing DPM concentrations by at least 75 percent (West Virginia) or by an average of 95 percent (Pennsylvania) or to a level that does not exceed an average concentration of 0.12 milligrams per cubic meter (mg/m^3) of air when diluted by 100 percent of the MSHA Part 7 approved ventilation rate for that diesel engine (Ohio).

In addition, West Virginia, Ohio, and Pennsylvania limit ambient concentrations of exhaust gases to a ceiling of 35 parts per million (ppm) for carbon monoxide (CO) and 3 ppm for nitrogen dioxide (NO_2). West Virginia and Pennsylvania also limit ambient concentrations of nitric oxide (NO) to 25 ppm. If the concentrations of these emissions exceed 75 percent of these limits, these states require mine operators to make changes to the use of diesel equipment, mine ventilation, or other modifications to the mining process.

All three states require mine operators to keep written records of emissions tests, pre-operational examinations, and maintenance and repairs for all diesel equipment operated underground. These states also require specific information to be recorded that MSHA does not require, *e.g.*, the results of testing the engine at full throttle against the brakes with loaded hydraulics (engine speed tests), operating hour meter hours, total intake restriction, total exhaust back pressure, cooled exhaust gas temperature, coolant temperature, engine oil pressure, and engine oil temperature.

II. Information Request

MSHA requests information and data on the effectiveness of the existing standards in controlling miners' exposures to diesel exhaust, including DPM. MSHA specifically requests input from industry, labor, and other interested parties on approaches that may enhance control of DPM and diesel exhaust exposures to improve protections for miners in underground coal and MNM mines. When responding—

- Address your comments to the topic and question number. For example, the response to questions regarding underground coal mines, Question 1, would be identified as "A.1".
- Explain the rationale supporting your views and, where possible, include specific examples.
- Provide sufficient detail in your responses to enable proper Agency review and consideration.
- Identify the information on which you rely and include applicable experiences, data, models, calculations, studies and articles, standard professional practices, availability of technology, and costs.

MSHA invites comment in response to the specific questions posed below and encourages commenters to include any related cost and benefit data, and any specific issues related to the impact on small mines.

A. Non-Permissible, Light-Duty, Diesel-Powered Equipment in Underground Coal Mines

It has been 14 years since MSHA promulgated its DPM rule for underground coal mines. At that time, MSHA had estimated a service life of 10 years for non-permissible, light-duty, diesel-powered equipment. Based on this estimate, MSHA expects that all the non-permissible, light-duty, diesel-powered equipment in use at that time has now been replaced with equipment having newer and cleaner diesel engines. MSHA's latest diesel inventory for underground coal mines indicates that this newer light-duty equipment makes up about 66 percent of the total existing diesel-powered fleet. MSHA believes that this newer equipment has resulted in a decrease in the overall levels of diesel emissions in underground coal mines. Diesel engine manufacturers have integrated a variety of advanced technologies into new engine designs to reduce engine emissions to meet EPA requirements.

To assist MSHA in determining whether it is feasible to lower the emissions limits for non-permissible, light-duty, diesel-powered equipment to 2.5 g/hr of DPM or less, please respond to the following questions. For each response, please provide data, the specific type of equipment, manufacturer, engine type, filter type, level of DPM, and comments that support your response.

1. Is there evidence that non-permissible, light-duty, diesel-powered equipment currently being operated in underground mines emits 2.5 g/hr of DPM or less? If so, please provide this evidence.
2. What administrative, engineering, and technological challenges would the coal mining industry face in meeting a 2.5 g/hr DPM emissions level for non-permissible, light-duty, diesel-powered equipment?
3. What costs would the coal mining industry incur to lower emissions of DPM to 2.5 g/hr or less on non-permissible, light-duty diesel-powered equipment? What are the advantages, disadvantages of requiring that light-duty diesel-powered equipment emit no more than 2.5 g/hr of DPM?
4. What percentage of non-permissible, light-duty, diesel-powered equipment operating underground does not meet the current EPA emissions standards?
5. What modifications could be applied to non-permissible, light-duty, diesel-powered equipment to meet current EPA emissions standards? What percentage of this equipment could not be modified to meet current EPA emissions standards? If these are specific types of equipment, please list the manufacturers and model numbers.
6. What are the advantages, disadvantages, and costs associated with requiring all non-permissible, light-duty, diesel-powered equipment operating in underground coal mines to meet current EPA emissions standards? Please be specific and include the rationale for your response.
7. West Virginia, Pennsylvania, and Ohio limit diesel equipment in the outby areas of underground coal mines based on the air quantity approved on the highest ventilation plate. What are the advantages, disadvantages, and costs of MSHA adopting such an approach?

B. Maintenance of Diesel-Powered Equipment in Underground Coal Mines and Recordkeeping Requirements

Performing routine preventive maintenance of diesel engines helps ensure that the engines are maintained in approved condition. Under 30 CFR 75.1914(f), all diesel-powered equipment must be examined and tested weekly in accordance with approved checklists and manufacturers' maintenance manuals. Under 30 CFR 75.1914(g), diesel-powered equipment approved under 30 CFR part 36 and non-permissible, heavy-duty, diesel-powered equipment in underground coal mines are tested and evaluated on a weekly basis in accordance with mine operator-developed standard operating procedures. These procedures must provide for carbon monoxide sampling; carbon monoxide concentration must not exceed 2500 parts per million.

8. What would be the advantages, disadvantages, safety and health benefits, and costs of testing non-permissible, light-duty, underground diesel-powered equipment on a weekly basis for carbon monoxide as required for permissible diesel-powered equipment and non-permissible, heavy-duty, diesel-powered equipment?
9. Reducing the emissions of nitric oxide (NO) and nitrogen dioxide (NO_2) is one way that engine manufacturers can control particulate production indirectly. What are the advantages, disadvantages, and costs of expanding exhaust emissions tests to include NO and NO_2 to determine the effectiveness of emissions controls in underground coal mines? Please provide data and comments that support your response.
10. Should MSHA require that diagnostics system tests include engine speed (testing the engine at full throttle against the brakes with loaded hydraulics), operating hour meter, total intake restriction, total exhaust back pressure, cooled exhaust gas temperature, coolant temperature, engine oil pressure, and engine oil temperature, as required by some states? Why or why not?
11. What would be the advantages, disadvantages, and costs associated with requiring additional records to document the testing and maintenance of diesel-powered equipment in underground coal mines, such as the testing described above? Please be specific and include the rationale for your response.
12. If your mine is in West Virginia, Pennsylvania, or Ohio, what is your experience with the resources expended to keep testing records? How have these records been used, *e.g.*, have you analyzed the records for trends? Have you made any changes in the use of the diesel-powered equipment, emissions controls, or mine ventilation based on the records of emissions testing? If so, please provide examples.
13. Please provide information related to additional training requirements for persons who operate and maintain diesel equipment. Please be specific on the types of training required, time associated with training, and additional safety and health benefits provided.

C. Exhaust After-Treatment and Engine Technologies

Options for reducing diesel exhaust emissions that are available include integration of advanced technologies into new engine designs and exhaust after-treatment systems. Reduction of diesel exhaust emissions prior to their release into the mine environment is an effective strategy used to prevent or reduce exposure of underground miners to diesel exhaust. The underground coal and MNM mining industries use exhaust after-treatment technology to control and reduce DPM and gaseous emissions from the existing fleet of diesel-powered equipment. While existing DPM standards provide for flexibility of controls to reach the required limit (*i.e.*, controls that reduce engine emissions), MSHA expected that most operators would use hot gas (ceramic) filters to comply.

MSHA is requesting information on the types and effectiveness of exhaust after-treatment technologies used in underground mines. Please describe some best practices for selecting and using after-treatment devices.

14. What exhaust after-treatment technologies are currently used on diesel-powered equipment? What are the costs associated with acquiring and maintaining these after-treatment technologies and by how much did they reduce DPM emissions? How durable and reliable are after-treatment technologies and how often should these technologies be replaced? Please be specific and include examples and the rationale for your response.

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[1] International Agency for Research on Cancer, World Health Organization, Press Release No. 213, "IARC: Diesel Engine Exhaust Carcinogenic," June 12, 2012.

[2] International Agency for Research on Cancer, "Carcinogenicity of Diesel-Engine and Gasoline-Engine Exhausts and Some Nitroarenes," *IARC Monographs*, Volume 105, World Health Organization, 2013.

[3] The Health Effects Institute is an independent, non-profit research institute funded jointly by the U.S. Environmental Protection Agency and industry to provide credible, high quality science on air pollution and health for air quality decisions. HEI sponsors do not participate in the selection, oversight, or review of HEI science, and HEI's reports do not necessarily represent their views.

[4] HEI Press Release, "New Report Examines Latest Studies of Lung Cancer Risk in Workers Exposed to Exhaust from Older Diesel Engines," November 24, 2015.

15. What are the advantages, disadvantages, and relative costs of using DPM filters capable of reducing DPM concentrations by at least 75 percent or by an average of 95 percent or to a level that does not exceed an average concentration of 0.12 milligrams per cubic meter (mg/m³) of air when diluted by 100 percent of the MSHA Part 7 approved ventilation rate for that diesel engine? How often do the filters need to be replaced?

16. What sensors (*e.g.* ammonia, nitrogen oxide (NO), nitrogen dioxide (NO_2)) are built into the after-treatment devices used on the diesel-powered equipment?

17. Are integrated engine and exhaust after-treatment systems used to control DPM and gaseous emissions in the mining industry? If so, please describe the costs associated with acquiring and maintaining integrated systems, and the reduction in DPM emissions produced.

18. What are the advantages, disadvantages, and relative costs of requiring that all light-duty diesel-powered equipment be equipped with high-efficiency DPM filters?

As discussed above, on June 29, 2004, EPA adopted Tier 4 diesel engine standards. These standards are performance-based and technology-neutral in the sense that manufacturers are responsible for determining which emissions control technologies will be needed to meet the requirements. Engine manufacturers will produce new engines with advanced emissions control technologies to comply with Tier 4 emissions standards. Exhaust emissions from these engines are expected to decrease by more than 90 percent.

19. In the mining industry, are operators replacing the engines on existing equipment with Tier 4i (interim) or Tier 4 engines? If so, please specify the type of equipment (make and model) and engine size and tier. Please indicate how much it costs to replace the engine (parts and labor).

20. What types of diesel equipment purchased new for use in the mining industry is powered by Tier 4i or Tier 4 engines? What types of diesel-powered equipment, purchased used for use in the mining industry, are powered by Tier 3, Tier 4i or Tier 4 engines?

21. Are Tier 4i or Tier 4 engines used in underground mines equipped with diesel particulate filter (DPF) systems (*e.g.*, advanced diesel engines with integrated after-treatment systems)? Please provide specific examples.

22. How long have Tier 4i or Tier 4 engines been in use in the mining industry and what additional cost is associated with maintaining equipment equipped with these engines?

23. What percentage of underground coal mines' total diesel equipment inventory is equipped with Tier 4i or Tier 4 engines?

D. Monitoring MNM Miners' Exposures to DPM

Under the existing standards, MSHA uses total carbon (TC) measurements as a surrogate for DPM when determining MNM miners' DPM exposures.

24. MSHA requests information on alternative surrogates, other than TC, to estimate a miner's DPM exposure. What is the surrogate's limit of detection and what are potential interferences in a mine environment?

25. What are the advantages, disadvantages, and relative costs for using the alternative surrogate to determine a MNM miner's exposure to DPM? Please be specific and include the rationale for your response.

26. MSHA requests information on advances in sampling and analytical technology and other methods for measuring a MNM miner's DPM exposure that may allow for a reduced exposure limit.

E. MNM Miners' Personal Exposure Limit (PEL)

MSHA analyzed its sampling data from 2006 (when the final PEL was published) to 2015, and found that the average exposures of MNM miners decreased by 57 percent from 253_{TC} to 109_{TC} μg/m³ in MNM mines. Further analysis of the data revealed that approximately 63 percent of the mines sampled had average exposures below 100_{TC} μg/m³ in 2015 and 75 percent of the mines sampled have average exposures below 122_{TC} μg/m³. Overall, 50 percent of the mines sampled have average exposures between 48_{TC} and 122_{TC} μg/m³. For operators who have had success in reducing exposures below the existing standard, please describe the best practices that you have used to reduce controls. MSHA intends to share this information with the underground metal and nonmetal mining community.

27. What existing controls were most effective in reducing exposures since 2006? Are these controls available and applicable to all MNM mines?

28. Based on MSHA's data, MNM miners' average exposures are well below the existing standard of 160_{TC} μg/m³. What are the technological challenges and relative costs of reducing the DPM exposure limit?

F. Other Information

Please provide any other data or information that may be useful to MSHA in evaluating miners' exposures to harmful diesel exhaust emissions, including the effectiveness of existing control mechanisms for reducing harmful diesel emissions and limiting miners' exposures to harmful diesel exhaust emissions.

Authority: 30 U.S.C. 811, 813(h).

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2016–13219 Filed 6–7–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0335]

RIN 1625–AA00

Safety Zone; Ohio River Mile 42.5 to 43.0, Chester, West Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for all water extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0. This proposed rule would be needed to protect personnel, vessels, and the marine environment from potential hazards created by a land based fireworks display. Entry of vessels or persons into this zone would be prohibited unless specifically authorized by the Captain of the Port Pittsburgh (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 20, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0335 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On April 6, 2016, the Chester Volunteer Fire Department notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. to 11:00 p.m. on July 4, 2016. The fireworks will be launched from land in the vicinity of Ohio River mile 42.5 to mile 43.0 along the left descending bank. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:30 p.m. to 11:00 p.m. on July 4, 2016. The safety zone would cover the waters extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration, of the safety zone and the low traffic nature of this area. The safety zone would close a small portion of the Ohio River for less than two hours. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow other waterway users to seek permission to enter the zone. Requests to transit the safety zone area would be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV. A. above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this

action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than two hours that would prohibit entry into the safety zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0335 to read as follows:

§ 165.T08–0335 Safety Zone; Ohio River Mile 42.5 to Mile 43.0, Chester, WV.

(a) *Location.* The following area is a safety zone: All waters extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative at 412–221–0807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. to 11:00 p.m. on July 4, 2016.

(e) *Informational Broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: May 12, 2016.

P.C. Burkett,

Commander, U.S. Coast Guard, Acting Captain of the Port Pittsburgh.

[FR Doc. 2016–13586 Filed 6–7–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter I

[Docket ID ED–2016–OS–0002]

RIN 1875–AA11

Secretary's Proposed Supplemental Priority for Discretionary Grant Programs

AGENCY: Department of Education.

ACTION: Proposed priority.

SUMMARY: The Secretary proposes an additional priority for use in any appropriate grant program for fiscal year (FY) 2016 and future years. The Secretary proposes to add this priority to the existing supplemental priorities and definitions for discretionary grant programs that were published in 2014. This priority reflects our current policy objectives and emerging needs in education.

DATES: We must receive your comments on or before July 8, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email, or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use *regulations.gov.*"
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority, address them to Ramin Taheri, U.S. Department of Education, 400 Maryland Avenue SW., Room 5E343, Washington, DC 20202–5930.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ramin Taheri, U.S. Department of Education, 400 Maryland Avenue SW., Room 5E343, Washington, DC 20202. Telephone: (202) 453–5961 or by email: *ramin.taheri@ed.gov*.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific issues that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about this notice by accessing *Regulations.gov*. You may also inspect the comments in person in Room 4W335, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Program Authority: 20 U.S.C. 1221e–3.

Proposed Priority: This notice contains one proposed priority.

Background: Children living in concentrated poverty face significant barriers to learning that contribute to poor outcomes for such students in our public schools.[1] In 2012, nearly one-quarter of our Nation's public school students attended schools where more than 75 percent of students were eligible for free or reduced price lunch; in cities, 40 percent of all public school students attend high-poverty schools.[2] Furthermore, most high-poverty schools are located in high-poverty school districts. Students attending high-poverty schools continue to have unequal access to advanced coursework, the best teachers, and necessary funding and supports.[3] Moreover, research shows that States with less socioeconomically diverse schools tend to have larger achievement gaps between low- and higher-income students.[4] Some communities have begun to address these disparities by employing strategies to bring together students from varying socioeconomic backgrounds; for example, more than 90 school districts and charter-school operators currently use socioeconomic status as a consideration in student assignment.[5]

In addition to the negative effects of concentrated poverty on education, many schools and communities continue to suffer the effects of racial segregation, and some of our Nation's largest school districts remain starkly segregated along both racial and economic lines. Accordingly, the Department believes that it is imperative for schools, school districts, States, and postsecondary institutions to take lawful steps to increase student-body diversity based on race and ethnicity. Using the Secretary's existing priority on Promoting Diversity, published in the **Federal Register** on December 10, 2014 (79 FR 73425), we intend to continue our efforts to reduce racial isolation in public schools and to increase racial and ethnic diversity in education. In addition, however, given the growing body of research showing that socioeconomically diverse schools and communities are associated with improved outcomes for disadvantaged children and families,[6] the Department plans to use this proposed priority to continue to focus on increasing diversity, including socioeconomic diversity, in educational settings.[7]

Proposed Priority—Increasing Socioeconomic Diversity in Schools.

Projects that are designed to increase socioeconomic diversity in educational settings by addressing one or more of the following:

(a) Using established survey or data-collection methods to identify socioeconomic stratification and related barriers to socioeconomic diversity at the classroom, school, district, community, or regional level.

(b) Developing, evaluating, or providing technical assistance on evidence-based policies or strategies designed to increase socioeconomic diversity in schools.

(c) Designing or implementing, with community input, education funding strategies, such as the use of weighted per-pupil allocations of local, State, and eligible Federal funds, to provide incentives for schools and districts to increase socioeconomic diversity.

(d) Developing or implementing policies or strategies to increase

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[1] See, *e.g.*, Coleman, James S., Ernest Q. Campbell, Carol J. Hobson, James McPartland, Alexander M. Mood, Frederic D. Weinfeld, and Robert York. "Equality of educational opportunity." *Washington, DC* (1966): 1066–5684; Rumberger, Russell, and Gregory Palardy. "Does segregation still matter? The impact of student composition on academic achievement in high school." *The Teachers College Record* 107, no. 9 (2005): 1999–2045; Mulligan, G.M., S. Hastedt, and J.C. McCarroll (2012). *First-Time Kindergartners in 2010–11: First Findings From the Kindergarten Rounds of the Early Childhood Longitudinal Study, Kindergarten Class of 2010–11 (ECLS–K: 2011)* (NCES 2012–049). U.S. Department of Education. Washington, DC: National Center for Education Statistics.

[2] National Center for Education Statistics. (2014). Digest of Education Statistics, Table 216.6. Available at: *http://nces.ed.gov/programs/digest/d14/tables/dt14_216.60.asp*.

[3] See, *e.g.*, Gray, Lucinda, et al. *Educational Technology in U.S. Public Schools: Fall 2008* (Apr. 2010) (NCES 2010–034). U.S. Department of Education, National Center for Education Statistics, available at: *http://nces.ed.gov/pubs2010/2010034.pdf;* Wells, John, and Laurie Lewis. *Internet Access in U.S. Public Schools and Classrooms: 1994–2005* (November 2006). U.S. Department of Education, National Center for Education Statistics, available at: *http://nces.ed.gov/pubs2007/2007020.pdf*.

[4] Mantil, Ann, Anne G. Perkins, and Stephanie Aberger. "The Challenge of High-Poverty Schools: How Feasible Is Socioeconomic School Integration?" The Future of School Integration (2012): 155–222.

[5] Potter, Halley, and Kimberly Quick, with Elizabeth Davies. *A New Wave of School Integration: Districts and Charters Pursuing Socioeconomic Diversity.* The Century Foundation, 2016.

[6] Schwartz, Heather. "Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland." In *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy*, edited by Richard D. Kahlenberg, 27–65. The Century Foundation, 2012; *see also* Chetty, Raj, Nathaniel Hendren, and Lawrence F. Katz. *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment.* No. w21156. National Bureau of Economic Research, 2015.

[7] Increasing socioeconomic diversity, both independently and in pursuit of racial diversity, is consistent with guidance, issued in 2011 and reaffirmed in 2013 and 2014 by the Department, in conjunction with the U.S. Department of Justice, regarding the use of race and ethnicity to promote diversity and reduce racial isolation. *See* Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools, available at: *http://www.ed.gov/ocr/letters/colleague-201111.pdf;* Guidance on *Fisher* v. *University of Texas at Austin*, available at: *http://www.ed.gov/ocr/letters/colleague-201309.pdf;* and Guidance on *Schuette* v. *Coalition to Defend Affirmative Action, et al.*, available at: *http://www.ed.gov/ocr/letters/colleague-201405-schuette-guidance.pdf*.

socioeconomic diversity in schools that—

(i) Are evidence-based;

(ii) May be carried out on an intra-district, inter-district, community, or regional basis;

(iii) Demonstrate ongoing, robust family and community involvement, including a process for intensive public engagement and consultation;

(iv) Reflect coordination with other relevant government entities, including housing or transportation authorities, to the extent practicable;

(v) May be based on an existing, public diversity plan or diversity needs assessment; and

(vi) May include, for example—

(A) Establishing school assignment or admissions policies that are designed to give preference to low-income students, students from low-performing schools, or students residing in neighborhoods experiencing concentrated poverty to attend higher-performing schools;

(B) Establishing or expanding schools that are designed to attract substantial numbers of students of different socioeconomic backgrounds, such as magnet or theme schools, charter schools, or other schools of choice.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits: The proposed priority would not impose significant costs on entities that would receive assistance through the Department's discretionary grant programs. Additionally, the benefits of implementing the proposal contained in this notice outweigh any associated costs because it would result in the Department's discretionary grant programs selecting high-quality applications to implement activities that reflect the Administration's policy focus.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the proposed priority would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Regulatory Flexibility Act Certification: For these reasons as well, the Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Intergovernmental Review: Some of the programs affected by this proposed priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

John B. King, Jr.,

Secretary of Education.

[FR Doc. 2016–13456 Filed 6–7–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2015–0159; FXRS12610700000167–FF07J00000; FBMS# 4500088147]

RIN 1018–BB22

Subsistence Management Regulations for Public Lands in Alaska—Applicability and Scope; Tongass National Forest Submerged Lands

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. District Court for Alaska in its October 17, 2011, order in *Peratrovich et al.* v. *United States and the State of Alaska,* 3:92-cv–0734–HRH (D. Alaska), enjoined the United States "to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) with respect to submerged public lands within Tongass National Forest" and directed entry of judgment. To comply with the order, the Federal Subsistence Board (Board) must initiate a regulatory proceeding to identify those submerged lands within the Tongass National Forest that did not pass to the State of Alaska at statehood and, therefore, remain Federal public lands subject to the subsistence provisions of ANILCA.

Following the Court's decision, the Bureau of Land Management (BLM) and the USDA–Forest Service (USDA–FS) started a review of hundreds of potential pre-statehood (January 3, 1959) withdrawals in the marine waters of the Tongass National Forest. In April and October of 2015, BLM submitted initial lists of submerged public lands to the Board. This proposed rule would add those submerged parcels to the subsistence regulations to ensure compliance with the Court order. Additional listings will be published as BLM and the USDA–FS continue their review of pre-statehood withdrawals.

DATES: *Public comments:* Comments on this proposed rule must be received or postmarked by August 8, 2016.

Public meetings: The Federal Subsistence Regional Advisory Councils (Councils) will hold public meetings to receive comments on this proposed rule on several dates between September 28 and November 2, 2016, and make recommendations to the Federal Subsistence Board. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in January 2017. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov* and search for FWS–R7–SM–2015–0159, which is the docket number for this rulemaking.
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *twhitford@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of ANILCA (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register**

on May 29, 1992 (57 FR 22940). The program regulations have subsequently been amended a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program (Program). The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments and Public Meetings

The Federal Subsistence Regional Advisory Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Councils, will hold public meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council, Petersburg, October 4, 2016
Region 2—Southcentral Regional Council, Anchorage, October 18, 2016
Region 3—Kodiak/Aleutians Regional Council, Cold Bay, September 28, 2016
Region 4—Bristol Bay Regional Council, Dillingham, October 26, 2016
Region 5—Yukon–Kuskokwim Delta Regional Council, Bethel, October 12, 2016
Region 6—Western Interior Regional Council, McGrath, October 11, 2016
Region 7—Seward Peninsula Regional Council, Nome, November 1, 2016
Region 8—Northwest Arctic Regional Council, Selawik, October 5, 2016
Region 9—Eastern Interior Regional Council, Fort Yukon, October 25, 2016
Region 10—North Slope Regional Council, Barrow, November 1, 2016

A public notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to each meeting. Locations and dates may change based on weather or local circumstances. The Regional Advisory Council's agenda determines the length of each Council meeting based on workload.

The Board will discuss and evaluate submitted comments and public testimony on this proposed rule during a public meeting scheduled for January 2017 in Anchorage, Alaska. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional public testimony may be provided to the Board on this proposed rule at that time. At that public meeting, the Board will deliberate and make final recommendations to the Secretaries on this proposed rule.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov*, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Deborah Coble, 907–786–3880, *subsistence@fws.gov*, or 800–877–8339 (TTY), seven business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010). Consultation with Alaska Native corporations is based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue

at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Jurisdictional Background and Perspective

The *Peratrovich* case dates back to 1992 and has a long and involved procedural history. The plaintiffs in that litigation raised the question of which marine waters in the Tongass National Forest, if any, are subject to the jurisdiction of the Federal Subsistence Management Program. In its May 31, 2011, order, the U.S. District Court for Alaska (Court) stated that "it is the duty of the Secretaries [Agriculture & Interior] to identify any submerged lands (and the marine waters overlying them) within the Tongass National Forest to which the United States holds title." It also stated that, if such title exists, it "creates an interest in [the overlying] waters sufficient to make those marine waters public lands for purposes of [the subsistence provisions] of ANILCA."

Most of the marine waters within the Tongass National Forest were not initially identified in the regulations as public lands subject to the subsistence priority based upon a determination that the submerged lands were State lands, and later through reliance upon a disclaimer of interest filed by the United States in *Alaska* v. *United States*, No. 128 Orig., 546 U.S. 413 (2006). In that case, the State of Alaska had sought to quiet title to all lands underlying marine waters in southeast Alaska, which includes most of the Tongass National Forest. Ultimately, the United States disclaimed ownership to most of the submerged lands in the Tongass National Forest. The Supreme Court accepted the disclaimer by the United States to title to the marine waters within the Tongass National Forest, excepting from that disclaimer several classes of submerged public lands that generally involve small tracts. *Alaska* v. *United States*, 546 U.S. at 415.

When the United States took over the subsistence program in Alaska in 1990, the Departments of the Interior and Agriculture stated in response to comments on the scope of the program during promulgation of the interim regulations that "the United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands" (55 FR 27115; June 29, 1990). That position was changed in 1999 when the subsistence priority was extended to waters subject to a Federal reserved water right following the *Katie John* litigation. The Board identified certain submerged marine lands that did not pass to the State and, therefore, where the subsistence priority applied. However, the Board did not attempt to identify each and every small parcel of submerged public lands and thereby marine water possibly subject to the Federal Subsistence Management Program because of the potentially overwhelming administrative burden. Instead the Board invited the public to petition to have submerged marine lands included. Over the years, several small areas of submerged marine lands in the Tongass National Forest have been identified as public lands subject to the subsistence priority.

In its May 31, 2011, order, the Court stated that the petition process was not sufficient and found that "concerns about costs and management problems simply cannot trump the congressional policy that the subsistence lifestyle of rural Alaskans be preserved as to public lands." The Court acknowledged in its order that inventorying all these lands could be an expensive undertaking, but that it is a burden "necessitated by the 'complicated regulatory scheme' which has resulted from the inability of the State of Alaska to implement Title VIII of ANILCA." The Court then "enjoined" the United States "to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of ANILCA with respect to submerged public lands within Tongass National Forest" and directed entry of judgment.

The BLM and USDA–FS started a time- and resource-consuming review of hundreds of potential pre-statehood (January 3, 1959) withdrawals in the marine waters of the Tongass National Forest. Both agencies are reviewing their records to identify dock sites, log transfer sites, and other areas that may not have passed to the State at statehood. The review process is ongoing and expected to take quite some time.

Developing the Applicability and Scope; Tongass National Forest Submerged Lands Proposed Regulations

In April and October of 2015, BLM submitted initial listings of parcels of submerged public lands to the Board. This proposed rule will add those listings to the subsistence regulations to ensure compliance with the Court's order. Additional listings will be published as BLM and USDA–FS continue their reviews of pre-statehood withdrawals. In addition, this proposed rule would make nonsubstantive changes to 36 CFR 242.3 and 50 CFR 100.3 to correct errors, such as misspellings and punctuation errors, which occur in the existing regulations.

Because this proposed rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA § 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final § 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management

Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with § 810. This evaluation also supported the Secretaries' determination that the regulations will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA § 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*) OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100, and assigned OMB Control Number 1018–0075. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this proposed rule is not a major rule. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these proposed regulations meet the applicable standards provided in §§ 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

The Secretaries, through the Board, will provide a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these proposed regulations under the guidance of Gene Peltola of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Secretaries propose to amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart A—General Provisions

■ 2. In subpart A of 36 CFR part 242 and 50 CFR part 100, amend § 3 as follows:

■ a. In paragraph (a), remove the word "or" and in its place add the word "of" and remove the word "poortion" and in its place add the word "portion";

■ b. In paragraph (b)(1)(iii), remove the word "A" and in its place add the word "All";

■ c. In paragraph (b)(1)(v), remove the word "Latitute" and in its place add the word "Latitude";

■ d. In paragraph (b)(2), remove "70 10′" and in its place add "70°10′" and remove "145 51′" and in its place add "145°51′";

■ e. In paragraph (b)(3), remove the word "cape" and in its place add the word "Cape", remove the word "Latitute" and in its place add the word "Latitude", and remove "161 46′" and in its place add "161°46′"; and

■ f. Revise paragraph (b)(5) to read as set forth below:

§ 3 Applicability and scope.

* * * * *

(5) Southeastern Alaska, including the:

(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02′35″ north latitude, 135°21′07″ west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2,500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3,000 feet, to a point, 57°03′15″ north latitude, 134°23′07″ west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No. 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.

(ii) Tongass National Forest:

(A) Beacon Point, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 57 south, 79 east, CRM, SEC 8, U.S. Survey No. 1604. The point begins on the low-water line at N. 63° W., true and approximately 1,520 feet from Beacon Point beacon; thence due south true 1,520 feet; thence true East 1,800 feet, more or less to an intersection with a low-water line; thence following, is the low-water line round the point to point of the beginning (Approx. Long. 133°00′ W. Lat. 56°56¼′ N.).

(B) Bushy Island and Snow Passage are shown on the U.S. Coast and Geodetic Survey Chart, labeled No. 8160—Sheet No. 12. The reference location is marked as 64 south, 80 east, CRM, SEC. 31/32 on the map labeled, USS 1607. The point begins on a low-water line about ¼ nautical miles and southwesterly from the northwest point of the island, from which a left tangent to an island that is 300 yards in diameter and 100 yards offshore, bears the location—N. 60° W., true; thence S. 60° E., true and more or less 2,000 feet to an intersection with a low-water line on the easterly side of the island; thence forward along the winding of the low-water line northwesterly and southwesterly to the point of the beginning, including all adjacent rocks and reefs not covered at low water (Approx. Long. 132°58′ W. Lat. 56°16½′ N.).

(C) Cape Strait, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 56 south, 77478 east, CRM, on the map labeled as USS 1011. It begins at a point on a low-water line that is westerly from the lighthouse and distant 1,520 feet in a direct line from the center of the concrete pier upon which the light tower is erected; thence South 45° E., true by 1,520 feet; thence east true by 1,520 feet, more or less to an intersection with the low-water line; thence north-westerly and westerly, following the windings of the low-water line to the point of beginning (Approx. Long. 133°05′ W. Lat. 57°00′ N.).

(D) Point Colpoys and Sumner Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Prince of Wales Island—Sheet No. 12. The reference location is marked as 64 south, 78 east, CRM, SECs. 10, 11, 12 on the map labeled as USS 1634. Location is north of a true east-and-west line running across the point to 1,520 feet true south from the high-water line at the northernmost extremity. Map includes all adjacent rocks and ledges not covered at low water and also includes two rocks awash about 1¼ nautical miles east and South and 75° East, respectively, from the aforementioned point (Approx. Long. 133°12′ W. Lat. 56°20′ N.).

(E) Vank Island and Stikine Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. Located at 62 south, 82 east, CRM, SEC 34, on the map labeled as USS 1648. This part of the island is lying south of a true east-and-west line that is drawn across the island from low water to low water. Island is 760 feet due North from

the center of the concrete pier upon which the structure for the light is erected (Approx. Long. 132°35′ W. Lat. 56°27′ N.).

(F) High Point, and Woronkofski Island, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. The location begins at a point on low water at the head of the first bight easterly of the point and about ⅛ nautical mile distant therefrom; thence south true 1,520 feet; thence west true 1,100 feet, more or less to an intersection with the low-water line; thence northerly and easterly, following the windings of the low-water line to point of the beginning (Approx. Long. 132°33′ W. Lat. 56°24′ N.).

(G) Key Reef and Clarence Strait are shown on the U.S Coast and Geodetic Survey Chart No. 8160—Sheet No. 11. The reef lies 1¾ miles S. 80° E., true, from Bluff Island and becomes awash at extreme high water. Chart includes all adjacent ledges and rocks not covered at low water (Approx. Long. 132°50′ W. Lat. 56°10′ N.).

(H) Low Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 22. The location begins at a point on a low-water line that is 760 feet in a direct line, easterly, from the center of Low Point Beacon. The position is located on a point of shoreline about 1 mile easterly from Low Point; thence S. 35°, W true 760 feet; thence N. 800 feet and W. 760 feet, more or less, to an intersection with the low-water line to the point of beginning (Approx. Long. 132°55½′ W. Lat. 56°27½′ N.).

(I) McNamara Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 25. Location begins at a point on a low-water line that is 1,520 feet in a direct line, northerly, from McNamara Point Beacon—a slatted tripod structure; thence true east 1,520 feet; thence true south, more or less, 2,500 feet to an intersection with the low-water line; thence northwesterly and northerly following the windings of the low-water line to the point of the beginning (Approx. Long. 133°04′ W. Lat. 56°20′ N.).

(J) Mountain Point and Wrangell Narrows, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8170—Sheet No. 27. The location begins at a point on a low-water line southerly from the center of Mountain Point Beacon and distant there from 1,520 feet in a direct line; thence true west 1,520 feet; thence true north, more or less, 3,480 feet to an intersection with the low-water line; thence southeasterly and southerly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°57½′ W. Lat. 56°44′ N.).

(K) Angle Point, Revillagigedo Channel, and Bold Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, USS 1603. The location begins at a point on a low-water line abreast of the lighthouse on Angle Point, the southwestern extremity of Bold Island; thence easterly along the low-water line to a point that is 3,040 feet in a straight line from the beginning point; thence N. 30° W. True 3,040 feet; thence true west to an intersection with the low-water line, 3,000 feet, more or less; thence southeasterly along the low-water line to the point of the beginning (Approx. Long. 131°26′ W. Lat. 55°14′ N.).

(L) Cape Chacon, Dixon Entrance, and Prince of Wales Island are shown on the U.S Coast and Geodetic Survey Chart No. 8074—Sheet No. 29. The reference location is marked as 83 south, 89 and 90 east, CRM, USS 1608. The location begins at a point at the low-water mark on the shore line of Dixon Entrance from which the southern extremity of Cape Chacon bears south 64° true East and approximately ¾ nautical miles; thence N. 45° true East and about 1 nautical mile, more or less, to an intersection with a low-water line on the shore of Clarence Strait; thence southerly, following the meanderings of the low-water line of the shore, to and around Cape Chacon, and continuing to the point of the beginning. Reference includes all adjacent islands, islets, rocks, and reefs that are not covered at the low-water line (Approx. Long. 132° W. Lat. 54°42′ N.).

(M) Lewis Reef and Tongass Narrows are shown on the U.S Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 75 south, 90 east, CRM, SEC 9. The area point begins at the reef off of Lewis Point and partly bare at low water. This part of the reef is not covered at low water and lies on the northeast side of a true northwest-and-southeast line that is located 300 feet true southwest from the center of the concrete pier of Lewis Reef Light (Approx. Long. 131°44½′ W. Lat. 55°22′25″ N.).

(N) Lyman Point and Clarence Strait are shown on the U.S Coast and Geodetic Survey, Chart No. 8076—Sheet No. 8. The reference location is marked as 73 south, 86 east, CRM, SEC 13, on a map labeled as USS 2174 TRC. It begins at a point at the low-water mark. The aforementioned point is 300 feet in a direct line easterly from Lyman Point light; thence due south 300 feet; thence due west to a low-water mark 400 feet, more or less; thence following the winding of the low-water mark to place of beginning (Approx. Long. 132°18′ W. Lat. 35°35′ N.).

(O) Narrow Point, Clarence Strait, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as 70 south, 84 east, CRM, on a map labeled as USS 1628. The point begins at a point on a low-water line about 1 nautical mile southerly from Narrow Point Light, from which point a left tangent to a high-water line of an islet about 500 yards in diameter and about 300 yards off shore, bears south 30° true East; thence north 30° W., true 7,600 feet; thence N. 60° E., 3,200 feet, more or less to an intersection with a low-water line; thence southeasterly, southerly, and southwesterly, following the winding of the low-water line to the point of the beginning. The map includes all adjacent rocks not covered at low water (Approx. Long. 132°28′ W. Lat. 55°47½′ N.).

(P) Niblack Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8102—Sheet No. 6, which is the same sheet used for Caamano Point. The location begins at a point on a low-water line from which Niblack Point Beacon, a tripod anchored to three concrete piers, bears southeasterly and is 1,520 feet in a direct line; thence true northeast 1,520 feet; thence true southeast 3,040 feet; thence true southwest at 600 feet, more or less, to an intersection with a low-water line; thence northwesterly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°07′ W. Lat. 55°33′ N.).

(Q) Rosa Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 74 south, 90 east, CRM, SEC 31. That part of the reef is not covered at low water and lies east of a true north-and-south line, located 600 feet true west from the center of the concrete pier of Rosa Reef Light. The reef is covered at high water (Approx. Long. 131°48′ W. Lat. 55°24′15″ N.).

(R) Ship Island and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as south, 8 east, CRM, SEC 27. The point begins as a small island on the northwesterly side of the Clarence Strait, about 10 nautical miles northwesterly from Caamano Point and ¼ mile off the shore of Cleveland Peninsula. The sheet includes all adjacent islets and rocks not connected to the main shore and not covered at low water (Approx. Long. 132°12′ W. Lat. 55°36′ N.).

(S) Spire Island Reef and Revillagigedo Channel are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, SEC 19.The detached reef, covered at high water and partly bare at low water, is located northeast of Spire Island. Spire Island Light is located on the reef and consists of small houses and lanterns surmounting a concrete pier. See chart for "Angle Pt." (Approx. Long. 131°30′ W. Lat. 55°16′ N.).

(T) Surprise Point and Nakat Inlet are shown on the U.S. Coast and Geodetic Survey Chart No. 8051—Sheet No. 1. The reference location is marked as 80 south, 89 east, CRM. This point lies north of a true east-and-west line. The true east-and-west line lies 3,040 feet true south from the northernmost extremity of the point together with adjacent rocks and islets (Approx. Long. 130°44′ W. Lat. 54°49′ N.).

(U) Caamano Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8102—Sheet No. 6. Location consists of everything apart of the extreme south end of the Cleveland Peninsula lying on a south side of a true east-and-west line that is drawn across the point at a distance of 800 feet true north from the southernmost point of the low-water line. This includes off-lying rocks and islets that are not covered at low water (Approx. Long. 131°59′ W. Lat. 55°30′ N.).

(V) Meyers Chuck and Clarence Strait, Alaska, are shown on the U.S. and Geodetic Survey Chart No. 8124—Sheet No. 26. The small island is about 150 yards in diameter and located about 200 yards northwest of Meyers Island (Approx. Long. 132°16′ W. Lat. 55°44½′ N.).

(W) Round Island and Cordova Bay, Alaska, are shown on the U.S coast and Geodetic Survey Chart No. 8145—Sheet No. 36. The Southwestern Island of the group is about 700 yards long, including off-lying rocks and reefs that are not covered at low water (Approx. Long. 132°30½′ W. Lat. 54°46½′ N.).

(X) Mary Island begins at a point that is placed at a low-water mark. The aforementioned point is southward 500 feet from a crosscut on the side of a large rock on the second point below Point Winslow and Mary Island; thence due west ¾ mile, statute; thence due north to a low-water mark; thence following the winding of the low water to the place of the beginning (Approx. Long. 131°11′00″ W. Lat. 55°05′55″ N.).

(Y) Tree Point starts a point of a low-water mark. The aforementioned point is southerly ½ mile from extreme westerly point of a low-water mark on Tree Point, on the Alaska Mainland; thence due true east, ¾ mile; thence due north 1 mile; thence due west to a low-water mark; thence following the winding of the low-water mark to the place of the beginning (Approx. Long. 130°57′44″ W. Lat. 54°48′27″ N.).

* * * * *

Dated: May 31, 2016.

Dated: February 17, 2016.

Sally Jewell,

Secretary of the Interior.

Beth G. Pendleton,

Regional Forester USDA—Forest Service.

[FR Doc. 2016–13374 Filed 6–7–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0247; FRL–9947–40–Region 4]

Air Plan Approval; South Carolina; Prong 4—2008 Ozone, 2010 NO_2, SO_2, and 2012 $PM_{2.5}$

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the portions of revisions to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO_2), 2010 1-hour Sulfur Dioxide (SO_2), and 2012 annual Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an "infrastructure SIP." Specifically, EPA is proposing to conditionally approve the prong 4 portions of South Carolina's July 17, 2008, 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO_2 infrastructure SIP submission; May 8, 2014, 2010 1-hour SO_2 infrastructure SIP submission; and December 18, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: Comments must be received on or before July 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0247 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal

authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

Through this action, EPA is proposing to conditionally approve the prong 4 portions of South Carolina's infrastructure SIP submissions for the 2008 8-hour Ozone, 2010 1-hour NO_2, 2010 1-hour SO_2, and 2012 annual $PM_{2.5}$ NAAQS as discussed in section IV of this document.[1] All other applicable infrastructure SIP requirements for these SIP submissions have been or will be addressed in separate rulemakings. A brief background regarding the NAAQS relevant to this proposal is provided below. For comprehensive information on these NAAQS, please refer to the **Federal Register** notices cited in the following subsections.

a. 2008 8-Hour Ozone NAAQS

On March 12, 2008, EPA revised the 8-hour Ozone NAAQS to 0.075 parts per million. *See* 73 FR 16436 (March 27, 2008). States were required to submit infrastructure SIP submissions for the 2008 8-hour Ozone NAAQS to EPA no later than March 12, 2011. South Carolina submitted its infrastructure SIP submission on July 17, 2012, for the 2008 8-hour Ozone NAAQS.

b. 2010 1-Hour NO_2 NAAQS

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013. South Carolina submitted its infrastructure SIP submission on April 30, 2014, for the 2010 1-hour NO_2 NAAQS.

c. 2010 1-Hour SO_2 NAAQS

On June 2, 2010, EPA revised the primary SO_2 NAAQS to an hourly standard of 75 parts per billion based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). States were required to submit infrastructure SIP submissions for the 2010 1-hour SO_2 NAAQS to EPA no later than June 2, 2013. South Carolina submitted its infrastructure SIP submission on May 8, 2014, for the 2010 1-hour SO_2 NAAQS.

d. 2012 Annual $PM_{2.5}$ NAAQS

On December 14, 2012, EPA revised the primary annual $PM_{2.5}$ NAAQS to 12 micrograms per cubic meter ($\mu g/m^3$). *See* 78 FR 3086 (January 15, 2013). States were required to submit infrastructure SIP submissions for the 2012 $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015. South Carolina submitted its infrastructure SIP submission on December 18, 2015, for the 2012 $PM_{2.5}$ NAAQS.

II. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "each such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of Title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[2] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section

[1] Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval automatically becomes a disapproval on that date and EPA will issue a finding of disapproval.

[2] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; Section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of Title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of Title I of the CAA, which specifically address nonattainment SIP requirements.[3] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[4] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[5] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[6]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[7]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires attainment plan SIP submissions required by part D to meet the "applicable requirements" of section 110(a)(2); thus, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of Title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[8] EPA most recently

[3] *See, e.g.,* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[4] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[5] *See, e.g.,* "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," 78 FR 4337 (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[6] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[7] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[8] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[9] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[10] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of Section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Greenhouse Gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions;[11] (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform). Thus, EPA believes that it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in section 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may

[9] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[10] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[11] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[12] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption or affirmative defense for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14]

Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[15]

III. What are the Prong 4 requirements?

Section 110(a)(2)(D)(i)(II) includes a requirement that a state's implementation plan contain provisions prohibiting sources in that state from emitting pollutants in amounts that interfere with any other state's efforts to protect visibility under part C of Title I of the CAA (which includes sections 169A and 169B). The 2013 Guidance states that these prong 4 requirements can be satisfied by approved SIP provisions that EPA has found to adequately address any contribution of that state's sources to impacts on visibility program requirements in other states. The 2013 Guidance also states that EPA interprets this prong to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.

The 2013 Guidance delineates two ways in which a state's infrastructure SIP may satisfy prong 4. The first way is through an air agency's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet the requirements of prong 4 through a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such an infrastructure SIP submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

IV. What is EPA's analysis of how South Carolina addressed Prong 4?

South Carolina's July 17, 2012, 2008 8-hour Ozone submission; April 30, 2014, 2010 1-hour NO_2 submission; May 8, 2014, 2010 1-hour SO_2 submission; and December 18, 2015, 2012 annual $PM_{2.5}$ submission cite to the State's regional haze SIP as satisfying prong 4 requirements.[16] However, as explained below, EPA has not yet fully approved South Carolina's regional haze SIP because the SIP relies on the Clean Air Interstate Rule (CAIR) to satisfy the nitrogen oxides (NO_X) and SO_2 Best Available Retrofit Technology (BART) requirements for the CAIR-subject electric generating units (EGUs) in the State and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.[17]

EPA demonstrated that CAIR achieved greater reasonable progress toward the national visibility goal than BART for NO_X and SO_2 at BART-eligible EGUs in CAIR affected states, and revised the regional haze rule to provide that states participating in CAIR's cap-and-trade programs need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 70 FR 39104 (July 6, 2005). As a result, a number of states in the CAIR region designed their regional haze SIPs to rely

[13] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[14] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under section 110(k)(6) of the CAA to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.*, 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] *See, e.g.*, EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.*, 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[16] The April 30, 2014, 2010 1-hour NO_2 submission; May 8, 2014, 2010 1-hour SO_2 submission; and December 18, 2015 also cite to the State's December 2012 regional haze progress report.

[17] CAIR, promulgated in 2005, required 27 states and the District of Columbia to reduce emissions of NO_X and SO_2 that significantly contribute to, or interfere with maintenance of, the 1997 NAAQS for fine particulates and/or ozone in any downwind state. CAIR imposed specified emissions reduction requirements on each affected State, and established several EPA-administered cap and trade programs for EGUs that States could join as a means to meet these requirements.

on CAIR as an alternative to NO_X and SO_2 BART for CAIR-subject EGUs. These states also relied on CAIR as an element of a long-term strategy for achieving their reasonable progress goals.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008,[18] but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR.[19] On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS.

Due to CAIR's status as a temporary measure following the D.C. Circuit's 2008 ruling, EPA could not fully approve regional haze SIP revisions to the extent that they relied on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. On these grounds, EPA finalized a limited disapproval of South Carolina's regional haze SIP on June 7, 2012 (77 FR 33642), triggering the requirement for EPA to promulgate a Federal Implementation Plan (FIP) unless South Carolina submitted and EPA approved a SIP revision that corrected the deficiencies. EPA finalized a limited approval of South Carolina's regional haze SIP on June 28, 2012 (77 FR 38509), as meeting the remaining applicable regional haze requirements set forth in the CAA and the regional haze rule.

Numerous parties filed petitions for review of CSAPR in the D.C. Circuit, and on August 21, 2012, the court issued its ruling, vacating and remanding CSAPR to EPA and ordering continued implementation of CAIR. *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012). The D.C. Circuit's vacatur of CSAPR was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 SO_2 emissions budget for South Carolina.[20]

Although South Carolina's infrastructure SIP revisions cite to the regional haze program as satisfying the requirements of Prong 4, the State may not currently rely on its regional haze SIP to satisfy these requirements because the regional haze SIP is not fully approved. In addition, these revisions do not otherwise demonstrate that emissions within the State's jurisdiction do not interfere with other states' plans to protect visibility. Therefore, on April 19, 2016, South Carolina submitted a commitment letter to EPA requesting conditional approval of the prong 4 portions of the aforementioned infrastructure SIP revisions.[21] In this letter, South Carolina commits to satisfy the prong 4 requirements for the 2008 8-hour ozone NAAQS, 2010 1-hour NO_2 NAAQS, 2010 1-hour SO_2 NAAQS, and 2012 $PM_{2.5}$ NAAQS by providing a SIP revision that adopts provisions for participation in the CSAPR annual NO_X and annual SO_2 trading programs, including annual NO_X and annual SO_2 budgets that are at least as stringent as the budgets codified for South Carolina at 40 CFR 97.710(a) (SO_2 Group 2 trading budgets) and 40 CFR 97.410(a) (NO_X Annual trading budgets). South Carolina will rely on this SIP revision adopting such budgets to submit a concurrent SIP revision specifically addressing the visibility requirements of prong 4. In its commitment letter, South Carolina commits to providing these two concurrent SIP revisions within one year of EPA's final conditional approval of the prong 4 portions of the infrastructure SIP revisions and provides an anticipated schedule for these revisions. If the revised infrastructure SIP revision relies on a fully approvable regional haze SIP, South Carolina also commits to providing the necessary regional haze SIP revision to EPA within one year of EPA's final conditional approval.

If South Carolina meets its commitment within one year of final conditional approval, the prong 4 portions of the conditionally approved infrastructure SIP submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision(s). However, if the State fails to submit these revisions within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA's final conditional approval and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under CAA section 110(c).

V. Proposed Action

As described above, EPA is proposing to conditionally approve the prong 4 portions of South Carolina's July 17, 2008 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO_2 infrastructure SIP submission; May 8, 2014, 2010 1-hour SO_2 infrastructure SIP submission; and December 18, 2015, 2012 annual $PM_{2.5}$ infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, South Carolina statute 27–16–120, "all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities." However, EPA has determined that because this proposed rule does not have substantial direct effects on an Indian Tribe because, as noted above, this action is not approving any specific rule, but rather proposing that South Carolina's already approved SIP meets certain CAA requirements. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 26, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–13606 Filed 6–7–16; 8:45 am]

BILLING CODE 6560–50–P

[18] *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[19] *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008).

[20] The D.C. Circuit also invalidated the Phase 2 ozone season NO_X budget for South Carolina. EPA has proposed to address the court's remand of the Phase 2 ozone season NO_X budgets in a notice of proposed rulemaking published on December 3, 2015 (80 FR 75706).

[21] South Carolina's April 19, 2016, commitment letter is available in the docket for today's proposed action.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0424; FRL–9947–41–Region 4]

Air Plan Approval/Disapproval; MS; Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, in part, and disapprove in part, portions of the State Implementation Plan (SIP) submission, submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), on December 11, 2015, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. MDEQ certified that the Mississippi SIP contains provisions to ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Mississippi. With the exception of the state board majority requirements respecting significant portion of income, for which EPA is proposing to disapprove, EPA is proposing to determine that portions of Mississippi's infrastructure submission, submitted to EPA on December 11, 2015, satisfy certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before July 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0424 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached via telephone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov*.

I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m³) to 12.0 μg/m³. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This action is proposing to approve Mississippi's infrastructure SIP submission for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the visibility requirement of section 110(a)(2)(D)(i)(II) (prong 4), interstate

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "APC" indicates Mississippi Air Pollution Control (APC) regulations relevant to air quality control. The cited regulation has either been approved, or submitted for approval into Mississippi's federally-approved SIP.

transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) and the state board majority requirements respecting significant portion of income of section 110(a)(2)(E)(ii). With respect to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) and visibility requirement of section 110(a)(2)(D)(i)(II) (prong 4), EPA will address these in a separate rulemaking action. With respect to Mississippi's infrastructure SIP submission related to the majority requirements respecting significant portion of income of 110(a)(2)(E)(ii), EPA is proposing to disapprove this portion of Mississippi's infrastructure SIP submission because Mississippi does not preclude at least a majority of the members of its boards from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by such boards. For the aspects of Mississippi's submittal proposed for approval, EPA notes that the Agency is not approving any specific rule, but rather proposing that Mississippi's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for the "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Mississippi that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2012 Annual $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to this proposed rulemaking.

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title

Continued

therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have

I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] *See, e.g.*, "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.*, that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] *See, e.g.*, "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)" to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16]

Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Mississippi addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

Mississippi's December 11, 2015, infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Mississippi's infrastructure SIP submission provides an overview of the provisions of the Mississippi Air Pollution Control (APC) regulations relevant to air quality control. *Mississippi Code Title 49,* Section 49–17–17(h) (Appendix A–9),[18] authorizes MDEQ to adopt, modify, or repeal ambient air quality standards and emissions standards for the control of air pollution, including those necessary to obtain EPA approval under section 110 of the CAA. Sections APC–S–1, *Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,* and APC–S–3, *Regulations for the Prevention of Air Pollution Emergency Episodes,* establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to $PM_{2.5}$ concentrations in the ambient air and provide authority for MDEQ to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the provisions contained in these regulations, and Mississippi's statute are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance for the 2012 Annual $PM_{2.5}$ NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[19]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B): *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.*, 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] *See, e.g.*, EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.*, 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] *Mississippi Code Title 49* is referenced in the State's infrastructure SIP submissions as "Appendix A–9." As discussed above, unless otherwise indicated herein, portions of the Mississippi Code referenced in this proposal are not incorporated into the SIP.

[19] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

Administrator. Section APC–S–1, *Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants*, and *Mississippi Code Title 49*, Section 49–17–17(g), provides MDEQ with the authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Annually, MDEQ develops and submits to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[20] On June 9, 2015, Mississippi submitted its monitoring network plan to EPA, which was approved by EPA on October 6, 2015. Mississippi's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0424. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C): *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program). To meet the requirements for this element, Mississippi cited APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality* and APC–S–2, *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment*, Section V. These regulations enable MDEQ to regulate sources contributing to the 2012 Annual $PM_{2.5}$ NAAQS through enforceable permits.

Enforcement: MDEQ's APC–S–2, *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment*, Section VI provides for the enforcement of $PM_{2.5}$ emission limits and control measures through construction permitting for new or modified stationary sources. Also note that under *Mississippi Code Title 49, Chapter 17*, MDEQ has enforcement authority to seek penalties and injunctive relief for violations of emission limits and other control measures and violations of permits.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's SIP with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission.

For the 2012 Annual $PM_{2.5}$ NAAQS, Mississippi's authority to regulate new and modified sources to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas in Mississippi is established in Regulations APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality*, and APC–S–2, *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment*. These SIP-approved regulations pertain to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment, attainment or unclassifiable. Mississippi's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[21] As such, EPA has made the preliminary determination that Mississippi's SIP and practices are adequate and comply with the PSD elements of the 2012 Annual $PM_{2.5}$ NAAQS.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source pre-construction program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. Mississippi has a SIP-approved minor NSR permitting program at APC–S–2, Section I. D—*Permitting Requirements*, that regulates the preconstruction permitting of minor modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Mississippi's SIP is adequate for enforcement of control measures, PSD permitting for major sources and regulation of minor sources and modifications related to the 2012 Annual $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II): *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action related to the provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2") of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will consider these requirements in relation to Mississippi's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: a PSD program meeting all the current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area for the relevant pollutant) a NNSR program that implements the NAAQS for a relevant pollutant. As discussed in more detail above under section 110(a)(2)(C), Mississippi's SIP contains provisions for the State's PSD program that reflects the required structural PSD requirements to satisfy the requirement of prong 3. EPA has made the preliminary determination that Mississippi's SIP is adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Mississippi's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. Section APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality*, provides how MDEQ will notify neighboring state and local agencies of potential impacts from new or modified sources consistent with the requirements of 40 CFR 51.166, which is adopted by reference into the Mississippi SIP. Additionally, Mississippi does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. 110(a)(2)(E): *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Mississippi's SIP as meeting the requirements of sections 110(a)(2)(E)(i) and (iii). EPA is proposing to approve, in part, and disapprove, in part, Mississippi's SIP respecting section 110(a)(2)(E)(ii). EPA's rationale for its proposal respecting each section of 110(a)(2)(E) is described in turn below.

To satisfy the requirements of sections 110(a)(2)(E)(i) and (iii), Mississippi provides that MDEQ is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs as found in *Mississippi Code Title 49*, Section 49–17–17(d) and Section 49–17–17(h) (Appendix A–9). As evidence of the adequacy of MDEQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Mississippi on April 19, 2016, outlining 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to Mississippi can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0424. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, MDEQ's grants were finalized and closed out. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under State law has been used to carry out the State's implementation plan and related issues. Mississippi's authority to implement provisions of the State's implementation plan is included in all prehearings and final SIP submittal packages for approval by EPA. EPA has made the preliminary determination that Mississippi has adequate resources for implementation of the 2012 Annual $PM_{2.5}$ NAAQS.

To meet the requirements of section 110(a)(2)(E)(ii), states must comply with the requirements respecting state boards pursuant to section 128 of the Act. Section 128 of the CAA requires that states include provisions in their SIP to address conflicts of interest for state boards or bodies that oversee CAA permits and enforcement orders and disclosure of conflict of interest requirements. Specifically, CAA section 128(a)(1) necessitates that each SIP shall require that at least a majority of any board or body which approves permits or enforcement orders shall be subject to the described public interest service and income restrictions therein. Subsection 128(a)(2) requires that the members of any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

To meet its section 110(a)(2)(E)(ii) obligations for the 2012 Annual $PM_{2.5}$ NAAQS, Mississippi's infrastructure SIP submission cites Article 4, Section 109 of the Mississippi Constitution and portions of Mississippi Code sections 25–4–25, –27, –29, –103, –105, and –109. These provisions were incorporated into the Mississippi SIP to meet CAA section 128 requirements in EPA's final action for the 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIPs. *See* 78 FR 20793.[22] In this same final action for the 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIPs (78 FR 20793), EPA disapproved Mississippi's October 11, 2012, submission as not satisfying the significant portion of income requirement of section 128(a)(1).

Based upon the review of the above cited laws and provisions, EPA is proposing to approve the section 110(a)(2)(E)(ii) portions of the infrastructure SIP submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2) for the 2012 Annual $PM_{2.5}$ NAAQS. EPA is proposing to disapprove the section 110(a)(2)(E)(ii) portion of the infrastructure SIP submission as it pertains to compliance with the significant portion of income requirement of section 128(a)(1) for the 2012 Annual $PM_{2.5}$ NAAQS.[23]

With respect to the significant portion of income requirement of section 128(a)(1), the provisions included in the infrastructure SIP submission do not preclude at least a majority of the members of the Mississippi Boards [24]

[20] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

[21] For more information on the structural PSD program requirements that are relevant to EPA's review infrastructure SIP in connection with the current PSD-related infrastructure requirements, see the Technical Support Document in the docket for today's rulemaking.

[22] This final action pertained to Mississippi's October 11, 2012, infrastructure SIP submission and only addressed compliance with 110(a)(2)(E)(ii) respecting CAA section 128 requirements.

[23] EPA took similar action with respect to Mississippi's section 110(a)(2)(E)(ii) submission for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, and 2008 8-hour Ozone NAAQS.

[24] The Mississippi Commission on Environmental Quality issues and supervises enforcement orders, and the Mississippi Department of Environmental

from receiving a significant portion of their income from persons subject to permits or enforcement orders issued by such Boards. While the submitted laws and provisions preclude members of the Mississippi Boards from certain types of income (*e.g.*, contracts with State or political subdivisions thereof, or income obtained through the use of his or her public office or obtained to influence a decision of the Mississippi Boards), they do not preclude a majority of members of the Mississippi Boards from deriving any significant portion of their income from persons subject to permits or enforcement orders so long as that income is not derived from one of the proscribed methods described in the laws and provisions submitted by the State. To date, because a majority of board members may still derive a significant portion of income from persons subject to permits or enforcement orders issued by the Mississippi Boards, the Mississippi SIP does not meet the section 128(a)(1) majority requirements respecting significant portion of income, and as such, EPA is proposing to disapprove the State's 110(a)(2)(E)(ii) submission as it relates only to this portion of section 128(a)(1).

Accordingly, EPA is proposing to approve the section 110(a)(2)(E)(ii) submission as it relates to the public interest requirements of section 128(a)(1) and the conflict of interest disclosure provisions of section 128(a)(2) and proposing to disapprove Mississippi's section 110(a)(2)(E)(ii) submission as it pertains to compliance with the significant portion of income requirement of section 128(a)(1) for the 2012 Annual $PM_{2.5}$ NAAQS.

7. 110(a)(2)(F): *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. Section APC–S–2, *Permit Regulations for the Construction and/or Operation of Air Emissions Equipment*, establishes requirements for emissions compliance testing utilizing emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. MDEQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. *Mississippi Code 49*, Section 49–17–21 (Appendix A–9) provides MDEQ with the authority to require the maintenance of records related to the operation of air contaminant sources and any authorized representative of the Commission may examine and copy any such records or memoranda pertaining to the operation of such contaminant source. Section APC–S–2 lists requirements for compliance testing and reporting that is required to be included in any MDEQ air pollution permit and requires that copies of records relating to the operation of air contamination sources be submitted to the Permit Board as required by the permit or upon request. Section APC–S–1, *Air Emission Regulations For The Prevention, Abatement, and Control of Air Contaminants*, authorizes source owners or operators to use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications. EPA is unaware of any provision preventing the use of credible evidence in the Mississippi SIP.

Additionally, Mississippi is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—NO_X, SO_2, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Mississippi made its latest update to the 2012 NEI on January 9, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html*. EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 Annual $PM_{2.5}$ NAAQS.

8. 110(a)(2)(G): *Emergency powers:* This section of the CAA requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. *Mississippi Code Title 49* (Appendix A–9) and Section APC–S–3, *Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes*, identify air pollution emergency episodes and preplanned abatement strategies. Specifically, Section APC–S–3 authorizes the MDEQ Director, once it has been determined that an Air Pollution Emergency Episode condition exists at one or more monitoring sites solely because of emissions from a limited number of sources, to order source(s) to put into effect the emission control programs which are applicable for each episode stage. Section APC–S–3 also lists regulations to prevent the excessive buildup of air pollutants during air pollution episodes. Also, *Mississippi Code Title 49*, Section 49–17–27 (Appendix A–9), states that in the event an emergency is found to exist by the Mississippi Commission on Environmental Quality, it may issue an emergency order as circumstances may require. Emergency situations include those which create an imminent and substantial endangerment threatening the public health and safety or the lives and property of the people in Mississippi. EPA has made the preliminary determination that Mississippi's SIP is adequate for emergency powers related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H): *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. MDEQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Mississippi. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. *Mississippi Code Title 49*, Section 49–17–17(h) (Appendix A–9), provides MDEQ with the statutory authority to adopt, modify or repeal and promulgate ambient air and water quality standards and emissions standards for the State. As such, the State has the authority to revise the SIP to accommodate changes to NAAQS and revise the SIP if the EPA Administrator finds the plan to be substantially inadequate to attain the NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

10. 110(a)(2)(J): *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Mississippi's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility protection. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. Section APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality*, and *Mississippi Code Title 49*, Section 49–17–17(c) (Appendix A–9), along with the State's various implementations plans, such as the State's Regional Haze Implementation Plan, provide for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers whose jurisdictions might be affected by SIP development activities. Mississippi adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires MDEQ to consult with Federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate that the State meets applicable requirements related to consultation with government officials for the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): These requirements are met through regulation APC–S–3, *Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes*, which requires that MDEQ notify the public of any air pollution alert, warning, or emergency. The MDEQ Web site also provides air quality summary data, air quality index reports and links to more information regarding public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting all the current structural requirements of part C of title I of the CAA. As discussed in more detail above under the section discussing 110(a)(2)(C), Mississippi's SIP contains provisions for the State's PSD program that reflect the relevant SIP revisions pertaining to the required structural PSD requirements to satisfy the requirement of the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Mississippi's SIP and practices are adequate for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. MDEQ referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so MDEQ does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that Mississippi's infrastructure SIP submission related to the 2012 Annual $PM_{2.5}$ NAAQS is approvable for the visibility protection element of section 110(a)(2)(J) and that Mississippi does not need to rely on its regional haze program to address this element.

11. 110(a)(2)(K): *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. Sections APC–S–2, V. B.—*Permit Regulation for the Construction and/or Operation of Air Emissions Equipment*, and APC–S–5, *Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality*, specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models*, as incorporated into the Mississippi SIP. Also of note, *Mississippi Code Title* 49, Section 49–17–17(e) (Appendix A–9),[25] authorizes MDEQ to "encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air and water quality and pollution and causes, prevention, control and abatement as it may deem advisable and necessary for the discharge of its duties under [the Mississippi air and water pollution control law]." These standards

Quality Permit Board has the authority to issue, modify, revoke or deny permits.

[25] *Mississippi Code Title 49* is referenced in the State's infrastructure SIP submissions as "Appendix A–9." As discussed above, unless otherwise indicated herein, portions of the Mississippi Code referenced in this proposal are not incorporated into the SIP.

demonstrate that Mississippi has the authority to perform air quality monitoring and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. Additionally, Mississippi supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the southeastern states. Taken as a whole, Mississippi's air quality regulations and practices demonstrate that MDEQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L): *Permitting fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Mississippi's *Mississippi Code Title* 49, Section 49–2–9(c) (Appendix A–9), authorizes MDEQ to apply for, receive, and expend Federal or State funds in order to operate its air programs. Mississippi SIP *Mississippi Code Title* 49, Section 49–17–30 (Appendix A–9), provides for the assessment of title V permit fees to cover the reasonable cost of reviewing and acting upon air permitting activities in the State including title V, PSD and NNSR permits. *Mississippi Code Title 49,* Section 49–17–14 (Appendix A–9), allows MDEQ to expend or utilize monies in the Mississippi Air Operating Permit Program Fee Trust Fund to pay all reasonable direct and indirect costs associated with the development and administration of the title V program and the PSD and NNSR permitting programs. The Mississippi Air Operating Permit Program Fee Trust Fund consists of State legislative appropriations, Federal grant funds and title V fees. Additionally, Mississippi has a federally-approved title V operating permit program at Section APC–S–6 [26] that covers the implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Mississippi adequately provides for permitting fees related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

13. 110(a)(2)(M): *Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. *Mississippi Code Title 49,* Sections 49–17–17(c) 49–17–19(b) (Appendix A–9) requires that MDEQ notify the public (including local political subdivisions) of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Additionally, MDEQ works closely with local political subdivisions during the development of its transportation conformity SIP and regional haze SIP. EPA has made the preliminary determination that Mississippi's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS.

V. Proposed Action

With the exception of interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility protection requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), and the state board majority requirements respecting the significant portion of income of section 110(a)(2)(E)(ii), EPA is proposing to approve Mississippi's December 11, 2015, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve these portions of Mississippi's infrastructure SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS because these aspects of the submission are consistent with section 110 of the CAA.

[26] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

With regard to the state board majority requirements respecting significant portion of income, EPA is proposing to disapprove Mississippi's December 11, 2015, infrastructure submission.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of a CAA Part D Plan or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP call) starts a sanctions clock. The portion of section 110(a)(2)(E)(ii) provisions (the provisions being proposed for disapproval in this notice) were not submitted to meet requirements for Part D or a SIP call, and therefore, if EPA takes final action to disapprove this submittal, no sanctions will be triggered. However, if this disapproval action is finalized, that final action will trigger the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiency, and EPA approves the plan or plan revision before EPA promulgates such FIP.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 26, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–13601 Filed 6–7–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 13–49; Report No. 3045]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding by James Arden Barnett, Jr., Esq., on behalf of Global Automakers, Inc., Ari Q. Fitzgerald, on behalf of Alliance of Automobile Manufacturers, and Stephen E. Coran, on behalf of The Wireless Internet Service Providers Association.

DATES: Oppositions to the Petitions must be filed on or before June 23, 2016. Replies to an opposition must be filed on or before July 5, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Aole Wilkins, Policy and Rules Division, Office of Engineering and Technology, (202) 418–2406, email: *Aole.Wilkins@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3045, released May 20, 2016. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *http://apps.fcc.gov/ecfs/.* The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: In the Matter of Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band, published at 81 FR 19896, April 6, 2016, and FCC 16–24. This *Notice* is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1).

Number of Petitions Filed: 3.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer. Office of the Secretary.

[FR Doc. 2016–13485 Filed 6–7–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

Federal Railroad Administration

49 CFR Parts 240 and 242

[Docket Numbers FMCSA–2015–0419 and FRA–2015–0111]

RIN 2126–AB88 and 2130–AC52

Evaluation of Safety Sensitive Personnel for Moderate-to-Severe Obstructive Sleep Apnea

AGENCY: Federal Motor Carrier Safety Administration (FMCSA) and Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Advance Notice of Proposed Rulemaking (ANPRM); extension of comment period.

SUMMARY: FMCSA and FRA published an ANPRM on March 10, 2016, requesting certain information regarding the evaluation of safety sensitive personnel for moderate-to-severe obstructive sleep apnea (OSA). The comment period for the ANPRM is extended from June 8, 2016, to July 8, 2016.

DATES: The comment period for the ANPRM published in the **Federal Register** on March 10, 2016 (81 FR 12642) is extended. Comments on the ANPRM are due by July 8, 2016.

ADDRESSES: You may submit comments identified by either of the docket numbers listed at the beginning of this document using any one of the following methods:

Federal Rulemaking Portal: www.regulations.gov.

Fax: 202–493–2251.

Mail: Docket Services (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" heading under the **SUPPLEMENTARY INFORMATION** section below for instructions regarding submitting comments.

FOR FURTHER INFORMATION CONTACT: *FMCSA:* Ms. Christine Hydock, Chief of the Medical Programs Division, FMCSA, 1200 New Jersey Ave SE., Washington,

DC 20590–0001, by telephone at 202–366–4001, or by email at *fmcsamedical@dot.gov.*

FRA: Dr. Bernard Arseneau, Medical Director, Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at 202–493–6232, or by email at *Bernard.arseneau@dot.gov.*

If you have questions about viewing or submitting material to the docket, call Ms. Cheryl Collins, Dockets Manager, Docket Services, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

FMCSA and FRA encourage you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this document (FMCSA–2015–0419 or FRA–2015–0111), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA and FRA recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and enter either docket number, ''FMCSA–2015–0419'' or ''FRA–2015–0111'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA and FRA will consider all comments and material received during the comment period and may change this document based on your comments.

Viewing Comments and Documents

To view comments, as well as documents available in the docket, go to *http://www.regulations.gov* and insert the docket number, ''FMCSA–2015–0419'' or ''FRA–2015–0111'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its potential rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Background

On May 18, 2016, the Owner Operator Independent Drivers Association (OOIDA) requested an extension to the comment period (Docket ID: FMCSA–2015–0419–0348) in order to review the results from the American Transportation Research Institute (ATRI) Commercial Driver Survey on Sleep Apnea Issues (*http://atri-online.org/2016/04/14/atri-launches-commercial-driver-survey-on-sleep-apnea-issues/*). In its request, OOIDA stated that the survey will provide a comprehensive look at the impact of OSA screening and treatment within the motor carrier community that is beyond the information which any one carrier can provide. Furthermore, with this data in hand, OOIDA will be able to present a better analysis of the information requested by the ANPRM. ATRI released its survey results on Thursday, May 26, 2016.

FMCSA and FRA believe that other potential commenters to this rulemaking will benefit from an extension as well. Accordingly, FMCSA and FRA extend the comment period for all comments on the ANPRM and its related documents to July 8, 2016.

Issued under the authority of delegations in 49 CFR 1.87(f) and (i) and 49 CFR 1.89(a), respectively: June 2, 2016.

Larry W. Minor,

Associate Administrator for Policy, Federal Motor Carrier Safety Administration.

Robert C. Lauby,

Associate Administrator for Railroad Safety & Chief Safety Officer, Federal Railroad Administration.

[FR Doc. 2016–13564 Filed 6–7–16; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 81, No. 110
Wednesday, June 8, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0036]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Mangoes From India Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of mangoes from India into the continental United States.

DATES: We will consider all comments that we receive on or before August 8, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2016-0036.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0036* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of mangoes from India, contact Dr. Nicole Russo, Assistant Director, Regulatory Coordination and Compliance, PHP, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 851–2159. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Mangoes From India Into the Continental United States.

OMB Control Number: 0579–0312.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of fruits and vegetables into the United States from certain parts of the world as provided in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–75).

Under § 319.56–46 of the regulations, APHIS allows the importation of mangoes from India into the continental United States under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, one of which is a phytosanitary certificate. As a condition of entry, the mangoes must undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declaration statements providing specific information regarding the treatment and inspection of the mangoes and the orchards in which they are grown. The additional information collection activities include a preclearance workplan, trust fund agreement, compliance agreement, monitoring of inspections, and recordkeeping.

Since the last approval of this collection by the Office of Management and Budget (OMB), we have added activities that were previously not accounted for, such as an orchard inspection agreement between APHIS and the national plant protection organization (NPPO) of India, package labeling identifying the treatment facility and date of treatment, treatment certification, and denial/withdrawal of facility certification. We have also revised the estimates of burden associated with this information collection.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.016 hours per response.

Respondents: Importers of mangoes and the NPPO of India.

Estimated annual number of respondents: 76.

Estimated annual number of responses per respondent: 1,233.

Estimated annual number of responses: 93,713.

Estimated total annual burden on respondents: 1,509 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–13567 Filed 6–7–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability (NOFA); Cotton Ginning Cost-Share (CGCS) Program Payments to Cotton Producers

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the availability of cost-share funds to certain cotton producers of the United States, specifically for the 2015 cotton crop. Eligible CGCS participants will receive a one-time payment, calculated based on a cost-share not to exceed 40 percent of calculated ginning costs by region, the number of cotton acres that were planted, including failed acreage, for the 2015 crop year, and the percentage of share the participant had in the cotton. Similar to other Commodity Credit Corporation (CCC) programs, certain eligibility requirements apply, such as a $40,000 per individual or entity payment limit and a requirement that each participant's 3-year average adjusted gross income (AGI) be $900,000 or less. CGCS Program payments will be made to help the domestic cotton industry find new and improved ways to market cotton.

DATES: Application period: June 20, 2016 through August 5, 2016.

FOR FURTHER INFORMATION CONTACT: Kelly Hereth, (202) 720–0448.

SUPPLEMENTARY INFORMATION:

Background

U.S. upland and extra-long staple (ELS) cotton producers are required to gin and bale cotton before either of the components of cotton (lint or seed) can be marketed, as there is no commerce in un-ginned bales. Approximately 13 million bales were ginned for the 2015 cotton crop year. There exists, however, 2014 cotton production carryover (ginned cotton inventory that has not yet been sold), as well as the 2015 cotton crop production some which has not been marketed. While the payments are based on ginning costs, the intended effect of the CGCS Program is to aid the broader marketing chain associated with cotton. For example, there is a direct cost to cotton producers associated with ginning for improved bale packing and storage to meet the ever increasing quality demands of the fiber industry, and there is a large domestic market for the cotton seed extracted during the ginning process.

The state of the market has limited the ability of cotton producers to expand domestic markets, develop new and additional markets, maintain existing markets that would have otherwise shrunk and marketing facilities, and increase the uses for cotton. The Commodity Credit Corporation Charter Act (15 U.S.C. 714c(e)) includes authority for CCC to use its general powers to increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

The ginning of cotton is necessary prior to marketing the lint for fiber or the seed for oil or feed; therefore CCC is using its general authority to aid in the expansion and maintenance of domestic markets for cotton. Increased domestic consumption and uses for cotton as a result of the CGCS Program payments to cotton producers, based on cotton ginning costs, will aid more than just the farmers; as the cotton gins, cooperatives, marketers, cottonseed crushers, and other marketing facilities will indirectly benefit also.

CGCS is being done as a NOFA, as opposed to a regulation, because it is a one-time payment to aid expansion and creation of new markets for cotton. Also, CGCS is based upon 2015 cotton crop acres which are already known to FSA through previously submitted acreage reports. Accordingly, there is no benefit for public comment on CGCS.

The Farm Service Agency (FSA) will administer the CGCS Program on behalf of CCC, using CCC funds.

CGCS Description

CGCS is a one-time payment to cotton producers. CGCS will be available to producers of upland and extra-long staple (ELS) cotton. CGCS payments will be available to those cotton producers who had a share in the 2015 cotton acres that were planted, including failed cotton acreage, and reported to FSA, including landowners who had a share interest and risk in the cotton crop and incurred ginning costs for the 2015 cotton crop.

FSA will make approximately $300 million in CGCS payments to cotton producers. The maximum aggregate payment amount a person or legal entity is eligible for under CGCS is $40,000. The funds announced in this NOFA are not subject to sequestration.

Most 2015 cotton crop producers have already submitted the required form FSA–578, "Report of Acreage", to FSA, as part of their participation in various FSA and CCC programs. The regulation in 7 CFR part 718 requires producers to report for various commodities, including the number of cotton acres that were planted, including failed acres, in the United States for their 2015 cotton crop and their percentage share of the reported 2015 cotton crop acreage. Accordingly, FSA has already acquired this information as previously reported to FSA on a FSA–578 or a crop acreage report to their crop insurance agent (both reports are referred to in this NOFA as the acreage report). If there were any errors in the previously submitted acreage report, the producer may go through the established FSA process to correct the reported information. Any such requests for correction are subject to review and require approval by FSA through the established process before they are accepted. Because FSA already possesses 2015 cotton acreage report data, we know who is potentially eligible to apply for the CGCS Program and will mail the application to such applicants. Applicants may also apply through an FSA county office.

Payment Limits, Eligible Persons, and Legal Entities

CGCS payments are limited to $40,000 per person or legal entity.

A person or legal entity is ineligible for payments if the person's or legal entity's AGI for the applicable compliance program year is more than $900,000. If a person with an indirect interest in a legal entity has AGI of more than $900,000, the CGCS payments subject to AGI compliance provisions to the legal entity will be reduced as calculated based on the percent interest of the person in the legal entity receiving the payment. The relevant years used to calculate AGI for CGCS are the 2011, 2012, and 2013 tax years. As with other FSA and CCC programs, AGI will be calculated based on the average income for the 3 taxable years preceding the most immediately preceding complete taxable year for which benefits are requested.

In addition to having a share in cotton planted in 2015, to be eligible for a CGCS Program payment, each applicant is required to be a person or legal entity

who was actively engaged in farming in 2015 and otherwise eligible for payment, as specified in 7 CFR part 1400, and who complies with requirements including, but not limited to, those pertaining to highly erodible land conservation and wetland conservation provisions (commonly referred to as the conservation compliance provisions) specified in 7 CFR part 12.

Foreign persons are not eligible for payments. Federal, State, and local governments are not eligible for CGCS payments.

Appeal regulations specified in 7 CFR parts 11 and 780 apply. FSA program requirements and determinations that are not in response to, or result from, an individual disputable set of facts in an individual participant's application for assistance are not matters that can be appealed.

Payment eligibility, payment limits, and AGI limits are the same for CGCS Program payments as they have been for other FSA and CCC programs, for example the Cotton Transition Assistance Program (see 7 CFR parts 1400 and 1412).

Payment Calculation

The CGCS payment will be calculated as follows:

acres × share × CGCS payment rate

Acres are the number of 2015 cotton crop acres (both upland and ELS) in which the applicant had an interest, as reported on their acreage report as planted (including failed acres, but not prevented planted acres).

Share is the producer's or landowner's share of such acres.

As shown in Table 1, the CGCS payment rate is 40 percent times the ginning cost. The ginning cost is the calculated average cost of ginning per acre in the production region. The applicable production region is the State in which the 2015 cotton crop (upland and ELS cotton) was planted (not where the farm operation is located).

There are four production regions, consistent with the U.S. cotton industry's longstanding designation. The per-acre regional rates are defined in Table 1. Cotton acreage planted in 2015 in any state not listed in Table 1, will receive the regional rate based on where the 2015 cotton acres are located, as determined by the Deputy Administrator.

TABLE 1—COTTON PRODUCTION REGIONS

Region	States	Costs of ginning per acre	CGCS payment rate [1]
Southeast	Alabama, Florida, Georgia, North Carolina, South Carolina, Virginia	$118.60	$47.44
Mid-South	Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, Tennessee	140.65	56.26
Southwest	Kansas, Oklahoma, Texas	92.43	36.97
West	Arizona, California, New Mexico	243.53	97.41

[1] The CGCS Payment Rate is 40 percent times the regional rate.

To develop the costs in Table 1, FSA used the USDA Economic Research Service's calculation of cotton ginning costs, which is based on the Agricultural Resource Management Survey (ARMS). The data is based on a large survey of cotton producers in 2007 and was updated through 2014 using several indices that reflect annual changes in ginning costs. The per planted acre ginning costs were converted to regional averages weighted by each State's share of regional plantings during the most recent 5 years. In the ARMS data, no distinction is made between ginning costs for upland and ELS cotton, so the same rate will be applied to both varieties of cotton.

For example, an applicant has 1,000 acres of upland cotton located in Texas and 500 acres of ELS cotton in New Mexico, and the applicant has 100 percent interest in all of the cotton reported for 2015 for the farm. Even though the farm operation is located in Texas, the applicable CGCS payment rate is based on where the cotton is planted. Therefore, for the acres located in Texas the CGCS payment rate is $36.97, and for the cotton acreage located in New Mexico, the CGCS payment rate is $97.41 (as shown in Table 1). Therefore, the result of the CGCS calculation would be $85,675 ((1,000 cotton acres in Texas × $36.97 per acre × 100 percent share) + (500 acres in New Mexico × $97.41 × 100 percent share)), but the CGCS payment to this applicant would be reduced to $40,000 because the CGCS payment limit is $40,000 per person or legal entity.

Application and Eligible Applicants

To apply for the CGCS Program, each applicant must submit a complete and valid CGCS application (CCC–882 form) to their recording FSA county office either in person, by mail, or by electronic means, including email and facsimile. The application period is from June 20, 2016, through August 5, 2016. CGCS applications must be received by FSA by August 5, 2016. Applicants may revise their application and re-submit it to FSA during the application period; the revised CGCS application must be received by FSA by August 5, 2016. Any application received by FSA after August 5, 2016, will not be considered and will be ineligible for any CGCS payment. The application must include, but is not limited to, the number of 2015 planted acres of cotton (upland and ELS cotton) on the farm, the farm serial number, and tract number of the farm where the cotton acreage was reported. The applicant will be required to submit evidence upon request, such as seed receipts, custom harvesting receipts, or bale gin lists, to substantiate either the claimed share interest in the cotton or the number of cotton acres reported for the 2015 crop year.

In order to be eligible for CGCS, applicants are required to have reported their 2015 crop year planted cotton, including failed acreage, to FSA using the FSA–578 acreage report. Only the number of cotton acres reported on the FSA–578 acreage report, and the producer's share in the planted, including failed, cotton acreage for the 2015 crop year will be eligible for consideration for a CGCS payment. In the event that there are determined acres of planted, including failed, cotton (upland and ELS cotton) crop acreage for 2015, as verified by FSA in carrying out acreage reporting compliance activities, then determined acres will be used in place of the reported acres. (Standard FSA acreage report compliance activities include verifying the number of reported acres; the results are referred to as "determined acres.")

The applicant's share interest in cotton acres on a CGCS application cannot be greater than the share interest in cotton acres as reported on the

acreage report. FSA will verify and confirm the applicant's share interest in cotton acres reported on the CGCS application by comparing it to the applicant's share interest in the cropland as reported on that farm's acreage report for the 2015 crop year. For example, if a farm has 50 acres of cotton and two producers report equal shares of the 50 acres of cotton, each must each have a 100 percent share interest in at least 25 cotton acres (or 50 percent share in the 50 reported cotton acres) reported on the farm acreage report for the 2015 crop year to support their reported share of cotton acres on that farm.

If an eligible applicant has sold or leased a farm that produced cotton in 2015, the applicant may assign the CGCS payment by completing form CCC–36. However, under no circumstances will CCC pay both the 2015 producer and the 2016 producer of such cotton.

As noted above, if there are any corrections required for acreage reports, they may be made, however corrections related to upland or ELS cotton acres or shares must be received by FSA by August 5, 2016, the CGCS Program application deadline in order to be used to calculate the CGCS payment. Any correction to 2015 cotton crop acres made to the acreage report after August 5, 2016, is not eligible to be considered for CGCS.

Process for Evaluation of CGCS Applications and Approval of Payments

FSA will review each CCC–882 application to determine eligibility by verifying that the application is complete and the number of cotton acres the applicant certified on the application for the 2015 crop year is the same as reported on the FSA–578 acreage report.

When there are multiple eligible applicants for a farm, FSA will approve an application for the CGCS Program and approve the division of payment when all the following, as applicable, occur or have been determined to have occurred:

(1) Each landlord, tenant, and sharecropper that apply sign their own CGCS Program application, and their combined payment shares recorded on the application when added together cannot exceed 100 percent of the shares recorded on the acreage report for the 2015 cotton crop for the farm, and neither the landlord, tenant, nor sharecropper can receive 100 percent of CGCS payment for the farm;

(2) CCC determines that the interests of tenants and sharecroppers are being protected by confirming the shares are consistent with the acreage report;

(3) The applicant, upon the FSA county office committee's request, if necessary, will provide a copy of the lease agreement; and

(4) CCC determines that the payment shares do not circumvent either the provisions of this NOFA or the provisions of 7 CFR part 1400.

The result of an approved application will be a one-time payment, consistent with the terms specified in this NOFA and the payment application. All applications are subject to the approval by FSA on behalf of CCC, and FSA will not approve ineligible applications.

Provisions Requiring Refund to FSA

In the event that any application for a CGCS payment resulted from erroneous information or a miscalculation, the payment will be recalculated and the participant must refund any excess to FSA with interest to be calculated from the date of the disbursement to the participant. If for whatever reason FSA determines that the applicant misrepresented either the acreage or share of cotton acreage or both, or if the CGCS payment would exceed the participant's payment based upon correct acreage and share, the application will be disapproved and the full CGCS payment for that crop and participant will be required to be refunded to FSA with interest from date of disbursement. If any corrections to the 2015 cotton crop acres or shares are made to the acreage report after August 5, 2016, and would have resulted in a lower CGCS payment, the applicant will be required to refund the difference with interest from date of disbursement.

The liability of anyone for any penalty or sanction resulting from a CGCS application, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

Paperwork Reduction Act Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), OMB approved an emergency information collection request on CGCS so FSA can begin the application period upon publication of this NOFA.

Environmental Review

Because this is a one-time payment, there are no impacts to the human environment as defined by NEPA and, as such, no Environmental Assessment or Environmental Impact Statement will be prepared.

Val Dolcini,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2016–13672 Filed 6–7–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Submission for OMB Review; Comment Request

June 2, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 8, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: 7 CFR 1437, Noninsured Disaster Assistance Program and Report of Acreage.

OMB Control Number: 0560–0175.

Summary Of Collection: The Noninsured Crop Assistance Program (NAP) is authorized under 7 U.S.C. 7333 and implemented under regulations issued at 7 CFR part 1437. NAP is administered by the Farm Service Agency (FSA) for the Commodity Credit Corporation (CCC) and is carried out by FSA State and County committees. The purpose of NAP is to help manage and reduce production risks faced by producers of eligible commercial crops or other agricultural commodities during a coverage period. NAP reduces financial losses that occur when natural disasters (damaging weather or adverse natural occurrence that is an eligible cause of loss) cause a loss of expected production or actual value for value loss crops, or where producers are prevented from planting an eligible crop because of an eligible cause of loss in a coverage period. NAP provides assistance for losses of floriculture, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), industrial crops, and sea oats sea grass, biomass, sweet sorghum and biomass sorghum. FSA will collect information using several forms.

Need and Use of the Information: The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing regulations. Producers must annually: (1) Request NAP coverage by completing an application for coverage and paying a service fee by the CCC-established application closing date; (2) file a current crop-year report of acreage for the covered crop or commodity; and (3) certify harvest production of each covered crop or commodity. The information collected allows CCC to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C. Section 1508 is not available. Eligible crops including commercial crops and agricultural commodities (except livestock) that are produced for food or fiber or specifically included by statute, including floriculture, ornamental nursery, Christmas trees, turfgrass sod, seed crops, aquaculture (including ornamental fish), industrial crops, and sea grass sea oats, biomass, sweet sorghum and biomass sorghum.

Description of Respondents: Farms; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 72,294.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Monthly; Annually.

Total Burden Hours: 933,528.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–13538 Filed 6–7–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes-Ochoco Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco Resource Advisory Committee (RAC) will meet in Bend, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/detail/deschutes/working together/advisorycommittees.*

DATES: The meeting will be held June 23, 2016, at 9:00 a.m. to 5:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Central Oregon Intergovernmental Council's Office, 334 Northeast Hawthorne Avenue, Bend, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Deschutes National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sean Ferrell, RAC Coordinator, by phone at 541–383–5576 or via email at *saferrell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Discuss the goals and objectives of the RAC;
2. Review projects proposals; and
3. Make project recommendations for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 13, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Sean Ferrell, RAC Coordinator, Deschutes National Forest Supervisor's Office, 63095 Deschutes Market Road, Bend, Oregon 97701; by email to *saferrell@fs.fed.us,* or via facsimile to 541–383–5531.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 1, 2016.

A. Shane Jeffries,

Deschutes National Forest, Deputy Forest Supervisor.

[FR Doc. 2016–13560 Filed 6–7–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the

Rural Utilities Service, an agency of the United States Department of Agriculture's (USDA), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492, FAX: (202) 720–4120. Email: *Thomas.Dickson@wdc.usda.gov*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for revision.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology. Comments may be sent to Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 690–4492. Email: *Thomas.Dickson@wdc.usda.gov.*

Title: Special Evaluation Assistance for Rural Communities and Household Program (SEARCH).

OMB Control Number: 0572–0146.

Type of Request: Extension of currently approved package.

Abstract: The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926 (a)(2)). The amendment created a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants.

Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in sections 306(a)(1), 306(a)(2) and 306(a)(24) of the CONACT.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per responses.

Estimated Number of Respondents: 25.

Estimated Number of Total Annual Responses per Respondents: 310.

Estimated Total Annual Burden on Respondents: 635.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853, FAX: (202) 720–4120. Email: *MaryPat.Daskal@wdc.usda.gov.*

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 2, 2016.

Brandon McBride,

Administrator, Rural Utilities Service .

[FR Doc. 2016–13543 Filed 6–7–16; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Advisory Committees Expiration

AGENCY: United States Commission on Civil Rights.

ACTION: Solicitation of applications.

SUMMARY: Because the terms of the members of the North Carolina Advisory Committee are expiring on July 24, 2016, the United States Commission on Civil Rights hereby invites any individual who is eligible to be appointed to apply. The memberships are exclusively for the North Carolina Advisory Committee, and applicants must be residents of North Carolina to be considered. Letters of interest must be received by the Southern Regional Office of the U.S. Commission on Civil Rights no later than June 24, 2016. Letters of interest must be sent to the address listed below.

Because the terms of the members of the Missouri Advisory Committee are expiring on July 24, 2016, the United States Commission on Civil Rights hereby invites any individual who is eligible to be appointed to apply. The memberships are exclusively for the Missouri Advisory Committee, and applicants must be residents of Missouri to be considered. Letters of interest must be received by the Central Regional Office of the U.S. Commission on Civil Rights no later than June 24, 2016. Letters of interest must be sent to the address listed below.

Because the terms of the members of the Arizona Advisory Committee are expiring on July 24, 2016, the United States Commission on Civil Rights hereby invites any individual who is eligible to be appointed to apply. The memberships are exclusively for the Arizona Advisory Committee, and applicants must be residents of the Arizona to be considered. Letters of interest must be received by the Western Regional Office of the U.S. Commission on Civil Rights no later than June 24, 2016. Letters of interest must be sent to the address listed below.

Because the terms of the members of the Oklahoma Advisory Committee are expiring on August 14, 2016, the United States Commission on Civil Rights hereby invites any individual who is eligible to be appointed to apply. The memberships are exclusively for the Oklahoma Advisory Committee, and applicants must be residents of the Oklahoma to be considered. Letters of interest must be received by the Central Regional Office of the U.S. Commission on Civil Rights no later than July 14, 2016. Letters of interest must be sent to the address listed below.

DATES: Letters of interest for membership on the North Carolina Advisory Committee should be received no later than June 24, 2016.

Letters of interest for membership on the Missouri Advisory Committee should be received no later than June 24, 2016.

Letters of interest for membership on the Arizona Advisory Committee should be received no later than June 24, 2016.

Letters of interest for membership on the Oklahoma Advisory Committee should be received no later than July 14, 2016.

ADDRESSES: Send letters of interest for the North Carolina Advisory Committee to: U.S. Commission on Civil Rights, Southern Regional Office, 61 Forsyth Street SW., Suite 1840T, Atlanta, GA 30303. Letter can also be sent via email to *jhinton@usccr.gov.*

Send letters of interest for the Missouri Advisory Committee to: U.S. Commission on Civil Rights, Central Regional Office, 400 State Avenue, Suite 908, Missouri City, KS 66101. Letter can also be sent via email to *csanders@usccr.gov.*

Send letters of interest for the Arizona Advisory Committee to: U.S. Commission on Civil Rights, Western Regional Office, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Letter can also be sent via email to *atrevino@usccr.gov.*

Send letters of interest for the Oklahoma Advisory Committee to: U.S. Commission on Civil Rights, Western Regional Office, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Letter can also be sent via email to *atrevino@usccr.gov.*

FOR FURTHER INFORMATION CONTACT: David Mussatt, Chief, Regional Programs Unit, 55 W. Monroe St., Suite 410, Chicago, IL 60603, (312) 353–8311. Questions can also be directed via email to *dmussatt@usccr.gov.*

SUPPLEMENTARY INFORMATION: The North Carolina, Missouri, Arizona, and Oklahoma Advisory Committees are statutorily mandated federal advisory committees of the U.S. Commission on Civil Rights pursuant to 42 U.S.C. 1975a. Under the charter for the advisory committees, the purpose is to provide advice and recommendations to the U.S. Commission on Civil Rights (Commission) on a broad range of civil rights matters in its respective state that pertain to alleged deprivations of voting rights or discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or the administration of justice. Advisory committees also provide assistance to the Commission in its statutory obligation to serve as a national clearinghouse for civil rights information.

Each advisory committee consists of not more than 19 members, each of whom will serve a four-year term. Members serve as unpaid Special Government Employees who are reimbursed for travel and expenses. To be eligible to be on an advisory committee, applicants must be residents of the respective state or district, and have demonstrated expertise or interest in civil rights issues.

The Commission is an independent, bipartisan agency established by Congress in 1957 to focus on matters of race, color, religion, sex, age, disability, or national origin. Its mandate is to:

- Investigate complaints from citizens that their voting rights are being deprived,
- study and collect information about discrimination or denials of equal protection under the law,
- appraise federal civil rights laws and policies,
- serve as a national clearinghouse on discrimination laws,
- submit reports and findings and recommendations to the President and the Congress, and
- issue public service announcements to discourage discrimination.

The Commission invites any individual who is eligible to be appointed a member of the North Carolina, Missouri, Arizona, or Oklahoma Advisory Committee covered by this notice to send a letter of interest and a resume to the respective address above.

Dated: June 2, 2016.

David Mussatt

Chief, Regional Programs Unit.

[FR Doc. 2016–13507 Filed 6–7–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a briefing meeting of the New Mexico Advisory Committee to the Commission will convene at 10:00 a.m. (MDT) on Friday, June 24, 2016, at the Main Library, 501 Copper Avenue NW., Albuquerque, NM 87102. The purpose of the briefing meeting is to explore the topic of Elder Abuse. The Briefing topics will include elder care services, non or limited access to care that may be impacted by finances, legal services, and structure of services. The New Mexico Advisory Committee will hear from individuals, advocacy groups, community organizations, and representatives of local, state, and Federal agencies. A planning meeting will convene at 6:00 p.m. (MDT) on Thursday, June 23, 2016, at a location that is TBD. The purpose of the planning meeting is for the committee to review the agenda and procedures of the next day briefing meeting. .

If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Rocky Mountain Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the briefing so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Monday, July 24. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=264* and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

AGENDA:

Welcome and Introductions
- Sandra Rodriguez, Chair, New Mexico Advisory Commitee
- Malee V. Craft, Regional Director, RMRO–USCCR, Denver, CO

Briefing
- New Mexico Advisory Committee
- Government Officials, Advocates, Experts

DATES: Friday, June 24, 2016 (MDT).

ADDRESSES: Main Library, 501 Copper Avenue NW., Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Malee Craft at *mcraft@usccr.gov,* or 303–866–1040

Dated: Thursday, June 2, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–13508 Filed 6–7–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Missouri Advisory Committee To Discuss Approval of a Report to the Commission Regarding Civil Rights and Police/Community Relations in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Tuesday, June 28, 2016, at 1:00 p.m. CDT for the purpose of discussing approval of a report to the Commission regarding civil rights and police/community interactions in Missouri.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–539–3612, conference ID: 2570459. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur regular charges for calls they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public may comment in advance of the meeting, or at the designated public comment period during the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available at *https://database.faca.gov/committee/meetings.aspx?cid=258*. Click on "meeting details" and "documents" to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov*, or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Introductions

Committee Discussion: Draft report resulting from Committee hearings on Civil Rights and Police/Community Relations in Missouri. (February 23, 2015 St. Louis; August 20, 2015 Kansas City)

Open Comment

Recommendations and Next Steps

DATES: The meeting will be held on Tuesday, June 28, 2016, at 1:00 p.m. CDT.

Public Call Information

Dial: 888–539–3612

Conference ID: 2570459

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov*.

Dated: June 2, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–13506 Filed 6–7–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–535–903]

Circular Welded Carbon-Quality Steel Pipe From Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that circular welded carbon-quality steel pipe (circular welded pipe) from Pakistan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is October 1, 2014, through September 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective: June 8, 2016.

FOR FURTHER INFORMATION CONTACT: David Lindgren, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3870.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on November 17, 2015.[1] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is circular welded pipe from Pakistan. Interested parties filed comments regarding the scope of the investigation, which resulted in one clarification to the scope language and are addressed, in detail, in the Department's Preliminary Scope Decision Memorandum.[3] For a full

[1] *See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less Than Fair Value Investigations*, 80 FR 73708 (November 25, 2015) (*Initiation Notice*).

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, From Gary Taverman, Associate Deputy Assistant Secretary for Enforcement and Compliance, "Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Less Than Fair Value Determination Decision Memorandum," dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[3] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Enforcement and

Continued

description of the scope of this investigation, *see* Appendix I to this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a)–(b) of the Act, the Department has preliminarily relied upon facts otherwise available, with adverse inferences, to assign an estimated weighted-average dumping margin to the sole mandatory respondent International Industries Limited (IIL). For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. We cannot apply the methodology described in section 735(c)(5)(A) of the Act to calculate the "all-others" rate, as the only margin in this preliminary determination was calculated under section 776 of the Act. In cases where no weighted-average dumping margins besides zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, the Department averages the margins calculated in the petition and applies the result to "all-other" entities not individually examined. In this case, however, only one margin was calculated in the petition. Therefore, we assigned as the "all-others" rate the only margin in the Petition, which is 11.80 percent.[4]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/producer	Weighted-average margin (percent)
International Industries Limited	11.80
All-Others	11.80

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Pakistan, as described in the "Scope of the Investigation" section, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average margin, as indicated in the chart above.[5] These suspension of liquidation instructions will remain in effect until further notice.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs may be submitted no later than 30 days from the publication of this preliminary determination in the **Federal Register**.[6] Rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.[7] Parties submitting case briefs and/or rebuttal briefs in this proceeding are encouraged to submit the following in regard to each argument: (1) A statement of the issue, (2) a brief (*i.e.*, no longer than five pages) summary of the argument, and (3) a table of authorities.[8]

The Department also invites parties to comment on the Preliminary Scope Decision Memorandum. Written comments concerning scope issues may be submitted no later than 30 days from the publication of this preliminary determination and should be submitted separately from the briefs. Scope-related comments must be filed on the record of this investigation, as well as the companion antidumping duty investigations of circular welded pipe from the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam and the countervailing duty investigation of circular welded pipe from Pakistan.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request within 30 days of the publication of the preliminary determination in the **Federal Register**.[10] Such requests should include the party's name, address, and telephone number, as well as the number of participants and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case briefs and rebuttal briefs, as well as any requests for a hearing, electronically, using ACCESS.[11] Electronically-filed documents must be successfully received in their entirety via ACCESS no later than 5:00 p.m. Eastern Time by the abovementioned deadlines.[12]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

IIL, the mandatory respondent, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.*, to 135 days after publication of the preliminary determination) and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR

Compliance, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from Pakistan; Scope Comments Decision Memorandum for the Preliminary Determinations," April 1, 2016 (Preliminary Scope Decision Memorandum).

[4] *See Certain Oil Country Tubular Goods From Thailand: Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination*, 79 FR 10487, 10488 (February 25, 2014), and accompanying Preliminary Decision Memorandum, unchanged in *Certain Oil Country Tubular Goods From Thailand: Final Determination of Sales at Less Than Fair Value*, 79 FR 41978, 41979 (July 18, 2014).

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

[6] *See* 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.309(d)(1)–(2).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* Preliminary Scope Decision Memorandum.

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.303(b)(2)(i).

[12] *See* 19 CFR 351.303(b)(1).

351.210(e)(2), from a four-month period to a period not to exceed six months.[13]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, (3) the requesting exporter has requested extension of provisional measures to a period not more than six months, and (4) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[14]

International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission (the ITC) of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine whether or not imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry within 120 days of publication of this preliminary determination or 45 days of publication of our final determination, whichever is later.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (O.D.) not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term "carbon quality" includes products in which:

(a) Iron predominates, by weight, over each of the other contained elements;

(b) the carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Covered products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (API) API–5L specification, may also be covered by the scope of these investigations. In particular, such multi-stenciled merchandise is covered when it meets the physical description set forth above, and also has one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

Standard pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications.

Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications.

Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Products that meet the physical description set forth above but are made to the following nominal outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, are included despite being certified to ASTM mechanical tubing specifications:

O.D. in inches (nominal)	Wall thickness in inches (nominal)	Gage
1.315	0.035	20
1.315	0.047	18
1.315	0.055	17
1.315	0.065	16
1.315	0.072	15
1.315	0.083	14
1.315	0.095	13
1.660	0.055	17
1.660	0.065	16
1.660	0.083	14
1.660	0.095	13
1.660	0.109	12
1.900	0.047	18
1.900	0.055	17
1.900	0.065	16
1.900	0.072	15
1.900	0.095	13
1.900	0.109	12
2.375	0.047	18
2.375	0.055	17
2.375	0.065	16
2.375	0.072	15
2.375	0.095	13
2.375	0.109	12
2.375	0.120	11
2.875	0.109	12
2.875	0.165	8
3.500	0.109	12
3.500	0.165	8
4.000	0.148	9
4.000	0.165	8
4.500	0.203	7

The scope of this investigation does not include:

(a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn, which are defined by standards such as ASTM A178 or ASTM A192;

(b) finished electrical conduit, *i.e.*, Electrical Rigid Steel Conduit (also known as Electrical Rigid Metal Conduit and Electrical Rigid Metal Steel Conduit), Finished Electrical Metallic Tubing, and Electrical Intermediate Metal Conduit, which are defined by specifications such as American National Standard (ANSI) C80.1–2005, ANSI C80.3–2005, or ANSI C80.6–2005, and Underwriters Laboratories Inc. (UL) UL–6, UL–797, or UL–1242;

(c) finished scaffolding, *i.e.*, component parts of final, finished scaffolding that enter the United States unassembled as a "kit." A kit is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble final, finished scaffolding;

(d) tube and pipe hollows for redrawing;

(e) oil country tubular goods produced to API specifications;

(f) line pipe produced to only API specifications, such as API 5L, and not multi-stenciled; and

(g) mechanical tubing, whether or not cold-drawn, other than what is included in the above paragraphs.

The products subject to this investigation are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[13] *See* Letter from IIL, "CWP from Pakistan—Request to Postpone the Final Determination," May 28, 2016.

[14] *See* 19 CFR 351.210(b)(2) and (e).

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Use of Facts Available With Adverse Inferences
A. Application of Facts Available
B. Use of Adverse Inference
C. Selection of the Adverse Facts Available Rate
D. Corroboration of Secondary Information
VII. All-Others Rate
VIII. Adjustments to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Investigation
IX. Verification
X. Conclusion

[FR Doc. 2016–13481 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 2, 2016, the Department of Commerce (the "Department") initiated the fourth five-year ("sunset") review of the antidumping duty order on porcelain-on-steel cooking ware ("POS cookware") from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited sunset review of the antidumping duty order, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the *Order* would likely lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Devine, Enforcement and Compliance, Office V, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2016, the Department initiated the fourth sunset review of the *Order* pursuant to section 751(c) of the Tariff Act of 1930, as amended ("Act").[2] On February 16, 2016, the Department received a timely notice of intent to participate in the sunset review on behalf of Columbian Home Products LLC (formerly General Housewares Corporation) ("Columbian"), pursuant to 19 CFR 351.218(d)(1)(i).[3] In accordance with 19 CFR 351.218(d)(1)(ii)(A), Columbian is an interested party under section 771(9)(C) of the Act as a producer of the domestic like product. On March 3, 2016, Columbian filed a substantive response in the sunset review within the 30-day deadline, as specified in 19 CFR 351.218(d)(3)(i).[4] The Department did not receive a substantive response from any respondent interested party in the sunset review. On April 4, 2016, the Department made its adequacy determination in the sunset review finding that the Department did not receive a substantive response from any respondent interested party.[5]

Scope of the Order

The subject merchandise is porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTSUS") subheading 7323.94.00.[6]

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Porcelain-on-Steel Cooking Ware from the People's Republic of China" ("Issues and Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with and hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Order* were revoked. Parties may find a complete discussion of all issues raised in the review and the corresponding recommendations in this public memorandum which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System ("ACCESS"). Access to ACCESS is available in the Central Records Unit room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://trade.gov/enforcement.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on POS cookware from the PRC would likely lead to continuation or recurrence of dumping at weighted-average margins up to 66.65 percent.

Notice Regarding Administrative Protective Order ("APO")

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary

[1] *See Initiation of Five-Year ("Sunset") Review,* 80 FR 45945 (August 3, 2015) ("*Initiation Notice*").

[2] *See Initiation of Five-Year ("Sunset") Review,* 80 FR 45945 (August 3, 2015) ("*Sunset Initiation*").

[3] *See* Letter to the Secretary from Columbian, "Five-Year Sunset Review of Antidumping Duty Order on Porcelain-On-Steel Cooking Ware From the People's Republic of China: Notice of Intent to Participate in Sunset Review," (February 16, 2016).

[4] *See* Letter to the Secretary from Columbian, "Five-Year ("Sunset") Review Of Antidumping Duty Order On Porcelain-On-Steel Cooking Ware From The People's Republic Of China: Columbian's Response To Notice Of Initiation," (March 3, 2016) ("*Substantive Response*").

[5] *See* Letter to the ITC from the Department, "Sunset Reviews Initiated on February 2, 2016," (April 4, 2016); specifically, based on the lack of an adequate response in the sunset review from any respondent party, the Department is conducting an expedited (120-day) sunset review consistent with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). *See also Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516, 13519 (March 20, 1998) (the Department normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response).

[6] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order,* 76 FR 7534 (February 10, 2011).

information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: June 1, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13578 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–812]

Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that circular welded carbon-quality steel pipe (CWP) from the Sultanate of Oman (Oman) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2014, through September 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on November 17, 2015.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] There is one mandatory respondent participating in this investigation, Al Jazeera Steel Products Co. SAOG (Al Jazeera). The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*, and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is CWP from Oman. Interested parties filed comments regarding the scope of the investigation, which resulted in one clarification to the scope language and are addressed, in detail, in the Department's Preliminary Scope Decision Memorandum.[3] For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

[1] *See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73708 (November 25, 2015).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman" (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] *See* Department Memorandum, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe form Pakistan; Scope Comments Decision Memorandum for the Preliminary Determinations," dated April 1, 2016 (Preliminary Scope Decision Memorandum).

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export price is calculated in accordance with section 772 of the Act and normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, we preliminarily calculated an above *de minimis* margin for Al Jazeera, the sole respondent in this investigation. Therefore, the rate calculated for Al Jazeera is also assigned as the all-others rate.

Preliminary Determination[4]

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/ manufacturer	Weighted-average dumping margin (percent)
Al Jazeera Steel Products Co. SAOG	7.86
All Others	7.86

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from Oman, as described in Appendix I of this notice, for all companies, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

[4] On March 14, 2016, the Department postponed the preliminary determination in this investigation until May 31, 2016, *see Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 81 FR 15039 (March 21, 2016).

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits[5] equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for the mandatory respondent listed above will be the respondent-specific rate we determined in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all-others rate. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments concerning scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days from the publication of this notice, and rebuttal briefs, limited to scope issues raised in the case briefs, may be submitted no later than five days after the deadline date for case briefs. Scope-related briefs/comments must be filed on the record of this investigation and the concurrent antidumping and countervailing duty CWP investigations. Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to non-scope issues raised in the case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Al Jazeera requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.*, to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[7]

In accordance with sections 735(a)(2)(A) and 733(d) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; (3) the requesting exporter has requested extension of provisional measures to a period not more than six months; and (4) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[8]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (O.D.) not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term "carbon quality" includes products in which:

(a) Iron predominates, by weight, over each of the other contained elements;

(b) the carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;

(ii) 2.25 percent of silicon;

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

[6] *See* 19 CFR 351.309.

[7] *See* Letter from Al Jazeera entitled, "Circular Welded Carbon-Quality Steel Pipe from Oman; request to extend final determination," dated April 28, 2016.

[8] *See* 19 CFR 351.210(b)(2) and (e).

(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Covered products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (API) API–5L specification, may also be covered by the scope of these investigations. In particular, such multi-stenciled merchandise is covered when it meets the physical description set forth above, and also has one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

Standard pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications.

Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications.

Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Products that meet the physical description set forth above but are made to the following nominal outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, are included despite being certified to ASTM mechanical tubing specifications:

O.D. in inches (nominal)	Wall thickness in inches (nominal)	Gage
1.315	0.035	20
1.315	0.047	18
1.315	0.055	17
1.315	0.065	16
1.315	0.072	15
1.315	0.083	14
1.315	0.095	13
1.660	0.055	17
1.660	0.065	16
1.660	0.083	14
1.660	0.095	13
1.660	0.109	12
1.900	0.047	18
1.900	0.055	17
1.900	0.065	16
1.900	0.072	15
1.900	0.095	13
1.900	0.109	12
2.375	0.047	18
2.375	0.055	17
2.375	0.065	16
2.375	0.072	15
2.375	0.095	13
2.375	0.109	12
2.375	0.120	11
2.875	0.109	12
2.875	0.165	8
3.500	0.109	12
3.500	0.165	8
4.000	0.148	9
4.000	0.165	8
4.500	0.203	7

The scope of this investigation does not include:

(a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn, which are defined by standards such as ASTM A178 or ASTM A192;

(b) finished electrical conduit, *i.e.*, Electrical Rigid Steel Conduit (also known as Electrical Rigid Metal Conduit and Electrical Rigid Metal Steel Conduit), Finished Electrical Metallic Tubing, and Electrical Intermediate Metal Conduit, which are defined by specifications such as American National Standard (ANSI) C80.1–2005, ANSI C80.3–2005, or ANSI C80.6–2005, and Underwriters Laboratories Inc. (UL) UL–6, UL–797, or UL–1242;

(c) finished scaffolding, *i.e.*, component parts of final, finished scaffolding that enter the United States unassembled as a "kit." A kit is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble final, finished scaffolding;

(d) tube and pipe hollows for redrawing;

(e) oil country tubular goods produced to API specifications;

(f) line pipe produced to only API specifications, such as API 5L, and not multi-stenciled; and

(g) mechanical tubing, whether or not cold-drawn, other than what is included in the above paragraphs.

The products subject to this investigation are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Discussion of the Methodology
a. Determination of the Comparison Method
b. Results of the Differential Pricing Analysis
7. Date of Sale
8. Product Comparisons
9. Export Price
10. Normal Value
a. Home Market Viability
b. Level of Trade
c. Cost of Production (COP) Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
d. Calculation of NV Based on Comparison Market Prices
11. Currency Conversion
12. Conclusion

[FR Doc. 2016–13480 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–835]

Furfuryl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 11, 2016, the Department of Commerce (the "Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on furfuryl alcohol from the People's Republic of China ("PRC") covering the period of review ("POR") June 1, 2014, through May 31, 2015.[1] This review covers one company, Qingdao WenKem Co., Ltd.[2] The Department conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"). The Department gave interested parties an opportunity to comment on the *Preliminary Results*, but we received no comments. Hence, these final results are unchanged from the *Preliminary Results*.

DATES: *Effective Date:* June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Mandy Mallott, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration,

[1] *See Furfuryl Alcohol From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 12876 (March 11, 2016) ("*Preliminary Results*").

[2] *Id.*

U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6430.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2016, the Department published the *Preliminary Results* of the instant review, preliminarily finding Qingdao WenKem Co., Ltd. to be a part of the PRC-wide entity.[3] We invited interested parties to comment on the *Preliminary Results*.[4] We received no comments from interested parties.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended ("the Act").

Scope of the Order

The merchandise covered by this order is furfuryl alcohol ($C_4H_3OCH_2OH$). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes. The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Final Results of Review

As a result of our review, we determine that the following dumping margin on furfuryl alcohol from the PRC exists for Qingdao WenKem Co., Ltd., determined to be a part of the PRC-wide entity,[5] for the period June 1, 2014, through May 31, 2015:

Exporter	Weighted-average dumping margin (percent)
PRC-Wide Entity	45.27

Assessment Rates

We will instruct U.S. Customs and Border Protection ("CBP") to apply an *ad valorem* assessment rate of 45.27 percent to all entries of subject merchandise during the POR which were produced and/or exported by Qingdao WenKem Co., Ltd. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

[3] *See Preliminary Results*, at 12877.

[4] *Id.*

[5] *Id.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Qingdao WenKem Co., Ltd., as part of the PRC-wide entity, will be the PRC-wide rate of 45.27 percent; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 45.27 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement off antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13576 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Final Results of Expedited Second Sunset Review of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this sunset review, the Department of Commerce ("Department") finds that revocation of the antidumping duty ("AD") order on magnesium metal from the People's Republic of China would be likely to lead to continuation or recurrence of dumping at the dumping margins identified in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Shanah Lee, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6386, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2016, the Department published the notice of initiation of the second sunset review of the AD *Order*[1] on magnesium metal from the People's Republic of China ("PRC"), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act").[2] On February 16, 2016, US Magnesium LLC ("Petitioner") notified the Department of its intent to participate within the 15-day period specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested party claimed interested-party status under section 771(9)(C) of the Act as a

[1] *See Notice of Antidumping Duty Order: Magnesium Metal From the People's Republic of China*, 70 FR 19928 (April 15, 2005) ("*Order*").

[2] *See Initiation of Five-Year ("Sunset") Review*, 82 FR 5418 (February 2, 2016) ("*Initiation Notice*").

manufacturer of a domestic like product in the United States.

On March 3, 2016, the Department received a complete substantive response to the *Initiation Notice,* with respect to the *Order,* from Petitioner within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[3] The Department received no substantive responses from respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited (120-day) sunset review of the antidumping duty order on certain magnesium metal from the PRC.

Scope of the Order

The merchandise covered by the order is magnesium metal from the PRC, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-backed scrap into magnesium metal. The magnesium covered by this investigation includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an "ASTM Specification for Magnesium Alloy"[4] and are thus outside the scope of the existing antidumping orders on magnesium from the PRC [generally referred to as "alloy" magnesium).

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an "ASTM Specification for Magnesium Alloy"[5]; (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[6]

The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is provided in the accompanying Issues and Decision Memorandum, which is hereby adopted by this notice.[7] The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the order were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of the Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, the Department determines that revocation of the antidumping duty order on magnesium metal from the PRC would likely to lead to a continuation or recurrence of dumping, and that the magnitude of the dumping margin likely to prevail would be weighted-average margins up to 141.49 percent.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: June 1, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13574 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* Submissions from Petitioner to the Department, "Five-Year ("Sunset") Review Of The Antidumping Duty Order On Magnesium Metal From The People's Republic of China: US Magnesium's Substantive Response To The Notice Of Initiation," ("Substantive Response") dated March 3, 2016.

[4] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[5] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[6] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001); *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[7] *See* the Department's memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Result of Expedited Second Sunset Reviews of the Antidumping Duty Orders on Certain Magnesium Metal From the People's Republic of China," dated concurrently with this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–816]

Certain Oil Country Tubular Goods From the Republic of Turkey: Notice of Court Decision Not in Harmony With the Final Determination of the Less Than Fair Value Investigation and Notice of Amended Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 10, 2016, the United States Court of International Trade (CIT) sustained the *Final Remand Redetermination*[1] pertaining to the less-than-fair-value (LTFV) investigation of certain oil country tubular goods from the Republic of Turkey (OCTG from Turkey).[2] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the CIT's final judgment in this case is not in harmony with the *Final Determination,* and that the Department is amending the *Final Determination* with respect to Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş. (collectively, Yücel). The period of investigation (POI) is July 1, 2012, through June 30, 2013.

DATES: Effective May 20, 2016.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2015, the CIT issued the *Remand Order,* directing the Department to reconsider the constructed value (CV) profit rate calculation used in the dumping margin analysis for Yücel, and granting the Department a voluntary remand to reconsider the duty drawback adjustment for Yücel.[3] On remand, the Department: (1) Recalculated Yücel's CV profit rate by replacing Yücel's CV profit and CV selling expenses with an aggregate figure representing the calculated CV profit and selling expenses of Borusan Manesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret A.S., the other mandatory respondent in this investigation, pursuant to section 773(e)(2)(B)(ii) of the Tariff Act of 1930, as amended (the Act); and (2) denied a duty drawback adjustment in its entirety for Yücel in its margin calculation.[4] As a result, the estimated weighted-average dumping margin for Yücel changed. On May 10, 2016, the Court upheld the *Final Remand Redetermination* in full.[5]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's May 10, 2016, final judgment affirming the *Final Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court decision, the Department is amending the *Final Determination* with respect to Yücel's weighted-average dumping margin for the period July 1, 2012, through June 30, 2013, effective May 20, 2016. The revised weighted-average dumping margin for Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru Ithalat-Ihracat ve Pazarlama A.Ş. (collectively, Yücel) is 13.59 percent.

Accordingly, the Department will continue the suspension of liquidation pending the expiration of the period of appeal or if appealed, pending a final and conclusive court decision.

Cash Deposit Requirements

Since the *Final Determination,* the Department has not established a new cash deposit rate for Yücel. As a result, in accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to collect a cash deposit of 13.59 percent, adjusted where appropriate for export subsidies,[6] for entries of subject merchandise produced and/or exported by Yücel, effective May 20, 2016.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 735(d) and 777(i)(1) of the Act.

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13536 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Final Results of Redetermination Pursuant to Court Remand (*Final Remand Redetermination*) in *Maverick Tube Corporation et al* v. *United States,* Consol. Court No. 14–00244, Slip Op. 15–107 (Ct. Int'l Trade September 24, 2015) (*Remand Order*), *aff'd Maverick Tube Corporation et al* v. *United States,* Consol. Court No. 14–00244, Slip Op. 16–46, (Ct. Int'l Trade May 10, 2016). The *Final Remand Redetermination* is accessible at *http://enforcement.trade.gov/remands/15-107.pdf.*

[2] *See Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part,* 79 FR 41971 (July 18, 2014) (*Final Determination*).

[3] *See Remand Order,* Slip Op. 15–107 at 25–26, 30–38.

[4] *See Final Remand Redetermination* at 7–9, 24–28.

[5] *See Maverick,* Slip Op. 16–46 at 11–22.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–032]

Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

[6] *See Final Determination,* 79 FR at 41972–73 ("In the final determination of the companion countervailing duty investigation on OCTG from Turkey, the Department determined that the all other companies benefitted from export subsidies. Pursuant to sections 735(c)(1) and 772(c)(1)(C) of the Act and 19 CFR 351.210(d), the Department will instruct CBP to require cash deposits equal to the weighted-average dumping margins indicated below, adjusted where appropriate for export subsidies"); *see also* Final Results of Remand Redetermination pursuant to the CIT orders in *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret* v. *United States,* 61 F. Supp. 3d 1306 (April 22, 2015) and *Maverick Tube Corporation* v. *United States,* Consol. Court No. 14–00229, Slip Op. 15–59 (June 15, 2015) (accessible at *http://enforcement.trade.gov/remands/15-59.pdf*), and *Oil Country Tubular Goods from Turkey: Notice of Court Decision Not in Harmony With the Final Determination of the Countervailing Duty Investigation;* 81 FR 12691, (March 10, 2016) (in which the Department calculated the "All Others" subsidy rate of 2.39 percent, including the countervailable subsidy rate for export subsidies in the amount of 0.22 percent). Yücel's cash-deposit rate will be calculated by subtracting the countervailable subsidy rate for export subsidies calculated in the countervailing duty final results of redetermination, 0.22 percent, from the weighted-average dumping margin rate of 13.59 percent, *i.e.,* 13.37 percent.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that certain iron mechanical transfer drive components ("IMTDC") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended (the "Act"). The period of investigation ("POI") is April 1, 2015, through September 30, 2015. The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Krisha Hill or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4037 or (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on November 25, 2015.[1] On December 18, 2015, in accordance with section 777A(c)(2)(B) of the Act, the Department selected the two exporters accounting for the largest volume of IMTDC from the PRC during the POI (*i.e.*, NOK (Wuxi) Vibration Control China Co. Ltd. ("NVCC") and Powermach Import & Export Co., Ltd. (Sichuan) ("Powermach") as mandatory respondents. Nine other companies filed separate rate applications. On April 19, 2016, NVCC withdrew from participation as a mandatory respondent in the investigation.[2] Pursuant to section 733(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by 50 days until May 31, 2016.[3] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum that is dated concurrently with and hereby adopted by this notice.[4]

The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Department's Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical.

Tolling and Postponement of Deadline for Preliminary Determination

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government due from Snowstorm "Jonas" from January 22, through January 27, 2016. Therefore, all deadlines in this segment of the proceeding have been extended by four business days.[5] If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.[6] In this case, the deadline is May 31, 2016.

Scope of the Investigation

The merchandise covered by this investigation is iron mechanical transfer drive components. The merchandise subject to this investigation is properly classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8483.30.8090, 8483.50.6000, 8483.50.9040, 8483.50.9080, 8483.90.3000, 8483.90.8080. Covered merchandise may also enter under the following HTSUS subheadings: 7325.10.0080, 7325.99.1000, 7326.19.0010, 7326.19.0080, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, and 8483.50.4000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. For a complete description of the scope of the investigation, see Appendix I to this notice.

Scope Comments

In accordance with the preamble to the Department's regulations,[7] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, "scope").[8] Certain interested parties commented on the scope of the investigation, as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record, and an accompanying discussion and analysis of all comments timely received, see the Department's Scope Memorandum issued concurrently with this notice.[9]

On March 30, 2016, Petitioner filed an amendment to the scope of the investigation to exclude certain finished torsional vibration dampers ("TVD").[10] On April 8, 2016, the Department preliminarily excluded TVDs from the scope of the investigation.[11] On May 16, 2016, Petitioner filed an additional amendment to the scope to exclude certain light-duty, fixed- and variable-pitch, non-synchronous sheaves and certain bushings.[12] As discussed in the

[1] *See Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73716 (November 25, 2016) ("*Initiation Notice*").

[2] *See* Letter from NVCC to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Withdrawal from Investigations," dated April 19, 2016 ("NVCC Non-Participation Letter").

[3] *See Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 81 FR 12687 (March 10, 2016).

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance "Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China" ("Preliminary Decision Memorandum").

[5] *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'," dated January 27, 2016.

[6] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

[7] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

[8] *See Initiation Notice*, 80 FR at 73716.

[9] *See* Memorandum from Abdelali Elouaradia, Director, Office IV, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this notice ("Scope Memorandum").

[10] *See* Letter from Petitioner to the Secretary of Commerce, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Amendment to the Scope," dated March 30, 2016.

[11] *See* Memorandum from Abdelali Elouaradia, Director, Office IV, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Scope Comments Regarding Exclusion of Certain Finished Torsional Vibration Dampers," dated April 8, 2016.

[12] *See* Letter from TB Woods to the Department, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's

Continued

Scope Memorandum, the Department has preliminarily excluded certain light-duty, fixed- and variable-pitch, non-synchronous sheaves and certain bushings. For a complete description of the scope exclusion language, see the full scope at Appendix II to this notice as well as the Department's Scope Memorandum issued concurrently with this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. We calculated export prices in accordance with section 772 of the Act. Because the PRC is a non-market economy, within the meaning of section 771(18) of the Act, we calculated normal value (NV) in accordance with section 773(c) of the Act. Further, in accordance with sections 776(a) and (b) of the Act, we preliminarily determined to apply facts otherwise available with an adverse inference in determining the weighted-average dumping margin for the PRC-wide entity and normal value, in part, for Powermach. For a full discussion of the Department's methodology, *see* the Preliminary Decision Memorandum.

Separate Rates

The Department received separate rate applications from nine companies, in addition to the two mandatory respondents. The Department has preliminarily granted separate-rate status to all of the companies which provided separate rates information, except NVCC, which withdrew from participation as a mandatory respondent in this investigation, Baldor Electric Canada ("Baldor"), and Yueqing Bethel Shaft Collar Manufacturing Co., Ltd. ("Yueqing Bethel"), which did not respond to the Department's request for supplemental information. The Department has treated these three companies as part of the PRC-wide entity. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,[13] the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[14]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist during the period April 1, 2015, through September 30, 2015:

Exporter	Producer	Weighted-average margin (percent)
Powermach Import & Export Co., Ltd. (Sichuan)/Sichuan Dawn Precision Technology Co., Ltd./Sichuan Dawn Foundry Co., Ltd./Powermach Co., Ltd.	Powermach Import & Export Co., Ltd. (Sichuan)/Sichuan Dawn Precision Technology Co., Ltd./Sichuan Dawn Foundry Co., Ltd./Powermach Co., Ltd.	2.17
Fuqing Jiacheng Trading Corporation Limited	Fuzhou Min Yue Mechanical & Electrical Co., Ltd	2.17
Haiyang Jingweida Gearing Co., Ltd	Haiyang Jingweida Gearing Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Shijiazhuang CAPT Power Transmission Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Shanghai CPT Machinery Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Yueqing Bethel Shaft Collar Manufacturing Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Kezheng (Fuzhou) Mechanical & Electrical Manufacture Co., Ltd.	2.17
Hangzhou Powertrans Co., Ltd	Handan Hengfa Transmission Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Shijiazhuang Lihua Mechanical Manufacturing Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Xingtai Shengjia Machinery and Equipment Factory	2.17
Hangzhou Powertrans Co., Ltd	Shanghai Keli Machinery Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Jiangsu Zhengya Technology Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Taizhou Feiyang Metal Spinning Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Taizhou Pengxun Machinery Manufacturing Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Guangde Ronghua Machinery Manufacturing Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Qiuxian Hengxin Machinery Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Reach Machinery Enterprise	2.17
Hangzhou Powertrans Co., Ltd	Chengdu Novo Machinery Co., Ltd	2.17
Hangzhou Powertrans Co., Ltd	Chengdu Leno Machinery Co., Ltd	2.17
Shijiazhuang CAPT Power Transmission Co., Ltd	Shijiazhuang CAPT Power Transmission Co., Ltd	2.17
Xinguang Technology Co. Ltd of Sichuan Province	Sichuan Dawn Precision Technology Co., Ltd	2.17
Zhejiang Damon Industrial Equipment Co., Ltd	Zhejiang Damon Industrial Equipment Co., Ltd	2.17
Zhejiang Dongxing Auto Parts Co., Ltd	Zhejiang Dongxing Auto Parts Co., Ltd	2.17
PRC-Wide Entity		401.68

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of IMTDC from the PRC, as described in the "Scope of the Investigation" section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[15] equal to the weighted-average amount by which NV exceeds U.S. price, adjusted where appropriate for export subsidies and estimated

Republic of China: Petitioner's Additional Amendment to the Scope," dated May 16, 2016.

[13] *See Initiation Notice* at 73720–21.

[14] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf*.

[15] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of PRC exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension of liquidation instructions will remain in effect until further notice.

In LTFV investigations with a companion countervailing duty (CVD) investigation, we normally adjust antidumping duty cash deposit rates by the amount of export subsidies, where appropriate. In the companion CVD investigation, we preliminarily found that Powermach did not receive export subsidies. The rate for all-others companies in the CVD case was based on Powermach's rate, and thus the all-others companies did not receive an export subsidy rate. Therefore, no offset to Powermach's or the separate rate entities' cash deposit rates for export subsidies is necessary. Additionally, we likewise are not adjusting the cash deposit rate applicable to the PRC-wide entity for export subsidies.

Pursuant to 777A(f) of the Act, we are not adjusting preliminary cash deposit rates for estimated domestic subsidy pass-through. Based on the data on the record of this investigation, the Department does not find a general decrease in the U.S. average import price during the relevant period. Thus, the Department preliminarily finds that the requirement under section 777A(f)(1)(B) of the Act has not been met, and the Department did not make an adjustment under Section 777A(f) of the Act.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding

[16] *See* sections 772(c)(1)(C) and 777A(f) of the Act, respectively. Unlike in administrative reviews, the Department calculates the adjustment for export subsidies in investigations not in the margin calculation program, but in the cash deposit instructions issued to CBP. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

announcement of the preliminary determination in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[17] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[18] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination by the Department, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination by the Department, a request for such postponement is made by the petitioner. 19 CFR 351.210(e)(2) requires that requests by respondents for

[17] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[18] *See* 19 CFR 351.310(c).

determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On May 5, 2016, pursuant to 19 CFR 351.210(b)(2)(ii), Powermach requested that the Department postpone its final determination, and requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[19] On May 16, 2016, Petitioner requested that the Department postpone the final determination in the event that the Department makes a negative preliminary determination.[20] Further, on May 17, 2016, NVCC also requested that the Department postpone its final determination and requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[21]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[22]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. Because the preliminary determination in this investigation is

[19] *See* Letter from Powermach to the Secretary of Commerce ''Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Request for Extension of Final Determination,'' dated May 5, 2016 (''Powermach Extension Request'').

[20] *See* Letter from Petitioner to the Secretary of Commerce ''Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Request to Extend the Final Determinations,'' dated May 16, 2016.

[21] *See* Letter from NVCC to the Secretary of Commerce ''Iron Mechanical Transfer Drive Components from the People's Republic of China: *Request to Postpone Final Determination,*'' dated May 17, 2016.

[22] *See* 19 CFR 351.210(e).

requires that the ITC make its final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of IMTDC from the PRC before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memorandum:

Summary
Background
Selection of Respondents
Period of Investigation
Postponement of Final Determination and Extension of Provisional Measures
Scope Comments
Scope of the Investigation
Product Characteristics
Discussion of the Methodology
- Non-Market Economy Country
- Surrogate Country and Surrogate Value Comments
- Separate Rates
- Dumping Margin for the Separate Rate Companies
- Combination Rates
- The PRC-wide Entity
- Application of Facts Available and Adverse Inferences
- Application of Partial AFA
- Single Entity Treatment
- Date of Sale
- Fair Value Comparisons
- U.S. Price
- Normal Value
- Factor Valuation Methodology
- Verification
- Export Subsidy Adjustment

International Trade Commission Notification
Conclusion

Appendix I: Scope of the Investigation

The products covered by this investigation are iron mechanical transfer drive (*i.e.*, blanks or castings). Subject iron mechanical transfer drive components are in the form of wheels or cylinders with a center bore hole that may have one or more grooves or teeth in their outer circumference that guide or mesh with a flat or ribbed belt or like device and are often referred to as sheaves, pulleys, flywheels, flat pulleys, idlers, conveyer pulleys, synchronous sheaves, and timing pulleys. The products covered by this investigation also include bushings, which are iron mechanical transfer drive components in the form of a cylinder and which fit into the bore holes of other mechanical transfer drive components to lock them into drive shafts by means of elements such as teeth, bolts, or screws.

Iron mechanical transfer drive components subject to this investigation are those not less than 4.00 inches (101 mm) in the maximum nominal outer diameter.

Unfinished iron mechanical transfer drive components (*i.e.*, blanks or castings) possess the approximate shape of the finished iron mechanical transfer drive component and have not yet been machined to final specification after the initial casting, forging or like operations. These machining processes may include cutting, punching, notching, boring, threading, mitering, or chamfering.

Subject merchandise includes iron mechanical transfer drive components as defined above that have been finished or machined in a third country, including but not limited to finishing/machining processes such as cutting, punching, notching, boring, threading, mitering, or chamfering, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the iron mechanical transfer drive components.

Subject iron mechanical transfer drive components are covered by the scope of the investigation regardless of width, design, or iron type (*e.g.*, gray, white, or ductile iron). Subject iron mechanical transfer drive components are covered by the scope of the investigation regardless of whether they have non-iron attachments or parts and regardless of whether they are entered with other mechanical transfer drive components or as part of a mechanical transfer drive assembly (which typically includes one or more of the iron mechanical transfer drive components identified above, and which may also include other parts such as a belt, coupling and/or shaft). When entered as a mechanical transfer drive assembly, only the iron components that meet the physical description of covered merchandise are covered merchandise, not the other components in the mechanical transfer drive assembly (*e.g.*, belt, coupling, shaft).

For purposes of this investigation, a covered product is of ''iron'' where the article has a carbon content of 1.7 percent by weight or above, regardless of the presence and amount of additional alloying elements.

finished TVD is an engine component composed of three separate components: an inner ring, a rubber ring and an outer ring. The inner ring is an iron wheel or cylinder with a bore hole to fit a crank shaft which forms a seal to prevent leakage of oil from the engine. The rubber ring is a dampening medium between the inner and outer rings that effectively reduces the torsional vibration. The outer ring, which may be made of materials other than iron, may or may not have grooves in its outer circumference. To constitute a finished excluded TVD, the product must be composed of each of the three parts identified above and the three parts must be permanently affixed to one another such that both the inner ring and the outer ring are permanently affixed to the rubber ring. A finished TVD is excluded only if it meets the physical description provided above; merchandise that otherwise meets the description of the scope and does not satisfy the physical description of excluded finished TVDs above is still covered by the scope of the investigation regardless of end use or identification as a TVD.

The scope also excludes light-duty, fixed-pitch, non-synchronous sheaves (''excludable LDFPN sheaves'') with each of the following characteristics: Made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN–GJL 200 or lower; having no more than two grooves; having a maximum face width of no more than 1.75 inches, where the face width is the width of the part at its outside diameter; having a maximum outside diameter of not more than 18.75 inches; and having no teeth on the outside or datum diameter. Excludable LDFPN sheaves must also either have a maximum straight bore size of 1.6875 inches with a maximum hub diameter of 2.875 inches; or else have a tapered bore measuring 1.625 inches at the large end, a maximum hub diameter of 3.50 inches, a length through tapered bore of 1.0 inches, exactly two tapped holes that are 180 degrees apart, and a 2.0-inch bolt circle on the face of the hub. Excludable LDFPN sheaves more than 6.75 inches in outside diameter must also have an arm or spoke construction.[23] Further, excludable LDFPN sheaves must have a groove profile as indicated in the table below:

[23] An arm or spoke construction is where arms or spokes (typically 3 to 6) connect the outside diameter of the sheave with the hub of the sheave. This is in contrast to a block construction (in which the material between the hub and the outside diameter is solid with a uniform thickness that is the same thickness as the hub of the sheave) or a web construction (in which the material between the hub and the outside diameter is solid but is thinner than at the hub of the sheave).

Size (belt profile)	Outside diameter (inches)	Top width range of each groove (inches)	Maximum height (inches)	Angle
MA/AK (A, 3L, 4L)	≤5.45	0.484–0.499	0.531	34°
MA/AK (A, 3L, 4L)	>5.45 but ≤18.75	0.499–0.509	0.531	38°
MB/BK (A, B, 4L, 5L)	≤7.40	0.607–0.618	0.632	34°
MB/BK (A, B, 4L, 5L)	>7.40 but ≤18.75	0.620–0.631	0.635	38°

In addition to the above characteristics, excludable LDFPN sheaves must also have a maximum weight (pounds-per-piece) as follows: For excludable LDFPN sheaves with one groove and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 4.7 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 15.0 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 13.3 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 17.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 16.5 pounds; and for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 26.5 pounds.

The scope also excludes light-duty, variable-pitch, non-synchronous sheaves with each of the following characteristics: Made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN–GJL 200 or lower; having no more than 2 grooves; having a maximum overall width of less than 2.25 inches with a single groove, or of 3.25 inches or less with two grooves; having a maximum outside diameter of not more than 7.5 inches; having a maximum bore size of 1.625 inches; having either one or two identical, internally-threaded (*i.e.*, with threads on the inside diameter), adjustable (rotating) flange(s) on an externally-threaded hub (*i.e.*, with threads on the outside diameter) that enable(s) the width (opening) of the groove to be changed; and having no teeth on the outside or datum diameter.

The scope also excludes certain IMTDC bushings. An IMTDC bushing is excluded only if it has a tapered angle of greater than or equal to 10 degrees, where the angle is measured between one outside tapered surface and the directly opposing outside tapered surface.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8483.30.8090, 8483.50.6000, 8483.50.9040, 8483.50.9080, 8483.90.3000, 8483.90.8080. Covered merchandise may also enter under the following HTSUS subheadings: 7325.10.0080, 7325.99.1000, 7326.19.0010, 7326.19.0080, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, and 8483.50.4000. These HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–13533 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2014, through September 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon or Dennis McClure, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6274 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on November 17, 2015.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] There are two mandatory respondents participating in this investigation, Ajmal Steel Tubes & Pipes Ind. L.L.C. (Ajmal Steel) and Universal Tube and Plastic Industries, LLC—Jebel Ali Branch, Universal Tube and Pipe Industries, and KHK Scaffolding and Framework LLC (collectively, Universal). The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is CWP from the UAE.

[1] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 73708 (November 25, 2015).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates" (Preliminary Decision Memorandum), dated concurrently with this notice.

Interested parties filed comments regarding the scope of the investigation, which resulted in one clarification to the scope language and are addressed, in detail, in the Department's Preliminary Scope Decision Memorandum.[3] For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export price and, where appropriate, constructed export price are calculated in accordance with section 772 of the Act and normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, we based our calculation of the all-others rate on the weighted-average of the margins calculated for Ajmal and Universal using publicly ranged data. We cannot calculate a weighted-average margin based on the actual data reported by the respondents because doing so may potentially reveal their business proprietary information. Accordingly, we find this rate, which is based on publicly ranged data that respondents reported to be the best proxy of the weighted-average margin based on these respondents' actual data. For further discussion of this calculation, *see* the memorandum entitled "Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Calculation of the Preliminary Margin for All Other Companies," dated concurrently with this notice.

Preliminary Determination[4]

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter/ manufacturer	Weighted-average dumping margin (percent)
Ajmal Steel Tubes & Pipes Ind. L.L.C	6.10
Universal Tube and Plastic Industries, LLC—Jebel Ali Branch, Universal Tube and Pipe Industries, and KHK Scaffolding and Framework LLC	9.25
All Others	7.86

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the UAE, as described in Appendix I of this notice, for all companies, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits[5] equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific rates we determined in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all-others rate. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments concerning scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days from the publication of this notice, and rebuttal briefs, limited to scope issues raised in the case briefs, may be submitted no later than five days after the deadline date for case briefs. Scope-related briefs/comments must be filed on the record of this investigation and the concurrent antidumping and countervailing duty CWP investigations. Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to non-scope issues raised in the case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and

[3] *See* Department Memorandum, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe form Pakistan; Scope Comments Decision Memorandum for the Preliminary Determination," April 1, 2016 (Preliminary Scope Decision Memorandum).

[4] On March 14, 2016, the Department postponed the preliminary determination in this investigation until May 31, 2016; *see Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 81 FR 15039 (March 21, 2016).

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[6] *See* 19 CFR 351.309.

date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Ajmal and Universal, the respondents, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.*, to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[7] [8]

In accordance with sections 735(a)(2)(A) and 733(d) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; (3) the requesting exporters have requested extension of provisional measures to a period not more than six months; and (4) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[9]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (O.D.) not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term "carbon quality" includes products in which:

(a) iron predominates, by weight, over each of the other contained elements;

(b) the carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Covered products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (API) API–5L specification, may also be covered by the scope of these investigations. In particular, such multi-stenciled merchandise is covered when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

Standard pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications.

Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications.

Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Products that meet the physical description set forth above but are made to the following nominal outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, are included despite being certified to ASTM mechanical tubing specifications:

O.D. in inches (nominal)	Wall thickness in inches (nominal)	Gage
1.315	0.035	20
1.315	0.047	18
1.315	0.055	17
1.315	0.065	16
1.315	0.072	15
1.315	0.083	14
1.315	0.095	13
1.660	0.055	17
1.660	0.065	16
1.660	0.083	14
1.660	0.095	13
1.660	0.109	12
1.900	0.047	18
1.900	0.055	17
1.900	0.065	16
1.900	0.072	15
1.900	0.095	13
1.900	0.109	12
2.375	0.047	18
2.375	0.055	17
2.375	0.065	16
2.375	0.072	15
2.375	0.095	13
2.375	0.109	12
2.375	0.120	11
2.875	0.109	12
2.875	0.165	8
3.500	0.109	12
3.500	0.165	8
4.000	0.148	9
4.000	0.165	8
4.500	0.203	7

The scope of this investigation does not include:

(a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn, which are defined by standards such as ASTM A178 or ASTM A192;

(b) finished electrical conduit, *i.e.*, Electrical Rigid Steel Conduit (also known as Electrical Rigid Metal Conduit and Electrical Rigid Metal Steel Conduit), Finished Electrical Metallic Tubing, and Electrical Intermediate Metal Conduit, which are defined by specifications such as American National Standard (ANSI) C80.1–2005, ANSI C80.3–2005, or ANSI C80.6–2005, and Underwriters Laboratories Inc. (UL) UL–6, UL–797, or UL–1242;

(c) finished scaffolding, *i.e.*, component parts of final, finished scaffolding that enter the United States unassembled as a "kit." A kit is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble final, finished scaffolding;

(d) tube and pipe hollows for redrawing;

(e) oil country tubular goods produced to API specifications;

(f) line pipe produced to only API specifications, such as API 5L, and not multi-stenciled; and

(g) mechanical tubing, whether or not cold-drawn, other than what is included in the above paragraphs.

The products subject to this investigation are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Discussion of the Methodology
   a. Determination of the Comparison Method
   b. Results of the Differential Pricing Analysis
7. Date of Sale
8. Product Comparisons
9. Export Price/Constructed Export Price
10. Normal Value
   a. Home Market Viability
   b. Affiliated Party Transactionsand Arm's Length Test
   c. Level of Trade
   d. Cost of Production (COP) Analysis
   1. Cost Averaging Methodology
   i. Significance of Cost Changes
   ii. Linkage Between Sales and Cost Information
   2. Calculation of COP
   3. Test of Comparison Market Sales Prices
   4. Results of the COP Test
   e. Calculation of NV Based on Comparison-Market Prices
11. Currency Conversion
12. Conclusion

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[7] *See* Letter from Ajmal entitled, "Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Request to Postpone the Final Determination," Amendment to Request to Postpone Final Determination," dated May 5, 2016.

[8] *See* Letters from Universal entitled, "Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates, Case No. A–520–807: Request to Postpone Final Determination" and "Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates, Case No. A–520–807: Amendment to Request to Postpone Final Determination," dated May 5, 2016.

[9] *See* 19 CFR 351.210(b)(2) and (e).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–820]

Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) preliminarily determines that circular welded carbon-quality steel pipe (CWP) from the Socialist Republic of Vietnam (Vietnam) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2015, through September 30, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0196 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated this investigation on November 17, 2015.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is CWP from Vietnam. Interested parties filed comments regarding the scope of the investigation, which resulted in one clarification to the scope language and are addressed, in detail, in the Department's Preliminary Scope Decision Memorandum.[3] For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Because Vietnam is a non-market economy within the meaning of section 771(18) of the Act, we calculated normal value (NV) in accordance with section 773(c) of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*, the Department stated that it would

[1] *See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, Pakistan, the Philippines, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73708 (November 25, 2015) (*Initiation Notice*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam" (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] *See* Department Memorandum, "Antidumping Duty Investigations of Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, the United Arab Emirates, and the Socialist Republic of Vietnam and Countervailing Duty Investigation of Circular Welded Carbon-Quality Steel Pipe form Pakistan; Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with and hereby adopted by this notice (Preliminary Scope Decision Memorandum).

calculate combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[4]

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Producer	Weighted-average dumping margin (percent)
SeAH Steel VINA Corporation	SeAH Steel VINA Corporation	0.00
Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd	Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd	* 1.19
Hoa Phat Steel Pipe Co	Hoa Phat Steel Pipe Co	* 0.38
Vietnam-Wide Entity		113.18

* *de minimis.*

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of CWP from Vietnam, as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** except for those produced and exported by Hoa Phat Steel Pipe Co. (Hoa Phat), SeAH Steel VINA Corporation (SeAH), and Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. (Hongyuan). Because the estimated weighted-average dumping margins for Hoa Phat, SeAH, and Hongyuan are zero or *de minimis*, we are not directing CBP to suspend liquidation of entries of the merchandise they produced and exported.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[5] equal to the weighted-average amount by which the NV exceeds U.S. price as follows: (1) The cash-deposit rate for the exporter/producer combination listed in the table above will be the rate identified for that combination in the table; (2) for all combinations of Vietnam exporters/producers of merchandise under consideration that have not received their own separate rate above, the cash-deposit rate will be the cash-deposit rate established for the Vietnam-wide entity, 113.18 percent; and (3) for all non-Vietnam exporters of the merchandise under consideration which have not received their own separate rate above, the cash-deposit rate will be the cash-deposit rate applicable to the Vietnam exporter/producer combination that supplied that non-Vietnam exporter. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

We will disclose the calculations performed to interested parties in this proceeding within five days of the announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i) of the Act, we intend to verify the information relied upon prior to making our final determination.

Public Comment

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments concerning scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days from the publication of this notice, and rebuttal briefs, limited to scope issue raised in the case briefs, may be submitted no later than five days after the deadline date for scope case briefs. Scope-related briefs/comments must be filed on the record of this investigation and the concurrent antidumping and countervailing duty CWP investigations.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to non-scope issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. 19

[4] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

[5] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[6] *See* 19 CFR 351.309.

CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

Respondents Hongyuan and SeAH, both requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days (*i.e.*, to 135 days after publication of the preliminary determination), and agreed to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[7]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; (3) the requesting exporters have requested extension of provisional measures to a period not more than six months; and (4) no compelling reasons for denial exist, we are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will issue our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[8]

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope Comments
6. Discussion of the Methodology
   a. Non-Market Economy Country
   b. Surrogate Country and Surrogate Values Comments
   c. Separate Rates
   d. The Vietnam-Wide Entity
   e. Date of Sale
   f. Comparisons to Fair Value
7. Currency Conversion
8. Disclosure and Public Comment
9. Verification
10. Conclusion

Appendix II—Scope of the Investigation

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (O.D.) not more than nominal 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American Society for Testing and Materials International (ASTM), proprietary, or other), generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term "carbon quality" includes products in which:

(a) Iron predominates, by weight, over each of the other contained elements;

(b) the carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Covered products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (API) API–5L specification, may also be covered by the scope of these investigations. In particular, such multi-stenciled merchandise is covered when it meets the physical description set forth above, and also has one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

Standard pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications.

Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications.

Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Products that meet the physical description set forth above but are made to the following nominal outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, are included despite being certified to ASTM mechanical tubing specifications:

O.D. in inches (nominal)	Wall thickness in inches (nominal)	Gage
1.315	0.035	20
1.315	0.047	18
1.315	0.055	17
1.315	0.065	16
1.315	0.072	15
1.315	0.083	14
1.315	0.095	13
1.660	0.055	17
1.660	0.065	16
1.660	0.083	14
1.660	0.095	13
1.660	0.109	12
1.900	0.047	18
1.900	0.055	17
1.900	0.065	16
1.900	0.072	15
1.900	0.095	13
1.900	0.109	12
2.375	0.047	18
2.375	0.055	17
2.375	0.065	16
2.375	0.072	15
2.375	0.095	13
2.375	0.109	12
2.375	0.120	11
2.875	0.109	12
2.875	0.165	8
3.500	0.109	12
3.500	0.165	8
4.000	0.148	9
4.000	0.165	8
4.500	0.203	7

The scope of this investigation does not include:

(a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn, which are defined by standards such as ASTM A178 or ASTM A192;

(b) finished electrical conduit, *i.e.*, Electrical Rigid Steel Conduit (also known as

[7] *See* Letter from Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd, "Circular Welded Carbon-Quality Steel Pipe from Vietnam; Request for Extension of Time for the Final Determination," dated April 28, 2016 and letter from SeAH Steel VINA Corporation "Circular Welded Carbon-Quality Steel Pipe from Vietnam; Request for Extension of Deadline for the Department's Final Determination," dated May 2, 2016.

[8] *See* 19 CFR 351.210(b)(2) and (e).

Electrical Rigid Metal Conduit and Electrical Rigid Metal Steel Conduit), Finished Electrical Metallic Tubing, and Electrical Intermediate Metal Conduit, which are defined by specifications such as American National Standard (ANSI) C80.1–2005, ANSI C80.3–2005, or ANSI C80.6–2005, and Underwriters Laboratories Inc. (UL) UL–6, UL–797, or UL–1242;

(c) finished scaffolding, *i.e.*, component parts of final, finished scaffolding that enter the United States unassembled as a "kit." A kit is understood to mean a packaged combination of component parts that contains, at the time of importation, all of the necessary component parts to fully assemble final, finished scaffolding;

(d) tube and pipe hollows for redrawing;

(e) oil country tubular goods produced to API specifications;

(f) line pipe produced to only API specifications, such as API 5L, and not multi-stenciled; and

(g) mechanical tubing, whether or not cold-drawn, other than what is included in the above paragraphs.

The products subject to this investigation are currently classifiable in Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070. The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–13484 Filed 6–7–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–856]

Certain Iron Mechanical Transfer Drive Components From Canada: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the "Department") preliminarily determines that certain iron mechanical transfer drive components ("iron transfer drive components") from Canada are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended (the "Act"). The period of investigation is October 1, 2014 through September 30, 2015. The estimated dumping margins of sales at LTFV are listed in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Robert Bolling, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2015, the Department received an antidumping duty ("AD") petition concerning imports of iron transfer drive components from Canada, filed in proper form on behalf of TB Wood's Incorporated ("TB Woods") ("Petitioner").[1] The Department initiated this investigation on November 17, 2015.[2] Pursuant to section 733(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by 50 days until May 31, 2016.[3]

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum that is dated concurrently with and hereby adopted by this notice.[4] The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Department's Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Tolling and Postponement of Deadline for Preliminary Determination

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the partial closure of the Federal Government due from Snowstorm "Jonas" from January 22, through January 27, 2016. Therefore, all deadlines in this segment of the proceeding have been extended by four business days.[5] If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.[6] In this case, the deadline is May 31, 2016.

Scope of the Investigation

The merchandise covered by this investigation is iron mechanical transfer drive components. The merchandise subject to this investigation is properly classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8483.30.8090, 8483.50.6000, 8483.50.9040, 8483.50.9080, 8483.90.3000, 8483.90.8080. Covered merchandise may also enter under the following HTSUS subheadings: 7325.10.0080, 7325.99.1000, 7326.19.0010, 7326.19.0080, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, and 8483.50.4000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. For a complete description of the scope of the investigation, see Appendix II to this notice.

Scope Comments

In accordance with the preamble to the Department's regulations,[7] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, "scope").[8] Certain interested parties commented on the scope of the investigation, as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record, and an accompanying discussion and analysis of all comments timely received, see the Department's Scope Memorandum issued concurrently with this notice.[9]

On March 30, 2016, Petitioner filed an amendment to the scope of the investigation to exclude certain finished torsional vibration dampers ("TVD").[10] On April 8, 2016, the Department preliminarily excluded TVDs from the scope of the investigation.[11] On May 16, 2016, Petitioner filed an additional amendment to the scope to exclude certain light-duty, fixed- and variable-pitch, non-synchronous sheaves and certain bushings.[12] As discussed in the Scope Memorandum, the Department has preliminarily excluded certain light-duty, fixed- and variable-pitch, non-synchronous sheaves and certain bushings. For a complete description of the scope exclusion language, see the full scope at Appendix II to this notice as well as the Department's Scope Memorandum issued concurrently with this notice.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The sole selected mandatory respondent, Baldor Electric Company Canada ("Baldor"), failed to participate in this investigation and to respond to the Department's Sections A, B, C, and D supplemental questionnaires.[13] As a result, we preliminarily determined to apply adverse facts available ("AFA") to Baldor, in accordance with section 776 of the Act and 19 CFR 351.308. For a full discussion of the rationale underlying our preliminary determination, as well as a description of the methodology used, see the Preliminary Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

We determined the dumping margin for mandatory respondent Baldor under section 776 of the Act. Consequently, the only available dumping margins for this preliminary determination are found in the petition and are margins upon which we initiated. Pursuant to section 735(c)(5)(B) of the Act, the Department's practice under these circumstances has been to calculate the "all-others" rate as a simple average of these margins from the petition.[14] For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memoranda.

Preliminary Determination

The preliminary dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Baldor Electric Company Canada	191.34
All-Others	100.47

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of iron transfer drive components from Canada as described in the "Scope of Investigation" section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), we will instruct CBP to require cash deposits[15] equal to the dumping margins, as indicated in the chart above, as follows: (1) The rate for the mandatory respondent listed above will be the respondent-specific rate we determined in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the "all-others" rate. This suspension of liquidation instruction will remain in effect until further notice.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied AFA to mandatory respondent Baldor in this investigation in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Interested parties are invited to comment on this preliminary

[1] *See* the Petition for the Imposition of Antidumping Duties on Imports of Certain Iron Mechanical Transfer Drive Components from Canada, dated October 28, 2015 (the "Petition").

[2] *See Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73716 (November 25, 2016) ("*Initiation Notice*").

[3] *See Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 81 FR 12687 (March 10, 2016).

[4] *See* Memoranda from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled: "Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from Canada" (Preliminary Decision Memorandum).

[5] *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'," dated January 27, 2016.

[6] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

[7] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

[8] *See Initiation Notice*, 80 FR at 73716.

[9] *See* Memorandum from Abdelali Elouaradia, Director, Office IV, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations," dated concurrently with this notice ("Scope Memorandum").

[10] *See* Letter from Petitioner to the Secretary of Commerce, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Amendment to the Scope," dated March 30, 2016.

[11] *See* Memorandum from Abdelali Elouaradia, Director, Office IV, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Scope Comments Regarding Exclusion of Certain Finished Torsional Vibration Dampers," dated April 8, 2016.

[12] *See* Letter from TB Woods to the Department, entitled "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Additional Amendment to the Scope," dated May 16, 2016.

[13] *See* letter from Baldor to the Department, re: Certain Iron Mechanical Transfer Drive Components from Canada—Baldor Canada's Decision Not to Respond to Department's Questionnaires, dated April 19, 2016 (No Response Letter).

[14] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets From Taiwan*, 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476, 14477 (March 14, 2014).

[15] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations*, 76 FR 61042 (October 3, 2011).

determination. Interested parties may submit case briefs to the Department no later than 30 days after the date of publication of the preliminary determination.[16] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[17] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All documents must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Standard Time on the date the document is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request for a hearing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[18] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date and time for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[19] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Verification

Because Baldor failed to provide information requested by the Department and the Department preliminarily determines Baldor to have been uncooperative, verification will not be conducted.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination by the Department, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On May 16, 2016, pursuant to 19 CFR 351.210(b)(2)(ii), Baldor requested that the Department postpone its final determination, and requested that the Department extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a period not to exceed six months.[20] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[21]

International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memoranda

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope of the Investigation
6. Scope Comments
7. Product Comparisons
8. Respondent Selection
9. Application of Facts Available and Use of Adverse Inference
10. Selection of the AFA Rate
11. Corroboration of Secondary Information
12. All-Others Rate
13. Conclusion

Appendix II—Scope of the Investigation

The products covered by this investigation are iron mechanical transfer drive components, whether finished or unfinished (*i.e.*, blanks or castings). Subject iron mechanical transfer drive components are in the form of wheels or cylinders with a center bore hole that may have one or more grooves or teeth in their outer circumference that guide or mesh with a flat or ribbed belt or like device and are often referred to as sheaves, pulleys, flywheels, flat pulleys, idlers, conveyor pulleys, synchronous sheaves, and timing pulleys. The products covered by this investigation also include bushings, which are iron mechanical transfer drive components in the form of a cylinder and which fit into the bore holes of other mechanical transfer drive components to lock them into drive shafts by means of elements such as teeth, bolts, or screws.

Iron mechanical transfer drive components subject to this investigation are those not less than 4.00 inches (101 mm) in the maximum nominal outer diameter.

Unfinished iron mechanical transfer drive components (*i.e.*, blanks or castings) possess the approximate shape of the finished iron mechanical transfer drive component and have not yet been machined to final specification after the initial casting, forging or like operations. These machining processes may include cutting, punching, notching, boring, threading, mitering, or chamfering.

Subject merchandise includes iron mechanical transfer drive components as defined above that have been finished or machined in a third country, including but not limited to finishing/machining processes such as cutting, punching, notching, boring, threading, mitering, or chamfering, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the iron mechanical transfer drive components.

Subject iron mechanical transfer drive components are covered by the scope of the investigation regardless of width, design, or iron type (*e.g.*, gray, white, or ductile iron). Subject iron mechanical transfer drive

[16] *See* 19 CFR 351.309(c)(1)(i).

[17] *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2).

[18] *See* 19 CFR 351.310(c).

[19] *Id.*

[20] *See* letter from Baldor, entitled "Certain Iron Mechanical Transfer Drive Components from Canada—Baldor Canada's Request to Postpone Final Determination," dated May 16, 2016.

[21] *See* 19 CFR 351.210(e).

components are covered by the scope of the investigation regardless of whether they have non-iron attachments or parts and regardless of whether they are entered with other mechanical transfer drive components or as part of a mechanical transfer drive assembly (which typically includes one or more of the iron mechanical transfer drive components identified above, and which may also include other parts such as a belt, coupling and/or shaft). When entered as a mechanical transfer drive assembly, only the iron components that meet the physical description of covered merchandise are covered merchandise, not the other components in the mechanical transfer drive assembly (*e.g.*, belt, coupling, shaft).

For purposes of this investigation, a covered product is of "iron" where the article has a carbon content of 1.7 percent by weight or above, regardless of the presence and amount of additional alloying elements.

Excluded from the scope are finished torsional vibration dampers (TVDs). A finished TVD is an engine component composed of three separate components: An inner ring, a rubber ring and an outer ring. The inner ring is an iron wheel or cylinder with a bore hole to fit a crank shaft which forms a seal to prevent leakage of oil from the engine. The rubber ring is a dampening medium between the inner and outer rings that effectively reduces the torsional vibration. The outer ring, which may be made of materials other than iron, may or may not have grooves in its outer circumference. To constitute a finished excluded TVD, the product must be composed of each of the three parts identified above and the three parts must be permanently affixed to one another such that both the inner ring and the outer ring are permanently affixed to the rubber ring. A finished TVD is excluded only if it meets the physical description provided above; merchandise that otherwise meets the description of the scope and does not satisfy the physical description of excluded finished TVDs above is still covered by the scope of the investigation regardless of end use or identification as a TVD.

The scope also excludes light-duty, fixed-pitch, non-synchronous sheaves ("excludable LDFPN sheaves") with each of the following characteristics: Made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN–GJL 200 or lower; having no more than two grooves; having a maximum face width of no more than 1.75 inches, where the face width is the width of the part at its outside diameter; having a maximum outside diameter of not more than 18.75 inches; and having no teeth on the outside or datum diameter. Excludable LDFPN sheaves must also either have a maximum straight bore size of 1.6875 inches with a maximum hub diameter of 2.875 inches; or else have a tapered bore measuring 1.625 inches at the large end, a maximum hub diameter of 3.50 inches, a length through tapered bore of 1.0 inches, exactly two tapped holes that are 180 degrees apart, and a 2.0- inch bolt circle on the face of the hub. Excludable LDFPN sheaves more than 6.75 inches in outside diameter must also have an arm or spoke construction.[22] Further, excludable LDFPN sheaves must have a groove profile as indicated in the table below:

Size (belt profile)	Outside diameter	Top width range of each groove (in.)	Maximum height (in.)	Angle
MA/AK (A, 3L, 4L)	≤5.45 in	0.484–0.499	0.531	34°
MA/AK (A, 3L, 4L)	>5.45 in. but ≤18.75 in	0.499–0.509	0.531	38°
MB/BK (A, B, 4L, 5L)	≤7.40 in	0.607–0.618	0.632	34°
MB/BK (A, B, 4L, 5L)	>7.40 in. but ≤18.75 in	0.620–0.631	0.635	38°

In addition to the above characteristics, excludable LDFPN sheaves must also have a maximum weight (pounds-per-piece) as follows: For excludable LDFPN sheaves with one groove and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 4.7 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 15.0 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 13.3 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 17.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 16.5 pounds; and for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 26.5 pounds.

The scope also excludes light-duty, variable-pitch, non-synchronous sheaves with each of the following characteristics: Made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN–GJL 200 or lower; having no more than 2 grooves; having a maximum overall width of less than 2.25 inches with a single groove, or of 3.25 inches or less with two grooves; having a maximum outside diameter of not more than 7.5 inches; having a maximum bore size of 1.625 inches; having either one or two identical, internally-threaded (*i.e.*, with threads on the inside diameter), adjustable (rotating) flange(s) on an externally-threaded hub (*i.e.*, with threads on the outside diameter) that enable(s) the width (opening) of the groove to be changed; and having no teeth on the outside or datum diameter.

The scope also excludes certain IMTDC bushings. An IMTDC bushing is excluded only if it has a tapered angle of greater than or equal to 10 degrees, where the angle is measured between one outside tapered surface and the directly opposing outside tapered surface.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8483.30.8090, 8483.50.6000, 8483.50.9040, 8483.50.9080, 8483.90.3000, 8483.90.8080. Covered merchandise may also enter under the following HTSUS subheadings: 7325.10.0080, 7325.99.1000, 7326.19.0010, 7326.19.0080, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070, 8431.39.0080, and 8483.50.4000. These HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–13535 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

[22] An arm or spoke construction is where arms or spokes (typically 3 to 6) connect the outside diameter of the sheave with the hub of the sheave. This is in contrast to a block construction (in which the material between the hub and the outside diameter is solid with a uniform thickness that is the same thickness as the hub of the sheave) or a web construction (in which the material between the hub and the outside diameter is solid but is thinner than at the hub of the sheave).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 5, 2016 the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from Thailand.[1] The period of review (POR) is August 1, 2014, through July 31, 2015. The review covers one producer/exporter of the subject merchandise, K. International Packaging Co., Ltd. (K. International Packaging). We invited parties to comment on the *Preliminarily Results*. None were received. Accordingly, for the final results, we continue to find that K. International Packaging made sales of subject merchandise at less than normal value.

DATES: Effective June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Andre Gziryan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2201.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 2016, the Department published the *Preliminary Results* of the administrative review. The Department gave interested parties an opportunity to comment on the *Preliminary Results*. None were received. The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to this order is PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

As a result of changes to the Harmonized Tariff Schedule of the United States (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of Review

The Department made no changes to the *Preliminary Results*. As a result of this review, we determine that a weighted-average dumping margin of 122.88 percent exists for K. International Packaging for the period August 1, 2014, through July 31, 2015.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to apply an *ad valorem* assessment rate of 122.88 percent to all entries of subject merchandise during the POR which were produced and/or exported by K. International Packaging. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for K. International Packaging will be 122.88 percent, the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will be 4.69 percent.[2] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

[1] *See Polyethylene Retail Carrier Bags From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 21536 (April 12, 2016) (Preliminary Results).

[2] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Polyethylene Retail Carrier Bags From Thailand*, 75 FR 48940 (August 12, 2010).

Dated: May 31, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13468 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Coastal Mapping Strategy 1.0: Coastal Lidar Elevation for a 3D Nation Draft for Review

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of Availability, Request for Comments; Webinar.

SUMMARY: The National Ocean Service of the National Oceanic and Atmospheric Administration (NOAA) publishes this notice on behalf of the Subcommittee on Ocean Science and Technology's Interagency Working Group on Ocean and Coastal Mapping (IWG–OCM) to announce a 60-day public comment period on the draft National Coastal Mapping Strategy (NCMS), Version 1.0.

Through this public comment period and corresponding webinar, the IWG–OCM seeks to solicit input on the draft NCMS.

DATES: See **SUPPLEMENTARY INFORMATION** section for location of the electronic version of the draft NCMS and webinar date.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for how to submit comments via email or by mail.

FOR FURTHER INFORMATION CONTACT: Sasha Pryborowski, (*Sasha.Pryborowski@noaa.gov*, 301–713–2702 x 111) or, Ashley Chappell (*Ashley.Chappell@noaa.gov*, 301–713–2702 x 110).

SUPPLEMENTARY INFORMATION: The IWG–OCM, of which NOAA is a member agency, was formed in 2006 to provide federal interagency coordination on ocean and coastal mapping. In accordance with the 2009 Ocean and Coastal Mapping Integration Act (OCMIA), the IWG–OCM is enhancing its coordination of ocean and coastal mapping to more effectively and efficiently provide stakeholders and the public with comprehensive geospatial information.

This first version of the NCMS is intended to address interagency data acquisition and coordination mandates in the OCMIA, and the National Ocean Policy. It is focused on coastal topographic-bathymetric lidar elevation data collection; subsequent versions will focus on other types of data collection (*e.g.*, bathymetry, photogrammetry). Lidar stands for Light Detection and Ranging, a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth. These light pulses—combined with other data recorded by the airborne system—generate precise, three-dimensional information about the shape of the Earth and its surface characteristics, in particular elevation. More information on lidar can be found at *http://oceanservice.noaa.gov/facts/lidar.html*.

Following is the executive summary from the draft NCMS Version1.0, which provides additional detail on the National Coastal Mapping Strategy:

Informed choices in the coastal zone, whether for the safety of coastal residents, environmental protection, security or economic decisions, require accurate and up-to-date U.S. coastal elevation data. The acquisition of this mapping data—in particular high-accuracy, high-resolution topographic and bathymetric lidar—must be comprehensive, coordinated, cost-effective, and recurring. Such a strategic approach to land-water lidar mapping at the coasts would bring the United States much closer to becoming a 3D Nation—a nation that translates robust mapping coordination into a seamless, modern elevation foundation for stronger, more resilient communities and a more competitive U.S. economy.

The IWG–OCM, tasked by Congress to develop a coastal mapping plan in the Ocean and Coastal Mapping Integration Act of 2009, has produced this first iteration of a NCMS to focus on that portion of the U.S. coastal zone that can be successfully mapped by a mix of lidar techniques for accurate elevation data. Recognizing the ongoing progress on lidar mapping coordination in the coastal zone, the IWG–OCM decided to capitalize on this existing momentum, and focus this first version of the NCMS on topographic and bathymetric lidar mapping of the U.S. coasts, Great Lakes, territories and possessions. Future iterations will include ocean mapping in the offshore and Outer Continental Shelf regions using technologies such as acoustic, aerial photography, hyperspectral and satellite imagery, to continue to build out the U.S. elevation dataset and meet other mapping needs (*e.g.*, bathymetry, nautical charting, habitat assessment, tsunami models). This NCMS 1.0 assesses the next steps needed to achieve the vision of the United States as a 3D Nation with comprehensive lidar elevation coverage, including whether there is sufficient interest in mapping U.S. coastal areas routinely through the judicious, efficient and closely-aligned collection of lidar bathymetry and topography. The strategy also contains four actionable components on the path to develop Coastal Lidar Elevation for a 3D Nation.

- Component 1 describes the organization of IWG–OCM Coastal Mapping Summits linked to web-based reporting in order to enhance existing and ongoing coordination on coastal lidar acquisition.
- Component 2 details definitions for bathymetric lidar Quality Levels that will foster the collection of interoperable datasets by all IWG–OCM member agencies involved in lidar collection.
- The focus of Component 3 is to improve interagency coordination on data management tasks (validation, processing, stewardship, dissemination and archiving) in order to reduce costs, maximize efficiency, and avoid duplication of effort.
- Lastly, Component 4 lays out an approach for cooperation on targeted methods, research, and technique development. New tools and improved technologies developed through this structure will facilitate interagency collaboration in obtaining the maximum value from shared coastal mapping data.

Other Information

The draft NCMS Version 1.0 can be found at: *http://www.iocm.noaa.gov/iwg/*.

Stakeholders and the public are encouraged to submit comments and questions on the NCMS. Electronic comments and questions on the NCMS may be submitted via email to *iwgocm.staff@noaa.gov*. Written comments may also be submitted to NOAA Integrated Ocean and Coastal Mapping Program, SSMC–3, #6815, 1315 East-West Highway, Silver Spring, MD 20910.

A webinar has also been scheduled to answer questions that stakeholders or the public may have on the NCMS and to gather input on how to improve the draft, such as by identifying missing elements or incorporating other perspectives. All interested parties are encouraged to participate. Comments and questions are welcomed both ahead of, and after, the webinar using the mechanisms identified above.

National Coastal Mapping Strategy Webinar—[June 23, 2016, 1:00–2:00 p.m. EST]

- TELECONFERENCE INFORMATION
  - Dial-in Number: 1–888–459–8313

- Passcode: 6564989#
- WEB CONFERENCE INFORMATION
- Persons wishing to attend the meeting online via the web conference must register in advance no later than 5 p.m. EST on June 20, 2016, by sending an email to *Sasha.Pryborowski@noaa.gov*.
- Instructions to Join Web Conference on June 23, 2016:
  - Join the meeting: *http://www.mymeetings.com/nc/join.php?sigKey=mymeetings&i=748882585&p=&t=c*
  - Enter the required fields (no passcode required)
    - Meeting Number: 748882585
    - Meeting Passcode: none required
  - Indicate that you have read the Privacy Policy.
  - Click on Proceed.

Note that the web conference is limited to 200 participants and will therefore be available on a first-come, first-served basis. The agenda for the webinar will include time for questions and answers, and comments. The agenda will be posted to *http://www.iocm.noaa.gov/iwg/* at least 10 days before the webinar.

Other Information

Paperwork Reduction Act: NOAA has determined that this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Dated: May 31, 2016.

W. Russell Callender,

Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–13568 Filed 6–7–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Electronic Monitoring Systems and Vessel Monitoring Systems (VMS) for Atlantic Highly Migratory Species (HMS)

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 8, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Margo Schulze-Haugen, (301) 427–8503 or *Margo.Schulze-Haugen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

VMS and electronic monitoring systems collect important information on fishing effort, catch, and the geographic location of fishing effort and catch for certain sectors of the Atlantic HMS fleet. Data collected through these programs are used in both domestic and international fisheries management, including for law enforcement, stock assessments, and quota management purposes. Atlantic HMS vessels required to use VMS are pelagic longline, purse seine, bottom longline (directed shark permit holders in North Carolina, South Carolina, and Virginia), and gillnet (directed shark permit holders consistent with the requirements of the Atlantic large whale take reduction plan requirements at 50 CFR 229.39.(h)) vessels. In addition to VMS, pelagic longline vessels are also required to have electronic monitoring systems to monitor catch and account for bluefin tuna harvest and discards.

The National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE) monitors fleet adherence to gear- and time-area restrictions with VMS position location data. Gear restricted areas and time-area closures are important tools for Atlantic HMS management that have been implemented to reduce bycatch of juvenile swordfish, sea turtles, and bluefin tuna, among other species. Electronic monitoring data from the pelagic longline fleet includes bluefin tuna discard and harvest information. These data are used by NMFS to accurately monitor bluefin tuna catch by the pelagic longline fleet, to ensure compliance with Individual Bluefin Quota (IBQ) limits and requirements, and to ensure that the Longline category bluefin tuna quota is not over-harvested. VMS reporting of bluefin tuna catch is used to monitor the status of IBQ allocations in real-time.

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

II. Method of Collection

First-time VMS respondents must install a VMS unit and submit an activation checklist to NMFS via mail. Hail-out, hail-in, hourly position reports, and bluefin tuna catch reports must be submitted to NMFS via the VMS communication system. First-time electronic monitoring respondents must have an electronic monitoring system installed by a NMFS contractor. Electronic monitoring data must be submitted after each pelagic longline trip via mail.

III. Data

OMB Control Number: 0648–0372.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Businesses or other for-profit organizations; individuals or households; State, Local, or Tribal government.

Estimated Number of Respondents: 311.

Estimated Time per Response: Four hours for initial VMS installation; 5 minutes per VMS initial activation checklist; 2 minutes per VMS hail-out/hail-in declaration; 6 hours for electronic monitoring installation; 5 minutes for VMS pelagic longline bluefin tuna catch reporting;15 minutes for VMS purse seine bluefin tuna catch records; 1 minute for dockside review of bluefin tuna catch records previously submitted via VMS; 2 hours for electronic monitoring data retrieval.

Estimated Total Annual Burden Hours: 20,402.

Estimated Total Annual Cost to Public: $389,416 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–13519 Filed 6–7–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0011]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 8, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Vietnam War Commemoration Program Partner Events; DD Form 2956, DD Form 2957, Vietnam War 50th Commemoration Certificate of Honor (1) "In Memory Of" (DD Form x711), (2) "Former Vietnam POW" (DD Form x712), and (3) "Unaccounted For" (DD Form x713); OMB Control Number 0704–0500.

Type of Request: Revision.

Number of Respondents: 12,000.

Responses per Respondent: 7.

Annual Responses: 22,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5,500.

Needs and Uses: The information collection requirement is necessary to notify the United States of America Vietnam War Commemoration Program of Commemorative Partner's planned events. Information is submitted for inclusion on the Program's events calendar and to request event support in the form of materials and/or speakers from the program. The information collection is necessary to obtain, vet, record, process and provide Certificates of Honor to be presented on behalf of a grateful nation by partner organizations. Additionally, this collection is necessary for the partner organizations to communicate to the Commemoration program the results of their events and lessons learned.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Federal Government; State, local, or tribal government, and individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 3, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13561 Filed 6–7–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0069]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 8, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Department of Defense Office of Economic Adjustment, 2231 Crystal Drive, Suite 520, Arlington, Virginia, 22202–3711, ATTN: Mr. James P. Holland, or call 703–697–2188, email: *james.p.holland8.civ@mail.mil*.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Control Number 0790–0004.

Needs and Uses: The information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the use of EDC property for seven years.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 2,000.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 40 hours.

Frequency: Annual.

Respondents are LRAs that have executed EDC agreements with a Military Department that transferred property from a closed military installation. As provided by 32 CFR 174.9, such agreements require that the LRA reinvest the proceeds from any sale, lease or equivalent use of EDC property (or any portion thereof) during at least the first seven years after the date of the initial transfer of the property to support the economic redevelopment of, or related to, the installation. The Secretary of Defense may recoup from the LRA such portion of these proceeds not used to support the economic redevelopment of, or related to, the installation. LRAs are subject to this same seven-year reinvestment requirement if their EDC agreement is modified to reduce the debt owed to the Federal Government. Military Departments monitor LRA compliance with this provision by requiring an annual financial statement certified by an independent Certified Public Accountant. No specific form is required.

Dated: June 3, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–13566 Filed 6–7–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Defense Advisory Committee on Military Personnel Testing.

DATES: Thursday, July 7, 2016, from 9:00 a.m. to 4:00 p.m. and Friday, July 8, 2016, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The Academy Hotel, 8110 North Academy Boulevard, Colorado Springs, Colorado 80920.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (title 5 United States Code (U.S.C.), Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and title 41, Code of Federal Regulations (CFR), section 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized tests for military enlistment screening.

Agenda: The agenda includes an overview of current enlistment test development timelines, test development strategies, and planned research for the next 3 years.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, Room 3D1066, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

Persons desiring to make oral presentations or submit written statements for consideration at the committee meeting must contact Dr. Jane M. Arabian at the address or telephone number in the **FOR FURTHER INFORMATION CONTACT** section no later than Wednesday, June 15, 2016.

Dated: June 3, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13524 Filed 6–7–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Comprehensive Centers Program—National Comprehensive Center on Improving Literacy for Students With Disabilities

AGENCY: Offices of Elementary and Secondary Education and Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

Comprehensive Centers Program—National Comprehensive Center on Improving Literacy for Students with Disabilities Notice inviting applications for a new award for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.283D.

DATES:

Applications Available: June 8, 2016.

Deadline for Transmittal of Applications: July 25, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Section 2244 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), requires the Secretary to establish a comprehensive center on students at risk of not attaining full literacy skills due to a disability. Comprehensive Centers are typically administered by the Office of Elementary and Secondary Education (OESE). OESE is funding this Center; however, because of the Center's subject matter, it will be administered jointly by

OESE and the Office of Special Education and Rehabilitative Services (OSERS).

Priority: We are establishing this priority for the FY 2016 grant competition in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Comprehensive Center on Improving Literacy for Students with Disabilities.

Priority: The purpose of this priority is to fund a cooperative agreement to establish a National Comprehensive Center on Improving Literacy for Students with Disabilities (the Center) for children in early childhood education programs through high school. The comprehensive center must:

(a) Identify or develop free or low-cost evidence-based assessment tools for identifying students at risk of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning;

(b) Identify evidence-based literacy instruction, strategies, and accommodations, including assistive technology, designed to meet the specific needs of such students;

(c) Provide families of such students with information to assist such students, and as part of this activity, the Center should plan to collaborate with the parent training and information and community parent resource centers funded by the Department of Education (the Department), Office of Special Education Programs (OSEP) (*e.g.*, Center for Parent Information and Resources, and Parent Technical Assistance Centers);

(d) Identify or develop evidence-based professional development for teachers, paraprofessionals, principals, other school leaders, and specialized instructional support personnel to—

(1) Understand early indicators of students at risk of not attaining full literacy skills due to a disability, including dyslexia impacting reading or writing, or developmental delay impacting reading, writing, language processing, comprehension, or executive functioning;

(2) Use evidence-based screening assessments for early identification of such students beginning not later than kindergarten; and

(3) Implement evidence-based instruction designed to meet the specific needs of such students; and

(d) Disseminate the products of the comprehensive center to regionally diverse State educational agencies (SEAs), local educational agencies (LEAs), regional educational agencies, and schools, including, as appropriate, through partnerships with other comprehensive centers established under section 203 of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9602), regional educational laboratories established under section 174 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9564), and OSEP- and other related federally-funded technical assistance centers.

Application Requirements: The following requirements apply to all applications submitted under this competition. Any application that does not include the required documents or information will not be considered.

(a) Demonstrate in the narrative section of the application under "Significance of the Project" how the proposed project will address current and emerging training and information needs of SEAs, LEAs, technical assistance (TA) centers, schools, and practitioners to select and implement evidence-based practices that will improve literacy outcomes for students with disabilities or students who show indicators of disabilities that may prevent them from attaining full literacy skills. To meet this requirement, the applicant must—

(1) Demonstrate knowledge of current and emerging evidence-based practices in reading and literacy-related instruction, screening, assessment, and identification of students with disabilities or students who show indicators of disabilities that may prevent them from attaining full literacy skills, including knowledge of culturally responsive evidence-based practices to respond to the needs of diverse learners with disabilities;

(2) Demonstrate knowledge of and previous experience with using creative approaches to disseminate evidence-based practices to a variety of entities, including parents, SEAs, LEAs, schools, Head Start, and other early childhood programs;

(3) Demonstrate knowledge of and previous experience with implementing TA strategies and delivering evidence-based professional development (PD) to a variety of entities, including SEAs, LEAs, schools, Head Start, and other early childhood programs; and

(4) Demonstrate how using these TA and PD strategies has resulted in SEAs, LEAs, schools, teachers, paraprofessionals, principals, other school leaders, and specialized instructional support personnel adopting, implementing, and sustaining evidence-based practices in reading and literacy-related instruction.

(b) Demonstrate in the narrative section of the application under "Quality of Project Design," how the Center will accomplish project goals and activities. To meet this requirement, the applicant must—

(1) Describe a five-year plan for the Center to identify current and emerging training and information needs and to address the priority requirements;

(2) Use a conceptual framework for developing project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

(3) Incorporate current research and evidence-based practices and strategies in the development and delivery of its products and services;

(4) Provide TA that is of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. The applicant must describe how it will use TA of varying levels of intensity, based on the needs of SEAs and other entities, to assess and build the capacity of SEAs, LEAs, TA centers, schools, Head Start and other early childhood programs, and practitioners to—

(i) Assess students' literacy-related skills, including the capacity to: Identify students with disabilities or students who show indicators of disabilities that may prevent them from attaining full literacy skills, administer assessments including screening tools, evaluate the evidence base for an assessment (*i.e.*, reliability, validity, sensitivity, specificity), understand the purpose of the assessment and the skills being assessed, and interpret assessment results;

(ii) Fully implement evidence-based literacy-related programs. This involves helping practitioners understand the literacy program's purpose or goal, intended population, content, and necessary implementation supports, including PD needed to implement it with fidelity; and

(iii) Use evidence-based PD programs to improve practitioners' knowledge of reading and literacy-related instruction, ultimately leading to better literacy-related skills of students with disabilities or students who show indicators of disabilities that may prevent them from attaining full literacy skills;

(5) Partner with other federally funded comprehensive centers, regional educational laboratories, equity assistance centers, TA centers, parent training and information and community parent resource centers, and other related organizations to refine or develop products, create training modules, and hold meetings to both encourage collaborative activities among SEAs, LEAs, schools, Head Start and other early childhood programs, practitioners, and parents, and maximize efficiency. These partnerships should include—

(i) Using technology, including assistive technology, to achieve intended project outcomes;

(ii) Collaborating with national experts, institutions of higher education, and TA providers to avoid duplicating efforts; and

(iii) Collaboratively identifying measures or guidelines for detecting if, due to a disability, students are at risk of not attaining full literacy skills, not learning to read, or not reaching benchmarks.

(c) In the narrative section of the application under "Quality of the Evaluation Plan," include an evaluation plan for the project. The evaluation plan must—

(1) Describe performance goals, objectives, and outcomes for the project that are clearly specified and measurable in terms of the project activities to be accomplished and their stated outcomes;

(2) In accordance with paragraph (f)(1) of these Application Requirements, describe the logic model by which the proposed project will achieve its intended outcomes;

(3) Describe how both progress in implementation and project outcomes will be measured, including the extent to which the project's products and services will reach its target population, how intended outcomes or results are achieved, a timeline for conducting the evaluation, and data analytic strategies.

(4) Specify the measures and associated instruments or sources for data appropriate to the evaluation questions, suggest analytic strategies for those data, provide a timeline for conducting the evaluation, and include staff assignments for completing the plan;

(5) Describe how evaluations of performance will be used to inform and improve service delivery over the course of the grant and to refine the proposed logic model and evaluation plan, including data collection; and

(6) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (c)(1) and (2) of these Application Requirements and implementing the evaluation plan.

(d) Demonstrate, in the narrative section of the application under "Adequacy of Project Resources," how—

(1) The proposed key project personnel, consultants, and subcontractors have the qualifications and subject-matter and technical expertise to carry out the proposed activities, achieve the project's intended outcomes, and develop ongoing partnerships with leading experts and organizations nationwide to inform project activities;

(2) The applicant and any key partners have adequate resources to carry out the proposed activities;

(3) The proposed costs are reasonable in relation to the anticipated results and benefits; and

(4) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate.

(e) Demonstrate, in the narrative section of the application under "Quality of the Management Plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as appropriate; and

(ii) Timelines and milestones for accomplishing the project tasks.

(2) Allocation of key project personnel and any consultants and subcontractors and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including families, general and special education teachers, related services providers, TA providers, researchers, institutions of higher education, policy makers, among others, in its development and operation.

(f) The applicant must—

(1) Include, in Appendix A, a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: OSEP uses this definition of logic model to differentiate between logic models and conceptual frameworks. The following Web sites provide more information on logic models: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(2) Include, in Appendix A, a conceptual framework for the project;

(3) Include, in Appendix A, person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(4) Include in the budget 2-day trips twice per year to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by the Department; and

(5) Maintain a Web site that meets government or industry-recognized standards for accessibility.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the project officer and the grantee's project director or other authorized representative.

Definitions: These definitions apply to the National Comprehensive Center on Improving Literacy for Students with Disabilities priority in this notice. The definition of "evidence-based" comes from section 8002 of the ESEA, as amended by the ESSA. The definitions are as follows:

Evidence-based means an activity, strategy, or intervention that (i) demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—(I) strong evidence from at least one well-designed and well-implemented experimental study; (II) moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or (III) promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or (ii)(I) demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and (II) includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Practitioners (for the purposes of this priority) includes teachers, paraprofessionals, principals, other school leaders, and specialized instructional support personnel.

TA services are defined as a negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the Comprehensive Centers program under section 2244 of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6674, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority and requirements under section 437(d)(1) of GEPA. The priority and requirements will apply to the FY 2016 grant competition only.

Program Authority: 20 U.S.C. 6674; Consolidated Appropriations Act, 2016.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $1,475,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,475,000 for a single budget period of 12 months in year one and $1,500,000 for a single budget period in years 2–5.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in this notice.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Eligible Subgrantees:* (a) Under 34 CFR 75.708(b) and (c) a grantee may award subgrants—to directly carry out project activities described in its application—to the following types of entities: SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian tribes or tribal organizations; and for-profit organizations suitable to carry out the activities proposed in the application.

(b) The grantee may award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.283D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to no more than 60 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit and double-spacing requirements do not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the page limit and double-spacing requirements do apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

We will reject your application if you exceed the page limit in the application narrative section or if you apply standards other than those specified in this notice and the application package.

3. *Submission Dates and Times:*

Applications Available: June 8, 2016.

Deadline for Transmittal of Applications: July 25, 2016.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application

process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform*. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov*.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a *SAM.gov* Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html*.

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html*.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the National Comprehensive Center on Improving Literacy for Students with Disabilities competition, CFDA number 84.283D, must be submitted electronically using the Governmentwide *Grants.gov* apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the National Comprehensive Center on Improving Literacy for Students with Disabilities competition at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.283, not 84.283D).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov*.
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov*. In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html*.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.*, Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the *Grants.gov* system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kristen Rhoads, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza, Washington, DC 20202–5076. FAX: (202) 245–7619.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.283D), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.283D), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* To evaluate the overall success of the Comprehensive Center program, the Department will use three performance measures to assess the quality, relevance, and usefulness of center activities funded under this competition. These measures, adapted from a set of common measures developed to help assess performance across the Department's TA programs, are: (1) The percentage of all Comprehensive Centers' products and services that are deemed to be of high quality by qualified experts or individuals with appropriate expertise to review the substantive content of the products and services; (2) the percentage of all Comprehensive Centers' products and services that are deemed to be of high relevance to educational policy or practice by target audiences; and (3) the percentage of all Comprehensive Centers' products and services that are deemed to be of high usefulness to educational policy or practice by target audiences.

All grantees will be expected to submit, as part of their performance reports, quantitative data documenting their progress with regard to these performance measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Kristen Rhoads, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6715.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting Wendell Bell, U.S. Department of Education, 400 Maryland Avenue SW., Room 5113, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7268. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 3, 2016.

Ann Whalen,

Delegated the Authority to Perform the Functions and Duties of Assistant Secretary for Elementary and Secondary Education.

Sue Swenson,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2016–13587 Filed 6–7–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0066]

Agency Information Collection Activities; Comment Request; Race to the Top—Early Learning Challenge Annual Performance Report

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 8, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0066. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Deborah Spitz, 202–260–3793.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Race to the Top—Early Learning Challenge Annual Performance Report.

OMB Control Number: 1810–0713.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 11.

Total Estimated Number of Annual Burden Hours: 1,320.

Abstract: The Department of Education and the Department of Health and Human Services (Departments) are requesting renewal of the currently approved Annual Performance Report for RTT–ELC grantees, without making any material change to the collection instrument, instructions, frequency of collection or use. The information submitted in the Annual Performance Report is used to verify that grantees are making substantial progress toward the achievement of approved objectives. This grant awarded all funds up front, so the APR will not be used to determine continuation awards, but will

be used to provide necessary performance information and data to program staff and to the public. Further, this APR form collects aggregate and quantifiable data needed to respond to the requirements of the Government Performance and Results Act (GPRA).

Information is collected under the authority of Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009, as amended by section 1832(b) of Division B of P.L. 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012 (Title III of Division F of P.L. 112–74, the Consolidated Appropriations Act, 2012). (Attached is a copy of the authorizing statute.)

Dated: June 2, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–13460 Filed 6–7–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 16–28–LNG]

Venture Global Plaquemines LNG, LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on March 1, 2016, by Venture Global Plaquemines LNG, LLC (Plaquemines LNG), requesting long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG), up to the equivalent of 1,240 billion cubic feet per year (Bcf/y) of natural gas. Plaquemines LNG requested authority to export this LNG to any country which has, or in future develops, the capacity to import LNG via ocean-going carriers, with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U. S. law or policy (non-FTA countries).[1] Plaquemines LNG seeks authorization to export this LNG for a 25-year term commencing on the earlier of the date of first export or seven years from the date the authorization is issued. Plaquemines LNG proposes to conduct its export operations from the Plaquemines LNG Project, a planned natural gas liquefaction and LNG export terminal to be located on the west bank of the Mississippi River, near river mile marker 55, in Plaquemines Parish, Louisiana. Plaquemines LNG seeks to export this LNG on its own behalf and as agent for other entities who hold title to the LNG at the time of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Additional details can be found in Plaquemines LNG's Application, posted on the DOE/FE Web site at: *http://www.energy.gov/fe/venture-global-plaquemines-lng-llc-plaquemines-lng-fe-dkt-no-16-28-lng-ftanfta.*

Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 8, 2016.

ADDRESSES:

Electronic Filing by email:fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Kyle W. Moorman or Larine Moore, U.S. Department of Energy (FE–34) Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7970; (202) 586–9578.

Edward Myers, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and DOE will consider any issues required by law or policy. To the extent determined to be relevant, these issues will include the domestic need for the natural gas proposed to be exported, the adequacy of domestic natural gas supply, U.S. energy security, and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE may also consider other factors bearing on the public interest, including the impact of the proposed exports on the U.S. economy (including GDP, consumers, and industry), job creation, the U.S. balance of trade, and international considerations; and whether the authorization is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the following two studies examining the cumulative impacts of exporting domestically produced LNG:

- *Effect of Increased Levels of Liquefied Natural Gas Exports on U.S. Energy Markets,* conducted by the U.S. Energy Information Administration upon DOE's request (2014 EIA LNG Export Study);[2] and
- *The Macroeconomic Impact of Increasing U.S. LNG Exports,* conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics, on behalf of DOE (2015 LNG Export Study).[3]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States, 79 FR 48132 (Aug. 15, 2014);*[4] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States,* 79 FR 32260 (June 4, 2014).[5]

Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Due to the complexity of the issues raised by the Applicant, interested parties will be provided 60 days from the date of publication of this Notice in which to submit their comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 16–28–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 16–28–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on June 1, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2016–13550 Filed 6–7–16; 8:45 am]

BILLING CODE 6450–01–P

[1] In the Application, Plaquemines LNG also requests authorization to export LNG to any nation that currently has, or in the future may enter into, a FTA requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (FTA countries). DOE/FE will review that request for a FTA export authorization separately pursuant to NGA § 3(c), 15 U.S.C. 717b(c). The proposed export volumes for FTA and non-FTA destination countries are not additive.

[2] The 2014 EIA LNG Export Study, published on Oct. 29, 2014, is available at: *https://www.eia.gov/analysis/requests/fe/.*

[3] The 2015 LNG Export Study, dated Oct. 29, 2015, is available at: *http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.*

[4] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[5] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2960–006; ER10–1595–006; ER10–1598–006; ER10–1616–006; ER10–1618–006.

Applicants: Astoria Generating Company, L.P., Crete Energy Venture, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, Rolling Hills Generating, L.L.C.

Description: Notice of Non-Material Change in Status of Astoria Generating Company, L.P., et al.

Filed Date: 5/31/16.

Accession Number: 20160531–5671.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1822–000.

Applicants: Pacific Gas and Electric Company.

Description: Section 205(d) Rate Filing: May 2016 Western WDT Service Agreement Biannual Filing to be effective 8/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5542.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1823–000.

Applicants: Pacific Gas and Electric Company.

Description: Section 205(d) Rate Filing: May 2016 Western Interconnection Agreement Biannual Filing to be effective 8/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5549.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1824–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Section 205(d) Rate Filing: WPC 2016 Rider F & G and SSR Amendments to be effective 6/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5559.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1825–000.

Applicants: Duke Energy Progress, LLC.

Description: Section 205(d) Rate Filing: NCEMC–PJM Dynamic Transfer Agreement RS No 202 to be effective 6/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5585.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1826–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: 1067R7 East Texas Electric Cooperative NITSA and NOA to be effective 5/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5590.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1827–000.

Applicants: GenOn Energy Management, LLC.

Description: Section 205(d) Rate Filing: Tariff Filing and Request for Waiver to be effective 6/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5605.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1828–000.

Applicants: New York State Electric & Gas Corporation.

Description: Section 205(d) Rate Filing: Executed Transmission Facility Interconnection Agreement to be effective 5/27/2016.

Filed Date: 5/26/16.

Accession Number: 20160526–5361.

Comments Due: 5 p.m. ET 6/16/16.

Docket Numbers: ER16–1829–000.

Applicants: Clean Energy Future—Lordstown, LLC.

Description: Request for Limited Waiver of Clean Energy Future ? Lordstown, LLC.

Filed Date: 5/31/16.

Accession Number: 20160531–5640.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1830–000.

Applicants: AEP Texas Central Company.

Description: Section 205(d) Rate Filing: TCC-TNC-Rio Grande EC TSA Second Amend & Restated to be effective 5/6/2016.

Filed Date: 6/1/16.

Accession Number: 20160601–5111.

Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: ER16–1831–000.

Applicants: AEP Texas North Company.

Description: Section 205(d) Rate Filing: TCC-TNC-Rio Grande EC TSA Second Amend & Restated Concurrence to be effective 5/6/2016.

Filed Date: 6/1/16.

Accession Number: 20160601–5112.

Comments Due: 5 p.m. ET 6/22/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13445 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–123–000.

Applicants: BluCo Energy LLC.

Description: Application under FPA Section 203 of BluCo Energy LLC.

Filed Date: 6/1/16.

Accession Number: 20160602–5182.

Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: EC16–124–000.

Applicants: Iron Energy LLC.

Description: Application under FPA Section 203 of Iron Energy LLC.

Filed Date: 6/1/16.

Accession Number: 20160602–5187.

Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: EC16–125–000.

Applicants: Northbrook New York, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Northbrook New York, LLC.

Filed Date: 6/1/16.

Accession Number: 20160601–5406.

Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: EC16–126–000.

Applicants: Odell Wind Farm, LLC, Algonquin Power (Odell Holdings) Inc., Odell SponsorCo, LLC, Odell Holdings, LLC.

Description: Application of Odell Wind Farm, LLC, et al. for Authorization Under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment.

Filed Date: 6/1/16.

Accession Number: 20160602–5222.

Comments Due: 5 p.m. ET 6/22/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2238–008; ER10–2239–008; ER10–2237–007; ER12–896–004.

Applicants: Indigo Generation LLC, Larkspur Energy LLC, Wildflower Energy LP, Mariposa Energy, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of the DGC Southwest Sellers, et al.

Filed Date: 6/2/16.

Accession Number: 20160602–5324.

Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: ER15–767–003

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–06–02_Schedule 43I White Pine 2 SSR Cost Allocation Compliance to be effective 1/1/2015.

Filed Date: 6/2/16.

Accession Number: 20160602–5256.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER15–2145–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–06–02_Schedule 43H_White Pine 1 SSR Cost Allocation Compliance to be effective 4/16/2015.

Filed Date: 6/2/16.

Accession Number: 20160602–5299.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–938–004.

Applicants: Arizona Public Service Company.

Description: Compliance filing: Compliance Filing—Corrected Schedule 10 to be effective 10/1/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5329.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1083–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–06–02SA 2786 ITC Midwest-IPL 1st Rev. GIA (J233) Compliance to be effective 3/5/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5300.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1835–000.

Applicants: Appalachian Power Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEPSC submits revisions to RAA Sch 8.1–Appdx 2B re: depreciation rates for APCo to be effective 6/1/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5002.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1836–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: § 205(d) Rate Filing: 2016 RIA Annual Update to be effective 1/1/2016.

Filed Date: 6/1/16.

Accession Number: 20160602–5003.

Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: ER16–1837–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4475, Queue No. Z2–116 to be effective 5/23/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5147.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1838–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: Joint Filing of ISO–NE and NEPOOL to Implement Sub-Hourly Settlements to be effective 3/1/2017.

Filed Date: 6/2/16.

Accession Number: 20160602–5148.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1839–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2016–06–02SA 2921 Ameren Illinois-Prairie Power T–TIA (Ballard Substation) to be effective 5/3/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5150.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1840–000.

Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: PPL submits Engineering and Construction SA No. 4476 with MetEd to be effective 8/1/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5153.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1841–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4472, Queue No. Z2–114 to be effective 5/23/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5186.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1843–000.

Applicants: Beech Ridge Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5305.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1844–000.

Applicants: Beech Ridge Energy II LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5307.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1845–000.

Applicants: Beech Ridge Energy Storage LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5308.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1846–000.

Applicants: Bishop Hill Energy III LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5309.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1847–000.

Applicants: Buckeye Wind Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5310.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1848–000.

Applicants: Forward Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5312.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1849–000.

Applicants: Grand Ridge Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5313.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1850–000.

Applicants: Grand Ridge Energy III LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5314.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1851–000.

Applicants: Grand Ridge Energy IV LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5315.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1852–000.

Applicants: Grand Ridge Energy V LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5316.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1853–000.

Applicants: Grand Ridge Energy Storage LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5317.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1854–000.

Applicants: Gratiot County Wind LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5318.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1855–000.

Applicants: Gratiot County Wind II LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5319.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1856–000.

Applicants: Grays Harbor Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5320.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1857–000.

Applicants: Invenergy Cannon Falls LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5321.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1858–000.

Applicants: Invenergy TN LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5322.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1859–000.

Applicants: Invenergy Nelson LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5323.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1860–000.

Applicants: Judith Gap Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5325.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1861–000.

Applicants: Sheldon Energy LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.

Filed Date: 6/2/16.

Accession Number: 20160602–5326.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–1862–000.

Applicants: Spindle Hill Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5330.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1863–000.
Applicants: Spring Canyon Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5332.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1864–000.
Applicants: Stony Creek Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5333.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1865–000.
Applicants: Willow Creek Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5336.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1866–000.
Applicants: Wolverine Creek Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5340.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1867–000.
Applicants: Prairie Breeze Wind Energy II LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5342.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1868–000.
Applicants: Prairie Breeze Wind Energy III LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5344.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1869–000.
Applicants: Vantage Wind Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5348.
Comments Due: 5 p.m. ET 6/23/16.
Docket Numbers: ER16–1870–000.
Applicants: Grand Ridge Energy II LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 8/2/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5357.
Comments Due: 5 p.m. ET 6/23/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: June 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13512 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–976–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Section 4(d) rate filing per 154.204: Madill Gas Processing Negotiated Rate to be effective 6/27/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5099.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–977–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rates 2016–05 to be effective 5/27/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5109.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–978–000.
Applicants: Ruby Pipeline, L.L.C.
Description: Section 4(d) rate filing per 154.403(d)(2): FLU and EPC to be effective 7/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5143.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–979–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: AGT Cleanup Filing to be effective 7/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5172.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–980–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—Keyspan Release to Chief 791677 to be effective 6/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5188.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–981–000.
Applicants: Portland Natural Gas Transmission System.
Description: Section 4(d) rate filing per 154.204: Available Capacity ROFR Revisions to be effective 6/27/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5189.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–982–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—Col Gas Release to BBPC 791665 to be effective 6/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5206.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–983–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—BUG Release to Chief Energy 791678 to be effective 6/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5208.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–984–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—Baystate Release to BBPC 791586 to be effective 6/1/2016.
Filed Date: 5/27/16.

Accession Number: 20160527–5213.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–985–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Section 4(d) rate filing per 154.403(d)(2): FL&U effective July 1, 2016 to be effective 7/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5215.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–986–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) rate filing per 154.204: Correct Language On Sheet 251 to be effective 4/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5216.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–987–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate—BBPC Release to EDF 791679 to be effective 6/1/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5219.
Comments Due: 5 p.m. ET 6/8/16.
Docket Numbers: RP16–989–000.
Applicants: WPX Energy Marketing, LLC, Citadel NGPE LLC.
Description: Joint Petition of WPX Energy Marketing, LLC and Citadel NGPE LLC for Temporary Waivers of Capacity Release Regulations, et al. and Request for Shortened Comment Period under RP16–989.
Filed Date: 5/27/16.
Accession Number: 20160527–5222.
Comments Due: 5 p.m. ET 6/3/16
Docket Numbers: RP16–1000–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Negotiated & Non-Conforming Service Agreement—Kentucky Power to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5595.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–1001–000.
Applicants: Discovery Gas Transmission LLC.
Description: Section 4(d) rate filing per 154.403(d)(2): 2016 FL&U Submittal to be effective 7/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5604.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–1002–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Non-Conforming Agreements—Colonial 510025 and Narragansett 510075 to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5614.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–988–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Section 4(d) rate filing per 154.204: Negotiated Rates—Cherokee AGL—Replacement Shippers—Jun 2016 to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5000.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–990–000.
Applicants: Texas Gas Transmission, LLC.
Description: Section 4(d) rate filing per 154.204: Neg Rate Agmts (Munford 20593 and Poplar Grove 20592) to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5186.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–991–000.
Applicants: Texas Eastern Transmission, LP.
Description: Section 4(d) rate filing per 154.204: NJRES 910531 6–1–2016 Negotiated Rate to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5289.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–992–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (Willmut 35221 to BP 46451) to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5369.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–993–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (Atlanta 8438 to various eff 6–1–16) to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5370.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–994–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmts (Encana 37663 to Conoco 46456, Texla 46469) to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5373.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–995–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Section 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (Petrohawk 41455 to Texla 46493) to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5374.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–996–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Compliance filing per 154.203: Cameron Interstate Pipeline, LLC eTariff Clean-Up to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5427.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–997–000.
Applicants: Enable Mississippi River Transmission, L.
Description: Section 4(d) rate filing per 154.204: Negotiated Rate Filing to Remove LER #5680 Effective 5–1–16 to be effective 5/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5454.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–998–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Section 4(d) rate filing per 154.403: Periodic Rate Adjustment Filing to be effective 7/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5485.
Comments Due: 5 p.m. ET 6/13/16.
Docket Numbers: RP16–999–000.
Applicants: Northern Natural Gas Company.
Description: Section 4(d) rate filing per 154.204: 20160531 Negotiated Rate to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5500.
Comments Due: 5 p.m. ET 6/13/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–549–002.
Applicants: PGPipeline LLC.
Description: Compliance filing per 154.203: NAESB 3.0 Compliance Filing to be effective 4/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5607.
Comments Due: 5 p.m. ET 6/13/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13448 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–959–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) rate filing per 154.204: June 2016 Open Season to be effective 6/1/2016.
Filed Date: 5/19/16.
Accession Number: 20160519–5142.
Comments Due: 5 p.m. ET 5/31/16.

Docket Numbers: RP16–970–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Section 4(d) rate filing per 154.204: PCB Adjustment Period Extension through 2018 to be effective 7/1/2016.
Filed Date: 5/26/16.
Accession Number: 20160526–5082.
Comments Due: 5 p.m. ET 6/7/16.

Docket Numbers: RP16–972–000.
Applicants: Rager Mountain Storage Company LLC.
Description: Section 4(d) rate filing per 154.204: Assignment Update to be effective 6/26/2016.
Filed Date: 5/26/16.
Accession Number: 20160526–5100.
Comments Due: 5 p.m. ET 6/7/16.

Docket Numbers: RP16–973–000.
Applicants: Elba Express Company, L.L.C.
Description: Annual Cashout True-Up of Elba Express Company, L.L.C. under RP16–973.
Filed Date: 5/26/16.
Accession Number: 20160526–5166.
Comments Due: 5 p.m. ET 6/7/16.

Docket Numbers: RP16–974–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: Section 4(d) rate filing per 154.601: Negotiated Rate Agreement Update (APS June 2016) to be effective 6/1/2016.
Filed Date: 5/26/16.
Accession Number: 20160526–5267.
Comments Due: 5 p.m. ET 6/7/16.

Docket Numbers: RP16–975–000.
Applicants: Venice Gathering System, L.L.C.
Description: Section 4(d) rate filing per 154.312: Filing to Change Rates to be effective 7/1/2016.
Filed Date: 5/26/16.
Accession Number: 20160526–5274.
Comments Due: 5 p.m. ET 6/7/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 27, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13446 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1833–000]

Sempra Gas & Power Marketing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sempra Gas & Power Marketing, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 22, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13513 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1150–001.
Applicants: Duke Energy Ohio, Inc., PJM Interconnection, L.L.C.
Description: Compliance filing: Duke Energy submits compliance filing per 5/13/16 order in Docket No. ER16–1150 to be effective 5/13/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5303.
Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: ER16–1832–000.
Applicants: Entergy Louisiana, LLC.
Description: Section 205(d) Rate Filing: ELL Nine Mile 6 Reactive to be effective 8/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5175.
Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: ER16–1833–000.
Applicants: Sempra Gas & Power Marketing, LLC.
Description: Baseline eTariff Filing: Sempra Gas & Power Marketing, LLC Petition for Market-Based Rates to be effective 8/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5189.
Comments Due: 5 p.m. ET 6/22/16.

Docket Numbers: ER16–1834–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original WMPA SA No. 4474, Queue No. Z2–113 to be effective 5/23/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5268.
Comments Due: 5 p.m. ET 6/22/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD16–6–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standards IRO–018–1 and TOP–010–1.
Filed Date: 07/01/16.
Accession Number: 20160526–5364.
Comments Due: 5 p.m. ET 6/27/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 1, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13447 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–122–000.
Applicants: Virginia Electric and Power Company.
Description: Application of Virginia Electric and Power Company for Authorization Under Section 203 of the Federal Power Act and Requests for Waivers, Shortened Comment Period and Expedited Consideration.
Filed Date: 5/27/16.
Accession Number: 20160527–5265.
Comments Due: 5 p.m. ET 6/17/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1469–004; ER10–1467–004; ER10–1468–004; ER10–1459–008; ER13–785–003; ER13–713–003; ER10–1453–004.
Applicants: Cleveland Electric Illuminating Company, FirstEnergy Generation Mansfield Unit 1 Corp., FirstEnergy Generation, LLC, FirstEnergy Nuclear Generation, LLC, FirstEnergy Solutions Corp., Ohio Edison Company, The Toledo Edison Company, The Cleveland Electric Illuminating Company.
Description: Notice of change in status of the FirstEnergy Companies et al.
Filed Date: 5/27/16.
Accession Number: 20160527–5247.
Comments Due: 5 p.m. ET 6/17/16.

Docket Numbers: ER15–623–009.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing pursuant to the May 10, 2016 Order on Rehearing and Compliance to be effective 4/1/2015.
Filed Date: 5/31/16.
Accession Number: 20160531–5509.
Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–923–002.
Applicants: Puget Sound Energy, Inc.
Description: Compliance filing: EIM Attachment O Compliance to be effective 7/25/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5209.
Comments Due: 5 p.m. ET 6/17/16.

Docket Numbers: ER16–1808–000.
Applicants: Williams Flexible Generation, LLC.
Description: Tariff Cancellation: Cancellation of Tariff to be effective 5/30/2016.
Filed Date: 5/27/16.
Accession Number: 20160527–5207.
Comments Due: 5 p.m. ET 6/17/16.

Docket Numbers: ER16–1809–000.
Applicants: NSTAR Electric Company.
Description: § 205(d) Rate Filing: First Amendment to Exelon West Medway II Design and Engineering Agreement to be effective 5/31/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5154.
Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1810–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Notice of Cancellation of Generator Interconnection and Operating Agreement of Michigan Electric Transmission Company, LLC.
Filed Date: 5/27/16.
Accession Number: 20160527–5254.
Comments Due: 5 p.m. ET 6/17/16.

Docket Numbers: ER16–1811–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3204 KCP&L GMO and City of Rich Hill, MO Interconnection Agr to be effective 5/27/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5271.
Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1812–000.
Applicants: Southwestern Electric Power Company.
Description: Informational Filing regarding postemployment benefits other than pensions and post-employment benefits of Southwestern Electric Power Company.
Filed Date: 5/27/16.
Accession Number: 20160527–5259.
Comments Due: 5 p.m. ET 6/17/16.

Docket Numbers: ER16–1813–000.
Applicants: New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: June 2016 Membership Filing to be effective 5/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5303.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1814–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment M Appendix 1 to Update the Loss Factor for SPS to be effective 5/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5321.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1815–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: DSA, Technicast Feed-In-Tariff Project to be effective 7/31/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5433.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1816–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 4471, Queue No. AB1–119 to be effective 5/17/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5437.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1817–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–05–31_Attachment X External NRIS Compliance Filing to be effective 12/31/9998.

Filed Date: 5/31/16.

Accession Number: 20160531–5480.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1818–000.

Applicants: South Eastern Generating Corp.

Description: Tariff Cancellation: Notice of Cancellation to be effective 6/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5499.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1819–000.

Applicants: South Eastern Electric Development Corp.

Description: Tariff Cancellation: Notice of Cancellation to be effective 6/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5501.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1820–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3252, Queue No. W4–031 to be effective 7/22/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5502.

Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: ER16–1821–000.

Applicants: Utility Contract Funding II, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation to be effective 6/1/2016.

Filed Date: 5/31/16.

Accession Number: 20160531–5503.

Comments Due: 5 p.m. ET 6/21/16.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH16–7–000.

Applicants: Public Sector Pension Investment Board.

Description: Public Sector Pension Investment Board submits FERC 65–B Waiver Notification.

Filed Date: 5/27/16.

Accession Number: 20160527–5264.

Comments Due: 5 p.m. ET 6/17/16.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR16–4–000.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation's Report of Comparisons of Budgeted to Actual Costs for 2015 for NERC and the Regional Entities.

Filed Date: 5/31/16.

Accession Number: 20160531–5442.

Comments Due: 5 p.m. ET 6/21/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 31, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13444 Filed 6–7–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–38–Region 4; CERCLA–04–2016–3751]

Cannon Drive Drum Superfund Site Social Circle, Walton County, Georgia; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement with Carter Jackson Inc., The Estate of Charles E. Carter and the United States Defense Logistics Agency, concerning the Cannon Drive Drum Superfund Site located in Social Circle, Walton County, Georgia. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until July 8, 2016. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices*
- *U.S. Mail:* U.S. Environmental Protection Agency Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404–562–8887.

Dated: May 11, 2016.

Anita L. Davis,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2016–13585 Filed 6–7–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0234; FRL–9947–47–OAR]

Access by EPA Contractors to Information Claimed as Confidential Business Information (CBI) Submitted Under Title II of the Clean Air Act and Related Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Office of Transportation and Air Quality (OTAQ) plans to authorize various contractors to access information which will be submitted to the EPA under the Clean Air Act that may be claimed as, or may be determined to be, confidential business information (CBI). Access to this information, which is related to registration of fuels and fuel additives under 40 CFR part 79; various fuels reporting programs under 40 CFR part 80; and reporting of various greenhouse gas reporting items under the mandatory reporting rule of 40 CFR part 98, subparts A, LL and MM, will begin on June 20, 2016.

In addition to fuels-related reporting, this notice addresses access to information related to vehicles and engine compliance under 40 CFR part 86, 40 CFR part 600, 40 CFR part 1033, 40 CFR part 1036, 40 CFR part 1039, 40 CFR part 1042, 40 CFR part 1045, 40 CFR part 1048, 40 CFR part 1051, 40 CFR part 1054, 40 CFR part 1060, and 40 CFR part 1068.

DATES: The EPA will accept comments on this Notice through June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Pastorkovich, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., MC 6405A, Washington, DC 20004; telephone number: 202–343–9623; fax number: 202–343–2800; email address: *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this notice apply to me?

This action is directed to the general public. However, this action may be of particular interest to parties who submit information to the EPA regarding the following programs: Fuel and fuel additive registration (40 CFR part 79); and various fuels programs including reformulated gasoline, anti-dumping, gasoline sulfur, ultra low sulfur diesel, benzene content, and the renewable fuel standard (40 CFR part 80). Parties who may be interested include refiners, importers, producers of renewable fuels, parties who engage in Renewable Identification Number (RIN) transactions, and all those who submit compliance reports to the EPA via any method (*e.g.,* via EPA's Central Data Exchange, or CDX), including those who engage in reporting via the EPA Moderated Transaction System (EMTS).

This action may be of particular interest to parties such as suppliers of coal-based liquid fuels and suppliers of petroleum products, as described in 40 CFR part 98 subparts LL and MM, respectively. (40 CFR part 98, subpart A contains general provisions related to registration and reporting.) Parties who may be interested in this notice include refiners, importers, and exporters of these products.

This action may also be of particular interest to parties who submit information to EPA's vehicle and engine compliance information system, commonly known as the Verify system, under 40 CFR part 86, 40 CFR part 600, 40 CFR part 1033, 40 CFR part 1036, 40 CFR part 1039, 40 CFR part 1042, 40 CFR part 1045, 40 CFR part 1048, 40 CFR part 1051, 40 CFR part 1054, 40 CFR part 1060, and 40 CFR part 1068.

This **Federal Register** notice may be of particular relevance to parties that submit or have submitted data under the above-listed programs or systems. Since other parties may also be interested, the Agency has not attempted to describe all the specific parties that may be affected by this action. If you have further questions regarding the applicability of this action to a particular party, please contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

II. How can I get copies of this document and other related information?

A. Electronically

The EPA has established a public docket for this **Federal Register** notice under Docket EPA–HQ–OAR–2016–0234.

All documents in the docket are identified in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, such as confidential business information (CBI) or other information for which disclosure is restricted by statute. Certain materials, such as copyrighted material, will only be available in hard copy at the EPA Docket Center.

B. EPA Docket Center

Materials listed under Docket EPA–HQ–OAR–2016–0234 will be available for public viewing at the EPA Docket Center Reading Room, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

III. Description of Programs and Potential Disclosure of Information Claimed as Confidential Business Information (CBI) to Contractors

The EPA's Office of Transportation and Air Quality (OTAQ) has responsibility for protecting public health and the environment by regulating air pollution from motor vehicles, engines, and the fuels used to operate them, and by encouraging travel choices that minimize emissions. In order to implement various Clean Air Act programs, and to permit regulated entities flexibility in meeting regulatory requirements (*e.g.,* compliance on average), we collect compliance reports and other information from them. The information submitted may be claimed as confidential business information (CBI). Information submitted under such a claim is handled in accordance with EPA's regulations at 40 CFR part 2, subpart B and in accordance with the EPA procedures, including comprehensive system security plans (SSPs) that are consistent with those regulations. When the EPA has determined that disclosure of information claimed as CBI to contractors is necessary, the corresponding contract must address the appropriate use and handling of the information by the contractor and the contractor must require its personnel who require access to information claimed as CBI to sign written non-disclosure agreements before they are granted access to data.

In accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as "contractors") listed below require access to CBI submitted to us under the Clean Air Act and in connection with various programs related to fuels, vehicles, and engines and we are providing notice and an opportunity to comment. OTAQ collects this data in order to monitor compliance with Clean Air Act programs and, in many cases, to permit regulated parties flexibility in meeting regulatory requirements. For example, data that may contain CBI are collected to register fuels and fuel additives prior to introduction into commerce. Certain programs are designed to permit regulated parties an

opportunity to comply on average, or to engage in transactions using various types of credits. For example, OTAQ collects information about batches of gasoline that refiners produce to ensure compliance with reformulated gasoline standards and this batch information may be claimed as CBI. We are issuing this **Federal Register** notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number GSGD0022, CGI Incorporated, located at 1100 New Jersey Avenue SE., Suite 800, Washington DC 20003, and its subcontractor, CACI International Incorporated, located at 4114 Legato Road, Fairfax, VA 22033, provide report processing, program support, technical support, and information technology services that involve access to information claimed as CBI related to 40 CFR part 79, 40 CFR part 80, and 40 CFR part 98 subparts A, LL, and MM. Access to data, including information claimed as CBI, will commence on June 20, 2016 and will continue until March 26, 2019. If the contract is extended, this access will continue for the remainder of the contract without further notice.

This **Federal Register** notice is in addition to our **Federal Register** notice entitled "Access by EPA Contractors to Information Claimed as Confidential Business Information (CBI) Submitted under Title II of the Clean Air Act and Related Regulations," which was published on December 21, 2015.[1] The access described under that notice and affecting submissions under 40 CFR part 79, 40 CFR part 80, and 40 CFR part 98 subparts A, LL, and MM continues and is unaffected by this notice.

Furthermore, in accordance with 40 CFR 2.301(h), we have determined that the contractors, subcontractors, and grantees (collectively referred to as "contractors") listed below require access to CBI submitted to us under the Clean Air Act and in connection with the vehicle and engine compliance information system, commonly known as the Verify system, under 40 CFR part 86, 40 CFR part 600, 40 CFR part 1033, 40 CFR part 1036, 40 CFR part 1039, 40 CFR part 1042, 40 CFR part 1045, 40 CFR part 1048, 40 CFR part 1051, 40 CFR part 1054, 40 CFR part 1060, and 40 CFR part 1068. We are providing notice and an opportunity to comment. We are issuing this **Federal Register** notice to inform all affected submitters of information that we plan to grant access to material that may be claimed as CBI to the contractors identified below on a need-to-know basis.

Under Contract Number GS00Q09BGD0025, CSC Government Solutions LLC, located at 1500 Conference Center Drive, Chantilly, VA 20151 provides Information Technology (IT) support services related to the EPA's vehicle and engine compliance information system, commonly known as the Verify system, under 40 CFR part 86, 40 CFR part 600, 40 CFR part 1033, 40 CFR part 1036, 40 CFR part 1039, 40 CFR part 1042, 40 CFR part 1045, 40 CFR part 1048, 40 CFR part 1051, 40 CFR part 1054, 40 CFR part 1060, and 40 CFR part 1068. Access by this contractor to vehicle and engine data and information under this contract, including information claimed as CBI, has been ongoing since March 10, 2016 and is expected to continue for the remainder of the contract without further notice.

Parties who want further information about this **Federal Register** notice or about OTAQ's disclosure of information claimed as CBI to contactors may contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection; confidential business information.

Dated: June 2, 2016.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–13580 Filed 6–7–16; 8:45 am]

BILLING CODE 6560–50–P

[1] See 80 FR 79329 (December 21, 2015). The notice may be viewed at the **Federal Register** Web page at *https://federalregister.gov/a/2015-32011.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9943–68]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel and amend pesticide registrations. The amendment request also would delete one glyphosate use on seed production of creeping bentgrass with a Roundup Ready Gene. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 5, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Attention: Miguel Zavala.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Miguel Zavala, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0504; email address: *zavala.miguel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants and stakeholders to cancel and delete certain product registrations and amend certain uses of the chemicals listed in Unit II., Tables 1 and 2, registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number).

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Active ingredient
100–1244	Banner Dry Maxx	Propiconazole.
3525–71	Utikem Black Algae Killer	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
3525–91	Coastal Mind Disinfectant	Alkyl* dimethyl benzyl ammonium chloride *(58%C14, 28%C16, 14%C12).
3525–96	Jolt Pool Shock Treatment for Control of Algae	Lithium hypochlorite.
3525–109	Algaecide & Pool Conditioner	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
9198–205	Andersons Golf Products Turf Enhancer 2SC	Paclobutrazol.
10324–56	Maquat 256	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12) and Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14).
35935–41	Dithiopyr Technical	Dithiopyr.
35935–49	Dynamo Dithiopyr Technical	Dithiopyr.
35935–75	Dithiopyr Technical	Dithiopyr.
53883–207	Dithiopyr 0.13% Plus Fertilizer	Dithiopyr.
53883–208	Dithiopyr 0.25% Plus Fertilizer	Dithiopyr.
53883–209	Dithiopyr 0.172% Plus Fertilizer	Dithiopyr.
53883–210	Dithiopyr 0.107% Plus Fertilizer	Dithiopyr.
53883–211	Dithiopyr 0.06% Plus Fertilizer	Dithiopyr.
53883–212	Dithiopyr 0.086% Plus Fertilizer	Dithiopyr.
53883–213	Dithiopyr 0.1% Plus Fertilizer	Dithiopyr.
53883–268	Dithiopyr Concentrate for Fertilizer	Dithiopyr.
53883–311	Quali-Pro Dithiopyr 2L	Dithiopyr.
66222–143	Alias 4F Flowable Insecticide	Imidacloprid.
81002–1	Chlorine Free Splashes Algicide	Dialkyl* methyl benzyl ammonium chloride *(60% C14, 30% C16, 5% C18, 5% C12) and Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12).
AZ–080006	Brigade 2EC Insecticide/Miticide	Bifenthrin.
CA–030012	Clinch Ant Bait	Abamectin.
MA–080001	Dupont Manzate Pro-Stick Fungicide	Mancozeb.
ND–110002	Moncut 70-DF	Flutolanil.
ND–130003	F7583-3 Herbicide	S-Metolachlor and Sulfentrazone.
OR–100003	TOPSIN M WSB	Thiophanate-methyl.
OR–080035	Callisto Herbicide	Mesotrione.
OR–100010	Callisto Herbicide	Mesotrione.
SD–130008	SC 547 Herbicide	Tembotrione and Thiencarbazone-methyl.
WA–090003	Topsin M 70WP	Thiophanate-methyl.
WA–930026	Rovral 4 Flowable Fungicide	Iprodione.
WA–940006	Rovral 4 Flowable Fungicide	Iprodione.
WA–960027	Rovral 4 Flowable Fungicide	Iprodione.
TX–100019	Devrinol 50-DF Selective Herbicide	Napropamide.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Active ingredient	Uses to be deleted
524–475	Roundup Ultra Herbicide	Glyphosate—isopropylammonium	Seed production of creeping bentgrass with a Roundup Ready Gene.

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number, which corresponds to the first part of the EPA product registration number under FIFRA section 3 (7 U.S.C. 136a), or by 24(c) number under FIFRA section 24(c) (7 U.S.C. 136v(c)), of the products listed in Tables 1 and 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA company No.	Company name and address
100, CA030012, OR080035, OR100010.	Syngenta Crop Protection, LLC., 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
524	Monsanto Company, 1300 I Street NW., Suite 450 East, Washington, DC 20005–7211.
3525	Qualco, Inc., 225 Passaic Street, Passaic, NJ 07055.
9198	The Andersons Lawn Fertilizer Division, Inc., 521 Illinois Avenue, P.O. Box 119, Maumee, OH 43537.
10324	Mason Chemical Company, 723 W. Algonquin Road, Suite B, Arlington Heights, IL 60005.
35935	Nufarm Limited (Agent to Nufarm Americas, Inc.), 4020 Aerial Center Parkway, Suite 101, Morrisville, NC 27560.
53883	Control Solutions, Inc., 5903 Genoa-Red Bluff Road, Pasadena, TX 77507–1041.
66222	Makhteshim Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
81002	Splashes, Inc., 90 Boroline Road, Allendale, NJ 07401.
AZ080006, ND130003	FMC Corp., 1735 Market Street, Room 1971, Philadelphia, PA 19103.
MA080001, TX100019	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
ND 110002	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
OR100003, WA090003	Nippon Soda Co., Ltd., 88 Pine Street, 14th Floor, New York, NY 10005.
SD130008, WA930026, WA940006, WA960027.	Bayer Cropscience, LP, 2 T.W. Alexander Drive, P.O., Box 12014, Research Triangle Park, NC 27709.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 3 of Unit II have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the product has been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

A. Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

B. For the product identified in Table 2 of Unit II., in a letter dated October 22, 2015, the registrant states that the use to be deleted was never registered for use in any state, added to the master label, or used for its stated purpose. Therefore, because there are no existing stocks, EPA anticipates that no existing stocks provision to sell, distribute, or use existing stocks is needed for the registrant or persons other than the registrant.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 1, 2016.

Michael Goodis,

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–13581 Filed 6–7–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Exposure Draft Titled Tax Expenditures: Management's Discussion and Analysis and Disclosure Requirements

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft titled *Tax Expenditures: Management's Discussion and Analysis and Disclosure Requirements.*

The exposure draft is available on the FASAB Web site at *http://www.fasab.gov/documents-for-comment/*. Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by September 15, 2016, and should be sent to *fasab@fasab.gov* or Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mail Stop 6H19, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy M. Payne, Executive Director, 441 G Street NW., Mail Stop 6H19, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: June 2, 2016.

Wendy M. Payne,

Executive Director.

[FR Doc. 2016–13559 Filed 6–7–16; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0895, 3060–0953, 3060–1214]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 8, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0895.

Title: Numbering Resource Optimization, CC Docket No. 99–200.

Form Number: FCC Form 502.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and state, local or tribal government.

Number of Respondents and Responses: 2,793 respondents; 10,165 responses.

Estimated Time per Response: 1 hour–44.4 hours.

Frequency of Response: On occasion and semi-annual reporting requirements and recordkeeping requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 153, 154, 201–205 and 251 of the Communications Act of 1934.

Total Annual Burden: 132,384 hours.

Total Annual Cost: $3,465,570.20.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Disaggregated, carrier specific forecast and utilization data will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses: The data collected on FCC Form 502 helps the Commission manage the ten-digit North American Numbering Plan (NANP), which is currently being used by the United States and 19 other countries. Under the Communications Act of 1934, as amended, the Commission was given "exclusive jurisdictions over those portions of the North American Numbering Plan that pertains to the United States." Pursuant to that authority, the Commission conducted a rulemaking in March 2000 that the Commission found that mandatory data collection is necessary to efficiently monitor and manage numbering use. The Commission is revising this information collection to implement its newly adopted rules that allow interconnected Voice over Internet Protocol (VoIP) providers to obtain numbering resources directly from the Numbering Administrators. The following information collection requirements will be contained in this collection:

(1) Utilization/Forecast Report;

(2) Application for initial numbering resource;

(3) Application for growth numbering resources;

(4) Recordkeeping requirement;

(5) Notifications by state commissions;

(6) Demonstration to state commission; and

(7) Petitions for additional delegation of numbering authority.

The data from this information collection is used by the FCC, state regulatory commissions, and the NANPA to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and NANP exhaust.

OMB Control Number: 3060–0953.

Title: Sections 95.1111 and 95.1113, Frequency Coordination/Coordinator, Wireless Medical Telemetry Service (WMTS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents and Responses: 3,000 respondents; 3.000 responses.

Estimated Time per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154 and 303.

Total Annual Burden: 15,000 hours.

Total Annual Cost: $750,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No information is requested that would require assurance of confidentiality.

Needs and Uses: The Commission will submit this information collection to OMB as a revision after this 60 day comment period to obtain the full three-year clearance from them.

On August 11, 2015 the Federal Communications Commission released a Report and Order, *Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, and Amendment of Part 74 of the Commission's Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap,* ET Docket No 14–165, GN Docket No. 12–268, FCC 15–99, which modifies Commission rules for unlicensed wireless devices and wireless microphones in the reconstituted TV bands and the new 600 MHz band.

On June 12, 2000, the Commission released a Report and Order, ET Docket No. 99–255, FCC 00–211, which allocated spectrum and established rules for a "Wireless Medical Telemetry Service" (WMTS) that allows potentially life-critical equipment to operate in an interference-protected basis. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data such as pulse and respiration rate to a nearby receiver, permitting greater patient mobility and increased comfort. The Commission designated a frequency coordinator, who maintains a database of all WMTS equipment. All parties using equipment in the WMTS are required to coordinate/register their operating frequency and other relevant technical operating parameters with the designated coordinator. The database provides a record of the frequencies used by each facility or device to assist parties in selecting frequencies to avoid interference. Without a database, there would be no record of WMTS usage because WMTS transmitters will not be individually licensed. The designated frequency coordinator has the responsibility to maintain an accurate engineering database of all WMTS transmitters, identified by location (coordinates, street address, and building), operating frequency, emission type and output power, frequency range(s) used, modulation scheme used, effective radiated power, number of transmitters in use at the health care facility at the time of registration, legal name of the authorized health care provider, and point of contact for authorized health care provider. The frequency coordinator will make the database available to WMTS users, equipment manufacturers and the public. The coordinator will also notify users of potential frequency conflicts. In addition, in order to receive interference protection, parties operating WMTS networks on channel 37 shall notify one of the white space database administrators of their operating location pursuant to §§ 15.713(j)(11) and 15.715(p) of that chapter.

OMB Control Number: 3060–1214.

Title: Direct Access to Numbers Order, FCC 15–70, Conditions.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 13 respondents; 13 responses.

Estimated Time per Response: 10–20 hours.

Frequency of Response: One-time application, on-going and bi-annual reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C 251(e)(1).

Total Annual Burden: 520 hours.

Total Annual Costs: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: If respondents submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Needs and Uses: In a June 2015 Report and Order (FCC 15–70), the Commission established the Numbering Authorization Application process, which allows interconnected VoIP providers to apply for a blanket authorization from the FCC that, once granted, will allow them to demonstrate that they have the authority to provide service in specific areas, thus enabling them to request numbers directly from the Numbering Administrators. This collection covers the information and certifications that applicants must submit in order to comply with the Numbering Authorization Application process. The data, information, and documents acquired through this collection will allow interconnected VoIP providers to obtain numbers with minimal burden or delay while also preventing providers from obtaining numbers without first demonstrating that they can deploy and properly utilize such resources. This information will also help the Federal Communications Commission (FCC) protect against number exhaust while promoting competitive neutrality among traditional telecommunications carriers and interconnected VoIP providers by allowing both entities to obtain numbers directly from the Numbering Administrators. It will further help the FCC to maintain efficient utilization of numbering resources and ensure that telephone numbers are not being stranded.

Federal Communications Commission.

Gloria J. Miles,

Federal Register *Liaison Officer, Office of the Secretary.*

[FR Doc. 2016–13486 Filed 6–7–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012415.

Title: COSCON/UASC Slot Charter Agreement Asia—USEC.

Parties: COSCO Container Lines Co. Ltd. and United Arab Shipping Co, S.A.G.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

Synopsis: The agreement authorizes UASC to charter space from COSCON in the trade between the U.S. East Coast on the one hand, and China (including Hong Kong) and Panama on the other hand.

Agreement No.: 012416.

Title: Network Shipping Ltd./Cool Carriers AB Space Charter and Sailing Agreement.

Parties: Network Shipping Ltd. and Cool Carriers AB.

Filing Party: Antonio Fernandez; Network Shipping; 241 Sevilla Ave.; Coral Cables, FL 33134.

Synopsis: The agreement authorizes Network Shipping to charter space to Cool Carriers AB for the carriage of empty refrigerated containers in the trade between Port Hueneme, CA and Ecuador, and in the trade between Port Gloucester, NJ and Costa Rica.

By Order of the Federal Maritime Commission.

Dated: June 3, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–13532 Filed 6–7–16; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0493]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

2017 and 2019 National Youth Risk Behavior Surveys (OMB Control No. 0920–0493)—Reinstatement with change—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The purpose of this request is to obtain OMB approval to reinstate with change, the data collection for the National Youth Risk Behavior Survey (YRBS), a school-based survey that has been conducted biennially since 1991. OMB approval for the 2013 YRBS and 2015 YRBS expired September 30, 2015 (OMB Control No. 0920–0493). CDC seeks a three-year approval to conduct the YRBS in Spring 2017 and Spring 2019. Minor changes incorporated into this reinstatement request include: An updated title for the information collection to accurately reflect the years in which the survey will be conducted, minor changes to the data collection instrument, and a reclassification of urban status for schools based on a different variable now present in the commercially available sampling frame.

The YRBS assesses priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and young adults in the United States. Data on health risk behaviors of adolescents are the focus of approximately 65 national health objectives in Healthy People 2020, an initiative of the U.S. Department of Health and Human Services (HHS). The YRBS provides data to measure 20 of the health objectives and one of the Leading Health Indicators established by Healthy People 2020. In addition, the YRBS can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the Healthy People 2020 objectives addressing adolescent health risk behaviors as the YRBS. The data also will have significant implications for policy and program development for school health programs nationwide.

In Spring 2017 and Spring 2019, the YRBS will be conducted among nationally representative samples of students attending public and private schools in grades 9–12. Information supporting the YRBS also will be collected from state-, district-, and school-level administrators and teachers. The table below reports the number of respondents annualized over the 3-year project period.

There are no costs to respondents except their time. The total estimated annualized burden hours are 7,822.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Administrators	State-level Recruitment Script for the Youth Risk Behavior Survey.	17	1	30/60
District Administrators	District-level Recruitment Script for the Youth Risk Behavior Survey.	80	1	30/60
School Administrators	School-level Recruitment Script for the Youth Risk Behavior Survey.	133	1	30/60
Teachers	Data Collection Checklist for the Youth Risk Behavior Survey.	435	1	15/60
Students	Youth Risk Behavior Survey	10,129	1	45/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13572 Filed 6–7–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16APN; Docket No. CDC–2016–0051]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection plan entitled "Generic Clearance for Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys." CDC's Division of Vector-Borne Diseases (DVBD), National Center for Emerging and Zoonotic Diseases (NCEZID) will use the plan to conduct survey development, pre-testing activities, and survey administration actions in 2016–2018. The data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions.

DATES: Written comments must be received on or before August 8, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0051 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Generic Clearance for Lyme and other Tickborne Diseases Knowledge, Attitudes, and Practices Surveys—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) Division of Vector-Borne Diseases (DVBD) and other programs working on tickborne diseases (TBDs) is requesting a three year approval for a generic clearance to conduct TBD prevention studies to include include knowledge, attitudes, and practices (KAP) surveys regarding ticks and tickborne diseases (TBDs) among residents and businesses offering pest control services in Lyme disease endemic areas of the United States. The data collection for which approval is sought will allow DVBD to use survey results to inform implementation of future TBD prevention interventions.

TBDs are a substantial and growing public health problem in the United States. From 2009–2014, over 200,000 cases of TBDs were reported to CDC, including cases of anaplasmosis, babesiosis, ehrlichiosis, Lyme disease, Rocky Mountain spotted fever, and tularemia (CDC, 2010, 2013). Lyme disease leads in number of cases with over 33,000 confirmed and probable cases reported in 2014. In addition, several novel tickborne pathogens have recently been found to cause human disease in the United States.

Factors driving the emergence of TBDs are not well defined and current prevention methods have been insufficient to curb the increase in cases. Data is lacking on how often certain prevention measures are used by individuals at risk as well as what the barriers to using certain prevention measure are.

The primary target population for these data collections are individuals and their household members who are at risk for TBDs associated with *I. scapularis* ticks and who may be exposed to these ticks residentially, recreationally, and/or occupationally. The secondary target population includes owners and employees of

businesses offering pest control services to residents in areas where *I. scapularis* ticks transmit diseases to humans. Specifically, these target populations include those residing or working in the 14 highest incidence states for Lyme disease (CT, DE, ME, MD, MA, MN, NH, NJ, NY, PA, RI, VT, VA, WI). We anticipate conducting one to two surveys per year, for a maximum of six surveys conducted over a three year period. Depending on the survey, we aim to enroll 500–10,000 participants per study. It is expected that we will need to target recruitment to about twice as many people as we intend to enroll.

Surveys may be conducted daily, weekly, monthly, or bi-monthly per participant for a defined period of time (whether by phone or web survey), depending on the survey or study. The surveys will range in duration from approximately 5–30 minutes. Each participant may be surveyed 1–64 times in one year; this variance is due to differences in the type of information collected for a given survey.

Specific burden estimates for each study and each information collection instrument will be provided with each individual project submission for OMB review. The maximum estimated, annualized burden hours are 98,833 hours. There is no cost to respondents other than their time.

Insights gained from KAP surveys will aid in prioritizing which prevention methods should be evaluated in future randomized, controlled trials and ultimately help target promotion of proven prevention methods that could yield substantial reductions in TBD incidence.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents *	Number of responses per respondent *	Average burden per response (in hours) *	Total burden hours
General public, individuals or households.	Screening instrument	20,000	1	15/60	5,000
	Consent form	10,000	1	20/60	3,333
	Introductory Surveys	10,000	1	30/60	5,000
	Monthly surveys	10,000	12	15/60	30,000
	Final surveys	10,000	1	30/60	5,000
	Daily surveys	10,000	60	5/60	50,000
Pest Control Operators	PCO Survey	1,000	1	30/60	500
Total					98,833

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13573 Filed 6–7–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16KA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Monitoring and Coordinating Personal Protective Equipment (PPE) in Healthcare to Enhance Domestic Preparedness for Ebola Response—New—National Center for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) has the authority under the Occupational Safety and Health Act [29 CFR 671] to "develop recommendations for health and safety standards", to "develop information on safe levels of exposure to toxic materials and harmful physical agents and substances", and to "conduct research on new safety and health problems". There is growing national concern for better understanding of the particular personal protective equipment (PPE) needs of healthcare workers to ensure the health and safety of this workforce during times of pandemic disease or bioterrorist threat. The use and effectiveness of the proper PPE are paramount to the management and mitigation of the effects of a disaster. NIOSH is requesting a three approval from OMB to develop an ongoing Personal Protective Technology (PPT) sentinel surveillance system in the

hospital setting that will document data used to evaluate and monitor use and effectiveness for PPE usage in healthcare workers including Ebola protection.

NIOSH conducted a pilot study and partnered with four hospitals where respirator-related data were collected from a variety of stakeholders (less than 10 respondents) including Infection Control, Occupational Health, Emergency Preparedness, Environmental Health & Safety, and Purchasing. Surveillance metrics were established and shared with pilot participants on a regular basis throughout the pilot. Partners identified key performance indicators that this data might provide, such as the average number of respirators used per isolation order in the hospital, and identification of stakeholders and protocols impacting effective respirator use. Recommendations were made for monitoring schedules and survey improvement. The data collected during the pilot study provided experience and knowledge of respirator selection, availability, fit testing, usage patterns, outcomes, and confounders of respirator use and effectiveness at the four participating hospitals.

NIOSH now seeks approval to execute an approach for a minimum viable product (MVP) multi-hospital (15–20), real-time monitoring phase. The 15–20 facilities shall reflect the tiered approach recommended by CDC involving Frontline Healthcare Facilities, Ebola Assessment Hospitals and Ebola Treatment Centers. The effort shall be built upon the experience and knowledge obtained from the pilot projects, and shall be structured as the next step in the establishment of a national system to monitor usage and training for PPE used to protect against the Ebola virus based on current CDC recommendations. With this effort, the contractor shall develop and deploy the system to include a contingent of the domestic acute healthcare facilities in this three tier approach. The system content shall include status information for all PPE categories identified for protection against the hazards of Ebola exposure. The system will use a general interface engine designed to accept, validate, and process data from multiple, disparate sources.

The system will be developed to identify PPE replenishment needs to facilitate local, state, and eventually regional resource sharing and local purchasing as needed. It will also be compatible with PPE previously used at these facilities to allow seamless continuity of patient care and worker protection. This capacity will offer a much-improved process for monitoring and maintaining appropriate PPE supplies through the constant, real-time monitoring of user demand, thus avoiding the misdirection of tens of millions of dollars' worth of respirators and other PPE to facilities that may not use distributed supplies due to a mismatch between products typically used and the supplies provided.

Respondents targeted for this study include hospital managers (also referred to in some cases as executives, coordinators or supervisors). These individuals are responsible for the day-to-day administration and/or implementation of the MVP. It is estimated that a sample of up to 20 hospitals will agree to participate among a variety of Ebola and Frontline treatment facilities. Participation will require no more than 255 minutes of workers' time per quarter. The hospitals will complete a baseline form and will also send quarterly and annual response as explained in the table below.

The Emergency and Crisis surveys are administered to hospitals via text message. The emergency survey is designed for an event spanning multiple weeks (*e.g.,* pandemic). There are 3 preset questions that are related to Ebola and PPT supply concerns. The crisis survey is designed for an unanticipated scenario in which we may need to push ad hoc questions on a daily basis to hospitals. They will only be administered in a non-routine situation. During the 3 year approval period, we will test/train hospitals on each survey. However, they will not be part of the regular data collection.

Estimated Annualized Burden Hours

The baseline form is completed once by each hospital as they come onboard. It is the same as the annual survey but will take longer to complete, because all fields in the collection tool will need to be entered. The annual form is completed by the hospitals in each year following their start and will take about a third of the time to complete than the baseline form. Example: Year one, 5 hospitals on start (baseline); year two, 6 new (baseline) and 5 from previous year (annual); year three, 9 new (baseline) and 11 from previous years (annual). Thus, taking the sum of the previous year hospitals (annual) leads to a total of 16. The quarterly form is completed by all participating hospitals four times a year. The emergency and crisis forms are completed by all participating hospitals as needed, but at least once for training, and uses the annualized number in the baseline form.

The total estimated annual burden hours are 230. There are no costs to respondents other than their time.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Hospital	Baseline	7	1	8
Hospital	Annual	5	1	3
Hospital	Quarterly	12	4	3
Hospital	Emergency	7	4	15/60
Hospital	Crisis	7	7	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13570 Filed 6–7–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–16KB]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Measuring Perceived Self-Escape Competencies among Underground Mineworkers—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

After a thorough review of United States' underground coal mine emergency escape preparedness and response, the National Academy of Sciences (NRC, 2013) has emphasized the need to improve underground mineworkers' ability to successfully escape a mine emergency. Specifically, several mine disasters of 2006 raised a number of issues about mine emergency preparedness and response particularly as they relate to self-escape competencies. The resulting federal regulations under the MINER Act of 2006, now require all underground coal miners receive SCSR and escapeway training quarterly throughout the year and new emergency communications and tracking systems have been mandated and installed in underground coal mines.

While such improvements may have better prepared underground miners to self-escape, it has become increasingly apparent that further research and development of new strategies is needed to enhance miner emergency preparedness, particularly as it relates to competency training and assessment. A review of various reports on coal mine emergency response [MSTTC 2006, U.S. GAO 2007, West Virginia Mine Safety Technology Task Force 2006, McAteer 2006a, McAteer 2006b] offered a number of recommendations for improving training that resulted in the identification of three areas of critical importance: (1) Evaluation of competencies; (2) improved training methods; and (3) new training content.

The NAS report echoed these findings and offered more specific recommendations for future training research and development. Specifically related to this information collection project, the NAS recommends that NIOSH identify critical self-escape competencies as well as any existing gaps in miners' knowledge, skills, abilities and other attributes (KSAOs) to be addressed through future training research and development. The specific aim of the work proposed is designed, in part, to respond to the recommendations set forth by the authors of the NAS report.

The information collected will have practical utility in efforts to enhance the ability of miners to successfully escape from underground coal mines in the event of an emergency by identifying gaps in perceived competence in specific knowledge and skills in moving through the mine, avoiding dangers, and using protective equipment. This information collection will contribute to our understanding of actual miner capabilities from the perspective of the mineworkers themselves.

NIOSH researchers will visit up to 20 mine sites to obtain informed consent from volunteer participants and administer a short paper and pencil survey. The survey will include demographic questions and 27 questions related to participants' perceived confidence in their own ability to escape their mine in the event of an emergency. Data collection will occur above ground at a variety of coal mines (and other above ground facilities) to gather information from a diverse sample of mines to better reflect the variability (*e.g.,* size, mining method, geographic location) that exists among mines and could impact self-escape procedures and resource availability. Variability in mineworker and mining site characteristics is key to generating a cross-sectional snapshot of current mineworkers' perceived self-escape competence and may reveal any potential relationships among these characteristics and perceived competence in a variety of self-escape KSAOs.

This data collection will occur once for each mine site over the next two years (after OMB approval) and is designed to gather information not previously available. This data collection instrument is not being used in any other research. The results produced are expected to lead to recommendations for emphasis in new and/or existing KSAO training and preparation as well as to inform future self-escape training and research development.

This data will be used by NIOSH's Office of Mining Safety and Health Research to improve underground coal miners' self-escape competence.

NIOSH proposes this exploratory two-year study to better characterize the current state of miner self-escape competence and to answer the following questions:

- What gaps exist between what miners are required to do for self-escape and their perceptions of their actual capabilities?
- How might miner demographics and mine-specific characteristics (*e.g.,* size, mining method, and geographic location) relate to perceived competence in self-escape KSAOs?

Based on the results of this and other concurrent exploratory work, interventions to increase mine escape competencies will be improved and/or developed and assessed which could lead to more standardized self-escape training and assessment throughout the industry.

Participants will be underground mining personnel drawn from a variety of operating underground coal mines. Descriptive and inferential statistics on data obtained from the survey will be used quantify miner self-escape competence and to identify any statistically significant relationships among aggregated miner characteristics and perceived competence.

Finally, the data will serve as a gross baseline measure of miner self-escape competence to be directly compared to future data collection utilizing the identical data collection instrument. The total estimated annualized burden hours are 67.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Mine Worker	Survey	400	1	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13571 Filed 6–7–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5520–CN]

Announcement of Requirements and Registration for "A Bill You Can Understand" Design and Innovation Challenge: Help Patients Understand Their Medical Bills and the Financial Aspect of Health; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: This document corrects technical errors that appeared in the notice published in the May 10, 2016 **Federal Register** entitled "Announcement of Requirements and Registration for "A Bill You Can Understand" Design and Innovation Challenge: Help Patients Understand Their Medical Bills and the Financial Aspect of Health."

DATES: Effective June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Ben Shannon, Communications Advisor, Office of the Assistant Secretary for Public Affairs, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20210, phone (202) 205–2819, email *ben.shanon@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016–10980 (81 FR 28873 through 28875), the notice entitled "Announcement of Requirements and Registration for "A Bill You Can Understand" Design and Innovation Challenge: Help Patients Understand Their Medical Bills and the Financial Aspect of Health," there were a number of technical errors that are identified and corrected in section III., the Correction of Errors. The provisions in this correction document are effective as if they had been included in the document published May 10, 2016. Accordingly, the corrections are effective June 3, 2016.

II. Summary of Errors

On page 28874, under the heading "A. Subject of the Challenge Competition", and page 29975, under the heading "F. Basis Upon Which the Winners Will Be Selected", we inadvertently omitted clarifying language.

III. Correction of Errors

In FR Doc. 2016–10980 of May 10, 2016 (81 FR 28873), make the following corrections:

1. On page 28874, first column; fourth paragraph, under the heading "A. Subject of the Challenge Competition", lines 8 through 16, the sentences "Participants will be asked to submit entries that improve both the design of the medical bill and patient experience of the medical billing process. Submissions will include the (1) design concept for the redesigned medical bill, (2) journey map or wireframe for the redesigned patient experience," are corrected to read "Participants will be asked to submit entries that improve both the design of the medical bill and other materials and tools the patient sees and interacts with as well as the patient experience of the medical billing process. Submissions will include the: (1) Design concept for the redesigned medical bill and other materials and tools the patient sees and interacts with, (2) journey map of the redesigned patient experience,"

2. On page 28875, first column; in the paragraph following the heading; "F. Basis Upon Which the Winners Will Be Selected", the bullet point statements:

"• Contains all Necessary Data and Information.

• Usefulness and Understandability of Patient Facing Materials (Bill or Otherwise).

• Adherence to Plain Language Guidelines.

• Transparency of Data (Including How the Data is Translated and Explained)." are corrected to read:

"• Most Appropriate Use of Data and Information.

• Addresses Top Concerns Associated with the Current Medical Billing Experience.

• Usefulness and Understandability of Patient Facing Materials (Bill or Otherwise).

• Use of Human-Centered Design Process in Creation of Concept.

• Use of Plain Language."

Dated: June 2, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–13548 Filed 6–3–16; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Cellular, Tissue and Gene Therapies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Cellular, Tissue and Gene Therapies Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues.

At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on July 26, 2016, from 1 p.m. to 3:30 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm*.

FOR FURTHER INFORMATION CONTACT: Janie Kim or Denise Royster, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 301–796–9016 or 240–402–8158, email: *Janie.Kim@fda.hhs.gov* or *Denise.Royster@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On July 26, 2016, the committee will meet by teleconference. In open session, the committee will hear updates of research programs in the Laboratory of Biological Chemistry and Laboratory of Molecular Oncology, Division of Biotechnology Review and Research 1 and 4, Office of Biotechnology Products, Center for Drug Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: On July 26, 2016, from 1 p.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 12, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 1, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 5, 2016.

Closed Committee Deliberations: On July 26, 2016, from 2:30 p.m. to 3:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Janie Kim at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 2, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–13457 Filed 6–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0134]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mammography Quality Standards Act Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the estimated reporting, recordkeeping, and third-party disclosure burden associated with the Mammography Quality Standards Act requirements.

DATES: Submit either electronic or written comments on the collection of information by August 8, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *http://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0134 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Mammography Quality Standards Act Requirements." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Mammography Quality Standards Act Requirements—21 CFR Part 900—OMB Control Number 0910–0309—Extension

The Mammography Quality Standards Act (Pub. L. 102–539) requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body (AB). This requires undergoing a review of their clinical images and providing the AB with information showing that they meet the equipment, personnel, quality assurance, and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer complaint mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA-approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

The following sections of Title 21 of the Code of Federal Regulations (CFR) are not included in the burden tables because they are considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations. Therefore, they resulted in no additional burden: 21 CFR 900.12(c)(1) and (3) and 900.3(f)(1). Section 900.24(c) was also not included in the burden tables because if a certifying State had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying State's electronic records, there wouldn't be an additional reporting burden.

We have rounded numbers in the "Total Hours" column in all three burden tables. (Where the number was a portion of 1 hour, it has been rounded to 1 hour. All other "Total Hours" have been rounded to the nearest whole number.)

We do not expect any respondents for § 900.3(c) because all four ABs are approved until April 2020.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity/21 CFR section/FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [1]	Total capital costs (in dollars)	Total operating and maintenance costs (in dollars)
Notification of intent to become an AB—900.3(b)(1)	0.33	1	0.33	1	1		
Application for approval as an AB; full [2]—900.3(b)(3)	0.33	1	0.33	320	106	10,000	
Application for approval as an AB; limited [3]—900.3(b)(3)	5	1	5	30	150		
AB renewal of approval—900.3(c)	0	1	0	15	1		
AB application deficiencies—900.3(d)(2)	0.1	1	0.1	30	3		
AB resubmission of denied applications—900.3(d)(5)	0.1	1	0.1	30	3		
Letter of intent to relinquish accreditation authority—900.3(e)	0.1	1	0.1	1	1		
Summary report describing all facility assessments—900.4(f)	330	1	330	7	2,310		77,600
AB reporting to FDA; facility [4]—900.4(h)	8,654	1	8,654	1	8,654		4,327
AB reporting to FDA; AB [5]—900.4(h)	5	1	5	10	50		
AB financial records—900.4(i)(2)	1	1	1	16	16		
Former AB new application—900.6(c)(1)	0.1	1	0.1	60	6		
Reconsideration of accreditation following appeal—900.15(d)(3)(ii)	1	1	1	2	2		
Application for alternative standard—900.18(c)	2	1	2	2	4		
Alternative standard amendment—900.18(e)	10	1	10	1	10		
Certification agency application—900.21(b)	0.33	1	0.33	320	106		208
Certification agency application deficiencies—900.21(c)(2)	0.1	1	0.1	30	3		
Certification electronic data transmission—900.22(h)	5	200	1000	0.083	83	30,000	
Changes to standards—900.22(i)	2	1	2	30	60		20
Certification agency minor deficiencies—900.24(b)	1	1	1	30	30		
Appeal of adverse action taken by FDA—900.25(a)	0.2	1	0.2	16	3		
Inspection fee exemption—FDA Form 3422	700	1	700	0.25	175		
Total					11,777	40,000	82,155

[1] Total hours have been rounded.
[2] One time burden.
[3] Refers to accreditation bodies applying to accredit specific full-field digital mammography (FFDM) units.
[4] Refers to the facility component of the burden for this requirement.
[5] Refers to the AB component of the burden for this requirement.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [1]	Total capital costs (in dollars)	Total operating and maintenance costs (in dollars)
AB transfer of facility records—900.3(f)(1)	0.1	1	0.1	0	1		
Consumer complaints system; AB—900.4(g)	5	1	5	1	5		
Documentation of interpreting physician initial requirements—900.12(a)(1)(i)(B)(*2*)	87	1	87	8	696		
Documentation of interpreting physician personnel requirements—900.12(a)(4)	8,654	4	34,616	1	34,616		

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [1]	Total capital costs (in dollars)	Total operating and maintenance costs (in dollars)
Permanent medical record—900.12(c)(4)	8,654	1	8,654	1	8,654	28,000	
Procedures for cleaning equipment—900.12(e)(13)	8,654	52	450,008	0.083	37,351		
Audit program—900.12(f)	8,654	1	8,654	16	138,464		
Consumer complaints system; facility—900.12(h)(2)	8,654	2	17,308	1	17,308		
Certification agency conflict of interest—900.22(a)	5	1	5	1	5		
Processes for suspension and revocation of certificates—900.22(d)	5	1	5	1	5		
Processes for appeals—900.22(e)	5	1	5	1	5		
Processes for additional mammography review—900.22(f)	5	1	5	1	5		
Processes for patient notifications—900.22(g)	3	1	3	1	3		30
Evaluation of certification agency—900.23	5	1	5	20	100		
Appeals—900.25(b)	5	1	5	1	5		
Total					237,223	28,000	30

[1] Total hours have been rounded.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]	Total operating and maintenance costs (in dollars)
Notification of facilities that AB relinquishes its accreditation—900.3(f)(2)	0.1	1	0.1	200	20	50
Clinical images; facility [3]—900.4(c), 900.11(b)(1) and (2)	2,885	1	2,885	1.44	4,154	
Clinical images; AB [4]—900.4(c)	5	1	5	416	2,080	230,773
Phantom images; facility [3]—900.4(d), 900.11(b)(1) and (2)	2,885	1	2,885	0.72	2,077	
Phantom images; AB [4]—900.4(d)	5	1	5	208	1,040	
Annual equipment evaluation and survey; facility [3]—900.4(e), 900.11(b)(1) and (2)	8,654	1	8,654	1	8,654	8,654
Annual equipment evaluation and survey; AB [4]—900.4(e)	5	1	5	1,730	8,650	
Provisional mammography facility certificate extension application—900.11(b)(3)	0	1	0	0.5	1	
Mammography facility certificate reinstatement application—900.11(c)	312	1	312	5	1,560	24,000,000
Lay summary of examination—900.12(c)(2)	8,654	5,085	44,055,590	0.083	3,652,464	
Lay summary of examination; patient refusal [5]—900.12(c)(2)	87	1	87	0.5	44	
Report of unresolved serious complaints—900.12(h)(4)	20	1	20	1	20	
Information regarding compromised quality; facility [3]—900.12(j)(1)	20	1	20	200	4,000	300
Information regarding compromised quality; AB [4]—900.12(j)(1)	20	1	20	320	6,400	600
Patient notification of serious risk—900.12(j)(2)	5	1	5	100	500	19,375
Reconsideration of accreditation—900.15(c)	5	1	5	2	10	

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]	Total operating and maintenance costs (in dollars)
Notification of requirement to correct major deficiencies—900.24(a)	0.4	1	0.4	200	80	68
Notification of loss of approval; major deficiencies—900.24(a)(2)	0.15	1	0.15	100	15	25.50
Notification of probationary status—900.24(b)(1)	0.3	1	0.3	200	60	51
Notification of loss of approval; minor deficiencies—900.24(b)(3)	0.15	1	0.15	100	15	25.50
Total					3,691,842	24,259,921

[1] There are no capital costs associated with this collection of information.
[2] Total hours have been rounded.
[3] Refers to the facility component of the burden for this requirement.
[4] Refers to the AB component of the burden for this requirement.
[5] Refers to the situation where a patient specifically does not want to receive the lay summary of her exam.

Dated: June 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13522 Filed 6–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–E–2351, FDA–2014–E–2352, and FDA–2014–E–2350]

Determination of Regulatory Review Period for Purposes of Patent Extension; ALPROLIX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ALPROLIX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 8, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 5, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2014–E–2351, FDA–2014–E–2352, and FDA–2014–E–2350 for "Determination of Regulatory Review Period for Purposes of Patent Extension; ALPROLIX."

Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets

Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ALPROLIX (Coagulation Factor IX (Recombinant), Fc Fusion Protein). ALPROLIX is a recombinant DNA derived, coagulation Factor IX concentrate indicated in adults and children with hemophilia B for control and prevention of bleeding episodes, perioperative management, and routine prophylaxis to prevent or reduce the frequency of bleeding episodes. Subsequent to this approval, the USPTO received patent term restoration applications for ALPROLIX (U.S. Patent Nos. 7,348,004, 7,862,820, and 8,329,182) from Biogen Idec Hemophilia Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ALPROLIX represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ALPROLIX is 2,223 days. Of this time, 1,767 days occurred during the testing phase of the regulatory review period, while 456 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* February 27, 2008. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was on February 27, 2008.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 28, 2012. FDA has verified the applicant's claim that the biologics license application (BLA) for ALPROLIX (BLA 125444/0) was initially submitted on December 28, 2012.

3. *The date the application was approved:* March 28, 2014. FDA has verified the applicant's claim that BLA 125444/0 was approved on March 28, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,326 days, 465 days, or 818, days, respectively, of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13526 Filed 6–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–E–2365, FDA–2014–E–2368, FDA–2014–E–2367, and FDA–2014–E–2366]

Determination of Regulatory Review Period for Purposes of Patent Extension; ELOCTATE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ELOCTATE and is publishing this notice of that determination as required

by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 8, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 5, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2014–E–2365, FDA–2014–E–2368, FDA–2014–E–2367, and FDA–2014–E–2366 for "Determination of Regulatory Review Period for Purposes of Patent Extension; ELOCTATE." Received comments will be placed in the dockets and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ELOCTATE (BDD-rFVIIIFc). ELOCTATE is a recombinant DNA derived, antihemophilic factor indicated in adults and children with Hemophilia A (congenital Factor VIII deficiency) for control and prevention of bleeding episodes, perioperative management, and routine prophylaxis to prevent or reduce the frequency of bleeding episodes. Subsequent to this approval, the USPTO received patent term restoration applications for ELOCTATE (U.S. Patent Nos. 7,348,004; 7,404,956; 7,862,820; and 8,329,182) from Biogen Idec Hemophilia Inc., and the USPTO requested FDA's assistance in

determining this patent's eligibility for patent term restoration. In a letter dated October 19, 2015, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ELOCTATE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ELOCTATE is 1,695 days. Of this time, 1,239 days occurred during the testing phase of the regulatory review period, while 456 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 17, 2009. The applicant claims December 10, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 17, 2009, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: March 8, 2013. The applicant claims March 7, 2013, as the date the biologics license application (BLA) for ELOCTATE (BLA 125487/0) was initially submitted. However, FDA records indicate that BLA 125487/0 was submitted on March 8, 2013.

3. *The date the application was approved:* June 6, 2014. FDA has verified the applicant's claim that BLA 125487/0 was approved on June 6, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,049 days, 740 days, 854 days, or 500 days, respectively, of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 2, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13521 Filed 6–7–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Dates and Times: June 28, 2016 (Day 1—8:30 a.m.–5:00 p.m., EST), June 29, 2016 (Day 2—8:30 a.m.–5:00 p.m., EST).

Place: In-Person Meeting with Webinar/Conference Call Component, 5600 Fishers Lane, Room 5E29, Rockville, MD 20857.

Status: The meeting will be open to the public.

Purpose: The ACTPCMD provides advice and recommendations on a broad range of issues relating to grant programs authorized by title VII, part C, sections 747 and 748 of the Public Health Service Act (PHSA). During the June 28–29, 2016 meeting, the Committee will discuss the topic for the 14th report which is divided into two areas: a) Review of Primary Care Medicine and Dentistry Programs under title VII, part C of the PHSA and b) the ways to integrate behavioral health content into primary care medicine and dentistry training programs.

Agenda: The purpose of the Advisory Committee meeting is two-fold: a) Review the activities under sections 747 and 748, part C of title VII of the PHS Act including performance measures, longitudinal evaluations, and appropriation levels for these programs; and b) review ways that behavioral health content could be integrated into primary care education and training. The Committee has identified that integrating behavioral health services into primary care settings offers a promising, viable, and efficient way of ensuring that people have access to needed behavioral health services. The ACTPCMD's reports are submitted to the Secretary of the Department of Health and Human Services; the Committee on Health, Education, Labor, and Pensions of the Senate; and the Committee on Energy and Commerce of the House of Representatives. The ACTPCMD agenda will be available 2 days prior to the meeting on the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/index.html.*

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the ACTPCMD should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to make oral comments or provide written comments to the ACTPCMD should notify Dr. Weiss at least 3 days prior to the meeting, using the address or phone number below. Members of the public will have the opportunity to provide comments. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Dr. Weiss at least 10 days prior to the meeting.

- The conference call-in number is 1–800–619–2521. The passcode is 9271697.
- The webinar link is *https://hrsa.connectsolutions.com/actpcmd.*

Contact: Anyone requesting information regarding the ACTPCMD should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, 5600 Fishers Lane, Room 15N39, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov.*

Jason Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–13523 Filed 6–7–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Notice for the President's Advisory Council on Faith-Based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council on Faith-based and Neighborhood Partnerships announces the following webinar:

Name: President's Advisory Council on Faith-based and Neighborhood Partnerships Council Meetings

Time and Date: Wednesday, June 22, 2016 3:00 p.m.–5:00 p.m. (EDT)

Public Webinar: The conference call will be available to the public through a webinar system. Register to participate in the conference call on Wednesday, June 22 at the Web site *https://attendee.gotowebinar.com/register/2826503921415476996*

Status: Conference call limited only by lines available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices. The charge for this Council focuses on steps the government should take to reduce poverty and inequality and create opportunity for all, including changes in policies, programs, and practices that affect the delivery of services by faith-based and community organizations and the needs of low-income and other underserved persons.

Contact Person for Additional Information: Please contact Ben O'Dell for any additional information about the President's Advisory Council meeting at *partnerships@hhs.gov*

Agenda: Opening and Welcome from the Chairperson and Executive Director for the President's Advisory Council for Faith-based and Neighborhood Partnership; Presentation of additional language and recommendations for the report; Deliberation of recommendations (if necessary); Conclusion from Chairperson and Executive Director

Public Comment: There will be an opportunity for public comment at the end of the meeting. Desire to make comments and questions should be sent in advance to *partnerships@hhs.gov.*

Dated: June 2, 2016.

Ben O'Dell,

Associate Director for Center for Faith-based and Neighborhood Partnerships at U.S. Department of Health and Human Services.

[FR Doc. 2016–13540 Filed 6–7–16; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Meredyth M. Forbes, Albert Einstein College of Medicine: Based on an assessment conducted by the Albert Einstein College of Medicine (AECM), an admission from the Respondent, and additional analysis conducted by ORI in its oversight review, ORI found that Ms. Meredyth M. Forbes, former Graduate Student, AECM, engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grants R01 GM089979, T32 GM007491, R01 GM55101, and R01 GM88202 and National Institute of Child Health and Human Development (NICHD), NIH, grant T32 HD007502.

ORI found that Respondent engaged in research misconduct by intentionally falsifying and/or fabricating data reported in the following three (3) published papers and four (4) meeting presentations:

- *Development.* In press, published online, Dec 23, 2015; doi:10.1242/dev.129023 (hereafter referred to as the "December 2015 *Development* paper")
- *Cell Reports* 12:49–57, 2015 (hereafter referred to as the "*Cell Reports* paper")
- *Development* 142(15):2704–18, 2015 Aug 1 (hereafter referred to as the "August 2015 *Development* paper")
- "Maternal dazap2 regulates germ granules via counteracting Dynein in zebrafish primordial germ cells." Laboratory Presentation, January 28, 2015 (hereafter referred to as the "*Lab Presentation* 2015")
- "Maternal dazap2 regulates germ granule formation in zebrafish primordial germ cells." Presented at the Germ Cells, Cold Spring Harbor, NY, October 2014, NYC-Wide Stem Cell Event, "Stem Cells in the City," NY, November 2014, Mid-Atlantic Regional Zebrafish Meeting, PA, November 2014, and New York Metropolitan Zebrafish Meeting, Cornell, NY, January 2015 (hereafter referred to as "*Poster 1,* 2014–2015")
- "Cytoskeleton, microtubules, centrosomes, germline cyst, Bucky ball, oocytes." Poster presented at the Mid-Atlantic Regional Zebrafish Meeting, Bronx, NY, July 2015 (hereafter referred to as "*MARZ* 2015")
- "Bucky ball associates with the centrosome and promotes microtubule cytoskeleton rearrangements to establish oocyte polarity in zebrafish." Poster presented at the American Society for Cell Biology (ASCB) Meeting, San Diego, CA, December 2015 (hereafter referred to as "*ACSB* 2015")

ORI found that Respondent intentionally falsified and/or fabricated data for germ-cell development in zebrafish Dazap2 maternal-effect mutants (MDazap2) in one (1) paper and two (2) presentations when the mutants were not produced nor the data derived from them.

Specifically, Respondent:

- falsified thirty-eight (38) fluorescent image panels by drawing staining in PhotoShop and falsely labeling them in Figures 1F, 1G, 2A, 2C, 2E, 2F, 2G, 3A, 3D, 4A, and S2A in the *Cell Reports* paper and included some of the same images in seven (7) figures in *Lab Presentation* 2015 and in six (6) figures in *Poster 1* 2014–2015
- fabricated numbers for data presented in ten (10) graphs in Figures 1L, 2B, 2D, 2H, 3B, 4B, 4C, S2B, S2C, and S3B in the *Cell Reports* paper and included some of the same graphs in seven (7) figures in *Lab Presentation* 2015 and in six (6) figures in *Poster 1* 2014–2015

ORI found that Respondent intentionally fabricated and/or falsified data for zebrafish embryogenesis and oocyte polarity in two (2) papers and two (2) presentations when the data were not obtained from actual experiments.

Specifically, Respondent:

- falsified twenty-four (24) fluorescent image panels by drawing staining in Photoshop and falsely labeling them in Figures 5B, 5C, 5D, 5E, 7A, 7B, 7D, 8A, 8B, 9A, and 9B in the August 2015 *Development* paper and included some of the same images in four (4) figures in the *ASCB* 2015 poster and in two (2) figures in the *MARZ* 2015 poster
- fabricated numbers for data presented in eight (8) graphs and one (1) illustration in Figures 5F, 7C, 7E, 8C, 8F–I, 9C, and 9D in the December 2015 *Development* paper and Figure 2F in the August 2015 *Development* paper and included some of the same graphs in four (4) figures in the *ASCB* 2015 poster and in two (2) figures in the *MARZ* 2015 poster

Ms. Forbes has entered into a Voluntary Exclusion Agreement (Agreement) and has voluntarily agreed for a period of three (3) years, beginning on May 6, 2016:

(1) to exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" pursuant to HHS' Implementation (2 CFR part 376 *et seq.*) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the "Debarment Regulations");

(2) that she will neither apply for nor permit her name to be used on any application, proposal, or other request for funds to the United States Government or any of its agencies, as defined in the Debarment Regulations; Respondent will further ensure that during the period of the voluntary exclusion, she will neither receive nor be supported by funds of the United States Government and its agencies made available through grants, subgrants, cooperative agreements, contracts, or subcontracts, as discussed in the Debarment Regulations; and

(3) to exclude herself from serving in any advisory capacity to the U.S. Public Health Service (PHS) including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Kathryn M. Partin,

Director, Office of Research Integrity.

[FR Doc. 2016–13541 Filed 6–7–16; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Office of the Surgeon General of the United States Public Health Service, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the "Advisory Group"). This meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/index.html.*

DATES: The meeting will be held on July 11, 2016, from 3:00 p.m.–5:00 p.m. EST.

ADDRESSES: This meeting will be held via teleconference. Teleconference information and the exact meeting time will be published closer to the meeting date at: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/index.html.*

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, U.S. Department of Health and Human Services, 200 Independence Ave. SW.; Washington, DC 20201; 202–205–9517; *npcsupport@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Group is a non-discretionary federal advisory committee that was initially established under Executive Order 13544, dated June 10, 2010, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. The Advisory Group was terminated on September 30, 2012, by Executive Order 13591, dated November 23, 2011. Authority for the Advisory Group to be re-established was given under Executive Order 13631, dated December 7, 2012. Authority for the Advisory Group to continue to operate until September 30, 2017, was given under Executive Order 13708, dated September 30, 2015.

The Advisory Group was established to assist in carrying out the mission of the National Prevention, Health Promotion, and Public Health Council (the Council). The Advisory Group provides recommendations and advice to the Council. It is authorized for the Advisory Group to consist of not more than 25 non-federal members. The Advisory Group currently has 21 members who were appointed by the President. The membership includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine.

A meeting description and relevant materials will be published closer to the meeting date at: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/.*

Members of the public have the opportunity to participate in the meeting and/or provide comments to the Advisory Group on July 11, 2016. Public comment will be limited to 3 minutes per speaker. Individuals who wish to participate in the meeting and/or provide comments must register by 12:00 p.m. EST on July 5, 2016. In order to register, individuals must send their full name and affiliation via email to *npcsupport@cdc.gov.* Individuals who need special assistance and/or accommodations, *i.e.,* sign language interpretation or other reasonable accommodations, should indicate so when they register. Members of the public who wish to have materials distributed to the Advisory Group members at these scheduled meetings should submit those materials when they register.

Dated: May 23, 2016.

Brigette Ulin,

Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2016–13558 Filed 6–7–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive License: The Development of an Anti-GPC3 Chimeric Antigen Receptor (CAR) Based on HN3 for the Treatment of Human Cancers

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in:

Intellectual Property:

U.S. Provisional Patent Application 61/477,020 entitled "Human Monoclonal Antibody Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–US–01], PCT Patent Application PCT/US2012/034186 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–PCT–02], Chinese Patent Application 201280029201.3 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–CN–03], European Patent 2699603 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–EP–04], and validated in France, Germany and the United Kingdom, United States Patent 9,206,257 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–US–05], United States Patent Application 14/837,903 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–US–06], European Patent Application 15188264.4 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–EP–07], United States Patent Application 15/090,873 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–US–12], Chinese Patent Application 201610290837.3 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–CN–13], European Patent Application 16166924.7 entitled "Human Monoclonal Antibodies Specific for Glypican-3 And Use Thereof" [HHS Ref. E–130–2011/0–EP–14], and all continuing U.S. and foreign patents/patent applications for the technology family, to Lentigen Technology, Inc.

The patent rights to these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive licensed territory may be the United States, Australia, Canada, the European Union, Russia, China, Hong Kong, Japan, Taiwan, South Korea and Singapore, and the field of use may be limited to: "The development of a glypican-3 (GPC3) chimeric antigen receptor (CAR)-based immunotherapy using autologous (meaning one individual is both the donor and the recipient) primary human lymphocytes (T cells or NK cells) transfected with a lentiviral or retroviral vector, wherein the vector expresses a CAR having (1) a single antigen specificity and (2) comprising at least: (a) The complementary determining region (CDR) sequences of the anti-GPC3 antibody known as HN3; and (b) a T cell signaling domain; for the prophylaxis and treatment of GPC3-expressing cancers."

DATES: Only written comments and/or applications for a license which are received by the NCI Technology Transfer Center on or before June 23, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, National Cancer Institute, 9609 Medical Center Drive, Rm. 1–E530 MSC9702, Rockville, MD 20850–9702, Email: *david.lambertson@nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns an anti-GPC3 (Glypican-3) chimeric antigen receptor (CAR) and methods of using the CAR for the treatment of GPC3-expressing cancers. GPC3 is a cell surface antigen that is preferentially expressed on certain types of cancer cells, particularly liver cancers such as hepatocellular carcinoma (HCC). The anti-GPC3 CARs of this technology contain (1) antigen recognition sequences that bind specifically to GPC3 and (2) signaling domains that can activate the cytotoxic functions of a T cell. The anti-GPC3 CAR can be transduced into T cells that are harvested from a donor, followed by (a) selection and expansion of the T cells expressing the anti-GPC3 CAR, and (b) reintroduction of the T cells into the patient. Once the anti-GPC3 CAR-expressing T cells are reintroduced into the patient, the T cells can selectively bind to GPC3-expressing cancer cells through its antigen recognition sequences, thereby activating the T cell through its signaling domains to selectively kill the cancer cells. Through this mechanism of action, the selectivity of the a CAR allows the T cells to kill cancer cells while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7 within fifteen (15) days from the date of this published notice.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 3, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–13530 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Clinical Trial Pilot Studies (R34).

Date: June 27, 2016.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS).

Dated: June 2, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13500 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; REDS–III Central Laboratory Task Order 3.

Date: June 28, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA National Heart, Lung, and Blood Institute 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, johnsonwj@nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 2, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13501 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; CTSA Review.

Date: June 15, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville; Jefferson-Adam Conference Room; 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Barbara J. Nelson, Ph.D.; Scientific Review Officer Office of Scientific Review; National Center for Advancing Translational Sciences (NCATS), National Institutes of Health; 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4874; 301–435–0806; *nelsonbj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 2, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13494 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment and Function.

Date: June 15, 2016.

Time: 11:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–358—Molecular and Cellular Causal Aspects of Alzheimer's Disease.

Date: June 30, 2016.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral and Dental Research.

Date: June 30, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Intercellular Interactions Study Section.

Date: July 5–6, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Differentiation and Integration of Stem Cells (Embryonic and Induced-Pluripotent) Into Developing or Damaged Tissues.

Date: July 5, 2016.

Time: 1:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 2, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13497 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oligodendrocyte Differentiation and Myelination.

Date: June 9, 2016.

Time: 12:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L Jelsema, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 2, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13498 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Therapeutic antibody-drug conjugates targeting CD56-positive tumors.

Description of Technology: CD56, also known as neural cell adhesion molecule (NCAM), is a glycoprotein that plays an important role in normal physiological functions. It is expressed in low levels in normal cells such as neurons, glia, skeletal muscle and natural killer cells but is highly expressed on a variety of cancerous cells including neuroblastoma, small-cell lung cancer, and multiple myeloma. In neuroblastoma, patients undergo a very aggressive treatment regimen that still results in a high mortality rate. Many neuroblastomas have increased expression of CD56 which represents a possible therapeutic target for these aggressive and hard to treat cancers.

Researchers at the National Cancer Institute's Cancer and Inflammation Program, in collaboration with the Children's Hospital of Philadelphia (CHOP), have developed antibody-drug conjugates (ADC) that incorporate one of two novel human CD56 antibodies, known as m900 and m906, in combination with a known cytotoxic drug, pyrrolobenzodiazepine (PBD). Other PBD–ADCs have demonstrated the ability to overcome resistance in some multi-drug resistant cancers which could present additional benefits for the ADCs of the current invention. The m900 and m906 ADCs have been shown to induce cell death and CD56 down regulation *in vitro* in four different CD56-positive neuroblastoma cell lines. Preliminary studies in animals have also shown promising results, and additional *in vivo* work is ongoing.

Potential Commercial Applications:

—Therapeutic for the treatment of neuroblastoma

—Therapeutic for the treatment of other CD56-positive cancers including small cell lung cancer, multiple myeloma, pancreatic cancer, ovarian cancer, acute myeloid leukemia, NK–T lymphoma, and neuroendocrine cancer

Value Proposition:

—Fully human antibodies (m900 or m906) targeting CD56 may offer improved properties over the humanized antibody IMGN901

Development Stage: Pre-clinical (in vivo validation).

Inventor(s): Dimiter S. Dimitrov (NCI), Yang Feng (NCI), Zhongyu Zhu (NCI), John M. Maris (Children's Hospital of Philadelphia).

Intellectual Property: HHS Reference No. E–221–2015/0–US–01. US Provisional Application No. 62/199,707, filed July 31, 2015 entitled "ANTIBODY–DRUG CONJUGATES FOR TARGETING CD56–POSITIVE TUMORS".

Publications: Feng, Y, et al. Differential killing of CD56-expressing cells by drug-conjugated human antibodies targeting membrane-distal and membrane-proximal non-overlapping epitopes. mAbs, 2016;

24:1–12. DOI: 10.1080/19420862.2016.1155014.

Related Technologies: E–142–2014 (CD56-targeting antibodies and related CARs).

Collaboration Opportunity: Researchers at the NCI seek licensing and/or co-development research collaborations for development of antibody-drug conjugates for the treatment of cancer.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov*.

Dated: June 2, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–13499 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Outstanding New Environmental Scientist Review Meeting.

Date: June 28, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 3, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13529 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIH Pathway to Independence Award (Parent K99/R00).

Date: July 12, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Xinli Nan, Ph.D., Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, Scientific Review Branch, OERA, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–7784, *Xinli.Nan@nih.gov*.

Dated: June 1, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13503 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Research Project Grants.

Date: June 13, 2016.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Research.

Date: June 20, 2016.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard,

Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR16–034: NIDDK Ancillary Studies on Chronic Kidney Disease.

Date: June 21, 2016.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Health Disparities Studies.

Date: June 23, 2016.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Planning NIDDK Clinical Studies.

Date: June 24, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK16–012 Developmental Centers for Interdisciplinary Research in Benign Urology (P20).

Date: June 27, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Gastroparesis Clinical Centers.

Date: July 8, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892, *davila-bloomm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CLAIM—A Randomized Trial Comparing Laparoscopic Sleeve Gastrectomy to Intensive Medical Weight Loss Therapy for Achieving Body Mass Index Goals for Renal Transplant Candidacy.

Date: July 12, 2016.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Multi-Center Clinical Study (U34).

Date: July 13, 2016.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: June 1, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13502 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–AG–16–020 Impact of Aging on Currently Employed Animal Models of Disease and Chronic Conditions: Demonstration Projects.

Date: June 27, 2016.

Time: 8:00 a.m. to 6:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Embassy Suite, 900 10th Street NW., Washington, DC 20001.

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncological Sciences.

Date: June 27–28, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC,, 923 16th Street NW., Washington, DC 20006.

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–009: Secondary Dataset Analyses in Heart, Lung and Blood Diseases and Sleep Disorders.

Date: June 29, 2016.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Systems Science and Health in the Behavioral and Social Science.

Date: June 29, 2016.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences.

Date: June 29, 2016.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 13–374: Modeling Social Behavior.

Date: June 29, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney and Urology.

Date: June 30, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Place: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 2188, MSC7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; OBT–AREA Review.

Date: June 30, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 1, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13496 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Advancing Translational Sciences Advisory Council, June 13, 2016, 12:00 p.m. to June 13, 2016, 03:00 p.m., National Institutes of Health, 9800 Medical Center Drive, Located in the Board Room, Rockville, MD 20852 which was published in the **Federal Register** on May 27, 2016, 81FR33679.

Amendment to include a discussion of Proposed Office of Policy, Communications and Strategic Alliances Organizational Change. The meeting is partially Closed to the public. Any interested person may file written comments about the proposed reorganization with the committee by forwarding the statement to *NCATSReorgComments@nih.gov* by June 30, 2016. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: June 3, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13531 Filed 6–7–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Interviews With Grantees Integrating Behavioral Health Treatment, Prevention, and HIV Medical Care Services (OMB NO. 0930–0336)—Reinstatement

SAMHSA is requesting Office of Management and Budget (OMB) approval to conduct in-person Site Visit Interviews with Minority AIDS Initiative—Continuum of Care (MAI–CoC) Grantees Integrating Behavioral Health Treatment, Prevention, and HIV Medical Care Services. This reinstatement request utilizes revised versions of the site visit interview guide approved under the Minority AIDS Initiative—Targeted Capacity Expansion (MAI–TCE) Grantees Integrating HIV Primary Care, Substance Abuse, and Behavioral Health Services (OMB NO. 0930–0336). The two rounds of interviews (baseline and follow-up) target the collection of programmatic-level data (*e.g.,* community context, organizational structure, and staffing and staff development, services and service model, outreach, referral and enrollment into services, services/care

coordination and integration and funding for integrated services and program successes and challenges) through one-on-one and group interviews with grantees who are part of the MAI–CoC program.

The goal of the MAI–CoC project is to integrate behavioral health treatment, prevention, and HIV and Hepatitis medical care services for racial/ethnic minority populations at high risk for behavioral health disorders who are also at high risk for or living with HIV and Hepatitis. The program also supports other priority populations including men who have sex with men (MSM) and bisexual men, transgender persons, and people with substance use disorder. The program is primarily intended for substance use disorder treatment and community mental health providers to provide coordinated and integrated services through the collocation and/or integration of behavioral health treatment and HIV and Hepatitis medical care. Interviews conducted with MAI–CoC grantees during the two rounds of site visits are an integral part of evaluation efforts to: (1) Assess the impact of the SAMHSA-funded HIV and Hepatitis programs in: Reducing behavioral health disorders and HIV and Hepatitis infections; increasing access to substance use disorder and mental disorder treatment and care; improving behavioral and mental health outcomes; and reducing HIV and Hepatitis-related disparities; (2) Describe the different integrated behavioral health and medical program models; and (3) Determine which program types or models are most effective in improving behavioral health and clinical outcomes.

Over the four-year project, SAMHSA will conduct two rounds of these in-person site visits (baseline and follow-up) with each of the 34 MAI–CoC program grantees.

SAMHSA will conduct one-on-one and group interviews with MAI–CoC grantee staff who will provide information on their program's integration of HIV and Hepatitis prevention, medical care, and primary care into behavioral health services. While participating in the evaluation is a condition of the grantees' funding, participating in the interview process is voluntary. The instruments are designed to collect information about: (1) The development and changes in MAI–CoC program operations, staffing, training and programming; (2) the grantee organization, the MAI–CoC program and its structure, the community context surrounding program efforts, and changes that result from MAI–CoC activities; and, (3) the changes in the number or nature of partnerships and collaborations both internal and external to the MAI–CoC program grantee.

Below is the table of the estimated total burden hours:

Data collection tool	Number of respondents	Number of responses per respondent	Hour per response	Total burden hours
Initial Site Visit Interview Guide	306	1	2	612
Follow-up Site Visit Interview Guide	306	1	1	306
Total	612	2	3	918

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by August 8, 2016.

Summer King,

Statistician.

[FR Doc. 2016–13511 Filed 6–7–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2016–0142]

Towing Safety Advisory Committee; June 2016 Teleconference

AGENCY: Coast Guard, DHS.

ACTION: Notice of teleconference meeting; correction to day-of-the-week reference.

SUMMARY: The Coast Guard published a notice in the **Federal Register** on June 2, 2016, announcing a Towing Safety Advisory Committee meeting, via teleconference. That notice listed the wrong day of the week for the date of the meeting. The notice should have stated, Wednesday, June 22, 2016. This notice removes the incorrect day-of-the-week reference.

DATES: This correction is effective June 8, 2016. The Towing Safety Advisory Committee will meet, via teleconference, on Wednesday, June 22, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Abernathy, Alternate Designated Federal Officer of the Towing Safety Advisory Committee, 2703 Martin Luther King Jr Ave. SE., Stop 7509, Washington, DC 20593–7509, telephone 202–372–1363, fax 202–372–8382 or *william.j.abernathy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard published a document in the **Federal Register** on June 2, 2016 (81 FR 35375), announcing a meeting of the Towing Safety Advisory Committee via teleconference. We listed the wrong day of the week for the June 22, 2016 meeting. The Committee will meet on Wednesday, June 22, 2016. This correction removes the incorrect day-of-the-week reference.

In notice FR Doc. 2016–12963 published June 2, 2016 (81 FR 35375), make the following correction:

On page 3537, in the second column, in the second line of the **DATES** section, remove the word "Tuesday" and add, in its place, the word "Wednesday".

Dated: June 2, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–13515 Filed 6–7–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0007]

Public Assistance Program Minimum Standards; Reopening of Comment Period

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this notice to advise the public that FEMA is reopening the comment period for Docket ID FEMA–2016–0007. The

initial notice of availability of FEMA's proposed policy regarding minimum standards for Public Assistance restoration of damaged facility projects published in the April 21, 2016 **Federal Register**, and requested public comments no later than May 23, 2016. FEMA has reopened the comment period for submitting public comments to July 8, 2016.

DATES: The comment period for the notice published on April 21, 2016 (81 FR 23503), is reopened. Comments must be received by July 8, 2016.

ADDRESSES: Comments must be identified by docket ID FEMA–2016–0007 and may be submitted by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: William Roche, Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–3834.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is issuing this notice to advise the public that FEMA is reopening the comment period for Docket ID FEMA–2016–0007. The initial notice of availability of FEMA's proposed policy regarding minimum standards for Public Assistance restoration of damaged facility projects published in the April 21, 2016 **Federal Register** (81 FR 23503), and requested public comments no later than May 23, 2016.

Interested parties have requested additional time to review and comment on the proposed policy. FEMA has reopened the comment period for submitting public comments to July 8, 2016.

Authority: 42 U.S.C. 5165a, 5172; 44 CFR 206.226, 206.400.

David Bibo,

Deputy Associate Administrator, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2016–13546 Filed 6–7–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLESM03300.L16100000.DU0000]

Notice of Intent To Amend the Land Use Plans for the BLM-Administered Public Lands in Wisconsin and Minnesota and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Northeastern States District, Milwaukee, Wisconsin, intends to prepare amendments for the Wisconsin Resource Management Plan (1985), the Minnesota Management Framework Plan (1982), and the Lake Vermilion Public Islands Coordinated Resource Management Plan (1993) (collectively referred to as Land Use Plans) and an associated Environmental Assessment (EA) for the BLM-administered public lands in Wisconsin and Minnesota, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the Land Use Plan amendments with an associated EA. Comments on issues may be submitted in writing until July 8, 2016. The BLM will hold public meetings pertaining to this proposed Land Use Plan amendment in one community in Minnesota (city of Virginia) and in three Wisconsin communities (cities of Stevens Point, Eau Claire, and Milwaukee). The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers, and the BLM Web site at: *https://www.blm.gov/epl-front-office/eplanning/lup/lup_register.do.* In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Land Use Plan Amendments and Associated EA by any of the following methods:

- *Internet: https://www.blm.gov/epl-front-office/eplanning/lup/lup_register.do.*
- *Email: blm_es_comments@blm.gov.*
- *Fax:* 414–297–4409.
- *Mail:* Bureau of Land Management, Northeastern States District, 626 E. Wisconsin Avenue, Suite 200, Milwaukee, WI 53202.

Documents pertinent to this proposal may be examined at the Northeastern States District, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Kurt Wadzinski, telephone 414–297–4408; address 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202; email *kwadzins@blm.gov.* Contact Mr. Wadzinski to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Northeastern States District, Milwaukee, Wisconsin, intends to prepare Land Use Plan amendments with an associated EA for the BLM-administered public lands in Wisconsin and Minnesota. This notice announces the beginning of the scoping process and invites public input on issues and planning criteria. The planning area is located in Wisconsin and Minnesota and encompasses approximately 3,636 acres of public land, including approximately 350 islands in Wisconsin, 100 islands in Minnesota, 30 upland parcels in Minnesota, and six upland parcels in Wisconsin. The planning area is covered by three Land Use Plans, including the Wisconsin Resource Management Plan (1985), the Minnesota Management Framework Plan (1982), and the Lake Vermilion Public Islands Coordinated Resource Management Plan (CRMP) (1993). An inventory of wilderness characteristics of the public islands in Wisconsin was published in 1981, and concluded that the public islands in Wisconsin do not meet the criteria for designation as wilderness. Amendments are needed to facilitate a more proactive management approach, in light of new information on resources that are present on the lands in question, notably the presence of cultural resources and sensitive wildlife habitats and plant communities. The purpose of

the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel, Federal, State, and local agencies, and other stakeholders. The issues include the following: (a) Degradation of cultural resources; (b) Recreation site degradation from litter, construction of unauthorized structures, and cutting of live trees for campfires; (c) Conflicts between recreational users and managers of nearby, regulated recreation sites under different jurisdictions; and (d) Spread of non-native, invasive plant species. Preliminary planning criteria are as follows: (a) The Land Use Plans will be amended in compliance with FLPMA, NEPA, the Shipstead-Nolan-Newton Act of 1930, and all other relevant Federal laws, executive orders, and BLM policies; (b) Where planning decisions are still valid, those decisions may remain unchanged and incorporated into the new Land Use Plans; (c) The Land Use Plans will recognize valid, existing rights; (d) Native American tribal consultations will be conducted in accordance with policy and Tribal concerns will be given due consideration; (e) The amended Land Use Plans (not including the Lake Vermilion CRMP) will provide disposal criteria that balance the public benefits of BLM retention against the management efficiency of land disposal; (f) The amended Land Use Plans will provide policy for managing recreational use on BLM-administered public lands; and (g) The amended Land Use Plans will provide a general description of BLM management activities pertaining to vegetation, prescribed fire, wildlife, cultural resources, and other resources. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: outdoor recreation, cultural resources, forestry, vegetation, wildlife and fisheries, lands and realty, hydrology, soils, air quality, fire management, sociology and economics.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2

Dean Gettinger,

District Manager, Northeastern States District.

[FR Doc. 2016–13557 Filed 6–7–16; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L14400000–BJ0000–16XL1109AF: HAG 16–0148]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 37 S., R. 2 E, accepted April 18, 2016

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before

including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2016–13565 Filed 6–7–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC09000 L71220000.EU0000 15XL8069TF LVTFB1559610; CACA 54618]

Notice of Realty Action: Proposed Non-Competitive (Direct) Sale of Public Land in Fresno and Monterey Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Central Coast Field Office, is considering a direct sale of public land containing 40 acres to Timothy Haley under Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, at not less than the fair market value of $149,500.

DATES: Comments must be received by July 25, 2016. The BLM will not hold the public sale prior to August 8, 2016.

ADDRESSES: Comments should be sent to the Bureau of Land Management Central Coast Field Office; Attn: Smith Mountain Project Manager, 940 2nd Ave. Marina, California, 93933–6009 or by email to *blm_ca_hollister_fo_email@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, Bureau of Land Management, Central Coast Field Office, 831–582–2200. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM will consider a direct sale for the following public lands in Fresno and Monterey counties, California, in accordance with Sections 203 and 209 of FLPMA (43 U.S.C. 1713 and 1719):

Mount Diablo Meridian, California

T. 21 S., R. 13 E.,
Sec. 29, NE¼NW¼.
The area described contains 40 acres.

The direct sale of the public land is in conformance with the BLM's 1984 Hollister Resource Management Plan (RMP) for the Southern Diablo Mountain Range and Central Coast of California, revised in 2007, and is located under Land Tenure Adjustment (LTEN–COM3) on page 3–36 and shown on Figure 27. Regulations at 43 CFR 2710.0–3(a) and 43 CFR 2711.3–3(a) authorize the BLM to utilize a direct sale of public land when a competitive sale is not appropriate and the public interest would best be served by a direct sale. The BLM will dispose of a small, isolated parcel that lacks legal public access making it difficult and uneconomical to manage. The land is not suitable for management by another Federal agency. The BLM will offer the lands to Timothy Haley since he is the adjacent landowner and owns the access to the public land. The other surrounding landowners are not interested in acquiring the public land.

The BLM prepared a mineral potential report, dated July 31, 2014, that concludes there are no known mineral values in the land offered for direct sale. Therefore, the BLM intends to convey the Federal mineral interest simultaneously with the sale. Timothy Haley will be required to pay a $50 non-refundable filing fee for conveyance of the available mineral interests and any associated administrative costs.

Pursuant to the requirements of 43 CFR 2711.1–2(d), publication of this notice in the **Federal Register** will segregate the land from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting the public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** or a termination of the segregation, or on June 8, 2018 unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. The BLM will publish this notice in the Monterey County Weekly newspaper once a week for three consecutive weeks.

The conveyance document will include the following terms, covenants, conditions, and reservations:

A reservation to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

The conveyance document will convey the land subject to the following:

1. Valid existing rights of record;

2. A right-of-way CACA 12914 for a communications site granted to the State of California Department of General Services on behalf of the California Department of Forestry and Fire Protection, (FLPMA);

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands; and

4. Additional terms and conditions that the authorized officer deems appropriate.

The BLM will make available the reports pertaining to the land, which include an appraisal, environmental site assessment, and mineral potential report for review at the address above. Until July 25, 2016, interested parties may submit in writing any comments concerning the land being considered for sale, including notifications of any encumbrances or other claims relating to the parcel, to the Field Manager, BLM Central Coast Field Office, at the address above. Comments, including names and street addresses of respondents will be available for public review at the BLM Central Coast Field Office during regular business hours, except holidays.

The BLM State Director or other authorized official of the Department of the Interior will review comments regarding the parcel and may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely field objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, email address, or other personal identifying information in your comments, the BLM will make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2710, 2711, and 2720.

Tom Pogacnik,

Deputy State Director, Resources.

[FR Doc. 2016–13555 Filed 6–7–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21097: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by July 8, 2016.

ADDRESSES: Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains and associated funerary objects were removed from Polk County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska.

History and Description of the Remains

At an unknown date, likely between 1914 and 1935, human remains representing, at minimum, one individual were removed from a burial near the town of Runnells, in Polk County, IA. The human remains were stored at the Iowa State Historical Society until 2013, when they were transferred to the Office of the State Archaeologist Bioarchaeology Program. The human remains represent a late-term fetus or newborn child (Burial Project 2926). No known individuals were identified. The 310 associated funerary objects are 307 glass beads, one hematite fragment, one wood fragment, and one piece of linsey-woolsy textile.

Based on the artifacts associated with the human remains, the burial is believed to belong to the Ioway culture, which is affiliated with the present day Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 310 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu,* by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska, may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Otoe-Missouria Tribe of Indians, Oklahoma; and the Winnebago Tribe of Nebraska, that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13598 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21096; [PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by July 8, 2016.

ADDRESSES: Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program. The human remains were removed from Walworth County, SD.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

History and Description of the Remains

In the 1960s, human remains representing, at minimum, one individual were removed from an unknown location, likely the Swan Creek site (39WW7), in Walworth County, SD. The human remains were transferred from an employee of the State Historical Museum to a private individual at an unknown date. The son of the recipient transferred the human remains to the Office of the State Archaeologist Bioarchaeology Program in June 2002. The cranial remains were identified as an older, possibly male adult (Burial Project 1588). No known individuals were identified. No associated funerary objects are present.

The Swan Creek site is attributed to the Coalescent tradition. The people who resided at Coalescent sites are considered to be most likely affiliated with the Arikara. The Arikara are present-day members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu*, by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13595 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21092; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Catalina Island Museum, Avalon, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Catalina Island Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meet the definition of a sacred object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Catalina Island Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the request to the Catalina Island Museum at the address in this notice by July 8, 2016.

ADDRESSES: Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Catalina Island Museum, Avalon, CA, that meets the definition of a sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In 1961, one cultural item was donated to the Catalina Island Museum by Catherine Loud as part of a set of 13 baskets, both of native and non-native origin, with no contextual information provided. Requests for information were sent out to tribes based on preliminary assessments of potential affiliation. Based on consultation with the Timbisha Shoshone, catalog number 61.484.13 was identified as a cremation basket and part of a living ceremonial tradition. The Timbisha Shoshone (aka Panamint Shoshone) are located in Death Valley, CA and as part of their final death rites, after cremation occurred, the ashes were collected and placed in a specifically designed basket. This basket is identified as one of them, although no human remains were found with the basket.

Determinations Made by the Catalina Island Museum

Officials of the Catalina Island Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 1 cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Timbisha Shoshone Tribe of Death Valley.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org*, by July 8, 2016. After that date, if no additional claimants have come forward, transfer of control of the sacred object may be to Timbisha Shoshone Tribe of Death Valley.

The Catalina Island Museum is responsible for notifying the Timbisha Shoshone Tribe of Death Valley that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13588 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21093; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Evanston History Center, Evanston, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Evanston History Center has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Evanston History Center. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Evanston History Center at the address in this notice by July 8, 2016.

ADDRESSES: Alyssa M. Padilla, Evanston History Center, 225 Greenwood Street, Evanston, IL 60201, telephone (847) 475–3410, email *apadilla@evanstonhistorycenter.org*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Evanston History Center, Evanston, IL. The first set of human remains was removed from either Albany, Whiteside County, IL or Evanston, Cook County, IL. The second set of human remains was removed from Evanston, Cook County, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Evanston History Center professional staff in consultation with representatives of Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Peoria Tribe of Indians of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1878, human remains representing, at minimum, one individual were removed from either Albany, Whiteside County, IL (Albany Mounds, site 11WT1) or Evanston, Cook County, IL. Conflicting provenance indicated on inventory tags and lack of accession records complicate the history of these human remains. One document asserts it is the skull of a Native American girl removed from a mound on the upper terrace of hills on the Mississippi river near Albany, IL in 1878 and was donated by F.S. Pooler (donation date unknown). Another document indicates that the skull was unearthed in a burial ground on the site of the present Evanston Hospital. It is unknown what methods were used in determining the age or gender of the cranium. No known individuals were identified. No associated funerary objects are present.

On an unknown date, prior to 1929, human remains representing, at

minimum, one individual were removed from south Evanston, Cook County, IL, along the lake shore. The fragmented human remains were presented to the Evanston Historical Society in 1929 as part of the C.S. Raddin Collection. Charles Salisbury Raddin (1863–1930) was an early director of the Evanston Historical Society. It is unknown when or exactly where on the South Evanston lakeshore the fragments were originally discovered. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Evanston History Center

Officials of the Evanston History Center have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on collection documentation in the Evanston History Center's records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 2 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and the Winnebago Tribe of Nebraska.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Alyssa M. Padilla, Evanston History Center, 225 Greenwood Street, Evanston, IL 60201, telephone (847) 475–3410, email *apadilla@evanstonhistorycenter.org*, by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and the Winnebago Tribe of Nebraska may proceed.

The Evanston History Center is responsible for notifying the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and the Winnebago Tribe of Nebraska that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13590 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21099: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Lake County Discovery Museum, Wauconda, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Lake County Discovery Museum has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes. Representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Lake County Discovery Museum. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Lake County Discovery Museum at the address in this notice by July 8, 2016.

ADDRESSES: Diana Dretske, Lake County Discovery Museum, 27277 North Forest Preserve Road, Wauconda, IL 60084, telephone (847) 968–3381, email *ddretske@lcfpd.org*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Lake County Discovery Museum, Wauconda, IL. The human remains and associated funerary objects were removed from Lake County, IL, and possibly McHenry County, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has

control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Lake County Discovery Museum professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana. The following tribes were invited to consult but did not respond to the invitation: Bad River Band of Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rock Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Eastern Band of Cherokee Indians; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indian of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota. All tribes listed above are hereafter referred to as "The Consulted and Invited Tribes."

History and Description of the Remains

In the 1950s or 1960s, human remains representing, at minimum, 17 individuals were found in an unknown location along Route 173, in Lake County, IL. The human remains were donated to the Lake County Discovery Museum around the same time. No known individuals were identified. No associated funerary objects are present.

In January and June 1962, human remains representing, at minimum, 11 individuals were discovered in a gravel quarry owned by Vulcan Materials Company, Consumers Division. The site was designated as Illinois Archaeology Site L–65, along the Des Plaines River, Lake County, IL. The burial site was "uncovered after workers for a gravel company had stripped away the top layer of ground. The final excavation was done largely by the staff of the Lake County Museum." The human remains were taken to the museum by Robert Vogel. The human remains were identified as eight adults and 3 children. No known individuals were identified. The 2 associated funerary objects are the jaw and intact teeth of a horse, and a necklace of bear teeth, shells, and fossilized crinoid stem beads.

In July 1959, human remains representing, at minimum, one individual were removed from a site on private land in Lake County, IL. The Lake County Sheriff was called to the James Kleth home on Ackerman Road, Antioch, where John B. Draundt was digging on the south side of the house and discovered human remains. County officials determined the land was a Native American burial ground. In 1976, the Office of Sheriff stated that "these bones were turned over to Mr. Vogel, who was the museum director at the time." No known individuals were identified. No associated funerary objects are present.

In the late 1950s or early 1960s, human remains representing, at minimum, four individuals were found in Newport Township, IL, and donated to the museum around the same time. The human remains were identified as three adults and one child. No known individuals were identified. The one associated funerary object is a rat skull.

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown area believed to be in McHenry County, IL. No other information is available for the human remains. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Lake County Discovery Museum

Officials of the Lake County Discovery Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on catalogue records and collection information.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 34 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three associated funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects, and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Consulted and Invited Tribes.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Consulted and Invited Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Consulted and Invited Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Diana Dretske, Lake County Discovery Museum, 27277 North Forest Preserve Road, Wauconda, IL 60084, telephone (847) 968–3381, email *ddretske@lcfpd.org*, by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Consulted and Invited Tribes may proceed.

The Lake County Discovery Museum is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13591 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–2109; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Catalina Island Museum, Avalon, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Catalina Island Museum, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of sacred objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Catalina Island Museum. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Catalina Island Museum at the address in this notice by July 8, 2016.

ADDRESSES: Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Catalina Island Museum, Avalon, CA, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

In 1996, Justin Farmer donated a cultural item (identified as 96.018) to the Catalina Island Museum as part of a set of baskets with no contextual information. Requests for information were sent out to tribes based on preliminary assessments of potential affiliation. Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, and Table Mountain Rancheria of California, the basket was determined to be part of living ceremonial traditions. Based on designs and shape it was identified as a traditional Yokuts Rattlesnake basket used in their Spring Ceremony. In addition twinned baskets such as catalog number 96.018 are identified as "Tulare bottleneck" or "treasure" baskets. The basket meets the NAGPRA definition of a sacred object, and is needed by current religious practitioners for the Rattlesnake ceremony and the Spring ceremony.

In 1961, an unknown person donated one cultural item (identified as 61.46.16) to the Catalina Island Museum with no contextual information. Based on consultation with the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, and Table Mountain Rancheria of California, the basket displays designs known as the Goose design (La-La). These designs signify that it is a cooking basket used for the Spring Ceremony. The basket meets the NAGPRA definition of a sacred object and is needed by current religious practitioners for the Spring Ceremony.

The Yokuts language belongs to the Penutian language family and is divided by anthropologists into three distinct groups: The Southern Valley Yokuts, located in the southern end of the San Joaquin Valley from the lower Kings River to the Tehachapi Mountains; the Foothill Yokuts occupying the western slopes of the Sierra Nevada Mountains from Fresno River to the Kern River; and the Northern Valley Yokuts extended "from near where the San Joaquin River makes a big bend northward to a line midway between the Calaveras and Mekelumne Rivers." Based on consultation with Santa Rosa Indian Community of the Santa Rosa Rancheria, California, and Table Mountain Rancheria of California, catalog number 96.018 and 61.46.16 are sacred items, as defined by NAGPRA.

Determinations Made by the Catalina Island Museum

Officials of the Catalina Island Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 2 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Michael DeMarsche, Ph.D., Catalina Island Museum, 1 Casino Way, Casino Building, P.O. Box 366, Avalon, CA 90704, telephone (310) 510–2416, email *director@catalinamuseum.org,* by July 8, 2016. After that date, if no additional claimants have come forward, transfer of control of the sacred objects to the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; the Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California will occur.

The Catalina Island Museum is responsible for notifying the Picayune Rancheria of the Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and the Tule River Indian Tribe of the Tule River Reservation, California, that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13589 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21100; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of Anthropology, Indiana University, Bloomington, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of Anthropology at Indiana University, Bloomington has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Indiana University NAGPRA Office. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Indiana University NAGPRA Office at the address in this notice by July 8, 2016.

ADDRESSES: Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, NAGPRA Office, Student Building 318, 701 East Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Department of Anthropology at Indiana University, Bloomington, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Indiana University professional staff in consultation with representatives of the Jena Band of the Choctaw Indians; the Mississippi Band of the Choctaw Indians; and The Choctaw Nation of Oklahoma.

History and Description of the Remains

In 1956, human remains representing, at minimum, 1 individual were donated to the Department of Anthropology at Indiana University from the Cincinnati Society of Natural History. Notes indicate that these human remains may have been part of the Chicago Historical Society collections prior to 1950. The human remains are labeled as belonging to a Choctaw Indian. No other information is present. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Indiana University

Officials of the Department of Anthropology at Indiana University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Jena Band of the Choctaw Indians; the Mississippi Band of the Choctaw Indians; and The Choctaw Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Jayne-Leigh Thomas, NAGPRA Director, Indiana University, NAGPRA Office, Student Building 318, 701 East Kirkwood Avenue, Bloomington, IN 47405, telephone (812) 856–5315, email *thomajay@indiana.edu,* by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Jena Band of the Choctaw Indians; the Mississippi Band of the Choctaw Indians; and The Choctaw Nation of Oklahoma may proceed.

Indiana University is responsible for notifying the Jena Band of the Choctaw Indians; the Mississippi Band of the Choctaw Indians; and The Choctaw Nation of Oklahoma that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13593 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21090: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Los Angeles County Museum of Natural History (LACMNH) has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Los Angeles County Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Los Angeles County Museum of Natural History at the address in this notice by July 8, 2016.

ADDRESSES: Dawn McDivitt, Chief Deputy Director, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007, telephone (213) 763–3306, email *dmcdivitt@nhm.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of an inventory of human remains under the control of the Los Angeles County Museum of Natural History, Los Angeles, CA. The human remains were removed from near the former town of Ainsworth, in Franklin County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon); Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe (previously listed as the Nez Perce Tribe of Idaho); and the Wanapum Band of Priest Rapids, a non-federally recognized Indian group.

History and Description of the Remains

In October 1905, human remains representing, at minimum, one individual (Natural History Museum Number A.4262.37–1) were removed from the confluence of the Snake and Columbia Rivers near the former town of Ainsworth, in Franklin County, WA. The burial was found 30 feet from the Columbia River shoreline during the course of excavation for a temporary wharf at the mouth of the Snake River. According to accession records at the Los Angeles County Natural History Museum, the burial was reportedly found six feet below the surface. The skull and mandible of a young person of indeterminate sex between the ages of 20 to 25 years were reportedly collected. The remains were stained green by copper salts. The left frontal bone showed an injury which had healed prior to the death of the individual. The remains were gifted to the LACNMH on 28 August 1937, by Leon G. Fell of Bakersfield, California, under accession number A.4262.37–1. No known individuals were identified. No associated funerary objects are present.

Today, the collection consists of a single mandible with green staining; the cranium is absent. The tribes with which the Museum consulted have noted that such green staining is typical of other human remains that have been culturally affiliated with the Plateau Culture from along the Snake and Columbia Rivers.

Prehistorically, the Ainsworth, Washington area was occupied seasonally by people of the Plateau Culture for at least 5,000 years. Ethnographers agree that the Plateau Culture people were Sahaptin speakers of the Palus, Walúulapam (Walla Walla), Imatalamláma (Umatilla), and Wanapam/Wanapum.

On their historic journey to the Pacific Ocean, Lewis and Clark noted being visited by Sahaptin speaking people on October 16, 1805, while at the mouth of the Snake River, which they called the Kimooenim or Lewis's River. The captains met two groups of Indians at their camp at the mouth of the Snake River, the Chimnapams and Sokulks, or what is today known as the Yakamas and Wanapums respectively. The Yakamas lived in villages along both sides of the Columbia River in the vicinity of present-day Pasco, Washington, north of the Snake River. The Wanapum lived further up the Columbia on the west bank, north of present-day Richland, Washington. Many Wallula and some Umatilla people lived north and south of the Snake River, too, as the river area was important as a valuable fishing and trading location.

Descendants of these communities are present-day members of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band of Priest Rapids, a non-federally recognized Indian group.

Determinations Made by the Los Angeles County Museum of Natural History

Officials of the Los Angeles County Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band of Priest Rapids, a non-federally recognized Indian group.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human should submit a written request with information in support of the request to Dawn McDivitt, Chief Deputy Director, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007, telephone (213) 763–3306, email *dmcdivitt@nhm.org*, by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group (if joined to one or more of the above Indian tribes) may proceed.

The Los Angeles County Museum of Natural History is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-federally recognized Indian group that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13594 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21098; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by July 8, 2016.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains were removed from an unspecified location in California.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with the Native American Heritage Commission, representatives of the Tejon Indian Tribe; the Tule River Indian Tribe of the Tule River Reservation, California; and the Kern Valley Indian Community, a non-federally recognized Indian group.

History and Description of the Remains

At an unknown date, human remains representing a minimum of one individual were removed from an unspecified mound site in California. At some point, the human remains, which were identified as "taken from mound of Kawai tribe," were donated to the Ham House Museum in Dubuque, IA. These human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in 1986. The human remains were identified as a young adult male (Burial Project 655). No known individuals were identified. No associated funerary objects are present.

The human remains are attributed to the Kawaiisu, based on collection evidence. The Kawai, also known as the Kawaiisu or Kaweah, occupied Eastern California in the vicinity of the Tehachapi Mountains. When the original Tule River Reservation was established in 1856, the Kawaiisu were among the tribes represented. Ethnohistorically, Kawaiisu is the name of a population that encompasses thre, now separate, present-day communities: The Tejon Indian Tribe, the Tule River Indian Tribe, and the Kern Valley Indian Community, a non-Federally recognized Indian group.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Tule River Indian Tribe of the Tule River Reservation, California.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu*, by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Tule River Indian Tribe of the Tule River Reservation, California, may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying the Tejon Indian Tribe; the Tule River Indian Tribe of the Tule River Reservation, California; and the Kern Valley Indian Community, a non-federally recognized Indian group, that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13592 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21139; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Pennsylvania Museum of Archaeology

and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by July 8, 2016.

ADDRESSES: Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from an unknown site in Wayne County, MI and Cuyahoga County, OH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Pokagon Band of Potawatomi Indians, Michigan and Indiana; Wyandotte Nation; and the Michigan Anishinaabek Cultural Preservation and Repatriation Alliance (MACPRA), a non-federally recognized entity which represents the following federally recognized groups: Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Pottawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan.

History and Description of the Remains

In 1844, human remains representing, at minimum, two individuals were removed by Lt. Montgomery C. Meigs from an unknown mound site in Wayne County, MI. According to museum and archival documents, the human remains were discovered in the immediate vicinity of Detroit and sent to Samuel G. Morton for inclusion in his collection of human crania from around the world prior to 1846. The human remains are represented by a cranium (no mandible) of a single adult female 35–45 years of age and a cranium (no mandible) of a probable male 30–40 years of age. No known individuals were identified. No associated funerary objects are present.

At an unknown date prior to 1839, human remains representing, at minimum, one individual were removed by Dr. George Mendenhall from an unknown site in Cuyahoga County, OH, and were sent to Samuel G. Morton for inclusion in his collection of human crania from around the world prior to 1846. According to museum and archival documents, the human remains were discovered near Cleveland, Cuyahoga County, OH. The human remains are represented by a cranium (no mandible) of a single female 35–45 years of age. No known individuals were identified. No associated funerary objects are present.

At an unknown date prior to 1839, human remains representing, at minimum, one individual were removed by Dr. Sturum from an unknown location near Detroit, Wayne County, MI. After his death, the human remains came into possession of the executor of Sturum's estate and were sent to Samuel G. Morton for inclusion in his collection of human crania from around the world prior to 1846. The human remains are represented by a cranium and mandible of a male, 50+ years of age. Museum and archival documents identified this individual as a "chief, who was slain in a broil with his son-in-law." No known individuals were identified. No associated funerary objects are present.

Dr. Morton published his collection in several catalogues (1839, 1840, and 1849). In 1853, Dr. Morton's collection, including all the human remains described above, were purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum of Archaeology and Anthropology.

Literature from the museum, collectors, and publications indicate that the four sets of human remains date to the Historic Period. The human remains have been identified as Native American based on specific cultural and geographic attribution in the museum records. Collector records, museum documentation and published sources identify the human remains above as Wyandot (Huron). Scholarly publications and land cession records indicate that the areas from which the human remains were removed are within the traditional aboriginal territory of the Wyandot (Huron) Indians and many known historic Wyandot (Huron) occupation sites within these areas have been identified.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and Wyandotte Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050, by July 8, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Wyandotte Nation may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Pottawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, that this notice has been published.

Dated: May 23, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13597 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21140; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Lakeshore Museum Center, Muskegon, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Lakeshore Museum Center, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of an unassociated funerary object. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Lakeshore Museum Center. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Lakeshore Museum Center at the address in this notice by July 8, 2016.

ADDRESSES: Sharon McCullar, Collections Curator, Lakeshore Museum Center, 430 West Clay, Muskegon, MI 49440, telephone (231) 722–0278, email *sharon@lakeshoremuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Lakeshore Museum Center that meets the definition of unassociated funerary objects under 25 U.S.C. 3001(3)(B).

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

Sometime prior to 1985, a mano and metate set was removed from the vicinity of the Mission San Xavier, south of Tucson, AZ. The item was donated to the Muskegon County Museum, now known as the Lakeshore Museum Center. A statement provided by the donor asserting that the mano and metate set was collected from the vicinity of the Mission San Xavier, in a burial area, was affirmed in consultation with the Tohono O'Odham Nation of Arizona. The Tohono O'Odham Nation has a cultural affiliation with the mano and metate set based upon geographical, historical, and contextual information, and has requested the return of this unassociated funerary object.

Determinations Made by the Lakeshore Museum Center

Officials of the Lakeshore Museum Center have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the mano and metate set and Tohono O'Odham Nation of Arizona.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Sharon McCullar, Collections Curator, Lakeshore Museum Center, 430 West Clay, Muskegon MI 49440, telephone (231) 722–0278, email *sharon@lakeshoremuseum.org,* by July 8, 2016. After that date, if no additional claimants have come forward, transfer of control of the corn grinding stone set to Tohono O'Odham Nation may proceed.

The Lakeshore Museum Center is responsible for notifying the Tohono O'Odham Nation that this notice has been published.

Dated: May 23, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–13598 Filed 6–7–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63642000 DR2000000.CH7000 167D0102R2]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of the Secretary, Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require ONRR to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. Consistent with these requirements, this notice provides major portion prices for the 12 months of calendar year 2014.

DATES: The due date to pay additional royalties based on the major portion prices is August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Michael Curry, Manager, Denver B, Western Audit & Compliance, ONRR; telephone (303) 231–3741; fax number (303) 231–3473; email *Michael.Curry@onrr.gov;* or Rob Francoeur, Denver B, Team 2, Western Audit & Compliance, ONRR; telephone (303) 231–3723; fax (303) 231–3473; email *Rob.Francoeur@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit & Compliance, Denver B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, ONRR published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases" effective January 1, 2000 (64 FR 43506). The gas valuation regulations apply to all gas production from Indian (Tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, as well as the due date for additional royalty payments. See 30 CFR 1206.174(a)(4)(ii). If you owe additional royalties based on a published major portion price, you must submit to ONRR by the due date, an amended form ONRR–2014, Report of Sales and Royalty Remittance. If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended form ONRR–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is the end of the month following 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2014	Feb 2014	Mar 2014	Apr 2014
Blackfeet Reservation	3.42	6.58	4.24	3.82
Fort Belknap	5.61	6.76	6.24	5.00
Fort Berthold	6.40	10.27	10.48	5.19
Fort Peck Reservation	6.55	7.28	7.87	6.64
Navajo Allotted Leases in the Navajo Reservation	4.68	5.59	5.39	4.58
Turtle Mountain Reservation	7.05	7.31	8.64	5.14

ONRR-designated areas	May 2014	Jun 2014	Jul 2014	Aug 2014
Blackfeet Reservation	3.69	3.82	3.30	3.14
Fort Belknap	5.11	5.12	4.85	4.69
Fort Berthold	5.04	5.01	4.66	4.20
Fort Peck Reservation	5.17	5.00	4.79	4.49
Navajo Allotted Leases in the Navajo Reservation	4.66	4.52	4.52	3.98
Turtle Mountain Reservation	5.05	4.97	4.24	4.14

ONRR-designated areas	Sep 2014	Oct 2014	Nov 2014	Dec 2014
Blackfeet Reservation	3.13	2.81	2.99	2.34
Fort Belknap	4.77	4.75	4.89	5.10
Fort Berthold	4.24	4.09	4.37	4.83
Fort Peck Reservation	4.70	4.31	3.52	3.10
Navajo Allotted Leases in the Navajo Reservation	4.14	3.96	3.80	4.24
Turtle Mountain Reservation	4.49	4.06	4.00	3.63

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the ONRR Web site at *http://www.onrr.gov/ReportPay/PDFDocs/991201.pdf*

Dated: May 31, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–13461 Filed 6–7–16; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1003]

Certain Composite Aerogel Insulation Materials and Methods for Manufacturing the Same Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 5, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Aspen Aerogels, Inc. of Northborough, Massachusetts. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite aerogel insulation materials and methods for manufacturing the same by reason of infringement of certain claims of U.S. Patent No. 6,989,123 ("the '123 patent"); U.S. Patent No. 7,078,359 ("the '359 patent"); U.S. Patent No. 7,399,439 ("the '439 patent"); U.S. Patent No. 7,780,890 ("the '890 patent"); and U.S. Patent No. 9,181,486 ("the '486 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the

Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 1, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain composite aerogel insulation materials and methods for manufacturing the same by reason of infringement of one or more of claims 15–17 and 19 of the '123 patent; claims 1–3, 5–7, 9, 10, 12–18, 49, and 50 of the '359 patent; claims 1–4, 6–9, 15, 16, and 18–21 of the '439 patent; claims 11–13, 15, 17–19, and 21 of the '890 patent; and claims 1, 2, and 11 of the '486 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Aspen Aerogels, Inc., 30 Forbes Road, Building B, Northborough, MA 01532.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nano Tech Co., Ltd., No. 9 Baichuan Road, Binhai New Area, Shaoxing, Zhejiang, China.

Guangdong Alison Hi-Tech Co., Ltd., Rm. 1202, Golden Lake Building, No. 2 Donghu Road West, Guangzhou, China.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 2, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–13467 Filed 6–7–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–974]

Certain Aquarium Fittings and Parts Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation; Issuance of Consent Order and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 10) terminating the above-captioned investigation based on a consent order stipulation, consent order, and settlement agreement. The Commission has issued the consent order and determined to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 11, 2015, based on a complaint filed by HYDOR USA Inc. of Sacramento, California. 80 FR 77019–20 (Dec. 11, 2015). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent No. 8,191,846. The complaint further alleged that a domestic industry exists. The Commission's Notice of Investigation named Jebao Co., Ltd. of Zhongshan City, China as the sole respondent.

On April 18, 2016, complainant and the sole respondent moved for termination of the investigation based on a consent order stipulation and a settlement agreement. The Commission investigative attorney supported the motion.

On May 4, 2016, the ALJ issued the subject ID (Order No. 10) granting the joint motion and finding that the motion for termination satisfies Commission Rules 210.21(a)(1) and (b)(1), termination is in the public interest, and that no "extraordinary circumstances" exist that would preclude granting the motion. No party petitioned for review of the ID.

The Commission has determined not to review the ID and has issued the consent order and terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 2, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–13495 Filed 6–7–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0004]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Interstate Firearms Shipment Report of Theft/Loss (ATF F 3310.6)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 8, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Neil Troppman, National Tracing Center, Law Enforcement Support Branch, 244 Needy Road, Martinsburg, WV 25405, at telephone number: 304–260–3643.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83–I):* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

3. *The agency form number, if any, and the applicable component of the Departmentsponsoring the collection:* Form number (if applicable): ATF F 3310.6.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable):

Abstract: 27 CFR part 478 of Federal Regulations requires Federal Firearms Licensees' who discovers a firearm it shipped was stolen or lost in transit, the transferor/sender FFL must report the theft or loss to ATF and to the appropriate local authorities within 48 hours of discovery.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 550 respondents will take 20 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 182 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E–405B, Washington, DC 20530.

Dated: June 3, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13520 Filed 6–7–16; 8:45 am]

BILLING CODE 4410–FY–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

SUMMARY: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, that the Operations and Regulations Committee (Committee) of the Board of Directors for the Legal Services Corporation (LSC) will hold its third and final Rulemaking Workshop (Workshop) to solicit public input on revisions to LSC's Cost Standards and Procedures and the Property Acquisition and Management Manual (PAMM).

DATE AND TIME: Wednesday, June 15, 2016, 1:30–4:30 p.m. EDT.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street NW., 3rd Floor, Washington DC 20007.

PUBLIC OBSERVATION AND PARTICIPATION: LSC encourages observation of and participation in the Workshop by interested individuals and organizations. The Workshop will be entirely open to public observation and will include opportunities for individuals who are not members of the panel to participate in person or via telephone. Persons interested in speaking during the public comment period are encouraged to pre-register by submitting a request in writing prior to close of business on Monday, June 13, 2016, to Stefanie K. Davis, Assistant General Counsel, at *sdavis@lsc.gov.* Those who pre-register will be scheduled to speak first. LSC will transcribe the meeting and make the transcript available to members of the public who are unable to attend. Transcripts, rulemaking materials, and workshop updates (if any) will be available at *http://www.lsc.gov/rulemaking-cost-standards-and-property-management-acquisition-and-disposal.* Individuals who wish to listen and/or participate in the proceedings remotely may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR PUBLIC OBSERVATION AND PARTICIPATION:

- Call toll-free number: 1–669–224–3412.
- When prompted, enter the following numeric pass code: 945–967–005.
- When connected to the call, please immediately "MUTE" your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. The Workshop moderator will solicit public comment as provided in the following Workshop Agenda.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Introductory remarks.
- Charles N.W. Keckler, Chair, Operations and Regulations Committee

2. Panelist introductions.
- AnnaMarie Johnson, Nevada Legal Services
- Michael Maher, Legal Action of Wisconsin
- Frank Bittner, California Rural Legal Assistance
- Jose Padilla, California Rural Legal Assistance
- Shamim Huq, Legal Aid Society of Northeastern New York
- Dilip Shah, Legal Aid of Northwest Texas
- Steve Ogilvie, Inland Counties Legal Services
- Robin Murphy, National Legal Aid and Defender Association
- Nikole Nelson, Alaska Legal Services
- Tracey Janssen, Alaska Legal Services
- Steve Pelletier, Northwest Justice Project
- Diana White, Legal Assistance Foundation of Metropolitan Chicago

3. Introductory discussion regarding each panelist's experience working with OMB's Uniform Guidance.

4. Discussion regarding LSC's proposal to incorporate minimum standards for procurement policies similar to those in the Uniform Guidance.

5. Discussion regarding LSC's proposal to incorporate Uniform Guidance cost principles.

6. Discussion regarding LSC's proposal to adopt the Uniform Guidance's property disposition principles.

7. Summary of Rulemaking Workshops and other comments.

8. Public comment.

9. Closing remarks.
- Charles N.W. Keckler, Chair, Operations and Regulations Committee

CONTACT PERSON FOR INFORMATION: Stefanie K. Davis, Assistant General Counsel, at (202) 295–1563. Questions may be sent by electronic mail to *sdavis@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Stefanie K. Davis, at (202) 295–1563 or *sdavis@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 6, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–13644 Filed 6–6–16; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (16–040)]

NASA Advisory Council; Ad Hoc Task Force on STEM Education Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Ad Hoc Task Force on Science, Technology, Engineering and Mathematics (STEM) of the NASA Advisory Council (NAC). This Task Force reports to the NAC.

DATES: Wednesday, June 29, 2016, 10:00 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 9H40, Program Review Center, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girten, Executive Secretary, NAC Ad Hoc Task Force on STEM Education, NASA Headquarters, Washington, DC, 202–358–0212, or *beverly.e.girten@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll free access number 844–467–6272 or toll access number 720–259–6462, and then the numeric participant passcode: 329152 followed by the # sign. To join via WebEx, the link is *https://nasa.webex.com/,* the meeting number is 992 384 106 and the password is BeverlyGirten1$ (Password is case sensitive.) NOTE: If dialing in, please "mute" your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair

—Update on Education and Outreach Business Service Assessment

—Update on Plans to Implement Observations

—Funding Profile of Education Programs

—Broadening Participation Efforts

—Formulating Recommendations

—Other Related Topics

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the "List of the Acceptable Documents" on Form I–9]. Non-compliant states/territories are: American Samoa, Illinois, Minnesota, Missouri, New Mexico and Washington. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Dr. Beverly Girten via email at *beverly.e.girten@nasa.gov.* U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Dr. Beverly Girten. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–13562 Filed 6–7–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–033]

Privacy Act of 1974, as Amended; System of Records Notice

AGENCY: National Archives and Records Administration (NARA).

ACTION: Privacy Act system of records notice (SORN) of a new system, NARA 45.

SUMMARY: The National Archives and Records Administration (NARA) proposes to add a system of records to its existing inventory of systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552(a)) (''Privacy Act''). In this notice, NARA publishes NARA 45, Insider Threat Program records. In addition, NARA is updating Appendix B to add the SORN's system manager to the list of system managers and their addresses.

DATES: This new system of records, NARA 45, and Appendix B update will become effective July 18, 2016 without further notice unless we receive comments by July 8, 2016 that cause us to revise it. NARA will publish a new notice if we must delay the effective date to review comments or make changes.

ADDRESSES: You may submit comments, identified by ''SORN NARA 45,'' by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Regulation_comments@nara.gov.* Include SORN NARA 45 in the subject line of the message.
- *Mail (for paper, disk, or CD–ROM submissions. Include SORN NARA 45 on the submission):* Regulations Comment Desk, Strategy and Performance Division (SP); Suite 4100; National and Archives Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.
- *Hand delivery or courier:* Deliver comments to front desk at the address above.

Instructions: All submissions must include NARA's name and SORN NARA 45. We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: For more information related to the SORN process, contact Kimberly Keravuori, External Policy Program Manager, by email at *regulation_comments@nara.gov*, or by telephone at 301–837–3151. For information on the records, contact Neil Carmichael, Insider Threat Program Director, by mail at National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, or by telephone at 301–837–3169.

SUPPLEMENTARY INFORMATION: The notice for this system of records states the record system's name and location, authority for and manner of operation, categories of individuals it covers, types of records it contains, sources of information in the records, and the ''routine uses'' for which the agency may use the information. Appendix B includes the business address of the NARA official you may contact to find out how you may access and correct records pertaining to yourself.

The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy. It requires Federal agencies that disseminate any record of personally identifiable information to do so in a manner that assures the action is for a necessary and lawful purpose, the information is current and accurate for its intended use, and adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles when transferring information to another agency or individual as a ''routine use,'' including assuring that the information is relevant for the purposes for which it is transferred.

In addition, the Privacy Act allows agencies to exempt from release certain information compiled for law enforcement purposes. By a separate, concurrent rulemaking action, NARA is exempting this system of records for that purpose. See the final rule published elsewhere in this issue of the **Federal Register**.

Dated: May 29, 2016.

David S. Ferriero,
Archivist of the United States.

NARA 45

SYSTEM NAME:

Insider Threat Program Records.

SYSTEM LOCATION:

The Office of the Chief Operating Officer at the National Archives in College Park maintains insider threat program records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include future, current, and former NARA employees, NARA contractors, employees and contractors of other Federal agencies who have access to classified information within NARA facilities, Presidential representatives at Presidential libraries, and members of the Public Interest Declassification Board. Other covered individuals include officials or employees of Federal, state, tribal, territorial, and local law enforcement organizations; complainants, informants, suspects, and witnesses; people with access to NARA facilities and infrastructure; members of the general public, including individuals and groups of individuals involved with insider threat matters, complaints, or incidents involving classified systems or classified information; individuals being investigated as potential insider threats; pose a threat to NARA operations, data, personnel, facilities, and systems; and foreign visitors or foreign contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

NARA maintains a centralized hub for insider threat analysis to (1) manually and electronically gather, integrate, review, assess, and respond to information derived from internal and external sources, and (2) identify potential insider threat concerns and conduct an appropriate inquiry to resolve the concern.

NARA monitors user activity on all information technology networks or stand-alone systems, including use by both cleared and un-cleared employees. The Insider Threat Program may use this monitoring information to detect activity that might indicate insider threat behavior. The system includes records from this activity, including monitoring logs and insider threat analyses. The Insider Threat Program may also make use of records from other NARA Privacy Act systems of records. When this occurs, records from those other systems will also become part of this system of records. The other systems of records involved include: NARA 7: Freedom of Information Act (FOIA) and Mandatory Review of Classified Documents Request Files; NARA 8: Restricted and Classified Records Access Authorization Files, NARA 11: Credentials and Passes; NARA 12: Emergency Notification Files and Employee Contact Information; NARA 14: Payroll, Attendance, Leave, Retirement, Benefits, and Electronic Reporting System Records; NARA 17: Grievance Records; NARA 18: General Law Files; NARA 19: Workers' Compensation Case Files; NARA 22: Employee-Related Files; NARA 23: Office of Inspector General Investigative Case Files; NARA 24: Personnel Security Files; NARA 26: Volunteer and Unpaid Student Intern Files; NARA 27: Contracting Officer and Contracting Officer's Representative (COR) Designation Files; NARA 28: Tort and Employee Claim Files; NARA 30: Garnishment Files; NARA 32: Alternate Dispute Resolution Files; NARA 34: Agency Ethics Program Files; NARA 35: Case Management and Reporting System (CMRS); and NARA 43: Internal Collaboration Network (ICN).

In addition, this system of records may contain information from NARA offices, programs, databases, records, or sources, including incident reports, investigatory records, personnel security records, facility access records, network security records, security violations, travel records, foreign visitor records, foreign contact reports, financial disclosure reports, personnel records, medical records, information on complainants, informants, suspects, and witnesses, and records involving potential insider threats or activities.

All the records in this system of records may contain the following information on an individual: Name, social security number, date of birth, place of birth, security clearance, home address, work address, personal and official phone numbers, personal and official email addresses, other contact information, driver license number, vehicle identification number, license plate number, ethnicity and race, tribal identification number or other tribal enrollment data, work history, educational history, arrest reports, references to illegal drug involvement, mental health records including counseling related to use of alcohol or drugs, civil court action records, subversive activity information, outside affiliations, information on family members, dependents, relatives, and other personal associations, passport number, gender, fingerprints, hair and eye color, biometric data, and any other individual physical or distinguishing attributes. Investigation records and incident reports may include additional information on an individual, such as: Photos, video, sketches, medical reports, network use records, identification badge data, facility and access control records, email, and text messages.

The records may also include information concerning potential insider threat activity, counterintelligence complaints, investigative referrals, results of incident investigations, case numbers, forms, nondisclosure agreements, consent forms, documents, reports, and correspondence received, generated, or maintained in the course of managing insider threat activities and conducting investigations related to potential insider threats.

Finally, this system contains records of inquiries the hub creates in the course of managing the Insider Threat Program. An inquiry record is akin to a case file on a possible insider threat, and may contain any of the information described above, in addition to investigatory records such as interview notes, analysis of the potential threat, voluntary statements to investigators, and similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104(a), as amended; Section 811 of the Intelligence Authorization Act for FY 1995; Executive Orders 13587, 13526, 12333, and 10450; Presidential Memorandum, National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs, November 21, 2012; Presidential Memorandum, Early Detection of Espionage and Other Intelligence Activities through Identification and Referral of Anomalies, August 23, 1996; and Presidential Decision Directive/NSC–12, Security Awareness and Reporting of Foreign Contacts, August 5, 1993.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains insider threat program records on people to: Manage insider threat matters; facilitate insider threat inquiries, investigations, and activities associated with counterintelligence complaints, inquiries, and investigations; identify potential threats; track referrals of potential insider threats to internal and external partners; provide statistical reports; and meet other insider threat reporting requirements.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside NARA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible to those for which the records are collected or maintained, to the extent the records have not been exempted from disclosure pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(2) To an official of another Federal agency to provide information the agency needs to perform official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(3) To state, local, and tribal governments to provide information in response to a court order or litigation discovery requests, when disclosure is compatible with the purpose for which the records were compiled.

(4) To other appropriate agencies, entities, and people when:

(a) NARA suspects or confirms that the security or confidentiality of information in the system of records has been compromised; and

(b) NARA has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by NARA or another agency or entity) that rely upon the compromised information; and

(c) NARA discloses the information to such agencies, entities, and people who are reasonably necessary to assist in connection with NARA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(5) To the Office of Management and Budget during legislative coordination and clearance as mandated by OMB Circular A–19.

(6) To the Department of the Treasury to recover debts owed to the United States.

(7) To the Department of Justice, the Federal Bureau of Investigation, the Department of Homeland Security, and other Federal, state and local law enforcement agencies to refer potential insider threats to them and exchange information on insider threat activity.

(8) To any criminal, civil, or regulatory authority (whether Federal, state, territorial, local, or tribal) to provide background search information on individuals for legally authorized purposes, including but not limited to background checks on individuals residing in a home with a minor or individuals seeking employment opportunities requiring background checks. Routine uses A, B, C, D, E, F, G, and H listed in Appendix A also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Staff may retrieve information in these records by the employee's name, by search, or by any available field or metadata element recorded in the system.

SAFEGUARDS:

During normal hours of operation, NARA maintains paper records in areas accessible to authorized NARA personnel. Staff access electronic records via password-protected workstations located in attended offices or through a secure remote access network. After hours, buildings have security guards or secured doors, and electronic surveillance equipment monitors all entrances.

RETENTION AND DISPOSAL:

NARA insider threat program records are unscheduled records; NARA therefore retains them until the Archivist of the United States approves dispositions for them.

SYSTEM MANAGER AND ADDRESS:

The system manager for the insider threat program records is the Chief Operating Officer. The business addresses for system managers are listed in Appendix B.

NOTIFICATION PROCEDURE:

People inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B. However, NARA proposes to exempt portions of this system from the notification procedures of the Privacy Act, pursuant to section and (k)(2).

RECORDS ACCESS PROCEDURES:

People who wish to access their records should submit a request in writing to the NARA Privacy Act Officer at the address listed in Appendix B. However, NARA proposes to exempt portions of this system from the access procedures of the Privacy Act, pursuant to section and (k)(2).

CONTESTING RECORDS PROCEDURES:

NARA's rules for contesting the contents of your records and appealing initial determinations are in 36 CFR part 1202. However, NARA proposes to exempt portions of this system from the amendment procedures of the Privacy Act, pursuant to section and (k)(2).

RECORD SOURCE CATEGORIES:

NARA may obtain information in the system from NARA office and program officials, employees, contractors, and other individuals associated with or representing NARA; officials from other Federal, tribal, territorial, state, and local government organizations; relevant NARA records, databases, and files, including personnel security files, facility access records, security incident or violation files, network security records, investigatory records, visitor records, travel records, foreign visitor or contact reports, and financial disclosure reports; and complainants, informants, suspects, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system contains classified and unclassified intelligence and law enforcement investigatory records related to counterintelligence and insider threat activities that are exempt from certain provisions of the Privacy Act; specifically, 5 U.S.C. 552a(k)(2). Pursuant to subsection (k)(2), NARA exempts portions of this system from the following subsections of the Privacy Act: (c)(3), (d), (e)(1) and (e)(4)(G) and (H), and (f). In accordance with 5 U.S.C. 553(b), (c), and (e), NARA has promulgated Regulations Implementing the Privacy Act of 1974, at 36 CFR 1202, that establish this exemption (see 36 CFR 1202.92). NARA is concurrently revising its regulation to add this system of records, as published elsewhere in this issue of the **Federal Register**.

Appendix B

Records Inquiries and Requests:

To inquire about your records or to gain access to your records, you should submit your request in writing to: NARA Privacy Act Officer; Office of the General Counsel (NGC); National Archives and Records Administration; 8601 Adelphi Road, Room 3110; College Park, MD 20740–6001.

System Managers:

If the system manager is the Chief Human Capital Officer, the business address is: Office of Human Capital; National Archives and Records Administration; 8601 Adelphi Road, Room 1200; College Park, MD 20740–6001.

If the system manager is the Chief Information Officer, the business address is: Office of Information Services; National Archives and Records Administration; 8601 Adelphi Road, Room 4400; College Park, MD 20740–6001.

If the system manager is the Chief Innovation Officer, the business address is: Office of Innovation; National Archives and Records Administration; 8601 Adelphi Road, Room 3200; College Park, MD 20740–6001.

If the system manager is the Chief Operating Officer, the business address is: Office of the Chief Operating Officer; National Archives and Records Administration; 8601 Adelphi Road, Room 4200; College Park, MD 20740–6001.

If the system manager is the Chief Records Officer, the business address is: Office of the Chief Records Officer; National Archives and Records Administration; 8601 Adelphi Road, Room 2100; College Park, MD 20740.

If the system manager is the Chief Strategy and Communications Officer, the business address is: Office of Strategy and Communications; National Archives and Records Administration; 8601 Adelphi Road, Room 4100; College Park, MD 20740–6001.

If the system manager is the Designated Agency Ethics Official, the business address is: Office of the General Counsel; National Archives and Records Administration; 8601 Adelphi Road, Room 3110; College Park, MD 20740–6001.

If the system manager is the Director, National Personnel Records Center, the business address is: National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138. If the system manager is the director of an individual Presidential library, the business address is the relevant Presidential library:

George H.W. Bush Library, 1000 George Bush Drive West, College Station, TX 77845
George W. Bush Library, 2943 SMU Boulevard, Dallas, TX 75205
Jimmy Carter Library, 441 Freedom Parkway, Atlanta, GA 30307–1498
William J. Clinton Library, 1200 President Clinton Avenue, Little Rock, AR 72201
Dwight D. Eisenhower Library, 200 SE 4th Street, Abilene, KS 67410–2900
Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109–2114
Herbert Hoover Library, 210 Parkside Drive, P.O. Box 488, West Branch, IA 52358–0488
Lyndon B. Johnson Library, 2313 Red River Street, Austin, TX 78705–5702
John F. Kennedy Library, Columbia Point, Boston, MA 02125–3398
Richard Nixon Library, 1800 Yorba Linda Boulevard, Yorba Linda, CA 92886
Ronald Reagan Library, 40 Presidential Drive, Simi Valley, CA 93065–0600
Franklin D. Roosevelt Library, 4079 Albany Post Road, Hyde Park, NY 12538–1999
Harry S. Truman Library, 500 West U.S. Highway 24, Independence, MO 64050–1798

If the system manager is the Director, Office of Equal Employment Opportunity, the business address is: Office of Equal Employment Opportunity; National Archives and Records Administration; 8601 Adelphi Road, Room 3310, College Park, MD 20740–6001.

If the system manager is the Director of the Center for Legislative Archives, the business address is: The Center for Legislative Archives; National Archives and Records Administration; 700 Pennsylvania Ave. NW., Washington, DC 20408–0001.

If the system manager is the Director of the Federal Register, the business address is: Office of the Federal Register; National Archives and Records Administration; 800 North Capitol Street NW., Washington, DC 20002.

If the system manager is the Director of the Office of Presidential Libraries, the business address is the Office of Presidential Libraries; National Archives and Records Administration; 8601 Adelphi Road, Room 2200, College Park, MD 20740–6001.

If the system manager is the Director of the Presidential Materials Division, the business address is: Presidential Materials Division; National Archives and Records Administration; 700 Pennsylvania Ave. NW., Room 104, Washington, DC 20408–0001.

If the system manager is the Director of the Washington National Records Center, the records are located at the following address: Washington National Records Center; National Archives and Records Administration; 4205 Suitland Road, Suitland, MD 20746–8001.

If the system manager is the Executive Director of the National Historical Publications and Records Commission, the business address is: National Historical Publications and Records Commission; National Archives and Records Administration; 700 Pennsylvania Avenue NW., Room 114, Washington, DC 20408–0001.

If the system manager is the Executive for Agency Services, the business address is: Office of Agency Services; National Archives and Records Administration; 8601 Adelphi Road, Room 3600, College Park, MD 20740–6001.

If the system manager is the Executive for Business Support Services, the business address is: Office of Business Support Services; National Archives and Records Administration; 8601 Adelphi Road, Room 5100, College Park, MD 20740–6001.

If the system manager is the Executive for Information Services, the business address is: Office of Information Services; National Archives and Records Administration; 8601 Adelphi Road, Room 4400, College Park, MD 20740–6001.

If the system manager is the Executive for Legislative Archives, Presidential Libraries, and Museum Services, the business address is the Office of Legislative Archives, Presidential Libraries, and Museum Services; National Archives and Records Administration; 700 Pennsylvania Avenue NW., Room 104, Washington, DC 20408–0001.

If the system manager is the Executive for Research Services, the business address is: Office of Research Services; National Archives and Records Administration; 8601 Adelphi Road, Room 3400, College Park, MD 20740–6001.

If the system manager is the General Counsel, the business address is: Office of the General Counsel; National Archives and Records Administration; 8601 Adelphi Road, Room 3110, College Park, MD 20740–6001.

If the system manager is the Inspector General, the business address is: Office of the Inspector General; National Archives and Records Administration; 8601 Adelphi Road, Room 1300, College Park, MD 20740–6001.

[FR Doc. 2016–13600 Filed 6–7–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by August 8, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Nanoscale Science and Engineering Centers (NSECs).

OMB Number: 3145–0229.

Expiration Date of Approval: September 30, 2016.

Type of Request: Intent to seek approval to renew an information collection.

Overview of This Information Collection: The Nanoscale Science and Engineering Centers (NSECs) Program supports innovation in the integrative conduct of research, education, and knowledge transfer. NSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. NSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

NSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. NSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

NSECs will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, NSECs will be required to develop a set of management and performance indicators for submission annually to NSF via the Research Performance Project Reporting module in *Research.gov* and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the NSEC effort. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

NSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, but are retrospective.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 200 hours per center for thirteen centers for a total of 2600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the thirteen NSECs.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of

information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 2, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–13449 Filed 6–7–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Forum

On Tuesday and Wednesday, June 21 and 22, 2016, the National Transportation Safety Board (NTSB) will convene a forum titled *PIREPs: Pay it Forward . . . Because Weather for One, is Weather for None.* The forum will begin at 9:00 a.m. each day and is open to all. Attendance is free, and no registration is required. NTSB Board Member Robert L. Sumwalt will serve as the presiding officer of the forum. Invited panelists will include representatives from the Federal Aviation Administration, National Weather Service, airlines, researchers, and industry and advocacy groups.

Below is the preliminary agenda.

Tuesday, June 21, 2016 (9:00 a.m. to 5:00 p.m.)

1. Opening Statement by Member Sumwalt
2. Staff Presentation on PIREP and Weather Dissemination
3. Presentations on *Use and Significance of PIREPs to Weather Services, Air Traffic Controllers, Pilots, and Researchers*
4. Questions from the Technical Panel and Member Sumwalt
5. Presentations on *PIREP Submission, Solicitation, and Dissemination*
6. Questions from the Technical Panel and Member Sumwalt
7. Roundtable discussion with panelists and other industry stakeholders moderated by Member Sumwalt

Wednesday, June 22, 2016 (9:00 a.m. to 5:00 p.m.)

1. Opening Statement by Member Sumwalt
2. Presentations on *Training, Education, and Operations*
3. Questions from the Technical Panel and Member Sumwalt
4. Presentations on *Future Improvements and Emerging Technologies*
5. Questions from the Technical Panel and Member Sumwalt
6. Roundtable discussion with panelists and other industry stakeholders moderated by Member Sumwalt

Unless otherwise noted, the forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza SW., Washington, DC. The public can view the forum in person or via live webcast at *http://ntsb.capitolconnection.org/*. Webcast archives are generally available by the end of the day after the forum, and webcasts are archived for 3 months after the date of the event.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Tuesday, June 14, 2016.

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov*.

NTSB Media Contact: Peter Knudson—*Peter.Knudson@ntsb.gov*.

NTSB Forum Manager: Brian Soper—*Brian.Soper@ntsb.gov*.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2016–13509 Filed 6–7–16; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0241]

Fuel Retrievability in Spent Fuel Storage Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG)-2, Revision 2, "Fuel Retrievability in Spent Fuel Storage Applications." This revision to the guidance was developed to improve regulatory clarity due to uncertain duration of spent fuel storage in an independent spent fuel storage installation (ISFSI). The revision is to provide improved guidance to the staff on the practical implementation of determining whether storage systems are designed to allow ready retrieval of spent fuel.

DATES: This guidance is effective on June 8, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0241 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0241. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The final ISG–2, Revision 2, and responses to public comments are available electronically in ADAMS under Accession Nos. ML16117A080 and ML16117A082, respectively.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Emma Wong, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7091, email: *Emma.Wong@nrc.gov* and Haile Lindsay, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0616, email: *Haile.Linsday@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC staff has developed ISG–2, Revision 2, "Fuel Retrievability in Spent Fuel Storage Applications," to clarify section 72.122(l) of title 10 of the *Code of Federal Regulations* (10 CFR), Retrievability. By the use of options to meet ready retrieval, this guidance focuses on safety and design bases to allow maximum flexibility to meet retrievability for the longer storage duration. With the increased flexibility in the guidance to meet retrievability, evaluations of the internal components of the cask or canister may no longer be necessary for maintaining the ability to remove the individual fuel assemblies by the use of normal means (*e.g.*, degradation of the internal components such as radiation damage to internal components, depletion of the neutron absorbing material, Boral blistering, fuel degradation, and basket degradation) for the retrievability safety function.

However, if these components' intended functions are relied upon for safety, these components would need to be evaluated for those safety functions which may include retrieval of the individual fuel assemblies safely.

II. Public Comments

The NRC issued draft ISG–2, Revision 2 (ADAMS Accession No. ML15239A683) in the **Federal Register** on October 21, 2015 (80 FR 63843), for a 30-day public comment period and received comments from the following sources:

Document	ADAMS Accession No.
Kristopher Cummings (Nuclear Energy Institute (NEI)) dated November 16, 2015	ML15337A082
Robert Einziger, dated November 13, 2015	ML15324A253
Donna Gilmore (San Onofre Safety), dated November 20, 2015	ML15337A007
Patricia Borchmann, dated November 20, 2015	ML15337A010
Marv Lewis, dated November 21, 2015, and November 26, 2015	ML15337A009 ML15337A012
Diane D'Arrigo (Nuclear Information and Resource Service (NIRS)), dated November 20, 2015	ML15337A011
Connecticut Yankee Atomic Power Company, dated November 17, 2015	ML15337A083
Yankee Atomic Electric Company, dated November 17, 2015	ML15337A083
Maine Yankee Atomic Power Company, dated November 17, 2015	ML15337A083
Richard Morgal, dated November 20, 2015	ML15337A084 ML15337A008

The NRC considered these comments in developing the final ISG. Detailed responses to the comments can be found in ML16117A082.

The final ISG–2, Revision 2 is approved for NRC staff and stakeholder use and will be incorporated into the NRC's next standard review plan guidance revision.

III. Congressional Review Act

This ISG is a rule as defined in the Congressional Review Act (§ 5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

This ISG provides guidance to the NRC staff for reviewing an application for an ISFSI license with respect to compliance with the retrievability requirement of 10 CFR 72.122(l). Issuance of the ISG does not constitute backfitting as defined in sections 72.62 and 50.59. Issuance of this ISG is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52 for generally licensed ISFSIs. The staff's position is based upon the following considerations.

1. The ISG does not constitute backfitting, inasmuch as the ISG is internal guidance to the NRC staff.

The ISG provides interim guidance to the staff on how to review an application for NRC's regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either ISFSI or nuclear power plant applicants or licensees are protected under the backfitting provisions in 10 CFR parts 50 or 72, or the issue finality provisions of 10 CFR part 52.

2. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by the backfitting provisions in sections 72.62 or 50.109, or any issue finality provisions under 10 CFR part 52. This is because neither the backfitting provisions nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.*, an early site permit) and/or NRC regulatory approval (*e.g.*, a design certification rule) with specified issue finality provisions. However, the matters covered in this ISG are not subject matters or issues for which issue finality protection is provided.

3. The NRC staff has no intention to impose the ISG on existing ISFSI or nuclear power plant licensees either now or in the future (absent a voluntary request for change from the licensee).

The NRC does not intend to impose or apply the positions described in this ISG to existing (already issued) licenses (*e.g.*, ISFSI licenses, operating licenses and combined licenses) absent a voluntary request for a change from the licensee. Hence, the ISG need not be evaluated as if it were a backfit.

Dated at Rockville, Maryland, this 2nd day of June, 2016.

For the Nuclear Regulatory Commission.

Bo Pham,

Acting Deputy Director, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–13569 Filed 6–7–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on June 24, 2016, to discuss the draft report of the ACMUI Radioactive Seed Localization (RSL) Subcommittee and discuss potential rulemaking to expand the financial assurance requirements for some radioactive byproduct material. The RSL report will include the subcommittee's comments on the draft RSL licensing guidance. For the second topic, NRC staff will summarize the results of a recently completed scoping study to determine whether financial planning requirements for decommissioning and end-of-life management for some radioactive byproduct material, are necessary. NRC staff believes that the financial assurance requirements in Title 10 of the *Code of Federal*

Regulations (10 CFR) Section 30.35 should be expanded to include all byproduct material Category 1 and 2 radioactive sealed sources tracked in the National Source Tracking System. Meeting information, including a copy of the agenda and handouts, will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2016.html*. The agenda and handouts may also be obtained by contacting Ms. Sophie Holiday using the information below.

DATES: The teleconference meeting will be held on Friday, June 24, 2016, 3:00 p.m. to 5:00 p.m. Eastern Time.

Public Participation: Any member of the public who wishes to participate in the teleconference should contact Ms. Holiday using the contact information below.

Contact Information: Sophie Holiday, email: *sophie.holiday@nrc.gov*, telephone: (301) 415–7865.

Conduct of the Meeting

Dr. Philip Alderson, ACMUI Chairman, will preside over the meeting. Dr. Alderson will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Holiday at the contact information listed above. All submittals must be received by June 21, 2016, 3 business days prior to the meeting, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meetings, at the discretion of the Chairman.

3. The draft transcript and meeting summary will be available on ACMUI's Web site *http://www.nrc.gov/reading-rm/doc-collections/acmui/meetings/2016.html* on or about August 08, 2016.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in 10 CFR part 7.

Dated at Rockville, Maryland, this 2nd day of June 2016.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–13552 Filed 6–7–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77983; File No. SR–MIAX–2016–15]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1015, Disciplinary Functions

June 2, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 1015, Disciplinary Functions, Interpretations and Policies .01, to state that the Exchange has entered into a contract with the Financial Industry Regulatory Authority ("FINRA") and to remove obsolete references to the Chicago Board Options Exchange, Inc. ("CBOE") from the Rule.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing*, at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1015, Disciplinary Functions, to remove two references to CBOE from current Interpretations and Policies .01 to the Rule. The current rule states that the Exchange intends to enter into a contract with FINRA and/or CBOE to provide professional hearing officers and to act as an agent of the Exchange with respect to the disciplinary procedures of the Exchange.

The Exchange has entered into a contract with FINRA to provide professional hearing officers and to act as an agent of the Exchange with respect to the disciplinary procedures of the Exchange. Certain regulatory services previously offered by CBOE are now being provided by FINRA. Therefore the reference to CBOE is obsolete as it is no longer feasible to contemplate entering into an agreement with CBOE as articulated in the current rule.

Additionally, the current Rule includes a second reference to CBOE which is also now obsolete, that states that a professional hearing officer, in the course of discharging his responsibilities, shall apply the standards contained in the FINRA Industry Code of Procedure and/or CBOE Rules Chapter XVII, and policies, practices and interpretations thereof. The Exchange proposes to delete this reference as well.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to protect investors and the public interest and to promote just and equitable principles of trade by eliminating obsolete references to CBOE from its rules relating to its regulatory

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

function. It is intended to foster cooperation and coordination with persons engaged in facilitating transactions in securities by accurately informing Members and the investing public of the Exchange's arrangements that satisfy its regulatory obligations under the Act. It is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to clarify the current rule and eliminate the potential for confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6)[6] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2016–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–15, and should be submitted on or before June 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13483 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77978; File No. SR–NYSEMKT–2016–15]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Certain End User Fees, Amend the Definition of Affiliate, and Amend the Co-Location Section of the Fee Schedule To Reflect the Changes

June 2, 2016.

On April 4, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees relating to certain end users, amend the definition of Affiliate, and amend the co-location section of the Fee Schedule to reflect the changes. The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.[5]

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77640 (April 18, 2016), 81 FR 23780 ("Notice").

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Fee Schedule.

[5] The Commission notes that it did receive two comment letters on a related filing, NYSE–2016–11, which are equally relevant to this filing.

[6] 15 U.S.C. 78s(b)(2).

proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates July 21, 2016, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSEMKT–2016–15), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13476 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77977; File No. SR–NYSEArca–2016–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Certain End User Fees, Amend the Definition of Affiliate, and Amend the Co-Location Section of the Fee Schedule To Reflect the Changes

June 2, 2016.

On April 4, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees relating to certain end users, amend the definition of Affiliate, and amend the co-location section of the Fee Schedule to reflect the changes. The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.[5]

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates July 21, 2016, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSEArca–2016–19), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13475 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–32138; File No. 812–14426]

Carey Credit Income Fund, et al.; Notice of Application

June 2, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies ("BDC") and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

Applicants: Carey Credit Income Fund (the "Fund"); Carey Credit Advisors, LLC ("W.P. Carey"); Guggenheim Partners Investment Management, LLC ("Guggenheim"); Guggenheim Funds Distributors, LLC, Guggenheim Funds Investment Advisors, LLC, Security Investors, LLC (collectively, together with Guggenheim, the "Existing Guggenheim Advisers"); Guggenheim European Credit Fund, Guggenheim Private Debt Fund Note Issuer, LLC, Guggenheim Private Debt Fund, LLC, Guggenheim Private Debt Fund, Ltd., Guggenheim Private Debt Master Fund, LLC, Guggenheim Private Debt Fund Note Issuer 2.0, LLC, Guggenheim Private Debt Fund 2.0, LLC, Guggenheim Private Debt Fund 2.0, Ltd., Guggenheim Private Debt Master Fund 2.0, LLC, NZC Guggenheim Fund LLC, NZC Guggenheim Fund Limited, NZC Guggenheim Master Fund Limited, NZCG Funding Ltd., NZCG Funding 2 Limited, South Dock Funding Limited, NZCG Feeder I, L.P., NZCG Funding 2, LLC, NZCG Funding LLC, Guggenheim U.S. Loan Fund, Guggenheim U.S. Loan Fund II, Guggenheim U.S. Loan Fund III, Guggenheim Opportunistic U.S. Loan and Bond Fund IV, Guggenheim Loan and Bond Fund V, Guggenheim Loan and Bond Fund VI, GFI Fund, and GHY Fund (collectively, the "Existing Affiliated Investors").

Filing Dates: The application was filed on February 23, 2015, and amended on June 12, 2015, October 20, 2015, February 25, 2016 and April 29, 2016.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 27, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77641 (April 18, 2016), 81 FR 23773 ("Notice").

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Fee Schedule.

[5] The Commission notes that it did receive two comment letters on a related filing, NYSE–2016–11, which are equally relevant to this filing.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: W.P. Carey and the Fund: 50 Rockefeller Plaza, New York, NY 10020; the Existing Guggenheim Advisers and the Existing Affiliated Investors: 100 Wilshire Boulevard, 5th Floor, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: Robert Shapiro, Senior Counsel, at (202) 551–7758 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund is a Delaware statutory trust organized as a closed-end management investment company that has elected to be regulated as a BDC under the Act.[1] The Fund serves as the master fund in a master-feeder structure with two feeder funds and makes investments with the proceeds it receives from the sale of shares of the feeder funds.[2] The Fund's Objectives and Strategies[3] are to provide shareholders with current income, capital preservation and, to a lesser extent, long-term capital appreciation. The Fund invests primarily in large, privately-negotiated loans to private middle market U.S. companies and in opportunities that are originated by various intermediaries where the Fund is able to play a differentiated role gaining outsized allocation, influencing structure, pricing, and fees compared to the broader market (this could include more broadly syndicated assets such as bank loans and corporate bonds). The Fund has a five member Board,[4] of which three members are Independent Trustees.[5]

2. W.P. Carey is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). W.P. Carey serves as the investment adviser to the Fund. W.P. Carey also provides administrative services to the Fund under an administrative services agreement.

3. Guggenheim is a Delaware limited liability company and is registered as an investment adviser under the Advisers Act. Guggenheim serves as the sub-adviser to the Fund. Guggenheim is part of the investment management business of Guggenheim Partners LLC, a privately held, global financial services firm.

4. Each Existing Affiliated Investor is a privately-offered fund that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. An Existing Guggenheim Adviser serves as the investment adviser to each Existing Affiliated Investor. Each Existing Guggenheim Adviser is either controlled by Guggenheim or under common control with Guggenheim and is registered as an investment adviser under the Advisers Act.

5. Applicants seek an order ("Order") to permit one or more Regulated Entities[6] and/or one or more Affiliated Investors[7] to participate in the same investment opportunities through a proposed co-investment program (the "Co-Investment Program") where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act. For purposes of the application, "Co-Investment Transaction" means any transaction in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order. "Potential Co-Investment Transaction" means any investment opportunity in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Investors and/or one or more other Regulated Entities without obtaining and relying on the Order.[8] The term "Adviser" means any W.P. Carey Adviser or any Guggenheim Adviser.

6. Applicants state that a Regulated Entity may, from time to time, form a Wholly-Owned Investment Subsidiary.[9] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any Affiliated Investor because it would be a company controlled by its parent Regulated Entity for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the requested Order, as though the parent Regulated

[1] Section 2(a)(48) of the Act defines a "BDC" to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities

[2] The existing feeder funds are Carey Credit Income Fund—I and Carey Credit Income Fund 2016 T. Any future feeder fund will be created by W.P. Carey.

[3] "Objectives and Strategies" means a Regulated Entity's (as defined below) investment objectives and strategies, as described in the Regulated Entity's registration statement on Form N–2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933 (the "Securities Act"), or under the Securities Exchange Act of 1934, and the Regulated Entity's reports to shareholders.

[4] The term "Board" refers to the board of directors or trustees of any Regulated Entity.

[5] The term "Independent Trustees" refers to the trustees or directors of any Regulated Entity that are not "interested persons" of the Regulated Entity within the meaning of section 2(a)(19) of the Act.

[6] "Regulated Entity" means the Fund and any Future Regulated Entity. "Future Regulated Entity" means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC under the Act, (b) whose investment adviser is a W.P. Carey Adviser and (c) whose investment sub-adviser is a Guggenheim Adviser. "W.P. Carey Adviser" means W.P. Carey or any future investment adviser that (i) controls, is controlled by or is under common control with W.P. Carey, (ii) is registered as an investment adviser under the Advisers Act and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity. "Guggenheim Adviser" means any Existing Guggenheim Adviser or any future investment adviser that (i) controls, is controlled by or is under common control with Guggenheim, (ii) is registered as an investment adviser under the Advisers Act, and (iii) is not a Regulated Entity or a subsidiary of a Regulated Entity.

[7] "Affiliated Investors" means the Existing Affiliated Investors and any Future Affiliated Investor. "Future Affiliated Investor" means an entity (a) whose investment adviser is a Guggenheim Adviser and (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

[8] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[9] The term "Wholly-Owned Investment Subsidiary" means an entity (i) that is wholly-owned by a Regulated Entity (with such Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of the Regulated Entity (and, in the case of an entity that is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, as amended (the "SBA Act"), as a small business investment company (an "SBIC"), to maintain a license under the SBA Act and issue debentures guaranteed by the Small Business Administration); (iii) with respect to which the Regulated Entity's Board has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries participating in the Co-Investment Program will be Wholly-Owned Investment Subsidiaries and will have Objectives and Strategies that are either substantially the same as, or a subset of, their parent Regulated Entity's Objectives and Strategies. A subsidiary that is an SBIC may be a Wholly-Owned Investment Subsidiary if it satisfies the conditions in this definition.

Entity were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Entity's investments and, therefore, no conflicts of interest could arise between the Regulated Entity and the Wholly-Owned Investment Subsidiary. The Regulated Entity's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Regulated Entity's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Entity's place. If the Regulated Entity proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Entity and the Wholly-Owned Investment Subsidiary.

7. It is anticipated that a Guggenheim Adviser will periodically determine that certain investments the Guggenheim Adviser recommends for a Regulated Entity would also be appropriate investments for one or more other Regulated Entities and/or one or more Affiliated Investors. Such a determination may result in the Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors co-investing in certain investment opportunities. For each such investment opportunity, the Advisers to each Regulated Entity will independently analyze and evaluate the investment opportunity as to its appropriateness for such Regulated Entity taking into consideration the Regulated Entity's Objectives and Strategies.

8. Applicants state that W.P. Carey serves as the Fund's investment adviser and administrator and either it or another W.P. Carey Adviser will serve in the same capacity to any Future Regulated Entity, and that Guggenheim serves as the Fund's sub-adviser and either it or another Guggenheim Adviser will serve in the same capacity to any Future Regulated Entity. Applicants represent that although a Guggenheim Adviser will identify and recommend investments [10] for each Regulated Entity, prior to any investment by the Regulated Entity, the Guggenheim Adviser will present each proposed investment to the W.P. Carey Adviser which has the authority to approve or reject all investments proposed for the Regulated Entity by the Guggenheim Adviser.

9. Applicants state that each Guggenheim Adviser has (or will have, in the case of future advisers) an investment committee through which it will carry out its obligation under condition 1 to make a determination as to the appropriateness of a Potential Co-Investment Transaction for each Regulated Entity. Applicants represent that each Guggenheim Adviser, as a registered investment adviser, has (or will have, in the case of future advisers) developed a robust allocation process that is designed to allocate investment opportunities fairly and equitably among its clients over time. Applicants state that, in the case of a Potential Co-Investment Transaction, the applicable Guggenheim Adviser would apply its allocation policies and procedures in determining the proposed allocation for the Regulated Entity consistent with the requirements of condition 2(a).

10. Applicants state that, once the applicable Guggenheim Adviser determined a proposed allocation for a Regulated Entity, such Guggenheim Adviser would notify the applicable W.P. Carey Adviser of the Potential Co-Investment Transaction and the Guggenheim Adviser's recommended allocation for such Regulated Entity. Applicants further state that the applicable W.P. Carey Adviser would then present the Potential Co-Investment Transaction and the Guggenheim Adviser's proposed allocation to the W.P. Carey Adviser's investment committee for its approval. Applicants represent that the W.P. Carey Adviser's investment committee would review the Guggenheim Adviser's recommendation for the Regulated Entity and would have the ability to ask questions of the Guggenheim Adviser and request additional information from the Guggenheim Adviser. Applicants further submit that if the W.P. Carey Adviser's investment committee approved the investment for the Regulated Entity, the investment and all relevant allocation information would then be presented to the Regulated Entity's Board for its approval in accordance with the conditions to the application. Applicants state that they believe the investment process between the Guggenheim Advisers and the W.P. Carey Advisers, prior to seeking approval from the Regulated Entity's Board (which is in addition to, rather than in lieu of, the procedures required under the conditions of the application), is significant and provides for additional procedures and processes to ensure that the Regulated Entity is being treated fairly in respect of Potential Co-Investment Transactions.

11. If the Advisers to a Regulated Entity determine that a Potential Co-Investment Transaction is appropriate for the Regulated Entity (and the applicable W.P. Carey Adviser approves the investment for such Regulated Entity), and one or more other Regulated Entities and/or one or more Affiliated Investors may also participate, the Advisers will present the investment opportunity to the Eligible Trustees [11] of the Regulated Entity prior to the actual investment by the Regulated Entity. As to any Regulated Entity, a Co-Investment Transaction will be consummated only upon approval by a required majority of the Eligible Trustees of such Regulated Entity within the meaning of section 57(o) of the Act ("Required Majority").[12]

12. With respect to the pro rata dispositions and follow-on Investments provided in conditions 7 and 8, a Regulated Entity may participate in a pro rata disposition or follow-on investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Entity and Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or follow-on investment, as the case may be; and (ii) each Regulated Entity's Board has approved that Regulated Entity's participation in pro rata dispositions and follow-on investments as being in the best interests of the Regulated Entity. If the Board does not so approve, any such disposition or follow-on investment will be submitted to the Regulated Entity's Eligible Trustees. The Board of any Regulated Entity may at any time rescind, suspend or qualify its approval of pro rata dispositions and follow-on investments with the result that all dispositions and/or follow-on investments must be submitted to the Eligible Trustees.

[10] Applicants represent that the W.P. Carey Advisers will not source any Potential Co-Investment Transactions under the requested Order.

[11] "Eligible Trustees" means the trustees or directors of a Regulated Entity that are eligible to vote under section 57(o) of the Act.

[12] In the case of a Regulated Entity that is a registered closed-end fund, the trustees or directors that make up the Required Majority will be determined as if the Regulated Entity were a BDC subject to section 57(o). As defined in section 57(o), "required majority" means "both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company."

13. No Independent Trustee of a Regulated Entity will have a financial interest in any Co-Investment Transaction.

14. Under condition 15, if an Adviser or its principals, or any person controlling, controlled by, or under common control with the Adviser or its the principals, and any Affiliated Investors (collectively, the "Holders") own in the aggregate more than 25% of the outstanding voting securities of a Regulated Entity ("Shares"), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the condition. Applicants believe that this condition will ensure that the Independent Trustees will act independently in evaluating the Co-Investment Program, because the ability of the Adviser or its principals to influence the Independent Trustees by a suggestion, explicit or implied, that the Independent Trustees can be removed will be limited significantly. Applicants represent that the Independent Trustees shall evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any "joint enterprise or other joint arrangement or profit-sharing plan," as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Entities that are registered closed-end investment companies. Similarly, with regard to BDCs, section 57(a)(4) of the Act makes it unlawful for any person who is related to a BDC in a manner described in section 57(b), acting as principal, knowingly to effect any transaction in which the BDC (or a company controlled by such BDC) is a joint or a joint and several participant with that person in contravention of rules as prescribed by the Commission. Because the Commission has not adopted any rules expressly under section 57(a)(4), section 57(i) provides that the rules under section 17(d) applicable to registered closed-end investment companies (*e.g.*, rule 17d–1) are, in the interim, deemed to apply to transactions subject to section 57(a). Rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), as modified by rule 57b–1, from acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC (or a company controlled by such BDC) is a participant, unless an application regarding the joint enterprise, arrangement, or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of the plan or any modification thereof, to security holders for approval, or prior to its adoption or modification if not so submitted.

2. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants submit that each Regulated Entity may be deemed to be an "affiliated person" of each other Regulated Entity within the meaning of section 2(a)(3) of the Act. Applicants state that the Regulated Entities, by virtue of each having a W.P. Carey Adviser, may be deemed to be under common control, and thus affiliated persons of each other under section 2(a)(3)(C) of the Act. Section 17(d) and section 57(b) apply to any investment adviser to a closed-end fund or a BDC, respectively, including the sub-adviser. Thus, a Guggenheim Adviser and any Affiliated Investors that it advises could be deemed to be persons related to Regulated Entities in a manner described by sections 17(d) and 57(b) and therefore prohibited by sections 17(d) and 57(a)(4) and rule 17d–1 from participating in the Co-Investment Program. Applicants further submit that, because the Guggenheim Advisers are "affiliated persons" of other Guggenheim Advisers, Affiliated Investors advised by any of them could be deemed to be persons related to Regulated Entities (or a company controlled by a Regulated Entity) in a manner described by sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

4. Applicants state that they expect that co-investment in portfolio companies by a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors will increase favorable investment opportunities for each Regulated Entity.

5. Applicants submit that the fact that the Required Majority will approve each Co-Investment Transaction before investment (except for certain dispositions or follow-on investments, as described in the conditions), and other protective conditions set forth in the application, will ensure that each Regulated Entity will be treated fairly. Applicants state that each Regulated Entity's participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants. Applicants further state that the terms and conditions proposed herein will ensure that all such transactions are reasonable and fair to each Regulated Entity and the Affiliated Investors and do not involve overreaching by any person concerned, including W.P. Carey or Guggenheim.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time a Guggenheim Adviser considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity's then-current Objectives and Strategies, the Advisers to the Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. a. If the Advisers to a Regulated Entity deem participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Advisers will then determine an appropriate level of investment for such Regulated Entity.

b. If the aggregate amount recommended by the Advisers to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, pro rata based on each participant's Available Capital [13] for investment in the asset

[13] "Available Capital" means (a) for each Regulated Entity, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Entity or imposed by applicable laws,

class being allocated, up to the amount proposed to be invested by each. The Advisers to each participating Regulated Entity will provide the Eligible Trustees of each participating Regulated Entity with information concerning each participating party's Available Capital to assist the Eligible Trustees with their review of the Regulated Entity's investments for compliance with these allocation procedures.

c. After making the determinations required in conditions 1 and 2(a) above, the Advisers to the Regulated Entity will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Trustees of each participating Regulated Entity for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities' and the Affiliated Investors' participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(a) The interests of the Regulated Entity's shareholders; and

(b) the Regulated Entity's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; provided, that if another Regulated Entity or Affiliated Investor, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer, or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit a Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(a) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; and

(b) the Advisers to the Regulated Entity agree to, and do, provide periodic reports to the Regulated Entity's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(c) any fees or other compensation that any other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or an Affiliated Investor receives in connection with the right of one or more Regulated Entities or Affiliated Investors to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Investors (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Entity in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Advisers, any other Regulated Entity or the Affiliated Investors or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted under sections 17(e) and 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(c), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. Each Regulated Entity will have the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Advisers will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for follow-on investments made in accordance with condition 8,[14] a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity or an Affiliated Investor or any affiliated person of another Regulated Entity or an Affiliated Investor is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Entity and Affiliated Investor. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(a), (b) and (c) are met.

7. a. If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the Advisers will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Entity in the disposition.

b. Each Regulated Entity will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity.

c. A Regulated Entity may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately

rules, regulations or interpretations and (b) for each Affiliated Investor, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set by the Affiliated Investor's directors, general partners or adviser or imposed by applicable laws, rules, regulations or interpretations.

[14] This exception applies only to follow-on investments by a Regulated Entity in issuers in which that Regulated Entity already holds investments.

preceding the disposition; (ii) the Regulated Entity's Board has approved as being in the best interests of the Regulated Entity the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Regulated Entity's Board is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Advisers will provide their written recommendation as to the Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

d. Each Regulated Entity and each Affiliated Investor will bear its own expenses in connection with the disposition.

8. a. If any Regulated Entity or Affiliated Investor desires to make a "follow-on investment" (*i.e.*, an additional investment in the same entity, including through the exercise of warrants or other rights to purchase securities of the issuer) in a portfolio company whose securities were acquired by the Regulated Entity and the Affiliated Investor in a Co-Investment Transaction, the Advisers will:

(i) Notify each Regulated Entity of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed follow-on investment, by each Regulated Entity.

b. A Regulated Entity may participate in such follow-on investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer immediately preceding the follow-on investment; and (ii) the Regulated Entity's Board has approved as being in the best interests of such Regulated Entity the ability to participate in follow-on investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Advisers will provide their written recommendation as to such Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such follow-on investment solely to the extent that the Required Majority determines that it is in such Regulated Entity's best interests.

c. If, with respect to any follow-on investment:

(i) The amount of a follow-on investment is not based on the Regulated Entities' and the Affiliated Investors' outstanding investments immediately preceding the follow-on investment; and

(ii) the aggregate amount recommended by the Advisers to be invested by the Regulated Entity in the follow-on investment, together with the amount proposed to be invested by the other participating Regulated Entities and the Affiliated Investors in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

d. The acquisition of follow-on investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and be subject to the other conditions set forth in the application.

9. The Independent Trustees of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that a Regulated Entity considered but declined to participate in, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Trustees will consider at least annually the continued appropriateness for such Regulated Entity of participating in new and existing Co-Investment Transactions.

10. Each Regulated Entity will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Entities were a BDC and each of the investments permitted under these conditions were approved by a Required Majority under section 57(f).

11. No Independent Trustee of a Regulated Entity will also be a trustee, director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of any Affiliated Investor.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) shall, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding brokers' fees contemplated by section 17(e) or 57(k) of the Act, as applicable)[15] received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the Advisers nor any affiliated person of the Regulated Entities or the Affiliated Investors will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and the Affiliated Investors, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(c) and (b) in the case of the Advisers, investment advisory fees paid in accordance with the Regulated Entities' and the Affiliated Investors' investment advisory agreements).

14. The Advisers to the Regulated Entities and Affiliated Investors will maintain written policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that each of the Advisers to each Regulated Entity will be notified of all Potential Co-Investment Transactions that fall within a Regulated Entity's then-current Objectives and Strategies and will be given sufficient information to make its independent determination

[15] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

and recommendations under conditions 1, 2(a), 7 and 8.

15. If the Holders own in the aggregate more than 25 percent of the shares of a Regulated Entity, then the Holders will vote such shares as directed by an independent third party when voting on (1) the election of directors or trustees; (2) the removal of one or more directors or trustees; or (3) any matters requiring approval by the vote of a majority of the outstanding voting securities, as defined in section 2(a)(42) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13514 Filed 6–7–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77975; File No. SR–NYSE–2016–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List To Eliminate Certain Services That Are No Longer Utilized by Users and To Remove Obsolete Text

June 2, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 23, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List to eliminate certain services that are no longer utilized by Users and to remove obsolete text. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the Price List for the co-location[4] services offered by the Exchange to eliminate certain services that are no longer utilized by Users[5] and to remove obsolete text.

LCN CSP Access

The "Liquidity Center Network" ("LCN") is a local area network available in the data center. A User is currently able to act as a content service provider (a "CSP" User) and deliver services to another User in the data center (a "Subscribing" User).[6] These services could include, for example, order routing/brokerage services and/or data delivery services.

Currently, the Exchange offers CSP Users specific, dedicated 10 gigabyte ("Gb") LCN connections ("LCN CSP") that would allow CSP Users to send data to, and communicate with, all their properly authorized Subscribing Users at once. In such a case, a Subscribing User would receive the services via its standard LCN connection and would be charged an initial and monthly fee ("CSP Subscriber fee") reflecting the benefit of receiving services from the CSP User in this manner.[7]

However, Users no longer utilize the LCN CSP connection offering. Accordingly, the Exchange proposes to discontinue LCN CSP connections, and to remove references to LCN CSP access and CSP Subscriber fees from the Price List. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from two "bundled" connectivity options when connecting to the data center: "Bundled Network Access Option 1" and "Bundled Network Access Option 2".[8] The Exchange proposes to discontinue Bundled Network Access Option 2, as Users no longer utilize it, and to remove references to related pricing from the Price List. In addition, the Exchange proposes to rename "Bundled Network Access Option 1" as "Bundled Network Access," as it would be the sole remaining option.

IP Network Access

The Internet protocol ("IP") network is a local area network available in the data center.[9] IP network access is offered in 1, 10 and 40 Gb capacities. The Exchange proposes to delete a statement in the Price List that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016,[10] as such statement is obsolete. This proposed change would have no impact on pricing.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18).

[7] *Id.* Previously, the Exchange also offered a one Gb LCN CSP connection, but it was discontinued as it was no longer utilized by Users. *See* Securities Exchange Act Release No. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR–NYSE–2014–37).

[8] Previously, the Exchange offered other "bundled" connectivity options, but they were discontinued as they were no longer utilized by Users. *See id.*, at 45562.

[9] *See* Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User's cabinet and a non-User's equipment).

[10] *See* Securities Exchange Act Release No. 76368 (November 5, 2015), 80 FR 70027 (November 12, 2015) (SR–NYSE–2015–54) (notice of filing and immediate effectiveness of proposed rule change to include IP 40 Gb network connections).

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List, make the Price List easier to read, understand and administer. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Price List because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. Removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Exchange believes that eliminating a reference in the Price List that states that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016, is reasonable, equitable and not unfairly discriminatory because the reference is obsolete and no longer has an impact on pricing. The proposed change would result in the removal of obsolete text from the Price List and therefore add greater clarity to the Price List regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users).

The Exchange believes that discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center and removing references to related pricing and obsolete text from the Price List would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because no Users utilize the services proposed to be discontinued. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering. The proposed rule change is not intended to address competitive issues.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* SR–NYSE–2013–59, *supra* note 5, at 51766. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2016–57 and SR–NYSEArca–2016–77.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2016–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2016–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2016–39, and should be submitted on or before June 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13473 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77973; File No. SR–NYSEMKT–2016–57]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Eliminate Certain Services That are No Longer Utilized by Users and To Remove Obsolete Text

June 2, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 23, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") to eliminate certain services that are no longer utilized by Users and to remove obsolete text. The proposed change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the Price List and Fee Schedule for the co-location[4] services offered by the Exchange to eliminate certain services that are no longer utilized by Users[5] and to remove obsolete text.

LCN CSP Access

The "Liquidity Center Network" ("LCN") is a local area network available in the data center. A User is currently able to act as a content service provider (a "CSP" User) and deliver services to another User in the data center (a "Subscribing" User).[6] These services could include, for example, order routing/brokerage services and/or data delivery services.

Currently, the Exchange offers CSP Users specific, dedicated 10 gigabyte ("Gb") LCN connections ("LCN CSP") that would allow CSP Users to send data to, and communicate with, all their properly authorized Subscribing Users at once. In such a case, a Subscribing User would receive the services via its standard LCN connection and would be charged an initial and monthly fee ("CSP Subscriber fee") reflecting the benefit of receiving services from the CSP User in this manner.[7]

However, Users no longer utilize the LCN CSP connection offering. Accordingly, the Exchange proposes to discontinue LCN CSP connections, and to remove references to LCN CSP access and CSP Subscriber fees from the Price List and Fee Schedule. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from two "bundled" connectivity options when connecting to the data center: "Bundled Network Access Option 1" and "Bundled Network Access Option 2".[8] The Exchange proposes to discontinue Bundled Network Access Option 2, as Users no longer utilize it, and to remove references to related pricing from the Price List and Fee Schedule. In addition, the Exchange proposes to rename "Bundled Network Access Option 1" as "Bundled Network Access," as it would be the sole remaining option.

IP Network Access

The Internet Protocol ("IP") network is a local area network available in the data center.[9] IP network access is offered in 1, 10 and 40 Gb capacities. The Exchange proposes to delete statements in the Price List and Fee Schedule that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016,[10] as such statements are obsolete. This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and Section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List and Fee Schedule, make the Price List and Fee Schedule easier to read, understand and administer. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Price List and Fee Schedule because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. Removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE Arca, Inc. *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Securities Exchange Act Release No. 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSEMKT–2012–11).

[7] *Id.* Previously, the Exchange also offered a one Gb LCN CSP connection, but it was discontinued as it was no longer utilized by Users. *See* Securities Exchange Act Release No. 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61).

[8] Previously, the Exchange offered other "bundled" connectivity options, but they were discontinued as they were no longer utilized by Users. *See id.*, at 45503.

[9] *See* Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User's cabinet and a non-User's equipment).

[10] *See* Securities Exchange Act Release No. 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90) (notice of filing and immediate effectiveness of proposed rule change to include IP 40 Gb network connections).

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* SR–NYSEMKT–2013–67, *supra* note 5, at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–39 and SR–NYSEArca-2016–77.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78f(b)(5).

The Exchange believes that eliminating references in the Price List and Fee Schedule that state that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016, is reasonable, equitable and not unfairly discriminatory because these references are obsolete and no longer have an impact on pricing. The proposed change would result in the removal of obsolete text from the Price List and Fee Schedule and therefore add greater clarity to the Price List and Fee Schedule regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center and removing references to related pricing and obsolete text from the Price List and Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because no Users utilize the services proposed to be discontinued. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering. The proposed rule change is not intended to address competitive issues.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEMKT–2016–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–57, and should be submitted on or before June 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13471 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 31 and Form R31, SEC File No. 270–537, OMB Control No. 3235–0597.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 31 (17 CFR 240.31) and Form R31 (17 CFR 249.11) under the Securities Exchange Act of 1934 (15 U.S.C. 78ee) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 31 of the Exchange Act requires the Commission to collect fees and assessments from national securities exchanges and national securities associations (collectively, "self-regulatory organizations" or "SROs") based on the volume of their securities transactions. To collect the proper amounts, the Commission adopted Rule 31 and Form R31 under the Exchange Act whereby the SROs must report to the Commission the volume of their securities transactions and the Commission, based on those data, calculates the amount of fees and assessments that the SROs owe pursuant to Section 31. Rule 31 and Form R31 require the SROs to provide this data on a monthly basis.

Currently, there are 23 respondents under Rule 31: 19 national securities exchanges, one security futures exchange, and one national securities association subject to the collection of information requirements of Rule 31; there are additionally two registered clearing agencies that are required to provide certain data in their possession needed by the SROs to complete Form R31, although these two entities are not themselves required to complete and submit Form R31. The Commission estimates that the total burden for all 23 respondents is 390 hours per year. The Commission notes that, based on previous and current experience, it estimates an additional three new national securities exchanges will become registered and subject to the reporting requirements of Rule 31 over the course of the authorization period and incur a burden of 18 hours per year. Thus, the Commission estimates the total burden for the existing and expected new respondents to be 408 hours per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 2, 2016.

Brent J. Fields

Secretary.

[FR Doc. 2016–13465 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form D, OMB Control No. 3235–0076, SEC File No. 270–072.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form D (17 CFR 239.500) is a notice of sales filed by issuers making an offering of securities in reliance on an exemption under Regulation D (17 CFR 230.501 *et seq.*) or Section 4(a)(5) of the Securities Act of 1933 (15 U.S.C. 77d(a)(5)). Regulation D sets forth rules governing the limited offer and sale of securities without Securities Act registration. The purpose of Form D is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the Form D allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D (17 CFR 230.501 *et seq.*) and Section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)) as capital-raising devices for all businesses. Approximately 21,686 issuers file Form D and it takes approximately 4 hours per response. We estimate that 25% of 4 hours per response (1 hour per response) is prepared by the issuer for an annual reporting burden 21,686 hours (1 hour per response x 21,686 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 2, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13464 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 477, OMB Control No. 3235–0550, SEC File No. 270–493.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission

plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 477 (17 CFR 230.477) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) sets forth procedures for withdrawing a registration statement, including any amendments or exhibits to the registration statement. The rule provides that if an issuer intends to rely on the safe harbor contained in Securities Act Rule 155 to conduct an unregistered private offering of securities, the issuer must affirmatively state in the withdrawal application that it plans to undertake a subsequent private offering of its securities. Without this statement, the Commission would not be able to monitor a company's reliance on, and compliance with, Securities Act Rule 155(c). We estimate that approximately 327 issuers will file Securities Act Rule 477 submissions annually at an estimated one hour per response for a total annual burden of approximately 327 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 2, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13466 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77982; File No. SR–ICC–2016–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Amendment No. 1 and Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Update and Formalize the ICC Stress Testing Framework

June 2, 2016.

I. Introduction

On March 31, 2016, ICE Clear Credit LLC ("ICC" or "ICE Clear Credit") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to update and formalize ICC's stress testing framework. On April 20, 2016 ICC filed Amendment No. 1 to the proposal.[3] The proposed rule change was published for comment in the **Federal Register** on April 21, 2016.[4] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The principal purpose of the proposed rule change is to update and formalize ICC's Stress Testing Framework, which sets forth the stress testing practices instituted by ICC. The framework, according to ICC, is designed to: Articulate the types of stress tests executed and the main purpose of each type of test; describe how stress tests are conducted; define the actual test scenarios currently executed; outline the range of remedial actions available (which, depending on the results, may include enhancements to the risk methodology or certain Clearing Participant ("CP") specific action); and explain how stress test results are used in the governance process.

ICC states that the stress testing framework helps ICC identify potential weaknesses in the risk management methodology currently used and, as a result, allows ICC to identify potential model enhancements to the Initial Margin and Guaranty Fund models, as well as identify the need to exercise short term remedies based upon specific CP positions and risk of exposure prior to introduction of model enhancements.

ICC represents that during the execution of stress testing, the ICC Risk Department ("Risk Department") applies the standard set of pre-defined Stress Test Scenarios against actual portfolios, sample portfolios derived from currently cleared positions, and expected future portfolios, as appropriate, to generate hypothetical profits or losses. According to ICC, the Risk Department compares the hypothetical losses to the available funds from the Initial Margin requirements and Guaranty Fund contribution related to the selected portfolios. A scenario deficiency is identified in the event that the hypothetical loss exceeds the protection provided by the available collateral assets and mutualization funds. ICC states that, depending on the plausibility of the stress scenarios and the frequency and severity of any resulting deficiencies, the Risk Department may recommend enhancements to the risk methodology.

ICC represents that it utilizes certain predefined scenarios for its stress testing, which fall into three standard categories: (i) Historically observed extreme but plausible market scenarios; (ii) historically observed and hypothetically constructed (forward looking) extreme but plausible market scenarios with a baseline credit event; and (iii) extreme model response tests (collectively, "Stress Test Scenarios"). ICC states that discordant scenarios (*i.e.*, scenarios under which selected risk factors move in opposite directions; commonly the behavior deviates from historically observed behavior) are applied to certain instruments to account for discordant price moves.

ICC asserts that it applies the Stress Test Scenarios to a variety of portfolios. Specifically, ICC applies the Stress Test Scenarios to all currently cleared portfolios. ICC states that its Risk Department may also apply the Stress Test Scenarios to sample portfolios obtained from currently cleared portfolios and may also apply the Stress Test Scenarios to staff-constructed, expected future portfolios, as ICC's Risk Department deems appropriate, to mimic expected future portfolios upon the launch of new services. In this case, ICC states that the stress test analysis is presented to and reviewed by ICC's Risk Committee prior to the launch of the new clearing services. ICC represents that it may design specific portfolio sets to test the validity of certain model/system assumptions. According to ICC, the stress test results from such expected future portfolio executions are reviewed and analyzed internally, and may be used to support future model initiatives.

ICC states that it also designs stress test analysis directed toward the identification of wrong-way risk in cleared portfolios. For every cleared portfolio, ICC asserts that all positions in index risk factors and single name risk factors that exhibit high degree of association with the considered CP are used to create a sub-portfolio which will be subjected to additional stress test analysis. The constructed sub-portfolio is subjected to the same Stress Test Scenarios utilized by ICC.

The framework also describes ICC's reverse stress testing (Guaranty Fund Adequacy Analysis) practices. According to ICC, the purpose of the adequacy analysis is to provide estimates for the level of protection achieved by the clearinghouse via its Initial Margin and Guaranty Fund models. In performing its analysis, ICC represents that it considers a combination of adverse price realizations and idiosyncratic credit events associated with reference obligations on which the stress tested CP sold protection. ICC's Stress Testing Framework also describes the correlation sensitivity analysis performed by ICC, based on Monte Carlo simulations, as well as the additional recovery rate sensitivity analysis.

ICC's framework also details how stress testing is utilized in ICC's governance process. ICC states that it maintains a framework to ensure that ICC's Risk Committee and Board are provided with transparency into the Risk Department's stress test results and contemplated methodology changes. According to ICC, stress testing results are reviewed, at a minimum, by ICC's Risk Department weekly. Additionally, ICC states that stress testing results are provided to ICC's Risk Committee weekly and a report of such results is presented to the Risk Committee on a monthly basis. Ad hoc reviews of the stress testing results may be undertaken at the discretion of ICC's Chief Risk Officer.

In the event of any deficiencies noted upon stress testing, ICC represents that its Risk Department must report such deficiencies to ICC senior management and the Risk Committee, and either (a) provide analysis that the results do not highlight a significant weakness in the stress testing or risk methodology; or (b) recommend enhancements to the stress testing or risk methodology. ICC states that ICC senior management and the Risk Committee will review and recommend any stress testing or risk methodology enhancements to the ICC Board, which is responsible for approval. ICC states that the Risk Department may also choose to add new scenarios and portfolios in response to deficiencies noted upon stress testing; in this case, the Risk Department will discuss with the Risk Committee, which will recommend to the Board, which is responsible for approval.

ICC asserts that the Risk Department maintains a standard set of Stress Scenarios and portfolios (namely actual portfolios, sample portfolios derived from currently cleared portfolios, and expected future portfolios) that are executed on a regular basis. In the event that a scenario or portfolio in the standard set is no longer applicable, or has been superseded by new scenarios or portfolios, ICC claims that the Risk Department may wish to retire or modify the outdated scenario or portfolio, in which case, the Risk Department will, with ICC senior management: Conduct analysis to support a recommendation; discuss the analysis and obtain a recommendation from the Risk Committee; and present the final analysis to the Board for approval. ICC states that, in the interest of prudent risk management, the Risk Department may wish to add scenarios and/or portfolios to the standard set and that Risk Committee or Board approval is not required unless such scenarios and/or portfolios are added in response to stress testing deficiencies, as described above.

Previous versions of ICC's framework included the Risk Working Group in the governance structure, as ICC consulted with the Risk Working Group as it worked to develop its initial stress testing approach and appropriate scenarios. ICC states that, as it now has a fully developed approach, stress testing remains focused on data analysis and reporting results, which ICC claims are addressed at the Risk Committee and Board level. Thus, to reflect current governance practices, references to the Risk Working Group have been removed from its framework.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable, derivative agreements, contracts and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest. In addition, Rule 17Ad–22(b)(3),[7] requires registered clearing agencies to maintain, at a minimum, sufficient financial resources to withstand a default by the participant family to which it has the largest exposure in extreme but plausible market conditions, and for registered clearing agencies acting as a central counterparty for security-based swaps, to maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder applicable to ICC.

ICC's Stress Testing Framework establishes ICC's stress testing practices. These stress testing practices are designed, among other things, to ensure the adequacy of ICC's financial resources under applicable legal requirements, and set forth the methodology by which ICC evaluates potential portfolio profits and losses, compared to the Initial Margin and Guaranty Fund funds maintained, in order to identify any potential weakness in ICC's risk methodology. Such financial resources will facilitate ICC's continued operations in the event of a participant default. As such, the Commission believes that the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ICE Clear Credit filed Amendment No. 1 to further revise the Stress Testing Framework to incorporate language regarding the treatment of unrated reference entities for the purposes of applying the stress scenarios. Under Amendment No. 1, ICC has clarified that unrated reference entities are treated as non-investment grade entities with respect to the application of stress scenarios. Amendment No. 1 is not subject to comment because it is a technical, clarifying amendment that does not alter the substance of the proposed rule change or raise any novel regulatory issues.

[4] Securities Exchange Act Release No. 34–77633 (April 15, 2016), 81 FR 23531 (April 21, 2016) (SR–ICC–2016–005).

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(b)(3).

[8] 15 U.S.C. 78q–1.

derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)[9] of the Act.

The Commission also believes that the proposed changes will satisfy the applicable requirements of Rule 17Ad–22.[10] In particular, the Stress Testing Framework contains stress testing practices designed to ensure that ICE Clear Credit maintains sufficient financial resources to withstand a default by the participant family to which it has the largest exposure in extreme but plausible market conditions, and that as a registered clearing agency acting as a central counterparty for security-based swaps, ICC maintains additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, consistent with the requirements of Rule 17Ad–22(b)(3).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ICC–2016–005) as modified by Amendment No. 1, be, and hereby is, approved.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13477 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

[9] Id.

[10] 17 CFR 240.17Ad–22.

[11] 17 CFR 240.17Ad–22(b)(3).

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77976; File No. SR–NYSE–2016–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Certain End User Fees, Amend the Definition of Affiliate, and Amend the Co-Location Section of the Price List To Reflect the Changes

June 2, 2016.

On April 4, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees relating to certain end users, amend the definition of Affiliate, and amend the co-location section of the Price List to reflect the changes. The Commission published the proposed rule change for comment in the **Federal Register** on April 22, 2016.[3] On April 29, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received two comment letters on the proposed rule change.[5]

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates July 21, 2016, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSE–2016–11), as modified by Amendment No. 1.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13474 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–77642 (April 18, 2016), 81 FR 23786 ("Notice").

[4] Amendment No. 1 made technical changes relating to the General Notes numbering and references in the Co-location section of the Price List.

[5] *See* Letter from Michael J. Friedman, General Counsel and CCO, Trillium to Brent J. Fields, Secretary, Commission, dated May 13, 2016; *see also* Letter from Eero Pikat to the Commission, dated May 13, 2016.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77974; File No. SR–NYSEArca–2016–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Eliminate Certain Services That Are No Longer Utilized by Users and To Remove Obsolete Text

June 2, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 23, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes amend the NYSE Arca Options Fee Schedule (the "Options Fee Schedule") and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") to eliminate certain services that are no longer utilized by Users and to remove obsolete text. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the Fee Schedules for the co-location[4] services offered by the Exchange to eliminate certain services that are no longer utilized by Users[5] and to remove obsolete text.

LCN CSP Access

The "Liquidity Center Network" ("LCN") is a local area network available in the data center. A User is currently able to act as a content service provider (a "CSP" User) and deliver services to another User in the data center (a "Subscribing" User).[6] These services could include, for example, order routing/brokerage services and/or data delivery services.

Currently, the Exchange offers CSP Users specific, dedicated 10 gigabyte ("Gb") LCN connections ("LCN CSP") that would allow CSP Users to send data to, and communicate with, all their properly authorized Subscribing Users at once. In such a case, a Subscribing User would receive the services via its standard LCN connection and would be charged an initial and monthly fee ("CSP Subscriber fee") reflecting the benefit of receiving services from the CSP User in this manner.[7]

However, Users no longer utilize the LCN CSP connection offering. Accordingly, the Exchange proposes to discontinue LCN CSP connections, and to remove references to LCN CSP access and CSP Subscriber fees from the Fee Schedules. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from two "bundled" connectivity options when connecting to the data center: "Bundled Network Access Option 1" and "Bundled Network Access Option 2".[8] The Exchange proposes to discontinue Bundled Network Access Option 2, as Users no longer utilize it, and to remove references to related pricing from the Fee Schedules. In addition, the Exchange proposes to rename "Bundled Network Access Option 1" as "Bundled Network Access," as it would be the sole remaining option.

IP Network Access

The internet protocol ("IP") network is a local area network available in the data center.[9] IP network access is offered in 1, 10 and 40 Gb capacities. The Exchange proposes to delete statements in the Fee Schedules that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016,[10] as such statements are obsolete. This proposed change would have no impact on pricing.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[11] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.[12]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and section 6(b)(4) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC and NYSE MKT LLC. *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63).

[7] *Id.* Previously, the Exchange also offered a one Gb LCN CSP connection, but it was discontinued as it was no longer utilized by Users. *See* Securities Exchange Act Release No. 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81).

[8] Previously, the Exchange offered other "bundled" connectivity options, but they were discontinued as they were no longer utilized by Users. *See id.*, at 45578.

[9] *See* Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User's cabinet and a non-User's equipment).

[10] *See* Securities Exchange Act Release No. 76372 (November 5, 2015), 80 FR 70039 (November 12, 2015) (SR–NYSEArca–2015–105) (notice of filing and immediate effectiveness of proposed rule change to include IP 40 Gb network connections).

[11] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[12] *See* SR–NYSEArca–2013–80, *supra* note 5, at 50459. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–39 and SR–NYSEMKT–2016–57.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

issuers, brokers or dealers. The Exchange also believes that the proposed rule change furthers the objectives of section 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedules, make the Fee Schedules easier to read, understand and administer. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Fee Schedules because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. Removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Exchange believes that eliminating references in the Fee Schedules that state that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016, is reasonable, equitable and not unfairly discriminatory because these references are obsolete and no longer have an impact on pricing. The proposed change would result in the removal of obsolete text from the Fee Schedules and therefore add greater clarity to the Fee Schedules regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[16] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users).

The Exchange believes that discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center and removing references to related pricing and obsolete text from the Fee Schedules would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because no Users utilize the services proposed to be discontinued. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering. The proposed rule change is not intended to address competitive issues.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2016–77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2016–77. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–77, and should be submitted on or before June 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13472 Filed 6–7–16; 8:45 am]

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[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Form N–2, OMB Control No. 3235–0026, SEC File No. 270–21.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Form N–2 (17 CFR 239.14 and 274.11a–1) under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Closed-End Management Investment Companies." Form N–2 is the form used by closed-end management investment companies ("closed-end funds") to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") and to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The primary purpose of the registration process is to provide disclosure of financial and other information to current and potential investors for the purpose of evaluating an investment in a security. Form N–2 also permits closed-end funds to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities. The form also may be used by the Commission in its regulatory review, inspection, and policy-making roles.

The Commission estimates that there are 136 initial registration statements and 30 post-effective amendments to initial registration statements filed on Form N–2 annually and that the average number of portfolios referenced in each initial filing and post-effective amendment is 1. The Commission further estimates that the hour burden for preparing and filing an initial registration statement on Form N–2 is 515 hours per portfolio, and the hour burden for preparing and filing a post-effective amendment on Form N–2 is 107 hours per portfolio. The estimated annual hour burden for preparing and filing initial registration statements is 70,040 hours (136 initial registration statements × 1 portfolio × 515 hours per portfolio). The estimated annual hour burden for preparing and filing post-effective amendments is 3,210 hours (30 post-effective amendments × 1 portfolio × 107 hours per portfolio). The estimated total annual hour burden for Form N–2, therefore, is estimated to be 73,250 hours (70,040 hours + 3,210 hours).

The information collection requirements imposed by Form N–2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 2, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13463 Filed 6–7–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Airport Property at St. Petersburg-Clearwater International (PIE), St. Petersburg, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties of approximately 16.88 acres at St. Petersburg-Clearwater International (PIE), St. Petersburg, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the Pinellas County, dated 11 March 1941. The release of property will allow Pinellas County to dispose of the property for Florida Department of Transportation roadway right of way project.

DATES: Comments are due on or before July 8, 2016.

ADDRESSES: Documents are available for review at St. Petersburg-Clearwater International Airport (PIE), and the FAA

Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Jenny Iglesias-Hamann, Community Planner, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Jenny Iglesias-Hamann, Community Planner, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

The property is located Multiple parcels along Roosevelt Road (SR 686) adjacent to airport. The parcels are currently designated Aeronautical and Non-Aeronautical. The property will be released of its federal obligations in support of the Florida Department of Transportation (FDOT) Gateway Express Project. The fair market value of thess parcels has been determined to be $12,205,865.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the St. Petersburg-Clearwater International Airport (PIE) and the FAA Airports District Office.

Bart Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2016–13554 Filed 6–7–16; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Automatic Dependent Surveillance—Broadcast (ADS–B) Rebate System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about its intention to request Office of Management and Budget (OMB) approval for a new information collection. The FAA is launching a rebate program to emphasize the urgent need for pilots to comply with Automatic Dependent Surveillance Broadcast (ADS–B) Out requirements ahead of the January 1, 2020, compliance deadline. This program will defray costs associated with the ADS–B equipment and installation for eligible general aviation aircraft, and help ensure that all general aviation aircraft are equipped by the compliance date.

DATES: Written comments should be submitted by August 8, 2016.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 441, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public comments invited: Individuals are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for this program; (b) the accuracy of the estimated burden; (c) ways for the FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include public comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: Not assigned.

Title: Automatic Dependent Surveillance-Broadcast (ADS–B) Rebate System.

Form Numbers: Information is collected via a Web site specific to the ADS–B Rebate program.

Type of Review: New information collection.

Background: On May 21, 2010, the FAA issued a final rule requiring Automatic Dependence Surveillance-Broadcast (ADS–B) Out avionics on aircraft operating in Classes A, B, and C airspace, as well as certain other classes of airspace within the National Airspace System (NAS), no later than January 1, 2020 (75 FR 30160). ADS–B Out equipage is a critical step in achieving the benefits of NextGen, in that it transforms aircraft surveillance with satellite-based precision. When properly equipped with ADS–B, both pilots and controllers can, for the first time, see the same real-time displays of air traffic, and pilots will be able to receive air traffic services in places where it has not been previously available.

To meet this deadline for compliance, the FAA estimated that as many as 160,000 general aviation aircraft would need to be equipped with ADS–B by January 1, 2020. In developing the ADS–B Out final rule, the FAA assumed that these aircraft owners would begin equipping new aircraft with ADS–B equipment in 2012, and begin retrofitting the existing aircraft in 2013, to minimize costs associated with retrofitting outside of the aircraft's heavy maintenance cycle. In any given year, avionics installers are capable of completing approximately 35,000–50,000 installations. In order to guarantee that general aviation aircraft that will operate in ADS–B airspace are equipped by January 1, 2020, approximately 23,000 aircraft would have needed to equip each year beginning in early 2013. This would have ensured there would be a balance between the expected demand for avionics installations and the capacity of avionics installers. Owners of general aviation aircraft who are particularly price sensitive are postponing their installations. This trend demonstrates that there is a near-term need to accelerate equipage, to ensure that pilots, manufacturers, and retail facilities have adequate time and capacity to equip aircraft by the January 1, 2020, compliance deadline. It is necessary to take advantage of the installation capacity available now in order to avoid back-end capacity constraints that could result in some aircraft being unable to receive their upgrades ahead of the compliance deadline, which will, in turn, lead to denial of access to ADS–B airspace once the ADS–B equipage mandate is in effect. This limited-time rebate will provide an incentive for early retrofitting, but it is intended to emphasize the urgent need for pilots to comply with ADS–B Out requirements ahead of 2020.

Section 221 of the FAA Modernization and Reform Act of 2012 provided the FAA with the authority to establish an incentive program for equipping general aviation and commercial aircraft with communications, surveillance, navigation, and other avionics equipment. Thus, the FAA is establishing an initiative (the ADS–B Rebate Program) to addresses the rate of general aviation equipage by incentivizing those aircraft owners who are affected by the ADS–B Out requirements and are the most price sensitive to the cost of avionics and the associated installation. The ADS–B Rebate Program will provide a one-time

$500 rebate to an aircraft owner to defray some of the cost of an ADS–B Out system meeting the program eligibility requirements. The rebates will be available on a first come first served basis.

The FAA, with input from industry partners (Aircraft Electronics Association, Aircraft Owners and Pilots Association, and General Aircraft Manufacturers Association), designed this rebate program targeting specific eligibility requirements for avionics, aircraft types, and aircraft owners. The eligibility requirements are as follows:

Eligible Avionics—Technical Standard Order (TSO)-certified Version 2 ADS–B Out system, purchased on or after June 8, 2016. Such equipment must have a TSO marking for TSO–C154c, or TSO–C166b, or both. Eligible ADS–B Out system equipment may have an embedded position source compliant with one of the following TSOs: TSO–C–145c (or subsequent versions), TSO–C146c (or subsequent versions), or may be connected to a separate position source compliant with TSO–C–145c (or subsequent versions) or TSO–C146c (or subsequent versions). Any separate position source must comply with the guidance published in FAA Advisory Circular (AC) 20–165B. ADS–B In/Out systems compliant with TSO–C154c, TSO–C166b, or both, are also eligible.

Eligible Aircraft—Only U.S.-registered, fixed-wing single-engine piston aircraft first registered before January 1, 2016 are eligible for the program. This eligibility will be determined via the FAA Civil Aircraft Registry. Program eligibility also requires permanent installation of new avionics equipment in a single aircraft in compliance with applicable FAA regulations and guidance material.

Aircraft Owner—Program eligibility is limited to one rebate per aircraft owner. An aircraft owner means either a single individual owner or any owning entity (any legal ownership entity including but not limited to an LLC, corporation, partnership or joint venture) identified as the owner of the eligible aircraft in the FAA Civil Aviation Registry.

Exclusions—All aircraft for which FAA has already paid or previously committed to upgrade to meet the ADS–B Out mandate. Software upgrades to existing equipment are not eligible. Aircraft that already have a Version 2 ADS–B Out system prior to the launch of the data collection system are not eligible. New aircraft produced after January 1, 2016, are not eligible.

For reimbursement under this program, the FAA Civil Aircraft Registry information regarding ownership is controlling and the rebate program will be using the publically available database to determine eligibility requirements based on the aircraft information. The aircraft owner is responsible for ensuring that the FAA Civil Aircraft Registry information is accurate before a claim for the rebate is submitted; rebates will only be mailed to the registered owner and address as indicated in the Civil Aircraft Registry.

To request a rebate, the applicant must provide via the program Web site a valid email address for official correspondence and notifications and aircraft-specific information such as the aircraft registration number, TSO-certified equipment purchased, and scheduled installation date. Once the information is submitted, the FAA will validate eligibility for the program with the official records regarding aircraft ownership contained in the publically available Civil Aircraft Registry. Additionally, anyone requesting a rebate will need to accept legal notices electronically by acknowledging their agreement and acceptance and providing the name of the person submitting the information on the individual web application.

Through the ADS–B Rebate Program, aircraft owners will be permitted to reserve a rebate, validate their installation, and then claim their rebate through the ADS–B Rebate Program Web site. The program steps and timeline requirements are as follows:

[1] *Decide:* The aircraft owner arranges for purchase and schedules installation of TSO-certified avionics for an eligible aircraft.

[2] *Reserve:* Before avionics installation occurs, the aircraft owner must go to the ADS–B Rebate Program Web site to submit information for a rebate reservation. Upon successful submission, the system will generate an email with a Rebate Reservation Code. During the rebate reservation process, the eligible aircraft's information is validated against the FAA Civil Aircraft Registry, including ownership information. If there are discrepancies, the aircraft owner may continue with the reservation process; but before a valid Incentive Code can be obtained in step [5], the aircraft owner must ensure that the FAA Civil Aircraft Registry data for their eligible aircraft is corrected.

[3] *Install:* TSO-certified ADS–B avionics are installed in the eligible aircraft.

[4] *Fly & Validate:* Only after the prior steps are completed, the eligible aircraft must be flown in the airspace defined in 14 CFR 91.225 for at least 30 minutes, with at least 10 aggregate minutes of maneuvering flight, per the guidance in AC 20–165B *http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1028666,* sections 4.3.2 and 4.3.2.3–4.3.2.6 for Part 23 aircraft. After flight, the ADS–B data is used to generate a Public Compliance Report (PCR) and General Aviation Incentive Requirements Status (GAIRS) Report, which is how the performance of the eligible aircraft's ADS–B installation is validated. Note that it may be necessary to repeat this step more than once, until the GAIRS Report indicates PASS for all fields and provides an Incentive Code in the Rebate Status section. Once proper installation and operation of the ADS–B is validated the FAA will notify the applicant using the email address provided at the time of rebate request.

[5] *Claim:* Within 60 days of the scheduled installation date, the aircraft owner gathers their Rebate Reservation Code (from step [2]) and their Incentive Code (from step [4]) and submits this information as well as their name and aircraft number via the ADS–B Rebate Program Web site to complete the claim for their rebate.

The FAA is seeking comments from the public regarding the information we collect for the program and how we collect it. The information provided in this notice is solely to identify and collect information from the public on the potential burden to an individual that would result from this program.

Respondents: Approximately 20,000 rebates.

Frequency: Information is collected only during the times the user is submitting their reservation and claiming their rebate after proof of meeting the eligibility requirements.

Estimated Average Burden per Response: Approximately 6 minutes.

Estimated Total Annual Burden: Approximately 2,000 hours.

Issued in Washington, DC, on June 1, 2016.

Ronda Thompson,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP–110.

[FR Doc. 2016–13307 Filed 6–6–16; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0050]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 27, 2016, the South Central Florida Express (SCFE) has petitioned the

Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229, Railroad Locomotive Safety Standards. FRA assigned this petition Docket Number FRA–2016–0050.

In its petition, SCFE proposes to maintain the daily inspection reports required by 49 CFR 229.21, *Daily inspection*, solely in electronic format. The system that SCFE proposes consists of a USB memory drive containing locomotive identifying information permanently affixed to each locomotive, with a semi-permanently installed, hardened tablet computer in each locomotive. In lieu of paper records, this computer system would run software prompting and recording the results of daily inspections and transmitting those inspection details directly and securely back to a central database maintained by the company, where they will be retained for at least 120 days. SCFE states that this system would fully satisfy the goals of daily inspection records to be accurate, not susceptible to after-the-fact changes, and readily available to FRA inspectors at any time.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 25, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*. See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov*.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–13487 Filed 6–7–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Electronic Funds Transfer (EFT) Market Research Study

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Electronic Funds Transfer (EFT) Market Research Study.

DATES: Written comments should be received on or before August 8, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Walt Henderson, EFT Strategy Division; 401 14th Street SW., Room 303, Washington, DC 20227, (202) 874–6624

SUPPLEMENTARY INFORMATION:

Title: Electronic Funds Transfer (EFT) Market Research Study.

OMB Number: 1530–0022.

Form Number: None.

Abstract: This is a generic clearance to conduct customer satisfaction surveys, focus groups, and interviews among recipients of federal benefit and vendor payments through EFT. The need for this market research continues to arise from a Congressional directive that accompanied legislation enacted in 1996, as part of the Debt Collection Improvement Act (Pub. L. 104–134), expanding the scope of check recipients required to use direct deposit to receive Federal benefit payments (see 31 U.S.C. 3332). Congress directed Treasury to "study the socioeconomic and demographic characteristics of those who currently do not have Direct Deposit and determine how best to increase usage among all groups." 142 Cong. Rec. H4090 (daily ed. April 25, 1996).

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households, Federal Government.

Estimated Number of Respondents: 19,500.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 7,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–13539 Filed 6–7–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one entity whose property and interests in property has been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (SDN List) of the entity identified in this notice whose property and interests in property was blocked pursuant to the Kingpin Act, is effective on June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President or the Secretary of the Treasury. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On June 3, 2016, the Associate Director of the Office of Global Targeting removed from the SDN List the entity listed below, whose property and interests in property was blocked pursuant to the Kingpin Act.

Entity

MAWA ENTERPRISES, CORP., Panama; RUC # 37255–145–266651 (Panama) [SDNTK].

Dated: June 3, 2016.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016–13525 Filed 6–7–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13712

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of three individuals whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13712, and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective June 2, 2016.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Notice of OFAC Actions

On June 2, 2016 OFAC blocked the property and interests in property of the following three individuals pursuant to E.O. 13712, "Blocking Property of Certain Persons Contributing to the Situation in Burundi":

1. NGENDABANKA, Marius, Kinanira IV, Kinindo, Bujumbura, Burundi; DOB 25 Aug 1974; nationality Burundi; Gender Male; Commander, First Military Region; Deputy Chief of Land Forces; Burundian National Defense Forces Deputy Commander of Operations (individual) [BURUNDI].
2. SIBOMANA, Ignace; DOB 01 Jan 1972; POB Buhina, Kanyosha, Bujumbura, Burundi; nationality Burundi; Gender Male; Burundian Army Colonel, Chief of Military Intelligence (individual) [BURUNDI].
3. NSHIMIRIMANA, Edouard; DOB 1970; POB Bugeni Vyanda, Burundi; nationality Burundi; Passport 089567 (Burundi) issued 10 Feb 2006 expires 10 Feb 2011; Former Lieutenant Colonel (individual) [BURUNDI].

Dated: June 2, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–13459 Filed 6–7–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the subcommittees of the Rehabilitation Research and Development Service Scientific Merit Review Board will meet from 8:00 a.m. to 5:00 p.m. on the dates indicated below:

Subcommittee	Date(s)	Location
Psychological Health & Social Reintegration	August 2, 2016	VHA National Conference Center.
Rehabilitation Engineering & Prosthetics/Orthotics	August 2, 2016	VHA National Conference Center.
Sensory Systems/Communication Disorders	August 2, 2016	VHA National Conference Center.
Career Development Award Program	August 2–3, 2016	VHA National Conference Center.
Regenerative Medicine	August 3, 2016	VHA National Conference Center.
Aging & Neurodegenerative Disease	August 3–4, 2016	VHA National Conference Center.
Musculoskeletal/Orthopedic	August 3–4, 2016	VHA National Conference Center.
Spinal Cord Injury	August 4, 2016	VHA National Conference Center.
VA–ORD Historically Black College and University Research Scientist Training Program.	August 4, 2016	*VA Central Office
Brain Injury: TBI & Stroke	August 4–5, 2016	VHA National Conference Center.

The addresses of the meeting sites are: (*Teleconference). VA Central Office, 1100 First Street NE., Washington, DC 20002. VHA National Conference Center, 2011 Crystal Drive, Arlington, VA 22202.

The purpose of the Board is to review rehabilitation research and development applications and advise the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

The subcommittee meetings will be open to the public for approximately one-half hour at the start of each meeting to cover administrative matters and to discuss the general status of the program. Members of the public who wish to attend the open portion of the teleconference sessions may dial (800) 767–1750, participant code 35847#. The remaining portion of each subcommittee meeting will be closed to the public for the discussion, examination, reference to, and oral review of the research applications and critiques. During the closed portion of each subcommittee meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

No oral or written comments will be accepted from the public for either portion of the meetings. Those who plan to attend the open portion of a subcommittee meeting should contact Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, at Department of Veterans Affairs (10P9R), 810 Vermont Avenue NW., Washington, DC 20420, or via email at *Tiffany.Asqueri@va.gov* at least five days before the meeting. For further information, please call Mrs. Asqueri at (202) 443–5757.

Dated: June 3, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–13527 Filed 6–7–16; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2009–BT–TP–0004]

RIN 1904–AB94

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: On November 9, 2015, the U.S. Department of Energy (DOE) issued a supplemental notice of proposed rulemaking (SNOPR) to amend the test procedure for central air conditioners and heat pumps. That proposed rulemaking serves as the basis for the final rule. The final rule, in addition to satisfying the agency's obligation to periodically review its test procedures for covered equipment, amends specific certification, compliance, and enforcement provisions related to this product. In the final rule DOE makes the following amendments to the current test procedure: a new basic model definition as it pertains to central air conditioners and heat pumps and revised requirements for represented values; revised alternative efficiency determination methods; termination of active waivers and interim waivers; procedures to determine off mode power consumption; changes to the test procedure that would improve test repeatability and reduce test burden; and clarifications to ambiguous sections of the test procedure intended also to improve test repeatability and reproducibility Some of these amendments also include incorporation by reference of updated industry standards.

DATES: The effective date of this rule is

A link to the docket Web page can be found at: *www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/72*. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Jochum@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into part 430 specific sections, figures, and tables in the following industry standards:

(1) ANSI/AHRI 210/240–2008 with Addenda 1 and 2, (''AHRI 210/240–2008''): 2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment, ANSI approved 27 October 2011;

(2) ANSI/AHRI 1230–2010 with Addendum 2, (''AHRI 1230–2010''): 2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump

(4) ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37–2009''), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009;

(5) ANSI/ASHRAE 41.1–2013, (''ANSI/ASHRAE 41.1–2013''): Standard Method for Temperature Measurement, ANSI approved January 30, 2013;

(6) ANSI/ASHRAE 41.6–2014, (''ASHRAE 41.6–2014''): Standard Method for Humidity Measurement, ANSI approved July 3, 2014;

(7) ANSI/ASHRAE 41.9–2011, (''ASHRAE 41.9–2011''): Standard Methods for Volatile-Refrigerant Mass Flow Measurements Using Calorimeters, ANSI approved February 3, 2011

(8) ANSI/ASHRAE 116–2010, (''ASHRAE 116–2010''): Methods of Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps, ANSI approved February 24, 2010.

(9) ANSI/ASHRAE 41.2–1987 (Reaffirmed 1992), (''ASHRAE 41.2–1987 (RA 1992)''): ''Standard Methods for Laboratory Airflow Measurement'', ANSI approved October 1, 1987.

Copies of ASHRAE 23.1–2010, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ASHRAE 41.6–2014, ASHRAE 41.9–2011, ASHRAE 116–2010, and ASHRAE 41.2–1987 (RA 1992) can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources—publications*.

(10) ANSI/AMCA 210–2007, ANSI/ASHRAE 51–2007, (''AMCA 210–2007'') Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, August 17, 2007;

Copies of AMCA 210–2007 can be purchased from AMCA's Web site at *http://www.amca.org/store/index.php*.

For a further discussion of these standards, see section IV.N.

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I. Authority and Background

A. Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include single-phase central air

and (4) certification and enforcement. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA, and (2) making other representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether covered products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

EPCA sets forth criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. (42 U.S.C. 6293(b)(3)) EPCA provides, in relevant part, that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. *Id.*

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the amended test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1))

The Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA to require that, at least once every 7 years, DOE must review test procedures for all covered products and either amend the test procedures (if the Secretary

procedure establishes the currently permitted means for determining energy efficiency and annual energy consumption of these products. The amendments in this final rule will not alter the measured efficiency of central air conditioners and heat pumps.

EISA 2007 also established that the Department's test procedures for all covered products must account for standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) For central air conditioners and heat pumps, standby mode is incorporated into the SEER metric, while off mode power consumption is separately regulated. This final rule includes modifications relevant to the determination of both SEER (including standby mode) and off mode power consumption.

10 CFR 430.27 allows manufacturers to submit an application for an interim waiver and/or a petition for a waiver granting relief from adhering to the test procedure requirements found under 10 CFR part 430, subpart B, appendix M. For those waivers that are active, however, 10 CFR 430.27(l) requires DOE to amend its regulations so as to eliminate any need for the continuation of such waivers. To this end, this final rule amends the test procedure concerning several waivers.

B. Background

This final rule addresses proposals and comments from three separate rulemakings, two guidance documents, and two working groups: (1) proposals for off mode test procedures made in earlier notices as part of this rulemaking (Docket No. EERE–2009–BT–TP–0004); (2) proposals regarding alternative efficiency determination methods (AEDMs) (Docket No. EERE–2011–BT–TP–0024); (3) the recommendations of the regional standards enforcement Working Group (Regional Standards Enforcement Working Group) (Docket No. EERE–2011–BT–CE–0077); (4) a draft guidance document related to testing and rating split systems with blower coil units (Docket No. EERE–2014–BT–GUID–0033); (5) a draft guidance document that deals with selecting units for testing, rating, and certifying split-system combinations, including discussion of basic models and of condensing units and evaporator coils sold separately for replacement installation (Docket No. EERE–2014–BT–GUID–0032); and (6) stakeholder comments from a request for information regarding energy conservation standards as well as the recommendations of the central air conditioner and heat pump energy conservation standards Working Group (CAC/HP ECS Working Group) (Docket No. EERE–2014–BT–STD–0048).

1. Proposals for Off Mode Test Procedures

DOE's initial proposals for estimating off mode power consumption in the test procedure for central air conditioners and heat pumps were shared with the public in a notice of proposed rulemaking published in the **Federal Register** on June 2, 2010 (June 2010 NOPR; 75 FR 31224) and at a public meeting at DOE headquarters in Washington, DC, on June 11, 2010 (Public Meeting Transcript, Doc. ID. EERE–2009–BT–TP–0004–0005). Subsequently, DOE published a supplemental notice of proposed rulemaking (SNOPR) on April 1, 2011, in response to comments received on the June 2010 NOPR and due to the results of additional laboratory testing conducted by DOE. (April 2011 SNOPR) 76 FR 18105, 18127. DOE received additional comments in response to the April 2011 SNOPR and proposed an amended version of the off mode procedure that addressed those comments in a second SNOPR on October 24, 2011 (October 2011 SNOPR). 76 FR 65616. DOE received additional comments during the comment period of the October 24, 2011 SNOPR and the subsequent extended comment period. 76 FR 79135.

Between the April 2011 and October 2011 SNOPRs, DOE published a direct final rule (DFR) in the **Federal Register** on June 27, 2011, that set forth amended energy conservation standards for central air conditioners and central air conditioning heat pumps, including a new standard for off mode electrical power consumption. (June 2011 DFR) 76 FR 37408. Under the June 2011 DFR, central air conditioning and heat pump units manufactured on or after January 1, 2015, would be subject to the published standard for off mode electrical power consumption. 10 CFR 430.32(c)(6). However, DOE has issued an enforcement policy statement regarding off mode standards for central air conditioners and central air conditioning heat pumps [4] (July 2014 Enforcement Policy Statement) specifying that DOE will not assert civil penalty authority for violation of the off mode standard until 180 days following publication of a final rule establishing a test method for measuring off mode electrical power consumption.

[4] Available at: *http://energy.gov/sites/prod/files/2014/07/f17/Enforcement%20Policy%20Statement%20-%20cac%20off%20mode.pdf* (Last accessed March 30, 2015.)

2. Proposals for AEDMs

DOE also pursued, in a request for information (RFI) published on April 18, 2011, (AEDM RFI) (76 FR 21673) and a NOPR published on May 31, 2012, (AEDM NOPR) (77 FR 32038) revisions to its existing alternative efficiency determination methods (AEDM) and alternative rating methods (ARM) requirements to improve the approach by which manufacturers may use modeling techniques as the basis to certify consumer products and commercial and industrial equipment covered under EPCA. DOE also published a final rule regarding AEDM requirements for commercial and industrial equipment only (Commercial Equipment AEDM FR). 78 FR 79579 (Dec. 31, 2013).

3. Regional Enforcement Standards Working Group and Guidance Documents

On June 13, 2014, DOE published a notice of intent to form a working group to negotiate enforcement of regional standards for central air conditioners and requested nominations from parties interested in serving as members of the Regional Standards Enforcement Working Group. 79 FR 33870. On July 16, 2014, the Department published a notice of membership announcing the eighteen nominees that were selected to serve as members of the Regional Standards Enforcement Working Group, in addition to two members from Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), and one DOE representative. 79 FR 41456. The Regional Standards Enforcement Working Group identified a number of issues related to testing and certification that are being addressed in this rule. In addition, all nongovernmental participants of the Regional Standards Enforcement Working Group approved the final report contingent on upon the issuance of the final guidance on Docket No. EERE–2014–BT–GUID–0032 0032 and Docket No. EERE–2014–BT–GUID–0033 consistent with the understanding of the Regional Standards Enforcement Working Group as set forth in its recommendations. (Docket No. EERE–2011–BT–CE–0077–0070, Attachment) The amendments in this final rule supplant the August 19 and 20, 2014 draft guidance documents; DOE will not finalize the draft guidance documents and instead has provided any necessary clarity through this final rule. DOE believes the amendments are consistent with the intent of the Regional Standards Enforcement Working Group.

4. Energy Conservation Standards and Working Group

On November 5, 2014, DOE published a request for information for energy conservation standards (ECS) for central air conditioners and heat pumps (November 2014 ECS RFI). 79 FR 65603. In response, several stakeholders provided comments suggesting that DOE amend the current test procedure.

On July 14, 2015, DOE published a notice of intent to establish the central air conditioners and heat pumps working group (CAC/HP ECS Working Group) to negotiate a notice of proposed rulemaking (NOPR) for energy conservation standards. 80 FR 40938. This working group was established under ASRAC. Ultimately, the CAC/HP ECS Working Group consisted of 15 members, including one member from ASRAC and one DOE representative. On January 19, 2016, the CAC/HP ECS Working Group successfully reached consensus on amended energy conservation standards and the associated compliance date for certain product classes of central air conditioners and central air conditioning heat pumps, on limited aspects of the proposed, amended test procedure appendix M1, and also on a handful of other miscellaneous issues related to the standards rulemaking as well as to this test procedure final rule. (ASRAC Working Group Term Sheet, Docket No. EERE–2014–BT–STD–0048, No. 0076)

5. Current Rulemaking

Prior to the conclusion of the CAC/HP ECS Working Group, on November 9, 2015, DOE published a third supplemental notice of proposed rulemaking (November 2015 SNOPR) for the test procedure of central air conditioners and heat pumps. 80 FR 69278. The SNOPR responded to relevant comments from the guidance documents and rulemaking dockets discussed in this section.

This final rule addresses certain comments received in response to the November 2015 SNOPR. Some of the provisions of the SNOPR, particularly related to changes proposed for appendix M1, will be addressed in a separate notice. This final rule, along with the separate final rule addressing Appendix M1, will fulfill DOE's obligation to periodically review its test procedures under 42 U.S.C. 6293(b)(1)(A).

II. Summary of the Final Rule

This final rule clarifies aspects of DOE's test procedure for central air conditioners and heat pumps to improve the consistency and accuracy of the results generated when using that procedure. The rule primarily clarifies how to test for compliance with the current energy conservation standards. The rule also amends certain certification, compliance, and enforcement provisions. While the changes adopted in this rulemaking may impact test burden in certain cases, as discussed in section III.H.3, DOE has determined that this final rule will not change the measured energy efficiency of central air conditioners and heat pumps when compared to the current test procedure. Any proposed amendments that would change the measured energy efficiency will be addressed as part of the new appendix M1, in a separate notice, which will be used in conjunction with amended standards.

DOE revises the basic model definition, adds additional definitions for clarity, makes certain revisions to the testing requirements for determination of represented values, adds certain certification reporting requirements, revises requirements for determination of represented values, and adds product-specific enforcement provisions.

DOE updates requirements for Alternative Rating Methods (ARMs) used to determine performance metrics for central air conditioners and heat pumps based on the regulations for Alternative Efficiency Determination Methods (AEDMs) that are used to estimate performance for commercial HVAC equipment. Specifically, for central air conditioners and heat pumps, DOE makes the following amendments: (1) Revising the nomenclature regarding ARMs; (2) rescinding DOE's pre-approval of an ARM prior to use; (3) creating AEDM validation requirements; (4) revising the AEDM verification testing process; (5) specifying actions a manufacturer could take following a verification test failure; and (6) clarifying consequences to manufacturers for invalid represented values.

DOE revises the test procedure such that tests of multi-circuit products, triple-capacity northern heat pump products, and multi-blower products can be performed without the need of an interim waiver or a waiver. Existing interim waivers and waivers for these products, as applicable, regarding these products will terminate 180 days after publication of this final rule.

DOE also terminates the existing waivers for air-to-water heat pump products integrated with domestic water heating because, as discussed in section III.C.1, DOE has determined that these waivers are not valid because they do not provide a method for measurement of the efficiency metrics used to determine compliance with applicable standards.

DOE adopts test methods and calculations for off mode power that do not impact the measured energy with respect to the current energy conservation standard. Specifically, the adopted test procedure includes the following:

(1) Provision of an option to conduct the off mode tests in a temperature-controlled room rather than a psychrometric room;

(2) Elimination of ambient condition requirements for units whose off mode power consumption can be measured without control of ambient temperature;

(3) Alteration of the off mode multiplier for modulated compressors;

(4) Addition of requirements on the heating season off mode power measurement for units having a crankcase heater whose controls cycle or vary crankcase heater power over time;

(5) Clarification of test sample set-up and power measurement testing methodology and components;

(6) Addition of requirement to eliminate the time delay effect on the off mode power measurement; and

(7) Elimination of the condition where P2 is equal to zero in the off mode power consumption calculation.

In this final rule DOE also improves the repeatability/reproducibility and reduces the test burden of the test procedure. Specifically, DOE amends the following:

(1) Clarification of fan speed settings;

(2) Clarification of insulation requirements for refrigerant lines and addition of a requirement for insulating mass flow meters;

(3) Addition of a requirement to demonstrate inlet air temperature uniformity for the outdoor unit using thermocouples;

(4) Addition of a requirement that outdoor air conditions be measured using sensors measuring the air captured by the air sampling device(s) rather than the temperature sensors located in the air stream approaching the inlets;

(5) Addition of a requirement that the air sampling device and the tubing that transfers the collected air to the dry bulb temperature sensor be at least two inches from the test chamber floor, and a requirement that humidity measurements be based on dry bulb temperature measurements made at the same location as the corresponding wet bulb temperature measurements used to determine humidity;

(6) Clarification of maximum speed for variable-speed compressors;

(7) Addition of requirements that improve consistency of refrigerant charging procedures;

(8) Allowance of an alternative arrangement for cyclic tests to replace the currently-required damper in the inlet portion of the indoor air ductwork for single-package ducted units;

(9) Clarification of the proper supply voltage for testing;

(10) Revision of the determination of the coefficient of cyclic degradation (C_D);

(11) Option for a break-in period of up to 20 hours;

(12) Update of references to industry standards where appropriate;

(13) Inclusion of information from the draft AHRI 210/240;

(14) Addition of provisions regarding damping of pressure transducer signals to avoid exceeding test operating tolerances due to high frequency fluctuations;

(15) Clarification of inputs for the demand defrost credit equation; and

(16) Improvement of test consistency associated with indoor unit air inlet geometry.

DOE also provides additional detail and specificity with respect to several provisions. Specifically, DOE adds reference to an industry standard for testing variable refrigerant flow multi-split systems; replaces the informative guidance table for using the test procedure; clarifies the definition of multi-split systems; clarifies the definition of mini-split systems, which DOE now calls multi-head mini-split systems; and clarifies the housing for uncased coils.

Lastly, DOE addresses comments received from stakeholders in response to the November 2015 SNOPR that were unrelated to any of DOE's proposals. Specifically, this includes the following:

(1) Water condensation metric;

(2) Barometric pressure correction ; and

(3) Inlet screen.

Given the difficulty of writing amendatory instructions to implement the many small changes throughout appendix M, DOE has provided a full reprint of appendix M in the regulatory text of this final rule.

DOE revises the test procedure in this final rule as reflected in the revised Appendix M to Subpart B of 10 CFR part 430 effective on July 8, 2016. The amended test procedure is mandatory for representations of efficiency as of December 5, 2016.

III. Discussion

This final rule amends the test procedure for central air conditioners and heat pumps in appendix M to subpart B of Part 430 and adds new product-specific certification and enforcement provisions in 10 CFR 429.12, 429.16, 429.70, and 429.134. The rule also amends certain definitions found in 10 CFR 430.2 and updates certain materials incorporated by reference in 10 CFR 430.3.

In response to the November 2015 SNOPR, the following 25 interested parties submitted written comments: Advanced Distributor Products LLC; Air-Conditioning, Heating, and Refrigeration Institute (AHRI); American Council for an Energy Efficient Economy (ACEEE); Appliance Standards Awareness Project (ASAP); First Co.; Goodman Global, Inc.; Heating, Air Conditioning & Refrigeration Distributors International (HARDI); Ingersoll Rand; Johnson Controls Inc. (JCI); Lennox International Inc; LG Electronics U.S.A., Inc; Mitsubishi Electric Cooling & Heating; Natural Resources Defense Council (NRDC); Nortek Global HVAC; Northwest Energy Efficiency Alliance (NEEA); Northwest Power and Conservation Council (NPCC); Pacific Gas and Electric Company (PG&E); Rheem Manufacturing Company (Rheem); San Diego Gas and Electric Company (SDG&E); Southern California Edison (SCE); Southern California Gas Company (SCG); Unico, Inc.; United Refrigeration, Inc. (URI); United Technologies Climate, Controls & Security (UTC), also known as Carrier Corporation. NEEA and NPCC submitted a joint comment. PG&E, SDG&E, SCG, and SCE, hereafter referred to as the California Investor-Owned Utilities (California IOUs), also submitted a joint comment. ACEEE, ASAP, and NRDC, hereafter referred to as the Efficiency Advocates, also submitted a joint comment.

Interested parties provided comments on a range of issues, including those DOE identified in the November 2015 SNOPR, as well as several other pertinent issues related to DOE's proposal. Commenters also offered thoughts on further opportunities to improve the clarity of the test procedure. These issues, as well as DOE's responses to them and the resulting changes to DOE's proposal, are discussed in the subsequent sections. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

A. Definitions, Testing, Represented Values, and Compliance of Basic Models of Central Air Conditioners and Heat Pumps

On August 19 and 20, 2014, DOE issued two draft guidance documents regarding the test procedure for central air conditioners and heat pumps. One guidance document dealt with testing and rating split systems with blower coil indoor units (Docket No. EERE–2014–BT–GUID–0033); and the other dealt more generally with selecting units for testing, rating, and certifying split-system combinations, including discussion of basic models and of condensing units and evaporator coils sold separately for replacement installation (Docket No. EERE–2014–BT–GUID–0032). The comments in response to these draft guidance documents were discussed in the November 2015 SNOPR. DOE proposed changes to the substance of the draft guidance that reflects the comments received as well as the recommendations of the Regional Standards Enforcement Working Group (Docket No. EERE–2011–BT–CE–0077–0070, Attachment). DOE makes additional modifications in this final rule in response to comment on the November 2015 SNOPR as well as the recommendations of the CAC/HP ECS Working Group (Docket No. Docket No. EERE–2014–BT–STD–0048, No. 76). The adopted changes supplant the two draft guidance documents; DOE will not finalize the draft guidance documents and has instead provided any necessary clarity through this final rule.

1. Basic Model Definition

In the November 2015 SNOPR, DOE proposed modifying its basic model definition for central air conditioners and heat pumps. 80 FR at 69282–4 (Nov. 9, 2015). Under DOE's proposal, manufacturers could consider each individual model/combination its own basic model, or manufacturers could assign all individual models of the same single-package system or all individual combinations using the same model of outdoor unit (for outdoor unit manufacturers (OUM)) or model of indoor unit (for independent coil manufacturers (ICM)) to the same basic model. DOE proposed to further define (for both single-package units and split systems) the physical characteristics necessary to assign individual models or combinations to the same basic model. 80 FR 69278, 69282–83 (Nov. 9, 2015).

DOE proposed that, if a manufacturer chooses to assign each individual model or combination to its own basic model, the manufacturer must test each individual model/combination—and that an AEDM could not be applied. 80 FR 69278, 69283 (Nov. 9, 2015). If manufacturers assign all individual combinations of a model of outdoor unit (for OUMs) or model of indoor unit (for ICMs) to a single basic model, DOE further proposed that each individual combination within a basic model must be certified with a rating determined for that individual combination. However, only one individual combination in each basic model would have to be tested (see section III.A.3.a), while the others may be rated using an AEDM. This option reduces testing burden but increases risk. Specifically, if any one of the combinations within a basic model fails to meet the applicable standard, then all of the combinations within the basic model fail, and the entire basic model must be taken off the market. 80 FR 69278 at 69283 (Nov. 9, 2015).

Comments on these proposals are discussed in the following sections.

a. Basic Model Framework

The Joint Advocates of ACEEE, NRDC and ASAP ("Joint Advocates") supported the proposed changes to the definition of a basic model and related testing and certification requirements. The Joint Advocates stated that they believe that the clarified testing requirements would reduce testing burden on manufacturers. (ACEEE, NRDC and ASAP, No. 72 at p. 1) Nortek supported DOE's proposal that manufacturers would have a choice in how to assign individual models or combinations to basic models. (Nortek, No. 58 at p. 3) ADP and Lennox supported the use of the basic model as the basis for any enforcement action as discussed in Section III.A.8 (80 FR 69278, 69297 (Nov. 9, 2015)) and the proposed 10 CFR 429. (ADP, No. 59 at p. 7; Lennox, No. 61 at p. 14)

NEEA and NPCC commented that DOE's proposed approach that all combinations within the basic model are deemed noncompliant if only one of the combinations within a basic model fails does not align with the other aspects of DOE's current proposal, in which each and every combination has its own certified rating. (NEEA and NPCC, No. 64 at p. 2–3)

Carrier/UTC expressed the concern that if one combination amongst potentially hundreds of combinations rated with a given outdoor unit fails then the entire basic model will be removed from the market and claimed that it is excessively punitive. Further, Carrier/UTC recommended a provision for saving the remaining indoor combinations of the basic model such as testing the tested combination and one (or more) other random indoor combinations. Carrier/UTC stated that the de-listing of the product should be limited to the combination that failed, not the entire basic model. (Carrier/UTC, No. 62 at pp. 5–6)

NEEA and NPCC further commented that they presume that DOE's ratings guidance of August 19 and 20, 2014, would also be impacted by a requirement to rate all outdoor and indoor unit combinations and the proposal with regard to testing-derived versus AEDM-derived ratings. They asserted that the proposal would seem to require the rating of both coil-only and blower coil combinations, with the choice of either using the highest sales volume combination being tested (and all other combinations rated using an AEDM), or testing each combination as its own basic model. (NEEA and NPCC, No. 64 at p. 2–3)

In response to NEEA and NPCC, DOE disagrees that DOE cannot make a determination of compliance on a basic model basis simply because DOE permits the manufacturer to make different representations for combinations within a basic model. In response to NEAA, NPCC, and UTC/Carrier, DOE notes that it developed the proposal for the basic model framework in an effort to balance manufacturer test burden and risk. The determination of compliance with the standard is made at the basic model level, and the manufacturer may choose how to group models into basic models and whether or not to make use of an AEDM for represented values of combinations. DOE expects that the individual combinations grouped into a single basic model would have similarities that would make validation of one of the individual model/combination's represented values a strong indication of the accuracy of the represented values of the other models/combinations—if the represented values are indeed different. DOE also notes that when manufacturers use an AEDM and DOE finds an invalid rating, manufacturers can conduct re-testing to re-certify the individual model/combination, as described in section 429.70.

DOE also notes that, as stated in the November 2015 SNOPR, this final rule will supplant DOE's draft ratings guidance documents, which will not be finalized. Finally, DOE notes in response to NEEA and NPCC that the basic model framework itself does not determine whether both coil-only and blower coil combinations must be rated; this is further discussed in section III.A.3.a. Given the support for the basic model framework voiced by many of the commenters, DOE adopts the framework as proposed in the SNOPR.

b. General Definition Comments

AHRI and several manufacturers including UTC/Carrier, ADP, Lennox, Nortek, and Unico agreed generally with DOE's proposal to modify its basic model definition. (AHRI, No. 70 at p. 3; UTC/Carrier, No. 62 at p. 5–6; ADP, No. 59 at p. 7; Lennox, No. 61 at p. 14; Nortek, No. 58 at p. 3; Unico, No. 63 at p. 4) Rheem recommended that DOE adopt the industry standard definition for basic model, as defined by AHRI. (Rheem, No. 69 at p. 4) As described below, several commenters requested additional modifications to DOE's proposed definitions; these comments are discussed below, along with revisions to the proposed definitions.

c. Split Systems Manufactured by OUMs and Single-Package Systems

For split systems manufactured by OUMs and single-package systems, AHRI, Lennox, Ingersoll Rand, Rheem, and Nortek recommended the removal of "the auxiliary refrigeration system components if present (*e.g.*, expansion valve) and controls" from the proposed basic model definition. Lennox and Nortek commented that adding these components to the definition can greatly expand the number of basic models. (AHRI, No. 70 at p. 3; Lennox, No. 61 at p. 4; Ingersoll Rand, No. 65 at p. 11; Rheem, No. 69 at p. 4; Nortek, No. 58 at p. 3) Additionally, Lennox and Nortek suggested that there would not be a benefit to expanding the definition of basic model beyond the currently accepted industry practice as outlined in AHRI's certification program. (Lennox, No. 61 at p. 4; Nortek, No. 58 at p. 3) DOE understands Lennox and Nortek are referring to the concept of a "basic model group" as the term is described in the AHRI Operations Manual for Unitary Small Air-Conditioners and Air-Source Heat Pumps, in section 1.5, "Basic Model Groups (BMGs)."

After reviewing the comments, DOE acknowledges that while use of different auxiliary refrigeration system components may impact measured performance, it may not do so significantly—for example, measurements made using two different thermostatic expansion valves that both maintain the same superheat should not be different. In an effort to balance manufacturer test burden with the

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to amend the test procedures for central air conditioners and heat pumps. (Docket No. EERE–2009–BT–TP–0004, which is maintained at *http://www.regulations.gov/#!docketDetail;D=EERE-2009-BT-TP-0004*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

regulatory needs of the program to establish an appropriate basic model definition, DOE has not included the phrase "auxiliary refrigeration system components if present (*e.g.*, suction accumulator, reversing valve, expansion valve) and controls" in the "basic model" definition for split systems manufactured by OUMs or for single-package systems. DOE notes, however, that each manufacturer is responsible for minor variations in efficiency differences resulting from such changes in design.

For the definition of a basic model for OUMs, Goodman agreed with DOE's overall direction. However, Goodman commented that DOE's proposed definition was too rigid and would not provide enough design flexibility to manufacturers. Specifically, Goodman cited the importance of the ability for a manufacturer to vary many aspects of its outdoor coils (*e.g.*, style and fin depth) and to source components, such as compressors, from multiple component manufacturers. Goodman asserted that this flexibility in design would allow manufacturers to provide combinations that optimize their product offering to consumers, while still yielding similar performance and therefore meriting classification under a single basic model. Goodman suggested revised basic model definitions for split systems manufactured by OUMs and single-package systems in which the list of parameters affecting performance (*e.g.*, compressor and outdoor coil properties) that had been proposed to define a distinct model be instead provided as guidance for the OUM to consider when deciding whether two variations of a design should have the same model number. (Goodman, No. 73 at pp. 2–3)

In response to Goodman, DOE recognizes the importance of allowing manufacturers flexibility in design. DOE agrees with Goodman that, for instance, using compressors from different compressor manufacturers in two different models should not require the manufacturer to classify these models as two separate basic models, if the models can still reasonably be described as having "essentially identical characteristics." However, DOE believes that Goodman's suggested revised definitions, by providing guidance but no requirements, would allow widely varying characteristics under the same model of outdoor unit or single-package unit. Rather than moving to definitions that provide flexibility limited only by guidance, DOE has instead modified the definitions to allow some design flexibility, while assuring that a large departure from a given design would require that the OUM establish a new basic model. In the definitions established in this final rule for basic model for split systems manufactured by OUMs and single-package systems, DOE has removed certain requirements proposed in the November 2015 SNOPR, and added tolerances for the remaining requirements. Specifically, these modifications from the proposal include: (1) Establishing a five percent tolerance for compressor displacement, capacity, and power input; (2) removing requirements for several outdoor coil parameters; (3) adding a five percent tolerance to the face area and total fin surface area of the outdoor coil; (4) adding a ten percent tolerance on outdoor airflow, and (5) for single-package systems, allowing a ten percent tolerance on indoor airflow and a twenty percent tolerance on power input to the indoor fan motor.

In the basic model definition proposed in the November 2015 SNOPR for split systems manufactured by OUMs and single-package systems, DOE specified that all individual models or combinations in a basic model must have the same or comparably performing compressor(s) with the "same displacement rate (volume per time) and same capacity and power input when tested under the same operating conditions." 80 FR 69278, 69341 (Nov. 9, 2015). In order to promote design flexibility, DOE is adopting less stringent requirements in the basic model definition amended in this final rule by adding a five percent tolerance to the displacement rate and capacity and power input. DOE's research suggests that comparable compressors made by different manufacturers vary by less than two percent in displacement rate and capacity and power input when tested under the same conditions. Therefore, DOE believes that a five percent tolerance allows manufacturers the option to use comparably performing compressors from different manufacturers in models without having to classify the models as separate basic models. Additionally, in the definition established in this final rule, DOE explains that the tolerances on compressor parameters refer to the values rated by the compressor manufacturer, not the performance of individual compressors.

In this final rule, DOE is adopting less stringent requirements for classifying as comparably performing outdoor coil(s) in the basic model definition for split systems manufactured by OUMs and single-package systems. To provide more flexibility to manufacturers, DOE is not adopting specifications in the basic model definitions for: Coil depth, fin style (*e.g.*, wavy, louvered), fin density (fins per inch), tube pattern, tube diameter, tube wall thickness, and tube internal enhancement. However, DOE has added a five percent tolerance to the face area and total fin surface area for outdoor coils. This tolerance on the outdoor coil areas will allow manufacturers to vary their designs while achieving similar performance, such as adding another row perpendicular to the airflow direction to the outdoor coil to compensate for using a more energy-consuming compressor.

Additionally, DOE is adding tolerances to the requirements for classifying as comparably performing outdoor fan(s) in the basic model definition for split systems manufactured by OUMs and single-package systems. DOE is adding a ten percent tolerance on outdoor fan airflow. DOE believes that this tolerance will allow manufacturers to make adjustments to the fans, such as increasing the number, diameter, or design of fan blades, without classifying comparably performing models as separate basic models.

UTC/Carrier agreed with DOE's proposal to align the basic model definition with that used by AHRI; however, they asserted that the list of additional reporting requirements is excessive and burdensome. Specifically, UTC/Carrier stated that some of these components do not affect the performance of the system, are considered proprietary, and need not be reported. Additionally, they stated that some of these minor components may change due to sourcing availability. UTC/Carrier recommended that DOE align the basic model exactly with AHRI's basic model group definition: Compressor model, outdoor coil face area, and outdoor airflow, and not require any additional data to be reported. (UTC/Carrier, No. 62 at p. 2)

For split systems manufactured by OUMs, Lennox recommended that the proposed OUM basic model definition be revised to more closely align with industry practices and recommended that the definition of outdoor coil be revised to protect business sensitive information. (Lennox, No. 61 at p. 4) Specifically, Lennox requested that the definition of outdoor coil-only include the words "same face area and depth, style." Lennox suggested that DOE remove the remaining specification requirements for outdoor coils so that this sensitive business information could not be made available to the public and industry competitors through a FOIA request. (Lennox, No. 61 at pp. 3–4)

DOE acknowledges the importance of avoiding disclosure of proprietary or sensitive business information; however, in the November 2015 SNOPR DOE did not propose any additional certification requirements or supplemental test instruction reporting that would require disclosure of these parameters about which UTC/Carrier and Lennox cited concern. 80 FR 69278, 69338–39 (Nov. 9, 2015). Requirements for reporting are limited to those items listed in section 429.16(e), and mention of a parameter as the basis for distinguishing a model does not by itself imply that the value of that parameter must be reported in certification reports. DOE notes that it is not requiring that manufacturers report the sensitive information such as surface area or coil depth for which their basic model determinations are made.

In response to UTC/Carrier, DOE recognizes that minor components may vary in manufacturer designs based on availability from component manufacturers. However, DOE believes that the tolerances established in this final rule (as previously discussed) around most of the requirements in DOE's definition of basic model allow for variation in component models and manufacturers. DOE also believes that the requirements included in DOE's definition of basic model are necessary to ensure units are similar enough to be classified as the same basic model. DOE also notes that the definition established in this final rule includes tolerances on the compressor model ratings, outdoor coil face area, and outdoor airflow; therefore DOE's definition allows more flexibility for outdoor coil face area and outdoor airflow than does the definition of a split-system model group in the AHRI Operations Manual.[6]

In response to Lennox, as previously discussed, DOE has removed references to fin material, style, or density or tube thickness in the basic model definition established in this final rule, which will provide manufacturers with more flexibility in offering a varied product offering to consumers while limiting the testing burden.

d. Requirements for Independent Coil Manufacturers

Several commenters expressed concern about the impact of the proposed definition of basic model on ICM test burden. Therefore comments regarding the ICM basic model definition are addressed in the context of testing required to determine represented values in section III.A.3.d.

e. Off-Mode

Revisions to the test procedure as stated in section III.D of this final rule enable the determination of off mode power consumption, which reflects the operation of the contributing components: crankcase heater and low-voltage controls. In the November 2015 SNOPR, DOE proposed that if individual combinations that are otherwise identical are offered with multiple options for off mode related components, manufacturers at a minimum must rate the individual combination with the crankcase heater and controls which are the most consumptive. Under this proposal, if a manufacturer wished to also make representations for less consumptive off mode options for the same individual combination, the manufacturer could provide separate ratings as long as the manufacturer differentiated the individual model numbers for these ratings. These individual combinations would be within the same basic model. 80 FR 69278, 69284 (Nov. 9, 2015).

In their comments, NEEA and NPCC strongly supported DOE's proposal to require manufacturers to either rate and certify all combinations using the most consumptive off-mode power controls and systems, or to differentiate models they wish to certify with different off-mode power controls and/or systems with different model numbers, each with its own certified rating. (NEEA and NPCC, No. 64 at p. 4)

DOE received no other comments on this proposal and adopts it in this final rule.

f. Central Air Conditioner Definition

In the November 2015 SNOPR, DOE proposed to clarify that a central air conditioner or central air conditioning heat pump may consist of: A single-package unit; an outdoor unit and one or more indoor units (*e.g.*, a single-split or multi-split system); an indoor unit only (rated as a combination by an ICM with an OUM's outdoor unit); or an outdoor unit only (with no match, rated by an OUM with the coil specified in this test procedure). DOE proposed adding these specifications to the definition of central air conditioner or central air conditioning heat pump in 10 CFR 430.2. In the certification reports submitted by OUMs for split systems, DOE proposed that manufacturers must report the basic model number as well as the individual model numbers of the indoor unit(s) and the air mover where applicable. 80 FR 69278, 69284 (Nov. 9, 2015).

Lennox and ADP expressed concern that modifying the CAC/HP definition to include "an indoor unit" only may have significant unintended consequences with additional regulation now applying to indoor units. They stated that the indoor unit has no heating or cooling capability without being installed as a part of the system, that by itself, it is a component, and that the proposed definition is factually incorrect and contradicts the DOE's previous position that they do not have authority to regulate components of air conditioners. Lennox recommended DOE keep the existing definition. (Lennox, No. 61 at p. 10; ADP, No. 59 at p. 4)

DOE notes that the modification of the CAC/HP definition does not change the scope of DOE's product coverage and is in line with the current certification requirements for CAC/HP. Specifically, ICMs are currently responsible for testing and certifying models of indoor units they manufacture as part of a split-system combination. DOE received no other comment on this topic. For these reasons, DOE is adopting the CAC/HP definition as proposed.

2. Additional Definitions

In the November 2015 SNOPR, in order to specify differences in the proposed basic model definition for ICMs and OUMs, DOE proposed definitions for an ICM and an OUM. With respect to any given basic model, a manufacturer could be an ICM or an OUM. 80 FR 69278, 69284 (Nov. 9, 2015).

DOE also proposed to define variable refrigerant flow (VRF) systems that are single-phase and less than 65,000 Btu/h as a kind of multi-split central air conditioner and central air conditioning heat pump system. Id.

Additionally, DOE proposed to clarify several other definitions currently in 10 CFR 430.2 with minor wording changes and move them to 10 CFR 430, Subpart B, Appendix M. DOE also proposed to remove entirely the definitions for "condenser-evaporator coil combination" and "coil family," as those terms no longer appear in the proposed regulations. Id.

DOE did not receive any comments on these definitions and related changes and adopts the proposals in this final rule.

a. Indoor Unit

In the November 2015 SNOPR, DOE proposed modifying the definition of indoor unit to read as follows: "indoor unit transfers heat between the refrigerant and the indoor air, and

[6] AHRI's Operations Manual for Unitary Small Air-Conditioners and Air-Source Heat Pumps (Includes Mixed-Match Coils) (Rated Below 65,000 Btu/h) Certification Program (AHRI OM 210/240—March 2015). Available at *www.ahrinet.org/App_Content/ahri/files/Certification/OM%20pdfs/USE_OM.pdf* (Last accessed March 31, 2016.)

consists of an indoor coil and casing and may include a cooling mode expansion device and/or an air moving device." 80 FR 69278, 69284 (Nov. 9, 2015).

Goodman commented that the definition for indoor unit does not fully account for the range of indoor units sold in the market. Specifically, Goodman stated that including the casing in the proposed indoor unit definition is inconsistent with many industry offerings. Goodman also suggested a new definition for indoor unit. (Goodman, No. 73 at p. 3–5)

AHRI and Nortek proposed a definition for indoor units that does not include casing and/or an expansion device. AHRI and Nortek expressed concern that the uncased coil would no longer be within the scope of regulation, which could open the doors for a loophole in the regulation, or that manufacturers would not be able to list an uncased coil with an outdoor unit, resulting in an illegal installation. AHRI and Nortek proposed definitions for uncased coil, cased coil, and service coil. (AHRI, No. 70 at p. 8; Nortek, No. 58 at p. 3–4). Further, AHRI stated that DOE should make clear that service coils will not be rated in the future. (AHRI, No. 70 at p. 8)

UTC/Carrier commented that the exclusion of uncased coils from DOE certification represents a significant loophole as uncased coils are often installed in various new construction scenarios and should be certified. According to UTC/Carrier, DOE should further define the replacement component service coils that are used only when the current coils fail and are considered service parts and, thus, should not be certified to DOE; the treatment of uncased coils in commerce by manufacturers as service-only is problematic. (UTC/Carrier, No. 62 at p. 3)

JCI commented that, while some manufacturers use uncased service coils, others supply service coils with casings on them. In addition, JCI commented that not all uncased coils are service coils. According to JCI, there are product families of uncased coils very often sold for new construction installations, or installation of new A/C systems in the northern parts of the United States. For example, JCI noted that often in the northern United States, a new home may be constructed with only a furnace for heating and no cooling, and that cooling may be added later by installing an uncased coil into the ductwork itself. JCI commented that the uncased coil market is a vital part of the northern U.S. market, and uncased coils need to be allowed to be rated as valid matches with a basic outdoor model. (JCI, No. 66 at p. 12–13). JCI also suggested definitions for uncased coil, cased coil, service coil, and indoor unit. (JCI, No. 66 at p. 13)

The California IOUs requested that DOE allow manufacturers to rate uncased coils with outdoor condensing units. They reported that California Building Energy Efficiency Standards (Title 24) define the replacement of any component containing refrigerant to be a system alteration requiring verification of refrigerant charge and airflow through the coil. (see California Code of Regulations, Title 24, Part 1, Article 1, Section 150.2(b)(1)F) The California IOUs stated that the replacement of an indoor coil is an alteration whether the coil is cased or uncased. DOE asserted that DOE's proposal to define uncased coils as repair parts and to not require them to be part of a rated model would create a compliance problem for contractors in California because without ratings, the energy efficiency of the system with an uncased coil is not known. The California IOUs stated that in applications where the existing coil is removed from the existing case and replaced with a new coil, which is then connected to a new outdoor unit, the efficiency rating is required to meet Title 24. Therefore, the California IOUs requested that DOE allow ratings of combinations having uncased indoor coils so that compliance with Title 24 can be verified. (California IOUs, No. 67 at p. 2)

ADP and Lennox commented that they understand the intent of excluding uncased coils is to differentiate between indoor units used for legacy replacements and new installations, but believe that DOE's proposal would create a significant loophole. ADP and Lennox commented that uncased coils are used for new installations in a significant number of markets in the upper Midwest of the United States where a long tradition of skilled sheet metal workers exists. Additionally, they asserted that Canada is a predominately uncased coil market and relies on manufacturer ratings that have been certified with DOE and AHRI. Instead, ADP suggests that DOE require replacement coils not subject to certification to carry a different model number than those sold for installation as a part of new, certified systems. (ADP, No. 59 at p. 4–5; Lennox, No. 61 at p. 10)

After consideration of the comments that uncased coils may be used for new installations and that the exclusion of uncased coils from the indoor unit definition could result in a significant loophole, DOE is adopting a revised definition for an indoor unit such that it "may or may not include . . . (e) external cabinetry". To distinguish newly installed cased and uncased coils from replacement cased and uncased coils, DOE has added a definition for service coils and explicitly excluded them in the indoor unit definition.

Indoor unit means part of a split-system air conditioner or heat pump that includes (a) an arrangement of refrigerant-to-air heat transfer coil(s) for transfer of heat between the refrigerant and the indoor air and (b) a condensate drain pan, and may or may not include (c) sheet metal or plastic parts not part of external cabinetry to direct/route airflow over the coil(s), (d) a cooling mode expansion device, (e) external cabinetry, and (f) an integrated indoor blower (*i.e.* a device to move air including its associated motor). A separate designated air mover that may be a furnace or a modular blower (as defined in Appendix AA to the subpart) may be considered to be part of the indoor unit. A service coil is not an indoor unit.

Service coil means an arrangement of refrigerant-to-air heat transfer coil(s) and condensate drain pan that may or may not include sheet metal or plastic parts to direct/route airflow over the coil(s), external cabinetry, and/or a cooling mode expansion device, and is sold exclusively to replace an uncased coil or cased coil that has already been placed into service and is labeled accordingly.

DOE also acknowledges the benefit of including definitions for both cased and uncased coils, and adopts the following definitions:

Cased coil means a coil-only indoor unit with external cabinetry.

Uncased coil means a coil-only indoor unit without external cabinetry.

In the November 2015 SNOPR, DOE proposed to specify that if the indoor unit does not ship with a cooling mode expansion device, the system should be tested using the device as specified in the installation instructions provided with the indoor unit, or if no device is specified, using a thermostatic expansion valve (TXV). 80 FR 69278, 69284 (Nov. 9, 2015).

Goodman commented that DOE should not assume the use of TXV if a metering (expansion) device is not specified by the manufacturer. Goodman commented that the majority of systems installed today use fixed orifice rather than TXV expansion devices. (Goodman, No. 73 at p. 3–5)

DOE agrees that many product offerings use fixed orifice or piston expansion devices as standard equipment and that it may be more suitable to use a fixed orifice or piston device if there are no detailed instructions provided in installation instructions regarding selection of an expansion device. This is because a system installed in the field without such instructions may very well perform poorly if an optimized device is not selected. Because a TXV generally is likely to provide better performance over a range of operating conditions, DOE believes the use of a fixed orifice is more consistent with this potential for poor field performance. Therefore, DOE is modifying its proposal and requiring instead that a fixed orifice or piston expansion device be used if the installation instructions do not specify a metering (expansion) device.

b. Blower Coil and Coil-Only Indoor Units

In the November 2015 SNOPR, DOE proposed definitions for blower coil indoor unit and coil-only indoor unit. The motivation was to simplify the description of the test requirements by referring to blower coil units instead of units "with an indoor fan installed" and to coil-only units instead of units "without an indoor fan installed".

Blower coil indoor unit means the indoor unit of a split-system central air conditioner or heat pump that includes a refrigerant-to-air heat exchanger coil, may include a cooling-mode expansion device, and includes either an indoor blower housed with the coil or a separate designated air mover such as a furnace or a modular blower (as defined in Appendix AA).

Blower coil system refers to a split system that includes one or more blower coil indoor units.

Coil-only indoor unit means the indoor unit of a split-system central air conditioner or heat pump that includes a refrigerant-to-air heat exchanger coil and may include a cooling-mode expansion device, but does not include an indoor blower housed with the coil, and does not include a separate designated air mover such as a furnace or a modular blower (as defined in Appendix AA). A coil-only indoor unit is designed to use a separately-installed furnace or a modular blower for indoor air movement.

Coil-only system refers to a system that includes one or more coil-only indoor units. 80 FR 69278, 69286 (Nov. 9, 2015).

ADP and UTC/Carrier agreed with the proposed definitions for blower coil and coil-only indoor units. (ADP, No. 59 at p. 6; UTC/Carrier, No. 62 at p. 3) Lennox agreed with the proposed definitions with the exceptions noted in other sections. (Lennox, No. 61 at p. 13) Unico agreed with the coil-only indoor definition, except recommended removing the word "modular" as there is no definition. Unico commented that the blower can be anywhere in the system. (Unico, No. 63 at p. 2) JCI suggested definitions for air handler, blower coil, and coil-only. (JCI, No. 66 at p. 13)

Rheem commented that the proposed definitions for blower coil and coil-only indoor units exclude the customary practice in the Northwest United States where an uncased coil is installed in a plenum for space-constrained installations. Rheem stated that under DOE's proposal, a certified rating for this system configuration would no longer be available to consumers. Rheem noted that there are building inspectors who require an AHRI or DOE certified combination including the evaporator coil for replacements. (Rheem, No. 69 at p. 5)

DOE acknowledges that by excluding indoor units without a casing, the customary practice identified by Rheem would not be included. As noted in the previous section, DOE has addressed this by expanding the indoor unit definition to include units which may or may not have external cabinetry. The blower coil and coil-only indoor unit definitions then build on this updated indoor unit definition. Further, DOE has removed, from both the blower coil and coil-only indoor unit definitions, language redundant with the indoor unit definition and is adopting amended definitions:

In response to Unico's comment regarding "modular", the definition explicitly refers to the definition of "modular blower" in appendix AA. In response to JCI's comment requesting a definition for "air handler", DOE feels that this is not necessary because there are few distinctions in the test procedure between test requirements for blower coil indoor units that are air handlers (as defined by JCI) and blower coil indoor units that are not. In cases where a distinction is needed, the regulatory language adequately provides the distinction, for example in section 3.13.1.d, "blower coil split systems for which a furnace or a modular blower is the dedicated air mover . . .", which refers to blower coil split systems whose indoor units are not "air handlers".

3. Determination of Represented Values

In the November 2015 SNOPR, DOE proposed several regulatory changes regarding the relationship between represented values and an effective enforcement plan. The changes are described in the following sections.

a. Single-Split-System Air Conditioners Rated by OUMs

DOE proposed to make changes to 10 CFR 429.16 to revise the testing and rating requirements for single-split system air conditioners. These changes were proposed to occur in two phases. In the first phase, prior to the compliance date of any amended energy conservation standards, DOE proposed only a slight change to the current requirements. Specifically, DOE proposed that for single-split system air conditioners with single speed condensing units, each model of outdoor unit must be tested with the model of coil-only indoor unit that is likely to have the largest volume of retail sales with the particular model of outdoor unit. For split-system air conditioners with other than single speed condensing units, each model of outdoor unit must also be tested with the model of coil-only indoor unit likely to have the largest sales volume unless the model of outdoor unit is sold only with model(s) of blower coil indoor units, in which case it must be tested and rated with the model of blower coil indoor unit likely to have the highest sales volume. However, any other combination may be rated through testing or use of an AEDM. Therefore, both single speed and other than single speed systems may be rated with models of both coil-only or blower coil indoor units, but if the system is sold with a model of coil-only indoor unit, it must, at a minimum, be tested in that combination. 80 FR 69278, 69285–86 (Nov. 9, 2015).

In the second phase, DOE anticipated that any amended energy conservation standards would be based on blower coil ratings. Therefore, DOE proposed that all single-split-system air conditioner basic models be tested and rated with the model of blower coil indoor unit likely to have the largest volume of retail sales with that model of outdoor unit. Manufacturers would be required to also rate all other blower coil and coil-only combinations within the basic model but would be permitted do so through testing or an AEDM. This proposed change would also be accounted for in the parallel energy conservation standards rulemaking, and would be contingent upon any proposed amended standards being based on blower coil ratings. Id.

DOE noted that these proposed testing requirements, when combined with the proposed definition for basic model, require that each basic model have at least one rating determined through testing; no basic model can be rated solely using an AEDM. Id.

DOE also proposed that in the certification report, manufacturers state whether each rating is for a coil-only or blower coil combination. 80 FR 69278, 69286 (Nov. 9, 2015).

Following publication of the November 2015 SNOPR, DOE held meetings of the CAC/HP ECS Working Group. The CAC/HP ECS Working Group recommended consensus energy conservation standards based on coil-only ratings rather than blower coil ratings, making the second phase of DOE's proposal no longer applicable. Many of the stakeholders who submitted comments on DOE's proposal were also members of the CAC/HP ECS Working Group, and as a result, their positions may have changed over the course of the negotiations. For these reasons, DOE has included the consensus recommendations of the CAC/HP ECS Working Group that pertain to DOE's proposal but has not included the comments of members of the CAC/HP ECS Working Group on the November 2015 SNOPR where the scope of the Working Group recommendation encompassed the scope of the comment.

With respect to the coil-only and blower coil requirements, ADP agreed with the proposed requirements of the first phase approach. (ADP, No. 59 at p. 5–6;)

JCI agreed with the single speed requirements in Appendix M but did not agree with DOE's proposed requirement for two-stage units or multi-stage units to be tested with a coil-only indoor unit, if any coil-only indoor units are listed with that outdoor unit. JCI recommended that there should be no change in the current regulatory text for two-stage or modulating equipment, and asserted that the spirit of the current regulation is met with blower coils remaining as the highest sales volume tested combination, even if there are limited loose coil or coil-only ratings available. (JCI, No. 66 at p. 5)

ADP had concerns that testing the highest sales volume combination (HSVC) with a blower coil in the second phase (in appendix M1) would make it more difficult for ICMs to accurately rate their products because of the added uncertainty of the indoor blower watts and airflow performance. Under the proposed second phase, with a blower coil indoor unit as HSVC, the indoor blower watt value is unknown by the ICM, forcing the ICM to estimate the watts, which introduces additional uncertainty to ICM ratings. Although ADP and Lennox recognized that ICMs could test the HSVC blower coil, they considered this to be an unreasonable testing burden on ICMs. (ADP, No. 59 at p. 5–6) ADP proposed that DOE require the reporting of indoor watt data, indoor air volume rates, and indoor air mover settings and require that they be made publicly available. (ADP, No. 59 at p. 5–6) Unico stated that it preferred that the HSVC be a coil-only indoor unit so that they would be able to properly account for the fan power when rating their products. (Unico, No. 63 at p. 2)

Lennox; the Joint Advocates of ACEEE, NRDC, and ASAP; UTC/Carrier; Goodman; and Rheem had submitted comments in regard to the two-phase proposal related to coil-only and blower coil requirements. As noted previously, these stakeholders were members of the CAC/HP ECS Working Group, and as such the comments are not included here.

JCI commented that the current language used in Appendix M denoting the HSVC match cannot be determined with exact statistics and that it actually inhibits the adoption of new and promising advancements in product design. (JCI, No. 66 at p. 4) In contrast, Unico commented that, as an indoor coil manufacturer, it believes it to be important that the outdoor unit manufacturer continue to test and rate the HSVC, as this is an integral requirement for their AEDM to maintain accuracy. (Unico, No. 63 at p. 2)

UTC/Carrier also submitted a comment related to removal of the HSVC requirement. As noted previously, UTC/Carrier was a member of the CAC/HP ECS Working Group, and as such the comment is not included here.

In the term sheet, the CAC/HP ECS Working Group recommended that DOE implement the following requirements for single-split system air conditioners and suggested some implementing regulatory text:

- Every combination distributed in commerce must be rated.
  - Every single-stage and two-stage condensing unit distributed in commerce (other than a condensing unit for a 1-to-1 mini split) must have at least 1 coil-only rating that is representative of the least efficient coil distributed in commerce with a particular condensing unit.
- Every condensing unit distributed in commerce must have at least 1 tested combination.
  - For single-stage and two-stage condensing units (other than condensing units for a 1-to-1 mini split), this must be a coil-only combination.
- All other combinations distributed in commerce for a given condensing unit may be rated based on the application of an AEDM or testing in accordance with the applicable sampling plan.

(Docket No. EERE–2014–BT–STD–0048, No. 76, Recommendation #7)

DOE notes that this recommendation is similar to DOE's Phase 1 proposal, as it is based primarily on coil-only values. In particular, single-stage and two-stage condensing units may not ever have only a blower coil represented value. The Working Group recommendation is consistent with ADP and Unico's comments requesting that the tested combination be a coil-only unit but inconsistent with JCI's request that two-stage units be tested with a blower coil. Given the preponderance of stakeholders supporting the recommendation, and the fact that multi-stage units may be tested and rated with a blower coil, DOE believes that adopting the Working Group recommendation best addresses the majority of stakeholder concerns. For these reasons, and given that there is no longer a need for a second-phase, DOE is adopting the recommendation in the term sheet, which will become effective 180 days after publication of this final rule. DOE notes that while 1-to-1 mini-splits are not expected to have a coil-only represented value, this exception does not appear explicitly in the regulatory text. DOE clarifies that since ductless mini-splits are never distributed in commerce as coil-only units, there is no coil-only value that would be representative. Therefore these units only require blower coil represented values. DOE also notes that the Working Group recommendation that every condensing unit distributed in commerce have at least one tested combination was based on the premise that manufacturers would group multiple individual combinations with a single model of outdoor unit into a basic model, as allowed in the adopted basic model definition. If manufacturers instead choose to make every individual combination (using the same model of outdoor unit) a separate basic model, each individual combination would be required to be tested. This aligns with the basic model framework discussed in section III.A.1.a.

DOE also adopts these recommendations for space-constrained split-system air conditioners given that they are subject to the same test procedure provisions and sampling plans as non-space-constrained single-split-system air conditioners.

DOE notes that both the current test procedure and the test procedure proposed in the November 2015 SNOPR requires that the test conditions used for testing coil-only units be the same as those used for units with single-speed compressors. For example, section 3.2.1 of the current Appendix M indicates that these tests, listed in Table 4 of Appendix M as proposed, are, ". . . for a unit . . . with no indoor blower installed." Because the regulatory approach finalized in this notice requires that two-stage condensing units have a coil-only test, DOE has removed "coil-only units" from the description of the units that must be tested using the Table 4 tests.

DOE notes that the CAC/HP ECS Working Group recommendation also removes the requirement that the tested combination be the HSVC. DOE believes the Working Group recommendation adequately addresses JCI's concern about using the highest sales volume as a tested combination, but is inconsistent with Unico's request that OUMs test and rate the HSVC. DOE will address this aspect of the recommendation in the separate notice and has not adopted it in this final rule.

Goodman commented that DOE has not adequately accounted for the inherent variability and uncertainty existing in the psychrometric test procedures in determining that the proposed change requiring two-stage units to be tested as coil-only would not affect the certified values. Goodman commented that the test methods specified by DOE, AHRI and ASHRAE have an uncertainty for steady state testing of approximately 6–8%. Goodman also noted that ISO 16491:2012 Annex B lists several factors associated with the indoor air enthalpy method that contribute to uncertainty. Moreover, Table A.3 of ISO 16491:2012 indicates that for typical cooling capacity methods, relative expanded uncertainty might be 6.8%. Goodman commented that even at 0.05 SEER or 0.05 EER below the regional requirements, new test data would therefore either require the OUM to test additional samples or would cause a once-compliant unit to be marked as non-compliant for the regional standards. (Goodman, No. 73 at p. 17)

In response to Goodman's concern about this change impacting measured energy use, DOE notes that current regulations require testing with the evaporator coil that has the largest volume of retail sales with the particular model of condensing unit. DOE understands that, for two-stage units, this is typically a coil-only combination since many homeowners do not replace the furnace at the same time when they replace their split-system air conditioning system and therefore that manufacturers should represent two-stage units as coil-only combinations. At the manufacturer's discretion, the two-stage units could also be represented as blower-coil combinations. Therefore, DOE does not believe the adopted requirements for two-stage units will change the impacted energy use,

b. Split-System Heat Pumps and Space-Constrained Split-System Heat Pumps

The current requirements for split-system heat pumps in 10 CFR 429.16 require testing a condenser-evaporator coil combination with the evaporator coil likely to have the largest volume of retail sales with the particular model of condensing unit.

In the November 2015 SNOPR, DOE proposed to slightly modify the wording explaining the testing requirement for split-system heat pumps to refer to the "evaporator coil" and condensing unit" as the "indoor unit" and "outdoor unit", as the word "outdoor unit" is more appropriate for heat pumps than "condensing unit". DOE also proposed to apply this same test requirement to space-constrained split-system heat pumps. 80 FR 69278, 69286–87 (Nov. 9, 2015).

DOE received no comment on this proposal, and in this final rule, DOE adopts the wording modifications. However, in the separate notice regarding Appendix M1, DOE will consider additional modifications based on the recommendations of the CAC/HP ECS Working Group with regard to split-system air conditioners.

c. Multi-Split, Multi-Circuit, and Multi-Head Mini-Split Systems

The current requirements in 10 CFR 429.16(a)(2)(ii) specify that multi-split systems and mini-split systems designed for installation with more than one indoor unit be tested using a "tested combination" as defined in 10 CFR 430.2.

In the November 2015 SNOPR, DOE proposed a slight modification to the testing requirements for single-zone-multiple-coil[7] and multi-split systems and proposed to add similar requirements for testing multi-circuit systems (see section III.C.2 for more information about these systems). DOE also explained that these requirements apply to VRF systems that are single-phase and less than 65,000 Btu/h. For all multi-split, multi-circuit, and single-zone-multiple-coil split systems, DOE proposed that, at a minimum, each model of outdoor unit must be tested as part of a tested combination (as defined in the CFR) composed entirely of non-ducted indoor units. For any models of outdoor units also sold with short-ducted indoor units, DOE proposed a second "tested combination" composed entirely of short-ducted indoor units would be required to be tested. DOE also proposed that a manufacturer may rate a mixed non-ducted/short-ducted combination as the mean of the represented values for the tested non-ducted and short-ducted combinations. 80 FR 69278, 69287 (Nov. 9, 2015).

Under the November 2015 SNOPR proposed definition of basic model, these three combinations (non-ducted, short-ducted, and mixed) would represent a single basic model. When certifying the basic model, manufacturers should report something like "* * *" for the indoor unit model number and report the test sample size as the total of all the units tested for the basic model, not just the units tested for each combination. For example, if the manufacturer tests 2 units of a non-ducted combination and two units of a short-ducted combination, and also rates a mixed combination, the manufacturer should specify "4" as the test sample size for the basic model, while providing the rating for each combination. DOE also proposed that manufacturers be allowed to test and rate specific individual combinations as separate basic models, even if they share the same model of outdoor unit. In this case, the manufacturer would provide the individual model numbers for the indoor units rather than stating a generic model, such as "* * *".

DOE also proposed adding a requirement that, for any models of outdoor units also sold with models of small-duct, high velocity (SDHV) indoor units, a "tested combination" composed entirely of SDHV indoor units must be used for testing and rating. However, such a system would be certified as a different basic model. 80 FR 69278, 69287 (Nov. 9, 2015).

In the November 2015 SNOPR, DOE noted that multi-split systems consisting of a model of outdoor unit paired with models of non-ducted or short-ducted units should meet the energy conservation standards for split-system air conditioners or heat pumps, while systems consisting of a model of outdoor unit paired with models of SDHV indoor units should meet SDHV standards. DOE also proposed requirements for models of outdoor units that were rated and distributed in combinations that span multiple product classes to be tested and certified

[7] The November 2015 SNOPR defined a single-zone-multiple-coil split system as representing a split system that has one outdoor unit and that has two or more coil-only or blower coil indoor units connected with a single refrigeration circuit, where the indoor units operate in unison in response to a single indoor thermostat. In this final rule, DOE has adopted the term multi-head mini-split system instead.

as compliant with the applicable standard for each product class. Even if a manufacturer would sell a combination including models of both SDHV and other non-ducted or short-ducted indoor units, DOE proposed that the manufacturer should not provide a mixed rating for such combinations. 80 FR 69278, 69287–88 (Nov. 9, 2015).

Use of Term "Short-Ducted"

DOE received several comments regarding its use of short-ducted systems as well as requests for low-static and mid-static terminology and comments regarding conventional ducted systems. Many of these systems and ESP requirements were recommended as part of the CAC/HP ECS Working Group term sheet and will be discussed in a separate notice.

In this final rule, DOE has not adopted use of the term short-duct and instead refers only to ducted units.

Mixed Represented Values for SDHV and Other Indoor Units

Several stakeholders commented on whether they supported represented values for mixed multi-split systems including models of both SDHV and non-ducted or ducted indoor units, and if so, how they should be rated and whether the SDHV or split-system standard would be most appropriate.

Nortek commented that some manufacturers publish ratings in the AHRI Directory for SDHV and non-ducted as an average value and that it is appropriate to maintain this practice for this product as it is for the mixed (ducted and non-ducted) indoor multi-split ratings. (Nortek, No. 58 at p. 13)

Unico commented that they publish multi-split ratings for SDHV indoor units, non-ducted indoor units and a mixture of SDHV and non-ducted indoor units. The mixed rating is calculated as an average of the other two, which are based on tests. This is the same procedure used for ducted ("short-ducted") and non-ducted indoor units. Unico requested the same consideration as all other manufacturers that have mixed (ducted and non-ducted) indoor multi-split ratings. (Unico, No. 63 at p. 3)

UTC/Carrier questioned whether there is any data available on the frequency of application of mixed SDHV and non-ducted, ducted or short duct unit systems to determine the need for a separate system rating. Lacking this data, UTC/Carrier recommended not supporting mixed multi-split system ratings for these systems. (UTC/Carrier, No. 62 at p. 4)

Goodman agreed that SDHV should not be intermixed with non-ducted or other ducted indoor units, and that SDHV ICMs should be required to rate and certify such systems based upon the external static pressure associated with the SDHV indoor units. (Goodman, No. 73 at p. 13–14)

Unico agreed with DOE that the SDHV test standard is appropriate for testing the multi-split SDHV indoor units. However, Unico asserted that, in doing this, it is not necessary to apply a standard for the mixed indoor combinations since the ratings are based on other ratings that already meet their appropriate standard. (Unico, No. 63 at p. 3)

NEEA and NPCC supported the rating and certification of systems that are distributed in combinations that span more than one product class (such as multi-split and SDHV) and stated that these systems must be tested and rated so as to meet the standards for all product classes represented by the various available combinations. NEEA and NPCC suggested that each class rating be listed separately, in accordance with the testing and rating requirements for that class, and be so identified in the ratings documentation. (NEEA and NPCC, No. 64 at p. 4)

After reviewing the comments, DOE has determined that given that current industry practice includes mixed represented values for SDHV and other non-ducted or ducted indoor units, DOE will explicitly allow these mixed represented values based on an average of the represented values for each of the homogenous indoor systems. DOE has clarified this in 429.16. As noted in the November 2015 SNOPR, SDHV represented values must be a separate basic model. Any represented values for a mixed system including SDHV and another style of unit (non-ducted or ducted) must be in the same basic model as the SDHV model.

Ability To Test Mixed Systems

Several stakeholders commented on whether they supported having the ability to test mixed systems (*i.e.*, systems including both non-ducted and ducted indoor units) using the test procedure rather than using an average of the other tested systems.

UTC/Carrier did not support mixed system ratings nor test averaging due to consumer confusion, proliferation of ratings, and too many permutations. (UTC/Carrier, No. 62 at p. 4) The California IOUs commented that for all types of split systems, it is important to not have averaged ratings and cited as an example that, for the California Building Energy Efficiency Code (Title 24), the rating of the system being installed is needed to demonstrate compliance. For incentive programs managed by Energy Efficiency Program Administrators such as the California IOUs, calculation and tracking of energy savings require that the installed system be known and its rating is available. (California IOUs, No. 67 at p. 3)

AHRI and Nortek commented that averaging of ducted and non-ducted ratings has been a long-standing industry practice. According to AHRI and Nortek, the kind of indoor ducted unit should be identified as part of the rating so that the mixed ratings could then be based on ratings for the specific kinds of indoor units. (AHRI, No. 70 at p. 16; Nortek, No. 58 at p. 13)

In response to UTC/Carrier, DOE notes that given the test requirements to make representations for individual combinations other than the "tested combination"(as discussed later in this section), and the limited amount of permutations currently listed in the AHRI directory, proliferation of represented values is not expected. In response to the California IOUs, DOE notes that the averaged represented values are based on represented values for kinds of individual systems (*i.e.*, ducted or non-ducted). As a result, an additional averaged represented value does not take away the availability of non-averaged represented values.

AHRI and Nortek also commented that, in industry practice, multi-split ratings with mixed indoor unit types are the numerical average of the ratings for each of the homogeneous indoor systems. They stated that the most common mixture is ducted and non-ducted indoor units. They asserted that there is no test procedure that could adequately test these combinations. (AHRI, No. 70 at p. 16; Nortek, No. 58 at p. 13)

Unico did not support testing mixed multi-split systems and commented that there is no adequate test procedure. Unico commented that using a numerical average of the individual (all ducted or all non-ducted) ratings is the best method to develop a rating for a mixed multi-split system. (Unico, No. 63 at p. 3)

Rheem commented that manufacturers should be permitted to test mixed systems instead of using an average to capture the interaction of the compressor with the multiple styles of indoor units. (Rheem, No. 69 at p. 5)

NEEA and NPCC commented that, given that the rating method for mixed multi-split systems will almost invariably produce a rating that is unrelated to how they actually operate in the field, they see no value in additional testing. However, NEEA and NPCC have no objection to manufacturers testing such systems if the manufacturers believe the ratings would be better or more reliable with additional testing. (NEEA and NPCC, No. 64 at p. 4)

DOE acknowledges that testing mixed systems could capture interactions not captured in an average; however Rheem did not provide suggestions for how to develop such a test procedure. Given that several other stakeholders believe there is not currently an adequate test procedure to do so, DOE declines to add one at this time.

Options for Averaging

Several stakeholders commented on whether they support determining represented values for mixed systems using other than a straight mean, such as a weighting by the number of non-ducted or short-ducted units.

Unico did not support weighting mixed multi-split systems. Unico commented that indoor units are made in various sizes so the number of indoor units is not indicative of the load split. In addition, Unico stated that indoor units are designed to provide a range of capacities so the load split is dependent mostly on the application rather than the indoor unit size. (Unico, No. 63 at p. 3)

NEAA and NPCC expressed ambivalence regarding the use of weighting by the number of ducted and non-ducted units in the system. They asserted that any alignment of the actual performance of such multi-zone variable capacity systems in the field and their weighted ratings would be purely accidental. (NEEA and NPCC, No. 64 at p. 4)

Given the lack of interest in weighting mixed systems, DOE will continue to allow mixed represented values only as a straight average of two individual systems represented values containing homogenous kinds of indoor units (*i.e.*, non-ducted, ducted, or SDHV) tested with the appropriate method of test in the DOE test procedure.

Determining Represented Values for Specific Individual Combinations

Several stakeholders commented on whether DOE's proposed definition in the June 2010 NOPR for "tested combination" would be appropriate for determining represented values for specific individual combinations, or whether manufacturers prefer more flexibility, such as ability to test more than 5 indoor units. See 75 FR 31223, 31231 (June 2, 2010).

UTC/Carrier commented that rating multi-split systems with more than 5 units is unnecessary, because all manufacturers offer indoor units with a nominal capacity of up to at least 12,000 BTU/hr. (UTC/Carrier, No. 62 at p. 5)

Mitsubishi commented that the original intent of the proposed "tested combination" definition was to provide variable-speed multi-split (VSMS) system manufacturers with a method to provide efficiency and capacity ratings that would be representative of all the combinations associated with a specific outdoor unit. Mitsubishi stated that DOE based the "tested combination" concept on the fact that the outdoor unit is the primary driver for efficiency and capacity and that DOE recognized that, if a manufacturer had "specific" combinations that had higher efficiencies than the "tested combination," then the manufacturer could test and rate that "specific" combination and enter it into the AHRI VSMS Directory of Certified Products. Mitsubishi recommended that DOE continue this process because it provides the VSMS manufacturer with the best opportunity to highlight top-performing combinations. (Mitsubishi, No. 68 at p. 3)

Unico supported the proposed DOE definition of "tested combination" and stated that there is no need to rate individual combinations unless the manufacturer chooses to rate all possible combinations (for example, if a manufacturer has a limited number of indoor models). Unico commented that single-split systems (one indoor unit) using the same outdoor unit used for multi-split systems should continue to be rated individually. (Unico, No. 63 at p. 4)

NEEA and NPCC acknowledged that combinations that might fall outside the current definition of "tested combination" systems do exist and are installed on a regular basis. The testing burden would be relatively small, as only the largest-capacity systems are capable of operating with more than 5 indoor units. (NEEA and NPCC, No. 64 at p. 4)

AHRI and Nortek commented that they do not believe the tested combination approach is appropriate for rating specific individual models. (AHRI, No. 70 at p. 16; Nortek, No. 58 at p. 13)

Rheem commented that the benefits of mix match ratings for multi-split systems are the same as those provided by mix match ratings for split systems. Rheem stated that consumers expect the ratings provided by DOE to reflect the operation of the system in their home and concluded that outdoor units should be rated to the worst case scenario and manufacturers should use an AEDM to determine the other combinations of indoor and outdoor units. On the other hand, DOE notes that Rheem also commented that a configuration that represents the highest sales volume should be established for multi-split systems. (Rheem, No. 69 at p. 5)

After reviewing the comments, DOE maintains its proposal to allow manufacturers to rate individual combinations as additional basic models beyond the required tested combinations. DOE agrees with Rheem and Mitsubishi that consumers and utilities often find benefit for having represented values for a wide variety of combinations that are available for installation.

DOE also agrees with Unico that single-split systems (one indoor unit) using the same outdoor unit used for multi-split systems must continue to be rated individually.

Sample Size

Several stakeholders commented on DOE's request for information and data on manufacturing and testing variability associated with multi-split systems that would allow it to understand how a single unit may be representative of the population and what tolerances would need to be applied to represented values based on a single unit sample in order to account for variability.

Lennox commented that multi-split products are subject to the same type of variability as a conventional unit in areas such as compressor variation, coil performance variation, charging, airflow, expansion device, etc. Lennox did not support an allowance for OUM manufacturers of multi-split products to be rated based on a single unit test while OUM manufacturers of conventional products are required to test a minimum of two samples to meet statistical confidence levels. Lennox asserted that all OUM-manufactured products should be required to meet the same minimum test requirements. (Lennox, No. 61 at p. 14)

Mitsubishi and Rheem also recommended that the ratings be established based on the testing of at least two samples. (Mitsubishi, No. 68 at p. 3; Rheem, No. 69 at p. 6)

The California IOUs commented that, in addition to manufacturing variances, controls software creates an additional source of variability in the performance of multi-split systems. The California IOUs asserted that software drives the performance of these variable capacity units based on the input from indoor and outdoor sensors. They stated that, until DOE-vetted data is available for these controls, the use of results from a single unit test for rating is inadvisable. (California IOUs, No. 67 at p. 4)

Unico commented that a single unit test is adequate provided the manufacturer rates a system conservatively. Specifically, Unico said that a manufacturer should not be permitted to rate a product directly using the result of the single test; instead, the manufacturer can generate a rating from a single test through derating the measured performance. Unico gave the example that the rated capacity and efficiency of a system should be at least 95 percent less than the single test result. If two or more tests are conducted, then Unico suggested that the rating could be the mean value or less. (Unico, No. 63 at p. 4)

Goodman suggested that, if DOE mandates that ratings for a single given kind of air conditioner (ducted, non-ducted or mixed) be based on two sample systems, then OUMs should be able to use AEDMs to rate some of the kinds of systems. Goodman stated that, because many multi-split and multi-head mini-split systems use the same indoor products for multiple sizes (*e.g.*, a 2-ton system may use two 1-ton indoor units while a 3-ton system may use three of the exact same 1-ton indoor units), a method to use an AEDM should be developed for rating non-tested systems. Goodman gave the example that, if one OUM chose to test two sample systems of non-ducted indoor units, it should be able to rate ducted and mixed systems based on an AEDM. Goodman asserted that, if the OUM chose to have a single rating for all combinations of ducted indoor units, then the AEDM would obviously have to be used to rate the combination of ducted indoor units with the lowest efficiency rating. Goodman gave a contrasting example that, if another OUM chose to rate multiple different combinations of ducted indoor units, then each combination would be rated using an AEDM. (Goodman, No. 73 at p. 13)

AHRI and Nortek recommended that DOE maintain consistency with its AEDM approach used in the commercial HVAC equipment such that, at a minimum, manufacturers would test two low static units and apply the AEDM to derive ratings for the high static and mixed ratings. (AHRI, No. 70 at p. 16; Nortek, No. 58 at p. 13)

As previously noted, Rheem stated that outdoor units should be rated to the worst case scenario and manufacturers should use an AEDM to determine the other combinations of indoor and outdoor units. (Rheem, No. 69 at p. 5)

After reviewing the comments, DOE found that commenters did not provide data on manufacturing and testing variability that would support DOE moving to a single unit sample approach. In response to Goodman, AHRI, Nortek, and Rheem, DOE notes that DOE's current regulations require that represented values for a single kind of system be based on testing a sample of at least two units representative of production units. For these reasons, DOE is not moving to a single unit sample approach and also declines to require only the represented values of a single kind of system to be based on testing while allowing other kinds of systems to be represented using an AEDM, given that the adopted testing requirements do not increase test burden compared to the current regulations. DOE is allowing use of an AEDM for off-mode, as discussed in section III.B.8.

Summary

In summary, Table III.2 provides an example of allowable represented values for multi-split, multi-circuit, and multi-head mini-split systems.

TABLE III.2—EXAMPLE REPRESENTED VALUES FOR MULTI-SPLIT SYSTEMS

Basic model	Individual model (outdoor unit)	Individual model(s) (indoor unit)	Sample size	Ducted rep. value	Non-ducted rep. value	Mix rep. value (D/ND)	SDHV rep. value	Mix rep. Value (SDHV/D)	Mix rep. value (SDHV/ND)
ABC	ABC	***	4	14	15	14.5			
ABC–ND1	ABC	2–A123; 3–JH746	2		17				
ABC–SDHV	ABC	***	6				11.5	12.75	13.25

d. Basic Models Rated by ICMs

In the November 2015 SNOPR, DOE proposed to require ICMs to test and provide certified ratings for each model of indoor unit (*i.e.*, basic model) with the least-efficient model of outdoor unit with which it will be paired, where the least-efficient model of outdoor unit is the outdoor unit in the lowest-SEER combination as certified by the OUM. If more than one model of outdoor unit (with which the ICM wishes to rate the model of indoor unit) has the same lowest-SEER rating, the ICM may select one for testing purposes. ICMs must rate all other individual combinations of the same model of indoor unit, but may determine those ratings through testing or use of an AEDM. 80 FR 69278, 69288 (Nov. 9, 2015).

AHRI, ADP, Lennox, Mortex, and First Co. commented that DOE's proposed changes to the definition of "basic model" with respect to ICMs, along with the proposed requirement to test at least one combination within each basic model, presents a significant testing burden to ICMs. (First Co., No. 56 at p. 1; AHRI, No. 70 at p. 3; ADP, No. 59 at p. 1; Lennox, No. 61 at p. 4) In order to avoid this burden, AHRI, ADP, Lennox, and Mortex recommended DOE adopt and define the term "Similarity Group," a group of ICM basic models within a defined range of coil geometries, with performance substantiated by the same validation test, and require testing of a Similar Group rather than testing of each basic model. The range of coil geometries within a Similarity Group would be defined by: face area within ± 1 square feet (*e.g.* 2–4, 4–6, etc.), fin material (*e.g.* aluminum, copper), fin style (*e.g.* wavy, louvered), fin density within ± 1 fin per inch (*e.g.* 10–12, 13–15, etc.), number of rows, tube pattern (*e.g.* 1 × 0.625, 1 × 0.75, etc.), tube size (*e.g.* outer diameter for round tube, channel characteristic size for microchannel), and tube internal enhancement (*e.g.* smooth or enhanced). (AHRI, No. 70 at p. 5; ADP, No. 59 at p. 2–3; Mortex, No. 71 at p. 4–6; Lennox, No. 61 at p. 5) AHRI, ADP, Mortex, and Lennox noted that in the proposed framework, Similarity Groups may span AC and HP operations as well as coil-only and blower coil combinations. (AHRI, No. 70 at p. 6; ADP, No. 59 at p. 3; Mortex, No. 71 at p. 6; Lennox, No. 61 at p. 6)

However, the commenters noted that the proposed Similarity Group concept would not replace the concept or definition of an ICM basic model. Instead, a Similarity Group would be a group of basic models for defining AEDM validation test requirements, and the ICM basic model would still be used for other aspects of the certification and enforcement scheme as noted in the SNOPR. (AHRI, No. 70 at p. 7; ADP, No. 59 at p. 4; Mortex, No. 71 at p. 7; Lennox, No. 61 at p. 7)

With regard to DOE's proposed definition of basic model for ICMs, Lennox requested that tube wall thickness not be required as part of a certification report as to protect business sensitive design information. (Lennox, No. 61 at p. 3)

UTC/Carrier, Rheem, and the Joint Advocates of ACEEE, NRDC, and ASAP supported DOE's proposal for ICMs to test each model of indoor unit with the lowest-SEER model of outdoor unit that is certified as a part of a basic model by an OUM. (UTC/Carrier, No. 62 at p. 6; Rheem, No. 69 at p. 6; ACEEE, NRDC, ASAP, No. 72 at p. 2) UTC/Carrier appreciated leveling the playing field closing this loophole advantage for ICMs. (UTC/Carrier, No. 62 at p. 6)

On the other hand, AHRI, ADP, Lennox, and Mortex commented that testing is necessary to validate product performance and each ICM's AEDM, but that the requirement to test every basic model presents an excessive burden on ICMs. (AHRI, No. 70 at p. 3; ADP, No. 59 at p. 1; Mortex, No. 71 at p. 3; Lennox, No. 61 at p. 4) First Co. also commented that the result of DOE's proposal is excessive testing. (First Co., No. 56 at p. 1)

AHRI analyzed data from the AHRI Directory of Certified Product Performance, considering air conditioning, heat pump, coil-only and air handler ratings, but omitting due to time limitations air flow, external static pressure and power input. The results indicated that each ICM has between 287 and 604 basic models for which they would have to bear the cost of testing, which AHRI estimated would increase several-fold if accounting for the additional parameters. AHRI stated that it used an estimate of testing costs for one system at an independent lab of $7,400 for AC and $10,000 for HP because many ICMs do not have their own labs. Therefore, by AHRI's calculations, the ICM with the smallest number of basic models from their analysis would be required to perform 574 tests for an estimated $5,740,000 in testing costs. In addition, a test takes approximately one day, so 574 tests would take approximately two years to complete. (AHRI, No. 70 at p. 4–5)

For these reasons, AHRI, ADP, Mortex, and Lennox recommended that DOE require all ICM ratings to be based on an AEDM, where the ICM would test and rate at least one combination of an outdoor unit with the lowest SEER that complies with standard per Similarity Group. They also recommended that the ICM perform at least one full-system test per Similarity Group, or if the ICM was rating HP combinations, the ICM test one-third of the Similarity Groups with HP systems in both heating and cooling modes; and certify all combinations before they are distributed in commerce. (AHRI, No. 70 at p. 5–6; ADP, No. 59 at p. 2–3; Mortex, No. 71 at p. 4–6; Lennox, No. 61 at p. 5) AHRI, ADP, Mortex, and Lennox noted that applying this scheme to the AHRI Directory results in between 26 and 64 tests for the same ICM companies analyzed above. AHRI, ADP, Mortex, and Lennox believed that their suggested method provides for an extremely high level of AEDM validation while creating a manageable testing burden on ICMs. (AHRI, No. 70 at p. 6; ADP, No. 59 at p. 3–4; Mortex, No. 71 at p. 6; Lennox, No. 61 at p. 6–7)

First Co. and Unico also supported AHRI's approach. First Co. commented that the use of a Similarity Group would be a more realistic and workable approach that would enable ICMs to reduce testing for comparably performing indoor coils and to validate performance for the group by the same test. (First Co., No. 56 at p. 1) Unico recommended that DOE require the OUM to have at least two tests for each basic model (the outdoor unit) and the ICM to have at least one test from each Similarity Group in order to validate the AEDM. Unico also noted that the ICM testing requirements would increase significantly compared to what they are today even under AHRI's suggestion. (Unico, No. 63 at p. 4–5)

After reviewing the comments, DOE agrees with the manufacturers that its proposed definition of basic model with respect to ICMs, combined with the proposed testing requirements, may result in a significant test burden for ICMs. In order to balance the burden of testing with the risk of enforcement action, DOE is adopting aspects of the suggested "Similarity Group" as a replacement to its proposed definition of basic model. Hence, the basic model definition for ICMs established in this final rule includes all individual combinations having comparably performing indoor coil(s) [plus or minus one square foot face area, plus or minus one fin per inch fin density, and the same fin material, tube material, number of tube rows, tube pattern, and tube size].

DOE also agrees that manufacturers should test one combination per what the AHRI and manufacturer calls "Similarity Group", and what DOE will call a basic model for ICMs. However, DOE does not agree that testing should only serve to validate AEDMs. In order to accurately rate these non-engineered-to-order products by capturing the variability in the manufacturing processes, all combinations required to be tested must be tested according to the sampling plan in 429.16, which generally requires a sample of at least two units of the basic model. DOE notes that AHRI's calculation of burden assumes that ICMs have not been testing under current regulations, which is not consistent with existing DOE regulations. In addition, by changing the proposed definition of basic model to align with the similarity group proposal, DOE has significantly reduced the proposed test burden on ICMs.

DOE notes that because basic models do not span product classes, unlike in the stakeholders' proposal, each Similarity Group is limited to either air conditioners or heat pumps; however, in response to the stakeholders' request that only one-third of Similarity Groups need be tested in both cooling and heating mode, DOE is not requiring testing for basic models of heat pumps as long as an equivalent basic model of air conditioner has been tested.

DOE also notes that while off-mode power consumption requirements apply to ICMs, the represented values for off-mode may be based on the results of testing by the OUM according to the requirements in 429.16.

In response to Lennox's request to remove tube wall thickness from the definition of basic model, DOE notes that the Similarity Group requirements DOE is adopting in its basic model definition for ICMs do not include tube wall thickness; in addition, as noted in section III.A.1.c, DOE did not propose that manufacturers report this information regardless of its inclusion in this definition.

e. Single-Package Systems

In the current regulations, 10 CFR 429.16(a)(2)(i) states that each single-package system must have a sample of sufficient size tested in accordance with the applicable provisions of Subpart B. In the November 2015 SNOPR, DOE proposed that the lowest SEER individual model within each basic model must be tested. DOE expected that in most cases, each single-package system would represent its own basic model. However, based on the definition of basic model in section III.A.1, this may not always be the case. DOE noted that regardless, AEDMs do not apply to single-package systems—manufacturers may either test and rate each individual single-package system or, if multiple individual models are assigned to the same basic model per the proposed requirements in the basic model definition, test only the lowest SEER individual model within the basic model and use that to determine the

rating for the basic model. 80 FR 69278, 69288 (Nov. 9, 2015).

DOE also proposed to specify this same requirement for space-constrained single-package air conditioners and heat pumps. 80 FR 69278, 69288 (Nov. 9, 2015).

DOE requested comment on the likelihood of multiple individual models of single-package units meeting the requirements proposed in the basic model definition to be assigned to the same basic model. DOE also requested comment on whether, if manufacturers are able to assign multiple individual models to a single basic model, manufacturers would want to use an AEDM to rate other individual models within the same basic model other than the lowest SEER individual model.

In response, Lennox commented that the use of basic models that meet the defined requirements should not be restricted to split-system products because allowing groupings in a basic model may allow the use of AEDMs for single-package products to reduce testing burden. (Lennox, No. 61 at p. 14) UTC/Carrier supported that different options would be assigned to [individual models within] the same basic model and supported the ability to have unique ratings for units with different options without additional testing. (UTC/Carrier, No. 62 at p. 6–7)

JCI stated that it, in general, would prefer to test single-package units, especially the single-phase models. For 3-phase (commercial) products, JCI would opt to utilize an AEDM. (JCI, No. 66 at p. 15)

Rheem disagreed that manufacturers should not be allowed to use AEDM to rate packaged units; Rheem would want to use an AEDM to rate other individual models within the basic model for packaged units. (Rheem, No. 69 at p. 3, 6–7)

In response to these comments, DOE is modifying the regulations to permit the use of AEDMs for models of single-package units in cases where multiple individual models are assigned to the same basic model. The lowest SEER individual model in the basic model still will be required to be tested. DOE believes that the lowest SEER model will typically be similar to the highest sales volume model.

f. Replacement Coils

In the November 2015 SNOPR, DOE noted that its proposed definition of "indoor unit" refers to the box rather than just a coil. Accordingly, legacy indoor coil replacements and uncased coils would not meet the definition of indoor unit of a central air conditioner or heat pump. Hence, they would not need to be tested or certified as meeting the standard. 80 FR 69278, 69289 (Nov. 9, 2015).

DOE received several comments in response to this proposal. These comments have been addressed as part of DOE's definition of "indoor unit," discussed in section III.A.2.

g. Outdoor Units With No Match

For split-system central air conditioners and heat pumps, current DOE regulations require that manufacturers test the condensing unit and "the evaporator coil that is likely to have the largest volume of retail sales with the particular model of condensing unit" (commonly referred to as the highest sales volume combination or HSVC). 10 CFR 4429.16(a)(2)(ii). Effective January 1, 2010, the U.S. Environmental Protection Agency (EPA) banned the sale and distribution of those central air conditioning systems and heat pump systems that are designed to use HCFC–22 refrigerant. 74 FR 66450 (Dec. 15, 2009). EPA's rulemaking included an exception for the manufacture and importation of replacement components, as long as those components are not pre-charged with HCFC–22. *Id.* at 66459–60.

Because complete HCFC–22 systems can no longer be distributed, manufacturers inquired how to test and rate individual components. Because the EPA prohibits distribution of new HCFC–22 condensing unit and coil combinations (*i.e.,* complete systems), there is no such thing as a HSVC, and hence, testing and determination of represented values of new HCFC–22 combinations cannot be conducted using the existing test procedure.

Accordingly, DOE proposed a test procedure that may be used for determining represented values and certifying the compliance of these outdoor units. DOE proposed to specify coil characteristics to be used when testing models of outdoor units that do not have a HSVC. Specifically, these requirements included limitations on indoor coil tube geometries and dimensions and coil fin surface area. In the November 2015 SNOPR, DOE proposed to require the normalized gross indoor fin surface (NGIFS) calculated for the indoor unit used for the test to be no more than 1.15. 80 FR 69278, 69289 (Nov. 9, 2015). NGIFS is the fin surface area divided by the unit's capacity. By imposing a limit on this value, the size of the indoor coil would be consistent with older model designs that would likely be installed in the field and that do not include a common design approach for improving efficiency, *i.e.* use of larger coils. Attaining a given efficiency level when testing a combination having a lower-NGIFS indoor unit requires use of a more efficient outdoor unit to compensate. These outdoor unit models must meet applicable Federal standards when tested with the specified indoor units.

General Comments

AHRI, URI, Nortek, HARDI, Goodman, UTC/Carrier, Rheem, and JCI submitted comments against adding the test procedure provisions for outdoor units with no match. (AHRI, No. 70 at p. 2; United Refrigeration, Inc., No. 60 at p. 3–4; Nortek, No. 58 at p. 2; HARDI, No. 57 at p. 2; Goodman, No. 73 at p. 17–18; UTC/Carrier, No. 62 at p. 22–23; Rheem, No. 69 at p. 3; JCI, No. 66 at p. 5)

Nortek and UTC/Carrier expressed concern that offering a test procedure for units with no match could potentially open up a larger loophole than what DOE is attempting to fix with this proposal. (Nortek, No. 58 at p. 2; UTC/Carrier, No. 62 at p. 23) Similarly, Nortek and HARDI noted that there have been no instances of a company trying to sell an outdoor unit without match that failed to meet existing standards. (Nortek, No. 58 at p. 2; HARDI No. 57 at p.1)

Conversely, Lennox, NEEA, NPCC, and the Joint Advocates of ACEEE, NRDC and ASAP concurred with DOE's proposal to require testing and rating of dry-ship units. (Lennox, No. 61 at p. 2; NEEA and NPCC, No. 64 at p. 3; ACEEE, NRDC and ASAP, No. 72 at p. 2)

DOE acknowledges these comments and responds to particular concerns about its proposal in subsequent sections.

URI commented that the Department's proposal not only would ban the manufacture of new replacement units, it also would impose significant cost burdens on manufacturers and distributors of replacement HCFC–22 components. URI suggested that under DOE's proposal, replacement unit manufacturers that tested and certified HCFC–22 products in good faith reliance of the various test procedure guidance documents issued by the Department would be unable to advertise or sell these units. URI requested that DOE evaluate the impacts of replacing rather than repairing and maintaining an HCFC–22 unit, particularly on those consumers who live on a fixed income, and that DOE assess whether, as a practical matter, this test procedure amendment would adversely impact the availability of replacement components for the installed base of HCFC–22 units.

(United Refrigeration, Inc., No. 60 at p. 8–9)

In response to URI, DOE's approach in developing the test procedure requirements for outdoor units with no match is based on the concept that the test should produce results that measure energy efficiency during a representative average use cycle. (42 U.S.C. 6293 (b)(3)) Further, the test procedure addresses the fact that these units have no match. Unmatched outdoor units are primarily used as a low-cost alternative to replacement of an entire legacy system when the outdoor unit is no longer operational. Specifically, in such installations, only the outdoor unit would be replaced, rather than both the outdoor unit and indoor unit. In addition, such units would be installed using HCFC–22, which is no longer legal for use in new systems.

DOE developed this amended test procedure with the goal of ensuring that the unmatched outdoor unit should be compliant when tested with an indoor unit that is representative of indoor units in the field with which the outdoor unit could be paired. DOE's goal was to provide a method of test, consistent with the current standards, that meets the statutory requirement of measuring a representative average use cycle. Hence, the indoor unit specifications are intended to represent among the lesser-efficient units that could be paired with a given outdoor unit with no match. DOE believes this approach is consistent with the requirement that the represented value for a basic model reflect the performance of the poorest-performing model that is part of the basic model.

In response to URI's comments regarding evaluation of cost burdens and impacts of the test procedure change, DOE notes that its energy conservation standard rulemakings have already evaluated the costs and benefits of specific efficiency levels for central air conditioners and heat pumps. This test procedure provides a mechanism of assessing the performance of unmatched outdoor units, which can then be used to provide a reasonable level of assurance that all field-match combinations of the new, unmatched outdoor units will achieve the established efficiency levels. DOE is now adopting the November 2015 SNOPR approach for testing and determining represented values for unmatched outdoor units based on stakeholder comment.

Goodman had concerns about unforeseen and unintended consequences when moving forward with alternate refrigerants at some date in the future, especially as the requirements for applying air conditioners and heat pumps with these likely A2L refrigerants is unknown. Goodman stated that it expects that, with currently known alternate refrigerants, there may be a need for certain low-income and elderly consumers to have cost-effective replacement air conditioners. Goodman also noted that it has apprehensions that providing a test procedure provides a path for HCFC-22 "dry ship" products to continue in the marketplace. (Goodman, No. 73 at p. 18)

DOE responds that it cannot set test procedure requirements based on speculation about the potential cost impact of future refrigerant changes on air-conditioning product costs. In response to the second comment, DOE points out the suggestion of commenters that DOE's proposal will limit sales of these units—URI for example indicated that the test procedure will effectively end the manufacturer of such components (URI, No. 60 at p. 2). While DOE does not agree with this assessment, DOE also does not believe that the approach will increase manufacturer of such units.

DOE Authority

In its comments, JCI stated that it was not certain that DOE has the authority under EPCA to create a test procedure to allow for units with no match. (JCI, No. 66 at p. 6)

URI commented that the DOE's November 2015 SNOPR test procedure, if finalized, would violate EPCA, as amended, as well as the Administrative Procedure Act. URI asserted that DOE had proposed a restriction on representations for already manufactured and certified units and that the proposal would invalidate the expectation-backed investments of manufacturers and distributors, constituting a violation of the Fifth Amendment to the U.S. Constitution. URI characterized DOE's proposal as an effective ban on condensing units using HCFC–22 that also would impose significant cost burdens on consumers. (United Refrigeration, Inc., No. 60 at p. 2, 3–5)

URI also commented that a test procedure change for replacement HCFC–22 systems is not needed, and that DOE has not articulated a valid basis for its proposal, as required by EPCA. URI argued that DOE's proposed test procedure change for replacement HCFC–22 systems would violate the Administrative Procedure Act, which requires an agency to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" 5 U.S.C. 553, *Motor Vehicle Manufacturers Ass'n* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29 (1983)). URI said that the DOE did not only fail to explain why the change to the test procedure for replacement units is necessary, but also failed to acknowledge the de facto ban it is proposing for such units. URI argued that DOE does not have the authority to impose a ban on replacement units and asserted that, even assuming that DOE has the authority to impose such a ban, that EPCA prohibits the Department from implementing such an action through a test procedure amendment. (United Refrigeration, Inc., No. 60 at p. 5)

URI also argued that DOE could not circumvent the prohibition against retroactive effect by belatedly "clarifying" that HCFC–22 condensing components are basic models in and of themselves, even assuming that the EPCA would allow such a comprehensive revision of the "basic model" via test procedure rulemaking. (United Refrigeration, Inc., No. 60 at p. 9)

Contrary to URI's assertions, DOE is not, in this rule, imposing a de facto ban on condensing units using HCFC–22. DOE is amending a test procedure and, in accordance with the applicable provisions of EPCA, is ensuring that the test procedure is reasonably designed to measure the energy efficiency and energy use of unmatched outdoor units in a manner that is comparable to that of other complete systems. DOE clearly articulated the basis for its proposal and has explained again here the need for a test procedure applicable to unmatched outdoor units. Regarding the amended definition of basic model in today's rule, DOE is not proposing that the definition, as amended, be applied retroactively.

Test Procedure Details Including Specification of Indoor Unit

Stakeholders provided a range of comments regarding whether the proposed details of the test for outdoor units with no match are suitable.

Nortek, Ingersoll Rand, and Goodman questioned how DOE determined the proposed value for NGIFS and that the default coefficient of cyclic degradation should be used for these units, and requested that DOE provide supporting evidence. (Nortek, No. 58 at p. 2; Ingersoll Rand, No. 65 at p. 12; Goodman, No. 73 at p. 18)

URI commented that it is simply impossible for any HCFC–22 replacement component to meet the 13

SEER standard using the amended test procedure, stating that the proposed coil size limitation makes no sense as such coils were used in HCFC–22 units rated to 10 SEER. URI also asserted that the proposed coefficient of cyclic degradation improperly excludes units that use thermostatic expansion valves, rather than orifice tubes, to control the flow of refrigerants, thus penalizing the efficiency rating approximately 6% (for example, a 13 SEER unit with a thermostatic expansion valve would instead rate at 12.2 SEER). (United Refrigeration, Inc., No. 60 at p. 2, 7)

Goodman noted that by specifically choosing the 1.15 maximum NGIFS (especially without deference to the type of fin used), DOE is choosing indoor coils that are smaller, but not smallest, in size. Goodman commented that based on the information it has, the value of 1.15 would favor one manufacturer, which has all of its "no-match" units rated with indoor coils having less than 1.15 NGIFS, while at least two manufacturers have zero "no-match" units rated with indoor coils having less than 1.15 NGIFS. Goodman commented that DOE should not ignore fin surface type in the NGIFS calculation, and that if DOE's intent is intent is to specify an indoor coil size such that it is virtually impossible for an OUM to have an outdoor unit with no match that can achieve 13 or 14 SEER as a system, then DOE should choose an NGIFS in the range of 0.90 or less using the proposed NGIFS formula. (Goodman, No. 73 at p. 18–19)

JCI commented for a 10 SEER product, the value of NGIFS of 1.15 is too small. The NGIFS of 10 SEER products made by JCI was 1.25, and these products will have been out of production for 10 years by the time this SNPOR is effective. JCI said that, at this point, when an outdoor unit fails, approximately 40% to 50% would be 13 SEER plus equipment. A reasonable NGIFS for 13 SEER equipment would be 1.30, which is the average for JCI's 13 SEER HCFC–22 product when the EPA ban on new produced equipment shipped with HCFC–22 took effect in 2010: averaging the 10 SEER and 13 SEER values leaves a value of 1.28. JCI believes this value to be a more representative value for NGIFS and recommends DOE adopt it. (JCI, No. 66 at p. 5–6)

Ingersoll Rand provided data on the 61 HCFC–22 systems that they had on the market before HCFC–22 was phased out. For the HSVCs of these 61 models, the NGIFS ranged from 0.9784 to 1.9082 with a mean of 1.2692 and a standard deviation of 0.2215. Ingersoll Rand recommended a value of 1.75 for the final rule. (Ingersoll Rand, No. 65 at p. 12)

JCI commented that modern heat exchanger technology such as that found in microchannel heat exchangers significantly reduces the refrigerant charge and thus reduces the cycling losses, resulting consistently in degradation coefficient values under 0.10 with piston metering (expansion) devices, or non-bleed TXVs. JCI recommended that rather than requiring use of the default degradation coefficient value, DOE should specify the type of expansion device it believes would be used in the legacy indoor units, which in most instances would be a piston or fixed orifice construction. (JCI, No. 66 at p. 6)

As mentioned above, DOE's approach in developing the test procedure requirements for outdoor units with no match is based on the concept that the test should produce results which measure energy efficiency during a representative average use cycle (see 42 U.S.C. 6293(b)(3)) while also ensuring that they will generally meet the standard. By their nature, however, neither the manufacturer nor DOE knows exactly what the paired system will be. DOE evaluated indoor unit specifications representing units across the spectrum that would likely be paired with the "no match" units. To ensure compliance, DOE proposed indoor unit specifications that it believed to be representative of a less efficient unit that could be paired with the given outdoor unit with no match.

In developing its proposal, DOE developed the indoor unit specifications (1.15 NGIFS and coefficient of cyclic degradation equal to the default) through reverse engineering 13 SEER split-system blower coil air conditioners designed to use HCFC–22. The 1.15 value is representative of the indoor units associated with the evaluated systems. All of these units had single-capacity compressors, and the indoor units had PSC fan motors. Although the NGIFS for these units ranged from 1.0 to 1.7, almost identical to the range of the data provided by Ingersoll Rand, DOE does not feel that establishing an NGIFS range is a valid approach, since this would be equivalent to setting the limit equal to the highest end of the range. In any case, both of these datasets are at odds with URI's claim that the 1.15 NGIFS makes attaining 13 SEER impossible. Regarding JCI's claim that the value is too small, the selected value is for an indoor unit that was part of an HCFC–22 unit rated at 13 SEER, hence it is certainly representative of the indoor units that may be installed in the field. In fact, DOE's selection of 1.15 did not consider the 10 SEER units whose indoor units are still in the field as well. In addition, the actual performance of the non-replaced legacy indoor units, represented in terms of NGIFS, generally will be significantly degraded. Degradation of indoor unit performance can be caused by numerous factors, including foulants coating external coil surfaces, caustic environments attacking fin material and/or fin/tube contact, inadequate air flow, and degraded oil fouling the internal tube surfaces. Consistent with the use of unmatched outdoor units for such system repairs as a low-cost alternative, it is questionable whether installation consistently addresses optimization of the system for operation at the diminished efficiency potential of the degraded legacy indoor unit. Consequently it is expected that laboratory testing of new models of unmatched outdoor units significantly overestimates the efficiency of these units when paired with old legacy indoor units in the field. The proposed maximum NGIFS of the indoor unit to be used in such a test is in the range of the values for legacy indoor units, but, because of the non-optimum field conditions, choosing a value that is an average or median for such legacy indoor units is not representative. Based on all of these considerations, DOE has decided to lower the required NGIFS for the test to 1.0. This level acknowledges degradation of indoor unit performance over time, questions regarding optimization of the indoor/outdoor unit match and of the installation, and that the range of indoor units in the field would also include 10 SEER units. This value is representative of the 13 SEER systems of both DOE's and Ingersoll Rand's datasets. DOE notes that the comments have not shown that this value is unrepresentative of the potential indoor unit pairings of no-match outdoor units. Furthermore, given that DOE believes this value is representative and that an NGIFS range is not a valid approach, DOE does not believe there is a need for AEDM for these units.

DOE understands that the type of fin surface has an impact on coil performance, as Goodman pointed out in its comment. Most of the fins of the evaporator coils of DOE's dataset were enhanced, having lanced or louvered surfaces, so DOE's assessment has considered the possibility that the fin surfaces would be enhanced. DOE believes that selecting the NGIFS limit based on enhanced-fin information is appropriate because any manufacturer conducting such a test would do so using an indoor unit that has enhanced fins, which would provide an advantage to the manufacturers.

DOE notes JCI's comment that when an outdoor unit fails, 40% to 50% of the indoor units would have been rated 13 SEER or higher. This suggests that at least half would have been rated lower than 13 SEER. JCI also suggested that NGIFS might be 0.05 lower for a 10 SEER indoor unit than for 13 SEER. The Ingersoll Rand comment indicates that the NGIFS of their HCFC–22 models on the market prior to the refrigerant's phase-out was as low as 0.9784. Since the 13 SEER standard took effect in 2006, DOE presumes that these units all had a SEER value no lower than 13.

DOE agrees with JCI that advanced heat exchanger technology might improve system efficiency. In particular, microchannel heat exchangers may reduce refrigerant charge sufficiently to reduce degradation of performance associated with unit cycling. However, DOE is not convinced that the expansion devices, be they thermostatic expansion valves, pistons, or fixed-orifice devices, of all legacy indoor units are replaced with orifices optimized for the new paired combination using the intended refrigerant. DOE agrees that a degradation coefficient less than the default value may be achievable in a laboratory test while using a fixed orifice device, but is not convinced that this will consistently be achieved with field-paired combinations. JCI did not comment on the consistency of the replacement of the expansion devices in unmatched outdoor unit installations, so DOE cannot determine how many such installations include expansion devices that are optimized for the outdoor/indoor unit combination. It is reasonable to expect that numerous such installations do not involve installation of an optimized expansion device, since unmatched outdoor units are sold as a low-cost alternative to purchase of an entirely new system, and use of the existing expansion device would also reduce cost. Further, DOE notes that reduction of the cyclic degradation coefficient, as proposed in the November 2015 SNOPR, was based on the observation that most modern systems achieve degradation coefficients well below 0.2. DOE did not intend to assign this same value as the default for outdoor units without a match. Based on the same arguments regarding lack of optimization of the expansion devices, DOE does not believe it is appropriate to adopt the new-test default of 0.2 for these units and therefore is retaining the current degradation coefficient for them at 0.25.

Waiver Process and Change in the Measurement

Nortek, Goodman, and HARDI commented that manufacturers who would like to sell a condensing unit with no match should request a waiver from DOE. (Nortek, No. 58 at p. 2; Goodman, No. 73 at p. 18; HARDI, No. 57 at p. 2)

URI commented that the notice is silent on how the proposed coil limitation or NGIFS will improve the measured energy efficiency of replacement HCFC–22 condensing units and that DOE's view that these units should have been tested pursuant to a waiver doesn't make sense in light of guidance DOE issued in 2010, 2012, and 2014 . URI separately indicated that DOE has not clarified whether the test procedure change will alter the measurement and/or whether the standard would have to be adjusted as required by EPCA. (United Refrigeration, Inc., No. 60 at p. 6)

In response to Nortek, Goodman, and HARDI, DOE notes that the waiver process is a step towards establishing new procedure provisions in the CFR that address the test procedure issues raised by the waiver. In this case, as mentioned by some commenters, at the time of publication of the November 2015 SNOPR, there had been no petitions for waivers for outdoor units with no match. Test procedure waivers are not a long-term solution, however. DOE's regulations require DOE to amend its test procedure to address an issue raised through the waiver process. Therefore, even though DOE has not received any petitions for waivers for outdoor units with no match, DOE has long recognized the difficulty of reconciling the current test procedure language with the reality that manufacturers have no highest sales volume combination due to EPA regulations and proposed a test method to eliminate the regulatory incongruity between EPA's and DOE's regulations. DOE is finalizing a test procedure to eliminate the issue.

In response to URI, DOE acknowledges that its guidance document indicated that an individual condensing unit must meet the current Federal standard when paired with the appropriate other new part to make a system when tested in accordance with the DOE test procedure and sampling plan. However, as noted in the November 2015 SNOPR, generally when a model cannot be tested in accordance with the DOE test procedure, manufacturers must submit a petition for a test procedure waiver for DOE to assign an alternative test method. Nothing in the guidance documents indicated that this would not have been the case for these units.

In response to URI's comment suggesting that measured energy use must improve under a waiver procedure, DOE notes that a test procedure waiver is not intended to impact measured energy efficiency. Instead, a test procedure waiver provides a manufacturer with an alternative method of test that will yield results comparable to the test procedure in the DOE regulations. Test procedures are not a mechanism to impact the efficiency of a product, which is why DOE has carefully evaluated the characteristics of a paired system so as to avoid impacting measured efficiency relative to the current test procedure.

Transition From Coverage Under the Guidance Documents

URI commented that the test procedure would effectively end the manufacture of such components six months after the revised test procedure goes into effect. URI contended that it also would be prohibited from selling or distributing its existing inventory of properly certified and rated HCFC–22 replacement condensing units six months after the effective date because the notice makes clear that "any representations, including compliance certifications," about the energy cost and efficiency of replacement condensing units must be based on the revised test procedure. (United Refrigeration, Inc., No. 60 at p. 2)

URI submitted that DOE should clarify in the preamble and regulatory text of a final test procedure that the restriction on representations does not apply to HCFC–22 condensing units that were manufactured and certified pursuant to the preceding DOE guidance. (United Refrigeration, Inc., No. 60 at p. 2)

In a letter to the Secretary of Energy, Lennox requested DOE to promptly issue guidance to prevent the entry of newly designed 14 SEER HCFC–22 dry-charge products into the southern and southwestern regions that do not meet the requirements of the DOE test procedure. Lennox commented that DOE action on these issues is particularly critical by early 2016, as manufacturers ramp up production for the 2016 summer air-conditioning sales season in that timeframe. (Lennox, No. 61 at p. 2)

Lennox requested DOE include mechanisms in the final rule to facilitate a quick and orderly market transition from legacy dry-shipped outdoor split-system central air conditioners and heat pumps certified to DOE as compliant

that are not rated in accordance with the test procedure final rule by requiring manufacturers to discontinue all non-compliant ratings 180 days after the final rule's publication. (Lennox, No. 61 at p. 2–3)

JCI recommended that no later than February 1, 2016, DOE should issue enforcement guidance stating that DOE will not seek civil penalties or injunctive relief for the distribution in commerce of a dry charged HCFC–22 unit (unit with no match), or for the labeling requirements of that unit, if the unit is manufactured prior to a date that is 30 days after the date of publication of the enforcement guidance. (JCI, No. 66 at p. 7)

On December 16, 2015, DOE issued an enforcement policy stating that it would begin investigating the methods manufacturers were using to rate split-system central air conditioners that do not have a highest sales volume combination. Those investigations are ongoing. DOE also stated that it would seek civil penalties for violations related to units manufactured on or after February 1, 2016, that had not been tested and properly certified as compliant with the applicable standards. As DOE indicated in the policy statement, DOE will continue to use its discretion in determining whether or to what extent penalties are appropriate, including an evaluation of a manufacturer's good faith efforts to comply with the regulations. DOE notes that this test procedure final rule does not have retroactive application; however, the units at issue have been subject to the energy conservation standards and certification requirements since 2006.

DOE also notes that following the close of the comment period for the November 2015 SNOPR, on December 1, 2015, an ex parte meeting occurred between AHRI, manufacturers, and DOE regarding outdoor units with no match. Representatives from Nortek, Mitsubishi, Carrier, Lennox, Trane, Rheem, JCI, ADM, Goodman, and Allied Air attended. During this meeting, the attendees requested that DOE require that ratings of existing dry R–22 units must be discontinued 180 days after the date of the publication of the amended test procedure in the **Federal Register**. (Docket No. EERE–2009–BT–TP–0004–0074) This recommendation indicates that existing ratings for outdoor units with no match are invalid and supports the need for a test procedure as finalized in this notice. DOE is implementing this recommendation consistent with EPCA, as discussed in section III.H.1.

4. Compliance With Federal (National or Regional) Standards

In the November 2015 SNOPR, DOE proposed to add requirements to the relevant provisions of section 430.32 that the least-efficient combination within each basic model must comply with the regional SEER and EER standards. 80 FR 69278, 69290 (Nov. 9, 2015). In addition, as noted in section III.A.1, DOE proposed that if any individual combination within a basic model fails to meet the standard, the entire basic model (*i.e.*, model of outdoor unit) must be removed from the market. In order to clarify the limitations on sales of models of outdoor units across regions with different standards, DOE proposed to add a limitation in section 429.16 that any model of outdoor unit that is certified in a combination that does not meet all regional standards cannot also be certified in a combination that meets the regional standard(s). Further,

Basic model	Individual model # (outdoor unit)	Individual model # (indoor unit)	Certified rep. value (SEER/EER)	Permitted?
AB12	ABC**#**–***	SO123	14.5/12.0	NO.
AB12	ABC**#**–***	SW123	15.0/12.8	
AB12	ABC**#**–***	N123	13.9/11.7	
CD13	CDESO**–*#*	SO123	14.5/12.0	YES.
CD13	CDESW**–*#*	SW123	15.0/12.8	
CD13	CDEN***–*#*	N123	13.9/11.7	
EF12	EFGS**#**–***	SO123	14.5/12.2	YES.
EF12	EFGS**#**–***	SW123	14.6/12.4	
EF12	EFGN**#**–***	N123	13.9/11.7	

DOE proposed to require that outdoor unit model numbers cannot span regions unless the model of outdoor unit is compliant with all standards in all possible combinations. If a model of outdoor unit is certified below a regional standard, then, under DOE's proposal, it must have a unique individual model number for distribution in each region. 80 FR at 69290 (Nov. 9, 2015).

For example:

The Joint Advocates of ACEEE, NRDC and ASAP commented that the approach proposed by DOE is workable and provides clear requirements for OUM rating systems. The Joint Advocates also commented that requiring a specific model number for outdoor units that are certified only in combinations that meet regional standard(s), and therefore permitted to be installed in those regions, will aid enforcement. The Joint Advocates also commented that DOE should clarify the requirements for ICMs, specifically how DOE would treat an ICM that attempts to certify a combination with a rating below 14 SEER using an outdoor unit model that otherwise meets 14 SEER in all combinations certified by the OUM. (ACEEE, NRDC and ASAP, No. 72 at p. 3)

Based on this comment, DOE adopts the limitation as proposed, with wording modifications for clarity. DOE has not added a limitation on ICMs certifying a combination below an OUM represented value, given that such a value would reflect the performance the consumer would experience. DOE has not modified 430.32 in this rulemaking and will instead do so in the regional standards enforcement rulemaking.

5. Certification Reports

To maximize test repeatability and reproducibility for assessment and enforcement testing, DOE proposed a number of amendments to the certification reporting requirements. 80 FR 69278, 69290 (Nov. 9, 2015).

Among these requirements, DOE proposed to clarify what basic model number and individual model numbers must be reported for central air conditioners and heat pumps. 80 FR 69278, 69290–91 (Nov. 9, 2015). DOE proposed to require the reporting of the sensible heat ratio (SHR) value calculated based on full-load cooling test conditions at the outdoor ambient conditions: 82 °F dry bulb and 65 °F wet bulb. 80 FR at 69326 (Nov. 9, 2015). Finally, DOE also proposed to require certain product-specific information at 10 CFR 429.16(c)(4) that would not be displayed in DOE's public database. 80 FR at 69291 (Nov. 9, 2015).

NEEA and NPCC supported DOE's proposals for certification reports, specifically noting the importance that all combinations of individual model numbers within a basic model group can be identified and to identify the outdoor and indoor mini-split and multi-split system units that are rated as combinations. (NEEA and NPCC, No. 64 at p. 3) DOE adopts this provision in the final rule.

Regarding the basic model provision, AHRI commented that ICMs should be required to identify in the certification report the Similarity Group to which each indoor unit belongs. (AHRI, No. 70 at p. 5–6) DOE notes that it has adopted the Similarity Group structure recommended by AHRI as the basis for the basic model for ICMs. Hence, identification of the Similarity Group is not necessary.

The California IOUs commented that the proposal to require reporting of SHR is a good precedent for providing other data from tests and requested that results also be reported for all the tests that are the inputs to calculation of SEER and HSPF, as well as the results of the AHRI maximum operational conditions test.[8] (California IOUs, No. 67 at p. 4) On the other hand, AHRI, Lennox, ADP, UTC/Carrier, JCI, Goodman, and Nortek believe that SHR should not be reported as part of a certification report. (AHRI, No. 70 at p. 10; Lennox, No. 61 at p. 9; ADP, No. 59 at p. 7; UTC/Carrier, No. 62 at p. 8; JCI, No. 66 at p. 15–16; Goodman, No. 73 at p. 14; Nortek, No. 58 at p. 7) JCI noted that the publication of SHR should be left to the manufacturer as part of their technical literature, and UTC/Carrier noted that that information is already provided in the manufacturer's product data. (JCI, No. 66 at p. 12; UTC/Carrier, No. 62 at p. 7) AHRI, Lennox, ADP, Goodman, Nortek, and Rheem commented that the requirement to add reporting of SHR adds an excessive burden. (AHRI, No. 70 at p. 10; Lennox, No. 61 at p. 9; ADP, No. 59 at p. 7; Goodman, No. 73 at p. 14; Nortek, No. 58 at p. 7: Rheem, No. 69 at p. 8) ADP further commented that adding a requirement for SHR is significant for those OUM and ICM ratings developed by AEDMs, as manufacturers may not have this capability in their current AEDM. (ADP, No. 59 at p. 7) JCI further commented that the agreement made between AHRI members and advocates (presumably referring to the agreement in advance of the 2011 Direct Final Rule) was intended to encourage manufacturers to list SHR in manufacturer technical literature, not to make it a certified value. (JCI, No. 66 at p. 15–16)

After reviewing these comments, DOE agrees that the joint proposal from stakeholders that served as the basis for the 2011 Direct Final Rule regarding central air conditioners stated that manufacturers would make the SHR at 82 °F (at the rated airflow) available in in manufacturer technical literature and Web sites but that the SHR would not be verified or certified by AHRI. The parties agreed that DOE did not need to take regulatory action to implement this information sharing. (Docket No. EERE–2011–BT–STD–0011, No. 16 at p. 7) DOE did not account for this agreement in the November 2015 SNOPR, and in response to stakeholder comment within this docket, proposed to require reporting of SHR. However, given the existing stakeholder agreement that underlay the 2011 Direct Final Rule, DOE is not adopting the proposed requirement to certify SHR.

AHRI, ADP, Lennox, UTC/Carrier, Ingersoll Rand, JCI, Nortek, Rheem, Goodman, and Mitsubishi did not support the additional reporting requirements proposed by DOE and commented that they are a significant burden on manufacturers. (AHRI, No. 70 at p. 13–15; ADP, No. 59 at p. 7; Lennox, No. 61 at p. 14–15; UTC/Carrier, No. 62 at p. 7; Ingersoll Rand, No. 65 at p. 12; JCI, No. 66 at p. 15; Nortek, No. 58 at p. 11; Rheem, No. 69 at p. 7; Goodman, No. 73 at p. 14, 19; Mitsubishi, No. 68 at p. 2–3) AHRI, Lennox, UTC/Carrier, Nortek, JCI, Rheem, Goodman, and Mitsubishi also commented that some of the required data is proprietary and puts the manufacturer at risk. (AHRI, No. 70 at p. 13–15; Lennox, No. 61 at p. 14–15; UTC/Carrier, No. 62 at p. 7; Nortek, No. 58 at p. 11; JCI, No. 66 at p. 12; Rheem, No. 69 at p. 7; Goodman, No. 73 at p. 14, 19; Mitsubishi, No. 68 at p. 2) JCI and Mitsubishi expressed concern that confidential information could be revealed in a FOIA request. (JCI, No. 66 at p. 12; Mitsubishi, No. 68 at p. 2)

AHRI and Lennox each provided a list of information that they support DOE requiring. (AHRI, No. 70 at p. 13–14; Lennox, No. 61 at p. 14–15) Unico agreed in its comments with AHRI's position on the reporting burden associated with the certification reporting requirements. (Unico, No. 63 at p. 6) Nortek commented that it supports DOE requiring information that is already being submitted to AHRI for purposes of certification. (Nortek, No. 58 at p. 10–11) Mitsubishi commented that manufacturers should not be required to provide any physical information that is not needed to test the system. (Mitsubishi, No. 68 at p. 3) JCI commented that the only additional reporting information that should be added to the certification report is the off mode standby metric, and that no other unregulated items should be added. (JCI, No. 66 at p. 12)

Some stakeholders listed specific information that DOE should not require manufacturers to report. AHRI, Rheem, and JCI commented that DOE should not require manufacturers to report the orientation of a product's indoor coils and that, rather than reporting the process for manually entering the defrost cycle to DOE, manufacturers should describe that process in the product instructions. (AHRI, No. 70 at p. 13; Rheem, No. 69 at p. 7–8; JCI, No. 66 at p. 12) AHRI commented that for variable speed products, compressor frequency set points are proprietary to the manufacturer and therefore should not be reported to DOE. (AHRI, No. 70 at p. 15) Rheem commented that variable speed heat pump minimum and maximum speed blocks are proprietary and therefore should not be reported. (Rheem, No. 69 at p. 7–8) Goodman commented that their product nameplates do not explicitly state nominal capacity, nor do the majority of their competitors' products. Goodman recommended that the manufacturer provide the specific model numbers of the indoor unit tested rather than nominal capacity of each indoor unit. (Goodman, No. 73 at p. 6) Goodman also suggested that, instead of requiring manufacturers to solely report the general type of expansion device, DOE should require that manufacturers submit the same information (for fixed orifices, the orifice inside dimension (I.D.) and length; or, for expansion valves, the part number or model number) manufacturers currently submit to AHRI for each individual combination of a split-system air conditioner or split-system heat pump. (Goodman, No. 73 at p. 3–5)

Rheem commented that the addition of the requirement to certify airflow and C_D is a significant certification burden on manufacturers. Rheem noted that the documentation of the values measured during the test of a single sample cannot be applied to a second test, and that the averages of multiple measured values are even less applicable. Rheem stated that the certification of C_D requires that manufacturers provide a conservative value that would be applied to multiple test samples. Rheem suggested that the certification of a product should be based on actual product performance, as the use of a certified value of C_D would

[8] This test is conducted with 115 °F air entering the outdoor coil, see AHRI 210/240–2008, Table 13.

increase the variability of the test procedure and require more conservative ratings and redesign of minimum efficiency equipment. (Rheem, No. 69 at p. 7)

After reviewing the stakeholders' comments, DOE maintains that the certification reporting requirements proposed in the November 2015 SNOPR, except for SHR as previously discussed, are necessary for DOE to be able to conduct testing. None of the commenters indicated how DOE could properly conduct testing without the requested information. In the November 2015 NOPR, DOE proposed that this information would not be made available on the DOE public Web site. While the information may be subject to Freedom of Information Act (FOIA), DOE will seek to protect this information to the extent legally permissible.

For these reasons, DOE has adopted these requirements in the final rule, with minor modifications as discussed in relevant sections. In response to Goodman, DOE notes that the model numbers of indoor units are required in addition to nominal capacity, which is needed to verify appropriate unit selection used for certification testing. DOE also declines to require additional information beyond the type of expansion device, as DOE does not need this information to conduct testing. In response to Rheem, as noted in section III.A.7, DOE is only requiring manufacturers to report whether they used a default value for C_D or whether they conducted the optional test; manufacturers do not have to report the C_D value used.

In their comments, the California IOUs requested that DOE require the reporting of all test results that are inputs to the calculation of SEER and HSPF. In addition, they requested that DOE collect the results of the AHRI Maximum Operational Conditions tests, which they acknowledge would require adding these tests to Appendix M/M1. As in the case of SHR, they argued that this would not add to the test burden; it would only add the additional reporting of results, because all the measurements required to calculate SHR (*e.g.*, indoor air flow and indoor entering and leaving air conditions) are required as part of the current test. The California IOUs argued that consumers, incentive programs, and energy efficiency building codes need to have SEER and HSPF values that are calculated for specific climatic regions to enhance the value of the published SEER and HSPF that are calculated for climatic region 4. They said this would support the fair comparison of system performance and annual energy use costs. (California IOUs, No. 67 at p. 3–4)

In this final rule, DOE declines to add the additional reporting requirements recommended by the California IOUs as these are not necessary for DOE testing, and existing programs currently operate without the additional detail requested.

6. Represented Values

In the November 2015 SNOPR, DOE proposed to make several additions to the represented value requirements in 10 CFR 429.16. First, DOE proposed adding a requirement that the represented values of cooling capacity, heating capacity, and sensible heat ratio (SHR) must be the mean of the values measured for the sample. Second, DOE proposed to move the provisions currently in 10 CFR 430.23 regarding calculations of various measures of energy efficiency and consumption for central air conditioners to 10 CFR 429.16. DOE proposed minor changes to the calculations of annual operating cost to address other changes proposed in Appendix M. 80 FR 69278, 69291 (Nov. 9, 2015).

Lennox, ADP, and UTC/Carrier commented that SHR is currently published by manufacturers and that there is no benefit to adding a single point SHR as a represented value potentially subject to enforcement. (Lennox, No. 61 at p. 9; ADP, No. 59 at p. 7; UTC/Carrier, No. 62 at p. 8) On the other hand, Unico supported the requirement to submit SHR but only for reporting purposes, not for testing and enforcement. (Unico, No. 63 at p. 6)

Although DOE has determined that manufacturers should not be required to report SHR (see section III.A.5), DOE is adopting requirements on the represented values for SHR as proposed, in order to generate consistency in any representations of SHR made by industry.

AHRI, Lennox, JCI, Ingersoll Rand, Goodman, UTC/Carrier, and Nortek disagreed with the requirement that the represented capacity values must be the mean of the tested values, and recommended that DOE allow manufacturers to rate capacity conservatively. (AHRI, No. 70 at p. 10; Lennox, No. 61 at p. 8, 15; JCI, No. 66 at p. 15–16; Ingersoll Rand, No. 65 at p. 5; Goodman, No. 73 at p. 15; UTC/Carrier, No. 62 at p. 8; Nortek, No. 58 at p. 6) Rheem similarly commented that the addition of the requirement to certify cooling capacity and heating capacity is a significant certification burden and does not allow for manufacturers to rate capacity conservatively. (Rheem, No. 69 at p. 8) Nortek commented that DOE's proposal adds significant and unnecessary increased risk to a manufacturer due to increased exposure from enforcement testing. (Nortek, No. 58 at p. 6)

In its comments, Goodman noted that there is variability from sample to sample in any population of units. (Goodman, No. 73 at p. 15) Lennox commented that DOE's proposed use of mean values adds unnecessary risk and complexity in associated voluntary industry certification programs (VICP), such as AHRI. Lennox commented that manufacturers face stringent penalties through the AHRI VCIP program in the event of failure, and that manufacturers manage their financial and market risk through conservative ratings. Although DOE and VICPs may have different parameters for capacity metrics, Lennox believed DOE's proposal adds unnecessary complexity, which may confuse the consumer and bring into question the validity of different represented capacity values in the VICP program versus the DOE CCMS value. (Lennox, No. 61 at p. 8–9)

AHRI, Lennox, and JCI disagreed with DOE's proposal, stating that eliminating the conservative rating capacity would impact current ratings, which would require re-rating products. They contended that this requirement represents a significant and unnecessary burden that has no value to the consumer. (AHRI, No. 70 at p. 10; Lennox, No. 61 at p. 8; JCI, No. 66 at p. 7)

Several commenters recommended alternatives to DOE's proposal. Ingersoll Rand recommended that the average capacity on which to base the appropriate standard be determined using the same statistical method as used for determining SEER, but that the manufacturers be allowed to claim up to 5 percent lower in their rating. (Ingersoll Rand, No. 65 at p. 5) UTC/Carrier commented that the current procedure of using the mean or the statistically adjusted mean should be used and manufacturers should be able to de-rate the certified values as necessary to account for testing uncertainties in the audit facility as well as the manufacturer's test facility. (UTC/Carrier, No. 62 at p. 8) AHRI and Nortek commented that instead of implementing the mean of measured values for capacity, any represented value of the energy efficiency or other measure of energy consumption for which consumers would favor higher values should be less than or equal to the lower of: (1) The mean of the sample, or (2) the lower 90 percent confidence limit (LCL) of the true mean divided by 0.95. (AHRI, No. 70 at p. 10; Nortek, No. 58 at p. 6–7) DOE understands that AHRI and Nortek supported DOE applying this approach to capacity as well.

After reviewing the comments, DOE is updating its proposal from the November 2015 SNOPR, which required represented values of cooling and heating capacity to be the mean of the sample. In this Final Rule, DOE is requiring the represented value of cooling (or heating) capacity to be a self-declared value that is no less than 95 percent of the mean of the cooling (or heating) capacities measured for the units in the sample selected for testing. This will allow manufacturers the flexibility to derate capacity with conservative values as requested by multiple commenters, while still providing consumers with information that is reasonably close to the performance they may expect when purchasing a system.

Goodman commented that DOE provided no guidance on how to treat systems rated by AEDM and that it is unreasonable to expect manufacturers to always rate at the exact value developed by a computer program. (Goodman, No. 73 at p. 15)

DOE agrees with Goodman. DOE's intent had been for represented values for systems rated by testing or AEDM to be determined similarly but had inadvertently left this requirement out of the AEDM portion of the regulatory text. To parallel the provision adopted for tested combinations, DOE is adopting a provision that the represented value of cooling (or heating) capacity must be no less than 95% of the cooling (or heating) capacity output simulated by the AEDM. DOE notes that, if a manufacturer believes the capacity predicted by the AEDM is more than 5% off of what the manufacturer would otherwise expect, then the manufacturer should be evaluating the validity of the AEDM in other respects.

Finally, DOE notes that Annual Performance Factor (APF) is not used for any regulatory program, and therefore DOE has removed all calculations and represented value requirements for APF in this final rule.

7. Product-Specific Enforcement Provisions

In the November 2015 SNOPR, DOE proposed to verify certified cooling capacity during assessment or enforcement testing. DOE proposed to measure the cooling capacity of each tested unit pursuant to the test requirements of 10 CFR part 430. If the measurement is within five percent of the certified cooling capacity, DOE would use the certified cooling capacity as the basis for determining SEER. Otherwise, DOE would use the measured cooling capacity as the basis for determining SEER. 80 FR 69278, 69292 (Nov. 9, 2015).

DOE also proposed to require manufacturers to report the cyclic degradation coefficient (C_D) value used to determine efficiency ratings. DOE proposed to run C_D testing as part of any assessment or verification testing, except when testing an outdoor unit with no match. If the measurement is 0.02 or more greater than the certified value, DOE would use the measurement as the basis for calculation of SEER or HSPF. Otherwise, DOE would use the certified value. For models of outdoor units with no match, DOE would always use the default value. 80 FR 69278, 69292 (Nov. 9, 2015).

Lennox, UTC/Carrier, Rheem, and JCI disagreed with DOE's proposal to use rated values in cooling capacity and in C_D testing. The commenters proposed that tested capacity and cyclic test values should be used in all determinations of efficiency and compliance. (Lennox, No. 61 at p. 9; UTC/Carrier, No. 62 at p. 8; Rheem, No. 69 at p. 2; JCI, No. 66 at p. 8) Rheem commented that the proposal to enforce SEER using certified values of cooling capacity and C_D has not been justified or shown to provide representative and repeatable results. (Rheem, No. 69 at p. 8) Unico supported the requirement to submit cooling capacity and heating capacity but only for reporting purposes, not for testing and enforcement. (Unico, No. 63 at p. 6)

In its comments, Lennox explained that, given the variability in component and manufacturing processes, product capacity and power can vary slightly from unit to unit. According to Lennox, if products are manufactured within the acceptable limits, the variations in capacity and power tend to be linear. Lennox added that DOE's proposal to fix capacity to the rated value in determining efficiency if measured within five percent of rating while allowing power to be a variable from the tested value can result in both false pass and fail results. (Lennox, No. 61 at p. 9–10) Lennox also commented that cyclic C_D testing is prone to variation from test to test on the same unit within the same facility—let alone lab to lab, and that the industry has spent a tremendous amount of resources studying variability issues and has developed recommendations for lab improvement. In particular, Lennox commented, the industry has developed a method for compensating for differences in thermal mass of the test facility used for testing. (Lennox, No. 61 at p. 10)

Nortek and JCI commented that the proposal to use a tolerance to determine if measured capacity is within 5 percent of rated capacity and from there, determining efficiency, would make it necessary for manufacturers to report capacity at all points necessary to determine SEER and HSPF. (Nortek, No. 58 at p. 7; JCI, No. 66 at p. 7–8) JCI commented that this is an increased burden of reporting without additional value. (JCI, No. 66 at p. 7–8) In addition to this burden, Nortek expressed concern that this could lead to overrating capacity. As efficiency is not tied to capacity, Nortek stated it is unsure of the purpose of this proposal and would like DOE to clarify the purpose. (Nortek, No. 58 at p. 7)

Goodman commented that DOE's proposal to use certified rather than tested values conflicts with DOE's acknowledgement that individual unit performance varies from sample to sample due to both individual unit production differences as well as testing differences. Goodman noted that compressor suppliers would only certify the performance of their product to manufacturers to a ±5% tolerance. Goodman commented that from a statistics perspective, it is not correct to suggest that in order to determine the true mean of a population that modified values would be used from actual measurements. Goodman strongly opposed DOE's proposed regulatory language in reference to the assessment and enforcement testing of HVAC products as it pertains to assumed average performance values in the determination of the performance of an individual unit. Goodman strongly suggested that DOE omit the proposed 10 CFR 429.134(g) in its entirety. (Goodman, No. 73 at p. 21)

After reviewing the comments, DOE is adopting modifications from its proposal. For cooling capacity, DOE will use the mean of any DOE test measurements to determine SEER. DOE notes that this adopted modification, by eliminating the comparison to the manufacturer's represented value, addresses JCI's concern about additional reporting burden and Goodman's concern about using modified (certified) values rather than actual measurements. In addition, DOE's modification related to the represented value for capacity, in section III.A.6, addresses Nortek's concern about overrating.

In addition, DOE wishes to clarify that when calculating SEER values, manufacturers must use the tested capacity value, not the certified capacity value.

For the C_D value, in section III.E.11, based on stakeholder comments, DOE

has decided to allow manufacturers to use the default value without testing. The default value is conservative, and DOE believes that manufacturers will only opt to test if it will improve upon the default value for that model. DOE will follow the lead of the manufacturer in determining whether to use the default value or to test a given unit. Therefore, instead of reporting the C_D value used, the manufacturer must report whether the optional tests were conducted to determine the C_D value or whether the default value was used. If manufacturers report using the default value, DOE will also use the default value. If manufacturers conduct optional testing, DOE will also conduct testing to determine C_D. The result for each unit tested (either the tested value or the default value, as selected according to the criteria for the cyclic test in 10 CFR part 430, subpart B, Appendix M, section 3.5e) will be used to determine the applicable standards for purposes of compliance.

B. Alternative Efficiency Determination Methods

1. General Background

For certain consumer products and commercial equipment, DOE's existing regulations allow the use of an alternative efficiency determination method (AEDM) or alternative rating method (ARM), in lieu of actual testing, to estimate the ratings of energy consumption or efficiency of basic models by simulating their energy consumption or efficiency at the test conditions required by the applicable DOE test procedure. The simulation method permitted by DOE for use in rating split-system central air conditioners and heat pumps, in accordance with 10 CFR 429.70(e), is referred to as an ARM. In contrast to an AEDM, an ARM must be approved by DOE prior to its use.

DOE published a Notice of Proposed Rulemaking (AEDM NOPR) in the **Federal Register** on May 31, 2012. 77 FR 32038. In the AEDM NOPR, DOE proposed the elimination of ARMs, and the expansion of AEDM applicability to those products for which DOE allowed the use of an ARM (*i.e.*, split-system central air conditioners and heat pumps). 77 FR at 32055. Furthermore, DOE proposed a number of requirements that manufacturers must meet in order to use an AEDM, as well as a method that DOE would employ to determine if an AEDM was used appropriately along with specific consequences for misuse of an AEDM. 77 FR at 32055–56. DOE subsequently published a final rule, related to commercial HVAC equipment only, on December 31, 2013 (78 FR 79579).

In the November 2015 SNOPR, DOE proposed modifications to the central air conditioner and heat pump AEDM requirements that were proposed in the AEDM NOPR. 80 FR 69278, 69292 (Nov. 9, 2015). In response to DOE's proposal, AHRI, Nortek, and Ingersoll Rand recommended that DOE align the CAC/HP AEDM proposal with commercial equipment AEDM provisions because the commercial and residential technologies, testing methods, and simulation approaches were nearly identical. (AHRI, No. 70 at p. 9; Nortek, No. 58 at p. 5; Ingersoll Rand, No. 65 at p. 11)

In response to that comment, DOE notes that its proposal was based off the commercial equipment AEDM provisions with slight modifications appropriate to the residential product, and as such declines to make the AEDM provisions identical to those for commercial equipment. However, revisions to specific aspects of the proposal based on stakeholder comments are discussed in subsequent sections.

First Co. commented that the DOE's proposed modifications in the November 2015 SNOPR require manufacturers to develop an AEDM for heat pumps. First Co. noted that any AEDMs used by an ICM to rate systems would require coefficient data from the OUM, which is not required to be publicly disclosed and which is not currently available to ICMs. First Co. commented that this issue must be addressed in the rule. (First Co., No. 56 at p. 1)

In response to First Co.'s comment, DOE notes that its proposal in the November 2015 SNOPR did not require use of an AEDM. 80 FR 69278, 69292 (Nov. 9, 2015). Manufacturers may choose to test all individual combinations within a basic model rather than applying an AEDM. Therefore, DOE has not made any changes to its proposal in response to First Co.'s concerns.

AHRI, ADP, Mortex, and Lennox commented that, for ICMs, certified ratings must be less than or equal to AEDM output. (AHRI, No. 70 at p. 5–6; ADP, No. 59 at p. 2–3; Mortex, No. 71 at p. 4–6; Lennox, No. 61 at p. 5)

In response, DOE notes that in 10 CFR 429.16, DOE adopted the requirement that represented values of efficiency must be less than or equal to the output of the AEDM, while represented values of power must be greater than or equal to the output of the AEDM. In addition, under 10 CFR 429.70(a), represented values must never be "better" (overrate efficiency or underrate consumption) than the output of the AEDM. These requirements apply to all manufacturers, not just ICMs.

2. Terminology

In the AEDM NOPR, DOE proposed to eliminate the term "alternate rating method" (ARM) and instead use the term "alternative efficiency determination method" (AEDM) to refer to any modeling technique used to rate and certify covered products. 77 FR 32038, 32040 (May 31, 2012). In the November 2015 SNOPR, DOE continued to propose the use of one term, AEDM, to refer to all modeling techniques used to develop certified ratings of covered products. 80 FR 69278, 69293 (Nov. 9, 2015).

Lennox, Goodman, Ingersoll Rand, and AHRI supported DOE's proposal to eliminate the term "ARM" and instead use the term "AEDM." (Lennox, No. 61 at p. 7; Goodman, No. 73 at p. 7; Ingersoll Rand, No. 65 at p. 11; AHRI, No. 70 at p. 9) There, DOE has eliminated the term "ARM" in this final rule, using only "AEDM."

3. Elimination of the Pre-Approval Requirement

In the November 2015 SNOPR, DOE proposed to eliminate the pre-approval process for ARMs for split-system central air conditioners and heat pumps. In lieu of this, DOE also proposed that manufacturers may only apply an AEDM if it (1) is derived from a mathematical model that estimates performance as measured by the applicable DOE test procedure; and (2) has been validated with individual combinations that meet current Federal energy conservation standards (as discussed in the next section). Furthermore, DOE proposed records retention requirements and additional manufacturer requirements to permit DOE to audit AEDMs through simulations, review of data and analyses, and/or certification testing. 80 FR 69278, 69294 (Nov. 9, 2015).

Lennox agreed that elimination of the pre-approval for AEDMs could reduce time to market, facilitate innovation, and eliminate the time required to complete the approval process. (Lennox, No. 61 at p. 7) In this final rule, DOE has eliminated the pre-approval requirement as proposed in the November 2015 SNOPR.

4. AEDM Validation

a. Outdoor Unit Manufacturers

In the November 2015 SNOPR, DOE noted that in its proposed revisions to the determination of certified ratings for central air conditioners and heat pumps, manufacturers must test each basic model. Specifically for split-system air conditioners and heat pumps, OUMs must test each model of outdoor unit with at least one model of indoor unit (highest sales volume). Manufacturers would only be able to use AEDMs for other individual combinations within the same basic model—in other words, other combinations of models of indoor units with the same model of outdoor unit. In the November 2015 SNOPR, DOE did not seek to require additional testing to validate an AEDM beyond what is proposed under 10 CFR 429.16(a)(1)(ii). 80 FR 69278, 69294 (Nov. 9, 2015).

DOE also proposed in the November 2015 SNOPR to adopt test requirements similar to those used for AEDM validation for commercial HVAC and water heating equipment, as published in the AEDM final rule 78 FR 79579, 79584 (Dec. 31, 2013). Specifically, DOE proposed that (1) for energy-efficiency metrics, the predicted efficiency using the AEDM may not be more than 3 percent greater than that determined through testing; (2) for energy consumption metrics, the predicted efficiency using the AEDM may not be more than 3 percent less than that determined through testing; and (3) the predicted efficiency or consumption for each individual combination calculated using the AEDM must comply with the applicable Federal energy conservation standard. Furthermore, the test results used to validate the AEDM must meet or exceed the applicable Federal standards, and the test must have been performed in accordance with the applicable DOE test procedure. If DOE has ordered the use of an alternative test method for a particular basic model through the issuance of a waiver, that alternative test method should apply in lieu of the DOE test procedure. 80 FR 69278, 69296 (Nov. 9, 2015).

In the November 2015 SNOPR, DOE proposed a validation tolerance of 3 percent for AEDMs because the variability in a manufacturer's lab and within a basic model should be more limited than lab-to-lab variability. DOE proposed tolerances for verification testing of 5 percent to account for added lab-to-lab variability. 80 FR 69278, 69296 (Nov. 9, 2015).

ADP, Lennox, UTC/Carrier, Rheem, and Unico agreed with DOE's proposal to not require additional testing to validate an AEDM beyond the testing required under 429.16(a)(2)(ii) for split-system air conditioners and heat pumps where manufacturers must test each basic model—that is, each model of outdoor unit with at least one model of HSV indoor unit. (ADP, No. 59 at p. 7; Lennox, No. 61 at p. 15; UTC/Carrier, No. 62 at p. 8; Rheem, No. 69 at p. 8; Unico, No. 63 at p. 6)

Unico commented that single-split systems manufactured and rated by an OUM should continue to validate their AEDM using the HSVC measured results. (Unico, No. 63 at p. 6) The California IOUs commented that it is critical that an AEDM be validated fully and in a manner that allows DOE to use lab-testing data to disallow an AEDM if it is inaccurate. (California IOUs, No. 67 at p. 4)

Lennox, JCI, AHRI, First Co., Ingersoll Rand, UTC/Carrier, Rheem, and Nortek recommended that DOE align the CAC/HP AEDM validation tolerance proposal with commercial equipment AEDM provisions of 5 percent. (Lennox, No. 61 at p. 8; JCI, No. 66 at pp. 3–4; AHRI, No. 70 at p. 9; First Co., No. 56 at p. 2; Ingersoll Rand, No. 65 at p. 11; UTC/Carrier, No. 62 at p. 8; Rheem, No. 69 at p. 2; Nortek, No. 58 at p. 5) AHRI, Lennox, JCI, and Nortek further commented that lab variability is an inherent part of the testing process regardless of whether all testing is conducted in a manufacturer's lab or lab-to-lab. They asserted that the fundamental issue is that HVAC equipment relies on accurate air property measurements (wet bulb/dew point) and the variability of the test alone is greater than five percent. (AHRI, No. 70 at p. 9; Nortek, No. 58 at p. 5; JCI, No. 66 at pp. 3–4; Lennox, No. 61 at p. 8) AHRI and Nortek also commented that it is crucial that manufacturers be permitted to apply the AEDM across basic models in order to align the CAC/HP AEDM validation tolerance with the commercial equipment AEDM provisions. (AHRI, No. 70 at p. 9; Nortek, No. 58 at p. 5)

Given the support in the comments related to AEDM validation for OUMs, DOE maintains its proposal to not require any additional testing to validate an AEDM beyond that required for certification. DOE notes that while the proposal applied to split systems only, in this final rule, it applies to single-package systems as well. After reviewing the comments, DOE has adopted a validation tolerance of 4% rather than the proposed 3%. DOE notes that manufacturers did not provide evidence of the comparison of within-lab variability to lab-to-lab variability nor did they request a higher verification tolerance, indicating that a 5% tolerance appropriately captures lab-to-lab variability. In addition, DOE notes that in its own enforcement testing, it obtains results within 3%. For these reasons, DOE believes that a validation tolerance of 4% balances the manufacturers' concerns regarding within-lab variability with the understanding that such variability is by nature less than lab-to-lab variability and with DOE's own experience with such testing variability. In response to AHRI and Nortek's additional comment, while at least one individual model or combination within each basic model must be tested, DOE did not propose that AEDMs be specific to basic models; they can be applied across basic models.

b. Independent Coil Manufacturers

In the November 2015 SNOPR, DOE noted that in its proposed revisions to the determination of certified ratings for central air conditioners and heat pumps, ICMs must test each model of indoor unit with at least one model of outdoor unit (lowest SEER). Manufacturers would only be able to use AEDMs for other individual combinations within the same basic model. Additionally, DOE did not require additional testing to validate an AEDM beyond that proposed to be required to determine the certified ratings. 80 FR 69278, 69294 (Nov. 9, 2015). DOE also proposed the same additional test requirements for ICMs as for OUMs, as discussed in the previous section. 80 FR 69278, 69296 (Nov. 9, 2015).

Rheem commented that ICMs should validate their AEDMs in the same manner as an OUM. Rheem agreed that ICM ratings would improve when indoor units are tested with outdoor units. Rheem further commented that ICM ratings would also improve when a particular indoor coil is tested with multiple outdoor units of different capacities and that the process should properly consider what effects refrigerant mass flow variations across tonnages have on the performance of a single indoor unit. (Rheem, No. 69 at p. 8) UTC/Carrier also supported DOE's proposal and appreciates DOE for closing what it perceived as a loophole in the current regulations and requiring ICMs to test in a similar fashion to OUMs. (UTC/Carrier, No. 62 at p. 9)

On the other hand, Unico commented that DOE should replace the term "basic model" with "Similarity Group," essentially requiring AEDM validation based on the testing requirements for a Similarity Group. (Unico, No. 63 at p. 6) As discussed in section III.A.3.d, AHRI, ADP, Mortex, and Lennox recommended that, to validate an AEDM, an ICM (1) test and rate at least one combination per Similarity Group with an outdoor unit with the lowest SEER that complies with standard; (2) perform at least one full-system test per Similarity Group; (3) if rating HP combinations, test one-third of

Similarity Groups with HP systems in both heating and cooling modes; and (4) if an ICM has only one Similarity Group, the manufacturer must test a minimum of two combinations to validate the AEDM. (AHRI, No. 70 at p. 5–6; ADP, No. 59 at p. 2–3; Mortex, No. 71 at p. 4–6; Lennox, No. 61 at p. 5)

AHRI, ADP, Mortex, and Lennox suggested that for ICMs to validate an AEDM, test results should be required to be more than five percent below output from the AEDM. The commenters noted that DOE has proposed three percent on the supposition that a manufacturer's lab will have less variation, but that many ICMs do not have labs and will rely on external labs for testing and that there is no basis to suggest that the testing variation will be significantly different between testing commercial and consumer products. (AHRI, No. 70 at p. 5–6; ADP, No. 59 at p. 2–3; Mortex, No. 71 at p. 4–6; Lennox, No. 61 at p. 5)

AHRI, ADP, Mortex, and Lennox also suggested that ICMs only be permitted to rate basic models within Similarity Groups validated by a tested combination. (AHRI, No. 70 at p. 5–6; ADP, No. 59 at p. 2–3; Mortex, No. 71 at p. 4–6; Lennox, No. 61 at p. 5)

As discussed in section III.A.3.d, DOE is adopting the suggested Similarity Group requirements as the basic model definition for ICMs and is requiring testing of one combination per basic model (with the exception of heat pumps) according to the sampling plan in 429.16. With these changes, DOE believes that the testing requirements for certification remain sufficient for validating an AEDM. In addition, DOE believes that the additional requirements on test data used for validation address AHRI's concern regarding a need for additional testing for ICMs with only a single Similarity Group. Therefore DOE is not requiring ICMs to conduct any additional testing for AEDM validation beyond that required for certification.

Furthermore, after reviewing these comments, DOE has adopted a validation tolerance of four percent rather than the proposed 3 percent, for ICMs as well as OUMs.

In response to AHRI, ADP, Mortex, and Lennox, DOE notes that the request that ICMs only be permitted to rate basic models within Similarity Groups validated by a tested combination is consistent with its adopted requirements regarding use and validation of AEDMs, although in the adopted framework, manufacturers may only use AEDMs to rate individual combinations within basic models validated by a tested combination.

5. AEDM Verification Testing

DOE may randomly select and test a single unit of a basic model pursuant to 10 CFR 429.104. This authority extends to all DOE covered products, including those certified using an AEDM. In conducting enforcement testing, DOE tests a retail unit or a unit provided by the manufacturer if a retail unit is not available. 10 CFR 429.110(c). A selected unit is tested using the applicable DOE test procedure at an independent, third-party laboratory accredited to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), "General requirements for the competence of testing and calibration laboratories," ISO/IEC 17025:2005E. 10 CFR 429.110(a). DOE may conduct testing at an independent, third-party testing facility or a manufacturer's facility upon DOE's request if the former is not capable of testing such a unit. 10 CFR 429.110(a).

In the November 2015 SNOPR DOE explained that verification testing conducted by DOE is conducted with no communication between the lab and the manufacturer without DOE authorization. 80 FR 69278, 69296 (Nov. 9, 2015). Thus, DOE proposed a method for determining that a combination rated using an AEDM does not meet its certified rating. Specifically, DOE proposed that an individual combination would be considered as having not met its certified rating if, even after applying the five percent tolerance between the test results and the rating as specified in the proposed 10 CFR 429.70(e)(5)(vi), the test results indicate the individual combination being tested is less efficient or consumes more energy than indicated by its certified rating. DOE noted that this approach will not penalize manufacturers for applying conservative ratings to their products. That is, if the test results indicate that the individual combination being tested is *more* efficient or consumes *less* energy than indicated by its certified rating, DOE would consider that individual combination to meet its certified rating. 80 FR 69278, 69296 (Nov. 9, 2015).

In the November 2015 SNOPR, DOE also proposed providing manufacturers with a test report that includes a description of test set-up, test conditions, and test results when an individual combination rated using an AEDM fails to meet the certified rating. Under this proposal, DOE would also provide the manufacturer with an opportunity to respond to the lab report by presenting all claims regarding testing validity, and if the manufacturer was not on-site for initial set-up, to purchase an additional unit from retail to test following the requirements in 429.110(a)(3). Under the proposed procedure, DOE would consider any response offered by the manufacturer within a designated time frame before deciding upon the validity of the test results. Only after considering the manufacturer's response and determining it to be unsatisfactory would DOE declare the manufacturer's rating for the basic model invalid and require the manufacturer to take subsequent action, as described in section III.B.6. 80 FR 69278, 69297 (Nov. 9, 2015).

AHRI and Nortek commented that DOE's proposal was unclear regarding the difference between AEDM validation testing and verification testing. (AHRI, No. 70 at p. 9; Nortek, No. 58 at p. 5) In response, DOE notes that manufacturers must conduct validation testing in order to use an AEDM to determine represented values and to certify compliance to DOE. DOE may conduct AEDM verification testing to verify the validity of an AEDM.

ADP, Lennox, UTC/Carrier, and Unico agreed with DOE's proposal that manufacturers should not be penalized for being conservative in their ratings for any of the metrics. They stated that, given the testing uncertainties, manufacturing variation, etc., manufacturers need to be conservative to ensure their product performs at the rated level. (ADP, No. 59 at p. 8; Lennox, No. 61 at p. 15; UTC/Carrier, No. 62 at p. 9; Unico, No. 63 at p. 7) Rheem also agreed with the proposal to allow conservative ratings. (Rheem, No. 69 at p. 9)

JCI and Lennox commented that there appears to be a typographical error on (5) AEDM Verification Testing. (v) Tolerance. The text shows "For efficiency metrics, the result from a DOE verification test must be greater than or equal to 1.05 multiplied by the certified rating." JCI and Lennox believe the language should read: "must be greater than or equal to 0.95 multiplied by the certified rating". (JCI, No. 66 at p. 3; Lennox, No. 61 at p. 15)

Given the agreement of the commenters, DOE finalizes its proposed five percent tolerance in verifying an AEDM's performance and allowance for manufacturers to make conservative representations in this final rule. In response to JCI and Lennox's comments, DOE acknowledges that the November 2015 SNOPR included a typographical error in the tolerances, which has been corrected in this final rule. DOE did not receive comments on other aspects of its AEDM verification testing proposals and adopts them as proposed in the SNOPR.

6. Failure To Meet Certified Represented Values

In the November 2015 SNOPR DOE proposed that manufacturers need not re-validate the AEDM in response to the first determination of an invalid rating for models certified with that AEDM. In such cases, the manufacturer must conduct additional testing and re-rate and re-certify the individual combinations within the basic model that were improperly rated using the AEDM. 80 FR 69278, 69297 (Nov. 9, 2015).

DOE also proposed that if DOE has determined that a manufacturer made invalid ratings on individual combinations within two or more basic models rated using the manufacturer's AEDM within a 24 month period, the manufacturer must test the least efficient and most efficient combination within each basic model in addition to the combination specified in 429.16(a)(1)(ii). The twenty-four month period begins with a DOE determination that a rating is invalid through the process outlined above. If DOE has determined that a manufacturer made invalid ratings on more than four basic models rated using the manufacturer's AEDM within a 24-month period, the manufacturer may no longer use an AEDM. 80 FR 69278, 69297 (Nov. 9, 2015).

DOE also proposed additional requirements for manufacturers to regain the privilege of using an AEDM, including identifying the cause(s) for failure, taking corrective action, performing six new tests per basic model, and obtaining DOE authorization. 80 FR 69278, 69297 (Nov. 9, 2015).

DOE created its proposal under the expectation that each manufacturer will use only a single AEDM for all central air conditioner and central air conditioning heat pumps. Several stakeholders responded to DOE's question on whether manufactures typically apply more than one AEDM, and if they do, then what the differences are between such AEDMs.

ADP commented that they use one AEDM. (ADP, No. 59 at p. 8) Unico commented that a single AEDM may incorporate several calculation methods, but that the AEDM should be designed to choose the most accurate calculation method and is still one AEDM. (Unico, No. 63 at p. 7)

Lennox commented that while the concept of an AEDM's function is the same, different AEDMs may be optimized for application, ease of use, outputs or integration into other business processes. Lennox recommended that AEDMs not be restricted to a singular application. (Lennox, No. 61 at p. 15) UTC/Carrier suggested that multiple AEDMs could be applied for different products, such as packaged systems versus splits and variable speed versus single-stage. UTC/Carrier argued that a dedicated AEDM would more accurately reflect product performance for consumer benefit (UTC/Carrier No. 62 at p. 9) JCI commented that they would likely utilize one AEDM for split AC units, one for split HP units, and possibly one for single-package units, with a possible additional one a two stage product and another for multistage product. JCI stated the primary differences are the additional simulation conditions and required additional input. (JCI, No. 66 at p. 16) Rheem commented that manufacturers may choose to have multiple AEDMs based on design technologies to ensure rating accuracy for each technology, *i.e.*, micro-channel vs. fin and tube performance modeling. (Rheem, No. 69 at p. 9)

After reviewing the comments, DOE acknowledges that some manufacturers may have more than one AEDM but will likely have fewer than five. DOE believes that its proposal is still valid under these circumstances and has adopted it as proposed. DOE has adopted a requirement for manufacturers to provide a "name" for the AEDM used to rate each individual model or combination, although for some manufacturers it may be the same for all. If DOE finds that there is a proliferation of AEDMs and that DOE's requirements for re-validation, re-determination of represented values, and/or re-certification following the failure of a model to meet its certified represented value are no longer sufficient to ensure that represented values generated with AEDMs are reliable, DOE may revisit these requirements.

AHRI and Nortek disagreed with the proposal to invalidate an AEDM after four failures within 24 months and recommended that DOE implement an option to "save" the HSVC and remaining basic model ratings, similar to the provisions within the AHRI Certification Program. (AHRI, No. 70 at p. 9; Nortek, No. 58 at p. 6) Ingersoll Rand recommended that DOE adopt the AHRI proposal for additional testing should there be "excessive" failures of AEDM rated products. (Ingersoll Rand, No. 65 at p. 11) JCI commented that it appears that if a basic model is deemed invalid that all mix match ratings associated with that basic outdoor model would be made invalid and be required to be recertified. JCI believes this is very punitive and does not take into account that the invalid ratings may be due to other factors. JCI also agreed with other commenters that there should be a method to "save" all of the other mix match ratings associated with that basic outdoor model. (JCI, No. 66 at p. 4)

UTC/Carrier recommended that the number of failures in 24 month period before the AEDM is invalidated should scale to the number of basic models for that particular manufacturer. (UTC/Carrier, No. 62 at p. 8)

Goodman expressed concern over the result of an initial assessment test in which the basic model being tested failed to achieve its ratings. Goodman commented that if the manufacturer is permitted to review the setup of test arrangement before the test is finished, the cause of failure could be eliminated. (Goodman, No. 73 at p. 7)

In response to AHRI, Nortek, and JCI, DOE's proposal does permit a manufacturer to "save" all represented values with minimal effort at the first failure and with additional testing at the second, third and fourth failures. If, after all of that additional testing, the AEDM is still not accurate, DOE is unsure what would be "saved". DOE notes that the tested combination of each basic model would not have been rated using the AEDM and thus would be unaffected by a failure of the AEDM. In response to Ingersoll Rand, DOE views five failures in two years as excessive, as DOE has already provided a 5% tolerance. In response to UTC/Carrier, DOE disagrees that the number of failures should scale to the number of basic models. DOE believes that if a manufacturer has five basic models that test outside of the 5% tolerance, especially following feedback from the four previous failures, that there must be a significant problem with the AEDM. In response to Goodman, DOE notes that although it has not provided an allowance for a manufacturer to review the test set up prior to testing, DOE will provide the manufacturer with documentation related to the test set up and allows the manufacturer to present claims regarding the validity. DOE believes this accomplishes the same result.

Unico commented that for ICM ratings, if a rating is invalid, if the same basic model was tested and passed, only the system tested that failed is re-rated. For an ICM, the same failure is not considered a failure of the AEDM unless the outdoor unit has been tested and shown to meet the OUM rating. Unico argued that, from an engineering view,

the calculation method should only be changed if the measured data is [in]consistent with the AEDM input. Unico also expressed the view that, since the ICM does not manufacture the outdoor unit, the ICM should not be held responsible for the OUM information. According to Unico, ICM ratings are likely to be doubly conservative if one considers that the OUM ratings are conservative and this is added to the conservative ICM rating. Unico also urged DOE to consider that the ratings are based on tests of the outdoor unit (OUM basic model testing) and of the indoor unit (ICM Similarity Group testing), asserting that this is more testing than the OUM product alone. (Unico, No. 63 at p. 4)

In response to Unico, DOE does not agree that ICMs should have different consequences for failures than OUMs. All manufacturers use AEDMs at their own risk and are responsible for ensuring the accuracy of the AEDM, including the accuracy of the testing used to validate the AEDM.

7. Action Following a Determination of Noncompliance

If an individual model or combination is determined to be noncompliant, then all other individual models or combinations within that basic model are considered noncompliant. DOE's proposal in the November 2015 SNOPR with respect to AEDMs did not include a provision that other basic models rated with the AEDM would be considered noncompliant. However, DOE noted that an AEDM must be validated using test data for individual combinations that meet the current Federal energy conservation standards. Therefore, if a noncompliant model was used for validation of an AEDM, a manufacturer must re-validate the AEDM with test data for a compliant basic model in order to continue using the AEDM. The requirements for additional testing based on invalid ratings, as discussed in the previous sections, may also apply. 80 FR 69278, 69298 (Nov. 9, 2015).

DOE notes that it did not receive comments related to this discussion in the November 2015 SNOPR.

8. AEDM for Off Mode

In the November 2015 SNOPR, DOE listed several requirements a manufacturer must meet to use an AEDM in certifying ratings, including $P_{W,OFF}$. 80 FR 69278, 69339 (Nov. 9, 2015).

AHRI, Ingersoll Rand, Nortek, Lennox, and JCI recommended that use of an AEDM be permitted to generate ratings for off mode power across units of similar construction. (AHRI, No. 70 at p. 9; Ingersoll Rand, No. 65 at p. 4; Nortek, No. 58 at p. 5; Lennox, No. 61 at p. 7; JCI, No. 66 at p. 9) Additionally, Lennox recommended that use of an AEDM be permitted to generate ratings for off mode power for units that use the same off mode components (Lennox, No. 61 at p. 7), while AHRI and Nortek recommended that an AEDM be permitted to be used to generate ratings across tonnages. (AHRI, No. 70 at p. 9; Nortek, No. 58 at p. 5) Rheem recommended that manufacturers be permitted to use an AEDM to generate ratings for off mode power across similar control systems that would consume the same off-mode power. Rheem also expressed the view that the AEDM should be validated based on testing of a single model with the same control system. Rheem further commented that manufacturers should be able to rate the off mode power consumption of both single-package and split systems with varying compressors, coils, and auxiliary refrigeration system components if the models are in the same basic model or have common control and motor types. (Rheem, No. 69 at p. 3, 7)

DOE agrees with stakeholders that, for units with a similar pairing of compressor, crankcase heater and common control, an AEDM is capable of providing an off mode represented value without the manufacturer needing to test each basic model. In response to the commenters' request, DOE has eliminated the requirement to test each basic model for off-mode power. Instead, at a minimum, among models with similar off-mode construction (even spanning different basic models, a manufacturer must test at least one individual model or combination for off-mode power, and may use an AEDM for the rest. DOE notes that in all cases, the AEDM-generated represented value may be subject to verification testing, and thus the responsibility is on the manufacturer to determine which model(s) or combination(s) should be tested for off-mode as part of AEDM validation. DOE also notes that an AEDM may be used for off-mode power for multi-split, multi-circuit, and multi-head mini-split systems, even though an AEDM may not be used for the efficiency metrics.

C. Waiver Procedures

In the November 2015 SNOPR, DOE stated that a total of four waivers (and one interim waiver) for central air conditioner and heat pump products would terminate 180 days after the publication of this final rule notice in the **Federal Register**. 80 FR 69278, 69298–300 (Nov. 9, 2015). The waivers to be terminated are listed in Table III.4.

In the June 2010 NOPR, DOE proposed a test method for testing Triple-Capacity Northern Heat Pumps which would replace the waiver test procedure granted to Hallowell International (see 75 FR 6013 (Feb. 5, 2010)) for testing its line of boosted compression heat pumps. 75 FR at 31238 (June 2, 2010). The November 2015 SNOPR reproposed the same procedure initially proposed in the June 2010 NOPR. 80 FR 69278, 69298 (Nov. 9, 2015). DOE did not receive comments regarding this test procedure and is therefore finalizing it in this final rule. The Hallowell waiver will terminate on December 5, 2016.

DOE received comments on the proposed test procedure revisions related to waivers for Multi-Zone Unitary Small Air Conditioners and Heat Pumps from ECR International (ECR) and Multi-blower Air-Conditioning and Heating Equipment from Cascade Group. Additionally, DOE has further reviewed the proposed approach for the waivers for air-to-water heat pumps granted to Daikin for their Altherma heat pumps. These waivers and associated comments are discussed in the following sub-sections.

TABLE III.4—WAIVERS TO BE TERMINATED

Scope	Decision & Order
ECR International, Inc., Multi-zone Unitary Small Air Conditioners and Heat Pumps	(Petition & Interim Waiver, 78 FR 47681, 8/6/2013).
Daikin AC (Americas), Inc., Heat Pump & Water Heater Combination	76 FR 11438, 3/2/2011.
Daikin AC (Americas), Inc., Heat Pump & Water Heater Combination	75 FR 34731, 6/18/2010.
Hallowell International, Triple-Capacity Northern Heat Pumps	75 FR 6013, 2/5/2010.
Cascade Group, LLC, Multi-blower Air-Conditioning and Heating Equipment	73 FR 50787, 8/28/2008.

1. Air-to-Water Heat Pumps and Air Conditioners

In the November 2015 SNOPR, DOE had determined that the Daikin Altherma air-to-water heat pumps with integrated domestic water heating rely exclusively on refrigerant-to-water heat exchange on the indoor side, and thus would not be required to be tested and rated for the purpose of compliance with DOE standards for central air conditioners or heat pumps. 80 FR 69278, 69298 (Nov. 9, 2015). DOE received no comment on these waivers.

DOE further considered the regulatory status of air-to-water heat pumps and notes that EPCA defines Central Air Conditioner as "a product, other than a packaged terminal air conditioner, which—(A) is powered by single phase electric current; (B) is air-cooled; (C) is rated below 65,000 Btu per hour; (D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and (E) is a heat pump or a cooling only unit." (42 U.S.C. 6291(21)) The definition does not exclude products that transfer cooling or heating to a water loop on the indoor side. Hence, DOE concludes that these products are covered under regulations for CAC/HP. DOE does agree that the existing test procedures for CAC/HP do not fully address test methods for air-to-water systems. Specifically, they do not provide instructions regarding how to set up the water loop in the test, nor whether any power input associated with the water-based thermal distribution system should be incorporated into the efficiency metrics.

The Daikin waivers called for testing of the Altherma air-to-water heat pumps using European standard EN 14511 to determine EER and COP, and that these measurements are the only allowed representations of the performance of these products. (See for example 75 FR 34731, 34733 (June 18, 2010).) DOE now considers these waivers to be invalid, because they did not provide a method to determine SEER and HSPF, the metrics that must be reported to DOE to certify compliance with the applicable efficiency standards. Hence, these waivers are considered to be terminated, effective immediately. DOE will work with manufacturers of air-to-water heat pumps and air-to-water air conditioners as needed to help develop test procedures for providing SEER, HSPF, and average off-mode power represented values that may become the basis of replacement waivers.

2. Clarification of the Test Procedure Pertaining to Multi-Circuit Products

The ECR waiver for Multi-zone Unitary Small Air Conditioners and Heat Pumps concerns a split system that has one outdoor unit with multiple circuits. In the November 2015 SNOPR, DOE proposed to define such a product as a multiple-circuit (or multi-circuit) system (see Section 1.2 in Appendix M). The November 2015 SNOPR also proposed to provide a test procedure for multi-circuit products using a common duct approach for the indoor air flow measurement, similar to the approach used for multi-split units (see Section 2.4.1.b in Appendix M), thus allowing a single test for each operating condition. 80 FR 69278, 69299 (Nov. 9, 2015).

In their comments, AHRI and Nortek stated that multi-circuit products are different than multi-split systems. According to AHRI and Nortek, the outdoor unit has multiple separate circuits, each serving a separate indoor unit. They commented that multi-circuit products should be considered as multiple units whose outdoor portions are all contained within one outdoor unit cabinet. (AHRI, No. 70 at p. 18; Nortek, No. 58 at p. 14–15). AHRI and Nortek also commented that utilizing a common duct at zero static pressure with indoor sections of differing airflows will load the indoor sections unequally and may not yield the same air flows as when individually ducted. AHRI and Nortek commented that without each circuit having individual performance data collected, the test would not reflect the true performance of the system. Id.

Rheem stated that each circuit should be tested individually and the efficiency certified separately but did not elaborate on this comment. (Rheem, No. 69 at p. 9)

Lennox supported DOE's proposal of the common duct approach for multi-circuit products. (Lennox, No. 61 at p. 16)

DOE believes that a multi-circuit system is a single unit rather than multiple units, one for each circuit, as suggested by Rheem. All of the individual circuits within the multi-circuit system share the same outdoor coil and fan(s) and therefore are affected by the operation of the other circuits. The outdoor unit containing the multiple circuits is shipped as a single unit, not as separate units. Therefore, DOE adopts its November 2015 SNOPR proposal to require manufacturers to certify the multi-circuit system as a single system, which is consistent with the existing ECR waiver.

DOE noted in the November 2015 SNOPR that the common duct testing approach has been adopted by industry standards and is an accepted method for testing systems, such as multi-split systems, having multiple indoor units. 80 FR 69299 (Nov. 9, 2015). In fact, the indoor units of multi-split systems do not all have the same capacity or air flow rate. Hence, it is not clear why the common-duct approach is suitable for multi-split systems but would not be suitable for multi-circuit systems. In this final rule, DOE adopts the common-duct testing approach proposed in the November 2015 SNOPR for multi-circuit systems. However, considering that there might be manufacturers and/or test laboratories that wish to use the approach of the waiver, in which individual measurements are made for each indoor section, DOE has modified the provisions in section 2.4.1.b for multi-circuit systems to allow use of either the common-duct approach or separate air flow measurement for each indoor unit of the multi-circuit system. Both approaches should yield the same performance since all the indoor sections are subject to the same external static pressure.

Because DOE has adopted test procedure amendments that allow multi-circuit systems to be tested without a waiver, testing in accordance with the ECR waiver may not be used for representations after 180 days following publication of this final rule.

3. Clarification of the Test Procedure Pertaining to Multi-Blower Products

The Cascade Group waiver concerns multi-blower products. The test procedure amendments, as proposed in the June 2010 NOPR enable testing of multi-blower products. 75 FR 31237 (June 2, 2010). In the November 2015 SNOPR, DOE proposed amending Appendix M to Subpart B of 10 CFR part 430 with language in sections 3.1.4.1.1d and 3.1.4.2e to provide detailed instructions on obtaining the Cooling full-load air volume rate and cooling minimum air volume rate. 80 FR 69278, 69300 (Nov. 9, 2015).

In response to DOE's November 2015 SNOPR, Rheem stated that, if there are options for obtaining the maximum or minimum airflow configuration, the option for each with the highest energy consumption should be tested. (Rheem, No. 69 at p. 9)

DOE notes that in tests for products other than multi-blower systems, the test procedures do not require use of the most energy-consumptive control setting options to achieve the specified air flow rates. Hence, DOE declines to require this approach for multi-blower

products. Therefore, DOE adopts the test approach initially proposed in the June 2010 NOPR and modified in the November 2015 SNOPR.

Because DOE has adopted test procedure amendments that allow multi-blower systems to be tested without a waiver, testing in accordance with the Cascade Group waiver may not be used for representations after 180 days following publication of this final rule.

D. Measurement of Off Mode Power Consumption

In the June 2010 NOPR, DOE proposed a first draft of testing procedures and calculations for off mode power consumption. 75 FR 31223, 31238 (June 2, 2010). In the following April 2011 SNOPR, DOE proposed a second draft, revising said testing procedures and calculations based on stakeholder-identified issues and changes to the test procedure proposals in the 2010 June NOPR and on DOE-conducted laboratory testing. 76 FR 18105, 18111 (April 1, 2011). In the October 2011 SNOPR, DOE proposed a third draft, further revising the testing procedures and calculations for off mode power consumption based primarily on stakeholder comments received during the April 2011 SNOPR comment period regarding testing burden on manufacturers. 76 FR 65616, 65618–22 (Oct. 24, 2011). In the November 2015 SNOPR, DOE proposed a fourth draft discussing and revising test settings and the calculation method in response to stakeholders' comments. 76 FR 69278, 69300–05 (Nov. 9, 2015). Based on further comments DOE received in the November 2015 SNOPR comment period, DOE is modifying its approach and is adopting the off mode test procedure.

1. Test Temperatures

In the November 2015 SNOPR, DOE proposed to require manufacturers to include the temperatures at which the crankcase heater is designed to turn on and turn off, if applicable, in their certification reports. 80 FR 69278, 69301 (Nov. 9, 2015). DOE proposed to replace the "shoulder season" off mode test (P1) at 82 °F with a test at 72±2 °F and replace the "heating season" off mode test (P2) at 57 °F with a test at a temperature which is 5±2 °F below a manufacturer-specified turn-on temperature. *Id.*

In response to the October 2011 SNOPR, the California IOUs recommended that P1 be measured at a temperature that is 3–5 °F above the manufacturer's reported "off" set point. (California IOUs, No. 33 at p. 2) DOE requested comment on this recommendation in the December 2011 extension notice. 76 FR 79135 (Dec. 21, 2011). AHRI responded to the California IOUs' recommendation, indicating that the first test should instead be conducted at 72 °F to verify whether the crankcase heater is on, and suggesting that 72 °F is more appropriate than 82 °F because 72 °F is "the top of the shoulder season." (AHRI, No. 41 at p. 2) In response to the November 2015 SNOPR, Rheem expressed its preference for the shoulder season off mode test to be at 82±2 °F instead of 72±2 °F in order to reduce the test condition transitioning time after the B test. (Rheem, No. 69 at p. 9)

Although DOE acknowledges that there may be added test burden to reduce the temperature in the test room, DOE agrees with AHRI that 72 °F is more representative of conditions during actual use. Accordingly, today's final rule adopts the requirement that this test be conducted at 72±2 °F. There were no comments against the proposal to replace the "heating season" off mode test (P2) at 57 °F with a test at a temperature which is 5±2 °F below a manufacturer-specified turn-on temperature. Hence, DOE adopts the proposal in this final rule.

Ingersoll Rand requested an option that off mode tests be allowed to take place in a climate controlled enclosure rather than a psychrometric room. (Ingersoll Rand, No. 65 at p. 4) In considering this suggestion, DOE noticed that, although the proposed test procedure does not specify that off mode tests should be conducted in psychrometric rooms, the proposed procedure requires off mode tests be done after the B, B_1, or B_2 test, thus implying that it be conducted in a psychrometric room. DOE agrees that the off mode test results will not be affected by humidity levels. The proposal of the November 2015 SNOPR involves conducting the off mode test after the B, B_1, or B_2 test, and approaching the target 72 °F test temperature at a rate of change of no more than 20 °F per hour. 80 FR 69278, 69374 (Nov. 9, 2015). The test procedure in this final rule modifies this procedure by allowing the off mode test to be conducted in a temperature-controlled room, but to otherwise maintain the proposed requirements with regard to ambient temperature, *i.e.* starting the test when the ambient temperature is 82 °F (as required for the B, B_1, or B_2 test) and subsequently ramping down the ambient temperature as required by the proposed procedure. The final test procedure also acknowledges the initial intent to conduct the test after the B, B_1, or B_2 test by requiring that the compressor shell temperature be at least 81 °F before starting the ambient-temperature rampdown. This requirement prevents a test lab from moving a test sample from a storage room that might be much colder than 82 °F into the test room and starting the test with a cold compressor.

Lennox suggested that DOE allow manufacturers to simply energizing the crankcase heater for non-variable type heaters to reduce the test burden, so that such units could be tested with no temperature control requirement. (Lennox, No. 61 at p. 16) In considering Lennox's comment, DOE agrees that this option could be adopted for many fixed-power-input crankcase heaters, including those without controls and those controlled by thermostats that measure ambient temperature whose sensing elements are not affected by the heater. However, DOE understands that, if the thermostat's action is affected by the crankcase heater's heat output (*i.e.* if the sensing element is close enough to the heater to be affected by the heat), the unit should be tested with a controlled ambient temperature because in such cases the ambient temperatures at which the thermostat switches the heater on and off would differ from its rated cut-in and cut-out temperatures, due to the warming effect of the heater.

Several comments recommended a third off-mode test at low temperatures. JCI recommended for air conditioners whose crankcase heaters are turned off during winter a third test at 5 °F below the winter cut-off temperature. (JCI, No. 66 at p. 16) The joint NEEA/NPCC comment requested a third test below freezing to establish the slope of a variable power crankcase heating system and to capture the energy use of electric resistance drain pan heaters which could consume considerable energy in off mode for conditions below freezing. (NEEA and NPCC, No. 64 at p. 4) The joint ACEEE/NRDC/ASAP comment made a similar recommendation (ACEEE, NRDC, ASAP, No. 72 at p. 3) As mentioned in the November 2015 SNOPR, the intent of the off mode power consumption value ($P_{W,OFF}$) is that it be a representation of the off mode power consumption for the shoulder and heating seasons, and DOE has not found that the additional accuracy gained from the additional test point merits the additional test burden, as discussed in the November 2015 SNOPR. 80 FR 69278, 69301 (Nov. 9, 2015). As DOE is required to consider test burden in its development of test procedures, DOE is not adopting a third test in this final rule.

2. Calculation and Weighting of P1 and P2

DOE proposed to give equal weighting to *P1* and *P2* for the calculation of the off mode power rating ($P_{W,OFF}$). 76 FR 65616, 65620 (Oct. 24, 2011). (See also 80 FR 69278, 69301 (Nov. 9, 2015)).

The Joint Efficiency Advocates (NEEA and NPCC) strongly urged DOE to adopt a temperature bin-weighting methodology that would include the energy contribution of drain pan heaters and suggested considering the AHRI-proposed bin method. (NEEA and NPCC, No. 64 at p. 5) The Joint Advocates of ACEEE, NRDC and ASAP also recommended the bin method due to their concern that the current averaging method would underestimate the off mode power consumed for units with variable output crankcase heaters. (ACEEE, NRDC and ASAP, No. 72 at p. 3) NEEA and NPCC also commented that with manufacturers providing turn-on and turn-off temperatures for crankcase heaters, it would be easy to construct a bin method calculation. Further, they indicated that DOE has not shown data to justify the selection of a 50–50 weighting of P1 and P2. (NEEA and NPCC, No. 64 at p. 5)

DOE is aware that drain pan heaters may be used in heat pumps that have drain pans to collect defrost melt water. However, heat pumps are not considered to have off-mode hours in sub-freezing winter conditions when drain pan heaters might be required. Their energy use is captured as part of the active-mode heating tests in 17 °F ambient conditions (*e.g.* the H3, $H3_1$, and $H3_2$ tests) that are part of the HSPF determination. To clarify, DOE has added a new section 2.2.f to Appendix M that indicates that such heaters are energized for active-mode testing.

DOE initially proposed to adopt the 50–50 weighting of the off mode in the October 2011 SNOPR 75 FR at 65620 (Oct. 24, 2011). This decision was made in light of disagreement regarding what represents an appropriate shoulder season, concern about regional variation in shoulder season characteristics, and the fact that EPCA did not grant DOE authority to set regional off-mode standards. A 50–50 weighting of P1 and P2 provides a representative national estimate of off mode power input. Depending on the assumptions made regarding the shoulder season, the climate region examined, whether the product is an air conditioner or a heat pump, and the details of the crankcase heater control, the relative representativeness of P1 and P2 may change. In light of this variability and uncertainty, it is not clear that a bin calculation would have more meaning than the 50–50 averaging. Therefore, DOE is adopting the 50–50 weighting as proposed.

There were additional comments concerning the calculation of P1 and P2 for products with variable speed compressors. Nortek, Unico, JCI, Rheem, Goodman and AHRI each provided an estimate of 70 Watts for variable speed products' crankcase heaters and commented that 70 Watts is an accurate average value. They argued that, considering that the standard single-capacity products' crankcase heaters require no more than 40 Watts, the ratio of 70 to 40, which is 1.75, should be a reasonable multiplier. (Nortek, No. 58 at p. 8; Unico, No. 63 at p. 9; JCI, No. 66 at p. 9; Rheem, No. 69 at p. 10; AHRI, No. 70 at p. 11; Goodman, No. 73 at p. 8) Lennox recommended that DOE adopt the same requirement for modulating or variable speed systems as adopted for multiple compressor systems, with a multiplier factor of 2. (Lennox, No. 61 at p. 16)

In contrast, a joint comment from NEEA and NPCC and a comment from the California IOUs disagreed with DOE's proposal to adjust the off-mode measurements for large-capacity, multiple or modulated compressors. NEEA and NPCC argued that appropriately-designed crankcase heaters for large-capacity compressors should pass the off-mode standard and that it is unnecessary to have a multiplier. (NEEA and NPCC, No. 64 at p. 5) The California IOUs commented that off mode power consumption should be on a per-system basis rather than per-compressor. (California IOUs, No. 67 at p. 2–4)

Based on these comments, DOE is adopting 1.75 as the multiplier for modulated compressors (including variable-speed compressors). DOE adopts as the effective multiplier for a compressor system consisting of multiple single-stage compressors a value equal to the number of single-stage compressors. As addressed in the November 2015 SNOPR, DOE believes that large-capacity and multiple-compressor systems require higher wattage crankcase heaters because they are likely to have larger surface area and more thermal mass, including more lubricant. Also, manufacturers have been using higher-wattage crankcase heaters for modulating compressors to address the higher perceived risk associated with oil frothing on restart for these compressors, due to their higher controls complexity. DOE does not have sufficient evidence that larger-capacity, multiple-, or modulating compressor systems can operate safely with the same levels of crankcase heating and hence retains the multiplier for these compressors in the off-mode test. DOE agrees that modulated compressors (including variable speed products) require more crankcase heater power, and selected the 1.75 factor on this basis (this is equal to the typical 70W mentioned above for variable-speed compressors divided by the typical 40W power draw for typical single-stage compressor crankcase heaters).

Although not indicated clearly in the comments, DOE understands "modulated" in the comments to refer to any compressor that is not single-capacity. DOE clarifies in this final rule that the 1.75 multiplier applies to the number of compressors that are not single-stage, including two-stage compressors and variable speed compressors. This is less than a factor of 2, which would be the effective adjustment for a two-compressor system, but there is insufficient data showing variable speed products should have the same requirement as multiple compressor systems.

3. Time Delay Credit and Removal of Calculations for Off Mode Energy Consumption and Annual Performance Factor

In the November 2015 SNOPR, DOE proposed to adopt, for crankcase heaters that incorporate a time delay before turning on, a credit that would be proportional to the duration of the delay, as implemented in the calculation of the off mode energy consumption. (The original proposed calculation method for $P_{W,OFF}$ did not include any adjustment associated with the time delay). DOE also proposed, for products in which a time delay relay is installed but the duration of the delay is not specified in the manufacturer's installation instructions shipped with the product or in the certification report, a default period of non-operation of 15 minutes out of every hour, resulting in a 25% savings in shoulder-season off mode energy consumption. DOE notes that the impact on crankcase heater energy use was extended in the proposal to the entire off-mode energy consumption because, for an air conditioner or heat pump with a crankcase heater, most of the off mode energy use is associated with the heater. To reduce potential instances of the misuse of this incentive, DOE also proposed requiring manufacturers to include in certification reports the duration of the crankcase heater time delay for both the shoulder and heating seasons. 80 FR 69278, 69303–04 (Nov. 9, 2015).

DOE received a joint comment from NEEA and NPCC that stated, among other things, that the impact of a time delay in a system is difficult to measure accurately. NEEA and NPCC also expressed the opinion that sometimes the time delay behavior is an artifact of temperature control, because it takes a certain time for the compressor to cool after a run cycle. (NEEA and NPCC, No. 64 at p. 6) The California IOUs recommended care be taken in adopting such a credit, and requested that it be vetted appropriately before being implemented. (California IOUs, No. 67 at p. 5)

Upon further review of the function of the time delay relay and its potential impact on off mode power consumption, DOE concludes that the proposed credit is not consistent with the intent of its off mode definition. A definition for off mode was initially proposed in the July 2010 NOPR. For air conditioners, it was proposed to include, "all times during the non-cooling season of an air conditioner. This mode includes the 'shoulder seasons' between the cooling and heating seasons when the unit provides no cooling to the building and the entire heating season, when the unit is idle." 75 FR at 31249 (June 2, 2010). The definition for off mode season in today's notice is not identical but has essentially the same meaning, for example for an air conditioner, referring to both the shoulder season and the heating season. The shoulder season is defined as the period between the months of the year that require heating or cooling. The off mode season lasts months. Hence, the impact of a crankcase heater time delay of a fraction of an hour, as is typical for such relays, would insignificantly reduce average crankcase heater on-time or energy use.

The time delay credit was proposed in the November 2015 SNOPR to apply only to the off mode energy use calculation, and to the annual performance factor, APF, but not to the off-mode metric $P_{W,OFF}$. DOE does not currently have, and has not proposed to establish, standards or reporting requirements for off mode energy use or annual performance factor, nor are these parameters needed for representations, such as for product labeling. Hence, DOE is not adopting in Appendix M the proposed provisions for calculating off mode energy use, as well as the proposed time delay credit, and has removed the provisions for calculating annual performance factor.

4. Impacts on Product Reliability

Addressing concerns from stakeholders, in the November 2015 SNOPR, DOE stated that it expected that the proposed off mode test method would allow manufacturers to meet the June 2011 off mode standards without compromising the reliability of central air conditioners and heat pumps. DOE requested comments on the issue of compressor reliability as it relates to crankcase heater operation. 80 FR 69278, 69304 (Nov. 9, 2015).

Lennox, JCI, and Rheem expressed concerns that regulating crankcase heater power will have a negative impact on products. (Lennox, No. 61 at p. 17; JCI, No. 66 at p. 17; Rheem, No. 69 at p. 11) NEEA/NPCC strongly agreed with DOE that manufacturers will be able to meet off mode power consumption standards without adverse impact on product reliability. (NEEA/NPCC, No. 64 at p. 7) UTC/Carrier and the California IOUs suggested that DOE should seek comments or obtain information on research conducted by compressor manufacturers or independent entities. (UTC/Carrier, No. 62 at p. 12; California IOUs, No. 67 at p. 5) However, no party provided any data indicating that the proposal would have such an impact. Also, DOE has modified many of the details of the test procedure as requested by stakeholders to address concerns, for example, adjusting the measurement of $P_{W,OFF}$ for modulating- or multiple-compressor systems for consistency with their typically higher crankcase heater wattages. In this final rule, DOE has modified the proposed off mode test procedure consistent with information, provided by stakeholders, that might affect crankcase heater performance as measured by the test procedure such that application of the off mode standard using the final test procedure should have minimal impact on the reliability of CAC/HP systems.

5. Off Mode Power Consumption for Intelligent Compressor Heat Control

In a general response to the off mode test procedure proposed in the November 2015 SNOPR, Ingersoll Rand commented that the proposed off mode test procedure cannot accurately reflect off mode energy consumption for their intelligent crankcase heater control, which cycles the heater to provide the appropriate average heat input. They requested that they be allowed to use an alternative test method for measurement of the heating season off-mode power consumption, P2, for products with this feature. The requested alternative test suggested by Ingersoll Rand would consist of a test period for measurement of input power that includes three complete crankcase heater cycles, or 18 hours, whichever is shorter, rather than the 5-minute test period of the proposed test. Ingersoll Rand provided test data showing typical operation of the crankcase heater. (Ingersoll Rand, No. 65 at p. 14–23) DOE carefully reviewed Ingersoll Rand's data and agrees that longer tests are needed for heaters whose controls cycle or vary crankcase heater power over time. Rather than authorizing an alternative method specific to Ingersoll Rand, the final rule adopts an additional provision in the measurement of heating season off mode power consumption (P2), using the approach suggested by Ingersoll Rand for such controls: three complete heater cycles or 18 hours, whichever is shorter. The final rule also requires that this approach be used for measuring the shoulder season off-mode power consumption, P1, if the heater is energized and cycles or varies input power for that measurement.

6. Off Mode Test Voltage for Dual-Voltage Units

In its comments on the off mode test procedure proposal of the November 2015 SNOPR, Ingersoll Rand stated that the proposal did not specify how to test units with a dual voltage rating. They further recommended that for such systems, the higher voltage should be the test voltage for off mode tests. (Ingersoll Rand, No 65 at p. 4). They also commented that the same tolerances be adopted as are used for performance testing. DOE notes that the current test procedure incorporates by reference section 6.1.3.2 of AHRI 210/240–2008, which provides requirements for setting voltage for testing products with dual nameplate voltages. The standard requires that 230 V be used for 208–230 V dual-voltage units and that testing for all other dual nameplate voltage units be conducted at either the lower of the two voltages or at both voltages. Ingersoll Rand did not provide explanations supporting their suggestion to instead use the higher voltage (Ingersoll Rand, No. 65 at p. 4), and DOE sees no reason to depart from these established requirements for off-mode testing. DOE agrees with the need to specify tolerances, which are discussed in the next section.

7. Off Mode Test Tolerance

DOE recognized that the November 2015 SNOPR did not address all relevant test tolerances for the off mode power consumption test. DOE proposed tolerances for outdoor temperatures in the November 2015 SNOPR, but did not clarify whether test tolerances for power supply voltage for off mode testing should be different than for active mode testing. DOE adopts in this final rule the same test tolerances used for active mode testing (see, for example, Table 7 in section 3.3 of Appendix M). These tolerances are 2.0 percent as the test operating tolerance and 1.5 percent as the test condition tolerance, both as a percentage of measured voltage.

8. Organization of Off Mode Test Procedure

In addition to revising the proposed off-mode test procedure in response to stakeholder comments, as discussed in previous sections, DOE also modifies the proposed off mode test procedure in this final rule. These modifications do not affect the measurement but should help to ensure consistency between tests conducted in different labs.

First, DOE has provided greater detail regarding test sample set-up and connection of power measurement devices for off-mode testing. This includes provisions for providing power to the control circuit for all kinds of units and specifically addresses the options when testing coil-only units for which a furnace or a modular blower is the designated air mover. (See section 3.13.1.a of Appendix M as finalized in this notice.)

Second, the test procedure now provides greater specification regarding which power inputs are to be included as part of the low voltage power P_x. (See, for example, section 3.13.1.d of Appendix M as finalized.)

Third, the test procedure indicates that for units with time delay relays, the measurement is to be made after the time delay has elapsed.

In addition, DOE notes that in the calculation of off-mode seasonal power consumption in section 4.3, P2 should never equal to zero. As described in the November 2015 SNOPR, DOE intended that the off mode power rating $P_{W,OFF}$ be equal to the arithmetic mean of P1 and P2, without discussion of any special cases in which P2 is equal to zero. 80 FR at 69301 (Nov. 9, 2015). The provisions for calculating $P_{W,OFF}$ for cases in which P2 is equal to zero should not have appeared in the Appendix M regulatory language presented in the notice. Hence this notice shows the intended calculation, that $P_{W,OFF}$ be equal to the average of P1 and P2.

9. Certification

In the November 2015 SNOPR, DOE proposed that manufacturers report off-mode power in their certification reports. 80 FR 69278, 69291 (Nov. 9, 2015). In response, AHRI and Rheem suggested that the off mode ratings should be reported as pass/fail with a 5% tolerance. AHRI did not explicitly clarify what they meant by a 5% tolerance, but DOE assumes this means that the model would rate as "pass" even if the measured value (or the average of the values measured for the sample of units) is as much as 5% greater than the standard. AHRI stated that first, it is difficult to accurately measure the power consumption because of the inaccuracies in common measurement devices, and second, because consumers do not compare products using this metric, manufacturers have no incentive to report it. (AHRI No. 70 at p. 11; Rheem No. 69 at p. 3)

DOE requires that manufacturers report the value of all regulated efficiency metrics rather than simply an indication of whether units pass or fail the energy conservation standard. If a manufacturer does not wish to reveal how much lower than the off-mode power consumption standard a model performs, it has the option to rate at the standard level as long as the represented value is consistent with the measurements, sampling plan and represented value requirements in 10 CFR 429. Accordingly, DOE maintains the requirement to report the actual value for off-mode power.

DOE also proposed to require manufacturers to include in the certification reports the temperatures at which the crankcase heater is designed to turn on and turn off for the heating season, if applicable. 80 FR 69278, 69301 (Nov. 9, 2015).

After finalization of the off mode test procedure based on stakeholder comments, DOE recognized that the only product-specific temperature needed to be known to properly conduct the test is the turn-on temperature (*i.e.* the cut-in temperature). This is the temperature below which the thermostat would energize the heater. The heating season off-mode power is measured at an ambient temperature 5 +/- 2 °F below this turn-on temperature. The temperature at which the crankcase heater of an air conditioner is designed to turn off for the heating season (*i.e.* below which the heater would no longer be energized) will not be needed to conduct the tests. This is because the test procedure as finalized does not call for a test at a temperature near this lower turn off temperature. Hence DOE is requiring reporting only of the temperature at which the crankcase heater is designed to turn on.

10. Compliance Dates

Rheem, Nortek, Goodman and JCI expressed concern with complying with the off mode power rating within 180 days of publication of the final test procedure. (Rheem, No. 69 at p. 3; Nortek, No. 58 at p. 7; Goodman, No. 73 at p. 20; JCI, No. 66 at p. 9) JCI commented that at least one test year is needed to complete the work to comply. (JCI, No. 66 at p. 9) JCI further suggested that they would agree with requiring the off mode test for any new basic model starting 180 days after the publication of final rule, but that all existing basic models should be granted an extended period of 5 years for compliance. (JCI, No. 66 at p. 9) Nortek commented that manufacturers should have at least two years to comply with this change, otherwise DOE must explicitly permit all existing products to be grandfathered in until the new energy conservation standard goes into effect. (Nortek, No. 58 at p. 7) Goodman commented that manufacturers are statutorily provided with five years to comply with energy conservation standards, which DOE has reduced to less than six months. Goodman requested that DOE provide at least half of the required statutory time (two-and-a-half years) to comply with the off-mode standard compliance and certification requirements. Goodman noted that DOE could not presently assert civil penalties for off-mode because there is no final method of test. (Goodman, No. 73 at p. 20–21)

DOE understands that the stakeholders' concern with the compliance date is due to the test burden related to measuring off mode power consumption. In this final rule, DOE has considerably reduced the test burden in the following aspects: (a) manufacturers do not need to test each basic model for off mode power consumption and instead are allowed to use an AEDM for off mode with certain requirements (discussed in section III.B.8); (b) all units are allowed to be tested for off mode power consumption in a temperature-controlled room rather than a psychrometric room; and (c) for units having a compressor crankcase heater whose power consumption can be determined without ambient condition requirements (*e.g.* the heater's wattage when energized does not vary with ambient temperature), manufacturers do not need to use temperature-controlled test facilities.

With the test procedure allowances stated above, DOE believes that the off mode test burden has been reduced significantly and manufacturers should be able to provide the off mode power represented values within 180 days as required by statute.

E. Test Repeatability Improvement and Test Burden Reduction

42 U.S.C. 6293(b)(3) states that any test procedure prescribed or amended

shall be reasonably designed to produce test results which measure energy efficiency and energy use of a covered product during a representative average period of use and shall not be unduly burdensome to conduct. This section discusses clarifications to improve test procedure repeatability and to reduce test burden. None of the clarifications listed in this section would alter the average measured energy consumption of a representative set of models.

1. Indoor Fan Speed Settings for Blower Coil or Single-Package Systems

Indoor unit fan speed is typically adjustable to assure that the required air volume rate is provided for the range of field-installed ductwork systems that the unit might use for air distribution. The DOE test procedure has specific requirements for fan speed adjustment, external static pressure, and air volume rate during the test. For a ducted blower coil system, DOE's test procedure requires that (a) external static pressure be no less than a minimum value that depends on cooling capacity [9] and product class, ranging from 1.10 to 1.20 inches of water column (in. wc.) for small-duct, high-velocity systems and from 0.10 to 0.20 in. wc. for all other systems except non-ducted (see 10 CFR part 430, subpart B, Appendix M, Table 2); and that (b) the air volume rate divided by the total cooling capacity not exceed a maximum value of 37.5 cubic feet per minute of standard air (scfm) per 1000 Btu/h of cooling capacity [10] (see 10 CFR part 430, subpart B, Appendix M, Section 3.1.4.1.1). In the November 2015 SNOPR, DOE proposed that blower coil products be tested using the lowest speed setting that satisfies the minimum static pressure and the maximum air volume rate requirements, if applicable, if more than one of these settings satisfies both requirements. This clarification was proposed to be added to section 2.3.1.a of Appendix M. 80 FR 69278, 69305 (Nov. 9, 2015).

Rheem agreed that the most logical and energy efficient method to set up an indoor fan on a central air conditioner or heat pump system is to set the indoor blower to the lowest fan setting that meets all of the air volume rate requirements. Rheem also agreed that lab to lab repeatability will improve with this requirement. (Rheem, No. 69 at p. 11)

JCI expressed concern that testing above the rated airflow would be permitted (JCI, No. 66 at p. 11). However, JCI expressed agreement with the proposal provided DOE establishes a tolerance relative to the rated airflow before adjusting speed settings (JCI, No. 66 at p. 17). In response to JCI, DOE did not intend to imply that the tested airflow is allowed to exceed the rated airflow. In this final rule, DOE has clarified this in sections 2.3.1.a and 2.3.2.a of the regulatory text by referencing section 3.1.4 for information on air volume rate control settings. Section 3.1.4 outlines a procedure in which the air volume rate is always set to the rated value or reduced to meet the static pressure requirement.

Further, DOE notes that in the current test procedure (section 3.1.4 of Appendix M) the air flow may be adjusted downwards from the rated air flow by up to 5 percent to meet the static pressure requirement before adjusting speed settings (*i.e.,* if the ESP is lower than required when running at the rated air flow, the code tester fan can be adjusted to increase ESP and decrease airflow, without increasing the fan speed setting, until airflow is 95 percent of rated airflow). The June 2010 NOPR proposed increasing this tolerance such that switching to a higher speed setting would be required when the air volume rate drops below 90 percent of the rated air volume rate without meeting the external static pressure requirement—a 10 percent tolerance below rated. 75 FR at 31234 (June 2, 2010).

NEEA commented that they do not support widening the gap between rated performance in the lab and actual performance in the field. NEEA requested that DOE research the adequacy of the 5 percent tolerance with an ESP testing minimum of 0.5 in. w.c. (NEEA, No. 7 at pp. 3–4). DOE does not believe that the air volume rate measurement in the field is very precise, if it is measured directly at all when systems are installed. This is because the apparatus used to measure air flow with this precision in the laboratory is very bulky and is not used for field installations. Hence, the increase from 5 to 10 percent tolerance would not increase the gap between field and laboratory operation. DOE adopts the tolerance as proposed.

DOE identified potential sources of confusion in section 3.1.4 and has improved the language for setting the air volume rate of ducted blower coil systems that use blower motors other than constant-air-volume-rate indoor blower motors. These changes do not alter the test method but rather provide clearer instructions for adjusting the indoor fan and the test apparatus settings to set the air volume rate in accordance with the test procedure.

Improper fan speeds implemented during testing may have a marked impact on product performance, and inconsistent implementation of speed settings and adjustments may be detrimental to test repeatability. DOE therefore proposed that manufacturers could include in their certification report a certified air volume rate and certified instructions for setting fan speed or controls to achieve that air volume rate. 80 FR 69278, 69305 (Nov. 9, 2015). The requirement has been adopted by DOE in the final rule. As part of the section 3.1.4 changes, DOE added instructions for testing if there is no certified air volume rate. Additionally, absent fan speed instructions for installation, DOE added instructions to use the as-shipped settings.

DOE also adds specificity on which test conditions to use for determining air volume rates. For instance, the A (for single-stage units) or A_2 test is specified for determining the cooling full-load air volume rate. Another modification places the 37.5 cubic feet per minute of standard air (scfm) per 1,000 Btu/h of capacity check as a last step in the process, after both the air volume rate and external static pressure requirements are met.

AHRI asked DOE to provide information on how the airflow 450 scfm per ton ceiling was derived and why it is still relevant. (AHRI, No. 70 at p. 13) DOE notes that the 450 scfm/ton ceiling is identical to the 37.5 scfm per 1,000 Btu/h maximum air flow requirement that is in the CAC/HP test procedure. This requirement has been in the DOE test procedure since it was initially established. On January 11, 2001, DOE published a NOPR in which it discussed whether this upper limit on air flow should remain in the test procedure, expressed interest in further discussion to resolve the question, but proposed not to change the limit. 66 FR 6774. The final rule completing that rulemaking did not again discuss the issue. 70 FR 59122 (Oct. 11, 2005).

DOE agrees with AHRI that the limit is not needed for blower coil systems. Increased air flow can improve heat transfer from the indoor coil. However, higher air flow for blower coil systems is at the expense of considerable fan power, which both reduces cooling capacity and increases system power. There is an optimum air flow for which efficiency would be maximized, typically near 400 scfm per ton, but it is different for each system. In a blower coil system test, the added fan power required to move additional air is incorporated in the measurement. Hence, a manufacturer would not have incentive to increase rated airflow unreasonably. On the other hand, not setting an upper bound on air flow in the test procedure gives manufacturers more design flexibility. For these reasons, DOE has removed the 450 scfm per ton requirement for blower coil systems in this final rule notice. DOE does, however, expect that certified airflow rates will be consistent with installation instructions, since ultimately the test procedure is intended to reflect field performance.

For consistency with the furnace fan test procedure, DOE proposed to add to Appendix M the definition for "airflow-control setting" that has been adopted in Appendix AA to refer to control settings used to obtain fan motor operation for specific functions. 80 FR 69278, 69305 (Nov. 9, 2015). DOE did not receive comments on this proposal and is retaining it as proposed.

2. Air Volume Rate Adjustment for Coil-Only Systems

In the current DOE test procedure, for a coil-only system, the pressure drop across the indoor unit must not exceed 0.3 inches of water for the A test (or A_2 test for two-capacity or variable-capacity systems), and the maximum air volume rate per capacity must not exceed 37.5 cubic feet per minute of standard air (scfm) per 1000 Btu/h. (10 CFR part 430, subpart B, Appendix M, Section 3.1.4.1.1) For such systems, higher air volume rates enhance the heat transfer rate of the indoor coil, and therefore may maximize the measured system capacity and efficiency. In addition, the energy use and heat input attributed to the fan energy for such products is a fixed default value in the test procedure, and is set at 365 W per 1,000 scfm (see, for example, 10 CFR part 430, subpart B, Appendix M, Section 3.3(d)). Thus, the impact from fan power on the efficiency measurement if air volume rate is increased may be more modest than for a blower coil unit, for which fan input power would increase more rapidly due to the increase of internal pressure drop as well as air volume rate. To prevent rating based on excessive air volume rates, a maximum pressure drop of 0.3 in. wc. is specified for the indoor coil assembly. To minimize potential testing variability due to the use of different air volume rates, in the November 2015 SNOPR, DOE proposed to require for coil-only systems for which the maximum air flow (37.5 scfm/1,000 Btuh) or maximum pressure drop (0.3 in wc) are exceeded when using the specified air flow rate, that the air flow rate must be reduced so that both are satisfied. This is specified in section 3.1.4.1.1.c of Appendix M as proposed. 80 FR 69278, 69305 (Nov. 9, 2015). DOE did not receive comments on this proposal other than the AHRI comment regarding the 450 scfm per ton upper limit on air flow discussed above. DOE believes that the 0.3 in wc coil pressure drop maximum provides a limit on airflow that is comparable, *i.e.* exceeding the 450 scfm per ton limit would generally involve also exceeding the 0.3 in wc limit. Hence, DOE sees little need to maintain the 450 scfm per ton limit only for coil-only systems and, consistent with the approach discussed above for blower coil systems, has removed this limit for coil-only systems.

3. Requirements for the Refrigerant Lines and Mass Flow Meter

Section 2.2(a) of 10 CFR part 430, subpart B, Appendix M provides instructions for insulating the "low-pressure" line(s) of a split system. In the cooling mode, the vapor refrigerant line connecting the indoor and outdoor units operates at low refrigerant pressure. However, in the heating mode, it operates at high pressure. To improve clarity and ensure that the language of the test procedure refers specifically to the actual functions of the refrigerant lines, DOE proposed in the November 2015 SNOPR to refer to the lines as "vapor refrigerant line" and "liquid refrigerant line". 80 FR 69278, 69306 (Nov. 9, 2015).

Because DOE seeks to minimize test variability associated with the use of insulation, the November 2015 SNOPR included a proposal for determining the insulation requirement for the test based on the materials and information shipped with the test unit. Under this proposal, test laboratories would install the insulation shipped with the unit. If the unit is not shipped with insulation, the test laboratory would install the insulation specified in the installation manuals shipped with the unit. If instructions for refrigerant line insulation are not provided, liquid line insulation would be used only for heating-only heat pumps. These proposed requirements were intended to reduce test burden and improve test repeatability. 80 FR 69278, 69306 (Nov. 9, 2015).

Additionally, DOE proposed to add requirements to Appendix M, section 2.10.3 to require use of a thermal barrier to prevent thermal transfers between the flow meter and the test chamber floor if the meter is not mounted on a pedestal or other support elevating it at least two feet from the floor. 80 FR 69278, 69306 (Nov. 9, 2015).

DOE requested comment on these proposals. Many stakeholders agreed with the proposals. (NEEA and NPCC, No. 64 at p.8; ADP, No. 59 at p.9; UTC/Carrier, No. 62 at p. 13; Rheem, No. 69 at p. 11) DOE did not receive any comments opposing these proposals. Therefore, in this final rule, DOE adopts these proposals and adds a specification that insulation should remain the same for heating mode and cooling mode.

4. Outdoor Room Temperature Variation

The current DOE test procedure requires that a portion of the air approaching the outdoor unit's coil is sampled using an air sampling device, often called an air sampling tree. (See Appendix M, section 2.5). To ensure that the measured temperature accurately represents the average temperature approaching the coil even if there might be variation in the outdoor room conditions, the November 2015 SNOPR proposed to require demonstration of air temperature uniformity over all of the air-inlet surfaces of the outdoor unit using thermocouples, if sampling tree air collection is not performed on all inlet-air faces of the outdoor unit. Specifically, DOE proposed requiring that the thermocouples be evenly distributed over the inlet air surfaces such that there is one thermocouple measurement representing each square foot of air-inlet area. The maximum temperature spread to demonstrate uniformity, *i.e.,* the maximum allowable difference in temperature between the measurements at the warmest location and at the coolest location, would be 1.5 °F. If this value is exceeded, DOE proposed that sampling tree collection of air would be required from all air-inlet surfaces of the outdoor unit. DOE proposed in the November 2015 SNOPR to add these requirements to Appendix M, section 2.11.b. 80 FR 69278, 69306–07 (Nov. 9, 2015).

In its comments on the November 2015 SNOPR, Rheem agreed with DOE's proposal. (Rheem, No. 69 at p. 12) UTC/Carrier also supported this proposal, indicating that although it will be challenging for testing facilities, it should reduce testing uncertainty. (UTC/Carrier, No. 62 at p. 14). DOE recognizes that some of these proposed requirements could represent challenges, since they involve both addition of instrumentation and could require adjustment of outdoor room air circulation patterns in order to assure that the maximum temperature difference is not exceeded.

Some stakeholders indicated that aspects of the proposal were not clear. JCI and AHRI commented that the

[9] Or heating capacity for heating-only heat pumps.

[10] Such a requirement does not exist for heating-only heat pumps.

proposal did not specify if the 1.5 °F maximum range for the observed temperatures measured by the thermocouples applies to time averages or instantaneous measurements made at any time during the test period, with AHRI adding that the tolerance should apply to the time-average measurements. (JCI, No. 66 at p.18; AHRI, No. 70 at p. 13; ADP, No. 59 at p. 10; Lennox, No. 61 at p. 17). JCI, AHRI, ADP, and Lennox commented that the regulatory text portion of the notice requires that the thermocouple grid be used to verify temperature uniformity whether or not air samplers are used on all air inlet faces of the outdoor unit, while the preamble discussion (section III.E.3 of the notice) indicates that the thermocouple grid is not needed if air samplers are used on all air inlet faces—the commenters questioned the requirement for use of the thermocouple grid if air samplers are used on all faces. (JCI, No. 66 at p.18; AHRI, No. 70 at p. 13; ADP, No. 59 at p. 10; Lennox, No. 61 at p. 17). In response, DOE notes that DOE intended that the tolerance apply to the average temperatures measured during the test period and that the thermocouple grid be waived if the air samplers are used on all air inlet faces. DOE revised Appendix M for consistency with the intent of the proposal. DOE notes that time variation of the air inlet temperature is already addressed by the test operating tolerance requirement of ANSI/ASHRAE 37–2009.

JCI and Ingersoll Rand suggested increasing the allowed variation between thermocouples on the thermocouple grid or sampler to 2.5F. (JCI, No. 66 at p.11; Ingersoll Rand, No. 65 at p. 5) In response, DOE notes that the proposal was somewhat lenient in allowing only one inlet air face to be measured with an air sampler if the temperature uniformity requirement is met. If, for example, the outdoor unit has four air inlet faces and the face with an air sampler is measuring high just within the allowed tolerance, while all the others are reading low, the actual average outdoor air condition would be up to 1.9 °F lower than measured by the air sampler if the maximum allowed tolerance were 2.5 °F.[11] Hence DOE is reluctant to allow significant departure from the proposed 1.5 °F tolerance. However, DOE has increased the tolerance to 2.0 °F, noting that the accuracy of thermocouples is at best nearly +/- 1 °F without careful calibration, thus making imposition of a 1.5 °F maximum range impractical.

JCI commented that they have had excellent experience with regard to the balance of entering air when using a 3-sided air sampler for products with 4 inlet air surfaces. (JCI, No. 66 at p.17) However, the comment did not provide DOE details to clarify what this means in terms of air temperature uniformity and how they determined that the 3-sided approach is sufficient. For example, if testing using four air samplers with separate measurements has always shown that any three of the air samplers provides an average temperature that is negligibly different than the full four-air-sampler average, such results would indicate strongly that the fourth air sampler was not necessary. DOE may consider such information and potential revision of the temperature uniformity requirements in a future rulemaking if such data can be provided.

AHRI and JCI commented that the requirement to provide thermocouples for every square foot of outdoor coil surface would increase test burden, potentially requiring use of up to 40 thermocouples for larger units. (AHRI, No. 70 at pp. 12–13; JCI, No. 66 at p.11). DOE notes that the thermocouples are not required if all air-inlet faces of the outdoor unit are measured using air samplers. DOE also notes that the 2015 draft version of AHRI Standard 210/240 calls for use of 16 thermocouples per air sampler. If using four air samplers, this adds up to 64 thermocouples. DOE has modified the requirement so that the thermocouple density would be 16 per face or one per square foot of inlet area, whichever is less. However, as noted before, the thermocouples are not required if air samplers are used on all air inlet faces.

Ingersoll Rand commented that DOE should specify the location of the thermocouples, indicating that poor choice of location could, contrary to ASHRAE 37 requirements, lead to the thermocouple grid blocking the natural recirculation of condenser discharge air to the air inlet that may be inherent to the product design. The comment recommended that the thermocouples be mounted on an air sampler. Ingersoll Rand also recommended adding a specification to correlate the average thermocouple reading to the dry bulb temperature measurement of the sampled air, similar to the requirements of the thermopile used on the indoor side. (Ingersoll Rand, No. 65 at p. 5) In response, DOE notes that thermocouple requirement applies only if all air inlet faces of the outdoor unit are not measured using air samplers. DOE has modified the test procedure language to indicate that natural recirculation of discharge air back to the air inlet should be avoided when mounting the thermocouples, and that they should be located 6 to 24 inches from the air inlet face. Certainly any thermocouple that blocks discharge air flow will register a high measurement that is outside of the specified tolerance. Regarding the correlation of thermocouple measurements with the air sampler dry bulb temperature measurement, DOE has not adopted this recommendation because it is not clear what its purpose would be. For the indoor side, such correlation helps to calibrate the thermocouple grid measurement for the cyclic test, but the outdoor air inlet temperature measurements are not used in a similar way for any of part of the tests. DOE adopts the amendments as proposed except for the changes discussed in this section, including (a) adopting 16 as the maximum number of thermocouples per inlet face, (b) increasing the maximum temperature range from 1.5 °F to 2.0 °F, (c) clarifying that the maximum range applies to the average measurements for the test period, and (d) clarifying that the thermocouples should not interfere with condenser discharge air flow.

5. Method of Measuring Inlet Air Temperature on the Outdoor Side

The average dry bulb temperature of air approaching the air inlet faces of the outdoor unit can be measured using air samplers or using thermocouple grids. To improve test repeatability, in the November 2015 SNOPR, DOE sought to ensure that temperature measurements taken during the test are as accurate as possible. DOE proposed that the air sampler dry bulb measurement (rather than the thermocouple grids) be the basis of comparison with the outdoor air dry bulb temperature requirement for the test. 80 FR 69278, 69307 (Nov. 9, 2015).

Rheem and ADP agreed with DOE's proposal in the November 2015 SNOPR. (Rheem, No. 69 at p. 12; ADP, No. 59 at p. 10) There were no comments against the proposal. Hence, DOE adopts the proposal in this final test rule.

6. Requirements for the Air Sampling Device

In the November 2015 SNOPR, DOE proposed to require that no part of the room air sampling device or the means of air conveyance to the dry bulb temperature sensor be within two inches of the test chamber floor. DOE also proposed to require those surfaces of the air sampling device and the means of air conveyance that are not in contact with the indoor and outdoor room air be insulated. 80 FR 69278, 69307 (Nov. 9, 2015).

DOE also proposed to require that humidity measurements and dry bulb temperature measurements used to determine the moisture content of air be made at the same location in the air sampling device. As discussed in section III.E.14, DOE also proposed several amendments to air sampling procedures that are included in a draft revision of AHRI 210/240. 80 FR 69278, 69307 (Nov. 9, 2015).

Many stakeholders supported these proposals. (JCI, No. 66 at p.18; ADP, No. 59 at p. 10; UTC/Carrier, No. 62 at p. 14; Unico, No. 63 at p. 9; Rheem, No. 69 at p. 12). There were no comments against the proposals. Therefore, DOE adopts the proposals.

7. Variation in Maximum Compressor Speed With Outdoor Temperature

In the November 2015 SNOPR, DOE proposed that the maximum compressor speed be defined for the test procedure as the absolute maximum speed at which the compressor operates, allowing for a different maximum for heating mode as opposed to cooling mode. One implication of this proposal is that the maximum speed cannot be different for different cooling mode test conditions, and likewise it cannot be different for different heating mode test conditions. 80 FR 69278, 69307 (Nov. 9, 2015).

Some stakeholders supported this proposal and others did not. In its comments, Rheem tentatively agreed with the proposal but indicated it would support DOE conducting further studies. (Rheem, No. 69 at p. 12) AHRI also proposed further study on the issue without further specificity. (AHRI, No. 70 at p. 17) UTC/Carrier requested clarification, although commented that the proposal seemed to be current industry practice. (UTC/Carrier, No. 62 at p. 14) JCI and Goodman also agreed that the maximum speed should be held constant. (JCI, No. 66 at p. 18; Goodman, No. 73 at pp. 8–9)

In contrast, Ingersoll Rand and Lennox commented that they do not support the proposal to fix the maximum compressor speed because it limits the potential performance benefits of heat pumps. (Ingersoll Rand, No. 65 at p. 11; Lennox, No. 61 at p. 11) Ingersoll Rand commented that this proposal will become a bigger problem when the heating load line of Appendix M1 is implemented. (Ingersoll Rand, No. 65 at p. 11) Lennox conducted testing on a three ton system and determined that operation at the 17 degree test point could be enhanced by 40 percent capacity and 10 percent HSPF by allowing the speed of the compressor to change with outdoor air temperature. (Lennox, No. 61 at p. 11) Mitsubishi recommended that the current testing process remain the same and that the optional testing method for HSPF should allow manufacturers to obtain ratings that incorporate the varying of the maximum compressor speed with outdoor temperatures. (Mitsubishi, No. 68 at p. 4)

DOE agrees with JCI and Goodman that the maximum speed should be the same for the different test conditions. DOE notes that a unit's performance is calculated based on test results using extrapolation and interpolation assuming that capacity and power vary linearly with outdoor temperature (*i.e.*, the capacity and power vary a fixed amount in Btu/h for each additional degree that the outdoor temperature rises). For example, equations 4.2.2–3 and 4.2.2.–4 in Appendix M of the current test procedure are used with k set equal to 2 to calculate heat pump capacity and power input when operating at maximum speed. The performance for temperatures below 17 °F and above 45 °F ambient temperatures is calculated based on tests conducted at 17 °F and 47 °F. Specifically, an equation for capacity as a function of ambient temperature is determined based on the measured capacities at 17 °F and 47 °F. This equation is then used to calculate capacity for all ambient conditions cooler than 17 °F and warmer than 45 °F. The same is done to determine heat pump power input for these temperature ranges. In a similar fashion, performance for temperatures between 17 °F and 45 °F are calculated based on tests conducted at 17 °F and 35 °F. The following example shows how allowing different compressor speeds for the pairs of tests used to determine performance can lead to non-representative results.

The heat pump in question varies its maximum compressor speed in heating mode—its performance is shown in Figure 2 of the Oak Ridge National Laboratory review of variable-speed heat pump test procedures. (Review of Test Procedure For Determining HSPF's of Residential Variable-Speed Heat Pumps, Docket No. EERE–2009–BT–TP–0004, No. 49 at p. 5) The maximum-speed capacity of this heat pump clearly does not vary linearly between outdoor temperatures of 17 °F and 47 °F. Use of the test procedure's equation to represent this heat pump's performance below 17 °F would indicate that its capacity increases as temperature drops below 17 °F, which clearly is not true. This example shows that allowing different maximum compressor speeds can lead to nonsensical results. Hence, DOE is maintaining its proposal, consistent with its understanding of the test procedure's original intent, that maximum speed be the same speed for all test conditions of the particular operating (heating or cooling) mode that uses maximum speed. DOE has, however, modified the test procedure in this notice such that the maximum speed for a given operating mode (heating or cooling) used for the test conditions required to rate the product does not have to be the absolute maximum used by the product for that operating mode. Hence, a heat pump could use a higher maximum compressor speed when operating in a 5 °F ambient condition than used for the required tests in 17 °F, 35 °F, and 47 °F conditions. This provision assures that cold-climate variable speed heat pumps, those that boost compressor speed in very low ambient temperatures to reduce the amount of heat provided by resistance heating, can be tested using appropriate compressor speeds for the tested operating conditions. DOE has implemented the requirements discussed in this section differently than proposed. Instead of adding the proposed clarifications for maximum and minimum compressor speed in the definition of "variable-speed compressor system", DOE has provided clarification regarding compressor speed requirements in sections 3.2 and 3.6, which describe the tests that are required to be conducted for cooling and heating modes.

DOE does agree that variable-speed heat pumps that have the capability to increase speed and thus heating capacity in lower ambient temperatures should have a test method that accurately reflects the performance of this potentially energy-saving feature (*e.g.*, see Lennox, No. 61 at p. 11). However, it is DOE's belief that accurately accounting for such a feature requires more careful consideration of test procedure changes beyond simply allowing the compressor speed to vary for the test conditions required by the current procedure. DOE will consider such revisions in a future rulemaking. In the meantime, if a manufacturer feels that more accurate representation of a unit's performance would be obtained with an alternative test procedure, the manufacturer has the option of petitioning for a test procedure waiver.

JCI and Goodman recommended using a different term than "maximum compressor speed". (JCI, No. 66 at p. 18; Goodman, No. 73 at pp. 8–9) Goodman

[11] For example, if the air approaching the air-sampled face were 95 °F while the air approaching the other faces were 92.5 °F, the actual average inlet air temperature would be 93.1 °F, nearly 2 °F lower than the temperature measured by the air sampler.

recommended adopting the term "full", as was proposed in the AHRI 210/240 Draft. DOE agrees and has modified the terminology accordingly, renaming the term "maximum compressor speed" to "full speed" to be consistent with AHRI 210/240 Draft.

The California IOUs commented that DOE should require the OUM to provide testing controls that allow fixed minimum, intermediate, and maximum speed/capacity controls settings. (California IOUs, No. 67 at p. 5) Rather than requiring provision of a test controller, DOE is requiring the provision as part of certification reporting of information that specifies the compressor frequency set points and settings for multi-step or variable-position components.

8. Refrigerant Charging Requirements

In the November 2015 SNOPR, DOE proposed to require that near-azeotropic and zeotropic refrigerant blends be charged in the liquid state rather than the vapor state. This was proposed for section 2.2.5.7 of Appendix M. 80 FR 69278, 69307 (Nov. 9, 2015).

DOE also proposed in the June 2010 NOPR to adopt into the test procedure select parts of the 2008 AHRI General Operations Manual indicating that the refrigerant charge cannot be changed after system setup. 75 FR at 31224, 31234–35 (June 2, 2010). DOE retained this requirement in the November 2015 SNOPR, specifically proposing that once the system has been charged with refrigerant consistent with the installation instructions shipped with the unit (or with other provisions of the test procedure, if the installation instructions are not provided or not clear), all tests must be conducted with this charge. 80 FR 69278, 69307 (Nov. 9, 2015).

Also, because the charging procedure would be different for systems with different metering devices, DOE also proposed to require manufacturers to report the type of metering device used during certification testing. 80 FR 69278, 69308 (Nov. 9, 2015).

If charging instructions are not provided in the manufacturer's installation instructions shipped with the unit, DOE proposed standardized charging procedures consistent with the type of expansion device to ensure consistency between testing and field practice. For a unit equipped with a fixed orifice type metering device for which the manufacturer's installation instructions shipped with the unit do not provide refrigerant charging procedures, DOE proposed that the unit be charged at the A or A_2 test condition, requiring addition of charge until the superheat temperature measured at the suction line upstream of the compressor is 12 °F.[12] For a unit equipped with a TXV or electronic expansion valve (EXV) type metering device for which the manufacturer's installation instructions shipped with the unit do not provide refrigerant charging procedures, DOE proposed that the unit be charged at the A or A_2 condition, requiring addition of charge until the subcooling[13] temperature measured at the condenser outlet is 10 °F plus or minus the proposed tolerance range.[14] 80 FR 69278, 69308 (Nov. 9, 2015).

For heating-only heat pumps for which refrigerant charging instructions are not provided in the manufacturer's installation instructions shipped with the unit, the proposed standardized charging procedure would be followed while performing refrigerant charging at the H1 or $H1_2$ condition. DOE also proposed that charging be done for the H1 or $H1_2$ test condition for cooling/heating heat pumps which fail to operate properly in heating mode when charged using the standardized charging procedure for the A or A_2 test condition. In such cases, some of the tests conducted using the initial charge may have to be repeated to ensure that all tests (cooling and heating) are conducted using the same refrigerant charge. DOE proposed to add this requirement to use the same charge for all tests to Appendix M in a new section 2.2.5.8. 80 FR 69278, 69308 (Nov. 9, 2015).

DOE understands that manufacturers may provide installation instructions with different charging procedures for the indoor and outdoor units. In such cases, DOE proposed to require charging based on the installation instructions shipped with the outdoor unit for OUM products and based on the installation instructions shipped with the indoor unit for ICM products, unless otherwise specified by either installation instructions. 80 FR 69278, 69308 (Nov. 9, 2015).

DOE also proposed that one or more refrigerant line pressure gauges be installed during the setup of single-package and split-system central air conditioner and heat pump products, depending on which parameters are used to set charge, unless otherwise specified by the installation instructions. DOE also proposed that the refrigerant charge be verified per the charging instructions provided in the installation instructions shipped with the unit, or, if no charging instructions are provided, the refrigerant charge would be verified based on the standardized charging procedure described above. 80 FR 69278, 69308 (Nov. 9, 2015).

As discussed in section III.E.14, DOE included in its proposal several aspects of the charging procedures that are included in a draft revision of AHRI 210/240. 80 FR 69278, 69308 (Nov. 9, 2015).

UTC/Carrier, Unico, Rheem, and JCI supported the November 2015 SNOPR proposal to require charging near-azeotropic and zeotropic refrigerant blends in the liquid state only. (UTC/Carrier, No. 62 at p. 14; Unico, No. 63 at p. 9; Rheem, No. 69 at p. 12; JCI, No. 66 at p. 18) There were no comments that disagreed with this proposal, so DOE is adopting it unchanged.

The California IOUs supported giving priority to the OUM charging instructions if the indoor and outdoor unit instructions differ but did not explain why the OUM charging instructions should take priority if both components include instructions and they are not consistent. DOE responds that integration of a system incorporating an OUM's outdoor unit and an ICM's indoor unit is the responsibility of the ICM. Consequently, DOE adopts the charging instruction priority as proposed, *i.e.* ICM instruction priority in this case.

The California IOUs also commented that providing generic superheat and subcooling temperatures is not appropriate or necessary, adding that manufacturers are required to include other types of installation instructions and should be required to do the same with something as basic as refrigerant charge. (California IOUs, No. 67 at p. 5) In response, DOE notes that most CAC/HP systems are shipped with installation instructions which discuss how to set refrigerant charge, and that it expects the provisions proposed to address cases where such instructions are not provided will not have to be used frequently. DOE notes further that providing clarity in the test procedure regarding how to address these situations will ensure that there is no question during testing about how to test products shipped without instructions.

[12] The range of superheating temperatures was generalized from industry-accepted practice and state-level authority regulations on refrigerant charging for non-TXV systems.

[13] The degree of subcooling or subcooling temperature is the extent to which a fluid is cooler than its refrigerant bubble point temperature at the measured pressure, *i.e.*, the bubble point temperature at a fluid's measured pressure minus its measured temperature. Bubble point temperature is the temperate at a given pressure at which vapor bubbles just begin to form in the refrigerant liquid.

[14] The range of subcooling temperatures was generalized from manufacturer-published and technician-provided service instructions and are typical of industry practice.

Rheem added that it provides refrigerant charging instructions that are dependent on the design of the unit; the charging instructions are different for different expansion devices (Rheem, No. 69 at p. 15). Consequently, DOE is adopting the proposal to provide standardized charging procedures that are based on the type of expansion device. Rheem commented that if the manufacturer does not specify a target superheat or subcooling point, 10 °F +/− 1 °F superheat should be used for systems with a fixed refrigerant restrictor and 10 °F +/− 0.6 °F subcooling should be used for systems with a TXV or electronic expansion valve. (Rheem, No. 69 at p. 15). As mentioned above, DOE does not expect the "generic" values of 12 °F superheat and 10 °F subcooling to be used frequently and notes that manufacturers that desire that different target values be used should be sure to include installation instructions with the units. DOE did not receive other comments regarding the specific values of the targets in case instructions are not provided, and DOE's research suggests that the proposed values are a good representation of the ranges of values provided in installations instructions for existing products. Hence, DOE is adopting the target values proposed in case instructions are not provided.

Unico did not support charging to a specific subcooling value in heating unless the product is heating-only (Unico, No. 63 at p. 10).

Responding to DOE's question about confirming proper operation in the H1 or $H1_2$ test for heat pumps following charging at the A or A_2 test condition, JCI requested that manufacturers be permitted to set charge levels in either heating or cooling mode (JCI, No. 66 at p. 19). Rheem agreed with the proposal to test a heat pump in the H1 or $H1_2$ test in case it does not operate properly in heating mode with a charge set in the cooling mode, provided a definition of nonfunctional is added to the test procedure. (Rheem, No. 69 at p. 13) In response, DOE added explanation in section 2.2.5.2.b that shutdown of a unit by its limiting devices would constitute non-operation.

DOE notes that the proposal in the November 2015 SNOPR requires that the installation instructions shipped with the system be consulted for instructions about how to charge the unit, and that the generic instructions be used only if no instructions are provided with the unit. Hence, a manufacturer has the option of requiring that charge be adjusted in cooling mode or to higher subcooling levels than indicated in section 2.2.5.4 of the November 2015 SNOPR, both of which would address Unico's concerns. Likewise, a manufacturer could specify that charge be set in either heating or cooling mode, which addresses JCI's concerns. 80 FR 69278, 69308 (Nov. 9, 2015).

In order to clarify that the manufacturer can specify the operating mode to be used for setting charge, DOE has added language to section 2.2.5.2 of this final rule notice allowing manufacturers the option of specifying tests for charging other than the A or A_2 test. DOE maintains, however, the requirement that air volume rate must be determined by the A or A_2 test.

Goodman disagreed that all single-package units must be pressure-verified, requesting an option for manufacturers to specify whether or not to connect pressure measurement devices (Goodman, No. 73 at p. 9). In response, section 2.2.5.5 of this final rule notice allows for manufacturers to specify in installation instructions whether or not pressure measurement instruments should be attached. Otherwise, DOE is adopting the proposal regarding refrigerant pressure gauges.

For the final rule, DOE has explicitly designated the charging tolerances as test condition tolerances (see section 2.2.5.4). This clarifies that the charging tolerances refer to the maximum permissible differences between the average value of the measured temperature and the specified temperature in the DOE test procedure.

Also for the final rule, DOE has relaxed the tolerance on subcooling in section 2.2.5.4 from +/− 0.6 °F (the maximum tolerance listed in the draft version of AHRI 210/240) to +/− 2.0 °F. DOE is adopting this change for two reasons. First, in re-examining past tests, DOE has observed considerable variation in subcooling temperatures even for properly installed systems that are operating correctly. DOE believes a test condition tolerance of +/− 0.6 °F will unnecessarily increase the difficulty of testing these units. Second, the minimum accuracy requirements in the current test procedure on the temperature and pressure instruments could result in as much as a 3.0 °F measurement uncertainty on subcooling. Using today's typical instrumentation, however, the expected measurement uncertainty is about 1.0 °F. DOE does not wish to require tighter tolerances than measurement uncertainties. Based on this, DOE settled on the average, a 2.0 °F test condition tolerance on subcooling.

DOE analyzed the impact of this tolerance change on capacity and EER by simulating performance across split-system and single-package air-conditioners as well as split-system heat pumps, varying the subcooling. On both capacity and EER, the impact of a 2.0 °F fluctuation was less than 1% of the capacity and EER at baseline subcooling. DOE concluded that the advantages of increasing the tolerance in reducing test burden outweighed this impact. Hence, as mentioned, DOE is adopting the 2.0 °F tolerance on subcooling.

DOE received no other comments on proposals concerned with changing the refrigerant charge after setup, reporting the type of metering device, refrigerant charge verification, and/or any other DOE proposals. Consequently, DOE is adopting these proposals for this final rule notice.

9. Alternative Arrangement for Thermal Loss Prevention for Cyclic Tests

In the November 2015 SNOPR, DOE proposed an alternative testing arrangement to prevent thermal losses during the compressor OFF period that would eliminate the need to install a damper in the inlet duct that conveys indoor chamber air to the indoor coil. The proposed alternative testing arrangement would allow the use of a duct configuration that relies on changes in duct height, rather than a damper, to eliminate natural convection thermal transfer out of the indoor duct during OFF periods of the "cold" (for tests of cooling mode) or heat (for tests of heating mode) generated by the system during the ON periods. An example of such an arrangement would be an upturned duct installed at the inlet of the indoor duct, such that the indoor duct inlet opening, facing upwards, is sufficiently high to prevent natural convection transfer out of the duct. The approach was developed for situations where insufficient space is available to install a damper box for both the inlet and outlet ductwork—the approach still requires use of a damper box on the outlet. DOE also proposed to require installation of a dry bulb temperature sensor near the inlet opening of the indoor duct at a centerline location not higher than the lowest elevation of the duct edges at the inlet. Measurement and recording of dry bulb temperature at this location would be required at least every minute during the compressor OFF period to confirm that no thermal loss occurs. DOE proposed a maximum permissible variation in temperature measured at this location during the OFF period of ±1.0 °F. 80 FR 69278, 69308–09 (Nov. 9, 2015). ADP supported this approach. (ADP, No. 59 at p. 11)

Rheem commented that the currently required damper in the inlet portion of the indoor air ductwork has not been a source of variation in their test results. Rheem plans to continue using the current damper configuration. Rheem did not support an optional configuration. (Rheem, No. 69 at p. 13, 14) Rheem has not explained their objection to allowing use of the alternative approach sufficiently for DOE to understand the concern. Hence, in this final rule, DOE is adopting the option to allow an alternative testing arrangement to prevent thermal losses for cyclic testing. If the alternative testing arrangement is used, installation of a dry bulb temperature sensor near the inlet opening of the indoor duct would be required, as well as measuring and recording the dry bulb temperature from this sensor.

JCI agreed with the proposal, but was concerned that it may not be possible to maintain the 1.0 °F tolerance at the duct inlet with continuous readings. (JCI, No. 66 at p.18). In response, DOE has relaxed the requirement such that any pair of 5-minute averages of the dry bulb temperature at the inlet, measured at least every minute during the compressor OFF period of the cyclic test, do not differ by more than 1.0 °F.

10. Test Unit Voltage Supply

In the November 2015 SNOPR, DOE clarified that the outdoor voltage supply requirement supersedes the indoor requirement if the provisions result in a difference for the indoor and outdoor voltage supply. DOE proposed that both the indoor and outdoor units be tested at the nameplate voltage of the outdoor unit. 80 FR 69278, 69309 (Nov. 9, 2015).

DOE received no comment on this proposal, however DOE recognized that it is possible that the nameplate voltages of the indoor and outdoor units could be so different that one unit cannot operate with the other's voltage supply. For example, if the outdoor unit requires 230V while the indoor unit requires 120V, applying 230V to the indoor unit would not be appropriate. DOE reviewed the range of nameplate voltages typically used for single-phase products as listed in Table 1 on page 3 of AHRI Standard 110–2012, "Air-Conditioning, Heating and Refrigerating Equipment Nameplate Voltages" and determined that the only pair of nameplate voltages for which the electrical components for a product rated with one could operate using the voltage rated with the other are 208 V (200 V) and 230V. Hence, DOE has decided to require use of the outdoor voltage supply for both indoor and outdoor components only when one is rated with 208V or 200V and the other one is rated with 230V. For all other voltage combinations, DOE will require supplying each unit with its own nameplate voltage.

11. Coefficient of Cyclic Degradation

The current test procedure gives manufacturers the option to use a default cyclic degradation coefficient for cooling mode (C_D^c) value of 0.25 instead of running the optional cyclic test. In the November 2015 SNOPR, DOE proposed to update the default cooling C_D^c value in Appendix M to 0.2 based on testing of 19 units for which the measured degradation coefficient for cooling ranged from 0.02 to 0.18. DOE did not propose to update the default heating C_D^h value. 80 FR 69278, 69309 (Nov. 9, 2015).

Responding to DOE's proposal on the coefficient of cyclic degradation, stakeholders generally agreed with the proposed default of 0.2 for cooling. (see, *e.g.*, AHRI, No. 70 at p. 12 or Ingersoll Rand, No. 65 at p. 1) The test procedure adopted in this final rule includes the proposed value of 0.2 as the default degradation coefficient for cooling for single-speed and two-capacity units.

However, DOE is aware that units with variable-speed compressors consistently have a higher coefficient of cyclic degradation than units with single-speed or two-capacity compressors. DOE reviewed the California Energy Commission (CEC) database of variable speed air conditioners and observed that the variable speed products rarely have a cooling C_D^c as low as 0.2. In its review of the CEC database, DOE noticed that many variable speed units are listed as multiple speed units. DOE separated the variable speed units from this group based on review of the product specification sheets, thus leading to a more complete list of variable speed models. As a result DOE found that, of 639 listed models that have variable-speed operation, only 76 (*i.e.* 11%) are rated with a C_D^c value less than or equal to 0.2. As discussed above, DOE initially proposed reducing the default value from 0.25 to 0.2 based on test data showing C_D^c values consistently below 0.2. However, these data did not include measurements for variable-speed units. Based on the clear evidence as illustrated by the CEC database information, the 0.2 value is not representative of the cyclic performance of variable-speed units. Hence, DOE has maintained the current default cooling C_D^c of 0.25 for variable speed products and unmatched outdoor units (see section III.A.3.g), while changing to a default value of 0.2 for all other products as proposed.

DOE also proposed significant changes to the cyclic test. DOE proposed that before determining C_D^c, three "warm up" cycles for a unit with a single-speed compressor or two-speed compressor or two "warm up" cycles for a unit with a variable speed compressor must be conducted. Then a minimum of three complete cycles would be conducted after the warm-up period, taking a running average of C_D^c after each additional cycle. If after three cycles, the average of three cycles does not differ from the average of two cycles by more than 0.02, the three-cycle average should be used. If it differs by more than 0.02, up to two more valid cycles must be conducted. If the average C_D^c of the last three cycles are within 0.02 of or lower than the previous three cycles, use the average C_D^c of all valid cycles. After the fifth valid cycle, if the average C_D^c of the last three cycles is more than 0.02 higher than the previous three cycles, the default value must be used. DOE proposed the same changes for the test method to determine the heating coefficient of degradation. 80 FR 69278, 69309 (Nov. 9, 2015).

As a departure from the current test procedure approach, DOE proposed that manufacturers would have to conduct cyclic testing to determine C_D^c for each tested unit, rather than allowing them to use the default and avoid cyclic testing. Per the proposal, the default value would be used only if stability was not achieved during testing or when rating outdoor units with no match. 80 FR 69278, 69309 (Nov. 9, 2015).

AHRI, Lennox, UTC/Carrier, Ingersoll Rand, JCI, and Rheem commented that manufacturers should be allowed to use the default value without having to run the cyclic test. (AHRI, No. 70 at p. 12; Lennox, No. 61 at p. 18; UTC/Carrier, No. 62 at p. 17; Ingersoll Rand, No. 65 at p. 2, JCI, No. 66 at p. 10; Rheem, No. 69 at p. 14) In contrast, NEEA commented in response to the June 2010 NOPR that laboratory measurements are often "at odds" with the 0.25 default value, and suggested that testing is more accurate and should always be conducted. The comment did not indicate whether the measurements were generally higher or lower than the default. (NEEA, No. 7 at p. 6)

Lennox, UTC/Carrier, Rheem and AHRI suggested that a manufacturer should be allowed to use the first two cycles meeting a stability requirement, rather than requiring three warm-up cycles before official measurement begins. (Lennox, No. 61 at p. 18; UTC/Carrier, No. 62 at p. 17; Rheem, No. 69 at p. 14; AHRI, No. 70 at p.11). If stability is not reached after eight cycles, several manufacturers suggested use of either a measured value or the default value, whichever is lower, rather than requiring use of the default value. Lennox, Rheem and UTC/Carrier suggested that this measured value be the highest C_D^c recorded for any of the eight test cycles. (Lennox, No. 61 at p.18; Rheem, No. 69 at p. 14; UTC/Carrier, No. 62 at p. 17) JCI suggested that the measured value be the average of the three highest measured C_D^c values (JCI, No. 66 at p. 10), and Ingersoll Rand suggested that the measured value be the highest C_D^c recorded in cycles four through eight (Ingersoll Rand, No. 65 at p. 3).

After reviewing all the stakeholders' comments, DOE has decided to allow manufacturers to use the default value without testing. Also, DOE is removing the requirement to conduct three warm-up cycles prior to making measurements. In the test finalized in this notice, a minimum of three cycles must be measured, and the test may then be terminated if the stability requirement is achieved. The test will still be required to continue for up to eight cycles if stability is not achieved. When the test is terminated, the highest C_D^c value recorded for any one test cycle would be used, unless it is higher than the default C_D^c, in which case the default would be used. The same approach is also adopted for the heating mode cyclic test. In response to the NEEA comment, DOE's data suggest that most single-stage and two-stage units have cyclic degradation coefficients less than the default and, in DOE's experience, manufacturers of such products nearly always run the cyclic test. DOE specifically re-evaluated selection of the default value so that it is higher than the expected result, but DOE retains in its procedures use of the default value rather than testing to limit test burden for cases where a low C_D^c is not critical to assuring that the represented value is compliant with the standard (*e.g.* for variable-speed units, which generally have higher C_D^c than single-stage or two-stage units).

In order to improve the accuracy of the cyclic test, DOE proposed in the June 2010 NOPR a calibration step in which the temperature difference between measurements of the inlet and outlet thermocouple grids used to make the cyclic test capacity measurements is checked during the steady state test which precedes the cyclic test (*e.g.* the steady state C test for cooling). If this temperature difference compares unfavorably to the more accurate dry bulb temperature difference based on air samplers and sample-air temperature sensors (*e.g.* resistance temperature detectors (RTDs)), the proposal required that a calibration adjustment be made for the thermocouple grid measurements for use in the cyclic test. 75 FR 31235 (June 2, 2010). NEEA commented that they have no objection to DOE's proposal. (NEEA, No. 7 at p. 4) In contrast, AHRI disagreed with DOE's proposal and supported using the same temperature devices between the steady-state tests and cyclic tests to calculate C_D in order to ensure consistency of measurement between the two tests. (AHRI, No. 6 at p. 3) DOE notes that AHRI's recommended solution, use of the thermocouple grids for measurement of the inlet/outlet temperature difference for both the steady-state and cyclic tests used as the basis for calculating C_D, does not fully resolve the potential error in measurement if the measured temperature difference is high or low. In such a case, both the steady state and cyclic capacity estimates may be incorrect, and the overall measurement less precise than if the calibration step is taken. In order to achieve the original goal of improving the accuracy of the cyclic test, the test procedure in this final rule notice includes the proposed calibration step.

12. Break-in Periods Prior to Testing

DOE proposed in the November 2015 SNOPR to allow manufacturers the option of specifying a break-in period to be conducted prior to testing under the DOE test procedure. DOE proposed to limit the optional break-in period to 20 hours, which is consistent with the test procedure final rule for commercial HVAC equipment. DOE also proposed to adopt the same provisions as the commercial HVAC rule regarding the requirement for manufacturers to report the use of a break-in period and its duration as part of the test data underlying their product certifications, the use of the same break-in period specified in product certifications for testing conducted by DOE, and use of the 20 hour break-in period for products certified using an AEDM. 80 FR 69278, 69310 (Nov. 9, 2015).

In response to the November 2015 SNOPR, Unico supported the option of having a break-in period and had no comment on the number of hours. (Unico, No. 63 at p. 11) Several other commenters requested longer break-in periods than 20 hours. LG and Ingersoll Rand commented that on average 40 hours of operation are required to reach peak capacity and efficiency. (LG, No. 55 at pp. 1–2; Ingersoll Rand, No. 65 at pp. 10–11) Rheem commented that manufacturers should have the option of up to a 48 hour break-in period. (Rheem, No. 69 at p. 14) Goodman commented that at least 72 hours should be permitted for break-in period testing because they believe that shorter break-in periods could produce test results that are inaccurate. (Goodman, No. 73 at pp. 12–13) Lennox, UTC/Carrier, and JCI also commented that some compressor manufacturers recommend up to 72 hours break-in. (Lennox, No. 61 at p. 19; UTC/Carrier, No. 62 at p. 17; JCI, No. 66 at p. 19) UTC/Carrier requested that DOE research directly with compressor manufacturers to align with their recommended compressor break-in periods. (UTC/Carrier, No. 62 at p. 17) Lennox commented that manufacturers should be able to specify break-in conditions. (Lennox, No. 61 at p. 19) JCI commented that if a manufacturer is willing to pay for an extended break-in time, it is reasonable to allow it, as it more closely represents what the consumer will see in the installation. (JCI, No. 66 at p. 19)

LG and Ingersoll Rand further commented that they have worked towards a process for reducing the required break-in period for scroll compressors, and have developed a process to reduce the required break-in period to 12 hours. (LG, No. 55 at pp. 1–2; Ingersoll Rand, No. 65 at pp. 10–11) LG commented that they will be phasing in this new process through 2016, and requested DOE to adopt a phase-in approach for the rule implementation, with the limit being 40 hours on the rule effective date followed by the final 20 hour limit that would commence one year after the effective date. (LG, No. 55 at pp. 1–2) Ingersoll Rand recommended the effective date of the maximum break-in time be January 1, 2017. (Ingersoll Rand, No. 65 at pp. 10–11)

In a supplemental response to the October 2011 SNOPR, AHRI requested that DOE implement an optional 75-hour break-in period for testing central air conditioners and heat pumps. It stated that scroll compressors, which are the type of compressors most commonly used in central air conditioners and heat pumps, achieve their design efficiency after 75 hours of operation. AHRI also cited a study of compressor break-in periods to justify this period of time.[15] 80 FR 69278, 69309–310 (Nov. 9, 2015).

In the November 2015 SNOPR, DOE noted that, in reviewing the paper that AHRI cited, while the data indicate that products with scroll compressors do appear to converge upon a more

[15] Khalifa, H.E. "Break-in Behavior of Scroll Compressors" (1996). *International Compressor Engineering Conference*. Paper 1145.

consistent result after compressor break-in periods exceeding 75 hours, the most significant improvement in compressor performance and reduction in variation among compressor models both appear to occur during roughly the first 20 hours of run time.[16] 80 FR 69278, 69310 (Nov. 9, 2015). Considering the improvements in break-in as discussed in the comments of LG and Ingersoll-Rand, as well as the 1996 data which shows that most of the break-in occurs within 20 hours, DOE concludes that setting the bread-in period at 20 hours appropriately balances test burden and full completion of the break-in process.

After reviewing the comments, DOE maintains its proposal from the SNOPR, and will allow a break-in period up to a maximum of 20 hours. As noted in the November 2015 SNOPR, DOE believes that a lengthy break-in period is not appropriate or justified. Since DOE determined in the May 16, 2012 commercial HVAC equipment final rule that a 20 hour maximum break-in time would be sufficient for small commercial air-conditioning products, which are of a capacity similar to central air-conditioning products, DOE does not see justification for a break-in period longer than 20 hours for central air conditioners and heat pumps. DOE acknowledges the research being done to reduce the break-in period as highlighted by LG and Ingersoll Rand, but DOE notes that at this time, none of the commenters has provided new information or data that sufficiently justifies the need for a longer break-in period.

Some commenters also requested that DOE provide additional specification regarding the break-in. The California IOUs recommended that DOE specify the operation of systems during the break in period or require the OUM to specify how the break-in should be done. (California IOUs, No. 67 at p. 5) Rheem commented that the break-in period should be at the A test cooling condition after the unit is properly charged. (Rheem, No. 69 at p. 14)

Without test results clearly showing the benefits of a particular set of break-in conditions, DOE is reluctant to require conditions for break-in that will require it to be conducted in the psychrometric chamber as part of a test, due to the significant test burden that such a requirement would impose. DOE declines to add more specification to the break-in period at this time but may consider modifications in a future rulemaking, provided sufficient information is provided to justify specific recommendations.

[16] Ibid. pp. 442–443.

13. Industry Standards That Are Incorporated by Reference

In the November 2015 SNOPR, DOE proposed a number of updates to industry standards that are incorporated by reference. DOE proposed to update the IBR from ARI 210/240–2006 to AHRI 210/240–2008; ASHRAE 37–2005, Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment to ANSI/ASHRAE 37–2009, Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment; ASHRAE 41.9–2000, Calorimeter Test Standard Methods for Mass Flow Measurements of Volatile Refrigerants to ASHRAE 41.9–2011, Standard Methods for Volatile-Refrigerant Mass Flow Measurements Using Calorimeters; ASHRAE/AMCA 51–1999/210–1999, Laboratory Methods of Testing Fans for Aerodynamic Performance Rating to AMCA 210–2007, Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating; ASHRAE 41.1–1986 (Reaffirmed 2006), Standard Method for Temperature Measurement, to ANSI/ASHRAE 41.1–2013, Standard Method for Temperature Measurement; ASHRAE 41.6–1994, Standard Method for Measurement of Moist Air Properties to ASHRAE 41.6–2014, Standard Method for Humidity Measurement; and ASHRAE 23–2005, Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units, to ASHRAE 23.1–2010 Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units That Operate at Subcritical Temperatures of the Refrigerant. DOE expressed the view that none of these updates includes significant changes to the sections referenced in the DOE test procedure and thus will not impact the ratings or energy conservation standards for central air conditioners and heat pumps.[17] 80 FR 69278, 69310–11 (Nov. 9, 2015).

In response, JCI encouraged DOE to utilize industry standards to the fullest extent possible. (JCI, No. 66 at p. 20) Goodman requested that DOE, along with other stakeholders, continue participation in the revision of AHRI 210/240 to assist in getting to the point where DOE can potentially adopt this standard outright. (Goodman, No. 73 at p. 16)

[17] ANSI/ASHRAE 37–2009 only updates to more recent versions of other standards it references. AMCA 210–2007 made slight changes to the figure referenced by DOE, which DOE has determined to be insignificant.

Ingersoll Rand requested DOE to remove all references to AMCA 210–2007, because it is for standalone air moving systems and does not match the configuration used for ducted HVAC equipment. (Ingersoll Rand, No. 65 at p. 13) AHRI and UTC/Carrier commented that the reference to AMCA 210–2007 in lieu of ASHRAE 116–1995 (RA 2005) for the air flow measurement apparatus is incorrect, and that instead the reference should be to section 6.3 of ANSI/ASHRAE 37–2009 or ASHRAE 41.2. (AHRI, No. 70 at p. 12; UTC/Carrier, No. 62 at p. 18)

DOE believes that the referenced sections are applicable to the airflow measurements required in Appendix M, as demonstrated by the installation types referenced in section 5.1.1 of AMCA 210–2007. DOE also notes that AHRI 210/240–2008 references the same sections of AMCA 210–2007 as Appendix M does, but DOE has simply chosen to reference AMCA 210–2007 directly. In response to AHRI and UTC/Carrier, DOE notes that section 2.6 of this final rule notice does reference sections 6.2 and 6.3 of ANSI/ASHRAE 37–2009 for fabricating and operating the Airflow Measurement Apparatus, and the manufacturer may refer to either Figure 12 of AMCA 210–2007 or Figure 14 of ASHRAE 41.2–1987 (RA 1992) for guidance on placing the static pressure taps and positioning the diffusion baffle. For these reasons, DOE maintains its incorporation by reference of AMCA 210–2007. DOE received no other comments on these proposed updates to industry standards, and in this final rule, DOE adopts all references to industry standards as proposed in the November 2015 SNOPR.

In the November 2015 SNOPR, DOE also proposed to revise the definition of "continuously recorded" based on changes to ASHRAE 41.1. ASHRAE 41.1–1986 (RA 2006) specified the maximum time interval of one minute for sampling dry-bulb temperature during a steady state test, with shorter sampling intervals based on expected rate of temperature change. The updated version, ANSI/ASHRAE 41.1–2013, does not contain specifications for sampling intervals. DOE proposed to require that dry-bulb temperature, wet bulb temperature, dew point temperature, and relative humidity data be "continuously recorded," that is, sampled and recorded at 5 second intervals or less. DOE proposed this requirement as a means of verifying that temperature condition requirements are met for the duration of the test. 80 FR 69278, 69311 (Nov. 9, 2015).

UTC/Carrier and Rheem supported the proposed sampling interval. (UTC/Carrier, No. 62 at p. 18; Rheem, No. 69 at p. 15) On the other hand, JCI recommended a longer sampling interval of 10 to 15 seconds, as there may be capital investment and programming required. (JCI, No. 66 at p. 20) Rheem commented that clarification is needed on how measurements such as the air leaving temperature are calculated from the multitude of values in the data sample. (Rheem, No. 69 at p. 15)

In response to JCI, DOE believes that the current standard of care requires digital data acquisition of all temperature and humidity measurements. DOE understands that for measurements being taken and recorded digitally, decreasing the sampling interval generally should have an insignificant impact on burden, since state-of-the-art data acquisition systems can easily record data at faster rates and the cost of the additional data storage is minimal. However, DOE understands that any specific test laboratory may require significant investment to upgrade to a faster data rate, depending on the capabilities of their current data acquisition systems, and hence has decided to increase the required sampling interval to 15 seconds. In response to Rheem's request for clarification, DOE believes that it is common industry practice, when continuously recording a parameter such as air leaving temperature, to average the value over the sampled interval. However, to enhance clarity, DOE has added words to sections 3.3.c and 3.7.b of Appendix M indicating that capacity is to be calculated using the averages of the 30-minute continuously-recorded measurements made for the parameters that are used to determine capacity (*e.g.* indoor air inlet and outlet temperatures).

14. References to ASHRAE Standard 116–1995 (RA 2005)

In the June 2010 NOPR, DOE proposed referencing ASHRAE Standard 116–1995 (RA 2005) within the DOE test procedure to provide additional information about the equations used to calculate SEER and HSPF for variable-speed systems. 75 FR 31223, 31243 (June 2, 2010). However, in section III.H.4 of the November 2015 SNOPR, DOE proposed to change the heating load line, and as such the equations for HSPF in ASHRAE 116–1995 (RA 2005) are no longer applicable. In order to prevent confusion, DOE proposed to withdraw the original proposal made in the June 2010 NOPR to reference ASHRAE 116–1995 (RA 2005) for both HSPF and SEER by removing those instances of these references. 80 FR 69278, 69311 (Nov. 9, 2015).

DOE also proposed to revise its reference for the requirements of the air flow measuring apparatus from ASHRAE 116–1995 (RA 2005) to ANSI/ASHRAE 37–2009. As this was the only other reference to ASHRAE 116 in Appendix M, DOE proposed to remove the incorporation by reference to ASHRAE 116–1995 (RA 2005) from the Code of Federal Regulations related to central air conditioners and heat pumps. 80 FR 69278, 69311 (Nov. 9, 2015).

AHRI, UTC/Carrier, Ingersoll Rand, Goodman, Rheem, and JCI disagreed with the proposal to withdraw the incorporation by reference of ASHRAE 116–1995 (RA 2005). (AHRI, No. 70 at p. 12; UTC/Carrier, No. 62 at pp. 17–18, Ingersoll Rand, No. 65 at p. 3; Goodman, No. 73 at p. 11; Rheem, No. 69 at p. 14; JCI, No. 66 at p. 10) AHRI, UTC/Carrier, Ingersoll Rand, Goodman, and JCI suggested adding a reference to the section on thermal mass correction to the cyclic capacity (section 7.4.3.4.5) to reduce variability. (AHRI, No. 70 at p. 12; UTC/Carrier, No. 62 at pp. 17–18, Ingersoll Rand, No. 65 at p. 3; Goodman, No. 73 at p. 11; JCI, No. 66 at p. 10)

DOE notes that the current test procedure does not reference the thermal mass correction to cyclic capacity. DOE acknowledges that, because ASHRAE 116 has been incorporated by reference into the DOE test procedure, and because the cyclic test would first have been developed as part of ASHRAE 116, it is understandable that the prevailing interpretation may have been that the correction has always been included in the DOE test procedure. DOE also acknowledges that the thermal mass stored in devices and connections located between measured points must be accounted for to ensure repeatability and accuracy of a cyclic test. DOE understands that accounting for thermal mass in this way is common industry practice. Therefore, DOE has included provisions in section 3.5 of the final rule requiring a thermal mass adjustment, referencing section 7.4.3.4.5 of ASHRAE 116–2010. DOE notes that it has updated the IBR from ASHRAE 116–1995 (RA 2005) to ASHRAE 116–2010, but the content of the referenced section has not changed.

15. Additional Changes Based on AHRI 210/240-Draft

In August 2015, AHRI provided a draft version of AHRI 210/240 for the docket that will supersede the 2008 version once it is published. (AHRI Standard 210/240-Draft, No. 45, See EERE–2009–BT–TP–0004–0045) The draft version includes a number of revisions from the 2008 version, some of which already exist in DOE's test procedure, and some of which do not. In the November 2015 SNOPR, DOE proposed to adopt several of these revisions. DOE noted that the final published version of what is currently the AHRI 210/240-Draft may not be identical to the docketed draft, and that if AHRI makes other than minor editorial changes to the sections DOE referenced in the SNOPR after publication, DOE would adopt the current draft content into its regulations and not incorporate by reference the modified test procedure. 80 FR 69278, 69312 (Nov. 9, 2015).

The AHRI 210/240-Draft added new size requirements for the inlet duct to the indoor unit, new external static pressure requirements for units intended to be installed with the airflow to the outdoor coil ducted, and a new requirement for the dew point temperature of the indoor test room when the air surrounding the indoor unit is not supplied from the same source as the air entering the indoor unit. DOE proposed to adopt these three revisions in the November 2015 SNOPR. 80 FR 69278, 69311 (Nov. 9, 2015).

DOE received comments from Ingersoll Rand regarding the proposed requirements for the inlet duct, which are discussed in section III.E.18. DOE did not receive any comments on the new external static pressure and dew point requirements and is adopting these revisions in this final rule.

The AHRI 210/240-Draft included differences as compared to the current DOE test procedure for setting air volume rates during testing. DOE proposed to adopt three of these changes because they would improve repeatability and the consistency of testing among different laboratories. 80 FR 69278, 69312 (Nov. 9, 2015). They include (a) use of air volume rates specified by manufacturers, (b) setting ESP requirements for operating modes other than full-load cooling, and (c) establishing an instability criterion for testing of units with constant-air-volume indoor blowers. DOE received no comments regarding these proposals and adopts them in this final rule.

DOE did receive several comments on other proposals related to setting air volume rates and has addressed these comments and revisions in section III.E.1.

The AHRI 210/240-Draft also included a more thorough procedure for setting of refrigerant charge than exists in the DOE test procedure. DOE proposed these changes because they improve test repeatability.

The AHRI 210/240-Draft also specifies both a target value tolerance and a maximum tolerance but does not specify in what circumstances each of these apply. In response, UTC/Carrier commented that they would like more detail, as correct refrigerant charging has a significant impact on performance and product reliability. (UTC/Carrier, No. 62 at p. 18) DOE interprets this comment as support of the additional detail regarding instructions for setting charge that were proposed in the November 2015 SNOPR, since the comment does not provide clarification regarding potential additional details that might be needed.

As an elaboration on DOE's past methodology, DOE believed that the AHRI 210/240-Draft did not clearly delineate how target value and maximum tolerances should be applied. Following from this lack of clarity, in the November 2015 SNOPR, DOE proposed to adopt the most liberal restriction on tolerance, the maximum tolerance, disregarding the AHRI 210/240-Draft target value. In addition, DOE proposed tolerances on the measured superheat and other parameters that would be set to specified levels during charging. 80 FR 69278, 69312 (Nov. 9, 2015). In this final rule, DOE continues to reference the maximum tolerance only. Additional comments regarding the procedure for setting of refrigerant charge, and revisions to the proposal are discussed in section III.E.8.

Finally, the AHRI 210/240-Draft included specifications for air sampling that provide more detail than provided in existing standards—DOE proposed incorporation of a number of these air sampling specifications into its test procedures. DOE did not receive comment on this proposal and is adopting the specifications in this final rule. However, DOE initially proposed incorporation by reference of sections of the AHRI 210/240-Draft, expecting that the standard might be published prior to this final rule. Because the AHRI standard was not finalized in time to incorporate the relevant sections of AHRI 210/240 by reference, DOE included the following provisions from the AHRI 210/240 draft in this final rule in order to finalize the proposal to adopt Appendix E4 Air Sampling Requirements in the November 2015 NOPR. DOE implemented these provisions consistent with the way they appear in the AHRI 210/240-Draft.

- DOE provided the definitions of Air Sampling Device and Aspirating Psychrometer to Section 1.2, Definitions, in Appendix M.
- DOE provided Section 2.14, Air Sampling Device and Aspirating Psychrometer Requirements, to Appendix M based on E 4.4 and E 4.6 of AHRI 210/240-Draft.
- DOE integrated the outdoor test setup instructions in E 4.2, E 4.4 and E 4.6 of AHRI 210/240-Draft and adopted those in Section 2.11 of Appendix M, with some revisions to improve clarity.
- In Section 2.11, DOE provided additional instructions regarding blockage of air sampling holes when this is done to prevent sampling of recirculated air. The revisions are intended to preserve symmetry and uniformity of air flow into the holes.
- In Section 2.11, DOE also clarified that tubes conveying sampled air may have reduced insulation requirements if dry bulb temperature measurements are made at the exit of each air sampler.

16. Damping Pressure Transducer Signals

In the June 2010 NOPR, DOE proposed to loosen the existing test operating tolerance assigned to the external resistance to airflow (ESP) from 0.05 to 0.12 in wc and the nozzle pressure drop tolerance from 2.0 percent to 8.0 percent. 75 FR 31223, 31234 (June 2, 2010).

In response to the June 2010 NOPR proposal, NEEA commented that it strongly disagreed with DOE's proposal, particularly for the ESP tolerance. NEEA also commented that it strongly supported another option presented by DOE at the June 11, 2010 public meeting, which is to lengthen the time constant for the measurements by signal integration and averaging, using a DOE-specified interval. (NEEA, No. 7 at p. 4)

AHRI commented that they disagreed with DOE's proposal to relax ESP and nozzle pressure drop tolerances. AHRI believed that the pressure transducer fluctuation issues could be resolved by implementing a time averaging routine or some kind of electronic damping algorithm that would provide the same results as a liquid manometer, using an algorithm agreed upon by AHRI members. (AHRI, No. 6 at p. 3)

In the November 2015 SNOPR, rather than proposing a revision of the operating tolerances for external resistance to airflow or nozzle pressure drop, DOE proposed to add clarifying language in the test procedure that would allow for damping of the measurement system to prevent high-frequency fluctuations from affecting recorded pressure measurements. The proposal allowed for damping of the measurement system so that the time constant for response to a step change in pressure (*i.e.* the time required for the indicated measurement to change 63% of the way from its initial value to its final value) would be no more than five seconds. This damping could be achieved in any portion of the measurement system. 80 FR 69278, 69312 (Nov. 9, 2015).

Rheem agreed with DOE's November 2015 SNOPR proposal regarding operating tolerances for external resistance to airflow or nozzle pressure drop. (Rheem, No. 69 at p. 15) JCI also agreed with that approach, but suggested that the time constant for response to a step pressure signal should be increased to 10 or 15 seconds, without providing an explanation why the slower response is needed. (JCI, No. 66 at p. 20) No commenters disagreed with the proposal. The intent of the damping is to address fluctuations associated with turbulence that would have a frequency so high that they would not be captured with a system with a 5 second response time. In the absence of more explanation regarding why the 5 second response is insufficient, DOE maintains this value for the damping allowance and, due to the absence of dissenting comments, DOE adopts this revision in the test procedure.

17. Clarify Inputs for the Demand Defrost Credit Equation

In the June 2010 NOPR, DOE proposed language in the test procedure to clarify that manufacturers must assign $\Delta\tau_{def}$ (the greater of the time in hours between defrost terminations and 1.5) the value of 6 hours if this limit is reached during a frost accumulation test and the heat pump has not completed a defrost cycle. A sentence was also proposed to be added in section 3.9.2 of Appendix M to indicate that the manufacturer must use a value of $\Delta\tau_{max}$, that is either the maximum time between defrosts as allowed by the controls (in hours) or 12, whichever is less. 75 FR at 31237 (June 2, 2010). In the proposal of the November 2015 SNOPR, this was changed to indicate that the value would be as provided in the installation manuals shipped with the unit. 80 FR at 69373 (Nov. 9, 2016).

AHRI supported DOE's proposal to clarify inputs to the demand defrost credit equation with the understanding that HSPF values would not be affected by such clarifications. (AHRI, No. 6 at p. 4) Ingersoll Rand stated that the facts do not support AHRI's understanding as there are significant numbers of heat pumps for which the reduction of the maximum permissible test duration from 12 to 6 hours would decrease the calculated HSPF. Ingersoll Rand further commented that reducing max duration of frost accumulation tests from 12 hours to 6 hours and eliminating the short-cut method for determining SEER would reduce the rated performance of AC/HP, which would be an adverse situation for manufacturers. Ingersoll Rand commented that this would require re-rating of units that are above 13 SEER and un-rating units that are at 13 SEER. (Ingersoll Rand, No. 10 at p. 1)

As noted in the June 2010 SNOPR, for most two-capacity and variable-speed heat pumps the proposal for the 6-hour limit reduces manufacturer test burden when defrost does not occur. DOE believes that when defrost does occur, the proposal has a negligible impact on the calculation of the average heating capacity and power consumption at a 35 °F outdoor temperature. Shortening the maximum duration of the frost accumulation test affects heat pumps that would otherwise conduct a defrost after 6 but before 12 hours in two ways. First, such heat pumps benefit slightly from not having a defrost cycle factored into their average heating capacity calculation. Second, they earn a higher demand defrost credit than they would have earned previously. As a worst case (*e.g.*, unit's demand defrost controls actuate at 11.999 hours while the unit's maximum duration is 12 hours or more), the approximated demand defrost credit is now 1.017 compared to the "true" value of 1.000. 75 FR 31223, 31236–37 (June 2, 2010). The HSPF is directly proportional to the demand defrost credit factor (see Equation 4.2–1 of Appendix M), hence, this would represent a 1.7 percent increase in HSPF. Ingersoll Rand did not provide any justification for why it did not agree with DOE's analysis regarding the impact of the change. Therefore, DOE adopts this revision in the test procedure.

18. Improving Test Consistency Associated With Indoor Unit Air Inlet Geometry

Ingersoll Rand commented that the range of inlet geometries allowed by the DOE test procedure for ducted units may lead to different test results, specifically different measurements of static pressure and (for blower coil and single-package units) fan input power, depending on what specific inlet geometry is selected for conducting a test. They recommended that DOE adopt the short duct minimal requirement described in the draft version of AHRI 210/240–2015. (Ingersoll Rand, No. 65 at p. 6–10)

DOE first reviewed the inlet configurations that Ingersoll Rand evaluated and claimed are all compliant with the DOE inlet equipment connection requirements. DOE does not agree that the current test procedure allows Configuration #7, in which the inlet plenum for measurement of inlet static pressure is upstream of the damper box. Section 2.5.1.1 of the current test procedure states, "install the inlet damper box upstream of the inlet plenum." This was proposed to be modified in the November 2015 SNOPR to read, "Install the airflow prevention device upstream of the inlet plenum . . .". Configuration #7 is inconsistent with both descriptions. DOE notes that the greatest deviation in static pressure measurements presented by Ingersoll Rand is associated with Configuration #1, in which there is neither an inlet plenum nor a damper box, and the inlet static pressure simply measures room pressure. In this case, the measured inlet static pressure would generally be higher than measured using an inlet plenum, because part of the static pressure within the room is converted to inlet velocity pressure as the room air is accelerated towards the unit's inlet. DOE agrees that for consistency it would be beneficial to avoid Configuration #1 in testing. Hence, the final rule established in today's notice does not allow use of this arrangement. DOE believes that most units will be tested with damper boxes (or other airflow prevention devices) in order to conduct the cyclic test, because of the measured performance improvement associated with use of the measured cyclic degradation coefficient, which is often less than the default coefficient that can be used if the cyclic test is not conducted. Hence, DOE does not believe that many, if any, tests are conducted using Configuration #1. Thus, adopting this change should ensure test consistency with inconsequential impact on test burden.

Responding to potential misinterpretation of the requirements for air inlet geometry (*e.g.* regarding Configuration #7 discussed above), DOE made some clarifying revisions in this final rule that were not part of the proposals in the NOPR or SNOPRs. The revisions include, (a) rearranging the text of section 2.4.2 regarding the inlet plenum for the indoor unit, (b) clarifying that figures 7b and 7c of ANSI/ASHRAE 37–2009 are for blower coil indoor units or single-package units while figure 8 is for coil-only units, and (c) clarifying that when an inlet plenum is not used that the length of straight duct upstream of the unit's inlet within the airflow prevention device must still adhere to the inlet plenum length requirements, as illustrated in ANSI/ASHRAE 37–2009, figures 7b, 7c, and 8.

F. Clarification of Test Procedure Provisions

This section discusses clarifications to the test procedure to address test procedure provisions that may lack sufficient specificity to ensure reproducibility. None of the clarifications listed in this section would alter the average measured energy consumption of a representative set of models.

1. Manufacturer Consultation

In the November 2015 SNOPR, DOE proposed to clarify the test procedure provisions regarding the specifications for refrigerant charging prior to testing, with input on certain details from the AHRI 210/240-Draft, as discussed in section III.E.15. Specifically, DOE proposed to remove the current test procedure's allowance for contacting the manufacturer to receive charging instructions. In instances where multiple sets of instructions are specified or are included with the unit and the instructions are unclear on which set to test with, DOE proposed the use of field installation criteria. 80 FR 69278, 69313 (Nov. 9, 2015).

ADP and Lennox commented that before using standard sub-cooling and superheat values, the test facility should contact the manufacturer to obtain instructions in cases where they have been misplaced, and in all cases the test facility should contact the manufacturer to request the latest version of the installation instructions. ADP and Lennox commented that given the level of inventory in the industry, testing an off-the-shelf unit solely based on the installation instructions in the box with the unit could result in outdated instructions being used. (ADP, No. 59 at p. 10; Lennox, No. 61 at p. 17–18)

After reviewing these comments, DOE maintains that it is not necessary to contact the manufacturer for the latest refrigerant charging requirements, and that the instructions provided with the unit should be used as the unit should have been certified by the manufacturer as compliant with the information provided with the unit. Therefore, DOE has adopted this provision in the final rule.

In the November 2015 SNOPR, DOE also proposed to revise language proposed in previous NOPRs regarding the metering of low-voltage transformers to eliminate the need for communication between third party test laboratories and manufacturers. 80 FR 69278, 69313 (Nov. 9, 2015). No comments were received on this proposal, and DOE adopts this provision in the final rule.

DOE also proposed to require manufacturers to report on their certification report whether the test was conducted with or without an inlet plenum installed in order to eliminate the need for the test laboratory to confirm this with the manufacturer. 80 FR 69278, 69313 (Nov. 9, 2015).

In response, AHRI, Nortek commented that it is burdensome and unnecessary to submit this data. (AHRI, No. 70 at p. 14; Nortek, No. 58 at p. 11) ADP, Unico, and Ingersoll Rand commented that they agreed with AHRI on this matter. (ADP, No. 59 at p. 7; Unico, No. 63 at p. 6; Ingersoll Rand, No. 65 at p. 12) JCI, UTC/Carrier, Lennox, and Mitsubishi commented generally that additional reporting requirements impose an unnecessary burden on manufacturers, which is discussed in section III.A.5. (JCI, No. 66 at p. 12; UTC/Carrier, No. 62 at p. 7; Lennox, No. 61 at pp. 14–15; Mitsubishi, No. 68 at pp. 1–2)

As discussed in section III.E.18, DOE has modified the test procedure to require the use of an inlet plenum or an inlet airflow prevention device that also provides the function of an inlet plenum, for ducted split-system or single-package units. Hence, this reporting requirement is not needed and DOE has removed it in the final rule.

DOE proposed to amend references in the test procedure to test setup instructions or manufacturer specifications by specifying that these refer to the test setup instructions included with the unit. DOE proposed to implement this change in the following sections: 2.2.2, 3.1.4.2(c), 3.1.4.4.2(c), 3.1.4.5(d), and 3.5.1(b)(3). 80 FR 69278, 69313 (Nov. 9, 2015). No comments were received on this proposal, and DOE adopts this provision in the final rule.

2. Incorporation by Reference of AHRI 1230–2010

ANSI/AHRI Standard 1230–2010 "Performance Rating of Variable Refrigerant Flow (VFR) Multi-Split Air-Conditioning and Heat Pump Equipment" with Addendum 2 (AHRI 1230–2010) prescribes test requirements for both consumer and commercial variable refrigerant flow multi-split systems. In the November 2015 SNOPR, DOE proposed to incorporate by reference the sections of AHRI 1230–2010 that are relevant to consumer variable refrigerant flow multi-split systems (namely, sections 3 (except 3.8, 3.9, 3.13, 3.14, 3.15, 3.16, 3.23, 3.24, 3.26, 3.27, 3.28, 3.29, 3.30, and 3.31), 5.1.3, 5.1.4, 6.1.5 (except Table 8), 6.1.6, and 6.2) into the existing test procedure for central air conditioners and heat pumps at Appendix M to Subpart B of 10 CFR part 430. 80 FR 69278, 69313 (Nov. 9, 2015).

In response to this proposal, JCI, AHRI, Nortek, Unico, Mitsubishi and Rheem supported applying AHRI 1230 for VRF testing. (JCI, No. 66 at p. 20; AHRI, No. 70 at p. 17; Nortek, No. 58 at p. 14; Unico, No. 63 at p. 12; Mitsubishi, No. 68 at p. 4; Rheem, No. 69 at p. 15) In contrast, Goodman commented that all products in the residential market should be tested using the same test procedure, and suggested multi-split air conditioners should be tested via AHRI 210/240. (Goodman, No. 73 at p. 15–16) As virtually all commenters support the use of the industry test procedure AHRI 1230 for multi-split air conditioners, DOE incorporates by reference certain sections of AHRI 1230–2010 as proposed.

DOE also proposed to define the terms "Multiple-split (or multi-split) system", "Small-duct, high-velocity system", "Tested combination", "Variable refrigerant flow system" and "Variable-speed compressor system" in its list of definitions in Appendix M to Subpart B of 10 CFR part 430. 80 FR 69278, 69313 (Nov. 9, 2015).

Regarding tested combination, AHRI had requested in response to the June 2010 NOPR that DOE use the "tested combination" definition in AHRI 1230–2010 (the definition appears in section 3.26 of this standard). (AHRI, No. 6 at pp. 1–2) In the November 2015 SNOPR, DOE proposed a definition which is nearly identical to the AHRI 1230–2010 definition, except that (a) the AHRI definition allows a maximum of 12 indoor units in the tested combination—the DOE proposal calls for up to five indoor units, (b) the DOE proposal allows use of an indoor unit model family other than the highest sales volume family if the 95 percent capacity threshold cannot be met with units of the highest sales volume family, and (c) DOE's proposal provided clarification of what is meant by indoor unit nominal capacity. 80 FR at 69313–14 (Nov. 9, 2015). Commenters did not specifically address these provisions in their comments regarding the November 2015 SNOPR, and hence the final rule adopts them.

In addition, both AHRI and Mitsubishi had commented in response to the June 2010 NOPR that DOE should remove the requirement to turn off one of the indoor units when testing at minimum compressor speed. (AHRI, No. 6 at p. 2, Mitsubishi, No. 12 at p. 1) DOE established this test requirement for multi-split systems in a final rule published October 22, 2007. 72 FR 59906–59909. DOE had initially considered a more aggressive approach in the October 2007 Final Rule for turning off indoor units at part load in which the number of operating units would be proportional to the load level, but settled instead on turning off just one unit for minimum compressor speed. *Id.* at 59909. Multi-split systems have indoor units that respond individually to separate thermostats. The outdoor units are designed to operate when one or more of the indoor units are not operating. It certainly would be expected that, for a large percentage of the time that such a unit operates at minimum compressor speed, at least one of the indoor units would have cycled off. The test approach suggested by AHRI and Mitsubishi is more consistent with the operation of multi-head mini-split systems, for which all of the indoor units operate in unison in response to a single thermostat, rather than the operation of multi-split systems—for such systems, all indoor units would always be operating when the outdoor unit is at minimum compressor speed. DOE is not aware of any field test information that shows that all of the indoor units of a multi-split system continue to operate when the compressor is at minimum speed. Hence, DOE is maintaining the requirement to turn off one indoor unit for the minimum-speed tests.

Finally, Mitsubishi had also commented, in response to the June 2010 NOPR, that the 50% requirement be waived for multi-split systems with cooling capacity less than 24,000 Btu/h, and that the 95% to 105% capacity requirement for match between indoor and outdoor nominal capacities be considered a guideline rather than a requirement. (AHRI, No. 6 at p. 2, Mitsubishi, No. 12 at pp. 1–2) The 50% requirement (*i.e.* that none of the indoor units of the tested combination have a nominal cooling capacity greater than 50% of the outdoor unit's nominal cooling capacity) has been adopted by DOE. DOE will not adopt the latter recommendation, since it would essentially eliminate any requirement for capacity matching, but has instead increased the flexibility of the requirements by allowing use of model families of indoor units other than the highest sales volume model family, if all of the tested combination requirements cannot be met by the highest sales volume family.[18] DOE notes that it has clarified this allowance in this final rule—whereas the proposed wording referenced inability to meet the 95% capacity threshold as the basis for considering other model families, the allowance in this final rule explicitly states that if all the requirements for "tested combination" cannot be met by indoor units selected from the highest sales volume model family, that one or more indoor units could be selected from a different sales model family.

[18] Examples of model families include configurations such as mid-range static ducted, high-static ducted, wall-mount, ceiling-mount 4-way cassette, ceiling-mount 2-way cassette, etc.

Comments received regarding the term "multiple-split system" are discussed in section III.F.5. DOE did not receive comments on the other definitions and adopts them as proposed.

In the November 2015 SNOPR, DOE also proposed to omit Table 8 of AHRI 1230–2010 from the IBR into Appendix M and to set minimum ESP requirements for systems with short-run ducted indoor units in Table 3 of Appendix M as follows: 0.03 in. w.c. for units less than 28,800 Btu/h; 0.05 in. w.c. for units between 29,000 Btu/h and 42,500 Btu/h; and 0.07 in. w.c. for units greater than 43,000 Btu/h. Furthermore, DOE proposed to define the term "short duct systems," to refer to ducted systems whose indoor units can deliver no more than 0.07 in. w.c. ESP when delivering the full load air volume rate for cooling operation. 80 FR 69278, 69314 (Nov. 9, 2015).

DOE received several comments in response to its proposal related to short duct systems and the required ESP. However, the CAC/HP ECS Working Group included recommendations to DOE regarding definitions and ESP for low-static and mid-static units rather than short duct systems. (Docket No. EERE–2014–BT–STD–0048, No. 76 at p. 1–2) Therefore, in this final rule, DOE is not adopting a definition or ESP requirement for short duct systems and will consider changes to the ESP for certain kinds of systems in a separate notice.

3. Replacement of the Informative Guidance Table for Using the Federal Test Procedure

In the November 2015 SNOPR, DOE proposed replacing the set of four tables at the beginning of "Section 2, Testing Conditions" of the current test procedure (10 CFR part 430, subpart B, Appendix M) with a more concise table to provide guidance to manufacturers regarding testing conditions, testing procedures, and calculations appropriate to a product class, system configuration, modulating capability, and special features of products. 80 FR 69278, 69314 (Nov. 9, 2015).

JCI commented the tables provide adequate clarity but that the table would be more viewable if placed in a portrait view. (JCI, No. 66 at p, 20–21). UTC/Carrier responded that they would like any clarity DOE can provide. (UTC/Carrier, No. 62 at p. 19) Rheem expressed the preference of the current table over the proposed table in the November 2015 SNOPR and suggested that DOE further clarify the proposed table, including adding a title and explanation of how it should be used. Rheem also pointed out a possible error under testing conditions for single-split-system coil-only. (Rheem, No. 69 at p.16).

Given the general consensus on the proposed table, DOE is adopting the format of the proposed table in this final rule with some clarification. DOE found it difficult to fit the eight columns within the table in the portrait view suggested by JCI, and maintains the landscape format. In response to Rheem, the proposed table is titled "Informative Guidance for Using Appendix M" and an explanation of how it should be used is given in section 2 (B) of this final rule notice. DOE conducted further review and revision to the proposed table to clarify the sections each test should refer to, including fixing the identified error on single-split-system coil-only test conditions.

4. Clarifying the Definition of a Mini-Split System

In the November 2015 SNOPR, DOE proposed deleting the definition of mini-split air conditioners and heat pumps, and adding two definitions for: (1) single-zone-multiple-coil split system, representing a split system that has one outdoor unit and that has two or more coil-only or blower coil indoor units connected with a single refrigeration circuit, where the indoor units operate in unison in response to a single indoor thermostat; and (2) single-split system, representing a split system that has one outdoor unit and that has one coil-only or blower coil indoor unit connected to its other component(s) with a single refrigeration circuit. 80 FR 69278, 69314 (Nov. 9, 2015).

ADP, Lennox, and UTC/Carrier supported DOE's proposal. (ADP, No. 59 at p. 12; Lennox, No. 61 at p. 19; UTC/Carrier, No. 62 at p. 20)

AHRI and Nortek proposed modifying the current definition to reflect common terminology used in the field. (AHRI, No. 70 at p. 17–18; Nortek, No. 58 at p. 14) AHRI and Mitsubishi recommended the terminology and definitions be revised as follows: (1) single head mini-split system, representing split systems that have a single outdoor section and one indoor section, where the indoor section cycles on and off in unison in response to a single indoor thermostat; and (2) multi head mini-split system, representing split systems that have a single outdoor section and more than one indoor sections, where the indoor sections cycle on and off in unison in response to a single indoor thermostat. (AHRI, No. 70 at p. 17–18; Mitsubishi, No. 68 at p. 4)

Goodman commented that they do not support the terminology of "single-zone-multiple-coil split system" and that there is no need to separate a one-to-one split system and a one-to-multiple split system. However, Goodman also suggested using the terms single-head mini-split and multi-head mini-split if DOE desires to separate the definition of mini-split into two categories. (Goodman, No. 73 at p. 7)

Mitsubishi also specifically recommended that the references to "coil-only" be removed since Appendix M does not permit the matching of a variable speed outdoor unit with a coil without a blower that can match the airflow required for each of the tests. (Mitsubishi, No. 68 at p. 4)

In response to the recommended terminology from AHRI, Nortek, Mitsubishi, and Goodman, DOE is adopting the term "multi-head mini-split system" in the regulatory text rather than the proposed "single-zone multiple-coil system." However, DOE believes it is important to specify that this system has a single refrigerant circuit, which is not part of the definition proposed by AHRI and Mitsubishi. In response to Mitsubishi, DOE has removed "coil-only" from the definition but cautions that this does not mean that the definition does not include systems with coil-only indoor units. DOE notes that the definition is not explicitly limited to variable-speed units, although DOE is aware that most of not all commercially available units that fit the definition have variable-speed compressors. For these reasons, DOE adopts the following definition for "multi-head mini-split system":

Multi-head mini-split system means a split system that has one outdoor unit and that has two or more indoor units connected with a single refrigeration circuit. The indoor units operate in unison in response to a single indoor thermostat.

DOE is adopting the definition for single-split system as proposed in the SNOPR. DOE is not adopting a definition for "single-head mini-split," as this variety of unit is included in the "single-split system" definition and there are no different test procedure requirements or energy conservation standard levels that would require

establishing a separate definition to distinguish these products.

5. Clarifying the Definition of a Multi-Split System

In the November 2015 SNOPR, DOE proposed to clarify the definition of multi-split system to specify that multi-split systems are to have only one outdoor unit. (DOE notes that it proposed to separately define multi-circuit units as units that incorporate multiple outdoor units into the same package. This is discussed in section III.C.1.) DOE also proposed to clarify that if a model of outdoor unit could be used both for single-zone-multiple-coil split systems (multi-head mini-split systems) and for multi-split systems, it should be tested as a multi-split system. 80 FR 69278, 69315 (Nov. 9, 2015).

In response, the California IOUs stated that the proposed definition was unclear and recommended the following definition: A multiple zone, multiple coil, split system is a split system with one outdoor unit and at least two coil-only or blower coil indoor units which operate separately as required to provide comfort in the zone each serves. (California IOUs, No. 67 at p. 6). DOE received no other comments on this issue.

The multi-split system definition suggested by California IOUs does not specify that the outdoor units and the indoor units are within a single refrigerant circuit, and therefore multi-circuit systems, which are tested differently, would fit in this definition. In order to preserve the distinction between multi-split and multi-circuit products, DOE adopts the proposed multi-split system definition from the November 2015 SNOPR, which clarifies that for multi-split systems all components are connected with a single refrigerant circuit.

6. Clarifying the Housing for Uncased Coil

The current test procedure provides instructions for installing uncased coil indoor units, indicating that an enclosure be provided for them using 1 in. fiberglass ductboard (see Appendix M, section 2.2.c). DOE is aware of issues associated with the use of fiberglass ductboard, as its lack of rigidity can present challenges in maintaining tight seals where it connects to upstream and downstream ducts used in the test set-up. DOE also notes that the requirements of section 2.2.c regarding both the ductboard and its installation are unnecessarily limited in the approaches listed for fabricating an enclosure for the test. DOE is aware that test laboratories fabricate enclosures for testing uncased coils that consist of materials other than just the listed fiberboard or alternative insulation. DOE also understands that the term "fiberboard" is not sufficiently descriptive to assure that a foil-faced fiberboard be used, which would be consistent with the expectation that such a casing provide a barrier to both air flow and water vapor transmission. As a result, DOE is clarifying these instructions with additional language in this final rule regarding the installation of uncased coils, including (a) indicating that the ductboard must be foil-faced, (b) allowing alternative housings, consisting of sheet metal or similar material and separate insulation, and (c) indicating that sizing and installation of the casing should be done as described in the installation instructions shipped with the unit. These clarifications are consistent with DOE's proposal in the November 2015 SNOPR and its understanding and expectations of how these tests are being conducted and should be conducted. Although most ductboard material is foil-faced, DOE has clarified that alternative materials claimed to be ductboard should not be used—without the foil facing, the ductboard would not present a sufficient barrier to vapor and air penetration. These alternative housing materials (*i.e.* alternatives to foil-faced fiberboard) will allow for more rigid construction of the coil housing. Finally, DOE recognizes that details regarding the fabrication and installation of the housing may affect test results and hence clarifies that they should be performed as described in installation instructions shipped with the unit. These changes would not affect any tests being conducted consistent with existing requirements (*e.g.* for negligible air leakage and installation according to shipped instructions.) but are intended to clarify set-up procedures to enhance consistency of testing.

7. Test Procedure Reprint

DOE has reprinted the entirety of Appendix M to 10 CFR part 430 Subpart B in the regulatory text for this final rule to improve clarity regarding the revisions established by this final rule. Table III.6 lists proposals from the previous notices that appear in this regulatory text reprint, and provides reference to the respective revised section(s) in the regulatory text.

TABLE III.6.—TEST PROCEDURE AMENDMENTS ADOPTED IN THIS FINAL RULE

[By original proposal]

Section	Proposal to . . .	Reference	Preamble discussion	Regulatory text location *
	June 2010 NOPR			
A.7	Add Calculations for Sensible Heat Ratio	75 FR 31229	III.G.1	3.3c, 4.5.
A.9	Modify Definition of Tested Combination	75 FR 31230	III.F.2	10 CFR 430.2 Definitions.
A.10	Add Definitions Terms Regarding Standby Power	75 FR 31231	None	Definitions.
B.1	Modify the Definition of "Tested Combination"	75 FR 31231	III.F.2	10 CFR 430.2 Definitions.
B.3	Clarify That Optional Tests May Be Conducted Without Forfeiting Use of the Default Value(s).	75 FR 31233	III.E.11	3.2.1, 3.2.2.1, 3.2.3
B.4	Allow a Wider Tolerance on Air Volume Rate To Yield More Repeatable Laboratory Setups.	75 FR 31233	III.E.1	3.1.4.1.1a.4(ii)
B.5	Change the Magnitude of the Test Operating Tolerance Specified for the External Resistance to Airflow.	75 FR 31234	III.E.17	3.3d Table, 3.5h Table, 3.7a Table, 3.8.1 Table, 3.9f Table.
	Change the Magnitude of the Test Operating Tolerance Specified for the Nozzle Pressure Drop.	75 FR 31234	III.E.17	3.3d Table, 3.5h Table, 3.7a Table, 3.8.1 Table.
B.6	Modify Refrigerant Charging Procedures: Disallow Charge Manipulation after the Initial Charge.	75 FR 31234	III.E.7	2.2.5.
B.7	Require All Tests be Performed with the Same Refrigerant Charge Amount.	75 FR 31235, 31250	III.F.1	2.2.5.8.
	When Determining the Cyclic Degradation Coefficient C_D, Correct the Indoor-Side Temperature Sensors Used During the Cyclic Test To Align With the Temperature Sensors Used During the Companion Steady-State Test, If Applicable: Equation.	75 FR 31235	III.E.11	3.4c, 3.5i, 3.7e, 3.8

TABLE III.6.—TEST PROCEDURE AMENDMENTS ADOPTED IN THIS FINAL RULE—Continued

[By original proposal]

Section	Proposal to . . .	Reference	Preamble discussion	Regulatory text location *
B.8	When Determining the Cyclic Degradation Coefficient C_D, Correct the Indoor-Side Temperature Sensors Used During the Cyclic Test To Align With the Temperature Sensors Used During the Companion Steady-State Test, If Applicable: Sampling Rate.	75 FR 31236	None	3.3b, 3.7a, 3.9e, 3.11.1.1, 3.11.1.3, 3.11.2a.
B.9	Clarify Inputs for the Demand Defrost Credit Equation	75 FR 31236	III.E.17	3.9.2a.
B.10	Add Calculations for Sensible Heat Ratio	75 FR 31237	III.G.1	3.3c, 4.5.
B.11	Incorporate Changes To Cover Testing and Rating of Ducted Systems Having More Than One Indoor Blower.	75 FR 31237	III.C.3	2.2.3, 2.2.3b, 2.4.1b, 3.1.4.1.1d, 3.1.4.2e, 3.1.4.4.2d, 3.1.4.5.2f, 3.2.2, 3.2.2.1, 3.6.2, 3.2.6, 3.6.7, 4.1.5, 4.1.5.1, 4.1.5.2, 4.2.7, 4.2.7.1, 4.2.7.2, 3.2.2.2 Table, 3.6.2 Table.
B.12	Add Changes To Cover Triple-Capacity, Northern Heat Pumps	75 FR 31238	III.C.4	3.6.6, 4.2.6.
B.13	Specify Requirements for the Low-Voltage Transformer Used When Testing for Off-Mode Power Consumption.	75 FR 31238	III.F.1	2.2d.
B.14	Add Testing Procedures and Calculations for Off Mode Power Consumption.	75 FR 31238	III.D	Definitions, 3.13, 4.3.
B.17	Update Test Procedure References	75 FR 31243	III.E.12	*10 CFR 430.3* Definitions.
	April 2011 SNOPR			
III.A	Revise Test Methods and Calculations for Off-Mode Power and Energy Consumption.	76 FR 18107	III.D	Definitions, 3.13, 4.3.
III.B	Revise Requirements for Selecting the Low-Voltage Transformer Used During Off-Mode Test(s).	76 FR 18109	III.F.1	2.2d.
III.D	Add Calculation of the Energy Efficiency Ratio for Cooling Mode Steady-State Tests.	76 FR 18111	None	4.7.
III.E	Revise Off-Mode Performance Ratings	75 FR 31238	III.D	Definitions, 3.13, 4.3.
	October 2011 SNOPR			
III.A	Reduce Testing Burden and Complexity	76 FR 65618	III.D	Definitions, 3.13, 4.3.
III.C	Add Definition for Shoulder Season	76 FR 65620	III.D	Definitions.
III.D	Revise Test Methods and Calculations for Off-Mode Power and Energy Consumption.	76 FR 65620	III.D	Definitions, 3.13, 4.3.
III.D.1	Add Provisions for Large Tonnage Systems	76 FR 65621	III.D	Definitions, 3.13, 4.3.
III.D.2	Add Requirements for Multi-Compressor Systems	76 FR 65622	III.D	Definitions, 3.13.
	November 2015 SNOPR			
III.A.1	Basic Model Definition	80 FR 69282	III.A.1	430.2.
III.A.2	Additional Definitions	80 FR 69284	III.A.2	430.2.
III.A.3	Determination of Certified Rating	80 FR 69285	III.A.3	429.16, 1.2.
III.A.4	Compliance with Federal (National or Regional) Standards	80 FR 69289	III.A.4	429.16(a).
III.A.5	Certification Reports	80 FR 69290	III.A.5	429.16(c).
III.A.6	Represented Values	80 FR 69291	III.A.6	429.16(a), 430.23.
III.A.7	Product-Specific Enforcement Provisions	80 FR 69292	III.A.7	429.134.
III.B.1	AEDM General Background	80 FR 69292	III.B.1	429.70(e).
III.B.2	AED< Terminology	80 FR 69292	III.B.2	429.70(e).
III.B.3	Elimination of the ARM Pre-Approval Requirement	80 FR 69293	III.B.3	
III.B.4	AEDM Validation	80 FR 69294	III.B.4	429.70(e)(2).
III.B.5	AEDM Requirements for Independent Coil Manufacturers	80 FR 69296	III.B.5	429.16.
III.B.6	AEDM Verification Testing	80 FR 69296	III.B.6	429.104, 429.70(e)(5).
III.B.7	Failure to Meet Certified Ratings	80 FR 69297	III.B.7	429.70(e)(5)(iv).
III.B.8	Action Following a Determination of Noncompliance	80 FR 69297	III.B.8	429.110, 429.70.
III.C.2	Termination of Waivers Pertaining to Multi-Circuit Products	80 FR 69299	III.C.2	429.16(a)(1)(ii)(A), 2.4.1b.
III.C.3	Termination of Waiver and Clarification of the Test Procedure Pertaining to Multi-Blower Products.	80 FR 69299	III.C.3	3.1.4.1.1.d, 3.1.4.2.e.
III.D.1	Off-Mode Test Temperatures	80 FR 69300	III.D.1	3.13.2.b.
III.D.2	Off-Mode Calculation and Weighting of P1 and P2	80 FR 69301	III.D.2	3.13.1, 4.3.
III.D.3	Off-Mode: Products with Large, Multiple or Modulated Compressors.	80 FR 69302	III.D.2	3.13.1.e, 3.13.2.g.
III.D.4	Off-Mode: Procedure for Measuring Low-Voltage Component Power.	80 FR 69302	III.D.7	3.13.1.c, 3.13.1.d, 3.13.2.c, 3.13.2.e, 3.13.2.f.
III.D.5	Off-Mode: Revision of Off-Mode Power Consumption Equations	80 FR 69302	III.D.7	3.13.1.e, 3.13.1.f, 3.13.2.g, 3.13.2.h.
III.D.6	Off-Mode Power Consumption for Split Systems	80 FR 69303	III.D.7	3.13.1, 3.13.2.
III.D.8	Test Metric for Off-Mode Power Consumption	80 FR 69304	III.D.3	429.16(a).
III.E.1	Indoor Fan Speed Settings	80 FR 69305	III.E.1	Table 2, 2.3.1.a, 3.1.4.1.1, 3.3(d).
III.E.2	Requirements for the Refrigerant Lines and Mass Flow Meter	80 FR 69306	III.E.3	2.2(a), 2.10.3.
III.E.3	Outdoor Room Temperature Variation	80 FR 69306	III.E.4	2.5, 2.11.b, 3.1.8.
III.E.4	Method of Measuring Inlet Air Temperature on the Outdoor Side.	80 FR 69307	III.E.5	2.11.b.
III.E.5	Requirements for the Air Sampling Device	80 FR 69307	III.E.6	2.5, 2.11.
III.E.6	Variation in Maximum Compressor Speed with Outdoor Temperature.	80 FR 69307	III.E.7	3.2.4, 3.6.4, 4.1.4, 4.2.4.
III.E.7	Refrigerant Charging Requirements	80 FR 69307	III.E.8	2.2.5.8.
III.E.8	Alternative Arrangement for Thermal Loss Prevention for Cyclic Tests.	80 FR 69308	III.E.9	2.5(c).
III.E.9	Test Unit Voltage Supply	80 FR 69309	III.E.10	2.7.
III.E.10	Coefficient of Cyclic Degradation	80 FR 69309	III.E.11	3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.5, 3.6, 3.8.

TABLE III.6.—TEST PROCEDURE AMENDMENTS ADOPTED IN THIS FINAL RULE—Continued
[By original proposal]

Section	Proposal to . . .	Reference	Preamble discussion	Regulatory text location *
III.E.11	Break-in Periods Prior to Testing	80 FR 69309	III.E.12	3.1.7.
III.E.12	Industry Standards that are Incorporated by Reference	80 FR 69310	III.E.13	430.3.
III.E.13	Withdrawing References to ASHRAE 116–1995 (RA 2005)	80 FR 69311	III.E.14	
III.E.14	Additional Changes Based on AHRI 210/240-Draft	80 FR 69311	III.E.15	Table 2, 2.2.5.4.a, 2.2.5.5, 2.3.1.a, 2.4.2, 2.5, 2.11, 3.1.3.1, 3.1.4.1.1, 3.1.5, 3.3(d).
III.E.15	Damping Pressure Transducer Signals	80 FR 69312	III.E.16	2.6(a).
III.F.1	Manufacturer Consultation	80 FR 69313	III.F.1	2.2.5, 2.4.2, 2.2.2, 3.1.4.2(c), 3.1.4.4.2(c), 3.1.4.5(d), 3.5.1(b)(3).
III.F.2	Incorporation by Reference of AHRI 1230–2010	80 FR 69313	III.F.2	1, 3.12, 2.2.a, 2.2.b, 2.2.c, 2.2.1, 2.2.2, 2.2.3(a), 2.2.3(c), 2.2.4, 2.2.5, 2.4–2.12, Table 3, section 3.1 (except sections 3.1.3, 3.1.4), 3.3, 3.4, 3.5, 3.7–3.10, 3.13, 4.
III.F.3	Replacement of the Informative Guidance Table for Using the Federal Test Procedure.	80 FR 69314	III.F.3	Table 1.
III.F.4	Clarifying the Definition of a Mini-Split System	80 FR 69314	III.F.4	1.2.
III.F.5	Clarifying the Definition of a Multi-Split System	80 FR 69315	III.F.5	1.2.

* Section numbers in this column refer to the Appendix M test procedure finalized in this notice.

G. Additional Comments From Interested Parties

This section discusses additional comments made by interested parties during this rulemaking that were unrelated to any of DOE's proposals.

1. Wet Coil Performance

NREL requested DOE require reporting of latent load or amount of water condensation removal at each test condition to be able to compare equipment performance between dry and humid regions. NREL also recommend adding two new cooling-mode test conditions to provide better representation of performance in hot dry regions and three new test cooling-mode conditions for hot humid regions. (NREL, No. 14 at p. 1)

In the June 2010 NOPR DOE proposed to add a calculation of the sensible heat ratio (SHR) to its test procedure to provide consumers and their contractors with more information to allow them to make more informed decisions regarding product selections. 75 FR 31223, 31237 (June 2, 2010). In response, UTC/Carrier and JCI noted in its comments that SHR is currently provided in manufacturer's product data. (UTC/Carrier, No. 62 at p. 7; JCI, No. 66 at p. 12). In this final rule, DOE agrees that SHR was intended to be provided in manufacturer literature and has not adopted the November 2015 SNOPR proposal to require SHR be reported to DOE (see Section III.A.5) The latent load and water condensate rate can be calculated based on the SHR in manufacturers' product literature and the rated cooling capacity, which should provide sufficient representation of wet coil performance.

The DOE test procedure requires units to be tested at 80 °F dry bulb temperature and 67 °F wet bulb temperature during wet-coil cooling test to represent typical indoor conditions. DOE does not disagree that the additional test points proposed by NREL would provide additional representation of performance in hot dry and hot humid regions. However, requiring those additional tests would impose significant test burden on manufacturers. Currently, for a single-capacity air-conditioner, a manufacturer must conduct four tests and generally conducts in addition the dry and cyclic tests. Adding five tests would roughly double the test time for these units. It is not clear how the five additional tests recommended by NREL would improve the accuracy or field-representativeness of the measurements of SEER or EER. Hence, DOE has determined not to include these test points in the test procedure.

2. Barometric Pressure Correction

AHRI and JCI proposed that DOE implement a barometric pressure correction specification for testing. They suggested that barometric pressure be corrected to the altitude where the mean of the U.S. population lives. (AHRI, No. 70 at p. 13; JCI, No. 66 at p. 11) JCI suggested addressing barometric pressure by maintaining the enthalpy or humidity ratio of the entering air, indicating that this has been used effectively for lab correlation. (JCI, No. 66 at p. 11)

DOE has noted the industry's concern regarding the impact of barometric pressure on the repeatability of tests and represented values. Currently, there is no systematic data to demonstrate the effect of barometric pressure on unit performance. However, JCI did not describe in sufficient detail how the correlation it proposed would work, nor provide data showing that it properly addresses the barometric pressure issue.

DOE also notes that there has not been a study leading to selection of a standard altitude or pressure level. DOE is not adopting a barometric pressure correction in this final rule because an approach for addressing it has not been described in sufficient detail nor shown to provide the correct adjustment for pressure changes.

3. Inlet Screen

DOE proposed in the November 2015 SNOPR the use of a screen downstream of the air mixer in the outlet of the indoor unit if necessary to improve temperature uniformity. 80 FR at 69278, 69353 (Nov. 9, 2015). Ingersoll Rand commented that inlet and outlet screens on the indoor unit air stream will impose pressure drop, potentially requiring an increase in the code tester fan motor size. The code tester is the airflow measuring apparatus as discussed in section 2.6 of Appendix M. They also recommended that regardless of whether the cyclic test is carried out, the measured performance should be equivalent to the no damper test setup. (Ingersoll Rand, No. 65 at p. 5–6) DOE notes that the proposal included no requirement for an inlet screen, and that the screen in the outlet is an option to help meet the temperature uniformity requirements, but is not required if other means are sufficient to attain uniformity. Further, requirement for temperature uniformity for the outlet temperature measurement applies whether or not an outlet damper box is used, *i.e.*, to conduct a cyclic test. DOE has made no changes in response to the Ingersoll Rand comment.

H. Compliance With Other Energy Policy and Conservation Act Requirements

This section discusses and responds to comments related to compliance with Energy Policy and Conservation Act Requirements.

1. Dates

HARDI commented that given the challenging and complex nature of the test procedure, the comment period should have been extended by 30 days. HARDI believes that restricting the comment period to 30 days has a negative impact to smaller companies as they may not have the means to fully assess the true impact of such a proposal in a narrow time frame. (HARDI, No. 57 at p. 1) JCI requested that the comment period remain open an additional 60 days to finalize their analysis of the proposed test procedure and any resulting clarifying comments. Goodman commented that the Department has not complied with federal law because it has failed to provide a 60-day comment period on this proposed test procedure per 42 U.S.C. 6293(b)(2). (Goodman, No. 73 at p. 22)

DOE notes that it received a request from AHRI to extend the comment period while the comment period was still open. (AHRI, No. 54, attachment 1). DOE considered the request from AHRI, but declined to do so. The November 2015 SNOPR represented the third round of comment on the CAC test procedure rulemaking. DOE is limited by a statutory cap on the number of days on which it can request public comment, and after three rounds of rulemaking, DOE is closer to that cap. Consequently, DOE declined the request and did not extend the comment period for the CAC/HP TP SNOPR. (AHRI, No. 54, Attachment 2)

JCI commented that the raw scope of changes proposed within the SNOPR coupled with the CAC/HP ECS Working Group and other DOE rulemaking activities is such that a complete and thorough review, understanding of the proposed changes, and resulting required laboratory changes, coupled with potential rerating and off mode standby test requirements make complying with the new test procedure within 180 days of being final particularly challenging if not impossible, and that the nature of many of the proposed changes to the test procedure require some level of capital investment and software programming. JCI formally requested that an additional 180 days were required to fully and completely implement all of the proposed changes in the SNOPR in addition to the standard 180 days as currently prescribed. (JCI, No. 66 at p. 2–3)

First Co. commented that the 180 day effective date for AEDM compliance proposed by DOE is unrealistic and suggested an effective date of 18 months from the date the rule is finalized. (First Co., No. 56 at p. 1)

AHRI, ADP, Mortex, and Lennox commented that even with the adoption of the recommended "Similarity Group" framework, ICMs anticipate that the industry will face significant challenges to perform all the required testing in the currently required time of 180 days after the publication of the final rule. AHRI formally petitions the Department to extend the time period to comply to 360 days, as is consistent with its authority. See 42 U.S.C. 6293(c)(3). (AHRI, No. 70 at p. 7; ADP, No. 59 at p. 4; Mortex, No. 71 at p. 6–7; Lennox, No. 61 at p. 7)

In response to JCI, DOE notes that this final rule has a reduced scope from that of the SNOPR. In addition, DOE has made modifications to the off mode test requirement proposals to reduce test burden, as discussed in section III.D.10. For these reasons, DOE believes that a 180 day time period will be sufficient to implement the finalized test procedure. In response to First Co., AHRI, ADP, Mortex, and Lennox, DOE notes that 42 U.S.C. 6293(c)(3) allows individual manufacturers to petition DOE for additional time to comply. DOE cannot grant this additional time based on a blanket request from AHRI. However, as discussed in section III.H.2, the changes adopted in this final rule do not impact measured energy use; and as such, additional test burden is expected to be limited.

2. Measured Energy Use

EPCA requires that if DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2)) In the November 2015 SNOPR, DOE determined that all proposed changes for Appendix M would not alter the measured efficiency of central air conditioners and heat pumps. DOE proposed all changes that it anticipated might alter the measured efficiency for Appendix M1, which will be addressed in a separate notice.

AHRI, Nortek and UTC/Carrier disagreed that the proposed changes to Appendix M will not alter the measured efficiency of a covered product. (AHRI, No. 70 at p. 1–2; Nortek, No. 58 at p. 1; UTC/Carrier, No. 62 at p. 23) UTC/Carrier commented that this could be due to C_D testing changing the resultant SEER or HSPF, as it has slightly different stability requirements, or could be due to manufacturers losing the ability to de-rate and require ratings to be at the mean of the data/testing results. (UTC/Carrier, No. 62 at p. 23) AHRI contended that the following proposed changes may impact efficiency: Changes to the C_D; requirement that manufacturers rate to the mean of the cooling capacity, heating capacity, and sensible heat ratio (SHR) and the prohibition on manufacturers' conservative ratings; requirement that two-speed products must be tested coil-only, which has the potential to change ratings derived previously using a blower coil or the alternative rating method; and limit on compressor break-in period. (AHRI, No. 70 at p. 1–2)

Rheem commented that that each of the changes that have been proposed made a difference in the rating of a specific equipment sample subject to verification or enforcement testing and that it is not clear whether the certification rating will increase or decrease for each proposed change. Rheem commented that it is not clear how the conclusion that proposed changes do not impact standards was reached. (Rheem, No. 69 at p. 2)

DOE notes that with the exception of compressor break-in period, DOE has made modifications to its proposals on all the topics for which UTC/Carrier and AHRI expressed concern over change in represented value. In addition, DOE notes that the current test procedure does not include a compressor break-in period, and any change in represented value for testing a specific unit with a break-in period would only serve to improve the value as compared to the standard. For these reasons, DOE confirms that the changes adopted in this final rule do not alter the measured efficiency of the covered product.

Nortek commented that if the test procedure does not change the efficiency, then all existing ratings are still valid. (Nortek, No. 58 at p. 1) Similarly, First Co. commented that the final rule should make clear that ICM test results remain valid until the energy efficiency standard changes. Retesting is not required merely because the OUM discontinues the outdoor unit tested by the ICM. (First Co., No. 56 at p. 2) Finally, AHRI, ADP, Mortex, and Lennox asked for clarity on using data from existing tests to satisfy testing requirements especially considering the burden associated with outside lab testing. These parties stated that, based on the proposed framework, ICMs and OUMs would expect that data from

existing tests performed to the current test standard and meeting all other requirements could be used to satisfy the testing requirement for existing products. In addition, they said that ICMs and OUMs also expect that tests will remain valid until the energy conservation standard is changed and Appendix M1 becomes effective. (AHRI, No. 70 at p. 7; ADP, No. 59 at p. 4; Mortex, No. 71 at p. 6–7; Lennox, No. 61 at p. 7)

DOE acknowledges that manufacturers have large amounts of pre-existing data that they currently use to make representations about and certify the performance of their equipment and that regenerating all of this data within the 180 day timeframe would be burdensome. As such, manufacturers may continue to use such data to make representations about the performance of models after the 180 day timeframe, provided manufacturers are confident that the values are consistent with those that would be generated under the adopted test procedure.

3. Test Burden

EPCA requires that any test procedures prescribed or amended shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) For the reasons that follow, DOE has concluded that revising the DOE test procedure, per the amendments in this final rule, to measure the energy consumption of central air conditioners and heat pumps in active mode and off mode would produce the required test results and would not result in any undue burden.

As discussed in section IV.B of this final rule, the revised test procedures to determine the active-mode and standby-mode energy use would require use of the same testing equipment and facilities that manufacturers are currently using for testing to determine CAC/HP represented values for certifying performance to DOE. While this notice clarifies the test procedures, and adopts into regulation the test procedures associated with a number of test procedure waivers, most of the amendments would not affect test time or the equipment and facilities required to conduct testing. Possible changes in test burden associated with the amendments of this notice apply to off mode testing.

The amendments include additional testing to determine off mode energy use, as required by EPCA. (42 U.S.C. 6295(gg)(2)(A)) This additional testing may require investment in additional temperature-controlled facilities. However, DOE's revised test procedure does not require that every individual combination be tested for off mode, allowing extensive use of AEDMs in order to reduce test burden.

In addition, DOE carefully considered the testing burden on manufacturers in a modified off mode test procedure that is less burdensome than the proposals it made in the April 2011 SNOPR and October 2011 SNOPR and that addresses stakeholder comment regarding the test burden of such prior proposals. DOE made further changes to reduce test burden of the off-mode test procedure in response to comments regarding the November 2015 SNOPR, specifically (a) allowing the test to be conducted in a temperature-controlled room rather than a psychrometric test facility, and (b) allowing the test to be conducted without room temperature control for more designs than allowed by the proposal. Further discussion regarding test burden associated with the proposals set forth in this notice for determining off mode power consumption can be found in section III.D.

The November 2015 SNOPR also proposed amendments calling for testing to determine performance for ICMs. These amendments have been revised in this final rule such that far fewer models will have to be tested (see the discussion in section III.A.1.d).

DOE allows manufacturers to develop and apply an alternative efficiency determination method to certify products without the need of testing. In this notice, DOE revises and clarifies such requirements, as detailed in section III.B, to continue to enable manufacturers who wish to reduce testing burden to utilize this method.

As detailed in section III.C, manufacturers of certain products covered by test procedure waivers have already been using the alternative test procedures provided to them for certification testing. Thus, the inclusion of those alternative test procedures into the test procedure, as revised in this notice, does not add test burden.

DOE set forth amendments to improve test repeatability, improve the readability and clarity of the test procedure, and utilize industry procedures that manufacturers may be aware of in an effort to reduce the test burden. Sections III.E, III.F, and III.G present additional detail regarding such amendments.

DOE carefully considered the impact on testing burden and made efforts to balance accuracy, repeatability, and test burden during the course of the development of all of the test procedure amendments. Therefore, DOE determined that the revisions to the central air conditioner and heat pump test procedure will produce test results that measure energy consumption during a period of representative use, and that the test procedure will not be unduly burdensome to conduct.

4. Potential Incorporation of International Electrotechnical Commission Standard 62301 and International Electrotechnical Commission Standard 62087

Under 42 U.S.C. 6295(gg)(2)(B), EPCA directs DOE to consider IEC Standard 62301 and IEC Standard 62087 when amending test procedures for covered products to include standby mode and off mode power measurements.

DOE reviewed IEC Standard 62301, "Household electrical appliances—Measurement of standby power" (Edition 2.0 2011–01),[19] and determined that the procedures contained therein are not sufficient to properly measure off mode power for the unique characteristics of the components that contribute to off-mode power for CAC/HP products, *i.e.*, the crankcase heaters. Therefore, DOE determined that referencing IEC Standard 62301 is not appropriate for the revised test procedure that is the subject of this rulemaking.

DOE reviewed IEC Standard 62087, "Methods of measurement for the power consumption of audio, video, and related equipment" (Edition 3.0 2011–04), and determined that it would not be applicable to measuring power consumption of products such as central air conditioners and heat pumps. Therefore, DOE determined that referencing IEC Standard 62087 is not necessary for the revised test procedure that is the subject of this rulemaking.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that test procedure rulemakings do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget.

[19] IEC Standard 62301 covers measurement of power consumption for standby mode and low power modes, as defined therein.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule prescribes clarifications to DOE's already-existing test procedures that will be used to test compliance with energy conservation standards for the products that are the subject of this rulemaking. It also adds a requirement to conduct testing to determine off mode power consumption. DOE has estimated the impacts of the test procedure changes on small business manufacturers.

For the purpose of the regulatory flexibility analysis for this rule, DOE adopts the Small Business Administration (SBA) definition of a small entity within this industry as a manufacturing enterprise with 1,250 employees or fewer. DOE used the small business size standards published by the SBA to determine whether any small entities would be required to comply with the rule. The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

Central air conditioner and heat pump manufacturing is classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing." 70 FR 12395 (March 11, 2005). DOE reviewed AHRI's listing of central air conditioner and heat pump product manufacturer members and surveyed the industry to develop a list of domestic manufacturers. As a result of this review, DOE identified 24 domestic small manufacturers of central air conditioners and heat pumps.

Potential impacts of the amended test procedure on all manufacturers, including small businesses, come from impacts associated with the cost of proposed additional testing. In the June 2010 NOPR, DOE estimated the incremental cost of the proposed additional tests described in 10 CFR part 430, subpart B, Appendix M (proposed section 3.13) to be an increase of $1,000 to $1,500 per unit tested, indicating that the largest additional cost would be associated with conducting steady-state cooling mode tests and the dry climate tests for the SEER–HD rating). 75 FR 31243 (June 2, 2010). DOE has eliminated tests associated with SEER–HD from this rulemaking. DOE conservatively estimates that off mode testing might cost $1,000 (roughly one-fifth of the $5000 cost of active mode testing—see 75 FR 31243 (June 2, 2010)). Assuming two off mode tests per tested model, this is an average test cost of $2,000 per model. This estimate does not take into consideration the possibility of the use of AEDMs for establishing off-mode represented values, which could significantly reduce the off-mode testing burden. It also does not take into account the changes in off-mode testing adopted in this final rule to reduce test burden, *i.e.*, specifically allowing more units to test off-mode energy use in a room without temperature control, and clarifying that off-mode testing does not need to be conducted in a psychrometric chamber (see section III.D for details).

The off mode test procedure primarily measures energy use of outdoor units. The off-mode power input represented values for CAC/HP model combinations including indoor units manufactured by ICMs would be equal to the off-mode represented values of other combinations using the same outdoor units. Hence, it is expected that small-business ICM manufacturers would use these same represented values rather than retesting the outdoor units and thus not be affected by the off-mode testing required by this rule. Because the incremental cost of running the extra off mode tests is the same for all other manufacturers, DOE believes that they would incur comparable costs for testing to certify off mode power use for basic models as a result of this final test procedure.

With respect to the provisions addressing AEDMs, the amendments contained herein will not increase the testing or reporting burden of OUMs who currently use, or are eligible to use, an AEDM to certify their products. The amendments eliminate the ARM nomenclature and treat these methods as AEDMs, eliminate the pre-approval requirement for product AEDMs, revise the requirements for validation of an AEDM in a way that would not require more testing than that required by the AEDM provisions included in the March 7, 2011 Certification, Compliance and Enforcement Final Rule (76 FR 12422) ("March 2011 Final Rule"), and amend the process that DOE promulgated in the March 2011 Final Rule for validating AEDMs and verifying certifications based on the use of AEDMs. Because these AEDM-related amendments will either have no effect on test burden or decrease burden related to testing and determination of represented values of products (*e.g.*, elimination of ARM pre-approval), DOE has determined these amendments will result in no significant change in testing or reporting burden.

To evaluate the potential cost impact of off-mode testing for small OUMs, DOE estimated small manufacturers' total cost of testing. As discussed above, DOE identified 24 domestic small business manufacturers of CAC/HP products. Of these, only OUMs that operate their own manufacturing facilities (*i.e.*, are not private labelers selling only products manufactured by other entities) and OUM importing private labelers would be subject to the additional requirements for testing required by this rule. DOE identified 12 such manufacturers, but was able to estimate the number of basic models associated only with nine of these. DOE calculated the additional testing expense for these nine domestic small businesses. Assuming the $2,000 estimate of additional test cost per basic model, and that testing of basic models may not have to be updated more than once every five years, DOE estimated that the annual cost impact of the additional testing is $400 per basic model when the cost is spread over five years.

DOE currently requires that only one combination associated with any given outdoor unit be laboratory tested. 10 CFR 430.24(m). The majority of central air conditioners and heat pumps offered by a manufacturer are typically split systems that are not required to be laboratory tested but can be certified using an AEDM that does not require DOE testing of these units. DOE reviewed available data for the nine small businesses to estimate the incremental testing cost burden those firms might experience due to the revised test procedure. These manufacturers had an average of 35

models requiring testing. DOE determined the numbers of models using DOE's Compliance Certification Database (*https://www.regulations.doe.gov/certification-data/*). The additional testing cost for final certification for 35 models was estimated at $70,000. Meanwhile, these certifications would be expected to last the product life, estimated to be at least five years. This test burden is therefore estimated to be approximately $14,000 annually.

In addition to off-mode testing costs facing small OUMs of central air conditioners and heat pumps, this final rule will require ICMs to conduct testing for their basic models. However, DOE has modified its definition of basic model for ICM to match the Similarity Group concept suggested by several stakeholders (see section III.A.1.d). Further, DOE has relaxed its requirement for testing of ICM heat pump combinations, such that only a limited number of heat pump basic models would require testing, *i.e.*, those for which a test has not been conducted for an equivalent air-conditioner model. DOE identified three domestic small ICMs subject to testing costs under this final rule.

To calculate the additional testing costs facing small ICMs, DOE used data provided by AHRI regarding what they referred to as Similarity Groups and which DOE is considering to be basic models. Specifically, DOE assumed an average of 42 basic models per ICM based on the AHRI data. (AHRI, No. 70 at p. 6) DOE also assumed $7,500 in added costs per test and two tests per basic model. (AHRI, No. 70 at p. 4) Assuming $15,000 in additional testing costs per basic model (to cover two tests per model), and that testing of basic models may not have to be updated more than once every five years, DOE estimated that the total additional testing cost for final certification of 42 basic models for each small ICM would amount to costs averaging $126,000 per year.

DOE will provide its certification and final supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of central air conditioners and heat pumps must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for central air conditioners and heat pumps, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including central air conditioners and heat pumps. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for central air conditioners and heat pumps. DOE has determined that this final rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

DOE's CX determination for this rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx.*

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use associated with the rule's implementation, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it will not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The rule incorporates testing methods contained in the following commercial standards: AHRI 210/240–2008, Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment; and AHRI 1230–2010, Performance Rating of Variable Refrigerant Flow Multi-Split Air-Conditioning and Heat Pump Equipment. While the amended test procedure is not exclusively based on AHRI 210/240–2008 or AHRI 1230–2010, one component of the test procedure, namely test setup requirements, adopts language from AHRI 210/240–2008 without amendment; and another component of the test procedure, namely test setup and test performance requirements for multi-split systems, adopts language from AHRI 1230–2010 without amendment. DOE has evaluated these standards and consulted with the Attorney General and the Chairman of the FTC and has concluded that this final rule fully complies with the requirements of section 32(b) of the FEAA.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE is incorporating by reference specific sections, figures, and tables in the following two test

standards published by AHRI: ANSI/AHRI 210/240–2008 with Addenda 1 and 2, titled "Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment;" and ANSI/AHRI 1230–2010 with Addendum 2, titled "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." DOE is also updating its incorporation by reference (IBR) to the most recent versions of specific standards, figures, and tables in the following standards published by ASHRAE: ASHRAE 23.1–2010 titled "Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant", ANSI/ASHRAE 37–2009, Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI/ASHRAE 41.1–2013 titled "Standard Method for Temperature Measurement", ASHRAE 41.6–2014 titled "Standard Method for Humidity Measurement", and ASHRAE 41.9–2011 titled "Standard Methods for Volatile-Refrigerant Mass Flow Measurements Using Calorimeters". Finally, DOE is updating its IBR to specific figures in the most recent version of the following test procedure from ASHRAE and AMCA: ANSI/AMCA 210–2007, ANSI/ASHRAE 51–2007, Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating.

AHRI 210/240–2008 is an industry accepted test procedure that measures the cooling and heating performance of central air conditioners and heat pumps and is applicable to products sold in North America. The test procedure in this final rule references various sections of AHRI 210/240–2008 that address test setup, test conditions, and rating requirements. AHRI 210/240–2008 is readily available on AHRI's Web site at *http://www.ahrinet.org/site/686/Standards/HVACR-Industry-Standards/Search-Standards.*

AHRI 1230–2010 is an industry accepted test procedure that measures the cooling and heating performance of variable refrigerant flow (VRF) multi-split air conditioners and heat pumps and is applicable to products sold in North America. The test procedure in this final rule for VRF multi-split systems references various sections of AHRI 1230–2010 that address test setup, test conditions, and rating requirements. AHRI 1230–2010 is readily available on AHRI's Web site at *http://www.ahrinet.org/site/686/Standards/HVACR-Industry-Standards/Search-Standards.*

ASHRAE 23.1–2010 is an industry accepted test procedure for rating the thermodynamic performance of positive displacement refrigerant compressors and condensing units that operate at subcritical temperatures. The test procedure in this final rule references sections of ASHRAE 23.1–2010 that address requirements, instruments, methods of testing, and testing procedure specific to compressor calibration. ASHRAE 23.1–2010 can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

ANSI/ASHRAE 37–2009 is an industry accepted standard that provides test methods for determining the cooling capacity of unitary air-conditioning equipment and the cooling or heating capacities, or both, of unitary heat pump equipment. The test procedure in this final rule references various sections of ANSI/ASHRAE 37–2009 that address test conditions and test procedures, updating the IBR from a previous version of this standard, ASHRAE 37–2005. ANSI/ASHRAE 37–2009 can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

ANSI/ASHRAE 41.1–2013 is an industry accepted method for measuring temperature in testing heating, refrigerating, and air-conditioning equipment. The test procedure in this final rule references sections of ANSI/ASHRAE 41.1–2013 that address requirements, instruments, and methods for measuring temperature. ANSI/ASHRAE 41.1–2013 can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

ASHRAE 41.2–1987 (RA 1992) is an industry accepted test method for measuring airflow. The test procedure in this final rule references sections of ASHRAE 41.2–1987 (RA 1992) that address test setup and test methods. ASHRAE 41.2–1987 (RA 1992) can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

ASHRAE 41.6–2014 is an industry accepted test method for measuring humidity of moist air. The test procedure in this final rule references sections of ASHRAE 41.6–2014 that address requirements, instruments, and methods for measuring humidity. ASHRAE 41.6–2014 can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

ASHRAE 41.9–2011 is an industry accepted standard that provides recommended practices for measuring the mass flow rate of volatile refrigerants using calorimeters. The test procedure in this final rule references sections of ASHRAE 41.9–2011 that address requirements, instruments, and methods for measuring refrigerant flow during compressor calibration. ASHRAE 41.9–2011 can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

ANSI/ASHRAE Standard 116–2010 is an industry accepted standard that provides test methods and calculation procedures for determining the capacities and cooling seasonal efficiency ratios for unitary air-conditioning, and heat pump equipment and heating seasonal performance factors for heat pump equipment. The test procedure in this final rule references various sections of ANSI/ASHRAE 116–2010 that addresses test methods and calculations, updating the IBR from a previous version of the standard, ASHRAE 116–1995 (RA 2005). ANSI/ASHRAE Standard 116–2010 can be purchased from ASHRAE's Web site at *https://www.ashrae.org/resources-publications.*

AMCA 210–2007 is an industry accepted standard that establishes uniform test methods for a laboratory test of a fan or other air moving device to determine its aerodynamic performance in terms of air flow rate, pressure developed, power consumption, air density, speed of rotation, and efficiency for rating or guarantee purposes. The test procedure in this final rule references various sections of AMCA 210–2007 that address test conditions, updating the IBR from a previous version of this standard, ASHRAE/AMCA 51–1999/210–1999. AMCA 210–2007 can be purchased from AMCA's Web site at *http://www.amca.org/store/index.php.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Energy conservation test procedures, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on May 19, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations, to read as follows:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.12 is amended by revising paragraphs (b)(8) and (12) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(8) The test sample size (*i.e.*, number of units tested for the basic model, or in the case of single-split system or single-package central air conditioners and central air conditioning heat pumps, or multi-split, multi-circuit, or multi-head mini-split systems other than the "tested combination," for each individual combination or individual model). Enter "0" if an AEDM was used in lieu of testing (and in the case of central air conditioners and central air conditioning heat pumps, this must be indicated separately for each metric);

* * * * *

(12) If the test sample size is listed as "0" to indicate the certification is based upon the use of an alternate way of determining measures of energy conservation, identify the method used for determining measures of energy conservation (such as "AEDM," or linear interpolation). Manufacturers of commercial packaged boilers, commercial water heating equipment, commercial refrigeration equipment, commercial HVAC equipment, and central air conditioners and central air conditioning heat pumps must provide the manufacturer's designation (name or other identifier) of the AEDM used; and

* * * * *

■ 3. Section 429.16 is revised to read as follows:

§ 429.16 Central air conditioners and central air conditioning heat pumps.

(a) *Determination of Represented Value*—(1) *Required represented values.* Determine the represented values (including SEER, EER, HSPF, $P_{W,OFF}$, cooling capacity, and heating capacity, as applicable) for the individual models/combinations (or "tested combinations") specified in the following table.

Category	Equipment subcategory	Required represented values
Single-Package Unit	Single-Package AC (including Space-Constrained).	Every individual model distributed in commerce.
	Single-Package HP (including Space-Constrained).	
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM).	Single-Split System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	Every individual combination distributed in commerce, including all coil-only and blower coil combinations. For each model of outdoor unit, this must include at least one coil-only value that is representative of the least efficient combination distributed in commerce with the particular model of outdoor unit.
	Single-Split System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	Every individual combination distributed in commerce, including all coil-only and blower coil combinations.
	Single-Split-System HP (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV.	For each model of outdoor unit, at a minimum, a non-ducted "tested combination." For any model of outdoor unit also sold with models of ducted indoor units, a ducted "tested combination." Additional representations are allowed, as described in paragraph (c)(3)(i) of this section.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For each model of outdoor unit, an SDHV "tested combination." Additional representations are allowed, as described in paragraph (c)(3)(ii) of this section.
Indoor Unit Only (Distributed in Commerce by ICM).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Single-Split-System Heat Pump (including Space-Constrained and SDHV).	
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For a model of indoor unit within each basic model, an SDHV "tested combination." Additional representations are allowed, as described in section (c)(3)(ii).
Outdoor Unit with no Match		Every model of outdoor unit distributed in commerce (tested with a model of coil-only indoor unit as specified in paragraph (c)(2) of this section).

(2) $P_{W,OFF}$. If individual models of single-package systems or individual combinations (or "tested combinations") of split systems that are otherwise identical are offered with multiple options for off mode-related components, determine the represented value for the individual model/combination with the crankcase heater and controls that are the most consumptive. A manufacturer may also determine represented values for individual models/combinations with less consumptive off mode options; however, all such options must be

identified with different model numbers for single-package systems or for outdoor units (in the case of split systems).

(3) *Limitations for represented values of individual combinations.* The following paragraphs explains the limitations for represented values of individual combinations (or "tested combinations").

(i) *Regional.* A basic model may only be certified as compliant with a regional standard if all individual combinations within that basic model meet the regional standard for which it is certified. If a model of outdoor unit is certified below a regional standard, then the model of outdoor unit must have a unique model number for distribution in each region. An ICM cannot certify a basic model containing a representative value that is more efficient than any combination certified by an OUM containing the same outdoor unit.

(ii) *Multiple product classes.* Models of outdoor units that are rated and distributed in individual combinations that span multiple product classes must be tested, rated, and certified pursuant to paragraph (a) of this section as compliant with the applicable standard for each product class. This includes multi-split systems, multi-circuit systems, and multi-head mini-split systems with a represented value for a mixed combination including both SDHV and either non-ducted or ducted indoor units.

(4) *Requirements.* All represented values under paragraph (a) of this section must be based on testing in accordance with the requirements in paragraph (b) of this section or the application of an AEDM or other methodology as allowed in paragraph (c) of this section.

(b) *Units tested*—(1) *General.* The general requirements of § 429.11 apply to central air conditioners and heat pumps; and

(2) *Individual model/combination selection for testing.* (i) The table identifies the minimum testing requirements for each basic model that includes multiple individual models/combinations. For each basic model that includes only one individual model/combination, that individual model/combination must be tested.

Category	Equipment subcategory	Must test:	With:
Single-Package Unit	Single-Package AC (including Space-Constrained).	The lowest SEER individual model.	N/A.
	Single-Package HP (including Space-Constrained).		
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small- Duct, High Velocity Systems (SDHV)).	The model of outdoor unit	The model of coil-only indoor unit that is likely to have the largest volume of retail sales with the particular model of outdoor unit.
	Single-Split System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	The model of outdoor unit	The model of indoor unit that is likely to have the largest volume of retail sales with the particular model of outdoor unit.
	Single-Split-System HP (including Space-Constrained and SDHV).		
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV.	The model of outdoor unit	At a minimum, a "tested combination" composed entirely of non-ducted indoor units. For any models of outdoor units also sold with models of ducted indoor units, a second "tested combination" composed entirely of ducted indoor units must be tested (in addition to the non-ducted combination).
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	The model of outdoor unit	A "tested combination" composed entirely of SDHV indoor units.
Indoor Unit Only (Distributed in Commerce by ICM).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	A model of indoor unit	The least efficient model of outdoor unit with which it will be paired where the least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER combination as certified by the OUM. If there are multiple models of outdoor unit with the same lowest SEER represented value, the ICM may select one for testing purposes.
	Single-Split-System Heat Pump (including Space-Constrained and SDHV).	Nothing, as long as an equivalent air conditioner basic model has been tested. If an equivalent air conditioner basic model has not been tested, must test a model of indoor unit.	

Category	Equipment subcategory	Must test:	With:
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	A model of indoor unit.	A "tested combination" composed entirely of SDHV indoor units, where the outdoor unit is the least efficient model of outdoor unit with which the SDHV indoor unit will be paired. The least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER combination as certified by the OUM. If there are multiple models of outdoor unit with the same lowest SEER represented value, the ICM may select one for testing purposes.
Outdoor Unit with No Match		The model of outdoor unit	A model of coil-only indoor unit meeting the requirements of section 2.2e of Appendix M to subpart B of part 430.

(ii) Each individual model/combination (or "tested combination") identified in paragraph (b)(2)(i) of this section is not required to be tested for $P_{W,OFF}$. Instead, at a minimum, among individual models/combinations with similar off-mode construction (even spanning different models of outdoor units), a manufacturer must test at least one individual model/combination for $P_{W,OFF}$.

(3) *Sampling plans and representative values.* (i) For individual models (for single-package systems) or individual combinations (for split–systems, including "tested combinations" for multi-split, multi-circuit, and multi-head mini-split systems) with represented values determined through testing, each individual model/combination (or "tested combination") must have a sample of sufficient size tested in accordance with the applicable provisions of this subpart. For heat pumps (other than heating-only heat pumps), all units of the sample population must be tested in both the cooling and heating modes and the results used for determining all representations. The represented values for any individual model/combination must be assigned such that:

(i) *Off-Mode.* Any represented value of power consumption or other measure of energy consumption for which consumers would favor lower values must be greater than or equal to the higher of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; Or,

(B) The upper 90 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n − 1 degrees of freedom (from appendix D). Round represented values of off-mode power consumption to the nearest watt.

(ii) *SEER, EER, and HSPF.* Any represented value of the energy efficiency or other measure of energy consumption for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(B) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n − 1 degrees of freedom (from Appendix D). Round represented values of EER, SEER, and HSPF to the nearest 0.05.

(iii) *Cooling Capacity.* The represented value of cooling capacity must be a self-declared value that is no less than 95 percent of the mean of the cooling capacities measured for the units in the sample, rounded:

(A) To the nearest 100 Btu/h if cooling capacity is less than 20,000 Btu/h,

(B) To the nearest 200 Btu/h if cooling capacity is greater than or equal to 20,000 Btu/h but less than 38,000 Btu/h, and

(C) To the nearest 500 Btu/h if cooling capacity is greater than or equal to 38,000 Btu/h and less than 65,000 Btu/h.

(iv) *Heating Capacity.* The represented value of heating capacity must be a self-declared value that is no less than 95 percent of the mean of the heating capacities measured for the units in the sample, rounded:

(A) To the nearest 100 Btu/h if heating capacity is less than 20,000 Btu/h,

(B) To the nearest 200 Btu/h if heating capacity is greater than or equal to 20,000 Btu/h but less than 38,000 Btu/h, and

(C) To the nearest 500 Btu/h if heating capacity is greater than or equal to 38,000 Btu/h and less than 65,000 Btu/h.

(c) *Determination of represented values for all other individual models/combinations besides those specified in paragraph (b)(2) of this section*—(1) *All basic models except outdoor units with no match and multi-split systems, multi-circuit systems, and multi-head mini-split systems.* (i) For every individual model/combination within a basic model other than the individual model/

combination required to be tested pursuant to paragraph (b)(2) of this section, either—

(A) A sample of sufficient size, comprised of production units or representing production units, must be tested as complete systems with the resulting represented values for the individual model/combination obtained in accordance with paragraphs (b)(1) and (3) of this section; or

(B) The represented values of the measures of energy efficiency or energy consumption must be assigned through the application of an AEDM in accordance with paragraph (d) of this section and § 429.70. An AEDM may only be used to rate individual models/combinations in a basic model other than the individual model/combination required for mandatory testing under paragraph (b)(2)(i) of this section. No basic model may be rated with an AEDM (except for determination of $P_{W,OFF}$).

(ii) For every individual model/combination within a basic model tested pursuant to paragraph (b)(2) of this section, but for which $P_{W,OFF}$ testing was not conducted, the represented value of $P_{W,OFF}$ may be assigned through, either:

(A) The testing result from an individual model/combination of similar off-mode construction, or

(B) The application of an AEDM in accordance with paragraph (d) of this section and § 429.70.

(2) *Outdoor units with no match.* All models of outdoor unit within a basic model must be tested. No model of outdoor unit may be rated with an AEDM.

(3) *Multi-split systems, multi-circuit systems, and multi-head mini-split systems.* The following applies:

(i) For basic models composed of both non-ducted and ducted combinations, the represented value for the mixed non-ducted/ducted combination is the mean of the represented values for the non-ducted and ducted combinations as determined in accordance with paragraph (b)(3)(i) of this section.

(ii) For basic models composed of both SDHV and non-ducted or ducted combinations, the represented value for the mixed SDHV/non-ducted or SDHV/ducted combination is the mean of the represented values for the SDHV, non-ducted, or ducted combinations, as applicable, as determined in accordance with paragraph (b)(3)(i) of this section.

(iii) All other individual combinations of models of indoor units for the same model of outdoor unit for which the manufacturer chooses to make representations must be rated as separate basic models, and the provisions in paragraphs (b)(1) through (3) and (c)(3)(i) and (ii) of this section apply.

(iv) For every individual combination (or "tested combination") within a basic model tested pursuant to paragraph (b)(2) of this section, but for which $P_{W,OFF}$ testing was not conducted, the representative values of $P_{W,OFF}$ may be assigned through either:

(A) The testing result from an individual combination (or "tested combination") of similar off-mode construction, or

(B) Application of an AEDM in accordance with paragraph (d) of this section and § 429.70. No basic model may be rated with an AEDM for SEER, EER, or HSPF.

(d) *Alternative efficiency determination methods.* In lieu of testing, represented values of efficiency or consumption may be determined through the application of an AEDM pursuant to the requirements of § 429.70(e) and the provisions of this section.

(1) *Power or energy consumption.* Any represented value of the average off mode power consumption or other measure of energy consumption of an individual model/combination for which consumers would favor lower values must be greater than or equal to the output of the AEDM but no less than the standard.

(2) *Energy efficiency.* Any represented value of the SEER, EER, HSPF or other measure of energy efficiency of an individual model/combination for which consumers would favor higher values must be less than or equal to the output of the AEDM but no greater than the standard.

(3) *Cooling capacity.* The represented value of cooling capacity of an individual model/combination must be no less than 95% of the cooling capacity output simulated by the AEDM.

(4) *Heating capacity.* The represented value of heating capacity of an individual model/combination must be no less than 95% of the heating capacity output simulated by the AEDM.

(e) *Certification reports.* This paragraph specifies the information that must be included in a certification report.

(1) *General.* The requirements of § 429.12 apply to central air conditioners and heat pumps.

(2) *Public product-specific information.* Pursuant to § 429.12(b)(13), for each individual model (for single-package systems) or individual combination (for split–systems, including "tested combinations" for multi-split, multi-circuit, and multi-head mini-split systems), a certification report must include the following public product-specific information: The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/W-h)); the average off mode power consumption ($P_{W,OFF}$ in Watts); the cooling capacity in British thermal units per hour (Btu/h); the region(s) in which the basic model can be sold; and

(i) For heat pumps, the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/W-h));

(ii) For air conditioners (excluding space constrained), the energy efficiency ratio (EER in British thermal units per Watt-hour (Btu/W-h));

(iii) For single-split-system equipment, whether the represented value is for a coil-only or blower coil system; and

(iv) For multi-split, multiple-circuit, and multi-head mini-split systems (including VRF), whether the represented value is for a non-ducted, ducted, mixed non-ducted/ducted system, SDHV, mixed non-ducted/SDHV system, or mixed ducted/SDHV system.

(3) *Basic and individual model numbers.* The basic model number and individual model number(s) required to be reported under § 429.12(b)(6) must consist of the following:

Equipment type	Basic model number	Individual model number(s)		
		1	2	3
Single-Package (including Space-Constrained).	Number unique to the basic model.	Package	N/A	N/A.
Single-Split System (including Space-Constrained).	Number unique to the basic model.	Outdoor Unit	Indoor Unit	Air Mover (could be same as indoor unit if fan is part of indoor unit model number).

Equipment type	Basic model number	Individual model number(s)		
		1	2	3
Multi-Split, Multi-Circuit, and Multi-Head Mini-Split System (including SDHV).	Number unique to the basic model.	Outdoor Unit	When certifying a basic model based on tested combination(s): ***. When certifying an individual combination: Indoor Unit(s).	When certifying a basic model based on tested combination(s): *** When certifying an individual combination: Air Mover(s).
Outdoor Unit with No Match.	Number unique to the basic model.	Outdoor Unit	N/A	N/A.

(4) *Additional product-specific information.* Pursuant to § 429.12(b)(13), for each individual model/combination (or "tested combination"), a certification report must include the following additional product-specific information: the cooling full load air volume rate for the system or for each indoor unit as applicable (in cubic feet per minute (cfm)); the air volume rates for other test conditions including minimum cooling air volume rate, intermediate cooling air volume rate, full load heating air volume rate, minimum heating air volume rate, intermediate heating air volume rate, and nominal heating air volume rate (cfm) for the system or for each indoor unit as applicable, if different from the cooling full load air volume rate; whether the individual model/combination uses a fixed orifice, thermostatic expansion valve, electronic expansion valve, or other type of metering device; the duration of the compressor break-in period, if used; whether the optional tests were conducted to determine the C_D^b value used to represent cooling mode cycling losses or whether the default value was used; the temperature at which the crankcase heater with controls is designed to turn on, if applicable; the maximum time between defrosts as allowed by the controls (in hours); and

(i) For heat pumps, whether the optional tests were conducted to determine the C_D^h value or whether the default value was used;

(ii) For multi-split, multiple-circuit, and multi-head mini-split systems, the number of indoor units tested with the outdoor unit; the nominal cooling capacity of each indoor unit and outdoor unit in the combination; and the indoor units that are not providing heating or cooling for part-load tests;

(iii) For ducted systems having multiple indoor fans within a single indoor unit, the number of indoor fans; the nominal cooling capacity of the indoor unit and outdoor unit; and which fan(s) were operating and the allocation of the air volume rate to each operational fan for each operating mode used to determine represented values;

(iv) For blower coil systems, the airflow-control settings associated with full load cooling operation; and the airflow-control settings or alternative instructions for setting fan speeds for tests other than full load cooling operation to the speeds upon which the represented value is based;

(v) For equipment with time-adaptive defrost control, the frosting interval to be used during frost accumulation tests and the procedure for manually initiating the defrost at the specified time;

(vi) For models of indoor units designed for both horizontal and vertical installation or for both up-flow and down-flow vertical installations, the orientation used for testing;

(vii) For variable speed equipment, the compressor frequency set points, and the required dip switch/control settings for step or variable components; and

(viii) For variable speed heat pumps, whether the unit controls restrict use of minimum compressor speed operation for some range of operating ambient conditions, whether the unit controls restrict use of maximum compressor speed operation for any ambient temperatures below 17 °F, and whether the optional $H4_2$ low temperature test was used to characterize performance at temperatures below 17 °F.

(f) *Represented values for the Federal Trade Commission.* The following represented value determinations shall be followed to meet the requirements of the Federal Trade Commission.

(1) *Annual Operating Cost—Cooling.* Determine the represented value of estimated annual operating cost for cooling-only units or the cooling portion of the estimated annual operating cost for air-source heat pumps that provide both heating and cooling by calculating the product of:

(i) The quotient of the represented value of cooling capacity, in Btu's per hour as determined in paragraph (b)(3)(iii) of this section, divided by the represented value of SEER, in Btu's per watt-hour, as determined in paragraph (b)(3)(ii) of this section;

(ii) The representative average use cycle for cooling of 1,000 hours per year;

(iii) A conversion factor of 0.001 kilowatt per watt; and

(iv) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act.

(2) *Annual Operating Cost—Heating.* Determine the represented value of estimated annual operating cost for air-source heat pumps that provide only heating or for the heating portion of the estimated annual operating cost for air-source heat pumps that provide both heating and cooling, as the product of:

(i) The quotient of the mean of the standardized design heating requirement for the sample, in Btu's per hour, nearest to the Region IV minimum design heating requirement, determined for each unit in the sample in section 4.2 of appendix M to subpart B of part 430, divided by the represented value of heating seasonal performance factor (HSPF), in Btu's per watt-hour, calculated for Region IV corresponding to the above-mentioned standardized design heating requirement, as determined in paragraph (b)(3)(ii) of this section;

(ii) The representative average use cycle for heating of 2,080 hours per year;

(iii) The adjustment factor of 0.77, which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system;

(iv) A conversion factor of 0.001 kilowatt per watt; and

(v) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act.

(3) *Annual Operating Cost—Total.* Determine the represented value of estimated annual operating cost for air-source heat pumps that provide both heating and cooling by calculating the sum of the quantity determined in paragraph (f)(1) of this section added to the quantity determined in paragraph (f)(2) of this section.

(4) *Regional Annual Operating Cost—Cooling.* Determine the represented value of estimated regional annual operating cost for cooling-only units or the cooling portion of the estimated regional annual operating cost for air-source heat pumps that provide both heating and cooling by calculating the product of:

(i) The quotient of the represented value of cooling capacity, in Btu's per hour, determined in paragraph (b)(3)(iii) of this section divided by the represented value of SEER, in Btu's per watt-hour, determined in paragraph (b)(3)(ii) of this section;

(ii) The estimated number of regional cooling load hours per year determined from Table 21 in section 4.4 of appendix M to subpart B of part 430;

(iii) A conversion factor of 0.001 kilowatts per watt; and

(iv) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act.

(5) *Regional Annual Operating Cost—Heating.* Determine the represented value of estimated regional annual operating cost for air-source heat pumps that provide only heating or for the heating portion of the estimated regional annual operating cost for air-source heat pumps that provide both heating and cooling as the product of:

(i) The estimated number of regional heating load hours per year determined from Table 21 in section 4.4 of appendix M to subpart B of part 430;

(ii) The quotient of the mean of the standardized design heating requirement for the sample, in Btu's per hour, for the appropriate generalized climatic region of interest (*i.e.*, corresponding to the regional heating load hours from "A") and determined for each unit in the sample in section 4.2 of appendix M to subpart B of Part 430, divided by the represented value of HSPF, in Btu's per watt-hour, calculated for the appropriate generalized climatic region of interest and corresponding to the above-mentioned standardized design heating requirement, and determined in paragraph (b)(3)(iii);

(iii) The adjustment factor of 0.77; which serves to adjust the calculated design heating requirement and heating load hours to the actual load experienced by a heating system;

(iv) A conversion factor of 0.001 kilowatts per watt; and

(v) The representative average unit cost of electricity in dollars per kilowatt-hour as provided pursuant to section 323(b)(2) of the Act; and

(6) *Regional Annual Operating Cost—Total.* For air-source heat pumps that provide both heating and cooling, the estimated regional annual operating cost is the sum of the quantity determined in paragraph (f)(4) of this section added to the quantity determined in paragraph (f)(5) of this section.

(7) *Annual Operating Cost—Rounding.* Round any represented values of estimated annual operating cost determined in paragraphs (f)(1) through (6) of this section to the nearest dollar per year.

4. Section 429.70 is amended by revising paragraph (e) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency or energy use.

* * * * *

(e) *Alternate Efficiency Determination Method (AEDM) for central air conditioners and heat pumps.* This paragraph (e) sets forth the requirements for a manufacturer to use an AEDM to rate central air conditioners and heat pumps.

(1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to an individual model/combination to determine its represented values (SEER, EER, HSPF, and/or $P_{W,OFF}$) pursuant to this section unless authorized pursuant to § 429.16(d) and:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the individual model or combination (SEER, EER, HSPF, and/or $P_{W,OFF}$) as measured by the applicable DOE test procedure; and

(ii) The manufacturer has validated the AEDM in accordance with paragraph (e)(2) of this section.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability as follows:

(i) The manufacturer must complete testing of each basic model as required under § 429.16(b)(2). Using the AEDM, calculate the energy use or efficiency for each of the tested individual models/combinations within each basic model. Compare the represented value based on testing and the AEDM energy use or efficiency output according to paragraph (e)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM.

(ii) *Individual model/combination tolerances.* This paragraph (e)(2)(ii) provides the tolerances applicable to individual models/combinations rated using an AEDM.

(A) The predicted represented values for each individual model/combination calculated by applying the AEDM may not be more than four percent greater (for measures of efficiency) or less (for measures of consumption) than the values determined from the corresponding test of the individual model/combination.

(B) The predicted energy efficiency or consumption for each individual model/combination calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard.

(iii) *Additional test unit requirements.* (A) Each AEDM must be supported by test data obtained from physical tests of current individual models/combinations; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 430 of this chapter; and

(C) Each test must have been performed in accordance with the applicable DOE test procedure with which compliance is required at the time the individual models/combinations used for validation are distributed in commerce.

(3) *AEDM records retention requirements.* If a manufacturer has used an AEDM to determine representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Product information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (e)(2) of this section; and

(iii) Product information and AEDM calculations for each individual model/combination to which the AEDM has been applied.

(4) *Additional AEDM requirements.* If requested by the Department, the manufacturer must:

(i) Conduct simulations before representatives of the Department to predict the performance of particular individual models/combinations;

(ii) Provide analyses of previous simulations conducted by the manufacturer; and/or

(iii) Conduct certification testing of individual models or combinations selected by the Department.

(5) *AEDM verification testing.* DOE may use the test data for a given individual model/combination generated pursuant to § 429.104 to verify the represented value determined by an AEDM as long as the following process is followed:

(i) *Selection of units.* DOE will obtain one or more units for test from retail, if available. If units cannot be obtained from retail, DOE will request that a unit be provided by the manufacturer;

(ii) *Lab requirements.* DOE will conduct testing at an independent, third-party testing facility of its choosing. In cases where no third-party laboratory is capable of testing the equipment, testing may be conducted at a manufacturer's facility upon DOE's request.

(iii) *Testing.* At no time during verification testing may the lab and the manufacturer communicate without DOE authorization. If during test set-up or testing, the lab indicates to DOE that it needs additional information regarding a given individual model or combination in order to test in accordance with the applicable DOE test procedure, DOE may organize a meeting between DOE, the manufacturer and the lab to provide such information.

(iv) *Failure to meet certified represented value.* If an individual model/combination tests worse than its certified represented value (*i.e.*, lower than the certified efficiency value or higher than the certified consumption value) by more than 5 percent, or the test results in a different cooling capacity than its certified cooling capacity by more than 5 percent, DOE will notify the manufacturer. DOE will provide the manufacturer with all documentation related to the test set up, test conditions, and test results for the unit. Within the timeframe allotted by DOE, the manufacturer:

(A) May present any and all claims regarding testing validity; and

(B) If not on site for the initial test set-up, must test at least one additional unit of the same individual model or combination obtained from a retail source at its own expense, following the test requirements in § 429.110(a)(3). When testing at an independent lab, the manufacturer may choose to have DOE and the manufacturer present.

(v) *Tolerances.* This paragraph specifies the tolerances DOE will permit when conducting verification testing.

(A) For consumption metrics, the result from a DOE verification test must be less than or equal to 1.05 multiplied by the certified represented value.

(B) For efficiency metrics, the result from a DOE verification test must be greater than or equal to 0.95 multiplied by the certified represented value.

(vi) *Invalid represented value.* If, following discussions with the manufacturer and a retest where applicable, DOE determines that the verification testing was conducted appropriately in accordance with the DOE test procedure, DOE will issue a determination that the represented values for the basic model are invalid. The manufacturer must conduct additional testing and re-rate and re-certify the individual models/combinations within the basic model that were rated using the AEDM based on all test data collected, including DOE's test data.

(vii) *AEDM use.* This paragraph (e)(5)(vii) specifies when a manufacturer's use of an AEDM may be restricted due to prior invalid represented values.

(A) If DOE has determined that a manufacturer made invalid represented values on individual models/combinations within two or more basic models rated using the manufacturer's AEDM within a 24 month period, the manufacturer must test the least efficient and most efficient individual model/combination within each basic model in addition to the individual model/combination specified in § 429.16(b)(2). The twenty-four month period begins with a DOE determination that a represented value is invalid through the process outlined above.

(B) If DOE has determined that a manufacturer made invalid represented values on more than four basic models rated using the manufacturer's AEDM within a 24-month period, the manufacturer may no longer use an AEDM.

(C) If a manufacturer has lost the privilege of using an AEDM, the manufacturer may regain the ability to use an AEDM by:

(*1*) Investigating and identifying cause(s) for failures;

(*2*) Taking corrective action to address cause(s);

(*3*) Performing six new tests per basic model, a minimum of two of which must be performed by an independent, third-party laboratory from units obtained from retail to validate the AEDM; and

(*4*) Obtaining DOE authorization to resume use of an AEDM.

* * * * *

■ 5. Section 429.134 is amended by adding paragraph (k) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(k) *Central air conditioners and heat pumps*—(1) *Verification of cooling capacity.* The cooling capacity of each tested unit of the individual model (for single-package systems) or individual combination (for split systems) will be measured pursuant to the test requirements of § 430.23(m) of this chapter. The mean of the measurement(s) (either the measured cooling capacity for a single unit sample or the average of the measured cooling capacities for a multiple unit sample) will be used to determine the applicable standards for purposes of compliance.

(2) *Verification of* C_D value. (i) For central air conditioners and heat pumps other than models of outdoor units with no match, if manufacturers certify that they did not conduct the optional tests to determine the C_D^c and/or C_D^h value for an individual model (for single-package systems) or individual combination (for split systems), as applicable, the default C_D^c and/or C_D^h value will be used as the basis for calculation of SEER or HSPF for each unit tested. If manufacturers certify that they conducted the optional tests to determine the C_D^c and/or C_D^h value for an individual model (for single-package systems) or individual combination (for split systems), as applicable, the C_D^c and/or C_D^h value will be measured pursuant to the test requirements of § 430.23(m) of this chapter for each unit tested and the result for each unit tested (either the tested value or the default value, as selected according to the criteria for the cyclic test in 10 CFR part 430, subpart B, appendix M, section 3.5e) used as the basis for calculation of SEER or HSPF for that unit.

(ii) For models of outdoor units with no match, DOE will use the default C_D^c and/or C_D^h value pursuant to 10 CFR part 430.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 6. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 7. Section 430.2 is amended by:

■ a. Removing the definition of "ARM/simulation adjustment factor;"

■ b. Revising the definitions of "basic model" and "central air conditioner;" and

■ c. Removing the definitions of "coil family," "condenser-evaporator coil combination", "condensing unit," "evaporator coil", "heat pump," "indoor unit," "outdoor unit," "small duct, high velocity system," and "tested combination."

The revisions read as follows:

§ 430.2 Definitions.

* * * * *

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer; having the same primary

energy source; and, which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; and

(1) With respect to general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps: Lamps that have essentially identical light output and electrical characteristics—including lumens per watt (lm/W) and color rendering index (CRI).

(2) With respect to faucets and showerheads: Have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest flow mode.

(3) With respect to furnace fans: Are marketed and/or designed to be installed in the same type of installation; and

(4) With respect to central air conditioners and central air conditioning heat pumps essentially identical electrical, physical, and functional (or hydraulic) characteristics means:

(i) For split systems manufactured by outdoor unit manufacturers (OUMs): all individual combinations having the same model of outdoor unit, which means comparably performing compressor(s) [a variation of no more than five percent in displacement rate (volume per time) as rated by the compressor manufacturer, and no more than five percent in capacity and power input for the same operating conditions as rated by the compressor manufacturer], outdoor coil(s) [no more than five percent variation in face area and total fin surface area; same fin material; same tube material], and outdoor fan(s) [no more than ten percent variation in air flow and no more than twenty percent variation in power input];

[ii) For split systems having indoor units manufactured by independent coil manufacturers (ICMs): all individual combinations having comparably performing indoor coil(s) [plus or minus one square foot face area, plus or minus one fin per inch fin density, and the same fin material, tube material, number of tube rows, tube pattern, and tube size]; and

(iii) For single-package systems: all individual models having comparably performing compressor(s) [no more than five percent variation in displacement rate (volume per time) rated by the compressor manufacturer, and no more than five percent variations in capacity and power input rated by the compressor manufacturer corresponding to the same compressor rating conditions], outdoor coil(s) and indoor coil(s) [no more than five percent variation in face area and total fin surface area; same fin material; same tube material], outdoor fan(s) [no more than ten percent variation in outdoor air flow], and indoor blower(s) [no more than ten percent variation in indoor air flow, with no more than twenty percent variation in fan motor power input];

(iv) Except that,

(A) for single-package systems and single-split systems, manufacturers may instead choose to make each individual model/combination its own basic model provided the testing and represented value requirements in 10 CFR 429.16 of this chapter are met; and

(B) For multi-split, multi-circuit, and multi-head mini-split combinations, a basic model may not include both individual small-duct, high velocity (SDHV) combinations and non-SDHV combinations even when they include the same model of outdoor unit. The manufacturer may choose to identify specific individual combinations as additional basic models.

* * * * *

Central air conditioner or central air conditioning heat pump means a product, other than a packaged terminal air conditioner or packaged terminal heat pump, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling unit only. A central air conditioner or central air conditioning heat pump may consist of: a single-package unit; an outdoor unit and one or more indoor units; an indoor unit only; or an outdoor unit with no match. In the case of an indoor unit only or an outdoor unit with no match, the unit must be tested and rated as a system (combination of both an indoor and an outdoor unit). For all central air conditioner and central air conditioning heat pump-related definitions, see appendix M of subpart B of this part.

* * * * *

■ 8. Section 430.3 is amended by:
■ a. Adding paragraph (b)(2);
■ b. Revising paragraph (c)(1);
■ c. Adding paragraph (c)(3);
■ d. Revising paragraph (g)(2);
■ e. Removing paragraph (g)(3);
■ f. Redesignating paragraph (g)(4) as (g)(3);
■ g. Adding a new paragraph (g)(4);
■ h. Removing ", M, " in paragraph (g)(5);
■ i. Removing paragraph (g)(10);
■ j. Redesignating paragraphs (g)(7) through (9) as (g)(8) through (10);
■ k. Adding new paragraph (g)(7);
■ l. Revising newly redesignated paragraphs (g)(8) through (10); and
■ m. Revising paragraph (g)(13).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) * * *

(2) ANSI/AMCA 210–07, ANSI/ASHRAE 51–07 ("AMCA 210–2007"), Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, ANSI approved August 17, 2007, Section 8—Report and Results of Test, Section 8.2—Performance graphical representation of test results, IBR approved for appendix M to subpart B, as follows:

(i) Figure 2A—Static Pressure Tap, and

(ii) Figure 12—Outlet Chamber Setup—Multiple Nozzles in Chamber.

(c) * * *

(1) ANSI/AHRI 210/240–2008 with Addenda 1 and 2 ("AHRI 210/240–2008"), 2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment, ANSI approved October 27, 2011 (Addendum 1 dated June 2011 and Addendum 2 dated March 2012), IBR approved for appendix M to subpart B, as follows:

(i) Section 6—Rating Requirements, Section 6.1—Standard Ratings, 6.1.3—Standard Rating Tests, 6.1.3.2—Electrical Conditions;

(ii) Section 6—Rating Requirements, Section 6.1—Standard Ratings, 6.1.3—Standard Rating Tests, 6.1.3.4—Outdoor-Coil Airflow Rate;

(iii) Section 6—Rating Requirements, Section 6.1—Standard Ratings, 6.1.3—Standard Rating Tests, 6.1.3.5—Requirements for Separated Assemblies;

(iv) Figure D1—Tunnel Air Enthalpy Test Method Arrangement;

(v) Figure D2—Loop Air Enthalpy Test Method Arrangement; and

(vi) Figure D4—Room Air Enthalpy Test Method Arrangement.

* * * * *

(3) ANSI/AHRI 1230–2010 with Addendum 2 ("AHRI 1230–2010"), 2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment (including Addendum 1 dated March 2011), ANSI approved August 2, 2010 (Addendum 2 dated June 2014), IBR approved for appendix M to subpart B, as follows:

(i) Section 3—Definitions (except 3.8, 3.9, 3.13, 3.14, 3.15, 3.16, 3.23, 3.24, 3.26, 3.27, 3.28, 3.29, 3.30, and 3.31);

(ii) Section 5—Test Requirements, Section 5.1 (untitled), 5.1.3–5.1.4;

(ii) Section 6—Rating Requirements, Section 6.1—Standard Ratings, 6.1.5—Airflow Requirements for Systems with Capacities <65,000 Btu/h [19,000 W];

(iii) Section 6—Rating Requirements, Section 6.1—Standard Ratings, 6.1.6—Outdoor-Coil Airflow Rate (Applies to all Air-to-Air Systems);

(iv) Section 6—Rating Requirements, Section 6.2—Conditions for Standard Rating Test for Air-cooled Systems < 65,000 Btu/h [19,000W] (except Table 8); and

(v) Table 4—Refrigerant Line Length Correction Factors.

* * * * *

(g) * * *

(2) ANSI/ASHRAE 23.1–2010, ("ASHRAE 23.1–2010"), Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant, ANSI approved January 28, 2010, IBR approved for appendix M to subpart B, as follows:

(i) Section 5—Requirements;

(ii) Section 6—Instruments;

(iii) Section 7—Methods of Testing; and

(iv) Section 8—Compressor Testing.

* * * * *

(4) ANSI/ASHRAE Standard 37–2009, ("ANSI/ASHRAE 37–2009"), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009, IBR approved for appendix M to subpart B, as follows:

(i) Section 5—Instruments, Section 5.1—Temperature Measuring Instruments: 5.1.1;

(ii) Section 5—Instruments, Section 5.2—Refrigerant, Liquid, and Barometric Pressure Measuring Instruments;

(iii) Section 5—Instruments, Section 5.5—Volatile Refrigerant Flow Measurement;

(iv) Section 6—Airflow and Air Differential Pressure Measurement Apparatus, Section 6.1—Enthalpy Apparatus (Excluding Figure 3): 6.1.1–6.1.2 and 6.1.4;

(v) Section 6—Airflow and Air Differential Pressure Measurement Apparatus, Section 6.2—Nozzle Airflow Measuring Apparatus (Excluding Figure 5);

(vi) Section 6—Airflow and Air Differential Pressure Measurement Apparatus, Section 6.3—Nozzles (Excluding Figure 6);

(vii) Section 6—Airflow and Air Differential Pressure Measurement Apparatus, Section 6.4—External Static Pressure Measurements;

(viii) Section 6—Airflow and Air Differential Pressure Measurement Apparatus, Section 6.5—Recommended Practices for Static Pressure Measurements;

(ix) Section 7—Methods of Testing and Calculation, Section 7.3—Indoor and Outdoor Air Enthalpy Methods (Excluding Table 1);

(x) Section 7—Methods of Testing and Calculation, Section 7.4—Compressor Calibration Method;

(xi) Section 7—Methods of Testing and Calculation, Section 7.5—Refrigerant Enthalpy Method;

(xii) Section 7—Methods of Testing and Calculation, Section 7.7—Airflow Rate Measurement, Section 7.7.2—Calculations—Nozzle Airflow Measuring Apparatus (Excluding Figure 10), 7.7.2.1–7.7.2.2;

(xiii) Section 8—Test Procedures, Section 8.1—Test Room Requirements: 8.1.2–8.1.3;

(xiv) Section 8—Test Procedures, Section 8.2—Equipment Installation;

(xv) Section 8—Test Procedures, Section 8.6—Additional Requirements for the Outdoor Air Enthalpy Method, Section 8.6.2;

(xvii) Section 8—Test Procedures, Section 8.6—Additional Requirements for the Outdoor Air Enthalpy Method, Table 2a—Test Tolerances (SI Units), and

(xviii) Section 8—Test Procedures, Section 8.6—Additional Requirements for the Outdoor Air Enthalpy Method, Table 2b—Test Tolerances (I–P Units);

(xix) Section 9—Data to be Recorded, Section 9.2—Test Tolerances; and

(xx) Section 9—Data to be Recorded, Table 3—Data to be Recorded.

* * * * *

(7) ANSI/ASHRAE Standard 41.1–2013, ("ANSI/ASHRAE 41.1–2013"), Standard Method for Temperature Measurement, ANSI approved January 30, 2013, IBR approved for appendix M to subpart B, as follows:

(i) Section 4—Classifications;

(ii) Section 5—Requirements, Section 5.3—Airstream Temperature Measurements;

(iii) Section 6—Instruments; and

(iv) Section 7—Temperature Test Methods (Informative).

(8) ANSI/ASHRAE Standard 41.2–1987 (RA 1992), ("ASHRAE 41.2–1987 (RA 1992)"), Standard Methods for Laboratory Airflow Measurement, ANSI reaffirmed April 20, 1992, Section 5—Section of Airflow-Measuring Equipment and Systems, IBR approved for appendix M to subpart B, as follows:

(i) Section 5.2—Test Ducts,, Section 5.2.2—Mixers, 5.2.2.1—Performance of Mixers (excluding Figures 11 and 12 and Table 1); and

(ii) Figure 14—Outlet Chamber Setup for Multiple Nozzles in Chamber.

(9) ANSI/ASHRAE Standard 41.6–2014, ("ASHRAE 41.6–2014"), Standard Method for Humidity Measurement, ANSI approved July 3, 2014, IBR approved for appendix M to subpart B, as follows:

(i) Section 4—Classifications;

(ii) Section 5—Requirements;

(iii) Section 6—Instruments and Calibration; and

(iv) Section 7—Humidity Measurement Methods.

(10) ANSI/ASHRAE 41.9–2011, ("ASHRAE 41.9–2011"), Standard Methods for Volatile-Refrigerant Mass Flow Measurements Using Calorimeters, ANSI approved February 3, 2011, IBR approved for appendix M to subpart B, as follows:

(i) Section 5—Requirements;

(ii) Section 6—Instruments;

(iii) Section 7—Secondary Refrigerant Calorimeter Method;

(iv) Section 8—Secondary Fluid Calorimeter Method;

(v) Section 9—Primary Refrigerant Calorimeter Method; and

(vi) Section 11—Lubrication Circulation Measurements.

* * * * *

(13) ANSI/ASHRAE Standard 116–2010, ("ASHRAE 116–2010"), Methods of Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps, ANSI approved February 24, 2010, Section 7—Methods of Test, Section 7.4—Air Enthalpy Method—Indoor Side (Primary Method), Section 7.4.3—Measurements, Section 7.4.3.4—Temperature, Section 7.4.3.4.5, IBR approved for appendix M to subpart B.

* * * * *

■ 9. Section 430.23 is amended by revising paragraph (m) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(m) *Central air conditioners and heat pumps.* (1) Determine cooling capacity must be determined from the steady-state wet-coil test (A or A2 Test), as described in section 3.3 of appendix M to this subpart, and round off:

(i) To the nearest 50 Btu/h if cooling capacity is less than 20,000 Btu/h,

(ii) To the nearest 100 Btu/h if cooling capacity is greater than or equal to 20,000 Btu/h but less than 38,000 Btu/h, and

(iii) To the nearest 250 Btu/h if cooling capacity is greater than or equal to 38,000 Btu/h and less than 65,000 Btu/h.

(2) Determine seasonal energy efficiency ratio (SEER) as described in section 4.1 of appendix M to this subpart, and round off to the nearest 0.025 Btu/W-h.

(3) Determine energy efficiency ratio (EER) as described in section 4.6 of appendix M to this subpart, and round off to the nearest 0.025 Btu/W-h.

(4) Determine heating seasonal performance factors (HSPF) as described in section 4.2 of appendix M to this subpart, and round off to the nearest 0.025 Btu/W-h.

(5) Determine average off mode power consumption as described in section 4.3 of appendix M to this subpart, and round off to the nearest 0.5 W.

(6) Determine sensible heat ratio (SHR), as described in section 4.5 of appendix M to this subpart, and round off to the nearest 0.5 percent (%).

(7) Determine all other measures of energy efficiency or consumption or other useful measures of performance using appendix M of this subpart.

* * * * *

■ 10. Appendix M to subpart B of part 430 is revised to read as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

Note: Prior to December 5, 2016, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps must be based on the results of testing pursuant to either this appendix or the procedures in Appendix M as it appeared at 10 CFR part 430, subpart B, Appendix M, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2015. Any representations made with respect to the energy use or efficiency of such central air conditioners and central air conditioning heat pumps must be in accordance with whichever version is selected.

On or after December 5, 2016 and prior to the compliance date for any amended energy conservation standards, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps must be based on the results of testing pursuant to this appendix.

On or after the compliance date for any amended energy conservation standards, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of central air conditioners and central air conditioning heat pumps must be based on the results of testing pursuant to appendix M1 of this subpart.

1. Scope and Definitions

1.1 Scope

This test procedure provides a method of determining SEER, EER, HSPF and $P_{W,OFF}$ for central air conditioners and central air conditioning heat pumps including the following categories:

(a) Split-system air conditioners, including single-split, multi-head mini-split, multi-split (including VRF), and multi-circuit systems

(b) Split-system heat pumps, including single-split, multi-head mini-split, multi-split (including VRF), and multi-circuit systems

(c) Single-package air conditioners

(d) Single-package heat pumps

(e) Small-duct, high-velocity systems (including VRF)

(f) Space-constrained products—air conditioners

(g) Space-constrained products—heat pumps

For purposes of this appendix, the Department of Energy incorporates by reference specific sections of several industry standards, as listed in § 430.3. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over the incorporated standards.

All section references refer to sections within this appendix unless otherwise stated.

1.2 Definitions

Airflow-control settings are programmed or wired control system configurations that control a fan to achieve discrete, differing ranges of airflow—often designated for performing a specific function (*e.g.*, cooling, heating, or constant circulation)—without manual adjustment other than interaction with a user-operable control (*i.e.*, a thermostat) that meets the manufacturer specifications for installed-use. For the purposes of this appendix, manufacturer specifications for installed-use are those found in the product literature shipped with the unit.

Air sampling device is an assembly consisting of a manifold with several branch tubes with multiple sampling holes that draws an air sample from a critical location from the unit under test (*e.g.* indoor air inlet, indoor air outlet, outdoor air inlet, etc.).

Airflow prevention device denotes a device that prevents airflow via natural convection by mechanical means, such as an air damper box, or by means of changes in duct height, such as an upturned duct.

Aspirating psychrometer is a piece of equipment with a monitored airflow section that draws uniform airflow through the measurement section and has probes for measurement of air temperature and humidity.

Blower coil indoor unit means an indoor unit either with an indoor blower housed with the coil or with a separate designated air mover such as a furnace or a modular blower (as defined in appendix AA to the subpart).

Blower coil system refers to a split system that includes one or more blower coil indoor units.

Cased coil means a coil-only indoor unit with external cabinetry.

Coefficient of Performance (COP) means the ratio of the average rate of space heating delivered to the average rate of electrical energy consumed by the heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be determined at a single set of operating conditions. COP is a dimensionless quantity. When determined for a ducted coil-only system, COP must include the sections 3.7 and 3.9.1 of this appendix: default values for the heat output and power input of a fan motor.

Coil-only indoor unit means an indoor unit that is distributed in commerce without an indoor blower or separate designated air mover. A coil-only indoor unit installed in the field relies on a separately-installed furnace or a modular blower for indoor air movement. *Coil-only system* refers to a system that includes only (one or more) coil-only indoor units.

Condensing unit removes the heat absorbed by the refrigerant to transfer it to the outside environment and consists of an outdoor coil, compressor(s), and air moving device.

Constant-air-volume-rate indoor blower means a fan that varies its operating speed to provide a fixed air-volume-rate from a ducted system.

Continuously recorded, when referring to a dry bulb measurement, dry bulb temperature used for test room control, wet bulb temperature, dew point temperature, or relative humidity measurements, means that the specified value must be sampled at regular intervals that are equal to or less than 15 seconds.

Cooling load factor (CLF) means the ratio having as its numerator the total cooling delivered during a cyclic operating interval consisting of one ON period and one OFF period, and as its denominator the total cooling that would be delivered, given the same ambient conditions, had the unit operated continuously at its steady-state, space-cooling capacity for the same total time (ON + OFF) interval.

Crankcase heater means any electrically powered device or mechanism for intentionally generating heat within and/or around the compressor sump volume. Crankcase heater control may be achieved using a timer or may be based on a change in temperature or some other measurable parameter, such that the crankcase heater is not required to operate continuously. A crankcase heater without controls operates continuously when the compressor is not operating.

Cyclic Test means a test where the unit's compressor is cycled on and off for specific time intervals. A cyclic test provides half the information needed to calculate a degradation coefficient.

Damper box means a short section of duct having an air damper that meets the performance requirements of section 2.5.7 of this appendix.

Degradation coefficient (C_D) means a parameter used in calculating the part load factor. The degradation coefficient for cooling is denoted by C_D^c. The degradation coefficient for heating is denoted by C_D^h.

Demand-defrost control system means a system that defrosts the heat pump outdoor coil-only when measuring a predetermined degradation of performance. The heat pump's controls either:

(1) Monitor one or more parameters that always vary with the amount of frost accumulated on the outdoor coil (*e.g.*, coil to air differential temperature, coil differential air pressure, outdoor fan power or current, optical sensors) at least once for every ten minutes of compressor ON-time when space heating or

(2) Operate as a feedback system that measures the length of the defrost period and adjusts defrost frequency accordingly. In all cases, when the frost parameter(s) reaches a predetermined value, the system initiates a defrost. In a demand-defrost control system, defrosts are terminated based on monitoring a parameter(s) that indicates that frost has been eliminated from the coil. (Note: Systems that vary defrost intervals according to outdoor dry-bulb temperature are not demand-defrost systems.) A demand-defrost control system, which otherwise meets the above requirements, may allow time-initiated defrosts if, and only if, such defrosts occur after 6 hours of compressor operating time.

Design heating requirement (DHR) predicts the space heating load of a residence when subjected to outdoor design conditions. Estimates for the minimum and maximum DHR are provided for six generalized U.S. climatic regions in section 4.2 of this appendix.

Dry-coil tests are cooling mode tests where the wet-bulb temperature of the air supplied to the indoor unit is maintained low enough that no condensate forms on the evaporator coil.

Ducted system means an air conditioner or heat pump that is designed to be permanently installed equipment and delivers conditioned air to the indoor space through a duct(s). The air conditioner or heat pump may be either a split-system or a single-package unit.

Energy efficiency ratio (EER) means the ratio of the average rate of space cooling delivered to the average rate of electrical energy consumed by the air conditioner or heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be determined at a single set of operating conditions. EER is expressed in units of Btu/h. When determined for a ducted coil-only system, EER must include, from this appendix, the section 3.3 and 3.5.1 default values for the heat output and power input of a fan motor.

Evaporator coil means an assembly that absorbs heat from an enclosed space and transfers the heat to a refrigerant.

Heat pump means a kind of central air conditioner that utilizes an indoor conditioning coil, compressor, and refrigerant-to-outdoor air heat exchanger to provide air heating, and may also provide air cooling, air dehumidifying, air humidifying, air circulating, and air cleaning.

Heat pump having a heat comfort controller means a heat pump with controls that can regulate the operation of the electric resistance elements to assure that the air temperature leaving the indoor section does not fall below a specified temperature. Heat pumps that actively regulate the rate of electric resistance heating when operating below the balance point (as the result of a second stage call from the thermostat) but do not operate to maintain a minimum delivery temperature are not considered as having a heat comfort controller.

Heating load factor (HLF) means the ratio having as its numerator the total heating delivered during a cyclic operating interval consisting of one ON period and one OFF period, and its denominator the heating capacity measured at the same test conditions used for the cyclic test, multiplied by the total time interval (ON plus OFF) of the cyclic-test.

Heating season means the months of the year that require heating, *e.g.*, typically, and roughly, October through April.

Heating seasonal performance factor (HSPF) means the total space heating required during the heating season, expressed in Btu's, divided by the total electrical energy consumed by the heat pump system during the same season, expressed in watt-hours. The HSPF used to evaluate compliance with 10 CFR 430.32(c) is based on Region IV, the minimum standardized design heating requirement, and the sampling plan stated in 10 CFR 429.16(a).

Independent coil manufacturer (ICM) means a manufacturer that manufactures indoor units but does not manufacture single-package units or outdoor units.

Indoor unit means a separate assembly of a split system that includes—

(1) An arrangement of refrigerant-to-air heat transfer coil(s) for transfer of heat between the refrigerant and the indoor air,

(2) A condensate drain pan, and may or may not include

(3) Sheet metal or plastic parts not part of external cabinetry to direct/route airflow over the coil(s),

(4) A cooling mode expansion device,

(5) External cabinetry, and

(6) An integrated indoor blower (*i.e.* a device to move air including its associated motor). A separate designated air mover that may be a furnace or a modular blower (as defined in appendix AA to the subpart) may be considered to be part of the indoor unit. A service coil is not an indoor unit.

Multi-head mini-split system means a split system that has one outdoor unit and that has two or more indoor units connected with a single refrigeration circuit. The indoor units operate in unison in response to a single indoor thermostat.

Multiple-circuit (or multi-circuit) system means a split system that has one outdoor unit and that has two or more indoor units installed on two or more refrigeration circuits such that each refrigeration circuit serves a compressor and one and only one indoor unit, and refrigerant is not shared from circuit to circuit.

Multiple-split (or multi-split) system means a split system that has one outdoor unit and two or more coil-only indoor units and/or blower coil indoor units connected with a single refrigerant circuit. The indoor units operate independently and can condition multiple zones in response to at least two indoor thermostats or temperature sensors. The outdoor unit operates in response to independent operation of the indoor units based on control input of multiple indoor thermostats or temperature sensors, and/or based on refrigeration circuit sensor input (*e.g.*, suction pressure).

Nominal capacity means the capacity that is claimed by the manufacturer on the product name plate. Nominal cooling capacity is approximate to the air conditioner cooling capacity tested at A or A2 condition. Nominal heating capacity is approximate to the heat pump heating capacity tested in H12 test (or the optional H1N test).

Non-ducted indoor unit means an indoor unit that is designed to be permanently installed, mounted on room walls and/or ceilings, and that directly heats or cools air within the conditioned space.

Normalized Gross Indoor Fin Surface (NGIFS) means the gross fin surface area of the indoor unit coil divided by the cooling capacity measured for the A or A2 Test, whichever applies.

Off-mode power consumption means the power consumption when the unit is connected to its main power source but is neither providing cooling nor heating to the building it serves.

Off-mode season means, for central air conditioners other than heat pumps, the shoulder season and the entire heating season; and for heat pumps, the shoulder season only.

Outdoor unit means a separate assembly of a split system that transfers heat between the refrigerant and the outdoor air, and consists of an outdoor coil, compressor(s), an air moving device, and in addition for heat pumps, may include a heating mode expansion device, reversing valve, and/or defrost controls.

Outdoor unit manufacturer (OUM) means a manufacturer of single-package units, outdoor units, and/or both indoor units and outdoor units.

Part-load factor (PLF) means the ratio of the cyclic EER (or COP for heating) to the steady-state EER (or COP), where both EERs (or COPs) are determined based on operation at the same ambient conditions.

Seasonal energy efficiency ratio (SEER) means the total heat removed from the conditioned space during the annual cooling season, expressed in Btu's, divided by the total electrical energy consumed by the central air conditioner or heat pump during the same season, expressed in watt-hours.

Service coil means an arrangement of refrigerant-to-air heat transfer coil(s), condensate drain pan, sheet metal or plastic parts to direct/route airflow over the coil(s), which may or may not include external cabinetry and/or a cooling mode expansion device, distributed in commerce solely for the intent of replacing an uncased coil or cased coil that has already been placed into service, and that has been labeled accordingly by the manufacturer.

Shoulder season means the months of the year in between those months that require cooling and those months that require heating, *e.g.*, typically, and roughly, April through May, and September through October.

Single-package unit means any central air conditioner or heat pump that has all major assemblies enclosed in one cabinet.

Single-split system means a split system that has one outdoor unit and one indoor unit connected with a single refrigeration circuit. *Small-duct, high-velocity system* means a split system for which all indoor units are blower coil indoor units that produce at least 1.2 inches (of water column) of external static pressure when operated at

the full-load air volume rate certified by the manufacturer of at least 220 scfm per rated ton of cooling.

Split system means any air conditioner or heat pump that has at least two separate assemblies that are connected with refrigerant piping when installed. One of these assemblies includes an indoor coil that exchanges heat with the indoor air to provide heating or cooling, while one of the others includes an outdoor coil that exchanges heat with the outdoor air. Split systems may be either blower coil systems or coil-only systems.

Standard Air means dry air having a mass density of 0.075 lb/ft^3.

Steady-state test means a test where the test conditions are regulated to remain as constant as possible while the unit operates continuously in the same mode.

Temperature bin means the 5 °F increments that are used to partition the outdoor dry-bulb temperature ranges of the cooling (≥65 °F) and heating (<65 °F) seasons.

Test condition tolerance means the maximum permissible difference between the average value of the measured test parameter and the specified test condition.

Test operating tolerance means the maximum permissible range that a measurement may vary over the specified test interval. The difference between the maximum and minimum sampled values must be less than or equal to the specified test operating tolerance.

Tested combination means a multi-head mini-split, multi-split, or multi-circuit system having the following features:

(1) The system consists of one outdoor unit with one or more compressors matched with between two and five indoor units;

(2) The indoor units must:

(i) Collectively, have a nominal cooling capacity greater than or equal to 95 percent and less than or equal to 105 percent of the nominal cooling capacity of the outdoor unit;

(ii) Each represent the highest sales volume model family, if this is possible while meeting all the requirements of this section. If this is not possible, one or more of the indoor units may represent another indoor model family in order that all the other requirements of this section are met.

(iii) Individually not have a nominal cooling capacity greater than 50 percent of the nominal cooling capacity of the outdoor unit, unless the nominal cooling capacity of the outdoor unit is 24,000 Btu/h or less;

(iv) Operate at fan speeds consistent with manufacturer's specifications; and

(v) All be subject to the same minimum external static pressure requirement while able to produce the same external static pressure at the exit of each outlet plenum when connected in a manifold configuration as required by the test procedure.

(3) Where referenced, "nominal cooling capacity" means, for indoor units, the highest cooling capacity listed in published product literature for 95 °F outdoor dry bulb temperature and 80 °F dry bulb, 67 °F wet bulb indoor conditions, and for outdoor units, the lowest cooling capacity listed in published product literature for these conditions. If incomplete or no operating conditions are published, the highest (for indoor units) or lowest (for outdoor units) such cooling capacity available for sale must be used.

Time-adaptive defrost control system is a demand-defrost control system that measures the length of the prior defrost period(s) and uses that information to automatically determine when to initiate the next defrost cycle.

Time-temperature defrost control systems initiate or evaluate initiating a defrost cycle only when a predetermined cumulative compressor ON-time is obtained. This predetermined ON-time is generally a fixed value (*e.g.*, 30, 45, 90 minutes) although it may vary based on the measured outdoor dry-bulb temperature. The ON-time counter accumulates if controller measurements (*e.g.*, outdoor temperature, evaporator temperature) indicate that frost formation conditions are present, and it is reset/remains at zero at all other times. In one application of the control scheme, a defrost is initiated whenever the counter time equals the predetermined ON-time. The counter is reset when the defrost cycle is completed.

In a second application of the control scheme, one or more parameters are measured (*e.g.*, air and/or refrigerant temperatures) at the predetermined, cumulative, compressor ON-time. A defrost is initiated only if the measured parameter(s) falls within a predetermined range. The ON-time counter is reset regardless of whether or not a defrost is initiated. If systems of this second type use cumulative ON-time intervals of 10 minutes or less, then the heat pump may qualify as having a demand defrost control system (see definition).

Triple-capacity, northern heat pump means a heat pump that provides two stages of cooling and three stages of heating. The two common stages for both the cooling and heating modes are the low capacity stage and the high capacity stage. The additional heating mode stage is the booster capacity stage, which offers the highest heating capacity output for a given set of ambient operating conditions.

Triple-split system means a split system that is composed of three separate assemblies: An outdoor fan coil section, a blower coil indoor unit, and an indoor compressor section.

Two-capacity (or two-stage) compressor system means a central air conditioner or heat pump that has a compressor or a group of compressors operating with only two stages of capacity. For such systems, low capacity means the compressor(s) operating at low stage, or at low load test conditions. The low compressor stage that operates for heating mode tests may be the same or different from the low compressor stage that operates for cooling mode tests. For such systems, high capacity means the compressor(s) operating at high stage, or at full load test conditions.

Two-capacity, northern heat pump means a heat pump that has a factory or field-selectable lock-out feature to prevent space cooling at high-capacity. Two-capacity heat pumps having this feature will typically have two sets of ratings, one with the feature disabled and one with the feature enabled. The heat pump is a two-capacity northern heat pump only when this feature is enabled at all times. The certified indoor coil model number must reflect whether the ratings pertain to the lockout enabled option via the inclusion of an extra identifier, such as "+LO". When testing as a two-capacity, northern heat pump, the lockout feature must remain enabled for all tests.

Uncased coil means a coil-only indoor unit without external cabinetry.

Variable refrigerant flow (VRF) system means a multi-split system with at least three compressor capacity stages, distributing refrigerant through a piping network to multiple indoor blower coil units each capable of individual zone temperature control, through proprietary zone temperature control devices and a common communications network. Note: Single-phase VRF systems less than 65,000 Btu/h are central air conditioners and central air conditioning heat pumps.

Variable-speed compressor system means a central air conditioner or heat pump that has a compressor that uses a variable-speed drive to vary the compressor speed to achieve variable capacities.

Wet-coil test means a test conducted at test conditions that typically cause water vapor to condense on the test unit evaporator coil.

2. Testing Overview and Conditions

(A) Test VRF systems using AHRI 1230–2010 (incorporated by reference, see § 430.3) and appendix M. Where AHRI 1230–2010 refers to the appendix C therein substitute the provisions of this appendix. In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over AHRI 1230–2010.

For definitions use section 1 of appendix M and section 3 of AHRI 1230–2010 (incorporated by reference, see § 430.3). For rounding requirements, refer to § 430.23(m). For determination of certified ratings, refer to § 429.16 of this chapter.

For test room requirements, refer to section 2.1 of this appendix. For test unit installation requirements refer to sections 2.2.a, 2.2.b, 2.2.c, 2.2.1, 2.2.2, 2.2.3(a), 2.2.3(c), 2.2.4, 2.2.5, and 2.4 to 2.12 of this appendix, and sections 5.1.3 and 5.1.4 of AHRI 1230–2010. The "manufacturer's published instructions," as stated in section 8.2 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) and "manufacturer's installation instructions" discussed in this appendix mean the manufacturer's installation instructions that come packaged with or appear in the labels applied to the unit. This does not include online manuals. Installation instructions that appear in the labels applied to the unit take precedence over installation instructions that are shipped with the unit.

For general requirements for the test procedure, refer to section 3.1 of this appendix, except for sections 3.1.3 and 3.1.4, which are requirements for indoor air volume and outdoor air volume. For indoor air volume and outdoor air volume requirements, refer instead to section 6.1.5 (except where section 6.1.5 refers to Table 8, refer instead to Table 3 of this appendix) and 6.1.6 of AHRI 1230–2010.

For the test method, refer to sections 3.3 to 3.5 and 3.7 to 3.13 of this appendix. For cooling mode and heating mode test conditions, refer to section 6.2 of AHRI 1230–2010. For calculations of seasonal performance descriptors, refer to section 4 of this appendix.

(B) For systems other than VRF, only a subset of the sections listed in this test procedure apply when testing and determining represented values for a particular unit. Table 1 shows the sections of the test procedure that apply to each system. This table is meant to assist manufacturers in finding the appropriate sections of the test procedure; the appendix sections rather than the table provide the specific requirements for testing, and given the varied nature of available units, manufacturers are responsible for determining which sections apply to each unit tested based on the unit's characteristics. To use this table, first refer to the sections listed under "all units". Then refer to additional requirements based on:

(1) System configuration(s),

(2) The compressor staging or modulation capability, and

(3) Any special features.

Testing requirements for space-constrained products do not differ from similar equipment that is not space-constrained and thus are not listed separately in this table. Air conditioners and heat pumps are not listed separately in this table, but heating procedures and calculations apply only to heat pumps.

Table 1—Informative Guidance for Using Appendix M

			Testing conditions	Testing procedures			Calculations		
			General	General	Cooling*	Heating**	General	Cooling*	Heating**
Requirements for all units (except VRF)			2.1; 2.2a-c; 2.2.1; 2.2.4; 2.2.4.1; 2.2.4.1 (1); 2.2.4.2; 2.2.5.1-5; 2.2.5.7-8; 2.3; 2.3.1; 2.3.2; 2.4; 2.4.1a,d; 2.5a-c; 2.5.1; 2.5.2 - 2.5.4.2; 2.5.5 2.13	3.1; 3.1.1-3; 3.1.5-9; 3.11; 3.12	3.3; 3.4; 3.5a-i	3.1.4.7; 3.1.10; 3.7a,b,d; 3.8a,d; 3.8.1; 3.9; 3.10	4.4; 4.5	4.1	4.2
Additional Requirements	System Configurations (more than one may apply)	Single-split system – blower coil	2.2a(1)		3.1.4.1.1; 3.1.4.1.1a,b; 3.1.4.2a-b; 3.1.4.3a-b	3.1.4.4.1; 3.1.4.4.2; 3.1.4.4.3a-b; 3.1.4.5.1; 3.1.4.5.2a-c; 3.1.4.6a-b			
		Single-split system - coil-only	2.2a(1); 2.2d,e; 2.4.2		3.1.4.1.1; 3.1.4.1.1c; 3.1.4.2c; 3.5.1	3.1.4.4.1; 3.1.4.4.2; 3.1.4.4.3c; 3.1.4.5.2d; 3.7c; 3.8b; 3.9f; 3.9.1b			
		Tri-split	2.2a(2)						
		Outdoor unit with no match	2.2e						
		Single-package	2.2.4.1(2); 2.2.5.6b; 2.4.2		3.1.4.1.1; 3.1.4.1.1a,b; 3.1.4.2a-b; 3.1.4.3a-b	3.1.4.4.1; 3.1.4.4.2; 3.1.4.4.3a-b; 3.1.4.5.1; 3.1.4.5.2a-c; 3.1.4.6a-b			
		Heat pump	2.2.5.6.a						
		Heating-only heat pump			3.1.4.1.1 Table 4	3.1.4.4.3			

		Two-capacity northern heat pump		3.1.4.4.2c; 3.1.4.5.2 c- d	3.2.3c	3.6.3			
		Triple-capacity northern heat pump			3.2.5	3.6.6			4.2.6
		SDHV (non-VRF)	2.2b; 2.4.1c; 2.5.4.3						
		Single- zone-multi-coil split and non-VRF multiple-split with duct	2.2a(1),(3); 2.2.3; 2.4.1b		3.1.4.1.1; 3.1.4.1.1a-b; 3.1.4.2a-b; 3.1.4.3a-b	3.1.4.4.1; 3.1.4.4.2; 3.1.4.4.3a-b; 3.1.4.5.1; 3.1.4.5.2a-c; 3.1.4.6a-b			
		Single-zone-multi-coil split and non-VRF multiple-split, ductless	2.2.a(1),(3); 2.2.3		3.1.4.1.2; 3.1.4.2d; 3.1.4.3c; 3.2.4c; 3.5c,g,h; 3.5.2; 3.8c	3.1.4.4.4; 3.1.4.5.2c; 3.1.4.6c; 3.6.1.c; 3.8c			
		VRF multiple-split[1] and VRF SDHV[2]	2.1; 2.2.a; 2.2.b; 2.2.c; 2.2.1; 2.2.2; 2.2.3(a); 2.2.3(c); 2.2.4; 2.2.5; 2.4-2.12	3.1 (except 3.1.3, 3.1.4) 3.1.4.1.1c; 3.11-3.13	3.3-3.5	3.7–3.10	4.4; 4.5	4.1	4.2
	Modulation Capability	Single speed compressor, fixed air volume rate			3.2.1	3.6.1		4.1.1	4.2.1
		Single speed compressor, VAV fan			3.2.2	3.6.2		4.1.2	4.2.2
		Two-capacity compressor		3.1.10	3.2.3	3.6.3		4.1.3	4.2.3
		Variable speed compressor			3.2.4	3.6.4		4.1.4	4.2.4
	Special Features	Heat pump with heat comfort controller				3.6.5			4.2.5
		Units with a multi-speed outdoor fan	2.2.2						
		Single indoor unit having multiple indoor blowers			3.2.6	3.6.2; 3.6.7		4.1.5	4.2.7

*Does not apply to heating-only heat pumps.

**Applies only to heat pumps; not to air conditioners.

†Use AHRI 1230-2010 (incorporated by reference, see § 430.3), with the sections referenced in section 2(A) of this appendix, in conjunction with the sections set forth in the table to perform test setup, testing, and calculations for determining represented values for VRF multiple-split and VRF SDHV systems.

NOTE: For all units, use section 3.13 of this appendix for off mode testing procedures and section 4.3 of this appendix for off mode calculations. For all units subject to an EER standard, use section 4.6 of this appendix to determine the energy efficiency ratio.

2.1 Test Room Requirements

a. Test using two side-by-side rooms: An indoor test room and an outdoor test room. For multiple-split, single-zone-multi-coil or multi-circuit air conditioners and heat pumps, however, use as many indoor test rooms as needed to accommodate the total number of indoor units. These rooms must comply with the requirements specified in sections 8.1.2 and 8.1.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3).

b. Inside these test rooms, use artificial loads during cyclic tests and frost accumulation tests, if needed, to produce stabilized room air temperatures. For one room, select an electric resistance heater(s) having a heating capacity that is approximately equal to the heating capacity of the test unit's condenser. For the second room, select a heater(s) having a capacity that is close to the sensible cooling capacity of the test unit's evaporator. Cycle the heater located in the same room as the test unit evaporator coil ON and OFF when the test unit cycles ON and OFF. Cycle the heater located in the same room as the test unit condensing coil ON and OFF when the test unit cycles OFF and ON.

2.2 Test Unit Installation Requirements

a. Install the unit according to section 8.2 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3), subject to the following additional requirements:

(1) When testing split systems, follow the requirements given in section 6.1.3.5 of AHRI 210/240–2008 (incorporated by reference, see § 430.3). For the vapor refrigerant line(s), use the insulation included with the unit; if no insulation is provided, use insulation meeting the specifications for the insulation in the installation instructions included with the unit by the manufacturer; if no insulation is included with the unit and the installation instructions do not contain provisions for insulating the line(s), fully insulate the vapor refrigerant line(s) with vapor proof insulation having an inside diameter that matches the refrigerant tubing and a nominal thickness of at least 0.5 inches. For the liquid refrigerant line(s), use the insulation included with the unit; if no insulation is provided, use insulation meeting the specifications for the insulation in the installation instructions included with the unit by the manufacturer; if no insulation is included with the unit and the installation instructions do not contain provisions for insulating the line(s), leave the liquid refrigerant line(s) exposed to the air for air conditioners and heat pumps that heat and cool; or, for heating-only heat pumps, insulate the liquid refrigerant line(s) with insulation having an inside diameter that

(3) When testing triple-split systems (see section 1.2 of this appendix, Definitions), use the tubing length specified in section 6.1.3.5 of AHRI 210/240–2008 (incorporated by reference, see § 430.3) to connect the outdoor coil, indoor compressor section, and indoor coil while still meeting the requirement of exposing 10 feet of the tubing to outside conditions;

(4) When testing split systems having multiple indoor coils, connect each indoor blower coil unit to the outdoor unit using:

(a) 25 feet of tubing, or

(b) tubing furnished by the manufacturer, whichever is longer.

At least 10 feet of the system interconnection tubing shall be exposed to the outside conditions. If they are needed to make a secondary measurement of capacity or for verification of refrigerant charge, install refrigerant pressure measuring instruments as described in section 8.2.5 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). Section 2.10 of this appendix specifies which secondary methods require refrigerant pressure measurements and section 2.2.5.5 of this appendix discusses use of pressure measurements to verify charge. At a minimum, insulate the low-pressure line(s) of a split system with insulation having an inside diameter that matches the refrigerant tubing and a nominal thickness of 0.5 inch.

b. For units designed for both horizontal and vertical installation or for both up-flow and down-flow vertical installations, use the orientation for testing specified by the manufacturer in the certification report. Conduct testing with the following installed:

(1) The most restrictive filter(s);

(2) Supplementary heating coils; and

(3) Other equipment specified as part of the unit, including all hardware used by a heat comfort controller if so equipped (see section 1 of this appendix, Definitions). For small-duct, high-velocity systems, configure all balance dampers or restrictor devices on or inside the unit to fully open or lowest restriction.

c. Testing a ducted unit without having an indoor air filter installed is permissible as long as the minimum external static pressure requirement is adjusted as stated in Table 3, note 3 (see section 3.1.4 of this appendix). Except as noted in section 3.1.10 of this appendix, prevent the indoor air supplementary heating coils from operating during all tests. For uncased coils, create an enclosure using 1 inch fiberglass foil-faced ductboard having a nominal density of 6 pounds per cubic foot. Or alternatively, construct an enclosure using sheet metal or a similar material and insulating material having a thermal resistance ("R" value) between 4 and 6 hr·ft²· °F/Btu. Size the

manuals included with the unit by the system manufacturer. If the installation manuals do not provide specifications for the transformer, use a transformer having the following features:

(1) A nominal volt-amp rating such that the transformer is loaded between 25 and 90 percent of this rating for the highest level of power measured during the off mode test (section 3.13 of this appendix);

(2) Designed to operate with a primary input of 230 V, single phase, 60 Hz; and

(3) That provides an output voltage that is within the specified range for each low-voltage component. Include the power consumption of the components connected to the transformer as part of the total system power consumption during the off mode tests; do not include the power consumed by the transformer when no load is connected to it.

e. Test an outdoor unit with no match (*i.e.*, that is not distributed in commerce with any indoor units) using a coil-only indoor unit with a single cooling air volume rate whose coil has:

(1) Round tubes of outer diameter no less than 0.375 inches, and

(2) a normalized gross indoor fin surface (NGIFS) no greater than 1.0 square inches per British thermal unit per hour (sq. in./Btu/hr). NGIFS is calculated as follows:

$$NGIFS = 2 \times L_f \times W_f \times N_f \div \dot{Q}_c \text{ (95)}$$

Where:

L_f = Indoor coil fin length in inches, also height of the coil transverse to the tubes.

W_f = Indoor coil fin width in inches, also depth of the coil.

N_f = Number of fins.

$\dot{Q}_c$(95) = the measured space cooling capacity of the tested outdoor unit/indoor unit combination as determined from the A2 or A Test whichever applies, Btu/h.

f If the outdoor unit or the outdoor portion of a single-package unit has a drain pan heater to prevent freezing of defrost water, the heater shall be energized, subject to control to de-energize it when not needed by the heater's thermostat or the unit's control system, for all tests.

2.2.1 Defrost Control Settings

Set heat pump defrost controls at the normal settings which most typify those encountered in generalized climatic region IV. (Refer to Figure 1 and Table 19 of section 4.2 of this appendix for information on region IV.) For heat pumps that use a time-adaptive defrost control system (see section 1.2 of this appendix, Definitions), the manufacturer must specify in the certification report the frosting interval to be used during frost accumulation tests and

must operate at the same speed used during the required wet coil test conducted at the same outdoor test conditions.

2.2.3 Special Requirements for Multi-Split Air Conditioners and Heat Pumps and Ducted Systems Using a Single Indoor Section Containing Multiple Indoor Blowers That Would Normally Operate Using Two or More Indoor Thermostats

Because these systems will have more than one indoor blower and possibly multiple outdoor fans and compressor systems, references in this test procedure to a singular indoor blower, outdoor fan, and/or compressor means all indoor blowers, all outdoor fans, and all compressor systems that are energized during the test.

a. Additional requirements for multi-split air conditioners and heat pumps. For any test where the system is operated at part load (*i.e.*, one or more compressors ''off'', operating at the intermediate or minimum compressor speed, or at low compressor capacity), the manufacturer must designate in the certification report the indoor coil(s) that are not providing heating or cooling during the test such that the sum of the nominal heating or cooling capacity of the operational indoor units is within 5 percent of the intended part load heating or cooling capacity. For variable-speed systems, the manufacturer must designate in the certification report at least one indoor unit that is not providing heating or cooling for all tests conducted at minimum compressor speed. For all other part-load tests, the manufacturer must choose to turn off zero, one, two, or more indoor units. The chosen configuration must remain unchanged for all tests conducted at the same compressor speed/capacity. For any indoor coil that is not providing heating or cooling during a test, cease forced airflow through this indoor coil and block its outlet duct.

b. Additional requirements for ducted split systems with a single indoor unit containing multiple indoor blowers (or for single-package units with an indoor section containing multiple indoor blowers) where the indoor blowers are designed to cycle on and off independently of one another and are not controlled such that all indoor blowers are modulated to always operate at the same air volume rate or speed. For any test where the system is operated at its lowest capacity—*i.e.*, the lowest total air volume rate allowed when operating the single-speed compressor or when operating at low compressor capacity—indoor blowers accounting for at least one-third of the full-load air volume rate must be turned off unless prevented by the controls of the unit. In such cases, turn off as many indoor blowers as permitted by the unit's controls. Where more than one option exists for meeting this ''off'' requirement, the manufacturer shall indicate in its certification report which indoor blower(s) are turned off. The chosen configuration shall remain unchanged for all tests conducted at the same lowest capacity configuration. For any indoor coil turned off during a test, cease forced airflow through any outlet duct connected to a switched-off indoor blower.

c. For test setups where the laboratory's physical limitations requires use of more than the required line length of 25 feet as listed in section 2.2.a(4) of this appendix, then the actual refrigerant line length used by the laboratory may exceed the required length and the refrigerant line length correction factors in Table 4 of AHRI 1230–2010 are applied to the cooling capacity measured for each cooling mode test.

2.2.4 Wet-Bulb Temperature Requirements for the Air Entering the Indoor and Outdoor Coils

2.2.4.1 Cooling Mode Tests

For wet-coil cooling mode tests, regulate the water vapor content of the air entering the indoor unit so that the wet-bulb temperature is as listed in Tables 4 to 7. As noted in these same tables, achieve a wet-bulb temperature during dry-coil cooling mode tests that results in no condensate forming on the indoor coil. Controlling the water vapor content of the air entering the outdoor side of the unit is not required for cooling mode tests except when testing:

(1) Units that reject condensate to the outdoor coil during wet coil tests. Tables 4–7 list the applicable wet-bulb temperatures.

(2) Single-package units where all or part of the indoor section is located in the outdoor test room. The average dew point temperature of the air entering the outdoor coil during wet coil tests must be within ±3.0 °F of the average dew point temperature of the air entering the indoor coil over the 30-minute data collection interval described in section 3.3 of this appendix. For dry coil tests on such units, it may be necessary to limit the moisture content of the air entering the outdoor coil of the unit to meet the requirements of section 3.4 of this appendix.

2.2.4.2 Heating Mode Tests

For heating mode tests, regulate the water vapor content of the air entering the outdoor unit to the applicable wet-bulb temperature listed in Tables 11 to 14. The wet-bulb temperature entering the indoor side of the heat pump must not exceed 60 °F. Additionally, if the Outdoor Air Enthalpy test method (section 2.10.1 of this appendix) is used while testing a single-package heat pump where all or part of the outdoor section is located in the indoor test room, adjust the wet-bulb temperature for the air entering the indoor side to yield an indoor-side dew point temperature that is as close as reasonably possible to the dew point temperature of the outdoor-side entering air.

2.2.5 Additional Refrigerant Charging Requirements

2.2.5.1 Instructions To Use for Charging

a. Where the manufacturer's installation instructions contain two sets of refrigerant charging criteria, one for field installations and one for lab testing, use the field installation criteria.

b. For systems consisting of an outdoor unit manufacturer's outdoor section and indoor section with differing charging procedures, adjust the refrigerant charge per the outdoor installation instructions.

c. For systems consisting of an outdoor unit manufacturer's outdoor unit and an independent coil manufacturer's indoor unit with differing charging procedures, adjust the refrigerant charge per the indoor unit's installation instructions. If instructions are provided only with the outdoor unit or are provided only with an independent coil manufacturer's indoor unit, then use the provided instructions.

2.2.5.2 Test(s) To Use for Charging

a. Use the tests or operating conditions specified in the manufacturer's installation instructions for charging. The manufacturer's installation instructions may specify use of tests other than the A or A_2 test for charging, but, unless the unit is a heating-only heat pump, the air volume rate must be determined by the A or A_2 test as specified in section 3.1 of this appendix.

b. If the manufacturer's installation instructions do not specify a test or operating conditions for charging or there are no manufacturer's instructions, use the following test(s):

(1) For air conditioners or cooling and heating heat pumps, use the A or A_2 test.

(2) For cooling and heating heat pumps that do not operate in the H1 or $H1_2$ test (*e.g.*, due to shut down by the unit limiting devices) when tested using the charge determined at the A or A_2 test, and for heating-only heat pumps, use the H1 or $H1_2$ test.

2.2.5.3 Parameters To Set and Their Target Values

a. Consult the manufacturer's installation instructions regarding which parameters (*e.g.*, superheat) to set and their target values. If the instructions provide ranges of values, select target values equal to the midpoints of the provided ranges.

b. In the event of conflicting information between charging instructions (*i.e.*, multiple conditions given for charge adjustment where all conditions specified cannot be met), follow the following hierarchy.

(1) For fixed orifice systems:

(i) Superheat

(ii) High side pressure or corresponding saturation or dew-point temperature

(iii) Low side pressure or corresponding saturation or dew-point temperature

(iv) Low side temperature

(v) High side temperature

(vi) Charge weight

(2) For expansion valve systems:

(i) Subcooling

(ii) High side pressure or corresponding saturation or dew-point temperature

(iii) Low side pressure or corresponding saturation or dew-point temperature

(iv) Approach temperature (difference between temperature of liquid leaving condenser and condenser average inlet air temperature)

(v) Charge weight

c. If there are no installation instructions and/or they do not provide parameters and target values, set superheat to a target value of 12 °F for fixed orifice systems or set subcooling to a target value of 10 °F for expansion valve systems.

2.2.5.4 Charging Tolerances

a. If the manufacturer's installation instructions specify tolerances on target values for the charging parameters, set the values within these tolerances.

b. Otherwise, set parameter values within the following test condition tolerances for the different charging parameters:

(1) Superheat: +/− 2.0 °F

(2) Subcooling: +/− 2.0 °F

(3) High side pressure or corresponding saturation or dew point temperature: +/− 4.0 psi or +/− 1.0 °F

(4) Low side pressure or corresponding saturation or dew point temperature: +/− 2.0 psi or +/− 0.8 °F

(5) High side temperature: +/− 2.0 °F

(6) Low side temperature: +/− 2.0 °F

(7) Approach temperature: +/− 1.0 °F

(8) Charge weight: +/− 2.0 ounce

2.2.5.5 Special Charging Instructions

a. Cooling and Heating Heat Pumps

If, using the initial charge set in the A or A_2 test, the conditions are not within the range specified in manufacturer's installation instructions for the H1 or $H1_2$ test, make as small as possible an adjustment to obtain conditions for this test in the specified range. After this adjustment, recheck conditions in the A or A_2 test to confirm that they are still within the specified range for the A or A_2 test.

b. Single-Package Systems

Unless otherwise directed by the manufacturer's installation instructions, install one or more refrigerant line pressure gauges during the setup of the unit, located depending on the parameters used to verify or set charge, as described:

(1) Install a pressure gauge at the location of the service valve on the liquid line if charging is on the basis of subcooling, or high side pressure or corresponding saturation or dew point temperature;

(2) Install a pressure gauge at the location of the service valve on the suction line if charging is on the basis of superheat, or low side pressure or corresponding saturation or dew point temperature.

Use methods for installing pressure gauge(s) at the required location(s) as indicated in manufacturer's instructions if specified.

2.2.5.6 Near-Azeotropic and Zeotropic Refrigerants

Perform charging of near-azeotropic and zeotropic refrigerants only with refrigerant in the liquid state.

2.2.5.7 Adjustment of Charge Between Tests

After charging the system as described in this test procedure, use the set refrigerant charge for all tests used to determine performance. Do not adjust the refrigerant charge at any point during testing. If measurements indicate that refrigerant charge has leaked during the test, repair the refrigerant leak, repeat any necessary set-up steps, and repeat all tests.

2.3 Indoor Air Volume Rates

If a unit's controls allow for overspeeding the indoor blower (usually on a temporary basis), take the necessary steps to prevent overspeeding during all tests.

2.3.1 Cooling Tests

a. Set indoor blower airflow-control settings (*e.g.*, fan motor pin settings, fan motor speed) according to the requirements that are specified in section 3.1.4 of this appendix.

b. Express the Cooling full-load air volume rate, the Cooling Minimum Air Volume Rate, and the Cooling Intermediate Air Volume Rate in terms of standard air.

2.3.2 Heating Tests

a. Set indoor blower airflow-control settings (*e.g.*, fan motor pin settings, fan motor speed) according to the requirements that are specified in section 3.1.4 of this appendix.

b. Express the heating full-load air volume rate, the heating minimum air volume rate, the heating intermediate air volume rate, and the heating nominal air volume rate in terms of standard air.

2.4 Indoor Coil Inlet and Outlet Duct Connections

Insulate and/or construct the outlet plenum as described in section 2.4.1 of this appendix and, if installed, the inlet plenum described in section 2.4.2 of this appendix with thermal insulation having a nominal overall resistance (R-value) of at least 19 hr • ft^2 • °F/Btu.

2.4.1 Outlet Plenum for the Indoor Unit

a. Attach a plenum to the outlet of the indoor coil. (Note: For some packaged systems, the indoor coil may be located in the outdoor test room.)

b. For systems having multiple indoor coils, or multiple indoor blowers within a single indoor section, attach a plenum to each indoor coil or indoor blower outlet. In order to reduce the number of required airflow measurement apparati (section 2.6 of this appendix), each such apparatus may serve multiple outlet plenums connected to a single common duct leading to the apparatus. More than one indoor test room may be used, which may use one or more common ducts leading to one or more airflow measurement apparati within each test room that contains multiple indoor coils. At the plane where each plenum enters a common duct, install an adjustable airflow damper and use it to equalize the static pressure in each plenum. Each outlet air temperature grid (section 2.5.4 of this appendix) and airflow measuring apparatus are located downstream of the inlet(s) to the common duct. For multiple-circuit (or multi-circuit) systems for which each indoor coil outlet is measured separately and its outlet plenum is not connected to a common duct connecting multiple outlet plenums, the outlet air temperature grid and airflow measuring apparatus must be installed at each outlet plenum.

c. For small-duct, high-velocity systems, install an outlet plenum that has a diameter that is equal to or less than the value listed in Table 2. The limit depends only on the Cooling full-load air volume rate (see section 3.1.4.1.1 of this appendix) and is effective regardless of the flange dimensions on the outlet of the unit (or an air supply plenum adapter accessory, if installed in accordance with the manufacturer's installation instructions).

d. Add a static pressure tap to each face of the (each) outlet plenum, if rectangular, or at four evenly distributed locations along the circumference of an oval or round plenum. Create a manifold that connects the four static pressure taps. Figure 9 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) shows allowed options for the manifold configuration. The cross-sectional dimensions of plenum shall be equal to the dimensions of the indoor unit outlet. See Figures 7a, 7b, and 7c of ANSI/ASHRAE 37–2009 for the minimum length of the (each) outlet plenum and the locations for adding the static pressure taps for ducted blower coil indoor units and single-package systems. See Figure 8 of ANSI/ASHRAE 37–2009 for coil-only indoor units.

TABLE 2—SIZE OF OUTLET PLENUM FOR SMALL-DUCT HIGH-VELOCITY INDOOR UNITS

Cooling full-load air volume rate (scfm)	Maximum diameter* of outlet plenum (inches)
≤500	6
501 to 700	7
701 to 900	8
901 to 1100	9
1101 to 1400	10
1401 to 1750	11

*If the outlet plenum is rectangular, calculate its equivalent diameter using ($4A/P$,) where A is the cross-sectional area and P is the perimeter of the rectangular plenum, and compare it to the listed maximum diameter.

2.4.2 Inlet Plenum for the Indoor Unit

Install an inlet plenum when testing a coil-only indoor unit, a ducted blower coil indoor unit, or a single-package system. See Figures 7b and 7c of ANSI/ASHRAE 37–2009 for cross-sectional dimensions, the minimum length of the inlet plenum, and the locations of the static-pressure taps for ducted blower coil indoor units and single-package systems. See Figure 8 of ANSI/ASHRAE 37–2009 for coil-only indoor units. The inlet plenum duct size shall equal the size of the inlet opening of the air-handling (blower coil) unit or furnace. For a ducted blower coil indoor unit the set up may omit the inlet plenum if an inlet airflow prevention device is installed with a straight internally unobstructed duct on its outlet end with a minimum length equal to 1.5 times the square root of the cross-sectional area of the indoor unit inlet. See section 2.5.1.2 of this appendix for requirements for the locations of static pressure taps built into the inlet airflow prevention device. For all of these arrangements, make a manifold that connects the four static-pressure taps using one of the three configurations specified in section 2.4.1.d of this appendix. Never use an inlet plenum when testing non-ducted indoor units.

2.5 Indoor Coil Air Property Measurements and Airflow Prevention Devices

Follow instructions for indoor coil air property measurements as described in section 2.14 of this appendix, unless otherwise instructed in this section.

a. Measure the dry-bulb temperature and water vapor content of the air entering and

leaving the indoor coil. If needed, use an air sampling device to divert air to a sensor(s) that measures the water vapor content of the air. See section 5.3 of ANSI/ASHRAE 41.1–2013 (incorporated by reference, see § 430.3) for guidance on constructing an air sampling device. No part of the air sampling device or the tubing transferring the sampled air to the sensor shall be within two inches of the test chamber floor, and the transfer tubing shall be insulated. The sampling device may also be used for measurement of dry bulb temperature by transferring the sampled air to a remotely located sensor(s). The air sampling device and the remotely located temperature sensor(s) may be used to determine the entering air dry bulb temperature during any test. The air sampling device and the remotely located sensor(s) may be used to determine the leaving air dry bulb temperature for all tests except:

(1) Cyclic tests; and

(2) Frost accumulation tests.

b. Install grids of temperature sensors to measure dry bulb temperatures of both the entering and leaving airstreams of the indoor unit. These grids of dry bulb temperature sensors may be used to measure average dry bulb temperature entering and leaving the indoor unit in all cases (as an alternative to the dry bulb sensor measuring the sampled air). The leaving airstream grid is required for measurement of average dry bulb temperature leaving the indoor unit for the two special cases noted above. The grids are also required to measure the air temperature distribution of the entering and leaving airstreams as described in sections 3.1.8 and 3.1.9 of this appendix. Two such grids may applied as a thermopile, to directly obtain the average temperature difference rather than directly measuring both entering and leaving average temperatures.

c. Use of airflow prevention devices. Use an inlet and outlet air damper box, or use an inlet upturned duct and an outlet air damper box when conducting one or both of the cyclic tests listed in sections 3.2 and 3.6 of this appendix on ducted systems. If not conducting any cyclic tests, an outlet air damper box is required when testing ducted and non-ducted heat pumps that cycle off the indoor blower during defrost cycles and there is no other means for preventing natural or forced convection through the indoor unit when the indoor blower is off. Never use an inlet damper box or an inlet upturned duct when testing non-ducted indoor units. An inlet upturned duct is a length of ductwork installed upstream from the inlet such that the indoor duct inlet opening, facing upwards, is sufficiently high to prevent natural convection transfer out of the duct. If an inlet upturned duct is used, install a dry bulb temperature sensor near the inlet opening of the indoor duct at a centerline location not higher than the lowest elevation of the duct edges at the inlet, and ensure that any pair of 5-minute averages of the dry bulb temperature at this location, measured at least every minute during the compressor OFF period of the cyclic test, do not differ by more than 1.0 °F.

2.5.1 Test Set-Up on the Inlet Side of the Indoor Coil: For Cases Where the Inlet Airflow Prevention Device Is Installed

a. Install an airflow prevention device as specified in section 2.5.1.1 or 2.5.1.2 of this appendix, whichever applies.

b. For an inlet damper box, locate the grid of entering air dry-bulb temperature sensors, if used, and the air sampling device, or the sensor used to measure the water vapor content of the inlet air, at a location immediately upstream of the damper box inlet. For an inlet upturned duct, locate the grid of entering air dry-bulb temperature sensors, if used, and the air sampling device, or the sensor used to measure the water vapor content of the inlet air, at a location at least one foot downstream from the beginning of the insulated portion of the duct but before the static pressure measurement.

2.5.1.1 If the Section 2.4.2 Inlet Plenum Is Installed

Construct the airflow prevention device having a cross-sectional flow area equal to or greater than the flow area of the inlet plenum. Install the airflow prevention device upstream of the inlet plenum and construct ductwork connecting it to the inlet plenum. If needed, use an adaptor plate or a transition duct section to connect the airflow prevention device with the inlet plenum. Insulate the ductwork and inlet plenum with thermal insulation that has a nominal overall resistance (R-value) of at least 19 hr • ft² • °F/Btu.

2.5.1.2 If the Section 2.4.2 Inlet Plenum Is Not Installed

Construct the airflow prevention device having a cross-sectional flow area equal to or greater than the flow area of the air inlet of the indoor unit. Install the airflow prevention device immediately upstream of the inlet of the indoor unit. If needed, use an adaptor plate or a short transition duct section to connect the airflow prevention device with the unit's air inlet. Add static pressure taps at the center of each face of a rectangular airflow prevention device, or at four evenly distributed locations along the circumference of an oval or round airflow prevention device. Locate the pressure taps at a distance from the indoor unit inlet equal to 0.5 times the square root of the cross sectional area of the indoor unit inlet. This location must be between the damper and the inlet of the indoor unit, if a damper is used. Make a manifold that connects the four static pressure taps using one of the configurations shown in Figure 9 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). Insulate the ductwork with thermal insulation that has a nominal overall resistance (R-value) of at least 19 hr • ft² • °F/Btu.

2.5.2 Test Set-Up on the Inlet Side of the Indoor Unit: For Cases Where No Airflow Prevention Device Is Installed

If using the section 2.4.2 inlet plenum and a grid of dry bulb temperature sensors, mount the grid at a location upstream of the static pressure taps described in section 2.4.2 of this appendix, preferably at the entrance plane of the inlet plenum. If the section 2.4.2 inlet plenum is not used (*i.e.* for non-ducted units) locate a grid approximately 6 inches upstream of the indoor unit inlet. In the case of a system having multiple non-ducted indoor units, do this for each indoor unit. Position an air sampling device, or the sensor used to measure the water vapor content of the inlet air, immediately upstream of the (each) entering air dry-bulb temperature sensor grid. If a grid of sensors is not used, position the entering air sampling device (or the sensor used to measure the water vapor content of the inlet air) as if the grid were present.

2.5.3 Indoor Coil Static Pressure Difference Measurement

Fabricate pressure taps meeting all requirements described in section 6.5.2 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) and illustrated in Figure 2A of AMCA 210–2007 (incorporated by reference, see § 430.3), however, if adhering strictly to the description in section 6.5.2 of ANSI/ASHRAE 37–2009, the minimum pressure tap length of 2.5 times the inner diameter of Figure 2A of AMCA 210–2007 is waived. Use a differential pressure measuring instrument that is accurate to within ±0.01 inches of water and has a resolution of at least 0.01 inches of water to measure the static pressure difference between the indoor coil air inlet and outlet. Connect one side of the differential pressure instrument to the manifolded pressure taps installed in the outlet plenum. Connect the other side of the instrument to the manifolded pressure taps located in either the inlet plenum or incorporated within the airflow prevention device. For non-ducted indoor units that are tested with multiple outlet plenums, measure the static pressure within each outlet plenum relative to the surrounding atmosphere.

2.5.4 Test Set-Up on the Outlet Side of the Indoor Coil

a. Install an interconnecting duct between the outlet plenum described in section 2.4.1 of this appendix and the airflow measuring apparatus described below in section 2.6 of this appendix. The cross-sectional flow area of the interconnecting duct must be equal to or greater than the flow area of the outlet plenum or the common duct used when testing non-ducted units having multiple indoor coils. If needed, use adaptor plates or transition duct sections to allow the connections. To minimize leakage, tape joints within the interconnecting duct (and the outlet plenum). Construct or insulate the entire flow section with thermal insulation having a nominal overall resistance (R-value) of at least 19 hr • ft² • °F/Btu.

b. Install a grid(s) of dry-bulb temperature sensors inside the interconnecting duct. Also, install an air sampling device, or the sensor(s) used to measure the water vapor content of the outlet air, inside the interconnecting duct. Locate the dry-bulb temperature grid(s) upstream of the air sampling device (or the in-duct sensor(s) used to measure the water vapor content of the outlet air). Turn off the sampler fan motor during the cyclic tests. Air leaving an indoor unit that is sampled by an air sampling device for remote water-vapor-content measurement must be returned to the interconnecting duct at a location:

(1) Downstream of the air sampling device;

(2) On the same side of the outlet air damper as the air sampling device; and

(3) Upstream of the section 2.6 airflow measuring apparatus.

2.5.4.1 Outlet Air Damper Box Placement and Requirements

If using an outlet air damper box (see section 2.5 of this appendix), the leakage rate from the combination of the outlet plenum, the closed damper, and the duct section that connects these two components must not exceed 20 cubic feet per minute when a negative pressure of 1 inch of water column is maintained at the plenum's inlet.

2.5.4.2 Procedures To Minimize Temperature Maldistribution

Use these procedures if necessary to correct temperature maldistributions. Install a mixing device(s) upstream of the outlet air, dry-bulb temperature grid (but downstream of the outlet plenum static pressure taps). Use a perforated screen located between the mixing device and the dry-bulb temperature grid, with a maximum open area of 40 percent. One or both items should help to meet the maximum outlet air temperature distribution specified in section 3.1.8 of this appendix. Mixing devices are described in sections 5.3.2 and 5.3.3 of ANSI/ASHRAE 41.1–2013 and section 5.2.2 of ASHRAE 41.2–1987 (RA 1992) (incorporated by reference, see § 430.3).

2.5.4.3 Minimizing Air Leakage

For small-duct, high-velocity systems, install an air damper near the end of the interconnecting duct, just prior to the transition to the airflow measuring apparatus of section 2.6 of this appendix. To minimize air leakage, adjust this damper such that the pressure in the receiving chamber of the airflow measuring apparatus is no more than 0.5 inch of water higher than the surrounding test room ambient. If applicable, in lieu of installing a separate damper, use the outlet air damper box of sections 2.5 and 2.5.4.1 of this appendix if it allows variable positioning. Also apply these steps to any conventional indoor blower unit that creates a static pressure within the receiving chamber of the airflow measuring apparatus that exceeds the test room ambient pressure by more than 0.5 inches of water column.

2.5.5 Dry Bulb Temperature Measurement

a. Measure dry bulb temperatures as specified in sections 4, 5.3, 6, and 7 of ANSI/ASHRAE 41.1–2013 (incorporated by reference, see § 430.3).

b. Distribute the sensors of a dry-bulb temperature grid over the entire flow area. The required minimum is 9 sensors per grid.

2.5.6 Water Vapor Content Measurement

Determine water vapor content by measuring dry-bulb temperature combined with the air wet-bulb temperature, dew point temperature, or relative humidity. If used, construct and apply wet-bulb temperature sensors as specified in sections 4, 5, 6, 7.2, 7.3, and 7.4 of ASHRAE 41.6–2014 (incorporated by reference, see § 430.3). The temperature sensor (wick removed) must be accurate to within ±0.2 °F. If used, apply dew point hygrometers as specified in sections 4, 5, 6, 7.1, and 7.4 of ASHRAE 41.6–2014 (incorporated by reference, see § 430.3). The dew point hygrometers must be accurate to within ±0.4 °F when operated at conditions that result in the evaluation of dew points above 35 °F. If used, a relative humidity (RH) meter must be accurate to within ±0.7% RH. Other means to determine the psychrometric state of air may be used as long as the measurement accuracy is equivalent to or better than the accuracy achieved from using a wet-bulb temperature sensor that meets the above specifications.

2.5.7 Air Damper Box Performance Requirements

If used (see section 2.5 of this appendix), the air damper box(es) must be capable of being completely opened or completely closed within 10 seconds for each action.

2.6 Airflow Measuring Apparatus

a. Fabricate and operate an airflow measuring apparatus as specified in section 6.2 and 6.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). Place the static pressure taps and position the diffusion baffle (settling means) relative to the chamber inlet as indicated in Figure 12 of AMCA 210–2007 and/or Figure 14 of ASHRAE 41.2–1987 (RA 1992) (incorporated by reference, see § 430.3). When measuring the static pressure difference across nozzles and/or velocity pressure at nozzle throats using electronic pressure transducers and a data acquisition system, if high frequency fluctuations cause measurement variations to exceed the test tolerance limits specified in section 9.2 and Table 2 of ANSI/ASHRAE 37–2009, dampen the measurement system such that the time constant associated with response to a step change in measurement (time for the response to change 63% of the way from the initial output to the final output) is no longer than five seconds.

b. Connect the airflow measuring apparatus to the interconnecting duct section described in section 2.5.4 of this appendix. See sections 6.1.1, 6.1.2, and 6.1.4, and Figures 1, 2, and 4 of ANSI/ASHRAE 37–2009; and Figures D1, D2, and D4 of AHRI 210/240–2008 (incorporated by reference, see § 430.3) for illustrative examples of how the test apparatus may be applied within a complete laboratory set-up. Instead of following one of these examples, an alternative set-up may be used to handle the air leaving the airflow measuring apparatus and to supply properly conditioned air to the test unit's inlet. The alternative set-up, however, must not interfere with the prescribed means for measuring airflow rate, inlet and outlet air temperatures, inlet and outlet water vapor contents, and external static pressures, nor create abnormal conditions surrounding the test unit. (Note: Do not use an enclosure as described in section 6.1.3 of ANSI/ASHRAE 37–2009 when testing triple-split units.)

2.7 Electrical Voltage Supply

Perform all tests at the voltage specified in section 6.1.3.2 of AHRI 210/240–2008 (incorporated by reference, see § 430.3) for "Standard Rating Tests." If either the indoor or the outdoor unit has a 208V or 200V nameplate voltage and the other unit has a 230V nameplate rating, select the voltage supply on the outdoor unit for testing. Otherwise, supply each unit with its own nameplate voltage. Measure the supply voltage at the terminals on the test unit using a volt meter that provides a reading that is accurate to within ±1.0 percent of the measured quantity.

2.8 Electrical Power and Energy Measurements

a. Use an integrating power (watt-hour) measuring system to determine the electrical energy or average electrical power supplied to all components of the air conditioner or heat pump (including auxiliary components such as controls, transformers, crankcase heater, integral condensate pump on non-ducted indoor units, etc.). The watt-hour measuring system must give readings that are accurate to within ±0.5 percent. For cyclic tests, this accuracy is required during both the ON and OFF cycles. Use either two different scales on the same watt-hour meter or two separate watt-hour meters. Activate the scale or meter having the lower power rating within 15 seconds after beginning an OFF cycle. Activate the scale or meter having the higher power rating within 15 seconds prior to beginning an ON cycle. For ducted blower coil systems, the ON cycle lasts from compressor ON to indoor blower OFF. For ducted coil-only systems, the ON cycle lasts from compressor ON to compressor OFF. For non-ducted units, the ON cycle lasts from indoor blower ON to indoor blower OFF. When testing air conditioners and heat pumps having a variable-speed compressor, avoid using an induction watt/watt-hour meter.

b. When performing section 3.5 and/or 3.8 cyclic tests on non-ducted units, provide instrumentation to determine the average electrical power consumption of the indoor blower motor to within ±1.0 percent. If required according to sections 3.3, 3.4, 3.7, 3.9.1 of this appendix, and/or 3.10 of this appendix, this same instrumentation requirement (to determine the average electrical power consumption of the indoor blower motor to within ±1.0 percent) applies when testing air conditioners and heat pumps having a variable-speed constant-air-volume-rate indoor blower or a variable-speed, variable-air-volume-rate indoor blower.

2.9 Time Measurements

Make elapsed time measurements using an instrument that yields readings accurate to within ±0.2 percent.

2.10 Test Apparatus for the Secondary Space Conditioning Capacity Measurement

For all tests, use the indoor air enthalpy method to measure the unit's capacity. This method uses the test set-up specified in sections 2.4 to 2.6 of this appendix. In addition, for all steady-state tests, conduct a second, independent measurement of capacity as described in section 3.1.1 of this appendix. For split systems, use one of the following secondary measurement methods: Outdoor air enthalpy method, compressor calibration method, or refrigerant enthalpy method. For single-package units, use either the outdoor air enthalpy method or the compressor calibration method as the secondary measurement.

2.10.1 Outdoor Air Enthalpy Method

a. To make a secondary measurement of indoor space conditioning capacity using the outdoor air enthalpy method, do the following:

(1) Measure the electrical power consumption of the test unit;

(2) Measure the air-side capacity at the outdoor coil; and

(3) Apply a heat balance on the refrigerant cycle.

b. The test apparatus required for the outdoor air enthalpy method is a subset of the apparatus used for the indoor air enthalpy method. Required apparatus includes the following:

(1) On the outlet side, an outlet plenum containing static pressure taps (sections 2.4, 2.4.1, and 2.5.3 of this appendix),

(2) An airflow measuring apparatus (section 2.6 of this appendix),

(3) A duct section that connects these two components and itself contains the instrumentation for measuring the dry-bulb temperature and water vapor content of the air leaving the outdoor coil (sections 2.5.4, 2.5.5, and 2.5.6 of this appendix), and

(4) On the inlet side, a sampling device and temperature grid (section 2.11.b of this appendix).

c. During the preliminary tests described in sections 3.11.1 and 3.11.1.1 of this appendix, measure the evaporator and condenser temperatures or pressures. On both the outdoor coil and the indoor coil, solder a thermocouple onto a return bend located at or near the midpoint of each coil or at points not affected by vapor superheat or liquid subcooling. Alternatively, if the test unit is not sensitive to the refrigerant charge, install pressure gages to the access valves or to ports created from tapping into the suction and discharge lines according to sections 7.4.2 and 8.2.5 of ASHRAE 37–2009. Use this alternative approach when testing a unit charged with a zeotropic refrigerant having a temperature glide in excess of 1 °F at the specified test conditions.

2.10.2 Compressor Calibration Method

Measure refrigerant pressures and temperatures to determine the evaporator superheat and the enthalpy of the refrigerant that enters and exits the indoor coil. Determine refrigerant flow rate or, when the superheat of the refrigerant leaving the evaporator is less than 5 °F, total capacity from separate calibration tests conducted under identical operating conditions. When using this method, install instrumentation and measure refrigerant properties according to section 7.4.2 and 8.2.5 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). If removing the refrigerant before applying refrigerant lines and subsequently recharging, use the steps in 7.4.2 of ANSI/ASHRAE 37–2009 in addition to the methods of section 2.2.5 of this appendix to confirm the refrigerant charge. Use refrigerant temperature and pressure measuring instruments that meet the specifications given in sections 5.1.1 and 5.2 of ANSI/ASHRAE 37–2009.

2.10.3 Refrigerant Enthalpy Method

For this method, calculate space conditioning capacity by determining the refrigerant enthalpy change for the indoor coil and directly measuring the refrigerant flow rate. Use section 7.5.2 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) for the requirements for this method, including the additional instrumentation requirements, and information on placing the flow meter and a sight glass. Use refrigerant temperature, pressure, and flow measuring instruments that meet the specifications given in sections 5.1.1, 5.2, and 5.5.1 of ANSI/ASHRAE 37–2009. Refrigerant flow measurement device(s), if used, must be either elevated at least two feet from the test chamber floor or placed upon insulating material having a total thermal resistance of at least R–12 and extending at least one foot laterally beyond each side of the device(s)' exposed surfaces.

2.11 Measurement of Test Room Ambient Conditions

Follow instructions for setting up air sampling device and aspirating psychrometer as described in section 2.14 of this appendix, unless otherwise instructed in this section.

a. If using a test set-up where air is ducted directly from the conditioning apparatus to the indoor coil inlet (see Figure 2, Loop Air-Enthalpy Test Method Arrangement, of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3)), add instrumentation to permit measurement of the indoor test room dry-bulb temperature.

b. On the outdoor side, use one of the following two approaches, except that approach (1) is required for all evaporatively-cooled units and units that transfer condensate to the outdoor unit for evaporation using condenser heat.

(1) Use sampling tree air collection on all air-inlet surfaces of the outdoor unit.

(2) Use sampling tree air collection on one or more faces of the outdoor unit and demonstrate air temperature uniformity as follows. Install a grid of evenly-distributed thermocouples on each air-permitting face on the inlet of the outdoor unit. Install the thermocouples on the air sampling device, locate them individually or attach them to a wire structure. If not installed on the air sampling device, install the thermocouple grid 6 to 24 inches from the unit. The thermocouples shall be evenly spaced across the coil inlet surface and be installed to avoid sampling of discharge air or blockage of air recirculation. The grid of thermocouples must provide at least 16 measuring points per face or one measurement per square foot of inlet face area, whichever is less. This grid must be constructed and used as per section 5.3 of ANSI/ASHRAE 41.1–2013 (incorporated by reference, see § 430.3). The maximum difference between the readings of any two pairs of these individual thermocouples located at any of the faces of the inlet of the outdoor unit, must not exceed 2.0 °F, otherwise approach (1) must be used.

The air sampling devices shall be located at the geometric center of each side; the branches may be oriented either parallel or perpendicular to the longer edges of the air inlet area. The air sampling devices in the outdoor air inlet location shall be sized such that they cover at least 75% of the face area of the side of the coil that they are measuring.

Air distribution at the test facility point of supply to the unit shall be reviewed and may require remediation prior to the beginning of testing. Mixing fans can be used to ensure adequate air distribution in the test room. If used, mixing fans shall be oriented such that they are pointed away from the air intake so that the mixing fan exhaust does not affect the outdoor coil air volume rate. Particular attention should be given to prevent the mixing fans from affecting (enhancing or limiting) recirculation of condenser fan exhaust air back through the unit. Any fan used to enhance test room air mixing shall not cause air velocities in the vicinity of the test unit to exceed 500 feet per minute.

The air sampling device may be larger than the face area of the side being measured, however care shall be taken to prevent discharge air from being sampled. If an air sampling device dimension extends beyond the inlet area of the unit, holes shall be blocked in the air sampling device to prevent sampling of discharge air. Holes can be blocked to reduce the region of coverage of the intake holes both in the direction of the trunk axis or perpendicular to the trunk axis. For intake hole region reduction in the direction of the trunk axis, block holes of one or more adjacent pairs of branches (the branches of a pair connect opposite each other at the same trunk location) at either the outlet end or the closed end of the trunk. For intake hole region reduction perpendicular to the trunk axis, block off the same number of holes on each branch on both sides of the trunk.

A maximum of four (4) air sampling devices shall be connected to each aspirating psychrometer. In order to proportionately divide the flow stream for multiple air sampling devices for a given aspirating psychrometer, the tubing or conduit conveying sampled air to the psychrometer shall be of equivalent lengths for each air sampling device. Preferentially, the air sampling device should be hard connected to the aspirating psychrometer, but if space constraints do not allow this, the assembly shall have a means of allowing a flexible tube to connect the air sampling device to the aspirating psychrometer. The tubing or conduit shall be insulated and routed to prevent heat transfer to the air stream. Any surface of the air conveying tubing in contact with surrounding air at a different temperature than the sampled air shall be insulated with thermal insulation with a nominal thermal resistance (R-value) of at least 19 hr · ft^2 · °F/Btu. Alternatively the conduit may have lower thermal resistance if additional sensor(s) are used to measure dry bulb temperature at the outlet of each air sampling device. No part of the air sampling device or the tubing conducting the sampled air to the sensors shall be within two inches of the test chamber floor.

Pairs of measurements (*e.g.*, dry bulb temperature and wet bulb temperature) used to determine water vapor content of sampled air shall be measured in the same location.

2.12 Measurement of Indoor Blower Speed

When required, measure fan speed using a revolution counter, tachometer, or stroboscope that gives readings accurate to within ±1.0 percent.

2.13 Measurement of Barometric Pressure

Determine the average barometric pressure during each test. Use an instrument that meets the requirements specified in section 5.2 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3).

2.14 Air Sampling Device and Aspirating Psychrometer Requirements

Air temperature measurements shall be made in accordance with ANSI/ASHRAE 41.1–2013, unless otherwise instructed in this section.

2.14.1 Air Sampling Device Requirements

The air sampling device is intended to draw in a sample of the air at the critical locations of a unit under test. It shall be constructed of stainless steel, plastic or other suitable, durable materials. It shall have a main flow trunk tube with a series of branch tubes connected to the trunk tube. Holes shall be on the side of the sampler facing the upstream direction of the air source. Other sizes and rectangular shapes can be used, and shall be scaled accordingly with the following guidelines:

(1) Minimum hole density of 6 holes per square foot of area to be sampled

(2) Sampler branch tube pitch (spacing) of 6 ± 3 in

(3) Manifold trunk to branch diameter ratio having a minimum of 3:1 ratio

(4) Hole pitch (spacing) shall be equally distributed over the branch (1/2 pitch from the closed end to the nearest hole)

(5) Maximum individual hole to branch diameter ratio of 1:2 (1:3 preferred)

The minimum average velocity through the air sampling device holes shall be 2.5 ft/s as determined by evaluating the sum of the open area of the holes as compared to the flow area in the aspirating psychrometer.

2.14.2 Aspirating Psychrometer

The psychrometer consists of a flow section and a fan to draw air through the flow section and measures an average value of the sampled air stream. At a minimum, the flow section shall have a means for measuring the dry bulb temperature (typically, a resistance temperature device (RTD) and a means for measuring the humidity (RTD with wetted sock, chilled mirror hygrometer, or relative humidity sensor). The aspirating psychrometer shall include a fan that either can be adjusted manually or automatically to maintain required velocity across the sensors.

The psychrometer shall be made from suitable material which may be plastic (such as polycarbonate), aluminum or other metallic materials. All psychrometers for a given system being tested, shall be constructed of the same material. Psychrometers shall be designed such that radiant heat from the motor (for driving the fan that draws sampled air through the psychrometer) does not affect sensor measurements. For aspirating psychrometers, velocity across the wet bulb sensor shall be 1000 ± 200 ft/min. For all other psychrometers, velocity shall be as specified by the sensor manufacturer.

3. Testing Procedures

3.1 General Requirements

If, during the testing process, an equipment set-up adjustment is made that would have altered the performance of the unit during any already completed test, then repeat all tests affected by the adjustment. For cyclic tests, instead of maintaining an air volume rate, for each airflow nozzle, maintain the static pressure difference or velocity pressure during an ON period at the same pressure difference or velocity pressure as measured during the steady-state test conducted at the same test conditions.

Use the testing procedures in this section to collect the data used for calculating:

(1) Performance metrics for central air conditioners and heat pumps during the cooling season;

(2) Performance metrics for heat pumps during the heating season; and

(3) Power consumption metric(s) for central air conditioners and heat pumps during the off mode season(s).

3.1.1 Primary and Secondary Test Methods

For all tests, use the indoor air enthalpy method test apparatus to determine the unit's space conditioning capacity. The procedure and data collected, however, differ slightly depending upon whether the test is a steady-state test, a cyclic test, or a frost accumulation test. The following sections described these differences. For all steady-state tests (*i.e.*, the A, A_2, A_1, B, B_2, B_1, C, C_1, EV, F_1, G_1, $H0_1$, H_1, $H1_2$, $H1_1$, HI_N, H_3, $H3_2$, and $H3_1$ Tests), in addition, use one of the acceptable secondary methods specified in section 2.10 of this appendix to determine indoor space conditioning capacity. Calculate this secondary check of capacity according to section 3.11 of this appendix. The two capacity measurements must agree to within 6 percent to constitute a valid test. For this capacity comparison, use the indoor air enthalpy method capacity that is calculated in section 7.3 of ANSI/ASHRAE 37–2009 (and, if testing a coil-only system, compare capacities before before making the after-test fan heat adjustments described in section 3.3, 3.4, 3.7, and 3.10 of this appendix). However, include the appropriate section 3.3 to 3.5 and 3.7 to 3.10 fan heat adjustments within the indoor air enthalpy method capacities used for the section 4 seasonal calculations of this appendix.

3.1.2 Manufacturer-Provided Equipment Overrides

Where needed, the manufacturer must provide a means for overriding the controls of the test unit so that the compressor(s) operates at the specified speed or capacity and the indoor blower operates at the specified speed or delivers the specified air volume rate.

3.1.3 Airflow Through the Outdoor Coil

For all tests, meet the requirements given in section 6.1.3.4 of AHRI 210/240–2008 (incorporated by reference, see § 430.3) when obtaining the airflow through the outdoor coil.

3.1.3.1 Double-Ducted

For products intended to be installed with the outdoor airflow ducted, the unit shall be installed with outdoor coil ductwork installed per manufacturer installation instructions and shall operate between 0.10 and 0.15 in H_2O external static pressure. External static pressure measurements shall be made in accordance with ANSI/ASHRAE 37–2009 section 6.4 and 6.5.

3.1.4 Airflow Through the Indoor Coil

Airflow setting(s) shall be determined before testing begins. Unless otherwise specified within this or its subsections, no changes shall be made to the airflow setting(s) after initiation of testing.

3.1.4.1 Cooling Full-Load Air Volume Rate

3.1.4.1.1. Cooling Full-Load Air Volume Rate for Ducted Units

Identify the certified cooling full-load air volume rate and certified instructions for setting fan speed or controls. If there is no certified Cooling full-load air volume rate, use a value equal to the certified cooling capacity of the unit times 400 scfm per 12,000 Btu/h. If there are no instructions for setting fan speed or controls, use the as-shipped settings. Use the following procedure to confirm and, if necessary, adjust the Cooling full-load air volume rate and the fan speed or control settings to meet each test procedure requirement:

a. For all ducted blower coil systems, except those having a constant-air-volume-rate indoor blower:

Step (1) Operate the unit under conditions specified for the A (for single-stage units) or A_2 test using the certified fan speed or controls settings, and adjust the exhaust fan of the airflow measuring apparatus to achieve the certified Cooling full-load air volume rate;

Step (2) Measure the external static pressure;

Step (3) If this external static pressure is equal to or greater than the applicable minimum external static pressure cited in Table 3, the pressure requirement is satisfied; proceed to step 7 of this section. If this external static pressure is not equal to or greater than the applicable minimum external static pressure cited in Table 3, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either

(i) The applicable Table 3 minimum is equaled or

(ii) The measured air volume rate equals 90 percent or less of the Cooling full-load air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.*, next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning above, at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until the applicable Table 3 minimum is equaled; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the Cooling full-load air volume rate. Use the final fan speed or control settings for all tests that use the Cooling full-load air volume rate.

b. For ducted blower coil systems with a constant-air-volume-rate indoor blower. For all tests that specify the Cooling full-load air volume rate, obtain an external static pressure as close to (but not less than) the applicable Table 3 value that does not cause automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined as follows, greater than 10 percent.

$$Q_{Var} = \left[\frac{Q_{max} - Q_{min}}{\left(\frac{Q_{max} + Q_{min}}{2}\right)}\right] * 100$$

where:

Q_{max} = maximum measured airflow value

Q_{min} = minimum measured airflow value

Q_{Var} = airflow variance, percent

Additional test steps as described in section 3.3.(e) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. For coil-only indoor units. For the A or A_2 Test, (exclusively), the pressure drop across the indoor coil assembly must not exceed 0.30 inches of water. If this pressure drop is exceeded, reduce the air volume rate until the measured pressure drop equals the specified maximum. Use this reduced air volume rate for all tests that require the Cooling full-load air volume rate.

TABLE 3—MINIMUM EXTERNAL STATIC PRESSURE FOR DUCTED BLOWER COIL SYSTEMS

Rated cooling [1] or heating [2] capacity (Btu/h)	Minimum external resistance [3] (inches of water)	
	Small-duct, high-velocity systems [4] [5]	All other systems
Up Thru 28,800	1.10	0.10
29,000 to 42,500	1.15	0.15
43,000 and Above	1.20	0.20

[1] For air conditioners and air-conditioning heat pumps, the value certified by the manufacturer for the unit's cooling capacity when operated at the *A* or A_2 Test conditions.

[2] For heating-only heat pumps, the value certified by the manufacturer for the unit's heating capacity when operated at the *H1* or $H1_2$ Test conditions.

[3] For ducted units tested without an air filter installed, increase the applicable tabular value by 0.08 inches of water.

[4] See section 1.2 of this appendix, Definitions, to determine if the equipment qualifies as a small-duct, high-velocity system.

[5] If a closed-loop, air-enthalpy test apparatus is used on the indoor side, limit the resistance to airflow on the inlet side of the blower coil indoor unit to a maximum value of 0.1 inch of water. Impose the balance of the airflow resistance on the outlet side of the indoor blower.

d. For ducted systems having multiple indoor blowers within a single indoor section, obtain the full-load air volume rate with all indoor blowers operating unless prevented by the controls of the unit. In such cases, turn on the maximum number of indoor blowers permitted by the unit's controls. Where more than one option exists for meeting this "on" indoor blower requirement, which indoor blower(s) are turned on must match that specified in the certification report. Conduct section 3.1.4.1.1 setup steps for each indoor blower separately. If two or more indoor blowers are connected to a common duct as per section 2.4.1 of this appendix, temporarily divert their air volume to the test room when confirming or adjusting the setup configuration of individual indoor blowers. The allocation of the system's full-load air volume rate assigned to each "on" indoor blower must match that specified by the manufacturer in the certification report.

3.1.4.1.2. Cooling Full-Load Air Volume Rate for Non-ducted Units

For non-ducted units, the Cooling full-load air volume rate is the air volume rate that results during each test when the unit is operated at an external static pressure of zero inches of water.

3.1.4.2 Cooling Minimum Air Volume Rate

Identify the certified cooling minimum air volume rate and certified instructions for setting fan speed or controls. If there is no certified cooling minimum air volume rate, use the final indoor blower control settings as determined when setting the cooling full-load air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling full load air volume obtained in section 3.1.4.1 of this appendix. Otherwise, calculate the target external static pressure and follow instructions a, b, c, d, or e below. The target external static pressure, ΔP_{st_i}, for any test "i" with a specified air volume rate not equal to the Cooling full-load air volume rate is determined as follows:

$$\Delta P_{st_i} = \Delta P_{st_full}\left[\frac{Q_i}{Q_{full}}\right]^2$$

where:

ΔP_{st_i} = target minimum external static pressure for test i;

ΔP_{st_full} = minimum external static pressure for test A or A_2 (Table 3);

Q_i = air volume rate for test i; and

Q_{full} = Cooling full-load air volume rate as measured after setting and/or adjustment as described in section 3.1.4.1.1 of this appendix.

a. For a ducted blower coil system without a constant-air-volume indoor blower, adjust for external static pressure as follows:

Step (1) Operate the unit under conditions specified for the B1 test using the certified fan speed or controls settings, and adjust the exhaust fan of the airflow measuring apparatus to achieve the certified cooling minimum air volume rate;

Step (2) Measure the external static pressure;

Step (3) If this pressure is equal to or greater than the minimum external static pressure computed above, the pressure requirement is satisfied; proceed to step 7 of this section. If this pressure is not equal to or greater than the minimum external static pressure computed above, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either

(i) The pressure is equal to the minimum external static pressure computed above or

(ii) The measured air volume rate equals 90 percent or less of the cooling minimum air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.*, next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning above, at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until it equals the minimum external static pressure computed above; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the cooling minimum air volume rate. Use the final fan speed or control settings for all tests that use the cooling minimum air volume rate.

b. For ducted units with constant-air-volume indoor blowers, conduct all tests that specify the cooling minimum air volume rate—(*i.e.*, the A_1, B_1, C_1, F_1, and G_1 Tests)—at an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.3(e) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. For ducted two-capacity coil-only systems, the cooling minimum air volume rate is the higher of (1) the rate specified by the installation instructions included with the unit by the manufacturer or (2) 75 percent of the cooling full-load air volume rate. During the laboratory tests on a coil-only (fanless) system, obtain this cooling minimum air volume rate regardless of the pressure drop across the indoor coil assembly.

d. For non-ducted units, the cooling minimum air volume rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water and at the indoor blower setting used at low compressor capacity (two-capacity system) or minimum compressor speed (variable-speed system). For units having a single-speed compressor and a variable-speed variable-air-volume-rate indoor blower, use the lowest fan setting allowed for cooling.

e. For ducted systems having multiple indoor blowers within a single indoor section, operate the indoor blowers such that the lowest air volume rate allowed by the unit's controls is obtained when operating the lone single-speed compressor or when operating at low compressor capacity while meeting the requirements of section 2.2.3.b of this appendix for the minimum number of blowers that must be turned off. Using the target external static pressure and the certified air volume rates, follow the procedures described in section 3.1.4.2.a of this appendix if the indoor blowers are not constant-air-volume indoor blowers or as described in section 3.1.4.2.b of this appendix if the indoor blowers are constant-air-volume indoor blowers. The sum of the individual "on" indoor blowers' air volume rates is the cooling minimum air volume rate for the system.

3.1.4.3 Cooling Intermediate Air Volume Rate

Identify the certified cooling intermediate air volume rate and certified instructions for setting fan speed or controls. If there is no certified cooling intermediate air volume rate, use the final indoor blower control settings as determined when setting the cooling full load air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling full load air volume obtained in section 3.1.4.1 of this appendix. Otherwise, calculate target minimum external static pressure as described in section 3.1.4.2 of this appendix, and set the air volume rate as follows.

a. For a ducted blower coil system without a constant-air-volume indoor blower, adjust for external static pressure as described in section 3.1.4.2.a of this appendix for cooling minimum air volume rate.

b. For a ducted blower coil system with a constant-air-volume indoor blower, conduct the E_V Test at an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.3(e) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. For non-ducted units, the cooling intermediate air volume rate is the air volume rate that results when the unit operates at an external static pressure of zero inches of water and at the fan speed selected by the controls of the unit for the E_V Test conditions.

3.1.4.4 Heating Full-Load Air Volume Rate

3.1.4.4.1 Ducted Heat Pumps Where the Heating and Cooling Full-Load Air Volume Rates Are the Same

a. Use the Cooling full-load air volume rate as the heating full-load air volume rate for:

(1) Ducted blower coil system heat pumps that do not have a constant-air-volume indoor blower, and that operate at the same airflow-control setting during both the A (or A_2) and the H1 (or $H1_2$) Tests;

(2) Ducted blower coil system heat pumps with constant-air-flow indoor blowers that provide the same air flow for the A (or A_2) and the H1 (or $H1_2$) Tests; and

(3) Ducted heat pumps that are tested with a coil-only indoor unit (except two-capacity northern heat pumps that are tested only at low capacity cooling—see section 3.1.4.4.2 of this appendix).

b. For heat pumps that meet the above criteria "1" and "3," no minimum requirements apply to the measured external or internal, respectively, static pressure. Use the final indoor blower control settings as determined when setting the Cooling full-load air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling full-load air volume obtained in section 3.1.4.1 of this appendix. For heat pumps that meet the above criterion "2," test at an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than, the same Table 3 minimum external static pressure as was specified for the A (or A_2) cooling mode test. Additional test steps as described in section 3.9.1(c) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

3.1.4.4.2 Ducted Heat Pumps Where the Heating and Cooling Full-Load Air Volume Rates Are Different Due to Changes in Indoor Blower Operation, *i.e.* Speed Adjustment by the System Controls

Identify the certified heating full-load air volume rate and certified instructions for setting fan speed or controls. If there is no certified heating full-load air volume rate, use the final indoor blower control settings as

determined when setting the cooling full-load air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling full load air volume obtained in section 3.1.4.1 of this appendix. Otherwise, calculate target minimum external static pressure as described in section 3.1.4.2 of this appendix and set the air volume rate as follows.

a. For ducted blower coil system heat pumps that do not have a constant-air-volume indoor blower, adjust for external static pressure as described in section 3.1.4.2.a of this appendix for cooling minimum air volume rate.

b. For ducted heat pumps tested with constant-air-volume indoor blowers installed, conduct all tests that specify the heating full-load air volume rate at an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.9.1(c) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. When testing ducted, two-capacity blower coil system northern heat pumps (see section 1.2 of this appendix, Definitions), use the appropriate approach of the above two cases. For coil-only system northern heat pumps, the heating full-load air volume rate is the lesser of the rate specified by the manufacturer in the installation instructions included with the unit or 133 percent of the cooling full-load air volume rate. For this latter case, obtain the heating full-load air volume rate regardless of the pressure drop across the indoor coil assembly.

d. For ducted systems having multiple indoor blowers within a single indoor section, obtain the heating full-load air volume rate using the same "on" indoor blowers as used for the Cooling full-load air volume rate. Using the target external static pressure and the certified air volume rates, follow the procedures as described in section 3.1.4.4.2.a of this appendix if the indoor blowers are not constant-air-volume indoor blowers or as described in section 3.1.4.4.2.b of this appendix if the indoor blowers are constant-air-volume indoor blowers. The sum of the individual "on" indoor blowers' air volume rates is the heating full load air volume rate for the system.

3.1.4.4.3 Ducted Heating-Only Heat Pumps

Identify the certified heating full-load air volume rate and certified instructions for setting fan speed or controls. If there is no certified heating full-load air volume rate, use a value equal to the certified heating capacity of the unit times 400 scfm per 12,000 Btu/h. If there are no instructions for setting fan speed or controls, use the as-shipped settings.

a. For all ducted heating-only blower coil system heat pumps, except those having a constant-air-volume-rate indoor blower. Conduct the following steps only during the first test, the H1 or $H1_2$ est:

Step (1) Adjust the exhaust fan of the airflow measuring apparatus to achieve the certified heating full-load air volume rate.

Step (2) Measure the external static pressure.

Step (3) If this pressure is equal to or greater than the Table 3 minimum external static pressure that applies given the heating-only heat pump's rated heating capacity, the pressure requirement is satisfied; proceed to step 7 of this section. If this pressure is not equal to or greater than the applicable Table 3 minimum external static pressure, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either (i) the pressure is equal to the applicable Table 3 minimum external static pressure or (ii) the measured air volume rate equals 90 percent or less of the heating full-load air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.*, next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning above, at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until it equals the applicable Table 3 minimum external static pressure; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the heating full-load air volume rate. Use the final fan speed or control settings for all tests that use the heating full-load air volume rate.

b. For ducted heating-only blower coil system heat pumps having a constant-air-volume-rate indoor blower. For all tests that specify the heating full-load air volume rate, obtain an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than, the applicable Table 3 minimum. Additional test steps as described in section 3.9.1(c) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. For ducted heating-only coil-only system heat pumps in the H1 or $H1_2$ Test, (exclusively), the pressure drop across the indoor coil assembly must not exceed 0.30 inches of water. If this pressure drop is exceeded, reduce the air volume rate until the measured pressure drop equals the specified maximum. Use this reduced air volume rate for all tests that require the heating full-load air volume rate.

3.1.4.4.4 Non-Ducted Heat Pumps, Including Non-Ducted Heating-Only Heat Pumps

For non-ducted heat pumps, the heating full-load air volume rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water.

3.1.4.5 Heating Minimum Air Volume Rate

3.1.4.5.1. Ducted Heat Pumps Where the Heating and Cooling Minimum Air Volume Rates Are the Same

a. Use the cooling minimum air volume rate as the heating minimum air volume rate for:

(1) Ducted blower coil system heat pumps that do not have a constant-air-volume indoor blower, and that operates at the same airflow-control setting during both the A_1 and the $H1_1$ tests;

(2) Ducted blower coil system heat pumps with constant-air-flow indoor blowers installed that provide the same air flow for the A_1 and the $H1_1$ Tests; and

(3) Ducted coil-only system heat pumps.

b. For heat pumps that meet the above criteria "1" and "3," no minimum requirements apply to the measured external or internal, respectively, static pressure. Use the final indoor blower control settings as determined when setting the cooling minimum air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling minimum air volume rate obtained in section 3.1.4.2 of this appendix. For heat pumps that meet the above criterion "2," test at an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than, the same target minimum external static pressure as was specified for the A_1 cooling mode test. Additional test steps as described in section 3.9.1(c) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

3.1.4.5.2. Ducted Heat Pumps Where the Heating and Cooling Minimum Air Volume Rates Are Different Due to Changes in Indoor Blower Operation, *i.e.*, Speed Adjustment by the System Controls

Identify the certified heating minimum air volume rate and certified instructions for setting fan speed or controls. If there is no certified heating minimum air volume rate, use the final indoor blower control settings as determined when setting the cooling minimum air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling minimum air volume obtained in section 3.1.4.2 of this appendix. Otherwise, calculate the target minimum external static pressure as described in section 3.1.4.2 of this appendix.

a. For ducted blower coil system heat pumps that do not have a constant-air-volume indoor blower, adjust for external static pressure as described in section 3.1.4.2.a of this appendix for cooling minimum air volume rate.

b. For ducted heat pumps tested with constant-air-volume indoor blowers installed, conduct all tests that specify the heating minimum air volume rate—(*i.e.*, the $H0_1$, $H1_1$, $H2_1$, and $H3_1$ Tests)—at an external static pressure that does not cause an automatic shutdown of the indoor blower while being as close to, but not less than the air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.9.1.c of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. For ducted two-capacity blower coil system northern heat pumps, use the appropriate approach of the above two cases.

d. For ducted two-capacity coil-only system heat pumps, use the cooling minimum air volume rate as the heating minimum air volume rate. For ducted two-capacity coil-only system northern heat pumps, use the cooling full-load air volume rate as the heating minimum air volume rate. For ducted two-capacity heating-only coil-only system heat pumps, the heating minimum air volume rate is the higher of the rate specified by the manufacturer in the test setup instructions included with the unit or 75 percent of the heating full-load air volume rate. During the laboratory tests on a coil-only system, obtain the heating minimum air volume rate without regard to the pressure drop across the indoor coil assembly.

e. For non-ducted heat pumps, the heating minimum air volume rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water and at the indoor blower setting used at low compressor capacity (two-capacity system) or minimum compressor speed (variable-speed system). For units having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor blower, use the lowest fan setting allowed for heating.

f. For ducted systems with multiple indoor blowers within a single indoor section, obtain the heating minimum air volume rate using the same "on" indoor blowers as used for the cooling minimum air volume rate. Using the target external static pressure and the certified air volume rates, follow the procedures as described in section 3.1.4.5.2.a of this appendix if the indoor blowers are not constant-air-volume indoor blowers or as described in section 3.1.4.5.2.b of this appendix if the indoor blowers are constant-air-volume indoor blowers. The sum of the individual "on" indoor blowers' air volume rates is the heating full-load air volume rate for the system.

3.1.4.6 Heating Intermediate Air Volume Rate

Identify the certified heating intermediate air volume rate and certified instructions for setting fan speed or controls. If there is no certified heating intermediate air volume rate, use the final indoor blower control settings as determined when setting the heating full-load air volume rate, and readjust the exhaust fan of the airflow measuring apparatus if necessary to reset to the cooling full load air volume obtained in section 3.1.4.2 of this appendix. Calculate the target minimum external static pressure as described in section 3.1.4.2 of this appendix.

a. For ducted blower coil system heat pumps that do not have a constant-air-volume indoor blower, adjust for external static pressure as described in section 3.1.4.2.a of this appendix for cooling minimum air volume rate.

b. For ducted heat pumps tested with constant-air-volume indoor blowers installed, conduct the $H2_V$ Test at an external static pressure that does not cause an automatic shutdown of the indoor blower or air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.9.1(c) of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

c. For non-ducted heat pumps, the heating intermediate air volume rate is the air volume rate that results when the heat pump operates at an external static pressure of zero inches of water and at the fan speed selected by the controls of the unit for the $H2_V$ Test conditions.

3.1.4.7 Heating Nominal Air Volume Rate

The manufacturer must specify the heating nominal air volume rate and the instructions for setting fan speed or controls. Calculate target minimum external static pressure as described in section 3.1.4.2 of this appendix. Make adjustments as described in section 3.1.4.6 of this appendix for heating intermediate air volume rate so that the target minimum external static pressure is met or exceeded.

3.1.5 Indoor Test Room Requirement When the Air Surrounding the Indoor Unit Is Not Supplied From the Same Source as the Air Entering the Indoor Unit

If using a test set-up where air is ducted directly from the air reconditioning apparatus to the indoor coil inlet (see Figure 2, Loop Air-Enthalpy Test Method Arrangement, of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3)), maintain the dry bulb temperature within the test room within ±5.0 °F of the applicable sections 3.2 and 3.6 dry bulb temperature test condition for the air entering the indoor unit. Dew point shall be within 2 °F of the required inlet conditions.

3.1.6 Air Volume Rate Calculations

For all steady-state tests and for frost accumulation (H2, $H2_1$, $H2_2$, $H2_V$) tests,

calculate the air volume rate through the indoor coil as specified in sections 7.7.2.1 and 7.7.2.2 of ANSI/ASHRAE 37–2009. When using the outdoor air enthalpy method, follow sections 7.7.2.1 and 7.7.2.2 of ANSI/ASHRAE 37–2009 to calculate the air volume rate through the outdoor coil. To express air volume rates in terms of standard air, use:

Equation 3-1

$$\overline{V_s} = \frac{\overline{V_{mx}}}{0.075\frac{lbm_{da}}{ft^3}*v'_n*[1+W_n]} = \frac{\overline{V_{mx}}}{0.075\frac{lbm_{da}}{ft^3}*v_n}$$

Where:

$\overline{V_s}$ = air volume rate of standard (dry) air, $(ft^3/min)_{da}$

$\overline{V_{mx}}$ = air volume rate of the air-water vapor mixture, $(ft^3/min)_{mx}$

v'_n = specific volume of air-water vapor mixture at the nozzle, ft^3 per lbm of the air-water vapor mixture

W_n = humidity ratio at the nozzle, lbm of water vapor per lbm of dry air

0.075 = the density associated with standard (dry) air, (lbm/ft^3)

v_n = specific volume of the dry air portion of the mixture evaluated at the dry-bulb temperature, vapor content, and barometric pressure existing at the nozzle, ft^3 per lbm of dry air.

NOTE: In the first printing of ANSI/ASHRAE 37–2009, the second IP equation for Q_{mi} should read, $Q_{mi} = 1097CA_n\sqrt{P_V v'_n}$

3.1.7 Test Sequence

Manufacturers may optionally operate the equipment under test for a "break-in" period, not to exceed 20 hours, prior to conducting the test method specified in this section. A manufacturer who elects to use this optional compressor break-in period in its certification testing should record this information (including the duration) in the test data underlying the certified ratings that are required to be maintained under 10 CFR 429.71. When testing a ducted unit (except if a heating-only heat pump), conduct the A or A_2 Test first to establish the cooling full-load air volume rate. For ducted heat pumps where the heating and cooling full-load air volume rates are different, make the first heating mode test one that requires the heating full-load air volume rate. For ducted heating-only heat pumps, conduct the H1 or $H1_2$ Test first to establish the heating full-load air volume rate. When conducting a cyclic test, always conduct it immediately after the steady-state test that requires the same test conditions. For variable-speed systems, the first test using the cooling minimum air volume rate should precede the E_V Test, and the first test using the heating minimum air volume rate must precede the $H2_V$ Test. The test laboratory makes all other decisions on the test sequence.

3.1.8 Requirement for the Air Temperature Distribution Leaving the Indoor Coil

For at least the first cooling mode test and the first heating mode test, monitor the temperature distribution of the air leaving the indoor coil using the grid of individual sensors described in sections 2.5 and 2.5.4 of this appendix. For the 30-minute data collection interval used to determine capacity, the maximum spread among the outlet dry bulb temperatures from any data sampling must not exceed 1.5 °F. Install the mixing devices described in section 2.5.4.2 of this appendix to minimize the temperature spread.

3.1.9 Requirement for the Air Temperature Distribution Entering the Outdoor Coil

Monitor the temperatures of the air entering the outdoor coil using the grid of temperature sensors described in section 2.11 of this appendix. For the 30-minute data collection interval used to determine capacity, the maximum difference between dry bulb temperatures measured at any of these locations must not exceed 1.5 °F.

3.1.10 Control of Auxiliary Resistive Heating Elements

Except as noted, disable heat pump resistance elements used for heating indoor air at all times, including during defrost cycles and if they are normally regulated by a heat comfort controller. For heat pumps equipped with a heat comfort controller, enable the heat pump resistance elements only during the below-described, short test. For single-speed heat pumps covered under section 3.6.1 of this appendix, the short test follows the H1 or, if conducted, the H1C Test. For two-capacity heat pumps and heat pumps covered under section 3.6.2 of this appendix, the short test follows the $H1_2$ Test. Set the heat comfort controller to provide the maximum supply air temperature. With the heat pump operating and while maintaining the heating full-load air volume rate, measure the temperature of the air leaving the indoor-side beginning 5 minutes after activating the heat comfort controller. Sample the outlet dry-bulb temperature at regular intervals that span 5 minutes or less. Collect data for 10 minutes, obtaining at least 3 samples. Calculate the average outlet temperature over the 10-minute interval, T_{CC}.

3.2 Cooling Mode Tests for Different Types of Air Conditioners and Heat Pumps

3.2.1 Tests for a System Having a Single-Speed Compressor and Fixed Cooling Air Volume Rate

This set of tests is for single-speed-compressor units that do not have a cooling minimum air volume rate or a cooling intermediate air volume rate that is different than the cooling full load air volume rate. Conduct two steady-state wet coil tests, the A and B Tests. Use the two optional dry-coil tests, the steady-state C Test and the cyclic D Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. A default value for C_D^c may be used in lieu of conducting the cyclic test. The default value of C_D^c is 0.20. If testing outdoor units of central air conditioners or heat pumps that are not sold with indoor units, assign C_D^c the default value of 0.25. Table 4 specifies test conditions for these four tests.

TABLE 4—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED COOLING AIR VOLUME RATE

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling full-load.[2]
B Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling full-load.[2]
C Test—optional (steady, dry coil)	80	([3])	82		Cooling full-load.[2]
D Test—optional (cyclic, dry coil)	80	([3])	82		([4])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1 of this appendix.
[3] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57 °F or less be used.)
[4] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C Test.

3.2.2 Tests for a Unit Having a Single-Speed Compressor Where the Indoor Section Uses a Single Variable-Speed Variable-Air-Volume Rate Indoor Blower or mUltiple Indoor Blowers

3.2.2.1 Indoor Blower Capacity Modulation That Correlates With the Outdoor Dry Bulb Temperature or Systems With a Single Indoor cOil but Multiple Indoor Blowers

Conduct four steady-state wet coil tests: The A_2, A_1, B_2, and B_1 tests. Use the two optional dry-coil tests, the steady-state C_1 test and the cyclic D_1 test, to determine the cooling mode cyclic degradation coefficient, C_D^c. A default value for C_D^c may be used in lieu of conducting the cyclic test. The default value of C_D^c is 0.20.

3.2.2.2 Indoor Blower Capacity Modulation Based on Adjusting the Sensible to Total (S/T) Cooling Capacity Ratio

The testing requirements are the same as specified in section 3.2.1 of this appendix and Table 4. Use a cooling full-load air volume rate that represents a normal installation. If performed, conduct the steady-state C Test and the cyclic D Test with the unit operating in the same S/T capacity control mode as used for the B Test.

TABLE 5—COOLING MODE TEST CONDITIONS FOR UNITS WITH A SINGLE-SPEED COMPRESSOR THAT MEET THE SECTION 3.2.2.1 INDOOR UNIT REQUIREMENTS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A_2 Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling full-load.[2]
A_1 Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling minimum.[3]
B_2 Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling full-load.[2]
B_1 Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling minimum.[3]
C_1 Test[4]—optional (steady, dry coil)	80	([4])	82		Cooling minimum.[3]
D_1 Test[4]—optional (cyclic, dry coil)	80	([4])	82		([5])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1 of this appendix.
[3] Defined in section 3.1.4.2 of this appendix.
[4] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. (It is recommended that an indoor wet-bulb temperature of 57 °F or less be used.)
[5] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C_1 Test.

3.2.3 Tests for a Unit Having a Two-Capacity Compressor (See Section 1.2 of This Appendix, Definitions)

a. Conduct four steady-state wet coil tests: the A_2, B_2, B_1, and F_1 Tests. Use the two optional dry-coil tests, the steady-state C_1 Test and the cyclic D_1 Test, to determine the cooling-mode cyclic-degradation coefficient, C_D^c. A default value for C_D^c may be used in lieu of conducting the cyclic test. The default value of C_D^c is 0.20. Table 6 specifies test conditions for these six tests.

b. For units having a variable speed indoor blower that is modulated to adjust the sensible to total (S/T) cooling capacity ratio, use cooling full-load and cooling minimum air volume rates that represent a normal installation. Additionally, if conducting the dry-coil tests, operate the unit in the same S/T capacity control mode as used for the B_1 Test.

c. Test two-capacity, northern heat pumps (see section 1.2 of this appendix, Definitions) in the same way as a single speed heat pump with the unit operating exclusively at low compressor capacity (see section 3.2.1 of this appendix and Table 4).

d. If a two-capacity air conditioner or heat pump locks out low-capacity operation at higher outdoor temperatures, then use the two dry-coil tests, the steady-state C_2 Test and the cyclic D_2 Test, to determine the cooling-mode cyclic-degradation coefficient that only applies to on/off cycling from high capacity, $C_D^c(k = 2)$. The default $C_D^c(k = 2)$ is the same value as determined or assigned for the low-capacity cyclic-degradation coefficient, C_D^c [or equivalently, $C_D^c(k = 1)$].

TABLE 6—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil).	80	67	95	[1] 75	High	Cooling Full-Load.[2]
B_2 Test—required (steady, wet coil).	80	67	82	[1] 65	High	Cooling Full-Load.[2]
B_1 Test—required (steady, wet coil).	80	67	82	[1] 65	Low	Cooling Minimum.[3]
C_2 Test—optional (steady, dry-coil).	80	([4])	82		High	Cooling Full-Load.[2]
D_2 Test—optional (cyclic, dry-coil).	80	([4])	82		High	([5])
C_1 Test—optional (steady, dry-coil).	80	([4])	82		Low	Cooling Minimum.[3]
D_1 Test—optional (cyclic, dry-coil).	80	([4])	82		Low	([6])
F_1 Test—required (steady, wet coil).	80	67	67	[1] 53.5	Low	Cooling Minimum.[3]

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1 of this appendix.
[3] Defined in section 3.1.4.2 of this appendix.
[4] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet-bulb temperature of 57 °F or less.
[5] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the C_2 Test.
[6] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the C_1 Test.

3.2.4 Tests for a Unit Having a Variable-Speed Compressor

a. Conduct five steady-state wet coil tests: The A_2, E_V, B_2, B_1, and F_1 Tests. Use the two optional dry-coil tests, the steady-state G_1 Test and the cyclic I_1 Test, to determine the cooling mode cyclic degradation coefficient, $C_D{}^c$. A default value for $C_D{}^c$ may be used in lieu of conducting the cyclic test. The default value of $C_D{}^c$ is 0.25. Table 7 specifies test conditions for these seven tests. The compressor shall operate at the same cooling full speed, measured by RPM or power input frequency (Hz), for both the A_2 and B_2 tests. The compressor shall operate at the same cooling minimum speed, measured by RPM or power input frequency (Hz), for the B_1, F_1, G_1, and I_1 tests. Determine the cooling intermediate compressor speed cited in Table 7 using:

$$\text{Cooling intermediate speed} = \text{Cooling minimum speed} + \frac{\text{Cooling full speed} - \text{Cooling minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

b. For units that modulate the indoor blower speed to adjust the sensible to total (S/T) cooling capacity ratio, use cooling full-load, cooling intermediate, and cooling minimum air volume rates that represent a normal installation. Additionally, if conducting the dry-coil tests, operate the unit in the same S/T capacity control mode as used for the F_1 Test.

c. For multiple-split air conditioners and heat pumps (except where noted), the following procedures supersede the above requirements: For all Table 7 tests specified for a minimum compressor speed, at least one indoor unit must be turned off. The manufacturer shall designate the particular indoor unit(s) that is turned off. The manufacturer must also specify the compressor speed used for the Table 7 E_V Test, a cooling-mode intermediate compressor speed that falls within ¼ and ¾ of the difference between the full and minimum cooling-mode speeds. The manufacturer should prescribe an intermediate speed that is expected to yield the highest EER for the given E_V Test conditions and bracketed compressor speed range. The manufacturer can designate that one or more indoor units are turned off for the E_V Test.

TABLE 7—COOLING MODE TEST CONDITION FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil).	80	67	95	[1] 75	Cooling Full	Cooling Full-Load.[2]
B_2 Test—required (steady, wet coil).	80	67	82	[1] 65	Cooling Full	Cooling Full-Load.[2]
E_V Test—required (steady, wet coil).	80	67	87	[1] 69	Cooling Intermediate	Cooling Intermediate.[3]
B_1 Test—required (steady, wet coil).	80	67	82	[1] 65	Cooling Minimum	Cooling Minimum.[4]
F_1 Test—required (steady, wet coil).	80	67	67	[1] 53.5	Cooling Minimum	Cooling Minimum.[4]
G_1 Test[5]—optional (steady, dry-coil).	80	([6])	67		Cooling Minimum	Cooling Minimum.[4]
I_1 Test[5]—optional (cyclic, dry-coil).	80	([6])	67		Cooling Minimum	([6])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1 of this appendix.
[3] Defined in section 3.1.4.3 of this appendix.
[4] Defined in section 3.1.4.2 of this appendix.
[5] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet bulb temperature of 57 °F or less.
[6] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the G_1 Test.

3.2.5 Cooling Mode Tests for Northern Heat Pumps With Triple-Capacity Compressors

Test triple-capacity, northern heat pumps for the cooling mode in the same way as specified in section 3.2.3 of this appendix for units having a two-capacity compressor.

3.2.6 Tests for an Air Conditioner or Heat Pump Having a Single Indoor Unit Having Multiple Indoor Blowers and Offering Two Stages of Compressor Modulation

Conduct the cooling mode tests specified in section 3.2.3 of this appendix.

3.3 Test Procedures for Steady-State Wet Coil Cooling Mode Tests (the A, A_2, A_1, B, B_2, B_1, E_V, and F_1 Tests)

a. For the pretest interval, operate the test room reconditioning apparatus and the unit to be tested until maintaining equilibrium conditions for at least 30 minutes at the specified section 3.2 test conditions. Use the exhaust fan of the airflow measuring apparatus and, if installed, the indoor blower of the test unit to obtain and then maintain the indoor air volume rate and/or external static pressure specified for the particular test. Continuously record (see section 1.2 of this appendix, Definitions):

(1) The dry-bulb temperature of the air entering the indoor coil,

(2) The water vapor content of the air entering the indoor coil,

(3) The dry-bulb temperature of the air entering the outdoor coil, and

(4) For the section 2.2.4 of this appendix cases where its control is required, the water vapor content of the air entering the outdoor coil.

Refer to section 3.11 of this appendix for additional requirements that depend on the selected secondary test method.

b. After satisfying the pretest equilibrium requirements, make the measurements specified in Table 3 of ANSI/ASHRAE 37–2009 for the indoor air enthalpy method and the user-selected secondary method. Make said Table 3 measurements at equal intervals that span 5 minutes or less. Continue data sampling until reaching a 30-minute period (*e.g.*, seven consecutive 5-minute samples) where the test tolerances specified in Table 8 are satisfied. For those continuously recorded parameters, use the entire data set from the 30-minute interval to evaluate Table 8 compliance. Determine the average electrical power consumption of the air conditioner or heat pump over the same 30-minute interval.

c. Calculate indoor-side total cooling capacity and sensible cooling capacity as specified in sections 7.3.3.1 and 7.3.3.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). To calculate capacity, use the averages of the measurements (*e.g.* inlet and outlet dry bulb and wet bulb temperatures measured at the psychrometers) that are continuously recorded for the same 30-minute interval used as described above to evaluate compliance with test tolerances. Do not adjust the parameters used in calculating capacity for the permitted variations in test conditions. Evaluate air enthalpies based on the measured barometric pressure. Use the values of the specific heat of air given in section 7.3.3.1 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) for calculation of the sensible cooling capacities. Assign the average total space cooling capacity, average sensible cooling capacity, and electrical power consumption over the 30-minute data collection interval to the variables $\dot{Q}_c{}^k(T)$, $\dot{Q}_{sc}{}^k(T)$ and $\dot{E}_c{}^k(T)$, respectively. For these three variables, replace the "T" with the nominal outdoor temperature at which the test was conducted. The superscript k is used only when testing multi-capacity units. Use the superscript k = 2 to denote a test with the unit operating at high capacity or full speed, k = 1 to denote low capacity or minimum speed, and k = v to denote the intermediate speed.

d. For coil-only system tests, decrease $\dot{Q}_c{}^k(T)$ by

$$\frac{1250\ Btu/h}{1000\ scfm} * \overline{V}_s$$

and increase $\dot{E}_c^k(T)$ by,

$$\frac{365\ W}{1000\ scfm} * \overline{V}_s$$

where $\overline{V}_s$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

TABLE 8—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.3 STEADY-STATE WET COIL COOLING MODE TESTS AND SECTION 3.4 DRY COIL COOLING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	[2] 0.3
Leaving temperature	[2] 1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[3] 2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	[4] 0.3
Leaving temperature	[3] 1.0	
External resistance to airflow, inches of water	0.12	[5] 0.02
Electrical voltage, % of rdg	2.0	1.5
Nozzle pressure drop, % of rdg	8.0	

[1] See section 1.2 of this appendix, Definitions.
[2] Only applies during wet coil tests; does not apply during steady-state, dry coil cooling mode tests.
[3] Only applies when using the outdoor air enthalpy method.
[4] Only applies during wet coil cooling mode tests where the unit rejects condensate to the outdoor coil.
[5] Only applies when testing non-ducted units.

e. For air conditioners and heat pumps having a constant-air-volume-rate indoor blower, the five additional steps listed below are required if the average of the measured external static pressures exceeds the applicable sections 3.1.4 minimum (or target) external static pressure (ΔP_{min}) by 0.03 inches of water or more.

(1) Measure the average power consumption of the indoor blower motor ($\dot{E}_{fan,1}$) and record the corresponding external static pressure (ΔP_1) during or immediately following the 30-minute interval used for determining capacity.

(2) After completing the 30-minute interval and while maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

(3) After re-establishing steady readings of the fan motor power and external static pressure, determine average values for the indoor blower power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

(4) Approximate the average power consumption of the indoor blower motor at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,\min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}(\Delta P_{\min} - \Delta P_1) + \dot{E}_{fan,1}$$

(5) Increase the total space cooling capacity, $Q_c^k(T)$, by the quantity ($\dot{E}_{fan,1} - \dot{E}_{fan,min}$), when expressed on a Btu/h basis. Decrease the total electrical power, $\dot{E}_c^k(T)$, by the same fan power difference, now expressed in watts.

3.4 Test Procedures for the Steady-State Dry-Coil Cooling-Mode Tests (the C, C_1, C_2, and G_1 Tests)

a. Except for the modifications noted in this section, conduct the steady-state dry coil cooling mode tests as specified in section 3.3 of this appendix for wet coil tests. Prior to recording data during the steady-state dry coil test, operate the unit at least one hour after achieving dry coil conditions. Drain the drain pan and plug the drain opening. Thereafter, the drain pan should remain completely dry.

b. Denote the resulting total space cooling capacity and electrical power derived from the test as $\dot{Q}_{ss,dry}$ and $\dot{E}_{ss,dry}$. With regard to a section 3.3 deviation, do not adjust $\dot{Q}_{ss,dry}$ for duct losses (*i.e.*, do not apply section 7.3.3.3 of ANSI/ASHRAE 37–2009). In preparing for the section 3.5 cyclic tests of this appendix, record the average indoor-side air volume rate, $\dot{V}$, specific heat of the air, Cp,a (expressed on dry air basis), specific volume of the air at the nozzles, v'_n, humidity ratio at the nozzles, W_n, and either pressure difference or velocity pressure for the flow nozzles.

For units having a variable-speed indoor blower (that provides either a constant or variable air volume rate) that will or may be tested during the cyclic dry coil cooling mode test with the indoor blower turned off (see section 3.5 of this appendix), include the electrical power used by the indoor blower motor among the recorded parameters from the 30-minute test.

c. If the temperature sensors used to provide the primary measurement of the indoor-side dry bulb temperature difference during the steady-state dry-coil test and the subsequent cyclic dry-coil test are different, include measurements of the latter sensors among the regularly sampled data. Beginning at the start of the 30-minute data collection period, measure and compute the indoor-side air dry-bulb temperature difference using both sets of instrumentation, ΔT (Set SS) and ΔT (Set CYC), for each equally spaced data sample. If using a consistent data sampling rate that is less than 1 minute, calculate and record minutely averages for the two temperature differences. If using a consistent sampling rate of one minute or more, calculate and record the two temperature differences from each data sample. After having recorded the seventh (i = 7) set of temperature differences, calculate the following ratio using the first seven sets of values:

$$F_{CD} = \frac{1}{7}\sum_{i-6}^{i}\frac{\Delta T(Set\ SS)}{\Delta T(Set\ CYC)}$$

Each time a subsequent set of temperature differences is recorded (if sampling more frequently than every 5 minutes), calculate F_{CD} using the most recent seven sets of values. Continue these calculations until the 30-minute period is completed or until a value for F_{CD} is calculated that falls outside the allowable range of 0.94–1.06. If the latter occurs, immediately suspend the test and identify the cause for the disparity in the two temperature difference measurements. Recalibration of one or both sets of instrumentation may be required. If all the values for F_{CD} are within the allowable range, save the final value of the ratio from the 30-minute test as F_{CD}*. If the temperature sensors used to provide the primary measurement of the indoor-side dry bulb temperature difference during the steady-state dry-coil test and the subsequent cyclic dry-coil test are the same, set F_{CD}* = 1.

3.5 Test Procedures for the Cyclic Dry-Coil Cooling-Mode Tests (the D, D_1, D_2, and I_1 Tests)

After completing the steady-state dry-coil test, remove the outdoor air enthalpy method test apparatus, if connected, and begin manual OFF/ON cycling of the unit's compressor. The test set-up should otherwise be identical to the set-up used during the steady-state dry coil test. When testing heat pumps, leave the reversing valve during the compressor OFF cycles in the same position as used for the compressor ON cycles, unless automatically changed by the controls of the unit. For units having a variable-speed indoor blower, the manufacturer has the option of electing at the outset whether to conduct the cyclic test with the indoor blower enabled or disabled. Always revert to testing with the indoor blower disabled if cyclic testing with the fan enabled is unsuccessful.

a. For all cyclic tests, the measured capacity must be adjusted for the thermal mass stored in devices and connections located between measured points. Follow the procedure outlined in section 7.4.3.4.5 of ASHRAE 116–2010 (incorporated by reference, see § 430.3) to ensure any required measurements are taken.

b. For units having a single-speed or two-capacity compressor, cycle the compressor OFF for 24 minutes and then ON for 6 minutes ($\Delta\tau_{cyc,dry}$ = 0.5 hours). For units having a variable-speed compressor, cycle the compressor OFF for 48 minutes and then ON for 12 minutes ($\Delta\tau_{cyc,dry}$ = 1.0 hours). Repeat the OFF/ON compressor cycling pattern until the test is completed. Allow the controls of the unit to regulate cycling of the outdoor fan. If an upturned duct is used, measure the dry-bulb temperature at the inlet of the device at least once every minute and ensure that its test operating tolerance is within 1.0 °F for each compressor OFF period.

c. Sections 3.5.1 and 3.5.2 of this appendix specify airflow requirements through the indoor coil of ducted and non-ducted indoor units, respectively. In all cases, use the exhaust fan of the airflow measuring apparatus (covered under section 2.6 of this appendix) along with the indoor blower of the unit, if installed and operating, to approximate a step response in the indoor coil airflow. Regulate the exhaust fan to quickly obtain and then maintain the flow nozzle static pressure difference or velocity pressure at the same value as was measured during the steady-state dry coil test. The pressure difference or velocity pressure should be within 2 percent of the value from the steady-state dry coil test within 15 seconds after airflow initiation. For units having a variable-speed indoor blower that ramps when cycling on and/or off, use the exhaust fan of the airflow measuring apparatus to impose a step response that begins at the initiation of ramp up and ends at the termination of ramp down.

d. For units having a variable-speed indoor blower, conduct the cyclic dry coil test using the pull-thru approach described below if any of the following occur when testing with the fan operating:

(1) The test unit automatically cycles off;

(2) Its blower motor reverses; or

(3) The unit operates for more than 30 seconds at an external static pressure that is 0.1 inches of water or more higher than the value measured during the prior steady-state test.

For the pull-thru approach, disable the indoor blower and use the exhaust fan of the airflow measuring apparatus to generate the specified flow nozzles static pressure difference or velocity pressure. If the exhaust fan cannot deliver the required pressure difference because of resistance created by the unpowered indoor blower, temporarily remove the indoor blower.

e. Conduct three complete compressor OFF/ON cycles with the test tolerances given in Table 9 satisfied. Calculate the degradation coefficient C_D for each complete cycle. If all three C_D values are within 0.02 of the average C_D then stability has been achieved, and the highest C_D value of these three shall be used. If stability has not been achieved, conduct additional cycles, up to a maximum of eight cycles total, until stability has been achieved between three consecutive cycles. Once stability has been achieved, use the highest C_D value of the three consecutive cycles that establish stability. If stability has not been achieved after eight cycles, use the highest C_D from cycle one through cycle eight, or the default C_D, whichever is lower.

f. With regard to the Table 9 parameters, continuously record the dry-bulb temperature of the air entering the indoor and outdoor coils during periods when air flows through the respective coils. Sample the water vapor content of the indoor coil inlet air at least every 2 minutes during periods when air flows through the coil. Record external static pressure and the air volume rate indicator (either nozzle pressure difference or velocity pressure) at least every minute during the interval that air flows through the indoor coil. (These regular measurements of the airflow rate indicator are in addition to

the required measurement at 15 seconds after flow initiation.) Sample the electrical voltage at least every 2 minutes beginning 30 seconds after compressor start-up. Continue until the compressor, the outdoor fan, and the indoor blower (if it is installed and operating) cycle off.

g. For ducted units, continuously record the dry-bulb temperature of the air entering (as noted above) and leaving the indoor coil. Or if using a thermopile, continuously record the difference between these two temperatures during the interval that air flows through the indoor coil. For non-ducted units, make the same dry-bulb temperature measurements beginning when the compressor cycles on and ending when indoor coil airflow ceases.

h. Integrate the electrical power over complete cycles of length $\Delta\tau_{cyc,dry}$. For ducted blower coil systems tested with the unit's indoor blower operating for the cycling test, integrate electrical power from indoor blower OFF to indoor blower OFF. For all other ducted units and for non-ducted units, integrate electrical power from compressor OFF to compressor OFF. (Some cyclic tests will use the same data collection intervals to determine the electrical energy and the total space cooling. For other units, terminate data collection used to determine the electrical energy before terminating data collection used to determine total space cooling.)

TABLE 9—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC DRY COIL COOLING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor entering dry-bulb temperature,[2] °F	2.0	0.5
Indoor entering wet-bulb temperature, °F		([3])
Outdoor entering dry-bulb temperature,[2] °F	2.0	0.5
External resistance to airflow,[2] inches of water	0.12	
Airflow nozzle pressure difference or velocity pressure,[2] % of reading	8.0	[4]2.0
Electrical voltage[5], % of rdg.	2.0	1.5

[1]See section 1.2 of this appendix, Definitions.
[2]Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor blower that ramps, the tolerances listed for the external resistance to airflow apply from 30 seconds after achieving full speed until ramp down begins.
[3]Shall at no time exceed a wet-bulb temperature that results in condensate forming on the indoor coil.
[4]The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state dry coil test.
[5]Applies during the interval when at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor blower—are operating except for the first 30 seconds after compressor start-up.

If the Table 9 tolerances are satisfied over the complete cycle, record the measured electrical energy consumption as $e_{cyc,dry}$ and express it in units of watt-hours. Calculate the total space cooling delivered, $q_{cyc,dry}$, in units of Btu using,

$$q_{cyc,dry} = \frac{60*\overline{V}*C_{p,a}*\Gamma}{[v_n'*(1+W_n)]} = \frac{60*\overline{V}*C_{p,a}*\Gamma}{v_n} \quad \text{and} \quad \Gamma = F_{CD}^{*}\int_{\tau_1}^{\tau_2}[T_{a1}(\tau) - T_{a2}(\tau)]\delta\tau,\ hr*°F$$

Where,

$\overline{V}$, $C_{p,a}$, v'_n (or v_n), W_n, and F_{CD}* are the values recorded during the section 3.4 dry coil steady-state test and

$T_{a1}(\tau)$ = dry bulb temperature of the air entering the indoor coil at time τ, °F.

$T_{a2}(\tau)$ = dry bulb temperature of the air leaving the indoor coil at time τ, °F.

τ_1 = for ducted units, the elapsed time when airflow is initiated through the indoor coil; for non-ducted units, the elapsed time when the compressor is cycled on, hr.

τ_2 = the elapsed time when indoor coil airflow ceases, hr.

Adjust the total space cooling delivered, $q_{cyc,dry}$, according to calculation method outlined in section 7.4.3.4.5 of ASHRAE 116–2010 (incorporated by reference, see § 430.3).

3.5.1 Procedures When Testing Ducted Systems

The automatic controls that are normally installed with the test unit must govern the OFF/ON cycling of the air moving equipment on the indoor side (exhaust fan of the airflow measuring apparatus and, if installed, the indoor blower of the test unit). For example, for ducted coil-only systems rated based on using a fan time delay relay, control the indoor coil airflow according to the rated ON and/or OFF delays provided by the relay. For ducted units having a variable-speed indoor blower that has been disabled (and possibly removed), start and stop the indoor airflow at the same instances as if the fan were enabled. For all other ducted coil-only systems, cycle the indoor coil airflow in unison with the cycling of the compressor. If air damper boxes are used, close them on the inlet and outlet side during the OFF period. Airflow through the indoor coil should stop within 3 seconds after the automatic controls of the test unit (act to) de-energize the indoor blower. For ducted coil-only systems (excluding the special case where a variable-speed fan is temporarily removed), increase $e_{cyc,dry}$ by the quantity,

Equation 3.5-2. $$\frac{365\ W}{1000\ scfm} * \overline{V}_s * [\tau_2 - \tau_1]$$

and decrease $q_{cyc,dry}$ by,

Equation 3.5-3. $$\frac{1250\ Btu/h}{1000\ scfm} * \overline{V}_s * [\tau_2 - \tau_1]$$

where $\overline{V}_s$ is the average indoor air volume rate from the section 3.4 dry coil steady-state test and is expressed in units of cubic feet per minute of standard air (scfm). For units having a variable-speed indoor blower that is disabled during the cyclic test, increase $e_{cyc,dry}$ and decrease $q_{cyc,dry}$ based on:

a. The product of $[\tau_2 - \tau_1]$ and the indoor blower power measured during or following the dry coil steady-state test; or,

b. The following algorithm if the indoor blower ramps its speed when cycling.

(1) Measure the electrical power consumed by the variable-speed indoor blower at a minimum of three operating conditions: At the speed/air volume rate/external static pressure that was measured during the steady-state test, at operating conditions associated with the midpoint of the ramp-up interval, and at conditions associated with the midpoint of the ramp-down interval. For these measurements, the tolerances on the airflow volume or the external static pressure are the same as required for the section 3.4 steady-state test.

(2) For each case, determine the fan power from measurements made over a minimum of 5 minutes.

(3) Approximate the electrical energy consumption of the indoor blower if it had operated during the cyclic test using all three power measurements. Assume a linear profile during the ramp intervals. The manufacturer must provide the durations of the ramp-up and ramp-down intervals. If the test setup instructions included with the unit by the manufacturer specifies a ramp interval that exceeds 45 seconds, use a 45-second ramp interval nonetheless when estimating the fan energy.

3.5.2 Procedures When Testing Non-Ducted Indoor Units

Do not use airflow prevention devices when conducting cyclic tests on non-ducted indoor units. Until the last OFF/ON compressor cycle, airflow through the indoor coil must cycle off and on in unison with the compressor. For the last OFF/ON compressor cycle—the one used to determine $e_{cyc,dry}$ and $q_{cyc,dry}$—use the exhaust fan of the airflow measuring apparatus and the indoor blower of the test unit to have indoor airflow start 3 minutes prior to compressor cut-on and end three minutes after compressor cutoff. Subtract the electrical energy used by the indoor blower during the 3 minutes prior to compressor cut-on from the integrated electrical energy, $e_{cyc,dry}$. Add the electrical energy used by the indoor blower during the 3 minutes after compressor cutoff to the integrated cooling capacity, $q_{cyc,dry}$. For the case where the non-ducted indoor unit uses a variable-speed indoor blower which is disabled during the cyclic test, correct $e_{cyc,dry}$ and $q_{cyc,dry}$ using the same approach as prescribed in section 3.5.1 of this appendix for ducted units having a disabled variable-speed indoor blower.

3.5.3 Cooling-Mode Cyclic-Degradation Coefficient Calculation

Use the two dry-coil tests to determine the cooling-mode cyclic-degradation coefficient, C_D^c. Append "(k = 2)" to the coefficient if it corresponds to a two-capacity unit cycling at high capacity. The default value for two-capacity units cycling at high capacity, however, is the low-capacity coefficient, *i.e.*, $C_D^c(k = 2) = C_D^c$. Evaluate C_D^c using the above results and those from the section 3.4 dry-coil steady-state test.

$$C_D^c = \frac{1 - \frac{EER_{cyc,dry}}{EER_{ss,dry}}}{1 - CLF}$$

where:

$$EER_{cyc,dry} = \frac{q_{cyc,dry}}{e_{cyc,dry}}$$

the average energy efficiency ratio during the cyclic dry coil cooling mode test, Btu/W·h

$$EER_{ss,dry} = \frac{\dot{Q}_{ss,dry}}{\dot{E}_{ss,dry}}$$

the average energy efficiency ratio during the steady-state dry coil cooling mode test, Btu/W·h

$$CLF = \frac{q_{cyc,dry}}{Q_{ss,dry} * \Delta\tau_{cyc,dry}}$$

the cooling load factor dimensionless

Round the calculated value for C_D^c to the nearest 0.01. If C_D^c is negative, then set it equal to zero.

3.6 Heating Mode Tests for Different Types of Heat Pumps, Including Heating-Only Heat Pumps

3.6.1 Tests for a Heat Pump Having a Single-Speed Compressor and Fixed Heating Air Volume Rate

This set of tests is for single-speed-compressor heat pumps that do not have a heating minimum air volume rate or a heating intermediate air volume rate that is different than the heating full load air volume rate. Conduct the optional high temperature cyclic (H1C) test to determine the heating mode cyclic-degradation coefficient, C_D^h. A default value for C_D^h may be used in lieu of conducting the cyclic test. The default value of C_D^h is 0.25. Test conditions for the four tests are specified in Table 10.

TABLE 10—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR BLOWER, A CONSTANT AIR VOLUME RATE INDOOR BLOWER, OR NO INDOOR BLOWER

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H1 Test (required, steady)	70	60 (max)	47	43	Heating Full-load.[1]
H1C Test (optional, cyclic)	70	60 (max)	47	43	(2).
H2 Test (required)	70	60 (max)	35	33	Heating Full-load.[1]
H3 Test (required, steady)	70	60 (max)	17	15	Heating Full-load.[1]

[1] Defined in section 3.1.4.4 of this appendix.
[2] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the H1 Test.

3.6.2 Tests for a heat pump having a single-speed compressor and a single indoor unit having either (1) a variable speed, variable-air-rate indoor blower whose capacity modulation correlates with outdoor dry bulb temperature or (2) multiple indoor blowers. Conduct five tests: Two high temperature tests ($H1_2$ and $H1_1$), one frost accumulation test ($H2_2$), and two low temperature tests ($H3_2$ and $H3_1$). Conducting an additional frost accumulation test ($H2_1$) is optional. Conduct the optional high temperature cyclic ($H1C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. A default value for C_D^h may be used in lieu of conducting the cyclic. The default value of C_D^h is 0.25. Test conditions for the seven tests are specified in Table 11. If the optional $H2_1$ test is not performed, use the following equations to approximate the capacity and electrical power of the heat pump at the $H2_1$ test conditions:

$$\dot{Q}_h^{k=1}(35) = QR_h^{k=2}(35) * \{\dot{Q}_h^{k=1}(17) + 0.6 * [\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)]\}$$

$$\dot{E}_h^{k=1}(35) = PR_h^{k=2}(35) * \{\dot{E}_h^{k=1}(17) + 0.6 * [\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)]\}$$

where:

$$\dot{Q}R_h^{k=2}(35) = \frac{\dot{Q}_h^{k=2}(35)}{\dot{Q}^{k=2}(17) + 0.6 * [\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17)]}$$

$$PR_h^{k=2}(35) = \frac{\dot{E}_h^{k=2}(35)}{\dot{E}_h^{k=2}(17) + 0.6 * [\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17)]}$$

The quantities $\dot{Q}_h^{k=2}(47)$, $\dot{E}_h^{k=2}(47)$, $\dot{Q}_h^{k=1}(47)$, and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_2$ and $H1_1$ tests and evaluated as specified in section 3.7 of this appendix; the quantities $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ are determined from the $H2_2$ test and evaluated as specified in section 3.9 of this appendix; and the quantities $\dot{Q}_h^{k=2}(17)$, $\dot{E}_h^{k=2}(17)$, $\dot{Q}_h^{k=1}(17)$, and $\dot{E}_h^{k=1}(17)$, are determined from the $H3_2$ and $H3_1$ tests and evaluated as specified in section 3.10 of this appendix.

TABLE 11—HEATING MODE TEST CONDITIONS FOR UNITS WITH A SINGLE-SPEED COMPRESSOR THAT MEET THE SECTION 3.6.2 INDOOR UNIT REQUIREMENTS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
$H1_2$ Test (required, steady)	70	60 (max)	47	43	Heating Full-load.[1]
$H1_1$ Test (required, steady)	70	60 (max)	47	43	Heating Minimum.[2]
$H1C_1$ Test (optional, cyclic)	70	60 (max)	47	43	(3)

TABLE 11—HEATING MODE TEST CONDITIONS FOR UNITS WITH A SINGLE-SPEED COMPRESSOR THAT MEET THE SECTION 3.6.2 INDOOR UNIT REQUIREMENTS—Continued

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
$H3_1$ Test (required, steady)	70	60 (max)	17	15	Heating Minimum.[2]

[1] Defined in section 3.1.4.4 of this appendix.
[2] Defined in section 3.1.4.5 of this appendix.
[3] Maintain the airflow nozzles static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the $H1_1$ test.

3.6.3 Tests for a Heat Pump Having a Two-Capacity Compressor (see Section 1.2 of This Appendix, Definitions), Including Two-Capacity, Northern Heat Pumps (see Section 1.2 of This Appendix, Definitions)

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_2$ and $H1_1$), one frost accumulation test ($H2_2$), and one low temperature test ($H3_2$). Conduct an additional frost accumulation test ($H2_1$) and low temperature test ($H3_1$) if both of the following conditions exist:

(1) Knowledge of the heat pump's capacity and electrical power at low compressor capacity for outdoor temperatures of 37 °F and less is needed to complete the section 4.2.3 of this appendix seasonal performance calculations; and

(2) The heat pump's controls allow low-capacity operation at outdoor temperatures of 37 °F and less.

If the above two conditions are met, an alternative to conducting the $H2_1$ frost accumulation is to use the following equations to approximate the capacity and electrical power:

$$\dot{Q}_h^{k=1}(35) = 0.90 * \{\dot{Q}_h^{k=1}(17) + 0.6 * [\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)]\}$$

$$\dot{E}_h^{k=1}(35) = 0.985 * \{\dot{E}_h^{k=1}(17) + 0.6 * [\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)]\}$$

Determine the quantities $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ test and evaluate them according to section 3.7 of this appendix. Determine the quantities $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ from the $H3_1$ test and evaluate them according to section 3.10 of this appendix.

b. Conduct the optional high temperature cyclic test ($H1C_1$) to determine the heating mode cyclic-degradation coefficient, C_D^h. A default value for C_D^h may be used in lieu of conducting the cyclic. The default value of C_D^h is 0.25. If a two-capacity heat pump locks out low capacity operation at lower outdoor temperatures, conduct the high temperature cyclic test ($H1C_2$) to determine the high-capacity heating mode cyclic-degradation coefficient, C_D^h (k=2). The default C_D^h (k=2) is the same value as determined or assigned for the low-capacity cyclic-degradation coefficient, C_D^h [or equivalently, C_D^h (k=1)]. Table 12 specifies test conditions for these nine tests.

TABLE 12—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady).	70	60(max)	62	56.5	Low	Heating Minimum.[1]
$H1_2$ Test (required, steady).	70	60(max)	47	43	High	Heating Full-Load.[2]
$H1C_2$ Test (optional,[7] cyclic).	70	60(max)	47	43	High	(3)
$H1_1$ Test (required)	70	60(max)	47	43	Low	Heating Minimum.[1]
$H1C_1$ Test (optional, cyclic).	70	60(max)	47	43	Low	(4)
$H2_2$ Test (required)	70	60(max)	35	33	High	Heating Full-Load.[2]
$H2_1$ Test[5 6] (required)	70	60(max)	35	33	Low	Heating Minimum.[1]
$H3_2$ Test (required, steady).	70	60(max)	17	15	High	Heating Full-Load.[2]
$H3_1$ Test[5] (required, steady).	70	60(max)	17	15	Low	Heating Minimum.[1]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Defined in section 3.1.4.4 of this appendix.

[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the section 4.2.3 *HSPF* calculations.
[6] If table note #5 applies, the section 3.6.3 equations for $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(17)$ may be used in lieu of conducting the $H2_1$ test.
[7] Required only if the heat pump locks out low capacity operation at lower outdoor temperatures.

3.6.4 Tests for a Heat Pump Having a Variable-Speed Compressor

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_2$ and $H1_1$), one frost accumulation test ($H2_V$), and one low temperature test ($H3_2$). Conducting one or both of the following tests is optional: An additional high temperature test ($H1_N$) and an additional frost accumulation test ($H2_2$). Conduct the optional maximum temperature cyclic ($H0C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. A default value for C_D^h may be used in lieu of conducting the cyclic. The default value of C_D^h is 0.25. Test conditions for the eight tests are specified in Table 13. The compressor shall operate at the same heating full speed, measured by RPM or power input frequency (Hz), for the $H1_2$, $H2_2$, and $H3_2$ tests. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H0C_1$, and $H1_1$ tests. Determine the heating intermediate compressor speed cited in Table 13 using the heating mode full and minimum compressors speeds and:

Heating intermediate speed

$$= \text{Heating minimum speed} + \frac{\text{Heating full speed} - \text{Heating minimum speed}}{3}$$

Where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

If the $H2_2$ test is not done, use the following equations to approximate the capacity and electrical power at the $H2_2$ test conditions:

$$\dot{Q}_h^{k=2}(35) = 0.90 * \left\{\dot{Q}_h^{k=2}(17) + 0.6 * \left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right]\right\}$$

$$\dot{E}_h^{k=2}(35) = 0.985 * \left\{\dot{E}_h^{k=2}(17) + 0.6 * \left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17)\right]\right\}$$

b. Determine the quantities $\dot{Q}_h^{k=2}(47)$ and from $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test and evaluate them according to section 3.7 of this appendix. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test and evaluate them according to section 3.10 of this appendix. For heat pumps where the heating mode full compressor speed exceeds its cooling mode full compressor speed, conduct the $H1_N$ test if the manufacturer requests it. If the $H1_N$ test is done, operate the heat pump's compressor at the same speed as the speed used for the cooling mode A_2 test. Refer to the last sentence of section 4.2 of this appendix to see how the results of the $H1_N$ test may be used in calculating the heating seasonal performance factor.

TABLE 13—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady)	70	60(max)	62	56.5	Heating Minimum	Heating Minimum.[1]
$H0C_1$ test (optional, cyclic)	70	60(max)	62	56.5	Heating Minimum	([2])
$H1_2$ test (required, steady)	70	60(max)	47	43	Heating Full	Heating Full-Load.[3]
$H1_1$ test (required, steady)	70	60(max)	47	43	Heating Minimum	Heating Minimum.[1]
$H1_N$ test (optional, steady)	70	60(max)	47	43	Cooling Full	Heating Nominal.[4]
$H2_2$ test (optional)	70	60(max)	35	33	Heating Full	Heating Full-Load.[3]
$H2_V$ test (required)	70	60(max)	35	33	Heating Intermediate	Heating Intermediate.[5]
$H3_2$ test (required, steady)	70	60(max)	17	15	Heating Full	Heating Full-Load.[3]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H0_1$ test.
[3] Defined in section 3.1.4.4 of this appendix.
[4] Defined in section 3.1.4.7 of this appendix.
[5] Defined in section 3.1.4.6 of this appendix.

c. For multiple-split heat pumps (only), the following procedures supersede the above requirements. For all Table 13 tests specified for a minimum compressor speed, at least one indoor unit must be turned off. The manufacturer shall designate the particular indoor unit(s) that is turned off. The manufacturer must also specify the compressor speed used for the Table 13 $H2_V$ test, a heating mode intermediate compressor speed that falls within ¼ and ¾ of the difference between the full and minimum heating mode speeds. The manufacturer should prescribe an intermediate speed that is expected to yield the highest COP for the given $H2_V$ test conditions and bracketed compressor speed range. The manufacturer can designate that one or more specific indoor units are turned off for the $H2_V$ test.

3.6.5 Additional Test for a Heat Pump Having a Heat Comfort Controller

Test any heat pump that has a heat comfort controller (see section 1.2 of this appendix, Definitions) according to section 3.6.1, 3.6.2, or 3.6.3, whichever applies, with the heat comfort controller disabled. Additionally, conduct the abbreviated test described in section 3.1.10 of this appendix with the heat comfort controller active to determine the system's maximum supply air temperature. (Note: Heat pumps having a variable speed compressor and a heat comfort controller are not covered in the test procedure at this time.)

3.6.6 Heating Mode Tests for Northern Heat Pumps With Triple-Capacity Compressors

Test triple-capacity, northern heat pumps for the heating mode as follows:

a. Conduct one maximum-temperature test ($H0_1$), two high-temperature tests ($H1_2$ and $H1_1$), one frost accumulation test ($H2_2$), two low-temperature tests ($H3_2$, $H3_3$), and one minimum-temperature test ($H4_3$). Conduct an additional frost accumulation test ($H2_1$) and low-temperature test ($H3_1$) if both of the following conditions exist: (1) Knowledge of the heat pump's capacity and electrical power at low compressor capacity for outdoor temperatures of 37 °F and less is needed to complete the section 4.2.6 seasonal performance calculations; and (2) the heat pump's controls allow low-capacity operation at outdoor temperatures of 37 °F and less. If the above two conditions are met, an alternative to conducting the $H2_1$ frost accumulation test to determine $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ is to use the following equations to approximate this capacity and electrical power:

$$\dot{Q}_h^{k=1}(35) = 0.90 * \left\{\dot{Q}_h^{k=1}(17) + 0.6 * \left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)\right]\right\}$$

$$\dot{E}_h^{k=1}(35) = 0.985 * \left\{\dot{E}_h^{k=1}(17) + 0.6 * \left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)\right]\right\}$$

In evaluating the above equations, determine the quantities $\dot{Q}_h^{k=1}(47)$ from the $H1_1$ test and evaluate them according to section 3.7 of this appendix. Determine the quantities $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ from the $H3_1$ test and evaluate them according to section 3.10 of this appendix. Use the paired values of $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ derived from conducting the $H2_1$ frost accumulation test and evaluated as specified in section 3.9.1 of this appendix or use the paired values calculated using the above default equations, whichever contribute to a higher Region IV HSPF based on the DHRmin.

b. Conducting a frost accumulation test ($H2_3$) with the heat pump operating at its booster capacity is optional. If this optional test is not conducted, determine $\dot{Q}_h^{k=3}(35)$ and $\dot{E}_h^{k=3}(35)$ using the following equations to approximate this capacity and electrical power:

$$\dot{Q}_h^{k=3}(35) = QR_h^{k=2}(35) * \left\{\dot{Q}_h^{k=3}(17) + 1.20 * \left[\dot{Q}_h^{k=3}(17) - \dot{Q}_h^{k=3}(2)\right]\right\}$$

$$\dot{E}_h^{k=3}(35) = PR_h^{k=2}(35) * \left\{\dot{E}_h^{k=3}(17) + 1.20 * \left[\dot{E}_h^{k=3}(17) - \dot{E}_h^{k=3}(2)\right]\right\}$$

Where:

$$QR_h^{k=2}(35) = \frac{\dot{Q}_h^{k=2}(35)}{\dot{Q}_h^{k=2}(17) + 0.6 * \left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right]}$$

$$PR_h^{k=2}(35) = \frac{\dot{E}_h^{k=2}(35)}{\dot{E}_h^{k=2}(17) + 0.6 * \left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17)\right]}$$

Determine the quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test and evaluate them according to section 3.7 of this appendix. Determine the quantities $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ test and evaluate them according to section 3.9.1 of this appendix. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test, determine the quantities $\dot{Q}_h^{k=3}(17)$ and $\dot{E}_h^{k=3}(17)$ from the $H3_3$ test, and determine the quantities $\dot{Q}_h^{k=3}(2)$ and $\dot{E}_h^{k=3}(2)$ from the $H4_3$ test. Evaluate all six quantities according to section 3.10 of this appendix. Use the paired values of $\dot{Q}_h^{k=3}(35)$ and $\dot{E}_h^{k=3}(35)$ derived from conducting the $H2_3$ frost accumulation test and calculated as specified in section 3.9.1 of this appendix or use the paired values calculated using the above default equations, whichever contribute

to a higher Region IV HSPF based on the DHRmin.

c. Conduct the optional high-temperature cyclic test ($H1C_1$) to determine the heating mode cyclic-degradation coefficient, C_D^h. A default value for C_D^h may be used in lieu of conducting the cyclic. The default value of C_D^h is 0.25. If a triple-capacity heat pump locks out low capacity operation at lower outdoor temperatures, conduct the high-temperature cyclic test ($H1C_2$) to determine the high-capacity heating mode cyclic-degradation coefficient, C_D^h (k = 2). The default C_D^h (k = 2) is the same value as determined or assigned for the low-capacity cyclic-degradation coefficient, C_D^h [or equivalently, C_D^h (k = 1)]. Finally, if a triple-capacity heat pump locks out both low and high capacity operation at the lowest outdoor temperatures, conduct the low-temperature cyclic test ($H3C_3$) to determine the booster-capacity heating mode cyclic-degradation coefficient, C_D^h (k = 3). The default C_D^h (k = 3) is the same value as determined or assigned for the high-capacity cyclic-degradation coefficient, C_D^h [or equivalently, C_D^h (k = 2)]. Table 14 specifies test conditions for all 13 tests.

TABLE 14—HEATING MODE TEST CONDITIONS FOR UNITS WITH A TRIPLE-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady).	70	60(max)	62	56.5	Low	Heating Minimum.[1]
$H1_2$ Test (required, steady).	70	60(max)	47	43	High	Heating Full-Load.[2]
$H1C_2$ Test (optional[8], cyclic).	70	60(max)	47	43	High	(3)
$H1_1$ Test (required)	70	60(max)	47	43	Low	Heating Minimum.[1]
$H1C_1$ Test (optional, cyclic).	70	60(max)	47	43	Low	(4)
$H2_3$ Test (optional, steady).	70	60(max)	35	33	Booster	Heating Full-Load.[2]
$H2_2$ Test (required)	70	60(max)	35	33	High	Heating Full-Load.[2]
$H2_1$ Test (required)	70	60(max)	35	33	Low	Heating Minimum.[1]
$H3_3$ Test (required, steady).	70	60(max)	17	15	Booster	Heating Full-Load.[2]
$H3C_3$ Test[5 6] (optional, cyclic).	70	60(max)	17	15	Booster	(7)
$H3_2$ Test (required, steady).	70	60(max)	17	15	High	Heating Full-Load.[2]
$H3_1$ Test[5] (required, steady).	70	60(max)	17	15	Low	Heating Minimum.[1]
$H4_3$ Test (required, steady).	70	60(max)	2	1	Booster	Heating Full-Load.[2]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Defined in section 3.1.4.4 of this appendix.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_2$ test.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_1$ test.
[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the section 4.2.6 HSPF calculations.
[6] If table note [5] applies, the section 3.6.6 equations for $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(17)$ may be used in lieu of conducting the $H2_1$ test.
[7] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H3_3$ test.
[8] Required only if the heat pump locks out low capacity operation at lower outdoor temperatures.

3.6.7 Tests for a Heat Pump Having a Single Indoor Unit Having Multiple Indoor Blowers and Offering Two Stages of Compressor Modulation

Conduct the heating mode tests specified in section 3.6.3 of this appendix.

3.7 Test Procedures for Steady-State Maximum Temperature and High Temperature Heating Mode Tests (the $H0_1$, H1, $H1_2$, $H1_1$, and $H1_N$ Tests)

a. For the pretest interval, operate the test room reconditioning apparatus and the heat pump until equilibrium conditions are maintained for at least 30 minutes at the specified section 3.6 test conditions. Use the exhaust fan of the airflow measuring apparatus and, if installed, the indoor blower of the heat pump to obtain and then maintain the indoor air volume rate and/or the external static pressure specified for the particular test. Continuously record the dry-bulb temperature of the air entering the indoor coil, and the dry-bulb temperature and water vapor content of the air entering the outdoor coil. Refer to section 3.11 of this appendix for additional requirements that depend on the selected secondary test method. After satisfying the pretest equilibrium requirements, make the measurements specified in Table 3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) for the indoor air enthalpy method and the user-selected secondary method. Make said Table 3 measurements at equal intervals that span 5 minutes or less. Continue data sampling until a 30-minute period (*e.g.*, seven consecutive 5-minute samples) is reached where the test tolerances specified in Table 15 are satisfied. For those continuously recorded parameters, use the entire data set for the 30-minute interval when evaluating Table 15 compliance. Determine the average electrical power consumption of the heat pump over the same 30-minute interval.

TABLE 15—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.7 AND SECTION 3.10 STEADY-STATE HEATING MODE TESTS

	Test operating tolerance[1]	Test condition tolerance[1]
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	
Leaving temperature	1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[2] 2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	0.3
Leaving temperature	[2] 1.0	
External resistance to airflow, inches of water	0.12	[3] 0.02
Electrical voltage, % of rdg	2.0	1.5
Nozzle pressure drop, % of rdg	8.0	

[1] See section 1.2 of this appendix, Definitions.
[2] Only applies when the Outdoor Air Enthalpy Method is used.
[3] Only applies when testing non-ducted units.

b. Calculate indoor-side total heating capacity as specified in sections 7.3.4.1 and 7.3.4.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). To calculate capacity, use the averages of the measurements (*e.g.* inlet and outlet dry bulb temperatures measured at the psychrometers) that are continuously recorded for the same 30-minute interval used as described above to evaluate compliance with test tolerances. Do not adjust the parameters used in calculating capacity for the permitted variations in test conditions. Assign the average space heating capacity and electrical power over the 30-minute data collection interval to the variables $\dot{Q}_h^k$ and $\dot{E}_h^k(T)$ respectively. The "T" and superscripted "k" are the same as described in section 3.3 of this appendix. Additionally, for the heating mode, use the superscript to denote results from the optional $H1_N$ test, if conducted.

c. For coil-only system heat pumps, increase $\dot{Q}_h^k(T)$ by

$$\frac{1250\ BTU/h}{1000\ scfm} * \overline{\dot{V}_s}$$

and increase $\dot{E}_h^k(T)$ by,

$$\frac{365\ W}{1000\ scfm} * \overline{\dot{V}_s}$$

where $\overline{\dot{V}_s}$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm). During the 30-minute data collection interval of a high temperature test, pay attention to preventing a defrost cycle. Prior to this time, allow the heat pump to perform a defrost cycle if automatically initiated by its own controls. As in all cases, wait for the heat pump's defrost controls to automatically terminate the defrost cycle. Heat pumps that undergo a defrost should operate in the heating mode for at least 10 minutes after defrost termination prior to beginning the 30-minute data collection interval. For some heat pumps, frost may accumulate on the outdoor coil during a high temperature test. If the indoor coil leaving air temperature or the difference between the leaving and entering air temperatures decreases by more than 1.5 °F over the 30-minute data collection interval, then do not use the collected data to determine capacity. Instead, initiate a defrost cycle. Begin collecting data no sooner than 10 minutes after defrost termination. Collect 30 minutes of new data during which the Table 15 test tolerances are satisfied. In this case, use only the results from the second 30-minute data collection interval to evaluate $\dot{Q}_h^k(47)$ and $\dot{E}_h^k(47)$.

d. If conducting the cyclic heating mode test, which is described in section 3.8 of this appendix, record the average indoor-side air volume rate, $\dot{V}$, specific heat of the air, $C_{p,a}$ (expressed on dry air basis), specific volume of the air at the nozzles, v_n' (or v_n), humidity ratio at the nozzles, W_n, and either pressure difference or velocity pressure for the flow nozzles. If either or both of the below criteria apply, determine the average, steady-state, electrical power consumption of the indoor blower motor ($\dot{E}_{fan,1}$):

(1) The section 3.8 cyclic test will be conducted and the heat pump has a variable-speed indoor blower that is expected to be disabled during the cyclic test; or

(2) The heat pump has a (variable-speed) constant-air volume-rate indoor blower and during the steady-state test the average external static pressure (ΔP_1) exceeds the applicable section 3.1.4.4 minimum (or targeted) external static pressure (ΔP_{min}) by 0.03 inches of water or more.

Determine $\dot{E}_{fan,1}$ by making measurements during the 30-minute data collection interval, or immediately following the test and prior to changing the test conditions. When the above "2" criteria applies, conduct the following four steps after determining $\dot{E}_{fan,1}$ (which corresponds to ΔP_1):

(i) While maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

(ii) After re-establishing steady readings for fan motor power and external static pressure, determine average values for the indoor blower power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

(iii) Approximate the average power consumption of the indoor blower motor if the 30-minute test had been conducted at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,\min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}(\Delta P_{\min} - \Delta P_1) + \dot{E}_{fan,1}$$

(iv) Decrease the total space heating capacity, $\dot{Q}_h^k(T)$, by the quantity ($\dot{E}_{fan,1} - \dot{E}_{fan,min}$), when expressed on a Btu/h basis. Decrease the total electrical power, $\dot{E}_h^k(T)$ by the same fan power difference, now expressed in watts.

e. If the temperature sensors used to provide the primary measurement of the indoor-side dry bulb temperature difference during the steady-state dry-coil test and the subsequent cyclic dry-coil test are different, include measurements of the latter sensors among the regularly sampled data. Beginning at the start of the 30-minute data collection period, measure and compute the indoor-side air dry-bulb temperature difference using both sets of instrumentation, ΔT (Set SS) and ΔT (Set CYC), for each equally spaced data sample. If using a consistent data sampling rate that is less than 1 minute, calculate and record minutely averages for the two temperature differences. If using a consistent sampling rate of one minute or more, calculate and record the two temperature differences from each data sample. After having recorded the seventh (i = 7) set of temperature differences, calculate the following ratio using the first seven sets of values:

$$F_{CD} = \frac{1}{7}\sum_{i-6}^{i}\frac{\Delta T(Set\ SS)}{\Delta T(Set\ CYC)}$$

Each time a subsequent set of temperature differences is recorded (if sampling more frequently than every 5 minutes), calculate F_{CD} using the most recent seven sets of values. Continue these calculations until the 30-minute period is completed or until a value for F_{CD} is calculated that falls outside the allowable range of 0.94–1.06. If the latter occurs, immediately suspend the test and identify the cause for the disparity in the two temperature difference measurements. Recalibration of one or both sets of instrumentation may be required. If all the values for F_{CD} are within the allowable range, save the final value of the ratio from the 30-minute test as F_{CD}*. If the temperature sensors used to provide the primary measurement of the indoor-side dry bulb temperature difference during the steady-state dry-coil test and the subsequent cyclic dry-coil test are the same, set F_{CD}* = 1.

3.8 Test Procedures for the Cyclic Heating Mode Tests (the $H0C_1$, H1C, $H1C_1$ and $H1C_2$ Tests)

a. Except as noted below, conduct the cyclic heating mode test as specified in section 3.5 of this appendix. As adapted to the heating mode, replace section 3.5 references to "the steady-state dry coil test" with "the heating mode steady-state test conducted at the same test conditions as the cyclic heating mode test." Use the test tolerances in Table 16 rather than Table 9. Record the outdoor coil entering wet-bulb temperature according to the requirements given in section 3.5 of this appendix for the outdoor coil entering dry-bulb temperature. Drop the subscript "dry" used in variables cited in section 3.5 of this appendix when referring to quantities from the cyclic heating mode test. The default C_D value for heating is 0.25. If available, use electric resistance heaters (see section 2.1 of this appendix) to minimize the variation in the inlet air temperature. Determine the total space heating delivered during the cyclic heating test, q_{cyc}, as specified in section 3.5 of this appendix except for making the following changes:

(1) When evaluating Equation 3.5–1, use the values of $\dot{V}$, $C_{p,a}$, v_n', (or v_n), and W_n that were recorded during the section 3.7 steady-state test conducted at the same test conditions.

(2) Calculate Γ using, $\Gamma = F_{CD}^{*}\int_{\tau_1}^{\tau_2}[T_{a1}(\tau) - T_{a2}(\tau)]\delta\tau,\ hr \times {}^{\circ}F,$

where F_{CD}* is the value recorded during the section 3.7 steady-state test conducted at the same test condition.

b. For ducted coil-only system heat pumps (excluding the special case where a variable-speed fan is temporarily removed), increase q_{cyc} by the amount calculated using Equation 3.5–3. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–2. In making these calculations, use the average indoor air volume rate ($\dot{V}_s$) determined from the section 3.7 steady-state heating mode test conducted at the same test conditions.

c. For non-ducted heat pumps, subtract the electrical energy used by the indoor blower during the 3 minutes after compressor cutoff from the non-ducted heat pump's integrated heating capacity, q_{cyc}.

d. If a heat pump defrost cycle is manually or automatically initiated immediately prior to or during the OFF/ON cycling, operate the heat pump continuously until 10 minutes after defrost termination. After that, begin cycling the heat pump immediately or delay until the specified test conditions have been re-established. Pay attention to preventing defrosts after beginning the cycling process. For heat pumps that cycle off the indoor blower during a defrost cycle, make no effort here to restrict the air movement through the indoor coil while the fan is off. Resume the OFF/ON cycling while conducting a minimum of two complete compressor OFF/ON cycles before determining q_{cyc} and e_{cyc}.

3.8.1 Heating Mode Cyclic-Degradation Coefficient Calculation

Use the results from the required cyclic test and the required steady-state test that were conducted at the same test conditions to determine the heating mode cyclic-degradation coefficient C_D^h. Add "(k = 2)" to the coefficient if it corresponds to a two-capacity unit cycling at high capacity. For the below calculation of the heating mode cyclic degradation coefficient, do not include the duct loss correction from section 7.3.3.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3) in determining $\dot{Q}_h^k(T_{cyc})$ (or q_{cyc}). The default value for two-capacity units cycling at high capacity, however, is the low-capacity coefficient, *i.e.*, C_D^h (k = 2) = C_D^h. The tested C_D^h is calculated as follows:

$$C_D^h = \frac{1 - \frac{COP_{cyc}}{COP_{ss}(T_{cyc})}}{1 - HLF}$$

where:

$$COP_{cyc} = \frac{q_{cyc}}{3.413\frac{Btu/h}{W} * e_{cyc}}$$

the average coefficient of performance during the cyclic heating mode test, dimensionless.

$$COP_{ss}(T_{cyc}) = \frac{\dot{Q}_h^k(T_{cyc})}{3.413\frac{Btu/h}{W} * \dot{E}_h^k(T_{cyc})}$$

the average coefficient of performance during the steady-state heating mode test conducted at the same test conditions—*i.e.*, same outdoor dry bulb temperature, T_{cyc}, and speed/capacity, k, if applicable—as specified for the cyclic heating mode test, dimensionless.

$$HLF = \frac{q_{cyc}}{\dot{Q}_h^k(T_{cyc}) * \Delta\tau_{cyc}}$$

the heating load factor, dimensionless.

T_{cyc} = the nominal outdoor temperature at which the cyclic heating mode test is conducted, 62 or 47 °F.

$\Delta\tau_{cyc}$ = the duration of the OFF/ON intervals; 0.5 hours when testing a heat pump having a single-speed or two-capacity compressor and 1.0 hour when testing a heat pump having a variable-speed compressor.

Round the calculated value for C_D^h to the nearest 0.01. If C_D^h is negative, then set it equal to zero.

TABLE 16—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC HEATING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor entering dry-bulb temperature,[2] °F	2.0	0.5
Indoor entering wet-bulb temperature,[2] °F	1.0	
Outdoor entering dry-bulb temperature,[2] °F	2.0	0.5
Outdoor entering wet-bulb temperature,[2] °F	2.0	1.0
External resistance to air-flow,[2] inches of water	0.12	
Airflow nozzle pressure difference or velocity pressure,[2][3] % of reading	2.0	[3] 2.0
Electrical voltage,[4] % of rdg	8.0	1.5

[1] See section 1.2 of this appendix, Definitions.
[2] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor blower that ramps, the tolerances listed for the external resistance to airflow shall apply from 30 seconds after achieving full speed until ramp down begins.
[3] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state test conducted at the same test conditions.
[4] Applies during the interval that at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor blower—are operating, except for the first 30 seconds after compressor start-up.

3.9 Test Procedures for Frost Accumulation Heating Mode Tests (the H2, $H2_2$, H2v, and $H2_1$ Tests)

a. Confirm that the defrost controls of the heat pump are set as specified in section 2.2.1 of this appendix. Operate the test room reconditioning apparatus and the heat pump for at least 30 minutes at the specified section 3.6 test conditions before starting the "preliminary" test period. The preliminary test period must immediately precede the "official" test period, which is the heating and defrost interval over which data are collected for evaluating average space heating capacity and average electrical power consumption.

b. For heat pumps containing defrost controls which are likely to cause defrosts at intervals less than one hour, the preliminary test period starts at the termination of an automatic defrost cycle and ends at the termination of the next occurring automatic defrost cycle. For heat pumps containing defrost controls which are likely to cause defrosts at intervals exceeding one hour, the preliminary test period must consist of a heating interval lasting at least one hour followed by a defrost cycle that is either manually or automatically initiated. In all cases, the heat pump's own controls must govern when a defrost cycle terminates.

c. The official test period begins when the preliminary test period ends, at defrost termination. The official test period ends at the termination of the

next occurring automatic defrost cycle. When testing a heat pump that uses a time-adaptive defrost control system (see section 1.2 of this appendix, Definitions), however, manually initiate the defrost cycle that ends the official test period at the instant indicated by instructions provided by the manufacturer. If the heat pump has not undergone a defrost after 6 hours, immediately conclude the test and use the results from the full 6-hour period to calculate the average space heating capacity and average electrical power consumption.

For heat pumps that turn the indoor blower off during the defrost cycle, take steps to cease forced airflow through the indoor coil and block the outlet duct whenever the heat pump's controls cycle off the indoor blower. If it is installed, use the outlet damper box described in section 2.5.4.1 of this appendix to affect the blocked outlet duct.

d. Defrost termination occurs when the controls of the heat pump actuate the first change in converting from defrost operation to normal heating operation. Defrost initiation occurs when the controls of the heat pump first alter its normal heating operation in order to eliminate possible accumulations of frost on the outdoor coil.

e. To constitute a valid frost accumulation test, satisfy the test tolerances specified in Table 17 during both the preliminary and official test periods. As noted in Table 17, test operating tolerances are specified for two sub-intervals: (1) When heating, except for the first 10 minutes after the termination of a defrost cycle (sub-interval H, as described in Table 17) and (2) when defrosting, plus these same first 10 minutes after defrost termination (sub-interval D, as described in Table 17). Evaluate compliance with Table 17 test condition tolerances and the majority of the test operating tolerances using the averages from measurements recorded only during sub-interval H. Continuously record the dry bulb temperature of the air entering the indoor coil, and the dry bulb temperature and water vapor content of the air entering the outdoor coil. Sample the remaining parameters listed in Table 17 at equal intervals that span 5 minutes or less.

f. For the official test period, collect and use the following data to calculate average space heating capacity and electrical power. During heating and defrosting intervals when the controls of the heat pump have the indoor blower on, continuously record the dry-bulb temperature of the air entering (as noted above) and leaving the indoor coil. If using a thermopile, continuously record the difference between the leaving and entering dry-bulb temperatures during the interval(s) that air flows through the indoor coil. For coil-only system heat pumps, determine the corresponding cumulative time (in hours) of indoor coil airflow, $\Delta\tau_a$. Sample measurements used in calculating the air volume rate (refer to sections 7.7.2.1 and 7.7.2.2 of ANSI/ASHRAE 37–2009) at equal intervals that span 10 minutes or less. (Note: In the first printing of ANSI/ASHRAE 37–2009, the second IP equation for Q_{mi} should read:) Record the electrical energy consumed, expressed in watt-hours, from defrost termination to defrost termination, $e_{DEF}{}^k(35)$, as well as the corresponding elapsed time in hours, $\Delta\tau_{FR}$.

TABLE 17—TEST OPERATING AND TEST CONDITION TOLERANCES FOR FROST ACCUMULATION HEATING MODE TESTS

	Test operating tolerance [1]		Test condition tolerance [1]
	Sub-interval H [2]	Sub-interval D [3]	Sub-interval H [2]
Indoor entering dry-bulb temperature, °F	2.0	[4] 4.0	0.5
Indoor entering wet-bulb temperature, °F	1.0		
Outdoor entering dry-bulb temperature, °F	2.0	10.0	1.0
Outdoor entering wet-bulb temperature, °F	1.5		0.5
External resistance to airflow, inches of water	0.12		[5] 0.02
Electrical voltage, % of rdg	2.0		1.5

1 See section 1.2 of this appendix, Definitions.
2 Applies when the heat pump is in the heating mode, except for the first 10 minutes after termination of a defrost cycle.
3 Applies during a defrost cycle and during the first 10 minutes after the termination of a defrost cycle when the heat pump is operating in the heating mode.
4 For heat pumps that turn off the indoor blower during the defrost cycle, the noted tolerance only applies during the 10 minute interval that follows defrost termination.
5 Only applies when testing non-ducted heat pumps.

3.9.1 Average Space Heating Capacity and Electrical Power Calculations

a. Evaluate average space heating capacity, $\dot{Q}_h{}^k(35)$, when expressed in units of Btu per hour, using:

$$\dot{Q}_h^k(35) = \frac{60 * \bar{V} * C_{p,a} * \Gamma}{\Delta\tau_{FR}[v_n' * (1 + W_n)]} = \frac{60 * \bar{V} * C_{p,a} * \Gamma}{\Delta\tau_{FR} v_n}$$

Where,

$\bar{V}$ = the average indoor air volume rate measured during sub-interval H, cfm.

$C_{p,a} = 0.24 + 0.444 \cdot W_n$, the constant pressure specific heat of the air-water vapor mixture that flows through the indoor coil and is expressed on a dry air basis, $Btu/lbm_{da} \cdot °F$.

v_n' = specific volume of the air-water vapor mixture at the nozzle, ft^3/lbm_{mx}.

W_n = humidity ratio of the air-water vapor mixture at the nozzle, lbm of water vapor per lbm of dry air.

$\Delta\tau_{FR} = \tau_2 - \tau_1$, the elapsed time from defrost termination to defrost termination, hr.

$$\Gamma = \int_{\tau_1}^{\tau_2}[T_{a2}(\tau) - T_{a1}(\tau)]d\tau,\ hr * °F$$

$T_{a1}(\tau)$ = dry bulb temperature of the air entering the indoor coil at elapsed time τ, °F; only recorded when indoor coil airflow occurs; assigned the value of zero during periods (if any) where the indoor blower cycles off.

$T_{a2}(\tau)$ = dry bulb temperature of the air leaving the indoor coil at elapsed time τ, °F; only recorded when indoor coil airflow occurs; assigned the value of zero during periods (if any) where the indoor blower cycles off.

τ_1 = the elapsed time when the defrost termination occurs that begins the official test period, hr.

τ_2 = the elapsed time when the next automatically occurring defrost termination occurs, thus ending the official test period, hr.

v_n = specific volume of the dry air portion of the mixture evaluated at the dry-bulb temperature, vapor content, and barometric pressure existing at the nozzle, ft^3 per lbm of dry air.

To account for the effect of duct losses between the outlet of the indoor unit and the section 2.5.4 dry-bulb temperature grid, adjust $\dot{Q}_h{}^k(35)$ in accordance with section 7.3.4.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3).

b. Evaluate average electrical power, $\dot{E}_h{}^k(35)$, when expressed in units of watts, using:

$$\dot{E}_h^k(35) = \frac{e_{def}(35)}{\Delta\tau_{FR}}$$

For coil-only system heat pumps, increase $\dot{Q}_h{}^k(35)$ by,

$$\frac{1250\ Btu/h}{1000\ scfm} * \bar{V}_s * \frac{\Delta\tau_a}{\Delta\tau_{FR}}$$

and increase $\dot{E}_h{}^k(35)$ by,

$$\frac{365\ W}{1000\ scfm} * \bar{V}_s * \frac{\Delta\tau_a}{\Delta\tau_{FR}}$$

where $\bar{V}_s$ is the average indoor air volume rate measured during the frost accumulation heating mode test and is expressed in units of cubic feet per minute of standard air (scfm).

c. For heat pumps having a constant-air-volume-rate indoor blower, the five additional steps listed below are required if the average of the external static pressures measured during sub-interval H exceeds the applicable section 3.1.4.4, 3.1.4.5, or 3.1.4.6 minimum (or targeted) external static pressure (ΔP_{min}) by 0.03 inches of water or more:

(1) Measure the average power consumption of the indoor blower motor ($\dot{E}_{fan,1}$) and record the corresponding external static pressure (ΔP_1) during or immediately following the frost accumulation heating mode test. Make the measurement at a time when the heat pump is heating, except for the first 10 minutes after the termination of a defrost cycle.

(2) After the frost accumulation heating mode test is completed and while maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

(3) After re-establishing steady readings for the fan motor power and external static pressure, determine average values for the indoor blower power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

(4) Approximate the average power consumption of the indoor blower motor had the frost accumulation heating mode test been conducted at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,\min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}(\Delta P_{\min} - \Delta P_1) + \dot{E}_{fan,1}$$

(5) Decrease the total heating capacity, $\dot{Q}_h{}^k(35)$, by the quantity $[(\dot{E}_{fan,1} - \dot{E}_{fan,min}) \cdot (\Delta\tau_a/\Delta\tau_{FR}]$, when expressed on a Btu/h basis. Decrease the total electrical power, $E_h{}^k(35)$, by the same quantity, now expressed in watts.

3.9.2 Demand Defrost Credit

a. Assign the demand defrost credit, F_{def}, that is used in section 4.2 of this

appendix to the value of 1 in all cases except for heat pumps having a demand-defrost control system (see section 1.2 of this appendix, Definitions). For such qualifying heat pumps, evaluate F_{def} using,

$$F_{def} = 1 + 0.03 * \left[1 - \frac{\Delta\tau_{def} - 1.5}{\Delta\tau_{\max} - 1.5}\right]$$

where:

$\Delta\tau_{def}$ = the time between defrost terminations (in hours) or 1.5, whichever is greater. A value of 6 must be assigned to $\Delta\tau_{def}$ if this limit is reached during a frost accumulation test and the heat pump has not completed a defrost cycle.

$\Delta\tau_{\max}$ = maximum time between defrosts as allowed by the controls (in hours) or 12, whichever is less, as provided in the certification report.

b. For two-capacity heat pumps and for section 3.6.2 units, evaluate the above equation using the $\Delta\tau_{def}$ that applies based on the frost accumulation test conducted at high capacity and/or at the heating full-load air volume rate. For variable-speed heat pumps, evaluate $\Delta\tau_{def}$ based on the required frost accumulation test conducted at the intermediate compressor speed.

3.10 Test Procedures for Steady-State Low Temperature Heating Mode Tests (the H3, $H3_2$, and $H3_1$ tests).

Except for the modifications noted in this section, conduct the low temperature heating mode test using the same approach as specified in section 3.7 of this appendix for the maximum and high temperature tests. After satisfying the section 3.7 requirements for the pretest interval but before beginning to collect data to determine $Q_h^k(17)$ and $E_h^k(17)$, conduct a defrost cycle. This defrost cycle may be manually or automatically initiated. The defrost sequence must be terminated by the action of the heat pump's defrost controls. Begin the 30-minute data collection interval described in section 3.7 of this appendix, from which $Q_h^k(17)$ and $E_h^k(17)$ are determined, no sooner than 10 minutes after defrost termination. Defrosts should be prevented over the 30-minute data collection interval.

3.11 Additional Requirements for the Secondary Test Methods

3.11.1 If Using the Outdoor Air Enthalpy Method as the Secondary Test Method

During the "official" test, the outdoor air-side test apparatus described in section 2.10.1 of this appendix is connected to the outdoor unit. To help compensate for any effect that the addition of this test apparatus may have on the unit's performance, conduct a "preliminary" test where the outdoor air-side test apparatus is disconnected. Conduct a preliminary test prior to the first section 3.2 of this appendix steady-state cooling mode test and prior to the first section 3.6 of this appendix steady-state heating mode test. No other preliminary tests are required so long as the unit operates the outdoor fan during all cooling mode steady-state tests at the same speed and all heating mode steady-state tests at the same speed. If using more than one outdoor fan speed for the cooling mode steady-state tests, however, conduct a preliminary test prior to each cooling mode test where a different fan speed is first used. This same requirement applies for the heating mode tests.

3.11.1.1 Preliminary Test

3.11.1.1.1 If a Preliminary Test Precedes the Official Test

a. The test conditions for the preliminary test are the same as specified for the official test. Connect the indoor air-side test apparatus to the indoor coil; disconnect the outdoor air-side test apparatus. Allow the test room reconditioning apparatus and the unit being tested to operate for at least one hour. After attaining equilibrium conditions, measure the following quantities at equal intervals that span 5 minutes or less:

(1) The section 2.10.1 of this appendix evaporator and condenser temperatures or pressures;

(2) Parameters required according to the indoor air enthalpy method.

Continue these measurements until a 30-minute period (*e.g.*, seven consecutive 5-minute samples) is obtained where the Table 8 or Table 15, whichever applies, test tolerances are satisfied.

b. After collecting 30 minutes of steady-state data, reconnect the outdoor air-side test apparatus to the unit. Adjust the exhaust fan of the outdoor airflow measuring apparatus until averages for the evaporator and condenser temperatures, or the saturated temperatures corresponding to the measured pressures, agree within ±0.5 °F of the averages achieved when the outdoor air-side test apparatus was disconnected. Calculate the averages for the reconnected case using five or more consecutive readings taken at one minute intervals. Make these consecutive readings after re-establishing equilibrium conditions and before initiating the official test.

3.11.1.1.2 If a Preliminary Test Does Not Precede the Official Test

Connect the outdoor-side test apparatus to the unit. Adjust the exhaust fan of the outdoor airflow measuring apparatus to achieve the same external static pressure as measured during the prior preliminary test conducted with the unit operating in the same cooling or heating mode at the same outdoor fan speed.

3.11.1.1 Official Test

a. Continue (preliminary test was conducted) or begin (no preliminary test) the official test by making measurements for both the indoor and outdoor air enthalpy methods at equal intervals that span 5 minutes or less. Discontinue these measurements only after obtaining a 30-minute period where the specified test condition and test operating tolerances are satisfied. To constitute a valid official test:

(1) Achieve the energy balance specified in section 3.1.1 of this appendix; and,

(2) For cases where a preliminary test is conducted, the capacities determined using the indoor air enthalpy method from the official and preliminary test periods must agree within 2.0 percent.

b. For space cooling tests, calculate capacity from the outdoor air-enthalpy measurements as specified in sections 7.3.3.2 and 7.3.3.3 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3). Calculate heating capacity based on outdoor air-enthalpy measurements as specified in sections 7.3.4.2 and 7.3.3.4.3 of the same ASHRAE Standard. Adjust the outdoor-side capacity according to section 7.3.3.4 of ANSI/ASHRAE 37–2009 to account for line losses when testing split systems. Use the outdoor unit fan power as measured during the official test and not the value measured during the preliminary test, as described in section 8.6.2 of ANSI/ASHRAE 37–2009, when calculating the capacity.

3.11.2 If Using the Compressor Calibration Method as the Secondary Test Method

a. Conduct separate calibration tests using a calorimeter to determine the refrigerant flow rate. Or for cases where the superheat of the refrigerant leaving the evaporator is less than 5 °F, use the calorimeter to measure total capacity rather than refrigerant flow rate. Conduct these calibration tests at the same test conditions as specified for the tests in this appendix. Operate the unit for at least one hour or until obtaining equilibrium conditions before collecting data that will be used in determining the average refrigerant flow rate or total capacity. Sample the data at equal intervals that span 5 minutes or less. Determine average flow rate or average capacity from data sampled over a 30-minute period where the Table 8 (cooling) or the Table 15 (heating) tolerances are satisfied. Otherwise, conduct the calibration tests according to sections 5, 6, 7, and 8 of ASHRAE 23.1–2010 (incorporated by reference, see § 430.3); sections 5, 6, 7, 8, 9, and 11 of ASHRAE 41.9–2011 (incorporated by reference, see § 430.3); and section 7.4 of ANSI/ASHRAE 37–2009 (incorporated by reference, see § 430.3).

b. Calculate space cooling and space heating capacities using the compressor calibration method measurements as specified in section 7.4.5 and 7.4.6 respectively, of ANSI/ASHRAE 37–2009.

3.11.3 If Using the Refrigerant-Enthalpy Method as the Secondary Test Method

Conduct this secondary method according to section 7.5 of ANSI/ASHRAE 37–2009. Calculate space cooling and heating capacities using the refrigerant-enthalpy method measurements as specified in sections 7.5.4 and 7.5.5, respectively, of the same ASHRAE Standard.

3.12 Rounding of Space Conditioning Capacities for Reporting Purposes

a. When reporting rated capacities, round them off as specified in § 430.23 (for a single unit) and in 10 CFR 429.16 (for a sample).

b. For the capacities used to perform the calculations in section 4 of this appendix, however, round only to the nearest integer.

3.13 Laboratory Testing To Determine Off Mode Average Power Ratings

Voltage tolerances: As a percentage of reading, test operating tolerance shall be 2.0 percent and test condition tolerance shall be 1.5 percent (see section 1.2 of this appendix for definitions of these tolerances).

Conduct one of the following tests: If the central air conditioner or heat pump lacks a compressor crankcase heater, perform the test in section 3.13.1 of this appendix; if the central air conditioner or heat pump has a compressor crankcase heater that lacks controls and is not self-regulating, perform the test in section 3.13.1 of this appendix; if the central air conditioner or heat pump has a crankcase heater with a fixed power input controlled with a thermostat that measures ambient temperature and whose sensing element temperature is not affected by the heater, perform the test in section 3.13.1 of this appendix; if the central air conditioner or heat pump has a compressor crankcase heater equipped with self-regulating control or with controls for which the sensing element temperature is affected by the heater, perform the test in section 3.13.2 of this appendix.

3.13.1 This Test Determines the off Mode Average Power Rating for Central Air Conditioners and Heat Pumps That Lack a Compressor Crankcase Heater, or Have a Compressor Crankcase Heating System That Can Be Tested Without Control of Ambient Temperature During the Test. This Test Has No Ambient Condition Requirements

a. Test Sample Set-up and Power Measurement: For coil-only systems, provide a furnace or modular blower that is compatible with the system to serve as an interface with the thermostat (if used for the test) and to provide low-voltage control circuit power. Make all control circuit connections between the furnace (or modular blower) and the outdoor unit as specified by the manufacturer's installation instructions. Measure power supplied to both the furnace or modular blower and power supplied to the outdoor unit. Alternatively, provide a compatible transformer to supply low-voltage control circuit power, as described in section 2.2.d of this appendix. Measure transformer power, either supplied to the primary winding or supplied by the secondary winding of the transformer, and power supplied to the outdoor unit. For blower coil and single-package systems, make all control circuit connections between components as specified by the manufacturer's installation instructions, and provide power and measure power supplied to all system components.

b. Configure Controls: Configure the controls of the central air conditioner or heat pump so that it operates as if connected to a building thermostat that is set to the OFF position. Use a compatible building thermostat if necessary to achieve this configuration. For a thermostat-controlled crankcase heater with a fixed power input, bypass the crankcase heater thermostat if necessary to energize the heater.

c. Measure $P2_x$: If the unit has a crankcase heater time delay, make sure that time delay function is disabled or wait until delay time has passed. Determine the average power from non-zero value data measured over a 5-minute interval of the non-operating central air conditioner or heat pump and designate the average power as $P2_x$, the heating season total off mode power.

d. Measure $P2_x$ for coil-only split systems and for blower coil split systems for which a furnace or a modular blower is the designated air mover: Disconnect all low-voltage wiring for the *outdoor* components and *outdoor* controls from the low-voltage transformer. Determine the average power from non-zero value data measured over a 5-minute interval of the power supplied to the (remaining) low-voltage components of the central air conditioner or heat pump, or low-voltage power, $P2_x$. This power measurement does not include line power supplied to the outdoor unit. It is the line power supplied to the air mover, or, if a compatible transformer is used instead of an air mover, it is the line power supplied to the transformer primary coil. If a compatible transformer is used instead of an air mover and power output of the low-voltage secondary circuit is measured, P_x is zero.

e. Calculate *P2:* Set the number of compressors equal to the unit's number of single-stage compressors plus 1.75 times the unit's number of compressors that are not single-stage.

For single-package systems and blower coil split systems for which the designated air mover is not a furnace or modular blower, divide the heating season total off mode power ($P2_x$) by the number of compressors to calculate *P2*, the heating season per-compressor off mode power. Round *P2* to the nearest watt. The expression for calculating *P2* is as follows:

$$P2 = \frac{P2_x}{number\ of\ compressors}$$

For coil-only split systems and blower coil split systems for which a furnace or a modular blower is the designated air mover, subtract the low-voltage power (P_x) from the heating season total off mode power ($P2_x$) and divide by the number of compressors to calculate *P2*, the heating season per-compressor off mode power. Round *P2* to the nearest

watt. The expression for calculating *P2* is as follows:

$$P2 = \frac{P2_x - P_x}{number\ of\ compressors}.$$

f. Shoulder-season per-compressor off mode power, P1: If the system does not have a crankcase heater, has a crankcase heater without controls that is not self-regulating, or has a value for the crankcase heater turn-on temperature (as certified in the DOE Compliance Certification Database) that is higher than 71 °F, P1 is equal to P2.

Otherwise, de-energize the crankcase heater (by removing the thermostat bypass or otherwise disconnecting only the power supply to the crankcase heater) and repeat the measurement as described in section 3.13.1.c of this appendix. Designate the measured average power as $P1_x$, the shoulder season total off mode power.

Determine the number of compressors as described in section 3.13.1.e of this appendix.

For single-package systems and blower coil systems for which the designated air mover is not a furnace or modular blower, divide the shoulder season total off mode power ($P1_x$) by the number of compressors to calculate *P1*, the shoulder season per-compressor off mode power. Round *P1* to the nearest watt. The expression for calculating *P1* is as follows:

$$P1 = \frac{P1_x}{number\ of\ compressors}.$$

For coil-only split systems and blower coil split systems for which a furnace or a modular blower is the designated air mover, subtract the low-voltage power (P_x) from the shoulder season total off mode power ($P1_x$) and divide by the number of compressors to calculate *P1*, the shoulder season per-compressor off mode power. Round *P1* to the nearest watt. The expression for calculating *P1* is as follows:

$$P1 = \frac{P1_x - P_x}{number\ of\ compressors}.$$

3.13.2 This test determines the off mode average power rating for central air conditioners and heat pumps for which ambient temperature can affect the measurement of crankcase heater power.

a. Test Sample Set-up and Power Measurement: Set up the test and measurement as described in section 3.13.1.a of this appendix.

b. Configure Controls: Position a temperature sensor to measure the outdoor dry-bulb temperature in the air between 2 and 6 inches from the crankcase heater control temperature sensor or, if no such temperature sensor exists, position it in the air between 2 and 6 inches from the crankcase heater. Utilize the temperature measurements from this sensor for this portion of the test procedure. Configure the controls of the central air conditioner or heat pump so that it operates as if connected to a building thermostat that is set to the OFF position. Use a compatible building thermostat if necessary to achieve this configuration.

Conduct the test after completion of the B, B_1, or B_2 test. Alternatively, start the test when the outdoor dry-bulb temperature is at 82 °F and the temperature of the compressor shell (or temperature of each compressor's shell if there is more than one compressor) is at least 81 °F. Then adjust the outdoor temperature at a rate of change of no more than 20 °F per hour and achieve an outdoor dry-bulb temperature of 72 °F. Maintain this temperature within +/−2 °F while making the power measurement, as described in section 3.13.2.c of this appendix.

c. Measure $P1_x$: If the unit has a crankcase heater time delay, make sure that time delay function is disabled or wait until delay time has passed. Determine the average power from non-zero value data measured over a 5-minute interval of the non-operating central air conditioner or heat pump and designate the average power as $P1_x$, the shoulder season total off mode power. For units with crankcase heaters which operate during this part of the test and whose controls cycle or vary crankcase heater power over time, the test period shall consist of three complete crankcase heater cycles or 18 hours, whichever comes first. Designate the average power over the test period as $P1_x$, the shoulder season total off mode power.

d. Reduce outdoor temperature: Approach the target outdoor dry-bulb temperature by adjusting the outdoor temperature at a rate of change of no more than 20 °F per hour. This target temperature is five degrees Fahrenheit less than the temperature specified by the manufacturer in the DOE Compliance Certification Database at which the crankcase heater turns on. Maintain the target temperature within +/−2 °F while making the power measurement, as described in section 3.13.2.e of this appendix.

e. Measure $P2_x$: If the unit has a crankcase heater time delay, make sure that time delay function is disabled or wait until delay time has passed. Determine the average non-zero power of the non-operating central air conditioner or heat pump over a 5-minute interval and designate it as $P2_x$, the heating season total off mode power. For units with crankcase heaters whose controls cycle or vary crankcase heater power over time, the test period shall consist of three complete crankcase heater cycles or 18 hours, whichever comes first. Designate the average power over the test period as $P2_x$, the heating season total off mode power.

f. Measure P_x for coil-only split systems and for blower coil split systems for which a furnace or modular blower is the designated air mover: Disconnect all low-voltage wiring for the *outdoor* components and *outdoor* controls from the low-voltage transformer. Determine the average power from non-zero value data measured over a 5-minute interval of the power supplied to the (remaining) low-voltage components of the central air conditioner or heat pump, or low-voltage power, P_x. This power measurement does not include line power supplied to the outdoor unit. It is the line power supplied to the air mover, or, if a compatible transformer is used instead of an air mover, it is the line power supplied to the transformer primary coil. If a compatible transformer is used instead of an air mover and power output of the low-voltage secondary circuit is measured, P_x is zero.

g. Calculate *P1:*

Set the number of compressors equal to the unit's number of single-stage compressors plus 1.75 times the unit's number of compressors that are not single-stage.

For single-package systems and blower coil split systems for which the air mover is not a furnace or modular blower, divide the shoulder season total off mode power ($P1_x$) by the number of compressors to calculate *P1*, the shoulder season per-compressor off mode power. Round to the nearest watt. The expression for calculating *P1* is as follows:

$$P1 = \frac{P1_x}{number\ of\ compressors}.$$

For coil-only split systems and blower coil split systems for which a furnace or a modular blower is the designated air mover, subtract the low-voltage power (P_x) from the shoulder season total off mode power ($P1_x$) and divide by the number of compressors to calculate *P1*, the shoulder season per-compressor off mode power. Round to the nearest watt. The expression for calculating *P1* is as follows:

$$P1 = \frac{P1_x - P_x}{number\ of\ compressors}.$$

h. Calculate *P2:*

Determine the number of compressors as described in section 3.13.2.g of this appendix.

For single-package systems and blower coil split systems for which the air mover is not a furnace, divide the heating season total off mode power ($P1_x$) by the number of compressors to calculate *P2*, the heating season per-compressor off mode power. Round to the nearest watt. The expression for calculating *P2* is as follows:

$$P2 = \frac{P2_x}{number\ of\ compressors}.$$

For coil-only split systems and blower coil split systems for which a furnace or a modular blower is the designated air mover, subtract the low-voltage power (P_x) from the heating season total off mode power ($P2_x$) and divide by the number of compressors to calculate *P2*, the heating season per-compressor off mode power. Round to the nearest watt. The expression for calculating *P2* is as follows:

$$P2 = \frac{P2_x - P_x}{number\ of\ compressors}.$$

4. Calculations of Seasonal Performance Descriptors

4.1 Seasonal Energy Efficiency Ratio (SEER) Calculations. SEER must be calculated as follows:

For equipment covered under sections 4.1.2, 4.1.3, and 4.1.4 of this appendix, evaluate the seasonal energy efficiency ratio,

Equation 4.1-1 $$SEER = \frac{\sum_{j=1}^{8} q_c(T_j)}{\sum_{j=1}^{8} e_c(T_j)} = \frac{\sum_{j=1}^{8} \frac{q_c(T_j)}{N}}{\sum_{j=1}^{8} \frac{e_c(T_j)}{N}}$$

where:

$\frac{q_c(T_j)}{N}$ = the ratio of the total space cooling provided during periods of the space cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season (N), Btu/h.

$\frac{e_c(T_j)}{N}$ = the electrical energy consumed by the test unit during periods of the space cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season (N), W.

T_j = the outdoor bin temperature, °F. Outdoor temperatures are grouped or "binned." Use bins of 5 °F with the 8 cooling season bin temperatures being 67, 72, 77, 82, 87, 92, 97, and 102 °F.

j = the bin number. For cooling season calculations, j ranges from 1 to 8.

Additionally, for sections 4.1.2, 4.1.3, and 4.1.4 of this appendix, use a building cooling load, $BL(T_j)$. When referenced, evaluate $BL(T_j)$ for cooling using,

Equation 4.1-2 $$BL(T_j) = \frac{(T_j - 65)}{95 - 65} * \frac{\dot{Q}_c^{k=2}(95)}{1.1}$$

Where:

$\dot{Q}_c^{k=2}(95)$ = the space cooling capacity determined from the A_2 test and calculated as specified in section 3.3 of this appendix, Btu/h.

1.1 = sizing factor, dimensionless.

The temperatures 95 °F and 65 °F in the building load equation represent the selected outdoor design temperature

and the zero-load base temperature, respectively.

4.1.1 SEER Calculations for a Blower Coil System Having a Single-Speed Compressor and Either a Fixed-Speed Indoor Blower or a Constant-Air-Volume-Rate Indoor Blower, or a Coil-Only System Air Conditioner or Heat Pump

a. Evaluate the seasonal energy efficiency ratio, expressed in units of Btu/watt-hour, using:

$$SEER = PLF(0.5) * EER_B$$

Where:

$EER_B = \frac{\dot{Q}_c(82)}{\dot{E}_c(82)}$ = the energy efficiency ratio determined from the B test described in sections 3.2.1, 3.1.4.1, and 3.3 of this appendix, Btu/h per watt.

PLF(0.5) = 1 − 0.5 · C_D^c, the part-load performance factor evaluated at a cooling load factor of 0.5, dimensionless.

b. Refer to section 3.3 of this appendix regarding the definition and calculation of $\dot{Q}_c(82)$ and $\dot{E}_c(82)$.

4.1.2 SEER Calculations for an Air Conditioner or Heat Pump Having a Single-Speed Compressor and a Variable-Speed Variable-Air-Volume-Rate Indoor Blower

4.1.2.1 Units covered by section 3.2.2.1 of this appendix where indoor blower capacity modulation correlates with the outdoor dry bulb temperature. The manufacturer must provide information on how the indoor air volume rate or the indoor blower speed varies over the outdoor temperature range of 67 °F to 102 °F. Calculate SEER using Equation 4.1–1. Evaluate the quantity $q_c(T_j)/N$ in Equation 4.1–1 using,

Equation 4.1.2-1 $$\frac{q_c(T_j)}{N} = X(T_j) * \dot{Q}_c(T_j) * \frac{n_j}{N}$$

Where:

$X(T_j) = \left\{ \begin{matrix} BL(T_j)/\dot{Q}_c(T_j) \\ or \\ 1 \end{matrix} \right\}$ whichever is less; the cooling mode load factor for temperature bin j, dimensionless.

$\dot{Q}_c(T_j)$ = the space cooling capacity of the test unit when operating at outdoor temperature, T_j, Btu/h.

n_j/N = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

a. For the space cooling season, assign n_j/N as specified in Table 18. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$. Evaluate $\dot{Q}_c(T_j)$ using,

Equation 4.1.2-2 $$\dot{Q}_c(T_j) = \dot{Q}_c^{k=1}(T_j) + \frac{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)}{FP_c^{k=2} - FP_c^{k=1}} * \left[FP_c(T_j) - FP_c^{k=1}\right]$$

where:

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(82) + \frac{\dot{Q}_c^{k=1}(95) - \dot{Q}_c^{k=1}(82)}{95 - 82} * (T_j - 82)$$

the space cooling capacity of the test unit at outdoor temperature T_j if operated at the cooling minimum air volume rate, Btu/h.

$$\dot{Q}_c^{k=2}(T_j) = \dot{Q}_c^{k=2}(82) + \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95 - 82} * (T_j - 82)$$

the space cooling capacity of the test unit at outdoor temperature T_j if operated at the Cooling full-load air volume rate, Btu/h.

b. For units where indoor blower speed is the primary control variable, $FP_c^{k=1}$ denotes the fan speed used during the required A_1 and B_1 tests (see section 3.2.2.1 of this appendix), $FP_c^{k=2}$ denotes the fan speed used during the required A_2 and B_2 tests, and $FP_c(T_j)$ denotes the fan speed used by the unit when the outdoor temperature equals T_j. For units where indoor air volume rate is the primary control variable, the three FP_c's are similarly defined only now being expressed in terms of air volume rates rather than fan speeds. Refer to sections 3.2.2.1, 3.1.4 to 3.1.4.2, and 3.3 of this appendix regarding the definitions and calculations of $\dot{Q}_c^{k=1}(82)$, $\dot{Q}_c^{k=1}(95)$, $\dot{Q}_c^{k=2}(82)$, and $\dot{Q}_c^{k=2}(95)$.

Calculate $e_c(T_j)/N$ in Equation 4.1-1 using, Equation 4.1.2-3 $$\frac{e_c(T_j)}{N} = \frac{X(T_j) * \dot{E}_c(T_j)}{PLF_j} * \frac{n_j}{N}$$

Where:

$PLF_j = 1 - C_D^c \cdot [1 - X(T_j)]$, the part load factor, dimensionless.

$\dot{E}_c(T_j)$ = the electrical power consumption of the test unit when operating at outdoor temperature T_j, W.

c. The quantities $X(T_j)$ and n_j/N are the same quantities as used in Equation 4.1.2–1.

d. Evaluate $\dot{E}_c(T_j)$ using,

$$\dot{E}_c(T_j) = \dot{E}_c^{k=1}(T_j) + \frac{\dot{E}_c^{k=2}(T_j) - \dot{E}_c^{k=1}(T_j)}{FP_c^{k=2} - FP_c^{k=1}} * \left[FP_c(T_j) - FP_c^{k=1}\right]$$

where:

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(82) + \frac{\dot{E}_c^{k=1}(95) - \dot{E}_c^{k=1}(82)}{95-82} * (T_j - 82)$$

the electrical power consumption of the test unit at outdoor temperature T_j if operated at the Cooling Minimum Air Volume Rate, W.

$$\dot{E}_c^{k=2}(T_j) = \dot{E}_c^{k=2}(82) + \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82} * (T_j - 82)$$ the electrical power consumption of the test unit at outdoor temperature T_j if operated at the cooling full-load air volume rate, W.

e. The parameters $FP_c^{k=1}$, and $FP_c^{k=2}$, and $FP_c(T_j)$ are the same quantities that are used when evaluating Equation 4.1.2–2. Refer to sections 3.2.2.1, 3.1.4 to 3.1.4.2, and 3.3 of this appendix regarding the definitions and calculations of $\dot{E}_c^{k=1}(82)$, $\dot{E}_c^{k=1}(95)$, $\dot{E}_c^{k=2}(82)$, and $\dot{E}_c^{k=2}(95)$.

4.1.2.2 Units Covered by Section 3.2.2.2 of This Appendix Where Indoor Blower Capacity Modulation Is Used To Adjust the Sensible to Total Cooling Capacity Ratio

Calculate SEER as specified in section 4.1.1 of this appendix.

4.1.2.3 SEER Calculations for an Air Conditioner or Heat Pump Having a Two-Capacity Compressor

Calculate SEER using Equation 4.1–1. Evaluate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at low compressor capacity and outdoor temperature T_j using,

Equation 4.1.3-1 $$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(67) + \frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (T_j - 67)$$

Equation 4.1.3-2 $$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(67) + \frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (T_j - 67)$$

where $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 test, $\dot{Q}_c^{k=1}(67)$ and $\dot{E}_c^{k=1}(67)$ are determined from the F_1 test, and all four quantities are calculated as specified in section 3.3 of this appendix. Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at high compressor capacity and outdoor temperature T_j using,

Equation 4.1.3-3 $$\dot{Q}_c^{k=2}(T_j) = \dot{Q}_c^{k=2}(82) + \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82} * (T_j - 82)$$

Equation 4.1.3-4 $$\dot{E}_c^{k=2}(T_j) = \dot{E}_c^{k=2}(82) + \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82} * (T_j - 82)$$

where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 test, $\dot{Q}_c^{k=2}(82)$, and $\dot{E}_c^{k=2}(82)$, are determined from the B_2test, and all are calculated as specified in section 3.3 of this appendix.

The calculation of Equation 4.1–1 quantities $q_c(T_j)/N$ and $e_c(T_j)/N$ differs depending on whether the test unit would operate at low capacity (section 4.1.2.4 of this appendix), cycle between low and high capacity (section 4.1.2.5 of this appendix), or operate at high capacity (sections 4.1.2.6 and 4.1.2.7 of this appendix) in responding to the building load. For units that lock out low capacity operation at higher outdoor temperatures, the manufacturer must supply information regarding this temperature so that the appropriate equations are used. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$, for each temperature bin.

4.1.2.4 Steady-state space cooling capacity at low compressor capacity is greater than or equal to the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{q_c(T_j)}{N} = X^{k=1}(T_j) * \dot{Q}_c^{k=1}(T_j) * \frac{n_j}{N} \qquad \frac{e_c(T_j)}{N} = \frac{X^{k=1}(T_j) * \dot{E}_c^{k=1}(T_j)}{PLF_j} * \frac{n_j}{N}$$

Where:

$X^{k=1}(T_j) = BL(T_j)/\dot{Q}_c^{k=1}(T_j)$, the cooling mode low capacity load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

$\frac{n_j}{N}$ = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 18. Use Equations 4.1.3-1 and 4.1.3-2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$.

TABLE 18—DISTRIBUTION OF FRACTIONAL HOURS WITHIN COOLING SEASON TEMPERATURE BINS

Bin number, j	Bin temperature range, °F	Representative temperature for bin, °F	Fraction of total temperature bin hours, n_j/N
1	65–69	67	0.214
2	70–74	72	0.231
3	75–79	77	0.216
4	80–84	82	0.161
5	85–89	87	0.104
6	90–94	92	0.052
7	95–99	97	0.018
8	100–104	102	0.004

4.1.2.5 Unit alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = [X^{k=1}(T_j) * \dot{Q}_c^{k=1}(T_j) + X^{k=2}(T_j) * \dot{Q}_c^{k=2}(T_j)] * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = [X^{k=1}(T_j) * \dot{E}_c^{k=1}(T_j) + X^{k=2}(T_j) * \dot{E}_c^{k=2}(T_j)] * \frac{n_j}{N}$$

where:

$X^{k=1}(T_j) = \frac{\dot{Q}_c^{k=2}(T_j) - BL(T_j)}{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)}$ the cooling mode, low capacity load factor for temperature bin j, dimensionless.

$X^{k=2}(T_j) = 1 - X^{k=1}(T_j)$, the cooling mode, high capacity load factor for temperature bin j, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 18. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$.

4.1.2.6 Unit only operates at high (k = 2) compressor capacity at temperature T_j and its capacity is greater than the building cooling load, $BL(T_j) < \dot{Q}_c^{k=2}(T_j)$. This section applies to units that lock out low compressor capacity operation at higher outdoor temperatures.

$$\frac{q_c(T_j)}{N} = X^{k=2}(T_j) * \dot{Q}_c^{k=2}(T_j) * \frac{n_j}{N} \qquad \frac{e_c(T_j)}{N} = \frac{X^{k=2}(T_j) * \dot{E}_c^{k=2}(T_j)}{PLF_j} * \frac{n_j}{N}$$

Where:

$X^{k=2}(T_j) = BL(T_j)/\dot{Q}_c^{k=2}(T_j)$, the cooling mode high capacity load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c(k = 2) * [1 - X^{k=2}(T_j)]$ the part load factor, dimensionless.

Obtain the fraction bin hours for the cooling season, $\frac{n_j}{N}$, from Table 18. Use Equations 4.1.3-3 and 4.1.3-4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$. If the C_2 and D_2 tests described in section 3.2.3 and Table 6 of this appendix are not conducted, set C_D^c (k=2) equal to the default value specified in section 3.5.3 of this appendix.

4.1.2.7 Unit must operate continuously at high (k = 2) compressor capacity at temperature T_j, $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=2}(T_j) * \frac{n_j}{N} \qquad \frac{e_c(T_j)}{N} = \dot{E}_c^{k=2}(T_j) * \frac{n_j}{N}$$

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 18. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and

4.1.3 SEER Calculations for an Air Conditioner or Heat Pump Having a Variable-Speed Compressor

Calculate SEER using Equation 4.1–1.

$\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at minimum compressor speed and outdoor temperature T_j. Use,

Equation 4.1.4-1 $\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(67) + \frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (T_j - 67)$

Equation 4.1.4-2 $\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(67) + \frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (T_j - 67)$

where $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 test, $\dot{Q}_c^{k=1}(67)$ and $\dot{E}_c^{k=1}(67)$ are determined from the F1 test, and all four quantities are calculated as specified in section 3.3 of this appendix. Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at full compressor speed and outdoor temperature T_j. Use Equations 4.1.3–3 and 4.1.3–4, respectively, where

$\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ are determined from the B_2 test, and all four quantities are calculated as specified in section 3.3 of this appendix. Calculate the space cooling capacity, $\dot{Q}_c^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=v}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.2.4 (and Table 7) E_V test of this appendix using,

Equation 4.1.4–3 $\dot{Q}_c^{k=v}(T_j) = \dot{Q}_c^{k=v}(87) + M_Q * (T_j - 87)$

Equation 4.1.4–4 $\dot{E}_c^{k=v}(T_j) = \dot{E}_h^{k=v}(87) + M_E * (T_j - 87)$

where $\dot{Q}_c^{k=v}(87)$ and $\dot{E}_c^{k=v}(87)$ are determined from the E_V test and calculated as specified in section 3.3 of this appendix. Approximate the slopes of the k=v intermediate speed cooling capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (1 - N_Q)\right] + \left[N_Q * \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82}\right]$$

$$M_E = \left[\frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (1 - N_E)\right] + \left[N_E * \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82}\right]$$

where,

$$N_Q = \frac{\dot{Q}_c^{k=v}(87) - \dot{Q}_c^{k=1}(87)}{\dot{Q}_c^{k=2}(87) - \dot{Q}_c^{k=1}(87)} \qquad N_E = \frac{\dot{E}_c^{k=v}(87) - \dot{E}_c^{k=1}(87)}{\dot{E}_c^{k=2}(87) - \dot{E}_c^{k=1}(87)}$$

Use Equations 4.1.4–1 and 4.1.4–2, respectively, to calculate $\dot{Q}_c^{k=1}(87)$ and $\dot{E}_c^{k=1}(87)$.

4.1.3.1 Steady-state space cooling capacity when operating at minimum compressor speed is greater than or equal to the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{q_c(T_j)}{N} = X^{k=1}(T_j) * \dot{Q}_c^{k=1}(T_j) * \frac{n_j}{N} \qquad \frac{e_c(T_j)}{N} = \frac{X^{k=1}(T_j) * \dot{E}_c^{k=1}(T_j)}{PLF_j} * \frac{n_j}{N}$$

Where:

$X^{k=1}(T_j) = BL(T_j)/\dot{Q}_c^{k=1}(T_j)$, the cooling mode minimum speed load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

n_j/N = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 18. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$.

4.1.3.2 Unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) * \frac{n_j}{N} \qquad \frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) * \frac{n_j}{N}$$

$$\dot{E}_c^{k=i}(T_j) = \frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)}$$ the electrical power input required by the test unit when operating at a compressor speed of k = i and temperature T_j, W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of k = i and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 18. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using,

$$EER^{k=i}(T_j) = A + B \cdot T_j + C \cdot T_j^2.$$

For each unit, determine the coefficients A, B, and C by conducting the following calculations once:

$$D = \frac{T_2^2 - T_1^2}{T_v^2 - T_1^2} \qquad B = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - D*[EER^{k=1}(T_1) - EER^{k=v}(T_v)]}{T_1 - T_2 - D*(T_1 - T_v)}$$

$$C = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - B*(T_1 - T_2)}{T_1^2 - T_2^2} \qquad A = EER^{k=1}(T_2) - B*T_2 - C*T_2^2$$

Where:

T_1 = the outdoor temperature at which the unit, when operating at minimum compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=1}(T_j) = BL(T_1)$), °F. Determine T_1 by equating Equations 4.1.3–1 and 4.1–2 and solving for outdoor temperature.

T_v = the outdoor temperature at which the unit, when operating at the intermediate compressor speed used during the section 3.2.4 E_V test of this appendix, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=v}(T_v) = BL(T_v)$), °F. Determine T_v by equating Equations 4.1.4–3 and 4.1–2 and solving for outdoor temperature.

T_2 = the outdoor temperature at which the unit, when operating at full compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=2}(T_2) = BL(T_2)$), °F. Determine T_2 by equating Equations 4.1.3–3 and 4.1–2 and solving for outdoor temperature.

$$EER^{k=1}(T_1) = \frac{\dot{Q}_c^{k=1}(T_j)[Eqn.\,4.1.4-1, substituting\ T_1\ for\ T_j]}{\dot{E}_c^{k=1}(T_j)[Eqn.\,4.1.4-2, substituting\ T_1\ for\ T_j]}, Btu/h \text{ per } W$$

$$EER^{k=v}(T_v) = \frac{\dot{Q}_c^{k=v}(T_v)[Eqn.\,4.1.4-3, substituting\ T_v\ for\ T_j]}{\dot{E}_c^{k=v}(T_v)[Eqn.\,4.1.4-4, substituting\ T_v\ for\ T_j]}, Btu/h \text{ per } W$$

$$EER^{k=2}(T_2) = \frac{\dot{Q}_c^{k=2}(T_2)[Eqn.\,4.1.3-3, substituting\ T_2\ for\ T_j]}{\dot{E}_c^{k=2}(T_2)[Eqn.\,4.1.3-4, substituting\ T_2\ for\ T_j]}, Btu/h \text{ per } W$$

4.1.3.3 Unit must operate continuously at full (k = 2) compressor speed at temperature Tj, $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$. Evaluate the Equation 4.1–1 quantities

$$\frac{q_c(T_j)}{N} \text{ and } \frac{e_c(T_j)}{N}$$

as specified in section 4.1.2.7 of this appendix with the understanding that $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$ correspond to full compressor speed operation and are derived from the results of the tests specified in section 3.2.4 of this appendix.

4.1.4 SEER Calculations for an Air Conditioner or Heat Pump Having a Single Indoor Unit With Multiple Indoor Blowers

Calculate SEER using Eq. 4.1–1, where $q_c(Tj)/N$ and $e_c(Tj)/N$ are evaluated as specified in the applicable subsection.

4.1.4.1 For Multiple Indoor Blower Systems That Are Connected to a Single, Single-Speed Outdoor Unit

a. Calculate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at the cooling minimum air volume rate and outdoor temperature electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at the cooling full-load air volume rate and outdoor temperature T_j using the equations given in section 4.1.2.1 of this appendix. In evaluating the section 4.1.2.1 equations, determine the quantities $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ from the B1 test, $\dot{Q}_c^{k=1}(95)$ and $\dot{E}_c^{k=1}(95)$ from the Al test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ from the B2 test, and $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ from the A2 test. Evaluate all eight quantities as specified in section 3.3 of this appendix. Refer to section 3.2.2.1 and Table 5 of this appendix for additional information on the four referenced laboratory tests.

appendix. Assign this same value to $CD_c(K=2)$.

c. Except for using the above values of $\dot{Q}_c^{k=1}(T_j)$, $\dot{E}_c^{k=1}(T_j)$, $\dot{E}_c^{k=2}(T_j)$, $\dot{Q}_c^{k=2}(T_j)$, CD_c, and CD_c (K=2), calculate the quantities $q_c(T_j)/N$ and $e_c(T_j)/N$ as specified in section 4.1.3.1 of this appendix for cases where $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$. For all other outdoor bin temperatures, T_j, calculate $q_c(Tj)/N$ and $e_c(Tj)/N$ as specified in section 4.1.3.3 of this appendix if $\dot{Q}_c^{k=2}(T_j) > BL(T_j)$ or as specified in section 4.1.3.4 of this appendix if $\dot{Q}_c^{k=2}(T_j) \leq BL(T_j)$.

4.1.4.2 For multiple indoor blower systems that are connected to either a lone outdoor unit having a two-capacity compressor or to two separate single-speed outdoor units of identical model, calculate the quantities $q_c(Tj)/N$ and $e_c(Tj)/N$ as specified in section 4.1.3 of this appendix.

4.2 Heating Seasonal Performance Factor (HSPF) Calculations

Unless an approved alternative efficiency determination method is used, as set forth in 10 CFR 429.70(e), HSPF must be calculated as follows: Six generalized climatic regions are depicted in Figure 1 and otherwise defined in Table 19. For each of these regions and for each applicable standardized design heating requirement, evaluate the heating seasonal performance factor using,

Equation 4.2-1 $$HSPF = \frac{\sum_j^J n_j * BL(T_j)}{\sum_j^J e_h(T_j) + \sum_j^J RH(T_j)} * F_{def} = \frac{\sum_j^J \left[\frac{n_j}{N} * BL(T_j)\right]}{\sum_j^J \frac{e_h(T_j)}{N} + \sum_j^J \frac{RH(T_j)}{N}} * F_{def}$$

Where:

$e_h(T_j)/N$ = The ratio of the electrical energy consumed by the heat pump during periods of the space heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season (N), W. For heat pumps having a heat comfort controller, this ratio may also include electrical energy used by resistive elements to maintain a minimum air delivery temperature (see 4.2.5).

$RH(T_j)/N$ = The ratio of the electrical energy used for resistive space heating during periods when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season (N), W. Except as noted in section 4.2.5 of this appendix, resistive space heating is modeled as being used to meet that portion of the building load that the heat pump does not meet because of insufficient capacity or because the heat pump automatically turns off at the lowest outdoor temperatures. For heat pumps having a heat comfort controller, all or part of the electrical energy used by resistive heaters at a particular bin temperature may be reflected in $e_h(T_j)/N$ (see section 4.2.5 of this appendix).

T_j = the outdoor bin temperature, °F. Outdoor temperatures are "binned" such that calculations are only performed based one temperature within the bin. Bins of 5 °F are used.

n_j/N = Fractional bin hours for the heating season; the ratio of the number of hours during the heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season, dimensionless. Obtain n_j/N values from Table 19.

j = the bin number, dimensionless.

J = for each generalized climatic region, the total number of temperature bins, dimensionless. Referring to Table 19, J is the highest bin number (j) having a nonzero entry for the fractional bin hours for the generalized climatic region of interest.

F_{def} = the demand defrost credit described in section 3.9.2 of this appendix, dimensionless.

$BL(T_j)$ = the building space conditioning load corresponding to an outdoor temperature of T_j; the heating season building load also depends on the generalized climatic region's outdoor design temperature and the design heating requirement, Btu/h.

TABLE 19—GENERALIZED CLIMATIC REGION INFORMATION

Region No.	I	II	III	IV	V	VI
Heating Load Hours, HLH	750	1,250	1,750	2,250	2,750	*2,750
Outdoor Design Temperature, T_{OD}	37	27	17	5	−10	30
j T_j (°F)	Fractional Bin Hours, n_j/N					
1 62	.291	.215	.153	.132	.106	.113
2 57	.239	.189	.142	.111	.092	.206
3 52	.194	.163	.138	.103	.086	.215
4 47	.129	.143	.137	.093	.076	.204
5 42	.081	.112	.135	.100	.078	.141
6 37	.041	.088	.118	.109	.087	.076
7 32	.019	.056	.092	.126	.102	.034
8 27	.005	.024	.047	.087	.094	.008
9 22	.001	.008	.021	.055	.074	.003
10 17	0	.002	.009	.036	.055	0
11 12	0	0	.005	.026	.047	0
12 7	0	0	.002	.013	.038	0
13 2	0	0	.001	.006	.029	0
14 −3	0	0	0	.002	.018	0
15 −8	0	0	0	.001	.010	0
16 −13	0	0	0	0	.005	0
17 −18	0	0	0	0	.002	0
18 −23	0	0	0	0	.001	0

Evaluate the building heating load using

Equation 4.2-2 $$BL(T_j) = \frac{(65-T_j)}{65-T_{OD}} * C * DHR$$

Where:

T_{OD} = the outdoor design temperature, °F. An outdoor design temperature is specified for each generalized climatic region in Table 19.

C = 0.77, a correction factor which tends to improve the agreement between calculated and measured building loads, dimensionless.

DHR = the design heating requirement (see section 1.2 of this appendix, Definitions), Btu/h.

Calculate the minimum and maximum design heating requirements for each generalized climatic region as follows:

$$DHR_{min} = \begin{Bmatrix} \dot{Q}_h^k(47) * \left[\frac{65-T_{OD}}{60}\right], for\ Regions\ I, II, III, IV, \& VI \\ \dot{Q}_h^k(47), \qquad for\ Region\ V \end{Bmatrix}$$

and

$$DHR_{max} = \begin{Bmatrix} 2 * \dot{Q}_h^k(47) * \left[\frac{65-T_{OD}}{60}\right], for\ Regions\ I, II, III, IV, \& VI \\ 2.2 * \dot{Q}_h^k(47), \qquad for\ Region\ V \end{Bmatrix}$$

Rounded to the nearest standardized DHR given in Table 19

where $\dot{Q}_h^k(47)$ is expressed in units of Btu/h and otherwise defined as follows:

a. For a single-speed heat pump tested as per section 3.6.1 of this appendix, $\dot{Q}_h^k(47) = \dot{Q}_h(47)$, the space heating capacity determined from the H1 test.

b. For a variable-speed heat pump, a section 3.6.2 single-speed heat pump, or a two-capacity heat pump not covered by item 3, $\dot{Q}_h^k(47) = \dot{Q}_h^{k=2}(47)$, the space heating capacity determined from the $H1_2$ test.

c. For two-capacity, northern heat pumps (see section 1.2 of this appendix, Definitions), $\dot{Q}^k_h(47) = \dot{Q}^{k=1}_h(47)$, the space heating capacity determined from the $H1_1$ test.

If the optional $H1_N$ test is conducted on a variable-speed heat pump, the manufacturer has the option of defining $\dot{Q}^k_h(47)$ as specified above in item 2 or as $\dot{Q}^k_h(47) = \dot{Q}^{k=N}_h(47)$, the space heating capacity determined from the $H1_N$ test.

For all heat pumps, HSPF accounts for the heating delivered and the energy consumed by auxiliary resistive elements when operating below the balance point. This condition occurs when the building load exceeds the space heating capacity of the heat pump condenser. For HSPF calculations for all heat pumps, see either section 4.2.1, 4.2.2, 4.2.3, or 4.2.4 of this appendix, whichever applies.

For heat pumps with heat comfort controllers (see section 1.2 of this appendix, Definitions), HSPF also accounts for resistive heating contributed when operating above the heat-pump-plus-comfort-controller balance point as a result of maintaining a minimum supply temperature. For heat pumps having a heat comfort controller, see section 4.2.5 of this appendix for the additional steps required for calculating the HSPF.

TABLE 20—STANDARDIZED DESIGN HEATING REQUIREMENTS

[Btu/h]

5,000	50,000
10,000	60,000
15,000	70,000
20,000	80,000
25,000	90,000
30,000	100,000
35,000	110,000
40,000	130,000

4.2.1 Additional steps for calculating the HSPF of a blower coil system heat pump having a single-speed compressor and either a fixed-speed indoor blower or a constant-air-volume-rate indoor blower installed, or a coil-only system heat pump.

Equation 4.2.1-1 $$\frac{e_h(T_j)}{N} = \frac{X(T_j) * \dot{E}_h(T_j) * \delta(T_j)}{PLF_j} * \frac{n_j}{N}$$

Equation 4.2.1-2 $$\frac{RH(T_j)}{N} = \frac{BL(T_j) - [X(T_j) * \dot{Q}_h(T_j) * \delta(T_j)]}{3.413 \frac{Btu/h}{W}} * \frac{n_j}{N}$$

where:

$$X(T_j) = \begin{Bmatrix} BL(T_j)/\dot{Q}_h(T_j) \\ or \\ 1 \end{Bmatrix}$$

whichever is less; the heating mode load factor for temperature bin j, dimensionless.

whichever is less; the heating mode load factor for temperature bin j, dimensionless.

$\dot{Q}_h(T_j)$ = the space heating capacity of the heat pump when operating at outdoor temperature T_j, Btu/h.

$\dot{E}_h(T_j)$ = the electrical power consumption of the heat pump when operating at outdoor temperature T_j, W.

$\delta(T_j)$ = the heat pump low temperature cut-out factor, dimensionless.

$PLF_j = 1 - C_D^h \cdot [1 - X(T_j)]$ the part load factor, dimensionless.

Use Equation 4.2–2 to determine $BL(T_j)$. Obtain fractional bin hours for the heating season, n_j/N, from Table 19.

Determine the low temperature cut-out factor using

Equation 4.2.1-3 $$\delta(T_j) = \begin{Bmatrix} 0, if\ T_j \le T_{off}\ and\ \frac{\dot{Q}_h(T_j)}{3.413 * \dot{E}_h(T_j)} < 1 \\ 1/2, if\ T_{off} < T_j \le T_{on}\ and\ \frac{\dot{Q}_h(T_j)}{3.413 * \dot{E}_h(T_j)} \ge 1 \\ 1, if\ T_j > T_{on}\ and\ \frac{\dot{Q}_h(T_j)}{3.413 * \dot{E}_h(T_j)} \ge 1 \end{Bmatrix}$$

Where:

T_{off} = the outdoor temperature when the compressor is automatically shut off, °F.

(If no such temperature exists, T_j is always greater than T_{off} and T_{on}).

T_{on} = the outdoor temperature when the compressor is automatically turned back on, if applicable, following an automatic shut-off, °F.

Calculate $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using,

Equation 4.2.1-4 $$\dot{Q}_h(T_j) = \begin{cases} \dot{Q}_h(17) + \frac{[\dot{Q}_h(47) - \dot{Q}_h(17)] * (T_j - 17)}{47-17}, & if\ T_j \ge 45\ °F\ or\ T_j \le 17\ °F \\ \dot{Q}_h(17) + \frac{[\dot{Q}_h(35) - \dot{Q}_h(17)] * (T_j - 17)}{35-17}, & if\ 17\ °F < T_j < 45\ °F \end{cases}$$

Equation 4.2.1-5

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_h(17) + \frac{[\dot{E}_h(47) - \dot{E}_h(17)] * (T_j - 17)}{47-17}, & if\ T_j \ge 45\ °F\ or\ T_j \le 17\ °F \\ \dot{E}_h(17) + \frac{[\dot{E}_h(35) - \dot{E}_h(17)] * (T_j - 17)}{35-17}, & if\ 17\ °F < T_j < 45\ °F \end{cases}$$

where $\dot{Q}_h(47)$ and $\dot{E}_h(47)$ are determined from the H1 test and calculated as specified in section 3.7 of this appendix; $\dot{Q}_h(35)$ and $\dot{E}_h(35)$ are determined from the H2 test and calculated as specified in section 3.9.1 of this appendix; and $\dot{Q}_h(17)$ and $\dot{E}_h(17)$ are determined from the H3 test and calculated as specified in section 3.10 of this appendix.

4.2.2 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor blower.

The manufacturer must provide information about how the indoor air volume rate or the indoor blower speed varies over the outdoor temperature range of 65 °F to −23 °F. Calculate the quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

in Equation 4.2–1 as specified in section 4.2.1 of this appendix with the exception of replacing references to the

H1C test and section 3.6.1 of this appendix with the $H1C_1$ test and section 3.6.2 of this appendix. In addition, evaluate the space heating capacity and electrical power consumption of the heat pump $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using

Equation 4.2.2-1 $$\dot{Q}_h(T_j) = \dot{Q}_h^{k=1}(T_j) + \frac{\dot{Q}_h^{k=2}(T_j) - \dot{Q}_h^{k=1}(T_j)}{FP_h^{k=2} - FP_h^{k=1}} * \left[FP_h(T_j) - FP_h^{k=1}\right]$$

Equation 4.2.2-2 $$\dot{E}_h(T_j) = \dot{E}_h^{k=1}(T_j) + \frac{\dot{E}_h^{k=2}(T_j) - \dot{E}_h^{k=1}(T_j)}{FP_h^{k=2} - FP_h^{k=1}} * \left[FP_h(T_j) - FP_h^{k=1}\right]$$

where the space heating capacity and electrical power consumption at both low capacity (k=1) and high capacity (k=2) at outdoor temperature Tj are determined using

Equation 4.2.2-3 $$\dot{Q}_h^k(T_j) = \begin{cases} \dot{Q}_h^k(17) + \frac{\left[\dot{Q}_h^k(47) - \dot{Q}_h^k(17)\right] * (T_j - 17)}{47 - 17}, & if\ T_j \geq 45\ °F\ or\ T_j \leq 17\ °F \\ \dot{Q}_h^k(17) + \frac{\left[\dot{Q}_h^k(35) - \dot{Q}_h^k(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F < T_j < 45\ °F \end{cases}$$

Equation 4.2.2-4

$$\dot{E}_h^k(T_j) = \begin{cases} \dot{E}_h^k(17) + \frac{\left[\dot{E}_h^k(47) - \dot{E}_h^k(17)\right] * (T_j - 17)}{47 - 17}, & if\ T_j \geq 45\ °F\ or\ T_j \leq 17\ °F \\ \dot{E}_h^k(17) + \frac{\left[\dot{E}_h^k(35) - \dot{E}_h^k(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F < T_j < 45\ °F \end{cases}$$

For units where indoor blower speed is the primary control variable, $FP_h^{k=1}$ denotes the fan speed used during the required $H1_1$ and $H3_1$ tests (see Table 11), $FP_h^{k=2}$ denotes the fan speed used during the required $H1_2$, $H2_2$, and $H3_2$ tests, and $FP_h(T_j)$ denotes the fan speed used by the unit when the outdoor temperature equals T_j. For units where indoor air volume rate is the primary control variable, the three FP_h's are similarly defined only now being expressed in terms of air volume rates rather than fan speeds. Determine $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ test, and $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test. Calculate all four quantities as specified in section 3.7 of this appendix. Determine $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ as specified in section 3.6.2 of this appendix; determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ and from the $H2_2$ test and the calculation specified in section 3.9 of this appendix. Determine $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17$ from the $H3_1$ test, and $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test. Calculate all four quantities as specified in section 3.10 of this appendix.

4.2.3 Additional Steps for Calculating the HSPF of a Heat Pump Having a Two-Capacity Compressor

The calculation of the Equation 4.2–1 quantities differ depending upon

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

a. Evaluate the space heating capacity and electrical power consumption of the heat pump when operating at low compressor capacity and outdoor temperature T_j using

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \frac{\left[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)\right] * (T_j - 47)}{62 - 47}, & if\ T_j \geq 40\ °F \\ \dot{Q}_h^{k=1}(17) + \frac{\left[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 40\ °F \\ \dot{Q}_h^{k=1}(17) + \frac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)\right] * (T_j - 17)}{47 - 17}, & if\ T_j < 17\ °F \end{cases}$$

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \frac{\left[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)\right] * (T_j - 47)}{62 - 47}, & if\ T_j \geq 40\ °F \\ \dot{E}_h^{k=1}(17) + \frac{\left[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 40\ °F \\ \dot{E}_h^{k=1}(17) + \frac{\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)\right] * (T_j - 17)}{47 - 17}, & if\ T_j < 17\ °F \end{cases}$$

b. Evaluate the space heating capacity and electrical power consumption ($\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$) of the heat pump when operating at high compressor capacity and outdoor temperature T_j by solving Equations 4.2.2–3 and 4.2.2–4, respectively, for k=2. Determine $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ from the $H0_1$ test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ test, and $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test. Calculate all six quantities as specified in section 3.7 of this appendix. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ test and, if required as described in section 3.6.3 of this appendix, determine $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ from the $H2_1$ test. Calculate the required 35 °F quantities as specified in section 3.9 of this appendix. Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test and, if required as described in section 3.6.3 of this appendix, determine $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ from the $H3_1$ test. Calculate the required 17 °F quantities as specified in section 3.10 of this appendix.

4.2.3.1 Steady-state space heating capacity when operating at low compressor capacity is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$.

Equation 4.2.3-1 $$\frac{e_h(T_j)}{N} = \frac{X^{k=1}(T_j) * \dot{E}_h^{k=1}(T_j) * \delta(T_j)}{PLF_j} * \frac{n_j}{N}$$

Equation 4.2.3-2 $$\frac{RH(T_j)}{N} = \frac{BL(T_j) * [1 - \delta(T_j)]}{3.413 \frac{Btu/h}{W}} * \frac{n_j}{N}$$

Where:

$X^{k=1}(T_j) = BL(T_j)/\dot{Q}_h^{k=1}(T_j)$, the heating mode low capacity load factor for temperature bin *j*, dimensionless.

$PLF_j = 1 - C_D^h \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

$\delta(T_j)$ = the low temperature cutoff factor, dimensionless.

Determine the low temperature cut-out factor using

Equation 4.2.3-3 $$\delta(T_j) = \begin{cases} 0, & if\ T_j \leq T_{off} \\ 1/2, & if\ T_{off} < T_j \leq T_{on} \\ 1, & if\ T_j > T_{on} \end{cases}$$

where T_{off} and T_{on} are defined in section 4.2.1 of this appendix. Use the calculations given in section 4.2.3.3 of this appendix, and not the above, if:

a. The heat pump locks out low capacity operation at low outdoor temperatures and

b. T_j is below this lockout threshold temperature.

4.2.3.2 Heat pump alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

Calculate $\frac{RH(T_j)}{N}$ using Equation 4.2.3-2. Evaluate $\frac{e_h(T_j)}{N}$ using

$$\frac{e_h(T_j)}{N} = [X^{k=1}(T_j) * \dot{E}_h^{k=1}(T_j) + X^{k=2}(T_j) * \dot{E}_h^{k=2}(T_j)] * \delta(T_j) * \frac{n_j}{N}$$

where:

$$X^{k=1}(T_j) = \frac{\dot{Q}_h^{k=2}(T_j) - BL(T_j)}{\dot{Q}_h^{k=2}(T_j) - \dot{Q}_h^{k=1}(T_j)}$$

$X^{k=2}(T_j) = 1 - X^{k=1}(T_j)$ the heating mode, high capacity load factor for temperature bin $_j$, dimensionless.

Determine the low temperature cut-out factor, $\delta'(T_j)$, using Equation 4.2.3–3.

4.2.3.3 Heat pump only operates at high (k=2) compressor capacity at temperature T_j and its capacity is greater than the building heating load, $BL(T_j)$ $<\dot{Q}_h^{k=2}(T_j)$. This section applies to units that lock out low compressor capacity operation at low outdoor temperatures.

Calculate $\frac{RH(T_j)}{N}$ using Equation 4.2.3-2. Evaluate $\frac{e_h(T_j)}{N}$ using

$$\frac{e_h(T_j)}{N} = \frac{X^{k=2}(T_j) * \dot{E}_h^{k=2}(T_j) * \delta(T_j)}{PLF_j} * \frac{n_j}{N}$$

where:

$X^{k=2}(T_j) = BL(T_j)/\dot{Q}_h^{k=2}(T_j)$. $PLF_j = 1 - C_D^h(k=2) * [1 - X^{k=2}(T_j)]$

If the $H1C_2$ test described in section 3.6.3 and Table 12 of this appendix is not conducted, set C_D^h (k=2) equal to the default value specified in section 3.8.1 of this appendix.

Determine the low temperature cut-out factor, $\delta(T_j)$, using Equation 4.2.3–3.

4.2.3.4 Heat pump must operate continuously at high (k=2) compressor capacity at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$.

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j) * \delta'(T_j) * \frac{n_j}{N} \qquad \frac{RH(T_j)}{N} = \frac{BL(T_j) * [\dot{Q}_h^{k=2}(T_j) * \delta\prime(T_j)]}{3.413\frac{Btu/h}{W}} * \frac{n_j}{N}$$

where:

$$\delta'(T_j) = \begin{cases} 0, & if\ T_j \leq T_{off}\ or\ \frac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} < 1 \\ 1/2, & if\ T_{off} < T_j \leq T_{on}\ and\ \frac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \geq 1 \\ 1, & if\ T_j > T_{on}\ and\ \frac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \geq 1 \end{cases}$$

4.2.4 Additional Steps for Calculating the HSPF of a Heat Pump Having a Variable-Speed Compressor

Calculate HSPF using Equation 4.2–1. Evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using

Equation 4.2.4-1 $\dot{Q}_h^{k=1}(T_j) = \dot{Q}_h^{k=1}(47) + \frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62-47} * (T_j - 47)$

Equation 4.2.4-2 $\dot{E}_h^{k=1}(T_j) = \dot{E}_h^{k=1}(47) + \frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62-47} * (T_j - 47)$

where $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ are determined from the $H0_1$ test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ test, and all four quantities are calculated as specified in section 3.7 of this appendix.

Evaluate the space heating capacity, $\dot{Q}_h^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=2}(T_j)$, of the heat pump when operating at full compressor speed and outdoor temperature T_j by solving Equations 4.2.2–3 and 4.2.2–4, respectively, for k=2. Determine the Equation 4.2.2–3 and 4.2.2–4 quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test and the calculations specified in section 3.7 of this appendix. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ test and the calculations specified in section 3.9 of this appendix or, if the $H2_2$ test is not conducted, by conducting the calculations specified in section 3.6.4 of this appendix. Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test and the calculations specified in section 3.10 of this appendix. Calculate the space heating capacity, $\dot{Q}_h^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=v}(T_j)$, of the heat pump when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.6.4 $H2_V$ test of this appendix using

Equation 4.2.4–3 $\dot{Q}_h^{k=v}(T_j = \dot{Q}_h^{k=v}(35) + M_Q * (T_j - 35)$

Equation 4.2.4–4 $\dot{E}_h^{k=v}(T_j = \dot{E}_h^{k=v}(35) + M_E * (T_j - 35)$

where $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_V$ test and calculated as specified in section 3.9 of this appendix. Approximate the slopes of the k=v intermediate speed heating capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62-47} * (1 - N_Q)\right] + \left[N_Q * \frac{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)}{35-17}\right]$$

$$M_E = \left[\frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62-47} * (1 - N_E)\right] + \left[N_E * \frac{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)}{35-17}\right]$$

where,

$$N_Q = \frac{\dot{Q}_h^{k=v}(35) - \dot{Q}_h^{k=1}(35)}{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=1}(35)} \qquad N_E = \frac{\dot{E}_h^{k=v}(35) - \dot{E}_h^{k=1}(35)}{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=1}(35)}$$

Use Equations 4.2.4-1 and 4.2.4-2, respectively, to calculate $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$.

The calculation of Equation 4.2-1 quantities $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ differs depending upon whether the heat pump would operate at minimum speed (section 4.2.4.1 of this appendix), operate at an intermediate speed (section 4.2.4.2 of this appendix), or operate at full speed (section 4.2.4.3 of this appendix) in responding to the building load.

4.2.4.1 Steady-state space heating

equal to the building heating load at

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

as specified in section 4.2.3.1 of this appendix. Except now use Equations 4.2.4–1 and 4.2.4–2 to evaluate $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$, respectively, and replace section 4.2.3.1 references to "low capacity" and section 3.6.3 of this appendix with "minimum speed" and section 3.6.4 of this appendix. Also, the last sentence of section 4.2.3.1 of this appendix does not apply.

4.2.4.2 Heat pump operates at an intermediate compressor speed (k=i) in order to match the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

Calculate $\frac{RH(T_j)}{N}$ using Equation 4.2.3-2 while evaluating $\frac{e_h(T_j)}{N}$ using,

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=i}(T_j) * \delta(T_j) * \frac{n_j}{N}$$

where:

$$\dot{E}_h^{k=i}(T_j) = \frac{\dot{Q}_h^{k=i}(T_j)}{3.413\frac{Btu/h}{W} * COP^{k=i}(T_j)}$$

and $\delta(T_j)$ is evaluated using Equation 4.2.3–3 while,

$\dot{Q}_h^{k=i}(T_j) = BL(T_j)$, the space heating capacity delivered by the unit in matching the building load at temperature (T_j), Btu/h. The matching occurs with the heat pump operating at compressor speed k=i.

$COP^{k=i}(T_j)$ = the steady-state coefficient of performance of the heat pump when operating at compressor speed k=i and temperature T_j, dimensionless.

For each temperature bin where the heat pump operates at an intermediate compressor speed, determine $COP^{k=i}(T_j)$ using,

$COP^{k=i}(T_j) = A + B \cdot T_j + C \cdot T_j$.

For each heat pump, determine the coefficients A, B, and C by conducting the following calculations once:

$$D = \frac{T_3^2 - T_4^2}{T_{vh}^2 - T_4^2} \qquad B = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - D*[COP^{k=2}(T_4) - COP^{k=v}(T_{vh})]}{T_4 - T_3 - D*(T_4 - T_{vh})}$$

$$C = \frac{COP^{k=2}(T_4) - COP^{k=2}(T_3) - B*(T_4 - T_3)}{T_4^2 - T_3^2} \qquad A = COP^{k=2}(T_4) - B * T_4 - C * T_4^2$$

Where:

T_3 = the outdoor temperature at which the heat pump, when operating at minimum compressor speed, provides a space heating capacity that is equal to the building load ($\dot{Q}_h^{k=1}(T_3) = BL(T_3)$), °F. Determine T_3 by equating Equations 4.2.4–1 and 4.2.4–2 and solving for outdoor temperature.

T_{vh} = the outdoor temperature at which the heat pump, when operating at the intermediate compressor speed used during the section 3.6.4 $H2_V$ test of this appendix, provides a space heating capacity that is equal to the building load ($\dot{Q}_h^{k=v}(T_{vh}) = BL(T_{vh})$), °F. Determine T_{vh} by equating Equations 4.2.4–3 and 4.2–2 and solving for outdoor temperature.

T_4 = the outdoor temperature at which the heat pump, when operating at full compressor speed, provides a space heating capacity that is equal to the building load ($\dot{Q}_h^{k=2}(T_4) = BL(T_4)$), °F. Determine T_4 by equating Equations 4.2.2–3 (k=2) and 4.2–2 and solving for outdoor temperature.

$$COP^{k=1}(T_3) = \frac{\dot{Q}_h^{k=1}(T_3)[Eqn.\,4.2.4-1, substituting\ T_3\ for\ T_j]}{3.413\frac{Btu/h}{W} * \dot{E}_h^{k=1}(T_3)[Eqn.\,4.2.4-2, substituting\ T_3\ for\ T_j]}$$

$$COP^{k=v}(T_{vh}) = \frac{\dot{Q}_h^{k=v}(T_{vh})[Eqn.\,4.2.4-3, substituting\ T_{vh}\ for\ T_j]}{3.413\frac{Btu/h}{W} * \dot{E}_h^{k=v}(T_{vh})[Eqn.\,4.2.4-4, substituting\ T_{vh}\ for\ T_j]}$$

$$COP^{k=2}(T_4) = \frac{\dot{Q}_h^{k=2}(T_4)[Eqn.\,4.2.2-3, substituting\ T_4\ for\ T_j]}{3.413\frac{Btu/h}{W} * \dot{E}_h^{k=2}(T_4)[Eqn.\,4.2.2-4, substituting\ T_4\ for\ T_j]}$$

For multiple-split heat pumps (only), the following procedures supersede the above requirements for calculating $COP_h^{k=i}(T_j)$. For each temperature bin where $T_3 > T_j > T_{vh}$,

$$COP_h^{k=i}(T_j) = COP_h^{k=1}(T_3) + \frac{COP_h^{k=v}(T_{vh}) - COP_h^{k=1}(T_3)}{T_{vh} - T_3} * (T_j - T_3)$$

For each temperature bin where $T_{vh} \geq T_j > T_4$,

$$COP_h^{k=i}(T_j) = COP_h^{k=v}(T_{vh}) + \frac{COP_h^{k=2}(T_4) - COP_h^{k=v}(T_{vh})}{T_4 - T_{vh}} * (T_j - T_{vh})$$

4.2.4.3 Heat pump must operate continuously at full (k=2) compressor speed at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$. Evaluate the Equation 4.2–1 quantities

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

as specified in section 4.2.3.4 of this appendix with the understanding that $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ correspond to full compressor speed operation and are derived from the results of the specified section 3.6.4 tests of this appendix.

4.2.5 Heat Pumps Having a Heat Comfort Controller

Heat pumps having heat comfort controllers, when set to maintain a typical minimum air delivery temperature, will cause the heat pump condenser to operate less because of a greater contribution from the resistive elements. With a conventional heat pump, resistive heating is only initiated if the heat pump condenser cannot meet the building load (*i.e.*, is delayed until a second stage call from the indoor thermostat). With a heat comfort controller, resistive heating can occur even though the heat pump condenser has adequate capacity to meet the building load (*i.e.*, both on during a first stage call from the indoor thermostat). As a result, the outdoor temperature where the heat pump compressor no longer cycles (*i.e.*, starts to run continuously), will be lower than if the heat pump did not have the heat comfort controller.

4.2.5.1 Blower coil system heat pump having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and either a fixed-speed indoor blower or a constant-air-volume-rate indoor blower installed, or a coil-only system heat pump.

Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in section 4.2.1 of this appendix (Equations 4.2.1–4 and 4.2.1–5) for each outdoor bin temperature, T_j, that is listed in Table 19. Denote these capacities and electrical powers by using the subscript "hp" instead of "h." Calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in $Btu/lbm_{da} \cdot °F$) from the results of the H1 test using:

$$\dot{m}_{da} = \overline{V}_s * 0.075\frac{lbm_{da}}{ft^3} * \frac{60_{min}}{hr} = \frac{\overline{V}_{mx}}{v_n' * [1 + W_n]} * \frac{60_{min}}{hr} = \frac{\overline{V}_{mx}}{v_n} * \frac{60_{min}}{hr}$$

where $\overline{V}_s$, $\overline{V}_{mx}$, v'_n (or v_n), and W_n are defined following Equation 3–1. For each outdoor bin temperature listed in Table 19, calculate the nominal temperature of the air leaving the heat pump condenser coil using,

$$T_0(T_j) = 70°\text{F} + \frac{\dot{Q}_{hp}(T_j)}{\dot{m}_{da} * C_{p,da}}$$

Evaluate $e_h(T_j/N)$, $RH(T_j)/N$, $X(T_j)$, PLF_j, and $\delta(T_j)$ as specified in section 4.2.1 of this appendix. For each bin calculation, use the space heating capacity and electrical power from Case 1 or Case 2, whichever applies.

Case 1. For outdoor bin temperatures where $T_o(T_j)$ is equal to or greater than T_{CC} (the maximum supply temperature determined according to section 3.1.9 of this appendix), determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ as specified in section 4.2.1 of this appendix (*i.e.*, $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j)$ and $\dot{E}_{hp}(T_j) = \dot{E}_{hp}(T_j)$).

Note: Even though $T_o(T_j) \geq T_{cc}$, resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

Case 2. For outdoor bin temperatures where $T_o(T_j) > T_{cc}$, determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j) + \dot{Q}_{CC}(T_j)$ $\dot{E}_h(T_j) = \dot{E}_{hp}(T_j) + \dot{E}_{CC}(T_j)$ where:

$$\dot{Q}_{CC}(T_j) = \dot{m}_{da} * C_{p,da} * [T_{CC} - T_0(T_j)] \qquad \dot{E}_{CC}(T_j) = \frac{\dot{Q}_{CC}(T_j)}{3.413\frac{Btu/h}{W}}$$

Note: Even though $T_o(T_j) < T_{cc}$, additional resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

4.2.5.2 Heat pump having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor blower.

Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in section 4.2.2 of this appendix (Equations 4.2.2–1 and 4.2.2–2) for each outdoor bin temperature, T_j, that is listed in Table 19. Denote these capacities and electrical powers by using the subscript "hp" instead of "h." Calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in Btu/lbm$_{da}$ · °F) from the results of the $H1_2$ test using:

$$\dot{m}_{da} = \overline{V}_s * 0.075\frac{lbm_{da}}{ft^3} * \frac{60_{min}}{hr} = \frac{\overline{V}_{mx}}{v'_n * [1 + W_n]} * \frac{60_{min}}{hr} = \frac{\overline{V}_{mx}}{v_n} * \frac{60_{min}}{hr}$$

$$C_{p,da} = 0.24 + 0.444 * W_n$$

where $\overline{V}_s$, $\overline{V}_{mx}$, v'_n (or v_n), and W_n are defined following Equation 3–1. For each outdoor bin temperature listed in Table 19, calculate the nominal temperature of the air leaving the heat pump condenser coil using,

$$T_0(T_j) = 70°\text{F} + \frac{\dot{Q}_{hp}(T_j)}{\dot{m}_{da} * C_{p,da}}$$

Evaluate $e_h(T_j)/N$, $RH(T_j)/N$, $X(T_j)$, PLF_j, and $\delta(T_j)$ as specified in section 4.2.1 of this appendix with the exception of replacing references to the H1C test and section 3.6.1 of this appendix with the $H1C_1$ test and section 3.6.2 of this appendix. For each bin calculation, use the space heating capacity and electrical power from Case 1 or Case 2, whichever applies.

Case 1. For outdoor bin temperatures where $T_o(T_j)$ is equal to or greater than T_{CC} (the maximum supply temperature determined according to section 3.1.9 of this appendix), determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ as specified in section 4.2.2 of this appendix (*i.e.* $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j)$ and $\dot{E}_h(T_j) = \dot{E}_{hp}(T_j)$).

Note: Even though $T_o(T_j) \geq T_{CC}$, resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

Case 2. For outdoor bin temperatures where $T_o(T_j) < T_{CC}$, determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j) + \dot{Q}_{CC}(T_j)$ $\dot{E}_h(T_j) = \dot{E}_{hp}(T_j) + \dot{E}_{CC}(T_j)$

$$\dot{Q}_{CC}(T_j) = \dot{m}_{da} * C_{p,da} * [T_{CC} - T_0(T_j)] \qquad \dot{E}_{CC}(T_j) = \frac{\dot{Q}_{CC}(T_j)}{3.413\frac{Btu/h}{W}}$$

Note: Even though $T_o(T_j) < T_{cc}$, additional resistive heating may be required; evaluate Equation 4.2.1–2 for all bins.

4.2.5.3 Heat pumps having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a two-capacity compressor.

Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in section 4.2.3 of this appendix for both high and low capacity and at each outdoor bin temperature, T_j, that is listed in Table 19. Denote these capacities and electrical powers by using the subscript "hp" instead of "h." For the low capacity case, calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in Btu/lbm$_{da}$ · °F) from the results of the $H1_1$ test using:

$$\dot{m}_{da}^{k=1} = \overline{V}_s * 0.075\frac{lbm_{da}}{ft^3} * \frac{60_{min}}{hr} = \frac{\overline{V}_{mx}}{v'_n * [1 + W_n]} * \frac{60_{min}}{hr} = \frac{\overline{V}_{mx}}{v_n} * \frac{60_{min}}{hr}$$

$$C_{p,da}^{k=1} = 0.24 + 0.444 * W_n$$

where $\overline{V}_s$, $\overline{V}_{mx}$, v'_n (or v_n), and W_n are defined following Equation 3–1. For each outdoor bin temperature listed in Table 19, calculate the nominal temperature of the air leaving the heat pump condenser coil when operating at low capacity using,

$$T_0^{k=1}(T_j) = 70°\text{F} + \frac{\dot{Q}_{hp}^{k=1}(T_j)}{\dot{m}_{da}^{k=1} * C_{p,da}^{k=1}}$$

Repeat the above calculations to determine the mass flow rate ($\dot{m}_{da}^{k=2}$) and the specific heat of the indoor air ($C_{p,da}^{k=2}$) when operating at high capacity by using the results of the $H1_2$ test. For each outdoor bin temperature listed in Table 19, calculate the nominal temperature of the air leaving the heat pump condenser coil when operating at high capacity using,

$$T_0^{k=2}(T_j) = 70°\text{F} + \frac{\dot{Q}_{hp}^{k=2}(T_j)}{\dot{m}_{da}^{k=2} * C_{p,da}^{k=2}}$$

Evaluate $e_h(T_j)/N$, $RH(T_j)/N$, $X^{k=1}(T_j)$, and/or $X^{k=2}(T_j)$, PLF_j, and $\delta'(T_j)$ or $\delta''(T_j)$ as specified in section 4.2.3.1. 4.2.3.2, 4.2.3.3, or 4.2.3.4 of this appendix, whichever applies, for each temperature bin. To evaluate these quantities, use the low-capacity space heating capacity and the low-capacity electrical power from Case 1 or Case 2, whichever applies; use the high-capacity space heating capacity and the high-capacity electrical power from Case 3 or Case 4, whichever applies.

Case 1. For outdoor bin temperatures where $T_o^{k=1}(T_j)$ is equal to or greater than T_{CC} (the maximum supply temperature determined according to section 3.1.9 of this appendix), determine $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$ as specified in section 4.2.3 of this appendix (*i.e.*, $\dot{Q}_h^{k=1}(T_j) = \dot{Q}_{hp}^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j) = \dot{E}_{hp}^{k=1}(T_j)$).

Note: Even though $T_o^{k=1}(T_j) \geq T_{CC}$, resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

Case 2. For outdoor bin temperatures where $T_o^{k=1}(T_j) < T_{CC}$, determine $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$ using $\dot{Q}_h^{k=1}(T_j) = \dot{Q}_{hp}^{k=1}(T_j) + \dot{Q}_{CC}^{k=1}(T_j)$ $\dot{E}_h^{k=1}(T_j) = \dot{E}_{hp}^{k=1}(T_j) + \dot{E}_{CC}^{k=1}(T_j)$ where,

$$\dot{Q}_{CC}(T_j) = \dot{m}_{da} * C_{p,da} * [T_{CC} - T_0(T_j)] \qquad \dot{E}_{CC}(T_j) = \frac{\dot{Q}_{CC}(T_j)}{3.413\frac{Btu/h}{W}}$$

Note: Even though $T_o^{k=1}(T_j) \geq T_{cc}$, additional resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

Case 3. For outdoor bin temperatures where $T_o^{k=2}(T_j)$ is equal to or greater than T_{CC}, determine $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ as specified in section 4.2.3 of this appendix (*i.e.*, $\dot{Q}_h^{k=2}(T_j) = \dot{Q}_{hp}^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j) = \dot{E}_{hp}^{k=2}(T_j)$).

Note: Even though $T_o^{k=2}(T_j) < T_{CC}$, resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

Case 4. For outdoor bin temperatures where $T_o^{k=2}(T_j) < T_{CC}$, determine $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ using $\dot{Q}_h^{k=2}(T_j) = \dot{Q}_{hp}^{k=2}(T_j) + \dot{Q}_{CC}^{k=2}(T_j)$ $\dot{E}_h^{k=2}(T_j) = \dot{E}_{hp}^{k=2}(T_j) + \dot{E}_{CC}^{k=2}(T_j)$ where,

$$\dot{Q}_{CC}^{k=2}(T_j) = \dot{m}_{da}^{k=2} * C_{p,da}^{k=2} * [T_{CC} - T_0^{k=2}(T_j)] \qquad \dot{E}_{CC}^{k=2}(T_j) = \frac{\dot{Q}_{CC}^{k=2}(T_j)}{3.413\frac{Btu/h}{W}}$$

Note: Even though $T_o^{k=2}(T_j) < T_{cc}$, additional resistive heating may be required; evaluate $RH(T_j)/N$ for all bins.

4.2.5.4 Heat pumps having a heat comfort controller: Additional steps for calculating the HSPF of a heat pump having a variable-speed compressor. [Reserved]

4.2.6 Additional steps for calculating the HSPF of a heat pump having a triple-capacity compressor.

The only triple-capacity heat pumps covered are triple-capacity, northern heat pumps. For such heat pumps, the calculation of the Eq. 4.2–1 quantities

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

differ depending on whether the heat pump would cycle on and off at low capacity (section 4.2.6.1 of this appendix), cycle on and off at high capacity (section 4.2.6.2 of this appendix), cycle between low capacity (section 4.2.6.3 of this appendix), cycle between low and high capacity (section 4.2.6.4 of this appendix), cycle between high and booster capacity (section 4.2.6.5 of this capacity (4.2.6.6 of this appendix), operate continuously at high capacity (section 4.2.6.7 of this appendix), operate continuously at booster capacity (section 4.2.6.8 of this

heating (also section 4.2.6.8 of this appendix) in responding to the building load. As applicable, the manufacturer must supply information regarding the outdoor temperature range at which each stage of compressor capacity is active. As an informative example, data may be submitted in this manner: At the low (k = 1) compressor capacity, the outdoor temperature range of operation is 40 °F ≤ T ≤ 65 °F; At the high (k = 2) compressor capacity, the outdoor temperature range of operation is 20 °F ≤ T ≤ 50 °F; At the booster (k = 3) compressor capacity, the outdoor temperature range of operation is − 20 °F ≤ T ≤ 30 °F.

a. Evaluate the space heating capacity and electrical power consumption of the heat pump when operating at low compressor capacity and outdoor temperature Tj using the equations given in section 4.2.3 of this appendix for $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$) In evaluating the section 4.2.3 equations, Determine $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ from the $H0_1$ test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ test, and $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test. Calculate all four quantities as specified in section 3.7 of this appendix. If, in accordance with section 3.6.6 of this appendix, the $H3_1$ test is conducted, calculate $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ as specified in section 3.10 of this appendix and determine $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ as specified in section 3.6.6 of this appendix.

b. Evaluate the space heating capacity and electrical power consumption ($\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$) of the heat pump when operating at high compressor capacity and outdoor temperature Tj by solving Equations 4.2.2–3 and 4.2.2–4, respectively, for k = 2. Determine $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ from the $H0_1$ test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ test, and $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test, evaluated as specified in section 3.7 of this appendix. Determine the equation input for $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$, evaluated as specified in section 3.9.1 of this appendix. Also, determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test, evaluated as specified in section 3.10 of this appendix.

c. Evaluate the space heating capacity and electrical power consumption of the heat pump when operating at booster compressor capacity and outdoor temperature Tj using

$$\dot{Q}_h^{k=3}(T_j) = \begin{cases} \dot{Q}_h^{k=3}(17) + \dfrac{\left[\dot{Q}_h^{k=3}(35) - \dot{Q}_h^{k=3}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F < T_j \le 45\ °F \\ \dot{Q}_h^{k=3}(2) + \dfrac{\left[\dot{Q}_h^{k=3}(17) - \dot{Q}_h^{k=3}(2)\right] * (T_j - 2)}{17 - 2}, & if\ T_j \le 17\ °F \end{cases}$$

$$\dot{E}_h^{k=3}(T_j) = \begin{cases} \dot{E}_h^{k=3}(17) + \dfrac{\left[\dot{E}_h^{k=3}(35) - \dot{E}_h^{k=3}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F < T_j \le 45\ °F \\ \dot{E}_h^{k=3}(2) + \dfrac{\left[\dot{E}_h^{k=3}(17) - \dot{E}_h^{k=3}(2)\right] * (T_j - 2)}{17 - 2}, & if\ T_j \le 17\ °F \end{cases}$$

Determine $\dot{Q}_h^{k=3}(17)$ and $\dot{E}_h^{k=3}(17)$ from the $H3_3$ test and determine $\dot{Q}_h^{k=2}(2)$ and $\dot{E}_h^{k=3}(2)$ from the $H4_3$ test. Calculate all four quantities as specified in section 3.10 of this appendix. Determine the equation input for $\dot{Q}_h^{k=3}(35)$ and $\dot{E}_h^{k=3}(35)$ as specified in section 3.6.6 of this appendix.

4.2.6.1 Steady-state space heating capacity when operating at low compressor capacity is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \ge BL(T_j)$., and the heat pump permits low compressor capacity at T_j.

Evaluate the quantities

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

using Eqs. 4.2.3–1 and 4.2.3–2, respectively. Determine the equation inputs $X^{k=1}(T_j)$, PLF_j, and $\delta'(T_j)$ as specified in section 4.2.3.1 of this appendix. In calculating the part load factor, PLF_j, use the low-capacity cyclic-degradation coefficient $C_D{}^h$, [or equivalently, $C_D{}^h(k = 1)$] determined in accordance with section 3.6.6 of this appendix.

4.2.6.2 Heat pump only operates at high (k = 2) compressor capacity at temperature T_j and its capacity is greater than or equal to the building heating load, $BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

Evaluate the quantities

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

as specified in section 4.2.3.3 of this appendix. Determine the equation inputs $X^{k=2}(T_j)$, PLF_j, and $\delta'(T_j)$ as specified in section 4.2.3.3 of this appendix. In calculating the part load factor, PLF_j, use the high-capacity cyclic-degradation coefficient, $C_D{}^h(k = 2)$ determined in accordance with section 3.6.6 of this appendix.

4.2.6.3 Heat pump only operates at high (k = 3) compressor capacity at temperature T_j and its capacity is greater than or equal to the building heating load, $BL(T_j) \le \dot{Q}_h^{k=3}(T_j)$.

Calculate $\frac{RH(T_j)}{N}$ and using Eq. 4.2.3-2. Evaluate $\frac{e_h(T_j)}{N}$ using

$$\frac{e_h(T_j)}{N} = \frac{X^{k=3}(T_j) * \dot{E}_h^{k=3}(T_j) * \delta'(T_j)}{PLF_j} * \frac{n_j}{N}$$

where

$X^{k=3}(T_j) = BL(T_j)/\dot{Q}_h^{k=3}(T_j)$ and $PLF_j = 1 - C_D{}^h(k = 3) * [1 - X^{k=3}(T_j)]$

Determine the low temperature cut-out factor, $\delta'(T_j)$, using Eq. 4.2.3–3. Use the

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

as specified in section 4.2.3.2 of this appendix. Determine the equation inputs $X^{k=1}(T_j)$, $X^{k=2}(T_j)$, and $\delta'(T_j)$ as specified in section 4.2.3.2 of this appendix.

Calculate $\frac{RH(T_j)}{N}$ and using Eq. 4.2.3-2. Evaluate $\frac{e_h(T_j)}{N}$ using

$$\frac{e_h(T_j)}{N} = [X^{k=2}(T_j) * \dot{E}_h^{k=2}(T_j) + X^{k=3}(T_j) * \dot{E}_h^{k=3}(T_j)] * \delta'(T_j) * \frac{n_j}{N}$$

where:

$$X^{k=2}(T_j) = \frac{\dot{Q}_h^{k=3}(T_j) - BL(T_j)}{\dot{Q}_h^{k=3}(T_j) - \dot{Q}_h^{k=2}(T_j)}$$

and $X^{k=3}(T_j) = X^{k=2}(T_j)$ = the heating mode, booster capacity load factor for temperature bin j, dimensionless. Determine the low temperature cut-out factor, $\delta'(T_j)$, using Eq. 4.2.3–3.

4.2.6.4 Heat pump alternates between high (k = 2) and low (k = 1) compressor capacity to satisfy the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

Evaluate the quantities

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=1}(T_j) * \delta'(T_j) * \frac{n_j}{N} \quad \text{and} \quad \frac{RH(T_j)}{N} = \frac{BL(T_j) - [\dot{Q}_h^{k=1}(T_j) * \delta'(T_j)]}{3.413\frac{Btu/h}{W}} * \frac{n_j}{N}$$

where the low temperature cut-out factor, $\delta'(T_j)$, is calculated using Eq. 4.2.3–3.

4.2.6.5 Heat pump alternates between high (k = 2) and booster (k = 3) compressor capacity to satisfy the building heating load at a temperature T_j, $\dot{Q}_h^{k=2}(T_j) < BL(T_j) < \dot{Q}_h^{k=3}(T_j)$.

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=1}(T_j) * \delta'(T_j) * \frac{n_j}{N} \quad \text{and} \quad \frac{RH(T_j)}{N} = \frac{BL(T_j) - [\dot{Q}_h^{k=1}(T_j) * \delta'(T_j)]}{3.413\frac{Btu/h}{W}} * \frac{n_j}{N}$$

where $\delta''(T_j)$ is calculated as specified in section 4.2.3.4 of this appendix if the heat pump is operating at its booster compressor capacity. If the heat pump system converts to using only resistive heating at outdoor temperature T_j, set $\delta'(T_j)$ equal to zero.

4.2.7 Additional steps for calculating the HSPF of a heat pump having a single indoor unit with multiple indoor blowers. The calculation of the Eq. 4.2–1 quantities $e_h(T_j)/N$ and $RH(T_j)/N$ are evaluated as specified in the applicable subsection.

4.2.7.1 For multiple indoor blower heat pumps that are connected to a singular, single-speed outdoor unit:

a. Calculate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at the heating minimum air volume rate and outdoor temperature T_j using Eqs. 4.2.2–3 and 4.2.2–4, respectively. Use these same equations to calculate the space heating capacity, $\dot{Q}_h^{k=2}(T_j)$ and electrical power consumption, $\dot{E}_h^{k=2}(T_j)$, of the test unit when operating at the heating full-load air volume rate and outdoor temperature T_j. In evaluating Eqs. 4.2.2–3 and 4.2.2– 4, determine the quantities $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ from the $H1_1$ test; determine $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ test. Evaluate all four quantities according to section 3.7 of this appendix. Determine the quantities $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ as specified in section 3.6.2 of this appendix. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ frost accumulation test as calculated according to section 3.9.1 of this appendix. Determine the quantities $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ from the $H3_1$ test, and $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test. Evaluate all four quantities according to section 3.10 of this appendix. Refer to section 3.6.2 and Table 11 of this appendix for additional information on the referenced laboratory tests.

b. Determine the heating mode cyclic degradation coefficient, CD_h, as per sections 3.6.2 and 3.8 to 3.8.1 of this appendix. Assign this same value to $CD_h(k = 2)$.

c. Except for using the above values of $\dot{Q}_h^{k=1}(T_j)$, $\dot{E}_h^{k=1}(T_j)$, $\dot{Q}_h^{k=2}(T_j)$, $\dot{E}_h^{k=2}(T_j)$, CD_h, and $CD_h(k = 2)$, calculate the quantities $e_h(T_j)/N$ as specified in section 4.2.3.1 of this appendix for cases where $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$. For all other outdoor bin temperatures, T_j, calculate $e_h(T_j)/N$ and $RH_h(T_j)/N$ as specified in section 4.2.3.3 of this appendix if $\dot{Q}_h^{k=2}(T_j) > BL(T_j)$ or as specified in section 4.2.3.4 of this appendix if $\dot{Q}_h^{k=2}(T_j) \leq BL(T_j)$

4.2.7.2 For multiple indoor blower heat pumps connected to either a single outdoor unit with a two-capacity compressor or to two separate single-speed outdoor units of identical model, calculate the quantities $e_h(T_j)/N$ and $RH(T_j)/N$ as specified in section 4.2.3 of this appendix.

4.3 Calculations of Off-Mode Power Consumption

For central air conditioners and heat pumps with a cooling capacity of: Less than 36,000 Btu/h, determine the off mode represented value, $P_{W,OFF}$, with the following equation:

$$P_{W,OFF} = \frac{P1 + P2}{2};$$

greater than or equal to 36,000 Btu/h, calculate the capacity scaling factor according to:

$$F_{scale} = \frac{\dot{Q}_C(95)}{36{,}000},$$

where $\dot{Q}_C(95)$ is the total cooling capacity at the A or A_2 test condition, and determine the off mode represented value, $P_{W,OFF}$, with the following equation:

$$P_{W,OFF} = \frac{P1 + P2}{2 \times F_{scale}};$$

4.4 Rounding of SEER and HSPF for Reporting Purposes

After calculating SEER according to section 4.1 of this appendix and HSPF according to section 4.2 of this appendix round the values off as specified per § 430.23(m) of title 10 of the Code of Federal Regulations.

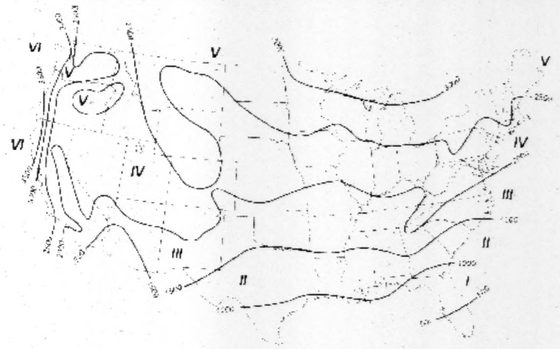

Figure 1—Heating Load Hours (HLH_A) for the United States

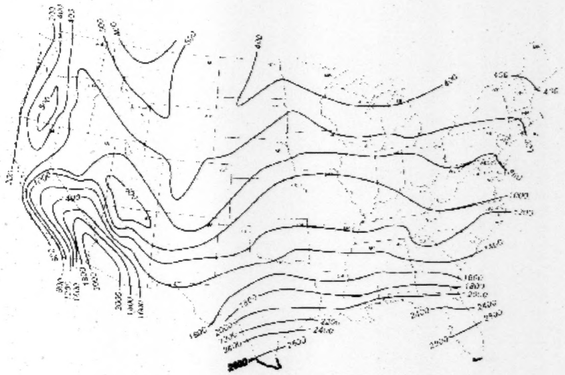

Figure 2—Cooling Load Hours (CLH_A) for the United States

TABLE 21—REPRESENTATIVE COOLING AND HEATING LOAD HOURS FOR EACH GENERALIZED CLIMATIC REGION

Climatic region	Cooling load hours CLH_R	Heating load hours HLH_R
I	2,400	750
II	1,800	1,250
III	1,200	1,750

TABLE 21—REPRESENTATIVE COOLING AND HEATING LOAD HOURS FOR EACH GENERALIZED CLIMATIC REGION—Continued

Climatic region	Cooling load hours CLH_R	Heating load hours HLH_R
IV	800	2,250
Rating Values	1,000	2,080
V	400	2,750
VI	200	2,750

TABLE 22—APPLICABLE TEST CONDITIONS FOR CALCULATION OF THE SENSIBLE HEAT RATIO

Equipment configuration	Reference table No. of Appendix M	SHR computation with results from	Computed values
Units Having a Single-Speed Compressor and a Fixed-Speed Indoor blower, a Constant Air Volume Rate Indoor blower, or No Indoor blower.	4	B Test	SHR(B)
Units Having a Single-Speed Compressor That Meet the section 3.2.2.1 Indoor Unit Requirements.	5	B2 and B1 Tests	SHR(B1), SHR(B2)
Units Having a Two-Capacity Compressor	6	B2 and B1 Tests	SHR(B1), SHR(B2)
Units Having a Variable-Speed Compressor	7	B2 and B1 Tests	SHR(B1), SHR(B2)

The SHR is defined and calculated as follows:

$$SHR = \frac{Sensible\ Cooling\ Capacity}{Total\ Cooling\ Capacity}$$

$$= \frac{\dot{Q}_{sc}^{k}(T)}{\dot{Q}_{c}^{k}(T)}$$

Where both the total and sensible cooling capacities are determined from the same cooling mode test and calculated from data collected over the same 30-minute data collection interval.

4.6 Calculations of the Energy Efficiency Ratio (EER). Calculate the energy efficiency ratio using,

$$EER = \frac{Total\ Cooling\ Capacity}{Total\ Electrical\ Power\ Consumption}$$

$$= \frac{\dot{Q}_{c}^{k}(T)}{\dot{E}_{c}^{k}(T)}$$

where $\dot{Q}_c^k(T)$ and $\dot{E}_c^k(T)$ are the space cooling capacity and electrical power consumption determined from the 30-minute data collection interval of the same steady-state wet coil cooling mode test and calculated as specified in section 3.3 of this appendix. Add the letter identification for each steady-state test as a subscript (*e.g.*, EER_{A2}) to differentiate among the resulting EER values.

4.5 Calculations of the SHR, which should be computed for different equipment configurations and test conditions specified in Table 22.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

RIN 0572–AC06

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; confirmation.

SUMMARY: The Rural Utilities Service (RUS), hereinafter referred to as the Agency, is confirming the interim final rule published in the **Federal Register** on July 30, 2015, which amends its regulation for the Rural Broadband Access Loan and Loan Guarantee Program (Broadband Loan Program).

DATES: Effective June 9, 2016.

FOR FURTHER INFORMATION CONTACT: Keith Adams, Assistant Administrator, Telecommunications Program, Rural Utilities Program, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 1590, Room 5151–S, Washington, DC 20250–1590. Telephone number: (202) 720–9554, Facsimile: (202) 720–0810.

SUPPLEMENTARY INFORMATION: Since the inception of the Broadband Loan Program, the Agency has faced, and continues to face, significant challenges in delivering the program due to the following factors: (1) The significant number of applicants proposing to offer broadband service that are start-ups with limited resources; (2) the continual evolution of telecommunications technology; and (3) the associated higher costs of serving rural communities. With the enactment of the Agricultural Act of 2014 (the 2014 Farm Bill), the Broadband Loan Program has been significantly modified, and was suspended while the Agency revised this regulation. Given that the program was unable to operate during the revision, the Agency published an interim rule on July 30, 2015 in the **Federal Register** (80 FR 45397) so that the program could immediately reopen. The Agency invited comments to guide its efforts in drafting the new procedures implementing the 2014 Farm Bill and received comments from the National Cable & Telecommunications Association, WTA-Advocates for Rural Broadband and Mr. James Cook. These comments and the Agency's responses are summarized as follows:

Broadband Service and Broadband Lending Speed Definitions

Comment: Respondents commented that the definitions for Broadband Service, which sets the eligibility standard for an area, and Broadband Lending Speed, which sets the construction standard, are too low and should be raised to higher standards to be more in line with the current Federal Communications Commission (FCC) definition for broadband of 25 megabits downstream and 3 megabits upstream.

Response: As the respondents noted in their comments, the regulation establishes a process to change these definitions by publishing new requirements when a NOSA/NOFA is published opening up an application window. The Agency agrees that higher definitions would be beneficial to rural residents. However, when these definitions are set, it is not only the bandwidth requirement for rural areas that is considered but also the amount of funding that is available for any given application window. If a higher definition for bandwidth is used, more of the country then becomes eligible for funding. When limited funding is available, the Agency has to ensure that those funds are directed to the most unserved rural areas. The Agency will re-evaluate these requirements every time a NOSA/NOFA is published and set the standards accordingly.

Overbuilding

Comment: Respondents commented that the RUS investment should go into unserved areas and that the Agency count all terrestrial providers in the proposed service territory when determining area eligibility.

Response: RUS agrees that unserved areas should be the target of the program. To ensure that all terrestrial broadband providers are counted in an area where an application is being considered, RUS has developed a multi-layer approach to locate them. First, when an application is submitted, the proposed service territory maps will be posted online utilizing the RUS Mapping Tool and existing service providers may respond to the public notice. If three or more existing providers are identified in the area and they meet the minimum eligibility speeds, then that area is considered ineligible for funding. If no providers respond to the public notice, then the Agency will have its field staff visit the proposed service area and locate all broadband providers in the area. The field staff will contact these providers and request that they respond to the public notice.

Area Eligibility

Comment: One respondent suggested that instead of three incumbents making a service area ineligible for funding, that the requirement be changed to two incumbents. The respondent also suggested that the definition of broadband service be raised to the current FCC definition for broadband of 25 megabits downstream and three megabits upstream.

Response: Although there is merit in using a higher bandwidth definition to determine area eligibility, the requirement that three incumbents in an area make that area ineligible is a statutory requirement and cannot be changed. The regulation does allow for the eligibility definition to be changed and the Agency will consider higher speeds whenever a NOSA/NOFA is published. As stated previously, the Agency must also recognize the amount of funding that is available each time an application window is opened and will set the eligibility definition accordingly.

Affordable Rates

Comment: One commenter reiterated that broadband service in rural areas needs to be affordable.

Response: Applicants must complete a market survey and a competitive analysis of all providers in the proposed service area as part of the application. This ensures that price points are set at the proper level for the area in question and that the operation is sustainable. There is a balance between providing high quality broadband service and charging the appropriate rate. It must be recognized that in less dense population

areas, it may be necessary to charge a higher rate to ensure the viability of the operation.

Affiliated Companies

Comment: One commenter proposed that affiliate or affiliated companies providing broadband service in the same proposed funded service area should be recognized as one incumbent service provider when considering if an area is eligible for funding.

Response: Each company that is providing broadband service in an area and meets the definition of an incumbent service provider will be counted as an incumbent service provider in determining the eligibility of an area. RUS cannot treat legally established companies properly acting as independent companies as the same entity.

Broadband Usage Restrictions

Comment: One commenter recommended that if a company has capped the amount of bandwidth that is allowed for a given period, that additional standards should be established in determining if this provider would be counted as an incumbent service provider when determining service eligibility.

Response: The Agency appreciates this suggestion and will consider it during the next revision to the regulation. The main goal of the program is to provide funding to areas that do not have any broadband service. Most companies that cap bandwidth have options where a consumer can buy more bandwidth at an additional cost.

Wireless Broadband Service

Comment: One commenter recommended that wireless solutions for broadband service should be validated during busy hour/busy time when determining if the wireless provider meets the definition for an incumbent service provide when determining area eligibility.

Response: There are many levels of providing broadband service and a number of ways for determining this. The Agency has elected to use advertised broadband rates that are being sold and to validate that this level of service is being provided in an area. We will consider implementing additional tests the next time the regulation is revised. If tests of this nature are implemented for wireless service providers then corresponding tests will have to be implemented for wireline service providers.

The Agency appreciates the interest of the commenters and thanks them for their comment submissions.

The Rural Utilities Service did not receive any significant adverse comments during the public comment period on the interim rule, and therefore confirms the rule without change.

PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

Accordingly, the interim rule amending 7 CFR part 1738 which was published at 80 FR 45397 on July 30, 2015, is adopted as a final rule without change.

Dated: May 26, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–13302 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4233; Directorate Identifier 2016–CE–003–AD; Amendment 39–18540; AD 2016–11–13]

RIN 2120–AA64

Airworthiness Directives; BLANIK LIMITED Gliders

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 99–19–33 for BLANIK LIMITED Models L–13 Blanik and L–13 AC Blanik gliders (type certificate previously held by LET Aeronautical Works). This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as lack of distinct color marking of the elevator drive. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 14, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 8, 1999 (64 FR 50440, September 17, 1999).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4233; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact BLANIK LIMITED, 2nd Floor Beaux Lane House, Mercer Street Lower, Dublin 2, Republic of Ireland; phone: +420 733 662 194; email: *info@blanik.aero;* Internet: *http://www.blanik.aero/%EF%BB%BFcustomer_support*. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–4233.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to BLANIK LIMITED Models L–13 Blanik and L–13 AC Blanik gliders. That NPRM was published in the **Federal Register** on March 4, 2016 (81 FR 11473), and proposed to supersede AD 99–19–33, Amendment 39–11320 (64 FR 50440; September 17, 1999) (''AD 99–19–33'').

The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states that:

> Colour marking of elevator drive is not inspected or re-painted during sailplane operation. The elevator drive is asymmetrical and improper installation causes significant elevator deflection changes.

The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4233-0003*.

A review of records since issuance of AD 99–19–33 revealed that the FAA inadvertently did not address this MCAI for the EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders and the BLANIK LIMITED Model L–13 AC Blanik gliders. This AD would supersede AD 99–19–13 to add the BLANIK LIMITED Model L–13 AC Blanik gliders to the applicability of the AD.

The FAA is addressing the EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders in another AD action.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 11473, March 4, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 11473, March 4, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 11473, March 4, 2016).

Related Service Information

We reviewed LET Aeronautical Works LET Mandatory Bulletin MB No.: L13/082a, dated December 10, 1998. The service information describes procedures for painting the left arm of the elevator drive. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 124 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $11,780, or $95 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4233; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–11320 (64 FR 50440, September 17, 1999) and adding the following new AD:

2016–11–13 BLANIK LIMITED: Amendment 39–18540; Docket No. FAA–2016–4233; Directorate Identifier 2016–CE–003–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 14, 2016.

(b) Affected ADs

This AD supersedes AD 99–19–33, Amendment 39–11320 (64 FR 50440; September 17, 1999) (''AD 99–19–33'').

(c) Applicability

This AD applies to BLANIK LIMITED Models L–13 Blanik and L–13 AC Blanik gliders (type certificate previously held by LET Aeronautical Works), all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as lack of distinct color marking of the elevator drive. We are issuing this AD to prevent inadvertent backward installation of the elevator drive, which could cause significant elevator deflection changes and lead to loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD, including all subparagraphs:

(1) *Model L–13 Blanik gliders:*

(i) Within the next 3 calendar months after November 8, 1999 (the effective date retained from AD 99–19–33), paint the elevator drive mechanism using a contrasting color (such as red) following the procedures in LET Mandatory Bulletin MB No.: L13/082a, dated December 10, 1998.

(ii) As of November 8, 1999 (the effective date retained from AD 99–19–33), only install an elevator bellcrank that has been painted as specified in paragraph (f)(1)(i) of this AD and that has been properly oriented to make sure it is not being installed backward.

(2) *Model L–13 AC Blanik gliders:*

(i) Within the next 3 calendar months after July 14, 2016 (the effective date of this AD), paint the elevator drive mechanism using a contrasting color (such as red) following the procedures in LET Mandatory Bulletin MB No.: L13/082a, dated December 10, 1998.

(ii) As of July 14, 2016 (the effective date of this AD), only install an elevator bellcrank that has been painted as specified in paragraph (f)(2)(i) of this AD and that has been properly oriented to make sure it is not being installed backward.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority AD CAA–AD–4–099/98, dated December 30, 1998, for related information. The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4233-0003*.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on November 8, 1999 (64 FR 50440, September 17, 1999).

(i) LET Mandatory Bulletin MB No.: L13/082a, dated December 10, 1998.

(ii) Reserved.

(4) For service information identified in this AD, contact BLANIK LIMITED, 2nd Floor Beaux Lane House, Mercer Street Lower, Dublin 2, Republic of Ireland; phone: +420 733 662 194; email: *info@blanik.aero;* Internet: *http://www.blanik.aero/%EF%BB%BFcustomer_support*.

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4233.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on May 20, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12591 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4230; Directorate Identifier 2015–CE–041–AD; Amendment 39–18539; AD 2016–11–12]

RIN 2120–AA64

Airworthiness Directives; EVEKTOR, spol. s.r.o. Gliders

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2000–20–12 for EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders (type certificate previously held by AEROTECHNIK s.r.o.). This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient material strength of the tail-fuselage attachment fitting. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 14, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 27, 2000 (65 FR 61262, October 17, 2000).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4230; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact EVEKTOR, spol. s.r.o, Letecka 1008, 686 04 Kunovice, Czech Republic; phone: +420 572 537 428; email: *evektor@evektor.cz;* Internet: *http://www.evektor.cz/en/sales-and-support*. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–4230.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders. That NPRM was published in the **Federal Register** on March 4, 2016 (81 FR 11465), and proposed to supersede AD 2000–20–12, Amendment 39–11923 (65 FR 61262, October 17, 2000).

The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states that:

> To prevent destruction of tail-fuselage attachment fitting which can lead to loss of control of the sailplane. This destruction could be caused due to lower strength of the material used during production.

The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4230-0003*.

A review of records since issuance of AD 2000–20–12 revealed that the FAA inadvertently did not address this MCAI for the EVEKTOR, spol. s.r.o. Model L 13 SDM VIVAT gliders and the BLANIK LIMITED Model L–13 AC Blanik gliders. This AD supersedes AD 2000–20–12 to add the EVECTOR, spol. s.r.o. Model L 13 SDM VIVAT gliders to the applicability of the AD.

The FAA is addressing the BLANIK LIMITED Model L–13 AC Blanik gliders in another AD action.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 11465, March 4, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We identified that we inadvertently included a parts cost for the initial inspection in the NPRM (81 FR 11465, March 4, 2016), and we removed that parts cost from this final rule AD action. The basic estimated cost for U.S. operators remains the same. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 11465, March 4, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 11465, March 4, 2016).

Related Service Information Under 1 CFR Part 51

AEROTECHNIK CZ s.r.o. issued Mandatory Service Bulletin SEH 13–005a, dated November 18, 1999. The service information describes procedures for testing the material strength of attachment fitting part number A 102 021N and instructions for contacting the manufacturer for replacement information if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 9 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $3,060, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing $500, for a cost of $1,860 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4230; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–11923 (65 FR 61262; October 17, 2000) and adding the following new AD:

2016–11–12 EVEKTOR, spol. s.r.o.: Amendment 39–18539; Docket No. FAA–2016–4230; Directorate Identifier 2015–CE–041–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 14, 2016.

(b) Affected ADs

This AD supersedes AD 2000–20–12, Amendment 39–11923 (65 FR 61262; October 17, 2000) ("AD 2000–20–12").

(c) Applicability

This AD applies to EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders (type certificate previously held by AEROTECHNIK s.r.o.), all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 53: Fuselage.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as insufficient material strength of the tail-fuselage attachment fitting. We are issuing this proposed AD to detect and correct tail-fuselage fittings with insufficient material strength, which if left uncorrected could result in detachment of the tail from the fuselage with consequent loss of control.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD, including all subparagraphs:

(1) *Model L 13 SEH VIVAT gliders:*

(i) Within the next 60 days after November 27, 2000 (the effective date retained from AD 2000–20–12), inspect the tail-fuselage

attachment fitting, part number (P/N) A 102 021N, for damage and material hardness following the procedures in AEROTECHNIK CZ s.r.o. Mandatory Service Bulletin SEH 13–005a, dated November 18, 1999.

(ii) If you find the tail-fuselage attachment fitting is damaged or the material does not meet the hardness requirements specified in the service bulletin during the inspection required in paragraph (f)(1)(i) of this AD, before further flight, you must contact the manufacturer to obtain an FAA-approved replacement part for P/N A 102 021N and FAA-approved installation instructions and install the replacement part. Use the contact information found in paragraph (i)(4) to contact the manufacturer.

(iii) As of November 27, 2000 (the effective date retained from AD 2000–20–12), do not install, on any glider, a P/N A 102 021N attachment fitting that has not passed the inspection required in paragraph (f)(1)(i) of this AD.

(2) *Model L 13 SDM VIVAT gliders:*

(i) Within the next 60 days after July 14, 2016 (the effective date of this AD), inspect the tail-fuselage attachment fitting, P/N A 102 021N, for damage and material hardness following the procedures in AEROTECHNIK CZ s.r.o. Mandatory Service Bulletin SEH 13–005a, dated November 18, 1999.

(ii) If you find the tail-fuselage attachment fitting is damaged or the material does not meet the hardness requirements specified in the service bulletin during the inspection required in paragraph (f)(2)(i) of this AD, before further flight, you must contact the manufacturer to obtain an FAA-approved replacement part for P/N A 102 021N and FAA-approved installation instructions and install the replacement part. Use the contact information found in paragraph (i)(4) to contact the manufacturer.

(iii) As of July 14, 2016 (the effective date of this AD), do not install, on any glider, a P/N A 102 021N attachment fitting that has not passed the inspection required in paragraph (f)(2)(i) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Authority AD CAA–AD–T–112/1999R1, dated November 23, 1999, for related information. The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4230-0003*.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on November 27, 2000 (65 FR 61262, October 17, 2000).

(i) AEROTECHNIK CZ s.r.o. Mandatory Service Bulletin SEH 13–005a, dated November 18, 1999.

(ii) Reserved.

(4) For service information identified in this AD, contact EVEKTOR, spol. s.r.o, Letecka 1008, 686 04 Kunovice, Czech Republic; phone: +420 572 537 428; email: *evektor@evektor.cz*; Internet: *http://www.evektor.cz/en/sales-and-support*.

(5) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4230.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on May 20, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12601 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–0149; Airspace Docket No. 15–AWA–8]

RIN 2120–AA66

Amendment of Class C Airspace; Billings Logan International Airport, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends geographic coordinates of Billings Logan International Airport, Billings, MT, under Class C airspace, due to recent surveys of the airport. This action does not change the boundaries or operating requirements of the airspace.

DATES: Effective date 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC, 20591; telephone: (202) 267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the geographic coordinates of Billings Logan International Airport, Billings, MT.

History

During a review of the airspace for Billings Logan International Airport, Billings, MT, the FAA identified that the airport's geographic coordinates were incorrect. This action updates the geographic coordinates to coincide with the FAA's aeronautical database for the respective Class C airspace area.

Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class C airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class C airspace at Billings Logan International Airport, Billings, MT, by adjusting the geographic coordinates to reflect recent survey data.

This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71 —DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

ANM MT C Billings, MT [Amended]

Billings Logan International Airport, MT

(Lat. 45°48′28″ N., long. 108°32′34″ W.)

That airspace extending upward from the surface to and including 7,700 feet MSL within a 5-mile radius of the Billings Logan International Airport; and that airspace extending upward from 4,900 feet MSL to and including 7,700 feet MSL within a 10-mile radius of the airport.

Issued in Washington, DC, on, June 1, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–13553 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4452; Airspace Docket No. 15–AWA–7]

RIN 2120–AA66

Amendment of Class C Airspace; Capital Region International Airport, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Lansing, MI, Class C airspace at the Capital Region International Airport, formerly the Lansing Capital City Airport, by removing a cutout from the surface area that was put in place to accommodate operations at an airport that is now permanently closed. This action also updates the Capital Region International Airport name and geographic coordinates to reflect the current information in the FAA's aeronautical database. The FAA is taking this action to ensure the safe and efficient operations at Capital Region International Airport.

DATES: Effective date 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/*ibr_locations.html.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies a portion of the terminal airspace structure at Capital Region International Airport, Lansing, MI.

History

On November 27, 2015, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify the Class C airspace at Capital Region International Airport, MI (80 FR 74061) Docket No. FAA–2015–4452. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the Capital Region International Airport Class C airspace area by removing the cutout from the Class C surface area that excluded the airspace within a 1-mile radius of the former Davis Airport and the airspace 1 mile either side of the 090° bearing from the former Davis Airport. The exclusion from the Class C surface area was in place solely to accommodate operations at Davis Airport, which closed in 2000 and was removed from the FAA's aeronautical database in 2006. Since the original purpose of the exclusion no longer exists, the FAA is removing the words ". . . excluding that airspace within a 1-mile radius of the Davis Airport and excluding that airspace 1 mile either side of the 090° bearing from Davis Airport to the 5-mile radius from Capital City Airport . . ." from the Class C airspace description.

This action also updates the Capital Region International Airport name and geographic coordinates in the Lansing, MI, Class C airspace description to reflect the current information in the FAA's aeronautical database. Specifically, this action replaces "Capital City Airport" with "Capital Region International Airport" and replaces "lat. 42°46′43″ N., long. 84°35′15″ W." with "lat. 42°46′43″ N., long. 84°35′10″ W."

Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class C airspace modification in this action will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action consists of modifying Class C airspace area and it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

AGL MI C Lansing, MI [Amended]

Capital Region International Airport, MI
(Lat. 42°46′43″ N., long. 84°35′10″ W.)

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of Capital Region International Airport; and that airspace extending upward from 2,100 feet MSL to and including 4,900 feet MSL within a 10-mile radius of Capital Region International Airport.

* * * * *

Issued in Washington, DC, on May 31, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–13551 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0019]

16 CFR Part 1227

Revisions to Safety Standard for Carriages and Strollers

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In accordance with section 104(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), also known as the Danny Keysar Child Product Safety Notification Act, the U.S. Consumer Product Safety Commission ("Commission" or "CPSC") has published consumer product safety standards for numerous durable infant or toddler products, including a safety standard for carriages and strollers. The standard incorporated by reference the ASTM voluntary standard for carriages and strollers, with a modification. In August 2011, Congress enacted a public law, which sets forth a process for updating standards that the Commission has issued under the authority of section 104(b) of the CPSIA. In accordance with that process, we are publishing this direct final rule, revising the CPSC's standard for carriages and strollers to incorporate by reference a more recent version of the applicable ASTM standard.

DATES: The rule is effective on October 2, 2016, unless we receive significant adverse comment by July 11, 2016. If we receive timely significant adverse comments, we will publish notification in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of October 2, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0019, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this document. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: For information related to the carriages and strollers standard, contact: Rana Balci-Sinha, Director, Division of Human Factors, Consumer Product Safety Commission, 5 Research Place, Rockville MD 20850; telephone: 301–987–2584; email: *rbalcisinha@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Danny Keysar Child Product Safety Notification Act. The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. The law requires that these standards are to be "substantially the same as" applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. On March 10, 2014, the Commission published a final rule issuing a standard for carriages and strollers that incorporated by reference the standard in effect at that time, ASTM F833–13b, with a modification to address potential hazardous openings created by adjustable grab bar/tray and foot rest configurations. 79 FR 13208. The standard was codified in the Commission's regulations at 16 CFR part 1227.

Public Law 112–28. On August 12, 2011, Congress enacted Public Law 112–28, amending and revising several provisions of the CPSIA, including the Danny Keysar Child Product Safety Notification Act. The revised provision sets forth a process for updating CPSC's durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed.

If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, the Commission must be notified. The statute further provides that the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the **Federal Register**) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard. Public Law 112–28, section 3.

Notification of Revisions. On April 5, 2016, ASTM notified the CPSC of ASTM's approval and publication of revisions to ASTM F833–13b in a revised standard approved on November 1, 2015, ASTM F833–15, Standard Consumer Safety Performance Specification for Carriages and Strollers (ASTM F833–15). As discussed below, the Commission has reviewed the differences between 16 CFR part 1227 and ASTM F833–15.

B. Revisions to the ASTM Standard

There are several differences between 16 CFR part 1227 (which references ASTM F833–13b) and the revised version of the standard, ASTM F833–15. We summarize the differences and the CPSC's assessment of the revisions below.

Definition of Convertible Car Seat/Stroller. The 2015 version of the ASTM standard adds a definition for a "convertible car seat/stroller" to clarify the distinction between a convertible car seat/stroller (*i.e.,* a car seat with wheels and a handle that can convert to a stroller) and a combined unit of a car seat on a stroller. The definition is referenced in a revised section regarding convertible car seat/strollers, which allows an exemption for restraints used in motor vehicles.

CPSC staff's review shows that the addition of a definition for "convertible car seat/stroller" adds clarity to the revised standard because this definition is used in a revised section regarding performance requirements for combination units of a car seat on a stroller and convertible car seat/stroller. The addition of this definition is neutral regarding safety.

Definitions of Tray/Grab BarLocking and Stop Positions. The 2015 version of the ASTM standard adds two new definitions that describe locking and stop positions of the tray/grab bar. These definitions are then referenced in revised sections clarifying the performance requirement and test methods associated with passive containment/foot opening.

CPSC staff's review shows that the addition of definitions for tray/grab bar locking and stop positions improve clarity to the revised standard because these definitions are used in revised sections for performance requirements and test methods applicable to passive containment/foot openings. The

addition of these definitions is neutral regarding safety.

Requirements for Static Load Associated with Step/Footrest. The 2015 version of the ASTM standard repeats a requirement that any step or footrest on a stroller shall support a static load of 50 lbs under the performance requirements section, as well as under the test methods for static load.

CPSC staff's review shows that the addition of a separate section repeating the static load requirement adds clarity to the revised standard because the provision is equally applicable to both the performance requirement and test method sections. The addition of this section is neutral regarding safety.

Requirements for Combination Unit of a Car Seat on a Stroller and Convertible Car Seat/Stroller. The 2015 version of the standard allows products that are used as a car seat and that can convert to a stroller using the same restraint as the car seat, to be exempt from the stroller restraint system anchor points and crotch strap location requirements. The restraint systems for car seats sold in the United States are regulated under Federal Motor Vehicle Safety Standard No. 213 (FMVSS 213).

CPSC staff's review shows that adding the exemption for a restraint system that is certified to restrain a child in a motor vehicle is neutral regarding safety because the restraint systems must comply with the FMVSS requirements. In addition, aside from the restraint system, the combination unit of a car seat on a stroller must still comply with all of the other applicable requirements when the car seat is installed in all of the manufacturer's recommended use positions.

Requirements for Passive Containment/Foot Opening, Testing Tray/Grab Bar Locking Positions, and Testing Tray/Grab Bar Positions. The 2015 version of the standard requires testing of all applicable positions of the adjustable grab bar/tray that may create a hazardous opening. These positions consist of locking positions (including positions intended for non-occupant use), as well as stop positions (not a locking position but a position where tray/grab bar can remain stationary when a 5 lb force is applied for 10 seconds).

CPSC staff's review shows that the revisions improve the safety of the standard set forth in 16 CFR part 1227 to address hazardous openings created by adjustable grab bar/tray and foot rest configurations. In its regulation, the CPSC required that tests be conducted in the position "most likely to cause failure." *See* 16 CFR 1227.2(b). The 2015 version of the standard provides additional clarity indicating that the test has to be repeated, depending on the number of adjustments that can be made in the grab bar/tray, as well as footrest or calf support positions. The revised test method is a clearer test and will improve the safety of the standard because all potentially hazardous openings will be evaluated.

Warning Statements for Jogging Strollers. The 2015 version of the standard clarifies the warning label requirements associated with strollers that have a removable-wheel fork assembly and strollers that are three-wheeled with a locking front wheel and are intended to be used for running, jogging, or walking fast, requiring the units to display the warning label. The warning content remains unchanged.

CPSC staff's review shows that the revisions on the warning label requirements improve the safety of strollers. The version referenced in 16 CFR part 1227, ASTM F833–13b, could be interpreted to require warning labels only on jogging strollers with a removable-wheel fork assembly. The 2015 version of the standard clarifies that the warning label requirements apply to: (1) Any stroller with a removable wheel fork assembly for the label that is placed on the front wheel fork; and (2) any three-wheeled stroller intended to be used while jogging, walking fast, or running with a locking front wheel. Accordingly, the revised standard makes clear that all of these types of three-wheeled strollers must display warning labels.

Assessment of the Revisions to the ASTM Standard. Under Public Law 112–28, unless the Commission determines that ASTM's revision "does not improve the safety of the consumer product covered by the standard," ASTM F833–15 will become the new mandatory standard for carriages and strollers. As discussed above, based on the CPSC staff's review, the Commission believes that certain revisions are neutral regarding safety. However, other revisions will improve the safety of standard, including the clarifications to the testing for adjustable grab bar/tray and foot rest configurations and warning labels. Consequently, the Commission did not determine or notify ASTM that the revised standard does not improve the safety of carriages and strollers.

In accordance with Public Law 112–28, the revised ASTM standard for carriages and strollers, therefore, becomes the new CPSC standard 180 days after the date the CPSC received notification of the revision from ASTM. This rule revises the incorporation by reference at 16 CFR part 1227, to reference the ASTM standard, ASTM F833–15.

C. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act ("APA") generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." The Commission concludes that, in the context of these revisions to ASTM standards upon which CPSC's durable infant or toddler product standards are based, which automatically become consumer product standards and that simply would be incorporated by reference into applicable regulatory provisions, notice and comment is not necessary.

Without Commission action to update the incorporation by reference in the CPSC's mandated standards, the standard published in the Code of Federal Regulations will not reflect the revised ASTM standard that will be in effect by operation of law under Public Law 112–28. For accuracy, and to avoid misleading the public about the applicable consumer product standard, the Commission believes that issuing a rule revising the incorporation by reference in these circumstances is appropriate. In Recommendation 95–4, the Administrative Conference of the United States ("ACUS") endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Revising the regulatory reference to the ASTM standard will conform the regulation to the substantive change in the applicable consumer product standard that will occur by operation of law under Public Law 112–28. Public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under Public Law 112–28. Therefore, there is little for the public to comment upon.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on October 2, 2016. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

D. Effective Date

Under the procedure set forth in Public Law 112–28, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. In accordance with this provision, this rule establishes an effective date that is 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on October 2, 2016.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The change to the incorporation by reference in the carriages and stroller standard will not result in any substantive changes to the standard. Therefore, this rule will not have any economic impact on small entities.

F. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

G. Paperwork Reduction Act

The carriages and stroller standard contain information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). No changes have been made to that section of the standard. Thus, these revisions will not have any effect on the information collection requirements related to that standard.

H. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the Consumer Product Safety Act (CPSA)]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as "consumer product safety standards," thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

I. Certification

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because carriages and strollers are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements of section 101 of the CPSIA, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.

J. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission has previously published a notice of requirements ("NOR") for accreditation of third party conformity assessment bodies for testing carriages and strollers (79 FR 13208 (March 10, 2014)). The NORs provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing carriages and strollers to 16 CFR part 1227 (which incorporated ASTM F833–13b with modifications). The NORs are listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies." 16 CFR part 1112.

The revisions discussed above do not add any new provisions that would require a third party conformity assessment body (testing laboratory) to conduct additional tests. As discussed above, most of the revisions clarify the existing standard and will not change existing test methods. Although the test method associated with passive containment/foot opening has been clarified to require testing depending on the number of adjustments that can be made in the grab bar/tray as well as footrest or calf support positions, the revision is not expected to affect how a test laboratory tests strollers and convertible carriages/strollers in a stroller mode. Revising the reference to ASTM F833–15 for the carriages and stroller standard will not necessitate any change in the way that third party conformity assessment bodies test these products for compliance to CPSC standards. Therefore, the Commission considers the existing accreditations that the Commission has accepted for testing to this standard also to cover testing to the revised standard. The existing NOR for this standards will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standard in the normal course of renewing their accreditation.

K. Incorporation by Reference

The OFR has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble of the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, section B of this preamble summarizes the ASTM F833–15 standard that the Commission incorporates by reference into 16 CFR part 1227. The standard is reasonably available to interested parties and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; *http://www.astm.org/*. A copy of the standard can also be inspected at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923.

List of Subjects in 16 CFR Part 1227

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends title 16 CFR chapter II as follows:

PART 1227—SAFETY STANDARD FOR CARRIAGES AND STROLLERS

■ 1. The authority citation for part 1227 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Public Law 110–314, 104, 122 Stat. 3016 (August 14, 2008); Public Law 112–28, 125 Stat. 273 (August 12, 2011).

■ 2. Revise § 1227.2 to read as follows:

§ 1227.2 Requirements for carriages and strollers.

Each carriage and stroller shall comply with all applicable provisions of ASTM F833–15, Standard Consumer Safety Specification for Carriages and Strollers, approved November 1, 2015. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA; phone: 610–832–9585; *http://www.astm.org/*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html*.

Dated: June 8, 2016.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2016–13663 Filed 6–8–16; 8:45 am]

BILLING CODE 6355–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–77969; File No. S7–09–16]

RIN 3235–AL89

Form 10–K Summary

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: We are adopting an interim final amendment to implement Section 72001 of the Fixing America's Surface Transportation ("FAST") Act. The interim final amendment provides that a registrant may, at its option, include a summary in its Form 10–K provided that each item in the summary includes a cross-reference by hyperlink to the material contained in the registrant's Form 10–K to which such item relates.

DATES:

Effective Date: The interim final rule is effective on June 9, 2016.

Comment Date: Comments should be received on or before July 11, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interim-final-temp.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–09–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/interim-final-temp.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, at (202) 551–3430, in the Office of Rulemaking, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting an interim final amendment to Form 10–K [1] under the Securities Exchange Act of 1934.[2]

I. Introduction

We are adopting an interim final amendment to Form 10–K that implements Section 72001 of the FAST Act,[3] which became law on December 4, 2015. Section 72001 of the FAST Act directs the Commission, not later than 180 days after the date of enactment, to issue regulations to permit "issuers" [4] to submit a "summary page" [5] on Form 10–K, but only if each item on such summary page includes a cross-reference (by electronic link or otherwise) to the material contained in Form 10–K to which such item relates.

II. Discussion of Amendment

Although our current rules do not prohibit a registrant from including voluntary information, such as a summary, in its Form 10–K,[6] we are amending Part IV of Form 10–K [7] to add new Item 16. This new item will expressly allow a registrant, at its option, to include a summary in the Form 10–K. To implement the statutory requirement that each item in the summary be accompanied by an electronic or other cross-reference, new Item 16 requires that each summary topic be hyperlinked to the related, more detailed disclosure item in the Form 10–K.

In light of the varied nature of registrants' size and operations, we believe that registrants should have the flexibility to determine how best to prepare the summary. Accordingly, the amendment does not prescribe the length of the summary (other than to state that the summary shall be brief), specify the Form 10–K disclosure items that should be covered by the summary,[8] or dictate where the summary must appear in the Form 10–K.

We recognize that it might not be practicable or necessary to summarize every Form 10–K disclosure item. The amendment is principles-based and affords a registrant choosing to include a summary the flexibility to decide which items to summarize,[9] as long as the information is presented fairly and accurately.

We are also including an instruction in Item 16 of Form 10–K that addresses information incorporated by reference into the Form 10–K that a registrant may choose to summarize. Exchange Act Rule 12b–23 allows registrants to incorporate information by reference in answer, or partial answer, to any item of an Exchange Act registration statement or report subject to certain conditions.[10] Generally, the incorporated information must be filed as an exhibit to the registration statement or report.[11] Under General Instruction G to Form 10–K, a registrant may incorporate by reference the information required by Parts I or II of Form 10–K from the registrant's annual report to security holders.[12] The information required by Part III of Form 10–K also may be incorporated by reference from a proxy or information statement involving the election of directors, if filed within 120 days of the end of the fiscal year.[13]

As stated above, the interim final amendment to Form 10–K requires the summary to include hyperlinks to the related, more detailed disclosure item in the Form 10–K, regardless of whether the more detailed disclosure appears in the sections of the Form 10–K that follow the summary or in a Form 10–K exhibit. Currently, registrants can hyperlink to different sections within the same document, as well as to specific sections of exhibits that are part of the same filing.

Therefore, the interim final amendment requires registrants electing to prepare a Form 10–K summary that discusses information that is incorporated by reference into the Form 10–K and for which an exhibit is filed with the form to include a hyperlink from the summary to the discussion in the accompanying exhibit. Under the interim final amendment, a registrant choosing to include a summary will only be able to summarize information that is included in the Form 10–K at the time the form is filed, and will not have to file a Form 10–K amendment to summarize Part III information that is incorporated by reference from a proxy or information statement that will be filed after the date that the registrant files its Form 10–K.[14] In that case, however, the registrant must indicate that the summary omits the Part III information.

Request for Comment

We request and encourage any interested person to submit comments on any aspect of the interim final amendment, other matters that might have an impact on the amendment, and any suggestions for further revisions. In addition, we seek comment on the following:

1. Are companies and investors likely to find a Form 10–K summary useful? If so, should we propose mandating a summary? [15]

2. Would it be helpful to EDGAR users for the Form 10–K summary or a link to the summary to be displayed on a registrant's EDGAR search results landing page? [16]

3. Should we impose a length limitation on the summary? If so, what limitation would be appropriate (*e.g.*, a page limit, word limit, character limit)?

4. Should we provide further guidance on preparation of the summary? For example, should we include language similar to Item 503(a) of Regulation S–K, which covers a prospectus summary? [17]

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[1] 17 CFR 249.310.

[2] 15 U.S.C. 78a *et seq.*

[3] Public Law 114–94, 129 Stat. 1312 (Dec. 4, 2015).

[4] We use the terms "issuer" and "registrant" interchangeably throughout this release to refer to a company that is subject to Section 13 [15 U.S.C. 78m] or 15(d) of the Exchange Act [15 U.S.C. 78o(d)] and is required to file an annual report on Form 10–K.

[5] As used in this release, the term "summary page" should not be construed to mean that the summary needs to be a single page, or of any specific length.

[6] Voluntary information included in Exchange Act filings is subject to the antifraud provisions of the federal securities laws and the officer certifications required by Exchange Act Rules 13a–14(a) and 15d–14(a) [17 CFR 240.13a–14(a) and 240.15d–14(a)].

[7] Part IV of Form 10–K sets forth the requirements for financial statement schedules, exhibits and certain supplemental information to be furnished to the Commission.

[8] Form 10–K is organized in four parts with each part containing distinct disclosure requirements. Part I [Items 1–4] contains disclosure requirements that relate to, among other things, the registrant's business, risk factors, properties, legal proceedings, and mine safety disclosure, if applicable. Part II [Items 5–9B] contains disclosure requirements that relate to market information, selected financial data, management's discussion and analysis of financial condition and results of operations ("MD&A"), quantitative and qualitative disclosures about market risk, financial statements and supplementary data, a description of changes in and disagreements with accountants on accounting and financial disclosure, controls and procedures and other information. Part III [Items 10–14] contains disclosure requirements that relate to directors and executive officers, management remuneration, beneficial ownership, related party transactions and principal accountants' fees and services and other information. Lastly, Part IV [Item 15, signatures and supplemental information] contains requirements that relate to financial statement schedules and exhibits.

[9] The flexible and non-prescriptive nature of new Item 16 is similar to other principles-based requirements under our rules, such as Item 503 Regulation S–K [17 CFR 229.503] and Item 1001 of Regulation M–A [17 CFR 229.1001]. As set forth below in the Request for Comment, we solicit and encourage comment on whether further guidance on preparing the summary should be provided.

[10] 17 CFR 240.12b–23.

[11] Rule 12b–23(a)(3)(i) [17CFR 240.12b–23(a)(3)(i)] provides an exception that does not require a proxy or information statement incorporated by reference in response to Part III of Form 10–K to be filed as an exhibit.

[12] Information incorporated from the annual report to security holders to fulfill the requirements of Part I of Form 10–K must contain the information required by Items 1–3 of Part I of Form 10–K to the extent applicable. See Note 1 to General Instruction G(2) to Form 10–K.

[13] *See* Note 2 to General Instruction G(2) to Form 10–K.

[14] *See* Instruction 1 to new Item 16 of Form 10–K. In addition, if the Part III information that is incorporated by reference contains a summary, such as commonly provided in proxy statements for executive compensation disclosure, that summary need not include hyperlinks.

[15] In 2008, the Advisory Committee on Improvements to Financial Reporting issued to the Commission a report that, among other things, recommended an executive summary in the forepart of a company's annual report on Form 10–K (with material updates in quarterly reports on Form 10–Q) that would describe concisely the most important themes or other significant matters with which management is primarily concerned, along with a page index showing where investors could find more detailed information in the document. *See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission* [Aug. 1, 2008), available at *https://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf*.

[16] We are considering ways to further enhance the presentation and usability of the Form 10–K summary. In this regard, we could require registrants to include HTML tags to identify the Form 10–K summary in their EDGAR submissions. This would make it possible for EDGAR to extract the summary from the Form 10–K, so that the information could be included on the registrant's search results EDGAR landing page. This could allow investors to more easily access the information.

[17] Among other provisions, Item 503(a) states "The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a

Continued

5. Should we require that the summary appear at the beginning of the Form 10–K? Should we require certain content or a specific format for the Form 10–K summary? For example, should we propose to require registrants choosing to prepare a summary to include specified Form 10–K items, such as the MD&A? Are there some items that registrants should not be permitted to include in a summary? If so, which items should be required to be included in, or excluded from, the summary?

6. Should we require registrants that cannot include a summary of the Part III information (because that information will be incorporated by reference from a later filed proxy or information statement involving the election of directors) to file a Form 10–K amendment to update the summary to reflect the Part III information when that information is filed with the proxy or information statement?

7. Are there other cross-reference methods that we should allow in lieu of, or in addition to, hyperlinks?

8. Should we propose to amend other annual reporting forms, such as Form 20–F [18] filed by foreign private issuers, or Form 1–K [19] filed by issuers that have conducted a Regulation A offering,[20] to expressly allow a summary similar to the approach we are adopting for Form 10–K? Would such revisions be useful given that our rules do not prohibit such registrants from voluntarily including a summary in their annual reports?

With respect to any comments, we note that they are of greatest assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Procedural and Other Matters

The Administrative Procedure Act ("APA") generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency "for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest." [21] Because the amendment conforms the specified form to the requirements of a newly enacted statute, the FAST Act, and involves minimal exercise of discretion, the Commission finds that notice and public comment are unnecessary.[22] As discussed above, Section 72001 of the FAST Act directs the Commission, not later than 180 days after the date of enactment, to issue regulations to permit issuers to submit a summary page on Form 10–K, but only if each item on such summary page includes a cross-reference (by electronic link or otherwise) to the material contained in Form 10–K to which such item relates. The amendment to Form 10–K that we are adopting revises the form to make it consistent with this provision of the FAST Act by expressly providing that a registrant may, at its option, include a summary in its Form 10–K (subject to certain conditions), something that registrants currently are permitted to do under existing rules.

For similar reasons, although the APA generally requires publication of a rule at least 30 days before its effective date, the Commission finds there is good cause for the amendment to take effect on June 9, 2016.[23]

IV. Economic Analysis

As discussed above, we are amending Form 10–K to implement Section 72001 of the FAST Act. The interim final amendment will provide that a registrant may, at its option, include a summary in its Form 10–K provided that each item in the summary includes a cross-reference by hyperlink to the material contained in the registrant's Form 10–K to which such item relates. Under the amendment, a registrant will have the flexibility to determine the content of the summary and its length.

We are sensitive to the costs and benefits of the amendment.[24] In this economic analysis, we examine the existing baseline, which consists of the current regulatory framework and market practices, and discuss the potential benefits and costs of the amendment, relative to this baseline, and its potential effects on efficiency, competition, and capital formation. We also consider the potential costs and benefits of reasonable alternatives to the amendment.

Where practicable, we attempt to quantify the economic effects of the amendment; however, in certain cases, we are unable to do so because we lack the necessary data. We do, however, provide a qualitative assessment of the likely economic effects.

A. Introduction

As discussed above, new Item 16 to Form 10–K provides that a registrant may, at its option, include a summary in its Form 10–K provided that each item in the summary includes a hyperlink to the detailed information in the registrant's Form 10–K to which such item relates. In light of the varied nature of registrants' size and operations, the amendment will provide registrants with flexibility in preparing the summary. The amendment does not prescribe the length of the summary, specify the Form 10–K disclosure items that should be covered in the summary, or dictate where the summary must appear in the Form 10–K.

A registrant may decide which items to summarize as long as the information is presented fairly and accurately. A summary should provide more information than a table of contents, which is often included in Form 10–K and generally shows the complete organizational structure of Form 10–K by listing each disclosure item without a summary of the disclosure. A summary with hyperlinked cross-references will allow users to easily locate the corresponding items in Form 10–K where the disclosure is fully presented, with the potential effect of enhancing the ability of investors and other users of the disclosure to process relevant information and/or reducing their processing time and search costs.

B. Baseline and Affected Parties

The amendment will potentially affect all registrants subject to Section 13 or 15(d) of the Exchange Act that are required to file an annual report on Form 10–K. However, given that current rules do not prohibit a registrant from voluntarily including a summary in its Form 10–K, the amendment likely will not have a substantial impact on the disclosure practices of registrants and on the information processing ability of investors and other users of the disclosure.

In particular, we expect that registrants that do not currently include a summary in their Form 10–Ks will not be likely to begin doing so in response to the amendment. Also, registrants that currently include a summary in their Form 10–K with a hyperlink for each disclosure topic in the summary to the related material contained in their Form 10–K will not be affected by the amendment because this practice will be in compliance with the hyperlink requirement. Among the registrants that are required to file a Form 10–K, the amendment will affect registrants that currently include a summary in their Form 10–Ks and that (1) do not cross-reference items; (2) use cross-references other than hyperlinks; or (3) use hyperlinks but not for all disclosure topics included in the summary. Under the amendment, if these registrants chose to continue to include a summary in their Form 10–K, they will be required to include hyperlinks to each disclosure topic that is mentioned.

We estimate that, in calendar year 2015, we received 7,844 Form 10–K filings. To draw a baseline indicative of the current disclosure practices among Form 10–K filers, we selected a random sample of 150 of these filings to review. Although small, the random sample was representative of the overall 2015 population of Form 10–K filers and consisted of 42 large accelerated filers, 29 accelerated filers, 27 non-accelerated filers, and 52 smaller reporting companies. None of the filings in the sample included a summary. A large majority (70%) of the 150 sampled filings included a table of contents that was fully hyperlinked to the corresponding items.

Due to the greater complexity of their operations, larger registrants generally have more extensive disclosures that are reflected in lengthier Form 10–Ks and may be more inclined to include a summary to assist investors and other users in navigating their filings.[25] Since we did not find any registrants in the random sample that included a summary in their Form 10–K, we also reviewed the most recent Form 10–K filed by each of the companies on the Fortune 100 list, which includes the largest 100 U.S. companies.[26] Of these companies, we found one large accelerated filer that included a summary in its Form 10–K. This summary provided an overview of several disclosure topics with cross-references, but not hyperlinks, to the more detailed discussion contained in the Form 10–K. While we found only one registrant that included a summary in its most recent Form 10–K, we found that a large majority of the companies (87%) included a table of contents that was fully hyperlinked to the corresponding items.

There may be several reasons why a summary is not widely used in Form 10–Ks. As with any other voluntary disclosure, registrants presumably weigh the potential incremental disclosure costs, including any liability considerations, against the potential benefits associated with including a summary in a Form 10–K. Among other factors, the perceived net benefit will depend on the presence of alternative disclosures that serve a similar purpose as a summary and on investor interest in such summary. For example, a table of contents may already provide an outline of the Form 10–K and indicate where investors can find additional information in the document.

In conclusion, based on our analysis of two relatively small samples of Form 10–K filings, it appears that the use of a summary in Form 10–Ks is currently extremely limited. While we cannot draw definite conclusions on the current use of a summary or on the current use of hyperlinks in summaries for the entire population of Form 10–K filers due to the size of the samples in our analysis, we believe that the amendment is likely to affect a limited number of Form 10–K filers that currently opt to include a summary in their Form 10–K. As a result of the hyperlink requirement, these filers will need to include a hyperlink for each disclosure topic that is not currently hyperlinked.

C. Potential Economic Effects

As noted above, Section 72001 of the FAST Act directs the Commission to issue regulations to permit registrants to submit a summary on Form 10–K with cross-references to the related discussion in the report. In implementing this mandate, the amendment will provide that registrants may include a summary in their Form 10–K if each item in the summary includes a hyperlink to the related material contained in the Form 10–K to which such item relates. Relative to cross-references that supply users with only a page reference to the specific Form 10–K items, hyperlinks will not only supply the location but also allow users to reach that location more easily and quickly.

By presenting an overview of the information contained in Form 10–K, a summary with hyperlinks could make disclosure more effective by enhancing the ability of investors and other users to process relevant information and/or by reducing their processing time and search costs. A summary can be particularly useful to investors and other users in the case of more complex [27] and larger [28] Form 10–Ks. Academic literature has examined the readability of Form 10 Ks and suggested that concisely written documents are more likely to be read, and their information more effectively incorporated into stock prices, compared to longer Form 10 Ks.[29] To the extent that a summary contains a concise overview of the information included in the more detailed disclosure items, the usefulness of the summary for investors may translate into potential positive effects on allocative efficiency and capital formation for registrants who opt to include it.[30] This, in turn, may have positive effects on competition for registrants, relative to, for example, registrants who do not opt to include a summary. For example, a summary could increase investors' interest in the business of a registrant because it may attract investors who otherwise would not be inclined to read the more detailed and lengthy information in the full Form 10–K. We

summary, you still must provide that information in plain English."

[18] 17 CFR 249.220f.

[19] 17 CFR 239.93.

[20] 17 CFR 230.251–230.263.

[21] 5 U.S.C. 553(b)(3)(B).

[22] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendment also does not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

[23] *See* 5 U.S.C. 553(d)(3).

[24] Exchange Act Section 23(a)(2) requires us, when adopting rules, to consider the impact that any new rule would have on competition. In addition, Section 3(f) of the Exchange Act directs us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[25] In addition to structural complexity, there may be other reasons for the length of disclosure documents. One study argues that firms may try to obscure mandated earnings-relevant information by burying the results in longer documents. Additionally, litigation risk may create an incentive to disclose information whether it is useful or not. *See* Tim Loughran & Bill McDonald, *Measuring Readability in Financial Disclosures*, 69 J. of FIN. 1643 – 1671 (2014).

[26] Eight entities included in the Fortune 100 list are privately-held companies; therefore, no Form 10–K was available for them.

[27] *See* Feng Li, *Annual Report Readability, Current Earnings, and Earnings Persistence*, 45 J. of ACCT. & ECON. 221–47 (2008). Using the Fog index and word count of Form 10 Ks, the author found that firms with annual reports that are easier to read have more persistent positive earnings and argues that firm managers may try to hide poor future earnings from investors by increasing the complexity of their written documents. The Fog index is a commonly used measure of the readability of a document.

[28] *See* Loughran & McDonald, *supra* note 25. While word count and file size are highly correlated, the authors found there is evidence that Form 10–K file size (in megabytes) is a better inverse proxy for readability than a commonly used metric of readability like the Fog index. Larger Form 10–Ks are significantly associated with high return volatility, earnings forecast errors, and earnings forecast dispersion, after controlling for other variables such as firm size, book-to-market, past volatility, industry effects, and prior stock performance.

[29] *See* Haifeng You & Xiao-jun Zhang, *Financial Reporting Complexity and Investor Under-Reaction to 10–K Information*, 14 REV. of ACCT. STUD. 559 – 86 (2009). Using the number of words in a Form 10–K as a measure of financial reporting complexity, the authors found that firms above the annual median word count have a delayed stock market reaction over the following 12 months.

[30] *See* Alastair Lawrence, *Individual Investors and Financial Disclosure*, 56 J. of ACCT. & ECON. 130 – 47 (2013). Using detailed data of individual investors, this study shows that, on average, individuals invest more in firms with clear and concise financial disclosures.

note that, if users were to rely only on the summary to make investment decisions without considering the more extensive disclosure provided elsewhere in the Form 10–K or other disclosure documents of the registrant, this could lead to less informed investment decisions with a corresponding decrease in allocative efficiency. Overall, relative to the current baseline, we expect that the amendment will have incremental positive effects on efficiency, competition, and capital formation, although, for the reasons discussed above, we do not expect these effects to be particularly significant.

Permitting registrants to determine the content, length, and location of a summary will enable them to tailor the format and presentation of the summary to best suit the specific aspects of their business and operational and financial results. It also will enable registrants to focus on topics or items they consider important to communicate to investors, subject to the overall requirement to present the summary fairly and accurately.

While a summary is potentially useful for investors and registrants, registrants who include a summary in their Form 10–Ks will incur increased disclosure costs to prepare the summary. As discussed above, given that Form 10–K filers can already voluntarily include a summary, we expect that, as a result of the amendment, registrants will not significantly change their disclosure practices by electing to include a summary if they currently do not.

Relative to the current baseline, we expect the potential benefits and costs stemming from the amendment to be limited and primarily related to those registrants—and their investors—who already include a summary in their Form 10–K but do not currently hyperlink or hyperlink only in part. Registrants that have voluntarily included a summary in the past and have not hyperlinked the items in the summary to the relevant sections in the Form 10–K will incur compliance costs to add hyperlinks.

There are potential benefits from adding cross-references to the Form 10–K summary. A summary that briefly discusses items in the Form 10–K without any type of cross-references may disconnect the information in the summary from the disclosure contained in other parts of Form 10–K. The required hyperlinks will serve not only as a reminder for investors that a summary complements the more extensive disclosure presented in other parts of the document, but also as a compass for users to navigate the document more easily and quickly. The required hyperlinks will easily direct users to a particular item, allowing users to avoid searching the Form 10–K in its entirety, thereby significantly reducing their search costs.

Relative to other types of cross-references that registrants may currently use, such as a footnote or plain text that points to a certain page number or location in the document, the inclusion of hyperlinks should direct users to relevant parts of Form 10–K more easily and quickly. To the extent that hyperlinks are implemented properly, they are able to automatically take the reader to that document or section. Cross-referencing through hyperlinks should make it easier for users to navigate the disclosure and decrease their search time and costs.

Finally, requiring hyperlinks for all topics in a summary that currently has only partial hyperlinks will prevent registrants from selectively steering investors and other users toward particular sections in the Form 10–K.

D. Alternatives

We considered three alternatives to the amendment. First, instead of providing registrants with the option of including a summary in their Form 10–K, we could have required all registrants to include a summary. By requiring a summary, investors and users could more extensively benefit from the potential usefulness of the summary. In particular, as discussed above, a summary could enhance investors' ability to process relevant material information in the filing. To the extent that a required summary contains useful and concise information, it could translate to potential positive effects on allocative efficiency for a greater number of registrants than under a voluntary approach. These potential benefits could be particularly relevant in the case of registrants with more complex operations that typically file larger reports that investors may find more time-consuming to read. They may be less relevant in the case of smaller registrants that typically have simpler operations and shorter Form 10–Ks. Consequently, requiring a mandatory summary for all registrants may impose additional compliance costs that are not justified by the overall benefits to investors and registrants, although the flexibility to determine the format of the summary could mitigate these additional compliance costs.

Second, instead of providing registrants with the flexibility to determine length, content, and location of the summary in Form 10–K, we could have prescribed a specific format of the summary. This could achieve consistency across filings and may enable users to compare the summaries of multiple registrants more efficiently. A specific format may also ease the preparation of a summary for some registrants, thereby encouraging them to provide a voluntary summary in their Form 10–Ks. At the same time, prescribing a specific format may discourage registrants from including a summary in their Form 10–K if they find the format not useful for their specific circumstances. Further, if the prescribed format includes sections that are unnecessary to effectively assess the registrant, it could detract from, rather than facilitate, investors' ability to process information efficiently.

Third, instead of requiring hyperlinks, we could have required registrants to use any type of cross-references, electronic or otherwise, to the extent that it would serve the function of locating the corresponding material in the Form 10–K.[31] This alternative would allow greater flexibility to registrants to use either hyperlinks or non-electronic cross-references, such as footnotes or plain text that points to a certain page number or other location in the document, or a combination of the two types in the summary. However, to the extent that registrants choose to use non-electronic cross-references under this alternative, the ability of investors to navigate the disclosure contained in the Form 10–K would be diminished relative to the proposal.

V. Paperwork Reduction Act

A. Background

Certain provisions of Form 10–K that will be affected by the interim final amendment contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[32] The Commission is submitting the interim final amendment to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[33] The title for the collections of information is:

"Form 10–K" (OMB Control No. 3235–0063).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number. Compliance with the information

[31] Section 72001 of the FAST Act requires that each item on the summary page include a "cross-reference" to the material contained in the Form 10–K, but the statute does not mandate any particular type of cross-reference.

[32] 44 U.S.C. 3501 *et seq.*

[33] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. Form 10–K was adopted under the Exchange Act and sets forth the disclosure requirements for annual reports filed by registrants to help investors make informed investment decisions. The hours and costs associated with preparing and filing Form 10–K constitute reporting and cost burdens imposed by each collection of information.

B. Summary of the Amendment

As described in more detail above, we are adopting an interim final amendment to Form 10–K to implement Section 72001 of the FAST Act. We are amending Form 10–K to add new Item 16. This new item will explicitly allow a registrant, at its option, to include a summary in the Form 10–K. Each disclosure topic included in the summary is required to contain a hyperlink to the related, more detailed disclosure item in the Form 10–K. Under the interim final amendment, a registrant has the flexibility to determine the content and the length of the summary.

C. Burden and Cost Estimates Related to the Amendment

We anticipate that new Item 16 of Form 10–K will increase the burdens and costs for companies that elect to prepare a summary. We derived our burden hour and cost estimates by estimating the average amount of time it would take a registrant to prepare and review the summary, as well as the average hourly rate for outside professionals who assist with such preparation. In addition, our burden estimates are based on several assumptions.

First, we assumed that registrants that elect to prepare a summary will not summarize every item in the Form 10–K. Therefore, to estimate the average burden hours of the interim final amendment, we have looked to the burden estimates carried internally by registrants for Form 10,[34] an Exchange Act registration form that requires many of same item disclosures as does Form 10–K. For purposes of the PRA, we have estimated the total burden per response for preparing and filing Form 10 to be 215 hours and that 25% of that burden (53.75 hours) is carried internally by the registrant. We estimate that the burden to prepare the Form 10–K summary would be less than that required to prepare the Form 10 because the summary would call for less information than required by Form 10. We estimate that the average incremental burden for a registrant to prepare the summary would be 50 hours. This estimate represents the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their operations. We believe that some registrants will experience costs in excess of this average in the first year of compliance with the amendments and some registrants may experience less than the average costs.

Second, we assumed that 10% of Form 10–K filers would elect to prepare a summary. The number of registrants that would choose to do a summary, however, is uncertain. We request comment and supporting empirical data, for purposes of the PRA, on the number of registrants that are expected to prepare a summary as a result of the interim final amendment.

The table below shows the total annual compliance burden, in hours and in costs, of the collection of information resulting from the interim final amendment.[35] The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review a Form 10–K summary. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. For purposes of the PRA, we estimate that 75% of the burden of preparation of Form 10–K is carried by the registrant internally and that 25% of the burden of preparation is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[36]

TABLE 1—INCREMENTAL PAPERWORK BURDEN UNDER THE INTERIM FINAL AMENDMENT

	Estimated number of affected responses	Incremental burden hours/form	Total incremental burden hours	75% company	25% professional	Professional costs
	(A)	(B)	(C) = (A) * (B)	(D) = (C) * 0.75	(E) = (C) * 0.25	(F) = (E) * $400
Form 10–K Summary	[37] 814	50	40,700	30,525	10,175	$4,070,000

D. Request for Comment

We request comments in order to evaluate: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.[38] Specifically, we request comment on the estimated number or percentage of registrants that are likely to include a summary in their Form 10–K.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of

[34] 17 CFR 249.210.

[35] For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

[36] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that such costs will be an average of $400 per hour. This estimate is based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

[37] This number is our estimate of the number of registrants that will choose to include a summary in their Form 10–K.

[38] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–09–16. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–09–16 and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington DC 20549–0213. Interested persons are encouraged to send comments to the OMB by July 11, 2016.

VI. Statutory Authority

The amendment contained in this release is being adopted under the authority set forth in Sections 3, 12, 13, 15(d), and 23(a) of the Exchange Act, and Section 72001 of the FAST Act.

List of Subjects in 17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

Text of the Interim Final Amendment

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29 and 80a–37.

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 249.308b is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.326(T) also issued under section 13(f)(1) (15 U.S.C. 78m(f)(1)).

Section 249.330 is also issued under secs. 3(a), 406, and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under 15 U.S.C. 78j–1, 7202, 7233, 7241, 7264, 7265; and 18 U.S.C. 1350.

Section 249.617 is also issued under Pub. L. 111–203, § 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78o–7 note).

Section 249.819 is also issued under 12 U.S.C. 5465(e).

Section 249.1400 is also issued under sec. 943, Pub. L. 111–203, 124 Stat. 1376.

Section 249.1800 is also issued under Pub. L. 111.203, § 922(a), 124 Stat 1841 (2010).

Section 249.1801 is also issued under Pub. L. 111.203, § 922(a), 124 Stat 1841 (2010).

■ 2. Amend Form 10–K (referenced in § 249.310) by adding new Item 16 to Part IV to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10–K

* * * * *

Part IV

* * * * *

Item 16. Form 10–K Summary.

Registrants may, at their option, include a summary of information required by this form, but only if each item in the summary is presented fairly and accurately and includes a hyperlink to the material contained in this form to which such item relates, including to materials contained in any exhibits filed with the form.

Instruction: The summary shall refer only to Form 10–K disclosure that is included in the form at the time it is filed. A registrant need not update the summary to reflect information required by Part III of Form 10–K that the registrant incorporates by reference from a proxy or information statement filed after the Form 10–K, but must state in the summary that the summary does not include Part III information because that information will be incorporated by reference from a later filed proxy or information statement involving the election of directors.

* * * * *

By the Commission.

Dated: June 1, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13328 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0149]

RIN 0960–AF58

Revised Medical Criteria for Evaluating Respiratory System Disorders

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving respiratory disorders in adults and children under titles II and XVI of the Social Security Act (Act). The revisions reflect our program experience and advances in medical knowledge since we last comprehensively revised this body system in 1993, as well as comments we received from medical experts and the public.

DATES: These final rules are effective October 7, 2016.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We are revising and making final the rules for evaluating respiratory disorders we proposed in a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on February 4, 2013 (78 FR 7968). The preamble to the NPRM provided an explanation of the changes from the current rules and our reasons for proposing those changes. To the extent that we are adopting the proposed rules as published, we are not repeating that information here. You can view the NPRM by visiting *www.regulations.gov* and searching for document "SSA–2006–0149–0024." We are making a number of changes because of public comments we received in response to the NPRM. We explain those changes in our summary of public comments and our responses later in this preamble. We are also making minor editorial changes for clarity throughout these final rules.

Why are we revising the listings for evaluating respiratory disorders?

We are revising the listings for evaluating respiratory disorders to reflect our program experience and advances in medical knowledge since we last comprehensively revised the listings for this body system, and comments we received from medical experts and the public at an outreach policy conference, in response to an Advance Notice of Proposed Rulemaking (ANPRM), and in response to an NPRM. We last published final rules making comprehensive revisions to section 3.00—the respiratory system listings for adults (people who are at least 18 years old)—and section 103.00—the respiratory system listings for children (people under age 18)—on October 7, 1993.[1] Since that time, we have revised the introductory text for children, revised some testing requirements, added adult and child listings for lung transplants, removed criterion C from listing 3.09, added listing 103.06 and corresponding introductory text, and extended the effective date of the rules.[2]

When will we begin to use these final rules?

We will begin to use these final rules on their effective date. We will continue to use the current listings until the date these final rules become effective. We will apply the final rules to new applications filed on or after the effective date of these final rules and to claims that are pending on or after the effective date.[3] These final rules will remain in effect for 3 years after the date they become effective, unless we extend them, or revise and issue them again.

Public Comments on the NPRM

In the NPRM, we provided the public with a 60-day comment period that ended on April 5, 2013. We received 212 comments. The commenters included advocacy groups, legal services organizations, State agencies that make disability determinations for us, medical organizations, and people who have respiratory disorders or have relatives with respiratory disorders.

[1] 58 FR 52346; corrected at 59 FR 1274 (January 10, 1994). These listings appear in appendix 1 to subpart P of part 404.

[2] See 65 FR 54747 (2000), 65 FR 57946 (2000), 67 FR 20018 (2002), 67 FR 43537 (2002), 68 FR 36911 (2003), 70 FR 35028 (2005), 71 FR 2312 (2006), 72 FR 33662 (2007), 73 FR 31025 (2008), 75 FR 33166 (2010), 77 FR 35264 (2012), 79 FR 10661 (2014), 80 FR 1 (2015), and 80 FR 19522 (2015).

[3] This means that we will use these final rules on and after their effective date, in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court's remand.

We carefully considered all of the comments that were relevant to this rulemaking. We have tried to present the commenters' concerns and suggestions accurately and completely, and we have responded to all significant issues that were within the scope of these rules. We provide our reasons for adopting or not adopting the recommendations in the summaries of the comments and our responses. We also received several comments supporting our proposed changes. We appreciate those comments; however, we did not include them in our discussion of the rules below.

As part of the rulemaking process, we held an informational teleconference with the public on May 10, 2013, during which we discussed general background information on the disability program, information for people with cystic fibrosis who either apply for Social Security disability benefits or are currently receiving disability benefits, information we received from medical experts and members of the public, and proposed criteria in listings 3.04 and 103.04.[4] We did not accept public comments during the teleconference. We have included information related to the teleconference in the rulemaking docket for these rules under Docket ID number SSA–2006–0149–0237.[5]

Pulmonary Function Testing

Comment: One commenter suggested that we not refer to arterial blood gas (ABG) tests and pulse oximetry as pulmonary function tests (PFTs) because they are monitoring devices.

Response: We are not adopting this recommendation because we use the results of these tests to document the severity of respiratory disorders and we believe it is appropriate, for this purpose, to refer to ABG tests and pulse oximetry as PFTs.

Comment: Many commenters did not support removing the requirement for spirometry tracings of the forced expiratory maneuvers used to determine a person's highest forced expiratory volume in the first second (FEV_1) and forced vital capacity (FVC). Some commenters explained that the tracings allow us to confirm that the American Thoracic Society (ATS) testing standards were met. One commenter stated that requiring tracings will enhance the quality of the test and ensure confidence in the disability decision-making process for respiratory disorders. Another commenter agreed with us that accepting providers' interpretations of spirometry results without requiring tracings might reduce the number of tests that we purchase, but stated that not also requiring tracings might result in inappropriate allowances. One commenter suggested that, if we do not require tracings, we should require flow-volume loops to ensure the integrity of the test.

Response: We are adopting the recommendation that we continue to require spirometry tracings. In the proposed rule, we indicated that we believed it would be appropriate to trust the professional who supervises the test and for us to use the resulting spirometry values *without* corresponding tracings to assess the severity of a person's respiratory disorder. The public commenters (including medical experts who use the results of spirometry in their treatment of people with respiratory disorders, and disability examiners), however, disagreed with us.

In its public comment, the ATS recommended that we continue to require documentation of three acceptable tracings. We agree with that comment.

For most claims involving respiratory disorders and in which spirometry results are available, the evidence we receive usually does not include the spirometry tracings. By requiring tracings, we may need to recontact the medical source to seek the tracings or, if we know from experience that the source either cannot or will not provide the tracings, we may need to purchase consultative examinations to obtain spirometry results with tracings, unless we can make a fully favorable determination or decision on another basis. We will provide guidance to our adjudicators on when it is appropriate to purchase a PFT when we conduct training on the final rules.

Comment: Some commenters recommended that we continue to require documentation of equipment calibration for spirometry.

Response: We are not adopting these recommendations because, in our program experience, recorded calibrations that we receive almost invariably establish spirometer accuracy. We do not believe it is necessary to continue to require proof of equipment calibration. We expect the professional who supervises the test to comply with the professional standards for equipment calibrations. If, however, we have reason to believe that the equipment was not calibrated, we may then request calibration logs from the medical source.

Comment: Several commenters explained that the spirometry values

[4] See 78 FR 26681 (2013).

[5] *See http://www.regulations.gov/#!documentDetail;D=SSA-2006-0149-0237.*

(FEV_1 and FVC) for several listings (proposed 3.02A, 3.02B, 3.02C4, 3.03A, 3.04A, 3.04B, 103.02A, 103.02B, 103.04A, and 103.04B) include too much variability in percent predicted between females and males, as well as between different height and age categories.

Response: We agree with these commenters. While we based the values in the spirometry tables on reference values from Hankinson, *et al.*,[6] as noted in the NPRM, we agree that there was too much variability between categories (age, gender, and height). In these final rules, the percent predicted values (from which we derive the spirometry values that we use in final 3.02A, 3.02B, 3.03A, 3.04A, 103.02A, 103.02B, and 103.04A) by height are all within three percentage points of one another for a given age and gender cohort.

Comment: Some commenters recommended that we include percent predicted values in our rules rather than tables of absolute values for measurement of lung function.

Response: We did not adopt these recommendations. We believe that both percent predicted values and absolute values accurately represent the severity of a person's respiratory disorder. While the percent predicted values represent the percentage of lung function remaining, the absolute values of FEV_1 and FVC represent the *actual* volumes of air that a person exhales during a forced expiratory maneuver.

Comment: Two commenters suggested that we use the Centers for Disease Control and Prevention/National Institute for Occupational Safety and Health (CDC/NIOSH) calculator, which calculates percent predicted values, to determine the severity of a person's respiratory disorder.[7]

Response: We did not adopt these recommendations because the calculator is intended for use with a NIOSH spirometry training course and the Food and Drug Administration has not approved the calculator for clinical use.

Comment: One commenter agreed with using diffusing capacity of the lungs for carbon monoxide (DLCO) to measure respiratory function but recommended that we use percent predicted values rather than absolute values to more accurately capture condition severity.

Response: We did not adopt this recommendation. DLCO test results include both the actual (absolute) and percent predicted values for the measurement. Both values represent the ability of the lungs to transfer gases across the alveolar-capillary membrane. Neither value is more accurate than the other value because they both represent the same DLCO measurement.

Comment: One commenter had three concerns with the use of pulse oximetry in proposed 3.02C4a. First, requiring pulse oximetry and spirometry decreases the utility of the listing. Second, the key finding on a 6-minute walk test (6MWT) is whether desaturation occurs with exertion and not the baseline or post-6MWT results. Lastly, requiring printouts of pulse oximetry will dramatically reduce the availability of pulse oximetry evidence that we can use. This commenter suggested that the listing require desaturation with exercise independent of spirometry.

Response: We partially adopted these recommendations. We revised proposed 3.02C4, final 3.02C3, to require only pulse oximetry. We believe that the percent of oxygen saturation of blood hemoglobin measured by pulse oximetry required in 3.02C3 demonstrates a chronic gas exchange defect of listing-level severity. If resting pulse oximetry does not establish listing-level severity, we may use pulse oximetry during or after a 6MWT. We require a printout of the pulse wave during measurement because we use it to verify that perfusion to the area covered by the probe is adequate and that the probe is positioned properly, and because motion artifact may limit the accuracy of pulse oximetry *during* the 6MWT. Furthermore, to be consistent with this revision to final 3.02C3, we combined proposed 3.02C2, which required two resting ABG tests to document a chronic gas exchange defect of listing-level severity, and proposed 3.02C3, which required one exercise ABG test, into final 3.02C2 requiring one ABG test, either resting or during steady state exercise.

Comment: One commenter recommended that a clinical evaluation accompany the pulse oximetry measurement in proposed 3.02C4 because a pulse oximetry measurement should not be considered a primary diagnostic tool.

Response: We agree with the commenter, but did not make any changes as a result. Proposed and final 3.00D1 explain that we need a person's medical history, physical examination findings, the results of imaging, and pulmonary function tests to document and assess the severity of a person's respiratory disorder. Consequently, the rules already require the type of clinical evaluation of a person's respiratory disorder that the commenter suggested.

Comment: One commenter suggested that we require pulse oximetry be performed while the person is breathing room air or on oxygen supplementation. This commenter also suggested that we include a requirement that nail polish is removed prior to testing and that, if finger circulation is not good, we accept ear lobe pulse oximetry.

Response: We did not adopt these recommendations because the purpose of the pulse oximetry measurement is to determine oxygen (O_2) saturation on room air and not with oxygen supplementation. We do not require that a finger probe be used. It is the responsibility of the professional supervising the test to choose the most appropriate probe (for example, finger or ear) and to also ensure that proper testing protocol (including removal of nail polish) is followed.

Asthma

Comment: One commenter suggested that we remove the requirement for reduced lung function between asthma exacerbations (that is, baseline obstruction).

Response: We did not propose to change this requirement and, therefore, are not adopting this recommendation. We currently require baseline obstruction (current 3.00C) established by spirometry while the person is medically stable to document listing-level asthma. We continued to include this requirement in final 3.00I2a and 3.03A.

Comment: One commenter asked us to continue to consider adherence to therapy for asthma.

Response: We agree with the commenter, but did not make any changes as a result. We consider any hospitalization for an exacerbation of asthma lasting at least 48 hours to be despite prescribed therapy, unless we have evidence to the contrary.

Comment: One commenter suggested that we add a criterion to proposed 103.03 for the need for endotracheal intubation, which is a type of treatment for respiratory failure.

Response: We did not adopt this recommendation because we do not believe we need to specify the types of treatments we consider under 103.03 when a child is hospitalized for asthma. We did, however, add guidance in final 3.00I1 and 103.00G1 to explain that we evaluate respiratory failure resulting from chronic asthma under final 3.14 or 103.14.

[6] Hankinson, J. L., Odencrantz, J. R., & Fedan, K. B. (1999). Spirometric reference values from a sample of the general U.S. population. *American Journal of Respiratory and Critical Care Medicine, 159*(1), 179–187.

[7] The CDC/NIOSH calculator is available at *http://www.cdc.gov/niosh/topics/spirometry/refcalculator.html.*

Cystic Fibrosis

Comment: Many commenters recommended that we continue to consider treatment for cystic fibrosis (CF) outside of the hospital. The commenters stated that physicians treat CF pulmonary exacerbations in a variety of ways including hospitalization and through use of intravenous antibiotics and inhaled nebulized therapies outside of the hospital setting. Some commenters explained that treatment at home for CF pulmonary exacerbations indicates the same severity of illness as a hospitalization for CF and is increasingly the method preferred by treating physicians.

Response: We adopted these recommendations. We included a criterion in final 3.04G and 103.04G that requires 10 consecutive days of intravenous antibiotic treatment, without specifying where (for example, in a hospital) the treatment occurs, for CF pulmonary exacerbations. We also added guidance in final 3.00J3 and 103.00H3 to explain that treatment for CF exacerbations usually includes intravenous antibiotics and intensified airway clearance therapy (for example, increased frequencies of chest percussion or increased use of inhaled nebulized therapies, such as bronchodilators or mucolytics). We want to assure the commenters that we are able to evaluate CF under the criteria in final listings 3.04 and 103.04, using medical equivalence, the functional equivalence rules for children, or at other steps in our sequential evaluation process.

Comment: Multiple commenters suggested that we revise proposed 3.04D and 103.04E, which required any two of six listed CF exacerbations and complications. Some commenters explained that four of the listed exacerbations and complications (spontaneous pneumothorax, respiratory failure, pulmonary hemorrhage, and hypoxemia) are serious health issues for people with CF. The commenters recommended that we revise the list to more accurately reflect the progression of CF and that we require only one of these four exacerbations or complications to establish that a person is disabled.

Response: We adopted these recommendations by adding standalone listing criteria for spontaneous pneumothorax in final 3.04C and 103.04D, respiratory failure in final 3.04D and 103.04E, pulmonary hemorrhage requiring vascular embolization in final 3.04E and 103.04F, and hypoxemia measured by pulse oximetry in final 3.04F.

Comment: One commenter stated that ABG tests in proposed 3.04B do not correlate well to disability for people with CF, and that ABG tests are not generally used in most specialized CF care centers.

Response: We adopted this recommendation and removed proposed 3.04B that required ABG test results to evaluate the severity of CF in the final rule.

Comment: One commenter said that proposed 103.04C for hypoxemia with the need for at least 1.0 liter per minute of oxygen supplementation for at least 4 hours per day for at least 90 consecutive days is "significantly too strict" for children with CF. The commenter stated that any child whose CF meets the proposed listing would already be on a lung transplant list.

Response: We adopted this recommendation and have not included proposed 103.04C in the final rule. While being on a lung transplant list is not a listing criterion, we believe children with CF whose impairment would have met proposed 103.04C will have an impairment that meets the requirements in one of the listings for CF included in the final rule.

Comment: Multiple commenters objected to the proposed lower spirometry values for evaluating CF in proposed 3.04A and 103.04A.

Response: We adopted these comments and modified the spirometry values in proposed 3.04A and 103.04A. Our revisions to *all* spirometry values to minimize variability, as we described above, in addition to the fact that people with CF are disabled at a comparatively higher level of lung function than people who do not have CF, resulted in none of the values in final 3.04A and 103.04A being lower than the corresponding values in current 3.04A and 103.04A.

Pulmonary Hypertension

Comment: Multiple commenters recommended that we not use echocardiograms to evaluate the severity of chronic pulmonary hypertension in proposed 3.09B. One commenter stated that results from echocardiograms do not accurately reflect the presence of moderate pulmonary hypertension that causes marked functional limitations. Another commenter stated that only cardiac catheterization should be used to evaluate disability for pulmonary hypertension in proposed 3.09A.

Response: We adopted these recommendations and removed the echocardiography requirement from final 3.09. We also removed echocardiography from the list of examples of medical imaging techniques in proposed 3.00D2 (final 3.00D3).

Comment: One commenter suggested that we add listing criteria to proposed 3.09A, which requires only cardiac catheterization for chronic pulmonary hypertension.

Response: We did not adopt this recommendation because adding the suggested listing criteria to 3.09 increases the severity level of the listing. We believe final 3.09 is medically appropriate and represents an inability to perform any gainful activity. When we have the results of cardiac catheterization and those results meet the requirements of the listing, we do not need additional criteria to support listing-level severity. Adding listing criteria creates an unnecessary evidence burden on claimants.

Respiratory Failure

Comment: One commenter suggested that we exclude asthma and obesity as underlying conditions for respiratory failure in proposed 3.14 and 103.14.

Response: We did not adopt this recommendation. Final 3.14 and 103.14 require that we evaluate respiratory failure resulting from any chronic respiratory disorder except CF. Obesity is not a "chronic respiratory disorder" and, therefore, respiratory failure cannot be evaluated under these listings if obesity is the person's only impairment. (We address how to consider the effects of obesity combined with a respiratory disorder in final 3.00O.) We believe it is appropriate to evaluate respiratory failure resulting from chronic asthma under these listings.

Comment: One commenter recommended that we consider noninvasive ventilation as an alternative to invasive ventilation for treatment of respiratory failure resulting from CF.

Response: We adopted this recommendation because ventilatory support in respiratory failure associated with any underlying chronic respiratory disorder, including CF, while traditionally provided by invasive ventilation, is now often provided by noninvasive ventilation. In either case, cyclical positive pressure is applied to the airway to assist ventilation and reduce the work of breathing. We believe it is reasonable to count the total ventilatory support time, whether it be invasive or noninvasive ventilation, for our purposes, so we added this alternative to final 3.04D, 3.14, 103.04E, and 103.14.

Other Comments

Comment: One commenter suggested that we include a listing for people with

respiratory disorders who are dependent on oxygen supplementation.

Response: We are not adopting this recommendation because the use of supplemental oxygen does not, by itself, indicate an impairment of listing-level severity. In proposed 3.00D1 and final 3.00D2 and 103.00D2, we explain that if a person uses supplementation oxygen, we still need medical evidence to establish the severity of his or her respiratory disorder.

Comment: One commenter suggested that we include a criterion in 3.02 that requires three hospitalizations within a 12-month period for any chronic respiratory disorder except CF.

Response: We adopted this recommendation in final 3.02D because we agree that three hospitalizations of 48 hours or longer, 30 days or more apart, within a 12-month period that we are considering in connection with an application or continuing disability review for exacerbations or complications of a chronic respiratory disorder will prevent a person from engaging in any gainful activity and, therefore, represents listing-level severity.

Additionally, we are able to evaluate chronic respiratory disorders resulting in fewer than three hospitalizations in a consecutive 12-month period using medical equivalence, under other listing criteria, or at other steps in our sequential evaluation process. For example, if a claimant's chronic respiratory disorder does not precisely meet the hospitalization requirements in final 3.02D, we may find that the disorder is medically equivalent to that listing, if the disorder is at least medically equal in severity and duration to the listing criteria. Our medical equivalence rules permit us to find that a disorder is medically equivalent to a listing at step 3 if there are other findings related to the disorder that are at least of equal medical significance to the listing criteria (see §§ 404.1526 and 416.926).

Although some of our listings include criteria for repeated hospitalizations (3.02D, 3.03B, 3.04B, 3.07, 103.02E, 103.03, and 103.04C), our medical equivalence policy accommodates recent trends in clinical care that emphasize quality of, rather than quantity of, medical treatment. The medical equivalence policy also accommodates claimants' varying level of access to medical care (as well as the preference of some medical providers to reduce the use of emergency department and hospital-level medical interventions). This accommodation accounts for differences in medical care people with similar disorders receive depending on the medical resources available to them. The medical equivalence policy provides some flexibility in determining whether a claimant is disabled at step 3 of the sequential evaluation process by allowing us to consider whether the claimant's impairment meets the listed criteria or is at least equal in severity and duration to the criteria of any listed impairment. The final listings do not provide substantive instructions to our adjudicators for determining such equivalence because we can better provide this information through operating instructions and training

If we are not able to find that a person's impairment due to a chronic respiratory disorder is disabling using our listings, we may still find the person disabled at the final steps of the sequential evaluation process.

Comment: One commenter suggested that we include a criterion in 3.02 for persistent chronic lung infections that are refractory to treatment or provide guidance in our internal operating instructions for how to evaluate these cases.

Response: We did not adopt this recommendation because we explain in final 3.00Q that we evaluate limitations in respiratory function resulting from chronic lung infections under 3.02. We will, however, provide guidance to our adjudicators on how to evaluate chronic lung infections that are resistant to treatment when we conduct training on these final rules.

Comment: One commenter suggested that we include a listing for prolonged, active infectious periods of mycobacterium tuberculosis (MTB) lasting longer than 12 months.

Response: We did not adopt this recommendation because prolonged, active infectious periods of MTB lasting longer than 12 months are extremely rare. MTB is generally treatable with a 6-month course of antibiotics. If, however, active infectious periods associated with resistance to, or intolerance of, multiple antibiotics last longer than 12 months, we will evaluate the impairment under an appropriate listing.

Comment: One commenter suggested that we place the tables in Part A directly following the listings for which they are used, similar to how the tables appear in Part B.

Response: We adopted this recommendation because we agree that it is easier for an adjudicator to use a table when it is located directly following its listing.

Other Changes

In proposed 3.00O and 103.00L, we included guidance explaining that, for listings that require a specific number of events within a 12-month period, the 12-month period must occur within the period we are considering in connection with the application or continuing disability review. We did not, however, provide a reference to proposed 3.00O and 103.00L in each proposed listing. In these final rules, we include this guidance in each listing (final 3.02D, 3.03B, 3.04B, 3.04F, 3.04G, 3.07, 3.14, 103.02E, 103.03, 103.04C, 103.04G, and 103.14) and, as a result, it is unnecessary to also include the same guidance in the introductory text.

In proposed 3.00D3 and 103.00D3, we included a requirement that pulmonary function testing be conducted in accordance with the most recently published standards of the ATS. We do not include this statement in these final rules because we now include in final 3.00E and 103.00E (for spirometry) and in final 3.00F (for DLCO) the specific ATS testing standards that we require to evaluate respiratory disorders. The ATS may revise its testing standards at any time, in which case we would review any new standards and, if appropriate, publish proposed changes to our requirements for public comment before revising the rules.

In these final rules, we are redesignating current 103.00F as 103.00K and revising the reference to 103.00F in listing 103.06 to 103.00K. We are not revising the introductory text or the listing requirements, both of which we added to the respiratory body system in 2015.[8]

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them. Sections 205(a), 702(a)(5), and 1631(d)(1) of the Act.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

[8] See 80 FR 19522.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)-(b) and (d)-(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)-(b) and (d)-(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by:

■ a. Revising item 4 of the introductory text before part A;

■ b. Revising the body system name for section 3.00 in the table of contents;

■ c. Revising section 3.00 in part A;

■ d. Revising in part B the body system name for section 103.00 in the table of contents; and

■ e. Revising section 103.00 in part B.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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4. Respiratory Disorders (3.00 and 103.00): October 7, 2019.

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Part A

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3.00 Respiratory Disorders.

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3.00 RESPIRATORY DISORDERS

A. *Which disorders do we evaluate in this body system?*

1. We evaluate respiratory disorders that result in obstruction (difficulty moving air out of the lungs) or restriction (difficulty moving air into the lungs), or that interfere with diffusion (gas exchange) across cell membranes in the lungs. Examples of such disorders and the listings we use to evaluate them include chronic obstructive pulmonary disease (chronic bronchitis and emphysema, 3.02), pulmonary fibrosis and pneumoconiosis (3.02), asthma (3.02 or 3.03), cystic fibrosis (3.04), and bronchiectasis (3.02 or 3.07). We also use listings in this body system to evaluate respiratory failure (3.04D or 3.14), chronic pulmonary hypertension (3.09), and lung transplantation (3.11).

2. We evaluate cancers affecting the respiratory system under the listings in 13.00. We evaluate the pulmonary effects of neuromuscular and autoimmune disorders under these listings or under the listings in 11.00 or 14.00, respectively.

B. *What are the symptoms and signs of respiratory disorders?* Symptoms and signs of respiratory disorders include dyspnea (shortness of breath), chest pain, coughing, wheezing, sputum production, hemoptysis (coughing up blood from the respiratory tract), use of accessory muscles of respiration, and tachypnea (rapid rate of breathing).

C. *What abbreviations do we use in this body system?*

1. *ABG* means arterial blood gas.
2. *BiPAP* means bi-level positive airway pressure ventilation.
3. *BTPS* means body temperature and ambient pressure, saturated with water vapor.
4. *CF* means cystic fibrosis.
5. *CFRD* means CF-related diabetes.
6. *CFTR* means CF transmembrane conductance regulator.
7. *CO* means carbon monoxide.
8. *COPD* means chronic obstructive pulmonary disease.
9. *DLCO* means diffusing capacity of the lungs for carbon monoxide.
10. FEV_1 means forced expiratory volume in the first second of a forced expiratory maneuver.
11. *FVC* means forced vital capacity.
12. *L* means liter.
13. *mL CO (STPD)/min/mmHg* means milliliters of carbon monoxide at standard temperature and pressure, dry, per minute, per millimeter of mercury.
14. P_aO_2 means arterial blood partial pressure of oxygen.
15. P_aCO_2 means arterial blood partial pressure of carbon dioxide.
16. S_pO_2 means percentage of oxygen saturation of blood hemoglobin measured by pulse oximetry.
17. *6MWT* means 6-minute walk test.
18. *VI* means volume of inhaled gas during a DLCO test.

D. *What documentation do we need to evaluate your respiratory disorder?*

1. We need *medical evidence* to document and assess the severity of your respiratory disorder. Medical evidence should include your medical history, physical examination findings, the results of imaging (see 3.00D3), pulmonary function tests (see 3.00D4), other relevant laboratory tests, and descriptions of any prescribed treatment and your response to it. We may not need all of this evidence depending on your particular respiratory disorder and its effects on you.

2. If you use *supplemental oxygen,* we still need medical evidence to establish the severity of your respiratory disorder.

3. *Imaging* refers to medical imaging techniques, such as x-ray and computerized tomography. The imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder.

4. *Pulmonary function tests* include *spirometry* (which measures ventilation of the lungs), *DLCO* tests (which measure gas diffusion in the lungs), *ABG* tests (which measure the partial pressure of oxygen, P_aO_2, and carbon dioxide, P_aCO_2, in the arterial blood), and *pulse oximetry* (which measures oxygen saturation, S_pO_2, of peripheral blood hemoglobin).

E. *What is spirometry and what are our requirements for an acceptable test and report?*

1. Spirometry, which measures how well you move air into and out of your lungs, involves at least three forced expiratory maneuvers during the same test session. A forced expiratory maneuver is a maximum inhalation followed by a forced maximum exhalation, and measures exhaled volumes of air over time. The volume of air you exhale in the first second of the forced expiratory maneuver is the FEV_1. The total volume of air that you exhale during the entire forced expiratory maneuver is the FVC. We use your highest FEV_1 value to evaluate your respiratory disorder under 3.02A, 3.03A, and 3.04A, and your highest FVC value to evaluate your respiratory disorder under 3.02B, regardless of whether the values are from the same forced expiratory maneuver or different forced expiratory maneuvers.

2. We have the following requirements for spirometry under these listings:

a. You must be medically stable at the time of the test. Examples of when we would not consider you to be medically stable include when you are:

(i) Within 2 weeks of a change in your prescribed respiratory medication.

(ii) Experiencing, or within 30 days of completion of treatment for, a lower respiratory tract infection.

(iii) Experiencing, or within 30 days of completion of treatment for, an acute exacerbation (temporary worsening) of a chronic respiratory disorder. Wheezing by itself does not indicate that you are not medically stable.

(iv) Hospitalized, or within 30 days of a hospital discharge, for an acute myocardial infarction (heart attack).

b. During testing, if your FEV_1 is less than 70 percent of your predicted normal value, we require repeat spirometry after inhalation of a bronchodilator to evaluate your respiratory disorder under these listings, unless it is medically contraindicated. If you used a bronchodilator before the test and your FEV_1 is less than 70 percent of your predicted normal value, we still require repeat spirometry after inhalation of a bronchodilator unless the supervising physician determines that it is not safe for you to take a bronchodilator again (in which case we may need to reschedule the test). If you do not have post-bronchodilator spirometry, the test report must explain why. We can use the results of spirometry administered without bronchodilators when the use of bronchodilators is medically contraindicated.

c. Your forced expiratory maneuvers must be satisfactory. We consider a forced expiratory maneuver to be satisfactory when you exhale with maximum effort following a full inspiration, and when the test tracing has a sharp takeoff and rapid rise to peak flow, has a smooth contour, and either lasts for at least 6 seconds or maintains a plateau for at least 1 second.

3. The spirometry report must include the following information:

a. The date of the test and your name, age or date of birth, gender, and height without shoes. (We will assume that your recorded height on the date of the test is without shoes, unless we have evidence to the contrary.) If your spine is abnormally curved (for example, you have kyphoscoliosis), we will substitute the longest distance between your outstretched fingertips with your arms abducted 90 degrees in place of your height when this measurement is greater than your standing height without shoes.

b. Any factors, if applicable, that can affect the interpretation of the test results (for example, your cooperation or effort in doing the test).

c. Legible tracings of your forced expiratory maneuvers in a volume-time format showing your name and the date of the test for each maneuver.

4. If we purchase spirometry, the medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

F. *What is a DLCO test, and what are our requirements for an acceptable test and report?*

1. A DLCO test measures the gas exchange across cell membranes in your lungs. It measures how well CO diffuses from the alveoli (air sacs) of your lungs into your blood. DLCO may be severely reduced in some disorders, such as interstitial lung disease (for example, idiopathic pulmonary fibrosis, asbestosis, and sarcoidosis) and COPD (particularly emphysema), even when the results of spirometry are not significantly reduced. We use the average of two of your unadjusted (that is, uncorrected for hemoglobin concentration) DLCO measurements reported in mL CO (STPD)/min/mmHg to evaluate your respiratory disorder under 3.02C1.

2. We have the following requirements for DLCO tests under these listings:

a. You must be medically stable at the time of the test. See 3.00E2a.

b. The test must use the single-breath technique.

(i) The VI during the DLCO maneuver must be at least 85 percent of your current FVC, and your time of inhalation must be less than 4 seconds. (See 3.00E for our rules for programmatically acceptable spirometry.) If you do not have an FVC measurement on the same day as the DLCO test, we may use your FVC from programmatically acceptable spirometry administered within 90 days of the DLCO test.

(ii) Your breath-hold time must be between 8 and 12 seconds.

(iii) Your total exhalation time must be less than or equal to 4 seconds, with a sample collection time of less than 3 seconds. If your FVC is at least 2.0 L, the washout volume must be between 0.75 L and 1.0 L. If your FVC is less than 2.0 L, the washout volume must be at least 0.5 L.

3. The DLCO test report must include the following information:

a. The date of the test and your name, age or date of birth, gender, and height without shoes. (We will assume that your recorded height on the date of the test is without shoes, unless we have evidence to the contrary.) If your spine is abnormally curved (for example, you have kyphoscoliosis), we will substitute the longest distance between your outstretched fingertips with your arms abducted 90 degrees in place of your height when this measurement is greater than your standing height without shoes.

b. Any factors, if applicable, that can affect the interpretation of the test results (for example, your cooperation or effort in doing the test).

c. Legible tracings of your VI, breath-hold maneuver, and volume of exhaled gas showing your name and the date of the test for each DLCO maneuver.

d. At least two acceptable (see 3.00F2) DLCO measurements within 3 mL CO (STPD)/min/mmHg of each other *or* within 10 percent of the highest value.

4. We may need to purchase a DLCO test to determine whether your disorder meets 3.02C1 when we have evidence showing that you have a chronic respiratory disorder that could result in impaired gas exchange, unless we can make a fully favorable determination or decision on another basis. Since the DLCO calculation requires a current FVC measurement, we may also purchase spirometry at the same time as the DLCO test, even if we already have programmatically acceptable spirometry.

5. Before we purchase a DLCO test, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

G. *What is an ABG test, and what are our requirements for an acceptable test and report?*

1. *General.* An ABG test measures P_aO_2, P_aCO_2, and the concentration of hydrogen ions in your arterial blood. We use a resting or an exercise ABG measurement to evaluate your respiratory disorder under 3.02C2.

2. *Resting ABG tests.*

a. We have the following requirements for resting ABG tests under these listings:

(i) You must be medically stable at the time of the test. See 3.00E2a.

(ii) The test must be administered while you are breathing room air; that is, without oxygen supplementation.

b. The resting ABG test report must include the following information:

(i) Your name, the date of the test, and either the altitude or both the city and State of the test site.

(ii) The P_aO_2 and P_aCO_2 values.

c. We may need to purchase a resting ABG test to determine whether your disorder meets 3.02C2 when we have evidence showing that you have a chronic respiratory disorder that could result in impaired gas exchange, unless we can make a fully favorable determination or decision on another basis.

d. Before we purchase a resting ABG test, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

3. *Exercise ABG tests.*

a. We will *not* purchase an exercise ABG test.

b. We have the following requirements for exercise ABG tests under these listings:

(i) You must have done the exercise under steady state conditions while breathing room air. If you were tested on a treadmill, you generally must have exercised for at least 4 minutes at a grade and speed providing oxygen (O_2) consumption of approximately 17.5 milliliters per kilogram per minute (mL/kg/min) or 5.0 metabolic equivalents (METs). If you were tested on a cycle ergometer, you generally must have exercised for at least 4 minutes at an exercise equivalent of 5.0 METs.

(ii) We may use a test in which you have not exercised for at least 4 minutes. If you were unable to complete at least 4 minutes of steady state exercise, we need a statement by the person administering the test about whether the results are a valid indication of your respiratory status. For example, this statement may include information about your cooperation or effort in doing the test and whether you were limited in completing the test because of your respiratory disorder or another impairment.

c. The exercise ABG test report must include the following information:

(i) Your name, the date of the test, and either the altitude or both the city and state of the test site.

(ii) The P_aO_2 and P_aCO_2 values.

H. *What is pulse oximetry, and what are our requirements for an acceptable test and report?*

1. Pulse oximetry measures S_pO_2, the percentage of oxygen saturation of blood hemoglobin. We use a pulse oximetry measurement (either at rest, during a 6MWT, or after a 6MWT) to evaluate your respiratory disorder under 3.02C3 or, if you have CF, to evaluate it under 3.04F.

2. We have the following requirements for pulse oximetry under 3.02C3:

a. You must be medically stable at the time of the test. See 3.00E2a.

b. Your pulse oximetry measurement must be recorded while you are breathing room air; that is, without oxygen supplementation.

c. Your pulse oximetry measurement must be stable. By "stable," we mean that the range of S_pO_2 values (that is, lowest to highest) during any 15-second interval cannot exceed 2 percentage points. For example: (1) The measurement is stable if the lowest S_pO_2 value during a 15-second interval is 87 percent and the highest value is 89 percent—a range of 2 percentage points. (2) The measurement is not stable if the lowest value is 86 percent and the highest value is 89 percent—a range of 3 percentage points.

d. If you have had more than one measurement (for example, at rest and after a 6MWT), we will use the measurement with the lowest S_pO_2 value.

e. The pulse oximetry report must include the following information:

(i) Your name, the date of the test, and either the altitude or both the city and State of the test site.

(ii) A graphical printout showing your S_pO_2 value and a concurrent, acceptable pulse wave. An acceptable pulse wave is one that shows the characteristic pulse wave; that is, sawtooth-shaped with a rapid systolic upstroke (nearly vertical) followed by a slower diastolic downstroke (angled downward).

f. We may need to purchase pulse oximetry at rest to determine whether your disorder meets 3.02C3 when we have evidence showing that you have a chronic respiratory disorder that could result in impaired gas exchange, unless we can make a fully favorable determination or decision on another basis. We may purchase pulse oximetry during and after a 6MWT if your S_pO_2 value at rest is greater than the value in Table V.

g. Before we purchase pulse oximetry, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

3. We have the following requirements for pulse oximetry under 3.04F:

a. You must be medically stable at the time of the test. See 3.00E2a.

b. Your pulse oximetry measurement must be recorded while you are breathing room air; that is, without oxygen supplementation.

c. If you have had more than one measurement (for example, at rest and after a 6MWT), we will use the measurement with the lowest S_pO_2 value.

d. The pulse oximetry report must include your name, the date of the test, and either the altitude or both the city and State of the test site. If you have CF, we do not require a graphical printout showing your S_pO_2 value and a concurrent, acceptable pulse wave.

I. *What is asthma and how do we evaluate it?*

1. *Asthma* is a chronic inflammatory disorder of the lung airways that we evaluate under 3.02 or 3.03. If you have respiratory failure resulting from chronic asthma (see 3.00N), we will evaluate it under 3.14.

2. For the purposes of 3.03:

a. We need evidence showing that you have listing-level (see Table VI in 3.03A) airflow obstruction at baseline while you are medically stable.

b. The phrase "consider under a disability for 1 year" in 3.03B does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your asthma continues to meet a listing or is otherwise disabling.

c. We determine the onset of your disability based on the facts of your case, but it will be no later than the admission date of your first of three hospitalizations that satisfy the criteria of 3.03B.

J. *What is CF and how do we evaluate it?*

1. *General.* We evaluate *CF*, a genetic disorder that results in abnormal salt and water transport across cell membranes in the lungs, pancreas, and other body organs, under 3.04. We need the evidence described in 3.00J2 to establish that you have CF.

2. *Documentation of CF.* We need a report signed by a physician (see §§ 404.1513(a) and 416.913(a) of this chapter) showing both a *and* b:

a. One of the following:

(i) A positive newborn screen for CF; or

(ii) A history of CF in a sibling; or

(iii) Documentation of at least one specific CF phenotype or clinical criterion (for example, chronic sino-pulmonary disease with persistent colonization or infections with typical CF pathogens, pancreatic insufficiency, or salt-loss syndromes); *and*

b. One of the following definitive laboratory tests:

(i) An elevated sweat chloride concentration equal to or greater than 60 millimoles per L; or

(ii) The identification of two CF gene mutations affecting the CFTR; or

(iii) Characteristic abnormalities in ion transport across the nasal epithelium.

c. When we have the report showing a and b, but it is not signed by a physician, we also need a report from a physician stating that you have CF.

d. When we do not have the report showing a and b, we need a report from a physician that is persuasive that a positive diagnosis of CF was confirmed by an appropriate definitive laboratory test. To be persuasive, this report must include a statement by the physician that you had the appropriate definitive laboratory test for diagnosing CF. The report must provide the test results or explain how your diagnosis was established that is consistent with the prevailing state of medical knowledge and clinical practice.

3. *CF pulmonary exacerbations.* Examples of CF pulmonary exacerbations include increased cough and sputum production, hemoptysis, increased shortness of breath, increased fatigue, and reduction in pulmonary function. Treatment usually includes intravenous antibiotics and intensified airway clearance therapy (for example, increased frequencies of chest percussion or increased use of inhaled nebulized therapies, such as bronchodilators or mucolytics).

4. For 3.04G, we require any two exacerbations or complications from the list in 3.04G1 through 3.04G4 within a 12-month period. You may have two of the same exacerbation or complication or two different ones.

a. If you have two of the acute exacerbations or complications we describe in 3.04G1 and 3.04G2, there must be at least 30 days between the two.

b. If you have one of the acute exacerbations or complications we describe in 3.04G1 and 3.04G2 and one of the chronic complications we describe in 3.04G3 and 3.04G4, the two can occur during the same time. For example, your CF meets 3.04G if you have the pulmonary hemorrhage we describe in 3.04G2 and the weight loss we describe in 3.04G3 even if the pulmonary hemorrhage occurs during the 90-day period in 3.04G3.

c. Your CF also meets 3.04G if you have both of the chronic complications in 3.04G3 and 3.04G4.

5. CF may also affect other body systems such as digestive or endocrine. If your CF, including pulmonary exacerbations and nonpulmonary complications, does not meet or medically equal a respiratory disorders listing, we may evaluate your CF-related impairments under the listings in the affected body system.

K. *What is bronchiectasis and how do we evaluate it?* Bronchiectasis is a chronic respiratory disorder that is characterized by abnormal and irreversible dilatation (enlargement) of the airways below the trachea, which may be associated with the accumulation of mucus, bacterial infections, and eventual airway scarring. We require imaging (see 3.00D3) to document this disorder. We evaluate your bronchiectasis under 3.02, or under 3.07 if you are having exacerbations or complications (for example, acute bacterial infections, increased shortness of breath, or coughing up blood) that require hospitalization.

L. *What is chronic pulmonary hypertension and how do we evaluate it?*

1. Chronic pulmonary hypertension is an increase in the blood pressure of the blood vessels of the lungs. If pulmonary hypertension is not adequately treated, it can eventually result in right heart failure. We evaluate chronic pulmonary hypertension due to any cause under 3.09.

2. Chronic pulmonary hypertension is usually diagnosed by catheterization of the

pulmonary artery. We will not purchase cardiac catheterization.

M. *How do we evaluate lung transplantation?* If you receive a lung transplant (or a lung transplant simultaneously with other organs, such as the heart), we will consider you to be disabled under 3.11 for 3 years from the date of the transplant. After that, we evaluate your residual impairment(s) by considering the adequacy of your post-transplant function, the frequency and severity of any rejection episodes you have, complications in other body systems, and adverse treatment effects. People who receive organ transplants generally have impairments that meet our definition of disability before they undergo transplantation. The phrase "consider under a disability for 3 years" in 3.11 does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your impairment(s) continues to meet a listing or is otherwise disabling. We determine the onset of your disability based on the facts of your case.

N. *What is respiratory failure and how do we evaluate it?* Respiratory failure is the inability of the lungs to perform their basic function of gas exchange. We evaluate respiratory failure under 3.04D if you have CF-related respiratory failure, or under 3.14 if you have respiratory failure due to any other *chronic* respiratory disorder. Continuous positive airway pressure does not satisfy the criterion in 3.04D or 3.14, and cannot be substituted as an equivalent finding, for invasive mechanical ventilation or noninvasive ventilation with BIPAP.

O. *How do we consider the effects of obesity when we evaluate your respiratory disorder?* Obesity is a medically determinable impairment that is often associated with respiratory disorders. Obesity makes it harder for the chest and lungs to expand, which can compromise the ability of the respiratory system to supply adequate oxygen to the body. The combined effects of obesity with a respiratory disorder can be greater than the effects of each of the impairments considered separately. We consider any additional and cumulative effects of your obesity when we determine whether you have a severe respiratory disorder, a listing-level respiratory disorder, a combination of impairments that medically equals the severity of a listed impairment, and when we assess your residual functional capacity.

P. *What are sleep-related breathing disorders and how do we evaluate them?*

1. *Sleep-related breathing disorders* (for example, sleep apnea) are characterized by transient episodes of interrupted breathing during sleep, which disrupt normal sleep patterns. Prolonged episodes can result in disorders such as hypoxemia (low blood oxygen) and pulmonary vasoconstriction (restricted blood flow in pulmonary blood vessels). Over time, these disorders may lead to chronic pulmonary hypertension or other complications.

2. We evaluate the complications of sleep-related breathing disorders under the listings in the affected body system(s). For example, we evaluate chronic pulmonary hypertension due to any cause under 3.09; chronic heart failure under 4.02; and disturbances in mood, cognition, and behavior under 12.02 or another appropriate mental disorders listing. We will not purchase polysomnography (sleep study).

Q. *How do we evaluate mycobacterial, mycotic, and other chronic infections of the lungs?* We evaluate chronic infections of the lungs that result in limitations in your respiratory function under 3.02.

R. *How do we evaluate respiratory disorders that do not meet one of these listings?*

1. These listings are only examples of common respiratory disorders that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system. For example, if your CF has resulted in chronic pancreatic or hepatobiliary disease, we evaluate your impairment under the listings in 5.00.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See §§ 404.1526 and 416.926 of this chapter. Respiratory disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth step and, if necessary, the fifth step of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

3.01 Category of Impairments, Respiratory Disorders

3.02 *Chronic respiratory disorders* due to any cause except CF (for CF, see 3.04) with A, B, C, or D:

A. FEV_1 (see 3.00E) less than or equal to the value in Table I–A or I–B for your age, gender, and height without shoes (see 3.00E3a).

TABLE I—FEV_1 CRITERIA FOR 3.02A

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table I–A* Age 18 to attainment of age 20		*Table I–B* Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<153.0	<60.25	1.20	1.45	1.05	1.20
153.0 to <159.0	60.25 to <62.50	1.30	1.55	1.15	1.35
159.0 to <164.0	62.50 to <64.50	1.40	1.65	1.25	1.40
164.0 to <169.0	64.50 to <66.50	1.45	1.75	1.35	1.50
169.0 to <174.0	66.50 to <68.50	1.55	1.85	1.45	1.60
174.0 to <180.0	68.50 to <70.75	1.65	2.00	1.55	1.75
180.0 to <185.0	70.75 to <72.75	1.75	2.10	1.65	1.85
185.0 or more	72.75 or more	1.80	2.15	1.70	1.90

OR

B. FVC (see 3.00E) less than or equal to the value in Table II–A or II–B for your age, gender, and height without shoes (see 3.00E3a).

TABLE II—FVC CRITERIA FOR 3.02B

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table II–A* Age 18 to attainment of age 20		*Table II–B* Age 20 or older	
		Females FVC less than or equal to (L, BTPS)	Females FVC less than or equal to (L, BTPS)	Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)
<153.0	<60.25	1.35	1.65	1.30	1.50
153.0 to <159.0	60.25 to <62.50	1.50	1.80	1.40	1.65
159.0 to <164.0	62.50 to <64.50	1.60	1.90	1.50	1.75
164.0 to <169.0	64.50 to <66.50	1.70	2.05	1.60	1.90
169.0 to <174.0	66.50 to <68.50	1.80	2.20	1.70	2.00
174.0 to <180.0	68.50 to <70.75	1.90	2.35	1.85	2.20
180.0 to <185.0	70.75 to <72.75	2.05	2.50	1.95	2.30
185.0 or more	72.75 or more	2.10	2.60	2.00	2.40

OR

C. Chronic impairment of gas exchange demonstrated by 1, 2, or 3:

1. Average of two unadjusted, single-breath DLCO measurements (see 3.00F) less than or equal to the value in Table III for your gender and height without shoes (see 3.00F3a); or

TABLE III—DLCO CRITERIA FOR 3.02C1

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females DLCO less than or equal to (mL CO (STPD)/min/mmHg)	Males DLCO less than or equal to (mL CO (STPD)/min/mmHg)
<153.0	< 60.25	8.0	9.0
153.0 to <159.0	60.25 to <62.50	8.5	9.5
159.0 to <164.0	62.50 to <64.50	9.0	10.0
164.0 to <169.0	64.50 to <66.50	9.5	10.5
169.0 to <174.0	66.50 to <68.50	10.0	11.0
174.0 to <180.0	68.50 to <70.75	10.5	11.5
180.0 to <185.0	70.75 to <72.75	11.0	12.0
185.0 or more	72.75 or more	11.5	12.5

2. Arterial P_aO_2 and P_aCO_2 measured concurrently by an ABG test, while at rest or during steady state exercise, breathing room air (see 3.00G3b), less than or equal to the applicable values in Table IV–A, IV–B, or IV–C; or

Tables IV–A, IV–B, and IV–C—ABG Criteria for 3.02C2

TABLE IV–A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) *and*	Arterial P_aO_2 less than or equal to (mm Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE IV–B

[Applicable at test sites from 3,000 through 6,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) *and*	Arterial P_aO_2 less than or equal to (mm Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE IV–C

[Applicable at test sites over 6,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) *and*	Arterial P_aO_2 less than or equal to (mm Hg)
30 or below	55
31	54

TABLE IV–C—Continued

[Applicable at test sites over 6,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) *and*	Arterial P_aO_2 less than or equal to (mm Hg)
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

3. S_pO_2 measured by pulse oximetry (see 3.00H2) either at rest, during a 6MWT, or after a 6MWT, less than or equal to the value in Table V.

TABLE V—S_pO_2 CRITERIA FOR 3.02C3

Test site altitude (feet above sea level)	S_pO_2 less than or equal to
Less than 3,000	87 percent.
3,000 through 6,000	85 percent.
Over 6,000	83 percent.

OR

D. Exacerbations or complications requiring three hospitalizations within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review). Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

3.03 *Asthma* (see 3.00I), with both A and B:

A. FEV_1 (see 3.00E1) less than or equal to the value in Table VI–A or VI–B for your age, gender, and height without shoes (see 3.00E3a) measured within the same 12-month period as the hospitalizations in 3.03B.

TABLE VI—FEV_1 CRITERIA FOR 3.03A

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table VI–A* Age 18 to attainment of age 20		*Table VI–B* Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<153.0	<60.25	1.65	1.90	1.45	1.60
153.0 to <159.0	60.25 to <62.50	1.75	2.05	1.55	1.75
159.0 to <164.0	62.50 to <64.50	1.85	2.15	1.65	1.90
164.0 to <169.0	64.50 to <66.50	1.95	2.30	1.75	2.00
169.0 to <174.0	66.50 to <68.50	2.05	2.45	1.85	2.15
174.0 to <180.0	68.50 to <70.75	2.20	2.60	2.00	2.30
180.0 to <185.0	70.75 to <72.75	2.35	2.75	2.10	2.45
185.0 or more	72.75 or more	2.40	2.85	2.20	2.55

AND

B. Exacerbations or complications requiring three hospitalizations within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review). Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. Consider under a disability for 1 year from the discharge date of the last hospitalization; after that, evaluate the residual impairment(s) under 3.03 or another appropriate listing.

3.04 *Cystic fibrosis* (documented as described in 3.00J2) with A, B, C, D, E, F, or G:

A. FEV_1 (see 3.00E) less than or equal to the value in Table VII–A or VII–B for your age, gender, and height without shoes (see 3.00E3a).

TABLE VII—FEV_1 CRITERIA FOR 3.04A

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table VII–A* Age 18 to attainment of age 20		*Table VII–B* Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<153.0	<60.25	1.65	1.90	1.45	1.60
153.0 to <159.0	60.25 to <62.50	1.75	2.05	1.55	1.75
159.0 to <164.0	62.50 to <64.50	1.85	2.15	1.65	1.90
164.0 to <169.0	64.50 to <66.50	1.95	2.30	1.75	2.00
169.0 to <174.0	66.50 to <68.50	2.05	2.45	1.85	2.15
174.0 to <180.0	68.50 to <70.75	2.20	2.60	2.00	2.30
180.0 to <185.0	70.75 to <72.75	2.35	2.75	2.10	2.45
185.0 or more	72.75 or more	2.40	2.85	2.20	2.55

OR

B. Exacerbations or complications (see 3.00J3) requiring three hospitalizations of any length within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review).

OR

C. Spontaneous pneumothorax, secondary to CF, requiring chest tube placement.

OR

D. Respiratory failure (see 3.00N) requiring invasive mechanical ventilation, noninvasive ventilation with BiPAP, or a combination of both treatments, for a continuous period of at least 48 hours, or for a continuous period of at least 72 hours if postoperatively.

OR

E. Pulmonary hemorrhage requiring vascular embolization to control bleeding.

OR

F. S_pO_2 measured by pulse oximetry (see 3.00H3) either at rest, during a 6MWT, or after a 6MWT, less than or equal to the value in Table VIII, *twice* within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review).

TABLES VIII—S_pO_2 CRITERIA FOR 3.04F

Test site altitude (feet above sea level)	S_pO_2 less than or equal to
Less than 3,000	89 percent.
3,000 through 6,000	87 percent.
Over 6,000	85 percent.

OR

G. Two of the following exacerbations or complications (either two of the same or two different, see 3.00J3 and 3.00J4) within a 12-month period (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review):

1. Pulmonary exacerbation requiring 10 consecutive days of intravenous antibiotic treatment.

2. Pulmonary hemorrhage (hemoptysis with more than blood-streaked sputum but not requiring vascular embolization) requiring hospitalization of any length.

3. Weight loss requiring daily supplemental enteral nutrition via a gastrostomy for at least 90 consecutive days *or* parenteral nutrition via a central venous catheter for at least 90 consecutive days.

4. CFRD requiring daily insulin therapy for at least 90 consecutive days.

3.05 [Reserved]

3.06 [Reserved]

3.07 *Bronchiectasis* (see 3.00K), documented by imaging (see 3.00D3), with exacerbations or complications requiring three hospitalizations within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review). Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

3.08 [Reserved]

3.09 *Chronic pulmonary hypertension due to any cause* (see 3.00L) documented by mean pulmonary artery pressure equal to or greater than 40 mm Hg as determined by cardiac catheterization while medically stable (see 3.00E2a).

3.10 [Reserved]

3.11 *Lung transplantation* (see 3.00M). Consider under a disability for 3 years from the date of the transplant; after that, evaluate the residual impairment(s).

3.12 [Reserved]

3.13 [Reserved]

3.14 *Respiratory failure* (see 3.00N) resulting from any underlying chronic respiratory disorder except CF (for CF, see 3.04D), requiring invasive mechanical ventilation, noninvasive ventilation with BiPAP, or a combination of both treatments, for a continuous period of at least 48 hours, or for a continuous period of at least 72 hours if postoperatively, *twice* within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review).

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Part B

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103.00 Respiratory Disorders.

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103.00 Respiratory Disorders

A. *Which disorders do we evaluate in this body system?*

1. We evaluate respiratory disorders that result in obstruction (difficulty moving air out of the lungs) or restriction (difficulty moving air into the lungs), or that interfere with diffusion (gas exchange) across cell membranes in the lungs. Examples of such disorders and the listings we use to evaluate them include chronic obstructive pulmonary disease (103.02), chronic lung disease of infancy (also known as bronchopulmonary dysplasia, 103.02C or 103.02E), pulmonary fibrosis (103.02), asthma (103.02 or 103.03), and cystic fibrosis (103.04). We also use listings in this body system to evaluate respiratory failure resulting from an underlying chronic respiratory disorder (103.04E or 103.14) and lung transplantation (103.11).

2. We evaluate cancers affecting the respiratory system under the listings in 113.00. We evaluate the pulmonary effects of neuromuscular and autoimmune disorders under these listings or under the listings in 111.00 or 114.00, respectively.

B. *What are the symptoms and signs of respiratory disorders?* Symptoms and signs of respiratory disorders include dyspnea (shortness of breath), chest pain, coughing, wheezing, sputum production, hemoptysis (coughing up blood from the respiratory tract), use of accessory muscles of respiration, and tachypnea (rapid rate of breathing).

C. *What abbreviations do we use in this body system?*

1. *BiPAP* means bi-level positive airway pressure ventilation.

2. *BTPS* means body temperature and ambient pressure, saturated with water vapor.

3. *CF* means cystic fibrosis.

4. *CFRD* means CF-related diabetes.

5. *CFTR* means CF transmembrane conductance regulator.

6. *CLD* means chronic lung disease of infancy.

7. *FEV_1* means forced expiratory volume in the first second of a forced expiratory maneuver.

8. *FVC* means forced vital capacity.

9. *L* means liter.

D. *What documentation do we need to evaluate your respiratory disorder?*

1. We need *medical evidence* to document and assess the severity of your respiratory disorder. Medical evidence should include your medical history, physical examination findings, the results of imaging (see 103.00D3), spirometry (see 103.00E), other relevant laboratory tests, and descriptions of any prescribed treatment and your response to it. We may not need all of this evidence depending on your particular respiratory disorder and its effects on you.

2. If you use *supplemental oxygen*, we still need medical evidence to establish the severity of your respiratory disorder.

3. *Imaging* refers to medical imaging techniques, such as x-ray and computerized tomography. The imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder.

E. *What is spirometry and what are our requirements for an acceptable test and report?*

1. Spirometry, which measures how well you move air into and out of your lungs, involves at least three forced expiratory maneuvers during the same test session. A forced expiratory maneuver is a maximum inhalation followed by a forced maximum exhalation, and measures exhaled volumes of air over time. The volume of air you exhale in the first second of the forced expiratory maneuver is the FEV_1. The total volume of air that you exhale during the entire forced expiratory maneuver is the FVC. We use your highest FEV_1 value to evaluate your respiratory disorder under 103.02A and 103.04A, and your highest FVC value to evaluate your respiratory disorder under 103.02B, regardless of whether the values are from the same forced expiratory maneuver or different forced expiratory maneuvers. We will not purchase spirometry for children who have not attained age 6.

2. We have the following requirements for spirometry under these listings:

a. You must be medically stable at the time of the test. Examples of when we would not consider you to be medically stable include when you are:

(i) Within 2 weeks of a change in your prescribed respiratory medication.

(ii) Experiencing, or within 30 days of completion of treatment for, a lower respiratory tract infection.

(iii) Experiencing, or within 30 days of completion of treatment for, an acute exacerbation (temporary worsening) of a chronic respiratory disorder. Wheezing by itself does not indicate that you are not medically stable.

b. During testing, if your FEV_1 is less than 70 percent of your predicted normal value, we require repeat spirometry after inhalation of a bronchodilator to evaluate your respiratory disorder under these listings, unless it is medically contraindicated. If you used a bronchodilator before the test and your FEV_1 is less than 70 percent of your predicted normal value, we still require repeat spirometry after inhalation of a bronchodilator unless the supervising physician determines that it is not safe for you to take a bronchodilator again (in which case we may need to reschedule the test). If you do not have post-bronchodilator spirometry, the test report must explain why. We can use the results of spirometry administered without bronchodilators when the use of bronchodilators is medically contraindicated.

c. Your forced expiratory maneuvers must be satisfactory. We consider a forced expiratory maneuver to be satisfactory when you exhale with maximum effort following a full inspiration, and when the test tracing has a sharp takeoff and rapid rise to peak flow, has a smooth contour, and either lasts for at least 6 seconds (for children age 10 and older) or for at least 3 seconds (for children who have not attained age 10), or maintains a plateau for at least 1 second.

3. The spirometry report must include the following information:

a. The date of the test and your name, age or date of birth, gender, and height without shoes. (We will assume that your recorded height on the date of the test is without shoes, unless we have evidence to the contrary.) If your spine is abnormally curved (for example, you have kyphoscoliosis), we will substitute the longest distance between your outstretched fingertips with your arms abducted 90 degrees in place of your height when this measurement is greater than your standing height without shoes.

b. Any factors, if applicable, that can affect the interpretation of the test results (for example, your cooperation or effort in doing the test).

c. Legible tracings of your forced expiratory maneuvers in a volume-time format showing your name and the date of the test for each maneuver.

4. If you have attained age 6, we may need to purchase spirometry to determine whether your disorder meets a listing, unless we can make a fully favorable determination or decision on another basis.

5. Before we purchase spirometry for a child age 6 or older, a medical consultant (see § 416.1016 of this chapter), preferably one with experience in the care of children with respiratory disorders, must review your case record to determine if we need the test. If we purchase spirometry, the medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

F. *What is CLD and how do we evaluate it?*

1. *CLD,* also known as bronchopulmonary dysplasia, or BPD, is scarring of the immature lung. CLD may develop as a complication of mechanical ventilation and oxygen therapy for infants with significant neonatal respiratory problems. Within the first 6 months of life, most infants with CLD are successfully weaned from mechanical ventilation, and then weaned from oxygen supplementation. We evaluate CLD under 103.02C, 103.02E, or if you are age 2 or older, under 103.03 or another appropriate listing.

2. If you have CLD, are not yet 6 months old, and need 24-hour-per-day oxygen supplementation, we will not evaluate your CLD under 103.02C until you are 6 months old. Depending on the evidence in your case record, we may make a fully favorable determination or decision under other rules before you are 6 months old.

3. We evaluate your CLD under 103.02C if you are at least 6 months old and you need 24-hour-per-day oxygen supplementation. (If you were born prematurely, we use your corrected chronological age. See § 416.924b(b) of this chapter.) We also evaluate your CLD under 103.02C if you were weaned off oxygen supplementation but needed it again by the time you were 6 months old or older.

4. We evaluate your CLD under 103.02E if you are any age from birth to the attainment of age 2 and have CLD exacerbations or complications (for example, wheezing, lower respiratory tract infections, or acute respiratory distress) that require hospitalization. For the purpose of 103.02E, we count your initial birth hospitalization as one hospitalization. The phrase "consider under a disability for 1 year from the discharge date of the last hospitalization *or* until the attainment of age 2, whichever is later" in 103.02E does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your impairment(s) continues to meet a listing or is otherwise disabling.

G. *What is asthma and how do we evaluate it?*

1. *Asthma* is a chronic inflammatory disorder of the lung airways that we evaluate under 103.02 or 103.03. If you have respiratory failure resulting from chronic asthma (see 103.00J), we will evaluate it under 103.14.

2. For the purposes of 103.03:

a. The phrase "consider under a disability for 1 year" explains how long your asthma can meet the requirements of the listing. It does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your asthma continues to meet a listing or is otherwise disabling.

b. We determine the onset of your disability based on the facts of your case, but it will be no later than the admission date of your first of three hospitalizations that satisfy the criteria of 103.03.

H. *What is CF and how do we evaluate it?*

1. *General.* We evaluate *CF,* a genetic disorder that results in abnormal salt and water transport across cell membranes in the lungs, pancreas, and other body organs, under 103.04. We need the evidence described in 103.00H2 to establish that you have CF.

2. *Documentation of CF.* We need a report signed by a physician (see § 416.913(a) of this chapter) showing both a *and* b:

a. One of the following:

(i) A positive newborn screen for CF; or

(ii) A history of CF in a sibling; or

(iii) Documentation of at least one specific CF phenotype or clinical criterion (for example, chronic sino-pulmonary disease with persistent colonization or infections with typical CF pathogens, pancreatic insufficiency, or salt-loss syndromes); *and*

b. One of the following definitive laboratory tests:

(i) An elevated sweat chloride concentration equal to or greater than 60 millimoles per L; or

(ii) The identification of two CF gene mutations affecting the CFTR; or

(iii) Characteristic abnormalities in ion transport across the nasal epithelium.

c. When we have the report showing a and b, but it is not signed by a physician, we also need a report from a physician stating that you have CF.

d. When we do not have the report showing a and b, we need a report from a physician that is persuasive that a positive diagnosis of CF was confirmed by an appropriate definitive laboratory test. To be persuasive, this report must include a statement by the physician that you had the appropriate definitive laboratory test for diagnosing CF. The report must provide the test results or explain how your diagnosis was established that is consistent with the prevailing state of medical knowledge and clinical practice.

3. *CF pulmonary exacerbations.* Examples of CF pulmonary exacerbations include increased cough and sputum production, hemoptysis, increased shortness of breath, increased fatigue, and reduction in pulmonary function. Treatment usually includes intravenous antibiotics and intensified airway clearance therapy (for example, increased frequencies of chest percussion or increased use of inhaled nebulized therapies, such as bronchodilators or mucolytics).

4. For 103.04G, we require any two exacerbations or complications from the list in 103.04G1 through 103.04G4 within a 12-month period. You may have two of the same exacerbation or complication or two different ones.

a. If you have two of the acute exacerbations or complications we describe in 103.04G1 and 103.04G2, there must be at least 30 days between the two.

b. If you have one of the acute exacerbations or complications we describe in 103.04G1 and 103.04G2 and one of the chronic complications we describe in 103.04G3 and 103.04G4, the two can occur during the same time. For example, your CF meets 103.04G if you have the pulmonary hemorrhage we describe in 103.04G2 and the weight loss we describe in 103.04G3 even if the pulmonary hemorrhage occurs during the 90-day period in 103.04G3.

c. Your CF also meets 103.04G if you have both of the chronic complications in 103.04G3 and 103.04G4.

5. CF may also affect other body systems such as digestive or endocrine. If your CF, including pulmonary exacerbations and nonpulmonary complications, does not meet or medically equal a respiratory disorders listing, we may evaluate your CF-related impairments under the listings in the affected body system.

I. *How do we evaluate lung transplantation?* If you receive a lung transplant (or a lung transplant simultaneously with other organs, such as the heart), we will consider you to be disabled under 103.11 for 3 years from the date of the transplant. After that, we evaluate your residual impairment(s) by considering the adequacy of your post-transplant function, the frequency and severity of any rejection episodes you have, complications in other body systems, and adverse treatment effects. Children who receive organ transplants generally have impairments that meet our definition of disability before they undergo transplantation. The phrase "consider under a disability for 3 years" in 103.11 does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your impairment(s) continues to meet a listing or is otherwise disabling. We determine the onset of your disability based on the facts of your case.

J. *What is respiratory failure and how do we evaluate it?* Respiratory failure is the inability of the lungs to perform their basic function of gas exchange. We evaluate respiratory failure under 103.04E if you have CF-related respiratory failure, or under 103.14 if you have respiratory failure due to any other *chronic* respiratory disorder. Continuous positive airway pressure does not satisfy the criterion in 103.04E or 103.14, and cannot be substituted as an equivalent finding, for invasive mechanical ventilation or noninvasive ventilation with BiPAP.

K. *How do we evaluate growth failure due to any chronic respiratory disorder?*

1. To evaluate growth failure due to any chronic respiratory disorder, we require documentation of the oxygen supplementation described in 103.06A and the growth measurements in 103.06B within the same consecutive 12-month period. The dates of oxygen supplementation may be different from the dates of growth measurements.

2. Under 103.06B, we use the appropriate table(s) under 105.08B in the digestive system to determine whether a child's growth is less than the third percentile.

a. For children from birth to attainment of age 2, we use the weight-for-length table corresponding to the child's gender (Table I or Table II).

b. For children age 2 to attainment of age 18, we use the body mass index (BMI)-for-age table corresponding to the child's gender (Table III or Table IV).

c. BMI is the ratio of a child's weight to the square of his or her height. We calculate BMI using the formulas in 105.00G2c.

L. *How do we evaluate respiratory disorders that do not meet one of these listings?*

1. These listings are only examples of common respiratory disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system. For example, if your CF has resulted in chronic pancreatic or hepatobiliary disease, we evaluate your impairment under the listings in 105.00.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See § 416.926 of this chapter. Respiratory disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not meet or medically equal a listing, we will also consider whether it functionally equals the listings. See § 416.926a of this chapter. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

103.01 Category of Impairments, Respiratory Disorders

103.02 *Chronic respiratory disorders* due to any cause except CF (for CF, see 103.04), with A, B, C, D, or E:

A. FEV_1 (see 103.00E) less than or equal to the value in Table I–A or I–B for your age, gender, and height without shoes (see 103.00E3a).

TABLE I—FEV_1 CRITERIA FOR 103.02A

Table I–A			*Table I–B*			
Age 6 to attainment of age 13 (for both females and males)			Age 13 to attainment of age 18			
Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	FEV_1 less than or equal to (L, BTPS)	Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<123.0	<48.50	0.80	<153.0	<60.25	1.35	1.40
123.0 to <129.0	48.50 to <50.75	0.90	153.0 to <159.0	60.25 to <62.50	1.45	1.50
129.0 to <134.0	50.75 to <52.75	1.00	159.0 to <164.0	62.50 to <64.50	1.55	1.60
134.0 to <139.0	52.75 to <54.75	1.10	164.0 to <169.0	64.50 to <66.50	1.65	1.70
139.0 to <144.0	54.75 to <56.75	1.20	169.0 to <174.0	66.50 to <68.50	1.75	1.85
144.0 to <149.0	56.75 to <58.75	1.30	174.0 to <180.0	68.50 to <70.75	1.85	2.00
149.0 or more	58.75 or more	1.40	180.0 or more	70.75 or more	1.95	2.10

OR

B. FVC (see 103.00E) less than or equal to the value in Table II–A or II–B for your age, gender, and height without shoes (see 103.00E3a).

TABLE II—FVC CRITERIA FOR 103.02B

Table II–A			*Table II–B*			
Age 6 to attainment of age 13 (for both females and males)			Age 13 to attainment of age 18			
Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	FVC less than or equal to (L, BTPS)	Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)
<123.0	<48.50	0.85	<153.0	<60.25	1.65	1.65
123.0 to <129.0	48.50 to <50.75	1.00	153.0 to <159.0	60.25 to <62.50	1.70	1.80
129.0 to <134.0	50.75 to <52.75	1.10	159.0 to <164.0	62.50 to <64.50	1.80	1.95
134.0 to <139.0	52.75 to <54.75	1.30	164.0 to <169.0	64.50 to <66.50	1.95	2.10
139.0 to <144.0	54.75 to <56.75	1.40	169.0 to <174.0	66.50 to <68.50	2.05	2.25
144.0 to <149.0	56.75 to <58.75	1.55	174.0 to <180.0	68.50 to <70.75	2.20	2.45
149.0 or more	58.75 or more	1.70	180.0 or more	70.75 or more	2.30	2.55

OR

C. Hypoxemia with the need for at least 1.0 L per minute of continuous (24 hours per day) oxygen supplementation for at least 90 consecutive days.

OR

D. The presence of a tracheostomy.

1. Consider under a disability until the attainment of age 3; or

2. Upon the attainment of age 3, documented need for mechanical ventilation via a tracheostomy for at least 4 hours per day and for at least 90 consecutive days.

OR

E. For children who have not attained age 2, CLD (see 103.00F) with exacerbations or complications requiring three hospitalizations within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review).

Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. (A child's initial birth hospitalization when CLD is first diagnosed counts as one hospitalization.) Consider under a disability for 1 year from the discharge date of the last hospitalization *or* until the attainment of age 2, whichever is later. After that, evaluate the impairment(s) under 103.03 or another appropriate listing.

103.03 *Asthma* (see 103.00G) with exacerbations or complications requiring three hospitalizations within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review). Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. Consider under a disability for 1 year from the discharge date of the last hospitalization; after that, evaluate the residual impairment(s) under 103.03 or another appropriate listing.

103.04 *Cystic fibrosis* (documented as described in 103.00H), with A, B, C, D, E, F, or G:

A. FEV_1 (see 103.00E) less than or equal to the value in Table III–A or Table III–B for your age, gender, and height without shoes (see 103.00E3a).

TABLE III—FEV_1 CRITERIA FOR 103.04A

Table III–A			*Table III–B*			
Age 6 to attainment of age 13 (for both females and males)			Age 13 to attainment of age 18			
Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	FEV_1 less than or equal to (L, BTPS)	Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<123.0	<48.50	1.00	<153.0	<60.25	1.75	1.85
123.0 to <129.0	48.50 to <50.75	1.15	153.0 to <159.0	60.25 to <62.50	1.85	2.05
129.0 to <134.0	50.75 to <52.75	1.25	159.0 to <164.0	62.50 to <64.50	1.95	2.15
134.0 to <139.0	52.75 to <54.75	1.40	164.0 to <169.0	64.50 to <66.50	2.10	2.30
139.0 to <144.0	54.75 to <56.75	1.50	169.0 to <174.0	66.50 to <68.50	2.25	2.45
144.0 to <149.0	56.75 to <58.75	1.70	174.0 to <180.0	68.50 to <70.75	2.35	2.60
149.0 or more	58.75 or more	1.80	180.0 or more	70.75 or more	2.50	2.70

OR

B. For children who have not attained age 6, findings on imaging (see 103.00D3) of thickening of the proximal bronchial airways, nodular-cystic lesions, segmental or lobular atelectasis, or consolidation, *and* documentation of one of the following:

1. Shortness of breath with activity; or
2. Accumulation of secretions as manifested by repetitive coughing; or
3. Bilateral rales or rhonchi, or reduction of breath sounds.

OR

C. Exacerbations or complications (see 103.00H3) requiring three hospitalizations of any length within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review).

OR

D. Spontaneous pneumothorax, secondary to CF, requiring chest tube placement.

OR

E. Respiratory failure (see 103.00J) requiring invasive mechanical ventilation, noninvasive ventilation with BiPAP, or a combination of both treatments, for a continuous period of at least 48 hours, or for a continuous period of at least 72 hours if postoperatively.

OR

F. Pulmonary hemorrhage requiring vascular embolization to control bleeding.

OR

G. Two of the following exacerbations or complications (either two of the same or two different, see 103.00H3 and 103.00H4) within a 12-month period (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review):

1. Pulmonary exacerbation requiring 10 consecutive days of intravenous antibiotic treatment.
2. Pulmonary hemorrhage (hemoptysis with more than blood-streaked sputum but not requiring vascular embolization) requiring hospitalization of any length.
3. Weight loss requiring daily supplemental enteral nutrition via a gastrostomy for at least 90 consecutive days *or* parenteral nutrition via a central venous catheter for at least 90 consecutive days.
4. CFRD requiring daily insulin therapy for at least 90 consecutive days.

103.05 [Reserved]

103.06 *Growth failure due to any chronic respiratory disorder* (see 103.00K), documented by:

A. Hypoxemia with the need for at least 1.0 L per min of oxygen supplementation for at least 4 hours per day and for at least 90 consecutive days.

AND

B. Growth failure as required in 1 or 2:

1. *For children from birth to attainment of age 2*, three weight-for-length measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate weight-for-length table under 105.08B1; or

2. *For children age 2 to attainment of age 18*, three BMI-for-age measurements that are:

a. Within a consecutive 12-month period; and

b. At least 60 days apart; and

c. Less than the third percentile on the appropriate BMI-for-age table under 105.08B2.

103.07 [Reserved]

103.08 [Reserved]

103.09 [Reserved]

103.10 [Reserved]

103.11 *Lung transplantation* (see 103.00I). Consider under a disability for 3 years from the date of the transplant; after that, evaluate the residual impairment(s).

103.12 [Reserved]

103.13 [Reserved]

103.14 *Respiratory failure* (see 103.00J) resulting from any underlying chronic respiratory disorder except CF (for CF, see 103.04E), requiring invasive mechanical ventilation, noninvasive ventilation with BiPAP, or a combination of both treatments, for a continuous period of at least 48 hours, or for a continuous period of at least 72 hours if postoperatively, *twice* within a 12-month period and at least 30 days apart (the 12-month period must occur within the period we are considering in connection with your application or continuing disability review).

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

§ 416.926a [Amended]

■ 4. Amend § 416.926a by removing paragraph (m)(1) and redesignating paragraphs (m)(2) through (6) as (m)(1) through (5).

[FR Doc. 2016–13275 Filed 6–8–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2016–N–0001]

Advisory Committee; Transmissible Spongiform Encephalopathies Advisory Committee; Termination

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the termination of the Transmissible Spongiform Encephalopathies Advisory Committee. This document removes the Transmissible Spongiform Encephalopathies Advisory Committee from the Agency's list of standing advisory committees.

DATES: This rule is effective June 9, 2016.

FOR FURTHER INFORMATION CONTACT: Bryan Emery, Division of Scientific Advisors and Consultants, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6132, Silver Spring, MD 20993–0002, 240–402–8054, FAX: 301–595–1307, or *bryan.emery@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Transmissible Spongiform Encephalopathies Advisory Committee (the Committee) was established on June 9, 1995 (60 FR 31311, June 14, 1995; 21 CFR 14.100 erroneously lists the date of establishment as June 21, 1995). The Committee reviews and evaluates available scientific data concerning the safety of products that may be a risk for transmission of spongiform encephalopathies having an impact on the public health as determined by the Commissioner of Food and Drugs. The Committee makes recommendations to the Commissioner regarding the regulation of such products. In recent years, the number of issues requiring Committee advice has declined, and the Committee has met very infrequently. Therefore, the effort and expense of maintaining this advisory committee is no longer justified. Any relevant Transmissible Spongiform Encephalopathy issues in the future could be addressed by the Agency's other advisory committees, such as the Agency's Blood Products Advisory Committee, with additional augmentation of expertise by appropriate subject matter experts serving as temporary members on the committee.

The Committee is no longer needed and will be terminated on June 9, 2016.

Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40 (d) and (e), the Agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and are not in the public interest as this final rule merely removes the name of the Transmissible Spongiform Encephalopathies Advisory Committee from the list of standing advisory committees in 21 CFR 14.100.

Therefore, the Agency is amending 21 CFR 14.100(b) as set forth in the regulatory text of this document.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155.

§ 14.100 [Amended]

■ 2. In § 14.100, redesignate paragraph (b)(5) as (b)(4) and remove paragraph (b)(6).

Dated: June 6, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–13705 Filed 6–8–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1241

[Docket No. ONRR–2016–0002; DS63644000 DR2PS0000.CH7000167D0102R2]

RIN 1012–AA17

Civil Monetary Penalties Inflation Adjustment

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Interim final rule.

SUMMARY: The Office of Natural Resources Revenue (ONRR) publishes this interim final rule to adjust the amount of our civil monetary penalties (CMPs) for inflation with an initial "catch-up" adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance.

DATES: This rule is effective July 11, 2016. Comments will be accepted until August 8, 2016.

ADDRESSES: You may submit comments to ONRR by one of the following three methods. (Please reference the Regulation Identifier Number (RIN) 1012–AA17 in your comments.). See also Public Availability of Comments under Procedural Requirements.

1. Electronically, go to *www.regulations.gov*. In the entry titled "Enter Keyword or ID," enter "ONRR–2016–0002," and then click "Search." Follow the instructions to submit public comments. ONRR will post all comments.

2. Mail comments to Luis Aguilar, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64400B, Denver, Colorado 80225.

3. Hand-carry comments, or use an overnight courier service to the Office of Natural Resources Revenue, Building 53, Entrance E–20, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Luis Aguilar, Regulatory Specialist, by telephone at (303) 231–3418 or email to *luis.aguilar@onrr.gov*. For questions on technical issues, contact Geary Keeton, Chief of Enforcement, by telephone at (303) 231–3096 or email to *geary.keeton@onrr.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Method of Calculation
III. Summary of Final Rule
IV. Procedural Requirements

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the Act). The Act requires Federal agencies to adjust each CMP amount with an initial catch-up adjustment through rulemaking and then make subsequent annual inflationary adjustments. The new CMP amounts must be published by July 1, 2016, and take effect no later than August 1, 2016. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to foster compliance with the law.

The Act provides that any increase in a CMP due to the calculated inflation adjustments shall apply only to a violation that occurs after the date when the increase takes effect and states that the initial inflation adjustment may not exceed 150 percent of the amount of the CMP on November 2, 2015.

II. Method of Calculation

OMB issued guidance on calculating the catch-up adjustments. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* Under this guidance, the Department of the Interior (Department) has identified applicable CMPs and calculated the catch-up adjustments. A CMP is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A CMP does not include a penalty levied for violation of a criminal statute, fees for services, licenses, permits, or other regulatory review.

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost-of-living adjustment. The cost-of-living adjustment is defined as the percent by which the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the calendar year preceding the adjustment exceeds the CPI–U for the month of October of the year in which the amount of such CMP was last set or adjusted pursuant to law.

The maximum CMP amounts for ONRR penalties under 30 U.S.C. 1719(a)–(d) were established in 1983 in the Federal Oil and Gas Management Act (FOGRMA). Since we have not updated the maximum CMP amounts for inflation since their establishment, we must calculate a new maximum CMP with an initial catch-up adjustment. The inflation adjustment amount for each maximum CMP amount is calculated by multiplying the 1983 maximum CMP amount by the 2016 CMP catch-up adjustment multiplier for 1983, which is 2.35483. In accordance with the Act, the new maximum CMP amount is rounded to the nearest dollar. For example:

- The maximum CMP amount under 30 U.S.C. 1719(a) established in 1983 is $500.
- The 2016 CMP catch-up adjustment multiplier for 1983 is 2.35483.
- Therefore, $500 × 2.35483 = $1,177.415, which rounds to $1,177.
- The new maximum CMP amount is $1,177.

Pursuant to the Act, in the event that a violation took place prior to the effective date of the new penalty amount—and we assess a penalty after the effective date—the new penalty amount is assessed in a manner consistent with the new maximum CMP calculation. As the Act applies to penalties assessed after the effective date of the applicable adjustment, the Act adjusts penalties prospectively. The Act does not retrospectively change previously assessed or enforced penalties that we are actively collecting or have collected. The Act does not alter our statutory authority to assess penalties below the maximum amount.

III. Summary of Final Rule

This final rule adjusts the maximum CMP amount within each of the four established civil penalty tiers specified in 30 U.S.C. 1719(a)–(d). The following list summarizes the existing ONRR regulations containing CMPs, as well as the penalties before and after adjustment. The increases in maximum CMP amounts contained in this final rule may not necessarily affect the amount of any CMP that we may seek for a particular violation; we will calculate each CMP on a case-by-case basis.

ONRR Regulation containing CMPs	Current maximum CMP amount	Catchup adjustment multiplier	Adjusted maximum CMP amount
30 CFR 1241.53(a)	500	2.35483	1,177
30 CFR 1241.53(b)	5,000	2.35483	11,774
30 CFR 1241.60(a)	10,000	2.35483	23,548
30 CFR 1241.60(b)	25,000	2.35483	58,871

Note: The CMP amounts under 30 CFR 1241 are authorized by 30 U.S.C. 1719(a)–(d).

IV. Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in OMB will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Adjustment Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. Thus, the RFA does not apply to this rulemaking.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, local government agencies; or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States–based enterprises to compete with foreign–based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, we are not required to provide a statement containing the information that the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) requires because this rule is not an unfunded mandate.

5. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule does not have any significant takings implications. This rule will not impose conditions or limitations on the use of any private property. Therefore, this rule does not require a takings implication assessment.

6. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Therefore, this rule does not require a Federalism summary impact statement.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a), which requires that we review all regulations to eliminate errors and ambiguity and to write them to minimize litigation.

b. Meets the criteria of section 3(b)(2), which requires that we write all regulations in clear language using clear legal standards.

8. Consultation With Indian Tribal Governments (E.O. 13175)

The Department strives to strengthen its government–to–government relationship with the Indian Tribes through a commitment to consultation with the Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it will have no substantial direct effects on Federally-recognized Indian Tribes and does not require consultation.

9. Paperwork Reduction Act

This rule:

(a) Does not contain any new information collection requirements.

(b) Does not require a submission to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). See 5 CFR 1320.4(a)(2).

10. National Environmental Policy Act of 1969 (NEPA)

This rule does not constitute a major Federal action, significantly affecting the quality of the human environment. We are not required to provide a detailed statement under NEPA because this rule qualifies for categorical exclusion under 43 CFR 46.210(i) in that this rule is ". . . *of an administrative, financial, legal, technical, or procedural nature*. . . ." We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211 and, therefore, does not require a Statement of Energy Effects.

12. Clarity of This Regulation

We are required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized.

(b) Use the active voice to address readers directly.

(c) Use common, everyday words and clear language rather than jargon.

(d) Be divided into short sections and sentences.

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

13. Public Availability of Comments

ONRR will post all comments, including the name and address of a respondent, at *www.regulations.gov*. Before including Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal information in your comments, you should be aware that your entire comment (including PII) may be made available to the public at any time. While you may ask us, in your comment, to withhold PII from public view, we cannot guarantee that we will be able to do so.

14. Administrative Procedure Act (APA)

In accordance with § 553(b), ONRR generally publishes a rule in a proposed form and solicits public comment on it before issuing the final rule. However, § 553(b)(3)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable, unnecessary, or contrary to the public interest."

ONRR finds that there is good cause to promulgate this rule without first providing for public comment. We are promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish an interim final rule and to update the CMP amounts by applying a specified formula. ONRR has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule. Also, it would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Thus, pre-promulgation notice and public comment is unnecessary and impracticable. These technical changes,

required by law, do not substantively alter the existing regulatory framework nor in any way effect the terms under which ONRR assesses civil penalties.

List of Subjects in 30 CFR Part 1241

Administrative practice and procedure, Civil penalties, Coal, Geothermal, Inflation, Mineral resources, Natural gas, Notices of non-compliance, oil.

Dated: June 1, 2016.

Kristen J. Sarri,

Principal Deputy Assistant Secretary for Policy, Management and Budget.

Authority and Issuance

For the reasons discussed in the preamble, ONRR amends 30 CFR part 1241 as set forth below:

PART 1241—PENALTIES

■ 1. The authority citation for part 1241 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.* and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 1241.53 [Amended]

■ 2. Amend § 1241.53 by:

■ A. In paragraph (a), remove "$500" and add in its place "$1,177."

■ B. In paragraph (b), remove "$5,000" and add in its place "$11,774."

§ 1241.60 [Amended]

■ 3. Amend § 1241.60 by:

■ A. In paragraph (a), remove "$10,000" and add in its place "$23,548."

■ B. In paragraph (b), remove "$25,000" and add in its place "$58,871."

[FR Doc. 2016–13462 Filed 6–8–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2015–0854]

Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for a marine event taking place in the Tred Avon River, between Bellevue, MD and Oxford, MD on June 12, 2016. The date of this enforcement action has changed because the event was postponed by the sponsor due to inclement weather. This action is necessary to ensure safety of life on navigable waters during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District identifies the regulated area for this marine event. During the enforcement period, the Coast Guard Patrol Commander or designated Marine Event Patrol may forbid and control the movement of all vessels in the regulated area.

DATES: The regulations in 33 CFR 100.501, listed as event (b)14 in the Table to 33 CFR 100.501 will be enforced from 9 a.m. to 11 a.m. on June 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region (WWM); telephone 410–576–26742, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulated area in 33 CFR 100.501 from 9 a.m. until 11 a.m. on June 12, 2016, for the Oxford-Bellevue Sharkfest Swim. The date of this enforcement action has changed because the event was postponed by the sponsor due to inclement weather. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for this event that includes all waters of the Tred Avon River from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42′25″ N., longitude 076°10′45″ W., thence south to latitude 38°41′37″ N., longitude 076°10′26″ W., and bounded on the west by a line drawn from latitude 38°41′58″ N., longitude 076°11′04″ W., thence south to latitude 38°41′25″ N., longitude 076°10′49″ W., thence east to latitude 38°41′25″ N., longitude 076°10′30″ W., located at Oxford, MD. Only designated marine event participants and their vessels and official patrol vessels are authorized to enter the regulated area. As specified in § 100.501(c), during the enforcement period, the Coast Guard Patrol Commander or designated Marine Event Patrol may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The operator of any vessel in the regulated area shall: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed; (ii) All persons and vessels shall comply with the instructions of the Official Patrol; (iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. The Coast Guard may be assisted by other Federal, state or local law enforcement agencies in enforcing this regulation. If the Captain of the Port or his designated on-scene Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

This notice of enforcement is issued under authority of 33 CFR 100.501(f), Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District and 5 U.S.C. 552(a). In addition to this notification in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners and the Local Notice to Mariners. The Captain of the Port, Sector Maryland-National Capital Region, or a designated on-scene representative may be contacted via Channel 16, VHF–FM.

Dated: May 23, 2016.

Michael W. Batchelder

Commander, U.S. Coast Guard, Acting Captain of the Port, Maryland-National Capital Region.

[FR Doc. 2016–13707 Filed 6–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0402]

Drawbridge Operation Regulation; Saugatuck River, Saugatuck, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Metro-North "SAGA" Bridge across the Saugatuck River, mile 1.1, at Saugatuck, Connecticut. This deviation is necessary to allow the bridge owner to perform timber tie and headblock replacements at the bridge.

DATES: This deviation is effective from 8 a.m. on July 18, 2016 to 8 a.m. on August 29, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0402] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the normal operating schedule to perform timber ties and headblocks replacement at the bridge.

The Metro-North Saga Bridge, mile 1.1, across the Saugatuck River, has a vertical clearance in the closed position of 13 feet at mean high water and 20 feet at mean low water.

The existing bridge operating regulations are found at 33 CFR 117.221(b).

The waterway is transited by seasonal recreational vessels.

Under this temporary deviation, the Metro-North Saga Bridge will operate according to the schedule below:

a. From 8 a.m. on July 18, 2016 through 4 a.m. on July 22, 2016, the bridge will not open to marine traffic.

b. From 4 a.m. on July 22, 2016 through 8 a.m. on July 25, 2016, the bridge will open fully on signal upon 24 hr advance notice.

c. From 8 a.m. on July 25, 2016 through 4 a.m. on July 29, 2016, the bridge will not open to marine traffic.

d. From 4 a.m. on July 29, 2016 through 8 a.m. on August 1, 2016, the bridge will open fully on signal upon 24 hr advance notice.

e. From 8 a.m. on August 1, 2016 through 4 a.m. on August 5, 2016, the bridge will not open to marine traffic.

f. From 4 a.m. on August 5, 2016 through 8 a.m. on August 8, 2016, the bridge will open fully on signal upon 24 hr advance notice.

g. From 8 a.m. on August 8, 2016 through 4 a.m. on August 12, 2016, the bridge will not open to marine traffic.

h. From 4 a.m. on August 12, 2016 through 8 a.m. on August 15, 2016, the bridge will open fully on signal upon 24 hr advance notice.

i. From 8 a.m. on August 15, 2016 through 4 a.m. on August 19, 2016, the bridge will not open to marine traffic.

j. From 4 a.m. on August 19, 2016 through 8 a.m. on August 22, 2016, the bridge will open fully on signal upon 24 hr advance notice.

k. From 8 a.m. on August 22, 2016 through 4 a.m. on August 26, 2016, the bridge will not open to marine traffic.

l. From 4 a.m. on August 26, 2016 through 8 a.m. on August 29, 2016, the bridge will open fully on signal upon 24 hr advance notice.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will inform the users of the waterways through our Local Notice and Broadcast to Mariners of the change in operating schedule for the bridge so that vessel operations can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 3, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–13653 Filed 6–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0404]

Drawbridge Operation Regulation; Reynolds Channel, Nassau, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Long Beach Bridge, mile 4.7, across Reynolds Channel, at Nassau, New York. This temporary deviation is necessary to facility public safety during a public event, the Annual Salute to Veterans and Fireworks Display.

DATES: This deviation is effective from 9:30 p.m. on June 25, 2016 to 11:59 p.m. on June 26, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0404] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: Town of Hempstead Department of Public Safety requested and the bridge owner, Nassau County Department of Public Works, concurred with this temporary deviation from the normal operating schedule to facilitate a public event, the Annual Salute to Veterans and Fireworks Display.

The Long Beach Bridge, mile 4.7, across Reynolds Channel has a vertical clearance in the closed position of 22 feet at mean high water and 24 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(g).

Reynolds Channel is transited by commercial and recreational traffic.

Under this temporary deviation, the Long Beach Bridges may remain in the closed position between 9:30 p.m. and 11:59 p.m. on June 25, 2016 (rain date: June 26, 2016 between 9:30 p.m. and 11:59 p.m.).

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridges will not be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 3, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–13654 Filed 6–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0427]

Drawbridge Operation Regulation; Narrow Bay, Suffolk County, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Smith Point Bridge, mile 6.1, across Narrow Bay, at Suffolk County, New York. This temporary deviation is necessary to facility public safety during a public event, the annual 5K Run for Literacy.

DATES: This deviation is effective on September 10, 2016 between 9:00 a.m. and 10 a.m.

ADDRESSES: The docket for this deviation, [USCG–2016–0427] is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil*.

SUPPLEMENTARY INFORMATION: Community Family Literacy Project, Inc. requested and Suffolk County Department of Public Works, the bridge owner concurred with this temporary deviation from the normal operating schedule to facilitate a public event, the annual 5K Run for Literacy.

The Smith Point Bridge, mile 6.1, across Narrow Bay has a vertical clearance in the closed position of 18 feet at mean high water and 19 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(d).

Narrow Bay is transited by seasonal recreational vessels of various sizes.

Under this temporary deviation, the Smith Point Bridges may remain in the closed position on Saturday September 10, 2016 between 9:00 a.m. and 10 a.m.

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridges will not be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 3, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–13664 Filed 6–8–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0786]

RIN 1625–AA11

Regulated Navigation Area; Holiday Events; Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Columbus Day Weekend regulated navigation area on Biscayne Bay in Miami, Florida. The proposed amended regulation extends the Biscayne Bay regulated navigation enforcement period to New Year's Eve and Fourth of July events. It also expands the boundaries of the regulated navigation area south to Turkey Point, east to Elliott Key, west to the shoreline, and north to the Julia Tuttle Causeway. These regulations are necessary to protect the public during these events, which are periods that have historically had a significant concentration of persons and vessels on the waters of Biscayne Bay. To ensure the public's safety, all vessels within the regulated navigation area are: Required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area.

DATES: This rule is effective July 11, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2015–0786 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Benjamin Colbert, Sector Miami Waterways Management Branch, U.S. Coast Guard; telephone 305–535–4317, email *Benjain.R.Colbert@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Recreational boating traffic on the waters of Biscayne Bay increases significantly during New Year's Eve, Fourth of July, and Columbus Day Weekend events. In recent years, recreational vessel speed, especially in crossing navigational channels, contributed to incidents that resulted in severe injury and death. This regulation seeks to increase public safety on the waters of Biscayne Bay during New Year's Eve, Fourth of July, and Columbus Day Weekend, holidays known for increased vessel traffic, by requiring vessels to travel at a maximum speed of 15 knots. It also subjects recreational vessels to the control by Coast Guard and local law enforcement authorities. On November 20, 2015 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area; Columbus Day Weekend, New Year's Eve Events, and Fourth of July Events; Biscayne Bay, Miami, FL (80 FR 72663). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended December 21, 2015, we received no comments.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1. The District Seven Commander has determined that potential hazards associated with New Year's Eve, Fourth of July, and Columbus Day Weekend events pose a safety concern for anyone on the waters of Biscayne Bay. The purpose of this rule is to ensure safety of vessels and the navigable waters in Biscayne Bay before, during, and after the New Year's Eve, Fourth of July, and Columbus Day Weekend events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published November 20, 2015. There are no significant changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule establishes a regulated navigation area Columbus Day weekend, starting at noon on the Saturday before Columbus Day through 2 a.m. on Monday (the Columbus Day holiday); from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne.

This regulated navigation area will encompass waters of Biscayne Bay between Julia Tuttle Causeway Bridge and Turkey Point in Homestead, Florida. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after New Year's Eve, Fourth of July, and Columbus Day Weekend Holidays.

All vessels within the proposed regulated navigation area are: (1) Required to transit the regulated navigation area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Although the regulated navigation area covers most of Biscayne Bay, it is only enforced for a maximum of 38 hours during three holiday weekends. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 to provide notice of the zone and the regulations that allow vessels to enter the regulated navigation area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the

Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.779 to read as follows:

§ 165.779 Regulated Navigation Area; Holiday Events; Biscayne Bay, Miami, FL.

(a) *Regulated area.* The regulated navigation area encompasses all waters of Biscayne Bay between Julia Tuttle and Turkey Point contained within the following points: Beginning at Point 1 in position 25°48′43″ N, 80°08′29″ W; thence south to Point 2 in position 25°29′07″ N, 80°10′44″ W; thence southwest to Point 3 in position 25°25′51″ N, 80°12′00″ W; thence west to Point 4 in position 25°25′51″ N, 80°19′42″ W; thence north to Point 5 in position 25°29′10″ N, 80°20′58″ W; thence north to Point 6 in position 25°37′35″ N, 80°18′28″ W; thence northeast to Point 7 in position 25°48′44″ N, 80°11′17″ W; thence back to origin. All coordinates are North American Datum 1983.

(b) *Definitions.* (1) The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(2) The term "Columbus Day" means the federally recognized holiday occurring annually on the second Monday in October.

(c) *Regulations.* All vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(d) *Enforcement period.* This section will be in enforced annually on Columbus Day weekend, starting at noon on the Saturday before Columbus Day through 2 a.m. on Monday (the Columbus Day holiday); from 9 p.m. December 31st until 2 a.m. January 1st; and from 7 p.m. until 2 a.m. on the night Fourth of July fireworks are scheduled in Downtown Miami and Key Biscayne.

Dated: June 2, 2016.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–13656 Filed 6–8–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0315; FRL–9947–39–Region 5]

Air Plan Approval; Indiana; Removal of Gasoline Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Indiana state implementation plan (SIP), submittals from the Indiana Department of Environmental Management (IDEM) dated April 27, and September 10, 2015. The submittal concerns the state's Stage II vapor recovery (Stage II) program for the Indiana portion of the Chicago (Lake and Porter counties) and the Louisville, Kentucky (Clark and Floyd counties) ozone nonattainment areas. The submittal removes Stage II requirements from both nonattainment areas, as a component of the Indiana ozone SIP. The submittal also includes a demonstration under the Clean Air Act (CAA) that addresses emission impacts associated with the removal of the Stage II program. EPA proposed to approve the state's submittal on February 25, 2016, and received no comments.

DATES: This final rule is effective on July 11, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0315. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Mobile Source Program Manager, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6061, *acevedo.francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. What is being addressed by this document?

On February 25, 2016, at 81 FR 9391, EPA proposed to approve amendments to 326 IAC 8–4–6 and 326 IAC 8–4–1 of the Indiana Administrative Code, removing Stage II requirements from the Indiana's Federally-approved ozone SIP. The revision included copies of 326 IAC 8–4–1 and 326 IAC 8–4–6, as published in the Indiana Register on March 4, 2015 (Document ID Number: 20150304–IR–326120636FRA); a summary of state-specific calculations based on EPA guidance used to calculate program benefits and demonstrate widespread use of onboard refueling vapor recovery (ORVR) in Indiana; and a section 110(l) demonstration that includes offset emission documentation that addresses the 2013–2015 period, when Stage II requirements were waived in Indiana but widespread use of ORVR had not yet occurred.

II. What comments did we receive on the proposed SIP revision?

EPA provided a 30-day review and comment period on the proposed action. The comment period closed on March 28, 2016. EPA received no comments.

III. What action is EPA taking?

EPA is approving revisions to the Indiana ozone SIP submitted dated April 27, and September 10, 2015, concerning the state's Stage II program in Indiana. EPA finds that the revisions will not interfere with any applicable requirement concerning attainment, reasonable further progress or any other applicable CAA requirement.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the proposed amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: June 3, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.770 the table in paragraph (c) is amended under "Article 8: Volatile Organic Compound Rules", "Rule 4: Petroleum Sources" by revising the entries for 8–4–1 "Applicability" and 8–4–6 "Gasoline dispensing facilities" to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

[1] 62 FR 27968 (May 22, 1997).

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
* * *	*	*	* * *	
Article 8: Volatile Organic Compound Rules				
Rule 4: Petroleum Sources				
8–4–1	Applicability	3/5/2015	6/9/2016, [Insert **Federal Register** citation].	
* * *	*	*	* * *	
8–4–6	Gasoline dispensing facilities	3/5/2015	6/9/2016, [Insert **Federal Register** citation].	
* * *	*	*	* * *	

* * * * *

[FR Doc. 2016–13605 Filed 6–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0136; FRL–9947–48–Region 5]

Air Plan Approval; Minnesota; Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for ELT Minneapolis, LLC's (ELT) River Road Industrial Center located in Fridley, Anoka County, Minnesota. The revision, submitted by the Minnesota Pollution Control Agency on February 24, 2016, updates information to reflect both administrative and equipment changes at the facility. The name of the facility has changed to BAE Technology Center (BAE). The revision will result in a significant decrease in SO_2 emissions and will support the continued attainment and maintenance of the SO_2 national ambient air quality standard (NAAQS) in the Twin Cities area.

DATES: This rule is effective on August 8, 2016, unless EPA receives adverse written comments by July 11, 2016. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0136 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)886–6031, *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background Information
II. How is the SIP being revised?
III. What is EPA's analysis of the state's submission?
IV. What action is EPA taking?
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background Information

In the SIP, the ELT River Road Industrial Center is subject to specific restrictions as part of Minnesota's SIP for SO_2 in the Twin Cities Seven County SO_2 area (Twin Cities area).[1] The SIP for ELT's River Road Industrial Center was most recently approved by EPA on August 3, 2010, (75 FR 148).

Currently, four fossil fuel-fired boilers (#1, #2, #3, and #4) and four emergency generators (#5, #6, #7, and #8) are the primary emission units at the facility. Boilers #1, #2, and #3 use natural gas as their primary fuel with distillate oil as a backup fuel. Boiler #4 uses natural gas for fuel. All the emergency generators use low sulfur diesel fuel. In addition, the facility is subject to fuel usage limitations to restrict the total facility SO_2 emissions.

II. How is the SIP being revised?

On February 24, 2016, the MPCA submitted a revision to Minnesota's SO_2 SIP for the ELT River Road Industrial Center. The revision, most specifically, reflects changes as a result of new ownership.

In 2015, as part of a purchase agreement, corporate ownership transferred from ELT to the Gramercy Property Trust Fridley Owner LLC (GPT Fridley). GPT Fridley changed the name of the facility from River Road Industrial Center to BAE.

Under new ownership, BAE will be used for office and warehouse space. The emergency generators are used for stand-by power, for both life-safety, and communications in the event of electrical power is lost.

The revised SIP identifies the boilers and emergency generators as both emission units (EU) and numbered equipment (EQUI). For example, boiler #4 (EU 004) is now identified as boiler #4 (EU 004/EQUI 1).

Because part of the BAE facility had been demolished, boilers #1, #2, and #3, and emergency generators #7 and #8 were decommissioned and removed from the facility. Boiler #4, and emergency generators #5 and #6 were relocated within the facility.

As part of the recent changes to the facility, boiler #4, which burns natural gas, has been modified to burn fuel oil as a backup fuel. Boiler #4 has a design capacity rated at 10.46 million British thermal units per hour (MMBtu/hr). BAE has imposed limits on boiler #4 to restrict its fuels to natural gas and distillate fuel oil, with a sulfur content limit on the fuel oil of less than or equal to 0.05 percent by weight.

Boilers #1, #2, and #3, which had design capacities rated at 69.8, 69.8, and 35.1 MMBtu/hr, respectively, have been replaced with a newer, more efficient boiler. The new boiler #5 has a design capacity rated at 19.674 MMBtu/hr. Boiler #5 is restricted to combusting natural gas and distillate fuel oil with a sulfur content limit on the fuel oil of less than or equal to 0.05 percent by weight as a backup fuel.

III. What is EPA's analysis of the state's submission?

The SO_2 emission units operating at the BAE facility are boilers #4 and #5 and two emergency generators (#5 and #6). Boilers #1, #2, and #3, and emergency generators #7 and #8 have been removed from the facility.

Boiler #4's potential SO_2 emissions increase by 2.33 tons per year.[2] Boiler #5's potential SO_2 emissions using distillate fuel as a backup fuel are 4.37 tons per year.

Overall, the emissions change from replacing the three older boilers (#1, #2, and #3) with a new, more efficient boiler #5, coupled with modifications to boiler #4 to burn fuel oil as a backup fuel, result in a significant decrease in SO_2 emissions at the BAE facility. This action reduces the facility's total SO_2 emissions from 39.76 tons per year to 7.25 tons per year. The net emissions change is a reduction of 32.51 tons of SO_2 per year for the BAE facility.

SO_2 monitors near the BAE facility are currently measuring values less than 10 parts per billion (ppb), well below the 1-hour SO_2 NAAQS of 75 ppb. EPA expects the air quality in the Twin Cities area to remain protected with the revisions being approved.

The revised SO_2 SIP for the BAE facility provides for reductions in allowable emissions, and therefore, strengthens the SO_2 SIP for the Twin Cities area. Thus, EPA believes the BAE facility revision request is approvable.

IV. What action is EPA taking?

EPA is approving the request by Minnesota to revise the SO_2 SIP as it applies to the BAE Technology Center. Specifically, EPA is approving into the SIP those portions of the BAE Technology Center facility Joint Title I/Title V document, permit No. 00300245–003, cited as "[Title I Condition: 40 CFR 50.4(SO_2 SIP), Title I Condition: 40 CFR 51, Title I Condition: 40 CFR pt. 52, subp. Y]." This replaces the current SO_2 SIP for ELT Minneapolis, LLC.

This revision will result in an overall reduction of SO_2 emissions at the facility, which supports the continued attainment and maintenance of the SO_2 NAAQS in the Twin Cities area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective August 8, 2016 without further notice unless we receive relevant adverse written comments by July 11, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective August 8, 2016.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Minnesota regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the appropriate EPA office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an

[1] The area was officially designated attainment of the SO_2 NAAQS on July 31, 1995 (60 FR 28339).

[2] Section 3 of Minnesota's technical support document provides a full analysis of the emission calculations and the results of the emission changes.

Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 31, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.1220, the table in paragraph (d) is amended by removing the entry for "ELT Minneapolis, LLC" and adding in alphabetical order an entry for "BAE Technology Center" to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
*	*	*	*	* * *
BAE Technology Center ..	00300245–003	01/20/16	6/9/16, [Insert **Federal Register** citation].	Only conditions cited as "[Title I Condition: 40 CFR 50.4(SO_2 SIP), Title I Condition: 40 CFR 51, Title I Condition: 40 CFR pt. 52, subp. Y]".
*	*	*	*	* * *

* * * * *

[FR Doc. 2016–13604 Filed 6–8–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0907271173–0629–03]

RIN 0648–XE666

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2015 Commercial Accountability Measure and Closure for South Atlantic Snowy Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for commercial snowy grouper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial landings for snowy grouper will reach the commercial annual catch limit (ACL) by June 14, 2016. Therefore, NMFS closes the commercial sector for snowy grouper in the South Atlantic EEZ on June 14, 2016, and it will remain closed until the start of the next fishing season on January 1, 2017. This closure is necessary to protect the snowy grouper resource.

DATES: This rule is effective 12:01 a.m., local time, June 14, 2016, until 12:01 a.m., local time, January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes snowy grouper and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for snowy grouper in the South Atlantic is 125,760 lb (57,044 kg), gutted weight, 148,397 lb (67,312 kg), round weight, for the current fishing year, January 1 through December 31, 2016, as specified in 50 CFR 622.190(a)(1)(ii).

Under 50 CFR 622.193(b)(1), NMFS is required to close the commercial sector for snowy grouper when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. NMFS projects that commercial landings of South Atlantic snowy grouper, as estimated by the Science and Research Director, will reach the commercial ACL by June 14, 2016. Accordingly, the commercial sector for South Atlantic snowy grouper is closed effective 12:01 a.m., local time, June 14, 2016, until 12:01 a.m., local time, January 1, 2017.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having snowy grouper on board must have landed and bartered, traded, or sold such snowy grouper prior to 12:01 a.m., local time, June 14, 2016. During the commercial closure, harvest and possession of snowy grouper in or from the South Atlantic EEZ is limited to the bag and possession limits, as specified in § 622.187(b)(2)(ii) and (c)(1). Also during the commercial closure, the sale or purchase of snowy grouper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of snowy grouper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 14, 2016, and were held in cold storage by a dealer or processor.

For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the bag and possession limits and the sale and purchase provisions of the commercial closure for snowy grouper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of snowy grouper and the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(b)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act, because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to close the commercial sector for snowy grouper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect snowy grouper since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 6, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13667 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 111
Thursday, June 9, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7026; Directorate Identifier 2016–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for PILATUS Aircraft Ltd. Model PC–7 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as stress corrosion cracking on the main frame on frame 11 left and right fittings. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 25, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact PILATUS Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *techsupport@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7026; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7026; Directorate Identifier 2016–CE–016–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued AD HB–2016–001, dated May 17, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for PILATUS Aircraft Ltd. Model PC–7 airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

> This Airworthiness Directive (AD) is prompted due to a report of Stress Corrosion Cracking (SCC) on the Main Frame on Frame (FR) 11 left fitting Part Number (P/N) 112.35.07.489 and right fitting P/N 112.35.07.490.
>
> Such a condition, if left uncorrected, could lead to potential loss of the horizontal stabilizer.
>
> In order to correct and control the situation, this AD requires a one-time check to identify the material specification and inspect the affected areas of the airframe that are made of aluminum alloy AA2024–T351. Any structural parts of the aircraft structure found to be cracked must be reported to Pilatus prior to further flight

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7026.

Related Service Information Under 1 CFR Part 51

PILATUS Aircraft Ltd. has issued PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013; and PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, both dated February 25, 2016. PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016, describes procedures for initial and repetitive inspection of the main frame FR11 left and right fittings for stress corrosion cracking; and PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, dated February 25, 2016, describes procedures for replacement of the main frame FR11 left and right fittings when necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the Service Information

The service bulletin requires repetitive inspections by reference in a note, which the FAA cannot mandate, so the intent of the note has been incorporated into a required action for this proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 19 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to check the material specification of the fittings and 11 work-hours per product to inspect the 2014–T351 fittings as required in order to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $17,765, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 19 work-hours and require parts costing $5,000 for a cost of $1,615 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

Pilatus Aircraft Limited: Docket No. FAA–2016–7026; Directorate Identifier 2016–CE–016–AD.

(a) Comments Due Date

We must receive comments by July 25, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Limited Model PC–7 airplanes, manufacturer serial numbers (MSN) 101 through 618, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 53: Fuselage.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as stress corrosion cracking on the main frame on frame 11 left and right fittings, which can cause potential loss of the horizontal stabilizer. We are issuing this proposed AD to detect and correct stress corrosion cracking on the frame 11 left and right fittings and replace if necessary.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(4) of this AD:

(1) Within the next 120 days after the effective date of this AD, check the material specification of the Frame (FR) 11 left fitting part number (P/N) 112.35.07.489 and the FR 11 right fitting P/N 112.35.07.490 following the Accomplishment Instructions in paragraph 3.B. of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016.

(2) If fittings made of aluminum alloy AA2124–T851 are found during the inspection required by paragraph (f)(1) of this AD, within 30 days after the inspection or within the next 30 days after the effective date of this AD, whichever occurs later, report the inspection results following the reporting requirements in paragraph 3.D. of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016.

(3) If fittings made of aluminum alloy AA2024–T351 are found during the inspection required by paragraph (f)(1) of this AD, before further flight, and repetitively thereafter at intervals not to exceed 12 months, inspect FR 11 left fitting, P/N 112.35.07.489 and the FR 11 right fitting, P/N 112.35.07.490, for cracks following the Accomplishment Instructions in paragraph 3.C. of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016.

(4) If cracks are found during any inspection required in paragraph (f)(3) of this AD, before further flight, replace the fittings following the Accomplishment Instructions in paragraph 3 of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, dated February 25, 2016.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs

for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to Federal Office of Civil Aviation (FOCA) AD HB–2016–001, dated May 17, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7026. For service information related to this AD, contact PILATUS Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *techsupport@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 2, 2016.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13544 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2016–0132]

RIN 1625–AA01

Anchorage Grounds, Hudson River; Yonkers, NY to Kingston, NY

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing new anchorage grounds in the Hudson River from Yonkers, NY, to Kingston, NY. We are considering this action after receiving requests suggesting that anchorage grounds may improve navigation safety along an extended portion of the Hudson River, which currently has no anchorage grounds, allowing for a safer and more efficient flow of vessel traffic. The Coast Guard is seeking comments and information about the operational need for new anchorage grounds and what form possible regulations should take.

DATES: Comments and related material must be received by the Coast Guard on or before September 7, 2016.

Requests for public meetings must be received by the Coast Guard on or before June 30, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0132 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Mr. Craig Lapiejko, Waterways Management Branch at Coast Guard First District, telephone 617–223–8351, email *craig.d.lapiejko@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ANPRM Advance notice of proposed rulemaking
DHS Department of Homeland Security
FR Federal Register
NAD 83 North American Datum of 1983

A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comments can help shape the outcome of this possible rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this ANPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted and if we publish rulemaking documents related to this ANPRM.

B. Regulatory History and Information

Under title 33 Code of Federal Regulation (CFR) 109.05, U.S. Coast Guard District Commanders are delegated the authority to establish anchorage grounds by the Commandant of the U.S. Coast Guard. The Coast Guard establishes Anchorage Grounds under the authority in Section 7 of the act of March 4, 1915, as amended (38 Stat. 1053; 33 U.S.C. 471), and places these regulations in title 33 CFR part 110, subpart B. Hudson River Anchorage Ground regulations were last amended by rules published on March 31, 2016, January 15, 2015, and on July 20, 1999; these are 81 FR 18494, 80 FR 2011, and 64 FR 38828, respectively. The Coast Guard is now considering a proposed rulemaking to establish new anchorage grounds in the Hudson River.

C. Basis and Purpose

The legal basis and authorities for this ANPRM are found in 33 U.S.C. 471, 1221 through 1236, and 2071, as well as 33 CFR 1.05–1 and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages. The Coast Guard is considering establishing new anchorage grounds.

The Coast Guard received requests from the Maritime Association of the Port of NY/NJ Tug and Barge Committee, the Hudson River Port Pilot's Association, and the American Waterways Operators to consider establishing new anchorage grounds on the Hudson River. The purpose of this ANPRM is to solicit comments on potential proposed rulemakings to increase the available anchorage grounds on the Hudson River in areas which currently have no anchorages.

D. Discussion of Possible Proposed Rule

The Coast Guard is considering proposing to establish new anchorage grounds on the Hudson River. The anticipated users of the proposed anchorage grounds are commercial vessels and their attending tug, tow, or pushboats.

The approximate depths of the proposed anchorage grounds range from 21 feet to 65 feet, which would accommodate a variety of vessel types and configurations, and would not interfere with the areas where vessels have historically transited the Hudson River. Preliminary details describing these contemplated anchorage grounds are provided below using coordinates based on North American Datum of 1983 (NAD 83). Illustrations showing the locations of these anchorage grounds are available in the docket.

Contemplated Kingston Flats South Anchorage Ground

We are considering proposing that a Kingston Flats South Anchorage Ground would cover approximately 279 acres for up to three vessels with a draft of less than 22 feet for long term usage. It would provide a vessel swing radius of approximately 1,300 feet for one vessel and of approximately 1,800 feet for two vessels. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–56.79′ N., 073–57.24′ W.; thence to 41–56.78′ N., 073–56.85′ W.; thence to 41–55.81′ N., 073–56.95′ W.; thence to 41–55.81′ N., 073–57.42′ W.; thence to the point of origin (NAD 83).

Contemplated Port Ewen Anchorage Ground

We are considering proposing that a Port Ewen Anchorage Ground would cover approximately 47 acres for one vessel with a draft of less than 30 feet for short term usage. It would provide a vessel swing radius of approximately 1,200 feet. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–54.85′ N., 073–57.85′ W.; thence to 41–54.79′ N., 073–57.59′ W.; thence to 41–54.58′ N., 073–57.64′ W.; thence to 41–54.57′ N., 073–57.95′ W.; thence to the point of origin (NAD 83).

Contemplated Big Rock Point Anchorage Ground

We are considering proposing that a Big Rock Point Anchorage Ground would cover approximately 208 acres for up to four vessels with a draft of less than 35 feet for long term usage. It would provide a vessel swing radius of approximately 1,200 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–54.25′ N., 073–58.04′ W.; thence to 41–54.31′ N., 073–57.76′ W.; thence to 41–53.79′ N., 073–57.55′ W.; thence to 41–53.40′ N., 073–57.25′ W.; thence to 41–53.21′ N., 073–57.45′ W.; thence to 41–53.68′ N., 073–57.80′ W.; thence to the point of origin (NAD 83).

Contemplated Roseton Anchorage Ground

We are considering proposing that a Roseton Anchorage Ground would cover approximately 305 acres for up to three vessels with a draft of less than 40 feet for long term usage. It would provide a vessel swing radius of approximately 1,700 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–33.46′ N., 073–58.71′ W.; thence to 41–33.41′ N., 073–58.27′ W.; thence to 41–32.92′ N., 073–58.77′ W.; thence to 41–32.41′ N., 073–59.21′ W.; thence to 41–32.65′ N., 073–59.47′ W.; thence to 41–33.12′ N., 073–59.11′ W.; thence to the point of origin (NAD 83).

Contemplated Milton Anchorage Ground

We are considering proposing that a Milton Anchorage Ground would cover approximately 74 acres for up to two vessels with a draft of less than 40 feet for long term usage. It would provide a vessel swing radius of approximately 1,200 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–38.56′ N., 073–57.02′ W.; thence to 41–38.64′ N., 073–56.72′ W.; thence to 41–38.12′ N., 073–56.79′ W.; thence to 41–37.93′ N., 073–56.88′ W.; thence to 41–38.19′ N., 073–57.05′ W.; thence to the point of origin (NAD 83).

Contemplated Marlboro Anchorage Ground

We are considering proposing that a Marlboro Anchorage Ground would cover approximately 154 acres for up to three vessels with a draft of less than 35 feet for long term usage. It would provide a vessel swing radius of approximately 1,800 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–36.68′ N., 073–57.12′ W.; thence to 41–38.82′ N., 073–57.76′ W.; thence to 41–35.88′ N., 073–57.21′ W.; thence to 41–35.87′ N., 073–56.92′ W.; thence to the point of origin (NAD 83).

Contemplated Newburgh Anchorage Ground

We are considering proposing that a Newburgh Anchorage Ground would cover approximately 445 acres for up to five vessels with a draft of less than 32 feet toward the northern end and less than 22 feet toward the southern end for long term usage. It would provide a vessel swing radius of approximately 1,800 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–29.75′ N., 073–59.98′ W.; thence to 41–29.96′ N., 073–59.48′ W.; thence to 41–28.38′ N., 073–59.94′ W.; thence to 41–28.29′ N., 074–00.20′ W.; thence to the point of origin (NAD 83).

Contemplated Tompkins Cove Anchorage Ground

We are considering proposing that a Tomkins Cove Anchorage Ground would cover approximately 98 acres for up to three vessels with a draft of less than 40 feet for long term usage. It would provide a vessel swing radius of approximately 1,200 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–15.91′ N., 073–58.51′ W.; thence to 41–15.91′ N., 073–58.21′ W.; thence to 41–15.27′ N., 073–58.38′ W.; thence to 41–15.28′ N., 073–58.65′ W.; thence to the point of origin (NAD 83).

Contemplated Montrose Point Anchorage Ground

We are considering proposing that a Montrose Point Anchorage Ground would cover approximately 127 acres for up to three vessels with a draft of

less than 26 feet for long term usage. It would provide a vessel swing radius of approximately 1,400 feet for each vessel. The contemplated ground would encompass waters within lines connecting the following points: 41–14.02′ N., 073–57.45′ W.; thence to 41–14.09′ N., 073–57.15′ W.; thence to 41–31.10′ N., 073–57.00′ W.; thence to 41–13.18′ N., 073–56.60′ W.; thence to the point of origin (NAD 83).

Contemplated Yonkers Extension Anchorage Ground

We are considering proposing that a Yonkers Extension Anchorage Ground would cover approximately 715 acres for up to 16 vessels with a draft of less than 35 feet for long term usage. It would provide a vessel swing radius of approximately 1,200 feet for each vessel. The contemplated anchorage ground would encompass waters within lines connecting the following points: 41–00.60′ N., 073–53.61′ W.; thence to 41–00.60′ N., 073–53.31′ W.; thence to 40–58.05′ N., 073–53.96′ W.; thence to 40–56.96′ N., 073–54.39′ W.; thence to 40–57.02′ N., 073–54.71′ W.; thence to 40–58.11′ N., 073–54.25′ W.; thence to the point of origin (NAD 83).

E. Information Requested

Public participation is requested to assist in determining the best way forward with respect to establishing new anchorage grounds on the Hudson River between Yonkers, NY, to Kingston, NY. To aid us in developing a possible proposed rule, we seek any comments, whether positive or negative, including but not limited to the impacts anchorage grounds may have on navigation safety and current vessel traffic in this area, the proposed number and size of vessels anchoring in each proposed anchorage ground, and the authorized duration for each vessel in each proposed anchorage ground. We are also seeking comments on any additional locations where anchorage grounds may be helpful on the Hudson River or any recommended alterations to the specific locations considered in this notice. Please submit any comments or concerns you may have in accordance with the "Public Participation and Request for Comments" section above.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Commander First Coast Guard District.

[FR Doc. 2016–13701 Filed 6–8–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0397: FRL–9947–53–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Stationary Source Permitting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve, and incorporate by reference, revisions to the Idaho State Implementation Plan submitted on May 21, 2015. In the submission, Idaho revised stationary source permitting rules, including the addition of facility-wide emission limits and nonmetallic mineral processing plant regulations. Idaho also added an alternative method for stationary sources to comply with sulfur content of fuels limits, and updated provisions to account for changes to federal air quality regulations. The EPA proposes to approve the submitted revisions as consistent with the Clean Air Act and the EPA's implementing regulations.

DATES: Comments must be received on or before July 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0397, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *http://www.regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information, the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, or *hall.kristin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, it is intended to refer to the EPA.

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I. Background

Section 110 of the Clean Air Act (CAA) governs the process by which a state submits air quality protection requirements to the EPA for approval into the State Implementation Plan (SIP). The SIP is the state's plan to implement, maintain and enforce the National Ambient Air Quality Standards (NAAQS) set by the EPA. Idaho regularly updates the Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01) to reflect changes to the NAAQS and to improve implementation, maintenance and enforcement of those standards. We note that Idaho incorporates by reference portions of certain federal regulations directly into the SIP. The state generally submits an annual update to the EPA to keep rules consistent with federal requirements.

II. State Submission

On May 21, 2015, Idaho submitted revisions to state air quality rules at IDAPA 58.01.01 to the EPA for approval into the SIP. Idaho adopted these rule changes on November 19 and November 21, 2014. The state provided notice and an opportunity for public comment and hearing on the changes. Notices were published in the *Idaho Administrative Bulletin* and public hearings were held on September 9 and October 7, 2014. We have evaluated Idaho's submission and propose to find the state has met the requirements for reasonable notice and public hearing under section 110 of the CAA.

III. Analysis of Submitted Revisions

A. Facility-Wide Emissions Cap Rules

In the submission, Idaho revised the rules that permit construction and operation of stationary sources. Idaho's changes give certain minor sources the option to apply for facility-wide emission limitations. These limitations, or caps, when incorporated into a minor source permit to construct or Tier II operating permit, are intended to allow minor sources to operate more flexibly, without having to request permit modifications for certain process changes.

For example, semiconductor manufacturing facilities make many equipment and process changes as they develop new products and technologies. However, many equipment and process changes do not warrant extensive review as a permit modification. The intent of the facility-wide emissions cap is to set a cap on emissions from a facility, while allowing process changes under certain conditions that may increase emissions. As long as facility emissions stay below the cap and the process changes do not trigger new requirements, the source may be permitted to construct and operate.

The new Idaho rules for limiting emissions from minor sources are called the facility-wide emissions cap rules, or "FEC" rules, codified at IDAPA 58.01.01.175 through 181. These rules lay out the requirements a minor source must meet to request a FEC limit, and the method for determining the limit. A FEC limit is expressed as tons per year, on a 12-month rolling basis, and may be applied to any criteria pollutant or hazardous air pollutant. The FEC rules do not provide for issuance of a stand-alone permit. Rather, owners or operators of eligible facilities may request a FEC limit be incorporated into a new or existing permit to construct or Tier II operating permit. As stated above, only minor sources are eligible. These include sources that request an emission limit to avoid major source permitting, otherwise known as synthetic minor sources.

In our review, we have evaluated the addition of the FEC option to determine if the revised minor source permit to construct and Tier II operating permit programs continue to comply with the CAA and the EPA's implementing regulations. We propose to find that they do, and that the FEC rules are approvable for the reasons stated below.

First, the FEC rules contain adequate provisions to prevent sources operating under a FEC limit from causing or contributing to a violation of the NAAQS. CAA section 110(a)(2)(C) requires ". . . regulation of the modification and construction of any stationary source . . . as necessary to assure that the [NAAQS] are achieved." The EPA's implementing regulations for minor sources, set forth in the Code of Federal Regulations (CFR) at 40 CFR 51.160 through 164, require a state to have procedures to prevent construction or modification of a source if it will result in a violation of a pollution control strategy, or if it will interfere with the attainment or maintenance of a NAAQS.

The FEC rules ensure maintenance of the NAAQS by limiting the option to obtain a FEC limit to minor sources and requiring the applicant to demonstrate that operating under the FEC limit will not cause or contribute to a violation of a NAAQS. As stated in IDAPA 58.01.01.176.02.a, major sources, or sources undergoing a major modification, cannot obtain a FEC limit. Moreover, by its terms, the FEC limit is set below major source thresholds. The FEC rules at IDAPA 58.01.01.178.03 through .04 also require recordkeeping and reporting, including an annual report, demonstrating compliance with the FEC limit(s) and maintenance of the NAAQS.

Second, the addition of the FEC option does not alleviate any of the application requirements for either the minor source permit to construct program or the Tier II operating permit program. The EPA has already approved Idaho's application procedures for both programs. The EPA approved revisions to Idaho's minor source permit to construct application procedures most recently on January 16, 2003 (68 FR 2217).[1] Similarly, the EPA approved revisions to Idaho's Tier II operating permit program most recently on November 26, 2010 (75 FR 72719).[2]

[1] EPA did not approve section .03 of IDAPA 58.01.01.201 because it is related to toxic air pollutants and not the criteria pollutants or other requirements of CAA section 110 (January 16, 2003; 68 FR 2217, at page 2221).

[2] The EPA did not approve section .01.a and section .04 of IDAPA 58.01.01.401, related to alternative emission limits and compliance date extensions (November 26, 2010; 75 FR 72719, at page 72723).

In sum, we are proposing to approve and incorporate by reference the FEC rules at IDAPA 58.01.01.175 through 181 into the Idaho SIP, except as the rules relate to hazardous air pollutants. Hazardous air pollutants are regulated under CAA section 112, and are not appropriate for approval into the SIP. The SIP includes provisions related to attainment and maintenance of the NAAQS, and other specific requirements of CAA section 110. We are also proposing to approve and incorporate by reference the revisions to IDAPA 58.01.01.201 *Permit to Construct Required* and IDAPA 58.01.01.401 *Tier II Operating Permit* to appropriately cross-reference the FEC rules. However, consistent with our previous action on November 26, 2010, we are not approving section .01.a and section .04 of IDAPA 58.01.01.401 because the provisions allow for unbounded director's discretion (75 FR 72719).

B. Nonmetallic Mineral Processing Plant Rules

In the submission, Idaho made changes to streamline the permit process for rock crushers, asphalt plants, and other portable equipment used to process nonmetallic minerals. Instead of continuing to require that a regulated rock crusher obtain a permit to construct before starting operation, Idaho created a permit by rule that establishes controls and other operating parameters that apply to an eligible source upon registration with the Idaho Department of Environmental Quality.

These requirements are codified at IDAPA 58.01.01.790 through 799 *Rules for the Control of Nonmetallic Mineral Processing Plants*. Sources that register and operate in compliance with the rules are considered to have a "permit by rule." Only minor sources that operate for less than twelve consecutive months at a single location are eligible for the permit by rule. Sources covered by the Federal New Source Performance Standards (NSPS) at 40 CFR part 60, subpart OOO are not eligible, nor are new and modified major sources. By extension, rock crushers that are part of a new major source or proposed major modification are not eligible for the permit by rule.

The requirements for eligible nonmetallic mineral processing plants specify that obtaining a permit by rule does not relieve the owner or operator of an eligible source from the responsibility of complying with other federal, state and local applicable laws, regulations, and requirements. The rules make clear that sources subject to the NSPS for Nonmetallic Mineral Processing Plants, or the NSPS for

Portland Cement Plants or Hot Mix Asphalt Plants, must continue to comply with the NSPS limits and controls, as applicable. Provisions in the rules related to NSPS and title V source operating permits (IDAPA 58.01.01.792 and IDAPA 58.01.01.794.04) are generally not appropriate for SIP approval because they are not intended to implement the requirements of CAA section 110. Moreover, the NSPS for Nonmetallic Mineral Processing Plants, codified at 40 CFR part 60, subpart OOO, applies to affected facilities by its terms regardless of Idaho's rule. *See* 40 CFR 60.670.

The nonmetallic mineral processing plant rules set out the registration process and operating parameters for rock crushers and other eligible sources, including limits on the hours of operation, fuel consumptions rates, best management practices, and general controls designed to ensure compliance with the NAAQS. The registration procedures for the permit by rule are contained in IDAPA 58.01.01.795 through 799. Owners and operators may choose to operate an eligible plant under the permit by rule by registering the new or modified processing plant fifteen days prior to commencing operation or modification. As part of the registration, the owner or operator must supply information, such as manufacturer, model, and throughput capacity, on the rock crushers, screen decks, and electric generators proposed to be part of the processing plant.

Owners and operators who register their nonmetallic mineral processing plants are deemed to have a permit by rule if they operate the plants in accordance with the applicable substantive requirements. In general, the rules prohibit emissions that would be injurious to human health or welfare, animal or plant life, or property, or that would interfere unreasonably with the enjoyment of life or property. In addition, owners and operators of eligible sources must take all reasonable precautions to prevent the generation of fugitive dust, in addition to meeting specific opacity standards spelled out for categories of activities at areas of operation.

Specific requirements sources must meet include fuel restrictions, limits on operating hours, and monitoring and recordkeeping requirements for electrical generators at a source. For example, electrical generators must run on American Society of Testing and Materials (ASTM) Grade 1 or 2 fuel oil and must also meet specific sulfur content in fuel restrictions. Sources also must restrict visible emissions from various activities to 20% opacity or less, aggregating more than three minutes in any sixty minute period. NSPS-regulated processing plants are held to stricter opacity limits.

In addition to meeting opacity limits, sources must use best management practices to limit fugitive dust from the operation, including controls on paved public roads, unpaved haul roads, transfer points, screening operations, stacks and vents, crushers and grinding mills, and stockpiles. These best management practices are triggered during the course of operations, for instance when observed visible emissions from vehicle traffic approaches the opacity limit, or when citizen complaints come in that have merit. Sources must maintain a daily record of observing the operation, including when events trigger required control strategies and the corrective actions taken.

Idaho also amended IDAPA 58.01.01.011 to include new terms supporting the nonmetallic mineral processing plant rules. The new definitions include: "Best Management Practice," "Control Strategy Trigger," "Nonmetallic Mineral Processing Plant," "NSPS Regulated Facility or Plant," "Permit by Rule," "Progressive Control Strategy," and "Site of Operations."

The EPA proposes to determine that the permit by rule provisions for rock crushers and other nonmetallic mineral processing plants are consistent with the types of permit terms and conditions that are generally used when issuing source-specific permits to sources in this category, and may in fact be more prescriptive. We also propose to conclude that the addition of the nonmetallic mineral processing rules are consistent with the CAA and the EPA's implementing regulations at 40 CFR 51.160 through 164. We are therefore proposing to approve IDAPA 58.01.01.011 and IDAPA 58.01.01.790 through 799 into the Idaho SIP, except IDAPA 58.01.01.792, and IDAPA 58.01.01.794.04 because they are not related to the requirements of CAA section 110 and are inappropriate for SIP approval.

C. Sulfur Content of Fuels Provision

The Idaho sulfur content of fuels provision regulates the sulfur dioxide emissions from stationary sources by setting limits on the sulfur content of residual fuel oil, distillate fuel oil, and coal that is sold, distributed, used, or made available in Idaho. The provision is located in IDAPA 58.01.01.725 *Rules for Sulfur Content of Fuels*. In the submission, Idaho revised the rule provision to allow a stationary source—when applying for a permit to construct or operate—to request an alternative method to comply with sulfur in fuel limits. The revision specifies that the alternative may only be allowed if the applicant demonstrates that sulfur dioxide emissions would be equal to or less than emissions would be under the prescribed sulfur content of fuel limits. In other words, to get approval to use a fuel with higher sulfur content, a stationary source must show that, by installing a control device, the source can reduce hourly controlled emissions to less than the maximum hourly emissions from combusting complying fuels.

If a demonstration meets the rule requirements, the Idaho Department of Environmental Quality may approve the alternative compliance method into a stationary source permit to construct or operating permit. Any permit issued must contain the appropriate source monitoring, record-keeping and reporting requirements, for ensuring compliance, in accordance with Idaho's federally-approved permit to construct and operating permit programs.

We note that this rule revision alone does not allow the Idaho Department of Environmental Quality to relax any existing permit limits or conditions without also ensuring compliance with existing permit rules. In addition, any modification required for a stationary source to combust higher sulfur fuels, even without increasing allowable emissions, may be subject to preconstruction permitting rules.

Based on the information above, we conclude that the rule change is designed to protect the NAAQS, and we propose to approve and incorporate by reference the revision to IDAPA 58.01.01.725 *Rules for Sulfur Content of Fuels*.

D. Definitions and Baselines for Fine Particulate Matter

In the submission, Idaho revised IDAPA 58.01.01.006 *General Definitions* to clarify that the definition of "Criteria Air Pollutant" includes fine particulate matter ($PM_{2.5}$), and added specific definitions for $PM_{2.5}$ and $PM_{2.5}$ emissions. Idaho also updated the *Baselines for Prevention of Significant Deterioration* rule section to add major and minor source baseline dates for $PM_{2.5}$. We propose to approve these revisions as consistent with the CAA, the EPA's fine particulate matter standards set forth at 40 CFR 50.18, and major and minor source baseline dates and area requirements detailed at 40 CFR 51.166(b)(14) and (15). We note that, consistent with our previous action on March 3, 2014, we are not approving the terms defined in sections .49, .50, .51, .66, .67, .68.b, .114, and .116 because these terms relate to toxic air pollutants, not the criteria pollutants and the requirements of CAA section 110 (79 FR 11711).

E. Incorporation by Reference Updates

Idaho revised section .03 of IDAPA 58.01.01.107 *Incorporations by Reference* by updating the citation dates that incorporate federal provisions effective as of that date. Paragraph .a incorporates by reference the Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions, effective July 1, 2014. We note that Idaho did not submit updates to the incorporation of federal provisions relied on as part of the State's nonattainment area major stationary source preconstruction permitting program.

Paragraphs .b, .d, and .e of the same section incorporate the following provisions effective July 1, 2014: .b National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; .d Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and .e Ambient Air Quality Surveillance, 40 CFR part 58. We propose to find that paragraphs .b, .d, and .e are consistent with CAA requirements. Idaho did not submit paragraphs .f through .n for approval because the provisions are not related to CAA section 110 and the criteria pollutants, and are inappropriate for SIP approval.

Paragraph .c incorporates the Approval and Promulgation of Implementation Plans, 40 CFR part 52 subparts A and N, and appendices D and E. This includes the Federal Prevention of Significant Deterioration (PSD) permitting rules at 40 CFR 52.21, effective July 1, 2014. We propose to find that paragraph .c is consistent with CAA requirements. We note that specific federal PSD permitting rules have been vacated and remanded by the courts to the EPA. Idaho has responded by submitting rule changes to align the Idaho SIP with the court decisions. Please see Section III. F. below.

F. Effect of Court Decisions Vacating and Remanding Certain Federal Rules

1. $PM_{2.5}$ PSD Provisions

As discussed above, Idaho incorporates by reference federal PSD permitting requirements. The current Idaho SIP incorporates these rules, codified at 40 CFR 52.21, as of July 1, 2012, except revisions to 40 CFR 52.21(i) (relating to the significant monitoring concentration (SMC)) and 40 CFR 52.21(k) (relating to the significant impact level (SIL)) that added a SMC and SIL for $PM_{2.5}$ as part of the 2010 PSD $PM_{2.5}$ Implementation Rule (October 20, 2010, 75 FR 64864). We partially disapproved Idaho's previous submittal incorporating these provisions because they were vacated by a court after Idaho had already adopted and submitted them to the EPA (April 7, 2015, 80 FR 18526).

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA*,[3] issued, with respect to the SMC, a judgment that, among other things, vacated the provisions adding the $PM_{2.5}$ SMC to the federal regulations at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the vacated SMC would be inconsistent with the Court's opinion and the requirements of section 165(e)(2) of the CAA.

At the EPA's request, the decision also vacated and remanded the portions of the 2010 PSD $PM_{2.5}$ Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for $PM_{2.5}$. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for $PM_{2.5}$ because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the Court's decision does not affect the PSD increments for $PM_{2.5}$ promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule.

On December 9, 2013, the EPA amended its regulations to remove the vacated $PM_{2.5}$ SILs and SMC provisions from the federal PSD regulations (78 FR 73698). In response, Idaho updated the incorporation by reference of federal PSD regulations to July 1, 2014, capturing the EPA's removal of the vacated provisions. Idaho also revised the ambient air quality analysis requirements for major sources seeking PSD permits (IDAPA 58.01.01.202 *Permit to Construct*, at section .01) to clarify the appropriate use of a SIL and reference the federal PSD regulation listing SILs. We propose to find that these revisions are consistent with the Court's opinion and current EPA PSD regulations.

2. PSD Deferral of Certain Emissions From Biogenic Sources

In 2011, the EPA revised the definition of "subject to regulation" at 40 CFR 52.21(b)(49)(ii)(*a*). The intent was to defer for three years (until July 21, 2014) PSD permitting for carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources (Deferral for CO_2 Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs; Final Rule (July 20, 2011, 76 FR 43490) (Biogenic CO_2 Deferral Rule)). Idaho's SIP incorporates by reference federal PSD permitting rules and includes this deferral provision.

On July 12, 2013, the U.S. Court of Appeals for the District of Columbia, in *Center for Biological Diversity* v. *EPA*,[4] vacated the Biogenic CO_2 Deferral Rule. The deferral expired on July 21, 2014, and by its terms is no longer in effect.

3. PSD Greenhouse Gas Tailoring Rule

On June 23, 2014, the United States Supreme Court, in *Utility Air Regulatory Group* v. *Environmental Protection Agency*,[5] issued a decision addressing the application of PSD permitting to greenhouse gas (GHG) emissions. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or modification thereof) required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limits on GHG emissions based on the application of Best Available Control Technology (BACT).

In order to act consistently with its understanding of the Court's decision, pending further judicial action before the U.S. Court of Appeals for the District of Columbia to effectuate the decision, the EPA is not continuing to apply the EPA regulations that would require SIPs to include permitting requirements that the Supreme Court found

[3] 703 F.3d 458 (D.C. Cir. 2013).

[4] 722 F.3d 401 (D.C. Cir. 2013).

[5] 134 S.Ct. 2427 (2014).

impermissible. Specifically, the EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.*, 40 CFR 51.166(b)(48)(v)).

The EPA recently revised federal PSD rules in light of the Supreme Court decision (May 7, 2015, 80 FR 26183). In addition, we anticipate that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. We do not expect that all states have revised their existing PSD program regulations yet, however, we are evaluating submitted PSD program revision to ensure that the state's program correctly addresses GHGs, consistent with the Court's decision.

Idaho's current SIP contains the GHG permitting requirements reflected in 40 CFR 52.21, as amended in the Tailoring Rule. As a result, the PSD permitting program in Idaho, previously approved into the SIP, continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limits on GHG emissions, based on the application of BACT, when sources emit or increase GHGs in the amount of 75,000 tons per year (measured as carbon dioxide equivalent).

Although the approved Idaho PSD permitting program may also currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not prevent the EPA from approving this SIP submission. Idaho's submission does not add any GHG permitting requirements that are inconsistent with the Supreme Court decision. While Idaho's submission incorporates all of 40 CFR 52.21 for completeness, the submission reincorporates PSD requirements for GHGs already in the Idaho SIP.

IV. Proposed Action

We propose to approve, and incorporate by reference into the Idaho SIP, changes to the following provisions submitted on May 21, 2015:

- IDAPA 58.01.01.006 *General Definitions*, except .49, .50, .51, .66, .67, .68.b, .114, and .116 (State effective 4/11/2014);
- IDAPA 58.01.01.011 *Definitions for the Purposes of Sections 790 through 799* (State effective 3/15/2002);
- IDAPA 58.01.01.107 *Incorporations by Reference*, except .03.f through .n, and with respect to .a, the incorporation by reference of 40 CFR 51.165 (State effective 4/11/2015);
- IDAPA 58.01.01.157 *Test Methods and Procedures* (State effective 4/11/2015);
- IDAPA 58.01.01.175 *Procedures and Requirements for Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.176 *Facility Emissions Cap*, except for provisions relating to hazardous air pollutants (State effective 4/11/2015);
- IDAPA 58.01.01.177 *Application Procedures* (State effective 4/11/2015);
- IDAPA 58.01.01.178 *Standard Contents of Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.179 *Procedures for Issuing Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.180 *Revisions to Permits Establishing a Facility Emissions Cap* (State effective 4/11/2015);
- IDAPA 58.01.01.181 *Notice and Record-Keeping of Estimates of Ambient Concentrations* (State effective 4/11/2015);
- IDAPA 58.01.01.201 *Permit to Construct Required* (State effective 4/11/2006);
- IDAPA 58.01.01.202 *Application Procedures* (State effective 4/11/2015);
- IDAPA 58.01.01.401 *Tier II Operating Permit*, except .01.a and .04, (State effective 4/11/2006);
- IDAPA 58.01.01.579 *Baselines for Prevention of Significant Deterioration* (State effective 4/11/2015);
- IDAPA 58.01.01.725 *Rules for Sulfur Content of Fuels* (State effective 4/11/2015);
- IDAPA 58.01.01.790 *Rules for the Control of Nonmetallic Mineral Processing Plants* (State effective 3/15/2002);
- IDAPA 58.01.01.791 *General Control Requirements*, (State effective 3/15/2002);
- IDAPA 58.01.01.793 *Emissions Standards for Nonmetallic Mineral Processing Plants not Subject to 40 CFR 60, Subpart OOO* (State effective 3/15/2002);
- IDAPA 58.01.01.794 *Permit Requirements*, except .04 (State effective 4/11/2015);
- IDAPA 58.01.01.795 *Permit by Rule Requirements* (State effective 3/15/2002);
- IDAPA 58.01.01.796 *Applicability* (State effective 3/15/2002);
- IDAPA 58.01.01.797 *Registration for Permit by Rule* (State effective 3/15/2002);
- IDAPA 58.01.01.798 *Electrical Generators* (State effective 3/15/2002); and
- IDAPA 58.01.01.799 *Nonmetallic Mineral Processing Plan Fugitive Dust Best Management Practice* (State effective 3/15/2002).

V. Incorporation by Reference

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section IV. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 26, 2016.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2016–13693 Filed 6–8–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0136; FRL–9947–49–Region 5]

Air Plan Approval; Minnesota; Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for ELT Minneapolis, LLC's River Road Industrial Center located in Fridley, Anoka County, Minnesota. The revision, submitted by the Minnesota Pollution Control Agency on February 24, 2016, updates information updates information to reflect both administrative and equipment changes at the facility. The name of the facility has changed to BAE Technology Center. The revision will result in a significant decrease in SO_2 emissions and will support the continued attainment and maintenance of the SO_2 national ambient air quality standard in the Twin Cities area.

DATES: Comments must be received on or before July 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2016–0136 at *http://www.regulations.gov* or via email to *blakley.pamela@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving Minnesota's SO_2 SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive adverse comments in response to this rule, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision can be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 31, 2016.

Robert A. Kaplan

Acting Regional Administrator, Region 5.

[FR Doc. 2016–13603 Filed 6–8–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, and 485

[CMS–1655–CN]

RIN 0938–AS77

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2017 Rates; Quality Reporting Requirements for Specific Providers; Graduate Medical Education; Hospital Notification Procedures Applicable to Beneficiaries Receiving Observation Services; and Technical Changes Relating to Costs to Organizations and Medicare Cost Reports; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical and typographical errors in the proposed rule that appeared in the **Federal Register** on April 27, 2016 titled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2017 Rates; Quality Reporting Requirements for Specific Providers; Graduate Medical Education; Hospital Notification Procedures Applicable to Beneficiaries Receiving Observation

Services; and Technical Changes Relating to Costs to Organizations and Medicare Cost Reports."

FOR FURTHER INFORMATION CONTACT: Charles Padgett, (410) 786–2811.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016–09120 of April 27, 2016 (81 FR 24946), there were a number of technical errors that are identified and corrected in the Correction of Errors section of this correcting document.

II. Summary of Errors

A. Summary of Errors in the Preamble

On pages 24958, 24959, and 25255 we made an inadvertent technical and typographical errors in referencing several quality measure titles.

On page 25121, we erroneously referenced the incorrect date for the end of the FY 2019 Hospital-acquired condition (HAC) Reduction Program performance period.

On page 25173, we made an error in referencing the Long-Term Care Hospital Quality Reporting Program (LTCH QRP).

On page 25223, we made an error in specifying the units for the dollar amount in reference to expenditures. We also inadvertently omitted full reference to "Agency for Healthcare Research and Quality: *Prevention Quality Indicators Overview*. 2008" in the footnote.

On page 25247, we erroneously referenced incorrect year regarding the Spring version of the Clinical Quality Measure (CQM) electronic specifications.

B. Summary of Errors in the Addendum

On page 25307, in table titled "Estimated Proportion of Hospitals in the Worst-Performing Quartile (75th Percentile) of the Total HAC Score for the FY 2017 HAC Reduction Program", we made technical errors in the entries for the "By Teaching Status" hospital characteristic.

On page 25319, we made an inadvertent technical and typographical errors in referencing several quality measure titles.

On pages 25322, we made an error in referencing the Long-Term Care Hospital Quality Reporting Program (LTCH QRP).

IV. Correction of Errors

In FR Doc. 2016–09120 of April 27, 2016 (81 FR 24946), we are making the following corrections:

A. Corrections of Errors in the Preamble

1. On page 24958, first column, last paragraph, line 11, the phrase "PAC LTCH QRP." is corrected to read "LTCH QRP.".

2. On page 24959, third column, last paragraph, line 8, the phrase "Issues-PAC" is corrected to read "Issues-PAC LTCH QRP".

3. On page 25121, third column, first full paragraph, line 18, the phrase "September 30" is corrected to read "June 30".

4. On page 25173, third column, fifth bulleted paragraph, lines 3 and 4, the phrase "(LTCH QRP) (also referred to as the LTCHQR Program);" is corrected to read as "(LTCH QRP);".

5. On page 25223:

a. Second column, first full paragraph, line 29, the figure "$4.3B" is corrected as "$4.3 billion".

b. Third column, third footnote (footnote 232), line 1, the phrase "National Quality Forum:" is corrected to read "Agency for Healthcare Research and Quality:".

6. On page 25247, first column, sixth paragraph, line 19, the phrase "Spring 2017" is corrected to read "Spring 2016".

7. On page 25255, first column, first partial paragraph, lines 7 through 14, the sentence "We refer readers to section VIII.C.9.d. of the preamble of this this proposed rule for further details on the proposed expansion of data collection for this measures (NQF #0680), including data collection timeframes and associated submission deadlines." is corrected to read "We refer readers to section VIII.C.9.d. of the preamble of this proposed rule for further details on the proposed expansion of data collection for this measure, Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short Stay) (NQF #0680), including data collection timeframes and associated submission deadlines.".

B. Corrections of Errors in the Addendum

1. On page 25307, in the table titled "ESTIMATED PROPORTION OF HOSPITAL IN THE WORST-PERFORMING QUARTILE (75TH PERCENTILE) OF THE TOTAL HAC SCORE FOR THE FY 2017 HAC REDUCTION PROGRAM," the entries for the hospital characteristic "By Teaching Status" are corrected to read as follows:

Hospital characteristic	Number of hospitals [a]	Number of hospitals in the worst-performing quartile [b]	Percent of hospitals in the worst-performing quartile [c]
By Teaching Status: [f]			
Non-teaching	2,189	398	18.2
Fewer than 100 residents	777	230	29.6
100 or more residents	245	136	55.5

2. On page 25319, first column, first partial paragraph, line 13, the phrase "this measures (NQF #0680)," is corrected to read "this measure, Percent of Residents or Patients Who Were Assessed and Appropriately Given the Seasonal Influenza Vaccine (Short Stay) (NQF #0680),".

3. On 25322, second column, second full paragraph, line 12, the phrase "LTCHQR Program" is corrected to read "LTCH QRP".

Dated: June 6, 2016.

Madhura Valverde,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2016–13685 Filed 6–6–16; 4:15 pm]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 81, No. 111
Thursday, June 9, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln National Forest; New Mexico; Integrated Non-Native Invasive Plant Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Lincoln National Forest will prepare an environmental impact statement to document and disclose projected effects of its management strategy for treating non-native invasive plants (NNIP) across the Forest. This strategy utilizes several management tools, including registered herbicides, biological treatments (biological controls and controlled grazing), and manual and/or mechanical methods. The strategy is adaptive, allowing for the treatment of new NNIP infestations and use of new treatment options, including new herbicides.

DATES: Comments concerning the scope of the analysis must be received by July 11, 2016. The draft environmental impact statement is expected February 2017 and the final environmental impact statement is expected August 2017.

ADDRESSES: Send written comments to the Aurora Roemmich, Integrated Non-Native Invasive Plant Management Project, Lincoln National Forest, 3462 La Palomas Road, Alamogordo, NM 88310. Comments may also be sent via email to *http://www.fs.usda.gov/project/?project=31150*, or via facsimile to (575) 434–7218. For email comments, go to the right-hand side "Get Connected", click "Comment on Project" to submit comments on this project.

FOR FURTHER INFORMATION CONTACT: Jennie O'Connor Card, Interdisciplinary Team Leader at (406) 522–2537 or by email at *jennieoconnorcard@fs.fed.us* or Aurora Roemmich, Forest Botanist, Lincoln National Forest at (575) 434–7266 or *aurorarroemmich@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Executive Order 13112, Forest Service Manual 2900, and Lincoln National Forest Land and Resource Management Plan (Forest Plan), provide direction related to the management of invasive species. Executive Order 13112 directs Federal agencies to prevent and control invasive species and to minimize their economic, ecological, and human health impacts. The order provides for restoration of native species and habitat conditions in ecosystems that have been invaded by non-native invasive species.

A non-native invasive plant species is defined as any terrestrial or aquatic plant species occurring outside its natural range that is likely to cause economic or environmental harm or harm to human health. If a native plant species is deemed a noxious weed by the New Mexico Department of Agriculture or another agency because it is likely to cause economic or environmental harm or harm to human health, then the species would also be considered for treatment under this analysis and decision.

The overall purpose of this project is to implement a management strategy that uses an integrated selection of techniques designed to prevent the introduction of and control the spread of non-native invasive plants (NNIP). A second purpose is to ensure that the strategy is adaptive, allowing for the treatment of new NNIP infestations and use of new treatment options, including new herbicides, because future NNIP management needs may be different. As such, there are underlying needs to:

1. Utilize the most effective and economical strategies to treat NNIP while protecting valued resources to the greatest practical extent; and,

2. Adapt management techniques to accommodate new NNIP infestations and treatment options, including new herbicides, within the scope of this analysis and resulting decision.

Proposed Action

The proposed action presents a forest-wide integrated weed management (IWM) strategy, for the prevention, eradication, suppression, and reduction of existing and future non-native invasive plant infestations. The IWM strategy is based on ecological factors and includes consideration of site conditions, other resource values, resource uses, NNIP characteristics, and potential effectiveness of control measures for specific circumstances.

The proposed action includes a wide range of treatment methods including options to use a combination of methods on the same site. It also was developed to minimize the risk of adverse impacts through resource protection measures. These resource protection measures are designed to minimize, avoid or mitigate adverse effects which could occur as a result of implementing proposed NNIP treatments on the Forest. The resource protection measures are based on Forest Plan direction and policy, best available science, and site-specific evaluations.

Selection of the most appropriate treatment practice, or combination of treatments, depends on numerous factors, including the size of the infestation, risk of NNIP expansion, species biology, environmental setting, potential impacts to other resources, and management objectives. Treatment practices available for use would include manual, mechanical, biological, and chemical treatments. Chemical treatments include hand/selective and broadcast herbicide applications (including aerial application). Aerial herbicide application by helicopter could be used in selected locations of the Forest including designated wilderness areas. Aerial application provides a means to effectively treat infestations in isolated areas rapidly and efficiently, dramatically reducing the threat of further establishment or expansion.

The project also includes an adaptive management strategy to determine treatment of identified and future NNIP infestations. This adaptive management strategy consists of two principle components: The ability to effectively treat new infestations as they are detected; and, the ability to incorporate new technology as it becomes available.

Forest Plan Amendment

This project would require an amendment to the Lincoln National Forest Land and Resource Management Plan (Forest Plan). The project proposes use of herbicides in places and under conditions that were not foreseen when the existing Forest Plan standards and guidelines were developed in 1986. To meet the purpose and need for this project, it may be necessary to apply herbicide treatments to areas infested with non-native invasive plant species.

This amendment would change forestwide standards and guidelines applicable to all areas for wildlife (pages 31–34), grazing management (page 35 and replacement page 35B), soil and water (pages 40–41), fire and protection (replacement page 55), all species (pages 205–206), Mexican spotted owl (replacement page 206A), peregrine falcon (page 207), and northern goshawk (replacement page 208A and 208E). The amendment also would change standards and guidelines related to protection in management area 1C Capitan Mountains Wilderness (replacement page 62), management area 1F White Mountain Wilderness (replacement page 70), management area 1H RNA William G. Telfer Research Natural Area (page 77), and management area 3A RNA Upper McKittrick RNA (page 115). If adopted, this would be the eigthtennth amendment to the Forest Plan since its inception in 1986.

Responsible Official

The Responsible Official for this project is the Lincoln National Forest, Forest Supervisor.

Nature of Decision To Be Made

The Responsible Official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action. The Responsible Official also will decide whether or not to amend the Forest Plan.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such a manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

This proposed project is an activity implementing a land management plan and is subject to the objection process described in 36 CFR 218 Subparts A and B. As such, individuals and organizations wishing to be eligible to file a predecisional objection must meet the information requirements in 36 CFR 218.25(a)(3). Names and contact information submitted with comments will become part of the public record and may be released under the Freedom of Information Act. Comments submitted anonymously will be accepted and considered, however.

Dated: June 3, 2016.

Barry L. Imler,

Acting Forest Supervisor.

[FR Doc. 2016–13669 Filed 6–8–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Business Meeting.

DATES: Friday, June 17, 2016, at 12:30 p.m. EST.

ADDRESSES: *Place:* National Place Building, 1331 Pennsylvania Ave. NW., 11th Floor, Suite 1150, Washington, DC 20245 (Entrance on F Street NW.).

FOR FURTHER INFORMATION CONTACT: Gerson Gomez, Media Advisor at telephone: (202) 376–8371 or email: *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. If you would like to listen to the business meeting, please contact the above for the call-in information. Persons with hearing impairments, please contact the above for how to access the Federal Relay Service for the meeting.

Hearing-impaired persons who will attend the briefing and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Meeting Agenda

I. Business Meeting
  A. Approval of Agenda
  B. Program Planning
  - Discussion of proposed Concept Papers for 2017 Statutory Enforcement Report
  - Discussion and vote on Commission Letter regarding guidance issued by the Department of Education's Office for Civil Rights on transgender students and their protections under title IX of the Education Amendments of 1972
  C. State Advisory Committees
  - Status of State Advisory Committees by the Chief of the Regional Programs Unit
  - Vote on Administrative Instruction (5–9) governing the appointments of State Advisory Committee members
  - Appointment of members to Advisory Committees
  - Nevada
  - Delaware
  - Vermont
  - New York
  - Connecticut
  - Minnesota
  - Presentation by the Chair of the Illinois Advisory Committee on Environmental Justice
  a. Management and Operations
  - Staff Director's Report
  b. Status of USCCR Web site Transition
  D. Other
II. Adjourn Meeting

Dated: June 7, 2016.

David Mussatt,

Regional Programs Unit Chief, U.S. Commission on Civil Rights.

[FR Doc. 2016–13802 Filed 6–7–16; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request; Trade Adjustment Assistance for Firms Program; Form ED–840P Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance for Firms

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Form ED–840P Petition by a Firm for Certification of Eligibility to Apply for Trade Adjustment Assistance for Firms.

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Request: Regular submission.

Number of Respondents: 800 (500 petitions for certification and 300 adjustment proposals).

Average Hours per Response: 128.2 hours (8.2 for petitions for certification and 120 for adjustment proposals).

Burden Hours: 40,100 (4,100 for petitions for certification and 36,000 for adjustment proposals).

Needs and Uses: The information contained in Form ED–840P is necessary for EDA to evaluate whether proposed projects satisfy eligibility and programmatic requirements contained in chapters 3 and 5 of title II of the Trade Act of 1974, as amended (U.S.C. 2341 *et seq.*) and the Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112–40) which reauthorized the program.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 17, 2016.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to OIRA *Submission@omb.eop.gov* or fax to (202) 975–5806.

Dated: June 6, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–13666 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Delivery Verification Procedure for Imports

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 8, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Foreign governments, on occasions, require U.S. importers of strategic commodities to furnish their foreign supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure increases the effectiveness of controls on the international trade of strategic commodities.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0016.

Form Number(s): BIS–647P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 11.4 hours.

Estimated Total Annual Cost to Public: $342.00

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–13607 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; International Import Certificate

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 8, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States and several other countries have increased the effectiveness of their respective controls over international trade in strategic commodities by means of an Import Certificate procedure. For the U.S. importer, this procedure provides that, where required by the exporting country, the importer submits an international import certificate to the U.S. Government to certify that he/she will import commodities into the United States and will not reexport such commodities, except in accordance with the export control regulations of the United States. The U.S. Government, in turn, certifies that such representations have been made.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0017.

Form Number(s): BIS–645P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 67.2.

Estimated Total Annual Cost to Public: $2,016.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–13608 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–921; C–570–931; C–570–936; C–570–938; C–570–940; C–570–942; C–570–944; C–570–946; C–570–955; C–570–957; C–570–959; C–570–966; C–570–968; C–570–978; C–570–980]

Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 1, 2016 and May 26, 2016, the U.S. Trade Representative (USTR) directed the Department of Commerce (the Department) to implement its determinations under section 129 of the Uruguay Round Agreements Act (URAA), regarding 15 countervailing duty (CVD) investigations, which render them not inconsistent with the World Trade Organization (WTO) dispute settlement findings in *United States—Countervailing Duty Measures on Certain Products from China*, WT/DS437 (December 18, 2014) (DS437). *See* Attachment for a listing of the 15 CVD investigations at issue in DS437. The Department issued its final determinations in these section 129 proceedings on March 31, 2016, April 26, 2016, and May 19, 2016. The Department is now implementing these final determinations.

DATES: The effective date for the determination covering the *Group One Investigations* and the *Wire Strand* investigation with respect to the public body and input specificity analyses is April 1, 2016, and the effective date for the determinations covering the *Group Two Investigations* and *Wire Strand* with respect to the land specificity analysis is May 26, 2016.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6071 or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2015, the Department informed interested parties that it was initiating proceedings under section 129 of the URAA to implement the recommendations and rulings of the WTO Dispute Settlement Body (DSB) in DS437.[1] Given the number of CVD investigations and complexity of the issues involved in this dispute, the Department addressed each of the issues and conclusions of the panel and Appellate Body in DS437 through separate preliminary determination memoranda. Specifically, the Department issued preliminary determinations regarding: (1) Export Restraints;[2] (2) Land;[3] (3) Public Bodies and Input Specificity;[4] and (4) Benefit (Market Distortion).[5]

The Department invited interested parties to comment on each of the section 129 preliminary determinations.[6] After receiving comments and rebuttal comments from the interested parties, the Department issued final determinations on March 31, 2016,[7] April 26, 2016,[8] and May 19, 2016.[9]

[1] *See Notice of Commencement of Compliance Proceedings Pursuant to Section 129 of the Uruguay Round Agreements Act*, 80 FR 23254 (April 27, 2015).

[2] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceeding: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437): Preliminary Determination Regarding Export Restraints," (February 23, 2016).

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceeding: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437): Preliminary Determination Regarding Land Specificity," (February 24, 2016).

[4] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Preliminary Determination of Public Bodies and Input Specificity," (February 25, 2016); *see also* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Input Specificity: Preliminary Analysis of the Diversification of Economic Activities and Length of Time," (December 31, 2015).

[5] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Benefit (Market Distortion) Memorandum," (March 7, 2016); *see also* Memorandum to Brendan Quinn, Acting Director, AD/CVD Operations, Office III, "Supporting Memorandum to Preliminary Benefit (Market Distortion) Memorandum," (March 7, 2016).

[6] *See* Department Memorandum to the File, "Section 129 Proceedings: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437): Schedule for rebuttal factual information, written argument, and a hearing," (March 11, 2016).

[7] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceedings: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO DS437): Final Determination of Public Bodies and Input Specificity," (March 31, 2016); Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceedings: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO DS437): No Comment Final Determinations," (March 31, 2016); and Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceedings: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO DS437): Final Determination for Countervailing Duty Investigation on Drill Pipe from the People's Republic of China," (March 31, 2016).

[8] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceedings: United States—Countervailing Duty (CVD) Measures on Certain Products from the People's Republic of China (WTO DS437): Final Determination on the Initiation of Allegations of Export Restraints in Magnesia Bricks," (April 26, 2016) (Final Determination for Export Restraints); *see also* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceedings: United States—Countervailing Duty (CVD) Measures on Certain Products from the People's Republic of China (WTO DS437): Final Determination for Certain Seamless Carbon Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China (*Seamless Pipe* from the PRC)," (April 26, 2016) (Final Determination for *Seamless Pipe*).

[9] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceedings: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO DS437): Final Determination for *Pressure Pipe, Line Pipe, OCTG, Wire Strand*, and *Solar Panels*," (May 19, 2016) (Final Determination for *Pressure Pipe, Line Pipe, OCTG, Wire Strand*, and *Solar Panels*).

On April 1, 2016, USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the March 31, 2016, determinations, had been completed and USTR directed the Department to implement those determinations in accordance with section 129(b)(4) of the URAA. As explained below, those determinations applied to *Lawn Groomers, Kitchen Shelving, Steel Cylinders, Print Graphics, Aluminum Extrusions, Thermal Paper*, and *Citric Acid* ("*Group One Investigations*"), as well as *Wire Strand* with respect to the Department's public body and input specificity analyses.

On May 26, 2016, USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the April 26, 2016, and May 19, 2016, determinations had been completed and USTR directed the Department to implement those determinations in accordance with section 129(b)(4) of the URAA. Those determinations apply to *Pressure Pipe, Line Pipe, OCTG, Solar Panels, Seamless Pipe*, and *Magnesia Bricks* ("*Group Two Investigations*") and *Wire Strand* with respect to the Department's land specificity analysis. Also on May 26, 2016, in accordance with section 129(b)(4) of the URAA, USTR directed the Department to implement those determinations as well.

Nature of the Proceedings

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that "notwithstanding any provision of the Tariff Act of 1930," upon a written request from USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body.[10] The Statement of Administrative Action, U.R.A.A., H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), variously refers to such a determination by the Department as a "new," "second," and "different" determination.[11] After consulting with the Department and the appropriate congressional committees, USTR may direct the Department to implement, in whole or in part, the new determination made under section 129 of the URAA.[12] Pursuant to section 129(c) of the URAA, the new determination shall apply with respect to unliquidated entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date on which USTR directs the Department to implement the new determination.[13] The new determination is subject to judicial review, separate and apart from judicial review of the Department's original determination.[14]

Final Determinations: Analysis of Comments Received

The issues raised in the comments and rebuttal comments submitted by interested parties to these proceedings are addressed in the respective final determinations. The issues included in the respective final determinations are as follows: (1) Export Restraints (*Magnesia Bricks* and *Seamless Pipe*); (2) Land (*Thermal Paper, Line Pipe, Citric Acid, OCTG, Wire Strand*, and *Seamless Pipe*); (3) Public Bodies and Input Specificity (*Pressure Pipe, Line Pipe, Lawn Groomers, Kitchen Shelving, OCTG, Wire Strand, Seamless Pipe, Print Graphics, Aluminum Extrusions, Steel Cylinders*, and *Solar Panels*); and (4) Benefit (Market Distortion) (*Pressure Pipe, Line Pipe, OCTG*, and *Solar Panels*). Separately, the Department issued a memorandum regarding *Drill Pipe*, concluding that because the order for *Drill Pipe* had been revoked pursuant to a final and conclusive decision from the U.S. Court of Appeals for the Federal Circuit, there is no longer a need for the Department to issue a determination in connection with this proceeding to render it not inconsistent with the findings in WTO DS437.[15] The final determinations are public documents and are on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, complete versions of the final determinations can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed versions of the final determinations and the electronic versions of the final determinations are identical in content.

Final Determinations: Recalculated Countervailing Duty Rates

The recalculated CVD rates, as included in the final determinations and which remain unchanged from the preliminary determinations for each company, are listed below. As indicated, we made changes to the net subsidy rates in certain proceedings (*i.e., Line Pipe, OCTG, Magnesia Bricks*, and *Seamless Pipe*).[16] As noted above, the CVD order for *Drill Pipe* including the corresponding CVD rates have been revoked independently from this Section 129 proceeding.[17] The net subsidy rates for the remaining CVD proceedings in DS437 are unchanged.

Exporter/producer	CVD rate (investigation)	Revised CVD rate
Amended Countervailable Subsidy Rates Ad Valorem (Percent): Line Pipe		
Huludao Seven-Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies)	33.43	32.65
Liaoning Northern Steel Pipe Co., Ltd. (Northern Steel)	40.05	40.05

[10] *See* 19 U.S.C. 3538(b)(2).

[11] *See* SAA at 1025, 1027.

[12] *See* 19 U.S.C. 3538(b)(4).

[13] *See* 19 U.S.C. 3538(c).

[14] *See* 19 U.S.C. 1516(a)(2)(B)(vii).

[15] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Section 129 Proceeding: United States—Countervailing Duty Measures on Certain Products from the People's Republic of China (WTO/DS437): Final Determination for Countervailing Duty Investigation on Drill Pipe from the People's Republic of China," (March 31, 2016); *see also Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony With International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037 (December 29, 2014) (*Drill Pipe Revocation*).

[16] *See* Final Determination for Export Restraints, Final Determination for *Seamless Pipe*, and Final Determination for *Pressure Pipe, Line Pipe, OCTG, Wire Strand*, and *Solar Panels*.

[17] *See Drill Pipe Revocation*.

Exporter/producer	CVD rate (investigation)	Revised CVD rate
All Others	36.74	36.35
Amended Countervailable Subsidy Rates Ad Valorem (Percent): OCTG		
Tianjin Pipe (Group) Co., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd. (collectively, TPCO)	10.49	7.71
Jiangsu Changbao Steel Tube Co. and Jiangsu Changbao Precision Steel Tube Co., Ltd. (collectively, Changbao)	12.46	12.46
Wuxi Seamless Pipe Co, Ltd., Jiangsu Fanli Steel Pipe Co, Ltd., Tuoketuo County Mengfeng Special Steel Co., Ltd. (collectively, Wuxi)	14.95	14.95
Zhejiang Jianli Enterprise Co., Ltd., Zhejiang Jianli Steel Tube Co., Ltd., Zhuji Jiansheng Machinery Co., Ltd., and Zhejiang Jianli Industry Group Co., Ltd. (collectively, Zhejiang Jinali)	15.78	15.78
All Others	13.41	12.26
Amended Countervailable Subsidy Rates Ad Valorem (Percent): Magnesia Bricks		
RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (RHIJ) (collectively, RHI)	24.24	3.00
Liaoning Mayerton Refractories and Dalian Mayerton Refractories Co. Ltd. (collectively, Mayerton)	253.87	232.63
All Others	24.24	3.00
Amended Countervailable Subsidy Rates Ad Valorem (Percent): Seamless Pipe		
Tianjin Pipe (Group) Co., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd. (collectively, TPCO)	13.66	8.24
Hengyang Steel Tube Group Int'l Trading, Inc., Hengyang Valin Steel Tube Co., Ltd., Hengyang Valin MPM Tube Co., Ltd., Xigang Seamless Steel Tube Co., Ltd., Wuxi Seamless Special Pipe Co., Ltd., Wuxi Resources Steel Making Co., Ltd., Jiangsu Xigang Group Co., Ltd., Hunan Valin Xiangtan Iron & Steel Co., Ltd., Wuxi Sifang Steel Tube Co., Ltd., Hunan Valin Steel Co., Ltd., Hunan Valin Iron & Steel Group Co., Ltd. (collectively, Hengyang)	56.67	49.56
All Others	35.17	28.90

Implementation of the Revised Cash Deposit Requirements

As noted above, on April 1, 2016 and May 26, 2016, in accordance with sections 129(b)(4) and 129(c)(1)(B) of the URAA, USTR directed the Department to implement these final determinations. With respect to all of the investigations except for *Magnesia Bricks* and *Seamless Pipe*, the Department will instruct U.S. Customs and Border Protection to require a cash deposit for estimated countervailing duties at the appropriate rate for each exporter/producer specified above, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after April 1, 2016, and May 26, 2016, respectively unless the applicable cash deposit rates have been superseded by intervening segments or revised based on a redetermination of the investigation as a result of domestic litigation. For *Magnesia Bricks* and *Seamless Pipe*, the Department's determinations are that there are insufficient bases on which to initiate investigations into the export restraint programs. As a result, the Department intends to reduce all cash deposit rates in these two proceedings applicable as of May 26, 2016. As noted above, the order on *Drill Pipe* and corresponding cash deposits instructions have been revoked independently from these Section 129 proceedings.[18] This notice of implementation of these section 129 final determinations is published in accordance with section 129(c)(2)(A) of the URAA.

Dated: June 3, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

ATTACHMENT: CVD INVESTIGATIONS EXAMINED IN THE SECTION 129 PROCEEDINGS FOR WTO DS437

Case No.	Case short cite	Final determination and order
C–570–921	*Thermal Paper*	*Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*Thermal Paper*), and accompanying Decision Memorandum (*Thermal Paper* Decision Memorandum). *Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 72 FR 70958 (November 24, 2008).
C–570–931	*Pressure Pipe*	*Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 4936 (January 28, 2009) (*Pressure Pipe*), and accompanying Decision Memorandum (*Pressure Pipe* Decision Memorandum). *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Countervailing Duty Order,* 74 FR 11712 (March 19, 2009).

[18] *See Drill Pipe Revocation.*

ATTACHMENT: CVD INVESTIGATIONS EXAMINED IN THE SECTION 129 PROCEEDINGS FOR WTO DS437—Continued

Case No.	Case short cite	Final determination and order
C–570–936	*Line Pipe*	*Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 70961 (November 24, 2008) (*Line Pipe*), and accompanying Decision Memorandum (*Line Pipe* Decision Memorandum). *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 74 FR 4136 (January 23, 2009).
C–570–938	*Citric Acid*	*Citric Acid and Certain Citrate Salts from People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid*), and accompanying Decision Memorandum (*Citric Acid* Decision Memorandum). *Citric Acid and Certain Citrate Salts from the People's Republic of China: Notice of Countervailing Duty Order,* 74 FR 25705 (May 29, 2009).
C–570–940	*Lawn Groomers*	*Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 29180 (June 19, 2009) (*Lawn Groomers*), and accompanying Decision Memorandum (*Lawn Groomers* Decision Memorandum). *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Countervailing Duty Order,* 74 FR 38399 (August 3, 2009).
C–570–942	*Kitchen Shelving*	*Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 37012 (July 27, 2009) (*Kitchen Shelving*), and accompanying Decision Memorandum (*Kitchen Shelving* Decision Memorandum). *Certain Kitchen Shelving and Racks from the People's Republic of China: Countervailing Duty Order,* 74 FR 46973 (September 14, 2009).
C–570–944	*OCTG*	*Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) (*OCTG*), and accompanying Decision Memorandum (*OCTG* Decision Memorandum). *Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010).
C–570–946	*Wire Strand*	*Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) (*Wire Strand*), and accompanying Decision Memorandum (*Wire Strand* Decision Memorandum). *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order,* 75 FR 38977 (July 7, 2010).
C–570–955	*Magnesia Bricks*	*Certain Magnesia Carbon Bricks from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 45472 (August 2, 2010) (*Magnesia Bricks*), and accompanying Decision Memorandum (*Magnesia Bricks* Decision Memorandum). *Certain Magnesia Carbon Bricks from the People's Republic of China: Countervailing Duty Order,* 75 FR 57442 (September 21, 2010).
C–570–957	*Seamless Pipe*	*Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) (*Seamless Pipe*), and accompanying Decision Memorandum (*Seamless Pipe* Decision Memorandum). *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 69050 (November 10, 2010).
C–570–959	*Print Graphics*	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59212 (September 27, 2010) (*Print Graphics*), and accompanying Decision Memorandum (*Print Graphics* Decision Memorandum). *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 70201 (November 17, 2010).
C–570–966	*Drill Pipe*	*Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 76 FR 1971 (January 11, 2011) (*Drill Pipe*), and accompanying Decision Memorandum (*Drill Pipe* Decision Memorandum). *Drill Pipe from the People's Republic of China: Countervailing Duty Order,* 76 FR 11758 (March 3, 2011). (Note: The CVD order on drill pipe was revoked. However, the litigation is not yet final and complete. *Drill Pipe from the People's Republic of China: Notice of Court Decision Not in Harmony With International Trade Commission's Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review,* 79 FR 78037 (December 29, 2014)).
C–570–968	*Aluminum Extrusions*	*Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions*), and accompanying Decision Memorandum (*Aluminum Extrusions* Decision Memorandum). *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011).
C–570–978	*Steel Cylinders*	*High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 77 FR 26738 (May 7, 2012) (*Steel Cylinders*), and accompanying Decision Memorandum (*Steel Cylinders* Decision Memorandum). *High Pressure Steel Cylinders from the People's Republic of China: Countervailing Duty Order,* 77 FR 37384 (June 21, 2012).

ATTACHMENT: CVD INVESTIGATIONS EXAMINED IN THE SECTION 129 PROCEEDINGS FOR WTO DS437—Continued

Case No.	Case short cite	Final determination and order
C–570–980	*Solar Panels*	*Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 77 FR 63788 (October 17, 2012) (*Solar Panels*), and accompanying Decision Memorandum (*Solar Panels* Decision Memorandum). *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

[FR Doc. 2016–13691 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE658

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of application for permit; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by Canadian vessels, submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary for NMFS to make a determination that the permit application can be approved.

DATES: Written comments must be received by June 23, 2016.

ADDRESSES: You may submit comments on this document, identified by docket NOAA–HQ–2016–0071, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-HQ-2016-0071*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

Mail: Mark Wildman, International Fisheries Division, Office for International Affairs and Seafood Inspection, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mark Wildman at (301) 427–8386 or by email at *mark.wildman@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. In addition, Public Law 104–297, section 105(e), directs the Secretary to issue section 204(d) permits for up to 14 Canadian transport vessels to receive Atlantic herring harvested by United States fishermen and to be used in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from Maine's seaward boundary.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated . . . an interest in performing the transportation at fair and reasonable rates." NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS received an application requesting authorization for four Canadian transport vessels to receive transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69°30′ W. longitude and within 12 nautical miles from Maine's seaward boundary.

Dated: June 3, 2016.

John Henderschedt,

Director, Office for International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2016–13619 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE613

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops will be held in July, August, and September of 2016. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Protected Species Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2016 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on July 28, August 25, and September 29, 2016.

The Protected Species Safe Handling, Release, and Identification Workshops will be held on July 8, July 13, August 2, August 5, September 1, and September 6, 2016.

See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Fort Lauderdale, FL; Rosenberg, TX; and Panama City, FL.

The Protected Species Safe Handling, Release, and Identification Workshops will be held in Galveston, TX; Ronkonkoma, NY; Warwick, RI; Kenner, LA; Largo, FL; and Palm Coast, FL.

See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/compliance/workshops/index.html.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Approximately 121 free Atlantic Shark Identification Workshops have been conducted since January 2007.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. July 28, 2016, 12 p.m.–4 p.m., LaQuinta Inn, 999 West Cypress Creek Road, Fort Lauderdale, FL 33309.
2. August 25, 2016, 12 p.m.–4 p.m., Hampton Inn, 3312 Vista Drive, Rosenberg, TX 77471.
3. September 29, 2016, 12 p.m.–4 p.m., LaQuinta Inn, 7115 Coastal Palms Boulevard, Panama City, FL 32408.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at (386) 852–8588.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Protected Species Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Protected Species Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Protected Species Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 232 free Protected Species Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Protected Species Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. July 8, 2016, 9 a.m.–5 p.m., Doubletree Hotel, 1702 Seawall Boulevard, Galveston, TX 77550.
2. July 13, 2016, 9 a.m.–5 p.m., Hilton Garden Inn, 3485 Veterans Memorial Highway, Ronkonkoma, NY 11779.
3. August 2, 2016, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886.
4. August 5, 2016, 9 a.m.–5 p.m., Hilton Hotel, 901 Airline Drive, Kenner, LA 70062.

5. September 1, 2016, 9 a.m.–5 p.m., Holiday Inn Express, 210 Seminole Boulevard, Largo FL 33770.

6. September 6, 2016, 9 a.m.–5 p.m., Hilton Garden Inn, 55 Town Center Boulevard, Palm Coast, FL 32164.

Registration

To register for a scheduled Protected Species Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

• Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.

• Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.

• Vessel operators must bring proof of identification.

Workshop Objectives

The Protected Species Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. In an effort to improve reporting, the proper identification of protected species will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13641 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE652

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold its 156th meeting.

DATES: The meeting will be held on June 28–29, 2016. The Council will convene on Tuesday, June 28, 2016, from 9 a.m. to 5 p.m., and will reconvene on Wednesday, June 29, 2016, from 9 a.m. to 5 p.m.

ADDRESSES: The Buccaneer Hotel, 5007 Shoys, Christiansted, USVI 00820.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 156th regular Council Meeting to discuss the items contained in the following agenda:

June 28, 2016, 9 a.m.–5 p.m.

- Call to Order
- Adoption of Agenda
- Consideration of 155th Council Meeting Verbatim Transcriptions
- Executive Director's Report
- SSC Report—Dr. Richard Appeldoorn
- Island Based FMP Developments
  - Status and Next Steps
  - Council DRAFT goals and objectives
  - Action 1—Species to include for federal management
  - Action 2—Assigning species to complexes
    - —Working group report
    - —Council guidance on alternative groupings
  - Action 3—Developing reference points, including ABCs and ACLs
    - —ABC Control Rule
      - —Working group report
      - —Council guidance on ABC Control Rule structure and alternatives
  - Action 4—Framework measures
- Timing of Accountability Measures
  - New Action 5
  - Final selection of preferred alternatives
  - Council direction to staff on next steps, including scheduling public hearings
- Developing permits for fishing activities in federal waters
  - Puerto Rico Snapper Unit 2 DRAFT scoping document
  - St. Thomas USVI spiny lobster white paper
- AM-based closures—2016 species/species complexes and closure dates

—PUBLIC COMMENT PERIOD—(5-minutes presentations)

June 28, 2016, 5:15 p.m.–6 p.m.

- Administrative Matters
  - —Budget Update FY 16
  - —Other Administrative Business
  - —Closed Session

June 29, 2016, 9 a.m.–5 p.m.

—Standing Committee or AP for Recreational Sampling Plan Development

- Exempting Fishing Permit Application-Puerto Rico Department of Natural and Environmental Resources
- Presentations:
  - —Spiny Lobster Project—Carlos Velazquez
  - —SEFSC: Caribbean Regional Action Plan for the National Climate Science Strategy
- Outreach and Education Report—Dr. Alida Ortíz
- MREP Update—Helena Antoun
- Enforcement Issues:
  - —Puerto Rico-DNER
  - —U.S. Virgin Islands-DPNR
  - —U.S. Coast Guard
  - —NMFS/NOAA
- Meetings Attended by Council Members and Staff

—PUBLIC COMMENT PERIOD—(5-minute presentations)

- Other Business

The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: June 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13652 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Harmful Algal Bloom Programs Termination of Regional Rotations

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to amend 74 **Federal Register** 84 (May 4, 2009) pp. 20465–20469 titled, "Notice of implementation of new competitive Prevention, Control, and Mitigation of Harmful Algal Blooms Program and regional rotation of the existing and new national competitive HAB Programs." This notice announces the completion of the regional rotation. In addition, further information about competitive objectives, procedures, and guidance will be posted in announcements on the OMB-designated government wide Web site for finding and applying for Federal financial assistance, currently *www.Grants.gov*. All other aspects of the original **Federal Register** Notice remain the same.

FOR FURTHER INFORMATION CONTACT: Quay Dortch, ECOHAB Program Coordinator and PCMHAB Program Manager, 301/713–3338 ext 157, *Quay.Dortch@noaa.gov* or Marc Suddleson, MERHAB Program Manager, 301/713–3338 ext 162, *Marc.Suddleson@noaa.gov*, Center for Sponsored Coastal Ocean Research, National Centers for Coastal Ocean Science, National Ocean Service, National Oceanic and Atmospheric Administration.

SUPPLEMENTARY INFORMATION: The 1998 Harmful Algal Bloom and Hypoxia Research Control Act (HABHRCA), as amended, codified at 33 U.S.C. 4001–4009, authorized the establishment of three national competitive programs on Harmful Algal Blooms (HABs) and the Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2014, Public Law 113–124; authorized the continuation of these programs. NOAA implements HABHRCA through the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) Program, the Monitoring and Event Response for Harmful Algal Bloom (MERHAB) Program and the Prevention, Control and Mitigation of Harmful Algal Blooms (PCMHAB) Program. ECOHAB provides coastal managers with the understanding, tools, and models to predict the development, extent, and toxicity of HABs and their impacts, leading to early warning and new prevention and mitigation strategies. MERHAB builds capacity and enhances partnerships between managers, researchers, and private industry to improve monitoring for HAB cells and toxins and responding to HAB events. The PCM HAB program transitions promising technologies and strategies for preventing, controlling, or mitigating HABs and their impacts from development through demonstration and technology transfer for field application by end-users. A regional rotation for the three Harmful Algal Blooms Programs was implemented in Fiscal Year 2009. All three regions have been rotated once and a rotation cycle is now complete. Beginning in 2016, the regional rotation will not be used to define the geographic scope of future competitions. Hereafter, the necessary objectives, procedures, and guidance for Harmful Algal Bloom funding competitions will be posted in announcements on the OMB-designated government wide Web site for finding and applying for Federal financial assistance, currently *www.Grants.gov*.

Other Information

Administrative Procedure Act: Notice and comment are not required under the Administrative Procedure Act, (5 U.S.C. 553), or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment is not required, a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, (5 U.S.C. 601 *et seq).*

Dated: June 2, 2016.

Christopher C. Cartwright,

Chief Financial Officer/Chief Administrative Officer, Ocean Service and Coastal Zone Management.

[FR Doc. 2016–13670 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–JE–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on June 27, 2016, from 10:00 a.m. to 1:30 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting at the CFTC's Washington, DC, headquarters. The MRAC will discuss: (1) The CCP Risk Management Subcommittee's draft recommendations on how Central Counterparties (CCPs) can better coordinate their efforts in preparing for the default of a significant clearing member, and (2) the role of the Federal Deposit Insurance Corporation (FDIC) and CFTC in the resolution of both banks and CCPs.

DATES: The meeting will be held on June 27, 2016 from 10:00 a.m. to 1:30 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by June 27, 2016.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted by mail to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Secretary of the Commission, or by electronic mail to: *secretary@cftc.gov*. Please use the title "Market Risk Advisory Committee" in any written statement you submit. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC Web site, *http://www.cftc.gov*.

FOR FURTHER INFORMATION CONTACT: Petal Walker, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5010.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served

basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–866–844–9416.

International Toll and Toll Free: Will be posted on the CFTC's Web site, *http://www.cftc.gov,* on the page for the meeting, under Related Documents.

Pass Code/Pin Code: 1519074.

After the meeting, a transcript of the meeting will be published through a link on the CFTC's Web site, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's Web site. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

Authority: 5 U.S.C. app. 2 10(a)(2).

Dated: June 3, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–13622 Filed 6–8–16; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice Requesting Approval of New Collection, CFTC SmartCheck Annual Campaign Impact Tracking Survey, 3038—NEW

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is announcing an opportunity for public comment on a proposed collection of information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The CFTC's Office of Customer Education and Outreach (OCEO) develops campaigns to change customer behaviors, so that customers can better avoid fraud as defined under the Commodities Exchange Act. The OCEO intends to survey the public by identifying customers and determining if the CFTC's SmartCheck℠ campaign is helping them to identify, avoid, and report financial fraud.

DATES: Comments must be submitted on or before August 8, 2016.

ADDRESSES: You may submit comments, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden. Please refer to this notice in any correspondence. Comments, identified by "CFTC SmartCheck Annual Campaign Impact Tracking Survey," and Collection Number 3038—NEW may be submitted by any of the following methods:

- The Agency Web site, via its Comments Online process: *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as *Mail* above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments.

Please submit your comments using only one method, and identify that it is for the "SmartCheck Campaign Annual Tracking Survey."

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Nisha Smalls, Lead Customer Outreach Specialist, 202–418–5000, *consumers@cftc.gov,* Office of Customer Education and Outreach, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from the Office of Management and Budget ("OMB") for each collection of information they collect or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) as "the obtaining, causing to be obtained, soliciting . . . facts or opinions by or for an agency, regardless of form or format [from] ten or more persons." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. 44 U.S.C. 3506(c). The Commission is submitting this collection of information to OMB for approval and assigning of a collection number, pursuant to 5 CFR 1320.10.

Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. Under OMB regulations, which implement provisions of the PRA, certain "facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications," 5 CFR 1320.3(h)(4), or "facts or opinions obtained or solicited at or in connection with public hearings or meetings," 5 CFR 1320.3(h)(8), are excluded from the OMB approval process.

Title: CFTC SmartCheck Annual Campaign Impact Tracking Survey (OMB Control No. 3038—NEW). This is a request for approval of a new collection.

Abstract: In 2010, the Dodd-Frank Act[2] expanded the Commission's authority to, among other matters related to regulatory oversight, establish funding of consumer education initiatives under its new Whistleblower authority.[3] Under this new authority, the Commission established an Office of Customer Education and Outreach ("OCEO") to, among other efforts, survey the public regarding consumer education initiatives.[4] This notice announces a public survey. This survey will include screening questions to identify the correct respondents and questions to determine if the CFTC's SmartCheck℠ campaign is helping customers identify, avoid, and report financial fraud.

The OCEO will use the information collected in the survey to refine the methods used to inform the public about how to best detect and report financial fraud. This will be done by creating a final summary report that includes key findings from the survey.

Findings from the summary report will be used to directionally inform the outreach efforts that the CFTC undertakes concerning helping customers avoid financial fraud.

The survey will be administered using an online survey tool. The online modality approach will allow presentation of test material to participants in a more convenient and time-efficient manner than other collection methods such as mall intercepts. The online method also allows for a quicker turnaround for data collection. No other collection methods will be used.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[5]

Burden Statement: The screening questions will take about 1 minute to complete. It is anticipated that 4,000 people will be screened. The survey will take about 15 minutes. The cost of the screener survey will be approximately $3,125, which equates to $46.85 per burden hour. 2,000 people will take the 15 minute survey. The cost of the full survey will be approximately $46,875, which equates to $93.75 per burden hour. Based on these assumptions, the total burden hours will be 566.7 hours. The Commission estimates the average burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN HOURS

	Annual reporting	Frequency	Hours per report	Total	
17 CFR 165.12	4,000	1 response per respondent.	1 minute per response	4,000	66.7 hours, total burden.
17 CFR 165.12	2,000	1 response per respondent.	15 minutes per response.	2,000	500 hours, burden hour.

The proposed survey questions appear below:

CFTC SmartCheck Annual Campaign Impact Tracking Survey

CFTC TARGET = Age 50–65; HH income 60k+; Answers 1 or 2 for question 1; Invests in 2 or more products in question 2

Screener

1. When it comes to family and personal investments like stocks, mutual funds, or other trading products, how likely are you to be involved in making decisions for your household?

1	Very likely.
2	Somewhat likely.
3	Not too likely.
4	Not at all likely.

2. Below is a list of financial products. Please select all that you currently are invested in or have invested in.

1	Stocks or shares.
2	Precious metals like gold or silver.
3	Foreign currency trading (FOREX).
4	Any type of futures or options.
5	None of these [Single Punch (SP)].
6	Don't know [SP].

Survey

[GRID, SP ACROSS]

Please answer yes or no to each of the following questions.

	Yes	No
3	Have you read, seen, or heard anything about the Commodity Futures Trading Commission (CFTC)?	
4	Have you read, seen, or heard anything about CFTC SmartCheck, a campaign that promotes expert tools and resources to check the background of financial professionals, learn how to avoid investment fraud, and report suspicious activity?	

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[3] *See* 7 U.S.C. 26.

[4] *See* 17 CFR 165.12.

[5] 17 CFR 145.9.

5	Have you read, seen, or heard anything about SmartCheck.gov, a Web site that links to databases which allow investors to check the background of financial professionals?
6	Have you read, seen, or heard anything about Investor.gov, a Web site that allows you to check the background of investment adviser representatives and firms?
7	Have you read, seen, or heard anything about BrokerCheck.org, a Web site that allows you to check the background of brokers who sell stocks, bonds, mutual funds and other securities?

[GRID, SP ACROSS. RANDOMIZE GRID ROWS]

Below are a number of actions that you may or may not be likely to complete. Please indicate how likely or unlikely you are to complete the actions using the scale below.

If you were considering investing with someone you had not invested with before, how likely are you to:

Very likely	Somewhat likely	Not likely or unlikely	Not too likely	Not at all likely
1	2	3	4	5

8	Review performance history.
9	Talk to references and/or past clients.
10	Confirm certifications and/or education.
11	Perform a general Internet search.
12	Check disciplinary history with an official financial regulator.
13	Check licensing and/or registration status with an official financial regulator.
14	Personally interview.
15	Check job affiliations with an official financial regulator.
16	None of these/don't know [SP].

[SP]

17. Generally speaking, how concerned are you about unknowingly being part of a fraudulent investment?

1	Very concerned.
2	Somewhat concerned.
3	Not too concerned.
4	Not at all concerned.

[SP]

18. If you *suspected* an investment *you were aware of* was fraudulent, how likely would you be to report it to a government financial agency such as the U.S. Commodity Futures Trading Commission (CFTC) or the U.S. Securities and Exchange Commission (SEC)?

1	Very likely.
2	Somewhat likely.
3	Not too likely.
4	Not at all likely.

[SP]

19. If you became aware that an investment you were *already a part of* was fraudulent, how likely would you be to report it to a government financial agency such as the U.S. Commodity Futures Trading Commission (CFTC) or the U.S. Securities and Exchange Commission (SEC)?

1	Very likely.
2	Somewhat likely.
3	Not too likely.
4	Not at all likely.

[MP; RANDOMIZE LEAVING LAST 1 AT THE END]

20. Which, if any, of the following do you think are potential signs of investment fraud? If the person selling the investment . . .

1	said the investment has a guaranteed rate of return.
2	said s/he has a special credential, so they can be trusted.
3	said that many of your friends have already invested in the opportunity.
4	was willing to charge you half of the regular commission.
5	said the opportunity was closing soon, so it was important to act quickly.
6	None of these [SP].

[GRID, SP ACROSS. RANDOMIZE GRID ROWS]

Below are a number of statements with which you may or may not agree. Please indicate how much you agree or disagree with each statement.

Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
1	2	3	4	5

21	It is important to know the common signs of fraud when investing.
22	The government reviews and investigates all alleged reports of investment fraud.
23	I know where to go to report suspected or known incidents of investment fraud.
24	I know where to go to check the background of a financial professional.
25	*Before I invest,* it is important to check the registration and/or licensing status of a financial professional.
26	*Each year,* it is important to check the registration and/or licensing of a financial professional with whom I invest.
27	*Before I invest,* it is important to check the disciplinary history of a financial professional.
28	*Each year,* it is important to check the disciplinary history of a financial professional.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 3, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–13623 Filed 6–8–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14782–000]

Energy Resources USA Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 4, 2016, Energy Resources USA Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the R.D. Bailey Dam Hydroelectric Project (R.D. Bailey Project or project) to be located at the existing U.S. Army Corps of Engineers' R.D. Bailey Dam on the Guyandotte River in Mingo and Wyoming Counties, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 90-foot-long by 45-foot-wide reinforced concrete powerhouse to be located downstream on the tailrace side of R.D. Bailey Dam; (2) a new 12-foot by 9-foot by 250-foot-long concrete conduit connecting the existing outlet tunnel with the powerhouse; (3) two 5-megawatt (MW) vertical Kaplan turbine-generator units with a total generating capacity of 10 MW; (4) a new 120-foot-long by 80-foot-wide tailrace; (5) a new 60-foot-long by 50-foot-wide substation with a 10-megavolt-ampere 4.16/69-kilovolt (kV) three-phase step-up transformer; (6) a new 0.6-mile-long, 69-kV transmission line; and (7) appurtenant facilities. The R.D. Bailey Project would have an estimated annual generation of 38.5 gigawatt-hours.

Applicant Contact: Mr. Ander Gonzalez, Energy Resources USA Inc., 350 Lincoln Road, 2nd Floor, Miami, FL 33139; telephone (954) 248–8425.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14782–000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14782) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13648 Filed 6–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13757–002; Project No. 13761–002; Project No. 13768–002]

FFP Missouri 5, LLC; FFP Missouri 6, LLC; Solia 6 Hydroelectric, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations Part 380, Office of Energy Projects staff has reviewed applications for original licenses for the Emsworth Locks and Dam Hydroelectric Project (FERC No. 13757–002), Emsworth Back Channel Hydroelectric Project (FERC No. 13761–002), and Montgomery Locks and Dam Hydroelectric Project (FERC No. 13768–002) on the Ohio River. These projects are referred to collectively as the Ohio River Projects.

The projects would all be located at existing locks and dams owned by the U.S. Army Corps of Engineers. The Emsworth Locks and Dam Hydroelectric Project would be located on the Ohio River near Emsworth, Pennsylvania, in Allegheny County at river mile (RM) 6.2. The Emsworth Back Channel Hydroelectric Project would be located on the Ohio River near Coraopolis, Pennsylvania, in Allegheny County at RM 6.8. The Montgomery Locks and Dam Hydroelectric Project would be located on the Ohio River downstream of Monaca, Pennsylvania, in Beaver County at RM 31.7. The projects would collectively occupy 17.1 acres of federal land.

Staff has prepared a multi-project environmental assessment (EA) that analyzes the potential environmental effects of the three projects and concludes that constructing and operating the projects, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERC OnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include: "Emsworth Locks and Dam Hydroelectric Project No. 13757–002,

Emsworth Back Channel Hydroelectric Project No. 13761–002, and/or Montgomery Locks and Dam Hydroelectric Project No. 13768–002,'' as appropriate.

For further information, contact Nicholas Ettema at (202) 502–6565 or by email at *nicholas.ettema@ferc.gov*.

Dated: June 3, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13647 Filed 6–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM16–12–000; Docket No. RM15–21–000]

Review of Generator Interconnection Agreements and Procedures; American Wind Energy Association; Notice Inviting Post-Technical Conference Comments

On May 13, 2016, Federal Energy Regulatory Commission (Commission) staff conducted a technical conference to discuss select issues related to the petition for rulemaking submitted by the American Wind Energy Association in Docket No. RM15–21–000 and other interconnection-related issues, including the interconnection of electric storage.

All interested persons are invited to file post-technical conference comments on any or all of the questions listed in the attachment to this Notice. We emphasize that commenters need not answer all of the questions. We encourage commenters to submit new or additional information in response to these questions rather than information that was previously submitted in Docket Nos. RM16–12–000 and/or RM15–21–000. Commenters should organize responses consistent with the numbering of the attached questions and identify to what extent their responses are generally applicable or pertain to a particular RTO/ISO. Commenters are also invited to reference material previously filed in this docket, including technical conference transcripts. These comments must be filed with the Commission no later than 5:00 p.m. Eastern Standard Time on June 20, 2016.

For more information about this Notice, please contact:

Tony Dobbins (Technical Information), Office of Energy Policy and Information, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6630, *tony.dobbins@ferc.gov*.

Adam Pan (Legal Information), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6023, *adam.pan@ferc.gov*.

Dated: June 3, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13650 Filed 6–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–77–000]

Michigan South Central Power Agency v. Michigan Electric Transmission Company, LLC; Notice of Complaint

Take notice that on June 1, 2016, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Michigan South Central Power Agency (Complainant) filed a formal complaint against Michigan Electric Transmission Company (Respondent) alleging that Respondent has failed to comply with Section19.1(i) of the Project I Transmission Ownership and Operating Agreement between Complainant and Respondent, as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 21, 2016.

Dated: June 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13645 Filed 6–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–361–000]

Columbia Gulf Transmission, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Gulf Xpress Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Gulf XPress Project (GXP) involving construction and operation of facilities by Columbia Gulf Transmission, LLC (Columbia Gulf) in Kentucky, Tennessee, and Mississippi. The Commission will use this EIS in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC, on or before July 5, 2016.

If you sent comments on this project to the Commission before the opening of this docket on April 29, 2016, you will need to file those comments in Docket No. CP16–361–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–361–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public scoping meeting its staff will conduct in the project area, scheduled as follows: FERC Public Scoping Meeting, Gulf Xpress Project, Tuesday, June 21, 2016 at 6:00 p.m., Cane Ridge High School, 12848 Old Hickory Boulevard, Antioch, TN 37013.

The doors will open at 5 p.m. at which time we will begin our sign up of speakers for the meetings. For the hour prior to the start of the meeting, Columbia Gulf representatives will be present with maps depicting the project area and to answer questions.

The scoping meeting will begin at 6 p.m. with a description of our environmental review process by Commission staff, after which speakers will be called. The meeting will end once all speakers have provided their comments or at 10 p.m., whichever comes first. Please note that depending on the number of people signed up to speak, there may be a time limit of 3 minutes to present comments, and speakers should structure their comments accordingly. If time limits are implemented, they will be strictly enforced to ensure that as many individuals as possible are given an opportunity to comment. The meeting will be recorded by a court reporter to ensure comments are accurately recorded. The transcript of the meeting will be entered into the formal record of the Commission proceeding.

Please note this is not your only opportunity to provide public input; refer to the review process flow chart in appendix 1.[1]

Summary of the Proposed Project

The GXP would increase the existing transportation capacity of Columbia Gulf's system by about 860,000 dekatherms per day of natural gas. According to Columbia Gulf, its project is necessary to provide additional pipeline capacity to meet contracted-for firm transportation demand. The proposed facilities would enable shippers the opportunity to transport natural gas to Gulf Coast high-demand markets, markets in Mississippi and Louisiana that are accessible through delivery points along Columbia Gulf's system, and markets accessible through other interstate pipeline connected to Columbia Gulf's system. Columbia Gulf has entered into binding precedent agreements for 100 percent of the GXP capacity.

For the GXP, Columbia Gulf proposes to construct, operate, and maintain seven new natural gas-fired turbine-driven compressor stations:

- The Morehead Compressor Station, a 44,800-horsepower (hp) compressor station in Rowan County, Kentucky;
- the Paint Lick Compressor Station, a 41,000-hp compressor station in Garrard County, Kentucky;
- the Goodluck Compressor Station, a 31,8000-hp compressor station in Metcalfe County, Kentucky;
- the Cane Ridge Compressor Station, a 41,000-hp compressor station in Davidson County, Tennessee;
- the Clifton Junction Compressor Station, a 31,800-hp compressor station in Wayne County, Tennessee;
- the New Albany Compressor Station, a 31,800-hp compressor station in Union County, Mississippi; and
- the Holcomb Compressor Station, a 31,800-hp compressor station in Grenada County, Mississippi.

The GXP would also involve:

- Installation of an additional 15,900 hp of compression at the anticipated Grayson Compressor Station[2] in Carter County, Kentucky; and
- demolition and construction of a new flow control building to upgrade

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice.

[2] The Grayson Compressor Station is proposed for construction in Docket No. CP15–539–000 as part of Columbia Gulf's Rayne XPress Certificated Capacity Increase Project. On April 6, 2016, FERC staff issued the Draft EIS for the Columbia Gas Transmission Leach XPress Pipeline Project and the Columbia Gulf Transmission Rayne XPress Expansion Project, which includes the proposed Grayson Compressor Station. As of this date, the Commission has not authorized construction of these facilities.

flow control capabilities at the existing Leach C Meter Station in Boyd County, Kentucky.

All new compressor stations would include a building to house the compressors; filter/separator and gas cooling equipment; suction and discharge piping; and appurtenant facilities. All stations would be fenced and include a permanent access road.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

The GXP would temporarily disturb about 198 acres during construction with approximately 82 acres converted to permanent use for station operations. At the Grayson Compressor Station site, no additional land would be disturbed during construction beyond that used for the original facility. At the Leach C Meter Station, approximately 1.4 acres of land outside the existing station fence line would be temporarily disturbed during construction. All permanent modifications at the Leach C Meter Station would occur within the existing facility resulting in no new permanent impacts from station operations.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS, we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources, fisheries, and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EIS.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia Gulf. This preliminary list of issues may change based on your comments and our analysis.

- air quality and noise impacts;
- wildlife impacts;
- alternative compressor station locations; and
- health and safety of nearby residences during the operation of the proposed facilities.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all who own homes within certain distances of the compressor and meter station facilities and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

You may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp*. Instructions for becoming an intervenor are in the "Document-less Intervention Guide" under the "e-filing" link on the Commission's Web site.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, CP16–361–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription, which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: June 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13649 Filed 6–8–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Conference

	Docket Nos.
Midwest Independent Transmission System Operator, Inc.	ER12–1265–005 ER12–1265–006
Midwest Independent Transmission System Operator, Inc.	ER12–1266–005

On June 15, 2016, Commission staff will hold a conference call with Midcontinent Independent System Operator, Inc. (MISO) beginning at 10:00 a.m. (Eastern Time). The purpose of the conference call is to discuss tariff administration issues related to MISO's pending compliance filings in the above-captioned proceedings to ensure that the versions of the tariff sheets filed are accurate and complete.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to listen to the conference call. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

The conference call will not be webcast or transcribed. However, an audio listen-only line will be provided. Those wishing to access the listen-only line must email Sarah McKinley (*Sarah.McKinley@ferc.gov*) by 5:00 p.m. (Eastern Time) on June 9, 2016, providing name, email, and phone number, in order to receive the call-in information the day before the conference call. Please use the following text for the subject line: "ER12–1266–005 listen-only line registration."

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For additional information, please contact Christopher Gore at (202) 502–8507, *christopher.gore@ferc.gov*.

Dated: June 2, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13646 Filed 6–8–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–584]

Media Bureau Announces Date by Which LPTV and TV Translator Stations Must Be "Operating" In Order To Participate In Post-Incentive Auction Special Displacement Window

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (Commission) announces that, in order to participate in the post-Incentive Auction special displacement window, low power television (LPTV) and TV translator stations must be operating on the date that the Channel Reassignment Public Notice is released following the completion of the reverse auction.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Division, Media Bureau, Federal Communications Commission, *barbara.kreisman@fcc.gov*, (202) 418–2324.

SUPPLEMENTARY INFORMATION: In the Incentive Auction R&O, the Commission delegated authority to the Media Bureau to announce, after release of the Channel Reassignment Public Notice and after eligible full power and Class A television stations have an opportunity to file construction permit applications for their new facilities, including an alternative channel or expanded facility, a limited window for operating LPTV and TV translator stations to submit displacement applications. The Commission's rules limit eligibility to file in the displacement window to "operating low power TV and TV translator stations that are displaced . . . as a result of the broadcast television spectrum incentive auction." The Commission delegated authority to the Media Bureau to announce the terms of the limited displacement window consistent with the approach outlined in the Incentive Auction R&O.

For these purposes, the Media announces that it interprets an "operating" LPTV or TV translator station that is displaced as a result of the incentive auction to mean one that is operating on the date of release of the Channel Reassignment Public Notice. Moreover, the Media Bureau clarifies that for these purposes a station is "operating" if it has licensed its authorized construction permit facilities or has an application for a license to cover on file with the Commission on that date. LPTV stations will not be required to actually cease operations on their current channels until well after the Channel Reassignment Public Notice is released. But the new full power and Class A channel assignments announced in the Channel Reassignment Public Notice and the new 600 MHz band plan announced contemporaneously will enable LPTV stations to determine whether they will eventually be required to move from their current channel to accommodate a new primary licensee and thus whether they would wish to consider filing for a displacement channel during the special displacement window. Determining the universe of displaced operating LPTV stations as of the release of the Channel Reassignment Public Notice will also assist the Media Bureau in identifying channels that can be proposed by displaced stations based on repacking and optimization software and issuing a public notice listing potential channel

assignments in advance of the displacement window.

By announcing the deadline for identifying operating LPTV stations now, well in advance of the release of the Channel Reassignment Public Notice, the Media Bureau seeks to provide LPTV and TV translator station permittees with "sufficient warning of this crucial deadline to allow them to complete construction and license permitted facilities." Permittees of digital LPTV and TV translators that are not operating on the date of release of the Channel Reassignment Public Notice will have to wait until the completion of the special displacement window for operating LPTV and TV translator stations before being able to file a displacement application and propose a channel from the smaller universe of unused television channels.

The Media Bureau also reminds LPTV and TV translator permittees that the Commission has extended the construction deadline for new digital LPTV and TV translator stations to the new digital transition date for the LPTV and TV translator service, which is 51 months after the release of the Channel Reassignment Public Notice. Thus, any construction efforts they may make between now and release of the Channel Reassignment Public Notice are completely voluntary.

This action is taken by the Chief, Media Bureau pursuant to authority delegated by 47 CFR 0.283 of the Commission's rules.

Federal Communications Commission.

Barbara Kreisman

Chief, Video Division, Media Bureau.

[FR Doc. 2016–13624 Filed 6–8–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, June 14, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceeding, or arbitration.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary.

[FR Doc. 2016–13760 Filed 6–7–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

June 6, 2016.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Document 2016–12966, June 1, 2016.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, June 8, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

CHANGES IN MEETING: The Commission has cancelled the meeting previously scheduled in *Secretary of Labor* v. *American Coal Company,* Docket No. LAKE 2011–13.

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–13711 Filed 6–7–16; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2016.

A. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Northern Interstate Financial, Inc.,* Norway, Michigan; to merge with C.F.C. Bancorp, Inc., and thereby indirectly acquire First National Bank of Crystal Falls, both in Crystal Falls, Michigan.

Board of Governors of the Federal Reserve System, June 6, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13639 Filed 6–8–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Title: Evaluation of the Child Welfare Capacity Building Collaborative: Part Two

OMB No.: New Collection.

Description

The purpose of this evaluation is to respond to a set of cross-cutting evaluation questions posed by the Children's Bureau. This new data collection is the second part of a larger data collection effort being conducted for the evaluation of the Child Welfare Capacity Building Collaborative. The first group of instruments for this evaluation has already been submitted, and a request for clearance has been submitted to the Office of Management and Budget (see **Federal Register** Volume 80, No. 211, November 2, 2015 and **Federal Register** Volume 81, No. 41, March 2, 2016). This notice details the second group of instruments that will be used for data collection as part of this evaluation. The Evaluation of the Child Welfare Capacity Building Collaborative is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services. The Capacity Building Collaborative includes three centers (Center for States, Center for Tribes, Center for Courts) funded by the Children's Bureau to provide national child welfare expertise and evidence-informed training and technical assistance services to State, Tribal and Territorial public child welfare agencies and Court Improvement Programs (CIP). The Centers offer a wide array of services including, but not limited to: Web-based content and resources, product development and dissemination, self-directed and group-based training, virtual learning and peer networking events, and tailored consultation and coaching. During the project period the Centers' services will be evaluated by both Center-specific evaluations and a Cross-Center Evaluation. The Center-specific evaluations are designed to collect data on Center-specific processes and outcomes.

The Cross-Center Evaluation will examine: The extent to which key partners across and within the Centers are collaborating; whether the capacity building service interventions offered by the Centers are evaluable; the degree to which Centers follow common protocols; whether service interventions are delivered or performed as designed; how satisfied recipients are with the services received; how effective the service interventions were; which service approaches were most effective and under what conditions; and the costs of services. The Cross-Center Evaluation is utilizing a longitudinal mixed methods approach to evaluate the Centers' services as they develop and mature over the course of the study period.

Multiple data collection strategies will be used to efficiently capture quantitative and qualitative data to enable analyses that address each evaluation question. The first set of Cross-Center and Center-specific instruments submitted as part of the larger information collection included: Satisfaction surveys to assess recipients' satisfaction; a leadership interview, administered to all State child welfare directors, Tribal child welfare directors, and CIP coordinators that receive services; a Web-based collaboration survey, administered to the directors and staff of the three Centers; assessment tools; and service-specific feedback forms.

This second group of data sources proposed for the Cross-Center Evaluation in this notice include: (1) A capacity survey to capture perceived changes in organizational capacity after receiving Center services; (2) a foundational assessment to capture contextual data regarding the organizational health and functioning of child welfare agencies and courts; (3) a follow-up survey that will examine short-term and intermediate outcomes among CIPs that receive different levels of tailored services following continuous quality improvement (CQI) workshops; and(4)a key informant survey and interview to examine how capacity building services are incorporated into state and tribal activities to support implementation of Public Law 113–183. Additional Center-specific data sources proposed in this notice include (1) registration forms such as webinar and CapLEARN (learning management system) registration forms and (2) service-specific feedback forms and interviews, such as the Center for States Tailored Services interviews and the Center for Courts Universal and Constituency Services survey.

Respondents

Respondents of this second set of data collection instruments will include (1) child welfare agency staff and stakeholders who directly receive services that have been tailored to the needs of their jurisdiction and (2) CIP coordinators, CIP Directors, and other project staff. The proposed data collection will span three years.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Capacity Survey	462	1	.39	180.18
Foundational Assessment Survey	277	1	.1	27.7
CQI Workshop Follow-Up Survey	48	2	.12	11.52
P.L.113–183 Key Informant Survey	52	1	.26	13.52
P.L. 113–183 Key Informant Interview	5	1	1	5
Center for Courts: Universal and Constituency Services	104	1	.41	42.64
Webinar Registration	4,650	1	.03	139.5
Center for States: Tailored Services Interviews	60	1	1	60
Center for States: Assessment and Work Planning Survey	150	1	.25	37.5
CapLearn Registration	600	1	.084	50.4

Estimated Total Annual Burden Hours: 567.96.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–13610 Filed 6–8–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Ethnic Community Self-Help Program Data Indicators.

OMB No.: 0970—NEW.

Description: The ACF Office of Refugee Resettlement proposes to collect information from Ethnic Community-Based Organizations (ECBOs) awarded federal funds under HHS–2016–ACF–ORR–1129. The information, collected through a questionnaire, is expected to provide information on Program objectives semi-annually in order for program staff to gauge the Program's progress for reporting and evaluation purposes.

Respondents: ECBOs awarded under HHS–2016–ACF–ORR–1129.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ECSH Data Indicators	10	2	1	20

Estimated Total Annual Burden Hours: 20.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–13662 Filed 6–8–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0937–0025–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number OMB No. 0937–0025, which expires on November 30, 2016. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before August 8, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–60D for reference.

Information Collection Request Title: The Commissioned Corps of the U.S. Public Health Service application.

Abstract: The principal purpose for collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Commissioned Corps of the U.S. Public Health Service (Corps). The Corps is one of the seven Uniformed Services of the United States (37 U.S.C. 101(3)), and appointments in the Corps are made pursuant to 42 U.S.C. 204 *et seq.* and 42 CFR 21.58. The application consists of forms PHS–50, PHS–1813, and the Commissioned Corps Personal Statement.

Likely Respondents: Candidates/Applicants to the Commissioned Corps of the U.S. Public Health Service.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Prequalification Questionnaire	Interested Health Professionals	6,000	1	15/60	1,500

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Form PHS–50	Health Professionals	1,000	1	1.0	1,000
Form PHS–1813	References (college professors/teachers).	4,000	1	15/60	1,000
Addendum: Commissioned Corps Personal Statement.	Health Professionals	1,000		45/60	750
Total					4,250

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst. Information Collection Clearance Officer.

[FR Doc. 2016–13602 Filed 6–8–16; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30 Day Information Collection: Indian Self-Determination and Education Assistance Act Contracts

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) is submitting to the Office of Management and Budget (OMB) a request for an extension of a previously approved collection of information titled, "Indian Self-Determination and Education Assistance Act Contracts," OMB Control Number 0917–0037. IHS is requesting OMB to approve an extension for this collection, which expires on July 31, 2016.

DATES: *Comment Due Date:* July 11, 2016. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

ADDRESSES: Send your written comments and suggestions regarding the information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the collection, or to obtain a copy of the data collection instrument and instruction(s), contact Mr. Chris Buchanan by one of the following methods:

- *Mail:* Mr. Chris Buchanan, Director, IHS Office of Direct Services and Contracting Tribes (ODSCT), Indian Health Service, 5600 Fishers Lane, Mail Stop O8E17C, Rockville, MD 20857.
- *Phone:* 301–443–1104.
- *Email: Chris.Buchanan@ihs.gov.*
- *Fax:* 301–480–3192.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** (81 FR 24108), on April 25, 2016 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2016–0003).

I. Abstract

Representatives of the IHS seek renewal of the approval for information collections conducted under 25 CFR part 900, implementing the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended (25 U.S.C. 450 *et seq.*), which describes how contracts are awarded to Indian Tribes. The rule at 25 CFR part 900 was developed through negotiated rulemaking with Tribes in 1996 and governs, among other things, what must be included in a Tribe's initial ISDEAA contract proposal to IHS. A response is required to obtain and retain a benefit.

The information requirements for this rule represent significant differences from other agencies in several respects. Under the Act, the Secretary of Department of Health and Human Services is directed to enter into self-determination contracts with Tribes upon request, unless specific declination criteria apply, and, generally, Tribes may renew these contracts annually, whereas other agencies provide grants on a discretionary or competitive basis. Additionally, IHS awards contracts for multiple programs whereas other agencies usually award single grants to Tribes.

The IHS uses the information collected to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Federal agency to administer and evaluate contract programs. Tribal governments or Tribal organizations provide the information by submitting contract proposals, and related information, to the IHS, as required under Public Law 93–638. No third party notification or public disclosure burden is associated with this collection.

II. Request for Comments

The IHS requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is IHS policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 0917–0037.

Title: Indian Self-Determination and Education Assistance Act Contracts, 25 CFR part 900.

Brief Description of Collection: An Indian Tribe or Tribal organization is required to submit this information each time that it proposes to contract with the IHS under the ISDEAA. Each response may vary in its length. In addition, each Subpart of 25 CFR part 900 concerns different parts of the contracting process. For example, Subpart C relates to provisions of the contents for the initial contract proposal. The respondents do not incur the burden associated with Subpart C when contracts are renewed. Subpart F describes minimum standards for management systems used by Indian Tribes or Tribal organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contracts. Responses are required to obtain or retain a benefit.

Type of Review: Revision of currently approved collection.

Respondents: Federally recognized Indian Tribes and Tribal organizations.

Number of Respondents: 566.

Estimated Number of Responses: 1,510.

Estimated Time per Response: Varies from 1 to 1,040 hours, with an average of 15.968 hours per response.

Frequency of Response: Each time programs, functions, services or activities are contracted from the IHS under the ISDEAA.

Estimated Total Annual Hour Burden: 24,112.

Dated: June 1, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operation, Indian Health Service.

[FR Doc. 2016–13679 Filed 6–8–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5946–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2016

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2016, and ending on March 31, 2016.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500, telephone 202–708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2016.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from January 1, 2016 through March 31, 2016. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2016) before the next report is published (the second quarter of calendar year 2016), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 2, 2016.

Helen R. Kanovsky,

General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2016 Through March 31, 2016

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 91.105(c)(2).

Project/Activity: Clackamas County, OR requested a waiver of 24 CFR 91.105(c)(2) in order to shorten its citizen comment period for a Consolidated Plan amendment in order to provide emergency relocation assistance to qualified displaced low- and moderate-income residents of two apartment complexes that required an emergency evacuation in the storm affected area that experienced prolonged periods of heavy rainfall resulting in flooding, electrical outages, and significant landslides.

Nature of Requirement: The regulation at 24 CFR 91.105(c)(2) requires that citizens be provided with reasonable notice and an opportunity to comment on substantial amendments to its consolidated plan. The citizen participation plan requires that citizens be given no less than 30 days to comment on substantial amendments before they are implemented. The city asked to shorten its citizen comment period to seven days so that it may quickly reallocate Community Development Block Grant (CDBG) funds on the effects of the extreme winter storms.

Granted By: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 11, 2016.

Reason Waived: The county was allowed to shorten its comment period from 30 days to 7 days so it could provide emergency relocation assistance more quickly to qualified displaced low- and moderate-income residents displaced by an evacuation order.

Contact: Steve Johnson, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• Regulation: 24 CFR 92.214(a)(6).

Project/Activity: The City of Salem, OR, requested a waiver of 24 CFR 92.214(a)(6), which prohibits additional assistance under HOME Investment Partnership (HOME) to a project previously assisted with HOME funds during the period of affordability. The City requested this waiver in order to invest $210,330 of HOME funds into three HOME rental projects—Chemawa Village, Marilyn Townhomes, and Renaissance Place.

Nature of Requirement: The regulation at 24 CFR 92.214(a)(6) prohibits, except for one year after project completion, HOME assistance from being provided to a project that was previously assisted with HOME funds during the period of affordability.

Granted By: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 11, 2016.

Reason Waived: In 2013, HUD was notified that Salem Kaiser Community Development Corporation (SKCDC), responsible for 148 HOME-assisted rental units in 10 properties, was experiencing financial and operational issues. HUD provided extensive technical assistance and in 2014 ownership of SKCDC's portfolio was transferred to Catholic Community Service Foundation (CCSF). A portfolio analysis indicated that each of the three projects—Chemawa Village, Marilyn Townhomes, and Renaissance Place—had negative net operating income, was unable to service debt flow, had significant deferred maintenance, and had no replacement reserve. The City sought this waiver to assist CCSF in preserving the affordable HOME-assisted units, by investing $210,330 of HOME funds, and an additional $251,808 of CDBG funds, to rehabilitate 21 HOME units. The investment of additional HOME funds is still within the HOME maximum per-unit subsidy limits at 24 CFR 92.205(a). In addition, as a condition of the waiver, HUD is requiring that the City extend the periods of affordability for each of the three projects for an additional five years.

Contact: Virginia Sardone, Director, Office of Affordable Housing Programs, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• Regulation: 24 CFR 570.200(g).

Project/Activity: In September 2014, Snohomish County, WA received a $1.5 million supplemental CDBG award that was reallocated under section 106(c)(4) of the Housing and Community Development Act. The funds were to be used as a portion of the requisite match for Hazard Mitigation Program Grant funds from the Federal Emergency Management Agency (FEMA) for voluntary buyouts of properties impacted by the State Road 530 Flooding and Mudslide disaster.

Nature of Requirement: The regulation at 24 CFR 570.200(g) requires that recipients limit the amount of CDBG funds obligated for planning and administration during each program year to an amount no greater than 20 percent of the sum of its grant(s) made for that program year plus the program income received by the recipient and its subrecipients during that program year.

Granted By: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 29, 2016.

Reason Waived: The county did not receive its supplemental funds until midway through its 2014 program year and anticipated the need for additional administrative and planning obligations associated with the buyout activities, as it may take several years to complete the activities and expend the supplemental CDBG funds.

The waiver of the provisions of 24 CFR 570.200(g) allows the obligation of up to 20 percent of its supplemental award over the life of the grant, rather than solely during program year 2014. Absent a waiver, the county would effectively be prevented from using the statutorily-allowed percentage of funds for administrative and planning purposes needed to carry out activities under its supplemental award.

Contact: Steve Johnson, Director of Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• Regulation: 24 CFR 570.200(h).

Project/Activity: On January 28, 2016, HUD issued a CPD Notice CPD–16–01 [1] implementing procedures to govern the submission and review of consolidated plans and action plans for FY 2016 funding prior to the enactment of a FY 2016 HUD appropriation bill. These procedures apply to any Entitlement, Insular or Hawaii nonentitlement grantee with a program year start date prior to, or up to 60 days after, HUD's announcement of the FY 2016 formula program funding allocations for CDBG, ESG, HOME and HOPWA formula funding. Any grantee with an FY 2016 program year start date during the period starting October 1, 2015, and ending August 16, 2016 or 60 days after HUD announcement of FY 2016 allocation amounts (whichever comes first), is advised not to submit its consolidated plan/action plan until the FY 2016 formula allocations have been announced.

Nature of Requirement: The Entitlement CDBG program regulations provide for

[1] See *https://www.hudexchange.info/resources/documents/Notice-CPD-16-01-Guidance-on-Submitting-Consolidated-Plans-and-Annual-Action-Plans-for-FY-2016.pdf.*

situations in which a grantee may incur costs against its CDBG grant prior to the award of its grant from HUD. Under the regulations at 24 CFR 570.200(h), the effective date of a grantee's grant agreement is either the grantee's program year start date or the date that the grantee's annual action plan is received by HUD, whichever is later. This waiver would allow grantees to treat the effective date of the FY 2016 program year as the grantee's program year start date or date or the date that the grantee's annual action plan is received by HUD, whichever is *earlier*.

Granted By: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: January 6, 2016, for effect on October 21, 2015.

Reason Waived: Under the provisions of the Notice, a grantee's action plan may not be submitted to (and thus received by) HUD until several months after the grantee's program year start date. Lengthy delays in the receipt of annual appropriations by HUD, and implementation of the policy to delay submission of FY 2016 Action Plans, may have negative consequences for CDBG grantees that intend to incur eligible costs prior to the award of FY 2016 funding. Some activities might otherwise be interrupted while implementing these revised procedures. In addition, grantees might not otherwise be able to use CDBG funds for planning and administrative costs of administering their programs. In order to address communities' needs and to ensure that programs can continue without disturbance, this waiver will allow grantees to incur pre-award costs on a timetable comparable to that under which grantees have operated in past years. This waiver is available for use by any applicable CDBG grantee whose action plan submission is delayed past the normal submission date because of delayed enactment of FY 2016 appropriations for the Department. This waiver authority is only in effect until August 16, 2016.

Contact: Steve Johnson, Director, Entitlement Communities Division, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7282, Washington, DC 20410, telephone (202) 402–4548.

• Regulation: 24 CFR 882.806(a)(2)(ii).

Project/Activity: The Housing Authority of the City of Los Angeles requested a waiver of 24 CFR 882.806(a)(2)(ii) to allow more time to complete the rehabilitation of the Single Room Occupancy Marion Hotel located at 642 Crocker Street.

Nature of Requirement: The regulation at 24 CFR 882.806(a)(2)(ii) provides that the owner must complete the rehabilitation of the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) project and the contract executed within 12 months of the execution of the Annual Contributions Contract.

Granted By: Harriet Tregoning, Principal Deputy Assistance Secretary for Community Planning and Development.

Date Granted: February 19, 2016.

Reason Waived: The Housing Authority of the City of Los Angeles had two potential developers that backed out of the project for financial and other reasons. HUD determined that the new developer has a financially feasible project that would require at least 7 months to complete the project, which is beyond the time limitation of the execution of the Annual Contributions Contract.

Contact: Norman Suchar, Director, Office of Special Needs Assistance Programs, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7262, Washington, DC 20410, telephone (202) 402–5015.

• Regulation: Neighborhood Stabilization Program 3 Notice published on October 19, 2010, at 75 FR 64322 (II.H.3.F) in accordance with Title XII of Division A under the heading Community Planning and Development: Community Development Fund of the American Recovery and Reinvestment Act of 2009.

Project/Activity: Richland County, OH requested a waiver of the 10 percent demolition cap under the Neighborhood Stabilization Program (NSP) which restricts grantees from spending more than 10 percent of total grant funds on demolition activities. The demolition waiver request combined Richland County's program income ($50,062.41) with an earlier approved demolition waiver of $420,050, that total $470,112.41.

These funds will be used to demolish blighted and vacant structures that are becoming prevalent in Richland County, specifically in the City of Mansfield. The use of these funds in target areas will allow the county to remove hazards and the destabilizing influence of blighted properties, while adding value to the neighborhood stabilization strategy the county has undertaken. The ability to use program income for demolition activities will allow the county to close-out their NSP3 grant once these funds are exhausted.

Nature of Requirement: Section II.H.3.F of the NSP3 Notice provides that a grantee may not use more than ten percent of its grant for demolition activities.

Granted By: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: March 25, 2016.

Reason Waived: The use of these funds in target areas will allow Richland County to remove hazards and the destabilizing influence of blighted properties, while adding value to the neighborhood stabilization strategy the county has undertaken. The county's neighborhood stabilization strategy is in response to a depressed housing market that has seen Richland County incur 771 foreclosures in 2014, a twelve percent increase from the 684 foreclosures the county suffered in 2013. The ability to use program income for demolition activities will allow the county to close-out their NSP3 grant once these funds are exhausted.

Contact: Jessie Handforth Kome, Deputy Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone (202) 402–5539.

• Regulation: Neighborhood Stabilization Program 3 Notice published on October 19, 2010, at 75 FR 64322 (II.H.3.F) in accordance with Title XII of Division A under the heading Community Planning and Development: Community Development Fund of the American Recovery and Reinvestment Act of 2009.

Project/Activity: Saginaw, MI requested a waiver of the 10 percent demolition cap under the Neighborhood Stabilization Program (NSP) which restricts grantees from spending more than 10 percent of total grant funds on demolition activities. The demolition waiver request submitted was for $97,614 or eight percent of its NSP3 allocation, and was for the continued demolition and removal of hazards and blighted properties.

Nature of Requirement: Section II.H.3.F of the NSP3 Notice provides that a grantee may not use more than 10 percent of its grant for demolition activities.

Granted By: Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development.

Date Granted: February 24, 2016.

Reason Waived: The market conditions in the Saginaw metro area require a mix of demolition of unsafe structures coupled with the preservation of housing units to stabilize communities that have suffered from foreclosures and abandonment. The housing vacancy rate in the NSP target area fluctuates between eighteen to 35 percent as of early 2016, despite the fact that the unemployment rate in the immediate area has steadily improved. The use of the final $97,614 is the most effective means to meet the needs of the Saginaw community.

Contact: Jessie Handforth Kome, Deputy Director, Office of Block Grant Assistance, Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone (202) 402–5539.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Woodland Christian Towers, FHA Project Number 114–44801T, Houston, Texas. Woodland Christian Towers, Incorporated (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

Nature of Requirement: The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states "Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project."

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: February 1, 2016.

Reason Waived: The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve this affordable housing resource for an additional 30 years through the execution and recordation of a Rental Use Agreement.

Contact: James Wyatt, Account Executive, Field Asset Management and Program Administration Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6172, Washington, DC 20410, telephone (202) 402–2519.

• Regulation: 24 CFR 203.41 and 24 CFR 206.45.

Project/Activity: Properties eligible for FHA-insured mortgages.

Nature of Requirement: The Amended and Restated Condominium Bylaws of the Waterway Pines condominium project contains restrictions on conveyance rendering this project, as provided in 24 CFR 203.41, ineligible for FHA approval. Additionally, any Home Equity Conversion Mortgage (HECM) secured by a dwelling subject to the covenants is ineligible, a provided in 24 CFR 206.45, for FHA insurance as HECM properties are required to be freely marketable and only permits a property to have a restriction on conveyance when permitted. The waiver is applicable to issuance of a case number for the property located at 367 Timberlake Drive E, Unit #125, Holland, Michigan 49424 only.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: February 29, 2016.

Reason Waived: Due to extenuating circumstances, this waiver was issued so that the purchaser did not lose the opportunity to purchase an affordable housing unit based on the Association Board's reluctance to amend the legal documents to obtain FHA condominium project approval.

Contact: Elissa O. Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410, telephone (202) 708–2121.

• Regulation: 24 CFR 232.7.

Project/Activity: Les Mason is a memory care facility. The facility does not meet the requirements of 24 CFR 232.7 "Bathroom" of FHA's regulations. The project is located in Crever Coeur, MO.

Nature of Requirement: The regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: February 29, 2016.

Reason Waived: The project is for memory care, all rooms have half-bathrooms and the resident to full bathroom ratio is 11: 1. The project meets the State of Missouri's licensing requirements for bathing and toileting facilities.

Contact: Vance T. Morris, Operations Manager, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 2337, Washington, DC 20401, telephone (202) 402–2419.

• Regulation: 24 CFR 266.638(b) and (d).

Project/Activity: Louisiana Housing Corporation (LHC), New Orleans, Louisiana Project, St. Martin Manor Project Number: 064–98014, Project: Villa Additions, Project Number: 064–98017.

Nature of Requirement: HUD's regulation at CFR 266.638(b) and (d) for debenture maturity and interest rate requirement is that the HFA Debenture shall, during the extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. The HFA debenture extension shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: March 30, 2016.

Reason Waived: The waiver will ensure that LHC is able to complete the re-development of the two properties and replace needed affordable housing in New Orleans. The waiver is an extension of a previously granted waiver for the debenture interest accruals, and the Katrina related claims were related to an extraordinary natural disaster.

Contact: Theodore K. Toon, Director, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• Regulation: 24 CFR 266.100(a)(5).

Project/Activity: Utah Housing Corporation (UHC), West Valley City, Utah.

Nature of Requirement: The regulation at 24 CFR 266.100(a)(5) requires housing finance agencies seeking participation in the Section 542(c) HFA Risk Sharing program to have at least 5 years of experience in multifamily underwriting.

Granted by: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: March 30, 2016.

Reason Waived: HUD determined that UHC is a qualified and experienced agency and meets the basic program qualifications and documented significant financial capacity to participate in the Risk Sharing Program. UHC's waiver approval and participating in the Risk Sharing Program are subject to the following conditions: (1) UHC participation will be limited to Level I (50/50) risk share only (UHC has the option to apply for level II risk share status once five years of successful underwriting has been achieved.); (2) UHC will confirm that it continues to hold an issuer rating of "A" or better from a national credit rating agency; (3) UHC will operate under a probationary period, until such time as it has obtained two Firm Commitments for two risk share transactions; and (4) UHC will work with the Denver Hub to complete a quality assurance review to ensure that UHC has complied with its own procedures for project underwriting.

Contact: Theodore K. Toon, Director, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6134, Washington, DC 20410, telephone (202) 402–8386.

• Regulation: 24 CFR 891.165.

Project/Activity: Campbell Ridge Apartments, King, NC, Project Number: 053–HD255/NC19–Q101–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18-months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: January 7, 2016.

Reason Waived: Additional time was needed for the office to update the firm commitment package.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• Regulation: 24 CFR 891.165.

Project/Activity: VOA Living Center of Lake City, Lake City, FL, Project Number: 063–HD030/FL29–Q101–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18-months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: February 28, 2016.

Reason Waived: Additional time was needed for the office to review the initial closing package.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• Regulation: 24 CFR 891.165.

Project/Activity: Victoria at COMM22, San Diego, CA, Project Number: 129–EE036/CA33–S101–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18-months from the date of issuance with limited exceptions up to 36 months, as approved by HUD on a case-by-case basis.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: March 31, 2016.

Reason Waived: Additional time was needed to meet other requirements of the State of California and the tax credit investor for receipt of their loans and capital contributions.

Contact: Alicia Anderson, Branch Chief, Grants and New Funding, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6138, Washington, DC 20410, telephone (202) 402–5787.

• Regulation: Waiver of Requirements of Mortgagee Letter 2011–22, Condominium Project Approval and Processing Guide, Insurance Requirements.

Project/Activity: Properties eligible for FHA-insured mortgages.

Nature of Requirement: FHA's current insurance requirement is that a HOA maintain master master/blanket hazard and liability property insurance for the replacement cost of the entire project, including the structures.

Granted By: Edward L. Golding, Principal Deputy Assistant Secretary for Housing.

Date Granted: January 5, 2016.

Reason Waived: In some circumstances, HOA legal governing documents assign the responsibility to the individual unit owner to obtain and maintain insurance coverage for certain condominium project types; Manufactured Housing Condominium Project (MHCP), Detached Condominium Housing Project (DCHP), and Common Interest Housing Development (CIHD). To assist in ensuring the continued availability of affordable housing, a waiver of the current condominium unit insurance requirements that allow the individual unit owner to obtain and maintain their own insurance coverage is required. The issuance of the waiver is consistent with the Department's objectives to expand access to mortgage credit, while providing appropriate safeguards to waive the insurance requirements.

Contact: Elissa O. Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410, telephone (202) 708–2121.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.801(c)(1) and (d)(1).

Project/Activity: Haverhill Housing Authority (MA087).

Nature of Requirement: The regulations establish certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 23, 2016.

Reason Waived: The HA is a Section 8 only entity with the Housing Choice Program, requesting additional time to submit its audited financial data for fiscal year end (FYE) March 31, 2015. The agency's fee accountant was unable to complete a scheduled merger with an auditing firm in time enough to perform and submit the audited information. The HA has until March 31, 2016, to complete and submit its audited financial data to the Department. The additional time would allow the auditor necessary time to compile and complete the agency's audited financial data report.

This FASS audited financial submission waiver (extension) does not apply to Single Audit submissions to the Federal Audit Clearinghouse and the HA is required to meet the Single Audit due dates.

Contact: Dee Ann R. Walker, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Room 100, Washington, DC 20410, telephone (202) 475–7908.

• Regulation: 24 CFR 5.801(c)(1) and (d)(1).

Project/Activity: Mohave County Housing Authority (AZ043).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 7, 2016.

Reason Waived: The (HA is a Section 8 only entity requesting additional time to submit its audited financial data for its fiscal year end (FYE) of June 30, 2015. The County-wide report for the state of Arizona's Office of the Auditor General had been delayed due to incomplete information of pension financial liability; the HA is requesting a 60-day extension to align with the state's audited financial report. The HA has until May 31, 2016, to complete and submit its audited financial data to HUD. The additional time would allow the auditor necessary time to compile and complete the agency's audited financial data report.

This FASS audited financial submission waiver (extension) does not apply to Single Audit submissions to the Federal Audit Clearinghouse and the HA is required to meet the Single Audit due dates.

Contact: Dee Ann R. Walker, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Room 100, Washington, DC 20410, telephone (202) 475–7908.

• Regulation: 24 CFR 5.801(c)(1) and (d)(1).

Project/Activity: Tallahassee Housing Authority (FL073).

Nature of Requirement: The regulation establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 25, 2016.

Reason Waived: The HA is requesting an additional time to submit its audited financial data for its fiscal year end (FYE) of June 30, 2015. The HAs cash balances for FY 2014 and FY 2015 were not reconciled as a result of converting to a new accounting system and a new software system. Also, the cash transactions were posted to incorrect funds and charged to incorrect bank accounts which rendered the HA's records unreliable resulting in the HA's auditor issuing a Disclaimer of opinion for FYE June 30, 2014, audited financial statements, and issued an adverse opinion on the Major Federal Program Compliance for the Housing Choice Vouchers program and the Mainstream Vouchers program. In addition, the Finance Supervisor was fired as a result of fraud allegations and the Finance Director resigned. The HA has until May 31, 2016, to complete and submit its audited financial data to HUD. The additional time would allow the auditor necessary time to compile and complete the agency's audited financial data report. This FASS audited financial submission waiver (extension) does not apply to Single Audit submissions to the Federal Audit Clearinghouse and the HA is required to meet the Single Audit due dates.

Contact: Dee Ann R. Walker, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Room 100, Washington, DC 20410, telephone (202) 475–7908.

• Regulation: 24 CFR 982.503(a)(3) and (c)(2).

Project/Activity: Housing Authority of the City of Los Angeles (HACLA) in Los Angeles, California, requested a waiver of 24 CFR 982.503(a)(3) and 982.503(c)(2) so that it could establish different payment standard amounts for its HUD-Veterans Affairs Supportive Housing (VASH) participants.

Nature of Requirement: The regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area. The regulation at 24 CFR 982.503(c)(2) states that the HUD Field Office may approve an exception payment standard amount from 110 percent of the published FMR to 120 percent of the published FMR if the Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method and that such approval is also supported by an appropriate program justification.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 2016.

Reason Waived: HACLA wished to establish a different payment standard schedule for participants in its HUD–VASH program because these families are traditionally more difficult to house when affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.503(a)(3) and (c)(2).

Project/Activity: Housing Authority of the County of Los Angeles (HACoLA) in Alhambra, California, requested a waiver of 24 CFR 982.503(a)(3) and 982.503(c)(2) so that it could establish different payment standard amounts for its HUD-Veterans Affairs Supportive Housing (VASH) participants.

Nature of Requirement: The regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area. The regulation at 24 CFR 982.503(c)(2) states that the HUD Field Office may approve an exception payment standard amount from 110 percent of the published FMR to 120 percent of the published FMR if the Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method and that such approval is also supported by an appropriate program justification.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 5, 2016.

Reason Waived: HACoLA wished to establish a different payment standard schedule for participants in its HUD–VASH program because these families are traditionally more difficult to house when affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.503(a)(3) and (c)(2).

Project/Activity: Housing Authority of the County of the City of Santa Rosa in Santa Rosa (HACSR), California, requested a waiver of 24 CFR 982.503(a)(3) and 982.503(c)(2) so that it could establish different payment standard amounts for its HUD-Veterans Affairs Supportive Housing (VASH) participants.

Nature of Requirement: The regulation at 24 CFR 982.503(a)(3) states that the public housing agency's (PHA) voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole fair market rent (FMR) area, or may establish a separate payment standard amount for each designated part of the FMR area. The regulation at 24 CFR 982.503(c)(2) states that the HUD Field Office may approve an exception payment standard amount from 110 percent of the published FMR to 120 percent of the published FMR if the Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method and that such approval is also supported by an appropriate program justification.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 10, 2016.

Reason Waived: HACSR wished to establish a different payment standard schedule for participants in its HUD–VASH program because these families are traditionally more difficult to house when affordable housing is in short supply.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.503(c), (c)(4)(ii) and (c)(5).

Project/Activity: Burleigh County Housing Authority (BCHA) in Bismarck, North Dakota, requested waivers of 24 CFR 982.503(c), (c)(4)(ii) and (c)(5) so that it could establish exception payment standards at 120 percent of the FMRs due to oil exploration's effect on housing.

Nature of Requirement: The regulation at 24 CFR 982.503(c) establishes the methodology for establishing exception payment standards for an area. The regulation at 24 CFR 503(c)(4)(ii) states that HUD will only approve an exception payment standard amount after six months from the date of HUD approval of an exception payment standard amount above 110 percent to 120 percent of the published fair market rent (FMR). The regulation at 24 CFR 982.503(c)(5) states that the total population of a HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 26, 2016.

Reason Waived: These waivers were granted because of increased economic activity and lack of affordable housing due to natural resource exploration.

Contact: Becky Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of the County of Alameda (HACA) in Hayward California, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 7, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: New York Homes and Community Renewal (NYHCR), in New York, New York requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: January 7, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Peninsula Housing Authority (PHA) in Port Angeles, Washington, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 3, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW.,

Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Howard County Housing (HCH) in Columbia, Maryland, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 5, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Boston Housing Authority (BHA) in Boston, Massachusetts, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 26, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Dedham Housing Authority (DHA) in Dedham, Massachusetts, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 26, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Medford Housing Authority (MHA) in Medford, Massachusetts, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 23, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Colorado Division of Housing (CDH) in Denver, Colorado, requested a waiver of 24 CFR 982.505(d) so that it could approve an exception payment standard amount above 120 percent of the FMR as a reasonable accommodation.

Nature of Requirement: The regulation at 24 CFR 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is no more than 120 percent of the fair market rent (FMR) for the unit size.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 30, 2016.

Reason Waived: This regulation was waived as a reasonable accommodation to allow a disabled participant to receive housing assistance and pay no more than 40 percent of its adjusted income toward the family share.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Deerfield Beach Housing Authority (DBHA) in Deerfield Beach, Florida, requested a waiver of 24 CFR 985.101(a) so that it could submit its Section Eight Management Assessment Program (SEMAP) certification after the deadline.

Nature of Requirement: The regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: February 24, 2016.

Reason Waived: This waiver was granted because for the DBHA's fiscal year ending September 30, 2015. The waiver was approved because of circumstances beyond the PHA's control and to prevent additional administrative burdens for the PHA and field office.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Lake County Housing Authority (LCHA) in Grayslake, Illinois, requested a waiver of 24 CFR 985.101(a) so that it could submit its Section Eight Management Assessment Program (SEMAP) certification after the deadline.

Nature of Requirement: The regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 3, 2016.

Reason Waived: This waiver was granted because for the LCHA's fiscal year ending September 30, 2015. The waiver was approved because of circumstances beyond the PHA's control and to prevent additional administrative burdens for the PHA and field office.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Housing and Community Services Agency of Lane County (HCSALC) in Eugene, Oregon, requested a waiver of 24 CFR 985.101(a) so that it could submit its Section Eight Management Assessment Program (SEMAP) certification after the deadline.

Nature of Requirement: The regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing

Date Granted: March 7, 2016.

Reason Waived: This waiver was granted for the HCSALC's fiscal year ending September 30, 2015. The waiver was approved because of circumstances beyond the PHA's control and to prevent additional administrative burdens for the PHA and field office.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 985.101(a).

Project/Activity: Sedalia Housing Authority (SHA) in Sedalia, Missouri, requested a waiver of 24 CFR 985.101(a) so that it could submit its Section Eight Management Assessment Program (SEMAP) certification after the deadline.

Nature of Requirement: The regulation at 24 CFR 985.101(a) states a PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 29, 2016.

Reason Waived: This waiver was granted because for the SHA's fiscal year ending December 31, 2015. The waiver was approved because of circumstances beyond the PHA's control and to prevent additional administrative burdens for the PHA and field office.

Contact: Becky Primeaux, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410, telephone (202) 708–0477.

• Regulation: 24 CFR 905.314.

Project/Activity: The Chester Housing Authority (CHA) requested a good cause waiver to transfer 33 percent of its 2016 Capital Fund Formula Grant into BLI 1406-Operations, in part to fund certain anticrime measures.

Nature of Requirement: In accordance with 24 CFR 905.314, PHAs may use Operating Funds for anticrime and antidrug activities, including costs of providing adequate security for public housing residents, including above-baseline service agreements.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 22, 2016.

Reason Waived: CHA's letter of March 2016 included all the information provided by the Capital Fund Processing Guidance to make a good cause determination. Specifically, CHA requested $628,435.00 to be transferred to Budget Line Item 1406 for Operations. CHA provided recent crime data at the developments and indicated the specific activities that it plans to use the funds for.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, 451 7th Street SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

• Regulation: 24 CFR 905.314.

Project/Activity: The Westmoreland County Housing Authority (WCHA) requested a good cause waiver to transfer 27 percent of its 2016 Capital Fund Formula Grant into BLI 1406-Operations, in part to fund certain anticrime measures.

Nature of Requirement: In accordance 24 CFR 905.314, PHAs may use Operating Funds for anticrime and antidrug activities, including costs of providing adequate security for public housing residents, including above-baseline service agreements.

Granted By: Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 29, 2016.

Reason Waived: WCHA's letter of March 2016 included all the information provided by the Capital Fund Processing Guidance to make a good cause determination. Specifically, WCHA requested $550,086 to be transferred to Budget Line Item 1406 for Operations. WCHA provided recent crime data at the developments and indicated the specific activities that it plans to use the funds for.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

[FR Doc. 2016–13699 Filed 6–8–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FW–HQ–IA–2016–N098; FXIA16710900000–167–FF09A30000]

Proposed Information Collection; Import of Sport-Hunted African Elephant Trophies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2016. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by August 8, 2016.

ADDRESSES: Send your comments on the IC to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include "1018–0164" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

On June 6, 2016, we published a final rule (81 FR 36388), Revision of the Section 4(d) Rule for the African Elephant (*Loxodonta africana*) (4(d) rule). The rule will be effective on July 6, 2016. After that date, permits will be required to import all African elephant trophies (*i.e.*, from both Appendix-I and Appendix-II populations).

When a species is listed as threatened, section 4(d) of the Endangered Species Act (ESA) gives discretion to the Secretary of the Interior to issue regulations that he or she "deems necessary and advisable to provide for the conservation of such species." In response to an unprecedented increase in poaching of elephants across Africa and the escalation of the illegal trade in ivory, we reevaluated the provisions of the existing ESA 4(d) rule for the African elephant. We revised the 4(d) rule by adopting measures that are necessary and advisable for the current conservation needs of the species, based on our evaluation of the current threats to the African elephant and the comments received from the public. The poaching crisis is driven by demand for elephant ivory. The final rule allows us to more strictly regulate trade in African elephant ivory and to help ensure that the U.S. ivory market is not contributing to the poaching of elephants in Africa.

Currently, import of sport-hunted African elephant trophies from Convention on International Trade in Endangered Species of Wild Fauna and

Flora (CITES) Appendix-II populations does not require an ESA threatened species import permit. Applications for permits required under current regulations (for import of African elephant sport-hunted trophies from CITES Appendix-I populations) are approved under OMB Control Number 1018–0093, which expires May 31, 2017. Under the revised rule, permits will be required to import all African elephant sport-hunted trophies from both Appendix-I and Appendix-II populations. As a result of the revised 4(d) rule, we expect to receive an additional 300 applications for permits. The burden associated with these additional applications is the basis of this information collection.

We requested that OMB approve, on an emergency basis, our request to collect information associated with permits to import African elephant sport-hunted trophies from Appendix-II populations. We asked for emergency approval because of the potential negative effects of delaying publication of the final 4(d) rule. OMB approved our request and assigned OMB Control No. 1018–0164, which expires November 30, 2016.

We will ask OMB to grant regular approval (3 years) for this information collection. If OMB grants regular approval, we will include the burden associated with the expected 300 additional applications in OMB Control Number 1018–0093 when we renew the approval in May 2017.

II. Data

OMB Control Number: 1018–0164.

Title: Import of Sport-Hunted African Elephant Trophies, 50 CFR 17.

Service Form Number: 3–200–19.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Individuals.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Completion time per response (minutes)	Total annual burden hours
3–200–9—application to import African elephant trophy from Appendix-II populations	300	300	20	100
Totals	300	300		100

Estimated Annual Nonhour Burden Cost: $30,000, primarily associated with application fees. Application fee is $100 per application.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 6, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–13678 Filed 6–8–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Request for Nominations of Members To Serve on the Bureau of Indian Education Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA) and the Individuals with Disabilities Education Act of 2004 (IDEA), the Bureau of Indian Education (BIE) requests nominations of individuals to serve on the Advisory Board for Exceptional Children (Advisory Board). There are three positions available. The BIE will consider nominations received in response to this request for nominations, as well as other sources.

DATES: Please submit nominations by July 11, 2016.

ADDRESSES: Please submit nominations to Ms. Sue Bement, Designated Federal Officer (DFO), Bureau of Indian Education, Division of Performance and Accountability, 1011 Indian School Road NW., Suite 332, Albuquerque, New Mexico 87104, telephone 505–563–5274, or fax to 505–563–5281.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Sue Bement, DFO, at the above listed address and telephone number.

SUPPLEMENTARY INFORMATION: The Advisory Board was established in accordance with FACA, 5 U.S.C. App. 2, section 10(a)(b). The following provides information about the Committee, the membership, and the nomination process.

1. Objective and Duties

(a) Members of the Advisory Board will provide guidance, advice, and recommendations with respect to special education and related services for children with disabilities in BIE-funded schools in accordance with the requirements of IDEA.

(b) The Advisory Board will:

(1) Provide advice and recommendations for the coordination of services within the BIE and with other local, State, and Federal agencies;

(2) Provide advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities;

(3) Serve as advocates for American Indian students with special education needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming;

(4) Provide advice and recommendations for the preparation of information required to be submitted to the Secretary of Education under 20 U.S.C. 1411(h)(2);

(5) Provide advice and recommend policies concerning effective inter- and intra- agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra- agency programs and activities; and

(6) Report and direct all correspondence to the Assistant Secretary—Indian Affairs through the Director, BIE with a courtesy copy to the DFO.

2. Membership

(a) Under 20 U.S.C. 1411(h)(6), the Advisory Board will be composed of up to 15 individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one member representing each of the following interests: Indians with disabilities; teachers of children with disabilities; Indian parents or guardians of children with disabilities; service providers; State education officials; local education officials; State interagency coordinating councils (for States having Indian reservations); Tribal representatives or Tribal organization representatives; and other members representing the various divisions and entities of the BIE.

(b) The Assistant Secretary—Indian Affairs may provide the Secretary of the Interior recommendations for the chairperson; however, the chairperson and other Advisory Board members will be appointed by the Secretary of the Interior. Advisory Board members shall serve staggered terms of two years or three years from the date of their appointment.

3. Miscellaneous

(a) Members of the Advisory Board will not receive compensation, but will be reimbursed for travel, including subsistence, and other necessary expenses incurred in the performance of their duties in the same manner as persons employed intermittently in Government Service under 5 U.S.C. 5703.

(b) A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the appropriate ethics official. Compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

(c) The Advisory Board meets at least twice per year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary—Indian Affairs or the DFO.

(d) All Advisory Board meetings are open to the public in accordance with FACA regulations.

4. Nomination Information

(a) Nominations are requested from individuals, organizations, and federally recognized Tribes, as well as from State Directors of Special Education (within the 23 states in which BIE-funded schools are located) concerned with the education of Indian children with disabilities as described above.

(b) Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. Such knowledge and expertise are needed to provide advice and recommendations to the BIE regarding the needs of American Indian children with disabilities.

(c) Nominees must have the ability to attend Advisory Board meetings, carry out Advisory Board assignments, participate in teleconference calls, and work in groups.

(d) The Department of the Interior is committed to equal opportunities in the workplace and seeks diverse Committee membership, which is bound by the Indian Preference Act of 1990 (25 U.S.C. 472).

5. Basis for Nominations

If you wish to nominate someone for appointment to the Advisory Board, please do not make the nomination until the person has agreed to have his or her name submitted to the BIE for this purpose.

6. Nomination Application

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department of the Interior to contact a potential member. The nomination application, which can be found on the BIE Web site at *http://www.bie.edu/Programs/SpecialEd/AdvisoryBoard/index.htm*, must also be included.

7. Information Collection

This collection of information is authorized by OMB Control Number 1076–0179, "Solicitation of Nominations for the Advisory Board for Exceptional Children."

Dated: May 24, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–13694 Filed 6–8–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 16X]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on July 11, 2016.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the dependent resurvey and survey in Township 40

North, Range 11 East, New Mexico Principal Meridian, Colorado, were accepted on March 30, 2016.

The plat and field notes of the dependent resurvey and survey in Township 41 North, Range 11 East, New Mexico Principal Meridian, Colorado, were accepted on March 30, 2016.

The plat and field notes of the dependent resurvey and survey in Township 18 South, Range 70 West, Sixth Principal Meridian, Colorado, were accepted on April 18, 2016.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 16 in Township 4 North, Range 71 West, Sixth Principal Meridian, Colorado, was accepted on May 13, 2016.

The plat and field notes of the dependent resurvey and survey in Township 36 North, Range 17 West, New Mexico Principal Meridian, Colorado, were accepted on May 23, 2016.

The field notes of the remonumentation of certain original corners in Township 27 South, Range 47 West, Sixth Principal Meridian, Colorado, were accepted on May 27, 2016.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2016–13660 Filed 6–8–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 16X]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Colorado.

SUMMARY: On Tuesday, July 14, 2009, the Bureau of Land Management (BLM) Colorado State Office, published a Notice of Stay of Filing of Plat, in the **Federal Register** (74 FR 34035) to inform the public of a stay on the proposed filing of the dependent resurvey of the east boundary and a portion of the subdivisional lines in Township 42 North, Range 13 West, New Mexico Principal Meridian, Colorado, accepted on December 22, 2008, pending consideration of the protest and/or appeal that was filed. On May 27, 2016, the Interior Board of Land Appeals affirmed the BLM's decision to dismiss the protest. The BLM Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed above and afford a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on July 11, 2016.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2016–13659 Filed 6–8–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DQ0000 16X]

Notice of Resource Advisory Council Meetings for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante National Conservation Area (NCA) Advisory Council (Council) will meet as indicated below.

DATES: The Council will meet July 13, 2016, and July 27, 2016. Any adjustments to these meetings will be advertised on the Dominguez-Escalante NCA Resource Management Plan (RMP) Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

ADDRESSES: The July 13 meeting will be held at the Mesa County Old Courthouse, 544 Rood Ave. Grand Junction, CO 81501. The July 27 meeting will be held at the Bill Heddles Recreation Center, 530 Gunnison River Drive, Delta, CO 81416.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, Dominguez-Escalante NCA Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *cewing@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the RMP process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness.

Topics of discussion during the meetings may include presentations from BLM staff on management actions contained in the RMP, particularly public comments on alternatives in the Draft RMP.

These meetings are open to the public. The public may present written comments to the Council. Time will be allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited at the discretion of the chair.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–13658 Filed 6–8–16; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1004]

Certain Mobile and Portable Electronic Devices Incorporating Haptics (Including Smartphones and Laptops) and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 5, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Immersion Corporation of San Jose, California. Supplements to the complaint were filed on May 9, May 16, and May 24, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile and portable electronic devices incorporating haptics (including smartphones and laptops) and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,749,507 ("the '507 patent"); U.S. Patent No. 7,808,488 ("the '488 patent"); U.S. Patent No. 7,336,260 ("the '260 patent"); and U.S. Patent No. 8,581,710 ("the '710 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2016).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 3, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile and portable electronic devices incorporating haptics (including smartphones and laptops) and components thereof by reason of infringement of one or more of claims 1–5, 9–12, and 14–17 of the '507 patent; claims 1, 2, 9, 10, 17, 18, 25–27, and 29 of the '488 patent; claims 1 and 2 of the '260 patent; and claims 1, 7–10, and 12 of the '710 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR § 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. §§ 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Immersion Corporation, 50 Rio Robles, San Jose, CA 95134.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Apple Inc., 1 Infinite Loop, Cupertino, CA 95014

AT&T Mobility LLC, 1025 Lenox Park Boulevard NE., Atlanta, GA 30319.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Chief Administrative Law Judge is authorized to consolidate Inv. No. 337–TA–990 and this investigation if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 6, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–13671 Filed 6–8–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—fd.io Project, Inc.

Notice is hereby given that, on May 4, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), fd.io Project, Inc. ("fd.io") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Intel Corporation, Hillsboro, OR; Brocade Communications Systems, Inc., San Jose, CA; Inocybe Technologies Inc., Gatineau, Quebec City, CANADA; Huawei Technologies Co., Ltd., Bantian,

Longgang District, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Cisco Systems, Inc., Milpitas, CA; PLUMgrid, Inc., Sunnyvale, CA; NXP Semiconductor Inc. (Freescale), Austin, TX; Mesosphere Inc., San Francisco, CA; Metaswitch Networks, San Francisco, CA; Cavium Networks, Inc., San Jose, CA; Ericsson, Kista, SWEDEN; Comcast, Philadelphia, PA; Red Hat, Inc., Raleigh, NC; and 6 WIND, Montigny-le-Bretonneux, FRANCE.

The general area of fd.io's planned activity are to: (a) Drive the evolution of IO services (IO, processing, and management agents for networking, storage, and other types of IO) through a neutral community delivering open source software that supports deployment models including cloud, NFV, container, bare metal networking, storage, and other types of IO, in order to create a high performance, modular, and extensible open source platform fostering innovation in IO services ("the Platform"); (b) host a collection of projects that form a cohesive code base for open community based development, enhanced component compatibility and interoperability, greater choice and flexibility for data plane developers, and an open environment for IO services development and technology adoption; (c) support and maintain the strategic framework of the Platform through the technologies made available by the organization to make the Platform a success; (d) support and maintain policies set by the Board of Directors of the Joint Venture; (e) promote such Platform worldwide; (f) create and maintain programs regarding the use of Joint Venture trademarks; and (g) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13629 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Development and Validation of FlawPRO for Assessing Defect Tolerance of Welded Pipes Under Generalized High Strain Conditions

Notice is hereby given that, on April 27, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on Development and Validation of FlawPRO for Assessing Defect Tolerance of Welded Pipes Under Generalized High Strain Conditions ("FlawPRO–JIP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ConocoPhillips Company, Houston, TX, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and FlawPRO–JIP intends to file additional written notifications disclosing all changes in membership.

On May 17, 2011, FlawPRO–JIP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 7, 2011 (76 FR 39901).

The last notification was filed with the Department on November 2, 2012. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 11, 2012 (77 FR 73676).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13633 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on May 11, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), UHD Alliance, Inc. ("UHD Alliance") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microsoft Corporation, Redmond, WA; Tongfang Global, Ltd. (Seiki), Diamond Bar, CA; Arcelik AS Electronics Plant, Istanbul, TURKEY; Dell Inc., Round Rock, TX; and Paramount Pictures Corporation, Hollywood, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on February 12, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 2016 (81 FR 14485).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13632 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on May 9, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Silicon Integration Initiative, Inc. ("Si2") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, MIE Fujitsu Semiconductor, Limited, Yokohama City, JAPAN; IC Manage, Inc., Campbell, CA; SA Magillem Design Services, Paris, FRANCE; Minalogic, Grenoble, FRANCE; Ricoh Electronic Devices Company, Limited, Osaka, JAPAN; Thermo Fisher Scientific, Guilford, CT; and Broadcom, Ltd., San Jose, CA, have been added as parties to this venture.

Also, AIST, Tokyo, JAPAN; ARM, Cambridge, MA; Berkeley Wireless Research Center, Berkley, CA; Blackcomb Design Automation, Inc. Vancouver, CANADA; IMEC, Heverlee, BELGIUM, Qorvo, Richardson, TX, Sage Design Automation, Santa Clara, CA; SiConTech, Inc., Austin, TX; STARC, Tokohama, JAPAN; Tyndall National Institute, Cork City, IRELAND; United Microelectronics Corporation, Hsinchu City, TAIWAN; Altera, San Jose, CA; Broadcom Corporation, Irvine, CA; and Avago Technologies, Ltd., San Jose, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Si2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, Si2 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on September 28, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 16, 2015 (80 FR 70837).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13634 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AllSeen Alliance, Inc.

Notice is hereby given that, on May 9, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AllSeen Alliance, Inc. ("AllSeen Alliance") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microfactory, Inc. (FirstBuild), Louisville, KY; Smartlabs, Inc., Irvine, CA; M2Communication Inc., Hsinchu County, TAIWAN; MobilityLab LLC, Moscow, RUSSIA; Organic Response Pty Ltd. (Organic Response), Richmond, Victoria, AUSTRALIA; dog hunter LLC, Boston, MA; Shenzhen Fenglian Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shenzhen H&T Home Online Network Technology Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Blackloud, Inc., Irvine, CA; wot.io, New York, NY; iiNet Limited, Subiaco, Perth, AUSTRALIA; Universal Devices, Inc., Encino, CA; Trend Micro Incorporated, Taipei, TAIWAN; CoCo Communications, Seattle, WA; Dropbeats Technology Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; and Netbeast, Munchen, Deutschland, GERMANY, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AllSeen Alliance intends to file additional written notifications disclosing all changes in membership.

On January 29, 2014, AllSeen Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 2014 (79 FR 12223).

The last notification was filed with the Department on February 23, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2016 (81 FR 15123).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13627 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Electronics Manufacturing Initiative

Notice is hereby given that, on May 4, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), International Electronics Manufacturing Initiative ("iNEMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, St. Jude Medical, Sylmar, CA; CoreTech System Co., Ltd., Hsinchu, TAIWAN; INSIDIX, Seussins, FRANCE; Interflux Electronics nv, Gent-Desteldonk, Belgium; US Conec, Hickory, NC; Foresite, Inc., Kokomo, IN; SuZhou Eunow Co., Ltd., Suzhou, PEOPLE'S REPUBLIC OF CHINA; Takaoka Toko Co., Ltd. Shizuoka, JAPAN; University of Waterloo, Waterloo, Ontario, CANADA; and Shinko Electric America, Inc., San Jose, CA, have been added as parties to this venture.

Also, Hewlett Packard Enterprises, Palo Alto, CA; Griffith University, Nathan, AUSTRALIA; Cisco Systems Inc., San Jose, CA; Teradyne, Inc., North Reading, MA; and Speedline, Franklin, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and iNEMI intends to file additional written notifications disclosing all changes in membership.

On June 6, 1996, iNEMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 1996 (61 FR 33774).

The last notification was filed with the Department on April 23, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 27, 2015 (80 FR 30269).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13626 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—TeleManagement Forum

Notice is hereby given that, on April 25, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TeleManagement Forum ("The Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have been added as members to this venture: TWI, Cambridge, UNITED KINGDOM; DataProbity, Stuart, FL; Hangzhou Eastcom Software Technology Co., Ltd., Guangzhou, PEOPLE'S REPUBLIC OF CHINA; Multinational Alliance for Collaborative Cyber Situational Awareness (MACCSA), Shrewton, UNITED KINGDOM; MÜNCHNER KREIS, München, GERMANY; triPica, Paris, FRANCE; Teltech Communications LLC, Dallas, TX; AZR L.L.C., Tripoli, LIBYA; Pervazive, Bengaluru, INDIA; Vodacom (Pty) Ltd., Midrand, SOUTH AFRICA; Fornax ICT Kft., Budapest, HUNGARY; Pryv, Lausanne, SWITZERLAND; Knowesis Pte Ltd., Singapore, SINGAPORE; Cloud Best Practices Network, London, UNITED KINGDOM; Active Minds, Belfast, UNITED KINGDOM; bit2win, Rome, ITALY; Cardinality, Ealing, UNITED KINGDOM; Readiness IT Systems Integration, S.A., Matosinhos, PORTUGAL; Guangzhou Highjet Technology Co., Ltd., Guangzhou, PEOPLE'S REPUBLIC OF CHINA; DataMi, Chelmsford, MA; Ebistrategy Software (Shanghai) Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Elephant Talk Communications, New York, NY; Premavals, Noisy-le-Grand, FRANCE; Eir, Dublin, IRELAND; Coeos Assurances, Paris, FRANCE; SigScale Global Inc., Colombo, SRI LANKA; AVSystem, Kraków, POLAND; NetYCE, Amsterdam, NETHERLANDS; Hortonworks, Inc., Santa Clara, CANADA; Stream Technologies Ltd, Glasgow, UNITED KINGDOM; CRM.COM Software Ltd., Nicosia, CYPRUS; Elite Business, Tunis, TUNISIA; 3Consulting, Lagos, NIGERIA; VMware, Inc., Palo Alto, CA; Linkem Spa, Rome, ITALY; Zeotap GmbH, Berlin, GERMANY; Blueline, Antananarivo, MADAGASCAR; Sri Lanka Telecom PLC, Colombo, SRI LANKA; Innowave Technologies, Lisbon, PORTUGAL; Swiss Post Ltd, Berne, SWITZERLAND; Ooredoo Tunis, Tunis, TUNISIA; Indosat Ooredoo, Jakarta, INDONESIA; Wataniya Palestine, Al Bireh, PALESTINIAN TERRITORY; Ooredoo Qatar, Doha, QATAR; Ooredoo Oman, Muscat, OMAN; Ooredoo Maldives Pvt. Ltd., Hulhumale, MALDIVES; Ooredoo Myanmar, Jakarta, INDONESIA; Ooredoo Kuwait, Plot 1A, Sharq Area, KUWAIT; Ooredoo Algeria, Alger, ALGERIA; AsiaCell Communications LLC, Sulaimaniyah, IRAQ; Michi Creative City Designers Inc., Tokyo, JAPAN; ZAA Architects, Montréal, CANADA; Canoe Ventures, Englewood, CO; Dorado Software, Folsom, CA; Waterfront Toronto, Toronto, CANADA; and Carlo Ratti Associati, Torino, ITALY.

Also, the following members have changed their names: PT Affia Andal Jasa Bismatamma (RSM AAJ ASSOCIATES) to PT RSM Indonesia Konsultan (RSM Indonesia), Jakarta, INDONESIA; NTS New Technology Systems GmbH to NTS Retail, Wilhering, AUSTRIA; AS Eesti Telekom to Telia Eesti AS, Tallinn, ESTONIA; Fornax Informatika to Fornax ICT Kft., Budapest, HUNGARY; Prodapt to Prodapt North America, Inc., Tualatin, OR; Knowesis Technology to Knowesis Pte Ltd, Singapore, SINGAPORE; and Citizen Telecom Services Company L.L.C. d/b/a Frontier Communications to Citizen Telecom Services Company L.L.C., Rochester, NY.

In addition, the following members have withdrawn as parties to this venture: AetherPal, South Plainfield, NJ; Almadar Aljadid, Tripoli, LIBYA; Applied Network Solutions, Inc., Columbia, MD; ARTIN Solutions, Bratislava, SLOVAKIA; BAE Systems Applied Intelligence, London, UNITED KINGDOM; Bank of America, New York, NY; beCloud, Minsk, BELARUS; Bobbil, Cork, IRELAND; BrandedIPTV, Hong Kong, HONG–KONG CHINA; Bright Computing BV, Amsterdam, NETHERLANDS; Broadband Infraco (SOC) Ltd, Johannesburg, SOUTH AFRICA; BTC Networks, Riyadh, SAUDI ARABIA; Business-intelligence of Oriental Nations Corporation Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Calix, Inc., Petaluma, CA; Cignium Technologies, Fort Lee, NJ; Cleartech, Barueri, BRAZIL; Ernst & Young, S.A. Costa Rica, San José, COSTA RICA; Eyelbe Ltd., Malmesbury, UNITED KINGDOM; Factdelta, Swansea, UNITED KINGDOM; GENBAND, Frisco, TX; i2i Bilisim Ve Teknoloji Danismanlik Tic Ltd., Kocaeli, TURKEY; ICCE Systems, Cary, NC; iiNet Limited, Subiaco, AUSTRALIA; InfoCumulus, Zagreb, CROATIA; Infopact Netwerkdiensten B.V., Hoogvliet, NETHERLANDS; Innovise ESM Ltd., Slough, UNITED KINGDOM; Instituto Costarricense de Electricidad ICE, San Jose, COSTA RICA; Iprotel Limited, Reading, UNITED KINGDOM; Kaiser Permanente, Pleasanton, CA; Kwezi Software Solutions, Johannesburg, SOUTH AFRICA; Maksen Consulting, S.A., Lisbon, PORTUGAL; metaWEAVE, Centurion, SOUTH AFRICA; Mformation Software Technologies, Edison, NJ; Mobius Wireless Solutions Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; moreCom AS, Halden, NORWAY; Mozambique Cellular SARL (mcel), Maputo, MOZAMBIQUE; Neotel (Proprietary) Ltd., Johannesburg, SOUTH AFRICA; NETvisor, Budapest, HUNGARY; Neural Technologies, Petersfield, UNITED KINGDOM; Neurocom SA, Athens, GREECE; NISCERT Corporation, Toronto, CANADA; N-Pulse GmbH, Heppenheim, GERMANY; Ogilvy, London, UNITED KINGDOM; one2tribe Sp. z o.o., Michalowice, POLAND; Onesto Services Oy, Jyvaskyla, FINLAND; Openet, Dublin, IRELAND; ParStream, Redwood City, CA; Ranck Consulting, Chevy Chase, MD; Simply Execute, Uerikon, SWITZERLAND; Softera Oy, Helsinki, FINLAND; Svarog Technology Group Inc., Half Moon Bay, CA; Tarantula, Slough, UNITED KINGDOM; TE Data, Dokki, EGYPT; Telecom Egypt, Giza, EGYPT; Telefonica Global Technology SA, Buenos Aires, ARGENTINA; Vertek Corporation, Colchester, VT; Visa, San Francisco, CA; Vox Telecom, Waverley, SOUTH AFRICA; and Worldstream Systems & Services, Ebene Cybercity, MAURITIUS.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 29, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 9, 2016 (81 FR 12527).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13625 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on May 9, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dongguan Team Force Electronic Co., Ltd., Dongguan, PEOPLE'S REPUBLIC OF CHINA, has been added as a party to this venture.

Also, 3A Media Co. Ltd., Geumcheon-gu, Seoul, REPUBLIC OF KOREA; Apollo Electronics Group Limited, Kowloon Bay, Kowloon, HONG KONG–CHINA; Bestdisc Technology Corporation, Kee-Lung, TAIWAN; CMC Magnetics Corporation, Taipei, TAIWAN; CSR Technology, Inc., Sunnyville, CA; digiCon AG, Kornwestheim, GERMANY; Fuhrmeister Electronics Co., Ltd., Chiyoda-ku, Tokyo, JAPAN; Guangdong OPPO Mobile Telecommunications, Dongguan, PEOPLE'S REPUBLIC OF CHINA; Hitachi High-Technologies Taiwan Corporation, Taipei, TAIWAN; Malata Group (HK) Limited, North Point, Hong Kong, HONG KONG–CHINA; Nagravision SA., Cheseau-sur-Lausanne, SWITZERLAND; Quatius Limited TST East, Hong Kong, HONG KONG–CHINA; Shanghai United Optical Disc Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Starlight Video Limited, Hong Kong, HONG KONG–CHINA; Tamul Multimedia Co., Ltd., AnYang-City, REPUBLIC OF KOREA; The Video Duplicating Co. Ltd., Middlesex, UNITED KINGDOM; Yu Cha (Hong Kong) Electronics, Co., Ltd., Tsuen Wan N.T., Hong Kong, HONG KONG–CHINA; and Zhong Shan City Litai Electronic Industrial Co. Ltd., Zhongshan City, PEOPLE'S REPUBLIC OF CHINA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on August 21, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 28, 2015 (80 FR 58297).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13631 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Node.js Foundation

Notice is hereby given that, on April 26, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Node.js Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, New Relic, Inc., San Francisco, CA; Opbeat, Inc., San Francisco, CA; Sphinx Co. Ltd., Hanoi, VIETNAM; Google Inc., Mountain View, CA; and Cars.com, Chicago, IL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Node.js Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, Node.js Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on February 10, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 9, 2016 (81 FR 12524).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13628 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on April 28, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ELCOM, a.s., Ostrava-Pustkovec, CZECH REPUBLIC, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on

February 10, 2016. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 9, 2016 (81 FR 12526).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–13630 Filed 6–8–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended

AGENCY: Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 11, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1210-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974 (ERISA), as Amended information collection requirements codified in regulations 29 CFR 2520.102–2, 2520.102–3, 2520.104b–2, and 2520.104b3 that provide guidance on the content, frequency, and manner of certain disclosures the ERISA requires an employee benefit plan subject to the Act periodically to furnish plan participants and certain specified plan beneficiaries. A benefit plan uses summary plan descriptions, material modifications summaries, and material reductions summaries to make the disclosures. ERISA sections 102(b), 104(b)(1), and 109(c) authorize this information collection. *See* 29 U.S. C. 1022(b), 1024(b)(1), and 1029(c).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0039.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 23, 2016 (80 FR 72990).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Summary Plan Description Requirements Under the Employee Retirement Income Security Act of 1974, as Amended.

OMB Control Number: 1210–0039.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 2,981,000.

Total Estimated Number of Responses: 108,466,000.

Total Estimated Annual Time Burden: 279,000 hours.

Total Estimated Annual Other Costs Burden: $172,736,000.

Dated: June 3, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–13642 Filed 6–8–16; 8:45 am]

BILLING CODE 4510–29–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–151 and CP2016–191; Order No. 3349]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 225 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 13, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 225 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–151 and CP2016–191 to consider the Request pertaining to the proposed Priority Mail Contract 225 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 13, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–151 and CP2016–191 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 13, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–13675 Filed 6–8–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 225 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 3, 2016 (Request).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–150 and CP2016–190; Order No. 3348]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 224 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 13, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30–.35, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 224 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–150 and CP2016–190 to consider the Request pertaining to the proposed Priority Mail Contract 224 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 13, 2016. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie R. Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–150 and CP2016–190 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie R. Ward is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 13, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–13674 Filed 6–8–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 224 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 3, 2016 (Request).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* June 9, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 3, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 224 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–150, CP2016–190.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–13636 Filed 6–8–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* June 9, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 3, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 225 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–151, CP2016–191.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–13637 Filed 6–8–16; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Matching Program (Railroad Retirement Board—Office of Personnel Management)

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of a renewal of an existing computer-matching program that expires on July 1, 2016.

DATES: This matching program will become effective July 19, 2016. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met, with an expiration date of January 1, 2019.

SUMMARY: As required by the Privacy Act of 1974, as amended, the RRB is issuing public notice of its renewal of an ongoing computer-matching program with the Office of Personnel Management (OPM). The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRB of this information obtained from OPM by means of a computer match.

We will file a report of this computer-matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB).

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Martha P. Rico, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Grant, Chief Privacy Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone 312–751–4869 or email at *tim.grant@rrb.gov.*

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988, (Pub. L. 100–503), amended by the Privacy Act of 1974, (5 U.S.C. 552a) as amended, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** for all matching programs.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records contained in a Privacy Act System of Records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register;**

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments. The last published notice for this matching program was November 27, 2013 (78 FR 70971).

B. RRB Computer Matches Subject to the Privacy Act

We have taken appropriate action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Notice of Computer Matching Program, RRB With the Office of Personnel Management (OPM)

A. Name of Participating Agencies

OPM and RRB.

B. Purpose of the Matching Program

The purpose of the match is to enable the RRB to (1) identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB, and (2) receive timely and accurate Federal public pension benefit information for affected RRB annuitants.

C. Authority for Conducting the Match

Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act, as amended, 45 U.S.C. 231b(a)(1), 231c(a)(1) and 231c(f)(1) require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own non-covered earnings. We call this reduction a Public Service Pension (PSP) offset.

Section 224 of the Social Security Act, as amended, 42 U.S.C. 424a, provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). We call this a PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

D. Categories of Individuals Covered

Individuals receiving Federal public pensions or RRB annuities.

E. Categories of Records Covered

OPM will provide the RRB once a year via secure electronic file transfer, data extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. Normally on December of each year, OPM transmits to us approximately 2.5 million electronic records for matching. The records contain these data elements: Name, Social Security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of current gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against approximately the 1.2 million records in our files. For records that match, the RRB will extract the civil service payment information.

F. Systems of Records Covered

The Privacy Act System of Records designation is OPM/Central-1, (Civil Service Retirement and Insurance Records), Published in the **Federal Register** on June 7, 2011 (76 FR 32997). The RRB Privacy Act System of Records is RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System, published in the **Federal Register** on May 15, 2015 (80 FR 28018).

Dated: June 6, 2016.

By authority of the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2016–13643 Filed 6–8–16; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77989; File No. SR–MIAX–2016–13]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 3, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to offer a Technical Support Request Fee to both Members and Non-Members.

The Exchange has an infrastructure comprised of low latency and ultra-low latency proximity solutions in several offsite data center locales offering universal access to all Exchange services via a single common connection across a variety of high speed network interfaces.

The Exchange offers connectivity in and between its data center facilities and supports direct attachment of all network equipment or direct attached host systems of both Member and Non-Member users of the Exchange. Member and Non-Member users of the Exchange are strongly encouraged to establish connectivity to at least two data centers to minimize the possibility of service disruption.

The Exchange proposes to add new Section (5)(f) to the Fee Schedule to establish a Member and Non-Member Technical Support Request Fee. Specifically, the Exchange proposes to charge Members and Non-Members an hourly fee in the event that such Member or Non-Member requests the Exchange to use the Exchange's on-site data center personnel to provide technical support at any of the Exchange's data centers. The Exchange proposes to assess Members and Non-Members that request MIAX technical support at any of the MIAX data centers a fee of $200 per hour for such technical support.

The purpose of the proposed rule change is to make the Exchange's on-site data center personnel available, for a fee, to Members and Non-Members when assisting with troubleshooting that requires a physical on-site presence.

The proposed Technical Support Request fee is scheduled to become effective June 1, 2016.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Section 6(b)(4) of the Act [4] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.

The Exchange believes that the proposed new service is consistent with Section 6(b)(5) of the Act [5] in that it is fair, equitable and not unreasonably discriminatory, because it is available to all Members and Non-Members for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

same fee. Moreover, the proposed fee is reasonable because other exchanges charge for similar services at their data centers.[6]

Additionally, Members and Non-Members are not required to use the service but instead it is offered as a convenience to all Members and Non-Members. The proposed fee is reasonably designed because it will permit both Members and Non-Members to request the use of the Exchange's on-site data center personnel as technical support and as a convenience that is equally available to them.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed enhancement of services by the Exchange provided to its Members and others using its facilities will not have an impact on competition. In fact, MIAX's proposed technical support services at a Member or Non-Member's request will benefit all who use such services. As stated above, other exchanges charge for similar services at their data centers.[7] The Exchange's hourly rate for such services is within the range of prices for similar services offered by other exchanges, and therefore the Exchange believes that the proposed hourly rate for technical support does not impose a burden on competition.[8]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because the hourly rate is competitive with the rates offered by other exchanges for similar services.[9]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2016–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–13, and should be submitted on or beforeJune 30, 2016 June 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13612 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Chicago Board Options Exchange, Incorporated ("CBOE") Fees Schedule, p. 9. CBOE charges $100 per hour for technical support outside normal hours and for after-hours technician services with a four hour minimum required. *See also* NYSE Amex Options ("Amex") Fee Schedule, Section V(B) and NYSE Arca Options ("Arca") Fees and Charges, p. 18. Both Amex and Arca charge $100 per half hour for "Hot Hands Services," which consists of allowing Amex and Arca Users to use Amex or Arca on-site data center personnel to maintain User equipment, support network troubleshooting, rack and stack, power recycling and install and document cable. *See also* NASDAQ PHLX LLC ("Phlx") Pricing Schedule, Section X(d). Phlx charges $150 per hour for "Remote Hands Service" and $250 per hour plus materials if necessary for "Power Consulting Services."

[7] *Id.*

[8] *See id.*

[9] *See supra* note 6.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77988; File No. SR–FICC–2016–001]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change Relating to the GCF Repo® Service

June 3, 2016.

On April 19, 2016, the Fixed Income Clearing Corporation ("FICC" or the "Corporation") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–FICC–2016–001 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on April 27, 2016.[3] The Commission received no comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–77675 (April 21, 2016), 81 FR 24922 (April 27, 2016) (SR–FICC–2016–001).

I. Description of the Proposed Rule Change

FICC seeks the Commission's approval to amend the Government Securities Division ("GSD") Rulebook[4] ("GSD Rules") in order to: (1) Permanently adopt the pilot program (the "2015 Pilot Program")[5] that is currently in effect for the GCF Repo®[6] service and that is scheduled to expire on June 22, 2016; (2) add clarifying rule changes regarding a process that is currently in effect with respect to the GCF Repo service and that FICC refers to as the "net-of-net" settlement process; and (3) make technical changes to the GSD Rules. The proposed rule changes consist of changes to GSD Rule 1, GSD Rule 20, and the *Schedule of GCF Timeframes*.

A. The GCF Repo Service

The GCF Repo service allows dealer members of FICC's Government Services Division to trade general collateral finance repos ("GCF Repos")[7] throughout the day without requiring intraday, trade-for-trade settlement on a delivery-versus-payment[8] basis. The service allows dealers to trade GCF Repos, based on rate and term, with inter-dealer broker netting members on a blind basis. Standardized, generic CUSIP numbers have been established exclusively for GCF Repo processing, and are used to specify the type of underlying security that is eligible to serve as collateral for GCF Repos. Only Fedwire eligible, book-entry securities may serve as collateral for GCF Repos. Acceptable collateral for GCF Repos include most U.S. Treasury securities, non-mortgage-backed federal agency securities, fixed and adjustable rate mortgage-backed securities, Treasury Inflation-Protected Securities and separate trading of registered interest and principal securities.[9]

B. Background of the Pilot Program

Because FICC's GCF Repo service operates as a tri-party mechanism, FICC states that it was asked to alter the service to align it with the recommendations of the Tri-Party Repo Infrastructure Reform Task Force ("TPR").[10] FICC consequently developed a pilot program ("2011 Pilot Program") to address the TPR's recommendations,[11] and sought Commission approval to institute that program.[12] The Commission approved the 2011 Pilot Program on August 29, 2011 for a period of one year.[13] When the expiration date for the 2011 Pilot Program approached, FICC sought Commission approval to implement the 2012 Pilot Program, which continued the 2011 Pilot Program in some aspects, and modified it in others.[14] The Commission approved the 2012 Pilot Program, as well as subsequent one-year extensions of the pilot program in 2013, 2014, and 2015 (respectively, the "2013 Pilot Program," "2014 Pilot Program," and "2015 Pilot Program").[15] The 2015 Pilot Program, as well its predecessors, the 2014, 2013, and 2012 Pilot Programs, have been the subject of a number of notices and approval orders published by the Commission.[16] These notices and orders provide extensive detail on both the GCF Repo service and the pilot program itself.

In proposed rule change SR–FICC–2016–001, FICC seeks the Commission's approval to permanently adopt the GSD Rules associated with the 2015 Pilot Program, which expires on June 22, 2016. In addition, FICC also seeks to add a clarification to the GSD Rules to reflect the net-of-net settlement process in the GCF Repo service. According to FICC, the net-of-net settlement clarification is also a result of Tri-Party Reform and reflects current practice at the GSD. FICC seeks to permanently adopt these changes rather than continually file annual extensions of the pilot program. The rule changes associated with the pilot have been in place since 2011 with certain additional modifications made in 2012, and FICC's members are accustomed to them. FICC states that this is also the case regarding the net-of-net settlement changes, which came into effect when the clearing banks implemented this process in 2014 and 2015. According to FICC, changes to the GSD Rules regarding the net-of-net settlement process require no operational changes on the part of FICC. However, FICC seeks to update the GSD Rules in an effort to ensure that the GSD Rules reflect the current net-of-net settlement process. According to FICC, any future changes that arise as a result of Tri-Party Reform will constitute stand-alone rule changes, and are not expected to affect the rule changes covered in this present filing. Finally, in addition to the above, FICC seeks to amend the GSD Rules to include non-substantive, technical changes for clarity.

[4] The GSD Rulebook is available at DTCC's Web site, *www.dtcc.com/legal/rules-and-procedures.aspx*.

[5] Securities Exchange Act Release No. 34–75258 (June 22, 2015), 80 FR 36879 (June 26, 2015) (SR–FICC–2015–002).

[6] GCF Repo is a registered trademark of FICC/DTCC.

[7] A GCF Repo is one in which the lender of funds is willing to accept any of a class of U.S. Treasuries, U.S. government agency securities, and certain mortgage-backed securities as collateral for the repurchase obligation. This is in contrast to a specific collateral repo.

[8] Delivery-versus-payment is a settlement procedure in which the buyer's cash payment for the securities it has purchased is due at the time the securities are delivered.

[9] *See* Securities Exchange Act Release No. 34–58696 (September 30, 2008), 73 FR 58698, 58699 (October 7, 2008) (SR–FICC–2008–04).

[10] The TPR was an industry group formed and sponsored in 2009 by the Federal Reserve Bank of New York to address weaknesses that emerged in the tri-party repo market during the financial crisis. The TPR's chief goal was to develop recommendations to address the risks presented by the reversal of tri-party repo transactions, and to develop procedures to ensure that tri-party repos would be collateralized throughout the day, rather than at the end of the day.

[11] The TPR issued preliminary and final reports setting forth its recommendations for the reform of the tri-party repo market. *See* Tri-Party Repo Infrastructure Reform Task Force Report of May 17, 2000, *available at http://www.newyorkfed.org/prc/files/report_100517.pdf; see also* Tri-Party Repo Infrastructure Reform Task Force Final Report (February 15, 2012), *available at http://www.newyorkfed.org/tripartyrepo/pdf/report_120215.pdf.*

[12] Securities Exchange Act Release No. 34–64955 (July 25, 2011), 76 FR 45638 (July 29, 2011) (SR–FICC–2011–05).

[13] Securities Exchange Act Release No. 34–65213 (August 29, 2011), 76 FR 54824 (September 2, 2011) (SR–FICC–2011–05).

[14] The 2012 Pilot Program implemented several changes which, although described in the rule filing that accompanied the 2011 Pilot Program, were not implemented during the 2011 Pilot Program's period of effectiveness. They include: (i) Moving the time for unwinding repos from 7:30 a.m. to 3:30 p.m.; (ii) moving the net-free-equity process from morning to the evening; and (iii) establishing rules for intraday GCF Repo collateral substitutions. *See* Securities Exchange Act Release No. 34–67227 (June 20, 2012), 77 FR 38108 (June 26, 2012) (SR–FICC–2012–05).

[15] Securities Exchange Release No. 34–67621 (August 8, 2012), 77 FR 48572 (August 14, 2012) (SR–FICC–2012–05); Securities Exchange Release No. 34–70068 (July 30, 2013), 78 FR 47453 (August 5, 2013) (SR–FICC–2013–06); Securities Exchange Act Release No. 34–72457 (June 24, 2014), 79 FR 36856 (June 30, 2014) (SR–FICC–2014–02); and Securities Exchange Act Release No. 34–75258 (June 22, 2015), 80 FR 36879 (June 26, 2015) (SR–FICC–2015–002).

[16] *See* Securities Exchange Act Release Nos. 34–67227 (June 20, 2012), 77 FR 38108 (June 26, 2012) (SR–FICC–2012–05); 34–67621 (August 8, 2012), 77 FR 48572 (August 14, 2012) (SR–FICC–2012–05); 34–69774 (June 17, 2013), 78 FR 37631 (June 21, 2013) (SR–FICC–2013–06); 34–70068 (July 30, 2013), 78 FR 47453 (August 5, 2013) (SR–FICC–2013–06); 34–72184 (May 19, 2014), 79 FR 29828 (May 23, 2014) (SR–FICC–2014–02); 34–72457 (June 24, 2014), 79 FR 36856 (June 30, 2014) (SR–FICC–2014–02); 34–74973 (May 15, 2015), 80 FR 29352 (May 21, 2015) (SR–FICC–2015–002); and 34–75258 (June 22, 2015), 80 FR 36879 (June 26, 2015) (SR–FICC–2015–002).

II. Discussion

Section 19(b)(2)(C) of the Act[17] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[18] requires, among other things, that the rules of a clearing agency be designed to achieve several goals, including (i) promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, (ii) assuring the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible, and (iii) protecting investors and the public interest.

The Commission finds that the proposed rule change is consistent with Section 17A of the Act[19] and the rules thereunder applicable to FICC. The proposal will permanently adopt the rules in the 2015 Pilot Program, which were intended to advance the TPR's Tri-Party Reform recommendations by moving the morning unwind process to the afternoon to ensure that such transactions are collateralized all day and, therefore, limiting the amount of intraday credit that is extended by clearing banks during the day. Permanently adopting these rules will serve to minimize systemic risk and avoid the need for seeking future approvals of renewing the 2015 Pilot Program annually, thereby bringing certainty to market participants as to FICC's rules implementing the Tri-Party Reform recommendations. Accordingly, the permanent adoption of the 2015 Pilot Program rules should help to protect investors and promote the public interest, consistent with Section 17A(b)(3)(F) of the Act.

The proposal also eliminates obsolete language from the GSD Rules by codifying the net-of-net settlement process in the GSD Rules, and makes non-substantive clarifying corrections to the GSD Rules. Accordingly, the changes related to the net-of-net settlement process and the clarifying changes to the GSD Rules should provide for a more well-founded and transparent legal framework for FICC's activities, consistent with Act Rule 17Ad–22(d)(1).[20]

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 15 U.S.C. 78q–1.

[20] 17 CFR 240.17Ad–22(d)(1).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly those set forth in Section 17A,[21] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–FICC–2016–001) be, and hereby is, *approved*.[23]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13611 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78q–1.

[22] 15 U.S.C. 78s(b)(2).

[23] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77992; File No. SR–NYSEArca–2016–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Virtus Japan Alpha ETF Under NYSE Arca Equities Rule 8.600

June 3, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 24, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"). The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[4] Virtus Japan Alpha ETF ("Fund").[5]

The Shares will be offered by Virtus ETF Trust II ("Trust"), which is registered with the Commission as an open-end management investment company.[6] Virtus ETF Advisers LLC will serve as the investment adviser to the Fund ("Adviser"). Euclid Advisors LLC will serve as the Fund's sub-adviser ("Sub-Adviser"). ETF Distributors LLC ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. Virtus ETF Solutions LLC will serve as the administrator for the Fund. The Bank of New York Mellon ("Transfer Agent") will serve as accounting services administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered broker-dealers but are affiliated with a broker-dealer and each has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments

According to the Registration Statement, under normal circumstances,[8] the Fund will invest not less than 80% of its assets in the common stocks of certain Japanese companies listed in the JPX-Nikkei 400 Total Return Index ("Index"), a free-float adjusted market capitalization-weighted equity index composed of 400 Tokyo Stock Exchange-listed securities, and the financial instruments listed below.

According to the Registration Statement, the Fund will be actively-managed through the selection, at any given time, of approximately 80–100 common stocks from the Index based on quantitative and qualitative factors, including an assessment of the following characteristics: Cash flow return on invested capital; earnings quality and momentum; operational quality; corporate governance policies; and capital stewardship. The Fund may invest in such Index components by directly purchasing shares of common stock or investing in American Depositary Receipts ("ADRs")[9] on the common stock of such Index components. Securities held by the Fund may be underweighted or overweighted relative to their positions in the Index.

Although the Fund will focus on investment in securities in the Index as described above, the Fund may also invest in common stocks of other Japanese companies with characteristics similar to those listed on the Index, as determined by the Sub-Adviser. With respect to such common stocks, the Fund will only invest in securities that are listed on the Tokyo Stock Exchange[10] and that have a market capitalization of $250,000,000 U.S. dollars or greater. The Fund may also invest in ADRs on such common stocks.

Positions may be reduced or removed when the Sub-Adviser determines that a security has become overweighted within the Fund's portfolio, that the security's prospects have adversely changed, that the Fund should raise funds for new or other investments or that there are more attractive opportunities.

Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its assets in common stock of Japanese companies listed in the Index, common stock of certain other Japanese companies and ADRs, as described above, the Fund will invest its remaining assets in the securities and financial instruments described below.

The Fund may invest in securities index futures contracts and foreign currency futures contracts.[11] According to the Registration Statement, in general, the Fund will not purchase or sell futures contracts unless either (i) the futures contracts are purchased for "bona fida hedging" purposes (as defined under applicable Commodity Futures Trading Commission regulations) or (ii) if purchased for other purposes, the sum of the amounts of initial margin deposits and premiums required to establish such positions on

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing and trading of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63974 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF); 71540 (February 12, 2014), 79 FR 9515 (February 19, 2014) (SR–NYSEArca–2013–138) (order approving listing and trading of shares of the iShares Enhanced International Large-Cap ETF and iShares Enhanced International Small-Cap ETF).

[6] The Trust is registered under the 1940 Act. On February 26, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–206600 and 811–23078) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30825 (December 11, 2013) (File No. 812–14212).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[9] ADRs are bought and sold in the United States and are typically issued by a U.S. bank or trust company which evidence ownership of underlying securities by a foreign corporation. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed.

[10] Japan Exchange Regulation ("JPX–R") is a member of the Intermarket Surveillance Group and information relating to transactions in Tokyo Stock Exchange listed securities is available through JPX–R.

[11] In instances involving the purchase of futures contracts, the Fund will deposit in a segregated account with its custodian an amount of cash, cash equivalents and/or appropriate securities equal to the cost of such futures contracts, to the extent that such deposits are required under the 1940 Act.

the Fund's existing futures would not exceed 5% of the liquidation value of the Fund's total assets.

The Fund may also invest in forward contracts and non-deliverable forward ("NDF") contracts on the foreign currency spot market.

The Fund may invest in when-issued and forward commitment securities, which means delivery and payment take place a number of days after the date of the commitment to purchase, if the Fund holds sufficient liquid assets to meet the purchase price.

The Fund may invest in the following equity securities (other than non-exchange traded investment company securities): Common stocks traded on U.S. or Japanese securities exchanges (other than the Tokyo Stock Exchange); common stocks traded on the over-the-counter market; U.S. and foreign exchange-traded preferred stocks; U.S. and foreign exchange-traded convertible preferred stocks; U.S. and foreign exchange-traded convertible bonds; U.S. and foreign exchange-traded warrants; and U.S. and foreign exchange-traded rights. The Fund will not invest in ADRs on any of these equity securities.

In addition, the Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,[12] other open-end investment companies, including other exchange-traded funds ("ETFs").[13]

The Fund may invest in Currency Trust Shares.[14]

The Fund may invest in real estate investment trusts ("REITs") traded on U.S. exchanges and Japanese exchanges.

The Fund may enter into short sales of securities. The Fund may also enter into short sales "against the box," *i.e.*, when the Fund sells a security short while owning a securities equivalent in kind and amount to the securities sold short (or securities convertible or exchangeable into such securities) and will hold such securities while the short sale is outstanding.

The Fund may invest in the following money market instruments: U.S. Government obligations; corporate debt obligations[15] (including, without limitation, those subject to repurchase agreements); banker's acceptances (credit instruments evidencing the obligation of a bank to pay a draft drawn on it by a customer); certificates of deposit of domestic branches of banks (certificates representing the obligation of a bank to repay funds deposited with it for a specified period of time); commercial paper[16] (unsecured, short-term debt obligation of a bank, corporation or other borrower); and master notes (unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest).

The Fund may invest assets in shares of money market funds.

Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.[17]

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code of 1986.[18]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets, which are investments that cannot be sold or disposed of in the ordinary course of business within seven days at approximately the prices at which they are valued. Under the supervision of the Board of Trustees of the Trust ("Board"), the Fund will determine the liquidity of the Fund's investments, which will be monitored by the Board pursuant to reports. If through a change in values, net assets or other circumstances, the Fund were in a position where more than 15% of its net assets were invested in illiquid assets, it would seek to take appropriate steps to protect liquidity.

Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[19]

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Index.

Net Asset Value

According to the Registration Statement, a Share's net asset value ("NAV") will be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (normally at 4:00 p.m., Eastern Time ("E.T.")) on each day that the NYSE is open for trading. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The NAV of the Shares for the Fund is equal to the Fund's total assets minus the Fund's total liabilities divided by the total number of Shares outstanding. Interest and investment income on the Fund's assets accrue daily and are included in the Fund's total assets. Expenses and fees (including investment advisory, management, administration and distribution fees, if any) accrue daily and are included in the Fund's total liabilities. The NAV that is published is rounded to the nearest cent; however, for purposes of determining the price of Creation Units, the NAV is calculated to five decimal places.

The pricing and valuation of portfolio securities is determined in good faith in accordance with procedures approved by, and under the direction of, the Board. In determining the value of the Fund's assets, equity securities (other than non-exchange traded investment company securities), including shares of preferred stocks, convertible preferred stocks, warrants, rights, ETFs, REITs, Currency Trust Shares and sponsored and unsponsored ADRs, generally will be valued at market value using quotations from the primary market on which they are traded. The Fund normally will use third party pricing services to obtain market quotations.

Money market instruments and cash equivalents will be valued on the basis of broker quotes or valuations provided by a third party pricing service, which in determining value utilizes information regarding recent sales, market transactions in comparable securities, quotations from dealers and various relationships between securities.

Futures contracts will generally be valued at the settlement price of the relevant exchange.

Investments in other open end investment companies (other than ETFs) that are registered under the 1940 Act, including money market funds, will be valued based upon the NAVs reported by such registered open end investment companies. The prospectuses for these companies explain the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

NDFs and foreign forward currency contracts will be valued intraday using market quotes, or another proxy as determined to be appropriate by a third party market data provider.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV calculation. In addition, the Trust may fair value foreign equity portfolio securities each day the Trust calculates the Fund's NAV. Pursuant to policies adopted by the Board, the Adviser will consult with Bank of New York Mellon and the Sub-Adviser on a regular basis regarding the need for fair value pricing. The Fund's policies regarding fair value pricing are intended to result in a calculation of the Fund's NAV that fairly reflects portfolio security values as of the time of pricing. A portfolio security's "fair value" price may differ from the price next available for that portfolio security using the Fund's normal pricing procedures, and the fair value price may differ substantially from the price at which the security may ultimately be traded or sold. The Board will monitor and evaluate the Fund's use of fair value pricing, and will periodically review the results of any fair valuation under the Trust's policies.

Creation and Redemption of Shares

According to the Registration Statement, Shares of the Fund will be "created" at NAV by certain large institutions only in block-size "Creation Units" of 50,000 Shares or multiples thereof. The size of a Creation Unit is subject to change. Only an "Authorized Participant" may create or redeem Creation Units directly with the Fund. Each Authorized Participant will enter into an authorized participant agreement with the Trust, Distributor and Transfer Agent ("Participant Agreement"). An Authorized Participant must either be (i) a broker-dealer or other participant ("Participating Party") in the clearing process through the Continuous Net Settlement System ("Clearing Process") of the National Securities Clearing Corporation ("NSCC") or a clearing agency that is registered with the Commission or (ii) a participant of the Depository Trust Company ("DTC Participant").

A creation transaction generally takes place when an Authorized Participant deposits into the Fund a basket of equity securities included in the Fund's portfolio ("Deposit Securities") and a specified cash payment ("Cash Component").

Similarly, Shares can be redeemed only in Creation Units, generally in exchange for Deposit Securities and a Cash Component.

The prices at which creations and redemptions occur are based on the next calculation of NAV after a creation or redemption order is received in an acceptable form under the Participant Agreement.

The consideration for purchase of Creation Units generally will consist of an in-kind deposit of Deposit Securities for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a Cash Component (calculated as described in this section below). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

According to the Registration Statement, the function of the Cash Component will be to compensate for any differences between the NAV per Creation Unit and the market value of the Deposit Securities. The Cash Component would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount and the Authorized Participant will deliver the Cash Component. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount, and the Authorized Participant will be entitled to receive cash from the Fund in an amount equal to the Cash Component.

The Fund, through NSCC, will make available on each day on which the NYSE is open for business ("Business Day"), immediately prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. The Fund, through NSCC, will also make available on each Business Day the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of the Fund.

According to the Registration Statement, the identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund may change as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Adviser with a view to the investment objective of the Fund. In addition, the Trust

[12] 15 U.S.C. 80a–12(d)(1).

[13] For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse ETFs or in leveraged (*e.g.*, 2X, -2X, 3X or -3X) ETFs.

[14] Currency Trust Shares are securities such as those described in NYSE Arca Equities Rule 8.202.

[15] The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least $100,000,000 par amount outstanding in developed countries or at least $200,000,000 par amount outstanding in emerging market countries.

[16] According to the Registration Statement, the Fund will directly invest in commercial paper only if such commercial paper is rated in one of the two highest rating categories as rated by a major credit agency or, if unrated, will be of comparable quality as determined by the Sub-Adviser.

[17] Cash equivalents are short-term instruments with maturities of less than 3 months. Short-term instruments shall include the following: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits; (vi) commercial paper; and (vii)money market funds.

[18] 26 U.S.C. 851.

[19] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

reserves the right to permit or require the substitution of an amount of cash, *i.e.*, a "cash in lieu" amount, to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, that may not be eligible for transfer through the Clearing Process or that may not be eligible for trading by an Authorized Participant or the investor for which it is acting.

All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be received by the Distributor no later than 3:00 p.m., E.T., on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a Business Day and only through a Participating Party or DTC Participant who has executed a Participant Agreement.

With respect to the Fund, the Trust, through NSCC, will make available immediately prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each Business Day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

The redemption proceeds for a Creation Unit will generally consist of Deposit Securities, as announced by the Trust on the Business Day of the request for a redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after receipt of the request, and the value of the Deposit Securities, less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its sole discretion exercise its option to redeem such Shares in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.[20] The Fund may also, in its sole discretion, upon request of the shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the Deposit Securities but does not differ in NAV.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund: (i) For any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

Availability of Information

The Fund's Web site (*www.virtus.com*), which will be publicly available prior to the public offering of Shares, will include quantitative information on a per-Share basis updated on a daily basis, including, for the Fund (i) the prior Business Day's NAV and mid-point of the bid-ask spread at the time of calculation of such NAV ("Bid-Ask Price"),[21] and a calculation of the premium and discount of the Bid-Ask Price against the NAV, and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's Web site the Disclosed Portfolio for the Fund (as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis of the Fund's calculation of the NAV on that Business Day.

On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket will represent one Creation Unit of the Fund.

In order to provide additional information regarding the indicative value of Shares of the Fund, one or more market data vendors will disseminate every 15 seconds an updated Indicative Intra-Day Value ("IIV") for the Fund as calculated by an information provider or market data vendor.

The Fund's IIV will be calculated based on the current market value of the Fund's portfolio holdings that will form the basis of the Fund's calculation of NAV at the end of the Business Day as disclosed on the Fund's Web site prior to the Business Day's commencement of trading.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and the Trust's Form N–CSR and Form N–Q, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–Q may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. With respect to U.S. exchange-listed equity securities, the intra-day, closing and settlement prices of common stocks and exchange-traded equity securities (including shares of preferred stocks, convertible preferred stocks, warrants, rights, ETFs, REITs, Currency Trust Shares and ADRs) will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. With respect to non-U.S. exchange-listed equity securities, intra-day, closing and settlement prices of common stocks and other equity securities (including REITs traded on Japanese exchanges, preferred stocks, convertible preferred stocks, warrants and rights), will be available from the foreign exchanges on which such securities trade as well as from major market data vendors. Intra-day and closing price information relating to securities regularly traded in an over-the-counter market will be available from major market data vendors. Price information from brokers and dealers or pricing services will be available for money market instruments, money market funds, cash equivalents, forwards and NDFs held by the Fund. Quotation and last sale information for futures will be available from the exchange on which they are listed. Price information regarding investment company securities (other than exchange-traded investment company securities) will be available from the applicable fund.

In addition, the IIV,[22] which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors.[23] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. The IIV should not be viewed as a "real-time" update of the NAV per Share of the Fund, which will be calculated once per day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[24] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange from 4:00 a.m. to 8:00 p.m., E.T., in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3[25] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[26] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").[27] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

[20] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

[21] The Bid-Ask Price of Shares of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid-Ask Prices will be retained by the Fund and its service providers.

[22] The IIV calculation will be an estimate of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The IIV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IIV and the market price of the Shares may occur. This should not be viewed as a "real-time" update of the NAV per Share of the Fund, which will be calculated only once a day.

[23] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

[24] *See* NYSE Arca Equities Rule 7.12.

[25] 17 CFR 240.10A–3.

[26] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[27] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts shall consist of futures contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

All statements and representations made in this filing regarding (i) the description of the portfolio, (ii) limitations on portfolio holdings or reference assets or (iii) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Funds [sic] are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (i) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (iv) how information regarding the IIV and the Disclosed Portfolio is disseminated; (v) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T., each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[28] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser has implemented a "fire wall" with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The ETFs held by the Fund will be traded on U.S. national securities exchanges and will be subject to the rules of such exchanges, as approved by the Commission. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. These criteria are similar to certain "generic" listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B), which relate to criteria applicable to an index or portfolio of U.S. and non-U.S. stocks underlying a series of Investment Company Units to be listed and traded on the Exchange pursuant to Rule 19b–4(e) under the Act. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund will include additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an [sic] Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The intra-day, closing and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an actively-managed exchange-traded product that will principally hold non-U.S. equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–79, and should be submitted on or before June 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13615 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77990; File No. SR–NSCC–2016–001]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Remove From the DTCC Limit Monitoring Tool the 50% Early Warning Limit Alert and Make Technical Revisions to the Rules

June 3, 2016.

On April 18, 2016, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–NSCC–2016–001 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to amend NSCC's Rules and Procedures ("Rules")[3] in order to (i) remove from the DTCC Limit Monitoring tool the alert that is sent to Members when trading activity in any of their Risk Entities reaches 50% of the pre-set trading limits for that Risk Entity and (ii) to make related technical changes and corrections to the Rules, as more fully described below. The proposed rule change was published for comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *Available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.* Terms not defined herein are defined in the Rules.

in the **Federal Register** on May 2, 2016.[4] The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposed Rule Change

The following is a description of the proposed rule change, as provided by NSCC:

Reasons for Adopting the Proposed Rule Change. NSCC provides its Members with a risk management tool called DTCC Limit Monitoring, for which certain types of Members are required to register.[5] DTCC Limit Monitoring enables Members that use the tool to monitor post-trade activity and to be notified when pre-set trading limits are reached. To use the tool, Members must (1) define one or more "Risk Entities," which may include (i) the trading activity of a single trading desk within the firm; (ii) for Members that clear trades for other firms, *i.e.*, their correspondents, the trading activity of a correspondent firm; (iii) for Members acting as a Special Representative or a QSR, as such terms are defined in the Rules,[6] the trading activity of a firm with which it has a clearing relationship; (iv) the trading activity of a single clearing number within the Member's NSCC account structure; or (v) all trading activity of the Member submitted to NSCC for clearing; and (2) set a trading limit, at a net notional value, for each Risk Entity. DTCC Limit Monitoring then sets early warning limits at 50%, 75%, and 90% of those trading limits.[7] Members receive alerts when trading activity for their Risk Entities reaches each of these early warning limits, as well as the pre-set trading limits.

Since the implementation of DTCC Limit Monitoring in 2014, NSCC has periodically met with a working group of its Members to discuss the functioning of the tool and to confirm it provides Members with effective post-trade surveillance as intended. In response to Member feedback provided during these discussions, NSCC has proposed to remove the 50% early warning alert for the reasons described below.

Additionally, NSCC has proposed to make technical revisions to Procedure XVII (DTCC Limit Monitoring Procedure) primarily to revise the verb tense and add clarity regarding use of the tool.

Issues the Proposed Rule Change Is Intended to Address. The proposed rule change will address concerns that (1) the 50% early warning alert is set too low and, thus, may not provide Members with useful information for purposes of effective post-trade monitoring; (2) the frequency of the 50% early warning alert could have a negative impact on Member responsiveness to more critical alerts; and (3) the verb tense and certain other language in the Rule may be unclear and/or technically inaccurate.

Manner in which the Proposed Rule Change Will Operate to Resolve the Issues. The proposed rule change will remove the 50% early warning alert from DTCC Limit Monitoring. DTCC Limit Monitoring will retain the 75% and 90% early warning alerts, which continue to provide Members with valuable notice of changes in their post-trade activity for purposes of effective risk management.

Additionally, the proposed rule change will make certain technical changes that will clarify the Rule, primarily by updating the verb tense from future tense to present tense to reflect the present applicability of the Rule and by making certain other technical clarifications to language used in the Rule.

Manner in which the Proposed Rule Change Will Affect Various Persons. Members that use DTCC Limit Monitoring will no longer receive the 50% early warning alert, but they will continue to receive alerts when their trading activity in each Risk Entity reaches 75% and 90% of their pre-set trading limits. No other changes are proposed with respect to the functioning of DTCC Limit Monitoring.

The proposed technical changes are not anticipated to have any effect on Members that use DTCC Limit Monitoring.

Significant Problems Known to the Self-Regulatory Organization that Persons Affected Are Likely to Have in Complying with the Proposed Rule Change. Members that use DTCC Limit Monitoring will not have to take any action as a result of the proposed rule change, and NSCC is not aware of any problems that Members will have in continuing to comply with the Rules[8] that address DTCC Limit Monitoring after the implementation of the proposed rule change.

As stated above, the proposed technical changes are not anticipated to have any effect on Members that use DTCC Limit Monitoring.

Description of the Proposed Rule Change. In order to implement this proposed rule change, NSCC will amend Section 4 of Procedure XVII (DTCC Limit Monitoring Procedure) of the Rules to remove reference to the 50% early warning alert and to make certain technical clarifications to language used in the Rule, primarily by updating the verb tense used therein. No other changes to the Rules are contemplated by this proposed rule change.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[9] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. The Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,[10] as described in detail below.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.[11] As described above, the 50% early warning alert may not provide Members with information that is useful for purposes of post-trade monitoring, but, rather, may distract Members from such information. By removing the 50% alert, a distraction is removed, thus increasing the effectiveness of the DTCC Limit Monitoring tool for Members to monitor their post-trade activity. Therefore, the proposed rule change will enhance Members' ability to manage risks from their trades, facilitating the protection of investors and the public interest from such risks.

As the proposed rule change pertains to technical changes to the Rules, the Commission finds the technical changes also consistent with Section 17A(b)(3)(F) of the Act[12] because technical updates to the Rules to make them more clear, consistent, and current for Members that rely on the Rules supports the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2016–001 be, and hereby is, *approved*.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13613 Filed 6–8–16; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 77709 (April 26, 2016), 81 FR 26274 (May 2, 2016) (SR–NSCC–2016–001).

[5] Rule 54 (DTCC Limit Monitoring) and Procedure XVII (DTCC Limit Monitoring), *supra* note 3; *see* Securities Exchange Act Release No. 71637 (February 28, 2014), 79 FR 12708 (March 6, 2014) (SR–NSCC–2013–12).

[6] Rule 7 (Comparison and Trade Recording Operation) and Procedure IV (Special Representative Service), *supra* note 3.

[7] Rule 54 (DTCC Limit Monitoring) and Procedure XVII (DTCC Limit Monitoring, *supra* note 3.

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2)(C).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] *Id.*

[12] *Id.*

[13] 15 U.S.C. 78q–1.

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE., Washington, DC 20549–2736.

Extension:

Notice of Exempt Preliminary Roll-Up Communication, SEC File No. 270–396, OMB Control No. 3235–0452.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Exchange Act Rule 14a–6(n) (17 CFR 240.14a–6(n)) requires any person that engages in a proxy solicitation subject to Exchange Act Rule 14a–2(b)(4) [(17 CFR 240.14a–2(b)(4))] to file a Notice of Exempt Preliminary Roll-Up Communication ("Notice") [(17 CFR 240.14a–104)] with the Commission. The Notice provides information regarding ownership interest and any potential conflicts of interest to be included in statements submitted by or on behalf of a person engaging in the solicitation. The Notice takes approximately 0.25 hours per response and is filed by approximately 4 respondents for a total of one annual burden hour (0.25 hours per response × 4 response).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 3, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13617 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form S–8; SEC File No. 270–66, OMB Control No. 3235–0066.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–8 (17 CFR 239.16b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) is the primary registration statement used by eligible registrants to register securities to be issued in connection with an employee benefit plan. We estimate that Form S–8 takes approximately 24 hours per response to prepare and is filed by approximately 2,140 respondents. In addition, we estimate that 50% of the preparation time (12 hours) is completed in-house by the filer for a total annual reporting burden of 25,680 (12 hours per response × 2,140 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 3, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13616 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 155; SEC File No. 270–492, OMB Control No. 3235–0549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 155 (17 CFR 230.155) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides safe harbors for a registered offering of securities following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. In connection with a registered offering following an abandoned private offering, Rule 155 requires an issuer to include in any prospectus filed as a part of a registration statement disclosure regarding the abandoned the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning the withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. We estimate Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents annually.

We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the filer for a total annual reporting burden of 1,200 hours (2 hours per response × 600 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 3, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–13618 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77991; File No. SR–DTC–2016–003]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Pursuant to Which It Would Impose Deposit Chills and Global Locks and Provide Fair Procedures to Issuers

June 3, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(2)[3] of the Act thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate of DTC (the "Rules") in order to add a Rule which establishes: (i) The circumstances under which DTC would impose and release a restriction on Deposits of an Eligible Security (a "Deposit Chill") or on book-entry services for an Eligible Security (a "Global Lock"); and (ii) the fair procedures for notice and an opportunity for the issuer of the Eligible Security (the "Issuer") to challenge the Deposit Chill or Global Lock (each, a "Restriction"), as described below.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(2).

[4] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, available at *http://www.dtcc.com/legal/rules-and-procedures.aspx.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal would add new Rule 33 (Deposit Chills and Global Locks) to establish: (i) The circumstances under which DTC would impose and release a Deposit Chill or a Global Lock; and (ii) the fair procedures for notice and an opportunity for the Issuer to challenge the Restriction, as described below.

(i) Background

A. DTC

DTC is the nation's central securities depository, registered as a clearing agency under Section 17A of the Act.[5] DTC's deposit and book-entry transfer services help facilitate the operation of the nation's securities markets. By serving as registered holder of trillions of dollars of Securities, DTC, on a daily basis, processes enormous volumes of securities transactions facilitated by book-entry movement of interests, without the need to transfer physical certificates.

DTC performs services and maintains Securities Accounts for its Participants, primarily banks and broker dealers, pursuant to its Rules and Procedures. Participants agree to be bound by the Rules and Procedures of DTC as a condition of their DTC membership.[6] DTC allows a Participant to present Securities to be made eligible for DTC's depository and book-entry services. If a Security is accepted by DTC as meeting DTC's eligibility requirements for services[7] and is deposited with DTC for credit to the Securities Account of a Participant, it becomes an Eligible Security. Thereafter, Participants may deposit shares of that Eligible Security into their respective DTC accounts. To facilitate book-entry transfers and other services that DTC provides for its Participants with respect to Deposited Securities, the Deposited Securities are generally registered on the books of the Issuer (typically, in a register maintained by a transfer agent) in DTC's nominee name, Cede & Co. Deposited Securities that are eligible for book-entry services are maintained in "fungible bulk," *i.e.*, each Participant whose Securities of an issue have been credited to its Securities Account has a *pro rata* (proportionate) interest in DTC's entire inventory of that issue, but none of the Securities on deposit are identifiable to or "owned" by any particular Participant.[8]

The Commission has recognized that DTC plays a "critical function" in the National Clearance and Settlement system.[9] More recently, the federal Financial Stability Oversight Council, which was established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act,[10] designated DTC as a Systemically Important Financial Market Utility (as defined therein).[11]

B. Deposit Chills and Global Locks: Prior Procedures

Previously, upon detecting suspiciously large deposits of a thinly traded Eligible Security, DTC imposed or proposed to impose a Deposit Chill as a measure to maintain the status quo while, pursuant to its Operational Arrangements,[12] DTC required the Issuer to confirm by legal opinion of independent counsel that the Eligible Security fulfilled the requirements for eligibility. The Deposit Chill would be maintained until the Issuer provided a satisfactory legal opinion. The Deposit Chill could remain in place for years, due to an Issuer's non-responsiveness, refusal, or inability to submit the required legal opinion.

With respect to Global Locks, DTC previously imposed a Global Lock on an Eligible Security when a governmental or regulatory authority commenced a proceeding or action alleging violations of Section 5 of the Securities Act of 1933, as amended, with respect to such Eligible Security. A Global Lock could be released when the underlying enforcement action was withdrawn, dismissed on the merits with prejudice, or otherwise resolved in a final, non-appealable judgment in favor of the defendants allegedly responsible for the violations of federal securities laws. However, many enforcement actions are only resolved after several years[13] and commonly without any definitive determination of wrongdoing.[14]

The above describes, in part, the proposed procedures filed by DTC on December 5, 2013,[15] in response to the Commission's opinion and order in *In re International Power Group, Ltd.* ("*IPWG*") directing DTC to "adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H)."[16] DTC withdrew the proposed rule change on August 18, 2014.[17]

As a result of DTC's experiences following the *IPWG* decision and in connection with the previous proposed rule change, DTC has determined that its proposed procedures for imposing Deposit Chills and Global Locks are more appropriately directed to current trading halts or suspensions imposed by the Commission, the Financial Industry Regulatory Authority, Inc. ("FINRA"), or a court of competent jurisdiction, and therefore are more effective in targeting suspected securities fraud that is ongoing at the time the Restriction is imposed. In particular, with respect to Deposit Chills imposed pursuant to DTC's previous procedures, DTC believes that wrongdoers have seemingly taken into account DTC's Restriction process, and have been avoiding it by shortening the timeframe in which they complete their scheme, dump their shares into the market, and move on to another issue.

Additionally, Global Locks were typically being imposed on the basis of a Commission enforcement action alleging securities law violations that had occurred in the past, and so could not affect the violative behavior (unless the alleged securities law violations were ongoing). In fact, it is DTC's understanding that, by the time of an enforcement action, the wrongdoers had long since transferred the subject securities. In addition, although a Global Lock bars book-entry settlements within DTC, it does not affect the trading of the issue, which occurs outside of DTC.

(ii) Proposal

A. Proposed Basis for the Imposition of Deposit Chills and Global Locks

With this proposal, DTC would establish the basis for the imposition of Deposit Chills and Global Locks, premised on direct current judicial or regulatory intervention or the threat of imminent adverse consequences to DTC or its Participants. DTC believes that the proposed rule change would provide a basis for imposing and releasing Restrictions that is consistent with its obligations under applicable law.

Under subsections (a) and (b) of Section 1 of the proposed rule, if FINRA or the Commission halts or suspends trading of an Eligible Security, DTC would impose a Global Lock. Similarly, under subsection (c) of Section 1 of the proposed rule, DTC would impose a Restriction if ordered to do so by a court of competent jurisdiction. Consistent with its mandate "to promote the prompt and accurate clearance and settlement of securities transactions,"[18] DTC's facilities should not be available to settle transactions otherwise prohibited by the Commission, FINRA, or a court of competent jurisdiction. The imposition of a Global Lock on an Eligible Security for which trading is halted or suspended would prevent settlement of trades that continue despite the halt or suspension, and prevent a bad actor from liquidating a position through DTC in order to obtain the proceeds of fraudulent activities.

Notwithstanding subsections (a) and (b) of Section 1 of the proposed Rule, DTC recognizes that FINRA and the Commission issue trading halts and suspensions for numerous reasons, and so there may be certain limited circumstances where a Global Lock

[5] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) (File No. 600–1).

[6] *See supra* note 5.

[7] *See* Rule 5, *supra* note 4; DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), January 2012 (the "Operational Arrangements"), Section 1, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[8] *See* Securities Exchange Act Release No. 19678 (April 15, 1983), 48 FR 17603, 17605, n.5 (April 25, 1983) (describing fungible bulk); *see also* N.Y. Uniform Commercial Code, § 8–503, Off. Cmt 1 (". . . all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds").

[9] *See* Securities Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037, 35041 (June 11, 2003) (File No. SR–DTC–2003–02).

[10] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[11] *See* Financial Stability Oversight Council, 2012 Annual Report, Appendix A, *available at https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf.*

[12] *See* Operational Arrangements, Section I.A, *supra* note 7.

[13] *See, e.g., SEC* v. *Kahlon*, 12–CV–517 (E.D. Tex., filed August 14, 2012); *SEC* v. *Bronson*, 12–cv–06421–KMK (S.D.N.Y., filed August 22, 2012). As of the date of this filing, neither case has been resolved.

[14] *See, e.g., SEC* v. *Heiss*, 13–cv–01537, dkt no. 10 (S.D.N.Y. 2014) (issuing a final judgment against the defendant in an enforcement action, without the defendant admitting or denying the allegations).

[15] *See* Securities Exchange Act Release No. 71132 (December 18, 2013); 78 FR 77755 (December 24, 2013) (File No. SR–DTC–2013–11).

[16] *See* Securities Exchange Act Release No. 66611 (March 15, 2012), 2012 SEC LEXIS 844 at *32 (March 15, 2012) (Admin. Proc. File No. 3–13887).

[17] *See* Securities Exchange Act Release No. 72860 (August 18, 2014), 79 FR 49825 (August 22, 2014) (File No. SR–DTC–2013–11).

[18] 15 U.S.C. 78q–1(b)(3)(F).

would not further the regulatory purpose of such trading halt or suspension. Therefore, if DTC reasonably determines that such is the case, DTC may decline to impose a Global Lock. Some examples of when DTC may decline to impose a Global Lock include, but are not limited to, if FINRA issues a trading halt in all OTC equity securities due to a technical glitch; or if FINRA issues a trading halt clearly based on financial uncertainty in a foreign jurisdiction that doesn't affect DTC's ability to settle transactions.

Finally, under subsection (d) of Section 1 of the proposed rule, DTC would impose a Restriction when it becomes aware of a need for immediate action to avert an imminent harm, injury, or other such material adverse consequence to DTC or its Participants that could arise from further Deposits of, or continued book-entry services with respect to, an Eligible Security. While it is impossible to anticipate all possible scenarios that may give rise to the need for action by DTC under this subsection (d) to avoid imminent harm, DTC does not anticipate that it would impose Restrictions pursuant to this formulation frequently. Some examples where this provision may be invoked include, but are not limited to, if DTC becomes aware that marketplace actors were about to deposit Securities at DTC in connection with an ongoing corporate hijacking, market manipulation, or in violation of other applicable laws; if an Issuer or its agent provides DTC with plausible information that Security certificates were stolen and were about to be deposited; or if an Issuer notifies DTC that shares of a Security had just been issued erroneously upon a conversion of previously satisfied notes.

The concept of taking immediate action to avoid imminent harm to DTC or its Participants was recognized in the Commission's opinion in *IPWG*. The Commission ruled that, when faced with justifiable circumstances, DTC may design fair procedures "in accordance with its own internal needs and circumstances," [19] recognizing that:

> If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.[20]

B. Proposed Basis for the Release of Deposit Chills and Global Locks

As part of DTC's process for imposing Restrictions premised on direct court or regulatory agency intervention or the prospect of imminent adverse consequences to DTC or its Participants, the proposed rule change provides corresponding criteria for releasing such Restrictions.

As an initial matter, pursuant to the proposed rule change, DTC would release a Restriction when DTC reasonably determines that its imposition of the Restriction was based on a clerical mistake.

In the case of a Global Lock imposed pursuant to subsections (a) or (b) of Section 1 of the proposed rule (FINRA trading halt or Commission trading suspension), under the proposed rule change, DTC would release the Global Lock when the halt or suspension of trading of the Eligible Security has been lifted. In the case of a Restriction imposed pursuant to subsection (c) of Section 1 of the proposed rule (order from a court of competent jurisdiction), under the proposed rule change, DTC would release the Restriction when a court of competent jurisdiction orders DTC to release the Restriction. Since trading would no longer be prohibited by FINRA, the Commission, or court order, respectively, there should not be any settlement restrictions, other than those otherwise provided in the Rules.

Finally, in the case of a Restriction imposed pursuant to subsection (d) of Section 1 of the proposed rule (imminent adverse consequences to DTC or its Participants), pursuant to the proposed rule change, DTC would release the Restriction when it reasonably determines that the release of the Restriction would not pose a threat of imminent adverse consequences to DTC or its Participants, obviating the original basis for the Restriction.

It is impossible to anticipate all possible scenarios that may give rise to a release of a Restriction under this basis. However, DTC anticipates that it would release such Restriction in a number of circumstances, including without limitation:

- When DTC determines that the perceived harm has passed or is significantly remote;
- when the basis for the Restriction no longer exists. For example, where DTC imposed a Deposit Chill on the basis of plausible information that certificates were stolen and about to be deposited, and DTC subsequently receives plausible information that the certificates have been recovered and will not be deposited, or where DTC imposed a Deposit Chill based on erroneously issued shares, and subsequently receives copies of a "Stop transfer" [21] directive and cancellation of such shares before they have been deposited; or
- when an Eligible Security had been previously Globally Locked based on a Commission enforcement action but there is no indication that illegally distributed Securities are about to be deposited.

C. Proposed Fair Procedures

DTC has developed the procedures in the proposed rule change to give the Issuer a timely notice of the Restriction, provide the Issuer an opportunity to submit a written challenge to the Restriction, provide a review and written determination by an independent officer, and maintain a complete record of the proceeding, consistent with Section 17A(b)(3)(H) of the Act [22] and the Commission's opinion and order in *IPWG*.

Pursuant to the proposed rule change, DTC would send written notice ("Restriction Notice") to the Issuer's last known business address and to the last known business address of the Issuer's transfer agent, if any, on record with DTC. The Restriction Notice would be sent within three Business Days of imposition of a Restriction and would set forth: (i) The basis for the Restriction; (ii) the date the Restriction was imposed; (iii) that the Issuer may submit a written response to DTC detailing the basis for release of the Restriction under proposed Rule 33 ("the Restriction Response"); and (iv) that the Restriction Response must be received by DTC within twenty Business Days of delivery of the Restriction Notice.

Once the Restriction Response is received by DTC, the proposed rule change provides that it would be reviewed by a DTC officer who did not have responsibility for the imposition of the Restriction. DTC may request additional information from the Issuer. After the officer's review is completed, DTC would provide a written decision (a "Restriction Decision") to the Issuer.

[19] *IPWG*, 2012 SEC LEXIS at *30, n.36.

[20] *Id.* at *29. *See also In re Atlantis Internet Group* ("*Atlantis*"), Securities Exchange Act Release. No. 75168 at 7–8, 2015 SEC LEXIS 2394 at *18 (June 12, 2015) (Admin. Proc. File No. 3–15432) ("DTC's imposition of the Global Lock without advance notice was an appropriate exercise of its authority to act to prevent imminent harm . . .").

[21] A "stop transfer" is an order made to prevent the transfer of ownership of a security.

[22] 15 U.S.C. 78q–1(b)(3)(H).

Within ten Business Days of delivery of the Restriction Decision, the Issuer may submit a supplement (a "Supplement") for the sole purpose of establishing that DTC made a clerical mistake or mistake arising from an oversight or omission in reviewing the Restriction Response.

If the Issuer submits a Supplement, the officer would provide a supplement decision (a "Supplement Decision") within ten Business Days after the Supplement was delivered. The Restriction Notice, the Restriction Response, the Restriction Decision, the Supplement, the Supplement Decision, and any other documents submitted in connection with these procedures would constitute the record for purposes of any appeal to the Commission.

The proposed rule change would not affect DTC's ability (A) to lift or modify a Restriction; (B) to operationally restrict book-entry services, Deposits or other services in the ordinary course of business, as such restrictions do not constitute Deposit Chills or Global Locks for purposes of proposed Rule 33; (C) to communicate with the Issuer or its transfer agent or representative, if any, provided that substantive communications are memorialized in writing to be included in the record for purposes of any appeal to the Commission; or (D) to send out a Restriction Notice prior to the imposition of a Restriction.

DTC believes that these procedures comport with Section 17A(b)(3)(H) of the Act, which requires that a registered clearing agency that denies or limits access to the agency's services to a "person," it must "provide a fair procedure." [23] Such procedures require the clearing agency to give the person notice and an opportunity to address the specific grounds for denial or prohibition or limitation and to keep a record.[24] In its decision in *IPWG*, the Commission ruled, *inter alia*, that issuers are "persons" for the purposes of Section 17A(b)(3).[25]

Section 17A of the Act does not specify the nature of the fair procedures DTC must provide to "persons," including issuers. In *IPWG*, the Commission observed that:

> Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that "a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record." [26]

As stated in *IPWG*, "DTC may design such [Section 17A procedures] in accordance with its own internal needs and circumstances." [27] The Commission further ruled in *IPWG* that DTC "should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly" in the cases where DTC denies or limits services with respect to an Issuer's Securities.

In the Commission's more recent opinion in *Atlantis*, the Commission upheld the notice, opportunity to be heard, and recordkeeping that DTC provided to a Globally Locked issuer. Significantly, the Commission held that Section 17A of the Act does not require DTC to hold a formal hearing in order to satisfy its obligations under Section 17A to provide Issuers with an opportunity to be heard.[28]

DTC believes that the procedures in proposed Rule 33 for giving notice of the Restriction to the Issuer with an opportunity to be heard are consistent with the fair procedures upheld by the Commission in *Atlantis*. In addition, consistent with the Commission's broad directive in *IPWG*, DTC believes that the proposed rule would establish uniform standards for the imposition of Restrictions, as well as the fair procedures for Issuers whose Securities are subject to a Restriction.

Implementation Timeframe

DTC will announce the effective date via Important Notice upon the Commission's approval of the proposed rule change.

2. *Statutory Basis*

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) of the Act [29] and Section 17A(b)(3)(H) of the Act.[30]

Section 17A(b)(3)(F) of the Act [31] requires, *inter alia*, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. By establishing a framework for DTC to impose and release Restrictions, the proposed rule change would provide a mechanism for DTC to act quickly and efficiently to screen out, prior to deposit, or restrict, after deposit, Securities for which trading has been prohibited by the Commission, FINRA, or a court of competent jurisdiction, or which pose a threat of imminent adverse consequences to DTC or its Participants, to assure the safeguarding of Securities deposited to and held by DTC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

Section 17A(b)(3)(H) of the Act, requires, *inter alia*, that the rules of a clearing agency are in accordance with the provisions of Section 17A(b)(5)(B) of the Act,[32] and in general provide a fair procedure with respect to the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency. By establishing a procedure that would provide for: (A) Criteria for notice to an Issuer that a Deposit Chill or Global Lock has been imposed; (B) an explanation of the specific grounds upon which any Restriction has been imposed; (C) the actions that the Issuer may take to object to the Restriction; (D) the process DTC would undertake to review written submissions of the Issuer and to render a final decision concerning the Restriction; (E) the grounds upon which DTC may release the Restriction; and (F) the maintenance of a complete record for submission to the Commission in the event an Issuer appeals, the proposed rule change would provide Issuers with fair procedures with respect to Deposit Chills and Global Locks, consistent with the requirements of the Act, in particular Section 17A(b)(3)(H) of the Act, cited above.[33]

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on, or impose any burden on competition that is not necessary or

[23] *See id.*

[24] *See* 15 U.S.C. 78q–1(b)(5)(B).

[25] *IPWG*, 2012 SEC LEXIS at *24.

[26] *Id.*

[27] *Id.* at *30 n.36.

[28] *Id.* at *19.

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 15 U.S.C. 78q–1(b)(3)(H).

[31] 15 U.S.C. 78q–1(b)(3)(F).

[32] Section 17A(b)(5)(B) of the Act, 15 U.S.C. 78q–1(b)(5)(B) provides: "In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based."

[33] 15 U.S.C. 78q–1(b)(3)(H).

appropriate in furtherance of the purposes of the Act, because the proposed procedures as described above would apply to all Eligible Securities that may be subject to a Deposit Chill or Global Lock.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received with respect to this filing. To the extent DTC receives written comments on the proposed rule change DTC will forward such comments to the Commission.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2016–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–003 and should besubmitted on or before June 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Brent J. Fields,

Secretary.

[FR Doc. 2016–13614 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

[34] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9600]

International Security Advisory Board (ISAB) Meeting Notice Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on July 12, 2016, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public because the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, nonproliferation, political-military affairs, international security, and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Christopher Herrick, Acting Executive Director of the International Security Advisory Board, U. S. Department of State, Washington, DC 20520, telephone: (202) 647–9683.

Dated: May 20, 2016.

Christopher Herrick,

Acting Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2016–13677 Filed 6–8–16; 8:45 am]

BILLING CODE 4710–24–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 780X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Boone County, W.Va.

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 2.9-mile rail line on CSXT's Southern Region, Huntington Division, Pond Fork Subdivision, the Robinson Creek Industrial Track, from the connection with CSXT's mainline at milepost CLK 0.0 to the end of the line at milepost CLK 2.9+ in Boone County, W.Va. (the Line). The Line traverses United States Postal Service Zip Code 26325 and includes the Holbrook station at milepost CLK 2.0 (FSAC 82034/OPSL 65220).[1]

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is not a through route, no overhead traffic has operated, and, therefore, none needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

[1] CSXT states that this station can be closed.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on July 9, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[2] must be filed by June 17, 2016.[3] Petitions to reopen must be filed by June 29, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: June 6, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–13640 Filed 6–8–16; 8:45 am]

BILLING CODE 4915–01–P

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinue proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0052]

Environmental Impact and Related Procedures

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice.

SUMMARY: FRA is issuing this notice to solicit public comments on the potential application of 23 CFR part 771, Environmental Impact and Related Procedures, to railroad projects. Part 771 currently prescribes the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) procedures for implementing the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*) and 23 U.S.C. 139, Efficient Environmental Reviews for Project Decisionmaking. FRA would further develop the application of 23 CFR part 771 to railroad projects in a rulemaking proceeding.

DATES: FRA must receive written comments on this notice on or before July 11, 2016. FRA will consider comments received after this date to the extent practicable.

ADDRESSES: *Comments:* Persons providing comments related to docket number FRA–2016–0052 must do so by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave. SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name, docket name and docket number for this notice. Note that FRA will post all comments received without change to *http://www.regulations.gov*, including any personal information provided.

Docket: To access the docket or read background documents or comments received, go to *http://www.regulations.gov* at any time, or to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen, Environmental and Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590 or by telephone at 202–493–1310 or Mr. Chris Van Nostrand, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590 or by telephone at 202–493–6058.

SUPPLEMENTARY INFORMATION: On December 4, 2015, the President signed the Fixing America's Surface Transportation (FAST) Act into law (Pub. L. 114–94). Section 11503 of the FAST Act requires the Secretary of Transportation (Secretary), among other things, to apply, to the greatest extent feasible, the project development procedures described in 23 U.S.C. 139 (Efficient Environmental Reviews for Project Decisionmaking) to railroad projects requiring the Secretary's approval under NEPA. The Secretary must incorporate into FRA regulations and procedures for railroad projects aspects of the 23 U.S.C. 139 project development procedures, or portions thereof, which increase the efficiency of the review of railroad projects consistent with section 11503. In addition, section 11503 requires the Secretary to publish a notice of proposed rulemaking to propose new and existing categorical exclusions for railroad projects the Secretary must approve under NEPA. *See* 49 U.S.C. 24201(c).

In light of section 11503's requirements, FRA is evaluating whether to apply 23 CFR part 771 to railroad projects. Part 771 currently prescribes FHWA and FTA procedures for implementing NEPA, including 23 U.S.C. 139 requirements. In FRA's view, applying part 771 to railroad projects may be the most efficient way to comply with section 11503 and promote consistency in FTA, FHWA, and FRA environmental reviews. In addition, FRA would not need to develop entirely new NEPA regulations for railroad projects. FRA, in conjunction with FHWA and FTA, would engage in a rulemaking to revise part 771 to make it applicable to railroad projects before such an approach would become effective. FRA seeks input from interested parties, stakeholders, and the public on this proposal.

Issued in Washington, DC, on June 3, 2016.

Sarah E. Feinberg,

Administrator.

[FR Doc. 2016–13621 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0002]

3D Surrogate Vehicle Scanning Event

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Announcement of public meeting.

SUMMARY: NHTSA is announcing a public meeting to seek stakeholder feedback on a full-size 3-dimensional surrogate vehicle being developed to better support the evaluation of advanced crash avoidance technologies. NHTSA, Euro NCAP, Thatcham, and the Insurance Institute for Highway Safety (IIHS) have been collaboratively working to develop this surrogate; however, confirmation that it appears as realistic to the sensors used in automotive safety systems requires feedback from industry experts.

DATES: NHTSA will hold the public meeting July 13–14, 2016, in East Liberty, OH. Each day the meeting will start at 9:00 a.m. and continue until 5:00 p.m., local time. Check-in will begin at 8:00 a.m. All attendees for the meeting are required to register by following the instructions under **FOR FURTHER INFORMATION CONTACT** no later than June 24, 2016. Admission onto the facility will not be permitted without advanced registration.

Following the event, participants are requested to submit all written feedback and supporting information pertaining to their 3D surrogate vehicle measurements no later than August 5, 2016.

ADDRESSES: The meeting will be held on the test track at the Transportation Research Center, Inc., 10820 SR 347, East Liberty, OH 43319.

Written Comments: Written feedback and supporting information should be submitted not later than August 5, 2016, by any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* 202–366–1767.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://www.regulations.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information to the Chief Counsel, NHTSA, 1200 New Jersey Ave. SE., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should submit a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

FOR FURTHER INFORMATION CONTACT: Attendees should register at *http://goo.gl/forms/C6tj0oRj1QlS4qNy2 not later than June 24, 2016.* Admission onto the facility will not be permitted without advanced registration. Should it be necessary to cancel the meeting due to inclement weather or other emergency, NHTSA will take available measures to notify registered participants. If you have questions about the public meeting, please contact *3dsurrogate@dot.gov.*

SUPPLEMENTARY INFORMATION: To date, multiple iterative efforts have been made to produce a 3D surrogate vehicle that not only emulates a passenger car from any approach angle, but one that can be safely and repeatedly struck by an actual light or heavy vehicle without harm. In Europe, vehicle manufacturers and suppliers were presented with two opportunities to measure the appearance of multiple surrogate designs during similar test events hosted by Thatcham in the UK. The feedback received from these companies has been invaluable, and has helped refine the surrogate to its current characteristics.

On July 13–14, 2016, NHTSA will be hosting a U.S.-based test event featuring the most recent iteration of the collaboratively-developed 3D surrogate vehicle and up to two robotic platforms (the surrogate vehicle is secured to a shallow self-propelled robotic platform to facilitate accurate longitudinal and lateral movement during testing). During this two-day meeting, vehicle manufacturers and suppliers will have an opportunity to measure the appearance of the 3D surrogate vehicle from multiple approach angles using vehicle-based sensors (*e.g.,* radar, lidar, cameras, etc.). Feedback from the first day of testing will be used to make adjustments to the surrogate ahead of the second day's tests. Results from the second testing day will be used to help finalize the surrogate's design. The stated goal is to identify a final design by December 2016.

Feedback from the participants will be beneficial in finalizing the design of the surrogate. Meeting participants will have the opportunity to provide results from the measurements collected with their respective test equipment, and to provide specific recommendations about how the surrogate vehicle's appearance, to any sensor, could be improved. When providing these recommendations, participants are asked to consider the balance between realism and practicality. While it is very important the surrogate look as realistic as possible, it must also remain strikeable from any approach angle, over a broad range of impact speeds, without affecting the safety of those using it or harming the vehicle being evaluated.

Draft Agenda (in local time)

Wednesday, July 13, 2016

08:00–09:00 Arrival/Check-In
09:00–09:30 Brief presentations describing the need for 3D surrogate vehicles, and development efforts to date.
09:30–09:45 Descriptions of the event test layout and choreography
09:45–12:00 Morning testing
12:00–13:00 Lunch break
13:00–16:00 Afternoon testing
16:00–17:00 Discuss the day's testing. Agree on what changes are to be made ahead of the next day's evaluations.
17:00 Adjourn

Thursday, July 14, 2016

08:00–08:30 Arrival/Check-In
08:30–12:00 Morning testing
12:00–13:00 Lunch break
13:00–15:30 Afternoon testing
15:30–17:00 Discuss preliminary results from the event's testing and how the results will be collected, consolidated, and disseminated.
17:00 Adjourn

Public Meeting Topics

Discussions pertaining to the 3D surrogate vehicle will be focused on what features, if any, will need to be adjusted to allow it to appear realistic to automotive sensing systems. NHTSA does not intend to discuss how it may use 3D surrogate vehicles beyond inclusion is its research programs.

Surrogate vehicle feedback forms will be available on-site, and will request information about, but not be limited to, the following topics:

1. Are the radar return characteristics of the surrogate, including radar cross section (RCS), adequately realistic from each approach angle, depth, and height relative to the ground?
2. Are the visual characteristics, including the overall shape, reflectivity, contrasting features, of the surrogate adequately realistic?
3. Is the surrogate able to adequately support lidar-based safety systems?
4. Is the presence of the robotic platform beneath the surrogate apparent to the automotive sensing system (radar, visual, etc.)? If so, what effect will the platform's presence expected to have on safety system performance?
5. How consistent is the classification of the surrogate (*e.g.,* distance to the surrogate at which the safety system classifies the surrogate as being an actual vehicle, and does the classification remain stable during the test vehicle's approach to the surrogate). How does this consistency compare to that expected by the overall light vehicle population? What effect does the panel misalignment have on surrogate classification?
6. From an industry perspective, what is the preferred rank order of the following: absolute surrogate vehicle realism, strikeablity/durability, or ease of reassembly?

Issued in Washington, DC, under authority delegated by 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2016–13665 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Hizballah Financial Sanctions Regulations—Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)) (PRA). Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Hizballah Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

DATES: Written comments must be submitted on or before August 8, 2016 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the Web site for submitting comments.

Fax: Attn: Request for Comments (Hizballah Financial Sanctions Regulations—Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts) 202–622–1657.

Mail: Attn: Request for Comments (Hizballah Financial Sanctions Regulations—Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Freedman's Bank Building, Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via *regulations.gov* or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Title: Hizballah Financial Sanctions Regulations—Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

OMB Number: 1505–0255.

Abstract: Pursuant to the Hizballah Financial Sanctions Regulations, 31 CFR part 566 (the Regulations), the Secretary of the Treasury may, among other things, prohibit a U.S. financial institution from opening or maintaining a correspondent account or a payable-through account in the United States for a foreign financial institution that the Secretary has determined has engaged in certain activities involving Hizballah and whose name is added to the Hizballah Financial Sanctions Regulations List (HFSR List) on OFAC's Web site (*www.treasury.gov/ofac*). Section 566.504 of the Regulations authorizes certain transactions related to the winding down and closing of such a correspondent account or payable-through account. Section 566.506(b) includes a reporting requirement pursuant to which a U.S. financial institution that maintained such an account must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable-through accounts for foreign financial institutions listed on the HFSR List. The reports will be reviewed by the U.S. Department of the Treasury and may be used for compliance and enforcement purposes by the agency.

Current Actions: There are no changes being made to the collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: U.S. financial institutions operating correspondent or payable-through accounts for foreign financial institutions.

Estimated Number of Respondents: Because this collection of information is a report that must be filed by U.S. financial institutions closing correspondent or payable-through accounts for a foreign financial institution pursuant to section 566.504 after OFAC adds the name of the foreign financial institution to the HFSR List, OFAC cannot predict the number of respondents for the section 566.504(b) reporting requirement at this time. From the date this reporting requirement was implemented pursuant to the Regulations (April 15, 2016) through June 9, 2016, OFAC did not add the name of any foreign financial institution to the HFSR List, and the number of respondents to this collection was therefore zero. For future PRA submissions, OFAC will continue to report retrospectively on the number of respondents during the previous reporting period.

Estimated Time per Respondent: 2 hours per response.

Estimated Total Annual Burden Hours: Because the section 566.504(b) reporting requirement applies to those U.S. financial institutions that operate correspondent or payable-through accounts for a foreign financial institution whose name is added to the HFSR List, OFAC cannot predict the response rate for the section 566.504(b) reporting requirement at this time. For future PRA submissions, OFAC will report retrospectively on the response rate during the previous reporting period.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Andrea Gacki,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–13668 Filed 6–8–16; 8:45 am]

BILLING CODE 4810–AL–P

UNITED STATES SENTENCING COMMISSION

Requests for Applications; Practitioners Advisory Group

AGENCY: United States Sentencing Commission.

ACTION: Notice.

SUMMARY: In view of upcoming vacancies in the voting membership of the Practitioners Advisory Group, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to succeed such a voting member to apply. The voting memberships covered by this notice are two circuit memberships (for the Second Circuit and the Ninth Circuit) and two at-large memberships. Application materials should be received by the Commission not later than August 8, 2016. An applicant for voting membership of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission as indicated in the addresses section below.

DATES: Application materials for voting membership of the Practitioners Advisory Group should be received not later than August 8, 2016.

ADDRESSES: An applicant for voting membership of the Practitioners Advisory Group should apply by sending a letter of interest and resume to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov*. The regular mail address is United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov*. More information about the Practitioners Advisory Group is available on the Commission's Web site at *www.ussc.gov/advisory-groups*.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice (*i.e.*, the circuit memberships for the Second Circuit and the Ninth Circuit, and the two at-large memberships) to apply by sending a letter of interest and a resume to the Commission as indicated in the **ADDRESSES** section above.

Authority: 28 U.S.C. § 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.4.

Patti B. Saris,

Chair.

[FR Doc. 2016–13680 Filed 6–8–16; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Proposed Priorities for Amendment Cycle

AGENCY: United States Sentencing Commission.

ACTION: Notice; request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2017.

DATES: Public comment should be received by the Commission on or before July 25, 2016.

ADDRESSES: Comments should be sent to the Commission by electronic mail or regular mail. The email address is *pubaffairs@ussc.gov*. The regular mail address is United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Christine Leonard, Director, Office of Legislative and Public Affairs, (202) 502–4500, *pubaffairs@ussc.gov*.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

Pursuant to 28 U.S.C. 994(g), the Commission intends to consider the issue of reducing costs of incarceration and overcapacity of prisons, to the extent it is relevant to any identified priority.

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2017. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2017. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2017.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Continuation of its work with Congress and other interested parties on statutory mandatory minimum penalties to implement the recommendations set forth in the Commission's 2011 report to Congress, titled *Mandatory Minimum Penalties in the Federal Criminal Justice System*, including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the "safety valve" at 18 U.S.C. 3553(f), and elimination of the mandatory "stacking" of penalties under 18 U.S.C. 924(c), and to develop appropriate guideline amendments in response to any related legislation.

(2) Continuation of its multi-year examination of the overall structure of the guidelines post-*Booker*, possibly including recommendations to Congress on any statutory changes and development of any guideline amendments that may be appropriate. As part of this examination, the Commission intends to study possible approaches to (A) simplify the operation of the guidelines, promote proportionality, and reduce sentencing disparities; and (B) appropriately account for the defendant's role, culpability, and relevant conduct.

(3) Continuation of its study of approaches to encourage use of alternatives to incarceration, including possible consideration of amending the Sentencing Table in Chapter 5, Part A to consolidate and/or expand Zones A, B, and C, and any other relevant provisions in the *Guidelines Manual*.

(4) Continuation of its multi-year study of statutory and guideline definitions relating to the nature of a defendant's prior conviction (*e.g.*, "crime of violence," "aggravated felony," "violent felony," "drug trafficking offense," and "felony drug offense") and the impact of such definitions on the relevant statutory and guideline provisions (*e.g.*, career offender, illegal reentry, and armed career criminal), possibly including recommendations to Congress on any statutory changes that may be appropriate and development of guideline amendments that may be appropriate.

(5) Continuation of its comprehensive, multi-year study of recidivism, including (A) examination of circumstances that correlate with increased or reduced recidivism; (B) possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons, and promote effectiveness of reentry programs; and (C) consideration of any amendments to the *Guidelines Manual* that may be appropriate in light of the information obtained from such study.

(6) Study of the findings and recommendations contained in the May 2016 Report issued by the Commission's Tribal Issues Advisory Group, and consideration of any amendments to the *Guidelines Manual* that may be appropriate in light of the information obtained from such study.

(7) Study of the treatment of youthful offenders under the *Guidelines Manual*, including possible amendments to Chapter Five, Part H.

(8) Study of the operation of Chapter Four, Part A of the *Guidelines Manual*, including (A) the feasibility and appropriateness of using the amount of time served by an offender, as opposed to the sentence imposed, for purposes of calculating criminal history under Chapter Four; and (B) the treatment of revocation sentences under § 4A1.2(k).

(9) Study of offenses involving 3,4-Methylenedioxy-N-methylcathinone (Methylone) and consideration of any amendments to the *Guidelines Manual* that may be appropriate in light of the information obtained from such study.

(10) Implementation of the Bipartisan Budget Act of 2015, Public Law 114–74, and any other crime legislation enacted during the 114th or 115th Congress warranting a Commission response.

(11) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

(12) Consideration of any miscellaneous guideline application issues coming to the Commission's

attention from case law and other sources, including possible consideration of whether a defendant's denial of relevant conduct should be considered in determining whether a defendant has accepted responsibility for purposes of § 3E1.1.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2017. To the extent practicable, public comment should include the following: (1) A statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Patti B. Saris,

Chair.

[FR Doc. 2016–13681 Filed 6–8–16; 8:45 am]

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FEDERAL REGISTER

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Part II

Regulatory Information Service Center

Semiannual Regulatory Agenda

REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: The Spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions.

Publication of the Spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions represents a key component of the regulatory planning mechanism prescribed in Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735) and incorporated by reference in the President's Executive Order 13563, "Improving Regulation and Regulatory Review," issued on January 18, 2011 (76 FR 3821).

The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602).

In the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda) agencies report regulatory actions upcoming in the next year. Executive Order 12866 "Regulatory Planning and Review," signed September 30, 1993 (58 FR 51735), and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' selected for periodic review under section 610 of the Regulatory Flexibility Act.

ADDRESSES: Regulatory Information Service Center (MVE), General Services Administration, 1800 F Street NW., MVE, Room 2219F, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the agency contact listed for each entry. To provide comment on or to obtain further information about this publication, contact: John C. Thomas, Executive Director, Regulatory Information Service Center (MVE), General Services Administration, 1800 F Street NW., MVE, Room 2219F, Washington, DC 20405, (202) 482–7340. You may also send comments to us by email at: *RISC@gsa.gov*.

SUPPLEMENTARY INFORMATION:

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Agency Agendas

Cabinet Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
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Department of Labor
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Department of Transportation
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Agencies

Environmental Protection Agency
Agency for International Development
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Nuclear Regulatory Commission
Securities and Exchange Commission
Surface Transportation Board

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

I. What is the Unified Agenda?

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. The complete Unified Agenda is available to the public at *http://reginfo.gov*. The online Unified Agenda offers user-friendly flexible search tools and a vast historical database.

The spring 2016 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at *http://reginfo.gov*.

These publication formats meet the publication mandates of the Regulatory Flexibility Act and Executive Order 12866. The complete online edition of the Unified Agenda includes regulatory agendas from 57 Federal agencies. Agencies of the United States Congress

National Science Foundation
Office of Government Ethics
Office of Management and Budget
Office of Personnel Management
Office of the United States Trade Representative
Peace Corps
Pension Benefit Guaranty Corporation
Railroad Retirement Board
Social Security Administration
Farm Credit Administration
Federal Deposit Insurance Corporation
Federal Energy Regulatory Commission
Federal Housing Finance Agency
Federal Maritime Commission
Federal Trade Commission
Gulf Coast Ecosystem Restoration Council
National Credit Union Administration
National Indian Gaming Commission
National Transportation Safety Board

The Regulatory Information Service Center compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866 (incorporated by reference in Executive Order 13563). The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency officials, and the public.

The activities included in the Unified Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may choose to include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. Executive Order 12866 does not require agencies to include regulations concerning military or

II. Why is the Unified Agenda published?

The Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

Executive Order 12866

Executive Order 12866 entitled "Regulatory Planning and Review," signed September 30, 1993, (58 FR 51735), requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

Executive Order 13563

Executive Order 13563 entitled "Improving Regulation and Regulatory Review," issued on January 18, 2011, supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866, which includes the general principles of regulation and public participation, and orders integration and innovation in coordination across agencies; flexible approaches where relevant, feasible, and consistent with regulatory approaches; scientific integrity in any scientific or technological information and processes used to support the agencies' regulatory actions; and retrospective analysis of existing regulations.

Regulatory Flexibility Act

(64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing a regulation with federalism implications, which either preempt State law or impose non-statutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such a regulation, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

Unfunded Mandates Reform Act of 1995

The *Unfunded Mandates Reform Act of 1995* (Pub. L. 104–4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions "that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more . . . in any 1 year . . . ." The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas

this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

Small Business Regulatory Enforcement Fairness Act

The *Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104–121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 *et seq.*), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted, or is likely to result, in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

III. How is the Unified Agenda organized?

Agency regulatory flexibility agendas are printed in a single daily edition of the **Federal Register**. A regulatory flexibility agenda is printed for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The parts are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Agencies may in turn be divided into sub-agencies. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

The online, complete Unified Agenda contains the preambles of all participating agencies. In the online Agenda, users can select the particular agencies whose agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

Each entry in the Unified Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. *Prerule Stage*—actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage*—actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *Final Rule Stage*—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

4. *Long-Term Actions*—items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *Completed Actions*—actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

Long-Term Actions are rulemakings reported during the publication cycle that are outside of the required 12-month reporting period for which the Agenda was intended. Completed Actions in the publication cycle are rulemakings that are ending their lifecycle either by Withdrawal or completion of the rulemaking process. Therefore, the Long-Term and Completed RINs do not represent the ongoing, forward-looking nature intended for reporting developing rulemakings in the Agenda pursuant to Executive Order 12866, section 4(b) and 4(c). To further differentiate these two stages of rulemaking in the Unified Agenda from active rulemakings, Long-Term and Completed Actions are reported separately from active rulemakings, which can be any of the first three stages of rulemaking listed above. A separate search function is provided on *http://reginfo.gov* to search for Completed and Long-Term Actions apart from each other and active RINs.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

In the printed edition, all entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. The sequence number is used as the reference in the printed table of contents. Sequence numbers are not used in the online Unified Agenda because the unique Regulation Identifier Number (RIN) is able to provide this cross-reference capability.

Editions of the Unified Agenda prior to fall 2007 contained several indexes, which identified entries with various characteristics. These included regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis, actions selected for periodic review under section 610(c) of the Regulatory Flexibility Act, and actions that may have federalism implications as defined in Executive Order 13132 or other effects on levels of government. These indexes are no longer compiled, because users of the online Unified Agenda have the flexibility to search for entries with any combination of desired characteristics. The online edition retains the Unified Agenda's subject index based on the **Federal Register** Thesaurus of Indexing Terms. In addition, online users have the option of searching Agenda text fields for words or phrases.

IV. What information appears for each entry?

All entries in the online Unified Agenda contain uniform data elements including, at a minimum, the following information:

Title of the Regulation—a brief description of the subject of the regulation. In the printed edition, the notation "Section 610 Review" following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews. In the online edition, these notations appear in a separate field.

Priority—an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an "economically significant" rule is similar but not identical to the definition of a "major" rule under 5 U.S.C. 801 (Pub. L. 104–121). (See below.)

(2) Other Significant

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

Major—whether the rule is "major" under 5 U.S.C. 801 (Pub. L. 104–121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

Unfunded Mandates—whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

Legal Authority—the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation—the section(s) of the Code of Federal Regulations that will be affected by the action.

Legal Deadline—whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

Abstract—a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

Timetable—the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 06/00/14 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is "To Be Determined." "Next Action Undetermined" indicates the agency does not know what action it will take next.

Regulatory Flexibility Analysis Required—whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

Small Entities Affected—the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

Government Levels Affected—whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

International Impacts—whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation's international trading partners.

Federalism—whether the action has "federalism implications" as defined in Executive Order 13132. This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Independent regulatory agencies are not required to supply this information.

Included in the Regulatory Plan—whether the rulemaking was included in the agency's current regulatory plan published in fall 2015.

Agency Contact—the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, email address, and TDD for each agency contact.

Some agencies have provided the following optional information:

RIN Information URL—the Internet address of a site that provides more information about the entry.

Public Comment URL—the Internet address of a site that will accept public comments on the entry. Alternatively, timely public comments may be submitted at the governmentwide e-rulemaking site, *http://www.regulations.gov.*

Additional Information—any information an agency wishes to include that does not have a specific corresponding data element.

Compliance Cost to the Public—the estimated gross compliance cost of the action.

Affected Sectors—the industrial sectors that the action may most affect, either directly or indirectly. Affected sectors are identified by North American Industry Classification System (NAICS) codes.

Energy Effects—an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," signed May 18, 2001 (66 FR 28355).

Related RINs—one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Some agencies that participated in the fall 2015 edition of The Regulatory Plan have chosen to include the following information for those entries that appeared in the Plan:

Statement of Need—a description of the need for the regulatory action.

Summary of the Legal Basis—a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

Alternatives—a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of Executive Order 12866.

Anticipated Costs and Benefits—a description of preliminary estimates of the anticipated costs and benefits of the action.

Risks—a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

V. Abbreviations

The following abbreviations appear throughout this publication:

ANPRM—An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR—The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, each title covering a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

E.O.—An Executive order is a directive from the President to Executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR—The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal agencies.

FY—The Federal fiscal year runs from October 1 to September 30.

NPRM—A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

a statement of the time, place, and nature of the public rulemaking proceeding; a reference to the legal authority under which the rule is proposed; and

either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL (or Pub. L.)—A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 110–4 is the fourth public law of the 110th Congress.

RFA—A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

RIN—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Unified Agenda, as directed by Executive Order 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

Seq. No.—The sequence number identifies the location of an entry in the printed edition of the Unified Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of the Unified Agenda. Sequence numbers are not used in the online Unified Agenda.

U.S.C.—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles, each title covering a broad area of Federal law.

VI. How can users get copies of the Agenda?

Copies of the **Federal Register** issue containing the printed edition of the Unified Agenda (agency regulatory flexibility agendas) are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone: (202) 512–1800 or 1–866–512–1800 (toll-free).

Copies of individual agency materials may be available directly from the agency or may be found on the agency's Web site. Please contact the particular agency for further information.

All editions of The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions since fall 1995 are available in electronic form at *http://reginfo.gov,* along with flexible search tools.

The Government Printing Office's GPO FDsys Web site contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register**. These documents are available at *http://www.fdsys.gov.*

Dated: May 18, 2016.

John C. Thomas,

Executive Director.

[FR Doc. 2016–12869 Filed 6–8–16; 8:45 am]

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Part III

Department of Agriculture

Office of the Secretary

Semiannual Regulatory Agenda

DEPARTMENT OF AGRICULTURE

Office of the Secretary

2 CFR Subtitle B, Ch. IV

5 CFR Ch. LXXIII

7 CFR Subtitle A; Subtitle B, Chs. I–XI, XIV–XVIII, XX, XXV–XXXVIII, XLII

9 CFR Chs. I–III

36 CFR Ch. II

48 CFR Ch. 4

Semiannual Regulatory Agenda, Spring 2016

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Orders (E.O.) 12866 "Regulatory Planning and Review," and 13563 "Improving Regulation and Regulatory Review." The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96–354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions as well as any regulation consistent with Executive Order 13563.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA's complete regulatory agenda is available online at *www.reginfo.gov*. Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA's printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3257.

Dated: March 18, 2016.

Michael Poe,

Legislative and Regulatory Staff.

AGRICULTURAL MARKETING SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
1	National Organic Program, Organic Pet Food Standards	0581–AD20
2	National Organic Program, Organic Apiculture Practice Standard, NOP–12–0063	0581–AD31
3	National Organic Program—Organic Aquaculture Standards	0581–AD34
4	NOP; Organic Livestock and Poultry Practices	0581–AD44

AGRICULTURAL MARKETING SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
5	National Organic Program, Origin of Livestock, NOP–11–0009	0581–AD08

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
6	Plant Pest Regulations; Update of General Provisions	0579–AC98
7	Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts.	0579–AD10
8	Brucellosis and Bovine Tuberculosis; Update of General Provisions	0579–AD65

ANIMAL AND PLANT HEALTH INSPECTION SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
13	Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles	0579–AD11
14	Exportation of Live Animals, Hatching Eggs, and Animal Germplasm From the United States	0579–AE00
15	Importation of Tomato Plantlets in Approved Growing Media From Mexico	0579–AE06
16	Importation of Phalaenopsis Spp. Plants for Planting in Approved Growing Media From China to the Continental United States.	0579–AE10

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
17	Undue Preference and Advantage	0580–AB27

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
18	Scope and Unfair Practices	0580–AB25

FOOD AND NUTRITION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
19	Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems	0584–AE37

FOOD AND NUTRITION SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
20	National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010.	0584–AE09
21	Child Nutrition Programs: Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010.	0584–AE25

FOOD AND NUTRITION SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
22	Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010.	0584–AE18

FOOD SAFETY AND INSPECTION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
23	Elimination of Trichina Control Regulations and Consolidation of Thermally Processed, Commercially	0583–AD59

FOREST SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
25	Management of Surface Activities Associated With Outstanding Mineral Rights on National Forest System Lands (Directive).	0596–AD03

FOREST SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
26	Ski Area—D Clauses: Resource and Improvement Protection, Water Facilities, and Water Rights (Directive).	0596–AD14

OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
27	Designation of Biobased Product Categories for Federal Procurement, Round 11	0599–AA24
28	Designation of Biobased Product Categories for Federal Procurement, Round 12	0599–AA25

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Proposed Rule Stage

1. National Organic Program, Organic Pet Food Standards

Legal Authority: 7 U.S.C. 6501

Abstract: The National Organic Program (NOP) establishes national standards governing the marketing of organically produced agricultural products. In 2004, the National Organic Standards Board (NOSB) initiated the development of organic pet food standards, which had not been incorporated into the NOP regulations, by forming a task force which included pet food manufacturers, organic consultants, etc. Collectively, these experts drafted organic pet food standards consistent with the Organic Foods Production Act of 1990, Food and Drug Administration requirements, and the Association of American Feed Control Officials (AAFCO) Model Regulations for Pet and Specialty Pet Food. The AAFCO regulations are scientifically based regulations for voluntary adoption by State jurisdictions to ensure the safety, quality, and effectiveness of feed. In November 2008, the NOSB approved a final recommendation for organic pet food standards incorporating the provisions drafted by the pet food task force.

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Miles McEvoy, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–3252.

RIN: 0581–AD20

2. National Organic Program, Organic Apiculture Practice Standard, NOP–12–0063

Legal Authority: 7 U.S.C. 6501

Abstract: This action proposes to amend the USDA organic regulations to reflect an October 2010 recommendation submitted to the Secretary by the National Organic Standards Board (NOSB) concerning the production of organic apicultural (or beekeeping) products.

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Miles McEvoy, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–3252.

RIN: 0581–AD31

3. National Organic Program—Organic Aquaculture Standards

Legal Authority: 7 U.S.C. 6501 to 6522

Abstract: This action proposes to establish standards for organic production and certification of farmed aquatic animals and their products in the USDA organic regulations. This action would also add aquatic animals as a scope of certification and accreditation under the National Organic Program (NOP). This action is necessary to establish standards for organic farmed aquatic animals and their products which would allow U.S. producers to compete in the organic seafood market. This action is also necessary to address multiple recommendations provided to USDA by the National Organic Standards Board (NOSB). From 2007 through 2009, the NOSB made five recommendations to establish standards for the certification of organic farmed aquatic animals and their products. Finally, the U.S. currently has organic standards equivalence arrangements with Canada and the European Union (EU). Both Canada and the EU established standards for organic aquaculture products. Because the U.S. does not have organic aquaculture standards, the U.S. is unable to include aquaculture in the scope of these arrangements. Establishing U.S. organic aquaculture may provide a basis for expanding those trade partnerships.

Timetable:

Action	Date	FR Cite
NPRM	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Miles McEvoy, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–3252.

RIN: 0581–AD34

4. • NOP; Organic Livestock and Poultry Practices

Legal Authority: 7 U.S.C. 6501 to 6522

Abstract: This action proposes to establish standards that support additional practice standards for organic livestock and poultry production. This action would add provisions to the USDA organic regulations to address and clarify livestock and poultry living conditions (for example, outdoor access, housing environment and stocking densities), health care practices (for example physical alterations, administering medical treatment, euthanasia), and animal handling and transport to and during slaughter.

Timetable:

Action	Date	FR Cite
NPRM	04/13/16	81 FR 21955
NPRM Comment Period End.	06/13/16	
Final Action	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Miles McEvoy, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–3252.

RIN: 0581–AD44

DEPARTMENT OF AGRICULTURE (USDA)

Agricultural Marketing Service (AMS)

Final Rule Stage

5. National Organic Program, Origin of Livestock, NOP–11–0009

Legal Authority: 7 U.S.C. 6501

Abstract: The current regulations provide two tracks for replacing dairy animals which are tied to how dairy farmers transition to organic production. Farmers who transition an entire distinct herd must thereafter replace dairy animals with livestock that has been under organic management from the last third of gestation. Farmers who do not transition an entire distinct herd may perpetually obtain replacement animals that have been managed organically for 12 months prior to marketing milk or milk products as organic. The proposed action would eliminate the two-track system and require that upon transition, all existing and replacement dairy animals from which milk or milk products are intended to be sold, labeled, or represented as organic must be managed organically from the last third of gestation.

Timetable:

Action	Date	FR Cite
NPRM	04/28/15	80 FR 23455
NPRM Comment Period End.	07/27/15	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Miles McEvoy, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW., Washington, DC 20250, *Phone:* 202 720–3252.

RIN: 0581–AD08

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Proposed Rule Stage

6. Plant Pest Regulations; Update of General Provisions

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 2260; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8817; 19 U.S.C. 136; 21 U.S.C. 111; 21 U.S.C. 114a; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332

Abstract: We are proposing to revise our regulations regarding the movement of plant pests. We are proposing criteria regarding the movement and environmental release of biological control organisms, and are proposing to establish regulations to allow the importation and movement in interstate commerce of certain types of plant pests without restriction by granting exceptions from permitting requirements for those pests. We are also proposing to revise our regulations regarding the movement of soil. This proposed rule replaces a previously published proposed rule, which we are withdrawing as part of this document. This proposal would clarify the factors that would be considered when assessing the risks associated with the movement of certain organisms and facilitate the movement of regulated organisms and articles in a manner that also protects U.S. agriculture.

Timetable:

Action	Date	FR Cite
Notice of Intent To Prepare an Environmental Impact Statement.	10/20/09	74 FR 53673
Notice Comment Period End.	11/19/09	
NPRM	05/00/16	
NPRM Comment Period End.	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Colin Stewart, Assistant Director, Pests, Pathogens, and Biocontrol Permits, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1236, *Phone:* 301 851–2237.

RIN: 0579–AC98

7. Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 1622; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

Abstract: This rulemaking would amend the bovine spongiform encephalopathy (BSE) and scrapie regulations regarding the importation of live sheep, goats, and wild ruminants and their embryos, semen, products, and byproducts. The proposed scrapie revisions regarding the importation of sheep, goats, and susceptible wild ruminants for other than immediate slaughter are similar to those recommended by the World Organization for Animal Health in restricting the importation of such animals to those from scrapie-free regions or certified scrapie-free flocks.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	
NPRM Comment Period End.	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Langston Hull, Senior Staff Veterinary Medical Officer, Animal Permitting and Negotiating Services, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, *Phone:* 301 851–3300.

RIN: 0579–AD10

8. Brucellosis and Bovine Tuberculosis; Update of General Provisions

Legal Authority: 7 U.S.C. 1622; 7 U.S.C. 8301 to 8317; 15 U.S.C. 1828; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

Abstract: This rulemaking would consolidate the regulations governing bovine tuberculosis (TB), currently found in 9 CFR part 77, and those governing brucellosis, currently found in 9 CFR part 78. As part of this consolidation, we are proposing to transition the TB and brucellosis programs away from a State status system based on disease prevalence. Instead, States and tribes would implement an animal health plan that identifies sources of the diseases within the State or tribe and specifies mitigations to address the risk posed by these sources. The consolidated regulations also would set forth standards for surveillance, epidemiological investigations, and affected herd management that must be incorporated into each animal health plan, with certain limited exceptions; conditions for the interstate movement of cattle, bison, and captive cervids; and conditions for APHIS approval of tests for bovine TB or brucellosis. Finally, the rulemaking would revise the import requirements for cattle and bison to make these requirements clearer and ensure that they more effectively mitigate the risk of introduction of the diseases into the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/16/15	80 FR 78461
NPRM Comment Period End.	03/15/16	
NPRM Comment Period Extended.	03/11/16	81 FR 12832
NPRM Comment Period Extended End.	05/16/16	
Final Rule	02/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Langston Hull, Senior Staff Veterinary Medical Officer, Animal Permitting and Negotiating Services, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, *Phone:* 301 851–3300.

C. William Hench, Senior Cattle Health Specialist, Cattle Health Center, Surveillance, Preparedness, and Response, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 2150 Centre Avenue, Building B–3E20, Fort Collins, CO 80526, *Phone:* 970 494–7378.

RIN: 0579–AD65

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Final Rule Stage

9. Scrapie in Sheep and Goats

Legal Authority: 7 U.S.C. 8301 to 8317

Abstract: This rulemaking would amend the scrapie regulations by changing the risk groups and categories established for individual animals and for flocks. It would simplify, reduce, or remove certain recordkeeping requirements. This action would provide designated scrapie epidemiologists with more alternatives and flexibility when testing animals in order to determine flock designations under the regulations. It would also make the identification and recordkeeping requirements for goat owners consistent with those for sheep owners. These changes would affect sheep and goat producers and State governments.

Timetable:

Action	Date	FR Cite
NPRM	09/10/15	80 FR 54659
NPRM Comment Period End.	11/09/15	
NPRM Comment Period Reopened.	11/16/15	80 FR 70718
NPRM Comment Period Reopened End.	12/09/15	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Diane Sutton, Sheep, Goat, Cervid, and Equine Health Center; Surveillance, Preparedness, and Response Services, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 43, Riverdale, MD 20737–1235, *Phone:* 301 851–3509.

RIN: 0579–AC92

10. Importation of Wood Packaging Material From Canada

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

Abstract: This rulemaking will amend the regulations for the importation of unmanufactured wood articles with regard to the exemption that allows wood packaging material from Canada to enter the United States without first meeting the treatment and marking requirements of the regulations that apply to wood packaging material from all other countries. This action is necessary in order to prevent the dissemination and spread of pests via wood packaging material from Canada.

Timetable:

Action	Date	FR Cite
NPRM	12/02/10	75 FR 75157
NPRM Comment Period End.	01/31/11	
Final Rule	09/00/16	
Final Action Effective.	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Tyrone Jones, Trade Director, Forestry Products, Phytosanitary Issues Management, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 140, Riverdale, MD 20737–1231, *Phone:* 301 851–2344.

RIN: 0579–AD28

11. Establishing a Performance Standard for Authorizing the Importation and Interstate Movement of Fruits and Vegetables

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

Abstract: This rulemaking will amend our regulations governing the importations of fruits and vegetables by broadening our existing performance standard to provide for consideration of all new fruits and vegetables for importation into the United States using a notice-based process. Rather than authorizing new imports through proposed and final rules and specifying import conditions in the regulations, the notice-based process uses **Federal Register** notices to make risk analyses available to the public for review and comment, with authorized commodities and their conditions of entry subsequently being listed on the Internet. It also will remove the region- or commodity-specific phytosanitary requirements currently found in these regulations. Likewise, we are proposing an equivalent revision of the performance standard in our regulations governing the interstate movements of fruits and vegetables from Hawaii and the U.S. territories (Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) and the removal of commodity-specific phytosanitary requirements from those regulations. This action will allow for the consideration of requests to authorize the importation or interstate movement of new fruits and vegetables in a manner that enables a more flexible and responsive regulatory approach to evolving pest situations in both the United States and exporting countries. It will not, however, alter the science-based process in which the risk associated with importation or interstate movement of a given fruit or vegetable is evaluated or the manner in which risks associated with the importation or interstate movement of a fruit or vegetable are mitigated.

Timetable:

Action	Date	FR Cite
NPRM	09/09/14	79 FR 53346
NPRM Comment Period End.	11/10/14	
NPRM Comment Period Reopened.	12/04/14	79 FR 71973
NPRM Comment Period End.	01/09/15	
NPRM Comment Period Reopened.	02/06/15	80 FR 6665
NPRM Comment Period End.	03/10/15	
Final Rule	08/00/16	
Final Rule Effective.	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nicole Russo, Assistant Director, Regulatory Coordination and Compliance, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1236, *Phone:* 301 851–2159.

RIN: 0579–AD71

12. • Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of The Select Agent and Toxin List

Legal Authority: 7 U.S.C. 8401

Abstract: In accordance with the Agricultural Bioterrorism Protection Act of 2002, we are soliciting public comment regarding the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires the biennial review and republication of the list of select agents and toxins and the revision of the list as necessary. Accordingly, we are soliciting public comment on the current list of select agents and toxins in our regulations and suggestions regarding any addition or reduction of the animal or plant pathogens currently on the list of select agents.

Timetable:

Action	Date	FR Cite
ANPRM	02/27/15	80 FR 10627
ANPRM Comment Period End.	04/28/15	
NPRM	01/19/16	81 FR 2762
NPRM Comment Period End.	03/21/16	
Final Action	11/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Freeda Isaac, National Director, Agriculture Select Agent Services, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 2, Riverdale, MD 20737–1231, *Phone:* 301 851–3300.

RIN: 0579–AE08

DEPARTMENT OF AGRICULTURE (USDA)

Animal and Plant Health Inspection Service (APHIS)

Completed Actions

13. Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles

Legal Authority: 16 U.S.C. 3371 *et seq.*

Abstract: We are adopting as a final rule, without change, an interim final rule that established definitions for the terms common cultivar and common food crop and several related terms. The 2008 amendments to the Lacey Act expanded its protections to a broader range of plant species; extended its reach to encompass products, including timber, that derive from illegally harvested plants; and required that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms common cultivar and common food crop but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. The interim final rule specifically requested comment on definitions of two related terms: commercial scale and tree. This document responds to comments we received on those definitions.

Completed:

Reason	Date	FR Cite
Affirmation of Interim Final Rule.	01/25/16	81 FR 3939
Affirmation of Interim Final Rule Effective.	01/25/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Parul Patel, *Phone:* 301 851–2351.

RIN: 0579–AD11

14. • Exportation of Live Animals, Hatching Eggs, and Animal Germplasm From the United States

Legal Authority: 7 U.S.C. 8301 to 8317; 19 U.S.C. 1644a(c); 21 U.S.C. 136, 136a, and 618; 46 U.S.C. 3901 and 3902

Abstract: We are revising the regulations pertaining to the exportation of livestock from the United States. Among other things, we are removing most of the requirements for export health certifications, tests, and treatments from the regulations, and instead directing exporters to follow the requirements of the importing country regarding such processes and procedures. We are retaining only those export health certification, testing, and treatment requirements that we consider necessary to have assurances regarding the health and welfare of livestock exported from the United States. We also are allowing pre-export inspection of livestock to occur at facilities other than an export inspection facility associated with the port of embarkation, under certain circumstances, and replacing specific standards for export inspection facilities and ocean vessels with performance standards. These changes will provide exporters and the Animal and Plant Health Inspection Service (APHIS) with more flexibility in arranging for the export of livestock from the United States while continuing to ensure the health and welfare of the livestock. Additionally, if APHIS knows that an importing country requires an export health certificate endorsed by the competent veterinary authority of the United States for any animal other than livestock, including pets, or for any hatching eggs or animal germplasm, we are requiring that the animal, hatching eggs, or animal germplasm have such a health certificate to be eligible for export from the United States. This change will help ensure that all animals, hatching eggs, and animal germplasm exported from the United States meet the health requirements of the countries to which they are destined. Finally, we are making editorial amendments to the regulations to make them easier to understand and comply with.

Timetable:

Action	Date	FR Cite
NPRM	02/26/15	80 FR 10398
NPRM Comment Period End.	04/27/15	
Final Rule	01/20/16	81 FR 2967
Final Rule Effective.	02/19/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jack Taniewski, Director for Animal Export, National Import Export Services, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231, *Phone:* 301 851–3300.

RIN: 0579–AE00

15. • Importation of Tomato Plantlets in Approved Growing Media From Mexico

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

Abstract: This rulemaking amends the regulations governing the importation of plants for planting to authorize the importation of tomato plantlets from Mexico in approved growing media, subject to a systems approach. The systems approach consists of measures currently specified for tomato plants for planting not imported in growing media, as well as measures specific to all plants for planting imported into the United States in approved growing media. Additionally, the plantlets must be imported into greenhouses in the continental United States and the importers of the plantlets from Mexico or the owners of the greenhouses in the continental United States must enter into compliance agreements regarding the conditions under which the plants from Mexico must enter and be maintained within the greenhouses. This rule allows for the importation into the continental United States of tomato plantlets from Mexico in approved growing media, while providing protection against the introduction of plant pests. The rule also allows the imported greenhouse plantlets to produce tomato fruit for commercial sale within the United States.

Timetable:

Action	Date	FR Cite
NPRM	03/05/15	80 FR 11946
NPRM Comment Period End.	05/04/15	
Final Rule	10/02/15	80 FR 59557
Final Rule Effective.	11/02/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lydia Coloón, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1236, *Phone:* 301 851–2302.

RIN: 0579–AE06

16. • Importation of Phalaenopsis SPP. Plants for Planting in Approved Growing Media From China to the Continental United States

Legal Authority: 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

Abstract: This rulemaking amends the regulations governing the importation of plants for planting to authorize the importation of Phalaenopsis spp. plants for planting from China in approved growing media into the continental United States, subject to a systems approach. The systems approach consists of measures that are currently specified in the regulations as generally applicable to all plants for planting authorized for importation into the United States in approved growing media. This rule allows for the importation of Phalaenopsis spp. plants for planting from China in approved growing media, while providing protection against the introduction of quarantine plant pests.

Timetable:

Action	Date	FR Cite
NPRM	06/01/15	80 FR 30959
NPRM Comment Period End.	07/31/15	
Final Rule	02/11/16	81 FR 7195
Final Rule Effective.	03/14/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lydia Colón, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1236, *Phone:* 301 851–2302.

RIN: 0579–AE10

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE (USDA)

Grain Inspection, Packers and Stockyards Administration (GIPSA)

Proposed Rule Stage

17. • Undue Preference and Advantage

Legal Authority: Pub. L. 110–246; 7 U.S.C. 181–229c

Abstract: Title XI of the 2008 Farm Bill required the Secretary of Agriculture to issue a number of regulations under the P&S Act. Among these instructions, the 2008 Farm Bill directed the Secretary to identify criteria to be considered in determining whether an undue or unreasonable preference or advantage has occurred in violation of the P&S Act. In June of 2010, the Grain Inspection, Packers and Stockyards Administration (GIPSA) published a proposed rule addressing this statutory requirement along with several other rules required by the 2008 Farm Bill. Proposed 201.211 to the regulations under the P&S Act would have established criteria that the Secretary may consider in determining if conduct would violate section 202(b) of the P&S Act (undue or unreasonable preference or advantage). While many commenters provided examples of similarly situated poultry growers and livestock producers receiving different treatment, other commenters were concerned about the impacts of the provision on marketing arrangements and other beneficial contractual agreements. Beginning with the FY 2012 appropriations act, USDA was precluded from working on certain proposed regulatory provisions related to the P&S Act, including criteria in this proposal regarding undue or unreasonable preferences or advantages. Consequently, GIPSA did not finalize this rule in 2011. The prohibitions are not included in the Consolidated Appropriations Act, 2016. This rulemaking is necessary to fulfill statutory requirements.

Timetable:

Action	Date	FR Cite
Proposed Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Raymond Dexter Thomas II, Lead Regulatory Analyst, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW., Room 2530–South, Washington, DC 20250, *Phone:* 202 720–6529, *Fax:* 202 690–2173, *Email: r.dexter.thomas@usda.gov.*

RIN: 0580–AB27

DEPARTMENT OF AGRICULTURE (USDA)

Grain Inspection, Packers and Stockyards Administration (GIPSA)

Final Rule Stage

18. • Scope and Unfair Practices

Legal Authority: Pub. L. 110–246; 7 U.S.C. 181 to 229c

Abstract: In June of 2010, GIPSA published a proposal to amend section 201.3 of the regulations issued under the Packers and Stockyards Act (P&S Act), 1921, as amended. This proposed change responds to guidance from the courts. The courts, in addressing litigation brought by poultry growers alleging harm, have said that GIPSA's statements regarding the appropriate application of subsections 202(a) and 202(b) are not entitled to deference in the absence of regulation addressing whether the P&S Act prohibits all unfair practices, or only those causing harm or a likelihood of harm to competition. The amendment to 201.3 will establish GIPSA's interpretation of the statute which will then be entitled to judicial deference. Section 201.210 will illustrate by way of examples types of conduct GIPSA would consider unfair, unjustly discriminatory, or deceptive.

Timetable:

Action	Date	FR Cite
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Raymond Dexter Thomas II, Lead Regulatory Analyst, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW., Room 2530–South, Washington, DC 20250, *Phone:* 202 720–6529, *Fax:* 202 690–2173, *Email: r.dexter.thomas@usda.gov.*

RIN: 0580–AB25

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Proposed Rule Stage

19. Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems

Legal Authority: Pub. L. 113–79

Abstract: The Agricultural Act of 2014 (Pub. L. 113–79, the Farm Bill) amended the Food and Nutrition Act of 2008 (the FNA) to include new requirements regarding the acceptance and processing of SNAP client benefits by all non-exempt retailers participating in SNAP. Statutory changes will modernize EBT systems and ensure greater program integrity. The Food and Nutrition Service (FNS) also plans to revise certain SNAP regulations for which multiple State agencies have sought and received approval of waivers. The revisions will streamline program administration, offer greater flexibility to State agencies, and improve customer service.

Timetable:

Action	Date	FR Cite
NPRM	11/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–0800, *Email: charles.watford@fns.usda.gov.*

Lynnette M. Thomas, Chief, Planning and Regulatory Affairs Branch, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–4782, *Email: lynnette.thomas@fns.usda.gov.*

RIN: 0584–AE37

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Final Rule Stage

20. National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010

Legal Authority: Pub. L. 111–296

Abstract: This rule codifies the two provisions of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) under 7 CFR parts 210 and 220. Section 208 requires the Secretary to promulgate regulations to establish science-based nutrition standards for all foods sold in schools. The nutrition standards apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day. Section 203 requires schools participating in the National School Lunch Program to make available to children free of charge, as nutritionally appropriate, potable water for consumption in the place where meals are served during meal service.

Timetable:

Action	Date	FR Cite
NPRM	02/08/13	78 FR 9530
NPRM Comment Period End.	04/09/13	
Interim Final Rule	06/28/13	78 FR 39067
Interim Final Rule Effective.	08/27/13	
Interim Final Rule Comment Period End.	10/28/13	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–0800, *Email: charles.watford@fns.usda.gov.*

Lynnette M. Thomas, Chief, Planning and Regulatory Affairs Branch, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–4782, *Email: lynnette.thomas@fns.usda.gov.*

RIN: 0584–AE09

21. Child Nutrition Programs: Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010

Legal Authority: Pub. L. 111–296

Abstract: This final rule codifies a provision of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) under 7 CFR parts 210 and 220. Section 204 of the Act requires each local educational agency (LEA) to establish, for all schools under its jurisdiction, a local school wellness policy. The Act requires that the wellness policy include goals for nutrition, nutrition education, physical activity, and other school-based activities that promote student wellness. In addition, the Act requires that local educational agencies ensure stakeholder participation in development of their local school wellness policies, and periodically assess compliance with the policies, and disclose information about the policies to the public.

Timetable:

Action	Date	FR Cite
NPRM	02/26/14	79 FR 10693
NPRM Comment Period End.	04/28/14	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–0800, *Email: charles.watford@fns.usda.gov.*

Lynnette M. Thomas, Chief, Planning and Regulatory Affairs Branch, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, *Phone:* 703 605–4782, *Email: lynnette.thomas@fns.usda.gov.*

RIN: 0584–AE25

DEPARTMENT OF AGRICULTURE (USDA)

Food and Nutrition Service (FNS)

Completed Actions

22. Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010

Legal Authority: Pub. L. 111–296

Abstract: This final rule will implement section 221 of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296; the Act). It requires USDA to review and update, no less frequently than once every 10 years, requirements for meals served under the Child and Adult Care Food Program (CACFP) to ensure those meal patterns are consistent with the most recent Dietary Guidelines for Americans and relevant nutrition science.

Completed:

Reason	Date	FR Cite
Final Action	04/25/16	81 FR 24348
Final Action Effective.	06/24/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles H. Watford, *Phone:* 703 605–0800, *Email: charles.watford@fns.usda.gov.*

Lynnette M. Thomas, *Phone:* 703 605–4782, *Email: lynnette.thomas@fns.usda.gov.*

RIN: 0584–AE18

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE (USDA)

Food Safety and Inspection Service (FSIS)

Proposed Rule Stage

23. Elimination of Trichina Control Regulations and Consolidation of Thermally Processed, Commercially Sterile Regulations

Legal Authority: Federal Meat Inspection Act (FMIA); Poultry Products Inspection Act (PPIA)

Abstract: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to eliminate the requirements for both ready-to-eat (RTE) and not-ready-to-eat (NRTE) pork and pork products to be treated to destroy trichina (Trichinella spiralis) because the regulations are inconsistent with the Hazard Analysis and Critical Control Point (HACCP) regulations, and these prescriptive regulations are no longer necessary. If this supplemental proposed rule is finalized, FSIS will end its Trichinella Approved Laboratory Program (TALP program) for the evaluation and approval of non-Federal laboratories that use the pooled sample digestion technique to analyze samples for the presence of trichina. FSIS is also proposing to consolidate the regulations on thermally processed, commercially sterile meat and poultry products (*i.e.,* canned food products containing meat or poultry).

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dr. Daniel L. Engeljohn, Assistant Administrator, Office of Policy and Program Development, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW., 349–E JWB, Washington, DC 20250, *Phone:* 202 205–0495, *Fax:* 202 720–2025, *Email: daniel.engeljohn@fsis.usda.gov.*

RIN: 0583–AD59

DEPARTMENT OF AGRICULTURE (USDA)

Food Safety and Inspection Service (FSIS)

Completed Actions

24. Mandatory Inspection of Fish of the Order Siluriformes and Products Derived From Such Fish

Legal Authority: Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 to 695); Pub. L. 110–246, sec 11016; Pub. L. 113–79, sec 12106

Abstract: The 2008 Farm Bill (Pub. L. 110–246, sec. 11016), amended the Federal Meat Inspection Act (FMIA) to make "catfish" a species amenable to the FMIA and, therefore, subject to Food Safety and Inspection Service (FSIS) inspection. In addition, the 2008 Farm Bill gave FSIS the authority to define the term "catfish." On February 24, 2011, FSIS published a proposed rule that outlined a mandatory catfish inspection program and presented two options for defining "catfish." The 2014 Farm Bill (Pub. L. 113–79, sec. 12106), amended the FMIA to remove the term "catfish" and to make "all fish of the order Siluriformes" subject to FSIS jurisdiction and inspection. As a result, FSIS inspection of Siluriformes is mandated by law and non-discretionary.

Completed:

Reason	Date	FR Cite
Final Action	12/02/15	80 FR 75589
Final Action Effective.	03/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Daniel L. Engeljohn, *Phone:* 202 205–0495, *Fax:* 202 720–2025, *Email: daniel.engeljohn@fsis.usda.gov.*

RIN: 0583–AD36

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE (USDA)

Forest Service (FS)

Long-Term Actions

25. Management of Surface Activities Associated With Outstanding Mineral Rights on National Forest System Lands (Directive)

Legal Authority: EPA 1992

Abstract: Close to 11,000,000 acres (approximately 6 percent) of National Forest System (NFS) lands overlie severed (split) mineral estates owned by a party other than the Federal Government. More than 75 percent of these lands are in the Eastern Region (Forest Service Regions 8 and 9). There are two kinds of severed mineral estates, generally known as "private rights": reserved and outstanding. Reserved mineral rights are those retained by a grantor in a deed conveying land to the United States. Outstanding mineral rights are those owned by a party other than the surface owner at the time the surface was conveyed to the United States. Because these are non-Federal mineral interests, the U.S. Department of the Interior's Bureau of Land Management has no authority for or role in managing development activities associated with such interests. States have the authority and responsibility for regulating development of the private mineral estate.

Various Secretary's Rules and Regulations (years of 1911, 1937, 1938, 1939, 1947, 1950, and 1963) and Forest Service regulations at 36 CFR 251.15 provide direction for the use of NFS lands for mineral development activities associated with the exercise of reserved mineral rights. These existing rules for reserved minerals development activities also include requirements for protection of NFS resources.

Currently, there are no formal regulations governing the use of NFS lands for activities associated with the exercise of outstanding mineral rights underlying those lands. The Energy Policy Act of 1992, section 2508, directed the Secretary of Agriculture to apply specified terms and conditions to surface-disturbing activities related to development of oil and gas on certain lands with outstanding mineral rights on the Allegheny National Forest, and promulgate regulations implementing that section.

The Forest Service initiated rulemaking for the use of NFS lands for development activities associated with both reserved and outstanding minerals rights with an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 29, 2008. Comments from the public in response to the ANPRM conveyed a high level of concern about the broad scope of the rule, along with a high level of concern about effects of a broad rule on small businesses and local economies.

Timetable:

Action	Date	FR Cite
ANPRM	12/29/08	73 FR 79424
ANPRM Comment Period End.	02/27/09	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: LaRenda C. King, *Phone:* 202 205–6560, *Email: larendacking@fs.fed.us.*

RIN: 0596–AD03

DEPARTMENT OF AGRICULTURE (USDA)

Forest Service (FS)

Completed Actions

26. Ski Area—D Clauses: Resource and Improvement Protection, Water Facilities, and Water Rights (Directive)

Legal Authority: FSH 2709.11

Abstract: On November 8, 2011, the Forest Service issued an interim directive (FSH 2709.11–2011–3) including a revised clause to address the ownership of water rights developed on National Forest System (NFS) lands for use by ski area permit holders. On March 6, 2012, a second interim directive (FSH 2709.11–2012–1) for the revised ski area water rights clause was issued, superseding the 2011 version. The National Ski Areas Association filed a lawsuit in the United States District Court for the District of Colorado on March 12, 2012, opposing use of the revised clause. On December 19, 2012, the court ruled that the Forest Service had erred in not providing an opportunity for notice and comment on the interim directive and that the agency needed to conduct a Regulatory Flexibility Act analysis of the impact of the directive on small business entities that hold ski area permits. The court vacated the interim directive and enjoined enforcement of the 2011 and 2012 clauses in permits containing them. The directive addresses the development of water facilities on NFS lands; the ownership of preexisting and future water rights; mechanisms to ensure sufficient water remains for ski areas on NFS lands; and measures necessary to protect NFS lands and resources. The Forest Service published the proposed ski area water rights clause in the **Federal Register** for public notice and comment. To identify interests and views from a diverse group of stakeholders regarding a revised water rights clause for ski areas, the Forest Service held four stakeholder meetings in April 2013. The input from the stakeholder sessions was considered in the development of the final water rights clause for ski areas.

Completed:

Reason	Date	FR Cite
Final Directive	12/30/15	80 FR 81508

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: LaRenda C. King, *Phone:* 202 205–6560, *Email: larendacking@fs.fed.us.*

RIN: 0596–AD14

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE (USDA)

Office of Procurement and Property Management (OPPM)

Proposed Rule Stage

27. Designation of Biobased Product Categories for Federal Procurement, Round 11

Legal Authority: Pub. L. 113–79

Abstract: This proposed rule will designate, for preferred procurement under the Federal Biobased Products Preferred Procurement Program, approximately 10 intermediate ingredient or feedstock product categories. An intermediate ingredient or feedstock is defined by the BioPreferred Program as a material or compound made in whole or in significant part from biological products. Typical intermediate ingredient or feedstock product categories will include renewable chemicals; plastic resins; chemical binders; oils, fats, and waxes; and fibers and fabrics.

Timetable:

Action	Date	FR Cite
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marie Wheat, Department of Agriculture, Office of Procurement and Property Management, Washington, DC 20250, *Phone:* 202 239–4502, *Email: marie.wheat@dm.usda.gov.*

RIN: 0599–AA24

28. Designation of Biobased Product Categories for Federal Procurement, Round 12

Legal Authority: Pub. L. 113–79

Abstract: This proposed rule will designate, for preferred procurement under the Federal Biobased Products Preferred Procurement Program, approximately eight complex assembly product categories. A complex assembly is defined by the BioPreferred program as a system of distinct materials and components assembled to create a finished product with specific functional intent where some or all of the system inputs contain some amount of biobased material or feedstock. Typical complex assembly product categories will include products such as upholstered office chairs and other office furniture; mattresses; backpacks; boots; and other camping gear. The specific product categories to be included in this rulemaking are under investigation by the Office of Procurement and Property Management, but technical information is expected to be available to support the designation of about eight product categories.

Timetable:

Action	Date	FR Cite
NPRM	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marie Wheat, Department of Agriculture, Office of Procurement and Property Management, Washington, DC 20250, *Phone:* 202 239–4502, *Email: marie.wheat@dm.usda.gov.*

RIN: 0599–AA25

[FR Doc. 2016–12899 Filed 6–8–16; 8:45 am]

BILLING CODE 3410–98–P

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Part IV

Department of Commerce

Semiannual Regulatory Agenda

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

Spring 2016 Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Semiannual regulatory agenda.

SUMMARY: In compliance with Executive Order 12866, entitled "Regulatory Planning and Review," and the Regulatory Flexibility Act, as amended, the Department of Commerce (Commerce), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the fall 2015 agenda. The purpose of the Agenda is to provide information to the public on regulations that are currently under review, being proposed, or issued by Commerce. The agenda is intended to facilitate comments and views by interested members of the public.

Commerce's spring 2016 regulatory agenda includes regulatory activities that are expected to be conducted

SUPPLEMENTARY INFORMATION: Commerce hereby publishes its spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of February 19, 2016, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the spring 2016 Unified Agenda. The Regulatory Flexibility Act requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities, and a list that identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

In addition, beginning with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov,* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act, Commerce's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of Commerce's regulations.

A large number of regulatory actions reported in the Agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of NMFS' programs, an "Explanation of Information Contained in NMFS Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (the Act) governs the management of fisheries within the Exclusive Economic Zone of the United States (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. For fisheries that require conservation and management measures, eight Regional Fishery Management Councils (Councils) prepare Fishery Management Plans (FMPs) for the fisheries within their respective areas. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing may be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. In the development of FMPs, or amendments to FMPs, and their implementing regulations, the Councils are required by law to conduct public hearings on the

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
30	Implementation of a Program for Transshipments by Large Scale Fishing Vessels in the Eastern Pacific Ocean.	0648–BD59
31	Regulatory Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region.	0648–BD78
32	Omnibus Acceptable Biological Catch Framework Adjustment	0648–BE65
33	Modification of the Temperature-Dependent Component of the Pacific Sardine Harvest Guideline Control Rule To Incorporate New Scientific Information.	0648–BE77
34	Reductions in Fishing Capacity for Lobster Management Areas 2 and 3	0648–BF01
35	Pacific Coast Groundfish Trawl Rationalization Program; Widow Rockfish Reallocation in the Individual Fishing Quota Fishery.	0648–BF12
36	Amendment 18 to the Northeast Multispecies Fishery Management Plan **(Section 610 Review)**	0648–BF26
37	Allow the Use of Longline Pot Gear in the Gulf of Alaska Sablefish Individual Fishing Quota Fishery	0648–BF42
38	Atlantic Highly Migratory Species; Atlantic Blacknose Shark Commercial Retention Limit	0648–BF49
39	Amendment 113 to the FMP for Groundfish of the BSAI Management Area To Establish a Catcher Vessel Fishing Period and Shoreside Processing Delivery Requirements for Aleutian Islands Pacific Cod.	0648–BF54
40	Regulatory Amendment 25 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region.	0648–BF61
41	Specification of Management Measures for Atlantic Herring for the 2016–2018 Fishing Years	0648–BF64
42	Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP)	0648–BF72
43	Amendment 17A to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters.	0648–BF77
44	Framework Amendment 1 to the Dolphin and Wahoo Fishery Management Plan of the Atlantic	0648–BF81
45	Omnibus Essential Fish Habitat Amendment 2	0648–BF82
46	Amendment 103 to the Fishery Management Plan for Groundfish of the Gulf of Alaska to Reapportion Chinook Salmon Prohibited Catch in the Gulf of Alaska Trawl Fisheries.	0648–BF84
47	Framework Adjustment 3 to the Northeast Skate Complex Fishery Management Plan	0648–BF87
48	2016–2018 Spiny Dogfish Fishery Specifications	0648–BF88
49	2016 Summer Flounder, Scup, and Black Sea Bass Recreational Harvest Measures **(Section 610 Review)**.	0648–BF89

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
50	Amendment 7 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan	0648–BC09
51	Amendment 39 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648–BD25
52	Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico **(Section 610 Review)**.	0648–BD68
53	Amendment 35 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region.	0648–BE70
54	Pacific Coast Groundfish Fishing Capacity Reduction Loan Refinance **(Section 610 Review)**	0648–BE90
55	Amendment 109 to the Fishery Management Plan for Groundfish of the BSAI To Facilitate Development of Groundfish Fisheries for Small Vessels in the Western Alaska Community Development Quota Program.	0648–BF05

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
70	Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico	0648–AS65
71	Atlantic Highly Migratory Species; Future of the Atlantic Shark Fishery	0648–BA17
72	Implement the 2010 Shark Conservation Act Provisions and Other Regulations in the Atlantic Smoothhound Shark Fishery.	0648–BB02
73	Implementation of the Inter-American Tropical Tuna Commission Resolution To Establish a Vessel Monitoring System Program in the Eastern Pacific Ocean.	0648–BD54
74	Amendment 7 to the FMP for the Dolphin Wahoo Fishery of the Atlantic and Amendment 33 to the FMP for the Snapper-Grouper Fishery of the South Atlantic.	0648–BD76
75	Amendment 8 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	0648–BD81
76	Cost Recovery from Amendment 80, CDQ Groundfish and Halibut, American Fisheries Act and Aleutian Islands Pollock, and the Freezer Longline Coalition Pacific Cod Fisheries Management Programs.	0648–BE05
77	Generic Accountability Measure and Dolphin Allocation Amendment for the South Atlantic Region	0648–BE38
78	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort and Catch Limits and other Restrictions and Requirements.	0648–BE84
79	Revision of Skate Maximum Retainable Amounts in the Gulf of Alaska Groundfish Fishery	0648–BE85
80	Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs to Modify Right of First Refusal Provisions of the Crab Rationalization Program.	0648–BE98
81	Framework Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region.	0648–BF14
82	Framework Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico to Modify Greater Amberjack Allowable Harvest and Management Measures.	0648–BF21
83	Framework Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for Red Snapper Commercial Quota Retention for 2016.	0648–BF33
84	Designation of Critical Habitat for the North Atlantic Right Whale	0648–AY54
85	Endangered and Threatened Species: Designation of Critical Habitat for Threatened Lower Columbia River Coho Salmon and Puget Sound Steelhead.	0648–BB30
86	Revisions to Hawaiian Islands Humpback Whale National Marine Sanctuary Regulations	0648–BD97

PATENT AND TRADEMARK OFFICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
87	Trademark Fee Adjustment	0651–AD08

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

National Marine Fisheries Service

29. Amendment 5B to the Highly Migratory Species Fishery Management Plan

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

Abstract: This rulemaking would propose management measures for dusky sharks based on the latest stock assessment, taking into consideration comments received on the proposed rule and Amendment 5 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan. This rulemaking considers a range of commercial and recreational management measures in both directed and incidental shark fisheries including, among other things, gear modifications, time/area closures, permitting, shark identification requirements, and reporting requirements. NMFS determined dusky sharks are still overfished and still experiencing overfishing and originally proposed management measures to end overfishing and rebuild dusky sharks in a proposed rule for Draft Amendment 5 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. That proposed rule also contained management measures for scalloped hammerhead, sandbar, blacknose and Gulf of Mexico blacktip sharks. NMFS decided to move forward with Draft Amendment 5's management measures for scalloped hammerhead, sandbar, blacknose and Gulf of Mexico blacktip sharks in a final rule and final amendment that will now be referred to as "Amendment 5a" to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan. Dusky shark management measures will be addressed in this separate, but related, action and will be referred to as "Amendment 5b."

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

RIN: 0648–BD22

30. Implementation of a Program for Transshipments by Large Scale Fishing Vessels in the Eastern Pacific Ocean

Legal Authority: 16 U.S.C. 951 *et seq.;* 16 U.S.C. 971 *et seq.*

Abstract: This rule would implement the Inter-American Tropical Tuna Commission program to monitor transshipments by large-scale tuna fishing vessels, and would govern transshipments by U.S. large-scale tuna fishing vessels and carrier, or receiving, vessels. The rule would establish: criteria for transshipping in port; criteria for transshipping at sea by longline vessels to an authorized carrier vessel with an Inter-American Tropical Tuna Commission observer onboard and an operational vessel monitoring system; and require the Pacific Transshipment Declaration Form, which must be used to report transshipments in the Inter-American Tropical Tuna Commission Convention Area. This rule is necessary for the United States to satisfy its international obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna, to which it is a Contracting Party.

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Stelle Jr., Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way Northeast, Building 1, Seattle, WA 98115. *Phone:* 206 526–6150. *Email: will.stelle@noaa.gov.*

RIN: 0648–BD59

31. Regulatory Amendment 16 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Regulatory Amendment 16 contains an action to address the prohibition on the use of black sea bass pots annually from November 1 through April 30 that was implemented through Regulatory Amendment 19. The prohibition was a precautionary measure to prevent interactions between black sea bass pot gear and whales listed under the Endangered Species Act during large whale migrations and the right whale calving season off the southeastern coast. The South Atlantic Fishery Management Council, through Regulatory Amendment 16, is considering removal of the closure, changing the length of the closure, and changing the area of the closure. The goal is to minimize adverse socio-economic impacts to black sea bass pot endorsement holders while maintaining protection for Endangered Species Act-listed whales in the South Atlantic region.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD78

32. Omnibus Acceptable Biological Catch Framework Adjustment

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This action would make two administrative adjustments to the Mid-Atlantic Fishery Management Council's (Council) Omnibus Annual Catch Limit Amendment: (1) Adjust the Council's risk policy so that the Scientific and Statistical Committee may apply an average probability of overfishing when recommending multi-year Acceptable Biological Catches; and (2) make all of the Council's fishery management plans consistent in allowing new status determination criteria (overfishing definitions, etc.) to be accepted as the best available scientific information.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BE65

33. Modification of the Temperature-Dependent Component of the Pacific Sardine Harvest Guideline Control Rule To Incorporate New Scientific Information

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Pursuant to a recommendation of the Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) is proposing to use a new temperature index to calculate the temperature parameter of the Pacific sardine harvest guideline control rule under the Fishery Management Plan. The harvest guideline control rule, in conjunction with the overfishing limit and acceptable biological catch control rules, is used to set annual harvest levels for Pacific sardine. The temperature parameter is calculated annually. NMFS determined that a new temperature index is more statistically sound and this action will adopt that index. This action also will revise the upper temperature limit to allow for additional sardine harvest where prior guidelines set catch unnecessarily low.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Stelle Jr., Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way Northeast, Building 1, Seattle, WA 98115, *Phone:* 206 526–6150, *Email: will.stelle@noaa.gov.*

RIN: 0648–BE77

34. Reductions in Fishing Capacity for Lobster Management Areas 2 and 3

Legal Authority: 16 U.S.C. 5101 *et seq.*

Abstract: This action proposes several reductions in fishing capacity for Lobster Management Areas 2 and 3. The proposed measures include: Caps on the number of traps that can be actively fished; caps on the number of traps associated with a permit (*i.e.,* allowing trap banking); and caps on the number of traps or permits issued to a given owner. This action is intended to assist in rebuilding the Southern New England lobster stock.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF01

35. Pacific Coast Groundfish Trawl Rationalization Program; Widow Rockfish Reallocation in the Individual Fishing Quota Fishery

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: In January 2011, NMFS implemented the groundfish trawl rationalization program (a catch share program) for the Pacific coast groundfish limited entry trawl fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations. Amendment

20 established the trawl rationalization program, which includes an Individual Fishing Quota program for limited entry trawl participants, and Amendment 21 established fixed allocations for limited entry trawl participants. During implementation of the trawl individual fishing quota program, widow rockfish was overfished and the initial allocations were based on its overfished status and management as a non-target species. NMFS declared the widow rockfish rebuilt in 2011 and, accordingly, the Pacific Fishery Management Council has now recommended actions to manage the increased abundance of widow rockfish. The action would reallocate individual fishing quota widow rockfish quota share to facilitate directed harvest and would lift the moratorium on widow rockfish quota share trading.

Timetable:

Action	Date	FR Cite
NPRM	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Stelle Jr., Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way Northeast, Building 1, Seattle, WA 98115, *Phone:* 206 526–6150, *Email: will.stelle@noaa.gov.*

RIN: 0648–BF12

36. Amendment 18 to the Northeast Multispecies Fishery Management Plan (Section 610 Review)

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Amendment 18 to the Northeast Multispecies Fishery Management Plan would make necessary minor administrative adjustments to several groundfish sectors, as well as minor adjustments to fishing activity designed to protect fishery resources while maximizing flexibility and efficiency. Specifically, it would include the following management measures: Creating an accumulation limit for either the holdings of Potential Sector Contribution or of Northeast multispecies permits; creating a sub-annual catch limit that Handgear A permits could enroll in and other measures pertaining to fishing with Handgear A permits; adjusting what fishery data are considered confidential, specifically the price of annual catch entitlement transferred within a sector or leased between sectors; establishing an inshore/offshore boundary within the Gulf of Maine with associated measures, including creation of a Gulf of Maine cod sub-annual catch limit, adjusting the Gulf of Maine Gear Restricted Area boundary to align with the inshore/offshore boundary, and creating declaration time periods for fishing in the inshore or offshore areas; and establishing a Redfish Exemption Area, in which vessels could fish with a smaller mesh net than the standard mesh size, targeting redfish.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF26

37. • Allow The Use of Longline Pot Gear in the Gulf of Alaska Sablefish Individual Fishing Quota Fishery

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 773 *et seq.*

Abstract: This action would amend Federal regulations to allow fishermen to use longline pot gear to harvest sablefish in the Gulf of Alaska Individual Fishing Quota fishery. Hook-and-line gear is currently the only authorized gear type in the sablefish Individual Fishing Quota fishery. The action would authorize Individual Fishing Quota fishermen to use either longline pot gear or hook-and-line gear in the sablefish Individual Fishing Quota fishery. Some fishermen would like to use longline pot gear because it is less prone to whale interactions than hook-and-line gear. Whales can remove sablefish from hook-and-line gear, which reduces fishing efficiency and increases costs for sablefish Individual Fishing Quota fishermen because the whale interactions damage hook-and-line gear and reduce sablefish catch rates. However, whales cannot remove sablefish from longline pot gear, and the action to authorize longline pot gear in the sablefish Individual Fishing Quota fishery is intended to reduce fishery interactions with whales and reduce the negative impacts of whale interactions on the sablefish Individual Fishing Quota fleet. The action would establish management measures to minimize conflicts between hook-and-line and longline pot gear on the fishing grounds and to prevent significant consolidation of sablefish Individual Fishing Quota onto fewer vessels.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF42

38. • Atlantic Highly Migratory Species; Atlantic Blacknose Shark Commercial Retention Limit

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

Abstract: This rule would evaluate the management measures for blacknose sharks in the Atlantic region. It would consider, among other things, a range of commercial management measures in both directed and incidental shark fisheries including, but not limited to, retention limits. In addition, this action would address commercial retention limits to help prevent early closures of the non-blacknose small coastal shark management group and fully utilize the quota.

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

RIN: 0648–BF49

39. • Amendment 113 to the FMP for Groundfish of the BSAI Management Area to Establish a Catcher Vessel Fishing Period and Shoreside Processing Delivery Requirements for Aleutian Islands Pacific Cod

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule would restrict participation in the Aleutian Islands Pacific cod fishery. This action is necessary to provide stability to catcher vessels that participate in the Aleutian Islands Pacific cod fishery and the shoreside processors to which they deliver, and to the communities in which these processors are located. Specifically, this rule would establish catch limits for Pacific cod in the Aleutian Islands and the Bering Sea. The revised allocation is intended to provide catcher vessels with a sufficient opportunity to harvest Pacific cod in an inshore fishery by restricting participation in the fisheries by catcher processors that can harvest significantly larger volumes of Pacific cod further offshore. This rule may include provisions to relieve the restrictions on catcher processor participation if catcher vessels would not be able to harvest the allocation or Aleutian Islands shoreside processors would not be able to process catcher vessel harvests of Pacific cod.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF54

40. • Regulatory Amendment 25 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule proposes management changes recommended by the South Atlantic Fishery Management Council to blueline tilefish, yellowtail snapper, and black sea bass in the South Atlantic Region. This rule would increase the annual catch limit and optimum yield for blueline tilefish based on a new acceptable biological catch recommendation from the South Atlantic Council's Scientific and Statistical Committee. This action also proposes an increase to the current commercial trip limit and changing the recreational bag limit for blueline tilefish. Currently, the fishing year for yellowtail snapper is based on the calendar year. This rule proposes a summer/early fall start date of the fishing year to protect the yellowtail snapper stock during the spawning season and provide economic benefits for commercial fishermen. Lastly, this rule proposes an increase to the black sea bass recreational bag limit to increase the chance the recreational annual catch limit will be landed and ensure that optimum yield is being achieved.

Timetable:

Action	Date	FR Cite
NPRM	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF61

41. • Specification of Management Measures for Atlantic Herring for the 2016–2018 Fishing Years

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The Atlantic herring fishery specifications are annual catch amounts for the 2016–2018 fishing years, January-December. These specifications are required by regulation to be set for 3 years. If implemented, these specifications will change the current catch limit levels and will continue to prevent overfishing of the herring resource and achieve optimum yield. The catch limits established in these specifications set a constant catch amount available to the industry that provides a stable allowable catch for 3-year business planning purposes. In addition, the specifications add catch that was not caught under last year's catch limit for one management area and reduce catch that exceeded the catch limits set in other management areas. Finally, the specifications set annual gear-specific and area-specific catch caps for river herring and shad, consistent with Framework Adjustment 3 to the Atlantic Herring Fishery Management Plan.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF64

42. • Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP)

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Amendment 19 would incorporate a specifications process into the Atlantic Sea Scallop Fishery Management Plan and change the start of the fishing year. Developing specifications to set annual or biennial allocations will allow for a more efficient process for setting annual allocations than currently possible through framework adjustments. By adjusting the start of the scallop fishing year, NMFS would be able to implement simple specifications actions at the start of the fishing year on a more consistent basis.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF72

43. • Amendment 17A to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule would implement the Gulf of Mexico Fishery Management Council's decision to extend the Council-imposed moratorium on new federal commercial shrimp permits for 10 years. The moratorium began in 2006 and will expire in 2016 if no action is taken. This action is necessary to protect federally managed Gulf of Mexico shrimp stocks while promoting catch efficiency, economic efficiency and stability.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF77

44. • Framework Amendment 1 to the Dolphin and Wahoo Fishery Management Plan of the Atlantic

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Dolphin Wahoo 1 would establish a commercial trip limit after a specified percentage of the commercial sector annual catch limit has been reached and would continue until the end of the fishing year or until the entire commercial annual catch limit is met, whichever comes first.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF81

45. • Omnibus Essential Fish Habitat Amendment 2

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rulemaking would update the essential fish habitat and habitat areas of particular concern designation for all of the New England Fishery Management Council's managed species. This rule will also propose revisions to the system of habitat management areas, update groundfish seasonal spawning closures, and establish Dedicated Habitat Research Areas.

Timetable:

Action	Date	FR Cite
NPRM	11/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF82

46. • Amendment 103 to the Fishery Management Plan for Groundfish of the Gulf of Alaska To Reapportion Chinook Salmon Prohibited Catch in the Gulf of Alaska Trawl Fisheries

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* 16 U.S.C. 773 *et seq.;* Pub. L. 08–199

Abstract: This action would allow NMFS to reapportion unused Chinook salmon prohibited species catch within and between trawl sectors in the Gulf of Alaska groundfish fisheries to reduce the potential for early fishery closures. Amendments 93 and 97 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and implementing regulations established Chinook salmon prohibited species catch limits for pollock and non-pollock trawl fisheries. If a sector reaches a prohibited species catch limit, the fishery is closed for the remainder of the fishing year currently, the fishery management plan and regulations do not allow NMFS to reapportion unused Chinook salmon prohibited species catch among trawl sectors. Specifically, this action would: Allow NMFS to reapportion remaining Chinook salmon prohibited species catch among trawl catcher vessel sectors and from the trawl catcher/processor sector to trawl catcher vessel sectors based on criteria established for inseason reapportionments and within specified limits; increase management flexibility without exceeding the current overall 32,500 Chinook salmon prohibited species catch limit or negating the current prohibited species catch limits under Amendments 93 and 97; and increase the likelihood that groundfish resources are more fully harvested, and minimize the adverse socioeconomic impacts of the fishery closures on harvesters, processors, and communities.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF84

47. • Framework Adjustment 3 to the Northeast Skate Complex Fishery Management Plan

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This action, developed by the New England Fishery Management Council, includes skate fishery specifications for the 2016–2017 fishing years, and a new seasonal quota allocation in the skate wing fishery. In summary, the Council proposes: An annual catch limit for skate of 31,081 metric tons, an overall total allowable landings of 12,590 metric tons, status quo possession limits for the skate wing and bait fisheries, the addition of a seasonal quota allocation, and NMFS authority to close the fishery in-season if the seasonal quota is reached.

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF87

48. • 2016–2018 Spiny Dogfish Fishery Specifications

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The proposed action includes spiny dogfish fishery specifications for the 2016–2018 fishing years, as recommended by the Mid-Atlantic and New England Fishery Management Councils. In summary, the Councils propose: spiny dogfish annual catch limits of 51.9 million lb for 2016, 50.7 million lb for 2017, and 49.8 million lb for 2018 (decreases from 62.3 million lb in 2015); coastwide commercial quotas of 40.4 million lb for 2016, 39.1 million lb for 2017, and 38.2 million lb for 2018 (decreases from 50.6 million lb in 2015); and spiny dogfish trip limits of 5,000 lb (status quo).

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF88

49. • 2016 Summer Flounder, Scup, and Black Sea Bass Recreational Harvest Measures (Section 610 Review)

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule would propose management measures such as recreational possession limits, minimum fish sizes, and seasonal closures to achieve recreational harvest limits for the 2016 summer flounder, scup, and black sea bass recreational fisheries. The recreational harvest limits for these species have been established in a separate rulemaking. This rule proposes the management measures the Council has recommended to help ensure recreational harvest is constrained to those harvest limits. This rule will also propose modifications to the commercial scup incidental possession limits to more closely align with the current conditions of the fishery.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF89

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Final Rule Stage

National Marine Fisheries Service

50. Amendment 7 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

Abstract: Amendment 7 focused on bluefin tuna fishery management issues consistent with the need to end overfishing and rebuild the stock. Measures in Amendment 7 addressed several of the longstanding challenges facing the fishery and analyzed, among other things, revisiting quota allocations; reducing and accounting for dead discards; adding or modifying time/area closures or gear-restricted areas; and improving the reporting and monitoring of dead discards and landings in all categories.

Timetable:

Action	Date	FR Cite
Notice	04/23/12	77 FR 24161
Notice	06/08/12	77 FR 34025
NPRM	08/21/13	78 FR 52032
NPRM Comment Period Extended.	09/18/13	78 FR 57340
Public Hearing	11/05/13	78 FR 66327
NPRM Comment Period Reopened.	12/11/13	78 FR 75327
Public Hearing	12/26/13	78 FR 78322
Final Rule	12/02/14	79 FR 71509
Notice of Public Webinars.	12/16/14	79 FR 74652
Final Rule	12/30/14	79 FR 78310
Final Rule	02/04/15	80 FR 5991
Final Rule Effective.	02/04/15	
Notice	05/07/15	80 FR 26196
Final Action—Next Stage Undetermined.	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

RIN: 0648–BC09

51. Amendment 39 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The purpose of this action is to facilitate management of the recreational red snapper component in the reef fish fishery by reorganizing the federal fishery management strategy to better account for biological, social, and economic differences among the regions of the Gulf of Mexico. Regional management would enable regions and their associated communities to specify the optimal management parameters that best meet the needs of their local constituents thereby addressing regional socio-economic concerns.

Timetable:

Action	Date	FR Cite
Notice	05/13/13	78 FR 27956
Next Stage Undetermined.	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD25

52. Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Section 610 Review)

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: NMFS proposed to implement management measures as requested by the Gulf of Mexico Fishery Management Council in Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The Council voted to reallocate the Gulf of Mexico (Gulf) 2016 and 2017 red snapper stock annual catch limit between the commercial and recreational sectors from 51:49 percent to 48.5:51.5 percent, respectively. As a result of the revised sector allocations proposed in Amendment 28, this rule would revise the red snapper commercial and recreational quotas (which are equivalent to the annual catch limits) and the recreational annual catch targets. This rule would also set the Federal charter vessel/headboat and private angling component quotas and annual catch targets based on the revised recreational sectors annual catch limit and annual catch target.

Timetable:

Action	Date	FR Cite
Notice	12/24/15	80 FR 80310
NPRM	01/25/16	81 FR 4010
NPRM Comment Period End.	03/10/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD68

53. Amendment 35 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Amendment 35 would consider removing black snapper, dog snapper, mahogany snapper, and schoolmaster from the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region because these species have extremely low commercial landings in

state and Federal waters. Almost all harvest (recreational and commercial) occurs in South Florida, and the Florida Fish and Wildlife Conservation Commission has agreed that if the four species are removed from the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region they will extend state regulations for those species into Federal waters. Additionally, the South Atlantic Fishery Management Council (Council) desires consistent regulations for snapper-grouper species caught primarily in South Florida. Removing the four subject species would establish a consistent regulatory environment in Federal and state waters off southern Florida where they are most frequently encountered. Amendment 35 would also clarify, in accordance with the Council's intent, regulations governing use of golden tilefish longline endorsements.

Timetable:

Action	Date	FR Cite
Notice	02/05/16	81 FR 6222
NPRM	03/04/16	81 FR 11502
NPRM Comment Period End.	04/04/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BE70

54. Pacific Coast Groundfish Fishing Capacity Reduction Loan Refinance (Section 610 Review)

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1861 *et seq.;* 5 U.S.C. 561 *et seq.*

Abstract: The National Marine Fisheries Service (NMFS) issued proposed regulations to refinance the voluntary fishing capacity reduction loan program implemented in 2004 in the Pacific Coast groundfish Federal limited-entry trawl, Washington coastal Dungeness crab, and California pink shrimp fisheries (collectively known hereafter as the refinanced reduction fisheries). The refinance loan of up to $30 million could establish a new industry fee system for future landings of the refinanced reduction fisheries. Upon publishing a final rule and receipt of an appropriation, NMFS would conduct three referenda to refinance the existing debt obligation in each of the refinanced reduction fisheries. If a referendum in one, two, or all three of the fisheries is successful, that fishery's current loan will be repaid in full and a new loan in the amount of the principal and interest balance as of the date of funding will be issued. The terms were prescribed in the 2015 National Defense Authorization Act and include a 45-year term to maturity, interest charged at a current Treasury interest rate, and a maximum repayment fee of 3 percent of ex-vessel value.

Timetable:

Action	Date	FR Cite
NPRM	08/07/15	80 FR 46941
NPRM Comment Period End.	09/08/15	
Final Action	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Pawlak, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8621, *Email: brian.t.pawlak@noaa.gov.*

RIN: 0648–BE90

55. Amendment 109 to the Fishery Management Plan for Groundfish of the Bsai To Facilitate Development of Groundfish Fisheries for Small Vessels in the Western Alaska Community Development Quota Program

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This action would amend the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and revise regulations governing the groundfish and halibut fisheries managed under the Western Alaska Community Development Quota Program in order to support increased participation in the groundfish Community Development Quota fisheries (primarily Pacific cod) by catcher vessels less than or equal to 46 feet (14.0 m) length overall using hook-and-line gear. This action is necessary to promote the goals of the Community Development Quota Program, to increase participation by residents of Community Development Quota communities in the Bering Sea and Aleutian Islands Management Area groundfish and halibut fisheries, and to support economic development in western Alaska. This action would benefit the six Community Development Quota groups and the operators of the small catcher vessels that the Community Development Quota groups authorize to fish on their behalf by reducing the costs of participating in the groundfish and halibut Community Development Quota fisheries.

Timetable:

Action	Date	FR Cite
Notice	01/21/16	81 FR 3374
NPRM	02/08/16	81 FR 6489
NPRM Comment Period End.	03/09/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF05

56. Magnuson-Stevens Fisheries Conservation and Management Act; Seafood Import Monitoring Program

Legal Authority: 16 U.S.C. 1857

Abstract: On March 15, 2015, the Presidential Task Force on Combating Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of Commerce and State, published its action plan to implement Task Force recommendations for a comprehensive framework of integrated programs to combat illegal, unreported, and unregulated fishing and seafood fraud. The plan identifies actions that will strengthen enforcement, create and expand partnerships with state and local governments, industry, and non-governmental organizations, and create a traceability program to track seafood from harvest to entry into U.S. commerce, including the use of existing traceability mechanisms. As part of that plan, NMFS proposes regulatory changes to improve the administration of the MSA prohibition on the entry into interstate or foreign commerce of any fish taken in violation of any foreign law or regulation. The rule includes adjustments to permitting and reporting requirements to provide for traceability of seafood products offered for entry into the U.S. supply chain, and to ensure that these products were lawfully acquired and are properly labeled. Requirements for an international trade permit and reporting on the origin of certain imported or exported fishery products were previously established by regulations applicable to a number of specified fishery products. This rulemaking would extend those existing permitting and reporting requirements to additional fish species and seafood products.

Timetable:

Action	Date	FR Cite
NPRM	02/05/16	81 FR 6210
NPRM Comment Period End.	04/05/16	
Final Action	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Henderschedt, Director, Office for International Affairs and Seafood Inspection, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East West Highway, Room 10362, Silver Spring, MD 20910, *Phone:* 301 427–8314, *Email: john.henderschedt@noaa.gov.*

RIN: 0648–BF09

57. Process for Divestiture of Excess Quota Shares (Section 610 Review)

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: In January 2011, the National Marine Fisheries Service implemented the groundfish trawl rationalization program (a catch share program) for the Pacific coast groundfish limited entry trawl fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations. Amendment 20 established the trawl rationalization program, which includes an Individual Fishing Quota program for limited entry trawl participants, and Amendment 21 established fixed allocations for limited entry trawl participants, with limits on how much quota each participant can accumulate. Under current regulations, quota share owners must divest quota shareholdings that exceed individual accumulation limits by November 30, 2015. This action makes minor procedural modifications to the program regulations to clarify how divestiture of excess quota share could occur.

Timetable:

Action	Date	FR Cite
NPRM	09/02/15	80 FR 53088
NPRM Comment Period End.	10/02/15	
Final Rule Effective.	11/04/15	
Final Rule	11/10/15	80 FR 69138
Final Action	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Stelle Jr., Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way Northeast, Building 1, Seattle, WA 98115, *Phone:* 206 526–6150, *Email: will.stelle@noaa.gov.*

RIN: 0648–BF11

58. Implementation of Salmon Bycatch Management Measures for the Bering Sea Pollock Fishery

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Regulatory Amendment 110 would make substantive changes to the management of salmon bycatch in the Bering Sea pollock fishery to minimize salmon bycatch in the pollock fishery to the extent practicable. Currently, Chinook and chum salmon bycatch are managed under two different programs, which have led to inefficiencies and do not allow the pollock fishery the flexibility to modify their harvest patterns and practices to effectively minimize both Chinook and chum salmon bycatch. This regulation would make salmon bycatch management more effective, comprehensive, and efficient by increasing flexibility to respond to changing conditions and providing greater incentives to reduce bycatch of both salmon species. This regulation would provide the flexibility to harvest pollock in times and places that best achieve salmon avoidance and to adapt to changing conditions quickly.

Timetable:

Action	Date	FR Cite
Notice	01/08/16	81 FR 897
NPRM	02/03/16	81 FR 5681
NPRM Comment Period End.	03/04/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF25

59. • Cost Recovery Authorized Payment Methods

Legal Authority: 16 U.S.C. 1862; 16 U.S.C. 773; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479; Pub. L. 111–281

Abstract: This rule would amend authorized payment methods in existing cost recovery fee programs for the halibut, sablefish, and crab catch share programs. The Magnuson-Stevens Fishery Conservation and Management Act authorizes and requires the collection of cost recovery fees for fishery management programs that issue a permit allocating exclusive harvest privileges. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Permit holders are required to submit cost recovery fee payments to NMFS annually. NMFS undertook a security review of the cost recovery fee payment process and developed the rule to improve security procedures for protecting sensitive financial information and to reduce costs associated with administering the cost recovery programs. The proposed rule eliminated manual processing of credit card information and required use of the Federal government's online payment system, pay.gov, for permit holders paying by credit card. The proposed rule also eliminated payments by paper check or money order and require the use of pay.gov beginning in 2020. The rule is expected to reduce the administrative costs of processing fee payments, and this reduction in costs would reduce the total amount of cost recovery fees collected from participants in the halibut, sablefish, and crab catch share programs.

Timetable:

Action	Date	FR Cite
NPRM	12/31/15	80 FR 81798
NPRM Comment Period End.	02/01/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF35

60. • Amendment 102 to the Fishery Management Plan for Groundfish of the Gulf of Alaska

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule would modify the basis for NMFS to place small catcher/processors in partial coverage in the North Pacific Groundfish and Halibut Observer Program (Observer Program). Under this action, NMFS would classify a catcher/processor as small and eligible for partial coverage for one year based on whether the catcher/processor had an average weekly production less than a specified threshold. This action would decrease the cost of observer coverage

for catcher/processors that process small amounts of groundfish relative to the rest of the fleet. Approximately nine vessels could be affected by this action and we expect all newly qualified vessels would choose to participate in partial coverage for the upcoming fishing year.

Timetable:

Action	Date	FR Cite
Notice	12/17/15	80 FR 78705
NPRM	12/29/15	80 FR 81262
Correction	01/22/16	81 FR 3775
NPRM Comment Period End.	01/28/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BF36

61. • 2016–2018 Specifications and Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This action establishes catch levels and associated management measures for the 2016–2018 fishing years for species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The proposed rule: Lowered the Atlantic mackerel quota by 56 percent to 9,177 metric tons (mt) for the next three years; lowered the cap on river herring and shad catch in the mackerel fishery from 89 mt to 82 mt for the next three years; increased the trigger for when 3-inch mesh is required for longfin squid-butterfish moratorium permits holders from 2,500 lb to 5,000 lb; clarified that 5-inch (square or diamond) or greater strengtheners may be used outside the 3-inch mesh to avoid breaking nets during large hauls; and suspended the pre-trip notification system requirement for longfin squid-butterfish moratorium permit holders.

Timetable:

Action	Date	FR Cite
NPRM	01/22/16	81 FR 3768
NPRM Comment Period End.	02/22/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF53

62. • Framework Adjustment 27 to the Atlantic Sea Scallop Fishery Management Plan

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The purpose of Framework 27 is to set management measures for the scallop fishery for the 2016 fishing year, including the annual catch limits and annual catch targets for the limited access and limited access general category fleets, as well as days-at-sea allocations and sea scallop access area trip allocations. Allocations in the proposed rule were similar to or slightly higher than previous years. In addition, Framework 27 would implement additional measures to protect small scallops for future harvest.

Timetable:

Action	Date	FR Cite
NPRM	02/24/16	81 FR 9151
NPRM Comment Period End.	03/25/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John K. Bullard, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9287, *Email: john.bullard@noaa.gov.*

RIN: 0648–BF59

63. • Revisions to the Pacific Halibut Catch Sharing Plan, Codified Regulations, and Annual Management Measures for 2016 and Beyond

Legal Authority: 16 U.S.C. 773 *et seq.*

Abstract: This action is NMFS annual rulemaking regarding halibut fishing on the U.S. West Coast, implementing the Pacific Halibut Catch Sharing Plan (Plan). The Plan governs the allocation of the annual halibut quota for the West Coast fisheries, which is set by the International Pacific Halibut Commission and approved by NOAA Fisheries. For 2016 and beyond, the Pacific Fishery Management Council has recommended several minor changes to the portion of the Plan covering sport fishery seasons and retention rules; and modifications to the processes for implementing inseason actions and sport fishery closures.

Timetable:

Action	Date	FR Cite
NPRM	02/19/16	81 FR 8466
NPRM Comment Period End.	03/10/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Stelle Jr., Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way Northeast, Building 1, Seattle, WA 98115, *Phone:* 206 526–6150, *Email: will.stelle@noaa.gov.*

RIN: 0648–BF60

64. • Framework Action To Modify the Gag Minimum Size Limits, Recreational Season, and Black Grouper Minimum Size Limits in the Gulf of Mexico (Section 610 Review)

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The proposed framework action modified the recreational minimum size limit for gag and black grouper from 22 inches total length (inches) to 24 inches. Additionally, the proposed action modified the gag recreational fishing season from July 1 through December 2, to June 1 through December 31. The intent is to extend the recreational fishing season.

Timetable:

Action	Date	FR Cite
NPRM	03/03/16	81 FR 11166
NPRM Comment Period End.	04/04/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF70

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Long-Term Actions

National Marine Fisheries Service

65. Comprehensive Fishery Management Plan for Puerto Rico

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This comprehensive Puerto Rico Fishery Management Plan will incorporate, and modify as needed, federal fisheries management measures presently included in each of the existing species-based U.S. Caribbean Fishery Management Plans (Spiny Lobster, Reef Fish, Coral, and Queen Conch Fishery Management Plans) as those measures pertain to Puerto Rico exclusive economic zone waters. The goal of this action is to create a Fishery Management Plan tailored to the specific fishery management needs of Puerto Rico. If approved, this new Puerto Rico Fishery Management Plan, in conjunction with similar comprehensive Fishery Management Plans being developed for St. Croix and St. Thomas/St. John, will replace the Spiny Lobster, Reef Fish, Coral and Queen Conch Fishery Management Plans presently governing the commercial and recreational harvest in U.S. Caribbean exclusive economic zone waters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD32

66. Comprehensive Fishery Management Plan for St. Croix

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This comprehensive St. Croix Fishery Management Plan will incorporate, and modify as needed, federal fisheries management measures presently included in each of the existing species-based U.S. Caribbean Fishery Management Plans (Spiny Lobster, Reef Fish, Coral, and Queen Conch Fishery Management Plans) as those measures pertain to St. Croix exclusive economic zone waters. The goal of this action is to create a Fishery Management Plan tailored to the specific fishery management needs of St. Croix. If approved, this new St. Croix Fishery Management Plan, in conjunction with similar comprehensive Fishery Management Plans being developed for Puerto Rico and St. Thomas/St. John, will replace the Spiny Lobster, Reef Fish, Coral and Queen Conch Fishery Management Plans presently governing the commercial and recreational harvest in U.S. Caribbean exclusive economic zone waters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD33

67. Comprehensive Fishery Management Plan for St. Thomas/St. John

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This comprehensive St. Thomas/St. John Fishery Management Plan will incorporate, and modify as needed, federal fisheries management measures presently included in each of the existing species-based U.S. Caribbean Fishery Management Plans (Spiny Lobster, Reef Fish, Coral, and Queen Conch Fishery Management Plans) as those measures pertain to St. Thomas/St. John exclusive economic zone waters. The goal of this action is to create a Fishery Management Plan tailored to the specific fishery management needs of St. Thomas/St. John. If approved, this new St. Thomas/St. John Fishery Management Plan, in conjunction with similar comprehensive Fishery Management Plans being developed for St. Croix and Puerto Rico, will replace the Spiny Lobster, Reef Fish, Coral and Queen Conch Fishery Management Plans presently governing the commercial and recreational harvest in U.S. Caribbean exclusive economic zone waters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD34

68. Designate Critical Habitat for the Hawaiian Insular False Killer Whale Distinct Population Segment

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: This action would designate critical habitat for the Hawaiian insular false killer whale distinct population segment, pursuant to section 4 of the Endangered Species Act. Proposed critical habitat would be designated in the main Hawaiian islands.

Timetable:

Action	Date	FR Cite
NPRM	04/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donna Wieting, *Phone:* 301 427–8400.

RIN: 0648–BC45

69. Designation of Critical Habitat for the Arctic Ringed Seal

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: The National Marine Fisheries Service published a final rule to list the Arctic ringed seal as a threatened species under the Endangered Species Act (ESA) in December 2012. The ESA requires designation of critical habitat at the time a species is listed as threatened or endangered, or within one year of listing if critical habitat is not then determinable. This rulemaking would designate critical habitat for the Arctic ringed seal. The critical habitat designation would be in the northern Bering, Chukchi, and Beaufort seas within the current range of the species.

Timetable:

Action	Date	FR Cite
NPRM	12/03/14	79 FR 71714
Proposed Rule	12/09/14	79 FR 73010
Notice of Public Hearings.	01/13/15	80 FR 1618
Comment Period Extended.	02/02/15	80 FR 5498
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donna Wieting, *Phone:* 301 427–8400.

RIN: 0648–BC56

DEPARTMENT OF COMMERCE (DOC)

National Oceanic and Atmospheric Administration (NOAA)

Completed Actions

70. Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The purpose of this fishery management plan was to develop a regional permitting process for regulating and promoting

environmentally sound and economically sustainable aquaculture in the Gulf of Mexico exclusive economic zone. This fishery management plan consisted of ten actions, each with an associated range of management alternatives, which will facilitate the permitting of an estimated 5 to 20 offshore aquaculture operations in the Gulf of Mexico over the next 10 years, with an estimated maximum annual production of up to 64 million pounds. By establishing a regional permitting process for aquaculture, the Gulf of Mexico Fishery Management Council will be positioned to achieve their primary goal of increasing maximum sustainable yield and optimum yield of federal fisheries in the Gulf of Mexico by supplementing harvest of wild caught species with cultured product. This rulemaking outlined a regulatory permitting process for aquaculture in the Gulf of Mexico, including: (1) Required permits; (2) duration of permits; (3) species allowed; (4) designation of sites for aquaculture; (5) reporting requirements; and (6) regulations to aid in enforcement.

Timetable:

Action	Date	FR Cite
Notice of Availability.	06/04/09	74 FR 26829
NPRM	08/28/14	79 FR 26829
NPRM Comment Period Reopened.	11/13/14	79 FR 67411
Final Action	01/13/16	81 FR 1761
Final Action Effective.	02/12/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–AS65

71. Atlantic Highly Migratory Species; Future of the Atlantic Shark Fishery

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 971 *et seq.*

Abstract: The National Marine Fisheries Service adjusted the regulations governing the U.S. Atlantic shark fishery to address current fishery issues and identify specific shark fishery goals for the future. This action considered potential changes to the quota and/or permit structure that are currently in place for the Atlantic shark fishery, and various catch share programs such as limited access privilege programs, individual fishing quotas, and sectors for the Atlantic shark fishery.

Timetable:

Action	Date	FR Cite
ANPRM	09/20/10	75 FR 57235
ANPRM Comment Period End.	01/14/11	
Notice	05/27/14	79 FR 30064
NPRM	01/20/15	80 FR 2648
Notice	03/09/15	80 FR 12394
Final Action	08/18/15	80 FR 50073
Final Action Effective.	08/18/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

RIN: 0648–BA17

72. Implement the 2010 Shark Conservation Act Provisions and Other Regulations in the Atlantic Smoothhound Shark Fishery

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule implemented Amendment 9 to the Atlantic shark and smoothhound shark fisheries and the measures in Amendment 3 and the 2011 Highly Migratory Species trawl rule in the Atlantic smoothhound shark fishery. The rule fully implemented smoothhound shark quota measures as well as the Savings Clause of the Shark Conservation Act. The Shark Conservation Act included a provision that allows, under specific conditions, smooth dogfish sharks to be landed without fins attached (versus the Shark Conservation Act as a whole that requires sharks to be landed with fins naturally attached). The final rule balanced this statutory provision that provides operating flexibility for smooth dogfish fisherman with the need to ensure effective shark conservation and management. The rule also made changes to the shark gillnet vessel monitoring system requirement to aid the industry by limiting the scope of vessel monitoring systems.

Timetable:

Action	Date	FR Cite
NPRM	08/07/14	79 FR 46217
NPRM Comment Period End.	11/14/14	
Final Action	11/24/15	80 FR 73128
Final Rule	12/18/15	80 FR 78969
Final Action Effective.	03/15/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 713–2334, *Fax:* 301 713–0596, *Email: alan.risenhoover@noaa.gov.*

RIN: 0648–BB02

73. Implementation of the Inter-American Tropical Tuna Commission Resolution To Establish a Vessel Monitoring System Program in the Eastern Pacific Ocean

Legal Authority: 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 951 *et seq.*

Abstract: This rule implemented the Inter-American Tropical Tuna Commission's Resolution intended to require owners and operators of tuna-fishing vessels to have installed, activate, carry and operate vessel monitoring system units (also known as mobile transmitting units). This regulation applies to owners and operators of tuna-fishing vessels 24 meters or more in length operating in the eastern Pacific Ocean. The vessel monitoring system units have to be type-approved and authorize the Inter-American Tropical Tuna Commission and National Marine Fisheries Service to receive and relay transmissions (also called position reports) from the vessel monitoring system unit. Vessel monitoring systems may enhance the safety of some vessels by allowing the vessels location to be tracked, which could assist in rescue efforts. This regulation applies to commercial vessels only and not recreational or charter vessels.

Timetable:

Action	Date	FR Cite
NPRM	02/06/14	79 FR 7152
Correction	02/25/14	79 FR 10465
Proposed Rule	05/19/15	80 FR 28572
Comment Period End.	06/18/15	
Final Action	10/07/15	80 FR 60533
Final Action Effective.	01/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Stelle Jr., Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way Northeast, Building 1, Seattle, WA 98115, *Phone:* 206 526–6150, *Email: will.stelle@noaa.gov.*

RIN: 0648–BD54

74. Amendment 7 to the FMP for the Dolphin Wahoo Fishery of the Atlantic and Amendment 33 to the FMP for the Snapper-Grouper Fishery of the South Atlantic

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Dolphin Wahoo Amendment 7 and Snapper-Grouper Amendment 33 allows recreational fishermen to bring dolphin and wahoo fillets from The Bahamas into the U.S. waters and updated regulations that currently allow recreational fishermen to bring snapper-grouper fillets from the Bahamas into U.S. waters.

Timetable:

Action	Date	FR Cite
Notice	09/17/15	80 FR 55819
NPRM	10/07/15	80 FR 60601
NPRM Comment Period End.	11/06/15	
Final Action	12/28/15	80 FR 80686
Final Action Effective.	01/27/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD76

75. Amendment 8 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Coral Amendment 8 modified the boundaries of the Oculina Bank Habitat Area of Particular Concern, the Stetson-Miami Terrace Coral Habitat Area of Particular Concern, and the Cape Lookout Coral Habitat Area of Particular Concern to protect deepwater coral ecosystems. The amendment also implemented a transit provision through the Oculina Bank Habitat Area of Particular Concern for fishing vessels with rock shrimp onboard.

Timetable:

Action	Date	FR Cite
Notice	05/20/14	79 FR 28880
NPRM	06/03/14	79 FR 31907
Correction	07/01/14	79 FR 37269
Final Rule	07/17/15	80 FR 42423
Final Rule Correction.	08/04/15	80 FR 46205
Final Rule Effective.	08/17/15	
Final Rule Correction.	10/07/15	80 FR 60565
Final Rule Effective.	10/07/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BD81

76. Cost Recovery From Amendment 80, CDQ Groundfish and Halibut, American Fisheries Act and Aleutian Islands Pollock, and the Freezer Longline Coalition Pacific Cod Fisheries Management Programs

Legal Authority: 16 U.S.C. 1801 *et seq.;* Pub. L. 109–241; Pub. L. 109–479

Abstract: The National Marine Fisheries Service implemented a limited access permit program cost recovery fee for Amendment 80, Western Alaska Community Development Quota groundfish and halibut, American Fisheries Act and Aleutian Islands Pollock, and the Pacific Cod Freezer Longline Coalition fisheries management programs in the Bering Sea and Aleutian Islands. The purpose of this action was to comply with Section 304(d) of the Magnuson-Stevens Act, which authorizes and requires the National Marine Fisheries Service to collect fees for limited access permit programs and the Western Alaska Community Development Quota program.The fees collected will be used to recover the actual costs directly related to the management, data collection, and enforcement of these programs that are incurred by the National Marine Fisheries Service.

Timetable:

Action	Date	FR Cite
NPRM	01/07/15	80 FR 935
NPRM Comment Period End.	02/06/15	
Final Action	01/05/16	81 FR 150
Final Action Effective.	02/04/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BE05

77. Generic Accountability Measure and Dolphin Allocation Amendment for the South Atlantic Region

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Amendment 34 and Amendment 9 established modifications to accountability measures for snapper-grouper species and golden crab to create a more consistent regulatory environment while ensuring overfishing does not occur. Amendment 8 modified sector allocations for dolphin.

Timetable:

Action	Date	FR Cite
Notice	07/15/15	80 FR 41472
NPRM	09/29/15	80 FR 58448
NPRM Comment Period End.	10/29/15	
Final Action	01/22/16	81 FR 3731
Final Action Effective.	02/22/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BE38

78. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort and Catch Limits and Other Restrictions and Requirements

Legal Authority: 16 U.S.C. 6901 *et seq.*

Abstract: This rule established a framework under which the National Marine Fisheries Service (NMFS) could specify limits on fishing effort and catches, as well as spatial and temporal restrictions on particular fishing activities, in U.S. fisheries for highly migratory fish species in the western and central Pacific Ocean. NMFS will issue the specifications as needed to implement conservation and management measures adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The rule also requires that U.S. fishing vessels of a certain size obtain International Maritime Organizational numbers, and prohibits U.S. longline fishing vessels from using

shark lines, which are used in some fisheries to target sharks. This action was necessary for the United States to satisfy its obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to which it is a Contracting Party.

Timetable:

Action	Date	FR Cite
NPRM	07/23/15	80 FR 43694
NPRM Comment Period End.	08/07/15	
Final Action	10/01/15	80 FR 59037
Final Action Effective.	11/30/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725–5000, *Email: michael.tosatto@noaa.gov.*

RIN: 0648–BE84

79. Revision of Skate Maximum Retainable Amounts in the Gulf of Alaska Groundfish Fishery

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule reduced the maximum retainable amount of incidentally caught skates in directed fisheries for groundfish in the Gulf of Alaska to 5 percent, which allows a vessel to retain skates in an amount up to 5 percent of the weight of the target groundfish species onboard the vessel. The skate maximum retainable amount is intended to limit harvest of skates to the intrinsic rate of incidental catch of skates in Gulf of Alaska groundfish fisheries and to provide a disincentive for vessels to target skates. Skate harvests have increased in recent years and have exceeded the acceptable biological catch in some areas. This action was necessary to enhance conservation and management of skates by decreasing the incentive for vessels to target skates and to slow the harvest rate of skates.

Timetable:

Action	Date	FR Cite
NPRM	07/10/15	80 FR 39734
NPRM Comment Period End.	08/10/15	
Final Action	12/28/15	80 FR 80695
Final Action Effective.	01/27/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BE85

80. Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs To Modify Right of First Refusal Provisions of the Crab Rationalization Program

Legal Authority: 16 U.S.C. 1801 *et seq.;* Pub. L. 109–241; Pub. L. 109–479

Abstract: This rule amended the Bering Sea and Aleutian Islands Crab Rationalization Program through two actions intended to benefit eligible crab communities by enhancing opportunities to retain community historical processing interests in the Bering Sea and Aleutian Islands crab fisheries. The action modified the right of first refusal provisions that provide eligible crab community entities with the opportunity to purchase processor quota shares and other associated assets proposed for sale. The first action affects about 21 processor quota shareholders. The rule requires all persons holding processor quota share to provide annual notification to NMFS regarding the status of the right of first refusal for all processor quota share holdings. The second action amends regulations to separate the combined individual fishing quota/individual processor quota application into two applications, and revised reporting requirements for crab cooperatives.

Timetable:

Action	Date	FR Cite
NPRM	10/22/15	80 FR 63950
NPRM Comment Period End.	11/23/15	
Final Action	01/13/16	81 FR 1557
Final Action Effective.	02/12/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email: jim.balsiger@noaa.gov.*

RIN: 0648–BE98

81. Framework Amendment 3 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: This rule modified trip limits, accountability measures, electronic reporting requirements, and gillnet permit requirements for commercial king mackerel landed by gillnet in the Gulf of Mexico. This action was necessary to increase efficiency, stability, and accountability, and to reduce the potential for regulatory discards in the commercial king mackerel gillnet component of the fishery.

Timetable:

Action	Date	FR Cite
NPRM	10/07/15	80 FR 60605
NPRM Comment Period End.	11/06/15	
Final Action	12/17/15	80 FR 78670
Final Action Effective.	01/19/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF14

82. Framework Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico To Modify Greater Amberjack Allowable Harvest and Management Measures

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: The intent of this action is to end overfishing and rebuild the Gulf of Mexico greater amberjack stock. A 2014 stock assessment indicated the Gulf of Mexico greater amberjack stock remains overfished and is undergoing overfishing. Allowable harvest was reduced and will remain constant until changed based on new scientific information. To better constrain catches to the allowable harvest levels, the recreational minimum size limit was increased from 30 inches fork length to 34 inches fork length, and the commercial trip limit was reduced from 1,923 pounds gutted weight to 1,500 pounds gutted weight.

Timetable:

Action	Date	FR Cite
NPRM	09/17/15	80 FR 55821
NPRM Comment Period End.	10/19/15	
Final Action	12/02/15	80 FR 75432
Final Action Effective.	01/04/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF21

83. Framework Amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for Red Snapper Commercial Quota Retention for 2016

Legal Authority: 16 U.S.C. 1801 *et seq.*

Abstract: Pursuant to the Gulf of Mexico Fishery Management Council's request, this rule provided authority to withhold 4.9 percent of the 2016 red snapper commercial annual catch limit prior to distribution to the Individual Fishing Quota Program, in anticipation that this percentage may be reallocated to the recreational sector.

Timetable:

Action	Date	FR Cite
NPRM	10/19/15	80 FR 63190
NPRM Comment Period End.	11/03/15	
Final Action	11/27/15	80 FR 73999
Final Action Effective.	12/28/15	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Roy E. Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Fax:* 727 824–5308, *Email: roy.crabtree@noaa.gov.*

RIN: 0648–BF33

84. Designation of Critical Habitat for the North Atlantic Right Whale

Legal Authority: 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 1531 *et seq.*

Abstract: The National Marine Fisheries Service revised the critical habitat designation for the North Atlantic right whale. This designation resulted in an expansion of critical habitat in the northeast feeding area (Gulf of Maine-Georges Bank region) and the southeast calving area (Florida to North Carolina) compared to what was designated in 1994 for right whales.

Timetable:

Action	Date	FR Cite
NPRM	02/20/15	80 FR 9313
NPRM Comment Period End.	04/21/15	
Final Action	01/27/16	81 FR 4837
Final Action Effective.	02/26/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donna Wieting, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400.

RIN: 0648–AY54

85. Endangered and Threatened Species: Designation of Critical Habitat for Threatened Lower Columbia River Coho Salmon and Puget Sound Steelhead

Legal Authority: 16 U.S.C. 1531 *et seq.*

Abstract: This action designated critical habitat for lower Columbia River coho salmon and Puget Sound steelhead, currently listed as threatened species under the Endangered Species Act. The areas designated include freshwater and estuarine habitat in Oregon and Washington.

Timetable:

Action	Date	FR Cite
NPRM	01/14/13	78 FR 2725
NPRM Comment Period End.	04/15/13	
Final Action	02/24/16	81 FR 9251
Final Action Effective.	03/25/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donna Wieting, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8400.

RIN: 0648–BB30

86. Revisions to Hawaiian Islands Humpback Whale National Marine Sanctuary Regulations

Legal Authority: 16 U.S.C. 1431 *et seq.;* Pub. L. 102–587

Abstract: In 2010, the Office of National Marine Sanctuaries (ONMS) initiated a review of the Hawaiian Islands Humpback Whale National Marine Sanctuary management plan, to evaluate substantive progress toward implementing the goals for the sanctuary, and to make revisions to its management plan and regulations as necessary to fulfill the purposes and policies of the National Marine Sanctuaries Act (NMSA) and the Hawaiian Islands National Marine Sanctuary Act (HINMSA; title II, subtitle C, Pub. L. 102587). ONMS intends to publish a proposed rule and draft EIS that proposes to expand the scope of the sanctuary to ecosystem based management rather than concentrating on only humpback whales. In addition, possible boundary expansion will be discussed.

Timetable:

Action	Date	FR Cite
Notice	07/14/10	75 FR 40759
NPRM	03/26/15	80 FR 16223
Notice	04/29/15	80 FR 23742
NPRM Comment Period End.	06/19/15	
Withdrawn	03/14/16	81 FR 13303

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Lindelof, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 240 533–0641, *Email: edward.lindelof@noaa.gov.*

RIN: 0648–BD97

DEPARTMENT OF COMMERCE (DOC)

Patent and Trademark Office (PTO)

Proposed Rule Stage

87. • Trademark Fee Adjustment

Legal Authority: 15 U.S.C. 1113; 15 U.S.C. 1123; 35 U.S.C. 2; Section 10 of AIA Pub. L. 112–29

Abstract: The United States Patent and Trademark Office (Office) takes this action to set and adjust Trademark fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, ensure integrity of the Trademark register, promote efficiency of processes, and incentivize electronic communications.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	
NPRM Comment Period End.	07/00/16	
Final Action	11/00/16	
Final Action Effective.	01/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Chicoski, Administrator for Trademark Policy and Procedure, Department of Commerce, Patent and Trademark Office, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313, *Phone:* 571 272–8943, *Fax:* 571 273–8943, *Email:* *jennifer.chicoski@uspto.gov.*

RIN: 0651–AD08

[FR Doc. 2016–12900 Filed 6–8–16; 8:45 am]

BILLING CODE 3510–12–P

FEDERAL REGISTER

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Part V

Department of Defense

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

48 CFR Ch. II

Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Defense (DoD).

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866 "Regulatory Planning and Review". This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive Order and other regulatory guidance. It contains DoD regulations initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD regulations listed in the agenda are of limited public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process. Members of the public may submit comments on individual proposed and interim final rulemakings at *www.regulations.gov* during the comment period that follows publication in the **Federal Register**.

This agenda updates the report published on November 19, 2015, and section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements. Additional information on these entries is in the Unified Agenda available online.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Ms. Patricia Toppings, telephone 571–372–0485, or write to Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010, or email: *patricia.l.toppings.civ@mail.mil*.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600, or call 703–697–2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Ms. Morgan Park, telephone 571–372–0489, or write to Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010, or email: *morgan.e.park.civ@mail.mil*.

For general information on Office of the Secretary regulations which are procurement-related, contact Ms. Jennifer Hawes, telephone 571–372–6115, or write to Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, Defense Procurement and Acquisition Policy, Defense Acquisition Regulations

For general information on Department of the Navy regulations, contact CDR Noreen Hagerty-Ford, telephone 703–614–7408, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374–5066, or email: *noreen.hagerty-ford@navy.mil*.

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703–614–8500, or write the Office of the Secretary of the Air Force, Chief, Information Dominance/Chief Information Officer (SAF CIO/A6), 1800 Air Force Pentagon, Washington, DC 20330–1800, or email: *usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil*.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army and Navy. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies

substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866. Executive Order 13563 recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. DoD's retrospective review plan is intended to identify certain significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive and can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036*.

Dated: March 13, 2016.

David Tillotson III,

Assistant Deputy Chief Management Officer.

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
88	TRICARE; Reimbursement of Long Term Care Hospitals	0720–AB47

DEPARTMENT OF DEFENSE (DOD)

Office of Assistant Secretary for Health Affairs (DODOASHA)

Final Rule Stage

88. TRICARE; Reimbursement of Long Term Care Hospitals

Legal Authority: 5 U.S.C. 301; 10 U.S.C. ch 55

Abstract: The rule implements the statutory provision in 10 U.S.C. 1079(j)(2) that TRICARE payment methods for institutional care shall be determined to the extent practicable in accordance with the same reimbursement rules as those that apply to payments to providers of services of the same type under Medicare. This rule implements a reimbursement methodology similar to that furnished to Medicare beneficiaries for services provided by long-term care hospitals. The revisions to this rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563, completed in August 2011. DoD's full plan can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036*.

Timetable:

Action	Date	FR Cite
NPRM	01/26/15	80 FR 3926
NPRM Comment Period End.	03/27/15	
Final Action	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ann N. Fazzini, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301, *Phone:* 303 676–3803.

RIN: 0720–AB47

[FR Doc. 2016–12901 Filed 6–8–16; 8:45 am]

BILLING CODE 5001–06–P

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Part VI

Department of Education

Semiannual Regulatory Agenda

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, Department of Education.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866, ''Regulatory Planning and Review.'' The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the regulatory actions we plan to take.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Other questions or comments on this agenda should be directed to LaTanya Cannady, Program Specialist, or Hilary Malawer, General Counsel, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6C128, 400 Maryland Avenue SW., Washington, DC 20202–2241; telephone: (202) 401–9676 (LaTanya Cannady) or (202) 401–6148 (Hilary Malawer). Individuals who use a telecommunications device for the deaf (TDD) or a text telephone (TTY) may call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in October and April of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan (78 FR 1361, published January 8, 2013), ED is committed to regulations that improve the quality and equality of services to its customers. ED will regulate only if absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any uncompleted actions in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities.

This publication does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

Electronic Access to This Document

The entire Unified Agenda is published electronically and is available online at *www.reginfo.gov*.

James Cole, Jr.,
General Counsel.

DEPARTMENT OF EDUCATION (ED)

Office of Postsecondary Education (OPE)

Proposed Rule Stage

89. Borrower Defense

Legal Authority: Section 455(h) of the Higher Education Act of 1965, as amended

Abstract: The Department has begun negotiated rulemaking to develop proposed regulations for determining which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under the William D. Ford Federal Direct Loan (Federal Direct Loan) Program and identify the consequences of such borrower defenses for borrowers, institutions, and the Secretary.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Negotiated Rulemaking Committee.	08/20/15	80 FR 50588
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Annmarie Weisman, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW., Room 6W245, Washington, DC 20202, *Phone:* 202 453–6712, *Email: annmarie.weisman@ed.gov.*

RIN: 1840–AD19

DEPARTMENT OF EDUCATION (ED)

Office of Postsecondary Education (OPE)

Completed Actions

90. Title IV of the HEA—Program Integrity and Improvement

Legal Authority: 20 U.S.C. 1001; 20 U.S.C. 1002; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099c; 20 U.S.C. 1070a; 20 U.S.C. 1087b; 20 U.S.C. 1087d; 20 U.S.C. 1087e; 20 U.S.C. 1088

Abstract: The Department issued regulations for the Federal Student Aid programs, authorized under title IV of the Higher Education Act of 1965, as amended (HEA). We are regulating in the following areas: cash management of funds provided under the title IV Federal Student Aid programs, clock-to-credit hour conversion, and repeat coursework.

Completed:

Reason	Date	FR Cite
Final Action	10/30/15	80 FR 67126
Final Action Effective.	07/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nathan Arnold, *Phone:* 202 453–7874, *Email: nathan.arnold@ed.gov.*

RIN: 1840–AD14

[FR Doc. 2016–12902 Filed 6–8–16; 8:45 am]

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Part VII

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Energy.

ACTION: Semi-annual regulatory agenda.

SUMMARY: The Department of Energy (DOE) has prepared and is making available its portion of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda) pursuant to Executive Order 12866, "Regulatory Planning and Review," and the Regulatory Flexibility Act.

SUPPLEMENTARY INFORMATION: The Agenda is a government-wide compilation of upcoming and ongoing regulatory activity, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy's portion of the Agenda includes regulatory actions called for by the Energy Independence and Security Act of 2007, the American Energy Manufacturing Technical Corrections Act and programmatic needs of DOE offices.

The Internet is the basic means for disseminating the Agenda and providing users the ability to obtain information from the Agenda database. DOE's Spring 2016 Agenda can be accessed online by going to *www.reginfo.gov*. Agenda entries reflect the status of activities as of approximately May 31, 2016.

Publication in the **Federal Register** is mandated by the Regulatory Flexibility Act (5 U.S.C. 602) only for Agenda entries that require either a regulatory flexibility analysis or periodic review under section 610 of that Act. DOE's regulatory flexibility agenda is made up of five rulemakings setting energy efficiency standards for the following products:

- General Service Lamps
- Walk-In Coolers and Freezers
- Commercial Packaged Boilers
- Cooking Products
- Residential Furnaces
- Miscellaneous Refrigeration Equipment

P. Croley,
General Counsel.

ENERGY EFFICIENCY AND RENEWABLE ENERGY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
91	Energy Conservation Standards for Commercial Packaged Boilers	1904–AD01
92	Energy Conservation Standards for General Service Lamps	1904–AD09

ENERGY EFFICIENCY AND RENEWABLE ENERGY—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
93	Test Procedures for Light-Emitting Diode Lamps	1904–AC67
94	Energy Efficiency Standards for Residential Dehumidifiers	1904–AC81
95	Energy Conservation Standards for Commercial Warm Air Furnaces	1904–AD11
96	Energy Conservation Standards for Ceiling Fans	1904–AD28

ENERGY EFFICIENCY AND RENEWABLE ENERGY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
97	Energy Conservation Standards for Commercial and Industrial Pumps	1904–AC54
98	Energy Conservation Standards for Residential Ceiling Fan Light Kits	1904–AC87

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Proposed Rule Stage

91. Energy Conservation Standards for Commercial Packaged Boilers

Legal Authority: 42 U.S.C. 6313(a)(6)(C)

Abstract: EPCA, as amended by AEMTCA, requires the Secretary to determine whether updating the statutory energy conservation standards for commercial packaged boilers is technically feasible and economically justified and would save a significant amount of energy. If justified, the Secretary will issue amended energy conservation standards for such equipment.

Timetable:

Action	Date	FR Cite
Notice of Proposed Determination (NOPD).	08/13/13	78 FR 49202
NOPD Comment Period End.	09/12/13	
Notice of Public Meeting and Framework Document Availability.	09/03/13	78 FR 54197
Framework Document Comment Period End.	10/18/13	
Notice of Public Meeting and Preliminary Analysis.	11/20/14	79 FR 69066
Preliminary Analysis Comment Period End.	01/20/15	
Withdrawal of	08/25/15	80 FR 51487

92. Energy Conservation Standards for General Service Lamps

Legal Authority: 42 U.S.C. 6295(i)(6)(A) and (B)

Abstract: Amendments to Energy Policy and Conservation Act (EPCA) in the Energy Independence and Security Act of 2007 direct DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs, the first of which must be initiated no later than January 1, 2014. EPCA specifically states that the scope of the rulemaking is not limited to incandescent lamp technologies. EPCA also states that DOE must consider in the first rulemaking cycle the minimum backstop requirement of 45 lumens per watt for general service lamps (GSLs) effective January 1, 2020. This rulemaking constitutes DOE's first rulemaking cycle.

Timetable:

Action	Date	FR Cite
Framework Document Availability; Notice of Public Meeting.	12/09/13	78 FR 73737
Framework Document Comment Period End.	01/23/14	
Framework Document Comment Period Extended.	01/23/14	79 FR 3742
Framework Document Comment Period Extended End.	02/07/14	
Preliminary Analysis; Notice of Public Meeting.	12/11/14	79 FR 73503
Preliminary Analysis Comment Period End.	02/09/15	
Preliminary Analysis Comment Period Ex-	01/30/15	80 FR 5052

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Final Rule Stage

93. Test Procedures for Light-Emitting Diode Lamps

Legal Authority: 42 U.S.C. 6294(a)(6); 42 U.S.C. 6293

Abstract: EPCA, as amended by EISA 2007, requires the Secretary to create test procedures for light emitting diode (LED) lamps that accurately represent the energy consumption of this product. This rulemaking is supporting the implementation by the Federal Trade Commission of labeling provisions under 42 U.S.C. 6294(a)(6), as well as the ongoing general service lamps rulemaking, which includes LED lamps.

Timetable:

Action	Date	FR Cite
NPRM	04/09/12	77 FR 21038
NPRM Comment Period End.	06/25/12	
Supplemental NPRM.	06/03/14	79 FR 32019
Supplemental NPRM Comment Period End.	08/04/14	
Second Supplemental NPRM.	06/26/14	79 FR 36242
Second Supplemental NPRM Comment Period End.	08/04/14	
Third Supplemental NPRM.	07/09/15	80 FR 39644
Third Supplemental NPRM Comment Period End.	08/10/15	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting and Framework Document Availability.	08/17/12	77 FR 49739
Framework Document Comment Period Extended.	08/28/12	77 FR 51943
Framework Document Comment Period Extended End.	10/17/12	
Notice of Public Meeting and Preliminary Analysis.	05/22/14	79 FR 29380
Preliminary Analysis Comment Period End.	07/21/14	
NPRM	06/03/15	80 FR 31646
NPRM Comment Period End.	08/03/15	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Cymbalsky, Office of Building Technologies Program, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 287–1692, *Email: john.cymbalsky@ee.doe.gov.*

RIN: 1904–AC81

95. Energy Conservation Standards for Commercial Warm Air Furnaces

Legal Authority: 42 U.S.C. 6313(a)(6)(C)(i) and (vi); 42 U.S.C. 6316; 42 U.S.C. 6295(p)(4)

Abstract: EPCA, as amended by AEMTCA, requires the Secretary to determine whether updating the statutory energy conservation standards for commercial warm air furnaces is technically feasible and economically justified and would save a significant amount of energy. If justified, the Secretary will issue amended energy conservation standards for this type of equipment. On April 1, 2015, DOE published a notice announcing the creation of a working group under the Appliance Standards Federal Rulemaking Advisory Committee (ASRAC). (80 FR 17363) to potentially develop negotiated standards. DOE has since published a direct final rule and supplemental notice of proposed rulemaking that embodies the standards-related aspects of the recommendations submitted to (and approved by) ASRAC.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	05/02/13	78 FR 25627
RFI Comment Period End.	06/03/13	
NPRM	02/04/15	80 FR 6182
NPRM Comment Period End.	04/06/15	
Notice of Intent to Form Working Group.	04/01/15	80 FR 17363
Notice of Public Meeting for Working Group.	05/07/15	80 FR 26199
Direct Final Rule	01/15/16	81 FR 2420
Supplemental NPRM.	01/15/16	81 FR 2111
Direct Final Rule and SNPRM Comment Period End.	05/04/16	
Direct Final Rule Effective.	05/16/16	
Final Action	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Cymbalsky, Office of Building Technologies Program, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 287–1692, *Email: john.cymbalsky@ee.doe.gov.*

RIN: 1904–AD11

96. Energy Conservation Standards For Ceiling Fans

Legal Authority: 42 U.S.C. 6295(ff)

Abstract: EPCA authorizes the Secretary to determine whether updating the statutory energy conservation standards for ceiling fans is technically feasible and economically justified and would result in significant energy savings. If these criteria are met, the Secretary may issue amended energy conservation standards for ceiling fans.

Timetable:

Action	Date	FR Cite
NPRM	01/13/16	81 FR 1688
NPRM Comment Period End.	03/14/16	
NPRM Comment Period Extended.	03/15/16	81 FR 13763
NPRM Comment Period Extended End.	04/14/16	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lucy DeButts, Office of Buildings Technologies Program, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 287–1604, *Email: lucy.debutts@ee.doe.gov.*

RIN: 1904–AD28

DEPARTMENT OF ENERGY (DOE)

Energy Efficiency and Renewable Energy (EE)

Completed Actions

97. Energy Conservation Standards for Commercial and Industrial Pumps

Legal Authority: 42 U.S.C. 6311(1)(A)

Abstract: EPCA, as amended, authorizes the Secretary to determine whether establishing energy conservation standards for commercial and industrial pumps is technically feasible and economically justified and would save a significant amount of energy. On June 13, 2013, DOE published a notice of intent to establish a negotiated rulemaking working group for the commercial and industrial pumps rulemaking under the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate proposed Federal standards for the energy efficiency of commercial and industrial pumps (78 FR 44036). The purpose of the working group was to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of commercial and industrial pumps. The working group negotiated standard levels that were accepted by ASRAC on July 7, 2014. As a result, DOE has proposed to adopt the working groups' recommendations.

Completed:

Reason	Date	FR Cite
Final Action	01/26/16	81 FR 4368
Final Action Effective.	03/28/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Cymbalsky, *Phone:* 202 287–1692, *Email: john.cymbalsky@ee.doe.gov.*

RIN: 1904–AC54

98. Energy Conservation Standards for Residential Ceiling Fan Light Kits

Legal Authority: 42 U.S.C. 6295(ff)(5)

Abstract: EPCA authorizes the Secretary to determine whether updating the statutory energy conservation standards for ceiling fan light kits is technically feasible and economically justified and would result in significant energy savings. If the criteria are met, the Secretary may issue amended energy conservation standards for these products.

Completed:

Reason	Date	FR Cite
Final Action	01/06/16	81 FR 580
Final Action Effective.	03/07/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lucy DeButts, *Phone:* 202 287–1604, *Email: lucy.debutts@ee.doe.gov.*

RIN: 1904–AC87

99. Energy Conservation Standards for Residential Boilers

Legal Authority: 42 U.S.C. 6295(f)(4)(C); 42 U.S.C. 6295(m)(1); 42 U.S.C. 6295(gg)(3)

Abstract: EPCA, as amended by EISA 2007, requires the Secretary to determine whether updating the statutory energy conservation standards for residential boilers is technically feasible and economically justified and would result in significant conservation of energy. If justified, the Secretary will issue amended energy conservation standards for residential boilers.

Completed:

Reason	Date	FR Cite
Final Action	01/15/16	81 FR 2320
Final Action Effective.	03/15/16	
Final Action; Technical Correction.	01/27/16	81 FR 4574
Final Action; Technical Correction Effective.	01/27/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Cymbalsky, *Phone:* 202 287–1692, *Email: john.cymbalsky@ee.doe.gov.*

RIN: 1904–AC88

100. Standards for Refrigerated Bottled or Canned Beverage Vending Machines

Legal Authority: 42 U.S.C. 6295(m)(1)

Abstract: EPCA, as amended by AEMTCA 2012, requires the Secretary to determine whether updating the statutory energy conservation standards for refrigerated beverage vending machines is technologically feasible and economically justified. The Secretary issued amended energy conservation standards on January 8, 2016.

Completed:

Reason	Date	FR Cite
Final Action	01/08/16	81 FR 1028
Final Action Effective.	03/08/16	
Final Rule; Correcting Amendment.	04/25/16	81 FR 24009
Final Rule; Correcting Amendment Effective.	04/25/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Cymbalsky, *Phone:* 202 287–1692, *Email: john.cymbalsky@ee.doe.gov.*

RIN: 1904–AD00

101. Energy Conservation Standards for Commercial Pre-Rinse Spray Valves

Legal Authority: 42 U.S.C. 6295(m)

Abstract: EPCA, as amended by EPACT 2005, requires the Secretary to determine whether amending the statutory energy conservation standards for commercial pre-rinse spray valves is technologically feasible and economically justified. If justified, the Secretary will issue amended energy conservation standards for commercial prerinse spray valves.

Completed:

Reason	Date	FR Cite
Notice of Data Availability (NODA).	11/12/15	80 FR 69888
NODA Comment Period End.	12/04/15	
Final Action	01/27/16	81 FR 4748
Final Action Effective.	03/28/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ashley Armstrong, *Phone:* 202 586–6590, *Email: ashley.armstrong@ee.doe.gov.*

RIN: 1904–AD31

DEPARTMENT OF ENERGY (DOE)

Defense and Security Affairs (DSA)

Proposed Rule Stage

102. Chronic Beryllium Disease Prevention Program

Legal Authority: 42 U.S.C. 2201(i)(3), and (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7107 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 12196

Abstract: The Department of Energy is amending its current chronic beryllium disease prevention program regulation. The proposed amendments would improve and strengthen the current provisions and continue to be applicable to DOE Federal and contractor employees who are, were, or potentially were exposed to beryllium at DOE sites.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	
NPRM Comment Period End.	07/00/16	
Final Action	07/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jacqueline D. Rogers, Industrial Hygienist, AU–11, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 586–4714, *Email: jackie.rogers@hq.doe.gov.*

RIN: 1992–AA39

103. • Workplace Substance Abuse Programs at Doe Sites

Legal Authority: 41 U.S.C. 701 *et seq.*; 41 U.S.C. 2012, 2013, 2051, 2061, 2165, 2201b, 2201i, and 2201p; 42 U.S.C. 5814 and 5815; 42 U.S.C. 7151, 7251, and 7256; 50 U.S.C. 2401 *et seq.*

Abstract: The Department of Energy is amending its regulation related to workplace substance abuse programs at DOE sites. The proposed amendments would address drug and alcohol abuse; testing workers in certain sensitive positions; development and approval of a workplace substance abuse program; employee assistance programs; and training. The proposed amendments would improve and strengthen the substance abuse programs; and enhance consistency with advances in similar rules and other Federal drug and alcohol programs that place similar requirements on the private sector.

Timetable:

Action	Date	FR Cite
NPRM	12/00/16	
NPRM Comment Period End.	03/00/17	
Final Action	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jacqueline D. Rogers, Industrial Hygienist, AU–11, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, *Phone:* 202 586–4714, *Email: jackie.rogers@hq.doe.gov.*

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Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Ch. I

25 CFR Ch. V

42 CFR Chs. I–V

45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

Regulatory Agenda

AGENCY: Office of the Secretary, HHS.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Regulatory Flexibility Act of 1980 and Executive Order (EO) 12866 require the semiannual issuance of an inventory of rulemaking actions under development throughout the Department, offering for public review summarized information about forthcoming regulatory actions.

FOR FURTHER INFORMATION CONTACT: Wilma Robinson, Deputy Executive Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201; (202) 690–5627.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) is the Federal Government's lead agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves. HHS enhances the health and well-being of Americans by promoting effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.

This Agenda presents the rulemaking activities that the Department expects to undertake in the foreseeable future to advance this mission. The Agenda furthers several Departmental goals, including strengthening health care; advancing scientific knowledge and innovation; advancing the health, safety, and well-being of the American people; increasing efficiency, transparency, and accountability of HHS programs; and strengthening the nation's health and human services infrastructure and workforce.

HHS has an agency-wide effort to support the Agenda's purpose of encouraging more effective public participation in the regulatory process. For example, to encourage public participation, we regularly update our regulatory Web page (*http://www.HHS.gov/regulations*) which includes links to HHS rules currently open for public comment, and also provides a "regulations toolkit" with background information on regulations, the commenting process, how public comments influence the development of a rule, and how the public can provide effective comments. HHS also actively encourages meaningful public participation in its retrospective review of regulations, through a comment form on the HHS retrospective review Web page (*http://www.HHS.gov/RetrospectiveReview*).

The rulemaking abstracts included in this paper issue of the **Federal Register** cover, as required by the Regulatory Flexibility Act of 1980, those prospective HHS rulemakings likely to have a significant economic impact on a substantial number of small entities. The Department's complete Regulatory Agenda is accessible online at *http://www.RegInfo.gov*.

Wilma Robinson,

Deputy Executive Secretary to the Department.

OFFICE FOR CIVIL RIGHTS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
104	Nondiscrimination Under the Patient Protection and Affordable Care Act	0945–AA02

OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
105	ONC Health IT Certification Program: Enhanced Oversight and Accountability	0955–AA00

FOOD AND DRUG ADMINISTRATION—FINAL RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
117	Food Labeling: Revision of the Nutrition and Supplement Facts Labels	0910–AF22
118	Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain RACCs.	0910–AF23
119	Abbreviated New Drug Applications and 505(b)(2)	0910–AF97
120	"Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act.	0910–AG38
121	Human Subject Protection; Acceptance of Data From Clinical Investigations for Medical Devices	0910–AG48
122	Focused Mitigation Strategies To Protect Food Against Intentional Adulteration	0910–AG63
123	Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products	0910–AG94
124	Food Labeling; Gluten-Free Labeling of Fermented, Hydrolyzed, or Distilled Foods	0910–AH00
125	General and Plastic Surgery Devices: Sunlamp Products	0910–AH14

FOOD AND DRUG ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
126	Laser Products; Amendment to Performance Standard	0910–AF87
127	Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives	0910–AG59
128	Radiology Devices; Designation of Special Controls for the Computed Tomography X-Ray System	0910–AH03
129	Regulations on Human Drug Compounding Under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act.	0910–AH10

FOOD AND DRUG ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
130	Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption	0910–AG35
131	Foreign Supplier Verification Program	0910–AG64
132	Sanitary Transportation of Human and Animal Food	0910–AG98

CENTERS FOR MEDICARE & MEDICAID SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
133	Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (CMS–3295–P) **(Rulemaking Resulting From a Section 610 Review).**	0938–AS21
134	Merit-Based Incentive Payment System (MIPS) and Alternative Payment Models (APMs) in Medicare Fee-for-Service (CMS–5517–P) **(Section 610 Review).**	0938–AS69
135	Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2017 Rates (CMS–1655–F) **(Section 610 Review).**	0938–AS77
136	CY 2017 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing	0938–AS80

21 CFR Ch. I

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FOR FURTHER INFORMATION CONTACT: Wilma Robinson, Deputy Executive Secretary, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201; (202) 690–5627.

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Office for Civil Rights—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
104	Nondiscrimination Under the Patient Protection and Affordable Care Act	0945–AA02

Office of the National Coordinator for Health Information Technology—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
105	ONC Health IT Certification Program: Enhanced Oversight and Accountability	0955–AA00

Food and Drug Administration—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
106	Over-the-Counter (OTC) Drug Review—Cough/Cold (Antihistamine) Products	0910–AF31
107	Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products	0910–AF69
108	Updated Standards for Labeling of Pet Food	0910–AG09
109	Format and Content of Reports Intended to Demonstrate Substantial Equivalence	0910–AG96
110	Mammography Quality Standards Act; Regulatory Amendments	0910–AH04
111	Investigational New Drug Application Annual Reporting	0910–AH07
112	Requirements for Tobacco Product Manufacturing Practice	0910–AH22
113	Use of Ozone Depleting Substances **(Section 610 Review)**	0910–AH36

Food and Drug Administration—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
114	Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs.	0910–AA49
115	Postmarketing Safety Reporting Requirements for Human Drug and Biological Products	0910–AA97
116	Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements	0910–AC53
117	Food Labeling: Revision of the Nutrition and Supplement Facts Labels	[illegible]
118	Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain RACCs.	0910–AF23
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Food and Drug Administration—Completed Actions

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Centers for Medicare & Medicaid Services—Proposed Rule Stage

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135	Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2017 Rates (CMS–1655–F) **(Section 610 Review).**	0938–AS77
136	CY 2017 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements **(Section 610 Review).**	0938–AS80
137	CY 2017 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1654–P) **(Section 610 Review).**	0938–AS81
138	CY 2017 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1656–P) **(Section 610 Review).**	0938–AS82

Centers for Medicare & Medicaid Services—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
139	Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS–3178–F) **(Section 610 Review).**	0938–AO91
140	Reform of Requirements for Long-Term Care Facilities (CMS–3260–F) **(Rulemaking Resulting From a Section 610 Review).**	0938–AR61

Centers for Medicare & Medicaid Services—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
141	Conditions of Participation for Home Health Agencies (CMS–3819–F) **(Rulemaking Resulting From a Section 610 Review).**	0938–AG81

CENTERS FOR MEDICARE & MEDICAID SERVICES—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
142	Medicare Clinical Diagnostic Laboratory Test Payment System (CMS–1621–F) **(Section 610 Review)**	0938–AS33
143	Imaging Accreditation (CMS–3309–P) **(Section 610 Review)**	0938–AS62

CENTERS FOR MEDICARE & MEDICAID SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
144	Covered Outpatient Drugs (CMS–2345–FC) **(Completion of a Section 610 Review)**	0938–AQ41
145	CY 2016 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1631–FC) **(Completion of a Section 610 Review)**.	0938–AS40
146	CY 2016 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1633–FC) **(Completion of a Section 610 Review)**.	0938–AS42
147	Comprehensive Care for Joint Replacement (CMS–5516–F) **(Completion of a Section 610 Review)**	0938–AS64

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office for Civil Rights (OCR)

Final Rule Stage

104. Nondiscrimination Under the Patient Protection and Affordable Care Act

Legal Authority: 42 U.S.C. 18116

Abstract: This final rule implements prohibitions against discrimination on the basis of race, color, national origin, sex, age, and disability as provided in section 1557 of the Affordable Care Act. Section 1557 provides protection from discrimination in health programs and activities of covered entities. This section also identifies additional forms of Federal financial assistance to which the section will apply.

Timetable:

Action	Date	FR Cite
NPRM	09/08/15	80 FR 54172
NPRM Comment Period End.	11/09/15	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Eileen Hanrahan, Senior Civil Rights Analyst, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW., Washington, DC 20201, *Phone:* 202 205–4925, *Email: eileen.hanrahan@hhs.gov.*

RIN: 0945–AA02

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Office of the National Coordinator for Health Information Technology (ONC)

Proposed Rule Stage

105. • ONC Health IT Certification Program: Enhanced Oversight and Accountability

Legal Authority: Not Yet Determined

Abstract: The rulemaking introduces modifications and new requirements under the ONC Health IT Certification Program ("Program"), including provisions related to the Office of the National Coordinator for Health Information Technology (ONC)'s role in the Program. The proposed rule proposes to establish processes for ONC to directly review health IT certified under the Program and take action when necessary, including requiring the correction of non-conformities found in health IT certified under the Program and suspending and terminating certifications issued to Complete EHRs and Health IT Modules. The proposed rule includes processes for ONC to authorize and oversee accredited testing laboratories under the Program. It also includes a provision for the increased transparency and availability of surveillance results.

Timetable:

Action	Date	FR Cite
NPRM	03/02/16	81 FR 11056
NPRM Comment Period End.	05/02/16	
Final Action	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Lipinski, Policy Analyst, Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, Room 729D, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, *Phone:* 202 690–7151.

RIN: 0955–AA00

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Proposed Rule Stage

106. Over-the-Counter (OTC) Drug Review—Cough/Cold (Antihistamine) Products

Legal Authority: 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

Abstract: FDA will be proposing a rule to add the common cold indication to certain over-the-counter (OTC) antihistamine active ingredients. This proposed rule is the result of collaboration under the U.S.-Canada Regulatory Cooperation Council (RCC) as part of efforts to reduce unnecessary duplication and differences. This pilot exercise will help determine the feasibility of developing an ongoing mechanism for alignment in review and adoption of OTC drug monograph elements.

Timetable:

Action	Date	FR Cite
Reopening of Administrative Record.	08/25/00	65 FR 51780
Comment Period End.	11/24/00	
NPRM (Amendment) (Common Cold).	01/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janice Adams-King, Regulatory Health Project Manager, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5416, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–3713, *Fax:* 301 796–9899, *Email: janice.adams-king@fda.hhs.gov.*

RIN: 0910–AF31

107. Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products

Legal Authority: 21 U.S.C. 321p; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective, and not misbranded. After a final monograph (*i.e.,* final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses antimicrobial agents in consumer antiseptic hand wash.

Timetable:

Action	Date	FR Cite
NPRM (Healthcare).	06/17/94	59 FR 31402
Comment Period End.	12/15/95	
NPRM (Consumer Hand Wash Products).	12/17/13	78 FR 76443
NPRM (Consumer Hand Wash) Comment Period End.	06/16/14	
NPRM (Healthcare Antiseptic).	05/01/15	80 FR 25166
NPRM Comment Period End (Healthcare Antiseptic).	10/28/15	
NPRM (Consumer Hand Rub).	06/00/16	
Final Rule (Consumer Hand Wash).	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janice Adams-King, Regulatory Health Project Manager, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 22, Room 5416, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–3713, *Fax:* 301 796–9899, *Email: janice.adams-king@fda.hhs.gov.*

RIN: 0910–AF69

108. Updated Standards for Labeling of Pet Food

Legal Authority: 21 U.S.C. 343; 21 U.S.C. 371; Pub. L. 110–85, sec 1002(a)(3)

Abstract: FDA is proposing updated standards for the labeling of pet food that include nutritional and ingredient information, as well as style and formatting standards. FDA is taking this action to provide pet owners and animal health professionals more complete and consistent information about the nutrient content and ingredient composition of pet food products.

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Burkholder, Veterinary Medical Officer, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, MPN–4, Room 2642, HFV–228, 7519 Standish Place, Rockville, MD 20855, *Phone:* 240 402–5900, *Email: william.burkholder@fda.hhs.gov.*

RIN: 0910–AG09

109. Format and Content of Reports Intended To Demonstrate Substantial Equivalence

Legal Authority: 21 U.S.C. 387e(j); 21 U.S.C. 387j(a); secs 905(j) and 910(a) of the Federal Food, Drug, and Cosmetic Act

Abstract: This regulation would establish the format and content of reports intended to demonstrate substantial equivalence. This regulation also would provide information as to how the Agency will review and act on these submissions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Annette L. Marthaler, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, Document Control Center, Building 71, Room G335, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Fax:* 877 287–1426, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AG96

110. Mammography Quality Standards Act; Regulatory Amendments

Legal Authority: 21 U.S.C. 360i; 21 U.S.C. 360nn; 21 U.S.C. 374(e); 42 U.S.C. 263b

Abstract: FDA is proposing to amend its regulations governing mammography. The amendments would update the regulations issued under the Mammography Quality Standards Act of 1992 (MQSA). FDA is taking this action to address changes in mammography technology and mammography processes that have occurred since the regulations were published in 1997 and to address breast density reporting to patient and health care providers.

Timetable:

Action	Date	FR Cite
NPRM	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nancy Pirt, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 4438, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: nancy.pirt@fda.hhs.gov.*

RIN: 0910–AH04

111. Investigational New Drug Application Annual Reporting

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353; 21 U.S.C. 355(i); 21 U.S.C. 371(a); 42 U.S.C. 262(a)

Abstract: This proposed rule would revise the requirements concerning annual reports submitted to investigational new drug applications (INDs) by replacing the current annual reporting requirement with a requirement that is generally consistent with the format, content, and timing of submission of the development safety update report devised by the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH).

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ebla Ali Ibrahim, Project Manager, Department of Health and Human Services, Food and Drug Administration, Center for Drug

Evaluation and Research, Building 51, Room 6302, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–3691, *Email: ebla.ali-ibrahim@fda.hhs.gov.*
RIN: 0910–AH07

112. Requirements for Tobacco Product Manufacturing Practice

Legal Authority: 21 U.S.C. 371; 21 U.S.C. 387b; 21 U.S.C. 387f
Abstract: FDA is proposing requirements that govern the methods used in, and the facilities and controls used for, the pre-production design validation, manufacture, packing, and storage of tobacco products.
Timetable:

Action	Date	FR Cite
ANPRM	03/19/13	78 FR 16824
ANPRM Comment Period End.	05/20/13	
NPRM	12/00/16	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Darin Achilles, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Fax:* 301 595–1426, *Email: ctpregulations@fda.hhs.gov.*
RIN: 0910–AH22

113. • Use of Ozone Depleting Substances (Section 610 Review)

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 335; 21 U.S.C. 342; 21 U.S.C. 346a; 21 U.S.C. 348; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 360b; 21 U.S.C. 361; 21 U.S.C. 371; 21 U.S.C. 372; 21 U.S.C. 374; 15 U.S.C. 402; 15 U.S.C. 409
Abstract: The Food and Drug Administration (FDA or the Agency) is proposing to amend its regulation (21 CFR 2.125) on uses of ozone-depleting substances (ODSs), including chlorofluorocarbons (CFCs), to remove designations for certain products as essential uses under the Clean Air Act. Essential-use products are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products and the Environmental Protection Agency's (EPA's) ban on the use of CFCs and other ODSs in pressurized dispensers. This action, if finalized, will remove essential use exemptions for sterile aerosol talc administered intrapleurally by thoracoscopy for human use, metered-dose atropine sulfate aerosol human drugs administered by oral inhalation, and anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application. FDA is proposing this action because alternative products that do not use ODSs are now available and because these products are no longer being marketed in approved versions that contain ODSs. On June 29, 2015, FDA published a notice and request for comment concerning its tentative conclusion that these products are no longer an essential use under the Clean Air Act (80 FR 36937). The Agency received no comments concerning removal of essential use designations for sterile aerosol talc and metered-dose atropine sulfate, and is proposing to remove these designations by direct final rule and a companion proposed rule in the event adverse comments are received. FDA received one comment concerning removal of anesthetic drugs for topical use in response to its 2015 notice and request for comment, and is proposing to remove this exemption through a separate notice. Because these products are not currently sold in the approved form, no significant economic impact is anticipated.
Timetable:

Action	Date	FR Cite
NPRM	08/00/16	

Regulatory Flexibility Analysis Required: No.
Agency Contact: Daniel Orr, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Building 51 Room 5199, 10993 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 240 402–0979, *Email: daniel.orr@fda.hhs.gov.*
RIN: 0910–AH36

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Final Rule Stage

114. Requirements for Foreign and Domestic Establishment Registration and Listing for Human Drugs, Including Drugs That Are Regulated Under a Biologics License Application, and Animal Drugs

Legal Authority: 21 U.S.C. 321 and 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355 to 356c; 21 U.S.C. 360 and 360b; 21 U.S.C. 360c to 360f; 21 U.S.C. 360h to 360j; 21 U.S.C. 371 and 374; 21 U.S.C. 379e and 381; 21 U.S.C. 393; 15 U.S.C. 1451 to 1561; 42 U.S.C. 262 and 264; 42 U.S.C. 271; and sec 122; Pub. L. 105–115, 11 Stat. 2322 (21 U.S.C. 355 note)
Abstract: The rule will reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list human drugs, including certain biological drugs, and animal drugs. These regulations contain information on when, how, and where to register drug establishments and list drugs, and what information must be submitted. They also address National Drug Codes.
Timetable:

Action	Date	FR Cite
NPRM	08/29/06	71 FR 51276
NPRM Comment Period End.	02/26/07	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: David Joy, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 6254, Silver Spring, MD 20993, *Phone:* 301 796–2242, *Email: david.joy@fda.hhs.gov.*
RIN: 0910–AA49

115. Postmarketing Safety Reporting Requirements for Human Drug and Biological Products

Legal Authority: 42 U.S.C. 216; 42 U.S.C. 241; 42 U.S.C. 242a; 42 U.S.C. 262 and 263; 42 U.S.C. 263a to 263n; 42 U.S.C. 264; 42 U.S.C. 300aa; 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 360b to 360j; 21 U.S.C. 361a; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 375; 21 U.S.C. 379e; 21 U.S.C. 381
Abstract: The final rule would amend the postmarketing expedited and periodic safety reporting regulations for human drugs and biological products to revise certain definitions and reporting formats as recommended by the International Conference on Harmonisation and to define new terms; to add to or revise current reporting requirements; to revise certain reporting time frames; and to propose other revisions to these regulations to enhance the quality of safety reports received by FDA. These revisions were proposed as part of a single rulemaking (68 FR 12406) to clarify and revise both premarketing and postmarketing safety reporting requirements for human drug and biological products. FDA plans to finalize the premarket and postmarket safety reporting requirements in separate final rules. Premarketing safety reporting requirements were finalized in a separate final rule published on September 29, 2010 (75 FR 59961). This final rule applies to postmarketing safety reporting requirements.
Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12406
NPRM Comment Period Extended.	06/18/03	
NPRM Comment Period End.	07/14/03	
NPRM Comment Period Extension End.	10/14/03	
Final Action	03/00/17	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Jane E. Baluss, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6362, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–3469, *Fax:* 301 847–8440, *Email: jane.baluss@fda.hhs.gov.*
RIN: 0910–AA97

116. Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 351 to 21 U.S.C. 353
Abstract: The Food and Drug Administration is amending its current good manufacturing practice regulations and other regulations to clarify and strengthen requirements for the label, color, dedication, and design of medical gas containers and closures. Despite existing regulatory requirements and industry standards for medical gases, there have been repeated incidents in which cryogenic containers of harmful industrial gases have been connected to medical oxygen supply systems in hospitals and nursing homes and subsequently administered to patients. These incidents have resulted in death and serious injury. There have also been several incidents involving high-pressure medical gas cylinders that have resulted in death and injuries to patients. These amendments, together with existing regulations, are intended to ensure that the types of incidents that have occurred in the past, as well as other types of foreseeable and potentially deadly medical gas accidents, do not occur in the future. FDA has described a number of proposals in the proposed rule including requiring that gas use outlet connections on portable cryogenic medical gas containers be securely attached to the valve body.
Timetable:

Action	Date	FR Cite
NPRM	04/10/06	71 FR 18039
NPRM Comment Period End.	07/10/06	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Patrick Raulerson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6368, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–3522, *Fax:* 301 847–8440, *Email: patrick.raulerson@fda.hhs.gov.*
RIN: 0910–AC53

117. Food Labeling: Revision of the Nutrition and Supplement Facts Labels

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371
Abstract: FDA is amending the labeling regulations for conventional foods and dietary supplements to provide updated nutrition information on the label to assist consumers in maintaining healthy dietary practices. The rule would modernize the nutrition information found on the Nutrition Facts label, as well as the format and appearance of the label. On July 27, 2015, FDA issued a supplemental notice of proposed rulemaking accepting comments on limited additional provisions until October 13, 2015. Also on July 27, 2015, FDA reopened the comment period on the proposed rule as to specific documents until September 25, 2015. In addition, in response to requests for the raw data related to FDA's consumer studies on the nutrition label, FDA issued a notice on September 10, 2015 to make the raw data available for comment until October 13, 2015 and extended the comment period for the July 27, 2015 reopening as to specific documents to October 13, 2015. On October 20, 2015, FDA extended the comment period for the consumer studies and the supplemental proposal to October 23, 2015.
Timetable:

Action	Date	FR Cite
ANPRM	07/11/03	68 FR 41507
ANPRM Comment Period End.	10/09/03	
Second ANPRM	04/04/05	70 FR 17008
Second ANPRM Comment Period End.	06/20/05	
Third ANPRM	11/02/07	72 FR 62149
Third ANPRM Comment Period End.	01/31/08	
NPRM	03/03/14	79 FR 11879
NPRM Comment Period End.	06/02/14	
Reopening of Comment Period as to Specific Documents.	07/27/15	80 FR 44302
NPRM Comment Period End as to Specific Documents.	09/25/15	
Supplemental NPRM to Solicit Comment on Limited Additional Provisions.	07/27/15	80 FR 44303
Supplemental NPRM to Solicit Comment on Limited Additional Provisions Comment Period End.	10/13/15	
Administrative Docket Update; Extension of Comment Period.	09/10/15	80 FR 54446
Administrative Docket Update; Comment Period End.	10/13/15	
NPRM Reopening of Comment Period for Certain Documents.	10/20/15	80 FR 63477
NPRM Reopening of Comment Period for Certain Documents Comment Period End.	10/23/15	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Blakeley Fitzpatrick, Interdisciplinary Scientist, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, HFS–830, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–5429, *Email: nutritionprogramstaff@fda.hhs.gov.*
RIN: 0910–AF22

118. Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion; Dual—Column Labeling; Updating, Modifying, and Establishing Certain RACCS

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 343; 21 U.S.C. 371; Pub. L. 101–535, sec 2(b)(1)(A)
Abstract: FDA is amending its labeling regulations for foods to provide update, modify, and establish Reference Amounts Customarily Consumed (RACCs) for certain food categories. This

rule would provide consumers with nutrition information based on the amount of food that is customarily consumed, which would assist consumers in maintaining healthy dietary practices. In addition to updating, modifying, and establishing certain RACCs, FDA is amending the definition of a single-serving containers; amending the label serving size for breath mints; and providing for dual-column labeling under certain circumstances, which would provide nutrition information per serving and per container or unit, as applicable; and making technical amendments to various aspects fo the serving size regulations.

Timetable:

Action	Date	FR Cite
ANPRM	04/04/05	70 FR 17010
ANPRM Comment Period End.	06/20/05	
NPRM/Comment Period Extended.	03/03/14	79 FR 11989
NPRM Comment Period End.	06/02/14	
NPRM Comment Period Extended.	05/27/14	79 FR 29699
NPRM Comment Period End.	08/01/14	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cherisa Henderson, Nutritionist, Department of Health and Human Services, Food and Drug Administration, HFS–830, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–5429, *Fax:* 301 436–1191, *Email: nutritionprogramstaff@fda.hhs.gov.*

RIN: 0910–AF23

119. Abbreviated New Drug Applications and 505(B)(2)

Legal Authority: Pub. L. 108–173, title XI; 21 U.S.C. 355; 21 U.S.C. 371

Abstract: This proposed rule would make changes to certain procedures for Abbreviated New Drug Applications and related applications to patent certifications, notice to patent owners and application holders, the availability of a 30-month stay of approval, amendments and supplements, and the types of bioavailability and bioequivalence data that can be used to support these applications.

Timetable:

Action	Date	FR Cite
NPRM	02/06/15	80 FR 6802
NPRM Comment Period End.	05/07/15	
NPRM Comment Period Extended.	04/24/15	80 FR 22953
NPRM Comment Period Extended End.	06/08/15	
Final Action	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janice L. Weiner, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 6268, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–3601, *Fax:* 301 847–8440, *Email: janice.weiner@fda.hhs.gov.*

RIN: 0910–AF97

120. "Tobacco Products" Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act

Legal Authority: 21 U.S.C. 301 *et seq.;* The Federal Food, Drug, and Cosmetic Act; Pub. L. 111–31; The Family Smoking Prevention and Tobacco Control Act

Abstract: The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) provides the Food and Drug Administration (FDA) authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Tobacco Control Act, permits FDA to issue regulations deeming other tobacco products to be subject to the FD&C Act. This rule would deem additional products meeting the statutory definition of "tobacco product" to be subject to the FD&C Act, and would specify additional restrictions.

Timetable:

Action	Date	FR Cite
NPRM	04/25/14	79 FR 23142
NPRM Comment Period End.	07/09/14	
NPRM Comment Period Extended.	06/24/14	79 FR 35711
NPRM Comment Period Extended End.	08/08/14	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gerie Voss, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, Document Control Center, Building 71, Room G335, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Fax:* 301 595–1426, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AG38

121. Human Subject Protection; Acceptance of Data From Clinical Investigations for Medical Devices

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 360; 21 U.S.C. 360c; 21 U.S.C. 360e; 21 U.S.C. 360i; 21 U.S.C. 360j; 21 U.S.C. 371; 21 U.S.C. 374; 21 U.S.C. 381; 21 U.S.C. 393; 42 U.S.C. 264; 42 U.S.C. 271; . . .

Abstract: This rule will amend FDA's regulations on acceptance of data for medical devices to require that clinical investigations submitted in support of a premarket approval application, humanitarian device exemption application, an investigational device exemption application, or a premarket notification submission be conducted in accordance with good clinical practice if conducted outside the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/25/13	78 FR 12664
NPRM Comment Period End.	05/28/13	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Soma Kalb, Biomedical Engineer, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, Building 66, Room 1534, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6359, *Email: soma.kalb@fda.hhs.gov.*

RIN: 0910–AG48

122. Focused Mitigation Strategies To Protect Food Against Intentional Adulteration

Legal Authority: 21 U.S.C. 331; 21 U.S.C. 342; 21 U.S.C. 350g; 21 U.S.C. 350i; 21 U.S.C. 371; 21 U.S.C. 374; Pub. L. 111–353

Abstract: This rule would require domestic and foreign food facilities that are required to register under the Federal Food, Drug, and Cosmetic Act to address hazards that may be intentionally introduced by acts of terrorism. These food facilities would be required to identify and implement focused mitigation strategies to significantly minimize or prevent significant vulnerabilities identified at actionable process steps in a food operation.

Timetable:

Action	Date	FR Cite
NPRM	12/24/13	78 FR 78014
NPRM Comment Period Extended.	03/25/14	79 FR 16251
NPRM Comment Period End.	03/31/14	
NPRM Comment Period Extended End.	06/30/14	
Final Rule	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jody Menikheim, Supervisory General Health Scientist, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–005), 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1864, *Fax:* 301 436–2633, *Email: fooddefense@fda.hhs.gov.*

RIN: 0910–AG63

123. Supplemental Applications Proposing Labeling Changes for Approved Drugs and Biological Products

Legal Authority: 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 352; 21 U.S.C. 353; 21 U.S.C. 355; 21 U.S.C. 371; 42 U.S.C. 262; . . .

Abstract: This rule would amend the regulations regarding new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics license application (BLAs) to revise and clarify procedures for changes to the labeling of an approved drug to reflect certain types of newly acquired information in advance of FDA's review of such change.

Timetable:

Action	Date	FR Cite
NPRM	11/13/13	78 FR 67985
NPRM Comment Period Extended.	12/27/13	78 FR 78796
NPRM Comment Period End.	01/13/14	
NPRM Comment Period Extended End.	03/13/14	
NPRM Comment Period Reopened.	02/18/15	80 FR 8577
NPRM Comment Period Reopened End.	04/27/15	
Final Rule	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janice L. Weiner, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 6268, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–3601, *Fax:* 301 847–8440, *Email: janice.weiner@fda.hhs.gov.*

RIN: 0910–AG94

124. Food Labeling; Gluten-Free Labeling of Fermented, Hydrolyzed, or Distilled Foods

Legal Authority: sec 206 of the Food Allergen Labeling and Consumer Protection Act; 21 U.S.C. 343(a)(1); 21 U.S.C. 321(n); 21 U.S.C. 371(a)

Abstract: This proposed rule would establish requirements concerning compliance for using a "gluten-free" labeling claim for those foods for which there is no scientifically valid analytical method available that can reliably detect and accurately quantify the presence of 20 parts per million (ppm) gluten in the food.

Timetable:

Action	Date	FR Cite
NPRM	11/18/15	80 FR 71990
NPRM Comment Period Reopened.	02/16/16	81 FR 3751
Comment Period Extended.	02/22/16	81 FR 8869
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carol D'Lima, Staff Fellow, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Room 4D022, HFS 820, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–2371, *Fax:* 301 436–2636, *Email: carol.dlima@fda.hhs.gov.*

RIN: 0910–AH00

125. General and Plastic Surgery Devices: Sunlamp Products

Legal Authority: 21 U.S.C. 360j(e)

Abstract: This proposed rule would apply device restrictions to sunlamp products.

Timetable:

Action	Date	FR Cite
NPRM	12/22/15	80 FR 79493
NPRM Comment Period End.	03/21/16	
Final Action	11/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ian Ostermiller, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Building 66 Room 5515, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–5678, *Email: ian.ostermiller@fda.hhs.gov.*

RIN: 0910–AH14

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Long-Term Actions

126. Laser Products; Amendment to Performance Standard

Legal Authority: 21 U.S.C. 360hh to 360ss; 21 U.S.C. 371; 21 U.S.C. 393

Abstract: FDA is proposing to amend the 2013 proposed rule for the performance standard for laser products, which will amend the performance standard for laser products to achieve closer harmonization between the current standard and the recently amended International Electrotechnical Commission (IEC) standard for laser products and medical laser products. The amendment is intended to update FDA's performance standard to reflect advancements in technology.

Timetable:

Action	Date	FR Cite
NPRM	06/24/13	78 FR 37723
NPRM Comment Period End.	09/23/13	
NPRM (Reproposal).	06/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Erica Blake, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 4426, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: erica.blake@fda.hhs.gov.*

RIN: 0910–AF87

127. Requirements for the Testing and Reporting of Tobacco Product Constituents, Ingredients, and Additives

Legal Authority: 21 U.S.C. 301 *et seq.;* 21 U.S.C. 387; The Family Smoking Prevention and Tobacco Control Act

Abstract: The Federal Food, Drug, and Cosmetic Act, as amended by the Family Smoking Prevention and Tobacco Control Act, requires the Food and Drug Administration to promulgate regulations that require the testing and reporting of tobacco product constituents, ingredients, and additives, including smoke constituents, that the

Agency determines should be tested to protect the public health.

Timetable:

Action	Date	FR Cite
NPRM	06/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Laura Rich, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, Building 71, G335, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 877 287–1373, *Email: ctpregulations@fda.hhs.gov.*

RIN: 0910–AG59

128. Radiology Devices; Designation of Special Controls for the Computed Tomography X-Ray System

Legal Authority: 21 U.S.C. 360c

Abstract: The proposed rule would establish special controls for the computed tomography (CT) X-ray system. A CT X-ray system is a diagnostic X-ray imaging system intended to produce cross-sectional images of the body through use of a computer to reconstruct an image from the same axial plane taken at different angles. High doses of ionizing radiation can cause acute (deterministic) effects such as burns, reddening of the skin, cataracts, hair loss, sterility, and, in extremely high doses, radiation poisoning. The design of a CT X-ray system should balance the benefits of the device (*i.e.,* the ability of the device to produce a diagnostic quality image) with the known risks (*e.g.,* exposure to ionizing radiation). FDA is establishing proposed special controls, which are necessary to provide reasonable assurance of the safety and effectiveness of a class II CT X-ray system.

Timetable:

Action	Date	FR Cite
NPRM	05/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Erica Blake, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 4426, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–6248, *Fax:* 301 847–8145, *Email: erica.blake@fda.hhs.gov.*

RIN: 0910–AH03

129. Regulations on Human Drug Compounding Under Sections 503A and 503B of the Federal Food, Drug, and Cosmetic Act

Legal Authority: 21 U.S.C. 353a; 21 U.S.C. 353b; 21 U.S.C. 371

Abstract: FDA will propose regulations to define and implement certain statutory conditions under which compounded products may qualify for exemptions from certain requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah Rothman, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 5197, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–3536, *Email: sarah.rothman@fda.hhs.gov.*

RIN: 0910–AH10

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Food and Drug Administration (FDA)

Completed Actions

130. Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption

Legal Authority: 21 U.S.C. 342; 21 U.S.C. 350h; 21 U.S.C. 371; 42 U.S.C. 264; Pub. L. 111–353 (signed on January 4, 2011)

Abstract: This rule will establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death. The purpose of the rule is to reduce the risk of illness associated with fresh produce.

Timetable:

Action	Date	FR Cite
NPRM	01/16/13	78 FR 3503
NPRM Comment Period End.	05/16/13	
NPRM Comment Period Extended.	04/26/13	78 FR 24692
NPRM Comment Period Extended End.	09/16/13	
NPRM Comment Period Extended.	08/09/13	78 FR 48637
NPRM Comment Period Extended End.	11/15/13	
Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Rule.	08/19/13	78 FR 50358
Notice of Intent To Prepare Environmental Impact Statement for the Proposed Rule Comment Period End.	11/15/13	
NPRM Comment Period Extended.	11/20/13	78 FR 69605
NPRM Comment Period Extended End.	11/22/13	
Environmental Impact Statement for the Proposed Rule; Comment Period Extended.	03/11/14	79 FR 13593
Environmental Impact Statement for the Proposed Rule; Comment Period Extended End.	04/18/14	
Supplemental NPRM.	09/29/14	79 FR 58433
Supplemental NPRM Comment Period End.	12/15/14	
Final Action—Draft Environmental Impact Statement.	01/14/15	80 FR 1852
Final Action—Draft Environmental Impact Statement Comment Period End.	03/13/15	
Final Action Effective.	01/26/16	
Final Rule	11/27/15	80 FR 74353

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Samir Assar, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–1636, *Email: samir.assar@fda.hhs.gov.*

RIN: 0910–AG35

131. Foreign Supplier Verification Program

Legal Authority: 21 U.S.C. 384a; title III, sec 301 of FDA Food Safety Modernization Act; Pub. L. 111–353, establishing sec 805 of the Federal Food, Drug, and Cosmetic Act (FD&C Act)

Abstract: This rule describes what a food importer must do to verify that its foreign suppliers produce food that is as safe as food produced in the United States. FDA is taking this action to improve the safety of food that is imported into the United States.

Timetable:

Action	Date	FR Cite
NPRM	07/29/13	78 FR 45729
NPRM Comment Period End.	11/26/13	
NPRM Comment Period Extended.	11/20/13	78 FR 69602
NPRM Comment Period Extended End.	01/27/14	
Supplemental NPRM.	09/29/14	79 FR 58573
Supplemental NPRM Comment Period End.	12/15/14	
Final Rule	11/27/15	80 FR 74225
Final Rule Effective.	01/27/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian L. Pendleton, Senior Policy Advisor, Department of Health and Human Services, Food and Drug Administration, Office of Policy, WO 32, Room 4245, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002, *Phone:* 301 796–4614, *Fax:* 301 847–8616, *Email: brian.pendleton@fda.hhs.gov.*

RIN: 0910–AG64

132. Sanitary Transportation of Human and Animal Food

Legal Authority: 21 U.S.C. 350e; 21 U.S.C. 373; 21 U.S.C. 331; 21 U.S.C. 342; 21 U.S.C. 371; . . .

Abstract: This rule would establish requirements for parties including shippers, carriers by motor vehicle or rail vehicle, and receivers engaged in the transportation of food, including food for animals, to use sanitary transportation practices to ensure that food is not transported under conditions that may render the food adulterated.

Timetable:

Action	Date	FR Cite
ANPRM	04/30/10	75 FR 22713
ANPRM Comment Period End.	08/30/10	
NPRM	02/05/14	79 FR 7005
NPRM Comment Period Extended.	05/23/14	79 FR 29699
NPRM Comment Period End.	05/31/14	
NPRM Comment Period Extended End.	07/30/14	
Final Rule	04/06/16	81 FR 20092
Final Rule Effective.	06/06/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael E. Kashtock, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402–2022, *Fax:* 301 346–2632, *Email: michael.kashtock@fda.hhs.gov.*

RIN: 0910–AG98

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Proposed Rule Stage

133. Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (CMS–3295–P) (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh and 1395rr

Abstract: This proposed rule would update the requirements that hospitals and Critical Access Hospitals (CAHs) must meet to participate in the Medicare and Medicaid programs. These proposals are intended to conform the requirements to current standards of practice and to support improvements in quality of care, reduce barriers to care, and reduce some issues that may exacerbate workforce shortage concerns.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: CDR Scott Cooper, Senior Technical Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Mail Stop S3–01–02, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9465, *Email: scott.cooper@cms.hhs.gov.*

RIN: 0938–AS21

134. Merit-Based Incentive Payment System (MIPS) and Alternative Payment Models (APMS) in Medicare Fee-For-Service (CMS–5517–P) (Section 610 Review)

Legal Authority: Pub. L. 114–10, sec 101

Abstract: This proposed rule would implement provisions of the Medicare Access and CHIP Reauthorization Act (MACRA) related to MIPS and APMs. Section 101 of MACRA authorizes a new MIPS, which repeals the Medicare sustainable growth rate and improves Medicare payments for physician services. MACRA consolidates the current programs of the Physician Quality Reporting System, the Value-Based Modifier, and the Electronic Health Records Incentive Program into one program, MIPS, that streamlines and improves on the three distinct incentive programs. Additionally, MACRA authorizes incentive payments for providers who participate in eligible APMs.

Timetable:

Action	Date	FR Cite
NPRM	05/09/16	81 FR 28161
NPRM Comment Period End.	06/27/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: James Sharp, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare & Medicaid Innovation Center, MS: WB–06–05, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–7388, *Email: james.sharp@cms.hhs.gov.*

RIN: 0938–AS69

135. Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and FY 2017 Rates (CMS–1655–F) (Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This annual final rule revises the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This rule implements changes arising from our continuing experience with these systems.

Timetable:

Action	Date	FR Cite
NPRM	04/27/16	81 FR 24946
NPRM Comment Period End.	06/17/16	
Final Action	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Donald Thompson, Deputy Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6504, *Email: donald.thompson@cms.hhs.gov.*

RIN: 0938–AS77

136. CY 2017 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model; and Home Health Quality Reporting Requirements (Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This annual proposed rule would update the 60-day national episode rate, the national per-visit rates used to calculate low utilization payment adjustments (LUPAs), and outlier payments under the Medicare prospective payment system for home health agencies. The rule would also update the provisions of the Home Health Value-Based Purchasing (HHVBP) program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hillary Loeffler, Deputy Director, Division of Home Health and Hospice, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5–07–22, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–0456, *Email: hillary.loeffler@cms.hhs.gov.*

RIN: 0938–AS80

137. CY 2017 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1654–P) (Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh; Pub. L. 114–10

Abstract: This annual proposed rule would revise payment polices under the Medicare physician fee schedule, and make other policy changes to payment under Medicare Part B. These changes would apply to services furnished beginning January 1, 2017.

Timetable:

Action	Date	FR Cite
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ryan Howe, Director, Division of Practitioner Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–15, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–3355, *Email: ryan.howe@cms.hhs.gov.*

RIN: 0938–AS81

138. CY 2017 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1656–P) (Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395hh

Abstract: This annual proposed rule would revise the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule would change the ambulatory surgical center payment system list of services and rates.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marjorie Baldo, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4617, *Email: marjorie.baldo@cms.hhs.gov.*

RIN: 0938–AS82

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services (CMS)

Final Rule Stage

139. Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers (CMS–3178–F) (Section 610 Review)

Legal Authority: 42 U.S.C. 1821; 42 U.S.C. 1861ff (3)(B)(i)(ii); 42 U.S.C. 1913(c)(1) et al

Abstract: This rule finalizes emergency preparedness requirements for Medicare and Medicaid participating providers and suppliers to ensure that they adequately plan for both natural and man-made disasters and coordinate with Federal, State, tribal, regional, and local emergency preparedness systems. This rule ensures providers and suppliers are adequately prepared to meet the needs of patients, residents, clients, and participants during disasters and emergency situations.

Timetable:

Action	Date	FR Cite
NPRM	12/27/13	78 FR 79082
NPRM Comment Period Extended.	02/21/14	79 FR 9872
NPRM Comment Period End.	03/31/14	
Final Action	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janice Graham, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clincial Standards and Quality, Mail Stop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Phone:* 410 786–8020, *Email: janice.graham@cms.hhs.gov.*

RIN: 0938–AO91

140. Reform of Requirements for Long-Term Care Facilities (CMS–3260–F) (Rulemaking Resulting From a Section 610 Review)

Legal Authority: Pub. L. 111–148, sec 6102; 42 U.S.C. 263a; 42 U.S.C. 1302; 42 U.S.C. 1395hh; 42 U.S.C. 1395rr

Abstract: This final rule revises the requirements that long-term care facilities must meet to participate in the Medicare and Medicaid programs. These changes are necessary to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery and safety. The rule is also an integral part of CMS efforts to achieve broad-based improvements both in the quality of health care furnished through federal programs, and in patient safety, while at the same time reducing procedural burdens on providers.

Timetable:

Action	Date	FR Cite
NPRM	07/16/15	80 FR 42167
NPRM Comment Period Extension.	09/15/15	80 FR 55284
NPRM Comment Period End.	09/14/15	
NPRM Comment Period Extended End.	10/14/15	
Final Action	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ronisha Blackstone, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6882, *Email: ronisha.blackstone@cms.hhs.gov.*

RIN: 0938–AR61

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Long-Term Actions

Centers for Medicare & Medicaid Services (CMS)

141. Conditions of Participation for Home Health Agencies (CMS–3819–F) (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 42 U.S.C. 1302; 42 U.S.C. 1395x; 42 U.S.C. 1395cc(a); 42 U.S.C. 1395hh; 42 U.S.C. 1395bb

Abstract: This final rule revises the conditions of participation (CoPs) that home health agencies (HHAs) must meet in order to participate in the Medicare and Medicaid programs. The requirements focus on the care delivered to patients by HHAs, reflect an interdisciplinary view of patient care, allow HHAs greater flexibility in meeting quality care standards, and eliminate unnecessary procedural requirements. These changes are an integral part of our overall effort to achieve broad-based, measurable improvements in the quality of care furnished through the Medicare and Medicaid programs, while at the same time eliminating unnecessary procedural burdens on providers.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11005
NPRM Comment Period End.	06/09/97	
Second NPRM	10/09/14	79 FR 61163
NPRM Comment Period Extended.	12/01/14	79 FR 71081
NPRM Comment Period End.	12/08/14	
NPRM Comment Period Extended End.	01/07/15	
Final Action	10/00/17	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Danielle Shearer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards & Quality, 7500 Security Boulevard, MS: S3–02–01, Baltimore, MD 21244, *Phone:* 410 786–6617, *Email: danielle.shearer@cms.hhs.gov.*

RIN: 0938–AG81

142. Medicare Clinical Diagnostic Laboratory Test Payment System (CMS–1621–F) (Section 610 Review)

Legal Authority: Pub. L. 113–93, sec 216

Abstract: This final rule revises the Medicare payment system for clinical diagnostic laboratory tests and implements other changes required by section 216 of the Protecting Access to Medicare Act of 2014.

Timetable:

Action	Date	FR Cite
NPRM	10/01/15	80 FR 59385
NPRM Comment Period End.	11/25/15	
Final Action	10/00/18	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Valerie Miller, Deputy Director, Division of Ambulatory Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, Mail Stop C4–01–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4535, *Email: valerie.miller@cms.hhs.gov.*

Sarah Harding, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4535, *Email: sarah.harding@cms.hhs.gov.*

RIN: 0938–AS33

143. Imaging Accreditation (CMS–3309–P) (Section 610 Review)

Legal Authority: 42 U.S.C. 1395hh; 42 U.S.C. 1102

Abstract: This proposed rule would establish standards for Imaging Accreditation. These proposed standards would address qualifications for clinical personnel, standards to ensure that suppliers have established policies and procedures governing the use of equipment in furnishing the technical component of advanced diagnostic imaging, and the establishment and maintenance of a quality assurance and quality control program to ensure reliability, clarity, and accuracy of the diagnostic images.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sonia Swancy, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–8445, *Email: sonia.swancy@cms.hhs.gov.*

RIN: 0938–AS62

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Completed Actions

Centers for Medicare & Medicaid Services (CMS)

144. Covered Outpatient Drugs (CMS–2345–FC) (Completion of a Section 610 Review)

Legal Authority: Pub. L. 111–48, sec 2501; Pub. L. 111–48, 2503; Pub. L. 111–48, 3301(d)(2); Pub. L. 111–152, sec 1206; Pub. L. 111–8, sec 221

Abstract: This final rule revises requirements pertaining to Medicaid reimbursement for covered outpatient drugs to implement provisions of the Affordable Care Act. This rule also revises other requirements related to covered outpatient drugs, including key aspects of Medicaid coverage, payment, and the drug rebate program.

Timetable:

Action	Date	FR Cite
NPRM	02/02/12	77 FR 5318
NPRM Comment Period End.	04/02/12	
Final Action	02/01/16	81 FR 5170

Action	Date	FR Cite
Final Action Effective.	04/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Wendy Tuttle, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, Mail Stop S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–8690, *Email: wendy.tuttle@cms.hhs.gov.*

RIN: 0938–AQ41

145. CY 2016 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1631–FC) (Completion of a Section 610 Review)

Legal Authority: 42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395kk, 1395rr and 1395ww(k); 42 U.S.C. 263a; 42 U.S.C. 1395m, 1395hh, and 1395ddd; 42 U.S.C. 1395w–101 through 1395w–152, and 1395nn; ...

Abstract: This annual final rule revises payment polices under the Medicare physician fee schedule, and makes other policy changes to payment under Medicare Part B. These changes apply to services furnished beginning January 1, 2016.

Timetable:

Action	Date	FR Cite
NPRM	07/15/15	80 FR 41686
NPRM Comment Period End.	09/08/15	
Final Action	11/16/15	80 FR 70886
Final Action Effective.	01/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ryan Howe, Director, Division of Practitioner Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–15, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–3355, *Email: ryan.howe@cms.hhs.gov.*

RIN: 0938–AS40

146. CY 2016 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1633–FC) (Completion of a Section 610 Review)

Legal Authority: 42 U.S.C. 1302, 1395m, 1395hh, and 1395ddd

Abstract: This annual final rule revises the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule changes the ambulatory surgical center payment system list of services and rates.

Timetable:

Action	Date	FR Cite
NPRM	07/08/15	80 FR 39200
NPRM Comment Period End.	08/31/15	
Final Action	11/13/15	80 FR 70298
Final Action Effective.	01/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marjorie Baldo, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4617, *Email: marjorie.baldo@cms.hhs.gov.*

RIN: 0938–AS42

147. Comprehensive Care for Joint Replacement (CMS–5516–F) (Completion of a Section 610 Review)

Legal Authority: Social Security Act, sec 1115A

Abstract: This final rule implements a new Medicare Part A and B payment model under section 1115A of the Social Security Act, called the Comprehensive Care Joint Replacement Model, in which acute care hospitals in certain selected geographic areas receive retrospective bundled payments for episodes of care for lower extremity joint replacement or reattachment of a lower extremity. All related care within 90 days of hospital discharge from the joint replacement procedures would be included in the episode of care. We believe this model furthers our goals in improving the efficiency and quality of care for Medicare beneficiaries for these common medical procedures.

Timetable:

Action	Date	FR Cite
NPRM	07/14/15	80 FR 41198
NPRM Comment Period End.	09/08/15	
Final Action	11/24/15	80 FR 73273
Final Action Effective.	01/15/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Claire Schreiber, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare & Medicaid Innovation, MS: WB–08–62, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–8939, *Email: claire.schreiber@cms.hhs.gov.*

RIN: 0938–AS64

[FR Doc. 2016–12904 Filed 6–8–16; 8:45 am]

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Part IX

Department of Homeland Security

Semiannual Regulatory Agenda

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chs. I and II

[DHS Docket No. OGC–RP–04–001]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, DHS.

ACTION: Semiannual regulatory agenda.

SUMMARY: This regulatory agenda is a semiannual summary of current and projected rulemakings, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS's regulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department's regulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

Please direct general comments and inquiries on the agenda to the Regulatory Affairs Law Division, Office of the General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, Mail Stop 0485, Washington, DC 20528–0485.

Specific

Please direct specific comments and inquiries on individual regulatory actions identified in this agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

SUPPLEMENTARY INFORMATION: DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) and Executive Order 12866 "Regulatory Planning and Review" (Sept. 30, 1993) as incorporated in Executive Order 13563 "Improving Regulation and Regulatory Review" (Jan. 18, 2011), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of current and projected rulemakings, as well as actions completed since the publication of the last regulatory agenda for the Department. DHS's last semiannual regulatory agenda was published on December 15, 2015, at 80 FR 77971.

Beginning in fall 2007, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov*.

The Regulatory Flexibility Act (5 U.S.C. 602) requires Federal agencies to publish their regulatory flexibility agendas in the **Federal Register**. A regulatory flexibility agenda shall contain, among other things, a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. DHS's printed agenda entries include regulatory actions that are in the Department's regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the Internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Dated: March 18, 2016.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

Office of the Secretary—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
148	Chemical Facility Anti-Terrorism Standards (CFATS)	1601–AA69

Office of the Secretary—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
149	Ammonium Nitrate Security Program	1601–AA52

U.S. Citizenship and Immigration Services—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.

U.S. Coast Guard—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
153	Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation	1625–AB85

U.S. Coast Guard—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
154	Inspection of Towing Vessels	1625–AB06
155	Transportation Worker Identification Credential (TWIC); Card Reader Requirements	1625–AB21
156	Seafarers' Access to Maritime Facilities	1625–AC15

U.S. Coast Guard—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
157	Numbering of Undocumented Barges	1625–AA14
158	Outer Continental Shelf Activities	1625–AA18
159	Updates to Maritime Security	1625–AB38

U.S. Coast Guard—Completed Actions

Sequence No.	Title	Regulation Identifier No.
160	Discharge Removal Equipment for Vessels Carrying Oil	1625–AA02

U.S. Customs and Border Protection—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
161	Implementation of the Guam-CNMI Visa Waiver Program **(Section 610 Review)**	1651–AA77

U.S. Customs and Border Protection—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
162	Importer Security Filing and Additional Carrier Requirements **(Section 610 Review)**	1651–AA70

Transportation Security Administration—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
163	Security Training for Surface Mode Employees	1652–AA55

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
167	Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F–1 Students **(Completion of a Section 610 Review)**.	1653–AA72

FEDERAL EMERGENCY MANAGEMENT AGENCY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
168	Updates to Floodplain Management and Protection of Wetlands Regulations to Implement Executive Order 13690 and the Federal Flood Risk Management Standard.	1660–AA85

DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Proposed Rule Stage

148. Chemical Facility Anti-Terrorism Standards (CFATS)

Legal Authority: Sec 550 of the Department of Homeland Security Appropriations Act of 2007 Pub. L. 109–295, as amended

Abstract: The Department of Homeland Security (DHS) previously invited public comment on an advance notice of proposed rulemaking (ANPRM) for potential revisions to the Chemical Facility Anti-Terrorism Standards (CFATS) regulations. The ANPRM provided an opportunity for the public to provide recommendations for possible program changes. DHS is reviewing the public comments received in response to the ANPRM, after which DHS intends to publish a Notice of Proposed Rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	08/18/14	79 FR 48693
ANPRM Comment Period End.	10/17/14	
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon MacLaren, Chief, Rulemaking Section, Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Security Compliance Division (NPPD/ISCD), 245 Murray Lane, Mail Stop 0610, Arlington, VA 20528–0610, *Phone:* 703 235–5263, *Fax:* 703 603–4935, *Email: jon.m.maclaren@hq.dhs.gov.*

RIN: 1601–AA69

DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Long-Term Actions

149. Ammonium Nitrate Security Program

Legal Authority: Pub. L. 110–161, 2008 Consolidated Appropriations Act, section 563

Abstract: This rulemaking will implement the December 2007 amendment to the Homeland Security Act entitled "Secure Handling of Ammonium Nitrate." The amendment requires the Department of Homeland Security to "regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility...to prevent the misappropriation or use of ammonium nitrate in an act of terrorism."

Timetable:

Action	Date	FR Cite
ANPRM	10/29/08	73 FR 64280
Correction	11/05/08	73 FR 65783
ANPRM Comment Period End.	12/29/08	
NPRM	08/03/11	76 FR 46908
Notice of Public Meetings.	10/07/11	76 FR 62311
Notice of Public Meetings.	11/14/11	76 FR 70366
NPRM Comment Period End.	12/01/11	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jon MacLaren, Chief, Rulemaking Section, Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Security Compliance Division (NPPD/ISCD), 245 Murray Lane, Mail Stop 0610, Arlington, VA 20528–0610, *Phone:* 703 235–5263, *Fax:* 703 603–4935, *Email: jon.m.maclaren@hq.dhs.gov.*

RIN: 1601–AA52

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Proposed Rule Stage

150. Requirements for Filing Motions and Administrative Appeals

Legal Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1304; 6 U.S.C. 112

Abstract: This proposed rule proposes to revise the requirements and procedures for the filing of motions and appeals before the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and its Administrative Appeals Office (AAO). The proposed changes are intended to streamline the existing processes for filing motions and appeals and will reduce delays in the review and appellate process. This rule also proposes additional changes necessitated by the establishment of DHS and its components. The proposed changes are intended to promote simplicity, accessibility, and efficiency in the administration of USCIS appeals. The Department also solicits public comment on proposed changes to the AAO's appellate jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles "Locky" Nimick, Deputy Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Administrative Appeals Office, 20 Massachusetts Avenue NW., Washington, DC 20529–2090, *Phone:* 703 224–4501, *Email: charles.nimick@usics.dhs.gov.*

RIN: 1615–AB98

151. U.S. Citizenship and Immigration Services Fee Schedule

Legal Authority: 8 U.S.C. 1356(m)

Abstract: This rule will propose to adjust the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does not adequately recover the full costs of services provided by USCIS. Without an adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. The fee review is undertaken pursuant to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03. The CFO Act requires each agency's chief financial officer (CFO) to "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value."

Timetable:

Action	Date	FR Cite
NPRM	05/04/16	81 FR 26904
NPRM Comment Period End.	07/05/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joseph D. Moore, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, Suite 4018, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1701, *Fax:* 202 272–1970, *Email: joseph.moore@uscis.dhs.gov.*

RIN: 1615–AC09

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Citizenship and Immigration Services (USCIS)

Final Rule Stage

152. Retention of EB–1, EB–2, and EB–3 Immigrant Workers and Program Improvements Affecting Highly-Skilled H–1B Alien Workers

Legal Authority: 6 U.S.C. 112; 8 U.S.C. 1154 and 1155; 8 U.S.C. 1184; 8 U.S.C. 1255; 8 U.S.C. 1324a

Abstract: In December 2015, the Department of Homeland Security (DHS) proposed to amend its regulations affecting certain employment-based immigrant and nonimmigrant classifications. This rule proposes to amend current regulations to provide stability and job flexibility for the beneficiaries of approved employment-based immigrant visa petitions while they wait to become lawful permanent residents. DHS is also proposing to conform its regulations with the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act (the 21st Century DOJ Appropriations Act), as well as the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The rule also seeks to clarify several interpretive questions raised by ACWIA and AC21 regarding H–1B petitions, and incorporate relevant AC21 policy memoranda and an Administrative Appeals Office precedent decision, and would ensure that DHS practice is consistent with them.

Timetable:

Action	Date	FR Cite
NPRM	12/31/15	80 FR 81900
NPRM Comment Period End.	02/29/16	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kevin Cummings, Branch Chief, Business and Foreign Workers Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Second Floor, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, *Phone:* 202 272–1470, *Fax:* 202 272–1480, *Email: kevin.cummings@uscis.dhs.gov.*

RIN: 1615–AC05

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Proposed Rule Stage

153. Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation

Legal Authority: Pub. L. 111–281

Abstract: The Coast Guard proposes to implement those requirements of 2010 and 2012 legislation that pertain to uninspected commercial fishing industry vessels and that took effect upon enactment of the legislation but that, to be implemented, require amendments to Coast Guard regulations affecting those vessels. The applicability of the regulations is being changed, and new requirements are being added to safety training, equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. This rulemaking promotes the Coast Guard's maritime safety mission.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	
NPRM Comment Period End.	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jack Kemerer, Project Manager, CG–CVC–3, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr., Avenue SE., STOP 7501, Washington, DC 20593–7501, *Phone:* 202 372–1249, *Email: jack.a.kemerer@uscg.mil.*

RIN: 1625–AB85

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Final Rule Stage

154. Inspection of Towing Vessels

Legal Authority: 46 U.S.C. 3103; 46 U.S.C. 3301; 46 U.S.C. 3306; 46 U.S.C. 3308; 46 U.S.C. 3316; 46 U.S.C. 3703; 46 U.S.C. 8104; 46 U.S.C. 8904; DHS Delegation No 0170.1

Abstract: This rulemaking would implement a program of inspection for certification of towing vessels, which were previously uninspected. It would prescribe standards for safety management systems and third-party auditors and surveyors, along with standards for construction, operation, vessel systems, safety equipment, and recordkeeping.

Timetable:

Action	Date	FR Cite
NPRM	08/11/11	76 FR 49976
Notice of Public Meetings.	09/09/11	76 FR 55847
NPRM Comment Period End.	12/09/11	
Final Rule	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: LCDR William Nabach, Project Manager, Office of Operating & Environmental Standards, CG–OES–2, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1386, *Email: william.a.nabach@uscg.mil.*

RIN: 1625–AB06

155. Transportation Worker Identification Credential (TWIC); Card Reader Requirements

Legal Authority: 33 U.S.C. 1226; 33 U.S.C. 1231; 46 U.S.C. 701; 50 U.S.C. 191; 50 U.S.C. 192; E.O. 12656

Abstract: The Coast Guard is establishing electronic card reader requirements for maritime facilities and vessels to be used in combination with TSA's Transportation Worker Identification Credential (TWIC). Congress enacted several statutory requirements within the Security and Accountability for Every (SAFE) Port Act of 2006 to guide regulations pertaining to TWIC readers, including the need to evaluate TSA's final pilot program report as part of the TWIC reader rulemaking. During the rulemaking process, we will take into account the final pilot data and the various conditions in which TWIC readers may be employed. For example, we will consider the types of vessels and facilities that will use TWIC readers, locations of secure and restricted areas, operational constraints, and need for accessibility. Recordkeeping requirements, amendments to security plans, and the requirement for data exchanges (*i.e.*, Canceled Card List) between TSA and vessel or facility owners/operators will also be addressed in this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/27/09	74 FR 13360
Notice of Public Meeting.	04/15/09	74 FR 17444
ANPRM Comment Period End.	05/26/09	
Notice of Public Meeting Comment Period End.	05/26/09	
NPRM	03/22/13	78 FR 20558
NPRM Comment Period Extended.	05/10/13	78 FR 27335
NPRM Comment Period Extended End.	06/20/13	
Final Rule	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: LT Mason Wilcox, Project Manager, Department of Homeland Security, U.S. Coast Guard, Commandant (CG–FAC–2), 2703 Martin Luther King Jr., Avenue SE., STOP 7501, Washington, DC 20593–7501, *Phone:* 202 372–1123, *Email: mason.c.wilcox@uscg.mil.*

RIN: 1625–AB21

156. Seafarers' Access to Maritime Facilities

Legal Authority: 33 U.S.C. 1226; 33 U.S.C. 1231; Pub. L. 111–281, sec 811

Abstract: This regulatory action will implement section 811 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281), which requires the owner/operator of a facility regulated by the Coast Guard under the Maritime Transportation Security Act of 2002 (Pub. L. 107–295) (MTSA) to provide a system that enables seafarers and certain other individuals to transit between vessels moored at the facility and the facility gate in a timely manner at no cost to the seafarer or other individual. Ensuring that such access through a facility is consistent with the security requirements in MTSA is part of the Coast Guard's Ports, Waterways, and Coastal Security (PWCS) mission.

Timetable:

Action	Date	FR Cite
NPRM	12/29/14	79 FR 77981
NPRM Comment Period Reopened.	05/27/15	80 FR 30189
NPRM Comment Period End.	07/01/15	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: LCDR Kevin McDonald, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr., Avenue SE., Commandant (CG–FAC–2), STOP 7501, Washington, DC 20593–7501, *Phone:* 202 372–1168, *Email: kevin.j.mcdonald@uscg.mil.*

RIN: 1625–AC15

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Long-Term Actions

157. Numbering of Undocumented Barges

Legal Authority: 46 U.S.C. 12301

Abstract: Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires that all undocumented barges of more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system and user fees for an original or renewed Certificate of Number for these barges. The numbering of undocumented barges allows the Coast Guard to identify the owners of abandoned barges. This rulemaking supports the Coast Guard's broad role and responsibility of protecting natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments.	10/18/94	59 FR 52646
Comment Period End.	01/17/95	
ANPRM	07/06/98	63 FR 36384
ANPRM Comment Period End.	11/03/98	
NPRM	01/11/01	66 FR 2385
NPRM Comment Period End.	04/11/01	
NPRM Reopening of Comment Period.	08/12/04	69 FR 49844
NPRM Reopening Comment Period End.	11/10/04	
Supplemental NPRM.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Denise Harmon, Project Manager, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419, *Phone:* 304 271–2506, *Email: denise.e.harmon@uscg.mil.*

RIN: 1625–AA14

158. Outer Continental Shelf Activities

Legal Authority: 43 U.S.C. 1333(d)(1); 43 U.S.C. 1348(c); 43 U.S.C. 1356; DHS Delegation No 0170.1

Abstract: The Coast Guard is the lead Federal agency for workplace safety and health on facilities and vessels engaged in the exploration for, or development, or production of, minerals on the Outer Continental Shelf (OCS), other than for matters generally related to drilling and production that are regulated by the Bureau of Safety and Environmental Enforcement (BSEE). This project would revise the regulations on OCS activities by: (1) Adding new requirements, for OCS units for lifesaving, fire protection, training, and helidecks; (2) providing for USCG acceptance and approval of specified classification society plan reviews, inspections, audits, and surveys; and (3) requiring foreign vessels engaged in OCS activities to comply with rules similar to those imposed on U.S. vessels similarly engaged. This project would affect the owners and operators of facilities and vessels engaged in offshore activities.

Timetable:

Action	Date	FR Cite
Request for Comments.	06/27/95	60 FR 33185
Comment Period End.	09/25/95	
NPRM	12/07/99	64 FR 68416
NPRM Correction	02/22/00	65 FR 8671
NPRM Comment Period Extended.	03/16/00	65 FR 14226
NPRM Comment Period Extended.	06/30/00	65 FR 40559
NPRM Comment Period End.	11/30/00	
Supplemental NPRM.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles Rawson, Project Manager, Department of Homeland Security, U.S. Coast Guard, Commandant (CG–ENG–2), 2703 Martin Luther King Jr., Avenue SE., STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1390, *Email: charles.e.rawson@uscg.mil.*

RIN: 1625–AA18

159. Updates to Maritime Security

Legal Authority: 33 U.S.C. 1226; 33 U.S.C. 1231; 46 U.S.C. 701; 50 U.S.C. 191 and 192; E.O. 12656; 33 CFR 1.05–1; 33 CFR 6.04–11; 33 CFR 6.14; 33 CFR 6.16; 33 CFR 6.19; DHS Delegation No. 0170.1

Abstract: The Coast Guard proposes certain additions, changes, and amendments to 33 CFR subchapter H. Subchapter H is comprised of parts 101 through 106. Subchapter H implements the major provisions of the Maritime Transportation Security Act of 2002 (MTSA). This rulemaking is the first major revision to subchapter H. The proposed changes would further the goals of domestic compliance and international cooperation by incorporating requirements from legislation implemented since the original publication of these regulations, such as the Security and Accountability for Every (SAFE) Port Act of 2006, and including international standards such as Standards of Training, Certification & Watchkeeping security training. This rulemaking has international interest because of the close relationship between subchapter H and the International Ship and Port Security Code (ISPS).

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: LCDR Kevin McDonald, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr., Avenue SE., Commandant (CG–FAC–2), STOP 7501, Washington, DC 20593–7501, *Phone:* 202 372–1168, *Email: kevin.j.mcdonald@uscg.mil.*

RIN: 1625–AB38

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Coast Guard (USCG)

Completed Actions

160. Discharge Removal Equipment for Vessels Carrying Oil

Legal Authority: 33 U.S.C. 1321

Abstract: The Oil Pollution Act of 1990 directed the President by August 18, 1992, to require periodic inspection of discharge-removal equipment to ensure that it is available in an emergency, and to require carriage of discharge removal equipment by vessels operating in the navigable waters of the United States and carrying oil or hazardous substances. This action implemented those provisions. This project supports the Coast Guard's broad role and responsibility of maritime stewardship.

Timetable:

Action	Date	FR Cite
ANPRM	08/30/91	56 FR 43534
ANPRM Comment Period End.	10/16/91	
NPRM	09/29/92	57 FR 44912
NPRM Comment Period Extended.	10/26/92	57 FR 48489
NPRM Comment Period End.	10/29/92	
NPRM Comment Period Extended.	11/16/92	57 FR 48489
Interim Final Rule	12/22/93	58 FR 67988
Interim Final Rule Effective.	01/21/94	
Correction	01/26/94	59 FR 3749
Interim Final Rule Comment Period End.	02/22/94	
Notice	03/27/12	77 FR 18151
Notice Comment Period End.	05/29/12	
Final Rule	04/07/16	81 FR 20247
Final Rule Effective.	05/09/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David A. Du Pont, Project Manager, CG–REG, Department of Homeland Security, U.S. Coast Guard, Office of Standards Evaluation and Development, 2703 Martin Luther King Jr., Avenue SE., STOP 7418, Washington, DC 20593–7418, *Phone:* 202 372–1497, *Email: david.a.dupont@uscg.mil.*

RIN: 1625–AA02

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Customs and Border Protection (USCBP)

Final Rule Stage

161. Implementation of the Guam–CNMI Visa Waiver Program (Section 610 Review)

Legal Authority: Pub. L. 110–229, sec 702

Abstract: The interim final rule (or the final rule planned for the coming year) amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program.

Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), subject to a transition period, extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the CNMI. On January 16, 2009, the Department of Homeland Security (DHS), Customs and Border Protection (CBP), issued an interim final rule in the **Federal Register** replacing the then-existing Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. As of November 28, 2009, the Guam-CNMI Visa Waiver Program is operational. This program allows nonimmigrant visitors from eligible countries to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed 45 days. This rulemaking would finalize the January 2009 interim final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/09	74 FR 2824
Interim Final Rule Effective.	01/16/09	
Interim Final Rule Comment Period End.	03/17/09	
Technical Amendment; Change of Implementation Date.	05/28/09	74 FR 25387
Final Action	02/00/17	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Stephanie Watson, Supervisory Program Manager, Department of Homeland Security, U.S. Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., 2.5B–38, Washington, DC 20229, *Phone:* 202 325–4548, *Email: stephanie.e.watson@cbp.dhs.gov.*

RIN: 1651–AA77

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Customs and Border Protection (USCBP)

Long-Term Actions

162. Importer Security Filing and Additional Carrier Requirements (Section 610 Review)

Legal Authority: Pub. L. 109–347, sec 203; 5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1433 to 1434; 19 U.S.C. 1624; 19 U.S.C. 2071 (note); 46 U.S.C. 60105

Abstract: This final rule implements the provisions of section 203 of the Security and Accountability for Every Port Act of 2006. On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule (CBP Dec. 08–46) in the **Federal Register** (73 FR 71730), that finalized most of the provisions proposed in the NPRM. It requires carrier and importers to provide to CBP, via a CBP approved electronic data interchange system, certain advance information pertaining to cargo brought into the United States by vessel to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. The interim final rule did not finalize six data elements that were identified as areas of potential concern for industry during the rulemaking process and, for which, CBP provided some type of flexibility for compliance with those data elements. CBP solicited public comment on these six data elements, is conducting a structured review, and also invited comments on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis. (See 73 FR 71782–85 for regulatory text and 73 CFR 71733–34 for general discussion.) The remaining requirements of the rule were adopted as final. CBP plans to issue a final rule after CBP completes a structured review of the flexibilities and analyzes the comments.

Timetable:

Action	Date	FR Cite
NPRM	01/02/08	73 FR 90
NPRM Comment Period End.	03/03/08	
NPRM Comment Period Extended.	02/01/08	73 FR 6061
NPRM Comment Period End.	03/18/08	
Interim Final Rule	11/25/08	73 FR 71730
Interim Final Rule Effective.	01/26/09	
Interim Final Rule Comment Period End.	06/01/09	
Correction	07/14/09	74 FR 33920
Correction	12/24/09	74 FR 68376
Final Action	09/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Craig Clark, Program Manager, Vessel Manifest & Importer Security Filing, Office of Cargo and Conveyance Security, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229, *Phone:* 202 344–3052, *Email: craig.clark@cbp.dhs.gov.*

RIN: 1651–AA70

DEPARTMENT OF HOMELAND SECURITY (DHS)

Transportation Security Administration (TSA)

Proposed Rule Stage

163. Security Training for Surface Mode Employees

Legal Authority: 49 U.S.C. 114; Pub. L. 110–53, secs 1408, 1517, and 1534

Abstract: This rule would require security awareness training for front-line employees for potential terrorism-related security threats and conditions pursuant to the 9/11 Act. This rule would apply to higher-risk public transportation, freight rail, and over-the-road bus owner/operators and take into consideration the many actions higher-risk owner/operators have already taken since 9/11 to enhance the baseline of security through training of their employees. The rulemaking will also propose extending security coordinator and reporting security incident requirements applicable to rail operators under current 49 CFR part 1580 to the non-rail transportation components of covered public transportation agencies and over-the-road buses.

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chandru (Jack) Kalro, Deputy Director, Surface Division, Office of Security Policy and Industry Engagement, Department of Homeland Security, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–1145, *Fax:* 571 227–2935, *Email: surfacefrontoffice@tsa.dhs.gov.*

Monica Grasso Ph.D., Manager, Economic Analysis Branch—Cross Modal Division, Department of Homeland Security, Transportation Security Administration, Office of Security Policy and Industry Engagement, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–3329, *Email: monica.grasso@tsa.dhs.gov.*

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RIN: 1652–AA55

DEPARTMENT OF HOMELAND SECURITY (DHS)

Transportation Security Administration (TSA)

Long-Term Actions

164. General Aviation Security and Other Aircraft Operator Security

Legal Authority: 6 U.S.C. 469; 18 U.S.C. 842; 18 U.S.C. 845; 46 U.S.C. 70102 to 70106; 46 U.S.C. 70117; 49 U.S.C. 114; 49 U.S.C. 114(f)(3); 49 U.S.C. 5103; 49 U.S.C. 5103a; 49 U.S.C. 40113; 49 U.S.C. 44901 to 44907; 49 U.S.C. 44913 to 44914; 49 U.S.C. 44916 to 44918; 49 U.S.C. 44932; 49 U.S.C. 44935 to 44936; 49 U.S.C. 44942; 49 U.S.C. 46105

Abstract: On October 30, 2008, the Transportation Security Administration (TSA) issued a notice of proposed rulemaking (NPRM), proposing to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements, and by adding new requirements for certain large aircraft operators and airports serving those aircraft. TSA also proposed that all aircraft operations, including corporate and private charter operations, with aircraft having a maximum certificated takeoff weight (MTOW) above 12,500 pounds (large aircraft) be required to adopt a large aircraft security program. TSA also proposed to require certain airports that serve large aircraft to adopt security programs. After considering comments received on the NPRM and sponsoring public meetings with stakeholders, TSA decided to prepare a supplemental NPRM (SNPRM), which will include a comment period for public comments. TSA is considering the following proposed provisions in the SNPRM: (1) Security measures for foreign aircraft operators commensurate with measures for U.S. operators, (2) security measures for certain general aviation aircraft operations, (3) watch list matching of passengers, and (5) scope of the background check requirements and the procedures used to implement any requirement.

Timetable:

Action	Date	FR Cite
NPRM	10/30/08	73 FR 64790
NPRM Comment Period End.	12/29/08	
Notice—NPRM Comment Period Extended.	11/25/08	73 FR 71590
NPRM Extended Comment Period End.	02/27/09	
Notice—Public Meetings; Requests for Comments.	12/18/08	73 FR 77045
Supplemental NPRM.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Alan Paterno, Section Chief, Policy Analysis Branch, Department of Homeland Security, Transportation Security Administration, Office of Security Policy and Industry Engagement, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–5698, *Email: alan.paterno@tsa.dhs.gov.*

Monica Grasso Ph.D., Manager, Economic Analysis Branch—Cross Modal Division, Department of Homeland Security, Transportation Security Administration, Office of Security Policy and Industry Engagement, 601 South 12th Street, Arlington, VA 20598–6028, *Phone:* 571 227–3329, *Email: monica.grasso@tsa.dhs.gov.*

Denise Daniels, Attorney-Advisor, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, 601 South 12th Street, Arlington, VA 20598–6002, *Phone:* 571 227–3443, *Fax:* 571 227–1381, *Email: denise.daniels@tsa.dhs.gov.*

RIN: 1652–AA53

165. Standardized Vetting, Adjudication, and Redress Services

Legal Authority: 49 U.S.C. 114, 5103A, 44903 and 44936; 46 U.S.C. 70105; 6 U.S.C. 469; Pub. L. 110–53, secs 1411, 1414, 1520, 1522 and 1531

Abstract: The Transportation Security Administration (TSA) intends to propose new regulations to revise and standardize the procedures, adjudication criteria, and fees for most of the security threat assessments (STA) of individuals for which TSA is responsible. The scope of the rulemaking will include transportation workers who are required to undergo an STA, including surface, maritime, and aviation workers. TSA will comply with certain vetting-related requirements of the Implementing Recommendations of the 9/11 Commission Act, Public Law 110–53 (Aug. 3, 2007). TSA will propose fees to cover the cost of all STAs. TSA plans to improve the processing of STAs and streamline existing regulations by simplifying language and removing redundancies. TSA will propose revisions to the Alien Flight Student Program (AFSP) regulations. TSA published an interim final rule for AFSP on September 20, 2004. TSA regulations require aliens seeking to train at Federal Aviation Administration-regulated flight schools to complete an application and undergo an STA prior to beginning flight training. There are four categories under which students currently fall; the nature of the STA depends on the student's category. TSA is considering changes to the AFSP that would improve the equity among fee payers and enable the implementation of new technologies to support vetting.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chang Ellison, Branch Manager, Program Initiatives Branch, Department of Homeland Security, Transportation Security Administration, Office of Intelligence and Analysis, TSA–10, HQ E6, 601 South 12th Street, Arlington, VA 20598–6010, *Phone:* 571 227–3604, *Email: chang.ellison@tsa.dhs.gov.*

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John Vergelli, Senior Counsel, Regulations and Security Standards Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, 601 South 12th Street, Arlington, VA 20598–6002, *Phone:* 571 227–4416, *Fax:* 571 227–1378, *Email: john.vergelli@tsa.dhs.gov.*

RIN: 1652–AA61

DEPARTMENT OF HOMELAND SECURITY (DHS)

Transportation Security Administration (TSA)

Completed Actions

166. Passenger Screening Using Advanced Imaging Technology

Legal Authority: 49 U.S.C. 44925

Abstract: The Transportation Security Administration (TSA) issued a final rule

to address whether screening and inspection of an individual, conducted to control access to the sterile area of an airport or to an aircraft, may include the use of advanced imaging technology (AIT). The notice of proposed rulemaking (NPRM) was published on March 26, 2013, to comply with the decision rendered by the U.S. Court of Appeals for the District of Columbia Circuit in Electronic Privacy Information Center (EPIC) v. U.S. Department of Homeland Security on July 15, 2011. 653 F.3d 1 (D.C. Cir. 2011). The Court directed TSA to conduct notice and comment rulemaking on the use of AIT in the primary screening of passengers. The final rule makes clear that TSA no longer uses images of actual passengers and now uses a generic image through the use of ATR technology installed on all AIT machines. The rule emphasizes that AIT is the best available technology to detect both metallic and non-metallic objects and safeguards agency flexibility to respond to evolving threats.

Timetable:

Action	Date	FR Cite
NPRM	03/26/13	78 FR 18287
NPRM Comment Period End.	06/24/13	
Final Rule	03/03/16	81 FR 11363
Final Rule Effective.	05/02/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chawanna Carrington, Project Manager, Passenger Screening Program, Department of Homeland Security, Transportation Security Administration, Office of Security Capabilities, 601 South 12th Street, Arlington, VA 20598–6016, *Phone:* 571 227–2958, *Fax:* 571 227–1931, *Email: chawanna.carrington@tsa.dhs.gov.*

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RIN: 1652–AA67

DEPARTMENT OF HOMELAND SECURITY (DHS)

U.S. Immigration and Customs Enforcement (USICE)

Completed Actions

167. Improving and Expanding Training Opportunities for F–1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief For All Eligible F–1 Students (Completion of a Section 610 Review)

Legal Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1182; 8 U.S.C. 1184; 8 U.S.C. 1221; 8 U.S.C. 1281 and 1282; 8 U.S.C. 1302 to 1305; 8 U.S.C. 1324a

Abstract: The Department of Homeland Security is proposing a new rule to enhance opportunities for F–1 nonimmigrant students graduating with a science, technology, engineering, or mathematics (STEM) degree from an accredited school certified by U.S. Immigration and Custom Enforcement (ICE) Student and Exchange Visitor Program (SEVP), and to further their courses of study through optional practical training (OPT) with employers enrolled in the U.S. Citizenship and Immigration Services' (USCIS') E-Verify employment verification program. The proposed rule would replace a 2008 interim final rule (IFR) that was invalidated and will be vacated on May 10, 2016, per a ruling by the U.S. District Court for the District of Columbia, in the *Washington Alliance of Technology Workers* v. *U.S. Department of Homeland Security* litigation.

Timetable:

Action	Date	FR Cite
NPRM	10/19/15	80 FR 63375
NPRM Comment Period End.	11/18/15	
Final Rule	03/11/16	81 FR 13039
Final Rule Effective.	05/10/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Molly Stubbs, ICE Regulatory Coordinator, Department of Homeland Security, U.S. Immigration and Customs Enforcement, Office of the Director, PTN—Potomac Center North, 500 12th Street SW., Washington, DC 20536, *Phone:* 202 732–6202, *Email: molly.stubbs@ice.dhs.gov.*

Brad Tuttle, Attorney Advisor, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Washington, DC 20536, *Phone:* 202 732–5000, *Email: bradley.c.tuttle@ice.dhs.gov.*

Katherine H. Westerlund, Acting Unit Chief, SEVP Policy, Student and Exchange Visitor Program, Department of Homeland Security, U.S. Immigration and Customs Enforcement, Potomac Center North, STOP 5600, 500 12th Street, SW., Washington, DC 20536–5600, *Phone:* 703 603–3400, *Email: sevp@ice.dhs.gov.*

RIN: 1653–AA72

DEPARTMENT OF HOMELAND SECURITY (DHS)

Federal Emergency Management Agency (FEMA)

Proposed Rule Stage

168. Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard

Legal Authority: E.O. 11988, as amended; E.O. 13690

Abstract: The Federal Emergency Management Agency (FEMA) proposes to amend its regulations at 44 CFR part 9 "Floodplain Management and Protection of Wetlands" to implement Executive Order 13690, which establishes the Federal Flood Risk Management Standard (FFRMS). 44 CFR part 9 describes FEMA's process for determining whether the proposed location for an action falls within a floodplain. In addition, for those projects that would fall within a floodplain, part 9 describes FEMA's framework for deciding whether and how to complete the action in the floodplain, in light of the risk of flooding. Consistent with Executive Order 13690 and the FFRMS, the proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating a proposed action in the floodplain.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristin Fontenot, Office of Environmental and Historic Preservation, Department of Homeland Security, Federal Emergency Management Agency, 400 C Street, SW., Washington, DC 20472, *Phone:* 202 646–2741, *Email: kristin.fontenot@fema.dhs.gov.*

RIN: 1660–AA85

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Part X

Department of Housing and Urban Development

Semiannual Regulatory Agenda

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitles A and B

[Docket No. FR–5935–N–01]

Semiannual Regulatory Agenda

AGENCY: Department of Housing and Urban Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with section 4(b) of Executive Order 12866, "Regulatory Planning and Review," as amended, HUD is publishing its agenda of regulations already issued or that are expected to be issued during the next several months. The agenda also includes rules currently in effect that are under review and describes those regulations that may affect small entities, as required by section 602 of the Regulatory Flexibility Act. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with advance information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500; telephone number 202–708–3055. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 800–877–8339 (Federal Relay Service).

SUPPLEMENTARY INFORMATION: Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), as amended, requires each department or agency to prepare semiannually an agenda of: (1) Regulations that the department or agency is considering proposing or promulgating that are likely to have a significant economic impact on a substantial number of "small entities," meaning small businesses, small organizations, or small governmental jurisdictions. Executive Order 12866 and the Regulatory Flexibility Act permit incorporation of the agenda required by these two authorities with any other prescribed agenda.

HUD's regulatory agenda combines the information required by Executive Order 12866 and the Regulatory Flexibility Act. As in the past, HUD's complete Unified Agenda will be available online at *www.reginfo.gov*, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. While publication in the **Federal Register** is mandated for the regulatory flexibility agendas by the Regulatory Flexibility Act (5 U.S.C. 602), the Department notes that its Spring 2016 Unified Agenda does not list any rules expected to be proposed or promulgated that are likely to have a significant economic impact on a substantial number of "small entities."

The Department is subject to certain rulemaking requirements set forth in the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that the Secretary transmit to the congressional committees having jurisdictional oversight of HUD (the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services), a semiannual agenda of all rules or regulations that are under development or review by the Department. A rule appearing on the agenda cannot be published for comment before or during the first 15 calendar days after transmittal of the agenda. Section 7(o) provides that if, after publication of the agenda, the Department proposes to publish a rule or regulation that is not in the agenda, the Department must publish in the agenda a description of the rule or regulation and the reasons why it was not included in the agenda. Section 7(o) also provides that the Department may publish a rule or regulation in the **Federal Register** as a proposed rule for public comment or as a final rule without prior notice and comment only if it has included the rule or regulation in its agenda or if it has published a description of the rule or regulation and the reasons why it was not included in the agenda in the agenda next preceding the publication of the rule or regulation. The semiannual agenda posted on *www.reginfo.gov* is the agenda transmitted to the committees in compliance with the above requirements.

HUD has attempted to list in this agenda all regulations and regulatory reviews pending at the time of publication, except for minor and routine or repetitive actions, but some may have been inadvertently omitted, or may have arisen too late to be included in the published agenda. There is no legal significance to the omission of an item from this agenda. Also, where a date is provided for the next rulemaking action, the date is an estimate and is not a commitment to act on or by the date shown.

In some cases, HUD has withdrawn rules that were placed on previous agendas for which there has been no publication activity. Withdrawal of a rule does not necessarily mean that HUD will not proceed with the rulemaking. Withdrawal allows HUD to assess the subject matter further and determine whether rulemaking in that area is appropriate. Following such an assessment, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate. If that determination is made, such rules will be included in a succeeding semiannual agenda.

In addition, for a few rules that have been published as proposed or interim rules and which, therefore, require further rulemaking, HUD has identified the timing of the next action stage as "undetermined." These are rules that are still under review by HUD for which a determination and timing of the next action stage have not yet been made.

Since the purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with advance information about the regulatory agenda, HUD's agenda includes rules currently in effect that are under review and describes those regulations that may affect small entities, as required by section 602 of the Regulatory Flexibility Act. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with advance information about pending regulatory activities.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Office of Housing (OH)

Proposed Rule Stage

169. Manufactured Home Construction and Safety Standards (FR–5739)

Legal Authority: 42 U.S.C. 5401 *et seq.*; 42 U.S.C. 3535(d)

Abstract: This proposed rule would amend the Federal Manufactured Home Construction and Safety Standards by adopting certain recommendations made to HUD by the Manufactured Housing Consensus Committee (MHCC). The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) requires HUD to publish all proposed revised construction and safety standards submitted by the MHCC. This proposed rule is based on the third set of MHCC recommendations to update and improve various aspects of the Manufactured Housing Construction and Safety Standards. HUD has reviewed those proposals and has made several editorial revisions to the proposals which were reviewed and accepted by the MHCC. This rule proposes to add new standards that would establish requirements for carbon monoxide detection, stairways, fire safety considerations for attached garages, and for draftstops when there is a usable space above and below the concealed space of a floor/ceiling assembly and would establish requirements for venting systems to ensure that proper separation is maintained between the air intake and exhaust systems.

Timetable:

Action	Date	FR Cite
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Richard Mendlen, Structural Engineer, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, Office of Housing, 451 7th Street SW., Washington, DC 20410, *Phone:* 202 708–6423.

RIN: 2502–AJ34

[FR Doc. 2016–12907 Filed 6–8–16; 8:45 am]

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FEDERAL REGISTER

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Part XI

Department of the Interior

Semiannual Regulatory Agenda

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Ch. I

30 CFR Chs. II and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

Unified Regulatory Agenda

AGENCY: Office of the Secretary, Interior.

ACTION: Unified regulatory agenda.

SUMMARY: This notice provides the unified agenda of rules scheduled for review or development between spring 2016 and spring 2017. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Direct all comments and inquiries to the appropriate agency contact. Direct general comments relating to the agenda to the Office of Executive Secretariat and Regulatory Affairs, Department of the Interior, at the address above or at 202–208–5257.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have these effects.

Mark Lawyer,

Federal Register Liaison Officer.

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
170	Cost Recovery Adjustment	1014–AA31

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
171	Production Safety Systems and Lifecycle Analysis	1014–AA10

BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
172	Blowout Prevention Systems and Well Control	1014–AA11

UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.

BUREAU OF INDIAN AFFAIRS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
176	Title Evidence for Trust Land Acquisitions **(Section 610 Review)**	1076–AF28

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
177	Stream Protection Rule	1029–AC63

BUREAU OF LAND MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
178	Waste Prevention, Production Subject to Royalties, and Resource Conservation	1004–AE14
179	Onshore Oil and Gas Order 4: Oil Measurement	1004–AE16

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Proposed Rule Stage

170. Cost Recovery Adjustment

Legal Authority: 31 U.S.C. 9701

Abstract: This rule would update 31 cost recovery fees to allow the Bureau of Safety and Environmental Enforcement to recover the full costs of the services it provides to the oil and gas industry. It complies with the Independent Office Appropriations Act of 1952 which established that government services should be self-sustaining to the extent possible. Rulemaking is the only method available to update these fees and comply with the intent of Congress to recover government costs when a

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Final Rule Stage

171. Production Safety Systems and Lifecycle Analysis

Legal Authority: 31 U.S.C. 9701; 43 U.S.C. 1334

Abstract: The Bureau of Safety and Environmental Enforcement (BSEE) will amend and update the regulations regarding offshore oil and natural gas production. It will address issues such as production safety systems, subsurface safety devices, and safety device testing. BSEE has expanded the rule to differentiate the requirements for operating dry tree and wet tree production systems on the Outer Continental Shelf (OCS). This rule will

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Safety and Environmental Enforcement (BSEE)

Completed Actions

172. Blowout Prevention Systems and Well Control

Legal Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334

Abstract: The Bureau of Safety and Environmental Enforcement (BSEE) will amend and update regulations regarding offshore oil and natural gas production. This final rule will upgrade regulations related to the design, manufacture, and repair of blowout preventers (BOPs) in response to numerous recommendations. In addition to BOPs, the final rule will address well design, well control, safe drilling margins, casing, cementing, real-time monitoring,

DEPARTMENT OF THE INTERIOR (DOI)

United States Fish and Wildlife Service (FWS)

Proposed Rule Stage

173. Migratory Bird Permits; Incidental Take of Migratory Birds

Legal Authority: 16 U.S.C. 703 to 712; 42 U.S.C. 4321 *et seq.*

Abstract: We are preparing a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 to 4347; NEPA) to evaluate the potential environmental impacts of a proposal to authorize incidental take of migratory birds under the Migratory Bird Treaty Act (16 U.S.C. 703 to 711). In drafting the PEIS, we invited input from other Federal and State agencies, tribes, nongovernmental organizations, and members of the public on the scope of the proposed NEPA analysis, the pertinent issues we should address, and alternatives to our proposed approach for authorizing incidental take. Based on this PEIS, we propose to establish regulations to govern the incidental take of migratory birds from activities under which migratory birds are killed incidental to otherwise lawful activities. These proposed regulations will establish rules for individual permits and programmatic agreements with Federal agencies and will establish the basis for future rulemaking for general authorizations for incidental take of migratory birds.

Timetable:

Action	Date	FR Cite
Notice	05/26/15	80 FR 30032
Comment Period End.	07/27/15	
NPRM; NOA for DEIS.	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stephen Earsom, Biologist–Pilot, Regions 4 & 5 Aviation Manager, Department of the Interior, United States Fish and Wildlife Service, *Phone:* 301 980–8711, *Email: stephen_earsom@fws.gov.*

RIN: 1018–BA69

DEPARTMENT OF THE INTERIOR (DOI)

United States Fish and Wildlife Service (FWS)

Final Rule Stage

174. National Wildlife Refuge System; Management of Non-Federal Oil and Gas Rights

Legal Authority: 16 U.S.C. 668dd to ee; 42 U.S.C. 7401 *et seq.*; 16 U.S.C. 1131 to 1136; 40 CFR 51.300 to 51.309

Abstract: We anticipate publishing regulations that ensure that all operators conducting oil or gas operations within a National Wildlife Refuge System unit do so in a manner that prevents or minimizes damage to National Wildlife Refuge System resources, visitor values, and management objectives. These regulations will not result in a taking of a property interest, but rather to impose reasonable controls on operations that affect federally owned or controlled lands, and/or waters.

Timetable:

Action	Date	FR Cite
ANPRM	02/24/14	79 FR 10080
ANPRM Comment Period End.	04/25/14	
ANPRM Comment Period Reopened.	06/09/14	79 FR 32903
ANPRM Comment Period Reopening End.	07/09/14	
NPRM	12/11/15	80 FR 77200
NPRM Comment Period End.	02/09/16	
Final Action	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Salem, Conservation Policy Analyst, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: NWRS, Falls Church, VA 22041–3808, *Phone:* 703 358–2397, *Email: brian_salem@fws.gov.*

Scott Covington, Refuge Energy Program Coordinator, Department of the Interior, United States Fish and Wildlife Service, National Wildlife Refuge System, 5275 Leesburg Pike, MS: NWRS, Falls Church, VA 22041–3808, *Phone:* 703 358–2427, *Email: scott_covington@fws.gov.*

RIN: 1018–AX36

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR (DOI)

National Park Service (NPS)

Final Rule Stage

175. Non-Federal Oil and Gas Rights

Legal Authority: 54 U.S.C. 100101; 54 U.S.C. 100301; 54 U.S.C. 100302; 54 U.S.C. 100731; 54 U.S.C. 100732

Abstract: This rule would update National Park Service (NPS) regulations governing the exercise of non-Federal oil and gas rights within NPS unit boundaries. It would accommodate new technology and industry practices, eliminate regulatory exemptions, update requirements, remove caps on bond amounts, and allow NPS to recover administrative costs. The changes make the regulations more effective and efficient and maintain the highest level of protection compatible with park resources and values.

Timetable:

Action	Date	FR Cite
ANPRM	11/25/09	74 FR 61596
ANPRM Comment Period End.	01/25/10	
NPRM	10/26/15	80 FR 65571
NPRM Comment Period End.	12/28/15	
Final Action	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ed Kassman, Regulatory Specialist, Department of the Interior, National Park Service, 12795 West Alameda Parkway, Lakewood, CA 80225, *Phone:* 303 969–2146, *Email: edward_kassman@nps.gov.*

RIN: 1024–AD78

BILLING CODE 4310–EJ–P

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Indian Affairs (BIA)

Final Rule Stage

176. • Title Evidence for Trust Land Acquisitions (Section 610 Review)

Legal Authority: 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9

Abstract: This rule would delete the requirement for applicants to furnish title evidence that meets the Standards for the Preparation of Title Evidence in Land Acquisitions by the United States issued by the U.S. Department of Justice (DOJ), and replace the requirement with a less onerous, more targeted requirement for title evidence. The DOJ standards are intended for acquisitions of Federal land, not for acquisitions of land in trust or restricted status for Indian Tribes or individuals.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/01/16	81 FR 10477
Interim Final Rule Comment Period End.	03/31/16	
Interim Final Rule-Delay of Effective Date.	04/15/16	81 FR 22183
Interim Final Rule Effective.	04/15/16	
Interim Final Rule—Confirmation of Rulemaking.	05/00/16	
Interim Final Rule-Delay of Effective Date Effective.	05/16/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Elizabeth Appel, Director, Office of Regulatory Affairs, Department of the Interior, 1849 C Street NW., Washington, DC 20240, *Phone:* 202 273–4680, *Email: elizabeth.appel@bia.gov.*

RIN: 1076–AF28

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR (DOI)

Office of Surface Mining Reclamation and Enforcement (OSMRE)

Final Rule Stage

177. Stream Protection Rule

Legal Authority: 30 U.S.C. 1201 *et seq.*

Abstract: On August 12, 2009, the U.S. District Court for the District of Columbia denied the Government's request that the court vacate and remand the Excess Spoil/Stream Buffer Zone rule published on December 12, 2008. Therefore, the Department intends to initiate notice and comment rulemaking to address issues arising from previous rulemakings. The Agency also intends to prepare a new environmental impact statement.

Timetable:

Action	Date	FR Cite
ANPRM	11/30/09	74 FR 62664
ANPRM Comment Period End.	12/30/09	
NPRM	07/27/15	80 FR 44436
NPRM Comment Period Extended.	09/10/15	80 FR 54590
NPRM Comment Period End.	09/25/15	
NPRM Comment Period Extended End.	10/26/15	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dennis Rice, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240, *Phone:* 202 208–2829, *Email: drice@osmre.gov.*

RIN: 1029–AC63

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR (DOI)

Bureau of Land Management (BLM)

Final Rule Stage

178. Waste Prevention, Production Subject to Royalties, and Resource Conservation

Legal Authority: 25 U.S.C. 396d; 25 U.S.C. 2107; 30 U.S.C. 189; 30 U.S.C. 306; 30 U.S.C. 359; 30 U.S.C. 1751; 43 U.S.C. 1732(b); 43 U.S.C. 1733; 43 U.S.C. 1740

Abstract: The rule would update decades-old standards to reduce wasteful venting, flaring, and leaks of natural gas from onshore wells located on Federal and Indian oil and gas leases. The proposed standards would establish requirements and incentives to reduce waste of gas and clarify when royalties apply to lost gas. This action will enhance our energy security and economy by boosting America's natural gas supplies, ensuring that taxpayers receive the royalties due to them from development of public resources, and reducing emissions.

Timetable:

Action	Date	FR Cite
NPRM	02/08/16	81 FR 6616
NPRM Comment Period Extended.	04/04/16	81 FR 19110
NPRM Comment Period End.	04/08/16	
NPRM Comment Period Extended End.	04/22/16	
Final Action	11/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Steven Wells, Division Chief, Fluid Minerals Division, Department of the Interior, Bureau of Land Management, Room 2134 LM, 20 M Street SE., Washington, DC 20003, *Phone:* 202 912–7143, *Fax:* 202 912–7194, *Email: s1wells@blm.gov.*

RIN: 1004–AE14

179. Onshore Oil and Gas Order 4: Oil Measurement

Legal Authority: 25 U.S.C. 396(d); 25 U.S.C. 2107; 30 U.S.C. 189; 30 U.S.C. 306; 30 U.S.C. 359; 30 U.S.C. 1751; 43 U.S.C. 1732(b); 43 U.S.C. 1733; 43 U.S.C. 1740

Abstract: Onshore Order 4 establishes minimum standards to ensure liquid hydrocarbons are accurately measured and reported. This Order was last updated in 1989, and since then changes in technology have allowed for more accurate fluid measurement. This order will incorporate current industry standards and allow for the use of new technology.

Timetable:

Action	Date	FR Cite
NPRM	09/30/15	80 FR 58952
NPRM Comment Period Extended.	11/23/15	80 FR 72943
NPRM Comment Period End.	12/14/15	
Final Action	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Steven Wells, Division Chief, Fluid Minerals Division, Department of the Interior, Bureau of Land Management, Room 2134 LM, 20 M Street SE., Washington, DC 20003, *Phone:* 202 912–7143, *Fax:* 202 912–7194, *Email: s1wells@blm.gov.*

RIN: 1004–AE16

[FR Doc. 2016–12908 Filed 6–8–16; 8:45 am]

BILLING CODE 4311–84–P

FEDERAL REGISTER

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Part XII

Department of Justice

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE

8 CFR Ch. V

21 CFR Ch. I

27 CFR Ch. II

28 CFR Ch. I, V

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its spring 2016 regulatory agenda pursuant to Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. 601 to 612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514–8059.

SUPPLEMENTARY INFORMATION: Beginning with the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov* in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Justice's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

Dated: March 24, 2016.

Jonathan J. Wroblewski,

Principal Deputy Assistant Attorney General, Office of Legal Policy.

CIVIL RIGHTS DIVISION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
180	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments.	1190–AA65

CIVIL RIGHTS DIVISION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
181	Nondiscrimination on the Basis of Disability; Movie Captioning and Audio Description	1190–AA63

DEPARTMENT OF JUSTICE (DOJ)

Civil Rights Division (CRT)

Prerule Stage

180. Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and

AA65. This rulemaking will provide specific guidance to State and local governments in order to make services, programs, or activities offered to the public via the Web accessible to individuals with disabilities. The ADA requires that State and local governments provide qualified

These Government Web sites are important because they allow programs and services to be offered in a more dynamic, interactive way in order to increase citizen participation; increase convenience and speed in obtaining information or services; reduce costs in providing information about

expressly address the obligations of public entities to make the Web sites they use to provide programs, activities, or services or information to the public accessible to and usable by individuals with disabilities under the legal framework established by the ADA. The proposed regulation will propose the scope of the obligation to provide accessibility when persons with disabilities access public Web sites, as well as propose the technical standards necessary to comply with the ADA.

Timetable:

Action	Date	FR Cite
ANPRM	07/26/10	75 FR 43460
ANPRM Comment Period End.	01/21/11	
Second ANPRM	05/00/16	
Second ANPRM Comment Period End.	08/00/16	
NPRM	07/00/17	
NPRM Comment Period End.	09/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rebecca B. Bond, Chief, Department of Justice, Civil Rights Division, Disability Rights Section, 950 Pennsylvania Avenue NW., Washington, DC 20530, *Phone:* 800 514–0301.

RIN: 1190–AA65

DEPARTMENT OF JUSTICE (DOJ)

Civil Rights Division (CRT)

Final Rule Stage

181. Nondiscrimination on the Basis of Disability; Movie Captioning and Audio Description

Legal Authority: 42 U.S.C. 12101, *et seq.*

Abstract: Following its advance notice of proposed rulemaking published on July 26, 2010, the Department plans to publish a proposed rule addressing the requirements for captioning and video description of movies exhibited in movie theatres under title III of the Americans with Disabilities Act of 1990 (ADA). Title III prohibits discrimination on the basis of disability in the activities of places of public accommodation (private entities whose operations affect commerce and that fall into one of twelve categories listed in the ADA). 42 U.S.C. 12181–12189. Title III makes it unlawful for places of public accommodation, such as movie theaters, to discriminate against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation (42 U.S.C. 12182[a]). Moreover, title III prohibits places of public accommodation from affording an unequal or lesser service to individuals or classes of individuals with disabilities than is offered to other individuals (42 U.S.C. 12182(b)(1)(A)(ii)). Title III requires places of public accommodation to take "such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently because of the absence of auxiliary aids and services, such as captioning and video description, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden," (42 U.S.C. 12182(b)(2)(A)(iii)).

Timetable:

Action	Date	FR Cite
ANPRM	07/26/10	75 FR 43467
ANPRM Comment Period End.	01/24/11	
NPRM	08/01/14	79 FR 44975
NPRM Comment Period Extended.	09/08/14	79 FR 53146
NPRM Comment Period End.	09/30/14	
NPRM Extended Comment Period End.	12/01/14	
Final Action	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rebecca B. Bond, Chief, Department of Justice, Civil Rights Division, Disability Rights Section, 950 Pennsylvania Avenue NW., Washington, DC 20530, *Phone:* 800 514–0301.

RIN: 1190–AA63

[FR Doc. 2016–12909 Filed 6–8–16; 8:45 am]

BILLING CODE 4410–BP–P

FEDERAL REGISTER

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Part XIII

Department of Labor

Semiannual Regulatory Agenda

FEDERAL REGISTER

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Part XIII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Internet has become the means for disseminating the entirety of the Department of Labor's semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This **Federal Register** Notice contains the regulatory flexibility agenda.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Director, Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2312, Washington, DC 20210; (202) 693–5959.

Note: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department's semiannual agenda is available online at *www.reginfo.gov*.

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory flexibility agenda. The Department's Regulatory Flexibility Agenda published with this notice includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department's semiannual regulatory agenda. There is only one item on the Department of Labor's Regulatory Flexibility Agenda:

Occupational Safety and Health Administration

Bloodborne Pathogens (RIN 1218–AC34).

Thomas E. Perez,
Secretary of Labor.

WAGE AND HOUR DIVISION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
182	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.	1235–AA11
183	Establishing Paid Sick Leave for Contractors, Executive Order 13706	1235–AA13

EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
184	Modernizing the Permanent Labor Certification Program (PERM)	1205–AB75

EMPLOYMENT AND TRAINING ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
191	Occupational Exposure to Beryllium	1218–AB76
192	Infectious Diseases	1218–AC46

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
193	Injury and Illness Prevention Program	1218–AC48

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
194	Occupational Exposure to Crystalline Silica	1218–AB70

DEPARTMENT OF LABOR (DOL)

Wage and Hour Division (WHD)

Final Rule Stage

182. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

Legal Authority: 29 U.S.C. 213(a)(1) (Fair Labor Standards Act)

Abstract: The Department proposes to update the regulations governing which executive, administrative, and professional employees (white collar workers) are entitled to the Fair Labor Standards Act's minimum wage and overtime pay protections. Key provisions of the proposed rule include: (1) Setting the standard salary level required for exemption for full-time salaried workers; (2) increasing the total annual compensation requirement needed to exempt highly compensated

Policy, Wage and Hour (WHD), Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210, *Phone:* 202 693–0406, *Fax:* 202 693–1387.

RIN: 1235–AA11

183. Establishing Paid Sick Leave for Contractors, Executive Order 13706

Legal Authority: Not Yet Determined

Abstract: Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors (80 FR 54697) establishes paid sick leave for Federal contractors and subcontractors. The Executive order indicates that Executive Departments and agencies shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations as described in section 6 of the order, include a clause, which the contractor and any subcontractors shall

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Robert Waterman, Compliance Specialist, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3010, Washington, DC 20210, *Phone:* 202 693–0805, *Email: waterman.robert@dol.gov*.

RIN: 1235–AA13

DEPARTMENT OF LABOR (DOL)

Employment and Training Administration (ETA)

Proposed Rule Stage

184. Modernizing the Permanent Labor Certification Program (PERM)

Legal Authority: 8 U.S.C. 1152(a)(5)(A)

Abstract: The PERM regulations

in rulemaking that will consider options to modernize the PERM program to be more responsive to changes in the national workforce, to further align the program design with the objectives of the U.S. immigration system and needs of workers and employers, and to enhance the integrity of the labor certification process.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William W. Thompson II, Acting Administrator, Office of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Room C–4312, Washington, DC 20210, *Phone:* 202 693–3010.

RIN: 1205–AB75

DEPARTMENT OF LABOR (DOL)

Employment and Training Administration (ETA)

Final Rule Stage

185. Workforce Innovation and Opportunity Act

Legal Authority: Sec. 503(f) of the Workforce Innovation and Opportunity Act (Pub. L. 113–128)

Abstract: On July 22, 2014, the President signed the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128). WIOA repeals the Workforce Investment Act of 1998 (WIA) and amends the Wagner-Peyser Act. (29 U.S.C. 2801 *et seq.*) The Department of Labor issued a Notice of Proposed Rulemaking (NPRM) on April 16, 2015, that proposed to implement the changes WIOA makes to the public workforce system in regulations. Through the NPRM, the Department proposed ways to carry out the purposes of WIOA to provide workforce investment activities, through State and local workforce development systems, that increase employment, retention, and earnings of participants, meet the skill requirements of employers, and enhance the productivity and competitiveness of the Nation. The Department has analyzed the comments received and is developing a final rule.

Timetable:

Action	Date	FR Cite
NPRM	04/16/15	80 FR 20690
NPRM Comment Period End.	06/15/15	
Final Rule	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Portia Wu, Assistant Secretary for Employment and Training, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Washington, DC 20210, *Phone:* 202 639–2700.

RIN: 1205–AB73

186. Workforce Innovation and Opportunity Act; Joint Rule With U.S. Department of Education for Combined and Unified State Plans, Performance Accountability, and the One-Stop System Joint Provisions

Legal Authority: Sec. 503(f) of the Workforce Innovation and Opportunity Act (Pub. L. 113–128)

Abstract: On July 22, 2014, the President signed the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) which repeals the Workforce Investment Act of 1998 (WIA). (29 U.S.C. 2801 *et seq.*) As directed by WIOA, the Departments of Education and Labor issued a Notice of Proposed Rulemaking (NPRM) on April 16, 2015, to implement the changes in regulations that WIOA makes to the public workforce system regarding Combined and Unified State Plans, performance accountability for WIOA title I, title II, title III, and title IV programs, and the one-stop delivery system.

All of the other regulations implementing WIOA were published by the Departments of Labor and Education in separate NPRMs. The Departments have analyzed the comments received and are developing a final rule.

Timetable:

Action	Date	FR Cite
NPRM	04/16/15	80 FR 20574
NPRM Comment Period End.	06/15/15	
Final Rule	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Portia Wu, Assistant Secretary for Employment and Training, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., FP Building, Washington, DC 20210, *Phone:* 202 639–2700.

RIN: 1205–AB74

DEPARTMENT OF LABOR (DOL)

Employee Benefits Security Administration (EBSA)

Completed Actions

187. Conflict of Interest Rule—Investment Advice

Legal Authority: 29 U.S.C. 1002; ERISA sec 3(21); 29 U.S.C. 1135; ERISA sec 505

Abstract: This rulemaking would reduce harmful conflicts of interest by amending the regulatory definition of the term "fiduciary" set forth at 29 CFR 2510.3–21(c) to more broadly define as fiduciaries those persons who render investment advice to plans and IRAs for a fee within the meaning of section 3(21) of the Employee Retirement Income Security Act (ERISA) and section 4975(e)(3) of the Internal Revenue Code. The amendment would take into account current practices of investment advisers, and the expectations of plan officials and participants, and IRA owners who receive investment advice, as well as changes that have occurred in the investment marketplace, and in the ways advisers are compensated that frequently subject advisers to harmful conflicts of interest.

Timetable:

Action	Date	FR Cite
NPRM	10/22/10	75 FR 65263
NPRM Comment Period End.	01/20/11	
Second NPRM	04/20/15	80 FR 21928
Second NPRM Comment Period End.	07/06/15	
Notice of Public Hearing and Extension of Comment Period.	06/18/15	80 FR 34869
Extension of Comment Period End.	07/21/15	
Final Action	04/08/16	81 FR 20945
Final Rule Effective.	06/07/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N–5655, Washington, DC 20210, *Phone:* 202 693–8500.

RIN: 1210–AB32

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Prerule Stage

188. Bloodborne Pathogens (Section 610 Review)

Legal Authority: 5 U.S.C. 533; 5 U.S.C. 610; 29 U.S.C. 655(b)

Abstract: OSHA will undertake a review of the Bloodborne Pathogen Standard (29 CFR 1910.1030) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

Timetable:

Action	Date	FR Cite
Begin Review	10/22/09	
Request for Comments Published.	05/14/10	75 FR 27237
Comment Period End.	08/12/10	
End Review and Issue Findings.	10/00/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Amanda Edens, Director, Directorate of Technical Support and Emergency Management, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3653, Washington, DC 20210, *Phone:* 202 693–2300, *Fax:* 202 693–1644, *Email: edens.mandy@dol.gov.*

RIN: 1218–AC34

189. Combustible Dust

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: Occupational Safety and Health Administration (OSHA) has initiated rulemaking to develop a combustible dust standard for general industry. OSHA will use information gathered, including from an upcoming SBREFA panel, to develop a comprehensive standard that addresses combustible dust hazards.

Timetable:

Action	Date	FR Cite
ANPRM	10/21/09	74 FR 54333
Stakeholder Meetings.	12/14/09	
ANPRM Comment Period End.	01/19/10	
Stakeholders Meetings.	03/09/10	75 FR 10739
Initiate SBREFA	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Fax:* 202 693–1678, *Email: perry.bill@dol.gov*

RIN: 1218–AC41

190. Preventing Backover Injuries And Fatalities

Legal Authority: 29 U.S.C. 655(b)

Abstract: Backing vehicles and equipment are common causes of struck-by injuries and can also cause caught-between injuries when backing vehicles and equipment pin a worker against an object. Struck-by injuries and caught-between injuries are two of the four leading causes of workplace fatalities. The Bureau of Labor Statistics reports that in 2013, 67 workers were fatally backed over while working. While many backing incidents can prove to be fatal, workers can suffer severe, non-fatal injuries as well. A review of OSHA's Integrated Management Information System (IMIS) database found that backing incidents can result in serious injury to the back and pelvis, fractured bones, concussions, amputations, and other injuries. Emerging technologies in the field of backing operations may prevent incidents. The technologies include cameras and proximity detection systems. The use of spotters and internal traffic control plans can also make backing operations safer. The Agency has held stakeholder meetings on backovers, and is conducting site visits to employers, and is developing a standard to address these hazards.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	03/29/12	77 FR 18973
RFI Comment Period End.	07/27/12	
Initiate SBREFA	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dean Mckenzie, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, Room N–3468, FP Building, 200 Constitution Avenue NW., Washington, DC 20210, *Phone:* 202 693–2020, *Fax:* 202 693–1689, *Email: mckenzie.dean@dol.gov.*

RIN: 1218–AC51

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

191. Occupational Exposure to Beryllium

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard for permissible exposure limit (PEL) to beryllium by the United Steel Workers (formerly the Paper Allied-Industrial, Chemical, and Energy Workers Union), Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage. On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium, including: current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected worksites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008. OSHA also completed a scientific peer review of its draft risk assessment.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	11/26/02	67 FR 70707
RFI Comment Period End.	02/24/03	
SBREFA Report Completed.	01/23/08	
Initiated Peer Review of Health Effects and Risk Assessment.	03/22/10	
Complete Peer Review.	11/19/10	

Action	Date	FR Cite
NPRM	08/07/15	80 FR 47565
NPRM Comment Period End.	11/05/15	
Notice of Public Hearing; Date 02/29/2016.	12/30/15	80 FR 81475
Notice of Public Hearing; Date Change 03/21/2016.	02/16/16	81 FR 7717
Analyze Comments.	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Fax:* 202 693–1678, *Email: perry.bill@dol.gov.*

RIN: 1218–AB76

192. Infectious Diseases

Legal Authority: 5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 660; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 673

Abstract: Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles (rubeola), as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS) and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-resistant Staphylococcus aureus (MRSA), and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is concerned about the ability of employees to continue to provide health care and other critical services without unreasonably jeopardizing their health. OSHA is developing a standard to ensure that employers establish a comprehensive infection control program and control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: Health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

Timetable:

Action	Date	FR Cite
Request for Information (RFI).	05/06/10	75 FR 24835
RFI Comment Period End.	08/04/10	
Analyze Comments.	12/30/10	
Stakeholder Meetings.	07/05/11	76 FR 39041
Initiate SBREFA	06/04/14	
Complete SBREFA.	12/22/14	
NPRM	03/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Fax:* 202 693–1678, *Email: perry.bill@dol.gov.*

RIN: 1218–AC46

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Long-Term Actions

193. Injury and Illness Prevention Program

Legal Authority: 29 U.S.C. 653; 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: OSHA is developing a rule requiring employers to implement an Injury and Illness Prevention Program. It involves planning, implementing, evaluating, and improving processes and activities that protect employee safety and health. OSHA has substantial data on reductions in injuries and illnesses from employers who have implemented similar effective processes. The Agency currently has voluntary Safety and Health Program Management Guidelines (54 FR 3904 to 3916), published in 1989. An injury and illness prevention program rule would build on these guidelines as well as lessons learned from successful approaches and best practices under OSHA's Voluntary Protection Program, Safety and Health Achievement Recognition Program, and similar industry and international initiatives such as American National Standards Institute/American Industrial Hygiene Association Z10, and Occupational Health and Safety Assessment Series 18001.

Timetable:

Action	Date	FR Cite
Notice of Stakeholder Meetings.	05/04/10	75 FR 23637
Notice of Additional Stakeholder Meetings.	06/22/10	75 FR 35360
SBREFA	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Fax:* 202 693–1678, *Email: perry.bill@dol.gov.*

RIN: 1218–AC48

DEPARTMENT OF LABOR (DOL)

Occupational Safety and Health Administration (OSHA)

Completed Actions

194. Occupational Exposure to Crystalline Silica

Legal Authority: 29 U.S.C. 655(b); 29 U.S.C. 657

Abstract: Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula proposed by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1968 (PEL = 10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and shipyards (derived from ACGIH's 1970 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50 $\mu g/m^3$ and 25 $\mu g/m^3$ exposure limits, respectively, for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. ASTM International has published recommended standards for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL–CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

The NPRM was published on September 12, 2013 (78 FR 56274). OSHA received over 1,700 comments from the public on the proposed rule, and over 200 stakeholders provided testimony during public hearings on the proposal. The agency is now reviewing and considering the evidence in the rulemaking record.

Timetable:

Action	Date	FR Cite
Completed SBREFA Report.	12/19/03	
Initiated Peer Review of Health Effects and Risk Assessment.	05/22/09	
Completed Peer Review.	01/24/10	
NPRM	09/12/13	78 FR 56274
NPRM Comment Period Extended; Notice of Intention to Appear at Pub Hearing; Scheduling Pub Hearing.	10/31/13	78 FR 65242
NPRM Comment Period Extended.	01/29/14	79 FR 4641
NPRM Comment Period Extended End.	02/11/14	
Informal Public Hearing.	03/18/14	
Post Hearing Briefs Ends.	08/18/14	
Final Rule	03/25/16	81 FR 16285
Final Rule Effective.	06/23/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: William Perry, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Fax:* 202 693–1678, *Email: perry.bill@dol.gov.*

RIN: 1218–AB70

[FR Doc. 2016–12911 Filed 6–8–16; 8:45 am]

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Part XIV

Department of Transportation

Office of the Secretary

Semiannual Regulatory Agenda

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Chs. I–III

23 CFR Chs. I–III

33 CFR Chs. I and IV

46 CFR Chs. I–III

48 CFR Ch. 12

49 CFR Subtitle A, Chs. I–VI, and Chs. X–XII

[DOT–OST–1999–5129]

Department Regulatory Agenda; Semiannual Summary

AGENCY: Office of the Secretary, DOT.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Regulatory Agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The intent of the Agenda is to provide the public with information about the Department of Transportation's regulatory activity planned for the next 12 months. It is expected that this information will enable the public to more effectively participate in the Department's regulatory process. The public is also invited to submit comments on any aspect of this Agenda.

FOR FURTHER INFORMATION CONTACT:

General

You should direct all comments and inquiries on the Agenda in general to Jonathan Moss, Assistant General Counsel for Regulation, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366–4723.

Appendix D—Review Plans for Section 610 and Other Requirements

SUPPLEMENTARY INFORMATION:

Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). Our regulations should be clear, simple, timely, fair, reasonable, and necessary. They should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to ensure that they continue to meet the needs for which they originally were designed. To view additional information about the Department's regulatory activities online, go to *http://www.dot.gov/regulations*. Among other things, this Web site provides a report updated monthly on the status of the DOT significant rulemakings listed in the semiannual regulatory agenda.

To help the Department achieve its goals and in accordance with Executive Order (E.O.) 12866, "Regulatory Planning and Review," (58 FR 51735; Oct. 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979), the Department prepares a semiannual regulatory agenda. It summarizes all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the next 12 months or for which action has been completed since the last Agenda.

The Agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by OST.

The Internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at *www.reginfo.gov* in a format that offers users a greatly enhanced

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list, see section heading "Explanation of Information on the Agenda") on these entries is available in the Unified Agenda published on the Internet.

Significant Rulemakings

The Agenda covers all rules and regulations of the Department. We have classified rules as significant in the Agenda if they are, essentially, very beneficial, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT significant rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decided a rule is subject to its review under Executive Order 12866, we have also classified it as significant in the Agenda.

Explanation of Information on the Agenda

An Office of Management and Budget memorandum, dated February 19, 2016, requires the format for this Agenda.

First, the Agenda is divided by initiating offices. Then the Agenda is divided into five categories: (1) Prerule stage, (2) proposed rule stage, (3) final rule stage, (4) long-term actions, and (5) completed actions. For each entry, the Agenda provides the following information: (1) Its "significance"; (2) a short, descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action

Agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled "Additional Information." One such example of this is the letters "SB," "IC," and "SLT." These refer to information used as part of our required reports on Retrospective Review of DOT rulemakings. A "Y" or an "N," for yes and no, respectively, follow the letters to indicate whether or not a particular rulemaking would have effects on: Small businesses (SB); information collections (IC); or State, local, or tribal (SLT) governments.

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the "Timetable" column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which a rulemaking document may publish. In addition, these dates are based on current

information, as well as making the Agenda easier to use. We would like you, the public, to make suggestions or comments on how the Agenda could be further improved.

Reviews

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in appendix D. In response to Executive Order 13563 "Retrospective Review and Analysis of Existing Rules," in 2011 we prepared a retrospective review plan providing more detail on the process we use to conduct reviews of existing rules, including changes in response to Executive Order 13563. Any updates related to our retrospective plan and review results can be found at *http://www.dot.gov/regulations*.

Regulatory Flexibility Act

The Department is especially interested in obtaining information on requirements that have a "significant economic impact on a substantial number of small entities" and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (sec. 610 Review) appears at the end of the title for these reviews. Please see appendix D for the Department's section 610 review plans.

Consultation With State, Local, and Tribal Governments

Purpose

The Department is publishing this regulatory Agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the Agenda. Regulatory action, in addition to the items listed, is not precluded.

Dated: March 23, 2016.

Anthony R. Foxx,

Secretary of Transportation.

Appendix A—Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the Agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most, if not all, such documents, including the Semiannual Regulatory Agenda, are available through the Internet at *http://www.regulations.gov*. See appendix C for more information.

(Name of contact person), (Name of the DOT agency), 1200 New Jersey Avenue SE., Washington, DC 20590. (For the Federal Aviation Administration, substitute the following address: Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591.)

Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the

SE., Washington, DC 20590; telephone (202) 493–6063.

FTA—Bonnie Graves, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–0944.

SLSDC—Carrie Mann Lavigne, Chief Counsel, 180 Andrews Street, Massena, NY 13662; telephone (315) 764–3200.

PHMSA—Karin Christian, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–4400.

MARAD—Gabriel Chavez, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–5157.

OST—Jonathan Moss, Assistant General Counsel for Regulation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–4723.

Appendix C—Public Rulemaking Dockets

All comments via the Internet are submitted through the Federal Docket Management System (FDMS) at the following address: *http://www.regulations.gov.* The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced Internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at or deliver comments on proposed rulemakings to the Dockets Office at 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, 1–800–647–5527. Working Hours: 9:00 a.m. to 5:00 p.m.

Appendix D—Review Plans for Section 610 and Other Requirements

Part I—The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our Regulatory Policies and Procedures require such reviews. We also have responsibilities under Executive Order 12866, "Regulatory Planning and Review," and section 610 of the Regulatory Flexibility Act to conduct such reviews. This includes the use of plain language techniques in new rules and considering its use in existing rules when we have the opportunity and resources to permit its use. We are committed to continuing our reviews of existing rules and, if it is needed, will initiate rulemaking actions based on these reviews.

In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, the Department has added other elements to its review plan. The Department has decided to improve its plan by adding special oversight processes within the Department, encouraging effective and timely reviews, including providing additional guidance on particular problems that warrant review, and expanding opportunities for public participation. These new actions are in addition to the other steps described in this appendix.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that: (1) Have been published within the last 10 years, and (2) have a "significant economic impact on a substantial number of small entities" (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a presidentially mandated review. If there is any change to the review plan, we will note the change in the following Agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II—The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Thus, Year 1 (2008) begins in the fall of 2008 and ends in the fall of 2009; Year 2 (2009) begins in the fall of 2009 and ends in the fall of 2010, and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses should be submitted to the regulatory contacts listed in appendix B, General Rulemaking Contact Persons.

Section 610 Review

The agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies' section 610 analyses listed each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (*e.g.,* "these rules only establish petition processes that have no cost impact" or "these rules do not apply to any small entities"). For parts, subparts, or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

Part III—List of Pending Section 610 Reviews

The Agenda identifies the pending DOT section 610 Reviews by inserting "(Section 610 Review)" after the title for the specific entry. For further information on the pending reviews, see the Agenda entries at *www.reginfo.gov.* For example, to obtain a list of all entries that are in section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting "advanced search") and, in effect, generate the desired "index" of reviews.

Office of the Secretary

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 91 through 99 and 14 CFR parts 200 through 212	2008	2009
2	48 CFR parts 1201 through 1253 and new parts and subparts	2009	2010
3	14 CFR parts 213 through 232	2010	2011
4	14 CFR parts 234 through 254	2011	2012
5	14 CFR parts 255 through 298 and 49 CFR part 40	2012	2013
6	14 CFR parts 300 through 373	2013	2014
7	14 CFR parts 374 through 398	2014	2015
8	14 CFR part 399 and 49 CFR parts 1 through 11	2015	2016
9	49 CFR parts 17 through 28	2016	2017
10	49 CFR parts 29 through 39 and parts 41 through 89	2017	2018

Year 8 (2015) List of Rules That Will Be Analyzed During the Next Year

14 CFR part 399—Fees and Charges for Special Services
49 CFR part 1—Organization and Delegation of Power and Duties
49 CFR part 3—Official Seal
49 CFR part 5—Rulemaking Procedures
49 CFR part 6—Implementation of Equal Access to Justice Act in Agency Proceedings
49 CFR part 7—Public Availability of Information
49 CFR part 8—Classified Information: Classification/Declassification/Access
49 CFR part 9—Testimony of Employees of the Department and Production of Records in Legal Proceedings
49 CFR part 10—Maintenance of and Access to Records Pertaining to Individuals
49 CFR part 11—Protection of Human Subjects

Year 7 (2014) List of Rules With Ongoing Analysis

14 CFR part 374—Implementation of the Consumer Credit Protection Act with Respect to Air Carriers and Foreign Air Carriers
14 CFR part 374a—Extension of Credit by Airlines to Federal Political Candidates
14 CFR part 375—Navigation of Foreign Civil Aircraft within the United States
14 CFR part 377—Continuance of Expired Authorizations by Operation of Law Pending Final Determination of Applications for Renewal Thereof
14 CFR part 380—Public Charters
14 CFR part 381—Special Event Tours
14 CFR part 382—Nondiscrimination on The Basis of Disability in Air Travel
14 CFR part 383—Civil Penalties
14 CFR part 385—Staff Assignments and Review of Action under Assignments
14 CFR part 389—Fees and Charges for Special Services
14 CFR part 398—Guidelines for Individual Determinations of Basic Essential Air Service

Year 6 (2013) List of Rules With Ongoing Analysis

14 CFR part 300—Rules of Conduct in DOT Proceedings Under This Chapter
14 CFR part 302—Rules of Practice in Proceedings
14 CFR part 303—Review of Air Carrier Agreements
14 CFR part 305—Rules of Practice in Informal Nonpublic Investigations
14 CFR part 313—Implementation of the Energy Policy and Conservation Act
14 CFR part 323—Terminations, Suspensions, and Reductions of Service
14 CFR part 325—Essential Air Service Procedures
14 CFR part 330—Procedures for Compensation of Air Carriers
14 CFR part 372—Overseas Military Personnel Charters

Year 5 (Fall 2012) List of Rules With Ongoing Analysis

14 CFR part 255—Airline Computer Reservations Systems
14 CFR part 256—[Reserved]
14 CFR part 271—Guidelines for Subsidizing Air Carriers Providing Essential Air Transportation
14 CFR part 272—Essential Air Service to the Freely Associated States
14 CFR part 291—Cargo Operations in Interstate Air Transportation
14 CFR part 292—International Cargo Transportation
14 CFR part 293—International Passenger Transportation
14 CFR part 294—Canadian Charter Air Taxi Operators
14 CFR part 296—Indirect Air Transportation of Property
14 CFR part 297—Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations
14 CFR part 298—Exemptions for Air Taxi and Commuter Air Carrier Operations

Year 4 (Fall 2011) List of Rules With Ongoing Analysis

14 CFR part 240—Inspection of Accounts and Property
14 CFR part 241—Uniform System of Accounts and Reports for Large Certificated Air Carriers
14 CFR part 243—Passenger Manifest Information
14 CFR part 247—Direct Airport-to-Airport Mileage Records
14 CFR part 248—Submission of Audit Reports
14 CFR part 249—Preservation of Air Carrier Records

Year 3 (Fall 2010) List of Rules With Ongoing Analysis

14 CFR part 213—Terms, Conditions, and Limitations of Foreign Air Carrier Permits
14 CFR part 214—Terms, Conditions, and Limitations of Foreign Air Carrier Permits Authorizing Charter Transportation Only
14 CFR part 215—Use and Change of Names of Air Carriers, Foreign Air Carriers, and Commuter Air Carriers
14 CFR part 216—Commingling of Blind Sector Traffic by Foreign Air Carriers
14 CFR part 217—Reporting Traffic Statistics by Foreign Air Carriers in Civilian Scheduled, Charter, and Nonscheduled Services

14 CFR part 218—Lease by Foreign Air Carrier or Other Foreign Person of Aircraft With Crew
14 CFR part 221—Tariffs
14 CFR part 222—Intermodal Cargo Services by Foreign Air Carriers
14 CFR part 223—Free and Reduced-Rate Transportation
14 CFR part 232—Transportation of Mail, Review of Orders of Postmaster General
14 CFR part 234—Airline Service Quality Performance Reports

Year 1 (Fall 2008) List of Rules With Ongoing Analysis

49 CFR part 91—International Air Transportation Fair Competitive Practices
49 CFR part 92—Recovering Debts to the United States by Salary Offset
49 CFR part 98—Enforcement of Restrictions on Post-Employment Activities
49 CFR part 99—Employee Responsibilities and Conduct
14 CFR part 200—Definitions and Instructions
14 CFR part 201—Air Carrier Authority Under Subtitle VII of Title 49 of the United States Code [Amended]
14 CFR part 203—Waiver of Warsaw Convention Liability Limits and Defenses
14 CFR part 204—Data to Support Fitness Determinations
14 CFR part 205—Aircraft Accident Liability Insurance
14 CFR part 206—Certificates of Public Convenience and Necessity: Special Authorizations and Exemptions
14 CFR part 207—Charter Trips by U.S. Scheduled Air Carriers
14 CFR part 208—Charter Trips by U.S. Charter Air Carriers
14 CFR part 211—Applications for Permits to Foreign Air Carriers
14 CFR part 212—Charter Rules for U.S. and Foreign Direct Air Carriers

Federal Aviation Administration

Section 610 Review Plan

The FAA has elected to use the two-step, two-year process used by most DOT modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the "*analysis year*"), all rules published during the previous 10 years within a 10% block of the regulations will be *analyzed* to identify those with a SEIOSNOSE. During the second year (the "*review year*"), each rule identified in the analysis year as having a SEIONOSE will be *reviewed* in accordance with Section 610(b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT Semiannual Regulatory Agenda.

Year	Regulations to be reviewed	Analysis year	Review year
1	14 CFR parts 119 through 129 and parts 150 through 156	2008	2009
2	14 CFR parts 133 through 139 and parts 157 through 169	2009	2010
3	14 CFR parts 141 through 147 and parts 170 through 187	2010	2011
4	14 CFR parts 189 through 198 and parts 1 through 16	2011	2012
5	14 CFR parts 17 through 33	2012	2013
6	14 CFR parts 34 through 39 and parts 400 through 405	2013	2014
7	14 CFR parts 43 through 49 and parts 406 through 415	2014	2015
8	14 CFR parts 60 through 77	2015	2016
9	14 CFR parts 91 through 105	2016	2017
10	14 CFR parts 417 through 460	2017	2018

Year 9 (2016) List of Rules To Be Analyzed During the Next Year

14 CFR part 91—General Operating and Flight Rules
14 CFR part 93—Special Air Traffic Rules
14 CFR part 95—IFR Altitudes
14 CFR part 97—Standard Instrument Procedures
14 CFR part 99—Security Control of Air Traffic
14 CFR part 101—Moored Balloons, Kites, Amateur Rockets and Unmanned Free Balloons
14 CFR part 103—Ultralight Vehicles
14 CFR part 105—Parachute Operations

Year 8 (2015) List of Rules Analyzed and Summary of Results

14 CFR part 60—Flight Simulation Training Device Initial and Continuing Qualification and Use
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 61—Certification: Pilots, Flight Instructors, and Ground Instructors
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 63—Certification: Flight Crewmembers Other than Pilots
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 65—Certification: Airmen Other than Flight Crewmembers
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 67—Medical Standards and Certification
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 71—Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 73—Special Use Airspace
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

14 CFR part 77—Safe, Efficient Use, and Preservation of the Navigable Airspace
- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FAA's plain language review of these rules indicates no need for substantial revision.

Federal Highway Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	None	2008	2009
2	23 CFR parts 1 to 260	2009	2010
3	23 CFR parts 420 to 470	2010	2011
4	23 CFR part 500	2011	2012
5	23 CFR parts 620 to 637	2012	2013
6	23 CFR parts 645 to 669	2013	2014
7	23 CFR parts 710 to 924	2014	2015
8	23 CFR parts 940 to 973	2015	2016
9	23 CFR parts 1200 to 1252	2016	2017
10	New parts and subparts	2017	2018

Federal-Aid Highway Program

The Federal Highway Administration (FHWA) has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highway is chapter I of title 23 of the U.S.C. 145 of title 23, expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for the construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

Year 7 (Fall 2014) List of Rules Analyzed and a Summary of Results

23 CFR part 710—Right-of-way and real estate
- Section 610: No SEIOSNOSE. No small entities are affected
- General: An updated rule was promulgated implementing section 1302 of MAP–21 by adding the new authorities for early acquisition of property to part 710, clarifying the Federal-aid eligibility of a broad range of real property interests that constitute less than full fee ownership, streamlining program requirements, clarifying the Federal-State partnership, and carrying out a comprehensive update of part 710.

23 CFR part 750—Highway beautification
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 FR part 751—Junkyard control and acquisition
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 752—Landscape and roadside development
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 771—Environmental impact and related procedures
- Section 610: No SEIOSNOSE. No small entities are affected
- General: An updated rule was promulgated to conform with MAP–21, and proposes additional substantive and nonsubstantive changes to streamline or clarify this part.

23 CFR part 772—Procedures for abatement of highway traffic noise and construction noise
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 773—Surface Transportation Project Delivery Program application requirements and termination
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 774—Parks, recreation areas, wildlife and waterfowl refuges, and historic sites (Section 4(f))
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 777—Mitigation of impacts to wetlands and natural habitat
- Section 610: No SEIOSNOSE. No small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 810—Mass transit and special use highway projects
- Section 610: No SEIOSNOSE. No

small entities are affected
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA's plain language review of these rules indicates no need for substantial revision.

23 CFR part 924—Highway safety improvement program
- Section 610: No SEIOSNOSE. No small entities are affected
- General: An updated rule was promulgated to incorporate amendments made to the program by section 1112 of MAP–21 and to incorporate necessary changes to align with the safety performance management rulemaking.

Year 8 (Fall 2015) List of Rules That Will Be Analyzed During the Next Year

23 CFR part 940—Intelligent transportation system architecture and standards

23 CFR part 950—Electronic toll collection

23 CFR part 970—National Park Service Management Systems

23 CFR part 971—Forest Service management systems

23 CFR part 972—Fish and Wildlife Service management systems

23 CFR part 973—Management systems pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program

Federal Motor Carrier Safety Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR part 372, subpart A	2008	2009
2	49 CFR part 386	2009	2010
3	49 CFR parts 325 and 390 (General)	2010	2011
4	49 CFR parts 390 (Small Passenger-Carrying Vehicles), 391 to 393 and 396 to 399	2011	2012
5	49 CFR part 387	2012	2013
6	49 CFR parts 360, 365, 366, 368, 374, 377, and 378	2013	2014
7	49 CFR parts 356, 367, 369, 370, 371, 372 (subparts B and C)	2014	2015
8	49 CFR parts 373, 376, and 379	2015	2016
9	49 CFR part 375	2016	2017
10	49 CFR part 395	2017	2018

Year 6 (Fall 2013) List of Rules Analyzed and a Summary of Results

49 CFR part 360—Fees for Motor Carrier Registration and Insurance
- Section 610: There is no SEISNOSE. This administrative rule allows FMCSA to collect one-time nominal registration and insurance fees for commercial motor carriers. The fees do not place any significant cost burden on small entities.
- General: FMCSA will integrate plain language techniques to the extent possible as it rewrites various rulemakings to address Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and MAP–21 provisions that authorize the replacement of three current identification and registration systems with a single online Federal "Unified Registration System (URS)." The authority to set and collect fees is found in 31 U.S.C. 9701 and 49 U.S.C. 13908.

49 CFR part 3659—Rules Governing Applications for Operating Authority
- Section 610: There is no SEISNOSE. This administrative rule describes the operating authority application process and does not require extensive time to complete. The rule also allows commercial motor vehicle (CMV) carriers to protest a rejected application for operating authority. Because no entity is obliged to file a protest; and the filing process requires minimal time to complete, we find that the rule does not impose any significant costs upon a significant number of small entities.
- General: FMCSA will integrate plain language techniques as it rewrites these rulemakings and will integrate this part into 49 CFR part 360 consistent with the Federal "Unified Registration System." This part is still relevant as it provides carriers with the authority to operate.

49 CFR part 366—Designation of Process Agent
- Section 610: There is no SEISNOSE. These rules require motor carriers to designate court-related process agents for every State in which they operate to enable the claimant to adjudicate a claim in the jurisdiction where the claim arises. Many small motor carriers contract with organizations which provide a nationwide blanket authority at a reasonable cost.
- General: The process-agent designation is imposed by statute: 49 U.S.C. 13303 and 13304; consequently FMCSA has no discretion regarding costs associated with this rulemaking. FMCSA will integrate plain language techniques as it rewrites these rulemakings and will integrate this part into 49 CFR part 360 consistent with the Federal "Unified Registration System."

49 CFR part 368—Application for a Certificate of Registration to Operate in Municipalities in the United States on the United States-Mexico International Border or Within the Commercial Zones of Such Municipalities
- Section 610: There is no SEISNOSE. The issuance of "Certificates of Registration" to Mexican motor carriers of property desiring to operate in the United States commercial border zones applies only to Mexican carriers and therefore has no cost impact to U.S. small entities.
- General: This rule remains important since the North American Free Trade Agreement has not been fully implemented. The FMCSA will integrate plain language techniques as it rewrites these rulemakings and will integrate this part into 49 CFR part 360, consistent with SAFETEA–LU and the proposed Federal "Unified Registration System."

49 CFR part 374—Discrimination in Operations of Interstate Motor Common Carriers of Passengers
- Section 610: There is no SEISNOSE. This regulation is administrative in nature and was transferred to the Department of Transportation upon the enactment of the Interstate Commerce Commission Termination Act (ICCTA) of 1995. This rule prohibits certain forms of discrimination and smoking on interstate motor carriers of passengers, ticketing requirements, and excess baggage requirements regarding commercial travel on Interstate motor carriers of passengers. These rules promote standard business practices that a prudent person should undertake in the proper management of transportation operations consistent with existing laws to include the Americans with Disabilities Act (ADA) and the Civil Rights Amendment. There are no substantial additive costs borne by small entities as a result of this rule.
- General: These regulations are cost effective and impose minimal burden. FMCSA will rewrite the regulations using plain language techniques as resources permit.

49 CFR part 377—Payment of Transportation Charges
- Section 610: There is no SEISNOSE. The rules and regulations in this part apply to the transportation by motor vehicle of collect on delivery shipments by common carriers of property subject to 49 U.S.C. 13702, and extending credit to shippers. The rules do not constrain business decisions or impose costly fees upon small entities.
- General: These rules support 49 U.S.C. 13702, and require certain carriers to publish tariffs in support of non-contiguous domestic trade. FMCSA will rewrite its regulations using plain language techniques as resources permit.

49 CFR part 378—Procedures Governing the Processing, Investigation, and Disposition of Overcharge, Duplicate Payment, or Over-collection Claims
- Section 610: There is no SEISNOSE. These rules involve standard business practices that a prudent carrier should undertake in the proper management of claim disputes even in the absence of the rules. The benefits of the rule justify their costs, and impose only a minimal cost burden on small entities.
- General: These rules support 49 U.S.C. 13301, 14101, 14704, 14705, and 13702(a), which regulate the management of claim disputes. FMCSA will rewrite the regulations using plain language techniques as resources permit.

Year 7 (Fall 2014) List of Rules With Ongoing Analysis

49 CFR part 356—Motor Carrier Routing Regulations

49 CFR part 367—Standards for Registration with States

49 CFR part 369—Reports of Motor Carriers

49 CFR part 370—Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage

49 CFR part 371—Brokers of Property

49 CFR part 372 (subparts B and C)—Exemptions, Commercial Zones and Terminal Areas.

Year 8 (2015) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 373 part 373—Receipts and Bills

49 CFR part 376—Lease and Interchange of Vehicles

49 CFR part 379—Preservation of Records

National Highway Traffic Safety Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 571.223 through 571.500, and parts 575 and 579	2008	2009
2	23 CFR parts 1200 through 1300	2009	2010
3	49 CFR parts 501 through 526 and 571.213	2010	2011
4	49 CFR parts 571.131, 571.217, 571.220, 571.221, and 571.222	2011	2012
5	49 CFR parts 571.101 through 571.110, and 571.135, 571.138, and 571.139	2012	2013
6	49 CFR parts 529 through 578, except parts 571 and 575	2013	2014
7	49 CFR parts 571.111 through 571.129 and parts 580 through 588	2014	2015
8	49 CFR parts 571.201 through 571.212	2015	2016
9	49 CFR parts 571.214 through 571.219, except 571.217	2016	2017
10	49 CFR parts 591 through 595 and new parts and subparts	2017	2018

Year 7 (Fall 2014) List of Rules Analyzed and a Summary of the Results

49 CFR part 571.111—Rear Visibility
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.113—Hood Latch System
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.114—Theft Protection and Rollaway Prevention
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.116—Motor Vehicle Brake Fluids
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.117—Retreaded Pneumatic Tires
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.118—Power-Operated Window, Partition, and Roof Panel Systems
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.119—New Pneumatic Tires For Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles

- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.120—Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information For Motor Vehicles With a GVWR of More Than 4,536 Kilograms (10,000 Pounds)
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.121—Air Brake Systems
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.122—Motorcycle Brake Systems
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.122a—Motorcycle Brake Systems
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.123—Motorcycle Controls and Displays
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.124—Accelerator Control Systems
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.125—Warning Devices
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.126—Electronic Stability Control Systems
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.129—New Non-pneumatic Tires For Passenger Cars
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 580—Odometer Disclosure Requirements
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 581—Bumper Standard
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 582—Insurance Cost Information Regulation
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 583—Automobile Parts Content Labeling
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 585—Phase-In Reporting Requirements
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 587—Deformable Barriers
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 588—Child Restraint Systems Recordkeeping Requirements
- Section 610: There is no SEIOSNOSE.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

Year 8 (Fall 2015) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 571.201—Occupant Protection in Interior Impact

49 CFR part 571.202—Head Restraints; Applicable at the Manufacturers Option Until September 1, 2009

49 CFR part 571.202a—Head Restraints; Mandatory Applicability Begins On September 1, 2009

49 CFR part 571.203—Impact Protection For the Driver From the Steering Control System

49 CFR part 571.204—Steering Control Rearward Displacement.

49 CFR part 571.205—Glazing Materials

49 CFR part 571.205a—Glazing Equipment Manufactured Before September 1, 2006 and Glazing Materials Used In Vehicles Manufactured Before November 1, 2006

49 CFR part 571.206—Door Locks and Door Retention Components

49 CFR part 571.207—Seating Systems

49 CFR part 571.208—Occupant Crash Protection

49 CFR part 571.209—Seat Belt Assemblies

49 CFR part 571.210—Seat Belt Assembly Anchorages

49 CFR part 571.211—[Reserved]

49 CFR part 571.212—Windshield Mounting

Federal Railroad Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 200 and 201	2008	2009
2	49 CFR parts 207, 209, 211, 215, 238, and 256	2009	2010
3	49 CFR parts 210, 212, 214, 217, and 268	2010	2011
4	49 CFR part 219	2011	2012
5	49 CFR parts 218, 221, 241, and 244	2012	2013
6	49 CFR parts 216, 228, and 229	2013	2014
7	49 CFR parts 223 and 233	2014	2015
8	49 CFR parts 224, 225, 231, and 234	2015	2016
9	49 CFR parts 222, 227, 235, 236, 250, 260, and 266	2016	2017
10	49 CFR parts 213, 220, 230, 232, 239, 240, and 265	2017	2018

Year 7 (Fall 2014) List of Rules Analyzed and a Summary of Results

49 CFR part 223—Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses
- Section 610: There is no SEIOSNOSE.
- General: The rule provides minimum requirements for glazing materials, and is necessary to protect railroad employees and railroad passengers from injury as a result of objects striking the windows of locomotives, passenger cars and cabooses. Recent amendments with regard to the clarification existing regulations related to the use of glazing materials in the windows of locomotives, passenger cars, and cabooses are expected to reduce paperwork and other economic burdens on the rail industry by removing a stenciling requirement for locomotives, passenger cars, and cabooses. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 233—Signal Systems Reporting Requirements
- Section 610: There is no SEIOSNOSE.
- General: FRA proposed to eliminate the five-year reporting requirement in a notice of proposed rulemaking (NPRM) that was published on June 19, 2013. The final rule eliminated the regulatory requirement that each railroad file a Signal Systems Five-Year Report with FRA which became effective on September 2, 2014. This would reduce paperwork burdens, and protect public health, welfare, safety and environment. FRA's plain language review of this rule indicates no need for substantial revision.

Year 8 (Fall 2015) List of Rule(s) That Will Be Analyzed During Next Year

49 CFR part 224—Reflectorization of Rail Freight Rolling Stock

49 CFR part 225—Railroad Accidents/Incidents: Reports Classification and Investigations

49 CFR part 231—Railroad Safety Appliance Standards

49 CFR part 234—Grade Crossing Safety, Including Signal Systems, State Action Plans, and Emergency Notification Systems

Federal Transit Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 604, 605, and 633	2008	2009
2	49 CFR parts 661 and 665	2009	2010
3	49 CFR part 633	2010	2011
4	49 CFR parts 609 and 611	2011	2012
5	49 CFR parts 613 and 614	2012	2013
6	49 CFR part 622	2013	2014
7	49 CFR part 630	2014	2015
8	49 CFR part 639	2015	2016
9	49 CFR parts 659 and 663	2016	2017
10	49 CFR part 665	2017	2018

Year 7 (Fall 2014) List of Rules Analyzed and Summary of Results

49 CFR part 630—National Transit Database
- Section 610: The agency has determined that the rule continues to not have a significant effect on a substantial number of small entities. FTA is proposing to amend the rule to align with the statutory requirement to report performance measures and targets for the National Transit Asset Management System as required under 49 U.S.C. 5326(c)(3). Currently, the NTD reporting requirements are limited, in some instances, to recipients and sub-recipients of section 5307 urban formula funds and 5311 rural formula funds. The proposed reporting requirements would apply to all recipients and sub-recipients of Chapter 53 funds that own, operate, or manage capital assets used in the provision of public transportation. However, FTA is not proposing to apply all existing NTD reporting requirements to all recipients of chapter 53 funds. FTA has evaluated the likely effects of the proposed rule on small entities and is requesting public comment during the rulemaking process. FTA has determined that the proposed revisions will not have a significant economic impact on a substantial number of small entities.
- General: The rule was promulgated to prescribe requirements and procedures for compliance with Federal data reporting requirements dictated by statute. Recently, Congress included additional reporting requirements for the management of transit asset when it enacted the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, (2012). FTA is promulgating a notice of proposed rulemaking to implement specific reporting

requirements of the National Asset Management System in accordance with 49 U.S.C. 5326. The proposal includes revising 49 CFR part 630 to apply to all recipients of Federal public transit funds instead of being limited to just recipients of Federal funds under 49 U.S.C. 5307 and 5311. However, the proposed rule will not extend all current reporting requirements to all recipients. This proposal will revise the regulation to be consistent with current statutory requirements.

Year 8 (Fall 2015)—List of Rule(s) That Will Be Analyzed This Year

49 CFR part 639—Capital Leases

Maritime Administration

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	46 CFR parts 201 through 205	2008	2009
2	46 CFR parts 221 through 232	2009	2010
3	46 CFR parts 249 through 296	2010	2011
4	46 CFR parts 221, 298, 308, and 309	2011	2012
5	46 CFR parts 307 through 309	2012	2013
6	46 CFR part 310	2013	2014
7	46 CFR parts 315 through 340	2014	2015
8	46 CFR parts 345 through 381	2015	2016
9	46 CFR parts 382 through 389	2016	2017
10	46 CFR parts 390 through 393	2017	2018

Year 6 (2013) List of Rules With Ongoing Analysis

46 CFR part 310—Merchant Marine Training

Year 7 (2014) List of Rules With Ongoing Analysis

46 CFR part 315—Agency Agreements and Appointment of Agents
46 CFR part 317—Bonding of Ship's Personnel
46 CFR part 324—Procedural Rules for Financial Transactions Under Agency Agreements
46 CFR part 325—Procedure to be Followed by General Agents in Preparation of Invoices and Payment of Compensation Pursuant to Provisions of NSA Order No. 47
46 CFR part 326—Marine Protection and Indemnity Insurance Under Agreements with Agents
46 CFR part 327—Seamen's Claims; Administrative Action and Litigation
46 CFR part 328—Slop Chests
46 CFR part 329—Voyage Data
46 CFR part 330—Launch Services
46 CFR part 332—Repatriation of Seaman
46 CFR part 335—Authority and Responsibility of General Agents to Undertake Emergency Repairs in Foreign Ports
46 CFR part 336—Authority and Responsibility of General Agents to Undertake in Continental United States Ports Voyage Repairs and Service Equipment of Vessels Operated for the Account of the National Shipping Authority Under General Agency Agreement
46 CFR part 337—General Agent's responsibility in Connection with Foreign Repair Custom's Entries
46 CFR part 338—Procedure for Accomplishment of Vessel Repairs Under National Shipping Authority Master Lump Sum Repair Contract—NSA—Lumpsumrep
46 CFR part 339—Procedure for Accomplishment of Ship Repairs Under National Shipping Authority Individual Contract for Minor Repairs—NSA—Worksmalrep
46 CFR part 340—Priority Use and Allocation of Shipping Services, Container and Chassis and Port Facilities and Services for National Security and National Defense Related Operations.

Year 8 (2015) List of Rules With Ongoing Analysis

46 CFR part 345—Restrictions upon the transfer or change in use or in terms governing utilization of port facilities
46 CFR part 346—Federal port controllers
46 CFR part 356—Requirements for vessels over 100 feet or greater in registered length to obtain a fishery endorsement to the vessel's documentation
46 CFR part 370—Claims
46 CFR part 381—Cargo preference—U.S.-flag vessels

Year 9 (2016) List of Rules That Will Be Analyzed During the Next Year

46 CFR part 382—Determination of fair and reasonable rates for the carriage of bulk and packaged preference cargoes on U.S.-flag commercial vessels
46 CFR part 385—Research and development grant and cooperative agreements regulations
46 CFR part 386—Regulations governing public buildings and grounds at the United States Merchant Marine Academy
46 CFR part 387—Utilization and disposal of surplus Federal real property for development or operation of a port facility
46 CFR part 388—Administrative waivers of the Coastwise Trade Laws
46 CFR part 389—Determination of availability of coast-wise-qualified vessels for transportation of platform jackets

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR part 178	2008	2009
2	49 CFR parts 178 through 180	2009	2010
3	49 CFR parts 172 and 175	2010	2011
4	49 CFR part 171, sections 171.15 and 171.16	2011	2012
5	49 CFR parts 106, 107, 171, 190, and 195	2012	2013

Year	Regulations to be reviewed	Analysis year	Review year
6	49 CFR parts 174, 177, 191, and 192	2013	2014
7	49 CFR parts 176 and 199	2014	2015
8	49 CFR parts 172 and 178	2015	2016
9	49 CFR parts 172, 173, 174, 176, 177, and 193	2016	2017
10	49 CFR parts 173 and 194	2017	2018

Year 7 (Fall 2015) List of Rules Analyzed and a Summary of Results

49 CFR part 176—Carriage by Vessel

- Section 610: There is no SEIOSNOSE. This rule prescribes minimum safety standards for the transportation of hazardous materials by vessel. Some small entities may be affected, but the economic impact on small entities will not be significant.
- General: The requirements in this rule are necessary to protect workers and the general public from the dangers associated with incidents involving hazardous materials transported by vessel. These provisions closely align with international standards for the safe transportation of dangerous goods. PHMSA works in consultation with the United States Coast Guard to promote a harmonized international framework for the vessel transport of hazardous materials through participation in relevant international standards setting bodies including the International Maritime Organization's Sub-Committee on Carriage of Cargoes and Containers and strives to harmonize domestic regulations with that framework wherever such harmonization provides an acceptable level of safety and is in the public interest. PHMSA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 199—Drug and Alcohol Testing

- Section 610: There is no SEIOSNOSE. Based on regulated entities, PHMSA found that the majority of operators are not small businesses. Therefore, though some small entities may be affected, the economic impact on small entities will not be significant.
- General: No changes are needed. These regulations are cost effective and impose the least burden. PHMSA's plain language review of this rule indicates no need for substantial revision.

Year 8 (Fall 2016) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans
49 CFR part 178—Specifications for Packagings

Saint Lawrence Seaway Development Corporation

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	33 CFR parts 401 through 403	2008	2009

Year 1 (Fall 2008) List of Rules With Ongoing Analysis

33 CFR part 401—Seaway Regulations and Rules
33 CFR part 402—Tariff of Tolls
33 CFR part 403—Rules of Procedure of the Joint Tolls Review Board

OFFICE OF THE SECRETARY—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
195	+ Airline Pricing Transparency and Other Consumer Protection Issues	2105–AE11

+ DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
196	+ Applying the Flight, Duty, and Rest Rules to Tail-End Ferry Operations & FAA Reauthorization	2120–AK26

+ DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
197	+Airport Safety Management System	2120–AJ38
198	+Applying the Flight, Duty, and Rest Requirements to Ferry Flights that Follow Domestic, Flag, or Supplemental All-Cargo Operations (Reauthorization).	2120–AK22
199	+Pilot Records Database (HR 500)	2120–AK31
200	+Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter (RRR)	2120–AK65
201	+Operations of Small Unmanned Aircraft Over People	2120–AK85

+DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
202	+Operation and Certification of Small Unmanned Aircraft Systems	2120–AJ60
203	Changing the Collective Risk Limits for Launches and Reentries and Clarifying the Risk Limit Used to Establish Hazard Areas for Ships and Aircraft.	2120–AK06
204	Acceptance Criteria for Portable Oxygen Concentrators Used Onboard Aircraft (RRR)	2120–AK32
205	Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities (RRR)	2120–AK44
206	+Registration and Marking Requirements for Small Unmanned Aircraft	2120–AK82

+DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
207	+Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States.	2120–AK09

+DOT-designated significant regulation.

FEDERAL AVIATION ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
208	Flight Simulation Training Device Qualification Standards for Extended Envelope and Adverse Weather Event Training (International Cooperation).	2120–AK08

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
209	+Commercial Drivers' License Drug and Alcohol Clearinghouse (MAP–21)	2126–AB18

+DOT-designated significant regulation.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
210	+Carrier Safety Fitness Determination	2126–AB11
211	+Entry-Level Driver Training **(Section 610 Review)**	2126–AB66

+DOT-designated significant regulation.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
212	+Electronic Logging Devices and Hours of Service Supporting Documents (MAP–21) (RRR)	2126–AB20

+DOT-designated significant regulation.

FEDERAL RAILROAD ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
213	+Passenger Equipment Safety Standards Amendments (RRR)	2130–AC46

+DOT-designated significant regulation.

FEDERAL RAILROAD ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
214	+Train Crew Staffing and Location	2130–AC48

+DOT-designated significant regulation.

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
215	Tariff of Tolls **(Rulemaking Resulting From a Section 610 Review)**	2135–AA38
216	Seaway Regulations and Rules: Periodic Update, Various Categories **(Rulemaking Resulting From a Section 610 Review)**.	2135–AA39

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
217	+Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve installation and Minimum Rupture Detection Standards.	2137–AF06
218	+Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains.	2137–AF08

+DOT-designated significant regulation.

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
219	+Pipeline Safety: Safety of Hazardous Liquid Pipelines	2137–AE66
220	Pipeline Safety: Issues related to the use of Plastic Pipe in Gas Pipeline Industry (RRR)	2137–AE93
221	Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Changes (RRR).	2137–AE94

+DOT-designated significant regulation.

MARITIME ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
222	+Cargo Preference	2133–AB74

+DOT-designated significant regulation.

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary (OST)

Final Rule Stage

195. +Airline Pricing Transparency and Other Consumer Protection Issues

Legal Authority: 49 U.S.C. 41712; 49 U.S.C. 40101; 49 U.S.C. 41702

Abstract: This rulemaking would address a number of proposals to enhance protections for air travelers and to improve the air travel environment. This rulemaking would explore whether to codify in regulation a definition of the term "ticket agent," to require airlines and ticket agents to disclose at all points of sale the fees for certain basic ancillary services associated with the air transportation consumers are buying or considering buying. The rulemaking would also consider whether to enhance airline passenger protections such as: Expanding the pool of "reporting" carriers; requiring enhanced reporting by mainline carriers for their domestic code-share partner operations; requiring large travel agents to adopt minimum customer service standards; codifying the statutory requirement that carriers and ticket agents disclose any code-share arrangements on their Web sites; and prohibiting unfair and deceptive practices such as undisclosed biasing and post-purchase price increases. The rulemaking would also consider whether to require ticket agents to

disclose the carriers whose tickets they sell in order to avoid having consumers mistakenly believe they are searching all possible flight options for a particular city-pair market when in fact there may be other options available. Additionally, the rulemaking would correct drafting errors and make minor changes to the Department's second Enhancing Airline Passenger Protections rule to conform to guidance issued by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) regarding its interpretation of the rule.

Timetable:

Action	Date	FR Cite
NPRM	05/23/14	79 FR 29970
NPRM Comment Period Extended.	08/06/14	79 FR 45731
NPRM Comment Period End.	08/21/14	
NPRM Comment Period Extended End.	09/22/14	
NPRM Comment Period Reopened.	09/25/14	79 FR 57489
NPRM Comment Period Reopened End.	09/29/14	
Final Rule	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Blane A. Workie, Principal Deputy Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202–366–9342, *TDD Phone:* 202–755–7687, *Fax:* 202–366–7152, *Email: blane.workie@dot.gov.*

RIN: 2105–AE11

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Prerule Stage

196. +Applying the Flight, Duty, and Rest Rules to Tail-End Ferry Operations & FAA Reauthorization

Legal Authority: 49 U.S.C. 106(g); 49 U.S.C. 1153; 49 U.S.C. 40101; 49 U.S.C. 40102; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44105; 49 U.S.C. 44106; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46103

Abstract: This rulemaking would require a flightcrew member who is employed by an air carrier conducting operations under part 135, and who accepts an additional assignment for flying under part 91 from the air carrier or from any other air carrier conducting operations under part 121 or 135, to apply the period of the additional assignment toward any limitation applicable to the flightcrew member relating to duty periods or flight times under part 135.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dale Roberts, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–5749, *Email: dale.roberts@faa.gov.*

RIN: 2120–AK26

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Proposed Rule Stage

197. +Airport Safety Management System

Legal Authority: 49 U.S.C. 44706; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701 to 44706; 49 U.S.C. 44709; 49 U.S.C. 44719

Abstract: This rulemaking would require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system (SMS) for its aviation related activities. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.

Timetable:

Action	Date	FR Cite
NPRM	10/07/10	75 FR 62008
NPRM Comment Period Extended.	12/10/10	75 FR 76928
NPRM Comment Period End.	01/05/11	
End of Extended Comment Period.	03/07/11	
Second Extension of Comment Period.	03/07/11	76 FR 12300
End of Second Extended Comment Period.	07/05/11	
Second NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Keri Lyons, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–8972, *Email: keri.lyons@faa.gov.*

RIN: 2120–AJ38

198. +Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Domestic, Flag, or Supplemental All-Cargo Operations (Reauthorization)

Legal Authority: 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 41706; 49 U.S.C. 44101; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 44716; 49 U.S.C. 44717

Abstract: This rulemaking would require a flightcrew member who accepts an additional assignment for flying under part 91 from the air carrier or from any other air carrier conducting operations under part 121 or 135 of such title, to apply the period of the additional assignment toward any limitation applicable to the flightcrew member relating to duty periods or flight times. This rule is necessary as it will make part 121 flight, duty, and rest limits applicable to tail-end ferries that follow an all-cargo flight.

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dale Roberts, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–5749, *Email: dale.roberts@faa.gov.*

RIN: 2120–AK22

199. +Pilot Records Database (HR 500)

Legal Authority: 49 U.S.C. 106(g); 49 U.S.C. 1155; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 40120; 49 U.S.C. 41706; 49 U.S.C. 44101; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44705; 49 U.S.C. 44709 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315; 49 U.S.C. 46316; 49 U.S.C. 46504; 49 U.S.C. 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531

Abstract: This rulemaking would implement a Pilot Records Database as required by Public Law 111–216 (Aug. 1, 2010). Section 203 amends the Pilot Records Improvement Act by requiring the FAA to create a pilot records database that contains various types of pilot records. These records would be provided by the FAA, air carriers, and other persons who employ pilots. The FAA must maintain these records until it receives notice that a pilot is deceased. Air carriers would use this database to perform a record check on a pilot prior to making a hiring decision.

Timetable:

Action	Date	FR Cite
NPRM	03/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Bradley Palmer, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–7739, *Email: bradley.palmer@faa.gov.*

RIN: 2120–AK31

200. +Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter (RRR)

Legal Authority: 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44704

Abstract: This rulemaking would revise title 14, Code of Federal Regulations (14 CFR) part 23 as a set of performance based regulations for the design and certification of small transport category aircraft. This rulemaking would: (1) Reorganize part 23 into performance-based requirements by removing the detailed design requirements from part 23. The detailed design provisions that would assist applicants in complying with the new performance-based requirements would be identified in means of compliance (MOC) documents to support this effort; (2) promote the adoption of the newly created performance-based airworthiness design standard as an internationally accepted standard by the majority of other civil aviation authorities; (3) re-align the part 23 requirements to promote the development of entry-level airplanes similar to those certified under Certification Specification for Very Light Aircraft (CS–VLA); (4) enhance the FAA's ability to address new technology; (5) increase the general aviation (GA) level of safety provided by new and modified airplanes; (6) amend the stall, stall warning, and spin requirements to reduce fatal accidents and increase crashworthiness by allowing new methods for occupant protection; and (7) address icing conditions that are currently not included in part 23 regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/14/16	81 FR 13452
NPRM Comment Period End.	05/13/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lowell Foster, Department of Transportation, Federal Aviation Administration, 901 Locust St., Kansas City, MO 64106, *Phone:* 816–329–4125, *Email: lowell.foster@faa.gov.*

RIN: 2120–AK65

201. • +Operations of Small Unmanned Aircraft Over People

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 40101; 49 U.S.C. 40103; 49 U.S.C. 44701; Pub. L. 112–95, sec 333; . . .

Abstract: This rulemaking would address the performance-based standards and means-of-compliance for operation of small unmanned aircraft systems (UAS) over people not directly participating in the operation or not under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling small unmanned aircraft. This rulemaking would provide relief from certain operational restrictions implemented in the Operation and Certification of Small Unmanned Aircraft Systems final rule (hereinafter the sUAS Operation and Certification rule).

Timetable:

Action	Date	FR Cite
NPRM	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Guido Hassig, Department of Transportation, Federal Aviation Administration, 1 Airport Way, Rochester, NY 14624, *Phone:* 585 436–3880, *Email: guido.hassig@faa.gov.*

RIN: 2120–AK85

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Final Rule Stage

202. +Operation and Certification of Small Unmanned Aircraft Systems

Legal Authority: 49 U.S.C. 44701; Pub. L. 112–95

Abstract: This rulemaking would allow the commercial operation of small unmanned aircraft systems (sUAS) in the National Airspace System (NAS). These changes would address the operation of small unmanned aircraft systems, certification of their operators, registration of the small unmanned aircraft, and display of registration markings. This action would also find airworthiness certification is not required for small unmanned aircraft system operations subject to this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/23/15	80 FR 9544
NPRM Comment Period End.	04/24/15	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lance Nuckolls, Unmanned Aircraft Systems Integration Office, Department of Transportation, Federal Aviation Administration, 490 L'Enfant Plaza SW., Washington, DC 20024, *Phone:* 202–267–8447, *Email: UAS-rule@faa.gov.*

RIN: 2120–AJ60

203. Changing the Collective Risk Limits for Launches and Reentries and Clarifying the Risk Limit Used To Establish Hazard Areas for Ships and Aircraft

Legal Authority: 51 U.S.C. 50901 to 50923

Abstract: This rulemaking would revise the requirements, (1) establish quantitative public risk acceptability criteria that treat launch and reentry separately, (2) define the scope of launch and reentry mission for the purposes of quantitative risk analyses (QRA), and (3) apply QRA requirements, including uncertainty analysis, equally to all types of launch and reentry vehicles. These revisions update the current regulations and are consistent with current practices at the Federal ranges.

Timetable:

Action	Date	FR Cite
NPRM	07/21/14	79 FR 42241

Action	Date	FR Cite
NPRM Comment Period End.	10/20/14	
Analyzing comments.	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rene Rey, Licensing and Safety Division, Office of Commercial Space, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590, *Phone:* 202 267–7538, *Email: rene.rey@faa.gov.*

RIN: 2120–AK06

204. Acceptance Criteria for Portable Oxygen Concentrators Used Onboard Aircraft (RRR)

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 1155; 49 U.S.C. 40103; 49 U.S.C. 40105; 49 U.S.C. 40109; 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 40120; 49 U.S.C. 41706; 49 U.S.C. 44101; 49 U.S.C. 44110; 49 U.S.C. 44111; 49 U.S.C. 44502; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44704; 49 U.S.C. 44705; 49 U.S.C. 44709 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46102; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315; 49 U.S.C. 46316; 49 U.S.C. 46504; 49 U.S.C. 46506; 49 U.S.C. 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531; 61 Stat. 1180—Articles 12 and 29

Abstract: This rulemaking would replace the existing process by which the Federal Aviation Administration (FAA) approves portable oxygen concentrators (POC) for use on board aircraft in air carrier operations, commercial operations, and certain other operations using large aircraft. This rulemaking would also replace the current process and allow passengers to use a POC on board an aircraft if the POC satisfies certain acceptance criteria and bears a label indicating conformance with the acceptance criteria. Additionally, this rulemaking would eliminate redundant operational requirements and paperwork requirements related to the physician's statement. As a result, this rulemaking would reduce burdens for POC manufacturers, passengers who use POCs while traveling, and affected aircraft operators.

Timetable:

Action	Date	FR Cite
NPRM	09/19/14	79 FR 56288
NPRM Comment Period End.	11/18/14	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Denise K. Deaderick, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202–267–8166, *Email: dk.deaderick@faa.gov.*

RIN: 2120–AK32

205. Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities (RRR)

Legal Authority: 49 U.S.C. 322; 51 U.S.C. 50910 to 50923

Abstract: This rulemaking would extend the waiver of claims for all the customers involved in a launch or reentry, amend the requirement describing which entities are required to sign the statutorily-mandated waiver of claims, and add a new waiver template for the customer's use. This rulemaking would ease the administrative burden on the customers, licensees, permittees, and the FAA, especially when a new customer is added only a short time before the scheduled launch or reentry.

Timetable:

Action	Date	FR Cite
NPRM	01/13/15	80 FR 2015
NPRM Comment Period End.	03/16/15	
NPRM Comment Period Reopened.	06/15/15	80 FR 34110
Comment Period End.	07/15/15	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shirley McBride, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–7470, *Email: shirley.mcbride@faa.gov.*

RIN: 2120–AK44

206. • +Registration and Marking Requirements for Small Unmanned Aircraft

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 41703; 49 U.S.C. 44101 to 44106; 49 U.S.C. 44110 to 44113; 49 U.S.C. 44701

Abstract: This interim final rule would establish an alternative, streamlined, web-based aircraft registration system for certain small unmanned aircraft systems, to help facilitate compliance with existing statutory obligations for aircraft registration. The alternative process will help create a culture of accountability and ensure responsible use of small UAS. As evidenced by the recent reports of unsafe UAS operations, the lack of awareness of operators regarding what must be done to operate UAS safely in the NAS, and the lack of identification of UAS and their operators pose significant challenges in ensuring accountability for responsible use. Without increased awareness and knowledge of the statutory and regulatory requirements for safe operation, the risk of unsafe UAS operations will only rise. Aircraft registration, identification, and marking will assist the Department in identifying owners of UAS that are operated in an unsafe manner, so we may continue to educate these users, and when appropriate, take enforcement action. This rulemaking is based on public comment regarding the proposed aircraft registration process for small UAS in the Operation and Use of Small UAS notice of proposed rulemaking and recommendations from the UAS Registration task force.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/15	80 FR 78593
OMB approval of information collection.	12/21/15	80 FR 79255
Final Rule Effective.	12/21/15	
Comment Period End.	01/15/16	
Analyzing Comments.	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sara Mikolop, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–7776, *Email: sara.mikolop@faa.gov.*

RIN: 2120–AK82

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Long-Term Actions

207. +Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States

Legal Authority: 14 CFR; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44707; 49 U.S.C. 44709; 49 U.S.C. 44717

Abstract: This rulemaking is required by the FAA Modernization and Reform Act of 2012. It would require controlled substance testing of some employees working in repair stations located outside the United States. The intended effect is to increase participation by companies outside of the United States in testing of employees who perform safety critical functions and testing standards similar to those used in the repair stations located in the United States. This action is necessary to increase the level of safety of the flying public.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/14	79 FR 14621
Comment Period Extended.	05/01/14	79 FR 24631
ANPRM Comment Period End.	05/16/14	
Comment Period End.	07/17/14	
NPRM	05/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Vicky Dunne, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, *Phone:* 202 267–8522, *Email: vicky.dunne@faa.gov.*

RIN: 2120–AK09

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration (FAA)

Completed Actions

208. Flight Simulation Training Device Qualification Standards for Extended Envelope and Adverse Weather Event Training (International Cooperation)

Legal Authority: 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; Pub. L. 111–216; 124 Stat. 2348; 49 U.S.C. 106(f)

Abstract: This rulemaking would amend the Qualification Performance Standards for flight simulation training devices (FSTDs) for the primary purpose of improving existing technical standards and introducing new technical standards for full stall and stick pusher maneuvers, upset recognition and recovery maneuvers, maneuvers conducted in airborne icing conditions, takeoff and landing maneuvers in gusting crosswinds, and bounced landing recovery maneuvers. These new and improved technical standards are intended to fully define FSTD fidelity requirements for conducting new flight training tasks introduced through recent changes to the air carrier training requirements, as well as to address various National Transportation Safety Board (NTSB) and Aviation Rulemaking Committee recommendations. This final rule also updates the FSTD technical standards to better align with the current international FSTD evaluation guidance and introduces a new FSTD level that expands the number of qualified flight training tasks in a fixed-base flight training device. These changes will ensure that the training and testing environment is accurate and realistic, will codify existing practice, and will provide greater harmonization with international guidance for simulation. The amendments will not apply to previously qualified FSTDs with the exception of the FSTD Directive, which codifies the new FSTD technical standards for specific training tasks.

Timetable:

Action	Date	FR Cite
NPRM	07/10/14	79 FR 39461
NPRM Comment Period Extended.	09/16/14	79 FR 55407
NPRM Comment Period End.	10/08/14	
Comment Period Extended.	01/06/15	
Final Action	03/03/16	81 FR 18177
Final Action Effective.	05/31/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Larry McDonald, Department of Transportation, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320, *Phone:* 404–474–5620, *Email: larry.e.mcdonald@faa.gov.*

RIN: 2120–AK08

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Final Rule Stage

209. +Commercial Drivers' License Drug and Alcohol Clearinghouse (MAP–21)

Legal Authority: 49 U.S.C. 31306

Abstract: This rulemaking would create a central database for verified positive controlled substances and alcohol test results for commercial driver's license (CDL) holders and refusals by such drivers to submit to testing. This rulemaking would require employers of CDL holders and service agents to report positive test results and refusals to test into the Clearinghouse. Prospective employers, acting on an application for a CDL driver position with the applicant's written consent to access the Clearinghouse, would query the Clearinghouse to determine if any specific information about the driver applicant is in the Clearinghouse before allowing the applicant to be hired and to drive CMVs. This rulemaking is intended to increase highway safety by ensuring CDL holders, who have tested positive or have refused to submit to testing, have completed the U.S. DOT's return-to-duty process before driving CMVs in interstate or intrastate commerce. It is also intended to ensure that employers are meeting their drug and alcohol testing responsibilities. Additionally, provisions in this rulemaking would also be responsive to requirements of the Moving Ahead for Progress in the 21st Century (MAP–21) Act. MAP–21 required creation of the Clearinghouse by 10/1/14.

Timetable:

Action	Date	FR Cite
NPRM	02/20/14	79 FR 9703
Comment Period End.	04/21/14	
Comment Period End.	04/22/14	79 FR 22467
Comment Period Extended.	04/22/14	79 FR 22467
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Juan Moya, Department of Transportation, Federal Motor Carrier Safety Administration, Washington, DC 20590, *Phone:* 202 366–4844, *Email: juan.moya@dot.gov.*

RIN: 2126–AB18

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Long-Term Actions

210. +Carrier Safety Fitness Determination

Legal Authority: 49 U.S.C. 31144; sec. 4009 of TEA–21

Abstract: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to adopt revised methodologies that would result in a safety fitness determination (SFD). The

proposed methodologies would determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce based on (1) the carrier's on-road safety performance in relation to five of the Agency's seven Behavioral Analysis and Safety Improvement Categories (BASICs); (2) an investigation; or (3) a combination of on-road safety data and investigation information. The intended effect of this action is to more effectively use FMCSA data and resources to identify unfit motor carriers and to remove them from the Nation's roadways.

Timetable:

Action	Date	FR Cite
NPRM	01/21/16	81 FR 3562
NPRM Comment Period End.	04/20/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David Miller, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–5370, *Email: david.miller@dot.gov.*

RIN: 2126–AB11

211. +Entry-Level Driver Training (Section 610 Review)

Legal Authority: 49 U.S.C. 31136

Abstract: FMCSA proposes new training standards for certain individuals applying for their initial commercial driver's license (CDL); an upgrade of their CDL (*e.g.*, a Class B CDL holder seeking a Class A CDL); or a hazardous materials, passenger, or school bus endorsement for their license; and a "refresher" training curriculum. These individuals would be subject to the proposed entry-level driver training requirements and must complete a course of instruction provided by an entity that (1) meets the minimum qualifications for training providers, (2) covers the curriculum, (3) is listed on FMCSA's proposed Training Provider Registry, and (4) submits electronically to FMCSA the training certificate for each individual who completes the training. This NPRM responds to a Congressional mandate imposed under the Moving Ahead for Progress in the 21st Century Act. The proposed rule is based on consensus recommendations from the Agency's Entry-Level Driver Training Advisory Committee (ELDTAC), a negotiated rulemaking committee which held a series of meetings between February and May 2015. The compliance date of the rule would be three years after the effective date of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	03/07/16	81 FR 11944
NPRM Comment Period End.	04/06/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sean Gallagher, MC–PRR, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, *Phone:* 202 366–3740, *Email: sean.gallagher@dot.gov.*

RIN: 2126–AB66

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Motor Carrier Safety Administration (FMCSA)

Completed Actions

212. +Electronic Logging Devices and Hours of Service Supporting Documents (MAP–21) (RRR)

Legal Authority: 49 U.S.C. 31502; 31136(a); Pub. L. 103.311; 49 U.S.C. 31137(a)

Abstract: This rulemaking would establish: (1) Minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs); (2) requirements for the mandatory use of these devices by drivers currently required to prepare HOS records of duty status (RODS); (3) requirements concerning HOS supporting documents; and (4) measures to address concerns about harassment resulting from the mandatory use of ELDs.

Timetable:

Action	Date	FR Cite
NPRM	02/01/11	76 FR 5537
NPRM Comment Period End.	02/28/11	
NPRM Comment Period Extended.	03/10/11	76 FR 13121
NPRM Comment Period Extended End.	05/23/11	
SNPRM	03/28/14	79 FR 17656
SNPRM Comment Period End.	05/27/14	
Final Rule	12/16/15	80 FR 78292
Final Rule Effective.	02/16/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Routhier, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–1225, *Email: brian.routhier@dot.gov.*

RIN: 2126–AB20

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Railroad Administration (FRA)

Proposed Rule Stage

213. +Passenger Equipment Safety Standards Amendments (RRR)

Legal Authority: 49 U.S.C. 20103

Abstract: This rulemaking would amend 49 CFR part 238 to update existing safety standards for passenger rail equipment. Specifically, the proposed rulemaking would add standards for alternative compliance with requirements for tier I passenger equipment, increase the maximum authorized speed for tier II passenger equipment, and add requirements for a new tier III category of passenger equipment.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kathryn Shelton, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 493–6063, *Email: kathryn.shelton@fra.dot.gov.*

RIN: 2130–AC46

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Railroad Administration (FRA)

Final Rule Stage

214. +Train Crew Staffing and Location

Legal Authority: 28 U.S.C. 2461, note; 49 CFR 1.89; 49 U.S.C. 20103; 49 U.S.C. 20107; 49 U.S.C. 21301–21302; 49 U.S.C. 21304

Abstract: This rulemaking would add minimum requirements for the size of different train crew staffs depending on the type of operation. The minimum crew staffing requirements would reflect the safety risks posed to railroad employees, the general public, and the environment. This rulemaking would also establish minimum requirements for the roles and responsibilities of the second train crew member on a moving train, and promote safe and effective teamwork. Additionally, this rulemaking would permit a railroad to submit information to FRA and seek approval if it wants to continue an existing operation with a one-person train crew or start up an operation with less than two crew members.

Timetable:

Action	Date	FR Cite
NPRM	03/15/16	81 FR 13918
NPRM Comment Period End.	05/16/16	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kathryn Shelton, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 493–6063, *Email: kathryn.shelton@fra.dot.gov.*

RIN: 2130–AC48

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION (DOT)

Saint Lawrence Seaway Development Corporation (SLSDC)

Completed Actions

215. • Tariff of Tolls (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 33 U.S.C. 981 *et seq.*

Abstract: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and currently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2006 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the tariff for full or partial transit of the Seaway will apply in the U.S. (See Supplementary Information.)

Timetable:

Action	Date	FR Cite
NPRM	02/09/16	81 FR 6810
NPRM Comment Period End.	03/10/16	
Final Rule	03/17/16	81 FR 14390
Final Rule Effective.	03/21/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Carrie Lavigne, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 315 764–3231, *Email: carrie.mann@dot.gov.*

RIN: 2135–AA38

216. • Seaway Regulations and Rules: Periodic Update, Various Categories (Rulemaking Resulting From a Section 610 Review)

Legal Authority: 33 U.S.C. 981 *et seq.*

Abstract: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and currently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations by updating the Seaway Regulations and Rules in various categories. The changes will update the following sections of the Regulations and Rules: Condition of Vessels; Preclearance and Security for Tolls; Tolls Assessment and Payment; Seaway Navigation; Dangerous Cargo; Toll Assessment and Payment; and, Information and Reports. These amendments are necessary to take account of updated procedures and will enhance the safety of transits through the Seaway. Several of the amendments are merely editorial or for clarification of existing requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/05/16	81 FR 6198
NPRM Comment Period End.	03/07/16	
Final Rule	03/15/16	81 FR 13744
Final Rule Effective.	03/21/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Carrie Lavigne, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 315 764–3231, *Email: carrie.mann@dot.gov.*

RIN: 2135–AA39

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION (DOT)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Proposed Rule Stage

217. +Pipeline Safety: Amendments to Parts 192 and 195 To Require Valve Installation and Minimum Rupture Detection Standards

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: This rule would propose installation of automatic shutoff valves, remote controlled valves, or equivalent technology and establish performance based meaningful metrics for rupture detection for gas and liquid transmission pipelines. The overall intent is that rupture detection metrics will be integrated with ASV and RCV placement with the objective of improving overall incident response. Rupture response metrics would focus on mitigating large, unsafe, uncontrolled release events that have a greater potential consequence. The areas proposed to be covered include High Consequence Areas (HCA) for hazardous liquids and HCA, Class 3 and 4 for natural gas (including could affect areas).

Timetable:

Action	Date	FR Cite
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lawrence White, Attorney-Advisor, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street SW., Washington, DC 20590, *Phone:* 202 366–4400, *Fax:* 292 366–7041.

RIN: 2137–AF06

218. +Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains

Legal Authority: 33 U.S.C. 1321; 49 U.S.C. 5101 *et seq.*

Abstract: This rulemaking, developed in consultation with the Federal Railroad Administration, would revise PHMSA's regulations to expand the applicability of comprehensive oil spill response plans (OSRPs) based on thresholds of liquid petroleum oil that apply to an entire train. We are also

proposing to revise the format and clarify requirements of a comprehensive OSRP and to require railroads to share information about high-hazard flammable train operations with state and tribal emergency response organizations (*i.e.,* State Emergency Response Commissions and Tribal Emergency Response Commissions) to improve community preparedness. Lastly, PHMSA is proposing an update to boiling point testing procedures to provide regulatory flexibility and promotes enhanced safety in transport through accurate packing group assignment.

Timetable:

Action	Date	FR Cite
ANPRM	08/01/14	79 FR 45079
ANPRM Comment Period End.	09/30/14	
NPRM	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Victoria Lehman, Transportation Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–8553, *Email: victoria.lehman@dot.gov.*

RIN: 2137–AF08

DEPARTMENT OF TRANSPORTATION (DOT)

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Final Rule Stage

219. +Pipeline Safety: Safety of Hazardous Liquid Pipelines

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: In recent years, there have been significant hazardous liquid pipeline accidents, most notably the 2010 crude oil spill near Marshall, Michigan, during which almost one million gallons of crude oil were spilled into the Kalamazoo River. In response to accident investigation findings, incident report data and trends, and stakeholder input, PHMSA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 13, 2015. Previously, Congress had enacted the Pipeline Safety, Regulatory Certainty, and Job Creation Act that included several provisions that are relevant to the regulation of hazardous liquid pipelines. Shortly after the Pipeline Safety, Regulatory Certainty, and Job Creation Act was passed, the National Transportation Safety Board (NTSB) issued its accident investigation report on the Marshall, Michigan, accident. In this rulemaking action, PHMSA is amending the Pipeline Safety Regulations to improve protection of the public, property, and the environment by closing regulatory gaps where appropriate, and ensuring that operators are increasing the detection and remediation of unsafe conditions, and mitigating the adverse effects of hazardous liquid pipeline failures.

Timetable:

Action	Date	FR Cite
ANPRM	10/18/10	75 FR 63774
Comment Period Extended.	01/04/11	76 FR 303
ANPRM Comment Period End.	01/18/11	
Extended Comment Period End.	02/18/11	
NPRM	10/13/15	80 FR 61610
NPRM Comment Period End.	01/08/16	
Final Rule	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John A. Gale, Transportation Regulations Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202–366–0434, *Email: john.gale@dot.gov.*

RIN: 2137–AE66

220. Pipeline Safety: Issues Related to the Use of Plastic Pipe in Gas Pipeline Industry (RRR)

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: In this rule, PHMSA is amending the natural and other gas pipeline safety regulations (49 CFR part 192) to address regulatory requirements involving plastic piping systems used in gas services. These amendments are intended to correct errors, address inconsistencies, and respond to petitions for rulemaking. The requirements in several subject matter areas are affected, including incorporation of tracking and traceability provisions; design factor for polyethylene (PE) pipe; more stringent mechanical fitting requirements; updated and additional regulations for risers; expanded use of Polyamide-11 (PA–11) thermoplastic pipe; incorporation of newer Polyamide-12 (PA–12) thermoplastic pipe; and incorporation of updated and additional standards for fittings.

Timetable:

Action	Date	FR Cite
NPRM	05/21/15	80 FR 29263
NPRM Comment Period End.	07/31/15	
Final Rule	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cameron H. Satterthwaite, Transportation Regulations Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202–366–8553, *Email: cameron.satterthwaite@dot.gov.*

RIN: 2137–AE93

221. Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Changes (RRR)

Legal Authority: 49 U.S.C. 60101 *et seq.*

Abstract: PHMSA is amending the pipeline safety regulations to address requirements of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Act), and to update and clarify certain regulatory requirements. Under the 2011 Act, PHMSA is adding a specific time frame for telephonic or electronic notifications of accidents and incidents and adding provisions for cost recovery for design reviews of certain new projects. Among other provisions, PHMSA is adding a procedure for renewal of expiring special permits, and for submitters of information requesting PHMSA to keep some information confidential. In addition, PHMSA is amending the operator qualification (OQ) requirements, drug and alcohol testing requirements, and incorporating consensus standards by reference for in-line inspection (ILI) and Stress Corrosion Cracking Direct Assessment (SCCDA).

Timetable:

Action	Date	FR Cite
NPRM	07/10/15	80 FR 39916
NPRM Comment Period End.	09/08/15	
Final Rule	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John A. Gale, Transportation Regulations Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202–366–0434, *Email: john.gale@dot.gov.*

RIN: 2137–AE94

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION (DOT)

Maritime Administration (MARAD)

Proposed Rule Stage

222. +Cargo Preference

Legal Authority: 49 CFR 1.66; 46 app U.S.C. 1101; 46 app U.S.C. 1241; 46 U.S.C. 2302 (e)(1); Pub. L. 91–469

Abstract: This rulemaking would revise and clarify the cargo preference regulations that have not been revised substantially since 1971. The rulemaking would also implement statutory changes, including section 3511, Public Law 110–417, of The National Defense Authorization Act for FY 2009, which provides enforcement authority.

Timetable:

Action	Date	FR Cite
NPRM	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mitch Hudson, Attorney, Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, *Phone:* 202 366–9373, *Email: mitch.hudson@dot.gov.*

RIN: 2133–AB74

BILLING CODE 4910–81–P

[FR Doc. 2016–12913 Filed 6–8–16; 8:45 am]

BILLING CODE 4910–81–P

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Part XV

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY

31 CFR Subtitles A and B

Semiannual Agenda

AGENCY: Department of the Treasury.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order 12866 ("Regulatory Planning and Review"), which require the publication by the Department of a semiannual agenda of regulations.

FOR FURTHER INFORMATION CONTACT: The Agency contact identified in the item relating to that regulation.

SUPPLEMENTARY INFORMATION: The semiannual regulatory agenda includes regulations that the Department has issued or expects to issue and rules currently in effect that are under departmental or bureau review.

Beginning with the fall 2007 edition, the Internet has been the primary medium for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov* and *www.regulations.gov,* in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury's printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that have been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda available on the Internet.

The semiannual agenda of the Department of the Treasury conforms to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

Brian J. Sonfield,

Deputy Assistant General Counsel for General Law and Regulation.

FINANCIAL CRIMES ENFORCEMENT NETWORK—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
223	Financial Crimes Enforcement Network: Customer Due Diligence Requirements for Financial Institutions	1506–AB25

CUSTOMS REVENUE FUNCTION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
224	Mandated use of the Automated Commercial Environment for Submission of International Trade Data System Agency Information Accompanying Electronic Entry/Entry Summary (Cargo Release and Related Entry).	1515–AE06

INTERNAL REVENUE SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
225	Deemed Distributions Under Section 305(c) of Stock and Rights to Acquire Stock	1545–BN07

INTERNAL REVENUE SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
226	Issue Price Definition for Tax-Exempt Bonds	1545–BM46

DEPARTMENT OF THE TREASURY (TREAS)

Financial Crimes Enforcement Network (FINCEN)

Completed Actions

223. Financial Crimes Enforcement Network: Customer Due Diligence Requirements for Financial Institutions

Legal Authority: 31 U.S.C. 5311 to 5314; 12 U.S.C. 1829(b)

Abstract: The Financial Crimes Enforcement Network (FinCEN), after consulting with staff from various Federal supervisory authorities, is proposing rules under the Bank Secrecy Act to clarify and strengthen customer due diligence requirements for: (i) Banks; (ii) brokers or dealers in securities; (iii) mutual funds; and (iv) futures commission merchants and introducing brokers in commodities. The proposed rules would contain explicit customer due diligence requirements and would include a new requirement to identify beneficial owners of legal entity customers, subject to certain exemptions.

Completed:

Reason	Date	FR Cite
Final Action	05/11/16	81 FR 29398
Final Action Effective.	05/11/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Vallely, *Phone:* 703 905–3851, *Email: michael.vallely@fincen.gov.*

RIN: 1506–AB25

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY (TREAS)

Customs Revenue Function (CUSTOMS)

Proposed Rule Stage

224. • Mandated Use of the Automated Commercial Environment for Submission of International Trade Data System Agency Information Accompanying Electronic Entry/Entry Summary (Cargo Release and Related Entry)

Legal Authority: Not Yet Determined

Abstract: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to reflect new requirements for filing in the Automated Commercial Environment (ACE). Pursuant to the Security and Accountability for Every (SAFE) Port Act of 2006, CBP plans to implement the International Trade Data System (ITDS) by making ACE the single window for processing of all entry and entry summary data. CBP expects that making ACE the single window for trade processing will help CBP eliminate redundant information submissions, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, as mandated by the SAFE Port Act of 2006. To realize the full benefit of the single window, CBP proposes new regulations that will require filers submitting entry or entry summary data electronically in ACE also to file associated ITDS Agency data electronically in ACE, subject to limited exceptions. This rule will make each discrete entry or entry summary more uniform, as each transaction will be filed entirely in electronic format or entirely in paper format. This will enhance the ability of the U.S. Government to enforce the legal requirements pertaining to those transactions.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Suzanne Kingsbury, Attorney, Regulations Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229, *Phone:* 202 572–8763.

RIN: 1515–AE06

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY (TREAS)

Internal Revenue Service (IRS)

Proposed Rule Stage

225. • Deemed Distributions Under Section 305(C) of Stock and Rights To Acquire Stock

Legal Authority: 26 U.S.C. 7805

Abstract: Provide guidance on the amount and timing of distributions under section 305(c) and 305(b), and to clarify that deemed distributions caused by changes in conversion ratios are considered a distribution of additional rights to acquire the underlying stock, and not a distribution of the underlying stock itself. Guidance is also provided to withholding agents regarding their withholding obligations, and on information reporting for such distributions under sections 860G, 861, 1441, 1461, 1471, 1473 and 6045B.

Timetable:

Action	Date	FR Cite
NPRM	04/13/16	81 FR 21795
NPRM Comment Period End.	07/12/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Maurice LaBrie, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224, *Phone:* 202 317–5024.

RIN: 1545–BN07

DEPARTMENT OF THE TREASURY (TREAS)

Internal Revenue Service (IRS)

Final Rule Stage

226. Issue Price Definition for Tax-Exempt Bonds

Legal Authority: 26 U.S.C. 148(i); 26 U.S.C. 7805

Abstract: The final regulations define issue price for purposes of the arbitrage restrictions under section 148 of the Internal Revenue Code applicable to tax-exempt bonds and other tax-advantaged bonds.

Timetable:

Action	Date	FR Cite
NPRM	06/24/15	80 FR 36301
NPRM Comment Period End.	09/22/15	
Final Action	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Lewis Bell, Tax Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, *Phone:* 202 317–4565, *Fax:* 855 574–9028, *Email: lewis.bell@irscounsel.treas.gov.*

RIN: 1545–BM46

[FR Doc. 2016–12914 Filed 6–8–16; 8:45 am]

BILLING CODE 4810–01–P

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Part XVI

Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities which may be conducted by the agency during the next 12 months. This regulatory agenda may be revised by the agency during the coming months as a result of action taken by the Board.

ADDRESSES: Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: For information concerning Board regulations and proposed actions, contact Gretchen Jacobs, General Counsel, (202) 272–0040 (voice) or (202) 272–0062 (TTY).

Gretchen Jacobs,

General Counsel.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
227	Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way	3014–AA26

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
228	Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels	3014–AA11

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

Final Rule Stage

227. Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way

Legal Authority: 42 U.S.C. 12204, Americans With Disabilities Act; 29 U.S.C. 792, Rehabilitation Act

Abstract: This rulemaking would establish accessibility guidelines to ensure that sidewalks and pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. A Supplemental Notice of Proposed Rulemaking consolidated this rulemaking with RIN 3014–AA41; accessibility guidelines for shared use paths (which are multi-use paths designed primarily for use by bicyclists and pedestrians—including persons with disabilities—for transportation and recreation purposes). The U.S. Department of Justice, U.S. Department of Transportation, and other Federal agencies are expected to adopt the accessibility guidelines for pedestrian facilities in the public right-of-way and for shared use paths, as enforceable standards in separate rulemakings for the construction and alteration of facilities covered by the Americans With Disabilities Act, section 504 of the Rehabilitation Act, and the Architectural Barriers Act.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee.	08/12/99	64 FR 43980
Notice of Appointment of Advisory Committee Members.	10/20/99	64 FR 56482
Availability of Draft Guidelines.	06/17/02	67 FR 41206
Availability of Draft Guidelines.	11/23/05	70 FR 70734
NPRM	07/26/11	76 FR 44664
NPRM Comment Period End.	11/23/11	
Notice Reopening Comment Period.	12/05/11	76 FR 75844
Reopening NPRM Comment Period End.	02/02/12	
Second NPRM	02/13/13	78 FR 10110
Second NPRM Comment Period End.	05/14/13	
Final Action	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gretchen Jacobs, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111, *Phone:* 202 272–0040, *TDD Phone:* 202 272–0062, *Fax:* 202 272–0081, *Email: jacobs@access-board.gov.*

RIN: 3014–AA26

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

Long-Term Actions

228. Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels

Legal Authority: 42 U.S.C. 12204, Americans with Disabilities Act of 1990

Abstract: This rulemaking would establish accessibility guidelines to ensure that newly constructed and altered passenger vessels covered by the Americans with Disabilities Act (ADA) are accessible to and usable by individuals with disabilities. The U.S. Department of Transportation and U.S. Department of Justice are expected to adopt the guidelines as enforceable standards in separate rulemakings for the construction and alteration of passenger vessels covered by the ADA.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee.	03/30/98	63 FR 15175
Establishment of Advisory Committee.	08/12/98	63 FR 43136
Availability of Draft Guidelines.	11/26/04	69 FR 69244
ANPRM	11/26/04	69 FR 69246
ANPRM Comment Period Extended.	03/22/05	70 FR 14435

Action	Date	FR Cite
ANPRM Comment Period Extended End.	07/28/05	
Availability of Draft Guidelines.	07/07/06	71 FR 38563
Notice of Intent to Establish Advisory Committee.	06/25/07	72 FR 34653
Establishment of Advisory Committee.	08/13/07	72 FR 45200
NPRM	06/25/13	78 FR 38102
NPRM Comment Period Extended.	08/13/13	78 FR 49248
NPRM Comment Period Extended End.	01/24/14	
Final Action	10/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gretchen Jacobs, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111, *Phone:* 202 272–0040, *TDD Phone:* 202 272–0062, *Fax:* 202 272–0081, *Email: jacobs@access-board.gov.*

RIN: 3014–AA11

[FR Doc. 2016–12919 Filed 6–8–16; 8:45 am]

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Part XVII

Environmental Protection Agency

Semiannual Regulatory Agenda

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[EPA–HQ–OA–2016–0203; EPA–HQ–OAR–2016–0175; EPA–HQ–OPPT–2016–0126; EPA–HQ–OW–2015–0541; FRL 9944–15–OP]

Spring 2016 Regulatory Agenda

AGENCY: Environmental Protection Agency.

ACTION: Semiannual regulatory flexibility agenda and semiannual regulatory agenda.

SUMMARY: The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda online (the e-Agenda) at *http://www.reginfo.gov* and at *www.regulations.gov* to update the public. This document contains information about:

- Regulations in the semiannual regulatory agenda that are under development, completed, or canceled since the last agenda;
- Retrospective reviews of existing regulations; and
- Reviews of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act.

DATES: Comments must be received on or before July 11, 2016.

ADDRESSES: Submit your comments, identified by the appropriate Docket ID No. EPA–HQ–OA–2016–0203; EPA–HQ–OAR–2016–0175; EPA–HQ–OPPT–2016–0126, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the semiannual regulatory agenda or retrospective review activity, please contact: Caryn Muellerleile (*muellerleile.caryn@epa.gov*; 202–564–2855).

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V. Thank You for Collaborating With Us

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA is committed to a regulatory strategy that effectively achieves the Agency's mission of protecting the environment and the health, welfare, and safety of Americans while also supporting economic growth, job

comments on regulations that might be appropriate for retrospective review.

EPA's Semiannual Regulatory Agenda also includes information about rules that may have a significant economic impact on a substantial number of small entities, and review of those regulations under the Regulatory Flexibility Act, as amended.

Within this document, EPA explains in greater detail the types of actions and information available in the Semiannual Regulatory Agenda, the opportunity to suggest regulations that may be appropriate for retrospective review, and actions that are currently undergoing review specifically for impacts on small entities.

A. EPA's Regulatory Information

"E-Agenda," "online regulatory agenda," and "semiannual regulatory agenda" all refer to the same comprehensive collection of information that, until 2007, was published in the **Federal Register** but now is only available through an online database, at both *www.reginfo.gov/* and *www.regulations.gov.*

"Regulatory Flexibility Agenda" refers to a document that contains information about regulations that may have a significant impact on a substantial number of small entities. We continue to publish it in the **Federal Register** pursuant to the Regulatory Flexibility Act of 1980. This document is available at *http://www.gpo.gov/fdsys/search/home.action.*

"Unified Regulatory Agenda" refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center facilitated by the General Service Administration.

"Regulatory Agenda Preamble" refers

laws-regulations/retrospective-review-history.

"610 Review" is an action EPA is committed to reviewing within ten years of promulgating a final rule that has or may have a significant economic impact on a substantial number of small entities. EPA maintains a list of these actions at *https://www.epa.gov/reg-flex/section-610-reviews.*

B. What key statutes and Executive Orders guide EPA's rule and policymaking process?

A number of environmental laws authorize EPA's actions, including but not limited to:

- Clean Air Act (CAA),
- Clean Water Act (CWA),
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund),
- Emergency Planning and Community Right-to-Know Act (EPCRA),
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
- Resource Conservation and Recovery Act (RCRA),
- Safe Drinking Water Act (SDWA), and
- Toxic Substances Control Act (TSCA).

Not only must EPA comply with environmental laws, but also administrative legal requirements that apply to the issuance of regulations, such as: The Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), the National Technology Transfer and Advancement Act (NTTAA), and the Congressional Review Act (CRA).

existing regulations under Executive Order 13563, "Improving Regulation and Regulatory Review" and Executive Order 13610, "Identifying and Reducing Regulatory Burdens." These Executive Orders provide for periodic retrospective review of existing regulations and are intended to determine whether any such regulations should be modified, streamlined, expanded, or repealed, so as to make the Agency's regulatory program more effective or less burdensome in achieving its regulatory objectives.

C. How can you be involved in EPA's rule and policymaking process?

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. EPA encourages you to participate as early in the process as possible. You may also participate by commenting on proposed rules published in the **Federal Register** (FR).

Instructions on how to submit your comments are provided in each Notice of Proposed Rulemaking (NPRM). To be most effective, comments should contain information and data that support your position and you also should explain why EPA should incorporate your suggestion in the rule or other type of action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

EPA believes its actions will be more cost effective and protective if the development process includes stakeholders working with us to help identify the most practical and effective solutions to problems. EPA encourages you to become involved in its rule and policymaking process. For more information about public involvement

to States; area designations for air quality planning purposes;

- Under FIFRA: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins;
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations;
- Under RCRA: Authorization of State solid waste management plans; hazardous waste delisting petitions;
- Under the CWA: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States;
- Under SDWA: Actions on State underground injection control programs.

Meanwhile, the Regulatory Flexibility Agenda includes:

- Actions likely to have a significant economic impact on a substantial number of small entities.
- Rules the Agency has identified for periodic review under section 610 of the RFA.

EPA is initiating two 610 reviews at this time and completing one 610 review.

B. How is the E-Agenda organized?

You can choose how to organize the agenda entries online by specifying the characteristics of the entries of interest in the desired individual data fields for both the *www.reginfo.gov* and *www.regulations.gov* versions of the e-Agenda. You can sort based on the following characteristics: EPA subagency; stage of rulemaking, which

3. *Final Rule Stage*—This section includes rules that will be issued as a final rule within a year.

4. *Long-Term Actions*—This section includes rulemakings for which the next scheduled regulatory action is after April 2017. We urge you to explore becoming involved even if an action is listed in the Long-Term category.

5. *Completed Actions*—This section contains actions that have been promulgated and published in the **Federal Register** since publication of the fall 2015 Agenda. It also includes actions that EPA is no longer considering and has elected to "withdraw." EPA also announces the results of any RFA section 610 review in this section of the agenda.

C. What information is in the Regulatory Flexibility Agenda and the E-Agenda?

The Regulatory Flexibility Agenda entries include only the nine categories of information that are required by the Regulatory Flexibility Act of 1980 and by **Federal Register** Agenda printing requirements: Sequence Number, RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule, and Contact Person. Note that the electronic version of the Agenda (e-Agenda) has more extensive information on each of these actions.

E-Agenda entries include:

Title: A brief description of the subject of the regulation. The notation "Section 610 Review" follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the RFA (5 U.S.C. 610).

Priority: Entries are placed into one of five categories described below.

a. Economically Significant: Under Executive Order 12866, a rulemaking that may have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

b. Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:

1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or

3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

c. Substantive, Nonsignificant: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

d. Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (*e.g.*, certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance Exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under Executive Order 12866, then we would classify the action as either "Economically Significant" or "Other Significant."

e. Informational/Administrative/Other: An action that is primarily informational or pertains to an action outside the scope of Executive Order 12866.

Major: A rule is "major" under 5 U.S.C. 801 if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act.

Unfunded Mandates: Whether the rule is covered by section 202 of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). The Act generally requires that federal agencies prepare a written statement, including a cost-benefit analysis, for each proposed and final rule with "federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year.

Legal Authority: The sections of the United States Code (U.S.C.), Public Law (Pub. L.), Executive Order (EO), or common name of the law that authorizes the regulatory action.

CFR Citation: The sections of the Code of Federal Regulations that would be affected by the action.

Legal Deadline: An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

Abstract: A brief description of the problem the action will address.

Timetable: The dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 10/00/16 means the agency is predicting the month and year the action will take place but not the day it will occur. For some entries, the timetable indicates that the date of the next action is "to be determined."

Regulatory Flexibility Analysis Required: Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the RFA. Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

Small Entities Affected: Indicates whether the rule is anticipated to have any effect on small businesses, small governments, or small nonprofit organizations.

Government Levels Affected: Indicates whether the rule may have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism Implications: Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Energy Impacts: Indicates whether the action is a significant energy action under Executive Order 13211.

Sectors Affected: Indicates the main economic sectors regulated by the action. The regulated parties are identified by their North American Industry Classification System (NAICS) codes. These codes were created by the Census Bureau for collecting, analyzing, and publishing statistical data on the U.S. economy. There are more than 1,000 NAICS codes for sectors in agriculture, mining, manufacturing, services, and public administration.

International Trade Impacts: Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

Agency Contact: The name, address, phone number, and email address, if available, of a person who is knowledgeable about the regulation.

Additional Information: Other information about the action including docket information.

URLs: For some actions, the Internet addresses are included for reading copies of rulemaking documents, submitting comments on proposals, and getting more information about the rulemaking and the program of which it is a part. (Note: To submit comments on proposals, you can go to the associated electronic docket, which is housed at *www.regulations.gov*. Once there, follow the online instructions to access the docket in question and submit comments. A docket identification [ID] number will assist in the search for materials.)

RIN: The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN identify the EPA office with lead responsibility for developing the action.

D. How can you find out about rulemakings that start up after the Regulatory Agenda is signed?

EPA posts monthly information of new rulemakings that the Agency's senior managers have decided to develop. This list is also distributed via email. You can find the current list, known as the Action Initiation List (AIL), at *http://www.epa.gov/laws-regulations/actions-initiated-month* where you will also find information about how to get an email notification when a new list is posted.

E. What tools are available for mining Regulatory Agenda data and for finding more about EPA rules, policies, and retrospective review?

1. The *http://www.reginfo.gov/* Searchable Database

The Regulatory Information Service Center and Office of Information and Regulatory Affairs have a Federal regulatory dashboard that allows users to view the Regulatory Agenda database (*http://www.reginfo.gov/public/do/eAgendaMain*), which includes search, display, and data transmission options.

2. Subject Matter EPA Web Sites

Some actions listed in the Agenda include a URL that provides additional information about the action.

3. Public Dockets

When EPA publishes either an Advance Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, the Agency typically establishes a docket to accumulate materials throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to a particular Agency action or activity. EPA most commonly uses dockets for rulemaking actions, but dockets may also be used for RFA section 610 reviews of rules with significant economic impacts on a substantial number of small entities and for various non-rulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the PRA, and other non-rule activities. Docket information should be in that action's agenda entry. All of EPA's public dockets can be located at *www.regulations.gov*.

4. EPA's Regulatory Development and Retrospective Review Tracker

EPA's Regulatory Development and Retrospective Review Tracker (*www.epa.gov/regdarrt/*) serves as a portal to EPA's priority rules, providing you with earlier and more frequently updated information about Agency regulations than is provided by the Regulatory Agenda. Not all of EPA's Regulatory Agenda entries appear on Reg DaRRT; only priority rulemakings can be found on this Web site.

This Web site also provides information about EPA's retrospective reviews of existing regulations and semiannual progress reports on those reviews.

III. Retrospective Review of Regulations

Recognizing the importance of reducing unnecessary red tape, Executive Order 13563 requires agencies to develop a plan to periodically review its regulations to determine whether any should be modified, streamlined, expanded, or repealed to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. Executive Order 13610 requires agencies to give priority to those initiatives that will produce significant monetary savings or reductions in paperwork burdens while protecting public health, welfare, safety, and our environment, and puts particular emphasis on initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements on small businesses.

In August 2011, EPA issued its *Final Plan for Periodic Retrospective Reviews of Existing Regulations* (*http://www.epa.gov/regdarrt/*). This Plan was developed after extensive public outreach that sought input on an agency plan for retrospective review, as well as on possible reforms to modify, streamline, expand or repeal existing regulations. As part of our 2011 Final Plan, the EPA committed to soliciting comments on what the public recommends for review as well as to evaluating the first review period.

Consistent with the Executive Orders and with our 2011 Plan, EPA is again soliciting comments on regulations that might be appropriate for retrospective review. We are requesting comment on rules that were finalized more than 5 years ago and that have not already been identified for review under the 2011 Final Plan or subsequent updates to that Plan. In addition, we are specifically soliciting comments on the following questions:

- Which regulations could be updated to be less burdensome for small businesses and/or state and local governments while maintaining environmental protection?
- Which regulations, including economically significant rules, could be transitioned from paper to electronic reporting?
- How can the EPA reduce duplicative reporting requirements in existing regulations that may overlap with other federal requirements?
- How can the EPA streamline or consolidate reporting requirements to reduce burden, including reducing the frequency of reporting, while maintaining effective programs?
- Which regulations could be improved through the use of advance monitoring techniques to facilitate environmental protection?
- Are there changes that could be made to a regulation to better protect vulnerable populations?
- Which regulations (or a portion of a regulation) have achieved their original objective and become obsolete?

We request that commenters be as specific as possible, include any supporting data or other information, and provide a citation when referencing a specific regulation. In addition, in drafting comments, bear in mind that the EPA must uphold both its legal obligations under governing statutes and its mission to protect human health and the environment; and that the EPA's retrospective review will be tailored to reflect its resources, rulemaking schedule, and workload.

The EPA is accepting comments until July 11, 2016. Please send retrospective review comments to docket EPA–HQ–OA–2016–0203. Although the agency will not respond to individual comments, the EPA values and will give careful consideration to all input that it receives. Please see *https://www.epa.gov/regdarrt/retrospective/history.html* for additional information and updates.

IV. Review of Regulations Under 610 of the Regulatory Flexibility Act

A. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities

Section 610 of the RFA requires that an agency review, within 10 years of

promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. At this time, EPA is initiating two 610 reviews and concluding a third 610 review.

Review title	RIN	Docket ID #	Status
610 Review of Control of Hazardous Air Pollutants From Mobile Sources	2060–AS88	EPA–HQ–OAR–2016–0175	New.
Section 610 Review of Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling Section 402(c)(3).	2070–AK17	EPA–HQ–OPPT–2016–0126	New.
Section 610 Review of National Primary Drinking Water Regulations: Ground Water Rule.	2040–AF58	EPA–HQ–OW–2015–0541	Completed.

EPA established official public dockets for the new 610 Reviews. If you would like to provide feedback, submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0175 or EPA–HQ–OPPT–2016–0126, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*. EPA is no longer accepting comment on the Section 610 Review of National Primary Drinking Water Regulations: Ground Water Rule.

B. What other special attention does EPA give to the impacts of rules on small businesses, small governments, and small nonprofit organizations?

For each of EPA's rulemakings, consideration is given to whether there will be any adverse impact on any small entity. EPA attempts to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under RFA as amended by SBREFA, the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed information about the Agency's policy and practice with respect to implementing RFA/SBREFA, please visit EPA's RFA/SBREFA Web site at *www.epa.gov/reg-flex*.

V. Thank You for Collaborating With Us

Finally, we would like to thank those of you who choose to join with us in making progress on the complex issues involved in protecting human health and the environment. Collaborative efforts such as EPA's open rulemaking process are a valuable tool for addressing the problems we face, and the regulatory agenda is an important part of that process.

Dated: March 18, 2016.

Shannon Kenny,

Principal Deputy Associate Administrator, Office of Policy.

10—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
229	Section 610 Review of Control of Hazardous Air Pollutants From Mobile Sources **(Section 610 Review)**	2060–AS88

10—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
230	Modernization of the Accidental Release Prevention Regulations Under Clean Air Act	2050–AG82
231	General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Six Source Categories.	2060–AR98
232	Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2.	2060–AS16
233	Oil and Natural Gas Sector: Emission Standards for New and Modified Sources	2060–AS30

35—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
234	Section 610 Review of Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling Section 402(c)(3) **(Section 610 Review)**.	2070–AK17

35—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
235	Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a); Vapor Degreasing	2070–AK11

35—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
236	Formaldehyde Emission Standards for Composite Wood Products	2070–AJ44

60—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
237	Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry.	2050–AG61

72—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
238	Section 610 Review of National Primary Drinking Water Regulations: Ground Water Rule **(Completion of a Section 610 Review)**.	2040–AF58

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10

Prerule Stage

229. • Section 610 Review of Control of Hazardous Air Pollutants From Mobile Sources (Section 610 Review)

Legal Authority: 5 U.S.C. 610

Abstract: The rulemaking "Control of Hazardous Air Pollutants From Mobile Sources" was finalized by the EPA in February 2007 (72 FR 8428, February 26, 2007). This program established stringent new controls on gasoline, passenger vehicles, and gas cans to further reduce emissions of benzene and other mobile source air toxics. The EPA developed a Small Entity Compliance Guide, which provides descriptions of the regulations and small entity provisions, Q&As, and other helpful compliance information. This new entry in the Regulatory Agenda announces that the EPA will review this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine if the provisions that could affect small entities should be continued without change, or should be rescinded or amended to minimize adverse economic impacts on small entities. As part of this review, the EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions, or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID EPA–HQ–OAR–2016–0175 and follow the instructions provided in the preamble to this issue of the Regulatory Agenda. This docket can be accessed at *www.regulations.gov*.

Timetable:

Action	Date	FR Cite
Final Rule	02/26/07	72 FR 8427
Begin Review	05/00/16	
End Review	11/00/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Tom Eagles, Environmental Protection Agency, Air and Radiation, 6103A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–1952, *Fax:* 202 564–1554, *Email: eagles.tom@epamail.epa.gov*.

RIN: 2060–AS88

ENVIRONMENTAL PROTECTION AGENCY (EPA)

10

Final Rule Stage

230. Modernization of the Accidental Release Prevention Regulations Under Clean Air Act

Legal Authority: 42 U.S.C. 7412(r)

Abstract: The EPA, in response to Executive Order 13650, is considering amending its Risk Management Program

regulations. Such revisions may include several changes to the accident prevention program requirements including an additional analysis of safer technology and alternatives for the process hazard analysis for some Program 3 processes, third-party audits and incident investigation root cause analysis for Program 2 and Program 3 processes, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions and data elements submitted in risk management plans. Such amendments are intended to improve chemical process safety, assist local emergency authorities in planning for and responding to accidents, and improve public awareness of chemical hazards at regulated sources.

Timetable:

Action	Date	FR Cite
NPRM	03/14/16	81 FR 13637
Final Rule	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jim Belke, Environmental Protection Agency, Office of Land and Emergency Management, 5104A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–8023, *Fax:* 202 564–8444, *Email: belke.jim@epa.gov.*

Kathy Franklin, Environmental Protection Agency, Office of Land and Emergency Management, 5104A, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–7987, *Fax:* 202 564–2625, *Email: franklin.kathy@epa.gov.*

RIN: 2050–AG82

231. General Permits and Permits By Rule for the Federal Minor New Source Review Program in Indian Country for Six Source Categories

Legal Authority: 42 U.S.C. 7401 *et seq.* Clean Air Act

Abstract: The Tribal Minor New Source Review (NSR) program applies to new and modified minor sources and minor modifications at major sources of air pollution in Indian country. The program, established in 2011, is implemented through issuance of preconstruction permits that can include, among other requirements, pollutant emission limits for minor sources and emission limitations on the potential of sources to emit pollution that would otherwise be considered major sources. This minor source program for Indian country is similar to state minor NSR programs. State minor NSR programs often use general permits and a few state programs allow permits by rule as streamlined permitting approaches for similar emission units or stationary sources. This action finalizes general permits for certain source categories of true minor sources wishing to locate or expand in Indian country. This action finalizes general permits for the following six source categories: Concrete batch plants; boilers and emergency engines, stationary spark ignition engines, stationary compression ignition engines, graphic arts and printing operations, and sawmill facilities.

Timetable:

Action	Date	FR Cite
NPRM	07/17/14	79 FR 41845
NPRM Comment Period Extended.	08/19/14	79 FR 49031
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chris Stoneman, Environmental Protection Agency, Air and Radiation, C304–01, Research Triangle Park, NC 27711, *Phone:* 919 541–0823, *Fax:* 919 541–0072, *Email: stoneman.chris@epa.gov.*

Mark Sendzik, Environmental Protection Agency, Air and Radiation, C304–03, Research Triangle Park, NC 27711, *Phone:* 919 541–5534, *Fax:* 919 541–0942, *Email: sendzik.mark@epa.gov.*

RIN: 2060–AR98

232. Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2

Legal Authority: 42 U.S.C. 7401 *et seq.* Clean Air Act

Abstract: The EPA and the Department of Transportation, in close coordination with the California Air Resources Board, are developing a comprehensive National Program for Medium- and Heavy-Duty Vehicle Greenhouse Gas Emission and Fuel Efficiency Standards for model years beyond 2018. These standards would further reduce greenhouse gas emissions and fuel consumption from a wide range of on-road vehicles from semi-trucks to the largest pickup trucks and vans, and all types and sizes of work trucks and buses. This action is in continued response to the President's directive to take coordinated steps to produce a new generation of clean vehicles and follows the first ever Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles (76 FR 57106, September 15, 2011).

Timetable:

Action	Date	FR Cite
NPRM	07/13/15	80 FR 40137
NPRM Comment Period End.	09/11/15	
NPRM Comment Period Extended.	07/28/15	80 FR 44863
NPRM Comment Period End Extended End.	09/17/15	
Notice	03/02/16	81 FR 10822
Final Rule	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Matt Spears, Environmental Protection Agency, Air and Radiation, Mail Code: ASD1, Ann Arbor, MI 48105, *Phone:* 734 214–4921, *Fax:* 734 214–4816, *Email: spears.mattew@epa.gov.*

Charles Moulis, Environmental Protection Agency, Air and Radiation, NFEVL, Ann Arbor, MI 48105, *Phone:* 734 214–4826.

RIN: 2060–AS16

233. Oil and Natural Gas Sector: Emission Standards for New and Modified Sources

Legal Authority: 42 U.S.C. 7401 *et seq.* Clean Air Act

Abstract: Consistent with the White House Methane Strategy and the January 14, 2015, announcement of the EPA's approach to achieving methane and volatile organic compounds (VOC) reductions from the oil and natural gas sector, this action will finalize amendments to the 2012 new source performance standards (NSPS) for this sector. The proposed rule published 9/18/15, included methane and VOC standards for sources not covered by the 2012 Oil and Gas NSPS, such as completions of hydraulically fractured oil wells, pneumatic pumps and fugitive emissions at well sites and compressor stations. The proposal also included methane standards for sources covered in the 2012 NSPS. In addition, in response to the reconsideration petitions received for the 2012 NSPS and the subsequent amendments to the NSPS, this rule addresses the issues for which the EPA is granting reconsideration.

Timetable:

Action	Date	FR Cite
NPRM	09/18/15	80 FR 56593
NPRM Comment Period Extended.	11/13/15	80 FR 70179
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amy Hambrick, Environmental Protection Agency, Air and Radiation, E143–05, Research Triangle Park, NC 27711, *Phone:* 919 541–0964, *Fax:* 919 541–3470, *Email: hambrick.amy@epa.gov.*

David Cozzie, Environmental Protection Agency, Air and Radiation, E–143–05, Research Triangle Park, NC 27711, *Phone:* 919 541–5356, *Email: cozzie.david@epa.gov.*

RIN: 2060–AS30

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35

Prerule Stage

234. • Section 610 Review of Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling Section 402(C)(3) (Section 610 Review)

Legal Authority: 5 U.S.C. 610

Abstract: EPA is initiating a review of the 2008 Lead; Renovation, Repair, and Painting Program (RRP) (73 FR 21692) pursuant to section 610 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 610). The rule was amended in 2010 (75 FR 24802) and 2011 (76 FR 47918) to eliminate a provision for contractors to opt-out of prescribed work practices and to affirm the qualitative clearance of renovated or repaired spaces, respectively. Although the section 610 review only needs to address the 2008 RRP Rule, EPA will exercise its discretion to consider relevant comments to the 2010 and 2011 amendments. The RRP rule is intended to reduce exposure to lead hazard created by renovation, repair, and painting activities that disturb lead-based paint. The current rule establishes requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and for renovation work practices. This new entry in the regulatory agenda announces that EPA will review this action pursuant to RFA section 610. As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. This review will also serve as an additional opportunity to provide comment on lead test kits, field testing alternatives and other broader RRP rule concerns as referenced in 80 FR 79335 and 80 FR 27621. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID EPA–HQ–OPPT–2016–0126 and follow the instructions provided in the preamble to this issue of the Regulatory Agenda. This docket can be accessed at *www.regulations.gov.*

Timetable:

Action	Date	FR Cite
Final Rule	04/22/08	73 FR 21691
Begin Review	05/00/16	
End Review	12/00/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Jonathan Shafer, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–0789, *Email: shafer.jonathan@epa.gov.*

Michelle Price, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 566–0744, *Email: price.michelle@epa.gov.*

RIN: 2070–AK17

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35

Proposed Rule Stage

235. • Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(A); Vapor Degreasing

Legal Authority: 15 U.S.C. 2605 Toxic Substances Control Act

Abstract: Section 6(a) of the Toxic Substances Control Act (TSCA) provides authority for the EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemicals, as well as any manner or method of disposal. The EPA identified trichloroethylene (TCE) for risk evaluation as part of its Work Plan for Chemical Assessment under TSCA. TCE is used in industrial and commercial processes, and also has some limited uses in consumer products. In the June 2014 TSCA Work Plan Chemical Risk Assessment for TCE, the EPA identified risks associated with commercial vapor degreasing. EPA is initiating rulemaking under TSCA section 6 to address these risks, if the EPA finds that there is a reasonable basis to conclude that the risks to human health or the environment are unreasonable. A separate Regulatory Agenda entry (RIN 2070–AK03) covers the EPA's consideration of a rulemaking to address the risks associated with TCE when used as a spotting agent in dry cleaning and in commercial and consumer aerosol spray degreasers.

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Toni Krasnic, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7405M, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–0984, *Email: krasnic.toni@epa.gov.*

Joel Wolf, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–2228, *Fax:* 202 566–0471, *Email: wolf.joel@epa.gov.*

RIN: 2070–AK11

ENVIRONMENTAL PROTECTION AGENCY (EPA)

35

Final Rule Stage

236. Formaldehyde Emission Standards for Composite Wood Products

Legal Authority: 15 U.S.C. 2697 Toxic Substances Control Act

Abstract: The EPA is developing a final rule under the Formaldehyde Standards for Composite Wood Products Act that was enacted in 2010 as title VI of Toxic Substances Control Act (TSCA), 15 U.S.C. 2697. In 2013, EPA issued a proposed rule to establish a framework for a TSCA title VI Third-Party Certification Program whereby third-party certifiers (TPCs) are accredited by accreditation bodies (ABs) so that they may certify composite wood product panel producers under TSCA title VI. That proposed rule identified the roles and responsibilities of the groups involved in the TPC process (EPA, ABs, and TPCs), as well as the criteria for participation in the program. EPA also proposed general requirements for TPCs, such as conducting and verifying formaldehyde emission tests,

inspecting and auditing panel producers, and ensuring that panel producers' quality assurance and quality control procedures comply with the regulations set forth in the proposed rule. A separate proposed rule issued in 2013 under RIN 2070–AJ92 covered the implementation of the statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured (including imported) in the United States. Pursuant to TSCA section 3(7), the definition of "manufacture" includes import. As required by title VI, these regulations apply to hardwood plywood, medium-density fiberboard, and particleboard. TSCA title VI also directs EPA to promulgate supplementary provisions to ensure compliance with the emissions standards, including provisions related to labeling; chain of custody requirements; sell-through provisions; ultra low-emitting formaldehyde resins; no-added formaldehyde-based resins; finished goods; third-party testing and certification; auditing and reporting of third-party certifiers; recordkeeping; enforcement; laminated products; and exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products. As noted in the previously published Regulatory Agenda entry for each rulemaking, EPA has decided to issue a single final rule that addresses both of these proposals. As such, EPA also combined the entries for the Regulatory Agenda.

Timetable:

Action	Date	FR Cite
ANPRM	12/03/08	73 FR 73620
Second ANPRM	01/30/09	74 FR 5632
NPRM	06/10/13	78 FR 34795
NPRM Comment Period Extended.	07/23/13	78 FR 44090
NPRM Comment Period Extended.	08/21/13	78 FR 51696
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sara Kemme, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 566–0511, *Fax:* 202 566–0473, *Email: kemme.sara@epa.gov.*

Robert Courtnage, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 7404T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 566–1081, *Email: courtnage.robert@epa.gov.*

RIN: 2070–AJ44

ENVIRONMENTAL PROTECTION AGENCY (EPA)

60

Proposed Rule Stage

237. Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry

Legal Authority: 42 U.S.C. 9601 *et seq.;* 42 U.S.C. 9608(b)

Abstract: Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain authorities concerning financial responsibility requirements. The Agency has identified classes of facilities within the Hard Rock mining industry as those for which financial responsibility requirements will be first developed. The EPA intends to include requirements for financial responsibility, as well as notification and implementation.

Timetable:

Action	Date	FR Cite
Notice	07/28/09	74 FR 37213
NPRM	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barbara Foster, Environmental Protection Agency, Office of Land and Emergency Management, 5304P, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 703 308–7057, *Email: foster.barbara@epa.gov.*

Scott Palmer, Environmental Protection Agency, Office of Land and Emergency Management, 5305P, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 703 308–8621, *Email: palmer.scott@epa.gov.*

RIN: 2050–AG61

ENVIRONMENTAL PROTECTION AGENCY (EPA)

72

Completed Actions

238. Section 610 Review of National Primary Drinking Water Regulations: Ground Water Rule (Completion of a Section 610 Review)

Legal Authority: 5 U.S.C. 610

Abstract: EPA published the Ground Water Rule (GWR) in the **Federal Register** on November 08, 2006. The purpose of the rule is to provide for increased protection against microbial pathogens in public water systems that use ground water sources. EPA is particularly concerned about ground water systems that are susceptible to fecal contamination since disease-causing pathogens may be found in fecal contamination. The GWR applies to public water systems that serve ground water. The rule also applies to any system that mixes surface and ground water if the ground water is added directly to the distribution system and provided to consumers without treatment. EPA reviewed this action in the fall of 2015 through the spring of 2016, pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA solicited comments for consideration on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. EPA has completed its review and concluded that the rule needs no revisions at this time to minimize impacts on small entities. The results of the review are summarized in a report and placed in the Water Docket under Docket ID No. EPA–HQ–OW–2015–0541. You can access the docket at the Federal eRulemaking Portal: *http://www.regulations.gov.*

Timetable:

Action	Date	FR Cite
Final Rule	11/08/06	71 FR 65573
Begin Review	11/09/15	
End Review	04/13/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Philip Berger, Environmental Protection Agency, Water, 4607M, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–5255, *Email: berger.philip@epa.gov.*

Crystal Rodgers-Jenkins, Environmental Protection Agency, Water, 4607M, 1200 Pennsylvania Avenue NW., Washington, DC 20460, *Phone:* 202 564–5275, *Fax:* 202 564–3767, *Email: rodgers-jenkins.crystal@epa.gov.*

RIN: 2040–AF58

[FR Doc. 2016–12921 Filed 6–8–16; 8:45 am]

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FEDERAL REGISTER

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Part XVIII

General Services Administration

Semiannual Regulatory Agenda

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 102, 300, and 301

48 CFR Chapter 5

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual Regulatory Agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the fall 2015 edition. This agenda was developed under the guidelines of Executive Order 12866 "Regulatory Planning and Review." GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. Proposed rules may be reviewed in their entirety at the Government's rulemaking Web site at *http://www.regulations.gov*.

Since the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at *www.reginfo.gov*, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA's regulatory plan.

FOR FURTHER INFORMATION CONTACT: Hada Flowers, Division Director, Regulatory Secretariat Division at (202) 501–4755.

Dated: March 28, 2016.

Troy Cribb,

Associate Administrator, Office of Government-wide Policy.

GENERAL SERVICES ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
239	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2010–G511, Purchasing by Non-Federal Entities.	3090–AJ43
240	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013–G504, Transactional Data Reporting.	3090–AJ51

GENERAL SERVICES ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
241	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G512, Unenforceable Commercial Supplier Agreement Terms.	3090–AJ67

GENERAL SERVICES ADMINISTRATION—COMPLETED ACTIONS

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dana L. Munson, Procurement Analyst, General Services Administration, 1800 F Street NW., Washington, DC 20405, *Phone:* 202 357–9652, *Email: dana.munson@gsa.gov.*

RIN: 3090–AJ43

240. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2013–G504, Transactional Data Reporting

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to require vendors to report transactional data from orders and prices paid by ordering activities. This includes orders placed against both Federal Supply Schedule (FSS) contract vehicles and GSA's non-FSS contract vehicles, Governmentwide Acquisition Contracts (GWACs) and Multi-Agency Contracts (MACs).

Once implemented, the new GSAR transactional data reporting clauses will enable GSA to provide Federal agencies with further market intelligence and expert guidance in procuring goods and services in each category of GSA acquisition vehicles. The new requirement will not affect the Department of Veterans Affairs (VA) FSS contract holders.

The proposed amendment to the GSAR will add an alternate version of the existing GSAR clause 552.238–74 Industrial Funding Fee and Sales Reporting (IFF) (Federal Supply Schedule) and a new GSAR clause 552.216–75 Sales Reporting and Fee Remittance. Under the FSS program, vendors that agree to the new transactional reporting requirement will stakeholders throughout the phases of the implementation.

GSA is reviewing the public comments received and analyzing alternatives for collecting transactional data, including the potential publication of a final rule. This case is included in GSA's retrospective review of existing regulations under Executive Order 13563. Additional information is located in GSA's retrospective review (2016), available at: *www.gsa.gov/improvingregulations.*

Timetable:

Action	Date	FR Cite
NPRM	03/04/15	80 FR 11619
NPRM Comment Period End.	05/04/15	
NPRM Comment Period Extended.	05/06/15	80 FR 25994
NPRM Comment Period Extended End.	05/11/15	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mr. Matthew McFarland, Program Analyst, General Services Administration, 1800 F Street NW., Washington, DC 20405, *Phone:* 202 690–9232, *Email: matthew.mcfarland@gsa.gov.*

RIN: 3090–AJ51

GENERAL SERVICES ADMINISTRATION (GSA)

Office of Acquisition Policy

Long-Term Actions

241. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2015–G512, Unenforceable

Timetable:

Action	Date	FR Cite
NPRM	06/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Janet Fry, Program Analyst, General Services Administration, 1800 F Street NW., Washington, DC 20405, *Phone:* 703 605–3167, *Email: janet.fry@gsa.gov.*

RIN: 3090–AJ67

GENERAL SERVICES ADMINISTRATION (GSA)

Completed Actions

242. General Services Administration Regulation (GSAR); GSAR Case 2015–G508, Removal of Unnecessary Construction Clauses and Editorial Changes

Legal Authority: 40 U.S.C. 121(c)

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise GSAR part 536, Construction and Architect-Engineer Contracts, and corresponding provisions and clauses in GSAR part 552, Solicitation Provisions and Contract Clauses, to remove unnecessary construction clauses. These provisions and clauses are now covered in the FAR or are otherwise no longer necessary for the agency. Removing these clauses simplifies contract terms and conditions, reduces regulatory burden to contractors, and eliminates

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Part XIX

National Aeronautics and Space Administration

Semiannual Regulatory Agenda

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Ch. V

Regulatory Agenda

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: NASA's regulatory agenda describes those regulations being considered for development or amendment by NASA, the need and legal basis for the actions being considered, the name and telephone number of the knowledgeable official, whether a regulatory analysis is required, and the status of regulations previously reported.

ADDRESSES: Deputy Associate Administrator, Office Mission Support Directorate, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Parker, (202) 358–0252.

SUPPLEMENTARY INFORMATION: OMB guidelines dated February 19, 2016, "Spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions," require a regulatory agenda of those regulations under development and review to be published in the **Federal Register** each spring and fall.

Dated: March 18, 2016.

Daniel Tenney,

Deputy Associate Administrator, Office of the Mission Support Directorate.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
243	Processing of Monetary Claims **(Section 610 Review)**	2700–AD83

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Final Rule Stage

243. Processing of Monetary Claims (Section 610 Review)

Legal Authority: 31 U.S.C. sec 3711

Abstract: NASA is amending its regulations at 14 CFR 1261 to make non-substantive changes in the amount to collect installment payments from $20,000 to $100,000 to align with title 31 subchapter II Claims of the United States Government section 3711 (a)(2) Collection and Compromise. Subpart 4 prescribes standards for the administrative collection compromise suspension or termination of collection and referral to the Government Accountability Office (GAO) and/or to the Department of Justice for litigation of civil claims as defined by 31 U.S.C. 3701(b) arising out of the activities of designated NASA officials authorized to effect actions and requires compliance with GAO/DOJ joint regulations at 4 CFR parts 101–105 and the Office of Personnel Management regulations at 5 CFR part 550 subpart K. There are also some statute citation and terminology updates. The revisions to this rule are part of NASA's retrospective plan under Executive Order 13563 completed in August 2011.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Laura Burns, Law Librarian, National Aeronautics and Space Administration, Office of the General Counsel, 300 E Street SW., Washington, DC 20546, *Phone:* 202 358–2078, *Fax:* 202 358–4955 *Email: laura.burns-1@nasa.gov.*

RIN: 2700–AD83

[FR Doc. 2016–12925 Filed 6–8–16; 8:45 am]

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Part XX

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This Regulatory Agenda is a semiannual summary of all current and projected rulemakings and completed actions of the Small Business Administration (SBA). SBA expects that this summary information will enable the public to be more aware of, and effectively participate in, SBA's regulatory activity. SBA invites the public to submit comments on any aspect of this Agenda.

FOR FURTHER INFORMATION CONTACT:

General

Please direct general comments or inquiries to Imelda A. Kish, Law Librarian, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 205–6849, *imelda.kish@sba.gov.*

Specific

Please direct specific comments and inquiries on individual regulatory activities identified in this Agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

SUPPLEMENTARY INFORMATION: SBA provides this notice under the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 to 612 and Executive Order 12866, "Regulatory Planning and Review," which require each agency to publish a semiannual agenda of regulations. The Regulatory Agenda is a summary of all current and projected Agency rulemakings, as well as actions completed since the publication of the last Regulatory Agenda. SBA's last Semiannual Regulatory Agenda was published on December 15, 2015, at 80 FR 78039. The Semiannual Agenda of the SBA conforms to the Unified Agenda format developed by the Regulatory Information Service Center. The complete Unified Agenda will be available online at *www.reginfo.gov* in a format that greatly enhances a user's ability to obtain information about the rules in SBA's Agenda.

The Regulatory Flexibility Act requires federal agencies to publish those regulatory actions that are likely to have a significant economic impact on a substantial number of small entities in their regulatory flexibility agendas in the **Federal Register**. SBA's Regulatory Agenda includes regulatory actions that are in the SBA's regulatory flexibility agenda. Publication of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

Maria Contreras-Sweet,
Administrator.

SMALL BUSINESS ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
244	Small Business Development Center Program Revisions	3245–AE05
245	Miscellaneous Amendments to Surety Bond, 7(a), and 504 Regulations	3245–AF85
246	Immediate, Expedited, and Private Disaster Assistance Loan Programs	3245–AF99
247	Office of Women Owned Business: Women's Business Center Program	3245–AG02
248	Small Business HUBZone Program; Government Contracting Programs; Office of Hearings and Appeals	3245–AG38
249	Record Disclosure and Privacy	3245–AG52
250	Small Business Timber Set-Aside Program	3245–AG69
251	Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification.	3245–AG75

SMALL BUSINESS ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.

SMALL BUSINESS ADMINISTRATION—COMPLETED ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
262	Small Business Size Standards: Industries With Employee Based Size Standards Not Part of Manufacturing, Wholesale Trade, or Retail Trade.	3245–AG51
263	Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards	3245–AG60
264	Surety Bond Guarantee Program; Miscellaneous Amendments	3245–AG70

SMALL BUSINESS ADMINISTRATION (SBA)

Proposed Rule Stage

244. Small Business Development Center Program Revisions

Legal Authority: 15 U.S.C. 634(b)(6); 15 U.S.C. 648

Abstract: Updates the SBDC program regulations by proposing to amend: (1) Procedures for approving applications for new Host SBDCs; (2) approval procedures for travel outside the continental U.S. and U.S. territories; (3) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (4) requirements for new or renewal applications for SBDC grants, including the requirements for electronic submission through the approved electronic Government submission facility; (5) procedures regarding the determination to affect suspension, termination or non-renewal of an SBDC's cooperative agreement; and (6) provisions regarding the collection and use of the individual SBDC client data.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/15	80 FR 17708
ANPRM Comment Period End.	06/01/15	

authorities in this proposed rule. Several minor modifications to the 504 Loan Program and governance rules for Certified Development Company (CDC) are also proposed in a follow-on to the Final Rule: 504 and 7(a) Loan Program Updates (March 21, 2014), along with alignment of terminology for 7(a) lenders that are federally regulated to synchronize with existing industry requirements. SBA plans to propose several other miscellaneous amendments to improve oversight and operations of its finance programs.

This rule proposes to make four changes to the Surety Bond Guarantee (SBG) Program. The first would change the threshold for notification to SBA of changes in the contract or bond amount. Second, the change would require sureties to submit quarterly contract completion reports. Third, SBA proposes to increase the eligible contract limit for the Quick Bond Application and Agreement from $250,000 to $400,000. Finally, SBA proposes to increase the guarantee percentage in the Preferred Surety Bond program to reflect the statutory change made by the National Defense Authorization Act of 2016. The guarantee percentage will increase from 70% to 80% or 90%, depending on contract size and socioeconomic factors currently in effect in the Prior Approval Program.

lenders and the public on three guaranteed disaster loan programs: (1) The expedited disaster assistance program (EDAP), under which the SBA would guarantee short-term loans of up to $150,000 made by private lenders to eligible small businesses located in a catastrophic disaster area; (2) the private disaster assistance program (PDAP), under which SBA would guarantee loans of up to $2 million made by private lenders to eligible small businesses and homeowners located in a catastrophic disaster area; and (3) the immediate disaster assistance program (IDAP), under which the SBA would guarantee interim loans of up to $25,000 made by private lenders to eligible small businesses, which would then be repaid with the proceeds of SBA direct disaster loans. SBA will seek input on what program features would be required for lenders to participate in these guaranteed disaster loan programs. SBA plans to use this feedback in drafting proposed rules for the EDAP and PDAP programs and in considering changes to the existing IDAP regulations.

Timetable:

Action	Date	FR Cite
ANPRM	10/21/15	80 FR 63715
ANPRM Comment Period End.	12/21/15	
NPRM	09/00/16	

and controlled by women, or on women planning to start a business, especially women who are economically or socially disadvantaged. The training and counseling provided by the WBCs encompass a comprehensive array of topics, such as finance, management and marketing in various languages. This rule would propose to codify the requirements and procedures that govern the delivery, funding and evaluation of the management and technical assistance provided under the WBC Program. The rule would address, among other things, the eligibility criteria for selection as a WBC, use of Federal funds, standards for effectively carrying out program duties and responsibilities, and the requirements for reporting on financial and programmatic performance.

Timetable:

Action	Date	FR Cite
ANPRM	04/22/15	80 FR 22434
ANPRM Comment Period End.	06/22/15	
NPRM	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Bruce D. Purdy, Deputy Assistant Administrator, Office of Women's Business Ownership, Small Business Administration, Washington, DC 20416, *Phone:* 202 205–7532, *Email: bruce.purdy@sba.gov.*

RIN: 3245–AG02

248. Small Business Hubzone Program; Government Contracting Programs; Office of Hearings and Appeals

Legal Authority: 15 U.S.C. 657a

Abstract: SBA has been reviewing its processes and procedures for implementing the HUBZone program and has determined that several of the regulations governing the program should be amended in order to resolve certain issues that have arisen. As a result, the proposed rule would constitute a comprehensive revision of part 126 of SBA's regulations to clarify current HUBZone Program regulations, and implement various new procedures. The amendments will make it easier for participants to comply with the program requirements and enable them to maximize the benefits afforded by participation. In developing this proposed rule, SBA will focus on the principles of Executive Order 13563 to determine whether portions of regulations should be modified, streamlined, expanded or repealed to make the HUBZone program more effective and/or less burdensome on small business concerns. At the same time, SBA will maintain a framework that helps identify and reduce waste, fraud, and abuse in the program.

Timetable:

Action	Date	FR Cite
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mariana Pardo, Director, Office of HUBZone, Small Business Administration, 409 3rd Street SW., Washington, DC 20416, *Phone:* 202 205–2985, *Email: mariana.pardo@sba.gov.*

RIN: 3245–AG38

249. Record Disclosure and Privacy

Legal Authority: 5 U.S.C. 301, 552 and 552(a); 31 U.S.C. 9701; 44 U.S.C. 3501 *et seq.;* E.O. 12600; 52 FR 23781

Abstract: SBA proposes to amend its Record Disclosure and Privacy regulations to implement the Openness Promotes Effectiveness in our National Government Act. The amendments, among other things, will update the Agency's Freedom of Information Act regulations to adjust the time for the public to submit an appeal of SBA's decision regarding a request for information, correct an obsolete address and provide applicable Web site addresses, and clarify the definition of news media for purposes of assessing processing fees.

Timetable:

Action	Date	FR Cite
NPRM	11/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Laura Magere, Director, Freedom of Information Act Office, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–6837, *Email: laura.magere@sba.gov.*

RIN: 3245–AG52

250. Small Business Timber Set-Aside Program

Legal Authority: 15 U.S.C. 631; 15 U.S.C. 644(a)

Abstract: The U.S. Small Business Administration (SBA or Agency) is proposing to amend its Small Business Timber Set-Aside Program (the Program) regulations. The Small Business Timber Set-Aside Program is rooted in the Small Business Act, which tasked SBA with ensuring that small businesses receive a fair proportion of the total sales of government property. Accordingly, the Program requires Timber sales to be set aside for small business when small business participation falls below a certain amount. SBA is considering comments received during the ANPRM process, including on issues such as, but not limited to, whether the saw timber volume purchased through stewardship timber contracts should be included in calculations, and whether the appraisal point used in set-aside sales should be the nearest small business mill. In addition, SBA is considering data from the timber industry to help evaluate the current program and economic impact of potential changes.

Timetable:

Action	Date	FR Cite
ANPRM	03/25/15	80 FR 15697
ANPRM Comment Period End.	05/26/15	
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David W. Loines, Area Director, Office of Government Contracting, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7311, *Email: david.loines@sba.gov.*

RIN: 3245–AG69

251. Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification

Legal Authority: Pub. L. 113–291, sec 825; 15 U.S.C. 637(m)

Abstract: Section 825 of the National Defense Authorization Act for Fiscal Year 2015 (NDAA), Public Law 113–291, 128 Stat. 3292, Dec. 19, 2014, included language requiring that women-owned small business concerns and economically disadvantaged women-owned small business concerns are certified by a Federal agency, a State government, the Administrator, or national certifying entity approved by the Administrator as a small business concern owned and controlled by women. SBA is issuing this Advance Notice of Proposed Rulemaking to get public feedback on how best to implement this statutory provision. SBA intends to request information on whether SBA should: Create its own certification program, rely on private certifiers, allow Federal agencies to create their own certification systems, or create a hybrid system. SBA also intends to request information from the public concerning State government certification programs.

Timetable:

Action	Date	FR Cite
ANPRM	12/18/15	80 FR 78984
ANPRM Comment Period End.	02/16/16	
NPRM	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kenneth Dodds, Director, Office of Government Contracting, Small Business Administration, 409 3rd Street SW., Washington, DC 20416, *Phone:* 202 619–1766, *Fax:* 202 481–2950, *Email: kenneth.dodds@sba.gov.*

RIN: 3245–AG75

SMALL BUSINESS ADMINISTRATION (SBA)

Final Rule Stage

252. Small Business Mentor Protégé Programs

Legal Authority: Pub. L. 111–240; sec 1347; 15 U.S.C. 657r

Abstract: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to implement provisions of the Small Business Jobs Act of 2010 and the National Defense Authorization Act for Fiscal Year 2013. Based on authorities provided in these two statutes, the rule will establish a Government-wide mentor-protégé program for all small business concerns, consistent with SBA's mentor-protégé program for Participants in SBA's 8(a) Business Development (BD) program. The rule will also make minor changes to the mentor-protégé provisions for the 8(a) Business Development program in order to make the mentor-protégé rules for each of the programs as consistent as possible. The rule will amend the current joint venture provisions to clarify the conditions for creating and operating joint venture partnerships, including the effect of such partnerships on any mentor-protégé relationships. Finally, the rule will make several additional changes to current size, 8(a) Office of Hearings and Appeals or HUBZone regulations, concerning among other things, ownership and control, changes in primary industry, standards of review and interested party status for some appeals.

Timetable:

Action	Date	FR Cite
NPRM	02/05/15	80 FR 6618
NPRM Comment Period End.	04/06/15	
NPRM Comment Period Extension.	04/07/15	80 FR 18556
NPRM Comment Period End.	05/06/15	
Final Rule	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda J. Fernandez, Procurement Analyst, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7337, *Email: brenda.fernandez@sba.gov.*

RIN: 3245–AG24

253. Agent Revocation and Suspension Procedures

Legal Authority: 15 U.S.C. 634; 15 U.S.C. 642

Abstract: This rule establishes detailed procedures for the suspension and revocation of an Agent's privilege to do business with the United States Small Business Administration (SBA) within a single Part of the Code of Federal Regulations; removes 8(a) program specific procedures for Agent suspension and revocation; clarifies existing and related regulations as to suspension, revocation, and debarment; and removes Office of Hearings and Appeals jurisdiction over Agent suspensions and revocations and government-wide debarment and suspension actions. This rule will also conform SBA suspension and revocation procedures for Agents with general government-wide nonprocurement suspension and debarment procedures.

Timetable:

Action	Date	FR Cite
NPRM	10/16/14	79 FR 62060
NPRM Comment Period Extended.	12/12/14	79 FR 73853
NPRM Comment Period End.	12/15/14	
Second NPRM Comment Period End.	02/14/15	
Final Rule	10/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Debra Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7577, *Email: debra.mayer@sba.gov.*

RIN: 3245–AG40

254. Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments

Legal Authority: 15 U.S.C. 631; Pub. L. 112–239

Abstract: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to implement provisions of the National Defense Authorization Act of 2013, which pertain to performance requirements applicable to small business and socioeconomic program set aside contracts and small business subcontracting. SBA will make changes to its regulations concerning the nonmanufacturer rule and affiliation rules. Further, SBA will allow a joint venture to qualify as small for any government procurement as long as each partner to the joint venture qualifies individually as small under the size standard corresponding to the NAICS code assigned in the solicitation.

Timetable:

Action	Date	FR Cite
NPRM	12/29/14	79 FR 77955
NPRM Comment Period End.	02/27/15	
NPRM Comment Period Reopened.	03/09/15	80 FR 12353
Second NPRM Comment Period End.	04/06/15	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda J. Fernandez, Procurement Analyst, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–7337, *Email: brenda.fernandez@sba.gov.*

RIN: 3245–AG58

255. Small Business Investment Company (SBIC) Program—Impact SBICS

Legal Authority: 15 U.S.C. 681

Abstract: This rule establishes a regulatory structure for the SBIC Programs Impact Investment Fund, which is currently being implemented through a policy memorandum to interested applicants. The rule establishes in the regulations a new type of SBIC license called the Impact SBIC license and will include application and examination fee considerations to incentivize Impact Investment Fund participation. Impact SBICs may also be able to access Early Stage leverage on the same terms as Early Stage SBICs without applying through the Early Stage call process defined in 107.310. This will allow Impact SBICs with early stage strategies to apply for the program. The new license will be available to investment funds that meet the SBIC Programs licensing qualifications and commit to invest at least 50 percent of their invested capital in impact

investments as defined in the rule. The rule would also outline reporting and performance measures for licensed funds to maintain Impact Investment Fund designation. The goal of the Impact Investment Fund is to support small business investment strategies that maximize financial returns while also yielding enhanced social environmental or economic impacts as part of the SBIC Programs overall effort to supplement the flow of private equity and long-term loan funds to small businesses whose capital needs are not being met.

Timetable:

Action	Date	FR Cite
NPRM	02/03/16	81 FR 5666
NPRM Comment Period End.	03/04/16	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nate T. Yohannes, Senior Advisor, Office of Investments, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–6714, *Email: nate.yohannes@sba.gov.*

RIN: 3245–AG66

256. Small Business Investment Companies; Passive Business Expansion and Technical Clarifications

Legal Authority: 15 U.S.C. 681 *et seq.*

Abstract: The SBA is revising the regulations for the Small Business Investment Company (SBIC) program to further expand the use of Passive Businesses and provide needed protections for SBA with regard to such investments. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958 as amended as well as by regulations. Current program regulations provided for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception identified in 107.720(b)(2) provides that an SBIC may structure an investment utilizing two pass-through entities to make an investment into an active business. The second exception identified in 107.720(b)(3) allows partnership SBICs with SBA prior approval to invest in a wholly owned passive business that in turn provides financing to an active small business only if a direct financing would cause its investors to incur Unrelated Business Taxable Income (UBTI). The second exception is commonly known as a blocker corporation. The current rule creates unnecessary complications in defining two exceptions and does not provide SBA with sufficient protections. SBA is simplifying the rule to allow a more flexible two pass-through entity structure but provides SBA certain protections to offset risks associated with passive investment structures. As part of the rule, SBA will also make technical corrections and clarifications, including conforming the regulation to the new "family of funds" statutory provision.

Timetable:

Action	Date	FR Cite
NPRM	10/05/15	80 FR 60077
NPRM Comment Period End.	12/04/15	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Theresa M. Jamerson, Senior Policy Advisor, Investment Division, Small Business Administration, 409 3rd Street SW., Washington, DC 20461, *Phone:* 202 205–7563, *Email: theresa.jamerson@sba.gov.*

RIN: 3245–AG67

257. Credit for Lower Tier Small Business Subcontracting

Legal Authority: Pub. L. 113–66, sec 1614

Abstract: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to implement Section 1614 of the National Defense Authorization Act (NDAA) of 2014, Public Law 113–66, December 26, 2013. Under the statute, when an other than small prime contractor has an individual subcontracting plan for a contract, the large business may receive credit towards its small business subcontracting goals for subcontract awards made to small business concerns at any tier. Currently, other than small business prime contractors only report on their performance awarding subcontracts to small businesses at the first tier level.

Timetable:

Action	Date	FR Cite
NPRM	10/06/15	80 FR 60300
NPRM Comment Period End.	12/07/15	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kenneth Dodds, Director, Office of Government Contracting, Small Business Administration, 409 3rd Street SW., Washington, DC 20416, *Phone:* 202 619–1766, *Fax:* 202 481–2950, *Email: kenneth.dodds@sba.gov.*

RIN: 3245–AG71

258. Affiliation for Business Loan Programs and Surety Bond Guarantee Program

Legal Authority: 15 U.S.C. 634(b)(6)

Abstract: The U.S. Small Business Administration (SBA) has determined that changing conditions in the American economy and a constantly evolving small business community compel it to seek ways to improve program efficiency for its Surety Bond Guarantee (SBG) Program, and the business loan programs consisting of the 7(a) Loan Program, the Business Disaster Loan Programs (the Economic Injury Disaster Loans, Reservist Injury Disaster Loans, Physical Disaster Business Loans, Immediate Disaster Assistance Program loans), the Microloan Program, and the Development Company Program (the 504 Loan Program). As a result, SBA is simplifying guidelines for determining affiliation for eligibility based on size as it relates to these programs. This rule would redefine affiliation for all five Programs, thereby simplifying eligibility determinations.

Timetable:

Action	Date	FR Cite
NPRM	10/02/15	80 FR 59667
NPRM Comment Period End.	12/01/15	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Dianna L. Seaborn, Acting Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416, *Phone:* 202 205–3645, *Email: dianna.seaborn@sba.gov.*

RIN: 3245–AG73

SMALL BUSINESS ADMINISTRATION (SBA)

Long-Term Actions

259. Small Business Size Standards; Alternative Size Standard for 7(a), 504, and Disaster Loan Programs

Legal Authority: Pub. L. 111–240, sec 1116

Abstract: SBA will amend its size eligibility criteria for Business Loans, certified development company (CDC) loans under title V of the Small Business Investment Act (504) and economic injury disaster loans (EIDL). For the SBA 7(a) Business Loan Program and the 504 program, the amendments will provide an alternative size standard for loan applicants that do not meet the small business size standards for their industries. The Small Business Jobs Act of 2010 (Jobs Act) established alternative size standards that apply to both of these programs until SBA's Administrator establishes other alternative size standards. For the disaster loan program, the amendments will provide an alternative size standard for loan applicants that do not meet the Small Business Size Standard for their industries. These alternative size standards do not affect other Federal Government programs, including Federal procurement.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Khem Raj Sharma, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

RIN: 3245–AG16

SMALL BUSINESS ADMINISTRATION (SBA)

Completed Actions

260. Small Business Size Standards: Employee Based Size Standards in Wholesale Trade and Retail Trade

Legal Authority: 15 U.S.C. 632(a)

Abstract: The U.S. Small Business Administration (SBA) published a rule to increase employee based size standards in 46 industries in North American Industry Classification System (NAICS) Sector 42, Wholesale Trade, and in one industry in Sector 44–45, Retail Trade. As a part of its comprehensive size standards review required by the Small Business Jobs Act of 2012, SBA reviewed all 71 industries in Sector 42 and two industries with employee based size standards in Sector 44–45 to determine whether their size standards should be retained or revised. The revisions primarily affect eligibility for SBA's financial assistance programs. This is one of the rules that will examine industries grouped by an NAICS Sector. SBA has applied its "Size Standards Methodology," which is available on its Web site at *http://www.sba.gov/size,* to this purposed rule. SBA expects to publish the final rule in the near future.

NOTE: The title for this rule has been changed since the rule was first reported in the Regulatory Agenda on January 8, 2013, from "Small Business Size Standards for Wholesale Trade" to "Small Business Size Standards: Employee Based Size Standards for Wholesale Trade and Retail Trade." The title was changed to make it clear that the rule also addresses industries with employee based size standards in Retail Trade.

Completed:

Reason	Date	FR Cite
Final Rule	01/25/16	81 FR 3941
Final Rule Effective.	02/26/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Khem Raj Sharma, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

RIN: 3245–AG49

261. Small Business Size Standards for Manufacturing

Legal Authority: 15 U.S.C. 632(a)

Abstract: This rule increases employee based size standards for 209 industries in North American Industry Classification System (NAICS) Section 31–33, Manufacturing. SBA also increases the refining capacity component of the Petroleum Refiners (NAICS 324110) size standard to 200,000 barrels per calendar day total capacity for businesses that are primarily engaged in petroleum refining. The rule also eliminates the requirement that 90 percent of a refiner's output being delivered should be refined by the bidder. As a part of its comprehensive size standards review required by the Small Business Jobs Act of 2010, SBA evaluated all 364 industries in NAICS Sector 31–33 to determine whether their size standards should be retained or revised. This is one of the rules that examined industries grouped by an NAICS Sector. SBA has applied its "Size Standards Methodology," which is available on its Web site at *http://www.sba.gov/size,* to this proposed rule.

Completed:

Reason	Date	FR Cite
Final Rule	01/26/16	81 FR 4469
Final Rule Effective.	02/26/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Khem Raj Sharma, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

RIN: 3245–AG50

262. Small Business Size Standards: Industries With Employee Based Size Standards Not Part of Manufacturing, Wholesale Trade, or Retail Trade

Legal Authority: 15 U.S.C. 632(a)

Abstract: This rule increases the employee-based size standards for 30 industries and three exceptions and decrease them for three industries that are not a part of NAICS Sector 31–33 (Manufacturing) Sector 42 (Wholesale Trade) and Sector 44–45 (Retail Trade). Additionally, SBA proposes to remove the Information Technology Value Added Resellers exception under NAICS 541519 (Other Computer Related Services) together with its 150-employee size standard. Similarly, SBA proposes to eliminate the Offshore Marine Air Transportation Services exception under NAICS 481211 and 481212 and Offshore Marine Services exception under NAICS Subsector 483 and their $30.5 million receipts based size standard. As part of its comprehensive size standards review required by the Small Business Jobs Act of 2010 SBA evaluated 57 industries and five exceptions with employee based size standards that are not in NAICS Sectors 31–33 42 or 4445. This is one of the rules that examined industries grouped by an NAICS Sector. SBA has applied its Size Standards Methodology, which is available on its Web site at *http://www.sba.gov/size* to this proposed rule.

Please Note: The title for this rule has been changed since it was first announced in the Regulatory Agenda on January 8, 2013 to add the words or Retail Trade at the end of the previous title. This change makes it clear that industries in the retail trade with employee based size standards are also not addressed in the rule.

Completed:

Reason	Date	FR Cite
Final Rule	01/26/16	81 FR 4436
Final Rule Effective.	02/26/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Khem Raj Sharma, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

RIN: 3245–AG51

263. Small Business Size Standards: Inflation Adjustment to Monetary Based Size Standards

Legal Authority: 15 U.S.C. 632(a)

Abstract: SBA issued a final rule with to adjust its monetary small business size standards (*i.e.,* receipts, net income, net worth, and financial assets), for the effects of inflation that have occurred

since the last inflation adjustment. The final rule aims to restore small business eligibility to businesses that have lost their small business status due to inflation. The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to review and adjust (as necessary) all size standards within five years of its enactment. SBA's Small Business Size Regulations at 13 CFR 121.102(c) require the same quinquennial (or less) review and adjustment. The rule did not increase the $750,000 size standard for agricultural enterprises, which is established by the Small Business Act (§ 3(a)(1)). The alternate size standard used in the 7(a) and 504 business loan programs is unaffected by this adjustment.

Completed:

Reason	Date	FR Cite
Final Rule	01/25/16	81 FR 3949
Final Rule Effective.	01/25/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Khem Raj Sharma, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email: khem.sharma@sba.gov.*

RIN: 3245–AG60

264. Surety Bond Guarantee Program; Miscellaneous Amendments

Legal Authority: 15 U.S.C. 694b

Abstract: This rule will change the regulations for SBA's Surety Bond Guarantee Program in four areas. First, as a condition for participating in the Prior Approval and Preferred Programs, the rule will clarify that a Surety must directly employ underwriting and claims staffs sufficient to perform and manage these functions, and final settlement authority for claims and recovery is vested only in salaried employees of the Surety. Second, the rule will provide that all costs incurred by the Surety's salaried claims staff are ineligible for reimbursement by SBA, but the Surety may seek reimbursement for amounts paid for specialized services that are provided by outside consultants in connection with the processing of a claim. Third, the rule will modify the criteria for determining when a Principal that caused a Loss to SBA is ineligible for a bond guaranteed by SBA. Fourth, the rule will modify the criteria for admitting Sureties to the Preferred Surety Bond Guarantee Program by increasing the Surety's underwriting limitation, as certified by the U.S. Treasury Department on its list of acceptable sureties, from at least $2 million to at least $6.5 million.

Completed:

Reason	Date	FR Cite
Final Rule	04/22/16	81 FR 23563
Final Rule Effective.	05/23/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Barbara J. Brannan, *Phone:* 202 205–6545, *Email: barbara.brannan@sba.gov.*

RIN: 3245–AG70

[FR Doc. 2016–12927 Filed 6–8–16; 8:45 am]

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Part XXI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 "Regulatory Planning and Review." This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing.

Published proposed rules may be reviewed in their entirety at the Government's rulemaking Web site at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Hada Flowers, Division Director, Regulatory Secretariat Division, 1800 F Street NW., Washington, DC 20405, or via telephone at 202–501–4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs). The electronic version of the FAR, including changes, can be accessed on the FAR Web site at *http://www.acquisition.gov/far.*

Dated: March 18, 2016.

William Clark,

Director, Office of Government-wide, Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

DOD/GSA/NASA (FAR)—Proposed Rule Stage

Sequence No.	Title	Regulation Identifier No.
265	Federal Acquisition Regulation (FAR); FAR Case 2015–014; Prohibition on Providing Funds to the Enemy	9000–AN03
266	Federal Regulation Acquisition (FAR); FAR Case 2015–024, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation.	9000–AN20

DOD/GSA/NASA (FAR)—Final Rule Stage

Sequence No.	Title	Regulation Identifier No.
267	Federal Acquisition Regulation (FAR); FAR Case 2011–001; Organizational Conflicts of Interest and Unequal Access to Information.	9000–AL82
268	Federal Acquisition Regulation (FAR); FAR Case 2010–013; Privacy Training	9000–AM02
269	Federal Acquisition Regulation (FAR); FAR Case 2011–020; Basic Safeguarding of Contractor Information Systems.	9000–AM19
270	Federal Acquisition Regulation (FAR); FAR Case 2012–022; Contracts Under the Small Business Administration 8(a) Program.	9000–AM68
271	Federal Acquisition Regulation (FAR); FAR Case 2014–012; Limitation on Allowable Government Contractor Compensation Costs.	9000–AM75
272	Federal Acquisition Regulation (FAR); FAR Case 2014–025; Fair Pay and Safe Workplaces	9000–AM81
273	Federal Acquisition Regulation (FAR); FAR Case 2014–026; High Global Warming Potential Hydrofluorocarbons.	9000–AM87
274	Federal Acquisition Regulation (FAR); FAR Case 2014–003; Small Business Subcontracting Improvements.	9000–AM91
275	Federal Acquisition Regulation (FAR); FAR Case 2014–015; Consolidation and Bundling	9000–AM92
276	Federal Acquisition Regulation (FAR); FAR Case 2015–016; Prohibition on Reimbursement for Congressional Investigations and Inquiries.	9000–AM97
277	Federal Acquisition Regulation (FAR); FAR Case 2014–004; Payment of Subcontractors	9000–AM98
278	Federal Acquisition Regulation (FAR); FAR Case 2015–012; Contractor Employee Internal Confidentiality Agreements.	9000–AN04
279	Federal Acquisition Regulation (FAR); FAR Case 2015–011; Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction.	9000–AN05
280	Federal Acquisition Regulation; FAR Case 2015–020, Simplified Acquisition Threshold for Overseas Ac-	9000–AN09

DOD/GSA/NASA (FAR)—Completed Actions

Sequence No.	Title	Regulation Identifier No.
284	Federal Acquisition Regulation (FAR); FAR Case 2013–015; Pilot Program for Enhancement of Contractor Employee Whistleblower Protections.	9000–AM56
285	Federal Acquisition Regulation (FAR); FAR Case 2013–020; Information on Corporate Contractor Performance and Integrity.	9000–AM74
286	Federal Acquisition Regulation (FAR); FAR Case 2015–003; Establishing a Minimum Wage for Contractors.	9000–AM82
287	Federal Acquisition Regulation (FAR); FAR Case 2015–019; Definition of Multiple Award Contract	9000–AM96
288	Federal Acquisition Regulation (FAR); FAR Case 2015–013; Further Amendment to Equal Employment Opportunity (EEO).	9000–AN01

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Proposed Rule Stage

265. Federal Acquisition Regulation (FAR); FAR Case 2015–014; Prohibition on Providing Funds to the Enemy

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement subtitle E of title VIII of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act (NDAA) for fiscal year (FY) 2015, which prohibits providing funds to the enemy. It also provides additional access to records to the extent necessary to ensure that funds available under the contract are not made available to the enemy.

Timetable:

Action	Date	FR Cite
NPRM	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AN03

266. • Federal Regulation Acquisition (FAR); FAR Case 2015–024, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals

emissions and greenhouse gas reduction goals or targets. This information will help the Government assess supplier greenhouse gas management practices and assist agencies in developing strategies to engage with contractors to reduce supply chain emissions, as directed in the Executive Order on Planning for Federal Sustainability in the Next Decade.

Timetable:

Action	Date	FR Cite
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chuck Gray, Program Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 208–6766.

RIN: 9000–AN20

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

267. Federal Acquisition Regulation (FAR); FAR Case 2011–001; Organizational Conflicts of Interest and Unequal Access to Information

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to provide revised regulatory coverage on

developed as a result of a review conducted in accordance with section 841 by the Civilian Agency Acquisition Council, the Defense Acquisition Regulations Council, and the Office of Federal Procurement Policy, in consultation with the Office of Government Ethics. The proposed rule was preceded by an Advance Notice of Proposed Rulemaking, under FAR Case 2007–018 (73 FR 15962), to gather comments from the public with regard to whether and how to improve the FAR coverage on OCIs. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
NPRM	04/26/11	76 FR 23236
NPRM Comment Period End.	06/27/11	
NPRM Comment Period Extended.	06/29/11	76 FR 38089
NPRM Comment Period Extended End.	07/27/11	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AL82

safeguarding of Personally Identifiable Information (PII). The proposed FAR language provides flexibility for agencies to conduct the privacy training or require the contractor to conduct the privacy training. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
NPRM	10/14/11	76 FR 63896
NPRM Comment Period End.	12/13/11	
Final Rule	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles Gray, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 208–6726.

RIN: 9000–AM02

269. Federal Acquisition Regulation (FAR); FAR Case 2011–020; Basic Safeguarding of Contractor Information Systems

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add a new subpart and contract clause for the basic safeguarding of contractor information systems that contain, transmit, or process Federal contract information. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
NPRM	08/24/12	77 FR 51496
NPRM Comment Period End.	10/23/12	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AM19

270. Federal Acquisition Regulation (FAR); FAR Case 2012–022; Contracts Under the Small Business Administration 8(a) Program

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement revisions made by the Small Business Administration to its regulations implementing section 8(a) of the Small Business Act, and to provide additional FAR coverage regarding protesting an 8(a) participant's eligibility or size status, procedures for releasing a requirement for non-8(a) procurements, and the ways a participant could exit the 8(a) Business Development program.

Timetable:

Action	Date	FR Cite
NPRM	02/03/14	79 FR 6135
NPRM Comment Period End.	04/14/14	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AM68

271. Federal Acquisition Regulation (FAR); FAR Case 2014–012; Limitation on Allowable Government Contractor Compensation Costs

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA and NASA are issuing a final rule amending the Federal Acquisition Regulation to implement section 702 of the Bipartisan Budget Act of 2013. In accordance with section 702, the interim rule revises the allowable cost limit relative to the compensation of contractor and subcontractor employees. Also, in accordance with section 702, this interim rule implements the possible exception to this allowable cost limit for narrowly targeted scientists, engineers, or other specialists upon an agency determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/24/14	79 FR 35865
Interim Final Rule Comment Period End.	08/25/14	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kathy Hopkins, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 969–7226, *Email: kathlyn.hopkins@gsa.gov.*

RIN: 9000–AM75

272. Federal Acquisition Regulation (FAR); FAR Case 2014–025; Fair Pay and Safe Workplaces

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation which implements Executive Order 13673, Fair Pay and Safe Workplaces, seeks to increase efficiency in the work performed by Federal contractors by ensuring that they understand and comply with labor laws designed to promote safe, healthy, fair and effective workplaces.

Timetable:

Action	Date	FR Cite
NPRM	05/28/15	80 FR 30548
NPRM Comment Period End.	07/27/15	
NPRM Comment Period Extended.	07/14/15	80 FR 40968
NPRM Comment Period Extended End.	08/11/15	
NPRM Comment Period Extended.	08/05/15	80 FR 46531
NPRM Comment Period Extended End.	08/26/15	
Final Rule	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Loeb, Program Manager, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501–0650, *Email: edward.loeb@gsa.gov.*

RIN: 9000–AM81

273. Federal Acquisition Regulation (FAR); FAR Case 2014–026; High Global Warming Potential Hydrofluorocarbons

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DDoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive branch policy in the President's Climate Action Plan to procure, when feasible, alternatives to high global warming potential (GWP) hydrofluorocarbons (HFCs). This final rule will allow agencies to better meet the greenhouse gas emission reduction goals and reporting requirements of the Executive Order on Planning for Sustainability in the Next Decade.

Timetable:

Action	Date	FR Cite
NPRM	05/11/15	80 FR 26883
NPRM Comment Period End.	07/10/15	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Charles Gray, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 208–6726.

RIN: 9000–AM87

274. Federal Acquisition Regulation (FAR); FAR Case 2014–003; Small Business Subcontracting Improvements

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule, concerning small business subcontracting. Among other things, SBA's final rule implements the statutory requirements set forth at sections 1321 and 1322 of the Small Business Jobs Act of 2010. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
NPRM	06/10/15	80 FR 32909
NPRM Comment Period End.	08/10/15	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AM91

275. Federal Acquisition Regulation (FAR); FAR Case 2014–015; Consolidation and Bundling

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections of the Small Business Jobs Act of 2010 and regulatory changes made by the Small Business Administration, which provide for a Governmentwide policy on consolidation and bundling. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
NPRM	06/03/15	80 FR 31561
NPRM Comment Period End.	08/03/15	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AM92

276. Federal Acquisition Regulation (FAR); FAR Case 2015–016; Prohibition on Reimbursement for Congressional Investigations and Inquiries

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement section 857 of the Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015. This section provides additional requirements relative to the allowability of costs incurred by a contractor in connection with a congressional investigation or inquiry.

Timetable:

Action	Date	FR Cite
NPRM	02/17/16	81 FR 8031
NPRM Comment Period End.	04/18/16	
Final Rule	03/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kathy Hopkins, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 969–7226, *Email: kathlyn.hopkins@gsa.gov.*

RIN: 9000–AM97

277. Federal Acquisition Regulation (FAR); FAR Case 2014–004; Payment of Subcontractors

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of the Small Business Jobs Act of 2010. This statute requires contractors to notify the contracting officer in writing if the contractor pays a reduced price to a small business subcontractor, or if the contractor's payment to a small business contractor is more than 90 days past due. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
NPRM	01/20/16	81 FR 3087
NPRM Comment Period End.	03/21/16	
Final Rule	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Curtis Glover, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501–1448, *Email: curtis.glover@gsa.gov.*

RIN: 9000–AM98

278. Federal Acquisition Regulation (FAR); FAR Case 2015–012; Contractor Employee Internal Confidentiality Agreements

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated and Further Continuing Appropriations Act, 2015, that prohibits the use of funds, appropriated or otherwise made available, for a contract with an entity that requires employees or subcontractors to sign an internal confidentiality agreement that restricts such employees or subcontractors from lawfully reporting waste, fraud, or abuse to a designated Government representative authorized to receive such information.

Timetable:

Action	Date	FR Cite
NPRM	01/22/16	81 FR 3763
NPRM Comment Period End.	03/22/16	
Final Rule	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AN04

279. Federal Acquisition Regulation (FAR); FAR Case 2015–011; Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015, to prohibit the Federal Government from entering into a contract with any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/04/15	80 FR 75903
Interim Final Rule Comment Period End.	02/02/16	
Interim Final Rule Effective.	02/26/16	
Final Rule	08/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AN05

280. Federal Acquisition Regulation; FAR Case 2015–020, Simplified Acquisition Threshold for Overseas Acquisitions in Support of Humanitarian or Peacekeeping Operations

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement 41 U.S.C. 153, which establishes a higher simplified acquisition threshold for overseas acquisitions in support of humanitarian or peacekeeping operations.

Timetable:

Action	Date	FR Cite
NPRM	10/08/15	80 FR 60832
NPRM Comment Period End.	12/07/15	
Final Rule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ms. Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 550–0935, *Email: camara.francis@gsa.gov.*

RIN: 9000–AN09

281. • Federal Acquisition Regulation (FAR); FAR Case 2016–007; Non-Retaliation for Disclosure of Compensation Information

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13665, entitled, Non-Retaliation for Disclosure of Compensation Information," and a final rule issued by the Department of Labor at 41 CFR part 60–1.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zenaida Delgado, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 969–7207, *Email: zenaida.delgado@gsa.gov.*

RIN: 9000–AN10

282. Federal Acquisition Regulation (FAR); FAR Case 2015–032, Sole Source Contracts for Women-Owned Small Businesses

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration, which provide for authority to award sole source contracts to economically disadvantaged women-owned small business concerns and to women-owned small business concerns eligible under the Women-Owned Small Business Program. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2016), available at: *https://www.acquisition.gov/.*

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/15	80 FR 81888
Interim Final Rule Effective.	12/31/15	
Interim Final Rule Comment Period End.	02/29/16	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 703 605–2868.

RIN: 9000–AN13

283. • Federal Acquisition Regulation (FAR); FAR Case 2015–036, Updating Federal Contractor Reporting of Veterans' Employment

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a final rule issued by the Department of Labor's (DOL) Veterans' Employment and Training Service (VETS), which replaced the VETS–100A Federal Contractor Veterans' Employment Report forms with the new VETS–4212, Federal Contractor Veterans' Employment Report form.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/04/15	80 FR 75908
Interim Final Rule Comment Period End.	02/02/16	
Interim Final Rule Effective.	02/26/16	
Final Rule	07/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Loeb, Program Manager, DOD/GSA/NASA (FAR), 1800 F Street NW., Washington, DC 20405, *Phone:* 202 501–0650, *Email: edward.loeb@gsa.gov.*

RIN: 9000–AN14

DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

284. Federal Acquisition Regulation (FAR); FAR Case 2013–015; Pilot Program for Enhancement of Contractor Employee Whistleblower Protections

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA issued a final rule of the Federal Acquisition Regulation to implement a statutory pilot program whistleblower protections for enhancement of contractor employee.

Completed:

Reason	Date	FR Cite
Final Rule	12/04/15	80 FR 75911
Final Rule Effective.	12/04/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AM56

285. Federal Acquisition Regulation (FAR); FAR Case 2013–020; Information on Corporate Contractor Performance and Integrity

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA issued a final rule amending the Federal Acquisition Regulation to implement a section of the National Defense Authorization Act for Fiscal Year 2013 to include in the Federal Awardee Performance and Integrity Information System, to the extent practicable, identification of any immediate owner or subsidiary, and all predecessors of an offeror that held a Federal contract or grant within the last three years. The objective is to provide a more comprehensive understanding of the performance and integrity of the corporation in awarding Federal contracts.

Completed:

Reason	Date	FR Cite
Final Rule	03/07/16	81 FR 11988
Final Rule Effective.	04/06/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cecelia L. Davis, *Phone:* 202 219–0202, *Email: cecelia.davis@gsa.gov.*

RIN: 9000–AM74

286. Federal Acquisition Regulation (FAR); FAR Case 2015–003; Establishing a Minimum Wage for Contractors

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA issued a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 13658, Establishing a Minimum Wage for Contractors, and a final rule issued by the Department of Labor (DOL) at 29 CFR part 10. This case is included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2015), available at: *https://www.acquisition.gov/.*

Completed:

Reason	Date	FR Cite
Final Rule	12/04/15	80 FR 75915
Final Rule Effective.	12/04/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Loeb, *Phone:* 202 501–0650, *Email: edward.loeb@gsa.gov.*

RIN: 9000–AM82

287. Federal Acquisition Regulation (FAR); FAR Case 2015–019; Definition of Multiple Award Contract

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA issued a final rule to amend the Federal Acquisition Regulation to implement section 1311 of the Small Business Jobs Act of 2010 and Small Business Administration implementing regulations. Section 1311 provided a new definition of the term "multiple award contract" in the Small Business Act at 15 U.S.C. 632.

Completed:

Reason	Date	FR Cite
Final Rule	12/31/15	80 FR 81887
Final Rule Effective.	02/01/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mahruba Uddowla, *Phone:* 703 605–2868, *Email: mahruba.uddowla@gsa.gov.*

RIN: 9000–AM96

288. Federal Acquisition Regulation (FAR); FAR Case 2015–013; Further Amendment to Equal Employment Opportunity (EEO)

Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

Abstract: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 13672, entitled, Further Amendments to Executive Order 11487, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," and a final rule issued by the Department of Labor at 41 CFR part 60.

Completed:

Reason	Date	FR Cite
Final Rule	11/04/15	80 FR 75907
Final Rule Effective.	12/04/15	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Edward Loeb, *Phone:* 202 501–0650, *Email: edward.loeb@gsa.gov.*

RIN: 9000–AN01

[FR Doc. 2016–12928 Filed 6–8–16; 8:45 am]

BILLING CODE 5001–EP–P

FEDERAL REGISTER

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Part XXII

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Commodity Futures Trading Commission (Commission), in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of rulemakings that the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

FOR FURTHER INFORMATION CONTACT: Christopher J. Kirkpatrick, Secretary of the Commission, (202) 418–5964, *ckirkpatrick@cftc.gov*, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, includes a requirement that each agency publish semiannually in the **Federal Register** a regulatory flexibility agenda. Such agendas are to contain the following elements, as specified in 5 U.S.C. 602(a):

1. A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

2. A summary of the nature of any such rule under consideration for each subject area listed in the agenda, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

3. The name and telephone number of an agency official knowledgeable about the items listed in the agenda.

Accordingly, the Commission has prepared an agenda of rulemakings that it presently expects may be considered during the course of the next year. Subject to a determination for each rule, it is possible as a general matter that some of these rules may have some impact on small entities.[1] The Commission notes also that, under the RFA, it is not precluded from considering or acting on a matter not included in the regulatory flexibility agenda, nor is it required to consider or act on any matter that is listed in the agenda. See 5 U.S.C. 602(d).

The Commission's spring 2016 regulatory flexibility agenda is included in the Unified Agenda of Federal Regulatory and Deregulatory Actions. The complete Unified Agenda will be available online at *www.reginfo.gov*, in a format that offers users enhanced ability to obtain information from the Agenda database.

Issued in Washington, DC, on April 5, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

COMMODITY FUTURES TRADING COMMISSION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
289	Regulation Automated Trading	3038–AD52

COMMODITY FUTURES TRADING COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
290	Trade Options	3038–AE26

COMMODITY FUTURES TRADING COMMISSION (CFTC)

Completed Actions

290. Trade Options

Legal Authority: CEA secs 4(c)(b) and 8(a)(5)

The comment period is open through March 16, 2016. Staff will review comments and consider next steps for

Action	Date	FR Cite
ANPRM Comment	02/14/14	

1155 21st Street NW., Washington, DC 20581, *Phone:* 202 418–5264, *Email: mdahlman@cftc.gov.*

RIN: 3038–AD52

COMMODITY FUTURES TRADING COMMISSION (CFTC)

Completed Actions

290. Trade Options

Legal Authority: CEA secs 4(c)(b) and 8(a)(5)

Abstract: The Commission has amended the trade option exemption in 32.3 of its regulations in the following subject areas: (1) Reporting requirements for trade option counterparties that are not swap dealers or major swap participants; (2) recordkeeping requirements for trade option counterparties that are not swap dealers or major swap participants; and (3) certain technical amendments.

Completed:

Reason	Date	FR Cite
Final Action	03/21/16	81 FR 14966
Final Action Effective.	03/21/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David Pepper, *Phone:* 202 418–5565, *Email: dpepper@cftc.gov.*

RIN: 3038–AE26

[FR Doc. 2016–12930 Filed 6–8–16; 8:45 am]

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Part XXIII

Bureau of Consumer Financial Protection

Semiannual Regulatory Agenda

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR CH. X

Semiannual Regulatory Agenda

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau) is publishing this agenda as part of the Spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions. The CFPB reasonably anticipates having the regulatory matters identified below under consideration during the period from May 1, 2016, to April 30, 2017. The next agenda will be published in fall 2016 and will update this agenda through fall 2017. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

DATES: This information is current as of March 25, 2016.

ADDRESSES: Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: A staff contact is included for each regulatory item listed herein.

SUPPLEMENTARY INFORMATION: The CFPB is publishing its spring 2016 agenda as part of the Spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The CFPB's participation in the Unified Agenda is voluntary. The complete Unified Agenda is available to the public at the following Web site: *http://www.reginfo.gov*

2017.[1] Among the Bureau's more significant regulatory efforts are the following.

Bureau Regulatory Efforts in Various Consumer Markets

The Bureau is working on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services.

For example, the Bureau is preparing to issue a Notice of Proposed Rulemaking this spring concerning the use of agreements between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future disputes. The rulemaking follows on a report that the Bureau issued to Congress in March 2015, as required by the Dodd-Frank Act, as well as on preliminary results of arbitration research that were released by the Bureau in December 2013. In fall 2015, the Bureau began the rulemaking process by releasing an outline explaining that it was considering whether to limit arbitration agreements from being used to compel arbitration of consumer class actions and whether to require the reporting of certain information concerning consumer arbitrations to the Bureau to facilitate monitoring. The Bureau convened a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy to consult with small businesses that may be affected by the policy proposals under consideration. The Bureau has also gathered extensive feedback from other stakeholders in preparation for the rulemaking.

The Bureau also expects to release

from other stakeholders in the last year to obtain feedback on the proposals. This rulemaking builds on Bureau research, including a white paper the Bureau published on these products in April 2013, a data point providing additional research in March 2014, and ongoing analysis.

The Bureau also expects to issue a final rule in early summer to create a comprehensive set of consumer protections for prepaid financial products, such as general purpose reloadable cards and other similar products, which are increasingly being used by consumers in place of traditional checking accounts or credit cards. The Bureau issued a proposed rule in November 2014, to bring prepaid products expressly within the ambit of Regulation E (which implements the Electronic Fund Transfer Act) as prepaid accounts and create new provisions specific to such accounts. The Bureau also proposed to amend Regulation E and Regulation Z (which implements the Truth in Lending Act) to regulate prepaid accounts with overdraft services or credit features.

The Bureau also expects to issue a proposal to amend Regulation P, which implements the Gramm-Leach-Bliley Act (GLBA). Congress recently amended the GLBA to provide an exception to the requirement for financial institutions to deliver annual privacy notices when certain conditions are met. The Bureau plans to make conforming amendments to Regulation P for consistency with the statutory amendment.

Building on Bureau research and other sources, the Bureau is also engaged in policy analysis and further research initiatives in preparation for a rulemaking on overdraft programs on checking accounts. The CFPB issued a

2013, Advance Notice of Proposed Rulemaking, the CFPB is in the process of analyzing the results of a survey to obtain information from consumers about their experiences with debt collection. The Bureau is also undertaking consumer testing initiatives to determine what information would be useful for consumers to have about debt collection and their debts and how that information should be provided to them.

The Bureau is also continuing rulemaking activities that will further establish the Bureau's nonbank supervisory authority by defining larger participants of certain markets for consumer financial products and services. Larger participants of such markets, as the Bureau defines by rule, are subject to the Bureau's supervisory authority. The Bureau expects that its next larger participant rulemaking will focus on the markets for consumer installment loans and vehicle title loans for purposes of supervision. The Bureau is also considering whether rules to require registration of these or other non-depository lenders would facilitate supervision, as has been suggested to the Bureau by both consumer advocates and industry groups.

The Bureau is also continuing to develop research on other critical markets to help implement statutory directives and to assess whether regulation of other consumer financial products and services may be warranted. For example, the Bureau is starting its work to implement section 1071 of the Dodd-Frank Act, which amends the Equal Credit Opportunity Act to require financial institutions to report information concerning credit applications made by women-owned,

Implementing Dodd-Frank Act Mortgage Protections

The Bureau is also continuing efforts to implement critical consumer protections under the Dodd-Frank Act to guard against mortgage market practices that contributed to the nation's most significant financial crisis in several decades. Since 2013, the Bureau has issued regulations as directed by the Dodd-Frank Act to implement certain protections for mortgage originations and servicing, integrate various federal mortgage disclosures, and amend mortgage reporting requirements under the Home Mortgage Disclosure Act (HMDA). The Bureau is continuing intensive work to facilitate implementation of the new requirements, including follow-up rulemaking where warranted.

For example, the Bureau expects this summer to release a Notice of Proposed Rulemaking to make small clarifications and provide further regulatory guidance concerning its rule combining several federal mortgage disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The project to integrate and streamline the disclosures was mandated under the Dodd-Frank Act and took effect in October 2015. The rule is the cornerstone of the Bureau's broader "Know Before You Owe" mortgage initiative.

The Bureau also expects to issue a final rule in the summer to amend various provisions of its January 2013, mortgage servicing rules in Regulation X (which implements RESPA) and Regulation Z. The Bureau has proposed clarifications of the applicability of certain provisions when the borrower is

amendments to HMDA. The Bureau has already released a small entity compliance guide in connection with the rule, which was finalized in October 2015. Certain elements of the rule take effect in January 2017, and most new data collection requirements begin in January 2018. The Bureau is working to streamline and modernize HMDA data collection and reporting processes in conjunction with implementation.

The Bureau is also continuing to facilitate the full implementation of and compliance with other rules that it issued in January 2013, to implement Dodd-Frank Act requirements concerning mortgage originations. Most recently, the Bureau has adjusted the thresholds defining small creditors and small creditors operating in rural and underserved areas for purposes of certain special rules concerning balloon loans, escrows, and other topics. The Bureau issued a final rule adjusting the thresholds for small creditors in October 2015. The Bureau then issued two rules to implement the Helping Expand Lending Practices in Rural Communities Act. The first rule, which the Bureau issued on March 2, 2016, established a process for creditors to apply to the Bureau for an area to be designated as rural. The second rule, which the Bureau issued on March 22, 2016, was an interim final rule that revised the test to determine which small creditors operate in rural areas in light of the Congressional amendments to the underlying statutory language.

Further Planning

Finally, the Bureau is continuing to conduct outreach and research to assess issues in various other markets for consumer financial products and

CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
292	Payday Loans and Deposit Advance Products	3170–AA40

CONSUMER FINANCIAL PROTECTION BUREAU—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
293	The Expedited Funds Availability Act (Regulation CC)	3170–AA31

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Prerule Stage

291. Business Lending Data (Regulation B)

Legal Authority: 15 U.S.C. 1691c–2

Abstract: Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. The amendments to ECOA made by the Dodd-Frank Act require that certain data be collected and maintained, including the number of the application and date the application was received; the type and purpose of loan or credit applied for; the amount of credit applied for and approved; the type of action taken with regard to each application and the date of such action; the census tract of the principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. The Dodd-Frank Act also provides authority for the CFPB to require any additional data that the CFPB determines would aid in fulfilling the purposes of this section. The Bureau will focus on outreach and research to develop its understanding of the players, products, and practices in the small business lending market and of the potential ways to implement section 1071. The CFPB then expects to begin developing proposed regulations concerning the data to be collected and appropriate procedures, information safeguards, and privacy protections for information-gathering under this section.

Timetable:

Action	Date	FR Cite
Prerule Activities	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Elena Grigera Babinecz, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

RIN: 3170–AA09

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Proposed Rule Stage

292. Payday Loans and Deposit Advance Products

Legal Authority: Not Yet Determined

Abstract: The Bureau is conducting a rulemaking to address consumer harms from practices related to payday loans and other similar credit products, including failure to determine whether consumers have the ability to repay without default or reborrowing and certain payment collection practices. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Bureau released in March 2015 an outline of proposals under consideration for the rulemaking. As part of the SBREFA process, in April 2015, the Bureau along with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy, met with small lenders that may be affected by the rulemaking to obtain feedback on the proposals. This rulemaking builds on Bureau research, including a white paper the Bureau published on these products in April 2013, a data point providing additional research in March 2014, and ongoing analysis.

Timetable:

Action	Date	FR Cite
NPRM	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Mark Morelli, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

RIN: 3170–AA40

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Final Rule Stage

293. The Expedited Funds Availability Act (Regulation CC)

Legal Authority: 12 U.S.C. 4001 *et seq.*

Abstract: The Expedited Funds Availability Act (EFA Act), implemented by Regulation CC, governs availability of funds after a check deposit and check collection and return processes. Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFA Act to provide the CFPB with joint rulemaking authority with the Board of Governors of the Federal Reserve System (Board) over certain consumer-related EFA Act provisions. The Board proposed amendments to Regulation CC in March 2011, to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return. The Board's proposal includes some provisions that are subject to the CFPB's joint rulemaking authority, including the period for funds availability and revising model form disclosures. In addition, in December 2013, the Board proposed revised amendments to certain Regulation CC provisions that are not subject to the CFPB's authority and extended the comment period to May 2014. The CFPB will work with the Board to issue jointly a final rule that includes provisions within the CFPB's authority.

Timetable:

Action	Date	FR Cite
NPRM	03/25/11	76 FR 16862
NPRM Comment Period End.	06/03/11	
Final Rule	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joseph Baressi, Office of Regulations, Consumer Financial Protection Bureau, *Phone:* 202 435–7700.

RIN: 3170–AA31

[FR Doc. 2016–12931 Filed 6–8–16; 8:45 am]

BILLING CODE 4810–AM–P

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Part XXIV

Consumer Product Safety Commission

Semiannual Regulatory Agenda

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Semiannual Regulatory Agenda

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulatory actions that the Commission expects to be under development or review by the agency during the next year. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866. The Commission welcomes comments on the agenda and on the individual agenda entries.

DATES: Comments should be received in the Office of the Secretary on or before July 1, 2016.

ADDRESSES: Comments on the regulatory flexibility agenda should be captioned, "Regulatory Flexibility Agenda," and emailed to: *cpsc-os@cpsc.gov*. Comments may also be mailed or delivered to the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814–4408.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Eileen Williams, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408; *ewilliams@cpsc.gov*. For further information regarding a particular item on the agenda, consult the individual listed in the column headed, "Contact," for that particular item.

Section 602 of the RFA (5 U.S.C. 602) requires each agency to publish, twice each year, a regulatory flexibility agenda containing a brief description of the subject area of any rule expected to be proposed or promulgated, which is likely to have a "significant economic impact" on a "substantial number" of small entities. The agency must also provide a summary of the nature of the rule and a schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking.

The regulatory flexibility agenda also is required to contain the name and address of the agency official knowledgeable about the items listed. Furthermore, agencies are required to provide notice of their agendas to small entities and to solicit their comments by direct notification or by inclusion in publications likely to be obtained by such entities.

Additionally, Executive Order 12866 requires each agency to publish, twice each year, a regulatory agenda of regulations under development or review during the next year, and the Executive order states that such an agenda may be combined with the agenda published in accordance with the RFA. The regulatory flexibility agenda lists the regulatory activities expected to be under development or review during the next 12 months. It includes all such activities, whether or not they may have a significant economic impact on a substantial number of small entities. This agenda also includes regulatory activities that appeared in the fall 2015 agenda and have been completed by the Commission prior to publication of this agenda. Although CPSC, as an independent regulatory agency, is not required to comply with Executive

subject to revision, for the development or completion of each activity; and the name and telephone number of a knowledgeable agency official concerning particular items on the agenda.

Beginning in fall 2007, the Internet became the basic means of disseminating the Unified Agenda. The complete Unified Agenda will be available online at: *www.reginfo.gov*, in a format that offers users a greatly enhanced ability to obtain information from the agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Commission's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

The agenda reflects an assessment of the likelihood that the specified event will occur during the next year; the precise dates for each rulemaking are uncertain and new information, changes of circumstances or of law may alter anticipated timing. In addition, no final determination by staff or the

CONSUMER PRODUCT SAFETY COMMISSION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
296	Standard for Sling Carriers	3041–AD28

CONSUMER PRODUCT SAFETY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
297	Petition to Amend Test Procedures for Glazing Materials in Architectural Products	3041–AD26
298	Third Party Testing Burden Reduction	3041–AD46

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Prerule Stage

294. Rule Review of: Standard for the Flammability (Open Flame) of Mattress Sets (Section 610 Review)

Legal Authority: 5 U.S.C. 1193, Flammable Fabrics Act; 5 U.S.C. 610, Regulatory Flexibility Act

Abstract: The Commission published the Standard for the Flammability (Open Flame) of Mattress Sets in March 2006. The Standard sets open flame performance measures on all mattress sets entered into commerce on or after the effective date in July 2007. The purpose of the rule review is to assess the impact of the rule on small entities and to determine whether the rule should be continued without change, or should be amended or rescinded to make the rule more effective or less burdensome while still maintaining safety objectives. CPSC staff solicited comments on the rule through a **Federal Register** Notice. Staff also conducted economic and fire loss data analyses to review the impact and effectiveness of the rule. A staff briefing package is

Place, Rockville, MD 20850, *Phone:* 301 987–2064, *Email: lscott@cpsc.gov*.

RIN: 3041–AD47

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Proposed Rule Stage

295. Recreational Off-Road Vehicles

Legal Authority: 15 U.S.C. 2056; 15 U.S.C. 2058

Abstract: The Commission is considering whether recreational off-road vehicles (ROVs) present an unreasonable risk of injury that should be regulated. ROVs are motorized vehicles having four or more low-pressure tires designed for off-road use and intended by the manufacturer primarily for recreational use by one or more persons. The salient characteristics of an ROV include a steering wheel for steering control, foot controls for throttle and braking, bench or bucket seats, a roll-over protective structure, and a maximum speed greater than 30 mph. On October 21, 2009, the Commission voted (4–0–1) to publish an advance notice of proposed rulemaking

extending the comment period to April 8, 2015. The Omnibus Appropriations Bill provides that during fiscal year 2016, none of the amounts made available by the Appropriations Bill may be used to finalize or implement the Safety Standard for Recreational Off-Highway Vehicles published by the CPSC in the **Federal Register** on November 19, 2014 (79 FR 68964) (ROV NPRM) until after the National Academy of Sciences completes a study to determine specific information as set forth in the Appropriations Bill. Staff has ceased work on a Final Rule briefing package that would implement the ROV NPRM, but continues to engage in the development of voluntary standards associated with ROVs. In FY 2016, staff will prepare a briefing package assessing the voluntary standards for Commission consideration.

Timetable:

Action	Date	FR Cite
Staff Sends ANPRM Briefing Package to Commission.	10/07/09	
Commission Deci-	10/21/09	

Action	Date	FR Cite
Extended Comment Period End.	04/08/15	
Staff Sends Briefing Package Assessing Voluntary Standards to Commission.	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2225, *Email: cpaul@cpsc.gov.*

RIN: 3041–AC78

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Final Rule Stage

296. Standard for Sling Carriers

Legal Authority: Pub. L. 110–314, sec 104

Abstract: Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to issue consumer product safety standards for durable infant or toddler products. The Commission is directed to assess the effectiveness of applicable voluntary standards, and in accordance with the Administrative Procedure Act, promulgate consumer product safety standards that are substantially the same as the voluntary standard, or more stringent than the voluntary standard if the Commission determines that more stringent standards would further reduce the risk of injury associated with the product. The CPSIA requires that not later than August 14, 2009, the Commission begin rulemaking for at least two categories of durable infant or toddler products and promulgate two such standards every six months thereafter. The Commission proposed a consumer product safety standard for infant sling carriers as part of this series of standards for durable infant and toddler products. On June 13, 2014, staff sent an NPRM briefing package to the Commission. The Commission voted unanimously (3–0) to approve publication of the NPRM in the **Federal Register**. The NPRM was published in the **Federal Register** on July 23, 2014. Following review of the comments, staff will prepare a Final Rule briefing package for the Commission's consideration.

Timetable:

Action	Date	FR Cite
Staff Sends NPRM Briefing Package to the Commission.	06/13/14	
Commission Decision to Publish NPRM.	07/09/14	
NPRM	07/23/14	79 FR 42724
NPRM Comment Period End.	10/06/14	
Staff Sends Final Rule Briefing Package to Commission.	09/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hope Nesteruk, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2579, *Email: hnesteruk@cpsc.gov.*

RIN: 3041–AD28

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

Completed Actions

297. Petition To Amend Test Procedures for Glazing Materials in Architectural Products

Legal Authority: 5 U.S.C. 553; 15 U.S.C. 2056; 15 U.S.C. 2058

Abstract: The Commission received correspondence from William M. Hannay, counsel for the Safety Glazing Certification Council, requesting that the Commission initiate rulemaking to replace the current testing procedures for glazing materials codified at 16 CFR 1201.4 with those contained in ANSI Z97.1, "American National Standard for Safety Glazing Materials Used in Building-Safety Performance Specifications and Methods of Test." The request was docketed as Petition CP 12–3, under the Consumer Product Safety Act (CPSA). On August 23, 2012, the Commission voted unanimously to approve publication of a notice in the **Federal Register** to solicit public comments on the petition. The notice was published in the **Federal Register** on August 30, 2012. The comment period closed on October 29, 2012. CPSC staff reviewed the submitted comments and sent a briefing package to the Commission on April 3, 2013. The Commission voted unanimously on April 9, 2013, to grant the petition. Staff prepared an NPRM briefing package for Commission consideration. The briefing package went to the Commission on May 6, 2015. The Commission voted to issue the NPRM on May 15, 2015. The NPRM published in the **Federal Register** on May 22, 2015. The comment period closed on July 21, 2015. Staff sent a Final Rule briefing package to the Commission on March 2, 2016. The Commission voted unanimously (5–0) on March 8, 2016, to approve publication in the **Federal Register** of the Final Rule, as drafted, to amend the Commission's regulations at 16 CFR part 1201, by replacing the testing procedures provided at 16 CFR 1201.4, with the voluntary standard, ANSI Z97.1–2015, *American National Standard for Safety Glazing Materials Used in Buildings-Safety Performance Specifications and Methods of Test.*

Timetable:

Action	Date	FR Cite
Petition Docketed	08/17/12	
Notice for Comment Published in **Federal Register**.	08/30/12	77 FR 52625
Comment Period End.	10/29/12	
Staff Sends Briefing Package to Commission.	04/03/13	
Commission Decision.	04/09/13	
Staff Sends NPRM Briefing Package to Commission.	05/15/15	
NPRM	05/22/15	80 FR 29555
NPRM Comment Period End.	07/21/15	
Staff Sends Final Rule Briefing Package to Commission.	03/02/16	
Commission Decision to Approve Publication of Final Rule in the **Federal Register**.	03/08/16	
Final Rule Published in the **Federal Register**.	03/23/16	81 FR 15427
Final Rule Effective.	04/22/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian M. Baker, Project Manager, Directorate for Laboratory Sciences Mechanical, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987–2289, *Email: bbaker@cpsc.gov.*

RIN: 3041–AD26

298. Third Party Testing Burden Reduction

Legal Authority: Sec 3, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063(d)(3)(B)

Abstract: Section 14(i)(3) of the Consumer Product Safety Act requires the Commission to seek opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable children's product safety rule. In the FY 2015 Operating Plan, the Commission directed staff to submit a notice of proposed rulemaking (NPRM) briefing package to the Commission addressing items to reduce third party testing burdens. On June 30, 2015, staff sent a briefing package to the Commission for a Direct Final Rule (DFR) and an NPRM for a determination regarding heavy elements limits for unfinished and untreated wood. On July 10, 2015, the Commission voted to publish the DFR and NPRM in the **Federal Register**. On July 17, 2015, the DFR and NPRM were published in the **Federal Register** with the comment period closing on August 17, 2015. On August 26, 2015, staff sent a draft **Federal Register** Notice withdrawing the DFR because the Commission received adverse comments regarding the DFR.

On September 1, 2015, the Commission voted to publish a notice of withdrawal of the DFR in the **Federal Register**. The notice of withdrawal published in the **Federal Register** on September 10, 2015. On December 8, 2015, staff sent a briefing package for a Final Rule for a determination regarding heavy elements for unfinished and untreated wood. On December 8, 2015, the Commission voted to publish the final rule in the **Federal Register**. On December 17, 2015, the Final Rule published in the **Federal Register** with an effective date of January 19, 2016.

On September 30, 2015, staff sent a briefing package to the Commission for a DFR and NPRM to clarify when component part testing can be used and which textile products have been determined not to exceed the allowable lead content limits. On October 8, 2015, the Commission voted to publish the DFR and the NPRM in the **Federal Register**. On October 14, 2015, the DFR and NPRM published in the **Federal Register**. On November 19, 2015, the Commission published a notice in the **Federal Register** delaying the effective date and extending the comment period for the DFR. On January 4, 2016, the Commission published a Notice in the **Federal Register** delaying the effective date and reopening the comment period for the DFR. The DFR became final with an effective date of February 12, 2016.

Timetable:

Action	Date	FR Cite
Commission Votes to Publish DFR and NPRM in **Federal Register**.	07/10/15	
NPRM Published in the **Federal Register**.	07/17/15	80 FR 42438
DFR Published in the **Federal Register**.	07/17/15	80 FR 42376
NPRM Comment Period End.	08/17/15	
DFR Comment Period End.	08/17/15	
Staff Sends Notice of Withdrawal to Commission.	08/26/15	
Commission Votes to Publish Notice of Withdrawal of DFR.	09/01/15	
Notice of Withdrawal of DFR Published in **Federal Register**.	09/10/15	80 FR 54417
Staff Sends DFR/NPRM Briefing Package to Commission.	09/30/15	
Commission Votes to Publish DFR/NPRM in **Federal Register**.	10/08/15	
DFR and NPRM Published in the **Federal Register**.	10/24/15	80 FR 61729, 80 FR 61773
Notice Delaying Effective Date.	11/19/15	
Staff Sends Final Rule Briefing Package to Commission.	12/08/15	
Commission Votes to Publish Final Rule in **Federal Register**.	12/08/15	
Final Rule Published in the **Federal Register**.	12/17/15	80 FR 78651
Notice Delaying Effective Date and Reopening Comment Period.	01/04/16	
Final Rule Effective.	02/12/16	81 FR 2

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, *Phone:* 301 504–7562, *Email: rbutturini@cpsc.gov.*

RIN: 3041–AD46

[FR Doc. 2016–12932 Filed 6–8–16; 8:45 am]

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Part XXV

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions—Spring 2016

AGENCY: Federal Communications Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. (U.S.C. 602). The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings. The complete Unified Agenda will be published on the Internet in a searchable format at *www.reginfo.gov.*

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418–0990.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

Docket Number—assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.,* Docket No. 96–1 or Docket No. 99–1). The abbreviation for the responsible bureau usually precedes the docket number, as in ''MB Docket No. 96–222,'' which indicates that the responsible bureau is the Media Bureau. A docket number consisting of only five digits (*e.g.,* Docket No. 29622) indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI)—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM)—issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

Further Notice of Proposed Rulemaking (FNPRM)—issued by the Commission when additional comment in the proceeding is sought.

Memorandum Opinion and Order (MO&O)—issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

Rulemaking (RM) Number—assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

Report and Order (R&O)—issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Consumer and Governmental Affairs Bureau—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
299	Implementation of the Telecom Act of 1996; Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities (WT Docket No. 96–198).	3060–AG58

Office of Engineering and Technology—Long-Term Actions—Continued

Sequence No	Title	Regulation Identifier No.
313	Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186)	3060–AI52
314	Fixed and Mobile Services in the Mobile Satellite Service (ET Docket No. 10–142)	3060–AJ46
315	Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules (ET Docket No. 10–236).	3060–AJ62
316	Operation of Radar Systems in the 76–77 GHz Band (ET Docket No. 11–90)	3060–AJ68
317	WRC–07 Implementation (ET Docket No. 12–338)	3060–AJ93
318	Federal Earth Stations-Non Federal Fixed Satellite Service Space Stations; Spectrum for Non-Federal Space Launch Operations; ET Docket No. 13–115.	3060–AK09
319	Authorization of Radiofrequency Equipment; ET Docket No. 13–44	3060–AK10
320	Operation of Radar Systems in the 76–77 GHz Band (ET Docket No. 15–26)	3060–AK29
321	Spectrum Access for Wireless Microphone Operations (GN Docket Nos. 14–166 and 12–268)	3060–AK30

International Bureau—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
322	Space Station Licensing Reform (IB Docket No. 02–34)	3060–AH98
323	International Settlements Policy Reform (IB Docket No. 11–80)	3060–AJ77
324	Comprehensive Review of Licensing and Operating Rules for Satellite Services (IB Docket No. 12–267)	3060–AJ98
325	Expanding Broadband and Innovation through Air-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13–114.	3060–AK02
326	Terrestrial Use of the 2473–2495 MHz Band for Low-Power Mobile Broadband Networks; Amendments to Rules of Mobile Satellite Service System; IB Docket No. 13–213.	3060–AK16
327	Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as amended (Docket No. 15–236).	3060–AK47

International Bureau—Completed Actions

Sequence No.	Title	Regulation Identifier No.
328	Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market (IB Docket 12–299).	3060–AJ97

Media Bureau—Long-Term Actions

Sequence No.	Title	Regulation Identifier No.
329	Broadcast Ownership Rules	3060–AH97
330	Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Sta-	3060–AJ28

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
341	Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102; PS Docket No. 07–114).	3060–AG34
342	Enhanced 911 Services for Wireline and Multi-Line Telephone Systems; PS Docket Nos. 10–255 and 07–114	3060–AG60
343	In the Matter of the Communications Assistance for Law Enforcement Act	3060–AG74
344	Implementation of 911 Act (CC Docket No. 92–105, WT Docket No. 00–110)	3060–AH90
345	Commission Rules Concerning Disruptions to Communications (PS Docket No. 11–82)	3060–AI22
346	E911 Requirements for IP-Enabled Service Providers (Dockets Nos. GN 11–117, PS 07–114, WC 05–196, WC 04–36).	3060–AI62
347	Wireless E911 Location Accuracy Requirements; PS Docket No. 07–114	3060–AJ52
348	700 MHz Public Safety Broadband—First Net (PS Docket Nos. 12–94 & 06–229 and WT 06–150)	3060–AJ99
349	Proposed Amendments to Service Rules Governing Public Safety Narrowband Operations in the 769–775 and 799–805 MHz Bands.	3060–AK19
350	Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206.	3060–AK39
351	Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; PS Docket No. 15–80.	3060–AK40
352	New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35	3060–AK41

WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
353	Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers	3060–AH83
354	Review of Part 87 of the Commission's Rules Concerning Aviation (WT Docket No. 01–289)	3060–AI35
355	Implementation of the Commercial Spectrum Enhancement Act (CSEA) and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05–211).	3060–AI88
356	Facilitating the Provision of Fixed and Mobile Broadband Access, Educational, and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands.	3060–AJ12
357	Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band; WT Docket No. 13–185	3060–AJ19
358	Amendment of the Commission's Rules to Improve Public Safety Communications in the 800 MHz Band, and to Consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pool Channels.	3060–AJ22
359	Amendment of Part 101 to Accommodate 30 MHz Channels in the 6525–6875 MHz Band and Provide Conditional Authorization on Channels in the 21.8–22.0 and 23.0–23.2 GHz Band (WT Docket No. 04–114).	3060–AJ28
360	Amendment of Part 90 of the Commission's Rules	3060–AJ37
361	Amendment of Part 101 of the Commission's Rules for Microwave Use and Broadcast Auxiliary Service Flexibility.	3060–AJ47
362	Universal Service Reform Mobility Fund (WT Docket No. 10–208)	3060–AJ58
363	Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz.	3060–AJ59
364	Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-Based 800 MHz Specialized Mobile Radio Licensees (WT Docket Nos. 12–64 and 11–110).	3060–AJ71
365	Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands	3060–AJ73
366	Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Docket No. 12–268.	3060–AJ82
367	Service Rules for Advanced Wireless Services of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands (WT Docket No. 12–357).	3060–AJ86
368	Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4).	3060–AJ87
369	Amendment of the Commission's Rules Governing Certain Aviation Ground Station Equipment (Squitter) (WT Docket Nos. 10–61 and 09–42).	3060–AJ88
370	Amendment of the Commission's Rules Concerning Commercial Radio Operators (WT Docket No. 10–177)	3060–AJ91
371	Radiolocation Operations in the 78–81 GHz Band; WT Docket No. 11–202	3060–AK04
372	Amendment of Part 90 of the Commission's Rules to Permit Terrestrial Trunked Radio (TETRA) Technology; WT Docket No. 11–6.	3060–AK05
373	Promoting Technological Solutions to Combat Wireless Contraband Device Use in Correctional Facilities	3060–AK06
374	Enabling Small Cell Use in the 3.5 GHz band	3060–AK12
375	800 MHz Cellular Telecommunications Licensing Reform; Docket No. 12–40	3060–AK13
376	Updating Competitive Bidding Rules	3060–AK28

WIRELESS TELECOMMUNICATIONS BUREAU—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
377	Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band (WT Docket No. 08–166) Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary.	3060–AJ21
378	In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands	3060–AJ35

WIRELESS TELECOMMUNICATIONS BUREAU—COMPLETED ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
379	2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of the Commission's Rules Governing Construction, Marking, and Lighting of Antenna Structures.	3060–AJ50
380	Promoting Interoperability in the 700 MHz Commercial Spectrum; Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines (WT Docket Nos. 12–69 & 12–332).	3060–AJ78

WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
381	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060–AF85
382	2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements	3060–AH72
383	National Exchange Carrier Association Petition	3060–AI47
384	IP-Enabled Services; WC Docket No. 04–36	3060–AI48
385	Jurisdictional Separations	3060–AJ06
386	Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering (WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21).	3060–AJ14
387	Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans.	3060–AJ15
388	Local Number Portability Porting Interval and Validation Requirements (WC Docket No. 07–244)	3060–AJ32
389	Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07–245, GN Docket No. 09–51).	3060–AJ64
390	Rural Call Completion; WC Docket No. 13–39	3060–AJ89
391	Rates for Inmate Calling Services; WC Docket No. 12–375	3060–AK08
392	Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130)	3060–AK20
393	Protecting and Promoting the Open Internet; (WC Docket No. 14–28)	3060–AK21
394	Emerging Wireline Networks and Services; GN Docket No 13–5, WC Docket No. 05–25	3060–AK32
395	Modernizing Common Carrier Rules, WC Docket No 15–33	3060–AK33
396	Numbering Policies for Modern Communications, WC Docket No. 13–97	3060–AK36

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Consumer and Governmental Affairs Bureau

Long-Term Actions

299. Implementation of the Telecom Act of 1996; Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities (WT Docket No. 96–198)

Legal Authority: 47 U.S.C. 255; 47 U.S.C. 251(a)(2)

Abstract: These proceedings implement the provisions of sections 255 and 251(a)(2) of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

Timetable:

Action	Date	FR Cite
R&O	08/14/96	61 FR 42181
NOI	09/26/96	61 FR 50465
NPRM	05/22/98	63 FR 28456
R&O	11/19/99	64 FR 63235
Further NOI	11/19/99	64 FR 63277
Public Notice	01/07/02	67 FR 678
R&O	08/06/07	72 FR 43546
Petition for Waiver	11/01/07	72 FR 61813
Public Notice	11/01/07	72 FR 61882
Final Rule	04/21/08	73 FR 21251
Public Notice	08/01/08	73 FR 45008
Extension of Waiver.	05/15/08	73 FR 28057
Extension of Waiver.	05/06/09	74 FR 20892
Public Notice	05/07/09	74 FR 21364
Extension of Waiver.	07/29/09	74 FR 37624
NPRM	03/14/11	76 FR 13800
NPRM Comment Period Extended.	04/12/11	76 FR 20297
FNPRM	12/30/11	76 FR 82240
Comment Period End.	03/14/12	
R&O	12/30/11	76 FR 82354
Announcement of Effective Date.	04/25/12	77 FR 24632
2nd R&O	05/22/13	78 FR 30226
FNPRM	12/20/13	78 FR 77074
FNPRM Comment Period End.	02/18/14	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cheryl J. King, Deputy Chief, Disability Rights Office, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2284, *TDD Phone:* 202 418–0416, *Fax:* 202 418–0037, *Email: cheryl.king@fcc.gov.*

RIN: 3060–AG58

300. Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278)

Legal Authority: 47 U.S.C. 227

Abstract: On July 3, 2003, the Commission released a Report and Order establishing, along with the FTC, a national do-not-call registry. The Commission's Report and Order also adopted rules on the use of predictive dialers, the transmission of caller ID information by telemarketers, and the sending of unsolicited fax advertisements. On September 21, 2004, the Commission released an Order amending existing safe harbor rules for telemarketers subject to the do-not-call registry to require such telemarketers to access the do-not-call list every 31 days, rather than every three months. On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration amending its facsimile advertising rules to implement the Junk Fax Protection Act of 2005. On October 14, 2008, the Commission released an Order on Reconsideration addressing certain issues raised in petitions for reconsideration and/or clarification of the Report and Order and Third Order

on Reconsideration. On January 4, 2008, the Commission released a Declaratory Ruling, clarifying that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the "prior express consent" of the called party. Following a December 4, 2007, NPRM, on June 17, 2008, the Commission released a Report and Order amending its rules to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely, unless the registration is cancelled by the consumer or the number is removed by the database administrator. Following a January 22, 2010, NPRM, the Commission released a Report and Order (on February 15, 2012) requiring telemarketers to obtain prior express written consent, including by electronic means, before making an autodialed or prerecorded telemarketing call to a wireless number or before making a prerecorded telemarketing call to a residential line; eliminating the "established business relationship" exemption to the consent requirement for prerecorded telemarketing calls to residential lines; requiring telemarketers to provide an automated, interactive "opt-out" mechanism during autodialed or prerecorded telemarketing calls to wireless numbers and during prerecorded telemarketing calls to residential lines; and requiring that the abandoned call rate for telemarketing calls be calculated on a "per-campaign" basis. On November 29, 2012, the Commission released a Declaratory Ruling clarifying that sending a one-time text message confirming a consumer's request that no further text messages be sent does not violate the Telephone Consumer Protection Act (TCPA) or the Commission's rules as long as the confirmation text only confirms receipt of the consumer's opt-out request, and does not contain marketing, solicitations, or an attempt to convince the consumer to reconsider his or her opt-out decision. The ruling applies only when the sender of the text messages has obtained prior express consent, as required by the TCPA and Commission rules, from the consumer to be sent text messages using an automatic telephone dialing system. On May 9, 2013, the Commission released a declaratory ruling clarifying that while a seller does not generally "initiate" calls made through a third-party telemarketer, within the meaning of the Telephone Consumer Protection Act (TCPA), it nonetheless may be held vicariously liable under Federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers.

On July 10, 2015, the commission released a Declaratory Ruling and Order resolving 21 separate requests for clarification or other action regarding the TCPA. It clarified, among other things, that: nothing in the Communications Act of the Commission's rules prohibits carriers or other service providers from implementing consumer-initiated call-blocking technologies; equipment meets the TCPA's definition of "autodialer" if it has the "capacity" to store or produce random sequential numbers, and to dial them, even if it is not presently used for that purpose; an "app" provider that plays a minimal role in making a call, such as just proving the app itself, is not the maker of the call for TCPA purposes; consumers who have previously consented to robocalls may revoke that consent at any time and through any reasonable means; the TCPA requires the consent of the party called—the subscriber to a phone number or the customary user of the number—not the intended recipient of the call; and callers who make calls without knowledge or reassignment of a wireless phone number and with a reasonable basis to believe that they have valid consent to make the call to the wireless number should be able to initiate one call after reassignment as an additional opportunity to gain actual or constructive knowledge of the reassignment and cease future calls to the new subscriber. The Commission also exempted certain financial and healthcare-related calls, when free to the consumer, from the TCPA's consumer-consent requirement.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62667
FNPRM	04/03/03	68 FR 16250
Order	07/25/03	68 FR 44144
Order Effective	08/25/03	
Order on Reconsideration.	08/25/03	68 FR 50978
Order	10/14/03	68 FR 59130
FNPRM	03/31/04	69 FR 16873
Order	10/08/04	69 FR 60311
Order	10/28/04	69 FR 62816
Order on Reconsideration.	04/13/05	70 FR 19330
Order	06/30/05	70 FR 37705
NPRM	12/19/05	70 FR 75102
Public Notice	04/26/06	71 FR 24634
Order	05/03/06	71 FR 25967
NPRM	12/14/07	72 FR 71099
Declaratory Ruling	02/01/08	73 FR 6041
R&O	07/14/08	73 FR 40183
Order on Reconsideration.	10/30/08	73 FR 64556
NPRM	03/22/10	75 FR 13471
R&O	06/11/12	77 FR 34233
Public Notice	06/30/10	75 FR 34244
Public Notice (Reconsideration Petitions Filed).	10/03/12	77 FR 60343
Announcement of Effective Date.	10/16/12	77 FR 63240
Opposition End Date.	10/18/12	
Rule Corrections	11/08/12	77 FR 66935
Declaratory Ruling (Release Date).	11/29/12	
Declaratory Ruling and Order.	10/09/15	80 FR 61129
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristi Lemoine, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2467, *Email: kristi.lemoine@fcc.gov.*

RIN: 3060–AI14

301. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

Abstract: This proceeding established a new docket flowing from the previous telecommunications relay service (TRS) history, CC Docket No. 98–67. This proceeding continues the Commission's inquiry into improving the quality of TRS and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

Timetable:

Action	Date	FR Cite
NPRM	08/25/03	68 FR 50993
R&O, Order on Reconsideration.	09/01/04	69 FR 53346
FNPRM	09/01/04	69 FR 53382
Public Notice	02/17/05	70 FR 8034
Declaratory Ruling/Interpretation.	02/25/05	70 FR 9239
Public Notice	03/07/05	70 FR 10930
Order	03/23/05	70 FR 14568
Public Notice/Announcement of Date.	04/06/05	70 FR 17334
Order	07/01/05	70 FR 38134
Order on Reconsideration.	08/31/05	70 FR 51643
R&O	08/31/05	70 FR 51649
Order	09/14/05	70 FR 54294
Order	09/14/05	70 FR 54298
Public Notice	10/12/05	70 FR 59346
R&O/Order on Reconsideration.	12/23/05	70 FR 76208
Order	12/28/05	70 FR 76712
Order	12/29/05	70 FR 77052
NPRM	02/01/06	71 FR 5221
Declaratory Ruling/Clarification.	05/31/06	71 FR 30818
FNPRM	05/31/06	71 FR 30848
FNPRM	06/01/06	71 FR 31131
Declaratory Ruling/Dismissal of Petition.	06/21/06	71 FR 35553
Clarification	06/28/06	71 FR 36690
Declaratory Ruling on Reconsideration.	07/06/06	71 FR 38268
Order on Reconsideration.	08/16/06	71 FR 47141
MO&O	08/16/06	71 FR 47145
Clarification	08/23/06	71 FR 49380
FNPRM	09/13/06	71 FR 54009
Final Rule; Clarification.	02/14/07	72 FR 6960
Order	03/14/07	72 FR 11789
R&O	08/06/07	72 FR 43546
Public Notice	08/16/07	72 FR 46060
Order	11/01/07	72 FR 61813
Public Notice	01/04/08	73 FR 863
R&O/Declaratory Ruling.	01/17/08	73 FR 3197
Order	02/19/08	73 FR 9031
Order	04/21/08	73 FR 21347
R&O	04/21/08	73 FR 21252
Order	04/23/08	73 FR 21843
Public Notice	04/30/08	73 FR 23361
Order	05/15/08	73 FR 28057
Declaratory Ruling	07/08/08	73 FR 38928
FNPRM	07/18/08	73 FR 41307
R&O	07/18/08	73 FR 41286
Public Notice	08/01/08	73 FR 45006
Public Notice	08/05/08	73 FR 45354
Public Notice	10/10/08	73 FR 60172
Order	10/23/08	73 FR 63078
2nd R&O and Order on Reconsideration.	12/30/08	73 FR 79683
Order	05/06/09	74 FR 20892
Public Notice	05/07/09	74 FR 21364
NPRM	05/21/09	74 FR 23815
Public Notice	05/21/09	74 FR 23859
Public Notice	06/12/09	74 FR 28046
Order	07/29/09	74 FR 37624
Public Notice	08/07/09	74 FR 39699
Order	09/18/09	74 FR 47894
Order	10/26/09	74 FR 54913
Public Notice	05/12/10	75 FR 26701
Order Denying Stay Motion (Release Date).	07/09/10	
Order	08/13/10	75 FR 49491
Order	09/03/10	75 FR 54040
NPRM	11/02/10	75 FR 67333
NPRM	05/02/11	76 FR 24442
Order	07/25/11	76 FR 44326
Final Rule (Order)	09/27/11	76 FR 59551
Final Rule; Announcement of Effective Date.	11/22/11	76 FR 72124
Proposed Rule (Public Notice).	02/28/12	77 FR 11997
Proposed Rule (FNPRM).	02/01/12	77 FR 4948
First R&O	07/25/12	77 FR 43538
Public Notice	10/29/12	77 FR 65526
Order on Reconsideration.	12/26/12	77 FR 75894
Order	02/05/13	78 FR 8030
Order (Interim Rule).	02/05/13	78 FR 8032
NPRM	02/05/13	78 FR 8090
Announcement of Effective Date.	03/07/13	78 FR 14701
NPRM Comment Period End.	03/13/13	
FNPRM	07/05/13	78 FR 40407
FNPRM Comment Period End.	09/18/13	
R&O	07/05/13	78 FR 40582
R&O	08/15/13	78 FR 49693
FNPRM	08/15/13	78 FR 49717
FNPRM Comment Period End.	09/30/13	
R&O	08/30/13	78 FR 53684
FNPRM	09/03/13	78 FR 54201
NPRM	10/23/13	78 FR 63152
FNPRM Comment Period End.	11/18/13	
Petiton for Reconsideration; Request for Comment.	12/16/13	78 FR 76096
Petition for Reconsideration; Request for Comment.	12/16/13	78 FR 76097
Request for Clarification; Request for Comment; Correction.	12/30/13	78 FR 79362
Petition for Reconsideration Comment Period End.	01/10/14	
NPRM Comment Period End.	01/21/14	
Announcement of Effective Date.	07/11/14	79 FR 40003
Announcement of Effective Date.	08/28/14	79 FR 51446
Correction—Announcement of Effective Date.	08/28/14	79 FR 51450
Technical Amendments.	09/09/14	79 FR 53303
Public Notice	09/15/14	79 FR 54979
R&O and Order	10/21/14	79 FR 62875
FNPRM	10/21/14	79 FR 62935
FNPRM Comment Period End.	12/22/14	
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515
Final Rule Effective.	10/30/14	
FNPRM	11/08/15	80 FR 72029
FNPRM Comment Period End.	01/01/16	
Public Notice	01/20/16	81 FR 3085
Public Notice Comment Period End.	02/16/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Karen Peltz Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2388, *Email: karen.strauss@fcc.gov.*

RIN: 3060–AI15

302. Consumer Information, Disclosure, and Truth in Billing and Billing Format

Legal Authority: 47 U.S.C. 201; 47 U.S.C. 258

Abstract: In 1999, the Commission adopted truth-in-billing rules to address concerns that there is consumer confusion relating to billing for telecommunications services. On March 18, 2005, the Commission released an Order and Further Notice of Proposed Rulemaking (FNPRM) to further facilitate the ability of telephone consumers to make informed choices among competitive service offerings. On August 28, 2009, the Commission released a Notice of Inquiry that asks questions about information available to consumers at all stages of the purchasing process for all communications services, including: (1) Choosing a provider; (2) choosing a service plan; (3) managing use of the service plan; and (4) deciding whether and when to switch an existing provider or plan. On October 14, 2010, the Commission released a Notice of Proposed Rulemaking (NPRM) proposing rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills. On July 12, 2011, the Commission released an NPRM proposing rules that would assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice, commonly referred to as "cramming." On April 27, 2012, the Commission adopted rules to address "cramming" on wireline telephone bills and released an FNPRM seeking comment on additional measures to protect wireline and wireless consumers from unauthorized charges.

Timetable:

party to a creditor in connection with an existing debt are permissible as calls made with the "prior express consent" of the called party. Following a December 4, 2007, NPRM, on June 17, 2008, the Commission released a Report and Order amending its rules to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely, unless the registration is cancelled by the consumer or the number is removed by the database administrator. Following a January 22, 2010, NPRM, the Commission released a Report and Order (on February 15, 2012) requiring telemarketers to obtain prior express written consent, including by electronic means, before making an autodialed or prerecorded telemarketing call to a wireless number or before making a prerecorded telemarketing call to a residential line; eliminating the "established business relationship" exemption to the consent requirement for prerecorded telemarketing calls to residential lines; requiring telemarketers to provide an automated, interactive "opt-out" mechanism during autodialed or prerecorded telemarketing calls to wireless numbers and during prerecorded telemarketing calls to residential lines; and requiring that the abandoned call rate for telemarketing calls be calculated on a "per-campaign" basis. On November 29, 2012, the Commission released a Declaratory Ruling clarifying that sending a one-time text message confirming a consumer's request that no further text messages be sent does not violate the Telephone Consumer Protection Act (TCPA) or the Commission's rules as long as the confirmation text only confirms receipt of the consumer's opt-out request, and does not contain marketing, solicitations, or an attempt to convince the consumer to reconsider his or her opt-out decision. The ruling applies only when the sender of the text messages has obtained prior express consent, as required by the TCPA and Commission rules, from the consumer to be sent text messages using an automatic telephone dialing system. On May 9, 2013, the Commission released a declaratory ruling clarifying that while a seller does not generally "initiate" calls made through a third-party telemarketer, within the meaning of the Telephone Consumer Protection Act (TCPA), it nonetheless may be held vicariously liable under Federal

released a Declaratory Ruling and Order resolving 21 separate requests for clarification or other action regarding the TCPA. It clarified, among other things, that: nothing in the Communications Act of the Commission's rules prohibits carriers or other service providers from implementing consumer-initiated call-blocking technologies; equipment meets the TCPA's definition of "autodialer" if it has the "capacity" to store or produce random sequential numbers, and to dial them, even if it is not presently used for that purpose; an "app" provider that plays a minimal role in making a call, such as just proving the app itself, is not the maker of the call for TCPA purposes; consumers who have previously consented to robocalls may revoke that consent at any time and through any reasonable means; the TCPA requires the consent of the party called—the subscriber to a phone number or the customary user of the number—not the intended recipient of the call; and callers who make calls without knowledge or reassignment of a wireless phone number and with a reasonable basis to believe that they have valid consent to make the call to the wireless number should be able to initiate one call after reassignment as an additional opportunity to gain actual or constructive knowledge of the reassignment and cease future calls to the new subscriber. The Commission also exempted certain financial and healthcare-related calls, when free to the consumer, from the TCPA's consumer-consent requirement.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62667
FNPRM	04/03/03	68 FR 16250
Order	07/25/03	68 FR 44144
Order Effective	08/25/03	
Order on Reconsideration.	08/25/03	68 FR 50978
Order	10/14/03	68 FR 59130
FNPRM	03/31/04	69 FR 16873
Order	10/08/04	69 FR 60311
Order	10/28/04	69 FR 62816
Order on Reconsideration.	04/13/05	70 FR 19330
Order	06/30/05	70 FR 37705
NPRM	12/19/05	70 FR 75102
Public Notice	04/26/06	71 FR 24634
Order	05/03/06	71 FR 25967
NPRM	12/14/07	72 FR 71099
Declaratory Ruling	02/01/08	73 FR 6041
R&O	07/14/08	73 FR 40183
Order on Reconsideration.	10/30/08	73 FR 64556
Public Notice (Reconsideration Petitions Filed).	10/03/12	77 FR 60343
Announcement of Effective Date.	10/16/12	77 FR 63240
Opposition End Date.	10/18/12	
Rule Corrections	11/08/12	77 FR 66935
Declaratory Ruling (Release Date).	11/29/12	
Declaratory Ruling and Order.	10/09/15	80 FR 61129
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kristi Lemoine, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2467, *Email: kristi.lemoine@fcc.gov.*

RIN: 3060–AI14

301. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

Abstract: This proceeding established a new docket flowing from the previous telecommunications relay service (TRS) history, CC Docket No. 98–67. This proceeding continues the Commission's inquiry into improving the quality of TRS and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

Timetable:

Action	Date	FR Cite
NPRM	08/25/03	68 FR 50993
R&O, Order on Reconsideration.	09/01/04	69 FR 53346
FNPRM	09/01/04	69 FR 53382
Public Notice	02/17/05	70 FR 8034
Declaratory Ruling/Interpretation.	02/25/05	70 FR 9239
Public Notice	03/07/05	70 FR 10930
Order	03/23/05	70 FR 14568
Order	07/01/05	70 FR 38134
Order on Reconsideration.	08/31/05	70 FR 51643
R&O	08/31/05	70 FR 51649
Order	09/14/05	70 FR 54294
Order	09/14/05	70 FR 54298
Public Notice	10/12/05	70 FR 59346
R&O/Order on Reconsideration.	12/23/05	70 FR 76208
Order	12/28/05	70 FR 76712
Order	12/29/05	70 FR 77052
NPRM	02/01/06	71 FR 5221
Declaratory Ruling/Clarification.	05/31/06	71 FR 30818
FNPRM	05/31/06	71 FR 30848
FNPRM	06/01/06	71 FR 31131
Declaratory Ruling/Dismissal of Petition.	06/21/06	71 FR 35553
Clarification	06/28/06	71 FR 36690
Declaratory Ruling on Reconsideration.	07/06/06	71 FR 38268
Order on Reconsideration.	08/16/06	71 FR 47141
MO&O	08/16/06	71 FR 47145
Clarification	08/23/06	71 FR 49380
FNPRM	09/13/06	71 FR 54009
Final Rule; Clarification.	02/14/07	72 FR 6960
Order	03/14/07	72 FR 11789
R&O	08/06/07	72 FR 43546
Public Notice	08/16/07	72 FR 46060
Order	11/01/07	72 FR 61813
Public Notice	01/04/08	73 FR 863
R&O/Declaratory Ruling.	01/17/08	73 FR 3197
Order	02/19/08	73 FR 9031
Order	04/21/08	73 FR 21347
R&O	04/21/08	73 FR 21252
Order	04/23/08	73 FR 21843
Public Notice	04/30/08	73 FR 23361
Order	05/15/08	73 FR 28057
Declaratory Ruling	07/08/08	73 FR 38928
FNPRM	07/18/08	73 FR 41307
R&O	07/18/08	73 FR 41286
Public Notice	08/01/08	73 FR 45006
Public Notice	08/05/08	73 FR 45354
Public Notice	10/10/08	73 FR 60172
Order	10/23/08	73 FR 63078
2nd R&O and Order on Reconsideration.	12/30/08	73 FR 79683
Order	05/06/09	74 FR 20892
Public Notice	05/07/09	74 FR 21364
NPRM	05/21/09	74 FR 23815
Public Notice	05/21/09	74 FR 23859
Public Notice	06/12/09	74 FR 28046
Order	07/29/09	74 FR 37624
Public Notice	08/07/09	74 FR 39699
Order	09/18/09	74 FR 47894
Order	10/26/09	74 FR 54913
Public Notice	05/12/10	75 FR 26701
Order Denying Stay Motion (Release Date).	07/09/10	
Order	08/13/10	75 FR 49491
Order	09/03/10	75 FR 54040
NPRM	11/02/10	75 FR 67333
NPRM	05/02/11	76 FR 24442
Order	07/25/11	76 FR 44326
Effective Date.		
Proposed Rule (Public Notice).	02/28/12	77 FR 11997
Proposed Rule (FNPRM).	02/01/12	77 FR 4948
First R&O	07/25/12	77 FR 43538
Public Notice	10/29/12	77 FR 65526
Order on Reconsideration.	12/26/12	77 FR 75894
Order	02/05/13	78 FR 8030
Order (Interim Rule).	02/05/13	78 FR 8032
NPRM	02/05/13	78 FR 8090
Announcement of Effective Date.	03/07/13	78 FR 14701
NPRM Comment Period End.	03/13/13	
FNPRM	07/05/13	78 FR 40407
FNPRM Comment Period End.	09/18/13	
R&O	07/05/13	78 FR 40582
R&O	08/15/13	78 FR 49693
FNPRM	08/15/13	78 FR 49717
FNPRM Comment Period End.	09/30/13	
R&O	08/30/13	78 FR 53684
FNPRM	09/03/13	78 FR 54201
NPRM	10/23/13	78 FR 63152
FNPRM Comment Period End.	11/18/13	
Petiton for Reconsideration; Request for Comment.	12/16/13	78 FR 76096
Petition for Reconsideration; Request for Comment.	12/16/13	78 FR 76097
Request for Clarification; Request for Comment; Correction.	12/30/13	78 FR 79362
Petition for Reconsideration Comment Period End.	01/10/14	
NPRM Comment Period End.	01/21/14	
Announcement of Effective Date.	07/11/14	79 FR 40003
Announcement of Effective Date.	08/28/14	79 FR 51446
Correction—Announcement of Effective Date.	08/28/14	79 FR 51450
Technical Amendments.	09/09/14	79 FR 53303
Public Notice	09/15/14	79 FR 54979
R&O and Order	10/21/14	79 FR 62875
FNPRM	10/21/14	79 FR 62935
FNPRM Comment Period End.	12/22/14	
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515
Final Rule Effective.	10/30/14	
FNPRM	11/08/15	80 FR 72029
FNPRM Comment Period End.	01/01/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Karen Peltz Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2388, *Email: karen.strauss@fcc.gov.*

RIN: 3060–AI15

302. Consumer Information, Disclosure, and Truth in Billing and Billing Format

Legal Authority: 47 U.S.C. 201; 47 U.S.C. 258

Abstract: In 1999, the Commission adopted truth-in-billing rules to address concerns that there is consumer confusion relating to billing for telecommunications services. On March 18, 2005, the Commission released an Order and Further Notice of Proposed Rulemaking (FNPRM) to further facilitate the ability of telephone consumers to make informed choices among competitive service offerings. On August 28, 2009, the Commission released a Notice of Inquiry that asks questions about information available to consumers at all stages of the purchasing process for all communications services, including: (1) Choosing a provider; (2) choosing a service plan; (3) managing use of the service plan; and (4) deciding whether and when to switch an existing provider or plan. On October 14, 2010, the Commission released a Notice of Proposed Rulemaking (NPRM) proposing rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills. On July 12, 2011, the Commission released an NPRM proposing rules that would assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice, commonly referred to as "cramming." On April 27, 2012, the Commission adopted rules to address "cramming" on wireline telephone bills and released an FNPRM seeking comment on additional measures to protect wireline and wireless consumers from unauthorized charges.

Timetable:

Action	Date	FR Cite
FNPRM	05/25/05	70 FR 30044
R&O	05/25/05	70 FR 29979
NOI	08/28/09	
Public Notice	05/20/10	75 FR 28249
Public Notice	06/11/10	75 FR 33303
NPRM	11/26/10	75 FR 72773
NPRM	08/23/11	76 FR 52625
NPRM Comment Period End.	11/21/11	
Order (Reply Comment Period Extended).	11/30/11	76 FR 74017
Reply Comment Period End.	12/05/11	
R&O	05/24/12	77 FR 30915
FNPRM	05/24/12	77 FR 30972
FNPRM Comment Period End.	07/09/12	
Order (Comment Period Extended).	07/17/12	77 FR 41955
Comment Period End.	07/20/12	
Announcement of Effective Dates.	10/26/12	77 FR 65230
Correction of Final Rule.	11/30/12	77 FR 71353
Correction of Final Rule.	11/30/12	77 FR 71354
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Richard D Smith, Special Counsel, Consumer Policy Division, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 717 338–2797, *Fax:* 717 338–2574, *Email: richard.smith@fcc.gov.*

RIN: 3060–AI61

303. Closed-Captioning of Video Programming; CG Docket Nos. 05–231 and 06–181 (Section 610 Review)

Legal Authority: 47 U.S.C. 613

Abstract: The Commission's closed-captioning rules are designed to make video programming more accessible to deaf and hard-of-hearing Americans. This proceeding resolves some issues regarding the Commission's closed-captioning rules that were raised for comment in 2005, and also seeks comment on how a certain exemption from the closed-captioning rules should be applied to digital multicast broadcast channels.

Timetable:

Action	Date	FR Cite
NPRM	02/03/97	62 FR 4959
R&O	09/16/97	62 FR 48487
Order on Reconsideration.	10/20/98	63 FR 55959
NPRM	09/26/05	70 FR 56150
Order and Declaratory Ruling.	01/13/09	74 FR 1594
NPRM	01/13/09	74 FR 1654
Final Rule Correction.	09/11/09	74 FR 46703
Final Rule (Announcement of Effective Date).	02/19/10	75 FR 7370
Order	02/19/10	75 FR 7368
Order Suspending Effective Date.	02/19/10	75 FR 7369
Waiver Order	10/04/10	75 FR 61101
Public Notice	11/17/10	75 FR 70168
Interim Final Rule (Order).	11/01/11	76 FR 67376
Final Rule (MO&O).	11/01/11	76 FR 67377
NPRM	11/01/11	76 FR 67397
NPRM Comment Period End.	12/16/11	
Public Notice	05/04/12	77 FR 26550
Public Notice	12/15/12	77 FR 72348
Final Rule Effective.	03/16/15	
FNPRM	03/27/14	79 FR 17094
R&O	03/31/14	79 FR 17911
FNPRM Comment Period End.	07/25/14	
Final Action (Announcement of Effective Date).	12/29/14	79 FR 77916
2nd FNPRM	12/31/14	79 FR 78768
Comment Period End.	01/30/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Eliot Greenwald, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2235, *Email: eliot.greenwald@fcc.gov.*

RIN: 3060–AI72

304. Accessibility of Programming Providing Emergency Information; MB Docket No. 12–107

Legal Authority: 47 U.S.C. 613

Abstract: In this proceeding, the Commission adopted rules detailing how video programming distributors must make emergency information accessible to persons with hearing and visual disabilities.

Timetable:

Action	Date	FR Cite
FNPRM	01/21/98	63 FR 3070
NPRM	12/01/99	64 FR 67236
NPRM Correction	12/22/99	64 FR 71712
Second R&O	05/09/00	65 FR 26757
R&O	09/11/00	65 FR 54805
Final Rule; Correction.	09/20/00	65 FR 5680
NPRM	11/28/12	77 FR 70970
NPRM Comment Period Extended.	12/20/12	77 FR 75404
NPRM Comment Period Extension End.	01/07/13	
R&O	05/24/13	78 FR 31770
FNPRM	05/24/13	78 FR 31800
FNPRM	12/20/13	78 FR 77074
FNPRM Comment Period End.	02/18/14	
NPRM	06/18/13	78 FR 36478
NPRM Comment Period End.	08/07/13	
R&O	12/20/13	78 FR 77210
Petition for Reconsideration.	01/31/14	79 FR 5364
Comment Period End.	02/25/14	
Correcting Amendments.	02/10/14	79 FR 7590
Announcement of Effective Date.	04/16/14	79 FR 21399
Final Action (Announcement of Effective Date).	01/26/15	80 FR 3913
Final Action Effective.	01/26/15	
2nd R&O	07/10/15	80 FR 39698
2nd FNPRM	07/10/15	80 FR 39722
2nd FNPRM Comment Period End.	09/08/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AI75

305. Empowering Consumers To Avoid Bill Shock (Docket No. 10–207)

Legal Authority: 47 U.S.C. 201; 47 U.S.C. 303; 47 U.S.C. 332

Abstract: On October 14, 2010, the Commission released a Notice of Proposed Rulemaking which proposes a rule that would require mobile service providers to provide usage alerts and information to help consumers avoid unexpected charges on their bills.

Timetable:

Action	Date	FR Cite
Public Notice	05/20/10	75 FR 28249
NPRM	11/26/10	75 FR 72773
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ51

306. Contributions to the Telecommunications Relay Services Fund (CG Docket No. 11–47)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225; 47 U.S.C. 616

Abstract: The Commission prescribes by regulation the obligations of each provider of interconnected and non-interconnected Voice over Internet Protocol (VoIP) service to participate in and contribute to the Interstate Telecommunications Relay Services Fund in a manner that is consistent with and comparable to such fund.

Timetable:

Action	Date	FR Cite
NPRM	04/04/11	76 FR 18490
NPRM Comment Period End.	05/04/11	
Final Rule	10/25/11	76 FR 65965
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rosaline Crawford, Attorney, Disability Rights Office, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2075, *Email: rosaline.crawford@fcc.gov.*

RIN: 3060–AJ63

307. Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges ("Cramming")

Legal Authority: 47 U.S.C. 201; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 332

Abstract: On July 12, 2011, the Commission released a Notice of Proposed Rulemaking proposing rules that would help consumers detect and prevent the placement of unauthorized charges on telephone bills, an unlawful and fraudulent practice commonly referred to as "cramming." On April 27, 2012, the Commission adopted rules to address "cramming" on wireline telephone bills and released a Further Notice of Proposed Rulemaking seeking comment on additional measures to protect wireline and wireless consumers from unauthorized charges.

Timetable:

Action	Date	FR Cite
NPRM	08/23/11	76 FR 52625
NPRM Comment Period End.	11/21/11	
Order (Extends Reply Comment Period).	11/30/11	76 FR 74017
NPRM Comment Period End.	12/05/11	
FNPRM	05/24/12	77 FR 30972
R&O	05/24/12	77 FR 30915
FNPRM Comment Period End.	07/09/12	
Order (Extends Reply Comment Period).	07/17/12	77 FR 41955
FNPRM Comment Period End.	07/20/12	
Announcement of Effective Dates.	10/26/12	77 FR 65230
Correction of Final Rule.	11/30/12	77 FR 71354
Correction of Final Rule.	11/30/12	77 FR 71353
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ72

308. Implementation of the Middle Class Tax Relief and Job Creation Act of 2012/Establishment of a Public Safety Answering Point Do-Not-Call Registry

Legal Authority: Public Law 112–96, sec 6507

Abstract: The Commission issued, on May 22, 2012, an NPRM to initiate a proceeding to create a Do-Not-Call registry for public safety answer points (PSAPs), as required by section 6507 of the Middle Class Tax Relief and Job Creation Act of 2012. The statute requires the Commission to establish a registry that allows PSAPs to register their telephone numbers on a do-not-call list; prohibit the use of automatic dialing equipment to contact registered numbers; and implement a range of monetary penalties for disclosure of registered numbers and for use of automatic dialing equipment to contact such numbers. On October 17, 2012, the Commission adopted final rules implementing the statutory requirements described above.

Timetable:

Action	Date	FR Cite
NPRM	06/21/12	77 FR 37362
R&O	10/29/12	77 FR 71131
Correction Amendments.	02/13/13	78 FR 10099
Announcement of Effective Date.	03/26/13	78 FR 18246
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ84

309. Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 255; 47 U.S.C. 617; 47 U.S.C. 618; 47 U.S.C. 619

Abstract: These proceedings implement sections 716, 717, and 718 of the Communications Act, which were added by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), related to the accessibility of advanced communications services and equipment (section 716), recordkeeping and enforcement requirements for entities subject to sections 255, 716, and 718 (section 717), and accessibility of Internet browsers built into mobile phones (section 718).

Timetable:

Action	Date	FR Cite
NPRM	03/14/11	76 FR 13800
NPRM Comment Period Extended.	04/12/11	76 FR 20297
NPRM Comment Period End.	05/13/11	
FNPRM	12/30/11	76 FR 82240
R&O	12/30/11	76 FR 82354
FNPRM Comment Period End.	03/14/12	
Announcement of Effective Date.	04/25/12	77 FR 24632
2nd R&O	05/22/13	78 FR 30226
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK00

310. Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13–24

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

Abstract: The FCC initiated this proceeding in its effort to ensure that IP CTS is available for eligible users only. In doing so, the FCC released an Interim Order and Notice of Proposed Rulemaking (NPRM) to address certain practices related to the provision and marketing of Internet Protocol Captioned Telephone Service (IP CTS). IP CTS is a form of relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an IP-enabled device. To ensure that IP CTS is provided efficiently to persons who need to use this service, this new Order establishes several requirements on a temporary basis from March 7, 2013, to September 3, 2013.

Timetable:

Action	Date	FR Cite
NPRM	02/05/13	78 FR 8090
Order (Interim Rule).	02/05/13	78 FR 8032
Order	02/05/13	78 FR 8030
Announcement of Effective Date.	03/07/13	78 FR 14701
NPRM Comment Period End.	03/12/13	
R&O	08/30/13	78 FR 53684
FNPRM	09/30/13	78 FR 54201
FNPRM Comment Period End.	11/18/13	
Petition for Reconsideration Request for Comment.	12/16/13	78 FR 76097
Petiton for Reconsideration Comment Period End.	01/10/14	
Announcement of Effective Date.	08/28/14	79 FR 51446
Correction—Announcement of Effective Date.	08/28/14	79 FR 51450
Technical Amendments.	09/09/14	79 FR 53303
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AK01

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Office of Engineering and Technology

Long-Term Actions

311. New Advanced Wireless Services (ET Docket No. 00–258)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303(c); 47 U.S.C. 303(f); 47 U.S.C. 303(g); 47 U.S.C. 303(r)

Abstract: This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks. The Third Notice of Proposed Rulemaking discusses the frequency bands that are still under consideration in this proceeding and invites additional comments on their disposition. Specifically, it addresses the Unlicensed Personal Communications Service (UPCS) band at 1910–1930 MHz, the Multipoint Distribution Service (MDS) spectrum at 2155–2160/62 MHz bands, the Emerging Technology spectrum, at 2160–2165 MHz, and the bands reallocated from MSS 91990–2000 MHz, 2020–2025 MHz, and 2165–2180 MHz. We seek comment on these bands with respect to using them for paired or unpaired Advance Wireless Service (AWS) operations or as relocation spectrum for existing services. The seventh Report and Order facilitates the introduction of Advanced Wireless Service (AWS) in the band 1710–1755 MHz—an integral part of a 90 MHz spectrum allocation recently reallocated to allow for such new and innovative wireless services. We largely adopt the proposals set forth in our recent AWS Fourth NPRM in this proceeding that are designed to clear the 1710–1755 MHz band of incumbent Federal Government operations that would otherwise impede the development of new nationwide AWS services. These actions are consistent with previous actions in this proceeding and with the United States Department of Commerce, National Telecommunications and Information Administration (NTIA) 2002 Viability Assessment, which addressed relocation and reaccommodation options for Federal Government operations in the band. The eighth Report and Order reallocated the 2155–2160 MHz band for fixed and mobile services and designates the 2155–2175 MHz band for Advanced Wireless Service (AWS) use. This proceeding continues the Commission's ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including Advanced Wireless Services. The Order requires Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band to provide information on the construction status and operational parameters of each incumbent BRS system that would be the subject of relocation. The Notice of Proposed Rule Making requested comments on the specific relocation procedures applicable to Broadband Radio Service (BRS) operations in the 2150–2160/62 MHz band, which the Commission recently decided will be relocated to the newly restructured 2495–2690 MHz band. The Commission also requested comments on the specific relocation procedures applicable to Fixed Microwave Service (FS) operations in the 2160–2175 MHz band. The Office of Engineering and Technology (OET) and the Wireless Telecommunications Bureau (WTB) set forth the specific data that Broadband Radio Service (BRS) licensees in the 2150–2160/62 MHz band must file along with the deadline date and procedures for filing this data on the Commission's Universal Licensing System (ULS). The data will assist in determining future AWS licensees' relocation obligations. The ninth Report and Order established procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150–2160/62 MHz band, as well as for the relocation of Fixed Microwave Service (FS) operations from the 2160–2175 MHz band, and modified existing relocation procedures for the 2110–2150 MHz and 2175–2180 MHz bands. It also established cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110–2150 MHz and 2160–2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150–2160/62 MHz band. The Commission continues its ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including AWS. The Order dismisses a petition for reconsideration filed by the Wireless Communications Association International, Inc. (WCA) as moot. Two petitions for reconsideration were filed in response to the ninth Report and Order. The Report and Orders and Declaratory Ruling concludes the Commission's longstanding efforts to relocate the Broadcast Auxiliary Service (BAS) from the 1990–2110 MHz band to the 2025–2110 MHz band, freeing up 35 megahertz of spectrum in order to foster the development of new and innovative services. This decision addresses the outstanding matter of Sprint Nextel Corporation's (Sprint Nextel) inability to agree with Mobile Satellite Service (MSS) operators in the band on the sharing of the costs to relocate the BAS incumbents. To resolve this controversy, the Commission applied its time-honored relocation principles for emerging technologies previously adopted for the BAS band to the instant relocation process, where delays and unanticipated developments have left ambiguities and misconceptions among the relocating parties. In the process, the Commission balances the responsibilities for and benefits of relocating incumbent BAS operations among all the new entrants in the different services that will operate in the band. The Commission proposed to modify its cost-sharing requirements for the 2 GHz BAS band because the circumstances surrounding the BAS transition are very different than what was expected when the cost-sharing requirements were adopted. The Commission believed that the best course of action was to propose new requirements that would address the ambiguity of applying the literal language of the current requirements to the changed circumstances, as well as balance the responsibilities for and benefits of relocating incumbent BAS operations among all new entrants in the band based on the Commission's relocation policies set forth in the Emerging Technologies proceeding. The Commission proposed to eliminate, as of January 1, 2009, the requirement that Broadcast Auxiliary Service (BAS) licensees in the 30 largest markets and fixed BAS links in all markets be transitioned before the Mobile Satellite Service (MSS) operators can begin offering service. The Commission also sought comments on how to mitigate interference between new MSS entrants and incumbent BAS licensees who had not completed relocation before the MSS entrants begin offering service. In addition, the Commission sought comments on allowing MSS operators to begin providing service in those markets where BAS incumbents have been transitioned. In the Further Notice of Proposed Rule Making the Commission proposed to modify its cost sharing requirements for the 2 GHz BAS band because the circumstances surrounding the BAS transition are very different than what was expected when the cost sharing requirements were adopted. The Commission believes that the best course of action is to propose new requirements that will address the ambiguity of applying the literal language of the current requirements to the changed circumstances, as well as balance the responsibilities for and benefits of relocating incumbent BAS operations among all new entrants in the band based on the Commission's relocation policies set forth in the Emerging Technologies proceeding.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7438
NPRM Comment Period End.	03/09/01	
Final Report	04/11/01	66 FR 18740
FNPRM	09/13/01	66 FR 47618
MO&O	09/13/01	66 FR 47591
First R&O	10/25/01	66 FR 53973
Petition for Reconsideration.	11/02/01	66 FR 55666
Second R&O	01/24/03	68 FR 3455
Third NPRM	03/13/03	68 FR 12015
Seventh R&O	12/29/04	69 FR 7793
Petition for Reconsideration.	04/13/05	70 FR 19469
Eighth R&O	10/26/05	70 FR 61742
Order	10/26/05	70 FR 61742
NPRM	10/26/05	70 FR 61752
Public Notice	12/14/05	70 FR 74011
Ninth R&O and Order.	05/24/06	71 FR 29818
Petition for Reconsideration.	07/19/06	71 FR 41022
FNPRM	03/31/08	73 FR 16822
R&O and NPRM	06/23/09	74 FR 29607
FNPRM	06/23/09	74 FR 29607
5th R&O, 11th R&O, 6th R&O, and Declaratory Ruling.	11/02/10	75 FR 67227
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AH65

312. Exposure to Radiofrequency Electromagnetic Fields (ET Docket No. 10–97)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 302 and 303; 47 U.S.C. 309(j); 47 U.S.C. 336

Abstract: In the Report and Order the Federal Communications Commission (Commission) resolved several issues regarding compliance with its regulations for conducting environmental reviews under the National Environmental Policy Act (NEPA) as they relate to the guidelines for human exposure to RF electromagnetic fields. More specifically, the Commission clarifies evaluation procedures and references to determine compliance with its limits, including specific absorption rate (SAR) as a primary metric for compliance, consideration of the pinna (outer ear) as an extremity, and measurement of medical implant exposure. The Commission also elaborates on mitigation procedures to ensure compliance with its limits, including labeling and other requirements for occupational exposure classification, clarification of compliance responsibility at multiple transmitter sites, and labeling of fixed consumer transmitters.

Timetable:

Action	Date	FR Cite
NPRM	09/08/03	68 FR 52879
NPRM Comment Period End.	12/08/03	
R&O	06/04/13	78 FR 33634
Petition for Recon	08/27/13	78 FR 52893
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AI17

313. Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04–186)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 302; 47 U.S.C. 303(e) and 303(f); 47 U.S.C. 303(r); 47 U.S.C. 307

Abstract: The Commission adopted rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed "white spaces"). This action will make a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. The actions taken are a conservative first step that

includes many safeguards to prevent harmful interference to incumbent communications services. Moreover, the Commission will closely oversee the development and introduction of these devices to the market and will take whatever actions may be necessary to avoid, and if necessary, correct any interference that may occur. The Second Memorandum Opinion and Order finalizes rules to make the unused spectrum in the TV bands available for unlicensed broadband wireless devices. This particular spectrum has excellent propagation characteristics that allow signals to reach farther and penetrate walls and other structures. Access to this spectrum could enable more powerful public Internet connections—super Wi-Fi hot spots—with extended range, fewer dead spots, and improved individual speeds as a result of reduced congestion on existing networks. This type of "opportunistic use" of spectrum has great potential for enabling access to other spectrum bands and improving spectrum efficiency. The Commission's actions here are expected to spur investment and innovation in applications and devices that will be used not only in the TV band, but eventually in other frequency bands as well. This Order addressed five petitions for reconsideration of the Commission's decisions in the Second Memorandum Opinion and Order ("Second MO&O") in this proceeding and modified rules in certain respects. In particular, the Commission: (1) Increased the maximum height above average terrain (HAAT) for sites where fixed devices may operate; (2) modified the adjacent channel emission limits to specify fixed rather than relative levels; and (3) slightly increased the maximum permissible power spectral density (PSD) for each category of TV bands device. These changes will result in decreased operating costs for fixed TVBDs and allow them to provide greater coverage, thus increasing the availability of wireless broadband services in rural and underserved areas without increasing the risk of interference to incumbent services. The Commission also revised and amended several of its rules to better effectuate the Commission's earlier decisions in this docket and to remove ambiguities.

Timetable:

Action	Date	FR Cite
NPRM	06/18/04	69 FR 34103
First R&O	11/17/06	71 FR 66876
FNPRM	11/17/06	71 FR 66897
R&O and MO&O	02/17/09	74 FR 7314
Petitions for Reconsideration.	04/13/09	74 FR 16870
Second MO&O	12/06/10	75 FR 75814
Petitions for Reconsideration.	02/09/11	76 FR 7208
3rd MO&O and Order.	05/17/12	77 FR 28236
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AI52

314. Fixed and Mobile Services in the Mobile Satellite Service (ET Docket No. 10–142)

Legal Authority: 47 U.S.C. 154(i) and 301; 47 U.S.C. 303(c) and 303(f); 47 U.S.C. 303(r) and 303(y); 47 U.S.C. 310

Abstract: The Notice of Proposed Rulemaking proposed to take a number of actions to further the provision of terrestrial broadband services in the MSS bands. In the 2 GHz MSS band, the Commission proposed to add co-primary Fixed and Mobile allocations to the existing Mobile-Satellite allocation. This would lay the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. The Commission also proposed to apply the terrestrial secondary market spectrum leasing rules and procedures to transactions involving terrestrial use of the MSS spectrum in the 2 GHz, Big LEO, and L-bands in order to create greater certainty and regulatory parity with bands licensed for terrestrial broadband service. The Commission also asked, in a notice of inquiry, about approaches for creating opportunities for full use of the 2 GHz band for standalone terrestrial uses. The Commission requested comment on ways to promote innovation and investment throughout the MSS bands while also ensuring market-wide mobile satellite capability to serve important needs like disaster recovery and rural access.

In the Report and Order, the Commission amended its rules to make additional spectrum available for new investment in mobile broadband networks while also ensuring that the United States maintains robust mobile satellite service capabilities. First, the Commission adds co-primary Fixed and Mobile allocations to the Mobile Satellite Service (MSS) 2 GHz band, consistent with the International Table of Allocations, allowing more flexible use of the band, including for terrestrial broadband services, in the future. Second, to create greater predictability and regulatory parity with the bands licensed for terrestrial mobile broadband service, the Commission extends its existing secondary market spectrum manager spectrum leasing policies, procedures, and rules that currently apply to wireless terrestrial services to terrestrial services provided using the Ancillary Terrestrial Component (ATC) of an MSS system. Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding concerning Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz, and published pursuant to 47 CFR 1.429(e). See 1.4(b)(1) of the Commission's rules.

Timetable:

Action	Date	FR Cite
NPRM	08/16/10	75 FR 49871
NPRM Comment Period End.	09/15/10	
Reply Comment Period End.	09/30/10	
R&O	05/31/11	76 FR 31252
Petitions for Reconsideration.	08/10/11	76 FR 49364
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

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RIN: 3060–AJ46

315. Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules (ET Docket No. 10–236)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 301 and 303

Abstract: The Commission initiated this proceeding to promote innovation and efficiency in spectrum use in the Experimental Radio Service (ERS). For many years, the ERS has provided fertile ground for testing innovative ideas that have led to new services and new devices for all sectors of the economy. The Commission proposed to leverage the power of experimental radio licensing to accelerate the rate at which these ideas transform from prototypes to consumer devices and services. Its goal is to inspire researchers to dream, discover, and deliver the innovations that push the boundaries of the broadband ecosystem. The resulting advancements in devices and services available to the American public and greater spectrum efficiency over the long term will promote economic growth, global competitiveness, and a better way of life for all Americans.

In the Report and Order (R&O), the Commission revised and streamlined its rules to modernize the Experimental Radio Service (ERS). The rules adopted in the R&O updated the ERS to a more flexible framework to keep pace with the speed of modern technological change while continuing to provide an environment where creativity can thrive. To accomplish this transition, the Commission created three new types of ERS licenses—the program license, the medical testing license, and the compliance testing license—to benefit the development of new technologies, expedite their introduction to the marketplace, and unleash the full power of innovators to keep the United States at the forefront of the communications industry. The Commission's actions also modified the market trial rules to eliminate confusion and more clearly articulate its policies with respect to marketing products prior to equipment certification. The Commission believes that these actions will remove regulatory barriers to experimentation, thereby permitting institutions to move from concept to experimentation to finished product more rapidly and to more quickly implement creative problem-solving methodologies.

The Memorandum Opinion and Order responds to three petitions for reconsideration seeking to modify certain rules adopted in the Report and Order in this proceeding. In response, the Commission modifies its rules, consistent with past practice, to permit conventional Experimental Radio Service (ERS) licensees and compliance testing licensees to use bands exclusively allocated to the passive services in some circumstances; clarifies that some cost recovery is permitted for the testing and operation of experimental medical devices that take place under its market trial rules; and adds a definition of emergency notification providers to its rules to clarify that all participants in the Emergency Alert System (EAS) are such providers. However, the Commission declines to expand the eligibility for medical testing licenses.

In the Further Notice of Proposed Rulemaking the Commission proposes to modify the rules for program experimental licenses to permit experimentation for radio frequency (RF)-based medical devices, if the device being tested is designed to comply with all applicable service rules in part 18, Industrial, Scientific, and Medical Equipment; part 95, Personal Radio Services subpart H Wireless Medical Telemetry Service; or part 95, subpart I Medical Device Radiocommunication Service. This proposal is designed to establish parity between all qualified medical device manufacturers for conducting basic research and clinical trials with RF-based medical devices as to permissible frequencies of operation.

This Memorandum Opinion and Order responds to three petitions for reconsideration seeking to modify certain rules adopted in the Report and Order in this proceeding. In response, the Commission modifies its rules, consistent with past practice, to permit conventional Experimental Radio Service (ERS) licensees and compliance testing licensees to use bands exclusively allocated to the passive services in some circumstances; clarifies that some cost recovery is permitted for the testing and operation of experimental medical devices that take place under its market trial rules; and adds a definition of emergency notification providers: to its rules to clarify that all participants in the Emergency Alert System (EAS) are such providers. However, the Commission declines to expand the eligibility for medical testing licenses.

Timetable:

Action	Date	FR Cite
NPRM	02/08/11	76 FR 6928
NPRM Comment Period End.	03/10/11	
R&O	04/29/13	78 FR 25138
FNPRM	08/31/15	80 FR 52437
MO&O	08/31/15	80 FR 52408
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nnake Nweke, Chief, Experimental Licensing Branch, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0785, *Email: nnake.nweke@fcc.gov.*

RIN: 3060–AJ62

316. Operation of Radar Systems in the 76–77 GHz Band (ET Docket No. 11–90)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303(f)

Abstract: The Commission proposed to amend its rules to enable enhanced vehicular radar technologies in the 76–77 GHz band to improve collision avoidance and driver safety. Vehicular radars can determine the exact distance and relative speed of objects in front of, beside, or behind a car to improve the driver's ability to perceive objects under bad visibility conditions or objects that are in blind spots. These modifications to the rules will provide more efficient use of spectrum, and enable the automotive and fixed radar application industries to develop enhanced safety measures for drivers and the general public. The Commission takes this action in response to petitions for rulemaking filed by Toyota Motor Corporation ("TMC") and Era Systems Corporation ("Era"). The Report and Order amends the Commission's rules to provide a more efficient use of the 76–77 GHz band, and to enable the automotive and aviation industries to develop enhanced safety measures for drivers and the general public. Specifically, the Commission eliminated the in-motion and not-in-motion distinction for vehicular radars, and instead adopted new uniform emission limits for forward, side, and rear-looking vehicular radars. This will facilitate enhanced vehicular radar technologies to improve collision avoidance and driver safety. The Commission also amended its rules to allow the operation of fixed radars at airport locations in the 76–77 GHz band for purposes of detecting foreign object debris on runways and monitoring aircraft and service vehicles on taxiways and other airport vehicle service areas that have no public vehicle access. The Commission took this action in response to petitions for rulemaking filed by Toyota Motor Corporation ("TMC") and Era Systems Corporation ("Era"). Petitions for Reconsideration were filed by Navtech Radar, Ltd. and Honeywell International Inc.

Navtech Radar, Ltd. and Honeywell International, Inc., filed petitions for reconsideration in response to the *Vehicular Radar R&O* that modified the Commission's part 15 rules to permit vehicular radar technologies and airport-based fixed radar applications in the 76–77 GHz band.

The Commission denied Honeywell's petition. Section 1.429(b) of the Commission's rules provides three ways in which a petition for reconsideration can be granted, and none of these have been met. Honeywell has not shown that its petition relies on facts regarding fixed radar use which had not previously been presented to the Commission, nor does it show that its petition relies on facts that relate to events that changed since Honeywell

had the last opportunity to present its facts regarding fixed radar use.

The Commission stated in the Vehicular Radar R&O, "that no parties have come forward to support fixed radar applications beyond airport locations in this band," and it decided not to adopt provisions for unlicensed fixed radar use other than those for FOD detection applications at airport locations. Because Navtech first participated in the proceeding when it filed its petition well after the decision was published, its petition fails to meet the timeliness standard of section 1.429(d).

In connection with the Commission's decision to deny the petitions for reconsideration discussed above, the Commission terminates ET Docket Nos. 10–28 and 11–90 (pertaining to vehicular radar).

Timetable:

Action	Date	FR Cite
NPRM	06/16/11	76 FR 35176
R&O	08/13/12	77 FR 48097
Petition for Reconsideration.	11/11/12	77 FR 68722
Reconsideration Order.	03/06/15	80 FR 12120
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Aamer Zain, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2437, *Email: aamer.zain@fcc.gov.*

RIN: 3060–AJ68

317. WRC–07 Implementation (ET Docket No. 12–338)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 301; 47 U.S.C. 302(a); 47 U.S.C. 303

Abstract: In the Notice of Proposed Rulemaking (NPRM), the Commission proposed to amend parts 1, 2, 74, 78, 87, 90, and 97 of its rules to implement allocation decisions from the World Radiocommunication Conference (Geneva, 2007) (WRC 07) concerning portions of the radio frequency (RF) spectrum between 108 MHz and 20.2 GHz and to make certain updates to its rules in this frequency range. The NPRM follows the Commission's July 2010 WRC–07 Table Clean-up Order, 75 FR 62924, October 13, 2010, which made certain nonsubstantive, editorial revisions to the Table of Frequency Allocations (Allocation Table) and to other related rules. The Commission also addressed the recommendations for implementation of the WRC–07 Final Acts that the National Telecommunications and Information Administration (NTIA) submitted to the Commission in August 2009. As part of its comprehensive review of the Allocation Table, the Commission also proposed to make allocation changes that are not related to the WRC–07 Final Acts and update certain service rules, and requested comment on other allocation issues that concern portions of the RF spectrum between 137.5 kHz and 54.25 GHz.

In the Report and Order the Commission implemented allocation changes from the World Radiocommunication Conference (Geneva, 2007) (WRC–07) and updated related service rules. The Commission took this action in order to conform its rules, to the extent practical, to the decisions that the international community made at WRC–07. This action will promote the advancement of new and expanded services and provide significant benefits to the American people. In addition, the Commission revised the International Table of Frequency Allocations within its rules to generally reflect the allocation changes made at the World Radiocommunication Conference (Geneva, 2012) (WRC–12).

Timetable:

Action	Date	FR Cite
NPRM	12/27/12	77 FR 76250
NPRM Comment Period End.	02/25/13	
Report and Order	04/23/15	80 FR 38811
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tom Mooring, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2450, *Fax:* 202 418–1944, *Email: tom.mooring@fcc.gov.*

RIN: 3060–AJ93

318. Federal Earth Stations—Non-Federal Fixed Satellite Service Space Stations; Spectrum for Non-Federal Space Launch Operations; ET Docket No. 13–115

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 302(a); 47 U.S.C. 303; 47 U.S.C. 336

Abstract: The Notice of Proposed Rulemaking proposes to make spectrum allocation proposals for three different space related purposes. The Commission makes two alternative proposals to modify the Allocation Table to provide interference protection for Fixed-Satellite Service (FSS) and Mobile-Satellite Service (MSS) earth stations operated by Federal agencies under authorizations granted by the National Telecommunications and Information Administration (NTIA) in certain frequency bands. The Commission also proposes to amend a footnote to the Allocation Table to permit a Federal MSS system to operate in the 399.9–400.05 MHz band; it also makes alternative proposals to modify the Allocation Table to provide access to spectrum on an interference protected basis to Commission licensees for use during the launch of launch vehicles (*i.e.*, rockets). The Commission also seeks comment broadly on the future spectrum needs of the commercial space sector. The Commission expects that, if adopted, these proposals would advance the commercial space industry and the important role it will play in our Nation's economy and technological innovation now and in the future.

Timetable:

Action	Date	FR Cite
NPRM	07/01/13	78 FR 39200
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nicholas Oros, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0636, *Email: nicholas.oros@fcc.gov.*

RIN: 3060–AK09

319. Authorization of Radiofrequency Equipment; ET Docket No. 13–44

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 301; 47 U.S.C. 303(f); 47 U.S.C. 303(g); 47 U.S.C. 303(r); 47 U.S.C. 307(e); 47 U.S.C. 332

Abstract: The Commission is responsible for an equipment authorization program for radiofrequency (RF) devices under part 2 of its rules. This program is one of the primary means that the Commission uses to ensure that the multitude of RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission rules. All RF devices subject to equipment authorization must comply with the Commission's technical requirement before they can be imported or marketed. The Commission or a Telecommunication Certification Body (TCB) must approve some of these devices before they can be imported or marketed, while others do not require such approval. The Commission last comprehensively reviewed its equipment authorization program more than 10 years ago. The rapid innovation in equipment design since that time has led to ever-accelerating growth in the number of parties applying for equipment approval. The Commission therefore believes that the time is now right for us to comprehensively review our equipment authorization processes to ensure that they continue to enable this growth and innovation in the wireless equipment market. In May of 2012, the Commission began this reform process by issuing an Order to increase the supply of available grantee codes. With this Notice of Proposed Rulemaking (NPRM), the Commission continues its work to review and reform the equipment authorization processes and rules. This Notice of Proposed Rulemaking proposes certain changes to the Commission's part 2 equipment authorization processes to ensure that they continue to operate efficiently and effectively. In particular, it addresses the role of TCBs in certifying RF equipment and post-market surveillance, as well as the Commission's role in assessing TCB performance. The NPRM also addressed the role of test laboratories in the RF equipment approval process, including accreditation of test labs and the Commission's recognition of laboratory accreditation bodies, and measurement procedures used to determine RF equipment compliance. Finally, it proposes certain modifications to the rules regarding TCBs that approve terminal equipment under part 68 of the rules that are consistent with our proposed modifications to the rules for TCBs that approve RF equipment. Specifically, the Commission proposes to recognize the National Institute for Standards and Technology (NIST) as the organization that designates TCBs in the United States and to modify the rules to reference the current International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) guides used to accredit TCBs.

This Report and Order updates the Commission's radiofrequency (RF) equipment authorization program to build on the success realized by its use of Commission-recognized Telecommunications Certification Bodies (TCBs). The rules the Commission is adopting will facilitate the continued rapid introduction of new and innovative products to the market while ensuring that these products do not cause harmful interference to each other or to other communications devices and services.

Timetable:

Action	Date	FR Cite
NPRM	05/03/13	78 FR 25916
R&O	06/12/15	80 FR 33425
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7506, *Fax:* 202 418–1944, *Email: hugh.vantuyl@fcc.gov.*

RIN: 3060–AK10

320. Operation of Radar Systems in the 76–77 GHz Band (ET Docket No. 15–26)

Legal Authority: 47 U.S.C. 1; 47 U.S.C. 4(i); 47 U.S.C. 154(i); 47 U.S.C. 302; 47 U.S.C. 303(f); 47 U.S.C. 303(r); 47 U.S.C. 332; 47 U.S.C. 337

Abstract: The Notice of Proposed Rulemaking proposes to authorize radar applications in the 76–81 GHz band. The Commission seeks to develop a flexible and streamlined regulatory framework that will encourage efficient, innovative uses of the spectrum and to allow various services to operate on an interference-protected basis. In doing so, it further seeks to adopt service rules that will allow for the deployment of the various radar applications in this band, both within and outside the U.S. The Commission takes this action in response to a petition for rulemaking filed by Robert Bosch, LLC (Bosch) and two petitions for reconsideration of the 2012 Vehicular Radar R&O.

Timetable:

Action	Date	FR Cite
NPRM	03/06/15	80 FR 12120
NPRM Comment Period End.	04/06/15	
NPRM Reply Comment Period End.	04/20/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Aamer Zain, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2437, *Email: aamer.zain@fcc.gov.*

RIN: 3060–AK29

321. Spectrum Access for Wireless Microphone Operations (GN Docket Nos. 14–166 and 12–268)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 301; 47 U.S.C. 303(f); 47 U.S.C. 303(g); 47 U.S.C. 303(r); 47 U.S.C. 307(e); 47 U.S.C. 332

Abstract: The Notice of Proposed Rule Making initiated a proceeding to address how to accommodate the long-term needs of wireless microphone users. Wireless microphones play an important role in enabling broadcasters and other video programming networks to serve consumers, including as they cover breaking news and broadcast live sports events. They enhance event productions in a variety of settings including theaters and music venues, film studios, conventions, corporate events, houses of worship, and internet webcasts. They also help create high quality content that consumers demand and value. Recent actions by the Commission, and in particular the repurposing of broadcast television band spectrum for wireless services set forth in the Incentive Auction R&O, will significantly alter the regulatory environment in which wireless microphones operate, which necessitates our addressing how to accommodate wireless microphone users in the future.

In the Report and Order, the Commission takes several steps to accommodate the long-term needs of wireless microphone users. Wireless microphones play an important role in enabling broadcasters and other video programming networks to serve consumers, including as they cover breaking news and live sports events. They enhance event productions in a variety of settings including theaters and music venues, film studios, conventions, corporate events, houses of worship, and internet webcasts. They also help create high quality content that consumers demand and value. In particular, the Commission provide additional opportunities for wireless microphone operations in the TV bands following the upcoming incentive auction, and the Commission provide new opportunities for wireless microphone operations to access spectrum in other frequency bands where they can share use of the bands without harming existing users.

Timetable:

Action	Date	FR Cite
NPRM	11/21/14	79 FR 69387
NPRM Comment Period End.	01/05/15	

Action	Date	FR Cite
NPRM Reply Comment Period End.	01/26/15	
R&O	11/17/15	80 FR 71702
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Paul Murray, Attorney Advisor, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0688, *Fax:* 202 418–7447, *Email: paul.murray@fcc.gov.*
RIN: 3060–AK30

FEDERAL COMMUNICATIONS COMMISSION (FCC)

International Bureau

Long-Term Actions

322. Space Station Licensing Reform (IB Docket No. 02–34)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 303(c); 47 U.S.C. 303(g)
Abstract: The Commission adopted a Notice of Proposed Rulemaking (NPRM) to streamline its procedures for reviewing satellite license applications. Before 2003, the Commission used processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issued a Public Notice establishing a cutoff date for other mutually exclusive satellite applications, and then considered all those applications together. In cases where sufficient spectrum to accommodate all the applications was not available, the Bureau directed the applicants to negotiate a mutually agreeable solution. Those negotiations took a long time, and delayed provision of satellite services to the public. The NPRM invited comment on two alternatives for expediting the satellite application process. One alternative was to replace the processing round procedure with a "first-come, first-served" procedure that would allow the Bureau to issue a satellite license to the first party filing a complete, acceptable application. The other alternative was to streamline the processing round procedure by adopting one or more of the following proposals: (1) Place a time limit on negotiations; (2) establish criteria to select among competing applicants; (3) divide the available spectrum evenly among the applicants. In the First Report and Order in this proceeding, the Commission determined that different procedures were better suited for different kinds of satellite applications. For most geostationary orbit (GSO) satellite applications, the Commission adopted a first-come, first-served approach. For most non-geostationary orbit (NGSO) satellite applications, the Commission adopted a procedure in which the available spectrum is divided evenly among the qualified applicants. The Commission also adopted measures to discourage applicants from filing speculative applications, including a bond requirement, payable if a licensee misses a milestone. The bond amounts originally were $5 million for each GSO satellite, and $7.5 million for each NGSO satellite system. These were interim amounts. Concurrently with the First Report and Order, the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) to determine whether to revise the bond amounts on a long-term basis. In the Second Report and Order, the Commission adopted a streamlined procedure for certain kinds of satellite license modification requests. In the Third Report and Order, the Commission adopted a standardized application form for satellite licenses, and adopted a mandatory electronic filing requirement for certain satellite applications. In the Fourth Report and Order, the Commission revised the bond amounts based on the record developed in response to FNPRM. The bond amounts were changed to $3 million for each GSO satellite, and $5 million for each NGSO satellite system.
Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12498
NPRM Comment Period End.	07/02/02	
Second R&O (Release Date).	06/20/03	68 FR 62247
Second FNPRM (Release Date).	07/08/03	68 FR 53702
Third R&O (Release Date).	07/08/03	68 FR 63994
FNPRM	08/27/03	68 FR 51546
First R&O	08/27/03	68 FR 51499
FNPRM Comment Period End.	10/27/03	
Fourth R&O (Release Date).	04/16/04	69 FR 67790
Fifth R&O, First Order on Reconsideration.	08/20/04	69 FR 51586
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Clay DeCell, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0803, *Email: clay.decell@fcc.gov.*
RIN: 3060–AH98

323. International Settlements Policy Reform (IB Docket No. 11–80)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154; 47 U.S.C. 201 to 205; 47 U.S.C. 208; 47 U.S.C. 211; 47 U.S.C. 214; 47 U.S.C. 303(r); 47 U.S.C. 309; 47 U.S.C. 403
Abstract: The FCC is reviewing the International Settlements Policy (ISP). It governs how U.S. carriers negotiate with foreign carriers for the exchange of international traffic, and is the structure by which the Commission has sought to respond to concerns that foreign carriers with market power are able to take advantage of the presence of multiple U.S. carriers serving a particular market. In 2011, the FCC released an NPRM which proposed to further deregulate the international telephony market and enable U.S. consumers to enjoy competitive prices when they make calls to international destinations. First, it proposed to remove the ISP from all international routes, except Cuba. Second, the FCC sought comment on a proposal to enable the Commission to better protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers in instances necessitating Commission intervention. In 2012, the FCC adopted a Report and Order which eliminated the ISP on all routes, but maintained the nondiscrimination requirement of the ISP on the U.S.-Cuba route and codified it at 47 CFR 63.22(f). In the Report and Order the FCC also adopted measures to protect U.S. consumers from anticompetitive conduct by foreign carriers. In 2016, the FCC released an FNPRM proposing to remove the nondiscrimination requirement on the U.S.-Cuba route.
Timetable:

Action	Date	FR Cite
NPRM	05/13/11	76 FR 42625
NPRM Comment Period End.	09/02/11	
Report and Order	02/15/13	78 FR 11109
FNPRM	03/04/16	81 FR 11500
FNPRM Comment Period End.	04/18/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: David Krech, Assoc. Chief, Telecommunications & Analysis Div., Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7443, *Fax:* 202 418–2824, *Email: david.krech@fcc.gov.*
RIN: 3060–AJ77

324. Comprehensive Review of Licensing and Operating Rules for Satellite Services (IB Docket No. 12–267)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 161; 47 U.S.C. 303(c); 47 U.S.C. 303(g); 47 U.S.C. 303(r)
Abstract: The Commission adopted a Notice of Proposed Rulemaking (NPRM) as part of its ongoing efforts to update and streamline regulatory requirements. The NPRM initiated a comprehensive review of Part 25 of the Commission's rules, which governs the licensing and operation of space stations and earth stations. The Commission proposed amendments to modernize the rules to better reflect evolving technology, to eliminate unnecessary technical and information filing requirements, and to reorganize and simplify existing requirements. In the ensuing Report and Order, the Commission adopted most of its proposed changes and revised over 150 rule provisions. Several proposals raised by commenters in the proceeding, however, were not within the scope of the original NPRM. To address these and other issues, the Commission released a Further Notice of Proposed Rulemaking (FNPRM). The FNPRM proposed additional rule changes to facilitate international coordination of proposed satellite networks, to revise system implementation milestones and the associated bond, and to expand the applicability of routine licensing standards. Following the FNPRM, the Commission issued a Second Report and Order adopting most of its proposals in the FNPNRM. Among other changes, the Commission established a two-step licensing procedure for most geostationary satellite applicants to facilitate international coordination, simplified the satellite development milestones, adopted an escalating bond requirement to discourage speculation, and refined the two-degree orbital spacing policy for most geostationary satellites to protect existing services.
Timetable:

Action	Date	FR Cite
NPRM	11/08/12	77 FR 67172
NPRM Comment Period End.	12/24/12	
Reply Comment Period End.	01/22/13	
Report and Order	02/12/14	79 FR 8308
FNPRM Comment Period End.	03/02/14	
FNPRM	10/21/14	79 FR 65106
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Clay DeCell, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0803, *Email: clay.decell@fcc.gov.*
RIN: 3060–AJ98

325. Expanding Broadband and Innovation Through Air–Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0–14.5 GHz Band; GN Docket No. 13–114

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 324
Abstract: In this docket, the Commission establishes a secondary allocation for the Aeronautical Mobile Service in the 14.0–14.5 GHz band and establishes service, technical, and licensing rules for air-ground mobile broadband. The Notice of Proposed Rulemaking requests public comment on a secondary allocation and service, technical, and licensing rules for air-ground mobile broadband.
Timetable:

Action	Date	FR Cite
NPRM (Release Date).	05/09/13	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Sean O'More, Attorney Advisor, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2453, *Email: sean.omore@fcc.gov.*
RIN: 3060–AK02

326. Terrestrial Use of the 2473–2495 MHz Band for Low-Power Mobile Broadband Networks; Amendments to Rules of Mobile Satellite Service System; IB Docket No. 13–213

Legal Authority: Not Yet Determined
Abstract: In this docket, the Commission proposes modified rules for the operation of the Ancillary Terrestrial Component of the single Mobile-Satellite Service system operating in the Big GEO S band. The changes would allow Globalstar, Inc. to deploy a low power broadband network using its licensed spectrum at 2483.5–2495 MHz under certain limited technical criteria, and with the same equipment utilize spectrum in the adjacent 2473–2483.5 MHz band, pursuant to technical rules for unlicensed operations in that band.
Timetable:

Action	Date	FR Cite
NPRM	02/19/14	79 FR 9445
NPRM Comment Period End.	05/05/14	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Stephen Duall, Chief, Satellite Policy Branch, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1103, *Fax:* 202 418–0748, *Email: stephen.duall@fcc.gov.*
RIN: 3060–AK16

327. • Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended (Docket No. 15–236)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 211; 47 U.S.C. 303(r); 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 403
Abstract: The FCC proposes to extend its foreign ownership rules and procedures that apply to common carrier licensees to broadcast licensees, with certain modifications to tailor them to the broadcast context. The FCC also seeks comment on whether and how to revise the methodology a licensee should use to assess its compliance with the 25 percent foreign ownership benchmark in section 310(b)(4) of the Communications Act of 1934, as amended, in order to reduce regulatory burdens on applicants and licensees. Finally, the FCC makes several proposals to clarify and update existing foreign ownership policies and procedures for broadcast, common carrier and aeronautical licensees.
Timetable:

Action	Date	FR Cite
NPRM	11/06/15	80 FR 68815
NPRM Comment Period End.	01/20/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.
Agency Contact: Kimberly Cook, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7532, *Email: kimberly.cook@fcc.gov.*
RIN: 3060–AK47

FEDERAL COMMUNICATIONS COMMISSION (FCC)

International Bureau

Completed Actions

328. Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market (IB Docket 12–299)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i) to (j); 47 U.S.C. 201 to 205

Abstract: FCC is considering proposed changes in the criteria under which it considers certain applications from foreign carriers or affiliates of foreign carriers for entry into the U.S. market for international telecommunications services. It proposes to eliminate or in the alternative simplify the effective competitive opportunities test (ECO Test) adopted in 1995 for Commission review of foreign carrier applications.

Timetable:

Action	Date	FR Cite
NPRM	11/26/12	77 FR 70400
NPRM Comment Period End.	12/26/12	
NPRM Reply Comment Period End.	01/15/13	
R&O	06/03/14	79 FR 31873
Final Rule (Announcement of Effective Date).	03/03/15	80 FR 11326
Final Rule Effective.	03/03/15	
Correction	08/03/15	80 FR 45898

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: David Krech, Assoc. Chief, Telecommunications & Analysis Div., Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7443, *Fax:* 202 418–2824, *Email: david.krech@fcc.gov.*

RIN: 3060–AJ97

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Media Bureau

Long-Term Actions

329. Broadcast Ownership Rules

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 309 and 310

Abstract: Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its ownership rules every four years and determine whether any such rules are necessary in the public interest as the result of competition. In 2002, the Commission undertook a comprehensive review of its broadcast multiple and cross-ownership limits examining: Cross-ownership of TV and radio stations; local TV ownership limits; national TV cap; and dual network rule. The Report and Order replaced the newspaper/broadcast cross-ownership and radio and TV rules with a tiered approach based on the number of television stations in a market. In June 2006, the Commission adopted a Further Notice of Proposed Rulemaking initiating the 2006 review of the broadcast ownership rules. The further notice also sought comment on how to address the issues raised by the Third Circuit. Additional questions are raised for comment in a Second Further Notice of Proposed Rulemaking. In the Report and Order and Order on Reconsideration, the Commission adopted rule changes regarding newspaper/broadcast cross-ownership, but otherwise generally retained the other broadcast ownership rules currently in effect. For the 2010 quadrennial review, five of the Commission's media rules are the subject of review: The local TV ownership rule; the local radio ownership rule; the newspaper broadcast cross-ownership rule; the radio/TV cross-ownership rule; and the dual network rule.

In the 2014 review, the Commission incorporated the record of the 2010 review, and sought additional data on market conditions and competitive indicators. The Commission also sought comment on whether to eliminate restrictions on newspaper/radio combined ownership and whether to eliminate the radio/television cross-ownership rule in favor of reliance on the local radio rule and the local television rule.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50991
R&O	08/05/03	68 FR 46286
Public Notice	02/19/04	69 FR 9216
FNPRM	08/09/06	71 FR 4511
Second FNPRM	08/08/07	72 FR 44539
R&O and Order on Reconsideration.	02/21/08	73 FR 9481
Notice of Inquiry	06/11/10	75 FR 33227
NPRM	01/19/12	77 FR 2868
NPRM Comment Period End.	03/19/12	
FNPRM	05/20/14	79 FR 29010
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brendan Holland, Chief, Industry Analysis Div., Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2757, *Email: brendan.holland@fcc.gov.*

RIN: 3060–AH97

330. Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185)

Legal Authority: 47 U.S.C. 309; 47 U.S.C. 336

Abstract: This proceeding initiates the digital television conversion for low-power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for these stations' conversion from analog to digital broadcasting. The Report and Order adopts definitions and permissible use provisions for digital TV translator and LPTV stations. The Second Report and Order takes steps to resolve the remaining issues in order to complete the low-power television digital transition. The third Notice of Proposed Rulemaking seeks comment on a number of issues related to the potential impact of the incentive auction and the repacking process.

Timetable:

Action	Date	FR Cite
NPRM	09/26/03	68 FR 55566
NPRM Comment Period End.	11/25/03	
R&O	11/29/04	69 FR 69325
FNPRM and MO&O.	10/18/10	75 FR 63766
2nd R&O	07/07/11	76 FR 44821
3rd NPRM	11/28/14	79 FR 70824
NPRM Comment Period End.	12/29/14	
NPRM Comment Period End.	12/29/14	
NPRM Reply Comment Period End.	01/12/15	
3rd R&O	02/01/16	81 FR 5041
4th NPRM	02/01/16	81 FR 5086
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shaun Maher, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554. *Phone:* 202 418–2324, *Fax:* 202 418–2827, *Email: shaun.maher@fcc.gov.*

RIN: 3060–AI38

331. Promoting Diversification of Ownership in the Broadcast Services (MB Docket No. 07–294)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i) and (j); 47 U.S.C. 257; 47 U.S.C. 303(r); 47 U.S.C. 307 to 310; 47 U.S.C. 336; 47 U.S.C. 534 and 535

Abstract: Diversity and competition are longstanding and important Commission goals. The measures proposed, as well as those adopted in this proceeding, are intended to promote diversity of ownership of media outlets. In the Report and Order and Third FNPRM, measures are enacted to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. In the Report and Order and Fourth FNPRM, the Commission adopts improvements to its data collection in order to obtain an accurate and comprehensive assessment of minority and female broadcast ownership in the United States. The Memorandum Opinion & Order addressed petitions for reconsideration of the rules, and also sought comment on a proposal to expand the reporting requirements to non attributable interests. In 2014, the Commission proposed a new type of FCC registration number for individuals to use on broadcast ownership reports. In 2015, the Commission proposed additional improvements to the collection of data reported on form 323.

Pursuant to a remand from the Third Circuit, the measures adopted in the 2009 Diversity Order were put forth for comment in the NPRM for the 2010 review of the Commission's Broadcast Ownership rules. The Commission sought additional comment in 2014. As directed by the court, the Commission considered a socially and economic disadvantaged business definition as a possible oasis for favorable regulatory treatment.

Timetable:

Action	Date	FR Cite
R&O	05/16/08	73 FR 28361
Third FNPRM	05/16/08	73 FR 28400
R&O	05/27/09	74 FR 25163
Fourth FNPRM	05/27/09	74 FR 25305
MO&O	10/30/09	74 FR 56131
NPRM	01/19/12	77 FR 2868
5th NPRM	01/15/13	78 FR 2934
6th FNPRM	01/15/13	78 FR 2925
FNPRM	05/20/14	79 FR 29010
7th FNPRM	02/26/15	80 FR 10442
Comment Period End.	03/30/15	
Reply Comment Period End.	04/30/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brendan Holland, Chief, Industry Analysis Div., Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2757, *Email: brendan.holland@fcc.gov.*

RIN: 3060–AJ27

332. Amendment of the Commission's Rules Related to Retransmission Consent (MB Docket No. 10–71)

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 325; 47 U.S.C. 534

Abstract: Cable systems and other multichannel video programming distributors are not entitled to retransmit a broadcast station's signal without the station's consent. This consent is known as "retransmission consent." Since Congress enacted the retransmission consent regime in 1992, there have been significant changes in the video programming marketplace. In this proceeding, comment is sought on a series of proposals to streamline and clarify the Commission's rules concerning or affecting retransmission consent negotiations.

In the 2014 Report and Order, the Commission adopted a rule providing that it is a violation of the duty to negotiate retransmission consent in good faith for a television station that is ranked among the top four stations to negotiate retransmission consent jointly with another such station if the stations are not commonly owned and serve the same geographic market.

Timetable:

Action	Date	FR Cite
NPRM	03/28/11	76 FR 17071
NPRM Comment Period End.	05/27/11	
R&O	05/19/14	79 FR 28615
NPRM	10/02/15	80 FR 59706
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Diana Sokolow, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2120, *Email: diana.sokolow@fcc.gov.*

RIN: 3060–AJ55

333. Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Docket No. 11–154)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 303; 47 U.S.C. 330(b); 47 U.S.C. 613; 47 U.S.C. 617

Abstract: Pursuant to the Commission's responsibilities under the Twenty-First Century Communications and Video Accessibility Act of 2010, this proceeding was initiated to adopt rules to govern the closed captioning requirements for the owners, providers, and distributors of video programming delivered using Internet protocol.

Timetable:

Action	Date	FR Cite
NPRM	09/28/11	76 FR 59963
R&O	03/20/12	77 FR 19480
Order on Recon, FNPRM.	07/02/13	78 FR 39691
2nd Order on Recon.	08/05/14	79 FR 45354
2nd FNPRM	08/05/14	79 FR 45397
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Maria Mullarkey, Attorney, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1067, *Email: maria.mullarkey@fcc.gov.*

RIN: 3060–AJ67

334. Accessibility of User Interfaces and Video Programming Guides and Menus (MB Docket No. 12–108)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 303(aa); 47 U.S.C. 303(bb)

Abstract: This proceeding was initiated to implement sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act. These sections generally require that user interfaces on digital apparatus and navigation devices used to view video programming be accessible to and usable by individuals who are blind or visually impaired.

Timetable:

Action	Date	FR Cite
NPRM	06/18/13	78 FR 36478
NPRM Comment Period End.	07/15/13	
R&O	12/20/13	78 FR 77210
FNPRM	12/20/13	78 FR 77074
2nd FNPRM	02/04/16	81 FR 5971
2nd R&O	02/04/16	81 FR 5921
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Maria Mullarkey, Attorney, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1067, *Email: maria.mullarkey@fcc.gov.*

RIN: 3060–AK11

335. Network Non-Duplication and Syndicated Exclusivity Rule (MB Docket No. 14–29)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 301; 47 U.S.C. 303(R); 47 U.S.C. 307; 47 U.S.C. 339(b); 47 U.S.C.573(b)

Abstract: In this proceeding, the Commission continues to examine whether to eliminate or modify the network no-duplication and syndicated exclusivity rules in light of changes in the video marketplace in the more than 40 years since these rules were adopted.

Timetable:

Action	Date	FR Cite
NPRM	04/10/14	79 FR 19849
NPRM Comment Period End.	05/12/14	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kathy Berthot, Attorney, Policy Division Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2120, *Email: kathy.berthot@fcc.gov.*

RIN: 3060–AK18

336. Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees; MB Docket No. 14–127

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i)

Abstract: In this proceeding, the Commission expands to cable operators, satellite TV providers, broadcast radio licensees, and satellite radio licensees the requirement that public inspection files be posted to the FCC's online database. In 2012, the Commission adopted online public file rules for broadcast television stations that required them to post public file documents to a central, FCC-hosted online database rather than maintain the files locally at their main studios. Expanding the online file to other media entities extends the benefits of improved public access to public inspection files and ultimately reduce the burden of maintaining these files.

Timetable:

Action	Date	FR Cite
NPRM	02/13/15	80 FR 8031
NPRM Comment Period End.	03/16/15	
R&O	02/29/16	81 FR 10105
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Matthews, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2154, *Fax:* 202 418–2053, *Email: kim.matthews@fcc.gov*

RIN: 3060–AK23

337. Channel Sharing by Full Power and Class A Stations Outside of the Incentive Auction Context (MB Docket No. 15–137)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 338; 47 U.S.C. 403; 47 U.S.C. 614; 47 U.S.C. 615

Abstract: In this proceeding, the Commission considers rules to enable full power and Class A television stations to share a channel with another licensee outside of the incentive auction context.

Timetable:

Action	Date	FR Cite
NPRM	07/14/15	80 FR 40957
NPRM Comment Period End.	08/13/15	
NPRM Reply Comment Period End.	08/28/15	
1st Order on Recon.	11/02/15	80 FR 67337
2nd Order on Recon.	11/12/15	80 FR 67344
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kim Matthews, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2154, *Fax:* 202 418–2053, *Email: kim.matthews@fcc.gov.*

RIN: 3060–AK42

338. Preserving Vacant Channels in the UHF Television Band for Unlicensed Use (MB Docket No. 15–68)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 403

Abstract: In this proceeding, the Commission considers proposals to preserve vacant television channels in the UHF television band for shared use by white space devices and wireless microphones following the repacking of the band after the conclusion of the Incentive Auction. In the NPRM, the Commission proposed preserving in each area of the country at least one vacant television channel. In the Public Notice, the Commission notes that a limited number of broadcast television stations may be reassigned during the incentive auction and repacking process to channels within the duplex gap established as part of the 600 MHz Band Plan, resulting in a restriction on the ability of white space devices and wireless microphone to use this spectrum. To address this concern, the Public Notice tentatively concluded that a second available television channel should be preserved in the remaining television band in such areas for shared use by white space devices and wireless microphones, in addition to the one such channel proposed in the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	07/02/15	80 FR 38158
NPRM Comment Period End.	08/03/15	
NPRM Reply Comment Period End.	08/31/15	
Public Notice	09/01/15	80 FR 52715
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Shaun Maher, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2324, *Fax:* 202 418–2827, *Email: shaun.maher@fcc.gov.*

RIN: 3060–AK43

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Office of Managing Director

Long-Term Actions

339. Assessment and Collection of Regulatory Fees

Legal Authority: 47 U.S.C. 159

Abstract: Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

Timetable:

Action	Date	FR Cite
NPRM	04/06/06	71 FR 17410
R&O	08/02/06	71 FR 43842
NPRM	05/02/07	72 FR 24213
R&O	08/16/07	72 FR 45908
FNPRM	08/16/07	72 FR 46010
NPRM	05/28/08	73 FR 30563
R&O	08/26/08	73 FR 50201
FNPRM	08/26/08	73 FR 50285
2nd R&O	05/12/09	74 FR 22104
NPRM and Order	06/02/09	74 FR 26329
R&O	08/11/09	74 FR 40089
NPRM	04/26/10	75 FR 21536
R&O	07/19/10	75 FR 41932
NPRM	05/26/11	76 FR 30605
R&O	08/10/11	76 FR 49333
NPRM	05/17/12	77 FR 29275
R&O	08/03/12	77 FR 46307
NPRM	06/17/12	77 FR 49749
NPRM	06/10/13	78 FR 34612
R&O	08/23/13	78 FR 52433
NPRM	07/03/14	79 FR 37982
R&O	09/11/14	79 FR 54190
NPRM	06/30/15	80 FR 37206
R&O	07/21/15	80 FR 43019
Final Rule	09/17/15	80 FR 55775
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roland Helvajian, Office of the Managing Director, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0444, *Email: roland.helvajian@fcc.gov.*

RIN: 3060–AI79

340. Amendment of Part 1 of the Commission's Rules, Concerning Practice and Procedure, Amendment of Cores Registration System; MD Docket No. 10–234

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 158(c)(2); 47 U.S.C. 159(c)(2); 47 U.S.C. 303(r); 5 U.S.C. 5514; 31 U.S.C. 7701(c)(1)

Abstract: This Notice of Proposed Rulemaking proposes revisions intended to make the Commission's Registration System (CORES) more feature-friendly and improve the Commission's ability to comply with various statutes that govern debt collection and the collection of personal information by the Federal Government. The proposed modifications to CORES partly include requiring entities and individuals to rely primarily upon a single FRN that may, at their discretion, be linked to subsidiary or associated accounts; allowing entities to identify multiple points of contact; eliminating some of our exceptions to the requirement that entities and individuals provide their Taxpayer Identification Number (TIN) at the time of registration; requiring FRN holders to provide their email addresses; modifying CORES log-in procedures; adding attention flags and automated notices that would inform FRN holders of their financial standing before the Commission; and adding data fields to enable FRN holders to indicate their tax-exempt status and notify the Commission of pending bankruptcy proceedings.

Timetable:

Action	Date	FR Cite
NPRM	02/01/11	76 FR 5652
NPRM Comment Period End.	03/03/11	
Public Notice	02/15/11	
NPRM	02/26/15	80 FR 10442
NPRM Comment Period End.	03/30/15	
FNPRM (Release Date).	02/27/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Warren Firschein, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0844, *Email: warren.firschein@fcc.gov.*

RIN: 3060–AJ54

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Public Safety and Homeland Security Bureau

Long-Term Actions

341. Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102; PS Docket No. 07–114)

Legal Authority: 47 U.S.C. 134(i); 47 U.S.C. 151; 47 U.S.C. 201; 47 U.S.C. 208; 47 U.S.C. 215; 47 U.S.C. 303; 47 U.S.C. 309

Abstract: In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of 911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services.

Timetable:

Action	Date	FR Cite
FNPRM	08/02/96	61 FR 40374
R&O	08/02/96	61 FR 40348
MO&O	01/16/98	63 FR 2631
Second R&O	06/28/99	64 FR 34564
Third R&O	11/04/99	64 FR 60126
Second MO&O	12/29/99	64 FR 72951
Fourth MO&O	10/02/00	65 FR 58657
FNPRM	06/13/01	66 FR 31878
Order	11/02/01	66 FR 55618
R&O	05/23/02	67 FR 36112
Public Notice	07/17/02	67 FR 46909
Order to Stay	07/26/02	
Order on Reconsideration.	01/22/03	68 FR 2914
FNPRM	01/23/03	68 FR 3214
R&O, Second FNPRM.	02/11/04	69 FR 6578
Second R&O	09/07/04	69 FR 54037
NPRM	06/20/07	72 FR 33948
NPRM Comment Period End.	09/18/07	
R&O	02/14/08	73 FR 8617
Public Notice	09/25/08	73 FR 55473
Comment Period End.	10/18/08	
Public Notice	11/18/09	74 FR 59539
Comment Period End.	12/04/09	
FNPRM, NOI	11/02/10	75 FR 67321
Second R&O	11/18/10	75 FR 70604
Order, Comment Period Extension.	01/07/11	76 FR 1126
Comment Period End.	02/18/11	
Final Rule	04/28/11	76 FR 23713
NPRM	08/04/11	76 FR 47114
Second FNPRM	08/04/11	76 FR 47114
3rd R&O	09/28/11	76 FR 59916
NPRM Comment Period End.	11/02/11	
3rd FNPRM	03/28/14	79 FR 17820
Order Extending Comment Period.	06/10/14	79 FR 33163
3rd FNPRM Comment Period End.	07/14/14	
Public Notice (release date).	11/20/14	
Public Notice Comment Period End.	12/17/14	
4th R&O	03/04/15	80 FR 11806
Final Rule	08/03/15	80 FR 45897
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim May, Policy and Licensing Div., Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1463, *Email: tim.may@fcc.gov.*

RIN: 3060–AG34

342. Enhanced 911 Services for Wireline and Multi-Line Telephone Systems; PS Docket Nos. 10–255 and 07–114

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201; 47 U.S.C. 222; 47 U.S.C. 251

Abstract: The policies set forth in the Report and Order will assist State governments in drafting legislation that will ensure that multi-line telephone systems are compatible with the enhanced 911 network. The Public Notice seeks comment on whether the Commission, rather than States, should regulate multiline telephone systems, and whether part 68 of the Commission's rules should be revised.

Timetable:

Action	Date	FR Cite
NPRM	10/11/94	59 FR 54878
FNPRM	01/23/03	68 FR 3214
Second FNPRM	02/11/04	69 FR 6595
R&O	02/11/04	69 FR 6578
Public Notice	01/13/05	70 FR 2405
Comment Period End.	03/29/05	
NOI	01/13/11	76 FR 2297
NOI Comment Period End.	03/14/11	
Public Notice (Release Date).	05/21/12	
Public Notice Comment Period End.	08/06/12	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim May, Policy and Licensing Div., Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1463, *Email: tim.may@fcc.gov.*

RIN: 3060–AG60

343. In the Matter of the Communications Assistance for Law Enforcement Act

Legal Authority: 47 U.S.C. 229; 47 U.S.C. 1001 to 1008

Abstract: All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

Timetable:

Action	Date	FR Cite
NPRM	10/10/97	62 FR 63302
Order	01/13/98	63 FR 1943
FNPRM	11/16/98	63 FR 63639
R&O	01/29/99	64 FR 51462
Order	03/29/99	64 FR 14834
Second R&O	09/23/99	64 FR 51462
Third R&O	09/24/99	64 FR 51710
Order on Reconsideration.	09/28/99	64 FR 52244
Policy Statement	10/12/99	64 FR 55164
Second Order on Reconsideration.	05/04/01	66 FR 22446
Order	10/05/01	66 FR 50841
Order on Remand	05/02/02	67 FR 21999
NPRM	09/23/04	69 FR 56976
First R&O	10/13/05	70 FR 59704
Second R&O	07/05/06	71 FR 38091
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jane Kelly, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2832, *Email: jane.kelly@fcc.gov.*

RIN: 3060–AG74

344. Implementation of 911 Act (CC Docket No. 92–105, WT Docket No. 00–110)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 202; 47 U.S.C. 208; 47 U.S.C. 210; 47 U.S.C. 214; 47 U.S.C. 251(e); 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 308 to 309(j); 47 U.S.C. 310

Abstract: This proceeding was separate from the Commission's proceeding on Enhanced 911 Emergency Systems (E911) in that it intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. More specifically, the chief goal of the proceeding is to ensure that all emergency calls are routed to the appropriate local emergency authority to provide assistance. The E911 proceeding goes a step further and was aimed at improving the effectiveness and reliability of wireless 911 dispatchers with additional information on wireless 911 calls.

Timetable:

Action	Date	FR Cite
Fourth R&O, Third NPRM.	09/19/00	65 FR 56752
NPRM	09/19/00	65 FR 56757
Fifth R&O, First R&O, and MO&O.	01/14/02	67 FR 1643
Final Rule	01/25/02	67 FR 3621
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim May, Policy and Licensing Div., Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1463, *Email: tim.may@fcc.gov.*

RIN: 3060–AH90

345. Commission Rules Concerning Disruptions to Communications (PS Docket No. 11–82)

Legal Authority: 47 U.S.C. 155; 47 U.S.C. 154; 47 U.S.C. 201; 47 U.S.C. 251

Abstract: The 2004 Report and Order extended the Commission's outage reporting requirements to non-wireline carriers and streamlined reporting through a new electronic template. A Further Notice of Proposed Rulemaking regarding the unique communications needs of airports also remains pending. The 2012 Report and Order extended the Commission's outage reporting requirements to interconnected Voice over Internet Protocol services where there is a complete loss of connectivity that has the potential to affect at least 900,000 user minutes. Interconnected VoIP services providers must now file outage reports through the same electronic mechanism as providers of other services. The Commission indicated that the technical issues involved in identifying and reporting significant outages of broadband Internet services require further study.

Timetable:

Action	Date	FR Cite
NPRM	03/26/04	69 FR 15761
FNPRM	11/26/04	69 FR 68859
R&O	12/03/04	69 FR 70316
Announcement of Effective Date and Partial Stay.	12/30/04	69 FR 78338
Petition for Reconsideration.	02/15/05	70 FR 7737
Amendment of Delegated Authority.	02/21/08	73 FR 9462
Public Notice	08/02/10	
NPRM	06/09/11	76 FR 33686
NPRM Comment Period End.	08/08/11	
R&O	04/27/12	77 FR 25088
Final Rule; Correction.	01/30/13	78 FR 6216
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott Mackoul, Attorney Advisor, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7498, *Email: scott.mackoul@fcc.gov.*

RIN: 3060–AI22

346. E911 Requirements for IP-Enabled Service Providers (Dockets Nos. GN 11–117, PS 07–114, WC 05–196, WC 04–36)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 251(e); 47 U.S.C. 303(r)

Abstract: The notice seeks comment on what additional steps the Commission should take to ensure that providers of Voice over Internet Protocol services that interconnect with the public switched telephone network to provide ubiquitous and reliable enhanced 911 service.

Timetable:

Action	Date	FR Cite
NPRM	03/29/04	69 FR 16193
NPRM	06/29/05	70 FR 37307
R&O	06/29/05	70 FR 37273
NPRM Comment Period End.	09/12/05	
NPRM	06/20/07	72 FR 33948
NPRM Comment Period End.	09/18/07	
FNPRM, NOI	11/02/10	75 FR 67321
Order, Extension of Comment Period.	01/07/11	76 FR 1126
Comment Period End.	02/18/11	
2nd FNPRM, NPRM.	08/04/11	76 FR 47114
2nd FNPRM, NPRM Comment Period End.	11/02/11	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim May, Policy and Licensing Div., Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1463, *Email: tim.may@fcc.gov.*

RIN: 3060–AI62

347. Wireless E911 Location Accuracy Requirements; PS Docket No. 07–114

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 332

Abstract: This is related to the proceedings in which the FCC has previously acted to improve the quality of all emergency services. Wireless carriers must provide specific automatic location information in connection with 911 emergency calls to Public Safety Answering Points (PSAPs). Wireless licensees must satisfy Enhanced 911 location accuracy standards at either a county-based or a PSAP-based geographic level.

Timetable:

Action	Date	FR Cite
NPRM	06/20/07	72 FR 33948
R&O	02/14/08	73 FR 8617
Public Notice	09/25/08	73 FR 55473
FNPRM; NOI	11/02/10	75 FR 67321
Public Notice	11/18/09	74 FR 59539
2nd R&O	11/18/10	75 FR 70604
Second NPRM	08/04/11	76 FR 47114
Second NPRM Comment Period End.	11/02/11	
Final Rule	04/28/11	76 FR 23713
NPRM, 3rd R&O, and 2nd FNPRM.	09/28/11	76 FR 59916
3rd FNPRM	03/28/14	79 FR 17820
Order Extending Comment Period.	06/10/14	79 FR 33163
3rd FNPRM Comment Period End.	07/14/14	
Public Notice (Release Date).	11/20/14	
Public Notice Comment Period End.	12/17/14	
4th R&O	03/04/15	80 FR 11806
Final Rule	08/03/15	80 FR 45897
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim May, Policy and Licensing Div., Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1463, *Email: tim.may@fcc.gov.*

RIN: 3060–AJ52

348. 700 MHz Public Safety Broadband—First Net (PS Docket Nos. 12–94 & 06–229 and WT 06–150)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 309; Public Law 112–96

Abstract: This action proposes technical rules to protect against harmful radio frequency interference in the spectrum designated for public safety services under the Middle Class Tax Relief and Job Creation Act of 2012.

Timetable:

Action	Date	FR Cite
NPRM	04/24/13	78 FR 24138
NPRM Comment Period End.	05/24/13	
R&O	01/06/14	79 FR 588
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Roberto Mussenden, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1428, *Email: roberto.mussenden@fcc.gov.*

RIN: 3060–AJ99

349. Proposed Amendments to Service Rules Governing Public Safety Narrowband Operations in the 769–775 and 799–805 MHz Bands

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 303; 47 U.S.C. 337(a); 47 U.S.C. 403

Abstract: This proceeding seeks to amend the Commission's rules to promote spectrum efficiency, interoperability, and flexibility in 700 MHz public safety narrowband operations (769775/799805 MHz).

Timetable:

Action	Date	FR Cite
NPRM	04/19/13	78 FR 23529
Final Rule	12/20/14	79 FR 71321
Final Rule Effective.	01/02/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Marenco, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0838, *Email: brian.marenco@fcc.gov.*

RIN: 3060–AK19

350. Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 34–39; 47 U.S.C. 301

Abstract: This proceeding takes steps toward assuring the reliability and resiliency of submarine cables, a critical piece of the Nation's communications infrastructure, by proposing to require submarine cable licensees to report to the Commission when outages occur and communications are disrupted. The Commission's intent is to enhance national security and emergency preparedness by these actions.

Timetable:

Action	Date	FR Cite
NPRM (Release Date).	09/17/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Saperstein, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7008, *Email: michael.saperstein@fcc.gov.*

RIN: 3060–AK39

351. Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; PS Docket No. 15–80

Legal Authority: 47 CFR 0; 47 CFR 4; 47 CFR 63

Abstract: The 2004 Report and Order extended the Commission's communication disruptions reporting rules to non-wireline carriers and streamlined reporting through a new electronic template, see docket ET Docket 04–35. In 2015, this proceeding, PS Docket 15–80, was opened to amend the original communications disruption reporting rules from 2004 in order to reflect technology transitions observed throughout the telecommunications sector. The Commission seeks to further study the possibility to share the reporting database information and access with state and other federal entities.

Timetable:

Action	Date	FR Cite
NPRM	06/16/15	80 FR 34321
NPRM Comment Period End.	07/31/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Villanueva, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7005.

RIN: 3060–AK40

352. New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 155; 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 307; 47 U.S.C. 316

Abstract: The proceeding creates a new part 4 in title 47, and amends part 63.100. The proceeding updates the Commission's communication disruptions reporting rules for wireline providers formerly found in 47 CFR 63.100, and extends these rules to other non-wireline providers. Through this proceeding, the Commission streamlines the reporting process through an electronic template. The Report and Order received several petitions for reconsideration, of which two were eventually withdrawn, and in 2015, seven are addressed in an Order on Reconsideration. Two petitions remain pending regarding NORS database sharing with states and communication disruptions at airports. The former is addressed in a separate proceeding, PS Docket 15–80. To the extent the communication disruption rules cover VoIP, the Commission studies and addresses these questions in a separate docket, PS Docket 11–82.

Timetable:

Action	Date	FR Cite
NPRM	03/26/04	69 FR 15761
R&O	11/26/04	69 FR 68859
Denial for Petition for Partial Stay.	12/02/04	
Seek Comment on Petition for Recon.	02/02/10	
Reply Period End	03/19/10	
Seek Comment on Broadband and Interconnected VOIP Service Providers.	07/02/10	
Reply Period End	08/16/12	
R&O and Order on Recon.	06/16/15	80 FR 34321
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brenda Villanueva, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7005.

RIN: 3060–AK41

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireless Telecommunications Bureau

Long-Term Actions

353. Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152(n); 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 201(b); 47 U.S.C. 251(a); 47 U.S.C. 253; 47 U.S.C. 303(r); 47 U.S.C. 332(c)(1)(B); 47 U.S.C. 309

Abstract: This rulemaking considers whether the Commission should adopt an automatic roaming rule for voice services for Commercial Mobile Radio Services and whether the Commission should adopt a roaming rule for mobile data services.

Timetable:

Action	Date	FR Cite
NPRM	11/21/00	65 FR 69891
NPRM	09/28/05	70 FR 56612
NPRM	01/19/06	71 FR 3029
FNPRM	08/30/07	72 FR 50085
Final Rule	08/30/07	72 FR 50064
Final Rule	04/28/10	75 FR 22263
FNPRM	04/28/10	75 FR 22338
2nd R&O	05/06/11	76 FR 26199
Order on Recon	06/25/14	79 FR 43956
Declaratory Ruling (release date).	12/18/14	
Comment Period End.	02/14/15	
Reply Comment Period End.	02/19/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Salhus, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2823, *Email: jsalhus@fcc.gov.*

RIN: 3060–AH83

354. Review of Part 87 of the Commission's Rules Concerning Aviation (WT Docket No. 01–289)

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 303; 47 U.S.C. 307(e)

Abstract: This proceeding is intended to streamline, consolidate, and revise our part 87 rules governing the Aviation Radio Service. The rule changes are designed to ensure these rules reflect current technological advances.

Timetable:

Action	Date	FR Cite
NPRM	10/16/01	66 FR 64785
NPRM Comment Period End.	03/14/02	
R&O and FNPRM	10/16/03	
FNPRM	04/12/04	69 FR 19140
FNPRM Comment Period End.	07/12/04	
R&O	06/14/04	69 FR 32577
NPRM	12/06/06	71 FR 70710
NPRM Comment Period End.	03/06/07	
Final Rule	12/06/06	71 FR 70671
3rd R&O	03/29/11	76 FR 17347
Stay Order	03/29/11	76 FR 17353
3rd FNPRM	01/30/13	78 FR 6276
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0680, *Email: jeff.tobias@fcc.gov.*

RIN: 3060–AI35

355. Implementation of the Commercial Spectrum Enhancement Act (CSEA) and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05–211)

Legal Authority: 15 U.S.C. 79; 47 U.S.C. 151; 47 U.S.C. 154(i) and (j); 47 U.S.C. 155; 47 U.S.C. 155(c); 47 U.S.C. 157; 47 U.S.C. 225; 47 U.S.C. 303(r); 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 309(j); 47 U.S.C. 325(e); 47 U.S.C. 334; 47 U.S.C. 336; 47 U.S.C. 339; 47 U.S.C. 554

Abstract: This proceeding implements rules and procedures needed to comply with the Commercial Spectrum Enhancement Act (CSEA). It establishes a mechanism for reimbursing Federal agencies' out-of-spectrum auction proceeds for the cost of relocating their operations from certain "eligible frequencies" that have been reallocated from Federal to non-Federal use. It also seeks to improve the Commission's ability to achieve Congress' directives with regard to designated entities and to ensure that, in accordance with the intent of Congress, every recipient of its designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

Timetable:

Action	Date	FR Cite
NPRM	06/14/05	70 FR 43372
NPRM Comment Period End.	08/26/05	
Declaratory Ruling	06/14/05	70 FR 43322
R&O	01/24/06	71 FR 6214
FNPRM	02/03/06	71 FR 6992
FNPRM Comment Period End.	02/24/06	
Second R&O	04/25/06	71 FR 26245
Order on Reconsideration of Second R&O.	06/02/06	71 FR 34272
NPRM	06/21/06	71 FR 35594
NPRM Comment Period End.	08/21/06	
Reply Comment Period End.	09/19/06	
Second Order and Reconsideration of Second R&O.	04/04/08	73 FR 18528
Order	02/01/12	77 FR 16470
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Quinn, Assistant Chief, Auctions and Spectrum Access Division, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0660, *Email: kelly.quinn@fcc.gov.*

RIN: 3060–AI88

356. Facilitating the Provision of Fixed and Mobile Broadband Access, Educational, and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 301 to 303; 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 332; 47 U.S.C. 336 and 337

Abstract: The Commission seeks comment on whether to assign Educational Broadband Service (EBS) spectrum in the Gulf of Mexico. It also seeks comment on how to license unassigned and available EBS spectrum. Specifically, we seek comment on whether it would be in the public interest to develop a scheme for licensing unassigned EBS spectrum that avoids mutual exclusivity; we ask whether EBS eligible entities could participate fully in a spectrum auction; we seek comment on the use of small business size standards and bidding credits for EBS if we adopt a licensing scheme that could result in mutually exclusive applications; we seek comment on the proper market size and size of spectrum blocks for new EBS licenses; and we seek comment on issuing one license to a State agency designated by the Governor to be the spectrum manager, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. The Commission must develop a new licensing scheme for EBS in order to achieve the Commission's goal of facilitating the development of new and innovative wireless services for the benefit of students throughout the Nation. In addition, the Commission has sought comment on a proposal intended to make it possible to use wider channel bandwidths for the provision of broadband services in these spectrum bands. The proposed changes may permit operators to use spectrum more efficiently, and to provide higher data rates to consumers, thereby advancing key goals of the National Broadband Plan.

Timetable:

Action	Date	FR Cite
NPRM	04/02/03	68 FR 34560
NPRM Comment Period End.	09/08/03	
FNPRM	07/29/04	69 FR 72048
FNPRM Comment Period End.	01/10/03	
R&O	07/29/04	69 FR 72020
MO&O	04/27/06	71 FR 35178
FNPRM	03/20/08	73 FR 26067
FNPRM Comment Period End.	07/07/08	
MO&O	03/20/08	73 FR 26032
MO&O	09/28/09	74 FR 49335
FNPRM	09/28/09	74 FR 49356
FNPRM Comment Period End.	10/13/09	
R&O	06/03/10	75 FR 33729
FNPRM	05/27/11	76 FR 32901
FNPRM Comment Period End.	07/22/11	
R&O	07/16/14	79 FR 41448
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Schauble, Deputy Chief, Broadband Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov.*

RIN: 3060–AJ12

357. Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band; WT Docket No. 13–185

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 214; 47 U.S.C. 301

Abstract: This proceeding explores the possible uses of the 2155–2175 MHz frequency band (AWS–3) to support the introduction of new advanced wireless services, including third generation and future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks. The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS–3 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly used to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services. We proposed to apply our flexible, market-oriented rules to the band to do so. Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed AWS–3 rules, which include adding 5 megahertz of spectrum (2175–80 MHz) to the AWS–3 band, and requiring licensees of that spectrum to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

Timetable:

Action	Date	FR Cite
NPRM	11/14/07	72 FR 64013
NPRM Comment Period End.	01/14/08	
FNPRM	06/25/08	73 FR 35995
FNPRM Comment Period End.	08/11/08	
FNPRM	08/20/13	78 FR 51559
FNPRM Comment Period End.	10/16/13	
R&O	06/04/14	79 FR 32366
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Peter Daronco, Deputy Division Chief, Broadband Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7235, *Email: peter.daronco@fcc.gov.*

RIN: 3060–AJ19

358. Amendment of the Commission's Rules To Improve Public Safety Communications in the 800 MHz Band, and To Consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pool Channels

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 332

Abstract: This action adopts rules that retain the current site-based licensing paradigm for the 900 MHz B/ILT "white space"; adopts interference protection rules applicable to all licensees operating in the 900 MHz B/ILT spectrum; and lifts, on a rolling basis, the freeze placed on applications for new 900 MHz B/ILT licenses in September 2004—the lift being tied to the completion of rebanding in each 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region.

Timetable:

Action	Date	FR Cite
NPRM	03/18/05	70 FR 13143
NPRM Comment Period End.	06/12/05	70 FR 23080
Final Rule	12/16/08	73 FR 67794
Petition for Reconsideration.	03/12/09	74 FR 10739
Order on Reconsideration.	07/17/13	78 FR 42701
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joyce Jones, Attorney Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1327, *Email: joyce.jones@fcc.gov.*

RIN: 3060–AJ22

359. Amendment of Part 101 To Accommodate 30 MHz Channels in the 6525–6875 MHz Band and Provide Conditional Authorization on Channels in the 21.8–22.0 and 23.0–23.2 GHz Band (WT Docket No. 04–114)

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 214; 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 310; 47 U.S.C. 319; 47 U.S.C. 324; 47 U.S.C. 332 and 333

Abstract: The Commission seeks comments on modifying its rules to authorize channels with bandwidths of as much as 30 MHz in the 6525–6875 MHz band. We also propose to allow conditional authorization on additional channels in the 21.8–22.0 and 23.0–23.2 GHz bands.

Timetable:

Action	Date	FR Cite
NPRM	06/29/09	74 FR 36134
NPRM Comment Period End.	07/22/09	
R&O	06/11/10	75 FR 41767
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Schauble, Deputy Chief, Broadband Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov.*

RIN: 3060–AJ28

360. Amendment of Part 90 of the Commission's Rules

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 303

Abstract: This proceeding considers rule changes impacting miscellaneous part 90 Private Land Mobile Radio rules.

Timetable:

Action	Date	FR Cite
NPRM	06/13/07	72 FR 32582
FNPRM	04/14/10	75 FR 19340
Order on Reconsideration.	05/27/10	75 FR 29677
5th R&O	05/16/13	78 FR 28749
Petition for Reconsideration.	07/23/13	78 FR 44091
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rodney P Conway, Engineer, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2904, *Fax:* 202 418–1944, *Email: rodney.conway@fcc.gov.*

RIN: 3060–AJ37

361. Amendment of Part 101 of the Commission's Rules for Microwave Use and Broadcast Auxiliary Service Flexibility

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 157; 47 U.S.C. 160 and 201; 47 U.S.C. 214; 47 U.S.C. 301 to 303; 47 U.S.C. 307 to 310; 47 U.S.C. 319 and 324; 47 U.S.C. 332 and 333

Abstract: In this document, the Commission commences a proceeding to remove regulatory barriers to the use of spectrum for wireless backhaul and other point-to-point and point-to-multipoint communications.

Timetable:

Action	Date	FR Cite
NPRM	08/05/10	75 FR 52185
NPRM Comment Period End.	11/22/10	
R&O	09/27/11	76 FR 59559
FNPRM	09/27/11	76 FR 59614
FNPRM Comment Period End.	10/25/11	
R&O	09/05/12	77 FR 54421
FNPRM	09/05/12	77 FR 54511
FNPRM Comment Period End.	10/22/12	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Schauble, Deputy Chief, Broadband Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0797, *Email: john.schauble@fcc.gov.*

RIN: 3060–AJ47

362. Universal Service Reform Mobility Fund (WT Docket No. 10–208)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 155; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 205; 47 U.S.C. 225; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 303(c); 47 U.S.C. 303(f); 47 U.S.C. 303(r); 47 U.S.C. 303(y); 47 U.S.C. 309; 47 U.S.C. 310

Abstract: This proceeding establishes the Mobility Fund which provides an initial infusion of funds toward solving persistent gaps in mobile services through targeted, one-time support for the build-out of current and next-generation wireless infrastructure in areas where these services are unavailable.

Timetable:

Action	Date	FR Cite
NPRM	10/14/10	75 FR 67060
NPRM Comment Period End.	01/18/11	
R&O	11/29/11	76 FR 73830
FNPRM	12/16/11	76 FR 78384
R&O	12/28/11	76 FR 81562
2nd R&O	07/03/12	77 FR 39435
4th Order on Recon.	08/14/12	77 FR 48453
FNPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott Mackoul, Attorney Advisor, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7498, *Email: scott.mackoul@fcc.gov.*

RIN: 3060–AJ58

363. Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525–1559 MHz and 1626.5–1660.5 MHz, 1610–1626.5 MHz and 2483.5–2500 MHz, and 2000–2020 MHz and 2180–2200 MHz

Legal Authority: 47 U.S.C. 151 and 154; 47 U.S.C. 303 and 310

Abstract: The Commission proposes steps making additional spectrum available for new investment in mobile broadband networks while ensuring that the United States maintains robust mobile satellite service capabilities. Mobile broadband is emerging as one of America's most dynamic innovation and economic platforms. Yet tremendous demand growth soon will test the limits of spectrum availability. Some 90 megahertz of spectrum allocated to the Mobile Satellite Service (MSS)—in the 2 GHz band, Big LEO band, and L-band—are potentially available for terrestrial mobile broadband use. The Commission seeks to remove regulatory barriers to terrestrial use, and to promote additional investments, such as those recently made possible by a transaction between Harbinger Capital Partners and SkyTerra Communications, while retaining sufficient market-wide MSS capability. The Commission proposes to add co-primary Fixed and Mobile allocations to the 2 GHz band, consistent with the International Table of Allocations. This allocation modification is a precondition for more flexible licensing of terrestrial services within the band. Second, the Commission proposes to apply the Commission's secondary market policies and rules applicable to terrestrial services to all transactions involving the use of MSS bands for terrestrial services to create greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. The Commission also requests comment on further steps we can take to increase the value, utilization, innovation, and investment in MSS spectrum generally.

Timetable:

Action	Date	FR Cite
NPRM	07/15/10	75 FR 49871
NPRM Comment Period End.	09/30/10	
R&O	04/06/11	76 FR 31252
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Blaise Scinto, Chief, Broadband Div., WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1380, *Email: blaise.scinto@fcc.gov.*

RIN: 3060–AJ59

364. Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-Based 800 MHz Specialized Mobile Radio Licensees (WT Docket Nos. 12–64 and 11–110)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154; 47 U.S.C. 301; 47 U.S.C. 302(a); 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308

Abstract: This proceeding was initiated to allow EA-based 800 MHz SMR licensees in 813.5–824/858.5–869 MHz to exceed the channel spacing and bandwidth limitation in section 90.209 of the Commission's rules, subject to conditions.

Timetable:

Action	Date	FR Cite
NPRM	03/29/12	77 FR 18991
NPRM Comment Period End.	04/13/12	
R&O	05/24/12	77 FR 33972
Petition for Recon Public Notice.	08/16/12	77 FR 53163
Petition for Recon PN Comment Period End.	09/27/12	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Linda Chang, Attorney, Deputy Div. Chief, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1339, *Fax:* 202 418–7447, *Email: linda.chang@fcc.gov.*

RIN: 3060–AJ71

365. Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 153; 47 U.S.C. 154(i); 47 U.S.C. 227; 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 324; 47 U.S.C. 332; 47 U.S.C. 333

Abstract: In the Report and Order, the Commission increased the Nation's supply of spectrum for mobile broadband by removing unnecessary barriers to flexible use of spectrum currently assigned to the Mobile Satellite Service (MSS) in the 2 GHz band. This action carries out a recommendation in the National Broadband Plan that the Commission enable the provision of standalone terrestrial services in this spectrum. We do so by adopting service, technical, assignment, and licensing rules for this spectrum. These rules are designed to provide for flexible use of this spectrum, encourage innovation and investment in mobile broadband, and provide a stable regulatory environment in which broadband deployment could develop.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End.	04/17/12	
NPRM	04/17/12	77 FR 22720
R&O	05/05/13	78 FR 8229
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Peter Daronco, Deputy Division Chief, Broadband Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7235, *Email: peter.daronco@fcc.gov.*

RIN: 3060–AJ73

366. Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions; Docket No. 12–268

Legal Authority: 47 U.S.C. 309(j)(8)(G); 47 U.S.C. 1452

Abstract: In February 2012, the Middle Class Tax Relief and Job Creation Act was enacted (Pub. L. 112–96, 126 Stat. 156 (2012)). Title VI of that statute, commonly known as the Spectrum Act, provides the Commission with the authority to conduct incentive auctions to meet the growing demand for wireless broadband. Pursuant to the Spectrum Act, the Commission may

conduct incentive auctions that will offer new initial spectrum licenses subject to flexible-use service rules on spectrum made available by licensees that voluntarily relinquish some or all of their spectrum usage rights in exchange for a portion, based on the value of the relinquished rights as determined by an auction, of the proceeds of bidding for the new licenses. In addition to granting the Commission general authority to conduct incentive auctions, the Spectrum Act requires the Commission to conduct an incentive auction of broadcast TV spectrum and sets forth special requirements for such an auction.

The incentive auction will consist of a reverse auction" to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its spectrum usage rights and a forward auction" that will allow mobile broadband providers to bid for licenses in the reallocated spectrum. Broadcast television licensees who elect voluntarily to participate in the auction have three basic options: Voluntarily go off the air, share their spectrum, or move channels in exchange for receiving part of the proceeds from auctioning that spectrum to wireless providers.

In June 2014, the Commission adopted a Report and Order that laid out the broad rules for the incentive auction. Consistent with past practice, in December 2014, a public notice was issued asking for comment specific key components related to implementing the June 2014 Report and Order. The public notice asking for comment will be followed by a public notice with the specific procedures about how to participate in the incentive auction. The start of the Incentive Auction is planned for early 2016.

Timetable:

Action	Date	FR Cite
NPRM	11/21/12	77 FR 69933
NPRM Comment Period End.	03/02/13	
R&O	08/15/14	79 FR 48441
Notice	01/29/15	80 FR 4816
Notice Comment Period End.	03/13/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Rachel Kazan, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1500, *Email: rachel.kazan@fcc.gov.*

RIN: 3060–AJ82

367. Service Rules for Advanced Wireless Services of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands (WT Docket No. 12–357)

Legal Authority: 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310

Abstract: The Commission proposes rules for the Advanced Wireless Services (AWS) H Block that would make available 10 megahertz of flexible use. The proposal would extend the widely deployed Personal Communications Services (PCS) band, which is used by the four national providers as well as regional and rural providers to offer mobile service across the nation. The additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the Nation's wireless networks keeps pace with the skyrocketing demand for mobile services.

Today's action is a first step to implement the congressional directive in the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) to grant new initial licenses for the 1915–1920 MHz and 1995–2000 MHz bands (the Lower H Block and Upper H Block, respectively) through a system of competitive bidding,Â– unless doing so would cause harmful interference to commercial mobile service licenses in the 1930–1985 MHz (PCS downlink) band. The potential for harmful interference to the PCS downlink band relates only to the Lower H Block transmissions, and may be addressed by appropriate technical rules, including reduced power limits on H Block devices. We, therefore, propose to pair and license the Lower H Block and the Upper H Block for flexible use, including mobile broadband, aiming to assign the licenses through competitive bidding in 2013. In the event that we conclude that the Lower H Block cannot be used without causing harmful interference to PCS, we propose to license the Upper H Block for full power, and seek comment on appropriate use for the Lower H Block, including Unlicensed PCS.

Timetable:

Action	Date	FR Cite
NPRM	01/08/13	78 FR 1166
NPRM Comment Period End.	03/06/13	
R&O	08/16/13	78 FR 50213
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Peter Daronco, Deputy Division Chief, Broadband Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7235, *Email: peter.daronco@fcc.gov.*

RIN: 3060–AJ86

368. Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules To Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4)

Legal Authority: 15 U.S.C. 79; 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 155; 47 U.S.C. 157; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 303(r)

Abstract: This action adopts new technical, operational, and registration requirements for signal boosters. It creates two classes of signal boosters—consumer and industrial—with distinct regulatory requirements for each, thereby establishing a two-step transition process for equipment certification for both consumer and industrial signal boosters sold and marketed in the United States.

Timetable:

Action	Date	FR Cite
NPRM	05/10/11	76 FR 26983
R&O	04/11/13	78 FR 21555
Petition for Reconsideration.	06/06/13	78 FR 34015
Order on Reconsideration.	11/08/14	79 FR 70790
FNPRM	11/28/14	79 FR 70837
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Amanda Huetinck, Attorney Advisor, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7090, *Email: amanda.huetinck@fcc.gov.*

RIN: 3060–AJ87

369. Amendment of the Commission's Rules Governing Certain Aviation Ground Station Equipment (Squitter) (WT Docket Nos. 10–61 and 09–42)

Legal Authority: 48 Stat 1066, 1082 as amended; 47 U.S.C. 154; 47 U.S.C. 303; 47 U.S.C. 307(e); 47 U.S.C. 151 to 156; 47 U.S.C. 301

Abstract: This action amends part 87 rules to authorize new ground station technologies to promote safety and allow use of frequency 1090 MHz by aeronautical utility mobile stations for airport surface detection equipment (commonly referred to as "squitters") to help reduce collisions between aircraft and airport ground vehicles.

Timetable:

Action	Date	FR Cite
NPRM	04/28/10	75 FR 22352
R&O	03/01/13	78 FR 61023
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim Maguire, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2155, *Fax:* 202 418–7247, *Email: tim.maguire@fcc.gov.*

RIN: 3060–AJ88

370. Amendment of the Commission's Rules Concerning Commercial Radio Operators (WT Docket No. 10–177)

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 332(a)2

Abstract: This action amends parts 0, 1, 13, 80, and 87 of the Commission's rules concerning commercial radio operator licenses for maritime and aviation radio stations in order to reduce administrative burdens on the telecom industry.

Timetable:

Action	Date	FR Cite
NPRM	10/29/10	75 FR 66709
R&O	05/29/13	78 FR 32165
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Stanislava Kimball, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1306, *Email: stanislava.kimball@fcc.gov.*

RIN: 3060–AJ91

371. Radiolocation Operations in the 78–81 GHz Band; WT Docket No. 11–202

Legal Authority: 47 U.S.C. 154; 47 U.S.C. 303; 47 U.S.C. 307(e)

Abstract: We amend our rules to permit the certification, licensing, and use of foreign object debris (FOD) detection radar equipment in the 78–81 GHz band. The presence of FOD on airport runways, taxiways, aprons, and ramps poses a significant threat to the safety of air travel. FOD detection radar equipment will be authorized on a licensed basis under part 90 of our rules. Authorization of other potential radiolocation uses of the 78–81 GHz band will be considered in other proceedings.

Timetable:

Action	Date	FR Cite
NPRM	01/11/12	77 FR 1661
R&O	07/26/13	78 FR 45072
NPRM	03/06/15	80 FR 12120
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim Maguire, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2155, *Fax:* 202 418–7247, *Email: tim.maguire@fcc.gov.*

RIN: 3060–AK04

372. Amendment of Part 90 of the Commission's Rules To Permit Terrestrial Trunked Radio (TETRA) Technology; WT Docket No. 11–6

Legal Authority: 47 U.S.C. 154(i); 47 U.S.C. 161; 47 U.S.C. 303(g); 47 U.S.C. 303(r); 47 U.S.C. 332(c)(7)

Abstract: We modify our rules to permit the certification and use of Terrestrial Trunked Radio (TETRA) equipment under part 90 of our rules. TETRA is a spectrally efficient digital technology with the potential to provide valuable benefits to land mobile radio users, such as higher security and lower latency than comparable technologies. It does not, however, conform to all of our current part 90 technical rules. In the Notice of Proposed Rule Making and Order (NPRM) in this proceeding, the Commission proposed to amend part 90 to accommodate TETRA technology. We conclude that modifying the part 90 rules to permit the certification and use of TETRA equipment in two bands—the 450–470 MHz portion of the UHF band (421–512 MHz) and Business/Industrial Land Transportation 800 MHz band channels (809–824/854–869 MHz) that are not in the National Public Safety Planning Advisory Committee (NPSPAC) portion of the band—will give private land mobile radio (PLMR) licensees additional equipment alternatives without increasing the potential for interference or other adverse effects on other licensees.

Timetable:

Action	Date	FR Cite
NPRM	05/11/11	76 FR 27296
R&O	10/10/12	77 FR 61535
Order on Reconsideration.	08/09/13	78 FR 48627
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Tim Maguire, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2155, *Fax:* 202 418–7247, *Email: tim.maguire@fcc.gov.*

RIN: 3060–AK05

373. Promoting Technological Solutions To Combat Wireless Contraband Device Use in Correctional Facilities

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 301; 47 U.S.C. 303(a); 47 U.S.C. 303(b); 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 332

Abstract: In this proceeding, the Commission proposes rules to encourage development of multiple technological solutions to combat the use of contraband wireless devices in correctional facilities nationwide. The Commission proposes to streamline rules governing lease agreement modifications between wireless providers and managed access system operators. It also proposes to require wireless providers to terminate service to a contraband wireless device.

Timetable:

Action	Date	FR Cite
NPRM	06/18/13	78 FR 36469
NPRM Comment Period End.	08/08/13	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Conway, Attorney Advisor, Wireless Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2887, *Email: melissa.conway@fcc.gov.*

RIN: 3060–AK06

374. Enabling Small Cell Use in the 3.5 GHz Band

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j) ; 47 U.S.C. 302(a); 47 U.S.C. 303; 47 U.S.C. 304; 47 U.S.C. 307(e); 47 U.S.C. 316

Abstract: The NPRM proposed to create a Citizens Broadband Service, licensed-by-rule pursuant to section 307(e) of the Communications Act and classified as a Citizens Band Service under part 95 of the Commission's rules. Access to and use of the 3.5 GHz band would be managed by a spectrum access system (SAS), incorporating a geo-location enabled dynamic database (similar to TVWS).

The Further Notice of Proposed Rulemaking proposes to create a new Citizens Broadband Radio Service in the 3550–3650 MHz band to be governed by a new part 96 of the Commission's rules. Access to and use of the 3550–3650 MHz band would be managed by a spectrum access system, incorporating a geo-location enabled dynamic database.

The Report and Order and Second Further Notice of Proposed Rulemaking adopted by the Commission established a new Citizens Broadband Radio Service for shared wireless broadband use of the 3550–3700 MHz band. The Citizens Broadband Radio Service is governed by a three-tiered spectrum authorization framework to accommodate a variety of commercial uses on a shared basis with incumbent federal and non-federal users of the band. Access and operations will be managed by a dynamic spectrum access system. The three tiers are: Incumbent Access, Priority Access, and General Authorized Access. Rules governing the Citizens Broadband Radio Service are found in Part 96 of the Commission's rules.

Timetable:

Action	Date	FR Cite
NPRM	01/08/13	78 FR 1188
NPRM Comment Period End.	03/19/13	
FNPRM	06/02/14	79 FR 31247
FNPRM Comment Period End.	08/15/14	
R&O and 2nd FNPRM.	06/15/15	80 FR 34119
2nd FNPRM Comment Period End.	08/14/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Paul Powell, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1613, *Email: paul.powell@fcc.gov.*

RIN: 3060–AK12

375. 800 MHz Cellular Telecommunications Licensing Reform; Docket No. 12–40

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 301 to 303; 47 U.S.C. 308; 47 U.S.C. 309(j); 47 U.S.C. 332

Abstract: The proceeding was launched to revisit and update various rules governing licensing for the 800 MHz cellular radiotelephone service. Most notably, the current site-based model for issuing licenses is under review, mindful of the evolution of this commercial wireless mobile service since its inception more than 30 years ago and the licensing models used for newer wireless telecommunications services.

On November 10, 2014, the FCC released a Report and Order (R&O) and a companion Further Notice of Proposed Rulemaking (FNPRM) to revise rules governing the 800 MHz Cellular Service. In the R&O, the FCC eliminated various regulatory requirements and streamlined requirements remaining in place, while retaining Cellular Service licensees' ability to expand into an area that is not yet licensed. In the FNPRM, the FCC proposes and seeks comment on additional Cellular Service reforms of licensing rules and the radiated power rules, to promote flexibility and help foster the deployment of newer technologies such as LTE.

Timetable:

Action	Date	FR Cite
NPRM	03/16/12	77 FR 15665
NPRM Comment Period End.	05/15/12	
NPRM Reply Comment Period End.	06/14/12	
R&O	12/05/14	79 FR 72143
FNPRM	12/22/14	79FR 76268
Final Rule Effective (with 3 exceptions).	01/05/15	
FNPRM Comment Period End.	01/21/15	
FNPRM Reply Comment Period End.	02/20/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nina Shafran, Attorney Advisor, Wireless Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2781, *Email: nina.shafran@fcc.gov.*

RIN: 3060–AK13

376. Updating Competitive Bidding Rules

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309(j); 47 U.S.C. 316

Abstract: This proceeding was initiated to revise some of the Commission's general part 1 rules governing competitive bidding for spectrum licenses to reflect changes in the marketplace, including the challenges faced by new entrants, as well as to advance the statutory directive to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.

Timetable:

Action	Date	FR Cite
NPRM	11/14/14	79 FR 68172
NPRM Comment Period End.	03/06/15	
Public Notice	03/16/15	80 FR 15715
R&O	07/21/15	80 FR 56764
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Kelly Quinn, Assistant Chief, Auctions and Spectrum Access Division, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0660, *Email: kelly.quinn@fcc.gov.*

RIN: 3060–AK28

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireless Telecommunications Bureau

Completed Actions

377. Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band (WT Docket No. 08–166) Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 301 and 302(a); 47 U.S.C. 303; 47 U.S.C. 303(r); 47 U.S.C. 304; 47 U.S.C. 307 to 309; 47 U.S.C. 316; 47 U.S.C. 332; 47 U.S.C. 336 and 337

Abstract: In 2010, the Commission: Prohibited the distribution and sale of wireless microphones that operate in the 700 MHz Band (TV channels 52–69); ordered that the band be cleared of these devices; authorized unlicensed wireless microphone operations subject to conditions; and sought comment on issues including the operation of low power auxiliary stations including wireless microphones in the core TV bands (channels 52–36, 38–51), and on license eligibility.

On June 2, 2014, the Commission released a Second Report and Order to provide a limited expansion of the types of entities eligible for a low power auxiliary station license under part 74 of its rules to include qualifying professional sound companies, as well as owners and operators of large venues, as further explained in the order. The Commission also: (1) Denied requests to expand eligibility under part 74 to include nuclear power plants, but modified a previous waiver concerning the operation of unlicensed low power auxiliary devices both inside and outside the plants; (2) adopted provisions to condition any new LPAS licenses on the requirement to cease operating in repurposed UHF spectrum in connection with the Commission's Incentive Auction Report and Order in GN Docket No. 12–268 (FCC 14–50); and (3) provided newly eligible licensees with an initial and renewal license term not to exceed 10 years.

Timetable:

Action	Date	FR Cite
NPRM	09/03/08	73 FR 51406
NPRM Comment Period End.	10/20/08	
R&O	01/22/10	75 FR 3622
FNPRM	01/22/10	75 FR 3682
FNPRM Comment Period End.	03/22/10	
Public Notice	10/05/12	
Second R&O	07/14/14	79 FR 40680

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: G. William Stafford, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0563, *Email: bill.stafford@fcc.gov.*

RIN: 3060–AJ21

378. In the Matter of Service Rules for the 698 to 746, 747 to 762, and 777 to 792 MHz Bands

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309

Abstract: This is one of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698–806 MHz band (the 700 MHz band). This spectrum is being vacated by television broadcasters in TV channels 52–69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services, and is known as the 700 MHz Commercial Services proceeding.

Timetable:

Action	Date	FR Cite
NPRM	08/03/06	71 FR 48506
NPRM	09/20/06	
FNPRM	05/02/07	72 FR 24238
FNPRM Comment Period End.	05/23/07	
R&O	07/31/07	72 FR 48814
Order on Reconsideration.	09/24/07	72 FR 56015
Second FNPRM	05/14/08	73 FR 29582
Second FNPRM Comment Period End.	06/20/08	
Third FNPRM	09/05/08	73 FR 57750
Third FNPRM Comment Period End.	11/03/08	
Second R&O	02/20/09	74 FR 8868
Final Rule	03/04/09	74 FR 8868
Order on Reconsideration.	03/01/13	78 FR 19424

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Paul D'Ari, Spectrum and Competition Policy Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1550, *Email: paul.dari@fcc.gov.*

RIN: 3060–AJ35

379. 2004 and 2006 Biennial Regulatory Reviews—Streamlining and Other Revisions of the Commission's Rules Governing Construction, Marking, and Lighting of Antenna Structures

Legal Authority: 47 U.S.C. 154(i)–(j) and 161; 47 U.S.C. 303(q)

Abstract: In this NPRM, in WT Docket No. 10–88, the Commission seeks comment on revisions to part 17 of the Commission's rules governing construction, marking, and lighting of antenna structures. The Commission initiated this proceeding to update and modernize the part 17 rules. These proposed revisions are intended to improve compliance with these rules and allow the Commission to enforce them more effectively, helping to better ensure the safety of pilots and aircraft passengers nationwide. The proposed revisions also would remove outdated and burdensome requirements without compromising the Commission's statutory responsibility to prevent antenna structures from being hazards or menaces to air navigation.

Timetable:

Action	Date	FR Cite
NPRM	05/21/10	75 FR 28517
NPRM Comment Period End.	07/20/10	
NPRM Reply Comment Period End.	08/19/10	
R&O	09/24/14	79 FR 56968

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Paul D'Ari, Spectrum and Competition Policy Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1550, *Email: paul.dari@fcc.gov.*

RIN: 3060–AJ50

380. Promoting Interoperability in the 700 MHz Commercial Spectrum; Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines (WT Docket Nos. 12–69 & 12–332)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 301; 47 U.S.C. 302(a); 47 U.S.C. 303(b); 47 U.S.C. 303(e); 47 U.S.C. 303(f); 47 U.S.C. 303(g); 47 U.S.C. 303(r); 47 U.S.C. 304; 47 U.S.C. 307(a); 47 U.S.C. 309(j)(3); 47 U.S.C. 316(a)(1); 47 CFR 1.401 et seq.

Abstract: In the Report and Order, the Commission took steps to implement an industry solution to provide interoperable Long Term Evolution (LTE) service in the lower 700 MHz band in an efficient and effective manner to improve choice and quality for consumers of mobile services.

Timetable:

Action	Date	FR Cite
NPRM	04/02/12	77 FR 19575
NPRM Comment Period End.	06/01/12	
R&O and Order of Proposed Modification.	11/05/13	78 FR 66298

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jennifer Salhus, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2823, *Email: jsalhus@fcc.gov.*

RIN: 3060–AJ78

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Wireline Competition Bureau

Long-Term Actions

381. Implementation of the Universal Service Portions of the 1996 Telecommunications Act

Legal Authority: 47 U.S.C. 151 *et seq.*

Abstract: The Telecommunications Act of 1996 expanded the traditional goal of universal service to include increased access to both telecommunications and advanced services such as high-speed Internet for all consumers at just, reasonable and affordable rates. The Act established principles for universal service that specifically focused on increasing access to evolving services for consumers living in rural and insular

areas, and for consumers with low-incomes. Additional principles called for increased access to high-speed Internet in the Nation's schools, libraries and rural health care facilities. The FCC established four programs within the Universal Service Fund to implement the statute. The four programs are: Connect America Fund (formally known as High-Cost Support) for rural areas; Lifeline (for low-income consumers), including initiatives to expand phone service for Native Americans; Schools and Libraries (E-rate); and Rural Health Care.

The Universal Service Fund is paid for by contributions from telecommunications carriers, including wireline and wireless companies, and interconnected Voice over Internet Protocol (VoIP) providers, including cable companies that provide voice service, based on an assessment on their interstate and international end-user revenues. The Universal Service Administrative Company, or USAC, administers the four programs and collects monies for the Universal Service Fund under the direction of the FCC.

On October 16, 2014, the Commission released a Public Notice seeking comments on proposed methodology for Connect America Fund recipients to measure and report speed and latency performance to fixed locations.

On December 18, 2014, the Commission released a Report and Order finalizing decisions necessary to proceed to Phase II of the Connect America Fund.

On December 19, 2014, the Commission released a Second E-rate Modernization Order adjusting program rules and support levels in order to meet long-term program goals for high speed connectivity.

On January 30, 2015, the Commission released a Public Notice seeking comment on the Alliance of Rural Broadband applicants petition for limited waiver of certain RBE letter of credit requirements.

On February 4, 2015, the Commission released a Public Notice seeking comments on NTCA's emergency petition for limited waiver of RBE letter of credit bank eligibility requirements.

Timetable:

Action	Date	FR Cite
Recommended Decision Federal-State Joint Board, Universal Service.	11/08/96	61 FR 63778
First R&O	05/08/97	62 FR 32862
Second R&O	05/08/97	62 FR 32862
Order on Reconsideration.	07/10/97	62 FR 40742
R&O and Second Order on Reconsideration.	07/18/97	62 FR 41294
Second R&O, and FNPRM.	08/15/97	62 FR 47404
Third R&O	10/14/97	62 FR 56118
Second Order on Reconsideration.	11/26/97	62 FR 65036
Fourth Order on Reconsideration.	12/30/97	62 FR 2093
Fifth Order on Reconsideration.	06/22/98	63 FR 43088
Fifth R&O	10/28/98	63 FR 63993
Eighth Order on Reconsideration.	11/21/98	
Second Recommended Decision.	11/25/98	63 FR 67837
Thirteenth Order on Reconsideration.	06/09/99	64 FR 30917
FNPRM	06/14/99	64 FR 31780
FNPRM	09/30/99	64 FR 52738
Fourteenth Order on Reconsideration.	11/16/99	64 FR 62120
Fifteenth Order on Reconsideration.	11/30/99	64 FR 66778
Tenth R&O	12/01/99	64 FR 67372
Ninth R&O and Eighteenth Order on Reconsideration.	12/01/99	64 FR 67416
Nineteenth Order on Reconsideration.	12/30/99	64 FR 73427
Twentieth Order on Reconsideration.	05/08/00	65 FR 26513
Public Notice	07/18/00	65 FR 44507
Twelfth R&O, MO&O and FNPRM.	08/04/00	65 FR 47883
FNPRM and Order.	11/09/00	65 FR 67322
FNPRM	01/26/01	66 FR 7867
R&O and Order on Reconsideration.	03/14/01	66 FR 16144
NPRM	05/08/01	66 FR 28718
Order	05/22/01	66 FR 35107
Fourteenth R&O and FNPRM.	05/23/01	66 FR 30080
FNPRM and Order.	01/25/02	67 FR 7327
NPRM	02/15/02	67 FR 9232
NPRM and Order	02/15/02	67 FR 10846
FNPRM and R&O	02/26/02	67 FR 11254
NPRM	04/19/02	67 FR 34653
Order and Second FNPRM.	12/13/02	67 FR 79543
NPRM	02/25/03	68 FR 12020
Public Notice	02/26/03	68 FR 10724
Second R&O and FNPRM.	06/20/03	68 FR 36961
Twenty-Fifth Order on Reconsideration, R&O, Order, and FNPRM.	07/16/03	68 FR 41996
NPRM	07/17/03	68 FR 42333
Order	07/24/03	68 FR 47453
Order	08/06/03	68 FR 46500
Order and Order on Reconsideration.	08/19/03	68 FR 49707
Order on Remand, MO&O, FNPRM.	10/27/03	68 FR 69641
R&O, Order on Reconsideration, FNPRM.	11/17/03	68 FR 74492
R&O, FNPRM	02/26/04	69 FR 13794
R&O, FNPRM	04/29/04	
NPRM	05/14/04	69 FR 3130
NPRM	06/08/04	69 FR 40839
Order	06/28/04	69 FR 48232
Order on Reconsideration & Fourth R&O.	07/30/04	69 FR 55983
Fifth R&O and Order.	08/13/04	69 FR 55097
Order	08/26/04	69 FR 57289
Second FNPRM	09/16/04	69 FR 61334
Order & Order on Reconsideration.	01/10/05	70 FR 10057
Sixth R&O	03/14/05	70 FR 19321
R&O	03/17/05	70 FR 29960
MO&O	03/30/05	70 FR 21779
NPRM & FNPRM	06/14/05	70 FR 41658
Order	10/14/05	70 FR 65850
Order	10/27/05	
NPRM	01/11/06	71 FR 1721
Report Number 2747.	01/12/06	71 FR 2042
Order	02/08/06	71 FR 6485
FNPRM	03/15/06	71 FR 13393
R&O and NPRM	07/10/06	71 FR 38781
Order	01/01/06	71 FR 6485
Order	05/16/06	71 FR 30298
MO&O and FNPRM.	05/16/06	71 FR 29843
R&O	06/27/06	71 FR 38781
Public Notice	08/11/06	71 FR 50420
Order	09/29/06	71 FR 65517
Public Notice	03/12/07	72 FR 36706
Public Notice	03/13/07	72 FR 40816
Public Notice	03/16/07	72 FR 39421
Notice of Inquiry	04/16/07	
NPRM	05/14/07	72 FR 28936
Recommended Decision.	11/20/07	
Order	02/14/08	73 FR 8670
NPRM	03/04/08	73 FR 11580
NPRM	03/04/08	73 FR 11591
R&O	05/05/08	73 FR 11837
Public Notice	07/02/08	73 FR 37882
NPRM	08/19/08	73 FR 48352
Notice of Inquiry	10/14/08	73 FR 60689
Order on Remand, R&O, FNPRM.	11/12/08	73 FR 66821
R&O	05/22/09	74 FR 2395
Order & NPRM	03/24/10	75 FR 10199
R&O and MO&O	04/08/10	75 FR 17872
NOI and NPRM	05/13/10	75 FR 26906
Order and NPRM	05/28/10	75 FR 30024
NPRM	06/09/10	75 FR 32699
NPRM	08/09/10	75 FR 48236
NPRM	09/21/10	75 FR 56494
R&O	12/03/10	75 FR 75393
Order	01/27/11	76 FR 4827
NPRM	03/02/11	76 FR 11407
NPRM	03/02/11	76 FR 11632
NPRM	03/23/11	76 FR 16482
Order and NPRM	06/27/11	76 FR 37307
R&O	12/28/11	76 FR 81562
Order	03/09/12	77 FR 14297
R&O	03/30/12	77 FR 19125
Order	05/23/12	77 FR 30411
3rd Order on Reconsideration.	05/24/12	77 FR 30904
Public Notice	05/31/12	77 FR 32113
FNPRM	06/07/12	77 FR 33896
Public Notice	07/26/12	77 FR 43773
Order	08/30/12	77 FR 52616
Public Notice	02/28/12	77 FR 76345
Public Notice	08/29/12	77 FR 52279
Public Notice	12/12/12	77 FR 74010
5th Order on Reconsideration.	01/17/13	78 FR 3837
Public Notice	02/07/13	78 FR 9020
Public Notice	02/21/13	78 FR 12006
Public Notice	02/22/13	78 FR 12269
Public Notice	03/15/13	78 FR 16456
6th Order on Reconsideration and MO&O.	03/19/13	78 FR 16808
MO&O	05/08/13	78 FR 26705
R&O	05/06/13	78 FR 26269
R&O	06/03/13	78 FR 32991
Public Notice	06/13/13	78 FR 35632
R&O	06/26/13	78 FR 38227
Order on Reconsideration.	08/08/13	78 FR 48622
Order	03/01/13	78 FR 13935
Public Notice	12/19/13	78 FR 76789
Order	02/28/14	79 FR 11366
Public Notice	03/11/14	79 FR 13599
Public Notice	03/17/14	79 FR 17070
Public Notice	04/18/14	79 FR 21924
R&O	05/21/14	79 FR 29111
Order	05/23/14	79 FR 33705
FNPRM	07/09/14	79 FR 39163
R&O	07/31/14	79 FR 44352
R&O	08/19/14	79 FR 49160
Public Notice	11/20/14	79 FR 69091
R&O	01/27/15	80 FR 4446
2nd R&O	02/04/15	80 FR 5961
Public Notice	02/27/15	80 FR 10658
2nd FNPRM	06/22/15	80 FR 40923
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Nakesha Woodward, Program Support Assistant, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1502, *Email: kesha.woodward@fcc.gov.*

RIN: 3060–AF85

382. 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements

Legal Authority: 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 201(b); 47 U.S.C. 303(r); 47 U.S.C. 403

Abstract: The notice of proposed rulemaking (NPRM) proposed to eliminate our current service quality reports (Automated Reporting Management Information System (ARMIS) Report 43–05 and 43–06) and replace them with a more consumer-oriented report. The NPRM proposed to reduce the reporting categories from more than 30 to six, and addressed the needs of carriers, consumers, State public utility commissions, and other interested parties. On February 15, 2005, the Commission adopted an Order that extended the Federal-State Joint Conference on Accounting Issues until March 1, 2007. On September 6, 2008, the Commission adopted a Memorandum Opinion and Order granting conditional forbearance from the ARMIS 43–05 and 43–06 reporting requirements to all carriers that are required to file these reports.

Timetable:

Action	Date	FR Cite
NPRM	12/04/00	65 FR 75657
Order	02/06/02	67 FR 5670
Order	03/22/05	70 FR 14466
MO&O	10/15/08	73 FR 60997
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cathy Zima, Deputy Chief, Industry Analysis Division, WCB, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7380, *Fax:* 202 418–6768, *Email: cathy.zima@fcc.gov.*

RIN: 3060–AH72

383. National Exchange Carrier Association Petition

Legal Authority: 47 U.S.C. 151 and 152; 47 U.S.C. 201 and 202; . . .

Abstract: In a Notice of Proposed Rulemaking (NPRM) released on July 19, 2004, the Commission initiated a rulemaking proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that obtain derived channel T–1 service where the customer provides the terminating channelization equipment and upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service.

Timetable:

Action	Date	FR Cite
NPRM	08/13/04	69 FR 50141
NPRM Comment Period End.	11/12/04	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Douglas Slotten, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1572, *Email: douglas.slotten@fcc.gov.*

RIN: 3060–AI47

384. IP-Enabled Services; WC Docket No. 04–36

Legal Authority: 47 U.S.C. 151 and 152; . . .

Abstract: The notice seeks comment on ways in which the Commission might categorize or regulate IP-enabled services. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services comprising each category constitute ''telecommunications services'' or ''information services'' under the definitions set forth in the Act. Finally, noting the Commission's statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

Timetable:

Action	Date	FR Cite
NPRM	03/29/04	69 FR 16193
NPRM Comment Period End.	07/14/04	
First R&O	06/03/05	70 FR 37273
Public Notice	06/16/05	70 FR 37403
First R&O Effective.	07/29/05	70 FR 43323
Public Notice	08/31/05	70 FR 51815
R&O	07/10/06	71 FR 38781
R&O and FNPRM	06/08/07	72 FR 31948
FNPRM Comment Period End.	07/09/07	72 FR 31782
R&O	08/06/07	72 FR 43546
Public Notice	08/07/07	72 FR 44136
R&O	08/16/07	72 FR 45908
Public Notice	11/01/07	72 FR 61813
Public Notice	11/01/07	72 FR 61882
Public Notice	12/13/07	72 FR 70808
Public Notice	12/20/07	72 FR 72358
R&O	02/21/08	73 FR 9463
NPRM	02/21/08	73 FR 9507
Order	05/15/08	73 FR 28057
Order	07/29/09	74 FR 37624
R&O	08/07/09	74 FR 39551
Public Notice	10/14/09	74 FR 52808
Announcement of Effective Date.	03/19/10	75 FR 13235
Public Notice	05/20/10	75 FR 28249
Public Notice	06/11/10	75 FR 33303
NPRM, Order, & NOI.	06/19/13	78 FR 36679
R&O (release date).	06/22/15	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Kirkel, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7958, *Fax:* 202 418–1413, *Email: melissa.kirkel@fcc.gov.*

RIN: 3060–AI48

385. Jurisdictional Separations

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 205; 47 U.S.C. 221(c); 47 U.S.C. 254; 47 U.S.C. 403; 47 U.S.C. 410

Abstract: Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and market changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' recommendation to impose an interim freeze on the part 36 category relationships and jurisdictional cost allocation factors for a period of five years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission adopted an Order and Further Notice of Proposed Rulemaking, which extended the separations freeze for a period of three years and sought comment on comprehensive reform. In 2009, the Commission adopted a Report and Order extending the separations freeze an additional year to June 2010. In 2010, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2011. In 2011, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2012. In 2012, the Commission adopted a Report and Order extending the separations freeze for an additional two years to June 2014. In 2014, the Commission adopted a Report and Order extending the separations freeze for an additional three years to June 2017.

Timetable:

Action	Date	FR Cite
NPRM	11/05/97	62 FR 59842
NPRM Comment Period End.	12/10/97	
Order	06/21/01	66 FR 33202
Order and FNPRM.	05/26/06	71 FR 29882
Order and FNPRM Comment Period End.	08/22/06	
R&O	05/15/09	74 FR 23955
R&O	05/25/10	75 FR 30301
R&O	05/27/11	76 FR 30840
R&O	05/23/12	77 FR 30410
R&O	06/13/14	79 FR 36232
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Hunter, Attorney—Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1520, *Email: john.hunter@fcc.gov.*

RIN: 3060–AJ06

386. Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering (WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21)

Legal Authority: 47 U.S.C. 151 to 155; 47 U.S.C. 160 and 161; 47 U.S.C. 20 to 205; 47 U.S.C. 215; 47 U.S.C. 218 to 220; 47 U.S.C. 251 to 271; 47 U.S.C. 303(r) and 332; 47 U.S.C. 403; 47 U.S.C. 502 and 503

Abstract: This notice of proposed rulemaking (NPRM) tentatively proposes to collect infrastructure and operating data that is tailored in scope to be consistent with Commission objectives from all facilities-based providers of broadband and telecommunications. Similarly, the NPRM also tentatively proposes to collect data concerning service quality and customer satisfaction from all facilities-based providers of broadband and telecommunications. The NPRM seeks comment on the proposals, on the specific information to be collected, and on the mechanisms for collecting information. On June 27, 2013, the Commission adopted a Report and Order addressing collection of broadband deployment data from facilities-based providers.

Timetable:

Action	Date	FR Cite
NPRM	10/15/08	73 FR 60997
NPRM Comment Period End.	11/14/08	
Reply Comment Period End.	12/15/08	
NPRM	02/28/11	76 FR 12308
NPRM Comment Period End.	03/30/11	
Reply Comment Period End.	04/14/11	
R&O	08/13/13	78 FR 49126
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Cathy Zima, Deputy Chief, Industry Analysis Division, WCB, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554 , *Phone:* 202 418–7380, *Fax:* 202 418–6768, *Email: cathy.zima@fcc.gov.*

RIN: 3060–AJ14

387. Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans

Legal Authority: 15 U.S.C. 251; 47 U.S.C. 252; 47 U.S.C. 257; 47 U.S.C. 271; 47 U.S.C. 1302; 47 U.S.C. 160(b); 47 U.S.C. 161(a)(2)

Abstract: The Report and Order streamlined and reformed the Commission's Form 477 Data Program, which is the Commission's primary tool to collect data on broadband and telephone services.

Timetable:

Action	Date	FR Cite
NPRM	05/16/07	72 FR 27519
Order	07/02/08	73 FR 37861
Order	10/15/08	73 FR 60997
NPRM	02/08/11	76 FR 10827
Order	06/27/13	78 FR 49126
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Ms Chelsea Fallon, Assistant Division Chief, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7991, *Email: chelsea.fallon@fcc.gov.*

RIN: 3060–AJ15

388. Local Number Portability Porting Interval and Validation Requirements (WC Docket No. 07–244)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 251; 47 U.S.C. 303(r)

Abstract: In 2007, the Commission released a Notice of Proposed Rulemaking in WC Docket No. 07–244. The Notice sought comment on whether the Commission should adopt rules specifying the length of the porting intervals or other details of the porting process. It also tentatively concluded that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval.

In the Local Number Portability Porting Interval and Validation Requirements First Report and Order and Further Notice of Proposed Rulemaking, released on May 13, 2009, the Commission reduced the porting interval for simple wireline and simple intermodal port requests, requiring all entities subject to its local number portability (LNP) rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day. In a related Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on what further steps, if any, the Commission should take to improve the process of changing providers.

In the LNP Standard Fields Order, released on May 20, 2010, the Commission adopted standardized data fields for simple wireline and intermodal ports. The Order also adopts the NANC's recommendations for porting process provisioning flows and for counting a business day in the context of number porting.

Timetable:

Action	Date	FR Cite
NPRM	02/21/08	73 FR 9507
R&O and FNPRM	07/02/09	74 FR 31630
R&O	06/22/10	75 FR 35305
Public Notice	12/21/11	76 FR 79607
Public Notice	06/06/13	78 FR 34015
R&O	05/26/15	80 FR 29978
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Melissa Kirkel, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7958, *Fax:* 202 418–1413, *Email: melissa.kirkel@fcc.gov.*

RIN: 3060–AJ32

389. Implementation of Section 224 of the Act; A National Broadband Plan for Our Future (WC Docket No. 07–245, GN Docket No. 09–51)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 224

Abstract: In 2010, the Commission released an Order and Further Notice of Proposed Rulemaking that implemented certain pole attachment recommendations of the National Broadband Plan and sought comment regarding others. On April 7, 2011, the Commission adopted a Report and Order and Order on Reconsideration that sets forth a comprehensive regulatory scheme for access to poles, and modifies existing rules for pole attachment rates and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	02/06/08	73 FR 6879
FNPRM	07/15/10	75 FR 41338
Declaratory Ruling	08/03/10	75 FR 45494
R&O	05/09/11	76 FR 26620
Order on Recon	02/03/16	81 FR 5605
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Ray, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–0357.

RIN: 3060–AJ64

390. Rural Call Completion; WC Docket No. 13–39

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 202(a); 47 U.S.C. 218; 47 U.S.C. 220(a); 47 U.S.C. 257(a); 47 U.S.C. 403

Abstract: The recordkeeping, retention, and reporting requirements in the Report and Order improve the Commission's ability to monitor problems with completing calls to rural areas, and enforce restrictions against blocking, choking, reducing, or restricting calls. The Further Notice of Proposed Rulemaking sought comment on additional measures intended to further ensure reasonable and nondiscriminatory service to rural areas. The Report and Order applies new recordkeeping, retention, and reporting requirements to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines which, in most cases, is the calling party's long-distance provider. Covered providers are required to file quarterly reports and retain the call detail records for at least six calendar months. Qualifying providers may certify that they meet a Safe Harbor which reduces their reporting and retention obligations, or seek a waiver of these rules from the Wireline Competition Bureau, in consultation with the Enforcement Bureau. The Report and Order also adopts a rule prohibiting all originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.

On February 13, 2015, the Wireline Competition Bureau provided additional guidance regarding how providers must categorize information. The Commission also adopted an Order on Reconsideration addressing petitions for reconsideration. Reports have been due quarterly beginning with the second quarter of 2015.

Timetable:

Action	Date	FR Cite
NPRM	04/12/13	78 FR 21891
Public Notice	05/07/13	78 FR 26572
NPRM Comment Period End.	05/28/13	
R&O and FNPRM	12/17/13	78 FR 76218
PRA 60 Day Notice.	12/30/13	78 FR 79448
FNPRM Comment Period End.	02/18/14	
PRA Comments Due.	03/11/14	
Public Notice	05/06/14	79 FR 25682
Order on Reconsideration.	12/10/14	79 FR 73227
Erratum	01/08/15	80 FR 1007
Public Notice	03/04/15	80 FR 11954
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Richard B. Hovey, Telecom Policy and Technology Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2582, *Email: richard.hovey@fcc.gov.*

RIN: 3060–AJ89

391. Rates for Inmate Calling Services; WC Docket No. 12–375

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i) to (j); 47 U.S.C. 225; 47 U.S.C. 276; 47 U.S.C. 303(r); 47 CFR 64

Abstract: In the Report and Order portion of this document, the Federal Communications Commission adopts rule changes to ensure that rates for both interstate and intrastate inmate calling services (ICS) are fair, just, and reasonable, as required by statute, and limits ancillary service charges imposed by ICS providers. In the Report and Order, the Commission sets caps on all interstate and intrastate calling rates for ICS, establishes a tiered rate structure based on the size and type of facility being served, limits the types of ancillary services that ICS providers may charge for and caps the charges for permitted fees, bans flat-rate calling, facilitates access to ICS by people with disabilities by requiring providers to offer free or steeply discounted rates for calls using TTY, and imposes reporting and certification requirements to facilitate continued oversight of the ICS market. In the Further Notice portion of the item, the Commission seeks comment on ways to promote competition for ICS, video visitation, rates for international calls, and

considers an array of solutions to further address areas of concern in the ICS industry.

Timetable:

Action	Date	FR Cite
NPRM	01/22/13	78 FR 4369
FNPRM	11/13/13	78 FR 68005
R&O	11/13/13	78 FR 67956
FNPRM Comment Period End.	12/20/13	
Announcement of Effective Date.	06/20/14	79 FR 33709
2nd FNPRM	11/21/14	79 FR 69682
2nd FNPRM Comment Period End.	01/15/15	
2nd FNPRM Reply Comment Period End.	01/20/15	
3rd FNPRM	12/18/15	80 FR 79020
2nd R&O	12/18/15	80 FR 79136
3rd FNPRM Comment Period End.	01/19/16	
3rd FNPRM Reply Comment Period End.	02/08/16	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Gil Strobel, Deputy Pricing Policy Div. Chief, WCB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–7084.

RIN: 3060–AK08.

392. Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 219; 47 U.S.C. 220

Abstract: The Commission initiates a rulemaking proceeding to review the Uniform System of Accounts (USOA) to consider ways to minimize the compliance burdens on incumbent local exchange carriers while ensuring that the agency retains access to the information it needs to fulfill its regulatory duties. In light of the Commission's actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, the Commission stated that it is likely appropriate to streamline the existing rules even though those reforms may not have eliminated the need for accounting data for some purposes.

The Commission's analysis and proposals are divided into three parts. First, the Commission proposes to streamline the USOA accounting rules while preserving their existing structure. Second, the Commission seeks more focused comment on the accounting requirements needed for price cap carriers to address our statutory and regulatory obligations. Third, the Commission seeks comment on several related issues, including state requirements, rate effects, implementation, continuing property records, and legal authority.

Timetable:

Action	Date	FR Cite
NPRM	09/15/14	79 FR 54942
NPRM Comment Period End.	11/14/14	
NPRM Reply Comment Period End.	12/15/14	
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Robin Cohn, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2747, *Email: robin.cohn@fcc.gov.*

RIN: 3060–AK20

393. Protecting and Promoting the Open Internet; (WC Docket No. 14–28)

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 151 ; 47 U.S.C. 154(i) to (j); 47 U.S.C. 201(b)

Abstract: In January of 2014, the D.C. Circuit in *Verizon* v. *FCC* struck down the no-blocking and no-unreasonable discrimination rules contained in the *2010 Open Internet Order,* invalidating the Commission's attempt to create legally enforceable standards to preserve the open Internet. In response to *Verizon,* in May 2014, the Commission released a Notice of Proposed Rulemaking (*2014 Open Internet NPRM*) that sought comment on a fundamental question: What is the right public policy to ensure that the Internet remains open? After careful review of the record generated by the *2014 Open Internet NPRM,* the Commission issued a combined Report and Order on Remand, Declaratory Ruling, and Order in this proceeding. The Report and Order established bright-line rules banning three specific practices that invariably harm the open Internet: Blocking, Throttling, and Paid Prioritization, and applied those rules to both fixed and mobile broadband Internet access service. In addition, the Report and Order put in place a general conduct standard to prevent a broadband service provider from unreasonably interfering with or disadvantaging the ability of end users to access content, applications, services or devices offered by edge providers. The Report and Order also strengthened the transparency rules that remained in place following *Verizon.*

In order to provide the best possible legal foundation for these rules, the Commission's Declaratory Ruling reclassified broadband Internet access service as a telecommunications service subject to title II of the Communications Act. Finally, in order to tailor title II to the 21st century broadband ecosystem, the Commission issued an Order forbearing from the majority of title II provisions, leaving in place a light-touch regime that will support regulatory action while simultaneously encouraging broadband investment, innovation, and deployment.

Timetable:

Action	Date	FR Cite
NPRM	07/01/14	79 FR 37448
NPRM Comment Period End.	07/18/14	
NPRM Reply Comment Period End.	09/15/14	
R&O on Remand, Declaratory Ruling, and Order.	04/13/15	80 FR 19737
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Zachary Ross, Attorney Advisor, Competiton Policy Division, WCB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1033, *Email: zachary.ross@fcc.gov.*

RIN: 3060–AK21

394. Emerging Wireline Networks and Services; GN Docket No. 13–5, WC Docket No. 05–25

Legal Authority: 47 U.S.C. 214; 47 U.S.C. 251; . . .

Abstract: This proceeding seeks to strengthen public safety, pro-consumer and pro-competition policies and protections in a manner appropriate for technology transitions that are underway and for networks and services that emerge from those transitions. The Notice of Proposed Rulemaking proposed new rules to ensure reliable backup power for consumers of IP-based voice and data services across networks that provide residential fixed service that substitutes for and improves upon the kind of traditional telephony used by people to dial 911. It also proposed new and revised rules to protect consumers by ensuring they are informed about their choices and the services provided to them when carriers retire legacy facilities (*e.g.,* copper networks) and seek to discontinue legacy services (*e.g.,* basic voice service). Finally, it proposed revised rules to protect competition where it exists today, so that the mere change of a network facility or discontinuance of a legacy service does not deprive small- and medium-size business, schools, libraries, and other enterprises of the ability to choose the kinds of innovative services that best suit their needs.

The Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking: (i) Adopted rules updating the process by which incumbent LECs notify interconnecting entities of planned copper retirements; (ii) clarified that a carrier must obtain Commission approval before discontinuing, reducing, or impairing a service used as a wholesale input, but only when the carrier's actions will discontinue, reduce, or impair service to end users, including a carrier-customer's retail end users; (iii) adopted an interim rule requiring that to receive authority to discontinue, reduce, or impair a legacy TDM-based service special access service or commercial wholesale platform service that is used as a wholesale input by competitive providers, an incumbent LEC must as a condition to obtaining discontinuance authority commit to providing competitive carriers wholesale access on reasonably comparable rates, terms, and conditions; (iv) proposed specific criteria for the Commission to consider in determining whether to authorize carriers to discontinue a legacy retail service in favor of a retail service based on a newer technology; (v) sought comment on updating the rules governing the discontinuance process, including regarding the timing of notice to consumers, the method for providing that notice, and providing notice to Tribal governments; (vi) sought comment on extending the end point of the interim rule adopted in the Report and Order as it applies to the commercial wholesale platform service; and (vii) sought comment on whether to adopt objective criteria to measure an ILEC's good faith in responding to competitive LEC requests for additional information in connection with a copper retirement notice and whether a planned copper retirement should be postponed when an ILEC has failed to fulfill the new good faith communication requirement adopted in the Report and Order.

Timetable:

Action	Date	FR Cite
NPRM	01/06/15	80 FR 450
NPRM Comment Period End.	02/05/15	
NPRM Reply Comment Period End.	03/09/15	
R&O	09/25/15	80 FR 57768
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michele Levy Berlove, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1477, *email: michele.berlove@fcc.gov.*

RIN: 3060–AK32

395. Modernizing Common Carrier Rules, WC Docket No. 15–33

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(j); 47 U.S.C. 154(i); 47 U.S.C. 160 to 161; 47 U.S.C. 201 to 205; 47 U.S.C. 214; 47 U.S.C. 218 to 221; 47 U.S.C. 225 to 228; 47 U.S.C. 254; 47 U.S.C. 303; 47 U.S.C. 308; 47 U.S.C. 403; 47 U.S.C. 410; 47 U.S.C. 571; 47 U.S.C. 1302; 52 U.S.C. sec 30141

Abstract: The Notice of Proposed Rulemaking (Notice) seeks to update our rules to better reflect current requirements and technology by removing outmoded regulations from the Code of Federal Regulations (CFR). The Notice proposes to update the CFR by (1) eliminating certain rules from which the Commission has forborn, and (2) eliminating references to telegraph service in certain rules. We propose to eliminate several rules from which the Commission has granted unconditional forbearance for all carriers. These are: (1) Section 64.804(c)–(g), which governs a carrier's recordkeeping and other obligations when it extends to federal candidates unsecured credit for communications service; (2) sections 42.4, 42.5, and 42.7, which require carriers to preserve certain records; (3) section 64.301, which requires carriers to provide communications service to foreign governments for international communications; (4) section 64.501, governing telephone companies' obligations when recording telephone conversations; (5) section 64.5001(a)–(c)(2), and (c)(4), which imposes certain reporting and certification requirements for prepaid calling card providers; and (6) section 64.1, governing traffic damage claims for carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service. We also propose to remove references to telegraph from certain sections of the Commission's rules. This proposal is consistent with Recommendation 5.38 of the Process Reform Report. Specifically, we propose to remove telegraph from: (1) Section 36.126 (separations); (2) section 54.706(a)(13) (universal service contributions); and (3) sections 63.60(c), 63.61, 63.62, 63.65(a)(4), 63.500(g), 63.501(g), and 63.504(k) (discontinuance).

Timetable:

Action	Date	FR Cite
NPRM	05/06/15	80 FR 25989
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Daniel Kahn, Deputy Division Chief, Competition Policy, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–1407, *Email: daniel.kahn@fcc.gov.*

RIN: 3060–AK33

396. Numbering Policies for Modern Communications, WC Docket No. 13–97

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 153; 47 U.S.C. 154; 47 U.S.C. 201–205; 47 U.S.C. 251; 47 U.S.C. 303(r)

Abstract: This Order establishes a process to authorize interconnected VoIP providers to obtain North American Numbering Plan (NANP) telephone numbers directly from the Numbering Administrators, rather than through intermediaries. Section 52.15(g)(2)(i) of the Commission's rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested. The Commission has interpreted this rule as requiring evidence of either a state certificate of public convenience and necessity (CPCN) or a Commission license. Neither authorization is typically available in practice to interconnected VoIP providers. Thus, as a practical matter, generally only telecommunications carriers are able to provide the proof of authorization required under our rules, and thus able to obtain numbers directly from the Numbering Administrators. This Order establishes an authorization process to enable interconnected VoIP providers that choose direct access to request numbers directly from the Numbering Administrators. Next, the Order sets forth several conditions designed to minimize number exhaust and preserve the integrity of the numbering system.

The Order requires interconnected VoIP providers obtaining numbers to comply with the same requirements applicable to carriers seeking to obtain numbers. These requirements include

any state requirements pursuant to numbering authority delegated to the states by the Commission, as well as industry guidelines and practices, among others. The Order also requires interconnected VoIP providers to comply with facilities readiness requirements adapted to this context, and with numbering utilization and optimization requirements. As conditions to requesting and obtaining numbers directly from the Numbering Administrators, interconnected VoIP providers are also required to: (1) Provide the relevant state commissions with regulatory and numbering contacts when requesting numbers in those states, (2) request numbers from the Numbering Administrators under their own unique OCN, (3) file any requests for numbers with the relevant state commissions at least 30 days prior to requesting numbers from the Numbering Administrators, and (4) provide customers with the opportunity to access all abbreviated dialing codes (N11 numbers) in use in a geographic area.

Finally, the Order also modifies Commission's rules in order to permit VoIP Positioning Center (VPC) providers to obtain pseudo-Automatic Number Identification (p–ANI) codes directly from the Numbering Administrators for purposes of providing E911 services.

Timetable:

Action	Date	FR Cite
NPRM	06/19/13	78 FR 36725
NPRM Comment Period End.	07/19/13	
R&O	10/29/15	80 FR 66454
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Marilyn Jones, Attorney, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554, *Phone:* 202 418–2357, *fax:* 202 418–2345, *email: marilyn.jones@fcc.gov.*

RIN: 3060–AK36

BILLING CODE 6712–01–P

[FR Doc. 2016–12933 Filed 6–8–16; 8:45 am]

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FEDERAL REGISTER

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Part XXVI

Federal Reserve System

Semiannual Regulatory Agenda

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period May 1, 2016 through October 31, 2016. The next agenda will be published in fall 2016.

DATES: Comments about the form or content of the agenda may be submitted any time during the next 6 months.

ADDRESSES: Comments should be addressed to Robert deV. Frierson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its spring 2016 agenda as part of the Spring 2016 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following Web site: *www.reginfo.gov*. Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into four sections. The first, Pre-rule Stage, reports on matters the Board is considering for future rulemaking. The second section, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The third section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. And a fourth section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further.

A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda and which the Board has not completed.

Margaret McCloskey Shanks,
Deputy Secretary of the Board.

FEDERAL RESERVE SYSTEM—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
403	Regulation CC—Availability of Funds and Collection of Checks (Docket No.: R–1409)	7100–AD68
404	Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No.: R–1429).	7100–AD80

FEDERAL RESERVE SYSTEM (FRS)

Proposed Rule Stage

403. Regulation CC—Availability of Funds and Collection of Checks (Docket No.: R–1409)

Legal Authority: 12 U.S.C. 4001 to 4010; 12 U.S.C. 5001 to 5018

Abstract: The Board of Governors of the Federal Reserve System (the Board) proposed amendments to Regulation CC to facilitate the banking industry's ongoing transition to fully electronic interbank check collection and return, including proposed amendments to subpart C to condition a depositary bank's right of expeditious return on the depositary bank agreeing to accept returned checks electronically, either directly or indirectly, from the paying bank. The Board also proposed amendments to subpart B, the funds availability schedule provisions to reflect the fact that there are no longer any non-local checks. The Board proposed to revise the model forms in appendix C that banks may use in disclosing their funds availability policies to their customers and to update the preemption determinations in appendix F. Finally, the Board requested comment on whether it should consider future changes to the regulation to improve the check collection system, such as decreasing the time afforded to a paying bank to decide whether to pay a check in order to reduce the risk to a depositary bank of needing to make funds available for withdrawal before learning whether a deposited check has been returned unpaid.

Timetable:

Action	Date	FR Cite
Board Requested Comment.	03/25/11	76 FR 16862
Board Requested Comment on Revised Proposal.	02/04/14	79 FR 6673
Board Expects Further Action on Subpart C.	09/00/16	
Board Expects Further Action on Subpart B.	12/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Clinton Chen, Attorney, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone*: 202 452–3952.

RIN: 7100–AD68

404. Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No.: R–1429)

Legal Authority: 5 U.S.C. 552; 5 U.S.C. 559; 5 U.S.C. 1813; 5 U.S.C. 1817; 5 U.S.C. 1828

Abstract: The Dodd-Frank Act Wall Street Reform and Consumer Protection Act (the Act) transferred responsibility for supervision of Savings and Loan Holding Companies (SLHCs) and their non-depository subsidiaries from the Office of Thrift Supervision (OTS) to the Board of Governors of the Federal Reserve System (the Board), on July 21, 2011. The Act also transferred supervisory functions related to Federal savings associations and State savings associations to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), respectively. The Board on August 12, 2011, approved an interim final rule for SLHCs, including a request for public comment. The interim final rule transferred from the OTS to the Board the regulations necessary for the Board to supervise SLHCs, with certain technical and substantive modifications. The interim final rule has three components: (1) New Regulation LL (part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to existing Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board. The structure of interim final Regulation LL closely follows that of the Board's Regulation Y, which governs bank holding companies, in order to provide an overall structure to rules that were previously found in disparate locations. In many instances, interim final Regulation LL incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation LL also reflects statutory changes made by the Dodd-Frank Act with respect to SLHCs, and incorporates Board precedent and practices with respect to applications processing procedures and control issues, among other matters. Interim final Regulation MM organized existing OTS regulations governing SLHCs in mutual form (MHCs) and their subsidiary holding companies into a single part of the Board's regulations. In many instances, interim final Regulation MM incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation MM also reflects statutory changes made by the Dodd-Frank Act with respect to MHCs. The interim final rule also made technical amendments to Board rules to facilitate supervision of SLHCs, including to rules implementing Community Reinvestment Act requirements and to Board procedural and administrative rules. In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Act, which transfers to the Board all rulemaking authority under section 11 of the Home Owner's Loan Act relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

Timetable:

Action	Date	FR Cite
Board Requested Comment.	09/13/11	76 FR 56508
Board Expects Further Action.	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: C. Tate Wilson, Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–3696.

Claudia Von Pervieux, Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452–2552.

RIN: 7100–AD80

[FR Doc. 2016–12934 Filed 6–8–16; 8:45 am]

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Part XXVII

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2016–0044]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda (the Agenda) in accordance with Public Law 96–354, "The Regulatory Flexibility Act," and Executive Order 12866, "Regulatory Planning and Review." The Agenda is a compilation of all rulemaking activities on which the NRC has recently completed action or has proposed or is considering action. The NRC has completed 9 rulemaking activities since publication of its last Agenda on December 15, 2015 (80 FR 78108). This issuance of the NRC's Agenda contains 22 active and 27 long-term rulemaking activities: 2 are Economically Significant; 8 represent Other Significant agency priorities; 41 are Substantive, Nonsignificant rulemaking activities; and 1 is Administrative rulemaking activity. In addition, 3 rulemaking activities impact small entities. The NRC is requesting comment on its rulemaking activities as identified in this Agenda.

DATES: Submit comments on rulemaking activities as identified in this Agenda by July 11, 2016.

ADDRESSES: Submit comments on any rulemaking activity in the Agenda by the date and methods specified in any **Federal Register** notice on the rulemaking activity. Comments received after the date specified will be considered if it is practicable to do so, but the Commission cannot assure consideration of comments received after the deadline. For more information on submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3280; email: *Cindy.Bladey@nrc.gov*. Persons outside the Washington, DC metropolitan area may call, toll-free: 1–800–368–5642. For further information on the substantive content of any rulemaking activity listed in the Agenda, contact the individual listed under the heading "Agency Contact" for that rulemaking activity.

SUPPLEMENTARY INFORMATION:

Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0044 when contacting the NRC about the availability of information for this document. You may obtain publically-available information related to this document by any of the following methods:

- *Reginfo.gov:*
- For completed rulemaking activities go to *http://www.reginfo.gov/public/do/eAgendaHistory?showStage=completed* and select Nuclear Regulatory Commission from drop down menu.
- For active rulemaking activities go to *http://www.reginfo.gov/public/do/eAgendaMain* and select Nuclear Regulatory Commission from drop down menu.
- For long-term rulemaking activities go to *http://www.reginfo.gov/public/do/eAgendaHistory?operation=OPERATION_GET_PUBLICATION&showStage=longterm&*

you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into the Agencywide Documents Access and Management System (ADAMS). The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

Introduction

The Agenda is a compilation of all rulemaking activities on which an agency has recently completed action or has proposed or is considering action. The Agenda reports rulemaking activities in three major categories: completed, active, and long-term. Completed rulemaking activities are those that were completed since publication of an agency's last Agenda; active rulemaking activities are those that an agency currently plans to have an Advance Notice of Proposed Rulemaking, a Proposed Rule, or a Final Rule issued within the next 12 months; and long-term rulemaking activities are rulemaking activities under development but for which an agency does not expect to have a regulatory action within the 12 months after

The date for the next scheduled action under the heading "Timetable" is the date the next regulatory action for the rulemaking activity is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The Agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking activity even though it is not included in the Agenda.

Common Prioritization of Rulemaking

A key part of the NRC's regulatory program is an annual review of all ongoing and potential rulemaking activities. In conjunction with its budget and long-term planning process, the NRC compiles a Common Prioritization of Rulemaking (CPR) listing to develop program budget estimates and to determine the relative priority of NRC rulemaking activities. The most current listing of each rulemaking activity for the Fiscal Year 2017/2018 planning period is available on the NRC's Rulemaking Priorities Web page at *http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rule-priorities.html*. The CPR process considers four factors and assigns a score to each factor. Factor A includes activities that support the NRC's Strategic Plan goals of ensuring the safe and secure use of radioactive materials. Factor B includes activities that support the Strategic Plan cross-cutting strategies of Regulatory Effectiveness and Openness. Specifically, this factor considers whether the rulemaking activity enhances regulatory effectiveness and/or openness in the way that the NRC conducts regulatory activities. Factor C is a governmental factor representing interest to the NRC, Congress, or other governmental bodies. Factor D is an external factor representing interest to members of the public, non-governmental organizations, the nuclear industry, vendors, and suppliers. The overall priority is determined by adding the factor scores together for each rulemaking activity.

Section 610 Periodic Reviews Under the Regulatory Flexibility Act

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies to conduct a review within 10 years of promulgation of those regulations that have or will have a *significant* economic impact on a substantial number of small entities. The NRC undertakes these reviews to decide whether the rules should be unchanged, amended, or withdrawn. At this time, the NRC does not have any rules that have a significant economic impact on a *substantial* number of small entities; therefore, the NRC has not included any RFA Section 610 periodic reviews in this edition of the Agenda. A complete listing of NRC regulations that impact small entities and related Small Entity Compliance Guides will be available from the NRC's Web site at *http://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act/small-entities.html*.

Public Comments Received on the NRC's Unified Agenda

The NRC did not receive any public comments on its last Agenda that published on December 15, 2015 (80 FR 78108).

Dated at Rockville, Maryland, this 18th day of March 2016.

For the Nuclear Regulatory Commission.

Leslie Terry,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

NUCLEAR REGULATORY COMMISSION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
405	Variable Annual Fee Structure for Small Modular Power Reactors [NRC–2008–0664]	3150–AI54
406	Revision of Fee Schedules: Fee Recovery for FY 2016 [NRC–2015–0223]	3150–AJ66

NUCLEAR REGULATORY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.

recover approximately 90 percent of its annual budget through fees.

Timetable:

Action	Date	FR Cite
NPRM	03/23/16	81 FR 15457
NPRM Comment Period End.	04/22/16	
Final Rule Published.	06/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michele D. Kaplan, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–5256, *Email: michele.kaplan@nrc.gov.*

RIN: 3150–AJ66

NUCLEAR REGULATORY COMMISSION (NRC)

Long-Term Actions

407. Controlling the Disposition of Solid Materials [NRC–1999–0002]

Legal Authority: 42 U.S.C. 2201; 42 U.S.C. 5841

Abstract: This rule would add radiological criteria for controlling the disposition of solid materials that have no, or very small amounts of, residual radioactivity resulting from licensed operations, and which originate in restricted or impacted areas of NRC-licensed facilities. The NRC staff provided a draft proposed rule package on Controlling the Disposition of Solid Materials to the Commission on March 31, 2005, which the Commission disapproved (ADAMS Accession No. ML051520285). The rulemaking package included a summary of stakeholder comments (NUREG/CR–6682), Supplement 1 (ADAMS Accession No. ML003754410). The Commission's decision was based on the fact that the Agency is currently faced with several high priority and complex tasks, that the current approach to review specific cases on an individual basis is fully protective of public health and safety, and that the immediate need for this rule has changed due to the shift in timing for reactor decommissioning. The Commission has deferred action on this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Torre Taylor, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–7900, *Email: torre.taylor@nrc.gov.*

RIN: 3150–AH18

[FR Doc. 2016–12959 Filed 6–8–16; 8:45 am]

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Part XXVIII

Securities and Exchange Commission

Semiannual Regulatory Agenda

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33–10056, 34–77408, IA–4353, IC–32031, File No. S7–04–16]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing the Chair's agenda of rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164) (Sep. 19, 1980). The items listed in the Regulatory Flexibility Agenda for Spring 2016 reflect only the priorities of the Chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the view and priorities of any individual Commissioner.

Information in the agenda was accurate on March 18, 2016, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of an RFA analysis is required.

The Commission's complete RFA agenda will be available online at *www.reginfo.gov*.

DATES: Comments should be received on or before July 11, 2016.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–04–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–04–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202–551–5019.

SUPPLEMENTARY INFORMATION: The RFA requires each Federal agency, twice each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The Commission may consider or act on any matter earlier or later than the estimated date provided on the agenda. While the agenda reflects the current intent to complete a number of rulemakings in the next year, the precise dates for each rulemaking at this point are uncertain. Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

"Securities Act"—Securities Act of 1933
"Exchange Act"—Securities Exchange Act of 1934
"Investment Company Act"—Investment Company Act of 1940
"Investment Advisers Act"—Investment Advisers Act of 1940
"Dodd Frank Act"—Dodd-Frank Wall Street Reform and Consumer Protection Act
"JOBS Act"—Jumpstart Our Business Startups Act

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
415	Crowdfunding	3235–AL37

DIVISION OF INVESTMENT MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
416	Reporting of Proxy Votes on Executive Compensation and Other Matters	3235–AK67
417	Investment Company Reporting Modernization	3235–AL42
418	Use of Derivatives by Registered Investment Companies and Business Development Companies	3235–AL60
419	Open-End Liquidity Risk Management Programs; Swing Pricing	3235–AL61
420	Amendments to Form ADV and Investment Advisers Act Rules	3235–AL75

DIVISION OF TRADING AND MARKETS—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
421	Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934	3235–AL14

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Proposed Rule Stage

408. • 10–K Summary Page

Legal Authority: Pub. L. 114–94; 15 U.S.C. 78c; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w; 15 U.S.C. 78ll

Abstract: The Division is considering recommending that the Commission propose rules to implement section 72001 of the FAST Act by permitting issuers to submit a summary page on Form 10–K.

Timetable:

Action	Date	FR Cite
NPRM	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Michael Seaman, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3460.

RIN: 3235–AL90

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Final Rule Stage

411. Amendments to Regulation D, Form D and Rule 156 Under the Securities Act

Legal Authority: 15 U.S.C. 77a *et seq.*

Abstract: The Commission proposed rule and form amendments to enhance the Commission's ability to evaluate the development of market practices in offerings under Rule 506 of Regulation D and address concerns that may arise in connection with permitting issuers to engage in general solicitation and general advertising under new

Agency Contact: Eduardo Aleman, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3430, *Fax:* 202 772–9207.

RIN: 3235–AL00

412. Disclosure of Hedging by Employees, Officers and Directors

Legal Authority: Pub. L. 111–203

Abstract: The Commission proposed rules to implement section 955 of the Dodd Frank Act, which added section 14(j) to the Exchange Act to require annual meeting proxy statement disclosure of whether employees or members of the board of directors are permitted to engage in transactions to hedge or offset any decrease in the market value of equity securities granted to the employee or board member as compensation, or held directly or indirectly by the employee or board member.

Timetable:

Action	Date	FR Cite
NPRM	02/17/15	80 FR 8486
NPRM Comment Period End.	04/20/15	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Carolyn Sherman, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3500.

RIN: 3235–AL49

413. Listing Standards for Recovery of Erroneously Awarded Compensation

Legal Authority: Pub. L. 111–203, sec 954; 15 U.S.C. 78j–4

Abstract: The Commission proposed rules to implement section 954 of the Dodd Frank Act, which requires the Commission to adopt rules to direct national securities exchanges to prohibit the listing of securities of issuers that have not developed and implemented a policy providing for disclosure of the issuer's policy on incentive-based compensation and mandating the clawback of such compensation in certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	07/14/15	80 FR 41144
NPRM Comment Period End.	09/14/15	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Anne M. Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3500.

RIN: 3235–AK99

414. Changes to Exchange Act Registration Requirements To Implement Title V and Title VI of the Jobs Act

Legal Authority: Pub. L. 112–106

Abstract: The Commission proposed amendments to rules to implement titles V (Private Company Flexibility and Growth) and VI (Capital Expansion) of the JOBS Act.

Timetable:

Action	Date	FR Cite
NPRM	12/30/14	79 FR 78343
NPRM Comment Period End.	03/03/15	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Steven G. Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3430.

RIN: 3235–AL40

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Corporation Finance

Completed Actions

415. Crowdfunding

Legal Authority: 15 U.S.C. 77a *et seq.;* 15 U.S.C. 78a *et seq.;* Pub. L. 112–108, secs 301 to 305

Abstract: The Commission adopted rules to implement title III of the JOBS Act by prescribing rules governing the offer and sale of securities through crowdfunding under new section 4(a)(6) of the Securities Act.

Timetable:

Action	Date	FR Cite
NPRM	11/05/13	78 FR 66428
NPRM Comment Period End.	02/03/14	
Final Action	11/16/15	80 FR 71388
Final Action Effective.	05/16/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Timothy White, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–7232.

Sebastian Gomez Abero, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–3460.

RIN: 3235–AL37

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Investment Management

Final Rule Stage

416. Reporting of Proxy Votes on Executive Compensation and Other Matters

Legal Authority: 15 U.S.C. 78m; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 78x; 15 U.S.C. 80a–8; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; 15 U.S.C. 80a–44; Pub. L. 111–203, sec 951

Abstract: The Commission proposed rule amendments to implement section 951 of the Dodd Frank Act. The proposed amendments to rules and Form N–PX would require institutional investment managers subject to section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to sections 14A(a) and (b) of the Exchange Act.

Timetable:

Action	Date	FR Cite
NPRM	10/28/10	75 FR 66622
NPRM Comment Period End.	11/18/10	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Matthew DeLesDernier, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6792, *Email: delesdernierj@sec.gov.*

RIN: 3235–AK67

417. Investment Company Reporting Modernization

Legal Authority: 15 U.S.C. 77 *et seq.;* 15 U.S.C. 77aaa *et seq.;* 15 U.S.C. 78a *et seq.;* 15 U.S.C. 80a *et seq.;* 44 U.S.C. 3506; 44 U.S.C. 3507

Abstract: The Commission proposed new rules and forms as well as amendments to its rules and forms to modernize the reporting and disclosure of information by registered investment companies.

Timetable:

Action	Date	FR Cite
NPRM	06/12/15	80 FR 33590
NPRM Comment Period End.	08/11/15	
NPRM Comment Period Reopened.	10/12/15	80 FR 62274
NPRM Comment Period Reopened End.	01/13/16	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sara Cortes, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6781, *Email: cortess@sec.gov.*

RIN: 3235–AL42

418. Use of Derivatives by Registered Investment Companies and Business Development Companies

Legal Authority: 15 U.S.C. 80a–c(c); 15 U.S.C. 80a–31(a); 15 U.S.C. 80a–12(a); 15 U.S.C. 80a–38(a); 15 U.S.C. 80a–8; 15 U.S.C. 80a–30; 15 U.S.C. 80–38

Abstract: The Commission proposed a new rule designed to enhance the regulation of the use of derivatives by registered investment companies, including mutual funds, exchange-traded funds, closed-end funds and business development companies. The proposed rule would regulate registered investment companies' use of derivatives and require enhanced risk management measures.

Timetable:

Action	Date	FR Cite
NPRM	12/28/15	80 FR 80884
NPRM Comment Period End.	03/28/16	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Johnson, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6740, *Email: johnsonbm@sec.gov.*

RIN: 3235–AL60

419. Open-End Liquidity Risk Management Programs; Swing Pricing

Legal Authority: 15 U.S.C. 80a–37(a); 15 U.S.C. 80a–22(c); 15 U.S.C. 80a–31(a); 15 U.S.C. 77a *et seq.;* 15 U.S.C. 77aaa *et seq.;* 15 U.S.C. 78a *et seq.;* 15 U.S.C 80a *et seq.*

Abstract: The Commission proposed a new rule requiring open-end funds to adopt and implement liquidity management programs. The Commission also proposed rule amendments that permit open-end funds to use "swing pricing" and form amendments that enhance disclosure regarding fund liquidity and redemption practices.

Timetable:

Action	Date	FR Cite
NPRM	10/15/15	80 FR 62274
NPRM Comment Period End.	01/13/16	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah ten Siethoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6729, *Email: tensiethoffs@sec.gov.*

RIN: 3235–AL61

420. Amendments to Form ADV and Investment Advisers Act Rules

Legal Authority: 15 U.S.C. 77s(a); 15 U.S.C. 77sss(a); 15 U.S.C. 78bb(e)(2); 15 U.S.C. 78w(a); 15 U.S.C. 80a–37(a); 15 U.S.C. 80b–3(c)(1)

Abstract: The Commission proposed amendments to Form ADV that are designed to provide additional information regarding advisers, including information about their separately managed account business; incorporate a method for private fund adviser entities operating a single advisory business to register using a single Form ADV; and make clarifying, technical and other amendments to certain Form ADV items and instructions. The Commission also proposed amendments to the Investment Advisers Act books and records rule and technical amendments to several Investment Advisers Act rules to remove transition provisions that are no longer necessary.

Timetable:

Action	Date	FR Cite
NPRM	06/12/15	80 FR 33718
NPRM Comment Period End.	08/11/15	
Final Action	04/00/17	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Sarah Buescher, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–5192, *Email: bueschers@sec.gov.*

RIN: 3235–AL75

SECURITIES AND EXCHANGE COMMISSION (SEC)

Division of Trading and Markets

Long-Term Actions

421. Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934

Legal Authority: Pub. L. 111–203, sec 939A

Abstract: Section 939A of the Dodd Frank Act requires the Commission to remove certain references to credit ratings from its regulations and to substitute such standards of creditworthiness as the Commission determines to be appropriate. The Commission amended certain rules and one form under the Exchange Act applicable to broker-dealer financial responsibility, and confirmation of transactions. The Commission has not yet finalized amendments to certain rules regarding the distribution of securities.

Timetable:

Action	Date	FR Cite
NPRM	05/06/11	76 FR 26550
NPRM Comment Period End.	07/05/11	
Final Action	01/08/14	79 FR 1522
Final Action Effective.	07/07/14	
Next Action Undetermined.	To Be Determined	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: John Guidroz, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, *Phone:* 202 551–6439, *Email: guidrozj@sec.gov.*

RIN: 3235–AL14

[FR Doc. 2016–12968 Filed 6–8–16; 8:45 am]

BILLING CODE 8011–01–P

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Part XXIX

Surface Transportation Board

Semiannual Regulatory Agenda

SURFACE TRANSPORTATION BOARD

49 CFR Ch. X

[STB Ex Parte No. 536 (Sub-No. 40)]

Semiannual Regulatory Agenda

AGENCY: Surface Transportation Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Surface Transportation Board (the Board), in accordance with the requirements of the Regulatory Flexibility Act (RFA), is publishing a semiannual agenda of: (1) Current and projected rulemakings; and (2) existing regulations being reviewed to determine whether to propose modifications through rulemaking. Listed below are the regulatory actions to be developed or reviewed during the next 12 months. Following each rule identified is a brief description of the rule, including its purpose and legal basis.

FOR FURTHER INFORMATION CONTACT: A contact person is identified for each of the rules listed below.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that, semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda, which shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings in the near future. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Board's best estimate of rules that will be considered over the next 12 months. However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Board is publishing its spring 2016 regulatory flexibility agenda as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Order 12866 and 13563. The Board is participating voluntarily in the program to assist OMB.

Dated: March 18, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

SURFACE TRANSPORTATION BOARD—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
422	Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Docket No. EP 704	2140–AB28

SURFACE TRANSPORTATION BOARD (STB)

Prerule Stage

422. • Review of Commodity, Boxcar, and TOFC/COFC Exemptions, Docket No. EP 704

container-on-flatcar exemption under 49 CFR part 1090. The Board encouraged interested parties to address the effectiveness of the exemptions in the marketplace, whether the rationale behind any of these exemptions should be revisited, and whether the

Action	Date	FR Cite
Prerule	05/00/16	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Scott M.

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Part XXX

The President

Memorandum of May 18, 2016—Delegation of Certain Functions and Authorities Under the North Korea Sanctions and Policy Enhancement Act of 2016

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Presidential Documents

Title 3—

The President

Memorandum of May 18, 2016

Delegation of Certain Functions and Authorities Under the North Korea Sanctions and Policy Enhancement Act of 2016

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Director of National Intelligence[, and] the Secretary of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby order as follows:

I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, functions and authorities vested in the President by section 103(a) of the North Korea Sanctions and Policy Enhancement Act of 2016 (Public Law 114–122, 22 U.S.C. 9201 note) (the "Act").

I hereby delegate to the Secretary of State the functions and authorities vested in the President by sections 208(b), 208(c), 401(a), 401(b), and 402. These functions and authorities shall be executed in consultation with the Secretary of the Treasury when affecting actions undertaken by the Department of the Treasury pursuant to authorities delegated herein or pursuant to authorities conferred by the Act.

I hereby delegate to the Secretary of State the functions and authorities vested in the President by section 301 of the Act and direct the Secretary of State to develop, in coordination with other executive departments and agencies, as appropriate, the strategy described in section 202(c) of the Act.

I hereby delegate to the Secretary of the Treasury, in consultation with the Secretary of State, the functions and authorities vested in the President by sections 104(a), 104(b), 104(d), 209(b), and 304(b) of the Act.

I hereby delegate to the Secretary of the Treasury the functions and authorities vested in the President by sections 102(a), 104(c), 104(e), and 208(d) of the Act.

I hereby delegate to the Director of National Intelligence, in consultation with the Secretary of State, the functions and authorities vested in the President by section 205(a) of the Act.

I hereby delegate the functions and authorities vested in the President by section 209(a) as follows:

- The Secretary of the Treasury, in consultation with the Secretary of State and the Director of National Intelligence, shall have the responsibility for submitting the report described in subsection 209(a)(1) and for providing the information described in subsections 209(a)(2)(A) and (B).

- The Director of National Intelligence, in consultation with the Secretary of the Treasury and the Secretary of State, shall have the responsibility for providing the description of significant activities described by subsection

Act as may be necessary to carry out the provisions of the Act, including the foregoing delegations.

Any reference herein to provisions of any act related to the subject of this memorandum shall be deemed to include references to any hereafter-enacted provisions of law that are the same or substantially the same as such provisions.

The Secretary of State is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 18, 2016

[FR Doc. 2016–13851
Filed 6–8–16; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2016–06 of May 19. 2016

Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the report submitted to the Congress by the Energy Information Administration on February 9, 2016, and other relevant factors, including global economic conditions, increased oil production by certain countries, the level of spare capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with my prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions. However, consistent with U.S. commitments specified in the Joint Comprehensive Plan of Action (JCPOA), the United States is no longer pursuing efforts to reduce Iran's sales of crude oil. The United States action to fulfill these commitments became effective upon reaching Implementation Day under the JCPOA, which occurred once the International Atomic Energy Agency verified that Iran had implemented key nuclear-related steps specified in the JCPOA to ensure that its nuclear program is and will remain exclusively peaceful.

I will continue to monitor this situation closely.

The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 19, 2016

[FR Doc. 2016–13863
Filed 6–8–16; 11:15 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2016–07 of June 1, 2016

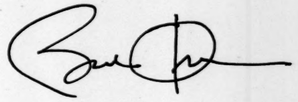
Suspension of Limitations under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the "Act"), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish this determination in the *Federal Register*.

This suspension shall take effect after the transmission of this determination and report to the Congress.



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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8138; Directorate Identifier 2014–NM–112–AD; Amendment 39–18552; AD 2016–12–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–17–10, for all Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. AD 2011–17–10 required inspecting for a by-pass wire between the housing of each in-tank fuel quantity indication (FQI) cable plug and the cable shield, and corrective actions if necessary. AD 2011–17–10 also required revising the airplane maintenance program. This new AD removes certain airplanes from the applicability. This new AD applies only to Model F.28 Mark 1000 airplanes and also requires revising the airplane maintenance or inspection program by incorporating the instructions in revised service information. This AD was prompted by the issuance of revised service information to update the critical design configuration control limitations (CDCCLs) that address potential ignition sources inside fuel tanks. We are issuing this AD to prevent potential ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of September 16, 2011 (76 FR 50111, August 12, 2011).

ADDRESSES: For service information identified in this final rule, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket Number FAA–2015–8138.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket Number FAA–2015–8138; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011) ("AD 2011–17–10"). AD 2011–17–10 applied to all Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes. The NPRM published in the **Federal Register** on January 4, 2016 (81 FR 34) ("the NPRM"). The NPRM was prompted by the issuance of revised service information to update the CDCCLs that address potential ignition sources inside fuel tanks. The NPRM proposed to retain the requirements of AD 2011–17–10, and to require revising the airplane maintenance or inspection program by incorporating the instructions in the revised service information. The NPRM also proposed to remove certain airplanes from the applicability. We are issuing this AD to prevent potential ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0111, dated May 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on certain Model F.28 Mark 1000 airplanes. The MCAI states:

> [T]he FAA published Special Federal Aviation Regulation (SFAR) 88 [Amendment 21–78 (66 FR 23086, May 7, 2001). Subsequently, SFAR 88 was amended by: Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change "21–82" to "21–83")], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> The review conducted by Fokker Services on the F28 design, in response to these regulations, revealed that on certain aeroplanes, an interrupted shield contact may exist or develop between the housing of an in-tank Fuel Quantity Indication (FQI) cable plug and the cable shield of the shielded FQI system cables in the main and collector fuel tanks, which can, under certain conditions, form a spark gap.
>
> This condition, if not detected and corrected, may create an ignition source in the fuel tank vapour space, possibly resulting in a wing fuel tank explosion and consequent loss of the aeroplane.
>
> To address and correct this unsafe condition, Fokker Services published Service Bulletin (SB) SBF28–28–053 which provides instructions, for early production aeroplanes, for a one-time inspection to check for the presence of a by-pass wire between the housing of each in-tank FQI cable plug and the cable shield and, depending on findings, for the installation of a by-pass wire. In addition, SBF28–28–053 provides a Critical

Design Configuration Control Limitation (CDCCL) item to make certain that the by-pass wire remains installed on these aeroplanes.

On later production aeroplanes, an improved plug Part Number (P/N) 20P227–2 was introduced with a better shield connection to the housing of the plug. Therefore, SBF28–28–053 (original issue and Revision 1) also provided a CDCCL item to ensure that this type of plug remains installed on those aeroplanes.

EASA issued AD 2010–0217 [which corresponds to FAA AD 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011)] to require accomplishment of the instructions related to the by-pass wire and implementation of the CDCCL items as specified in Fokker Services SBF28–28–053 Revision 1, as applicable to aeroplane s/n.

Since EASA AD 2010–0217 was issued, it was identified that P/N 20P227–1 and 20P228–1 plugs are also approved and can therefore be installed on the later production aeroplanes. Prompted by this finding, Fokker Services issued SBF28–28–055 to address the implementation of a CDCCL item to make certain that only approved plug types remain installed on the later production aeroplanes, while SBF28–28–053 Revision 2 was issued for early production aeroplanes to address the by-pass wire related actions only.

Consequently, EASA issued AD 2011–0184, retaining the requirements of EASA AD 2010–0217, which was superseded, to require implementation of the related CDCCL items as specified in Fokker Services SBF28–28–053 Revision 2, or SBF28–28–055, as applicable to aeroplane s/n.

More recently, Fokker Services published Revision 3 of SBF28–28–053, to eliminate the use of a heat gun in or near to the fuel tank, and prompted by a change to the definition of the related CDCCL item. Fokker Services also cancelled SBF28–28–055, due to the introduction of a revised definition of the CDCCL item that has been published in Fokker Services SBF28–28–050, Revision 2.

For the reason described above, this [EASA] AD retains the requirements related to SBF28–28–053 of EASA AD 2011–0184, which is superseded, but requires those actions to be accomplished in accordance with the instructions of Fokker Services SBF28–28–053, Revision 3 (R3).

All the actions related to SBF28–28–055, as previously required through paragraphs (5) and (6) of EASA AD 2011–0184, are now addressed by EASA AD 2014–0110 [*http://ad.easa.europa.eu/ad/2014-0110_1.pdf*].

* * * * *

The CDCCL requirement in AD 2011–17–10 for Model F.28 Mark 2000, 3000, and 4000 airplanes is now addressed in other related rulemaking. Therefore, this AD does not include Model F.28 Mark 2000, 3000, and 4000 airplanes in the applicability.

This AD also removes airplanes having serial numbers 11993 and 11994 from the applicability because those airplanes were scrapped and removed from the type certificate data sheet.

The unsafe condition is the potential of ignition sources inside fuel tanks. Such ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8138.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. The service information describes procedures for inspecting for a by-pass wire between the housing of each in-tank FQI cable plug and the cable shield, and installing a by-pass wire if necessary. The service information also describes CDCCL Item 1.7 for fuel quantity indicating system (FQIS) wiring in wing tanks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 5 airplanes of U.S. registry. This AD adds a requirement to revise the airplane maintenance or inspection program by incorporating the instructions in revised service information. The current costs associated with this AD are repeated as follows for the convenience of affected operators:

The actions required by AD 2011–17–10 will take about 6 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2011–17–10 is $510 per product.

In addition, we estimate that any necessary follow-on actions required by AD 2011–17–10 take about 7 work-hours and require parts costing $308, for a cost of $903 per product. We have no way of determining the number of products that may need these actions.

We also estimate that it takes about 1 work-hour per product to revise the maintenance or inspection program. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $425, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011), and adding the following new AD:

2016–12–03 Fokker Services B.V.: Amendment 39–18552. Docket No. FAA–2015–8138; Directorate Identifier 2014–NM–112–AD.

(a) Effective Date

This AD becomes effective July 15, 2016.

(b) Affected ADs

This AD replaces AD 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011) ("AD 2011–17–10").

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 1000 airplanes; certificated in any category; serial numbers (S/Ns) 11003 through 11041 inclusive, and S/Ns 11991 and 11992.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by the issuance of revised service information to update the critical design configuration control limitations (CDCCLs) that address potential ignition sources inside fuel tanks. We are issuing this AD to prevent potential ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection and Installation, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2011–17–10, with revised service information. At a scheduled opening of the fuel tanks, but not later than 84 months after September 16, 2011 (the effective date of AD 2011–17–10), do a general visual inspection for the presence of a by-pass wire between the housing of each in-tank fuel quantity indication (FQI) cable plug and the cable shield, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010; or Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. As of the effective date of this AD, only Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014, may be used.

(h) Retained Corrective Actions, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2011–17–10, with revised service information. If during the general visual inspection required by paragraph (g) of this AD, it is found that a by-pass wire is not installed: Before the next flight, install the by-pass wire between the housing of the in-tank FQI cable plug and the cable shield, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010; or Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. As of the effective date of this AD, only Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014, may be used.

(i) Retained Maintenance Program Revision To Add Fuel Airworthiness Limitation, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2011–17–10, with a new exception. Except as required by paragraph (k) of this AD, concurrently with the actions required by paragraph (g) of this AD, revise the airplane maintenance program by incorporating CDCCL–1 specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

(j) Retained Requirement for No Alternative Actions, Intervals, and/or CDCCLs, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2011–17–10 with a new exception. Except as required by paragraph (k) of this AD: After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.*, inspection, interval) and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative methods of compliance (AMOC) in accordance with the procedures specified in paragraph (n)(1) of this AD.

(k) New Maintenance or Inspection Program Revision To Add Fuel Airworthiness Limitation

Within 30 days after the effective date of this AD: Revise the airplane maintenance or inspection program, as applicable, by incorporating CDCCL Item 1.7 as specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. Accomplishing the revision required by this paragraph terminates the revision required by paragraph (i) of this AD.

(l) No Alternative CDCCLs

After the maintenance or inspection program has been revised as required by paragraph (k) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (n)(1) of this AD.

(m) Credit for Previous Actions

This paragraph provides credit for the applicable actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using Fokker Service Bulletin SBF28–28–053, Revision 2, dated June 22, 2011. This document is not incorporated by reference in this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0111, dated May 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8138.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 15, 2016.

corresponds to FAA AD 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011)] to require accomplishment of the instructions related to the by-pass wire and implementation of the CDCCL items as specified in Fokker Services SBF28–28–053 Revision 1, as applicable to aeroplane s/n.

Since EASA AD 2010–0217 was issued, it was identified that P/N 20P227–1 and 20P228–1 plugs are also approved and can therefore be installed on the later production aeroplanes. Prompted by this finding, Fokker Services issued SBF28–28–055 to address the implementation of a CDCCL item to make certain that only approved plug types remain installed on the later production aeroplanes, while SBF28–28–053 Revision 2 was issued for early production aeroplanes to address the by-pass wire related actions only.

Consequently, EASA issued AD 2011–0184, retaining the requirements of EASA AD 2010–0217, which was superseded, to require implementation of the related CDCCL items as specified in Fokker Services SBF28–28–053 Revision 2, or SBF28–28–055, as applicable to aeroplane s/n.

More recently, Fokker Services published Revision 3 of SBF28–28–053, to eliminate the use of a heat gun in or near to the fuel tank, and prompted by a change to the definition of the related CDCCL item. Fokker Services also cancelled SBF28–28–055, due to the introduction of a revised definition of the CDCCL item that has been published in Fokker Services SBF28–28–050, Revision 2.

For the reason described above, this [EASA] AD retains the requirements related to SBF28–28–053 of EASA AD 2011–0184, which is superseded, but requires those actions to be accomplished in accordance with the instructions of Fokker Services SBF28–28–053, Revision 3 (R3).

All the actions related to SBF28–28–055, as previously required through paragraphs (5) and (6) of EASA AD 2011–0184, are now addressed by EASA AD 2014–0110 [*http://ad.easa.europa.eu/ad/2014-0110_1.pdf*].

* * * * *

The CDCCL requirement in AD 2011–17–10 for Model F.28 Mark 2000, 3000, and 4000 airplanes is now addressed in other related rulemaking. Therefore, this AD does not include Model F.28 Mark 2000, 3000, and 4000 airplanes in the applicability.

This AD also removes airplanes having serial numbers 11993 and 11994 from the applicability because those airplanes were scrapped and removed from the type certificate data sheet.

The unsafe condition is the potential of ignition sources inside fuel tanks.

participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. The service information describes procedures for inspecting for a by-pass wire between the housing of each in-tank FQI cable plug and the cable shield, and installing a by-pass wire if necessary. The service information also describes CDCCL Item 1.7 for fuel quantity indicating system (FQIS) wiring in wing tanks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 5 airplanes of U.S. registry. This AD adds a requirement to revise the airplane maintenance or inspection program by incorporating the instructions in revised service information. The current costs associated with this AD are repeated as follows for the convenience of affected operators:

The actions required by AD 2011–17–10 will take about 6 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2011–17–10 is $510 per product.

cost of this AD on U.S. operators to be $425, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011), and adding the following new AD:

2016–12–03 Fokker Services B.V.: Amendment 39–18552. Docket No. FAA–2015–8138; Directorate Identifier 2014–NM–112–AD.

(a) Effective Date

This AD becomes effective July 15, 2016.

(b) Affected ADs

This AD replaces AD 2011–17–10, Amendment 39–16774 (76 FR 50111, August 12, 2011) ("AD 2011–17–10").

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 1000 airplanes; certificated in any category; serial numbers (S/Ns) 11003 through 11041 inclusive, and S/Ns 11991 and 11992.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by the issuance of revised service information to update the critical design configuration control limitations (CDCCLs) that address potential ignition sources inside fuel tanks. We are issuing this AD to prevent potential ignition sources inside the fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection and Installation, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2011–17–10, with revised service information. At a scheduled opening of the fuel tanks, but not later than 84 months after September 16, 2011 (the effective date of AD 2011–17–10), do a general visual inspection for the presence of a by-pass wire between the housing of each in-tank fuel quantity indication (FQI) cable plug and the cable shield, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053,

paragraph (g) of this AD, it is found that a by-pass wire is not installed: Before the next flight, install the by-pass wire between the housing of the in-tank FQI cable plug and the cable shield, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010; or Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. As of the effective date of this AD, only Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014, may be used.

(i) Retained Maintenance Program Revision To Add Fuel Airworthiness Limitation, With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2011–17–10, with a new exception. Except as required by paragraph (k) of this AD, concurrently with the actions required by paragraph (g) of this AD, revise the airplane maintenance program by incorporating CDCCL–1 specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

(j) Retained Requirement for No Alternative Actions, Intervals, and/or CDCCLs, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2011–17–10 with a new exception. Except as required by paragraph (k) of this AD: After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.*, inspection, interval) and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative methods of compliance (AMOC) in accordance with the procedures specified in paragraph (n)(1) of this AD.

(k) New Maintenance or Inspection Program Revision To Add Fuel Airworthiness Limitation

Within 30 days after the effective date of this AD: Revise the airplane maintenance or inspection program, as applicable, by incorporating CDCCL Item 1.7 as specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014. Accomplishing the revision required by this paragraph terminates the revision required by paragraph (i) of this AD.

(l) No Alternative CDCCLs

After the maintenance or inspection program has been revised as required by paragraph (k) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an AMOC in accordance with

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0111, dated May 8, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8138.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 15, 2016.

(i) Fokker Service Bulletin SBF28–28–053, Revision 3, dated January 9, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 16, 2011 (76 FR 50111, August 12, 2011).

(i) Fokker Service Bulletin SBF28–28–053, Revision 1, dated September 20, 2010.

(ii) Reserved.

(5) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13545 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4813; Directorate Identifier 2013–NM–161–AD; Amendment 39–18532; AD 2016–11–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 99–16–01 for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 99–16–01 required repetitive inspections of certain bolt holes where parts of the main landing gear (MLG) are attached to the wing rear spar, and repair if necessary. Since we issued AD 99–16–01, we have determined that the risk of cracking in the wing rear spar is higher than initially determined. This new AD adds airplanes to the applicability, reduces the compliance times and repetitive intervals for the inspections, and changes the inspection procedures. This AD was prompted by a determination that the risk of cracking in the wing rear spar is higher than initially determined. We are issuing this AD to detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 9, 1995 (60 FR 52618, October 10, 1995).

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4813.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4813; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–2125; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 99–16–01, Amendment 39–11236 (64 FR 40743, July 28, 1999) ("AD 99–16–01"). AD 99–16–01 superseded AD 95–20–02, Amendment 39–9380 (60 FR 52618, October 10, 1995). AD 99–16–01 applied to certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The NPRM published in the **Federal Register** on November 17, 2015 (80 FR 71751) ("the NPRM").

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0180, dated August 9, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

> During full-scale fatigue testing, cracks were found on the rear spar from certain bolt holes at the attachment of the Main Landing gear (MLG) forward pick-up fitting and the MLG Rib 5 aft.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the aeroplane.
>
> DGAC [Direction Générale de l'Aviation Civile] France issued * * * [an AD] (later revised) to require High Frequency Eddy Current (HFEC) or Ultrasonic (U/S) inspections of certain fastener holes where the MLG forward pick-up fitting and MLG Rib 5 aft are attached to the rear spar.
>
> Since DGAC France * * * [issued a revised AD, which corresponded to FAA AD 99–16–01, Amendment 39–11236 (64 FR 40743, July 28, 1999), which superseded FAA AD 95–20–02, Amendment 39–9380 (60 FR 52618, October 10, 1995)] * * *, a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second A300–600 Extended Service Goal (ESG2) exercise. The results of these analyses have shown that the threshold and interval must be reduced to allow timely detection of these cracks and accomplishment of an applicable corrective action.
>
> For the reasons described above, this [EASA] AD retains the requirements of [the revised DGAC France AD], which is superseded, but reduces the related compliance times.

The new, reduced threshold for the initial inspection ranges between 8,900 total flight cycles/20,000 total flight hours, and 34,600 total flight cycles/77,800 total flight hours, depending on the modification. The grace periods (750 or 1,500 landings) for airplanes that have exceeded the specified thresholds are unchanged from those provided in AD 99–16–01. The new, reduced intervals for the repetitive inspections range between 4,000 flight cycles/9,000 flight hours (whichever occurs first), and 8,900 flight cycles/20,000 flight hours (whichever occurs first), depending on the modification. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4813.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 4, 2011. This service information describes procedures for repetitive inspections of certain bolt holes where parts of the MLG are attached to the wing rear spar, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 71 airplanes of U.S. registry.

The actions required by AD 99–16–01 and retained in this AD, take about 226 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that are required by AD 99–16–01 is $19,210 per product, per inspection cycle.

We also estimate that it will take about 226 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,363,910, or $19,210 per product.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 99–16–01, Amendment 39–11236 (64 FR 40743, July 28, 1999), and adding the following new AD:

2016–11–05 Airbus: Amendment 39–18532; Docket No. FAA–2015–4813; Directorate Identifier 2013–NM–161–AD.

(a) Effective Date

This AD becomes effective July 15, 2016.

(b) Affected ADs

This AD replaces AD 99–16–01, Amendment 39–11236 (64 FR 40743, July 28, 1999) ("AD 99–16–01").

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R airplanes; and Model A300 C4–605R Variant F airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by the results of a full-scale fatigue test when cracking was found on the rear spar of the wing, and the subsequent determination that the risk of such cracking is higher than initially determined. We are issuing this AD to detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspections and Corrective Actions, With Revised Service Information

This paragraph restates the requirements of paragraphs (a), (b), (c), (d), (e), and (f) of AD 99–16–01 with revised service information and reduced thresholds and repetitive intervals, for Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes; manufacturer serial numbers (MSNs) 252 through 553 inclusive; except those airplanes on which Airbus Modification 07601 has been accomplished prior to delivery.

(1) Perform a high frequency eddy current (HFEC) rototest inspection to detect cracks in

certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6017, Revision 01, including Appendix 1, dated July 25, 1994; or Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011. As of the effective date of this AD, only Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011, may be used for the actions required by this paragraph.

(i) For airplanes that have accumulated 17,300 total landings or less as of November 9, 1995 (the effective date of AD 95–20–02, Amendment 39–9380 (60 FR 52618, October 10, 1995)) ("AD 95–20–02"): Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after November 9, 1995, whichever occurs later.

(ii) For airplanes that have accumulated 17,301 or more total landings, but less than 19,300 total landings as of November 9, 1995 (the effective date of AD 95–20–02): Inspect within 1,500 landings after November 9, 1995.

(iii) For airplanes that have accumulated 19,300 or more total landings as of November 9, 1995 (the effective date of AD 95–20–02): Inspect within 750 landings after November 9, 1995 (the effective date of AD 95–20–02).

(2) If no crack is found during the inspection required by paragraph (g)(1) of this AD, repeat that inspection thereafter at the time specified in either paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable.

(i) For airplanes on which Airbus Modification 07716 (as specified in Airbus Service Bulletin A300–57–6020) has not been accomplished: Inspect at the time specified in paragraph (g)(2)(i)(A) or (g)(2)(i)(B) of this AD, as applicable.

(A) For airplanes having MSNs 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 13,000 landings, until the inspection required by paragraph (g)(4)(ii)(A)(*1*) of this AD has been accomplished.

(B) For airplanes having MSNs 252 through 464 inclusive: Repeat the inspection at intervals not to exceed 8,400 landings, until the inspection required by paragraph (g)(4)(ii)(A)(*2*) of this AD has been accomplished.

(ii) For airplanes on which Airbus Modification 07716 has been accomplished: Inspect at the time specified in either paragraph (g)(2)(ii)(A) or (g)(2)(ii)(B) of this AD, as applicable.

(A) For airplanes having MSNs 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 11,800 landings, until the inspection required by paragraph (g)(4)(i)(B) of this AD has been accomplished.

(B) For airplanes having MSNs 252 through 464 inclusive: Repeat the inspection within 10,700 landings following the initial inspection required by paragraph (g)(1) of this AD, and thereafter at intervals not to exceed 7,500 landings, until the inspection required by paragraph (g)(4)(ii)(B)(*2*) has been accomplished.

(3) If any crack is found during the inspection required by either paragraph (g)(1) or (g)(2) of this AD, prior to further flight, accomplish the requirements of either paragraph (g)(3)(i) or (g)(3)(ii) of this AD, as applicable.

(i) For airplanes on which Airbus Modification 07716 has not been accomplished: Oversize the bolt hole by 1/32 inch and repeat the HFEC inspection required by paragraph (g)(1) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6017, Revision 01, including Appendix 1, dated July 25, 1994. After accomplishing the oversizing and HFEC inspection, repeat the inspection, as required by paragraph (g)(2) of this AD, at the applicable schedule specified in that paragraph, until the inspection required by paragraph (g)(4)(ii)(B)(*1*) or (g)(4)(ii)(B)(*2*) of this AD has been accomplished.

(A) If no cracking is detected, install the second oversize bolt in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6017, Revision 01, including Appendix 1, dated July 25, 1994.

(B) If any cracking is detected, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(ii) For airplanes on which Airbus Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, International Branch, ANM–116. After repair, repeat the inspections as required by paragraph (g)(2) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (g)(4)(ii)(B)(*1*) or (g)(4)(ii)(B)(*2*) of this AD has been accomplished.

(4) Perform an ultrasonic inspection to detect cracks in certain bolt holes where the MLG forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6017, Revision 03, dated November 19, 1997; or Revision 04, including Appendix 1, dated February 24, 2011; at the time specified in paragraph (g)(4)(i) or (g)(4)(ii) of this AD, as applicable. As of the effective date of this AD, only Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011, may be used for the actions in this paragraph.

(i) For airplanes not inspected prior to September 1, 1999 (the effective date of AD 99–16–01), as specified in Airbus Service Bulletin A300–57–6017, dated November 22, 1993; or Revision 01, including Appendix 1, dated July 25, 1994: Inspect at the time specified in paragraph (g)(4)(i)(A), (g)(4)(i)(B), or (g)(4)(i)(C) of this AD, as applicable. Accomplishment of this inspection terminates the requirements of paragraph (g)(1) of this AD.

(A) For airplanes that have accumulated 17,300 total landings or fewer as of the effective date of this AD: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after September 1, 1999 (the effective date of AD 99–16–01), whichever occurs later.

(B) For airplanes that have accumulated 17,301 total landings or more but fewer than 19,300 total landings as of September 1, 1999 (the effective date of AD 99–16–01): Inspect within 1,500 landings after September 1, 1999 (the effective date of AD 99–16–01).

(C) For airplanes that have accumulated 19,300 total landings or more as of September 1, 1999 (the effective date of AD 99–16–01): Inspect within 750 landings after September 1, 1999 (the effective date of AD 99–16–01).

(ii) For airplanes on which an HFEC inspection was performed prior to September 1, 1999 (the effective date of AD 99–16–01), in accordance with the requirements of paragraph (g)(1) of this AD, or in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6017, dated November 22, 1993: Inspect at the time specified in paragraph (g)(4)(ii)(A) or (g)(4)(ii)(B) of this AD, as applicable.

(A) If no cracking was detected during any HFEC inspection accomplished prior to September 1, 1999 (the effective date of AD 99–16–01), and if Airbus Modification 07716 has not been accomplished: Inspect at the time specified in paragraph (g)(4)(ii)(A)(*1*) or (g)(4)(ii)(A)(*2*) of this AD, as applicable.

(*1*) For airplanes having MSNs 465 through 553 inclusive: Inspect within 13,000 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (g)(2)(i)(A) of this AD.

(*2*) For airplanes having MSNs 252 through 464 inclusive: Inspect within 8,400 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 5,500 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (g)(2)(i)(B) of this AD.

(B) If any cracking was detected during any HFEC inspection performed prior to the effective date of this AD, regardless of the method of repair, or if Airbus Modification 07716 has been accomplished: Inspect at the time specified in paragraph (g)(4)(ii)(B)(*1*) or (g)(4)(ii)(B)(*2*) of this AD, as applicable.

(*1*) For airplanes having MSNs 465 through 553 inclusive: Inspect within 11,800 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,200 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (g)(3)(i) or (g)(3)(ii) of this AD, as applicable.

(*2*) For airplanes having MSNs 252 through 464 inclusive: Inspect within 10,700 landings after the initial inspection in accordance with paragraph (g)(1) of this AD, or within 7,500 landings after the most recent HFEC inspection, whichever occurs later, and thereafter at intervals not to exceed 4,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (g)(3)(i) or (g)(3)(ii) of this AD, as applicable.

(5) If no cracking is detected during the ultrasonic inspection required by paragraph (g)(4)(i) of this AD, repeat that inspection thereafter at the time specified in paragraph (g)(5)(i) or (g)(5)(ii) of this AD, as applicable, until the initial ultrasonic inspection required by paragraph (h) of this AD is done.

(i) For airplanes having MSNs 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 8,900 landings.

(ii) For airplanes having MSNs 232 through 464 inclusive: Repeat the inspection at intervals not to exceed 5,500 landings.

(6) If any cracking is detected during any inspection performed in accordance with the requirements of paragraph (g)(4) or (g)(5) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its delegated agent); or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

Note 1 to paragraph (g) of this AD: Airbus Service Bulletin A300–57–6017, Revision 01, including Appendix 1, dated July 25, 1994; and Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011; also reference Airbus Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information for installation of oversize studs in the bolt holes.

(h) New Repetitive Inspections

At the applicable times specified in paragraph 1.B.(5), "Accomplishment Timescale," of Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011: Do ultrasonic inspections to detect cracks in the MLG attachment fitting holes on the wing rear spar, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011. Repeat the inspections thereafter at the applicable intervals specified in paragraph 1.B.(5), "Accomplishment Timescale," of Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011. For airplanes modified as specified in Airbus Service Bulletin A300–57–6073, the initial inspection threshold is counted from the completion date of the modification. Clarification of compliance time terminology used in table 1, "Structural Inspection Program," of Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011, is provided in paragraphs (h)(1) through (h)(4) of this AD. Accomplishment of the initial inspection terminates the repetitive inspections required by paragraph (g)(5) of this AD.

(1) For pre-Airbus Modification 07716 or pre-Airbus Modification 11440 airplanes:

(i) The term "flight cycles" in the "Inspection Threshold" column is total flight cycles accumulated by the airplane.

(ii) The term "flight hours" in the "Inspection Threshold" column is total flight hours accumulated by the airplane.

(2) For post-Airbus Modification 07716 airplanes:

(i) The term "flight cycles" in the "Inspection Threshold" column is total flight cycles accumulated by the airplane.

(ii) The term "flight hours" in the "Inspection Threshold" column is total flight hours accumulated by the airplane.

(3) For post-Airbus Modification 11440 (Airbus Service Bulletin A300–57–6073) airplanes:

(i) The term "flight cycles" in the "Inspection Threshold" column is flight cycles accumulated by the airplane after the modification was done.

(ii) The term "flight hours" in the "Inspection Threshold" column is flight hours accumulated by the airplane after the modification was done.

(4) For post-Airbus Modification 07601 airplanes:

(i) The term "flight cycles" in the "Inspection Threshold" column is total flight cycles accumulated by the airplane.

(ii) The term "flight hours" in the "Inspection Threshold" column is total flight hours accumulated by the airplane.

(i) Repairs

If any crack is found during any inspection required by paragraph (h) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(j) Non-Terminating Repair

Accomplishment of any repair as required by paragraph (i) of this AD is not terminating action for the repetitive inspections required by paragraph (g) or (h) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using any of the following service information.

(1) Airbus Service Bulletin A300–57–6017, dated November 22, 1993, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A300–57–6017, Revision 01, including Appendix 1, dated July 25, 1994, which was incorporated by reference in AD 95–20–02 and is retained in this AD.

(3) Airbus Service Bulletin A300–57–6017, Revision 02, dated January 14, 1997, including Appendix 1, dated July 25, 1994, which is not incorporated by reference in this AD.

(4) Airbus Service Bulletin A300–57–6017, Revision 03, including Appendix 1, dated November 19, 1997, which was incorporated by reference in AD 99–16–01, but is not retained in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local FIight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–2125; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously for AD 99–16–01 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0180, dated August 9, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* searching for and locating Docket No. FAA–2015–4813.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(5) and (n)(6) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 15, 2016.

(i) Airbus Service Bulletin A300–57–6017, Revision 04, including Appendix 1, dated February 24, 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on November 9, 1995 (60 FR 52618, October 10, 1995).

(i) Airbus Service Bulletin A300–57–6017, Revision 01, including Appendix 1, dated July 25, 1994.

(ii) Reserved.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call

202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 18, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–12324 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2134; Directorate Identifier 2015–CE–012–AD; Amendment 39–18547; AD 2016–11–20]

RIN 2120–AA64

Airworthiness Directives; B/E Aerospace Protective Breathing Equipment Part Number 119003–11

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain B/E Aerospace protective breathing equipment (PBE) that is installed on airplanes. This AD was prompted by a report of a PBE catching fire upon activation by a crewmember. This AD requires replacing the PBE. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 15, 2016.

ADDRESSES: For service information identified in this final rule, contact B/E Aerospace, Inc., Commercial Aircraft Products Group, 10800 Pflumm Road, Lenexa, Kansas 66215; phone: (913) 338–9800; fax: (913) 338–8419; Internet: *www.beaerospace.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2134.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2134; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Enns, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4147; fax: (316) 946–4107; email: *david.enns@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain B/E Aerospace protective breathing equipment (PBE) that is installed on airplanes. The SNPRM published in the **Federal Register** on January 15, 2016 (81 FR 2131). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on June 16, 2015 (80 FR 34330). The NPRM proposed to require inspecting the PBE to determine if the pouch has the proper vacuum seal and replacing if necessary. The NPRM was prompted by a report of a PBE catching fire upon activation by a crewmember. The SNPRM proposed to require replacement of the PBE following newly issued service information, regardless of inspection results. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. We received one anonymous comment in support of the SNPRM (81 FR 2131, January 15, 2016).

Request To Change Compliance Time

Penney Baudin of United Airlines requested a change to the PBE replacement compliance time.

The commenter requested a 12-month repetitive inspection with a 36-month terminating replacement action. The commenter stated that the change would alleviate restrictive shipping means and complex distribution of the PBEs since the units contain oxygen generators.

We do not agree with the commenter. We believe that the replacement compliance time of 18 months after the effective date of this AD is sufficient time since we are allowing even more time than specified in the related service information. Also, the public has been aware of this safety issue since we first published the first NPRM on June 16, 2015 (80 FR 34330). We have not changed the final rule AD action based on this comment.

Request To Correct Service Information

John Barker of B/E Aerospace stated that Service Bulletin 119003–35–009, dated November 9, 2015, is incorrectly referenced as Rev. 009 instead of Rev. 000 in the preamble of the SNPRM (81 FR 2131, January 15, 2016). The commenter requested the reference to the revision number be corrected.

We agree with the commenter. However, on April 12, 2016, Rev. 001 of B/E Aerospace Service Bulletin 119003–35–009 was released. We are incorporating the Revision 001, dated April 12, 2016, into the final rule AD action because the procedures for doing the inspection and replacement of the PBE have not changed.

We have changed the final rule AD action to include the newly revised service bulletin and to give credit to owners/operators who may have already done the required replacement following B/E Aerospace Service Bulletin No. 119003–35–009, Rev. 000, dated November 9, 2015, which was correctly referenced in paragraph (h) of the regulatory text in the SNPRM (81 FR 2131, January 15, 2016).

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (81 FR 2131, January 15, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (81 FR 2131, January 15, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed B/E Aerospace Service Bulletin No. 119003–35–011, Rev. 000, dated February 4, 2015, and B/E Aerospace Service Bulletin 119003–35–009, Rev. 001, dated April 12, 2016. B/E Aerospace Service Bulletin No. 119003–35–011, Rev. 000, dated February 4, 2015, describes procedures for inspecting PBE, part number (P/N) 119003–11, to determine if the vacuum seal of the pouch containing the PBE is compromised. B/E Aerospace Service Bulletin 119003–35–009, Rev. 001, dated April 12, 2016, describes procedures for replacing PBE P/N 119003–11 with P/N 119003–21. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the Service Information

B/E Aerospace Service Bulletin No. 119003–35–011, Rev. 000, dated February 4, 2015, applies to all PBE with P/N 119003–11 and P/N 119003–21. We have determined that this AD will apply only to a PBE P/N 119003–11 with regard to the inspection requirement of paragraph (g) of this AD. B/E Aerospace Service Bulletin 119003–35–009, Rev. 001, dated April 12, 2016, includes instructions for disposal. In this AD, we are requiring only the replacement action.

Costs of Compliance

We estimate that this AD affects 9,000 products installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting the pouch containing the PBE for proper vacuum seal.	.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$382,500
Replace the PBE P/N 119003–11 with a PBE P/N 119003–21.	.5 work-hour × $85 per hour = $42.50	1,510	1,552.50	13,972,500

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–11–20 B/E Aerospace: Amendment 39–18547; FAA–2015–2134; Directorate Identifier 2015–CE–012–AD.

(a) Effective Date

This AD is effective July 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to B/E Aerospace Protective Breathing Equipment (PBE), part number (P/N) 119003–11, that is installed on airplanes.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 35; Oxygen.

(e) Unsafe Condition

This AD was prompted by a report of a PBE, P/N 119003–11, catching fire upon activation by a crewmember. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

Within 3 months after July 15, 2016 (the effective date of this AD), while still in the stowage box, physically inspect the PBE pouch to determine if it has an intact vacuum seal. Do this inspection following paragraph III.A.1. of the Accomplishment Instructions in B/E Aerospace Service Bulletin No. 119003–35–011, Rev. 000, dated February 4, 2015.

(h) Replacement

(1) *If a PBE pouch is found that does not have an intact vacuum seal during the inspection required in paragraph (g) of this AD:* Before further flight or following existing minimum equipment list (MEL) procedures, replace the PBE with a PBE, P/N 119003–21, following paragraphs III.C., III.D.(4), III.D.(6), and III.D.(7) of the Accomplishment Instructions in B/E Aerospace Service Bulletin No. 119003–35–009, Rev. 001, dated April 12, 2016, or replace it with another FAA-approved serviceable PBE.

(2) *If a PBE pouch is found during the inspection required in paragraph (g) of this AD where the vacuum seal is intact:* Within 18 months after July 15, 2016 (the effective date of this AD), remove PBE, P/N 119003–11, and replace the PBE with PBE, P/N 119003–21, following paragraphs III.C., III.D.(4), III.D.(6), and III.D.(7) of the Accomplishment Instructions in B/E

Aerospace Service Bulletin No. 119003–35–009, Rev. 001, dated April 12, 2016, or replace it with another FAA-approved serviceable PBE.

(i) Credit for Actions Done Following Previous Service Information

If you performed the replacement action required in paragraphs (h)(1) and (2) of this AD before July 15, 2016 (the effective date of this AD) using B/E Aerospace Service Bulletin No. 119003–35–009, Rev. 000, dated November 9, 2015, you met the requirements of those paragraphs of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact David Enns, Aerospace Engineer, Wichita ACO, FAA, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4147; fax: (316) 946–4107; email: *david.enns@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) B/E Aerospace Service Bulletin No. 119003–35–009, Rev. 001, dated April 12, 2016.

(ii) B/E Aerospace Service Bulletin No. 119003–35–011, Rev. 000, dated February 4, 2015.

(3) For B/E Aerospace, Inc. service information identified in this AD, contact B/E Aerospace, Inc., 10800 Pflumm Road, Commercial Aircraft Products Group, Lenexa, Kansas 66215; phone: (913) 338–9800; fax: (913) 338–8419; Internet: *www.beaerospace.com.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2134.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on May 25, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13250 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5284; Directorate Identifier 2016–CE–006–AD; Amendment 39–18550; AD 2016–12–01]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect installation instructions of the torlon plates in the airplane maintenance manual resulting in the incorrect installation of the torlon plates in the forward wing-to-fuselage attachment. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 15, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5284; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Support Manager, CH–6371 STANS, Switzerland; phone: +41 (0)41 619 33 33; fax: +41 (0)41 619 73 11; email: *SupportPC12@pilatus-aircraft.com;* internet: *http://www.pilatus-aircraft.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–5284.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. The NPRM was published in the **Federal Register** on March 28, 2016 (81 FR 17107). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> Incorrect installations of torlon plates in the forward lower wing-to-fuselage attachment were reported on aeroplanes in service. Investigation determined that wrong torlon plate installation instructions were published in June 2007 in Revision (Rev.) 18 to 27 of the Aircraft Maintenance Manual (AMM) 02049, Data Module (DM) 12–A–57–00–00A–520A–A and DM 12–A–57–00–00A–720A–A, for the PC–12, PC–12/45 and PC–12/47 aeroplanes, and in the initial issue to Rev. 10 of AMM 02300, in DM 12–B–57–00–00A–520A–A and DM 12–B–57–00–00A–720A–A, for PC–12/47E aeroplanes.
>
> This condition, if not corrected, could lead to additional loads at the wing-to-fuselage interface, which detrimentally affects the fatigue life of the structural joint.
>
> To address this potential unsafe condition, Pilatus issued Service Bulletin (SB) No. 57–007 to provide inspection instructions to verify the correct installation of torlon plates in the wing-to-fuselage attachments, and the rectification instructions for incorrect installed torlon plates.
>
> For the reason described above, this AD requires a one-time inspection of the forward lower wing-to-fuselage attachments, both left hand (LH) and right hand (RH) sides and, depending on findings, accomplishment of applicable corrective action(s).

The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-5284-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 17107, March 28, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 17107, March 28, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 17107, March 28, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 57–007, dated September 29, 2015. The service information describes procedures for inspection, and if necessary realignment or replacement of the torlon plates in the forward lower wing-to-fuselage attachments. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 268 products of U.S. registry. We also estimate that it would take about 1 work-hour per wing per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $45,560, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours per wing and require parts costing $1,000 per wing, for a total cost of $2,510 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5284; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–12–01 Pilatus Aircraft LTD.: Amendment 39–18550; Docket No. FAA–2016–5284; Directorate Identifier 2016–CE–006–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS AIRCRAFT LTD. PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes, all serial numbers delivered before January 1, 2015, certificated in any category.

Note 1 to paragraph (c) of this AD: The date of delivery may be found as the issue date of the EASA Form 52, which is part of the airplane records.

(d) Subject

Air Transport Association of America (ATA) Code 57: Wings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrect installation instructions of the torlon plates in the airplane maintenance manual resulting in the incorrect installation of the torlon plates in the forward wing-to-fuselage attachment. We are issuing this AD to identify and correct incorrectly installed torlon plates which could cause additional loads affecting the fatigue life at the wing-to-fuselage interface.

(f) Actions and Compliance

Do the actions in paragraphs (f)(1) through (4) of this AD. If paragraphs (f)(1), (2), and (3) of this AD have already been done before July 15, 2016 (the effective date of this AD), then only paragraph (f)(4) of this AD applies.

(1) *For any airplane that has had a wing removed and reinstalled or replaced between June 2007 and July 15, 2016 (the effective date of this AD):* Within the next 12 months after July 15, 2016 (the effective date of this AD), inspect the torlon plates in the forward lower wing-to-fuselage attachments (both left hand (LH) and right hand (RH) sides) for correct installation following the accomplishment instructions in PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 57–007, dated September 29, 2015.

(2) *For any airplane that has had a wing removed and reinstalled or replaced, between June 2007 and July 15, 2016 (the effective date of this AD):* If an incorrect installation of the torlon plates is found during the inspection required in paragraph (f)(1) of this AD, remove the affected torlon plates, visually inspect the torlon plates and the affected lugs using a mirror and light source (if necessary) for any damage, and reinstall the torlon plates in the correct sequence, following the accomplishment instructions in paragraph 3.C. of PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 57–007, dated September 29, 2015.

(3) *For any airplane that has had a wing removed and reinstalled or replaced, between June 2007 and July 15, 2016 (the effective date of this AD):* If any damage is found during the inspection of the torlon plates and lugs required in paragraph (f)(2) of this AD, before further flight, contact PILATUS AIRCRAFT LTD. for FAA-approved repair instructions and accomplish those instructions accordingly. You may find contact information for PILATUS AIRCRAFT LTD. in paragraph (h) of this AD.

(4) *For all airplanes:* As of July 15, 2016 (the effective date of this AD), do not install or re-install a wing on any airplane, unless concurrent with the wing installation, the torlon plates of the forward lower wing-to-fuselage attachment (both LH and RH sides) of the airplane are inspected and found to be installed correctly in accordance with the accomplishment instructions in paragraph 3.B. of PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 57–007, dated September 29, 2015.

Note 2 to paragraph (f)(4) of this AD: Installation of a wing on an airplane in accordance with the instructions of PILATUS aircraft maintenance manual (AMM) 02049, Revision 28 or later, or AMM 02300, Revision 11 or later, is an acceptable alternative method to comply with this inspection requirement.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2016–0037, dated February 26, 2016, for related information. The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-5284-0002*.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 57–007, dated September 29, 2015.

(ii) Reserved.

(3) For PILATUS AIRCRAFT LTD. service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Support Manager, CH–6371 STANS, Switzerland; phone: +41 (0)41 619 33 33; fax: +41 (0)41 619 73 11; email: *SupportPC12@pilatus-aircraft.com;* Internet: *http://www.pilatus-aircraft.com*.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5284.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on June 1, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13372 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4878; Directorate Identifier 2016–CE–001–AD; Amendment 39–18551; AD 2016–12–02]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With BRP-Powertrain GmbH & Co KG 912 A Series Engine

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for various aircraft equipped with a BRP-Powertrain GmbH & Co KG (formerly Rotax Aircraft Engines) 912 A series engine. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a design change of the engine cylinder head temperature sensor without a concurrent revision of the engine model designation, the engine part number, or the cockpit indication to the pilot. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 15, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 15, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4878; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact BRP-Powertrain GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; Internet: *www.rotax-aircraft-engines.com*. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–4878.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to various aircraft equipped with a BRP-Powertrain GmbH & Co KG (formerly Rotax Aircraft Engines) 912 A series engine. The NPRM was published in the **Federal Register** on March 28, 2016 (81 FR 17109). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> A design change of the engine cylinder heads was introduced by BRP-Powertrain in March 2013 which modifies the engine/aircraft interfaces by substituting the previous cylinder head temperature (CHT) measurement (limit temperature 135 °C/150 °C) with a coolant temperature (CT) measurement (limit temperature 120 °C). The design change was communicated on 15 May 2013 by BRP-Powertrain Service Instruction (SI) 912–020R7/914–022R7 (single document) but was not identified by a change of the engine model designation or of the engine P/N, but only through the cylinder head P/N and the position of the temperature sensor.
>
> Consequently, engines with the new cylinder heads (installed during production or replaced in-service during maintenance) may be installed on an aircraft without concurrent modification of that aircraft, instructions for which should be provided by the Type Certificate (TC) holder or Supplemental Type Certificate (STC) holder, as applicable. In this case, the coolant temperature with a maximum engine operating limit of 120 °C (valid for engines operated with water diluted glycol coolant) is displayed on a CHT indicator with a typical limit marking (red radial/range) of more than 120 °C.
>
> This condition, if not detected and corrected, will prevent the pilot to identify coolant limit exceedances, with subsequent loss of coolant (120 °C is the boiling temperature of the coolant), which could lead to engine in-flight shut-down, possibly resulting in a forced landing, with consequent damage to the aircraft and injury to occupants.
>
> BRP-Powertrain published revised SI–912–020R8/914–022R8 to clarify that, on the new cylinder heads, the coolant temperature, instead of the cylinder head temperature in the aluminum, is measured. EASA issued SIB 2014–34 to raise awareness that installation of affected engines and spare parts, without concurrent incorporation of aircraft TC/STC holder approved modifications, and even if unintended and unnoticed by production or maintenance, constitutes an unapproved aircraft modification.
>
> Since EASA published the SIB, further investigation has finally determined that sufficient reason exists to warrant AD action.
>
> For the reason stated above, this AD requires a one-time inspection to determine the actual engine configuration and, depending on findings, engine reidentification and (depending on TC or STC holder installation) modification of the affected aircraft. This also affects engines that are operated with waterless coolant.
>
> The MCAI can be found in the AD docket on the Internet at *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4878-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 17109, March 28, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 17109, March 28, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 17109, March 28, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed BRP-Powertrain GmbH & CO KG issued Rotax Aircraft Engines BRP Service Bulletin SB–912–068 and SB–914–049 (co-published as one document), dated April 16, 2015. The service information describes procedures for re-identifying the engine that has new cylinder heads, part numbers 413235 and 413236 installed. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 65 products of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the engine re-identification requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this portion of this AD on U.S. operators to be $5,525, or $85 per product.

We also estimate that it will take about 1 work-hour per product to comply with the engine installation modification to indicate a Maximum Coolant Temperature requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this portion of this AD on U.S. operators to be $5,525, or $85 per product.

We also estimate that it will take about 1.5 work-hours per product to comply with the cylinder head replacement option of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,500 to replace a single engine cylinder head.

Based on these figures, we estimate the cost of this portion of this AD on U.S. operators to be $2,627.50 per engine cylinder head.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–12–02 Various Aircraft: Amendment 39–18551; Docket No. FAA–2016–4878; Directorate Identifier 2016–CE–001–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all serial numbers of the airplanes listed in table 1 of paragraph (c) of this AD, that are:

(1) equipped with a BRP-Powertrain GmbH & Co KG (formerly Rotax Aircraft Engines) 912 A series engine with a part number (P/N) 413235 or 413236 cylinder head installed in position 2 or 3; and

(2) certificated in any category.

TABLE 1 OF PARAGRAPH (c)—AFFECTED AIRPLANES

Type certificate holder	Aircraft model	Engine model
Aeromot-Indústria Mecânico-Metalúrgica Ltda	AMT–200	912 A2
Diamond Aircraft Industries	HK 36 R "SUPER DIMONA"	912 A
DIAMOND AIRCRAFT INDUSTRIES GmbH	HK 36 TS and HK 36 TC	912 A3
Diamond Aircraft Industries Inc.	DA20–A1	912 A3
HOAC-Austria	DV 20 KATANA	912 A3
Iniziative Industriali Italiane S.p.A.	Sky Arrow 650 TC	912 A2
SCHEIBE-Flugzeugbau GmbH	SF 25C	912 A2, 912 A3

(d) Subject

Air Transport Association of America (ATA) Code 72: Engine—Reciprocating.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. This AD was prompted by design change of the engine cylinder head temperature sensor without a concurrent revision of the engine model designation, the engine part number, or the cockpit indication to the pilot. The sensor now measures the coolant temperature rather than the cylinder head temperature. If the engine coolant temperature with a maximum engine operating limit of 120 °C is displayed on a Cylinder Head Temperature indicator with a typical limit marking greater than 120 °C, the pilot will be unable to identify coolant temperature limit exceedances. This could result in loss of coolant, which could cause an inflight engine shutdown and forced landing.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 6 months after July 15, 2016 (the effective date of this AD), for engines with cylinder heads listed in paragraph (c)(1) of this AD installed on both position 2 and position 3, change the engine model designation on the engine type data plate to include a "–01" suffix following paragraph 3.1.1) of the Accomplishment/Instructions in Rotax Aircraft Engines BRP Service Bulletin SB–912–068 and SB–914–049 (co-published as one document), dated April 16, 2015.

(2) Within 6 months after July 15, 2016 (the effective date of this AD), for engines with only one cylinder head listed paragraph (c)(1) of this AD installed in a position 2 or 3, in order to keep such cylinder installed, you must replace the cylinder head installed on the unchanged position (2 or 3, as applicable) with a cylinder head having a P/N listed in paragraph (c)(1) of this AD, and change the engine model designation on the engine type data plate to include a "–01" suffix following paragraph 3.1.1) of the Accomplishment/Instructions in Rotax Aircraft Engines BRP Service Bulletin SB–912–068 and SB–914–049 (co-published as one document), dated April 16, 2015.

(3) Before further flight after doing the required actions in paragraphs (f)(1) or (f)(2) of this AD as applicable, modify the aircraft and related documentation to indicate a Maximum Coolant Temperature limit of 120 °C using FAA-approved procedures.

(i) Such procedures can be found by contacting your aircraft type certificate holder or the FAA contact specified in paragraph (g)(1) of this AD. The service documents referenced in paragraph (h) of this AD are examples of FAA-approved procedures for the applicable aircraft.

(ii) These re-identified engines remain eligible for installation on approved aircraft-engine combinations.

(4) As of July 15, 2016 (the effective date of this AD), do not install any other P/N cylinder head unless that installation is done following approved instructions provided by BRP-Powertrain at the address provided in paragraph (i)(3) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0240, dated December 18, 2015; Rotax Aircraft Engines BRP Service Bulletin SB–912–066 R1/SB–914–047 R1 (published as one document), Revision 1, dated April 23, 2015; Diamond Aircraft Industries GmbH Optional Service Bulletin OSB 36–111, dated September 17, 2015; Diamond Aircraft Industries GmbH Work Instruction WI–OSB 36–111, dated September 17, 2015; Diamond Aircraft Service Bulletin No.: DA20–72–04, dated January 22, 2015; Diamond Aircraft Industries GmbH Optional Service Bulletin OSB 20–066, dated September 17, 2015; Diamond Aircraft Industries GmbH Work Instruction WI–OSB 20–066, dated September 17, 2015; and Scheibe Aircraft GmbH Service Information 02/14–1, dated December 15, 2014, for related information. You may examine the MCAI on the Internet at *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4878-0002*. For information on the availability of the service documents above, contact the FAA, Small Airplane Directorate, at 816–329–4148.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rotax Aircraft Engines BRP Service Bulletin SB–912–068 and SB–914–049 (co-published as one document), dated April 16, 2015.

(ii) Reserved.

(3) For BRP-Powertrain GmbH & CO KG service information identified in this AD, contact BRP-Powertrain GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: +43 7246 601 0; fax: +43 7246 601 9130; Internet: *www.rotax-aircraft-engines.com*.

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4878.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on June 1, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13542 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. FDA–2016–N–1308]

Medical Devices; Ophthalmic Devices; Classification of Nasolacrimal Compression Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the nasolacrimal compression device into class I (general controls). The Agency is classifying the device into class I (general controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective June 10, 2016. The classification was applicable on April 20, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel Fedorko, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2414, Silver Spring, MD 20993–0002, 301–796–6620.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1) of the FD&C Act. Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of "low-moderate risk" or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On June 27, 2014, Innovatex, Inc., submitted a request for classification of the Tear Duct Occluder (originally referred to as the Glaucoma Companion Nasolacrimal Compression Device) under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class I (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class I if general controls by themselves are sufficient to provide reasonable assurance of safety and effectiveness of the device for its intended use. After review of the information submitted in the de novo request, FDA determined that the device can be classified into class I. FDA believes general controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 20, 2016, FDA issued an order to the requestor classifying the device into class I. FDA

is codifying the classification of the device by adding 21 CFR 886.5838.

The device is assigned the generic name nasolacrimal compression device, and it is identified as a prescription device that is fitted to apply mechanical pressure to the nasal aspect of the orbital rim to reduce outflow through the nasolacrimal ducts.

The risks to health that may be associated with use of the nasolacrimal compression device are improper fit of the device (extended or aggressive use of this device may cause sequelae such as bruising and/or soreness) and improper use of the device (for the uncoordinated, a corneal abrasion may occur inadvertently). General controls of the FD&C Act, including compliance with the labeling requirements in 21 CFR part 801 and the Quality System Regulation (21 CFR part 820), are sufficient to mitigate these risks and reasonably assure safety and effectiveness. FDA believes that the general controls provide reasonable assurance of safety and effectiveness.

The nasolacrimal compression device is not safe for use except under the supervision of a practitioner licensed by law to direct the use of the device. As such, the device is a prescription device and must satisfy prescription labeling requirements (see 21 CFR 801.109, *Prescription devices*).

Section 510(l) of the FD&C Act provides that a class I device is not subject to the premarket notification requirements under section 510(k) of the FD&C Act, unless the device is of substantial importance in preventing impairment of human health or presents a potential unreasonable risk of illness or injury. FDA has determined that the device does meet these criteria and, therefore, premarket notification is not required for the device. Thus, persons who intend to market this device need not submit a premarket notification containing information on the nasolacrimal compression device they intend to market prior to marketing the device, subject to the limitations on exemptions in 21 CFR 886.9.

II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding the quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

IV. Reference

The following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov*.

1. DEN140022: De novo request from Innovatex, Inc., dated June 27, 2014.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 886.5838 to subpart F to read as follows:

§ 886.5838 Nasolacrimal compression device.

(a) *Identification.* A nasolacrimal compression device is a prescription device that is fitted to apply mechanical pressure to the nasal aspect of the orbital rim to reduce outflow through the nasolacrimal ducts.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 886.9.

Dated: June 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13788 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2015–D–3539]

Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a guidance for industry entitled "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act." The guidance describes FDA's interim regulatory policy regarding outsourcing facilities that compound human drug products using bulk drug substances while FDA develops the list of bulk drug substances that can be used in compounding under the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Submit electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–3539 for "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act". Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sara Rothman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act." A new section 503B (21 U.S.C. 353b), added to the FD&C Act by the Drug Quality and Security Act in 2013, describes the conditions that must be satisfied for human drug products compounded by an outsourcing facility to be exempt from the following three sections of the FD&C Act: Section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications or abbreviated new drug applications); section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and section 582 (21 U.S.C. 360eee-1) (concerning drug supply chain security requirements). One of the conditions that must be met for a drug product compounded by an outsourcing facility to qualify for these exemptions is that the outsourcing facility does not compound drug products using a bulk drug substance unless: It appears on a list established by the Secretary identifying bulk drug substances for which there is a clinical need (see section 503B(a)(2)(A)(i) of the FD&C Act); or the drug compounded from such bulk drug substances appears on the drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e) at the time of compounding, distribution, and dispensing (see section 503B(a)(2)(A)(ii) of the FD&C Act).

This guidance describes the conditions under which FDA does not intend to take action against an outsourcing facility for compounding a drug product from a bulk drug substance that does not appear on a list of bulk drug substances that can be used in compounding and is not used to compound a drug product that appears on the FDA drug shortage list at the time of compounding, distribution, and dispensing, while FDA develops the list of bulk drug substances that can be used in compounding pursuant to section 503B(a)(2)(A)(i) of the FD&C Act (503B bulks list).[1]

The guidance also describes FDA's process to establish the 503B bulks list, and it describes categories of substances that were nominated for inclusion on the 503B bulks list. These categories include:

- 503B Category 1—Bulk Drug Substances Under Evaluation: These bulk drug substances may be eligible for inclusion on the 503B bulks list, were nominated with sufficient supporting information for FDA to evaluate them, and do not appear on any other list.
- 503B Category 2—Bulk Drug Substances That Raise Significant Safety Risks: These bulk drug substances were nominated with sufficient supporting information to permit FDA to evaluate them and they may be eligible for inclusion on the 503B bulks list. However, FDA has identified significant safety risks relating to the use of these bulk substances in compounding, and therefore does not intend to adopt the policy described for the bulk substances in Category 1.
- 503B Category 3—Bulk Drug Substances Nominated Without Adequate Support: These bulk drug substances may be eligible for inclusion on the 503B bulks list but were nominated with insufficient supporting information for FDA to evaluate them. These substances can be re-nominated with sufficient supporting information

[1] Elsewhere in this issue of the **Federal Register**, the Agency is making available a guidance entitled "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act," which describes the conditions under which FDA does not intend to take action against a licensed pharmacist in a State-licensed pharmacy or Federal facility, or a licensed physician, for compounding a drug product from a bulk drug substance that cannot otherwise be used in compounding under section 503A of the FD&C Act while FDA develops the list of bulk drug substances that can be used in compounding under section 503A(b)(1)(A)(i)(III).

through a docket that FDA has established.

In the **Federal Register** of October 27, 2015 (80 FR 65768), FDA issued a notice announcing the availability of the draft version of this guidance. The comment period on the draft guidance ended on December 28, 2015. FDA received 11 comments on the draft guidance. In response to received comments or on its own initiative, FDA made several changes to the guidance to clarify particular points. In addition, FDA has made the following updates to the lists on its Web site of bulk drug substances that were nominated for inclusion on the 503A bulks list: [2]

- 503B Category 2: FDA has added one bulk drug substances to Category 2, germanium sesquioxide, because FDA identified significant safety risks relating to the use of this bulk drug substance in compounding.
- 503B Category 4: The draft interim guidance included a fourth category of bulk drug substances that would have identified substances that FDA evaluated for inclusion on the 503B bulks list but, after obtaining and considering public comments, decided not to place on the 503B bulks list. In the final interim guidance, FDA removed this fourth category because the Agency intends to identify the bulk drug substances that will not be placed on the 503B bulks list in the **Federal Register** notice that establishes the 503B bulks list. Therefore, we do not believe it is necessary to also include them in the categories identified in this guidance.

II. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: June 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13798 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

[2] In the future, if FDA makes changes to the categories of bulk drug substances on its Web site, we intend to follow the procedure identified in the guidance.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2015–D–3517]

Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act; Guidance for Industry; Availability.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act." The guidance describes FDA's interim regulatory policy regarding the use of bulk drug substances by licensed pharmacists in State-licensed pharmacies or Federal facilities and by licensed physicians to compound human drug products while FDA develops the list of bulk drug substances that can be used in compounding under section 503A of the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Submit electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (*see* "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–3517 for "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sara Rothman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5197, Silver Spring, MD 20993–0002, 301–796–3110.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug, and Cosmetic Act." Section 503A of the FD&C Act (21 U.S.C. 353a) describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist in a State-licensed pharmacy or Federal facility, or by a licensed physician, to be exempt from the following three sections of the FD&C Act:

- Section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug applications or abbreviated new drug applications);
- Section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and
- Section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice requirements).

One of the conditions that must be met for a compounded drug product to qualify for these exemptions is that a licensed pharmacist, or licensed physician, compounds the drug product using bulk drug substances that:

(1) Comply with the standards of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph, if a monograph exists, and the USP chapter on pharmacy compounding;

(2) If such a monograph does not exist, are drug substances that are components of drugs approved by the Secretary; or

(3) If such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, appears on a list developed by the Secretary through regulations issued by the Secretary under subsection (c) of section 503A (503A bulks list).

(See section 503A(b)(1)(A)(i) of the FD&C Act).

This guidance describes the conditions under which FDA does not intend to take action against a licensed pharmacist or licensed physician for compounding a drug product from a bulk drug substance that is not the subject of an applicable USP or NF monograph, is not a component of an FDA-approved drug, or does not appear on the list of bulk drug substances that can be used in compounding under section 503A(b)(1)(A)(i)(III) of the FD&C Act while FDA is developing the 503A bulks list.[1] The guidance also describes FDA's process to establish the 503A bulks list and describes categories of substances that were nominated for inclusion on the 503A bulks list. The guidance includes a link to FDA's Web site listing bulk drug substances in each of the following categories:

503A Category 1—Bulk Drug Substances Under Evaluation: These bulk drug substances may be eligible for inclusion on the 503A bulks list, were nominated with sufficient supporting information for FDA to evaluate them, and do not appear on any other list.

503A Category 2—Bulk Drug Substances That Raise Significant Safety Risks: These bulk drug substances were nominated with sufficient supporting information to permit FDA to evaluate them and they may be eligible for inclusion on the 503A bulks list. However, FDA has identified significant safety risks relating to the use of these bulk substances in compounding, and therefore does not intend to adopt the policy described for the bulk substances in Category 1.

503A Category 3—Bulk Drug Substances Nominated Without Adequate Support: These bulk drug substances may be eligible for inclusion on the 503A bulks list, but were nominated with insufficient supporting information for FDA to evaluate them. These substances can be re-nominated with sufficient supporting information through a docket that FDA has established.

In the **Federal Register** of October 27, 2015 (80 FR 65781), FDA issued a notice announcing the availability of the draft version of this guidance. The comment period on the draft guidance ended on December 28, 2015. FDA received 14 comments on the draft guidance. In response to received comments or on its own initiative, FDA made several changes to the guidance to clarify particular points. In addition, FDA has made the following updates to the lists on its Web site of bulk drug substances that were nominated for inclusion on the 503A bulks list: [2]

1. 503A Category 2: FDA has added two bulk drug substances to Category 2, quinacrine hydrochloride for intrauterine administration and germanium sesquioxide, because FDA identified significant safety risks relating to the use of these bulk substances in compounding.
2. 503A Category 3: FDA removed bulk drug substances from Category 3 that the Agency previously included on this list in error. Many of these substances are components of FDA-approved drugs or the subject of an applicable USP or NF monograph, and, therefore, can be used in compounding under section 503A without being placed on the 503A bulks list.
3. 503A Category 4: The draft interim guidance included a fourth category of bulk drug substances that would have identified substances that FDA evaluated for inclusion on the 503A bulks list but, after notice-and-comment rulemaking, decided not to place on the 503A bulks list. In the final interim guidance, FDA removed this fourth category because the Agency intends to identify the bulk drug substances that will not be placed on the 503A bulks list in the final rule that establishes the 503A bulks list. Therefore, we do not believe it is necessary to also include them in the categories identified in this guidance.

In this document, FDA is also announcing a Level 2 change to the final guidance, "Pharmacy Compounding of

[1] Elsewhere in this issue of the **Federal Register**, the Agency is making available a final guidance entitled "Interim Policy on Compounding Using Bulk Drug Substances Under Section 503B of the Federal Food, Drug, and Cosmetic Act," which describes the conditions under which FDA does not intend to take action against an outsourcing facility for compounding a drug product from certain bulk drug substances while FDA develops the list of bulk drug substances that can be used in compounding under section 503B(a)(2)(A)(i) of the FD&C Act.

[2] In the future, if FDA makes changes to the categories of bulk drug substances on its Web site, we intend to follow the procedure identified in the guidance.

Human Drug Products Under Section 503A of the FD&C Act,'' (503A Final Guidance) published in 2014 (79 FR 37742) and revised in 2015 (80 FR 65781). That guidance stated, ''Until a bulk drug substances list is published in the **Federal Register** as a final rule, human drug products should be compounded using only bulk drug substances that are components of drugs approved under section 505 of the FD&C Act, or are the subject of USP or NF monographs.''

When FDA issued the interim guidance concerning compounding using certain bulk drug substances under section 503A (Interim 503A Bulks Guidance) as a draft guidance for public comment, FDA announced in the notice of availability that because this draft interim guidance proposed to change the Agency's policy relating to compounding with bulk drug substances while FDA develops a list of bulk drug substances that can be used in compounding, FDA was adding a footnote to the 503A final guidance referencing this draft interim guidance. FDA stated that once this Interim 503A Bulks Guidance is finalized, FDA would remove that footnote from the 503A final guidance and cross-reference the final Interim 503A Bulks Guidance as establishing the policy for compounding with bulk drug substances during the development of the 503A bulks list.

Therefore, concurrent with the issuance of the final Interim 503A Bulks Guidance, FDA is removing the sentence in the 503A final guidance referenced previously and is replacing it with the following statement, which the Agency proposed for public comment in the draft Interim 503A Bulks Guidance: ''FDA's interim policy concerning bulk drug substances that are not components of drugs approved under section 505 of the FD&C Act or that are not the subject of applicable USP or NF monographs can be found in the guidance, 'Interim Policy on Compounding Using Bulk Drug Substances Under Section 503A of the Federal Food, Drug and Cosmetic Act.' '' This change is a Level 2 change under 21 CFR 10.115, and comments on the proposed change in policy were solicited as part of the notice of availability of the draft Interim 503A Bulks Guidance.

II. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13799 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9771]

RIN 1545–BJ14

Guidance Under Section 108(a) Concerning the Exclusion of Section 61(a)(12) Discharge of Indebtedness Income of a Grantor Trust or a Disregarded Entity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations relating to the exclusion from gross income of discharge of indebtedness income of a grantor trust or an entity that is disregarded as an entity separate from its owner. These final regulations provide rules regarding the term ''taxpayer'' for purposes of applying the exclusion from gross income of discharge of indebtedness income of a grantor trust or a disregarded entity. These final regulations affect grantor trusts, disregarded entities, and their owners.

DATES: *Effective Date:* These regulations are effective on June 10, 2016.

Applicability Date: These regulations apply to discharge of indebtedness income occurring on or after June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Frank J. Fisher or Amy Chang, (202) 317–6850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain amendments to the Income Tax Regulations (26 CFR part 1) under section 108 of the Internal Revenue Code (Code). Section 61(a)(12) provides that income from the discharge of indebtedness is includible in gross income. However, such income may be excludable from gross income under section 108 in certain circumstances. Section 108(a)(1)(A) and (B) exclude from gross income any amount that would be includible in gross income by reason of the discharge of indebtedness of the taxpayer if the discharge occurs in a title 11 case or when the taxpayer is insolvent. Section 108(d)(1) through (3) provide the meaning of the terms ''indebtedness of the taxpayer,'' ''title 11 case,'' and ''insolvent,'' for purposes of applying section 108, and each definition uses the term ''taxpayer.'' Section 7701(a)(14) defines ''taxpayer'' as any person subject to any internal revenue tax.

On April 13, 2011, the Treasury Department and the IRS published in the **Federal Register** (76 FR 20593) a notice of proposed rulemaking (REG–154159–09) (the proposed regulations) to provide rules under section 108(a) regarding the term ''taxpayer'' for purposes of applying section 108 to the discharge of indebtedness income of a grantor trust or an entity that is disregarded as an entity separate from its owner (disregarded entity). The proposed regulations provide that, for purposes of applying section 108(a)(1)(A) and (B) to the discharge of indebtedness income of a grantor trust or a disregarded entity, the term ''taxpayer,'' as used in section 108(a)(1) and (d)(1) through (3), refers to the owner of the grantor trust or the disregarded entity. The proposed regulations also provide that, in the case of a partnership, the owner rules apply at the partner level to the partners to whom the discharge of indebtedness is allocable. For example, if a partnership holds an interest in a grantor trust or a disregarded entity, the applicability of section 108(a)(1)(A) and (B) to the discharge of indebtedness income is tested by looking to each partner to whom the income is allocable. Lastly, the proposed regulations clarify that, subject to the special rule for partnerships under section 108(d)(6), the insolvency exclusion is available only if the owner is insolvent and the bankruptcy exclusion is available only if the owner is under the bankruptcy court's jurisdiction.

The Treasury Department and the IRS received written comments responding to the notice of proposed rulemaking. The comments are available for public inspection at *www.regulations.gov*. No public hearing was requested or held. The comments are discussed in this preamble.

Summary of Comments and Explanation of Revisions

After consideration of all the comments, the final regulations adopt the proposed regulations as modified by this Treasury decision. The purpose and scope of the proposed regulations and these final regulations are primarily limited to defining the term ''taxpayer'' for purposes of applying the bankruptcy and the insolvency exclusions from gross income, under section 108(a)(1)(A) and (B), to the discharge of indebtedness income of a grantor trust or a disregarded entity. These final regulations are not intended to address section 108 in general and are not intended to address liabilities in general.

1. Other Exclusions Under Section 108(a)

Two commenters recommended that the final regulations apply the provisions of the proposed regulations to all exclusions in section 108(a), not only to the bankruptcy and the insolvency exclusions. Guidance on the other exclusions in section 108(a) is beyond the scope of these regulations.

2. Whether, Under Section 108(d)(2), the Owner Is ''Under the Jurisdiction'' of the Court in a Title 11 Case

Section 108(a)(1)(A) provides, in part, that gross income does not include any amount which would be includible in gross income by reason of the discharge of the indebtedness of the taxpayer if the discharge occurs in a title 11 case. Section 108(d)(2) defines ''title 11 case'' as a case under title 11 of the United States Code (relating to bankruptcy), but only if the taxpayer is under the jurisdiction of the court in such case and the discharge of indebtedness is granted by the court or is pursuant to a plan approved by the court.

Consistent with the proposed regulations, these regulations provide that the bankruptcy exclusion is available only if the owner of the grantor trust or the owner of the disregarded entity is under the jurisdiction of the court in a title 11 case. It is insufficient for the grantor trust or the disregarded entity to be under the jurisdiction of the court in a title 11 case. These regulations further clarify that the owner of the grantor trust or the owner of the disregarded entity must be under the jurisdiction of the court in a title 11 case of that owner as the ''debtor,'' as that term is defined in title 11 of the United States Code (the title 11 debtor).

The commenters suggested that section 108(d)(2) does not require that the taxpayer be a title 11 debtor to be considered under the jurisdiction of the court in a title 11 case. One commenter recommended that an owner of a grantor trust or a disregarded entity be considered under the jurisdiction of the court in a title 11 case when that owner is indirectly liable for the debt of the grantor trust or the disregarded entity and the court in a title 11 case eliminates the owner's liability in conjunction with the cancellation of the debt of the grantor trust or disregarded entity. Another commenter recommended that an owner of a grantor trust or a disregarded entity be considered under the jurisdiction of the court in a title 11 case when either the owner has taken affirmative actions, such as filing a proof of claim or a proof of interest, that place the owner under the court's jurisdiction in a title 11 case, or the court otherwise asserts jurisdiction over the owner in connection with a title 11 case. A third commenter recommended that the owner of a disregarded entity be considered under the jurisdiction of the court in a title 11 case when: (1) The court asserts jurisdiction over that owner during the title 11 proceeding of the disregarded entity; (2) the owner's liability on the discharged debt had been previously established (by contract or otherwise); (3) the owner is liable for all, or substantially all, of the discharged debt; and (4) qualifying for the bankruptcy exclusion was not a principal purpose of the owner's undertaking of such liability.

The Treasury Department and the IRS have not adopted these recommendations because extending the bankruptcy exclusion to the owner of a grantor trust or a disregarded entity when that owner is not itself in bankruptcy would be inconsistent with the intended purpose of section 108(a)(1)(A), as reflected in the legislative history of that provision. Congress added the bankruptcy exclusion to the Code to allow insolvent debtors a ''fresh start'' after they have liquidated their assets to pay off creditors. S. Rep. No. 1035, 96th Cong., 2d Sess. 9–10 (1980), 1980–2 CB 620, 624, provides:

> The rules of the [Bankruptcy Tax Act of 1980, Public Law 96–589, 94 Stat. 3389 (1980)] concerning income tax treatment of debt discharge in bankruptcy are intended to accommodate bankruptcy policy and tax policy. To preserve the debtor's ''fresh start'' after bankruptcy, the bill provides that no income is recognized by reason of debt discharge in bankruptcy, so that a debtor coming out of bankruptcy (or an insolvent debtor outside bankruptcy) is not burdened with an immediate tax liability.

Here, Congress was referring to ''debtor'' as that term is defined in title 11. See 11 U.S.C. 101(12) (1980) (defining ''debtor'' as a person or municipality concerning which a case under title 11 has been commenced).

The Bankruptcy Tax Act of 1980 was enacted to supplement the Bankruptcy Reform Act of 1978, Public Law 95–598, 92 Stat. 2549 (1978). See S. Rep. No. 1035, 96th Cong., 2d Sess. 9 (1980), 1980–2 CB 620, 624. As indicated in the legislative history of the Bankruptcy Reform Act of 1978, the debtor's ''fresh start'' is conditioned upon the debtor committing all of its nonexempt assets to the jurisdiction of the bankruptcy court, either for sale by the trustee or to determine an appropriate plan to repay creditors. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 118, 125–26, 176 (1977). Congress did not intend that a solvent, non-debtor owner of a grantor trust or a disregarded entity, which has committed some but not all of its nonexempt assets to the bankruptcy court's jurisdiction, have an exclusion from discharge of indebtedness income merely by virtue of having some of its assets subject to the jurisdiction of the bankruptcy court.

The commenters' recommendations are thus inconsistent with the Congressional intent underlying the Bankruptcy Tax Act of 1980 because those recommendations would provide a non-debtor owner that conducts only some of its activities through the grantor trust or disregarded entity with an unwarranted benefit when that owner is not a title 11 debtor and is able to pay its tax liability.

Accordingly, these regulations clarify that the owner of the grantor trust or disregarded entity must itself be under the jurisdiction of the court in a title 11 case as the title 11 debtor to qualify for the bankruptcy exclusion.

3. The Gracia Cases and the Application of the Bankruptcy Exclusion at the Partner Level

A commenter noted uncertainty under existing law as to whether the holding in certain case law would be followed by the IRS. See *Gracia* v. *Commissioner*, T.C. Memo. 2004–147; *Mirarchi* v. *Commissioner*, T.C. Memo. 2004–148; *Price* v. *Commissioner*, T.C. Memo. 2004–149; *Estate of Martinez* v. *Commissioner*, T.C. Memo. 2004–150 (collectively, the Gracia Cases). Because the bankruptcy court had asserted jurisdiction over non-debtor partners for certain matters, the Tax Court in the Gracia Cases upheld the application of the bankruptcy exclusion to the partners of a partnership that was a title 11 debtor, despite the fact that the partners were not title 11 debtors. The IRS's position is that the Gracia Cases failed to interpret correctly the limited scope of section 108(a)(1)(A), which applies only to partners that are also title 11 debtors. *See* Action on Decision 2015–01 (2015–6 IRB 579) (nonacquiescence in the Gracia Cases).

These regulations provide that, in the case of a partnership that holds an interest in a grantor trust or a disregarded entity, the owner rules

apply at the level of the partners to whom the income is allocable. These regulations provide that the owner must be under the jurisdiction of the court in a title 11 case as the title 11 debtor to qualify for the bankruptcy exclusion. Accordingly, when the owner of the grantor trust or disregarded entity is a partnership, the partner to whom the income is allocable must be under the jurisdiction of the court in a title 11 case of that partner as the title 11 debtor to qualify for the bankruptcy exclusion.

4. Whether a Grantor Trust Can Be a Debtor in a Title 11 Case

One commenter noted that a trust cannot generally be a debtor in a title 11 case. On the other hand, a business trust can be a debtor in a title 11 case but is generally treated as a business entity for both bankruptcy and Federal tax purposes. As such, the commenter noted uncertainty as to whether these regulations concerning the bankruptcy exclusion could ever apply to the bankruptcy of a grantor trust.

These regulations account for the possibility that a trust that is treated as a grantor trust for Federal tax purposes may be treated as a business trust for purposes of eligibility to be a debtor in a title 11 case. To provide comprehensive guidance, the Treasury Department and the IRS have retained references in these regulations to grantor trusts in the provisions concerning the bankruptcy exclusion.

5. Multiple-Owner Grantor Trusts

A grantor trust is any portion of a trust that is treated, under subpart E of part I of subchapter J of chapter 1, as being owned by a grantor or another person. One commenter recommended that future guidance specify how a grantor's share of a multiple-owner grantor trust's liability should be determined for purposes of determining insolvency under section 108(d)(3). Specifically, that commenter recommended that future guidance or tax forms provide that a grantor trust is required to report the owner's share of the trust's liabilities. These regulations do not address these issues but the Treasury Department and the IRS invite comments regarding the application of section 108(d)(3) to the owners of a multiple-owner grantor trust. Submissions should be submitted to:

In the case of submissions to the IRS submitted by U.S. Mail: Internal Revenue Service, Attn: Frank J. Fisher, CC:PSI:1, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

In the case of submissions to the IRS submitted by a private delivery service: Internal Revenue Service, Attn: Frank J. Fisher, CC:PSI:1, 1111 Constitution Ave. NW., Washington, DC 20224.

6. Extent to Which Indebtedness of a Grantor Trust or a Disregarded Entity Is Treated as Indebtedness of the Owner, Whether Indebtedness Is Recourse or Nonrecourse Debt of the Owner, and the Effect on Insolvency

For purposes of section 108, section 108(d)(1) defines the term "indebtedness of the taxpayer" as any indebtedness for which the taxpayer is liable or subject to which the taxpayer holds property. One commenter recommended that the final regulations clarify that, for purposes of section 108(d)(1), indebtedness of a disregarded entity is indebtedness of the owner. In addition, a commenter recommended that the Treasury Department and the IRS clarify whether debt of a disregarded entity should be treated as recourse or nonrecourse debt of the owner for purposes of determining the amount of cancellation of debt income realized by the owner. That commenter suggested that the Treasury Department and the IRS issue guidance, in the form of an example in a regulation or a revenue ruling, as to whether the indebtedness of a grantor trust or a disregarded entity is recourse or nonrecourse indebtedness of the owner.

In addition, commenters recommended approaches for determining the extent to which liabilities of a grantor trust or a disregarded entity are taken into account in measuring the owner's insolvency under section 108(d)(3) for purposes of the insolvency exclusion under section 108(a)(1)(B), including applying the principles of Revenue Ruling 92–53 (1992–2 CB 48). For purposes of the insolvency exclusion, section 108(d)(3) defines "insolvency" as the excess of liabilities over the fair market value of assets. Revenue Ruling 92–53 provides that the amount by which a nonrecourse debt exceeds the fair market value of the property securing the debt (excess nonrecourse debt) is taken into account in determining whether a taxpayer is insolvent within the meaning of section 108(d)(3) only to the extent that the excess nonrecourse debt is discharged.

Comprehensive guidance on these issues is beyond the scope of these regulations. However, the Treasury Department and the IRS are of the view that indebtedness of a grantor trust or a disregarded entity is indebtedness of the owner for purposes of section 108(d)(1); assuming the owner has not guaranteed the indebtedness and is not otherwise liable for the indebtedness under applicable law, such indebtedness should generally be treated as nonrecourse indebtedness for purposes of applying the section 108(a)(1)(B) insolvency exclusion; and accordingly the principles of Revenue Ruling 92–53 apply to determine the extent to which such indebtedness is taken into account in determining the owner's insolvency under section 108(d)(3). The Treasury Department and the IRS continue to study these issues and anticipate publishing additional guidance providing further clarification. Accordingly, the Treasury Department and the IRS invite comments on these issues. Submissions should be submitted to:

In the case of submissions to the IRS submitted by U.S. Mail: Internal Revenue Service, Attn: Seoyeon Sharon Park, CC:ITA:5, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

In the case of submissions to the IRS submitted by a private delivery service: Internal Revenue Service, Attn: Seoyeon Sharon Park, CC:ITA:5, 1111 Constitution Ave. NW., Washington, DC 20224.

7. Valuation Discounts for Purposes of Section 108(d)(3)

One commenter requested that the Treasury Department and the IRS clarify whether valuation discounts, if applicable to the owner's interest in a disregarded entity, could apply to the valuation of the assets and liabilities held by a disregarded entity for purposes of determining insolvency under section 108(d)(3). Guidance on this issue is beyond the scope of these regulations.

8. Effective/Applicability Date

These final regulations apply to the discharge of indebtedness income occurring on or after the date these final regulations are published in the **Federal Register**.

Some commenters requested that the Treasury Department and the IRS permit taxpayers to apply the final regulations retroactively to taxable years for which the period of limitations remain open. Another commenter requested that the final regulations specifically provide that the IRS will not challenge positions taken by taxpayers that apply the rules in the proposed regulations. The proposed regulations and these regulations are consistent with the existing statute. Accordingly, the IRS will not challenge return positions consistent with the proposed regulations, as clarified in these final regulations, for the period prior to the effective/applicability date of these final regulations.

Availability of IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at *http://www.irs.gov*.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal authors of these regulations are Frank J. Fisher and Amy Chang, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.108–9 is added to read as follows:

§ 1.108–9 Application of the bankruptcy and the insolvency provisions of section 108 to grantor trusts and disregarded entities.

(a) *General rule*—(1) *Owner is the taxpayer.* For purposes of applying section 108(a)(1)(A) and (B) to discharge of indebtedness income of a grantor trust or a disregarded entity, neither the grantor trust nor the disregarded entity shall be considered to be the "taxpayer," as that term is used in section 108(a)(1) and (d)(1) through (3). Rather, for purposes of section 108(a)(1)(A) and (B) and (d)(1) through (3) and subject to section 108(d)(6), the owner of the grantor trust or the owner of the disregarded entity is the "taxpayer."

(2) *The bankruptcy exclusion.* If indebtedness of a grantor trust or a disregarded entity is discharged in a title 11 case, section 108(a)(1)(A) applies to that discharged indebtedness only if the owner of the grantor trust or the owner of the disregarded entity is under the jurisdiction of the court in a title 11 case as the title 11 debtor. If the grantor trust or the disregarded entity is under the jurisdiction of the court in a title 11 case as the title 11 debtor, but the owner of the grantor trust or the owner of the disregarded entity is not, section 108(a)(1)(A) does not apply to the discharge of indebtedness income.

(3) *The insolvency exclusion.* Section 108(a)(1)(B) applies to the discharged indebtedness of a grantor trust or a disregarded entity only to the extent the owner of the grantor trust or the owner of the disregarded entity is insolvent. If the grantor trust or the disregarded entity is insolvent, but the owner of the grantor trust or the owner of the disregarded entity is solvent, section 108(a)(1)(B) does not apply to the discharge of indebtedness income.

(b) *Application to partnerships.* Under section 108(d)(6), in the case of a partnership, section 108(a)(1)(A) and (B) applies at the partner level. If a partnership holds an interest in a grantor trust or a disregarded entity, the applicability of section 108(a)(1)(A) and (B) to the discharge of indebtedness income is tested by looking to each partner to whom the income is allocable.

(c) *Definitions*—(1) *Disregarded entity.* For purposes of this section, a *disregarded entity* is an entity that is disregarded as an entity separate from its owner for Federal income tax purposes. See § 301.7701–2(c)(2)(i) of this chapter, the Procedure and Administration Regulations. Examples of disregarded entities include a domestic single-member limited liability company that does not elect to be classified as a corporation for Federal income tax purposes pursuant to § 301.7701–3 of this chapter, a corporation that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)), and a corporation that is a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)).

(2) *Grantor trust.* For purposes of this section, a *grantor trust* is any portion of a trust that is treated under subpart E of part I of subchapter J of chapter 1 of subtitle A of title 26 of the United States Code as being owned by the grantor or another person.

(3) *Owner.* Notwithstanding any other provision of this section to the contrary, neither a grantor trust nor a disregarded entity shall be considered an owner for purposes of this section.

(4) *Title 11 debtor.* For purposes of this section, a *title 11 debtor* is a debtor in a case under title 11 of the United States Code, as defined in 11 U.S.C. 101(13).

(d) *Applicability date.* The rules of this section apply to discharge of indebtedness income occurring on or after June 10, 2016.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: May 25, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–13779 Filed 6–9–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0463]

RIN 1625–AA08

Special Local Regulation; Midwest Masters Sprints; Maumee River; Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation controlling movement of vessels for certain waters of the Maumee River. This action is necessary and is intended to ensure safety of life on navigable waters to be used for a rowing event immediately prior to, during, and immediately after this event. This regulation requires vessels to maintain a minimum speed for safe navigation and maneuvering.

DATES: This temporary final rule is effective from 5 a.m. until 2:30 p.m. on June 11, 2016. For the purposes of enforcement, actual notice will be used on June 11, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–

0463 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Petty Officer Brett Kreigh, Marine Safety Unit Toledo, Coast Guard; telephone 419–418–6046, email *Brett.A.Kreigh@uscg.mil*. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
DHS Department of Homeland Security
E.O. Executive Order
NAD 83 North American Datum of 1983
NPRM Notice of Proposed Rulemaking

II. Background History and Regulatory Information

On June 11, 2016, the Toledo Rowing Club is holding a rowing regatta in which at least 200 rowers will participate in a race on the Maumee River. Due to the projected amount of human-powered watercraft on the water, there is a need to require vessels in the affected waterways to maintain a minimum speed for safe navigation. The rowing regatta will occur between 5 a.m. and 2:30 p.m. on June 11, 2016. This event is taking place under the same sponsorship in the same location as last year.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05–1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. Having reviewed the application for a marine event submitted by the sponsor on January 11, 2016, the Captain of the Port Detroit (COTP) has determined that the likely combination of recreation vessels, commercial vessels, and an unknown number of spectators in close proximity to a rowing regatta along the water pose extra and unusual hazards to public safety and property. Therefore, the COTP is establishing a Special Local Regulation around the event location to help minimize risks to safety of life and property during this event.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because waiting for a notice and comment period to run would be impracticable, unnecessary, and contrary to the public interest. Although an initial marine event application was submitted on January 11, 2016, final details regarding event area and patrol parameters were not known to the Coast Guard with sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying the effective date of this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this power boat race.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

IV. Discussion of Rule

This rule establishes a temporary special local regulation from 5 a.m. until 2:30 p.m. on June 11, 2016. In light of the aforementioned hazards, the COTP has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass the following waterway: All waters of the Maumee River, Toledo, OH from the Veterans Glass Memorial Bridge at River Mile 3.25 to the Norfolk Southern Railroad Bridge at River Mile 5.76.

An on-scene representative of the COTP or event sponsor representatives may permit vessels to transit the area when no race activity is occurring. The on-scene representative may be present on any Coast Guard, state or local law enforcement vessel assigned to patrol the event. Vessel operators desiring to transit through the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The COTP or his designated on-scene representative may be contacted via VHF Channel 16.

The COTP or his designated on-scene representative will notify the public of the enforcement of this rule by all appropriate means, including a Broadcast Notice to Mariners and Local Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders (E.O.).

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 or under section 1 of E.O. 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

The Coast Guard's use of this special local regulation will be of relatively small size and only nine and a half hours in duration, and it is designed to minimize the impact on navigation. Moreover, vessels may transit through the area affected by this special local regulation at a minimum speed for safe navigation. Overall, the Coast Guard expects minimal impact to vessel movement from the enforcement of this special local regulation.

B. Impact on Small Entities

As per the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, we have considered the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Maumee River, in the vicinity of Toledo, OH between 5 a.m. and 2:30 p.m. on June 11, 2016.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the regulation, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

F. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

This action is not a "significant energy action" under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

M. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation and is therefore categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T09–0463 to read as follows:

§ 100.35T09–0463 Special Local Regulation; Midwest Masters Sprints; Maumee River; Toledo, OH.

(a) Regulated area. A regulated area is established to encompass the following waterway: all waters of the Maumee River, from the Veterans Glass Memorial Bridge at River Mile 3.25 to the Norfolk Southern Railroad Bridge at River Mile 5.76.

(b) Effective period. This section is effective and will be enforced from 5 a.m. until 2:30 p.m. on June 11, 2016.

(c) Regulations. (1) Consistent with § 100.901 of this part, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant at all times. Additionally, vessels within the regulated area must yield right-of-way for event participants and event safety craft. Commercial vessels will have right-of-way over event participants, and event safety craft.

(2) Vessel operators desiring to operate in the regulated area must contact the Coast Guard Patrol Commander to obtain permission to do so. The Captain of the Port Detroit (COTP) or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to operate within the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

(3) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

Dated: June 6, 2016.

Raymond Negron,

Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 2016–13746 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0377]

RIN 1625–AA08

Special Local Regulation; On Water Activities Associated With the 2016 Macy's 4th of July Fireworks, East River, Manhattan, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the navigable waters of the East River and Upper New York Bay Manhattan and Brooklyn, NY for on water vessel management associated with the Macy's 4th of July fireworks show. This Special Local Regulation allows the Coast Guard to enforce spectator vessel movement and prohibit all vessel traffic from entering the fireworks barge buffer zone during times when the associated event could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters and to establish public viewing areas during the event.

DATES: This rule is effective from 6 p.m. through 11 p.m. on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0377 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Kathleen Kane, Vessel Traffic Services Division, Sector New York, U.S. Coast Guard; telephone (718) 354–4010, email *Kathleen.E.Kane@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard was provided the final details for this event on March 31, 2016. Macy's is unable to move their event to a later date because of the highly publicized nature of this 4th of July event. Due to a major change in the location of the event from the Hudson, to East River, the Coast Guard was unable to use the safety zone established by the recurring Macy's 4th of July fireworks regulation published in Table 1 of 33 CFR 165.160.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Any delay in this rule becoming effective would be contrary to public interest since immediate action is needed to provide for the safety of life and property on the navigable waters due to the inherent hazards created by the high concentration of spectator vessels expected in attendance for the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. This Special Local Regulation is necessary to ensure the safety of spectators and vessels from hazards associated with the anticipated concentration of vessels, before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

The Coast Guard is establishing a Special Local Regulation on the navigable waters of the East River and Upper New York Bay along Manhattan and Brooklyn, NY for the on water management of vessels associated with the 2016 Macy's 4th of July event. The Special Local Regulation is necessary to ensure the safety of spectators from hazards associated with the anticipated concentration of vessels for the event.

The event is scheduled to occur from 9:20 p.m. through 9:50 p.m. and the COTP New York anticipates a large number of vessels will congregate to view the fireworks display. This rule will be enforced from 6 p.m. through 11 p.m. on July 4, 2016 in order to ensure that the area is clear of persons and vessels before the fireworks display begins, and to ensure that no hazards remain after the fireworks display ends. If the event is cancelled due to inclement weather, then this regulation will be enforced from 6 p.m. through 11 p.m. on July 5, 2016.

The COTP New York will establish seven limited access areas within the boundary of the regulated area. Access to these areas will be restricted to vessels of a certain size. The seven limited access areas are: (1) A "spectator area" designated ALFA in which access is limited to vessels greater than or equal to 20 meters in length (65.6ft); (2) a "spectator area" designated BRAVO in which access is limited to vessels less than 20 meters in length (65.6ft); (3) a "buffer zone" around the fireworks launch barges, designated area CHARLIE, limited to all vessels tending the fireworks launch barges; (4) a "spectator area" designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6ft); (5) a "spectator area" designated ECHO in which access is limited to vessels less than or equal to 20 meters in length (65.6ft); (6) a "buffer zone" around the fireworks launch barge, designated area FOXTROT, limited to all vessels tending the fireworks launch barges; (7) a "spectator area" designated GOLF in which access is open to all vessels all lengths.

Based on the inherent hazards associated with large concentrations of vessels in tight confines, the COTP New York has determined that the event poses a significant risk to public safety and property. The combination of an increased number of recreational vessels, congested waterways, and darkness has the potential to result in serious injuries or fatalities. The buffer zone along with the designated viewing areas will restrict vessels from a portion of the East River around the location of the fireworks launch platform before, during, and immediately after the event. All persons and vessels shall comply with the instructions of the COTP New York or a designated representative during the enforcement of the Special Local Regulation.

Consistent with 33 CFR 165.7, the Coast Guard will notify the public and local mariners of this Special Local Regulation through appropriate means, which may include, but are not limited to, publication in the **Federal Register**, the Local Notice to Mariners, and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will only be restricted from the regulated area for a limited duration, and the Special Local Regulation is in effect during late night hours when vessel traffic is low. Advanced public notifications will also be made to local mariners through appropriate means, which may include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to enter or transit within the Special Local Regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves restricting vessel movement within a Limited Access Area established by a Special Local Regulation. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**, though due to the short timeline it may be made available after publication of this rule in

the FR. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T01–0481 to read as follows:

§ 100.35T01–0481 Special Local Regulation; On Water Activities Associated with the 2016 Macy's 4th of July Fireworks, East River, Manhattan, NY.

(a) *Regulated area.* The regulated area includes all navigable waters of the East River and Upper New York Bay bounded by a line drawn from position 40°45′20″ N., 073°57′21″ W. (57th Street, New York, NY to 43rd Ave., Long Island City, NY), south along the East River to position 40°40′55″ N., 074°01′21″ W. (Southern tip of Governors Island, NY to Red Hook Point, NY), bounded West by a line drawn from position 40°41′47″ N., 074°00′37″ W. (Southern tip of Downtown Manhattan Heliport, NY to Governors Island Ventilator, NY). All geographic coordinates are North American Datum of 1983 (NAD 83). Within the overall regulated area defined above, the following are individually defined areas subject to specific requirements:

(1) *Area ALPHA.* All navigable waters of the East River south of a line drawn from position 40°45′20″ N., 073°57′21″ W. (57th Street, New York, to 43rd Ave, Long Island City, New York) to a line drawn from position 40°44′58″ N. 073°57′41″ W. (47th Street, New York, NY to N Basin Rd., Long Island City, NY) between the east shore of Manhattan and west shore of Roosevelt Island.

(2) *Area BRAVO.* All navigable waters of the East River south of a line drawn from position 40°45′20″ N., 073°57′21″ W. (57th Street, New York, to 43rd Ave, Long Island City, New York) to a line drawn from position 40°44′58″ N. 073°57′41″ W., (47th Street, New York, NY to N Basin Rd., Long Island City, NY) between the east shore of Roosevelt Island and west shore of Long Island City. (NAD 83)

(3) *Area CHARLIE.* All navigable waters of the East River bound by a line drawn from position 40°44′58″ N. 073°57′41″ W. (47th Street, New York, NY to N Basin Rd., Long Island City, NY), south along the East River to position 40°43′40″ N., 073°57′59″ W. (15th Street, New York, NY to Noble Street, Brooklyn, NY), (NAD 83).

(4) *Area DELTA.* All navigable waters of the East River by a line drawn from position 40°43′40″ N., 073°57′59″ W. (15th Street, New York, NY to Noble Street, Brooklyn, NY), south to a line drawn from position 40°43′19″ N., 073°58′04″ W. (7th Street, New York, NY to Bushwick Inlet Park), (NAD 83).

(5) *Area ECHO.* All navigable waters of the East River by a line drawn from position 40°43′19″ N., 073°58′04″ W. (7th Street, New York, NY to Bushwick Inlet Park), south to position 40°42′52″ N., 073°58′18″ W. (East River Park, New York, NY to S 4th Street), (NAD 83).

(6) *Area FOXTROT.* All navigable waters of the East River by a line drawn from position 40°42′52″ N., 073°58′18″ W. (East River Park, New York, NY to S 4th Street), south to position 40°41′58″ N., 074°00′16″ W. (Downtown Manhattan Heliport to Pier 3 Brooklyn, NY).

(7) *Area GOLF.* All navigable waters of the Upper Bay, New York Harbor, NY, south of a line drawn from position 40°41′58″ N., 074°00′16″ W. to a line drawn from position 40°41′29″ N., 074°00′31″ W. (Governors Island Ventilator to Pier 7 Brooklyn, NY), south. West by a line drawn from position 40°41′47″ N., 074°00′37″ W. (Downtown Manhattan Heliport to Governors Island Ventilator).

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative.* A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) New York, to act on his or her behalf.

(2) *Official patrol vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP New York.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Special local regulations.* (1) In accordance with the general regulations in § 100.35, entry into, transiting, or anchoring within the regulated areas is prohibited, unless authorized by the COTP or a designated representative.

(2) Vessels are authorized by the COTP or a designated representative to enter areas of this special location regulation in accordance with the following restrictions:

(i) Area ALPHA access is limited to vessels greater than or equal to 20 meters (65.6ft) in length.

(ii) Area BRAVO access is limited to vessels less than 20 meters (65.6ft) in length.

(iii) All vessels are prohibited from entering area CHARLIE without permission from the COTP or a designated representative.

(iv) Area DELTA access is limited to vessels less than 20 meters (65.6ft) in length.

(v) Area ECHO access is limited to vessels greater than or equal to 20 meters (65.6ft) in length.

(vi) All vessels are prohibited from entering area FOXTROT without permission from the COTP or a designated representative.

(vii) Area GOLF access is not limited by vessel length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the COTP or a designated representative. Vessels shall be present in the corresponding areas by 7:30 p.m.

(4) Upon being hailed by a U.S. Coast Guard vessel or a designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. A designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(5) Vessel operators desiring to enter or operate within the regulated area should contact the COTP New York at (718) 354–4356 (Sector NY Command Center) or a designated representative via VHF channel 16 to obtain permission to do so.

(6) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times unless authorized by COTP New York or a designated representative.

(7) The COTP New York or a designated representative may delay or terminate any marine event in this subpart at any time if it is deemed necessary to ensure the safety of life or property.

(d) *Enforcement period.* This regulation will be enforced from 6 p.m. until 11 p.m. on July 4, 2016, and if the fireworks display is postponed due to inclement weather, it will be enforced from 6 p.m. until 11 p.m. on July 5, 2016.

Dated: May 23, 2016.

M.H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2016–13780 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0327]

RIN 1625–AA00

Special Local Regulations; Harborfest Dragon Boat Race, South Haven, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the Black River in South Haven, Michigan for the Harborfest Dragonboat Race on June 18 and 19, 2016. This action is necessary and intended to ensure safety of life on navigable waters immediately prior to, during, and after the Dragonboat race. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in the special regulated area.

DATES: The regulations in 33 CFR 100.903 will be enforced from 6 a.m. until 7 p.m. on each day of June 18 and 19, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email CWO Mark Stevens, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7188, email *mark.l.stevens@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation listed in 33 CFR 100.903 from 6 a.m. until 7 p.m. on each day of June 18 and 19, 2016. This special local regulation encompasses the waters of the Black River in South Haven, MI within the following coordinates starting at 42°24′13.6″ N., 086°16′41″ W.; then southeast 42°24′12.6″ N., 086°16′40″ W.; then northeast to 42°24′19.2″ N., 086°16′26.5″ W.; then northwest to 42°24′20.22″ N., 086°16′27.4″ W.; then back to point of origin (NAD 83). As specified in 33 CFR 100.903, no vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander. Furthermore, the regulations in § 100.901 apply. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties. The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

This notice of enforcement is issued under authority of 33 CFR 165.903, Harborfest Dragon Boat Race; South Haven, MI, and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide the maritime community with advance notification for the enforcement of this regulation via Broadcast Notice to Mariners or Local Notice to Mariners. The Patrol Commander may be contacted via Channel 16, VHF–FM.

Dated: May 18, 2016.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2016–13783 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0405]

Drawbridge Operation Regulation; Sloop Channel and Long Creek, Nassau, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Loop Parkway Bridge, mile 0.7, across Long Creek and the Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel, at Nassau, New York. This temporary deviation is necessary to facilitate public safety during a public event, the Annual Salute to Veterans and Fireworks Display.

DATES: This deviation is effective from 9:30 p.m. on June 25, 2016, to 11:59 p.m. June 26, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0405] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.*

SUPPLEMENTARY INFORMATION: Town of Hempstead Department of Public Safety requested and the bridge owner of both bridges, the State of New York Department of Transportation, concurred with this temporary deviation from the normal operating schedule to facilitate a public event, the Annual Salute to Veterans and Fireworks Display.

The Loop Parkway Bridge, mile 0.7, across Long Creek has a vertical clearance in the closed position of 21 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(f).

The Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.799(h).

Long Creek and Sloop Channel are transited by commercial fishing and recreational vessel traffic.

Under this temporary deviation, the Loop Parkway and the Meadowbrook State Parkway Bridges may remain in the closed position between 9:30 p.m. and 11:59 p.m. on June 25, 2016 (rain date: June 26, 2016 between 9:30 p.m. and 11:59 p.m.).

Vessels able to pass under the bridge in the closed position may do so at anytime. The bridges will not be able to open for emergencies and there are no immediate alternate routes for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 6, 2016.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2016–13692 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0484]

Drawbridge Operation Regulation; Isle of Wight (Sinepuxent) Bay, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 50 (Harry W. Kelly Memorial) Bridge across the Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD. The deviation is necessary to accommodate the increased vehicular traffic of the 2016 Ocean City Air Show. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 3:55 p.m. on Saturday June 18, 2016, to 4:55 p.m. Sunday June 19, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0484] is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Town of Ocean City, on behalf of the Maryland State Highway Administration, who owns the US 50 (Harry W. Kelly Memorial) Bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.559, to accommodate increased vehicular traffic of the 2016 Ocean City Air Show.

Under this temporary deviation, the bridge will be closed-to-navigation from 3:55 p.m. to 4:55 p.m. on June 18, 2016, and from 3:55 p.m. to 4:55 p.m. on June 19, 2016. The bridge is a double bascule bridge and has a vertical clearance in the closed-to-navigation position of 13 feet above mean high water.

The Isle of Wight (Sinetuxent) Bay is used by a variety of vessels including small fishing vessels and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 7, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–13777 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0330]

RIN 1625–AA87

Security Zone; Military Ocean Terminal Concord (MOTCO); Concord, California

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the existing conditional security zone regulation currently in place in the navigable waters of Suisun Bay, California, near Concord, California around each of the three piers at the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). This action is intended to clarify responsibilities and authorities for enforcement of the security zone.

DATES: This rule is effective from July 11, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2015–0330 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Marcia Medina, Sector San Francisco, U.S. Coast Guard; telephone (415) 399–7443, email *D11-PF-MarineEvents@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
MOTCO Military Ocean Terminal Concord
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On August 27, 1996, the Department of the Army, Corps of Engineers published a final rule in the **Federal Register** (61 FR 43969) establishing a restricted area [1] around the MOTCO piers (33 CFR 334.1110). Although the restricted area prohibits public access to the piers at all times, it lacks a conditional boundary extension to be enforced during the presence of munitions laden vessels and/or military onload/offload activities. Prior to January 24, 2005, the Coast Guard would address this lack of a conditional boundary by publishing a temporary security zone of sufficient size in the area for each operation at MOTCO (see *e.g.*, 68 FR 33382).

On January 24, 2005, to address this issue on a more permanent basis, the Coast Guard published a final rule in the **Federal Register** (70 FR 3299) establishing a conditional 500-yard security zone around MOTCO's piers to be enforced during military onload/offload operations (33 CFR 165.1199). The security zone provides necessary security for military operations by providing a standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel.

On July 1, 2015, the Coast Guard published a NPRM (80 FR 48787), with proposed changes to clarify responsibilities and authorities for enforcement of the security zone. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended on September 14, 2015, we received 0 comments.

III. Legal Authority and Need for Rule

The legal basis for this rule is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish security zones. This authority is separate from the Department of the Army, Corps of Engineers authority to provide appropriate security in defense of their waterfront facilities and for vessels moored thereto in accordance with the restricted area in 33 CFR 334.1110.

The purpose of this rulemaking is to advance the Coast Guard's efforts to thwart potential terrorist activity through security measures on U.S. ports and waterways.

IV. Discussion of Comments, Changes, and the Rule

The current regulation at § 165.1199 contains several items that are the subject of the revisions in this FR. The revisions to § 165.1199 will clarify the regulations in a concise, understandable format.

First, the Coast Guard revises § 165.1199(c) by clarifying the Coast Guard's enforcement role during active loading operations, and the ability of the COTP to designate other representatives as having authority to enforce the security zone. The Coast Guard proposes to replace the existing term "patrol personnel," in favor of a more appropriate term, "designated representative," which includes federal, state and local officials designated by the COTP. This revision clarifies that the COTP may designate law enforcement officials other than Coast Guard personnel to patrol and enforce the security zone.

The Coast Guard also revises the security zone so that it is enforceable at any time a vessel loaded with munitions is present at a pier (in addition to during military onload/offload operations). Without this revision, the existing security zone is enforceable during military onload or offload operations only.

Additionally, the Coast Guard proposes to remove the existing provision regarding "Local Notice to Mariners" as a means of notifying the public that the security zone will be enforced. The security concern related to providing advance notification of the presence of an explosive load at a military base outweighs the benefit of advance notice of the security zone. Instead, the Coast Guard would notify the public of security zone enforcement (and suspensions of enforcement) via Broadcast Notice to Mariners and/or actual notice on-scene during military onloads or offloads. This revision would better align the notification method of this security zone with the notification method for the existing safety zone in the area (see § 165.1198).

No changes in the regulatory text of the rule in the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

Security zone enforcement would be limited in duration, and limited to a narrowly tailored geographic area. In addition, although this rule would restrict access to the waters encompassed by the security zone, the effect of this rule would not be significant because the local waterway users will be notified via Broadcast Notice to Mariners and/or actual notice on-scene during military onloads or offloads. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. The security zone would not have a significant economic impact on a substantial number of small entities for the following reasons. The security zone would be activated, and thus subject to patrol and enforcement, for a limited duration. When the security zone is activated, vessel traffic would be directed to pass safety around the security zone. The maritime public would be advised when transiting near the activated zone.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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[1] A "restricted area" is defined in § 334.2 as a defined water area for the purpose of prohibiting or limiting public access to the area that generally provides security for Government property and/or protection to the public from the risks of damage or injury arising from the Government's use of that area.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone of limited size and duration. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.1199 to read as follows:

§ 165.1199 Security Zones; Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone(s) reside(s) within the navigable waters of Suisun Bay, California, extending from the surface to the sea floor, within 500 yards of the three Military Ocean Terminal Concord (MOTCO) piers in Concord, California.

(b) *Definitions.* As used in this section, "designated representative" means any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the Captain of the Port San Francisco (COTP) to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a Federal, state, or local law enforcement vessel, or a location on shore.

(c) *Regulations.* (1) The security zone(s) described in paragraph (a) of this section will be in force during active military onloading and/or offloading operations and at any time a vessel loaded with munitions is present at a pier.

(2) When one or more piers are involved in onload or offload operations at the same time, there will be a 500-yard security zone for each involved pier.

(3) Under the general regulations in subpart D of this part, entry into, transiting or anchoring within the security zone(s) described in paragraph (a) of this section is prohibited during times of enforcement unless authorized by the COTP or a designated representative.

(4) Vessel operators desiring to enter or operate within the security zone(s) during times of enforcement must contact the COTP or a designated representative on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547 to obtain permission to do so. Vessel operators given permission to enter or operate in the security zone(s) must comply with all directions given to them by the COTP or a designated representative.

(5) Upon being hailed by the COTP or designated representative by siren, radio, flashing light, or other means, the operator of a vessel approaching the security zone(s) must proceed as directed to avoid entering the security zone(s).

(d) *Notice of enforcement or suspension of enforcement of security zone(s).* During periods that one or more security zones are enforced, the COTP or a designated representative will issue a Broadcast Notice to Mariners and/or notify mariners via actual notice on-scene. In addition, COTP maintains a telephone line that is maintained 24 hours a day, 7 days a week. The public can contact COTP at (415) 399–3547 to obtain information concerning enforcement of this section. When the security zones are no longer needed, the COTP or designated representative will cease enforcement of the security zones. Upon suspension of enforcement, all persons and vessels are granted general permissions to enter, move within, and exit the security zones, but should remain cognizant of the applicable restricted area designated in 33 CFR 334.1110.

Dated: May 20, 2016.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2016–13781 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0009; EPA–R05–OAR–2015–0314; FRL–9946–80–Region 5]

Air Plan Approval; Illinois; NAAQS Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revised rules submitted by the State of Illinois as State Implementation Plan (SIP) revisions. The submitted rules update Illinois' ambient air quality standards to include the 2012 primary National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$), add EPA-promulgated monitoring methods, and address the "sunset provisions" in our regulations. In addition, the revised rules contain the timing requirements for the "flagging of exceptional events" and the submitting of documentation supporting the determination of exceptional events for the 2012 primary annual $PM_{2.5}$ standard.

DATES: This direct final rule will be effective August 9, 2016, unless EPA receives adverse comments by July 11, 2016. If adverse comments are received by EPA, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0009 or EPA–R05–OAR–2015–0314 at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. When and why did the State make these submittals?
II. What are the State rule revisions?
A. April 23, 2015, Submittal—Rule Revision Group R14–06
B. December 18, 2014, Submittal—Rule Revision Group R14–17
III. Did the State hold public hearings for these submittals?
IV. What is EPA's analysis of the State's submittals?
V. What action is EPA taking?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. When and why did the State make these submittals?

Section 109 of the Clean Air Act (CAA) requires EPA to establish national primary (protective of human health) and secondary (protective of human welfare) air quality standards for pollutants for which air quality criteria have been issued under Section 108 of the CAA (the criteria pollutants [1]). Individually and collectively these standards are referred to as NAAQS. Section 109(d)(1) of the CAA requires EPA to review, and if necessary, based on accumulated health and welfare data, to revise each NAAQS every five years. If a NAAQS is revised, states whose rules include state air quality standards may revise their rules to address the revised NAAQS and associated monitoring requirements, and submit them to EPA as SIP revision requests. *See, e.g.*, 415 ILCS 5/10(H).

On December 18, 2014, the Illinois Environmental Protection Agency (IEPA) submitted to EPA for approval as SIP revisions updates to the methods used by Illinois to monitor air quality for several NAAQS. These updates correspond to EPA's revised monitoring methods promulgated during the period of July 1, 2013, through December 31, 2013. The Illinois Pollution Control Board (IPCB) adopted these rule revisions on June 5, 2014, as rule revision group R14–17.

On April 23, 2015, IEPA submitted to EPA for approval as SIP revisions an additional update to include the 2012 primary annual and 24-hour $PM_{2.5}$ NAAQS and a provision incorporating by reference EPA-promulgated monitoring methods. These rule updates correspond to the NAAQS and monitoring methods promulgated by EPA during the period of January 1, 2013, through June 30, 2013, and on July 3, 2013, and August 5, 2013. This state submittal also addressed the "sunset provisions" of 40 CFR 50.4(e), finding that the 1971 NAAQS for sulfur dioxide (SO_2) no longer applies to the Lemont and Pekin areas in Illinois. Finally, the revised rules contain the timing requirements for the "flagging of exceptional events" and the submitting of documentation supporting the determination of exceptional events for the 2012 primary annual $PM_{2.5}$ standard. The IPCB adopted these rule revisions on September 5, 2013, as rule revision group R14–6.

II. What are the State rule revisions?

A. April 23, 2015, Submittal—Rule Revision Group R14–06

The rule revisions contained in the April 23, 2015 submittal are summarized below.

[1] The criteria pollutants are ozone (O_3), nitrogen oxides (represented by nitrogen dioxide (NO_2)), sulfur oxides (represented by sulfur dioxide (SO_2)), carbon monoxide (CO), particulate matter (represented by total suspended particulates (TSP), particulates (PM_{10}), and fine particulates ($PM_{2.5}$)), and lead (Pb). Note that Illinois also has air quality standard and monitoring rules for "coarse particulate matter" ($PM_{2.5-10}$), although this is not a criteria pollutant and is generally considered to be included in PM_{10}.

35 IAC 243.107. Reference Conditions

Illinois amended this section to apply applicable monitoring requirements to the 2012 primary annual and 24-hour $PM_{2.5}$ NAAQS, which Illinois codified at 35 IAC 243.120(d). Volume 35 of the Illinois Administrative Code section 243.107 (35 IAC 243.107) sets forth the reference air temperature and reference pressure measurements to determine air quality concentrations of monitored air pollutants, and mirrors the requirements of title 40 of the Code of Federal Regulations (CFR) 50.3. Among other things, this section requires that measurements of $PM_{2.5}$ must be reported based on actual ambient air volume measured at actual temperature and pressure at the monitoring site. *See also* the discussion of 35 IAC 243.120(d), below.

35 IAC 243.108. Incorporations by Reference

Illinois updated 35 IAC 243.108 to incorporate by reference the 2013 versions of appendices A–1, A–2, B, C, D, F, G, H, I, J, K, L, N, O, P, Q, R, S, and T of 40 CFR part 50. These appendices contain the reference monitoring methods for and the "interpretation" of (*i.e.*, data handling conventions and computations) the ambient standards for the criteria air pollutants.

EPA made two changes in the 2013 versions of these appendices relative to the 2012 versions. First, EPA revised the appendix G reference method for the determination of lead in suspended particulate matter (78 FR 40000, July 3, 2013). Second, EPA revised appendix N for the data handling conventions and computations necessary for determining when the primary and secondary NAAQS for $PM_{2.5}$ are met. 78 FR 3086, 3277–3281 (January 15, 2013). Illinois' rule revisions incorporate by reference these amended CFR appendices.

Additionally, Illinois references an August 5, 2013, (78 FR 47191) EPA **Federal Register** document as revising appendix N of 40 CFR part 50. However, EPA's August 5, 2013 **Federal Register** document establishes area designations for the 2010 SO_2 primary NAAQS, and does not address or relate to appendix N. Therefore, this rule revision contains an incorrect reference to EPA rulemaking, and is further discussed in Section IV, below.

35 IAC 243.120. PM_{10} and $PM_{2.5}$

Illinois added Subsection (d) to incorporate EPA's 2012 primary annual and 24-hour NAAQS for $PM_{2.5}$. These revised $PM_{2.5}$ standards include an annual average level of 12 micrograms per cubic meter and a 24-hour average level of 35 micrograms per cubic meter. *See* 78 FR 3086 (January 15, 2013).

Consistent with 40 CFR 50.13, this section also requires that the revised $PM_{2.5}$ standards be measured by either a Federal Reference Method (FRM) based on appendix L of 40 CFR part 50, incorporated by reference in 35 IAC 243.108, or a Federal Equivalent Method (FEM) designated by EPA in accordance with 40 CFR part 53 and listed in EPA's "List of Designated Reference and Equivalent Methods," which is also incorporated by reference in 35 IAC 243.108.[2] See *http://www3.epa.gov/ttnamti1/files/ambient/criteria/reference-equivalent-methods-list.pdf.*

35 IAC 243.122. Sulfur Oxides (Sulfur Dioxide)

Illinois amended the IPCB Board Note in subsection (a)(5) to address the "sunset provisions" in 40 CFR 50.4(e). Under 40 CFR 50.4(e), the 1971 primary annual and 24-hour NAAQS for SO_2 no longer apply to the Lemont and Pekin areas, effective October 4, 2014, because: (1) One year has passed since EPA designated these areas as nonattainment for the 2010 primary 1-hour SO_2 NAAQS, effective October 3, 2013; (2) these areas were not designated as nonattainment for the 1971 SO_2 NAAQS as of June 22, 2010; and (3) there has not been a SIP call for the 1971 SO_2 NAAQS for these areas. *See* 75 FR 47191 (August 5, 2013). The 1971 SO_2 NAAQS continues to apply for other areas in Illinois until these areas meet the sunset provisions specified in 40 CFR 50.4(e).

35 IAC 243. Table A. Schedule of Exceptional Event Flagging and Documentation Submission for New or Revised NAAQS

Illinois has amended Table A to add the flagging deadlines by year for the 2012 annual $PM_{2.5}$ standard adopted in 2012 and promulgated on January 15, 2013 (78 FR 3086). For $PM_{2.5}$ data collected in 2010 and 2011, the exceptional events were required to be flagged and described by July 1, 2013, and supported by complete documentation by December 12, 2013. For $PM_{2.5}$ data collected in 2012, the exceptional events were required to be flagged and described by July 1, 2013, and supported by complete documentation by December 12, 2013. For $PM_{2.5}$ data collected in 2013, the exceptional events were required to be flagged and described by July 1, 2014, and supported by complete documentation by August 1, 2014. The flagging and demonstration submittal deadlines are the same as the deadlines provided in Table 1 in 40 CFR 50.14.

Table A lists the deadlines for exceptional event flagging and documentation of such flagging by pollutant standard. Under 40 CFR 50.14, a state may request that EPA exclude data showing violations or exceedances of the NAAQS from air quality determinations if the state can demonstrate to EPA's satisfaction that these violations or exceedances were due to exceptional events unlikely to reoccur and cause additional violations of the NAAQS at any monitoring site. Where such an event has occurred, the state may flag air quality data affected by the event and request that EPA approve the exclusion of these data from further air quality determinations, including designation of nonattainment areas and assessment of air quality data used for purposes of redesignation to attainment. The criteria for approval of exceptional event exclusion are given in 40 CFR 50.14(b) and the schedule and procedures for data flagging by the state are discussed in 40 CFR 50.14(c).

B. December 18, 2014, Submittal—Rule Revision Group R14–17

The rule revisions contained in the December 18, 2014, submittal are summarized below.

35 IAC 243.108. Incorporations by Reference

Illinois revised this section to incorporate by reference EPA's updated "List of Designated Reference and Equivalent Methods" from June 27, 2013, to December 17, 2013. On December 17, 2013, EPA issued an updated version of the "List of Designated Reference and Equivalent Methods" that includes five new FEMs for monitoring of PM_{10}, $PM_{2.5-10}$, $PM_{2.5}$, and oxides of nitrogen (NO_x) promulgated by EPA. *See* 78 FR 67360 (November 12, 2013). More specifically, EPA promulgated the following FEMs: (1) For $PM_{2.5-10}$, Automated Equivalent Method EQPM–1013–207 ("Thermo Scientific TEOM® 1405-Dichotomous Ambient Particulate Monitor with FDMS"); (2) for PM_{10}, Automated Equivalent Method EQPM–1013–208 ("Thermo Scientific TEOM® 1405-Dichotomous Ambient Particulate Monitor with FDMS"); (3) for $PM_{2.5}$, Automated Equivalent Method EQPM–1013–209 ("Met One BAM–1022 Real Time Beta Attenuation Mass Monitor-Outdoor $PM_{2.5}$ FEM Configuration") and Automated Equivalent Method EQNA–1013–210 ("Environment S.A. Model MP101M $PM_{2.5}$ Beta Attenuation Monitor"); and (4) for NO_x, Automated Equivalent Method EQNA–1013–210 ("Environment S.A. Model AS32M cavity attenuated phase shift spectroscopy Nitrogen Dioxide Analyzer"). Illinois also added a statement to 35 IAC 243.108 that the incorporation by reference of EPA's promulgated monitoring methods "does not include USEPA methods approvals that occurred after December 17, 2013."

[2] The "List of Designated Reference and Equivalent Methods" is an EPA Web page that lists all FRMs and FEMs by pollutant and documents the Federal rulemakings that promulgated the monitoring methods. Other than the **Federal Register** notices for these rulemakings, it is the only comprehensive source of FEMS designated by EPA.

III. Did the State hold public hearings for these submittals?

Illinois held a public hearing for the rule changes discussed in the December 18, 2014, submittal (R14–17) on May 7, 2014. Illinois held a public hearing for the rule revisions discussed in the April 23, 2015, submittal (R14–6) on October 31, 2013. The state received one comment for the R14–6 rule revisions in support of adoption of the proposed rule revisions.

IV. What is EPA's analysis of the State's submittals?

EPA finds the state's requested SIP revisions to be acceptable because the state's rule revisions make the state's air quality standards and associated monitoring requirements identical-in-substance to EPA's promulgated NAAQS and monitoring methods, as revised through December 17, 2013.

Additionally, EPA finds that the specified exceptional event flagging and demonstration submittal deadlines are acceptable because they are consistent with the deadlines in 40 CFR 50.14.

EPA also agrees with Illinois' application of the "sunset provisions" in 40 CFR 50.4(e) to the Lemont and Pekin areas. EPA has designated the Lemont and Pekin areas as nonattainment for the 2010 SO_2 NAAQS, which means that Illinois must submit a regulation for SIP approval that meets Federal requirements and that provides for attainment of the 2010 SO_2 NAAQS in these areas no later than October 4, 2018. The 1971 SO_2 NAAQS no longer applies to the Lemont and Pekin areas because EPA designated the Lemont and Pekin areas as nonattainment for the 2010 SO_2 NAAQS, these areas were not designated as nonattainment for the 1971 SO_2 NAAQS as of June 22, 2010, and there has not been a SIP call for the 1971 SO_2 NAAQS. *See* 78 FR 47192.

Finally, as discussed above, the state's rule revisions to 35 IAC 243.108 incorrectly cite an August 5, 2013 EPA rulemaking at 78 FR 47191 as amending appendix N to 40 CFR part 50. Appendix N sets forth the data handling and computational requirements needed to demonstrate compliance with the 2012 $PM_{2.5}$ NAAQS. The August 5, 2013, EPA rulemaking establishes area designations for the 2010 SO_2 NAAQS, but does not amend appendix N to 40 CFR part 50. Although this citation is incorrect, we are still approving the submission because Illinois has also incorporated by reference the 2013 version of appendix N to 40 CFR part 50 at 35 IAC 243.108. Appendix N, as codified in the CFR, contains the reference monitoring methods for SO_2 under the 2010 NAAQS and does not contain a citation to the August 5, 2013, EPA rulemaking. Therefore, it is unlikely that the public would be confused when determining the applicable data handling and computational requirements to demonstrate compliance with the 2012 $PM_{2.5}$ NAAQS. Illinois should correct this incorrect citation in a subsequent rule revision, but it does not appear to present any implementation or enforcement issues for the state or EPA.

V. What action is EPA taking?

EPA is approving the submitted rule revisions as revisions of the Illinois SIP. Specifically, we are approving 35 IAC sections 243.107, 243.108, 243.120, 243.122, and 243.Table A revised as discussed above, and we are incorporating by reference these revised rules into the Illinois SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective August 9, 2016 without further notice unless we receive relevant adverse written comments by July 11, 2016. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that, if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective August 9, 2016.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 10, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.720 is amended by adding paragraph (c)(208) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(208) On December 18, 2014, and April 23, 2015, Illinois submitted amendments to its State Implementation Plan at 35 Illinois Administrative Code part 243, which updates Illinois air quality standards to reflect National Ambient Air Quality Standards promulgated by EPA through December 17, 2013, and incorporates Federal test procedures for these pollutants.

(i) *Incorporation by Reference.* (A) Illinois Administrative Code Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter I: Air Quality Standards And Episodes; Part 243: Air Quality Standards; Sections 243.107 Reference Conditions, 243.120 $p.m._{10}$ and $PM_{2.5}$, 243.122 Sulfur Oxides (Sulfur Dioxide), and 243.Table A Schedule of Exceptional Event Flagging and Documentation Submission for New or Revised NAAQS, effective November 27, 2013.

(B) Illinois Administrative Code Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter I: Air Quality Standards And Episodes; Part 243: Air Quality Standards; Section 243.108 Incorporation by Reference, effective June 9, 2014.

[FR Doc. 2016–13700 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0485; FRL–9946–43]

Alpha-2,4,6-Tris[1-(phenyl)ethyl]-Omega-hydroxypoly(oxyethylene) poly(oxypropylene) Copolymer; Tolerance Exemption; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of March 2, 2016, concerning Alpha-2,4,6-Tris[1-(phenyl)ethyl]-Omega-hydroxypoly(oxyethylene) poly(oxypropylene) copolymer; Tolerance Exemption. This document corrects typographical errors.

DATES: This final rule correction is effective June 10, 2016.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0485, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 308–8009; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the March 2, 2016 final rule a list of those who may be potentially affected by this action.

II. What does this technical correction do?

EPA issued a final rule in the **Federal Register** of March 2, 2016 (81 FR 10776) (FRL–9942–48) that increases the poly(oxyethylene) content from 16–30 moles to 16–60 moles. EPA inadvertently mistyped the final ratio of poly(oxyethylene) ratio as 16–30 moles instead of 16–60 moles.

The preamble for FR Doc. 2016–04599 published in the **Federal Register** issue of Wednesday, March 2, 2016 (81 FR 10776) (FRL–9942–48) is corrected as follows:

1. On page 10776, second column, under the heading Summary, paragraph one, line 9 and line 23, correct 16–30 to read 16–60.

2. On page 10777, first column, paragraph 6, line 17 is corrected to read: 16–60 moles.

3. On page 10778, second column, paragraph two, line 7 is corrected to read: 16–60 moles.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because it does not affect or change the Agency's original regulatory decision nor does it adversely affect human or environmental health. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and executive order reviews apply to this action?

No. For a detailed discussion concerning the statutory and executive order review, refer to Unit X of the March 2, 2016 final rule.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter 1 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, revise the following entry in the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
Alpha-[2,4,6-Tris[1-(phenyl)ethyl]phenyl]-Omega-hydroxy poly(oxyethylene) poly(oxypropylene) copolymer, the poly(oxypropylene) content averages 2–8 moles, the poly(oxyethylene) content averages 16–60 moles. Minimum number-average molecular weight (in amu) of 1,500	70880–56–7
* * * * * * *	

* * * * *

[FR Doc. 2016–13816 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8435]

Suspension of Community Eligibility

Correction

§ 64.6 [Corrected]

In rule document 2016–12123, appearing on pages 32660–32664, in the issue of Tuesday, May 24, 2016, make the following correction:

On page 32661, in the first column of the table, the entry "**Region III**" should read "**Region I**".

[FR Doc. C1–2016–12123 Filed 6–8–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2011–0007, Notice No. 6]

RIN 2130–AC55

National Highway-Rail Crossing Inventory Reporting Requirements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of FRA's January 6, 2015, final rule addressing U.S. DOT National Highway-Rail Crossing Inventory (Crossing Inventory or Inventory) Reporting Requirements. This document amends and clarifies the final rule in response to the petition for reconsideration and makes certain additional amendments to the rule to address practical implementation problems that arose after publication of the final rule.

DATES: The amendments in this final rule are effective June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Ronald Ries, Staff Director, Highway-Rail Crossing and Trespasser Prevention Programs Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6299), *ronald.ries@dot.gov;* or Kathryn Shelton Gresham, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 13, Washington, DC 20590 (telephone: 202–493–6063), *kathryn.gresham@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 2012, FRA published a notice of proposed rulemaking (NPRM) as a first step towards the agency's promulgation of Crossing Inventory regulations per the Congressional mandate contained in Section 204(a) of the Rail Safety Improvement Act of 2008 (RSIA)

(codified at 49 U.S.C. 20160). *See* 77 FR 64077. After careful consideration of comments received in response to the NPRM and testimony received at a February 19, 2013, public hearing, FRA published a final rule on January 6, 2015, requiring railroads that operate one or more trains through highway-rail or pathway crossings to submit initial reports to the Crossing Inventory, including current information about warning devices and signs for previously unreported and new highway-rail and pathway crossings through which they operate. The final rule also requires railroads to periodically update the data in the Crossing Inventory, including the prompt reporting of a crossing sale, crossing closure, or changes in certain crossing characteristics. *See* 80 FR 746.

The Association of American Railroads (AAR) filed a petition for reconsideration (Petition) of the final rule. In its Petition, AAR asks FRA: (1) For additional time to comply with the final rule; (2) to reconsider the rule's requirement that railroads, in certain instances, submit data to the Crossing Inventory that State agencies have historically submitted voluntarily. Specifically, AAR asks FRA to amend 49 CFR 234.405 and 234.407 to address that issue and issues associated with the assignment of inventory numbers to certain crossings located in private companies', ports', and docks' areas; (3) to amend those same sections, and § 234.409, to remove the requirement that railroads operating trains through highway-rail or pathway crossings, that are not the "primary operating railroad" for those crossings, ensure information the relevant primary operating railroad provides to the Crossing Inventory is submitted and updated; and (4) to revise the Inventory Guide [1] to disallow states from reporting crossing closures to the Crossing Inventory.

The specific issues AAR raised, and FRA's responses to those issues, are discussed in detail in the "Section-by-Section Analysis" below. The Section-by-Section Analysis also contains a discussion of each provision of the final rule which FRA is amending or clarifying in response to practical implementation issues it has discovered since it promulgated the final rule. These amendments also allow greater flexibility in complying with the rule. These amendments are within the scope of the issues and options discussed, considered, or raised in the NPRM.

[1] Federal Railroad Administration, Office of Railroad Safety, "Guide for Preparing U.S. DOT Crossing Inventory Forms" (initially published January 6, 2015).

II. Section-by-Section Analysis

A. Amendments to 49 CFR Part 234

Section 234.401 Definitions

FRA is adding definitions of "general railroad system of transportation" and "general system railroad" to this section because these terms are used in the revised definition of "primary operating railroad", which is discussed below. For purposes of this subpart, FRA is defining a general railroad system of transportation as the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Consistent with the definition of "general railroad system of transportation", FRA is defining general system railroad as a railroad that operates on track, which is part of the general railroad system of transportation. Thus, a general system railroad is not a plant railroad, as defined in § 234.5 of this part.

As applied to highway-rail and pathway crossings located within private companies', ports', or docks' areas, the final rule defines "primary operating railroad" as "each railroad that owns track leading to the private company, port, or dock area." After FRA issued the final rule, at least one regulated entity expressed concern about a private company where a railroad owns track leading into the private company, but does not actually operate on track within the company. Because the railroad does not operate over any crossings within the company's area, the railroad stated it does not have ready access to the information the rule requires it to report to the Crossing Inventory for crossings within the private company.

FRA did not intend to require railroads merely owning track leading to a private company, port, or dock area, where the only railroad that operates through crossings within the area is a plant railroad, as defined in § 234.5, to report to the Crossing Inventory information on the crossings within the private area. Accordingly, FRA is revising the definition of "primary operating railroad" to clarify that mere ownership of track leading to a private company, port, or dock area does not make a railroad a primary operating railroad for crossings within that area, if no general system railroad operates over that track and through at least one crossing within the private area.

If a general system railroad operates over track leading to a private area and through at least one highway-rail or pathway crossing within the private area, the railroad that owns the track leading to the area and over which the general system railroad operates, is responsible for reporting to the Crossing Inventory information on all the crossings within the private area. The railroad owning the track leading to the private area should be able to obtain access to the information required to be submitted to the Crossing Inventory (*e.g.,* number and speed of train movements through the crossings within the area) through the railroad operating over the track it owns.

For example, if one general system railroad (Railroad A) owns a track leading to a private company, port, or dock area and operates over that track and through at least one crossing within the private area, that Railroad (Railroad A) is the primary operating railroad for all crossings within the private area. Similarly, if Railroad A owns track leading to a private company, port, or dock area, but does not operate over that track or any crossings within the private area but instead allows another general system railroad (Railroad B) to operate over its track leading to the private area and Railroad B also operates through at least one crossing within the private area, Railroad A (the railroad that owns the track leading to the private area) is considered the primary operating railroad for all of the crossings within the private area—even though it does not actually operate over the track.

On the other hand, if two general system railroads (*e.g.,* Railroad C and Railroad D) own separate tracks leading to a private company, port, or dock area, and Railroad C operates over its own track leading to the private area and through at least one crossing within that area (and Railroad D does not operate over its track leading to the private area or through any crossings within the area), Railroad C (the general system railroad that owns and operates over its track leading to the private area and through at least one crossing within that area) is considered the primary operating railroad for all of the crossings within that area.

Likewise, if Railroads C and D each own track leading to a private company, port, or dock area, and Railroad E (another general system railroad) operates over one of their tracks leading to the private area and through at least one crossing within the area, the owner of the track leading to the area over which Railroad E operates is the primary operating railroad for all crossings within the private area. If both Railroads C and D own track leading to a private company, port, or dock area, and they each operate over their owned track into the area and through at least one crossing within the area, they both will be considered primary operating railroads for all crossings within the private area.

Finally, if in any scenario a general system railroad (or more than one railroad) owns track leading to a private company, port, or dock area, but neither that railroad nor any other general system railroad operates over that track and through at least one crossing within the area, then the crossings in the private area do not need to be reported to the Crossing Inventory. For example, if a general system railroad owns track leading up to the entrance of a private area and operates over that track (or allows another general system railroad to operate over that track), but does not operate over any crossing within the area, that railroad is not considered a primary operating railroad for purposes of the crossings within the private area.

Section 234.403 Submission of Data to the Crossing Inventory, Generally

Section 234.403 of the final rule contains the general requirements for submission of information to the Crossing Inventory. Paragraph (e) of that section of the final rule allows a parent corporation to submit crossing data to the Crossing Inventory on behalf of one or more of its subsidiaries, if the parent corporation and subsidiary railroad(s): (1) Provide written notice (signed by the chief executive officer of the parent corporation) to FRA that the parent corporation is assuming the reporting and updating responsibility; and (2) operate as a "single, seamless, integrated" railroad system. Since publication of the final rule, numerous railroads that voluntarily submitted crossing data in the past on behalf of their subsidiaries notified FRA they would like to continue to do so. However, because they do not operate as a "single, seamless, integrated" railroad system they cannot report on behalf of their subsidiaries under the final rule. Railroads also questioned the need for the chief executive officer, as opposed to any railroad official, to sign the written notice the parent corporation submits. After considering these concerns, which could inadvertently prevent parent corporations from reporting crossing data on behalf of their subsidiaries, FRA is amending § 234.403(e) by removing the requirement that parent corporations and their subsidiary railroads operate as a "single, seamless, integrated" railroad system. As a result, all railroad parent corporations can now report on behalf of their subsidiaries under paragraph (e).

This final rule also simplifies the notification process a parent corporation must follow if it wants to submit Crossing Inventory data on behalf of one or more of its subsidiary railroads. At least one regulated entity raised concerns about current paragraph (e)(1) of this section of the final rule that requires the chief executive officer of the parent corporation to sign the required notice to FRA that the parent corporation is assuming reporting and updating responsibility for its subsidiaries. In response to those concerns, FRA is amending paragraph (e)(1) to allow any appropriate management official with authority to bind the company to sign the notice. This notice must include a statement that the parent corporation is agreeing to (1) submit and update crossing data for the named subsidiaries and the parent corporation, and (2) be subject to enforcement action for noncompliance with the final rule. FRA is also amending paragraph (e)(1) to require only the parent corporation, instead of the parent corporation and the named subsidiary, to submit the required written notice to FRA.

Section 234.405 Submission of Initial Data to the Crossing Inventory for Previously Unreported Crossings

Assignment of Inventory Numbers to Previously Unreported Crossings Located in a Private Company, Port, or Dock Area

Current paragraph (a)(1)(ii) of § 234.405 requires each primary operating railroad that operates through at least one previously unreported crossing within a private company, port, or dock area to assign one or more Inventory Numbers to those crossings. AAR asserts that (1) this requirement is contrary to current practice that allows a single Inventory Number to be assigned to all crossings in these areas, and (2) this new requirement could create reporting confusion if an accident were to occur at a crossing within a private company, port, or dock area. AAR requests that FRA amend this requirement to allow multiple primary operating railroads to share an assigned Inventory Number for one or more previously unreported highway-rail and pathway crossings located within a private company, port, or dock area.

After careful consideration, FRA is not adopting AAR's request to modify the language of § 234.405(a)(1)(ii) for two reasons. First, for purposes of enforcement of this rule's reporting requirements, if the railroads share a single Inventory Number, FRA will not know which railroad is responsible for misreporting or failure to report. Second, if a reportable accident/incident occurs at a previously unreported highway-rail or pathway crossing located within a private company, port, or dock area, it benefits both FRA and the railroads involved for the railroad responsible for reporting the accident/incident under 49 CFR part 225 to have its own unique Inventory Number it can use in the accident/incident report it files with FRA.[2]

FRA disagrees with AAR's argument that assigning multiple Inventory Numbers to the same highway-rail or pathway crossing could create reporting confusion. It is possible that a railroad that operates over its own track into a private company, port, or dock area may not know if another railroad with its own track leading into the area assigned an Inventory Number to the crossings within the area. By requiring each railroad to assign its own Inventory Number to the crossings within a private company, port, or dock area, a railroad involved in a crossing collision inside the area will not have to rely on another railroad to provide the Inventory Number so it can report the accident as required under part 225.

FRA also disagrees with AAR's assertion that requiring each primary operating railroad to assign one or more Inventory Numbers to crossings located within a private company, port, or dock area could result in multiple railroads having multiple signs at each vehicular entrance that provide multiple Inventory Numbers and emergency notification information for the same crossings. However, FRA regulations do not require railroads to post emergency notification signs (ENS signs) at crossings located within a private company. As for port and dock areas, subpart E of 49 CFR part 234 (subpart E) requires railroads to post at least one ENS sign only at each vehicular entrance if any highway-rail and/or pathway crossings are located within that area (and provided the port or dock area does not meet the definition of "plant railroad" in § 234.5.) *See* 49 CFR 234.311(a)(2)(ii). Subpart E does not require railroads to post signs at each crossing within such an area. The track owner or lessee that maintains the highway-rail or pathway grade crossing (the "maintaining railroad" under 49 CFR 234.301) is responsible for the placement and maintenance of ENS

[2] FRA is aware that some primary operating railroads already share a single Inventory Number for highway-rail and pathway crossings located within a private company, port, or dock area that have already been reported to the Crossing Inventory. *See* discussion of § 234.409 below for how to submit periodic updates in such situations.

signs at each vehicular entrance. *See* 49 CFR 234.311(a)(2)(ii). Under subpart E, if the primary dispatching railroad under 49 CFR 234.306 and the maintaining railroad are not the same entity, the primary dispatching railroad must provide the emergency telephone number to display on the ENS sign to the maintaining railroad. *See* 49 CFR 234.309(a).

If there is more than one primary operating railroad that operates through highway-rail or pathway crossings in a port or dock area, subpart E does not require multiple signs at each vehicular entrance with multiple Inventory Numbers and emergency notification information for the crossings. Instead, under subpart E, the maintaining railroad (not the primary operating railroad under this final rule) is responsible for posting ENS signs that display the emergency telephone number and the Inventory Number assigned to the crossings in the port or dock area by the primary dispatching railroad.

Submission of Completed Inventory Forms for Previously Unreported Highway-Rail and Pathway Crossings

Paragraph (a)(3) of § 234.405 of the final rule requires primary operating railroads to submit to the Crossing Inventory "accurate and complete [U.S. DOT Crossing] Inventory Forms, or their electronic equivalent," for previously unreported highway-rail and pathway crossings through which the railroads operate. AAR requests that FRA amend this provision (and the corresponding provision in § 234.407(a)(3) addressing new highway-rail and pathway crossings) by removing the requirement that primary operating railroads submit "completed" U.S. DOT Crossing Inventory Forms (Inventory Forms) for such crossings.

AAR also objects to the voluntary process in paragraph 234.405(d) (and the corresponding provision in § 234.407(d) (addressing new highway-rail and pathway crossings). Section 234.405(d) provides that if a railroad requests data necessary to complete an Inventory Form from a State agency, but does not timely receive that information from the State agency, the railroad may notify FRA in writing of the State's non-responsiveness. AAR asserts that railroads should not be held responsible for supplying state-controlled information not maintained by the railroads. AAR urges FRA to revise this requirement to limit primary operating railroads' reporting responsibilities to crossing data within their control.

FRA acknowledges that State agencies generally maintain the crossing data in Parts III, IV, and V of the Inventory Form. However, the RSIA, as amended by sec. 11316(g) of the Fixing America's Surface Transportation Act (FAST Act), specifically requires railroads to report "[n]ot later than 1 year after the date of enactment of the RSIA or 6 months after a new crossing becomes operational, whichever occurs later . . . current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates with respect to the trackage over which it operates." 49 U.S.C. 20160. Crossing data about warning devices and signage is primarily in Part III of the Inventory Form, under the heading "Highway or Pathway Traffic Control Device Information." Thus, in addition to the crossing data in Parts I and II of the Inventory Form, which railroads have historically collected and maintained in the Crossing Inventory, the RSIA specifically requires railroad carriers to submit additional crossing data "about warning devices and signage" for previously unreported and new crossings.

The RSIA also contains language granting the Secretary of Transportation (and by delegation, FRA) the authority to exercise discretion in determining the scope of the crossing data railroads must submit to the Crossing Inventory. In the final rule, FRA determined that submission of complete Inventory Forms for previously unreported and new public highway-rail grade crossings is needed to increase the accuracy and utility of the Crossing Inventory. FRA continues to maintain that position. Railroads generally work closely with the State agency responsible for grade crossing safety before any new public highway-rail grade crossings become operational. Therefore, any burden associated with obtaining State-maintained crossing data for new public highway-rail grade crossings should be minimal.

Nevertheless, to clarify this requirement, FRA is revising § 234.405(a)(3) (and the corresponding provision in § 234.407(a)(3) on new highway-rail and pathway crossings) to require primary operating railroads to submit "accurate Inventory Forms, or their electronic equivalent," (as opposed to "accurate and complete" Inventory Forms) to the Crossing Inventory for previously unreported highway-rail and pathway crossings through which they operate. Primary operating railroads must fill out these accurate Inventory Forms as the Inventory Guide requires. In other words, primary operating railroads are only required to complete the entire Inventory Form for new and previously unreported public highway-rail grade crossings. The Inventory Guide only requires primary operating railroads to complete Parts I and II of the Inventory Form for new and previously unreported pathway grade crossings and new and previously unreported private highway-rail grade crossings.

State-Maintained Crossing Data

Since the final rule requires primary operating railroads to complete Inventory Forms (or their electronic equivalent) for new and previously unreported public highway-rail grade crossings, those railroads may need to obtain crossing data from the State agency responsible for maintaining highway-rail and pathway crossing data to complete the Inventory Form (or its electronic equivalent). Current § 234.405(d) of the final rule explains how a primary operating railroad that requests State-maintained crossing data from the appropriate State agency responsible for maintaining the data, but does not timely receive the requested data, may notify FRA in writing that the railroad requested the required data, but did not receive the data. Under the final rule, if a railroad properly submits such notification, FRA would not hold the primary operating railroad responsible for failing to complete and submit accurate Inventory Forms (or their electronic equivalent) for previously unreported public highway-rail grade crossings.

In its Petition, AAR asserts that "FRA has taken a relatively straightforward process, whereby primary operating railroads could provide the data which they possess and state agencies could provide the remaining highway traffic and other non-railroad data, and has made it burdensome and complex." Noting that a primary operating railroad may operate in dozens of states, AAR further asserts that contacting each relevant State agency, tracking the responses of those agencies, and creating a certification process would be an unmerited burden on the industry.

As noted previously, FRA continues to maintain its position that submission of complete Inventory Forms for previously unreported and new public highway-rail grade crossings is needed to increase the accuracy and utility of the Crossing Inventory. To achieve this goal, FRA is requiring primary operating railroads to provide the crossing data they possess and to request any additional required crossing data from the State agency responsible for maintaining that data. FRA anticipates that State agencies will generally respond promptly to railroad requests for State-maintained crossing data. However, primary operating railroads may submit copies of their written requests for State-maintained crossing data to FRA and to each operating railroad that operates through the crossing. This is not mandatory, but, if FRA audits the Crossing Inventory, FRA would know the primary operating railroad made an effort to obtain State data for one or more previously unreported public highway-rail grade crossings.

After considering AAR's request, FRA is simplifying the written notification process in § 234.405(d). Instead of providing written notice to FRA certifying that State-maintained crossing data was requested at least 60 days earlier and has not yet been received, a primary operating railroad can send a copy of its written request for State-maintained crossing data to FRA and to each operating railroad that operates through the crossing. As long as the primary operating railroad submits the State-maintained crossing data within 60 days of receipt, FRA will consider the written request for State-maintained crossing data to be an affirmative defense to potential liability for failure to timely submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for a previously unreported public highway-rail grade crossing.

Deadline for the Submission of Crossing Data for Previously Unreported Highway-Rail and Pathway Crossings

Paragraphs (a)(3) and (b) of § 234.405 of the final rule provide a deadline of March 7, 2016, for operating railroads and primary operating railroads to submit the required Inventory Forms, or their electronic equivalent, for previously unreported highway-rail and pathway crossings. AAR requests that FRA extend the deadline to three years from the final rule's effective date (*i.e.*, until March 9, 2018). AAR asserts this additional time will allow railroads to hire and train additional staff to physically locate and inspect tens of thousands of previously unreported private crossings. AAR also asserts that railroads need this additional time to add newly acquired information to the Crossing Inventory and to modify their IT systems to meet the new requirements.

After careful consideration, FRA is not adopting AAR's request to extend the reporting deadline for new and previously unreported highway-rail and pathway crossings to three years from the final rule's effective date. However, FRA acknowledges that railroads may need additional time to incorporate the changes that FRA is making in this amendment to the final rule as a result of AAR's Petition. Therefore, FRA is revising § 234.405(a)(3) to extend the deadline for primary operating railroads to submit crossing data to the Crossing Inventory for previously unreported highway-rail and pathway crossings to August 9, 2016. Consistent with this extension of time, FRA is also extending the deadline for operating railroads that operate on separate tracks to submit crossing data to the Crossing Inventory to August 9, 2016. FRA is not adjusting any other deadlines in § 234.405(a) and (b).

Duty of Operating Railroads To Ensure New and Previously Unreported Highway-Rail and Pathway Crossings Are Reported to the Crossing Inventory

Paragraph (c) of § 234.405 requires operating railroads (railroads other than the primary operating railroad that operate through a crossing) to notify FRA if a primary operating railroad has not submitted a completed Inventory Form, or its electronic equivalent, to the Crossing Inventory consistent with the rule for a new or previously unreported crossing the railroad operates through. AAR requests that FRA amend this requirement (along with the corresponding requirement in § 234.407(c) related to new crossings) so operating railroads will not be liable for a primary operating railroad's failure to submit the required crossing data. AAR asserts this provision imposes a significant burden on operating railroads and constitutes an inappropriate shift of regulatory compliance policing responsibility to a private business. AAR asserts that the final rule requires operating railroads to include and validate data for other railroads' crossings in their databases on an ongoing basis to ensure the primary operating railroad properly submitted required crossing data to the Crossing Inventory. AAR further asserts it is unrealistic to require railroads to audit the crossing data of other railroads, in addition to their own crossing data, all within 14 months.

After careful consideration of AAR's request, with respect to the initial reporting of new and previously unreported highway-rail and pathway crossings, FRA cannot legally adopt AAR's request. Paragraph (c) of § 234.405 (and paragraph (c) of § 234.407 related to new crossings) implements the RSIA mandate that *each railroad carrier* ensure current information about each previously unreported highway-rail or pathway crossing is reported to the Crossing Inventory. *See* 49 U.S.C. 20160(a). Congress left FRA no discretion to ignore this mandate. Clearly, Congress thought operating railroads that operate over new and unreported highway-rail and pathway crossings are in the best position to identify crossings that have not been reported to the Crossing Inventory.

Section 234.407 Submission of Initial Data to the Crossing Inventory for new Crossings

Paragraph (b) of this section of the final rule requires operating railroads that operate on separate tracks through a new highway-rail or pathway crossing to submit crossing data to the Crossing Inventory by March 7, 2016, but erroneously fails to provide a future deadline for highway-rail and pathway crossings that become operational after the final rule's effective date. This document corrects this technical error by amending § 234.407(b) to require operating railroads that operate on separate tracks through a new highway-rail or pathway crossing to submit crossing data no later than six months after the crossing becomes operational or August 9, 2016, whichever occurs later.

FRA is also making a technical amendment to correct a typographical error in the second sentence of paragraph (d)(1)(i) of this section in this final rule. The original version of this sentence in the final rule contained an erroneous reference to § 234.405(a)(3).

Assignment of Inventory Numbers to New Crossings Located in a Private Company, Port, or Dock Area

Paragraph (a)(1)(ii) of § 234.407 of the final rule requires each primary operating railroad to assign one or more Inventory Numbers to new highway-rail and pathway crossings within a private company, port, or dock area and through which the railroad operates. *See* discussion of § 234.405 above. AAR requests that FRA amend this requirement to allow multiple primary operating railroads to assign a shared Inventory Number to new highway-rail and pathway crossings that are located within a private company, port, or dock area. AAR asserts that as drafted, § 234.407(a)(1)(ii) is contrary to current practice. AAR also asserts that this new requirement could create reporting confusion if an accident were to occur at a crossing within a private company, port, or dock area. After careful consideration, FRA is not adopting AAR's request to modify § 234.407(a)(1)(ii) for the reasons explained in the Section-by-Section analysis of § 234.405(a)(1)(ii) above.

Submission of Completed Inventory Forms for New Highway-Rail and Pathway Crossings

Paragraph (a)(3) of § 234.407 requires primary operating railroads to submit to the Crossing Inventory "accurate and complete [U.S. DOT Crossing] Inventory Forms, or their electronic equivalent," for new highway-rail and pathway crossings through which railroads operate. As discussed in the Section-by-Section Analysis of § 234.405 above, under the heading "Submission of Completed Inventory Forms for Previously Unreported Highway-Rail Grade Crossings", AAR requests that FRA amend § 234.407(a)(3) to remove the requirement that primary operating railroads submit "completed" Inventory Forms for new highway-rail and pathway crossings. AAR also objects to the voluntary process in paragraph (d) of this section which provides that if a railroad requests data necessary to complete an Inventory Form from a State agency and that agency does not timely respond, the railroad may notify FRA in writing of the State's non-responsiveness.

After careful consideration, FRA is revising § 234.407(a)(3) consistent with the revisions to § 234.405(a)(3), to clarify that primary operating railroads must submit "accurate Inventory Forms, or their electronic equivalent," (as opposed to "accurate and complete" Inventory Forms) to the Crossing Inventory for new highway-rail and pathway crossings through which they operate. The primary operating railroad must fill out these accurate Inventory Forms consistent with the Inventory Guide, which requires completion of the entire Inventory Form only for new public highway-rail grade crossings.

Deadline for the Submission of Crossing Data for New Highway-Rail and Pathway Crossings

The final rule provides that "[e]ach primary operating railroad shall submit accurate and complete Inventory Forms, or their electronic equivalent, to the Crossing Inventory for new highway-rail and pathway crossings through which it operates, no later than six (6) months after the crossing becomes operational or March 7, 2016, whichever occurs later." 49 CFR 234.407(a)(3). The final rule also provides that "[f]or each new highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad (other than the primary operating railroad) shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than March 7, 2016." 49 CFR 234.407(b).

AAR requests that FRA amend § 234.407(a)(3) to establish a deadline three years from the final rule effective date for operating railroads and primary operating railroads to submit crossing data for new highway-rail and pathway crossings to the Crossing Inventory. AAR asserts that railroads need this additional time to add newly acquired information to the Inventory and to modify their IT systems to meet the new requirements. For the reasons explained in the Section-by-Section analysis of § 234.405(a)(3) above, FRA is not adopting the AAR's request to extend the reporting deadline for new highway-rail and pathway crossings to March 9, 2018 (three years from the final rule effective date). However, with respect to new crossings (highway-rail and pathway crossings that become operational on or after June 10, 2016), primary operating railroads will have six (6) months from the date on which the highway-rail or pathway crossing becomes operational to report the new crossing to the Crossing Inventory, consistent with § 234.403 and the Inventory Guide. Similarly, operating railroads that operate on separate tracks through a new highway-rail or pathway crossing will have six (6) months from the date on which the highway-rail or pathway crossing becomes operational to submit crossing data to the Crossing Inventory, consistent with § 234.403 and the Inventory Guide.

Duty of Operating Railroads To Ensure New Highway-Rail and Pathway Crossings Are Reported to the Crossing Inventory

Paragraph (c) of § 234.407 requires operating railroads (railroads other than the primary operating railroad that operate through a crossing) to notify FRA if a completed Inventory Form, or its electronic equivalent, has not been submitted to the Crossing Inventory consistent with the final rule for a new crossing that the railroad operates through. Consistent with its request to amend § 234.405(c) regarding previously unreported crossings, AAR requests that FRA amend § 234.407(c), so operating railroads will not be held liable for the primary operating railroad's failure to timely report a new highway-rail or pathway crossing to the Crossing Inventory. For the reasons discussed in the Section-by-Section analysis of § 234.405(c), FRA is not adopting AAR's request to amend § 234.407(c).

State-Maintained Crossing Data

As explained in the Section-by-Section analysis of § 234.405(d), primary operating railroads are required to complete Inventory Forms (or their electronic equivalent) for new public highway-rail grade crossings. Therefore, primary operating railroads may need to obtain crossing data from the State agency responsible for maintaining highway-rail and pathway crossing data to complete the Inventory Form (or its electronic equivalent). Like paragraph (d) of § 234.405, current paragraph (d) of § 234.407 of the final rule explains how a primary operating railroad may submit written notification to the FRA Associate Administrator that they requested certain crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, which the State has not yet provided. As long as the primary operating railroad submits the State-maintained crossing data within 60 days of receipt, FRA will consider a properly filed written notification to be an affirmative defense to potential violations for failure to timely submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new public highway-rail grade crossing.

FRA is revising the written notification process in § 234.407(d). FRA is no longer asking primary operating railroads to provide their written notifications by certified mail, return receipt requested. Instead, a primary operating railroad can send copies of its request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the new public highway-rail grade crossing. As long as the primary operating railroad: (1) Sends copies of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the new public highway-rail grade crossing no later than six (6) months after the crossing becomes operational; and (2) submits the State-maintained crossing data within 60 days of receipt, FRA will consider the written request for State-maintained crossing data to be an affirmative defense to potential liability for failure to timely submit an Inventory Form (or its electronic equivalent) to the Crossing Inventory for a new public highway-rail grade crossing.

Section 234.409 Submission of Periodic Updates to the Crossing Inventory.

AAR's Petition states that some primary operating railroads share a single Inventory Number for highway-rail and pathway crossings located within a private company, port, or dock area that have already been reported to the Crossing Inventory. (As explained in the definition of "primary operating railroad" in § 234.401 above, each railroad that owns track leading to a private company, port, or dock area is considered a primary operating railroad for the crossings within that area, if a general system railroad operates over the track owned by that railroad and through at least one crossing within that private area.)

Paragraph (a) of § 234.409 requires each primary operating railroad to submit periodic updates to the Crossing Inventory. To comply with this requirement, primary operating railroads that currently share Inventory Numbers for highway-rail and pathway crossings located within a private company, port, or dock area must exercise one of two options.

First, each primary operating railroad that operates through the crossing(s) may choose to assign a new unique Inventory Number (or set of Inventory Numbers) to the crossing(s) located within a private company, port, or dock area through which it operates. Each primary operating railroad (except the primary operating railroad that assigned the original Inventory Number to the crossing(s)) would then use its new Inventory Number(s) to submit crossing data to the Crossing Inventory as a new crossing record. After the new crossing record is established, each primary operating railroad can submit periodic updates to the Crossing Inventory for the highway-rail and pathway crossing(s) located within a private company, port, or dock area using the Inventory Number(s) it assigned to the crossing(s).

Second, FRA will accommodate primary operating railroads that wish to continue sharing a single Inventory Number which has already been used to report highway-rail and pathway crossings located within a private company, port, or dock area to the Crossing Inventory. As explained in Frequently Asked Question (FAQ) number 37 in Appendix E to the Inventory Guide, the primary operating railroad of record in the Crossing Inventory can submit an up-to-date and accurate periodic update to the Crossing Inventory for all of the railroad-assigned data fields in Appendix B to the Inventory Guide ("Responsibility Table for Periodic Updates to the Crossing Inventory"). As part of this update, the primary operating railroad of record must check the "Yes" box in Part I, item 7 ("Do Other Railroads Operate a Separate Track at Crossing") of the Inventory Form (or its electronic equivalent) and provide railroad codes for all of the other primary operating railroads.

The other primary operating railroads that share the Inventory Number can satisfy the periodic updating requirement in § 234.409 by using the shared Inventory Number to submit up-to-date and accurate crossing data for the data fields specified in Appendix C to the Inventory Guide ("Reporting Crossings that have Multiple Operating Railroads"). This method for submitting periodic updates is identical to the method operating railroads that operate on separate tracks through a crossing use, under paragraph (b) of § 234.409.

This second option is only available for new or previously unreported highway-rail and pathway crossings located within a private company, port, or dock area that have already been reported to the Crossing Inventory and assigned one or more Inventory Numbers that are shared by multiple primary operating railroads.

Submission of Periodic Updates

The final rule requires primary operating railroads to submit, consistent with the Inventory Guide, "up-to-date and accurate crossing data" to the Crossing Inventory for each highway-rail and pathway crossing through which it operates. Paragraph (a) of § 234.409 of the final rule requires primary operating railroads to submit updated data at least every three (3) years from the date of the primary operating railroad's most recent submission of data (or most recent submission on behalf of the primary operating railroad) for the crossing or by March 7, 2016. Paragraph (b) requires operating railroads that operate trains on separate tracks through a crossing to similarly update the data required by the Inventory Guide.

As it did for §§ 234.405 and 234.407, AAR requests that FRA amend the compliance deadlines in paragraphs (a) and (b) of § 234.409 for three years from the final rule's effective date. This would allow railroads to submit updated crossing data for highway-rail and pathway grade crossings at least every three (3) years from the date of the most recent submission of data by that railroad for the crossing or by March 7, 2018, whichever occurs later.

Consistent with FRA's responses to AAR's requests to amend the compliance deadlines in §§ 234.405 and 234.407 discussed above, FRA is not adopting AAR's request to extend the compliance deadlines for railroads in paragraphs (a) and (b) of § 234.409 by three years. As with the compliance deadlines in §§ 234.405 and 234.407, however, FRA acknowledges that railroads may need additional time to incorporate the changes that are being made in these amendments to the final rule being made as a result of AAR's Petition. Therefore, FRA is revising § 234.409(a) and (b) to extend the deadline for primary operating railroads and operating railroads to submit updated crossing data to the Crossing Inventory for highway-rail and pathway crossings over which they operate to every three (3) years from the date of the most recent submission of data by the railroad (or on behalf of the railroad) for the crossing or August 9, 2016, whichever occurs later.

Duty of Operating Railroads To Ensure Up-to-Date Crossing Data Is Reported to the Crossing Inventory

Paragraph (c) of § 234.409 requires operating railroads (other than primary operating railroads), that operate through a highway-rail or pathway crossing for which up-to-date information has not been timely submitted to the Crossing Inventory to notify FRA of this oversight. Written notification the operating railroad provides must include, at a minimum, the Inventory Number for each highway-rail or pathway crossing that has not been updated.

AAR requests that FRA amend § 234.409(c), so that operating railroads will not be held liable for the primary operating railroad's failure to timely submit updated crossing data to the Crossing Inventory. AAR asserts that this provision imposes a significant burden on operating railroads, which will need to include and validate data for other railroads' crossings in their databases on an ongoing basis to ensure that the primary operating railroad has properly submitted required crossing data to the Crossing Inventory. AAR further asserts that this language constitutes an inappropriate shift of regulatory compliance policing responsibility to a private business and that it is unrealistic to require railroads to audit the crossing data of other railroads, in addition to their own crossing data, within 14 months.

After considering AAR's request, FRA is removing § 234.409(c). The RSIA requires each railroad carrier to ensure that periodic updates are submitted to the Crossing Inventory for each highway-rail and pathway crossing through which it operates. *See* 49 U.S.C. 20160(b). However, unlike previously unreported and new crossings that have not yet been reported to the Crossing Inventory, FRA can use the Grade Crossing Inventory System (GCIS) to generate reports that identify out-of-date highway-rail and pathway crossing data.

FRA can use these reports to verify that primary operating railroads (and any operating railroads that operate on separate tracks through the crossing) are timely submitting periodic updates to the Crossing Inventory, as required by § 234.409(a) and (b). Therefore, FRA is revising the final rule to remove the requirement that operating railroads monitor the Crossing Inventory and provide the agency written notification if a primary operating railroad fails to timely submit updates to the highway-rail and pathway crossing data for which it is responsible.

Section 234.411 Changes Requiring Submission of Updated Information to the Crossing Inventory

Consistent with the extended deadline by which railroads are required to report new and previously unreported highway-rail and pathway crossings to the Crossing Inventory, this final rule revises § 234.411 to clarify the primary operating railroad is required to report the following events to the Crossing Inventory within three (3) months, if they occur on or after June 10, 2016: (1) The sale of all or part of a crossing; (2) the closure of a highway-rail or pathway crossings; or (3) a change in crossing surface or warning device at a public highway-rail grade crossing.

Current paragraph (a) of § 234.411 requires any railroad that sells all or part of a highway-rail or pathway crossing to report the crossing sale to the Crossing Inventory within three (3) months of the date of sale or March 7, 2016, whichever occurs later. However, with respect to railroads, GCIS is primarily designed to accept crossing data from the primary operating railroad, unless other operating railroads operate on separate tracks through the crossing (or the primary operating railroad delegates reporting and updating responsibility to another entity). (As stated in the Inventory Guide, GCIS will accept partial data submissions from other operating railroads once the primary operating railroad submits an Inventory Form, or its electronic equivalent, which indicates that one or more operating railroads operate on separate tracks through the crossing.) Therefore, FRA is also amending § 234.411(a)(1) to require a selling railroad that is not the primary operating railroad to notify the primary operating railroad of the sale of all or part of a highway-rail or pathway crossing within three (3) months of the date of sale.

Under new § 234.411(a)(2)(i), if the primary operating railroad sells all or part of a highway-rail or pathway crossing for which it has reporting and updating responsibility under this subpart, it would be required to submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory consistent with § 234.403 and the Inventory Guide within three (3) months of the date of sale. However, under new § 234.411(a)(2)(ii), if a primary operating railroad is notified of the sale of all or part of a highway-rail or pathway crossing under paragraph (a)(1) of this section, then it would be required to submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory consistent with § 234.403 and the Inventory Guide within three (3) months of the date of notification.

Section 234.413 Recordkeeping

This document makes a technical amendment to the heading of this section to correct a typographical error.

Appendix A to Part 234—Schedule of Civil Penalties

This document revises the civil penalty schedule in appendix A to this part to reflect changes that were made to individual sections in these final rule amendments. FRA is revising the civil penalty schedule to reflect violations may be assessed under §§ 234.405(a) and 234.407(a) if the primary operating railroad fails to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for a new or previously unreported crossing. (Previously, the civil penalty schedule indicated that violations may be assessed under these sections if the primary operating railroad fails to timely submit an accurate and complete Inventory Form or the electronic equivalent to the Crossing Inventory for a new or previously unreported crossing. However, as discussed above, primary operating railroads are only required to submit complete Inventory Forms or their electronic equivalent for public highway-rail grade crossings.) FRA is also revising the civil penalty schedule to remove the recommended civil penalty associated with § 234.409(c) because this provision has been removed.

B. Amendments to Inventory Guide

Instructions for Completing the U.S. DOT Crossing Inventory Form

FRA is clarifying a statement made in the final rule preamble discussion of the "Crossing Type" data field in Part I of the Inventory Form. Specifically, in the preamble to the final rule, FRA stated that it will defer to the determination of the relevant State agency for the public/private classification of highway-rail (and pathway) crossings. Accordingly, we are asking State agencies to submit voluntary updates to the Crossing Type data field in Part I of the Inventory Form, as stated in Appendix B to the Inventory Guide.

80 FR at 767. FRA intended to ask State agencies to submit voluntary updates to the "Crossing Type" data field only for public highway-rail and pathway crossings. Appendix B to the Inventory Guide states that primary operating railroads are required to submit updates to the "Crossing Type" data field for private highway-rail and pathway crossings.

Appendix E to the Inventory Guide, Frequently Asked Questions (FAQs)

Who Can Report Closed Crossing Status in the Crossing Inventory

FAQ number 22 in Appendix E to the Inventory Guide states that "[t]he primary operating railroad must report the closure of a highway-rail or pathway crossing to the Crossing Inventory, but the State may also report the closure of a public crossing." AAR requests that FRA amend this FAQ to state that only railroads can report the closure of a crossing to the Crossing Inventory. AAR asserts that allowing dual reporting is problematic because a State may close crossings in the Crossing Inventory on the basis of inaccurate information and without informing the operating railroad, which causes railroads to incur additional research and effort to address and resolve the discrepancy.

FRA declines to adopt AAR's recommendation to modify FAQ number 22 in Appendix E to the Inventory Guide. While the primary operating railroad is the only entity that can report the closure of a private highway-rail or pathway crossing to the Inventory, both railroads and States collect and maintain data related to public highway-rail and pathway crossings. Both entities have an interest in ensuring that the Crossing Inventory reflects up-to-date and accurate data related to crossing status. By allowing States to report the closure of public highway-rail and pathway crossings to the Crossing Inventory, States can provide needed updates to crossing status in the event that the primary operating railroad ceases to operate.

Reporting Crossing Sales That Result in a New Primary Operating Railroad

FRA is revising FAQ number 24 in Appendix E to the Inventory Guide to incorporate an FRA recommendation when railroads report crossing sales that result in a new primary operating railroad. As stated in revised FAQ number 24, if the sale of a highway-rail or pathway crossing results in a new primary operating railroad, FRA strongly recommends that the new primary operating railroad submit updated crossing data to the Crossing Inventory for all of the railroad-assigned data fields on the Inventory Form (or its electronic equivalent) within six (6) months of the date of sale.

III. Regulatory Impact and Notices

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA analyzed the potential costs and benefits of the amendments to the final rule adopted in this document. FRA estimates that the amendments will not materially impact the findings of the previously published regulatory evaluation. The extension of time for compliance with changes that are being made in these final rule amendments will grant some relief to railroads. However, the twenty-year analysis is still valid.

FRA evaluated both the final rule and these amendments under existing policies and procedures and determined both to be non-significant under both Executive Order 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. FRA previously placed in the docket a regulatory evaluation addressing the economic impact of the final rule. The primary purpose of the Crossing Inventory is to provide a uniform inventory database that can be merged with highway-rail crossing collision files and used to analyze information for planning and implementation of crossing improvement programs by public and private agencies responsible for highway-rail crossing safety, as well as the railroad industry and academia.

FRA has determined these amendments to the final rule do not change FRA's position that the anticipated benefits justify the costs.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure the impact of this rulemaking on small entities is properly considered, FRA developed these final rule amendments consistent with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. FRA certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the final rule, none of these entities will be significantly impacted. The amendments to this final rule will grant some relief to small entities by granting them additional time to comply with changes that are being made in these the final rule amendments. However, the amendments to the final rule will not change the overall impact on small entities. Therefore, FRA is confident that its previous certification for the final rule is still valid.

C. Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA analyzed this amended final rule in accordance with the principles and criteria contained in Executive Order 13132. Based on this analysis, FRA concluded that this rule will not have a substantial effect on the States or their political subdivisions; it will not impose any compliance costs; and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply and FRA determined that preparation of a federalism summary impact statement for this amended final rule is not required. This amended final rule could have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970 (repealed and recodified at 49 U.S.C. 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to sec. 20106.

D. Paperwork Reduction Act

The information collection requirements in this amended final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
234.403(a–c)—Submission of Data to the U.S. DOT Highway-Rail Crossing Inventory: Completion of Inventory Form.	51 States/entities & 618 railroads.	4,212 forms	30 minutes	2,106 hours
—Mass Update Lists of Designated Data Submitted by Railroads/States.	51 States/entities & 618 railroads.	257 lists	30 minutes	129 hours
—Excel Lists of Submitted Data	51 States/entities & 618 railroads.	1,234 lists	30 minutes	617 hours

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Changes/Corrections to Crossing Inventory Data Submitted via GX 32 Computer Program.	51 States/entities & 618 railroads.	35,845 records	6 minutes	3,585 hours
—Written Requests by States/Railroads for FRA Crossing Inventory Guide.	51 States/entities & 618 railroads.	10 requests	15 minutes	3 hours
(d)—Reporting Crossing Inventory Data by State Agencies on Behalf of Railroads: Written Notices to FRA.	51 States/entities & 618 railroads.	20 notices	30 minutes	10 hours
—(e)(1)—Consolidated Reporting by Parent Corporation on Behalf of Its Subsidiary Railroads: Written Notice to FRA.	51 States/entities & 618 railroads.	250 notices	30 minutes	125 hours
—(e)(2)—Immediate Notification to FRA by Parent Corporation of Any Changes in the List of Subsidiary Railroads for Which It Reports.	51 States/entities & 618 railroads.	75 notices	30 minutes	38 hours
234.405(a)(1)—Initial Submission of *Previously Unreported Highway-Rail and Pathway Crossings* through which They Operate by Primary Operating Railroads: Providing Assigned Crossing Inventory Number to Each Railroad that Operates One or More Trains Through Crossing + Assignee Inventory Numbers for Highway-Rail and Pathway Crossing Located in Rail Yard, Passenger Station, within Private Company, Port, or Dock Area.	51 States/entities & 618 railroads.	5,300 assigned numbers + 10,600 provided assigned numbers.	5 minutes + 5 minutes	1,325 hours
(a)(2)(i)—Completed Inventory Forms for Each Previously Unreported Crossing.	51 States/entities & 618 railroads.	5,300 forms	30 minutes	2,650 hours
(c)—Duty of All Operating Railroads: Notification to FRA of Previously Unreported Crossing through Which It Operates.	51 States/entities & 618 railroads.	450 notices/Notifications.	30 minutes	225 hours
(d)—State-maintained Crossing Data: Written Copy of Request for Such Data to FRA (Revised Requirement).	51 States/entities & 618 railroads.	35 copies of written request.	2 minutes	1 hour
—Copies of Written Request for State-maintained Data to Each Operating Railroad Transiting Crossing (Revised Requirement).	51 States/entities & 618 railroads.	105 copies of written request.	2 minutes	4 hours
234.407(a)—Submission of Initial Data to the Crossing Inventory for New Crossings: Providing Assigned Inventory Numbers for New Highway-Rail and Pathway Crossings through which They Operate by Primary Operating Railroads to Each Railroad that Operates One or More Trains Through the Crossing.	51 States/entities & 618 railroads.	100 assigned numbers + 100 provided assigned numbers.	5 minutes + 5 minutes.	16 hours
(a)(2)(i)—Completed Inventory Forms for Each New Highway-Rail and Pathway Crossing.	51 States/entities & 618 railroads.	100 forms	90 minutes	150 hours
234.409(a)—Submission of Periodic Updates to the Crossing Inventory.	51 States/entities & 618 railroads.	80,775 crossing inventory updates.	2.5025 minutes	3,369 hours
(c) Duty of All Operating Railroads: Written Notification to FRA of that Up-to-date and Accurate Information has *Not* Been Timely Submitted to the Crossing Inventory.	51 States/entities & 618 railroads.	950 written notices	20 minutes	317 hours
234.411(a)—Crossing Sale: Submission of Crossing Inventory Form by Any Operating Railroad that Sells All or Part of Highway-Rail and Pathway Crossing.	51 States/entities & 618 railroads.	650 reports/updated crossing inventory form.	2 hours	1,300 hours
(b)—Crossing Closure: Submission of Crossing Inventory Form by Primary Operating Railroad that Closes Highway-Rail and Pathway Crossing.	51 States/entities & 618 railroads.	85 crossing inventory forms (closures).	5 minutes	7 hours

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
(c)—Primary Operating RR Submission of Inventory form for Any Surface/Warning Device Changes at Crossing.	51 States/entities & 618 railroads.	650 forms	30 minutes	325 hours
234.413(a&b)(1)—Recordkeeping: Duplicate Copy of Each Inventory Form Submitted in Hard Copy.	51 States/entities & 618 railroads.	5,901 duplicate copies.	1 minute	98 hours
(a&b)(2)—Railroad Copy of FRA Confirmation after Electronic Submission of Crossing Data to the Crossing Inventory.	51 States/entities & 618 railroads.	80,775 copies	1 minute	1,346 hours
(c)—Railroad List of Establishment Locations Where Any Required Records are Kept.	51 States/entities & 618 railroads.	618 lists	5 minutes	52 hours

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this amended final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action on the effective date of this amended final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

E. Environmental Impact

FRA has evaluated this rule under its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this amended final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999.

Under section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this amended final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This amended final rule will not result in the expenditure, in the aggregate, of $155,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA evaluated this amended final rule consistent with Executive Order 13211. FRA determined that this amended final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

H. Trade Impact

The Trade Agreements Act of 1979 (TAA) (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA assessed the potential effect of this amended final rule on foreign commerce and believes that its requirements are consistent with

the TAA. The requirements imposed are safety standards which, as noted, are not considered unnecessary obstacles to trade.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

List of Subjects in 49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

For the reasons discussed in the preamble, FRA amends part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 234—[AMENDED]

■ 1. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 110–432, Div. A., Sec. 202, 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Section 234.401 is amended by adding definitions of "General railroad system of transportation" and "General system railroad" in alphabetical order and revising the definition of "Primary operating railroad" to read as follows:

§ 234.401 Definitions.

* * * * *

General railroad system of transportation means the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.

General system railroad means a railroad that operates on track which is part of the general railroad system of transportation.

* * * * *

Primary operating railroad means the operating railroad that either owns or maintains the track through the highway-rail or pathway crossing, unless the crossing is located within a private company, port, or dock area. If more than one operating railroad either owns or maintains the track through the highway-rail or pathway crossing, or if no operating railroad owns or maintains the track through the highway-rail or pathway crossing, then the operating railroad that operates the highest number of trains through the crossing is the primary operating railroad. In the event that there is only one operating railroad that operates one or more trains through a highway-rail or pathway crossing, that operating railroad is the primary operating railroad. For highway-rail and pathway crossings that are located within a private company, port, or dock area ("private area"), each railroad that owns track leading to the private company, port, or dock area will be considered a primary operating railroad for all crossings within the private area if a general system railroad operates over the railroad's track leading to the private area and through at least one crossing within that area.

* * * * *

■ 3. Revise § 234.403(e) to read as follows:

§ 234.403 Submission of data to the Crossing Inventory, generally.

* * * * *

(e) *Reporting by the parent corporation on behalf of subsidiary railroads.* (1) To satisfy the reporting requirements of this section, a parent corporation may submit crossing data to the Crossing Inventory on behalf of one or more of its subsidiary railroads. The parent corporation shall provide written notice to the FRA Associate Administrator that it has assumed reporting and updating responsibility for all of the subsidiary railroad's highway-rail and pathway crossings. The written notification shall include the following:

(i) A list of all subsidiary railroads for which the parent corporation will submit and update highway-rail and pathway crossing data;

(ii) A statement signed by an official of the parent corporation affirming that the parent corporation agrees to submit and update all of the highway-rail and pathway crossing data for the named subsidiary railroad(s); and

(iii) A statement that the parent corporation agrees to be subject to enforcement action for noncompliance with the reporting or updating requirements of this subpart.

(2) The parent corporation shall provide immediate written notification to the FRA Associate Administrator of any change in the list of subsidiary operating railroads for which it has assumed reporting and updating responsibility.

(3) The parent corporation shall submit the data required by paragraph (a) of this section to the Crossing Inventory electronically.

■ 4. In § 234.405, revise paragraphs (a)(1) and (3), (b), and (d) to read as follows:

§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings.

(a) *Duty of primary operating railroad.* (1)(i) With the exception of highway-rail and pathway crossings located in a railroad yard, passenger station, or within a private company, port, or dock area, each primary operating railroad shall assign an Inventory Number to each previously unreported highway-rail and pathway crossing through which it operates.

(ii) A primary operating railroad shall assign one or more Inventory Numbers to previously unreported highway-rail and pathway crossings through which it operates, which are located in a railroad yard, passenger station, or within a private company, port, or dock area.

* * * * *

(3) Each primary operating railroad shall submit accurate Inventory Forms, or their electronic equivalent, to the Crossing Inventory for the previously unreported highway-rail and pathway crossings through which it operates, no later than August 9, 2016. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each previously unreported highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad (other than the primary operating railroad) shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than August 9, 2016. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted in accordance with § 234.403.

* * * * *

(d) *State-maintained crossing data.* If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, the primary operating railroad may send a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing. FRA will consider the written request to be an affirmative defense to potential liability for failure to timely submit an accurate Inventory Form, or its electronic equivalent, as required by paragraph (a)(3) of this section if the primary operating railroad:

(1) Provides a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing; and

(2) Submits the requested State-maintained crossing data to the Crossing Inventory within 60 days of receipt.

■ 5. In § 234.407, revise paragraphs (a)(3), (b) and (d) to read as follows:

§ 234.407 Submission of initial data to the Crossing Inventory for new crossings.

(a) * * *

(3) Each primary operating railroad shall submit accurate Inventory Forms, or their electronic equivalent, to the Crossing Inventory for new highway-rail and pathway crossings through which it operates, no later than six (6) months after the crossing becomes operational. The Inventory Form, or its electronic equivalent, shall reference the assigned Inventory Number for the crossing(s) and shall be completed and submitted in accordance with § 234.403.

(b) *Duty of Operating Railroad when operating railroads operate on separate tracks.* For each new highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit accurate crossing data specified in the Inventory Guide to the Crossing Inventory no later than six (6) months after the crossing becomes operational. The Inventory Form, or its electronic equivalent, which contains this crossing data shall reference the Inventory Number assigned to the crossing by the primary operating railroad and shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

* * * * *

(d) *State-maintained crossing data.* If a primary operating railroad requests State-maintained crossing data from the appropriate State agency responsible for maintaining highway-rail and pathway crossing data, the primary operating railroad may send a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing. FRA will consider the written request to be an affirmative defense to potential liability for failure to timely submit an accurate Inventory Form, or its electronic equivalent, as required by paragraph (a)(3) of this section if the primary operating railroad:

(1) Provides a copy of its written request for State-maintained crossing data to the FRA Associate Administrator and to each operating railroad that operates through the crossing; and

(2) Submits the requested State-maintained crossing data to the Crossing Inventory within 60 days of receipt.

■ 6. Revise § 234.409 to read as follows:

§ 234.409 Submission of periodic updates to the Crossing Inventory.

(a) *Duty of primary operating railroad.* Each primary operating railroad shall submit up-to-date and accurate crossing data to the Crossing Inventory for each highway-rail and pathway crossing (except for a grade-separated or closed highway-rail or pathway crossing) through which it operates, consistent with the Inventory Guide. Updated crossing data shall be submitted to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad) for the crossing or August 9, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the primary operating railroad (or on behalf of the primary operating railroad).

(b) *Duty of operating railroad when operating railroads operate on separate tracks.* For each highway-rail and pathway crossing where operating railroads operate trains on separate tracks through the crossing, each operating railroad shall submit up-to-date and accurate crossing data for certain specified data fields on the Inventory Form, or its electronic equivalent, to the Crossing Inventory at least every three (3) years from the date of the most recent submission of data by that operating railroad (or on behalf of that operating railroad) for the crossing or August 9, 2016, whichever occurs later. For hard-copy submissions to Crossing Inventory, this three-year period shall be measured from mailing date of the most recent submission of data by the operating railroad (or on behalf of the operating railroad). The Inventory Form, or its electronic equivalent, shall be completed and submitted consistent with § 234.403 and the Inventory Guide.

■ 7. Revise § 234.411 to read as follows:

§ 234.411 Changes requiring submission of updated information to the Crossing Inventory.

(a) *Crossing sale.* (1) If a railroad that is not a primary operating railroad sells all or part of a highway-rail or pathway crossing on or after June 10, 2016, it shall report the crossing sale to the primary operating railroad within three (3) months of the date of sale.

(2) If the primary operating railroad:

(i) Sells all or part of a highway-rail or pathway crossing on or after June 10, 2016 for which it has reporting and updating responsibility under this subpart; or

(ii) Is notified of the sale of all or part of a highway-rail or pathway crossing on or after June 10, 2016 under paragraph (a)(1) of this section, then the primary operating railroad shall submit an Inventory Form, or its electronic equivalent, which reflects the crossing sale to the Crossing Inventory consistent with § 234.403 and the Inventory Guide within three (3) months of the date of sale or three months of notification, respectively.

(b) *Crossing closure.* The primary operating railroad shall report the closure of any highway-rail or pathway crossing that occurs on or after June 10, 2016 to the Crossing Inventory within three (3) months of the date on which the crossing is closed. The primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects closure of the crossing to the Crossing Inventory consistent with § 234.403 and the Inventory Guide.

(c) *Changes in crossing characteristics.* (1) The primary operating railroad shall report any change in crossing surface or change in warning device at a public highway-rail grade crossing that occurs on or after June 10, 2016 to the Crossing Inventory within three (3) months of the date of the change. The primary operating railroad shall submit an Inventory Form, or its electronic equivalent, that reflects up-to-date and accurate crossing data for the crossing (including the change in crossing surface or change in warning device) to the Crossing Inventory consistent with § 234.403 and the Inventory Guide.

(2) For purposes of this subpart, a "change in warning device" means the addition or removal of a crossbuck, yield or stop sign, flashing lights, or gates at a public highway-rail grade

crossing. The installation of a crossbuck, yield or stop sign, flashing lights, or gates that will be in place for less than six months does not constitute a "change in warning device" for purposes of this subpart.

■ 8. The heading of § 234.413 is revised to read as follows:

§ 234.413 Recordkeeping.

* * * * *

■ 9. In Appendix A to Part 234, place the entry for subpart F in alphabetical order, and revise the entries under subpart F to read as follows:

APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES [1]

Section	Violation	Willful violation
* * * * * * *		
Subpart F—Highway-Rail and Pathway Crossing Inventory Reporting		
§ 234.403 Submission of data to the Crossing Inventory:		
(b) Failure to complete Inventory Form (or electronic equivalent) in accordance with the Inventory Guide	$1,000	$2,000
(c) Class I railroad failure to submit crossing data to the Crossing Inventory electronically	1,000	2,000
§ 234.405 Submission of initial data to the Crossing Inventory for previously unreported crossings		
(a) Primary operating railroad failure to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for previously unreported crossing	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for previously unreported crossing	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report previously unreported crossing	1,000	2,000
§ 234.407 Submission of initial data to the Crossing Inventory for new crossings:		
(a) Primary operating railroad failure to timely submit an accurate Inventory Form (or electronic equivalent) to the Crossing Inventory for new crossing	2,500	5,000
(b) Operating railroad failure to timely submit accurate partial crossing data to the Crossing Inventory for new crossing	2,500	5,000
(c) Operating railroad failure to provide written notification to FRA that the primary operating railroad failed to timely report new crossing	1,000	2,000
§ 234.409 Submission of periodic updates to the Crossing Inventory:		
(a) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory for highway-rail or pathway crossing	2,500	5,000
(b) Operating railroad failure to timely submit up-to-date and accurate partial crossing data to the Crossing Inventory for highway-rail or pathway crossing	2,500	5,000
§ 234.411 Changes requiring submission of updated information to the Crossing Inventory:		
(a) Failure to timely report crossing sale to the Crossing Inventory	2,500	5,000
(b) Primary operating railroad failure to timely report crossing closure to the Crossing Inventory	2,500	5,000
(c) Primary operating railroad failure to timely submit up-to-date and accurate crossing data to the Crossing Inventory after change in crossing characteristics	2,500	5,000
§ 234.413 Recordkeeping	1,000	2,000
§ 234.415 Electronic Recordkeeping	1,000	2,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $105,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. To facilitate the assessment of penalty amounts, the specific types of violations of a given section are sometimes designated by the paragraph of the section (*e.g.*, "(a)") and a code not corresponding to the legal citation for the violation (*e.g.*, "(1)"), so that the complete citation in the penalty schedule is *e.g.*, "(a)(1)." FRA reserves the right to revise the citation of the violation in the Summary of Alleged Violations issued by FRA in the event of litigation.

Issued in Washington, DC, on May 20, 2016, under the authority set forth in 49 CFR 1.89(b).

Sarah E. Feinberg,

Administrator.

[FR Doc. 2016–13516 Filed 6–9–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150629562–6447–02]

RIN 0648–BF25

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Management in the Bering Sea Pollock Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area (FMP). Amendment 110 and this final rule improve the management of Chinook and chum salmon bycatch in the Bering Sea pollock fishery by creating a comprehensive salmon bycatch avoidance program. This action is necessary to minimize Chinook and chum salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maintaining the potential for the full harvest of the pollock total allowable catch (TAC) within specified prohibited species catch (PSC) limits. Amendment 110 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective July 11, 2016.

ADDRESSES: Electronic copies of Amendment 110 and the Environmental Assessment (EA)/Regulatory Impact Review (RIR) prepared for this action (collectively the "Analysis"), and the Environmental Impact Statement (EIS) prepared for Amendment 91 to the FMP may be obtained from *www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*. All public comments submitted during the comment periods may be obtained from *www.regulations.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to *OIRA_Submission@omb.eop.gov*; or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Alicia Miller, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

NMFS published the Notice of Availability for Amendment 110 in the **Federal Register** on January 8, 2016 (81 FR 897), with comments invited through March 8, 2016. NMFS published the proposed rule to implement Amendment 110 on February 3, 2016 (81 FR 5681), with comments invited through March 4, 2016. The Secretary of Commerce approved Amendment 110 on March 29, 2016. NMFS received 15 comment letters containing 27 unique substantive comments on the FMP amendment and proposed rule. A summary of these comments and the responses by NMFS are provided under the heading Response to Comments below.

A detailed review of the provisions of Amendment 110, the proposed regulations to implement Amendment 110, and the rationale for these regulations is provided in the preamble to the proposed rule (81 FR 5681, February 3, 2016) and is briefly summarized in this final rule. The preamble to the proposed rule describes 1) the Bering Sea pollock fishery, 2) salmon bycatch in the Bering Sea pollock fishery, 3) the importance of salmon in western Alaska, 4) management of salmon bycatch in the BSAI, 5) objectives of and rationale for Amendment 110 and the implementing regulations, 6) proposed salmon bycatch management measures, 7) proposed changes to monitoring and enforcement requirements, and 8) other regulatory changes in the proposed rule.

Amendment 110 and this final rule apply to owners and operators of catcher vessels, catcher/processors, motherships, inshore processors, and the six Western Alaska Community Development Quota (CDQ) Program groups participating in the pollock (*Gadus chalcogrammus*) fishery in the Bering Sea. The Bering Sea pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA defines the sectors of the Bering Sea pollock fishery, determines which vessels and processors are eligible to participate in each sector, establishes allocations of Bering Sea pollock total TAC to each sector as directed fishing allowances, and establishes excessive share limits for harvesting pollock. As required by section 206(b) of the AFA, NMFS allocates a specified percentage of the Bering Sea pollock TAC to each of the three AFA fishery sectors: 1) 50 percent to catcher vessels delivering to inshore processors, called the "inshore sector"; 2) 40 percent to catcher/processors and catcher vessels delivering to those catcher/processors, called the "catcher/processor sector"; and 3) 10 percent to catcher vessels harvesting pollock for processing by motherships, called the "mothership sector."

Pollock is harvested with trawl vessels that tow large nets through the water. Pollock can occur in the same locations as Chinook salmon and chum salmon. Consequently, Chinook salmon and chum salmon are incidentally caught in the nets as fishermen target pollock.

Section 3 of the Magnuson-Stevens Act defines bycatch as fish that are harvested in a fishery, which are not sold or kept for personal use. Therefore, Chinook salmon and chum salmon caught in the pollock fishery are considered bycatch under the Magnuson-Stevens Act, the FMP, and NMFS regulations at 50 CFR part 679. Bycatch of any species, including discard or other mortality caused by fishing, is a concern of the Council and NMFS. National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act require the Council to recommend, and NMFS to implement, conservation and management measures that, to the extent practicable, minimize bycatch and bycatch mortality.

The bycatch of culturally and economically valuable species like Chinook salmon and chum salmon, which are fully allocated and, in some cases, facing conservation concerns, are categorized as prohibited species under the FMP. They are the most regulated and closely managed category of bycatch in the groundfish fisheries off Alaska, and specifically in the pollock fishery. In addition to Pacific salmon, other species including steelhead trout, Pacific halibut, king crab, Tanner crab, and Pacific herring are also classified as prohibited species in the groundfish fisheries off Alaska. Fishermen must avoid salmon bycatch and any salmon caught must either be donated to the Prohibited Species Donation (PSD) Program (see § 679.26), or returned to Federal waters as soon as practicable, with a minimum of injury, after an observer has determined the amount of salmon bycatch and collected any scientific data or biological samples.

The Council and NMFS have been concerned about the potential impact of Chinook and chum salmon bycatch on returns to western Alaska given the relatively large proportion of bycatch from western Alaska that occurs in the pollock fishery. Chinook salmon and chum salmon destined for western Alaska support commercial, subsistence, sport, and personal use fisheries. The State of Alaska (State) manages the salmon commercial, subsistence, sport, and personal use fisheries. The Alaska Board of Fisheries adopts regulations through a public process to conserve salmon and to allocate salmon to the various users. The first management priority is to meet spawning escapement goals to sustain salmon resources for future generations. The next priority is for subsistence use under both State and Federal law. Salmon is a primary subsistence food in some areas. Subsistence fisheries management includes coordination with U.S. Federal agencies where Federal rules apply under the Alaska National Interest Lands Conservation Act. Section 3.4 of the Analysis describes the State and Federal management process. Appendix A–4 of the Analysis provides an overview of the importance of subsistence salmon harvests and commercial salmon harvests.

Over the last 20 years, the Council and NMFS have adopted and

implemented several management measures to limit salmon bycatch in the BSAI trawl fisheries, and particularly in the pollock fishery. Most recently, NMFS implemented Amendment 84 to the FMP to enhance the effectiveness of salmon bycatch measures (72 FR 61070, October 29, 2007) and Amendment 91 to the FMP to provide incentives to minimize Chinook salmon bycatch to the extent practicable (75 FR 53026, August 30, 2010).

Amendment 84 exempted pollock vessels from Chinook Salmon Savings Area and Chum Salmon Savings Area closures in the Bering Sea if they participate in an intercooperative agreement (ICA) to reduce salmon bycatch. Amendment 84 also exempted vessels participating in non-pollock trawl fisheries in the Bering Sea from area closures because these fisheries intercept minimal amounts of salmon. Additional information on the provisions of Amendment 84 is provided in the final rule prepared for that action (72 FR 61070, October 29, 2007).

Amendment 91 was implemented to manage Chinook salmon bycatch in the pollock fishery. Amendment 91 combined a limit on the amount of Chinook salmon that may be caught incidentally with a novel approach designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years, while providing the fleet the flexibility to harvest the total allowable catch (TAC) of Bering Sea pollock. Amendment 91 removed Chinook salmon from the Amendment 84 regulations, and established two Chinook salmon PSC limits for the pollock fishery—60,000 and 47,591 Chinook salmon. Under Amendment 91, the PSC limit is 60,000 Chinook salmon if some, or all, of the pollock fishery participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA). An IPA establishes a program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA is voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA is subject to a restrictive opt-out allocation (also called a backstop cap). Since Amendment 91 was implemented, all AFA vessels (*i.e.*, vessels authorized to directed fish for Bering Sea pollock) have participated in an IPA. Additional information on the provisions of Amendment 91 is provided in the final rule prepared for that action (75 FR 53026, August 30, 2010).

The following sections describe 1) the salmon bycatch management measures implemented with Amendment 110 and this final rule, 2) the changes from proposed to final rule, and 3) response to comments.

Amendment 110 and This Final Rule

The objective of Amendment 110 and this final rule is to create a comprehensive salmon bycatch avoidance program that works more effectively than current management to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch in the pollock fishery. The Council and NMFS recognize that salmon are an extremely important resource to Alaskans who depend on local fisheries for their sustenance and livelihood.

Amendment 110 and this final rule adjust the existing Chinook salmon bycatch program to incorporate revised chum salmon bycatch measures into the existing IPAs. Amendment 110 and this final rule are designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of Alaskan chum salmon runs. Historically, western Alaska chum salmon run strength has varied substantially and chum salmon are important to the subsistence lifestyle of Alaskans. Amendment 110 and this final rule also provide additional protections to chum salmon stocks other than those from western Alaska, recognizing that most of the non-western Alaska chum salmon are likely from Asian hatcheries.

In addition, the Council and NMFS sought to provide greater incentives to avoid Chinook salmon by strengthening existing incentives during times of historically low Chinook salmon abundance in western Alaska. Thus, the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91. Multiple years of historically low Chinook salmon abundance have resulted in significant restrictions for subsistence users in western Alaska and failure to achieve conservation objectives. While Chinook salmon bycatch impact rates have been low under Amendment 91, the Council and NMFS determined that there is evidence that improvements could be made to ensure the program is reducing Chinook salmon bycatch at low levels of salmon abundance. An analysis of the possible improvements is provided in Section 3.5.3 of the Analysis.

Amendment 110 and this final rule—

- incorporate chum salmon avoidance into the IPAs established under Amendment 91 to the FMP, and remove the non-Chinook salmon bycatch reduction ICA previously established under Amendment 84 to the FMP;
- modify the requirements for the content of the IPAs to increase the incentives for fishermen to avoid Chinook salmon;
- change the seasonal apportionments of the pollock TAC to allow more pollock to be harvested earlier in the year when Chinook salmon PSC use tends to be lower;
- reduce the Chinook salmon PSC limit and performance standard in years with low Chinook salmon abundance in western Alaska; and
- improve the monitoring of salmon bycatch in the pollock fishery.

Incorporate Chum Salmon Avoidance Into the Incentive Plan Agreements (IPAs)

Amendment 110 and this final rule incorporate chum salmon avoidance, and the important chum salmon avoidance features of the Amendment 84 ICAs, into the IPAs established under Amendment 91. This final rule removes the Amendment 84 implementing regulations at § 679.21(g). However, Amendment 110 and this final rule maintain the current non-Chinook salmon PSC limit of 42,000 fish and the closure of the Chum Salmon Savings Area to the pollock fishery when the 42,000 non-Chinook salmon PSC limit has been reached. Vessels that participate in an IPA are exempt from the Chum Salmon Savings Area closure. The purpose of maintaining the non-Chinook salmon PSC limit and the Chum Salmon Savings Area closure is to provide additional incentives for vessels to join an IPA, and to serve as back-stop chum salmon bycatch management measures for those vessels that choose not to participate in an IPA.

To incorporate chum salmon into the IPAs, this final rule modifies the required contents of the IPAs at § 679.21(f)(12), to include the following eight provisions.

- Incentives for the operator of each vessel to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.
- An explanation of how the incentives to avoid chum salmon do not increase Chinook salmon bycatch.
- Rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both.
- An explanation of how the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what might have occurred in absence of the incentive program.
- An explanation of how the incentive measures in the IPA promote Chinook salmon savings and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance and influence the vessel operator's decisions to avoid Chinook salmon and chum salmon.
- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard for the sector in which the vessel participates.
- An explanation of how the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.
- The rolling hot spot program for salmon bycatch avoidance and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to at least one third party group representing western Alaskans who depend on salmon and do not directly fish in a groundfish fishery.

This final rule also adds reporting requirements to the IPA Annual Report at § 679.21(f)(13) to require the IPA representative to describe how the IPA addresses the goals and objectives in the IPA provisions related to chum salmon. Section 3.5.2 of the Analysis provides more detail on adding elements of chum salmon bycatch management.

Modify the IPAs To Increase the Incentives To Avoid Chinook Salmon

Amendment 110 and this final rule modify the IPAs to increase the incentives to reduce Chinook salmon bycatch within the IPAs. To incorporate additional incentives for Chinook salmon savings into the IPAs, this final rule modifies the required contents of the IPAs at § 679.21(f)(12) to include the following six provisions.

- Restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.
- Requirement that vessels enter a fishery-wide in-season salmon PSC data sharing agreement.
- Requirement for a rolling hotspot program that operates throughout the entire pollock A season (January 20 through June 10) and B season (June 10 through November 1).
- Requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 through March 31 and from September 1 until the end of the B season.
- For savings-credit-based IPAs, limitation on the salmon savings credits to maximum of three years.
- Restrictions or performance criteria to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months, thereby avoiding late-season spikes in salmon PSC.

Revise the Bering Sea Pollock Seasonal Allocations

This final rule changes the allocation of the Bering Sea pollock TAC between the A and B seasons at § 679.20(a)(5)(i)(B)(*1*). This final rule allocates five percent of the pollock allocation from the B season to the A season, resulting in new seasonal apportionments of 45 percent of the TAC in the A season and 55 percent of the TAC in the B season. This final rule maintains the rollover of any remaining pollock from the A season to the B season. The revised season allocation works in conjunction with the new IPA requirements to shift effort out of the late B season and provide fishery participants more flexibility to avoid Chinook salmon PSC when it tends to be higher in the late B season.

Reduce the Chinook Salmon Performance Standard and PSC Limit in Years of Low Chinook Salmon Abundance in Western Alaska

Amendment 110 and this final rule add a new lower Chinook salmon performance standard and PSC limit for the pollock fishery in years of low Chinook salmon abundance in western Alaska. The Council and NMFS determined that a lower performance standard and PSC limit would be appropriate at low levels of Chinook salmon abundance in western Alaska because most of the Chinook salmon bycatch comes from western Alaska. These provisions work in conjunction with the changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year, NMFS will determine whether Chinook salmon is at low abundance based on information provided by the State. By October 1 of each year, the State will provide a Chinook salmon abundance using the 3-System Index for western Alaska based on the post-season in-river Chinook salmon run size for the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping. When this index is less than or equal to 250,000 Chinook salmon, NMFS will apply the new lower performance standard and low PSC limit for the following year.

If NMFS determines it is a low Chinook salmon abundance year, NMFS will set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon for the following fishing year. NMFS will publish the lower PSC limit and performance standard in the annual harvest specifications. In years with no determination of a low Chinook salmon abundance, NMFS will manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit.

The inclusion of a lower PSC limit and performance standard is based on the need to reduce bycatch when these Chinook salmon stocks are low in order to minimize the impact of the pollock fishery on the stocks. Any additional Chinook salmon returning to Alaska rivers improves the ability to meet the State's spawning escapement goals, which is necessary for long-term sustainability of Chinook salmon and the people reliant on salmon fisheries. While the performance standard is the functional limit in the IPAs, the Council and NMFS determined that the 60,000 PSC limit should also be reduced given the potential for decreased bycatch reduction incentives should a sector exceed its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

Changes to Monitoring and Enforcement Requirements

This final rule amends the monitoring and enforcement regulations to clarify and strengthen those implemented under Amendment 91. These changes—

- revise salmon retention and handling requirements on catcher vessels;
- improve observer data entry and transmission requirements aboard catcher vessels;
- clarify the requirements applicable to viewing salmon in a storage container; and
- clarify the requirements for the removal of salmon from an observer sampling station at the end of a haul or delivery.

This final rule also makes a number of other revisions to the regulations for clarity and efficiency. All of these regulatory changes are detailed in the preamble to the proposed rule (81 FR 5681, February 3, 2016).

Change From Proposed to Final Rule

NMFS made no changes to the final rule in response to comments received on the proposed rule.

NMFS made three minor changes in this final rule to reflect final rules published after NMFS published the proposed rule for Amendment 110. First, this final rule removed the definition of prohibited species quota (PSQ) reserve because that definition was corrected in the final rule to implement halibut PSC limit reductions under Amendment 111 to the FMP (81 FR 24714, April 27, 2016). Second, this final rule revises the heading for § 679.21(e) that was modified under regulations that implemented Amendment 111 to the FMP to clarify that paragraph (e) applies to PSC limits for BSAI crab and herring. Third, this final rule adds the parenthetical phrase "(except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section)" to § 679.51(e)(1)(iii)(B) to be consistent with the final rule to allow qualifying small catcher/processors to be in the partial observer coverage category under the North Pacific Groundfish and Halibut Observer Program (81 FR 17403, March 29, 2016).

Additionally, this final rule makes a minor editorial clarification to revise § 679.21(f)(2) to clarify that the State will provide to NMFS an estimate of Chinook salmon abundance using a the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

Response to Comments

NMFS received 15 comment letters containing 27 specific comments, which are summarized and responded to below. The commenters consisted of individuals, representatives of the pollock fishery participants, a representative of groundfish fishery participants, Alaska Native organizations, and the State.

Comment 1: We support the comprehensive salmon bycatch avoidance program outlined in the proposed rule for Amendment 110 and believe it will be more effective in meeting the Council's objectives, including minimizing salmon bycatch, responding to changing conditions of abundance, and avoiding Alaska-origin salmon stocks.

Response: NMFS acknowledges the comment.

Comment 2: Consistent genetic stock composition data show that Alaska-origin stocks continue to comprise a majority of the Chinook salmon bycatch and almost a quarter of the chum salmon bycatch in the Bering Sea pollock fishery. Recognizing the importance of these stocks to western Alaska commercial and subsistence users, and our increased understanding of the areas and times of year in which Alaska Chinook and chum salmon stocks are more predominate in the bycatch, Amendment 110 provides the necessary flexibility to respond to and incorporate new information in the bycatch avoidance program.

Response: NMFS acknowledges the comment.

Comment 3: Reducing salmon bycatch in the Bering Sea pollock fishery is critical to the future of Chinook salmon runs. Amendment 110 is urgently needed because of the dire status of Chinook salmon stocks in western Alaska. Amendment 110 and the proposed regulations are an important step in further reducing salmon bycatch in the pollock fishery. Amendment 110 will continue to lower Chinook salmon bycatch, however, constant vigilance is required to ensure that the Chinook salmon PSC limits established in regulation are never actually met.

Response: NMFS acknowledges the comment.

Comment 4: It is essential to integrate chum salmon bycatch measures into the IPAs and include the accountability and transparency measures.

Response: Amendment 110 and this final rule incorporate chum salmon avoidance measures into the IPAs established for Chinook salmon bycatch management under Amendment 91. Incorporating chum salmon into the IPAs provides measures to prevent high chum salmon bycatch, while also giving participants in the pollock fishery the flexibility to use coordinated management under the IPAs to adapt quickly to changing conditions. The Council determined and NMFS agreed that Amendment 110 and this final rule strike an appropriate balance between regulatory requirements and adaptive management necessary for chum salmon bycatch management.

Comment 5: Make sure the theoretical salmon avoidance schemes proposed do not make matters worse for Chinook salmon in the attempt to avoid chum salmon.

Response: The chum salmon-specific requirements in the Amendment 84 implementing regulations sometimes prevented fishery participants from making decisions to avoid Chinook salmon when vessels encountered both chum salmon and Chinook salmon. Adding chum salmon measures to the IPAs provides vessel operators with the flexibility to respond to changing conditions and provides greater incentives to reduce bycatch of both salmon species, thereby making salmon bycatch management more effective, comprehensive, and efficient.

Comment 6: The measures designed to reduce Chinook salmon bycatch in the proposed rule provide useful tools to fine-tune the IPAs to mandate greater bycatch reduction.

Response: NMFS agrees. Amendment 110 and this final rule modify the IPAs to increase the incentives for fishermen to avoid Chinook salmon. The Council and NMFS recognize that the IPAs were effective at providing incentives for each vessel operator to avoid Chinook salmon, but that additional measures were necessary to address higher Chinook salmon PSC rates observed in October (the last month when the pollock fishery is authorized to operate). Amendment 110 and this final rule also address concerns with individual vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time. The Council and NMFS want to ensure the use of salmon excluder devices (*i.e.*, gear modifications that are designed to exclude salmon bycatch while retaining pollock) and a rolling hotspot program. These new provisions increase the incentives to reduce Chinook salmon bycatch within the IPAs, provide an opportunity for IPAs to increase vessels' responsiveness in October, and improve performance of individual vessels.

Comment 7: The entire history of the Bering Sea pollock fishery and its impacts on western Alaska salmon has been a disaster and it is within this context that we remain opposed to the allowance of any salmon bycatch during the pollock fishery. Driving bycatch continuously lower, with an ultimate goal of zero, is essential. NMFS should prioritize its responsibilities based on moral and ethical obligations, in addition to its legal obligations, to those tribal communities whose very survival depends on a future of salmon returning in sufficient numbers to their rivers.

Response: The Council recommended and NMFS approved Amendment 110 because it best balances the need to minimize salmon bycatch to the extent practicable while providing the pollock fleet the flexibility to harvest the pollock TAC. NMFS has complied with all applicable laws, executive orders, and international obligations in approving and implementing Amendment 110. Preventing all salmon bycatch would not meet the purpose and need for this action and would not meet NMFS' obligations under the Magnuson-Stevens Act.

While salmon bycatch in the pollock fishery may be a contributing factor in the decline of salmon, NMFS expects the numbers of the ocean bycatch that would have returned to western Alaska would be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook or chum salmon bycatch. For Chinook salmon, Section 3.5.1 of the Analysis explains that the Chinook salmon bycatch expected to have returned to western Alaska rivers is approximately 2.3 percent of coastal western Alaska run size in recent years. For chum salmon, Section 3.5.1 of the Analysis explains that the chum salmon bycatch expected to have returned to western Alaska rivers is approximately 0.5 percent of the coastal western Alaska run size in recent years. Under Amendment 110 and this final rule, these impact rates are anticipated to be further reduced as the pollock fleet improves its ability to avoid salmon at all times.

Although the reasons for the decline of Chinook salmon and some runs of chum salmon are not completely understood, scientists believe they are predominately natural. Changes in ocean and river conditions, including unfavorable shifts in temperatures and food sources, likely cause poor survival of Chinook salmon and some runs of chum salmon. The EIS prepared for Amendment 91 provides more detail on the decline of salmon in western Alaska (see **ADDRESSES**). Section 3.4 of the Analysis describes the stocks status of Chinook and chum salmon.

Comment 8: A key component of Amendment 110 and the proposed rule is to reduce the performance standard and PSC limit in years of low Chinook salmon abundance in western Alaska. The limits set in Amendment 91 were far too high to ensure a healthy future for western Alaska salmon runs. The mechanism to lower these limits in times of low Chinook salmon abundance is the minimum step NMFS must take at this time to fulfill numerous legal responsibilities to reduce the allowable salmon bycatch in the pollock fishery. Taking action now to lower the PSC limit and performance standard in years of extremely low abundance is a critical step to ensure that bycatch is reduced in the years when every source of mortality must be reduced.

Response: Amendment 110 and this final rule add a new lower Chinook salmon performance standard and PSC limit for the pollock fishery in years of low Chinook salmon abundance in western Alaska. These provisions work in conjunction with the changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

Each year, NMFS will determine whether Chinook salmon is at low abundance based on information provided by the State using the 3-System Index. When this index is less than or equal to 250,000 Chinook salmon, NMFS will apply the new lower performance standard and reduced PSC limit for the following year. If NMFS determines it is a low Chinook salmon abundance year, NMFS will set the performance standard at 33,318 Chinook salmon and the PSC limit at 45,000 Chinook salmon for the following fishing year. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

In years with no determination of low Chinook salmon abundance, NMFS will manage under the current 47,591 Chinook salmon performance standard and 60,000 Chinook salmon PSC limit. The Council determined, and NMFS agrees, that these limits are appropriate given that the IPAs maintain bycatch well below these limits. Average Chinook salmon bycatch has been approximately 16,647 Chinook salmon per year since implementation of Amendment 91 in 2011.

Comment 9: Amendment 110 reduces the number of Chinook salmon that can be taken as bycatch in years of very low Chinook salmon abundance in western Alaska, which is critical to maintaining objectives under National Standard 9. In years of very low Chinook salmon abundance, the State struggles to meet salmon escapement goals in important western Alaska systems, and only does so by prohibiting any directed Chinook salmon harvest for subsistence, as well as restricting subsistence harvest of other species, such as chum salmon, to minimize Chinook salmon mortalities.

Response: NMFS acknowledges the comment.

Comment 10: Amendment 110 links bycatch limits to a broad index of Chinook salmon abundance based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping — the 3-System Index. The 3-System Index includes significant river systems for subsistence fisheries in Alaska and provides a broad regional representation of western Alaska Chinook salmon stocks. Any additional fish returning to these rivers in years of very low abundance improves the State's ability to meet escapement goals.

The Analysis clearly outlined the objectives that proposed indices were evaluated against, and the 3-System Index was identified as the most robust and appropriate index for this purpose. The primary component of the 3-System Index is preliminary escapement information from total run reconstruction using methods outlined in State publications. The State will provide the 3-System Index estimate to NMFS annually by October 1 and is committed to maintaining a transparent and accessible process for stakeholders as the State improves its understanding of these systems. The State will present any substantive changes to the methods used in developing the 3-System Index to the Council and its Scientific and Statistical Committee (SSC).

Response: NMFS acknowledges the comment.

Comment 11: The provision to reduce the PSC limit and performance standard in years of low Chinook salmon abundance based on the State's 3-System Index is unwarranted, unnecessary, not sound science, and not responsible management. It unfairly targets and penalizes the pollock fishery for circumstances beyond its control. Science has shown that there is not a relationship between Chinook salmon bycatch in the pollock fishery and the size of the runs in coastal western Alaska.

Response: NMFS disagrees. The provisions to reduce the Chinook salmon PSC limit and performance standard in years of low abundance are necessary to achieve the program goals. The Council and NMFS determined that a lower performance standard and PSC limit are appropriate at low levels of Chinook salmon abundance in western Alaska because most of the Chinook salmon bycatch in the pollock fishery comes from western Alaska. These provisions work in conjunction with the changes to the IPA requirements to ensure that Chinook salmon bycatch is avoided at all times, particularly at low abundance levels.

The Council and State conducted an extensive analysis about the appropriate index to use to indicate a low Chinook salmon abundance year. Low Chinook salmon abundance years are characterized by difficulty meeting escapement goals and severely restricted or fully closed in-river salmon fisheries. Section 2.6 of the Analysis evaluates various indices and shows that the 3-System Index (Unalakleet, Upper Yukon, and Kuskokwim river systems) meets the objectives. The Analysis also shows a clear natural break in the data

analyzed indicating that when the index is less than 250,000 Chinook salmon, the index is strongly correlated to years with historically low run sizes. These river systems provide a broad regional representation of stocks and signify very important river systems and subsistence fisheries in western Alaska. Subsistence harvests from these three river systems account for up to 87 percent of the statewide subsistence harvest of Chinook salmon. As shown in the Analysis, having more than one system in the index and having broad regional representation makes the index more robust and able to account for changing environmental conditions.

The inclusion of a lower PSC limit and performance standard is based on the need to reduce bycatch when the abundance of Chinook salmon stocks in western Alaska is low, in order to minimize the impact of the pollock fishery on the stocks. Any additional Chinook salmon returning to Alaska rivers improves the ability to meet the State's spawning escapement goals, which is necessary for long-term sustainability of Chinook salmon, and to meet subsistence management objectives for the people reliant on salmon fisheries. While the performance standard is the functional limit in the IPAs, the Council and NMFS determined that the 60,000 PSC limit should also be reduced given the potential for decreased bycatch reduction incentives if a sector exceeds its performance standard before the PSC limit is reached. The reduced PSC limit is intended to encourage vessels to avoid bycatch to a greater degree in years of low Chinook salmon abundance, and to set a maximum permissible PSC limit that reduces the risk of adverse impact on stocks in western Alaska during periods of low abundance.

See the response to Comment 7 for a discussion of the relationship between Chinook salmon bycatch in the pollock fishery and the size of the runs in coastal western Alaska.

Comment 12: The dramatic changes the Council made to the Chinook salmon abundance index, Chinook salmon PSC limit, and the performance standard between initial review in December 2014 and final action in April 2015 are hard to track and are not well documented in the final Analysis.

Response: Sections 2.6.3 and 2.6.4 of the Analysis discuss the management measures to reduce the PSC limit and performance standard in years of low Chinook salmon abundance (see **ADDRESSES**). Section 2.6.4 explains the history of the 3-System Index and the analysis the State undertook to develop the appropriate Chinook salmon abundance index for determining low Chinook salmon abundance in western Alaska.

Comment 13: There is no discussion in the EA about the methods used to determine a "natural break." The EA identifies 250,000 Chinook as a natural break in the "data". However, the data presented is actually the output of a model used to assess Chinook salmon run size. A formal definition for this threshold is required, as there is no guarantee that future models, or revisions to input data, will result in the same natural break in the model output. Instead of the 250,000 Chinook salmon threshold, NMFS should define (in probabilistic terms) a threshold to set the performance standard and PSC limit, rather than identifying an arbitrary natural break in future model output.

Response: Section 2.6.4 of the Analysis provides a description of the methods for use of in-river run reconstructions with the 3-System Index and rationale for this choice of index and for the 250,000 Chinook salmon threshold. The evaluation of the estimated Chinook salmon run size by year is included in the Analysis and represents the best available scientific information.

In-river run reconstructions represent an estimate of all fish harvested in the river and respective coastal areas plus escapement. The relationship upon which the threshold was determined is the relationship between final in-river run abundance of the 3-System Index and the bycatch of adult equivalent Chinook salmon attributed to all western Alaska stocks. In Section 2.6.4.2 of the Analysis, each point in Figure 8 represents a single year showing this relationship during the years analyzed. The years were referred to in the Analysis as data points for purposes of describing the clustering of these years below a breakpoint which falls above 200,486 Chinook salmon and below 286,692 Chinook salmon (see Table 6 in Section 2.6.4.5 of the Analysis).

The clustering of years below 200,486 Chinook salmon also matches years which have been categorized as low abundance years for all three systems due to documented failures to meet escapement goals, restrictions on subsistence harvests, or declarations of Federal fishery resource disasters under the provisions of section 312 of the Magnuson-Stevens Act (Section 2.6.4 of the Analysis). Based on this information, the Council determined that a threshold of 250,000 Chinook salmon was an appropriate value within this range to represent a year when Chinook salmon were in a low abundance and as a threshold to determine that the lower PSC limit and lower performance standard would be in place for the subsequent year.

This information was also used by the Council to select the 3-System Index. As explained in Section 2.6.4 of the Analysis, the 3-System index is a transparent and annually updated index that relies on easily accessible information from reports published by the State.

The management measure to reduce the PSC limit and performance standard is tied to the selected threshold of 250,000 Chinook salmon based on the 3-System Index. No re-estimation of the threshold is planned on an annual basis or in subsequent years.

Comment 14: Many comments expressed concerned over a letter the State had sent to NMFS on September 17, 2015, before Amendment 110 was approved and implemented. In this letter, the State provided an index estimate of 252,000 Chinook salmon to provide NMFS, the Council, and the public with a preview of Chinook salmon abundance using the 3-System Index for 2016. Commenters are concerned that this estimate reflected changes the State made in how it modeled abundance from the methods outlined in the Analysis. The State subsequently sent another letter on March 3, 2016, revising the index estimate to 279,000 Chinook salmon. The State made this revision to the index estimate based largely on the public review of the 3-System Index used to inform the State's September 17, 2015, letter.

Response: In their March 3, 2016, letter, the State explains that the September 2015 letter's post-season run size estimate for the 3-System Index used a Kuskokwim River run reconstruction estimate that employed a modification to the model that had not yet been reviewed by the Council. As such, the State amended the 2015 post-season run size estimate to reflect the original version of the model and has committed to using the original model in the 3-System Index until the Council determines the modification is appropriate to use.

Further, the State explains in their comment letter submitted on the proposed rule (see **ADDRESSES**) that the primary components of the post-season run index are preliminary escapement information and the total run reconstruction methods outlined in State publications. The State is committed to maintaining a transparent and accessible process for stakeholders, and the State will present any

substantive changes to the methods used in developing the 3-System Index to the Council and its SSC.

Comment 15: Clarify in the final rule a transparent public process for ensuring that the State provides the data, assumptions, and methods it uses to generate the 3-System Index to NMFS, the public, and the Council.

Response: NMFS agrees that a transparent public process is necessary for ensuring that the 3-System Index represents the best available scientific information. NMFS is committed to working with the Council and the State to define a transparent process to ensure that the data, assumptions, and methods used in the 3-System Index continue to incorporate the best available scientific information and provide a reliable indicator of Chinook salmon abundance necessary to reduce the PSC limit and performance standard. NMFS will work with the State and the Council to refine this process before the State provides the index for the 2017 fishing year on October 1, 2016.

Comment 16: The State must use the 3-System Index and associated methods and models described the Analysis and recommended by the Council in April 2015. Any changes to the 3-System Index and associated methods and models should be vetted through the Council and its SSC. Other models and methods may produce different run size estimates and a different threshold of low abundance. Structural changes to the run-reconstruction model would have resulted in a different "natural break" in the data that was used to determine the threshold for the 3-System Index. There are no provisions in the proposed rule to accommodate changes in the threshold that are associated with future changes to the run-reconstruction model, or revisions to the historical input data.

Response: The Council and State conducted an extensive analysis about the appropriate index to indicate a low Chinook salmon abundance year. Low Chinook salmon abundance years are characterized by difficulty meeting escapement goals and in-river salmon fisheries being severely restricted or fully closed. Section 2.6 of the Analysis evaluates various indices and shows that the 3-System Index (Unalakleet, Upper Yukon, and Kuskokwim river systems) meets the objectives. These river systems provide a broad regional representation of stocks and signify very important river systems and subsistence fisheries in western Alaska. Subsistence harvests from these three river systems account for up to 87 percent of the statewide subsistence harvest of Chinook salmon. As shown in the Analysis, having more than one system in the index and having broad regional representation makes the index more robust. The Analysis also shows a clear natural break in the data such that index sizes less than 250,000 Chinook salmon correspond to years with historically low run sizes.

NMFS agrees that any changes to the 3-System Index or the methods used should have a transparent review process by the Council and its SSC. Scientific methods change over time based on the best available scientific information. NMFS is committed to working with the State and the Council to define a transparent process for review of the State's 3-System Index and associated scientific methods. However, neither Amendment 110 nor the proposed rule prescribes the process to review the State's scientific methods on an ongoing basis, or that the State must use the same scientific methods that were used to develop the 3-System Index. NMFS does not prescribe scientific methods for stock assessments in Federal regulations. To do so would preclude NMFS, the Council, and the State from incorporating the best scientific information available into the stock assessment.

In recommending Amendment 110, the Council chose a threshold of 250,000 Chinook salmon on which to determine when Chinook salmon are at low abundance. In order to change that threshold amount, the Council would need to amend the FMP and NMFS would need to amend the regulations. The process for changing the 250,000 Chinook salmon threshold would be the same as for any FMP amendment with implementing regulations.

Comment 17: NMFS does not have the latitude to just receive and apply the State's estimate of Chinook salmon abundance from the 3-System Index without analysis to independently verify the estimates. Applying the State's estimate would constitute delegation of management to the State of vessels fishing for pollock in the exclusive economic zone, which cannot occur because the FMP does not authorize delegation to the State. The proposed rule grants the State sole authority over the annual run size estimate and does not contemplate independent verification of the estimate by NMFS. NMFS compares the estimate to the low abundance threshold fixed in the regulations to determine whether or not a year is one of low Chinook salmon abundance, which in turn determines the following year's Chinook salmon PSC limit and performance standard applicable to vessels participating in the Federal pollock fishery. That determination does not involve any discretion on the part of NMFS.

Response: Each year, NMFS will rely on a Chinook salmon abundance estimate from the State using the established 3-System Index as the best available scientific information on Chinook salmon abundance in western Alaska. The 3-System Index was reviewed by the Council's SSC and recommended by the Council. NMFS relies on the State for this abundance estimate because the State has management authority over salmon in western Alaska and collects and analyzes the scientific data necessary to estimate Chinook salmon abundance. Relying on the State to provide this type of scientific information is not the same as delegating management authority of the pollock fishery to the State. NMFS manages, and will continue to manage, the pollock fishery. In furtherance of that effort, NMFS will use information collected by the State. Specifically, NMFS will use the 3-System Index for Chinook salmon abundance to apply the appropriate PSC limit and performance standard. The PSC limit and performance standard are the measures the Council and NMFS determined were required in low Chinook salmon abundance years to achieve the program goals. NMFS will publish the PSC limit and performance standard in the annual harvest specifications. That is clearly a management action undertaken by NMFS, and not the State.

Under Amendment 110, it is each pollock vessel's responsibility to avoid salmon bycatch at all times. If fishery participants maintain their bycatch below their PSC limit, then these measures achieve their purpose without closing the pollock fishery. Alternatively, the Council could have recommended to permanently reduce the performance standard and PSC limit in order to achieve the goals of encouraging vessels to avoid bycatch to a greater degree in years of low abundance and reducing the risk of adverse impact on stocks in western Alaska during periods of low abundance. Instead, by using the 3-System Index, the Council recommended a reduced PSC limit and performance standard only during years of low Chinook salmon abundance.

Comment 18: To avoid unauthorized delegation, the proposed rule should be revised to require that NMFS annually confirm that the State estimate was calculated using the Council-approved index and models from April 2015 and reproduce the estimate using the data provided by the State. These standards would address the requirement that, when a core agency function—such as

PSC management—is involved, there must be Federal standards in place and a process for NMFS to review the application of those standards.

Response: NMFS did not change this final rule in response to this comment. The Council designed, and this final rule implements, a program where the State provides NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska. Neither Amendment 110 nor the proposed rule constrains the State to use the methods, data sources, and models developed for Council final action in April 2015. To do so would be inconsistent with the manner in which science develops generally, and would result in an index that may fail to incorporate the best scientific information available.

NMFS relies on the State to produce the 3-System Index annually because the State has management authority over salmon and collects and analyzes the scientific data necessary to estimate Chinook salmon abundance. While NMFS will review the 3-System Index provided each October 1, NMFS will not recalculate the State's Chinook salmon abundance estimate each year.

Comment 19: What action would NMFS take if the State is unable to provide an estimate of Chinook salmon abundance by October 1? NMFS should not determine low abundance if the State does not timely deliver an estimate, whether because of difficulty obtaining relevant data, budget restrictions, or other reason. The final rule should specify that NMFS will not determine it is a year of low Chinook salmon abundance if the State does not provide a Chinook salmon abundance estimate by October 1. If no such determination is made, the 60,000 Chinook salmon PSC limit and 47,591 Chinook salmon performance standard would apply.

Response: Absent a letter from the State showing Chinook salmon abundance under the 3-System Index is equal to or below the 250,000 Chinook salmon threshold, the 60,000 PSC limit and 45,591 performance standard will remain in effect. The State's reporting of the 3-System Index by October 1 is necessary to determine if it is a low Chinook salmon abundance year and to reduce the PSC limit and performance standard in the next fishing year. A change to this final rule is not necessary.

Comment 20: Change the text of Amendment 110 to state that NMFS will verify the State's estimate of abundance and that the State must use the index approved by the Council at its April 2015 meeting.

Response: NMFS cannot change amendment text after it has been transmitted by the Council and NMFS as published in the Notice of Availability. Under section 304(a) of the Magnuson-Stevens Act, NMFS is limited to approval, disapproval, or partial approval of a fishery management plan amendment. If NMFS disapproves or partially approves an amendment, NMFS has to notify the Council and specify the applicable law with which the amendment is inconsistent, the nature of such inconsistencies, and make recommendations to conform to applicable law. The Council may then submit a revised amendment to the Secretary of Commerce. Amendment 110 and the provision to reduce the PSC limit and performance standard are consistent with applicable law, and the commenter did not recommend disapproval or partial disapproval of Amendment 110.

NMFS responds to the issue of verifying the State's Chinook salmon abundance index in the response to Comment 17. NMFS responds to the issue of requiring the State to use the index approved by the Council at its April 2015 meeting in the response to Comment 16.

Comment 21: Commenters made a number of technical comments on the State's 3-System Index and the methods and models that the State used to develop the index and to generate the September 17, 2015, index estimate of 252,000 Chinook salmon.

Response: The State can modify the 3-System Index over time to represent the best available scientific information. These comments concerning the intricacies of the State's scientific methods are important for that process. However, they are outside of the scope of Amendment 110 and this final rule.

Comment 22: Good fisheries management calls for a reduction in salmon bycatch. The pollock fishery should be managed in a way that rewards those fishermen that successfully avoid salmon and other bycatch and reduces quota and opportunity for those fishermen that have significant salmon or other bycatch.

Response: Amendment 110 and this final rule improve the IPAs implemented under Amendment 91 to include chum salmon avoidance measures and to increase the ability for each vessel to avoid Chinook salmon. The IPA component is an innovative approach that is designed to provide incentives for each vessel to avoid bycatch at all times with the goal of bringing bycatch to minimum achievable levels. The requirements for an IPA are performance based (*i.e.,* they address what an IPA should accomplish); any number of different incentive plans could meet these objectives. The requirements for the IPA are performance based because fishery participants have more tools available to them to create incentives to minimize bycatch at the vessel level than could be prescribed through Federal regulation. As designed, an IPA can be more responsive and adaptive than Federal regulations. IPAs are flexible in allowing the pollock fleet to modify the IPAs as performance information becomes available to ensure that the IPAs meet the goal to provide incentives for each vessel to avoid bycatch at all times in Amendment 91 and Amendment 110.

Additionally, this final rule requires the IPA representative to submit an annual report to the Council that is the primary tool through which the Council will evaluate whether the IPAs meet the goal for each vessel to avoid salmon bycatch at all times.

Comment 23: Include a well thought-out plan for this Chinook salmon bycatch avoidance program and outline the possible increased incentives to achieve maximum effectiveness. Without this, the program could have little to no impact on Chinook salmon bycatch. It is ideal to have the IPA incentives visible to the public in order to have complete transparency of industry.

Response: The Council analyzed a number of specific incentive measures in Section 3.5.3 of the Analysis. The Analysis describes the new IPA requirements implemented with this final rule and provides examples of ways the fishery participants could modify their IPAs to meet those requirements. Regulations establish the performance based requirements that each IPA must accomplish. Any number of different incentive plans could meet these regulatory requirements. The requirements for the IPA are performance based because fishery participants have more tools available to them to create incentives to minimize bycatch at the vessel level than could be prescribed through Federal regulation. As designed, an IPA can be more responsive and adaptive than Federal regulations and can use tools not available to managers, such as fees and penalties.

Additionally, Federal regulations include a number of provisions to ensure transparency of the IPAs. First, regulations require the IPA representative to submit an annual report so the Council can evaluate whether its goals for the IPAs are being met (§ 679.21(f)(13)). Second, existing regulations require vessel owners to submit an annual economic data report to provide quantitative information so the Council can evaluate how the IPA influences a vessel's operational decisions to avoid Chinook salmon bycatch (§ 679.65). Third, this final rule adds additional requirements for IPA transparency, including a requirement that IPA representatives notify at least one third party group representing western Alaskans of closure areas and any violations of the rolling hot spot program. Finally, the final rule requires the IPA representative to describe in the IPA annual report how the IPA addresses the goals and objectives in the IPA provisions related to chum salmon (§ 679.21(f)).

Comment 24: Research should be done on Chinook salmon bycatch in the pollock fishery to determine which stock they are from since there are some stocks where the State has limited commercial and subsistence harvests. If Chinook salmon from those stocks are being taken by the pollock fishery, then the pollock fishery should have to wait to fish until those Chinook salmon leave the areas in which pollock are taken.

Response: NMFS conducts research on the Chinook salmon caught in the pollock fishery. Amendment 91 improved the collection of Chinook salmon information by increasing observer coverage to full coverage for all vessels and shoreside processing facilities and by requiring a census of Chinook salmon in every haul or fishing trip. NMFS also collects and analyzes scientific data and biological samples from the Chinook salmon bycatch. NMFS conducts a genetic analysis of samples from the Chinook salmon bycatch in the pollock fishery to determine the overall stock composition of the bycatch. The most recent analysis is available from the NMFS Alaska Fisheries Science Center (*http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-310.pdf*).

However, this genetic analysis takes time and the results are not available in time to delay or move the pollock fishery. Instead, the IPAs use a rolling hotspot program to provide real-time Chinook salmon bycatch information so that the fleet can avoid areas of high Chinook salmon bycatch rates. A Chinook salmon rolling hotspot program is a component of the current IPAs, however, it is not a mandatory requirement. The catcher/processor IPA and the mothership IPA have a rolling hotspot program in place throughout the year. The inshore IPA has a rolling hotspot program that can be suspended during the season. Amendment 110 and this final rule require all IPAs to have a rolling hot spot program throughout the A and B seasons. This provision also requires notifications of closure areas and any violations of the rolling hot spot program to at least one third-party group representing western Alaskans, consistent with the requirement for the chum salmon rolling hotspot program. Section 3.5.3.3 of the Analysis provides more detail on this addition to the IPA requirements (see **ADDRESSES**).

Comment 25: The over allocation of pollock has ruined the livelihoods of all that depend on it for a living. A two-thirds reduction in the Bering Sea pollock TAC would increase escapement to the Yukon River system and raise the price of the pollock products. We have been giving pollock away at the expense of traditional Alaskan salmon fisheries. Everything that swims in the Bering Sea eats pollock and every fishery and northern fur seals have declined due to the over allocation of pollock.

Response: The process for assessing and specifying the Bering Sea pollock TAC is outside the scope of this action. There is no evidence that a two-thirds reduction in the pollock TAC would measurably increase salmon escapement to the Yukon River system. While salmon bycatch in the pollock fishery may be a contributing factor in the decline of salmon, NMFS expects the numbers of the ocean bycatch that would have returned to western Alaska would be relatively small due to ocean mortality and the large number of other river systems contributing to the total Chinook or chum salmon bycatch. For Chinook salmon, Section 3.5.1 of the Analysis explains that the Chinook salmon bycatch expected to have returned to western Alaska rivers is approximately 2.3 percent of coastal western Alaska run size in recent years. For chum salmon, Section 3.5.1 of the Analysis explains that the chum salmon bycatch expected to have returned to western Alaska rivers is approximately 0.5 percent of the coastal western Alaska run size in recent years. Under Amendment 110 and this final rule, these impact rates will be reduced further as the pollock fleet improves its ability to avoid salmon at all times.

NMFS is actively pursuing research on northern fur seals to help us understand the reasons for the decline and potential threats to the population. A description of past and ongoing research is available on the National Marine Mammal Laboratory's Web site (*http://www.afsc.noaa.gov/nmml/species/species_nfs.php*). The research projects investigate a broad range of topics related to fisheries interactions around the Pribilof Islands, including studies to quantify area-specific food habits and animal conditions, describe foraging behavior in different environments, delineate foraging habitats, and model habitat suitability in relation to fur seals and commercial fisheries.

Comment 25: The Analysis did not fully describe the potential impacts to the pollock fishery under the lower PSC performance standard and limits in years of low Chinook salmon abundance. The Analysis compared the impacts only to current Chinook salmon bycatch levels and not to potential or historical levels. Little to no forgone pollock harvest was noted under any scenario. Amendment 110 and the proposed rule are a potential threat that could suspend fishing operations in one of the largest fisheries in the world. Large juvenile Chinook salmon year classes persist in the marine environment for multiple years before returning as mature fish to the river systems. Recent unpredictability in the BSAI ecosystem likely only increases the probability of constraining the pollock fishery in future years based on management decisions made today. The Analysis should have attempted to quantify the probability of the limit shutting the fishery down in a given year.

Response: The purpose of a RIR is to analyze the potential costs and benefits associated with a regulatory change. To do so, the RIR must compare potential effects of the alternatives being considered with the regulatory status quo condition. In this case, the status quo is defined by the incentive-based Chinook salmon PSC avoidance structure established under Amendment 91. Since Amendment 91, Chinook salmon PSC has been much lower than the "potential or historical" levels the commenter presumably is referring to and these lower levels, as properly considered in the analysis, represent the regulatory status quo condition. Historically higher levels of bycatch occurred under differing regulatory conditions, do not represent status quo conditions, and are not appropriate to consider in the Analysis. Note that historical bycatch was considered in the EIS prepared for Amendment 91 (see **ADDRESSES**).

Amendment 110 and this final rule provide further incentives for industry to avoid Chinook salmon PSC, particularly in years of low Chinook salmon abundance. As explained in Section 4.8.2 of the Analysis, economic analysis has demonstrated the ability of a catcher-processor fleet to adapt their

behavior to reduce PSC when faced with individual vessel caps. The reduced individual vessel caps that could result under this final rule during times of low Chinook abundance in western Alaska are not intended to close the pollock fishery. They are intended to alter fishing behavior to further avoid Chinook PSC. The flexibility given to industry to self-regulate PSC avoidance, provided in Amendment 91, remains and is augmented by this rule. Thus, the probability of the limit shutting down the fishery in a given year is dependent on changes in fishing activity that are not presently known and are dependent on the actions of the fishing fleet.

Comment 26: Revise the Regulatory Flexibility Act (RFA) analysis to determine the number of directly regulated entities that are defined as small entities without applying affiliations among directly regulated entities based on their participation in a pollock harvesting cooperative. NMFS considers a vessel owner's membership in a harvesting cooperative to be an affiliation; this shows a misunderstanding of the nature of harvesting cooperatives. Harvesting cooperatives in Alaska are not large vertically or horizontally integrated businesses. Cooperative members are joined by simple rules to help remove the race for fish by coordinating selected fishing activities, but each catcher vessel (or collection of commonly owned catcher vessels) is a distinct business unit. The fact that cooperatives coordinate harvests in a manner that allows for more complete harvest of the quota should not be interpreted as creating a single business unit in the manner intended for defining a small business that is appropriate for protection by the RFA.

Response: When NMFS calculates the size of an entity to determine if it is a small entity, NMFS must include the annual receipts and the employees of affiliates. Affiliation is determined by the ability to control. Control may arise through ownership, management, or other relationships or interactions between the parties. When the ability to control exists, even if it is not exercised, affiliation exists. The Small Business Administration (SBA) has a specific set of rules that explain when another person, business, or entity is considered an affiliate for size purposes in its Small Business Size Regulations (13 CFR 121.103). NMFS has applied these rules in the evaluation it conducted in this RFA analysis.

Harvesting cooperatives meet the definition of affiliation because cooperatives have the ability to control member vessels. Cooperatives are predicated on collective agreements among their members, to abide by the terms and practices set out for membership. That is, the entity formed by creation of the cooperative is, by definition, a third party that controls or has the power to control its members. Cooperatives coordinate harvests, which is operational control of the input side of the business. The small entity standard is "independently owned and operated." Cooperative members may be independently owned but still not be considered small entities because the cooperative has enough operational control that its members are not considered to be independently operated for purposes of the definition of affiliation.

Cooperative membership does not automatically mean an entity is large (not small). A cooperative may be a small entity if the combined annual gross receipts of all cooperative members meet the size standard used by the SBA or, after July 1, 2016, NMFS' small business size standard for RFA compliance at 50 CFR 200.2(a). For more information on NMFS' small business size standard for RFA compliance, see 80 FR 81194 (December 29, 2015). NMFS's RFA analysis to estimate the number of small entities directly regulated by this action is correct.

Comment 27: NMFS' aggregation of cooperative member's gross earnings eliminates a fishing business's access to the benefits of SBA review and runs against the intent of the RFA.

Response: The RFA is primarily concerned with ensuring that Federal agency decision-makers seriously and systematically consider disproportionate economic impacts on small entities that may result from their actions. To comply with the RFA, NMFS has prepared an IRFA and a FRFA following the required contents specified in the RFA. The IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule (81 FR 5681, February 3, 2016). The FRFA is in the "Classification" section of the preamble to this final rule.

If a specific business applies to the SBA to participate in an SBA program, the SBA conducts an independent review of that business to determine if that business qualifies as a small business for purposes of participating in an SBA program. That business must satisfy SBA's definition of a business concern, along with SBA's size standards for small businesses. The SBA does not rely on the analysis conducted by NMFS under the RFA to determine whether a particular entity satisfies SBA's definition of a small business. See *https://www.sba.gov/* for more information on SBA's assessment of a small business.

Classification

The NMFS Assistant Administrator has determined that Amendment 110 to the FMP and this rule are necessary for the conservation and management of the groundfish fishery and that they are consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS Web site at *http://alaskafisheries.noaa.gov*.

Final Regulatory Flexibility Analysis

This FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action.

Section 604 of the Regulatory Flexibility Act requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for, and Objectives of, This Rule

A statement of the need for, and objectives of, this rule is contained earlier in this preamble and is not repeated here.

Public and Chief Counsel for Advocacy Comments on the Proposed Rule

NMFS published a proposed rule on February 3, 2016 (81 FR 5681). An IRFA was prepared and summarized in the "Classification" section of the preamble to the proposed rule. The comment period closed on March 4, 2016. NMFS received 15 letters of public comment on the proposed rule and Amendment 110. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Summary of Significant Issues Raised During Public Comment

One comment letter was received with two comments on the IRFA. These are Comment 26 and Comment 27 under Response to Comments, above. No changes were made to this rule or the RFA analysis as a result of these comments on the IRFA.

Comment 26 disagrees with NMFS using affiliation to determine whether a member of a fishery cooperative is a small entity in the IRFA. The comment requests NMFS to revise the analysis to determine whether the vessels that are directly regulated entities under this action are small entities without applying the cooperative affiliations. We disagree because when we calculate the size of an entity to determine if it is a small entity, we must include the annual receipts and the employees of affiliates, per the Small Business Size Regulations (13 CFR 121.103).

Comment 27 is concerned that NMFS' aggregation of a cooperative member's gross earnings eliminates a fishing business's access to the benefits of SBA review and runs against the intent of the RFA. To comply with the RFA, agencies prepare an IRFA and a FRFA following the required contents specified in the RFA. NMFS has complied with the RFA for this action. NMFS has prepared an IRFA and a FRFA following the required contents specified in the RFA. If a specific business applies to the SBA to participate in an SBA program, the SBA conducts an independent review of that business to determine if that business qualifies as a small business for purposes of participating in an SBA program. That business must satisfy SBA's definition of a business concern, along with SBA's size standards for small businesses. The SBA does not rely on the analysis conducted by NMFS under the RFA to determine whether a particular entity satisfies SBA's definition of a small business.

Number and Description of Directly Regulated Small Entities

The action directly regulates those entities that participate in the directed pollock trawl fishery in the Bering Sea. These entities include vessels harvesting pollock under the AFA and the six CDQ groups that receive allocations of pollock.

The SBA requires consideration of affiliations among entities for the purpose of assessing if an entity is small. The AFA pollock cooperatives are a type of affiliation. All the non-CDQ entities directly regulated by this action are members of AFA cooperatives and, therefore, NMFS considers them "affiliated" large (non-small) entities for RFA purposes. AFA cooperatives have gross annual revenues that are substantially greater than $20.5 million, the standard used by the SBA to define the annual gross revenue of a large (non-small) business engaged in finfish harvesting, such as pollock. Therefore, all the non-CDQ pollock fishery participants are defined as large (non-small) entities.

Due to their status as non-profit corporations, the six CDQ groups are identified as "small" entities for RFA purposes. This action directly regulates the six CDQ groups. As described in regulations implementing the RFA (13 CFR 121.103), the CDQ groups' affiliations with other large entities do not define them as large entities.

The six CDQ groups, formed to manage and administer the CDQ allocations, investments, and economic development projects, are the Aleutian Pribilof Island Community Development Association, the Bristol Bay Economic Development Corporation, the Central Bering Sea Fishermen's Association, the Coastal Villages Region Fund, the Norton Sound Economic Development Corporation, and the Yukon Delta Fisheries Development Association. The 65 communities, with approximately 27,000 total residents, that benefit from participation in the CDQ Program are not directly regulated by this action.

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule revises some existing requirements and removes some requirements. The revised requirements are those related to—

- Development and submission of proposed IPAs and amendments to approved IPAs;
- An annual report from the participants in each IPA, documenting information and data relevant to the Bering Sea Chinook salmon bycatch management program; and
- Salmon handling and storage on board a vessel, and obligations to facilitate observer data reporting.

This final rule removes the requirements for an application form for a proposed IPA or amended IPA.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

This action is a comprehensive program to minimize Chinook salmon and chum salmon bycatch in a manner that accomplishes the stated objectives and is consistent with applicable statutes. No alternatives were identified in addition to those analyzed in the IRFA that had the potential to further reduce the economic burden on small entities, while achieving the objectives of this action. Section 2.10 of the Analysis discusses alternatives considered and eliminated from detailed analysis (see **ADDRESSES**).

This final rule includes performance standards to minimize Chinook salmon and chum salmon bycatch, while limiting the burden on CDQ groups. A system of transferable PSC allocations and a performance standard, even in years of low Chinook salmon abundance, will allow CDQ groups to decide how best to comply with the requirements of this action, given the other constraints imposed on the pollock fishery (*e.g.*, pollock TAC, market conditions, area closures associated with other rules, gear restrictions, climate and oceanographic change).

Based on the best available scientific data and information, none of the

alternatives except the preferred alternative have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities.

Tribal Summary Impact Statement (E.O. 13175)

E.O. 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995), and the Tribal Consultation and Coordination Policy of the U.S. Department of Commerce (May 21, 2013), outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. Under the E.O. and agency policies, NMFS must ensure meaningful and timely input by tribal officials and representatives of Alaska Native corporations in the development of regulatory policies that have tribal implications.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) a description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met.

A Description of the Extent of the Agency's Prior Consultation With Tribal Officials

The consultation process for this action began during the Council process when the Council started developing Amendment 110 in 2012. A number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during Council outreach meetings on Amendment 110 and at the numerous Council meetings at which Amendment 110 was discussed.

NMFS conducted two tribal consultations, one in December 2014 and one in April 2015, with representatives from the Tanana Chiefs Conference; the Association of Village Council Presidents; the Yukon River Drainage Fisheries Association; the Kawerak, Inc.; and the Bering Sea Fishermen's Association. These organizations prepared letters for the Council and requested the consultations to discuss the salmon bycatch management measures under consideration by the Council. NMFS posted reports from these consultations on the NMFS Alaska Region Web site at *https://alaskafisheries.noaa.gov/tribal-consultations*.

NMFS continued the consultation process by sending a letter to Alaska tribal governments, Alaska Native corporations, and related organizations ("Alaska Native representatives") when the Notice of Availability for Amendment 110 published in the **Federal Register** in March 2016. The letter included a copy of the Notice of Availability and notified representatives of the opportunity to comment and consult. NMFS received 4 letters of comment on Amendment 110 and the proposed rule from tribal members and representatives of tribal governments, tribal organizations, or Alaska Native corporations. The comment summaries and NMFS' responses are provided in this preamble under Response to Comments and are summarized below.

A Summary of the Nature of Tribal Concerns

The concerns expressed in consultations and reflected in written comments from tribal representatives and members center on four themes. First, Chinook salmon is vitally important to tribal members, and they suffer great hardships when Chinook salmon abundance is low. Second, tribal representatives attribute low Chinook salmon in-river returns directly to bycatch in the Bering Sea pollock fishery. Third, tribal members want Chinook salmon bycatch greatly curtailed. Fourth, NMFS should exercise its trust responsibilities by advocating for Alaska native interests on the Council.

The comment letter from Tanana Chiefs Conference; the Association of Village Council Presidents; the Yukon River Drainage Fisheries Association; the Kawerak, Inc.; and the Bering Sea Fishermen's Association supported Amendment 110 and the implementing regulations as an important step in further reducing salmon bycatch but urged NMFS and the pollock industry to continue working towards greater bycatch reduction, with an ultimate goal of zero bycatch. In particular, these comments support the provision to reduce the PSC limit and performance standard in years of low Chinook salmon abundance in western Alaska as critical to ensuring Chinook salmon bycatch is reduced in the years when every source of mortality must be reduced.

The comment from the Native Village of Kotzebue expressed concern that although Amendment 110 is going in the right direction towards zero salmon bycatch, the bycatch limits are still too high.

The comment from Ahtna, Incorporated, encourages the Secretary of Commerce to take all reasonable measures to reduce Chinook salmon bycatch in the Bering Sea and Gulf of Alaska.

The comment from the Aleut Corporation supports Amendment 110, but is strongly opposed to the provision to reduce the PSC limit and performance standard in low Chinook salmon abundance years because it is unwarranted, unnecessary, not sound science, and not responsible management. The Aleut Corporation believes this provision unfairly restricts the pollock fishery when science has shown that there is not a relationship between salmon bycatch and the size of the salmon runs in coastal western Alaska.

NMFS' Position Supporting the Need To Issue the Regulation

This final rule is needed to implement Amendment 110, a complex and innovative program to minimize salmon bycatch to the extent practicable in the pollock fishery. This final rule is also needed to create a comprehensive salmon bycatch avoidance program that works more effectively than the current salmon bycatch programs to avoid Chinook salmon bycatch and Alaska-origin chum salmon bycatch. The Council and NMFS recognize that salmon are an extremely important resource to Native Alaskans who depend on local fisheries for their sustenance and livelihood.

Amendment 110 and this final rule adjust the existing Chinook salmon bycatch program to, among other things, incorporate revised chum salmon bycatch measures into the existing IPAs. Amendment 110 and this final rule are designed to consider the importance of continued production of critical chum salmon runs in western Alaska by focusing on bycatch avoidance of Alaskan chum salmon runs. These runs have substantial variation in run sizes over time, and are of historic importance in the subsistence lifestyle of Native Alaskans. Additional protections to other chum stocks from outside of Alaska are embedded in the objective to avoid the high bycatch of chum salmon overall, recognizing that most non-Alaska chum salmon are likely from Asian hatcheries.

In addition, the Council and NMFS sought to provide greater incentives to avoid Chinook salmon by strengthening incentives during times of historically low Chinook salmon abundance in western Alaska. Thus, the management measures included in Amendment 110 focus on retaining the incentives to avoid Chinook salmon bycatch at all levels of abundance as intended by Amendment 91. Multiple years of historically low Chinook salmon abundance have resulted in significant restrictions for subsistence users in western Alaska and failure to achieve conservation objectives. While Chinook salmon bycatch impact rates have been low under Amendment 91, the Council and NMFS have determined that there is evidence that improvements could be made to ensure the program is reducing Chinook salmon bycatch at low levels of salmon abundance.

A Statement of the Extent to Which the Concerns of Tribal Officials Have Been Met

One of the primary factors in initiating this action was concern over the potential impacts of Chinook salmon and chum salmon bycatch in the Bering Sea pollock fishery on the return of these salmon to western Alaska river systems and the recognition of the importance of salmon to the people in western Alaska. While the final program is not as restrictive on the pollock fishery as advocated by some Alaska Native representatives, it will minimize salmon bycatch to the extent practicable.

Collection-of-Information Requirements

This rule contains collection-of-information requirements subject the Paperwork Reduction Act (PRA) and which have been approved by OMB. The collections are listed below by OMB control number.

OMB Control Number 0648–0731

Public reporting burden is estimated to average 5 minutes per individual response for use of a vessel's computer, software, and data transmission; 5 minutes per individual response for notification of observer before handling the vessel's Bering Sea pollock catch; and 5 minutes for notification of crew person responsible for ensuring all sorting, retention, and storage of salmon.

OMB Control Number 0648–0393

Public reporting burden is estimated to average 8 hours per individual response for the Application to Receive Transferable Chinook Salmon PSC Allocations, including the contract; 4 hours for the amendment to the contract; and 15 minutes for the Application for the Transfer of Chinook Salmon PSC Allocations.

OMB Control Number 0648–0401

Public reporting burden is estimated to average 40 hours per individual response for the Salmon Bycatch IPA; and 8 hours for the IPA Annual Report.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on this data collection, including suggestions for reducing the burden, to NMFS Alaska Region (see **ADDRESSES**), or by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 2, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Public Law 108–447; Public Law 111–281.

■ 2. In § 679.2:

■ a. Remove the definitions for "Chinook salmon bycatch incentive plan agreement (IPA)";

■ b. Revise the definitions for "Chum Salmon Savings Area of the BSAI CVOA", and paragraph (6) of "Fishing trip";

■ c. Remove the definition for "Non-Chinook salmon bycatch reduction intercooperative agreement (ICA)"; and

■ d. Add a definition for "Salmon bycatch incentive plan agreement (IPA)" in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Chum Salmon Savings Area of the BSAI CVOA (See § 679.21(f)(14) and Figure 9 to this part).

* * * * *

Fishing trip means: * * *

(6) For purposes of § 679.7(d)(5)(ii)(C)(*2*) for CDQ groups and § 679.7(k)(8)(ii) for AFA entities, the period beginning when a vessel operator commences harvesting any pollock that will accrue against a directed fishing allowance for pollock in the BS or against a pollock CDQ allocation harvested in the BS and ending when the vessel operator offloads or transfers any processed or unprocessed pollock from that vessel.

* * * * *

Salmon bycatch incentive plan agreement (IPA) is a voluntary private contract, approved by NMFS under § 679.21(f)(12), that establishes incentives for participants to avoid Chinook salmon and chum salmon bycatch while directed fishing for pollock in the BS.

* * * * *

■ 3. In § 679.7:

■ a. Revise paragraphs (d)(5)(ii)(B), (d)(5)(ii)(C)(*5*), and the paragraph (k)(8) heading;

■ b. Redesignate paragraph (k)(8)(iv) as (k)(8)(v); and

■ c. Add new paragraph (k)(8)(iv).

The revisions and addition read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(5) * * *

(ii) * * *

(B) *Non-Chinook salmon.* For the operator of a vessel, to use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in an approved IPA under § 679.21(f)(12).

(C) * * *

(*5*) For the operator of a catcher vessel delivering pollock CDQ catch to a shoreside processor or stationary floating processor to:

(*i*) Deliver pollock CDQ to a processor that does not have a catch monitoring and control plan approved under § 679.28(g).

(*ii*) Handle, sort, or discard catch without notifying the observer 15

minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(*2*).

(*iii*) Fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(*3*).

* * * * *

(k) * * *

(8) *Salmon PSC.*

* * * * *

(iv) *Catcher vessels.* (A) For the operator of a catcher vessel, to handle, sort, or discard catch without notifying the observer 15 minutes prior to handling, sorting, or discarding catch as described in § 679.21(f)(15)(ii)(B)(*2*).

(B) For the operator of a catcher vessel to fail to secure catch after the completion of catch handling and the collection of scientific data and biological samples as described in § 679.21(f)(15)(ii)(B)(*3*).

* * * * *

■ 4. In § 679.20, revise paragraph (a)(5)(i)(B)(*1*) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(B) * * *

(*1*) *Inshore, catcher/processor, mothership, and CDQ sectors.* The portions of the BS subarea pollock directed fishing allowances allocated to each sector under sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows:

(*i*) A Season, 45 percent;

(*ii*) B Season, 55 percent.

* * * * *

■ 5. In § 679.21:

■ a. Remove and reserve paragraph (c);

■ b. Revise the paragraph (e) heading;

■ c. Remove paragraphs (e)(1)(vi) through (viii), (e)(3)(i)(A)(*3*), and (e)(7)(vii) through (ix); and

■ d. Revise paragraphs (f) and (g).

The revisions read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) *BSAI PSC limits for crab and herring.* * * *

* * * * *

(f) *Salmon Bycatch Management in the BS Pollock Fishery*—(1) *Applicability.* This paragraph contains regulations governing the bycatch of salmon in the BS pollock fishery.

(2) *Chinook salmon prohibited species catch (PSC) limit.* Each year, NMFS will allocate to AFA sectors listed in paragraph (f)(3)(ii) of this section a portion of the applicable Chinook salmon PSC limit. NMFS will publish the applicable Chinook salmon PSC limit in the annual harvest specifications after determining if it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. By October 1 of each year, the State of Alaska will provide to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

(i) An AFA sector will receive a portion of the 47,591 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 33,318 Chinook salmon PSC limit, if —

(A) No Chinook salmon bycatch incentive plan agreement (IPA) is approved by NMFS under paragraph (f)(12) of this section; or

(B) That AFA sector has exceeded its performance standard under paragraph (f)(6) of this section.

(ii) An AFA sector will receive a portion of the 60,000 Chinook salmon PSC limit, or, in a low Chinook salmon abundance year, the 45,000 Chinook salmon PSC limit, if—

(A) At least one IPA is approved by NMFS under paragraph (f)(12) of this section; and

(B) That AFA sector has not exceeded its performance standard under paragraph (f)(6) of this section.

(3) *Allocations of the Chinook salmon PSC limits*—(i) *Seasonal apportionment.* NMFS will apportion the Chinook salmon PSC limits annually 70 percent to the A season and 30 percent to the B season, which are described in § 679.23(e)(2).

(ii) *AFA sectors.* Each year, NMFS will make allocations of the applicable Chinook salmon PSC limit to the following four AFA sectors:

AFA Sector:	Eligible participants are:
(A) Catcher/processor	AFA catcher/processors and AFA catcher vessels delivering to AFA catcher/processors, all of which are permitted under § 679.4(l)(2) and (l)(3)(i)(A), respectively.
(B) Mothership	AFA catcher vessels harvesting pollock for processing by AFA motherships, all of which are permitted under § 679.4(l)(3)(i)(B) and (l)(4), respectively.
(C) Inshore	AFA catcher vessels harvesting pollock for processing by AFA inshore processors, all of which are permitted under § 679.4(l)(3)(i)(C).
(D) CDQ Program	The six CDQ groups authorized under section 305(i)(1)(D) of the Magnuson-Stevens Act to participate in the CDQ Program.

(iii) *Allocations to each AFA sector.* NMFS will allocate the Chinook salmon PSC limits to each AFA sector as follows:

(A) If a sector is managed under the 60,000 Chinook salmon PSC limit, the maximum amount of Chinook salmon PSC allocated to each sector in each season and annually is—

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	13,818	17.9	3,222	28.4	17,040
(*2*) Mothership	8.0	3,360	7.3	1,314	7.8	4,674
(*3*) Inshore	49.8	20,916	69.3	12,474	55.6	33,390
(*4*) CDQ Program	9.3	3,906	5.5	990	8.2	4,896

(B) If the sector is managed under the 45,000 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	10,363	17.9	2,415	28.4	12,780
(*2*) Mothership	8.0	2,520	7.3	987	7.8	3,510
(*3*) Inshore	49.8	15,687	69.3	9,355	55.6	25,020
(*4*) CDQ Program	9.3	2,930	5.5	743	8.2	3,690

(C) If the sector is managed under the 47,591 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	10,906	17.9	2,556	28.4	13,516
(*2*) Mothership	8.0	2,665	7.3	1,042	7.8	3,707
(*3*) Inshore	49.8	16,591	69.3	9,894	55.6	26,485
(*4*) CDQ Program	9.3	3,098	5.5	785	8.2	3,883

(D) If the sector is managed under the 33,318 Chinook salmon PSC limit, the sector will be allocated the following amount of Chinook salmon PSC in each season and annually:

AFA sector	A season		B season		Annual total	
	% Allocation	# of Chinook	% Allocation	# of Chinook	% Allocation	# of Chinook
(*1*) Catcher/processor	32.9	7,673	17.9	1,789	28.4	9,462
(*2*) Mothership	8.0	1,866	7.3	730	7.8	2,599
(*3*) Inshore	49.8	11,615	69.3	6,926	55.6	18,525
(*4*) CDQ Program	9.3	2,169	5.5	550	8.2	2,732

(iv) *Allocations to the AFA catcher/processor and mothership sectors.* (A) NMFS will issue transferable Chinook salmon PSC allocations under paragraph (f)(3)(iii) of this section to entities representing the AFA catcher/processor sector and the AFA mothership sector if these sectors meet the requirements of paragraph (f)(8) of this section.

(B) If no entity is approved by NMFS to represent the AFA catcher/processor sector or the AFA mothership sector, then NMFS will manage that sector under a non-transferable Chinook salmon PSC allocation under paragraph (f)(10) of this section.

(v) *Allocations to inshore cooperatives and the AFA inshore open access fishery.* NMFS will further allocate the inshore sector's Chinook salmon PSC allocation under paragraph (f)(3)(iii) of this section among the inshore cooperatives and the inshore open access fishery based on the percentage allocations of pollock to each inshore cooperative under § 679.62(a). NMFS will issue transferable Chinook salmon PSC allocations to inshore cooperatives. Any Chinook salmon PSC allocated to the inshore open access fishery will be as a non-transferable allocation managed by NMFS under the requirements of paragraph (f)(10) of this section.

(vi) *Allocations to the CDQ Program.* NMFS will further allocate the Chinook salmon PSC allocation to the CDQ Program under paragraph (f)(3)(iii) of this section among the six CDQ groups based on each CDQ group's percentage of the CDQ Program pollock allocation. NMFS will issue transferable Chinook salmon PSC allocations to CDQ groups.

(vii) *Accrual of Chinook salmon bycatch to specific PSC allocations.*

If a Chinook salmon PSC allocation is:	Then all Chinook salmon bycatch:
(A) A transferable allocation to a sector-level entity, inshore cooperative, or CDQ group under paragraph (f)(8) of this section.	By any vessel fishing under a transferable allocation will accrue against the allocation to the entity representing that vessel.
(B) A non-transferable allocation to a sector or the inshore open access fishery under paragraph (f)(10) of this section.	By any vessel fishing under a non-transferable allocation will accrue against the allocation established for the sector or inshore open access fishery, whichever is applicable.
(C) The opt-out allocation under paragraph (f)(5) of this section.	By any vessel fishing under the opt-out allocation will accrue against the opt-out allocation.

(viii) *Public release of Chinook salmon PSC information.* For each year, NMFS will release to the public and publish on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*):

(A) The Chinook salmon PSC allocations for each entity receiving a transferable allocation;

(B) The non-transferable Chinook salmon PSC allocations;

(C) The vessels fishing under each transferable or non-transferable allocation;

(D) The amount of Chinook salmon bycatch that accrues towards each transferable or non-transferable allocation;

(E) Any changes to these allocations due to transfers under paragraph (f)(9) of this section, rollovers under paragraph (f)(11) of this section, and deductions from the B season non-transferable allocations under paragraphs (f)(5)(v) or (f)(10)(iii) of this section; and

(F) Tables for each sector that provide the percent of the sector's pollock allocation, numbers of Chinook salmon associated with each vessel in the sector used to calculate the opt-out allocation and annual threshold amounts, and the percent of the pollock allocation associated with each vessel that NMFS will use to calculate IPA minimum participation assigned to each vessel.

(4) *Reduction in allocations of the Chinook salmon PSC limit*—(i) *Reduction in sector allocations.* NMFS will reduce the seasonal allocation of the Chinook salmon PSC limit to the catcher/processor sector, the mothership sector, the inshore sector, or the CDQ Program under paragraph (f)(3)(iii)(A) or (B) of this section, if the owner of any permitted AFA vessel in that sector, or any CDQ group, does not participate in an approved IPA under paragraph (f)(12) of this section. NMFS will subtract the amount of Chinook salmon from each sector's allocation associated with each vessel not participating in an approved IPA.

(ii) *Adjustments to the inshore sector and inshore cooperative allocations.* (A) If some members of an inshore cooperative do not participate in an approved IPA, NMFS will reduce the allocation to the cooperative to which those vessels belong, or the inshore open access fishery.

(B) If all members of an inshore cooperative do not participate in an approved IPA, the amount of Chinook salmon that remains in the inshore sector's allocation, after subtracting the amount of Chinook salmon associated with the non-participating inshore cooperative, will be reallocated among the inshore cooperatives participating in an approved IPA based on the proportion each participating cooperative represents of the Chinook salmon PSC initially allocated among the participating inshore cooperatives that year.

(iii) *Adjustment to CDQ group allocations.* If a CDQ group does not participate in an approved IPA, the amount of Chinook salmon that remains in the CDQ Program's allocation, after subtracting the amount of Chinook salmon associated with the non-participating CDQ group, will be reallocated among the CDQ groups participating in an approved IPA based on the proportion each participating CDQ group represents of the Chinook salmon PSC initially allocated among the participating CDQ groups that year.

(iv) *All members of a sector do not participate in an approved IPA.* If all members of a sector do not participate in an approved IPA, the amount of Chinook salmon that remains after subtracting the amount of Chinook salmon associated with the non-participating sector will not be reallocated among the sectors that have members participating in an approved IPA. This portion of the PSC limit will remain unallocated for that year.

(5) *Chinook salmon PSC opt-out allocation.* The following table describes requirements for the opt-out allocation:

(i) What is the amount of Chinook salmon PSC that will be allocated to the opt-out allocation in the A season and the B season?	The opt-out allocation will equal the sum of the Chinook salmon PSC deducted under paragraph (f)(4)(i) of this section from the seasonal allocations of each sector with members not participating in an approved IPA.
(ii) Which participants will be managed under the opt-out allocation?	Any AFA-permitted vessel or any CDQ group that is a member of a sector eligible under paragraph (f)(2)(ii) of this section to receive allocations of the 60,000 PSC limit or the 45,000 PSC limit, but that is not participating in an approved IPA.
(iii) What Chinook salmon bycatch will accrue against the opt-out allocation?	All Chinook salmon bycatch by participants under paragraph (f)(5)(ii) of this section.
(iv) How will the opt-out allocation be managed?	All participants under paragraph (f)(5)(ii) of this section will be managed as a group under the seasonal opt-out allocations. If the Regional Administrator determines that the seasonal opt-out allocation will be reached, NMFS will publish a notice in the **Federal Register** closing directed fishing for pollock in the BS, for the remainder of the season, for all vessels fishing under the opt-out allocation.
(v) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation exceeds the amount allocated to the A season opt-out allocation?	NMFS will deduct from the B season opt-out allocation any Chinook salmon bycatch in the A season that exceeds the A season opt-out allocation.
(vi) What will happen if Chinook salmon bycatch by vessels fishing under the opt-out allocation is less than the amount allocated to the A season opt-out allocation?	If Chinook salmon bycatch by vessels fishing under the opt-out allocation in the A season is less than the amount allocated to the opt-out allocation in the A season, this amount of Chinook salmon will not be added to the B season opt-out allocation.
(vii) Is Chinook salmon PSC allocated to the opt-out allocation transferable?	No. Chinook salmon PSC allocated to the opt-out allocation is not transferable.

(6) *Chinook salmon bycatch performance standard.* If the total annual Chinook salmon bycatch by the members of a sector participating in an approved IPA is greater than that sector's annual threshold amount of Chinook salmon in any three of seven consecutive years, that sector will receive an allocation of Chinook salmon under the 47,591 PSC limit in all future years, except in low Chinook salmon abundance years when that sector will receive an allocation under the 33,318 Chinook salmon PSC limit.

(i) *Annual threshold amount.* Prior to each year, NMFS will calculate each sector's annual threshold amount. NMFS will post the annual threshold amount for each sector on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*). At the end of each year, NMFS will evaluate the Chinook salmon bycatch by all IPA participants in each sector against that sector's annual threshold amount.

(ii) *Calculation of the annual threshold amount.* A sector's annual threshold amount is the annual number of Chinook salmon that would be allocated to that sector under the 47,591 Chinook salmon PSC limit, as shown in the table in paragraph (f)(3)(iii)(C) of this section, or the 33,318 Chinook salmon PSC limit in low Chinook salmon abundance years, as shown in the table in paragraph (f)(3)(iii)(D) of this section. If any vessels in a sector do not participate in an approved IPA, NMFS will reduce that sector's annual threshold amount by the number of Chinook salmon associated with each vessel not participating in an approved IPA. If any CDQ groups do not participate in an approved IPA, NMFS will reduce the CDQ Program's annual threshold amount by the number of Chinook salmon associated with each CDQ group not participating in an approved IPA.

(iii) *Exceeding the performance standard.* If NMFS determines that a sector has exceeded its performance standard by exceeding its annual threshold amount in any three of seven consecutive years, NMFS will issue a notification in the **Federal Register** that the sector has exceeded its performance standard. In all subsequent years, NMFS will allocate to that sector either the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(C) of this section or, in low Chinook salmon abundance years, the amount of Chinook salmon in the table in paragraph (f)(3)(iii)(D) of this section. All members of the affected sector will fish under this lower PSC allocation regardless of whether a vessel or CDQ group within that sector participates in an approved IPA.

(7) *Replacement vessels.* If an AFA-permitted vessel is no longer eligible to participate in the BS pollock fishery or if a vessel replaces a currently eligible vessel, NMFS will assign the portion and number of Chinook salmon associated with that vessel to the replacement vessel or distribute it among other eligible vessels in the sector based on the procedures in the law, regulation, or private contract that accomplishes the vessel removal or replacement action.

(8) *Entities eligible to receive transferable Chinook salmon PSC allocations.* (i) NMFS will issue transferable Chinook salmon PSC allocations to the following entities, if these entities meet all the applicable requirements of this section.

(A) *Inshore cooperatives.* NMFS will issue transferable Chinook salmon PSC allocations to the inshore cooperatives permitted annually under § 679.4(l)(6). The representative and agent for service of process (see definition at § 679.2) for an inshore cooperative is the cooperative representative identified in the application for an inshore cooperative fishing permit issued under § 679.4(l)(6), unless the inshore cooperative representative notifies NMFS in writing that a different person will act as its agent for service of process for purposes of this paragraph (f). An inshore cooperative is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(B) *CDQ groups.* NMFS will issue transferable Chinook salmon PSC allocations to the CDQ groups. The representative and agent for service of process for a CDQ group is the chief executive officer of the CDQ group, unless the chief executive officer notifies NMFS in writing that a different person will act as its agent for service of process. A CDQ group is not required to submit an application under paragraph (f)(8)(ii) of this section to receive a transferable Chinook salmon PSC allocation.

(C) *Entity representing the AFA catcher/processor sector.* NMFS will authorize only one entity to represent the catcher/processor sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the catcher/processors eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to the entity representing the catcher/processor sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(D) *Entity representing the AFA mothership sector.* NMFS will authorize only one entity to represent the mothership sector for purposes of receiving and managing transferable Chinook salmon PSC allocations on behalf of the vessels eligible to fish under transferable Chinook salmon PSC allocations. NMFS will issue transferable Chinook salmon allocations under the Chinook salmon PSC limit to an entity representing the mothership sector if that entity represents all the owners of AFA-permitted vessels in this sector that are participants in an approved IPA.

(ii) *Request for approval as an entity eligible to receive transferable Chinook salmon PSC allocations.* A representative of an entity representing the catcher/processor sector or the mothership sector may request approval by NMFS to receive transferable Chinook salmon PSC allocations on behalf of the members of the sector. The application must be submitted to NMFS at the address in paragraph (b)(6) of this section. A completed application consists of the application form and a contract, described below.

(A) *Application form.* The applicant must submit a paper copy of the application form with all information fields accurately filled in, including the affidavit affirming that each eligible vessel owner, from whom the applicant received written notification requesting to join the sector entity, has been allowed to join the sector entity subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the sector entity. The application form is available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address in paragraph (b)(6) of this section.

(B) *Contract.* A contract containing the following information must be attached to the completed application form:

(*1*) Information that documents that all vessel owners party to the contract agree that the entity, the entity's representative, and the entity's agent for service of process named in the application form represent them for purposes of receiving transferable Chinook salmon PSC allocations.

(*2*) A statement that the entity's representative and agent for service of process are authorized to act on behalf of the vessel owners party to the contract.

(*3*) Signatures, printed names, and date of signature for the owners of each AFA-permitted vessel identified in the application form.

(C) *Contract duration.* Once submitted, the contract attached to the application form is valid until amended or terminated by the parties to the contract.

(D) *Deadline.* An application form and contract must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the Chinook salmon PSC allocations are effective.

(E) *Approval.* If more than one entity application form is submitted to NMFS, NMFS will approve the application form for the entity that represents the most eligible vessel owners in the sector.

(F) *Amendments to the sector entity.* (*1*) An amendment to the sector entity contract, with no change in entity participants, may be submitted to NMFS at any time and is effective upon written notification of approval by NMFS to the entity representative. To amend a contract, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section.

(*2*) To make additions or deletions to the vessel owners represented by the entity for the next year, the entity representative must submit a complete application, as described in paragraph (f)(8)(ii) of this section, by December 1.

(iii) *Entity representative.* (A) The entity's representative must —

(*1*) Act as the primary contact person for NMFS on issues relating to the operation of the entity;

(*2*) Submit on behalf of the entity any applications required for the entity to receive a transferable Chinook salmon PSC allocation and to transfer some or all of that allocation to and from other entities eligible to receive transfers of Chinook salmon PSC allocations;

(*3*) Ensure that an agent for service of process is designated by the entity; and

(*4*) Ensure that NMFS is notified if a substitute agent for service of process is designated. Notification must include the name, address, and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the entity or its members within the 5-year period from the time the agent is identified in the application to NMFS under paragraph (f)(8)(ii) of this section.

(B) Any vessel owner that is a member of an inshore cooperative, or a member of the entity that represents the catcher/processor sector or the mothership sector, may authorize the entity representative to sign a proposed IPA submitted to NMFS, under paragraph (f)(12) of this section, on his or her behalf. This authorization must be included in the contract submitted to NMFS, under paragraph (f)(8)(ii)(B) of this section, for the sector-level entities and in the contract submitted annually to NMFS by inshore cooperatives under § 679.61(d).

(iv) *Agent for service of process.* The entity's agent for service of process must—

(A) Be authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of an entity receiving a transferable allocation of Chinook salmon PSC or with respect to a CDQ group. Service on or notice to the entity's appointed agent constitutes service on or notice to all members of the entity.

(B) Be capable of accepting service on behalf of the entity until December 31 of the year five years after the calendar year for which the entity notified the Regional Administrator of the identity of the agent.

(v) *Absent a catcher/processor sector or mothership sector entity.* If the catcher/processor sector or the mothership sector does not form an entity to receive a transferable allocation of Chinook salmon PSC, the sector will be managed by NMFS under a non-transferable allocation of Chinook salmon PSC under paragraph (f)(10) of this section.

(9) *Transfers of Chinook salmon PSC.* (i) A Chinook salmon PSC allocation issued to eligible entities under paragraph (f)(8)(i) of this section may be transferred to any other entity receiving a transferable allocation of Chinook salmon PSC by submitting to NMFS an application for transfer described in paragraph (f)(9)(iii) of this section. Transfers of Chinook salmon PSC allocations among eligible entities are subject to the following restrictions:

(A) Entities receiving transferable allocations under the 60,000 PSC limit may only transfer to and from other entities receiving allocations under the 60,000 PSC limit.

(B) Entities receiving transferable allocations under the 45,000 PSC limit may only transfer to and from other entities receiving allocations under the 45,000 PSC limit.

(C) Entities receiving transferable allocations under the 47,591 PSC limit may only transfer to and from other entities receiving allocations under the 47,591 PSC limit.

(D) Entities receiving transferable allocations under the 33,318 PSC limit may only transfer to and from other entities receiving allocations under the 33,318 PSC limit.

(E) Chinook salmon PSC allocations may not be transferred between seasons.

(ii) *Post-delivery transfers.* If the Chinook salmon bycatch by an entity exceeds its seasonal allocation, the entity may receive transfers of Chinook salmon PSC to cover overages for that season. An entity may conduct transfers to cover an overage that results from Chinook salmon bycatch from any fishing trip by a vessel fishing on behalf of that entity that was completed or is in progress at the time the entity's allocation is first exceeded. Under § 679.7(d)(5)(ii)(C)(*2*) and (k)(8)(v)(B), vessels fishing on behalf of an entity that has exceeded its Chinook salmon PSC allocation for a season may not start a new fishing trip for pollock in the BS on behalf of that same entity for the remainder of that season.

(iii) *Application for transfer of Chinook salmon PSC allocation*—(A) *Completed application.* NMFS will process a request for transfer of Chinook salmon PSC provided that a paper or electronic application is completed, with all information fields accurately filled in. Application forms are available on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*) or from NMFS at the address in paragraph (b)(6) of this section.

(B) *Certification of transferor*—(*1*) *Non-electronic submittal.* The transferor's designated representative must sign and date the application certifying that all information is true, correct, and complete. The transferor's designated representative must submit the paper application as indicated on the application.

(*2*) *Electronic submittal.* The transferor's designated entity representative must log onto the NMFS online services system and create a transfer request as indicated on the computer screen. By using the transferor's NMFS ID, password, and Transfer Key, and submitting the transfer request, the designated representative certifies that all information is true, correct, and complete.

(C) *Certification of transferee*—(*1*) *Non-electronic submittal.* The transferee's designated representative must sign and date the application certifying that all information is true, correct, and complete.

(*2*) *Electronic submittal.* The transferee's designated representative must log onto the NMFS online services system and accept the transfer request as indicated on the computer screen. By using the transferee's NMFS ID, password, and Transfer Key, the designated representative certifies that all information is true, correct, and complete.

(D) *Deadline.* NMFS will not approve an application for transfer of Chinook salmon PSC after June 25 for the A season or after December 1 for the B season.

(10) *Non-transferable Chinook salmon PSC allocations.* (i) All vessels belonging to a sector that is ineligible to receive transferable allocations under paragraph (f)(8) of this section, any catcher vessels participating in an inshore open access fishery, and all vessels fishing under the opt-out allocation under paragraph (f)(5) of this section will fish under specific non-transferable Chinook salmon PSC allocations.

(ii) All vessels fishing under a non-transferable Chinook salmon PSC allocation, including vessels fishing on behalf of a CDQ group, will be managed together by NMFS under that non-transferable allocation. If, during the fishing year, the Regional Administrator determines that a seasonal non-transferable Chinook salmon PSC allocation will be reached, NMFS will publish a notice in the **Federal Register** closing the BS to directed fishing for pollock by those vessels fishing under that non-transferable allocation for the remainder of the season or for the remainder of the year.

(iii) For each non-transferable Chinook salmon PSC allocation, NMFS will deduct from the B season allocation any amount of Chinook salmon bycatch in the A season that exceeds the amount available under the A season allocation.

(11) *Rollover of unused A season allocation*—(i) *Rollovers of transferable allocations.* NMFS will add any Chinook salmon PSC allocation remaining at the end of the A season, after any transfers under paragraph (f)(9)(ii) of this section, to an entity's B season allocation.

(ii) *Rollover of non-transferable allocations.* For a non-transferable allocation for the mothership sector, catcher/processor sector, or an inshore open access fishery, NMFS will add any Chinook salmon PSC remaining in that non-transferable allocation at the end of the A season to that B season non-transferable allocation.

(12) *Salmon bycatch incentive plan agreements (IPAs)*—(i) *Minimum participation requirements.* More than one IPA may be approved by NMFS. Each IPA must have participants that represent the following:

(A) *Minimum percent pollock.* Parties to an IPA must collectively represent at least 9 percent of the BS pollock quota.

(B) *Minimum number of unaffiliated AFA entities.* Parties to an IPA must represent any combination of two or more CDQ groups or corporations, partnerships, or individuals who own AFA-permitted vessels and are not affiliated, as affiliation is defined for purposes of AFA entities in § 679.2.

(ii) *Membership in an IPA.* (A) No vessel owner or CDQ group is required to join an IPA.

(B) For a vessel owner in the catcher/processor sector or mothership sector to join an IPA, that vessel owner must be a member of the entity representing that sector under paragraph (f)(8).

(C) For a CDQ group to be a member of an IPA, the CDQ group must sign the IPA and list in that IPA each vessel harvesting BS pollock CDQ, on behalf of that CDQ group, that will participate in that IPA.

(D) Once a member of an IPA, a vessel owner or CDQ group cannot withdraw from the IPA during a fishing year.

(iii) *Request for approval of a proposed IPA.* The IPA representative must submit a proposed IPA to NMFS at the address in paragraph (b)(6) of this section. The proposed IPA must contain the following information:

(A) *Affidavit.* The IPA must include the affidavit affirming that each eligible vessel owner or CDQ group, from whom the IPA representative received written notification requesting to join the IPA, has been allowed to join the IPA subject to the same terms and conditions that have been agreed on by, and are applicable to, all other parties to the IPA.

(B) *Name of the IPA.*

(C) *Representative.* The IPA must include the name, telephone number, and email address of the IPA representative who submits the proposed IPA on behalf of the parties and who is responsible for submitting proposed amendments to the IPA and the annual report required under paragraph (f)(13) of this section.

(D) *Third party group.* The IPA must identify at least one third party group. Third party groups include any entities representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery.

(E) *Description of the incentive plan.* The IPA must contain a description of the following—

(*1*) The incentive(s) that will be implemented under the IPA for the operator of each vessel participating in the IPA to avoid Chinook salmon and chum salmon bycatch under any condition of pollock and Chinook salmon abundance in all years.

(*2*) How the incentive(s) to avoid chum salmon do not increase Chinook salmon bycatch.

(*3*) The rewards for avoiding Chinook salmon, penalties for failure to avoid Chinook salmon at the vessel level, or both.

(*4*) How the incentive measures in the IPA are expected to promote reductions in a vessel's Chinook salmon and chum salmon bycatch rates relative to what would have occurred in absence of the incentive program.

(*5*) How the incentive measures in the IPA promote Chinook salmon and chum salmon savings in any condition of pollock abundance or Chinook salmon abundance in a manner that is expected to influence operational decisions by vessel operators to avoid Chinook salmon and chum salmon.

(*6*) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's Chinook salmon bycatch to keep total bycatch below the performance standard described in paragraph (f)(6) of this section for the sector in which the vessel participates.

(*7*) How the IPA ensures that the operator of each vessel governed by the IPA will manage that vessel's chum salmon bycatch to avoid areas and times where the chum salmon are likely to return to western Alaska.

(*8*) The rolling hot spot program for salmon bycatch avoidance that operates throughout the entire A season and B season and the agreement to provide notifications of closure areas and any violations of the rolling hot spot program to the third party group.

(*9*) The restrictions or penalties targeted at vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels fishing at the same time.

(*10*) The requirement for vessels to enter a fishery-wide in-season salmon PSC data sharing agreement.

(*11*) The requirement for the use of salmon excluder devices, with recognition of contingencies, from January 20 to March 31, and from September 1 until the end of the B season.

(*12*) The requirement that salmon savings credits are limited to a maximum of three years for IPAs with salmon savings credits.

(*13*) The restrictions or performance criteria used to ensure that Chinook salmon PSC rates in October are not significantly higher than those achieved in the preceding months.

(F) *Compliance agreement.* The IPA must include a written statement that all parties to the IPA agree to comply with all provisions of the IPA.

(G) *Signatures.* The names and signatures of the owner or representative for each vessel and CDQ group that is a party to the IPA. The representative of an inshore cooperative, or the representative of the entity formed to represent the AFA catcher/processor sector or the AFA mothership sector under paragraph (f)(8) of this section may sign a proposed IPA on behalf of all vessels that are members of that inshore cooperative or sector level entity.

(iv) *Deadline and duration*—(A) *Deadline for proposed IPA.* A proposed IPA must be received by NMFS no later than 1700 hours, A.l.t., on October 1 of the year prior to the year for which the IPA is proposed to be effective.

(B) *Duration.* Once approved, an IPA is effective starting January 1 of the year

following the year in which NMFS approves the IPA, unless the IPA is approved between January 1 and January 19, in which case the IPA is effective starting in the year in which it is approved. Once approved, an IPA is effective until December 31 of the first year in which it is effective or until December 31 of the year in which the IPA representative notifies NMFS in writing that the IPA is no longer in effect, whichever is later. An IPA may not expire mid-year. No party may join or leave an IPA once it is approved, except as allowed under paragraph (f)(12)(v)(C) of this section.

(v) *NMFS review of a proposed IPA*—(A) *Approval.* An IPA will be approved by NMFS if it meets the following requirements:

(*1*) Meets the minimum participation requirements in paragraph (f)(12)(i) of this section;

(*2*) Is submitted in compliance with the requirements of paragraphs (f)(12)(ii) and (iv) of this section; and

(*3*) Contains the information required in paragraph (f)(12)(iii) of this section.

(B) *IPA identification number.* If approved, NMFS will assign an IPA identification number to the approved IPA. This number must be used by the IPA representative in amendments to the IPA.

(C) *Amendments to an IPA.* Amendments to an approved IPA may be submitted to NMFS at any time and will be reviewed under the requirements of this paragraph (f)(12). An amendment to an approved IPA is effective upon written notification of approval by NMFS to the IPA representative.

(D) *Disapproval.* (*1*) NMFS will disapprove a proposed IPA or a proposed amendment to an IPA for either of the following reasons:

(*i*) If the proposed IPA fails to meet any of the requirements of paragraphs (f)(12)(i) through (iii) of this section, or

(*ii*) If a proposed amendment to an IPA would cause the IPA to no longer be consistent with the requirements of paragraphs (f)(12)(i) through (iv) of this section.

(*2*) *Initial Administrative Determination (IAD).* If, in NMFS' review of the proposed IPA, NMFS identifies deficiencies in the proposed IPA that require disapproval of the proposed IPA, NMFS will notify the applicant in writing. The IPA representative will be provided one 30-day period to address, in writing, the deficiencies identified by NMFS. Additional information or a revised IPA received by NMFS after the expiration of the 30-day period specified by NMFS will not be considered for purposes of the review of the proposed IPA. NMFS will evaluate any additional information submitted by the applicant within the 30-day period. If the Regional Administrator determines that the additional information addresses deficiencies in the proposed IPA, the Regional Administrator will approve the proposed IPA under paragraphs (f)(12)(iv)(B) and (f)(12)(v)(A) of this section. However, if, after consideration of the original proposed IPA and any additional information submitted during the 30-day period, NMFS determines that the proposed IPA does not comply with the requirements of paragraph (f)(12) of this section, NMFS will issue an initial administrative determination (IAD) providing the reasons for disapproving the proposed IPA.

(*3*) *Administrative Appeals.* An IPA representative who receives an IAD disapproving a proposed IPA may appeal under the procedures set forth at § 679.43. If the IPA representative fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination to approve the proposed IPA, then the IPA will be effective as described in paragraph (f)(12)(iv)(B) of this section.

(*4*) *Pending appeal.* While appeal of an IAD disapproving a proposed IPA is pending, proposed members of the IPA subject to the IAD that are not currently members of an approved IPA will fish under the opt-out allocation under paragraph (f)(5) of this section. If no other IPA has been approved by NMFS, NMFS will issue all sectors allocations of the 47,591 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(C) of this section, or, in low Chinook salmon abundance years, allocations of the 33,318 Chinook salmon PSC limit as described in paragraph (f)(3)(iii)(D) of this section.

(vi) *Public release of an IPA.* NMFS will make all proposed IPAs and all approved IPAs and the list of participants in each approved IPA available to the public on the NMFS Alaska Region Web site (*http://alaskafisheries.noaa.gov/*).

(13) *IPA Annual Report.* The representative of each approved IPA must submit a written annual report to the Council at the address specified in § 679.61(f). The Council will make the annual report available to the public.

(i) *Submission deadline.* The IPA Annual Report must be received by the Council no later than March 15.

(ii) *Information requirements.* The IPA Annual Report must contain the following information:

(A) A comprehensive description of the incentive measures, including the rolling hot spot program and salmon excluder use, in effect in the previous year;

(B) A description of how these incentive measures affected individual vessels;

(C) An evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures, including the effectiveness of—

(*1*) Measures to ensure that chum salmon were avoided in areas and at times where chum salmon are likely to return to western Alaska;

(*2*) Restrictions or penalties that target vessels that consistently have significantly higher Chinook salmon PSC rates relative to other vessels; and

(*3*) Restrictions or performance criteria used to ensure that Chinook PSC rates in October are not significantly higher than in previous months.

(D) A description of any amendments to the terms of the IPA that were approved by NMFS since the last annual report and the reasons that the amendments to the IPA were made.

(E) The sub-allocation to each participating vessel of the number of Chinook salmon PSC and amount of pollock (mt) at the start of each fishing season, and number of Chinook salmon PSC and amount of pollock (mt) caught at the end of each season.

(F) The following information on in-season transfer of Chinook salmon PSC and pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups:

(*1*) Date of transfer;

(*2*) Name of transferor;

(*3*) Name of transferee;

(*4*) Number of Chinook salmon PSC transferred; and

(*5*) Amount of pollock (mt) transferred.

(G) The following information on in-season transfers among vessels participating in the IPA:

(*1*) Date of transfer;

(*2*) Name of transferor;

(*3*) Name of transferee;

(*4*) Number of Chinook salmon PSC transferred; and

(*5*) Amount pollock (mt) transferred.

(14) *Non-Chinook salmon prohibited species catch (PSC) limit and Chum Salmon Savings Area.* (i) The PSC limit for non-Chinook salmon caught by vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area, as defined under § 679.22(a)(5) and in Figure 2 to this part, is 42,000 fish.

(ii) 10.7 percent of the non-Chinook PSC limit is allocated to the CDQ Program as a PSQ reserve.

(iii) If the Regional Administrator determines that 42,000 non-Chinook salmon have been caught by vessels using trawl gear during the period August 15 through October 14 in the Catcher Vessel Operational Area, NMFS will prohibit fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

(iv) Trawl vessels participating in directed fishing for pollock and operating under an IPA approved by NMFS under paragraph (f)(12) of this section are exempt from closures in the Chum Salmon Savings Area.

(15) *Salmon handling.* Regulations in this paragraph apply to vessels directed fishing for pollock in the BS, including pollock CDQ, and processors taking deliveries from these vessels.

(i) *Salmon discard.* The operator of a vessel and the manager of a shoreside processor or SFP must not discard any salmon or transfer or process any salmon under the PSD Program at § 679.26 if the salmon were taken incidental to a directed fishery for pollock in the BS until the number of salmon has been determined by the observer and the observer's collection of any scientific data or biological samples from the salmon has been completed.

(ii) *Salmon retention and storage.* (A) Operators of catcher/processors or motherships must—

(*1*) Sort and transport all salmon bycatch from each haul to an approved storage container located adjacent to the observer sampling station that allows an observer free and unobstructed access to the salmon (see § 679.28(d)(2)(i) and (d)(7)). The salmon storage container must remain in view of the observer from the observer sampling station at all times during the sorting of the haul.

(*2*) If, at any point during sorting of a haul or delivery, the salmon are too numerous to be contained in the salmon storage container, cease all sorting and give the observer the opportunity to count the salmon in the storage container and collect scientific data or biological samples. Once the observer has completed all counting and sampling duties for the counted salmon, the salmon must be removed by vessel personnel from the approved storage container and the observer sampling station, in the presence of the observer.

(*3*) Before sorting of the next haul may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous haul. When the observer has completed all counting and sampling duties for a haul or delivery, vessel personnel must remove the salmon, in the presence of the observer, from the salmon storage container and the observer sampling station.

(*4*) Ensure no salmon of any species pass the observer sample collection point, as identified in the scale drawing of the observer sampling station (see § 679.28(d)(2)(i) and (d)(7)).

(B) Operators of vessels delivering to shoreside processors or stationary floating processors must—

(*1*) Retain all salmon taken incidental to a directed fishery for pollock in the BS until the salmon are delivered to the processor receiving the vessel's BS pollock catch.

(*2*) Notify the observer at least 15 minutes before handling catch on board the vessel, including, but not limited to, moving catch from one location to another, sorting, or discard of catch prior to the delivery of catch to the processor receiving the vessel's BS pollock catch. This notification requirement is in addition to the notification requirements in § 679.51(e).

(*3*) Secure all salmon and catch after the observer has completed the collection of scientific data and biological samples and after the vessel crew has completed handling the catch. All salmon and any other catch retained on board the vessel must be made unavailable for sorting and discard until the delivery of catch to the processor receiving the vessel's BS pollock catch. Methods to make salmon or retained catch unavailable for sorting or discard include but are not limited to securing the catch in a completely enclosed container above or below deck, securing the catch in an enclosed codend, or completely and securely covering the fish on deck.

(*4*) Comply with the requirements in paragraphs (f)(15)(ii)(B)(*2*) and (*3*) of this section, before handling the catch prior to delivery.

(C) Shoreside processors or stationary floating processors must—

(*1*) Comply with the requirements in § 679.28(g)(7)(vii) for the receipt, sorting, and storage of salmon from deliveries of catch from the BS pollock fishery.

(*2*) Ensure no salmon of any species pass beyond the last point where sorting of fish occurs, as identified in the scale drawing of the plant in the Catch Monitoring Control Plan (CMCP).

(*3*) Sort and transport all salmon of any species to the salmon storage container identified in the CMCP (see § 679.28 (g)(7)(vi)(C) and (g)(7)(x)(F)). The salmon must remain in that salmon storage container and within the view of the observer at all times during the offload.

(*4*) If, at any point during the offload, salmon are too numerous to be contained in the salmon storage container, cease the offload and all sorting and give the observer the opportunity to count the salmon and collect scientific data or biological samples. The counted salmon then must be removed from the area by plant personnel in the presence of the observer.

(*5*) At the completion of the offload, give the observer the opportunity to count the salmon and collect scientific data or biological samples.

(*6*) Before sorting of the next offload of catch from the BS pollock fishery may begin, give the observer the opportunity to complete the count of salmon and the collection of scientific data or biological samples from the previous offload of catch from the BS pollock fishery. When the observer has completed all counting and sampling duties for the offload, plant personnel must remove the salmon, in the presence of the observer, from the salmon storage container and location where salmon are counted and biological samples or scientific data are collected.

(iii) *Assignment of crew to assist observer.* Operators of vessels and managers of shoreside processors and SFPs that are required to retain salmon under paragraph (f)(15)(i) of this section must designate and identify to the observer aboard the vessel, or at the shoreside processor or SFP, a crew person or employee responsible for ensuring all sorting, retention, and storage of salmon occurs according to the requirements of (f)(15)(ii) of this section.

(iv) *Discard of salmon.* Except for salmon under the PSD Program at § 679.26, all salmon must be returned to the sea as soon as is practicable, following notification by an observer that the number of salmon has been determined and the collection of scientific data or biological samples has been completed.

(g) *Chinook salmon bycatch management in the AI pollock fishery*—(1) *Applicability.* This paragraph contains regulations governing the bycatch of Chinook salmon in the AI pollock fishery.

(2) *AI Chinook salmon PSC limit.* (i) The PSC limit for Chinook salmon caught by vessels while harvesting pollock in the AI is 700 fish.

(ii) 7.5 percent of the PSC limit is allocated to the CDQ Program as a PSQ reserve.

(3) *Area closures.* If, during the fishing year, the Regional Administrator determines that catch of Chinook salmon by vessels using trawl gear while directed fishing for pollock in the AI will reach the PSC limit, NMFS, by notification in the **Federal Register**, will close the AI Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear on the following dates:

(i) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained before April 15.

(ii) From September 1 through December 31, if the Regional Administrator determines that the annual limit of AI Chinook salmon will be attained after April 15.

* * * * *

■ 6. In § 679.22, revise paragraph (a)(10) to read as follows:

§ 679.22 Closures.

(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(f)(14)). Vessels directed fishing for pollock in the BS, including pollock CDQ, and operating under an approved IPA under § 679.21(f)(12) are exempt from closures in the Chum Salmon Savings Area.

* * * * *

■ 7. In § 679.28, revise paragraphs (d)(7)(i) through (iii) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(d) * * *

(7) * * *

(i) A salmon storage container must be located adjacent to the observer sampling station;

(ii) The salmon storage container must remain in view of the observer at the observer sampling station at all times during the sorting of each haul; and

(iii) The salmon storage container must be at least 1.5 cubic meters.

* * * * *

■ 8. In § 679.51, revise paragraphs (e)(1)(iii), (e)(2) introductory text, and (e)(2)(iii)(B)(*3*) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(e) * * *

(1) * * *

(iii) *Communications and observer data entry*—(A) *Observer use of equipment.* Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observer or the United States.

(B) The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, or catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear) must provide the following equipment, software and data transmission capabilities:

(*1*) *Observer access to computer.* Make a computer available for use by the observer.

(*2*) *NMFS-supplied software.* Ensure that the most recent release of NMFS data entry software provided by the Regional Administrator or other approved software is installed on the computer described in paragraph (e)(1)(iii)(B)(*1*) of this section.

(*3*) *Data transmission.* The computer and software described in paragraphs (e)(1)(iii)(B)(*1*) and (*2*) of this section must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(*4*) *Functional and operational equipment.* Ensure that the required equipment described in paragraph (e)(1)(iii)(B) of this section and that is used by an observer to enter or transmit data is fully functional and operational. "Functional" means that all the tasks and components of the NMFS-supplied, or other approved, software described in paragraph (e)(1)(iii)(B)(*2*) of this section and any required data transmissions to NMFS can be executed effectively aboard the vessel by the equipment.

(C) The operator of a catcher vessel participating in the Rockfish Program or a catcher vessel less than 125 ft LOA directed fishing for pollock in the BS must comply with the computer and software requirements described in paragraphs (e)(1)(iii)(B)(*1*), (*2*), and (*4*) of this section.

* * * * *

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (b) of this section must:

* * * * *

(iii) * * *

(B) * * *

(*3*) *Functional and operational equipment.* Ensuring that the communications equipment required under paragraph (e)(2)(iii)(B) of this section that is used by observers to enter and transmit data is functional and operational. "Functional" means that all the tasks and components of the NMFS-supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(*2*) of this section and any data transmissions to NMFS can be executed effectively by the communications equipment.

* * * * *

Tables 47a through 47d to Part 679 [Removed]

■ 9. Remove Tables 47a through 47d to part 679.

[FR Doc. 2016–13697 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 81, No. 112

Friday, June 10, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2016–0015]

RIN 0960–AH92

Evidence From Statutorily Excluded Medical Sources

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In accordance with section 812 of the Bipartisan Budget Act of 2015 (BBA section 812), we propose to revise our rules to explain how we would address evidence furnished by medical sources that meet one of BBA section 812's exclusionary categories (statutorily excluded medical sources). Under this proposed rule, we would not consider evidence furnished by a statutorily excluded medical source unless we find good cause to do so. We propose several circumstances in which we would find good cause, and we also propose to require statutorily excluded medical sources to notify us of their excluded status when they furnish evidence to us. These rules would allow us to fulfill obligations that we have under the Bipartisan Budget Act of 2015 (BBA).

DATES: To ensure that we consider your comments, we must receive them by no later than August 9, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2016–0015 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the "Search" function to find docket number SSA–2016–0015. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments and background documents are available for public viewing on the Federal eRulemaking portal at *www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1632. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

I. How BBA Section 812 Affects How We Consider Evidence

We consider all evidence we receive when we determine whether an individual is blind or disabled under the Social Security Act (Act).[1] We define evidence as anything you or anyone else submits to us, or that we obtain, that relates to your claim.[2]

The BBA was enacted on November 2, 2015.[3] BBA section 812 amended section 223(d)(5) of the Act, 42 U.S.C. 423(d)(5), by adding a new paragraph "C." Under this provision, when we make a disability determination or decision, or when we conduct a continuing disability review (CDR), under titles II or XVI of the Act, we cannot consider evidence furnished by certain sources, unless we have good cause.[4]

Specifically, we may not consider evidence from the following medical sources:

- A medical source convicted of a felony under sections 208 or 1632 of the Act,[5]
- a medical source excluded from participating in any Federal health care program under section 1128 of the Act,[6] or
- a medical source imposed with a civil monetary penalty (CMP),

[1] 42 U.S.C. 416(i), 42 U.S.C. 423(d), and 42 U.S.C. 1382c(a).

[2] 20 CFR 404.1512(b) and 416.912(b).

[3] Pub. L. 114–74, 129 Stat. 584.

[4] Public Law 114–74, sec. 812, 129 Stat. 584, 602. Excluding evidence under BBA section 812 does not constitute an exclusion of a medical source from Social Security programs under section 1136 of the Act, 42 U.S.C. 1320b–6.

[5] 42 U.S.C. 408 and 1383a. These sections make it a felony to give false statements or omit information to cause an improper payment, convert a payment intended for someone else, provide us with false information we need for our records concerning the individual's true identity, or misuse a Social Security card or number for the purpose of obtaining or causing an increase in benefits to which the individual is not entitled or eligible.

[6] 42 U.S.C. 1320a–7. This section identifies four mandatory and 16 permissive bases for excluding a provider from participating in all Federal health care programs (as defined in section 1128B(f) of the Act). The four mandatory exclusions from participating in Federal health care programs are: (1) Conviction of program-related crimes, (2) conviction relating to patient abuse, (3) felony conviction relating to health care fraud, and (4) felony conviction relating to controlled substance. The 16 permissive exclusions from participating in Federal health care programs are: (1) Conviction relating to fraud, (2) conviction relating to obstruction of an investigation or audit, (3) misdemeanor conviction relating to controlled substance, (4) license revocation or suspension, (5) exclusion or suspension under federal or state health care program, (6) claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services, (7) fraud, kickbacks, and other prohibited activities, (8) entities controlled by a sanctioned individual, (9) failure to disclose required information, (10) failure to supply requested information on subcontractors and suppliers, (11) failure to supply payment information, (12) failure to grant immediate access, (13) failure to take corrective action, (14) default on health education loan or scholarship obligations, (15) individuals controlling a sanctioned entity, and (16) making false statements or misrepresentation of a material fact. The Department of Health and Human Services' Office of Inspector General (HHS OIG), which administers section 1128 of the Act, may grant a waiver for all but one of these bases. A mandatory exclusion for a conviction related to patient abuse may not be waived.

assessment, or both, for submitting false evidence under section 1129 of the Act.[7] We refer to the individuals and entities that fall into one or more of these exclusionary categories as statutorily excluded medical sources.

Our Inspector General or the Secretary of Health and Human Services (HHS) will inform us about these statutorily excluded medical sources at such times and to the extent necessary for the effective implementation of this requirement.[8] BBA section 812 requires us to issue regulations to carry out the amendments to the Act by November 2, 2016.[9] BBA section 812 is effective on or after the effective date of the regulations, or by November 2, 2016, whichever is earlier.[10]

II. Proposed Revisions to Our Rules

We propose to implement BBA section 812 by adding new 20 CFR 404.1503b and 416.903b to state that we will not consider evidence from a statutorily excluded medical source under section 223(d)(5)(C) of the Act, unless we find good cause. Under our proposed rules, we may find good cause to consider evidence from an excluded medical source in the following five situations:

- The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;
- The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;
- The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a CMP, assessment, or both, for submitting false evidence under section 1129 of the Act;
- The sole basis for the medical source's exclusion under section 223(d)(5)(C) of the Act is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or
- The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

We may find good cause to consider evidence from an excluded medical source in any of these five enumerated situations when we make a disability determination or decision or when we conduct a CDR.

The first three good cause exceptions relate to evidence that pertains to periods prior to the event that would trigger exclusion under BBA section 812, or relate to a period during which the medical source was not excluded from participating in any Federal health care program. We believe that it would be consistent with the purpose of BBA section 812 to find good cause to consider evidence furnished by a medical source of treatment that occurred: (1) Before the source is convicted of a felony under section 208 or 1632 of the Act,[11] (2) outside of the period the source cannot participate in Federal health care programs under section 1128 of the Act,[12] or (3) before the source is issued a final decision imposing a CMP, assessment, or both, for submitting false evidence under section 1129 of the Act.[13] We propose these good cause exceptions in order to protect the public interest. In our view, an undue hardship would be placed on our claimants, and the purposes of BBA section 812 would not be served, unless we include these exceptions. In this situation, there is little risk that the evidence would be tainted by the activity for which the source has been sanctioned or convicted, but a greater risk that we could make an incorrect determination or decision by excluding probative evidence.

Specifically, it would be against the public interest if we barred claimants from ever using evidence furnished by statutorily excluded medical sources concerning treatment that occurred prior to the period those sources qualify for a BBA section 812 exclusion. For example, there may be instances where a statutorily excluded medical source provided treatment to a claimant prior to the period the source qualified for a BBA section 812 exclusion or performed the acts that led to the exclusion. In those instances, and others, we would determine whether to consider the source's evidence concerning such treatment on a case-by-case basis. In addition, section 1128 of the Act permits some medical sources to resume participating in Federal health care programs after a prescribed exclusion period if they successfully apply for reinstatement.[14] We believe it would also be against the public interest for us to place an absolute bar on claimants from ever using evidence of treatment that occurred after termination of the exclusion under section 1128 when medical sources are permitted to resume their participation in Federal health care programs. We would determine whether to consider that evidence on a case-by-case basis as well.

The fourth good cause exception aligns our rules with those of HHS and provides a consistent approach regarding evidence from affected medical sources. HHS' Office of the Inspector General (HHS OIG) may waive a medical source's exclusion[15] from participating in any Federal health care program for three of the four mandatory exclusions contained in section 1128 of the Act if: (1) It receives a written waiver request from the program's administrator who has determined that the exclusion will pose a hardship to any beneficiary, and (2) the medical source is the sole community physician or sole source of essential specialized services in a community.[16] HHS OIG may waive a medical source's exclusion for one of the permissive exclusions if it determines that imposing the exclusion would not be in the public interest.[17] All waivers may be rescinded if the basis for the waiver ceases to exist.[18] Because a waiver from HHS OIG permits an otherwise excluded medical source to participate in a Federal health care program, we may find good cause to consider evidence from such a medical source consistent with the particular terms of the waiver.

The fifth good cause exception relies on the unique nature of laboratory findings about physical impairments.[19] Laboratory findings about physical impairments are objective, reliable, and reproducible tests that require the least amount of subjective interpretation by a medical source. They are important to help us understand fundamental information about claimants' impairments and whether they are entitled to benefits, such as the onset date and duration of an impairment(s).[20] If we would find that a laboratory finding about a physical impairment in a claim is not reliable, we would not apply the good cause exception.

III. Proposed Notification Process

Our long-term solution to the administration of BBA section 812 is to implement automated evidence matching within our case processing system(s) to identify excludable evidence. As part of our efforts to comply with BBA section 812's implementation deadline of November 2, 2016, we propose to require that statutorily excluded medical sources inform us in writing of their BBA section 812 exclusion(s) each time they submit evidence to us that relates to a claim for Social Security disability benefits or payments.

Regarding the content of the written statement, statutorily excluded medical sources would be required to include a heading that states,

WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT—DO NOT REMOVE.

Immediately following this heading, sources would also need to include their name, title, and the applicable event(s) that triggered their statutory exclusion. Sources convicted of a felony under section 208 or 1632 of the Act[21] would also need to provide the date of their felony conviction. Similarly, sources imposed with a CMP, assessment, or both, for submitting false evidence under section 1129 of the Act,[22] would need to provide the date of the final imposition of the CMP, assessment, or both. Sources that cannot participate in any Federal health care program under section 1128 of the Act[23] would need to include the basis for their exclusion, its effective date and anticipated length, and whether HHS' OIG waived it.

As stated above, our proposed self-reporting requirement would apply only to statutorily excluded medical sources. This requirement applies when the statutorily excluded medical source submits evidence to us directly or indirectly through a representative, claimant, or other individual or entity. We further propose to require that no individual or entity be permitted to remove a statutorily excluded medical source's written statement of exclusion prior to submitting the source's evidence to us. We also seek to reserve the right to request that statutorily excluded medical sources provide us with additional information or clarify any information they submit regarding their exclusion under section 223(d)(5)(C) of the Act.

If statutorily excluded medical sources do not inform us of their excluded status, we may refer the medical source to our Office of the Inspector General for any action it deems appropriate, including investigation and CMP pursuit.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this NPRM does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB has not reviewed it.

Regulatory Flexibility Act

We certify that this NPRM would not have a significant economic impact on a substantial number of small entities. The only economic impact on small entities from this NPRM results from BBA section 812's requirement that we not consider evidence from statutorily excluded medical sources. As described above and in our Paperwork Reduction Act statement, below, we propose to require statutorily excluded medical sources to provide us with a brief self-report containing basic information each time they submit evidence related to a claim for benefits under titles II or XVI of the Act. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This proposed rule poses new public reporting burdens in the sections listed below. Because these requirements are not covered by an existing OMB-approved form, we provide burden estimates for them.

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.1503b(c) 416.903b(c).	Statutorily excluded medical sources must inform us in writing that they are excluded under section 223(d)(5)(C) of the Act, as amended, each time they submit evidence related to a claim for benefits under titles II or XVI of the Act. The written statement must include: A heading stating that it is a written statement regarding section 223(d)(5)(C) of the Act; the name and title of the medical source; the applicable excluding event(s); the date of the medical source's felony conviction if applicable; the date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence if applicable; the basis, effective date, anticipated length of the exclusion, and whether the Office of Inspector General of the Department of Health and Human Services waived the exclusion.	50	60	20	1000
Total	.....	50	.....	.....	1000

We submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity;

[7] 42 U.S.C. 1320a–8. This section permits the imposition of a CMP or assessment (or both) for certain offenses. One such offense is making a false statement or representation of a material fact for us to use in determining an initial or continuing right to Social Security disability benefits.

[8] Section 812(a) of Public Law 114–74, 129 Stat. at 602.

[9] Section 812(b) of Public Law 114–74, 129 Stat. at 602.

[10] Section 812(c) of Public Law 114–74, 129 Stat. at 602.

[11] 42 U.S.C. 408 and 42 U.S.C. 1383a.

[12] 42 U.S.C. 1320a–7.

[13] 42 U.S.C. 1320a–8.

[14] 42 U.S.C. 1320a–7.

[15] 42 U.S.C. 1320a–7(c)(3)(B); 42 CFR 1001.1801.

[16] 42 U.S.C. 1320a–7(a), (c)(3)(B); 42 CFR 1001.1801(a). HHS OIG cannot waive an exclusion based on a conviction related to patient abuse.

[17] 42 U.S.C. 1320a–7(b); 42 CFR 1001.1801(c).

[18] 42 CFR 1001.1801(d), (e).

[19] Laboratory findings related to a physical impairment include chemical tests (such as blood tests), electrophysiological studies (such as electrocardiograms and electroencephalograms), pathology reports, and medical imaging (such as x-rays). See 20 CFR 404.1528(c) and 416.928(c).

[20] See 20 CFR 404.130, 404.1509, and 416.909.

and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex, 6401 Security Blvd., Baltimore, MD 21235–0001, Fax Number: 410–965–6400, Email: *OR.Reports.Clearance@ssa.gov*

You can submit comments until August 9, 2016, which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by July 11, 2016, which is 30 days after publication. To receive a copy of the OMB clearance package, contact our Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 27, 2016.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Add § 404.1503b to read as follows:

§ 404.1503b Evidence from statutorily excluded medical sources.

(a) *General.* We will not consider evidence from the following medical sources statutorily excluded under section 223(d)(5)(C) of the Social Security Act (Act), as amended, unless we find good cause under paragraph (b) of this section:

(1) Any medical source that has been convicted of a felony under section 208 or under section 1632 of the Act;

(2) Any medical source that has been excluded from participation in any Federal health care program under section 1128 of the Act; or

(3) Any medical source that has received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act.

(b) *Good cause.* We may find good cause to consider evidence from a statutorily excluded medical source under section 223(d)(5)(C) of the Act, as amended, if:

(1) The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;

(2) The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;

(3) The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act;

(4) The sole basis for the medical source's exclusion under section 223(d)(5)(C) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or

(5) The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

(c) *Statutorily excluded medical sources' reporting requirements.* Statutorily excluded medical sources (as described in paragraph (a) of this section) must inform us in writing that they are excluded under section 223(d)(5)(C) of the Act, as amended, each time they submit evidence related to a claim for benefits under titles II or XVI of the Act. This reporting requirement applies to evidence that statutorily excluded medical sources submit to us either directly or through a representative, claimant, or other individual or entity.

(1) Statutorily excluded medical sources must provide a written statement, which contains the following information:

(i) A heading stating: "WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT—DO NOT REMOVE"

(ii) The name and title of the medical source;

(iii) The applicable excluding event(s) stated in paragraphs (a)(1)–(a)(3) of this section;

(iv) The date of the medical source's felony conviction under sections 208 or 1632 of the Act, if applicable;

(v) The date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence, under section 1129 of the Act, if applicable; and

(vi) The basis, effective date, anticipated length of the exclusion, and whether the Office of the Inspector General of the Department of Health and Human Services waived the exclusion, if the excluding event was the medical source's exclusion from participation in any Federal health care program under section 1128 of the Act.

(2) The written statement provided by an excluded medical source may not be removed by any individual or entity prior to submitting evidence to us.

(3) We may request that the excluded medical source provide us with additional information or clarify any information submitted that bears on the medical source's exclusion(s) under section 223(d)(5)(C) of the Act, as amended.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 4. Add § 416.903b to read as follows:

§ 416.903b Evidence from statutorily excluded medical sources.

(a) *General.* We will not consider evidence from the following medical sources statutorily excluded under section 223(d)(5)(C) of the Social Security Act (Act), as amended, unless we find good cause under paragraph (b) of this section:

(1) Any medical source that has been convicted of a felony under section 208 or under section 1632 of the Act;

(2) Any medical source that has been excluded from participation in any Federal health care program under section 1128 of the Act; or

(3) Any medical source that has received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act.

(b) *Good cause.* We may find good cause to consider evidence from a statutorily excluded medical source under section 223(d)(5)(C) of the Act, as amended, if:

(1) The evidence from the medical source consists of evidence of treatment that occurred before the date the source was convicted of a felony under section 208 or under section 1632 of the Act;

(2) The evidence from the medical source consists of evidence of treatment that occurred during a period in which the source was not excluded from participation in any Federal health care program under section 1128 of the Act;

(3) The evidence from the medical source consists of evidence of treatment that occurred before the date the source received a final decision imposing a civil monetary penalty or assessment, or both, for submitting false evidence under section 1129 of the Act;

(4) The sole basis for the medical source's exclusion under section 223(d)(5)(C) of the Act, as amended, is that the source cannot participate in any Federal health care program under section 1128 of the Act, but the Office of Inspector General of the Department of Health and Human Services granted a waiver of the section 1128 exclusion; or

(5) The evidence is a laboratory finding about a physical impairment and there is no indication that the finding is unreliable.

(c) *Statutorily excluded medical sources' reporting requirements.* Statutorily excluded medical sources (as described in paragraph (a) of this section) must inform us in writing that they are excluded under section 223(d)(5)(C) of the Act, as amended, each time they submit evidence related to a claim for benefits under titles II or XVI of the Act. This reporting requirement applies to evidence that statutorily excluded medical sources submit to us either directly or through a representative, claimant, or other individual or entity.

(1) Statutorily excluded medical sources must provide a written statement, which contains the following information:

(i) A heading stating: "WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT—DO NOT REMOVE"

(ii) The name and title of the medical source;

(iii) The applicable excluding event(s) stated in paragraphs (a)(1)–(a)(3) of this section;

(iv) The date of the medical source's felony conviction under sections 208 or 1632 of the Act, if applicable;

(v) The date of the imposition of a civil monetary penalty or assessment, or both, for the submission of false evidence, under section 1129 of the Act, if applicable; and

(vi) The basis, effective date, anticipated length of the exclusion, and whether the Office of the Inspector General of the Department of Health and Human Services waived the exclusion, if the excluding event was the medical source's exclusion from participation in any Federal health care program under section 1128 of the Act.

(2) The written statement provided by an excluded medical source may not be removed by any individual or entity prior to submitting evidence to us.

(3) We may request that the excluded medical source provide us with additional information or clarify any information submitted that bears on the medical source's exclusion(s) under section 223(d)(5)(C) of the Act, as amended.

[FR Doc. 2016–13744 Filed 6–9–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175, 176, 177, and 178

[Docket No. FDA–2016–F–1253]

Breast Cancer Fund, Center for Environmental Health, Center for Food Safety, Center for Science in the Public Interest, Clean Water Action, Consumer Federation of America, Earthjustice, Environmental Defense Fund, Improving Kids' Environment, Learning Disabilities Association of America, and Natural Resources Defense Council; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition; correction.

SUMMARY: The Food and Drug Administration (FDA or we) is correcting a notice entitled "Breast Cancer Fund, Center for Environmental Health, Center for Food Safety, Center for Science in the Public Interest, Clean Water Action, Consumer Federation of America, Earthjustice, Environmental Defense Fund, Improving Kids' Environment, Learning Disabilities Association of America, and Natural Resources Defense Council; Filing of Food Additive Petition" that appeared in the **Federal Register** of May 20, 2016 (81 FR 31877). The document announced that Breast Cancer Fund, Center for Environmental Health, Center for Food Safety, Center for Science in the Public Interest, Clean Water Action, Consumer Federation of America, Earthjustice, Environmental Defense Fund, Improving Kids' Environment, Learning Disabilities Association of America, and Natural Resources Defense Council filed a petition proposing that we amend and/or revoke specified regulations to no longer provide for the food contact use of specified ortho-phthalates, but omitted two items. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Kelly Randolph, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1188.

SUPPLEMENTARY INFORMATION: In FR Doc. 2016–11866, appearing on page 31878 in the **Federal Register** of Friday, May 20, 2016, the following correction is made:

On page 31878, in the third column, under the heading "*§ 175.300 Resinous and Polymeric Coatings,*" the

document is corrected to add "Butyl phthalyl butyl glycolate (CAS No. 85–70–1)" and "Ethyl phthalyl ethyl glycolate (CAS No. 84–72–0)" in alphabetical order.

Dated: June 7, 2016.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2016–13739 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0169]

RIN 1625–AA08

Special Local Regulation; Cumberland River, Mile 190.0 to 191.5; Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for all waters of the Cumberland River beginning at mile marker 190.0 and ending at mile marker 191.5 from 9 a.m. until noon on July 30, 2016. This proposed special regulation is necessary to provide safety for the participants in the "Music City SUP Race" marine event. This proposed rulemaking would prohibit persons and vessels from being in the special local regulated area unless authorized by the Captain of the Port Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 27, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0169 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Ashley Schad, MSD Nashville, Nashville, TN, at 615–736–5421 or at *Ashley.M.Schad@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On January 28, 2016, the Nashville Paddle Company notified the Coast Guard that it will be conducting a race from 9 a.m. to noon on July 30, 2016. The event will consist of at least 75 participants on various sized stand up paddle boards and kayaks on the Cumberland River. The Captain of the Port Ohio Valley (COTP) has determined that additional safety measures are necessary to protect participants, spectators, and waterway users during this event. Therefore, the Coast Guard proposes to establish a special local regulation on specified waters of the Cumberland River. This proposed regulation would be in effect from 9 a.m. until noon on July 30, 2016.

The purpose of this rulemaking is to ensure the safety of vessels and participants of the navigable waters before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorizes the Coast Guard to establish and define special local regulations under 33 CFR 100.

III. Discussion of Proposed Rule

The Captain of the Port Ohio Valley proposes to establish a special local regulated area from 9 a.m.to noon on July 30, 2016 for all waters of the Cumberland River beginning at mile marker 190.0 and ending at mile marker 191.5. The duration of the special local regulated area is intended to ensure the safety of vessels, participants, and these navigable waters before, during, and after the scheduled event. No vessel or person would be permitted to enter the special local regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulated area.

This proposed special local regulation restricts transit on the Cumberland River from mile 190.0 to 191.5, for a short duration of 3 hours for one day; Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of this special local regulation so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulated area may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulated area that would prohibit entry to unauthorized vessels. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERWAYS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T08–0169 to read as follows:

§ 100.35T08–0169 Special Local Regulation; Cumberland River Mile 190.0 to 191.5; Nashville, TN

(a) *Location.* All waters of the Cumberland River beginning at mile marker 190.0 and ending at mile marker 191.5 at Nashville, TN.

(b) *Regulations.*

(1) In accordance with the general regulations in § 100.801 of this part, entry into this area is prohibited unless authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels requiring entry into or passage through the area must request permission from the Captain of the Port Ohio Valley or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

Dated: May 10, 2016.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–13782 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2016–3]

Mandatory Deposit of Electronic Books and Sound Recordings Available Only Online

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadline for the submission of written comments in response to its May 17, 2016 Notice of Inquiry regarding the mandatory deposit of online-only electronic books and sound recordings.

DATES: Written comments are now due no later than 11:59 p.m. Eastern Time on August 18, 2016.

ADDRESSES: The Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office Web site at *http://copyright.gov/policy/mandatory deposit/*. If electronic submission of comments is not feasible, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, *jcharlesworth@loc.gov;* or Sarang V. Damle, Deputy General Counsel, *sdam@loc.gov*. Both can be reached by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: The United States Copyright Office is undertaking an inquiry into the current interim rule regarding mandatory deposit of online-only electronic works, and the rule's potential expansion to cover electronic books and sound recordings. On May 17, 2016, the Copyright Office issued a Notice of Inquiry seeking public input on several questions related to that topic. *See* 81 FR 30505 (May 17, 2016). To ensure that commenters have sufficient time to respond, the Copyright Office is extending the deadline for the submission of initial comments in response to the Notice to August 18, 2016, at 11:59 p.m. Eastern Time.

Dated: June 7, 2016.

Jacqueline C. Charlesworth,

General Counsel and Associate Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–13814 Filed 6–9–16; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0009; EPA–R05–OAR–2015–0314; FRL–9946–79–Region 5]

Air Plan Approval; Illinois; NAAQS Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revised rules submitted by the State of Illinois as State Implementation Plan (SIP) revisions. The submitted rules update Illinois' ambient air quality standards to include the 2012 primary National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$), add EPA-promulgated monitoring methods, and address the "sunset provisions" in our regulation, finding that the 1971 NAAQS for sulfur dioxide no longer applies to the Lemont and Pekin areas in Illinois. In addition, the revised rules contain the timing requirements for the "flagging of exceptional events" and the submitting of documentation supporting the determination of exceptional events for the 2012 primary annual averaged $PM_{2.5}$ standard.

DATES: Comments must be received on or before July 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0009 or EPA–R05–OAR–2015–0314 at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that, if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 10, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–13695 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–HQ–RCRA–2016–0040; FRL–9947–60–OLEM]

Hazardous Waste Management System; Tentative Denial of Petition To Revise the RCRA Corrosivity Hazardous Characteristic

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is extending the comment period on the tentative denial of a petition to revise the Resource Conservation and Recovery Act (RCRA) corrosivity hazardous waste characteristic regulation, published in the **Federal Register** on April 11, 2016. EPA is tentatively denying the rulemaking petition because the materials submitted in support of the petition fail to demonstrate that the requested regulatory revisions are warranted, as further explained in the tentative denial. The Agency's review of additional materials it identified as relevant to the petition similarly did not demonstrate that any change to the corrosivity characteristic regulation is warranted at this time. The comment period is being extended to December 7, 2016.

DATES: Comments must be received on or before December 7, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2016–0040, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Gregory Helms, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, (5304P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: 703–308–8855; email address: *helms.greg@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period on the tentative denial of a petition to revise the Resource Conservation and Recovery Act (RCRA) corrosivity hazardous waste characteristic regulation, published in the **Federal Register** on April 11, 2016 (81 FR 21295). In that **Federal Register** notice, the Agency tentatively denied petitioners' requests that the Agency make two changes to the current RCRA corrosivity characteristic regulation: (1) Revise the regulatory value for defining waste as corrosive from the current value of pH 12.5, to pH 11.5; and (2) expand the scope of the RCRA corrosivity definition to include nonaqueous wastes in addition to the aqueous wastes currently regulated. Petitioner-Public Employees for Environmental Responsibility ("PEER") has requested that the Agency extend the public comment period to allow additional time to evaluate the record supporting the tentative denial. EPA is hereby extending the comment period, which was set to end on June 10, 2016, to December 7, 2016. Late comments on this tentative denial may not be considered.

To submit comments or access the docket, please follow the detailed instructions as provided under **ADDRESSES**. If you have questions, consult the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 3, 2016.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery, Office of Solid Waste and Emergency Response.

[FR Doc. 2016–13793 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 81, No. 112
Friday, June 10, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. APP., this notice announces a meeting of the National Advisory Council on Maternal, Infant and Fetal Nutrition.

Date and Time: July 12–14, 2016, 9:00 a.m.–5:30 p.m.

Place: The meeting will be held at the Hilton Garden Inn Arlington/Shirlington, Environment Room, 4271 Campbell Avenue, Arlington, Virginia, 22206.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Maternal, Infant and Fetal Nutrition will meet to continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), and the Commodity Supplemental Food Program (CSFP). The agenda will include updates and a discussion of Breastfeeding Promotion and Support activities, the WIC food packages, WIC funding, Electronic Benefits Transfer, CSFP initiatives, and current research studies.

Status: Meetings of the National Advisory Council on Maternal, Infant and Fetal Nutrition are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below before or after the meeting.

Contact Person for Additional Information: Anne Bartholomew, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, (703) 305–2746. If accommodations, please notify Anne Bartholomew by June 28, 2016, at (703) 305–2746, or email at *WICHQ–SFPD@fns.usda.gov*.

Dated: May 26, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–13703 Filed 6–9–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Uinta-Wasatch-Cache Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Uinta-Wasatch-Cache Resource Advisory Committee (RAC) will meet in South Jordan, Utah. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/uwcnf/workingtogether/advisorycommittees*.

DATES: The meeting will be held on June 28, 2016, from 6:00 p.m.–8:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Forest Service Office, Room #314, 857 West South Jordan Parkway, South Jordan, Utah. The meeting will also be available via conference call, for the conference line information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at *www.fs.fed.us/uwcnf*. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Loyal Clark, RAC Coordinator, by phone at 801–999–2113 or via email at *lfclark@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review the roles and responsibilities of the RAC,
2. Develop operating guidelines,
3. Elect a chair person, and
4. Review and recommend project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 17, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Loyal Clark, RAC Coordinator, Uinta-Wasatch-Cache National Forest, 857 West South Jordan Parkway, South Jordan, Utah 84095; by email to *lfclark@fs.fed.us*, or via facsimile to 801–253–8118.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 3, 2016.

David C. Whittekiend,

Forest Supervisor.

[FR Doc. 2016–13745 Filed 6–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sanders Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sanders Resource Advisory Committee (RAC) will meet in Thompson Falls, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwIAAS*.

DATES: The meeting will be held July 14, 2016, at 7:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Sanders County Courthouse, 1111 Main Street, Thompson Falls, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Plains Ranger District, 408 Clayton Plains, Montana. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Gubel, Designated Federal Officer, by phone at 406–827–3533 or via email at *jgubel@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. Review and approve previous meeting minutes;
2. Discuss project proposals and address project specific questions;
3. Discuss project recommendations
4. Vote on projects to be recommended for approval; and
5. Open forum for public discussion.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 1, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Robin Walker, RAC Coordinator, P.O. Box 429, Plains, Montana 59859; by email to *robinmwalker@fs.fed.us*, or via facsimile to 406–826–4358.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 23, 2016.

John Gubel,

Designated Federal Official, Sanders Resource Advisory Commitee.

[FR Doc. 2016–13759 Filed 6–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northeast Oregon Forests Resource Advisory Committee (RAC) will meet in Baker City, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racweb*.

DATES: The meeting will be held on the following dates:

- July 14, 2016, from 9:30 a.m. to 4:00 p.m.; and
- July 15, 2016, from 9:30 a.m. to 4:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Whitman Ranger District, Baker Work Center, 3285 11th St., Baker City, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Whitman Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jeff Tomac, Designated Federal Officer, by phone at 541–523–1301 or via email at *jtomac@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend 2016/2017 project proposals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 7, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Jeff Tomac, Designated Federal Officer, Whitman Ranger District, 1550 Dewey Avenue, Suite A, Baker City, Oregon 97814; by email to *jtomac@fs.fed.us*, or via facsimile to 541–523–6395.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 31, 2016.

Jeff Tomac,

Designated Federal Official.

[FR Doc. 2016–13749 Filed 6–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills Resource Advisory Committee (RAC) will meet in Rapid City, South Dakota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

DATES: The meeting will be held on June 30, 2016, at 5:00 p.m. to 8:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mystic Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ruth Esperance, Designated Federal Officer, by phone at 605–343–1567 or via email at *resperance@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend projects for funding under the Secure Rural School allocations to the Custer, Lawrence, and Pennington Counties for 2014 and 2015.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 24, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Ruth Esperance, Designated Federal Officer, 8221 South Highway 16, Rapid City, South Dakota; by email to *resperance@fs.fed.us;* or via facsimile to 605–343–7134.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 6, 2016.

Ruth Esperance,

Designated Federal Officer.

[FR Doc. 2016–13743 Filed 6–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Coronado National Forest, USDA Forest Service, USDA.

ACTION: Notice of new fee site.

SUMMARY: The Coronado National Forest is proposing to charge a $175 fee for the overnight rental of the Sollers Cabin, located on the Santa Catalina Ranger District. The Sollers Cabin has not been available for recreation use prior to this date. Rentals of other cabins on National Forests in Arizona have shown that the public appreciates the enhanced recreational opportunity afforded by these rehabilitated historic structures. Funds from the rental will be used for the continued operation and maintenance of this facility and other properties in the Arizona "Rooms with a View" Cabin Rental Program. This fee is only a proposal and will be determined upon further analysis and public comment.

DATES: Please send any comments on this fee proposal by December, 2016, so comments can be complied, and analyzed and shared with the BLM—Arizona Recreation Resource Advisory Council. If the fee proposal is approved, the Sollers Cabin will likely be available for rent in the spring of 2017.

ADDRESSES: Forest Supervisor, Coronado National Forest, 300 West Congress, Tucson, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Kathy Makansi, Archaeologist, 520–760–2502.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by the BLM—Arizona Recreation Resource Advisory Council prior to a final decision and implementation. The Coronado National Forest currently has seven other cabin rentals. These rentals are often fully booked throughout their rental season. Sollers is a large three bedroom (2-story) cabin located in a remote setting (at the end of a dirt road) approximately 20 miles from Tucson, Arizona. The cabin consists of 3 bedrooms, a living room, kitchen, and a bathroom. The cabin also has electricity and indoor plumbing. A business analysis of the Sollers Cabin has shown that people desire having this sort of recreation experience on the Coronado National Forest. A market analysis indicates that the $175.00/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent the Sollers Cabin will need to do so through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: June 2, 2016.

Kerwin S. Dewberry,

Coronado National Forest Supervisor.

[FR Doc. 2016–13747 Filed 6–9–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sanders Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sanders Resource Advisory Committee (RAC) will meet in Thompson Falls, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcwJAAS.*

DATES: The meeting will be held June 30, 2016, at 7:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Sanders County Courthouse, 1111 Main Street, Thompson Falls, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Plains Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: John Gubel, Designated Federal Officer, by phone at 406–827–3533 or via email at *jgubel@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and approve previous meeting minutes;
2. Discuss status of RAC and membership;
3. Review status of approved projects and discuss monitoring;
4. Review project proposals submitted; and
5. Open forum for public discussion.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 15, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Robin Walker, RAC Coordinator, P.O. Box 429, Plains, Montana 59859; by email to *robinmwalker@fs.fed.us,* or via facsimile to 406–826–4358.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 23, 2016.

John Gubel,

Designated Federal Official, Sanders Resource Advisory Committee.

[FR Doc. 2016–13758 Filed 6–9–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wisconsin Advisory Committee To Discuss Preparations for a Hearing on Hate Crimes in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Wisconsin Advisory Committee (Committee) will hold a meeting on Friday, June 24, 2016, at 12:00 p.m. CDT for the purpose of preparing for a hearing on hate crime in the state.

This meeting is open to the public through the following toll-free call-in number: 888–481–2877, conference ID: 4195513. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are invited to make statements to the Committee during the scheduled open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=282.* Click on the "Meeting Details" and "Documents" links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda:

I. Welcome and Introductions—Naheed Bleecker, Chair

II. Hearing Preparation: Hate Crimes and Civil Rights in Wisconsin

- Panelists
- Logistics (schedule, location, date)

III. Open Comment—Public Participation

IV. Adjournment

DATES: The meeting will be held on Friday, June 24, 2016, at 12:00 p.m. CDT.

Public Call Information:

Dial: 888–481–2877.

Conference ID: 4195513.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov.*

Dated: June 07, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–13756 Filed 6–9–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–5–2016]

[Authorization of Production Activity, Foreign-Trade Subzone 279A, Thoma-Sea Marine Constructors, L.L.C. (Shipbuilding), Houma, Louisiana

On February 3, 2016, the Houma-Terrebonne Airport commission, grantee of FTZ 279, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Thoma-Sea Marine Constructors, L.L.C., operator of Subzone 279A, in Houma, Louisiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 7500, February 12, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and the following special conditions:

(1) Any foreign steel mill products admitted to the zone for the Thoma-Sea Marine Constructors, L.L.C., activity, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to full customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

(2) Thoma-Sea Marine Constructors, L.L.C., shall meet its obligation under 15 CFR 400.13(b) by annually advising the FTZ Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the FTZ Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of FTZ procedures and whether the FTZ Board should consider requiring customs duties to be paid on such items.

Dated: June 2, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–13712 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2016]

Foreign-Trade Zone 119—Minneapolis, Minnesota; Notification of Proposed Production Activity; SICK, Inc.; Subzone 119G; (Electronic Industrial Sensors, Encoders, Optical Readers and Monitoring Systems); Savage, Minnesota

The Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119, submitted a notification of proposed production activity to the FTZ Board on behalf of SICK, Inc. (SICK), operator of Subzone 119G, at its facility located in Savage, Minnesota. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 17, 2016.

SICK already has authority to produce photo-electronic industrial automation sensors within Subzone 119G. The current request would add new finished products (encoders, zone control sensors, proximity sensors, integrated optical readers, data process monitoring/reporting systems) and certain foreign components and materials to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt SICK from customs duty payments on the foreign status components and materials used in export production. On its domestic sales, SICK would be able to choose the duty rates during customs entry procedures that apply to photo-electronic industrial automation sensors, encoders, zone control sensors, proximity sensors, integrated optical readers, and data process monitoring/reporting systems (free, 2.6% or 2.7%) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad are: adhesives of polymers; plastic labels; plastic gaskets/washers/seals; corrugated cartons; steel screws/bolts/nuts/washers; steel and brass nuts/bolts/screws; steel brackets; inductors; electrical connectors; and, metal clamps and brackets (duty rate ranges from free to 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 20, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: June 2, 2016.

Executive Secretary.

[FR Doc. 2016–13706 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–1–2016]

Subzone 230D; Authorization of Limited Production Activity; Klaussner Furniture Industries, Inc. (Upholstered Furniture); Asheboro and Candor, North Carolina

On January 5, 2016, Klaussner Furniture Industries, Inc., operator of Subzone 230D, submitted a notification of proposed production activity to the Foreign Trade-Zones (FTZ) Board for its facilities within Subzone 230D, in Asheboro and Candor, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 3100, January 20, 2016). The FTZ Board has determined that further review of part of the proposed activity is warranted at this time. The production activity described in the notification is authorized on a limited basis, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that foreign status upholstery leather including hides (classified within HTSUS Subheadings 4107.11, 4107.92, and 4107.99) be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: June 2, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–13720 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–78–2016]

Foreign-Trade Zone 233—Dothan, Alabama, Application for Subzone, Next Level Apparel, Ashford, Alabama

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dothan-Houston County Foreign Trade Zone, Inc., grantee of FTZ 233, requesting subzone status for the facility of Next Level Apparel located in Ashford, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on June 1, 2016.

The proposed subzone (22.27 acres) is located at 814 6th Avenue in Ashford. The proposed subzone would be subject to the existing activation limit of FTZ 233. No authorization for production activity has been requested at this time.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 20, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 4, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: June 1, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–13719 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel nails (nails) from the United Arab Emirates (UAE). The period of review (POR) is May 1, 2014, through April 30, 2015.[1] We preliminarily find that ODS and Dubai Wire sold subject merchandise at less than normal value in the United States and that Oman Fasteners, OISI, and Precision had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3683, and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the *Order*[2] is nails from the UAE. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7317.00.55, 7317.00.65, and 7317.00.75. While the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[3]

Preliminary Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by Oman Fasteners, OISI, and Precision, we preliminarily determine that these companies had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR. For a full discussion of this determination, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period May 1, 2014, through April 30, 2015:

Producer/exporter	Weighted-average margin (percent)
Overseas Distribution Services Inc.	7.80
Dubai Wire FZE[4]	7.80

[1] The review covers five producers/exporters of the subject merchandise, Dubai Wire FZE (Dubai Wire), Oman Fasteners LLC (Oman Fasteners), Overseas Distribution Services Inc. (ODS), Overseas International Steel Industry LLC (OISI), and Precision Fasteners LLC (Precision).

[2] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (*Order*).

[3] *See* the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2014–2015: Certain Steel Nails from the United Arab Emirates" dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[7] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine and CBP shall assess antidumping duties on all appropriate entries. If ODS' weighted-average dumping margin continues to be above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). If ODS' weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.*, "{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis*, no antidumping duties will be assessed."[8]

For entries of subject merchandise during the POR produced by ODS for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Consistent with our practice, if we continue to find that Oman Fasteners, OISI, and Precision had no shipments of subject merchandise to the United States in the final results of this review, we intend to instruct CBP to liquidate any existing entries of merchandise produced by Oman Fasteners, OISI, and Precision and exported by other parties at the all-others rate.

For Dubai Wire, the company not selected for individual examination, we will instruct CBP to apply the rate assigned to it in the final results of this review, to all entries of subject merchandise produced and/or exported by Dubai Wire.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of nails from the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for ODS and Dubai Wire will be the rates established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.30 percent, the all-others rate established in the *Order*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 3, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Preliminary Determination of No Shipments
Rate for Respondent Not Selected for Individual Examination
Discussion of the Methodology
A. Comparisons to Normal Value
1. Determination of Comparison Method
2. Results of Differential Pricing Analysis
B. Product Comparisons
C. Date of Sale
D. U.S. Price
E. Normal Value
1. Home Market Viability and Comparison Market
2. Level of Trade
3. Calculation of Normal Value Based on Constructed Value
4. Cost of Production
F. Verification
G. Currency Conversion Recommendation

[FR Doc. 2016–13704 Filed 6–9–16; 8:45 am]

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[4] Dubai Wire was not selected for individual examination in this review. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based on total facts available. Accordingly, our usual practice has been to average the rates for the selected companies excluding zero, *de minimis*, and rates based entirely on facts available. In this review, we calculated a weighted-average dumping margin above zero or *de minimis* for the sole respondent selected for individual examination, ODS. Based on this, and analogous to the statutory provision concerning investigations, we preliminarily determine that a reasonable method for determining the weighted-average dumping margin for Dubai Wire in this review is to assign the rate calculated for ODS.

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.310(c).

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8102 (February 14, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is a conducting a new shipper review (NSR) of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The NSR covers the exporter Wah Yuen Stationery Co., Ltd. and its affiliated producer, Shandong Wah Yuen Stationery Co., Ltd. (collectively, Wah Yuen). The period of review (POR) is December 1, 2014, through May 31, 2015. The Department preliminarily finds that Wah Yuen made a sale of subject merchandise at below normal value. Interested parties are invited to comment on these preliminary results.

DATES: Effective Date: June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1785.

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, *etc.*) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1] Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is in the attached Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's centralized electronic service system (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and it is available to all parties in the Department's Central Records Unit, B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of New Shipper Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the POR December 1, 2014, through May 31, 2015:

Exporter	Producer	Weighted average dumping margin (percent)
Wah Yuen Stationery Co., Ltd.	Shandong Wah Yuen Stationery Co., Ltd..	31.03

Disclosure and Public Comment

The Department will disclose the analysis performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs by no later than 30 days after the date of publication of these preliminary results of review.[2] Rebuttals, limited to issues raised in the case briefs, may be filed by no later than five days after the case briefs are filed.[3]

Any interested party may request a hearing within 30 days of publication of this notice.[4] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[5]

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iii), the Department intends to issue the final results of this new shipper review, which will include the results of its analysis of all issues raised in the case and rebuttal briefs, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon issuance of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[6] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this new shipper review.

If the respondent's weighted average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.50 percent) in the final results, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total

[1] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary, re: "Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Cased Pencils from the People's Republic of China," dated June 2, 2016.

[2] *See* 19 CFR 351.309(c).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310(d).

[6] *See* 19 CFR 351.212(b)(1).

entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* rate is not zero or *de minimis,* the Department will instruct CBP to collect the appropriate antidumping duties at the time of liquidation.[7] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[8]

For entries that were not reported in the U.S. sales data submitted by Wah Yuen, the Department will instruct CBP to liquidate such entries at the rate for the PRC-wide entity.[9] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: For merchandise produced by Shandong Wah Yuen Stationery Co., Ltd. and exported by Wah Yuen Stationery Co., Ltd., the cash deposit rates will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[7] *See* 19 CFR 351.212(b)(1).

[8] *See* 19 CFR 351.106(c)(2).

[9] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214 and 351.221(b)(4).

Dated: June 2, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Date of Sale
VI. Comparisons to Normal Value
VII. Results of Differential Pricing Analysis
VIII. U.S. Price
IX. Normal Value
X. Factor Valuations
XI. Currency Conversion
XII. Recommendation

[FR Doc. 2016–13721 Filed 6–9–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold the first meeting of its newly appointed members on Thursday, June 30, 2016. The Board was re-chartered in August 2015, to advise the Secretary of Commerce on matters relating to the travel and tourism industry. At the meeting, members will be sworn-in and will begin a discussion of the work they will undertake during their appointment term. They are expected to discuss issues impacting the travel and tourism industry, including travel promotion, visa policy, travel facilitation, data and research, sustainable tourism, and domestic travel and tourism issues, in addition to other topics. The agenda may change to accommodate Board business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://trade.gov/ttab,* at least one week in advance of the meeting.

DATES: Thursday, June 30, 2016, 9 a.m.–12 p.m. EDT. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on June 23, 2016.

ADDRESSES: The meeting will be held at the Department of Commerce. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Travel and Tourism Advisory Board, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *OACIO@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Li Zhou, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *OACIO@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATES caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on Thursday, June 23, 2016, for inclusion in the meeting records and for circulation to the members of the Travel and Tourism Advisory Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Li Zhou at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on Thursday, June 23, 2016, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: June 6, 2016.

Li Zhou,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2016–13775 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 9, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sarah Towne, NMFS West Coast Region, 7600 Sand Point Way NE., Seattle, WA 98103, (206) 526–4140, or *sarah.towne@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) requests comments on the extension of a currently approved information collection for the West Coast Region's Pacific Coast Groundfish Trawl Rationalization Program.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* provides that the Secretary of Commerce is responsible for the conservation and management of marine fisheries resources in the Exclusive Economic Zone (3–200 miles) of the United States. NMFS West Coast Region manages the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone (EEZ) off of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan.

In January 2011, NMFS implemented a trawl rationalization program, which is a catch share program, for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations at 50 CFR part 660. Amendment 20 established the trawl rationalization program that consists of: an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and nonwhiting sectors), and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Amendment 21 set long-term allocations for the limited entry trawl sectors of certain groundfish species.

Under the trawl rationalization program, new permits, accounts, endorsements and licenses were established. These consist of: Quota share (QS) permits/accounts, vessel accounts, first receiver site licenses, mothership endorsements on certain limited entry trawl permits, mothership catcher vessel endorsements on certain limited entry trawl permits, catcher/processor endorsements on certain limited entry trawl permits, a mothership cooperative permit, and a catcher/processor cooperative permit. NMFS collects information from program participants required to: (1) Establish new permits, accounts, and licenses; (2) renew permits, accounts, and licenses; (3) allow trading of QS percentages and quota pounds (QP) in online QS and vessel accounts, and allow transfer of catch history assignments between limited entry trawl permits; (4) track compliance with program control limits; and (5) implement other features of the regulations pertaining to permits and licenses. NMFS requests comments on the extension of these permit information collections.

As part of this request, NMFS plans to remove the notary requirement on all of our forms in this collection, which will save time and money for permit, vessel, and license owners.

II. Method of Collection

Information is collected by mail and electronically.

The following information is collected by mail: QS permit application forms; late QS permit renewals; vessel account registration requests; late vessel account renewals; trawl identification of ownership interest forms for new applicants, mothership catcher vessel endorsed limited entry permit owners, and mothership permit owners; first receiver site license application forms; mothership permit renewal forms; mothership permit change of vessel registration, permit owner, or vessel owner application forms; mothership cooperative permit application forms; change of mothership catcher vessel endorsement and catch history assignment registration forms; mutual agreement exception forms; mothership withdrawal forms; catcher/processor cooperative permit application forms; material change forms; and QS abandonment requests.

The following information is collected electronically: QS permit renewals; QS percent transfers; QP transfers from a QS account to a vessel account; vessel account renewals; QP transfers from a vessel account to another vessel account; and trawl identification of ownership interest forms for online QS and vessel account renewals.

III. Data

OMB Control Number: 0648–0620.

Form Number(s): None.

Type of Review: Extension of a currently approved collection, with revision.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 410 unique respondents.

Estimated Time per Response: QS permit/account application form—30 minutes; QS permit/account online renewal—10 minutes; QS permit/

margin is zero or *de minimis*, or an importer-specific *ad valorem* rate is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[8]

For entries that were not reported in the U.S. sales data submitted by Wah Yuen, the Department will instruct CBP to liquidate such entries at the rate for the PRC-wide entity.[9] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: For merchandise produced by Shandong Wah Yuen Stationery Co., Ltd. and exported by Wah Yuen Stationery Co., Ltd., the cash deposit rates will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

[7] *See* 19 CFR 351.212(b)(1).

[8] *See* 19 CFR 351.106(c)(2).

[9] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214 and 351.221(b)(4).

Dated: June 2, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Date of Sale
VI. Comparisons to Normal Value
VII. Results of Differential Pricing Analysis
VIII. U.S. Price
IX. Normal Value
X. Factor Valuations
XI. Currency Conversion
XII. Recommendation

[FR Doc. 2016–13721 Filed 6–9–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold the first meeting of its newly appointed members on Thursday, June 30, 2016. The Board was re-chartered in August 2015, to advise the Secretary of Commerce on matters relating to the travel and tourism industry. At the meeting, members will be sworn-in and will begin a discussion of the work they will undertake during their appointment

business. The final agenda will be posted on the Department of Commerce Web site for the Board at *http://trade.gov/ttab*, at least one week in advance of the meeting.

DATES: Thursday, June 30, 2016, 9 a.m.–12 p.m. EDT. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on June 23, 2016.

ADDRESSES: The meeting will be held at the Department of Commerce. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Travel and Tourism Advisory Board, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *OACIO@trade.gov*. Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Li Zhou, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *OACIO@trade.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the DATES caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the

and Tourism Advisory Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Li Zhou at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on Thursday, June 23, 2016, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: June 6, 2016.

Li Zhou,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2016–13775 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 9, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

The National Marine Fisheries Service (NMFS) requests comments on the extension of a currently approved information collection for the West Coast Region's Pacific Coast Groundfish Trawl Rationalization Program.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, provides that the Secretary of Commerce is responsible for the conservation and management of marine fisheries resources in the Exclusive Economic Zone (3–200 miles) of the United States. NMFS West Coast Region manages the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone (EEZ) off of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan.

In January 2011, NMFS implemented a trawl rationalization program, which is a catch share program, for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations at 50 CFR part 660. Amendment 20 established the trawl rationalization program that consists of: an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and nonwhiting sectors), and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Amendment 21 set long-term allocations for the limited entry trawl sectors of certain groundfish species.

Under the trawl rationalization program, new permits, accounts, endorsements and licenses were established. These consist of: Quota share (QS) permits/accounts, vessel accounts, first receiver site licenses, mothership endorsements on certain limited entry trawl permits, mothership catcher vessel endorsements on certain limited entry trawl permits, catcher/processor endorsements on certain limited entry trawl permits, a mothership cooperative permit, and a catcher/processor cooperative permit. NMFS collects information from program participants required to: (1) Establish new permits, accounts, and licenses; (2) renew permits, accounts, and licenses; (3) allow trading of QS

the extension of these permit information collections.

As part of this request, NMFS plans to remove the notary requirement on all of our forms in this collection, which will save time and money for permit, vessel, and license owners.

II. Method of Collection

Information is collected by mail and electronically.

The following information is collected by mail: QS permit application forms; late QS permit renewals; vessel account registration requests; late vessel account renewals; trawl identification of ownership interest forms for new applicants, mothership catcher vessel endorsed limited entry permit owners, and mothership permit owners; first receiver site license application forms; mothership permit renewal forms; mothership permit change of vessel registration, permit owner, or vessel owner application forms; mothership cooperative permit application forms; change of mothership catcher vessel endorsement and catch history assignment registration forms; mutual agreement exception forms; mothership withdrawal forms; catcher/processor cooperative permit application forms; material change forms; and QS abandonment requests.

The following information is collected electronically: QS permit renewals; QS percent transfers; QP transfers from a QS account to a vessel account; vessel account renewals; QP transfers from a vessel account to another vessel account; and trawl identification of ownership interest forms for online QS and vessel account renewals.

III. Data

OMB Control Number: 0648–0620.

Form Number(s): None.

Type of Review: Extension of a currently approved collection, with revision.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 410 unique respondents.

Estimated Time per Response: QS permit/account application form—30 minutes; QS permit/account online renewal—10 minutes; QS permit/

account late renewal form—15 minutes; QS transfer—10 minutes; QP transfer from QS account to vessel account—8 minutes; vessel account registration request—15 minutes; vessel account online renewal—10 minutes; vessel account late renewal form—15 minutes; QP transfer from vessel account to another vessel account—8 minutes; trawl identification of ownership interest form for new entrants—45 minutes; trawl identification of ownership interest form for renewals—5 minutes; first receiver site license application form for new entrants—210 minutes; first receiver site license application form for re-registering license holders—110 minutes; mothership permit renewal form—20 minutes; mothership permit change of vessel registration, permit owner, or vessel owner application form—45 minutes; mothership cooperative permit application form—240 minutes; change of mothership catcher vessel endorsement and catch history assignment registration form—45 minutes; mutual agreement exception—60 minutes; mothership withdrawal—120 minutes; catcher/processor cooperative permit application form—120 minutes; QS abandonment request—10 minutes.

Estimated Total Annual Burden Hours: 640.

Estimated Total Annual Cost to Public: $12,475.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 7, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–13748 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE614

Endangered Species; File No. 20114

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Commonwealth of Northern Mariana Islands Department of Lands & Natural Resources, Sea Turtle Program, Caller Box 10007 Saipan, MP 96950 Northern Mariana Islands [Responsible Party: Richard B. Seman,], has applied in due form for a permit to take green (*Chelonia mydas)* and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before July 11, 2016.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 20114 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Arturo Herrera or Amy Hapeman (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year permit to research green and hawksbill sea turtles within the U.S. CNMI. The purpose of the project is to characterize the population structure, size class composition, foraging ecology, health, and migration patterns of green and hawksbill turtles in the region. Researchers would be authorized to capture 265 green and 40 hawksbill sea turtles annually by hand-capture and perform the following procedures: Examine; measure; photograph; video; weigh; flipper and Passive Integrated Transponder (PIT) tag; temporary carapace mark; oral swab, tissue, and blood sample. 235 green and 20 hawksbill sea turtles will receive scute sampling, while 30 captured hawksbills and 20 greens will have satellite transmitters attached by epoxy. In addition, dead carcasses, tissues and parts may be salvaged from up to 15 greens and 10 hawksbills annually.

Dated: June 6, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–13713 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BA21

Notice of Availability of a Draft Environmental Impact Statement for the Proposed Expansion for the Flower Garden Banks National Marine Sanctuary; Announcement of Public Meetings

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and public meetings.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has prepared a draft environmental impact statement for the proposed actions of boundary expansion, and application of existing regulations and management plan actions to new geographic areas of the Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary). The purpose of this action is to provide sanctuary protection for a number of nationally significant reefs and banks in the northcentral Gulf of Mexico. Five alternatives to implement these proposed actions are analyzed for potential effects on the human environment. NOAA is soliciting public comment on the draft environmental impact statement.

DATES: Comments on this draft environmental impact statement will be considered if received by August 19, 2016. Public meetings will be held in the following locations and times as indicated below:

(1) Galveston, Texas

Date: July 12, 2016
Location: Flower Garden Banks National Marine Sanctuary Office
Address: 4700 Avenue U, Building 216, Galveston, TX 77551
Time: 5:30–7:30 p.m.

(2) Houston, Texas

Date: July 13, 2016
Location: Trini Mendenhall Community Center
Address: 1414 Wirt Rd., Houston, TX 77055
Time: 5:30–7:30 p.m.

(3) New Orleans, Louisiana

Date: July 19, 2016
Location: Hilton New Orleans Airport, Segnette Room
Address: 901 Airline Drive, Kenner, LA 70062
Time: 5:30–7:30 p.m.

(4) Mobile, Alabama

Date: July 20, 2016
Location: Five Rivers Delta Center
Address: 30945 Five Rivers Blvd., Spanish Fort, AL 36527
Time: 5:30–7:30 p.m.

(5) Lafayette, Louisiana

Date: July 21, 2016
Location: Estuarine Habitats and Coastal Fisheries Center
Address: 646 Cajundome Blvd., Lafayette, LA 70506
Time: 5:30–7:30 p.m.

ADDRESSES: You may submit comments on this document, identified by NOAA–NOS–2016–0059, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2016-0059,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Flower Garden Banks National Marine Sanctuary, NOAA, 4700 Avenue U, Building 216, Galveston, TX 77551, Attn: George Schmahl, Superintendent.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Kelly Drinnen, Education and Outreach Specialist, Flower Garden Banks National Marine Sanctuary at 409–621–5151 ext. 102 or via email at *fgbexpansion@noaa.gov.*

Copies of the draft environmental impact statement can be downloaded or viewed on the internet at *www.regulations.gov* (search for docket #NOAA–NOS–2016–0059) or at *http://flowergarden.noaa.gov.* Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

I. Background

Flower Garden Banks National Marine Sanctuary

Located in the northwestern Gulf of Mexico, 70 to 115 miles off the coasts of Texas and Louisiana, Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) currently includes three separate undersea features: East Flower Garden Bank; West Flower Garden Bank; and Stetson Bank. The banks range in depth from 55 feet to nearly 500 feet and provide a wide range of habitat conditions that support several distinct biological communities, including the northernmost coral reefs in the continental United States. These and similar formations throughout the north central Gulf of Mexico provide the foundation for significant habitat for a variety of species. The combination of location and geology makes FGBNMS extremely productive and diverse, and presents a unique set of challenges for managing and protecting its natural wonders. East and West Flower Garden Banks were designated a national marine sanctuary in 1992 for purposes of protecting and managing the conservation, ecological, recreational, research, education, historic and aesthetic resources and qualities of these areas. Stetson Bank was added to the sanctuary by Congress in 1996 (Pub. Law 104–283).

The Office of National Marine Sanctuaries (ONMS) is required to periodically review sanctuary management plans to ensure that sanctuary sites continue to best conserve, protect and enhance their nationally significant living and cultural resources. In 2012 NOAA updated and revised the 1991 Flower Garden Banks Management Plan to address recent scientific discoveries, advancements in managing marine resources, and new resource management issues. As a result of this review, the FGBNMS Advisory Council recommended expanding the sanctuary to provide similar protections to additional banks in the north central Gulf of Mexico.

On February 3, 2015 NOAA initiated the public scoping process (80 FR 5699) to consider expanding FGBNMS to include additional areas in the Gulf of Mexico. The public scoping period ended on April 6, 2015, during which time three public hearings were held and NOAA received both written and oral comments on the concept of expanding the boundaries of the sanctuary. NOAA received approximately 200 comments during that scoping period, generally supportive of the concept to expand the sanctuary boundary. Some comments were supportive with conditions tied to specific issues such as access to oil and gas resources and fisheries concerns. This information was considered during the development of the range of alternatives in the expansion proposal.

The expansion of the sanctuary to include additional nationally significant habitat is supported for a number of reasons. In general, the northern Gulf of Mexico is a heavily utilized and industrialized region, and there is a significant concern about impacts from bottom-disturbing activities (*e.g.* some activities related to oil and gas exploration and production, fishing with bottom tending gear, vessel anchoring, and salvage activities) on the sensitive biological resources and geological features associated with many reefs and banks in the area. Additional opportunities for research, exploration, and education related to these significant ocean resources is critical for understanding changes occurring in the environment, fostering a stewardship ethic, and developing an understanding of the ecosystem services these resources provide for communities throughout the Gulf of Mexico region.

II. NOAA Proposed Action

NOAA is releasing for public comment a DEIS that analyzes a proposed action to expand the FGBNMS boundary to include additional bank and reef areas in the northcentral Gulf of Mexico and to apply the existing sanctuary regulations and management regime to the expanded area. NOAA developed five alternatives for expanding the FGBNMS boundary. The alternatives range from taking no action to adding as much as an additional approximate 880 square miles.

NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico. This alternative would add 15 additional banks ranging from 70 to 120 miles offshore that are comprised of reefs and bottom features that provide habitat for fish and other biological resources that serve as engines of sustainability for much of the Gulf of Mexico.

The proposed sanctuary expansion advances NOAA's mission to conserve and manage coastal and marine ecosystems and resources and furthers the FGBNMS mission to identify, protect, conserve, and enhance the natural and cultural resources, values, and qualities of FGBNMS and its regional environment for this and future generations. The need for the proposed sanctuary expansion is informed by widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico that can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion to ensure that valuable natural resources are available to future generations of Americans.

NOAA is seeking public comment on the DEIS which is available at *http://flowergarden.noaa.gov/* or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Authority: 16 U.S.C. 1431 *et seq.*

Dated: June 1, 2016.

John Armor,

Acting Director, Office of National Marine Sanctuaries.

[FR Doc. 2016–13661 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE404 and 0648–XE486

Marine Mammals; File Nos. 18978 and 19768

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that permits have been issued to the following entities for research on marine mammal parts:

File No. 18978: Pam Miller, Alaska Community Action on Toxics, 505 West Northern Lights Blvd., Suite 205, Anchorage, AK 99503; and

File No. 19768: Evin Hildebrandt, Ph.D., University of Massachusetts Medical School, 55 Lake Avenue, S3–221, Worcester, MA 01655.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On March 8, 2016 (File No. 18978; 81 FR 12075) and March 11, 2016 (File No. 19768; 81 FR 12879), notices were published in the **Federal Register** that requests for permits to conduct research on marine mammal parts had been submitted by the above-named applicants. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 18978 (Miller) authorizes the receipt and export of subsistence hunted marine mammal parts. Researchers will work with Yupik households and local hunters on St. Lawrence Island, Alaska, to obtain samples from up to 8 animals per year from ringed seal (*Pusa hispida*); bearded seal (*Erignathus barbatus*); and ribbon seal (*Histriophoca fasciata*) and 9 animals per year from bowhead whale (*Balaena mysticetus*) and spotted seal (*Phoca largha*). Samples would be measured for contaminant levels to determine marine mammal exposure to polybrominated diphenyl ethers and perfluorinated compounds. No live animals would be affected. The permit is valid through April 30, 2021.

File No. 19768 (Hildebrandt) authorizes the receipt of cell lines from other researchers and the creation of cell lines from animal tissues obtained from the stranding network under a regional authorization letter for scientific research purposes. Up to 15 cell lines would be received or created annually from certain cetacean species. These cell lines would be used to study the evolution of endogenous viruses (viruses that integrate into the genome of the host) using the DNA and RNA sequencing. No live animals would be affected. The permit is valid through May 31, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of these permits was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 6, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–13714 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE619

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This permit would allow one commercial fishing vessel to test the economic viability of using electric rod and reel gear to target pollock in the Western Gulf of Maine Closure Area, and to temporarily retain undersized catch for measurement and data collection. The privately-funded study would be conducted by a commercial fisherman as a pilot demonstration project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before June 27, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line "Comments on Rod and Reel Fishing in WGOM Closed Area EFP."
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments Rod and Reel Fishing in WGOM Closed Area EFP."

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheimer, Fisheries Management Specialist, 978–281–9236, *Elizabeth.scheimer@noaa.gov.*

SUPPLEMENTARY INFORMATION: A commercial fisherman submitted a complete application for an exempted fishing permit (EFP) on May 4, 2016, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize one vessel to use electric rod and reel gear in the Western Gulf of Maine (GOM) Closure Area and to temporarily retain undersized catch for measurement and data collection.

The project, titled "Utilization of Electric Rod and Reel to Target Pollock in WGOM Closed Area," is privately funded by a commercial fisherman as a pilot study to test the economic viability of using electric rod and reel gear to target pollock while avoiding non-target catch. The study would take place in the Western GOM Closure Area, from June through August 2016, with one vessel planning to fish up to 5 days per month. The exemptions are necessary because groundfish vessels on commercial groundfish trips are prohibited from fishing in the Western GOM Closure Area and from retaining undersized groundfish. The vessel would use four electric rod and reels each day and fish for at least 4 to 6 hours, with an additional 5 to 6 hours of steaming, for a total trip of approximately 12 hours. Fishing would primarily occur within the Western GOM Closure Area, in the area known as "The Fingers," with some effort being conducted outside the area. The researcher is requesting access to the Western GOM Closure Area based on his belief that pollock is concentrated in this area, and that they can be targeted with minimal catch of non-target species.

A research technician would accompany all trips that occur under this EFP to measure and document fish caught (retained and discarded), document fishing gear, bait, location, and fishing conditions to evaluate gear performance. Undersized fish would be discarded as quickly as possible after sampling. All Northeast multispecies of legal size would be landed, with all catch being attributed to the sector vessel's annual catch entitlement. Proceeds from the sales would be retained by the vessel. The participating vessel would not be exempt from any sector monitoring or reporting requirements.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 6, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13728 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2016–00014]

Grant of Interim Extension of the Term of U.S. Patent No. 5,912,231; LOCILEX® (pexiganan)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a one-year interim extension of the term of U.S. Patent No. 5,912,231.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755; or by email to *Mary.Till@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 26, 2016, Scripps Research Institute, the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 5,912,231. The patent claims a composition of the active ingredient pexiganan of the human drug product LOCILEX®. The application for patent term extension indicates that New Drug Application (NDA) 29–930 was submitted to the Food and Drug Administration (FDA) on July 24, 1998.

Review of the patent term extension application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the original expiration date of the patent, June 15, 2016, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 5,912,231 is granted for a period of one year from the original expiration date of the patent.

Dated: June 6, 2016.

Robert Bahr,

Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office.

[FR Doc. 2016–13764 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2016–0020]

Patent and Trademark Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations for the Patent and Trademark Public Advisory Committees.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Public Law 106–113, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified at 35 U.S.C. 5). The America Invents Act Technical Corrections Act made several amendments to the 1999 Act, including the requirement that the terms of the USPTO Public Advisory Committee members be realigned by 2014, so that December 1 be used as the start and end date, with terms staggered so that each year three existing terms expire and three new terms begin on December 1. Through this Notice, the USPTO is requesting nominations for up to three (3) members of the Patent Public Advisory Committee, and for up to three (3) members of the Trademark Public Advisory Committee, for terms of three years that begin on December 1, 2016.

DATES: Nominations must be postmarked or electronically transmitted on or before July 25, 2016.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resumé by postal mail to Vikrum D. Aiyer, Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450 or by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee, or *TPACnominations@uspto.gov* for the Trademark Public Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Vikrum D. Aiyer, Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at (571) 272–8600.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary") and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States and are chosen to represent the interests of diverse users of the United States Patent and Trademark Office with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee. Members must represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants. The Committees must include individuals with "substantial background and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO. Administration policy discourages the appointment of federally registered lobbyists to agency advisory boards and commissions (Lobbyists on Agency Boards and Commissions, *http://www.whitehouse.gov/blog/2009/09/23/lobbyist-agency-boards-and-commissions* (Sept. 23, 2009)); cf. Exec. Order No. 13490, 74 FR 4673 (January 21, 2009) (While Executive Order 13490 does not specifically apply to federally registered lobbyists appointed by agency or department heads, it sets forth the Administration's general policy of decreasing the influence of special interests in the Federal Government).

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a three-year term that begins on December 1, 2015, and ends on December 1, 2018. As required by the 1999 Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day (including travel time) while the member is attending meetings or engaged in the business of that Advisory Committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of Title 5, United States Code. Committee members are compensated on an hourly basis, calculated at the daily rate. While away from home or regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code.

Applicability of Certain Ethics Laws

Public Advisory Committee Members are Special Government Employees within the meaning of Section 202 of Title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that came before the member's committee and that involved at least one specific party. 18 U.S.C. 205(c); *see also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.

- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the respective Committee Chair to consider an agenda set by that Chair. Meetings may be conducted in person, telephonically, on-line through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in Committee business through the Internet.

Dated: June 3, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–13765 Filed 6–9–16; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products and services from the Procurement List that were previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Effective July 10, 2016

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 4/22/2016 (81 FR 23682), 5/6/2016 (81 FR 27419–27420), and 5/20/2016 (81 FR 31917–31918), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8415–01–580–0038—Cover, Helmet, Advanced Combat, Multi Camouflage, Large/X-Large
8415–01–580–0064—Cover, Helmet, Advanced Combat, Multi Camouflage, Small/Medium
8415–01–580–0074—Cover, Helmet, Advanced Combat, Multi Camouflage, XX-Large
Mandatory Source(s) of Supply:
Mount Rogers Community Services Board, Wytheville, VA
Lions Volunteer Blind Industries, Inc., Morristown, TN
Contracting Activities:
Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division, Natick, MA
Defense Logistics Agency Troop Support, Philadelphia, PA

NSN(s)—Product Name(s):
7510–01–463–1985—Jumbo Refill, Ballpoint Pen "Aristocrat"
7510–01–463–1987—Jumbo Refill, Ballpoint Pen "Aristocrat"
7510–01–463–1988—Jumbo Refill, Ballpoint Pen "Aristocrat"
7510–01–463–1989—Jumbo Refill, Ballpoint Pen "Aristocrat"
7520–01–446–4500—Pen, Retractable, Cushion Grip, Exec. "Aristocrat"
7520–01–446–4503—Pen, Retractable, Cushion Grip, Exec. "Aristocrat"
7520–01–446–4504—Pen, Retractable, Cushion Grip, Exec. "Aristocrat"
7520–01–446–4505—Pen, Retractable, Cushion Grip, Exec. "Aristocrat"
Mandatory Source(s) of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s): 7530–01–555–2906—Paper, Tabulating Machine
Mandatory Source(s) of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s): 7530–00–800–0996—Paper, Tabulating Machine
Mandatory Source(s) of Supply:
The Lighthouse for the Blind, St. Louis, MO
Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: General Services Administration, New York, NY

Services

Service Type: Document Destruction Service
Mandatory for: Internal Revenue Service: St. Paul Headquarters, Minneapolis, MN
Mandatory Source(s) of Supply: AccessAbility, Inc., Minneapolis, MN
Contracting Activity: Dept. of the Treasury, Washington, DC

Service Type: Janitorial/Custodial Service
Service Mandatory For: Middle River Depot, 2800 Eastern Blvd., Baltimore, MD
Mandatory Source(s) of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: GSA/PBS/R03 Regional Contracts Support Services Section, Philadelphia, PA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–13769 Filed 6–9–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the procurement list.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product previously furnished by such agency.

Comments must be received on or before: 7/10/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s):
5120–00–NIB–0163—Socket Set, Chrome, ¼″ Drive Deep, Metric 6 Point Fasteners, 11 Pieces
5120–00–NIB–0164—Socket Set, Chrome ¼″ Drive Shallow, Metric 6 Point Fasteners, 11 Pieces
5120–01–047–4356—Socket Set, Chrome ⅜″ Drive Shallow, Metric 12 Point Fasteners, 12 Pieces
5120–01–429–3550—Socket Set, Chrome ½″ Drive Deep, Metric 12 Point Fasteners, 13 Pieces
5120–01–429–3569—Socket Set, Chrome ½″ Drive Shallow, Metric 12 Point Fasteners, 13 Pieces
5120–01–429–3605—Socket Set, Chrome ⅜″ Drive Deep, Metric 6 Point Fasteners, 12 Pieces
Mandatory Purchase For: Total Government Requirement
Mandatory Source(s) of Supply: Beyond Vision, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, Kansas City, MO
Distribution: B-List

NSN(s)—Product Name(s):
8105–00–022–1319—Grocery Bag, Kraft Paper, Natural Brown, ⅙ Barrel, Heavy Duty, 12″ x 7″ x 16½″
8105–00–271–1485—Grocery Bag, Kraft Paper, Natural Brown, No. 12, 7″ x 4½″ x 13⅞″
8105–00–281–1158—Grocery Bag, Kraft Paper, Natural Brown, No. 2, 4¾″ x 2⅝″ x 8⅛″
8105–00–281–1425—Grocery Bag, Kraft Paper, Natural Brown, No. 8, 6¼″ x 3¾″ x 12¾″
8105–00–281–1429—Grocery Bag, Kraft Paper, Natural Brown, No. 25, 8¼″ x 5¼″ x 17⅞″
8105–00–286–7308—Grocery Bag, Kraft Paper, Natural Brown, No. 20, 8⅛″ x 6″ x 14⅜″
8105–00–543–7169—Grocery Bag, Kraft Paper, Natural Brown, ¼ Barrel Bag, 11″ x 7″ x 23¼″
8105–00–857–2250—Grocery Bag, Kraft Paper, Natural Brown, ⅙ Barrel, Heavy Duty, 17″ x 13″ x 7″
Mandatory Purchase For: Total Government Requirement
Mandatory Source(s) of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: General Services Administration, New York, NY
Distribution: A-List
NSN(s)—Product Name(s): 8530–01–490–7372—Kit, Toiletries
Mandatory Purchase For: Total Government Requirement
Mandatory Source(s) of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Contracting Activity: General Services Administration, Fort Worth, TX
Distribution: B-List
NSN(s)—Product Name(s): 6210–00–NIB–0006—Tube Light, LED, T8, Universal (Type A or B), 4100K, 2 Foot
Mandatory Purchase For: Total Government Requirement
Mandatory Source(s) of Supply: Central Association for the Blind and Visually Impaired, Utica, NY
Industries for the Blind, Inc., Greensboro, NC
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: B-List

Services

Service Type: Dormitory Support Service
Mandatory for: US Air Force, Cannon Air Force Base, Dormitory Campus, CAFB Fire Department,
Base Confinement Area, and Fire Department, Melrose AF Range, Cannon AFB, NM
Mandatory Source(s) of Supply: ENMRSH, Inc., Clovis, NM
Contracting Activity: US Air Force, 27th Special Operations Contracting Squadron, Cannon Air Force Base, NM
Service Type: Laundry Service
Mandatory for: US Army, Tripler Army Medical Center and Clinics Schofield Barracks, HI
Mandatory Source(s) of Supply: Great Plains Enterprises, Inc., Las Vegas, NV
Contracting Activity: US Army, US Army 0413 AQ HQ, KO Directorate of Contracting, Building 520 Pierce St., Fort Shafter, HI
Service Type: Transcription Service
Mandatory for: U.S. Navy, Naval Medical Logistics Command, Fort Detrick, MD
Mandatory Source(s) of Supply: Lighthouse of Houston, Houston, TX
Contracting Activity: Naval Medical Logistics Command, Fort Detrick, MD

Deletion

The following product is proposed for deletion from the Procurement List:

Product

NSN(s)—Product Name(s): 2510–01–063–3893—Floorboard, Wood
Mandatory Source(s) of Supply: UNKNOWN
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–13768 Filed 6–9–16; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday June 15, 2016, 10:00 a.m.–4:00 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: Hearing: Agenda and Priorities for Fiscal Years 2017 and 2018. A live webcast of the Meeting can be viewed at *www.cpsc.gov/live*.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 7, 2016.

Todd A. Stevenson,
Secretary.

[FR Doc. 2016–13855 Filed 6–8–16; 11:15 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of its Senior Corps Project Progress Report (PPR)—OMB Control Number 3045–0033, with an expiration date of August 31, 2016. The Senior Corps PPR has two components: (1) Narratives and work plans, and (2) the Progress Report Supplement (PRS) which is an annual survey of volunteer demographics and grantee characteristics. The resulting data is used by grantees and CNCS to track performance and inform continued grant funding support, as well as to identify trends and to support management and analysis.

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 9, 2016.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Corporation for National and Community Service, Senior Corps; Attention Ms. Jill Sears, Program Officer; 250 E Street SW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom on the 4th Floor at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov*.

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jill Sears, (202) 606–7577, or by email at *jsears@cns.gov*.

SUPPLEMENTARY INFORMATION:

CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

The Progress Report (PPR) was designed to assure that grantees of the Senior Corps' programs (RSVP, Foster Grandparent and Senior Companion Programs) address and fulfill legislated program purposes; meet agency program management and grant requirements; track and measure progress to benefit the local project and its contributions to senior volunteers and the community; and to report progress toward work plan objectives agreed upon in the granting of the award. The resulting data is used by grantees and CNCS to track performance and inform continued grant funding support, as well as to identify trends and to support management and analysis.

Current Action

CNCS seeks to renew and revise the current OMB approved Progress Report. In August of 2015, Senior Corps revised its OMB approved Grant Application Instructions. The revised Grant Application Instructions incorporated a revised standard national performance measures framework for Senior Corps programs. The revised PPR will align to the national performance measures revisions and allow grantees to enter actual data relative to the revised framework.

The revised PPR will be used in the same manner as the existing report. CNCS also seeks to continue using the current report until the revised report is approved by OMB. The current application is due to expire on August 31, 2016.

Type of Review: Renewal.
Agency: Corporation for National and Community Service.
Title: Senior Corps Project Progress Report.
OMB Number: 3045–0033.
Agency Number: CNCS Form 1020.
Affected Public: Sponsors of Senior Corps grants.
Total Respondents: 1,250.
Frequency: Work plans and narratives: Semi-Annual. Progress Report Supplement: Annual.
Average Time per Response: Work plans and narratives: Four hours. Progress Report. *Supplement:* Eight hours.
Estimated Total Burden Hours: 20,000 hours.
Total Burden Cost (Capital/Startup): None.
Total Burden Cost (Operating/Maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 6, 2016.

Mikel Herrington,
Acting Director Senior Corps.

[FR Doc. 2016–13702 Filed 6–9–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 1:00 p.m. to 5:00 p.m. on Tuesday, June 21, 2016. Public registration will begin at 12:30 p.m. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html*.

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M2. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil*, phone: 571–256–9004.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the

Government-Industry Advisory Panel was unable to provide public notification of its meeting of June 21, 2016, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the second meeting of the Government-Industry Advisory Panel with a series of meetings planned through September 1, 2016. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detailed the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for the second meeting will include the following: (1) Issues or concerns of 10 U.S.C. 2320 and 2321; (2) Implementing DFARS regulations (Subparts 227.71 and .72, and associated clauses); (3) Discussions on DoD's policy and guidance on Intellectual Property (IP) strategy and management; (4) Discussions on DoD personnel preparation for implementation of DoD's IP policy and guidance; (5) Discussion of regulation of extending and adapting the scheme of 10 U.S.C. 2320 and 2321 to apply to computer software; (6) Discussion on applicability of 10 U.S.C. 2320 and 2321, and implementing DFARS requirements and clauses, to contracts and subcontracts for commercial items; (7) Discussions on practices used by DoD in acquiring IP from non-traditional contractors, commercial contractors, and traditional contractors; (8) Discussion on DoD's policy, guidance and practices linking technical data management and other IP considerations with open systems architecture (OSA) and/or modular open systems approaches (MOSA); (9) Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the June 21, 2016 meeting will be available as requested or at the following site: *http://www.facadatabase.gov/committee/meetings.aspx?cid=2561.*

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (June 16) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 12:30 p.m. on June 21. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: June 6, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13718 Filed 6–9–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0071]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DPR 37, entitled "DoD Employer Support of Guard and Reserve Volunteer Rosters." The system is used to maintain a roster of and facilitate communication between ESGR members; to track ESGR-related training, awards, and hours donated by ESGR DoD volunteer staff; and to identify federal employee and ESGR DoD volunteer emergency contact information.

DATES: Comments will be accepted on or before July 11, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on May 23, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: June 7, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 37

SYSTEM NAME:

DoD Employer Support of Guard and Reserve Volunteer Rosters (January 29, 2010, 75 FR 4788)

CHANGES:

SYSTEM ID:

Delete entry and replace with "DHRA 17."

SYSTEM NAME:

Delete entry and replace with "Employer Support of the Guard and Reserve Member Management System (MMS)."

SYSTEM LOCATION:

Delete entry and replace with "Defense Information Systems Agency (DISA), Computing Directorate Mechanicsburg, 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411."

Backup: Iron Mountain, 1665 S 5350 W, Salt Lake City, UT 84104–4721."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Federal employees and DoD volunteers who work for Employer Support of the Guard and Reserve (ESGR)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name; role/position and ESGR affiliation (State Committee region or Headquarters); military base for volunteer activity; home address, home and/or mobile phone number, and personal email address; ESGR-related training completed; affiliated Service (if applicable); and emergency contact name, phone number, and relationship.

Additional information collected on federal employees includes: work address, phone number, and email; assigned military unit and rank (where applicable); and official report and departure date.

Additional information collected on DoD volunteers includes: volunteer hours performed; awards; mentor/mentee assignments; military experience (Component, rank, status, and years of service); civilian work experience (industry and position type); special skills or qualifications; and form of DoD identification (where applicable)."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1588, Authority to accept certain voluntary services; DoDD 1250.01, National Committee for Employer Support of the Guard and Reserve (NCESGR); DoD Instruction (DoDI) 1205.22, Employer Support of the Guard and Reserve; DoDI 1100.21, Voluntary Services in the Department of Defense; and DoDI 3001.02, Personnel Accountability in Conjunction With Natural or Manmade Disasters."

PURPOSE(S):

Delete entry and replace with "To maintain a roster of and facilitate communication between ESGR members; to track ESGR-related training, awards, and hours donated by ESGR DoD volunteer staff; and to identify federal employee and ESGR DoD volunteer emergency contact

information for accountability during manmade disasters and other emergencies."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Full name and ESGR affiliation."

SAFEGUARDS:

Delete entry and replace with "All personally identifiable information (PII) is maintained in a secure, password protected electronic system. The system utilizes security hardware and software to include physical controls such as combination locks, cipher locks, key cards, identification badges, closed circuit televisions, and controlled screenings. Technical controls include the use of user identifications and passwords, intrusion detection systems, encryption, Common Access Cards (CAC), firewalls, virtual private networks, role-based access controls, and two-factor authentication. Administrative controls include periodic security audits, regular monitoring of users' security practices, methods to ensure only authorized personnel access information, encryption of backups containing sensitive data, visitor registers, backups secured off-site, and use of visitor registers."

RETENTION AND DISPOSAL:

Delete entry and replace with "Headquarters Personnel Records: Destroy upon separation or transfer of employee.

Volunteer Staff Records: Destroy/delete 4 years after volunteer departs program."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Executive Director, Headquarters, Employer Support of the Guard and Reserve, 4800 Mark Center Drive, Alexandria, VA 22350–1200."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Executive Director, Headquarters, Employer Support of the Guard and Reserve, 4800 Mark Center Drive, Alexandria, VA 22350–1200.

Signed, written requests should contain the individual's full name, ESGR affiliation, and personal contact information (home address, phone number, and email)."

RECORDS ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should contain the individual's full name, personal contact information (home address, phone number, email), and the number and name of this system of records notice."

* * * * *

[FR Doc. 2016–13776 Filed 6–9–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Re-Establishment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Re-establishment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is re-establishing the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College ("the Board").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board is being re-established in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.*

The Board provides the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Navy, independent advice and recommendations on matters relating to the Naval Postgraduate School and the Naval War College. These matters include, but are not limited to, organizational management, curricula and methods of instructions, facilities, and other matters of interest.

The Board is composed of no more than ten members who are eminent authorities in the fields of academia, business, national defense and security, the defense industry, and research and analysis. Membership appointments are authorized by the Secretary of Defense or the Deputy Secretary of Defense and administratively certified by the Secretary of the Navy for a term of service of one-to-four years, with annual renewals, in accordance with DoD policies and procedures. Board members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Board members who are full-time or permanent part-time Federal officers or employees shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. No member, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense, may serve more than two consecutive terms of service on the Board, including its subcommittees, or serve on more than two DoD federal advisory committees at one time. All members of the Board are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation. The DoD may establish subcommittees, task forces, or working groups to support the Board. Currently, the DoD has approved two permanent subcommittees to the Board—the Naval Postgraduate School Subcommittee, and the Naval War College Subcommittee. The Naval Postgraduate School Subcommittee, comprised of no more than 15 members, shall focus on the Naval Postgraduate School, and the Secretary of Defense has approved the following non-voting ex-officio appointments to the Naval Postgraduate School Subcommittee—the Chief of Naval Personnel/Deputy Chief of Naval Operations for Manpower, Personnel, Training and Education Command; the Commanding General USMC Training and Education Command; the Commandant Army War College; the Chief of Naval Research; and the Commander and President of the Air University. The Naval Postgraduate School Subcommittee shall meet a minimum of two times a year. The Naval War College Subcommittee, comprised of no more than ten members, shall focus on the Naval War College, and the Secretary of Defense has approved the following ex-officio non-voting member to the Naval War College Subcommittee—the Chief of Naval Personnel/Deputy Chief of Naval Operations for Manpower, Personnel, Training and Education. The Naval War College Subcommittee shall meet a minimum of two times a year.

Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 7, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13838 Filed 6–9–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Defense Business Board ("the Board").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The charter and contact information for the Board's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

The Board provides the Secretary of Defense and the Deputy Secretary of Defense with independent advice and recommendations on critical matters concerning the Department of Defense (DoD). The Board shall be composed of no more than 35 members who must possess the following: (a) A proven track record of sound judgment and business acumen in leading or governing large, complex private sector corporations or organizations and (b) a wealth of top-level, global business experience in the areas of executive management, corporate governance, audit and finance, human resources, economics, technology, or healthcare. Members who are not full-time or permanent part-time Federal officers or employees are appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees are appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Each member is appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation. The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish

subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board meetings. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: June 6, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13729 Filed 6–9–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2556–077]

Messalonskee Stream Hydro, LLC—Maryland; Messalonskee Stream Hydro, LLC—Maine; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 20, 2016, Messalonskee Stream Hydro, LLC—Maryland (transferor) and Messalonskee Stream Hydro, LLC—Maine (transferee) filed an application for the transfer of license of the Messalonskee Project No. 2556. The project is located on Messalonskee Stream, a tributary of the Kennebec River, in Kennebec County, Maine. The project does not occupy Federal lands.

The applicants seek Commission approval to transfer the license for the Messalonskee Project from the transferor to the transferee. This transfer of license reflects an internal corporate reorganization. The transferor will be merged into newly created transferee.

Applicants Contact: Mr. Andrew Locke, Messalonskee Stream Hydro, LLC, c/o Essex Hydro Assets, 55 Union Street, Boston, MA 02108, Phone: 617–367–0032, Email: *alocke@essexhydro.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2556–077.

Dated: June 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13751 Filed 6–9–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0301; FRL–9947–57–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit; Request for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by Partnership for Policy Integrity ("Plaintiffs") in the United States District Court for the Middle District of Georgia: *Partnership for Policy Integrity* v. *McCarthy,* Civil Action No. 5:16–cv–00038–CAR (M.D. G.A.). On January 25, 2016, Plaintiffs filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), failed to perform a non-discretionary duty to grant or deny within 60 days a petition submitted by Plaintiffs on May 26, 2015 requesting that EPA object to a CAA Title V permit issued by the Environmental Protection Division ("EPD") of Georgia's Department of Natural Resources, to Piedmont Green Power, LLC, authorizing the operation of a 60.5 megawatt (MW) steam-turbine generator powered by a 700 million British thermal unit per hour (MMBtu) biomass boiler in Barnesville, Georgia. The proposed consent decree would establish a deadline for EPA to take such action.

DATES: Written comments on the proposed consent decree must be received by July 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0301, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: John Krallman, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–0904; email address: *krallman.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Plaintiffs seeking to compel the Administrator to take actions under CAA section 505(b)(2). Under the terms of the proposed consent decree, EPA would agree to sign its response granting or denying the petition filed by Plaintiffs regarding Piedmont Green Power's biomass boiler located in Barnesville, Georgia, pursuant to section 505(b)(2) of the CAA, on or before December 16, 2016.

Under the terms of the proposed consent decree, EPA would expeditiously deliver notice of EPA's response to the Office of the **Federal Register** for review and publication following signature of such response. In addition, the proposed consent decree outlines the procedure for the Plaintiffs to request costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2016–0301) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 1, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–13792 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0268; FRL–9947–55–OW]

Notice of Availability: Draft Protective Action Guide (PAG) for Drinking Water After a Radiological Incident

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability; request for public comment.

SUMMARY: As part of its mission to protect human health and the environment, the Environmental Protection Agency (EPA) publishes protective action guides to help federal, state, local and tribal emergency response officials make radiation protection decisions during emergencies. EPA, in coordination with a multi-agency working group within the Federal Radiological Preparedness Coordinating Committee, is proposing an addition to the 2013 revised interim Protective Action Guides and Planning Guidance for Radiological Incidents ("2013 revised PAG Manual" hereafter) to provide guidance on drinking water. The Draft Protective Action Guide for Drinking Water is now available in the EPA Docket, under ID No. EPA–HQ–OAR–2007–0268, and EPA is requesting comment on the draft guide.

DATES: Comments must be received on or before July 25, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0268, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Lisa M. Christ, Standards and Risk Management Division, Office of Ground Water and Drinking Water, Mail Code 4607M, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–8354; fax number: (202) 564–3758; Email: *christ.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. General Information

A. Does this action apply to me?

This action does not impose any requirements on anyone. It notifies interested parties of EPA's proposed, draft drinking water protective action guide (PAG) and requests public comment. The drinking water PAG will help federal, state, local, tribal officials and public water systems make decisions about use of water during radiological emergencies. The drinking water PAG is non-regulatory guidance.

B. What authority does EPA have to provide Protective Action Guidance?

The historical and legal basis of EPA's role in the 2013 PAG Manual begins with Reorganization Plan No. 3 of 1970, in which the Administrator of the EPA assumed all the functions of the Federal Radiation Council (FRC), including the charge to ". . . advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with [s]tates." (Reorg. Plan No. 3 of 1970, sec. 2(a)(7), 6(a)(2); § 274.h of the Atomic Energy Act of 1954, as amended (AEA), codified at 42 U.S.C. 2021(h)). Recognizing this role, the Federal Emergency Management Agency (FEMA) directed EPA, in its Radiological Emergency Planning and Preparedness Regulations, to "establish Protective Action Guides (PAGs) for all aspects of radiological emergency planning in coordination with appropriate federal agencies." (44 CFR 351.22(a)). FEMA also tasked EPA with preparing "guidance for state and local governments on implementing PAGs, including recommendations on protective actions which can be taken to mitigate the potential radiation dose to the population." (44 CFR 351.22(b)). All of this information was to "be presented in the Environmental Protection Agency (EPA) 'Manual of Protective Action Guides and Protective Actions for Nuclear Incidents.' "(44 CFR 351.22(b)).

Additionally, section 2021(h) charged the Administrator with performing "such other functions as the President may assign to him [or her] by Executive Order." Executive Order 12656 states that the Administrator shall "[d]evelop, for national security emergencies, guidance on acceptable emergency levels of nuclear radiation. . .." (Executive Order No. 12656, sec. 1601(2)). EPA's role in PAGs development was reaffirmed by the *National Response Framework, Nuclear/Radiological Incident Annex* of June 2008.

C. What is the PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents?

In 2013, EPA revised the PAG Manual to provide federal, state and local emergency management officials with guidance for responding to radiological emergencies (78 FR 22257, April 15, 2013). See the 2013 PAG Manual at *https://www.epa.gov/radiation/protective-action-guides-pags.* A protective action guide (PAG) is the projected dose to an individual from a release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended. Emergency management officials use PAGs for making decisions regarding actions to protect the public from exposure to radiation during an emergency. Such actions include evacuation, shelter-in-place, temporary relocation, water and food restrictions.

The PAGs are based on the following essential principles, which also apply to the selection of any protective action during an incident:

- Prevent acute effects.
- Balance protection with other important factors and ensure that actions result in more benefit than harm.
- Reduce risk of chronic effects.

The PAG Manual is not a legally binding regulation or standard and does not supersede any environmental laws; PAGs are not intended to define "safe" or "unsafe" levels of exposure or contamination. As indicated by the use of non-mandatory language such as "may," "should" and "can," the Manual only provides recommendations and does not confer any legal rights or impose any legally binding requirements upon any member of the public, states or any federal agency. Rather, the PAG Manual provides projected radiation dose levels at which specific actions are recommended in order to reduce or avoid that dose. The 2013 revised interim PAG Manual is designed to provide flexibility to be more or less restrictive as deemed appropriate by decision makers based on the unique characteristics of the incident and the local situation.

D. What additional guidance is being proposed for the PAG Manual?

The draft drinking water protective action guidance was developed by a multi-agency PAG Subcommittee of the Federal Radiological Preparedness Coordinating Committee and is published by the EPA with concurrence from the Department of Energy, the Department of Defense, the Department of Homeland Security (DHS), including the Federal Emergency Management Agency, the Nuclear Regulatory Commission, the Department of Health and Human Services, including both the Centers for Disease Control and Prevention and the Food and Drug Administration (FDA), the U.S. Department of Agriculture and the Department of Labor.

A large scale radiation contamination incident could impact the United States, driving the need for a pre-established drinking water PAG. EPA is proposing a two-tiered intermediate phase drinking water PAG of 100 mrem projected dose in the first year for infants, children and pregnant or nursing women and 500 mrem projected dose in the first year for the general population. The proposed PAG is designed to work in concert with the other Protective Action Guides currently in place for other media in the intermediate phase (*i.e.,* the Food and Drug Administration's 500 mrem PAG for ingestion of food) and provides an additional level of protection for the most sensitive life stages. Authorities have flexibility on how to apply the PAG. In some cases they may find it prudent to use a single PAG (*e.g.,* 100 mrem) as a target for the whole population, while in other circumstances, authorities may find that it makes sense to use both targets simultaneously. For example, emergency managers can use a two-tiered approach to focus on protecting the most sensitive population with limited, alternate water resources. Because the water and food PAGs are designed to be used in concert, the appropriate protective actions will be influenced by the exposure scenario and factors that influence the viability of alternative approaches to reducing that dose.

This proposed, additional draft guidance recommends protective actions when drinking water may be impacted by a radiological or nuclear incident. The two-tier approach seeks to balance the goal of keeping radiation doses as low as possible with the practical and logistical challenges of providing alternative drinking water during the response to a disaster. EPA has included examples of estimated costs for selected drinking water protective actions in the Docket, ID No. EPA–HQ–OAR–2007–0268. In developing the drinking water PAG, the Agency considered potential cumulative exposure from a radiation incident. Ultimately, a PAG does not represent an "acceptable" routine exposure; a PAG is a dose at which protective action is advised in order to reduce or avoid that dose. Every PAG is developed with the same three principles: prevent acute effects, balance protection with other important factors and ensure that actions result in more benefit than harm, and reduce risk of chronic effects. Emergency management officials should consider all exposure routes when making protective action decisions in an emergency.

Under the Safe Drinking Water Act (SDWA), the Agency has established maximum contaminant levels (MCLs) for radiological contaminants in drinking water. The National Primary Drinking Water Regulations (NPDWR) for radionuclides are based on lifetime exposure criteria and assume 70 years of continued exposure to contaminants in drinking water. While the SDWA framework is appropriate for day-to-day normal operations, it may not provide the necessary tools to assist emergency responders with determining the need for an immediate protective action. EPA expects that any drinking water system adversely impacted during a radiation contamination incident will take action to return to compliance with MCLs as soon as practicable.

E. How were comments received on the 2013 draft PAG Manual considered in developing this proposal?

On April 15, 2013, EPA published a **Federal Register** notice requesting public comments on the appropriateness of developing and incorporating a drinking water PAG in the revised PAG Manual (78 FR 22257).

Regarding the specific issue of drinking water, the Agency received about 50 comment letters from members of the public, state and local emergency response and health organizations, environmental advocates, industry associations, organizations opposed to nuclear power, and from national and international radiation protection organizations.

Several commenters from state emergency management agencies and radiation control programs expressed an urgent need for EPA to establish a drinking water PAG, pointing out that drinking water is the only media not currently addressed in the PAG Manual. Commenters stated that a drinking water PAG is a critical aspect of a coordinated emergency response after a radiation contamination incident.

Commenters representing states agencies from Ohio, Kansas, Pennsylvania, Illinois and Washington suggested that a drinking water PAG should be established at the 500 mrem level, to be consistent with the FDA food PAG and with the DHS guidance[1] for water. While EPA agrees with the need of establishing a drinking water PAG, which is consistent with currently available guidance, it is also important to note that EPA believes that when possible, PAG recommendations should provide an additional level of protection to sensitive life-stages. For short-term incidents, it is appropriate to consider a lower tier PAG level of 100 mrem for sensitive life-stages including pregnant women, nursing women and children 15 years old and under. This approach of setting a two-tier level of protection incorporates suggestions submitted by commenters regarding the adequate consideration of children and sensitive subpopulations. There is an abundant precaution built into the derivation of the drinking water PAG through a variety of assumptions, including amount of water consumed, exposure duration and dose-response modeling, using the dose-response for the most sensitive life stages to derive the PAG for children through age 15 years. Today's proposal ensures that protective measures are appropriate for all members of the public, including sensitive subpopulations.

In contrast, several commenters from environmental protection advocate organizations suggested that a drinking water PAG is not needed, and urged EPA to base any emergency response measures regarding drinking water solely on the NPDWR for Radionuclides MCLs. Some commenters expressed concerns that establishing a drinking water PAG would weaken existing environmental standards and regulations. However, the drinking water standards are legal limits designed to prevent health effects from everyday exposure to low levels of radiation over long periods and they are not changing with this proposal.

Estimated risk of excess cancer cases for lifetime exposure (70 years) to radioactive contaminants in drinking water at 4 mrem/yr (the MCL) generally falls in a range of risks deemed acceptable by the Agency's regulations. Estimated risks associated with a shorter (one year) exposure to radioactivity in drinking water at the proposed PAG levels fall within a similar range. Emergency guides are temporary measures to minimize risk while enabling prioritization of limited resources during an emergency response.

The PAG levels are guidance for emergency situations; they do not supplant any standards or regulations, nor do they affect the stringency or enforcement of any standards or regulations. The PAG levels are intended to be used only in an emergency when radiation levels have already exceeded environmental standards. EPA expects that any drinking water system adversely impacted during a radiation incident will take action to return to compliance with Safe Drinking Water Act levels as soon as practicable.

F. When will the PAG Manual be finalized?

Once comments on this proposed, additional draft action have been addressed, EPA will add drinking water guidance to the full PAG Manual, which will then be issued in final form for incorporation into state, local, tribal and federal emergency response plans over a one-year implementation timeframe.

G. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

- Identify the rulemaking by docket number, subject heading, **Federal Register** date and page number.
- Follow directions—the EPA may ask you to respond to specific questions or organize comments by referencing the chapter number of the draft action guide
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide technical information and data that you used.

[1] Guidance established by the Department of Homeland Security as an intermediate-level PAG for drinking water interdiction (73 FR 45029, April 1, 2008).

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow it to be reproduced.

• Illustrate your concerns with specific examples and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

H. What specific comments are being sought?

While all comments regarding any aspect of the draft drinking water PAG guidance will be considered, please comment on the following issues specifically:

• Please comment on the appropriateness of the drinking water PAG and the guidance for advance planning.

• Please comment on what implementation challenges might be associated with the two-tiered approach to the water PAG that EPA should consider, and suggest additional guidance that would be helpful.

• Please comment on whether (and if so why) EPA should reconsider using a single-tier drinking water PAG rather than tiered approach proposed in the draft action guide.

• Please suggest additional guidance that would aid pre-incident planning and implementation specific to your community's drinking water systems.

• Please comment on how this guidance should be implemented in emergency response and recovery plans at all levels of government, including considerations for public communications during an emergency.

In the future, calculations and derived response levels will be provided in the Federal Radiological Monitoring and Assessment Center (FRMAC) Assessment Manuals. Emergency planners are referred to FRMAC Monitoring and Sampling Methods to assess surface and drinking water impacts from a radiological emergency. See the Assessment and Monitoring & Sampling folders at *http://www.nv.doe.gov/nationalsecurity/homelandsecurity/frmac/manuals.aspx*. After considering public comments, EPA intends to issue a final PAG Manual, which will supersede the 1992 PAG Manual and the 2013 revised PAG Manual.

Dated: June 3, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–13786 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9027–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 05/30/2016 Through 06/03/2016

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160124, Final, FERC, AK, Sweetheart Lake Hydroelectric Project, Review Period Ends: 07/11/2016, Contact: John Matkowski 202–502–8576

EIS No. 20160125, Final, BIA, NV, Aiya Solar Project, Review Period Ends: 07/11/2016, Contact: Charles Lewis 602–379–6782

EIS No. 20160126, Draft, USA, AZ, Lone Star Ore Body Development Project, Comment Period Ends: 07/25/2016, Contact: Michael Langley 602–230–6953

EIS No. 20160127, Final, NPS, CA, Restoration of Native Species in High Elevation Aquatic Ecosystems Plan, Review Period Ends: 07/11/2016, Contact: Woody Smeck 559–565–3100

EIS No. 20160128, Final, USACE, NC, Morehead City Harbor Integrated Dredged Material Management Plan, Review Period Ends: 07/11/2016, Contact: Jennifer Owens 910–251–4757

EIS No. 20160129, Draft, USFS, CA, Los Padres Tamarisk Removal, Comment Period Ends: 07/25/2016, Contact: Lloyd Simpson 805–646–4348 ex. 316

EIS No. 20160130, Draft, NOAA, TX, Flower Garden Banks National Marine Sanctuary Boundary Expansion, Comment Period Ends: 08/19/2016, Contact: Kelly Drinnen 409–621–5151 Ext.105

EIS No. 20160131, Third Final Supplemental, USFS, MT, Beaverhead-Deerlodge National Forest Land and Resource Management Plan to comply with District of Mont Court Order, Review Period Ends: 07/20/2016, Contact: Jan Bowey 406–842–5432

EIS No. 20160132, Draft, FHWA, CO, US 50 Corridor East, Comment Period Ends: 07/29/2016, Contact: Patricia Sergeson 720–963–3073

EIS No. 20160133, Final, FTA, VA, Potomac Yard Metrorail Station, Review Period Ends: 07/11/2016, Contact: Dan Koenig 202–219–3528

EIS No. 20160134, Final, TVA, TN, PROGRAMMATIC—Ash Impoundment Closure, Review Period Ends: 07/11/2016, Contact: Ashley Farless 423–751–2361

Dated: June 7, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–13791 Filed 6–9–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 16–599]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Thursday, June 30, 2016, 10:00 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmell Weathers at (202) 418–2325 or *Carmell.Weathers@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 16–599 released May 31, 2016. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, June 30, 2016, from 10:00 a.m. until 2:00 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Thursday, June 30, 2016, 10:00 a.m.*

1. Announcements and Recent News
2. Approval of Transcript—March 24, 2016
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the Toll Free Number Administrator (TFNA)
6. Report of the Numbering Oversight Working Group (NOWG)
7. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
8. Report of the Billing and Collection Working Group (B&C WG)
9. Report of the North American Portability Management LLC (NAPM LLC)
10. Report of the Local Number Portability Administration (LNPA) Transition

Oversight Manager (TOM)

11. Report of the Local Number Portability Administration Working Group (LNPA WG)
12. Report of the Future of Numbering Working Group (FoN WG)
13. Report of the Internet Protocol Issue Management Group (IP IMG)
14. Status of the Industry Numbering Committee (INC) activities
15. Summary of Action Items
17. Public Comments and Participation (maximum 5 minutes per speaker)
18. Other Business

Adjourn no later than 2:00 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. 2016–13696 Filed 6–9–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0710]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 9, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0710.

Title: Policy and Rules Under Parts 1 and 51 Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996—CC Docket No. 96–98.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 15,282 respondents; 1,067,987 responses.

Estimated Time per Response: .50 hours–4,000 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1–4, 201–205, 214, 224, 251, 252, and 303(r) of the Communications Act of 1934, as amended, and section 601 of the Telecommunications Act of 1996. 47 U.S.C. 151–154, 201–205, 224, 251, 252, 303 (r), and 601.

Total Annual Burden: 645,798 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish confidential treatment of their information, they may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission adopted rules to implement the First Report and Order on Reconsideration issued in CC Docket No. 96–98. That Order implemented parts of sections 251 and 252 of the Telecommunications Act of 1996 that affect local competition. Incumbent local exchange carriers (ILECs) are required to offer interconnection, unbundled network elements (UNEs), transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECS must price such services and rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of Secretary.

[FR Doc. 2016–13708 Filed 6–9–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination 10328 CommunitySouth Bank and Trust Easley, South Carolina

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10328 CommunitySouth Bank and Trust, Easley, South Carolina (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of CommunitySouth Bank and Trust (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13683 Filed 6–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10242 Bank of Florida—Southwest; Naples, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10242 Bank of Florida—Southwest, Naples, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Bank of Florida—Southwest (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 6, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–13689 Filed 6–9–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Meeting

June 8, 2016.

TIME AND DATE: 10:00 a.m., Tuesday, July 12, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *The American Coal Company,* Docket No. LAKE 2011–13 (Issues include whether the Judge erred by denying the Secretary's motion to approve a proposed settlement because the Judge concluded that more information was needed.) Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–13879 Filed 6–8–16; 4:15 pm]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Meeting

JUNE 8, 2016.

TIME AND DATE: 10:00 a.m., Thursday, July 14, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *The American Coal Company,* Docket No. LAKE 2011–13 (Issues include whether the Judge erred by denying the Secretary's motion to approve a proposed settlement because the Judge concluded that more information was needed.) Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–13880 Filed 6–8–16; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Scientific Information Request on Treatment Strategies for Patients With Lower Extremity Chronic Venous Disease (LECVD)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for scientific information submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review of *Treatment Strategies for Patients with Lower Extremity Chronic Venous Disease (LECVD),* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Programs. Access to published and unpublished pertinent scientific information will improve the quality of this review. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

DATES: *Submission Deadline* on or before July 11, 2016.

ADDRESSES:

Email submissions: SIPS@epc-src.org.

Print submissions:

Mailing Address: Portland VA Research Foundation, Scientific Resource Center, Attn: Scientific Information Packet Coordinator, P.O. Box 69539, Portland, OR 97239.

Shipping Address (FedEx, UPS, etc.): Portland VA Research Foundation, Scientific Resource Center, Attn: Scientific Information Packet Coordinator, 3710 SW. U.S. Veterans Hospital Road, Mail Code: R&D 71, Portland, OR 97239.

FOR FURTHER INFORMATION CONTACT: Ryan McKenna, Telephone: 503–220–8262 ext. 51723 or Email: *SIPS@epc-src.org.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Programs to complete a review of the evidence for *Treatment Strategies for Patients with Lower Extremity Chronic Venous Disease (LECVD).* The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Treatment Strategies for Patients with Lower Extremity Chronic Venous Disease (LECVD),* including those that describe adverse events. The entire research protocol, including the key questions, is also available online at: *http://www.AHRQ.gov/sites/default/files/wysiwyg/research/findings/ta/topicrefinement/lecvd_protocol.pdf.*

This notice is to notify the public that the EPC Program would find the following information on *Treatment Strategies for Patients with Lower Extremity Chronic Venous Disease (LECVD)* helpful:

☐ A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*

☐ *For completed studies that do not have results on ClinicalTrials.gov,* please provide a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.

☐ *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.

☐ Description of whether the above studies constitute all Phase II and above clinical trials sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution will be very beneficial to the ECP Program. The contents of all submissions will be made available to the public upon request. Materials submitted must be publicly available or can be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program Web site and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://subscriptions.ahrq.gov/accounts/USAHRQ/subscriber/new?topic_id=USAHRQ_18.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions. The entire research protocol, is available online at: *http://www.AHRQ.gov/sites/default/files/wysiwyg/research/findings/ta/topicrefinement/lecvd_protocol.pdf.*

KQ 1: Narrative review of the diagnostic methods and diagnostic criteria for all adult patients (symptomatic and asymptomatic) with LE varicose veins, LE chronic venous insufficiency/incompetence/reflux, and/or LE chronic venous thrombosis/obstruction (including post-thrombotic syndrome).

KQ 2: Regarding treatments for all adult patients (symptomatic and asymptomatic) with LE varicose veins and/or LE chronic venous insufficiency/incompetence/reflux:

I. What is the comparative effectiveness of exercise, medical therapy, weight reduction, mechanical compression therapy, and invasive procedures (*i.e.,* surgical and endovascular procedures) on health outcomes?

II. What diagnostic method(s) and criteria were used in each study?

III. How does the comparative effectiveness of treatment vary by patient characteristics, including age, sex, risk factors, comorbidities, characteristics of disease, anatomic segment affected, and characteristics of the therapy (*e.g.,* exercise intensity, type of mechanical compression)?

IV. What are the comparative safety concerns associated with each treatment strategy (*e.g.,* adverse drug reactions, bleeding)? Do the safety concerns vary by patient subgroup (age, sex, race, risk factors, comorbidities, anatomic segment, or disease severity)?

KQ 3: Regarding treatments for all adult patients (symptomatic and asymptomatic) with LE chronic venous thrombosis/obstruction (including post-thrombotic syndrome):

I. What is the comparative effectiveness of exercise, medical therapy, mechanical compression therapy, and invasive procedures (*i.e.,* surgical and endovascular procedures) on health outcomes?

II. What diagnostic method(s) and criteria were used in each study?

III. How does the comparative effectiveness of treatment vary by patient characteristics, including age, sex, risk factors, comorbidities, characteristics of disease, anatomic segment affected, and characteristics of the therapy (*e.g.,* exercise intensity, type of mechanical compression)?

IV. What are the comparative safety concerns associated with each treatment strategy (*e.g.,* adverse drug reactions, bleeding)? Do the safety concerns vary by patient subgroup (age, sex, race, risk factors, comorbidities, anatomic segment, or disease severity)?

PICOTS (Population, Intervention, Comparator, Outcome, Timing, Setting)

KQ 1: Diagnosis

I. Population(s):
- A. Adults (over age 18) with the diagnosis of LE varicose veins, LE chronic venous insufficiency/incompetence/reflux, and/or LE chronic venous thrombosis/obstruction (including post-thrombotic syndrome)

II. Diagnostic Measures:
- A. Air plethysmography, LE venous duplex ultrasonography (with and without compression), invasive venography, magnetic resonance venography, computed tomographic venography, serum D-dimer testing, Villalta score

III. Comparators:
- A. Diagnostic modalities listed above (air plethysmography, LE duplex venous ultrasonography [with and without compression], invasive venography, magnetic resonance venography, computed tomographic venography, serum D-dimer testing, Villalta score) will be compared to one another

IV. Outcomes:
- A. Sensitivity, specificity, positive predictive value, negative predictive value, inter -rater reliability, internal consistency, test -retest reliability, false positives, false negatives, and positive and negative likelihood ratios for each diagnostic measure listed above will be compared

V. Timing:
- A. Not applicable

VI. Settings:
- A. All clinical settings, including inpatient and outpatient

KQs 2–3: Treatment

I. Population(s):
- A. KQ 2: A symptomatic or symptomatic adults (over age 18) with the diagnosis of LE varicose veins and/or LE chronic venous insufficiency/incompetence/reflux:
  - i. Subgroup analysis: age, race/ethnicity, sex, body weight, CEAP classification, VCSS classification, severity of disease, anatomic segment affected (*e.g.,* iliofemoral, infrainguinal), known malignancy, presence of LE ulcer
- A. KQ 3: A symptomatic or symptomatic adults(over age 18) with the diagnosis of LE chronic venous thrombosis/obstruction (including post-thrombotic syndrome):
  - i. Subgroup analysis: age, race/ethnicity, sex, body weight, CEAP classification, VCSS classification, Villalta score, severity of disease, anatomic segment affected (*e.g.,* iliofemoral, infrainguinal), known malignancy, presence of LE ulcer

II. Interventions:
- A. KQ 2: lifestyle interventions (e.g ., smoking cessation, leg elevation, weight reduction, exercise), medical therapy, local skin care/wound care, mechanical compression therapy, and invasive procedures (*i.e.,* surgical and endovascular procedures)
  - i. Medical therapies: diuretics, aspirin, pentoxifylline, prostacyclins, zinc sulfate
  - ii. Invasive surgical/endovascular procedures: sclerotherapy (liquid, foam, glue), radiofrequency ablation, thermal ablation, chemical ablation, ambulatory phlebectomy, transilluminated powered phlebectomy, venous ligation, venous excision
- B. KQ 3: lifestyle interventions (*e.g.,* smoking cessation, leg elevation, weight reduction, exercise), medical therapy, local skin care/wound care, mechanical compression therapy, and invasive procedures (*i.e.,* surgical and endovascular procedures)
  - i. Medical therapies: anticoagulants including warfarin, apixaban, rivaroxaban, edoxaban, and dabigatran; diuretics
  - ii. Invasive surgical/endovascular procedures: endovenous angioplasty/stenting, ultrasound accelerated thrombolysis for chronic DVT (EkoSonic® endovascular system), surgical thromboembolectomy

III. Comparators:
- A. Specific treatments will be compared to other included treatments as described above or to no treatment (placebo or usual care)

IV. Outcomes:
- A. Changes on standardized symptom scores (Villalta score, CEAP classification, AVVQ score, and VCSS score); qualitative reduction in Ledema; qualitative reduction in LE pain; improvement in LE venous hemodynamics/reflux severity as measured by air plethysmography, duplex ultrasonography, or invasive venography; venous wound healing, recurrent ulceration, patient-reported quality of life (including AVVQ), repeat intervention, LE amputation E
- B. Adverse effects of treatment, including: adverse drug reactions; bleeding (including intracranial bleeding); venous wound infection; contrast nephropathy; radiation-related injuries; exercise-related harms; periprocedural complications (vessel dissection, vessel perforation, and AV fistula), thrombophlebitis, venous thrombosis (including stent thrombosis), venous thromboembolic events (including PE), and death

V. Timing:
- A. Studies with all durations of followup will be included in the review; for symptomatic patients, we will attempt to categorize studies into those that evaluate short-term (≤30 days), intermediate-ter m (31 days to 6 months), and long-term (≤ 6 months) events.

VI. Settings:
- A. Any

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–13761 Filed 6–9–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *"Survey of Hospital Quality Leaders."* In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 10, 2016 and allowed 60 days for public comment. AHRQ received no substantive comments. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by July 11, 2016.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Survey of Hospital Quality Leaders

The Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospital Survey (HCAHPS) was first implemented on a voluntary basis in 2006 to assess patients' experiences with care. Today, hospitals subject to the Inpatient Prospective Payment System (IPPS) annual payment update provisions are required to collect and submit HCAHPS data in order to receive their full annual payment update. In addition, HCAHPS performance was added to the calculation of the value-based incentive payment in the Hospital Value-Based Purchasing (Hospital VBP) program, beginning with discharges in October 2012. The FY 2015 Hospital VBP program links 30% of the Inpatient Prospective Payment System hospitals' payment from CMS to HCAHPS performance.

Despite the high stakes associated with HCAHPS scores, little is known about the ways in which hospitals are using HCAHPS data and supplemental information about patient experience to understand and improve their patients' experiences.

This research has the following goals:

(1) To characterize the role of HCAHPS in hospitals' efforts to improve patient experiences

(2) to identify the types of quality improvement activities that hospitals implement to improve their HCAHPS scores

(3) to describe hospitals' perspectives on HCAHPS

(4) to determine the types of information collected by hospitals beyond those required for Hospital VBP

This study is being conducted by AHRQ through its contractor, the RAND Corporation, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

Survey of Hospital Quality Leaders: this survey will elicit information from approximately 500 hospital quality leaders in a variety of hospital settings, including high- and low-performing hospitals, facilities of varying sizes, and hospitals representing all nine geographic Census divisions. Hospital quality leaders will be asked to provide information about the use of HCAHPS in their hospital, with questions addressing all of the substantive areas identified in the goals section above.

Characterizing hospitals' use of HCAHPS data will provide important insight into the activities hospitals conduct to improve patient experience scores. This information may be useful in supporting hospitals who lag behind their peers, learning from hospitals with outstanding records of patient experience, and providing recommendations that may be used to refine HCAHPS survey content.

Estimated Annual Respondent Burden

Table 1 shows the estimated annualized burden and cost for the respondents' time to participate in this data collection. These burden estimates are based on tests of data collection conducted on nine or fewer entities. As indicated below, the annual total burden hours are estimated to be 294 hours. The annual total cost associated with the annual total burden hours is estimated to be $14,708.

Table 1 shows the estimated annualized burden for the respondents' time to participate in this data collection. The Survey of Hospital Quality Leaders will be administered to 500 individuals. Prior work suggests that 3–5 items can typically be completed per minute, depending on item complexity and respondent characteristics, (Hays & Reeve, 2010; Berry, 2009). We have calculated our burden estimate using a conservative estimate of 4.5 items per minute. The survey contains 159 items and is thus estimated to require an average administration time of 35 minutes. As indicated below, the annual total burden hours are estimated to be 294 hours.

TABLE 1—ESTIMATED ANNUALIZED BURDEN HOURS AND COST

Collection task	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours	Average hourly wage rate*	Total cost burden
Survey of Hospital Quality Leaders	500	1	.59	294	$49.96	$14,708
Totals				294		14,708

*Based upon mean hourly wages, "National Compensation Survey: All United States December 2009—January 2011," U.S. Department of Labor, Bureau of Labor Statistics.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All

comments will become a matter of public record.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–13841 Filed 6–9–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6069–N]

Medicare Program; Pre-Claim Review Demonstration for Home Health Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a 3-year Medicare pre-claim review demonstration for home health services in the states of Illinois, Florida, Texas, Michigan, and Massachusetts where there have been high incidences of fraud and improper payments for these services.

DATES: This demonstration will begin in Illinois no earlier than August 1, 2016, in Florida no earlier than October 1, 2016, and in Texas no earlier than December 1, 2016. The demonstration will begin in Michigan and Massachusetts no earlier than January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer McMullen, (410) 786–7635.

Questions regarding the Medicare Pre-Claim Review Demonstration for Home Health Services should be sent to *HHPreClaimDemo@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

Section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(a)(1)(J)) authorizes the Secretary to develop demonstration projects that "develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act" (the Act). According to this authority, we will implement a Medicare demonstration that establishes a pre-claim review process for home health agencies (HHAs) to assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring among HHAs providing services to Medicare beneficiaries. The proposed demonstration will begin in Illinois not earlier than August 1, 2016, will begin in Florida not earlier than October 1, 2016, and will begin in Texas not earlier than December 1, 2016. The demonstration will begin in Michigan and Massachusetts not earlier than January 1, 2017. Providers in each state will be notified by the appropriate Medicare Administrative Contractor prior to the start of the demonstration in the state. Additionally, CMS will utilize other educational efforts to announce the program to stakeholders.

This demonstration will evaluate an additional method that may assist with the investigation and prosecution of fraud in order to protect the Medicare Trust Funds from fraudulent actions and improper payments. We believe this demonstration will bolster the efforts that CMS and its partners have taken in implementing a series of anti-fraud initiatives in these states and will provide valuable data that CMS working with its law enforcement partners, can use to combat the submission of fraudulent claims to the Medicare program. One such anti-fraud initiative is the use of temporary moratoria on the enrollment of new home health providers that were put in place in the Miami and Chicago that and were subsequently expanded to the Fort Lauderdale, Detroit, Dallas, and Houston metropolitan areas. These temporary moratoria prohibit the new enrollment of home health providers to help CMS prevent and combat fraud, waste, and abuse in these locations.

We also believe the data collected from this demonstration will assist with a second initiative, the Health Care Fraud Prevention and Enforcement Action Team (HEAT) Task Force, created by the Department of Health and Human Services and the Department of Justice (DOJ), and the Heat Task Force's ongoing fight against Medicare fraud. The HEAT Task Force uses resources across the government to help prevent and stop fraud, waste, and abuse in the Medicare and Medicaid programs. Since 2007, the HEAT Task Force of the DOJ has charged more than 2,300 defendants with defrauding Medicare of more than $7 billion and convicted approximately 1,800 defendants of felony health care fraud offenses. In addition, the data resulting from this demonstration could provide investigators and law enforcement with important information to determine how to focus their investigation activities to identify and combat home health fraud, and in so doing, protect the Medicare Trust Funds from fraudulent actions and improper payments.

This demonstration may also help prevent improper payments in geographic areas where HHA providers are known to have a high incidence of fraud. The improper payment rate for HHA claims has been increasing over the past several years, and fraud is one factor contributing to the increase. It is important to note that while all payments made as a result of fraud are considered "improper payments," not all improper payments constitute fraud. CMS' Comprehensive Error Rate Testing (CERT) program, which measures Medicare's improper payment rate, estimates the payments that did not meet Medicare coverage, coding, and billing rules. The fiscal year (FY) 2015 Department of Health and Human Services Agency Financial Report reported that the CERT program's calculated 2015 improper payment rate for HHA claims increased to 59.0 percent from the 2014 rate of 51.4 percent and the 2013 rate of 17.3 percent. The increase in the 2015 improper payment rate was primarily due to "insufficient documentation" errors, specifically, insufficient documentation to support the medical necessity of the services. Similar documentation errors have also occurred in previous years. For example, the 2014 CERT report found that the majority of home health payment errors occurred when the narrative portion of the face-to-face encounter documentation did not sufficiently describe how the clinical findings from the encounter supported the beneficiary's homebound status and need for skilled services.

Due to the substantial increase in improper payments and concerns raised by the home health industry, relating to implementation of the face-to-face encounter documentation requirement, we made Medicare HHA payment policy changes in an effort to simplify the face-to-face encounter regulations. Specifically, as of January 1, 2015, a separate narrative is no longer required as part of the face-to-face documentation. Rather, the certifying physician's or the acute/post-acute care facility's medical record(s) for the patient must contain sufficient documentation to substantiate eligibility for home health services.

Despite these recent changes, we continue to see cases in which the medical record does not support eligibility for the home health benefit, which constitute "insufficient documentation" errors. Moreover, we note that the recent regulatory changes do not address HHA errors in home health billing other than those related to the face-to-face narrative requirement.

Therefore, we also plan to use this demonstration to help make sure that all coverage and clinical documentation requirements are met before claims are submitted for final payment.

We also believe that this demonstration will enable us to—(1) test the level of resources needed to implement a permanent pre-claim review program for home health services; (2) determine the feasibility of performing pre-claim reviews to prevent payment for services that have historically had a high incidence of fraud; and (3) determine the return on investment of pre-claim review for home health claims. This demonstration will support our program integrity strategy of moving beyond a reactive "pay and chase" method toward a more effective, proactive strategy that identifies potential improper payments before payments are made. We will analyze data from the home health services pre-claim review demonstration to evaluate the impact on fraud in the demonstration states, which we believe will help assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring among HHAs providing services to Medicare beneficiaries and may consider if a more focused, risk based approach to pre-claim review is warranted in the future.

The pre-claim review demonstration does not create new documentation requirements, but simply requires currently mandated documentation earlier in the claims payment process. In addition, there are no changes to the home health service benefit for Medicare fee-for service beneficiaries.

II. Provisions of the Notice

This demonstration will implement a 3-year pre-claim review process for home health services in Illinois, Florida, Texas, Michigan, and Massachusetts. Prior to and during the demonstration, we will conduct outreach to and education of home health providers and Medicare beneficiaries using media such as webinars, open door forums, frequently asked questions pages on our Web site, other Web site postings, and educational materials issued by the Medicare Administrative Contractors (MACs) to provide guidance on the pre-claim review process. Additional information about the implementation of the pre-claim review demonstration will be available on the CMS Web site at: *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Overview.html.* Questions regarding the Medicare Pre-Claim Review Demonstration for Home Health Services should be sent to *HHPreClaimDemo@cms.hhs.gov.* Under this demonstration, a HHA provider, the entity billing on behalf of the HHA, or the beneficiary (known as the "submitter") will be encouraged to submit to the relevant MAC a request for pre-claim review, along with all relevant documentation to support Medicare coverage of the applicable home health level of service. After receipt of all relevant documentation, the MAC will review the pre-claim review request to determine whether the service level complies with applicable Medicare coverage and clinical documentation requirements. The HHA provider should submit the Request for Anticipated Payment (RAP) before submitting the pre-claim review request and begin providing services while waiting for the decision from the MAC.

The MAC will communicate to the HHA and beneficiary a decision provisionally approving (or disapproving) payment after a submission of a request for pre-claim review. For the initial submission of a pre-claim review request, the MAC will make all reasonable efforts to make a determination and issue a notice of the decision within 10 business days.

If the MAC declines payment after review, the submitter may amend and resubmit it. A pre-claim review request may be resubmitted an unlimited number of times. For subsequent pre-claim review requests, CMS or its agents will conduct a complex medical review and make all reasonable efforts to postmark and notify the HHA and the beneficiary of its decision within 20 business days. These timeframes are consistent with the Prior Authorization of Power Mobility Devices (PMDs) Demonstration. Meeting these timeframes will be part of the contract performance metrics for the MACs that are involved in this demonstration at the time their contracts are modified to incorporate the demonstration's work requirements (as well as the necessary funding).

If an applicable claim is submitted for payment without a pre-claim review decision, it will be stopped for prepayment review and documentation will be requested. After the first 3 months of the demonstration in a particular state, we will apply a payment reduction for claims that, after such prepayment review, are deemed payable, but did not first receive a pre-claim review decision. As evidence of compliance, the HHA must submit the pre-claim review number on the claim in order to avoid a 25-percent payment reduction. The 25-percent payment reduction cannot be recouped from or otherwise charged to the beneficiary, and is not subject to appeal. The beneficiary would not be liable for more than he or she would otherwise be if the demonstration were not in place.

The following explains the various pre-claim review scenarios:

In each of the following scenarios, the HHA would conduct all required assessments, submit the RAP, and begin services for the beneficiaries.

- *Scenario 1:* When a submitter submits a pre-claim review request to the MAC with appropriate documentation, and all relevant Medicare coverage and documentation requirements are met for the home health service, the MAC will send a provisional affirmative pre-claim review decision to the HHA and the Medicare beneficiary. When the HHA submits the claim for payment to the MAC after delivering the home health level of service(s), the claim will include a unique tracking number that indicates it has been affirmed for pre-claim review and, as long as all Medicare coverage and documentation requirements continue to be met, the claim is paid.
- *Scenario 2:* When a submitter submits a pre-claim review request with documentation that does not meet all relevant Medicare coverage and clinical documentation requirements for the home health level of service, notification of a non-affirmative decision will be sent to the HHA and the beneficiary advising them that Medicare will not pay for the service. The submitter may then resubmit the request with additional documentation to support that the Medicare requirements have been met. Alternatively, the HHA could submit the claim to the MAC, at which point the MAC would deny the claim for lack of a provisional affirmative pre-claim review decision and recoup the payment made on the RAP following their standard procedures. Upon receiving the claim denial by the MAC, the HHA or the beneficiary would have the opportunity to appeal the claim denial if they believe Medicare coverage was denied inappropriately. Beneficiaries will continue to have the option of signing an Advance Beneficiary Notice of Noncoverage (ABN) in order to receive the services and be liable for payment.
- *Scenario 3:* When a submitter submits a pre-claim review request with incomplete documentation, the request, along with a detailed decision letter explaining what information is missing, is sent back to the submitter for resubmission. Both the HHA and the beneficiary are notified and the

submitter can resubmit the request with appropriate supporting documentation.

• *Scenario 4:* When the HHA provides the treatment to the beneficiary and submits the claim to the MAC for payment without submitting a pre-claim review request, the home health claim will be stopped for prepayment review and documentation will be requested. If the claim is determined to be not medically necessary or not sufficiently documented, the claim will be denied and all current policies and procedures regarding liability for payment will apply. The HHA, the beneficiary, or both can appeal the claim denial if they believe the claim was payable. If the claim is determined to be payable on appeal, it will be paid. After the first 3 months of the demonstration, we will reduce payment by 25 percent for claims that after such prepayment review are deemed payable but did not first receive a pre-claim review decision. This payment reduction is not subject to appeal. After a claim is submitted, processed, and denied, appeal rights for the claim denial would become available in accordance with 42 CFR part 405, subpart I. The 25-percent payment reduction cannot be charged to the beneficiary. The beneficiary would not be liable for more than he or she would otherwise be if the demonstration were not in place.

Additional information is available on the CMS' Web site at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Overview.html.*

III. Collection of Information Requirements

We announced and solicited comments for the information collection requirements associated with the Medicare Prior Authorization of Home Health Services Demonstration in a 60-day **Federal Register** notice that published on February 5, 2016 (81 FR 6275). The information collection requirements do not take effect until they are approved by OMB and issued a valid OMB control number.

Dated: May 26, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–13755 Filed 6–8–16; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.092]

Announcing the Intent To Award Single-Source Expansion Supplement Grants to Two Personal Responsibility Education Program Innovative Strategies (PREIS) Grantees

AGENCY: Family and Youth Services Bureau, ACYF, ACF.

ACTION: This notice announces the intent to award single-source expansion supplement grants under the Personal Responsibility Education Program Innovative Strategies (PREIS) program to Children's Hospital of Los Angeles in Los Angeles, CA and Education Development Center, Inc. in Newton, MA.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Adolescent Pregnancy Prevention Program, announces its intent to award a single-source expansion supplement grant of up to $151,265 to Children's Hospital of Los Angeles and up to $55, 917.20 to Education Development Center, Inc.

DATES: The period of support for the single-source expansion supplements is September 30, 2015, through September 29, 2016.

FOR FURTHER INFORMATION CONTACT: LeBretia White, Program Manager, Adolescent Pregnancy Prevention Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 330 C Street SW., Washington, DC 20201. Telephone: 202–205–9605; Email: *LeBretia.White@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: Children's Hospital of Los Angeles is funded under the Personal Responsibility Education Program Innovative Strategies (PREIS) program to adapt an existing evidence-based pregnancy prevention program for pregnant and parenting teens and rigorously evaluate the program for its impact on reducing repeat pregnancy. The supplemental award will be used to review, code, and analyze digital recordings, employ intensive tracking and follow up efforts with participants to administer the 36-month follow-up survey, conduct additional advanced analyses, develop manuscripts and briefs based on additional analyses, and disseminate study findings.

Education Development Center, Inc. is funded under the Personal Responsibility Education Program Innovative Strategies (PREIS) program to implement a parent education program for Latino youth (*Salud y Exito/Health and Success*) and to rigorously evaluate the intervention to determine impact on reducing sexual risk-taking behavior. The supplement award will be used to augment dissemination efforts for the intervention by developing a social media campaign to promote the intervention Web site and to analyze social media data to determine the campaign's reach.

Statutory Authority: The statutory authority for the award is Sec. 513 of the Social Security Act (42 U.S.C. 713). Sec. 2953 of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) established PREP and funded it for FY 2010 through 2014. Sec. 206 of the Protecting Access to Medicare Act of 2014 (Pub. L. 113–93) extended that funding through FY 2015. Sec. 215 of the Medicare Access and CHIP Reauthorization Act of 2015 (Pub. L. 114–10) extended funding through FY 2017.

Christopher Beach,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration, Administration for Children and Families.

[FR Doc. 2016–13698 Filed 6–9–16; 8:45 am]

BILLING CODE 8414–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Survey of Child and Adolescent Well-Being-Third Cohort (NSCAW III): Agency Recruitment.

OMB No.: 0970–0202.

Description: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) intends to collect data on a third cohort of children and families for the National Survey of Child and Adolescent Well-Being (NSCAW). NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. The first two cohorts of NSCAW were collected beginning in 1999 and 2008 and studied children who had been the subject of investigation by Child Protective Services. Children were sampled from child welfare agencies nationwide.

The proposed data collection plan for the third cohort of NSCAW includes two phases: Phase 1 includes child welfare agency recruitment and collection of files for sampling children, and Phase 2 includes baseline data collection and an 18-month follow-up data collection. The current data collection plan calls for selecting a new cohort of 4,565 children and families and repeating similar data collection procedures as the previous two cohorts. This Notice is specific to Phase 1. The overall goal is to recruit child welfare agencies in 83 primary sampling units nationwide. Child welfare agencies will be selected with probability proportional to size, based on the current distributions in the child welfare system. Child welfare agency recruitment will include: mail, email, phone calls, and site visits with child welfare agency administrators.

Respondents: Child welfare agency administrators and other personnel. Data collection will take place over a 2-year period.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Information package for agency administrators	114	57	1	0.25	14
Initial call with agency staff	114	57	1	1	57
In-person visit with agency staff	20	10	1	1	10
Visit or call with agency staff explaining the sample file process	83	42	1	2	84
Agency staff monthly sample file generation and transmission	83	42	15	1	630

Estimated Total Annual Burden Hours: 795.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street, SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

ACF Certifying Officer.

[FR Doc. 2016–13682 Filed 6–9–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Arthritis Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on July 13, 2016, from 7:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Moon Hee Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *AAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss biologics license application 761042, for GP2015, a proposed biosimilar to Amgen Inc.'s ENBREL (etanercept) submitted by Sandoz, Inc. The proposed indications (uses) for this product are: (1) Reducing signs and symptoms, inducing major clinical response, inhibiting the progression of structural damage, and improving physical function in patients with moderately to severely active rheumatoid arthritis (in combination with methotrexate (MTX) or used alone); (2) reducing signs and symptoms of moderately to severely active polyarticular juvenile idiopathic arthritis in patients ages 2 and older; (3) reducing signs and symptoms, inhibiting the progression of structural damage of active arthritis, and improving physical function in patients with psoriatic arthritis (in combination with MTX in patients who do not respond adequately to MTX alone); (4) reducing signs and symptoms in patients with active ankylosing spondylitis; and (5) treatment of adult patients (18 years or older) with chronic

moderate to severe plaque psoriasis who are candidates for systemic therapy or phototherapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 28, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 20, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 21, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Hee Choi at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 6, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–13709 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0511]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medicated Feed Mill License Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 11, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0337. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medicated Feed Mill License Application—21 CFR Part 515—OMB Control Number 0910–0337—Revision

Feed manufacturers that seek to manufacture feed using Category II, Type A medicated articles or manufacture certain liquid and free-choice feed, using Category I, Type A medicated articles that must follow proprietary formulas or specifications are required to obtain a facility license under section 512 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b). Our regulations in part 515 (21 CFR part 515) establish the procedures associated with applying for a facility license. We require that a manufacturer seeking a facility license submit a completed medicated feed mill license application using Form FDA 3448 (21 CFR 515.10(b)). We use the information submitted to establish that the applicant has made the certifications required by section 512 of the FD&C Act, to register the mill, and to schedule a pre-approval inspection. We have made minor editorial revisions to Form FDA 3448, including the addition of a dedicated field for the submitter's email address in the contact information section. We estimate that the revisions will not change the amount of time necessary to complete the form.

We require the submission of a supplemental medicated feed mill license application for a change in facility ownership or a change in facility address (§ 515.11(b)). If a licensed facility is no longer manufacturing medicated animal feed under § 515.23, a manufacturer may request voluntary revocation of a medicated feed mill license. An applicant also has the right to file a request for hearing under § 515.30(c) to give reasons why a medicated feed mill license should not be refused or revoked.

In the **Federal Register** of March 9, 2016 (81 FR 12509), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment, which was not responsive to the comment request.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section and activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Medicated Feed Mill License Application using Form FDA 3448 (515.10(b)).	20	1	20	0.25 (15 minutes)	5
Supplemental Feed Mill License Application using Form FDA 3448 (515.11(b)).	40	1	40	0.25 (15 minutes)	10
Voluntary Revocation of Medicated Feed Mill License. (515.23)	40	1	40	0.25 (15 minutes)	10
Filing a Request for a Hearing on Medicated Feed Mill License (515.30(c)).	1	1	1	4	4
Total					29

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section and activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of Records for Approved Labeling for Each "Type B" and "Type C" Feed (510.305).	890	1	890	0.03 (2 minutes)	27

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on our experience with medicated feed mill license applications. We estimate that we will receive 20 medicated feed mill license applications, 40 supplemental applications, 40 requests for voluntary revocation, and that these submissions will take approximately 15 minutes per response, as shown in table 1, rows 1 through 3. We estimate that preparing a request for a hearing under § 515.30(c) takes approximately 4 hours, as shown in table 1, row 4. In table 2, we estimate that 890 licensees will keep the records required by 21 CFR 510.305 expending a total of 27 hours annually.

Dated: June 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13790 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1264]

Dissemination of Patient-Specific Information From Devices by Device Manufacturers; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Dissemination of Patient-Specific Information from Devices by Device Manufacturers." The FDA developed this draft guidance to facilitate the appropriate and responsible dissemination of patient-specific information recorded, stored, processed, retrieved, and/or derived from medical devices from manufacturers to patients. This draft guidance provides recommendations to industry, healthcare providers, and FDA staff about the mechanisms and considerations for device manufacturers sharing such information with patients. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 9, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 28, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 20, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 21, 2016.

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FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at

Dated: June 6, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–13709 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0511]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medicated Feed Mill License Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 11, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0337. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

manufacture feed using Category II, Type A medicated articles or manufacture certain liquid and free-choice feed, using Category I, Type A medicated articles that must follow proprietary formulas or specifications are required to obtain a facility license under section 512 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b). Our regulations in part 515 (21 CFR part 515) establish the procedures associated with applying for a facility license. We require that a manufacturer seeking a facility license submit a completed medicated feed mill license application using Form FDA 3448 (21 CFR 515.10(b)). We use the information submitted to establish that the applicant has made the certifications required by section 512 of the FD&C Act, to register the mill, and to schedule a pre-approval inspection. We have made minor editorial revisions to Form FDA 3448, including the addition of a dedicated field for the submitter's email address in the contact information section. We estimate that the revisions will not change the amount of time necessary to complete the form.

We require the submission of a supplemental medicated feed mill license application for a change in facility ownership or a change in facility address (§ 515.11(b)). If a licensed facility is no longer manufacturing medicated animal feed under § 515.23, a manufacturer may request voluntary revocation of a medicated feed mill license. An applicant also has the right to file a request for hearing under § 515.30(c) to give reasons why a medicated feed mill license should not be refused or revoked.

In the **Federal Register** of March 9, 2016 (81 FR 12509), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment, which was not responsive to the comment request.

We estimate the burden of this collection of information as follows:

cense. (515.23)					
Filing a Request for a Hearing on Medicated Feed Mill License (515.30(c)).	1	1	1	4	4
Total					29

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section and activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of Records for Approved Labeling for Each "Type B" and "Type C" Feed (510.305).	890	1	890	0.03 (2 minutes)	27

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on our experience with medicated feed mill license applications. We estimate that we will receive 20 medicated feed mill license applications, 40 supplemental applications, 40 requests for voluntary revocation, and that these submissions will take approximately 15 minutes per response, as shown in table 1, rows 1 through 3. We estimate that preparing a request for a hearing under § 515.30(c) takes approximately 4 hours, as shown in table 1, row 4. In table 2, we estimate that 890 licensees will keep the records required by 21 CFR 510.305 expending a total of 27 hours annually.

Dated: June 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13790 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1264]

Dissemination of Patient-Specific Information From Devices by Device Manufacturers; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled "Dissemination of Patient-Specific Information from Devices by Device Manufacturers." The FDA developed this draft guidance to facilitate the appropriate and responsible dissemination of patient-specific information recorded, stored, processed, retrieved, and/or derived from medical devices from manufacturers to patients. This draft guidance provides recommendations to industry, healthcare providers, and FDA staff about the mechanisms and considerations for device manufacturers sharing such information with patients. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 9, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1264 for "Dissemination of Patient-Specific Information from Devices by Device Manufacturers." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled "Dissemination of Patient-Specific Information from Devices by Device Manufacturers" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Sugato De, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5435, Silver Spring, MD 20993–0002, 301–796–6270, *Sugato.De@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Increasingly, patients seek to play an active role in their own healthcare. FDA believes that manufacturers providing patients with accurate, useable information about their healthcare (including the medical products they use and patient-specific information these products generate) will improve healthcare by empowering patients to participate fully with their healthcare providers in making sound medical decisions. For purposes of this guidance, patient-specific information is defined as any information unique to an individual patient or unique to that patient's treatment or diagnosis that may be recorded, stored, processed, retrieved, and/or derived from a medical device. This information may include, but is not limited to, recorded patient data, device usage/output statistics, healthcare provider inputs, incidence of alarms, and/or records of device malfunctions or failures.

FDA developed this draft guidance to convey FDA's policy regarding the dissemination of patient-specific information recorded, stored, processed, retrieved, and/or derived from a medical device and provided by the manufacturer to the patient who is either treated or diagnosed with that specific device. This draft guidance document also outlines considerations for the form in which this information is communicated to help to ensure clarity of content and appropriate context.

Manufacturers may share patient-specific information (recorded, stored, processed, retrieved, and/or derived from a medical device, consistent with the intended use of that medical device) with patients either on their own initiative or at the patient's request, without obtaining additional premarket review before doing so. Any labeling, as that term is defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), that is provided to the patient by the manufacturer is subject to applicable requirements in the FD&C Act and FDA regulations.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance when finalized will represent the current thinking of FDA on "Dissemination of Patient-Specific Information from Devices by Device Manufacturers." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. Persons unable to download an electronic copy of "Dissemination of Patient-Specific Information from Devices by Device Manufacturers" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500067 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 801 and 809, regarding device labeling, are approved under OMB control number 0910–0485.

Dated: June 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13787 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Dermatologic and Ophthalmic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on July 19, 2016, from 8 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm*.

FOR FURTHER INFORMATION CONTACT: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *DODAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss biologics license application (BLA) 761032, brodalumab injection, a human monoclonal antibody, submitted by Valeant Pharmaceuticals Luxembourg S.à.r.l, proposed for the treatment of moderate to severe plaque psoriasis in adult patients who are candidates for systemic therapy or phototherapy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 5, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 24, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 27, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jennifer Shepherd at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 6, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–13710 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1248]

Oncology Drugs for Companion Animals; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry (GFI) #237 entitled "Oncology Drugs for Companion Animals." The guidance provides recommendations for sponsors of investigational oncology drugs for use in companion animals (*e.g.*, dogs, cats, and horses), discusses the contents of a new animal drug application (NADA) for certain oncology drugs, and provides recommendations on how to address human user safety concerns.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 9, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1248 for "Oncology Drugs for Companion Animals." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states, "This Document Contains Confidential Information." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Christopher Loss, Center for Veterinary Medicine (HFV–116), Food and Drug Administration, 7500 Standish Pl., Rm. N310, Rockville, MD 20855, 240–402–0619, *christopher.loss@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry #237 entitled "Oncology Drugs for Companion Animals." This guidance document makes recommendations to sponsors of investigational oncology drugs for use in companion animals (*e.g.*, dogs, cats, and horses). The guidance discusses the contents of the target animal safety, effectiveness, and labeling technical sections of an NADA for oncology drugs administered as single agents. The guidance also includes recommendations on how to address human user safety concerns.

In the guidance, FDA recommends that sponsors of multi-drug regimens contact the Center for Veterinary Medicine (CVM) to discuss a product development plan. While sponsors may choose alternate pathways for approval, the Agency is recommending that sponsors first discuss their proposed study plans with CVM, especially if they choose to use an alternative pathway for approval. The Agency encourages sponsors to schedule a presubmission conference with CVM as they begin to make their investigational plans to ensure that they are completely informed on the requirements contained in the statute and regulations.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on oncology drugs for companion animals. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov*.

Dated: June 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13789 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–E–1239; FDA–2015–E–0539]

Determination of Regulatory Review Period for Purposes of Patent Extension; POMALYST

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for POMALYST and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2016 Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

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• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA–2014–E–1239 and FDA–2015–E–0539 for "Determination of Regulatory Review Period for Purposes of Patent Extension; POMALYST." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product POMALYST (pomalidomide). POMALYST is indicated for treatment of patients with multiple myeloma who have received at least two prior therapies including lenalidomide and bortezomib and have demonstrated disease progression on or within 60 days of completion of last therapy. Subsequent to this approval, the USPTO received patent term restoration applications for POMALYST (U.S. Patent Nos. 6,316,471 and 8,198,262) from Celgene Corporation, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of POMALYST represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for POMALYST is 3,716 days. Of this time, 3,411 days occurred during the testing phase of the regulatory review period, while 305 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* December 9, 2002. The applicant claims December 14, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 9, 2002, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* April 10, 2012. FDA has verified the applicant's claim that the new drug application (NDA) for POMALYST (NDA 204026) was initially submitted on April 10, 2012.

3. *The date the application was approved:* February 8, 2013. FDA has verified the applicant's claim that NDA 204026 was approved on February 8, 2013.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 5 years or 241 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13796 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by July 11, 2016, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by July 11, 2016. Nominations will be accepted for current vacancies and for those that will or may occur through August 31, 2016.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process and consumer representative nominations should be submitted electronically to *kimberly.hamilton@fda.hhs.gov,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, or by FAX: 301–847–8640.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, or by FAX: 301–847–8640. Additional information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff (ACOMS), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, 301–796–8220 email: *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate Contact Person listed in table 1 in the **SUPPLEMENTARY INFORMATION** section:

SUPPLEMENTARY INFORMATION:

I. Background

FDA is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing (see table 1 for Contact Person).

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Janie Kim, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6129, Silver Spring, MD 20993–0002, Phone: 301–796–9016, Email: *Janie.Kim@fda.hhs.gov.*	Allergenic Products Advisory Committee.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993–0002, Phone: 301–796–6639, Email: *Shanika.Craig@fda.hhs.gov.*	Anesthesiology and Respiratory Therapy Devices Panel.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1611, Silver Spring, MD 20993–0002, Phone: 301–796–6875, Email: *Patricio.Garcia@fda.hhs.gov.*	Gastroenterology and Urology Devices Panel; General and Plastic Surgery Devices Panel; Neurological Devices Panel.
Natasha Facey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3354, Silver Spring, MD 20993–0002, Phone: 301–796–5290, Email: *Natasha.Facey@fda.hhs.gov.*	Ophthalmic Devices Panel.
Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, Phone: 301–796–6683, Email: *Evella.Washington@fda.hhs.gov.*	Molecular and Clinical Genetics Devices Panel.
Cindy Hong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2430, Silver Spring, MD 20993–0002, Phone: 301–796–0889, Email: *Cindy.Hong@fda.hhs.gov.*	Gastrointestinal Drugs Advisory Committee.
Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, Phone: 301–796–4043, Email: *Jennifer.Shepherd@fda.hhs.gov.*	Medical Imaging Advisory Committee; Pharmaceutical Science and Clinical Pharmacology Advisory Committee.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Allergenic Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	August 31, 2016.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Non-Voting	Immediately.
Gastroenterology and Urology Devices Panel Science Advisory Board to the National Center for Toxicological Research—Knowledgeable in the fields related to toxicological research.	1—Non-Voting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Non-Voting	Immediately.
Neurological Devices Panel—Neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians.	1—Non-Voting	Immediately.
Ophthalmic Devices Panel—Ophthalmologists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Non-Voting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics as well as ancillary fields of study will be considered.	1—Non-Voting	Immediately.
Gastrointestinal Drugs Advisory Committee—Knowledgeable in the fields of gastroenterology, endocrinology, surgery, clinical pharmacology, physiology, pathology, liver function, motility, esophagitis, and statistics.	1—Voting	June 30, 2016.
Medical Imaging Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics and related specialties.	1—Voting	June 30, 2016.
Pharmaceutical Science and Clinical Pharmacology Advisory Committee—Knowledgeable in the fields of pharmaceutical manufacturing, clinical pharmacology, pharmacokinetics, bioavailability and bioequivalence research, the design and evaluation of clinical trials, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, biostatistics and related biomedical and pharmacological specialties.	1—Voting	Immediately.

II. Functions and General Description of the Committee Duties

A. Allergenic Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease as well as the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the product; on clinical and laboratory studies of such products; on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products; and on the quality and relevance of FDA's research programs.

B. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

C. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

D. Medical Imaging Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

E. Pharmaceutical Science and Clinical Pharmacology Advisory Committee

Provide advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and, as required, any other product for which FDA has regulatory responsibility. The committee may also review Agency sponsored intramural and extramural biomedical research programs in support of FDA's generic drug regulatory responsibilities.

III. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

IV. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or resume. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

V. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations should include a cover letter and current curriculum vitae or resume for each nominee, including a current business and/or home address, telephone number, and email address if available, and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations should also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations should include confirmation that the nominee is aware of the nomination, unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 3, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–13733 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–E–2341]

Determination of Regulatory Review Period for Purposes of Patent Extension; TANZEUM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TANZEUM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by August 9, 2016. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 7, 2016. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
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- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–E–2341

For Determination of Regulatory Review Period for Purposes of Patent Extension; TANZEUM. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION". The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the

length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biological product TANZEUM (albiglutide). TANZEUM is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. Subsequent to this approval, the U.S. Patent and Trademark Office (USPTO) received a patent term restoration application for TANZEUM (U.S. Patent No. 7,141,547) from Human Genome Sciences, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 11, 2015, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of TANZEUM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TANZEUM is 3,014 days. Of this time, 2,557 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 15, 2006. FDA has verified the applicant's claim that the date the investigational new drug application (IND) became effective was on January 15, 2006.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* January 14, 2013. The applicant claims January 11, 2013, as the date the biologics license application (BLA) for TANZEUM (BLA 125431) was initially submitted. However, FDA records indicate that BLA 125431 was received by FDA on January 14, 2013.

3. *The date the application was approved:* April 15, 2014. FDA has verified the applicant's claim that BLA 125431 was approved on April 15, 2014.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,577 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and ask for a redetermination (see **DATES**). Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must be timely (see **DATES**) and contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 3, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13797 Filed 6–9–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reproductive and Environmental Health Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of a Single-Award Deviation from Competition Requirements for the Reproductive and Environmental Health Network.

SUMMARY: HRSA announces the award of an extension in the amount of $1,100,000 for the Reproductive and Environmental Health Network (REHN) cooperative agreement. The purpose of the REHN is to improve maternal and fetal health outcomes by providing evidence-based information on the safety of exposures in pregnancy and lactation. The extension will permit the Organization of Teratology Information Specialists (OTIS), the cooperative agreement awardee, during the budget period of 9/1/2016–8/31/2017, to continue to provide evidence-based information on the safety of exposures in pregnancy and lactation through individualized risk-assessments and counseling services, developing and disseminating the most current education to providers and the public, improving access to information for hard-to-reach populations, and supporting a national network of resources with centers accessible to each of the 10 HRSA regions.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Organization of Teratology Information Specialists.

Amount of Non-Competitive Awards: $1,100,000.

Period of Supplemental Funding: 9/1/2016–8/31/2017.

CFDA Number: 93.110.

Authority: Social Security Act, Title V, § 501(a)(2); (42 U.S.C. 701(a)(2)).

Justification: REHN activities are essential to achieving HHS Healthy People 2020 goals related to improving preconception care, preventing maternal morbidity and mortality, reducing infant mortality, and reducing health disparities in perinatal health. During this extension period of the budget period (9/1/2016–8/31/2017), MCHB plans to issue a new FOA that will align HRSA's work in this area with work funded by the Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention's (CDC) through their jointly funded Pediatric Environmental Health Specialty Unit Program (PEHSU). Aligning REHN and PEHSU will result in a more comprehensive HHS initiative to expand access to services and maximize limited resources in this area. During this time, OTIS would continue to provide individualized risk-assessments and counseling services, developing and disseminating the most current education to providers and the public, improving access to information for hard-to-reach populations, and supporting a national network of resources with centers accessible to each of the 10 HRSA regions.

MCHB proposes to initiate a one-time 12 month extension for the budget period of 9/1/2016 to 8/31/2017 with $1,100,000 in FY 2016 funds to the OTIS REHN cooperative agreement. The extension would allow the OTIS to continue to provide evidence-based information on the safety of exposures in pregnancy and lactation through individualized risk-assessments and counseling services, developing and disseminating the most current education to providers and the public, improving access to information for hard-to-reach populations, and supporting a national network of resources with centers accessible to each of the 10 HRSA regions.

FOR FURTHER INFORMATION CONTACT: Kathryn McLaughlin, MPH, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 18W08, Rockville, MD 20852, Phone: (301) 443–6829, Email: *KMcLaughlin@hrsa.gov*.

Dated: June 3, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–13784 Filed 6–9–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than August 9, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14A39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: National Practitioner Data Bank (NPDB) Attestation of Reports by Hospitals, Medical Malpractice Payers, Health Plans, and Health Centers.

OMB No. 0915–xxxx—New.

Abstract: The NPDB plans to collect data from hospitals, medical malpractice payers, health plans, and certain other health care entities [1] that are subject to NPDB reporting requirements to assist these entities in understanding and meeting their reporting requirements to the NPDB. The NPDB currently collects similar data from state licensing boards on a regular basis, and this information collection request would expand beyond current reporting activities to include hospitals, medical malpractice payers, health plans, and certain health care entities.

The NPDB began operation on September 1, 1990. The statutory authorities establishing and governing the NPDB are title IV of Public Law (Pub. L.) 99–660, the Health Care Quality Improvement Act of 1986, as amended, section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, codified as section 1921 of the Social Security Act, and section 221(a) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, codified as section 1128E of the Social Security Act. Final regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for NPDB implementation and operation resides in the Bureau of Health Workforce, Health Resources and Services Administration, Department of Health and Human Services (HHS).

The NPDB acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, health-related civil judgments, adverse licensure actions, adverse clinical privileging actions, adverse professional society actions, and Medicare/Medicaid exclusions is collected from and disseminated to eligible entities such as licensing boards, hospitals, and other health care entities. It is intended that NPDB information should be considered with other relevant information in evaluating a practitioner's credentials.

The NPDB outlines specific reporting requirements for hospitals, medical malpractice payers, health plans, and health care entities; per 45 CFR 60.7, 60.12, 60.14, 60.15, and 60.16. These reporting requirements are further explained in chapter E of the NPDB e-Guidebook, which can be found at: *http://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp*.

Through a process called Attestation, hospitals, medical malpractice payers, health plans, and certain other health entities will be required to attest that they understand and have met their responsibility to submit all required reports to the NPDB. The Attestation process will be completely automated through the secure NPDB system (*https://www.npdb.hrsa.gov*), using both secure email messaging and system notifications to alert entities registered with the NPDB of their responsibility to attest. All entities with reporting requirements and querying access to the NPDB must register with the NPDB before gaining access to the secure NPDB system for all reporting and querying transactions.

Although the Attestation process and forms are new, the secure NPDB system currently used by hospitals, medical malpractice payers, health plans, and health care entities to conduct reporting and querying will not change, ensuring that these entities are familiar with the interface needed to complete the Attestation process. NPDB will ask these entities to attest their reporting compliance every 2 years. If the organization is responsible for privileging or credentialing individuals who provide services for other sites, those sites will be included in the Attestation process.

The Attestation forms will collect the following information: (1) Information regarding sub-sites and entity relationships; (2) contact information for the Attesting Official; and (3) a statement attesting whether or not all required reports have been submitted.

Need and Proposed Use of the Information: The NPDB engages in compliance activities to ensure the accuracy and completeness of the information in the NPDB. Through the Attestation process, the NPDB can better determine which hospitals, medical malpractice payers, health plans, and health care entities are meeting the reporting requirements, and which of

[1] Unless otherwise noted, the term "health care entities" refers to health centers whose access and reporting obligations are addressed in the NPDB statutory and regulatory requirements for health care entities. In this document, "health center" refers to organizations that receive grants under the HRSA Health Center Program as authorized under section 330 of the Public Health Service Act, as amended (referred to as "grantees") and Federally Qualified Health Center (FQHC) Look-Alike organizations, which meet all the Health Center Program requirements but do not receive Health Center Program grants. It does not refer to FQHCs that are sponsored by tribal or Urban Indian Health Organizations, except for those that receive Health Center Program grants.

these entities may require additional outreach and assistance. The Attestation process will strengthen the robustness of the data in the NPDB, improving the accuracy of query responses for entities with access to NPDB reports.

Likely Respondents: Hospitals medical malpractice payers, health plans, health care entities, and their representatives.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and attesting information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Health Care Entity Attestation	3,000	1	3,000	1	3,000
Medical Malpractice Payer Attestation	750	1	750	1	750
Health Plan Attestation	1,500	1	1,500	1	1,500
Hospital Attestation	7,500	1	7,500	1	7,500
Total	[2] 12,750		12,750		12,750

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of Executive Secretariat.

[FR Doc. 2016–13735 Filed 6–9–16; 8:45 am]

BILLING CODE 4165–15–P

[2] There are approximately 6,800 hospitals, 575 medical malpractice payers, 1,400 health plans, and 2,200 health centers registered with the NPDB. However, the reporting entities may include multiple sites that are registered independently in the system, thereby increasing the total number of respondents. Therefore, we estimate there will be 7,500 respondents for hospitals, 750 respondents for medical malpractice payers, 1,500 respondents for health plans, and 3,000 respondents for health centers for 12,750 total respondents.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill vacancies on the National Advisory Council on Migrant Health (NACMH). The NACMH is authorized under 42 U.S.C. 218, section 217 of the Public Health Service (PHS) Act, as amended and governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2).

DATES: The agency will receive nominations on a continuous basis.

ADDRESSES: All nominations should be addressed to the Designated Federal Official, NACMH, Strategic Initiatives and Planning Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 16N38B, 5600 Fishers Lane, Rockville, Maryland 20857 or via email to: Esther Paul at *epaul@hrsa.gov* and/or Priscilla Charles at *PCharles@hrsa.gov*.

FOR FURTHER INFORMATION CONTACT: Esther Paul, MBBS, MA, MPH, Designated Federal Official, NACMH, phone number: (301) 594–4496 or via email at *epaul@hrsa.gov*.

SUPPLEMENTARY INFORMATION: As authorized under section 217 of the Public Health Service Act, as amended, 42 U.S.C. 218, the Secretary established the NACMH. The NACMH is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The NACMH, consults with and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the HRSA Administrator concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 330 of the PHS Act.

The NACMH Charter requires that the Council consist of 15 members, each serving a 4-year term. Twelve Council members are required to be governing board members of migrant health centers and other entities assisted under section 254(b) of the PHS Act. Of these 12, at least 9 must be patient board members. The remaining three must be individuals qualified by training and experience in the medical sciences or in the administration of health programs. New members filling a vacancy that occurred prior to expiration of a term may serve only for the remainder of such term. Members may serve after the expiration of their terms until their successors have taken office, but no longer than 120 days.

Compensation: Members who are not full-time Federal employees shall be paid at the rate of $200 per day including travel time plus per diem and travel expenses in accordance with Standard Government Travel Regulations.

Specifically, HRSA is requesting nominations for:

• *Board Member/Patient (1 vacancy):* A nominee *must be a member* or member-elect of a governing board of an organization receiving funding or look-alike designation under section 330(g) of the PHS Act. A board member nominee *must also be a patient* of the entity that he/she represents. Additionally, a board member nominee *must* be familiar with the delivery of primary health care to migratory and seasonal agricultural workers (MSAWs) and their families.

• *Administrator/Provider Representative (1 vacancy)* A nominee *must* be qualified by training and experience in the medical sciences or in the administration of health programs for MSAWs and their families.

A complete nomination package should include the following information for each nominee:

(1) A NACMH Nomination form; (2) three letters of reference; and (3) a statement of prior service on the NACMH; and (4) a biographical sketch of the nominee or a copy of his/her curriculum vitae. The nomination package must also state that the nominee is willing to serve as a member of the NACMH and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee. Please contact Esther Paul at *epaul@hrsa.gov* and/or Priscilla Charles at *PCharles@hrsa.gov* to obtain a nomination form.

HHS strives to ensure that the membership of HHS federal advisory committees is balanced in terms of points of view represented, consistent with the committee's authorizing statute and charter. Appointment to the NACMH shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. The Department encourages nominations of qualified candidates from all groups and locations.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–13767 Filed 6–9–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received no later than August 9, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Develop a Strategic Communication Plan for the Bureau of Primary Health Care (BPHC).

OMB No. 0915–xxxx—New.

Abstract: Health centers (which include those entities funded under Public Health Service Act section 330 and those designated as Health Center Program Look-Alikes) deliver comprehensive, high quality, cost-effective primary health care services to patients regardless of their ability to pay. Health centers have become an essential primary care provider for America's most vulnerable populations. Health centers advance the health care home model of coordinated, comprehensive, and patient-centered primary health care providing a wide range of medical, dental, behavioral, and social services. Nearly 1,400 health centers operate more than 9,800 service delivery sites that provide care in every state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin.

The Health Center Program is administered by BPHC. BPHC provides accurate, timely, and valuable information to internal and external stakeholders in order to support its mission to improve the health of the Nation's underserved communities and vulnerable populations by assuring access to comprehensive, culturally competent, quality primary health care services.

BPHC will engage with key external stakeholder populations to collect data that will inform the creation of a data-driven strategic communication plan that serves BPHC's stakeholders and facilitates clear, timely, and well-coordinated communication. This comprehensive strategic plan will identify communication priorities for BPHC, leading to a more efficient and effective communication operations with a focus on establishing BPHC's capacity for leading external affairs activities.

Need and Proposed Use of the Information: Data collected from Health Center Program stakeholders are critical to the development of a communication plan and will be used to identify audiences and their preferences for communication; develop effective key messages regarding the Health Center Program grant and non-grant processes; increase health centers' and the public's understanding of the program requirements; develop BPHC communication goals, strategies, and tactics; and develop meaningful metrics for communication process improvement. This systematic exploration will inform the development of cost-efficient and effective business processes that will centralize and streamline external communication within BPHC.

Likely Respondents: Health Center Program grantees and Look-Alikes, entities with national cooperative agreements, and state and regional primary care associations.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Online Surveys	200	1	200	.2	40
Focus Groups	80	1	80	1.5	120
One-on-One Interviews	50	2	100	.75	75
Total	330		380		235

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–13736 Filed 6–9–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Appointment to the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

Authority: 42 U.S.C. 300u–6, Section 1707 of the Public Health Service Act, as amended. The Advisory Committee is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Department of Health and Human Services (HHS), Office of Minority Health (OMH), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Minority Health (hereafter referred to as the "Committee or ACMH"). In accordance with Public Law 105–392, the Committee provides advice to the Deputy Assistant Secretary for Minority Health on improving the health of racial and ethnic minority groups, and on the development of goals and specific program activities of OMH designed to improve the health status and outcomes of racial and ethnic minorities. Nominations of qualified candidates are being sought to fill vacancies on the Committee.

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on September 8, 2016, at the address listed below.

ADDRESSES: All nominations should be mailed to Dr. Minh Wendt, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Dr. Minh Wendt, Designated Federal Officer, Advisory Committee on Minority Health, Office of Minority Health, Department of Health and Human Services, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–8222; fax: 240–453–8223.

A copy of the ACMH charter and list of the current membership can be obtained by contacting Dr. Wendt or by accessing the Web site managed by OMH at *www.minorityhealth.hhs.gov*. Information about ACMH activities can be found on the OMH Web site under the heading About OMH.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 105–392, the Secretary of Health and Human Services established the ACMH. The Committee provides advice to the Deputy Assistant Secretary for Minority Health in carrying out the duties stipulated under Public Law 105–392. This includes providing advice on improving the health of racial and ethnic minority populations and in the development of goals and specific program activities of OMH, which are to:

(1) Establish short-range and long-range goals and objectives and coordinate all other activities within the Public Health Service that relate to disease prevention, health promotion, service delivery, and research impacting racial and ethnic minority populations;

(2) Enter into interagency agreements with other agencies of the Public Health Service;

(3) Support research, demonstrations, and evaluations to test new and innovative models;

(4) Increase knowledge and understanding of health risk factors;

(5) Develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including individuals who are members of racial or ethnic minority groups;

(6) Ensure that the National Center for Health Statistics collects data on the health status of each minority group;

(7) Enter into contracts with public and non-profit private providers of primary health services for the purpose of increasing the access of individuals who lack proficiency in speaking the English language by developing and carrying out programs to provide bilingual or interpretive services;

(8) Support a national minority health resource center which provides resources to the public such as information services and assistance in capacity building;

(9) Carry out programs to improve access to health care services for individuals with limited proficiency in speaking the English language; and

(10) Advise in matters related to the development, implementation, and evaluation of health professions education in decreasing disparities in health care outcomes, including cultural competency as a method of eliminating health disparities.

Management and support services for the ACMH are provided by OMH.

Nominations: The Committee is composed of 12 voting members. The Committee composition also can include non-voting *ex officio* members. This announcement is seeking nominations for voting members. Voting members of the Committee are appointed by the Secretary from individuals who are not officers or employees of the federal government and who have expertise regarding issues of minority health. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise working on issues impacting the health of racial and ethnic minority populations. The Committee charter stipulates that the racial and ethnic minority groups shall be equally represented on the Committee membership. ACMH is comprised of members who represent the health interest of Hispanics/Latinos; Blacks/African Americans; American Indians and Alaska Natives; and/or Asian Americans, Native Hawaiians, and other Pacific Islanders.

There are two impending vacancies on the ACMH that impact the representation for the health interests of Blacks/African Americans. OMH is particularly seeking nominations for individuals who can represent the health interests of this racial and ethnic minority group. Nominations that are received for individuals to represent other racial and ethnic minority groups also will be accepted. These applications will be retained in files that are maintained by OMH on potential candidates to be considered for the ACMH.

Mandatory Professional/Technical Qualifications: Nominees must meet all of the following mandatory qualifications to be eligible for consideration:

(1) Expertise in minority health and racial and ethnic health disparities;

(2) Expertise in developing or contributing to the development of science-based or evidence- based health policies and/or programs. This expertise may include experience in the analysis, evaluation, and interpretation of federal/state health or regulatory policy;

(3) Involvement in national, state, regional, tribal, and/or local efforts to improve the health status or outcomes among racial and ethnic minority populations;

(4) Educational achievement, professional certification(s) in health-related fields (*e.g.*, health professions, allied health, behavioral health, public health, health policy, health administration/management, etc.), and professional experience that will support ability to give expert advice on issues related to improving minority health and eliminating racial and ethnic health disparities; and

(5) Expertise in population level health data for racial and ethnic minority groups. This expertise may include survey, administrative, and/or clinical data.

Desirable Qualifications:

(1) Knowledge and experience in health care systems, cultural and linguistic competency, social determinants of health, evidence-based research, data collection (*e.g.*, federal, state, tribal, or local data collection), or health promotion and disease prevention.

(2) Nationally recognized via peer-reviewed publications, professional awards, advanced credentials, or involvement in national professional organizations.

Requirements for Nomination Submission: Nominations should be typewritten (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone number, and email address; (3) the nominee's curriculum vitae which should not exceed 10 pages; and (4) a summary of the nominee's experience and qualification relative to the mandatory professional and technical criteria listed above. Federal employees should not be nominated for consideration of appointment to this Committee.

Individuals selected for appointment to the Committee shall be invited to serve a four-year term. Committee members will receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of a HHS federal advisory committee is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, gender, racial and ethnic and minority groups, and the disabled are given consideration for membership on HHS federal advisory committees. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of ACMH and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee; therefore, individuals selected for nomination will be required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Individuals selected to serve on the ACMH through the nomination process will be posted on the OMH Web site once selections have been made.

Dated: May 31, 2016.

Minh Wendt,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2016–13785 Filed 6–9–16; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small-Cell Lung Cancer (SCLC) Consortium: Innovative Approaches to the Prevention and Early Detection of Small Cell Lung Cancer (U01).

Date: July 18, 2016.

Time: 7:30 p.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Timothy C. Meeker, MD, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small-Cell Lung Cancer (SCLC) Consortium: Therapeutic Development and Mechanisms of Resistance (U01).

Date: July 19, 2016.

Time: 8:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817

Contact Person: Timothy C. Meeker, MD, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20892–9750, 240–276–6464 *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Small-Cell Lung Cancer (SCLC) Consortium: Coordinating Center (U24).

Date: July 19, 2016.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Timothy C. Meeker, MD, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Clinical Center Collaborative Research (U01).
Date: July 22, 2016.
Time: 9:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 2W914, Rockville, MD 20850 (Telephone Conference Call).
Contact Person: Caron A. Lyman, Ph.D., Chief, Scientific Review Officer, Research Programs Review, Branch Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W126, Rockville, MD 20892–9750, 240–276–6348, *lymanc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 6, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13725 Filed 6–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections, 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the, discussions could disclose confidential trade secrets or commercial property such as patentable, material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Infectious, Reproductive, Asthma and Pulmonary Conditions and Social Sciences and Population Studies.
Date: July 6, 2016.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
*Place:*National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ellen K Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, 301–828–6146, *schwarel@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Microbial Pathogenesis.
Date: July 11, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard G Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR14–226: Limited Competition: National Primate Research Centers (P51).
Date: July 11–13, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Silver Cloud Inn—Lake Union, 1150 Fairview Ave. N., Seattle, WA 98109.
Contact Person: Maribeth Champoux, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business—Hematology.
Date: July 11, 2016.
Time: 10:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, 301–806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–16–006: Environmental Influences on Child Health Outcomes (ECHO) Coordinating Center.
Date: July 12, 2016.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–375: Nutrigenetics and Nutrigenomics Approaches for Nutrition Research.
Date: July 12, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pediatric Diagnostic Biomarkers for Active Pulmonary TB Diseases.
Date: July 12–13, 2016.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Synthetic and Biological Chemistry.
Date: July 12–13, 2016.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187 MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846– 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13724 Filed 6–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Investigations on Primary Immunodeficiency Diseases.
Date: June 23, 2016.
Time: 1:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Adaptive and Innate Immunity to Pathogens.
Date: June 30, 2016.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pediatric Disorders.
Date: June 30, 2016.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Baishali Maskeri, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–2864, *maskerib@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.
Date: June 30, 2016.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jessica Bellinger, Ph.D., Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–358–Molecular and Cellular Causal Aspects of Alzheimer's Disease.
Date: June 30, 2016.
Time: 12:45 p.m. to 1:45 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pulmonary Hypertension.
Date: July 5–6, 2016.
Time: 9:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory Diseases.
Date: July 5–6, 2016.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments.
Date: July 6–7, 2016.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Elucidating HIV and HIV-treatment Associated Metabolic/Endocrine Dysfunction.
Date: July 6, 2016.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Biological Macromolecules Fellowship Applications.
Date: July 7–8, 2016.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: David R Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 437–7927, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Risk, Prevention and Health Behavior.
Date: July 7–8, 2016.
*Time:*8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
Contact Person: Claire E Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cellular Mechanisms of Metabolism, Obesity, and Diabetes.
Date: July 7, 2016.
Time: 1:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovative Research in HIV in Kidney, Urology, and Hematology.

Date: July 7, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–027: Commercialization Readiness Pilot.

Date: July 8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, *cbackman@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–315: CounterAct Exploratory Grants.

Date: July 8, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 3, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13723 Filed 6–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, COBRE Phase I.

Date: July 15, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892–6200, 301–594–3663, *sidorova@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research, Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 6, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13727 Filed 6–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Autism Spectrum Disorder (ASD) Research Portfolio Analysis, NIMH

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Mental Health, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 23, 2016, Vol. 81 page 15541 and allowed 60-days for public comment. One public comment was received, requesting a copy of the data collection plans and instruments; the NIMH Office of Autism Research Coordination provided draft copies of the data collection plan and instrument to the requester. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: The Office of Autism Research Coordination, NIMH, NIH, Neuroscience Center, 6001 Executive Blvd., MSC 9663, Room 6184, Bethesda, Maryland 20892. Or you can Email your request, including your address to: *iaccpublicinquiries@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: NIMH Office of Autism Research Coordination (OARC) Autism Spectrum Disorder (ASD) Research Portfolio Analysis, 0925–0682, Expiration Date 09/30/2016—EXTENSION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of the ASD portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Combating Autism Act, and to inform the committee and interested stakeholders of the funding landscape and current directions for ASD research. Specifically, these analyses will continue to examine the extent to which current funding and research topics align with the IACC Strategic Plan for ASD Research. The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual activities and research progress.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 520.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents (funders)	Number of respondents	Number of projects per respondent	Average time per response (in hours)	Total burden hours
U.S. Federal	22	63	15/60	347
U.S. Private	8	75	15/60	150
International Government	4	14	15/60	14
International Private	4	9	15/60	9

Dated: June 3, 2016.

Melba Rojas,

Project Clearance Liaison, NIMH, NIH.

[FR Doc. 2016–13722 Filed 6–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings (Parent R13/U13).

Date: June 28–30, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Actives, Room 3G51, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240–507–9685, *thomas.conway@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13726 Filed 6–9–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Center for Substance Abuse Treatment (CSAT) National Advisory Council will meet on June 29, 2016, 2:30 p.m.–3:30 p.m. (EDT) in a closed teleconference meeting.

The meeting will include discussions and evaluations of grant applications reviewed by SAMHSA's Initial Review Groups, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, the meeting will be closed to the public as determined by the Principal Deputy SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4), (6)(B) and Title 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee Web site at *http://www.samhsa.gov/about-us/advisory-councils/csat-national-advisory-council* or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: June 29, 2016, 2:30 p.m.–3:30 p.m. EDT, CLOSED.

Place: SAMHSA, 5600 Fishers Lane, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov*.

Summer King,

Statistician, SAMHSA.

[FR Doc. 2016–13690 Filed 6–9–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1628]

Changes In Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each

community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html*.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 19, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Colorado:						
Boulder	City of Boulder, (16-08-0026P).	Ms. Jane Brautigam, Manager, City of Boulder, 1777 Broadway Street, Boulder, CO 80302.	Park and Central Building, 1739 Broadway Street, Boulder, CO 80308.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	080024
Colorado:	Unincorporated areas of Boulder County, (16-08-0026P).	The Honorable Elise Jones, Chair, Boulder County Board of Commissioners, 1325 Pearl Street, 3rd Floor, Boulder, CO 80302.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80306.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2016	080023
Florida:						
Bay	City of Panama City, (16-04-0407P).	The Honorable Greg Brudnicki, Mayor, City of Panama City, 9 Harrison Avenue, Panama City, FL 32401.	Public Works Engineering Division, 9 Harrison Avenue, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc*	Aug. 19, 2016	120012
Bay	City of Panama City, (16-04-1535P).	The Honorable Greg Brudnicki, Mayor, City of Panama City, 9 Harrison Avenue, Panama City, FL 32401.	Public Works Engineering Division, 9 Harrison Avenue, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc*	Aug. 11, 2016	120012
Bay	Unincorporated areas of Bay County, (16–04–0407P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc*	Aug. 19, 2016	120004

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bay	Unincorporated areas of Bay County, (16-04-1535P).	The Honorable Mike Nelson, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Division, 840 West 11th Street, Panama City, FL 32401.	*http://www.msc.fema.gov/lomc*	Aug. 11, 2016	120004
Brevard	City of Cocoa Beach, (16-04-3178X).	The Honorable Tim Tumulty, Mayor, City of Cocoa Beach, P.O. Box 322430, Cocoa Beach, FL 32932.	Development Services Department, 2 South Orlando Avenue, Cocoa Beach, FL 32931.	*http://www.msc.fema.gov/lomc*	Aug. 10, 2016	125097
Brevard	Unincorporated areas of Brevard County, (16-04-3178X).	The Honorable Jim Barfield, Chairman, Brevard County Board of Commissioners, 2575 North Courtenay Parkway, Suite 200, Merritt Island, FL 32953.	Brevard County Public Works Department, 2725 Judge Fran Jamieson Way, Melbourne, FL 32940.	*http://www.msc.fema.gov/lomc*	Aug. 10, 2016	125092
Broward	City of Hallandale Beach, (16–04–0173P).	The Honorable Joy F. Cooper, Mayor, City of Hallandale Beach, 400 South Federal Highway, Hallandale Beach, FL 33009.	Development Services Department, 400 South Federal Highway, Hallandale Beach, FL 33009.	*http://www.msc.fema.gov/lomc*	Aug. 2, 2016	125110
Broward	Unincorporated areas of Broward County, (16-04-0173P).	Ms. Bertha Henry, Broward County Administrator, 115 South Andrews Avenue, Fort Lauderdale, FL 33301.	Broward County Environmental Licensing and Building Permitting Division, 1 North University Drive, Plantation, FL 33324.	*http://www.msc.fema.gov/lomc*	Aug. 2, 2016	125093
Charlotte	Unincorporated areas of Charlotte County, (16-04-1533P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*http://www.msc.fema.gov/lomc*	Aug. 11, 2016	120061
Gulf	Unincorporated areas of Gulf County, (16-04-3116X).	The Honorable Ward McDaniel, Chairman, Gulf County Board of Commissioners, 1000 Cecil G. Costin, Sr. Boulevard, Port St. Joe, FL 32456.	Gulf County Planning Department, 1000 Cecil G. Costin, Sr. Boulevard, Port St. Joe, FL 32456.	*http://www.msc.fema.gov/lomc*	Aug. 12, 2016	120098
Manatee	Unincorporated areas of Manatee County, (15–04–9689P).	The Honorable Vanessa Baugh, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Aug. 24, 2016	120153
Miami-Dade	Unincorporated areas of Miami-Dade County, (16-04-2319P).	The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County, 111 Northwest 1st Street, Miami, FL 33128.	Miami-Dade County Regulatory and Economic Resources Water Management Division, 701 Northwest 1st Court, 5th Floor, Miami, FL 33136.	*http://www.msc.fema.gov/lomc*	Aug. 2, 2016	120635
Monroe	Unincorporated areas of Monroe County, (16–04–0996P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	Aug. 2, 2016	125129
Monroe	Unincorporated areas of Monroe County, (16-04-2190P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*http://www.msc.fema.gov/lomc*	Aug. 4, 2016	125129
Orange	City of Orlando, (16-04-0456P).	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	*http://www.msc.fema.gov/lomc*	Aug. 19, 2016	120186
Orange	Unincorporated areas of Orange County, (16-04-0456P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Stormwater Division, 4200 South John Young Parkway, Orlando, FL 32839.	*http://www.msc.fema.gov/lomc*	Aug. 19, 2016	120179

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
St. Johns	Unincorporated areas of St. Johns County, (16–04–0993P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	http://www.msc.fema.gov/lomc	Aug. 11, 2016	125147
St. Johns	Unincorporated areas of St. Johns County, (16–04–2611P).	The Honorable Jeb Smith, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	http://www.msc.fema.gov/lomc	Aug. 2, 2016	125147
Georgia:						
Bryan	City of Richmond Hill, (16–04–2230P).	The Honorable E. Harold Fowler, Mayor, City of Richmond Hill, 40 Richard R. Davis Drive, Richmond Hill, GA 31324..	Planning and Zoning Department, 85 Richard R. Davis Drive, Richmond Hill, GA 31324.	http://www.msc.fema.gov/lomc	Aug. 5, 2016	130018
Bryan	Unincorporated areas of Bryan County, (16–04–2230P).	The Honorable Jimmy Burnsed, Chairman, Bryan County Board of Commissioners, 173 Davis Road, Richmond Hill, GA 31324.	Bryan County Planning and Zoning Department, 66 Captain Matthew Freeman Drive, Suite 201, Richmond Hill, GA 31324.	http://www.msc.fema.gov/lomc	Aug. 5, 2016	130016
Kentucky:						
Jefferson	Louisville-Jefferson County Metropolitan Government, (16–04–3003X).	The Honorable Greg Fischer, Mayor, City of Louisville, 527 West Jefferson Street, 4th Floor, Louisville, KY 40202.	Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	http://www.msc.fema.gov/lomc	Aug. 1, 2016	210120
Louisiana:						
Bossier	City of Bossier City, (15-06-2130P).	The Honorable Lorenz Walker, Mayor, City of Bossier City, P.O. Box 5337, Bossier City, LA 71171.	City Hall, 620 Benton Road, Bossier City, LA 71171.	http://www.msc.fema.gov/lomc	Aug. 18, 2016	220033
Bossier	Unincorporated areas of Bossier Parish, (15-06-2130P).	The Honorable William R. Altimus, Bossier Parish Administrator, P.O. Box 70, Benton, LA 71006.	Bossier Parish Courthouse, 204 Burt Boulevard, Benton, LA 71006.	http://www.msc.fema.gov/lomc	Aug. 18, 2016	220031
Massachusetts: Barnstable.	Town of Falmouth, (16-01-0373P).	The Honorable Doug Jones, Chairman, Town of Falmouth Board of Selectmen, 59 Town Hall Square, Falmouth, MA 02540.	Town Hall, 59 Town Hall Square, Falmouth, MA 02540.	http://www.msc.fema.gov/lomc	Aug. 15, 2016	255211
North Carolina:						
Buncombe	Unincorporated areas of Buncombe County, (15–04–8908P).	The Honorable David Gantt, Chairman, Buncombe County Board of Commissioners, 200 College Street, Suite 316, Asheville, NC 28801.	Buncombe County Planning Department, 46 Valley Street Asheville, NC 28801.	http://www.msc.fema.gov/lomc	Aug. 5, 2016	370031
Burke	Unincorporated areas of Burke County, (15–04–6342P).	The Honorable Wayne F. Abele, Sr, Chairman, Burke County Board of Commissioners, P.O. Box 219, Morganton, NC 28680.	Burke County Services Building, 110 North Green Street Morganton, NC 28680.	http://www.msc.fema.gov/lomc	Aug. 1, 2016	370034
Orange	Town of Chapel Hill, (16–04–4141X).	The Honorable Pam Hemminger, Mayor, Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	Public Works Department, Stormwater Division, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514.	http://www.msc.fema.gov/lomc	Aug. 18, 2016	370180
Oklahoma: Payne	Unincorporated areas of Payne County, (15–06–3395P).	The Honorable Kent Bradley, Chairman, Payne County Board of Commissioners, 506 Expo Circle South, Stillwater, OK 74074.	Payne County Floodplain Administrator's Office, 315 West 8th Avenue, Suite 203, Stillwater, OK 74074.	http://www.msc.fema.gov/lomc	Aug. 22, 2016	400493
Pennsylvania:						
Montgomery	Borough of Ambler, (15-03-2420P).	The Honorable Salvatore Pasceri, President, Borough of Ambler Council, 131 Rosemary Avenue, Ambler, PA 19002.	Borough Hall, 131 Rosemary Avenue, Ambler, PA 19002.	http://www.msc.fema.gov/lomc	Aug. 1, 2016	420947

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Montgomery	Township of Lower Gwynedd, (15-03-2420P).	The Honorable Stephen J. Paccione, Chairman, Township of Lower Gwynedd Board of Supervisors, P.O. Box 625, Spring House, PA 19477.	Township Hall, 1130 North Bethlehem Pike, Spring House, PA 19477.	http://www.msc.fema.gov/lomc	Aug. 1, 2016	420953
Montgomery	Township of Upper Dublin, (15 03 2420P).	The Honorable Ira S. Tackel, President, Township of Upper Dublin Board of Commissioners, 801 Loch Alsh Avenue, Fort Washington, PA 19034.	Township Hall, 801 Loch Alsh Avenue, Fort Washington, PA 19034.	http://www.msc.fema.gov/lomc	Aug. 1, 2016	420708
Montgomery	Township of Whitemarsh, (15-03-2924P).	The Honorable Amy P. Grossman, Chair, Township of Whitemarsh Board of Supervisors, 616 Germantown Pike, Lafayette Hill, PA 19444.	Township Administrative Building, 616 Germantown Pike, Lafayette Hill, PA 19444.	http://www.msc.fema.gov/lomc	Aug. 16, 2016	420712
Montgomery	Township of Whitpain, (15-03-2420P).	The Honorable Adam Zucker, Chairman, Township of Whitpain Board of Supervisors, 960 Wentz Road, Blue Bell, PA 19422.	Township Hall, 960 Wentz Road, Blue Bell, PA 19422.	http://www.msc.fema.gov/lomc	Aug. 1, 2016	420713
Tennessee:						
Hamilton	City of Chattanooga, (15–04–3964P).	The Honorable Andy Berke, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	Planning Department, 1250 Market Street, Chattanooga, TN 37402.	http://www.msc.fema.gov/lomc	Aug. 5, 2016	470072
Hamilton	City of Chattanooga, (15-04-9959P).	The Honorable Andy Berke, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	Planning Department, 1250 Market Street, Chattanooga, TN 37402.	http://www.msc.fema.gov/lomc	Jun. 6, 2016	470072
Hamilton	City of East Ridge, (15–04–3964P).	The Honorable Brent Lambert, Mayor, City of East Ridge, 1517 Tombras Avenue, East Ridge, TN 37412.	Codes Division, 1517 Tombras Avenue, East Ridge, TN 37412.	http://www.msc.fema.gov/lomc	Aug. 5, 2016	475424
Sequatchie	City of Dunlap, (16–04–1892P).	The Honorable Dwain Land, Mayor, City of Dunlap, P.O. Box 546, Dunlap, TN 37327.	City Hall, 15595 Rankin Avenue, Dunlap, TN 37327.	http://www.msc.fema.gov/lomc	Jul. 8, 2016	470270
Texas:						
Bexar	City of San Antonio, (16–06–1080P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	http://www.msc.fema.gov/lomc	Aug. 9, 2016	480045
Bexar	Unincorporated areas of Bexar County, (15–06–3161P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	http://www.msc.fema.gov/lomc	Jul. 22, 2016	480035
Collin	Town of Westminster, (16–06–0644P).	Mr. Phil Goplin, President, Westminster Special Utility District, 409 East Houston Street, Westminster, TX 75485.	Town Hall, 309 West Houston Street, Westminster, TX 75069.	http://www.msc.fema.gov/lomc	Jul. 17, 2016	480758
Collin	Unincorporated areas of Collin County, (16–06–0644P).	The Honorable Keith Self, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	http://www.msc.fema.gov/lomc	Jul. 17, 2016	480130
Comal	City of Fair Oaks Ranch, (15-06-3044P).	The Honorable Cheryl Landman, Mayor, City of Fair Oaks Ranch, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	Public Works Department, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	http://www.msc.fema.gov/lomc	Aug. 15, 2016	481644

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Dallas	City of Dallas, (15–06–4110P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Engineering Department, 320 East Jefferson Boulevard, Room 200, Dallas, TX 75203.	http://www.msc.fema.gov/lomc	Aug. 8, 2016	480171
Denton	City of Carrollton, (15–06–2940P).	The Honorable Matthew Marchant, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, TX 75011.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75011.	http://www.msc.fema.gov/lomc	Aug. 22, 2016	480167
Fort Bend	Unincorporated areas of Fort Bend County, (16–06–1119P).	The Honorable Robert Hebert, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, 4th Floor, Richmond, TX 77469.	http://www.msc.fema.gov/lomc	Aug. 18, 2016	480228
Harris	Unincorporated areas of Harris County, (16–06–1373P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	http://www.msc.fema.gov/lomc	Aug. 9, 2016	480287
Tarrant	City of Colleyville, (15-06-4177P).	The Honorable David Kelly, Mayor, City of Colleyville, 100 Main Street, Colleyville, TX 76034.	Public Works Department, 100 Main Street, Colleyville, TX 76034.	http://www.msc.fema.gov/lomc	Aug. 11, 2016	480590
Utah: Davis	City of North Salt Lake, (15–08–1306P).	The Honorable Len Arave, Mayor, City of North Salt Lake, 10 East Center Street, North Salt Lake, UT 84054.	City Hall, 10 East Center Street, North Salt Lake, UT 84054.	http://www.msc.fema.gov/lomc	Aug. 5, 2016	490048
Virginia:						
Prince William	City of Manassas, (15–03–2702P).	The Honorable Harry J. Parrish II, Mayor, City of Manassas, 9027 Center Street, Manassas, VA 20110.	City Hall, 9027 Center Street, Manassas, VA 20110.	http://www.msc.fema.gov/lomc	Aug. 11, 2016	510122
Prince William	Unincorporated areas of Prince William County, (15–03–1042P).	The Honorable Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	http://www.msc.fema.gov/lomc	Aug. 4, 2016	510119
Prince William	Unincorporated areas of Prince William County, (15–03–2702P).	The Honorable Christopher E. Martino, Acting Prince William County Executive, 1 County Complex Court, Prince William, VA 22192.	Prince William County Department of Public Works, 5 County Complex Court, Prince William, VA 22192.	http://www.msc.fema.gov/lomc	Aug. 11, 2016	510119

[FR Doc. 2016–13807 Filed 6–9–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of June 15, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 19, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Douglas County, Nevada, and Incorporated Areas	
Docket No.: FEMA–B–1535	
Unincorporated Areas of Douglas County	Community Development, 1594 Esmeralda Avenue, Minden, NV 89423.

[FR Doc. 2016–13812 Filed 6–9–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1629]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 8, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1629, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of

experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 19, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
Carroll County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0901S Preliminary Date: June 8, 2015	
City of Arcadia	City Hall, 205 West Front Street, Arcadia, IA 51430.
City of Carroll	City Hall, 112 East 5th Street, Carroll, IA 51401.
City of Coon Rapids	City Hall, 123 3rd Avenue, Coon Rapids, IA 50058.
City of Dedham	City Hall, 210 Main Street, Dedham, IA 51440.
City of Halbur	City Hall, 238 West 2nd Street, Halbur, IA 51444.
City of Lanesboro	City Hall, 210 East Main Street, Lanesboro, IA 51451.
City of Manning	City Hall, 717 3rd Street, Manning, IA 51455.
Unincorporated Areas of Carroll County	Carroll County Building, 114 East 6th Street, Carroll, IA 51401.

[FR Doc. 2016–13808 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Office for Interoperability and Compatibility

[Docket No. DHS–2016–0037]

Office for Interoperability and Compatibility Seeks Nominations for the Project 25 Compliance Assessment Program Advisory Panel—Single Position

AGENCY: Science and Technology Directorate, DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) is seeking nominations and expressions of interest for replacing an open position on the Project 25 Compliance Assessment Program Advisory Panel (P25 CAP AP). The P25 CAP AP holds quarterly meetings with the public on topics related to P25 CAP. The next meeting is scheduled for August 2016 timeframe.

The Project 25 Compliance Assessment Program is a standard which enables interoperability among digital two-way land mobile radio communications products created by and for public safety professionals. The P25 CAP is a formal, independent process created by DHS and operated in collaboration with the National Institute of Standards and Technology (NIST), to ensure that communications equipment that is declared by the supplier to be P25 compliant, is in fact tested against the standards with publicly published results. The P25 CAP AP provides a resource by which DHS gains insight into the collective interest of organizations that procure P25-compliant equipment and a resource for DHS to continue to establish the policies of the P25 CAP, along with assisting the DHS Office for Interoperability and Compatibility (OIC) in the administration of the Program.

DATES: All responses must be received within 30 days from the date of this notice at the address listed below.

ADDRESSES: Expressions of interest and nominations shall be submitted to *SandTFRG@hq.dhs.gov.*

• *Instructions:* All submissions received must include the words "Department of Homeland Security" and DHS–2016–0037, the docket number for this action.

FOR FURTHER INFORMATION CONTACT: John Merrill, Director, Office for Interoperability and Compatibility, Science and Technology Directorate, Department of Homeland Security, 202–254–5604, *John.Merrill@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The TIA–102/Project 25 (P25) is a standards development process for the design, manufacture, and evaluation of interoperable digital two-way land mobile radio communications products created by and for public safety professionals. The goal of P25 is to specify formal standards for interfaces and features between the various components of a land mobile radio system commonly used by public safety agencies in portable handheld and mobile vehicle-mounted devices. The P25 standard enables interoperability among different suppliers' products.

The P25 CAP was developed by DHS and the National Institute of Standards and Technology (NIST) to test equipment designed to comply with P25 standards. The program provides public safety agencies with evidence that the communications equipment they are purchasing is tested against and complies with the P25 standards for performance, conformance, and interoperability.

The P25 CAP is a voluntary system that provides a mechanism for the recognition of testing laboratories based on internationally accepted standards. It identifies competent P25 CAP testing laboratories for DHS-recognition through a robust assessment process and promotes the acceptance of compliant test results from these laboratories.

As a voluntary program, P25 CAP allows suppliers to publicly attest to their products' compliance with a selected group of requirements through Summary Test Report (STR) and Supplier's Declaration of Compliance (SDOC) documents based on the Detailed Test Report (DTR) from the DHS-recognized laboratory (ies) that performed the product testing. In turn, P25 CAP makes these documents available to the first response community to inform their purchasing decisions via the *FirstResponder.gov/P25CAP* Web site.

Membership

The Science and Technology Directorate (S&T) of DHS formed the P25 CAP Advisory Panel to provide S&T with the views of active State, local, tribal, territorial and Federal government officials who use or whose offices use portable handheld and mobile vehicle-mounted radios. Those government officials selected to participate in the P25 CAP AP are selected based on their experience with the management and procurement of land mobile radio systems or knowledge of conformity assessment programs and methods. The OIC selection process balances viewpoints required to effectively address P25 CAP issues under consideration. To fill an open position on the P25 CAP AP, OIC is particularly interested in receiving nominations and expressions of interest from individuals in the following categories:

• State, local, tribal, or territorial government agencies and organizations with expertise in communications issues and technologies.

• Federal government agencies with expertise in communications or homeland security matters.

While OIC can call for a meeting of the P25 CAP AP as it deems necessary and appropriate, for member commitment and planning purposes, it is anticipated that the P25 CAP AP will meet approximately 3–4 times annually in their role of providing guidance and support to the P25 CAP.

Those selected to serve on the P25 CAP AP will be required to sign a gratuitous services agreement and will not be paid or reimbursed for their participation; however, DHS S&T will, subject to the availability of funds, reimburse the travel expenses associated with the participation of non-Federal members in accordance with Federal Travel Regulations. The OIC reserves the right to select primary and alternate members to the P25 CAP AP for terms appropriate for the accomplishment of the Board's mission. Members serve at the pleasure of the OIC Director.

Registered lobbyists pursuant to the Lobbying Disclosure Act of 1995 are not eligible for membership on the P25 CAP AP and will not be considered.

Roles and Responsibilities

The duties of the P25 CAP AP will include providing recommendations of its individual members to OIC regarding actions and steps OIC could take to promote the P25 CAP. The duties of the P25 CAP AP may include but are not limited to its members reviewing, commenting on, and advising on:

a. The laboratory component of the P25 CAP under established, documented laboratory recognition guidelines.

b. Proposed Compliance Assessment Bulletins (CABs).

c. Proposed updates to previously approved CABs, as Notices of Proposed CABs, to enable comment and input on the proposed CAB modifications.

d. OIC updates to existing test documents or establishing new test documents for new types of P25 equipment.

e. Best practices associated with improvement of the policies and procedures by which the P25 CAP operates.

f. Existing test documents including but not limited to Supplier Declarations of Compliance (SDOCs) and Summary Test Reports (STRs) posted on the FirstResponder.gov/P25CAP Web site.

g. Proposed P25 user input for improving functionality through the standards-making process.

Nominations/Expressions of Interest Procedures and Deadline

Nominations and expressions of interest shall be received by OIC no later than 30 days from the date of this notice at the address: (*SandTFRG@hq.dhs.gov*). Nominations and expressions of interest received after this date shall not be considered. Each nomination and expression of interest must provide the following information as part of the submission:

• A cover letter that highlights a history of proven leadership within the public safety community including, if applicable, a description of prior experience with law enforcement, fire response, emergency medical services, emergency communications, National Guard, or other first responder roles and how the use of communications in those roles qualifies the nominee to participate on the P25 CAP AP.

• Name, title, and organization of the nominee.

• A résumé summarizing the nominee's contact information (including the mailing address, phone number, facsimile number, and email address), qualifications, and expertise to explain why the nominee should be appointed to the P25 CAP AP.

• The résumé must demonstrate a minimum of ten years (10) years of experience directly using P25 systems in an operational environment in support of established public safety communications or from a system implementer/administrator perspective; a bachelor's or associate degree with an emphasis in communications and engineering may be substituted for three (3) years, a master's/professional certification for seven (7) years, and a Ph.D. for ten (10) years of the requirement.

• The resume must discuss the nominee's familiarity with the current P25 CAP, including documents that are integral to the process such as the SDOCs, STRs, and CABs referenced in this notice.

• A letter from the nominee's supervisor indicating the nominee's agency's support for the nominee to participate on the P25 CAP AP as a representative from their respective agency.

• Disclosure of Federal boards, commissions, committees, task forces, or work groups on which the nominee currently serves or has served within the past 12 months.

• A statement confirming that the nominee is not registered as a lobbyist pursuant to the Lobbying Disclosure Act of 1995.

Additional information can be found as follows: Project 25 Compliance Assessment Program and Compliance Assessment Bulletins *http://www.dhs.gov/science-and-technology/p25-cap.*

Dated: June 6, 2016.

Reginald Brothers,

Under Secretary, DHS Science and Technology Directorate.

[FR Doc. 2016–13730 Filed 6–9–16; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and

surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853; ARMY: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145 (These are not toll-free numbers).

Dated: June 2, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/10/2016

Suitable/Available Properties

Building

Alabama

4 Buildings
Bldg. 30815 AL 85 Peters St.
Doleville AL 36362
Landholding Agency: Army
Property Number: 21201620022
Status: Unutilized
Directions: 4011T:RPUID:186097 (720 sq.); 414:RPUID:186545 (288 sq.); 30815:RPUID:671439 (144 sq.); 4513: RPUID:186563 (400 sq.)
Comments: Oof-site removal only; no future agency need 24+–47+ yrs. old; sq. ft. above; storage; rec shelter; flam mat; 1+-6+ mos. vacant; poor & fair condition; contact Army for more information.

Colorado

Building R005F
Range 5 Specker Avenue
Fort Carson CO 80913
Landholding Agency: Army
Property Number: 21201620003
Status: Unutilized
Comments: off-site removal only; 13+ yrs. old; 800 sq. ft.; storage; 6+ mos. vacant; repairs required; contact Army for more information.

6 Buildings
Fort Carson
Fort Carson CO 80913
Landholding Agency: Army
Property Number: 21201620014
Status: Unutilized
Directions: 02554:RPUID:572361 (22,441 sq.); 02552:RPUID:591052 (22,441 sq.); 01950:RPUID:606520 (11,819 sq.); 01954:RPUID:583977 (22,386 sq.); 01951:RPUID:576840 (22,386 sq.); 02551:RPUID:576791 (22,441 sq.)
Comments: off-site removal only; 38+–42+yrs. old; sq. ft. above; barracks; 2+mos. vacant; repairs required; contact Army for more information.

Georgia

5 Buildings
Fort Benning
Fort Benning GA 31905
Landholding Agency: Army
Property Number: 21201620006
Status: Unutilized
Directions: Building 00485:RPUID:281444 (148 sq.); 08848:RPUID:282680 (288 sq.); 08830:RPUID:282664; (288 sq.) 08020:RPUID:282782; (192 sq.); 04022:RPUID:1006195 (144 sq.)
Comments: off-site removal only; 7+-74+ yrs. old; veh; toil/shower; storage; poor conditions; contact Army for more information.

Kentucky

2 Buildings
Fort Campbell
Fort Campbell KY 42223
Landholding Agency: Army
Property Number: 21201620004
Status: Underutilized
Directions: A0127: RPUID: 582404 (400 sq. ft.); B0127: RPUID: 320594 (783 sq. ft.)
Comments: 25+—27+ yrs. old; heating plant; refrig/AC building; fair condition; prior approval needed to gain access; contact Army for more information.

Missouri

Building 319A
Intersection of Headquarters and Illonoise Ave.
Fort Leonard Wood MO 65473
Landholding Agency: Army
Property Number: 21201620023
Status: Unutilized
Directions: RPUID: 1239157
Comments: 4+ yrs. old; 384 sq. ft.; recreation; adequate condition; contact Army for more information.

Oklahoma

7 Buildings
Fort Sill
Fort Sill OK 73503
Landholding Agency: Army
Property Number: 21201620020
Status: Unutilized
Directions: 3336 (8,883 sq.); 1620 (800 sq.); 2598 (3,670 sq.); 2599 (3,670 sq.); 1608 (108 sq.); 3602 (8,883 sq.); 4744 (2,108 sq.)
Comments: off-site removal only; no future agency need; 21+–82+ yrs. old; sq. ft. above; warehouse; admin.; toilet/shower; instruction bldg.; 6+mos. vacant; contact Army for more information.

Virginia

Building 9046
Battle Drive in the Marine Complex Area
Fort Lee VA 23801
Landholding Agency: Army
Property Number: 21201620024
Status: Unutilized
Comments: 39+ yrs. old; 120 sq. ft.; storage; 3+ mos. vacant; poor condition; contact Army for more information.

Unsuitable Properties

Building

Alabama

6 Buildings
Anniston Army Depot
Anniston AL 36207
Landholding Agency: Army
Property Number: 21201620009
Status: Unutilized
Directions: Building 00072:RPUID:235554; 0027A:RPUID:235396; 00663:RPUID:234486; 00198:RPUID:237626 00656:RPUID:237503; 00602:RPUID:237280
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

5 Buildings
Military Ocean Terminal Concord
Concord AL 94520
Landholding Agency: Army
Property Number: 21201620018
Status: Unutilized
Directions: 00350:RPUID:95946; 00352:RPUID:959488; 00100:RPUID:959345; 00262:RPUID:1039404; 00283:RPUID:959484
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 30908
Bldg. 30908 AL 85 Specker St.
Daleville AL 36362
Landholding Agency: Army
Property Number: 21201620021
Status: Unutilized
Directions: RPUID: 598532
Comments: property located within an airport runway clear zone or military airfield.
Reasons: Within airport runway clear zone

California

Defense Distribution San Joaqu
#1; 26500 S. Chrisman Road
Tracy CA 95304
Landholding Agency: Army
Property Number: 21201620008
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

6 Buildings
Sierra Army Depot
Herlong CA 96113
Landholding Agency: Army
Property Number: 21201620010
Status: Unutilized
Directions: 00180:RPUID:197379; 00182:RPUID:197381; 00319:RPUID:197415; 00176:RPUID:197375; 0179:RPUID:197378; 00181:RPUID:197380
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

8 Buildings
Sierra Army Depot
Herlong CA 96113
Landholding Agency: Army
Property Number: 21201620011
Status: Unutilized
Directions: 00019:RPUID:200744; 00018:RPUID:200743; 00016:RPUID:200741; 00015:RPUID:200740; 00025:RPUID:200750; 00024:RPUID:200749; 00022:RPUID:200747; 00021:RPUID:200746
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

5 Buildings
Military Ocean Terminal Concord
Military Ocean Termin CA 94520
Landholding Agency: Army
Property Number: 21201620012
Status: Unutilized
Directions: Building 00E61: RPUID: 959953; 00A31: RPUID: 1039399; 00S51: RPUID: 960038; 00S45: RPUID: 960035; 00IA2: RPUID: 1039398
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Military Ocean Terminal Concord
Concord CA 94520
Landholding Agency: Army
Property Number: 21201620016
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

4 Buildings
5604 Exercise Street
Dublin CA 94568
Landholding Agency: Army
Property Number: 21201620026
Status: Unutilized
Directions: 985: RPUID: 376808; 986: RPUID: 376809; 987: RPUID: 376810; 984: RPUID: 376807
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Colorado

2 Buildings
Fort Carson
Fort Carson CO 80913
Landholding Agency: Army
Property Number: 21201620002
Status: Unutilized
Directions: Building 00300 & 00301
Comments: public access denied and no alternative method to gain access without compromising national security; property located within floodway, which has not been correct or contained.
Reasons: Secured Area

Georgia

Savannah HHIAP
Fac. 1907 &1914 XDQU
1401 Robert B. Miller Dr.
Garden City GA
Landholding Agency: Air Force
Property Number: 18201620010
Status: Underutilized
Comments: public access denied and no alternative without compromising national security
Reasons: Secured Area

2 Buildings
Fort Benning
Fort Benning GA 31905
Landholding Agency: Army
Property Number: 21201620007
Status: Excess
Directions: Building 02831: RPUID: 282470 & 02836: RPUID: 282475
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Illinois

3 Buildings
Rock Island Arsenal
Rock Island IL 61299
Landholding Agency: Army
Property Number: 21201620015
Status: Underutilized
Directions: 0030G: RPUID: 366331; 31: RPUID: 610280; 30: RPUID: 610255

Comments: property located within floodway, which has not been correct or contained.
Reasons: Floodway

Kentucky

10 Buildings
Porter River Road
Fort Knox KY 40121
Landholding Agency: Army
Property Number: 21201620028
Status: Unutilized
Directions: 9606:RPUID:310162; 9475:RPUID:286869; 9322:RPUID:182117; 9679:RPUID:309686; 9395:RPUID:293399; 9676:RPUID:286480; 9353:RPUID:310217; 9671:RPUID:1104885; 9342:RPUID:309470; 9660:RPUID:308904
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

10 Buildings
Main Range Road
Fort Knox KY 40121
Landholding Agency: Army
Property Number: 21201620029
Status: Unutilized
Directions: 9282:RPUID:286483; 9240:RPUID:286705; 9284:RPUID:309690; 9241:RPUID:309683; 9290:RPUID:309737; 9242:RPUID:310425; 9234:RPUID:310217; 9258:RPUID:309480; 9265:RPUID:309473; 9235:RPUID:310418
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

13 Buildings
Ft. Knox
Ft. Knox KY 40121
Landholding Agency: Army
Property Number: 21201620036
Status: Unutilized
Directions: 9697 (310446); 9701 (310071); 9702 (310072); 9704 (309327); 9751 (178549); 9682 (309486); 9684 (310449); 9685 (309485); 9686 (309483); 9687 (309484); 9694 (310043); 9695 (310444); 9696 (310445)
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Maryland

6 Buildings
Aberdeen Proving Ground
APG MD 21010
Landholding Agency: Army
Property Number: 21201620031
Status: Unutilized
Directions: E5181 (235839); E4655 (235019); E6882 (234049); E5286 (236064); E5920 (237899); E3966 (237859)
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
APG MD 21010
Landholding Agency: Army
Property Number: 21201620032
Status: Unutilized
Directions: E3965 (237858); E2300 (236780); E3334 (225912); E3335 (225913); E3346 (225915); E3508 (236906); E3727 (237181); E3860 (237205); E3951 (237844); E3955 (237848)
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
APG MD 21010
Landholding Agency: Army
Property Number: 21201620033
Status: Unutilized
Directions: E1421 (230356); E1425 (230360); 5608E (233610); E1467 (231217); 1128 (230958); 1149A (233364); 1169 (231805); 4303 (230771); 4725 (231020); E1406 (230345)
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
APG MD 21005
Landholding Agency: Army
Property Number: 21201620034
Status: Unutilized
Directions: 1076B(1197700); 1101A (2333334); 714D (231385); 718 (233262); 783 (229636); 852A (232469); 798 (229642); 806 (229846); 807 (229847); 808 (229848)
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

10 Buildings
Aberdeen Proving Ground
APG MD 21005
Landholding Agency: Army
Property Number: 21201620035
Status: Unutilized
Directions: 303 (233151); 312 (957898); 335A (233192); 347A (229683); 457 (231108); 526 (232983); 527 (232984); 700h (251369); 00036 (232287); 279 (233148)
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

E5950 (RPUID:237908)
Callahan St.
Aberdeen Proving Ground
APG MD 21010
Landholding Agency: Army
Property Number: 21201620038
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Massachusetts

2 Buildings
Soldier Systems Center Natick
Natick MA 01760
Landholding Agency: Army
Property Number: 21201620013
Status: Underutilized
Directions: T0024:RPUID:206927 & T0025:RPUID:206928
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New York

Building 697
697 Washington Road
West Point NY 10996
Landholding Agency: Army
Property Number: 21201620030
Status: Unutilized
Comments: Documented deficiencies: extensive structural damage; wall coming apart; bricks are dislodged which may cause the building to collapse; located on a landfill.
Reasons: Extensive deterioration

North Carolina

12 Buildings
Fort Bragg
Fort Bragg NC 28310
Landholding Agency: Army
Property Number: 21201620001
Status: Underutilized
Directions: D2609:RPUID:577998; D2815:RPUID:614614; D3225:RPUID:594582; D3637:RPUID:586751; E1739:RPUID:605961; N5204:RPUID:304497; D2509:RPUID:597728; D2212:RPUID:604181; D2211:RPUID:297376; D2113: RPUID:584535; D2111:RPUID:611859; D1911:RPUID:604178
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Fort Bragg
Fort Bragg NC 28310
Landholding Agency: Army
Property Number: 21201620005
Status: Unutilized
Directions: Building D2105 & 280
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

South Carolina

Building 5715
5715 Imboden Street
Fort Jackson SC 29207
Landholding Agency: Army
Property Number: 21201620025
Status: Unutilized
Directions: RPUID:308163
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

8 Buildings
2545 ESSAYONS WAY
Fort Jackson SC 29207
Landholding Agency: Army
Property Number: 21201620027
Status: Unutilized
Directions: 2557:RPUID:308587; 2545:RPUID:310534; 2539:RPUID:310640; 12625:RPUID:604053; 2584:RPUID:180421; 2561:RPUID:310641; 4475:RPUID:307769; 2548:RPUID:308585;
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

5713(RPUID: 308428)
Imoden St.
Ft. Jackson SC 29207
Landholding Agency: Army
Property Number: 21201620037
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Unsuitable Properties

Land

Alabama

5 Buildings
Ft. McClellan
Alexandria AL 36250
Landholding Agency: Army
Property Number: 21201620017
Status: Unutilized
Directions: R8434:RPUID:299453; R8437:RPUID:303405; C1395:RPUID:175953; C1312:RPUID:299704; C1320:RPUID:176206
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2016–13428 Filed 6–9–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2016–N099; FF07RKDK00–FVRS80810700000–XXX]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Kodiak National Wildlife Refuge Bear Viewing Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before July 11, 2016.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–Kodiak bear viewing'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–XXXX.

Title: Kodiak National Wildlife Refuge Bear Viewing Survey.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Description of Respondents: Visitors to Kodiak National Wildlife Refuge who come for the purpose of viewing bears.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Activity	Number of responses	Completion time per response (minutes)	Total annual burden hours
Initial Contact	1,520	2	51
Online Survey	730	15	183
Totals	2,250		234

Estimated Annual Nonhour Burden Cost: None.

Abstract: The Kodiak National Wildlife Refuge has partnered with Utah State University to conduct a public survey of visitors to the Kodiak National Wildlife Refuge who participate in bear viewing at structured and unstructured sites. Questions will address logistical aspects of bear viewing (including the amount of money visitors are willing to spend on viewing and amenities), satisfaction with current experiences (based on number of bears, density of other visitors, length of stay, and education received), and reported changes in attitudes and behavior related to bear conservation based on visitors' experiences on the refuge. Survey results are crucial to understanding public demands for and expectations for bear viewing, so that the refuge can better facilitate bear viewing opportunities and better convey educational messages on bear management.

Comments Received and Our Responses

On November 3, 2015, we published in the **Federal Register** (80 FR 67784) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on January 4, 2016. We received two comments in response to that notice.

Comment: The first comment from an individual protested the entire survey and stated that the national survey conducted across the country every 5 years already contributes to Government overreach and misspending of tax dollars without preserving wildlife.

Response: The National Survey of Fishing, Hunting, and Wildlife-Associated recreation, conducted every 5 years, does not address the Kodiak-specific questions of this study. The proposed study will provide information that allows Kodiak Refuge Management to make informed decisions on how to facilitate bear viewing in a way that protects bear populations while creating positive educational experiences for visitors.

Comment: The second comment from the State of Alaska's Alaska National Interest Lands Conservation Act (ANILCA) Implementation Program generally supported the proposed information collection to better inform decisionmakers and rejuvenate quality bear viewing on the refuge. The commenter made three suggestions:

- Consult with the Alaska Department of Fish and Game and other stakeholders in the development of the survey.
- Consider surveying all refuge visitors rather than just bear viewers to provide a more holistic view of refuge usage.
- Conduct the survey onsite for higher response rates and more accurate recall among participants.

Response: We thank the ANILCA Implementation Program for their comments. Throughout survey development, we conducted interviews with stakeholders to address key concerns and issues to be addressed in the survey. This included the Alaska Department of Fish and Game area biologist for the Kodiak Archipelago, the Kodiak Brown Bear Center (owned and operated by the Koniag Native Corporation), and commercial air taxi operators and guides. We sincerely appreciate the insights from all of these groups. Unfortunately, surveying all refuge visitors is not within financial and time feasibility of the current study. While hunting and fishing patterns are well understood due to the purchase of licenses and close regulation in partnership with the State of Alaska, an equally detailed understanding of bear viewing activity and satisfaction is lacking, making it the current priority for social science research. Finally, the primary survey is being conducted online instead of onsite due to affordability, logistics (weather on Kodiak is often not conducive to sitting outside for 10–20 minutes to complete a printed survey in wind and rain), and proven success with past online surveys. Our intent is to minimize onsite burden hours for visitors traveling from around the world for expensive and sometimes short viewing experiences.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB and us in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 7, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service.

[FR Doc. 2016–13750 Filed 6–9–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYR05000.L16100000.XP0000; WYW 168593]

Notice of Proposed Withdrawal and Notification of a Public Meeting for the Johnny Behind the Rocks Recreation Zone, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the Bureau of Land Management (BLM), the Assistant Secretary for Land and Minerals Management proposes to withdraw, subject to valid existing rights, 4,964.75 acres of public land from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, for a period of 20 years. The proposed withdrawal is needed to protect cultural and recreational resources of the Johnny Behind the Rocks Recreation Zone in Fremont County, Wyoming. This notice temporarily segregates the land for up to 2 years from location and entry under the United States mining laws, while the application is processed. This notice also gives an opportunity to comment on the proposed withdrawal, and announces a public meeting date, time, and location.

DATES: Comments on the proposed withdrawal must be received on or before September 8, 2016. A public meeting will be held on July 25, 2016.

ADDRESSES: Please mail or hand deliver all comments concerning the proposed withdrawal to Kristin Yannone, Planner, BLM Lander Field Office, 1335 Main, Lander, Wyoming, 82520.

The public meeting will be held at the Fremont County Library, 220 North 2nd Street, Lander, Wyoming.

FOR FURTHER INFORMATION CONTACT: Kristin Yannone, Planner, by mail at the BLM Lander Field Office, 1335 Main Street, Lander, Wyoming, 82520; by phone at 307–332–8400; or by email at *kyannone@blm.gov*. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 800–877–8339 to contact Ms. Yannone. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM filed an application requesting the Assistant Secretary for Land and Minerals Management withdraw, subject to valid existing rights, the following described public land from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, to protect the cultural and recreational resources of the Johnny Behind the Rocks Recreation Zone:

Sixth Principal Meridian

T. 31 N., R. 98 W.,
Sec. 3, lots 3 and 4;
Sec. 4, lot 1;
Sec. 5, lot 1.
T. 32 N., R. 98 W.,
Sec. 17, SW1/4, NW1/4SE1/4, and S1/2SE1/4;
Sec. 18, lots 9 thru 12, and SE1/4;
Sec. 19, lots 5 thru 10, and E1/2;
Sec. 20;
Sec. 21, SW1/4NW1/4, W1/2SW1/4, and SE1/4SW1/4;
Sec. 28, SW1/4NE1/4, W1/2, NW1/4SE1/4, and S1/2SE1/4;
Sec. 29;
Sec. 30, NE1/4;
Sec. 32, N1/2, NE1/4SW1/4, and SE1/4;
Sec. 33;
Sec. 34, SW1/4NW1/4, SW1/4, and W1/2SE1/4.
T. 32 N., R. 99 W.,
Sec. 13, E1/2SE1/4;
Sec. 24, SE1/4NE1/4.

The area described contains approximately 4,964.75 acres in Fremont County.

The Assistant Secretary for Land and Minerals Management approved the BLM's petition/application. Therefore, the petition/application constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal is to protect the cultural and recreational resources of the Johnny Behind the Rocks Recreation Zone.

The use of a right-of-way, interagency, or cooperative agreement would not adequately constrain nondiscretionary uses which could result in permanent loss of significant values and irreplaceable resources.

There are no suitable alternative sites since the lands contain cultural and recreational resources that are unique to the area proposed for withdrawal.

No additional water rights will be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by contacting the BLM at the above addresses and phone numbers.

For a period until September 8, 2016, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to Kristin Yannone, Planner, BLM Lander Field Office, 1335 Main, Lander, Wyoming, 82520.

Comments, including names, street addresses and other contact information of respondents, will be available for public review at the BLM Lander Field Office during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

A public meeting will be held on July 25, 2016, at the Fremont County Library, 220 North 2nd Street, Lander, Wyoming, from 4:30–5:30 p.m. A notice of the meeting will be published in at least one local newspaper no less than 30 days before the scheduled meeting date. Interested parties may make oral statements and may file written statements at the meeting.

For a period until June 11, 2018, the public land described in this notice will be segregated from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws, unless the application is denied or canceled or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature that would not impact the site may be allowed with the approval of an authorized officer of the BLM during the temporary segregative period.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Michael G. Valle,

Acting BLM Wyoming State Director.

[FR Doc. 2016–13762 Filed 6–9–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA930000.L14400000.EU0000. 16XL1109AF; CACA 54031]

Notice of Realty Action: Direct Sale of Reversionary Interest in San Bernardino County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Needles Field Office, proposes to sell the United States' reversionary interest in 2.31 acres of land in San Bernardino County, California to the City of Needles (City) at not less than fair market value in the amount of $139,994. The land was conveyed out of Federal ownership in 1966 subject to a reversionary interest which is now proposed for sale under the authority of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended.

DATES: Comments regarding the proposed sale must be received by the BLM on or before July 25, 2016.

ADDRESSES: You may submit written comments concerning the proposed sale to the Field Manager, BLM, Needles Field Office, 1303 South Highway 95, Needles, California 92363.

FOR FURTHER INFORMATION CONTACT: William Webster, Realty Specialist, BLM Needles Field Office, telephone 760–326–7006; address 1303 South Highway 95, Needles, California 92363. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The reversionary interest in the following land is proposed for direct sale in accordance with Section 203 of the FLPMA, as amended (43 U.S.C. 1713).

San Bernardino Meridian, California

T. 9 N., R. 23 E., sec. 31, lot 6.

The area described contains 2.31 acres.

The area described above is part of 50 acres conveyed in 1966 to the City in patent 04–67–0018 under the authority of the Recreation and Public Purposes Act (R&PP Act) of June 14, 1926, as amended. The land was conveyed for park and recreational purposes for $2.50 per acre. The United States (U.S.) retained an interest in the land in which title could revert back to the U.S. if the land is not used for purposes authorized under the R&PP Act or if the land is transferred to another party without the BLM's approval. In 1971, the BLM approved a change in use to allow the City to construct the Needles Municipal Hospital on 2.31 acres of the land conveyed in patent 04–67–0018. In 2010, the voters of Needles approved Measure Q, which effectively required the City to sell the Needles Municipal Hospital to a qualified non-profit corporation. The sale has been complicated by the fact that the Needles Municipal Hospital is located on 2.31 acres owned by the City subject to the reversionary interest and approximately 3.36 acres owned by the City which is not subject to a reversionary interest. The City agreed to sell the land occupied by the Needles Municipal Hospital to Community Healthcare Partner, Inc., a non-profit corporation. The sale is contingent on the BLM selling the reversionary interest in the 2.31 acres of land occupied by the Needles Municipal Hospital so the City can convey the land free of any reversionary interest. The sale would allow for possible future commercial use of the 2.31 acres, including a for-profit hospital, and allow for future transfers of the land without the BLM's approval.

The reversionary interest in the 2.31 acres of land described above is proposed for sale to the City for $139,994, which represents the appraised fair market value of $140,000, less $6.00 paid to the BLM to purchase the land in 1966. The reversionary interest is difficult and uneconomic to manage as part of the public lands because it is surrounded by private land and is not contiguous to any public land administered by the BLM. The BLM has concluded that a competitive sale is not appropriate and that the public interest would best be served by a direct sale to the City, which currently owns the land subject to the reversionary interest. The reversionary interest was not identified for sale in the 1980 California Desert Conservation Area (CDCA) Plan. On January 14, 2015, the BLM approved an amendment to the 1980 CDCA Plan, which identified the reversionary interest in the 50 acres conveyed to the City in 1966 in patent 04–67–0018 as suitable for sale pursuant to section 203 of FLPMA.

The reversionary interest would not be sold until at least August 9, 2016. Any conveyance document issued would convey only the reversionary interest retained by the U.S. in patent 04–67–0018 and would contain the

following terms, conditions, and reservations:

1. A condition that the conveyance be subject to all valid existing rights of record.

2. A condition that the conveyance would be subject to all reservations, conditions and restrictions in patent 04–67–0018, except the reversionary interest which is being conveyed.

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands.

4. Additional terms and conditions that the authorized officer deems appropriate.

Detailed information concerning the proposed sale including the appraisal, planning and environmental document are available for review at the location identified in the **ADDRESSES** section above.

Public comments regarding the proposed sale may be submitted in writing to the attention of the BLM Needles Field Manager (see **ADDRESSES** above) on or before July 25, 2016. Comments received in electronic form, such as email will not be considered. Any adverse comments regarding the proposed sale will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2(a) and (c).

Thomas Pogacnik,

Deputy State Director, Resources.

[FR Doc. 2016–13773 Filed 6–9–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000 L1610000.DP0000]

Notice of Intent To Solicit Nominations for the Dominguez-Escalante National Conservation Area Advisory Council, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for eight positions on the Dominguez-Escalante National Conservation Area (D–E NCA) Advisory Council (Council). The Secretary of the Interior (Secretary) was directed by the Omnibus Public Lands Management Act of 2009 to establish the D–E NCA Council. The 10-member Council was formed in December 2010 to provide recommendations to the Secretary through the Bureau of Land Management (BLM) during the development of a resource management plan (RMP) for the D–E NCA. The appointments of eight members of the Council are scheduled to expire in November 2016. This call for nominations is to fill those eight expiring appointments.

DATES: Submit nomination packages on or before July 11, 2016.

ADDRESSES: Send completed Council nominations to Collin Ewing, D–E NCA Interim Manager, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Nomination forms may be obtained at the Grand Junction Field Office at the above address; at the BLM Uncompahgre Field Office, 2465 S. Townsend Ave., Montrose, CO 81401; or online at *http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council.html.*

FOR FURTHER INFORMATION CONTACT: Collin Ewing, D–E NCA Manager, 970–244–3049, *cewing@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The D–E NCA and Dominguez Canyon Wilderness, located within the D–E NCA, were established by the Omnibus Public Land Management Act of 2009, Public Law 111–11 (Act). The D–E NCA is comprised of approximately 210,172 acres of public land, including approximately 66,280 acres designated as Dominguez Canyon Wilderness, located in Delta, Montrose and Mesa counties, Colorado. The purpose of the D–E NCA is to conserve and protect the land's unique resources for the benefit and enjoyment of present and future generations. These values include the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public lands as well as the water resources of area streams based on seasonally available flows that are necessary to support aquatic, riparian, and terrestrial species and communities. According to the Act, the 10-member council must include, to the extent practicable:

1. One member appointed after considering the recommendations of the Mesa County Commission;

2. One member appointed after considering the recommendations of the Montrose County Commission;

3. One member appointed after considering the recommendations of the Delta County Commission;

4. One member appointed after considering the recommendations of the permittees holding grazing allotments within the D–E NCA or the wilderness; and

5. Six members who reside in or within reasonable proximity to Mesa, Delta or Montrose counties with backgrounds that reflect:

a. The purposes for which the D–E NCA or wilderness was established; and

b. The interests of the stakeholders that are affected by the planning and management of the D–E NCA and wilderness.

Appointments for a position based on the recommendations of the Delta County Commission and a position representing wildlife interests have already been filled and will not expire this year. The BLM is soliciting nominations for the other eight positions on the Council. Nominees should reside in or within close proximity to Mesa, Delta, or Montrose counties. Any individual or organization may nominate one or more persons to serve on the Council. Individuals may nominate themselves for Council membership. The Obama Administration prohibits individuals who are currently federally-registered lobbyists from serving on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils. Nomination forms may be obtained from the BLM Grand Junction or Uncompahgre field offices, or may be downloaded from the following Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council.html.*

Nomination packages must include a completed nomination form, letters of reference from the represented interests or organizations, and any other information relevant to the nominee's qualifications. Letters of reference can be from an organization or from anyone who is familiar with the nominee's qualifications to serve on the Council. Appointments are open to new and currently seated members. The Grand Junction and Uncompahgre field offices will review the nomination packages in coordination with the affected counties and the Governor of Colorado before forwarding recommendations to the Secretary, who will make the appointments.

The Council shall be subject to the FACA, 5 U.S.C. App. 2; and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* This notice is being provided pursuant to 43 CFR 1784.4–1.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–13772 Filed 6–9–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12100000.MD0000 16XL1109AF]

Call for Nominations for the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's (BLM) California Desert District is soliciting nominations from the public for four members of its District Advisory Council to serve a three-year term. Council members provide advice and recommendations to the BLM on the management of public lands in Southern California.

DATES: All nominations must be received no later than July 25, 2016.

ADDRESSES: Nominations should be sent to Teresa Raml, District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553.

FOR FURTHER INFORMATION CONTACT: Stephen Razo, BLM California Desert District External Affairs, (951) 697–5217. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The California Desert District Advisory Council is comprised of 15 private individuals who represent an array of diverse interests whose purpose is to advise BLM officials on policies and programs concerning the management of over 10 million acres of public land in Southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation other than travel expenses. Members serve three-year terms and may be nominated for reappointment for an additional three-year term.

Section 309 of the Federal Land Policy and Management Act directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM-administered lands. The Secretary also selects Council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the Council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The BLM will seek qualified representatives from areas throughout the California Desert District to have balanced representation. The District covers portions of eight counties, and includes more than 10 million acres of public land in the California Desert Conservation Area of Mono, Inyo, Kern, Los Angeles, San Bernardino, Riverside, and Imperial counties, as well as 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, and Los Angeles counties (known as the South Coast).

Public notice begins with the publication date of this notice and nominations will be accepted for 45 days from the date of this notice. The four positions to be filled include: One representative of non-renewable resources groups or organizations, one representative of environmental protection groups or organizations, one representative of transportation/rights-of-way groups or organizations, and one representative of the public-at-large.

Any group or individual may nominate a qualified person, based upon education, training, and knowledge of the BLM, the California Desert, and the issues involving BLM-administered public lands throughout Southern California. Qualified individuals also may nominate themselves.

The nomination form may be found on the Desert Advisory Council Web page: *http://www.blm.gov/ca/st/en/info/rac/dac.html.* The following must accompany the nomination form for all nominations:

- Letters of reference from represented interests or organizations;
- A completed background information nomination form; and
- Any other information that addresses the nominee's qualifications.

Nominees unable to download the nomination form may contact the BLM California Desert District External Affairs staff at 951–697–5217 to request a copy.

Advisory Council members are appointed by the Secretary of the Interior. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Authority: 43 CFR 1784.4–1.

Teresa A. Raml,

California Desert District Manager.

[FR Doc. 2016–13771 Filed 6–9–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15XL1109AF.LLWY930000.L12200000.MD0000]

Notice of Final Supplementary Rules for the Killpecker Sand Dunes Recreation Site, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is finalizing supplementary rules for the Killpecker Sand Dunes Recreation Site located within the Greater Sand Dunes Area of Critical Environmental Concern (ACEC) Eastern Portion managed by the Rock Springs Field Office (RSFO) in Rock Springs, Wyoming. This action improves the safety of visitors in the open play sand dunes area by providing better visual identification of off-highway vehicles (OHVs), implementing a speed limit, and prohibiting the possession and use of glass containers in the OHV recreation area.

DATES: The final supplementary rules are effective July 11, 2016.

ADDRESSES: Email *blm_wy_rsfo_sand_dunes@blm.gov* with "Supplementary Rules" in the subject line; fax (307) 352–0329; or mail to BLM Rock Springs Field Office, Attn: Supplementary Rules, 280 Highway 191 North, Rock Springs, WY 82901.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the rule, please contact Jo Foster, RSFO Outdoor Recreation Planner, (307) 352–0327. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to speak with Georgia Foster during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background

Conditions of use for OHVs are defined under 43 CFR subpart 8341. Rules of conduct on public land are defined under 43 CFR subpart 8365. On December 11, 2014, the BLM proposed supplementary rules (79 FR 73623), in accordance with 43 CFR 8365.1–6, which authorizes state directors to establish supplementary rules for the protection of persons, property, and public lands and resources. The public comment period ended February 9, 2015.

The Killpecker Sand Dunes Recreation Site is managed in accordance with the 2006 Record of Decision and Jack Morrow Hills Coordinated Activity Plan/Green River Resource Management Plan Amendment, which designates 10,020 acres as open to OHV travel on the active sand dunes. These supplementary rules implement key decisions in the March 12, 2013, Killpecker Sand Dunes Recreation Site Facility Improvement Environmental Assessment (WY–040–EA13–098) Decision Record, which is in compliance with the 2006 Record of Decision.

The final supplementary rules apply to public lands administered by the BLM Rock Springs Field Office. The active sand dunes within the Killpecker Sand Dunes Recreation Site consist of approximately 10,500 acres of public lands within Sweetwater County, Wyoming in the following described township:

Sixth Principal Meridian, Wyoming

T. 23 N., R. 103 W., sec.16, SE¼SW¼ and SW¼SE¼.

The rules require safety flags on all vehicles in the OHV open area, prohibit speeds in excess of 15 miles per hour within 500 feet of access roads, and prohibit the use of glass containers within the OHV recreation area.

II. Discussion of Public Comment and Final Supplementary Rules

One substantive comment was received during the public comment period. The comment expressed no objection to the supplementary rules as they will promote public safety and a safer environment for OHV recreation by providing for better visual identification of OHVs, by implementing a speed limit, and by prohibiting the possession and use of glass containers.

No changes have been made to the supplementary rules in response to this public comment. However, the BLM has revised the wording of the first and second prohibited acts in order to clarify that they apply to all vehicles, including but not limited to OHVs. In addition, the paragraph labeled, "Penalties" has been replaced with a paragraph labeled, "Enforcement," in accordance with BLM policy. While that paragraph has been re-worded, it cites the same statutory and regulatory authorities as the paragraph that was in the proposed rule.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They will not have an effect of $100 million or more on the economy and will not adversely affect, in a material way, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. They will not affect legal commercial activity, but merely impose limitations on certain recreational activities on certain public lands to protect natural resources and human health and safety.

National Environmental Policy Act

The final supplementary rules were analyzed in and will implement key decisions in the March 12, 2013, Killpecker Sand Dunes Recreation Site Facility Improvement Environmental Assessment (WY–040–EA13–098) Decision Record. This decision record is in compliance with the actions identified for this area in the 2006 Record of Decision and Jack Morrow Hills Coordinated Activity Plan/Green River Resource Management Plan Amendment.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if rules would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, the BLM has determined under the RFA that these final supplementary rules will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). These final supplementary rules merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and human health and safety. The final supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor do these final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The final supplementary rules do not require anything of state, local, or tribal governments. The final supplementary rules merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501–1571).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The final supplementary rules do not constitute a government action capable of interfering with constitutionally protected property rights. The final supplementary rules do not address property rights in any form and do not cause the impairment of constitutionally protected property rights. Therefore, the BLM has determined that the final supplementary rules will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final supplementary rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The final supplementary rules apply only in Wyoming and do not address jurisdictional issues involving the Wyoming State government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM Wyoming State Director has determined that these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these final supplementary rules do not include policies that have tribal implications and will have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government owned lands managed by the Bureau of Indian Affairs.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the final supplementary rules will not impede facilitating cooperative conservation; will take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; will properly accommodate local participation in the Federal decision-making process; and will provide that the programs, projects, and activities are consistent with protecting public health and safety.

Information Quality Act

In developing these final supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules do not comprise a significant energy action. The rules will not have an adverse effect on energy supply, production, or consumption and have no connection with energy policy.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Author

The principal author of these supplementary rules is Georgia Foster, Outdoor Recreation Planner, BLM Wyoming, High Desert District, RSFO, Rock Springs, Wyoming.

IV. Final Supplementary Rules

Definitions

Off-Highway Vehicle (OHV) means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain.

Vehicle means any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck, and any motorized conveyance originally equipped with safety belts. This includes two-wheeled motorcycles.

Prohibited Acts

1. You must not operate any vehicle or OHV within the Killpecker Sand Dunes Recreation Site without an appropriate safety flag. All vehicles and OHVs must be equipped with a whip mast and a 6 inch × 12 inch red or orange flag. A whip mast is any pole, rod, or antenna mounted on the vehicle that extends at least eight feet from the surface of the ground to the mast tip. It must stand upright when the vehicle is stationary. Masts must be securely mounted on the vehicle. Safety flags must be attached within 10 inches of the tip of the whip mast with other flags mounted below the safety flag or on another whip. Flags may be of pennant, triangle, square, or rectangular shape.

2. You must not operate a vehicle or OHV in excess of 15 miles per hour on public lands within 500 feet of access roads within the Killpecker Sand Dunes Recreation Site.

3. You must not possess or use any glass container within the Killpecker Sand Dunes Recreation Site.

Exemptions

The following persons are exempt from these supplementary rules: Any Federal, State, local, and/or military employees acting within the scope of their official duties; members of any organized rescue or firefighting forces acting within the scope of their official duties; and persons who are expressly authorized or otherwise officially approved by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Wyoming law.

Mary Jo Rugwell,

BLM Wyoming State Director.

[FR Doc. 2016–13757 Filed 6–9–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X.LLAK941000.L54200000.FR0000. LVDIL15L0520; AA094010]

Notice of Application for a Recordable Disclaimer of Interest for Lands Owned by the Corporation of the Catholic Archbishop of Anchorage, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corporation of the Catholic Archbishop of Anchorage (Archdiocese) has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest (RDI) from the United States for lands the Archdiocese owns at the confluence of the Tazlina River and

Copper River, near the village of Tazlina, Alaska. This notice is intended to notify the public of the Archdiocese's application and its supporting rationale.

DATES: All comments to this action should be received on or before September 8, 2016.

ADDRESSES: Written comments on the Archdiocese's application or the BLM Draft Summary Report for the Corporation of Archbishop of Anchorage, Inc. (Archdiocese of Anchorage) application for RDI must be filed with the RDI Program Manager (AK–942), Division of Lands and Cadastral, BLM Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Angie Nichols, RDI Program Manager, at 222 West 7th Avenue, #13, Anchorage, AK 99513; 907- 271–3359; or *anichols@blm.gov;* or visit the BLM RDI Web site at *http://www.blm.gov/ak/st/en/prog/rdi.html.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay System (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours of a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Archdiocese has filed an application for an RDI pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), as amended, and the regulations contained in 43 CFR subpart 1864 for the surface estate of the following lands:

Copper River Meridian, Alaska

T. 3 N., R. 1 W.,
Sec. 10, lots 6 and 7, NW¼SW¼, S½SW¼;
Sec. 15, lots 2, 3, 4, 7, and 8, N½NW¼, SE¼NW¼.

The areas described aggregate 461.67 acres. In the application, the Archdiocese asserts that the United States has no interest in the property.

The lands were patented under Private Law 151. Both the law and patent have language stating that the land is for use as a mission school. The Archdiocese believes that the clause for use as a mission school casts a cloud on the title and believes that cloud serves as an impediment to any future use or sale of the land. If the BLM approves the application and issues an RDI, it would confirm that the United States has no valid interest in the subject lands.

By this notice the BLM is informing the public of the Archdiocese's application and its supporting rationale. A final decision on the merits of the Archdiocese's application will not be made before September 8, 2016. During the 90-day period, interested parties may comment on the Archdiocese's application, AA–094010, and supporting evidence. Interested parties may comment during this time on the BLM's Draft Summary Report for the Corporation of Archbishop of Anchorage, Inc. (Archdiocese of Anchorage) Application for Recordable Disclaimer of Interest.

Comments, including names and street addresses, will be available for public review at the Alaska State Office (see **ADDRESSES** above), during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If the evidence is sufficient to find a favorable determination and neither the records nor a valid objection disclose a reason not to disclaim, then the application may be approved.

Authority: 43 CFR 1864.

Erika L. Reed,
Acting Deputy State Director, Division of Lands and Cadastral.

[FR Doc. 2016–13763 Filed 6–9–16; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–956]

Certain Recombinant Factor VIII Products

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (ALJ) has issued a final initial determination on May 27, 2016, and a recommended determination on remedy and bonding on June 3, 2016.

The ALJ found no violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). Should the Commission, however, find a violation of Section 337, the ALJ recommends that the Commission issue a limited exclusion order that excludes from importation into the United States certain recombinant factor VIII products manufactured by processes that infringe certain claims of U.S. Patent Nos. 6,100,061 and 8,084,252. The respondents are Novo Nordisk A/S of Bagsvaerd, Denmark, and Novo Nordisk Inc. of Plainsboro, N.J. Upon a finding of a violation, the ALJ further recommends that cease and desist orders issue to respondents and be directed to respondents' domestic inventories.

This notice is soliciting public interest comments only from the public. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4) within 30 days from service of the recommended determination.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–3427. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, (202) 205–2000.

General information concerning the Commission may also be obtained at *http://www.usitc.gov.* The public record for this investigation may be viewed on EDIS at *http://edis.usitc.gov.* Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

Therefore, the Commission is interested in further developing the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five pages, inclusive of attachments, concerning the public interest in light of the ALJ's recommended determination on remedy and bonding issued in this investigation on June 3, 2016. Comments should address whether the issuance of a limited exclusion order and cease and desist order would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on June 29, 2016.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (Inv. No. 337–TA–956) in a prominent place on the cover page, the first page, or both. *See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.* Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10, 210.46, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.46, 210.50).

By order of the Commission.

Issued: June 6, 2016.

Lisa R. Barton,
Secretary to the Commission.

[FR Doc. 2016–13688 Filed 6–9–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB 1125–0002]

Agency Information Collection Activities; Proposed eCollection; eComments Requested;Notice of Appeal From a Decision of an Immigration Judge (EOIR–26)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed collection was previously published in **Federal Register** at 81 FR 19639, on April 5, 2016, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until July 11, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jean King, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Executive Office for Immigration Review, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* A party (either the U.S. Immigration and Customs Enforcement of the Department of Homeland Security or the respondent/applicant) who appeals a decision of an Immigration Judge to the Board of Immigration Appeals (Board). A party affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal

from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 17,627 respondents will complete the form annually with an average of thirty minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,813.5 total burden hours associated with this collection annually.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 7, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13738 Filed 6–9–16; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[Docket No. OLP 157]

Notice of Public Comment Period on Proposed Uniform Language for Testimony and Reports

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces the opening of the public comment period on the Proposed Uniform Language for Testimony and Reports (Proposed Uniform Language) documents for the forensic disciplines of fiber, footwear and tire treads, general chemistry, glass, latent prints, serology, and toxicology.

DATES: Written public comment regarding the Proposed Uniform Language should be submitted through *www.regulations.gov* before July 8, 2016.

FOR FURTHER INFORMATION CONTACT: The Office of Legal Policy, 950 Pennsylvania Avenue NW., Washington, DC 20530, by phone at 202–514–4601 or via email at *ULTR.OLP@usdoj.gov.*

SUPPLEMENTARY INFORMATION: As part of the Department's continued efforts to advance the practice of forensic science by ensuring Department forensic examiners are testifying and reporting consistent with applicable scientific standards and across Department components including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), and the Federal Bureau of Investigation (FBI), the Department is developing Proposed Uniform Language that would apply to all Department forensic laboratory personnel. The Proposed Uniform Language documents are based on the Federal Bureau of Investigation's (FBI) Approved Scientific Standards for Testimony and Reports (ASSTRs) but differ substantially. As a primary matter, the ASSTRs are currently in effect for FBI personnel, while the Proposed Uniform Language documents are merely proposed and have not been adopted. After adjudication of public comment and the incorporation of appropriate edits, it is anticipated that each Proposed Uniform Language document will be forwarded to the Deputy Attorney General. If one or more are adopted by the Deputy Attorney General, they would become effective for Department forensic laboratory personnel.

The Department plans to seek comment on the Proposed Uniform Language documents in two phases with Proposed Uniform Language documents for seven forensic science disciplines being posted now and the remaining documents posted in July 2016.

PROPOSED UNIFORM LANGUAGE: The Department is posting the Proposed Uniform Language document for each of the following forensic science disciplines on *www.regulations.gov* and seeking public comment: Fiber, footwear and tire treads, general chemistry, glass, latent prints, serology, and toxicology. Each Proposed Uniform Language document contains two primary sections: Statements approved for use in examination testimony and/or laboratory reports and statements not approved for use in examination testimony and/or laboratory reports. We ask that you review and provide comment on each Proposed Uniform Language document separately.

Review Sheet: In order to assist commenters in evaluating each Proposed Uniform Language document, the Department has provided a review sheet that identifies certain criteria. Commenters may find it helpful to use a format similar to that provided by the review sheet to frame their responses. Use of the review sheet is optional but would be helpful to provide consistency in commentary.

Supporting Documentation: Each Proposed Uniform Language document is accompanied by supporting documentation (posted separately) that provides additional scientific background and policy considerations to support the statements approved for use and statements not approved in examination testimony and/or laboratory reports. The Department is not seeking public comment on the supporting documentation, however, commenters are welcome to provide thoughts and suggestions on these documents but notes that only each Proposed Uniform Language document will be forwarded to the Deputy Attorney General for review and potential adoption by Department personnel.

Posting of Public Comments: To ensure proper handling of comments, please reference "Docket No. OLP 157" on all electronic and written correspondence. The Department encourages all comments on this framework be submitted electronically through *www.regulations.gov.* Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *www.regulations.gov* will be posted for public review and are part of the official docket record.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection online at *www.regulations.gov.* The comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information voluntarily submitted by the commenter.

The Department will post all comments received on *www.regulations.gov* without making any changes to the comments or redacting any information, including any personally identifiable information provided. It is the responsibility of the commenter to safeguard personally identifiable information. You are not required to submit personally identifying information in order to comment on the Proposed Uniform Language and the Department recommends that commenters not include personally identifiable information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses that they do not want made public in their comments as such submitted information will be available to the public via *www.regulations.gov.* Comments submitted through *www.regulations.gov* will not include the email address of the commenter unless the commenter chooses to include that information as part of his or her comment.

Dated: June 2, 2016.

Kira Antell,

Senior Counsel, Office of Legal Policy.

[FR Doc. 2016–13635 Filed 6–9–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–NEW]

Civil Rights Division; Agency Information Collection Activities; Proposed eCollection; eComments Requested; Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (the Department), Civil Rights Division, Disability Rights Section (DRS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 60 days until August 9, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated compliance time) or need additional information, please contact Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by any one of the following methods: By email at *DRS.PRA@usdoj.gov;* by regular U.S. mail at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885; by overnight mail, courier, or hand delivery at Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue NW., Suite 4039, Washington, DC 20005; or by phone at (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Division's Information Line). Include in the subject line of all comments the title of this proposed collection: "Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description."

You may obtain copies of this notice in an alternative format by calling the Americans with Disabilities Act (ADA) Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of information collection:* New information collection.

2. *The title of the form/collection:* Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description.

The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form Number: None.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

3. *Affected public who will be required to comply, as well as a brief abstract:*

Affected Public (Primary): Businesses and not-for-profit institutions that own, operate, or lease a movie theater that has one or more auditoriums showing movies with closed movie captioning and audio description, and that provide notice of movie showings and times. For purposes of the proposed rule and this notice, "movie theater" means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

Affected Public (Other): None.

Abstract: The Department's Civil Rights Division, Disability Rights Section (DRS), is requesting PRA approval of a new collection that would require movie theaters to disclose information to the public regarding the availability of closed movie captioning and audio description for movies shown in their auditoriums. On August 1, 2014, the Department published a notice of proposed rulemaking amending its ADA title III regulation, 28 CFR part 36, to specifically require movie theaters to provide closed movie captioning and audio description for patrons with hearing and vision disabilities (NPRM). 79 FR 44976. The NPRM proposed a new information collection requirement that is the subject of this notice. Proposed § 36.303(g)(5) stated that "movie theaters shall ensure that communications and advertisements intended to inform potential patrons of movie showings and times, that are provided by the theater through Web sites, posters, marquees, newspapers, telephone, and other forms of communications, shall provide information regarding the availability of closed movie captioning and audio description for each movie." Movie theaters' disclosure of this information will enable individuals with hearing and vision disabilities to readily find out which theaters are showing movies with these features, and the times those movies are being shown. All public comments on the NPRM supported the inclusion of a notice requirement in some form.

4. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,876 respondents will be required to disclose information concerning the availability of closed movie captioning and audio description in their existing communications concerning movie showings and times.

However, this number includes movie theaters that show analog movies exclusively. In the NPRM, the Department sought public comment on whether it should defer application of the proposed requirements for theaters with auditoriums that show analog movies exclusively. If the Department decides to defer coverage of analog auditoriums, then the number of respondents may drop. DRS estimates that all of the approximately 1,876 respondents will comply with this requirement.

Based on a review of current movie theater communications, it is estimated that an average of 10 minutes per respondent is needed to update existing notices of movie showings and times with this information. The Department acknowledges, however, that the amount of time it will take a respondent to comply with this requirement will likely vary because the amount of time necessary depends on the number of

movies that the respondent is able to show at any given time.

5. *Frequency:* The Department anticipates that movie theaters will likely update their existing listings of movie showings and times to include information concerning the availability of closed movie captioning and audio description on a regular basis. The Department's research suggests that this information would only need to be updated whenever a new movie with these features is added to the schedule. This will vary as some movies stay on the schedule for longer periods of time than other movies, but the Department estimates that movie theaters will update their listings to include this information weekly. If, in the future, all movies are distributed with these features, specific notice on a movie-by-movie basis may no longer be necessary, and a movie theater may only need to advise the public that it shows movies with closed movie captioning and audio description.

6. *An estimate of the total annual public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 16,259 hours. It is estimated that respondents will take an average of 10 minutes (⅙ of an hour) to update their existing listings of movie showings and times to include this information and that such updates will occur weekly for new movies that are added to the schedule. The total annual public burden hours for disclosing this information sum to 16,258.67 hours (1,876 respondents × ⅙ hours × 52 times a year = 16,258 and ⅔ hours). Assuming a movie theater spends 10 minutes each week to update its notices of moving showings and times to include this information, the average movie theater firm will spend 8.67 hours annually (⅙ hour × 52 times) performing the necessary tasks to comply with this requirement.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 7, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13737 Filed 6–9–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0016]

Derricks; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in its Standard on Derricks (29 CFR 1910.181).

DATES: Comments must be submitted (postmarked, sent, or received) by August 9, 2016.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0016, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0016) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among workers by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart must be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations the manufacturer must provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the workers to assure that the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

Paragraph (f)(2)(i)(d) requires that warning or out of order signs must be placed on the derrick hoist while adjustments and repairs are being performed.

Paragraph (g)(1) requires employers to thoroughly inspect all running rope in use, and to do so at least once a month. In addition, before using rope that has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, workers, and OSHA compliance officers with assurance that the ropes are in good condition.

Disclosure of Charts under paragraph (c) and Inspection Certification Records under paragraph (g). The Standard requires the disclosure of charts and inspection certification records if requested during an OSHA inspection.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment decrease of 1 hour, from 1,356 to 1,355 hours, associated with the information collection requirements in the Standard. OSHA normally requests access to records during an inspection, however, the Agency has now determined that information collected by the Agency during an investigation is not subject to the PRA under 5 CFR 1320.4(a)(2). Therefore, OSHA takes no burden or cost for disclosure of records. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Derricks (29 CFR 1910.181).

OMB Control Number: 1218–0222.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 500.

Frequency of Responses: On occasion.

Average Time per Response: Ranges from one minute (.02 hour) to maintain rating load charts to 13 minutes (.22 hour) to inspect ropes and to develop and maintain the inspection certification record.

Estimated Total Burden Hours: 1,355.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (OSHA Docket No. OSHA–2010–0016). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 6, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–13732 Filed 6–9–16; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; Systems of Records

AGENCY: National Science Foundation.

ACTION: Notice of rescindment of two existing systems of records, the addition of one new system of records, the amendment of one agency-wide routine use, and amendment to eight existing systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation (NSF) is providing public notice that it is rescinding two systems of records: NSF–3 Application and Account for Advance of Funds; and NSF–34 Integrated Time and Attendance System (ITAS). NSF is adding one new system of records: NSF–75 Early Career Doctorates Survey (ECDS). NSF is amending the agency-wide routine use number two titled

Freedom of Information Act/Privacy Act Compliance. NSF is also making revisions to the text of eight existing systems of records: NSF–6, Doctorate Records Files (Survey of Earned Doctorates); NSF–13, Fellowship Payroll; NSF–43, Doctorate Work History Files (Survey of Doctorate Recipients); NSF–55, Debarment/Scientific Misconduct Files; NSF–57, NSF Delinquent Debtors' File; NSF–58, National Survey of Recent College Graduates and Follow-up Files; NSF–65, NSF Electronic Payment File; and NSF–67, Invention, Patent and Licensing Documents.

DATES: Persons wishing to comment on the changes set out in this notice may do so on or before July 20, 2016.

Effective Date: This action will be effective without further notice on July 20, 2016 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: You may submit comments, identified by [docket number and/or RIN number ___], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: https://www.nsf.gov/policies/privacy_act.jsp.* Follow the instructions for submitting comments on the NSF Web site.
- *Email: sevans@nsf.gov.* Include [docket number and/or RIN number ___] in the subject line of the message.
- *Fax:* (703) 292–9242.
- *Mail:* Sandra Evans, Privacy Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.
- *Hand Delivery/Courier:* Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230.

Instructions: NSF will post all comments on the NSF's Web site (*https://www.nsf.gov/policies/privacy_act.jsp*). All comments submitted in response to this Notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Privacy Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 22230; or by telephone at 703–292–8060.

SUPPLEMENTARY INFORMATION:

I. Background

Two NSF systems of records are proposed for rescindment, NSF–3 Application and Account for Advance of Funds and NSF–34 Integrated Time and Attendance System (ITAS). NSF no longer uses these systems. All records that were contained in these systems have been moved to other existing systems or archived and/or destroyed consistent with applicable records schedules.

A new system of records, NSF–75 Early Career Doctorates Survey (ECDS) will contain records from a sample of individuals who earned their first doctorate within the past 10 years and are working in specific areas of employment. This information is collected from a new NSF survey, the ECDS.

The NSF agency-wide routine use, titled Freedom of Information Act/Privacy Act Compliance is being amended to allow NSF to more easily share information with the Office of Government Information Services (OGIS) for FOIA compliance and mediation purposes.

Proposed changes to eight systems of records maintained by NSF, described in more detail below, will correct outdated information and references, update routine uses, and in two instances update the names of the systems to better reflect the records contained in those systems. All revised system notices are reprinted in their entirety.

NSF–6: Doctorate Records Files (Survey of Earned Doctorates) contains records about persons who have received research doctorates from U.S. institutions since 1920 and who have filled out the Survey of Earned Doctorates questionnaire that is created and maintained by NSF. The proposed changes to this system include amending the system name to reference the survey that is the source of records contained in the system; updating the categories of records in the system to reflect changes to the way social security number and salary information is collected; updating the description of existing routine uses to clarify how information is being used by NSF; and minor updates to language throughout the system to better inform the public as to how information is being stored and how records can be accessed. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–13: Fellowship Payroll contains records about fellows under certain NSF fellowship programs being paid directly by the government. The proposed changes to this system include updating and clarifying language in the system location, authority for maintaining the system, storage, and retrievability sections, as well as minor updates to other system sections, to better inform the public about access procedures and how information in the system is being used. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–43: Doctorate Work History Files (Survey of Doctorate Recipients) contains records about individuals holding a research doctoral degree in a science, engineering, or health field from a U.S. academic institution who have filled out the biennial Survey of Doctorate Recipients. The proposed changes to this system include amending the system name to better reflect reference the survey that is the source of records contained in the system; updating the categories of individuals covered by the system to more specifically identify who is covered; updating the categories of records in the system to reflect changes to the way social security numbers and demographic characteristics are collected; updating the description of existing routine uses to clarify how information is being used by NSF; and minor updates to remaining system sections to better inform the public as to how information is being stored and how records can be accessed. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–55: Debarment/Scientific Misconduct Files, contains records about persons considered for government-wide suspension, debarment, and/or research misconduct determinations. The proposed changes to this system include amending the system name to better reflect the type of records contained in the system, as well as, minor updates to all of the system sections to better inform the public about access procedures and how information in the system is being used. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–57: NSF Delinquent Debtors' File contains records about individuals who owe money to NSF. The proposed changes to this system include minor updates to the authority, routine uses, retrievability and record source system sections to better inform the public about access procedures and how information in the system is being used. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–58: National Survey of Recent College Graduates and Follow-up Files, contains records about individuals holding bachelor's and master's degrees from U.S. institutions in science, engineering, and health degree fields who have filled out the Survey of Recent College Graduates. The proposed changes to this system include updating the categories of individuals covered by the system to more specifically identify who is covered; updating the categories of records in the system to reflect changes to the way social security numbers and demographic characteristics are collected; updating the language in the purpose and routine uses sections to clarify how information is being used by NSF; and minor updates to remaining system sections to better inform the public as to how information is being stored and how records can be accessed. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–65, NSF Electronic Payment File contains records about individuals who receive electronic payment from NSF for goods or services. The proposed changes to this system include minor updates throughout the system sections to better inform the public about access procedures and how information in the system is being used. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

NSF–67, Invention, Patent and Licensing Documents contains records about invention disclosures, patents and patent applications, and licenses submitted to NSF by its employees, grantees and contractors. The proposed changes to this system include minor updates to all of the system sections to better inform the public about access procedures and how information in the system is being used. An amendment to this system notice was last published in the **Federal Register** on August 20, 2007, effective on September 30, 2007, 72 FR 46520–46521.

II. Privacy Act

The Privacy Act of 1974, as amended (5 U.S.C. 552a), embodies fair information practice principles in a statutory framework governing the means by which federal agencies collect, maintain, use, and disseminate individual's personal information. A "system of records" is a group of records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident. As a matter of policy, NSF extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or control of NSF by complying with NSF Privacy Act regulations, 45 CFR part 613.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to find such records within the agency. Below are the complete texts of the NSF agency-wide routine uses and the following NSF systems: NSF–6, Doctorate Records Files (Survey of Earned Doctorates); NSF–13 Fellowship Payroll; NSF–43, Doctorate Work History Files (Survey of Doctorate Recipients); NSF–55, Debarment/Scientific Misconduct Files, proposed to be renamed as NSF–55, Suspension/Debarment/Research Misconduct Files; NSF–58: National Survey of Recent College Graduates and Follow-up Files, proposed to be renamed as NSF–58, National Survey of Recent College Graduates; NSF–67, Invention, Patent and Licensing Documents; and NSF–75, Early Career Doctorates Survey (ECDS).

In accordance with 5 U.S.C. 552a(r), NSF has provided a report of this system of records notice to the Office of Management and Budget; the Chairman, Senate Committee on Governmental Affairs; and the Chairman, House Committee on Government Reform and Oversight.

Dated: June 2, 2016.

Sandra Evans,

Privacy Act Officer, National Science Foundation.

Privacy Act Systems—Standard Routine Uses—National Science Foundation

The following standard routine uses apply, subject to the Privacy Act of 1974, except where otherwise noted, to each system of records maintained by the National Science Foundation:

1. *Members of Congress.* Information from a system may be disclosed to congressional offices in response to inquiries from the congressional offices made at the request of the individual to whom the record pertains.

2. *Freedom of Information Act/Privacy Act Compliance.* Information from a system may be disclosed to the Department of Justice or the Office of Management and Budget in order to obtain advice regarding NSF's obligations under the Freedom of Information Act and the Privacy Act. Information may also be provided to the National Archives and Records Administration (NARA) Office of Government Information Services (OGIS) for the following purposes: to allow OGIS to fulfill its responsibilities in 5 U.S.C. 552(h); to allow OGIS to review administrative agency policies, procedures and compliance with the Freedom of Information Act (FOIA); and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

3. *Counsel.* Information from a system may be disclosed to NSF's legal representatives, including the Department of Justice and other outside counsel, where the agency is a party in litigation or has an interest in litigation, including when any of the following is a party to litigation or has an interest in such litigation: (a) NSF, or any component thereof; (b) any NSF employee in his or her official capacity; (c) any NSF employee in his or her individual capacity, where the Department of Justice has agreed to, or is considering a request to, represent the employee; or (d) the United States, where NSF determines that litigation is likely to affect the agency or any of its components.

4. *National Archives, General Services Administration.* Information from a system may be disclosed to representatives of the General Services Administration and the National Archives and Records Administration (NARA) during the course of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

5. *Response to an Actual or Suspected Compromise or Breach of Personally Identifiable Information.* Information from a system may be disclosed to appropriate agencies, entities, and persons when (a) NSF suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) NSF has determined that as a result of the suspected or confirmed compromise there is a risk of

harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by NSF or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist with NSF's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

6. *Courts.* Information from a system may be disclosed to the Department of Justice or other agencies in the event of a pending court or formal administrative proceeding, when records are relevant to that proceeding, for the purpose of representing the government, or in the course of presenting evidence, or they may be produced to parties or counsel involved in the proceeding in the course of pre-trial discovery.

7. *Contractors.* Information from a system may be disclosed to contractors, agents, experts, consultants, or others performing work on a contract, service, cooperative agreement, job, or other activity for NSF and who have a need to access the information in the performance of their duties or activities for NSF.

8. *Audit.* Information from a system may be disclosed to government agencies and other entities authorized to perform audits, including financial and other audits, of the agency and its activities.

9. *Law Enforcement.* Information from a system may be disclosed to appropriate Federal, State, or local agencies responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, to disclose pertinent information when NSF becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

10. *Disclosure When Requesting Information.* Information from a system may be disclosed to Federal, State, or local agencies which maintain civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

11. *To The News Media And The Public When:* (1) A matter has become public knowledge, (2) the NSF Office of the Director determines that disclosure is necessary to preserve confidence in the integrity of NSF or is necessary to demonstrate the accountability of NSF's officers, employees, or individuals covered by this system, or (3) the Office of the Director determines that there exists a legitimate public interest in the disclosure of the information, except to the extent that the Office of the Director determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

NSF–6

SYSTEM NAME:

Doctorate Records Files (Survey of Earned Doctorates).

SYSTEM LOCATION(S):

National Science Foundation (NSF) headquarters, Virginia, and NSF's current survey contractor location(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Science Foundation Act of 1950, as amended, 42 U.S.C. 1862(a)(6), 1863(j)(1), 1885(d); and the America COMPETES Reauthorization Act of 2010.

PURPOSE(S):

This system is used:

(1) To provide a source of information, that will be used for statistical purposes only, on demographic characteristics, educational history, and employment plans of recipients of U.S. research doctorates, in compliance with NSF responsibilities to monitor scientific and technical resources.

(2) To provide indicators of the state of science and engineering enterprise in the United States, as required by congressional mandate.

(3) To report biennially on the participation rates of men, women, persons with disabilities, and race/ethnicity groups, in scientific and technical fields, as required by congressional mandate.

(4) To provide the sampling frame for the Survey of Doctorate Recipients.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have earned research doctorates from accredited U.S. institutions since 1920. Limited information (name, field of degree and institution) about individuals receiving doctorates between 1920 and 1957 was compiled from public records. Information about individuals receiving doctoral degrees after 1957 was supplied voluntarily by the individual receiving the degree. Some institutions supply name and field of degree for individuals who do not provide any information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Educational, professional and demographic characteristics of doctorate earners including name, birth date, gender, citizenship, race, ethnicity, education history, social security number (for individuals added after 2006, only the last four digits of the SSN are maintained), sources of financial support during graduate school, and post-graduation plans (since 2008, including the anticipated annual salary).

RECORD SOURCE CATEGORIES:

Information is obtained voluntarily from the individual; limited information may be provided by academic institutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply to the extent that such disclosure is compatible with the National Science Foundation Act of 1950, the America COMPETES Reauthorization Act of 2010, and the Confidential Information Protection and Statistical Efficiency Act (CIPSEA). In addition, information may be disclosed to:

(1) License for the Use of Restricted Data (License) holders. Organizations (*e.g.* academic institutions, nonprofit organizations) and their researcher(s) granted a NSF/National Center for Science and Engineering Statistics (NCSES) License for the purpose of analyzing data and preparing scientific reports and articles. These Licensees receive data without direct personal identifiers.

(2) Federal agency sponsors. Records with personal identifiers may be disclosed to federal sponsors, their contractors and collaborating researchers and their staff under an Inter-Agency Agreement for the purpose of analyzing data, preparing scientific reports and articles, and for conducting review and evaluation of their programs.

(3) NCSES contractors. Records may be disclosed to NCSES contractors for statistical activities or purposes such as conducting surveys. Any NSF contractor who wishes to use restricted-use data for statistical activities or purposes that are not part of NCSES-sponsored work must follow the regular License procedures as laid out in routine use (1) above.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper (short term) and on electronic digital media (long term).

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by individual name and unique, anonymous data collection identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Data are cumulative and are kept indefinitely.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Division Director, National Center for Science and Engineering Statistics, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

CONTESTING RECORD PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

NOTIFICATION PROCEDURE:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The portions of this system consisting of statistical records have been exempted from provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I), and (f), pursuant to 5 U.S.C. 552a(k)(4).

NSF–13

SYSTEM NAME:

Fellowship Payroll.

SYSTEM LOCATION(S):

National Science Foundation (NSF) headquarters, Virginia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 1861; Department of the Treasury Financial Manual; GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 6—Pay, Leave and Allowances.

PURPOSE(S):

This system enables the NSF to maintain data regarding the payment of fellowship payroll in a single location and ensures that appropriate payments are made.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals participating in certain NSF Fellowship Programs being paid directly by the federal government (Fellows).

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of the fellowship award letter, acceptance form, starting certificates, and records of stipend payments.

RECORD SOURCE CATEGORIES:

Information is obtained from Fellows.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply. In addition, information may be disclosed to:

(1) The Department of Treasury for the purpose of issuing the payment directly to the financial account of the payee.

(2) Financial institutions for the purpose of direct deposit.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and/or on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved alphabetically by last name of Fellow, supplier number, or award number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with NAPA approved records schedules.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Division Director, Division of Financial Management, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

Follow the procedures found at 45 CFR part 613.

NOTIFICATION PROCEDURE:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

NSF–43

SYSTEM NAME:

Survey of Doctorate Recipients.

SYSTEM LOCATION(S):

National Science Foundation (NSF) headquarters, Virginia, and NSF's current survey contractor location(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Science Foundation Act of 1950, as amended, 42 U.S.C. 1862(a)(6), 1863(j)(1), 1885(d); the America COMPETES Reauthorization Act of 2010; and the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

PURPOSE(S):

This system is used:

(1) To provide a source of information, that will be used for statistical purposes only, on demographic characteristics of individuals with doctorate degrees in science, engineering, or selected health (SEE) fields in the U.S., in compliance with NSF responsibilities to monitor scientific and technical resources.

(2) To provide indicators of the state of science and engineering enterprise in the U.S., as required by congressional mandate.

(3) To report biennially on the participation rates of men, women, persons with disabilities, and race/ethnicity groups, in scientific and technical fields, as required by congressional mandate.

(4) To provide data on doctorate holders in the SEH workforce to the Scientists and Engineers Statistical Data System (SESTAT) maintained by NSF.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of individuals holding a research doctoral degree in a SEH field from a U.S. academic institution. The information is collected from individuals in the biennial Survey of Doctorate Recipients (SDR). The survey follows a sample of individuals with SEH doctorates throughout their careers from the year of their degree award until age 76.

CATEGORIES OF RECORDS IN THE SYSTEM:

Educational, professional and demographic characteristics of doctorate holders including name, birth date, gender, citizenship, race, ethnicity, education history, social security number (for individuals added after 2006, only the last four digits of the SSN are maintained), geographic locations, earned degrees, field of degree, employment status, occupation, type of employer, primary work activity, and salary.

RECORD SOURCE CATEGORIES:

Information is obtained voluntarily from the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply to the extent that such disclosure is compatible with the National Science Foundation Act of 1950, the America COMPETES Reauthorization Act of 2010, and CIPSEA. In addition, information may be disclosed to:

(1) License for the Use of Restricted Data (License) holders. Organizations (*e.g.* academic institutions, nonprofit organizations) and their researcher(s) granted an NSF/National Center for Science and Engineering Statistics (NOSES) License for the purpose of analyzing data and preparing scientific reports and articles. These Licensees receive data without direct personal identifiers.

(2) Federal agency sponsors. Records with personal identifiers may be disclosed to federal sponsors, their contractors and collaborating researchers and their staff under an Inter-Agency Agreement for the purpose of analyzing data, preparing scientific reports and articles, and for conducting review and evaluation of their programs.

(3) NCSES contractors. Records may be disclosed to NCSES contractors for statistical activities or purposes such as conducting surveys. Any NSF contractor who wishes to use restricted-use data for statistical activities or purposes that are not part of NCSES-sponsored work must follow the regular License procedures as laid out in routine use (1) above.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and/or on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by the name of individual and unique, anonymous data collection identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Data are cumulative and are kept indefinitely.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Division Director, National Center for Science and Engineering Statistics, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

CONTESTING RECORD PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

NOTIFICATION PROCEDURE:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The portions of this system consisting of statistical records have been exempted from provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I), and (f), pursuant to 5 U.S.C. 552a(k)(4).

NSF–55

SYSTEM NAME:

Suspension, Debarment, and Research Misconduct Files.

SYSTEM LOCATION:

National Science Foundation (NSF) headquarters, Virginia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11(a), National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a); Federal Acquisition Regulation (FAR), 2 CFR 180.800; 45 CFR part 689; and E.O. 12549 (February 18, 1986).

PURPOSE(S):

To Information contained in this system of records is used to protect the federal government from the actions prohibited under applicable suspension, debarment, and research misconduct regulations; make decisions regarding suspension, debarment, and research misconduct; ensure that other federal agencies give effect to suspension, debarment, and research misconduct decisions rendered by NSF; and to ensure that NSF gives effect to suspension, debarment, and research misconduct decisions rendered by other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, including applicants for NSF grants and contracts, NSF grantees, contractors, and principal investigators, who are the subject of suspension, debarment, or research misconduct proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files for persons considered for suspension, debarment or research misconduct; communications between the NSF and the respondent; inter-agency and intra-agency communications regarding proposed or completed suspensions, debarments, or research misconduct; investigative files; witness statements and affidavits; staff working papers; testimony transcripts; hearing exhibits; and records of any findings.

RECORD SOURCE CATEGORIES:

Federal, state, and local agency officials; the NSF Office of the Inspector General; private persons; and respondents and their legal representatives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply. In addition, information may be disclosed to:

(1) The General Services Administration (GSA) to compile and maintain the System for Award Management.

(2) A federal agency involved in suspension, debarment or research misconduct actions involving the same person.

(3) A federal, state, or local government agency to the extent necessary to allow NSF to obtain information maintained by those agencies in connection with a suspension, debarment, or research misconduct action.

(4) Other persons involved in or affected by a suspension, debarment, or research misconduct actions, including witnesses, awardee institutions, to support NSF objectives.

(5) A federal, state, local government agency, federal contractor, or grantee, for the purpose of verifying the identity of an individual NSF has suspended, debarred, or imposed actions upon pursuant to an administrative agreement or research misconduct determination.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and/or on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by the name of the person and/or entity being considered for suspension, debarment, or a finding of research misconduct.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with NARA approved record schedules.

PHYSICAL, PROCEDURAL AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

General Counsel, Office of General Counsel, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

Follow the procedures found at 45 CFR part 613.

NOTIFICATION PROCEDURE:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

In accordance with 5 U.S.C. 552a(k)(2), investigative material in this system of records compiled for law enforcement purposes is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the government with an express promise that the identity of the source would be held in confidence.

NSF–57

SYSTEM NAME:

NSF Delinquent Debtors' File.

SYSTEM LOCATION:

Division of Financial Management, Financial Statements Section, National Science Foundation (NSF) headquarters, Virginia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, Public Law 89–508; Debt Collection Act of 1996, Public Law 104–134; and E.O. 9397.

PURPOSE(S):

Information is used for the purpose of collecting moneys owed NSF arising out of any administrative or program activities or service administered by NSF. The file represents the basis for the debt and amount of debt and actions taken by NSF to collect the moneys owed under the debt. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferments of payment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of NSF, panelists, recipients of fellowship stipends, and others owing money to NSF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on individual debtor. Normally, the name, social security number, address, amount of debt or delinquent amount, basis of the debt, office referring debts, agency collection efforts, credit reports, debt collection letters, correspondence to or from the debtor relating to the debt and correspondence with employing agencies of debtors.

RECORD SOURCE CATEGORIES:

Information in this system of records obtained from the individual, institution, award records, collection agencies, and other appropriate agencies, *i.e.*, the Internal Revenue Service (IRS), the Government Accountability Office (GAO), the United States Postal Service (USPS), the Department of the Treasury, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply. In addition, information may be disclosed to:

(1) GAO, the Department of Justice, the U.S. Attorney, or other federal agencies for further collection action on any delinquent account when circumstances warrant.

(2) A commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

(3) A debt collection agency for the purpose of collection services to recover indebtedness owed to NSF.

(4) Debtor's name, social security number, the amount of debt owed, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on NSF's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1996.

(5) Any other federal agency including but limited to, the IRS pursuant to 31 U.S.C. 3720A, and the Department of the Treasury Debt Management Services, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to NSF by the debtor.

(6) The IRS, to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NSF against the taxpayer pursuant to 26 U.S.C. 6103(m)(20) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

Note: Disclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a federal claim under the Debt Collection Act of 1996, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other NSF purpose or disclosed to another federal, state, or local agency, which seeks to locate the same individual for its own debt collection purpose.

(7) Database information consisting of debtor's name, social security number, and amount owed may be disclosed to the Defense Manpower Data Center (DMDC). Department of Defense, USPS, or to any other federal state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended, to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed NSF by the debtor arising out of any administrative or program activities or services administered by NSF.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and/or on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by the Principal Investigator's name or identification number, or by proposal number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with NARA approved record schedules.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Director/Head or designee of particular Division or Office maintaining such records, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

Follow the procedures found at 45 CFR part 613.

NOTIFICATION PROCEDURE:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The portions of this system consisting of data that would identify reviewers or other persons supplying evaluations of NSF proposals have been exempted at 45 CFR part 613, pursuant to 5 U.S.C. 552a(k)(4).

NSF–58

SYSTEM NAME:

National Survey of Recent College Graduates.

SYSTEM LOCATION(S):

National Science Foundation (NSF) headquarters, Virginia, and NSF's current survey contractor location(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Science Foundation Act of 1950, as amended, 42 U.S.C. 1862(a)(6), 1863(j)(1), 1885(d); the America COMPETES Reauthorization Act of 2010; and the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

PURPOSE(S):

This system is used:

(1) To provide a source of information, that will be used for statistical purposes only, on demographic characteristics of individuals with bachelor's and master's degrees in science, engineering, and health fields (SEH) in the U.S., in compliance with NSF responsibilities to monitor scientific and technical resources.

(2) To provide indicators of the state of science and engineering enterprise in the U.S., as required by congressional mandate.

(3) To report biennially on the participation rates of men, women, persons with disabilities, and race/ethnicity groups, in scientific and technical fields, as required by congressional mandate.

(4) To provide data on recent bachelor's and master's degree recipients in the SEE workforce to the Scientists and Engineers Statistical Data System (SESTAT) maintained by NSF.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of individuals holding a bachelor's and master's degrees from U.S. institutions in SEE fields.

CATEGORIES OF RECORDS IN THE SYSTEM:

Educational, professional and demographic characteristics of bachelor's and master's degree holders including name, address, birth date, race, ethnicity, gender, disability, country of birth, social security number (for individuals added after 2006, only the last four digits of the SSN are maintained), occupational information, employment status, professional activities, academic degrees, earlier education, continuing education, marital status, spouse's employment status, number and ages of children living at home, parent's educational attainment, and citizenship.

RECORD SOURCE CATEGORIES:

Information is obtained voluntarily from the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply to the extent that such disclosure is compatible with the National Science Foundation Act of 1950, the America COMPETES Reauthorization Act of 2010, and CIPSEA. In addition, information may be disclosed to:

(1) License for the Use of Restricted Data (License) holders. Organizations (*e.g.* academic institutions, nonprofit organizations) and their researcher(s) granted an NSF/National Center for Science and Engineering Statistics (NCSES) License for the purpose of analyzing data and preparing scientific reports and articles. These Licensees receive data without direct personal identifiers.

(2) NCSES contractors. Records may be disclosed to NCSES contractors for statistical activities or purposes such as conducting surveys. Any NSF contractor who wishes to use restricted-use data for statistical activities or purposes that are not part of NCSES-sponsored work must follow the regular License procedures as laid out in routine use (1) above.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and/or on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by the name of individual and unique, anonymous data collection identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Data are cumulative and are kept indefinitely.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Division Director, National Center for Science and Engineering Statistics, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

CONTESTING RECORD PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

NOTIFICATION PROCEDURE:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The portions of this system consisting of statistical records have been exempted from provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I), and (f), pursuant to 5 U.S.C. 552a(k)(4).

NSF–65

SYSTEM NAME:

NSF Electronic Payment File.

SYSTEM LOCATION:

Division of Financial Management, National Science Foundation (NSF) headquarters, Virginia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Debt Collection Improvement Act of 1996.

PURPOSE(S):

To enable NSF to comply with the mandatory electronic payment provisions of the Debt Collection Act of 1996.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NSF, former employees, other individuals and vendors who will or do receive electronic payment from NSF for goods and services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security Number, and payee banking information.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals or payees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply. In addition, information may be disclosed to:

(1) The Department of the Treasury for the purpose of issuing the payment directly to the financial account of the payee, and reporting income paid in accordance with reporting requirements.

(2) Financial institutions for the purpose of direct deposit.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by supplier number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Updated information automatically replaces old information. The file is cumulative and maintained permanently.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Director, Division of Financial Management, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

Follow the procedures found at 45 CFR part 613.

NOTIFICATION PROCEDURE:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

NSF–67

SYSTEM NAME:

Invention, Patent and Licensing Documents.

SYSTEM LOCATION:

Office of the General Counsel, National Science Foundation (NSF) headquarters, Virginia.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 200, *et seq.;* E.O. 10096, as amended; 37 CFR part 401; and 37 CFR part 501.

PURPOSE(S):

To administer governmental rights to inventions made by NSF employees or during NSF-assisted research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NSF, its grantees, or contractors, who made inventions while employed by NSF while performing NSF-assisted research.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains invention disclosures, patents and patent applications, and licenses submitted to NSF by its employees, grantees, and contractors, including inventor(s) name(s), identification of grantee or contractor, title and description of the invention, inventor(s) address(es), and patent prosecution and licensing document in situations where the inventor's rights were waived.

RECORD SOURCE CATEGORIES:

Record sources are Principal Investigators, academic or other applicant institutions, proposal reviewers, and NSF program officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply. In addition, information may be disclosed to:

(1) Scientific personnel, both in NSF and other government agencies and in non-governmental organizations such as universities, who possess the expertise to understand the invention and evaluate its importance as a scientific advance.

(2) Contract patent counsel and their employees and foreign contract personnel retained by NSF for patent searching and prosecution in both the United States and foreign patent offices.

(3) Federal agencies whom NSF contacts regarding the possible use, interest in, or ownership rights in NSF inventions.

(4) Prospective licensees or technology finders who may further make the invention available to the public through sale or use.

(5) Parties, such as supervisors of inventors, whom NSF contacts to determine ownership rights, and those parties contacting NSF to determine the Government's ownership.

(6) United States and foreign patent offices involved in the filing of NSF patent applications.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in paper and/or on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by the name of the inventor, invention-disclosure number, NSF program, or institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with NARA approved record schedules.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

General Counsel, Office of the General Counsel, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

CONTESTING RECORD PROCEDURES:

Follow the procedures found at 45 CFR part 613.

NOTIFICATION PROCEDURE:

Follow the Requesting Access to Records procedures found at 45 CFR part 613.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

NSF–75

SYSTEM NAME:

Early Career Doctorates Survey (ECDS)

SYSTEM LOCATION(S):

National Science Foundation (NSF) headquarters, Virginia, and NSF's current survey contractor location(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Science Foundation Act of 1950, as amended, 42 U.S.C. 1862(a)(6), 1863(j)(1), 1885(d); the America COMPETES Reauthorization Act of 2010; and the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

PURPOSE(S):

This system is used:

(1) To provide a source of information, that will be used for statistical purposes only, on demographic characteristics of individuals who received their first doctorate or doctorate-equivalent degrees within the past 10 years, regardless of the country of degree.

(2) To provide indicators of the state of science and engineering enterprise in the U.S., as required by congressional mandate.

(3) To report biennially on the participation rates of men, women, persons with disabilities, and race/ethnicity groups, in scientific and technical fields, as required by congressional mandate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of individuals who earned their first doctorate within the past 10 years and are working in one of the following areas of employment: U.S. academic institutions, federally funded research and development centers (FFRDCs), or the National Institutes of Health intramural research programs (NIH IRPs).

CATEGORIES OF RECORDS IN THE SYSTEM:

Educational, professional and demographic characteristics of doctorate degree holders including name, age, race, ethnicity, gender, functional limitations, educational history, professional activities and achievements, employer characteristics, professional and personal life balance, mentoring training, research opportunities, and career paths and plans of early career doctorate holders.

RECORD SOURCE CATEGORIES:

Information is obtained voluntarily from the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NSF standard routine uses apply to the extent that such disclosure is compatible with the National Science Foundation Act of 1950, the America COMPETES Reauthorization Act of 2010, and CIPSEA. In addition, information may be disclosed to:

(1) License for the Use of Restricted Data (License) holders. Organizations (*e.g.* academic institutions, nonprofit organizations) and their researcher(s) granted an NSF/National Center for Science and Engineering Statistics (NCSES) License for the purpose of analyzing data and preparing scientific reports and articles. These Licensees receive data without direct personal identifiers.

(2) Federal agency sponsors. Records without personal identifiers may be disclosed to federal sponsors, their contractors and collaborating researchers and their staff under an Inter-Agency Agreement for the purpose of analyzing data, preparing scientific reports and articles, and for conducting review and evaluation of their programs.

(3) NCSES contractors. Records may be disclosed to NCSES contractors for statistical activities or purposes such as conducting surveys. Any NSF contractor who wishes to use restricted-use data for statistical activities or purposes that are not part of NCSES-sponsored work must follow the regular License procedures as laid out in routine use (1) above.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored on electronic digital media.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by the name of individual and unique, anonymous data collection identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Data are cumulative and are kept indefinitely.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Records are protected by administrative, technical, and physical safeguards administered by NSF.

SYSTEM MANAGER(S):

Division Director, National Center for Science and Engineering Statistics, NSF headquarters, Virginia.

RECORD ACCESS PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

CONTESTING RECORD PROCEDURES:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

NOTIFICATION PROCEDURE:

This system is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(4).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The portions of this system consisting of statistical records have been exempted from provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), (I), and (f), pursuant to 5 U.S.C. 552a(k)(4).

[FR Doc. 2016–13452 Filed 6–9–16; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32139; 812–14501]

Ramius Archview Credit and Distressed Fund and Ramius Advisors, LLC; Notice of Application

June 6, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest ("Shares") and to impose asset-based service and/or distribution fees and contingent deferred sales loads ("CDSCs").

APPLICANTS: Ramius Archview Credit and Distressed Fund (the "Fund") and Ramius Advisors, LLC (the "Adviser").

FILING DATES: The application was filed on June 30, 2015, and amended on September 3, 2015 and February 4, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 1, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 1200 Prospect Street, Suite 400, La Jolla, CA 92037.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551–6773 or James M. Curtis, Branch Chief, at (202) 551–6712 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund is a continuously offered closed-end management investment company registered under the Act and organized as a Delaware statutory trust. The Fund currently serves as the master fund in a master-feeder structure with one feeder fund.[1] If the requested relief is granted, the feeder fund will be dissolved promptly and the Fund will no longer operate within a master-feeder structure.[2] The Fund's investment objective is to seek to generate consistent, total returns while minimizing the risk of loss. The Fund intends to pursue its investment objective by investing primarily in debt and equity securities, loans, trade claims and derivative instruments of leveraged or financially distressed companies. In addition, the Fund will typically take long and short positions in securities, loans and derivatives.

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as investment adviser to the Fund. Foreside Fund Services, LLC, a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act"), acts as the distributor of the Fund.

3. The Fund continuously offers its Shares[3] to investors that represent that they are "qualified clients" within the meaning of Rule 205–3 under the Advisers Act ("Qualified Clients"). Shares of the Fund are not listed on any securities exchange and do not trade on an over-the-counter system such as NASDAQ. Applicants do not expect that any secondary market will develop for the Shares.

4. The Fund currently offers a single class of Shares (the "Initial Class") at net asset value per share without a sales load and without an annual asset-based service and/or distribution fee. The Fund proposes to issue multiple classes of Shares and specifically proposes to offer a new Share class (the "New Class"): (1) Only to Qualified Clients; (2) at net asset value plus a front-end sales load of up to 3%; and (3) subject to an annual distribution/shareholder fee of 0.75%. The front-end sales load and annual distribution/shareholder servicing fee to be charged to the New Class Shares will be the same as those currently charged to the feeder fund Shares. The Fund intends to continue to offer Initial Class Shares, without a sales load and without a service and/or distribution fee.

5. In order to provide a limited degree of liquidity to shareholders, the Fund may from time to time offer to repurchase Shares, in an amount not to exceed 25% of the Fund's net asset value, at their then current net asset value in accordance with rule 13e–4 under the 1934 Act pursuant to written tenders by shareholders.[4] Repurchases will be made at such times, in such amounts and on such terms as may be determined by the Fund's board of trustees ("Board"), in its sole discretion.[5] Repurchases will not commence for at least six months following the date of the initial closing for subscriptions for Shares. Following such date, the Adviser will recommend to the Board (subject to its discretion) that the Fund offer to repurchase Shares from shareholders on a quarterly basis.

6. Applicants request that the order also apply to any other continuously offered registered closed-end management investment company existing now or in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser acts as investment adviser and which provides periodic liquidity with respect to its Shares through tender offers conducted in compliance with rule 13e–4 under the 1934 Act.[6]

7. Applicants represent that any asset-based service and/or distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Conduct Rule 2830") as if that rule applied to the Fund.[7] Applicants also represent that the Fund will disclose in its prospectus, the fees, expenses and other characteristics of each class of Shares offered for sale by the prospectus as is required for open-end multiple class funds under Form N–1A. As is required for open-end funds, the Fund will disclose its expenses in shareholder reports, and disclose any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.[8] The Fund will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Distributor.[9] The Fund will contractually require that the Distributor and any other distributor of the Fund's Shares comply with such requirements in connection with the distribution of Shares of the Fund.

8. The Fund will allocate all expenses incurred by it among the various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of Shares will be borne on a pro rata basis

[1] The feeder fund is Ramius Archview Credit and Distressed Feeder Fund.

[2] In accordance with the organizational documents of the feeder fund and Delaware statutory trust law, no shareholder vote is required to liquidate and dissolve the feeder fund.

[3] "Shares" includes any other equivalent designation of a proportionate ownership interest of the Fund.

[4] Likewise, the feeder fund's repurchase offers are conducted pursuant to rule 13e–4 under the 1934 Act.

[5] Shares are subject to an Early Repurchase Fee at a rate of 2% of the net asset value of any Shares repurchased by the Fund that were held for less than one year. The Early Repurchase Fee will equally apply to all shareholders of the Fund, regardless of class, consistent with section 18 of the Act and rule 18f–3 under the Act. To the extent the Fund determines to waive, impose scheduled variations of, or eliminate the Early Repurchase Fee, it will do so consistently with the requirements of rule 22d–1 under the Act as if the Early Repurchase Fee were a CDSC and as if the Fund were an open-end investment company, and the Fund's waiver of, scheduled variation in, or elimination of, the Early Repurchase Fee will apply uniformly to all shareholders of the Fund.

[6] The Fund and any other investment company relying on the requested relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an applicant.

[7] All references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority ("FINRA").

[8] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[9] *See, e.g.*, Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions and Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

by each outstanding Share of that class. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

9. In the event the Fund imposes a CDSC, the applicants will comply with the provisions of rule 6c-10 under the Act, as if that rule applied to closed-end management investment companies. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Fund to issue multiple classes of Shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

CDSCs

Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that any CDSC imposed by the Fund will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Fund also will disclose CDSCs in accordance with the requirements of Form N–1A concerning CDSCs as if the Fund were an open-end investment company. Applicants further state that the Fund will apply the CDSC (and any waivers, scheduled variations or eliminations of the CDSC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

The applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3 and 22d–1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13717 Filed 6–9–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77995; File No. SR–CHX–2016–07]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Business Continuity Plan Requirements for Participants

June 6, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on May 24, 2016, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange ("CHX Rules") to adopt Article 7, Rule 14, which corresponds to a similar rule of the Financial Industry Regulatory Authority, Inc. ("FINRA") regarding Business Continuity Plans ("BCPs").

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(6)[4] thereunder and has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii).[5]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchange proposes to adopt Article 7, Rule 14 to require Participants to maintain BCPs. The Exchange recognizes that BCPs serve a critical function in facilitating the operation of orderly markets in the event of a disruptive emergency. Given that the Exchange does not currently require Participants to maintain BCPs or emergency contact information, the Exchange now proposes to adopt such standards and believes that adopting BCP requirements that are similar to FINRA Rule 4370 and the BCP rules of other national securities exchanges[6] would better ensure that Participant BCPs meet minimum standards that are, when triggered, executed in a consistent and predictable manner, which furthers the purposes of Section 6(b)(5) of the Act by removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.[7] Moreover, the Exchange believes that greater harmonization between CHX Rules and FINRA Rules will result in less burdensome and more efficient regulatory compliance for Participants that are also members of FINRA ("Dual Members"). To this end, the Exchange proposes to adopt Article 7, Rule 14, which is similar to FINRA Rule 4370, except that proposed Article 7, Rule 14 differs from FINRA Rule 4370 in the following ways:

- Addresses the unique membership, organizational and rules structures of the Exchange;
- Clarifies throughout proposed Article 7, Rule 14 that Participant BCPs must address a Participant's existing obligations to other interested parties, in addition to its existing obligations to its Customers,[8] and defines "interested parties," as discussed below;
- Expands alternate communication requirements to include Associated Persons[9] of the Participant, in addition to employees, and other interested parties, in addition to Customers; and
- Expands alternate physical location requirements to include Associated Persons of the Participant, in addition to employees.

Specifically, proposed paragraph (a) provides as follows:

Each Participant must create and maintain a written business continuity plan ("BCP") identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the Participant to meet its existing obligations to Customers and other interested parties. The BCP must be made available promptly upon request to the Exchange staff.

Unlike FINRA Rule 4370(a), which includes additional language that BCPs must address "existing relationships with other broker-dealers and counter-parties," the Exchange proposes to clarify that requirement by omitting such language from proposed Article 7 Rule 14(a) and, rather, provide that BCPs must be reasonably designed to enable the Participant to meet it existing obligations to Customers and other interested parties. Moreover, the Exchange proposes to define "other interested parties" to be inclusive of other broker-dealers and counter-parties, under proposed paragraph (g)(3), which provides as follows:

"Interested parties" means any person or entity to which Participant owes a fiduciary and/or legal responsibility, including, but not limited to, Customers, other brokers or dealers, vendors and banks.

To further clarify the requirement, the Exchange proposes to add the term "other interested parties" after all subsequent references to "Customers" under proposed paragraphs (c)(4), (c)(10) and (e).

Proposed paragraph (b) provides as follows:

Each Participant must update its BCP in the event of any material change to the Participant's operations, structure, business or location. Each Participant must also conduct an annual review of its BCP to determine whether any modifications are necessary in light of changes to the Participant's operations, structure, business or location.

Proposed paragraph (c) provides as follows:

The elements that comprise a BCP are flexible and may be tailored to the size and needs of a Participant. Each plan, however, must at a minimum, address:

(1) Data back-up and recovery (hard copy and electronic);

(2) All mission critical systems;

(3) Financial and operational assessments;

(4) Alternate communications between Customers and the Participant and between other interested parties and the Participant;

(5) Alternate communications between the Participant and its employees and between the Participant and its Associated Persons;

(6) Alternate physical location of employees and the Participant's Associated Persons;

(7) Critical business constituent, bank, and counter-party impact;

(8) Regulatory reporting;

(9) Communications with all regulators; and

(10) How the Participant will assure Customers and other interested parties have prompt access to their funds and securities in the event that the Participant determines that it is unable to continue its business.

Each Participant must address the above-listed categories to the extent applicable and necessary. If any of the above-listed categories is not applicable, the Participant's BCP need not address the category. The Participant's BCP, however, must document the rationale for not including such category in its plan. If a Participant relies on another entity for any one of the above-listed categories or any mission critical system, the Participant's BCP must address this relationship.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See e.g.,* NYSE MKT Equities Rule 4370.

[7] 15 U.S.C. 78f(b)(5).

[8] Incidentally, the Exchange proposes to amend CHX Article 1, Rule 1(hh) defining "Customer" to correspond to FINRA Rule 160(b)(4), so as to provide, "'Customer' shall not include a broker or dealer registered with the Commission." Currently, CHX Article 1, Rule 1(hh) provides that "'Customer' means any person or entity other than a broker or dealer registered with the Commission." The Exchange proposes to harmonize its definition of Customer with that of FINRA to clarify the scope of the term.

[9] *See* CHX Article 1, Rule 1(d) defining "Associated Person."

Notably, the Exchange proposes to expand the alternate communications and physical location requirements to include Associated Persons under proposed paragraphs (c)(5) and (c)(6).

Proposed paragraph (d) provides as follows:

Each Participant must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review. The member of senior management must also be a registered principal.

Proposed paragraph (e) provides as follows:

Each Participant must disclose to its Customers and other interested parties how its BCP addresses the possibility of a future significant business disruption and how the Participant plans to respond to events of varying scope. At a minimum, such disclosure must be made in writing to Customers and other interested parties at account opening, posted on the Participant's Web site (if the Participant maintains a Web site), and mailed to Customers or other interested parties upon request.

Proposed paragraph (f)(1) provides as follows:

Each Participant shall report to the Exchange, via such electronic or other means as the Exchange may specify, prescribed emergency contact information for the Participant. The emergency contact information for the Participant includes designation of two Associated Persons as emergency contact persons. At least one emergency contact person shall be a member of senior management and a registered principal of the Participant. If a Participant designates a second emergency contact person who is not a registered principal, such person shall be a member of senior management who has knowledge of the Participant's business operations. A Participant with only one Associated Person shall designate as a second emergency contact person an individual, either registered with another firm or nonregistered, who has knowledge of the Participant's business operations (*e.g.*, the Participant's attorney, accountant, or clearing firm contact).

Proposed paragraph (f)(2) provides as follows:

Each Participant must promptly update its emergency contact information, via such electronic or other means as the Exchange may specify, in the event of any material change, but in any event not later than 30 days following any change in such information. In addition, each Participant shall review and, if necessary, update its required contact information within 17 business days after the end of each calendar year.

Proposed paragraph (f)(2) is similar to FINRA Rule 4370(f)(2), except that proposed paragraph (f)(2) includes the explicit timing requirements of FINRA Rule 4517(c)(1). Since CHX Rules do not include a rule or provision similar to FINRA Rule 4517, the Exchange believes it is appropriate to incorporate such timing requirements into proposed paragraph (f)(2).

Proposed paragraph (g) provides as follows:

For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Mission critical system" means any system that is necessary, depending on the nature of a Participant's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of Customer or other interested party accounts, access to Customer or other interested party accounts and the delivery of funds and securities.

(2) "Financial and operational assessment" means a set of written procedures that allow a Participant to identify changes in its operational, financial, and credit risk exposures.

(3) "Interested parties" means any person or entity to which Participant owes a fiduciary and/or legal responsibility, including, but not limited to, Customers, other brokers or dealers, counter-parties, vendors and banks.

Operative Date

The Exchange proposes to make the proposed rule change operative pursuant to two weeks' notice by the Exchange to its Participants via Information Memorandum, but not on a date prior to the expiration of the thirty (30) days pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Sections 6(b)(5) of the Act [12] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that adopting standardized BCP requirements that are similar to FINRA Rule 4370 and the BCP rules of other national securities exchanges [13] would better ensure that Participant BCPs meet minimum standards that are, when triggered, executed in a consistent and predictable manner, which furthers the purposes of Section 6(b)(5) of the Act by removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.[14]

The Exchange also believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between CHX Rules and FINRA Rules, which would result in less burdensome and more efficient regulatory compliance for Dual Members. To the extent that proposed Article 7, Rule 14 differs from FINRA Rules 4370 and 4517(c)(1), such differences are non-substantive in nature, merely clarify the scope of the rule, expands certain alternative communication and location requirements to apply to Associated Persons of a Participant or, in the case of the proposed term "interested parties," better defines the type of contra-parties that must be contemplated in the BCP.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change will harmonize CHX Rules with FINRA Rules regarding BCPs and, thus, has no impact on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as non-controversial under Section 19(b)(3)(A) of the Act [15] and paragraph (f)(6) of Rule 19b–4 thereunder.[16]

The Exchange asserts that the proposed rule change: (1) Will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.[17] While the Exchange does not currently have a rule that requires Participants maintain BCPs, the Exchange believes that the proposed rule change raises no novel issues, as it is substantively consistent with FINRA Rules 4370 and 4517(c)(1). Moreover, although proposed Article 7, Rule 14 differs from FINRA Rule 4370 in that the proposed rule expands alternative communication and location requirements to Associated Persons of Participants and explicitly requires BCPs contemplate a broader range of contra-parties (*i.e.*, interested parties), the Exchange believes that such differences are non-controversial as they merely expand FINRA Rule 4370 requirements to additional parties that rely on the orderly operation of the Participant in the event of an emergency. The Exchange also notes that the proposed rule change would apply to all Participants and not only Dual Members. As such, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act [18] and paragraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule should be approved or disapproved.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 6.

[14] *See supra* note 12.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CHX–2016–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2016–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2016–07 and should be submitted on or before July 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13715 Filed 6–9–16; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77996; File No. SR–NYSE–2016–22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 5, To Adopt Initial and Continued Listing Standards for the Listing of Equity Investment Tracking Stocks and Adopt Listing Fees Specific to Equity Investment Tracking Stocks

June 6, 2016.

On April 7, 2016, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt initial and continued listing standards for the listing of Equity Investment Tracking Stocks and to adopt fees for Equity Investment Tracking Stocks. The proposed rule change was published for comment in the **Federal Register** on April 27, 2016.[3] On April 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the original filing in its entirety.[4] On May 17, 2016, the Exchange filed Amendment No. 5 to the proposal, which superseded the filing, as amended by Amendment No. 1. Amendment No. 5 was published for comment in the **Federal Register** on May 23, 2016.[5] No comments have been received on the proposed rule change in response to both the original publication

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77674 (April 21, 2016), 81 FR 24919 (April 27, 2016).

[4] On May 13, 2016, the Exchange submitted and withdrew Amendment No. 2 to the proposed rule change. On May 13, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, and on May 16, 2016 the Exchange withdrew Amendment No. 3 to the proposed rule change. On May 16, 2016 the Exchange submitted Amendment No. 4 to the proposal, and on May 17, 2016, the Exchange withdrew Amendment No. 4 to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 77850 (May 17, 2016), 81 FR 32360 (May 23, 2016).

of the proposal in the **Federal Register**[6] and, to date, in response to the subsequent publication of the proposal as modified by Amendment No. 5.[7]

Section 19(b)(2) of the Act[8] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 11, 2016. The Commission is extending this 45-day time period for Commission action on the proposed rule change.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, as modified by Amendment No. 5.[9] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] and for the reason noted above, designates July 26, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2016–22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13716 Filed 6–9–16; 8:45 am]

BILLING CODE 8011–01–P

[6] See note 3 supra.

[7] See note 5 supra.

[8] 15 U.S.C. 78s(b)(2).

[9] See note 4 supra, and accompanying text.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(31).

DEPARTMENT OF STATE

[Public Notice 9601]

In the Matter of the Designation of Yarmouk Martyrs Brigade, aka Katibah Shuhada' al-Yarmouk, aka Liwa' Shuhada' al-Yarmouk, aka Yarmouk Brigade, aka Brigade of the Yarmouk Martyrs, aka Martyrs of Yarmouk, aka Al Yarmuk Brigade, aka Shuhda al-Yarmouk, aka Shohadaa al-Yarmouk Brigade, aka Suhada'a al-Yarmouk Brigade, aka Shuhada al Yarmouk Brigade, aka YMB, aka LSY as a Specially Designated Global Terrorist

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Yarmouk Martyrs Brigade, also known as Katibah Shuhada' al-Yarmouk, also known as Liwa' Shuhada' al-Yarmouk, also known as Yarmouk Brigade, also known as Brigade of the Yarmouk Martyrs, also known as Martyrs of Yarmouk, also known as Al Yarmuk Brigade, also known as Shuhda al-Yarmouk, also known as Shohadaa al-Yarmouk Brigade, also known as Suhada'a al-Yarmouk Brigade, also known as Shuhada al Yarmouk Brigade, also known as YMB, also known as LSY committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 31, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–13676 Filed 6–9–16; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36035]

Union Pacific Railroad Company—Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a trackage rights agreement dated April 5, 2016, has agreed to grant Union Pacific Railroad Company (UP) overhead trackage rights over approximately 41.3 miles of railroad between milepost 1.6, near Kansas City, Mo., and milepost 42.9, near Paola, Kan., on BNSF's Fort Scott Subdivision.[1]

The purpose of the proposed transaction is to allow UP to continue moving trains between Paola and Kansas City, as an alternative to UP's own route, thereby providing for increased efficiency in operations.[2]

UP may consummate the transaction on or after June 24, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by June 17, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36035, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, 1400 Douglas St., Stop 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: June 7, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–13754 Filed 6–9–16; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the Agreement between UP and BNSF was filed with the notice of exemption. UP simultaneously filed a motion for a protective order to protect the confidential and commercially sensitive information contained in the unredacted version of the Agreement, which UP submitted under seal in this proceeding. That motion will be addressed in a separate decision.

[2] UP states that it obtained trackage rights over the rail line as successor to the Missouri-Kansas-Texas Railroad Company (MKT). MKT was granted authority to acquire the trackage rights from Burlington Northern Railroad Company in *Missouri-Kansas-Texas Railroad—Trackage Rights—Burlington Northern Railroad*, FD 30672 (ICC served July 8, 1985).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0161]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection: Unified Registration System, FMCSA Registration/Updates

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to extend an ICR titled, "Unified Registration System, FMCSA Registration/Updates." This ICR is due to the Agency's development of a Final Rule titled, "Unified Registration System" (78 FR 52608 dated August 23, 2013) requiring those entities that are subject to the FMCSA's licensing, registration and certification regulations to use a new electronic on-line application Form MCSA–1 titled, "FMCSA Registration/Update(s)" to make data more readily accessible for all regulated entities. On October 21, 2015, FMCSA published a final rule delaying the final effective date of the URS final rule until September 30, 2016, with full compliance not due until December 31, 2016.

DATES: We must receive your comments on or before August 9, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0161 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Secrist, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone Number: (202) 385–2367; Email Address: *jeff.secrist@dot.gov.* Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background: Section 103 of the ICC Termination Act of 1995 (ICCTA) enacted 49 U.S.C. 13908, which required the Secretary of Transportation (Secretary) to propose regulations to replace four current identification and registration systems with a single, online, Federal system—the Unified Registration System (URS). The Unified Carrier Registration Act of 2005, subtitle C of title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1714, August 10, 2005] modified the requirements for a unified registration system by amending § 13908. In particular, SAFETEA–LU repealed the Single State Registration System (SSRS), one of the four systems identified in § 13908, and replaced it with the Unified Carrier Registration Agreement. It also modified the requirement that fees collected under the new system cover the costs of operating and upgrading the registration by placing limitations on certain fees that the Agency could charge. Section 4304 of SAFETEA–LU reiterated the congressional requirement for a single, Federal online system to replace the four individual systems identified under 49 U.S.C. 13908. This consolidation simplifies current Federal registration processes and makes data on interstate motor carriers, property brokers, freight forwarders, and other regulated entities more accessible. The URS applies to virtually every motor carrier, property broker, freight forwarder, cargo tank facility, and intermodal equipment provider that is required to register with the United States Department of Transportation (USDOT).

This information collection supports the DOT Strategic Goal of Safety. It will streamline the existing registration process and ensure that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, and other entities regulated by the Agency.

The information on the on-line Form MCSA–1 will be used by FMCSA to identify its regulated entities, to help prioritize the Agency's activities, to aid in assessing the safety outcomes of those activities and for statistical purposes. The FMCSA will collect the information electronically through on-line forms. The information is currently being collected through a series of forms, which may be filed on-line or on paper. Every interstate motor carrier operating commercial motor vehicles is required to register with FMCSA to obtain a

USDOT Number. Most for-hire carriers are also required to file a separate application for operating authority under 49 U.S.C. 13901. Mexico- and Non-North America-domiciled motor carriers file a separate registration form. The information collection will replace these three collections and create a single on-line form. This rule will streamline the collection and eliminate the need for motor carriers to file the same information on multiple forms.

Title: Unified Registration System, FMCSA Registration/Updates.

OMB Control Number: 2126–0051.

Type of Request: Extension of a currently approved information collection.

Respondents: Motor carriers (including private and exempt for-hire carriers effective September 30, 2016), freight forwarders, brokers, cargo tank (CT) facilities, and intermodal equipment providers (IEPs) that are required to initially register for and then maintain their safety and operating authority registrations with USDOT.

Estimated Number of Respondents: 78,400 respondents for initial registration filings; 507,500 respondents for completing the biennial update; 13,000 respondents for filing name/address change requests; 1,100 respondents for transfer of operating authority registration notifications; and 2,030 respondents for reinstatements of operating authority registration.

Estimated Time per Response: 1.34 hours for initial registration filings; and 10 minutes each for the biennial update, name/address change request, notification of transfer of operating authority registration, and reinstatement of revoked or inactive registration.

Expiration Date: November 30, 2016.

Frequency of Response: This information collection covers the initial application to register with FMCSA as a motor carrier, freight forwarder, broker, intermodal equipment provider, and cargo tank facility; as well as subsequent applications to complete a biennial update or any other update of the information recorded on the registration system, submit a name/address change request, seek a reinstatement of revoked or inactive registration, and notify the Agency of a transfer of operating authority registration.

Estimated Total Annual Burden: 105,000 burden hours for the initial applications of registration; 84,600 burden hours for completing biennial updates; 2,200 burden hours for filing name/address change requests; 180 burden hours for operating authority registration transfer notifications; and 340 burden hours for reinstatements of revoked or inactive registration; for a total estimated annual burden of 192,320 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: June 3, 2016.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2016–13752 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA—2016–0167

Parts and Accessories Necessary for Safe Operation, Lamps and Reflective Devices; Application for an Exemption From STEMCO LP

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption from STEMCO LP (STEMCO) to allow motor carriers to operate commercial motor vehicles (CMVs) that are equipped with STEMCO's TrailerTail® aerodynamic device with rear identification lamps and rear clearance lamps that are mounted lower than currently permitted by the Agency's regulations. The Federal Motor Carrier Safety Regulations (FMCSRs) require rear identification lamps and rear clearance lamps to be located ''as close as practicable to the top of the vehicle.'' While the TrailerTail® aerodynamic device is currently mounted slightly below the roof of the vehicle, STEMCO states that this offset prevents the device from delivering the maximum available fuel economy benefit as opposed to mounting it flush with the top of the vehicle which may block the visibility of the rear identification lamps and rear clearance lamps. STEMCO believes that locating the rear identification lamps and rear clearance lamps lower on the vehicle, on a horizontal plane with other required lamps (stop, turn, and tail lamps) as is done on a flatbed trailer or an intermodal chassis, will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. STEMCO is requesting the temporary exemption in advance of petitioning FMCSA to conduct a rulemaking to amend 49 CFR 393.11.

DATES: Comments must be received on or before July 11, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2016–0167 using any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site as well as the DOT's *http://docketsinfo.dot.gov* Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Cestero, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–5541; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

STEMCO Application for Exemption

STEMCO, on behalf of motor carriers utilizing its TrailerTail® aerodynamic devices, applied for an exemption from 49 CFR 393.11 to allow rear identification lamps and rear clearance lamps to be mounted lower than currently permitted by the Agency's regulations. A copy of the application is included in the docket referenced at the beginning of this notice.

Table 1 of § 393.11, ''Required lamps and reflectors on commercial motor vehicles,'' specifies the requirements for lamps, reflective devices and associated equipment by the type of CMV. All CMVs manufactured on or after December 25, 1968, must, at a minimum, meet the applicable requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, reflective devices, and associated equipment,'' in effect at the time of manufacture of the vehicle. Rear identification lamps must be mounted as close as practicable to the top of the vehicle. One lamp must be as close as practicable to the vertical centerline and one on each side of the center lamp with the lamp centers spaced not less than 6 inches or more than 12 inches apart, and all on the same level. One rear clearance lamp must be located on each side of the vertical centerline of the vehicle to indicate overall width, both of which must be on the same level and as high as practicable.

The U.S. Environmental Protection Agency (EPA) and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) have jointly proposed a national program that would establish the next phase of greenhouse gas (GHG) emissions and fuel efficiency standards for medium- and heavy-duty vehicles. This ''Phase 2 program'' would significantly reduce carbon emissions and improve the fuel efficiency of heavy-duty vehicles, helping to address the challenges of global climate change and energy security. In February 2015, STEMCO purchased ATDynamics and its TrailerTail® product line, a collapsible boat tail technology that improves the rear aerodynamic shape of CMVs. STEMCO states that motor carriers are evaluating the TrailerTail® rear aerodynamic device to help meet (1) the proposed Phase 2 program standards, and (2) the California Air Resources Board (CARB) Tractor-Trailer Greenhouse Gas Regulation for dry van and refrigerated van type trailers that has been in effect since 2010.

For newly manufactured trailers, STEMCO states that the TrailerTail® top panel is mounted 1.5—3.5 inches below the roof of the trailer in order to comply with the FMVSS No. 108 and FMCSR mounting location requirements for rear identification and clearance lamps. However, STEMCO states:

> This inset creates an unaerodynamic gap as airflow transitions from the trailer roof onto the TrailerTail panels and has prevented TrailerTails from delivering the maximum available fuel economy benefit. Wind tunnel flow visualization highlights the contrast in airflow between flush and inset panels and our own internal testing estimates an additional 0.14 delta C_DA (measured drag area) gain and 70 million gallons of annual diesel fuel savings can be achieved simply by installing TrailerTails flush with the trailer roof. In order to evaluate the actual performance of flush mounted TrailerTail aerodynamic systems on actual fleet based fuel economy, it is necessary to request relief from the location requirements for upper identification lamps and rear clearance lamps on commercial van trailers and box trucks. Additionally, these lower clearance and identification lamp locations will pave the way for the commercial launch of collapsible boat tails for roll door box trailers, where the rear upper header is a critical mounting location of boat tail components.

In support of its application, STEMCO states that ''The relocation of the rear identification lamps and rear clearance lamps to a lower location on the trailer or box truck are equivalent to the current required lamp location on a flatbed trailer or intermodal chassis, so no safety impact is anticipated.'' In addition, according to the application:

> STEMCO believes that there will be no safety impact from the relocation of both the rear identification lamps and the rear clearance lamps to a location on an approximate horizontal plane with other rear lamps. NHTSA issued legal interpretations from 1968 until approximately 1999 to trailer manufacturers to allow the lower mounting location for rear identification lamps and rear clearance lamps when there was no ''practicable'' means of installing the lamps ''as close as practicable to the top of the vehicle.'' NHTSA subsequently issued an interpretative rule on April 5, 1999, 64 FR 16358, suggesting that trailer manufacturers could no longer mount lamps at the lower location as narrow lamps were now readily available, and NHTSA would no longer defer to a manufacturer's subjective determination of practicability for locating lamps in the rear upper header location on van trailers and box trucks. However, NHTSA noted in that same Notice that they did not intend to bring enforcement actions based on this interpretive rule immediately. Subsequently, trailer manufacturers continued to manufacture van trailers and box trucks with the rear identification lamps and rear clearance lamps mounted lower on the vehicles on an approximate horizontal plane with the other required lamps.''

STEMCO states that without the exemption, it will be unable to verify fleet performance of a higher performance TrailerTail® design that is expected to provide the maximum available fuel economy benefit that may

be necessary in order to meet future fuel efficiency requirements.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on STEMCO's application for an exemption from 49 CFR 393.11. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file relevant information in the public docket that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 2, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–13774 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2016–0059]

Pipeline Safety: Public Workshop on Public Awareness

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing a one-day public workshop PHMSA is sponsoring on public awareness to bring pipeline safety stakeholders together to review the findings from the joint Public Awareness Program Working Group's (PAPWG) Strengths, Weaknesses, Opportunities, and Threats (SWOT) Report and explore future actions that can be taken to expand public awareness and stakeholder engagement efforts. Various stakeholders, including federal and state regulators, industry, pipeline operators, public, emergency response officials, local public officials, land planners, and excavators, will engage to strengthen pipeline safety public awareness.

DATES: The workshop will be held on July 13, 2016. The workshop will take place from 8:00 a.m. until approximately 5:00 p.m. central time. The workshop will be webcasted live and recorded for pipeline safety stakeholders who are unable to travel to the workshop.

ADDRESSES: The workshop will be held in Chicago, IL. The meeting location in Chicago and the hotel information will be provided on the meeting Web site at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=114&nocache=5719* in the near future. The meeting room location will be posted on the day of the workshop.

Registration: Members of the public may attend this free workshop. To help assure that adequate space is provided, all attendees, both in person and by webcast, should register in advance for the workshop at the PHMSA Public Meeting Web site at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=114&nocache=5719*. The meeting agenda will be posted and updated on the registration site. On-site registration will also be available for those attending in person starting at 7:00 a.m. central time. All workshop presentations will be available on the meeting registration Web site within 15 days following the workshop.

Comments: Members of the public may submit written comments either before or after the workshop. Comments should reference Docket No. PHMSA–2016–0059. Comments may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. eastern time, Monday through Friday, except Federal holidays.

Instructions: Identify the docket number (PHMSA–2016–0059) at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act statement below for additional information.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477) or visit *http://dms.dot.gov.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Dr. Christie Murray, Director, Program Development Division, PHMSA, at (202) 366–4996 or by email at *Christie.Murray@dot.gov* no later than July 8, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Christie Murray, Director, Program Development Division, PHMSA, at 202–366–4996 or by email at *Christie.Murray@dot.gov.*

SUPPLEMENTARY INFORMATION: Stakeholders are encouraged to review the PAPWG SWOT Report prior to the workshop. The PAPWG SWOT Report is available at: *https://primis.phmsa.dot.gov/comm/publicawareness/docs/PAPWG%20SWOT%20Analysis%20Report-FINAL%2005-16-16.pdf.*

The Federal pipeline safety regulations (49 CFR 192.616 and 49 CFR 195.440) require pipeline operators to develop and implement public awareness programs that follow the guidance provided by the API RP 1162, 1st Edition, "Public Awareness Programs for Pipeline Operators" (incorporated by reference in the pipeline safety regulations 49 CFR 192.616 and 49 CFR 195.440). Pipeline operators are required to implement public awareness programs that provide pipeline safety information to the affected public, emergency response officials, local public officials, and excavators. Implementing and improving public awareness programs allows pipeline stakeholders an opportunity to address pipeline safety concerns, such as third party damages, in a proactive manner.

The PAPWG was a collaborative stakeholder work group comprised of myriad pipeline safety stakeholders. The PAPWG was established in September 2013. The mission of the PAPWG was to review pipeline safety public awareness data and information from various sources, identify relevant topical review areas, perform SWOT analyses of those topical areas, and report out on key findings to support improving public awareness.

Issued in Washington, DC, on June 7, 2016, under the authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–13845 Filed 6–9–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board); Office of the Comptroller of the Currency (OCC), Treasury; and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the OCC, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number. The agencies have approved for public comment a proposal to extend, with minor revision, the Uniform Interagency Transfer Agent Registration and Amendment Form ("Form TA–1"), which is a currently approved collection of information. The agencies propose to modify Form TA–1, effective December 31, 2016, to require Board registrants to submit the form and attachments to a designated email address, to give FDIC registrants the option to submit the form and attachments to a designated email address, to require state savings associations to file with the FDIC, to remove outdated references to the Office of Thrift Supervision ("OTS"), to clarify the definition of a "qualifying security," and to make other instructional clarifications. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the agencies should modify the proposed revisions before giving final approval. The agencies will then submit the revisions to OMB for approval.

DATES: Comments must be submitted on or before August 9, 2016.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

Board: You may submit comments, which should refer to "Form TA–1," by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the reporting form numbers in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention "1557–0124, Form TA–1," 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to 571–465–4326 or by electronic mail to *prainfo@occ.treas.gov.*

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling 202–649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FDIC: You may submit comments, which should refer to "Form TA–1," by any of the following methods:

- *Agency Web site: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Comments@FDIC.gov.* Include "Form TA–1" in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, Room MB–3016, or Manuel E. Cabeza, Counsel, Room MB–3105, Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to 202–395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to Form TA–1 discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the current Form TA–1 reporting form and instructions can be obtained at the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, 202–452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C

Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

OCC: Shaquita Merritt, OCC Clearance Officer, 202–649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Washington, DC 20219.

FDIC: Gary Kuiper, Counsel, 202–898–3877, or Manuel E. Cabeza, Counsel, 202–898–3767, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

The agencies are proposing to extend, with minor revision, Form TA–1, which is a currently approved collection of information for each agency.

Report Title: Uniform Interagency Transfer Agent Registration and Amendment Form.

Form Number: Form TA–1.

Frequency of Response: On occasion.

Affected Public: National banks and their subsidiaries, federal savings associations and their subsidiaries, state member banks ("SMBs") and their subsidiaries, state nonmember banks, state savings associations, bank holding companies ("BHCs"), certain nondeposit trust company subsidiaries of BHCs, and savings and loan holding companies ("SLHCs").

Board

OMB Number: 7100–0099.

Estimated Number of Respondents: registrations: 2; amendments: 4.

Estimated Average Time per Response: registrations: 1.25 hours; amendments: 10 minutes.

Estimated Total Annual Burden: 4 hours.

OCC

OMB Number: 1557–0124.

Estimated Number of Respondents: registrations: 1; amendments: 10.

Estimated Average Time per Response: registrations: 1.25 hours; amendments: 10 minutes.

Estimated Total Annual Burden: 3 hours.

FDIC

OMB Number: 3064–0026.

Estimated Number of Respondents: registrations: 2; amendments: 10.

Estimated Average Time per Response: registrations: 1.25 hours; amendments: 10 minutes.

Estimated Total Annual Burden: 4 hours.

General Description of Report

Section 17A(c) of the Security Exchange Act of 1934 (the Act) requires all transfer agents for securities registered under section 12 of the Act or, if the security would be required to be registered except for the exemption from registration provided by Section 12(g)(2)(B) or Section 12(g)(2)(G), to "fil[e] with the appropriate regulatory agency . . . an application for registration in such form and containing such information and documents . . . as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section."[1] In general, an entity performing transfer agent functions for a security is required to register with its appropriate regulatory agency ("ARA") if the security is registered on a national securities exchange or if the issuer of the security has total assets exceeding $10 million and a class of equity security held of record by 2,000 persons or, for an issuer that is not a bank, BHC, or SLHC, by 500 persons who are not accredited investors.[2] The Board's Regulation H (12 CFR 208.31(a)) and Regulation Y (12 CFR 225.4(d)), the OCC's 12 CFR 9.20, and the FDIC's 12 CFR part 341 implement these provisions of the Act.

To accomplish the registration of transfer agents, Form TA–1 was developed in 1975 as an interagency effort by the Securities and Exchange Commission (SEC) and the agencies. The agencies primarily use the data collected on Form TA–1 to determine whether an application for registration should be approved, denied, accelerated or postponed, and they use the data in connection with their supervisory responsibilities.

Current Actions

The agencies propose to revise the reporting instructions for Form TA–1. The Board will require, and the FDIC will provide the option for, respondents to submit a Portable Document Format (PDF) version of the form and attachments to a designated email address for each respective agency, effective December 31, 2016. In addition, the proposed revisions remove outdated references to the OTS, clarify the definition of a "qualifying security" pursuant to statutory changes, reduce the number of Form TA–1 copies that registrants are required to file with their ARA to one for all agencies, require state savings associations to file with the FDIC, and make other minor instructional clarifications.

[1] 15 U.S.C. 78q–1.

[2] 15 U.S.C. 78l(g)(1).

Discussion of Proposed Revisions

Title III of the Dodd-Frank Act Wall Street Reform and Consumer Protection Act abolishes the OTS and transfers the OTS's functions to the OCC, the Board, and the FDIC effective as of July 21, 2011.[3] Therefore, there is no reason to continue to refer to the OTS on Form TA–1.

Pursuant to statutory changes,[4] the definition of a 'qualifying security' was altered to include securities registered on a national securities exchange pursuant to Section 12(b) of the Act, as well as equity securities registered pursuant to Section 12(g)(1) of the Act for issuers that have:

(a) Total assets exceeding $10 million and a class of equity security (other than an exempted security) held of record by either 2,000 persons, or 500 persons who are not accredited investors (as such term is defined by the SEC), and

(b) In the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), has total assets exceeding $10 million and a class of equity security (other than an exempted security) held of record by 2,000 or more persons.

Legal Basis for the Information Collection

The agencies have determined that Form TA–1 is mandatory and that its collection is authorized by sections 17A(c), 17(a)(3), and 23(a)(1) of the Act, as amended (15 U.S.C. 78q-1(c), 78q(a)(3), and 78w(a)(1)). Additionally, Section 3(a)(34)(B) of the Act (15 U.S.C. 78c(a)(34)(B)(ii)) provides that the OCC is the ARA in the case of a national banks and insured Federal savings associations, and subsidiaries of such institutions; the Board is the ARA for purposes of various filings by state member banks and their subsidiaries, BHCs, SLHCs, and certain nondepository trust company subsidiaries of BHCs that act as a clearing agency or transfer agent; and the FDIC is the ARA in the case of state nonmember banks and state non-member savings associations, and subsidiaries of such institutions. The registrations are public filings and are not considered confidential.

[3] 12 U.S.C. 5301, *et seq.*

[4] *See* Fixing America's Surface Transportation Act § 85001, Public Law 114–94, 129 Stat. 1312, 1797 (2010), amending 15 U.S.C. 78a *et seq;* Jumpstart Our Business Startups Act § 501, Public Law 112–106, 126 Stat. 306, 325 (2012), amending 15 U.S.C. 78l(g)(1)(A).

Section 208.31 of the Board's regulations (12 CFR 208.31) governs registration of transfer agents for state member banks, and section 225.4(d) (12 CFR 225.4(d)) governs registration of transfer agents for bank holding companies and certain nondepository trust company subsidiaries of BHCs that act as a transfer agent. The Board is also the ARA for SLHCs seeking to act as transfer agent. Before any of these entities may perform any transfer agent function for a qualifying security, it must register on Form TA–1 with the Board and its registration must become effective.

Section 341.3 of FDIC's regulations (12 CFR part 341) governs registration of transfer agents for state nonmember banks and state non-member savings associations, and subsidiaries of such institutions. Before an insured state nonmember bank or a state savings association and any subsidiary of such institution may perform any transfer agent function for a qualifying security, it must register on Form TA–1 with the FDIC and its registration must become effective.

Section 9.20 of the OCC's regulations (12 CFR 9.20) governs registration of transfer agents. Section 9.20(b) provides that SEC rules pursuant to Section 17A of the Act, prescribing operational and reporting requirements for transfer agents, apply to the domestic activities of registered national bank transfer agents. Before a national bank, Federal savings bank, or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank, may perform any transfer agent function for a qualifying security, it must register on Form TA–1 with the OCC and its registration must become effective.

Request for Comment

The agencies invite comment on the following topics related to this collection of information:

(a) Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: May 24, 2016.

Mary H. Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, June 3, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 24th day of May, 2016.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2016–13810 Filed 6–9–16; 8:45 am]

BILLING CODE 6714–01–P; 4810–33–P; 6210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–H

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–H, Health Coverage Tax Credit (HCTC) Advance Payments.

DATES: Written comments should be received on or before August 9, 2016. to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6528, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545–1813.

Form Number: Form 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

Current Actions: There are no changes being made to the form at this time. However, the estimated number of responses is being decreased as a result of updated filing estimates.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 49,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 14,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–13778 Filed 6–9–16; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 81 Friday,
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Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 42

Federal Reserve System

12 CFR Part 236

Federal Deposit Insurance Corporation

12 CFR Part 372

National Credit Union Administration

12 CFR Parts 741 and 751

Federal Housing Finance Agency

12 CFR Part 1232

Securities and Exchange Commission

17 CFR Parts 240, 275, and 303

Incentive-Based Compensation Arrangements; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 42

[Docket No. OCC–2011–0001]

RIN 1557–AD39

FEDERAL RESERVE SYSTEM

12 CFR Part 236

[Docket No. R–1536]

RIN 7100 AE–50

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 372

RIN 3064–AD86

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741 and 751

RIN 3133–AE48

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1232

RIN 2590–AA42

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 275, and 303

[Release No. 34–77776; IA–4383; File No. S7–07–16]

RIN 3235–AL06

Incentive-Based Compensation Arrangements

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Federal Housing Finance Agency (FHFA); National Credit Union Administration (NCUA); and U.S. Securities and Exchange Commission (SEC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The OCC, Board, FDIC, FHFA, NCUA, and SEC (the Agencies) are seeking comment on a joint proposed rule (the proposed rule) to revise the proposed rule the Agencies published in the **Federal Register** on April 14, 2011, and to implement section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 956 generally requires that the Agencies jointly issue regulations or guidelines: (1) Prohibiting incentive-based payment arrangements that the Agencies determine encourage inappropriate risks by certain financial institutions by providing excessive compensation or that could lead to material financial loss; and (2) requiring those financial institutions to disclose information concerning incentive-based compensation arrangements to the appropriate Federal regulator.

DATES: Comments must be received by July 22, 2016.

ADDRESSES: Although the Agencies will jointly review the comments submitted, it would facilitate review of the comments if interested parties send comments to the Agency that is the appropriate Federal regulator, as defined in section 956(e) of the Dodd-Frank Act, for the type of covered institution addressed in the comments. Commenters are encouraged to use the title "Incentive-based Compensation Arrangements" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Office of the Comptroller of the Currency: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title "Incentive-based Compensation Arrangements" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to *www.regulations.gov*. Enter "Docket ID OCC–2011–0001" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the *Regulations.gov*home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2011–0001" in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rule by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov*. Enter "Docket ID OCC–2011–0001" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen and then "Comments." Comments can be filtered by clicking on "View All" and then using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. Supporting materials may be viewed by clicking on "Open Docket Folder" and then clicking on "Supporting Documents." The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. 1536 and RIN No. 7100 AE–50, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN 3064–AD86, by any of the following methods:

- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@FDIC.gov.* Include the RIN 3064–AD86 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal.*

Federal Housing Finance Agency: You may submit your written comments on the proposed rulemaking, identified by RIN number, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA42" in the subject line of the message.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA42, Federal Housing Finance Agency, Eighth Floor, 400 7th Street SW., Washington, DC 20219. The package should be delivered at the 7th Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA42, Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

All comments received by the deadline will be posted without change for public inspection on the FHFA Web site at *http://www.fhfa.gov*, and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10:00 a.m. and 3:00 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649–3804.

National Credit Union Administration: You may submit comments by any of the following methods (please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.ncua.gov.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov*. Include "[Your name] Comments on "Notice of Proposed Rulemaking for Incentive-based Compensation Arrangements" in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.
- *Public Inspection:* All public comments are available on the agency's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except when not possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

Securities and Exchange Commission: You may submit comments by the following method:

Electronic Comments

- Use the SEC's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–07–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number S7–07–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The SEC will post all comments on the SEC's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the SEC's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the SEC does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the SEC or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT:

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NCUA: Vickie Apperson, Program Officer, and Jeffrey Marshall, Program Officer, Office of Examination & Insurance, (703) 518–6360; or Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SEC: Raymond A. Lombardo, Branch Chief, Kevin D. Schopp, Special Counsel, Division of Trading & Markets, (202) 551–5777 or *tradingandmarkets@sec.gov*; Sirimal R. Mukerjee, Senior Counsel, Melissa R. Harke, Branch Chief, Division of Investment Management, (202) 551–6787 or *IARules@SEC.gov*, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

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I. Introduction

Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or the "Act")[1] requires the Agencies to jointly prescribe regulations or guidelines with respect to incentive-based compensation practices at certain financial institutions (referred to as "covered financial institutions").[2] Specifically, section 956 of the Dodd-Frank Act ("section 956") requires that the Agencies prohibit any types of incentive-based compensation[3] arrangements, or any feature of any such arrangements, that the Agencies determine encourage inappropriate risks by a covered financial institution: (1) By providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or (2) that could lead to material financial loss to the covered financial institution. Under the Act, a covered financial institution also must disclose to its appropriate Federal regulator the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides excessive compensation, fees, or benefits or could lead to material financial loss to the institution. The Dodd-Frank Act does not require a covered financial institution to report the actual compensation of particular individuals.

The Act defines "covered financial institution" to include any of the following types of institutions that have $1 billion or more in assets: (A) A depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1813); (B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o); (C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; (D) an investment adviser, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); (E) the Federal National Mortgage Association (Fannie Mae); (F) the Federal Home Loan Mortgage Corporation (Freddie Mac); and (G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for these purposes.

The Act also requires that any compensation standards adopted under section 956 be comparable to the safety and soundness standards applicable to insured depository institutions under section 39 of the FDIA[4] and that the Agencies take the compensation standards described in section 39 of the FDIA into consideration in establishing compensation standards under section 956.[5] As explained in greater detail below, the standards established by the proposed rule are comparable to the standards established under section 39 of the FDIA.

In April 2011, the Agencies published a joint notice of proposed rulemaking that proposed to implement section 956 (2011 Proposed Rule).[6] Since the 2011 Proposed Rule was published, incentive-based compensation practices have evolved in the financial services industry. The Board, the OCC, and the FDIC have gained experience in applying guidance on incentive-based compensation,[7] FHFA has gained supervisory experience in applying compensation-related rules[8] adopted under the authority of the Safety and Soundness Act,[9] and foreign jurisdictions have adopted incentive-based compensation remuneration codes, regulations, and guidance.[10] In light of these developments and the comments received on the 2011 Proposed Rule, the Agencies are publishing a new proposed rule to implement section 956.

The first part of this **SUPPLEMENTARY INFORMATION** section provides background information on the proposed rule, including a summary of the 2011 Proposed Rule and areas in which the proposed rule differs from the 2011 Proposed Rule. The second part contains a section-by-section description of the proposed rule.[11] To help explain how the requirements of the proposed rule would work in practice, the Appendix to this **SUPPLEMENTARY INFORMATION** section sets out an example of an incentive-based compensation arrangement for a hypothetical senior executive officer at a hypothetical large banking organization and an example of how a forfeiture and downward adjustment review might be conducted for a senior manager at a hypothetical large banking organization.

For ease of reference, the proposed rules of the Agencies are referenced in this **SUPPLEMENTARY INFORMATION** section using a common designation of section ____.1 to section ____.14 (excluding the title and part designations for each agency). Each agency would codify its rule, if adopted, within its respective title of the Code of Federal Regulations.[12]

A. Background

Incentive-based compensation arrangements are critical tools in the management of financial institutions. These arrangements serve several important objectives, including attracting and retaining skilled staff and promoting better performance of the institution and individual employees. Well-structured incentive-based compensation arrangements can promote the health of a financial institution by aligning the interests of executives and employees with those of

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5641.

[3] Section 956(b) uses the term "incentive-based payment arrangement." It appears that Congress used the terms "incentive-based payment arrangement" and "incentive-based compensation arrangement" interchangeably. The Agencies have chosen to use the term "incentive-based compensation arrangement" throughout the proposed rule and this **SUPPLEMENTARY INFORMATION** section for the sake of clarity.

[4] 12 U.S.C. 1831p–1. The OCC, Board, and FDIC (collectively, the "Federal Banking Agencies") each have adopted guidelines implementing the compensation-related and other safety and soundness standards in section 39 of the FDIA. *See* Interagency Guidelines Establishing Standards for Safety and Soundness (the "Federal Banking Agency Safety and Soundness Guidelines"), 12 CFR part 30, Appendix A (OCC); 12 CFR part 208, Appendix D–1 (Board); 12 CFR part 364, Appendix A (FDIC).

[5] 12 U.S.C. 1831p–1(c).

[6] 76 FR 21170 (April 14, 2011).

[7] OCC, Board, FDIC, and Office of Thrift Supervision, "Guidance on Sound Incentive Compensation Policies" ("2010 Federal Banking Agency Guidance"), 75 FR 36395 (June 25, 2010).

[8] These include the Executive Compensation Rule (12 CFR part 1230), the Golden Parachute Payments Rule (12 CFR part 1231), and the Federal Home Loan Bank Directors' Compensation and Expenses Rule (12 CFR part 1261 subpart C).

[9] The Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*). 12 CFR 1201.1.

[10] *See, e.g.*, the European Union, Directive 2013/36/EU (effective January 1, 2014); United Kingdom Prudential Regulation Authority ("PRA") and Financial Conduct Authority ("FCA"), "PRA PS12/15/FCA PS15/16: Strengthening the Alignment of Risk and Reward: New Remuneration Rules" (June 25, 2015) ("UK Remuneration Rules"), *available at http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps1215.pdf*; Australian Prudential Regulation Authority ("APRA"), Prudential Practice Guide SPG 511—Remuneration (November 2013), *available at http://www.apra.gov.au/Super/Documents/Prudential-Practice-Guide-SPG-511-Remuneration.pdf*; Canada, The Office of the Superintendent of Financial Institutions ("OSFI") Corporate Governance Guidelines (January 2013) ("OSFI Corporate Governance Guidelines"), *available at http://www.osfi-bsif.gc.ca/eng/fi-if/rg-ro/gdn-ort/gl-ld/pages/cg_guideline.aspx* and Supervisory Framework (December 2010) ("OSFI Supervisory Framework"), *available at http://www.osfi-bsif.gc.ca/Eng/Docs/sframew.pdf*; Switzerland, Financial Market Supervisory Authority ("FINMA"), 2010/01 FINMA Circular on Remuneration Schemes (October 2009) ("FINMA Remuneration Circular"), *available at https://www.finma.ch/en/documentation/circulars/#Order=2*.

[11] This section-by-section description also includes certain examples of how the proposed rule would work in practice. These examples are intended solely for purposes of illustration and do not cover every aspect of the proposed rule. They are provided as an aid to understanding the proposed rule and do not carry the force and effect of law or regulation.

[12] Specifically, the Agencies propose to codify the rules as follows: 12 CFR part 42 (OCC); 12 CFR part 236 (the Board); 12 CFR part 372 (FDIC); 17 CFR part 303 (SEC); 12 CFR parts 741 and 751 (NCUA); and 12 CFR part 1232 (FHFA).

the institution's shareholders and other stakeholders. At the same time, poorly structured incentive-based compensation arrangements can provide executives and employees with incentives to take inappropriate risks that are not consistent with the long-term health of the institution and, in turn, the long-term health of the U.S. economy. Larger financial institutions in particular are interconnected with one another and with many other companies and markets, which can mean that any negative impact from inappropriate risk-taking can have broader consequences. The risk of these negative externalities may not be fully taken into account in incentive-based compensation arrangements, even arrangements that otherwise align the interests of shareholders and other stakeholders with those of executives and employees.

There is evidence that flawed incentive-based compensation practices in the financial industry were one of many factors contributing to the financial crisis that began in 2007. Some compensation arrangements rewarded employees—including non-executive personnel like traders with large position limits, underwriters, and loan officers—for increasing an institution's revenue or short-term profit without sufficient recognition of the risks the employees' activities posed to the institutions, and therefore potentially to the broader financial system.[13] Traders with large position limits, underwriters, and loan officers are three examples of non-executive personnel who had the ability to expose an institution to material amounts of risk. Significant losses caused by actions of individual traders or trading groups occurred at some of the largest financial institutions during and after the financial crisis.[14]

Of particular note were incentive-based compensation arrangements for employees in a position to expose the institution to substantial risk that failed to align the employees' interests with those of the institution. For example, some institutions gave loan officers incentives to write a large amount of loans or gave traders incentives to generate high levels of trading revenues, without sufficient regard for the risks associated with those activities. The revenues that served as the basis for calculating bonuses were generated immediately, while the risk outcomes might not have been realized for months or years after the transactions were completed. When these, or similarly misaligned incentive-based compensation arrangements, are common in an institution, the foundation of sound risk management can be undermined by the actions of employees seeking to maximize their own compensation.

The effect of flawed incentive-based compensation practices is demonstrated by the arrangements implemented by Washington Mutual (WaMu). According to the Senate Permanent Subcommittee on Investigations Staff's report on the failure of WaMu "[l]oan officers and processors were paid primarily on volume, not primarily on the quality of their loans, and were paid more for issuing higher risk loans. Loan officers and mortgage brokers were also paid more when they got borrowers to pay higher interest rates, even if the borrower qualified for a lower rate—a practice that enriched WaMu in the short term, but made defaults more likely down the road."[15]

Flawed incentive-based compensation arrangements were evident in not just U.S. financial institutions, but also major financial institutions worldwide.[16] In a 2009 survey of banking organizations engaged in wholesale banking activities, the Institute of International Finance found that 98 percent of respondents recognized the contribution of incentive-based compensation practices to the financial crisis.[17]

Shareholders and other stakeholders in a covered institution[18] have an interest in aligning the interests of executives, managers, and other employees with the institution's long-term health. However, aligning the interests of shareholders (or members, in the case of credit unions, mutual savings associations, mutual savings banks, some mutual holding companies, and Federal Home Loan Banks) and other stakeholders with employees may not always be sufficient to protect the safety and soundness of an institution, deter excessive compensation, or deter behavior or inappropriate risk-taking that could lead to material financial loss at the institution. Executive officers and employees of a covered institution may be willing to tolerate a degree of risk that is inconsistent with the interests of stakeholders, as well as broader public policy goals.

Generally, the incentive-based compensation arrangements of a covered institution should reflect the interests of the shareholders and other stakeholders, to the extent that the incentive-based compensation makes those covered persons demand more or less reward for their risk-taking at the covered institution, and to the extent that incentive-based compensation changes those covered persons' risk-taking. However, risks undertaken by a covered institution—particularly a larger institution—can spill over into the broader economy, affecting other institutions and stakeholders. Therefore, there may be reasons why the preferences of all of the stakeholders are not fully reflected in incentive-based compensation arrangements. Hence, there is a public interest in curtailing the inappropriate risk-taking incentives provided by incentive-based compensation arrangements. Without restrictions on incentive-based compensation arrangements, covered institutions may engage in more risk-taking than is optimal from a societal perspective, suggesting that regulatory measures may be required to cut back on the risk-taking incentivized by such arrangements. Particularly at larger institutions, shareholders and other stakeholders may have difficulty effectively monitoring and controlling the impact of incentive-based compensation arrangements throughout the institution that may affect the institution's risk profile, the full range of stakeholders, and the larger economy.

As a result, supervision and regulation of incentive-based compensation can play an important role in helping safeguard covered institutions against incentive-based compensation practices that threaten safety and soundness, are excessive, or could lead to material financial loss. In particular, such supervision and regulation can help address the negative externalities affecting the broader economy or other institutions that may arise from inappropriate risk-taking by large financial institutions.

B. Supervisory Experience

To address such practices, the Federal Banking Agencies proposed, and then later adopted, the 2010 Federal Banking Agency Guidance governing incentive-based compensation programs, which applies to all banking organizations regardless of asset size. This Guidance uses a principles-based approach to ensure that incentive-based compensation arrangements appropriately tie rewards to longer-term performance and do not undermine the safety and soundness of banking organizations or create undue risks to the financial system. In addition, to foster implementation of improved incentive-based compensation practices, the Board, in cooperation with the OCC and FDIC, initiated in late 2009 a multidisciplinary, horizontal review ("Horizontal Review") of incentive-based compensation practices at 25 large, complex banking organizations, which is still ongoing.[19] One goal of the Horizontal Review is to help improve the Federal Banking Agencies' understanding of the range and evolution of incentive-based compensation practices across institutions and categories of employees within institutions. The second goal is to provide guidance to each institution in implementing the 2010 Federal Banking Agency Guidance. The supervisory experience of the Federal Banking Agencies in this area is also relevant to the incentive-based compensation practices at broker-dealers and investment advisers.

As part of the Horizontal Review, the Board conducted reviews of line of business operations in the areas of trading, mortgage, credit card, and commercial lending operations as well as senior executive incentive-based compensation awards and payouts. The institutions subject to the Horizontal Review have made progress in developing practices that would incorporate the principles of the 2010 Federal Banking Agency Guidance into their risk management systems, including through better recognition of risk in incentive-based compensation decision-making and improved practices to better balance risk and reward. Many of those changes became evident in the actual compensation arrangements of the institutions as the review progressed. In 2011, the Board made public its initial findings from the Horizontal Review, recognizing the steps the institutions had made towards improving their incentive-based compensation practices, but also noting that each institution needed to do more.[20] In early 2012, the Board initiated a second, cross-firm review of 12 additional large banking organizations ("2012 LBO Review"). The Board also monitors incentive-based compensation as part of ongoing supervision. Supervisory oversight focuses most intensively on large banking organizations because they are significant users of incentive-based compensation and because flawed approaches at these organizations are more likely to have adverse effects on the broader financial system. As part of that supervision, the Board also conducts targeted incentive-based compensation exams and considers incentive-based compensation in the course of wider line of business and risk-related reviews.

For the past several years, the Board also has been actively engaged in international compensation, governance, and conduct working groups that have produced a variety of publications aimed at further improving incentive-based compensation practices.[21]

The FDIC reviews incentive-based compensation practices as part of its safety and soundness examinations of state nonmember banks, most of which are smaller community institutions that would not be covered by the proposed rule. FDIC incentive-based compensation reviews are conducted in the context of the 2010 Federal Banking Agency Guidance and Section 39 of the FDIA. Of the 518 bank failures resolved by the FDIC between 2007 and 2015, 65 involved banks with total assets of $1 billion or more that would have been covered by the proposed rule. Of the 65 institutions that failed with total assets of $1 billion or more, 18 institutions or approximately 28 percent, were identified as having some level of issues or concerns related to compensation arrangements, many of which involved incentive-based compensation. Overall, most of the compensation issues related to either excessive compensation or tying financial incentives to metrics such as corporate performance or loan production without adequate consideration of related risks. Also, several cases involved poor governance practices, most commonly, dominant

[13] *See, e.g.,* Financial Crisis Inquiry Commission, "Financial Crisis Inquiry Report" (January 2011), at 209, 279, 291, 343, *available at https://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf;* Senior Supervisors Group, "Observations on Risk Management Practices during the Recent Market Turbulence" (March 6, 2008), *available at https://www.newyorkfed.org/medialibrary/media/newsevents/news/banking/2008/SSG_Risk_Mgt_doc_final.pdf.*

[14] A large financial institution suffered losses in 2012 from trading by an investment office in its synthetic credit portfolio. These losses amounted to approximately $5.8 billion, which was approximately 3.6 percent of the holding company's tier 1 capital. *https://www.sec.gov/Archives/edgar/data/19617/000001961713000221/0000019617-13-000221-index.htm* Form 10–K 2013, Pages 69 and 118. In 2007, a proprietary trading group at another large institution caused losses of an estimated $7.8 billion (approximately 25 percent of the firm's total stockholder's equity). *http://www.morganstanley.com/about-us-ir/shareholder/10k113008/10k1108.pdf* Form 10–K 2008, Pages 45 and 108. Between 2005 and 2008, one futures trader at a large financial institution engaged in activities that caused losses of an estimated EUR4.9 billion in 2007, which was approximately 23 percent of the firm's 2007 tier 1 capital. *http://www.societegenerale.com/sites/default/files/03%20March%202008%202008%20Registration%20Document.pdf,* Pages, 52, 159–160; *http://www.societegenerale.com/sites/default/files/12%20May%202008%20The%20report%20by%20the%20General%20Inspection%20of%20Societe%20Generale.pdf,* Pages 1–71. In 2011, one trader at another large financial institution caused losses of an estimated $2.25 billion, which represented approximately 5.4 percent of the firm's tier 1 capital. *https://www.fca.org.uk/news/press-releases/fca-bans-kweku-mawuli-adoboli-from-the-financial-services-industry,* Page 1; *https://www.ubs.com/global/en/about_ubs/investor_relations/other_filings/sec.html.* 2012 SEC Form 20–F, Page 34. In 2007, one trader caused losses of an estimated $264 million at a large financial institution, which represented approximately 1.7 percent of its tier 1 capital. *http://www.federalreserve.gov/newsevents/press/enforcement/20081118a.htm,* Page 1; *https://www.bmo.com/ci/ar2008/downloads/bmo_ar2008.pdf,* Page 61.

[15] Staff of S. Permanent Subcomm. on Investigations, Wall Street and the Financial Crisis: Anatomy of a Financial Collapse at 143 (Comm. Print 2011).

[16] *See* Financial Stability Forum, "FSF Principles for Sound Compensation Practices" (April 2009) (the "FSB Principles"), *available at http://www.financialstabilityboard.org/publications/r_0904b.pdf;* Senior Supervisors Group, "Risk-management Lessons from the Global Banking Crisis of 2008" (October 2009), *available at http://www.newyorkfed.org/newsevents/news/banking/2009/ma091021.html.* The Financial Stability Forum was renamed the Financial Stability Board ("FSB") in April 2009.

[17] *See* Institute of International Finance, Inc., "Compensation in Financial Services: Industry Progress and the Agenda for Change" (March 2009), *available at http://www.oliverwyman.com/ow/pdf_files/OW_En_FS_Publ_2009_CompensationInFS.pdf. See also* UBS, "Shareholder Report on UBS's Write-Downs," (April 18, 2008), at 41–42 (identifying incentive effects of UBS compensation practices as contributing factors in losses suffered by UBS due to exposure to the subprime mortgage market), *available at http://www.ubs.com/1/ShowMedia/investors/agm?contentId=140333&name=080418ShareholderReport.pdf.*

[18] As discussed below, the proposed rule uses the term "covered institution" rather than the statutory term "covered financial institution."

[19] The financial institutions in the Horizontal Review are Ally Financial Inc.; American Express Company; Bank of America Corporation; The Bank of New York Mellon Corporation; Capital One Financial Corporation; Citigroup Inc.; Discover Financial Services; The Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; Northern Trust Corporation; The PNC Financial Services Group, Inc.; State Street Corporation; SunTrust Banks, Inc.; U.S. Bancorp; and Wells Fargo & Company; and the U.S. operations of Barclays plc, BNP Paribas, Credit Suisse Group AG, Deutsche Bank AG, HSBC Holdings plc, Royal Bank of Canada, The Royal Bank of Scotland Group plc, Societe Generale, and UBS AG.

[20] Board, "Incentive Compensation Practices: A Report on the Horizontal Review of Practices at Large Banking Organizations" (October 2011) ("2011 FRB White Paper), *available at http://www.federalreserve.gov/publications/other-reports/files/incentive-compensation-practices-report-201110.pdf.*

[21] *See, e.g.,* FSB Principles; FSB, "FSB Principles for Sound Compensation Practices: Implementation Standards, Basel, Switzerland" (September 2009), *available at http://www.fsb.org/wp-content/uploads/r_090925c.pdf?page_moved=1* (together with the FSB Principles, the "FSB Principles and Implementation Standards"); Basel Committee on Banking Supervision, "Report on Range of Methodologies for Risk and Performance Alignment of Remuneration" (May 2011); Basel Committee on Banking Supervision, "Principles for the Effective Supervision of Financial Conglomerates" (September 2012); FSB, "Implementing the FSB Principles for Sound Compensation Practices and their Implementation Standards—First, Second, Third, and Fourth Progress Reports" (June 2012, August 2013, November 2014, November 2015), *available at http://www.fsb.org/publications/?policy_area%5B%5D=24.*

management influencing improper incentives.[22]

The OCC reviews and assesses compensation practices at individual banks as part of its normal supervisory activities. For example, the OCC identifies matters requiring attention (MRAs) relating to compensation practices, including matters relating to governance and risk management and controls for compensation. The OCC's Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches[23] (the "OCC's Heightened Standards") require covered banks to establish and adhere to compensation programs that prohibit incentive-based payment arrangements that encourage inappropriate risks by providing excessive compensation or that could lead to material financial loss. The OCC includes an assessment of the banks' compensation practices when determining compliance with the OCC's Heightened Standards.

In addition to safety and soundness oversight, FHFA has express statutory authorities and mandates related to compensation paid by its regulated entities. FHFA reviews compensation arrangements before they are implemented at Fannie Mae, Freddie Mac, the Federal Home Loan Banks, and the Office of Finance of the Federal Home Loan Bank System. By statute, FHFA must prohibit its regulated entities from providing compensation to any executive officer of a regulated entity that is not reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.[24] FHFA also has additional authority over the Enterprises during conservatorship, and has established compensation programs for Enterprise executives.[25]

In early 2014, FHFA issued two final rules related to compensation pursuant to its authority over compensation under the Safety and Soundness Act.[26] The Executive Compensation Rule sets forth requirements and processes with respect to compensation provided to executive officers by the Enterprises, the Federal Home Loan Banks, and the Federal Home Loan Bank System's Office of Finance.[27] Under the rule, those entities may not enter into an incentive plan with an executive officer or pay any incentive compensation to an executive officer without providing advance notice to FHFA.[28] FHFA's Golden Parachute Payments Rule governs golden parachute payments in the case of a regulated entity's insolvency, conservatorship, or troubled condition.[29]

In part because of the work described above, incentive-based compensation practices and the design of incentive-based compensation arrangements at banking organizations supervised by the Federal Banking Agencies have improved significantly in the years since the recent financial crisis. However, the Federal Banking Agencies have continued to evaluate incentive-based compensation practices as a part of their ongoing supervision responsibilities, with a particular focus on the design of incentive-based compensation arrangements for senior executive officers; deferral practices (including compensation at risk through forfeiture and clawback mechanisms); governance and the use of discretion; ex ante risk adjustment; and control function participation in incentive-based compensation design and risk evaluation. The Federal Banking Agencies' supervision has been focused on ensuring robust risk management and governance practices rather than on prescribing levels of pay.

Generally, the supervisory work of the Federal Banking Agencies and FHFA has promoted more risk-sensitive incentive-based compensation practices and effective risk governance. Incentive-based compensation decision-making increasingly leverages underlying risk management frameworks to help ensure better risk identification, monitoring, and escalation of risk issues. Prior to the recent financial crisis, many institutions had no effective risk adjustments to incentive-based compensation at all. Today, the Board has observed that incentive-based compensation arrangements at the largest banking institutions reflect risk adjustments, the largest banking institutions take into consideration adverse outcomes, more pay is deferred, and more of the deferred amount is subject to reduction based on failure to meet assigned performance targets or as a result of adverse outcomes that trigger forfeiture and clawback reviews.[30]

Similarly, prior to the recent financial crisis, institutions rarely involved risk management and control personnel in incentive-based compensation decision-making. Today, control functions frequently play an increased role in the design and operation of incentive-based compensation, and institutions have begun to build out frameworks to help validate the effectiveness of risk adjustment mechanisms. Risk-related performance objectives and "risk reviews" are increasingly common. Prior to the recent financial crisis, boards of directors had begun to consider the relationship between incentive-based compensation and risk, but were focused on incentive-based compensation for senior executives. Today, refined policies and procedures promote some consistency and effectiveness across incentive-based compensation arrangements. The role of boards of directors has expanded and the quality of risk information provided to those boards has improved. Finance and audit committees work together with compensation committees with the goal of having incentive-based compensation result in prudent risk-taking.

Notwithstanding the recent progress, incentive-based compensation practices are still in need of improvement, including better targeting of performance measures and risk metrics to specific activities, more consistent application of risk adjustments, and better documentation of the decision-making process. Congress has required the Agencies to jointly prescribe regulations or guidelines that cover not only depository institutions and depository institution holding companies, but also other financial institutions. While the Federal Banking Agencies' supervisory approach based on the 2010 Federal Banking Agency

[22] The Inspector General of the appropriate federal banking agency must conduct a Material Loss Review ("MLR") when losses to the Deposit Insurance Fund from failure of an insured depository institution exceed certain thresholds. *See* FDIC MLRs, *available at https://www.fdicig.gov/mlr.shtml*; Board MLRs *available at http://oig.federalreserve.gov/reports/audit-reports.htm*; and OCC MLRs, *available at https://www.treasury.gov/about/organizational-structure/ig/Pages/audit_reports_index.aspx. See also* the Subcommittee Report.

[23] 12 CFR part 30, appendix D.

[24] 12 U.S.C. 4518(a).

[25] As conservator, FHFA succeeded to all rights, titles, powers and privileges of the Enterprises, and of any shareholder, officer or director of each company with respect to the company and its assets. The Enterprises have been under conservatorship since September 2008.

[26] 12 CFR parts 1230 and 1231, under the authority of the Safety and Soundness Act (12 U.S.C. 4518), as amended by the Housing and Economic Recovery Act of 2008. Congress enacted HERA, including new or amended provisions addressing compensation at FHFA's regulated entities, at least in part in response to the financial crisis that began in 2007.

[27] 12 CFR part 1230.

[28] 12 CFR 1230.3(d).

[29] 12 CFR part 1231.

[30] *See generally* 2011 FRB White Paper. The 2011 FRB White Paper provides specific examples of how compensation practices at the institutions involved in the Board's Horizontal Review of Incentive Compensation have changed since the recent financial crisis.

Guidance and the work of FHFA have resulted in improved incentive-based compensation practices, there are even greater benefits possible under rule-based supervision. Using their collective supervisory experiences, the Agencies are proposing a uniform set of enforceable standards applicable to a larger group of institutions supervised by all of the Agencies. The proposed rule would promote better incentive-based compensation practices, while still allowing for some flexibility in the design and operation of incentive-based compensation arrangements among the varied institutions the Agencies supervise, including through the tiered application of the proposed rule's requirements.

C. Overview of the 2011 Proposed Rule and Public Comment

The Agencies proposed a rule in 2011, rather than guidelines, to establish requirements applicable to the incentive-based compensation arrangements of all covered institutions. The 2011 Proposed Rule would have supplemented existing rules, guidance, and ongoing supervisory efforts of the Agencies.

The 2011 Proposed Rule would have prohibited incentive-based compensation arrangements that could encourage inappropriate risks. It would have required compensation practices at regulated financial institutions to be consistent with three key principles—that incentive-based compensation arrangements should appropriately balance risk and financial rewards, be compatible with effective risk management and controls, and be supported by strong corporate governance. The Agencies proposed that financial institutions with $1 billion or more in assets be required to have policies and procedures to ensure compliance with the requirements of the rule, and submit an annual report to their Federal regulator describing the structure of their incentive-based compensation arrangements.

The 2011 Proposed Rule included two additional requirements for "larger financial institutions."[31] The first would have required these larger financial institutions to defer 50 percent of the incentive-based compensation for executive officers for a period of at least three years. The second would have required the board of directors (or a committee thereof) to identify and approve the incentive-based compensation for those covered persons who individually have the ability to expose the institution to possible losses that are substantial in relation to the institution's size, capital, or overall risk tolerance, such as traders with large position limits and other individuals who have the authority to place at risk a substantial part of the capital of the covered institution.

The Agencies received more than 10,000 comments on the 2011 Proposed Rule, including from private individuals, community groups, several members of Congress, pension funds, labor federations, academic faculty, covered institutions, financial industry associations, and industry consultants.

The vast majority of the comments were substantively identical form letters of two types. The first type of form letter urged the Agencies to minimize the incentives for short-term risk-taking by executives by requiring at least a five-year deferral period for executive bonuses at big banks, banning executives' hedging of their pay packages, and requiring specific details from banks on precisely how they ensure that executives will share in the long-term risks created by their decisions. These commenters also asserted that the final rule should apply to the full range of important financial institutions and cover all the key executives at those institutions. The second type of form letter stated that the commenter or the commenter's family had been affected by the financial crisis that began in 2007, a major cause of which the commenter believed to be faulty pay practices at financial institutions. These commenters suggested various methods of improving these practices, including basing incentive-based compensation on measures of a financial institution's safety and stability, such as the institution's bond price or the spread on credit default swaps.

Comments from community groups, members of Congress, labor federations, and pension funds generally urged the Agencies to strengthen the proposed rule and many cited evidence suggesting that flawed incentive-based compensation practices in the financial industry were a major contributing factor to the recent financial crisis. Their suggestions included: Revising the 2011 Proposed Rule's definition of "incentive-based compensation"; defining "excessive compensation"; increasing the length of time for or amount of compensation subject to the mandatory deferral provision; requiring financial institutions to include quantitative data in their annual incentive-based compensation reports; providing for the annual public reporting by the Agencies of information quantifying the overall sensitivity of incentive-based compensation to long-term risks at major financial institutions; prohibiting stock ownership by board members; and prohibiting hedging strategies used by highly-paid executives on their own incentive-based compensation.

The academic faculty commenters submitted analyses of certain compensation issues and recommendations. These recommendations included: Adopting a corporate governance measure tied to stock ownership by board members; regulating how deferred compensation is reduced at future payment dates; requiring covered institutions' executives to have "skin in the game" for the entire deferral period; and requiring disclosure of personal hedging transactions rather than prohibiting them.

A number of covered institutions and financial industry associations favored the issuance of guidelines instead of rules to implement section 956. Others expressed varying degrees of support for the 2011 Proposed Rule but also requested numerous clarifications and modifications. Many of these commenters raised questions concerning the 2011 Proposed Rule's scope, suggesting that certain types of institutions be excluded from the coverage of the final rule. Some of these commenters questioned the need for the excessive compensation prohibition or requested that the final rule provide specific standards for determining when compensation is excessive. Many of these commenters also opposed the 2011 Proposed Rule's mandatory deferral provision, and some asserted that the provision was unsupported by empirical evidence and potentially harmful to a covered institution's ability to attract and retain key employees. In addition, many of these commenters asserted that the material risk-taker provision in the 2011 Proposed Rule was unclear or imposed on the boards of directors of covered institutions duties more appropriately undertaken by the institutions' management. Finally, these commenters expressed concerns about the burden and timing of the 2011 Proposed Rule.

D. International Developments

The Agencies considered international developments in

[31] In the 2011 Proposed Rule, the term "larger covered financial institution" for the Federal Banking Agencies and the SEC meant those covered institutions with total consolidated assets of $50 billion or more. For the NCUA, all credit unions with total consolidated assets of $10 billion or more would have been larger covered institutions. For FHFA, Fannie Mae, Freddie Mac, and all Federal Home Loan Banks with total consolidated assets of $1 billion or more would have been larger covered institutions.

developing the 2011 Proposed Rule, mindful that some covered institutions operate in both domestic and international competitive environments.[32] Since the release of the 2011 Proposed Rule, a number of foreign jurisdictions have introduced new compensation regulations that require certain financial institutions to meet certain standards in relation to compensation policies and practices. In June 2013, the European Union adopted the Capital Requirements Directive ("CRD") IV, which sets out requirements for compensation structures, policies, and practices that apply to all banks and investment firms subject to the CRD.[33] The rules require that up to 100 percent of the variable remuneration shall be subject to malus [34] or clawback arrangements, among other requirements.[35] The PRA's and the FCA's Remuneration Code requires covered companies to defer 40 to 60 percent of a covered person's variable remuneration—and recently updated their implementing regulations to extend deferral periods to seven years for senior executives and to five years for certain other covered persons.[36] The PRA also implemented, in July 2014, a policy requiring firms to set specific criteria for the application of malus and clawback. The PRA's clawback policy requires that variable remuneration be subject to clawback for a period of at least seven years from the date on which it is awarded.[37]

Also in 2013, the EBA finalized the process and criteria for the identification of categories of staff who have a material impact on the institution's risk profile ("Identified Staff").[38] These Identified Staff are subject to provisions related, in particular, to the payment of variable compensation. The standards cover remuneration packages for Identified Staff categories and aim to ensure that appropriate incentives for prudent, long-term oriented risk-taking are provided. The criteria used to determine who is identified are both qualitative (*i.e.,* related to the role and decision-making authority of staff members) and quantitative (*i.e.,* related to the level of total gross remuneration in absolute or in relative terms).

More recently, in December 2015, the EBA released its final Guidelines on Sound Remuneration Policies.[39] The final Guidelines on Sound Remuneration Policies set out the governance process for implementing sound compensation policies across the European Union under CRD IV, as well as the specific criteria for categorizing all compensation components as either fixed or variable pay. The final Guidelines on Sound Remuneration Policies also provide guidance on the application of deferral arrangements and pay-out instruments to ensure that variable pay is aligned with an institution's long-term risks and that any ex-post risk adjustments can be applied as appropriate. These Guidelines will apply as of January 1, 2017, and will replace the Guidelines on Remuneration Policies and Practices that were published by the CEBS in December 2010.

Other regulators, including those in Canada, Australia, and Switzerland, have taken either a guidance-based approach to the supervision and regulation of incentive-based compensation or an approach that combines guidance and regulation that is generally consistent with the FSB Principles and Implementation Standards. In Australia,[40] all deposit-taking institutions and insurers are expected to comply in full with all the requirements in the APRA's Governance standard (which includes remuneration provisions). APRA also supervises according to its Remuneration Prudential Practice Guide (guidance). In Canada,[41] all federally regulated financial institutions (domestic and foreign) are expected to comply with the FSB Principles and Implementation Standards, and the six Domestic Systemically Important Banks and three largest life insurance companies are expected to comply with the FSB's Principles and Implementation Standards. OSFI has also issued a Corporate Governance Guideline that contain compensation provisions.[42] Switzerland's Swiss Financial Markets Supervisory Authority has also published a principles-based rule on remuneration consistent with the FSB Principles and Implementation Standards that applies to major banks and insurance companies.[43]

As compensation practices continue to evolve, the Agencies recognize that international coordination in this area is important to ensure that internationally active financial organizations are subject to consistent requirements. For this reason, the Agencies will continue to work with their domestic and international counterparts to foster sound compensation practices across the financial services industry. Importantly, the proposed rule is consistent with the FSB Principles and Implementation Standards.

E. Overview of the Proposed Rule

The Agencies are re-proposing a rule, rather than proposing guidelines, to establish general requirements applicable to the incentive-based compensation arrangements of all covered institutions. Like the 2011 Proposed Rule, the proposed rule would prohibit incentive-based compensation arrangements at covered institutions that could encourage inappropriate risks by providing excessive compensation or that could lead to a material financial loss. However, the proposed rule reflects the Agencies' collective supervisory experiences since they proposed the 2011 Proposed Rule. These supervisory experiences, which are described above, have allowed the Agencies to propose a rule that incorporates practices that financial institutions and foreign regulators have adopted to address the deficiencies in incentive-based compensation practices that helped contribute to the financial crisis that began in 2007. For that reason, the proposed rule differs in some respects from the 2011 Proposed Rule. This section provides a general overview of the proposed rule and highlights areas in which the proposed rule differs from the 2011 Proposed Rule. A more detailed, section-by-section description of the proposed rule and the reasons for the proposed rule's requirements is provided later in this **SUPPLEMENTARY INFORMATION** section.

Scope and Initial Applicability. Similar to the 2011 Proposed Rule, the proposed rule would apply to any covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

The compliance date of the proposed rule would be no later than the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**. The proposed rule would not apply to any incentive-based compensation plan with a performance period that begins before the compliance date.

Definitions. The proposed rule includes a number of new definitions that were not included in the 2011 Proposed Rule. These definitions are described later in the section-by-section analysis in this Supplementary Information section. Notably, the Agencies have added a definition of significant risk-taker, which is intended to include individuals who are not senior executive officers but who are in the position to put a Level 1 or Level 2 covered institution at risk of material financial loss. This definition is explained in more detail below.

Applicability. The proposed rule distinguishes covered institutions by asset size, applying less prescriptive incentive-based compensation program requirements to the smallest covered institutions within the statutory scope and progressively more rigorous requirements to the larger covered institutions. Although the 2011 Proposed Rule contained specific requirements for covered financial institutions with at least $50 billion in total consolidated assets, the proposed rule creates an additional category of institutions with at least $250 billion in average total consolidated assets. These larger institutions are subject to the most rigorous requirements under the proposed rule.

The proposed rule identifies three categories of covered institutions based on average total consolidated assets: [44]

- Level 1 (greater than or equal to $250 billion);
- Level 2 (greater than or equal to $50 billion and less than $250 billion); and
- Level 3 (greater than or equal to $1 billion and less than $50 billion).[45]

Upon an increase in average total consolidated assets, a covered institution would be required to comply with any newly applicable requirements under the proposed rule no later than the first day of the first calendar quarter that begins at least 540 days after the date on which the covered institution becomes a Level 1, Level 2, or Level 3 covered institution. The proposed rule would grandfather any incentive-based compensation plan with a performance period that begins before such date. Upon a decrease in total consolidated assets, a covered institution would remain subject to the provisions of the proposed rule that applied to it before the decrease until total consolidated assets fell below $250 billion, $50 billion, or $1 billion, as applicable, for four consecutive regulatory reports (*e.g.,* Call Reports).

A covered institution under the Board's, the OCC's, or the FDIC's proposed rule that is a subsidiary of another covered institution under the Board's, the OCC's, or the FDIC's proposed rule, respectively, may meet any requirement of the Board's, OCC's, or the FDIC's proposed rule if the parent covered institution complies with that requirement in such a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with that requirement.

Requirements and Prohibitions Applicable to All Covered Institutions. Similar to the 2011 Proposed Rule, the proposed rule would prohibit all covered institutions from establishing or maintaining incentive-based compensation arrangements that encourage inappropriate risk by providing covered persons with excessive compensation, fees, or benefits or that could lead to material financial loss to the covered institution.

Also consistent with the 2011 Proposed Rule, the proposed rule provides that compensation, fees, and benefits will be considered excessive when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including:

- The combined value of all compensation, fees, or benefits provided to a covered person;
- The compensation history of the covered person and other individuals with comparable expertise at the covered institution;
- The financial condition of the covered institution;
- Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets;
- For post-employment benefits, the projected total cost and benefit to the covered institution; and
- Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

The proposed rule is also similar to the 2011 Proposed Rule in that it provides that an incentive-based compensation arrangement will be considered to encourage inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement:

- Appropriately balances risk and reward;
- Is compatible with effective risk management and controls; and
- Is supported by effective governance.

However, unlike the 2011 Proposed Rule, the proposed rule specifically provides that an incentive-based compensation arrangement would not be considered to appropriately balance risk and reward unless it:

- Includes financial and non-financial measures of performance;

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[32] *See* 76 FR at 21178. *See, e.g.,* FSB Principles and Implementation Standards.

[33] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (effective January 1, 2014). The remuneration rules in CRD IV were carried over from CRD III with a few additional requirements. CRD III directed the Committee of European Bank Supervisors ("CEBS"), now the European Banking Authority ("EBA"), to develop guidance on how it expected the compensation principles under CRD III to be implemented. *See* CEBS Guidelines on Remuneration Policies and Practices (December 10, 2010) ("CEBS Guidelines"), *available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0076&from=EN.*

[34] Malus is defined by the European Union as "an arrangement that permits the institution to prevent vesting of all or part of the amount of a deferred remuneration award in relation to risk outcomes or performance." *See,* PRA expectations regarding the application of malus to variable remuneration—SS2/13 UPDATE, available at: *http://www.bankofengland.co.uk/pra/Documents/publications/ss/2015/ss213update.pdf.*

[35] CRD IV provides that at least 50 percent of total variable remuneration should consist of equity-linked interests and at least 40 percent of any variable remuneration must be deferred over a period of three to five years. In the case of variable remuneration of a particularly high amount, the minimum amount required to be deferred is increased to 60 percent.

[36] *See* UK Remuneration Rules.

[37] *See* PRA, "PRA PS7/14: Clawback" (July 2014), *available at http://www.bankofengland.co.uk/pra/Pages/publications/ps/2014/ps714.aspx.*

[38] EBA Regulatory Technical Standards on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile under Article 94(2) of Directive 2013/36/EU. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (December 16, 2013), *available at https://www.eba.europa.eu/documents/10180/526386/EBA-RTS-2013-11+%28On+identified+staff%29.pdf/c313a671-269b-45be-a748-29e1c772ee0e.*

[39] EBA, "Guidelines for Sound Remuneration Policies under Articles 74(3) and 75(2) of Directive 2013/36/EU and Disclosures under Article 450 of Regulation (EU) No 575/2013" (December 21, 2015) ("EBA Remuneration Guidelines"), *available at https://www.eba.europa.eu/documents/10180/1314839/EBA-GL-2015-22+Guidelines+on+Sound+Remuneration+Policies.pdf/1b0f3f99-f913-461a-b3e9-fa0064b1946b.*

[40] *See* APRA, "Prudential Standard CPS 510 Governance" (January 2015), *available at http://www.apra.gov.au/CrossIndustry/Documents/Final-Prudential-Standard-CPS-510-Governance-%28January-2014%29.pdf;* APRA, Prudential Practice Guide PPG 511—Remuneration (November 30, 2009), *available at http://www.apra.gov.au/adi/PrudentialFramework/Pages/adi-prudential-framework.aspx.*

[41] *See* OSFI Corporate Governance Guidelines and OSFI Supervisory Framework.

[42] *See* OSFI Corporate Governance Guidelines.

[43] *See* FINMA Remuneration Circular.

[44] For covered institutions that are subsidiaries of other covered institutions, levels would generally be determined by reference to the average total consolidated assets of the top-tier parent covered institution. A detailed explanation of consolidation under the proposed rule is included under the heading "Definitions pertaining to covered institutions" below in this Supplementary Information section.

[45] As explained later in this Supplementary Information section, the proposed rule includes a reservation of authority that would allow the appropriate Federal regulator of a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to require the Level 3 covered institution to comply with some or all of the provisions of sections ____.5 and ____.7 through ____.11 of the proposed rule if the agency determines that the complexity of operations or compensation practices of the Level 3 covered institution are consistent with those of a Level 1 or Level 2 covered institution.

• Is designed to allow non-financial measures of performance to override financial measures of performance, when appropriate; and

• Is subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

The proposed rule also contains requirements for the board of directors of a covered institution that are similar to requirements included in the 2011 Proposed Rule. Under the proposed rule, the board of directors of each covered institution (or a committee thereof) would be required to:

• Conduct oversight of the covered institution's incentive-based compensation program;

• Approve incentive-based compensation arrangements for senior executive officers, including amounts of awards and, at the time of vesting, payouts under such arrangements; and

• Approve material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

The 2011 Proposed Rule contained an annual reporting requirement, which has been replaced by a recordkeeping requirement in the proposed rule. Covered institutions would be required to create annually and maintain for at least seven years records that document the structure of incentive-based compensation arrangements and that demonstrate compliance with the proposed rule. The records would be required to be disclosed to the covered institution's appropriate Federal regulator upon request.

Disclosure and Recordkeeping Requirements for Level 1 and Level 2 Covered Institutions. The proposed rule includes more detailed disclosure and recordkeeping requirements for larger covered institutions than the 2011 Proposed Rule. The proposed rule would require all Level 1 and Level 2 covered institutions to create annually and maintain for at least seven years records that document: (1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on the percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to the covered institution's incentive-based compensation arrangements and policies. Level 1 and Level 2 covered institutions would be required to create and maintain records in a manner that would allow for an independent audit of incentive-based compensation arrangements, policies, and procedures, and to provide the records described above in such form and frequency as the appropriate Federal regulator requests.

Deferral, Forfeiture and Downward Adjustment, and Clawback Requirements for Level 1 and Level 2 Covered Institutions. The proposed rule would require incentive-based compensation arrangements that appropriately balance risk and reward. For Level 1 and Level 2 covered institutions, the proposed rule would require that incentive-based compensation arrangements for certain covered persons include deferral of payments, risk of downward adjustment and forfeiture, and clawback to appropriately balance risk and reward. The 2011 Proposed Rule required deferral for three years of 50 percent of annual incentive-based compensation for executive officers of covered financial institutions with $50 billion or more in total consolidated assets. The proposed rule would apply deferral requirements to significant risk-takers as well as senior executive officers, and, as described below, would require 40, 50, or 60 percent deferral depending on the size of the covered institution and whether the covered person receiving the incentive-based compensation is a senior executive officer or a significant risk-taker. Unlike the 2011 Proposed Rule, the proposed rule would explicitly require a shorter deferral period for incentive-based compensation awarded under a long-term incentive plan. The proposed rule also provides more detailed requirements and prohibitions than the 2011 Proposed Rule with respect to the measurement, composition, and acceleration of deferred incentive-based compensation; the manner in which deferred incentive-based compensation can vest; increases to the amount of deferred incentive-based compensation; and the amount of deferred incentive-based compensation that can be in the form of options.

Deferral. Under the proposed rule, the mandatory deferral requirements for Level 1 and Level 2 covered institutions for incentive-based compensation awarded each performance period would be as follows:

• A Level 1 covered institution would be required to defer at least 60 percent of a senior executive officer's "qualifying incentive-based compensation" (as defined in the proposed rule) and 50 percent of a significant risk-taker's qualifying incentive-based compensation for at least four years. A Level 1 covered institution also would be required to defer for at least two years after the end of the related performance period at least 60 percent of a senior executive officer's incentive-based compensation awarded under a "long-term incentive plan" (as defined in the proposed rule) and 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan. Deferred compensation may vest no faster than on a pro rata annual basis, and, for covered institutions that issue equity or are subsidiaries of covered institutions that issue equity, the deferred amount would be required to consist of substantial amounts of both deferred cash and equity-like instruments throughout the deferral period. Additionally, if a senior executive officer or significant risk-taker receives incentive-based compensation in the form of options for a performance period, the amount of such options used to meet the minimum required deferred compensation may not exceed 15 percent of the amount of total incentive-based compensation awarded for that performance period.

• A Level 2 covered institution would be required to defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation and 40 percent of a significant risk-taker's qualifying incentive-based compensation for at least three years. A Level 2 covered institution also would be required to defer for at least one year after the end of the related performance period at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan and 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan. Deferred compensation may vest no faster than on a pro rata annual basis, and, for covered institutions that issue equity or are subsidiaries of covered institutions that issue equity, the deferred amount would be required to consist of substantial amounts of both deferred cash and equity-like instruments throughout the deferral period. Additionally, if a senior executive officer or significant risk-taker receives incentive-based compensation in the form of options for a performance period, the amount of such options used to meet the minimum required deferred compensation may not exceed 15 percent of the amount of total incentive-based compensation awarded for that performance period.

The proposed rule would also prohibit Level 1 and Level 2 covered institutions from accelerating the payment of a covered person's deferred incentive-based compensation, except in the case of death or disability of the covered person.

Forfeiture and Downward Adjustment. Compared to the 2011 Proposed Rule, the proposed rule provides more detailed requirements for Level 1 and Level 2 covered institutions to reduce (1) incentive-based compensation that has not yet been awarded to a senior executive officer or significant risk-taker, and (2) deferred incentive-based compensation of a senior executive officer or significant risk-taker. Under the proposed rule, "forfeiture" means a reduction of the amount of deferred incentive-based compensation awarded to a person that has not vested. "Downward adjustment" means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun. The proposed rule would require a Level 1 or Level 2 covered institution to make subject to forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans. This forfeiture requirement would apply to all unvested, deferred incentive-based compensation for those individuals, regardless of whether the deferral was required by the proposed rule. Similarly, a Level 1 or Level 2 covered institution would also be required to make subject to downward adjustment all incentive-based compensation amounts not yet awarded to any senior executive officer or significant risk-taker for the current performance period, including amounts payable under long-term incentive plans. A Level 1 or Level 2 covered institution would be required to consider forfeiture or downward adjustment of incentive-based compensation if any of the following adverse outcomes occur:

• Poor financial performance attributable to a significant deviation from the covered institution's risk parameters set forth in the covered institution's policies and procedures;

• Inappropriate risk-taking, regardless of the impact on financial performance;

• Material risk management or control failures;

• Non-compliance with statutory, regulatory, or supervisory standards resulting in enforcement or legal action brought by a federal or state regulator or agency, or a requirement that the covered institution report a restatement of a financial statement to correct a material error; and

• Other aspects of conduct or poor performance as defined by the covered institution.

Clawback. In addition to deferral, downward adjustment, and forfeiture, the proposed rule would require a Level 1 or Level 2 covered institution to include clawback provisions in the incentive-based compensation arrangements for senior executive officers and significant risk-takers. The term "clawback" refers to a mechanism by which a covered institution can recover vested incentive-based compensation from a senior executive officer or significant risk-taker if certain events occur. The proposed rule would require clawback provisions that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in misconduct that resulted in significant financial or reputational harm to the covered institution, fraud, or intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation. The 2011 Proposed Rule did not include a clawback requirement.

Additional Prohibitions. The proposed rule contains a number of additional prohibitions for Level 1 and Level 2 covered institutions that were not included in the 2011 Proposed Rule. These prohibitions would apply to:

• Hedging;

• Maximum incentive-based compensation opportunity (also referred to as leverage);

• Relative performance measures; and

• Volume-driven incentive-based compensation.

Risk Management and Controls. The proposed rule's risk management and controls requirements for large covered institutions are generally more extensive than the requirements contained in the 2011 Proposed Rule. The proposed rule would require all Level 1 and Level 2 covered institutions to have a risk management framework for their incentive-based compensation programs that is independent of any lines of business; includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures; and is commensurate with the size and complexity of the covered institution's operations. In addition, the proposed rule would require Level 1 and Level 2 covered institutions to:

• Provide individuals in control functions with appropriate authority to influence the risk-taking of the business areas they monitor and ensure covered persons engaged in control functions are compensated independently of the performance of the business areas they monitor; and

• Provide for independent monitoring of: (1) Incentive-based compensation plans to identify whether the plans appropriately balance risk and reward; (2) events related to forfeiture and downward adjustment and decisions of forfeiture and downward adjustment reviews to determine consistency with the proposed rule; and (3) compliance of the incentive-based compensation program with the covered institution's policies and procedures.

Governance. Unlike the 2011 Proposed Rule, the proposed rule would require each Level 1 or Level 2 covered institution to establish a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under the proposed rule. The compensation committee would be required to obtain input from the covered institution's risk and audit committees, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance incentive-based compensation arrangements. Additionally, management would be required to submit to the compensation committee on an annual or more frequent basis a written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution. The compensation committee would also be required to obtain an independent written assessment from the internal audit or risk management function of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution.

Policies and Procedures. The proposed rule would require all Level 1 and Level 2 covered institutions to have policies and procedures that, among other requirements:

• Are consistent with the requirements and prohibitions of the proposed rule;

• Specify the substantive and procedural criteria for forfeiture and clawback;
• Document final forfeiture, downward adjustment, and clawback decisions;
• Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person;
• Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;
• Describe how discretion is exercised to achieve balance;
• Require that the covered institution maintain documentation of its processes for the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements;
• Describe how incentive-based compensation arrangements will be monitored;
• Specify the substantive and procedural requirements of the independent compliance program; and
• Ensure appropriate roles for risk management, risk oversight, and other control personnel in the covered institution's processes for designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting and assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

These policies and procedures requirements for Level 1 and Level 2 covered institutions are generally more detailed than the requirements in the 2011 Proposed Rule.

Indirect Actions. The proposed rule would prohibit covered institutions from doing indirectly, or through or by any other person, anything that would be unlawful for the covered institution to do directly under the proposed rule. This prohibition is similar to the evasion provision contained in the 2011 Proposed Rule.

Enforcement. For five of the Agencies, the proposed rule would be enforced under section 505 of the Gramm-Leach-Bliley Act, as specified in section 956. For FHFA, the proposed rule would be enforced under subtitle C of the Safety and Soundness Act.

Conservatorship or Receivership for Certain Covered Institutions. FHFA's and NCUA's proposed rules contain provisions that would apply to covered institutions that are managed by a government agency or a government-appointed agent, or that are in conservatorship or receivership or are limited-life regulated entities under the Safety and Soundness Act or the Federal Credit Union Act.[46]

A detailed description of the proposed rule and requests for comments are set forth below.

II. Section-by-Section Description of the Proposed Rule

§ ____.1 Authority, Scope and Initial Applicability

Section ____.1 provides that the proposed rule is issued pursuant to section 956. The Agencies also have listed applicable additional rulemaking authority in their respective authority citations.

The OCC is issuing the proposed rule under its general rulemaking authority, 12 U.S.C. 93a and the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*, its safety and soundness authority under 12 U.S.C. 1818, and its authority to regulate compensation under 12 U.S.C. 1831p–1.

The Board is issuing the proposed rule under its safety and soundness authority under section 5136 of the Revised Statutes (12 U.S.C. 24), the Federal Reserve Act (12 U.S.C. 321–338a), the FDIA (12 U.S.C. 1818), the Bank Holding Company Act (12 U.S.C. 1844(b)), the Home Owners' Loan Act (12 U.S.C. 1462a and 1467a), and the International Banking Act (12 U.S.C. 3108).

The FDIC is issuing the proposed rule under its general rulemaking authority, 12 U.S.C. 1819 Tenth, as well as its general safety and soundness authority under 12 U.S.C. 1818 and authority to regulate compensation under 12 U.S.C. 1831p–1.

FHFA is issuing the proposed rule pursuant to its authority under the Safety and Soundness Act (particularly 12 U.S.C. 4511(b), 4513, 4514, 4518, 4526, and ch. 46 subch. III.).

NCUA is issuing the proposed rule under its general rulemaking and safety and soundness authorities in the Federal Credit Union Act, 12 U.S.C. 1751 *et seq.*

The SEC is issuing the proposed rule pursuant to its rulemaking authority under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 (15 U.S.C. 78q, 78w, 80b–4, and 80b–11).

The approach taken in the proposed rule is within the authority granted by section 956. The proposed rule would prohibit types and features of incentive-based compensation arrangements that encourage inappropriate risks. As explained more fully below, incentive-based compensation arrangements that result in payments that are unreasonable or disproportionate to the value of services performed could encourage inappropriate risks by providing excessive compensation, fees, and benefits. Further, incentive-based compensation arrangements that do not appropriately balance risk and reward, that are not compatible with effective risk management and controls, or that are not supported by effective governance are the types of incentive-based compensation arrangements that could encourage inappropriate risks that could lead to material financial loss to covered institutions. Because these types of incentive-based compensation arrangements encourage inappropriate risks, they would be prohibited under the proposed rule.

The Federal Banking Agencies have found that any incentive-based compensation arrangement at a covered institution will encourage inappropriate risks if it does not sufficiently expose the risk-takers to the consequences of their risk decisions over time, and that in order to do this, it is necessary that meaningful portions of incentive-based compensation be deferred and placed at risk of reduction or recovery. The proposed rule reflects the minimums that are required to be effective for that purpose, as well as minimum standards of robust governance, and the disclosures that the statute requires. The Agencies' position in this respect is informed by the country's experience in the recent financial crisis, as well as by their experience supervising their respective institutions and their observation of the experience and judgments of regulators in other countries.

Consistent with section 956, section ____.1 provides that the proposed rule would apply to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation arrangements to covered persons.

The Agencies propose the compliance date of the proposed rule to be the beginning of the first calendar quarter that begins at least 540 days after the final rule is published in the **Federal Register**. Any incentive-based compensation plan with a performance period that begins before such date would not be required to comply with the requirements of the proposed rule. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution[47] on the compliance date would be determined based on average total consolidated assets as of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**. For example, if the final rule is published in the **Federal Register** on November 1, 2016, then the compliance date would be July 1, 2018. In that case, any incentive-based compensation plan with a performance period that began before July 1, 2018 would not be required to comply with the rule. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution on July 1, 2018 would be determined based on average total consolidated assets as of the beginning of the first quarter of 2017.

The Agencies recognize that most incentive-based compensation plans are implemented at the beginning of the fiscal or calendar year. Depending on the date of publication of a final rule, the proposed compliance date would provide at least 18 months, and in most cases more than two years, for covered institutions to develop and approve new incentive-based compensation plans and 18 months for covered institutions to develop and implement the supporting policies, procedures, risk management framework, and governance that would be required under the proposed rule.

1.1. The Agencies invite comment on whether this timing would be sufficient to allow covered institutions to implement any changes necessary for compliance with the proposed rule, particularly the development and implementation of policies and procedures. Is the length of time too long or too short and why? What specific changes would be required to bring existing policies and procedures into compliance with the rule? What constraints exist on the ability of covered institutions to meet the proposed deadline?

1.2. The Agencies invite comment on whether the compliance date should instead be the beginning of the first performance period that starts at least 365 days after the final rule is published in the **Federal Register** in order to have the proposed rule's policies, procedures, risk management, and governance requirements begin when the requirements applicable to incentive-compensation plans and arrangements begin. Why or why not?

Section ____.1 also specifies that the proposed rule is not intended to limit the authority of any Agency under other provisions of applicable law and regulations. For example, the proposed rule would not affect the Federal Banking Agencies' authority under section 39 of the FDIA and the Federal Banking Agency Safety and Soundness Guidelines. The Board's Enhanced Prudential Standards under 12 CFR part 252 (Regulation YY) would not be affected. The OCC's Heightened Standards also would continue to be in effect. The NCUA's authority under 12 U.S.C. 1761a, 12 CFR 701.2, part 701 App. A, Art. VII. section 8, 701.21(c)(8)(i), 701.23(g) (1), 701.33, 702.203, 702.204, 703.17, 704.19, 704.20, part 708a, 712.8, 721.7, and part 750, and the NCUA Examiners Guide, Chapter 7,[48] would not be affected. Neither would the proposed rule affect the applicability of FHFA's executive compensation rule, under section 1318 of the Safety and Soundness Act (12 U.S.C. 4518), 12 CFR part 1230.

The Agencies acknowledge that some individuals who would be considered covered persons, senior executive officers, or significant risk-takers under the proposed rule are subject to other Federal compensation-related requirements. Further, some covered institutions may be subject to SEC rules regarding the disclosure of executive compensation,[49] and mortgage loan originators are subject to the Consumer Financial Protection Bureau's restrictions on compensation. This rule is not intended to affect the application of these other Federal compensation-related requirements.

§ ____.2 Definitions

Section ____.2 defines the various terms used in the proposed rule. Where the proposed rule uses a term defined in section 956, the proposed rule generally adopts the definition included in section 956.[50]

Definitions Pertaining to Covered Institutions

Section 956(e)(2) of the Dodd-Frank Act defines the term "covered financial institution" to mean a depository institution; a depository institution holding company; a registered broker-dealer; a credit union; an investment adviser; the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together, the "Enterprises"); and any other financial institution that the Agencies determine, jointly, by rule, should be treated as a covered financial institution for purposes of section 956. Section 956(f) provides that the requirements of section 956 do not apply to covered financial institutions with assets of less than $1 billion.

The Agencies propose to jointly, by rule, designate additional financial institutions as covered institutions. The Agencies propose to include the Federal Home Loan Banks as covered institutions because they pose risks similar to those of some institutions covered under the proposed rule and should be subject to the same regulatory regime. The Agencies also propose to include as covered institutions the state-licensed uninsured branches and agencies of a foreign bank, organizations operating under section 25 or 25A of the Federal Reserve Act (*i.e.*, Edge and Agreement Corporations), as well as the other U.S. operations of foreign banking organizations that are treated as bank holding companies pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106). Applying the same requirements to these institutions would be consistent with other regulatory requirements that are applicable to foreign banking organizations operating in the United States and would not distort competition for human resources between U.S. banking organizations and foreign banking organizations operating in the United States. These offices and operations currently are referenced in the Federal Banking Agency Guidance and are subject to section 8 of the FDIA (12 U.S.C. 1818), which prohibits institutions from engaging in unsafe or unsound practices to the same extent as insured depository institutions and bank holding companies.[51]

In addition, the Agencies propose to jointly, by rule, designate state-chartered non-depository trust companies that are members of the Federal Reserve System as covered institutions. The definition of "covered financial institution" under section 956 of the Dodd-Frank Act includes a depository institution as such term is defined in section 3 of the FDIA (12 U.S.C. 1813); that term includes all national banks and any state banks, including trust companies, that are engaged in the business of receiving deposits other than trust funds. As a consequence of these definitions, all

[46] The FDIC's proposed rule would not apply to institutions for which the FDIC is appointed receiver under the FDIA or Title II of the Dodd-Frank Act, as appropriate, as those statutes govern such cases.

[47] As discussed below, the proposed rule includes baseline requirements for all covered institutions and additional requirements for Level 1 and Level 2 covered institutions, which are larger covered institutions.

[48] The NCUA Examiners Guide, Chapter 7, *available at https://www.ncua.gov/Legal/GuidesEtc/ExaminerGuide/Chapter07.pdf.*

[49] *See* Item 402 of Regulation S–K. 17 CFR 229.402.

[50] The definitions in the proposed rule would be for purposes of administering section 956 and would not affect the interpretation or construction of the same or similar terms for purposes of any other statute or regulation administered by the Agencies.

[51] *See* 12 U.S.C. 1813(c)(3) and 1818(b)(4).

national banks, including national banks that are non-depository trust companies, are "depository institutions" within the meaning of section 956, but non-FDIC insured state non-depository trust companies that are members of the Federal Reserve System are not. In order to achieve equal treatment across similar entities with different charters, the Agencies propose to include state-chartered non-depository member trust companies as covered institutions. These institutions would be "regulated institutions" under the definition of "state member bank" in the Board's rule.

Each Agency's proposed rule contains a definition of the term "covered institution" that describes the covered financial institutions the Agency regulates.

The Agencies have tailored the requirements of the proposed rule to the size and complexity of covered institutions, and are proposing to designate covered institutions as Level 1, Level 2, or Level 3 covered institutions to effectuate this tailoring. The Agencies have observed through their supervisory experience that large financial institutions typically have complex business activities in multiple lines of business, distinct subsidiaries, and regulatory jurisdictions, and frequently operate and manage their businesses in ways that cross those lines of business, subsidiaries, and jurisdictions. Level 3 covered institutions would generally be subject to only the basic set of prohibitions and disclosure requirements. The proposed rule would apply additional prohibitions and requirements to incentive-based compensation arrangements at Level 1 and Level 2 covered institutions, as discussed below. Whether a covered institution that is a subsidiary of a depository institution holding company is a Level 1, Level 2, or Level 3 covered institution would be based on the average total consolidated assets of the top-tier depository institution holding company. Whether that subsidiary has at least $1 billion will be based on the subsidiary's average total consolidated assets.

The Agency definitions of covered institution, Level 1, Level 2, and Level 3 covered institution, and related terms are summarized below.

Covered Institution and Regulated Institution. Each Agency has set forth text for its Agency-specific definition of the term "covered institution" that specifies the entities to which that Agency's rule applies.[52] Under the proposed rule, a "covered institution" would include all of the following:

- In the case of the OCC:
  - ○ A national bank, Federal savings association, or Federal branch or agency of a foreign bank[53] with average total consolidated assets greater than or equal to $1 billion; and
  - ○ A subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank, if the subsidiary (A) is not a broker, dealer, person providing insurance, investment company, or investment adviser; and (B) has average total consolidated assets greater than or equal to $1 billion.
- In the case of the Board, the proposed definition of the term "covered institution" is a "regulated institution" with average total consolidated assets greater than or equal to $1 billion, and the Board's definition of the term "regulated institution" includes:
  - ○ A state member bank, as defined in 12 CFR 208.2(g);
  - ○ A bank holding company, as defined in 12 CFR 225.2(c), that is not a foreign banking organization, as defined in 12 CFR 211.21(o), and a subsidiary of such a bank holding company that is not a depository institution, broker-dealer or investment adviser;
  - ○ A savings and loan holding company, as defined in 12 CFR 238.2(m), and a subsidiary of a savings and loan holding company that is not a depository institution, broker-dealer or investment adviser;
  - ○ An organization operating under section 25 or 25A of the Federal Reserve Act (Edge and Agreement Corporation);
  - ○ A state-licensed uninsured branch or agency of a foreign bank, as defined in section 3 of the FDIA (12 U.S.C. 1813); and
  - ○ The U.S. operations of a foreign banking organization, as defined in 12 CFR 211.21(o), and a U.S. subsidiary of such foreign banking organization that is not a depository institution, broker-dealer, or investment adviser.
- In the case of the FDIC, "covered institution" means a:
  - ○ State nonmember bank, state savings association, and a state insured branch of a foreign bank, as such terms are defined in section 3 of the FDIA, 12 U.S.C. 1813, with average total consolidated assets greater than or equal to $1 billion; and
  - ○ A subsidiary of a state nonmember bank, state savings association, or a state insured branch of a foreign bank, as such terms are defined in section 3 of the FDIA, 12 U.S.C. 1813, that: (i) Is not a broker, dealer, person providing insurance, investment company, or investment adviser; and (ii) Has average total consolidated assets greater than or equal to $1 billion.
- In the case of the NCUA, a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act, meaning an insured credit union as defined under 12 U.S.C. 1752(7) or credit union eligible to make application to become an insured credit union under 12 U.S.C. 1781. Instead of the term "covered financial institution," the NCUA uses the term "credit union" throughout its proposed rule, as credit unions are the only type of covered institution NCUA regulates. The scope section of the rule defines the credit unions that will be subject to this rule—that is, credit unions with $1 billion or more in total consolidated assets.
- In the case of the SEC, a broker or dealer registered under section 15 of the Securities Exchange Act of 1934, 15 U.S.C. 78o; and an investment adviser, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(11).[54] The proposed rule would not apply to persons excluded from the definition of investment adviser contained in section 202(a)(11) of the Investment Advisers Act nor would it apply to such other persons not within the intent of section 202(a)(11) of the Investment Advisers Act, as the SEC may designate by rules and regulations or order. Section 956 does not contain exceptions or exemptions for investment advisers based on registration.[55]
- In the case of FHFA, the proposed definition of the term "covered institution" is a "regulated institution" with average total consolidated assets greater than or equal to $1 billion, and FHFA's definition of the term "regulated institution" means an Enterprise, as defined in 12 U.S.C. 4502(10), and a Federal Home Loan Bank.

Level 1, Level 2, and Level 3 covered institutions. The Agencies have tailored the requirements of the proposed rule to the size and complexity of covered institutions. All covered institutions would be subject to a basic set of prohibitions and disclosure requirements, as described in section ____.4 of the proposed rule.

The Agencies are proposing to group covered institutions into three levels. The first level, Level 1 covered institutions, would generally be covered institutions with average total consolidated assets of greater than $250 billion and subsidiaries of such institutions that are covered institutions. The next level, Level 2 covered institutions, would generally be covered institutions with average total consolidated assets between $50 billion and $250 billion and subsidiaries of such institutions that are covered institutions. The smallest covered institutions, those with average total consolidated assets between $1 and $50 billion, would be Level 3 covered institutions and generally would be subject to only the basic set of prohibitions and requirements.[56]

The proposed rule would apply additional prohibitions and requirements to incentive-based compensation arrangements at Level 1 and Level 2 covered institutions, as described in section ____.5 and sections ____.7 through ____.11 of the proposed rule and further discussed below. The specific requirements of the proposed rule that would apply to Level 1 and Level 2 covered institutions are the same, with the exception of the deferral amounts and deferral periods described in section ____.7(a)(1) and section ____.7(a)(2).

Consolidation

Generally, the Agencies also propose that covered institutions that are subsidiaries of other covered institutions would be subject to the same requirements, and defined to be the same level, as the parent covered institution,[57] even if the subsidiary covered institution is smaller than the parent covered institution.[58] This approach of assessing risks at the level of the holding company for a consolidated organization recognizes that financial stress or the improper management of risk in one part of an organization has the potential to spread rapidly to other parts of the organization. Large depository institution holding companies increasingly operate and manage their businesses in such a way that risks affect different subsidiaries within the consolidated organization and are managed on a consolidated basis. For example, decisions about business lines including management and resource allocation may be made by executives and employees in different subsidiaries. Integrating products and operations may offer significant efficiencies but can also result in financial stress or the improper management of risk in one part of a consolidated organization and has the potential to spread risk rapidly to other parts of the consolidated organization. Even when risk is assessed at the level of the holding company, risk will also be assessed at individual institutions within that consolidated organization. For example, a bank subsidiary of a large, complex bank holding company might have a different risk profile than the bank holding company. In that situation, a risk assessment would have different results when conducted at the level of the bank and at the level of the bank holding company.

Moreover, in the experience of the Federal Banking Agencies, incentive-based compensation programs generally are designed at the holding company level and are applied throughout the consolidated organization. Many holding companies establish incentive-based compensation programs in this manner because it can help maintain effective risk management and controls for the entire consolidated organization. More broadly, the expectations and incentives established by the highest levels of corporate leadership set the tone for the entire organization and are important factors of whether an organization is capable of maintaining fully effective risk management and internal control processes. The Board has observed that some large, complex depository institution holding companies have evolved toward comprehensive, consolidated risk management to measure and assess the range of their exposures and the way these exposures interrelate, including in the context of incentive-based compensation programs. In supervising the activities of depository institution holding companies, the Board has adopted and continues to follow the principle that depository institution holding companies should serve as a source of financial and managerial strength for their subsidiary depository institutions.[59]

The proposed rule is designed to reinforce the ability of institutions to establish and maintain effective risk management and controls for the entire consolidated organization with respect to the organization's incentive-based compensation program. Moreover, the structure of the proposed rule is also consistent with the reality that within many large depository institution holding companies, covered persons may be employed by one legal entity but may do work for one or more of that entity's affiliates. For example, an employee of a national bank might also perform certain responsibilities on behalf of an affiliated broker-dealer. Applying the same requirements to all subsidiary covered institutions may reduce the possibility of evasion of the more specific standards applicable to certain individuals at Level 1 or Level 2 covered institutions. Finally, this approach may enable holding company structures to more effectively manage

[52] The Agency-specific definitions are intended to be applied only for purposes of administering a final rule under section 956.

[53] The term "Federal branch or agency of a foreign bank" refers to both insured and uninsured Federal branches and agencies of foreign banks.

[54] By its terms, the definition of "covered financial institution" in section 956 includes any institution that meets the definition of "investment adviser" under the Investment Advisers Act of 1940 ("Investment Advisers Act"), regardless of whether the institution is registered as an investment adviser under that Act. Banks and bank holding companies are generally excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act, although they would still be "covered institutions" under the relevant Agency's proposed rule.

[55] Commenters to the 2011 Proposed Rule requested clarification with respect to those entities that are excluded from the definition of "investment adviser" under the Investment Advisers Act and those that are exempt from registration as an investment adviser under the Investment Advisers Act. Section 956 expressly includes any institution that meets the definition of investment adviser regardless of whether the institution is registered under the Investment Advisers Act. *See supra* note 54. Thus, the proposed rule would apply to institutions that meet the definition of investment adviser under section 202(a)(11) of the Investment Advisers Act and would not exempt any such institutions that may be prohibited or exempted from registering with the SEC under the Investment Advisers Act.

[56] As discussed later in this Supplemental Information section, under section ____.6 of the proposed rule, an Agency would be able to require a covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of section ____.5 and sections ____.7 through ____.11, if the Agency determines that the activities, complexity of operations, risk profile, or compensation practices of the covered institution are consistent with those of a Level 1 or Level 2 covered institution.

[57] Commenters on the 2011 Proposed Rule questioned how the requirements would apply in the context of consolidated organizations where a parent holding company structure may include one or more subsidiary banks, broker-dealers, or investment advisers each with total consolidated assets either above or below, or somewhere in between, the relevant thresholds. They also expressed concern that the 2011 Proposed Rule could lead to "regulatory overlap" where the parent holding company and individual subsidiaries are regulated by different agencies.

[58] For the U.S. operations of a foreign banking organization, level would be determined by the total consolidated U.S. assets of the foreign banking organization, including the assets of any U.S. branches or agencies of the foreign banking organization, any U.S. subsidiaries of the foreign banking organization, and any U.S. operations held pursuant to section 2(h)(2) of the Bank Holding Company Act. In contrast, the level of an OCC-regulated Federal branch or agency of a foreign bank would be determined with reference to the assets of the Federal branch or agency. This treatment is consistent with the determination of the level of a national bank or Federal savings association that is not a subsidiary of a holding company and the OCC's approach to regulation of Federal branches and agencies.

[59] See 12 U.S.C. 1831o–1; 12 CFR 225.4(a)(1).

human resources, because applying the same requirements to all subsidiary covered institutions would treat similarly the incentive-based compensation arrangements for similar positions at different subsidiaries within a holding company structure.[60]

The proposed rule would also be consistent with the requirements of overseas regulators who have examined the role that incentive-based compensation plays in institutions. After examining the risks posed by certain incentive-based compensation programs, many foreign regulators are now requiring that the rules governing incentive-based compensation be applied at the group, parent, and subsidiary operating levels (including those in offshore financial centers).[61]

The Agencies are cognizant that the approach being proposed may have some disadvantages for smaller subsidiaries within a larger depository institution holding company structure by applying the more specific provisions of the proposed rule to these smaller institutions that would not otherwise apply to them but for being a subsidiary of a depository institution holding company. As further discussed below, in an effort to reduce burden, the Board's proposed rule would permit institutions that are subsidiaries of depository institution holding companies and that are subject to the Board's proposed rule to meet the requirements of the proposed rule if the parent covered institution complies with the requirements in such a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with the requirements.[62]

Similarly, the OCC's proposed rule would allow a covered institution subject to the OCC's proposed rule that is a subsidiary of another covered institution subject to the OCC's proposed rule to meet a requirement of the OCC's proposed rule if the parent covered institution complies with that requirement in a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with that requirement.

The FDIC's proposed rule would similarly allow a covered institution subject to the FDIC's proposed rule that is a subsidiary of another covered institution subject to the FDIC's proposed rule to meet a requirement of the FDIC's proposed rule if the parent covered institution complies with that requirement in a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with that requirement.

The SEC is not proposing to require a covered institution under its proposed rule that is a subsidiary of another covered institution under that proposed rule to be subject to the same requirements, and defined to be the same levels, as the parent covered institution. In general, the operations, services, and products of broker-dealers and investments advisers are not typically effected through subsidiaries[63] and it is expected that their incentive-based compensation arrangements are typically derived from the activities of the broker-dealers and investment advisers themselves. Because of this, any inappropriate risks for which the incentive-based compensation programs at these firms may encourage should be localized, and the management of these risks similarly should reside at the broker-dealer or investment adviser. Where that is not the case, individuals that are employed by subsidiaries of a broker-dealer or investment adviser may still be considered to be a "significant risk-taker" for the covered institution and, therefore, subject to the proposed rule.[64] In addition, broker-dealers and investment advisers that are subsidiaries of depository institution holding companies would be consolidated on the basis of such depository institution holding companies generally, where there is often a greater integration of products and operations, public interest, and assessment and management of risk (including those related to incentive-based compensation) across the depository institution holding companies and their subsidiaries.[65]

Level 1, Level 2, and Level 3 Covered Institutions

For purposes of the proposed rule, the Agencies have specified the three levels of covered institutions as:

- In the case of the OCC:
  - ○ A "Level 1 covered institution" means: (i) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $250 billion; (ii) a covered institution with average total consolidated assets greater than or equal to $250 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and (iii) a covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $250 billion.
  - ○ A "Level 2 covered institution" means: (i) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $50 billion but less than $250 billion; (ii) a covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and (iii) a covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion.
  - ○ A "Level 3 covered institution" means: (i) A covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion; and (ii) a covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion.
- In the case of the Board:
  - ○ A "Level 1 covered institution" means a covered institution with average total consolidated assets greater than or equal to $250 billion and any subsidiary of a Level 1 covered institution that is a covered institution.
  - ○ A "Level 2 covered institution" means a covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution and any subsidiary of a Level 2 covered institution that is a covered institution.
  - ○ A "Level 3 covered institution" means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 or Level 2 covered institution.
- In the case of the FDIC:
  - ○ A "Level 1 covered institution" means: (i) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $250 billion; (ii) a covered institution with average total consolidated assets greater than or equal to $250 billion that is not a subsidiary of a depository institution holding company; and (iii) a covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $250 billion.
  - ○ A "Level 2 covered institution" means: (i) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $50 billion but less than $250 billion; (ii) a covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion that is not a subsidiary of a depository institution holding company; and (iii) a covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion.
  - ○ A "Level 3 covered institution" means: (i) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $1 billion but less than $50 billion; (ii) a covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion that is not a subsidiary of a depository institution holding company; and (iii) a covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion.
- In the case of the NCUA:
  - ○ A "Level 1 credit union" means a credit union with average total consolidated assets of $250 billion or more.
  - ○ A "Level 2 credit union" means a credit union with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 credit union.
  - ○ A "Level 3 credit union" means a credit union with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 or Level 2 credit union.
- In the case of the SEC:
  - ○ A "Level 1 covered institution" means: (i) A covered institution with average total consolidated assets greater than or equal to $250 billion; or (ii) a covered institution that is a subsidiary of a depository institution holding company that is a Level 1 covered institution pursuant to 12 CFR 236.2.
  - ○ A "Level 2 covered institution" means: (i) A covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution; or (ii) a covered institution that is a subsidiary of a depository institution holding company that is a Level 2 covered institution pursuant to 12 CFR 236.2.
  - ○ A "Level 3 covered institution" means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution.
- In the case of FHFA:
  - ○ A "Level 1 covered institution" means a covered institution with average total consolidated assets greater than or equal to $250 billion that is not a Federal Home Loan Bank.
  - ○ A "Level 2 covered institution" means a covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution and any Federal Home Loan Bank that is a covered institution.
  - ○ A "Level 3 covered institution" means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution.

The Agencies considered the varying levels of complexity and risks across covered institutions that would be subject to this proposed rule, as well as the general correlation of asset size with those potential risks, in proposing to distinguish covered institutions by their asset size.[66] In general, larger financial institutions have more complex structures and operations. These more complex structures make controlling risk-taking more difficult. Moreover, these larger, more complex institutions also tend to be significant users of incentive-based compensation. Significant use of incentive-based compensation combined with more complex business operations can make it more difficult to immediately recognize and assess risks for the institution as a whole. Therefore, the requirements of the proposed rule are tailored to reflect the size and complexity of each of the three levels of covered institutions identified in the proposed rule. The proposed rule assigns covered institutions to one of three levels, based on each institution's average total consolidated assets.

Additionally, the Agencies considered the exemption in section 956 for institutions with less than $1 billion in assets along with other asset-level thresholds in the Dodd-Frank Act[67] as an indication that Congress views asset size as an appropriate basis for the requirements and prohibitions established under this proposed rule. Consistent with this approach, the Agencies also looked to asset size to determine the types of prohibitions that would be necessary to discourage inappropriate risks at covered institutions that could lead to material financial loss.

The Agencies are proposing that more rigorous requirements apply to institutions with $50 billion or more in assets. These institutions with assets of $50 billion or more tend to be significantly more complex and, the risk-taking of these institutions, and their potential failure, implicates greater risks for the financial system and the overall economy. Tailoring application of the requirements of the proposed rule is consistent with other provisions of the Dodd-Frank Act, which distinguish requirements for institutions with $50

[60] For example, requirements that apply to certain job functions in one part of a consolidated organization but not to the same job function in another operating unit of the same holding company structure could create uneven treatment across the legal entities.

[61] *See, e.g.*, Article 92 of the CRD IV (2013/36/EU).

[62] *See* section ____.3(c) of the proposed rule.

[63] In addition, the SEC's regulatory regime with respect to broker-dealers and investment advisers generally applies on an entity-by-entity basis. For example, subject to certain exclusions, any person that for compensation is engaged in the business of providing advice, making recommendations, issuing reports, or furnishing analyses on securities, either directly or through publications is subject to the Investment Advisers Act. *See* 15 U.S.C. 80b–2(a)(11).

[64] The proposed rule also prohibits a covered institution from doing indirectly, or through or by any other person, anything that would be unlawful for such covered institution to do directly. *See* section 303.12. For example, the SEC has stated that it will, based on facts and circumstances, treat as a single investment adviser two or more affiliated investment advisers that are separate legal entities but are operationally integrated. *See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers*, Investment Advisers Act Release No. 3222 (June 22, 2011) 76 FR 39,646 (July 6, 2011); *In the Matter of TL Ventures, Inc.*, Investment Advisers Act Release No. 3859 (June 20, 2014) (settled action); section 15 U.S.C. 80b–8.

[65] As discussed above in this Supplementary Information, the Agencies propose that covered institutions that are subsidiaries of covered institutions that are depository institution holding companies would be subject to the same requirements, and defined to be the same level, as the parent covered institutions. Because the failure of a depository institution may cause losses to the deposit insurance fund, there is a heightened interest in the safety and soundness of depository institutions and their holding companies. Moreover, as noted above, depository institution holding companies should serve as a source of financial and managerial strength for their subsidiary depository institutions. Additionally, in the experience of the Federal Banking Agencies, incentive-based compensation programs generally are designed at the holding company level and are applied throughout the consolidated organization. The Board has observed that complex depository institution holding companies have evolved toward comprehensive, consolidated risk management to measure and assess the range of their exposures and the way these exposures interrelate, including in the context of incentive-based compensation programs.

[66] *But see* earlier discussion regarding consolidation.

[67] *See, e.g.*, section 116 of the Dodd-Frank Act (12 U.S.C. 5326) (allowing the Financial Stability Oversight Council to require a bank holding company with total consolidated assets of $50 billion or more to submit reports); section 163 of the Dodd-Frank Act (12 U.S.C. 5363) (requiring prior notice to the Board for certain acquisitions by bank holding companies with total consolidated assets of $50 billion or more); section 165 of the Dodd-Frank Act (12 U.S.C. 5365) (requiring enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more); section 318(c) of the Dodd-Frank Act (12 U.S.C. 16) (authorizing the Board to collect assessments, fees, and other charges from bank holding companies and savings and loan holding companies with total consolidated assets of $50 billion or more).

billion or more in total consolidated assets. For example, the enhanced supervision and prudential standards for nonbank financial companies and bank holding companies under section 165[68] apply to bank holding companies with total consolidated assets of $50 billion or greater. It is also consistent with the definitions of advanced approaches institutions under the Federal Banking Agencies' domestic capital rules,[69] which are linked to the total consolidated assets of an institution. Other statutory and regulatory provisions recognize this difference.[70]

Most of the requirements of the proposed rule would apply to Level 1 and Level 2 covered institutions in a similar manner. Deferral requirements, however, would be different for Level 1 and Level 2 covered institutions, as discussed further below: Incentive-based compensation for senior executive officers and significant risk-takers at covered institutions with average total consolidated assets equal to or greater than $250 billion would be subject to a higher percentage of deferral, and longer deferral periods. In the experience of the Agencies, covered institutions with assets of $250 billion or more tend to be significantly more complex and thus exposed to a higher level of risk than those with assets of less than $250 billion. The risk-taking of these institutions, and their potential failure, implicates the greatest risks for the broader economy and financial system. Other statutory and regulatory provisions recognize this difference. For example, the definitions of advanced approaches institutions under the Federal Banking Agencies' domestic capital rules establish a $250 billion threshold for coverage. This approach is similar to that used in the international standards published by the Basel Committee on Banking Supervision, and rules implementing such capital standards, under which banks with consolidated assets of $250 billion or more are subject to enhanced capital and leverage standards.

As noted above, the Agencies propose to designate the Federal Home Loan Banks as covered institutions. Under FHFA's proposed rule, each Federal Home Loan Bank would be a Level 2 covered institution by definition, as opposed to by total consolidated assets. As long as a Federal Home Loan Bank is a covered institution under this part, with average total consolidated assets greater than or equal to $1 billion, it is a Level 2 covered institution. FHFA proposes this approach because generally for the Federal Home Loan Banks, asset size is not a meaningful indicator of risk. The Federal Home Loan Banks all operate in a similar enough manner that treating them differently based on asset size is not justifiable. Because of the scalability of the Federal Home Loan Bank business model, it is possible for a Federal Home Loan Bank to pass back and forth over the asset-size threshold without any meaningful change in risk profile. FHFA proposes to designate the Federal Home Loan Banks as Level 2 covered institutions instead of Level 3 covered institutions because at the time of the proposed rule, at least one Federal Home Loan Bank would be a Level 2 covered institution if determined by asset size, and the regulatory requirements under the proposed rule that seem most appropriate for the Federal Home Loan Banks are those of Level 2 covered institutions.

Similar to the approach used by the Federal Banking Agencies in their general supervision of banking organizations, if the proposed rule were adopted, the Agencies would generally expect to coordinate oversight and, to the extent applicable, supervision for consolidated organizations in order to assess compliance throughout the consolidated organization with any final rule. The Agencies are cognizant that effective and consistent supervision generally requires coordination among the Agencies that regulate the various entities within a consolidated organization. The supervisory authority of each appropriate Federal regulator to examine and review its covered institutions for compliance with the proposed rule would not be affected under this approach.

Affiliate. For the OCC, the Board, the FDIC, and the SEC, the proposed rule would define "affiliate" to mean any company that controls, is controlled by, or is under common control with another company. FHFA's proposed rule would not include a definition of "affiliate." The Federal Home Loan Banks have no affiliates, and affiliates of the Enterprises are included as part of the definition of Enterprise in the Safety and Soundness Act, which is referenced in the definition of regulated entity. The NCUA's proposed rule also would not include a definition of "affiliate." While in some cases, credit union service organizations ("CUSOs") might be considered affiliates of a credit union, NCUA has determined that this rule would not apply to CUSOs.

Average total consolidated assets. Consistent with section 956, the proposed rule would not apply to institutions with less than $1 billion in assets. Additionally, as discussed above, under the proposed rule, more specific requirements would apply to institutions with higher levels of assets. The Agencies propose to use average total consolidated assets to measure assets for the purposes of determining applicability of the requirements of this rule. Whether a covered institution that is a subsidiary of a depository institution holding company is a Level 1, Level 2, or Level 3 covered institution would be based on the average total consolidated assets of the top-tier depository institution holding company. Whether that subsidiary has at least $1 billion will be based on the subsidiary's average total consolidated assets.

For an institution that is not an investment adviser, average total consolidated assets would be determined with reference to the average of the total consolidated assets reported on regulatory reports for the four most recent consecutive quarters. This method is consistent with those used to calculate total consolidated assets for purposes of other rules that have $50 billion thresholds,[71] and it may reduce administrative burden on institutions—particularly Level 3 covered institutions that become Level 2 covered institutions—if average total consolidated assets are calculated in the same way for the proposed rule. For an institution that does not have a regulatory report for each of the four most recent consecutive quarters to reference, average total consolidated assets would mean the average of total consolidated assets, as reported on the relevant regulatory reports, for the most recent quarter or consecutive quarters available, as applicable. Average total consolidated assets would be measured on the as-of date of the most recent regulatory report used in the calculation of the average. For a covered institution that is an investment adviser, average total consolidated assets would be determined by the investment adviser's total assets (exclusive of non-proprietary assets) shown on the balance sheet for the adviser's most recent fiscal year end.[72]

The Board's proposed rule would require that savings and loan holding companies that do not file a regulatory report within the meaning of section ____.2(ee)(3) of the Board's proposed rule report their average total consolidated assets to the Board on a quarterly basis. In addition, foreign banking organizations with U.S. operations would be required to report their total consolidated U.S. assets to the Board on a quarterly basis. These regulated institutions would be required to report their average total consolidated assets to the Board either because they do not file reports of their total consolidated assets with the Board (in the case of savings and loan holding companies that do not file a regulatory report with the Board within the meaning of section ____.2(ee)(3) of the Board's proposed rule), or because the reports filed do not encompass the full range of assets (in the case of foreign banking organizations with U.S. operations). Asset information concerning the U.S. operations of foreign banking organizations is filed on form FRY–7Q, but the information does not include U.S. assets held pursuant to section 2(h)(2) of the Bank Holding Company Act. Foreign banking organizations with U.S. operations would report their average total consolidated U.S. assets including assets held pursuant to section 2(h)(2) of the Bank Holding Company Act for purposes of complying with the requirements of section ____.2(ee)(3) of the Board's proposed rule. The Board would propose that reporting forms be created or modified as necessary for these institutions to meet these reporting requirements.

The proposed rule does not specify a method for determining the total consolidated assets of some types of subsidiaries that would be considered covered institutions under the proposed rule, because those subsidiaries do not currently submit regular reports of their asset size to the Agencies. For the subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank, the OCC would rely on a report of the subsidiary's total consolidated assets prepared by the subsidiary, national bank, Federal savings association, or Federal branch or agency in a form that is acceptable to the OCC. Similarly, for a regulated institution subsidiary of a bank holding company, savings and loan holding company, or foreign banking organization the Board would rely on a report of the subsidiary's total consolidated assets prepared by the bank holding company or savings and loan holding company in a form that is acceptable to the Board.

Control. The definition of control in the proposed rule is similar to the definition of the same term in the Bank Holding Company Act.[73] Any company would have control over a bank or any company if: (1) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company; (2) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (3) the appropriate Federal regulator determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

Depository institution holding company. The OCC's, the FDIC's, and the SEC's proposed rules define "depository institution holding company" to mean a top-tier depository institution holding company, where "depository institution holding company" would have the same meaning as in section 3 of the FDIA.[74] In a multi-tiered depository institution holding company, references in the OCC's, FDIC's and SEC's proposed rules to the "depository institution holding company" would mean the top-tier depository institution holding company of the multi-tiered holding company only.

For example, for the purpose of determining whether a state nonmember bank that is a subsidiary of a depository institution holding company and is within a multi-tiered depository institution holding company structure is a Level 1, Level 2, or Level 3 covered institution under the FDIC's proposed rule, the state nonmember would look to the top-tier depository institution holding company's average total consolidated assets. Thus, in a situation in which a state nonmember bank with average total consolidated assets of $35 billion is a subsidiary of a depository institution holding company with average total consolidated assets of $45 billion that is itself a subsidiary of a depository institution holding company with $75 billion in average total consolidated assets, the state nonmember bank would be treated as a Level 2 covered institution because the top-tier depository institution holding company has average total consolidated assets of $75 billion (which is greater than or equal to $50 billion but less than $250 billion). Similarly, state member banks and national banks within multi-tiered depository institution holding company structures would look to the top-tier depository institution holding company's average total consolidated assets when determining if they are a Level 1, Level 2 or Level 3 covered institution under the Board's and the OCC's proposed rules.

Subsidiary. For the OCC, the Board, the FDIC, and the SEC, the proposed rule would define "subsidiary" to mean any company which is owned or controlled directly or indirectly by another company. The Board proposes to exclude from its definition of "subsidiary" any merchant banking investment that is owned or controlled pursuant to 12 U.S.C. 1843(k)(4)(H) and subpart J of the Board's Regulation Y (12 CFR part 225) and any company with respect to which the covered institution acquired ownership or control in the ordinary course of collecting a debt previously contracted in good faith. Depository institution holding companies may hold such investments only for limited periods of time by law. Application of the proposed rule to these institutions directly would not further the purpose of the proposed rule under section 956. The holding company and any nonbanking subsidiary holding these investments would be subject to the proposed rule. For these reasons, the Board is proposing to exclude from the definition

[68] 12 U.S.C. 5365.

[69] *See* 12 CFR 3.100(b)(1) (advanced approaches national banks and Federal savings associations); 12 CFR 324.100(b)(1) (advanced approaches state nonmember banks, state savings associations, and insured branches of foreign banks); 12 CFR 217.100(b)(1) (advanced approaches bank holding companies, savings and loan holding companies, and state member banks).

[70] *See, e.g.,* Board, "Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies," 80 FR 49081 (August 14, 2015); Board, "Single-Counterparty Credit Limits for Large Banking Organizations; Proposed Rule," 81 FR 14327 (March 4, 2016); Board, "Debit Card Interchange Fees and Routing; Final Rule," 76 FR 43393 (July 20, 2011); Board, "Supervision and Regulation Assessments for Bank Holding Companies and Savings and Loan Holding Companies With Total Consolidated Assets of $50 Billion or More and Nonbank Financial Companies Supervised by the Federal Reserve," 78 FR 52391 (August 23, 2013); OCC, Board, FDIC, "Supplementary Leverage Ratio; Final Rule," 79 FR 57725 (September 26, 2014).

[71] *See, e.g.,* OCC's Heightened Standards (12 CFR part 30, Appendix D); 12 CFR 46.3; 12 CFR 225.8; 12 CFR 243.2; 12 CFR 252.30; 2 CFR 252.132; 12 CFR 325.202; 12 CFR 381.2.

[72] This proposed method of calculation for investment advisers corresponds to the reporting requirement in Item 1.O. of Part 1A of Form ADV, which currently requires an investment adviser to check a box to indicate if it has assets of $1 billion or more. *See* Form ADV, Part IA, Item 1.O.; SEC, "Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Release No. IA–3221," 76 FR 42950 (July 19, 2011). Many commenters to the first notice of proposed rulemaking indicated that they understood that the SEC did not intend "total consolidated assets" to include non-proprietary assets, such as client assets under management; others requested clarification that this understanding is correct. The SEC is clarifying in the proposed rule that investment advisers should include only proprietary assets in the calculation—that is, non-proprietary assets, such as client assets under management would not be included, regardless of whether they appear on an investment adviser's balance sheet. The SEC notes that this method is drawn directly from section 956. *See* section 956(f) (referencing "assets" only).

[73] 12 U.S.C. 1841(a)(2).

[74] *See* 12 U.S.C. 1813(w).

of subsidiary companies owned by a holding company as merchant banking investments or through debt previously contracted in good faith. These companies would, therefore, not be required to conform their incentive-based compensation programs to the requirements of the proposed rule.

FHFA's proposed rule would not include a definition of "subsidiary." The Federal Home Loan Banks have no subsidiaries, and any subsidiaries of the Enterprises as defined by other Agencies under the proposed rule would be included as affiliates as part of the definition of Enterprise in the Safety and Soundness Act, which is referenced in the definition of regulated entity. The NCUA's proposed rule also would not include a definition of "subsidiary." While in some cases, CUSOs might be considered subsidiaries of a credit union, NCUA has determined that this rule would not apply to CUSOs.

2.1. The Agencies invite comment on whether other financial institutions should be included in the definition of "covered institution" and why.

2.2. The Agencies invite comment on whether any additional financial institutions should be included in the proposed rule's definition of subsidiary and why.

2.3. The Agencies invite comment on whether any additional financial institutions (such as registered investment companies) should be excluded from the proposed rule's definition of subsidiary and why.

2.4. The Agencies invite comment on the definition of average total consolidated assets.

2.5. The Agencies invite comment on the proposed rule's approach to consolidation. Are there any additional advantages to the approach? For example, the Agencies invite comment on the advantages of the proposed rule's approach for reinforcing the ability of an institution to establish and maintain effective risk management and controls for the entire consolidated organization and enabling holding company structures to more effectively manage human resources. Are there advantages to the approach of the proposed rule in helping to reduce the possibility of evasion of the more specific standards applicable to certain individuals at Level 1 or Level 2 covered institutions? Are there any disadvantages to the proposed rule's approach to consolidation? For example, the Agencies invite comment on any disadvantages smaller subsidiaries of a larger covered institution may have by applying the more specific provisions of the proposed rule to these smaller institutions that would not otherwise apply to them but for being a subsidiary of a larger institution. Is there another approach that the proposed rule should take? The Agencies invite comment on any advantages and disadvantages of the SEC's proposal to not consolidate subsidiaries of broker-dealers and investment advisers that are not themselves subsidiaries of depository institution holding companies. Are the operations, services, and products of broker-dealers and investment advisers not typically effected through subsidiaries? Should the SEC adopt an express requirement to treat two or more affiliated investment advisers or broker-dealers that are separate legal entities (*e.g.*, investment advisers that are operationally integrated) as a single investment adviser or broker-dealer for purposes of the proposed rule's thresholds?

2.6. The Agencies invite comment on whether the three-level structure would be a workable approach for categorizing covered institutions by asset size and why.

2.7. The Agencies invite comment on whether the asset thresholds used in these definitions would divide covered institutions into appropriate groups based on how they view the competitive marketplace. If asset thresholds are not the appropriate methodology for determining which requirements apply, which other alternative methodologies would be appropriate and why?

2.8. Are there instances where it may be appropriate to modify the requirements of the proposed rule where there are multiple covered institutions subsidiaries within a single parent organization based upon the relative size, complexity, risk profile, or business model, and use of incentive-based compensation of the covered institution subsidiaries within the consolidated organization? In what situations would that be appropriate and why?

2.9. Is the Agencies' assumption that incentive-based compensation programs are generally designed and administered at the holding company level for the organization as a whole correct? Why or why not? To what extent do broker-dealers or investment advisers within a holding company structure apply the same compensation standards as other subsidiaries in the parent company?

2.10. Bearing in mind that section 956 by its terms seeks to address incentive-based compensation arrangements that could lead to material financial loss to a covered institution, commenters are asked to provide comments on the proposed method of determining asset size for investment advisers. Are there instances where it may be appropriate to determine asset size differently, by for example, including client assets under management for investment advisers? In what situations would that be appropriate and why?

2.11. Should the determination of average total consolidated assets for investment advisers exclude non-proprietary assets that are included on a balance sheet under accounting rules, such as certain types of client assets under management required to be included on an investment adviser's balance sheet? Why or why not?

2.12. Should the determination of average total consolidated assets be further tailored for certain types of investment advisers, such as charitable advisers, non-U.S.-domiciled advisers, or insurance companies and, if so, why and in what manner?

2.13. The Agencies invite comment on the methods for determining whether foreign banking organizations and Federal branches and agencies are Level 1, Level 2, or Level 3 covered institutions. Should the same method be used for both foreign banking organizations and Federal branches and agencies? Why or why not?

Definitions Pertaining to Covered Persons

Covered person. The proposed rule defines "covered person" as any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.[75] The term "executive officer" would include individuals who are senior executive officers, as defined in the proposed rule, as well as other individuals designated as executive officers by the covered institution. As described further below, section ____.4 of the proposed rule would apply requirements and prohibitions on all incentive-based compensation arrangements for covered persons at covered institutions.

Included in the class of covered persons are senior executive officers and significant risk-takers, discussed further below. Senior executive officers and significant risk-takers are covered persons that may have the ability to expose a covered institution to significant risk through their positions or actions. Accordingly, the proposed rule would prohibit the incentive-based compensation arrangements for senior executive officers and significant risk-takers from including certain features that encourage inappropriate risk, consistent with the approach under sections ____.5, ____.9, ____.10, and ____.11 of the proposed rule of requiring risk-mitigating features for the incentive-based compensation programs at larger and more complex covered institutions.

For Federal credit unions, only one director, if any, would be considered a covered person because, under section 112 of the Federal Credit Union Act[76] and NCUA's regulations at 12 CFR 701.33, only one director may be compensated as an officer of the board of directors. The insurance and indemnification benefits that are excluded from the definition of "compensation" for purposes of 12 CFR 701.33 would not cause a non-compensated director of a credit union to be included under the definition of "covered person" because these benefits would not be "incentive-based compensation" under the proposed rule.

Director. The proposed rule defines "director" as a member of the board of directors of a covered institution. Any member of a covered institution's governing body would be included within this definition.

Principal shareholder. Section 956 applies to principal shareholders as well as executive officers, employees, and directors. The proposed rule defines "principal shareholder" as a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution. The 10 percent threshold for identifying principal shareholders is used in a number of bank regulatory contexts.[77] The NCUA's proposed rule does not include this definition because credit unions are not-for-profit financial cooperatives with member owners. The Agencies recognize that some other types of covered institutions, for example, mutual savings associations, mutual savings banks, and some mutual holding companies, do not have principal shareholders.

2.14. The Agencies invite comment on whether the definition of "principal shareholder" reflects a common understanding of who would be a principal shareholder of a covered institution.

Senior executive officer. The proposed rule defines "senior executive officer" as a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer (CEO), executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function. As described below, a Level 1 or Level 2 covered institution would be required to defer a portion of the incentive-based compensation of a senior executive officer and subject the incentive-based compensation to forfeiture, downward adjustment, and clawback. The proposed rule would also limit the extent to which options could be used to meet the proposed rule's minimum deferral requirements for senior executive officers. The proposed rule would require a covered institution's board of directors, or a committee thereof, to approve incentive-based compensation arrangements for senior executive officers and any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers. Additionally, Level 1 and Level 2 covered institutions would be required to create and maintain records listing senior executive officers and to document forfeiture, downward adjustment, and clawback decisions for senior executive officers. The proposed rule would limit the extent to which a Level 1 or Level 2 covered institution may award incentive-based compensation to a senior executive officer in excess of the target amount for the incentive-based compensation. Senior executive officers also would not be eligible to serve on the compensation committee of a Level 1 or Level 2 covered institution under the proposed rule.

The 2011 Proposed Rule contained a definition of "executive officer" that included the positions of president, CEO, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, and head of a major business line. It did not include the positions of chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a control function. One commenter asserted that the term "executive officer" should not be defined with reference to specific position, but, rather, should be identified by the board of directors of a covered institution. Other commenters asked the Agencies for additional specificity about the types of executive officers that would be covered at large and small covered institutions, particularly with respect to the heads of major business lines. Some commenters encouraged the Agencies to align the definition of "executive officer" with the Securities Exchange Act of 1934 by focusing on individuals with significant policymaking functions. In the alternative, some of these commenters suggested that the definition be revised to conform to the 2010 Federal Banking Agency Guidance.

The definition of "senior executive officer" in the proposed rule retains the list of positions included in the 2011 Proposed Rule and is consistent with other rules and agency guidance. The list includes the minimum positions that are considered "senior executives" under the Federal Banking Agency Safety and Soundness Guidelines.[78] The Agencies also took into account the positions that would be considered "officers" under section 16 of the Securities Exchange Act of 1934.[79]

In addition to the positions listed in the 2011 Proposed Rule, the proposed definition of "senior executive officer" includes the positions of chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, and other heads of a control function. Individuals in these positions do not generally initiate activities that generate risk of material financial loss, but they play an important role in identifying, addressing, and mitigating that risk. Individuals in these positions have the ability to influence the risk measures and other information and judgments that a covered institution uses for risk management, internal control, or financial purposes.[80] Improperly structured incentive-based compensation arrangements could create incentives for individuals in these positions to use their authority in ways that increase, rather than mitigate, risk of material financial loss. Some larger institutions have designated

[75] Section 956 requires the Agencies to jointly prescribe regulations or guidelines that prohibit certain incentive-based compensation arrangements or features of such arrangements that encourage inappropriate risk by providing an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits or that could lead to material financial loss to the covered financial institution.

[76] 12 U.S.C. 1761a.

[77] *See, e.g.*, 12 CFR 215.2(m), 12 CFR 225.2(n)(2), and 12 CFR 225.41(c)(2).

[78] These minimum positions include "executive officers," within the meaning of Regulation O (12 CFR 215.2(e)(1)) and "named officers" within the meaning of the SEC's rules on disclosure of executive compensation (17 CFR 229.402). In addition to these minimum positions, the Federal Banking Agency Safety and Soundness Guidelines also apply to individuals "who are responsible for oversight of the organization's firm-wide activities or material business lines." 75 FR at 36407.

[79] *See* 17 CFR 240.16a–1.

[80] *See* 2010 Federal Banking Agency Guidance, 75 FR at 36411.

individuals in these positions as "covered persons" for purposes of the 2010 Federal Banking Agency Guidance.

The definition of "senior executive officer" also includes a covered person who performs the function of a senior executive officer for a covered institution, even if the covered person's formal title does not reflect that role or the covered person is employed by a different entity. For example, under the proposed rule, a covered person who is an employee of a bank holding company and also performs the functions of a chief financial officer for the subsidiary bank would, in addition to being a covered person of the bank holding company, also be a senior executive officer of the bank holding company's subsidiary bank. This approach would address attempts to evade being included within the definition of "senior executive officer" by changing an individual's title but not that individual's responsibilities. In some instances, the determination of senior executive officers and compliance with relevant requirements of the proposed rule may be influenced by the covered institution's organizational structure.[81] If a covered institution does not have any covered person who holds the title or performs the function of one or more of the positions listed in the definition of "senior executive officer," the proposed rule would not require the covered institution to designate a covered person to fill such position for purposes of the proposed rule. Similarly, if a senior executive officer at one covered institution also holds the title or performs the function of one of more of the positions listed for a subsidiary that is also a covered institution, then that individual would be a senior executive officer for both the parent and the subsidiary covered institutions.

The list of positions in the proposed definition sets forth the types of positions whose incumbents would be considered senior executive officers. The Agencies are proposing this list to aid covered institutions in identifying their senior executive officers while allowing the covered institutions some degree of flexibility in determining which business lines are major business lines.

2.15. The Agencies invite comment on whether the types of positions identified in the proposed definition of senior executive officer are appropriate, whether additional positions should be included, whether any positions should be removed, and why.

[81] *See* section ____.3(c) of the proposed rule.

2.16. The Agencies invite comment on whether the term "major business line" provides enough information to allow a covered institution to identify individuals who are heads of major business lines. Should the proposed rule refer instead to a "core business line," as defined in FDIC and FRB rules relating to resolution planning (12 CFR 381.2(d)), to a "principal business unit, division or function," as described in SEC definitions of the term "executive officer" (17 CFR 240.3b–7), or to business lines that contribute greater than a specified amount to the covered institution's total annual revenues or profit? Why?

2.17. Should the Agencies include the chief technology officer ("CTO"), chief information security officer, or similar titles as positions explicitly listed in the definition of "senior executive officer"? Why or why not? Individuals in these positions play a significant role in information technology management.[82] The CTO is generally responsible for the development and implementation of the information technology strategy to support the institution's business strategy in line with its appetite for risk. In addition, these positions are generally responsible for implementing information technology architecture, security, and business resilience.

Significant risk-taker. The proposed rule's definition of "significant risk-taker" is intended to include individuals who are not senior executive officers but are in the position to put a Level 1 or Level 2 covered institution at risk of material financial loss so that the proposed rule's requirements and prohibitions on incentive-based compensation arrangements apply to such individuals. In order to ensure that incentive-based compensation arrangements for significant risk-takers appropriately balance risk and reward, most of the proposed rule's requirements for Level 1 and Level 2 covered institutions relating to senior executive officers would also apply to significant risk-takers to some degree. These requirements include the disclosure and recordkeeping requirements of section ____.5; the deferral, forfeiture, downward adjustment, and clawback requirements of section ____.7 (including the related limitation on options); and the maximum incentive-based compensation opportunity limit of section ____.8.

[82] *See generally* Federal Financial Institutions Examination Council ("FFIEC") Information Technology Examination Handbook, *available at http://ithandbook.ffiec.gov/it-booklets.aspx.*

The proposed definition of "significant risk-taker" incorporates two tests for determining whether a covered person is a significant risk-taker. A covered person would be a significant risk-taker if either test was met. The first test is based on the amounts of annual base salary and incentive-based compensation of a covered person relative to other covered persons working for the covered institution and its affiliate covered institutions (the "relative compensation test"). This test is intended to determine whether the individual is among the top 5 percent (for Level 1 covered institutions) or top 2 percent (for Level 2 covered institutions) of highest compensated covered persons in the entire consolidated organization, including affiliated covered institutions. The second test is based on whether the covered person has authority to commit or expose 0.5 percent or more of the capital of the covered institution or an affiliate that is itself a covered institution (the "exposure test").[83]

The definition of significant risk-taker applies to only Level 1 and Level 2 covered institutions. The definition of significant risk-taker does not apply to senior executive officers. Senior

[83] In the proposed rule, the Agencies have tailored the measure of capital to the type of covered institution. For most covered institutions, the exposure test would be based on common equity tier 1 capital. For depository institution holding companies, foreign banking organizations, and affiliates of those institutions that do not report common equity tier 1 capital, the Board would work with covered institutions to determine the appropriate measure of capital. For registered securities brokers or dealers, the exposure test would be based on tentative net capital. *See* 17 CFR 240.15c3–1(c)(15). For Federal Home Loan Banks, the exposure test would be based on regulatory capital. For the Enterprises, the exposure test would be based on minimum capital. For credit unions, the exposure test would be based on net worth or total capital. For simplicity in describing the exposure test in this **SUPPLEMENTARY INFORMATION** section, common equity tier 1 capital, tentative net capital, regulatory capital, minimum capital, net worth, and total capital are referred to generally as "capital." The Agencies expect that a covered institution that is an investment adviser will use common equity tier 1 capital or tentative net capital to the extent it would be a covered institution in another capacity (*e.g.,* if the investment adviser also is a depository institution holding company, a bank, a broker-dealer, or a subsidiary of a depository institution holding company). For an investment adviser that would not be a covered institution in any other capacity, the proposed rule's exposure test would not be measured against the investment adviser's capital. For a covered person of such an investment adviser that can commit or expose capital of an affiliated covered institution, the exposure test would be based on common equity tier 1 capital or tentative net capital of that affiliated covered institution. For other covered persons of any investment adviser that would not be a covered institution in any other capacity, no exposure test is proposed to apply. Comment is requested below regarding what measure would be appropriate for an exposure test.

executive officers of Level 1 and Level 2 covered institutions would be separately subject to the proposed rule, as discussed earlier in this Supplemental Information section.

The significant risk-taker definition under either test would be applicable only to covered persons who received annual base salary and incentive-based compensation of which at least one-third is incentive-based compensation (one-third threshold), based on the covered person's annual base salary paid and incentive-based compensation awarded during the last calendar year that ended at least 180 days before the beginning of the performance period for which significant risk-takers are being identified.[84] For example, an individual who received $180,000 in annual base salary during calendar year 2019 and was awarded incentive-based compensation of $120,000 for performance periods that ended during calendar year 2019 could be a significant risk-taker because one-third of the individual's compensation was incentive-based. Specifically, the individual would be a significant risk-taker for a performance period beginning on or after June 28, 2020 if the individual also met the relative compensation test or the exposure test.[85]

Under the proposed rule, in order for covered persons to be designated as significant risk-takers, the covered persons would have to be awarded a level of incentive-based compensation that would be sufficient to influence their risk-taking behavior. In order to ensure that significant risk-takers are only those covered persons who have incentive-based compensation arrangements that could provide incentives to engage in inappropriate risk-taking, only covered persons who meet the one-third threshold could be significant risk-takers.

The proposed one-third threshold is consistent with the more conservative end of the range identified in industry practice. Institutions in the Board's 2012 LBO Review that would be Level 2 covered institutions under the proposed rule reported that they generally rewarded their self-identified individual risk-takers with incentive-based compensation in the range of 8 percent to 90 percent of total compensation, with an average range of 32 percent to 71 percent. The proposed threshold of one-third or more falls within the lower end of that average range.

The one-third threshold would also be consistent with other standards regarding compensation. Under the Emergency Economic Stabilization Act of 2008 (as amended by section 7001 of the American Recovery and Reinvestment Act of 2009), recipients of financial assistance under Treasury's Troubled Asset Relief Program ("TARP") were prohibited from paying or accruing any bonus, retention award, or incentive compensation except for the payment of long-term restricted stock if that stock had a value that was not greater than one third of the total amount of annual compensation of the employee receiving the stock.[86] In addition, some international regulators also use a threshold of one-third incentive-based compensation for determining the scope of application for certain compensation standards.[87]

The Agencies included the 180-day period in the one-third threshold of annual base salary and incentive-based compensation because, based upon the supervisory experience of the Federal Banking Agencies and FHFA, this period would allow covered institutions an adequate period of time to calculate the total compensation of their covered persons and, for purposes of the relative compensation test, the individuals receiving incentive-based compensation from their affiliate covered institutions over a full calendar year. The Agencies expect, based on the experience of exceptional assistance recipients under TARP,[88] that 180 days would be a reasonable period of time for Level 1 and Level 2 covered institutions to finalize compensation paid to and awarded to covered persons and to perform the necessary calculations to determine which covered persons are significant risk-takers. This time period would allow covered institutions to make awards following the end of the performance period, calculate the annual base salary and incentive-based compensation for all employees in the consolidated organization, including affiliated covered institutions, and then implement new compensation arrangements for the significant risk-takers identified, if necessary.

The Agencies recognize that the relative compensation test and the exposure test, combined with the one-third threshold, may not identify all covered persons at Level 1 and Level 2 covered institutions who have the ability to expose a covered institution or its affiliated covered institutions to material financial loss. Accordingly, paragraph (2) of the proposed rule's definition of significant risk-taker would allow covered institutions or the Agencies the flexibility to designate additional persons as significant risk-takers. An Agency would be able to designate a covered person as a significant risk-taker if the covered person has the ability to expose the covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance. Each Agency would use its own procedures for making such a designation. Such procedures generally would include reasonable advance written notice of the proposed action, including a description of the basis for the proposed action, and opportunity for the covered person and covered institution to respond.

Relative Compensation Test

The relative compensation test in paragraphs (1)(i) and (ii) of the proposed definition of "significant risk-taker" would require a covered institution to determine which covered persons received the most annual base salary and incentive-based compensation among all individuals receiving incentive-based compensation from the covered institution and any affiliates of the covered institution that are also subject to the proposed rule.[89] The

[84] Incentive-based compensation awarded in a particular calendar year would include any incentive-based compensation awarded with respect to a performance period that ended during that calendar year.

[85] In this example, incentive-based compensation awarded ($120,000) would be 40 percent of the total $300,000 received in annual base salary ($180,000) and incentive-based compensation awarded ($120,000).

[86] 12 U.S.C. 5221(b)(3)(D).

[87] PRA, "Supervisory Statement LSS8/13, Remuneration Standards: The Application of Proportionality" (April 2013), at 11, *available at http://www.bankofengland.co.uk/publications/Documents/other/pra/policy/2013/remunerationstandardslss8-13.pdf.*

[88] The institutions that accepted "exceptional assistance" under TARP were required to submit to the Office of the Special Master for approval the compensation levels and structures for the five named executive officers and the next 20 most highly compensated executive officers ("Top 25") and the compensation structures for the next 75 most highly compensated employees. The requirement for submission of the Top 25 necessitated the collection of the compensation data for executives worldwide and took considerable time and effort on the part of the institutions.

[89] The OCC, Board, FDIC, and SEC's proposed rules include a defined term, "section 956 affiliate," that is intended to function as shorthand for the types of entities that are considered "covered institutions" under the six Agencies' proposed rules. The term "section 956 affiliate" is used only in the definition of "significant risk-taker," and it is not intended to affect the scope of any Agency's rule or the entities considered "covered institutions" under any Agency's rule. Given the proposed location of each Agency's proposed rule in the Code of Federal Regulations, the cross-references used in each of the OCC, Board, FDIC, and SEC's proposed rule differ slightly. NCUA's proposed rule does not include a definition of "section 956 affiliate," because credit unions are not affiliated with the entities that are considered

Continued

definition contains two percentage thresholds for measuring whether an individual is a significant risk-taker. For a Level 1 covered institution, a covered person would be a significant risk-taker if the person receives annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the performance period that places the person among the highest 5 percent of all covered persons in salary and incentive-based compensation (excluding senior executive officers) of the Level 1 covered institution and, in the cases of the OCC, the Board, the FDIC, and the SEC, any section 956 affiliates of the Level 1 covered institution. For Level 2 covered institutions, the threshold would be 2 percent rather than 5 percent.

For example, if a hypothetical bank holding company were a Level 1 covered institution and had $255 billion in average total consolidated assets might have a subsidiary national bank with $253 billion in average total consolidated assets, a mortgage subsidiary with $1.9 billion in average total consolidated assets, and a wealth management subsidiary with $100 million in average total consolidated assets.[90] The relative compensation test would analyze the annual base salary and incentive-based compensation of all covered persons (other than senior executive officers) who receive incentive-based compensation at the bank holding company, the subsidiary national bank, and the mortgage subsidiary, which are all covered institutions with assets greater than or equal to $1 billion. Individuals at the wealth management subsidiary would not be included because that subsidiary has less than $1 billion in average total consolidated assets. Thus, if the bank holding company, state member bank, and mortgage subsidiary collectively had 150,000 covered persons (excluding senior executive officers), then the covered institution should identify the 7,500 or 5 percent of covered persons (other than senior executive officers) who receive the most annual base salary and incentive-based compensation out of those 150,000 covered persons, and identify as significant risk-takers any of those 7,500 persons who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation.[91] Some of those 7,500 covered persons might receive incentive-based compensation from the bank holding company; others might receive incentive-based compensation from the national bank or the mortgage subsidiary. Each covered person that satisfies all requirements would be considered a significant risk-taker of the covered institution from which they receive incentive-based compensation. This example is provided solely for the purpose of illustrating the calculation of the number of significant risk-takers under the relative compensation test as proposed. It does not reflect any specific institution, nor does it reflect the experience or judgment of the Agencies of the number of covered persons or significant risk-takers at any institution that would be a Level 1 covered institution under the proposed rule.

Annual base salary and incentive-based compensation would be measured based on the last calendar year that ended at least 180 days before the beginning of the performance period for the reasons discussed above.

The Agencies propose that Level 1 and Level 2 covered institutions generally should consider a covered person's annual base salary actually paid during the calendar year. If, for example, a covered person was a manager during the first half of the year, with an annual salary of $100,000, and was then promoted to a senior manager with an annual salary of $150,000 on July 1 of that year, the annual base salary would be the $50,000 that person received as manager for the first half of the year plus the $75,000 received as a senior manager for the second half of the year, for a total of $125,000.

For the purposes of determining significant risk-takers, covered institutions should consider the incentive-based compensation that was awarded for any performance period that ended during a particular calendar year, regardless of when the performance period began. For example, if a covered person is awarded incentive-based compensation relating to (i) a plan with a three-year performance period that began on January 1, 2017, (ii) a plan with a two-year performance period that began on January 1, 2018, and (iii) a plan with a one-year performance period that began on January 1, 2019, then all three of these awards would be included in the calculation of incentive-based compensation for calendar year 2019 because all three performance periods would end on December 31, 2019. The amount of previously deferred incentive-based compensation that vests in a particular year would not affect the measure of a covered person's incentive-based compensation for purposes of the relative compensation test.[92]

To reduce the administrative burden of calculating annual base salary and incentive-based compensation, the calculation would not include fringe benefits such as the value of medical insurance or the use of a company car. For purposes of such calculation, any non-cash compensation, such as stock or options, should be valued as of the date of the award.

In the Agencies' supervisory experience, the amount of a covered person's annual base salary and incentive-based compensation can reasonably be expected to relate to the amount of responsibility that the covered person has within an organization, and covered persons with a higher level of responsibility generally either (1) have a greater ability to expose a covered institution to financial loss or (2) supervise covered persons who have a greater ability to expose a covered institution to financial loss. For this reason, the Agencies are proposing to use the relative compensation test as one basis for identifying significant risk-takers.

Although a large number of covered persons may be able to expose a covered institution to a financial loss, the Agencies have limited the relative compensation test to the most highly compensated individuals in order to focus on those covered persons whose behavior can directly or indirectly expose a Level 1 or Level 2 covered institution to a financial loss that is material. Based on an analysis of public disclosures of large, international banking organizations[93] and on the Agencies' own supervision of incentive-based compensation, the top 5 percent most highly compensated covered persons among the covered institutions in the consolidated structure of Level 1 covered institutions are the most likely to have the potential to encourage inappropriate risk-taking by the covered institution because their compensation is excessive (the first test in section 956) or be the personnel who are able to expose the organization to risk of material financial loss (the second test in section 956).

The Board and the OCC, as a part of their supervisory efforts, reviewed a limited sample of banking organizations with total consolidated assets of $50 billion or more to better understand what types of positions within these organizations would be captured by various thresholds for highly compensated employees. In the review, the Board and the OCC also considered how far below the CEO within the organizational hierarchy the selected thresholds would reach. Generally, at banking organizations that would be Level 1 covered institutions under the proposed rule, a 5 percent threshold would include positions such as managing directors, directors, senior vice presidents, relationship and sales managers, mortgage brokers, financial advisors, and product managers. Such positions generally have the ability to expose the organization to the risk of material financial loss. Based on this review, the Agencies believe it is reasonable to propose a 5 percent threshold under the relative compensation test for Level 1 covered institutions.

At banking organizations that would be Level 2 covered institutions under the proposed rule, a 5 percent threshold yielded results that went much deeper into the organization and identified roles with individuals who might not individually take significant risks for the organization. Additional review of a limited sample of these banking organizations that would be Level 2 covered institutions under the proposed rule showed that, on average, the institutions in the limited sample identified approximately 2 percent of their total global employees as individual employees whose activities may expose the organization to material amounts of risk, as consistent with the 2010 Federal Banking Agency Guidance. A lower percentage threshold for Level 2 covered institutions relative to Level 1 covered institutions also is consistent with the observation that larger covered institutions generally have more complex structures and use incentive-based compensation more significantly than relatively smaller covered institutions. Based on this analysis, the Agencies chose to propose a 2 percent threshold for Level 2 covered institutions. A lower percentage threshold for Level 2 covered institutions relative to Level 1 covered institutions would reduce the burden on relatively smaller covered institutions.

Under the proposed rule, if an Agency determines, in accordance with procedures established by the Agency, that a Level 1 covered institution's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 covered institution, then the Agency may apply a 2 percent threshold under the relative compensation test rather than the 5 percent threshold that would otherwise apply. This provision is intended to allow an Agency the flexibility to adjust the number of covered persons who are significant risk-takers with respect to a Level 1 covered institution if the Agency determines that, notwithstanding the Level 1 covered institution's average total consolidated assets, its actual activities and risks are similar to those of a Level 2 covered institution, and therefore it would be appropriate for the Level 1 covered institution to have fewer significant risk-takers.

Exposure Test

Under the exposure test, a covered person would be a significant risk-taker with regard to a Level 1 or Level 2 covered institution if the individual may commit or expose[94] 0.5 percent or more of capital of the covered institution or, and, in the cases of the OCC, the Board, the FDIC, and the SEC, any section 956 affiliates of the covered institution, whether or not the individual is employed by that specific legal entity.

The exposure test relates to a covered person's authority to commit or expose significant amounts of an institution's capital, regardless of whether or not such exposures or commitments are realized. The exposure test would relate to a covered person's authority to cause the covered institution to be subject to credit risk or market risk. The exposure test would not relate to the ability of a covered person to expose a covered institution to other types of risk that may be more difficult to measure or quantify, such as compliance risk.

The measure of capital would relate to a covered person's authority over the course of the most recent calendar year, in the aggregate, and would be based on the maximum amount that the person has authority to commit or expose during the year. For example, a Level 1 or Level 2 covered institution might allocate $10 million to a particular covered person as an authorized level of lending for a calendar year. For purposes of the exposure test in the proposed rule, the covered person's authority to commit or expose would be $10 million. This would be true even if the individual only made $8 million in loans during the year or if the covered institution reduced the authorized amount to $7.5 million at some point during the year. It would also be true even if the covered person did not have the authority through any single transaction to lend $10 million, so long as over the course of the year the covered person could lend up to $10 million in the aggregate. If, however, in

"covered institutions" under the other Agencies' rules. Similarly, FHFA's proposed rule does not include a definition of "section 956 affiliate" because its regulated institutions are not affiliated with other Agencies' covered institutions.

[90] Under the proposed rule, all of these subsidiaries in this example other than the wealth management subsidiary would be subject to the same requirements as the bank holding company, including the specific requirements applying to identification of significant risk-takers. The wealth management subsidiary would not be subject to the requirements of the proposed rule because it has less than $1 billion in average total consolidated assets.

[91] The Agencies anticipate that covered institutions that are within a depository institution holding company structure would work together to ensure that significant risk-takers are correctly identified under the relative compensation test.

[92] Level 1 and Level 2 covered institutions would also use this method of calculating a covered person's incentive-based compensation for a particular calendar year for purposes of determining (1) whether such person received annual base salary and incentive-based compensation of which at least one third was incentive-based compensation and (2) the amount of a covered person's annual base salary and incentive-based compensation under the dollar threshold test.

[93] Agencies examined information available through various public reports, including the FSB's annual Compensation Progress Report. For instance, many international jurisdictions require firms to identify a population of employees who can expose a firm to material amounts of risk (sometimes called material risk takers or key risk takers), who are subject to specific requirements including deferral. In 2014 the FSB published information indicating that the average percentage of total global employees identified as risk-takers under these various jurisdictions' requirements at a sample of large firms ranged from 0.01 percent of employees of the global consolidated organization to more than 5 percent. The number varied between, but also within, individual jurisdictions and institutions as a result of factors such as specific institutions surveyed, the size of institution, and the nature of business conducted. *See* FSB, Implementing the FSB Principles for Sound Compensation Practices and their Implementation Standards Third Progress Report (November 2014), at 19, *available at http://www.fsb.org/2014/11/fsb-publishes-third-progress-report-on-compensation-practices.*

In addition, the Agencies relied to a certain extent on information disclosed on a legal entity basis as a result of Basel Pillar 3 remuneration disclosure requirements, for instance those required under implementing regulations such as Article 450 of the Capital Requirements Regulation (EU No 575/2013) in the European Union. *See, e.g.*, Morgan Stanley, Article 450 of CRR Disclosure: Remuneration Policy (December 31, 2014), *available at http://www.morganstanley.com/about-us-ir/pillar3/2014_CRR_450_Disclosure.pdf.* Remuneration disclosure requirements apply to "significant" firms. CRD IV defines institutions that are significant "in terms of size, internal organisation and nature, scope and complexity of their activities." Under the EBA Guidance on Sound Remuneration Policies, significant institutions means institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions or 'G–SIIs,' and other systemically important institutions or 'O–SIIs'), and, as appropriate, other institutions determined by the competent authority or national law, based on an assessment of the institutions' size, internal organization and the nature, the scope and the complexity of their activities. Some, but not all, national regulators have provided further guidance on interpretation of that term, including the United Kingdom's FCA which provides a form of methodology to determine if a firm is "significant"—based on quantitative tests of balance sheet assets, liabilities, annual fee commission income, client money and client assets.

[94] An individual may commit or expose capital of a covered institution or affiliate if the individual has the ability to put the capital at risk of loss due to market risk or credit risk.

the course of the year the covered person received authorization for an additional $5 million in lending, $15 million would become the authorization amount for purposes of the exposure test. If a covered person had no specific maximum amount of lending for the year, but instead his or her lending was subject to approval on a rolling basis, then the covered person would be assumed to have an authorized annual lending amount in excess of the 0.5 percent threshold.

As an additional example, a Level 1 or Level 2 covered institution could authorize a particular covered person to trade up to $5 million per day in a calendar year. For purposes of the exposure test, the covered person's authorized annual lending amount would be $5 million times the number of trading days in the year (for example, $5 million times 260 days or $1.3 billion). This would be true even if the covered person only traded $1 million per day during the year or if the covered institution reduced the authorized trading amount to $2.5 million per day at some point during the year. If, however, in the course of the year the covered person received authorization for an additional $2 million in trading per day, the covered person's authority to commit or expose capital for purposes of the exposure test would be $1.82 billion ($7 million times 260 days). The Agencies are aware that institutions may not calculate their exposures in this manner and are requesting comment upon it, as set forth below.

The exposure test would also include individuals who are voting members of a committee that has the decision-making authority to commit or expose 0.5 percent or more of the capital of a covered institution or of a section 956 affiliate of a covered institution. For example, if a committee that is comprised of five covered persons has the authority to make investment decisions with respect to 0.5 percent or more of a state member bank's capital, then each voting member of such committee would have the authority to commit or expose 0.5 percent or more of the state member bank's capital for purposes of the exposure test. However, individuals who participate in the meetings of such a committee but who do not have the authority to exercise voting, veto, or similar rights that lead to the committee's decision would not be included.

The exposure test would also cause a covered person to be considered a significant risk-taker if he or she can commit or expose 0.5 percent or more of the capital of any section 956 affiliate of the covered institution by which the covered person is employed. For example, if a covered person of a nonbank subsidiary of a bank holding company has the authority to commit 0.5 percent or more of the bank holding company's capital or the capital of the bank holding company's subsidiary national bank (and received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation), then the covered person would be considered a significant risk-taker of the bank holding company or national bank, whichever is applicable. This would be true even if the covered person is not employed by the bank holding company or the bank holding company's subsidiary national bank, and even if the covered person does not have the authority to commit or expose the capital of the nonbank subsidiary that employs the covered person.

The exposure test would require a Level 1 or Level 2 covered institution to consider the authority of an individual to take an action that could result in significant credit or market risk exposures to the covered institution. The Agencies are proposing the exposure test because individuals who have the authority to expose covered institutions to significant amounts of risk can cause material financial losses to covered institutions. For example, in proposing the exposure test, the Agencies were cognizant of the significant losses caused by actions of individuals, or a trading group, at some of the largest financial institutions during and after the financial crisis that began in 2007.[95]

The exposure test would identify significant risk-takers based on the extent of an individual's authority to expose an institution to market risk or credit risk, measured by reference to 0.5 percent of the covered institution's regulatory capital. Measuring this authority by reference to an existing capital standard would provide a uniform and clearly defined metric to apply among covered persons at Level 1 and Level 2 covered institutions. The Agencies have selected credit and market risks as the most relevant types of exposures because the majority of assets on a covered institution's balance sheet generally give rise to market or credit risk exposure.

In proposing a threshold of 0.5 percent of relevant capital, the Agencies considered both the absolute and relative amount of losses that the threshold would represent for covered institutions, and the fact that incentive-based compensation programs generally apply to numerous employees at a covered institution. In the Agencies' view, the proposed threshold represents a material financial loss within the meaning of section 956 for any institution and multiple losses at the same firm incentivized by a single incentive-based compensation program could impair the firm.

The Agencies considered the cumulative effect of incentive-based compensation arrangements across a covered institution. The Agencies recognize that many covered persons who have the authority to expose a covered institution to risk are subject to similar incentive-based compensation arrangements. The effect of an incentive-based compensation arrangement on a covered institution would be the cumulative effect of the behavior of all covered persons subject to the incentive-based compensation arrangement. If multiple covered persons are incented to take inappropriate risks, their combined risk-taking behavior could lead to a financial loss at the covered institution that is significantly greater than the financial loss that could be caused by any one individual.[96] Although many institutions already have governance and risk management systems to help ensure the commitment of significant amounts of capital is subject to appropriate controls, as noted above, incentive-based compensation arrangements that provide inappropriate risk-taking incentives can weaken those governance and risk management systems. These considerations about the cumulative effect of incentive-based compensation arrangements weigh in favor of a conservative threshold under the exposure test so that large groups of covered persons with the authority to commit a covered institution's capital are not subject to flawed incentive-based compensation arrangements which would incentivize them to subject the covered institution to inappropriate risks.

The Agencies also considered that in another regulatory context, a relatively small decrease in a large institution's capital requires additional safeguards for safety and soundness. Under the capital plan rule in the Board's Regulation Y, well-capitalized bank holding companies with average total consolidated assets of $50 billion or more are subject to prior approval requirements on incremental capital distributions if those distributions, as measured over a one-year period, would exceed pre-approved amounts by more than 1 percent of the bank holding company's tier 1 capital.[97] Relative to the capital plan rule, a lower threshold of capital is appropriate in the context of incentive-based compensation in light of the potential cumulative effect of multiple covered persons with incentives to take inappropriate risks and the possibility that correlated inappropriate risk-taking incentives could, in the aggregate, significantly erode capital buffers at Level 1 and Level 2 covered institutions.

Taking into consideration the cumulative impact of incentive-based compensation arrangements described above, the Agencies have proposed a threshold level for the exposure test of 0.5 percent of capital. The exposure test would be measured on an annual basis to align with the common practice at many institutions of awarding incentive-based compensation on an annual basis, taking into account a covered person's performance and risk-taking over 12 months.

The Agencies also considered international compensation regulations that also use a 0.5 percent threshold, but on a per transaction basis.[98] The Agencies are proposing to apply the threshold on an aggregate annual basis because a per transaction basis could permit an individual to evade designation as a significant risk-taker and the related incentive-based compensation restrictions by keeping his or her individual transactions below the threshold, but completing multiple transactions during the course of the year that, in the aggregate, far exceed the threshold.

Exposure Test at Certain Affiliates

Paragraph (3) of the definition of significant risk-taker is intended to address potential evasion of the exposure test by a Level 1 or Level 2 covered institution that authorizes an employee of one of its affiliates that is not a covered institution because it has less than $1 billion in average total consolidated assets or is not considered a covered institution under one of the six Agencies' proposed rules, to commit or expose 0.5 percent or more of capital of the Level 1 or Level 2 covered institution. The Agencies are concerned that in such a situation, the employee would be functioning as a significant risk-taker at the affiliated Level 1 or Level 2 covered institution but would not be subject to the requirements of the proposed rule that would be applicable to a significant risk-taker at the affiliated Level 1 or Level 2 covered institution. To address this circumstance, the proposed rule would treat such employee as a significant risk-taker with respect to the affiliated Level 1 or Level 2 covered institution for which the employee may commit or expose capital. That Level 1 or Level 2 covered institution would be required to ensure that the employee's incentive-based compensation arrangement complies with the proposed rule.

Dollar Threshold Test

As an alternative to the relative compensation test, the Agencies also considered using a specific absolute compensation threshold, measured in dollars, to determine whether an individual is a significant risk-taker. Under this test, a covered person who receives annual base salary and incentive-based compensation[99] in excess of a specific dollar threshold would be a significant risk-taker, regardless of how that covered person's annual base salary and incentive-based compensation compared to others in the consolidated organization (the "dollar threshold test"). A dollar threshold test would include adjustments such as for inflation. If the dollar threshold test replaced the relative compensation test, the definition of "significant risk-taker" would still include only covered persons who received annual base salary and incentive-based compensation of which at least one-third was incentive-based compensation, based on the covered person's annual base salary paid and incentive-based compensation awarded during the last calendar year that ended at least 180 days before the beginning of the performance period.

One advantage of a dollar threshold test compared to the relative compensation test is that it could be less burdensome to implement and monitor. With a dollar threshold test covered institutions can determine whether an individual covered person meets the dollar threshold test of the significant risk-taker definition by reviewing the compensation of only that single individual. The dollar threshold test would also allow an institution to implement incentive-based compensation structures, policies, and procedures with some foreknowledge of which employees would be covered by them. However, even with adjustment for inflation, a dollar threshold put in place by regulation would assume that a certain dollar threshold is an appropriate level for all Level 1 and Level 2 covered institutions and covered persons. On the other hand, a dollar threshold could set expectations so that individual employees would know based on their own compensation if they are significant risk-takers.

Based on FHFA's supervisory experience analyzing compensation both at FHFA's regulated entities and at other financial institutions, a dollar threshold would be an appropriate approach to identify individuals with the ability to put the covered institution at risk of material loss. FHFA must prohibit its regulated entities from providing compensation to any executive officer of the regulated entity that is not reasonable and comparable with compensation for employment in other similar businesses (including publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.[100] In order to meet this statutory mandate, FHFA analyzes, assesses, and compares the compensation paid to employees of its regulated entities and compensation paid to employees of other financial institutions of various asset sizes. In performing this analysis, FHFA has observed that the amount of a covered person's annual base salary and incentive-based compensation reasonably relates to the level of responsibility that the covered person has within an organization. A dollar threshold test, if set at the appropriate level, would identify covered persons who either (1) have a greater ability to expose a covered institution to financial loss or (2) supervise covered persons who have a greater ability to expose a covered institution to financial loss.

One disadvantage of the dollar threshold test is that it may not appropriately capture all individuals who subject the firm to significant risks. A dollar threshold put in place by regulation that is static across all Level 1 and Level 2 covered institutions also is not sensitive to the compensation

[95] *See supra* note 14.

[96] *See, e.g.*, the Subcommittee Report.

[97] *See* 12 CFR 225.8(g). Bank holding companies that are well-capitalized and that meet other requirements under the rule must provide the Board with prior notice for incremental capital distributions, as measured over a one-year period, that represent more than 1 percent of their tier 1 capital. *Id.*

[98] *See, e.g.*, EBA, "Regulatory Technical Standards on Criteria to Identify Categories of Staff Whose Professional Activities Have a Material Impact on an Institution's Risk Profile under Article 94(2) of Directive 2013/36/EU" (December 16, 2013), *available athttps://www.eba.europa.eu/documents/10180/526386/EBA-RTS-2013-11+%28On+identified+staff%29.pdf/c313a671-269b-45be-a748-29e1c772ee0e.*

[99] For purposes of the dollar threshold test, the measure of annual base salary and incentive-based compensation would be calculated in the same way as the measure for the one-third threshold discussed above.

[100] 12 U.S.C. 4518(a).

practices of an individual organization. The relative compensation test, while not as easy to implement, could be more sensitive to the compensation structure of an organization because it is based on the relative compensation of individuals that the organization concludes should be the mostly highly compensated.

2.18. For purposes of a designation under paragraph (2) of the definition of significant risk-taker, should the Agencies provide a specific standard for what would constitute "material financial loss" and/or "overall risk tolerance"? If so, how should these terms be defined and why?

2.19. The Agencies specifically invite comment on the one-third threshold in the proposed rule. Is one-third of the total of annual base salary and incentive-based compensation an appropriate threshold level of incentive-based compensation that would be sufficient to influence risk-taking behavior? Is using compensation from the last calendar year that ended at least 180 days before the beginning of the performance period for calculating the one-third threshold appropriate?

2.20. The Agencies specifically invite comment on the percentages of employees proposed to be covered under the relative compensation test. Are 5 percent and 2 percent reasonable levels? Why or why not? Would 5 percent and 2 percent include all of the significant risk-takers or include too many covered persons who are not significant risk-takers?

2.21. The Agencies specifically invite comment on the time frame needed to identify significant risk-takers under the relative compensation test. Is using compensation from the last calendar year that ended at least 180 days before the beginning of the performance period appropriate? The Agencies invite comment on whether there is another measure of total compensation that would be possible to measure closer in time to the performance period for which a covered person would be identified as a significant risk-taker.

2.22. The Agencies invite comment on all aspects of the exposure test, including potential costs and benefits, the appropriate exposure threshold and capital equivalent, efficacy at identifying those non-senior executive officers who have the authority to place the capital of a covered institution at risk, and whether an exposure test is a useful complement to the relative compensation test. If so, what specific types of activities or transactions, and at what level of exposure, should the exposure test cover? The Agencies also invite comment on whether the exposure test is workable and why. What, if any, additional details would need to be specified in order to make the exposure test workable, such as further explanation of the meanings of "commit" or "expose"? In addition to committees, should the exposure test apply to groups of persons, such as traders on a desk? If so, how should it be applied?

2.23. With respect to the exposure test, the Agencies specifically invite comment on the proposed capital commitment levels. Is 0.5 percent of capital of a covered institution a reasonable proxy for material financial loss, or are there alternative levels or dollar thresholds that would better achieve the statutory objectives? If alternative methods would better achieve the statutory objectives, what are the advantages and disadvantages of those alternatives compared to the proposed level? For depository institution holding company organizations with multiple covered institutions, should the capital commitment level be consistent across all such institutions or should it vary depending on specified factors and why? For example, should the levels for covered institutions that are subsidiaries of a parent who is also a covered institution vary depending on: (1) The size of those subsidiaries relative to the parent; and/or (2) whether the entity would be subject to comparable restrictions if it were not affiliated with the parent? What are the advantages and disadvantages of any such variation, and what would be the appropriate levels? The Agencies recognize that certain covered institutions under the Board's, the OCC's, the FDIC's, and the SEC's proposed rules, such as Federal and state branches and agencies of foreign banks and investment advisers that are not also depository institution holding companies, banks, or broker-dealers or subsidiaries of those institutions, are not otherwise required to calculate common equity tier 1 capital or tentative net capital, as applicable. How should the capital commitment level be determined under the Board's, the OCC's, the FDIC's, and the SEC's proposed rules for those covered institutions? Is there a capital or other measure that the Agencies should consider for those covered institutions that would achieve similar objectives to common equity tier 1 capital or tentative net capital? If so, what are the advantages and disadvantages of such a capital or other measure?

2.24. The Agencies invite comment on whether it is appropriate to limit the exposure test to market risk and credit risk and why. What other types of risk should be included, if any and how would such exposures be measured? Should the Agencies prescribe a method for measurement of market risk and credit risk? Should exposures be measured as notional amounts or is there a more appropriate measure? If so, what would it be? Should the exposure test take into account hedging? How should the exposure test be applied to an individual in a situation where a firm calculates an exposure limit for a trading desk comprised of a group of people? Should a de minimis threshold be introduced for any transaction counted toward the 0.5 percent annual exposure test?

2.25. Should the exposure test consider the authority of a covered person to initiate or structure proposed product offerings, even if the covered person does not have final decision-making authority over such product offerings? Why or why not? If so, are there specific types of products with respect to which this approach would be appropriate and why?

2.26. Should the exposure test measure a covered person's authority to commit or expose (a) through one transaction or (b) as currently proposed, through multiple transactions in the aggregate over a period of time? What would be the benefits and disadvantages of applying the test on a per-transaction versus aggregate basis over a period of time? If measured on an aggregate basis, what period of time is appropriate and why? For example, should paragraph (1)(iii) of the definition of significant risk-taker read: "A covered person of a covered institution who had the authority to commit or expose in any single transaction during the previous calendar year 0.5 percent or more of the capital [101] of the covered institution or of any section 956 affiliate of the covered institution, whether or not the individual is a covered person of that specific legal entity"? Why or why not?

2.27. If the exposure test were based on a single transaction, would 0.5 percent of capital be the appropriate threshold for significant risk-taker status? Why or why not? If not, what would be the appropriate percentage of capital to include in the exposure test and why?

2.28. Should the Agencies introduce an absolute exposure threshold in addition to a percentage of capital test if a per-transaction test was introduced instead of the annual exposure test? Why or why not? For example, would a threshold formulated as "the lesser of 0.5 percent of capital or $100 million" help to level the playing field across Level 1 covered institutions and the smallest Level 2 covered institutions and better ensure that the right set of activities is being considered by all institutions? The Agencies' supervisory experience indicates that many large institutions, for example, require additional scrutiny of significant transactions, which helps to ensure that the potential risks posed by large transactions are adequately considered before such transactions are approved. Would $100 million be the appropriate level at which additional approval procedures are required before a transaction is approved, or would a lower threshold be appropriate if an absolute dollar threshold were combined with the capital equivalent threshold?

[101] Under this alternative language, each Agency's rule text would include the relevant capital metrics for its covered institutions.

2.29. Should the exposure test measure exposures or commitments actually made, or should the authority to make an exposure or commitment be sufficient to meet the test and why? For example, should paragraph (1)(iii) of the definition of significant risk-taker read: "A covered person of a covered institution who committed or exposed in the aggregate during the previous calendar year 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any section 956 affiliate of the covered institution, whether or not the individual is a covered person of that specific legal entity"?

2.30. Would a dollar threshold test, as described above, achieve the statutory objectives better than the relative compensation test? Why or why not? If using a dollar threshold test, and assuming a mechanism for inflation adjustment, would $1 million be the right threshold or should it be higher or lower? For example, would a threshold of $2 million dollars be more appropriate? Why or why not? How should the threshold be adjusted for inflation? Are there other adjustments that should be made to ensure the threshold remains appropriate? What are the advantages and disadvantages of a dollar threshold test compared to the proposed relative compensation test?

2.31. The Agencies specifically invite comment on replacement of the relative compensation test in paragraphs (1)(i) and (ii) of the definition of significant risk-taker with a dollar threshold test, as follows: "a covered person of a Level 1 or Level 2 covered institution who receives annual base salary and incentive-based compensation of $1 million or more in the last calendar year that ended at least 180 days before the beginning of the performance period." Under this alternative, the remaining language in the definition of "significant risk-taker" would be unchanged.

2.32. The Agencies invite comment on all aspects of a dollar threshold test, including potential costs and benefits, the appropriate amount, efficacy at identifying those non-senior executive officers who have the ability to place the institution at risk, time frame needed to identify significant risk-takers, and comparison to a relative compensation test such as the one proposed. Is the last calendar year that ended at least 180 days before the beginning of the performance period an appropriate time frame or for the dollar threshold test or would using compensation from the performance period that ended in the most recent calendar year be appropriate? The Agencies specifically invite comment on whether to use an exposure test if a dollar threshold test replaces the relative compensation test and why.

2.33. The Agencies invite comment on all aspects of the definition of "significant risk-taker." The Agencies specifically invite comment on whether the definition should rely solely on the relative compensation test, solely on the exposure test, or on both tests, as proposed. What are the advantages and disadvantages of each of these options?

2.34. In addition to the tests outlined above, are there alternative tests of, or proxies for, significant risk-taking that would better achieve the statutory objectives? What are the advantages and disadvantages of alternative approaches? What are the implementation burdens of any of the approaches, and how could they be addressed?

2.35. How many covered persons would likely be identified as significant risk-takers under the proposed rule? How many covered persons would likely be identified under only the relative compensation test with the one-third threshold? How many covered persons would likely be identified under only the exposure test as measured on an annual basis with the one-third threshold? How many covered persons would be identified under only an exposure test formulated on a per transaction basis with the one-third threshold? How many covered persons would be identified under only the dollar threshold test, assuming the dollar threshold is $1 million, with the one-third threshold? How many covered persons would be identified under each test individually without a one-third threshold?

Other Definitions

To award. The proposed rule defines "to award" as to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

The Agencies acknowledge that some covered institutions use the term "award" to refer to the decisions that covered institutions make about incentive-based compensation structures and performance measure targets before or soon after the relevant performance period begins. However, in the interest of clarity and consistency, the proposed rule uses the phrase "to award" only with reference to final determinations about incentive-based compensation amounts that an institution makes and communicates to the covered person who could receive the award under an incentive-based compensation arrangement for a given performance period.

In most cases, incentive-based compensation will be awarded near the end of the performance period. Neither the length of the performance period nor the decision to defer some or all incentive-based compensation would affect the determination of when incentive-based compensation is awarded for purposes of the proposed rule. For example, at the beginning of a one-year performance period, a covered institution might inform a covered person of the amount of incentive-based compensation that the covered person could earn at the end of the performance period if certain measures and other criteria are met. The covered institution might also inform the covered person that a portion of the covered person's incentive-based compensation will be deferred for a four-year period. The covered person's incentive-based compensation for that performance period—including both the portion that is deferred and the portion that vests immediately—would be "awarded" when the covered institution determines what amount of incentive-based compensation the covered person has earned based on his or her performance during the performance period.

For equity-like instruments, such as stock appreciation rights and options, the date when incentive-based compensation is awarded may be different than from the date when the instruments vest, are paid out, or can be exercised. For example, a covered institution could determine at the end of a performance period that a covered person has earned options on the basis of performance during that performance

period, and the covered institution could provide that the covered person cannot exercise the options for another five years. The options would be considered to have been "awarded" at the end of the performance period, even if they cannot be exercised for five years.

Under the proposed rule, covered institutions would have the flexibility to decide how the determination of the amount of incentive-based compensation would be conveyed to a covered person. For example, some covered institutions may choose to inform covered persons of their award amounts in writing or by electronic message. Others may choose to allow managers to orally inform covered persons of their award amounts.

2.36. The Agencies invite comment on whether the proposed rule's definition of "to award" should include language on when incentive-based compensation is awarded for purposes of the proposed rule. Specifically, the Agencies invite comment on whether the definition should read: "To award incentive-based compensation means to make a final determination, conveyed to a covered person, at the end of the performance period, of the amount of incentive-based compensation payable to the covered person for performance over that performance period." Why or why not?

Board of directors. The proposed rule defines "board of directors" as the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers. Under the Board's proposed rule, for a foreign banking organization, "board of directors" would mean the relevant oversight body for the institution's state insured or uninsured branch, agency, or operations, consistent with the foreign banking organization's overall corporate and management structure. Under the FDIC's proposed rule, for a state insured branch of a foreign bank, "board of directors" would refer to the relevant oversight body for the state insured branch consistent with the foreign bank's overall corporate and management structure. Under the OCC's proposed rule, for a Federal branch or agency of a foreign bank, "board of directors" would refer to the relevant oversight body for the Federal branch or agency, consistent with its overall corporate and management structure. The OCC would work closely with Federal branches and agencies to determine the appropriate person or committee to undertake the responsibilities assigned to the oversight body. NCUA's proposed rule defines "board of directors" as the governing body of a credit union.

Clawback. The term "clawback" under the proposed rule refers specifically to a mechanism that allows a covered institution to recover from a senior executive officer or significant risk-taker incentive-based compensation that has vested if the covered institution determines that the senior executive officer or significant risk-taker has engaged in fraud or the types of misconduct or intentional misrepresentation described in section ____.7(c) of the proposed rule. Clawback would not apply to incentive-based compensation that has been awarded but is not yet vested. As used in the proposed rule, the term "clawback" is distinct from the terms "forfeiture" and "downward adjustment," in that clawback provisions allow covered institutions to recover incentive-based compensation that has already vested. In contrast, forfeiture applies only after incentive-based compensation is awarded but before it vests. Downward adjustment occurs only before incentive-based compensation is awarded.

Compensation, fees, or benefits. The proposed rule defines "compensation, fees, or benefits" to mean all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to the covered institution. The form of payment would not affect whether such payment meets the definition of "compensation, fees, or benefits." The term would include, among other things, payments or benefits pursuant to an employment contract, compensation, pension, or benefit agreements, fee arrangements, perquisites, options, post-employment benefits, and other compensatory arrangements. The term is defined broadly under the proposed rule in order to include all forms of incentive-based compensation.

The term "compensation, fees, or benefits" would exclude reimbursement for reasonable and proper costs incurred by covered persons in carrying out the covered institution's business.

Control function. The proposed rule defines "control function" as a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.[102] The term would include loan review and Bank Secrecy Act roles. Section ____.9(b) of the proposed rule would require a Level 1 or Level 2 covered institution to provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor and ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of the business areas they monitor. As described below, section ____.11 of the proposed rule would also require that a Level 1 or Level 2 covered institution's policies and procedures provide an appropriate role for control function personnel in the covered institution's incentive-based compensation program. The heads of control functions would also be considered senior executive officers for purposes of the proposed rule, because such employees can individually affect the risk profile of a covered institution.

Although covered persons in control functions generally do not perform activities designed to generate revenue or reduce expenses, they may nonetheless have the ability to expose covered institutions to risk of material financial loss. For example, individuals in human resources and risk management roles contribute to the design and review of performance measures used in incentive-based compensation arrangements, which may allow them to influence the activities of risk-takers in a covered institution. For that reason, the proposed rule would treat covered persons who are the heads of control functions as senior executive officers who would be subject to certain additional requirements under the proposed rule as described further below.

2.37. The Agencies invite comment on whether and in what circumstances, the proposed definition of "control function" should include additional individuals and organizational units that (a) do not engage in activities designed to generate revenue or reduce expenses; (b) provide operational support or servicing to any organizational unit or function; or (c) provide technology services.

Deferral. The proposed rule defines "deferral" as the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded. As discussed below in this Supplementary Information section, under the proposed rule, a Level 1 or Level 2 covered institution would be required to defer a portion of the incentive-based compensation of senior executive officers and significant risk-takers. The Agencies would not consider compensation that has vested, but that the covered person then chooses to defer, *e.g.*, for tax reasons, to be deferred incentive-based compensation for purposes of the proposed rule because it would not be subject to forfeiture.

The Agencies note that the deferral period under the proposed rule would not include any portion of the performance period, even for incentive-based compensation plans that have longer performance periods. Deferral involves a "look-back" period that is intended as a stand-alone interval that follows the performance period and allows time for ramifications (such as losses or other adverse consequences) of, and other information about, risk-taking decisions made during the performance period to become apparent.

If incentive-based compensation is paid in the form of options, the period of time between when an option vests and when the option can be exercised would not be considered deferral under the proposed rule. As with other types of incentive-based compensation, an option would count toward the deferral requirement only if it has been awarded but has not yet vested, regardless of when the option could be exercised.[103]

2.38. To the extent covered institutions are already deferring incentive-based compensation, does the proposed definition of deferral reflect current practice? If not, in what way does it differ?

Deferral period. The proposed rule defines "deferral period" as the period of time between the date a performance period ends and the last date on which the incentive-based compensation that is awarded for such performance period vests. A deferral period and a performance period that both relate to the same incentive-based compensation award could not occur concurrently. Because sections ____.7(a)(1)(iii) and (a)(2)(iii) of the proposed rule would allow for pro rata vesting of deferred amounts during a deferral period, some deferred incentive-based compensation awarded for a performance period could vest before the end of the deferral period following that performance period. As a result, the deferral period would be considered to end on the date that the last tranche of incentive-based compensation awarded for a performance period vests.

Downward adjustment. The proposed rule defines "downward adjustment" as a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under section ____7(b) of the proposed rule. As explained above, downward adjustment is distinct from clawback and forfeiture because downward adjustment affects incentive-based compensation that has not yet been awarded. It is also distinct from performance-based adjustments that covered institutions might make in determining the amount of incentive-based compensation to award to a covered person, absent or separate from a forfeiture or downward adjustment review. Depending on the results of a forfeiture and downward adjustment review under section ____.7(b) of the proposed rule, a covered institution could adjust downward incentive-based compensation that has not yet been awarded to a senior executive officer or significant risk-taker such that the senior executive officer or significant risk-taker is awarded none, or only some, of the incentive-based compensation that could otherwise have been awarded to such senior executive officer or significant risk-taker.

Equity-like instrument. The proposed rule defines "equity-like instrument" as (1) equity in the covered institution or of any affiliate of the covered institution; or (2) a form of compensation (i) payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or (ii) that requires, or may require, settlement in the shares of the covered institution or any affiliate of the covered institution. The value of an equity-like instrument would be related to the value of the covered institution's shares.[104] The definition includes three categories. Shares are an example of the first category, "equity." Examples of the second category, "a form of compensation payable at least in part based on the price of the shares or other equity instruments of the covered institution or any affiliate of the covered institution," include restricted stock units (RSUs), stock appreciation rights, and other derivative instruments that settle in cash. Examples of the third category, "a form of compensation that requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution," include options and derivative securities that settle, either mandatorily or permissively, in shares. An RSU that offers a choice of settlement in either cash or shares is also an example of this third category. The definition of equity-like instrument would include shares in the holding company of a covered institution, or instruments the value of which is dependent on the value of shares in the holding company of a covered institution. For example, the definition would include incentive-based compensation paid in the form of shares in a bank holding company, even if that incentive-based compensation were provided by a national bank subsidiary of that bank holding company. Covered institutions would determine the specific terms and conditions of the equity-like instruments they award to covered persons.

NCUA's proposed rule does not include the definition of "equity-like instrument" because credit unions do not have these types of instruments.

2.39. Are there any financial instruments that are used for incentive-based compensation and have a value that is dependent on the performance of a covered institution's shares, but are not captured by the definition of "equity-like instrument"? If so, what are they, and should such instruments be added to the definition? Why or why not?

Forfeiture. The proposed rule defines "forfeiture" as a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.[105]

[102] The term "control function" would serve a different purpose than, and is not intended to affect the interpretation of, the term "front line unit," as used in the OCC's Heightened Standards.

[103] Section ____.7(a)(4)(ii) of the proposed rule limits the portion of the proposed rule's minimum deferral requirements that can be met in the form of options.

[104] The definition of "equity-like instrument" in the proposed rule is similar to "share-based payment" in Topic 718 of the Financial Accounting Standards Board (FASB) Accounting Standards Codification (formerly FAS 123(R)). Paragraph 718–10–30–20, FASB Accounting Standards Codification.

[105] Forfeiture is similar to the concept of "malus" common at some covered institutions. Malus is defined in the CEBS Guidelines as "an arrangement that permits the institution to prevent vesting of all or part of the amount of a deferred remuneration award in relation to risk outcomes or performance." *See* CEBS Guidelines. The 2011 Proposed Rule did not define the term "forfeiture," but the concept was implicit in the discussion of adjustments during the deferral period. *See* 76 FR at 21179, "Deferred payouts may be altered according to risk outcomes either formulaically or based on managerial judgment, though extensive use of judgment might make it more difficult to execute deferral arrangements in a sufficiently predictable fashion to influence the risk-taking behavior of a covered person. To be most effective in ensuring balance, the deferral period should be sufficiently long to allow for the realization of a substantial portion of the risks from the covered person's activities, and the measures of loss should be clearly explained to covered persons and closely

Continued

Depending on the results of a forfeiture and downward adjustment review under section ____.7(b) of the proposed rule, a covered institution could reduce a significant risk-taker or senior executive officer's unvested incentive-based compensation such that none, or only some, of the deferred incentive-based compensation vests. As discussed below in this **SUPPLEMENTARY INFORMATION** section, a Level 1 or Level 2 covered institution would be required to place at risk of forfeiture all unvested deferred incentive-based compensation, including amounts that have been awarded and deferred under long-term incentive plans.

Incentive-based compensation. The proposed rule defines "incentive-based compensation" as any variable compensation, fees, or benefits that serve as an incentive or reward for performance. The Agencies propose a broad definition to provide flexibility as forms of compensation evolve. Compensation earned under an incentive plan, annual bonuses, and discretionary awards are all examples of compensation that could be incentive-based compensation. The form of payment, whether cash, an equity-like instrument, or any other thing of value, would not affect whether compensation, fees, or benefits meet the definition of "incentive-based compensation."

In response to a similar definition in the 2011 Proposed Rule, commenters asked for clarification about the components of incentive-based compensation. The proposed definition clarifies that compensation, fees, and benefits that are paid for reasons other than to induce performance would not be included. For example, compensation, fees, or benefits that are awarded solely for, and the payment of which is solely tied to, continued employment (*e.g.*, salary or a retention award that is conditioned solely on continued employment) would not be considered incentive-based compensation. Likewise, payments to new employees at the time of hiring (signing or hiring bonuses) that are not conditioned on performance achievement would not be considered incentive-based compensation because they generally are paid to induce a prospective employee to join the institution, not to influence future performance of such employee.

Similarly, a compensation arrangement that provides payments solely for achieving or maintaining a professional certification or higher level of educational achievement would not be considered incentive-based compensation under the proposed rule. In addition, the Agencies do not intend for this definition to include compensation arrangements that are determined based solely on the covered person's level of fixed compensation and that do not vary based on one or more performance measures (*e.g.*, employer contributions to a 401(k) retirement savings plan computed based on a fixed percentage of an employee's salary). Neither would the proposed definition include dividends paid and appreciation realized on stock or other equity-like instruments that are owned outright by a covered person. However, stock or other equity-like instruments awarded to a covered person under a contract, arrangement, plan, or benefit would not be considered owned outright while subject to any vesting or deferral arrangement (regardless of whether such deferral is mandatory).

2.40. The Agencies invite comment on the proposed definition of incentive-based compensation. Should the definition be modified to include additional or fewer forms of compensation and in what way? Is the definition sufficiently broad to capture all forms of incentive-based compensation currently used by covered institutions? Why or why not? If not, what forms of incentive-based compensation should be included in the definition?

2.41. The Agencies do not expect that most pensions would meet the proposed rule's definition of "incentive-based compensation" because pensions generally are not conditioned on performance achievement. However, it may be possible to design a pension that would meet the proposed rule's definition of "incentive-based compensation." The Agencies invite comment on whether the proposed rule should contain express provisions addressing the status of pensions in relation to the definition of "incentive-based compensation." Why or why not?

Incentive-based compensation arrangement, incentive-based compensation plan, and incentive-based compensation program. The proposed rule defines three separate, but related, terms describing how covered institutions provide incentive-based compensation.[106] Under the proposed rule, "incentive-based compensation arrangement" would mean an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans. An individual employment agreement would be an incentive-based compensation arrangement.

"Incentive-based compensation plan" is defined as a document setting forth terms and conditions governing the opportunity for and the delivery of incentive-based compensation payments to one or more covered persons. An incentive-based compensation plan may cover, among other things, specific roles or job functions, categories of individuals, or forms of payment. A covered person may be compensated under more than one incentive-based compensation plan.

"Incentive-based compensation program" means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls. A covered institution's incentive-based compensation program would include all of the covered institution's incentive-based compensation arrangements and incentive-based compensation plans.

Long-term incentive plan. The proposed rule defines "long-term incentive plan" as a plan to provide incentive-based compensation that is based on a performance period of at least three years. Any incentive-based compensation awarded to a covered person for a performance period of less than three years would not be awarded under a long-term incentive plan, but instead would be considered "qualifying incentive-based compensation" as that term is defined under the proposed rule.[107]

Long-term incentive plans are forward-looking plans designed to reward employees for performance over a multi-year period. These plans generally provide an award of cash or equity at the end of a performance period if the employee meets certain individual or institution-wide performance measures. Because they have longer performance periods, long-term incentive plans allow more time for information about a covered person's performance and risk-taking to become apparent, and covered institutions can take that information into account to balance risk and reward. Under current practice, the performance period for a long-term incentive plan is typically three years.[108]

2.42. The Agencies invite comment on whether the proposed definition of "long-term incentive plan" is appropriate for purposes of the proposed rule. Are there incentive-based compensation arrangements commonly used by financial institutions that would not be included within the definition of "long-term incentive plan" under the proposed rule but that, given the scope and purposes of section 956, should be included in such definition? If so, what are the features of such incentive-based compensation arrangements, why should the definition include such arrangements, and how should the definition be modified to include such arrangements?

Option. The proposed rule defines an "option" as an instrument through which a covered institution provides a covered person with the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right. Typically, covered persons must wait for a specified time period to conclude before obtaining the right to exercise an option.[109] The definition of option would also include option-like instruments that mirror some or all of the features of an option. For example, the proposed rule would include stock appreciation rights under the definition of option because the value of a stock appreciation right is based on a stock's price on a future date. As mentioned above, an option would be considered an equity-like instrument, as that term is defined in the proposed rule. NCUA's proposed rule does not include a definition of "option" because credit unions do not issue options.

Performance period. The proposed rule defines "performance period" as the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation. The Agencies intend for the proposed rule to provide covered institutions with flexibility in determining the length and the start and end dates of their employees' performance periods. For example, under the proposed rule, a covered institution could choose to have a performance period that coincided with a calendar year or with the covered institution's fiscal year (if the calendar year and fiscal year were different). A covered institution could also choose to have a performance period of one year for some incentive-based compensation and a performance period of three years for other incentive-based compensation.

2.43. Does the proposed rule's definition of "performance period" meet the goal of providing covered institutions with flexibility in determining the length and start and end dates of performance periods? Why or why not? Would a prescribed performance period, for example, periods that correspond to calendar years, be preferable? Why or why not?

Qualifying incentive-based compensation. The proposed rule defines "qualifying incentive-based compensation" as the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to such covered person for that particular performance period under a long-term incentive plan. With the exception of long-term incentive plans, all forms of compensation, fees, and benefits that qualify as "incentive-based compensation," including annual bonuses, would be included in the amount of qualifying incentive-based compensation. The deferral requirements of section ____.7(a) of the proposed rule would require a Level 1 or Level 2 covered institution to defer a specified percentage of any qualifying incentive-based compensation awarded to a significant risk-taker or senior executive officer for each performance period.

Regulatory report. Each Agency has included a definition of "regulatory report" in its version of the proposed rule that explains which regulatory reports would be required to be used by each of that Agency's covered institutions for the purposes of measuring average total consolidated assets under the proposed rule.

For a national bank, state member bank, state nonmember bank, federal savings association, and state savings association, "regulatory report" would mean the consolidated Reports of Condition and Income ("Call Report").[110] For a U.S. branch or agency of a foreign bank, "regulatory report" would mean the Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks—FFIEC 002. For a bank holding company, "regulatory report" would mean Consolidated Financial Statements for Bank Holding Companies ("FR Y–9C"). For a savings and loan holding company, "regulatory report" would mean FR Y–9C; if a savings and loan holding company is not required to file an FR Y–9C, Quarterly Savings and Loan Holding Company Report ("FR 2320"), if the savings and loan holding company reports consolidated assets on the FR 2320. For a savings and loan holding company that does not file a regulatory report within the meaning of the preceding sentence, "regulatory report" would mean a report of average total consolidated assets filed with the Board on a quarterly basis. For an Edge or Agreement Corporation, "regulatory report" would mean the Consolidated Report of Condition and Income for Edge and Agreement Corporations ("FR 2886b"). For the U.S. operations of a foreign banking organization, "regulatory report" would mean a report of average total consolidated U.S. assets filed with the Board on a quarterly basis. For subsidiaries of national banks, Federal savings associations, and Federal branches or agencies of foreign banking organizations that are not brokers, dealers, persons providing insurance, investment companies, or investment advisers, "regulatory report" would mean a report of the subsidiary's total consolidated assets prepared by the subsidiary, national bank, Federal

tied to their activities during the relevant performance period."

[106] The use of these terms under the proposed rule is consistent with how the same terms are used in the 2010 Federal Banking Agency Guidance.

[107] In the 2011 Proposed Rule, the Agencies did not define the term "long-term incentive plan," but the 2011 Proposed Rule discussed "longer performance periods" as one of four methods used to make compensation more sensitive to risk. 76 FR at 21179 ("Under this method of making incentive-based compensation risk sensitive, the time period covered by the performance measures used in determining a covered person's award is extended (for example, from one year to two years). Longer performance periods and deferral of payment are related in that both methods allow awards or payments to be made after some or all risk outcomes associated with a covered person's activities are realized or better known.").

[108] *See* Compensation Advisory Partners, "Large Complex Banking Organizations: Trends, Practices, and Outlook" (June 2012), *available at http://www.capartners.com/uploads/news/id90/capartners.com-capflash-issue31.pdf*; Pearl Meyer & Partners, "Trends in Incentive Compensation: How the Federal Reserve is Influencing Pay" (2013), *available at https://pearlmeyer.com/pearl/media/pearlmeyer/articles/pmp-art-fedreserveinfluencingpay-so-bankdirector-5-14-2013.pdf*; Meridian Compensation Partners, LLC, "Executive Compensation in the Banking Industry: Emerging Trends and Best Practices, 2014–2015" (June 22, 2015), *available at https://www.meridiancp.com/wp-content/uploads/Executive-Compensation-in-the-Banking-Industry.pdf*; Compensation Advisory Partners, "Influence of Federal Reserve on Compensation Design in Financial Services: An Analysis of Compensation Disclosures of 23 Large Banking Organizations" (April 24, 2013), *available at http://www.capartners.com/uploads/news/id135/capartners.com-capflash-issue45.pdf*; "The 2014 Top 250 Report: Long-term Incentive Grant Practices for Executives" ("Cook Report") (October 2014), *available at http://www.fwcook.com/alert_letters/The_2014_Top_250_Report_Long-Term_Incentive_Grant_Practices_for_Executives.pdf*; "Study of 2013 Short- and Long-term Incentive Design Criterion Among Top 200 S&P 500 Companies" (December 2014), *available at http://www.ajg.com/media/1420659/study-of-2013-short-and-long-term-incentive-design-criterion-among-top-200.pdf*.

[109] As explained above in the definition of "deferral," the time period after the option vests but before it may be exercised is not considered part of the deferral period.

[110] Specifically, the OCC will refer to item RCFD 2170 of Schedule RC.

savings association, or Federal branch or agency in a form that is acceptable to the OCC. For a regulated institution that is a subsidiary of a bank holding company, savings and loan holding company, or a foreign banking organization, "regulatory report" would mean a report of the subsidiary's total consolidated assets prepared by the bank holding company, savings and loan holding company, or subsidiary in a form that is acceptable to the Board.

For FHFA's proposed rule, "regulatory report" would mean the Call Report Statement of Condition.

For a natural person credit union, "regulatory report" would mean the 5300 Call Report. For corporate credit unions, "regulatory report" would mean the 5310 Call Report.

For a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), "regulatory report" would mean the FOCUS Report.[111] For an investment adviser, as such term is defined in section 202(a)(11) of the Investment Advisers Act, and as discussed above, total consolidated assets would be determined by the investment adviser's total assets (exclusive of non-proprietary assets) shown on the balance sheet for the adviser's most recent fiscal year end.[112]

Vesting. Under the proposed rule, "vesting" of incentive-based compensation means the transfer of ownership[113] of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event. Amounts awarded under an incentive-based compensation arrangement may vest immediately—for example, when the amounts are paid out to a covered person immediately and are not subject to deferral and forfeiture. As explained above, before amounts awarded to a covered person vest, the amounts could also be deferred and at risk of forfeiture. After amounts awarded to a covered person vest, the amounts could be subject to clawback, but they would not be at risk of forfeiture.

As described below in this **SUPPLEMENTARY INFORMATION** section, for incentive-based compensation to be counted toward the minimum deferral amount as discussed in section ____.7(a) of the proposed rule, a sufficient amount of time must elapse between the end of the performance period and the time when the deferred incentive-based compensation vests (and is no longer subject to forfeiture). During that deferral period, the award would be at risk of forfeiture.

If, after the award date, the covered institution had the right to require forfeiture of the shares or units awarded, then the award would not be considered vested. If, after the award date, the covered institution does not have the right to require forfeiture of the shares or units awarded, then the award would be vested and therefore would not be able to be counted toward the minimum deferral amount even if the shares or units have not yet been transferred to the covered person. For example, a covered institution could award an employee 100 shares of stock appreciation rights that pay out five years after the award date. In other words, five years after the award date, the covered institution will pay the employee the difference between the value of 100 shares of the covered institution's stock on the award date and the value of 100 shares of the covered institution's stock five years later. The amount the covered institution pays the employee could vary based on the value of the institution's shares. If the covered institution does not have the right to adjust the number of shares of stock appreciation rights before the payout, the stock appreciation rights would be considered vested as of the award date (even if the amount paid out could vary based on the value of the institution's shares). If, however, the covered institution has the right to adjust the number of shares of stock appreciation rights until payout to account for risk outcomes that occur after the award date (for example, by reducing the number of shares of stock appreciation rights from 100 to 50 based on a failure to comply with the institution's risk management policies), the stock appreciation rights would not be considered vested until payout. Similarly, amounts paid to a covered person pursuant to a dividend equivalent right would vest when the number of dividend equivalent rights cannot be adjusted by the covered institution on the basis of risk outcomes.

2.44. The Agencies invite comment generally on the proposed rule's definitions.

Relationship Between Defined Terms

The relationship between some of these defined terms can best be explained chronologically. Under the proposed rule, a covered institution's incentive-based compensation timeline would be as follows:

- Performance period. A covered person may have incentive-based compensation targets based on performance measures that would apply during a *performance period*. A covered person's performance or the performance of the covered institution during this period would influence the amount of incentive-based compensation *awarded* to the covered person. Before incentive-based compensation is *awarded* to a covered person, it should be subject to risk adjustments to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance, as described in section ____.4(d) of the proposed rule. In addition, at any time during the performance period, incentive-based compensation could be subject to *downward adjustment*, as described in section ____.7(b) of the proposed rule.
- Downward adjustment (if needed). Downward adjustment could occur at any time during a performance period if a Level 1 or Level 2 covered institution conducts a forfeiture and downward adjustment review under section ____.7(b) of the proposed rule and the Level 1 or Level 2 covered institution determines that incentive-based compensation not yet awarded for the current performance period should be reduced. In other words, downward adjustment applies to plans where the performance period has not yet ended.
- Award. At or near the end of a *performance period*, a covered institution would evaluate the covered person's or institution's performance, taking into account adjustments described in section ____.4(d)(3) of the proposed rule, and determine the amount of incentive-based compensation, if any, to be awarded to the covered person for that *performance period*. At that time, the covered institution would determine what portion of the incentive-based compensation that is awarded will be *deferred*, as well as the *vesting* schedule for that deferred incentive-based compensation. A Level 1 or Level 2 covered institution could reduce the amount of incentive-based compensation payable to a senior executive officer or significant risk-taker depending on the outcome of a forfeiture and downward adjustment review, as described in section ____.7(b) of the proposed rule.
- Deferral period. The *deferral period* for incentive-based compensation awarded for a particular performance period would begin at the end of such *performance period*, regardless of when a covered institution *awards* incentive-based compensation to a covered person for that *performance period*. At any time during a *deferral period*, a covered institution could require *forfeiture* of some or all of the incentive-based compensation that has been *awarded* to the covered person but has not yet *vested*.
- Forfeiture (if needed). *Forfeiture* could occur at any time during the *deferral period* (after incentive-based compensation has been *awarded* but before it *vests*). A Level 1 or Level 2 covered institution could require forfeiture of unvested deferred incentive-based compensation payable to a senior executive officer or significant risk-taker based on the result of a forfeiture and downward adjustment review, as described in section ____.7(b) of the proposed rule. Depending on the outcome of a forfeiture and downward adjustment review under section ____.7(b) of the proposed rule, a covered institution could reduce, or eliminate, the unvested deferred incentive-based compensation of a senior executive officer or significant risk-taker.
- Vesting. *Vesting* could occur annually, on a pro rata basis, throughout a deferral period. *Vesting* could also occur at a slower than pro rata schedule, such as entirely at the end of a deferral period (vesting entirely at the end of a deferral period is sometimes called "cliff vesting"). The *deferral period* for a particular performance period would end when all incentive-based compensation awarded for that performance period has *vested*. A covered institution may also evaluate information that has arisen over the deferral period about financial losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance of the covered person at the time of *vesting* to determine if the amount that has been deferred should *vest* in full or should be reduced through forfeiture.
- Clawback (if needed). Clawback could be used to recover incentive-based compensation that has already *vested*. Clawback could be used after a *deferral period* has ended, and it also could be used to recover any portion of incentive-based compensation that *vests* before the end of a *deferral period*. A Level 1 or Level 2 covered institution would be required to include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers, as described in section ____.7(c) of the proposed rule.

2.45. Is the interplay of the award date, vesting date, performance period, and deferral period clear? If not, why not?

2.46. Have the Agencies made clear the distinction between the proposed definitions of clawback, forfeiture, and downward adjustment? Do these definitions align with current industry practice? If not, in what way do they differ and what are the implications of such differences for both the operations of covered institutions and the effective supervision of compensation practices?

§ ____.3 Applicability

Section ____.3 describes which provisions of the proposed rule would apply to an institution that is subject to the proposed rule when an increase or decrease in average total consolidated assets causes it to become a covered institution, transition to another level, or no longer meet the definition of covered institution. This process may differ somewhat depending on whether the institution is a subsidiary of, or affiliated with, another covered institution.

As discussed above, for an institution that is not an investment adviser, average total consolidated assets would be determined by reference to the average of the total consolidated assets reported on regulatory reports for the four most recent consecutive quarters. The Agencies are proposing this calculation method because it is also used to calculate total consolidated assets for purposes of other rules that have $50 billion thresholds,[114] and it is therefore expected to result in lower administrative burden on some institutions—particularly when those institutions move from Level 3 to Level 2—if the proposed rule requires total consolidated assets to be calculated in the same way as existing rules.

As discussed above, average total consolidated assets for a covered institution that is an investment adviser would be determined by the investment adviser's total assets (exclusive of non-proprietary assets) shown on the balance sheet for the adviser's most recent fiscal year end. The proposed rule would not apply the concept of a regulatory report and the attendant mechanics provided in section ____.3 of the proposed rule to covered institutions that are investment advisers because such institutions are not currently required to report the amount of total consolidated assets to any Federal regulators in their capacities as investment advisers.

(a) When Average Total Consolidated Assets Increase

Section ____.3(a) of the proposed rule describes how the proposed rule would apply to institutions that are subject to the proposed rule when average total consolidated assets increase. It generally provides that an institution that is not a subsidiary of another covered institution becomes a Level 1, Level 2, or Level 3 covered institution when its average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively. For subsidiaries of other covered institutions, the Agencies would generally look to the average total consolidated assets of the top-tier parent holding company to determine whether average total consolidated assets have increased.

Given the unique characteristics of the different types of covered institutions subject to each Agency's proposed rule, each Agency's proposed rule contains specific language for subsidiaries that is consistent with the same general approach. For example, under the Board's proposed rule, a regulated institution would become a Level 1, Level 2, or Level 3 covered institution when its average total consolidated assets or the average total consolidated assets of any of its affiliates, equals or exceeds $250 billion, $50 billion, or $1 billion, respectively. Under the OCC's proposed rule, a national bank that is a subsidiary of a bank holding company would become a Level 1, Level 2, or Level 3 covered institution when the top-tier bank holding company's average total consolidated assets equals or exceeds $250 billion, $50 billion, or $1 billion, respectively. Because the Federal Home Loan Banks have no subsidiaries, and subsidiaries of the Enterprises are included as affiliates as part of the definition of the Enterprises, FHFA's proposed rule does not include specific language to address subsidiaries. Because the NCUA's rule does not cover subsidiaries of credit unions and credit unions are not subsidiaries of other types of institutions, NCUA's proposed

[111] 17 CFR 240.17a–5(a); 17 CFR 249.617.

[112] The proposed rule would not apply the concept of a regulatory report and the attendant mechanics provided in section ____.3 of the proposed rule to covered institutions that are investment advisers because such institutions are not currently required to report the amount of total consolidated assets to any Federal regulators in their capacities as investment advisers. *See* proposed definition of "average total consolidated assets" for the proposed method by which an investment adviser would determine its asset level for purposes of the proposed rule.

[113] Compensation awarded to a trust or other entity at the direction of, or for the benefit of, a covered person would be treated as compensation awarded to that covered person. If incentive-based compensation awarded to the entity cannot be reduced by forfeiture, the amounts would be treated as having vested at the time of the award.

[114] *See, e.g.,* OCC's Heightened Standards; 12 CFR 46.3; 12 CFR 225.8; 12 CFR 243.2; 12 CFR 252.30; 2 CFR 252.132; 12 CFR 325.202; 12 CFR 381.2.

rule does not include specific language to address subsidiaries. More detail on each Agency's proposed approach to subsidiaries is provided in the above discussion of definitions relating to covered institutions.

For covered institutions other than investment advisers and the Federal Home Loan Banks, using a rolling average for asset size, rather than measuring asset size at a single point in time, should minimize the frequency with which an institution may fall into or out of a covered institution level. As explained above, if a covered institution has fewer than four regulatory reports, the institution would be required to use the average of its total consolidated assets from its existing regulatory reports for purposes of determining average total consolidated assets. If a covered institution has a mix of two or more different types of regulatory reports covering the relevant period, those would be averaged for purposes of determining average total consolidated assets.

Section ____.3(a)(2) of the proposed rule provides a transition period for institutions that were not previously considered covered institutions and for covered institutions moving from a lower level to a higher level due to an increase in average total consolidated assets. Such covered institutions would be required to comply with the requirements for their new level not later than the first day of the first calendar quarter that begins at least 540 days after the date on which they become Level 1, Level 2, or Level 3 covered institutions. Prior to such date, the institutions would be required to comply with the requirements of the proposed rule, if any, that were applicable to them on the day before they became Level 1, Level 2, or Level 3 covered institutions as a result of the increase in assets. For example, if a Level 3 covered institution that is not a subsidiary of a depository institution holding company has average total consolidated assets that increase to more than $50 billion on December 31, 2015, then such institution would become a Level 2 covered institution on December 31, 2015. However, the institution would not be required to comply with the requirements of the proposed rule that are applicable to a Level 2 covered institution until July 1, 2017. Prior to July 1, 2017, (the compliance date), the institution would remain subject to the requirements of the proposed rule that are applicable to a Level 3 covered institution. The covered institution's controls, risk management, and corporate governance also would be required to comply with the provisions of the proposed rule that are applicable to a Level 2 covered institution no later than July 1, 2017. The Agencies are proposing this delay between the date when a covered institution's average total consolidated assets increase and the date when the covered institution becomes subject to the requirements related to its new level to provide covered institutions with sufficient time to comply with the new requirements.

The same general rule would apply to covered institutions that are subsidiaries (or, in the case of the Board's proposed rule, affiliates) of other covered institutions. For example, a Level 3 state savings association that is a subsidiary of a Level 3 savings and loan holding company, and a Level 3 subsidiary of that state savings association, would become a Level 2 covered institution on December 31, 2015, if the average total consolidated assets of the savings and loan holding company increased to more than $50 billion on December 31, 2015, and would not be required to comply with the requirements of the proposed rule that are applicable to a Level 2 covered institution until July 1, 2017.

Section ____.3(a)(3) of the proposed rule provides that incentive-based compensation plans with performance periods that begin before the compliance date described in section ____.3(a)(2) would not be required to comply with the requirements of the proposed rule that become applicable to the covered institution on the compliance date as a result of the change in its status as a Level 1, Level 2, or Level 3 covered institution. Incentive-based compensation plans with a performance period that begins on or after the compliance date described in section ____.3(a)(2) would be required to comply with the rules for the covered institution's new level. In the example described in the previous paragraph, any incentive-based compensation plan with a performance period that begins before July 1, 2017, would not be required to comply with the requirements of the proposed rule that are applicable to a Level 2 covered institution (although any such plan would be required to comply with the requirements of the proposed rule that are applicable to a Level 3 covered institution).

The Agencies have included this grandfathering provision so that covered institutions would not be required to modify incentive-based compensation plans that are already in place when a covered institution's average total consolidated assets increase such that it moves to a higher level. However, incentive-based compensation plans with performance periods that begin after the compliance date would be subject to the rules that apply to the covered institution's new level. In the previous example, any incentive-based compensation plan for a senior executive officer with a performance period that begins on or after July 1, 2017, would be required to comply with the requirements of the proposed rule that are applicable to a Level 2 covered institution, such as the deferral, forfeiture, downward adjustment, and clawback requirements contained in section ____.7 of the proposed rule.

Because institutions that would be covered institutions under the proposed rule commonly use long-term incentive plans with overlapping performance periods or incentive-based compensation plans with performance periods of one year, the Agencies do not anticipate that the grandfathering provision would unduly delay the application of the proposed rule to individual incentive-based compensation arrangements.

3.1. The Agencies invite comment on whether a covered institution's average total consolidated assets (a rolling average) is appropriate for determining a covered institution's level when its total consolidated assets increase. Why or why not? Will 540 days provide covered institutions with adequate time to adjust incentive-based compensation programs to comply with different requirements? If not, why not? In the alternative, is 540 days too long to give covered institutions time to comply with the requirements of the proposed rule? Why or why not?

3.2. The Agencies invite comment on whether the date described in section ____.3(a)(2) should instead be the beginning of the first performance period that begins at least 365 days after the date on which the regulated institution becomes a Level 1, Level 2, or Level 3 covered institution in order to have the date on which the proposed rule's corporate governance, policies, and procedures requirements begin coincide with the date on which the requirements applicable to plans begin. Why or why not?

(b) When Total Consolidated Assets Decrease

Section ____.3(b) of the proposed rule describes how the proposed rule would apply to an institution when assets decrease. A covered institution (other than an investment adviser) that is not a subsidiary of another covered institution would cease to be a Level 1, Level 2, or Level 3 covered institution if its total consolidated assets, as reported on its regulatory reports, fell below the relevant total consolidated assets threshold for Level 1, Level 2, or Level 3 covered institutions, respectively, for four consecutive quarters. The calculation would be effective on the as-of date of the fourth consecutive regulatory report. For example, a bank holding company that is a Level 2 covered institution with total consolidated assets of $55 billion on January 1, 2016, might report total consolidated assets of $48 billion for the first quarter of 2016, $49 billion for the second quarter of 2016, $49 billion for the third quarter of 2016, and $48 billion for the fourth quarter of 2016. On the as-of date of the Y–9C submitted for the fourth quarter of 2016, that bank holding company would become a Level 3 covered institution because its total consolidated assets were less than $50 billion for four consecutive quarters. In contrast, if that same bank holding company reported total consolidated assets of $48 billion for the first quarter of 2016, $49 billion for the second quarter of 2016, $49 billion for the third quarter of 2016, and $51 billion for the fourth quarter of 2016, it would still be considered a Level 2 covered institution on the as-of date of the Y–9C submitted for the fourth quarter of 2016 because it had total consolidated assets of less than $50 billion for only 3 consecutive quarters. If the bank holding company had total consolidated assets of $49 billion in the first quarter of 2017, it still would not become a Level 3 covered institution at that time because it would not have four consecutive quarters of total consolidated assets of less than $50 billion. The bank holding company would only become a Level 3 covered institution if it had four consecutive quarters with total consolidated assets of less than $50 billion *after* the fourth quarter of 2016.

As with section ____.3(a), a Level 1, Level 2, or Level 3 covered institution that is a subsidiary of another Level 1, Level 2, or Level 3 covered institution would cease to be a Level 1, Level 2, or Level 3 covered institution when the top-tier parent covered institution ceases to be a Level 1, Level 2, or Level 3 covered institution. As with section ____.3(a), each Agency's proposed rule takes a slightly different approach that is consistent with the same general principle. For example, if a broker-dealer with less than $50 billion in average total consolidated assets is a Level 2 covered institution because its parent bank holding company has more than $50 billion in average total consolidated assets, the broker-dealer would become a Level 3 covered institution if its parent bank holding company had less than $50 billion in total consolidated assets for four consecutive quarters, thus causing the parent bank holding company itself to become a Level 3 covered institution.

The proposed rule would not require any transition period when a decrease in a covered institution's total consolidated assets causes it to become a Level 2 or Level 3 covered institution or to no longer be a covered institution. The Agencies are not proposing to include a transition period in this case because the new requirements would be less stringent than the requirements that were applicable to the covered institution before its total consolidated assets decreased, and therefore a transition period should be unnecessary. Instead, the covered institution would immediately be subject to the provisions of the proposed rule, if any, that are applicable to it as a result of the decrease in its total consolidated assets. For example, if as a result of having four consecutive regulatory reports with total consolidated assets less than $50 billion, a bank holding company that was previously a Level 2 covered institution becomes a Level 3 covered institution as of June 30, 2017, then as of June 30, 2017 that bank holding company would no longer be subject to the requirements of the proposed rule that are applicable to Level 2 covered institutions. It would instead be subject to the requirements of the proposed rule that are applicable to Level 3 covered institutions.

A covered institution that is an investment adviser would cease to be a Level 1, Level 2, or Level 3 covered institution effective as of the most recent fiscal year end in which its total consolidated assets fell below the relevant asset threshold for Level 1, Level 2, or Level 3 covered institutions, respectively. For example, an investment adviser that is a Level 1 covered institution during 2015 would cease to be a Level 1 covered institution effective on December 31, 2015 if its total assets (exclusive of non-proprietary assets) shown on its balance sheet for the year ended December 31, 2015 (assuming the investment adviser had a calendar fiscal year) were less than $250 billion.

3.3. The Agencies invite comment on whether four consecutive quarters is an appropriate period for determining a covered institution's level when its total consolidated assets decrease. Why or why not?

3.4. Should the determination of total consolidated assets for covered institutions that are investment advisers be by reference to a periodic report or similar concept? Why or why not? Should there be a concept of a rolling average for asset size for covered institutions that are investment advisers and, if so, how should this be structured?

3.5. Should the transition period for an institution that changes levels or becomes a covered institution due to a merger or acquisition be different than an institution that changes levels or becomes a covered institution without a change in corporate structure? If so, why? If so, what transition period would be appropriate and why?

3.6. The Agencies invite comment on whether covered institutions transitioning from Level 1 to Level 2 or Level 2 to Level 3 should be permitted to modify incentive-based compensation plans with performance periods that began prior to their transition in level in such a way that would cause the plans not to meet the requirements of the proposed rule that were applicable to the covered institution at the time when the performance periods for the plans commenced. Why or why not?

(c) Compliance of Covered Institutions That Are Subsidiaries of Covered Institutions

Section ____.3(c) of the Board's, OCC's, or FDIC's proposed rules provide that a covered institution that is subject to the Board's, OCC's, or FDIC's proposed rule, respectively, and that is a subsidiary of another covered institution may meet any requirement of the proposed rule if the parent covered institution complies with such requirement in a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with the requirement. The Board, the OCC, and the FDIC have included this provision in their proposed rules in order to reduce the compliance burden on subsidiaries that would be subject to the Board's, OCC's, and FDIC's proposed rules and in recognition of the fact that holding companies, national banks, Federal savings associations, state nonmember banks, and state savings associations may perform certain functions on behalf of such subsidiaries.

Subsidiary covered institutions subject to the Board's, OCC's, or FDIC's proposed rule could rely on this provision to comply with, for example, the corporate governance or policies and procedures requirements of the proposed rule. For example, if a parent bank holding company has a compensation committee that performs the requirements of section ____.4(e) of

the proposed rule with respect to a subsidiary of the parent bank holding company that is a covered institution under the Board's rule by (1) conducting oversight of the subsidiary's incentive-based compensation program, (2) approving incentive-based compensation arrangements for senior executive officers of the subsidiary (including any individuals who are senior executive officers of the subsidiary but not senior executive officers of the parent bank holding company), and (3) approving any material exceptions or adjustments to incentive-based compensation policies or arrangements for such senior executive officers of the subsidiary, then the subsidiary would be deemed to have complied with the requirements of section ____.4(e) of the proposed rule. Similarly, under the OCC's proposed rule, if an operating subsidiary of a national bank that is a Level 1 or Level 2 covered institution subject to the OCC's proposed rule uses the policies and procedures for its incentive-based compensation program of its parent national bank that is also a Level 1 or Level 2 covered institution subject to the OCC's proposed rule, and such policies and procedures satisfy the requirements of section ____.11 of the proposed rule, then the OCC would consider the subsidiary to have satisfied section ____.11 of the proposed rule. Under the FDIC's proposed rule, if a subsidiary of a state nonmember bank or state savings association that is a covered institution subject to the FDIC's proposed rule uses the policies and procedures for its incentive-based compensation program of its parent state nonmember bank or state savings association that is a Level 1 or Level 2 covered institution subject to the FDIC's proposed rule, and such policies and procedures satisfy the requirements of section ____.11 of the proposed rule, then the FDIC would consider the subsidiary to have satisfied section ____.11 of the proposed rule.

Many parent holding companies, particularly larger banking organizations, design and administer incentive-based compensation programs and associated policies and procedures. Smaller covered institutions that operate within a larger holding company structure may realize efficiencies by incorporating or relying upon their parent company's incentive-based compensation program or certain components of the program, to the extent that the program or its components establish governance, risk management, and recordkeeping frameworks that are appropriate to the smaller covered institutions and support incentive-based compensation arrangements that appropriately balance risks to the smaller covered institution and rewards for its covered persons. Therefore, it may be less burdensome for covered institution subsidiaries with risk profiles that are similar to those of their parent holding companies to use their parent holding companies' program rather than their own.

The Agencies recognize that the authority of each appropriate Federal regulator to examine and review compliance with the proposed rule, along with requiring corrective action when they deem appropriate, would not be affected by section ____.3(c) of the Board's, OCC's, or FDIC's proposed rule. Each appropriate Federal regulator would be responsible for examining, reviewing, and enforcing compliance with the proposed rule by their covered institutions, including any that are owned or controlled by a depository institution holding company. For example, in the situation where a parent holding company controls a subsidiary national bank, state nonmember bank, or broker-dealer, it would be expected that the board of directors of the subsidiary will ensure that the subsidiary is in compliance with the proposed rule. Likewise, the board of directors of a broker-dealer operating subsidiary of a national bank would be expected to ensure that the broker-dealer operating subsidiary is in compliance with the proposed rule.

§ ____.4 Requirements and Prohibitions Applicable to All Covered Institutions

Section ____.4 sets forth the general requirements that would be applicable to all covered institutions. Later sections establish more specific requirements that would be applicable for Level 1 and Level 2 covered institutions.

Under the proposed rule, all covered institutions would be prohibited from establishing or maintaining incentive-based compensation arrangements, or any features of any such arrangements, that encourage inappropriate risks by the covered institution (1) by providing covered persons with excessive compensation, fees, or benefits or (2) that could lead to material financial loss to the covered institution. Section ____.4 includes considerations for determining whether an incentive-based compensation arrangement provides excessive compensation, fees, or benefits, as required by section 956(a)(1). Section ____.4 also establishes requirements that would apply to all covered institutions designed to prevent inappropriate risks that could lead to material financial loss, as required by section 956(a)(2).[115] The general standards and requirements set forth in sections ____.4(a), (b), and (c) of the proposed rule would be consistent with the general standards and requirements set forth in sections ____.5(a) and (b) of the 2011 Proposed Rule.

The Agencies do not intend to establish a rigid, one-size-fits-all approach to the design of incentive-based compensation arrangements. Thus, under the proposed rule, the structure of incentive-based compensation arrangements at covered institutions would be expected to reflect the proposed requirements set forth in section ____.4 of the proposed rule in a manner tailored to the size, complexity, risk tolerance, and business model of the covered institution. Subject to supervisory oversight, as applicable, each covered institution would be responsible for ensuring that its incentive-based compensation arrangements appropriately balance risk and reward. The methods by which this is achieved at one covered institution may not be effective at another, in part because of the importance of integrating incentive-based compensation arrangements and practices into the covered institution's own risk-management systems and business model. The effectiveness of methods may differ across business lines and operating units as well, so the proposed rule would provide for considerable flexibility in how individual covered institutions approach the design and implementation of incentive-based compensation arrangements that appropriately balance risk and reward.

(a) In General

Section ____.4(a) of the proposed rule is derived from the text of section 956(b) which requires the Agencies to jointly prescribe regulations or guidelines that prohibit any type of incentive-based payment arrangement, or any feature of any such arrangement, that the Agencies determine encourages inappropriate risks by covered institutions (1) by providing an executive officer, employee, director, or principal shareholder of the covered institution with excessive compensation, fees, or benefits or (2) that could lead to material financial loss to the covered institution.

(b) Excessive Compensation

Section ____.4(b) of the proposed rule specifies that compensation, fees, and

[115] In addition to the requirements outlined in section ____.4, Level 1 and Level 2 covered institutions would have to meet additional requirements set forth in section ____.5 and sections ____.7 through ____.11.

benefits would be considered excessive for purposes of section ____.4(a)(1) when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into account all relevant factors. Section 956(c) directs the Agencies to "ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section [39] of the Federal Deposit Insurance Act (12 U.S.C. 2 [sic] 1831p–1) for insured depository institutions." Under the proposed rule, the factors for determining whether an incentive-based compensation arrangement provides excessive compensation would be comparable to the Federal Banking Agency Safety and Soundness Guidelines that implement the requirements of section 39 of the FDIA.[116] The proposed factors would include: (1) The combined value of all compensation, fees, or benefits provided to the covered person; (2) the compensation history of the covered person and other individuals with comparable expertise at the covered institution; (3) the financial condition of the covered institution; (4) compensation practices at comparable covered institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets; (5) for post-employment benefits, the projected total cost and benefit to the covered institution; and (6) any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution. The inclusion of these factors is consistent with the requirement under section 956(c) that any standards for compensation under section 956(a) or (b) must be comparable to the standards established for insured depository institutions under the FDIA and that the Agencies must take into consideration the compensation standards described in section 39(c) of the FDIA.

In response to similar language in the 2011 Proposed Rule, some commenters indicated that this list of factors should include additional factors or allow covered institutions to consider other factors that they deem appropriate. The proposed rule clarifies that all relevant factors would be taken into consideration, and that the list of factors in section ____.4(b) would not be exclusive.

Commenters on the 2011 Proposed Rule expressed concern that it would be difficult for some types of institutions, such as grandfathered unitary savings and loan holding companies with retail operations, mutual savings associations, mutual savings banks, and mutual holding companies, to identify comparable covered institutions. Those commenters also expressed concern that it would be difficult for these institutions to identify the compensation practices of comparable institutions that are not public companies or that do not otherwise make public information about their compensation practices. The Agencies intend to work closely with these institutions to identify comparable institutions to help ensure compliance with the proposed rule.

(c) Material Financial Loss

Section 956(b)(2) of the Act requires the Agencies to adopt regulations or guidelines that prohibit any type of incentive-based payment arrangement, or any feature of any such arrangement, that the Agencies determine encourages inappropriate risks by a covered financial institution that could lead to material financial loss to the covered institution. In adopting such regulations or guidelines, the Agencies are required to ensure that any standards established under this provision of section 956 are comparable to the standards under Section 39 of the FDIA, including the compensation standards. However, section 39 of the FDIA does not include standards for determining whether compensation arrangements may encourage inappropriate risks that could lead to material financial loss.[117]

Accordingly, as in the 2011 Proposed Rule, the Agencies have considered the language and purpose of section 956, existing supervisory guidance that addresses incentive-based compensation arrangements that may encourage inappropriate risk-taking,[118] the FSB Principles and Implementation Standards, and other relevant material in considering how to implement this aspect of section 956.

A commenter argued that the provisions of the 2011 Proposed Rule relating to incentive-based compensation arrangements that could encourage inappropriate risks that could lead to material financial loss were not comparable to the standards established under section 39 of the FDIA. More specifically, the commenter believed that the requirements of the 2011 Proposed Rule, including the mandatory deferral requirement, were more "detailed and prescriptive" than the standards established under section 39 of the FDIA.

The Agencies intend that the requirements of the proposed rule implementing section 956(b)(2) of the Act would be comparable to the standards established under section 39 of the FDIA. Section 956(b)(2) of the Act requires that the Agencies prohibit incentive-based compensation arrangements that encourage inappropriate risks by covered institutions that could lead to material financial loss, a requirement that is not discussed in the standards established under section 39 of the FDIA, which, as discussed above, provide guidelines to determine when compensation paid to a particular executive officer, employee, director or principal shareholder would be excessive. In enacting section 956, Congress referred specifically to the standards established under section 39 of the FDIA, and was presumably aware that in the statute there were no such standards articulated that provide guidance for determining whether compensation arrangements could lead to a material financial loss. The provisions of the proposed rule implementing section 956(b)(2) reflect the Agencies' intent to comply with the statutory mandate under section 956, while ensuring that the proposed rule is comparable to section 39 of the FDIA, which states that compensatory arrangements that could lead to a material financial loss are an unsafe and unsound practice.

[116] The Federal Banking Agency Safety and Soundness Guidelines provide: Compensation shall be considered excessive when amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following: (1) The combined value of all cash and non-cash benefits provided to the individual; (2) The compensation history of the individual and other individuals with comparable expertise at the institution; (3) The financial condition of the institution; (4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets; (5) For postemployment benefits, the projected total cost and benefit to the institution; (6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and (7) Any other factors the Agencies determines to be relevant. *See* 12 CFR part 30, Appendix A, III.A; 12 CFR part 364, Appendix A, III.A; 12 CFR part 208, Appendix D–1. These factors are drawn directly from section 39(c)(2) of the FDIA (12 U.S.C. 1831p–1(c)(2)).

[117] Section 39 of the FDIA requires only that the Federal banking agencies prohibit as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that could lead to a material financial loss. See 12 U.S.C. 1831p–1(c)(1)(B). The Federal Banking Agency Safety and Soundness Guidelines satisfy this requirement.

[118] 2010 Federal Banking Agency Guidance.

Section ____.4(c) of the proposed rule sets forth minimum requirements for incentive-based compensation arrangements that would be permissible under the proposed rule, because arrangements without these attributes could encourage inappropriate risks that could lead to material financial loss to a covered institution. These requirements reflect the three principles for sound incentive-based compensation policies contained in the 2010 Federal Banking Agency Guidance: (1) Balanced risk-taking incentives; (2) compatibility with effective risk management and controls; and (3) effective corporate governance.[119] Similarly, section ____.4(c) of the proposed rule provides that an incentive-based compensation arrangement at a covered institution could encourage inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement: (1) Appropriately balances risk and reward; (2) is compatible with effective risk management and controls; and (3) is supported by effective governance.

An example of a feature that could encourage inappropriate risks that could lead to material financial loss would be the use of performance measures that are closely tied to short-term revenue or profit of business generated by a covered person, without any adjustments for the longer-term risks associated with the business generated. Similarly, if there is no mechanism for factoring risk outcomes over a longer period of time into compensation decisions, traders who have incentive-based compensation plans with performance periods that end at the end of the calendar year, could have an incentive to take large risks towards the end of the calendar year to either make up for underperformance earlier in the performance period or to maximize their year-end profits. The same result could ensue if the performance measures themselves are poorly designed or can be manipulated inappropriately by the covered persons receiving incentive-based compensation.

Incentive-based compensation arrangements typically attempt to encourage actions that result in greater revenue or profit for a covered institution. However, short-run revenue or profit can often diverge sharply from actual long-run profit because risk outcomes may become clear only over time. Activities that carry higher risk typically have the potential to yield higher short-term revenue, and a covered person who is given incentives to increase short-term revenue or profit, without regard to risk, would likely be attracted to opportunities to expose the covered institution to more risk that could lead to material financial loss.

Section ____.4(c)(1) of the proposed rule would require all covered institutions to ensure that incentive-based compensation arrangements appropriately balance risk and reward. Incentive-based compensation arrangements achieve balance between risk and financial reward when the amount of incentive-based compensation ultimately received by a covered person depends not only on the covered person's performance, but also on the risks taken in achieving this performance. Conversely, an incentive-based compensation arrangement that provides financial reward to a covered person without regard to the amount and type of risk produced by the covered person's activities would not be considered to appropriately balance risk and reward under the proposed rule.[120] Incentive-based compensation arrangements should balance risk and financial rewards in a manner that does not encourage covered persons to expose a covered institution to inappropriate risk that could lead to material financial loss.

The incentives provided by an arrangement depend on how all features of the arrangement work together. For instance, how performance measures are combined, whether they take into account both current and future risks, which criteria govern the use of risk adjustment before the awarding and vesting of incentive-based compensation, and what form incentive-based compensation takes (*i.e.*, equity-based vehicles or cash-based vehicles) can all affect risk-taking incentives and generally should be considered when covered institutions create such arrangements.

The 2010 Federal Banking Agency Guidance outlined four methods that can be used to make compensation more sensitive to risk—risk adjustments of awards, deferral of payment, longer performance periods, and reduced sensitivity to short-term performance.[121] Consistent with the 2010 Federal Banking Agency Guidance, under the proposed rule, an incentive-based compensation arrangement generally would have to take account of the full range of current and potential risks that a covered person's activities could pose for a covered institution. Relevant risks would vary based on the type of covered institution, but could include credit, market (including interest rate and price), liquidity, operational, legal, strategic, and compliance risks. Performance and risk measures generally should align with the broader risk management objectives of the covered institution and could be incorporated through use of a formula or through the exercise of judgment. Performance and risk measures also may play a role in setting amounts of incentive-based compensation pools (bonus pools), in allocating pools to individuals' incentive-based compensation, or both. The effectiveness of different types of adjustments varies with the situation of the covered person and the covered institution, as well as the thoroughness with which the measures are implemented.

The analysis and methods for ensuring that incentive-based compensation arrangements appropriately balance risk and reward should also be tailored to the size, complexity, business strategy, and risk tolerance of each institution. The manner in which a covered institution seeks to balance risk and reward in incentive-based compensation arrangements should account for the differences between covered persons—including the differences between senior executive officers and significant risk-takers and other covered persons. Activities and risks may vary significantly both among covered institutions and among covered persons within a particular covered institution. For example, activities, risks, and incentive-based compensation practices may differ materially among covered institutions based on, among other things, the scope or complexity of activities conducted and the business strategies pursued by the institutions. These differences mean that methods for achieving incentive-based compensation arrangements that appropriately balance risk and reward at one institution may not be effective in restraining incentives to engage in imprudent risk-taking at another institution.

The proposed rule would require that incentive-based compensation arrangements contain certain features. Section ____.4(d) sets out specific requirements that would be applicable to arrangements for all covered persons at all covered institutions and that are intended to result in incentive-based compensation arrangements that appropriately balance risk and reward. Sections ____.7 and ____.8 of the proposed rule provide more specific requirements that would be applicable to arrangements at Level 1 and Level 2 covered institutions.

While the proposed rule would require incentive-based compensation arrangements for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions to have certain features (such as a certain percentage of the award deferred), those features alone would not be sufficient to balance risk-taking incentives with reward. The extent to which additional balancing methods are required would vary with the size and complexity of a covered institution and with the nature of a covered person's activities.

Section ____.4(c)(2) of the proposed rule provides that an incentive-based compensation arrangement at a covered institution would encourage inappropriate risks that could lead to material financial loss to the covered institution unless the arrangement is compatible with effective risk management and controls. A covered institution's risk management processes and internal controls would have to reinforce and support the development and maintenance of incentive-based compensation arrangements that appropriately balance risk and reward required under section ____.4(c)(1) of the proposed rule.

One of the reasons risk management is important is that covered persons may seek to evade the processes established by a covered institution to achieve incentive-based compensation arrangements that appropriately balance risk and reward in an effort to increase their own incentive-based compensation. For example, a covered person might seek to influence the risk measures or other information or judgments that are used to make the covered person's incentive-based compensation sensitive to risk. Such actions may significantly weaken the effectiveness of a covered institution's incentive-based compensation arrangements in restricting inappropriate risk-taking and could have a particularly damaging effect if they result in the manipulation of measures of risk, information, or judgments that the covered institution uses for other risk-management, internal control, or financial purposes. In such cases, the covered person's actions may weaken not only the balance of the covered institution's incentive-based compensation arrangements but also the risk-management, internal controls, and other functions that are supposed to act as a separate check on risk-taking.

All covered institutions would have to have appropriate controls surrounding the design, implementation, and monitoring of incentive-based compensation arrangements to ensure that processes for achieving incentive-based compensation arrangements that appropriately balance risk and reward are followed, and to maintain the integrity of their risk-management and other control functions. The nature of controls likely would vary by size and complexity of the covered institution as well as the activities of the covered person. For example, under the proposed rule, controls surrounding incentive-based compensation arrangements at smaller covered institutions likely would be less extensive and less formalized than at larger covered institutions. Level 1 and Level 2 covered institutions would be more likely to have a systematic approach to designing and implementing their incentive-based compensation arrangements, and their incentive-based compensation programs would more likely be supported by formalized and well-developed policies, procedures, and systems. Level 3 covered institutions, on the other hand, might maintain less extensive and detailed incentive-based compensation programs. Section ____.9 of the proposed rule provides additional, specific requirements that would be applicable to Level 1 and Level 2 covered institutions designed to result in incentive-based compensation arrangements at Level 1 and Level 2 covered institutions that are compatible with effective risk management and controls.

Incentive-based compensation arrangements also would have to be supported by an effective governance framework. Section ____.4(e) sets forth more detail on requirements for boards of directors of all covered institutions that would be designed to result in incentive-based compensation arrangements that are supported by effective governance, while section ____.10 of the proposed rule provides more specific requirements that would be applicable to Level 1 and Level 2 covered institutions.

The proposed requirement for effective governance is an important foundation of incentive-based compensation arrangements that appropriately balance risk and reward. The involvement of the board of directors in oversight of the covered institution's overall incentive-based compensation program should be scaled appropriately to the scope of the covered institution's incentive-based compensation arrangements and the number of covered persons who have incentive-based compensation arrangements.

(d) Performance Measures

The performance measures used in an incentive-based compensation arrangement have an important effect on the incentives provided to covered persons and thus affect the potential for the incentive-based compensation arrangement to encourage inappropriate risk-taking that could lead to material financial loss. Under section ____.4(d) of the proposed rule, an incentive-based compensation arrangement would not be considered to appropriately balance risk and reward unless: (1) It includes financial and non-financial measures of performance that are relevant to a covered person's role and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking; (2) it is designed to allow non-financial measures of performance to override financial measures when appropriate; and (3) any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance. Each of these requirements is described more fully below.

First, the arrangements would be required to include both financial and non-financial measures of performance. Financial measures of performance generally are measures tied to the attainment of strategic financial objectives of the covered institution, or one of its operating units, or to the contributions by covered persons towards attainment of such objectives, such as measures related to corporate sales, profit, or revenue targets. Non-financial measures of performance, on the other hand, could be assessments of a covered person's risk-taking or compliance with limits on risk-taking. These may include assessments of compliance with the covered institution's policies and procedures, adherence to the covered institution's risk framework and conduct standards, or compliance with applicable laws. These financial and non-financial measures of performance should include considerations of risk-taking, and be relevant to a covered person's role within the covered institution and to the type of business in which the covered person is engaged. They also should be appropriately weighted to

[119] *See* 75 FR 36407–36413.

[120] For example, a covered person who makes a high-risk loan may generate more revenue in the short run than one who makes a low-risk loan. Incentive-based compensation arrangements that reward covered persons solely on the basis of short-term revenue might pay more to the covered person taking more risk, thereby incentivizing employees to take more, and sometimes inappropriate, risk. *See* 2011 FRB Report at 11.

[121] *See* 2010 Federal Banking Agency Guidance, 75 FR at 36396.

reflect the nature of such risk-taking. The requirement to include both financial and non-financial measures of performance would apply to forms of incentive-based compensation that set out performance measure goals and related amounts near the beginning of a performance period (such as long-term incentive plans) and to forms that do not necessarily specify performance measure goals and related amounts in advance of performance (such as certain bonuses). For example, a senior executive officer may have his or her performance evaluated based upon quantitative financial measures, such as return on equity, and on qualitative, non-financial measures, such as the extent to which the senior executive officer promoted sound risk management practices or provided strategic leadership through a difficult merger. The senior executive officer's performance also may be evaluated on several qualitative non-financial measures that in some instances span multiple calendar and performance years.

Incentive-based compensation should support prudent risk-taking, but should also allow covered institutions to hold covered persons accountable for inappropriate behavior. Reliable quantitative measures of risk and risk outcomes, where available, may be particularly useful in both developing incentive-based compensation arrangements that appropriately balance risk and reward and assessing the extent to which incentive-based compensation arrangements properly balance risk and reward. However, reliable quantitative measures may not be available for all types of risk or for all activities, and in many cases may not be sufficient to fully assess the risks that the activities of covered persons may pose to covered institutions. Poor performance, as assessed by non-financial measures such as quality of risk management, could pose significant risks for the covered institution and may itself be a source of potential material financial loss at a covered institution. For this reason, non-financial performance measures play an important role in reinforcing expectations on appropriate risk, control, and compliance standards and should form a significant part of the performance assessment process.

Under certain circumstances, it may be appropriate for non-financial performance measures, which are the primary measures that relate to risk-taking behavior, to override considerations of financial performance measures. An override might be appropriate when, for example, a covered person conducts trades or other transactions that increase the covered institution's profit but that create an inappropriate compliance risk for the covered institution. In such a case, an incentive-based compensation arrangement should allow for the possibility that the non-financial measure of compliance risk could override the financial measure of profit when the amount of incentive-based compensation to be awarded to the covered person is determined.

The effective balance of risks and rewards may involve the use of both formulaic arrangements and discretion. At most covered institutions, management retains a significant amount of discretion when awarding incentive-based compensation. Although the use of discretion has the ability to reinforce risk balancing, when improperly utilized, discretionary decisions can undermine the goal of incentive-based compensation arrangements to appropriately balance risk and reward. For example, an incentive-based compensation arrangement that has a longer performance period that could allow risk events to manifest and for awards to be adjusted to reflect risk could be less effective if management makes a discretionary award decision that does not account for, or mitigates, the future impact of those risk events.[122]

Section ____.4(d)(3) of the proposed rule would also require that any amounts to be awarded under an incentive-based compensation arrangement be subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance. It is important that incentive-based compensation arrangements be balanced in design and implemented so that awards and actual amounts that vest actually vary based on risks or risk outcomes. If, for example, covered persons are awarded or paid substantially all of their potential incentive-based compensation even when they cause a covered institution to take a risk that is inappropriate given the institution's size, nature of operations, or risk profile, or cause the covered institution to fail to comply with legal or regulatory obligations, then covered persons will have less incentive to avoid activities with substantial risk of financial loss or non-compliance with legal or regulatory obligations.

[122] For Level 1 and Level 2 covered institutions, section ____.11 of the proposed rule would require policies and procedures that address the institution's use of discretion.

(e) Board of Directors

Under section ____.4(e) of the proposed rule, the board of directors, or a committee thereof, would be required to: (1) Conduct oversight of the covered institution's incentive-based compensation program; (2) approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and (3) approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

Section ____.4(e)(1) of the proposed rule would require the board of directors, or a committee thereof, of a covered institution to conduct oversight of the covered institution's incentive-based compensation program. Such oversight generally should include overall goals and purposes. For example, boards of directors, or a committee thereof, of covered institutions generally should oversee senior management in the development of an incentive-based compensation program that incentivizes behaviors consistent with the long-term health of the covered institution, and provide sufficient detail to enable senior management to translate the incentive-based compensation program into objectives, plans, and arrangements for each line of business and control function. Such oversight also generally should include holding senior management accountable for effectively executing the covered institution's incentive-based compensation program and for communicating expectations regarding acceptable behaviors and business practices to covered persons. Boards of directors should actively engage with senior management, including challenging senior management's incentive-based compensation assessments and recommendations when warranted.

In addition to the general program oversight requirement set forth in section ____.4(e)(1) of the proposed rule, a board of directors, or a committee thereof, would also be required by sections ____.4(e)(2) and ____.4(e)(3) to approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and payouts, at the time of vesting, under such arrangements, and to approve any material exceptions or adjustments to those arrangements.

Although risk-adjusting incentive-based compensation for senior executive officers responsible for the covered institution's overall risk posture and performance may be challenging given that quantitative measures of institution-wide risk are difficult to produce and allocating responsibility among the senior executive team for achieving risk objectives can be a complex task, the role of senior executive officers in managing the overall risk-taking activities of an institution is important. Accordingly the proposed rule would require the board of directors, or a committee thereof, to approve compensation arrangements involving senior executive officers. When a board of directors, or a committee thereof, is considering an award or a payout, it should consider risks to ensure that the award or payout is consistent with broader risk management and strategic objectives.

(f) Disclosure and Recordkeeping Requirements and (g) Rule of Construction

Section ____.4(f) of the proposed rule would establish disclosure and recordkeeping requirements for all covered institutions, as required by section 956(a)(1).[123] Under the proposed rule, each covered institution would be required to create and maintain records that document the structure of all of the institution's incentive-based compensation arrangements and demonstrate compliance with the proposed rule, and to disclose these records to the appropriate Federal regulator upon request. The proposed rule would require covered institutions to create such records on an annual basis and to maintain such records for at least seven years after they are created. The Agencies recognize that the exact timing for recordkeeping will vary from institution to institution, but this requirement would ensure that covered institutions create such records for their incentive-based compensation arrangements at least once every 12 months. The requirement to maintain records for at least seven years generally aligns with the clawback period described in section ____.7(c) of the proposed rule.

The proposed rule would require that the records maintained by a covered institution, at a minimum, include copies of all incentive-based compensation plans, a list of who is subject to each plan, and a description of how the covered institution's incentive-based compensation program is compatible with effective risk management and controls. These records would be the minimum required information to determine whether the structure of the covered institution's incentive-based compensation arrangements provide covered persons with excessive compensation or could lead to material financial loss to the covered institution. As specified in section 956(a)(2) and section ____.4(g) of the proposed rule, a covered institution would not be required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of this requirement.[124]

The 2011 Proposed Rule would have implemented section 956(a)(1) by requiring all covered financial institutions to submit an annual report to their appropriate Federal regulator, in a format specified by their appropriate Federal regulator, that described in narrative form the structure of the covered financial institution's incentive-based compensation arrangements for covered persons and the policies governing such arrangements.[125] Some commenters on the 2011 Proposed Rule favored annual reporting requirements, while other commenters opposed any requirement for institutions to make periodic submissions of information about incentive-based compensation arrangements to regulators, noting concerns about burden, particularly for smaller covered financial institutions. A few commenters requested an annual certification requirement instead of a reporting requirement. While there is value in receiving reports, the burden of producing them would potentially be great on smaller covered institutions. Accordingly, the Agencies determined not to include a requirement for covered institutions to submit annual narrative reports.

Given the variety of covered institutions and asset sizes, the Agencies are not proposing a specific format or template for the records that must be maintained by all covered institutions. According to the Agencies' supervisory experience, as discussed further above, many covered institutions already maintain information about their incentive-based compensation programs comparable to the types of information described above (*e.g.*, in support of public company filings).

Several commenters on the 2011 Proposed Rule expressed concern regarding the confidentiality of the reported compensation information. In light of the nature of the information that would be provided to the Agencies under section ____.4(f) of the proposed rule, and the purposes for which the Agencies are requiring the information, the Agencies would view the information disclosed to the Agencies as nonpublic and expect to maintain the confidentiality of that information, to the extent permitted by law.[126] When providing information to one of the Agencies pursuant to the proposed rule, covered institutions should request confidential treatment by that Agency.

4.1. The Agencies invite comment on the requirements for performance measures contained in section ____.4(d) of the proposed rule. Are these measures sufficiently tailored to allow for incentive-based compensation arrangements to appropriately balance risk and reward? If not, why?

4.2. The Agencies invite comment on whether the terms "financial measures of performance" and "non-financial measures of performance" should be defined. If so, what should be included in the defined terms?

4.3. Would preparation of annual records be appropriate or should another method be used? Would covered institutions find a more specific list of topics and quantitative information for the content of required records helpful? Should covered institutions be required to maintain an inventory of all such records and to maintain such records in a particular format? If so, why? How would such specific requirements increase or decrease burden?

[123] 12 U.S.C. 5641(a)(1).

[124] The Agencies note that covered institutions may be required to report actual compensation under other provisions of law. For example, corporate credit unions must disclose compensation of certain executive officers to their natural person credit union members under NCUA's corporate credit union rule. 12 CFR 704.19. The proposed rule would not affect the requirements in 12 CFR 704.19 or in any other reporting provision under any other law or regulation.

The SEC requires an issuer that is subject to the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to disclose information regarding the compensation of its principal executive officer, principal financial officer, and three other most highly compensated executive officers, as well as its directors, in the issuer's proxy statement, its annual report on Form 10–K, and registration statements for offerings of securities. The requirements are generally found in Item 402 of Regulation S–K (17 CFR 229.402).

[125] *See* 2011 Proposed Rule, at 21177. The 2011 Proposed Rule also would have set forth additional more detailed requirements for covered financial institutions with total consolidated assets of $50 billion or more.

[126] For example, Exemption 4 of the Freedom of Information Act ("FOIA") provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). FOIA Exemption 6 provides an exemption for information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). FOIA Exemption 8 provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." 5 U.S.C. 552(b)(8).

4.4. Should covered institutions only be required to create new records when incentive-based compensation arrangements or policies change? Should the records be updated more frequently, such as promptly upon a material change? What should be considered a "material change"?

4.5. Is seven years a sufficient time to maintain the records required under section ____.4(f) of the proposed rule? Why or why not?

4.6. Do covered institutions generally maintain records on incentive-based compensation arrangements and programs? If so, what types of records and related information are maintained and in what format? What are the legal or institutional policy requirements for maintaining such records?

4.7. For covered institutions that are investment advisers or broker-dealers, is there particular information that would assist the SEC in administering the proposed rule? For example, should the SEC require its reporting entities to report whether they utilize incentive-based compensation or whether they are Level 1, Level 2 or Level 3 covered institutions?

§ ____.5 Additional Disclosure and Recordkeeping Requirements for Level 1 and Level 2 Covered Institutions

Section ____.5 of the proposed rule would establish additional and more detailed recordkeeping requirements for Level 1 and Level 2 covered institutions.

Under section ____.5(a) of the proposed rule, a Level 1 or Level 2 covered institution would be required to create annually, and maintain for at least seven years, records that document: (1) Its senior executive officers and significant risk-takers listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to the covered institution's incentive-based compensation arrangements and policies.

The proposed recordkeeping and disclosure requirements at Level 1 and Level 2 covered institutions would assist the appropriate Federal regulator in monitoring whether incentive-based compensation structures, and any changes to such structures, could result in Level 1 and Level 2 covered institutions maintaining incentive-based compensation structures that encourage inappropriate risks by providing excessive compensation, fees, or benefits or could lead to material financial loss. The more detailed reporting requirement for Level 1 and Level 2 covered institutions under section ____.5(a) of the proposed rule reflects the information that would assist the appropriate Federal regulator in most effectively evaluating the covered institution's compliance with the proposed rule and identifying areas of potential concern with respect to the structure of the covered institution's incentive-based compensation arrangements.

For example, the recordkeeping requirement in section ____.5(a)(2) of the proposed rule regarding amounts of incentive-based compensation deferred and the form of payment of incentive-based compensation for senior executive officers and significant risk-takers would help Federal regulators determine compliance with the requirement in section ____.7(a) of the proposed rule for certain amounts of incentive-based compensation of senior executive officers and significant risk-takers to be deferred for specific periods of time. Similarly, the recordkeeping requirement in section ____.5(a)(3) of the proposed rule would require Level 1 and Level 2 covered institutions to document the rationale for decisions under forfeiture and downward adjustment reviews and to keep timely and accurate records of the decision. This documentation would provide information useful to Federal regulators for determining compliance with the requirements in sections ____.7(b) and (c) of the proposed rule regarding specific forfeiture and clawback policies at Level 1 and Level 2 covered institutions that are further discussed below.

The proposed recordkeeping requirements in section ____.5(a) of the proposed rule relate to the proposed substantive requirements in section ____.7 of the proposed rule and would help the appropriate Federal regulator to closely monitor incentive-based compensation payments to senior executive officers and significant risk-takers and to determine whether those payments have been adjusted to reflect risk outcomes. This approach also would be responsive to comments received on the 2011 Proposed Rule suggesting that specific qualitative and quantitative information, instead of a narrative description, be the basis of a reporting requirement for larger covered institutions.

Section ____.5(b) of the proposed rule would require a Level 1 or Level 2 covered institution to create and maintain records sufficient to allow for an independent audit of incentive-based compensation arrangements, policies, and procedures, including those required under section ____.11 of the proposed rule. A standard which reflects the level of detail required in order to perform an independent audit of incentive-based compensation would be appropriate given the importance of regular monitoring of incentive-based compensation programs by independent control functions. Such a standard also would be consistent with the monitoring requirements set out in section ____.11 of the proposed rule.

As with the requirements applicable to all covered institutions under section ____.4(f) of the proposed rule, the Agencies are not proposing to require that a Level 1 or Level 2 covered institution annually file a report with the appropriate Federal regulator. Instead, section ____.5(c) of the proposed rule would require a Level 1 or Level 2 covered institution to disclose its records to the appropriate Federal regulator in such form and with such frequency as requested by the appropriate Federal regulator. The required form and frequency of recordkeeping may vary among the Agencies and across categories of covered institutions, although the records described in section ____.5(a) of the proposed rule, along with any other records a covered institution creates to satisfy the requirements of section ____.5(f) of the proposed rule, would be required to be created at least annually. Some Agencies may require Level 1 and Level 2 covered institutions to provide their records on an annual basis, alone or with a standardized form of report. Level 1 and Level 2 covered institutions should seek guidance concerning the reporting requirement from their appropriate Federal regulator.

Generally, the Agencies would expect the volume and detail of information disclosed by a covered institution under section ____.5 of the proposed rule to be tailored to the nature and complexity of business activities at the covered institution, and to the scope and nature of its use of incentive-based compensation arrangements. The Agencies recognize that smaller covered institutions with less complex and less extensive incentive-based compensation arrangements likely would not create or retain records that are as extensive as those that larger covered institutions with relatively complex programs and business activities would likely create. The tailored recordkeeping and disclosure provisions for Level 1 and Level 2 covered institutions in the proposed rule are designed to provide the Agencies with streamlined and well-focused records that would allow the Agencies to promptly and effectively identify and address any areas of concern.

Similar to the provision of information under section ____.4(f) of the proposed rule, the Agencies expect to treat the information provided to the Agencies under section ____.5 of the proposed rule as nonpublic and to maintain the confidentiality of that information to the extent permitted by law.[127] When providing information to one of the Agencies pursuant to the proposed rule, covered institutions should request confidential treatment by that Agency.

5.1. Should the level of detail in records created and maintained by Level 1 and Level 2 covered institutions vary among institutions regulated by different Agencies? If so, how? Or would it be helpful to use a template with a standardized information list?

5.2. In addition to the proposed records, what types of information should Level 1 and Level 2 covered institutions be required to create and maintain related to deferral and to forfeiture, downward adjustment, and clawback reviews?

§ ____.6 Reservation of Authority for Level 3 Covered Institutions

Section ____.6 of the proposed rule would allow the appropriate Federal regulator to require certain Level 3 covered institutions to comply with some or all of the more rigorous requirements applicable to Level 1 and Level 2 covered institutions. Specifically, an Agency would be able to require a covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the more rigorous provisions of section ____.5 and sections ____.7 through ____.11 of the proposed rule, if the appropriate Federal regulator determined that the covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution, based on the covered institution's activities, complexity of operations, risk profile, or compensation practices. In such cases, the Agency that is the Level 3 covered institution's appropriate Federal regulator, in accordance with procedures established by the Agency, would notify the institution in writing that it must satisfy the requirements and other standards contained in section ____.5 and sections ____.7 through ____.11 of the proposed rule. As with the designation of significant risk-takers discussed above, each Agency's procedures generally would include reasonable advance written notice of the proposed action, including a description of the basis for the proposed action, and opportunity for the covered institution to respond.

As noted previously, the Agencies have determined that it may be appropriate to apply only basic prohibitions and disclosure requirements to Level 3 covered institutions, in part because these institutions generally have less complex operations, incentive-based compensation practices, and risk profiles than Level 1 and Level 2 covered institutions.[128] However, the Agencies recognize that there is a wide spectrum of business models and risk profiles within the $10 to $50 billion range and believe that some Level 3 covered institutions with between $10 and $50 billion in total consolidated assets may have incentive-based compensation practices and operational complexity comparable to those of a Level 1 or Level 2 covered institution. In such cases, it may be appropriate for the Agencies to provide a process for determining that such institutions should be held to the more rigorous standards.

The Agencies are proposing $10 billion as the appropriate threshold for the low end of this range based upon the general complexity of covered institutions above this size. The threshold is also used in other statutory and regulatory requirements. For example, the stress testing provisions of the Dodd-Frank Act require banking organizations with total consolidated assets of more than $10 billion to conduct annual stress tests.[129] For deposit insurance assessment purposes, the FDIC distinguishes between small and large banks based on a $10 billion asset size.[130] For supervisory purposes, the Board defines community banks by reference to the $10 billion asset size threshold.[131]

The Agencies would consider the activities, complexity of operations, risk profile, and compensation practices to determine whether a Level 3 covered institution's operations or compensation practices warrant application of additional standards pursuant to the proposed rule. For example, a Level 3 covered institution could have significant levels of off-balance sheet activities, such as derivatives that may entail complexities of operations and greater risk than balance sheet measures would indicate, making the institution's risk profile more akin to that of a Level 1 or Level 2 covered institution. Additionally, a Level 3 covered institution might be involved in particular high-risk business lines, such as lending to distressed borrowers or investing or trading in illiquid assets, and make significant use of incentive-based compensation to reward risk-takers. Still other Level 3 covered institutions might have or be part of a complex organizational structure, such as operating with multiple legal entities in multiple foreign jurisdictions.

Section ____.6 of the proposed rule would permit the appropriate Federal regulator of a Level 3 covered institution with total consolidated assets of between $10 and $50 billion to require the institution to comply with some or all of the provisions of section ____.5 and sections ____.7 through ____.11 of the proposed rule. This approach would allow the Agencies to take a flexible approach in the proposed rule provisions applicable to all Level 3 covered institutions while retaining authority to apply more rigorous standards where the Agencies determine appropriate based on the Level 3 covered institution's complexity of operations or compensation practices. The Agencies expect they only would use this authority on an infrequent basis. This approach has been used in other rules for purposes of tailoring the application of requirements and providing flexibility to accommodate the variations in size, complexity, and overall risk profile of financial institutions.[132]

6.1. The Agencies invite general comment on the reservation of authority in section ____.6 of the proposed rule.

[127] *See supra* note 126.

[128] *See* section 3 of Part II of this Supplementary Information for more discussions on Level 1, Level 2, and Level 3 covered institutions.

[129] 12 U.S.C. 5365(i)(2).

[130] *See* 12 CFR 327.8(e) and (f).

[131] *See* Federal Reserve SR Letter 12–7, "Supervisory Guidance on Stress Testing for Banking Organizations with More Than $10 Billion in Total Consolidated Assets" (May 14, 2012).

[132] For example, the OCC, FDIC, and Board's domestic capital rules include a reservation of authority whereby the agency may require an institution to hold an amount of regulatory capital greater than otherwise required under the capital rules. 12 CFR 3.1(d) (OCC); 12 CFR 324.1(d)(1) through (6) (FDIC); 12 CFR 217.1(d) (Board). The OCC, FDIC, and the Board's Liquidity Coverage Ratio rule includes a reservation of authority whereby each agency may impose heightened standards on an institution. 12 CFR 50.2 (OCC); 12 CFR 329.2 (FDIC); 12 CFR 249.2 (Board). The FDIC's stress testing rules include a reservation of authority to require a $10 billion to $50 billion covered bank to use reporting templates for larger banks. 12 CFR 325.201.

6.2. The Agencies based the $10 billion dollar floor of the reservation of authority on existing similar reservations of authority that have been drawn at that level. Did the Agencies set the correct threshold or should the floor be set lower or higher than $10 billion? If so, at what level and why?

6.3. Are there certain provisions in section ____.5 and sections ____.7 through ____.11 of the proposed rule that would not be appropriate to apply to a covered institution with total consolidated assets of $10 billion or more and less than $50 billion regardless of its complexity of operations or compensation practices? If so, which provisions and why?

6.4. The Agencies invite comment on the types of notice and response procedures the Agencies should use in determining that the reservation of authority should be used. The SEC invites comment on whether notice and response procedures based on the procedures for a proceeding initiated upon the SEC's own motion under Advisers Act rule 0–5 would be appropriate for this purpose.

6.5. What specific features of incentive-based compensation programs or arrangements at a Level 3 covered institution should the Agencies consider in determining such institution should comply with some or all of the more rigorous requirements within the rule and why? What process should be followed in removing such institution from the more rigorous requirements?

§ ____.7 Deferral, Forfeiture and Downward Adjustment, and Clawback Requirements for Level 1 and Level 2 Covered Institutions

As discussed above, allowing covered institutions time to measure results with the benefit of hindsight allows for a more accurate assessment of the consequences of risks to which the institution has been exposed. This approach may be particularly relevant, for example, where performance is difficult to measure because performance results and risks take time to observe (*e.g.*, assessing the future repayment prospects of loans written during the current year).

In order to achieve incentive-based compensation arrangements that appropriately balance risk and reward, including closer alignment between the interests of senior executive officers and significant risk-takers within the covered institution and the longer-term interests of the covered institution itself, it is important for information on performance, including information on misconduct and inappropriate risk-taking, to affect the incentive-based compensation amounts received by covered persons. Covered institutions may use deferral, forfeiture and downward adjustment, and clawback to address information about performance that comes to light after the conclusion of the performance period, so that incentive-based compensation arrangements are able to appropriately balance risk and reward. Section ____.7 of the proposed rule would require Level 1 and Level 2 covered institutions to incorporate these tools into the incentive-based compensation arrangements of senior executive officers and significant risk-takers.

Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would not be considered to appropriately balance risk and reward, as would be required by section ____.4(c)(1), unless the deferral, forfeiture, downward adjustment, and clawback requirements of section ____.7 are met. These requirements would apply to incentive-based compensation arrangements provided to senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions. Institutions may, of course, take additional steps to address risks that may mature after the performance period.

The requirements of section ____.7 of the proposed rule would apply to Level 1 and Level 2 covered institutions; that is, to covered institutions with $50 billion or more in average total consolidated assets. The requirements of section ____.7 would not be applicable to Level 3 covered institutions.[133] As discussed above, the Agencies recognize that larger covered institutions have more complex business activities and generally rely more on incentive-based compensation programs, and, therefore, it is appropriate to impose specific deferral, forfeiture and downward adjustment reviews and clawback requirements on these institutions. It has been recognized that larger financial institutions can present greater potential systemic risks. The Board, for example, has expressed the view that institutions with more than $250 billion in total consolidated assets are more likely than other institutions to pose systemic risk to U.S. financial stability.[134] Because of these risks that could be created by excessive risk-taking at the largest covered institutions, additional safeguards are needed against inappropriate risk-taking at Level 1 covered institutions. For these reasons, the Agencies are proposing a required minimum deferral percentage and a required minimum deferral period for Level 1 covered institutions that are greater than those for Level 2 covered institutions.

The requirements of section ____.7 of the proposed rule would apply to incentive-based compensation arrangements for senior executive officers and significant risk-takers of Level 1 and Level 2 covered institutions. The decisions of senior executive officers can have a significant impact on the entire consolidated organization and often involve substantial strategic or other risks that can be difficult to measure and model—particularly at larger covered institutions—during or at the end of the performance period, and therefore can be difficult to address adequately by risk adjustments in the awarding of incentive-based compensation.[135] Supervisory experience and a review of the academic literature [136] suggest that incentive-based compensation arrangements for the most senior decision-makers and risk-takers at the largest institutions appropriately balance risk and reward when a significant portion of the incentive-based compensation awarded under those arrangements is deferred for an adequate amount of time.

As discussed above, in addition to the institution's senior executive officers, the significant risk-takers at Level 1 and Level 2 covered institutions may have the ability to expose the institution to the risk of material financial loss. In order to help ensure that the incentive-based compensation arrangements for these individuals appropriately balance risk and reward and do not encourage them to engage in inappropriate risk-taking that could lead to material financial loss, the proposed rule would extend the deferral requirement to significant risk-takers at Level 1 and Level 2 covered institutions. Deferral for significant risk-takers as well as executive officers helps protect against material financial loss at the largest covered institutions.

§ ____.7(a) Deferral

As a tool to balance risk and reward, deferral generally consists of four components: the proportion of incentive-based compensation required to be deferred, the time horizon of the deferral, the speed at which deferred incentive-based compensation vests, and adjustment during the deferral period to reflect risks or inappropriate conduct that manifest over that period of time.

Section ____.7(a) of the proposed rule would require Level 1 and Level 2 covered institutions, at a minimum, to defer the vesting of a certain portion of all incentive-based compensation awarded (the deferral amount) to a senior executive officer or significant risk-taker for at least a specified period of time (the deferral period). The minimum required deferral amount and minimum required deferral period would be determined by the size of the covered institution, by whether the covered person is a senior executive officer or significant risk-taker, and by whether the incentive-based compensation was awarded under a long-term incentive plan or is qualifying incentive-based compensation. Minimum required deferral amounts range from 40 percent to 60 percent of the total incentive-based compensation award, and minimum required deferral periods range from one year to four years, as detailed below.

Deferred incentive-based compensation of senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions would also be required to meet the following other requirements:

- Vesting of deferred amounts may occur no faster than on a pro rata annual basis beginning on the one-year anniversary of the end of the performance period;
- Unvested deferred amounts may not be increased during the deferral period;
- For most Level 1 and Level 2 covered institutions, substantial portions of deferred incentive-based compensation must be paid in the form of both equity-like instruments and deferred cash;
- Vesting of unvested deferred amounts may not be accelerated except in the case of death or disability; [137] and
- All unvested deferred amounts must be placed at risk of forfeiture and subject to a forfeiture and downward adjustment review pursuant to section ____.7(b).

Except for the prohibition against accelerated vesting, the prohibitions and requirements in section ____.7(a) of the proposed rule would apply to all unvested deferred incentive-based compensation, regardless of whether the deferral of the incentive-based compensation was necessary to meet the requirements of the proposed rule. For example, if a covered institution chooses to defer incentive-based compensation above the amount required to be deferred under the rule, the additional amount would be required to be subject to forfeiture. In another example, if a covered institution would be required to defer a portion of a particular covered person's incentive-based compensation for four years, but chooses to defer that compensation for ten years, the deferral would be subject to forfeiture during the entire ten-year deferral period. Applying the requirements and prohibitions of section ____.7(a) to all unvested deferred incentive-based compensation is intended to maximize the balancing effect of deferred incentive-based compensation, to make administration of the requirements and prohibitions easier for covered institutions, and to facilitate the Agencies' supervision for compliance.

Compensation that is not incentive-based compensation and is deferred only for tax purposes would not be considered "deferred incentive-based compensation" for purposes of the proposed rule.

§ ____.7(a)(1) and § ____.7(a)(2) Minimum Deferral Amounts and Deferral Periods for Qualifying Incentive-Based Compensation and Incentive-Based Compensation Awarded Under a Long-Term Incentive Plan

The proposed rule would require a Level 1 covered institution to defer at least 60 percent of each senior executive officer's qualifying incentive-based compensation [138] for at least four years, and at least 60 percent of each senior executive officer's incentive-based compensation awarded under a long-term incentive plan for at least two years beyond the end of that plan's performance period. A Level 1 covered institution would be required to defer at least 50 percent of each significant risk-taker's qualifying incentive-based compensation for at least four years, and at least 50 percent of each significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for at least two years beyond the end of that plan's performance period.

Similarly, the proposed rule would require a Level 2 covered institution to defer at least 50 percent of each senior executive officer's qualifying incentive-based compensation for at least three years, and at least 50 percent of each senior executive officer's incentive-based compensation awarded under a long-term incentive plan for at least one year beyond the end of that plan's performance period. A Level 2 covered institution would be required to defer at least 40 percent of each significant risk-taker's qualifying incentive-based compensation for at least three years, and at least 40 percent of each significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for at least one year beyond the end of that plan's performance period.

In practice, a Level 1 or Level 2 covered institution typically evaluates the performance of a senior executive officer or significant risk-taker during and after the performance period. As the performance period comes to a close, the covered institution determines an amount of incentive-based compensation to award the covered person for that performance period. Senior executive officers and significant risk-takers may be awarded incentive-based compensation at a given time under multiple incentive-based compensation plans that have performance periods that come to a close at that time. Although they end at the same time, those performance periods may have differing lengths, and therefore may not completely overlap. For example, long-term incentive plans, which have a minimum performance period of three years, would consider performance in at least two years prior to the year the performance period ends, while annual incentive plans would only consider performance in the year of the performance period.

For purposes of determining the amount of incentive-based compensation that would be required to be deferred and the actual amount that

[133] As explained earlier in this Supplementary Information section, the appropriate Federal regulator of a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion may require the covered institution to comply with some or all of the provisions of section ____.5 and sections ____.7 through ____.11 of the proposed rule if the Agency determines that the complexity of operations or compensation practices of the Level 3 covered institution are consistent with those of a Level 1 or 2 covered institution.

[134] Board, Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082, 49084 (August 14, 2015).

[135] This premise was identified in the 2010 Federal Banking Agency Guidance, 75 FR at 36409, and was highlighted in the 2011 FRB White Paper. The report reiterated the recommendation that "[a] substantial fraction of incentive compensation awards should be deferred for senior executives of the firm because other methods of balancing risk taking incentives are less likely to be effective by themselves for such individuals." 2011 FRB White Paper, at 15.

[136] Gopalan, Milbourn, Song and Thakor, "Duration of Executive Compensation" (December 18, 2012), at 29–30, *available at http://apps.olin.wustl.edu/faculty/thakor/Website%20Papers/Duration%20of%20Executive%20Compensation.pdf.*

[137] For covered persons at credit unions, NCUA's rule also permits acceleration of payment if the covered person must pay income taxes on the entire amount of an award, including deferred amounts, at the time of award.

[138] As described above, incentive-based compensation that is not awarded under a long-term incentive plan would be defined as qualifying incentive-based compensation under the proposed rule.

would be deferred, a Level 1 or Level 2 covered institution generally should use the present value of the incentive-based compensation at the time of the award. In determining the value of awards for this purpose, Level 1 and Level 2 covered institutions generally should use reasonable valuation methods consistent with methods used in other contexts.[139]

Pro Rata Vesting

The requirements of this section would permit the covered institution to immediately pay, or allow to vest, all of the incentive-based compensation that is awarded that is not required to be deferred. All incentive-based compensation that is deferred would be subject to a deferral period that begins only once the performance period comes to a close. During this deferral period, indications of inappropriate risk-taking may arise, leading the covered institution to consider whether the covered person should not be paid the entire amount originally awarded.

The incentive-based compensation that would be required by the rule to be deferred would not be permitted to vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the compensation was awarded. In other words, a covered institution would be allowed to make deferred incentive-based compensation eligible for vesting during the deferral period on a schedule that paid out equal amounts on each anniversary of the end of the relevant performance period. A covered institution would also be permitted to make different amounts eligible for vesting each year, so long as the cumulative total of the deferred incentive-based compensation that has been made eligible for vesting on each anniversary of the end of the performance period is not greater than the cumulative total that would have been eligible for vesting had the covered institution made equal amounts eligible for vesting each year.

For example, if a Level 1 covered institution is required to defer $100,000 of a senior executive officer's incentive-based compensation for four years, the covered institution could choose to make $25,000 available for vesting on each anniversary of the end of the performance period for which the $100,000 was awarded. The Level 1 covered institution could also choose to make different amounts available for vesting at different times during the deferral period, as long as: The total amount that is made eligible for vesting on the first anniversary is not more than $25,000; the total amount that has been made eligible for vesting by the second anniversary is not more than $50,000; and the total amount that has been made eligible for vesting by the third anniversary is not more than $75,000. In this example, the Level 1 covered institution would be permitted to make eligible for vesting $10,000 on the first anniversary, $30,000 on the second anniversary (bringing the total for the first and second anniversaries to $40,000), $30,000 on the third anniversary (bringing the total for the first, second, and third anniversaries to $70,000), and $30,000 on the fourth anniversary.

A Level 1 or Level 2 covered institution should consider the vesting schedule at the time of the award, and the present value at time of award of each form of incentive-based compensation, for the purposes of determining compliance with this requirement. Level 1 and Level 2 covered institutions generally should use reasonable valuation methods consistent with methods used in other contexts in valuing awards for purposes of this rule.

This approach would provide a covered institution with some flexibility in administering its specific deferral program. For example, a covered institution would be permitted to make the full deferred amount of incentive-based compensation awarded for any given year eligible for vesting in a lump sum at the conclusion of the deferral period (*i.e.*, "cliff vesting"). Alternatively, a covered institution would be permitted to make deferred amounts eligible for vesting in equal increments at the end of each year of the deferral period. Except in the case of acceleration allowed in sections ____.7(a)(1)(iii)(B) and ____.7(a)(2)(iii)(B), the proposed rule does not allow for vesting of amounts required to be deferred (1) faster than on a pro rata annual basis; or (2) beginning earlier than the first anniversary of the award date.

The Agencies recognize that some or all of the incentive-based compensation awarded to a senior executive officer or significant risk-taker may be forfeited before it vests. For an example of how these requirements would work in practice, please see Appendix A of this Supplementary Information section.

This restriction is intended to prevent covered institutions from defeating the purpose of the deferral requirement by allowing vesting of most of the required deferral amounts immediately after the award date. In addition, the proposed approach aligns with both what the Agencies understand is common practice in the industry and with the requirements of many foreign supervisors.

Acceleration of Payments

The Agencies propose that the acceleration of vesting and subsequent payment of incentive-based compensation that is required to be deferred under this proposed rule generally be prohibited for covered persons at Level 1 and Level 2 covered institutions. This restriction would apply to all deferred incentive-based compensation required to be deferred under the proposed rule, whether it was awarded as qualifying incentive-based compensation or under a long-term incentive plan. This prohibition on acceleration would not apply to compensation that the employee or the employer elects to defer in excess of the amounts required under the proposed rule or for time periods that exceed the required deferral periods or in certain other limited circumstances, such as the death or disability of the covered person.

NCUA's proposed rule would permit acceleration of payment if covered persons at credit unions were subject to income taxes on the entire amount of an incentive-based compensation award even before deferred amounts vest. Incentive-based compensation for executives of not-for-profit entities is subject to income taxation under a different provision of the Internal Revenue Code[140] than that applicable to executives of other covered institutions. The result is that credit union executives' incentive-based compensation awards may be subject to immediate taxation on the entire award, even deferred amounts.[141] The ability to accelerate payment would be a limited exception only applicable to income tax liability and would only apply to the extent credit union executives must pay income tax on unvested amounts during the deferral period. Also, any amounts advanced to pay income tax liabilities for deferrals must be taken in proportion to the vesting schedule. For example, a credit union executive may have deferrals of $200,000 for each of three years ($600,000 total) and a total tax liability of $240,000 for the deferred amount of an award. The advanced tax

[139] *See, e.g.*, Topic 718 of the FASB Accounting Standards Codification (formerly FAS 123(R); Black-Scholes method for valuing options.

[140] 26 U.S.C. 457(f).

[141] The Agencies understand that the taxation of unvested deferred awards of covered persons at other covered institutions is based on other provisions of the Internal Revenue Code. *See, e.g.*, 26 U.S.C. 409A.

payments would result in an annual reduction of $80,000 per deferred payment, resulting in a new vesting amount of $120,000 for each year of the deferral period.

Many institutions currently allow for accelerated vesting in the case of death or disability. Some current incentive-based compensation arrangements, such as separation agreements, between covered persons and covered institutions provide for accelerated vesting and payment of deferred incentive-based compensation that has not yet vested upon the occurrence of certain events.[142] Many institutions also currently provide for the accelerated vesting of deferred incentive-based compensation awarded to their senior executive officers, particularly compensation awarded in the form of equity, in connection with a change in control of the company[143] (sometimes as part of a "golden parachute"). Shareholder proxy firms and some institutional investors have raised concerns about such golden parachutes,[144] and golden parachutes are restricted by law under certain circumstances, including if an institution is in troubled condition.[145] Finally, in current incentive-based compensation arrangements, events triggering acceleration commonly include leaving the employment of a covered institution for a new position (either any new position or only certain new positions, such as employment at a government agency), an acquisition or change in control of the covered institution, or upon the death or disability of the employee.[146]

The Federal Banking Agencies have found that the acceleration of deferred incentive-based compensation to covered persons is generally inappropriate because it weakens the balancing effect of deferral and eliminates the opportunity for forfeiture during the deferral period as information concerning risks taken during the performance period becomes known. The acceleration of vesting and payment of deferred incentive-based compensation in other circumstances, such as when the covered person voluntarily leaves the institution, could also provide covered persons with an incentive to retire or leave a covered institution if the covered person is aware of risks posed by the covered person's activities that are not yet apparent to or fully understood by the covered institution. Acceleration of payment could skew the balance of risk-taking incentives provided to the covered person if the circumstances under which acceleration is allowed are within the covered person's control. The proposed rule would prohibit acceleration of deferred compensation that is required to be deferred under this proposed rule in most circumstances given the potential to undermine risk balancing mechanisms.

In contrast, the circumstances under which the Agencies would allow acceleration of payment, namely death or disability of the covered person, generally are not subject to the covered person's control, and, therefore, are less likely to alter the balance of risk-taking incentives provided to the covered person. In other cases where acceleration is permitted, effective governance and careful assessment of potential risks, as well as specific facts and circumstances are necessary in order to protect against creating precedents that could undermine more generally the risk balancing effects of deferral. Therefore, the Agencies have proposed to permit only these limited exceptions.

Under the proposed rule, the prohibition on acceleration except in cases of death or disability would apply only to deferred amounts that are required by the proposed rule so as not to discourage additional deferral, or affect institutions that opt to defer incentive-based compensation exceeding the requirements. For example, if an institution defers compensation until retirement as a retention tool, but the institution then merges into another company and ceases to exist, retention may not be a priority. Thus, acceleration would be permitted for any deferred incentive-based compensation amounts above the amount required to be deferred or that was deferred longer than the minimum deferral period to allow those amounts to be paid out closer in time to the merger.

Similarly, the acceleration of payment NCUA's rule permits if a covered person of a credit union faces up-front income tax liability on the deferred amounts of an award is not an event subject to the covered person's control. This exception will not apply unless the covered person is actually subject to income taxes on deferred amounts for which the covered person has not yet received payment, and equalizes the effect of deferral for covered persons at credit unions and covered persons at most other covered institutions. This limited exception is not intended to alter the balance of risk-taking incentives.

Qualifying Incentive-Based Compensation and Incentive-Based Compensation Awarded Under a Long-Term Incentive Plan

The minimum required deferral amounts would be calculated separately for qualifying incentive-based compensation and incentive-based compensation awarded under a long-term incentive plan, and those amounts would be required to be deferred for different periods of time. For the purposes of calculating qualifying incentive-based compensation awarded for any performance period, a covered institution would aggregate incentive-based compensation awarded under any incentive-based compensation plan that is not a long-term incentive plan. The required deferral percentage (40, 50, or 60 percent) would be multiplied by that total amount to determine the minimum deferral amount. In a given year, if a senior executive officer or significant risk-taker is awarded qualifying incentive-based compensation under multiple plans that have the same performance period (which is less than three years), the award under each plan would not be required to meet the minimum deferral requirement, so long as the total amount that is deferred from all of the amounts awarded under those plans meets the minimum required percentage of total qualifying incentive-based compensation relevant to that covered person.

[142] Several commenters argued that the 2011 Proposed Rule's deferral requirements should not apply upon the death, disability, retirement, or acceptance of government employment of covered persons, or a change in control of the covered institution, effectively arguing for the ability of covered institutions to accelerate incentive-based compensation under these circumstances.

[143] *See, e.g.*, Equilar, "Change-in-Control Equity Acceleration Triggers" (March 19, 2014), *available at http://www.equilar.com/reports/8-change-in-control-equity-acceleration-triggers.html* (Noting that although neither Institutional Shareholder Services (ISS) nor Glass Lewis state that a single trigger plan will automatically result in an "against" recommendation, both make it clear that they view the single versus double trigger issue as an important factor in making their decisions. ISS, in particular, suggests in its policies that double trigger vesting of equity awards is currently the best market practice).

[144] Institutional Shareholders Services, "2015 U.S. Compensation Policies, Frequently Asked Questions" (February 9, 2015) ("ISS Compensation FAQs"), *available at https://www.issgovernance.com/file/policy/2015-us-comp-faqs.pdf*, and Institutional Shareholders Services, "U.S. Corporate Governance Policy: 2013 Updates" (November 16, 2012), *available at https://www.issgovernance.com/file/files/2013USPolicyUpdates.pdf*.

[145] *See* 12 U.S.C. 1828(k) and 12 CFR part 359 (generally applicable to banks and holding companies).

[146] *See, e.g.*, 2012 James F. Reda & Associates, "Study of Executive Termination Provisions Among Top 200 Public Companies (December 2012), *available at www.jfreda.com*; Equilar, "Change-in-Control Equity Acceleration Triggers" (March 19, 2014), *available athttp://www.equilar.com/reports/8-change-in-control-equity-acceleration-triggers.html*.

For example, under the proposal, a significant risk-taker at a Level 2 covered institution might be awarded $60,000 under a plan with a one-year performance period that applies to all employees in her line of business and $40,000 under a plan with a one-year performance period that applies to all employees of the covered institution. For that performance period, the significant risk-taker has been awarded a total of $100,000 in qualifying incentive-based compensation, so she would be required to defer a total of $40,000. The covered institution could defer amounts awarded under either plan or under both plans, so long as the total amount deferred was at least $40,000. For example, the covered institution could choose to defer $20,000 from the first plan and $20,000 from the second plan. The covered institution could also choose to defer nothing awarded under the first plan and the entire $40,000 awarded under the second plan.

For a full example of how these requirements would work in the context of a more complete incentive-based compensation arrangement, please see Appendix A of this preamble.

In contrast, the minimum required deferral percentage would apply to all incentive-based compensation awarded under each long-term incentive plan separately. In a given year, if a senior executive officer or significant risk-taker is awarded incentive-based compensation under multiple long-term incentive plans that have performance periods of three years or more, each award under each plan would be required to meet the minimum deferral requirement.[147] Based on supervisory experience, the Federal Banking Agencies have found that it would be extremely rare for a covered person to be awarded incentive-based compensation under multiple long-term incentive plans in one year.

The proposed rule would require deferral for the same percentage of qualifying incentive-based compensation as of incentive-based compensation awarded under a long-term incentive plan. However, the proposed rule would require that deferred qualifying incentive-based compensation meet a longer minimum deferral period than deferred incentive-based compensation awarded under a long-term incentive plan. As with the shorter performance period for qualifying incentive-based compensation, the period over which performance is measured under a long-term incentive plan is not considered part of the deferral period.

Under the proposed rule, both deferred qualifying incentive-based compensation and deferred incentive-based compensation awarded under a long-term incentive plan would be required to meet the vesting requirements separately. In other words, deferred qualifying incentive-based compensation would not be permitted to vest faster than on a on a pro rata annual basis, even if deferred incentive-based compensation awarded under a long-term incentive plan vested on a slower than pro rata basis. Each deferred portion is bound by the pro rata requirement.

For an example of how these requirements would work in practice, please see Appendix A of this Supplementary Information section.

Incentive-based compensation provides an inducement for a covered person at a covered institution to advance the strategic goals and interests of the covered institution while enabling the covered person to share in the success of the covered institution. Incentive-based compensation may also encourage covered persons to take undesirable or inappropriate risks, or to sell unsuitable products in the hope of generating more profit and thereby increasing the amount of incentive-based compensation received. Covered persons may also be tempted to manipulate performance results in an attempt to make performance measurements look better or to understate the actual risks such activities impose on the covered institution's balance sheet.[148] Incentive-based compensation should therefore also provide incentives for prudent risk-taking in the long term and for sound risk management.

Deferral of incentive-based compensation awards involves a delay in the vesting and payout of an award to a covered person beyond the end of the performance period. The deferral period allows for amounts of incentive-based compensation to be adjusted for actual losses to the covered institution or for other aspects of performance that become clear during the deferral period before those amounts vest or are paid. These aspects include inappropriate risk-taking and misconduct on the part of the covered person. More generally, deferral periods that lengthen the time between the award of incentive-based compensation and vesting, combined with forfeiture, are important tools for aligning the interests of risk-takers with the longer-term interests of covered institutions.[149] Deferral periods that are sufficiently long to allow for a substantial portion of the risks from the covered person's activities to manifest are likely to be most effective in ensuring that risks and rewards are adequately balanced.[150]

Deferral periods allow covered institutions an opportunity to more accurately judge the nature and scale of risks imposed on covered institutions' balance sheets by a covered person's performance for which incentive-based compensation has been awarded, and to better understand and identify risks that result from such activities as they are realized. These include risks imposed by inappropriate risk-taking or misconduct, and risks that may manifest as a result of lapses in risk management or risk oversight. For example, the risks associated with some business lines, such as certain types of lending, may require many years before they materialize.

Though it is difficult to set deferral periods that perfectly match the time it takes risks undertaken by the covered persons of covered institutions to become known, longer periods allow more time for incentive-based compensation to be adjusted between the time of award and the time incentive-based compensation vests.[151] At the same time, deferral periods that are inordinately long may reduce the effectiveness of incentive-based compensation arrangements because employees more heavily discount the potential impact of such arrangements. Thus, it is important to strike a reasonable balance between providing effective incentives and allowing sufficient time to validate performance measures over a reasonable period of deferral. The specific deferral periods and amounts proposed in the proposed rule are also consistent with current practice at many institutions that would be Level 1 or Level 2 covered institutions, and with compensation requirements in other countries.[152] In drafting the requirements in sections ____.7(a)(1) and ____.7(a)(2), the Agencies took into account the comments received regarding similar requirements in the 2011 Proposed Rule.[153]

The Agencies have proposed the three- and four-year minimum deferral periods because these deferral periods, taken together with the typically one-year performance period, would allow a Level 1 or Level 2 covered institution four to five years, or the majority of a traditional business cycle, to identify outcomes associated with a senior executive officer's or significant risk-taker's performance and risk-taking activities. The business cycle reflects periods of economic expansion or recession, which typically underpin the performance of the financial sector. The Agencies recognize that credit cycles, which revolve around access to and demand for credit and are influenced by various economic and financial factors, can be longer.[154]

However, the Agencies are also concerned with striking the right balance between allowing covered persons to be fairly compensated and not encouraging inappropriate risk-taking. The Agencies are concerned that extending deferral periods for too long may lead to a covered person placing little or no value on the incentive-based compensation that only begins to vest far out in the future. This type of discounting of the value of long-deferred awards may be less effective as an incentive, positive or negative, and consequently for balancing the benefit of these types of awards.[155]

As described above, since the Agencies proposed the 2011 Proposed Rule, the Agencies have gained significant supervisory experience while encouraging covered institutions to adopt improved incentive-based compensation practices. The Federal Banking Agencies note in particular improvements in design of incentive-based compensation arrangements that help to more appropriately balance risk and reward. Regulatory requirements for sound incentive-based compensation arrangements at financial institutions have continued to evolve, including those being implemented by foreign regulators. Consideration of international practices and standards is particularly relevant in developing incentive-based compensation standards for large financial institutions because they often compete for talented personnel internationally.

Based on supervisory experience, although exact amounts deferred may vary across employee populations at large covered institutions, the Federal Banking Agencies have observed that, since the financial crisis that began in 2007, most deferral periods at financial institutions range from three to five years, with three years being the most common deferral period.[156] Consistent with this observation, the FSB standards suggest deferral periods "not less than

[147] For example, if a Level 1 covered institution awarded a senior executive officer $100,000 under one long-term incentive plan and $200,000 under another long-term incentive-plan, the covered institution would be required to defer at least $60,000 of the amount awarded under the first long-term incentive plan and at least $120,000 of the amount awarded under the second long-term incentive plan. The Level 1 covered institution would not be permitted to meet the deferral requirements by deferring, for example, $10,000 awarded under the first long-term incentive plan and $170,000 awarded under the second long-term incentive plan.

[148] For example, towards the end of the performance period, covered persons who have not yet met the target performance measures could be tempted to amplify risk taking or take other actions to meet those targets and receive the maximum incentive-based compensation. Without deferral, there would be no additional review applied to the risk-taking activities that were taken during the defined performance period to achieve those target performance measures.

[149] There have been a number of academic papers that argue that deferred compensation provides incentives for executives to consider the long-term health of the firm. For example, Eaton and Rosen (1983) note that delaying compensation is a way of bonding executives to the firm and providing incentives for them to focus on long-term performance of the firm. *See* Eaton and Rosen, "Agency, Delayed Compensation, and the Structure of Executive Remuneration," 38 *Journal of Finance* 1489, at 1489–1505; *see also* Park and Sturman, "How and What You Pay Matters: The Relative Effectiveness of Merit Pay, Bonus, and Long-Term Incentives on Future Job Performance" (2012), *available at http://scholarship.sha.cornell.edu/cgi/viewcontent.cgi?article=1121&context=articles.*

[150] The length of the deferral period has been a topic of discussion in the literature. Edmans (2012) argues that deferral periods of two to three years are too short. He also argues that deferral should be longer for institutions where the decisions of the executives have long-term consequences. Bebchuk et al (2010) argue that deferral provisions alone will not prevent executives from putting emphasis on short-term prices because executives that have been in place for many years will have the opportunity to regularly cash out. They argue that executives should be required to hold a substantial number of shares and options until retirement. *See also* Edmans, Alex, "How to Fix Executive Compensation," *The Wall Street Journal* (February 27, 2012); Bebchuk, Lucian, Cohen, and Spamann, "The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000–2008," 27 *Yale Journal on Regulation* 257, 257–282 (2010); Bhagat, Sanjai, Bolton and Romano, "Getting Incentives Right: Is Deferred Bank Executive Compensation Sufficient?," 31 *Yale Journal on Regulation* 523 (2014); Bhagat, Sanjai and Romano, "Reforming Financial Executives' Compensation for the Long Term," *Research Handbook on Executive Pay* (2012); Bebchuk and Fried, "Paying for Long-Term Performance," 158 *University of Pennsylvania Law Review*, 1915 (2010).

[151] Some empirical literature has found a link between the deferral of compensation and firm value, firm performance, risk, and the manipulation of earnings. Gopalan et al (2014) measure the duration of executive compensation by accounting for the vesting schedules in compensation. They argue that the measure is a proxy for the executives' horizon. They find that longer duration of compensation is present at less risky institutions and institutions with better past stock performance. They also find that longer duration is associated with less manipulation of earnings. Chi and Johnson (2009) find that longer vesting periods for stocks and options are related to higher firm value. *See* Gopalan, Radhakrishnan, Milbourn, Song and Thakor, "Duration of Executive Compensation," 59 *The Journal of Finance* 2777 (2014); Chi, Jianxin, and Johnson, "The Value of Vesting Restrictions on Managerial Stock and Option Holdings" (March 9, 2009) *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1136298.*

[152] Moody's Investor Service, "Global Investment Banks: Reformed Pay Policies Still Pose Risks to Bondholders" ("Moody's Report") (December 9, 2014); McLagan, "Mandatory Deferrals in Incentive Programs" (March 2013), *available at http://www.mclagan.com/crb/downloads/McLagan_Mandatory_Deferral_Flash_Survey_Report_3-29-2013.pdf.*

[153] Commenters on the 2011 Proposed Rule expressed differing views on the proposed deferral requirements and the deferral-related questions posed by the Agencies. For example, some commenters expressed the view that the deferral requirements for incentive-based compensation awards for executive officers were appropriate. Some commenters argued that deferral would create a longer-term focus for executives and help to ensure they are not compensated on the basis of short-term returns that fail to account for long-term risks. Many commenters also argued that the deferral requirements should be strengthened by extending the required minimum deferral period or minimum percentage of incentive compensation deferred. For example, these commenters urged the Agencies to require a five-year deferral period, instead of the three-year period that was proposed, or to disallow "pro rata" payments within the proposed three-year deferral period. These commenters also expressed the view that the Agencies' proposal to require covered financial institutions to defer 50 percent of their annual compensation would result in an insufficient amount of incentive-based compensation being at risk of potential adjustment, because the risks posed by those executive officer can take longer to become apparent. Other commenters argued that all covered institutions subject to this rulemaking should comply with the deferral requirements regardless of their size.

On the other hand, many commenters recommended that deferral not be required or argued that, if deferral were to be required, the three-year and 50 percent deferral minimums provided in the 2011 Proposed Rule were sufficient. Some commenters recommended that the deferral requirements not be applied to smaller covered institutions. Some commenters also suggested that unique aspects of certain types of covered institutions, such as investment advisers or smaller banks within a larger consolidated organization, should be considered when imposing deferral and other requirements on incentive-based compensation arrangements. A number of commenters suggested that applying a prescriptive deferral requirement, together with other requirements under the 2011 Proposed Rule, would make it more difficult for covered institutions to attract and retain key employees in comparison to the ability of organizations not subject to such requirements to recruit and retain the same employees.

[154] From 1945 to 2009, the average length of the business cycle in the U.S. was approximately 5.7 years. *See* The National Bureau of Economic Research, "U.S. Business Cycle Expansions and Contractions, *available at http://www.nber.org/cycles/cyclesmain.html.* Many researchers have found that credit cycles are longer than business cycles. For example, Drehmann et al (2012) estimate an average duration of credit cycles from 10 to 20 years. *See* Drehmann, Mathias, Borio and Tsatsaronis, "Characterising the Financial Cycle: Don't Lose Sight of the Medium Term!" Bank for International Settlements, Working Paper, No. 380 (June 2012), *available at http://www.bis.org/publ/work380.htm.* Aikman et al (2015) found that the credit cycle ranges from eight to 20 years. *See* Aikman, Haldane, and Nelson, "Curbing the Credit Cycle," 125 *The Economic Journal* 1072 (June 2015).

[155] *See* Pepper and Gore, "The Economic Psychology of Incentives: An International Study of Top Managers," 49 *Journal of World Business* 289 (2014); PRA, Consultation Paper PRA CP15/14/FCA CP14/14: Strengthening the alignment of risk and reward: new remuneration rules (July 2014) *available at http://www.bankofengland.co.uk/pra/Documents/publications/cp/2014/cp1514.pdf.*

[156] *See* 2011 FRB White Paper, at 15.

three years," and the average deferral period at significant institutions in FSB member countries is now between three and four years.[157] The PRA requires deferral of seven years for senior managers as defined under the Senior Managers Regime, five years for risk managers as defined under the EBA regulatory technical standard on identification of material risk-takers, and three to five years as per the CRD IV minimum for all other material risk-takers.[158] CRD IV sets a minimum deferral period of "at least three to five years." For senior management, significant institutions [159] are expected to apply deferral of "at least five years." [160] Swiss regulations [161] require that for members of senior management, persons with relatively high total remuneration, and persons whose activities have a significant influence on the risk profile of the firm, the time period for deferral should last "at least three years."

The requirements in the proposed rule regarding amounts deferred are also consistent with observed better practices and the standards established by foreign regulators. The Board's summary overview of findings during the early stages of the 2011 FRB White Paper [162] observed that "deferral fractions set out in the FSB Principles and Implementation Standards [163] are sometimes used as a benchmark (60 percent or more for senior executives, 40 percent or more for other individual "material risk takers," which are not the same as "covered employees") and concluded that deferral fractions were at or above these benchmarks at both the U.S. banking organizations and foreign banking organizations that participated in the horizontal review.

The proportion of incentive-based compensation awards observed to be deferred at financial institutions during the Board's horizontal review was substantial. For example, on average senior executives report more than 60 percent of their incentive-based compensation is deferred,[164] and some of the most senior executives had more than 80 percent of their incentive-based compensation deferred with additional stock retention requirements after deferred stock vests. Most institutions assigned deferral rates to employees using a fixed schedule or "cash/stock table" under which employees that received higher incentive-based compensation awards generally were subject to higher deferral rates, although deferral rates for the most senior executives were often set separately and were higher than those for other employees.[165] The proposed rule's higher deferral rates for senior executive officers would be consistent with this observed industry practice of requiring higher deferral rates for the most senior executives. Additionally, by their very nature, senior executive officer positions tend to have more responsibility for strategic decisions and oversight of multiple areas of operations, and these responsibilities warrant requiring higher percentages of deferral and longer deferral periods to safeguard against inappropriate risk-taking.

This proposed rule is also consistent with standards being developed internationally. The PRA expects that "where any employee's variable remuneration component is £500,000 or more, at least 60 percent should be deferred." [166] European Union regulations require that "institutions should set an appropriate portion of remuneration that should be deferred for a category of identified staff or a single identified staff member at or above the minimum proportion of 40 percent or respectively 60 percent for particularly high amounts." [167] The EU also publishes a report on *Benchmarking of Remuneration Practices at Union Level and Data on High Earners* [168] that provides insight into amounts deferred across various lines of business within significant institutions across the European Union. While amounts varied by areas of operations, average deferral levels for identified staff range from 54 percent in retail banking to more than 73 percent in investment banking.

The proposed rule's enhanced requirements for Level 1 institutions are consistent with international standards. Many regulators apply compensation standards in a proportional or tiered fashion. The PRA, for example, classifies three tiers of firms based on asset size and applies differentiated standards across this population. Proportionality Level 1 includes firms with greater than £50 billion in consolidated assets; Proportionality Level 2 includes firms with between £15 billion and £50 billion in consolidated assets; and Proportionality Level 3 includes firms with less than £15 billion in consolidated assets. The PRA also recognizes "significant" firms. Proportionality Level 3 firms are typically not subject to provisions on retained shares, deferral, or performance adjustment.

Under the proposed rule, incentive-based compensation awarded under a long-term incentive plan would be treated separately and differently than amounts of incentive-based compensation awarded under annual performance plans (and other qualifying incentive-based compensation) for the purposes of the deferral requirements. Deferral of incentive-based compensation and the use of longer performance periods (which is the hallmark of a long-term incentive plan) both are useful tools for balancing risk and reward in incentive-based compensation arrangements because both allow for the passage of time that allows the covered institution to have more information about a covered person's risk-taking activity and its possible outcomes. Both methods allow

[157] FSB, Implementing the FSB Principles for Sound Compensation Practices and their Implementation Standards: Fourth Progress Report ("2015 FSB Compensation Progress Report") (2015), *available at http://www.fsb.org/2015/11/fsb-publishes-fourth-progress-report-on-compensation-practices.*

[158] *See* UK Remuneration Rules. The United Kingdom deferral standards apply on a group-wide basis and apply to banks, building societies, and PRA-designated investment firms, but do not currently cover investment advisors outside of consolidated firms.

[159] CRD IV defines institutions that are significant "in terms of size, internal organisation and nature, scope and complexity of their activities." Under the EBA Guidance on Sound Remuneration Policies, significant institutions means institutions referred to in Article 131 of Directive 2013/36/EU (global systemically important institutions or 'G–SIIs,' and other systemically important institutions or 'O–SIIs'), and, as appropriate, other institutions determined by the competent authority or national law, based on an assessment of the institutions' size, internal organisation and the nature, the scope and the complexity of their activities. Some, but not all, national regulators have provided further guidance on interpretation of that term, including the FCA which provides a form of methodology to determine if a firm is "significant" based on quantitative tests of balance sheet assets, liabilities, annual fee commission income, client money and client assets.

[160] *See* EBA Remuneration Guidelines.

[161] *See* FINMA Remuneration Circular 2010.

[162] *See* FRB 2011 Report, at 31.

[163] Specifically, the FSB Implementation Standards encourage that "a substantial portion of variable compensation, such as 40 to 60 percent, should be payable under deferral arrangements over a period of years" and that "proportions should increase significantly along with the level of seniority and/or responsibility . . . for the most senior management and the most highly paid employees, the percentage of variable compensation that is deferred should be substantially higher, for instance, above 60 percent."

[164] "Deferral" for these reports is defined by the institutions and may include long-term incentive plans without additional deferral.

[165] *See* 2011 FRB White Paper, at 15.

[166] *See* PRA, Supervisory Statement SS27/15: Remuneration (June 2015), *available at http://www.bankofengland.co.uk/pra/Documents/publications/ss/2015/ss2715.pdf.*

[167] *See* EBA Remuneration Guidelines.

[168] *See, e.g.*, EBA, Benchmarking of Remuneration Practices at Union Level and Data on High Earners, at 39, Figure 46 (September 2015), *available at http://www.eba.europa.eu/-/eba-updates-on-remuneration-practices-and-high-earners-data-for-2013-across-the-eu.*

awards or payments to be made after some or all risk outcomes are realized or better known. However, longer performance periods and deferral of vesting are distinct risk balancing methods.[169]

As noted above, the Agencies took into account the comments received regarding similar deferral requirements in the 2011 Proposed Rule. In response to the proposed deferral requirement in the 2011 Proposed Rule, which did not distinguish between incentive-based compensation awarded under a long-term incentive plan and other incentive-based compensation, several commenters argued that the Agencies should allow incentive-based compensation arrangements that use longer performance periods, such as a three-year performance period, to count toward the mandatory deferral requirement. In particular, some commenters argued that institutions that use longer performance periods should be allowed to start the deferral period at the beginning of the performance period. In this way, they argued, a payment made at the end of a three-year performance period has already been deferred for three years for the purposes of the deferral requirement.

As discussed above, deferral allows for time to pass after the conclusion of the performance period. It introduces a period of time in between the end of the performance period and vesting of the incentive-based compensation during which risks may mature without the employee taking additional risks to affect that earlier award.

Currently, institutions commonly use long-term incentive plans without subsequent deferral and thus there is no period following the multi-year performance period that would permit the covered institution to apply forfeiture or other reductions should it become clear that the covered person engaged in inappropriate risk-taking. Without deferral, the incentive-based compensation is awarded and vests at the end of the multi-year performance period.[170] In contrast, during the deferral period, the covered person's incentive-based compensation award is fixed and the vesting could be affected by information about a covered person's risk-taking activities during the performance period that becomes known during the deferral period.

For a long-term incentive plan, the period of time between the beginning of the performance period and when incentive-based compensation is awarded is longer than that of an annual plan. However, the period of time between the end of the performance period and when incentive-based compensation is awarded is the same for both the long-term incentive plan and for the annual plan. Consequently, while a covered institution may have more information about the risk-taking activities of a covered person that occurred near the beginning of the performance period for a long-term incentive plan than for an annual plan, the covered institution would have no more information about risk-taking activities that occur near the end of the performance period. The incentive-based compensation awarded under the long-term incentive plan would be awarded without the benefit of additional information about risk-taking activities near the end of the performance period.

Therefore, the proposed rule would treat incentive-based compensation awarded under a long-term incentive plan similarly to, but not the same as, qualifying incentive-based compensation for purposes of the deferral requirement. Under the proposed rule, the incentive-based compensation awarded under a long-term incentive plan would be required to be deferred for a shorter amount of time than qualifying incentive-based compensation, although the period of time elapsing between the beginning of the performance period and the actual vesting would be longer. A shorter deferral period would recognize the fact that the longer performance period of a long-term incentive plan allows some time for information to surface about risk-taking activities undertaken at the beginning of the performance period. The longer performance period allows covered institutions to adjust the amount awarded under long-term incentive plans for poor performance during the performance period. Yet, since no additional time would pass between risk-taking activities at the end of the performance period and the award date, the proposed rule would allow a shorter deferral period than would be necessary for qualifying incentive-based compensation.

The percentage of incentive-based compensation awarded that would be required to be deferred would be the same for incentive-based compensation awarded under a long-term incentive plan and for qualifying incentive-based compensation. However, because of the difference in the minimum required deferral period, the minimum deferral amounts for qualifying incentive-based compensation and for incentive-based compensation awarded under a long-term incentive plan would be required to be calculated separately. In other words, any amount of qualifying incentive-based compensation that a covered institution chooses to defer above the minimum required would not decrease the minimum amount of incentive-based compensation awarded under a long-term plan that would be required to be deferred, and vice versa.

For example, a Level 2 covered institution that awards a senior executive officer $50,000 of qualifying incentive-based compensation and $20,000 under a long-term incentive plan would be required to defer at least $25,000 of the qualifying incentive-based compensation and at least $10,000 of the amounts awarded under the long-term incentive plan. The Level 2 covered institution would not be permitted to defer, for example, $35,000 of qualifying incentive-based compensation and no amounts awarded under the long-term incentive plan, even though that would result in the deferral of 50 percent of the senior executive officer's total incentive-based compensation. For a full example of how these requirements would work in the context of a more complete incentive-based compensation arrangement, please see Appendix A of this preamble.

For incentive-based compensation awarded under a long-term incentive plan, section ____.7(a)(2) of the proposed rule would require that minimum deferral periods for senior executive officers and significant risk-takers at a Level 1 covered institution extend to two years after the award date and minimum deferral periods at a Level 2 covered institution extend to one year after the award date. For long-term incentive plans with performance periods of three years,[171] this

[169] The 2011 Proposed Rule expressly recognized this distinction ("The Proposed Rule identifies four methods that currently are often used to make compensation more sensitive to risk. These methods are Risk Adjustment of Awards . . . Deferral of Payment . . . Longer Performance Periods . . . Reduced Sensitivity to Short-Term Performance."). *See* 76 FR at 21179.

[170] An employee may be incentivized to take additional risks near the end of the performance period to attempt to compensate for poor performance early in the period of the long-term incentive compensation plan. For example, as noted above, towards the end of a multi-year performance period, covered persons who have not yet met the target performance measures could be tempted to amplify risk taking or take other actions to meet those targets and receive the maximum long-term incentive plan award with no additional review applied to the risk-taking activities that were taken during the defined performance period to achieve those target performance measures.

[171] Many studies of incentive-based compensation at large institutions have found that long-term incentive plans commonly have performance periods of three years. *See* Cook Report; Moody's Report.

requirement would delay the vesting of the last portion of this incentive-based compensation until five years after the beginning of the performance period at Level 1 covered institutions and four years after the beginning of the performance period at Level 2 covered institutions. Thus, while the deferral period from the award date is shorter for incentive-based compensation awarded under a long-term incentive plan, the delay in vesting from the beginning of the performance period would generally be the same under the most common qualifying incentive-based compensation and long-term incentive plans.

Under the proposed rule, the incentive-based compensation that would be required by the rule to be deferred would not be permitted to vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period. This requirement would apply to both deferred qualifying incentive-based compensation and deferred incentive-based compensation awarded under a long-term incentive plan.

The Federal Banking Agencies have also observed that the minimum required deferral amounts and deferral periods that would be required under the proposed rule are generally consistent with industry practice at larger covered institutions that are currently subject to the 2010 Federal Banking Agency Guidance, although the Agencies recognize that some institutions would need to revise their individual incentive-based compensation programs and others were not subject to the 2010 Federal Banking Agency Guidance. In part because the 2010 Federal Banking Agency Guidance and compensation regulations imposed by international regulators [172] currently encourage banking institutions to increase the proportion of compensation that is deferred to reflect higher levels of seniority or responsibility, current practice for the largest international banking institutions reflects substantial levels of deferral for such individuals. Many of those individuals would be senior executive officers and significant risk-takers under the proposed rule. Under current practice, deferral typically ranges from 40 percent for less senior significant risk-takers to more than 60 percent for senior executives.[173] The Agencies note that current practice for the largest international banking institutions reflects average deferral periods of at least three years.[174]

The deferral requirements of the proposed rule for senior executive officers and significant risk-takers at the largest covered institutions are also consistent with international standards on compensation. The European Union's 2013 law on remuneration paid by financial institutions requires deferral for large firms, among other requirements.[175] The PRA and the FCA initially adopted the European Union's law and requires covered companies to defer 40 to 60 percent of "senior manager," "risk manager," and "material risk-taker" compensation. The PRA and FCA recently updated their implementing regulations to extend deferral periods to seven years for senior managers and up to five years for certain other persons.[176] The proposed deferral requirements are also generally consistent with the FSB's Principles for Sound Compensation Practices and their related implementation standards issued in 2009.[177] Having standards that are generally consistent across jurisdictions would be important both to enable institutions subject to multiple regimes to fulfill the requirements of all applicable regimes, and to ensure that covered institutions in the United States would be on a level playing field compared to their non-U.S. peers in the global competition for talent.

7.1. The Agencies invite comment on the proposed requirements in sections ____.7(a)(1) and (a)(2).

7.2. Are minimum required deferral periods and percentages appropriate? If not, why not? Should Level 1 and Level 2 covered institutions be subject to different deferral requirements, as in the proposed rule, or should they be treated more similarly for this purpose and why? Should the minimum required deferral period be extended to, for example, five years or longer in certain cases and why?

7.3. Is a deferral requirement for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions appropriate to promote the alignment of employees' incentives with the risk undertaken by such covered persons? If not, why not? For example, comment is invited on whether deferral is generally an appropriate method for achieving incentive-based compensation arrangements that appropriately balance risk and reward for each type of senior executive officer and significant risk-taker at these institutions or whether there are alternative or more effective ways to achieve such balance.

7.4. Commenters are also invited to address the possible impact that the required minimum deferral provisions for senior executive officers and significant risk-takers may have on larger covered institutions and whether any deferral requirements should apply to senior executive officers at Level 3 institutions.

7.5. A number of commenters to the 2011 Proposed Rule suggested that applying a prescriptive deferral requirement, together with other requirements under that proposal, would make it more difficult for covered institutions to attract and retain key employees in comparison to the ability of organizations not subject to such requirements to recruit and retain the same employees. What implications does the proposed rule have on "level playing fields" between covered institutions and non-covered institutions in setting forth minimum deferral requirements under the rule?

7.6. The Agencies invite comment on whether longer performance periods can provide risk balancing benefits similar to those provided by deferral, such that the shorter deferral periods for incentive-based compensation awarded under long-term incentive plans in the proposed rule would be appropriate.

7.7. Would the proposed distinction between the deferral requirements for

[172] Most members of the FSB, for instance, have issued regulations, or encourage through guidance and supervisory practice, deferral standards that meet the minimums set forth in the FSB's Implementation Standards. *See* 2015 FSB Compensation Progress Report (concluding "almost all FSB jurisdictions have now fully implemented the P&S for banks."). The FSB standards state that "a substantial portion of variable compensation, such as 40 to 60 percent, should be payable under deferral arrangements over a period of years and these proportions should increase significantly along with the level of seniority and/or responsibility. The deferral period should not be less than three years. *See* FSB Principles and Implementation Standards.

[173] FSB member jurisdictions provided data for the purposes of the 2015 FSB Compensation Progress Report indicating that while the percentage of variable remuneration deferred varies significantly between institutions and across categories of staff, for the surveyed population of senior executives, the percentage of deferred incentive-based compensation averaged approximately 50 percent. *See* 2015 FSB Compensation Progress Report.

[174] *See* Moody's Report.

[175] In June 2013, the European Union adopted CRD IV, which sets out requirements on compensation structures, policies, and practices that applies to all banks and investment firms subject to the CRD. CRD IV provides that at least 50 percent of total variable remuneration should consist of equity-linked interests and at least 40 percent of the variable component must be deferred over a period of three to five years. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 (effective January 1, 2014).

[176] *See* UK Remuneration Rules. In the case of a material risk-taker who performs a PRA senior management function, the pro rata vesting requirement applies only from year three onwards (*i.e.*, the required deferral period is seven years, with no vesting to take place until three years after award).

[177] FSB Principles and Implementation Standards.

qualifying incentive-based compensation and incentive-based compensation awarded under a long-term incentive plan pose practical difficulties for covered institutions or increase compliance burdens? Why or why not?

7.8. Would the requirement in the proposed rule that amounts awarded under long-term incentive plans be deferred result in covered institutions offering fewer long-term incentive plans? If so, why and what other compensation plans will be used in place of long-term incentive plans and what negative or positive consequences might result?

7.9. Are there additional considerations, such as tax or accounting considerations, that may affect the ability of Level 1 or Level 2 covered institutions to comply with the proposed deferral requirement or that the Agencies should consider in connection with this provision in the final rule? Commenters on the 2011 Proposed Rule noted that employees of an investment adviser to a private fund hold partnership interests and that any incentive allocations paid to them are typically taxed at the time of allocation, regardless of whether these allocations have been distributed, and consequently, employees of an investment adviser to a private fund that would have been subject to the deferral requirement in the 2011 Proposed Rule would have been required to pay taxes relating to incentive allocations that they were required to defer. Should the determination of required deferral amounts under the proposed rule be adjusted in the context of investment advisers to private funds and, if so, how? Could the tax liabilities immediately payable on deferred amounts be paid from the compensation that is not deferred?

7.10. The Agencies invite comment on the circumstances under which acceleration of payment should be permitted. Should accelerated vesting be allowed in cases where employees are terminated without cause or cases where there is a change in control and the covered institution ceases to exist and why? Are there other situations for which acceleration should be allowed? If so, how can such situations be limited to those of necessity?

7.11. The Agencies received comment on the 2011 Proposed Rule that stated it was common practice for some private fund adviser personnel to receive payments in order to enable the recipients to make tax payments on unrealized income as they became due. Should this type of practice to satisfy tax liabilities, including tax liabilities payable on unrealized amounts of incentive-based compensation, be permissible under the proposed rule, including, for example, as a permissible acceleration of vesting under the proposed rule? Why or why not? Is this a common industry practice?

§ ____.7(a)(3) Adjustments of Deferred Qualifying Incentive-Based Compensation and Deferred Long-Term Incentive Plan Compensation Amounts

Under section ____.7(a)(3) of the proposed rule, during the deferral period, a Level 1 or Level 2 covered institution would not be permitted to increase a senior executive or significant risk-taker's unvested deferred incentive-based compensation.[178] In other words, any deferred incentive-based compensation, whether it was awarded as qualifying incentive-based compensation or under a long-term incentive plan, would be permitted to vest in an amount equal to or less than the amount awarded, but would not be permitted to increase during the deferral period.[179] Deferred incentive-based compensation may be decreased, for example, under a forfeiture and downward adjustment review as would be required under section ____.7(b) of the proposed rule, discussed below. It may also be adjusted downward as a result of performance that falls short of agreed upon performance measure targets.

As discussed in section 8(b), under some incentive-based compensation plans, covered persons can be awarded amounts in excess of their target amounts if the covered institution or covered person's performance exceed performance targets. As explained in the discussion on section 8(b), this type of upside leverage in incentive-based compensation plans may encourage covered persons to take inappropriate risks. Therefore, the proposed rule would limit maximum payouts to between 125 and 150 percent of the pre-set target. In a similar vein, the Agencies are concerned that allowing Level 1 and Level 2 covered institutions to provide for additional increases in amounts that are awarded but deferred may encourage senior executive officers and significant risk-takers to take more risk during the deferral period and thus may not balance risk-taking incentives. This concern is especially acute when covered institutions require covered persons to meet more aggressive goals than those established at the beginning of the performance period in order to "re-earn" already awarded, but deferred incentive-based compensation.

Although increases in the amount awarded, as described above, would be prohibited by the proposed rule, increases in the value of deferred incentive-based compensation due solely to a change in share value, a change in interest rates, or the payment of reasonable interest or a reasonable rate of return according to terms set out at the award date would not be considered increases in the amount awarded for purposes of this restriction. Thus, a Level 1 or Level 2 covered institution would be permitted to award incentive-based compensation to a senior executive officer or significant risk-taker in the form of an equity or debt instrument, and, if that instrument increased in market value or included a provision to pay a reasonable rate of interest or other return that was set at the time of the award, the vesting of the full amount of that instrument would not be in violation of the proposed rule.

For an example of how these requirements would work in practice, please see Appendix A of this **SUPPLEMENTARY INFORMATION** section.

7.12. The Agencies invite comment on the requirement in section ____.7(a)(3).

§ ____.7(a)(4) Composition of Deferred Qualifying Incentive-Based Compensation and Deferred Long-Term Incentive Plan Compensation for Level 1 and Level 2 Covered Institutions

Section ____.7(a)(4) of the proposed rule would require that deferred qualifying incentive-based compensation or deferred incentive-based compensation awarded under a long-term incentive plan of a senior executive officer or significant risk-taker at a Level 1 or Level 2 covered institution meet certain composition requirements.

Cash and Equity-Like Instruments

Covered institutions award incentive-based compensation in a number of forms, including cash-based awards, equity-like instruments, and in a smaller number of cases, incentive-based compensation in the form of debt or debt-like instruments such as deferred cash. First, the proposed rule would require that, at Level 1 and Level 2 covered institutions [180] that issue equity

[178] This requirement is distinct from the prohibition in section 8(b) of the proposed rule, discussed below.

[179] Accelerated vesting would be permitted in limited circumstances under sections ____.7(a)(1)(iii)(B) and ____.7(a)(2)(iii)(B), as described above.

[180] In the cases of the Board, FDIC and OCC, this requirement would not apply to a Level 1 and Level 2 covered institution that does not issue equity itself and is not an affiliate of an institution that issues equity. Credit unions and certain mutual

Continued

or are the affiliates of covered institutions that issue equity, deferred incentive-based compensation for senior executive officers and significant risk-takers include substantial portions of both deferred cash and equity-like instruments throughout the deferral period. The Agencies recognize that the form of incentive-based compensation that a senior executive officer or significant risk-taker receives can have an impact on the incentives provided and thus their behavior. In particular, having incentive-based compensation in the form of equity-like instruments can align the interests of the senior executive officers and significant risk-takers with the interests of the covered institution's shareholders. Thus, the proposed rule would require that a senior executive officer's or significant risk-taker's deferred incentive-based compensation include a substantial portion of equity-like instruments.

Similarly, having incentive-based compensation in the form of cash can align the interests of the senior executive officers and significant risk-takers with the interests of other stakeholders in the covered institution.[181] Thus, the proposed rule would require that a senior executive officer's or significant risk-taker's deferred incentive-based compensation include a substantial portion of cash.

The value of equity-like instruments received by a covered person increases or decreases in value based on the value of the equity of the covered institution, which provides an implicit method of adjusting the underlying value of compensation as the share price of the covered institution changes as a result of better or worse operational performance. Deferred cash may increase in value over time pursuant to an interest rate, but its value generally does not vary based on the performance of the covered institution. These two forms of incentive-based compensation present a covered person with different incentives for performance, just as a covered institution itself faces different incentives when issuing debt or equity-like instruments.[182]

For purposes of this proposed rule, the Agencies consider incentive-based compensation paid in equity-like instruments to include any form of payment in which the final value of the award or payment is linked to the price of the covered institution's equity, even if such compensation settles in the form of cash. Deferred cash can be structured to share many attributes of a debt instrument. For instance, while equity-like instruments have almost unlimited upside (as the value of the covered institution's shares increase), deferred cash that is structured to resemble a debt instrument can be structured so as to offer limited upside and can be designed with other features that align more closely with the interests of the covered institution's debtholders than its shareholders.[183]

Where possible, it is important for the incentive-based compensation of senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions to have some degree of balance between the amounts of deferred cash and equity-like instruments received. With the exception of the limitation of use of options discussed below, the Agencies propose to provide covered institutions with flexibility in meeting the general balancing requirement under section ____.7(a)(4)(i) and thus have not proposed specific percentages of deferred incentive-based compensation that must be paid in each form.

Similar to the rest of section ____.7, the requirement in section ____.7(a)(4)(i) would apply to deferred incentive-based compensation of senior executive officers and significant risk-takers of Level 1 and Level 2 covered institutions. As discussed above, these covered persons are the ones most likely to have a material impact on the financial health and risk-taking of the covered institution. Importantly for this requirement, these covered persons are also the most likely to be able to influence the value of the covered institution's equity and debt.

7.13. The Agencies invite comment on the composition requirement set out in section ____.7(a)(4)(i) of the proposed rule.

savings associations, mutual savings banks, and mutual holding companies do not issue equity and do not have a parent that issues equity. For those institutions, imposing this requirement would have little benefit, as no equity-like instruments would be based off of the equity of the covered institution or one of its parents. In the case of FHFA, this requirement would not apply to a Level 1 or Level 2 covered institution that does not issue equity or is not permitted by FHFA to use equity-like instruments as compensation for senior executive officers and significant risk-takers.

[181] Generally, in the case of resolution or bankruptcy, deferred incentive-based compensation in the form of cash would be treated similarly to other unsecured debt.

[182] Jensen and Meckling (1976) were the first to point out that the structure of compensation should reflect all of the stakeholders in the firm—both equity and debt holders, an idea further explored by Edmans and Liu (2013). Faulkender et al. (2012) argue that a compensation program that relies too heavily on stock-based compensation can lead to excessive risk taking, manipulation, and distract from long-term value creation. Empirical research has found that equity-based pay increases risk at financial firms Balanchandarn et al. 2010). *See* Jensen and Metcking, "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure," 3 *Journal of Financial Economics* 305 (July 1, 1976); Edmans and Liu, "Inside Debt," 15 *Review of Finance* 75 (June 29, 2011); Faulkender, Kadyrzhanova, Prabhala, and Senbet, "Executive Compensation: An Overview of Research on Corporate Practices and Proposed Reforms," 22 *Journal of Applied Corporate Finance* 107 (2010); and Balachandran, Kogut, and Harnal, "The Probability of Default, Excess Risk and Executive Compensation: A Study of Financial Service Firms from 1995 to 2008," working paper (June 2010), *available at http://www.insead.edu/facultyresearch/areas/accounting/events/documents/excess_risk_bank_revisedjune21bk.pdf.*

[183] There has been a recent surge in research on the use of compensation that has a payoff structure similar to debt, or "inside debt." *See, e.g.,* Wei and Yermack, "Investor Reactions to CEOs Inside Debt Incentives," 24 *Review of Financial Studies* 3813 (2011) (finding that bond prices rise, equity prices fall, and the volatility of both bond and stock prices fall for firms where the CEO has sizable inside debt and arguing the results indicate that firms with higher inside debt have lower risk; Cassell, Huang, Sanchez, and Stuart, "Seeking Safety: The Relation between CEO Inside Debt Holding and the Riskiness of Firm Investment and Financial Policies," 103 *Journal of Financial Economics* 518 (2012) (finding higher inside debt is associated with lower volatility of future firm stock returns, research and development expenditures, and financial leverage, and more diversification and higher asset liquidity and empirical research finding that debt holders recognize the benefits of firms including debt-like components in their compensation structure); Anantharaman, Divya, Fang, and Gong, "Inside Debt and the Design of Corporate Debt Contracts," 60 *Management Science* 1260 (2013) (finding that higher inside debt is associated with a lower cost of debt and fewer debt covenants); Bennett, Guntay and Unal, "Inside Debt and Bank Default Risk and Performance During the Crisis," FDIC Center for Financial Research Working Paper No. 2012–3 (finding that banks that had higher inside debt before the recent financial crisis had lower default risk and higher performance during the crisis and that banks with higher inside debt had supervisory ratings that indicate that they had stronger capital positions, better management, stronger earnings, and being in a better position to withstand market shocks in the future); Srivastav, Abhishek, Armitage, and Hagendorff, "CEO Inside Debt Holdings and Risk-shifting: Evidence from Bank Payout Policies," 47 *Journal of Banking & Finance* 41 (2014) (finding that banks with higher inside debt holdings have a more conservative dividend payout policy); Chen, Dou, and Wang, "Executive Inside Debt Holdings and Creditors' Demand for Pricing and Non-Pricing Protections," working paper (2010) (finding that higher inside debt is associated with lower interest rates and less restrictive debt covenants and that in empirical research, specifically on banks, similar patterns emerge). In addition, the Squam Lake Group has done significant work on the use of debt based structures. *See, e.g.,* Squam Lake Group, "Aligning Incentives at Systemically Important Financial Institutions" (2013) *available at http://www.squamlakegroup.org/Squam%20Lake%20Bonus%20Bonds%20Memo%20Mar%2019%202013.pdf.* In their paper "Enhancing Financial Stability in the Financial Services Industry: Contribution of Deferred Cash Compensation," forthcoming in the Federal Reserve Bank of New York's *Economic Policy Review* (*available at https://www.newyorkfed.org/research/epr/index.html*), Hamid Mehran and Joseph Tracy highlight three channels through which deferred cash compensation can help mitigate risk: Promoting conservatism, inducing internal monitoring, and creating a liquidity buffer.

7.14. In order to allow Level 1 and Level 2 covered institutions sufficient flexibility in designing their incentive-based compensation arrangements, the Agencies are not proposing a specific definition of "substantial" for the purposes of this section. Should the Agencies more precisely define the term "substantial" (for example, one-third or 40 percent) and if so, should the definition vary among covered institutions and why? Should the term "substantial" be interpreted differently for different types of senior executive officers or significant risk-takers and why? What other considerations should the Agencies factor into level of deferred cash and deferred equity required? Are there particular tax or accounting implications attached to use of particular forms of incentive-based compensation, such as those related to debt or equity?

7.15. The Agencies invite comment on whether the use of certain forms of incentive-based compensation in addition to, or as a replacement for, deferred cash or deferred equity-like instruments would strengthen the alignment between incentive-based compensation and prudent risk-taking.

7.16. The Agencies invite commenters' views on whether the proposed rule should include a requirement that a certain portion of incentive-based compensation be structured with debt-like attributes. Do debt instruments (as opposed to equity-like instruments or deferred cash) meaningfully influence the behavior of senior executive officers and significant risk-takers? If so, how? How could the specific attributes of deferred cash be structured, if at all, to limit the amount of interest that can be paid? How should such an interest rate be determined, and how should such instruments be priced? Which attributes would most closely align use of a debt-like instrument with the interest of debt holders and promote risk-taking that is not likely to lead to material financial loss?

Options

Under section ____.7(a)(4)(ii), for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions that receive incentive-based compensation in the form of options, the total amount of such options that may be used to meet the minimum deferral amount requirements is limited to, no more than 15 percent of the amount of total incentive-based compensation awarded for a given performance period. A Level 1 or Level 2 covered institution would be permitted to award incentive-based compensation to senior executive officers and significant risk-takers in the form of options in excess of this limitation, and could defer such compensation, but the incentive-based compensation in the form of options in excess of the 15 percent limit would not be counted towards meeting the minimum deferral requirements for senior executive officers and significant risk-takers at these covered institutions.

For example, a Level 1 covered institution might award a significant risk-taker $100,000 in incentive-based compensation at the end of a performance period: $80,000 in qualifying incentive-based compensation, of which $25,000 is in options, and $20,000 under a long-term incentive plan, all of which is delivered in cash. The Level 1 covered institution would be required to defer at least $40,000 of the qualifying incentive-based compensation and at least $10,000 of the amount awarded under the long-term incentive plan. Under the draft proposed rule, the amount that could be composed of options and count toward the overall deferral requirement would be limited to 15 percent of the total amount of incentive-based compensation awarded. In this example, the Level 1 covered institution could count $15,000 in options (15 percent of $100,000) toward the requirement to defer $40,000 of qualifying incentive-based compensation. For an example of how these requirements would work in the context of a more complete incentive-based compensation arrangement, please see Appendix A of this preamble.

This requirement would thus limit the total amount of incentive-based compensation in the form of options that could satisfy the minimum deferral amounts in sections ____.7(a)(1)(i) and ____.7(a)(1)(ii). Any incentive-based compensation awarded in the form of options would, however, be required to be included in calculating the total amount of incentive-based compensation awarded in a given performance period for purposes of calculating the minimum deferral amounts at Level 1 and Level 2 covered institutions as laid out in sections ____.7(a)(1)(i) and ____.7(a)(2)(ii).

Options can be a significant and important part of incentive-based compensation arrangements at many covered institutions. The Agencies are concerned, however, that overreliance on options as a form of incentive-based compensation could have negative effects on the financial health of a covered institution due to options' emphasis on upside gains and possible lack of responsiveness to downside risks.[184]

The risk dynamic for senior executive officers and significant risk-takers changes when options are awarded because options offer asymmetric payoffs for stock price performance. Options may generate very high payments to covered persons when the market price of a covered institution's shares rises, representing a leveraged return relative to shareholders. Payment of incentive-based compensation in the form of options may therefore increase the incentives under some market conditions for covered persons to take inappropriate risks in order to increase the covered institution's short-term share price, possibly without giving appropriate weight to long-term risks.

Moreover, unlike restricted stock, options are limited in how much they decrease in value when the covered institution's shares decrease in value.[185] Thus, options may not be an effective tool for causing a covered person to adjust his or her behavior to manage downside risk. For senior executive officers and significant risk-takers, whose activities can materially impact the firm's stock price, incentive-based

[184] In theory, since the payoffs from holding stock options are positively related to volatility of stock returns, options create incentives for executives to increase the volatility of share prices by engaging in riskier activities. *See, e.g.,* Guay, W.R., "The Sensitivity of CEO Weather to Equity Risk: An Analysis of the Magnitude and Determinants," 53 *Journal of Financial Economics* 43 (1999); Cohen, Hall, and Viceira, "Do Executive Stock Options Encourage Risk Taking?" working paper (2000) *available at http://www.people.hbs.edu/lviceira/cohallvic3.pdf;* Rajgopal and Shvelin, "Empirical Evidence on the Relation between Stock Option Compensation and Risk-Taking," 33 *Journal of Accounting and Economics* 145 (2002); Coles, Daniel, and Naveen, "Managerial Incentives and Risk-Taking," 79 *Journal of Financial Economics* 431 (2006); Chen, Steiner, and Whyte, "Does Stock Option-Based Executive Compensation Induce Risk-Taking? An Analysis of the Banking Industry," 30 *Journal of Banking & Finance* 915 (2006); Mehran, Hamid and Rosenberg, "The Effect of Employee Stock Options on Bank Investment Choice, Borrowing and Capital," Federal Reserve Bank of New York Staff Reports No. 305 (2007) *available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr305.pdf.*

Beyond the typical measures of risk, the academic literature has found a relation between executive stock option holdings and risky behavior. *See, e.g.,* Denis, Hanouna, and Sarin, "Is There a Dark Side to Incentive Compensation?" 12 *Journal of Corporate Finance* 467 (2006) (finding that there is a significant positive association between the likelihood of securities fraud allegations and the executive stock option incentives); Bergstresser and Phillippon, "CEO Incentives and Earnings Management," 80 *Journal of Financial Economics* 511 (2006) (finding that the use of discretionary accruals to manipulate reported earnings was more pronounced at firms where CEO's compensation was more closely tied to stock and option holdings).

[185] This would be the case if the current market price for a share is less than or equal to the option's strike price (*i.e.,* the option is not "in the money").

compensation based on options may therefore create greater incentive to take inappropriate risk or provide inadequate disincentive to manage risk. For these reasons, the Agencies are proposing to limit to 15 percent the amount permitted to be used in meeting the minimum deferral requirements.

In proposing to limit, but not prohibit, the use of options to fulfill the proposed rule's deferral requirements, the Agencies have sought to conservatively apply better practice while still allowing for some flexibility in the design and operation of incentive-based compensation arrangements. The Agencies note that supervisory experience at large banking organizations and analysis of compensation disclosures, as well as the views of some commenters to the 2011 Proposed Rule, indicate that many institutions have recognized the risks of options as an incentive and have reduced their use of options in recent years.

The proposed rule's 15 percent limit on options is consistent with current industry practice, which is moving away from its historical reliance on options as part of incentive-based compensation. Since the financial crisis that began in 2007, institutions on their own initiative and those working with the Board have decreased the use of options in incentive-based compensation arrangements generally such that for most organizations options constitute no more than 15 percent of an institution's total incentive-based compensation. Restricted stock unit awards have now emerged as the most common form of equity compensation and are more prevalent than stock options at all employee levels.[186] Further, a sample of publicly available disclosures from large covered institutions shows minimal usage of stock options among CEOs and other named executive officers; out of a sample of 14 covered institutions reviewed by the Agencies, only two covered institutions awarded stock options as part of their incentive-based compensation in 2015. Only one of those two covered institutions awarded options in excess of 15 percent of total compensation, and the excess was small. Thus, the proposed rule's limit on options has been set at a level that would, in the Agencies' views, help mitigate concerns about the use of options in incentive-based compensation while still allowing flexibility for covered institutions to use options in a manner that is consistent with the better practices that have developed following the recent financial crisis.[187]

7.17. The Agencies invite comment on the restrictions on the use of options in incentive-based compensation in the proposed rule. Should the percent limit be higher or lower and if so, why? Should options be permitted to be used to meet the deferral requirements of the rule? Why or why not? Does the use of options by covered institutions create, reduce, or have no effect on the institution's risk of material financial loss?

7.18. Does the proposed 15 percent limit appropriately balance the benefits of using options (such as aligning the recipient's interests with that of shareholders) and drawbacks of using options (such as their emphasis on upside gains)? Why or why not? Is the proposed 15 percent limit the appropriate limit, or should it be higher or lower? If it should be higher or lower, what should the limit be, and why?

7.19. Are there alternative means of addressing the concerns raised by options as a form of incentive-based compensation other than those proposed?

§ ____.7(b) Forfeiture and Downward Adjustment

Section ____.7(b) of the proposed rule would require Level 1 and Level 2 covered institutions to place incentive-based compensation of senior executive officers and significant risk-takers at risk of forfeiture and downward adjustment and to subject incentive-based compensation to a forfeiture and downward adjustment review under a defined set of circumstances. As described below, a forfeiture and downward adjustment review would be required to identify senior executive officers or significant risk-takers responsible for the events or circumstances triggering the review. It would also be required to consider certain factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward.

In general, the forfeiture and downward adjustment review requirements in section ____.7(b) would require a Level 1 or Level 2 covered institution to consider reducing some or all of a senior executive officer's or significant risk-taker's incentive-based compensation when the covered institution becomes aware of inappropriate risk-taking or other aspects of behavior that could lead to material financial loss. The amount of incentive-based compensation that would be reduced would depend upon the severity of the event, the impact of the event on the covered institution, and the actions of the senior executive officer or significant risk-taker in the event. The covered institution could accomplish this reduction of incentive-based compensation by reducing the amount of unvested deferred incentive-based compensation (forfeiture), by reducing the amount of incentive-based compensation not yet awarded for a performance period that has begun (downward adjustment), or through a combination of both forfeiture and downward adjustment. The Agencies have found that the possibility of a reduction in incentive-based compensation in the circumstances identified in section ____.7(b)(2) of the rule is needed in order to properly align financial reward with risk-taking by senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions.

The possibility of forfeiture and downward adjustment under the proposed rule would play an important role not only in better aligning incentive-based compensation payouts with long-run risk outcomes at the covered institution but also in reducing incentives for senior executive officers and significant risk-takers to take inappropriate risk that could lead to material financial loss at the covered institution. The proposed rule would also require covered institutions, through policies and procedures,[188] to formalize the governance and review processes surrounding such decision-making, and to document the decisions made.

While forfeiture and downward adjustment reviews would be required components of incentive-based compensation arrangements for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions under the proposed rule, and are one way for covered institutions to take into account information about performance that becomes known over time, such reviews would not alone be sufficient to appropriately balance risk and reward, as would be required under section ____.4(c)(1). Incentive-based compensation arrangements for those covered persons would also be required to comply with the specific requirements of sections ____.4(d), ____.7(a), ____.7(c) and ____.8. As discussed above, to achieve balance between risk and reward, covered institutions should examine incentive-based compensation arrangements as a whole, and consider including provisions for risk adjustments before the award is made, and for adjustments resulting from forfeiture and downward adjustment review during the deferral period.

§ ____.7(b)(1) Compensation at Risk

Under the proposed rule, a Level 1 or Level 2 covered institution would be required to place at risk of forfeiture 100 percent of a senior executive officer's or significant risk-taker's deferred and unvested incentive-based compensation, including unvested deferred amounts awarded under long-term incentive plans. Additionally, a Level 1 or Level 2 covered institution would be required to place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation that has not yet been awarded, but that could be awarded for a performance period that is underway and not yet completed.

Forfeiture and downward adjustment give covered institutions an appropriate set of tools through which consequences may be imposed on individual risk-takers when inappropriate risk-taking or misconduct, such as the events identified in section ____.7(b)(2), occur or are identified. They also help ensure that a sufficient amount of compensation is at risk. Certain risk management failures and misconduct can take years to manifest, and forfeiture and downward adjustment reviews provide covered institutions an opportunity to adjust the ultimate amount of incentive-based compensation that vests based on information about risk-taking or misconduct that comes to light after the performance period. A senior executive officer or significant risk-taker should not be rewarded for inappropriate risk-taking or misconduct, regardless of when the covered institution learns of it.

Some evidence of inappropriate risk taking, risk management failures and misconduct may not be immediately apparent to the covered institution. To provide a strong disincentive for senior executive officers and significant risk-takers to engage in such conduct, which may lead to material financial loss to the covered institution, the Agencies are proposing to require that all unvested deferred incentive-based compensation and all incentive-based compensation eligible to be awarded for the performance period in which the covered institution becomes aware of the conduct be available for forfeiture and downward adjustment under the forfeiture and downward adjustment review. A covered institution would be required to consider all incentive-based compensation available, in the form of both unvested deferred incentive-based compensation and yet-to-be awarded incentive-based compensation, when considering forfeiture or downward adjustments, even if the incentive-based compensation does not specifically relate to the performance in the period in which the relevant event occurred.

For example, a significant risk-taker of a Level 1 covered institution might engage in misconduct in June 2025, but the Level 1 covered institution might not become aware of the misconduct until September 2028. The Level 1 covered institution would be required to consider downward adjustment of any amounts available under any of the significant risk-taker's incentive-based compensation plans with performance periods that are still in progress as of September 2028 (for example, an annual plan with a performance period that runs from January 1, 2028, to December 31, 2028, or a long-term incentive plan with a performance period that runs from January 1, 2027, to December 31, 2030). The Level 1 covered institution would also be required to consider forfeiture of any amounts that are deferred, but not yet vested, as of September 2028 (for example, amounts that were awarded for a performance period that ran from January 1, 2026, to December 31, 2026, and that have been deferred and do not vest until December 31, 2030). For an additional example of how these requirements would work in practice, please see Appendix A of this **SUPPLEMENTARY INFORMATION** section.

§ ____.7(b)(2) Events Triggering Forfeiture and Downward Adjustment Review

Section ____.7(b) of the proposed rule would require a Level 1 or Level 2 covered institution to conduct a forfeiture and downward adjustment review based on certain identified adverse outcomes.

Under section ____.7(b), events[189] that would be required to trigger a forfeiture and downward adjustment review include: (1) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures; (2) inappropriate risk-taking, regardless of the impact on financial performance; (3) material risk management or control failures; and (4) non-compliance with statutory, regulatory, or supervisory standards that results in: Enforcement or legal action against the covered institution brought by a Federal or state regulator or agency; or a requirement that the covered institution report a restatement of a financial statement to correct a material error. Covered institutions would be permitted to define additional triggers based on conduct or poor performance. Generally, in the Agencies' supervisory experience as earlier described, the triggers are consistent with current practice at the largest financial institutions, although many covered institutions have triggers that are more granular in nature than those proposed and cover a wider set of adverse outcomes. The proposed enumerated adverse outcomes are a set of minimum standards.

As discussed later in this **SUPPLEMENTARY INFORMATION** section, covered institutions would be required to provide for the independent monitoring of all events related to forfeiture and downward adjustment.[190] When such monitoring, or other risk surveillance activity, reveals the occurrence of events triggering forfeiture and downward adjustment reviews, Level 1 and Level 2 covered institutions would be required to conduct those reviews in accordance with section ____.7(b). Covered institutions may choose to coordinate the monitoring for triggering events under section ____.9(c)(2) and the forfeiture and downward adjustment reviews with broader risk surveillance activities. Such coordinated reviews could take place on a schedule identified by the covered institution. Schedules may vary among covered institutions, but they should occur often enough to appropriately monitor risks and events related to forfeiture and downward adjustment. Larger covered institutions with more complex operations are likely to need to conduct more frequent

[186] Bachelder, Joseph E., "What Has Happened To Stock Options," *New York Law Journal* (September 19, 2014).

[187] Rajgopal and Shvelin, "Empirical Evidence on the Relation between Stock Option Compensation and Risk-Taking," 33 *Journal of Accounting and Economics* 145 (2002); Bettis, Bizjak, and Lemmon, "Exercise Behavior, Valuation, and the Incentive Effects of Employee Stock Options," 76 *Journal of Financial Economics* 445; ISS Compensation FAQs.

[188] See sections ____.11(b) and ____.11(c).

[189] The underlying, or contractual, forfeiture language used by institutions need not be identical to the triggers enumerated in this section, provided the covered institution's triggers capture the full set of outcomes outlined in section 7(b)(2) of the rule. For example, a trigger at a covered institution that read "if an employee improperly or with gross negligence fails to identify, raise, or assess, in a timely manner and as reasonably expected, risks and/or concerns with respect to risks material to the institution or its business activities," would be considered consistent with the minimum parameters set forth in the trigger identified in section 7(b)(2)(ii) of the rule.

[190] See section ____9(c)(2).

reviews to ensure effective risk management.

Poor financial performance can indicate that inappropriate risk-taking has occurred at a covered institution. The Agencies recognize that not all inappropriate risk-taking does, in fact, lead to poor financial performance, but given the risks that are posed to the covered institutions by poorly designed incentive-based compensation programs and the statutory mandate of section 956, it is appropriate to prohibit incentive-based compensation arrangements that reward such inappropriate risk-taking. Therefore, if evidence of past inappropriate risk-taking becomes known, the proposed rule would require a Level 1 or Level 2 covered institution to perform a forfeiture and downward adjustment review in order to assess whether the relevant senior executive officer's or significant risk-taker's incentive-based compensation should be affected by the inappropriate risk-taking.

Similarly, material risk management or control failures may allow for inappropriate risk-taking that may lead to material financial loss at a covered institution. Because the role of senior executive officers and significant risk-takers, including those in risk management and other control functions whose role is to identify, measure, monitor, and control risk, the material failure by covered persons to properly perform their responsibilities can be especially likely to put an institution at risk. Thus, if evidence of past material risk management or control failures becomes known, the proposed rule would require a Level 1 or Level 2 covered institution to perform a forfeiture and downward adjustment review, to assess whether a senior executive officer or significant risk-taker's incentive-based compensation should be affected by the risk management or control failure. Examples of risk management or control failures would include failing to properly document or report a transaction or failing to properly identify and control the risks that are associated with a transaction. In each case, the risk management or control failure, if material, could allow for inappropriate risk-taking at a covered institution that could lead to material financial loss.

Finally, a covered institution's non-compliance with statutory, regulatory, or supervisory standards may also reflect inappropriate risk-taking that may lead to material financial loss at a covered institution. The proposed rule would require a forfeiture and downward adjustment review whenever any such non-compliance (1) results in an enforcement or legal action against the covered institution brought by a Federal or state regulator or agency; or (2) requires the covered institution to restate a financial statement to correct a material error. The Federal Banking Agencies have found that it is appropriate for a covered institution to conduct a forfeiture and downward adjustment review under these circumstances because in many cases a statutory, regulatory, or supervisory standard may have been put in place in order to prevent a covered person from taking an inappropriate risk. In addition, non-compliance with a statute, regulation, or supervisory standard may also give rise to inappropriate compliance risk for a covered institution. A forfeiture and downward adjustment review would allow the institution to assess whether this type of non-compliance should affect a senior executive officer or significant risk-taker's incentive-based compensation.

§ ____.7(b)(3) Senior Executive Officers and Significant Risk-Takers Affected by Forfeiture and Downward Adjustment

A forfeiture and downward adjustment review would be required to consider forfeiture and downward adjustment of incentive-based compensation for a senior executive officer and significant risk-taker with direct responsibility or responsibility due to the senior executive officer or significant risk-taker's role or position in the covered institution's organizational structure, for the events that would trigger a forfeiture and downward adjustment review as described in section ____.7(b)(2). Covered institutions should consider not only senior executive officers or significant risk-takers who are directly responsible for an event that triggers a forfeiture or downward adjustment review, but also those senior executive officers or significant risk-takers whose roles and responsibilities include areas where failures or poor performance contributed to, or failed to prevent, a triggering event. This requirement would discourage senior executive officers and significant risk-takers who can influence outcomes from failing to report or prevent inappropriate risk. A covered institution conducting a forfeiture and downward adjustment review may also consider forfeiture for other covered persons at its discretion.

§ ____.7(b)(4) Determining Forfeiture and Downward Adjustment Amounts

The proposed rule sets out factors that Level 1 and Level 2 covered institutions must consider, at a minimum, when making a determination to reduce incentive-based compensation as a result of a forfeiture or downward adjustment review. A Level 1 or Level 2 covered institution would be responsible for determining how much of a reduction in incentive-based compensation is warranted, consistent with the policies and procedures it establishes under § ____.11(b), and should be able to support its decisions that such an adjustment was appropriate if requested by its appropriate Federal regulator. In reducing the amount of incentive-based compensation, covered institutions may reduce the dollar amount of deferred cash or cash to be awarded, may lower the amount of equity-like instruments that have been deferred or were eligible to be awarded, or some combination thereof. A reduction in the value of equity-like instruments due to market fluctuations would not be considered a reduction for purposes of this review.

The proposed minimum factors that would be required to be considered when determining the amount of incentive-based compensation to be reduced are: (1) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the covered institution's board of directors or to depart from the covered institution's policies and procedures; (2) the senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering the review; (3) any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the review; (4) the financial and reputational impact of the events [191] triggering the review as set forth in section ____.7(b)(2) on the covered institution, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation; (5) the causes of the events triggering the review, including any decision-making by other individuals; and (6) any other relevant information, including past behavior and risk outcomes linked to past behavior attributable to the senior executive officer or significant risk-taker.

[191] Reputational impact or harm related to the actions of covered individuals refers to a potential weakening of confidence in an institution as evidenced by negative reactions from customers, shareholders, bondholders and other creditors, consumer and community groups, the press, or the general public. Reputational impact is a factor currently considered by some institutions in their existing forfeiture policies. *See, e.g.,* Wells Fargo & Company 2016 Proxy Statement, page 47, available at *https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2016-proxy-statement.pdf;* and Citigroup 2016 Proxy Statement, page 74, available at *http://www.citigroup.com/citi/investor/quarterly/2016/ar16cp.pdf?ieNocache=611.*

The considerations identified constitute a minimum set of parameters that would be utilized for exercising the discretion permissible under the proposed rule while still holding senior executive officers and significant risk-takers accountable for inappropriate risk-taking and other behavior that could encourage inappropriate risk-taking that could lead to risk of material financial loss at covered institutions. For example, a covered institution might identify a pattern of misconduct stemming from activities begun three years before the review that ultimately leads to an enforcement action and reputational damage to the covered institution. A review of facts and circumstances, including consideration of the minimum review parameters set forth in the proposed rule, could reveal that one individual knowingly removed transaction identifiers in order to facilitate a trade or trades with a counterparty on whom regulators had applied Bank Secrecy Act or Anti-Monetary Laundering sanctions. Several of the senior executive officer's or significant risk-taker's peers might have been aware of this pattern of behavior but did not report it to their managers. Under the proposed rule, the individual who knowingly removed the identifiers would, in most cases, be subject to a greater reduction in incentive-based compensation than those who were aware of but not participants in the misconduct. However, those peers that were aware of the misconduct, managers supervising the covered person directly involved in the misconduct, and control staff who should have detected but failed to detect the behavior would be considered for a reduction, depending on their role in the organization, and assuming the peers are now senior executive officers or significant risk-takers.

The Agencies do not intend for these proposed factors to be exhaustive and covered institutions should consider additional factors where appropriate. In addition, covered institutions generally should impact incentive-based compensation as a result of forfeiture and downward adjustment reviews to reflect the severity of the event that triggered the review and the level of an individual's involvement. Covered institutions should be able to demonstrate to the appropriate Federal regulator that the impact on incentive-based compensation was appropriate given the particular set of facts and circumstances.

7.20. The Agencies invite comment on the forfeiture and downward adjustment requirements of the proposed rule.

7.21. Should the rule limit the events that require a Level 1 or Level 2 covered institution to consider forfeiture and downward adjustment to adverse outcomes that occurred within a certain time period? If so, why and what would be an appropriate time period? For example, should the events triggering forfeiture and downward adjustment reviews be limited to those events that occurred within the previous seven years?

7.22. Should the rule limit forfeiture and downward adjustment reviews to reducing only the incentive-based compensation that is related to the performance period in which the triggering event(s) occurred? Why or why not? Is it appropriate to subject unvested or unawarded incentive-based compensation to the risk of forfeiture or downward adjustment, respectively, if the incentive-based compensation does not specifically relate to the performance in the period in which the relevant event occurred or manifested? Why or why not?

7.23. Should the rule place all unvested deferred incentive-based compensation, including amounts voluntarily deferred by Level 1 and Level 2 covered institutions or senior executive officers or significant risk-takers, at risk of forfeiture? Should only that unvested deferred incentive-based compensation that is required to be deferred under section ____.7(a) be at risk of forfeiture? Why or why not?

7.24. Are the events triggering a review that are identified in section ____.7(b)(2) comprehensive and appropriate? If not, why not? Should the Agencies add "repeated supervisory actions" as a forfeiture or downward adjustment review trigger and why? Should the Agencies add "final enforcement or legal action" instead of the proposed "enforcement or legal action" and why?

7.25. Is the list of factors that a Level 1 or Level 2 covered institution must consider, at a minimum, in determining the amount of incentive-based compensation to be forfeited or downward adjusted by a covered institution appropriate? If not, why not? Are any of the factors proposed unnecessary? Should additional factors be included?

7.26. Are the proposed parameters for forfeiture and downward adjustment review sufficient to provide an appropriate governance framework for making forfeiture decisions while still permitting adequate discretion for covered institutions to take into account specific facts and circumstances when making determinations related to a wide variety of possible outcomes? Why or why not?

7.27. Should the rule include a presumption of some amount of forfeiture for particularly severe adverse outcomes and why? If so, what should be the amount and what would those outcomes be?

7.28. What protections should covered institutions employ when making forfeiture and downward adjustment determinations?

7.29. In order to determine when forfeiture and downward adjustment should occur, should Level 1 and Level 2 covered institutions be required to establish a formal process that both looks for the occurrence of trigger events and fulfills the requirements of the forfeiture and downward adjustment reviews under the proposed rule? If not, why not? Should covered institutions be required as part of the forfeiture and downward adjustment review process to establish formal review committees including representatives of control functions and a specific timetable for such reviews? Should the answer to this question depend on the size of the institution considered?

§ ____.7(c) Clawback

As used in the proposed rule, the term "clawback" means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person. The proposed rule would require Level 1 and Level 2 covered institutions to include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, would allow for the recovery of up to 100 percent of vested incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests. Under section ____.7(c) of the proposed rule, all vested incentive-based compensation for senior executive officers and significant risk-takers, whether it had been deferred before vesting or paid out immediately upon award, would be required to be subject to clawback for a period of no less than seven years following the date on which such incentive-based compensation vests. Clawback would be exercised under an identified set of circumstances. These circumstances include situations where a senior executive officer or significant risk-taker engaged in: (1) Misconduct that resulted in significant financial or

reputational harm[192] to the covered institution; (2) fraud; or (3) intentional misrepresentation of information used to determine the senior executive officer's or significant risk-taker's incentive-based compensation.[193] The clawback provisions would apply to all vested incentive-based compensation, whether that incentive-based compensation had been deferred or paid out immediately when awarded. If a Level 1 or Level 2 covered institution discovers that a senior executive officer or significant risk-taker was involved in one of the triggering circumstances during a past performance period, the institution would potentially be able to recover from that senior executive officer or significant risk-taker incentive-based compensation that was awarded for that performance period and has already vested. A covered institution could require clawback irrespective of whether the senior executive officer or significant risk-taker was currently employed by the covered institution.

The proposed set of triggering circumstances would constitute a minimum set of outcomes for which covered institutions would be required to consider recovery of vested incentive-based compensation. Covered institutions would retain flexibility to include other circumstances or outcomes that would trigger additional use of such provisions.

In addition, while the proposed rule would require the inclusion of clawback provisions in incentive-based compensation arrangements, the proposed rule would not require that Level 1 or Level 2 covered institutions exercise the clawback provision, and the proposed rule does not prescribe the process that covered institutions should use to recover vested incentive-based compensation. Facts, circumstances, and all relevant information should determine whether and to what extent it is reasonable for a Level 1 or Level 2 covered institution to seek recovery of any or all vested incentive-based compensation.

The Agencies recognize that clawback provisions may provide another effective tool for Level 1 and Level 2 covered institutions to deter inappropriate risk-taking because it lengthens the time horizons of incentive-based compensation.[194] The Agencies are proposing that vested incentive-based compensation be subject to clawback for up to seven years. The Agencies are proposing seven years as the length of the review period because it is slightly longer than the length of the average business cycle in the United States and is close to the lower end of the range of average credit cycles.[195] Also, the Agencies observe that seven years is consistent with some international standards.[196]

By proposing seven years as the length of the review period, the Agencies intend to encourage institutions to fairly compensate covered persons and incentivize appropriate risk-taking, while also recognizing that recovering amounts that have already been paid is more difficult than reducing compensation that has not yet been paid. The Agencies are concerned that a clawback period that is too short or one that is too long, or even infinite, could result in the covered person ignoring or discounting the effect of the clawback period and accordingly, could be less effective in balancing risk-taking. Additionally, a very long or even infinite clawback period may be difficult to implement.

While the Agencies did not propose a clawback requirement in the 2011 Proposed Rule, mandatory clawback provisions are not a new concept. Commenters to the 2011 Proposed Rule advocated that the Agencies adopt measures to allow shareholders (and others) to recover incentive-based compensation already paid to covered persons. As discussed above, clawback provisions are now increasingly common at the largest financial institutions. The largest (and mostly publicly traded) covered institutions are already subject to a number of overlapping clawback regimes as a result of statutory requirements.[197] Over the past several years, many financial institutions have further refined such mechanisms.[198] Most often, clawbacks allow banking institutions to recoup incentive-based compensation in cases of financial restatement, misconduct, or poor financial outcomes. A number of covered institutions have gone beyond these minimum parameters to include situations where poor risk management has led to financial or reputational damage to the firm.[199] The Agencies were cognizant of these developments in proposing the clawback provision in section ____.7(c).

The Agencies propose the three triggers referenced above for several reasons. First, a number of the specified triggers reflect better practice at covered institutions today.[200] The factors triggering clawback are based on existing clawback requirements that appear in some covered institutions' incentive-based compensation arrangements. Second, while many of the clawback regulatory regimes currently in place focus only on accounting restatements or material misstatements of financial results, the proposed triggers focus more broadly on risk-related outcomes that are more likely to contribute meaningfully to the balance of incentive-based compensation arrangements. Third, the proposed rule would extend coverage of clawback mechanisms to include additional senior executive officers or significant risk-takers whose inappropriate risk-taking may not result in an accounting restatement, but would inflict harm on the covered institution nonetheless.

This provision would go beyond, but not conflict with, clawback provisions in other areas of law.[201] For example, covered institutions that issue securities also may be subject to clawback requirements pursuant to statutes administered by the SEC:

○ Section 304 of the Sarbanes-Oxley Act of 2002[202] provides that if an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirements under the securities laws, the CEO and chief financial officer of the issuer shall reimburse the issuer for (i) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the SEC (whichever first occurs) of the financial document embodying such financial reporting requirement and (ii) any profits realized from the sale of securities of the issuer during that 12-month period.

○ Section 954 of the Dodd-Frank Act added Section 10D to the Securities Exchange Act of 1934.[203] Specifically, Section 10D(a) of the Securities Exchange Act requires the SEC to adopt rules directing the national securities exchanges[204] and the national securities associations[205] to prohibit the listing of any security of an issuer that is not in compliance with the requirements of Section 10D(b). Section 10D(b) requires the SEC to adopt rules directing the exchanges to establish listing standards to require each issuer to develop and implement a policy providing: (1) For the disclosure of the issuer's policy on incentive-based compensation that is based on financial information required to be reported under the securities laws; and (2) that, in the event that the issuer is required to prepare an accounting restatement due to the issuer's material noncompliance with any financial reporting requirement under the securities laws, the issuer will recover from any of the issuer's current or former executive officers who received incentive-based compensation (including stock options awarded as compensation) during the three-year period preceding the date the issuer is required to prepare the accounting restatement, based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.

The SEC has proposed rules to implement the requirements of Exchange Act Section 10D.[206]

7.30. The Agencies invite comment on the clawback requirements of the proposed rule.

7.31. Is a clawback requirement appropriate in achieving the goals of section 956? If not, why not?

7.32. Is the seven-year period appropriate? Why or why not?

7.33. Are there state contract or employment law requirements that would conflict with this proposed requirement? Are there challenges that would be posed by overlapping Federal clawback regimes? Why or why not?

7.34. Do the triggers discussed above effectively achieve the goals of section 956? Should the triggers be based on those contained in section 954 of the Dodd-Frank Act?

7.35. Should the Agencies provide additional guidance on the types of behavior that would constitute misconduct for purposes of section ____.7(c)(1)?

7.36. Should the rule include a presumption of some amount of clawback for particularly severe adverse outcomes? Why or why not? If so, what should be the amount and what would those outcomes be?

§ ____.8 Additional Prohibitions for Level 1 and Level 2 Covered Institutions

Section ____.8 of the proposed rule would establish additional prohibitions for Level 1 and Level 2 covered institutions to address practices that, in the view of the Agencies, could encourage inappropriate risks that could lead to material financial loss at covered institutions. The Agencies' views are based in part on supervisory experiences in reviewing and supervising incentive-based compensation at some covered institutions, as described earlier in this Supplemental Information section. Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would be considered to appropriately balance risk and reward, as required by section ____.4(c)(1) of the proposed rule, only if the covered institution complies with the prohibitions of section ____.8.

§ ____.8(a) Hedging

Section ____.8(a) of the proposed rule would prohibit Level 1 and Level 2 covered institutions from purchasing hedging instruments or similar instruments on behalf of covered persons to hedge or offset any decrease in the value of the covered person's incentive-based compensation. This prohibition would apply to all covered persons at a Level 1 or Level 2 covered institution, not just senior executive officers and significant risk-takers. Personal hedging strategies may undermine the effect of risk-balancing mechanisms such as deferral, downward adjustment and forfeiture, or may otherwise negatively affect the goals of these risk-balancing mechanisms and their overall efficacy in inhibiting inappropriate risk-taking.[207] For example, a financial instrument, such as a derivative security that increases in value as the price of a covered institution's equity decreases would offset the intended balancing effect of awarding incentive-based compensation in the form of equity, the value of which is linked to the performance of the covered institution.

Similarly, a hedging arrangement with a third party, under which the third party would make direct or indirect payments to a covered person that are linked to or commensurate with the amounts by which a covered person's incentive-based compensation is reduced by forfeiture, would protect the covered person against declines in the value of incentive-based compensation.

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[192] As described in the above note 191, reputational impact or harm of an event related to the actions of covered individuals refers to a potential weakening of confidence in an institution as evidenced by negative reactions from customers, shareholders, bondholders and other creditors, consumer and community groups, the press, or the general public.

[193] As with other provisions in this proposed rule, the clawback requirement would not apply to incentive-based compensation plans and arrangements in place at the time the proposed rule is final because those plans and arrangements would be grandfathered.

[194] *See, e.g.,* Faulkender, Kadyrzhanova, Prabhala, and Senbet, "Executive Compensation: An Overview of Research on Corporate Practices and Proposed Reforms," 22 *Journal of Applied Corporate Finance* 107 (2010) (arguing that clawbacks guard against compensating executives for luck rather than long-term performance); Babenko, Bennett, Bizjak and Coles, "Clawback Provisions," working paper (2015) *available at https://wpcarey.asu.edu/sites/default/files/uploads/department-finance/clawbackprovisions.pdf* (finding that the use of clawback provisions are associated with lower institution risk); Chen, Greene, and Owers, "The Costs and Benefits of Clawback Provisions in CEO Compensation," 4 *Review of Corporate Finance Studies* 108 (2015) (finding that the use of clawback provisions are associated with higher reporting quality).

[195] *See supra* note 154.

[196] *See, e.g.,* PRA, "Policy Statement PS7/14: Clawback" (July 2014), *available at http://www.bankofengland.co.uk/pra/Documents/publications/ps/2014/ps714.pdf.*

[197] *See, e.g.,* section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7243; section 111 of the Emergency Economic Stabilization Act of 2008, 12 U.S.C. 5221; section 210(s) of the Dodd-Frank Act, 12 U.S.C. 5390(s); section 954 of the Dodd-Frank Act, 15 U.S.C. 78j–4(b).

[198] *See, e.g.,* PricewaterhouseCoopers, "Executive Compensation: Clawbacks, 2014 Proxy Disclosure Study" (January 2015), *available at http://www.pwc.com/us/en/hr-management/publications/assets/pwc-executive-compensation-clawbacks-2014.pdf;* Compensation Advisory Partners, "2014 Proxy Season: Changing Practices in Executive Compensation: Clawback, Hedging, and Pledging Policies" (December 17, 2014), *available at http://www.capartners.com/uploads/news/id204/capartners.com-capflash-issue62.pdf.*

[199] *See, e.g.,* JPMorgan Chase & Company 2015 Proxy Statement, page 56, available at *http://files.shareholder.com/downloads/ONE/1425504805x0x820065/4c79f471-36d9-47d4-a0b3-7886b0914c92/JPMC-2015-ProxyStatementl.pdf* (where vested compensation is subject to clawback if, among other things, "the employee engaged in conduct detrimental to the Firm that causes material financial or reputational harm to the Firm").

[200] *See, e.g.,* notes 198 and 199. *See also* Dawn Kopecki, "JP Morgan's Drew Forfeits 2 Years' Pay as Managers Ousted," *Bloomberg Business (July 13, 2012);* Dolia Estevez, "Pay Slash to Citigroup's Top Mexican Executive Called 'Humiliating,' " *Forbes* (March 13, 2014); Eyk Henning, "Deutsche Bank Cuts Co-CEOs' Compensation," *Wall Street Journal* (March 20, 2015).

[201] *See, e.g.,* section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7243; section 111 of the Emergency Economic Stabilization Act of 2008, 12 U.S.C. 5221; section 210(s) of the Dodd-Frank Act, 12 U.S.C. 5390(s); section 954 of the Dodd-Frank Act, 15 U.S.C. 78j–4(b).

[202] 15 U.S.C. 7243.

[203] 15 U.S.C. 78a *et seq.*

[204] A "national securities exchange" is an exchange registered as such under section 6 of the Exchange Act (15 U.S.C. 78f). There are currently 18 exchanges registered under Section 6(a) of the Exchange Act: BATS Exchange, BATS Y-Exchange, BOX Options Exchange, C2 Options Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, EDGA Exchange, EDGX Exchange, International Securities Exchange ("ISE"), ISE Gemini, Miami International Securities Exchange, NASDAQ OMX BX, NASDAQ OMX PHLX, The NASDAQ Stock Market, National Stock Exchange, New York Stock Exchange ("NYSE"), NYSE Arca and NYSE MKT.

[205] A "national securities association" is an association of brokers and dealers registered as such under Section 15A of the Exchange Act (15 U.S.C. 78o–3). The Financial Industry Regulatory Authority ("FINRA") is the only association registered with the SEC under section 15A(a) of the Exchange Act, but FINRA does not list securities.

[206] Listing Standards for Recovery of Erroneously Awarded Compensation, Release No. 33–9861 (July 1, 2015), 80 FR 41144 (July 14, 2015).

[207] This prohibition would not limit a covered institutions ability to hedge its own exposure in deferred compensation obligations, which the Board, the OCC, and the FDIC continue to view as prudent practice. (*see, e.g.,* Federal Reserve SR Letter 04–19 (Dec. 7, 2004); OCC Bulletin 2004–56 (Dec. 7, 2004); FDIC FIL–127–2004 (Dec. 7, 2004); OCC Interpretive Letter No. 878 (Dec. 22, 1999).

In order for incentive-based compensation to provide the appropriate incentive effects, covered persons should not be shielded from exposure to the negative financial impact of taking inappropriate risks or other aspects of their performance at the covered institution.

In the 2011 Proposed Rule, the Agencies stated that they were aware that covered persons who received incentive-based compensation in the form of equity might wish to use personal hedging strategies as a way to assure the value of deferred equity compensation.[208] The Agencies expressed concern that such hedging during deferral periods could diminish the alignment between risk and financial rewards that deferral arrangements might otherwise achieve.[209] After considering supervisory experiences in reviewing incentive-based compensation at some covered institutions and the purposes of section 956 and related provisions of the Dodd-Frank Act, the Agencies are proposing a prohibition on covered institutions purchasing hedging and similar instruments on behalf of a covered person as a practical approach to eliminate the possibility that hedging during deferral periods could diminish the alignment between risk and financial rewards that deferral arrangements might otherwise achieve.

8.1. The Agencies invite comment on whether this restriction on Level 1 and Level 2 covered institutions prohibiting the purchase of a hedging instrument or similar instrument on behalf of covered persons is appropriate to implement section 956 of the Dodd-Frank Act.

8.2. Are there additional requirements that should be imposed on covered institutions with respect to hedging of the exposure of covered persons under incentive-based compensation arrangements?

8.3. Should the proposed rule include a prohibition on the purchase of a hedging instrument or similar instrument on behalf of covered persons at Level 3 institutions?

§ ____.8(b) Maximum Incentive-Based Compensation Opportunity

Section ____.8(b) of the proposed rule would limit the amount by which the actual incentive-based compensation awarded to a senior executive officer or significant risk-taker could exceed the target amounts for performance measure goals established at the beginning of the performance period. It is the understanding of the Agencies that, under current practice, covered institutions generally establish performance measure goals for their covered persons at the beginning of, or early in, a performance period. At that time, under some incentive-based compensation plans, those covered institutions establish target amounts of incentive-based compensation that the covered persons can expect to be awarded if they meet the established performance measure goals. Some covered institutions also set out the additional amounts of incentive-based compensation, in excess of the target amounts, that covered persons can expect to be awarded if they or the covered institution exceed the performance measure goals. Incentive-based compensation plans commonly set out maximum awards of 150 to 200 percent of the pre-set target amounts.[210]

The proposed rule would prohibit a Level 1 or Level 2 covered institution from awarding incentive-based compensation to a senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation. For a significant risk-taker the limit would be 150 percent of the target amount for that incentive-based compensation. This limitation would apply on a plan-by-plan basis, and, therefore, would apply to long-term incentive plans separately from other incentive-based compensation plans.

For example, a Level 1 covered institution might provide an incentive-based compensation plan for its senior executive officers that links the amount awarded to a senior executive officer to the covered institution's four-year average return on assets (ROA). The plan could establish a target award amount of $100,000 and a target four-year average ROA of 75 basis points. That is, if the covered institution's four-year average ROA was 75 basis points, a senior executive officer would receive $100,000. The plan could also provide that senior executive officers would earn nothing (zero percent of target) under the plan if ROA was less than 50 basis points; $60,000 (60 percent of target) if ROA was 65 basis points; and $125,000 (125 percent of target) if ROA was 100 basis points. Under the proposed rule, the plan would not be permitted to provide, for example, $130,000 (130 percent of target) if ROA was 100 basis points or $150,000 (150 percent of target) if ROA was 110 basis points.

The Agencies are proposing these limits, in part, because they are consistent with the current industry practice at large banking organizations. Moreover, high levels of upside leverage (*e.g.*, 200 percent to 300 percent above the target amount) could lead to senior executive officers and significant risk-takers taking inappropriate risks to maximize the opportunity to double or triple their incentive-based compensation. Recognizing the potential for inappropriate risk-taking with such high levels of leverage, the Federal Banking Agencies have worked with large banking organizations to reduce leverage levels to a range of 125 percent to 150 percent. Such a range continues to provide for flexibility in the design and operation of incentive-based compensation arrangements in covered institutions while it addresses the potential for inappropriate risk-taking where leverage opportunities are large or uncapped. For a full example of how these requirements would work in practice, please see Appendix A of this Supplementary Information section.

The proposed rule would set different maximums for senior executive officers and for significant risk-takers because senior executive officers and significant risk-takers have the potential to expose covered institutions to different types and levels of risk, and may be motivated by different types and amounts of incentive-based compensation. The Agencies intend the different limitations to reflect the differences between the risks posed by senior executive officers and significant risk-takers.

The Agencies emphasize that the proposed limits on a covered employee's maximum incentive-based compensation opportunity would not equate to a ceiling on overall incentive-based compensation. Such limits would represent only a constraint on the percentage by which incentive-based compensation could exceed the target amount, and is aimed at prohibiting the use of particular features of incentive-based compensation arrangements which can contribute to inappropriate risk-taking.

8.4. The Agencies invite comment on whether the proposed rule should establish different limitations for senior executive officers and significant risk-takers, or whether the proposed rule should impose the same percentage limitation on senior executive officers and significant risk-takers.

8.5. The Agencies also seek comment on whether setting a limit on the amount that compensation can grow from the time the target is established until an award occurs would achieve the goals of section 956.

8.6. The Agencies invite comment on the appropriateness of the limitation, *i.e.*, 125 percent and 150 percent for senior executive officers and significant risk-takers, respectively. Should the limitations be set higher or lower and, if so, why?

8.7. Should the proposed rule apply this limitation on maximum incentive-based compensation opportunity to Level 3 institutions?

§ ____.8(c) Relative Performance Measures

Under section ____.8(c) of the proposed rule, a Level 1 or Level 2 covered institution would be prohibited from using incentive-based compensation performance measures based solely on industry peer performance comparisons. This prohibition would apply to incentive-based compensation arrangements for all covered persons at a Level 1 or Level 2 covered institution, not just senior executive officers and significant risk-takers.

As discussed above, covered institutions generally establish performance measures for covered persons at the beginning of, or early in, a performance period. For these types of plans, the performance measures (sometimes known as performance metrics) are the basis upon which a covered institution determines the related amounts of incentive-based compensation to be awarded to covered persons. These performance measures can be absolute, meaning they are based on the performance of the covered person or the covered institution without reference to the performance of other covered persons or covered institutions. In contrast, a relative performance measure is a performance measure that compares a covered institution's performance to that of so called "peer institutions" or an industry average. The composition of peer groups is generally decided by the individual covered institution. An example of an absolute performance measure is total shareholder return (TSR). An example of a relative performance measure is the rank of the covered institution's TSR among the TSRs of institutions in a pre-established peer group.

The Agencies have observed that incentive-based compensation arrangements based solely on industry peer performance comparisons (a type of relative performance measure) can cause covered persons to take inappropriate risks that could lead to material financial loss.[211] For example, if a covered institution falls behind its industry peers, it may use performance measures—and set goals for those measures—that lead to inappropriate risk-taking by covered persons in order to perform better than its industry peers. Also, the performance of a covered institution can be strong relative to its peers, but poor on an absolute basis (*e.g.*, every institution in the peer group is performing poorly, but the covered institution is the best of the group). Consequently, if incentive-based compensation arrangements were based only on relative performance measures, they would, in that circumstance, reward covered employees for performance that is poor on an absolute level but still better than that of the covered institution's peer group. Similarly, in cases where only relative performance measures are used and performance is poor, performance-based vesting may still occur when peer performance is also poor. Using a combination of relative and absolute performance measures as part of the performance evaluation process can help maintain balance between financial rewards and potential risks in such situations.

Additionally, covered persons do not know what level of performance is necessary to meet or exceed target peer group rankings, as rankings will become known only at the end of the performance period. As a result, covered employees may be strongly incentivized to achieve exceptional levels of performance by taking inappropriate risks to increase the likelihood that the covered institution will meet or exceed the peer group ranking in order to maximize their incentive-based compensation.

Further, comparing an institution's performance to a peer group can be misleading because the members of the peer group are likely to have different business models, product mixes, operations in different geographical locations, cost structures, or other attributes that make comparisons between institutions inexact.

Relative performance measures, including industry peer performance measures, may be useful when used in combination with absolute performance measures. Thus, under the proposed rule, a covered institution would be permitted to use relative performance measures in combination with absolute performance measures, but not in isolation. For instance, a covered institution would not be in compliance with the proposed rule if the performance of the CEO were assessed solely on the basis of total shareholder return relative to a peer group. However, if the performance of the CEO were assessed on the basis of institution-specific performance measures, such as earnings per share and return on tangible common equity, along with the same relative TSR the covered institution would comply with section ____.8(c) of the proposed rule (assuming the CEO's incentive-based compensation arrangement met the other requirements of the rule, such as an appropriate balance of risk and reward).

8.8. The Agencies invite comment on whether the restricting on the use of relative performance measures for covered persons at Level 1 and Level 2 covered institutions in section ____.8(d) of the proposed rule is appropriate in deterring behavior that could put the covered institution at risk of material financial loss. Should this restriction be limited to a specific group of covered persons and why? What are the relative performance measures being used in industry?

8.9. Should the proposed rule apply this restriction on the use of relative performance measures to Level 3 institutions?

§ ____.8(d) Volume-Driven Incentive-Based Compensation

Section ____.8(d) of the proposed rule would prohibit Level 1 and Level 2 covered institutions from providing incentive-based compensation to a covered person that is based solely on transaction or revenue volume without regard to transaction quality or the compliance of the covered person with sound risk management. Under the proposed rule, transaction or revenue volume could be used as a factor in incentive-based compensation arrangements, but only in combination with other factors designed to cause covered persons to account for the risks of their activities. This prohibition would apply to incentive-based compensation arrangements for all covered persons at a Level 1 or Level 2 covered institution, not just senior executive officers and significant risk-takers.

Incentive-based compensation arrangements that do not account for the risks covered persons can take to achieve performance measures do not appropriately balance risk and reward, as section ____.4(c)(1) of the proposed rule would require. An arrangement that provides incentive-based compensation

[208] *See* 76 FR at 21183.

[209] The Agencies note that one commenter to the 2011 Proposed Rule supported limits on hedging.

[210] *See, e.g.*, Arthur Gallagher & Co., "Study of 2013 Short- and Long-Term Incentive Design Criterion Among Top 200 S&P 500 Companies" (December 5, 2014), *available at http://www.ajg.com/media/1420659/study-of-2013-short-and-long-term-incentive-design-criterion-among-top-200.pdf.*

[211] Gong, Li, and Shin, "Relative Performance Evaluation and Related Peer Groups in Executive Compensation Contracts," 86 *The Accounting Review* 1007 (May 2011).

to a covered person based solely on transaction or revenue volume, without regard to other factors, would not adequately account for the risks to which the transaction in question could expose the covered institution. For instance, an incentive-based compensation arrangement that rewarded mortgage originators based solely on the volume of loans approved, without any subsequent adjustment for the quality of the loans originated (such as adjustments for early payment default or problems with representations and warranties) would not adequately balance risk and financial rewards.

An incentive-based compensation arrangement with performance measures based solely on transaction or revenue volume could incentivize covered persons to generate as many transactions or as much revenue as possible without appropriate attention to resulting risks. Such arrangements were noted in MLRs and similar reports where compensation had been cited as a contributing factor to a financial institution's failure during the recent financial crisis.[212] In addition, many studies about the causes of the recent financial crisis discuss how volume-driven incentive-based compensation lead to inappropriate risk-taking and caused material financial loss to financial institutions.[213]

8.10. The Agencies invite comment on whether there are circumstances under which consideration of transaction or revenue volume as a sole performance measure goal, without consideration of risk, can be appropriate in incentive-based compensation arrangements for Level 1 or Level 2 covered institutions.

8.11. Should the proposed rule apply this restriction on the use of volume-driven incentive-based compensation arrangements to Level 3 institutions?

[212] In accordance with section 38(k) of the FDIA, 12 U.S.C. 1831o(k), MLRs are conducted by the Inspectors General of the appropriate Federal banking agency following the failure of insured depository institutions.

See, e.g., Office of Inspector General for the Department of Treasury, "Material Loss Review of Indymac Bank, FSB," OIG–09–032 (February 26, 2009), *available at http://www.treasury.gov/about/organizational-structure/ig/Documents/oig09032.pdf;* Offices of Inspector General for the Federal Deposit Insurance Corporation and the Department of Treasury, "Evaluation of Federal Regulatory Oversight of Washington Mutual Bank," EVAL–10–002 (April 9, 2010), *available at https://www.fdicig.gov/reports10/10-002EV.pdf.*

[213] *See, e.g.,* Financial Crisis Inquiry Commission, "The Financial Crisis Inquiry Report" (January 2011), *available at http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.*

§ ____.9 Risk Management and Controls Requirements for Level 1 and Level 2 Covered Institutions

Prior to the financial crisis that began in 2007, institutions rarely involved risk management in either the design or monitoring of incentive-based compensation arrangements. Federal Banking Agency reviews of compensation practices have shown that one important development in the intervening years has been the increasing integration of control functions in compensation design and decision-making. For instance, control functions are increasingly relied on to ensure that risk is properly considered in incentive-based compensation programs. At the largest covered institutions, the role of the board of directors in oversight of compensation programs (including the oversight of supporting risk management processes) has also expanded.

Section ____.9 of the proposed rule would establish additional risk management and controls requirements at Level 1 and Level 2 covered institutions. Without effective risk management and controls, larger covered institutions could establish incentive-based compensation arrangements that, in the view of the Agencies,[214] could encourage inappropriate risks that could lead to material financial loss at covered institutions. Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would be considered to be compatible with effective risk management and controls, as required by section ____.4(c)(2) of the proposed rule, only if the covered institution also complies with the requirements of section ____.9. In proposing section ____.9, the Agencies are also cognizant of comments received on the 2011 Proposed Rule.[215] In order to facilitate consistent adoption of the practices that contribute to incentive-based compensation arrangements that appropriately balance risk and reward, the Agencies are proposing that the practices set forth in section ____.9 be required for all Level 1 and Level 2 covered institutions.

Section ____.9(a) of the proposed rule would establish minimum requirements for a risk management framework at a Level 1 or Level 2 covered institution by requiring that such framework: (1) Be independent of any lines of business; (2) include an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with section ____.11 of the proposed rule; and (3) be commensurate with the size and complexity of the covered institution's operations.

Generally, section ____.9(a) would require that Level 1 and Level 2 covered institutions have a systematic approach to designing and implementing their incentive-based compensation arrangements and incentive-based compensation programs supported by independent risk management frameworks with written policies and procedures, and developed systems. These frameworks would include processes and systems for identifying and reporting deficiencies; establishing managerial and employee responsibility; and ensuring the independence of control functions. To be effective, an independent risk management framework should have sufficient stature, authority, resources and access to the board of directors.

Level 1 and Level 2 covered institutions would be required to develop, as part of their broader risk management framework, an independent compliance program for incentive-based compensation. The Federal Banking Agencies have found that an independent compliance program leads to more robust oversight of incentive-based compensation programs, helps to avoid undue influence by lines of business, and facilitates supervision. Agencies would expect such a compliance program to have formal policies and procedures to support compliance with the proposed rule and to help to ensure that risk is effectively taken into account in both design and decision-making processes related to incentive-based

[214] This view is based in part on supervisory experiences in reviewing and supervising incentive-based compensation at some covered institutions.

[215] The 2011 Proposed Rule would have required incentive-based compensation arrangements to be compatible with effective risk management and controls. A number of commenters offered views on the proposed requirements, and some raised concerns. Some commenters emphasized the importance of sound risk management practices in the area of incentive-based compensation. However, a number of commenters also questioned whether the determination of an "appropriate" role for risk management personnel should be left to the discretion of individual institutions. In light of these comments, the proposed rule is designed to strike a reasonable balance between requiring an appropriate role for risk management and allowing institutions the ability to tailor their risk management practices to their business model. The proposed rule does not include prescriptive standards. Instead, it would allow Level 1 and Level 2 covered institutions to retain flexibility to determine the specific role that risk management and control functions should play in incentive-based compensation processes, while still allowing for appropriate oversight of incentive-based compensation arrangements.

compensation. The requirements for such policies and procedures are set forth in section ____.11 of the proposed rule.

The requirements of the proposed rule would encourage Level 1 and Level 2 covered institutions to develop well-targeted internal controls that work within the covered institution's broader risk management framework to support balanced risk-taking. Independent control functions should regularly monitor and test the covered institution's incentive-based compensation program and its arrangements to validate their effectiveness. Training would generally include communication to employees of the covered institution's compliance risk management standards and policies and procedures, and communication to managers on expectations regarding risk adjustment and documentation.

The Agencies note that independent compliance programs consistent with these proposed requirements are already in place at a significant number of larger covered institutions, in part due to supervisory efforts such as the Board's ongoing horizontal review of incentive-based compensation,[216] Enhanced Prudential Standards from section 165 of the Dodd-Frank Act,[217] and the OCC's Heightened Standards.[218] For example, control function employees monitor compliance with policies and procedures and help to ensure robust documentation of compensation decisions, including those relating to forfeiture and risk-adjustment processes. Institutions have also improved communication to managers and employees about how risk adjustment should work and have developed processes to review the application of related guidance in order to ensure better consideration of risk in compensation decisions. The Agencies are proposing to require similar compliance programs at covered institutions not subject to the supervisory efforts described above, as well as to reinforce the practices of covered institutions that already have such compliance programs in place.

Section ____.9(b) of the proposed rule would require Level 1 and Level 2 covered institutions to provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor and to ensure covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of the business areas they oversee. These protections are intended to mitigate potential conflicts of interest that might undermine the role covered persons engaged in control functions play in supporting incentive-based compensation arrangements that appropriately balance risk and reward.

Under section ____.9(c) of the proposed rule, Level 1 and Level 2 covered institutions would be required to provide for independent monitoring of: (1) Incentive-based compensation plans to identify whether those plans appropriately balance risk and reward; (2) events relating to forfeiture and downward adjustment reviews and decisions related thereto; and (3) compliance of the incentive-based compensation program with the covered institution's policies and procedures.

To be considered independent under the proposed rule, the group or person at the covered institution responsible for monitoring the areas described above generally should have a reporting line to senior management or the board that is separate from the covered persons whom the group or person is responsible for monitoring. Some covered institutions may use internal audit to perform the independent monitoring that would be required under this section.[219] The type of independent monitoring conducted to fulfill the requirements of section ____.9(c) generally should be appropriate to the size and complexity of the covered institution and its use of incentive-based compensation. For example, a Level 1 covered institution might be expected to use a different scope and type of data and analysis to monitor its incentive-based compensation program than a Level 2 covered institution. Likewise, a covered institution that offers incentive-based compensation to only a few employees may require a less formal monitoring process than a covered institution that offers many types of incentive-based compensation to many of its employees.

Section ____.9(c)(1) of the proposed rule would require covered institutions to periodically review all incentive-based compensation plans to assess whether those plans provide incentives that appropriately balance risk and reward. Monitoring the incentives embedded in plans, rather than the individual arrangements that rely on those plans, provides an opportunity to identify incentives for imprudent risk-taking. It also reduces burden on covered institutions in a reasonable way in light of the proposed rule's additional protections against excessive risk-taking which operate at the level of incentive-based compensation arrangements. Supervisory experience indicates that many covered institutions already periodically perform such a review, and the Agencies consider it a better practice. Level 1 and Level 2 covered institutions should have procedures for collecting information about the effects of their incentive-based compensation arrangements on employee risk-taking, and have systems and processes for using this information to adjust incentive-based compensation arrangements in order to eliminate or reduce unintended incentives for inappropriate risk-taking.

Under Section ____.9(c)(2), covered institutions would be required to provide for the independent monitoring of all events related to forfeiture and downward adjustment. With regard to forfeiture and downward adjustment decisions, covered institutions would be expected to regularly monitor the events that could trigger a forfeiture and downward adjustment review. Many covered institutions also regularly conduct independent monitoring and testing activities, or broad-based risk reviews, that could reveal instances of inappropriate risk-taking. The policies and procedures established under section ____.11(b) would be expected to specify that covered institutions would evaluate whether inappropriate risk-taking identified in the course of any independent monitoring and testing activities triggered a forfeiture and downward adjustment review. The frequency of reviews may vary depending on the size and complexity of, and the level of risks at, the covered institution, but they should occur often enough to reasonably monitor risks and events related to the forfeiture and downward adjustment triggers.[220] When these reviews uncover events that trigger forfeiture and downward adjustment reviews, Level 1 and Level 2 covered institutions would be required to complete such a review, consistent with the requirements of section ____.7(b). They would also be required to monitor adherence to policies and procedures that support effective balancing of risk and rewards. Many covered institutions currently perform forfeiture reviews in the context of broader and more regular risk reviews to ensure that the forfeiture review process appropriately captures all risk-taking activity. The Agencies view this

[216] *See* 2011 FRB White Paper.

[217] *See* 12 CFR part 252.

[218] *See* 12 CFR part 30, appendix D.

[219] At OCC-supervised institutions, the independent monitoring required under section ____.9(c) would be carried out by internal audit.

[220] *See* section ____.7(b)(2).

approach as better practice, as decisions about appropriate adjustment of compensation in such circumstances are only one desired outcome. For instance, identification of risk events generally should lead not only to consideration of compensation adjustments, but also to analysis of whether there are weaknesses in broader controls or risk management oversight that need to be addressed. In their supervisory experience, the Federal Banking Agencies have found that tying forfeiture reviews to broader risk reviews is a better practice.

Section ____.9(c)(3) of the proposed rule would require covered institutions to provide for independent compliance monitoring of the institution's incentive-based compensation program with policies and procedures. To be considered independent under the proposed rule, the group or person at the covered institution monitoring compliance should have a separate reporting line to senior management or to the board of directors from the business line or group being monitored, but may be conducted by groups within the covered institution. For example, internal audit could review whether award disbursement and vesting policies were adhered to and whether documentation of such decisions was sufficient to support independent review. Such independence will help ensure that the monitoring is unbiased and identifies appropriate issues.

The Agencies have taken the position that Level 1 and Level 2 covered institutions should regularly review whether the design and implementation of their incentive-based compensation arrangements deliver appropriate risk-taking incentives. Independent monitoring should enable covered institutions to correct deficiencies and make necessary improvements in a timely fashion based on the results of those reviews.[221]

9.1 Some Level 1 and Level 2 covered institutions are subject to separate risk management and controls requirements under other statutory or regulatory regimes. For example, OCC-supervised Level 1 and Level 2 covered institution are subject to the OCC's Heightened Standards. Is it clear to commenters how the risk management and controls requirements under the proposed rule would interact, if at all, with requirements under other statutory or regulatory regimes?

§ ____.10 Governance Requirements for Level 1 and Level 2 Covered Institutions

Section ____.10 of the proposed rule contains specific governance requirements that would apply to Level 1 and Level 2 covered institutions. Under the proposed rule, an incentive-based compensation arrangement at a Level 1 or Level 2 covered institution would be considered to be supported by effective governance, as required by section ____.4(c)(3) of the proposed rule, only if the covered institution also complies with the requirements of section ____.10.

As discussed earlier in this Supplementary Information section, the supervisory experience of the Federal Banking Agencies at large consolidated financial institutions is that effective oversight by a covered institution's board of directors, including review and approval by the board of the overall goals and purposes of the covered institution's incentive-based compensation program, is essential to the attainment of incentive-based compensation arrangements that do not encourage inappropriate risks that could lead to material financial loss to the covered institution.

Accordingly, section ____.10(a) of the proposed rule would require that a Level 1 or Level 2 covered institution establish a compensation committee, composed solely of directors who are not senior executive officers, to assist the board in carrying out its responsibilities related to incentive-based compensation.[222] Having an independent compensation committee is consistent with the emphasis the Agencies place on the need for incentive-based compensation arrangements to be compatible with effective risk management and controls and supported by effective governance. In response to the 2011 Proposed Rule, some commenters expressed a view that an independent compensation committee composed solely of non-management directors would have helped to avoid potential conflicts of interest and more appropriate consideration of management proposals, particularly proposed awards and payouts for senior executive officers.

Section ____.10(b) of the proposed rule would require that compensation committees at Level 1 and Level 2 covered institutions obtain input and assessments from various parties. For example, the compensation committees would be required to obtain input on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements from the risk and audit committees of the covered institution's board of directors, or groups performing similar functions, and from the covered institution's risk management function. The proposed requirements would help protect covered institutions against inappropriate risk-taking that could lead to material financial loss by leveraging the expertise and experience of these parties.

In their review of the incentive-based compensation practices of many of the largest covered institutions, the Federal Banking Agencies have noted that the compensation, risk, and audit committees of the boards of directors collaborate and seek advice from risk management and other control functions before making decisions. Many of these covered institutions have members of the compensation committee that are also members of the risk and audit committees. Some covered institutions rely on regular meetings between the compensation and risk committees, while others rely on more ad hoc communications. Human resources, risk management, finance, and audit committees work with compensation committees to ensure that compensation systems attain multiple objectives, including appropriate risk-taking.[223]

Section ____.10(b)(2) of the proposed rule would require the compensation committees to obtain from management, on an annual or more frequent basis, a written assessment of the covered institution's incentive-based compensation program and related compliance and control processes. The report should assess the extent to which the program and processes provide risk-taking incentives that are consistent with the covered institution's risk profile. Management would be required to develop the assessment with input from the covered institutions' risk and audit committees, or groups performing similar functions, and from individuals in risk management and audit functions. In addition to the written assessment submitted by management, section ____.10(b)(3) of the proposed rule would require the compensation committee to obtain another written assessment on the same matter, submitted on an annual or more frequent basis, by the internal audit or risk management function of the covered institution. This written assessment would be developed independently of the covered institution's management.

The Agencies are proposing that the independent compensation committee of the board of directors to be the recipient of such input and written assessments.

Developing incentive-based compensation arrangements that provide balanced risk-taking incentives and monitoring arrangements to ensure they achieve balance requires an understanding of the full spectrum of risks (including compliance risks) and potential risk outcomes associated with the activities of covered persons. For this reason, risk-management and other control functions generally should each have an appropriate role in the covered institution's processes, not only for designing incentive-based compensation arrangements, but also for assessing their effectiveness in providing risk-taking incentives that are consistent with the risk profile of the institution. The proposed rule sets forth two separate effectiveness assessments: (1) An assessment under the auspices of management, but reliant on risk management and audit functions, as well as the audit and risk committees of the board, and (2) an assessment conducted by the internal audit or risk management function of the covered institution, independent of management.

In support of the first requirement, a covered institution's management has a full understanding of both the entirety of the covered institution's activities and a detailed understanding of its incentive-based compensation program, including both the performance that the covered institution intends to reward and the risks to which covered persons can expose the covered institution. An understanding of the full compensation program (including the effectiveness of risk measures across various lines of business, the measurement of actual risk outcomes, and the analysis of risk-taking and risk outcomes relative to incentive-based compensation payments) requires a large degree of technical expertise. It also requires an understanding of the wider strategic and risk management frameworks in place at the covered institution (including the various objectives that compensation programs seek to balance, such as recruiting and retention goals and prudent risk management). While the board of directors at a covered institution is ultimately responsible for the balance of incentive-based compensation arrangements, and for an incentive-based compensation program that incentivizes behaviors consistent with the long-term health of the organization, the board should generally hold senior management accountable for effectively executing the covered institution's incentive-based compensation program, and for modifying it when weaknesses are identified.

In addition, some Level 1 and Level 2 covered institutions use automated systems to monitor the effectiveness of incentive-based compensation arrangements in balancing risk-taking incentives, especially systems that support capture of relevant data in databases that support monitoring and analysis. Management plays a role in all of these activities and is well-positioned to oversee an analysis that considers such a wide variety of inputs. In order to ensure that considerations of risk-taking are included in such an exercise, an active role for independent control functions is critical in such a review as well as input from the risk and audit committees of the board of directors, or groups performing similar functions. Periodic presentations by the chief risk officer or other risk management staff to the board of directors can help complement the annual effectiveness review.

In addition, the proposed rule includes a requirement that internal audit or risk management submit a written assessment of the effectiveness of a Level 1 or Level 2 covered institution's incentive-based compensation program and related control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution. Regular internal reviews and audits of compliance with policies and procedures are important to helping implement the incentive-based compensation system as intended by those employees involved in incentive-based compensation decision-making. Internal audit and risk management are well-positioned to provide an independent perspective on a covered institution's incentive-based compensation program and related control processes. The Federal Banking Agencies have observed that compensation committees benefit from an independent analysis of the effectiveness of their covered institutions' incentive-based compensation programs.[224]

The proposed requirement takes into consideration comments received on the policies and procedures standards embodied in the 2011 Proposed Rule that would have required the covered financial institution's board of directors, or a committee thereof, to receive data and analysis from management and other sources sufficient to allow the board, or committee thereof, to assess whether the overall design and performance of the institution's incentive-based compensation arrangements were consistent with section 956. Many commenters on the 2011 Proposed Rule expressed concern that the proposed requirements in the 2011 Proposed Rule would have inappropriately expanded the traditional "oversight" role of the board and would have required the board to exercise judgment in areas that traditionally have been—and, in the view of some commenters, are best left to—the expertise and prerogative of management. Commenters suggested that the proposed requirement instead place responsibility on management to conduct a formal assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes. The Agencies agree that management should be responsible for conducting such an assessment and section ____.10(b)(2) of the proposed rule would thus place this responsibility on management, while requiring input from risk and audit committees, or groups performing similar functions, and from the covered institutions' risk management and audit functions. Under the proposed rule, the board's primary focus would be oversight of incentive-based compensation program and arrangements, while management would be expected to implement a program consistent with the vision of the board.

10.1. The Agencies invite comment on this provision generally and whether the written assessments required under sections ____.10(b)(2) and ____.10(b)(3)

[221] The 2010 Federal Banking Agency Guidance mentions several practices that can contribute to the effectiveness of such activity, including internal reviews and audits of compliance with policies and procedures, and monitoring of results relative to expectations. For instance, internal audit should assess the effectiveness of the compliance risk management program by performing regular independent reviews and evaluating whether internal controls, policies, and processes that limit incentive-based compensation risk are effective and appropriate for the covered institution's activities and associated risks.

[222] As described above, under the Board's and FDIC's proposed rules, for a foreign banking organization, "board of directors" would mean the relevant oversight body for the institution's U.S. branch, agency, or operations, consistent with the foreign banking organization's overall corporate and management structure. The Board and FDIC will work with foreign banking organizations to determine the appropriate persons to carry out the required functions of a compensation committee under the proposed rule. Likewise, under the OCC's proposed rule, for a Federal branch or agency of a foreign bank, "board of directors" would mean the relevant oversight body for the Federal branch or agency, consistent with its overall corporate and management structure. The OCC would work closely with Federal branches and agencies to determine the person or committee to undertake the responsibilities assigned to the oversight body.

[223] *See generally* 2011 FRB White Paper; FSB, "FSB 2015 Workshop on Compensation Practices" (April 14, 2015), *available at http://www.fsb.org/wp-content/uploads/Summary-of-the-April-2015-FSB-workshop-on-compensation-practices.pdf.*

[224] For example, the 2010 Federal Banking Agency Guidance notes that a banking organization's risk-management processes and internal controls should reinforce and support the development and maintenance of balanced incentive compensation arrangements.

of the proposed rule should be provided to the compensation committee on an annual basis or at more or less frequent intervals?

10.2. Are both reports required under § ____.10(b)(2) and (3) necessary to aid the compensation committee in carrying out its responsibilities under the proposed rule? Would one or the other be more helpful? Why or why not?

§ ____.11 Policies and Procedures Requirements for Level 1 and Level 2 Covered Institutions

Section ____.11 of the proposed rule would require Level 1 and Level 2 covered institutions to develop and implement certain minimum policies and procedures relating to their incentive-based compensation programs. Requiring covered institutions to develop and follow policies and procedures related to incentive-based compensation would help both covered institutions and regulators identify the incentive-based compensation risks to which covered institutions are exposed, and how these risks are managed so as not to incentivize inappropriate risk-taking by covered persons that could lead to material financial loss to the covered institution. The Agencies are not proposing to require specific policies and procedures of Level 3 covered institutions because these institutions are generally less complex and the impact to the financial system by risks taken at these covered institutions is not as significant as risks taken by covered persons at the larger, more complex covered institutions. In addition, by not requiring additional policies and procedures, Agencies intend to reduce burden on smaller covered institutions. In contrast, the larger Level 1 and Level 2 covered institutions generally will have more complex organizations that tend to conduct a wide range of business activities and therefore will need robust policies and procedures as part of their compliance programs.[225] Therefore, under section ____.11 of the proposed rule, Level 3 covered institutions would not be subject to any specific requirements in this area, while Level 1 and Level 2 covered institutions would be required to develop and implement specific policies and procedures for their incentive-based compensation programs.

Section ____.11 of the proposed rule would identify certain areas that the policies and procedures of Level 1 and Level 2 covered institutions would, at a minimum, have to address. The list is not exhaustive. Instead, it is meant to indicate the policies and procedures that would, at a minimum, be necessary to carry out the requirements in other sections of the proposed rule.

The development and implementation of the policies and procedures under section ____.11 of the proposed rule would help to ensure and monitor compliance with the requirements set forth in section 956 and the other requirements in the proposed rule because the policies and procedures would set clear expectations for covered persons and allow the Agencies to better understand how a covered institution's incentive-based compensation program operates. Section ____.11(a) of the proposed rule would contain the general requirement that the policies and procedures be consistent with the prohibitions and requirements under the proposed rule. Other parts of section ____.11 of the proposed rule would help to ensure and monitor compliance with specific portions of the proposed rule.

Under section ____.11(b) of the proposed rule, a Level 1 or Level 2 covered institution would have to develop and implement policies and procedures that specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back. These policies and procedures would provide covered persons with notice of the circumstances that would lead to forfeiture and clawback at their covered institutions, including any circumstances identified by the covered institution in addition to those required under the proposed rule. They would also help ensure consistent application of forfeiture and clawback by establishing a common set of expectations.

Policies and procedures should make clear the triggers that will result in consideration of forfeiture, downward adjustment, and clawback; should indicate what individuals or committees are responsible for identifying, escalating and resolving these issues in such cases; should ensure that control functions contribute relevant information and participate in any decisions; and should set out a clear process for determining responsibility for the events triggering the forfeiture and downward adjustment review including provisions requiring appropriate input from covered employees under consideration for forfeiture or clawback.

The proposed rule also would require that Level 1 and Level 2 covered institutions' policies and procedures require the maintenance of documentation of final forfeiture, downward adjustment, and clawback decisions under section ____.11(c) of the proposed rule. Documentation would allow control functions and the Agencies to evaluate compliance with the requirements of section ____.7 of the proposed rule. The Agencies are proposing this requirement because they have found that it is critical that forfeiture and downward adjustment reviews at covered institutions be supported by effective governance to ensure consistency, fairness and robustness of all related decision-making.

Section ____.11(d) of the proposed rule would include a requirement for policies and procedures of Level 1 and Level 2 covered institutions that would specify the substantive and procedural criteria for acceleration of payments of deferred incentive-based compensation to a covered person consistent with sections ____.7(a)(1)(iii)(B) and ____.7(a)(2)(iii)(B) of the proposed rule. Under section ____.7 of the proposed rule, acceleration of vesting of incentive-based compensation that is required to be deferred under such section would only be permitted in the case of death or disability. A Level 1 or Level 2 covered institution would have to have policies and procedures that describe how disability would be evaluated for purposes of determining whether to accelerate payments of deferred incentive-based compensation.

Section ____.11(e) would require Level 1 and Level 2 covered institutions to have policies and procedures that identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized. A Level 1 or Level 2 covered institution's policies and procedures would also have to describe how discretion is expected to be exercised in order to appropriately balance risk and reward and how the incentive-based compensation arrangements will be monitored under sections ____.11(f) and (h) of the proposed rule, respectively.

Related to the requirements regarding disclosure under sections ____.4(f) and ____.5 of the proposed rule, under section ____.11(g), a Level 1 or Level 2 covered institution would need to have policies and procedures that require the covered institution to maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements sufficient to support the covered institution's decisions. Section ____.11(i) would require the policies and procedures to specify the substantive and procedural requirements of the independent compliance program, consistent with section ____.9(a)(2). And section ____.11(j) would require policies and procedures that address the appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for (1) designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting, and (2) assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

The Agencies anticipate that some Level 1 and Level 2 covered institutions that have international operations might choose to adopt enterprise-wide incentive-based compensation policies and procedures. The Agencies recognize that such policies and procedures, when utilized by various subsidiary institutions, may need to be further modified to reflect local regulation and the requirements of home country regulators in the case of international institutions and tailored to a certain extent by line of business, legal entity, or business model.

11.1. The Agencies invite general comment on the proposed policies and procedures requirements for Level 1 and Level 2 covered institutions under section ____.11 of the proposed rule.

§ ____.12 Indirect Actions

Section ____.12 of the proposed rule would prohibit a covered institution from doing indirectly what it cannot do directly under the proposed rule. Section ____.12 would apply all of the proposed rule's requirements and prohibitions to actions taken by covered institutions indirectly or through or by any other person. Section ____.12 is substantially the same as section ____.7 of the 2011 Proposed Rule. The Agencies did not receive any comments on section ____.7 of the 2011 Proposed Rule.

By subjecting such indirect actions by covered institutions to all of the proposed rule's requirements and prohibitions, section ____.12 would implement the directive in section 956(b) to adopt rules that prohibit any type of incentive-based payment arrangement, or any feature of any such arrangement, that the Agencies determine encourages inappropriate risks by covered institutions (1) by providing excessive compensation, fees, or benefits or (2) that could lead to material financial loss. The Agencies are concerned that a covered institution may take indirect actions in order to avoid application of the proposed rule's requirements and prohibitions. For example, a covered institution could attempt to make substantial numbers of its covered persons independent contractors for the purpose of avoiding application of the proposed rule's requirements and prohibitions. A covered institution could also attempt to make substantial numbers of its covered persons employees of another entity for the purpose of avoiding application of the proposed rule's requirements and prohibitions. If left unchecked, such indirect actions could encourage inappropriate risk-taking by providing covered persons with excessive compensation or could lead to material financial loss at a covered institution.

The Agencies, however, do not intend to disrupt indirect actions, including independent contractor or employment relationships, not undertaken for the purpose of avoiding application of the proposed rule's requirements and prohibitions. Thus, the Agencies would apply the proposed rule regardless of how covered institutions classify their actions, while also recognizing that covered institutions may legitimately engage in activities that are outside the scope of section 956 and the proposed rule.[226]

NCUA's proposed rule also would clarify that covered credit unions may not use CUSOs to avoid the requirements of the proposed rule, such as by using CUSOs to maintain non-compliant incentive-based compensation arrangements on behalf of senior executive officers or significant risk-takers of Federally insured credit unions.

12.1. Commenters are invited to address all aspects of section ____.12, including any examples of other indirect actions that the Agencies should consider.

§ ____.13 Enforcement

By its terms, section 956 applies to any depository institution and any depository institution holding company (as those terms are defined in section 3 of the FDIA), any broker-dealer registered under section 15 of the Securities Exchange Act, any credit union, any investment adviser (as that term is defined in the Investment Advisers Act of 1940), the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. Section 956 also applies to any other financial institution that the appropriate Federal regulators jointly by rule determine should be treated as a covered financial institution for purposes of section 956.

Section 956(d) also specifically sets forth the enforcement mechanism for rules adopted under that section. The statute provides that section 956 and the implementing rules shall be enforced under section 505 of the Gramm-Leach-Bliley Act and that a violation of section 956 or the regulations under section 956 will be treated as a violation of subtitle A of Title V of the Gramm-Leach-Bliley Act.

Section 505 of the Gramm-Leach-Bliley Act provides for enforcement under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12,[227] in the case of national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 *et seq.*, 611 *et seq.*], and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); as well as banks insured by the FDIC (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and savings associations the deposits of which are insured by the FDIC, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

The Gramm-Leach-Bliley Act also provides for enforcement under the following: (1) Federal Credit Union Act

[225] *See* Federal Reserve SR Letter 08–08, "Compliance Risk Management Programs and Oversight at Large Banking Organizations with Complex Compliance Profiles" (October 16, 2008).

[226] The Agencies note, however, that section 956 of the Dodd-Frank Act does not, and the proposed rule would not, limit the authority of the Agencies under other provisions of applicable law and regulations.

[227] For purposes of section 1813(q), the appropriate Federal banking agency for institutions listed in paragraphs (A) and (D) is the OCC; for institutions listed in paragraphs (B), the Board; and for institutions listed in paragraph (C), the FDIC. 12 U.S.C. 1813(q).

[12 U.S.C. 1751 *et seq.*], by the Board of the NCUA with respect to any federally insured credit union, and any subsidiaries of such an entity; (2) the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*], by the SEC with respect to any broker or dealer; (3) the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*], by the SEC with respect to investment companies; (4) the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*], by the SEC with respect to investment advisers registered with the Commission under such Act; (5) State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of the Gramm-Leach-Bliley Act; (6) the Federal Trade Commission Act [15 U.S.C. 41 *et seq.*], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority listed above; and (7) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 *et seq.*], by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau.

The proposed rule includes these enforcement provisions as provided in section 956.

FHFA's enforcement authority for the proposed rule derives from its authorizing statute, the Safety and Soundness Act. FHFA is not one of the "Federal functional regulators" listed in section 505 of the Gramm-Leach-Bliley Act. Additionally, the applicability of Title V of the Gramm-Leach-Bliley Act to Fannie Mae and Freddie Mac is limited by their conditional exclusion from that Title's definition of "financial institution." But there is no evidence that Congress intended to exclude FHFA, or Fannie Mae and Freddie Mac, from enforcement of the proposed rule. To the contrary, Congress specifically included Fannie Mae and Freddie Mac as covered financial institutions and FHFA as an "appropriate federal regulator" in section 956, and FHFA requires no additional enforcement authority. The Safety and Soundness Act provides FHFA with enforcement authority for all laws and regulations that apply to its regulated entities.

13.1. The Agencies invite comment on all aspects of section ____.13.

§ ____.14 NCUA and FHFA Covered Institutions in Conservatorship, Receivership, or Liquidation

The NCUA's and FHFA's proposed rules each include a section ____.14 that would address those instances when a covered institution is placed in conservatorship, receivership, or liquidation, including limited-life regulated entities, under their respective authorizing statutes, the Federal Credit Union Act or the Safety and Soundness Act.[228] If a covered institution is placed in conservatorship, receivership, or liquidation, the conservator, receiver, or liquidating agent, respectively, and not the covered institution's board or management, has ultimate authority over all compensation arrangements, including any incentive-based compensation for covered persons. When determining or approving any incentive-based compensation plans for covered persons at such a covered institution, the conservator, receiver, or liquidating agent will implement the purposes of the Dodd-Frank Act by prohibiting excessive incentive-based compensation and incentive-based compensation that encourages inappropriate risk-taking.

Institutions placed in conservatorship, receivership, or liquidation may be subject to different needs and circumstances with respect to attracting and retaining talent than other types of covered institutions. In order to attract and retain qualified individuals at a covered institution in conservatorship, for example, the conservator may determine that while a significant portion of a covered person's incentive-based compensation should be deferred, due to the uncertain future of the covered institution in conservatorship, the deferral period would be shorter than that set forth in the deferral provisions of the proposed rule. In another example, where a conservator assumes the roles and responsibilities of the covered institution's board and its committees, the conservator may determine that it is not necessary for the board of the covered institution, if any remains in conservatorship, to approve a material adjustment to a senior executive officer's incentive-based compensation arrangement as described by the governance section of the proposed rule.

Certain provisions of the proposed rule, such as the deferral and governance provisions, may not be appropriate for institutions in conservatorship, receivership, or liquidation, and the incentive-based compensation structure that best meets their needs while implementing the purposes of the Dodd-Frank Act is appropriately left to the conservator, receiver, or liquidating agent, respectively. Under the applicable section ____.14 of the proposed rule, if a covered institution is placed in conservatorship, receivership, or liquidation under the Safety and Soundness Act, for FHFA's proposed rule, or the Federal Credit Union Act, for the NCUA's proposed rule, the respective conservator, receiver, or liquidating agent would have the responsibility to fulfill the requirements and purposes of 12 U.S.C. 5641. The conservator, receiver, or liquidating agent also has the discretion to determine transition terms should the covered institution cease to be in conservatorship, receivership, or liquidation.

14.1. Commenters are invited to address all aspects of section ____.14 of the proposed rule.

SEC Amendment to Exchange Act Rule 17a–4

The SEC is proposing an amendment to Exchange Act Rule 17a–4(e) (17 CFR 240.17a–4(e)) to require that broker-dealers maintain the records required by § ____.4(f), and for Level 1 and Level 2 broker-dealers, §§ ____.5 and ____.11, in accordance with the recordkeeping requirements of Exchange Act Rule 17a–4. Exchange Rule 17a–4 establishes the general formatting and storage requirements for records that broker-dealers are required to keep. For the sake of consistency with other broker-dealer records, the SEC believes that broker-dealers should also keep the records required by § ____.4(f), and for Level 1 and Level 2 broker-dealers, §§ ____.5 and ____.11, in accordance with these requirements.

New paragraph (e)(10) of Exchange Act Rule 17a–4 would require Level 1, Level 2, and Level 3 broker-dealers to maintain and preserve in an easily accessible place the records required by § ____.4(f), and for Level 1 and Level 2 broker-dealers, the records required by §§ ____.5 and ____.11. Paragraph (f) of Exchange Act Rule 17a–4 provides that the records a broker-dealer is required to maintain and preserve under Exchange Act Rule 17a–3 (17 CFR 240.17a–3) and Exchange Act Rule 17a–4 may be immediately produced or reproduced on micrographic media or by means of electronic storage media. Paragraph (j) of Exchange Act Rule 17a–4 requires a broker-dealer, which would include a broker-dealer that is a Level 1, Level 2, or Level 3 covered institution pursuant to the proposed rules, to furnish promptly to a representative of the SEC legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under Exchange Act Rule 17a–4, or any other records of the broker-dealer subject to examination under section 17(b) of the Securities Exchange Act of 1934 that are requested by the representative.[229]

SEC Amendment to Investment Advisers Act Rule 204–2

The SEC is proposing an amendment to rule 204–2 under the Investment Advisers Act (17 CFR 275.204–2) to require that investment advisers registered or required to be registered under section 203 of the Investment Advisers Act (15 U.S.C. 80b–3) maintain the records required by § ____.4(f) and, for those investment advisers that are Level 1 or Level 2 covered institutions, §§ ____.5 and ____.11, in accordance with the recordkeeping requirements of rule 204–2. New paragraph (a)(19) of rule 204–2 would require investment advisers subject to rule 204–2 that are Level 1, Level 2, or Level 3 covered institutions to make and keep true, accurate, and current the records required by, and for the period specified in, § ____.4(f) and, for those investment advisers that are Level 1 or Level 2 covered institutions, the records required by, and for the periods specified in, §§ ____.5 and ____.11.

Rule 204–2 establishes the general recordkeeping requirements for investment advisers registered or required to be registered under section 203 of the Investment Advisers Act. For the sake of consistency with other investment adviser records, the SEC is proposing that this rule require such investment advisers that are covered institutions to keep the records required by § ____.4(f) and those that are Level 1 or Level 2 covered institutions to keep the records required by §§ ____.5 and ____.11 in accordance with the requirements of rule 204–2.

[228] The FDIC's proposed rule would not apply to institutions for which the FDIC is appointed receiver under the FDIA or Title II of the Dodd-Frank Act, as appropriate, as those statutes govern such cases.

[229] For a discussion generally of Exchange Act Rule 17a–4, see Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Release No. 34–71958 (Apr. 17, 2014), 79 FR 25194 (May 2, 2014).

III. Appendix to the Supplementary Information: Example Incentive-Based Compensation Arrangement and Forfeiture and Downward Adjustment Review

For an incentive-based compensation arrangement to meet the requirements of the proposed rule, particularly the requirement that such an arrangement appropriately balance risk and reward, covered institutions would need to look holistically at the entire incentive-based arrangement. Below, for purposes of illustration only, the Agencies outline an example of a hypothetical incentive-based compensation arrangement that would meet the requirements of the proposed rule and an example of how a forfeiture and downward adjustment review might be conducted. These illustrations do not cover every aspect of the proposed rule. They are provided as an aid to understanding the proposed rule and would not carry the force and effect of law or regulation, if issued as a companion to a final rule. Reviewing these illustrations does not substitute for a review of the proposed rule.

This example assumes that the final rule was published as proposed and all incentive-based compensation programs and arrangements were required to comply on or before January 1, 2020.

Ms. Ledger: Senior Executive Officer at Level 2 Covered Institution

Ms. Ledger is the chief financial officer at a bank holding company, henceforth "ABC," which has $200 billion in average total consolidated assets. Under the definitions of the proposed rule Ms. Ledger would be a senior executive officer and ABC would be a Level 2 covered institution.[230]

Ms. Ledger is provided incentive-based compensation under three separate incentive-based compensation plans. The first plan, the "Annual Executive Plan," is applicable to all senior executive officers at ABC, and requires assessment over the course of one calendar year. The second plan, the "Annual Firm-Wide Plan," is applicable to all employees at ABC, and is also based on a one-year performance period that coincides with the calendar year. The third plan, "Ms. Ledger's LTIP," is applicable only to Ms. Ledger, and requires assessment of performance over a three-year performance period that begins on January 1 of year 1 and ends on December 31 of year 3. These three plans together comprise Ms. Ledger's incentive-based compensation arrangement.

The proposed rule would impose certain requirements on Ms. Ledger's incentive-based compensation arrangement. Section ____.4(a)(1) of the proposed rule would require that Ms. Ledger's entire incentive-based compensation arrangement, and each feature of that arrangement, not provide excessive compensation. ABC would be required to consider the six factors listed in section ____.4(b) of the proposed rule, as well as any other factors that ABC finds relevant, in evaluating whether Ms. Ledger's incentive-based compensation arrangement provides excessive compensation before approving Ms. Ledger's incentive-based compensation arrangement.

Balance

Under section ____.4(c)(1) of the proposed rule, the entire arrangement would be required to appropriately balance risk and reward. ABC would be expected to consider the risks that Ms. Ledger's activities pose to the institution, and the performance that Ms. Ledger's incentive-based compensation arrangement rewards. ABC might consider both the type and target level of any associated performance measures; how all performance measures would work together under the three plans; the form of incentive-based compensation; the recourse ABC has to reduce incentive-based compensation once awarded (through forfeiture)[231] including under the conditions outlined in section ____.7 of the proposed rule; the ability ABC has to use clawback of incentive-based compensation once vested, including under the conditions outlined in section ____.7 of the proposed rule; and any overlapping performance periods of the various incentive-based compensation plans, which apply to Ms. Ledger.

Under section ____.4(d) of the proposed rule, Ms. Ledger's incentive-based compensation arrangement would be required to include both financial and non-financial measures of performance. These measures would need to include considerations of risk-taking that are relevant to Ms. Ledger's role within ABC and to the type of business in which Ms. Ledger is engaged. They also would need to be appropriately weighted to reflect risk-taking. The arrangement would be required to allow non-financial

[230] *See* the definitions of "senior executive officer" and "Level 2 covered institution" in section ____.2 of the proposed rule.

[231] This requirement for balance under section ____.4(c)(1) would not, however require forfeiture, or any specific forfeiture measure, for any particular covered person. As discussed below, sections ____.7 and ____.8 contain specific requirements applicable to senior executive officers at Level 1 and Level 2 covered institutions.

measures of performance to override financial measures of performance when appropriate in determining Ms. Ledger's incentive-based compensation. Any amounts to be awarded under Ms. Ledger's arrangement would be subject to adjustment to reflect ABC's actual losses, inappropriate risks Ms. Ledger took or was accountable for others taking, compliance deficiencies Ms. Ledger was accountable for, or other measures or aspects of Ms. Ledger's and ABC's financial and non-financial performance. For example, the Annual Firm-Wide Plan might use a forward-looking internal profit measure that takes into account stressed conditions as a proxy for liquidity risk that Ms. Ledger's activities pose to ABC and thus mitigates against incentives to take imprudent liquidity risk. It might also include limits on liquidity risk, the repeated breach of which would result in non-compliance with a key non-financial performance objective.

In practice, each incentive-based compensation plan will include various measures of performance, and under the proposed rule, each plan would be required to include both financial and non-financial measures. The Annual Firm-Wide Plan may be largely based on the change in value of ABC's equity over the performance year, but that cannot be the only basis for incentive-based compensation awarded under that plan. Non-financial measures of Ms. Ledger's risk-taking activity would have to be taken into account in determining the incentive-based compensation awarded under that plan, and those non-financial measures would need to be appropriately weighted so that they could override financial measures. Even if ABC's equity performed very well over the performance year, if Ms. Ledger was found to have violated risk performance measures, Ms. Ledger should not be awarded the full target of incentive-based compensation from the plan.

Because Ms. Ledger is a senior executive officer at a Level 2 covered institution, Ms. Ledger's incentive-based compensation arrangement would not be considered to appropriately balance risk and reward unless it was structured to be consistent with the requirements set forth in sections ____.7 and ____.8 of the proposed rule. The incentive-based compensation awarded to Ms. Ledger would not be permitted to be based solely on relative performance measures [232] or be based solely on transaction revenue or volume.[233] The Annual Executive Plan may include a measure of ABC's TSR relative to its peer group, but that plan would comply with the proposed rule only if other absolute measures of ABC's or Ms. Ledger's performance were also included (*e.g.*, achievement of a three-year average return on risk adjusted capital). Similarly, a plan that applied to significant risk-takers who were engaged in trading might include transaction volume as one of the financial performance measures, but that plan would comply with the proposed rule only if it also included other factors, such as measurement of transaction quality or the significant risk-taker's compliance with the institution's risk-management policies.

Award of Incentive-Based Compensation for Performance Periods Ending December 31, 2024

Ms. Ledger's incentive-based compensation is awarded on January 31, 2025. The Annual Executive Plan and the Annual Firm-Wide Plan are awarded on this date for the performance period starting on January 1, 2024 and ending on December 31, 2024. Ms. Ledger's LTIP will be awarded on this date for the performance period starting on January 1, 2022 and ending on December 31, 2024. This example assumes ABC's share price on December 31, 2024 (the end of the performance period) is $50.

Ms. Ledger's target incentive-based compensation award amount under the Annual Executive plan is $60,000 and 1,000 shares of ABC.[234] Under the Annual Firm-Wide Plan, Ms. Ledger's target incentive-based compensation award amount is $30,000. Finally, under Ms. Ledger's LTIP, her target incentive-based compensation award amount is $40,000 and 2,000 shares of ABC.

To be consistent with the proposed rule, the maximum incentive-based compensation amounts that ABC would be allowed to award to Ms. Ledger are 125 percent of the target amount, which would amount to: $75,000 and 1,250 shares under the Annual Executive Plan; $37,500 under the Annual Firm-Wide Plan; and $50,000 and 2,500 shares under Ms. Ledger's LTIP.

If Ms. Ledger were implicated in a forfeiture and downward adjustment review during the performance period, ABC would be expected to consider whether and by what amount to reduce the amounts awarded to Ms. Ledger. As part of that review, ABC would be expected to consider all of the amounts that could be awarded to Ms. Ledger under the Annual Executive Plan, Annual Firm-Wide Plan, and Ms. Ledger's LTIP for downward adjustment before any incentive-based compensation were awarded to Ms. Ledger.[235]

Regardless of whether a downward forfeiture and downward adjustment review occurred, ABC would be expected to evaluate Ms. Ledger's performance, including Ms. Ledger's risk-taking activities, at or near the end of the performance period (December 31, 2024). ABC would be required to use non-financial measures of performance, and particularly measures of risk-taking, to determine Ms. Ledger's incentive-based compensation award, possibly decreasing the amount Ms. Ledger would be awarded if only financial measures were taken into account.[236]

Based on performance and taking into account Ms. Ledger's risk-taking behavior, ABC decides to award Ms. Ledger: $30,000 and 1,000 shares under the Annual Executive Plan; $35,000 under the Annual Firm-Wide Plan; and $40,000 and 2,000 shares under Ms. Ledger's LTIP. Valuing the ABC equity at the time of award, the total value of Ms. Ledger's award under the Annual Executive Plan is $80,000, under the Annual Firm-Wide Plan is $35,000, and under Ms. Ledger's LTIP is $140,000.

Incentive-based compensation	Target award				Maximum award				Actual award			
	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash[1] ($)	Equity[2] (#)	Value of equity ($)	Total value ($)
Annual Executive Plan	60,000	1,000	50,000	110,000	75,000	1,250	62,500	137,500	30,000	1,000	50,000	80,000
Annual Firm-Wide Plan	30,000	.....	.....	30,000	37,500	.....	.....	37,500	35,000	.....	.....	35,000
Ms. Ledger's LTIP	40,000	2,000	100,000	140,000	50,000	2,500	125,000	175,000	40,000	2,000	100,000	140,000

[232] See section ____.8(c) of the proposed rule.

[233] See section ____.8(d) of the proposed rule.

[234] That is, if Ms. Ledger meets all of the performance measure targets set out under that plan, she will be awarded both $60,000 in cash and 1,000 shares of ABC stock.

[235] *See* section ____.7(b) of the proposed rule.

[236] *See* section ____.4(d)(2) of the proposed rule.

Incentive-based compensation	Target award				Maximum award				Actual award			
	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash[1] ($)	Equity[2] (#)	Value of equity ($)	Total value ($)
Total Incentive-Based Compensation	130,000	3,000	150,000	280,000	162,500	3,750	87,500	350,000	105,000	3,000	150,000	255,000

[1] The amount of actual cash award ABC chose to award.
[2] The amount of actual equity award ABC chose to award.

To calculate the minimum required deferred amounts, ABC would have to aggregate the amounts awarded under both the Annual Executive Plan ($80,000) and the Annual Firm-Wide Plan ($35,000), because each has the same performance period, which is less than three years, to determine the total amount of qualifying incentive-based compensation awarded ($115,000).[237] At least 50 percent of that qualifying incentive-based compensation would be required to be deferred for at least three years.[238] Thus, ABC would be required to defer cash and equity with an aggregate value of at least $57,500 from qualifying incentive-based compensation. ABC would have the flexibility to defer the amounts awarded in cash or in equity, as long as the total deferred incentive-based compensation was composed of both substantial amounts of deferred cash and substantial amounts of deferred equity.[239] ABC would also have the flexibility to defer amounts awarded from either the Annual Executive Plan or the Annual Firm-Wide Plan.

In this example, ABC chooses to defer $27,500 of cash and 650 shares from Ms. Ledger's award from the Annual Executive Plan, which has a total value of $60,000 at the time of the award, for three years and none of the award under the Annual Firm-Wide Plan.[240]

Incentive-based compensation	Total award				Minimum required deferred			Actual deferred			
	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Total value ($)	Deferral rate (%)	Total value ($)	Cash[2] ($)	Equity[3] (#)	Value of equity ($)	Total value ($)
Annual Executive Plan	30,000	1,000	50,000	80,000	.....	.....	.....	27,500	650	32,500	60,000
Annual Firm-Wide Plan	35,000	.....	.....	35,000	.....	.....	.....	.....	.....	.....	.....
Qualified Incentive-Based Compensation	65,000	1,000	50,000	115,000	115,000	50	57,500	27,500	650	32,500	60,000
Ms. Ledger's LTIP	40,000	2,000	100,000	140,000	140,000	50	70,000	35,000	700	35,000	70,000
Total Incentive-Based Compensation	105,000	3,000	150,000	255,000	255,000	50	127,500	62,500	1,350	67,500	130,000

[1] The aggregate amount from both the Annual Executive Plan and Annual Firm-Wide Plan.
[2] The amount of actual cash award ABC chose to defer.
[3] The amount of actual equity award ABC chose to defer.

Vesting Schedule

ABC would have the flexibility to determine the schedule by which this deferred incentive-based compensation would be eligible for vesting, as long as the cumulative total of the deferred incentive-based compensation that has been made eligible for vesting by any given year is not greater than the cumulative total that would have been eligible for vesting had the covered institution made equal amounts eligible for vesting each year.[241] With deferred qualifying incentive-based compensation valued at $60,000 and three-year vesting, no more than $20,000 would be allowed to be eligible to vest on December 31, 2025, and no more than $40,000 would be eligible to vest on or before December 31, 2026. At least $20,000 would need to be eligible to vest on December 31, 2027, to be consistent with the proposed rule. In this example, ABC decides to make none of the deferred award from the Annual Executive Plan eligible for vesting on December 31, 2025; to make $13,750 and 325 shares (total value of cash and equity $30,000) eligible for vesting on December 31, 2026; and to make $13,750 and 325 shares (total value of cash and equity $30,000) eligible for vesting on December 31, 2027.

Ms. Ledger's LTIP has a performance period of three years, so Ms. Ledger's LTIP would meet the definition of a "long-term incentive-plan" under the proposed rule.[242] At least 50 percent of Ms. Ledger's LTIP amount ($140,000) would be required to be deferred for at least one year.[243] Thus, ABC would be required to defer cash and equity with an aggregate value of at least $70,000 from Ms. Ledger's LTIP, which would be eligible for vesting on December 31, 2025. ABC would have flexibility to defer the amounts awarded in cash or in equity, as long as the total deferred incentive-based compensation were composed of both substantial amounts of deferred cash and substantial amounts of deferred equity.[244] If ABC chooses to defer amounts awarded from Ms. Ledger's LTIP for longer than one year, ABC would have flexibility to determine the schedule on which it would be eligible for vesting, as long as the cumulative total of the deferred incentive-based compensation that has been made eligible for vesting by any given year is not greater than the cumulative total that would have been eligible for vesting had the covered institution made equal amounts eligible for vesting in one year.[245]

In this example, ABC chooses to defer $35,000 of cash and 700 shares of the award from Ms. Ledger's LTIP, which has a total value of $70,000 at the time of the award, for one year.[246] The non-deferred amount ($35,000 and 700 shares) could vest at the time of the award on January 31, 2025.

In summary, Ms. Ledger would receive $42,500 and 1,650 shares (a total value of $125,000) immediately after December 31, 2024.[247] A total of $35,000 and 700 shares (total value $70,000) would be eligible to vest on

[237] *See* section ____.7(a)(1) of the proposed rule.

[238] *See* sections ____.7(a)(1)(i)(C) and ____.7(a)(1)(ii)(B) of the proposed rule.

[239] *See* section ____.7(a)(4)(i) of the proposed rule.

[240] Ms. Ledger's entire award under the Annual Firm-Wide Plan, $35,000, and remaining award under the Annual Executive Plan, $2,500 and 350 shares, could vest immediately.

[241] *See* section ____.7(a)(1)(iii) of the proposed rule.

[242] *See* the definition of "long-term incentive plan" in section ____.2 of the proposed rule.

[243] *See* sections ____.7(a)(2)(i)(C) and ____.7(a)(2)(ii)(B) of the proposed rule.

[244] *See* section ____.7(a)(4)(i) of the proposed rule.

[245] *See* section ____.7(a)(2)(iii) of the proposed rule.

[246] Ms. Ledger's remaining award under Ms. Ledger's LTIP would vest immediately.

[247] This amount would represent $2,500 and 350 shares awarded under the Annual Executive Plan, $35,000 awarded under the Annual Firm-Wide Plan and $5,000 and 1,300 shares awarded under Ms. Ledger's LTIP.

December 31, 2025. A total of $13,750 and 325 shares (total value $30,000) would be eligible to vest on December 31, 2026. Finally, a total of $13,750 and 325 shares (total value $30,000) would again be eligible to vest on December 31, 2027.

Incentive-based compensation	Immediate amounts payable				Total amounts deferred			
	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)
Annual Executive Plan	$2,500	350	$17,500	$20,000	$27,500	650	$32,500	$60,000
Annual Firm-Wide Plan	35,000	.....	.....	35,000	.....	.....	.....	.....
Ms. Ledger's LTIP	5,000	1,300	65,000	70,000	35,000	700	35,000	70,000
Total Incentive-Based Compensation	42,500	1,650	82,500	125,000	62,500	1,350	67,500	130,000

VESTING SCHEDULE

Incentive-based compensation	12/31/2025				12/31/2026				12/31/2027			
	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)	Cash ($)	Equity (#)	Value of equity ($)	Total value ($)
Annual Executive Plan	.....	.....	.....	.....	$13,750	325	$16,250	$30,000	$13,750	325	$16,250	$30,000
Ms. Ledger's LTIP	$35,000	700	$35,000	$70,000	.....	.....	.....	.....	.....	.....	.....	.....
Amount Eligible for Vesting	.....	.....	.....	70,000	.....	.....	.....	30,000	.....	.....	.....	30,000
Remaining Unvested Amount	.....	.....	.....	60,000	.....	.....	.....	30,000	.....	.....	.....	0

Use of Options in Deferred Incentive-Based Compensation

If, under the total award amount outlined above, ABC chooses to award Ms. Ledger incentive-based compensation partially in the form of options, and chooses to defer the vesting of those options, no more than $38,250 worth of those options (the equivalent of 15 percent of the aggregate incentive-based compensation awarded to Ms. Ledger) would be eligible to be treated as deferred incentive-based compensation.[248] As an example, ABC may award Ms. Ledger options that have a value at the end of the performance period of $10 and deferred vesting. ABC may choose to award Ms. Ledger incentive-based compensation with a total value of $255,000 in the following forms: $30,000 in cash, 640 shares of equity (valued at $32,000), and 1,800 options (valued at $18,000) under the Annual Executive Plan; $35,000 cash under the Annual Firm-Wide Plan; and $40,000 cash, 1,600 shares of equity (valued at $80,000), and 2,000 options (valued at $20,000) under Ms. Ledger's LTIP. Of that award, ABC may defer: $27,500 in cash, 290 shares (valued at $14,500), and 1,800 options (valued at $18,000) under the Annual Executive Plan (total value of deferred $60,000); none of the award from the Annual Firm-Wide Plan; and $35,000 in cash, 300 shares (valued at $15,000) and 2,000 options (valued at $20,000) under Ms. Ledger's LTIP (total value of deferred $70,000). The total value of options being counted as deferred incentive-based compensation would be $38,000, which would be 14.9 percent of the total incentive-based compensation awarded ($255,000). Assuming the vesting schedule is consistent with the proposed rule, Ms. Ledger's incentive-based compensation arrangement would be consistent with the proposed rule, because: (1) The value of Ms. Ledger's deferred incentive-based compensation under the Annual Executive Plan (which comprises all of Ms. Ledger's deferred qualifying incentive-based compensation) is more than 50 percent of the value of Ms. Ledger's total qualifying incentive-based compensation award ($115,000) and (2) the value of Ms. Ledger's deferred incentive-based compensation under Ms. Ledger's LTIP is 50 percent the value of Ms. Ledger's incentive-based compensation awarded under a long-term incentive plan ($140,000).

ALTERNATIVE SCENARIO 1: DEFERRED OPTIONS CONSISTENT WITH THE PROPOSED RULE

Incentive-based compensation	Total award amounts					
	Cash ($)	Equity (#)	Value of equity ($)	Options (#)	Value of options ($)	Total value ($)
Annual Executive Plan	$30,000	640	$32,000	1,800	$18,000	$80,000
Annual Firm-Wide Plan	35,000	.....	.....	.....	.....	35,000
Ms. Ledger's LTIP	40,000	1,600	80,000	2,000	20,000	140,000
Total	105,000	2,240	112,000	3,800	38,000	255,000
	Amounts immediately payable					
Annual Executive Plan	$2,500	350	$17,500	.....	.....	20,000
Annual Firm-Wide Plan	35,000	.....	.....	.....	.....	35,000
Ms. Ledger's LTIP	5,000	1,300	65,000	.....	.....	70,000

[248] *See* section ____.7(a)(4)(ii).

ALTERNATIVE SCENARIO 1: DEFERRED OPTIONS CONSISTENT WITH THE PROPOSED RULE—Continued

Incentive-based compensation	Total award amounts					
	Cash ($)	Equity (#)	Value of equity ($)	Options (#)	Value of options ($)	Total value ($)
Total	42,500	1,650	82,500	.....	.....	125,000
	Total deferred amounts					
Annual Executive Plan	$27,500	290	$14,500	1,800	$18,000	$60,000
Annual Firm-Wide Plan	.....	.....	.....	.....	.....	.....
Ms. Ledger's LTIP	35,000	300	15,000	2,000	20,000	70,000
Total	62,500	590	29,500	3,800	38,000	130,000

Aggregate Incentive-Based Compensation Awarded	$255,000
Option Value at 15% Threshold Maximum	38,250
Minimum Qualifying Incentive-Based Compensation—Deferral at 50%	57,500
Minimum Incentive-Based Compensation Required under a Long-Term Incentive Plan—Deferral at 50%	70,000

In contrast, if ABC chooses to award Ms. Ledger more options than in the example above, Ms. Ledger's incentive-based compensation arrangement may no longer be consistent with the proposed rule. As a second alternative scenario, ABC may choose to award Ms. Ledger incentive-based compensation with a total value of $255,000 in the following forms: $30,000 In cash, 500 shares of equity (valued at $25,000), and 2,500 options (valued at $25,000) under the Annual Executive Plan; $35,000 cash under the Annual Firm-Wide Plan; and $40,000 cash, 1,600 shares of equity (valued at $80,000), and 2,000 options (valued at $20,000) under Ms. Ledger's LTIP. Of that award, if ABC defers the following amounts, the arrangement would not be consistent with the proposed rule: $27,500 in cash, 150 shares (valued at $7,500), and 2,500 options (valued at $25,000) under the Annual Executive Plan (total value of deferred $60,000); none of the award from the Annual Firm-Wide Plan; and $35,000 in cash, 300 shares (valued at $15,000) and 2,000 options (valued at $20,000) under Ms. Ledger's LTIP (total value of deferred $70,000). The total value of options would be $45,000, which would be 17.6 percent of the total incentive-based compensation awarded ($255,000). Thus, 675 of those options, or $6,750 worth, would not qualify to meet the minimum deferral requirements of the proposed rule. Combining qualifying incentive-based compensation and incentive-based compensation awarded under a long-term incentive plan, Ms. Ledger's total minimum required deferral amount would be $127,500, and yet incentive-based compensation worth only $123,250 would be eligible to meet the minimum deferral requirements. ABC could alter the proportions of incentive-based compensation awarded and deferred in order to comply with the proposed rule.

ALTERNATIVE SCENARIO 2: DEFERRED OPTIONS INCONSISTENT WITH THE PROPOSED RULE

Incentive-based compensation	Total award amounts					
	Cash ($)	Equity (#)	Value of equity ($)	Options (#)	Value of options ($)	Total value ($)
Annual Executive Plan	$30,000	500	$25,000	2,500	$25,000	$80,000
Annual Firm-Wide Plan	35,000	.....	.....	.....	.....	35,000
Ms. Ledger's LTIP	40,000	1,600	80,000	2,000	20,000	140,000
Total	105,000	2,100	105,000	4,500	45,000	255,000
	Amounts immediately payable					
Annual Executive Plan	$2,500	350	$17,500	.....	.....	$20,000
Annual Firm-Wide Plan	35,000	.....	.....	.....	.....	35,000
Ms. Ledger's LTIP	5,000	1,300	65,000	.....	.....	70,000
Total	42,500	1,650	82,500	.....	.....	125,000
	Total deferred amounts					
Annual Executive Plan	$27,500	150	$7,500	2,500	$25,000	$60,000
Annual Firm-Wide Plan	.....	.....	.....	.....	.....	.....
Ms. Ledger's LTIP	35,000	300	15,000	2,000	20,000	70,000
Total	62,500	450	22,500	4,500	45,000	130,000

Aggregate Incentive-Based Compensation Awarded	$255,000
Option Value at 15% Threshold Maximum	38,250
Non-Qualifying Options	6,750 or 675 options
Incentive-Based Compensation Eligible to Meet the Minimum Deferral Requirements	123,250

Other Requirements Specific to Ms. Ledger's Incentive-Based Compensation Arrangement

Under the proposed rule, ABC would not be allowed to accelerate the vesting of Ms. Ledger's deferred incentive-based compensation, except in the case of Ms. Ledger's death or disability, as determined by ABC pursuant to sections ____.7(a)(1)(iii)(B) and ____.7(a)(2)(iii)(B).

Before vesting, ABC may determine to reduce the amount of deferred incentive-based compensation that Ms. Ledger receives pursuant to a forfeiture and downward adjustment review.[249] If Ms. Ledger, or an employee Ms. Ledger managed, had been responsible for an event triggering the proposed rule's requirements for forfeiture and downward adjustment review, ABC would be expected to consider all of the unvested deferred amounts from the Annual Executive Plan and Ms. Ledger's LTIP for forfeiture before any incentive-based compensation vested even if the event occurred outside of the relevant performance period for the awards discussed in the example (*i.e.*, January 1, 2022 to December 31, 2024).[250] ABC may also rely on other performance adjustments during the deferral period to appropriately balance Ms. Ledger's incentive-based compensation arrangement. In this case ABC would take into account information about Ms. Ledger's and ABC's performance that becomes better known during the deferral period to potentially reduce the amount of deferred incentive-based compensation that vests. ABC would not be allowed to increase the amount of deferred incentive-based compensation that vests. In the case of the deferred equity awarded to Ms. Ledger, the number of shares or options awarded to Ms. Ledger and eligible for vesting on each anniversary of the end of the performance period is the maximum number of shares or options that may vest on that date. An increase in the total value of those shares or options would not be considered an increase in the amount of deferred incentive-based compensation for the purposes of the proposed rule.[251]

ABC would be required to include clawback provisions in Ms. Ledger's incentive-based compensation arrangement that, at a minimum, allowed for clawback for seven years following the date on which Ms. Ledger's incentive-based compensation vested.[252] These provisions would permit ABC to recover up to 100 percent of any vested incentive-based compensation if ABC determined that Ms. Ledger engaged in certain misconduct, fraud or intentional misrepresentation of information, as described in section ____.7(c) of the proposed rule. Thus, if in the year 2030, ABC determined that Ms. Ledger engaged in fraud in the year 2024, the entirety of the $42,500 and 1,650 shares of equity that vested immediately after 2024, and as well as any part of her deferred incentive-based compensation ($62,500 and 1,350 shares of equity) that actually had vested by 2030, could be subject to clawback by ABC. Facts and circumstances would determine whether the ABC would actually seek to claw back amounts, as well as the specific amount ABC would seek to recover from Ms. Ledger's already-vested incentive-based compensation.

Finally, in order for Ms. Ledger's incentive-based compensation arrangement to appropriately balance risk and reward, ABC would not be permitted to purchase a hedging instrument or similar instrument on Ms. Ledger's behalf that would offset any decrease in the value of Ms. Ledger's deferred incentive-based compensation.[253]

Risk Management and Controls and Governance

Sections ____.4(c)(2) and ____.4(c)(3) of the proposed rule would require that Ms. Ledger's incentive-based compensation arrangement be compatible with effective risk management and controls and be supported by effective governance.

For Ms. Ledger's arrangement to be compatible with effective risk management and controls, ABC's risk management framework and controls would be required to comply with the specific provisions of section ____.9 of the proposed rule. ABC would have to maintain a risk management framework for its incentive-based compensation program that is independent of any lines of business, includes an independent compliance program, and is commensurate with the size and complexity of ABC's operations.[254] ABC would have to provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor and ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their job functions, independent of the performance of those business areas.[255] In addition, ABC would have to provide for independent monitoring of events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews.[256]

For Ms. Ledger's arrangement to be consistent with the effective governance requirement in the proposed rule, the board of directors of ABC would be required to establish a compensation committee composed solely of directors who are not senior executive officers. The board of directors, or a committee thereof, would be required to approve Ms. Ledger's incentive-based compensation arrangements, including the amounts of all awards and payouts under those arrangements.[257] In this example, the board of directors or a committee thereof (such as the compensation committee) would be required to approve the total award of $105,000 and 3,000 shares in 2024. Each time deferred amounts are scheduled to vest (in this example, in December 31, 2025, December 31, 2026, and December 31, 2027), the board of directors or a committee thereof would also be required to approve the amounts that vest.[258] Additionally, the compensation committee would be required to receive input from the risk and audit committees of the ABC's board of directors on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements.[259] Finally, the compensation committee would be required to obtain at least annually two written assessments, one prepared by ABC's management with input from the risk and audit committees of the board of directors and a separate assessment written from ABC's risk management or internal audit function developed independently of ABC's senior management. Both assessments would focus on the effectiveness of ABC's incentive-based compensation program and related compliance and control processes in providing appropriate risk-taking incentives.[260]

Recordkeeping

In order to comply with the recordkeeping requirements in the proposed rule, ABC would be required to document Ms. Ledger's incentive-based compensation arrangement.[261] ABC would be required to maintain copies of the Annual Executive Plan, the Annual Firm-Wide Plan, and Ms. Ledger's LTIP, along with all plans that are part of ABC's incentive-based compensation program. ABC also would be required to include Ms. Ledger on the list of senior executive officers and significant risk-takers, including the legal entity for which she works, her job function, her line of business, and her position in the organizational hierarchy.[262] Finally, ABC would be required to document Ms. Ledger's entire incentive-based compensation arrangement, including information on percentage deferred and form of payment and any forfeiture and downward adjustment or clawback reviews and decisions that pertain to her.[263]

Mr. Ticker: Forfeiture and Downward Adjustment Review

Under section ____.7(b) of the proposed rule, ABC would be required to put certain portions of a senior executive officer's or significant risk-taker's incentive-based compensation at risk of forfeiture and downward adjustment upon certain triggering events.[264] In this example, Mr. Ticker is a significant risk-taker who is the senior manager of a trader and a trading desk that engaged in inappropriate risk-taking in calendar year 2021, which was discovered on March 1, 2024.[265] The activity of the trader, and several other members of the same trading desk, resulted in an enforcement proceeding against ABC and the imposition of a significant fine.

Mr. Ticker is provided incentive-based compensation under two separate incentive-based compensation plans. The first plan, the "Annual Firm-Wide Plan," is applicable to all employees at ABC, and is based on a one-year performance period that coincides with the calendar year. The second plan, "Mr. Ticker's LTIP," is applicable to all traders at Mr. Ticker's level, and requires assessment of performance over a three-year performance period that begins on January 1, 2022 (year 1) and ends on December 31, 2024 (year 3). These two plans together comprise Mr. Ticker's incentive-based compensation arrangement.

The proposed rule would require ABC to conduct a forfeiture and downward adjustment review both because the trades resulted from inappropriate risk-taking and because they failed to comply with a statutory, regulatory, or supervisory standard in a manner that resulted in an enforcement or legal action against ABC.[266] In addition, the possibility exists that a material risk management and control failure as described in section ____.7(b)(2)(iii) of the proposed rule has occurred, which would widen the group of covered employees whose incentive-based compensation would be considered for possible forfeiture and downward adjustment. Under the proposed rule, covered institutions would be required to consider forfeiture and downward adjustment for a covered person with direct responsibility for the adverse outcome (in this case, the trader, if designated as a significant risk-taker), as well as responsibility due to the covered person's role or position in the covered institution's organizational structure (in this case, Mr. Ticker for his possible lack of oversight of the trader when such activities were conducted).[267]

In this example, ABC determines that as the senior manager of the trader, Mr. Ticker is responsible for inappropriate oversight of the trader and that Mr. Ticker facilitated the inappropriate risk-taking the trader engaged in. Under the proposed rule, ABC would have to consider all of Mr. Ticker's unvested deferred incentive-based compensation, including unvested deferred amounts awarded under Mr. Ticker's LTIP, when determining the appropriate impact on Mr. Ticker's incentive-based compensation.[268] In addition, all of Mr. Ticker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts to be awarded under Mr. Ticker's LTIP, would have to be considered for possible downward adjustment.[269] The amount by which Mr. Ticker's incentive-based compensation would be reduced could be part or all of the relevant tranches which have not yet vested or have not yet been awarded. For example, if Mr. Ticker's lack of oversight were determined to be only a contributing factor that led to the adverse outcome (*e.g.*, Mr. Ticker identified and elevated the breach of related risk limits but made no effort to follow up in order to ensure that such activity immediately ceased), ABC might be comfortable reducing only a portion of the incentive-based compensation to be awarded under Mr. Ticker's LTIP in 2024.

To determine the amount or portion of Mr. Ticker's incentive-based compensation that should be forfeited or adjusted downward under the proposed rule, ABC would be required to consider, at a minimum, the six factors listed in section ____.7(b)(4) of the proposed rule.[270] The cumulative impact of these factors, when appropriately weighed in the final decision-making process, might lead to lesser or greater impact on Mr. Ticker's incentive-based compensation. For instance, if it were found that Mr. Ticker had repeatedly failed to manage traders or others who report to him, ABC might decide that a reduction of 100 percent of Mr. Ticker's incentive-based compensation at risk would be appropriate.[271] On the other hand, if it were determined that Mr. Ticker took immediate and meaningful actions to prevent the adverse outcome from occurring and immediately escalated and addressed the inappropriate behavior, the impact on Mr. Ticker's incentive-based compensation could be less than 100 percent, or nothing.

It is possible that some or all of Mr. Ticker's incentive-based compensation may be forfeited before it vests, which could result in amounts vesting faster than pro rata. In this case, ABC decides to defer $30,000 of Mr. Ticker's incentive-based compensation for three years so that $10,000 is eligible for vesting in 2022, $10,000 is eligible for vesting in 2023, and $10,000 is eligible for vesting in 2024. This schedule would meet the proposed rule's pro rata vesting requirement. No adverse information about Mr. Ticker's performance comes to light in 2022 or 2023 and so $10,000 vests in each of those years. However, Mr. Ticker's

[249] *See* "Mr. Ticker: Forfeiture and downward adjustment review" discussion below for more details about the requirements for a forfeiture and downward adjustment review.

[250] *See* section ____.7(b) of the proposed rule.

[251] *See* section ____.7(a)(3) of the proposed rule.

[252] *See* section ____.7(c) of the proposed rule.

[253] *See* section ____.8(a) of the proposed rule.

[254] *See* section ____.9(a) of the proposed rule.

[255] *See* section ____.9(b) of the proposed rule.

[256] *See* section ____.9(c) of the proposed rule.

[257] *See* section ____.4(e) of the proposed rule.

[258] *See* sections ____.4(e)(2) and ____.4(e)(3) of the proposed rule.

[259] *See* section ____.10(b)(1) of the proposed rule.

[260] *See* sections ____.10(b)(2) and ____.10(b)(3) of the proposed rule.

[261] *See* sections ____.4(f) and ____.5(a) of the proposed rule.

[262] *See* section ____.5(a) of the proposed rule.

[263] *See* section ____.5(a) of the proposed rule.

[264] *See* section ____.7(b) of the proposed rule.

[265] If Mr. Ticker's inappropriate risk-taking during 2021 were instead discovered in another year, ABC could subject all deferred amounts not yet vested in that year to forfeiture.

[266] *See* sections ____.7(b)(2)(ii) and ____.7(b)(2)(iv)(A) of the proposed rule.

[267] *See* section ____.7(b)(3) of the proposed rule.

[268] *See* section ____.7(b)(1)(i) of the proposed rule.

[269] *See* section ____.7(b)(1)(ii) of the proposed rule.

[270] *See* section ____.7(b)(4) of the proposed rule.

[271] *See* sections ____.7(b)(4)(ii) and (iii) of the proposed rule.

inappropriate risk-taking during 2021 is discovered in 2024, causing ABC to forfeit the remaining $10,000. Therefore, the amounts that vest in this case are $10,000 in 2022, $10,000 in 2023, and $0 in 2024. While the vesting is faster than pro rata due to the forfeiture, the incentive-based compensation arrangement would still be consistent with the proposed rule since the original vesting schedule would have been in compliance.

ABC would be required to document the rationale for its decision and to keep timely and accurate records that detail the individuals considered for compensation adjustments, the factors weighed in reaching a final decision and how those factors were considered during the decision-making process.[272]

IV. Request for Comments

The Agencies are interested in receiving comments on all aspects of the proposed rule.

V. Regulatory Analysis

A. Regulatory Flexibility Act

OCC: Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (''RFA''), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks and Federal branches and agencies with assets less than or equal to $550 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its proposed rule.

As discussed in the **SUPPLEMENTARY INFORMATION** section above, section 956 of the Dodd-Frank Act does not apply to institutions with assets of less than $1 billion. As a result, the proposed rule will not, if promulgated, apply to any OCC-supervised small entities. For this reason, the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of OCC-supervised small entities. Therefore, the OCC certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

Board: The Board has considered the potential impact of the proposed rule on small banking organizations in accordance with the RFA (5 U.S.C. 603(b)). As discussed in the **SUPPLEMENTARY INFORMATION** above, section 956 of the Dodd-Frank Act (codified at 12 U.S.C. 5641) requires that the Agencies prohibit any incentive-based payment arrangement, or any feature of any such arrangement, at a covered financial institution that the Agencies determine encourages inappropriate risks by a financial institution by providing excessive compensation or that could lead to material financial loss. In addition, under the Dodd-Frank Act a covered financial institution also must disclose to its appropriate Federal regulator the structure of its incentive-based compensation arrangements. The Board and the other Agencies have issued the proposed rule in response to these requirements of the Dodd-Frank Act.

The proposed rule would apply to ''covered institutions'' as defined in the proposed rule. Covered institutions as so defined include specifically listed types of institutions, as well as other institutions added by the Agencies acting jointly by rule. In every case, however, covered institutions must have at least $1 billion in total consolidated assets pursuant to section 956(f). Thus the proposed rule is not expected to apply to any small banking organizations (defined as banking organizations with $550 million or less in total assets). See 13 CFR 121.201.

The proposed rule would implement section 956(a) of the Dodd-Frank act by requiring a covered institution to create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with the proposed rule. A covered institution must disclose the records to the Board upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

Covered institutions with at least $50 billion in consolidated assets, and their subsidiaries with at least $1 billion in total consolidated assets, would be subject to additional, more specific requirements, including that such covered institutions create annually and maintain for a period of at least seven years records that document: (1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to the covered institution's incentive-based compensation arrangements and policies. These larger covered institutions must provide these records in such form and with such frequency as requested by the Board, and they must be maintained in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures.

As described above, the volume and detail of information required to be created and maintained by a covered institution is tiered; covered institutions with less than $50 billion in total consolidated assets are subject to less rigorous and detailed informational requirements than larger covered institutions. As such, the Board expects that the volume and detail of information created and maintained by a covered institution with greater than $50 billion in consolidated assets, that may use incentive-based arrangements to a significant degree, would be substantially greater than that created and maintained by a smaller institution.

The proposed rule would implement section 956(b) of the Dodd-Frank Act by prohibiting a covered institution from having incentive-based compensation arrangements that may encourage inappropriate risks (i) by providing excessive compensation or (ii) that could lead to material financial loss. The proposed rule would establish standards for determining whether an incentive-based compensation arrangement violates these prohibitions. These standards would include deferral, forfeiture, downward adjustment, clawback, and other requirements for certain covered persons at covered institutions with total consolidated assets of more than $50 billion, and their subsidiaries with at least $1 billion in assets, as well as specific prohibitions on incentive-based compensation arrangements at these institutions. Consistent with section 956(c), the standards adopted under section 956 are comparable to the compensation-related safety and soundness standards applicable to insured depository institutions under section 39 of the FDIA. The proposed rule also would supplement existing guidance adopted by the Board and the other Federal Banking Agencies regarding incentive-based compensation (*i.e.*, the 2010 Federal Banking Agency Guidance, as defined in the **SUPPLEMENTARY INFORMATION** above).

The proposed rule also would require all covered institutions to have incentive-based compensation arrangements that are compatible with effective risk management and controls and supported by effective governance. In addition, the board of directors, or a committee thereof, of a covered institution to conduct oversight of the covered institution's incentive-based compensation program and to approve incentive-based compensation arrangements and material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers. For covered institutions with greater than $50 billion in total consolidated assets, and their subsidiaries with at least $1 billion in total consolidated assets, the proposed rule includes additional specific requirements for risk management and controls, governance and policies and procedures. Thus, like the deferral, forfeiture, downward adjustment, clawback and other requirements referred to above, risk management, governance, and policies and procedures requirements are tiered based on the size of the covered institution, with smaller institutions only subject to general risk management, controls, and governance requirements and larger institutions subject to more detailed requirements, including policies and procedures requirements. Therefore, the requirements of the proposed rule in these areas would be expected to be less extensive for covered institutions with less than $50 billion in total consolidated assets than for larger covered institutions.

As noted above, because the proposed rule applies to institutions that have at least $1 billion in total consolidated assets, if adopted in final form it is not expected to apply to any small banking organizations for purposes of the RFA. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised by the Board. The Board specifically seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small institutions and whether there are ways such potential burdens or consequences could be addressed in a manner consistent with section 956 of the Dodd-Frank Act.

FDIC: In accordance with the RFA, 5 U.S.C. 601–612 (''RFA''), an agency must provide an initial regulatory flexibility analysis with a proposed rule or to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banking entities with total assets of $550 million or less).

As described in the Scope and Initial Applicability section of the **SUPPLEMENTARY INFORMATION** above, the proposed rule would establish general requirements applicable to the incentive-based compensation arrangements of all institutions defined as covered institutions under the proposed rule (*i.e.*, covered institutions with average total consolidated assets of $1 billion or more that offers incentive-based compensation to covered persons). As of December 31, 2015, a total of 353 FDIC-supervised institutions had total assets of $1 billion or more and would be subject to the proposed rule.

As of December 31, 2015, there were 3,947 FDIC-supervised depository institutions. Of those depository institutions, 3,262 had total assets of $550 million or less. All FDIC-supervised depository institutions that fall under the $550 million asset threshold, by definition, would not be subject to the proposed rule, regardless of their incentive-based compensation practices.

Therefore, the FDIC certifies that the notice of proposed rulemaking would not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

FHFA: FHFA believes that the proposed rule will not have a significant economic impact on a substantial number of small entities, since none of FHFA's regulated entities come within the meaning of small entities as defined in the RFA (*see* 5 U.S.C. 601(6)), and the proposed rule will not substantially affect any business that its regulated entities might conduct with such small entities.

NCUA: The RFA requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[273] For purposes of this analysis, NCUA considers small credit unions to be those having under $100 million in assets.[274] Section 956 of the Dodd Frank Act and the NCUA's proposed rule apply only to credit unions with $1 billion or more in assets. Accordingly, NCUA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities since the credit unions subject to NCUA's proposed rule are not small entities for RFA purposes.

SEC: Pursuant to 5 U.S.C. 605(b), the SEC hereby certifies that the proposed rules would not, if adopted, have a significant economic impact on a substantial number of small entities. The SEC notes that the proposed rules would not apply to broker-dealers or investment advisers with less than $1 billion in total consolidated assets. Therefore, the SEC believes that all broker-dealers and investment advisers that are likely to be covered institutions under the proposed rules would not be small entities.

The SEC encourages written comments regarding this certification. The SEC solicits comment as to whether the proposed rules could have an effect on small entities that has not been considered. The SEC requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

B. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.[275] In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this joint notice of proposed rulemaking have been submitted by the OCC, FDIC, NCUA, and SEC to OMB for review and approval under section 3506 of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. FHFA has found that, with respect to any regulated entity as defined in section 1303(20) of the Safety and Soundness Act (12 U.S.C. 4502(20)), the proposed rule does not contain any collection of information that requires the approval of the OMB under the PRA. The recordkeeping requirements are found in sections ____.4(f), ____.5, and ____.11.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information

[272] *See* section ____.5(a)(3) of the proposed rule.

[273] 5 U.S.C. 603(a).

[274] 80 FR 57512 (September 24, 2015).

[275] 44 U.S.C. 3501–3521.

collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, by facsimile to (202) 395–5806, or by email to *oira_submission@omb.eop.gov,* Attention, Commission and Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping Requirements Associated with Incentive-Based Compensation Arrangements.

Frequency of Response: Annual.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks, Federal savings associations, and Federal branches or agencies of a foreign bank with average total consolidated assets greater than or equal to $1 billion and their subsidiaries.

Board: State member banks, bank holding companies, savings and loan holding companies, Edge and Agreement corporations, state-licensed uninsured branches or agencies of a foreign bank, and foreign banking organization with average total consolidated assets greater than or equal to $1 billion and their subsidiaries.

FDIC: State nonmember banks, state savings associations, and state insured branches of a foreign bank, and certain subsidiaries thereof, with average total consolidated assets greater than or equal to $1 billion.

NCUA: Credit unions with average total consolidated assets greater than or equal to $1 billion.

SEC: Brokers or dealers registered under section 15 of the Securities Exchange Act of 1934 and investment advisers as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940, in each case, with average total consolidated assets greater than or equal to $1 billion.

Abstract: Section 956(e) of the Dodd-Frank Act requires that the Agencies prohibit incentive-based payment arrangements at a covered financial institution that encourage inappropriate risks by a financial institution by providing excessive compensation or that could lead to material financial loss. Under the Dodd-Frank Act, a covered financial institution also must disclose to its appropriate Federal regulator the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides "excessive compensation, fees, or benefits" or "could lead to material financial loss" to the institution. The Dodd-Frank Act does not require a covered financial institution to disclose compensation of individuals as part of this requirement.

Section ____.4(f) would require all covered institutions to create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A covered institution must disclose the records to the Agency upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

Section ____.5 would require a Level 1 or Level 2 covered institution to create annually and maintain for a period of at least seven years records that document: (1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to the covered institution's incentive-based compensation arrangements and policies. A Level 1 or Level 2 covered institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including, those required under § ____.11. A Level 1 or Level 2 covered institution must provide the records described above to the Agency in such form and with such frequency as requested by Agency.

Section ____.11 would require a Level 1 or Level 2 covered institution to develop and implement policies and procedures for its incentive-based compensation program that, at a minimum (1) are consistent with the prohibitions and requirements of this part; (2) specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back; (3) require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions; (4) specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with section ____.7(a)(1)(iii)(B) and section ____.7(a)(2)(iii)(B)); (5) identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized; (6) describe how discretion is expected to be exercised to appropriately balance risk and reward; (7) require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions; (8) describe how incentive-based compensation arrangements will be monitored; (9) specify the substantive and procedural requirements of the independent compliance program consistent with section 9(a)(2); and (10) ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

Collection of Information Is Mandatory

The collection of information will be mandatory for any covered institution subject to the proposed rules.

Confidentiality

The information collected pursuant to the collection of information will be kept confidential, subject to the provisions of applicable law.

Estimated Paperwork Burden

In determining the method for estimating the paperwork burden the Board, OCC and FDIC made the assumption that covered institution subsidiaries of a covered institution subject to the Board's, OCC's or FDIC's proposed rule, respectively, would act in concert with one another to take advantage of efficiencies that may exist. The Board, OCC and FDIC invite comment on whether it is reasonable to assume that covered institutions that are affiliated entities would act jointly or whether they would act independently to implement programs tailored to each entity.

Estimated Average Hours per Response

Recordkeeping Burden

§ ____.4(f)–20 hours (Initial setup 40 hours).

§§ ____.5 and ____.11 (Level 1 and Level 2)–20 hours (Initial setup 40 hours).

OCC

Number of respondents: 229 (Level 1–18, Level 2–17, and Level 3–194).

Total estimated annual burden: 15,840 hours (10,560 hours for initial setup and 5,280 hours for ongoing compliance).

Board

Number of respondents: 829 (Level 1–15, Level 2–51, and Level 3–763).

Total estimated annual burden: 53,700 hours (35,800 hours for initial setup and 17,900 hours for ongoing compliance).

FDIC

Number of respondents: 353 (Level 1–0, Level 2–13, and Level 3–340).

Total estimated annual burden: 21,960 hours (14,640 hours for initial setup and 7,320 hours for ongoing compliance).

NCUA

Number of respondents: 258 (Level 1–0, Level 2–1, and Level 3–257).

Total estimated annual burden: 15,540 hours (10,360 hours for initial setup and 5,180 hours for ongoing compliance).

SEC

Number of respondents: 806 (Level 1–58, Level 2–36, and Level 3–712).

Total estimated annual burden: 54,000 hours (36,000 hours for initial setup and 18,000 hours for ongoing compliance)

Amendments to Exchange Act Rule 17a–4 and Investment Advisers Act Rule 204–2: The proposed amendments to Exchange Act Rule 17a–4 and Investment Advisers Act Rule 204–2 contain "collection of information requirements" within the meaning of the PRA. The SEC has submitted the collections of information to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has assigned control number 3235–0279 to Exchange Act Rule 17a–4 and control number 3235–0278 to Investment Advisers Act Rule 204–2. The titles of these collections of information are "Rule 17a–4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers" and "Rule 204–2 under the Investment Advisers Act of 1940." The collections of information required by the proposed amendments to Exchange Act Rule 17a–4 and Investment Advisers Act Rule 204–2 will be necessary for any broker-dealer or investment adviser (registered or required to be registered under section 203 of the Investment Advisers Act (15 U.S.C. 80b–3)) ("covered investment advisers"), as applicable, that is a covered institution subject to the proposed rules.

A. Summary of Collection of Information

The SEC is proposing amendments to Exchange Act Rule 17a–4(e) (17 CFR 240.17a–4(e)) and Investment Advisers Act Rule 204–2 (17 CFR 275.204–2) to require that broker-dealers and covered investment advisers that are covered institutions maintain the records required by § ____.4(f), and for broker-dealers or covered investment advisers that are Level 1 or Level 2 covered institutions, §§ ____.5 and ____.11, in accordance with the recordkeeping requirements of Exchange Act Rule 17a–4 or Investment Advisers Act Rule 204–2, as applicable.

B. Proposed Use of Information

The collections of information are necessary for, and will be used by, the SEC to determine compliance with the proposed rules and section 956 of the Dodd-Frank Act. Exchange Act Rule 17a–4 requires a broker-dealer to preserve records if the broker-dealer makes or receives the type of record and establishes the general formatting and storage requirements for records that broker-dealers are required to keep. Investment Advisers Act Rule 204–2 establishes general recordkeeping requirements for covered investment advisers. For the sake of consistency with other broker-dealer or covered investment adviser records, the SEC believes that broker-dealers and covered investment advisers that are covered institutions should also keep the records required by § ____.4(f), and for broker-dealers or covered investment advisers that are Level 1 or Level 2 covered institutions, §§ ____.5 and ____.11, in accordance with these requirements.

C. Respondents

The collections of information will apply to any broker-dealer or covered investment adviser that is a covered institution under the proposed rules. The SEC estimates that 131 broker-dealers and approximately 669 investment advisers will be covered institutions under the proposed rules. The SEC further estimates that of those 131 broker-dealers, 49 will be Level 1 or Level 2 covered institutions, and 82 will be Level 3 covered institutions and that of those 669 investment advisers, approximately 18 will be Level 1 covered institutions, approximately 21 will be Level 2 covered institutions, and approximately 630 will be Level 3 covered institutions.[276]

D. Total Annual Reporting and Recordkeeping Burden

The collection of information would add three types of records to be maintained and preserved by broker-dealers and covered investment advisers: The records required by § ____.4(f), and for broker-dealers or covered investment advisers that are Level 1 or Level 2 covered institutions, the records required by § ____.5 and the policies and procedures required by § ____.11.

1. Exchange Act Rule 17a–4

In recent proposed amendments to Exchange Act Rule 17a–4, the SEC estimated that proposed amendments adding three types of records to be preserved by broker-dealers pursuant to Exchange Act Rule 17a–4(b) would impose an initial burden of 39 hours per broker-dealer and an ongoing annual burden of 18 hours and $360 per broker-dealer.[277] The SEC believes that those

[276] For a discussion of how the SEC arrived at these estimates, see the SEC Economic Analysis at Section V.I.

[277] Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Release No. 34–71958 (Apr. 17, 2014), 79 FR 25194, 25267 (May 2, 2014). The burden hours estimated by the SEC for amending Exchange Act Rule 17a–4(b) include burdens attributable to ensuring adequate physical space and computer hardware and software storage for the records and promptly producing them when requested. These burdens may include, as necessary, acquiring

Continued

estimates provide a reasonable estimate for the burden imposed by the collection of information because the collection of information would add three types of records to be preserved by broker-dealers pursuant to Exchange Act Rule 17a–4(e). The records required to be preserved under Exchange Act Rule 17a–4(e) are subject to the similar formatting and storage requirements as the records required to be preserved under Exchange Act Rule 17a–4(b). For example, paragraph (f) of Exchange Act Rule 17a–4 provides that the records a broker-dealer is required to maintain and preserve under Exchange Act Rule 17a–4, including those under paragraph (b) and (e), may be immediately produced or reproduced on micrographic media or by means of electronic storage media. Similarly, paragraph (j) of Exchange Act Rule 17a–4 requires a broker-dealer to furnish promptly to a representative of the SEC legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under Exchange Act Rule 17a–4, including those under paragraph (b) and (e).

The SEC notes, however, that paragraph (b) of Exchange Act Rule 17a–4 includes a three-year minimum retention period while paragraph (e) does not include any retention period. Thus, to the extent that a portion of the SEC's previously estimated burdens with respect to the amendments to Exchange Act Rule 17a–4(b) represent the burden of complying with the minimum retention period, using those same burden estimates with respect to the collection of information may represent a slight overestimate because the collection of information does not include a minimum retention period. The SEC believes, however, that the previously estimated burdens with respect to the amendments to Exchange Act Rule 17a–4(b) represent a reasonable estimate of the burdens of the collection of information given the other similarities between Exchange Act Rule 17a–4(b) and Exchange Act Rule 17a–4(e) discussed above. Moreover, the burden to create, and the retention period for, the records required by §____.4(f), and for Level 1 and Level 2 broker-dealers, the records required by §____.5 and the policies and procedures required by §____.11, is accounted for in the PRA estimates for the proposed rules. Consequently, the burdens imposed by the collection of information are to ensure adequate physical space and computer hardware and software storage for the records and promptly produce them when requested.[278]

Therefore, the SEC estimates that each of the three types of records required to be preserved pursuant to the collection of information will each impose an initial burden of 13 hours[279] per respondent and an ongoing annual burden of 6 hours[280] and $120[281] per respondent. This is the result of dividing the SEC's previously estimated burdens with respect to the amendments to Exchange Act Rule 17a–4(b) by three to produce a per-record burden estimate.

The SEC estimates that requiring broker-dealers to maintain the records required by §____.4(f) in accordance with Exchange Act Rule 17a–4 will impose an initial burden of 13 hours per respondent and a total ongoing annual burden of 6 hours and $120 per respondent. The total burden for all respondents will be 1,703 hours initially (13 hours × 131 Level 1, Level 2, and Level 3 broker-dealers) and 786 hours annually (6 hours × 131 Level 1, Level 2, and Level 3 broker-dealers) with an annual cost of $15,720 ($120 × 131 Level 1, Level 2, and Level 3 broker-dealers).

The SEC estimates that requiring Level 1 and Level 2 broker-dealers to maintain the records required by §____.5 in accordance with Exchange Act Rule 17a–4 will impose an initial burden of 13 hours per respondent and a total ongoing annual burden of 6 hours and $120 per respondent. The total burden for all Level 1 and Level 2 broker-dealers will be 637 hours initially (13 hours × 49 Level 1 and Level 2 broker-dealers) and 294 hours annually (6 hours × 49 Level 1 and Level 2 broker-dealers) with an annual cost of $5,880 ($120 × 49 Level 1 and Level 2 broker-dealers).

The SEC estimates that requiring Level 1 and Level 2 broker-dealers to maintain the policies and procedures required by §____.11 in accordance with Exchange Act Rule 17a–4 will impose an initial burden of 13 hours per respondent and a total ongoing annual burden of 6 hours and $120 per respondent. The total burden for all Level 1 and Level 2 broker-dealers will be 637 hours initially (13 hours × 49 Level 1 and Level 2 broker-dealers) and 294 hours annually (6 hours × 49 Level 1 and Level 2 broker-dealers) with an annual cost of $5,880 ($120 × 49 Level 1 and Level 2 broker-dealers).

In the Supporting Statement accompanying the most recent extension of Exchange Act Rule 17a–4's collection of information, the SEC estimated that each registered broker-dealer spends 254 hours annually to ensure it is in compliance with Rule 17a–4 and produce records promptly when required, and $5,000 each year on physical space and computer hardware and software to store the requisite documents and information.[282] Thus, for Level 3 broker-dealers, as a result of the collection of information, the total annual burden to ensure compliance with Rule 17a–4 and produce records promptly when required will be 260 hours[283] and $5,120[284] per Level 3 broker-dealer, or 21,320 hours and $419,840 per all 82 Level 3 broker-dealers. For Level 1 and Level 2 broker-dealers, as a result of the collection of information, the total annual burden to ensure compliance with Rule 17a–4 and produce records promptly when required will be 272 hours[285] and $5,360[286] per Level 1 and Level 2 broker-dealer, or 13,328 hours and $262,640 per all 49 Level 1 and Level 2 broker-dealers.

additional physical space, computer hardware, and software storage and establishing and maintaining additional systems for computer software and hardware storage.

[278] As discussed above, paragraph (j) of Exchange Act Rule 17a–4 requires a broker-dealer to furnish promptly to a representative of the SEC legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under Exchange Act Rule 17a–4. Thus, the SEC estimates that this promptness requirement will be part of the incremental burden of the collection of information.

[279] 13 hours is the result of dividing the SEC's previously estimated burdens with respect to the amendments to Exchange Act Rule 17a–4(b) (39 hours) by three to produce a per-record burden estimate. 39 hours/3 types of records = 13 hours per record. These internal hours likely will be performed by a senior database administrator.

[280] 6 hours is the result of dividing the SEC's previously estimated burdens with respect to the amendments to Exchange Act Rule 17a–4(b) (18 hours) by three to produce a per-record burden estimate. 18 hours/3 types of records = 6 hours per record. These internal hours likely will be performed by a compliance clerk.

[281] $120 is the result of dividing the SEC's previously estimated cost with respect to the amendments to Exchange Act Rule 17a–4(b) ($360) by three to produce a per-record cost estimate. $360 hours/3 types of records = $120 per record.

[282] *See* Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4, Collection of Information for Exchange Act Rule 17a–4 (OMB Control No. 3235–0279), Office of Information and Regulatory Affairs, Office of Management and Budget, *available at http://www.reginfo.gov/public/doPRAMain.*

[283] 254 hours + 6 hour annual burden of maintaining the records required by §____.4(f) in accordance with Exchange Act Rule 17a–4.

[284] $5,000 + $ 120 annual cost of maintaining the records required by §____.4(f) in accordance with Exchange Act Rule 17a–4.

[285] 254 hours + 6 hour annual burden of maintaining the records required by §____.4(f) in accordance with Exchange Act Rule 17a–4 + 6 hour annual burden of maintaining the records required by §____.5 in accordance with Exchange Act Rule 17a–4 + 6 hour annual burden of maintaining the policies and procedures required by §____.11 in accordance with Exchange Act Rule 17a–4.

[286] $5,000 + $120 annual cost of maintaining the records required by §____.4(f) in accordance with Exchange Act Rule 17a–4 + $120 annual cost of maintaining the policies and procedures required by §____.11 in accordance with Exchange Act Rule 17a–4.

SUMMARY OF COLLECTION OF INFORMATION BURDENS PER RECORD TYPE

Nature of information collection burden	Initial hourly burden estimate per respondent (all respondents)	Annual hourly burden estimate per respondent (all respondents)	Annual cost estimate per respondent (all respondents)
§____.4(f) Recordkeeping for Level 1, Level 2, and Level 3 Broker-Dealers	13 (1,703)	6 (786)	$120 ($15,720)
§____.5 Recordkeeping for Level 1 and Level 2 Broker-Dealers	13 (637)	6 (294)	120 (5,880)
§____.11 Policies and Procedures for Level 1 and Level 2 Broker-Dealers	13 (637)	6 (294)	120 (5,880)
Totals	39 (2,977)	18 (1,374)	360 (27,480)

SUMMARY OF COLLECTION OF INFORMATION BURDENS PER RESPONDENT TYPE

Nature of information collection burden	Initial hourly burden estimate per respondent (all respondents)	Annual hourly burden estimate per respondent (all respondents)	Annual cost estimate per respondent (all respondents)
Level 1 and Level 2 Broker-Dealers (49 total)	39 (1,911)	18 (882)	$360 ($17,640)
Level 3 Broker-Dealers (82 total)	13 (1,066)	6 (492)	120 (9,840)

SUMMARY OF COLLECTION OF INFORMATION BURDENS PER RESPONDENT TYPE INCLUDING ESTIMATE OF ANNUAL COMPLIANCE WITH RULE 17a–4

Nature of information collection burden	Annual hourly burden estimate per respondent (all respondents)	Annual cost estimate per respondent (all respondents)
Level 1 and Level 2 Broker-Dealers (49 total)	272 (13,328)	$5,360 ($262,640)
Level 3 Broker-Dealers (82 total)	260 (21,320)	5,120 (419,840)

As discussed above, the SEC estimates an increase of $120 for Level 3 broker-dealers and $360 for Level 1 and Level 2 broker-dealers to the $5,000 spent each year by a broker-dealer on physical space and computer hardware and software to store the requisite documents and information as a result of the collection of information. The SEC estimates that respondents will not otherwise seek outside assistance in completing the collection of information or experience any other external costs in connection with the collection of information.

2. Investment Advisers Act Rule 204–2

The currently-approved total annual burden estimate for rule 204–2 is 1,986,152 hours. This burden estimate was based on estimates that 10,946 advisers were subject to the rule, and each of these advisers spends an average of 181.45 hours preparing and preserving records in accordance with the rule. Based on updated data as of January 4, 2016, there are 11,956 registered investment advisers.[287] This increase in the number of registered investment advisers increases the total burden hours of current rule 204–2 from 1,986,152 to 2,169,417, an increase of 183,265 hours.[288]

The proposed amendment to rule 204–2 would require covered investment advisers that are Level 1, Level 2, or Level 3 covered institutions to make and keep true, accurate, and current the records required by, and for the period specified in, §____.4(f) and, for those covered investment advisers that are Level 1 or Level 2 covered institutions, the records required by, and for the periods specified in, §§____.5 and ____.11.

[287] Based on data from the Commission's Investment Adviser Registration Depository ("IARD") as of January 4, 2016.

[288] This estimate is based on the following calculations: (11,956 − 10,946) × 181.45 = 183,265; 183,265 + 1,986,152 = 2,169,417.

Based on SEC staff experience, the SEC estimates that the proposed amendment to rule 204–2 would increase each registered investment adviser's average annual collection burden under rule 204–2 by 2 hours [289] for each of the three types of records required to be preserved pursuant to the collection of information.[290] Therefore, for a covered investment adviser that is a Level 1 covered institution, the increase in its average annual collection burden would be from 181.45 hours to 187.45 hours,[291] and would thus increase the annual aggregate burden for rule 204–2 by 108 hours,[292] from 2,169,417 hours to 2,169,525 hours.[293] As monetized, the estimated burden for each such investment adviser's average annual burden under rule 204–2 would increase by approximately $450,[294] which would increase the estimated monetized aggregate annual burden for rule 204–2 by $8,100, from $162,706,275 to $162,714,375.[295] For a covered investment adviser that is a Level 2 covered institution, the increase in its average annual collection burden would be from 181.45 hours to 185.45 hours,[296] and would thus increase the annual aggregate burden for rule 204–2 by 84 hours,[297] from 2,169,525 hours [298] to 2,169,609 hours.[299] As monetized, the estimated burden for each such investment adviser's average annual burden under rule 204–2 would increase by approximately $300,[300] which would increase the estimated monetized aggregate annual burden for rule 204–2 by $6,300, from $162,714,375 [301] to $162,720,675.[302] For a covered investment adviser that is a Level 3 covered institution, the increase in its average annual collection burden would be from 181.45 hours to 183.45 hours,[303] and would thus increase the annual aggregate burden for rule 204–2 by 1,260 hours,[304] from 2,169,609 hours [305] to 2,170,869 hours.[306] As monetized, the estimated burden for each such investment adviser's average annual burden under rule 204–2 would increase by approximately $150,[307] which would increase the estimated monetized aggregate annual burden for rule 204–2 by $94,500, from $162,720,675 [308] to $162,815,175.[309] The SEC estimates that the proposed amendment does not result in any additional external costs associated with this collection of information for rule 204–2.

E. Collection of Information Is Mandatory

The collections of information will be mandatory for any broker-dealer or covered investment adviser that is a covered institution subject to the proposed rules.

F. Confidentiality

The information collected pursuant to the collections of information will be kept confidential, subject to the provisions of applicable law.

G. Retention Period of Recordkeeping Requirements

The collections of information will not impose any retention period with respect to recordkeeping requirements. The retention period for the records required by § ____.4(f) and the records required by § ____.5 is accounted for in the PRA estimates for the proposed rules.

H. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the SEC solicits comment to:

1. Evaluate whether the proposed collections are necessary for the proper performance of its functions, including whether the information shall have practical utility;

2. Evaluate the accuracy of its estimate of the burden of the proposed collections of information;

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Evaluate whether there are ways to minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–07–16. Requests for materials submitted to OMB by the SEC with regard to this collection of information should be in writing, with reference to File No. S7–07–16, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this proposal, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA and the FDIC have determined that this proposed rulemaking would not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999.[310]

D. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 ("RCDRIA") requires that each Federal Banking Agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The Federal Banking Agencies note that comment on these matters has been solicited in the discussions of section ____.1 and ____.3 in Part II of the Supplementary Information, as well as other sections of the preamble, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the Federal Banking Agencies also invite any other comments that further will inform the Federal Banking Agencies' consideration of RCDRIA.

E. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [311] requires the Federal Banking Agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal Banking Agencies invite comments on how to make these proposed rules easier to understand. For example:

- Have the agencies organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rules clearly stated? If not, how could the proposed rules be more clearly stated?
- Do the proposed rules contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed rules easier to understand? If so, what changes to the format would make the proposed rules easier to understand?
- What else could the Agencies do to make the regulation easier to understand?

F. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the proposed rule under the factors set forth in section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA") (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes Federal mandates that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). For the following reasons, the OCC finds that the proposed rule does not trigger the $100 million UMRA threshold. First, the mandates in the proposed rule do not apply to State, local, and tribal governments. Second, the overall estimate of the maximum one-year cost of the proposed rule to the private sector is approximately $50 million. For this reason, and for the other reasons cited above, the OCC has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this proposed rule is not subject to section 202 of the UMRA.

G. Differences Between the Federal Home Loan Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations relating to the Federal Home Loan Banks, to consider the differences between the Federal Home Loan Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: The Federal Home Loan Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations (12 U.S.C. 4513(f)). The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Federal Home Loan Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate. FHFA requests comments regarding whether differences related to those factors should result in any revisions to the proposed rule.

H. NCUA Executive Order 13132 Determination

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency,[312] voluntarily complies with the Executive Order. As required by statute, the proposed rule, if adopted, will apply to federally insured, state-chartered credit unions. These institutions are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. Because the statute specifies that this rule must apply to state-chartered credit unions, NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

I. SEC Economic Analysis

A. Introduction

As discussed above, section 956 of the Dodd-Frank Act requires the SEC, jointly with other appropriate Federal regulators, to prescribe regulations or

[289] The burden hours estimated by the SEC for amending Investment Advisers Act Rule 204–2 assumes that the covered investment adviser already has systems in place to comply with the general requirements of Investment Advisers Rule 204–2. Accordingly, the 2 burden hours estimated by the SEC for each type of record required to be preserved pursuant to these proposed rules is attributable solely to the burden associated with maintaining such record.

[290] The records required by § ____.4(f), and for covered investment advisers that are Level 1 or Level 2 covered institutions, the records required by § ____.5 and the policies and procedures required by § ____.11.

[291] This estimate is based on the following calculation: 181.45 existing hours + 6 new hours = 187.45 hours.

[292] This estimate is based on the following calculation: 18 (Level 1 covered institution) advisers × 6 hours = 108 hours.

[293] This estimate is based on the following calculation: 2,169,417 hours + 108 hours = 2,169,525 hours.

[294] This estimate is based on the following calculation: 6 hours × $75 (hourly rate for an administrative assistant) = $450. The hourly wage used is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[295] This estimate is based on the following calculations: 2,169,417 hours × $75 = $162,706,275. 2,169,525 hours × $75 = $162,714,375. $162,714,375 − $162,706,275 = $8,100.

[296] This estimate is based on the following calculation: 181.45 existing hours + 4 new hours = 185.45 hours.

[297] This estimate is based on the following calculation: 21 (Level 2 covered institution) advisers x 4 hours = 84 hours.

[298] This estimate includes the increase in the annual aggregate burden for covered investment advisers that are Level 1 covered institutions.

[299] This estimate is based on the following calculation: 2,169,525 hours + 84 hours = 2,169,609 hours.

[300] This estimate is based on the following calculation: 4 hours × $75 (hourly rate for an administrative assistant) = $300. The hourly wage used is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[301] This estimate includes the monetized increase in the annual aggregate burden for covered investment advisers that are Level 1 covered institutions.

[302] This estimate is based on the following calculations: 2,169,525 hours × $75 = $162,714,375. 2,169,609 hours × $75 = $162,720,675. $162,720,675 − $162,714,375 = $6,300.

[303] This estimate is based on the following calculation: 181.45 existing hours + 2 new hours = 183.45 hours.

[304] This estimate is based on the following calculation: 630 (Level 3 covered institution) advisers × 2 hours = 1,260 hours.

[305] This estimate includes the increase in the annual aggregate burden for covered investment advisers that are Level 1 or Level 2 covered institutions.

[306] This estimate is based on the following calculation: 2,169,609 hours + 1,260 hours = 2,170,869 hours.

[307] This estimate is based on the following calculation: 2 hours × $75 (hourly rate for an administrative assistant) = $150. The hourly wage used is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[308] This estimate includes the monetized increase in the annual aggregate burden for covered investment advisers that are Level 1 or Level 2 covered institutions.

[309] This estimate is based on the following calculations: 2,169,609 hours × $75 = $162,720,675. 2,170,869 hours × $75 = $162,815,175. $162,815,175 − $162,706,275 = $94,500.

[310] Public Law 105–277, 112 Stat. 2681 (1998).

[311] Public Law 106–102, section 722, 113 Stat. 1338 1471 (1999).

[312] 44 U.S.C. 3502(5).

guidelines to require covered institutions to disclose information about their incentive-based compensation arrangements sufficient for the Agencies to determine whether their compensation structure provides an executive officer, employee, director or principal shareholder with excessive compensation, fees or benefits or could lead to material financial loss to the firm. Section 956 also requires the Agencies to jointly prescribe regulations or guidelines that prohibit any type of incentive-based compensation arrangements, or any feature of these arrangements, that the Agencies determine encourages inappropriate risks by covered institutions by providing excessive compensation to officers, employees, directors, or principal shareholders ("covered persons") or that could lead to material financial loss to the covered institution. While section 956 requires rulemaking to address a number of types of financial institutions, the rule being proposed by the SEC would apply to broker-dealers registered with the SEC under section 15 of the Securities Exchange Act ("broker-dealers" or "BDs") and investment advisers, as defined in section 202(a)(11) of the Investment Advisers Act of 1940 ("investment advisers" or "IAs").

In connection with its rulemakings, the SEC considers the likely economic effects of the rules. This section provides the SEC's economic analysis of the main likely effects of the proposed rule on broker-dealers and investment advisers that would be covered under the proposed rule. For purposes of this analysis, the SEC addresses the potential economic effects for covered BDs and IAs resulting from the statutory mandate and from the SEC's exercise of discretion together, recognizing that it is often difficult to separate the economic effects arising from these two sources. The SEC also has considered the potential costs and benefits of reasonable alternative means of implementing the mandate. Where practicable, the SEC has attempted to quantify the effects of the proposed rule; however, in certain cases noted below, the SEC is unable to provide a reasonable estimate because the SEC lacks the necessary data.

In particular, because the SEC's regulation of individuals' compensation has historically been centered on disclosures by reporting companies, the SEC lacks information and data regarding the present incentive-based compensation practices of broker-dealers and investment advisers if those entities are not themselves reporting companies under the Exchange Act. In addition, in proposing these rules jointly for public comment, the Agencies have relied in part on the supervisory experience of the Federal Banking Agencies.[313] Accordingly, for the purposes of evaluating the economic impact of the proposed rule, the SEC has considered outside analyses and other studies regarding the effects of incentive-based compensation that are not directly related to broker-dealers or investment advisers. In addition, the SEC is requesting that commenters provide data that will permit the SEC to perform a more direct analysis of the economic impact on broker-dealers and investment advisers that the proposed rules would have if adopted.

The SEC requests comment on all aspects of the economic effects, including the costs and benefits of the proposed rule and possible alternatives to the proposed rule. The SEC appreciates comments that include data or qualitative information that would enable it to quantify the costs and benefits associated with the proposed rule and alternatives to the proposed rule.

B. Broad Economic Considerations

Economic theory suggests that even compensation practices that are optimal from the perspective of one set of stakeholders may not be optimal from the perspective of others. As discussed below, pay packages that are optimal from the point of view of certain shareholders may not be optimal from the point of view of taxpayers and other stakeholders.

In particular, as discussed above, under certain facts and circumstances, even pay packages that are optimal from the point of view of shareholders may induce an excessive amount of risk-taking that could create potentially negative externalities for taxpayers. For example, also as discussed above, some have argued that during financial crises the losses of certain financial institutions have resulted in taxpayer assistance.[314] To the extent that the proposed rule would curtail pay convexity[315] by imposing restrictions of certain amounts, components, and features of incentive-based compensation, the proposed rule may have potential benefits by lowering the likelihood of an outcome that may induce negative externalities. The extent of these potential benefits would depend on specific facts and circumstances at the firm level and individual level, including whether the size, centrality, and business complexity of the firm and the position of the individual materially affect the level of risk, including risks that could lead to negative externalities. While academic literature does not provide clear evidence that broker-dealers and investment advisers have produced negative externalities for taxpayers,[316] the proposed rule may address scenarios where such externalities could nonetheless arise because the incentive-based compensation arrangements at a broker-dealer or investment adviser generate differences in risk preferences between managers[317] and taxpayers.

From an economic standpoint, when the risk preferences of managers (agents) differ from the risk preferences of stakeholders (principals) of a firm, risk-taking may be considered inappropriate from the point of view of a particular stakeholder.[318] While the economic theory mainly focuses on the principal-agent relationship between managers and shareholders, an agency problem may also exist between managers and taxpayers and between managers and debtholders. For example, certain levels of risk-taking (*e.g.*, those associated with investments in R&D-intensive activities) may be optimal[319] for shareholders but considered to be excessive for debtholders. In general, debtholders are likely to require a rate of return on their investment that is proportionate to the riskiness of the firm and to put in place covenants in the contracts governing the debt that restrict those managerial actions that, in their view, may constitute inappropriate risk-taking but that shareholders may find appropriate.[320]

Tying managerial compensation to firm performance aims at aligning the incentives of management with the interests of shareholders.[321] Managers are likely to be motivated by drivers other than their explicit compensation, including for example career advancements, personal pride, and job retention concerns. Beyond that, making their compensation in part depend on firm performance could incentivize managers to exert effort and make decisions that maximize shareholder value. In a principal-agent relationship between shareholders and managers, there may be an incentive misalignment that may give rise to agency problems between the parties: For example, managers may take on projects that benefit their personal wealth but do not necessarily increase the value of the firm. Absent a variable component in the compensation arrangements that encourages risk-taking, risk averse and undiversified managers[322] may take less risk than is optimal from the point of view of shareholders.[323]

With an aim to incentivize managers to take on risk that is optimal for shareholders and to attract and retain managerial talent, managerial compensation arrangements most often include incentive-based compensation, which is the variable component of compensation that serves as an incentive or a reward for performance.[324] Incentive-based compensation arrangements typically include[325] performance-based compensation whose award is conditional on achieving specified performance measures that are evaluated over a certain time period (*i.e.*, short-term and long-term incentive plans), in absolute terms or in relation to a peer group. It encompasses a wide range of forms of compensation instruments. Among these forms, equity-based compensation (*e.g.*, performance share units, restricted stock units, and stock option awards) ties managerial wealth to stock performance to motivate managers to take actions—exert effort and take risks—that are more directly aligned with the interests of shareholders. Equity awards are typically subject to multi-year vesting schedules and vesting conditions restricting managers from unwinding their equity positions during vesting periods. Relatedly, some managers are often prohibited from hedging their equity positions in their firm's stock against any downside in the stock value.

Incentivizing managers through compensation to take on shareholders' preferred amount of risk requires a delicate balancing act, because different combinations of amounts, components and features of incentive-based compensation may make managerial pay more or less sensitive to firm risk than the level that is desired by shareholders to maximize their return. In particular, different combinations may make pay a nonlinear (in particular, convex) function of performance; in other words, a greater increment in payoffs is realized in the case of high performance, compared to when performance is moderate or poor. While there has been ample debate about how certain characteristics of incentive-based compensation may affect pay convexity and induce risk-taking, the economic literature has not conclusively identified a specific amount, component, or feature of incentive-based compensation that uniformly leads to inappropriate risk-taking, due to differential facts and circumstances at both the firm level and individual level.

For example, stock options and risk grants are often seen as a form of incentive-based compensation that, under certain conditions, may lead to incentives for taking inappropriate risk from shareholders' point of view.[326] Compared to cash incentives or restricted stock units, stock options have an asymmetric payoff structure since they provide the option holder with unlimited upside potential and limited downside. In particular, given that a positive outcome from risk-taking is a positive payoff, whereas a negative outcome does not symmetrically penalize the option holder, the design of stock options is likely to encourage managers to undertake risks. The empirical research on the effect of stock options on risk-taking does in general support a positive relation between option-based compensation and risk-taking;[327] however, as a whole, the academic evidence is mixed on whether stock options induce inappropriate risk-

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[313] *See, e.g.*, OCC, Board, FDIC, and Office of Thrift Supervision, "Guidance on Sound Incentive Compensation Policies" ("2010 Federal Banking Agency Guidance"), 75 FR 36395 (June 25, 2010), available at: *http://www.federalreserve.gov/newsevents/press/bcreg/20100621a.htm*. As discussed above, the Federal Banking Agencies have found that any incentive-based compensation arrangement at a covered institution will encourage inappropriate risks if it does not sufficiently expose the risk-takers to the consequences of their risk decisions over time, and that in order to do this, it is necessary that meaningful portions of incentive-based compensation be deferred and placed at risk of reduction or recovery. This economic analysis relies in part on these Agencies' supervisory experience described above.

[314] *See* Gorton, G., 2012. Misunderstanding Financial Crises: Why We Don't See Them Coming, Oxford University Press; French et al., 2010. Excerpts from The Squam Lake Report: Fixing the Financial System. *Journal of Applied Corporate Finance* 22, 8–21.

[315] Pay convexity describes the shape of the payoff curve as a result of compensation arrangements. More convex payoff curves provide higher rewards for taking on risk.

[316] In the academic literature, some studies relate to a broad spectrum of firms in different industries, while other studies related to firms, primarily banks, in the financial services sector. The SEC is not aware of studies that focus on broker-dealers and investment advisers. While certain findings in the financial services sector may apply also to broker-dealers and investment advisers, any generalization is subject to a number of limitations. For example, BDs and IAs differ from other financial services firms with respect to business models, nature of the risks posed by the institutions, and the nature and identity of the persons affected by those risks.

[317] The SEC's economic analysis uses the term "managers" in an economic (rather than organizational) connotation as the persons or entities that are able to make decisions on behalf of, or that impact, another person or entity. Thus, managers in this context would include covered persons such as senior executive officers and significant risk-takers.

[318] The literature in economics and finance typically refers to a principal-agent model to describe the employment relationship between shareholders and managers of a firm. The principal (shareholder) hires an agent (manager) to operate the firm. More generally, the principal-agent model is also used to describe the relationship between managers and stakeholders. For example, *see* Jensen, M., Meckling, W. 1976. Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. *Journal of Financial Economics* 3, 305–360.

[319] The economic literature uses the term of "optimal" ("suboptimal") level of risk-taking in a technical manner to describe the alignment (misalignment) in risk preferences between managers and a particular stakeholder. Here "optimal" means from the point of view of a particular stakeholder (*e.g.*, shareholders). Hereafter, consistently with the economic literature, the SEC's economic analysis uses these terms without any normative connotation or implication.

[320] Both managers and shareholders have an incentive to engage in activities that promise high payoffs if successful even if they have a low probability of success. If such activities turn out well, managers and shareholders capture most of the gains, whereas if they turn out badly debtholders bear most of the costs. In the principal-agent relationship between managers and debtholders, inappropriate risk taking would amount to managers' actions that transfer risks from shareholders to debtholders and that benefit shareholders at the expense of debtholders. *See* Jensen, M., Meckling, W. 1976. Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. *Journal of Financial Economics* 3, 305–360.

[321] *See* Ibid.

[322] The differential degree of diversification between managers' and shareholders' portfolios may lead to a misalignment of managerial incentives from optimal risk-taking from the point of view of shareholders. In general, executives are relatively undiversified compared to the average investor, because a significant fraction of executives' wealth is invested into the companies they operate, through the value of their firm-specific human capital and their portfolio holdings, including their compensation-related claims. The concentration of managerial wealth in their employer company may lead to managerial aversion towards value-enhancing but risky projects since such projects can place undiversified managerial wealth at heightened levels of risk. *See* Hall, B., and Murphy, K. 2002. Stock Options for Undiversified Executives. *Journal of Accounting and Economics* 33, 3–42.

[323] Most managers would operate in a multi-period framework. In this environment, managers would still have incentives to exert effort and make decisions that maximize shareholder value due to career concerns and expectations about future wages.

[324] Incentive-based compensation addresses the fact that shareholders cannot observe how much effort managers exert or should exert. Because shareholders do not know and cannot specify every action managers should take in every scenario, shareholders delegate many of the decisions to managers by compensating them based on the results from those decisions.

[325] *See*, for example, Frydman, C., and R. Saks, 2010. Executive Compensation: A New View from a Long-Term Perspective, 1936–2005. *Review of Financial Studies* 23, 2099–2138.

[326] *See* Frydman and Jenter. CEO Compensation. *Annual Review of Financial Economics* (2010).

[327] *See* Guay, W. 1999. The sensitivity of CEO wealth to equity risk: An analysis of the magnitude and determinants. *Journal of Financial Economics* 53, 43–71. Stock options, as opposed to common stockholdings, increase the sensitivity of CEOs' wealth to equity risk. The study documents a positive relation between the convexity in compensation arrangements and stock return volatility suggesting that such compensation arrangements are related to riskier investing and financing decisions. Stock options are mostly used in companies where underinvestment is value-increasing but risky projects may lead to significant losses in the value of these companies.

taking from the point of view of shareholders.

Some studies show that the relation between option-based compensation and risk-taking incentives is not uniform across different firms, and the incentives to undertake risk may vary depending on certain conditions.[328] For example, options that are deep in-the-money may lead the option holder to moderate risk exposure to protect the value of the option. On the other hand, options that are deep out-of-the-money may provide incentives for excessive risk-taking. Additionally, there is significant variation across companies with regard to the use of options in compensation arrangements. Stock options are a relatively more significant component of compensation arrangements for executives in companies where risk-taking is important for maximizing shareholder value.[329]

Another example of a characteristic in incentive-based compensation arrangements that is commonly considered to potentially provide incentives for actions that carry undesired risks is the disproportionate use of short-term (*e.g.*, measured over a period of one year) performance measures (*i.e.*, accounting, stock price-based, or nonfinancial measures) that may steer managers toward short-termism without adequate regard of the long-term risks potentially posed to long-term firm value.[330] In doing so, managers may reap the rewards of their actions in the short run but may not participate in the potentially negative outcomes that may materialize in the long run. Short-termism may lead to investment distortions in the long run, such as under-[331] or over-investment,[332] that are potentially detrimental to shareholder value. Some academic studies suggest that managers' focus on short-term performance may arise simply out of their reputation and career concerns, and compensation awards tied to short-term performance measures may accentuate the tendency toward short-termism.[333]

Studies document that short-term incentive plans or annual bonuses typically represent a small fraction of executive compensation.[334] Additionally, a recent study provides evidence of a significant increase in the number of firms granting multi-year accounting-based performance incentives to their chief executive officers ("CEOs").[335] Firms with relatively less volatile accounting performance measures and a stronger presence of long-term shareholders are more likely to utilize these compensation arrangements. As a whole, the academic evidence is mixed on whether short-term incentive plans induce inappropriate risk-taking from the point of view of certain shareholders. However, there is evidence that certain equity-based compensation arrangements may provide incentives for earnings management[336] and misreporting[337] that could lead to lower long-term shareholder value. Finally, there is also evidence that compensation contracts with relatively shorter horizons are positively related (in a statistical sense) to proxies for earnings management.[338]

[328] *See* Ross, S. 2004. Compensation, Incentives, and the Duality of Risk Aversion and Riskiness. *Journal of Finance* 59, 207–225; Carpenter, J. 2000. Does Option Compensation Increase Managerial Risk Appetite? *Journal of Finance* 55, 2311–2332. Both studies question the common belief that stock options unequivocally induce holders to undertake more risk. Although the asymmetric payoff structure of options is likely to encourage risk-taking in some cases, there are also circumstances where options may lead to decreased appetite for risk taking by option holders.

[329] *See* Guay (1999).

[330] *See* Bizjak, J., Brickley, J., Coles, J. 1993. Stock-based incentive compensation and investment behavior. *Journal of Accounting and Economics* 16, 349–372. The authors argue that managerial concern about current stock prices could lead management to distort optimal investment decisions in an effort to influence the current stock price. Such short-termism is likely to be exacerbated when there is a significant information asymmetry between management and investors. The study argues that compensation arrangements with longer horizons are a potential solution to such behavior, and finds that firms with higher information asymmetries between management and shareholders actually use compensation arrangements with relatively longer horizons.

[331] *See* Stein, J. 1989. Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior. *Quarterly Journal of Economics* 104, 655–669.

[332] *See* Bebchuk, L., Stole, L. 1993. Do Short-Term Objectives Lead to Under- or Overinvestment in Long-Term Projects? *Journal of Finance* 48, 719–729. The paper develops a model showing that, depending on the nature of the information asymmetry between management and shareholders, either under- or over-investment in long-run projects is likely to occur. When shareholders cannot observe the level of investment in long-term projects, the model predicts that managers would underinvest. When shareholders can observe the level of investment but not the productivity of such investment, then managers have incentives to over-invest.

[333] *See* Narayanan, M.P. 1985. Managerial Incentives for Short-Term Results. *Journal of Finance* 40, 1469–1484; and Stein, J. 1989. Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior. *Quarterly Journal of Economics* 104, 655–669. These studies examine managerial incentives to focus on shorter-term performance at the expense of longer-term value. When managers have information about firm decisions that investors do not have, focusing on short-term performance may be an optimal strategy from managers to enhance their perceived skill and reputation, as well as achieve higher compensation. The studies also argue that even if the market anticipates such short-termism from managers, the optimal strategy for managers would still be to focus on short-term results. Narayanan (1985) also shows that short-termism can be *partially* curbed by offering longer-term contracts to managers.

A survey of Chief Financial Officers indicates that, among other motivations, career concerns and reputation act as leading motivations for the significant focus of executives on delivering short-term performance (*e.g.*, quarterly earnings expectations). The survey also documents that executives are willing to forgo long-term value enhancing activities and projects in order to deliver on short-term performance targets. *See* Graham, J., Harvey, C., and Rajgopal, S. 2005. The Economic Implications of Corporate Financial Reporting. *Journal of Accounting and Economics* 40, 3–73.

[334] *See* Frydman, C., and R. Saks, 2010. Executive Compensation: A New View from a Long-Term Perspective, 1936–2005. *Review of Financial Studies* 23, 2099–2138. The paper documents the evolution of various characteristics of executive compensation arrangements for the 50 largest U.S. companies since 1936. Long-term pay including deferred bonuses in the form of restricted stock and stock options comprised the largest part of executive compensation in recent years. For example, 35% of total executive pay for these companies was in the form of long-term bonuses in the form of restricted stock in 2005.

[335] *See* Li, Z., and L. Wang, 2013. Executive Compensation Incentives Contingent on Long-Term Accounting Performance, Working Paper. The study documents a significant increase in the use of long-term accounting performance plans for CEOs of S&P500 companies. More specifically, the study documents that 43% of S&P500 companies used long-term accounting performance plans in CEO compensation arrangements in 2008, compared to 16% of S&P500 companies in 1996. In general terms, these plans usually rely on a three-year performance measurement period of various accounting measures of performance such as earnings, revenues, cash flows and other metrics to determine payouts to CEOs in the form of mostly equity or cash. The paper does not find evidence that such compensation arrangements are used by CEOs to extract excessive compensation.

[336] *See* Bergstresser, D., Philippon, T. 2006. CEO incentives and earnings management. *Journal of Financial Economics* 80, 511–529. The paper presents evidence that highly incentivized CEOs, as measured by the significance of stock and options in CEOs' compensation arrangements, are more likely to engage in earnings management that misrepresents the true economic performance of a company, with the intent to personally profit from such misrepresentation of performance. Although tying CEOs' wealth to company performance aims at aligning the incentives of CEOs with those of shareholders, the strength of such incentives may lead to unintended consequences such as incentives to misrepresent company performance in efforts to increase the value of their compensation.

[337] *See* Burns, N., Kedia, S. 2006. The impact of performance-based compensation on misreporting. *Journal of Financial Economics* 79, 35–67. The study provides empirical evidence that CEOs whose option portfolios are more sensitive to the stock price of the company are more likely to misreport their performance. The paper does not find any evidence that the sensitivity of other components of performance-based compensation to stock price, such as restricted stock and bonuses, are related to the propensity to misreport performance. The asymmetric payoff structure of stock options provides incentives to CEOs to misreport because of the limited downside risk associated with the detection of misreporting.

[338] *See* Gopalan, R., Milbourn, T., Song, F., and Thakor, A. 2014. Duration of Executive Compensation. *Journal of Finance* 69, 2777–2817. The paper constructs a measure of executive pay duration that reflects the vesting periods of different pay components to investigate its association with short-termism. Pay duration is positively related to growth opportunities, long-term assets, R&D intensity, lower risk and better recent stock performance. Longer CEO pay duration is negatively related with income increasing accruals.

The presence of a number of mitigating factors may explain why evidence is inconclusive on the effects of incentive-based compensation on inappropriate risk-taking. One such factor is corporate governance and, more specifically, board of directors oversight over executive compensation. The board of directors, as an agent of shareholders, may monitor managers and review their performance (*e.g.*, through the compensation committee of the board of directors) in the case of decreases in shareholder value that, among other factors, may be a result of inappropriate risk-taking.[339] Also, corporate boards may attempt to determine compensation arrangements for executives in a way that aligns executives' interests with those of shareholders. The empirical evidence on the effectiveness of board of directors oversight over executive compensation is mixed. One study finds evidence suggesting that certain boards are not effective in setting executive compensation because executives are often rewarded for performance due to luck.[340] Another study provides evidence that CEOs play an important role in the nomination and selection of board of directors members, suggesting that board of directors oversight may be impaired as a result.[341] Other studies find that firms with strong governance are better than firms with weak governance at monitoring the CEO and have better control of size and structure of CEO pay.[342]

Another example of a mitigating factor is the implementation of risk controls over business activities that academic studies have generally found effective at curbing inappropriate risk-taking. One study[343] examines the relation between risk controls at bank holding companies ("BHCs") and outcomes related to risk-taking, such as the fraction of loans that are non-performing, during the financial crisis. In this study, the strength and quality of risk controls are proxied by the existence, independence, experience and centrality of the Chief Risk Officer and the corresponding Risk Committee. The study finds that BHCs with strong risk controls during years preceding the crisis had lower frequencies of underperforming loans and better operating and stock performance during the crisis. In this study, this relation was not significant in the years outside of the financial crisis indicating that strong risk controls, as measured by this study, curtailed extreme risk exposures only during the financial crisis. Another study[344] shows that lenders with relatively powerful risk managers, as measured by the level of the risk manager's compensation relative to the level of named executive officers' compensation, experience lower loan default rates, interpreting this finding as evidence that strong risk management is effective in reducing the origination of low quality loans.

Another mechanism that could play a mitigating role at curtailing the potential effects of incentive-based compensation on inappropriate risk-taking is reputation and career concerns of executives. On one hand, some studies show that managers' concerns about the effects of current performance on their future compensation are important in affecting managerial incentives, even in the absence of formal compensation contracts.[345] For example, executives with greater career concerns typically have an incentive to take less risk than optimal for the company[346] and an executive's pay-for-performance sensitivity is higher as the executive becomes older.[347] This suggests that

[339] While the SEC is not aware of any literature that directly examines inappropriate risk-taking and managerial retention decisions, there is evidence in the academic literature documenting a higher likelihood of managerial turnover following poor performance measured with stock returns or accounting measures of performance (*See* for example, Engel, E., Hayes, R., and Wang, X. 2003. CEO Turnover and Properties of Accounting Information. *Journal of Accounting and Economics* 36, 197–226; and Farell, K., and Whitbee, D. 2003. The Impact of Firm Performance Expectations on CEO Turnover and Replacement Decisions. *Journal of Accounting and Economics* 36, 165–196.).

[340] *See* Bertrand, M., and S. Mullainathan, 2001. Are CEOs rewarded for luck? The ones without principals are. *Quarterly Journal of Economics* 116, 901–932. The paper examines whether the component of firm performance that is outside of managerial control is related to managerial compensation. According to the efficient contracting view of compensation, *i.e.* compensation arrangements are used to mitigate principal-agent problems, executives should not be rewarded (nor penalized) for performance due to luck. The authors propose a 'skimming view' for managerial compensation where CEOs capture the compensation setting process and find evidence that CEOs of oil companies get rewarded when changes in oil prices induce favorable changes in company performance. *See* also Bebchuk, L.A., Fried, J.M., Walker, D.I., 2002. Managerial power and rent extraction in the design of executive compensation. *University of Chicago Law Review* 69, 751–846.

[341] *See* Coles, J., Daniel, N., and Naveen, L. Co-opted Boards. 2014. *Review of Financial Studies* 27, 1751–1796. The study examines whether independent directors that are appointed after the current CEO assumed office are effective monitors of the CEO. The findings show that there is a difference in the monitoring efficiency between independent directors holding their position prior to the current CEO's appointment vs. independent directors that join the board of directors after the current CEO has assumed office (Co-opted board members). The percentage of 'co-opted' board members in a company is negatively related with various measures of board monitoring. For example, these companies tend to pay their CEOs more and have lower turnover-performance sensitivity (*i.e.*, CEOs are less likely to be fired following deteriorating firm performance). The study questions whether independent directors appointed after CEO assumed office are really independent to the CEO.

Relatedly, another study finds that on average directors receive a very high level of votes in elections, in the post-SOX era. The evidence points to the fact that if a director is slated, she is elected. However, the study also finds evidence that lower levels of director votes lead to reductions in 'abnormal' compensation and an increase in the level of CEO turnover. This latter result is particularly strong when these directors serve as chair or members of the compensation committee. *See* Cai, J., Garner, J., and Walking R. 2009. *Journal of Finance* 64, 2389–2421.

[342] *See* Core, J., R.W. Holthausen, and D.F. Larcker. 1999. Corporate Governance, Chief Executive Officer Compensation, and Firm Performance. *Journal of Financial Economics* 51, 371–406. The paper finds that board and ownership structure explain differences in CEO compensation across firms to a significant extent. Weaker governance structures are related to greater agency problems resulting in higher CEO compensation.

See Chhaochharia, V., and Grinstein, Y. 2009. CEO Compensation and Board Structure. *Journal of Finance* 64, 231–261, showing that companies that were least compliant with new regulations issued in 2002 by NYSE and NASDAQ (regarding governance listing standards) decreased compensation to their CEOs to a significant extent. The decrease in CEO compensation is mainly attributable to decreases in bonus and stock-based compensation. The results suggest that requirements for board of directors structure and procedures have a significant effect on the structure and size of CEO compensation. *See* also Fahlenbrach, R. 2009. Shareholder Rights, Boards, and CEO Compensation. *Review of Finance* 13, 81–113, finding evidence of a substitution effect between compensation and other governance mechanisms.

[343] *See* Kilul, A., Yerramilli, V. 2013. Stronger Risk Controls, Lower Risk: Evidence from U.S. Bank Holding Companies. *Journal of Finance* 68, 1757–1803.

[344] *See* Keys, B., Mukherjee, T., Seru, A., Vig, V. 2009. Financial regulation and securitization: Evidence from subprime loans. *Journal of Monetary Economics* 56, 700–720.

[345] *See* Gibbons, Robert, and Kevin J. Murphy. 1992. Optimal incentive contracts in the presence of career concerns: Theory and evidence, *Journal of Political Economy* 100, 468–505. The paper shows that career concerns can have important effects on incentives even in the absence of formal contracts. The importance of career concerns as a motivating mechanism is particularly relevant for younger managers whose ability is not yet established in the labor market. Moreover, the evidence shows that CEOs' pay-for-performance sensitivity is stronger for CEOs closer to retirement, consistent with the idea that career concerns are not strong for older CEOs and are thus re-enforced through formal contracts.

[346] *See* Holmstrom, B. 1999. Managerial Incentive Problems: A Dynamic Perspective. *Review of Economic Studies* 66, 169–182. The study models incentives for effort and risk taking by agents in the presence of career concerns. With regards to risk taking, the model shows that younger managers whose talent or ability is not yet known to the market may be reluctant to choose risky projects that are optimal from a shareholders' perspective.

[347] *See* Gibbons, Robert, and Kevin J. Murphy, 1992. Optimal incentive contracts in the presence

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inappropriate risk-taking could be less severe for younger executives, for whom there are more periods over which to spread the reward for their efforts.[348] On the other hand, as mentioned above, some studies also argue that career concerns can lead executives to focus on delivering short-term performance to enhance their present reputation, at the expense of long-term value.[349]

Some studies argue that compensation structures did not encourage inappropriate risk-taking and that managers were severely penalized since their portfolio values suffered considerably during the financial crisis.[350] According to these studies, executives held significant amounts of their financial institutions' equity in the form of stock options and restricted stock when the crisis occurred and the value of these holdings declined dramatically and quickly, wiping out most of their value. The fact that executives were still significantly exposed to firm performance by holding on to stock options and restricted stock units when the crisis occurred can be viewed as an indicator that these executives had no knowledge of the significant risks associated with their actions.[351] According to this view, executives were held accountable and penalized upon the realization of the risks undertaken.

However, some other studies argue that, whereas bank executives lost significant amounts of wealth tied to their stock and stock option holdings during the crisis, they also received significant amounts of compensation during the years leading up to the financial crisis.[352] Significant amounts of short-term bonuses were paid in the years preceding the crisis, even to executives of financial institutions that failed soon thereafter. While bank executives walked away with significant gains during the years leading up to the crisis, investors suffered significant losses in their investments in these institutions and, in some cases, taxpayers provided capital support to save these institutions from default. Thus, the underlying actions that generated significant positive performance and resulted in significant payouts to executives in the short run were also responsible for the realization of the associated risks in the long run. Another study[353] finds that risk-taking incentives for CEOs at large commercial banks substantially increased around 2000 and suggests that this increase in risk-taking incentives was, at least partly, a response to growth opportunities resulting from deregulation. The study also finds that CEOs responded to the increased risk-taking incentives by increasing both systematic and idiosyncratic risks. CEOs with strong risk-taking incentives were also more likely to invest in mortgage backed securities; this finding is interpreted as knowledge on behalf of these CEOs regarding the risks associated with such investments. Finally, the study finds that, whereas boards of directors responded by moderating risk-taking incentives in situations where these incentives were particularly strong, such an effect was absent at the very largest banks with strong growth opportunities.

Finally, there are also studies that argue that compensation structures were not responsible for the differential risk-taking and performance of financial institutions during crises. In particular, a study argues that the differential risk culture across banks determines the differential performance of these institutions.[354] For example, banks that performed poorly during the 1998 crisis were also found to perform poorly, and had higher failure rates, during the recent financial crisis. Another recent study argues that, prior to 2008, risk-taking was inherently different across financial institutions and the fact that high-risk financial institutions paid high amounts of compensation to their executives was not an indicator of excessive compensation practices but represented compensation for the additional risk to which executives' wealth was exposed.[355] The study suggests that at financial institutions, compensation was the result of efficient contracting between managers and shareholders. The study did not find support for the view that compensation determined risk-taking and ultimately led to the failure of many institutions.

Taken all together, while there is debate about certain amounts, components, and features of incentive-based compensation that potentially encourage risk-taking, the existing academic literature does not provide conclusive evidence about a specific type of incentive-based compensation arrangement that leads to inappropriate risk-taking without taking into account other considerations, such as firm characteristics or other governance mechanisms. In particular, there may be mitigating factors—some more effective than others—that allow efficient contracting to develop compensation arrangements for managers to align managerial interests with shareholders' interests and provide incentives for maximization of shareholder value.

If it is the case that some institutions are able to contract efficiently for compensation arrangements, for any such institution that is a covered BD or IA with large balance sheet assets, and if such institution does not pose potentially negative externalities on taxpayers, the proposed rule may curtail the pay convexity resulting from such efficient contracting between managers and shareholders with potential unintended consequences. In particular, unintended consequences may include curbing risk-taking incentives to a level that is lower than what shareholders deem optimal, with consequent negative effects on efficiency and shareholder value. These potential negative effects on efficiency and shareholder value could manifest themselves in a number of ways. For example, the lower-than-optimal level of risk-taking could affect covered BDs' and IAs' transactions for their own accounts as well as operations that involve customers and clients. The SEC expects that whether such consequences occur would depend on the specific facts and circumstances of each covered BD or IA.

In addition, the proposed rule may result in losses of managerial talent that may migrate from covered institutions to firms in different industries or abroad, especially if CEOs have developed, in recent decades, general managerial skills that are transferable across firms and industries, as some studies assert.[356] It should be noted, however, as the discussion in the Preamble suggests, that some foreign regulators (*e.g.*, in UK) have adopted stricter limits on incentive-based compensation. Thus, some foreign regulators' restrictions on incentive-based compensation may limit the likelihood of human capital migrating to foreign institutions subject to those restrictions. Moreover, given that incentive-based compensation is also designed to attract and retain managerial talent, the proposed rule may result in an increased level of total compensation to make up for the limits imposed to award opportunities, for the decrease in present value of the awards that are deferred, or for the increase in the uncertainty associated with the fact that managers may not be able to retain the compensation awards due to the potential for forfeiture during the deferral period and/or clawback during the period following vesting of such awards. If these unintended consequences occur, they may contribute to reduce the competitiveness of certain U.S. financial institutions in their role of intermediation, potentially affecting other industries.

On the other hand, for those covered institutions, including BDs and IAs with large balance sheets, that do have the potential to generate negative externalities, the proposed rule may result in better alignment of incentives between managers at these institutions and taxpayers and hence may have potential benefits by lowering the likelihood of an outcome that may induce negative externalities. Lowering the likelihood of negative externalities would be beneficial for the long-term health of these institutions, other institutions that are interconnected with those covered institutions and, in turn, the long-term health of the U.S. economy. The extent of these potential benefits, as mentioned above, would depend on specific facts and circumstances at the firm level and individual level.

C. Baseline

The baseline for the SEC's economic analysis of the proposed rule includes the current incentive-based compensation practices of those covered institutions that are regulated by the SEC—registered broker-dealers and investment advisers—and the relevant regulatory requirements that may currently affect such compensation practices.[357]

1. Covered Institutions

Section 956(f) limits the scope of the requirements to covered institutions with total assets of at least $1 billion. The proposed rule defines covered institution as a regulated institution that has average total consolidated assets of $1 billion or more. Regulated institutions include covered BDs and IAs. Based on their average total consolidated assets, the proposed rule further classifies covered institutions into three levels: Level 1 covered institutions with average total consolidated assets greater than or equal to $250 billion; Level 2 covered institutions with average total consolidated assets greater than or equal to $50 billion, but less than $250 billion; and Level 3 covered institutions with average total consolidated assets greater than or equal to $1 billion, but less than $50 billion.

In the case of BDs and IAs, a Level 1 BD or IA is a covered institution with average total consolidated assets greater than or equal to $250 billion, or a covered institution that is a subsidiary of a depository institution holding company that is a Level 1 covered institution. A Level 2 BD or IA is a covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution; or a covered institution that is a subsidiary of a depository institution holding company that is a Level 2 covered institution. A Level 3 BD or IA is a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution

Table 1 shows the number of covered BDs and IAs as of December 31, 2014, sorted by the size of a BD or IA as a covered institution by itself, without considering the size of that covered institution's parent depository holding company, if any (hereafter, "unconsolidated Level 1," "unconsolidated Level 2," and "unconsolidated Level 3" BDs and

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of career concerns: Theory and evidence, *Journal of Political Economy* 100, 468–505.

[348] Young CEOs are likely to differ in other dimensions such as character, knowledge, and experience and hence establishing a causal effect of career concerns on risk taking could be difficult. *See* Cziraki, P., and M. Xu, 2013. CEO career concerns and risk-taking, working paper.

[349] *See* Narayanan, M.P. 1985. Managerial Incentives for Short-Term Results. *Journal of Finance* 40, 1469–1484; and Stein, J. 1989. Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior. *Quarterly Journal of Economics* 104, 655–669.

[350] *See* Murphy, K. 2009. Compensation Structure and Systemic Risk. U.S.C. Marshall School of Business Working Paper. Compensation for CEOs and other named executive officers (NEOs) significantly suffered during the crisis. For TARP recipient institutions: Bonuses declined by approximately 80% from 2007 to 2008, and the value of stock options and restricted stock held by NEOs declined by more than 80% during the same time period. Executive compensation also significantly declined for non-TARP recipients but the decline was lower than for TARP recipients.

[351] *See* Fahlenbrach, R., Stulz, R. 2011. Bank CEO Incentives and the Credit Crisis. *Journal of Financial Economics* 99, 11–26. The study examines the link between bank performance during the crisis and CEO incentives from compensation arrangements preceding the crisis. The evidence shows that banks whose CEOs' incentives were better aligned with the interests of shareholders performed worse during the crisis. The authors argue that a potential explanation for their findings is that CEOs with better aligned incentives undertook higher risks before the crisis; such risks were not suboptimal for shareholders at the point in time when they were undertaken. This explanation is also corroborated by the fact that CEOs did not unload their equity holdings prior to the crisis and, as a result, their wealth significantly declined.

[352] *See* Bebchuk, L., Cohen, A., Spamann, H. 2010. The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000–2008. *Yale Journal on Regulation* 27, 257–282. The study presents details regarding payouts made to CEOs and executives of Bear Sterns and Lehman Brothers during the 2000–2008 period. During the 2000–2008 period, executive teams at Bear Sterns cashed out a total of $1.4 billion in cash bonuses and equity sales whereas the executives at Lehman cashed out a total of $1 billion. The authors argue that the divergence between how top executives and their shareholders fared may suggest that pay arrangements provided incentives for excessive risk taking.

See Bhagat, S., Bolton, B. 2013. Bank Executive Compensation and Capital Requirements Reform. Working Paper. The study examines, among other things, 2000–2008 net payoffs to CEOs of 14 financial institutions that received TARP assistance during the crisis. Consistent with the findings of Bebchuk et al. (2010), this study shows that CEOs of TARP assisted institutions cashed out significant amounts of compensation prior to the crisis, but also suffered significant losses when the crisis hit. The authors find that TARP CEOs cashed out significantly higher amounts of compensation during the 2000–2008 period compared to other institutions that did not receive TARP assistance; the finding is interpreted as evidence that TARP CEOs were aware of the increased risks associated with their actions and significantly limited their exposure to firm performance before the crisis hit.

[353] *See* DeYoung, R., Peng, E., Yan, Meng. 2013. Executive Compensation and Business Policy Choices at U.S. Commercial Banks. *Journal of Financial and Quantitative Analysis* 48, 165–196. The study examines CEOs' risk-taking incentives at large commercial banks over the 1995–2006 period. The authors link the increase in risk-taking incentives at these banks to growth opportunities due to deregulation. They find that board of directors moderated CEO risk-taking incentives but this effect is absent at the largest banks with strong growth opportunities and a history of highly aggressive risk-taking incentives.

[354] *See* Fahlenbrach, R., Prilmeier, R., Stulz, R. 2012. This Time Is the Same: Using Bank Performance in 1998 to Explain Bank Performance during the Recent Financial Crisis. *Journal of Finance* 67, 2139–2185. The paper examines whether inherent business models or/and culture drive certain banks to perform worse during crises. The study documents that banks that performed poorly, performance measured in terms of stock returns, after Russia's default in 1998 were also likely to perform poorly during the recent financial crisis. These banks had greater degrees of leverage, relied more on short-term market funding and grew faster during the years leading up to both crisis periods. The authors interpret their findings as being attributable to differential risk-taking cultures across banks that persist over time.

[355] *See* Cheng, I., Hong, H., Scheinkman, J. 2015. Yesterday's Heroes: Compensation and Risk at Financial Firms. *Journal of Finance* 70, 839–879. The paper examines the link between managerial pay and risk taking in the financial industry. Specifically, the paper builds upon efficient contracting theory to predict that managers in companies facing greater amounts of uncontrollable risk would require higher levels of compensation. Given that higher levels of uncontrollable risk expose managerial compensation to increased risk, risk averse managers require additional compensation for the increased risk exposure. Using various measures of arguably uncontrollable company risk, such as lagged risk measures and risk measures when the company had an IPO, the authors find a positive relation between current compensation and historical measures of risk. They interpret their results as inherent differences in risk among financial companies driving differences in compensation levels among these companies.

[356] *See* Custodio, Claudia, Miguel Ferreira, and Pedro Matos. 2013. Generalists versus Specialists: Lifetime Work Experience and Chief Executive Officer Pay. *Journal of Financial Economics* 108, 471–492.

[357] When referencing investment advisers, the SEC's economic analysis references those institutions that meet the definition of investment adviser under section 202(a)(11) of the Investment Advisers Act, including any such institutions that may be prohibited or exempted from registering with the SEC under the Investment Advisers Act and any that are exempt from registration but are reporting.

IAs).[358] We use 2014 data in our analysis because this is the most recent year for which compensation data is available. From FOCUS reports, there were 131 BDs with total assets above $1 billion at the end of calendar year 2014.[359] From Item 1(O) of Form ADV the SEC estimated that, out of 11,702 IAs registered with the SEC, or reporting to the SEC as an exempt reporting adviser, 669 IAs had total assets of at least $1 billion as of December 31, 2014, although the SEC lacks information that allows it to further classify these IAs as Level 1, Level 2, or Level 3 covered institutions.[360]

TABLE 1—NUMBER OF BROKER-DEALERS AND INVESTMENT ADVISERS

Institution	Unconsolidated Level 1	Unconsolidated Level 2	Unconsolidated Level 3	Total
Broker-dealers (BDs)	7	13	111	131
Investment advisers (IAs)	n/a	n/a	n/a	669

i. Broker-Dealers

In 2014, 4,416 unique BDs filed FOCUS reports. Of these 4,416 BDs, seven had total assets greater than $250 billion (Level 1 BDs), 13 had total assets between $50 billion and $250 billion (unconsolidated Level 2 BDs), and 111 had total assets between $1 billion and $50 billion (unconsolidated Level 3 BDs) in 2014.[361] As shown in Table 2, these unconsolidated Level 3 BDs had total assets equal to $9.6 billion on average and $3.7 billion in median; and about 70 percent (78 out of 111) of them had total assets below $10 billion.

TABLE 2—SIZE DISTRIBUTION OF BDS

BD size	Number of BDs	Mean size ($ billion)	Median size ($ billion)	Size range ($ billion)	Number of BDs per size range
Below $1 billion	4,285	$0.02	$0.001		
$1–$49 billion (Unconsolidated Level 3)	111	9.6	3.7	<=10	78
				10–20	16
				20–30	3
				30–40	12
				>40	2
$50–$250 billion (Unconsolidated Level 2)	13	90.6	80.3	50–100	9
				100–$150	2
				150–200	2
				>200	0
Over $250 billion (Level 1)	7	312.3	275.2	250–300	4
				300–350	2
				350–400	0
				>400	1

The SEC's analysis indicates that, in 2014, all of the unconsolidated Level 1 and unconsolidated Level 2 BDs were subsidiaries of a holding company or parent institution. Of these parent institutions, only one was not a depository institution holding company. The majority of the unconsolidated Level 3 BDs were also part of a larger corporate structure. It should be noted that some parent institutions owned more than one BD. Out of the 111 unconsolidated Level 3 BDs, 21 BDs were non-reporting, stand-alone institutions (*i.e.*, entities that are not part of a larger corporate structure).

In Table 3, the parent institutions of the affected BDs are classified into Level 1, Level 2, or Level 3, based on the ultimate parent's total consolidated assets.[362] As of the end of 2014, there were 23 unique Level 1 parents and 9 unique Level 2 parents that owned covered Level 1, unconsolidated Level 2, and unconsolidated Level 3 BDs. An additional 18 unique parents were Level 3 covered institutions, and those owned only unconsolidated Level 3 BDs. The SEC was not able to classify 29 parent institutions due to the lack of data on their total consolidated assets.

[358] The terms "unconsolidated Level 1 covered institution," "unconsolidated Level 2 covered institution," and "unconsolidated Level 3 covered institution" used in the SEC's economic analysis differ from the terms "Level 1 covered institution," "Level 2 covered institution," and "Level 3 covered institution" as defined in the proposed rule.

[359] Total assets are taken from FOCUS report, Part II Statement of Financial Condition. The assets reported in the FOCUS report are required to be consolidated total assets if a BD has subsidiaries.

[360] Form ADV requires IAs to report consolidated balance sheet assets. The 669 number includes 59 IAs that are not registered with the SEC but are reporting.

[361] For purposes of this analysis, the SEC determined the unconsolidated level of each BD. For example, if a BD alone had total assets between $1 billion and $50 billion at the end of at least one calendar quarter in 2014, it was classified in this economic analysis as an unconsolidated Level 3 BD. Similarly, if a BD alone had total assets between $50 and $250 billion (greater than $250 billion) in at least one quarter in 2014, it was classified in this economic analysis as an unconsolidated Level 2 (Level 1) BD. This classification method differs from the proposed rule. Thus, some of the unconsolidated Level 2 and unconsolidated Level 3 BDs discussed in this economic analysis may be Level 1 and Level 2 covered institutions after consolidation and for purposes of the proposed rule. Given that an unconsolidated Level 1 BD alone has greater than or equal to $250 billion in total assets, an unconsolidated Level 1 BD would be a Level 1 covered institution for purposes of the proposed rule, regardless of consolidation.

[362] The name of the ultimate parent was obtained using the company information in the Capital IQ database. The SEC found total assets information for public parents in the Compustat database. Total assets information for some of the private parents the SEC found in the Capital IQ database.

TABLE 3—DISTRIBUTION OF BDS BY LEVEL SIZE OF THE PARENT

	BD as a subsidiary of a				BD as a stand-alone institution
	Level 1 parent	Level 2 parent	Level 3 parent	Parent size n/a	
Number of unconsolidated Level 1 BDs	7	0	0	0	0
Number of unique parents	7				
Number of public parents	7				
Median BD assets ($ billion)	$275.2				
Median parent assets ($ billion)	$1,882.9				
Number of unconsolidated Level 2 BDs	13	0	0	0	0
Number of unique parents	11				
Number of public parents	11				
Median BD assets ($ billion)	$80.3				
Median parent assets ($ billion)	$1,702.1				
Number of unconsolidated Level 3 BDs	18	11	23	36	23
Number of unique parents	14	9	19	29	
Number of public parents	14	8	17		
Median BD assets ($ billion)	$9.5	$4.0	$3.0	$4.4	
Median parent assets ($ billion)	$850.8	$127.7	$9.2	n/a	
Total number of unique parents	23	9	19	29	
Total number of public parents	23	8	17		

The majority of BDs that were subsidiaries were held by a parent registered with the SEC as a reporting institution (*i.e.*, public company). All parents of Level 1 BDs and almost all of the parents of unconsolidated Level 2 BDs were public companies, while 39 out of the 71 unique parents of unconsolidated Level 3 BDs were public companies. Twenty three BDs were not subsidiaries but stand-alone companies that were private Level 3 BDs.

ii. Investment Advisers

The SEC does not have a precise way of distinguishing among the largest IAs because Form ADV requires an adviser to indicate only whether it has $1 billion or more in assets on the last day of its most recent fiscal year.[363] In addition, the information contained on Form ADV relates only to registered investment advisers and exempt reporting advisers, while the proposed rule would apply to all investment advisers.[364] As of December 2014, there were 669 IAs with assets of at least $1 billion, of which 129 IAs were affiliated with banking or thrift institutions.[365] For the remaining 540 IAs the SEC does not have information on how many of them are stand-alone companies and how many are affiliated with non-bank parent companies. Of the 669 IAs, 51 are dually registered as BDs with the SEC.[366] Of the 129 IAs affiliated with banking or thrift institutions, 39 IAs are affiliated with banks and thrifts with $50 billion or more in assets. Of the 39 IAs, 10 IAs were affiliated with banks and thrift institutions with assets between $50 billion and $250 billion; and 23 IAs were affiliated with banks and thrift institutions with assets of more than $250 billion. As Table 4 shows, the 39 IAs have 25 unique parent institutions and most of these parent institutions (17) are public companies.

TABLE 4—DISTRIBUTION OF 39 IAS AFFILIATED WITH LEVEL 1 AND LEVEL 2 BANKS AND THRIFTS, BY LEVEL SIZE OF THE PARENT

	IA as a subsidiary of a		
	Level 1 parent	Level 2 parent	Parent size n/a
Number of IAs	23	10	6
Number of unique parents	10	9	6
Number of public parents	10	7	0

[363] *See* Item 1.O of Part 1A of Form ADV. As noted above, the SEC has not historically examined its regulated entities' use of incentive-based employee compensation. In this regard, Form ADV does not contain information with respect to such practices.

[364] By its terms, the definition of "covered financial institution" in section 956 includes any institution that meets the definition of "investment adviser" under the Investment Advisers Act, regardless of whether the institution is registered as an investment adviser under that Act. Most investment advisers (including registered investment advisers, exempt reporting advisers, or otherwise) currently do not report to the SEC their average total consolidated assets, so the SEC is unable to determine with particularity how many have average total consolidated assets greater than or equal to $1 billion and less than $50 billion, greater than or equal to $50 billion and less than $250 billion, or greater than or equal to $250 billion. The estimates used in this section with respect to investment advisers, however, are based on data reported by registered investment advisers and exempt reporting advisers with the SEC on Form ADV, because the SEC estimates that it is unlikely that investment advisers that are prohibited from registering with the SEC would be subject to the proposed rule.

[365] Form ADV requires an adviser to indicate whether it has a "related person" that is a "banking or thrift institution," but does not require an adviser to identify a related person by type (*e.g.*, a depository institution holding company). *See* Item 7 of Part 1A and Item 7.A of Schedule D to Form ADV. These estimates are therefore limited by the information reported by registered investment advisers and exempt reporting advisers in their Forms ADV and has necessitated manual referencing of the institutions specified.

[366] Because the data presented below for the effects on BDs and IAs are presented separately, in aggregate, they may overstate the costs and other economic effects for dual registrants.

2. Current Incentive-Based Compensation Practices

The SEC does not have information on the incentive-based compensation practices of the BDs and IAs themselves. The main reason why the SEC lacks such information is that BDs and IAs are generally not public reporting companies and as a result they do not provide the type of compensation information that a public reporting company would file with the SEC as part of its communications with shareholders. Notwithstanding these limitations on the data regarding the incentive-based compensation arrangements at BDs or IAs, when the BDs or IAs are subsidiaries of public reporting companies, the SEC has information for the public reporting company that is the parent of these BDs and IAs. In particular, the information on incentive-based compensation practices for named executive officers ("NEOs") is annually disclosed in proxy statements and annual reports filed with the SEC. NEOs typically include the principal executive officer, the principal financial officer, and three most highly compensated executives.[367]

Given that it lacks data on the BDs and IAs themselves, for the purposes of this economic analysis, the SEC uses data on incentive-based compensation of the NEOs at the parent institutions, which for unconsolidated Level 1 and unconsolidated Level 2 BDs are mostly bank holding companies,[368] as an indirect measure of incentive-based compensation practices at the subsidiary level.[369] The SEC also analyzes the incentive-based compensation of public reporting institutions with assets between $1 billion and $50 billion, many of which are not bank holding companies, because it is possible that size may be a determinant of incentive-based compensation arrangements and thus the incentive-based compensation of an unconsolidated Level 3 BD or IA may be more similar to that of a public reporting institution with assets between $1 billion and $50 billion.

While the SEC utilizes the above-referenced public reporting company data, it should be noted that there are a number of caveats that may impact the SEC's analysis. First, the incentive-based compensation arrangement at the subsidiary level may differ from that of the parent level due to either the difference between the size of the subsidiary relative to the size of the parent, or because the business model of the subsidiary is different from that of the parent. More specifically, the incentive-based compensation arrangement of bank holding companies may be different than that of BDs or IAs given the fundamentally differing natures of the underlying business models and the composition of their respective balance sheets. Further, the incentive-based compensation practices at a public reporting company could be different than those at a non-public reporting company. The SEC also does not have information about incentive-based compensation of non-NEOs and of those employees included in the definition of significant risk-takers under the proposed rule. These caveats mean that the SEC's analysis, which is mainly based on data from public bank holding companies, may not accurately reflect incentive-based compensation practices at BDs and IAs. To address this lack of data, the SEC has supplemented its analysis with anonymized supervisory data from the Board and the OCC, with limitations to the generalizability of the analysis on non-NEOs and significant risk-takers similar to the ones discussed above.

i. Named Executive Officers

Table 5A presents data on the compensation structure of NEOs at Level 1, Level 2, and Level 3 parent public reporting institutions of unconsolidated Level 1, unconsolidated Level 2, and unconsolidated Level 3 BDs as of the end of fiscal year 2014.[370] In addition to the CEO and the CFO, NEOs typically include the chief operating officer ("COO"), the general counsel ("GC"), and the heads of business units such as wealth management and investment banking. As shown in Table 5A, incentive-based compensation is a significant component of NEO compensation at parent institutions. It is approximately 90 percent of total compensation for Level 1 parent institutions and 85 percent for Level 2 parent institutions (median values are also reported in parentheses).[371] Additionally, a sizable fraction of incentive-based compensation is in the form of long-term incentive compensation, which is mainly awarded in the form of stock, stock options, or debt instruments.[372] The SEC observes that the use of stock options varies by size of the parent institution: Stock options represent on average 6 percent of long-term incentive compensation for Level 1 parents, while they represent approximately 20 percent of long-term incentive compensation for Level 2 parents.[373]

[367] For a company that is not a smaller reporting company, Item 402(a)(3) of Regulation S–K defines named executive officers as: (1) All individuals serving as the company's principal executive officer or acting in a similar capacity during the last completed fiscal year (PEO), regardless of compensation level; (2) All individuals serving as the company's principal financial officer or acting in a similar capacity during the last completed fiscal year (PFO), regardless of compensation level; (3) The company's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and (4) Up to two additional individuals for whom disclosure would have been provided under the immediately preceding bullet point, except that the individual was not serving as an executive officer of the company at the end of the last completed fiscal year.

[368] For Level 1 and unconsolidated Level 2 BDs, the SEC's analysis indicates that, as of December 2014, two of their 20 unique parent institutions are non-bank holding companies (one investment management firm and one investment bank/brokerage). For the 39 IAs described in Table 4, six of their 25 unique parent institutions are not bank holding companies, For unconsolidated Level 3 BDs, 20 of the 42 unique parent institutions for which data on their size is available are not bank holding companies.

[369] It is also possible that the compensation practices between Level 1 parent and unconsolidated Level 2 subsidiary (or between Level 2 parent and unconsolidated Level 3 subsidiary) may be closer to each other than those of Level 1 parent and unconsolidated Level 3 subsidiary.

[370] Data comes from Compustat's ExecuComp database. Out of 30 unique Level 1 and Level 2 parent institutions of Level 1, Level 2, and Level 3 BDs, compensation data is not available for 16 parent institutions.

[371] Incentive-based compensation is determined as Total compensation as reported in SEC filings—Salary.

[372] Long-term incentive compensation is determined using the following items from Compustat's ExecuComp database: Total compensation as reported in SEC filings—Salary—Bonus—Other annual compensation. Short-term incentive compensation is determined as Bonus + Other annual compensation.

[373] This is consistent with evidence of decreased use of stock options in compensation arrangements over the last decade, with companies replacing the use of stock options with restricted stock units. *See* Frydman and Jenter, CEO Compensation, *Annual Review of Financial Economics* (2010).

TABLE 5A—COMPENSATION STRUCTURE OF BD PARENT INSTITUTIONS BY LEVEL SIZE

	Level 1 parent	Level 2 parent	Level 3 parent
Incentive-based compensation as percent of total compensation	90% (90%)	85% (86%)	83% (87%)
Short-term incentive compensation as percent of total compensation	15% (0%)	1% (0%)	21% (0%)
Long-term incentive compensation as percent of total compensation	74% (81%)	85% (86%)	62% (77%)
Option awards as percent of long-term incentive compensation	6% (0%)	20% (18%)	4% (0%)
Stock awards as percent of long-term incentive compensation	68% (69%)	40% (37%)	44% (49%)
Number of NEOs per institution	5.5 (5)	5.3 (5)	5.4 (5)
Number of parent institutions with available compensation data	10	4	7

Table 5B presents similar statistics for the compensation structures of Level 1 and Level 2 parent institutions of IAs that were affiliated with banks and thrift institutions with assets of more than $50 billion.[374] The summary statistics for the parent companies of IAs mirrors the statistics for the BDs' parent companies: A significant portion of NEO compensation is in the form of incentive-based compensation, most of which is long-term incentive compensation that comes in the form of stock awards.[375] Both Level 1 and Level 2 IA parents exhibit relatively little use of options.

TABLE 5B—COMPENSATION STRUCTURE OF LEVEL 1 AND LEVEL 2 IA PARENT INSTITUTIONS

	Level 1 parent	Level 2 parent
Incentive compensation as percent of total compensation	90% (90%)	84% (94%)
Short-term incentive compensation as percent of total compensation	20% (28%)	2% (0%)
Long-term incentive compensation as percent of total compensation	70% (65%)	82% (84%)
Option awards as percent of long-term incentive compensation	8% (0%)	9% (0%)
Stock awards as percent of long-term incentive compensation	71% (73%)	51% (55%)
Number of NEOs per institution	5.2 (5)	5.2 (5)
Number of parent institutions with available compensation data	8	5

Table 6A provides summary statistics for types of incentive-based compensation currently awarded by parent institutions of BDs, their vesting periods, and the specific measures on which these awards are based.[376] All types of parent institutions use cash in their short-term incentive compensation. Only 12 percent of Level 1 parent institutions, and none of the Level 2 parent institutions, defer short-term incentive compensation that is awarded in cash only. A significant fraction of Level 1 parent institutions awards short-term incentive compensation in the form of cash and stock.

TABLE 6A—TYPE AND FREQUENCY OF USE OF INCENTIVE-BASED COMPENSATION AWARDS—LEVEL 1, LEVEL 2, AND LEVEL 3 BD PARENT INSTITUTIONS

	Short-term incentive compensation			Long-term incentive compensation		
	Level 1 parent	Level 2 parent	Level 3 parent	Level 1 parent	Level 2 parent	Level 3 parent
Number of parent institutions with available compensation data.	16	5	13	16	5	13.
Fraction of total compensation:						
CEO	25%	44%	39%	52%	45%	60%.
Other NEOs	27%	45%	59%	50%	40%	40%.
Award:						
Cash only—percent of institutions	44%	100%	100%	6%	0%	0%.
percent that defer cash	12%	0%	9%	6%	0%	0%.
Cash & stock—percent of institutions.	56%	0%	0%	6%	0%	9%.
Avg percent of stock in ST IC	55%.					
Avg deferral for stock	3 years.					
Restricted stock-percent of institutions.				56%	60%	100%.
Avg percent of LT IC				36%	26%	75%.
Avg vesting period				3.5 years	3.3 years	3.4 years.
Type of vesting:						
percent with pro-rata				87%	100%	82%.

[374] There is an overlap between the parent institutions of BDs and IAs: About half of the IAs' parents are also parents of BDs and included in Table 5A.

[375] This is not surprising given that approximately half of the IAs' parent institutions are also parent institutions of BDs and included in Table 5A.

[376] Data for tables 6A through 10B is collected from the 2015 and 2007 proxy statements, 10–Ks, and 20–Fs of the Level 1, Level 2, and Level 3 parent institutions.

TABLE 6A—TYPE AND FREQUENCY OF USE OF INCENTIVE-BASED COMPENSATION AWARDS—LEVEL 1, LEVEL 2, AND LEVEL 3 BD PARENT INSTITUTIONS—Continued

	Short-term incentive compensation			Long-term incentive compensation		
	Level 1 parent	Level 2 parent	Level 3 parent	Level 1 parent	Level 2 parent	Level 3 parent
percent with cliff				13%	0%	18%.
Performance stock—percent of institutions.				88%	80%	36%.
Avg percent of LT IC				53%	42%	44%.
Avg performance period				3.7 years	3 years	2 years.
percent with perf period <3yrs.				6%	0%	100%.
percent with vesting				14%	0%	0%.
Avg vesting period				3.7 years.		
Type of vesting:						
percent with pro-rata				100%.		
percent with cliff				0%.		
Options—percent of institutions	0%	0%		12%	60%	18%.
Avg percent of LT IC				4%	20%	39%.
Avg vesting period				3.5 years	3.3 years	3 years.
Notional bonds—percent of institutions.	0%	0%		6%	0%	0%.
Avg percent of LT IC				30%.		
Avg vesting period				5 years.		
Performance measures:						
EPS or Net income	44%	100%	31%	19%	50%	38%.
ROA	6%	40%	0%	19%	25%	0%.
ROE	44%	0%	31%	44%	50%	31%.
Pre-tax income	25%	0%	62%	6%	0%	54%.
Capital strength	31%	0%	0%	6%	0%	0%.
Efficiency ratios	13%	40%	0%	6%	0%	0%.
Strategic goals	19%	25%	23%	13%	0%	23%.
TSR	19%	25%	46%	56%	75%	54%.

A significant percentage of long-term incentive compensation of BD parent institutions comes in the form of restricted or performance stock.[377] Restricted stock accounts for about 36 percent of long-term incentive compensation at Level 1 parent institutions and approximately 26 percent at Level 2 parent institutions. It has a vesting period of approximately 3.5 years. Performance stock awards are more popular: Over 80 percent of Level 1 and Level 2 parent institutions employ performance stock, which on average accounts for approximately 53 percent of the long-term incentive compensation of Level 1 parents and 42 percent of that of Level 2 parents. Performance stock awards are frequently evaluated using total shareholder return (''TSR''), return on equity (''ROE''), return on assets (''ROA''), earnings per share (''EPS''), or a combination of TSR and one or more accounting measures of performance over an average of 3.7 years for Level 1 parent institutions and 3 years for Level 2 parent institutions. About 14 percent of Level 1 parent institutions impose deferral after the performance period for performance stock. The average deferral period for these awards is approximately 4 years.

Consistent with the results in Table 5A above, stock options do not appear to be a popular component of incentive-based compensation arrangements among Level 1 parent institutions. They are more frequently used by Level 2 parent institutions, for which options account for approximately 20 percent of long-term incentive compensation. One of the Level 1 parents also uses debt instruments as a part of NEOs' long-term incentive compensation, which fully vest after five years (*i.e.* cliff vest). Similar results are obtained when examining the compensation practices of Level 1 and Level 2 parent institutions of IAs, as the summary statistics in Table 6B suggest.

TABLE 6B—TYPE AND FREQUENCY OF USE OF INCENTIVE-BASED COMPENSATION AWARDS—LEVEL 1 AND LEVEL 2 IA PARENT INSTITUTIONS

	Short-term incentive compensation		Long-term incentive compensation	
	Level 1 parent	Level 2 parent	Level 1 parent	Level 2 parent
Number of parent institutions with available compensation data	10	6	10	6.
Fraction of total compensation:				
CEO	23%	26%	64%	63%.
Other NEOs	27%	27%	58%	59%.

[377] Restricted stock includes actual shares or share units that are earned by continued employment, often referred to as time-based awards. Performance stock consists of stock-denominated actual shares or share units (performance shares) and grants of cash or dollar-denominated units (performance units) earned based on performance against predetermined objectives over a defined period.

TABLE 6B—TYPE AND FREQUENCY OF USE OF INCENTIVE-BASED COMPENSATION AWARDS—LEVEL 1 AND LEVEL 2 IA PARENT INSTITUTIONS—Continued

	Short-term incentive compensation		Long-term incentive compensation	
	Level 1 parent	Level 2 parent	Level 1 parent	Level 2 parent
Award:				
Cash only—percent of institutions	60%	83%	0%	0%.
percent that defer cash	10%	0%	0%	0%.
Cash & stock—percent of institutions	40%	17%	10%	17%.
Avg percent of stock in ST IC	50%.			
Avg deferral for stock	3 years.			
Restricted stock—percent of institutions			80%	67%.
Avg percent of LT IC			51%	30%.
Avg vesting period			3.5 years	3.8 years.
Type of vesting:				
percent with pro-rata			100%	100%.
percent with cliff			0%	0%.
Performance stock—percent of institutions			80%	100%.
Avg percent of LT IC			42%	56%.
Avg performance period			3.9 years	2.6 years.
percent with perf period <3yrs			13%	0%.
percent with vesting			13%	0%.
Avg vesting period			4 years.	
Type of vesting:				
percent with pro-rata			100%.	
percent with cliff			0%.	
Options—percent of institutions	0%	0%	10%	50%.
Avg percent of LT IC			25%	28%.
Avg vesting period			4 years	3.2 years.
Performance measures:				
EPS or Net income	60%	67%	20%	50%.
ROA	10%	17%	20%	17%.
ROE	40%	33%	60%	67%.
Pre-tax income	10%	0%	0%	0%.
Capital strength	30%	0%	10%	17%.
Efficiency ratios	30%	17%	10%	17%.
Strategic goals	20%	17%	20%	17%.
TSR	30%	17%	50%	17%.

Table 7A reports whether incentive-based compensation of NEOs at Level 1, Level 2, and Level 3 parent institutions of BDs is deferred or subject to clawback, forfeiture, and certain prohibitions.[378]

TABLE 7A—CURRENT DEFERRAL, CLAWBACK, FORFEITURE AND CERTAIN PROHIBITIONS FOR NEOS AT LEVEL 1, LEVEL 2, AND LEVEL 3 BDS PARENT INSTITUTIONS

	Level 1 parent	Level 2 parent	Level 3 parent
Number of parent institutions with available compensation data	16	5	13
Number of NEOs:			
Total number of NEOs	104	24	66
Average number of NEOs per institution	6	5	5
Deferred compensation:			
Institutions with deferred compensation	100%	80%	100%
Average percent of deferred compensation:			
CEO	75%	52%	65%
Other NEOs	73%	49%	43%
Average number of years deferred	3.5	2.6	3.3
Type of compensation deferred:			
Institutions with cash	19%	25%	8%
Institutions with stock	100%	100%	100%
Institutions with bonds	6%	N/A	8%
Clawback and forfeiture:			
Institutions with clawback	100%	80%	92%
Institutions with forfeiture	100%	60%	85%
Prohibitions:			
Institutions prohibiting hedging	75%	60%	62%

[378] From the disclosures provided by reporting companies on clawback, forfeiture and certain prohibitions, the SEC is able to establish whether a reporting company currently uses policies that are in line with the proposed rule, but was not able to establish compliance with certainty.

TABLE 7A—CURRENT DEFERRAL, CLAWBACK, FORFEITURE AND CERTAIN PROHIBITIONS FOR NEOS AT LEVEL 1, LEVEL 2, AND LEVEL 3 BDS PARENT INSTITUTIONS—Continued

	Level 1 parent	Level 2 parent	Level 3 parent
Institutions prohibiting volume-driven incentive-based compensation	N/A	N/A	N/A
Institutions prohibiting acceleration of payments except in case of death and disability	70%	14%	9%
Maximum incentive-based compensation:			
Average percent	155%	190%	134%
Risk Management:			
Institutions with Risk Committees	100%	67%	62%
Institutions with fully independent Compensation Committee	93%	88%	83%
Institutions where CROs review compensation packages	31.3%	20%	15%

In general, the SEC's analysis of the compensation information disclosed in proxy statements and annual reports by parent institutions of covered BDs suggests that NEO compensation practices at most of the parent institutions are in line with the main requirements and prohibitions in the proposed rule. This may not be surprising given that the baseline already reflects a regulatory response to the financial crisis.[379] For example, all Level 1 parents and 80 percent of Level 2 parents of BDs require some form of deferral of incentive-based executive compensation. The average Level 1 parent institution defers 75 percent of incentive-based compensation awarded to CEOs and 73 percent awarded to other NEOs, which is above the minimum deferral amount that would be required by the proposed rule. In a similar vein, an average of 52 percent of incentive-based compensation awarded to CEOs and 49 percent awarded to other NEOs is deferred at Level 2 parent institutions, similar to what would be required by the proposed rule. The length of the deferral period at Level 1 and Level 2 parent institutions is also currently in line with what would be required by the proposed rule: On average, 3.5 years for NEOs at Level 1 parent institutions and approximately 3 years for those at Level 2 parent institutions.

Regarding the type of incentive-based compensation that is being deferred, both Level 1 and Level 2 parent institutions defer equity-based compensation. One of the Level 1 parent institutions uses debt instruments as incentive-based compensation and defers it as well. Only a fraction of them (20 percent of Level 1 and 25 percent of Level 2 parent institutions), however, currently defer incentive-based compensation in cash; the proposed rule would require deferral of substantial portions of both cash and equity-like instruments for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions. Thus, for both Level 1 and Level 2 parent institutions the current composition of their deferred compensation appears to conform to the proposed rule requirements with respect to equity-like instruments, but only a few Level 1 and Level 2 parent institutions appear to conform to the proposed rule requirements with respect to deferral of cash.

Some of the other requirements and prohibitions for Level 1 and Level 2 covered institutions in the proposed rule are also currently in place at the parent institutions of covered BDs. For example, all of the Level 1 parent institutions and a large majority of Level 2 parent institutions require that the incentive-based compensation awards of NEOs be subject to clawback and forfeiture provisions. The frequency of the use of clawback and forfeiture by Level 1 and Level 2 parent institutions is higher than that reported by a commenter[380] based on the results of a study.[381] The commenter did not specify, however, when the study was done, nor the number and type of companies covered by the study.

A majority of parent institutions also have prohibitions on hedging.[382] Consistent with the proposed prohibition of relying solely on relative performance measures when awarding incentive-based compensation, all of the Level 1 and Level 2 parent institutions currently use a mix of absolute and relative performance measures in their incentive-based compensation arrangements. Additionally, most Level 1 parent institutions prohibit acceleration of compensation payments except in the cases of death or disability, whereas very few Level 2 parent institutions do that. The average maximum incentive-based compensation opportunity is 155 percent of the target amount for Level 1 parent institutions and 190 percent for Level 2 parent institutions, which is above what would be permitted by the proposed rules. In the SEC's analysis of the compensation disclosure, the SEC did not find any mention about prohibition of volume-driven incentive-based compensation as would be proposed by the rule.

Similar results are obtained when analyzing the current practices of the Level 1 and Level 2 parent institutions of IAs (Table 7B). All IA parent institutions defer NEO compensation, on average, for three years. Almost all parent companies subject incentive-based compensation of NEOs to clawback and forfeiture and prohibit hedging transactions.

[379] *See*, 2010 Federal Banking Agency Guidance, available at: *http://www.federalreserve.gov/newsevents/press/bcreg/20100621a.htm.*

[380] All references to commenters in this economic analysis refer to comments received on the 2011 Proposed Rule.

[381] *See* comment letter from Financial Services Roundtable (May 31, 2011). The Roundtable conducted a study of a portion of its membership. Data was collected on the risk management strategies and the procedures for determining compensation since 2008.

[382] The proposed rule would prohibit covered institutions from purchasing hedging instruments on behalf of covered persons. The statistics regarding hedging prohibitions presented in Table 7A and Table 7B, and Table 9A and Table 9B refer to complete prohibition regarding the use of hedging instruments by senior executives and directors respectively.

TABLE 7B—CURRENT DEFERRAL, CLAWBACK, FORFEITURE AND CERTAIN PROHIBITIONS FOR NEOS AT LEVEL 1 AND LEVEL 2 IA PARENT INSTITUTIONS

	Level 1 parent	Level 2 parent
Number of parent institutions with available compensation data	10	6
Number of NEOs:		
Total number of NEOs	53	32
Average number of NEOs per institution	5	5
Deferred compensation:		
Institutions with deferred compensation	100%	100%
Average percent of deferred compensation:.		
CEO	77%	69%
Other NEOs	71%	68%
Average number of years deferred	3.6	3.3
Type of compensation deferred:.		
Institutions with cash	20%	67%
Institutions with stock	100%	100%
Institutions with bonds	0%	0
Clawback and forfeiture:		
Institutions with clawback	100%	100%
Institutions with forfeiture	100%	83%
Prohibitions:		
Institutions prohibiting hedging	90%	67%
Institutions prohibiting volume-driven incentive-based compensation	N/A	N/A
Institutions prohibiting acceleration of payments but for death and disability	70%	0%
Maximum incentive-based compensation:		
Average percent	148%	188%
Risk Management:		
Institutions with Risk Committees	100%	100%
Institutions with fully independent Compensation Committee	80%	89%
Institutions where CROs review compensation packages	50%	33%

To examine how the use of the proposed rule's requirements and prohibitions has changed since the financial crisis, in Tables 8A and 8B the SEC reports the use of incentive-based compensation deferral, clawback, forfeiture, and some of the rule prohibitions by the Level 1 and Level 2 parent institutions of BDs and IAs in year 2007, just prior to the financial crisis. A comparison with the results in Tables 7A and 7B shows that just prior to the financial crisis Level 1 and Level 2 covered institutions deferred less of NEOs' incentive-based compensation compared to what they defer nowadays. More importantly, the use of clawback and forfeiture in 2007 was far less common than it is now: For example, none of these institutions reported using clawback arrangements as of year 2007. Additionally, fewer covered institutions had risk committees in year 2007.

TABLE 8A—DEFERRAL, CLAWBACK, FORFEITURE AND CERTAIN PROHIBITIONS FOR NEOS AT LEVEL 1 AND LEVEL 2 BD PARENT INSTITUTIONS IN YEAR 2007

	Level 1 parent	Level 2 parent
Number of parent institutions with available compensation data	16	5
Number of NEOs:		
Total number of NEOs	101	26
Average number of NEOs per institution	6	5
Deferred compensation:		
Institutions with deferred compensation	100%	100%
Average percent of deferred compensation:		
CEO	49%	34%
Other NEOs	51%	28%
Average number of years deferred	3.3	3
Type of compensation deferred:		
Institutions with cash	0%	40%
Institutions with stock	100%	100%
Clawback and forfeiture:		
Institutions with clawback	0%	0%
Institutions with forfeiture	27%	40%
Prohibitions:		
Institutions prohibiting hedging	14%	0%
Institutions prohibiting volume-driven incentive-based compensation	N/A	N/A
Institutions prohibiting acceleration of payments except in case of death and disability	67%	20%
Maximum incentive-based compensation:		
Average percent	186%	N/A
Risk Management:		
Institutions with Risk Committees	60%	20%

TABLE 8A—DEFERRAL, CLAWBACK, FORFEITURE AND CERTAIN PROHIBITIONS FOR NEOS AT LEVEL 1 AND LEVEL 2 BD PARENT INSTITUTIONS IN YEAR 2007—Continued

	Level 1 parent	Level 2 parent
Institutions with fully independent Compensation Committee	93%	100%
Institutions where CROs review compensation packages	0%	0%

Thus, the analysis suggests that following the financial crisis, most Level 1 and Level 2 parent institutions of BDs and IAs have adopted to a certain extent some of the provisions and prohibitions that would be required by the proposed rule.

TABLE 8B—DEFERRAL, CLAWBACK, FORFEITURE AND CERTAIN PROHIBITIONS FOR NEOS AT LEVEL 1 AND LEVEL 2 IA PARENT INSTITUTIONS IN YEAR 2007

	Level 1 parent	Level 2 parent
Number of parent institutions with available compensation data	10	5
Number of NEOs:		
Total number of NEOs	53	26
Average number of NEOs per institution	5	5
Deferred compensation:		
Institutions with deferred compensation	100%	100%
Average percent of deferred compensation:		
CEO	45%	44%
Other NEOs	53%	33%
Average number of years deferred:	3.3	3.5
Type of compensation deferred:		
Institutions with cash	20%	40%
Institutions with stock	100%	100%
Clawback and forfeiture:		
Institutions with clawback	0%	0%
Institutions with forfeiture	40%	40%
Prohibitions:		
Institutions prohibiting hedging	20%	0%
Institutions prohibiting volume-driven incentive-based compensation	N/A	N/A
Institutions prohibiting acceleration of payments but for death and disability	40%	100%
Maximum incentive-based compensation Risk Management:		
Average percent	223%	N/A
Institutions with Risk Committees	60%	0%
Institutions with fully independent Compensation Committee	100%	100%
Institutions where CROs review compensation packages	0%	0%

Table 9A lists the most frequent triggers for clawback and forfeiture, which include some type of misconduct and adverse performance/outcome. About 19 percent of Level 1 parent institutions use improper or excessive risk-taking as a trigger for forfeiture and clawback. About 88 percent of Level 1 parent institutions use misconduct, and 75 percent of Level 1 parent institutions also use adverse performance as triggers for clawback, similar to the proposed rules.

TABLE 9A—PERCENTAGE OF LEVEL 1, LEVEL 2, AND LEVEL 3 BD PARENT INSTITUTIONS BY TRIGGER FOR FORFEITURE AND CLAWBACK

Trigger	Level 1 parents		Level 2 parents		Level 3 parents	
	Forfeiture: % of firms	Clawback: % of firms	Forfeiture: % of firms	Clawback: % of firms	Forfeiture: % of firms	Clawback: % of firms
Adverse performance/outcome	75	75	20	20	0	9
Misconduct/gross/detrimental conduct	88	88	40	60	57	63
Improper/excessive risk-taking	19	19	0	0	14	18
Managerial failure	6	6	0	0	0	0
Restatement/inaccurate reporting	19	19	40	60	71	73
Voluntary resignation/retirement	13	13	0	0	0	0
Misuse of confidential information/competitive activity					29	0
Policy/regulatory breach	6	6	0	0	0	0
For-cause termination	6	6	0	20	14	0

TABLE 9A—PERCENTAGE OF LEVEL 1, LEVEL 2, AND LEVEL 3 BD PARENT INSTITUTIONS BY TRIGGER FOR FORFEITURE AND CLAWBACK—Continued

Trigger	Level 1 parents		Level 2 parents		Level 3 parents	
	Forfeiture: % of firms	Clawback: % of firms	Forfeiture: % of firms	Clawback: % of firms	Forfeiture: % of firms	Clawback: % of firms
Number of parent institutions with available compensation data	16		5		13	

The use of forfeiture and clawback triggers is similar for IA parent institutions, as Table 9B shows. A significant number of Level 1 parent institutions use adverse performance and misconduct as triggers for both clawback and forfeiture.

TABLE 9B—TRIGGERS FOR FORFEITURE AND CLAWBACK OF LEVEL 1 AND LEVEL 2 IA PARENT INSTITUTIONS

Trigger	Level 1 parents		Level 2 parents	
	Forfeiture: % of firms	Clawback: % of firms	Forfeiture: % of firms	Clawback: % of firms
Adverse performance/outcome	80	80	33	33
Misconduct/gross/detrimental conduct	60	70	50	67
Improper/excessive risk-taking	40	40	17	17
Managerial failure	0	0	0	17
Restatement/inaccurate reporting	10	30	33	50
Misuse of confidential information/competitive activity	10	10	33	17
For-cause termination	10	10	33	17
Number of parent institutions with available compensation data	10		6	

Some of the provisions of the proposed rule (*e.g.*, prohibition of hedging) would apply to covered persons that are non-employee directors who receive incentive-based compensation at Level 1 and Level 2 covered institutions. Table 10A presents summary statistics on the current compensation practices of Level 1, Level 2, and Level 3 parent public institutions of BDs with respect to their non-employee directors. The data shows that most of the Level 1 parent institutions and all of the Level 2 parent institutions provide incentive-based compensation to their non-employee directors, and this compensation comes mainly in the form of deferred equity. Additionally, a large percentage of both Level 1 and Level 2 parents prohibit hedging by non-employee directors.

TABLE 10A—INCENTIVE-BASED COMPENSATION OF NON-EMPLOYEE DIRECTORS OF BD PARENTS

	Level 1 parents	Level 2 parents	Level 3 parents
Percentage of institutions with non-employee directors receiving IBC	77%	100%	100%.
Non-employee director IBC as percentage of total compensation	56%	46%	55%.
Type of IBC:			
Deferred equity	90%	100%	100%.
Options	10%	50%	8%.
Vesting (average number of years)	2.6 years	2.3 years	1.9 years.
Percentage of institutions prohibiting hedging by non-employee directors	70%	100%	25%.

The analysis of non-employee director compensation at the Level 1 and Level 2 parent institutions of IAs in Table 10B shows similar results: In all of the parent institutions non-employee directors receive incentive-based compensation and a significant fraction of parent institutions prohibit hedging transactions related to incentive-based compensation.

TABLE 10B—INCENTIVE-BASED COMPENSATION OF NON-EMPLOYEE DIRECTORS OF IA PARENTS

	Level 1	Level 2
Percentage of institutions with non-employee directors receiving IBC	100%	100%.
Non-employee director IBC as percentage of total compensation	56%	46%.
Type of IBC:		
Deferred equity	90%	100%.
Options	0%	17%.
Vesting (average number of years)	1.5 years	1.6 years.
Percentage of institutions prohibiting hedging by non-employee directors	78%	83%.

ii. Executives Other Than Named Executive Officers

While the above statistics are based on publicly disclosed information on compensation for the five most highly compensated executive officers at parent institutions, the proposed rule would apply to any executive officer, employee, director or principal shareholder (covered persons) who receives incentive-based compensation. Thus, the data presented above may not be representative for non-NEOs. To provide some evidence on the current incentive-based compensation arrangements of non-NEOs, the SEC uses anonymized supervisory data from the Board. It should be noted that the composition of the supervisory data sample could be different than that of the Level 1 and Level 2 parent institutions analyzed above. To alleviate this potential selection problem, Table 10 compares NEO and non-NEO compensation arrangements only for the supervisory data sample. Also, the supervisory data comes from banks, while the data above is from bank holding companies. Because there may be differences in incentive-based compensation arrangements and policies at the bank level and the bank holding company level, the supervisory data analysis could yield different results compared to the results presented in the tables above.

Since the supervisory data does not identify NEOs and non-NEOs but identifies the managerial position of each executive, the SEC uses an indirect approach to separate the two groups of executives. From the proxy statements of Level 1 and Level 2 parent institutions, the SEC identifies the executives that are most often included in the definition of NEOs, in addition to the CEO and the CFO. These executives are the COO, the GC, and often the heads of wealth management or investment banking. The SEC then classifies these executives as NEOs and any other executive as non-NEO. Table 11 presents summary statistics for NEOs and non-NEOs based on the supervisory data.

Similar to NEOs, non-NEOs tend to have a significant fraction of long-term incentive compensation in the form of restricted stock units ("RSUs") and performance stock units ("PSUs") that is deferred on average for about three years. Only 36 percent of institutions in the sample used cash as incentive-based compensation for non-NEOs and a significant fraction (on average about 50 percent across institutions that use cash as incentive-based compensation) of the cash incentive-based compensation is deferred. Similarly, 45 percent of the deferred incentive-based compensation for non-NEOs was in the form of restricted stock and 54 percent was in the form of performance share units. Fifty percent of the institutions in the sample used options as incentive-based compensation for non-NEOs, with average vesting period of approximately 3.7 years.

TABLE 11—EXISTING COMPENSATION ARRANGEMENTS FOR NEO AND NON-NEO EXECUTIVES

	Non-NEOs	NEOs
Number of institutions with available compensation data	14	14.
Number of executives	112	50.
ST IC/total IC	41%	40%.
Deferred IC/total IC	60%	64%.
Options/total IC	12%	13%.
percent of institutions with options	70%	70%.
Deferred IC subject to clawback and forfeit/deferred IC	57%	61%.
Types of IC compensation used:		
Cash:		
percent of institutions using cash	36%	36%.
cash as percent of deferred IC	48%	50%.
length of vesting	3 years	3 years.
type of vesting	40% immediate, 60% pro-rata	40% immediate, 60% pro-rata.
RSUs:		
percent of institutions using RSUs	64%	64%.
RSU as percent of deferred IC	45%	47%.
length of vesting	3.2 years	3.2 years.
type of vesting	11% immediate, 89% pro-rata	11% immediate, 89% pro-rata.
PSUs:		
percent of institutions using PSUs	64%	64%.
PSU as percent of deferred IC	54%	56%.
performance period	3 years	3 years.
length of vesting	3 years	3 years.
type of vesting	78% immediate, 22% pro-rata	78% immediate, 22% pro-rata.
Options:		
percent of institutions using options	50%	50%.
Options as percent of deferred IC	18%	19%.
length of vesting	3.7 years	3.7 years.
type of vesting	100% pro-rata	100% pro-rata.

iii. Significant Risk-Takers

The proposed rule requirements also would apply to significant risk-takers who receive incentive-based compensation. Because data on the compensation of significant risk-takers is not publicly available, the SEC relies on bank supervisory data from the OCC to provide some evidence on the current practices regarding significant risk-taker compensation at covered institutions. In the OCC anonymized data, banks identify material risk-takers and specific compensation arrangements for them. The definition of a material risk-taker is similar, but not identical, to that of a significant risk-taker in the proposed rule. Based on supervisory data from three Level 2 covered institutions, it seems that the incentive-based compensation of material risk-takers is subject to deferral, clawback and forfeiture. The fraction of incentive-based compensation that is subject to deferral depends on the size of the compensation a material risk-taker receives. As Table 12 suggests, the percentage deferred varies, with some exceptions, from 40 percent to 60 percent. The average length of the deferral period is three years.

TABLE 12—DEFERRAL POLICY FOR MATERIAL RISK-TAKERS AT THREE LEVEL 2 COVERED INSTITUTIONS

Institutions	Deferral percent	Forfeiture/ clawback	Length of deferral (years)
Institution 1	40%–60%	Yes	3
Institution 2	40%	Yes	3
Institution 3	10%–40%, 40% if bonus >$750,000	Yes	3

Due to the lack of data, the SEC is unable to shed light on current significant risk-taker compensation practices with respect to some of the other proposed rule requirements such as the use of hedging or the type of compensation that is being deferred (cash vs. stock vs. options). In addition, the data is based on information from only three Level 2 covered institutions. It is also worth noting that the OCC data is at the bank subsidiary level, not the depository institution holding company level. Thus, it is possible that the features of the compensation of significant risk-takers at the bank subsidiary level may not be representative of the compensation of significant risk-takers at BDs and IAs.

iv. Covered Persons at Subsidiaries

Economic theory suggests that, in large, complex, and interconnected financial institutions that are perceived to receive implicit government guarantee, managers of these institutions could have the incentive to take on more risk than they would have taken had there been no implicit government backstops, thus creating negative externalities for taxpayers. As discussed above, the proposed rule could decrease the likelihood of such negative externalities. To the extent that certain BDs and IAs pose high risk that may lead to externalities, covered persons likely would therefore include those individuals who, by virtue of receiving incentive-based compensation, are in a position of placing significant risks.

Under the proposed rule, senior executive officers and significant risk-takers of BDs and IAs that are covered institutions would be considered covered persons. The proposed rule would require consolidation of subsidiaries of BHCs that are themselves covered institutions for the purpose of applying certain rule requirements and prohibitions to covered persons. As a result of this proposed consolidation, covered persons employed at BDs and IAs would be subject to the same requirements as the covered persons of their parent institutions, even though the BDs and IAs may be of a smaller size, and hence otherwise treated at a lower level, than their parent institutions. This proposed consolidation would significantly affect unconsolidated Level 3 BDs because most of them are held by Level 1 and Level 2 covered institutions, as well as Level 3 IAs that are held by Level 1 and Level 2 covered institutions. The proposed consolidation would also affect unconsolidated Level 2 BDs and IAs that are held by Level 1 covered institutions because those BDs and IAs will also become Level 1 covered institutions for the purposes of the rule.

As of December 2014, there were 29 unconsolidated Level 3 BDs whose parent institutions are Level 1 and Level 2 institutions (Table 3); only one of those parent institutions was not a covered institution as defined by the rule. Additionally, there were 38 unconsolidated Level 3 BDs whose parents were private institutions; while it is possible that some of these may be Level 1 or Level 2 institutions, the SEC lacks data to determine their size. With respect to the proposed rule requirements, the current compensation arrangements of NEOs of Level 3 parent institutions exhibit some important differences compared to Level 1 and Level 2 parent institutions. For example, Level 3 parent institutions typically defer a smaller fraction of NEOs' incentive-based compensation (Table 7A), defer cash less frequently (Table 7A), and tend to use more options as part of their incentive-based compensation arrangements (Table 6A), compared to Level 1 and Level 2 parent institutions. On the other hand, Level 3 covered institutions, like Level 1 and Level 2 covered institutions, tend to apply forfeiture and clawback and prohibit hedging (Table 7A).

The proposed rule also would require consolidation with respect to certain significant risk-takers. Under the proposed definition of significant risk-taker, employees of a subsidiary that could put substantial capital of the parent institution at risk would be deemed significant risk-takers of the parent institution, and the proposed rule requirements would apply to them in the same manner as the significant risk-taker at their parent institutions. Because data on the compensation of significant risk-takers is not publicly available, the SEC relies on bank supervisory data from the OCC regarding the current compensation practices for significant risk-takers at Level 3 financial institutions; the SEC does not have data on the compensation arrangements at Level 1 and Level 2 institutions. Table 13 shows summary statistics for the compensation arrangements of significant risk-takers at Level 3 covered institutions. The compensation arrangements of significant risk-takers of Level 3 covered institutions seem similar to those of NEOs of Level 3 covered institutions. It is also worth noting that the OCC data is at the bank subsidiary level, not the depository institution holding company level. Thus, it is possible that the features of the compensation of significant risk-takers at the bank subsidiary level may not be representative of the compensation of significant risk-takers at BDs and IAs.

TABLE 13—EXISTING COMPENSATION ARRANGEMENTS FOR SIGNIFICANT RISK-TAKERS OF LEVEL 3 COVERED INSTITUTIONS

	Significant risk-takers
Number of institutions with available compensation data	5.

TABLE 13—EXISTING COMPENSATION ARRANGEMENTS FOR SIGNIFICANT RISK-TAKERS OF LEVEL 3 COVERED INSTITUTIONS—Continued

	Significant risk-takers
ST IC/total IC	77%.
Deferred IC/total IC	23%.
Deferred IC subject to clawback and forfeit/deferred IC	89%.
Types of IC compensation used:	
Cash:	
percent of institutions using cash	80%.
cash as percent of deferred IC	22%.
length of vesting	0.33 years.
type of vesting	100% pro-rata.
RSUs:	
percent of institutions using RSUs	100%.
RSU as percent of deferred IC	31%.
length of vesting	3 years.
type of vesting	40% immediate, 60% pro-rata.
PSUs:	
percent of institutions using PSUs	80%.
PSU as percent of deferred IC	12%.
performance period	1.9 years.
length of vesting	3 years.
type of vesting	80% immediate, 20% pro-rata.
Options:	
percent of institutions using options	20%.
Options as percent of deferred IC	25%.
length of vesting	NA.
type of vesting	NA.

3. Regulatory Baseline

The existing regulatory environment, especially after the financial crisis of 2007–2008, is also relevant to the current compensation practices of covered institutions and the effects of the proposed rulemaking. Several guidance and codes that specifically target incentive-based compensation have been adopted by various financial regulators that may also apply to some BDs and IAs. Some of those prescribe compensation practices and suggest prohibitions that are similar to the requirements and prohibitions in the proposed rules.

i. Guidance on Sound Incentive Compensation Policies

In June 2010, the U.S. Federal Banking Agencies [383] adopted the Guidance on Sound Incentive Compensation Policies.[384] The guidance applies to banking institutions and, because most of the parents of Level 1 and Level 2 BDs are bank holding companies subject to the guidance, its principles may apply to these BDs as well if the compensation structures at subsidiaries are similar to those at the parent institutions and the parent institution determines to implement relatively uniform incentive-based compensation policies for the consolidated institution. The guidance may also apply to the 39 IAs that are affiliated with banks and thrift institutions with assets of more than $50 billion.

The guidance is designed to prevent incentive-based compensation policies at banking institutions from encouraging imprudent risk-taking and to aid in the development of incentive-based compensation policies that are consistent with the safety and soundness of the institution. It has three key principles providing that compensation arrangements at a banking institution should: (a) Provide employees with incentives that appropriately balance risk and reward; (b) be compatible with effective risk management and controls; and (c) be supported by strong corporate governance, including active and effective oversight by the institution's board of directors. Similar to the proposed rules, this guidance applies to senior executives and other employees who, either individually or as a part of a group, have the ability to expose the relevant banking institution to a material level of risk. The guidance suggests several methods of balancing risk and rewards: Risk adjustment of awards; deferral of payment; longer performance periods; and reduced sensitivity to short-term performance.

ii. UK Prudential Regulatory Authority Remuneration Code

The SEC notes that for BDs and IAs whose parents are regulated by foreign authorities, the foreign regulatory framework with respect to incentive-based compensation may also be relevant for compliance with the proposed rules.[385] For example, in 2010, the UK PRA adopted four remuneration codes that apply to banks and investment firms and share important similarities with the proposed rules.[386] For instance, the SYSC 19A remuneration code imposes a deferral of at least 40 percent for not less than 3–5 years. For higher earners, at least 60 percent has to be deferred. The code applies to senior management, risk takers, staff engaged in control functions, and any employee receiving compensation that takes them into the same income bracket as senior management and risk takers, whose professional activities have a material impact on the firm's risk profile. The code also requires that at least 50 percent of any bonus must be made in shares, share-linked instruments or other equivalent non-cash instruments of the firm. These shares should be subject to an appropriate retention period. Firms also need to disclose details of their remuneration policies at least annually.

In July 2014, the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) published two joint consultation papers "aimed at improving individual responsibility and accountability in the banking sector." [387] The papers seek feedback on proposed changes to the rules for remuneration for UK banks and PRA-designated investment firms.[388] The PRA and FCA's new proposed rules follow recommendations made by the UK Parliamentary Commission on Banking Standards, "Changing Banking for Good," published in June 2013, and are a response to the major role played by banks in the financial crisis in 2007–2008 and allegations of the attempted manipulation of LIBOR. Their new proposed rules were deemed necessary because the current rule on individual accountability is "often unclear or confused" [389] and thus undermines public trust in the banking sector and the financial regulators. The PRA and FCA proposed that banks defer bonuses for a minimum of 7 years for senior managers and 5 years for other material risk-takers. Financial institutions would be able to recover variable pay even if it was paid out or vested for up to 7 years after the award date.

D. Scope of the Proposed Rule

1. Levels of Covered Institutions

The proposed rule would create a tiered system of covered institutions based on an institution's average total consolidated assets during the most recent consecutive four quarters.[390] There are three levels of covered institutions: Level 1, Level 2, and Level 3 covered institutions. Some of the proposed rule requirements (*e.g.*, deferral of compensation, forfeiture and clawback) would apply differentially to covered institutions based on their size tier, with more stringent restrictions on the incentive-based compensation arrangements at larger institutions (*i.e.*, Level 1 and Level 2 covered institutions). In general, the importance of financial institutions in the economy tends to be positively correlated with their size. This is apparent from the use of implicit "too-big-to-fail" policies by governments and central banks, providing support to large financial institutions at times of financial crises because of their importance to the greater financial system.[391] In a similar vein, the 2010 Federal Banking Agency Guidance prescribes stricter compensation rules and related risk-management and corporate governance practices for large and more complex banking institutions.[392]

There are various measures developed to estimate the amount of risk [393] posed by an institution to the greater financial system. One study finds that the degree of leverage, maturity mismatch and the size of the institution are all related to a measure of systemic importance and risk.[394] Another study finds that institution size, degree of leverage and covariance of the institution's stock with the market during distress are related to the systemic risk contribution of an institution.[395] Moreover, an academic study of the financial crisis states that the size of an institution is likely to magnify the impact of failure to the entire financial system.[396] In terms of defining systemic importance, bank holding companies with assets over $50 billion are required to disclose to the Board on an annual basis, three indicators related to their systemic risk: Institution size, interconnectedness and complexity.[397]

By setting stricter restrictions on the incentive-based compensation arrangements at Level 1 and Level 2 covered institutions, the tiered approach could benefit taxpayers. To the extent that stricter incentive-based compensation rules are effective at curbing inappropriate risk-taking, this could lessen the default likelihood for Level 1 and Level 2 covered institutions, thus increasing the likelihood that taxpayers would not have to incur costs to rescue important institutions. Moreover, if the stricter incentive-based compensation rules lower the likelihood of default for Level 1 and Level 2 covered institutions, the likelihood of default for smaller institutions could decrease as well, to the extent that smaller institutions are exposed to counterparty risks due to their connection with larger Level 1 and Level 2 covered institutions.

Consolidation requirements aside, the tiered approach also would not impose as great a compliance burden on smaller Level 3 covered institutions for which the proposed rule requirements on deferral, forfeiture and clawback, and some other prohibitions and requirements do not apply. To the extent that compliance costs have a fixed component that may have a disproportionate impact on smaller institutions, excluding Level 3 covered institutions from more burdensome requirements would not place them at a competitive disadvantage compared to Level 1 and Level 2 covered institutions. Moreover, to the extent that executives' incentives become distorted due to the implicit government guarantee, this is less likely to be the case for Level 3 covered institutions due to their relatively smaller size. Thus, the potential benefits of the proposed rule may be less substantial for smaller covered institutions since such institutions are less likely to be in a

[383] The Federal Banking Agencies, as of 2010, were the Board, OCC, FDIC, and Office of Thrift Supervision.

[384] *See*, 2010 Federal Banking Agency Guidance, available at: *http://www.federalreserve.gov/newsevents/press/bcreg/20100621a.htm.*

[385] For example, 3 Level 1 and Level 2 BDs have parent institutions that are subject to the UK PRA rules.

[386] There are four codes: SYSC 19A (covering Deposit Taker and Investment firms), SYSC 19B (covering Alternative Investment Fund Managers), SYSC 19C—BIPRU (covering Investment firms), and SYSC 19D (covering Dual-regulated firms Remuneration Code). *See https://www.the-fca.org.uk/remuneration.*

[387] *See* "Prudential Regulation Authority and Financial Conduct Authority Consult on Proposals to Improve Responsibility and Accountability in the Banking Sector," Press Release by the Financial Conduct Authority, (July 30, 2014), available at: *https://www.fca.org.uk/news/pra-and-fca-consult-on-proposals-to-improve-responsibility-and-accountability-in-the-banking-sector.*

[388] *See* "Strengthening Accountability in Banking: A New Regulatory Framework for Individuals," PRA CP14/13, Consultation Paper, July 2014, available at: *https://www.fca.org.uk/news/cp14-13-strengthening-accountability-in-banking.* See also, "Strengthening the Alignment of Risk and Reward: New Remuneration Rules," PRA CP14/14, Consultation Paper, July 2014, available at: *https://www.fca.org.uk/news/cp14-14-strengthening-the-alignment-of-risk-and-reward.*

[389] *See* FSA Consultation Paper 14/13: Strengthening accountability in banking: a new regulatory framework for individuals (*https://www.fca.org.uk/news/cp14-13-strengthening-accountability-in-banking*).

[390] For IAs, the tiered system would be based on year end balance sheet assets (excluding non-proprietary assets).

[391] *See*, for example, Frederic Mishkin, Financial Institutions.

[392] Large banking institutions include, in the case of banking institutions supervised by (i) The Board, large, complex banking institutions as identified by the Board for supervisory purposes; (ii) the OCC, the largest and most complex national banks as defined in the Large Bank Supervision booklet of the Comptroller's Handbook; (iii) the FDIC, large, complex insured depository institutions (IDIs). *See*, 2010 Federal Banking Agency Guidance, available at: *http://www.federalreserve.gov/newsevents/press/bcreg/20100621a.htm.*

[393] *See* Bisias et al. 2012. A Survey of Systemic Risk Analytics. Office of Financial Research, Working Paper.

[394] *See* Adrian, T., Brunnermier, M. 2011. COVAR. *American Economic Review*, forthcoming. The paper proposes a measure for systemic risk contribution by financial institutions. The forward-looking measure of systemic risk contribution is significantly related to lagged characteristics of financial institutions such as size, leverage, and maturity mismatch.

[395] *See* Brownlees, C., Engle, R. 2015. SRISK: A Conditional Capital Shortfall Index for Systemic Risk Measurement. Working Paper. The paper develops a measure of systemic risk contribution of a financial firm. This measure associates systemic risk with the capital shortfall a financial institution is expected to experience conditional on a severe market decline. The measure is a function of the firm's size, degree of leverage and the expected equity loss conditional on a market downturn.

[396] *See* French et al. 2010. Squam Lake Report: Fixing the Financial System. Princeton University Press.

[397] Size is correlated with the two other measures of systemic importance, complexity and interconnectedness. *See* FSOC 2015 Annual Report, available at: *https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/2015%20FSOC%20Annual%20Report.pdf.*

position to take risks that may lead to externalities.

However, to the extent that the stricter proposed requirements for incentive-based compensation arrangements at Level 1 and Level 2 covered institutions induce less than optimal risk-taking incentives for covered persons from shareholders' point of view, this could result in a decrease in firm value and hence lower returns for the shareholders of these institutions. Additionally, the stricter requirements for Level 1 and Level 2 covered institutions could make it more difficult to attract and retain human capital, thus creating competitive disadvantages in the labor market for these institutions. If these institutions become disadvantaged due to their stricter compensation requirements, they might be forced to increase overall compensation to be able to compete for managerial talent with firms that are not affected by the proposed rules.

As discussed above, besides an institution's average total consolidated assets, other indicators (for example, the size of that institution's open counterparty positions in a market) not perfectly correlated with size could be a proxy for the importance of financial institutions to the financial sector and the broader economy. If size is not a good proxy for the importance of a financial institution, then the proposed rule would likely pose a disproportionate compliance burden on larger institutions while not covering institutions that may be more significant to the overall financial system under different proxies for importance.

The proposed thresholds for identifying Level 1 covered institutions (over $250 billion) and Level 2 covered institutions (between $50 billion and $250 billion) are similar to those used by banking regulators in other contexts. For example, the $250 billion is used by Basel III as a threshold to identify core banks that must adopt the Basel standards; and the $50 billion threshold is used in a number of sections of the Dodd-Frank Act.[398] The use of these two thresholds might place a higher compliance burden on institutions that, are close to, but just above the threshold compared to institutions that are close, but just below the threshold. For example, a BD that has a size of $49 billion is likely to be similar in many aspects to a BD that has a size of $51 billion. Yet, with the current cutoff points, the former would not be subject to deferral, forfeiture and clawback, and other prohibitions in the proposed rule, while the latter would be.

By covering various types of financial institutions (*e.g.*, banks, BDs, IAs, thrifts, etc.) with at least $1 billion in assets, section 956 and the proposed rule implicitly assume that larger institutions pose higher risks, including risks that may impact the financial system at large. This assumption may not hold true for certain institutions. For example, in the case of BDs and IAs, which may have a much narrower scope of activities than a comparably sized commercial bank, the narrower range of activities could limit their impact on the overall financial system. On the other hand, larger BDs and IAs may pose higher risks than smaller BDs and IAs. Also, at least one study has suggested that the interconnectedness of financial institutions generally could affect multiple financial institutions in a crisis and impact otherwise unrelated parts of the larger financial system.[399] Another study asserts that financial institutions, including broker-dealers, have become highly interrelated and less liquid in the past decade, thus increasing the level of risk in the financial sector.[400]

[398] For example, sections 165 and 166 of the Dodd-Frank Act require the Board to establish enhanced prudential standards for nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets of $50 billion or more. In prescribing more stringent prudential standards, the Board may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board deems appropriate.

[399] *See*, for example, Bisias D., M. Flood, A.W. Lo, and S. Valavanis, 2012. A Survey of Systemic Risk Analytics. Office of Financial Research, Working paper, available at: *https://www.treasury.gov/initiatives/wsr/ofr/Documents/OFRwp0001_Bisias FloodLoValavanis_ASurveyOfSystemicRisk Analytics.pdf.* On page 9, the authors argue that "*In a world of interconnected and leveraged institutions, shocks can propagate rapidly throughout the financial network, creating a self-reinforcing dynamic of forced liquidations and downward pressure on prices.*" The study discusses the interconnectedness between financial institutions in general and does not focus on the potential role of BDs and IAs.

[400] *See* Billio M., M. Getmansky, A.W. Lo, and L. Pelizzon. 2012. Econometric Measures of Connectedness and Systemic Risk in the Finance and Insurance Sectors, *Journal of Financial Economics*, 104, 535–559. The study examines and finds evidence that banks, brokers, hedge funds and insurance companies have become highly interrelated during the last decade, thus increasing the level of systemic risk in the financial sector. For example, insurance companies have had little to do with hedge funds until recently when these companies expanded into markets such as providing insurance for financial products and credit default swaps. Such activities have potential implications for systemic risk when conducted on a large scale.

2. Senior Executive Officers and Significant Risk-Takers

The requirements under the proposed rule would place differential restrictions on compensation arrangements of covered persons. Within each covered institution, the proposed rule would create different categories of covered persons, which include any executive officer, employee, director, or principal shareholder that receives incentive-based compensation. While the proposed rule would apply to directors or principal shareholders who receive incentive-based compensation, the SEC's baseline analysis suggests that most of the parent institutions provide incentive-based compensation to non-employee directors but none of them provide such compensation arrangements to principal shareholders that are neither executives nor non-employee directors. Below, the SEC focuses the discussion of the economic effects of the proposed rule on two types of covered persons: Senior executive officers and significant risk-takers.

As discussed above, a senior executive officer is defined as a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, executive chairman, CEO, CFO, COO, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function (as defined in the proposed rule). A significant risk-taker is defined as a covered person, other than a senior executive officer, who receives compensation of which at least one-third is incentive-based compensation and is: Either (1) placed among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of a Level 1 covered institution or of any covered institution affiliate, or (2) placed among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of a covered Level 2 covered institution or of any covered institution affiliate, or (3) may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any affiliate of the covered institution

that is itself a covered institution, or (4) is designated as a significant risk-taker by the SEC or the covered institution.

The proposed rule would impose differential requirements on compensation arrangements of senior executive officers and significant risk-takers conditional on the size of the covered institution. Regarding senior executive officers, at least 60 percent of a senior executive officer's incentive-based compensation would be required to be deferred at a Level 1 covered institution, whereas 50 percent would be the minimum deferral amount for a senior executive officer at a Level 2 covered institution. Regarding significant risk-takers, 50 percent of a significant-risk-taker's incentive-based compensation at a Level 1 covered institution would be required to be deferred as compared to 40 percent for a significant risk-taker's incentive-based compensation at a Level 2 covered institution. Moreover, the minimum deferral period for all covered persons at Level 1 covered institutions would be four years for qualifying incentive-based compensation and two years for incentive-based compensation received under long-term incentive plans whereas the deferral period for covered persons at a Level 2 covered institution would be three years for qualifying incentive-based compensation and one year for compensation received under long-term incentive plans.

In general, the proposed rule would impose relatively stricter requirements for compensation arrangements of individuals who are more likely to be in a position to execute or authorize actions with accompanying risks that may have a significant impact on the financial health of the covered institution or of any covered institution affiliate. Specifically, the proposed rule would require a higher percentage of incentive-based compensation to be deferred for senior executive officers compared to significant risk-takers at covered institutions. If senior executive officers are in a position to make decisions that have a more significant impact on the degree of risk a covered institution takes than significant risk-takers, then the higher percentages of deferral amounts for senior executive officers appear to be commensurate with the degree of inappropriate risk-taking in which they could engage. This would likely provide proportionately stronger disincentives for inappropriate risk-taking by individuals that are more likely to be able to expose the covered institution to greater amounts of risk, thus potentially benefiting taxpayers and other stakeholders. In general, if certain significant risk-takers (*e.g.*, traders with the ability to place significant bets that could endanger the financial health of the covered institution or of any affiliate of the covered institution) could engage in more or similarly significant risk-taking than senior executive officers, the proposed rules would place less stringent requirements on the compensation arrangements of such significant risk-takers compared to senior executive officers, lowering risk-taking disincentives for significant risk-takers and/or imposing a potential higher cost to senior executive officers. However, the proposed rules may also create an incentive for senior executive officers to monitor significant risk-takers in those situations when they do not directly supervise such significant risk-takers.

While the definition of senior executive officer would be primarily based on job function, the definition of significant risk-taker would be based on multiple criteria. To identify significant risk-takers, one direct approach would require knowledge of their authority to expose their institution to material amounts of risk. This risk-based approach has intuitive appeal because it relates the application of the rules to the potential for risk taking. Such an approach could, however, be designed in many different ways, including differences relating to determining the appropriate risk-based measure, whether it should be applied to individuals or a group (*e.g.*, a trader or a trading desk), and whether it would be appropriate to subject all trading activity to the same risk-based measure (*e.g.*, U.S. treasury securities versus collateralized mortgage obligations). One of the criteria in the definition of significant risk-takers in the proposed rules is based on individuals' relative size of annual base salary and incentive-based compensation within a covered institution and its affiliates. If the highest paid individuals at BDs and IAs are the ones that could place BDs and IAs, or their parent institutions, at risk of insolvency, then the use of this criterion is likely to reasonably identify individuals that are significant risk-takers and as a result lower the likelihood of inappropriate risks being undertaken and potentially safeguard the health of these institutions and the broader economy. If, however, the highest paid individuals at BDs and IAs are not likely to be able to expose their parent institution to significant risks, this criterion may be overly inclusive, resulting in individuals being designated as significant risk-takers without possessing the ability to inflict substantial losses on BDs or IAs, or their parent institutions. This may impose restrictions on the compensation of those individuals and as a consequence may put BDs and IAs at a disadvantage in hiring or retaining human capital. BDs and IAs may have to increase the compensation of affected individuals to offset the restrictions imposed by the proposed rule.

For IAs that are covered institutions in another capacity and BDs, the proposed rules would also identify significant risk-takers using a measure of their ability to expose the covered institution to risks. More specifically, a person that receives compensation of which at least one-third is incentive-based compensation and may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any affiliate of the covered institution would be a significant risk-taker. As discussed above, the Agencies are proposing the exposure test because individuals who have the authority to expose covered institutions to significant amounts of risk can cause material financial losses to covered institutions. For example, in proposing the exposure test, the Agencies were cognizant of the significant losses caused by actions of individuals, or a trading group, at some of the largest financial institutions during and after the financial crisis that began in 2007. In the case of a covered institution that is a subsidiary of another covered institution and is smaller than its parent, this particular criterion of the significant risk-taker definition could result in individuals being classified as significant risk-takers who do not have the ability to expose significant amounts of the parent's capital to risk.

Additionally, under the proposed definition of significant risk-taker, a covered person of a BD or IA subsidiary of a parent institution that is a Level 1 or Level 2 covered institution may be designated as a significant risk-taker relative to: (i) In the case of a BD subsidiary, the size of the BD's tentative net capital or; (ii) in the case of both BD and IA subsidiaries, the tentative net capital or common equity tier 1 capital of any section 956 affiliate of the BD or IA, if the covered person has the ability to commit capital of the affiliate, even if the BD or IA subsidiary has significantly fewer assets than its parent. Because the BD subsidiary would be treated as a Level 1 or Level 2 covered institution due to its parent, a covered person of a BD that is a

of these institutions. Additionally, the stricter requirements for Level 1 and Level 2 covered institutions could make it more difficult to attract and retain human capital, thus creating competitive disadvantages in the labor market for these institutions. If these institutions become disadvantaged due to their stricter compensation requirements, they might be forced to increase overall compensation to be able to compete for managerial talent with firms that are not affected by the proposed rules.

As discussed above, besides an institution's average total consolidated assets, other indicators (for example, the size of that institution's open counterparty positions in a market) not perfectly correlated with size could be a proxy for the importance of financial institutions to the financial sector and the broader economy. If size is not a good proxy for the importance of a financial institution, then the proposed rule would likely pose a disproportionate compliance burden on larger institutions while not covering institutions that may be more significant to the overall financial system under different proxies for importance.

The proposed thresholds for identifying Level 1 covered institutions (over $250 billion) and Level 2 covered institutions (between $50 billion and $250 billion) are similar to those used by banking regulators in other contexts. For example, the $250 billion is used by Basel III as a threshold to identify core banks that must adopt the Basel standards; and the $50 billion threshold is used in a number of sections of the Dodd-Frank Act.[398] The use of these two thresholds might place a higher compliance burden on institutions that, while the latter would be.

By covering various types of financial institutions (*e.g.,* banks, BDs, IAs, thrifts, etc.) with at least $1 billion in assets, section 956 and the proposed rule implicitly assume that larger institutions pose higher risks, including risks that may impact the financial system at large. This assumption may not hold true for certain institutions. For example, in the case of BDs and IAs, which may have a much narrower scope of activities than a comparably sized commercial bank, the narrower range of activities could limit their impact on the overall financial system. On the other hand, larger BDs and IAs may pose higher risks than smaller BDs and IAs. Also, at least one study has suggested that the interconnectedness of financial institutions generally could affect multiple financial institutions in a crisis and impact otherwise unrelated parts of the larger financial system.[399] Another study asserts that financial institutions, including broker-dealers, have become highly interrelated and less liquid in the past decade, thus increasing the level of risk in the financial sector.[400]

based compensation. While the proposed rule would apply to directors or principal shareholders who receive incentive-based compensation, the SEC's baseline analysis suggests that most of the parent institutions provide incentive-based compensation to non-employee directors but none of them provide such compensation arrangements to principal shareholders that are neither executives nor non-employee directors. Below, the SEC focuses the discussion of the economic effects of the proposed rule on two types of covered persons: Senior executive officers and significant risk-takers.

As discussed above, a senior executive officer is defined as a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, executive chairman, CEO, CFO, COO, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function (as defined in the proposed rule). A significant risk-taker is defined as a covered person, other than a senior executive officer, who receives compensation of which at least one-third is incentive-based compensation and is: Either (1) placed among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of a Level 1 covered institution or of any covered institution affiliate, or (2) placed among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of a covered Level 2 covered institution or of any covered institution affiliate, or (3) may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any affiliate of the covered institution

based compensation would be required to be deferred at a Level 1 covered institution, whereas 50 percent would be the minimum deferral amount for a senior executive officer at a Level 2 covered institution. Regarding significant risk-takers, 50 percent of a significant-risk-taker's incentive-based compensation at a Level 1 covered institution would be required to be deferred as compared to 40 percent for a significant risk-taker's incentive-based compensation at a Level 2 covered institution. Moreover, the minimum deferral period for all covered persons at Level 1 covered institutions would be four years for qualifying incentive-based compensation and two years for incentive-based compensation received under long-term incentive plans whereas the deferral period for covered persons at a Level 2 covered institution would be three years for qualifying incentive-based compensation and one year for compensation received under long-term incentive plans.

In general, the proposed rule would impose relatively stricter requirements for compensation arrangements of individuals who are more likely to be in a position to execute or authorize actions with accompanying risks that may have a significant impact on the financial health of the covered institution or of any covered institution affiliate. Specifically, the proposed rule would require a higher percentage of incentive-based compensation to be deferred for senior executive officers compared to significant risk-takers at covered institutions. If senior executive officers are in a position to make decisions that have a more significant impact on the degree of risk a covered institution takes than significant risk-takers, then the higher percentages of deferral amounts for senior executive officers appear to be commensurate with the degree of inappropriate risk-taking in which they could engage. This would likely provide proportionately stronger disincentives for inappropriate risk-taking by individuals that are more likely to be able to expose the covered institution to greater amounts of risk, thus potentially benefiting taxpayers and other stakeholders. In general, if certain significant risk-takers (*e.g.,*

senior executive officers, lowering risk-taking disincentives for significant risk-takers and/or imposing a potential higher cost to senior executive officers. However, the proposed rules may also create an incentive for senior executive officers to monitor significant risk-takers in those situations when they do not directly supervise such significant risk-takers.

While the definition of senior executive officer would be primarily based on job function, the definition of significant risk-taker would be based on multiple criteria. To identify significant risk-takers, one direct approach would require knowledge of their authority to expose their institution to material amounts of risk. This risk-based approach has intuitive appeal because it relates the application of the rules to the potential for risk taking. Such an approach could, however, be designed in many different ways, including differences relating to determining the appropriate risk-based measure, whether it should be applied to individuals or a group (*e.g.,* a trader or a trading desk), and whether it would be appropriate to subject all trading activity to the same risk-based measure (*e.g.,* U.S. treasury securities versus collateralized mortgage obligations). One of the criteria in the definition of significant risk-takers in the proposed rules is based on individuals' relative size of annual base salary and incentive-based compensation within a covered institution and its affiliates. If the highest paid individuals at BDs and IAs are the ones that could place BDs and IAs, or their parent institutions, at risk of insolvency, then the use of this criterion is likely to reasonably identify individuals that are significant risk-takers and as a result lower the likelihood of inappropriate risks being undertaken and potentially safeguard the health of these institutions and the broader economy. If, however, the highest paid individuals at BDs and IAs are not likely to be able to expose their parent institution to significant risks, this criterion may be overly inclusive, resulting in individuals being designated as significant risk-takers without possessing the ability to inflict

in another capacity and BDs, the proposed rules would also identify significant risk-takers using a measure of their ability to expose the covered institution to risks. More specifically, a person that receives compensation of which at least one-third is incentive-based compensation and may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any affiliate of the covered institution would be a significant risk-taker. As discussed above, the Agencies are proposing the exposure test because individuals who have the authority to expose covered institutions to significant amounts of risk can cause material financial losses to covered institutions. For example, in proposing the exposure test, the Agencies were cognizant of the significant losses caused by actions of individuals, or a trading group, at some of the largest financial institutions during and after the financial crisis that began in 2007. In the case of a covered institution that is a subsidiary of another covered institution and is smaller than its parent, this particular criterion of the significant risk-taker definition could result in individuals being classified as significant risk-takers who do not have the ability to expose significant amounts of the parent's capital to risk.

Additionally, under the proposed definition of significant risk-taker, a covered person of a BD or IA subsidiary of a parent institution that is a Level 1 or Level 2 covered institution may be designated as a significant risk-taker relative to: (i) In the case of a BD subsidiary, the size of the BD's tentative net capital or; (ii) in the case of both BD and IA subsidiaries, the tentative net capital or common equity tier 1 capital of any section 956 affiliate of the BD or IA, if the covered person has the ability to commit capital of the affiliate, even if the BD or IA subsidiary has significantly fewer assets than its parent. Because the BD subsidiary would be treated as a Level 1 or Level 2 covered institution due to its parent, a covered person of a BD that is a

[398] For example, sections 165 and 166 of the Dodd-Frank Act require the Board to establish enhanced prudential standards for nonbank financial companies supervised by the Board and bank holding companies with total consolidated assets of $50 billion or more. In prescribing more stringent prudential standards, the Board may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board deems appropriate.

[399] *See,* for example, Bisias D., M. Flood, A.W. Lo, and S. Valavanis, 2012. A Survey of Systemic Risk Analytics. Office of Financial Research, Working paper, available at: *https://www.treasury.gov/initiatives/wsr/ofr/Documents/OFRwp0001_Bisias FloodLoValavanis_ASurveyOfSystemicRisk Analytics.pdf.* On page 9, the authors argue that "*In a world of interconnected and leveraged institutions, shocks can propagate rapidly throughout the financial network, creating a self-reinforcing dynamic of forced liquidations and downward pressure on prices.*" The study discusses the interconnectedness between financial institutions in general and does not focus on the potential role of BDs and IAs.

[400] *See* Billio M., M. Getmansky, A.W. Lo, and L. Pelizzon. 2012. Econometric Measures of Connectedness and Systemic Risk in the Finance and Insurance Sectors, *Journal of Financial Economics,* 104, 535–559. The study examines and finds evidence that banks, brokers, hedge funds and insurance companies have become highly interrelated during the last decade, thus increasing the level of systemic risk in the financial sector. For example, insurance companies have had little to do with hedge funds until recently when these companies expanded into markets such as providing insurance for financial products and credit default swaps. Such activities have potential implications for systemic risk when conducted on a large scale.

relatively smaller subsidiary would be subject to more stringent compensation restrictions than would an employee of a comparably sized BD that is not a subsidiary of a Level 1 or Level 2 covered institution. As a consequence, if such a designated significant risk-taker of a smaller BD subsidiary of a Level 1 or Level 2 covered institution is not in a position to undertake actions that place the entire institution at risk, then the proposed approach may impose disproportionately stricter compensation restrictions on such covered person.

An alternative would be to use an individual's level of compensation as a proxy for his or her ability or authority to undertake risks within a corporate structure. The main assumption under this approach would be that there is a positive link between an individual's total compensation and that individual's authority to commit significant amounts of capital at risk at the covered institution or any affiliate of the covered institution. A benefit of the total compensation-based approach would be the implementation simplicity in the identification of significant risk-takers. However, the main challenge would be the determination of the total compensation threshold that would appropriately qualify individuals as significant risk-takers. On one hand, setting the total compensation threshold too low could impose incentive-based compensation restrictions on individuals that do not have authority to undertake significant risks. As a result, it is possible that incentive-based compensation requirements imposed on individuals that do not have significant risk-taking authority could lead to a disadvantage in the efforts of the institutions to attract and retain talent. On the other hand, setting the total compensation threshold too high could impose incentive-based compensation restrictions on an incomplete set of significant risk-takers, limiting the potential benefits of the proposed rule.

3. Consolidation of Subsidiaries

The proposed rule would subject covered institution subsidiaries of a depository institution holding company that is a Level 1 or Level 2 covered institution to the same requirements as the depository institution holding company. In this manner, the proposed rule would capture the effect that risk-taking within the subsidiaries of a depository institution holding company could have on the parent, and the negative externalities that could result for taxpayers.

For example, covered persons at a $10 billion BD subsidiary of a depository institution holding company that is a Level 1 covered institution would be treated as covered persons of a Level 1 covered institution and subject to the proposed requirements and prohibitions applicable to covered persons at a Level 1 covered institution. One benefit of the proposed approach is the implementation simplicity of the proposed rule since the parent institution's size would determine the requirements for all covered persons in the covered institution's corporate structure. Such an approach also has the advantage that it may cover situations where the subsidiary could potentially expose the consolidated institution to substantial risks. This could be the case if for example the parent institution has provided capital to the subsidiary and the subsidiary is large enough that its failure would represent a significant loss for the parent institution. Moreover, such an approach curbs the possibility that a covered institution might place significant risk-takers in a smaller unregulated subsidiary, in order to evade the compensation restrictions of the proposed rule for individuals with authority to expose the institution to significant amounts of risk.

There may also be costs associated with the proposed consolidation approach. The main disadvantage of such approach is that it may impose requirements and prohibitions on individuals employed in smaller subsidiaries that are less likely to be in a position to expose the institution to significant risks. Thus, the assumptions underlying the rule's consolidation may not be accurate in all cases. The proposed rules' treatment of subsidiaries would depend on their size and the size of their parent, and also on the effect that risk-taking within those subsidiaries could have on the potential failure of the parent institution and the potential risk that such a failure could impose on the overall financial system and the subsequent negative externality that this could create for taxpayers. For example, if the parent institution does not explicitly provide capital or implicitly guarantee the subsidiary's positions, the proposed rules would impose similar requirements on the incentive-based compensation of individuals with different abilities to expose the institution to risk. Such compensation requirements may impose costs on individuals in these subsidiaries, and it might affect the ability of these subsidiaries to compete for managerial talent with stand-alone companies of the same size as the subsidiary. If that were the case, the subsidiaries of larger parent institutions may have to provide additional pay to individuals to compensate for the relatively stricter compensation requirements and prohibitions. If these additional compensation requirements are significantly costly, there may be incentives for smaller subsidiaries to spin-off from their parents and operate as stand-alone firms to avoid the stricter compensation requirements that would be applicable based on the size of the parent institution.

Additionally, the costs of the proposed consolidation approach would depend on how different the current incentive-based compensation arrangements of a subsidiary are from those of its parent institution. If the compensation arrangements of BDs' and IAs' covered persons are similar to those of their parent institutions (*e.g.*, they use similar deferral percentages and terms, prohibit hedging, etc.), then the proposed consolidation approach is not likely to lead to significant compliance costs for BDs and IAs. The 2010 Federal Banking Agency Guidance has significantly limited differences in compensation arrangements between financial institutions and their subsidiaries. If, however, the compensation arrangements at BDs and IAs more closely resemble the compensation structures of financial institutions of similar size, than the proposed rule's consolidation requirement may lead to significant compliance costs. Unconsolidated Level 3 BDs and IAs are most likely to be affected by this proposition. The parent institutions of Level 3 BDs, to the extent that they are owned by one, are mainly Level 1 and Level 2 covered institutions. Although the SEC does not have data about the parent institutions of Level 3 IAs, the SEC expects that they would also be mainly Level 1 and Level 2 covered institutions. As shown above, compensation practices at Level 3 parent institutions differ significantly from Level 1 and Level 2 parent institutions on a number of dimensions: They defer a smaller fraction of NEOs incentive-based compensation (Table 7A), defer cash less frequently (Table 7A), and tend to use more options as part of their incentive-based compensation (Table 6A) compared to Level 1 and Level 2 parent institutions. They also rather infrequently prohibit hedging with respect to non-employee directors that receive incentive-based compensation (Table 10A). If the compensation arrangements of unconsolidated Level 3 BDs and IAs are similar to those of Level 3 parent institutions, under the proposed rule they would need to make significant changes to certain features of their compensation arrangements to be compliant with the proposed rule. On the other hand, to the extent that their current compensation practices are not optimal from the perspective of taxpayers and other stakeholders of such BDs and IAs, there may be potential benefits. This point holds for the remainder of the economic analysis where the SEC discusses the potential costs and benefits to unconsolidated Level 3 BDs and IAs of a larger covered institution from applying the proposed rule requirements and prohibitions.

An alternative to the proposed consolidation approach would be to use the subsidiary's size to determine its status as a Level 1, Level 2, or Level 3 covered institution. For example, a $10 billion BD subsidiary of a Level 1 depository institution holding company would be treated as a Level 3 covered institution and covered persons within the subsidiary would be subject to all requirements and prohibitions applicable to a Level 3 covered institution. This alternative approach would not entail the potential costs identified in the proposed approach described above. However, differential application of the rule depending on subsidiary size could provide covered institutions with an incentive to re-organize their operations by placing significant risk-takers into relatively smaller subsidiaries to bypass the proposed requirements. This type of behavior, however, might be mitigated in some circumstances by the proposed rule's prohibition on such indirect actions: A covered institution must not indirectly, or through or by any other person, do anything that would be unlawful for such covered institution to do directly under this part. Moreover, this type of behavior would be constrained by the fact that the SEC's capital requirements for broker-dealers require that the broker-dealer itself carry the necessary capital for all broker-dealer positions.[401] Additionally, the rule's definition of a significant risk-taker would treat any employee of the subsidiary with the ability to commit certain amount of capital or to create risks for the parent institution as a significant risk-taker of the parent, further limiting the ability of institutions to bypass the proposed requirements by placing such individuals into relatively smaller subsidiaries.

[401] *See* 17 CFR 15c3–1(a).

E. Potential Costs and Benefits of the Proposed Rule's Requirements and Prohibitions

In the following sections, the SEC provides an analysis of the potential costs and benefits associated with the proposed rule's requirements and prohibitions and possible alternatives.[402] For purposes of this analysis, the SEC addresses the potential economic effects for covered BDs and IAs resulting from the statutory mandate and from the SEC's exercise of discretion together, recognizing that it is often difficult to separate the costs and benefits arising from these two sources. The SEC also requests comment on any economic effect the proposed requirements may have on covered BDs and IAs. The SEC appreciates comments that include both qualitative information and data quantifying the costs and the benefits identified in the analysis or alternative implementations of the proposed rule.

1. Limitations on Excessive Compensation

The proposed rule would prohibit covered institutions from establishing or maintaining any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risk-taking by providing a covered person with excessive compensation, fees, or benefits or that could lead to material loss for the institution.

The proposed rule would not define excessive compensation; instead, it would use a principles-based approach that would provide covered institutions with the flexibility to structure incentive-based compensation arrangements that do not constitute excessive compensation based on several factors that are outlined below. These factors would include: The total size of a covered person's compensation; the compensation history of the covered person and other individuals with comparable expertise at the institution; the financial condition of the covered institution; compensation practices at comparable institutions based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets; for post-employment benefits, the projected total cost and benefit to the covered institution; and any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

The flexibility that the proposed rule provides would likely benefit covered institutions by allowing them to tailor the incentive-based compensation arrangements to the skills and job requirements of each covered person and to the nature of a particular institution's business and the risks thereof instead of applying a "one size fits all" approach. The differences in the size, complexity, interconnectedness, and degree of competition in the market for managerial talent among the institutions covered by the proposed rule make excessive compensation difficult to define universally.

As mentioned above, a principles-based approach is likely to provide greater discretion to covered institutions in tailoring compensation arrangements that do not provide incentives for inappropriate risk-taking. Such discretion may potentially allow for differential interpretation among covered institutions on what constitutes excessive compensation and as a consequence, differential compensation arrangements even for similar institutions could be designed. Given the flexibility inherent under a principles-based approach, it is also possible that in fact some compensation contracts to covered persons constitute excessive compensation that could lead to inappropriate risk-taking, particularly if the compensation setting process is not efficient or unbiased.[403] It is also possible that boards of directors may find it difficult to evaluate whether a compensation arrangement creates excessive compensation that could lead to inappropriate risk-taking. As such, it is likely that governance mechanisms in place would be crucial for institutions to benefit from the flexibility of the principles-based approach and avoid the potential costs described above.

An alternative would be a more prescriptive approach in defining compensation arrangements that constitute excessive compensation. For example, an explicit definition of excessive compensation could be provided for covered institutions. As mentioned above, such an approach has

[402] Commenters on the 2011 Proposed Rule suggested more expansive discussion and analysis of economic effects of the proposed rulemaking on items such as the ability of covered institutions to compete for talent acquisition and retention (*See*, for example, letters by the U.S. Chamber and FSR), and also on the effects of the rule on risk taking incentives and its consequences for covered institutions' ability to compete (*See*, for example, FSR). Below, the SEC's economic analysis outlines and discusses potential economic effects of the various rule provisions, including items identified in comment letters discussing economic considerations.

[403] For example, *see* Coles, J., Daniel, N., and Naveen, L. Co-opted Boards. 2014. *Review of Financial Studies* 27, 1751–1796.

the disadvantage of restricting compensation arrangement options for covered institutions and thus an increased likelihood that inefficient compensation arrangements would be applied to at least some covered institutions, given the significant differences among covered institutions and covered persons.

2. Performance Measures

The proposed rule would require covered institutions to use a variety of performance measures when determining the incentive-based compensation of covered persons. Incentive-based compensation arrangements would be required to include a mix of financial (*i.e.*, accounting and stock-based) measures and non-financial measures, with the ability for non-financial measures to override financial measures when appropriate. Additionally, any amounts to be awarded under the arrangement would be subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

There is evidence in the economic literature suggesting that non-financial measures of performance are incremental predictors of long-term financial performance relative to financial measures of performance, and provide important information about executives' performance.[404] Moreover, non-financial measures of performance in compensation arrangements may better capture progress or milestones of strategic goals that may be unique to specific institutions.[405] Thus, the proposed requirement to use a mix of the two types of measures would likely provide more relevant information to enable covered institutions to set up incentive compensation arrangements for covered persons. In addition, the flexibility that the proposed rule would provide to covered institutions to adjust the compensation awards based on various factors would allow covered institutions to tailor their compensation arrangements to their specific circumstances.

The baseline analysis suggests that many of the public parent institutions of some BDs and IAs already use a mix of financial and non-financial measures in determining the incentive-based compensation awards of senior executive officers. To the extent that BDs and IAs use a similar mix of measures to determine the incentive-based compensation awards of their senior executive officers, the SEC expects the costs of compliance with this provision of the proposed rule to be relatively low. If BDs and IAs do not use the same mixture of financial and non-financial measures as their parents, or do not rely on non-financial measures when determining the compensation of their senior executive officers and significant risk-takers, the compliance costs associated with this particular rule requirement may be significant. Such costs may be in the form of additional expenditures related to hiring compensation consultants and/or lawyers to design compensation schemes and assure the compliance of newly designed compensation schemes with the proposed rule.

The SEC has attempted to quantify such costs using data reported by Level 1, Level 2, and Level 3 covered institutions that are parents of BDs and IAs. Table 14 provides some summary statistics on the use of compensation consultants and the fees paid to those over the period 2007–2014.[406] Based on the results in the table, Level 1 and Level 2 covered institutions use on average two compensation consultants, while Level 3 covered institutions use one compensation consultant on average. If a Level 1 BD or IA has to hire compensation consultant(s) to help them meet this rule requirement, it may incur costs of approximately $185,515 per year. If an unconsolidated Level 2 BD or IA has to hire compensation consultant(s) to help them meet this rule requirement, it may incur costs of approximately $77,000 per year.[407] If an unconsolidated Level 3 BD or IA, because of the consolidation requirement, has to hire compensation consultant(s) to help meet this rule requirement, it may incur costs of approximately $18,788 per year. These costs could be higher if the compensation consultant is asked to provide additional services other than compensation consulting services. These costs could be lower, however, if the parent institutions of BDs and IAs already employ compensation consultants and could extend their services to meet the proposed rule requirements for BDs and IAs.

TABLE 14—THE USE AND COSTS OF COMPENSATION CONSULTANTS BY CERTAIN LEVEL 1, LEVEL 2, AND LEVEL 3 COVERED INSTITUTIONS THAT ARE PARENTS OF BDS AND IAS, 2007–2014

	Average number of compensation consultants used	Median fees for consulting services to the compensation committee	Number of institutions
Level 1	2	185,515	7
Level 2	2	77,000	9
Level 3	1	18,788	6

[404] *See, e.g.*, Banker, R., G. Potter, and D. Srinivasan, 1999. An Empirical Investigation of an Incentive Plan that Includes Nonfinancial Performance Measures. *The Accounting Review* 75, 65–92. The study examines whether non-financial measures of performance, specifically customer satisfaction, are incremental predictors of future performance and whether inclusion of such measures of performance in compensation contracts is efficient. The study finds that customer satisfaction is incremental in predicting future financial performance and inclusion of such performance measure in compensation contracts leads to improved future performance.

[405] *See, e.g.*, Ittner, C., D. Larcker, and T. Randall, 2003. Performance Implications of Strategic Performance Measurement in Financial Services Firms. *Accounting, Organizations and Society* 28, 715–741. The study uses a sample of 140 U.S. financial services firms to examine the relation between measurement system satisfaction, economic performance, and two general approaches to strategic performance measurement: Greater measurement diversity and improved alignment with firm strategy and value drivers. The study finds evidence that firms making more extensive use of a broad set of financial and non-financial measures than firms with similar strategies or value drivers have higher measurement system satisfaction and stock market returns.

[406] Data used in the table comes from the ISS database.

[407] We note that while we report the median consulting fee for covered institutions in Table 14, the average compensation consultant fees are higher. For example, for Level 1 covered institutions the average consulting fee is $198,673, for Level 2 covered institutions the average consulting fee is $293,501, and for Level 3 covered institutions the average consulting fee is $59,828. The presence of outliers in the compensation consulting fee data and the small sample size are the reason for the large difference between average and median consulting fee.

3. Board of Directors

Additionally, the proposed rule would require that the board of directors of covered institutions oversee a covered institution's incentive-based compensation program, and approve incentive-based compensation arrangements for senior executive officers or any material exceptions or adjustments to incentive-based compensation policies or arrangements.

Since overseeing and approving executive compensation arrangements is one of the primary functions of the compensation committee of the corporate board, the SEC believes that this rule requirement would not impose significant compliance costs on covered institutions that already have compensation committees. Moreover, because the baseline analysis suggests that the majority of the parents of some covered institutions already employ most of the requirements and limitations of the proposed rule, it may not be particularly costly for boards of directors or compensation committees to comply with the proposed rule. However, there might be additional compliance costs for covered institutions if the board of directors or the compensation committee have to exert incremental effort (*i.e.*, meet more frequently) in designing and approving compensation arrangements. Additionally, if because of the rule's definition of significant risk-takers the compensation committee of a covered institution has to cover a much larger number of employees and consider additional factors than it does at present, this may increase compliance costs.

For covered BDs and IAs that do not have compensation committees, the board of directors as a whole may be able to oversee and approve executive compensation arrangements. Thus, for such BDs and IAs the compliance costs of this rule requirement could result in more time being spent for the board of directors on these issues, which might entail higher directors' fees and possibly additional compensation consulting costs.

4. Disclosure and Recordkeeping

The proposed rule would require all covered institutions to create annually and maintain for a period of at least 7 years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with the proposed rule. At a minimum, these must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

The SEC is proposing an amendment to Exchange Act Rule 17a–4(e)[408] and Investment Advisers Act Rule 204–2[409] to require that registered broker-dealers maintain and investment advisers, respectively, the records required by the proposed rule, in accordance with the recordkeeping requirements of Exchange Act Rule 17a–4 and Investment Advisers Act Rule 204–2, respectively. Exchange Rule 17a–4 and Investment Advisers Act Rule 204–2 establish the general formatting and storage requirements for records that registered broker-dealers and investment advisers, respectively, are required to keep. For the sake of consistency with other broker-dealer and investment adviser records, the SEC believes that registered broker-dealers and investment advisers, respectively, should also keep the records required by the proposed rule, in accordance with these requirements.

The proposed recordkeeping requirement would assist covered BDs and IAs in monitoring incentive-based compensation awards and payments and comparing them with actual risk outcomes to determine whether incentive-based compensation payments to senior executive officers and significant risk-takers lead to inappropriate risk-taking. The proposed recordkeeping requirement would also help BDs and IAs to modify the incentive-based compensation arrangements of senior executive officers and significant risk-takers, if, over time, incentive-based compensation paid does not appropriately reflect risk outcomes. These records would be available to SEC staff for examination, which may enhance compliance and facilitate oversight.

This proposed requirement would likely impose compliance costs on covered institutions. The SEC expects the magnitude of the compliance costs to depend on whether broker-dealers and investment advisers already have a system in place to generate information regarding their compensation practices for internal use (*e.g.*, for reports to the board of directors or the compensation committee) or for required disclosures under the Exchange Act (for reporting companies). To the extent that such existing platforms can be expanded to produce the records required under the proposed rule, the SEC expects this requirement to impose lower compliance costs on these institutions. The compliance costs associated with this particular proposed rule requirement would likely be higher for covered institutions that may not be generating such information, if for example they are not subject to related reporting obligations, or may not keep the type and detail of records that would be required under the proposed rule. Given that all Level 1 and unconsolidated Level 2 BDs, and most unconsolidated Level 3 BDs and IAs, are non-reporting companies, the SEC expects that the recordkeeping costs associated with the rule may be substantial for these BDs and IAs. The SEC notes, however, that because it does not have information on the compensation reporting and recordkeeping at the subsidiary level, the SEC may be overestimating compliance costs for BDs and IAs with reporting parent institutions. For example, if the parent institution reports and keeps records of the incentive-based compensation arrangements at the subsidiary level, and on the same scale and detail as required by the proposed rule, it is possible that the compliance costs for such BDs could be lower than the compliance costs for BDs with non-reporting parent institutions. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions.

According to the 2010 Federal Banking Agency Guidance, a banking organization should provide an appropriate amount of information concerning its incentive compensation arrangements for executive and non-executive employees and related risk-management, control, and governance processes to shareholders to allow them to monitor and, where appropriate, take actions to restrain the potential for such arrangements and processes to encourage employees to take imprudent risks. Such disclosures should include information relevant to employees other than senior executive officers. The scope and level of the information disclosed by the institution should be tailored to the nature and complexity of the institution and its incentive compensation arrangements. Thus, private covered institutions that are banking institutions and apply the policies of the 2010 Federal Banking Agency Guidance may already be

[408] 17 CFR 240.17a–4(e).

[409] 17 CFR 275.204–2.

collecting the information that would be required by the proposed rule. The SEC expects the compliance costs to be lower for such covered institutions, to the extent that there is an overlap between the information collected under the 2010 Federal Banking Agency Guidance and the information that would be required for disclosure and recordkeeping under the proposed rule. The BDs and IAs that are stand-alone non-reporting firms or have non-reporting parent institutions that are not banking institutions would most likely be the ones to incur higher compliance costs of disclosure and recordkeeping.

By requiring covered institutions to create and maintain records of incentive-based compensation arrangements for covered persons at all covered BDs and IAs, the proposed recordkeeping requirement is expected to facilitate the SEC's ability to monitor incentive-based compensation arrangements and could potentially strengthen incentives for covered institutions to comply with the proposed rule. As a consequence, an increase in investor confidence that covered institutions are less likely to be incentivizing inappropriate actions through compensation arrangements may occur and potentially result in greater market participation and allocative efficiency, thereby potentially facilitating capital formation. As discussed above, it is difficult for the SEC to estimate compliance costs related to the specific provision. However, for covered institutions that do not currently have a similar reporting system in place, there could be significant fixed costs that may disproportionately burden smaller covered BDs and IAs and hinder competition. Overall, the SEC does not expect the effects of the proposed recordkeeping requirements on efficiency, competition and capital formation to be significant.

5. Reservation of Authority

Under the proposed rule, an Agency may require a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 5 and 7 through 11of the proposed rule applicable to Level 1 and Level 2 covered institutions if the agency determines that such Level 3 covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution.

This proposed rule requirement would allow the SEC to treat senior executive officers and significant risk-takers at BDs and IAs that have total consolidated assets below $50 billion as covered persons of a Level 1 or Level 2 covered institution, because, for example, the complexity of the BDs' and IAs' operations or risk profile could have a significant impact on the overall financial system and could generate negative spillover effects for taxpayers. As a result, the number of BDs and IAs that would be subject to the portions of the proposed rule applicable to Level 1 and Level 2 covered institutions may increase relative to the estimates presented in the baseline.[410]

The proposed requirement may increase compliance costs for these BDs and IAs. As shown above, Level 3 parent institutions differ significantly from Level 1 and Level 2 parent institutions on a number of dimensions: They tend to defer a smaller fraction of NEOs incentive-based compensation (Table 7A), tend to defer cash less frequently (Table 7A), and tend to use more options as part of their incentive-based compensation (Table 6A) compared to Level 1 and Level 2 parent institutions. They also use rather infrequently the prohibition of hedging with respect to non-employee directors that receive incentive-based compensation (Table 9A). If the compensation arrangements of Level 3 BDs and IAs are similar to those of Level 3 parent institutions, then for Level 3 BDs and IAs that are designated as Level 1 or Level 2 covered BDs and IAs by an Agency, the proposed rule is likely to require significant changes to certain features of their compensation arrangements to be in compliance.

F. Potential Costs and Benefits of Additional Requirements and Prohibitions for Level 1 and 2 Covered Institutions

1. Mandatory Deferral

The proposed rule would require a minimum amount of annual incentive-based compensation to be deferred for a minimum number of years for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions. For senior executive officers and significant risk-takers at Level 1 and Level 2 BDs and IAs, such requirement is expected to establish a minimum accountability horizon with respect to the outcomes of actions of these individuals, including the realization of longer-term risks that may be associated with such actions.

As discussed above, from an economic standpoint, managerial actions carry associated risks, and the horizon over which such risks unfold is uncertain. If the risk realization horizon is longer than the performance period used to measure and compensate the performance of senior executive officers and significant risk-takers, they may have an incentive to undertake projects that deliver strong short-term performance at the potential expense of long-term value. A minimum compensation deferral period aims to curb incentives for such undesired behavior by increasing senior executive officers' and significant risk-takers' accountability for the potential adverse outcomes of their actions that may be realized in the long run, which in turn may discourage short-termism and inappropriate risk-taking and as a consequence lower the likelihood of default for the covered institution and the potential risk such a default could pose to the greater financial system.

As discussed above, the proposed minimum deferral periods required by the proposed rule for Level 1 and Level 2 BDs and IAs covered institutions would relate to the horizons over which the risks in these institutions may be realized. The deferral periods are likely to overlap with a traditional business cycle to identify outcomes associated with a senior executive officer's or significant risk-taker's performance and risk-taking activities. As noted, the business cycle reflects periods of economic expansion or recession, which typically underpin the performance of the financial sector. There might be specific facts and circumstances (for example, the variety of assets held, the changing nature of those assets over time, the normal turnover in assets held by financial institutions, and the complexity of the business models of BDs and IAs) that may affect the horizon over which risks may be realized for particular covered institutions, so a uniform deferral period may be more or less aligned with the horizon over which a particular covered institution realizes certain risks.

With regard to the type of incentive-based compensation instruments to be deferred, the rule proposes to require deferred compensation to consist of substantial amounts of both cash and equity-linked instruments. Whereas deferred equity-linked compensation would be subject to both upside potential (for example, if the stock price of the firm increases during the deferral period) and downside risk, the cash component of deferred compensation would be mainly subject to downside risk, thus resembling the payoff structure of a debt security. More specifically, the cash component of deferred compensation would not appreciate in value if firm performance during the deferral period is positive, but would be subject to downward adjustment, forfeiture, and clawback if, for example, the executive has engaged in inappropriate risk-taking that results in poor performance during the performance, deferral and post-deferral periods respectively. This asymmetry in the payoff structure of the cash component of deferred compensation is expected to provide incentives for responsible risk-taking by covered persons thus lowering the likelihood of default at these institutions as well as the corresponding risk to the greater financial system posed by certain large, complex, and interconnected institutions.[411] Economic studies suggest a negative relation between pre-crisis levels of managerial debt holdings and measures of default risk during the crisis for bank holding companies—bank holding companies whose executives held larger debt holdings were less likely to default.[412]

As mentioned above, the deferral requirements of the proposed rule for senior executive officers and significant risk-takers at the largest covered institutions are also consistent with international standards on compensation. Having standards that are generally consistent across jurisdictions would ensure that covered institutions in the United States, compared to their non-U.S. peers, are on a level playing field in the global competition for talent.

The mandatory deferral requirements of the proposed rule may impose significant costs on affected BDs and IAs.[413] As a consequence of the mandatory deferral requirement, the wealth of covered persons would be likely less diversified and more tied to prolonged periods of a covered institution's performance. This potential deterioration of wealth diversification may induce covered persons to demand an increase in pay which could result in higher compensation-related costs for covered institutions.[414] This increase in compensation costs may be necessary in order for covered institutions to be able to both attract and retain human talent. The SEC notes, however, that there may be other factors affecting the ability of a covered institution to attract and retain human talent, such as the supply of talent and non-pecuniary benefits of employment at covered institutions. These factors may exacerbate or mitigate the potential increase in compensation costs. For example, if senior executive officers and significant risk-takers value non-pecuniary job benefits such as prestige, networking, and visibility, these benefits may offset the costs associated with deterioration in the diversification of their portfolios.

As a result of the proposed compensation deferral requirement, covered persons at BDs and IAs may be incentivized to curb inappropriate risk-taking given the increased accountability over their actions. There could be situations, however, where bonus deferral could actually lead to an increase in risk-taking incentives.[415] For example, if firm performance during the deferral period significantly declines and causes a significant loss in the value of deferred compensation, senior executive officers and significant risk-takers could potentially have an incentive to engage in high-risk actions in an effort to recoup at least some of the value of their deferred compensation.

As discussed above, deferral of the cash component of compensation resembles the payoff structure of debt and as a consequence may expose managerial compensation to risk without a corresponding upside. Whereas this may provide incentives to covered persons to avoid actions that would expose a covered institution to higher likelihood of default and for important institutions risks to the financial system, such incentives may result in misalignment of interests between managers and shareholders and potentially harm shareholder value. Several studies suggest that managers with significant debt instruments in their compensation arrangement tend to undertake a more conservative approach in managing their firms.[416] The significant use of debt in compensation arrangements is viewed negatively by shareholders: Stock prices of companies whose executives hold significant debt positions experience a decrease upon disclosure of such compensation arrangements.[417] Thus, whereas the utilization of debt-like instruments in compensation arrangements in important institutions may lower the risk to the greater financial system, this may come at the expense of shareholder value at these institutions. One commenter suggested that the proposed rule could cause covered institutions to perform in a less competitive way given lower incentives for risk-taking.[418]

Alternatively, the Agencies could have proposed higher deferral percentages and/or longer deferral horizons. Some commenters[419] suggested more stringent deferral requirements, such as a longer deferral

[410] As discussed above in the Baseline section, as of the end of 2014, there were 33 BDs with total consolidated assets between $10 and $50 billion. Due to the lack of data, the SEC cannot determine the number of IAs with total consolidated assets between $10 and $50 billion.

[411] The academic literature provides evidence regarding the effect of compensation instruments resembling a debtholder's payoff and the effect of such compensation instruments on various aspects of the agency costs of debt. For example, there is evidence of a negative relation between levels of inside debt and the cost of debt; see Anantharaman et al. 2013. Inside debt and the design of corporate debt contracts. *Management Science* 60, 1260–1280. Also, studies have documented a negative relation between inside debt and restrictiveness of debt covenants and demand for accounting conservatism, and a positive relation between CEO inside debt and firm liquidation values; see Chen, F., Y. Dou, and X. Wang. 2010. Executive Inside Debt Holdings and Creditors' Demand for Pricing and Non-Pricing Protections. Working Paper. With respect to the mechanism through which inside debt holdings lead to lower firm risk, evidence suggests that such firms apply more conservative investment as well as financing choices. Inside debt in particular has been shown to be negatively related to future stock return volatility, a market-based measure of risk; see Cassell, Cory A., Shawn X. Huang, Juan Manuel Sanchez, and Michael D. Stuart. 2012. The relation between CEO inside debt holdings and the riskiness of firm investment and financial policies. *Journal of Financial Economics* 103, 588–610.

It must be noted that the academic literature proxies for such debt-like compensation instruments mostly through pensions and other forms of deferred compensation. Such instruments may not fully resemble the characteristics of deferred cash under the rule, particularly with respect to the horizon of deferral as well as the vesting schedules (pro-rata vs. cliff-vesting).

[412] *See* Bennett et al. (2015). Inside Debt, Bank Default Risk, and Performance during the Crisis. *Journal of Financial Intermdiation* 24, 487–513. The study examines the relation between pre-crisis levels of inside equity vs. inside debt holdings by bank holding company CEOs and risk and performance of these BHCs during the crisis. The findings reveal a negative relation between pre-crisis CEO inside debt holdings and default risk during the crisis, and higher supervisory ratings for these BHCs before the crisis.

[413] Several commenters raised accounting related issues with respect to covered institutions' financial statements under the proposed rule (*see, e.g.*, KPMG, CEC) and tax related issues with respect to individuals affected by the proposed rule (*see, e.g.*, KPMG, MFA, SIFMA, CEC, PEGCC).

[414] Three commenters argued that the proposed rule could result in unintended consequences such as higher fixed compensation or other benefits (*See* FSR, WLF, U.S. Chamber).

[415] *See* Leisen, D. (2014). Does Bonus Deferral Reduce Risk Taking? Working Paper. The paper develops a model comparing risk-taking incentives from bonuses with and without deferral. The results challenge the common belief that bonus deferral unequivocally leads to reduced risk-taking incentives; under certain conditions, deferral of bonus could lead to stronger risk-taking incentives during the deferral period.

[416] *See* Anantharaman, D., V.W. Fang, and G. Gong. 2014. Inside Debt and the Design of Corporate Debt Contracts. *Management Science* 60, 1260–1280; Chen et al. (2010); and Cassell et al. (2012).

[417] *See* Wei, C., and Yermack, D. (2011).

[418] *See* FSR.

[419] It should be noted that comments were based on the 2011 Proposed Rule's 3-year deferral period (as opposed to the 4-year deferral period currently proposed).

horizon,[420] a higher percentage subject to deferral,[421] and holding the entire deferred amount back until the end of the deferral period.[422] For example, the Agencies could have selected a seven-year deferral for senior executive officers and a five-year horizon deferral horizon for significant risk-takers, similar to the rules that the Prudential Regulation Authority has recently proposed in the UK. Such long deferral periods may have allowed for longer-term risks to materialize and thus be accounted for when calculating managerial compensation. On the other hand, as mentioned above, longer deferral periods could result in inappropriate risk-taking if firm performance during the deferral period significantly declines and causes a significant loss in the value of deferred compensation. Additionally, a longer deferral period increases the probability that financial performance is impacted by actions or factors that are not related to covered persons' actions and as such result in an inefficient compensation contract. Moreover, lengthening of the deferral period is likely to lead to increased liquidity issues for covered persons since their compensation cannot be cashed out on a timely basis to meet their liquidity needs. Finally, it is also possible that further prolonging of the deferral period could create incentives for institutions to shift away from incentive-based compensation and increase the fixed component of compensation. A potential consequence from such action may be distortion of value-enhancing incentives that are generated through incentive-based compensation. Another potential cost from deferral requirements that are more strict could be that affected institutions may not be able to compete and as a consequence lose talent to other sectors that are not subject to the proposed rule.

Another alternative could be shorter deferral periods (*e.g.,* deferral period of less than four years for the qualifying incentive-based compensation of senior executive officers at Level 1 covered institutions; for example, 3 years as in the 2011 Proposed Rule) and/or smaller deferral percentages (*e.g.,* deferral of less than 60 percent of qualifying incentive-based compensation for senior executive officers at Level 1 covered institutions; for example, 50 percent as in the 2011 Proposed Rule). A shorter deferral period and/or smaller deferral percentage amount, however, may not provide adequate incentives to covered persons to engage in responsible risk-taking. On the other hand, if the risk realization horizon is actually shorter than the deferral horizon proposed in the rule, then using a shorter deferral period would avoid exposing covered persons' wealth to risks that do not result from their actions and would also impose lower liquidity constraints on undiversified executives. From the baseline analysis of current compensation practices, it appears that all of the Level 1 public parent institutions and most of the Level 2 public parent institutions of BDs and IAs already have deferral policies in place similar to the proposed rule requirements. Currently, about 50 percent to 75 percent of incentive-based compensation is deferred for a period of about three years, and the deferral includes NEOs, non-NEOs and significant risk-takers.

If the compensation structure of BDs and IAs is similar to that of their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, for the covered BDs and IAs the implementation of the deferred aspect of the proposed rule is unlikely to lead to significant compliance costs. The only potentially significant compliance costs that such covered institutions could incur with respect to the deferral requirement is related to the deferral of cash compensation, which currently only 20 percent to 25 percent of Level 1 and Level 2 covered institutions defer, and the prohibition on accelerated vesting, which very few of the Level 2 covered parent institutions currently use. On the other hand, if the compensation practices of parent institutions are significantly different than those at their subsidiaries, covered BDs and IAs could experience significant compliance costs when implementing the proposed deferral rule. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions. As discussed above, the SEC has data regarding the incentive-based compensation arrangements at the depository institution holding company parents of Level 1 and unconsolidated Level 2 and unconsolidated Level 3 BDs and IAs because many of those bank holding companies are public reporting companies under the Exchange Act. The SEC lacks information regarding the compensation arrangements of BDs and IAs that are not so affiliated, and hence the SEC cannot accurately assess the compliance costs for those issuers. The same holds true if the incentive-based compensation practices at BDs and IAs are generally different than those at banking institutions, which most of their parent institutions are. Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the compensation practices between public and private covered institutions such private BDs and IAs could face larger compliance costs. To better assess the effects of deferral on compliance costs for BDs and IAs the SEC requests comments on these issues.

2. Options

For senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions, the proposed rule would limit the amount of stock option-based compensation that can qualify for mandatory deferral at 15 percent, effectively placing a cap on the use of stock options as part of the incentive-based compensation arrangements for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions.[423] This implies that 45 percent of incentive-based compensation would have to be in some other form to fulfill the 60 percent deferral amount for a senior executive officer or significant risk-taker at a Level 1 and Level 2 covered institution. As discussed in the Broad Economic Considerations section, the payoff structure from stock options is asymmetric and thus generates incentives for executives to undertake risks. For the financial services industry in general, economic studies find that higher levels of stock options in compensation arrangements of publicly traded bank CEOs are positively related to multiple measures of risk, such as equity volatility.[424] Thus, limiting the use of stock options in compensation arrangements could result, on average, in lower risk-taking incentives for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions. As previously noted, however, the link between stock options and risk-taking is not indisputable. For example, a study that examined the effect of a decrease in the provision of stock options in compensation arrangements due to an unfavorable change in accounting rules regarding option expensing, did not identify decreased risk-taking by executives as a response to a decrease in stock options awards.[425]

The unique characteristics of the financial services sector compared to the rest of the economy—significantly higher leverage,[426] interconnectedness with other institutions and markets, and the possibility for negative externalities—may create a conflict of interest between shareholders (managers) of important financial institutions and taxpayers with respect to the optimal level of risk-taking. In other words, shareholders may enjoy the upside of risk-taking actions whereas taxpayers and other stakeholders have to bear the costs associated with such risk-taking. While the literature does not specifically reference BDs and IAs, but rather the financial services sector more generally, the SEC believes that the global point may be applicable to BDs and IAs given that these entities constitute a segment of the financial services sector. In addition, many BDs and IAs that would be covered by the proposed rule are subsidiaries of bank holding companies and as such these studies may be relevant for them. Thus, for BDs and IAs the use of options in compensation arrangements could potentially amplify this conflict of interest as it provides covered persons with an asymmetric payoff structure and an incentive to undertake risks that may be optimal from shareholders' point of view but may provide risk-taking incentives to management that could lead to higher likelihood of default at these institutions and potentially increase the risk to the greater financial system. Consequently, capping the use of stock options and curbing covered persons' incentives for inappropriate risk-taking at BDs and IAs could decrease their likelihood of default, better align managers' incentives with those of a broader group of stakeholders and limit potential negative externalities generated by the default of particularly important institutions.[427] However, although BDs and IAs are financial institutions, any generalization based on the findings in the literature may not be very accurate because BDs and IAs also have some differences with respect to other financial institutions. For example, BDs and IAs differ from other financial institutions with respect to business models, nature of the risks posed by the institutions, and the nature and identity of the persons affected by those risks.

To the extent that the asymmetric payoff structure of options encourages covered persons at BDs and IAs to undertake risks that are also suboptimal from a shareholders' point of view, the proposed rule's limitation on the use of options as part of compensation arrangements may also improve incentive alignment between executives and shareholders. However, as discussed in the Broad Economic Considerations section, executives may be reluctant to undertake value-increasing but risky projects due to the undiversified nature of their wealth and as such may engage in actions that lower firm value (*i.e.,* forgo risky but value-increasing projects). For example, an economic study found that low sensitivity of compensation to risk resulted in a loss of firm value due to suboptimal risk-taking by executives in these companies.[428] Mechanisms that are put in place to curb such undesired behavior by executives include incentive-based compensation components whose value is generally increasing in risk, such as stock options. Thus, risk-taking incentives induced by options may be valuable in order to provide covered persons at BDs and IAs with incentives to take risks that are desirable by shareholders. As a consequence, a potential cost of the proposed limit to the use of stock options in incentive-based compensation arrangements at covered institutions is the potential for such limit to generate sub-optimally low risk-taking incentives for the covered persons at BDs and IAs, potentially leading to lower shareholder values for these institutions.

Limiting the amount of stock option based compensation that can qualify for mandatory deferral at 15 percent suggests that a covered institution could theoretically award up to 55 percent of its annual incentive-based compensation in the form of stock options (for senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions). Based on the SEC's baseline analysis, it appears that the use of options is increasingly infrequent in incentive-based compensation arrangements at public parent institutions of BDs and IAs. Stock options at Level 1 covered institutions represent about 4 percent of total incentive-based compensation, while at Level 2 covered institutions they represent about 20 percent.

If the compensation structure of BDs and IAs is similar to that of their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, the specific restriction imposed by the proposed rule would be unlikely to affect the usage of options at Level 1 or unconsolidated Level 2 BDs and IAs and would likely result in insignificant compliance costs. On the other hand, if the compensation practices of parent institutions are significantly different from those at their subsidiaries, covered BDs and IAs could experience

[420] *See* AFR, Public Citizen, Chris Barnard, AFSCME, AFL–CIO, Senator Brown.

[421] *See* AFR, Public Citizen, AFSCME.

[422] *See* AFR, Senator Brown, Public Citizen.

[423] If stock options awarded are not part of incentive-based compensation, there is no limit to such awards.

[424] *See* Mehran, H., Rosenberg, J. 2009. The Effect of CEO Stock Options on Bank Investment Choice, Borrowing, and Capital. Federal Reserve Bank of New York. The study finds a positive relation between the use of stock options in bank CEO compensation arrangements and risk-taking as evident by higher levels of equity and asset volatility. The paper also finds that the increased risk exposure in these banks comes from riskier project choices rather than increased use of leverage.

See DeYoung, R., Peng, E., Yan, M. 2013. Executive Compensation and Business Policy Choices at U.S. Commercial Banks. *Journal of Financial and Quantitative Analysis* 48, 165–196.

See Chen, C., Steiner, T., Whyte, A. 2006. Does stock option-based executive compensation induce risk-taking? An analysis of the banking industry. *Journal of Banking and Finance* 30, 915–945. The paper examines whether option-based compensation is related to various measures of risk for a sample of commercial banks. Option-based compensation is positively related to various market measures of risk such as systematic and idiosyncratic risk. However, causality cannot be inferred; risk also has an effect on the structure of compensation arrangements.

[425] *See* Hayes, R., Lemmon, M., Qiu, M., 2012. 'Stock options and managerial incentives for risk taking: Evidence from FAS 123R'. *Journal of Financial Economics* 105, 174–190. This study examines the effect of changes in option-based compensation, due to a change in the accounting treatment of stock options in 2005, on risk-taking behavior. Firms significantly reduce the use of stock options in compensation arrangements as a response to the unfavorable treatment of stock options in financial statements. However, the study finds little evidence that the decline in option usage resulted in less risky investment and financial policies.

[426] *See* Bolton, P., Mehran, H., Shapiro, J. 2011. Executive Compensation and Risk Taking. Federal Reserve Bank of New York Staff Reports, available at: *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr456.pdf.* The report shows the significant difference between the composition of financing for the average non-financial firm (having about 40% of debt on its balance sheet), as opposed to the average financial institution (having at least 90% of debt on its balance sheet).

[427] *See* French et al., 2010. The Squam Lake Report: Fixing the Financial System. *Journal of Applied Corporate Finance* 22, 8–21; and McCormack, J., Welker, J. 2010. Rethinking 'Strength of Incentives' for Executives of Financial Institutions. *Journal of Applied Corporate Finance* 22, 25–72.

[428] *See* Low, A., 2009. Managerial risk-taking behavior and equity-based compensation. *Journal of Financial Economics* 92, 470–490. The study examines changes in risk-taking by CEOs whose firms have become more protected from a takeover due to a change in anti-takeover laws. The study finds that CEOs with compensation arrangements with a low sensitivity of compensation to volatility decrease risk-taking following the adoption of the anti-takeover law, and that such a decrease in risk-taking activity is value destroying. The study also shows that as a response, firms increase the sensitivity of CEO compensation to volatility to encourage risk-taking following the adoption of the anti-takeover law.

significant compliance costs when implementing the specific requirement of the proposed rule. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions.

As discussed above, BDs and IAs could also incur direct economic costs such as decrease in firm value if the proposed rule leads to lower than optimal use of options in senior executive officers and significant risk-takers incentive-based compensation arrangements. The same holds true if the compensation of BDs and IAs is generally different than that of banking institutions, which most of their parent institutions are. Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs and direct economic costs. The SEC does not have data for the use of options at subsidiaries of Level 1 or Level 2 parents, and thus cannot quantify the impact of the proposed rule on those institutions. To better assess the effects of options on compliance costs for BDs and IAs, the SEC requests comments on the use of options in the compensation structures of BDs and IAs below.

The Agencies could have selected as an alternative not to place a limit on the use of stock options to meet the minimum required deferral amount requirement for a performance period. Such an alternative would provide covered persons at BDs and IAs with more incentives to undertake risks compared to the alternative the SEC has chosen in the proposed rule. Taxpayers would potentially be worse off under the alternative since the combination of high leverage and government guarantees, coupled with additional risk-taking incentives from stock options could lead to inappropriate risk-taking from taxpayers' point of view. Such an alternative likely would have led to a higher probability of default at covered institutions. For important institutions, such an alternative would also increase the likelihood of risks at the institution also propagating to the greater financial system. On the other hand, it is possible that shareholders would potentially prefer increased risk-taking and as a consequence compensation arrangements that encourage such behavior. From the SEC's baseline analysis, provided that BDs and IAs have similar compensation arrangements as their parents, the proposed rule should not significantly affect existing compensation arrangements of covered institutions.

3. Long-Term Incentive Plans

For senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions the proposed rule would require a minimum deferral period and a minimum deferral percentage amount of incentive-based compensation awarded through long-term incentive plans (LTIPs), where LTIPs are characterized by having a performance measurement period of at least three years. The proposed rule would require deferral of 60 percent (50 percent) of LTIP awards for senior executive officers of Level 1 (Level 2) covered institutions, and deferral of 50 percent (40 percent) of LTIP awards for significant risk-takers of Level 1 (Level 2) covered institutions. The deferral period for deferred LTIPs must be at least two years for covered persons of Level 1 covered institutions and at least one year for covered persons of Level 2 covered institutions.

LTIPs are designed to reward long-term performance, performance that is usually measured over the three-years following the beginning of the performance period.[429] Thus, these plans reward long-term performance outcomes and as such generate incentives for long-term value. LTIP awards can be in the form of cash or stock and these awards occur at the end of the performance period. The amount of the award depends on the degree to which the company meets some predetermined performance milestones. These performance milestones can include a variety of accounting-based performance measures, such as sales and earnings, and research shows that the choice of performance measures is related to company specific strategic goals.[430] Requiring a minimum percentage of LTIP awards to be deferred would lengthen the period over which senior executive officers and significant risk-takers receive compensation under these plans and subject such compensation to downward adjustment during the performance measurement period (prior to the award) as well as forfeiture and clawback during the deferral and post-deferral periods respectively. Some studies have criticized LTIPs for having short performance periods.[431] The limited economic literature on LTIPs currently does not provide a clear indication of the effect of LTIPs on excessive risk-taking. The only study that investigates the role of LTIPs[432] suggests that companies that use them experience improvement in operating performance and their NEOs do not appear to take higher risks. Similar to the discussion on the benefits and costs of mandatory deferral of other forms of incentive-based compensation, deferral of the LTIP award could allow for long-term risks taken by BD and IA senior executive officers and significant risk-takers to materialize and thus for their compensation to be more appropriately adjusted for the risks they have taken. LTIP deferral may decrease risk-taking because covered persons may have an incentive to manage the institution such that they receive their full compensation under these plans. If the additional deferral of LTIPs lowers risk-taking incentives at covered BDs and IAs to suboptimally low levels, then firm value at these institutions could suffer as a consequence. However, if the additional deferral of LTIPs mitigates incentives for inappropriate risk-taking at covered BDs and IAs, then such outcome would lower the likelihood of default at these institutions, better align managers' incentives with those of a broader group of stakeholders, and also lower the likelihood of negative externalities.

As an alternative, the Agencies could have selected a larger fraction of LTIPs to be deferred (*e.g.*, more than 60 percent for senior executive officer at a Level 1 covered institution) and increased the LTIPs' deferral period (*e.g.*, for more than two years for senior executive officers and significant risk-takers at Level 1 covered institutions). A longer deferral period for LTIPs would prolong the exposure of senior executive officers' and significant risk-takers' compensation to adverse outcomes of their actions. If outcomes of some inappropriate risks are only realized in the longer-term, then prolonging the deferral period for LTIPs would provide incentives to senior executive officers and significant risk-takers to avoid such actions. On the other hand, such an alternative might have exposed senior executive officers and significant risk-takers to outcomes of actions that they are less likely to have been responsible for. Additionally, long deferral period for LTIPs could create potential

[429] *See* Frederic W. Cook & Co., Inc. The 2014 Top 250 Report: Long-term incentive grant practices for executives.

[430] *See* Li and Wang (2014).

[431] *See* The alignment gap between creating value, performance measurement, and long-term incentive design, IRRCI research report, 2014.

[432] See Li and Wang, 2014.

liquidity issues for senior executive officers and significant risk-takers since their compensation cannot be cashed out on a timely basis to meet their liquidity needs.[433] It is also possible that a long deferral period for LTIPs would create incentives for institutions to pay higher fixed pay and as a consequence distort the value-enhancing incentives that are generated through variable pay.

As another alternative, the Agencies could have decided to exclude LTIPs from the amount of incentive-based compensation that is to be deferred in a given year. Such an alternative could have excluded a major part of covered persons' incentive-based compensation arrangements from the deferred amount. LTIPs typically have a performance period of three years, which is shorter than the deferral period proposed in the rulemaking. Under this alternative, not including LTIPs as part of the deferred amount may have limited the ability of the proposed rule to curb inappropriate risk-taking. However, if the current use of LTIPs by covered institutions is consistent with generating optimal risk-taking incentives from the perspective of certain shareholders, then not subjecting LTIPs to mandatory deferral would maintain these value-enhancing incentives.

4. Downward Adjustment and Forfeiture

For senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions, the rule proposes placing at risk of downward adjustment all incentive-based compensation amounts not yet awarded for the current performance period and at risk of forfeiture all deferred but not yet vested incentive-based compensation. As the analysis in the baseline section suggests, the triggers for downward adjustment and forfeiture consist of adverse outcomes such as poor financial performance due to significant deviations from approved risk parameters, inappropriate risk-taking (regardless of the impact on financial performance), risk management or control failures, and non-compliance with regulatory and supervisory standards resulting in either legal action against the covered institution or a restatement to correct a material error. The compensation of covered persons with either direct accountability or failure of awareness of an undesirable action would be subject to downward adjustment and/or forfeiture.

With regard to the determination of the compensation amount to be downward adjusted or forfeited, the proposed rule would condition the magnitude of the adjustment or forfeiture amounts on both the intent and the participation of covered persons in the event(s) triggering the review, as well as the magnitude of costs generated by the related actions (including financial performance, fines and litigation and related reputational damage). Compensation would be subject to downward adjustment and forfeiture during the performance period and the deferral period, respectively. As a consequence, this requirement would provide incentives to senior executive officers and significant risk-takers at BDs and IAs to avoid inappropriate risk-taking since they could be penalized in situations where inappropriate risks had been undertaken, regardless of whether such risks resulted in poor performance.

The downward adjustment or forfeiture amounts is conditional on the intent, responsibility and the magnitude of the financial loss caused to the covered institution by inappropriate actions of covered persons. In other words, the penalty imposed on the covered person would increase with the intent, responsibility and the magnitude of financial loss generated. This "progressiveness" characteristic in the proposed rule requirement would imply that the covered person's incentive-based compensation award would be increasingly at stake. Thus, covered persons would be expected to have incentives to avoid excessive risk-taking in order to secure at least part of incentive-based compensation award.

Additionally, provided that senior executive officers and significant risk-takers at BDs and IAs may be deemed accountable and risk their compensation for inappropriate actions that were undertaken by other executives or significant risk-takers, they may have an incentive to establish an effective governance system that would monitor risk exposure. Such an incentive and the corresponding actions would strengthen risk oversight within the covered institution and potentially lower the probability that any inappropriate action taken might go undetected. To this point, a recent economic study indicates that bank holding companies with strong risk controls, as proxied by the presence of an independent and strong risk committee, were found to be exposed to lower tail risk, lower amount of underperforming loans, and had better operating and financial performance during the financial crisis.[434]

On the other hand, the risk of downward adjustment and forfeiture could increase uncertainty on covered persons' expectations for receiving the compensation. A possibility exists that risks a covered person believes ex-ante to be appropriate may be classified as ex-post inappropriate and thus trigger downward adjustment or forfeiture of related compensation. Such uncertainty about the interpretation of appropriate risk-taking could generate incentives for managers to take approaches with respect to risk-taking that are not optimal from the perspective of shareholders. Such an avoidance of risks, if it occurs, could lead to lower firm value and losses for shareholders.

Based on the SEC's baseline analysis of current compensation practices, it appears that all of the Level 1 public parent institutions and most of the Level 2 public parent institutions already employ forfeiture with respect to deferred compensation. The forfeiture rules are based on various triggers and apply to NEOs, non-NEOs and significant risk-takers. Thus, if the compensation structure of BDs and IAs is similar to that of their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, the implementation of the proposed rule related to forfeiture would be unlikely to lead to significant compliance costs. On the other hand, if the compensation practices of parent institutions are significantly different than those at their subsidiaries (*e.g.*, BDs and IAs do not use downward adjustment and forfeiture in their compensation packages), covered BDs and IAs could experience significant compliance costs when implementing this specific requirement of the proposed rule. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions. BDs and IAs could also incur direct economic costs such as decrease in firm value if the proposed rule requirements regarding downward adjustment or forfeiture lead to less risk-taking than is optimal from shareholders' point of view. The same

[433] Interest rates charged to covered persons on loans used to cover their liquidity needs could proxy for the related cost stated in the text. Such costs are likely to be determined by multiple factors (for example, the macroeconomic environment) and vary over time and by individuals making them difficult to quantify.

[434] *See* Ellul, A., Yerramilli, V. 2013. Stronger Risk Controls, Lower Risk: Evidence from U.S. Bank Holding Companies. *Journal of Finance* 68, 1757–1803.

holds true if the compensation of BDs and IAs is generally different than that of banking institutions, which most of their parent institutions are.

Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs and direct economic costs. The SEC does not have data for the use of downward adjustment and forfeiture at subsidiaries of Level 1 or Level 2 parents, and thus cannot quantify the impact of the rule for those institutions. To better assess the effects of downward adjustment and forfeiture on compliance costs for BDs and IAs. The SEC requests comments below.

5. Clawback

For senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions, the proposed rule would require clawback provisions in incentive-based compensation arrangements to provide for the recovery of paid compensation for up to seven years following the vesting date of such compensation. Such a clawback requirement would be triggered when senior executive officers and significant risk-takers are determined to have engaged in fraud, intentional misrepresentation of information used to determine a covered person's incentive-based compensation, or misconduct resulting in significant financial or reputational harm to the covered institution. Other existing provisions of law contain clawback requirements that potentially have some overlap with those in the proposed rulemaking. Thus, certain covered institutions may have experience with recovering executive compensation via clawback. For example, section 304 of the Sarbanes Oxley Act ("SOX") contains a recovery provision that is triggered when a restatement occurs as a result of issuer misconduct. This provision applies only to the chief executive officer ("CEO") and chief financial officer ("CFO") and the amount of required recovery is limited to compensation received in the year following the first improper filing.[435] The Interim Final Rules under section 111 of the Emergency Economic Stabilization Act of 2008 ("EESA") required institutions receiving assistance under TARP to mandate Senior Executive Officers to repay compensation if awards based on statements of earnings, revenues, gains, or other criteria that were later found to be materially inaccurate.[436] Relative to either SOX or EESA, the clawback requirement of the proposed rule is more expansive in that its application is not only limited to CEOs and CFOs but would cover any senior executive officer and significant risk-taker in a Level 1 or Level 2 covered institution. In addition to the broader scope of the clawback provision in the proposed rule regarding covered persons, there is also a broader scope with respect to the circumstances that would trigger clawback. More specifically, the proposed rule includes misconduct that resulted in reputational or financial harm to the covered institution as a trigger for clawback.

The inclusion of the clawback provision in the incentive-based compensation of senior executive officers and significant risk-takers at BDs and IAs could increase the horizon of accountability with respect to the identified actions that are likely to bring harm to the covered institution. As a consequence of the clawback horizon, senior executive officers and significant risk-takers are likely to have lower incentives to engage in actions that may put the covered institution at risk in the longer run. Moreover, the proposed rule may also increase incentives to senior executive officers and significant risk-takers to put in place stronger mechanisms such as governance in an effort to protect their incentive-based compensation from events that may trigger a clawback. Finally, in addition to lowering the incentives of senior executive officers and significant risk-takers for undesirable actions that may harm the covered institution, stakeholders of the covered institution are also expected to benefit from the clawback provision since in the event of an action triggering a clawback, any recovered incentive-based compensation amount would accrue to the institution.

The fact that incentive-based compensation is to a large extent determined by reported performance, coupled with the lowered incentives for covered persons to intentionally misrepresent information, can lead to improved financial reporting quality for covered institutions. Thus, indirectly the potential to claw back incentive-based compensation that is awarded on erroneous financial information could generate incentives for high quality reporting. The literature finds that market penalties for reporting failures, as captured by restatements of financial reports, *i.e.*, financial reports of (extremely) low quality, are non-trivial and may translate into an increase in the cost of capital for such firms.[437] To the extent that the quality of financial reporting increases as a result of the proposed rule, capital formation may be fostered since the improved information environment may lead to a decrease in the cost of raising capital for covered institutions.[438]

However, the relatively long clawback horizon may generate uncertainty regarding incentive-based compensation of senior executive officers and significant risk-takers. For example, that could be the case if certain actions that trigger a clawback are outside of a covered person's control. As a response to the potentially increased uncertainty, senior executive officers and significant risk-takers may demand higher levels of overall compensation, or substitution of incentive-based compensation with other forms of compensation such as salary. Such potential may distort incentives for risk-taking and as a consequence lower shareholder value. Also, the increased allocation of resources to the production of high-quality financial reporting may divert resources from other activities that may be value enhancing. Finally, covered persons may have a decreased incentive to pursue those projects that would require more complex accounting judgments, perhaps lowering shareholder value.[439]

[435] *See* 15 U.S.C. 7243.

[436] Under EESA a "Senior Executive Officer" was defined as an individual who is one of the top five highly paid executives whose compensation was required to be disclosed pursuant to the Securities Exchange Act of 1934. *See* Department of Treasury, TARP Standards for Compensation and Corporate Governance; Interim Final Rule (June 15, 2009), available at *http://www.gpo.gov/fdsys/pkg/FR-2009-06-15/pdf/E9-13868.pdf.*

[437] *See* Palmrose, Z., Richardson, V., Scholz, S. 2004. Determinants of Market Reactions to Restatement Announcements. *Journal of Accounting and Economics* 37, 59–89. This study observes an average abnormal return of −9% over the 2-day restatement announcement window for a sample of restatements announced over the 1995–1999 period.

See Hribar, P., Jenkins, N. 2004. The Effect of Accounting Restatements on Earnings Revisions and the Estimated Cost of Capital. *Review of Accounting Studies* 9, 337–356. This study observes a significant increase in the cost of capital for firms that restated their financial reports due to lower perceived earnings quality and an increase in investors' required rate of return.

[438] *See* Francis, J., LaFond, R., Olsson, P., Schipper, K. 2005. The Market Pricing of Accruals Quality. *Journal of Accounting and Economics* 39, 295–327. This study observes a negative relation between measures of earnings quality and costs of debt and equity. The study focuses on the accrual component of earnings to infer earnings quality since this component of earnings involves more discretion in its estimation and is more prone to be manipulated by firms.

[439] For example, if an executive is under pressure to meet an earnings target, rather than manage earnings through accounting judgments, the executive may elect to reduce or defer to a future period research and development or advertising expenses. This could improve reported earnings in the short-term, but could result in a suboptimal level of investment that adversely affects performance in the long run. *See* Chan, L., Chen, K., Chen, T., Yu, Y. 2012. The effects of firm-initiated clawback provisions on earnings quality and auditor behavior. *Journal of Accounting and Economics* 54, 180–196.

Moreover, the potential compliance costs related with the implementation of the clawback provision could be significant. For example, covered institutions may have to rely on the work of outside experts to estimate the amount of incentive-based compensation to be clawed back following a clawback trigger.

Based on the SEC's baseline analysis, it appears that all of the Level 1 covered institutions and most of the Level 2 covered institutions already employ clawback policies with respect to deferred compensation. The clawback policies are based on various triggers and apply to NEOs, non-NEOs and significant risk-takers. Thus, if the BDs and IAs have similar policies on clawback, and the compensation structure of private institutions is similar to that of public institutions, the implementation of the proposed clawback rule would unlikely lead to significant compliance costs. On the other hand, if the compensation practices of parent institutions are significantly different than those at their subsidiaries (*e.g.*, BDs and IAs do not include clawback policies in their compensation packages), covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. The same holds true if the compensation of BDs and IAs is generally different than that of banking institutions, which most of their parent institutions are. Additionally, since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions.

The SEC has attempted to quantify such costs using data in Table 14. We note that these costs are not necessarily going to be in addition to the compliance costs discussed above, as covered institutions may hire a compensation consultant to help them with several requirements in the proposed rules.

Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs. The SEC does not have data for the use of clawback at subsidiaries of Level 1 or Level 2 parents, and thus cannot quantify the impact of the rule on those institutions. To better assess the effects of clawback on compliance costs for BDs and IAs the SEC requests detailed comments below.

6. Hedging

The proposed rule would prohibit the purchase of any instrument by a Level 1 or Level 2 covered institution to hedge against any decrease in the value of a covered person's incentive-based compensation. As discussed above, introducing a minimum mandatory deferral period for incentive-based compensation aims at increasing long-term managerial accountability, including long-term risk implications associated with covered persons' actions. Using instruments to hedge against decreases in firm value would provide downside insurance to covered persons' wealth, including equity holdings that are part of deferred compensation. If the value of (deferred) incentive-based compensation is protected from potential downside through a hedging transaction, this is likely to increase the covered person's tolerance to risk. Thus, the effect of compensation deferral would likely be weakened.[440] For BDs and IAs that currently initiate hedges on behalf of their covered persons, a benefit from the prohibition on hedging is that the incentives of covered persons to exert effort could be strengthened given the same compensation contract. This in turn would imply a stronger alignment between executives' and taxpayers' and other stakeholders' interests for the same amount of performance-based pay.

While the proposed rule intends to eliminate firm initiated hedging, a personal hedging transaction by covered persons would still be permitted (unless the institution prohibits such transactions from occurring). Thus, a covered person at BDs and IAs could potentially substitute the firm-initiated hedge with a personal hedging[441] contract and restore any changes in incentives from the prohibition of the firm-initiated hedge.

To the extent that the covered person's compensation contract is not adjusted as a response to the elimination of the hedge, the covered person would face stronger incentives to exert effort whereas her tolerance for risk-taking would decrease with the prohibition on hedging. Whether the resulting lower risk-taking tolerance is beneficial for BDs and IAs is difficult to determine. On one hand, if the covered persons' risk-taking incentives are at an optimal level with the hedging transaction in place, then eliminating the hedge may reduce their risk-taking incentives to levels that could be detrimental for shareholder value. If this were the case, however, the institution's compensation committees could adjust compensation structures in a manner to achieve pre-prohibition risk-taking incentives if the distortion from hedging prohibition is deemed to be detrimental to firm value; however, some provisions of the proposed rule could potentially constrain board of directors' flexibility to make such adjustments.[442] On the other hand, if covered persons had incentives to undertake undesirable risks given the downside protection provided by the hedge, then eliminating such protection could lead them to engage in risk-taking which could lead to higher firm values.

Based on the SEC's baseline analysis, it appears that most Level 1 covered institutions (70 percent) and Level 2 covered institutions (60 percent) are already using prohibition on hedging with respect to executive compensation of executives and significant risk-takers. Additionally, 70 percent of Level 1 covered institutions and 100 percent of Level 2 covered institutions already prohibit hedging with respect to executive compensation of non-employee directors. If BDs and IAs have similar policies as their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, the

[440] *See* Bebchuk, L., Fried. J. Paying for long-term performance. *University of Pennsylvania Law Review* 158, 1915–1959. The paper argues that potential benefits from tying executive compensation to long-term shareholder value are weakened when executives are allowed to hedge against downside risk.

See also Gao, H. 2010. Optimal compensation contracts when managers can hedge. *Journal of Financial Economics* 97, 218–238. This study shows that the ability to hedge against potential downside makes the executive more risk tolerant. In other words, holding the compensation arrangement constant, hedging is predicted to weaken the sensitivity of compensation to performance and also the sensitivity of compensation to risk. However, the study also shows that for executives who can engage in low-cost hedging transactions, compensation contracts tend to provide higher sensitivity of executive pay to both performance and volatility.

[441] Refer to Tables 7a and 7b for statistics regarding the complete prohibition of hedging by parent institutions of BDs and IAs.

[442] For example, boards of directors or compensation committees at covered BDs and IAs would be constrained from increasing the risk-taking incentives of covered persons through the additional provision of stock options, if banning hedging lowers risk-taking incentives to a sub-optimal level.

implementation of the proposed rule in its part related to the prohibition of hedging is unlikely to lead to significant compliance costs. The cost of compliance with the proposed requirement of the rule would mostly affect the few BDs and IAs whose parent institutions do not currently implement such a prohibition. On the other hand, if the compensation practices of parent institutions are significantly different than those at their subsidiaries (*e.g.*, BDs and IAs do not prohibit hedging), covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions. BDs and IAs could also incur direct economic costs such as decrease in firm value if the proposed prohibition on hedging leads to less risk-taking than is optimal. The same holds true if the compensation of BDs and IAs is generally different than that of banking institutions, which most of their parent institutions are. If BDs and IAs do not prohibit hedging and this provides incentives to their covered persons to undertake undesirable risks because of the downside protection provided by the hedge, then applying the rule provisions could lead to more appropriate risk-taking.

Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference between the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs and direct economic costs. The SEC does not have data for a prohibition of hedging at subsidiaries of Level 1 or Level 2 private parents, and thus cannot quantify the impact of the rule on those institutions. To better assess the effects of the prohibition on hedging on compliance costs for BDs and IAs the SEC requests comments below.

As an alternative, some commenters suggested disclosure of hedging transactions instead of prohibition.[443] One commenter suggested instead of prohibiting the use of hedging instruments to require full disclosure of all outside transactions in financial markets by covered persons, including hedging transactions, to the extent that these transactions affect pay-performance sensitivity.[444] This disclosure should be made to the compensation committee of the board of directors and the appropriate regulator, and the board of directors should attest to the fact that these transactions do not distort proper risk-reward balance in the compensation arrangement. According to the commenter, sometimes covered persons may have legitimate purposes for engaging in hedging transactions such as when they are exposed excessively to the riskiness of the covered institution and need to rebalance their personal portfolio. Such an alternative, however, might not prevent covered persons from unwinding the effect of the mandatory deferral. For example, it would not be easy to disentangle hedging transactions that diminish individuals' exposure to the riskiness of the covered institutions from transactions that reverse the effect of the deferral. Additionally, the compensation committee might not have the expertise to evaluate complex derivatives transactions.

7. Maximum Incentive-Based Compensation Opportunity

The proposed rule would prohibit Level 1 and Level 2 covered institutions from awarding incentive-based compensation to senior executive officers and significant risk-takers in excess of 125 percent (for senior executive officers) or 150 percent (for significant risk-takers) of the target amount for that incentive-based compensation. Placing a cap on the amount by which the incentive-based compensation award can exceed the target would essentially limit the upside pay potential due to performance and a potential impact of such restriction could be to lower risk-taking incentives by senior executive officers and significant risk-takers. That could be the case because the cap on incentive-based compensation implies that managers would not be rewarded for performance once the cap is reached.

As discussed above, high levels of upside leverage could lead to senior executive officers and significant risk-takers taking inappropriate risks to maximize the potential for large amounts of incentive-based compensation. Given the positive link between risk and expected payoffs from managerial actions, a potential impact of such restriction could be to lower risk-taking incentives by senior executive officers and significant risk-takers. Whether such an effect is beneficial or not for covered BDs and IAs firm value is likely to depend on many factors including the level of the incentive-based compensation targets set in compensation arrangements. If the proposed cap excessively lowers appropriate risk-taking incentives, then firm value could suffer. Moreover, another potential cost from the proposed restriction is that effort inducing incentives may be diminished once the cap is achieved, possibly misaligning the interests of shareholders with those of managers. On the other hand, if the cap on incentive-based compensation awards eliminates a range of payoffs that could only be achieved by actions associated with taking suboptimally high risks, then such a restriction would improve firm value.

As the baseline analysis shows, the maximum incentive-based compensation opportunity for Level 1 parent institutions is on average 155 percent and that for Level 2 parent institutions is on average 190 percent. Both are significantly higher than would be permitted under the proposed rule. If BDs and IAs have similar policies as their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, the implementation of the proposed rule in its part related to maximum incentive-based compensation opportunity could lead to significant compliance costs. The cost could result from changing the current practices and, as a result, potentially having to compensate senior executive officers and significant risk-takers for the decreased ability to earn compensation in excess of the target amount. If the current compensation practices with regard to maximum incentive-based compensation opportunity are optimal, it is possible than affected BDs and IAs could experience loss of human capital. On the other hand, as discussed above, if the cap on incentive-based compensation awards eliminates a range of payoffs that could only be achieved by actions associated with taking suboptimally high risks, then such a restriction would improve firm value. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions.

Additionally, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference between the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs when applying this rule requirement. The SEC does not have data on the use of maximum incentive-based compensation opportunity at subsidiaries of Level 1 or Level 2 private parents, and thus cannot quantify the impact of the rule on those institutions. To better assess the effects of the proposed limitations to the maximum incentive-based compensation opportunity on compliance costs for BDs and IAs the SEC requests comments below.

8. Acceleration of Payments

The proposed rule would prohibit the acceleration of payment of deferred regulatory incentive-based compensation except in cases of death or disability of covered persons at Level 1 and Level 2 covered institutions. This would prevent covered institutions from undermining the effect from the mandatory deferral of incentive-based compensation by accelerating the deferred payments to covered persons. It could, however, negatively affect covered persons that decide to leave the institution in search for other employment opportunities. In such cases, these covered persons might have to forgo a significant portion of their compensation.

As the analysis in the Baseline section shows, most Level 1 parent institutions (approximately 70 percent) already prohibit acceleration of payments to their executives, while very few of the Level 2 parent institutions do. The only exceptions are in cases of death or disability. Given that current practices of BDs' and IAs' Level 1 parent institutions already apply most of the prohibitions required by the proposed rule (except employment termination), if those BDs and IAs have similar policies as their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, the implementation of the proposed with respect to the prohibition on the acceleration of payments is unlikely to lead to significant compliance costs. The cost of compliance with the requirement of the rule will mostly affect the BDs and IAs whose parent institutions are Level 2 covered institutions or Level 1 covered institutions that do not currently implement such a prohibition. On the other hand, if the compensation practices of parent institutions are significantly different than those at their subsidiaries (*e.g.*, BDs and IAs do not prohibit acceleration of payments), covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. Additionally, since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions.

Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs when applying this rule requirement. The SEC does not have data for the prohibition of acceleration of payments at subsidiaries of Level 1 or Level 2 parents, and thus cannot quantify the impact of the rule on those institutions. The SEC requests comment on the effects of the prohibition on acceleration of payments may have on compliance costs for BDs and IAs.

9. Relative Performance Measures

The proposed rule would prohibit the sole use of relative performance measures in incentive-based compensation arrangements at Level 1 and Level 2 covered institutions. Although relative performance measures are widely used to filter out uncontrollable events that are outside of management control and can reduce the efficiency of the compensation arrangement, a peer group could be opportunistically selected to justify compensation awards at a covered institution. To the extent that covered persons may influence peer selection, opportunism in choosing a performance benchmark may translate into covered persons selectively choosing benchmark firms in order to increase or justify increases in their compensation awards.

Evidence on whether such practices take place is mixed. For example, one study examined the selection of peer firms used as benchmarks in setting compensation for a wide range of firms and showed that, on average, chosen peer firms provided higher levels of compensation to their executives. The study asserts that managers tend to choose higher paying firms as peers to justify increases in the level of their own compensation.[445] The same study also found that the choice of highly paid peers is more prevalent when the CEO is also the chair of the board of directors, re-enforcing the argument for opportunism in peer selection. Another study found that executives attempt to justify increases in their compensation by choosing relatively larger firms as their peers since larger firms are likely to offer higher compensation to their executives.[446] However, the study also showed that boards of directors exercise conservative discretion in using information from benchmark firms when setting compensation practices. Finally, a third related study[447] suggests that firms choose peers with (relatively) highly paid CEOs when their own CEO is highly talented, a finding that is not consistent with opportunism regarding the choice of peers in compensation setting. Overall, empirical studies suggest that opportunism in the peer group selection may exist, particularly in companies where the CEO may exert influence over her compensation setting process. By restricting the sole use of relative performance measures in compensation arrangements, the proposed rule would curb the ability of covered persons to engage in such opportunistic behavior, which would benefit covered BDs and IAs.

As mentioned above, the proposed rule would prohibit the sole use of relative performance measures in determining compensation at covered institutions. Constraining the use of relative performance measures in incentive-based compensation contracts has potential costs. Absolute firm performance is typically driven by multiple factors and not all of these factors are under the covered persons' control. If incentive-based compensation is tied to measures of absolute firm performance, then at least

[443] *See* CFP, FSR, SIFMA.

[444] *See* CFP.

[445] *See* Faulkender, M., Yang, J. 2010. Inside the black box: The role and composition of compensation peer groups. *Journal of Financial Economics* 96, 257–270. The study suggests that companies appear to select highly paid peers as a benchmark for their CEO's pay to justify higher CEO compensation. The study also suggests that such an effect is stronger when governance is weaker: In companies where the CEO is also the chairman of the board, has longer tenure, and when directors are busier serving on multiple boards.

[446] *See* Bizjak, J., Lemmon, M., Nguyen, T. 2011. Are all CEOs above average? An empirical analysis of compensation peer groups and pay design. *Journal of Financial Economics* 100, 538–555. The study suggests that companies use compensation peer groups that are larger or provide higher pay in order to inflate pay in their own company and this practice is more prevalent for companies outside of the S&P500. However, the study also shows that boards exercise discretion in adjusting compensation due to the peer group effect; pay increases only close about one-third of the gap between company CEO and peer group CEO pay.

[447] *See* Albuquerque, A., De Franco, G., Verdi, R. 2013. Peer Choice in CEO Compensation. *Journal of Financial Economics* 108, 160–181. The study examines whether companies that benchmark CEO pay against highly paid peer CEOs is driven by incentives to increase CEO pay. Whereas the study suggests that benchmarking pay against highly paid peer CEOs is driven by opportunism, such practice mostly represents increased compensation for CEO talent.

a part of incentive-based compensation will be tied to events out of covered persons' control. This could generate uncertainty about compensation outcomes for covered persons, reducing the efficiency of the incentive-based compensation arrangement. Whereas the proposed rule would not prohibit the use of relative performance measures, if the proposed limitation regarding the use of performance measures in determining compensation awards leads to less filtering out of the uncontrollable risk component of performance, then covered institutions may increase overall pay to compensate covered persons for bearing uncontrollable risk.

The SEC's baseline analysis of current compensation practices suggests that most Level 1 and Level 2 covered institutions use a mix of absolute and relative performance measures. If BDs and IAs have similar policies as their parent institutions, and the compensation structure of private institutions is similar to that of public institutions, the SEC does not expect this rule requirement to generate significant compliance costs for covered institutions. The cost of compliance with the proposed rule would mostly affect the few BDs and IAs whose parent institutions do not currently implement such a requirement. On the other hand, if the compensation practices of parent institutions are significantly different than those at their subsidiaries (*e.g.*, they do not use absolute performance measures, or use mostly absolute measures), covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions. The same holds true if the compensation of BDs and IAs is generally different than that of banking institutions, which most of their parent institutions are.

The SEC has attempted to quantify such costs based on the estimates in Table 14. The SEC also notes that these costs are not necessarily going to be in addition to the compliance costs discussed above, as covered institutions may hire a compensation consultant to help them with several requirements in the proposed rules. These costs could be lower, however, if the parent institutions of BDs and IAs already employ compensation consultants and could extend their services to meet the proposed rule requirements for BDs and IAs. Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the compensation practices of public and private covered institutions such BDs and IAs could face large compliance costs. The SEC does not have data for the prohibition of the sole use of relative performance measures at subsidiaries of Level 1 or Level 2 parents, and thus cannot quantify the impact of the rule on those institutions. To better assess the effects of this prohibition on compliance costs for BDs and IAs. The SEC requests detailed comments below.

10. Volume-Driven Incentive-Based Compensation

For covered persons at Level 1 and Level 2 covered institutions, the proposed rule would prohibit incentive-based compensation arrangements that are based solely on the volume of transactions being generated without regard to transaction quality or compliance of the covered person with sound risk management. Such a compensation contract would provide incentives for employees to maximize the number of transactions since that outcome would lead to maximizing their compensation. A compensation contract that solely uses volume as the performance indicator is likely to provide employees with incentives for inappropriate risk-taking since employees benefit from one aspect of performance but do not bear the negative consequences of their actions—the associated costs and risks incurred to generate revenue/volume. There is limited academic literature addressing the effect of volume-driven compensation on employee incentives. A study examined the behavior of loan officers at a major commercial bank when compensation switched from a fixed salary structure to a performance-based structure where the measure of performance was set as loan origination volume.[448] The study found a 31 percent increase in loan approvals, holding other factors related to the probability of loan approvals constant. The study also found that the 12-month probability of default in originating loans increased by 27.9 percent. Whereas the study did not conclude whether the bank was better or worse off due to the introduction of the compensation scheme, the authors found that interest rates charged to lower quality loans did not reflect the increased riskiness of the borrowers. Another related study[449] finds that loan officers who are incentivized based on lending volume rather than on the quality of their loan portfolio originate more loans of lower average quality. The study also finds that due to the presence of career concerns or reputational motivations, loan officers with lending volume incentives do not indiscriminately approve all applications. Whereas the study examines the effects of volume-driven compensation on employees that are not likely to be covered by the proposed rule, it confirms intuition that providing incentives for volume maximization may lead to behaviors that do not necessarily maximize firm value.

It is unclear to the SEC whether volume-driven incentive-based compensation arrangements are utilized by IAs and BDs given the nature of the business conducted by IAs and BDs. Assuming that these incentive-based compensation arrangements are relevant to IAs and BDs, restricting the sole use of volume-driven compensation practices may curb incentives that reward employees of BDs and IAs on only partial outcomes of their actions; partial in the sense that costs and risks associated with those actions are not part of the performance indicators used to determine their compensation. As a consequence, to the extent that BDs and IAs contribute significantly to the overall risk profile of their parent institutions, covered persons' incentives would likely become aligned with the interests of stakeholders, including taxpayers, since covered persons would bear both the benefits and the costs from their actions. Likewise, the prohibition on the sole use of volume-driven compensation practices is also likely to limit covered persons' incentives for inappropriate risk-taking.

The effect of this proposed rule on BDs and IAs cannot be unambiguously determined because of the lack of data on the current use of volume-driven compensation practices. If BDs and IAs have already instituted similar policies with respect to senior executive officers and significant risk-takers, the SEC does not expect this rule requirement to generate significant compliance costs for covered institutions. On the other hand, if covered BDs and IAs' compensation practices with respect to senior executive officers and significant risk-takers rely exclusively on volume-driven transactions, covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. To better assess the effects of this prohibition on compliance costs for BDs and IAs the SEC requests comments below.

11. Risk Management

The proposed rule would include specific requirements with regard to risk management functions to qualify a covered person's incentive-based compensation arrangement at Level 1 and Level 2 covered institutions as compatible with the rule. Specifically, the proposed rule would require that a Level 1 or Level 2 covered institution have a risk management framework for its incentive-based compensation arrangement that is independent of any lines of business, includes an independent compliance program that provides for internal controls, testing, monitoring, and training, with written policies and procedures consistent with the proposed rules, and is commensurate with the size and complexity of a covered institution's operations. Moreover, the proposed rule would require that covered persons engaged in control functions be provided with the authority to influence the risk-taking of the business areas they monitor and be compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of the business areas they monitor. Finally, a Level 1 or Level 2 covered institution would be required to provide independent monitoring of all incentive-based compensation plans, events related to forfeiture and downward adjustment and decisions of forfeiture and downward adjustment reviews, and compliance of the incentive-based compensation program with the covered institution's policies and procedures.

The proposed requirements may strengthen the risk management and control functions of covered BDs and IAs, which could result in lower levels of inappropriate risk-taking. Academic literature suggests that stronger risk controls in bank holding companies resulted in lower risk exposure, as evident by lower tail-risk and lower fraction of non-performing loans; and better performance, as evident by better operating performance and stock return performance, during the crisis.[450] This study also shows that the risk management function is stronger for larger banks, banks with larger derivative trading operations and banks whose CEOs compensation is more closely tied to stock volatility. Additionally, the study shows that stronger risk function, as measured by this study, was associated with better firm performance only during crisis years, whereas the same relation did not hold during non-crisis periods. As such, a strong and independent risk management function can curtail tail risk exposures at banks and potentially enhance value, particularly during crisis years. Another study shows that lenders with a relatively powerful risk manager, as measured by the level of the risk manager's compensation relative to the top named executives' level of compensation, experienced lower loan default rates. Thus, the evidence in the study seems to suggest that powerful risk executives curb risk-taking with respect to loan origination.[451]

It is also possible that the proposed requirements may not have an effect on the current level of risk-taking at BDs and IAs. For example, if risk-taking is driven by the culture of the institution, then governance characteristics (including risk management functions) may reflect the choice of control functions that match the inherent risk-taking appetite in the institution.[452] A potential downside of applying a strict risk management control function over covered BDs and IAs is that it could lead to decreased risk-taking and potential loss of value for those BDs and IAs that already employ an optimal risk management function. For such BDs and IAs, the implementation of the rule requirements with respect to risk management could result in lower than optimal risk-taking by covered persons.

Based on the SEC's baseline analysis, it appears that all Level 1 parent institutions and most Level 2 parent institutions (67 percent) of BDs already have an independent risk management and control function (*e.g.*, a risk committee) and compensation monitoring function (*e.g.*, a fully independent compensation committee)[453] that could apply the rule requirements. Similarly, all of the Level 1 and Level 2 parent institutions of IAs have risk committees and substantial portion (80 percent and above) have fully independent compensation committees. The SEC, however, does not have information on whether risk committees review and monitor the incentive-based compensation plans. The SEC's analysis suggests that there are some Level 1 covered institutions (30 percent) and Level 2 covered institutions (20 percent) where CROs review compensation packages.

If BDs and IAs have similar policies as their parent institutions, and the risk management structure of private institutions is similar to that of public institutions, the implementation of the proposed rule in its part related to risk management and control is unlikely to lead to significant compliance costs for the majority of covered BDs and IAs because, as mentioned in the previous paragraph, a large percentage of the parent institutions already have fully independent risk committees. Some BDs with Level 2 parent institutions and some IAs with Level 1 and Level 2 parent institutions may face high compliance costs because their parent institutions currently do not employ risk management and compensation monitoring practices similar to the one prescribed by the proposed rule. On the other hand, if the risk management practices of parent institutions are significantly different from those at their subsidiaries (*e.g.*, BDs and IAs do not have risk management and control functions), covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions. BDs and IAs could also incur direct economic costs such as decrease in firm value if the proposed

[448] *See* Agarwal, S., Ben-David, I. 2014. Do Loan Officers' Incentives Lead to Lax Lending Standards? NBER Working Paper. This study examines changes in lending practices in one of the largest U.S. commercial banks when loan officers' compensation structure was altered from fixed salary to volume-based pay. The study suggests that following the change in the compensation structure, loan origination became more aggressive as evident by higher origination rates, larger loan sizes, and higher default rates. The study estimates that 10% of the loans under the volume-based compensation structure were likely to have negative net present value.

[449] *See* Cole, S., Kanz, M., Klapper, L. 2015. Incentivizing Calculated Risk-Taking: Evidence from an Experiment with Commercial Bank Loan Officers. *Journal of Finance* 70, 537–575. The study examines the effect of different incentive-based compensation arrangements on loan originators behavior in screening and approving loans in an Indian commercial bank. In general, the study finds that the structure of incentive-based arrangements for loan officers affects their decisions; the performance metric used in compensation arrangements of loan officers as well as whether pay is deferred affect loan officers screening and approval incentives and corresponding decisions.

[450] *See* Ellul, A., Yerramilli, V. 2013. Stronger Risk Controls, Lower Risk: Evidence from U.S. Bank Holding Companies. *Journal of Finance* 68, 1757–1803.

[451] *See* Keys, B., Mukherjee, T., Seru, A., Vig, Vikrant. 2009. Financial regulation and securitization: Evidence from subprime loans. *Journal of Monetary Economics* 56, 700–720.

[452] *See* Cheng, I., Hong, H., Scheinkman, J. 2015. Yesterday's Heroes: Compensation and Risk at Financial Firms. *Journal of Finance* 70, 839–879.

[453] A risk committee is "fully independent" for purposes of this discussion if it consists only of directors that are not employees of the corporation.

rule requirements regarding risk management lead to less risk-taking than is optimal. The same holds true if the risk management and controls of BDs and IAs is generally different than that of banking institutions, which most of their parent institutions are.

Lastly, because some BDs and IAs are subsidiaries of private parent institutions, if there is a significant difference in the risk management practices of public and private covered institutions such BDs and IAs could face large compliance costs and direct economic costs. The SEC does not have data for the risk management and control functions at subsidiaries of Level 1 or Level 2 parents, and thus cannot quantify the impact of the rule on those institutions. To better assess the effects of these rule requirements on compliance costs for BDs and IAs the SEC requests comments below.

The SEC has attempted to quantify the potential compliance costs for BDs and IAs associated with the proposed rule's requirements regarding the existence and structure of compensation committees and risk committees. BDs and IAs that are currently not in compliance with the proposed committee requirements, either because such a committee does not exist or because the composition of such committee is not consistent with the rule requirements, may have to elect additional individuals in order to either establish the required committees or alter the structure of such committees to be in compliance with the rule's requirements. Table 15 provides estimates of the average annual total compensation of non-employee (*i.e.* independent) directors for Level 1 and Level 2 parents of BDs and Level 1 and Level 2 parents of IAs covered by the proposed rule.[454] Assuming that the cost estimates in the table approximate the compensation requirements for independent members of compensation and/or risk committees, the incremental compliance costs of electing an additional non-employee director to comply with this specific provision of the rule for BDs and IAs that currently do not meet the rule's requirements could be approximately $333,086 and $309,513 annually per independent director for a Level 1 BDs and IAs, respectively, and approximately $208,009 and $194,563 annually per independent director for unconsolidated Level 2 BDs and IAs, respectively.

[454] Data is taken from 2015 proxy statements.

TABLE 15—AVERAGE TOTAL ANNUAL COMPENSATION OF A NON-EMPLOYEE DIRECTOR FOR LEVEL 1 AND LEVEL 2 COVERED INSTITUTIONS

	Average total annual compensation of a non-employee director
BD parents:	
Level 1 covered institutions	$333,086
Level 2 covered institutions	208,009
IA parents:	
Level 1 covered institutions	309,513
Level 2 covered institutions	194,563

The SEC considers these estimates an upper bound of potential costs that BDs and IAs may incur to comply with these requirements of the proposed rule. It is possible that some BDs and IAs are able to reshuffle existing personnel in order to comply with the rule's requirements (*e.g.*, use existing directors to create a risk committee or fully independent compensation committee) and as such would not incur any of the costs described in the analysis.

12. Governance, Policies and Procedures

For Level 1 and Level 2 covered institutions, the proposed rule would include specific corporate governance requirements to support the design and implementation of compensation arrangements that provide balanced risk-taking incentives to affected individuals. More specifically, the proposed rule would require the existence of a compensation committee composed solely of directors who are not senior executive officers, input from the corresponding risk and audit committees and risk management on the effectiveness of risk measures and adjustments used to balance incentive-based compensation arrangements, and a written assessment, submitted at least annually to the compensation committee from the management of the covered institution, regarding the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes and an independent written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the internal audit or risk management function of the covered institution, developed independently of the covered institution's management.

The proposed governance requirements would benefit covered BDs and IAs by further ensuring that the design of compensation arrangements is independent of the persons receiving compensation under these arrangements, thus curbing potential conflicts of interest. It could also facilitate the optimal design of compensation arrangements by incorporating relevant information from committees whose mandate is risk oversight. For example, by having a fully independent compensation committee that designs compensation arrangements and a risk committee that reviews those compensation arrangements to make sure they are consistent with the institution's optimal risk policy, a BD or IA may be able to devise compensation arrangements that provide a better link between pay and performance for covered persons.

Based on the SEC's baseline analysis, it appears that the majority of Level 1 and Level 2 covered parent institutions already have a fully independent compensation committee. The SEC does not have information whether BDs and IAs that are subsidiaries have compensation committees and boards of directors. In 2012, the SEC adopted rules requiring exchanges to adopt listing standards requiring a board compensation committee that satisfies independence standards that are more stringent than those in the proposed rule.[455] Therefore, all covered parent institutions with listed securities on national exchanges, or any covered BDs and IAs with listed securities, should have compensation committees that would satisfy the proposed rule's compensation committee independence requirements. Thus, this proposed requirement should place no additional burden on those IAs and BDs that have listed securities on national exchanges, or have governance structures similar to those of their listed parent institutions.

For those BDs and IAs that have compensation committees, the SEC does not have information whether management of the covered BDs and IAs submits to the compensation committee on an annual or more frequent basis a written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution.

[455] 17 CFR parts 229 and 240.

Additionally, the SEC does not have information on whether the compensation committee obtains input from the covered institution's risk and audit committees, or groups performing similar functions. If covered BDs and IAs have already instituted similar policies with respect to the proposed rule's governance requirements, the SEC does not expect this proposed requirement to generate significant compliance costs for them.

On the other hand, if covered BDs and IAs' governance practices are significantly different (*e.g.*, they do not have independent compensation committees, or the compensation committees do not obtain input from the risk and audit committees), then covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. Similarly, for BDs and IAs that do not have securities listed on a national exchange or have governance structures different from those of their parent institutions with listed securities, this rule proposal may result in significant costs. Also, since the SEC does not have data on how many covered IAs have parent institutions, or whether the IAs themselves or their parents have listed securities, it is also possible that a significant number of these IAs may be stand-alone companies that do not have independent compensation committees, and therefore could have higher costs to comply with the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions with independent compensation committees. To better assess the effects of the proposed rule requirement on compliance costs for BDs and IAs, the SEC requests comments below.

For Level 1 and Level 2 covered BDs and IAs, the proposed rule would require the development and implementation of policies and procedures relating to its incentive-based compensation programs that would require among other things, specifying the substantive and procedural criteria for the application of the various policies such as forfeiture and clawback, identifying and describing the role of employees, committees, or groups with authority to make incentive-based compensation decisions, and description of the monitoring mechanism over incentive-based compensation arrangements.

The SEC does not have information about whether covered BDs and IAs have policies and procedures in place as required by the proposed rule. If BDs and IAs have already instituted similar policies, the SEC does not expect this rule requirement to generate significant compliance costs for them. On the other hand, if the covered BDs and IAs do not have such policies and procedures, or if their policies and procedures are significantly different than what the proposed rule requires, then covered BDs and IAs could experience significant compliance costs when implementing the proposed rule. To better assess the effects of these rule requirements on compliance costs for BDs and IAs the SEC requests comments below.

13. Additional Disclosure and Recordkeeping

All covered institutions would be required to create annually and maintain for a period of at least 7 years records that document the structure of all incentive-based compensation arrangements and demonstrate compliance with the proposed rules. Level 1 and Level 2 covered institutions would be required to create annually and maintain for at least 7 years records that document additional information, such as identification of the senior executive officers and significant risk-takers within the covered institution, the incentive-based compensation arrangements of these individuals including deferral details, and any material changes in incentive-based compensation arrangements and policies. Level 1 and Level 2 covered institutions must create and maintain such records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures.

The SEC is proposing an amendment to Exchange Act Rule 17a–4(e)[456] and Investment Advisers Act Rule 204–2[457] to require that registered broker-dealers and investment advisers maintain the records required by the proposed rule for registered Level 1 and Level 2 broker-dealers and investment advisers, in accordance with the recordkeeping requirements of Exchange Act Rule 17a–4 and Investment Advisers Act Rule 204–2, respectively. Exchange Act Rule 17a–4 and Investment Advisers Act Rule 204–2 establish the general formatting and storage requirements for records that registered broker-dealers and investment advisers are required to keep. For the sake of consistency with other broker-dealer and investment adviser records, the SEC believes that registered broker-dealers and investment advisers should also keep the records required by the proposed rule for registered Level 1 and Level 2 broker-dealers and investment advisers, in accordance with these requirements.

[456] 17 CFR 240.17a–4(e).

[457] 17 CFR 275.204–2.

Such recordkeeping requirements would provide information availability to the SEC in examining and confirming the design and implementation of compensation arrangements for a prolonged period of time. This may enhance compliance and facilitate oversight.

The proposed requirement may increase compliance costs for covered BDs and IAs. The SEC expects that the magnitude of the compliance costs would depend on whether covered BDs and IAs are part of reporting companies or not. Most Level 1 and Level 2 BDs are subsidiaries of reporting parent institutions. Reporting covered institutions provide compensation and disclosure analysis and compensation tables for their named executive officers in their annual reports, and disclose the incentive-based compensation arrangements for named executive officers in the annual proxy statement. In addition, reporting companies have to make an assessment each year whether they need to make Item 402(s) disclosure, which, among other things includes disclosure of compensation policies and practices that present material risks to the company and the board of directors' role in risk oversight. Thus, given that reporting covered institutions create certain records and provide certain disclosures for their annual reports and proxy statements and for internal purposes (*e.g.*, for reports to the board of directors or the compensation committee) that are similar to those required by the proposed rule, the BDs and IAs that are subsidiaries of such parent institutions may experience lower disclosure and recordkeeping compared to BDs and IAs of non-reporting parent institutions or institutions that do not provide such disclosures. Even BDs and IAs of reporting companies, however, would have to incur costs associated with disclosure and recordkeeping of information required by the proposed rule that currently is not disclosed by their parent institutions, such as identification of significant risk-takers details on deferral of incentive-based compensation. The SEC also notes that because it does not have information on the compensation reporting and recordkeeping at the subsidiary level, the SEC may be underestimating compliance costs for BDs with reporting parent institutions. For example, even if the parent institution reports and keeps records of the incentive-based compensation arrangements, this might not be done on the same scale and detail at the subsidiary level.

The compliance costs associated with this particular rule requirement may be higher for non-reporting covered institutions, since they may not be disclosing such information and as such may not be keeping the type of records required. However, according to 2010 Federal Banking Agency Guidance, a banking institution should provide an appropriate amount of information concerning its incentive compensation arrangements for executive and non-executive employees and related risk-management, control, and governance processes to shareholders to allow them to monitor and, where appropriate, take actions to restrain the potential for such arrangements and processes to encourage employees to take imprudent risks. Such disclosures should include information relevant to employees other than senior executives. The scope and level of the information disclosed by the institution should be tailored to the nature and complexity of the institution and its incentive-based compensation arrangements. The SEC expects the compliance costs to be lower for such covered institutions. Since the SEC does not have data on how many covered IAs have parent institutions, it is also possible that a significant number of these IAs may be stand-alone companies and therefore could have higher costs to comply with this specific requirement of the proposed rule compared to covered IAs and BDs that are part of reporting parent institutions.

By requiring Level 1 and Level 2 covered institutions to create and maintain records of incentive-based compensation arrangements for covered persons, the proposed recordkeeping requirement is expected to facilitate the SEC's ability to monitor incentive-based compensation arrangements and could potentially strengthen incentives for covered institutions to comply with the proposed rule. As a consequence, an increase in investor confidence that covered institutions are less likely to be incentivizing inappropriate actions through compensation arrangements may occur and potentially result to greater market participation and allocative efficiency, thereby potentially facilitating capital formation. As discussed above, it is difficult for the SEC to estimate compliance costs related to the specific provision. However, for covered institutions that do not currently have a similar reporting system in place, there could be significant fixed costs that could disproportionately burden smaller covered BDs and IAs and hinder competition. Overall, the SEC does not expect that the effects of the proposed recordkeeping requirements on efficiency, competition and capital formation to be significant.

H. Request for Comment

The SEC requests comments regarding its analysis of the potential economic effects of the proposed rule. With regard to any comments, the SEC notes that such comments are of particular assistance to the SEC if accompanied by supporting data and analysis of the issues addressed in those comments. For example, the SEC is interested in receiving estimates, data, or analyses on incentive-based compensation at BDs and IAs for all aspects of the proposed rule, including thresholds, on the overall economic impact of the proposed rule, and on any other aspect of this economic analysis. The SEC also is interested in comments on the benefits and costs it has identified and any benefits and costs it may have overlooked.

1. In the SEC's baseline analysis, the SEC uses data from publicly held covered institutions as a proxy for incentive-based compensation arrangements at privately held institutions. The SEC requests comment on the validity of the assumption that privately held institutions employ similar compensation practices to publicly held institutions. The SEC also requests data or analysis with respect to incentive-based compensation arrangements of covered persons at privately held covered institutions.

2. The SEC does not have comprehensive data on incentive-based compensation arrangements for affected individuals, other than those senior executive officers who are named executive officers (NEOs) and some significant risk-takers, for either public or privately held covered institutions. The SEC requests data or analysis related to compensation practices of all senior executive officers and significant risk-takers at covered BDs and IAs as defined in the proposed rule.

3. The SEC uses incentive-based compensation arrangements of NEOs at the parent level as a proxy for incentive-based compensation arrangements of covered persons at covered BDs and IAs that are subsidiaries. The SEC requests comment on the validity of the assumption that incentive-based compensation arrangements for senior executive officers at the parent level is similar to incentive-based compensation arrangements followed at the subsidiary level for other senior executive officers or for significant risk-takers. The SEC also requests any data or related analysis on this issue.

4. Are the economic effects with respect to the asset thresholds ($50 billion and $250 billion) utilized to scale the proposed requirements for covered BDs and IAs adequately outlined in the analysis? The SEC also invites comment on the economic consequences of any alternative asset thresholds, as well as economic consequences of potential alternative measures.

5. The proposed consolidation approach would impose restrictions on covered persons' incentive-based compensation arrangements in BDs and IAs that are subsidiaries of depositary institution holding companies based on the size of their parent institution. Are the economic effects from the proposed consolidation approach adequately described in the analysis? Are there specific circumstances, such as certain organizational structures, that would deem such a consolidation approach more or less effective?

6. Are there additional effects with respect to the proposed definition of significant risk-takers to be considered? Are there alternative ways to identify significant risk-takers and what would be the economic consequences of alternative ways to identify significant risk-takers?

7. Are the economic effects on the proposed minimum deferral periods and the proposed minimum deferral percentage amounts adequately described in the analysis? What would be the economic effects of any alternative? The SEC also requests literature or evidence regarding the length and amount of deferral of incentive-based compensation that would lead to incentive-based compensation arrangements that best address the underlying risks at covered institutions.

8. Are the economic effects from the proposed vesting schedule for deferred incentive-based compensation adequately described in the analysis? What would be the economic effects from any alternatives?

9. Are there additional economic effects to be considered from the proposed prohibition of increasing a senior executive officer or significant risk-taker's unvested deferred incentive-based compensation? What would be the economic effects of any alternatives?

10. The proposed rule would require deferred qualifying incentive-based compensation to be composed of substantial amounts of both deferred cash and equity-like instruments for covered persons. Are the economic effects of the proposed rule adequately described in the analysis? Would explicitly specifying the mix between cash and equity-like instruments to be included in the deferral amount be preferred? What would be the economic effects of such an alternative? Are there additional alternatives to be considered?

11. For senior executive officers and significant risk-takers at Level 1 and Level 2 covered institutions, the total amount of options that may be used to meet the minimum deferral amount requirements is limited to no more than 15 percent of the amount of total incentive-based compensation awarded for a given performance period. Indirectly, this policy choice would place a cap on the amount of options that covered BDs and IAs may provide to affected persons as part of their incentive-based compensation arrangement. Are the economic effects of the provision adequately described in the analysis? What would be the economic effects from any alternatives?

12. Are the triggers for forfeiture or downward adjustment review effective for both senior executive officers and significant risk-takers? Are some of the triggers more effective for significant risk-takers while others are more effective for senior executive officers? What other triggers would be effective for forfeiture or downward adjustment review?

13. Are the economic effects from the 125 percent (150 percent) limit on the amount by which incentive-based compensation may exceed the target amount for senior executive officers (significant risk-takers) at covered BDs and IAs adequately described in the analysis? Are there alternatives to be considered? What would be the economic effect of such alternatives?

14. Are the economic effects regarding the prohibition of the sole use of industry peer performance benchmarks for incentive-based compensation performance measurement adequately described in the analysis? The SEC also requests data on relative performance measures used by covered BDs and IAs and/or related analysis that may further inform this policy choice.

15. The SEC requests any relevant data or analysis regarding the potential effect of the proposed rule on the ability of covered BDs and IAs to attract and retain managerial talent.

16. In general, are there alternative courses of action to be considered that would enhance accountability and limit the potential for inappropriate risk-taking by covered persons at BDs and IAs? What would be the economic effects of such alternatives? Are there specific circumstances, such as certain types of shareholders and other stakeholders, that would make these alternative approaches more or less effective? For example, should such alternative approaches distinguish between the effects on short-term shareholders and the effects on long-term shareholders?

17. In recent years, several foreign regulators have implemented regulations concerning incentive-based compensation similar to those in the proposed rule. The SEC requests data or analysis regarding the economic effects of those regulations and whether they are similar to or different from the likely economic effects of the proposed rule.

J. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA")[458] the SEC must advise the OMB whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The SEC requests comment on the potential impact of the proposed amendment on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

List of Subjects

12 CFR Part 42

Banks, banking, Compensation, National banks, Reporting and recordkeeping requirements.

12 CFR Part 236

Banks, Bank holding companies, Compensation, Foreign banking organizations, Reporting and recordkeeping requirements, Savings and loan holding companies.

12 CFR Part 372

Banks, banking, Compensation, Foreign banking.

12 CFR Parts 741 and 751

Compensation, Credit unions, Reporting and recording requirements.

12 CFR Part 1232

Administrative practice and procedure, Banks, Compensation, Confidential business information, Government-sponsored enterprises, Reporting and recordkeeping requirements.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

17 CFR Part 303

Incentive-based compensation arrangements, Reporting and recordkeeping requirements, Securities.

[458] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and 15 U.S.C. and as a note to 5 U.S.C. 601).

Department of the Treasury: Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the joint preamble, the OCC proposes to amend 12 CFR chapter I of the Code of Federal Regulations as follows:

■ 1. Add part 42 to read as follows:

PART 42—INCENTIVE-BASED COMPENSATION ARRANGEMENTS

Sec.
42.1 Authority, scope, and initial applicability.
42.2 Definitions.
42.3 Applicability.
42.4 Requirements and prohibitions applicable to all covered institutions.
42.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.
42.6 Reservation of authority for Level 3 covered institutions.
42.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.
42.8 Additional prohibitions for Level 1 and Level 2 covered institutions.
42.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.
42.10 Governance requirements for Level 1 and Level 2 covered institutions.
42.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.
42.12 Indirect actions.
42.13 Enforcement.

Authority: 12 U.S.C. 1 *et seq.* 1, 93a, 1462a, 1463, 1464, 1818, 1831p–1, and 5641.

§ 42.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641), sections 8 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1818 and 1831p–1), sections 3, 4, and 5 of the Home Owners' Loan Act (12 U.S.C. 1462a, 1463, and 1464), and section

5239A of the Revised Statutes (12 U.S.C. 93a).

(b) *Scope.* This part applies to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A covered institution must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A covered institution is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in § 42.1(c)(1)].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of the OCC under other provisions of applicable law and regulations.

§ 42.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Average total consolidated assets* means the average of the total consolidated assets of a national bank; a Federal savings association; a Federal branch or agency of a foreign bank; a subsidiary of a national bank, Federal savings association, or Federal branch or agency; or a depository institution holding company, as reported on the national bank's, Federal savings association's, Federal branch or agency's, subsidiary's, or depository institution holding company's regulatory reports, for the four most recent consecutive quarters. If a national bank, Federal savings association, Federal branch or agency, subsidiary, or depository institution holding company has not filed a regulatory report for each of the four most recent consecutive quarters, the national bank, Federal savings association, Federal branch or agency, subsidiary, or depository institution holding company's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers. For a Federal branch or agency of a foreign bank, "board of directors" refers to the relevant oversight body for the Federal branch or agency, consistent with its overall corporate and management structure.

(e) *Clawback* means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a covered institution.

(g) *Control* means that any company has control over a bank or over any company if—

(1) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(2) The company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(3) The OCC determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.

(i) *Covered institution* means:

(1) A national bank, Federal savings association, or Federal branch or agency of a foreign bank with average total consolidated assets greater than or equal to $1 billion; and

(2) A subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank that:

(i) Is not a broker, dealer, person providing insurance, investment company, or investment adviser; and

(ii) Has average total consolidated assets greater than or equal to $1 billion.

(j) *Covered person* means any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) *Depository institution holding company* means a top-tier depository institution holding company, where "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(n) *Director* of a covered institution means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 42.7(b).

(p) *Equity-like instrument* means:

(1) Equity in the covered institution or of any affiliate of the covered institution; or

(2) A form of compensation:

(i) Payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or

(ii) That requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution.

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 covered institution* means:

(1) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $250 billion;

(2) A covered institution with average total consolidated assets greater than or equal to $250 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and

(3) A covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $250 billion.

(w) *Level 2 covered institution* means:

(1) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $50 billion but less than $250 billion;

(2) A covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and

(3) A covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion.

(x) *Level 3 covered institution* means:

(1) A covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion; and

(2) A covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) *Option* means an instrument through which a covered institution provides a covered person the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right.

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) *Principal shareholder* means a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution.

(cc) *Qualifying incentive-based compensation* means the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) [Reserved].

(ee) *Regulatory report* means:

(1) For a national bank or Federal savings association, the consolidated Reports of Condition and Income ("Call Report");

(2) For a Federal branch or agency of a foreign bank, the Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks—FFIEC 002;

(3) For a depository institution holding company—

(i) The Consolidated Financial Statements for Bank Holding Companies ("FR Y–9C");

(ii) In the case of a savings and loan holding company that is not required to file an FR Y–9C, the Quarterly Savings and Loan Holding Company Report ("FR 2320"), if the savings and loan holding company reports consolidated assets on the FR 2320, as applicable; or

(iii) In the case of a savings and loan holding company that does not file an FRY–9C or report consolidated assets on the FR2320, a report submitted to the Board of Governors of the Federal Reserve System pursuant to 12 CFR 236.2(ee); and

(4) For a covered institution that is a subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank, a report of the subsidiary's total consolidated assets prepared by the subsidiary, national bank, Federal savings association, or Federal branch or agency in a form that is acceptable to the OCC.

(ff) *Section 956 affiliate* means an affiliate that is an institution described in § 42.2(i), 12 CFR 236.2(i), 12 CFR 372.2(i), 12 CFR 741.2(i), 12 CFR 1232.2(i), or 17 CFR 303.2(i).

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 1 covered institution;

(ii) A covered person of a Level 2 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 2 covered institution; or

(iii) A covered person of a covered institution who may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any section 956 affiliate of the covered

institution, whether or not the individual is a covered person of that specific legal entity; and

(2) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who is designated as a "significant risk-taker" by the OCC because of that person's ability to expose a covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance, in accordance with procedures established by the OCC, or by the covered institution.

(3) For purposes of this part, an individual who is an employee, director, senior executive officer, or principal shareholder of an affiliate of a Level 1 or Level 2 covered institution, where such affiliate has less than $1 billion in total consolidated assets, and who otherwise would meet the requirements for being a significant risk-taker under paragraph (hh)(1)(iii) of this section, shall be considered to be a significant risk-taker with respect to the Level 1 or Level 2 covered institution for which the individual may commit or expose 0.5 percent or more of common equity tier 1 capital or tentative net capital. The Level 1 or Level 2 covered institution for which the individual commits or exposes 0.5 percent or more of common equity tier 1 capital or tentative net capital shall ensure that the individual's incentive compensation arrangement complies with the requirements of this part.

(4) If the OCC determines, in accordance with procedures established by the OCC, that a Level 1 covered institution's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 covered institution, the Level 1 covered institution may apply paragraph (hh)(1)(i) of this section to covered persons of the Level 1 covered institution by substituting "2 percent" for "5 percent".

(ii) *Subsidiary* means any company that is owned or controlled directly or indirectly by another company

(jj) *Vesting* of incentive-based compensation means the transfer of ownership of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event.

§ 42.3 Applicability.

(a) *When average total consolidated assets increase*—(1) *In general*—(A) *Covered institution subsidiaries of depository institution holding companies.* A national bank or Federal savings association that is a subsidiary of a depository institution holding company shall become a Level 1, Level 2, or Level 3 covered institution when the depository institution holding company's average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(B) *Covered institutions that are not subsidiaries of a depository institution holding company.* A national bank, Federal savings association, or Federal branch or agency of a foreign bank that is not a subsidiary of a national bank, Federal savings association, Federal branch or agency, or depository institution holding company shall become a Level 1, Level 2, or Level 3 covered institution when the national bank, Federal savings association, or Federal branch or agency's average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(C) *Subsidiaries of covered institutions.* A subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank that is not a broker, dealer, person providing insurance, investment company, or investment adviser shall become a Level 1, Level 2, or Level 3 covered institution when the national bank, Federal savings association, or Federal branch or agency becomes a Level 1, Level 2, or Level 3 covered institution, respectively, pursuant to paragraph (a)(1)(A) or (B) of this section.

(2) *Compliance date.* A national bank, Federal savings association, Federal branch or agency of a foreign bank, or a subsidiary thereof, that becomes a Level 1, Level 2, or Level 3 covered institution pursuant to paragraph (a)(1) of this section shall comply with the requirements of this part for a Level 1, Level 2, or Level 3 covered institution, respectively, not later than the first day of the first calendar quarter that begins not later than 540 days after the date on which the national bank, Federal savings association, Federal branch or agency, or subsidiary becomes a Level 1, Level 2, or Level 3 covered institution, respectively. Until that day, the Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements of this part, if any, that applied to the institution on the day before the date on which it became a Level 1, Level 2, or Level 3 covered institution.

(3) *Grandfathered plans.* A national bank, Federal savings association, Federal branch or agency of a foreign bank, or a subsidiary thereof, that becomes a Level 1, Level 2, or Level 3 covered institution under paragraph (a)(1) of this section is not required to comply with requirements of this part applicable to a Level 1, Level 2, or Level 3 covered institution, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2) of this section. Any such incentive-based compensation plan shall remain subject to the requirements under this part, if any, that applied to the national bank, Federal savings association, Federal branch or agency of a foreign bank, or subsidiary at the beginning of the performance period.

(b) *When total consolidated assets decrease*—(1) *Covered institutions that are subsidiaries of depository institution holding companies.* A Level 1, Level 2, or Level 3 covered institution that is a subsidiary of a depository institution holding company will remain subject to the requirements applicable to such covered institution at that level under this part unless and until the total consolidated assets of the depository institution holding company, as reported on the depository institution holding company's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters.

(2) *Covered institutions that are not subsidiaries of depository institution holding companies.* A Level 1, Level 2, or Level 3 covered institution that is a not subsidiary of a depository institution holding company will remain subject to the requirements applicable to such covered institution at that level under this part unless and until the total consolidated assets of the covered institution, as reported on the covered institution's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters.

(3) *Subsidiaries of covered institutions.* A Level 1, Level 2, or Level 3 covered institution that is a subsidiary of a national bank, Federal savings association, or Federal branch or agency of a foreign bank that is a covered institution will remain subject to the requirements applicable to such national bank, Federal savings association, or Federal branch or agency at that level under this part unless and until the total consolidated assets of the national bank, Federal savings association, Federal branch or agency, or depository institution holding company of the national bank, Federal savings association, or Federal branch or agency, as reported on its regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters.

(4) *Calculations.* The calculations under this paragraph (b) of this section will be effective on the as-of date of the fourth consecutive regulatory report.

(c) *Compliance of covered institutions that are subsidiaries of covered institutions.* A covered institution that is a subsidiary of another covered institution may meet any requirement of this part if the parent covered institution complies with that requirement in a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with that requirement.

§ 42.4 Requirements and prohibitions applicable to all covered institutions.

(a) *In general.* A covered institution must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the covered institution:

(1) By providing a covered person with excessive compensation, fees, or benefits; or

(2) That could lead to material financial loss to the covered institution.

(b) *Excessive compensation.* Compensation, fees, and benefits are considered excessive for purposes of paragraph (a)(1) of this section when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including, but not limited to:

(1) The combined value of all compensation, fees, or benefits provided to the covered person;

(2) The compensation history of the covered person and other individuals with comparable expertise at the covered institution;

(3) The financial condition of the covered institution;

(4) Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets;

(5) For post-employment benefits, the projected total cost and benefit to the covered institution; and

(6) Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

(c) *Material financial loss.* An incentive-based compensation arrangement at a covered institution encourages inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement:

(1) Appropriately balances risk and reward;

(2) Is compatible with effective risk management and controls; and

(3) Is supported by effective governance.

(d) *Performance measures.* An incentive-based compensation arrangement will not be considered to appropriately balance risk and reward for purposes of paragraph (c)(1) of this section unless:

(1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a covered institution and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking;

(2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and

(3) Any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

(e) *Board of directors.* A covered institution's board of directors, or a committee thereof, must:

(1) Conduct oversight of the covered institution's incentive-based compensation program;

(2) Approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and

(3) Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

(f) *Disclosure and recordkeeping requirements.* A covered institution must create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A covered institution must disclose the records to the OCC upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

(g) *Rule of construction.* A covered institution is not required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the disclosure and recordkeeping requirements under this part.

§ 42.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.

(a) A Level 1 or Level 2 covered institution must create annually and maintain for a period of at least seven years records that document:

(1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business;

(2) The incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award;

(3) Any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and

(4) Any material changes to the covered institution's incentive-based compensation arrangements and policies.

(b) A Level 1 or Level 2 covered institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including, those required under § 42.11.

(c) A Level 1 or Level 2 covered institution must provide the records described in paragraph (a) of this section to the OCC in such form and with such frequency as requested by the OCC.

§ 42.6 Reservation of authority for Level 3 covered institutions.

(a) *In general.* The OCC may require a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 42.5 and 42.7 through 42.11 if the OCC determines that the Level 3 covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution.

(b) *Factors considered.* Any exercise of authority under this section will be in writing by the OCC in accordance with procedures established by the OCC and will consider the activities,

complexity of operations, risk profile, and compensation practices of the Level 3 covered institution, in addition to any other relevant factors.

§ 42.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to appropriately balance risk and reward, for purposes of § 42.4(c)(1), unless the following requirements are met.

(a) *Deferral.* (1) Qualifying incentive-based compensation must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 4 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 3 years.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred qualifying incentive-based compensation may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred qualifying incentive-based compensation that is required to be deferred under this part, except in the case of death or disability of such covered person.

(2) Incentive-based compensation awarded under a long-term incentive plan must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 2 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 1 year.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred long-term incentive plan amounts may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred long-term incentive plan amounts that is required to be deferred under this part, except in the case of death or disability of such covered person.

(3) *Adjustments of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation amounts.* A Level 1 or Level 2 covered institution may not increase deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts for a senior executive officer or significant risk-taker during the deferral period. For purposes of this paragraph, an increase in value attributable solely to a change in share value, a change in interest rates, or the payment of interest according to terms set out at the time of the award is not considered an increase in incentive-based compensation amounts.

(4) *Composition of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation for Level 1 and Level 2 covered institutions*—(i) *Cash and equity-like instruments.* For a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution that issues equity or is an affiliate of a covered institution that issues equity, any deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts must include substantial portions of both deferred cash and equity-like instruments throughout the deferral period.

(ii) *Options.* If a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution receives incentive-based compensation for a performance period in the form of options, the total amount of such options that may be used to meet the minimum deferral amount requirements of paragraph (a)(1)(i) or (a)(2)(i) of this section is limited to no more than 15 percent of the amount of total incentive-based compensation awarded to the senior executive officer or significant risk-taker for that performance period.

(b) *Forfeiture and downward adjustment*—(1) *Compensation at risk*—(i) A Level 1 or Level 2 covered institution must place at risk of forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans.

(ii) A Level 1 or Level 2 covered institution must place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts payable under long-term incentive plans.

(2) *Events triggering forfeiture and downward adjustment review.* At a minimum, a Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment of incentive-based compensation of senior executive officers and significant risk-takers described in paragraph (b)(3) of this section due to any of the following adverse outcomes at the covered institution:

(i) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures;

(ii) Inappropriate risk taking, regardless of the impact on financial performance;

(iii) Material risk management or control failures;

(iv) Non-compliance with statutory, regulatory, or supervisory standards that results in:

(A) Enforcement or legal action against the covered institution brought by a federal or state regulator or agency; or

(B) A requirement that the covered institution report a restatement of a financial statement to correct a material error; and

(v) Other aspects of conduct or poor performance as defined by the covered institution.

(3) *Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.* A Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment for a senior executive officer or significant risk-taker with direct responsibility, or responsibility due to the senior executive officer's or significant risk-taker's role or position in the covered institution's organizational structure, for the events related to the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section.

(4) *Determining forfeiture and downward adjustment amounts.* A Level 1 or Level 2 covered institution must consider, at a minimum, the following factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward:

(i) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the covered institution's board of directors or to depart from the covered institution's policies and procedures;

(ii) The senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iii) Any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iv) The financial and reputational impact of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section to the covered institution, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation;

(v) The causes of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section, including any decision-making by other individuals; and

(vi) Any other relevant information, including past behavior and past risk outcomes attributable to the senior executive officer or significant risk-taker.

(c) *Clawback.* A Level 1 or Level 2 covered institution must include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in:

(1) Misconduct that resulted in significant financial or reputational harm to the covered institution;

(2) Fraud; or

(3) Intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation.

§ 42.8 Additional prohibitions for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to provide incentives that appropriately balance risk and reward for purposes of § 42.4(c)(1) only if such institution complies with the following prohibitions.

(a) *Hedging.* A Level 1 or Level 2 covered institution must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation.

(b) *Maximum incentive-based compensation opportunity.* A Level 1 or Level 2 covered institution must not award incentive-based compensation to:

(1) A senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation; or

(2) A significant risk-taker in excess of 150 percent of the target amount for that incentive-based compensation.

(c) *Relative performance measures.* A Level 1 or Level 2 covered institution must not use incentive-based compensation performance measures that are based solely on industry peer performance comparisons.

(d) *Volume driven incentive-based compensation.* A Level 1 or Level 2 covered institution must not provide incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance of the covered person with sound risk management.

§ 42.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to be compatible with effective risk management and controls for purposes of § 42.4(c)(2) only if such institution meets the following requirements.

(a) A Level 1 or Level 2 covered institution must have a risk management framework for its incentive-based compensation program that:

(1) Is independent of any lines of business;

(2) Includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with § 42.11; and

(3) Is commensurate with the size and complexity of the covered institution's operations.

(b) A Level 1 or Level 2 covered institution must:

(1) Provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor; and

(2) Ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of those business areas.

(c) A Level 1 or Level 2 covered institution must provide for the independent monitoring of:

(1) All incentive-based compensation plans in order to identify whether those plans provide incentives that appropriately balance risk and reward;

(2) Events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews in order to determine consistency with § 42.7(b); and

(3) Compliance of the incentive-based compensation program with the covered institution's policies and procedures.

§ 42.10 Governance requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to be supported by effective governance for purposes of § 42.4(c)(3), unless:

(a) The covered institution establishes a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under § 42.4(e); and

(b) The compensation committee established pursuant to paragraph (a) of this section obtains:

(1) Input from the risk and audit committees of the covered institution's board of directors, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements;

(2) A written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the management of the covered institution and developed with input from the risk and audit committees of its board of directors, or groups performing similar functions, and from the covered institution's risk management and audit functions; and

(3) An independent written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the internal audit or risk management function of the covered institution, developed independently of the covered institution's management.

§ 42.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.

A Level 1 or Level 2 covered institution must develop and implement policies and procedures for its incentive-based compensation program that, at a minimum:

(a) Are consistent with the prohibitions and requirements of this part;

(b) Specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back;

(c) Require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions;

(d) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with § 42.7(a)(1)(iii)(B) and (a)(2)(iii)(B));

(e) Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;

(f) Describe how discretion is expected to be exercised to appropriately balance risk and reward;

(g) Require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions;

(h) Describe how incentive-based compensation arrangements will be monitored;

(i) Specify the substantive and procedural requirements of the independent compliance program consistent with § 42.9(a)(2); and

(j) Ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for:

(1) Designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and

(2) Assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

§ 42.12 Indirect actions.

A covered institution must not indirectly, or through or by any other person, do anything that would be unlawful for such covered institution to do directly under this part.

§ 42.13 Enforcement.

The provisions of this part shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this part shall be treated as a violation of subtitle A of title V of such Act.

Federal Reserve Board

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board proposes to amend 12 CFR chapter II as follows:

■ 2. Add part 236 to read as follows:

PART 236—INCENTIVE-BASED COMPENSATION ARRANGEMENTS (REGULATION JJ)

Sec.

236.1 Authority, scope, and initial applicability.
236.2 Definitions.
236.3 Applicability.
236.4 Requirements and prohibitions applicable to all covered institutions.
236.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.
236.6 Reservation of authority for Level 3 covered institutions.
236.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.
236.8 Additional prohibitions for Level 1 and Level 2 covered institutions.
236.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.
236.10 Governance requirements for Level 1 and Level 2 covered institutions.
236.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.
236.12 Indirect actions.
236.13 Enforcement.

Authority: 12 U.S.C. 24, 321–338a, 1462a, 1467a, 1818, 1844(b), 3108, and 5641.

§ 236.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641), section 5136 of the Revised Statutes (12 U.S.C. 24), the Federal Reserve Act (12 U.S.C. 321–338a), section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), sections 3 and 10 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a and 1467a), and section 13 of the International Banking Act of 1978 (12 U.S.C. 3108).

(b) *Scope.* This part applies to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A covered institution must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A covered institution is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in § 236.1(c)(1)].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of the Board under other provisions of applicable law and regulations.

§ 236.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Average total consolidated assets* means the average of a regulated institution's total consolidated assets, as reported on the regulated institution's regulatory reports, for the four most recent consecutive quarters. If a regulated institution has not filed a regulatory report for each of the four most recent consecutive quarters, the regulated institution's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers. For a foreign banking organization, "board of directors" refers to the relevant oversight body for the firm's U.S. branch, agency or operations, consistent with the foreign banking organization's overall corporate and management structure.

(e) *Clawback* means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a covered institution.

(g) *Control* means that any company has control over a bank or over any company if—

(1) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(2) The company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(3) The Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.

(i) *Covered institution* means a regulated institution with average total consolidated assets greater than or equal to $1 billion.

(j) *Covered person* means any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) [Reserved].

(n) *Director* of a covered institution means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 236.7(b).

(p) *Equity-like instrument* means:

(1) Equity in the covered institution or of any affiliate of the covered institution; or

(2) A form of compensation:

(i) Payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or

(ii) That requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution.

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 covered institution* means a covered institution with average total consolidated assets greater than or equal to $250 billion and any subsidiary of a Level 1 covered institution that would itself be a covered institution.

(w) *Level 2 covered institution* means a covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution and any subsidiary of a Level 2 covered institution that would itself be a covered institution.

(x) *Level 3 covered institution* means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) *Option* means an instrument through which a covered institution provides a covered person the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right.

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) *Principal shareholder* means a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution.

(cc) *Qualifying incentive-based compensation* means the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) *Regulated institution* means:

(1) A state member bank, as defined in 12 CFR 208.2(g);

(2) A bank holding company, as defined in 12 CFR 225.2(c), that is not a foreign banking organization, as defined in 12 CFR 211.21(o), and a subsidiary of such a bank holding company that is not a depository institution, broker-dealer, or investment adviser;

(3) A savings and loan holding company, as defined in 12 CFR 238.2(m), and a subsidiary of a savings and loan holding company that is not a depository institution, broker-dealer, or investment adviser;

(4) An organization operating under section 25 or 25A of the Federal Reserve Act ("Edge or Agreement Corporation");

(5) A state-licensed uninsured branch or agency of a foreign bank, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(6) The U.S. operations of a foreign banking organization, as defined in 12 CFR 211.21(o), excluding any Federal branch or agency and any state insured branch of the foreign banking organization, and a U.S. subsidiary of such foreign banking organization that is not a depository institution, broker-dealer, or investment adviser.

(ee) *Regulatory report* means:

(1) For a state member bank, Consolidated Reports of Condition and Income ("Call Report");

(2) For a bank holding company that is not a foreign banking organization, Consolidated Financial Statements for Bank Holding Companies ("FR Y–9C");

(3) For a savings and loan holding company, FR Y–9C; if a savings and loan holding company is not required to file an FR Y–9C, Quarterly Savings and Loan Holding Company Report ("FR 2320"), if the savings and loan holding company reports consolidated assets on the FR 2320;

(4) For a savings and loan holding company that does not file a regulatory report within the meaning of § 236.2(ee)(3), a report of average total consolidated assets filed with the Board on a quarterly basis.

(5) For an Edge or Agreement Corporation, Consolidated Report of Condition and Income for Edge and Agreement Corporations ("FR 2886b");

(6) For a state-licensed uninsured branch or agency of a foreign bank, Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks—FFIEC 002;

(7) For the U.S. operations of a foreign banking organization, a report of average total consolidated U.S. assets filed with the Board on a quarterly basis; and

(8) For a regulated institution that is a subsidiary of a bank holding company, savings and loan holding company, or a foreign banking organization, a report of the subsidiary's total consolidated assets prepared by the bank holding company, savings and loan holding company, or subsidiary in a form that is acceptable to the Board.

(ff) *Section 956 affiliate* means an affiliate that is an institution described in § 236.2(i), 12 CFR 42.2(i), 12 CFR 372.2(i), 12 CFR 741.2(i), 12 CFR 1232.2(i), or 17 CFR 303.2(i).

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 1 covered institution;

(ii) A covered person of a Level 2 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 2 covered institution; or

(iii) A covered person of a covered institution who may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any section 956 affiliate of the covered institution, whether or not the individual is a covered person of that specific legal entity; and

(2) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who is designated as a "significant risk-taker" by the Board because of that person's ability to expose a covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance, in accordance with procedures established by the Board, or by the covered institution.

(3) For purposes of this part, an individual who is an employee, director, senior executive officer, or principal shareholder of an affiliate of a Level 1 or Level 2 covered institution, where such affiliate has less than $1 billion in total consolidated assets, and who otherwise would meet the requirements for being a significant risk-taker under paragraph (hh)(1)(iii) of this section, shall be considered to be a significant risk-taker with respect to the Level 1 or Level 2 covered institution for which the individual may commit or expose 0.5 percent or more of common equity tier 1 capital or tentative net capital. The Level 1 or Level 2 covered institution for which the individual commits or exposes 0.5 percent or more of common equity tier 1 capital or tentative net capital shall ensure that the individual's incentive compensation arrangement complies with the requirements of this part.

(4) If the Board determines, in accordance with procedures established by the Board, that a Level 1 covered institution's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 covered institution, the Level 1 covered institution may apply paragraph (hh)(1)(i) of this section to covered persons of the Level 1 covered institution by substituting "2 percent" for "5 percent".

(ii) *Subsidiary* means any company that is owned or controlled directly or indirectly by another company; provided that the following are not subsidiaries for purposes of this part:

(1) Any merchant banking investment that is owned or controlled pursuant to 12 U.S.C. 1843(k)(4)(H) and subpart J of the Board's Regulation Y (12 CFR part 225); and

(2) Any company with respect to which the covered institution acquired ownership or control in the ordinary course of collecting a debt previously contracted in good faith.

(jj) *Vesting* of incentive-based compensation means the transfer of ownership of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event.

§ 236.3 Applicability.

(a) *When average total consolidated assets increase*—(1) *In general.* A regulated institution shall become a Level 1, Level 2, or Level 3 covered institution when its average total consolidated assets or the average total consolidated assets of any affiliate of the regulated institution equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(2) *Compliance date.* A regulated institution that becomes a Level 1, Level 2, or Level 3 covered institution pursuant to paragraph (a)(1) of this section shall comply with the requirements of this part for a Level 1, Level 2, or Level 3 covered institution, respectively, not later than the first day of the first calendar quarter that begins at least 540 days after the date on which the regulated institution becomes a Level 1, Level 2, or Level 3 covered institution, respectively. Until that day, the Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements of this part, if any, that applied to the regulated institution on the day before the date on which it became a Level 1, Level 2, or Level 3 covered institution.

(3) *Grandfathered plans.* A regulated institution that becomes a Level 1, Level 2, or Level 3 covered institution under paragraph (a)(1) of this section is not required to comply with requirements of this part applicable to a Level 1, Level 2, or Level 3 covered institution, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2) of this section. Any such incentive-based compensation plan shall remain subject to the requirements under this part, if any, that applied to the regulated institution at the beginning of the performance period.

(b) *When total consolidated assets decrease.* A Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements applicable to such covered institution under this part unless and until the total consolidated assets of such covered institution, or the total consolidated assets of another Level 1, Level 2, or Level 3 covered institution of which the first covered institution is a subsidiary, as reported on the covered institution's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters. The calculation will be effective on the as-of date of the fourth consecutive regulatory report.

(c) *Compliance of covered institutions that are subsidiaries of covered institutions.* A covered institution that is a subsidiary of another covered institution may meet any requirement of this part if the parent covered institution complies with that requirement in such a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with that requirement.

§ 236.4 Requirements and prohibitions applicable to all covered institutions.

(a) *In general.* A covered institution must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the covered institution:

(1) By providing a covered person with excessive compensation, fees, or benefits; or

(2) That could lead to material financial loss to the covered institution.

(b) *Excessive compensation.* Compensation, fees, and benefits are considered excessive for purposes of paragraph (a)(1) of this section when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including, but not limited to:

(1) The combined value of all compensation, fees, or benefits provided to the covered person;

(2) The compensation history of the covered person and other individuals with comparable expertise at the covered institution;

(3) The financial condition of the covered institution;

(4) Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets;

(5) For post-employment benefits, the projected total cost and benefit to the covered institution; and

(6) Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

(c) *Material financial loss.* An incentive-based compensation arrangement at a covered institution encourages inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement:

(1) Appropriately balances risk and reward;

(2) Is compatible with effective risk management and controls; and

(3) Is supported by effective governance.

(d) *Performance measures.* An incentive-based compensation arrangement will not be considered to appropriately balance risk and reward for purposes of paragraph (c)(1) of this section unless:

(1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a covered institution and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking;

(2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and

(3) Any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

(e) *Board of directors.* A covered institution's board of directors, or a committee thereof, must:

(1) Conduct oversight of the covered institution's incentive-based compensation program;

(2) Approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and

(3) Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

(f) *Disclosure and recordkeeping requirements.* A covered institution must create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A covered institution must disclose the records to the Board upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

(g) *Rule of construction.* A covered institution is not required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the disclosure and recordkeeping requirements under this part.

§ 236.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.

(a) A Level 1 or Level 2 covered institution must create annually and maintain for a period of at least seven years records that document:

(1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business;

(2) The incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award;

(3) Any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and

(4) Any material changes to the covered institution's incentive-based compensation arrangements and policies.

(b) A Level 1 or Level 2 covered institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including, those required under § 236.11.

(c) A Level 1 or Level 2 covered institution must provide the records described in paragraph (a) of this section to the Board in such form and with such frequency as requested by the Board.

§ 236.6 Reservation of authority for Level 3 covered institutions.

(a) *In general.* The Board may require a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 236.5 and 236.7 through 236.11 if the Board determines that the Level 3 covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution.

(b) *Factors considered.* Any exercise of authority under this section will be in writing by the Board in accordance with procedures established by the Board and will consider the activities, complexity of operations, risk profile, and compensation practices of the Level 3 covered institution, in addition to any other relevant factors.

§ 236.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to appropriately balance risk and reward, for purposes of § 236.4(c)(1), unless the following requirements are met.

(a) *Deferral.* (1) Qualifying incentive-based compensation must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 4 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 3 years.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred qualifying incentive-based compensation may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred qualifying incentive-based compensation that is required to be deferred under this part, except in the case of death or disability of such covered person.

(2) Incentive-based compensation awarded under a long-term incentive plan must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 2 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 1 year.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred long-term incentive plan amounts may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred long-term incentive plan amounts that is required to be deferred under this part, except in the case of death or disability of such covered person.

(3) *Adjustments of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation amounts.* A Level 1 or Level 2 covered institution may not increase deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts for a senior executive officer or significant risk-taker during the deferral period. For purposes of this paragraph, an increase in value attributable solely to a change in share value, a change in interest rates, or the payment of interest according to terms set out at the time of the award is not considered an increase in incentive-based compensation amounts.

(4) *Composition of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation for Level 1 and Level 2 covered institutions*—(i) *Cash and equity-like instruments.* For a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution that issues equity or is an affiliate of a covered institution that issues equity, any deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts must include substantial portions of both deferred cash and equity-like instruments throughout the deferral period.

(ii) *Options.* If a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution receives incentive-based compensation for a performance period in the form of options, the total amount of such options that may be used to meet the minimum deferral amount requirements of paragraph (a)(1)(i) or (a)(2)(i) of this section is limited to no more than 15 percent of the amount of total incentive-based compensation awarded to the senior executive officer or significant risk-taker for that performance period.

(b) *Forfeiture and downward adjustment*—(1) *Compensation at risk.* (i) A Level 1 or Level 2 covered institution must place at risk of forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans.

(ii) A Level 1 or Level 2 covered institution must place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts payable under long-term incentive plans.

(2) *Events triggering forfeiture and downward adjustment review.* At a minimum, a Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment of incentive-based compensation of senior executive officers and significant risk-takers described in paragraph (b)(3) of this section due to any of the following adverse outcomes at the covered institution:

(i) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures;

(ii) Inappropriate risk taking, regardless of the impact on financial performance;

(iii) Material risk management or control failures;

(iv) Non-compliance with statutory, regulatory, or supervisory standards that results in:

(A) Enforcement or legal action against the covered institution brought by a federal or state regulator or agency; or

(B) A requirement that the covered institution report a restatement of a financial statement to correct a material error; and

(v) Other aspects of conduct or poor performance as defined by the covered institution.

(3) *Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.* A Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment for a senior executive officer or significant risk-taker with direct responsibility, or responsibility due to the senior executive officer's or significant risk-taker's role or position in the covered institution's organizational structure, for the events related to the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section.

(4) *Determining forfeiture and downward adjustment amounts.* A Level 1 or Level 2 covered institution must consider, at a minimum, the following factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward:

(i) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the covered institution's board of directors or to depart from the covered institution's policies and procedures;

(ii) The senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iii) Any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iv) The financial and reputational impact of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section to the covered institution, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation;

(v) The causes of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section, including any decision-making by other individuals; and

(vi) Any other relevant information, including past behavior and past risk outcomes attributable to the senior executive officer or significant risk-taker.

(c) *Clawback.* A Level 1 or Level 2 covered institution must include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in:

(1) Misconduct that resulted in significant financial or reputational harm to the covered institution;

(2) Fraud; or

(3) Intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation.

§ 236.8 Additional prohibitions for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to provide incentives that appropriately balance risk and reward for purposes of § 236.4(c)(1) only if such institution complies with the following prohibitions.

(a) *Hedging.* A Level 1 or Level 2 covered institution must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation.

(b) *Maximum incentive-based compensation opportunity.* A Level 1 or Level 2 covered institution must not award incentive-based compensation to:

(1) A senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation; or

(2) A significant risk-taker in excess of 150 percent of the target amount for that incentive-based compensation.

(c) *Relative performance measures.* A Level 1 or Level 2 covered institution must not use incentive-based compensation performance measures that are based solely on industry peer performance comparisons.

(d) *Volume driven incentive-based compensation.* A Level 1 or Level 2 covered institution must not provide incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance of the covered person with sound risk management.

§ 236.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to be compatible with effective risk management and controls for purposes of § 236.4(c)(2) only if such institution meets the following requirements.

(a) A Level 1 or Level 2 covered institution must have a risk management framework for its incentive-based compensation program that:

(1) Is independent of any lines of business;

(2) Includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with § 236.11; and

(3) Is commensurate with the size and complexity of the covered institution's operations.

(b) A Level 1 or Level 2 covered institution must:

(1) Provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor; and

(2) Ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of those business areas.

(c) A Level 1 or Level 2 covered institution must provide for the independent monitoring of:

(1) All incentive-based compensation plans in order to identify whether those plans provide incentives that appropriately balance risk and reward;

(2) Events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews in order to determine consistency with § 236.7(b); and

(3) Compliance of the incentive-based compensation program with the covered institution's policies and procedures.

§ 236.10 Governance requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to be supported by effective governance for purposes of § 236.4(c)(3), unless:

(a) The covered institution establishes a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under § 236.4(e); and

(b) The compensation committee established pursuant to paragraph (a) of this section obtains:

(1) Input from the risk and audit committees of the covered institution's board of directors, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements;

(2) A written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the management of the covered institution and developed with input from the risk and audit committees of its board of directors, or groups performing similar functions, and from the covered institution's risk management and audit functions; and

(3) An independent written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the internal audit or risk management function of the covered institution, developed independently of the covered institution's management.

§ 236.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.

A Level 1 or Level 2 covered institution must develop and implement policies and procedures for its incentive-based compensation program that, at a minimum:

(a) Are consistent with the prohibitions and requirements of this part;

(b) Specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back;

(c) Require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions;

(d) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with § 236.7(a)(1)(iii)(B) and (a)(2)(iii)(B));

(e) Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;

(f) Describe how discretion is expected to be exercised to appropriately balance risk and reward;

(g) Require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions;

(h) Describe how incentive-based compensation arrangements will be monitored;

(i) Specify the substantive and procedural requirements of the independent compliance program consistent with § 236.9(a)(2); and

(j) Ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for:

(1) Designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and

(2) Assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

§ 236.12 Indirect actions.

A covered institution must not indirectly, or through or by any other person, do anything that would be unlawful for such covered institution to do directly under this part.

§ 236.13 Enforcement.

The provisions of this part shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this part shall be treated as a violation of subtitle A of title V of such Act.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

■ 3. Add part 372 to read as follows:

PART 372—INCENTIVE-BASED COMPENSATION ARRANGEMENTS

Sec.

372.1 Authority, scope, and initial applicability.
372.2 Definitions.
372.3 Applicability.
372.4 Requirements and prohibitions applicable to all covered institutions.
372.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.
372.6 Reservation of authority for Level 3 covered institutions.
372.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.
372.8 Additional prohibitions for Level 1 and Level 2 covered institutions.
372.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.
372.10 Governance requirements for Level 1 and Level 2 covered institutions.
372.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.
372.12 Indirect actions.
372.13 Enforcement.

Authority: 12 U.S.C. 5641, 12 U.S.C. 1818, 12 U.S.C. 1819 Tenth, 12 U.S.C. 1831p–1.

§ 372.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641), and sections 8 (12 U.S.C. 1818), 9 (12 U.S.C. 1819 Tenth), and 39 (12 U.S.C. 1831p–1) of the Federal Deposit Insurance Act.

(b) *Scope.* This part applies to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A covered institution must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A covered institution is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in § 372.1(c)(1)].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of the Corporation under other provisions of applicable law and regulations.

§ 372.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Average total consolidated assets* means the average of the total consolidated assets of a state nonmember bank; state savings association; state insured branch of a foreign bank; a subsidiary of a state nonmember bank, state savings association, or state insured branch of a foreign bank; or a depository institution holding company, as reported on the state nonmember bank's, state savings association's, state insured branch of a foreign bank's, subsidiary's, or depository institution holding company's regulatory reports, for the four most recent consecutive quarters. If a state nonmember bank, state savings association, state insured branch of a foreign bank, subsidiary, or depository institution holding company has not filed a regulatory report for each of the four most recent consecutive quarters, the state nonmember bank, state savings association, state insured branch of a foreign bank, subsidiary, or depository institution holding company's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers. For a state insured branch of a foreign bank, "board of directors" refers to the relevant oversight body for the state insured branch consistent with the foreign bank's overall corporate and management structure.

(e) *Clawback* means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a covered institution.

(g) *Control* means that any company has control over a bank or over any company if—

(1) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(2) The company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(3) The Corporation determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying,

measuring, monitoring, or controlling risk-taking.

(i) *Covered institution* means

(1) A state nonmember bank, state savings association, or a state insured branch of a foreign bank, as such terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, with average total consolidated assets greater than or equal to $1 billion; and

(2) A subsidiary of a state nonmember bank, state savings association, or a state insured branch of a foreign bank, as such terms are defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, that:

(i) Is not a broker, dealer, person providing insurance, investment company, or investment adviser; and

(ii) Has average total consolidated assets greater than or equal to $1 billion.

(j) *Covered person* means any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) *Depository institution holding company* means a top-tier depository institution holding company, where "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(n) *Director* of a covered institution means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 372.7(b).

(p) *Equity-like instrument* means:

(1) Equity in the covered institution or of any affiliate of the covered institution; or

(2) A form of compensation:

(i) Payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or

(ii) That requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution.

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 covered institution* means

(1) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $250 billion;

(2) A covered institution with average total consolidated assets greater than or equal to $250 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and

(3) A covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $250 billion.

(w) *Level 2 covered institution* means

(1) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $50 billion but less than $250 billion;

(2) A covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and

(3) A covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $50 billion but less than $250 billion.

(x) *Level 3 covered institution* means

(1) A covered institution that is a subsidiary of a depository institution holding company with average total consolidated assets greater than or equal to $1 billion but less than $50 billion;

(2) A covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion that is not a subsidiary of a covered institution or of a depository institution holding company; and

(3) A covered institution that is a subsidiary of a covered institution with average total consolidated assets greater than or equal to $1 billion but less than $50 billion.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) *Option* means an instrument through which a covered institution provides a covered person the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right.

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) *Principal shareholder* means a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution.

(cc) *Qualifying incentive-based compensation* means the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) [Reserved].

(ee) *Regulatory report* means

(1) For a state nonmember bank and state savings association, Consolidated Reports of Condition and Income;

(2) For an state insured branch of a foreign bank, the Reports of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks—FFIEC 002; and

(3) For a depository institution holding company:

(i) The Consolidated Financial Statements for Bank Holding Companies ("FR Y–9C");

(ii) In the case of a savings and loan holding company that is not required to file an FR Y–9C, the Quarterly Savings and Loan Holding Company Report ("FR 2320"), if the savings and loan holding company reports consolidated assets on the FR 2320, as applicable; and

(iii) In the case of a savings and loan holding company that does not file an FRY–9C or report consolidated assets on the FR2320, a report submitted to the Board of Governors of the Federal Reserve System pursuant to 12 CFR 236.2(ee).

(ff) *Section 956 affiliate* means an affiliate that is an institution described in § 372.2(i), 12 CFR 42.2(i), 12 CFR 236.2(i), 12 CFR 741.2(i), 12 CFR 1232.2(i), or 17 CFR 303.2(i).

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 1 covered institution;

(ii) A covered person of a Level 2 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 2 covered institution; or

(iii) A covered person of a covered institution who may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any section 956 affiliate of the covered institution, whether or not the individual is a covered person of that specific legal entity; and

(2) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who is designated as a "significant risk-taker" by the Corporation because of that person's ability to expose a covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance, in accordance with procedures established by the Corporation, or by the covered institution.

(3) For purposes of this part, an individual who is an employee, director, senior executive officer, or principal shareholder of an affiliate of a Level 1 or Level 2 covered institution, where such affiliate has less than $1 billion in total consolidated assets, and who otherwise would meet the requirements for being a significant risk-taker under paragraph (hh)(1)(iii) of this section, shall be considered to be a significant risk-taker with respect to the Level 1 or Level 2 covered institution for which the individual may commit or expose 0.5 percent or more of common equity tier 1 capital or tentative net capital. The Level 1 or Level 2 covered institution for which the individual commits or exposes 0.5 percent or more of common equity tier 1 capital or tentative net capital shall ensure that the individual's incentive compensation arrangement complies with the requirements of this part.

(4) If the Corporation determines, in accordance with procedures established by the Corporation, that a Level 1 covered institution's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 covered institution, the Level 1 covered institution may apply paragraph (hh)(1)(i) of this section to covered persons of the Level 1 covered institution by substituting "2 percent" for "5 percent".

(ii) *Subsidiary* means any company that is owned or controlled directly or indirectly by another company.

(jj) *Vesting* of incentive-based compensation means the transfer of ownership of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event.

§ 372.3 Applicability.

(a) *When average total consolidated assets increase*—(1) *In general*—(i) *Covered institution subsidiaries of depository institution holding companies.* A state nonmember bank or state savings association that is a subsidiary of a depository institution holding company shall become a Level 1, Level 2, or Level 3 covered institution when the depository institution holding company's average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(ii) *Covered institutions that are not subsidiaries of a depository institution holding company.* A state nonmember bank, state savings association, or state insured branch of a foreign bank that is not a subsidiary of a state nonmember bank, state savings association, or state insured branch of a foreign bank, or depository institution holding company shall become a Level 1, Level 2, or Level 3 covered institution when such state nonmember bank, state savings association, or state insured branch of a foreign bank's average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(iii) *Subsidiaries of covered institutions.* A subsidiary of a state nonmember bank, state savings association, or state insured branch of a foreign bank, as described under § 372.2(i)(2), shall become a Level 1, Level 2, or Level 3 covered institution when the state nonmember bank, state savings association, or state insured branch of a foreign bank becomes a Level 1, Level 2, or Level 3 covered institution, respectively, under paragraph (a)(1)(i) or (ii) of this section.

(2) *Compliance date.* A state nonmember bank, state savings association, state insured branch of a foreign bank, or subsidiary thereof, that becomes a Level 1, Level 2, or Level 3 covered institution pursuant to paragraph (a)(1) of this section shall comply with the requirements of this part for a Level 1, Level 2, or Level 3 covered institution, respectively, not later than the first day of the first calendar quarter that begins at least 540 days after the date on which such state nonmember bank, state savings association, state insured branch of a

foreign bank, or subsidiary thereof becomes a Level 1, Level 2, or Level 3 covered institution, respectively. Until that day, the Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements of this part, if any, that applied to the institution on the day before the date on which it became a Level 1, Level 2, or Level 3 covered institution.

(3) *Grandfathered plans.* A state nonmember bank, state savings association, state insured branch of a foreign bank, or subsidiary thereof, that becomes a Level 1, Level 2, or Level 3 covered institution under paragraph (a)(1) of this section is not required to comply with requirements of this part applicable to a Level 1, Level 2, or Level 3 covered institution, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2) of this section. Any such incentive-based compensation plan shall remain subject to the requirements under this part, if any, that applied to such state nonmember bank, state savings association, state insured branch of a foreign bank, or subsidiary thereof at the beginning of the performance period.

(b) *When total consolidated assets decrease*—(1) *Covered institutions that are subsidiaries of depository institution holding companies.* A Level 1, Level 2, or Level 3 covered institution that is a subsidiary of a depository institution holding company will remain subject to the requirements applicable to such covered institution at that level under this part unless and until the total consolidated assets of the depository institution holding company, as reported on the depository institution holding company's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters.

(2) *Covered institutions that are not subsidiaries of depository institution holding companies.* A Level 1, Level 2, or Level 3 covered institution that is not a subsidiary of a depository institution holding company will remain subject to the requirements applicable to such covered institution at that level under this part unless and until the total consolidated assets of the covered institution, as reported on the covered institution's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters.

(3) *Subsidiaries of covered institutions.* A Level 1, Level 2, or Level 3 covered institution that is a subsidiary of a state nonmember bank, state savings association, or state insured branch of a foreign bank that is a covered institution will remain subject to the requirements applicable to such state nonmember bank, state savings association, or state insured branch of a foreign bank at that level under this part unless and until the total consolidated assets of the state nonmember bank, state savings association, state insured branch of a foreign bank, or depository holding company of the state nonmember bank or state savings association, as reported on its regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters.

(4) The calculations under this paragraph (b) of this section will be effective on the as-of date of the fourth consecutive regulatory report.

(c) *Compliance of covered institutions that are subsidiaries of covered institutions.* A covered institution that is a subsidiary of another covered institution may meet any requirement of this part if the parent covered institution complies with that requirement in a way that causes the relevant portion of the incentive-based compensation program of the subsidiary covered institution to comply with that requirement.

§ 372.4 Requirements and prohibitions applicable to all covered institutions.

(a) *In general.* A covered institution must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the covered institution:

(1) By providing a covered person with excessive compensation, fees, or benefits; or

(2) That could lead to material financial loss to the covered institution.

(b) *Excessive compensation.* Compensation, fees, and benefits are considered excessive for purposes of paragraph (a)(1) of this section when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including, but not limited to:

(1) The combined value of all compensation, fees, or benefits provided to the covered person;

(2) The compensation history of the covered person and other individuals with comparable expertise at the covered institution;

(3) The financial condition of the covered institution;

(4) Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets;

(5) For post-employment benefits, the projected total cost and benefit to the covered institution; and

(6) Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

(c) *Material financial loss.* An incentive-based compensation arrangement at a covered institution encourages inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement:

(1) Appropriately balances risk and reward;

(2) Is compatible with effective risk management and controls; and

(3) Is supported by effective governance.

(d) *Performance measures.* An incentive-based compensation arrangement will not be considered to appropriately balance risk and reward for purposes of paragraph (c)(1) of this section unless:

(1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a covered institution and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking;

(2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and

(3) Any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

(e) *Board of directors.* A covered institution's board of directors, or a committee thereof, must:

(1) Conduct oversight of the covered institution's incentive-based compensation program;

(2) Approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and

(3) Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

(f) *Disclosure and recordkeeping requirements.* A covered institution must create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A covered institution must disclose the records to the Corporation upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

(g) *Rule of construction.* A covered institution is not required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the disclosure and recordkeeping requirements under this part.

§ 372.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.

(a) A Level 1 or Level 2 covered institution must create annually and maintain for a period of at least seven years records that document:

(1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business;

(2) The incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award;

(3) Any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and

(4) Any material changes to the covered institution's incentive-based compensation arrangements and policies.

(b) A Level 1 or Level 2 covered institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including, those required under § 372.11.

(c) A Level 1 or Level 2 covered institution must provide the records described in paragraph (a) of this section to the Corporation in such form and with such frequency as requested by the Corporation.

§ 372.6 Reservation of authority for Level 3 covered institutions.

(a) *In general.* The Corporation may require a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 372.5 and 372.7 through 372.11 if the Corporation determines that the Level 3 covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution.

(b) *Factors considered.* Any exercise of authority under this section will be in writing by the Corporation in accordance with procedures established by the Corporation and will consider the activities, complexity of operations, risk profile, and compensation practices of the Level 3 covered institution, in addition to any other relevant factors.

§ 372.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to appropriately balance risk and reward, for purposes of § 372.4(c)(1), unless the following requirements are met.

(a) *Deferral.* (1) Qualifying incentive-based compensation must be deferred as follows:

(i) *Minimum required deferral amount.*

(A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 4 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 3 years.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred qualifying incentive-based compensation may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred qualifying incentive-based compensation that is required to be deferred under this part, except in the case of death or disability of such covered person.

(2) Incentive-based compensation awarded under a long-term incentive plan must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 2 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 1 year.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred long-term incentive plan amounts may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred long-term incentive plan amounts that is required to be deferred under this part, except in the case of death or disability of such covered person.

(3) *Adjustments of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation amounts.* A Level 1 or Level 2 covered institution may not increase deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts for a senior executive officer or significant risk-taker during the deferral period. For purposes of this paragraph, an increase in value attributable solely to a change in share value, a change in interest rates, or the payment of interest according to terms set out at the time of the award is not considered an increase in incentive-based compensation amounts.

(4) *Composition of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation for Level 1 and Level 2 covered institutions*—(i) *Cash and equity-like instruments.* For a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution that issues equity or is an affiliate of a covered institution that issues equity, any deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts must include substantial portions of both deferred cash and equity-like instruments throughout the deferral period.

(ii) *Options.* If a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution receives incentive-based compensation for a performance period in the form of options, the total amount of such options that may be used to meet the minimum deferral amount requirements of paragraph (a)(1)(i) or (a)(2)(i) of this section is limited to no more than 15 percent of the amount of total incentive-based compensation awarded to the senior executive officer or significant risk-taker for that performance period.

(b) *Forfeiture and downward adjustment*—(1) *Compensation at risk.* (i) A Level 1 or Level 2 covered institution must place at risk of forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans.

(ii) A Level 1 or Level 2 covered institution must place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts payable under long-term incentive plans.

(2) *Events triggering forfeiture and downward adjustment review.* At a minimum, a Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment of incentive-based compensation of senior executive officers and significant risk-takers described in paragraph (b)(3) of this section due to any of the following adverse outcomes at the covered institution:

(i) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures;

(ii) Inappropriate risk taking, regardless of the impact on financial performance;

(iii) Material risk management or control failures;

(iv) Non-compliance with statutory, regulatory, or supervisory standards that results in:

(A) Enforcement or legal action against the covered institution brought by a federal or state regulator or agency; or

(B) A requirement that the covered institution report a restatement of a financial statement to correct a material error; and

(v) Other aspects of conduct or poor performance as defined by the covered institution.

(3) *Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.* A Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment for a senior executive officer or significant risk-taker with direct responsibility, or responsibility due to the senior executive officer's or significant risk-taker's role or position in the covered institution's organizational structure, for the events related to the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section.

(4) *Determining forfeiture and downward adjustment amounts.* A Level 1 or Level 2 covered institution must consider, at a minimum, the following factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward:

(i) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the covered institution's board of directors or to depart from the covered institution's policies and procedures;

(ii) The senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iii) Any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iv) The financial and reputational impact of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section to the covered institution, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation;

(v) The causes of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section, including any decision-making by other individuals; and

(vi) Any other relevant information, including past behavior and past risk outcomes attributable to the senior executive officer or significant risk-taker.

(c) *Clawback.* A Level 1 or Level 2 covered institution must include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in:

(1) Misconduct that resulted in significant financial or reputational harm to the covered institution;

(2) Fraud; or

(3) Intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation.

§ 372.8 Additional prohibitions for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to provide incentives that appropriately balance risk and reward for purposes of § 372.4(c)(1) only if such institution complies with the following prohibitions.

(a) *Hedging.* A Level 1 or Level 2 covered institution must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation.

(b) *Maximum incentive-based compensation opportunity.* A Level 1 or Level 2 covered institution must not award incentive-based compensation to:

(1) A senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation; or

(2) A significant risk-taker in excess of 150 percent of the target amount for that incentive-based compensation.

(c) *Relative performance measures.* A Level 1 or Level 2 covered institution must not use incentive-based compensation performance measures that are based solely on industry peer performance comparisons.

(d) *Volume driven incentive-based compensation.* A Level 1 or Level 2 covered institution must not provide incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance of the covered person with sound risk management.

§ 372.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to be compatible with effective risk management and controls for purposes of § 372.4(c)(2) only if such institution meets the following requirements.

(a) A Level 1 or Level 2 covered institution must have a risk management framework for its incentive-based compensation program that:

(1) Is independent of any lines of business;

(2) Includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with § 372.11; and

(3) Is commensurate with the size and complexity of the covered institution's operations.

(b) A Level 1 or Level 2 covered institution must:

(1) Provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor; and

(2) Ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of those business areas.

(c) A Level 1 or Level 2 covered institution must provide for the independent monitoring of:

(1) All incentive-based compensation plans in order to identify whether those plans provide incentives that appropriately balance risk and reward;

(2) Events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews in order to determine consistency with § 372.7(b); and

(3) Compliance of the incentive-based compensation program with the covered institution's policies and procedures.

§ 372.10 Governance requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to be supported by effective governance for purposes of § 372.4(c)(3), unless:

(a) The covered institution establishes a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under § 372.4(e); and

(b) The compensation committee established pursuant to paragraph (a) of this section obtains:

(1) Input from the risk and audit committees of the covered institution's board of directors, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements;

(2) A written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the management of the covered institution and developed with input from the risk and audit committees of its board of directors, or groups performing similar functions, and from the covered institution's risk management and audit functions; and

(3) An independent written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the internal audit or risk management function of the covered institution, developed independently of the covered institution's management.

§ 372.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.

A Level 1 or Level 2 covered institution must develop and implement policies and procedures for its incentive-based compensation program that, at a minimum:

(a) Are consistent with the prohibitions and requirements of this part;

(b) Specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back;

(c) Require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions;

(d) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with § 372.7(a)(1)(iii)(B) and (a)(2)(iii)(B));

(e) Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;

(f) Describe how discretion is expected to be exercised to appropriately balance risk and reward;

(g) Require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions;

(h) Describe how incentive-based compensation arrangements will be monitored;

(i) Specify the substantive and procedural requirements of the independent compliance program consistent with § 372.9(a)(2); and

(j) Ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for:

(1) Designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and

(2) Assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

§ 372.12 Indirect actions.

A covered institution must not indirectly, or through or by any other

person, do anything that would be unlawful for such covered institution to do directly under this part.

§ 372.13 Enforcement.

The provisions of this part shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this part shall be treated as a violation of subtitle A of title V of such Act.

National Credit Union Administration

12 CFR Chapter VII

Authority and Issuance

For the reasons stated in the joint preamble, the National Credit Union Administration proposes to amend chapter VII of title 12 of the Code of Federal Regulations as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 4. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 5. Add § 741.226 to read as follows:

§ 741.226 Incentive-based compensation arrangements.

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 751 of this chapter.

■ 6. Add part 751 to subchapter A to read as follows.

PART 751—INCENTIVE-BASED COMPENSATION ARRANGEMENTS

Sec.

751.1 Authority, scope, and initial applicability.
751.2 Definitions.
751.3 Applicability.
751.4 Requirements and prohibitions applicable to all credit unions subject to this part.
751.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 credit unions.
751.6 Reservation of authority for Level 3 credit unions.
751.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 credit unions.
751.8 Additional prohibitions for Level 1 and Level 2 credit unions.
751.9 Risk management and controls requirements for Level 1 and Level 2 credit unions.
751.10 Governance requirements for Level 1 and Level 2 credit unions.
751.11 Policies and procedures requirements for Level 1 and Level 2 credit unions.
751.12 Indirect actions.
751.13 Enforcement.
751.14 Credit unions in conservatorship or liquidation.

Authority: 12 U.S.C. 1751 *et seq.* and 5641.

§ 751.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641) and the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*)

(b) *Scope.* This part applies to any federally insured credit union, or any credit union eligible to make application to become an insured credit union under 12 U.S.C. 1781, with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A credit union must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a credit union is a Level 1, Level 2, or Level 3 credit union at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A credit union is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in paragraph (c)(1) of this section].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of NCUA under other provisions of applicable law and regulations.

§ 751.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) [Reserved].

(b) *Average total consolidated assets* means the average of a credit union's total consolidated assets, as reported on the credit union's regulatory reports, for the four most recent consecutive quarters. If a credit union has not filed a regulatory report for each of the four most recent consecutive quarters, the credit union's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a credit union that oversees the activities of the credit union.

(e) *Clawback* means a mechanism by which a credit union can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a credit union.

(g) [Reserved].

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.

(i) [Reserved].

(j) *Covered person* means any executive officer, employee, or director who receives incentive-based compensation at a credit union.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) [Reserved].

(n) *Director* of a credit union means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 751.7(b).

(p) [Reserved].

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a credit union and a covered person, under which the credit union provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a credit union's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 credit union* means a credit union with average total consolidated assets greater than or equal to $250 billion.

(w) *Level 2 credit union* means a credit union with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 credit union.

(x) *Level 3 credit union* means a credit union with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 credit union or Level 2 credit union.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) [Reserved].

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) [Reserved].

(cc) *Qualifying incentive-based compensation* means the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) [Reserved].

(ee) *Regulatory report* means NCUA form 5300 or 5310 call report.

(ff) [Reserved].

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a credit union for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 credit union, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 credit union who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 credit union;

(ii) A covered person of a Level 2 credit union who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 credit union; or

(iii) A covered person of a credit union who may commit or expose 0.5 percent or more of the net worth or total capital of the credit union; and

(2) Any covered person at a Level 1 or Level 2 credit union, other than a senior executive officer, who is designated as a "significant risk-taker" by NCUA because of that person's ability to expose a credit union to risks that could lead to material financial loss in relation to the credit union's size, capital, or overall risk tolerance, in accordance with procedures established by NCUA, or by the credit union.

(3) [Reserved]

(4) If NCUA determines, in accordance with procedures established by NCUA, that a Level 1 credit union's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 credit union, the Level 1 credit union may apply paragraph (hh)(1)(i) of this section to covered persons of the Level 1 credit union by substituting "2 percent" for "5 percent".

(ii) [Reserved]

(jj) *Vesting* of incentive-based compensation means the transfer of ownership of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event.

751.3 Applicability.

(a) *When average total consolidated assets increase*—(1) *In general.* A credit union shall become a Level 1, Level 2, or Level 3 credit union when its average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(2) *Compliance date.* A credit union that becomes a Level 1, Level 2, or Level 3 credit union pursuant to paragraph (a)(1) of this section shall comply with the requirements of this part for a Level 1, Level 2, or Level 3 credit union, respectively, not later than the first day of the first calendar quarter that begins at least 540 days after the date on which the credit union becomes a Level 1, Level 2, or Level 3 credit union, respectively. Until that day, the Level 1, Level 2, or Level 3 credit union will remain subject to the requirements of this part, if any, that applied to the credit union on the day before the date on which it became a Level 1, Level 2, or Level 3 credit union.

(3) *Grandfathered plans.* A credit union that becomes a Level 1, Level 2, or Level 3 credit union under paragraph (a)(1) of this section is not required to comply with requirements of this part applicable to a Level 1, Level 2, or Level 3 credit union, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2) of this section.

(b) *When total consolidated assets decrease.* A Level 1, Level 2, or Level 3 credit union will remain subject to the requirements applicable to such credit union under this part unless and until the total consolidated assets of the credit union, as reported on the credit union's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters. The calculation will be effective on the as-of date of the fourth consecutive regulatory report.

751.4 Requirements and prohibitions applicable to all credit unions subject to this part.

(a) *In general.* A credit union must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the credit union:

(1) By providing a covered person with excessive compensation, fees, or benefits; or

(2) That could lead to material financial loss to the credit union.

(b) *Excessive compensation.* Compensation, fees, and benefits are considered excessive for purposes of paragraph (a)(1) of this section when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including, but not limited to:

(1) The combined value of all compensation, fees, or benefits provided to the covered person;

(2) The compensation history of the covered person and other individuals with comparable expertise at the credit union;

(3) The financial condition of the credit union;

(4) Compensation practices at comparable credit unions, based upon such factors as asset size, geographic location, and the complexity of the credit union's operations and assets;

(5) For post-employment benefits, the projected total cost and benefit to the credit union; and

(6) Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the credit union.

(c) *Material financial loss.* An incentive-based compensation arrangement at a credit union encourages inappropriate risks that could lead to material financial loss to the credit union, unless the arrangement:

(1) Appropriately balances risk and reward;

(2) Is compatible with effective risk management and controls; and

(3) Is supported by effective governance.

(d) *Performance measures.* An incentive-based compensation arrangement will not be considered to appropriately balance risk and reward for purposes of paragraph (c)(1) of this section unless:

(1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a credit union and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking;

(2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and

(3) Any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

(e) *Board of directors.* A credit union's board of directors, or a committee thereof, must:

(1) Conduct oversight of the credit union's incentive-based compensation program;

(2) Approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and

(3) Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

(f) *Disclosure and recordkeeping requirements.* A credit union must create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A credit union must disclose the records to NCUA upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

(g) *Rule of construction.* A credit union is not required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the disclosure and recordkeeping requirements under this part.

§ 751.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 credit unions.

(a) A Level 1 or Level 2 credit union must create annually and maintain for a period of at least seven years records that document:

(1) The credit union's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business;

(2) The incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award;

(3) Any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and

(4) Any material changes to the credit union's incentive-based compensation arrangements and policies.

(b) A Level 1 or Level 2 credit union must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including, those required under § 751.11.

(c) A Level 1 or Level 2 credit union must provide the records described in paragraph (a) of this section to NCUA in such form and with such frequency as requested by NCUA.

§ 751.6 Reservation of authority for Level 3 credit unions.

(a) *In general.* NCUA may require a Level 3 credit union with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 751.5 and 751.7 through 751.11 if NCUA determines that the Level 3 credit union's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 credit union.

(b) *Factors considered.* Any exercise of authority under this section will be in writing by the NCUA Board in accordance with procedures established by the NCUA Board and will consider the activities, complexity of operations, risk profile, and compensation practices of the Level 3 credit union, in addition to any other relevant factors.

§ 751.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 credit unions.

An incentive-based compensation arrangement at a Level 1 or Level 2 credit union will not be considered to appropriately balance risk and reward, for purposes of § 751.4(c)(1), unless the following requirements are met.

(a) *Deferral.* (1) Qualifying incentive-based compensation must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 credit union must defer at least 60 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(B) A Level 1 credit union must defer at least 50 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(C) A Level 2 credit union must defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(D) A Level 2 credit union must defer at least 40 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 credit union, the deferral period for deferred qualifying incentive-based compensation must be at least 4 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 credit union, the deferral period for deferred qualifying incentive-based compensation must be at least 3 years.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred qualifying incentive-based compensation may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 credit union must not accelerate the vesting of a covered person's deferred qualifying incentive-based compensation that is required to be deferred under this part, except in the case of:

(1) Death or disability of such covered person; or

(2) The payment of income taxes that become due on deferred amounts before the covered person is vested in the deferred amount. For purposes of this paragraph, any accelerated vesting must be deducted from the scheduled deferred amounts proportionally to the deferral schedule.

(2) Incentive-based compensation awarded under a long-term incentive plan must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 credit union must defer at least 60 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(B) A Level 1 credit union must defer at least 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(C) A Level 2 credit union must defer at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(D) A Level 2 credit union must defer at least 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 credit union, the deferral period for deferred long-term incentive plan amounts must be at least 2 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 credit union, the deferral period for deferred long-term incentive plan amounts must be at least 1 year.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred long-term incentive plan amounts may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 credit union must not accelerate the vesting of a covered person's deferred long-term incentive plan amounts that is required to be deferred under this part, except in the case of:

(1) Death or disability of such covered person; or

(2) The payment of income taxes that become due on deferred amounts before the covered person is vested in the deferred amount. For purposes of this paragraph, any accelerated vesting must be deducted from the scheduled deferred amounts proportionally to the deferral schedule.

(3) *Adjustments of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation amounts.* A Level 1 or Level 2 credit union may not increase deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts for a senior executive officer or significant risk-taker during the deferral period. For purposes of this paragraph, an increase in value attributable solely to a change in share value, a change in interest rates, or the payment of interest according to terms set out at the time of the award is not considered an increase in incentive-based compensation amounts.

(4) [Reserved].

(b) *Forfeiture and downward adjustment*—(1) *Compensation at risk.* (i) A Level 1 or Level 2 credit union must place at risk of forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans.

(ii) A Level 1 or Level 2 credit union must place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts payable under long-term incentive plans.

(2) *Events triggering forfeiture and downward adjustment review.* At a minimum, a Level 1 or Level 2 credit union must consider forfeiture and downward adjustment of incentive-based compensation of senior executive officers and significant risk-takers described in paragraph (b)(3) of this section due to any of the following adverse outcomes at the credit union:

(i) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the credit union's policies and procedures;

(ii) Inappropriate risk taking, regardless of the impact on financial performance;

(iii) Material risk management or control failures;

(iv) Non-compliance with statutory, regulatory, or supervisory standards that results in:

(A) Enforcement or legal action against the credit union brought by a federal or state regulator or agency; or

(B) A requirement that the credit union report a restatement of a financial statement to correct a material error; and

(v) Other aspects of conduct or poor performance as defined by the credit union.

(3) *Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.* A Level 1 or Level 2 credit union must consider forfeiture and downward adjustment for a senior executive officer or significant risk-taker with direct responsibility, or responsibility due to the senior executive officer's or significant risk-taker's role or position in the credit union's organizational structure, for the events related to the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section.

(4) *Determining forfeiture and downward adjustment amounts.* A Level 1 or Level 2 credit union must consider, at a minimum, the following factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward:

(i) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the credit union's board of directors or to depart from the credit union's policies and procedures;

(ii) The senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering

the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iii) Any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iv) The financial and reputational impact of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section to the credit union, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation;

(v) The causes of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section, including any decision-making by other individuals; and

(vi) Any other relevant information, including past behavior and past risk outcomes attributable to the senior executive officer or significant risk-taker.

(c) *Clawback.* A Level 1 or Level 2 credit union must include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, allow the credit union to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the credit union determines that the senior executive officer or significant risk-taker engaged in:

(1) Misconduct that resulted in significant financial or reputational harm to the credit union;

(2) Fraud; or

(3) Intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation.

§ 751.8 Additional prohibitions for Level 1 and Level 2 credit unions.

An incentive-based compensation arrangement at a Level 1 or Level 2 credit union will be considered to provide incentives that appropriately balance risk and reward for purposes of § 751.4(c)(1) only if such credit union complies with the following prohibitions.

(a) *Hedging.* A Level 1 or Level 2 credit union must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation.

(b) *Maximum incentive-based compensation opportunity.* A Level 1 or Level 2 credit union must not award incentive-based compensation to:

(1) A senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation; or

(2) A significant risk-taker in excess of 150 percent of the target amount for that incentive-based compensation.

(c) *Relative performance measures.* A Level 1 or Level 2 credit union must not use incentive-based compensation performance measures that are based solely on industry peer performance comparisons.

(d) *Volume driven incentive-based compensation.* A Level 1 or Level 2 credit union must not provide incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance of the covered person with sound risk management.

§ 751.9 Risk management and controls requirements for Level 1 and Level 2 credit unions.

An incentive-based compensation arrangement at a Level 1 or Level 2 credit union will be considered to be compatible with effective risk management and controls for purposes of § 751.4(c)(2) only if such credit union meets the following requirements.

(a) A Level 1 or Level 2 credit union must have a risk management framework for its incentive-based compensation program that:

(1) Is independent of any lines of business;

(2) Includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with § 751.11; and

(3) Is commensurate with the size and complexity of the credit union's operations.

(b) A Level 1 or Level 2 credit union must:

(1) Provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor; and

(2) Ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of those business areas.

(c) A Level 1 or Level 2 credit union must provide for the independent monitoring of:

(1) All incentive-based compensation plans in order to identify whether those plans provide incentives that appropriately balance risk and reward;

(2) Events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews in order to determine consistency with § 751.7(b); and

(3) Compliance of the incentive-based compensation program with the credit union's policies and procedures.

§ 751.10 Governance requirements for Level 1 and Level 2 credit unions.

An incentive-based compensation arrangement at a Level 1 or Level 2 credit union will not be considered to be supported by effective governance for purposes of § 751.4(c)(3), unless:

(a) The credit union establishes a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under § 751.4(e); and

(b) The compensation committee established pursuant to paragraph (a) of this section obtains:

(1) Input from the risk and audit committees of the credit union's board of directors, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements;

(2) A written assessment of the effectiveness of the credit union's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the credit union, submitted on an annual or more frequent basis by the management of the credit union and developed with input from the risk and audit committees of its board of directors, or groups performing similar functions, and from the credit union's risk management and audit functions; and

(3) An independent written assessment of the effectiveness of the credit union's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the credit union, submitted on an annual or more frequent basis by the internal audit or risk management function of the credit union, developed independently of the credit union's management.

§ 751.11 Policies and procedures requirements for Level 1 and Level 2 credit unions.

A Level 1 or Level 2 credit union must develop and implement policies and procedures for its incentive-based compensation program that, at a minimum:

(a) Are consistent with the prohibitions and requirements of this part;

(b) Specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back;

(c) Require that the credit union maintain documentation of final forfeiture, downward adjustment, and clawback decisions;

(d) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with § 751.7(a)(1)(iii)(B) and (a)(2)(iii)(B));

(e) Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;

(f) Describe how discretion is expected to be exercised to appropriately balance risk and reward;

(g) Require that the credit union maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the credit union's decisions;

(h) Describe how incentive-based compensation arrangements will be monitored;

(i) Specify the substantive and procedural requirements of the independent compliance program consistent with § 751.9(a)(2); and

(j) Ensure appropriate roles for risk management, risk oversight, and other control function personnel in the credit union's processes for:

(1) Designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and

(2) Assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

§ 751.12 Indirect actions.

A credit union must not indirectly, or through or by any other person, do anything that would be unlawful for such credit union to do directly under this part. The term "any other person" includes a credit union service organization described in 12 U.S.C. 1757(7)(I) or established under similar state law.

§ 751.13 Enforcement.

The provisions of this part shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this part shall be treated as a violation of subtitle A of title V of such Act.

§ 751.14 Credit unions in conservatorship or liquidation.

(a) *Scope.* This section applies to federally insured credit unions for which any one or more of the following parties are acting as conservator or liquidating agent:

(1) The National Credit Union Administration Board;

(2) The appropriate state supervisory authority; or

(3) Any party designated by the National Credit Union Administration Board or by the appropriate state supervisory authority.

(b) *Compensation requirements.* For a credit union subject to this section, the requirements of this part do not apply. Instead, the conservator or liquidating agent, in its discretion and according to the circumstances deemed relevant in the judgment of the conservator or liquidating agent, will determine the requirements that best fulfill the requirements and purposes of 12 U.S.C. 5641. The conservator or liquidating agent may determine appropriate transition terms and provisions in the event that the credit union ceases to be within the scope of this section.

Federal Housing Finance Agency

Authority and Issuance

Accordingly, for the reasons stated in the joint preamble, under the authority of 12 U.S.C. 4526 and 5641, FHFA proposes to amend chapter XII of title 12 of the Code of Federal Regulation as follows:

■ 7. Add part 1232 to subchapter B to read as follows:

PART 1232—INCENTIVE-BASED COMPENSATION ARRANGEMENTS

Sec.

1232.1 Authority, scope, and initial applicability.
1232.2 Definitions.
1232.3 Applicability.
1232.4 Requirements and prohibitions applicable to all covered institutions.
1232.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.
1232.6 Reservation of authority for Level 3 covered institutions.
1232.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.
1232.8 Additional prohibitions for Level 1 and Level 2 covered institutions.
1232.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.
1232.10 Governance requirements for Level 1 and Level 2 covered institutions.
1232.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.
1232.12 Indirect actions.
1232.13 Enforcement.
1232.14 Covered institutions in conservatorship or receivership.

Authority: 12 U.S.C. 4511(b), 4513, 4514, 4518, 4526, ch. 46 subch. III, and 5641.

§ 1232.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641) and sections 1311, 1313, 1314, 1318, and 1319G and Subtitle C of the Safety and Soundness Act (12 U.S.C. 4511(b), 4513, 4514, 4518, 4526, and ch. 46 subch. III).

(b) *Scope.* This part applies to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A covered institution must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a covered institution other than a Federal Home Loan Bank is a Level 1, Level 2, or Level 3 covered institution at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A covered institution is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in paragraph (c)(1) of this section].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of the Federal Housing Finance Agency under other provisions of applicable law and regulations.

§ 1232.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) [Reserved].

(b) *Average total consolidated assets* means the average of a regulated institution's total consolidated assets, as reported on the regulated institution's regulatory reports, for the four most recent consecutive quarters. If a regulated institution has not filed a regulatory report for each of the four most recent consecutive quarters, the regulated institution's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers.

(e) *Clawback* means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a covered institution.

(g) [Reserved].

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.

(i) *Covered institution* means a regulated institution with average total consolidated assets greater than or equal to $1 billion.

(j) *Covered person* means any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) [Reserved].

(n) *Director* of a covered institution means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 1232.7(b).

(p) *Equity-like instrument* means:

(1) Equity in the covered institution or of any affiliate of the covered institution; or

(2) A form of compensation:

(i) Payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or

(ii) That requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution.

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 covered institution* means a covered institution with average total consolidated assets greater than or equal to $250 billion that is not a Federal Home Loan Bank.

(w) *Level 2 covered institution* means a covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution and any Federal Home Loan Bank that is a covered institution.

(x) *Level 3 covered institution* means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) *Option* means an instrument through which a covered institution provides a covered person the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right.

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) *Principal shareholder* means a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution.

(cc) *Qualifying incentive-based compensation* means the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) *Regulated institution* means an Enterprise, as defined in 12 U.S.C. 4502(10), and a Federal Home Loan Bank.

(ee) *Regulatory report* means the Call Report Statement of Condition.

(ff) [Reserved].

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 covered institution;

(ii) A covered person of a Level 2 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 covered institution; or

(iii) A covered person of a covered institution who may commit or expose 0.5 percent or more of the regulatory capital, in the case of a Federal Home Loan Bank, or the minimum capital, in the case of an Enterprise, of the covered institution; and

(2) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who is designated as a "significant risk-taker" by the Federal Housing Finance Agency because of that person's ability to expose a covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance, in accordance with procedures established by the Federal Housing Finance Agency, or by the covered institution.

(3) [Reserved].

(4) If the Federal Housing Finance Agency determines, in accordance with procedures established by the Federal Housing Finance Agency, that a Level 1 covered institution's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 covered institution, the Level 1 covered institution may apply paragraph (hh)(1)(i) of this section to covered persons of the Level 1 covered institution by substituting "2 percent" for "5 percent".

(ii) [Reserved].

(jj) *Vesting* of incentive-based compensation means the transfer of ownership of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event.

§ 1232.3 Applicability.

(a) *When average total consolidated assets increase*—(1) *In general.* A regulated institution other than a Federal Home Loan Bank shall become a Level 1, Level 2, or Level 3 covered institution when its average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(2) *Compliance date.* A regulated institution that becomes a Level 1, Level 2, or Level 3 covered institution pursuant to paragraph (a)(1) of this section shall comply with the requirements of this part for a Level 1, Level 2, or Level 3 covered institution, respectively, not later than the first day of the first calendar quarter that begins at least 540 days after the date on which the regulated institution becomes a Level 1, Level 2, or Level 3 covered institution, respectively. Until that day, the Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements of this part, if any, that applied to the regulated institution on the day before the date on which it became a Level 1, Level 2, or Level 3 covered institution.

(3) *Grandfathered plans.* A regulated institution that becomes a Level 1, Level 2, or Level 3 covered institution under paragraph (a)(1) of this section is not required to comply with requirements of this part applicable to a Level 1, Level 2, or Level 3 covered institution, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2) of this section. Any such incentive-based compensation plan shall remain subject to the requirements under this part, if any, that applied to the regulated institution at the beginning of the performance period.

(b) *When total consolidated assets decrease.* A Level 1, Level 2, or Level 3 covered institution other than a Federal Home Loan Bank will remain subject to the requirements applicable to such covered institution under this part unless and until the total consolidated assets of the covered institution, as reported on the covered institution's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters. A Federal Home Loan Bank will remain subject to the requirements of a Level 2 covered institution under this part unless and until the total consolidated assets of the Federal Home Loan Bank, as reported on the Federal Home Loan Bank's regulatory reports, fall below $1 billion for each of four consecutive quarters. The calculation will be effective on the as-of date of the fourth consecutive regulatory report.

§ 1232.4 Requirements and prohibitions applicable to all covered institutions.

(a) *In general.* A covered institution must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the covered institution:

(1) By providing a covered person with excessive compensation, fees, or benefits; or

(2) That could lead to material financial loss to the covered institution.

(b) *Excessive compensation.* Compensation, fees, and benefits are considered excessive for purposes of paragraph (a)(1) of this section when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including, but not limited to:

(1) The combined value of all compensation, fees, or benefits provided to the covered person;

(2) The compensation history of the covered person and other individuals with comparable expertise at the covered institution;

(3) The financial condition of the covered institution;

(4) Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets;

(5) For post-employment benefits, the projected total cost and benefit to the covered institution; and

(6) Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

(c) *Material financial loss.* An incentive-based compensation arrangement at a covered institution encourages inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement:

(1) Appropriately balances risk and reward;

(2) Is compatible with effective risk management and controls; and

(3) Is supported by effective governance.

(d) *Performance measures.* An incentive-based compensation arrangement will not be considered to appropriately balance risk and reward for purposes of paragraph (c)(1) of this section unless:

(1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a covered institution and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking;

(2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and

(3) Any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

(e) *Board of directors.* A covered institution's board of directors, or a committee thereof, must:

(1) Conduct oversight of the covered institution's incentive-based compensation program;

(2) Approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and

(3) Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

(f) *Disclosure and recordkeeping requirements.* A covered institution must create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A covered institution must disclose the records to the Federal Housing Finance Agency upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

(g) *Rule of construction.* A covered institution is not required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the disclosure and recordkeeping requirements under this part, though it may be required to do so under other applicable regulations of the Federal Housing Finance Agency.

§ 1232.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.

(a) A Level 1 or Level 2 covered institution must create annually and maintain for a period of at least seven years records that document:

(1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business;

(2) The incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award;

(3) Any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and

(4) Any material changes to the covered institution's incentive-based compensation arrangements and policies.

(b) A Level 1 or Level 2 covered institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including those required under § 1232.11.

(c) A Level 1 or Level 2 covered institution must provide the records described in paragraph (a) of this section to the Federal Housing Finance Agency in such form and with such frequency as requested by the Federal Housing Finance Agency.

§ 1232.6 Reservation of authority for Level 3 covered institutions.

(a) *In general.* The Federal Housing Finance Agency may require a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 1232.5 and 1232.7 through 1232.11 if the Federal Housing Finance Agency determines that the Level 3 covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution.

(b) *Factors considered.* Any exercise of authority under this section will be in writing by the Federal Housing Finance Agency in accordance with procedures established by the Federal Housing Finance Agency and will consider the activities, complexity of operations, risk profile, and compensation practices of the Level 3 covered institution, in addition to any other relevant factors.

§ 1232.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to appropriately balance risk and reward, for purposes of § 1232.4(c)(1), unless the following requirements are met.

(a) *Deferral.* (1) Qualifying incentive-based compensation must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 4 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 3 years.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred qualifying incentive-based compensation may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred qualifying incentive-based compensation that is required to be deferred under this part, except in the case of death or disability of such covered person.

(2) Incentive-based compensation awarded under a long-term incentive plan must be deferred as follows:

(i) *Minimum required deferral amount.*

(A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 2 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 1 year.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred long-term incentive plan amounts may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred long-term incentive plan amounts that is required to be deferred under this part, except in the case of death or disability of such covered person.

(3) *Adjustments of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation amounts.* A Level 1 or Level 2 covered institution may not increase deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts for a senior executive officer or significant risk-taker during the deferral period. For purposes of this paragraph, an increase in value attributable solely to a change in share value, a change in interest rates, or the payment of interest according to terms set out at the time of the award is not considered an increase in incentive-based compensation amounts.

(4) *Composition of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation for Level 1 and Level 2 covered institutions*—(i) *Cash and equity-like instruments.* For a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution, any deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts must include substantial portions of both deferred cash and, in the case of a covered institution that issues equity instruments and is permitted by the Federal Housing Finance Agency to use equity-like instruments as compensation for senior executive officers and significant risk-takers, equity-like instruments throughout the deferral period.

(ii) *Options.* If a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution receives incentive-based compensation for a performance period in the form of options, the total amount of such options that may be used to meet the minimum deferral amount requirements of paragraph (a)(1)(i) or (a)(2)(i) of this section is limited to no more than 15 percent of the amount of total incentive-based compensation awarded to the senior executive officer or significant risk-taker for that performance period.

(b) *Forfeiture and downward adjustment*—(1) *Compensation at risk.* (i) A Level 1 or Level 2 covered institution must place at risk of forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans.

(ii) A Level 1 or Level 2 covered institution must place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts payable under long-term incentive plans.

(2) *Events triggering forfeiture and downward adjustment review.* At a minimum, a Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment of incentive-based compensation of senior executive officers and significant risk-takers described in paragraph (b)(3) of this section due to any of the following adverse outcomes at the covered institution:

(i) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures;

(ii) Inappropriate risk taking, regardless of the impact on financial performance;

(iii) Material risk management or control failures;

(iv) Non-compliance with statutory, regulatory, or supervisory standards that results in:

(A) Enforcement or legal action against the covered institution brought by a federal or state regulator or agency; or

(B) A requirement that the covered institution report a restatement of a financial statement to correct a material error; and

(v) Other aspects of conduct or poor performance as defined by the covered institution.

(3) *Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.* A Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment for a senior executive officer or significant risk-taker with direct responsibility, or responsibility due to the senior executive officer's or significant risk-taker's role or position in the covered institution's organizational structure, for the events related to the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section.

(4) *Determining forfeiture and downward adjustment amounts.* A Level 1 or Level 2 covered institution must consider, at a minimum, the following factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward:

(i) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the covered institution's board of directors or to depart from the covered institution's policies and procedures;

(ii) The senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iii) Any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the forfeiture and downward

adjustment review set forth in paragraph (b)(2) of this section;

(iv) The financial and reputational impact of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section to the covered institution, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation;

(v) The causes of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section, including any decision-making by other individuals; and

(vi) Any other relevant information, including past behavior and past risk outcomes attributable to the senior executive officer or significant risk-taker.

(c) *Clawback.* A Level 1 or Level 2 covered institution must include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in:

(1) Misconduct that resulted in significant financial or reputational harm to the covered institution;

(2) Fraud; or

(3) Intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation.

§ 1232.8 Additional prohibitions for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to provide incentives that appropriately balance risk and reward for purposes of § 1232.4(c)(1) only if such institution complies with the following prohibitions.

(a) *Hedging.* A Level 1 or Level 2 covered institution must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation.

(b) *Maximum incentive-based compensation opportunity.* A Level 1 or Level 2 covered institution must not award incentive-based compensation to:

(1) A senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation; or

(2) A significant risk-taker in excess of 150 percent of the target amount for that incentive-based compensation.

(c) *Relative performance measures.* A Level 1 or Level 2 covered institution must not use incentive-based compensation performance measures that are based solely on industry peer performance comparisons.

(d) *Volume driven incentive-based compensation.* A Level 1 or Level 2 covered institution must not provide incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance of the covered person with sound risk management.

§ 1232.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to be compatible with effective risk management and controls for purposes of § 1232.4(c)(2) only if such institution meets the following requirements.

(a) A Level 1 or Level 2 covered institution must have a risk management framework for its incentive-based compensation program that:

(1) Is independent of any lines of business;

(2) Includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with § 1232.11; and

(3) Is commensurate with the size and complexity of the covered institution's operations.

(b) A Level 1 or Level 2 covered institution must:

(1) Provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor; and

(2) Ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of those business areas.

(c) A Level 1 or Level 2 covered institution must provide for the independent monitoring of:

(1) All incentive-based compensation plans in order to identify whether those plans provide incentives that appropriately balance risk and reward;

(2) Events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews in order to determine consistency with § 1232.7(b); and

(3) Compliance of the incentive-based compensation program with the covered institution's policies and procedures.

§ 1232.10 Governance requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to be supported by effective governance for purposes of § 1232.4(c)(3), unless:

(a) The covered institution establishes a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under § 1232.4(e); and

(b) The compensation committee established pursuant to paragraph (a) of this section obtains:

(1) Input from the risk and audit committees of the covered institution's board of directors, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements;

(2) A written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the management of the covered institution and developed with input from the risk and audit committees of its board of directors, or groups performing similar functions, and from the covered institution's risk management and audit functions; and

(3) An independent written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the internal audit or risk management function of the covered institution, developed independently of the covered institution's management.

§ 1232.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.

A Level 1 or Level 2 covered institution must develop and implement policies and procedures for its incentive-based compensation program that, at a minimum:

(a) Are consistent with the prohibitions and requirements of this part;

(b) Specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of incentive-based compensation to be clawed back;

(c) Require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions;

(d) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with § 1232.7(a)(1)(iii)(B) and (a)(2)(iii)(B));

(e) Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;

(f) Describe how discretion is expected to be exercised to appropriately balance risk and reward;

(g) Require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions;

(h) Describe how incentive-based compensation arrangements will be monitored;

(i) Specify the substantive and procedural requirements of the independent compliance program consistent with § 1232.9(a)(2); and

(j) Ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for:

(1) Designing incentive-based compensation arrangements and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and

(2) Assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

§ 1232.12 Indirect actions.

A covered institution must not indirectly, or through or by any other person, do anything that would be unlawful for such covered institution to do directly under this part.

§ 1232.13 Enforcement.

The provisions of this part shall be enforced under subtitle C of the Safety and Soundness Act (12 U.S.C. ch. 46 subch. III).

§ 1232.14 Covered institutions in conservatorship or receivership.

(a) *Scope.* This section applies to covered institutions that are in conservatorship or receivership, or are limited-life regulated entities, under the Safety and Soundness Act.

(b) *Compensation requirements.* For a covered institution subject to this section, the requirements that would otherwise apply under this part shall be those that are determined by the Agency to best fulfill the requirements and purposes of 12 U.S.C. 5641, taking into consideration the possible duration of the covered institution's conservatorship or receivership, the nature of the institution's governance while under conservatorship or receivership, the need to attract and retain management and other talent to such an institution, the limitations on such an institution's ability to employ equity-like instruments as incentive-based compensation, and any other circumstances deemed relevant in the judgment of the Agency. The Agency may determine appropriate transition terms and provisions in the event that the covered institution ceases to be within the scope of this section.

Securities and Exchange Commission

Authority and Issuance

For the reasons set forth in the joint preamble, the SEC proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78n–1, 78*o*, 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub. L. 94–29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);

* * * * *

■ 9. Section 240.17a–4 is amended by adding paragraph (e)(10). The addition reads as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(e) * * *

(10) The records required pursuant to §§ 303.4(f), 303.5, and 303.11 of this chapter.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 10. The authority citation continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 11. Section 275.204–2 is amended by adding paragraph (a)(19) and by revising paragraph (e)(1). The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(19) The records required pursuant to, and for the periods specified in, §§ 303.4(f), 303.5, and 303.11 of this chapter.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), (a)(17)(i), and (a)(19) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

■ 12. Add part 303 to read as follows:

PART 303—INCENTIVE-BASED COMPENSATION ARRANGEMENTS

Sec.

303.1 Authority, scope, and initial applicability.
303.2 Definitions.
303.3 Applicability.
303.4 Requirements and prohibitions applicable to all covered institutions.
303.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.
303.6 Reservation of authority for Level 3 covered institutions.

303.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.
303.8 Additional prohibitions for Level 1 and Level 2 covered institutions.
303.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.
303.10 Governance requirements for Level 1 and Level 2 covered institutions.
303.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.
303.12 Indirect actions.
303.13 Enforcement.

Authority: 15 U.S.C. 78q, 78w, 80b–4, and 80b–11 and 12 U.S.C. 5641.

§ 303.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641), 15 U.S.C. 78q, 78w, 80b–4, and 80b–11.

(b) *Scope.* This part applies to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A covered institution must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A covered institution is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in paragraph (c)(1) of this section].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of the Commission under other provisions of applicable law and regulations.

§ 303.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Average total consolidated assets* means the average of a regulated institution's total consolidated assets, as reported on the regulated institution's regulatory reports, for the four most recent consecutive quarters. If a regulated institution has not filed a regulatory report for each of the four most recent consecutive quarters, the regulated institution's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average. Average total consolidated assets for a regulated institution that is an investment adviser means the regulated institution's total assets (exclusive of non-proprietary assets) shown on the balance sheet for the regulated institution for the most recent fiscal year end.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers.

(e) *Clawback* means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a covered institution.

(g) *Control* means that any company has control over any company if—

(1) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company;

(2) The company controls in any manner the election of a majority of the directors or trustees of the company; or

(3) The Commission determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the company.

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.

(i) *Covered institution* means a regulated institution with average total consolidated assets greater than or equal to $1 billion.

(j) *Covered person* means any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) *Depository institution holding company* means a top-tier depository institution holding company, where "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(n) *Director* of a covered institution means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 303.7(b).

(p) *Equity-like instrument* means:

(1) Equity in the covered institution or any affiliate of the covered institution; or

(2) A form of compensation:

(i) Payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or

(ii) That requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution.

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more incentive-based compensation plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 covered institution* means a:

(i) Covered institution with average total consolidated assets greater than or equal to $250 billion; or

(ii) Covered institution that is a subsidiary of a depository institution holding company that is a Level 1 covered institution pursuant to 12 CFR 236.2.

(w) *Level 2 covered institution* means a:

(i) Covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution; or

(ii) Covered institution that is a subsidiary of a depository institution holding company that is a Level 2 covered institution pursuant to 12 CFR 236.2.

(x) *Level 3 covered institution* means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) *Option* means an instrument through which a covered institution provides a covered person the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right.

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) *Principal shareholder* means a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution.

(cc) *Qualifying incentive-based compensation* means the amount of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) *Regulated institution* means a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and an investment adviser as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

(ee) *Regulatory report* means, for a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), the Financial and Operational Combined Uniform Single Report, Form X–17A–5, 17 CFR 249.617, or any successors thereto.

(ff) *Section 956 affiliate* means an affiliate that is an institution described in § 303.2(i), 12 CFR 42.2(i), 12 CFR 236.2(i), 12 CFR 372.2(i), 12 CFR 741.2(i), or 12 CFR 1232.2(i).

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 1 covered institution;

(ii) A covered person of a Level 2 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 2 covered institution; or

(iii) A covered person of a covered institution who may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any section 956 affiliate of the covered institution, whether or not the individual is a covered person of that specific legal entity; and

(2) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who is designated as a "significant risk-taker" by the Commission because of that person's ability to expose a covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance, in accordance with procedures established by the Commission, or by the covered institution.

(3) For purposes of this part, an individual who is an employee, director, senior executive officer, or principal shareholder of an affiliate of a Level 1 or Level 2 covered institution, where such affiliate has less than $1 billion in total consolidated assets, and who otherwise would meet the requirements for being a significant risk-taker under paragraph (hh)(1)(iii) of this section, shall be considered to be a significant risk-taker with respect to the Level 1 or Level 2 covered institution for which the individual may commit or expose 0.5 percent or more of common equity tier 1 capital or tentative net capital. The Level 1 or Level 2 covered institution for which the individual commits or exposes 0.5 percent or more of common equity tier 1 capital or tentative net capital shall ensure that the individual's incentive compensation arrangement complies with the requirements of this part.

adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.
303.8 Additional prohibitions for Level 1 and Level 2 covered institutions.
303.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.
303.10 Governance requirements for Level 1 and Level 2 covered institutions.
303.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.
303.12 Indirect actions.
303.13 Enforcement.

Authority: 15 U.S.C. 78q, 78w, 80b–4, and 80b–11 and 12 U.S.C. 5641.

§ 303.1 Authority, scope, and initial applicability.

(a) *Authority.* This part is issued pursuant to section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5641), 15 U.S.C. 78q, 78w, 80b–4, and 80b–11.

(b) *Scope.* This part applies to a covered institution with average total consolidated assets greater than or equal to $1 billion that offers incentive-based compensation to covered persons.

(c) *Initial applicability*—(1) *Compliance date.* A covered institution must meet the requirements of this part no later than [Date of the beginning of the first calendar quarter that begins at least 540 days after a final rule is published in the **Federal Register**]. Whether a covered institution is a Level 1, Level 2, or Level 3 covered institution at that time will be determined based on average total consolidated assets as of [Date of the beginning of the first calendar quarter that begins after a final rule is published in the **Federal Register**].

(2) *Grandfathered plans.* A covered institution is not required to comply with the requirements of this part with respect to any incentive-based compensation plan with a performance period that begins before [Compliance Date as described in paragraph (c)(1) of this section].

(d) *Preservation of authority.* Nothing in this part in any way limits the authority of the Commission under other provisions of applicable law and regulations.

§ 303.2 Definitions.

For purposes of this part only, the following definitions apply unless otherwise specified:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) *Average total consolidated assets* means the average of a regulated institution's total consolidated assets, as reported on the regulated institution's recent consecutive quarters. If a regulated institution has not filed a regulatory report for each of the four most recent consecutive quarters, the regulated institution's average total consolidated assets means the average of its total consolidated assets, as reported on its regulatory reports, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent regulatory report used in the calculation of the average. Average total consolidated assets for a regulated institution that is an investment adviser means the regulated institution's total assets (exclusive of non-proprietary assets) shown on the balance sheet for the regulated institution for the most recent fiscal year end.

(c) *To award* incentive-based compensation means to make a final determination, conveyed to a covered person, of the amount of incentive-based compensation payable to the covered person for performance over a performance period.

(d) *Board of directors* means the governing body of a covered institution that oversees the activities of the covered institution, often referred to as the board of directors or board of managers.

(e) *Clawback* means a mechanism by which a covered institution can recover vested incentive-based compensation from a covered person.

(f) *Compensation, fees, or benefits* means all direct and indirect payments, both cash and non-cash, awarded to, granted to, or earned by or for the benefit of, any covered person in exchange for services rendered to a covered institution.

(g) *Control* means that any company has control over any company if—

(1) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the company;

(2) The company controls in any manner the election of a majority of the directors or trustees of the company; or

(3) The Commission determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the company.

(h) *Control function* means a compliance, risk management, internal audit, legal, human resources, accounting, financial reporting, or finance role responsible for identifying, measuring, monitoring, or controlling risk-taking.

(i) *Covered institution* means a regulated institution with average total consolidated assets greater than or equal to $1 billion.

(j) *Covered person* means any executive officer, employee, director, or principal shareholder who receives incentive-based compensation at a covered institution.

(k) *Deferral* means the delay of vesting of incentive-based compensation beyond the date on which the incentive-based compensation is awarded.

(l) *Deferral period* means the period of time between the date a performance period ends and the last date on which the incentive-based compensation awarded for such performance period vests.

(m) *Depository institution holding company* means a top-tier depository institution holding company, where "depository institution holding company" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(n) *Director* of a covered institution means a member of the board of directors.

(o) *Downward adjustment* means a reduction of the amount of a covered person's incentive-based compensation not yet awarded for any performance period that has already begun, including amounts payable under long-term incentive plans, in accordance with a forfeiture and downward adjustment review under § 303.7(b).

(p) *Equity-like instrument* means:

(1) Equity in the covered institution or any affiliate of the covered institution; or

(2) A form of compensation:

(i) Payable at least in part based on the price of the shares or other equity instruments of the covered institution or of any affiliate of the covered institution; or

(ii) That requires, or may require, settlement in the shares of the covered institution or of any affiliate of the covered institution.

(q) *Forfeiture* means a reduction of the amount of deferred incentive-based compensation awarded to a covered person that has not vested.

(r) *Incentive-based compensation* means any variable compensation, fees, or benefits that serve as an incentive or reward for performance.

(s) *Incentive-based compensation arrangement* means an agreement between a covered institution and a covered person, under which the covered institution provides incentive-based compensation to the covered person, including incentive-based compensation delivered through one or more plans.

(t) *Incentive-based compensation plan* means a document setting forth terms and conditions governing the opportunity for and the payment of incentive-based compensation payments to one or more covered persons.

(u) *Incentive-based compensation program* means a covered institution's framework for incentive-based compensation that governs incentive-based compensation practices and establishes related controls.

(v) *Level 1 covered institution* means a:

(i) Covered institution with average total consolidated assets greater than or equal to $250 billion; or

(ii) Covered institution that is a subsidiary of a depository institution holding company that is a Level 1 covered institution pursuant to 12 CFR 236.2.

(w) *Level 2 covered institution* means a:

(i) Covered institution with average total consolidated assets greater than or equal to $50 billion that is not a Level 1 covered institution; or

(ii) Covered institution that is a subsidiary of a depository institution holding company that is a Level 2 covered institution pursuant to 12 CFR 236.2.

(x) *Level 3 covered institution* means a covered institution with average total consolidated assets greater than or equal to $1 billion that is not a Level 1 covered institution or Level 2 covered institution.

(y) *Long-term incentive plan* means a plan to provide incentive-based compensation that is based on a performance period of at least three years.

(z) *Option* means an instrument through which a covered institution provides a covered person the right, but not the obligation, to buy a specified number of shares representing an ownership stake in a company at a predetermined price within a set time period or on a date certain, or any similar instrument, such as a stock appreciation right.

(aa) *Performance period* means the period during which the performance of a covered person is assessed for purposes of determining incentive-based compensation.

(bb) *Principal shareholder* means a natural person who, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 10 percent or more of any class of voting securities of a covered institution.

(cc) *Qualifying incentive-based compensation payment* means a payment of incentive-based compensation awarded to a covered person for a particular performance period, excluding amounts awarded to the covered person for that particular performance period under a long-term incentive plan.

(dd) *Regulated institution* means a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and an investment adviser as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)).

(ee) *Regulatory report* means, for a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), the Financial and Operational Combined Uniform Single Report, Form X–17A–5, 17 CFR 249.617, or any successors thereto.

(ff) *Section 956 affiliate* means an affiliate that is an institution described in § 303.2(i), 12 CFR 42.2(i), 12 CFR 236.2(i), 12 CFR 372.2(i), 12 CFR 741.2(i), or 12 CFR 1232.2(i).

(gg) *Senior executive officer* means a covered person who holds the title or, without regard to title, salary, or compensation, performs the function of one or more of the following positions at a covered institution for any period of time in the relevant performance period: President, chief executive officer, executive chairman, chief operating officer, chief financial officer, chief investment officer, chief legal officer, chief lending officer, chief risk officer, chief compliance officer, chief audit executive, chief credit officer, chief accounting officer, or head of a major business line or control function.

(hh) *Significant risk-taker* means:

(1) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period of which at least one-third is incentive-based compensation and is—

(i) A covered person of a Level 1 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 5 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 1 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 1 covered institution;

(ii) A covered person of a Level 2 covered institution who received annual base salary and incentive-based compensation for the last calendar year that ended at least 180 days before the beginning of the performance period that placed the covered person among the highest 2 percent in annual base salary and incentive-based compensation among all covered persons (excluding senior executive officers) of the Level 2 covered institution together with all individuals who receive incentive-based compensation at any section 956 affiliate of the Level 2 covered institution; or

(iii) A covered person of a covered institution who may commit or expose 0.5 percent or more of the common equity tier 1 capital, or in the case of a registered securities broker or dealer, 0.5 percent or more of the tentative net capital, of the covered institution or of any section 956 affiliate of the covered institution, whether or not the individual is a covered person of that specific legal entity; and

(2) Any covered person at a Level 1 or Level 2 covered institution, other than a senior executive officer, who is designated as a "significant risk-taker" by the Commission because of that person's ability to expose a covered institution to risks that could lead to material financial loss in relation to the covered institution's size, capital, or overall risk tolerance, in accordance with procedures established by the Commission, or by the covered institution.

(3) For purposes of this part, an individual who is an employee, director, senior executive officer, or principal shareholder of an affiliate of a Level 1 or Level 2 covered institution, where such affiliate has less than $1 billion in total consolidated assets, and who otherwise would meet the requirements for being a significant risk-taker under paragraph (hh)(1)(iii) of this section, shall be considered to be a significant risk-taker with respect to the Level 1 or Level 2 covered institution for which the individual may commit or expose 0.5 percent or more of common equity tier 1 capital or tentative net capital. The Level 1 or Level 2 covered institution for which the individual commits or exposes 0.5 percent or more of common equity tier 1 capital or tentative net capital shall ensure that the individual's incentive compensation arrangement complies with the requirements of this part.

(4) If the Commission determines, in accordance with procedures established by the Commission, that a Level 1 covered institution's activities, complexity of operations, risk profile, and compensation practices are similar to those of a Level 2 covered institution, the Level 1 covered institution may apply paragraph (hh)(1)(i) of this section to covered persons of the Level 1 covered institution by substituting "2 percent" for "5 percent."

(ii) *Subsidiary* means any company that is owned or controlled directly or indirectly by another company.

(jj) *Vesting* of incentive-based compensation means the transfer of ownership of the incentive-based compensation to the covered person to whom the incentive-based compensation was awarded, such that the covered person's right to the incentive-based compensation is no longer contingent on the occurrence of any event.

§ 303.3 Applicability.

(a) *When average total consolidated assets increase*—(1) *In general.* (i) A regulated institution shall become a Level 1, Level 2, or Level 3 covered institution when its average total consolidated assets increase to an amount that equals or exceeds $250 billion, $50 billion, or $1 billion, respectively.

(ii) A covered institution regardless of its average total consolidated assets (provided that, for the avoidance of doubt, such covered institution has average total consolidated assets greater than or equal to $1 billion) that is a subsidiary of a depository institution holding company shall become a Level 1 or Level 2 covered institution when such depository institution holding company becomes a Level 1 or Level 2 covered institution, respectively, pursuant to 12 CFR 236.3.

(2) *Compliance date.* (i) A regulated institution that becomes a Level 1, Level 2, or Level 3 covered institution pursuant to paragraph (a)(1)(i) of this section shall comply with the requirements of this part for a Level 1, Level 2, or Level 3 covered institution, respectively, not later than the first day of the first calendar quarter that begins at least 540 days after the date on which the regulated institution becomes a Level 1, Level 2, or Level 3 covered institution, respectively. Until that day, the Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements of this part, if any, that applied to the regulated institution on the day before the date on which it became a Level 1, Level 2, or Level 3 covered institution.

(b) A covered institution that becomes a Level 1 or Level 2 covered institution pursuant to paragraph (a)(1)(ii) of this section shall comply with the requirements of this part for a Level 1 or Level 2 covered institution, respectively, not later than the first day of the first calendar quarter that begins at least 540 days after the date on which the regulated institution becomes a Level 1 or Level 2 covered institution, respectively. Until that day, the Level 1 or Level 2 covered institution will remain subject to the requirements of this part, if any, that applied to the covered institution on the day before the date on which it became a Level 1 or Level 2 covered institution.

(3) *Grandfathered plans.* (i) A regulated institution that becomes a Level 1, Level 2, or Level 3 covered institution under paragraph (a)(1)(i) of this section is not required to comply with requirements of this part applicable to a Level 1, Level 2, or Level 3 covered institution, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2)(i) of this section. Any such incentive-based compensation plan shall remain subject to the requirements under this part, if any, that applied to the regulated institution at the beginning of the performance period.

(b) A covered institution that becomes a Level 1 or Level 2 covered institution under paragraph (a)(1)(ii) of this section is not required to comply with requirements of this part applicable to a Level 1 or Level 2 covered institution, respectively, with respect to any incentive-based compensation plan with a performance period that begins before the date described in paragraph (a)(2)(ii) of this section. Any such incentive-based compensation plan shall remain subject to the requirements under this part, if any, that applied to the covered institution at the beginning of the performance period.

(b) *When total consolidated assets decrease.* (1) A Level 1, Level 2, or Level 3 covered institution will remain subject to the requirements applicable to such covered institution under this part unless and until the total consolidated assets of such covered institution, as reported on the covered institution's regulatory reports, fall below $250 billion, $50 billion, or $1 billion, respectively, for each of four consecutive quarters. The calculation will be effective on the as-of date of the fourth consecutive regulatory report.

(2) A Level 1, Level 2, or Level 3 covered institution that is an investment adviser will remain subject to the requirements applicable to such covered institution under this part unless and until the average total consolidated assets of the covered institution fall below $250 billion, $50 billion, or $1 billion, respectively as of the most recent fiscal year end.

(3) A covered institution that is a Level 1 or Level 2 covered institution solely by virtue of its being a subsidiary of a depository institution holding company will remain subject to the requirements applicable to such covered institution under this part unless and until such depository institution holding company ceases to be subject to the requirements applicable to it in accordance with 12 CFR 236.3.

§ 303.4 Requirements and prohibitions applicable to all covered institutions.

(a) *In general.* A covered institution must not establish or maintain any type of incentive-based compensation arrangement, or any feature of any such arrangement, that encourages inappropriate risks by the covered institution:

(1) By providing a covered person with excessive compensation, fees, or benefits; or

(2) That could lead to material financial loss to the covered institution.

(b) *Excessive compensation.* Compensation, fees, and benefits are considered excessive for purposes of § 303.4(a)(1) when amounts paid are unreasonable or disproportionate to the value of the services performed by a covered person, taking into consideration all relevant factors, including, but not limited to:

(1) The combined value of all compensation, fees, or benefits provided to the covered person;

(2) The compensation history of the covered person and other individuals with comparable expertise at the covered institution;

(3) The financial condition of the covered institution;

(4) Compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the covered institution's operations and assets;

(5) For post-employment benefits, the projected total cost and benefit to the covered institution; and

(6) Any connection between the covered person and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the covered institution.

(c) *Material financial loss.* An incentive-based compensation arrangement at a covered institution encourages inappropriate risks that could lead to material financial loss to the covered institution, unless the arrangement:

(1) Appropriately balances risk and reward;

(2) Is compatible with effective risk management and controls; and

(3) Is supported by effective governance.

(d) *Performance measures.* An incentive-based compensation arrangement will not be considered to appropriately balance risk and reward for purposes of paragraph (c)(1) of this section, unless:

(1) The arrangement includes financial and non-financial measures of performance, including considerations of risk-taking, that are relevant to a covered person's role within a covered institution and to the type of business in which the covered person is engaged and that are appropriately weighted to reflect risk-taking;

(2) The arrangement is designed to allow non-financial measures of performance to override financial measures of performance when appropriate in determining incentive-based compensation; and

(3) Any amounts to be awarded under the arrangement are subject to adjustment to reflect actual losses, inappropriate risks taken, compliance deficiencies, or other measures or aspects of financial and non-financial performance.

(e) *Board of directors.* A covered institution's board of directors, or a committee thereof, must:

(1) Conduct oversight of the covered institution's incentive-based compensation program;

(2) Approve incentive-based compensation arrangements for senior executive officers, including the amounts of all awards and, at the time of vesting, payouts under such arrangements; and

(3) Approve any material exceptions or adjustments to incentive-based compensation policies or arrangements for senior executive officers.

(f) *Disclosure and recordkeeping requirements.* A covered institution must create annually and maintain for a period of at least seven years records that document the structure of all its incentive-based compensation arrangements and demonstrate compliance with this part. A covered institution must disclose the records to the Commission upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls.

(g) *Rule of construction.* A covered institution is not required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the disclosure and recordkeeping requirements under this part.

§ 303.5 Additional disclosure and recordkeeping requirements for Level 1 and Level 2 covered institutions.

(a) A Level 1 or Level 2 covered institution must create annually and maintain for a period of at least seven years records that document:

(1) The covered institution's senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business;

(2) The incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award;

(3) Any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and

(4) Any material changes to the covered institution's incentive-based compensation arrangements and policies.

(b) A Level 1 or Level 2 covered institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including those required under § 303.11.

(c) A Level 1 or Level 2 covered institution must provide the records described in paragraph (a) of this section to the Commission in such form and with such frequency as requested by the Commission.

§ 303.6 Reservation of authority for Level 3 covered institutions.

(a) *In general.* The Commission may require a Level 3 covered institution with average total consolidated assets greater than or equal to $10 billion and less than $50 billion to comply with some or all of the provisions of §§ 303.5 and 303.7 through 303.11 if the Commission determines that the Level 3 covered institution's complexity of operations or compensation practices are consistent with those of a Level 1 or Level 2 covered institution.

(b) *Factors considered.* Any exercise of authority under this section will be in writing by the Commission in accordance with procedures established by the Commission and will consider the activities, complexity of operations, risk profile, and compensation practices of the Level 3 covered institution, in addition to any other relevant factors.

§ 303.7 Deferral, forfeiture and downward adjustment, and clawback requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to appropriately balance risk and reward, for purposes of § 303.4(c)(1), unless the following requirements are met.

(a) *Deferral.* (1) Qualifying incentive-based compensation must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's qualifying incentive-based compensation awarded for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's qualifying incentive-based compensation awarded for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 4 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred qualifying incentive-based compensation must be at least 3 years.

(iii) *Vesting of amounts during deferral period.* (A) *Pro rata vesting.* During a deferral period, deferred qualifying incentive-based compensation may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which the amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred qualifying incentive-based compensation that is required to be deferred under this part, except in the case of death or disability of such covered person.

(2) Incentive-based compensation awarded under a long-term incentive plan must be deferred as follows:

(i) *Minimum required deferral amount.* (A) A Level 1 covered institution must defer at least 60 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(B) A Level 1 covered institution must defer at least 50 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(C) A Level 2 covered institution must defer at least 50 percent of a senior executive officer's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(D) A Level 2 covered institution must defer at least 40 percent of a significant risk-taker's incentive-based compensation awarded under a long-term incentive plan for each performance period.

(ii) *Minimum required deferral period.* (A) For a senior executive officer or significant risk-taker of a Level 1 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 2 years.

(B) For a senior executive officer or significant risk-taker of a Level 2 covered institution, the deferral period for deferred long-term incentive plan amounts must be at least 1 year.

(iii) *Vesting of amounts during deferral period*—(A) *Pro rata vesting.* During a deferral period, deferred long-term incentive plan amounts may not vest faster than on a pro rata annual basis beginning no earlier than the first anniversary of the end of the performance period for which amounts were awarded.

(B) *Acceleration of vesting.* A Level 1 or Level 2 covered institution must not accelerate the vesting of a covered person's deferred long-term incentive plan amounts that is required to be deferred under this part, except in the case of death or disability of such covered person.

(3) *Adjustments of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation amounts.* A Level 1 or Level 2 covered institution may not increase deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts for a senior executive officer or significant risk-taker during the deferral period. For purposes of this paragraph, an increase in value attributable solely to a change in share value, a change in interest rates, or the payment of interest according to terms set out at the time of the award is not considered an increase in incentive-based compensation amounts.

(4) *Composition of deferred qualifying incentive-based compensation and deferred long-term incentive plan compensation for Level 1 and Level 2 covered institutions*—(i) *Cash and equity-like instruments.* For a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution that issues equity or is an affiliate of a covered institution that issues equity, any deferred qualifying incentive-based compensation or deferred long-term incentive plan amounts must include substantial portions of both deferred cash and equity-like instruments throughout the deferral period.

(ii) *Options.* If a senior executive officer or significant risk-taker of a Level 1 or Level 2 covered institution receives incentive-based compensation for a performance period in the form of options, the total amount of such options that may be used to meet the minimum deferral amount requirements of paragraph (a)(1)(i) or (a)(2)(i) of this section is limited to no more than 15 percent of the amount of total incentive-based compensation awarded to the senior executive officer or significant risk-taker for that performance period.

(b) *Forfeiture and downward adjustment*—(1) *Compensation at risk.* (i) A Level 1 or Level 2 covered institution must place at risk of forfeiture all unvested deferred incentive-based compensation of any senior executive officer or significant risk-taker, including unvested deferred amounts awarded under long-term incentive plans.

(ii) A Level 1 or Level 2 covered institution must place at risk of downward adjustment all of a senior executive officer's or significant risk-taker's incentive-based compensation amounts not yet awarded for the current performance period, including amounts payable under long-term incentive plans.

(2) *Events triggering forfeiture and downward adjustment review.* At a minimum, a Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment of incentive-based compensation of senior executive officers and significant risk-takers described in paragraph (b)(3) of this section due to any of the following adverse outcomes at the covered institution:

(i) Poor financial performance attributable to a significant deviation from the risk parameters set forth in the covered institution's policies and procedures;

(ii) Inappropriate risk taking, regardless of the impact on financial performance;

(iii) Material risk management or control failures;

(iv) Non-compliance with statutory, regulatory, or supervisory standards that results in:

(A) Enforcement or legal action against the covered institution brought by a federal or state regulator or agency; or

(B) A requirement that the covered institution report a restatement of a financial statement to correct a material error; and

(v) Other aspects of conduct or poor performance as defined by the covered institution.

(3) *Senior executive officers and significant risk-takers affected by forfeiture and downward adjustment.* A Level 1 or Level 2 covered institution must consider forfeiture and downward adjustment for a senior executive officer or significant risk-taker with direct responsibility, or responsibility due to the senior executive officer's or significant risk-taker's role or position in the covered institution's organizational structure, for the events related to the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section.

(4) *Determining forfeiture and downward adjustment amounts.* A Level 1 or Level 2 covered institution must consider, at a minimum, the following factors when determining the amount or portion of a senior executive officer's or significant risk-taker's incentive-based compensation that should be forfeited or adjusted downward:

(i) The intent of the senior executive officer or significant risk-taker to operate outside the risk governance framework approved by the covered institution's board of directors or to depart from the covered institution's policies and procedures;

(ii) The senior executive officer's or significant risk-taker's level of participation in, awareness of, and responsibility for, the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iii) Any actions the senior executive officer or significant risk-taker took or could have taken to prevent the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section;

(iv) The financial and reputational impact of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section to the covered institution, the line or sub-line of business, and individuals involved, as applicable, including the magnitude of any financial loss and the cost of known or potential subsequent fines, settlements, and litigation;

(v) The causes of the events triggering the forfeiture and downward adjustment review set forth in paragraph (b)(2) of this section, including any decision-making by other individuals; and

(vi) Any other relevant information, including past behavior and past risk outcomes attributable to the senior executive officer or significant risk-taker.

(c) *Clawback.* A Level 1 or Level 2 covered institution must include clawback provisions in incentive-based compensation arrangements for senior executive officers and significant risk-takers that, at a minimum, allow the covered institution to recover incentive-based compensation from a current or former senior executive officer or significant risk-taker for seven years following the date on which such compensation vests, if the covered institution determines that the senior executive officer or significant risk-taker engaged in:

(1) Misconduct that resulted in significant financial or reputational harm to the covered institution;

(2) Fraud; or

(3) Intentional misrepresentation of information used to determine the senior executive officer or significant risk-taker's incentive-based compensation.

§ 303.8 Additional prohibitions for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to provide incentives that appropriately balance risk and reward for purposes of § 303.4(c)(1) only if such institution complies with the following prohibitions.

(a) *Hedging.* A Level 1 or Level 2 covered institution must not purchase a hedging instrument or similar instrument on behalf of a covered person to hedge or offset any decrease in the value of the covered person's incentive-based compensation.

(b) *Maximum incentive-based compensation opportunity.* A Level 1 or Level 2 covered institution must not award incentive-based compensation to:

(1) A senior executive officer in excess of 125 percent of the target amount for that incentive-based compensation; or

(2) A significant risk-taker in excess of 150 percent of the target amount for that incentive-based compensation.

(c) *Relative performance measures.* A Level 1 or Level 2 covered institution must not use incentive-based compensation performance measures that are based solely on industry peer performance comparisons.

(d) *Volume driven incentive-based compensation.* A Level 1 or Level 2 covered institution must not provide incentive-based compensation to a covered person that is based solely on transaction revenue or volume without regard to transaction quality or compliance of the covered person with sound risk management.

§ 303.9 Risk management and controls requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will be considered to be compatible with effective risk management and controls for purposes of § 303.4(c)(2) only if such institution meets the following requirements.

(a) A Level 1 or Level 2 covered institution must have a risk management framework for its incentive-based compensation program that:

(1) Is independent of any lines of business;

(2) Includes an independent compliance program that provides for internal controls, testing, monitoring, and training with written policies and procedures consistent with § 303.11; and

(3) Is commensurate with the size and complexity of the covered institution's operations.

(b) A Level 1 or Level 2 covered institution must:

(1) Provide individuals engaged in control functions with the authority to influence the risk-taking of the business areas they monitor; and

(2) Ensure that covered persons engaged in control functions are compensated in accordance with the achievement of performance objectives linked to their control functions and independent of the performance of those business areas.

(c) A Level 1 or Level 2 covered institution must provide for the independent monitoring of:

(1) All incentive-based compensation plans in order to identify whether those plans provide incentives that appropriately balance risk and reward;

(2) Events related to forfeiture and downward adjustment reviews and decisions of forfeiture and downward adjustment reviews in order to determine consistency with § 303.7(b); and

(3) Compliance of the incentive-based compensation program with the covered institution's policies and procedures.

§ 303.10 Governance requirements for Level 1 and Level 2 covered institutions.

An incentive-based compensation arrangement at a Level 1 or Level 2 covered institution will not be considered to be supported by effective governance for purposes of § 303.4(c)(3), unless:

(a) The covered institution establishes a compensation committee composed solely of directors who are not senior executive officers to assist the board of directors in carrying out its responsibilities under § 303.4(e); and

(b) The compensation committee established pursuant to paragraph (a) of this section obtains:

(1) Input from the risk and audit committees of the covered institution's board of directors, or groups performing similar functions, and risk management function on the effectiveness of risk measures and adjustments used to balance risk and reward in incentive-based compensation arrangements;

(2) A written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the management of the covered institution and developed with input from the risk and audit committees of its board of directors, or groups performing similar functions, and from the covered institution's risk management and audit functions; and

(3) An independent written assessment of the effectiveness of the covered institution's incentive-based compensation program and related compliance and control processes in providing risk-taking incentives that are consistent with the risk profile of the covered institution, submitted on an annual or more frequent basis by the internal audit or risk management function of the covered institution, developed independently of the covered institution's management.

§ 303.11 Policies and procedures requirements for Level 1 and Level 2 covered institutions.

A Level 1 or Level 2 covered institution must develop and implement policies and procedures for its incentive-based compensation program that, at a minimum:

(a) Are consistent with the prohibitions and requirements of this part;

(b) Specify the substantive and procedural criteria for the application of forfeiture and clawback, including the process for determining the amount of

incentive-based compensation to be clawed back;

(c) Require that the covered institution maintain documentation of final forfeiture, downward adjustment, and clawback decisions;

(d) Specify the substantive and procedural criteria for the acceleration of payments of deferred incentive-based compensation to a covered person, consistent with § 303.7(a)(1)(iii)(B) and (a)(2)(iii)(B);

(e) Identify and describe the role of any employees, committees, or groups authorized to make incentive-based compensation decisions, including when discretion is authorized;

(f) Describe how discretion is expected to be exercised to appropriately balance risk and reward;

(g) Require that the covered institution maintain documentation of the establishment, implementation, modification, and monitoring of incentive-based compensation arrangements, sufficient to support the covered institution's decisions;

(h) Describe how incentive-based compensation arrangements will be monitored;

(i) Specify the substantive and procedural requirements of the independent compliance program consistent with § 303.9(a)(2); and

(j) Ensure appropriate roles for risk management, risk oversight, and other control function personnel in the covered institution's processes for:

(1) Designing incentive-based compensation arrangements, and determining awards, deferral amounts, deferral periods, forfeiture, downward adjustment, clawback, and vesting; and

(2) Assessing the effectiveness of incentive-based compensation arrangements in restraining inappropriate risk-taking.

§ 303.12 Indirect actions.

A covered institution must not, indirectly or through or by any other person, do anything that would be unlawful for such covered institution to do directly under this part.

§ 303.13 Enforcement.

The provisions of this part shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this part shall be treated as a violation of subtitle A of title V of such Act.

Dated: April 26, 2016.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, May 2, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Dated at Washington, DC this 26th day of April, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: April 21, 2016.

By the Federal Housing Finance Agency.

Melvin L. Watt,

Director.

By the National Credit Union Administration Board on April 21, 2016.

Gerard Poliquin,

Secretary of the Board.

Dated: May 6, 2016.

By the Securities and Exchange Commission.

Robert W. Errett,

Deputy Secretary.

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Department of Transportation

Federal Railroad Administration

49 CFR Part 214

Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR); Final Rule

perceived shortcomings in the railroads' rules, emphasize the importance of compliance, or give FRA a more direct means of promoting compliance. A detailed description of the background and history of FRA's RWP regulation is found in the NPRM.

IV. RSAC Overview

As explained in the preamble to the NPRM, FRA's RSAC provides a forum for collaborative rulemaking and program development. The RSAC includes representatives from all of the railroad industry's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties.[2] When appropriate, FRA assigns a task to the RSAC, and, after consideration and debate, the RSAC may accept or reject the task. If the task is accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop consensus recommendations to FRA for action on the task. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration.

When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC members, the proposal is formally recommended to the FRA Administrator. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level discussing the issues and options and drafting the consensus recommendation, FRA often adopts the RSAC recommendation.

FRA is not bound to follow the RSAC's recommendation, and the agency exercises its independent judgment on whether a recommendation achieves the agency's regulatory goal(s), is soundly supported, and is consistent with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. FRA explains any such variations in the rulemaking. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

V. RWP RSAC Working Group

As detailed in the NPRM, on January 26, 2005, the RSAC formed the RWP Working Group (Working Group)[3] to consider specific actions to advance the on-track safety of railroad employees and their contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation. FRA tasked the Working Group with reviewing the existing RWP regulation, technical bulletins, and a safety advisory dealing with on-track safety for roadway workers, and, as appropriate, to consider enhancements to the existing rule to further reduce the risk of serious injury or death to roadway workers.

The Working Group held 12 multi-day meetings and worked diligently to reach consensus on 32 separate items. The Working Group's consensus recommendations included adding or amending various provisions in the following sections in part 214, subpart C:

- § 214.7—add two new definitions; revise an existing definition; and incorporate three other existing definitions from part 236.
- § 214.309—revision to address on-track safety manual for lone workers and changes to the manual.
- § 214.315—requirement that on-track safety job briefings include information concerning adjacent tracks and accessibility of the roadway worker in charge.
- § 214.317—new paragraph to formalize procedures for roadway workers to walk across tracks; new paragraph for on-track weed spray and snow blowing operations on non-controlled track.
- § 214.321—new paragraph to address the use of work crew numbers.
- § 214.323—clarification of foul time provision prohibiting roadway worker in charge or train dispatcher from permitting movements into working limits.
- § 214.324—new section called "verbal protection" for abbreviated working limits within manual interlocking and controlled points.
- § 214.327—three new paragraphs to formalize the following methods of making non-controlled track inaccessible: Occupied locomotive as a point of inaccessibility; block register territory; and, the use of track bulletins to make track inaccessible within yard limits.
- § 214.335—revision of paragraph (c) concerning on-track safety for tracks adjacent to occupied tracks. Key elements are the elimination of "large-scale" and the addition of a new requirement for on-track safety for tracks adjacent to occupied tracks for specific work activities (addressed in separate rulemaking proceeding as discussed below).
- § 214.337—allow the use of individual train detection at controlled points consisting only of signals and a new paragraph limiting equipment/materials that can only be moved by hand by a lone worker.
- § 214.339—revision of this section concerning train audible warnings to address operational considerations.
- § 214.343—new paragraph to ensure contractors receive requisite training/and or qualification before engaged by a railroad.
- § 214.345—lead-in phrase requiring all training to be consistent with initial or recurrent training, as specified in § 214.343(b).
- §§ 214.347, 214.349, 214.351, 214.353, and 214.355—consistent requirements for various roadway worker qualifications and a maximum 24-month time period between qualifications.

On June 26, 2007, the full RSAC voted to accept the above recommendations presented by the Working Group. In addition to the above, the Working Group worked on a proposal to use electronic display of authorities as a provision under exclusive track occupancy. The Working Group developed lead-in regulatory text and agreed to some conceptual items. When circulated back to the Working Group prior to the full RSAC vote, however, technical issues were raised that could not be resolved in the time available. Accordingly, in the NPRM, FRA addressed the electronic display issue, and certain other issues the Working Group did not reach consensus on, and FRA is addressing certain of those items in this final rule. Other items the Working Group did not reach consensus on include:

- § 214.7—new term and definition for a "remotely controlled hump yard facility."
- § 214.7—revision to the definition for the term "roadway worker."
- § 214.317—use of tunnel clearing bays.
- § 214.321—track occupancy after passage of a train.
- § 214.329—removal of objects from the track under train approach warning.
- § 214.336—passenger station platform snow removal and cleaning.
- § 214.337—consideration of allowance for the use of individual train detection at certain types of manual interlockings or controlled points.
- § 214.353—qualification of employees other than roadway workers who directly provide for the on-track safety of a roadway work group.

As described further in either the preamble to the NPRM or below, FRA is not addressing all of these non-consensus items in this final rule. This rule does not address revisions to the terms "roadway worker" or "remotely controlled hump yard facility," the removal of objects from the track under train approach warning, the addition of a new "verbal protection" section, or passenger station platform snow removal and cleaning, but the remaining non-consensus items this rule does address are discussed in detail in the relevant Section-by-Section analyses below.

VI. Proceedings Concerning On-Track Safety Procedures for Adjacent Tracks

As mentioned above, the Working Group reached consensus on items that dealt specifically with adjacent-track on-track safety issues. In light of roadway worker fatality trends involving adjacent track protections, and to expedite lowering the safety risk associated with roadway workers fouling adjacent tracks, FRA undertook a rulemaking proceeding to separately address the adjacent-track safety issues the Working Group contemplated. FRA then published an NPRM addressing adjacent-track on-track safety on July 17, 2008 (73 FR 41214), but formally withdrew the NPRM on August 13, 2008 (73 FR 47124). FRA then published a revised NPRM on November 25, 2009 (74 FR 61633), and a final rule on November 30, 2011 (76 FR 74586). FRA received two petitions for reconsideration of the final rule, and five public comments on those petitions for reconsideration. *See* Docket No. FRA–2008–0059, available at *www.regulations.gov*. On December 27, 2013, FRA issued an amended final rule which made certain modifications to the adjacent track final rule in light of issues the petitions for reconsideration raised. 79 FR 1743. The final rule, as amended, became effective on July 1, 2014. The provisions in that rulemaking have limited interaction with the miscellaneous revisions in this final rule amending subpart C. However, as a result of the adjacent track rulemaking, the subpart C section numbering in this final rule for the RSAC's consensus recommendations is slightly different from that recommended. Any relevant numbering changes are noted in the Section-by-Section analysis below.

VII. Proceedings in This Rulemaking to Date

On August 20, 2012, FRA published an NPRM in the **Federal Register** proposing nearly all the RSAC consensus recommendations the adjacent track rulemaking did not address and requesting public comment on a variety of other proposals. 77 FR 50324. Noteworthy consensus recommendations proposed in the NPRM include: A job briefing requirement regarding the accessibility of the roadway worker in charge; the adoption of procedures for how roadway workers walk across railroad track; a new allowance for railroad's conducting on-track snow removal and weed spraying operations; a clarification of the existing "foul time" provision; a new "verbal protection" provision; three new permissible methods of establishing working limits on non-controlled track; the expanded use of individual train detection at controlled points; an amended provision governing audible warnings by trains for roadway workers; and, clarification of training requirements for roadway workers.

The NPRM also addressed items on which the Working Group did not reach consensus and certain miscellaneous other revisions. These items include: electronic display of track authorities, NTSB Safety Recommendation R–08–06 (redundant signal protections), using certain tunnel niches as a place of safety for roadway workers; a new provision for the removal of objects from railroad track when train approach warning is used as the method of on-track safety; amendments to the existing provision governing the qualification of roadway workers in charge (RWIC); a new section addressing passenger station platform snow removal; a new provision governing using "occupancy behind" or "conditional" working limit authorities; the phase-out of using definite train location and informational train line-ups, potential amendments to the existing RWP and blue signal protection requirements for work performed within shop areas, and, using other railroad track as a place of safety when train approach warning is used as the method of on-track safety. Finally, the NPRM also proposed to delete certain incorporations by reference of personal protective equipment standards in FRA's Bridge Worker Safety Standards at subpart B of part 214, and instead cross reference OSHA's regulations on the same point.

VIII. Public Comments Received

FRA received 14 comments in response to the NPRM. Commenters include: AAR, APTA, ASLRRA, BMWED and BRS (jointly; BMWED/BRS comment), Kimberly Clark Professional, Metro-North and LIRR jointly (MTA comment), New Jersey Transit (NJT), NTSB, Reflective Apparel Factory, SEPTA, and 3M Occupational Health and Environmental Safety Division (3M). FRA also received two comments from individuals, and an additional late comment from BMWED. Section VIII.A below contains a summary and analysis of the comments FRA received that FRA is not adopting in this final rule. Section VIII.B below addresses the effective date of the final rule. Section VIII.C below contains a discussion of the general comments FRA received in response to the NPRM. Section IX contains the Section-by-Section discussion of the final rule, and addresses comments received in response to the NPRM on

[2] RSAC member groups are: American Association of Private Railroad Car Owners (AAPRCO); American Association of State Highway and Transportation Officials (AASHTO); American Chemistry Council; American Petroleum Institute; American Public Transportation Association (APTA); American Short Line and Regional Railroad Association (ASLRRA); American Train Dispatchers Association (ATDA); Association of American Railroads (AAR); Association of Railway Museums; Association of State Rail Safety Managers (ASRSM); Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division (BMWED); Brotherhood of Railroad Signalmen (BRS); Chlorine Institute; Federal Transit Administration (FTA);* Fertilizer Institute; High Speed Ground Transportation Association (HSGTA); Institute of Makers of Explosives; International Association of Machinists and Aerospace Workers; International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), including the Sheet Metal Workers' International Association (SMWIA) and United Transportation Union (UTU); International Brotherhood of Electrical Workers (IBEW); Labor Council for Latin American Advancement (LCLAA);* League of Railway Industry Women;* National Association of Railroad Passengers (NARP); National Association of Railway Business Women;* National Conference of Firemen & Oilers; National Railroad Construction and Maintenance Association (NRCMA); National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board (NTSB);* Railway Supply Institute (RSI); Safe Travel America (STA); Secretaria de Comunicaciones y Transporte (Mexico);* Tourist Railway Association, Inc.; Transport Canada;* Transport Workers Union of America (TWU); Transportation Communications International Union/BRC (TCIU/BRC); and Transportation Security Administration (TSA).* *Indicates associate membership.

[3] The Working Group included members representing the following organizations: Amtrak; APTA; ASLRRA; ATDA; AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Limited (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), The Kansas City Southern Railway Company (KCS), Norfolk Southern Corporation railroads (NS), and Union Pacific Railroad Company (UP); Belt Railroad of Chicago; BLET; BMWED; BRS; FRA; Indiana Harbor Belt Railroad (IHB); Long Island Rail Road (LIRR); Metro-North Commuter Railroad Company (Metro-North); Montana Rail Link; NRC; Northeast Illinois Regional Commuter Railroad Corporation (Metra); RailAmerica, Inc.; Southeastern Pennsylvania Transportation Authority (SEPTA); UTU; and Western New York and Pennsylvania Railroad (WNY&P).

each respective section of the regulation.

A. Comments on NPRM Proposals Not Included in Final Rule

1. Passenger Station Platform Snow Removal and Cleaning

In the NPRM, FRA proposed a new § 214.338 addressing snow removal and cleaning on passenger station platforms. As proposed, under certain circumstances a single RWIC could oversee several "station platform work coordinators" each responsible for directing the on-track safety of a roadway worker or workgroup performing snow removal or cleaning at passenger stations. FRA intended the proposal to address issues associated with snow removal and routine maintenance operations, and to ensure roadway worker safety while facilitating railroads' ability to carry out these tasks on passenger stations platforms.

FRA received seven comments on this proposal. NTSB's comment opposed FRA's proposal, stating it would detract from safety. The BMWED/BRS comment also opposed the proposal, asserting it would weaken existing safety protections and that the existing regulation already facilitates timely removal of snow from passenger station platforms. AAR's comment indicated proposed § 214.338 is confusing and suggested changes to the proposal (including removal of the 79 mph speed limitation and increased exceptions for snow removal on crosswalks). APTA also opposed FRA's proposal, and specifically noted it disagreed with FRA's stated position that part 214 applies to routine passenger station maintenance activities. APTA and BMWED/BRS's comment also opposed this provision's related training section (proposed § 214.352). MTA opposed FRA's proposal, citing an alleged lack of benefits and implying FRA's NPRM preamble discussion attempted to expand the existing requirements of part 214. SEPTA commented that snow removal and maintenance activities do fall under the scope of existing part 214's on-track safety requirements and supported the proposal. NJT commented that it successfully utilizes snow removal procedures like those proposed on the Northeast corridor, but stated the proposed 79 mph speed limit would impose financial burdens on the railroad with no resulting safety benefit.

After evaluating the issue and comments received, FRA is not adopting proposed § 214.338 in this final rule. After recent winters in which many States received heavy snowfalls, FRA's evaluation of this issue indicates the existing regulation is not problematic. Thus, FRA concludes the proposed amendments are not necessary. Further, several commenters opposed all or parts of FRA's proposal, with two commenters asserting that adopting the proposal would decrease safety. Because FRA is not adopting proposed § 214.338 in this final rule, FRA is not adopting that provision's related training at proposed § 214.352. Similarly, FRA is not adopting the proposed revisions to existing § 214.329(a) or to § 214.7's definition of the term "watchmen/lookouts" that both related to the sight distance exception of proposed § 214.338.

While FRA is not including the station platform snow removal and cleaning proposal in this final rule, FRA believes it is important to clarify that snow removal activities involving railroad employees or contractors fouling track are subject to the requirements of existing part 214. The definition of a roadway worker includes employees or contractors to a railroad who perform maintenance of roadway or roadway facilities on or near track, or with the potential of fouling a track, which includes snow removal activities. Whether a roadway worker sweeps snow from a switch, a signal appliance, or at a passenger station, if the roadway worker is fouling track (or could potentially foul the track), the risk of injury or death to the roadway worker is the same. FRA recognizes the risks of fouling track may be somewhat mitigated when snow removal is conducted on elevated station platforms (railroad passengers safely occupy the same area where these activities occur). However, not all station platforms are high platforms, and often roadway workers face risks when they foul track with their bodies or equipment while removing snow or performing other routine maintenance activities (*e.g.*, a roadway worker clearing snow from an outside station platform may foul the track with his or her shovel). Before receiving the comments, FRA believed industry understood part 214 applies to snow removal activities. For example, in 2011, Amtrak petitioned FRA for relief from part 214's definition of "fouling a track" when hand tools are used to remove snow from a station platform's tactile warning area. *See* Docket No. FRA 2011–0077, available at *www.regulations.gov*. As noted in BMWED/BRS's comment, FRA granted that waiver.

In the NPRM, FRA also requested comment on whether station platform work coordinators should be required to wear highly visible garments conforming to the standards of the American National Standards Institute/International Safety Equipment Association. In response, APTA, BMWED/BRS, 3M, Kimberly-Clark Professional, the Reflective Apparel Factory, and NTSB commented. The BMWED/BRS commented that individual railroads should determine the selection and their employees' use of highly visible protective equipment. NTSB commented that most railroads currently require roadway workers to wear highly visible vests, and, because of the low visibility conditions that typically exist during snow removal operations on station platforms, FRA should require highly visible safety apparel for all work performed in those conditions. APTA's comment supported using high visibility apparel to help differentiate passengers on the platform from workers, but stated it did not support considering these workers "roadway workers." Kimberly-Clark Professional, the Reflective Apparel Factory, and 3M all expressed general support for a highly visible garment requirement for station platform work coordinators. As discussed above, FRA is not adopting proposed § 214.338 in this final rule. Accordingly, FRA is not adopting a highly visible garment requirement. As noted in NTSB's comment, FRA understands most railroads already require roadway workers to wear highly visible garments.

2. Verbal Protection

Consistent with a recommendation of the Working Group, in the NPRM, FRA proposed new § 214.324, designed to enable roadway workers to establish working limits using "verbal protection." In the NPRM, FRA explained that by proposing to adopt the Working Group's "verbal protection" recommendations, it intended to address discrepancies discussed by the Working Group regarding how on-track safety terminology and use varies in different parts of the country. As proposed, verbal protection nearly mirrored the requirements of foul time. For example, as proposed, if a RWIC established working limits utilizing either verbal protection or foul time, he or she would not have to copy a written authority and maintain possession of it while working limits were in effect. Instead, the RWIC would only have to correctly repeat back the applicable working limits information to the train dispatcher or control operator. The primary difference between verbal protection as proposed and the existing rule allowing establishment of working limits via foul time is that under verbal protection, a RWIC could authorize on-track equipment and trains to move into and within working limits. Under existing § 214.323, foul time can be utilized both within and outside of manual interlockings or controlled points, but trains and on-track equipment are prohibited from moving into working limits until the roadway worker who obtained the foul time reports clear of the track.

In the NPRM, FRA requested comment on whether a RWIC using verbal protection to establish working limits should be required to make and maintain a copy of the working limits information. FRA noted that such a requirement would ensure a RWIC could reference a written document if any question regarding the working limits arose. FRA believes this would be particularly important when a RWIC utilizing verbal protection is asked to clear track to permit trains or other on-track equipment to move through his or her working limits and then resume work.

In response to this request for comment, FRA received comments from AAR, MTA, and the BMWED/BRS. AAR's comment stated the rule should not require a RWIC to make and maintain a written copy of working limits when using verbal protection, as there is no "significant opportunity for confusion if the procedures for verbal protection are followed." AAR further stated the use of a written authority would defeat the purpose of verbal protection. MTA's comment made the same point and added that requiring a RWIC to copy the information could potentially distract that RWIC. BMWED/BRS's comment indicated this proposal would exclude lone workers from being able to establish verbal protection working limits (due to § 214.7's proposed definition of the term "roadway worker in charge") and advocated requiring the RWIC to make a written copy of working limits authority via verbal protection. BMWED/BRS indicated that because an RWIC could authorize train and on-track equipment movements into working limits authorized by verbal protection, a written document would enhance safety and eliminate mental errors regarding the working limits.

In light of the comments received, FRA again reviewed the records of the Working Group's discussions on verbal protection. Those records indicate the Working Group may have primarily intended verbal protection as a method for roadway maintenance machines to occupy and move through interlockings and controlled points and to perform short duration work as necessary. FRA notes that existing part 214 already accommodates these activities through the establishment of working limits via foul time (§ 214.323) and exclusive track occupancy (§ 214.321). Existing § 214.323 permits the establishment of foul time working limits within a manual interlocking or controlled point, and permits the working limits to be established verbally by the RWIC and dispatcher. Although part 214 does not specify any time limit on the duration of foul time, typically, foul time is used for short durations. If longer duration work needs to be performed, and a RWIC desires to let trains through working limits without giving up his or her authority, the RWIC can use the exclusive track occupancy procedures at existing § 214.321. Further, FRA notes that part 214 does not always require the establishment of working limits to move roadway maintenance machines through an interlocking or controlled point. Existing § 214.301(c) allows roadway maintenance machine movements in travel mode (not performing work such that working limits are required) to do so under the authority of a dispatcher or control operator. Because existing part 214 already provides the flexibility FRA intended the proposal for verbal protection to achieve, and consistent with AAR's comment, FRA believes requiring a RWIC to write down his or her working limits information would make verbal protection somewhat indistinguishable from existing exclusive track occupancy procedures under § 214.321.

FRA also believes that in some instances using verbal protection could raise safety issues if not utilized as intended (*e.g.*, a roadway work group's establishment of working limits within an interlocking to perform work requiring the group to repeatedly clear and then re-occupy track to let trains travel through working limits). After careful consideration of this issue, FRA strongly believes that if a work group wants to let trains or other on-track equipment travel through working limits without releasing its authority, the RWIC should have a written (or electronic) document to refer to containing all relevant information for that authority (*e.g.*, the exact limits of the authority, track number(s)). The existing exclusive track occupancy procedures at § 214.321 provide for such a document for the work group to reference.

FRA understands the operating rules of railroads may utilize different terminology than exists in part 214 (*e.g.*, some railroads' rules may refer to § 214.321's exclusive track occupancy requirements as "foul time"). FRA also understands some railroads' rules may differ from part 214 in not permitting using certain forms of working limits within the limits of an interlocking or controlled point. However, existing part 214 has no such restrictions. A new verbal protection section would not create any flexibility in establishing working limits within a manual interlocking or controlled point that part 214 does not already provide, and could potentially introduce safety concerns that do not currently exist if not used as the Working Group seems to have originally intended. Thus, FRA declines to adopt the proposed "verbal protection" section in this final rule.

3. Physical Characteristics Qualification for Watchmen/Lookouts and Lone Workers

Existing § 214.353 governs the qualification and training of RWICs and includes training on the "relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified." However, similar training and qualification is not required for lone workers or watchmen/lookouts. *See* §§ 214.347 and 214.349. In the NPRM, FRA requested comment on whether lone workers and watchman/lookouts should be trained and qualified on the physical characteristics of a territory similar to the qualification requirement for RWICs. Lone workers are similar to RWICs because they establish on-track safety, but only for themselves rather than for an entire roadway work group like an RWIC. FRA sought comment on this issue to determine if such a requirement could potentially improve the safety of lone workers and better enable watchmen/lookouts to provide effective train approach warning at particular locations.

BMWED/BRS, AAR, SEPTA, NJT, and MTA each commented on this proposal. The BMWED/BRS comment supported including physical characteristics qualification and training for lone workers, noting they must be able to establish working limits when necessary, and be familiar with their assigned territory. Both BMWED/BRS and SEPTA opposed physical characteristics training for watchmen/lookouts because such employees work under the supervision of a RWIC who must be qualified on the physical characteristics and have cost concerns. Noting the lack of accidents attributed to roadway workers lacking familiarity with the physical characteristics of a territory, AAR's comment opposed this proposal, stating there is no evidence to support the requirement and citing cost concerns. NJT's comment stated lone workers already have to be qualified on

physical characteristics to foul track. FRA agrees with NJT to the extent a railroad chooses to require physical characteristics training to consider a lone worker "qualified," as that term is defined at existing § 214.7. With regard to watchmen/lookouts, NJT's comment stated that physical characteristics qualification would not always help an employee determine proper sight distances and such a requirement would not significantly enhance safety. Rather, NJT suggested FRA should clarify job briefing requirements when roadway work groups utilize watchmen/lookouts. MTA's comment stated it does not believe watchmen/lookouts should be required to have physical characteristics qualification.

After evaluating the comments, FRA is not adopting either the lone worker or watchmen/lookouts physical characteristics qualification requirement. First, no commenters supported the proposal on watchmen/lookouts, pointing to cost prohibitions, the fact that each roadway work group is already required to have a RWIC qualified on the physical characteristics, and issues with logistics and efficiency. Although some commenters did support such a requirement applying to lone workers, FRA is not aware of accident data to offset the costs such a requirement might entail and does not believe that specifically mandating the physical characteristics qualification of lone workers would yield any real safety benefit. As a practical matter, as NJT's comment recognized, lone workers are often already qualified on the physical characteristics of a territory, as they need to be conversant in which type of protection (working limits versus individual train detection) is appropriate at any given work location. FRA also notes that under the existing RWP regulation lone workers always have the absolute right to establish working limits when fouling track, which eliminates safety concerns regarding the use of individual train detection if the lone worker is not comfortable using that form of on-track safety at any location. *See* 49 CFR 214.337(b).

4. Removal of Objects by Hand Under Train Approach Warning

Consistent with the Working Group's consensus recommendation, in the NPRM FRA proposed to add new paragraph (g) to § 214.337. Paragraph (g) is adopted in this final rule and prohibits lone workers from utilizing individual train detection to provide on-track safety when using a roadway maintenance machine, equipment, or material that cannot be readily removed from the track by hand. As noted in the NPRM, the Working Group also discussed the use of train approach warning (§ 214.329) by roadway work groups using roadway maintenance machines, equipment, or material not easily removed from the track. Although the Working Group did not reach consensus on this point, because the existing RWP regulation is silent on this issue, FRA proposed in the NPRM new § 214.329(h). FRA intended paragraph (h) to prohibit using train approach warning as the form of on-track safety when a roadway work group is using equipment they cannot easily remove from the track and to clarify the establishment of working limits is necessary in such situations. FRA is not adopting proposed § 214.329(h) in this final rule for the reasons explained below.

NTSB and BMWED/BRS comments opposed adding proposed paragraph (h) to § 214.329. NTSB stated the purpose of existing § 214.329 governing train approach warning provided by watchmen/lookouts is to ensure roadway workers can occupy a place of safety not less than 15 seconds before a train arrives. Further, NTSB notes the section is intended to protect roadway workers by allowing them to immediately move to occupy a place of safety when train approach warning is provided, not to allow the coordination of equipment removal.

Like NTSB's comments, BMWED/BRS commented that train approach warning is limited to warning persons to clear the track and is not intended to protect equipment fouling a track. BMWED/BRS noted that issues with removing equipment from track have not arisen in situations involving the train approach warning regulation. BMWED/BRS explained that if a roadway worker is holding a hand tool or a small handheld power tool, he or she will normally carry that tool with them to the place of safety. BMWED/BRS argued proposed paragraph (h) is unsafe, would increase the risk of roadway workers being struck by trains or on-track equipment, and that "FRA should not require roadway workers to do anything except immediately move to a predetermined place of safety upon receiving a train approach warning."

After FRA published the NPRM, on January 6, 2014, the rail industry's Fatality Analysis of Maintenance-of-Way Employees and Signalmen (FAMES) Committee[4] published a report analyzing fatal accidents which occurred under train approach warning.[5] The report noted that three of the 10 fatal accidents analyzed, which occurred when roadway workers used train approach warning to establish on-track safety, resulted from watchmen/lookouts not being fully focused on the task of detecting approaching trains. The FAMES report emphasized compliance with certain practices required by existing § 214.329. That existing regulatory provision requires watchmen/lookouts to devote their full attention to detecting the approach of trains and communicating the appropriate warnings to roadway workers. That section further prohibits assigning any other duties to the watchman/lookout while that individual is functioning as a watchmen/lookout. After careful consideration of the comments received and the findings of the FAMES report, FRA believes that emphasis on the existing requirements of § 214.329 and continued vigilant enforcement efforts are the best methods to ensure roadway worker safety when train approach warning is used to establish on-track safety. Accordingly, FRA is not adopting proposed paragraph (h) in this final rule. FRA believes the commenters raised valid points regarding the safety of roadway workers and that the regulation is intended to protect roadway workers, not equipment. FRA also agrees a roadway worker's first responsibility upon receiving train approach warning is to move to occupy a place of safety. While FRA intended this proposal to improve safety, it appears safety is best improved by reinforcing strict compliance with existing § 214.329. That section, if followed, provides for effective on-track safety for roadway workers.

B. Effective Date

In the NPRM, FRA requested comment regarding the appropriate effective date of this final rule. SEPTA, MTA, BMWED/BRS, and AAR submitted comments in response to this request. SEPTA agreed with the NPRM's preamble discussion noting that the effective date of this final rule should consider railroad training schedules. MTA commented that FRA should consider the time needed for the preparation of training materials to select an effective date. MTA's comment also indicated that if this final rule required certain employees to be trained

[4] The FAMES Committee consists of safety representatives from a cross section of railroad labor, railroad management, and federal regulators. FAMES analyzed all fatalities and selected related incidents to make recommendations to reduce the risk of future occurrences and eliminate fatalities to roadway workers.

[5] *http://www.fra.dot.gov/eLib/Details/L04902.*

on both part 218's blue signal protections and subpart C's roadway worker protections, additional time for developing training would be necessary. FRA is not adopting a requirement that employees be trained on the protections in both part 218 (blue signal) and part 214 (on-track safety) in this final rule.

BMWED/BRS requested the effective date to be timed to coincide with the effective date of the adjacent track final rule. However, that rule already took effect on July 1, 2014. AAR's comment urged FRA to choose an effective date providing sufficient time to allow for the preparation of training materials for training classes.

In light of the comments received and consideration of the safety benefits to be gained from implementation of this rule, the effective date of this final rule is April 1, 2017. As this final rule is being published in the first half of 2016, railroads have adequate time to adjust training materials used for training classes to be conducted in the first quarter of 2017, or during the time period when annual training is typically conducted for roadway workers. Industry practice is for railroads to finalize their annual rules instruction programs in the fourth quarter of the calendar year, and then to actually instruct their employees in the first quarter of the next calendar year. Based on the implementation date chosen, railroads will not have to alter the timing of their instruction programs for the rule to take effect after the first quarter of 2017.

C. Discussion of General Comments Received

SEPTA recommended that FRA limit this rulemaking to issues the RSAC addressed. As noted in the NPRM and discussed above, the Working Group meetings that form the basis for much of this final rule took place between 2005 and 2007. Since these meetings, FRA focused its efforts and resources on the adjacent track rulemaking discussed above and other safety issues and Congressional mandates (most notably implementation of the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Division A, 122 Stat. 4848) (RSIA), which required significant new FRA regulatory efforts). In the interim time, however, FRA continued to address safety issues related to roadway worker protection in general, including NTSB Safety Recommendation R–08–06. Therefore, issuing a regulation not taking into consideration the latest relevant developments and safety issues would be an inefficient and ineffective use of FRA's resources.

APTA requested that FRA publish specific proposed rule text to comment on so the public can appropriately focus their comments and increase the effectiveness of public comments. The Administrative Procedure Act (*see* 5 U.S.C. 553(b)(3)), does not require an agency to propose specific regulatory text in proposed rules, but instead allows an agency to provide "a description of the subjects and issues involved." Nevertheless, in the NPRM, FRA proposed specific regulatory text for almost all its proposals. In this final rule, FRA is adopting three of the items proposed without specific regulatory text (tunnel niches (§ 214.317(d)), blue signal allowances (§ 214.318), and redundant signal protections (§ 214.319(b)). FRA believes the public comments received addressing the benefits and/or drawbacks and potential burdens of these proposals sufficiently inform FRA's reasonable regulatory decisions, particularly in light of the past RSAC discussions. Further, on certain proposals, such as whether FRA should permit using blue signal protections for certain maintenance performed within locomotive and car shop areas, FRA reasonably sought comments broadly addressing how best to implement the proposals if adopted in a final rule (*see* new § 214.318 below). Last, AAR commented that the NPRM's accompanying cost-benefit analysis relied on business benefits. AAR stated that where NPRM proposals would impose burdens on the railroad industry, to adopt those provisions in a final rule, the proposals must be modified if there are no offsetting safety benefits. FRA addresses this comment further in the Regulatory Impact Analysis (RIA) accompanying this rule.

IX. Section-by-Section Analysis

Section 214.7 Definitions

In the NPRM, FRA proposed amending the existing part 214 definitions to add both new definitions and revise existing definitions. In this final rule, FRA is adding new definitions for the following terms: controlled point; interlocking, manual; maximum authorized speed; on-track safety manual; and roadway worker in charge (RWIC). FRA is also amending part 214's existing definitions for "effective securing device" and "watchman/lookout."

Consistent with the consensus recommendation of the Working Group, in the NPRM, FRA proposed to add the same definition of "controlled point" to part 214 as in FRA's signal regulations at 49 CFR 236.782. In this final rule, FRA is adopting the definition as proposed. As explained in the NPRM, a definition of "controlled point" in part 214 is necessary because existing § 214.337 prohibits using individual train detection by a lone worker inside the limits of a "controlled point." *See* § 214.337(c)(3). However, the term "controlled point" is not defined in the existing RWP regulation. As also explained in the NPRM, in 2005, in response to interpretation issues, FRA issued Technical Bulletin G–05–29. Technical Bulletin G–05–29 adopted § 236.782's definition of "controlled point" and that definition is used in the RWP regulation today.

AAR and BMWED/BRS commented on this proposal. AAR expressed concern that under the proposed definition any location with a remote controlled power switch would be considered a controlled point. AAR stated that absolute signals are not always at these locations (*e.g.*, dual-control switches that may be manipulated either by hand or remotely, typically by a train dispatcher or control operator) in non-signaled track warrant control territory. In addition, AAR stated the practical effect of this definition would be that railroads could not use individual train detection where there is a remote controlled power switch since it only permits using individual train detection outside the limits established by a controlled point. AAR also expressed concern that switch heaters, snow blowers, signal call lights, blue signal protection, electric switch locks, and bridges can be "controlled" by dispatchers via the control system, but these locations are not considered "controlled points" as commonly understood in the industry. AAR urged FRA to delete the words "and/or other functions of a traffic control system" from the definition of "controlled point" in this final rule.

BMWED/BRS expressed concern about allowing roadway workers to use individual train detection at power-operated switches. BMWED/BRS asserted that power-operated switches can be manipulated by a train crew from a distance resulting in injury to a roadway worker performing work on such a switch while relying on individual train detection as his or her means of on-track safety. BMWED/BRS urged FRA to prohibit lone workers from using individual train detection as a method of on-track safety while working on power-operated switches.

FRA agrees with AAR's comments to the extent that FRA did not intend to include most of the mechanisms AAR listed in the definition of "controlled point" (switch heaters, blue signal protection, snow blowers, *etc.*). FRA

disagrees, however, with regard to remote-controlled power switches and to bridges that are moveable via a control machine (by train dispatcher or control operator). FRA does intend to include those mechanisms in the definition. Under the existing regulation, a lone worker working on a moveable bridge that is a controlled point is always required to establish working limits because a lone worker using individual train detection as his or her form of on-track safety is not required to notify a train dispatcher or control operator of the work they are performing. If a lone worker used individual train detection on a moveable bridge "controlled point," the dispatcher or control operator may be unaware of the roadway worker's presence and could remotely move the bridge with the roadway worker on it, creating risk of injury or death to the roadway worker. Accordingly, FRA does not agree with AAR's comment regarding movable bridges has merit.

In the NPRM, FRA explained that power-operated switches are not generally considered interlockings or controlled points when the switches have wayside indication devices that convey the position of a switch and are operated by train crews. However, FRA further noted that if a power operated switch can be remotely operated by a control operator or dispatcher, it may be considered a "controlled point." *See* 77 FR 50333. The Working Group specifically contemplated whether to expand the allowable use of individual train detection in the otherwise prohibited "controlled point" locations, but did not reach consensus on this issue, largely for safety reasons. FRA agrees with the Working Group's concerns and does not believe it prudent to expand use of individual train detection to "controlled points" consisting of remote-controlled power switches. As explained in the original 1996 RWP final rule, using individual train detection is appropriate only in very limited circumstances. 61 FR 65959, 65971.

In response to the BMWED/BRS comment, in the NPRM, FRA addressed power-operated switches (77 FR 50333), explaining that use of individual train detection by a lone worker at power-operated switch installation locations is permitted if:

- The signals at these installations do not convey train movement authority; and
- The switch installation is not controlled by a train dispatcher or control operator, and is not part of a manual interlocking or controlled point.

FRA does not believe it prudent to expand the definition of "controlled point" to include all power-operated switches. Rather, the longstanding guidance described above from FRA Technical Bulletin G–05–11 regarding which power-operated switches constitute "controlled points," will continue to control. Lone workers performing work at these installations, or at any other location where individual train detection use is permitted, maintain the absolute right to use a form of on-track safety other than individual train detection. *See* § 214.337(b). Thus, a blanket expansion of the definition to address all power-operated switches is not justified. Upon the effective date of this final rule, the definitions of "controlled point" and "interlocking, manual" (discussed below) adopted in this rule supplant FRA Technical Bulletin G–05–29.

Consistent with the Working Group recommendation, in the NPRM FRA proposed amending the existing definition of "effective securing device" to incorporate the contents of Technical Bulletin G–05–20. In this final rule, FRA is adopting the revised definition as proposed. FRA intended to clearly identify effective securing devices and to prevent railroad employees from being injured attempting to operate a secured device. Therefore, FRA proposed to specify in the definition of "effective securing device" that any such device must be equipped with a "unique tag" clearly indicating to other railroad employees that the switch is secured by roadway workers.

AAR, BMWED/BRS, and an individual submitted comments on FRA's proposed amendment to this definition. BMWED/BRS advocated for a tag affixed to an effective securing device to be either a generic or a unique tag if the tag clearly indicates inaccessible track working limits and the railroad's rules prohibit operating in those limits except as the RWIC permits. AAR similarly commented that FRA should clarify the meaning of "unique" tag. AAR stated unique tags should be craft-specific, and not unique to an individual employee. AAR also stated that requiring an individual employee to sign the tag would be unnecessary and burdensome. Finally, an individual commenter asked if an RWP-specific tag would suffice or whether FRA's proposed amendment would require an additional "unique" tag.

FRA is adopting the revised definition as proposed. In response to the comments received, FRA clarifies that the tag does not have to be "unique" to a specific person or work gang. Rather, a craft-specific tag is considered unique.

In this final rule, as proposed in the NPRM and consistent with BMWED/BRS's comment supporting the proposal, FRA is adopting the Working Group's recommended definition for the new term "interlocking, manual." This definition mirrors the existing definition for the same term in FRA's signal and train control regulation (§ 236.751).

Because we are not making substantive revisions in this final rule to the proposals in the NPRM for the definitions of "controlled point" or "interlocking, manual," for ease of reference, below, FRA is duplicating the table included in the NPRM, summarizing the applicability of individual train detection on various types of track arrangements:

Track arrangement	Individual train detection permitted
Controlled point/manual interlocking with switches, crossings (diamonds), or moveable bridges	No.
Controlled point with signals only—see § 214.337(c)(3)	Yes.
Manual interlocking	No.
Automatic interlocking	Yes.
Power-operated switch installations	See discussion above.

In this final rule FRA is adopting the new definition for the term "maximum authorized speed" proposed in the NPRM. Existing § 214.329(a) requires that train approach warning be given in sufficient time for a roadway worker to occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker. Existing § 214.337(c) contains a similar requirement for lone workers. However, no definition for "maximum authorized speed" exists in the current RWP regulation. Accordingly, the Working Group recommended that FRA define the term "maximum authorized speed" as the speed designated for a track in a railroad's timetable, special instructions, or bulletin. The Working Group agreed that using a temporary speed restriction as the basis to determine the appropriate train approach warning distance could pose inherent dangers. That danger can occur when someone removes a temporary restriction from a particular segment of track without notifying the roadway work group or lone worker using that temporary speed restriction so they can determine the appropriate train approach warning distance.

In response to the NPRM proposal, both NJT and BMWED/BRS comments agreed temporary speed restrictions should not be used to determine appropriate train approach warning distances and supported the proposed definition. Therefore, FRA is adopting the new definition as proposed. FRA notes this new definition also applies to the RWP requirements in the adjacent track rulemaking. *See* § 214.336.

Consistent with the consensus recommendation of the Working Group, in the NPRM, FRA proposed to define "on-track safety manual." FRA intended the proposed definition to provide clarity. FRA is adopting the definition substantially as proposed, with minor clarifying language suggested by BMWED/BRS.

As noted in the NPRM, existing § 214.309 requires each RWIC and lone worker to have with them a manual containing the rules and operating procedures governing track occupancy and protection. To clarify the materials that must be included in such a manual, FRA proposed to define the term "on-track safety manual," in part, as "the entire set of instructions designed to prevent roadway workers from being struck by trains or other on-track equipment." BMWED/BRS suggested that the definition require "the entire set of on-track safety rules and instructions" to be in the manual and to expressly state the on-track safety rules and instructions must be maintained together in one manual. FRA agrees with both of BMWED/BRS's suggestions. First, BMWED/BRS's suggested reference to "the entire set of on-track safety rules and instructions" more accurately captures the manual's required contents. Second, consistent with the existing RWP regulation, FRA intended to require that the "on-track safety manual" be a single manual. As discussed in the NPRM preamble, and in the 1996 final rule preamble BWMWED/BRS quoted in their comment, that single manual may be divided into binders (separate sections where appropriate), rather than requiring railroads to issue new manuals each time it amends a rule or issues a new rule. For example, the manual could be broken into separate sections addressing on-track safety rules, good faith challenge procedures, roadway maintenance machine procedures, and other relevant issues.

As discussed in the NPRM, FRA Technical Bulletins G–05–12 and G–05–25 both address concerns regarding the requirement to maintain on-track safety manuals. Because this final rule's adoption of a definition for "on-track safety manual" alleviates the need for Technical Bulletins G–05–12 and G–05–25, those Technical Bulletins are supplanted upon the effective date of this final rule.

Next, in the NPRM FRA proposed a definition for the term "roadway worker in charge" (RWIC). The term is used in existing § 214.321, and is also described interchangeably throughout the existing regulation as the "roadway worker responsible for the on-track safety of others," the "roadway worker designated by the employer to provide for on-track safety for all members of the group," the "roadway workers in charge of the working limits," and other similarly descriptive terms. The Working Group's consensus recommendations for this rulemaking also used the term "roadway worker in charge" in several places. However, that term is not defined in the existing regulation, and the Working Group did agree on a recommended definition of the term.

The NPRM's proposed definition of RWIC mirrored the existing definition for the term in FRA's Railroad Operating Practices Regulation (*see* § 218.93). FRA also proposed to amend numerous sections of part 214 to substitute the term "roadway worker in charge" for the wide variety of terms currently used to describe the roadway worker who is in charge of a roadway work group and establishes on-track safety for that group.

In its comments on FRA's proposed definition of RWIC, BMWED/BRS recommended that FRA revise the proposed definition to include lone workers. BMWED/BRS supported including lone workers in the definition of "roadway worker in charge" to permit a lone worker to establish on-track safety for his or her self (without unnecessary regulatory text referring to both RWICs and lone workers). Specifically, BMWED/BRS suggested adding the words "and lone workers qualified in accordance with § 214.347 for the purpose of establishing on-track safety for themselves" to the end of the proposed definition.

FRA concurs with the BMWED/BRS comment, and, in this final rule, is adopting a slightly different definition of RWIC than the suggested language. FRA is defining "roadway worker in charge" as a roadway worker who is qualified under § 214.353 to establish on-track safety for roadway work groups, and lone workers qualified under § 214.347 to establish on-track safety for themselves. Under the current regulation, lone workers can establish on-track safety for their own protection, either via individual train detection or by establishing working limits. In the NPRM, FRA did not intend to prohibit lone workers from establishing working limits for their own protection. FRA emphasizes, however, that consistent with the existing regulation, a lone worker who is qualified under § 214.347 may establish the appropriate form of on-track safety for his or herself. However, if a lone worker is establishing on-track safety for any other roadway workers, he or she must be qualified under § 214.353 as a RWIC.

Finally, FRA noted in the preamble of the NPRM that a RWIC may only perform watchman/lookout duties if the requirements of § 214.329 are met. Section 214.329(b) requires that watchmen/lookouts devote full attention to detecting the approach of trains and communicating warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts. Thus, a RWIC could not perform any other duties, such as providing direction to a roadway work group, while simultaneously serving as a watchmen/lookout. The limitation on performing other tasks while simultaneously serving as a watchman/lookout severely limits the instances when a RWIC may permissibly fill both roles.

In the NPRM, FRA proposed to amend the definition of "watchman/lookout" to account for the proposed use of station platform work coordinators and requested comment on potentially amending the existing definition to more accurately reflect the training and qualification requirements for a watchman/lookouts. In this final rule, FRA is not adopting the proposed station platform work coordinators provisions. Thus, the proposed revision to the watchman/lookout definition is unnecessary. With regard to watchman/lookout training and qualification requirements, the existing regulation defines a watchman/lookout, in part as, an employee who has been annually trained and qualified to provide train

approach warning to roadway workers of approaching trains or on-track equipment. *See* § 214.7. However, as discussed below in the Section-by-Section analysis for § 214.347, the current regulation does not specify the frequency of "periodic" qualification requirements for specific roadway worker qualifications (*e.g.*, lone worker, watchman/lookout, flagman, or RWIC qualification). Existing § 214.349(b) requires initial and periodic qualification of a watchman/lookout to be evidenced by demonstrated proficiency, mirroring the other existing additional roadway worker qualification sections. FRA requested comment on whether it should remove the word "annually" from the existing definition of "watchman/lookout" so the definition more accurately reflects both the current and any future RWP refresher qualification and training requirements and is consistent with the other existing roadway worker qualification definitions.

BMWED/BRS submitted a joint comment in response to the proposal, and BMWED, submitted its own additional late comment. Noting that the Working Group reached consensus on annual training and qualification requirements for roadway workers, in their comments, BMWED/BRS opposed removing the word "annual" from the definition of watchman/lookout.

After consideration of BMWED/BRS's comment, in this final rule FRA is removing the word "annually" from the definition of "watchman/lookout." As stated above, removing the reference to "annual" is for consistency with the definitions of the other roadway worker qualifications, and because the "periodic" qualification requirement is not considered an "annual" requirement under the RWP regulation. FRA's longstanding position since the RWP rule became effective in 1997 is that roadway worker training is an annual requirement (see Section-by-Section analysis discussion for §§ 214.343, 214.345, 214.347, 214.349, 214.351 and 214.353). As discussed in the Section-by-Section analysis for the roadway worker training sections below, the RSAC consensus recommendation was for a 24-month "periodic" re-qualification requirement, and the training standards rulemaking at 49 CFR part 243 requires a minimum three-year qualification interval. FRA is not amending the annual training requirement for watchmen/lookouts or for roadway workers generally. However, as discussed in the Section-by-Section analysis for the training sections below, FRA is adopting a definite interval for periodic re-qualification in this final rule.

The BMWED's later comment expressed concern that some railroads are not providing watchmen/lookouts with any audible or visual warning devices to provide appropriate train approach warning. The comment points out the existing definition of the term "watchman/lookout" in § 214.7 requires, in part, that roadway workers acting as watchmen/lookouts be properly equipped to provide visual and auditory warning, such as whistle, air horn, white disk, red flag, lantern, fusee. The comment urges FRA to clarify in this final rule that use of such audible and/or visible warning devices are mandatory to provide train approach warning under § 214.329. FRA concurs with the BMWED. Both the definition of watchman/lookout, and the operative train approach warning regulation at § 214.329(c) and (g), provide that watchmen/lookouts must be properly equipped to provide train approach warning. As explained in the preamble to the 1996 final rule implementing subpart C:

> [t]his section further imposes a duty upon the employer to provide the watchman/lookout employee with the requisite equipment necessary to carry out his on-track safety duties. It is intended that a railroad's on-track safety program would specify the means to be used by watchmen/lookouts to communicate a warning, and that they be equipped according to that provision.

61 FR 65970, Dec. 16, 1996. Thus, FRA emphasizes that under the existing RWP regulation, a railroad must properly equip a watchman/lookout with the equipment specified by the railroad's on-track safety program to properly communicate a warning. Except in limited circumstances (*e.g.*, a watchman/lookout assigned to provide train approach warning for a single welder and who is located immediately next to the welder to provide a warning), if a railroad does not provide equipment with the specified auditory or visual warning capabilities to the roadway workers a watchman/lookout is protecting, the railroad is in violation of § 214.329. If an on-track safety program fails to specify the "requisite equipment necessary" for a watchman/lookout to provide on-track safety for a roadway work group, the program also is not compliant with part 214.

Subpart B—Bridge Worker Safety Standards

In the NPRM, FRA proposed to delete the existing incorporations by reference of certain outdated industry standards for personal protective equipment (PPE) in subpart B of part 214 (Bridge Worker Protection). Specifically, §§ 214.113, 214.115, and 214.117 incorporate by reference certain American National Standards Institute (ANSI) standards governing head, foot, eye, and face protection, respectively. FRA originally promulgated those sections in 1992 and they reference standards from 1986. 57 FR 28116, Jun. 24, 1992. Although the regulatory requirements have not been substantively updated in some time, ANSI has updated the standards themselves. Employers and employees may not be able to obtain PPE manufactured using the older standards currently incorporated by reference. As such, FRA proposed to (1) amend these existing sections to reflect the updated ANSI standards, (2) allow the continued use of any existing equipment which meets the standards currently incorporated by reference in part 214, and (3) allow the use of equipment meeting updated versions of those standards. FRA received no comments on these NPRM proposals and is adopting the revisions to §§ 214.113, 214.115, and 214.117 as proposed. For a detailed discussion of these amendments, see the preamble to the proposed rule at 77 FR at 50335–36.

Subpart C—Roadway Worker Protection

Section 214.301 Purpose and Scope

Section 214.301 sets forth the purpose and scope of subpart C of part 214. Existing paragraph (c) explains that subpart C prescribes safety standards for the movement of roadway maintenance machines when such movements affect the safety of roadway workers. Paragraph (c) further explains that subpart C does not affect the movements of roadway maintenance machines that are conducted under the authority of a train dispatcher, a control operator, or the operating rules of a railroad. To clarify the paragraph's meaning, FRA proposed regulatory text explicitly stating that while roadway maintenance machines are traveling under the authority of a train dispatcher, a control operator, or the operating rules of the railroad, the operator is not required to establish on-track safety under part 214. FRA did not intend this proposed amendment to be substantive but rather to clarify the existing meaning of paragraph (c) consistent with FRA Technical Bulletin G–05–14. Technical Bulletin G–05–14 explains that the regulation does not affect movements of roadway maintenance machines over non-controlled track being made under the operating rules of the railroad, but, those same machines, while actually conducting work, must establish on-track safety. After careful consideration of the issue and comments received, FRA concluded the meaning of paragraph (c) is already well understood and the proposed amendment is unnecessary. Thus, in this final rule, FRA is not adopting this proposed amendment to paragraph (c).

However, FRA is adding a reference in paragraph (c) to new § 214.320 adopted in this final rule. Section 214.320 pertains to the NPRM's proposed revisions to § 214.301 on the movement of roadway maintenance machines over non-controlled track equipped with automatic block signal (ABS) systems where trains are permitted to travel at greater than restricted speed. The discussion of that issue, and of the comments received, appears below in the Section-by-Section analysis for new § 214.320.

As a result of the amendments this final rule makes to §§ 214.301, 214.320, and 214.329, and as noted in the NPRM, upon the effective date of this final rule Technical Bulletin G–05–14 is supplanted.

Section 214.302 Information Collection Requirements

FRA received no comments in response to this proposal. Therefore, as proposed in the NPRM, FRA is deleting this existing section from part 214. For a detailed summary of the information collection requirements, please see the Paperwork Reduction Act discussion in Section X of the preamble below.

Section 214.305 Compliance Dates

As proposed in the NPRM, FRA is deleting existing § 214.305, because the compliance dates in the section are obsolete. FRA received no comments in response to this proposal.

Section 214.307 On-Track Safety Programs

Existing § 214.307 requires a railroad to notify FRA in writing at least one-month in advance of its on-track safety program becoming effective, and sets forth FRA's formal review and approval process for such programs. In the NPRM, FRA proposed to amend this section by: (1) Rescinding the requirement that railroads provide FRA advance notice of the effective date of their on-track safety programs; and (2) modifying the existing on-track safety program formal approval process. Instead, FRA proposed to review railroads' on-track safety programs upon request. FRA proposed these amendments intending to alleviate burdens as part of its retrospective review of subpart C. Related to this proposed revision, FRA proposed a new paragraph (b) mirroring other provisions FRA recently adopted in the Federal railroad safety regulations (*see* 49 CFR 220.313). In new paragraph (b), FRA proposed that the FRA Associate Administrator for Railroad Safety and Chief Safety Officer could disapprove a program for cause stated, and proposed requiring a railroad to respond to any such disapproval within 35 days by either (1) amending its program and submitting the amendments for approval, or (2) providing a written response in support of its program. As proposed, FRA's Associate Administrator for Railroad Safety and Chief Safety Officer would subsequently render a decision in writing either approving or disapproving the program. Under this proposal, FRA would consider a failure to submit an amended program or provide a written response as the section requires a failure to implement a program under this part. Finally, in the NPRM, FRA proposed removing the outdated reference to the compliance dates of § 214.305.

BMWED/BRS submitted comments recommending that FRA retain and clarify the advance notification requirement of the section, and additionally suggested language clarifying the requirement for railroads to maintain an on-track safety program approved by FRA. BMWED/BRS also recommended requiring railroads amending or adopting an on-track safety program notify FRA one month prior to the effective date of any amendments to a program or implementation of a new program.

FRA agrees with BMWED/BRS's comment regarding the retention of the advance notification requirement. FRA is retaining that existing provision but moving it to paragraph (b) of this section. FRA agrees it should continue to have advance notice so it can review new on-track safety programs (or railroads' amendments to existing FRA-approved programs). FRA is, however, amending this section to eliminate the required formal review process for each new program and each amendment to existing FRA-approved programs. Specifically, FRA is amending paragraph (a) of this section to require railroads to maintain and make their programs available to FRA upon request. This amendment will enable FRA to better utilize its limited resources to focus on addressing legitimate safety concerns with railroads' on-track safety programs, rather than conducting mandatory formal reviews of programs that, in some instances, been established and approved by FRA for many years.

As proposed in the NPRM, FRA is also amending this section to eliminate reference to the compliance dates in § 214.305, because as explained above, those dates are obsolete and this final rule deletes § 214.305. Given the deletion of § 214.305, however, FRA is amending paragraph (a) of § 214.307 to specifically require railroads to have an on-track safety program in effect by the date on which each railroad's operations commence. Finally, FRA is adopting proposed paragraph (b), but is re-designating it as paragraph (c) in this final rule.

Section 214.309 On-Track Safety Manual

Existing § 214.309, titled "On-track safety program documents," mandates, in part, that rules and operating procedures governing track occupancy and protection be maintained together in one manual and be readily available to all roadway workers. In the NPRM, FRA proposed amendments to this section consistent with the consensus language recommended by the Working Group. In this final rule, FRA is amending this section to incorporate the definition for the new term "on-track safety manual" (*see* discussion of § 214.7 above for background on this newly-defined term). As proposed in the NPRM, FRA is also amending the title of this section to reflect the new term "on-track safety manual." As proposed in the NPRM, new paragraph (a) of this section incorporated the term "on-track safety manual," and then repeated the current existing text of § 214.309. In response to this proposal, for consistency with the new term "roadway workers in charge," BMWED/BRS suggested that FRA add the words "in charge" to the second sentence of this paragraph (so that the sentence would require RWICs responsible for the on-track safety of others and lone workers to have and maintain a copy of the on-track safety manual). FRA concurs, and, in final rule, is amending paragraph (a) consistent with BMWED/BRS's suggestion.

In the NPRM, FRA intended new paragraph (b) to address the difficulty a lone worker, such as a signal maintainer or a walking track inspector, might experience carrying a large on-track safety manual. FRA proposed that a railroad must provide an alternate process for a lone worker to obtain on-track safety information. As proposed, the alternate process could include use of a phone or radio for a lone worker to contact an employee who has the on-track safety manual readily accessible. In response to this proposal, BMWED/BRS suggested FRA remove the reference to situations where it is impracticable for a lone worker to

"carry" the on-track safety manual, and instead refer to situations where it is "impracticable for the on-track safety manual to be readily available" to a lone worker. FRA agrees BMWED/BRS's proposed language more accurately captures the requirement with regard to access to the on-track safety manual, and is adopting that change in this final rule.

Related to the "alternative access" provision of paragraph (b), FRA is also adopting the Working Group's recommendation to require each railroad's lone worker training program to include training on the on-track safety manual alternative access requirement (see discussion of § 214.347 below).

As proposed, new paragraph (c) of this section provides for the temporary publication of changes to a railroad's on-track safety manual in bulletins or notices carried along with the on-track safety manual. This proposed change recognizes that railroads often need to make temporary or permanent changes to on-track safety rules and procedures and to publish and distribute those new or revised requirements on an as-needed basis. While any permanent amendments to a railroad's on-track safety program must be incorporated into the on-track safety manual, existing § 214.309 does not allow for the temporary nature of some documents or the practical difficulties with incorporating permanent changes immediately after issuance.

In response to this proposal, consistent with their recommendation in paragraph (b) of this section and noting that bulletins and notices are not always literally "carried" by a RWIC or lone worker, the BMWED/BRS suggested that FRA not require temporary bulletins and notices to be "carried" with the on-track safety manual, but rather any temporary publications be "retained" with the on-track safety manual. FRA concurs with this suggestion and is adopting this change in the final rule.

In response to proposed paragraph (c), BMWED/BRS also suggested that to prevent "an open-ended process where stacks of 'temporary' notices will ultimately supplant" a railroad's on-track safety manual, FRA should require employers to update their on-track safety manual at least annually to incorporate any relevant changes. FRA declines to adopt an annual update requirement because the RSAC did not recommend the requirement, FRA did not propose the requirement in the NPRM, and FRA data does not demonstrate a pattern of problems or accidents resulting from a lack of updates to railroads' on-track safety manuals. Even so, FRA encourages railroads to regularly update their on-track safety manuals to ensure roadway workers have clear access to the most current on-track safety rules.

Section 214.315 Supervision and Communication

Existing § 214.315 mandates that railroads provide job briefings to roadway workers assigned duties requiring the worker to foul a track. Section 214.315 sets forth certain communication requirements between members of a roadway work group, and, in the case of a lone worker, between that lone worker and his or her supervisor or other designated employee. The Working Group recommended FRA add new requirements to this existing section, mainly addressing job briefing terminology and the substance of the required job briefings. FRA addressed most of these consensus recommendations in the adjacent track rulemaking. 74 FR 74614. One recommendation FRA did not address in the adjacent track rulemaking is the Working Group's recommendation to require job briefing's to include information regarding the accessibility of the RWIC to individual roadway workers and alternative procedures if the RWIC is not accessible to members of the roadway work group. In the NPRM, FRA proposed the Working Group's recommended consensus language requiring employers to designate a substitute employee with the relevant qualifications to serve as RWIC when a roadway work group's original RWIC departs a work site for an extended period of time. FRA is adopting that language in this final rule.

SEPTA commented on this proposed amendment noting the inconsistency of the proposal with FRA Technical Bulletin G–05–07. Specifically, SEPTA noted that Technical Bulletin G–05–07 states " 'when a RWIC departs a work site for an extended period, a substitute employee with relevant qualifications *may* be designated.' " (Emphasis added.) SEPTA specifically took exception to FRA's use of the word "must" in the NPRM's preamble rather than the word "may" used in the technical bulletin.

An RWIC is the person who establishes and directs the on-track safety for a roadway work group, and it is critical that each roadway worker in a roadway work group have access to the RWIC. Access is necessary when a member of the group invokes a good faith challenge, or when he or she has questions concerning the established on-track safety protection. As discussed in FRA Technical Bulletin G–05–07, generally a RWIC must be located in the immediate vicinity of the work activity, but it may be necessary for a RWIC to depart a work location for a short period to travel to another area encompassing the same work activity (*e.g.*, to conduct on-track safety checks throughout a large mechanized production activity). When an RWIC is away from a work site for a short period, it is imperative the roadway work group have a readily available means to communicate with that person. When a RWIC departs a work site for an extended period and is not readily available to communicate with members of the roadway work group, the roadway work group members effectively do not have a RWIC, as he or she is not at the work group's location and cannot communicate with the group.

After carefully considering SEPTA's comment, FRA finds that "must" is correct. The RWIC is responsible for ensuring the on-track safety of members of a roadway work group and must be readily available to communicate with members of the group. Thus, FRA is adopting this recommended consensus item as the NPRM proposed.

In the NPRM, FRA also proposed minor changes to existing paragraphs (b), (c), and (d) to reflect that roadway work groups often include multiple roadway workers and to ensure consistent use of the term "roadway worker in charge" and "on-track safety job briefing" throughout subpart C. FRA received no comments on these minor proposed amendments and is adopting them in this final rule. For more background on these amendments see the discussion in the preamble to the NPRM. 77 FR 50338.

Section 214.317 On-Track Safety Procedures, Generally

Existing § 214.317 generally requires employers to provide on-track safety for roadway workers by adopting on-track safety programs compliant with §§ 214.319 through 214.337. In the NPRM, FRA proposed adopting two substantive amendments to this section recommended by the Working Group. The first recommendation would impose requirements for roadway workers who walk across railroad track in new paragraph (b), and the second recommendation would provide new exceptions for roadway workers conducting snow removal or weed spraying operations on non-controlled track in new paragraph (c). FRA also requested comment on whether it should amend subpart C to address using tunnel niches or clearing bays less than four feet from the field side of the near rail. After consideration of comments received, FRA is adopting a slightly modified new paragraph (b), paragraph (c) substantially as proposed, and a new paragraph (d) to address the use of certain tunnel niches and clearing bays. FRA is also redesignating the existing text of § 214.317 as paragraph (a) of the section to account for new paragraphs (b), (c), and (d).

In the NPRM, FRA proposed new paragraph (b) in this section to require roadway workers to (1) stop and look before crossing track and (2) move directly and promptly across tracks. Proposed paragraph (b) would also require railroads to adopt rules governing how roadway workers determine if it is safe to cross track and clarify the section is not a substitute for required on-track safety when roadway workers are required to foul the track to perform roadway worker duties. As explained in the NPRM, this proposal addresses the practical reality that roadway workers often need to walk across tracks while not directly engaged in activities covered by the existing RWP regulation. For example, a roadway worker might incidentally walk from a work site on a track in which working limits are in effect to a vehicle adjacent to the right of way. While walking to the vehicle, a roadway worker may have to cross over other "live" tracks where working limits or another form of on-track safety is not in effect. Proposed paragraph (b) is intended to prevent roadway workers from being struck by trains or other on-track equipment when incidentally crossing track, while at the same time recognizing the need for procedures enabling roadway workers to cross tracks safely without formal on-track safety in place.

As proposed, paragraph (b) would have required roadway workers to first stop and look in all directions a train or other on-track equipment could approach from before starting across a track to ensure they could safely clear the track before the arrival of any train or other on-track equipment. FRA intended the proposal to provide an opportunity for roadway workers to physically stop what they are doing and consider the on-track circumstances before crossing live track.

SEPTA, BMWED/BRS, NJT, and AAR submitted comments in response to this proposal. SEPTA's comment opposed a requirement that roadway workers stop before crossing each track, explaining that a person who would attempt to cross a track without proper sight distance or in a high traffic area is not likely to stop and look in all directions anyway, so the utility of such a provision would be minimal. NJT's comment supported the requirement that roadway workers look in both directions before crossing a track. BMWED/BRS supported requiring roadway workers to look in all directions before starting across track, but opposed requiring roadway workers to "stop" before crossing. The labor organizations stated a requirement to stop: (1) Is unnecessary; (2) would cause delays; (3) could lead to increases in slips, trips, and falls; (4) is over-prescriptive; and (5) could subject roadway workers to abuse by managers or FRA inspectors conducting safety audits. AAR also opposed the requirement to "stop" before crossing, stating there could be no expectation such a requirement would regularly be followed, and railroads would then be liable for such noncompliance.

After evaluating the comments, in this final rule FRA is not adopting the proposed requirement that roadway workers stop and look in all directions before crossing track. Commenters expressed unanimous opposition to the proposed requirement and FRA recognizes it would be very difficult to enforce. FRA believes stopping and looking before crossing railroad track is also a matter of common sense and a necessary reality roadway workers are already faced with. Thus, while in this final rule FRA is not adopting the proposed language requiring roadway workers to stop and look before crossing tracks, FRA is adopting the remaining portions of proposed paragraph (b). New paragraph (b) requires roadway workers to move directly and promptly across tracks and railroads to adopt rules governing how roadway workers determine if it is safe to cross track. Consistent with the proposal in the NPRM, as adopted in this final rule, paragraph (b) also clarifies the requirements of the paragraph are not a substitute for required on-track safety when roadway workers are required to foul the track to perform roadway worker duties. For further background on when on-track safety is required for roadway workers, see the discussion in the preamble to the NPRM. 77 FR 50339–50340.

FRA is also adopting the Working Group's recommendation to require a railroad's safety rules governing walking across railroad tracks to be included in all roadway worker training. As proposed in the NPRM, FRA has adopted this recommended training requirement in the roadway worker training provision at § 214.345 (discussed below).

New paragraph (c) of this section addresses the Working Group's recommendation for on-track snow removal and weed spraying on non-controlled track. As proposed, paragraph (c) permits on-track snow removal and weed spraying operations on non-controlled track without requiring the track to be made inaccessible under § 214.327. FRA intends the provision to alleviate the difficulty of establishing working limits on non-controlled track for operating equipment moving over long distances, and where roadway workers are conducting limited to no on-ground work activities.

After careful consideration of comments responding to proposed paragraph (c), in this final rule, FRA is adopting the paragraph substantially as proposed. Paragraph (c) allows weed spraying and snow removal operations under § 214.301, with the limitations and/or conditions listed in paragraphs (c)(1) through (4) of the paragraph. AAR's comments advocated expanding this provision to allow inspection activities under the same circumstances, but noted the Working Group did not discuss this possibility. Because the Working Group did not discuss this possibility, and FRA did not propose it, FRA declines to include inspection activities in the activities covered by paragraph (c). Also, FRA believes allowing expansion of this exception to include inspection activities would present safety risks as "inspection activities" may entail many different roadway worker activities, and are not of the specialized and more limited nature of the specific snow removal and weed spray operations the Working Group addressed. Further, § 214.301 already covers certain inspection activities while roadway maintenance machines are in "travel" mode, and hi-rail inspection activities are also already subject to certain on-track safety exclusions under § 214.336. Thus, FRA is retaining the existing on-track safety requirements for work activities other than the specific snow removal and weed spray operations the Working Group addressed.

Paragraph (c)(1) requires railroads to adopt and comply with procedures for on-track snow removal and weed spraying operations if the allowances under paragraph (c) are utilized. Paragraphs (c)(1)(i) through (iv) set minimum standards for what those procedures must include. Paragraph (c)(1)(i) requires all on-track movements in the area where on-track snow removal or weed spraying operations are occurring be informed of those operations. AAR's comment opposed this requirement, stating it is unnecessary and problematic in areas

without radio reception. In response, FRA notes that in areas without radio reception it may be likely there are no other persons conducting on-track movements in the "affected area" required to be notified. Further, there are communication methods other than radio if a railroad wishes to utilize the exception in § 214.317(c) in an area without radio reception. FRA also emphasizes paragraph (c) is an exception to the requirement to establish on-track safety, and FRA anticipates that in the majority of instances this exception can be utilized for, radio reception will not be an issue. If radio reception is an issue and there is no other way to inform others making on-track movements in the area of snow removal or weed spraying operations, railroads will have to follow existing methods of establishing on-track safety to perform the work.

As proposed in the NPRM, paragraph (c)(1)(ii) of this final rule requires railroads' procedures to ensure all weed spraying and snow removal operations conducted under paragraph (c) operate at restricted speed defined in § 214.7; except on other than yard tracks and yard switching leads, where movements may operate at no more than 25 miles-per-hour (mph) and must be prepared to stop within one-half the range of vision. Paragraph (c)(1)(iii) requires the procedure adopted by a railroad to ensure there is a means of communication between on-track equipment conducting snow removal and weed spraying operations and any other on-track movements in the area.

Paragraph (c)(1)(iv) prohibits remotely controlled hump yard facility operations from being in effect while snow removal or weed spraying operations are in progress and also prohibits the kicking of cars unless agreed to by the RWIC of the snow removal or weed spraying operation. The prohibition on kicking cars is intended to help ensure there is no free rolling equipment near on-track snow removal or weed spraying operations. Thus, before machines can operate under this provision in remotely controlled hump yard facilities, humping operations must be suspended. As explained in the NPRM, in proposing to prohibit weed spraying and snow removal operations when hump yard operations are "in effect," FRA considered AAR's post-RSAC recommendation to instead prohibit weed spraying and snow removal operations when hump operations are "in progress." BMWED's post-RSAC comment stated it favored "in effect," because that term is more inclusive as hump operations might be "in effect" but not actually "in progress" (*e.g.*, cars not literally being humped right at the moment that weed spraying operations begin). FRA agreed with the BMWED's position, and proposed the initial Working Group's consensus wording of "in effect," but requested further comment on this issue from all interested parties.

In response to the NPRM proposal, the BMWED/BRS comment reconfirmed the labor organizations' support for the term "in effect" for the status of hump yards. BMWED/BRS stated if "hump yard operations are not 'in effect', that would mean that humping operations have been suspended until released back to the hump by the RWIC." The labor organizations objected to using the term "in progress" because hump operations are not suspended just because humping may not actually be "in progress" at a particular moment.

After considering these additional comments, FRA continues to agree with BMWED/BRS's recommendation to prohibit snow removal and weed spraying operations when hump yard operations are "in effect." This language makes clear FRA's intent for no humping operations to take place until a roadway work group utilizing this section reports clear of hump yard tracks that present the possibility of being struck by humped cars. Thus, FRA is adopting the language it proposed in the NPRM.

FRA does not intend that the only way the exceptions in this section may be utilized is to shut down an entire classification yard. Rather, FRA's intent is the hump operations must not be in effect for the tracks (or group of tracks) that would be affected by snow removal or weed spray operations. For example, under this section it is permissible for a block to be placed on a group of tracks within a classification yard where snow blowing activities are taking place, such that equipment could not be humped into those tracks until the roadway work group utilizing this section reports clear of those tracks.

Paragraph (c)(2) provides that roadway workers engaged in snow removal or weed spraying operations retain an absolute right to utilize the provisions of § 214.327 (inaccessible track). FRA is adopting this provision as proposed.

Paragraph (c)(3) provides that roadway workers engaged in snow removal or weed spraying operations subject to § 214.317 can line switches for the machine's movement without establishing a form of on-track safety under §§ 214.319 through 214.337, but may not engage in any roadway work activity. In its comments, AAR recommends amending this provision to include the lining of derails. FRA agrees with AAR's recommendation as applied to derails lined via switch stands. The lining of derails by switch stand does not typically require fouling the track. FRA does not agree with AAR's recommendation for derails not operated via switch stands. These derails require roadway workers to bend down onto the rail (or directly adjacent to and in the foul of the rail) to operate the derail. Thus, FRA is adding the words "or derails operated by switch stand" to this provision. For derails not operated by switch stand, a method of on-track safety complaint with subpart C is required.

As proposed and adopted in this final rule, paragraph (c)(4) contains the consensus recommendation of the Working Group for the roadway equipment utilized under this provision. Paragraph (c)(4) requires that each machine engaged in snow removal or weed spraying operations under § 214.317(c) be equipped with: (1) An operative 360-degree intermittent warning light or beacon; (2) an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions; (3) a brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and, (4) a rearward viewing device, such as a rearview mirror. If a machine is utilized in snow removal or weed spraying operations conducted during the period between one-half hour after sunset and one-half hour before sunrise, or in dark areas such as tunnels, that machine must also be equipped with work lights, unless equivalent lighting is otherwise provided. AAR commented that paragraph (c)(4) does not address what happens when there is an equipment failure, such as if a machine's headlight burns out. AAR suggested that railroads be permitted to operate the equipment under § 214.317 for seven days after learning of a failed component. FRA declines to adopt AAR's suggested amendment. As noted above, § 214.317(c) is designed as an exception to the current requirement to establish on-track safety while certain roadway work activities are performed. FRA believes under the provisions of this paragraph the specified activities can be conducted safely. When equipment fails, such as a headlight in AAR's example, the safety of the operation is potentially compromised. Accordingly, when equipment required by this section fails, railroads must default to part 214's existing on-track safety requirements until the equipment is repaired and operating.

Finally, in the NPRM, FRA requested comment on using certain existing tunnel niches (also referred to as clearing bays) as places of safety for roadway workers. As explained in detail in the NPRM (77 FR 50331), some existing railroad tunnels have niches built into the sidewalls that roadway workers occupy as places of safety while performing work in tunnels (typically inspection work). Some of the niches may, by design, be slightly less than four feet from the field side of the near rail. Because existing subpart C does not address using tunnel niches as places of safety, the use of niches less than four feet from the field side of the near rail as a place of safety technically violates the existing regulation because a roadway worker occupying the niche would be "fouling a track" as defined by § 214.7. The Working Group discussed this issue but did not reach consensus. The Working Group did, however, decide against modifying the definition of "fouling a track" to accommodate using tunnel niches. Working Group discussions indicated tunnel niches outside the clearance envelope, but less than four feet from the field side of the rail, existed on a small number of railroads, primarily in the Eastern United States, and those railroads have a long history of safely utilizing the niches.

FRA did not propose specific regulatory text regarding the use of tunnel niches, but requested comment on whether, and how, to address the issue in a final rule. FRA listed certain items it anticipated a regulatory provision allowing using tunnel niches would need to include (*e.g.*, railroad designation of niches, time for a roadway worker to move into a niche upon the approach of a train, that niches must be free from debris).

In response to its request for comments on tunnel niches, FRA received comments from SEPTA, MTA, BMWED/BRS, APTA, and AAR. SEPTA's comment stated that using tunnel niches as a safe place should be allowed if individuals using the niches are not at risk of being struck by moving on-track equipment. MTA's comment supported using niches as a safe place for roadway workers, and indicated railroads should review each niche location before designating it as a safe place. BMWED/BRS's comment opposed using tunnel niches less than four feet from the near running rail as a place of safety. Citing the presence of debris, vagrants, rats, spiders, mice, raccoons and other hazards, and noting that conditions such as claustrophobia could cause roadway workers to panic and jump out of a tunnel niche into the path of an oncoming train, BMWED/BRS indicated its members typically establish working limits before entering tunnels with close side clearances. BMWED/BRS also expressed concern about roadway work groups exceeding the capacity of a tunnel niche, potentially resulting in one or more roadway workers being left out in the foul with no ability to reach an alternative place of safety.

In its comments, AAR disagreed with BMWED/BRS noting that, particularly in the Northeast United States, railroads have safely used tunnel niches for a century. AAR specifically noted Amtrak's use of tunnel niches as places of safety for inspectors and argued that given the decades of experience demonstrating that tunnel niches can be safely used, FRA should permit Amtrak to continue to use tunnel niches.

APTA's comment indicated that tunnel niches, clearing bays on bridges, and passenger platforms all provide appropriate clearance of the envelope of train and equipment passage and all are safe places with "no historical incident data" supporting the need for FRA to establish additional regulatory provisions to improve their safety. Finally, APTA recommended FRA allow using tunnel niches, clearing bays on bridges, and platforms as designated places of safety and require analysis of any related potential safety issues under FRA's future risk reduction and system safety regulations.

After further evaluating this issue and considering the comments received, in this final rule FRA is adopting new paragraph (d) in § 214.317 authorizing, subject to certain conditions, the use of existing tunnel niches or clearing bays less than four feet from the nearest rail as places of safety for roadway workers. Although FRA recognizes some railroads have successfully used tunnel niches and clearing bays as designated places of safety for roadway workers for some time, existing subpart C technically prohibits such use. New paragraph (d) of § 214.317 sets minimum standards for the use of such existing niches to ensure their continued safe use. Consistent with existing § 214.337(b) applicable to lone workers and § 214.317(c)(2) adopted in this final rule for certain snow removal and weed spraying operations, paragraph (d) also makes clear RWICs and lone workers maintain the absolute right to designate a place of safety in a location other than a tunnel niche or to establish working limits if appropriate.

Paragraph (d) authorizes only using tunnel niches and clearing bays that have a place of safety less than four feet from the field side of the near rail in existence on the effective date of this final rule, if the conditions of paragraphs (d)(1) and (2) are met. Paragraph (d)(1) requires RWICs or lone workers to inspect each tunnel niche or clearing bay prior to determining the niche is suitable to use as a place of safety. Consistent with the requirements of §§ 214.329 and 214.337, paragraph (d)(2) requires a RWIC or lone worker to determine if there is adequate sight distance to permit roadway worker(s) to occupy the place of safety in the niche or clearing bay at least 15 seconds prior to the arrival of a train or other on-track equipment at the work location.

Finally, like existing § 214.337's provision providing lone workers with the absolute right to establish alternate methods of on-track safety, paragraph (d)(3) gives the RWIC or lone worker the absolute right to designate a place of safety in a location other than a tunnel niche or clearing bay, or to establish working limits if appropriate.

Compliance with this new paragraph will ensure the continued safe use of existing tunnel niches, as the RWIC or lone worker is required to visually inspect each niche and determine the proper sight distance to utilize each niche before designating the niche a safe place. Moreover, by providing RWICs and lone workers the absolute right to designate a place of safety other than a tunnel niche which might be less than four feet from a running rail, or to utilize another method of establishing on-track safety, FRA believes BMWED/BRS's safety concerns are alleviated.

Section 214.318 Locomotive and Car Shop Repair Track Areas

In the NPRM, FRA requested comment on potentially amending subpart C and/or the existing blue signal regulations in part 218, subpart B to provide a limited exception from part 214's on-track safety requirements for using blue signal protections for certain incidental work performed by mechanical employees within the limits of locomotive servicing and car shop repair track areas (shop areas). FRA did not propose specific regulatory text on this issue, but indicated it might adopt a provision addressing this topic in a final rule. For the reasons explained below, in this final rule FRA is amending subpart C by adding a new § 214.318 addressing incidental work performed in locomotive servicing and car shop repair track areas. This amendment allows "workers," as defined by § 218.5, to utilize blue signal

protections in place of subpart C's on-track safety procedures.

As discussed in the NPRM, subpart C currently requires "roadway workers" performing work with the potential to foul a track within a locomotive servicing or car shop repair track area (including performing work on signals or structures within those areas that may involve fouling track) to utilize the on-track safety procedures of subpart C. Conversely, any "workers," as defined by § 218.5 (typically mechanical department employees), performing work involving the inspection, testing, repairing, or servicing of rolling equipment within locomotive servicing or car shop repair track areas are required to do so in compliance with the blue signal regulations. Because certain incidental duties "workers" under § 218.5 typically perform in shop areas often technically meet the definition of the type of work a "roadway worker" would do (*e.g.*, mechanical department employee performing work on the overhead door of a locomotive maintenance building when such work involves fouling a track), questions arose over what protections are appropriate within shop facilities for certain types of "incidental" work performed by mechanical department employees (*i.e.*, "workers" under § 218.5).

FRA's Technical Bulletin G–08–03 addresses this issue, and explains FRA will not take enforcement action for "incidental" work performed in shop areas similar to roadway worker duties (*e.g.*, sweeping a shop floor or changing a light bulb in an inspection pit). Despite Technical Bulletin G–08–03, many railroads argue shop personnel ("workers" under § 218.5) are already trained on the blue signal regulations and believe FRA should exempt certain work within shop areas from the subpart C on-track safety requirements. Railroads argue shop employees perform the work safely utilizing the blue signal protections they are trained on and most familiar with. Railroads further argue that training shop personnel on two different protection regimes is both costly and confusing for the employees. Thus, railroads argue the requirement to require using the on-track safety protections of subpart C by "worker" in shop areas is detrimental to safety.

In the NPRM, FRA requested comment on potential amendments to the existing part 214 or 218 to address this issue. Because contractor employees are subject to part 214 but not part 218's blue signal requirements, FRA also specifically asked how best to address applying these requirements to contractor employees.

FRA received six comments in response to this request from APTA, AAR, BMWED/BRS, ASLRRA, MTA, and SETPA. According to APTA, the existing blue signal and RWP regulations are adequate for work performed in shop areas and there is no accident history supporting concerns about this issue. AAR's comment acknowledged the controversy, but noted that for decades blue signal protection has proven to be an effective way to provide for the safety of employees in shop areas. AAR reasoned if blue signal protection adequately protects employees when working on rolling stock, it also will adequately protect employees performing other incidental activities in shop areas. From a safety perspective, AAR stated employees should be permitted to utilize the method of protection they are most familiar with—for mechanical employees within shop areas, that is blue signal protection (part 218), and for roadway workers it is roadway worker protections under part 214, subpart C. AAR also recommended FRA treat contractors the same as railroad employees.

AAR also asserted significant additional costs would result if FRA does not permit mechanical employees who might foul track while performing their duties inside a shop area to utilize blue signal protection as opposed to RWP protection, and noted certain potential drug and alcohol testing implications. AAR explained costs would be incurred for: (1) Providing additional training; (2) placing RWICs in shop areas; and (3) purchasing additional switch locks. AAR indicated one large railroad estimated initial costs at $1.2 million, and costs of $700,000 in subsequent years. AAR proposed specific rule text for parts 214 and 218 to permit employees in shop areas to use blue signal protections under part 218, instead of complying with the RWP requirements of part 214.

In its comments, ASLRRA disagreed with FRA's explanation in the NPRM of certain activities within shop areas being subject to the on-track safety regulations of part 214. ASLRRA said FRA's position, consistently applied, would require railroads to use blue signal protection to repair a roadway maintenance machine irrespective of the repair location. ASLRRA urged FRA to not change the regulations.

BMWED/BRS's comment stated the type of work being performed governs whether the blue signal regulations or the RWP regulations apply and argued against any change eliminating the distinction between the two different forms of protection.

Noting the existing blue signal protection requirements provide a proven level of Safety, SEPTA's comment indicated the railroad industry would be better served if mechanical department employees could perform certain facility-maintenance work within the limits of shop areas using blue signal protection rather than the on-track safety requirements of part 214. Further, SEPTA stated any inconsistency in the forms of protection employees utilize increases the potential for confusion and reduces safety. SEPTA also questioned if the original RWP rulemaking even considered applying the on-track safety requirements in shop areas and expressed doubt that the intended scope of the original RWP regulation even covered work in shop areas.

MTA's comment indicated the primary consideration in deciding what protections to follow in shop areas should be whether employees are adequately protected while performing their assigned duties. MTA asserted it would be overly prescriptive to require employees to be familiar with different types of protection and recommended individual railroads determine the appropriate type of protection employee's should use based on the specific task being performed.

FRA believes the assertion that part 214 as it currently exists does not apply in shop areas is without merit. FRA notes the discussion in the NPRM preamble titled "RWP and Blue Signal Protection in Shop Areas" (77 FR 50329–50330) did not, as AAR and ASLRRA suggested in their comments, attempt to expand the scope of the existing RWP and blue signal regulations. Rather, the discussion described the existing state of interplay between the two regulations. FRA is puzzled by AAR's comment asserting estimated additional costs would be incurred to comply with the requirements of the RWP regulation in place since 1997. FRA agrees it is not in the best interests of safety to apply the requirements of part 214 to certain activities in shop areas not involving work on, under, or between rolling equipment. FRA notes, however, the existing regulations do not allow certain work to be conducted in shop areas without on-track protection under part 214. Thus, compliance with the existing regulation could not impose additional new costs to railroads as AAR's comment states.

FRA also disagrees with the ASLRRA comment asserting "[i]f one were to apply FRA's logic consistently . . . every time a roadway maintenance machine broke down and had to be repaired on any track, blue signal protections would have to be applied, whether in a yard or on a main track." FRA cannot envision how the existing regulations could require blue signal protections be applied to repair of roadway maintenance machines as ASLRRA's comment asserted. The existing blue signal protection regulation (part 218, subpart B) applies to work performed on, under, or between "rolling equipment." The part 218 definition of the term "rolling equipment" (locomotives and cars), and the corresponding definition of the term "locomotive," do not include roadway maintenance machines. Repairs to roadway maintenance machines are specifically covered by the definition of "roadway worker" in part 214. Therefore, the literal application of the regulations would not require blue signal protections be applied to repair of roadway maintenance machines as ASLRRA's comment asserted.

FRA generally agrees with the comments of BMWED/BRS, SEPTA, and MTA and believes allowing railroad employees and contractors to utilize the procedures they are trained on and most familiar with provides clear direction and consistency and will actually eliminate confusion and increase safety. FRA agrees with SEPTA's comment that the original RWP rule did not specifically discuss maintenance work performed in shop areas. BMWED/BRS argued against FRA eliminating any distinction between RWP protection and blue signal protection and warned doing so could present unforeseen consequences. FRA does not believe providing railroads with the flexibility to use blue signal protection or RWP protection in certain instances within shop facilities in any way eliminates a distinction between the two forms of protection. Finally, FRA believes new § 214.318 addresses both SEPTA and MTA's stated concerns as "workers" in shop areas will be permitted to utilize blue signal protections in most instances to ensure they are protected while performing their assigned duties.

For all the reasons discussed above, in this final rule, FRA is amending part 214 to permit "workers" (as defined by § 218.5), in certain instances, to utilize the blue signal protections of part 218, subpart B (as opposed to the on-track safety requirements of part 214) in locomotive servicing and car shop repair track areas when fouling track while performing duties incidental to inspecting, testing, servicing, or repairing rolling equipment. FRA believes this is the reasonable and logical application of parts 214 and 218 in locomotive servicing and car shop repair track areas. Although FRA is not adopting the specific regulatory language amending both parts 214 and 218 AAR suggested, FRA believes new § 214.318 accomplishes the same goal.

As noted by several commenters, for decades "workers" have successfully used blue signal protections in shop areas. In general, when blue signal protections are applied on a track, the regulations prohibit: (1) The movement of equipment on the track (except under the very specific conditions described in § 218.29); (2) coupling to any equipment on the track; and (3) rolling equipment from passing a blue signal. These requirements ensure worker safety by prohibiting the movement of equipment on a protected track. As SEPTA's comments noted, the conditions in shop areas (where mechanical employees repair rolling equipment secured from movement) are different than situations the RWP regulation typically addresses (*e.g.*, maintenance-of-way workers working along the railroad right-of-way where trains and other on-track equipment pass). FRA does not believe safety is improved by mandating that a railroad employee be trained on, and comply with, the requirements of the blue signal regulation to safely tighten a bolt on a locomotive, and also be trained on and apply the differing requirements of the RWP regulation while standing in the exact same location to perform the incidental work of tightening a bolt on an overhead door. Such a literal approach to the regulations introduces the potential for confusion and the misapplication of the differing requirements, and is also not cost effective, efficient, or reasonable.

Accordingly, new § 214.318(a) reasonably allows "workers" (as defined by § 218.5) within the limits of locomotive servicing and car shop repair track areas (as also defined by § 218.5) to utilize a railroad's blue signal protection procedures to perform duties incidental to their work on, under, or between rolling equipment while fouling a track protected by blue signal(s). If a railroad chooses to allow "workers" to use blue signal protections authorized by this new section, paragraph (a) also requires the railroad rules address how those protections apply to the incidental duties "workers" perform. By "incidental" duties, FRA means duties within the shop area such as working on a shop door, sweeping excess ballast off a shop floor or away from a work area, cleaning up fluid spills in the gage of the track in a work area, or performing electrical work in a locomotive shop to an appliance such as an exhaust hood above a track. FRA emphasizes that for this new section to apply, all work must be performed on a track protected by blue signals as required by part 218, subpart B.

This new section does not require railroads to use blue signal protections instead of part 214 on-track safety procedures where applicable inside shop areas. Instead, this new section only gives railroad's the option to decide the appropriate form of protection for "workers" in shop areas. Roadway workers still must comply with part 214 when fouling track within a shop area. For example, if a signal department employee fouls a track in a shop area while performing work on an electronic system controlling the blue signal display within the shop area, that employee must comply with part 214's on-track safety requirements because as a signal department employee, he or she is not a "worker" under § 218.5 who inspects, tests, services, or repairs rolling equipment. Similarly, bridge and building department employees required to foul track while building a structure within a shop area also still must establish on-track safety under part 214 because bridge and building department employees are clearly not "workers" under part 218 (they do not inspect, test, service, or repair rolling equipment).

Paragraph (b) of this section addresses how this section applies to contractor employees. As discussed in the NPRM, although the on-track safety requirements of part 214 apply to contractor employees, FRA's blue signal regulations do not. Typically, however, railroad rules require contractors to follow the railroad's blue signal procedures when performing work within shop areas. As noted above, AAR recommended FRA treat contractors the same as railroad employees for purposes of what protections apply to those employees while performing the same work as railroad employees. FRA agrees, but because contractor employees do not meet part 218's definition of "workers," FRA cannot enforce part 218's requirements on contractors. Accordingly, in paragraph (b), FRA is extending application of paragraph (a) of this section to contractor employees, but only if the contractor employee's work is supervised by a railroad employee qualified on the railroad's rules and procedures implementing the requirements of part 218, subpart B. Thus, if a railroad elects to use the exception in paragraph (a), a contractor within a shop area performing duties incidental to those of inspecting, testing, servicing, and repairing rolling equipment may perform the work

utilizing the railroad's blue signal protections, if the contractor employee is supervised by a railroad employee qualified (as defined by § 217.9) on the railroad's blue signal rules

For example, if a railroad elects to use the exception in paragraph (a) of this section, a contractor employee servicing a shop building's exhaust hood above idling locomotives on a track protected by blue signals may do so under the supervision of a blue signal-qualified railroad employee. If a railroad does not elect to use the exception in paragraph (a), or the contractor employee is not supervised by a blue-signal qualified railroad employee, the contractor would be subject to the RWP requirements of subpart C of part 214 when servicing the exhaust hood because the employee would be a "roadway worker," under § 214.7.

Similarly, if a railroad elects to use the exception in paragraph (a), and implements rules governing its use, if a contractor employee vacuums water from a switch in a locomotive shop on track protected by blue signals and his her work is supervised by a blue signal-qualified railroad employee, the contractor need only comply with the railroad's blue signal requirements. If the contractor employee is not supervised by a blue signal-qualified employee while performing this duty, the contractor must comply with the on-track safety requirements of part 214 because the work performed makes the contractor a "roadway worker" per existing § 214.7.

Paragraph (c) of this new section requires compliance with part 214, subpart C, for any work performed within a shop area requiring the presence of a person qualified under § 213.7 of FRA's Track Safety Standards. FRA intends this paragraph to make clear traditional inspection, construction, maintenance, or repair of railroad track affecting the ability of rolling equipment to move safely over that track continues to be governed by the on-track safety requirements of part 214, regardless of the craft of a particular employee (or whether the employee(s) are railroad employees or contractors) performing the work. FRA intends this provision to prevent situations where "workers" who are not qualified to perform maintenance-of-way duties perform such duties in a shop or locomotive repair area, potentially affecting the safe movement of rolling equipment over track structures.

To determine if railroad employees or contractors working in shop areas are "workers" under § 218.5 (and can use blue signal protection) or roadway workers under § 214.7 (and required to establish on-track safety under part 214), FRA will look to the employee's primary duties and the primary purpose of the work performed (whether the work is performed on, under, or between rolling equipment or incidental to work performed on, under, or between rolling equipment). Examples include:

- A mechanical department employee whose primary duty is performing electrical work on locomotives, but to access part of a locomotive to perform such work, fouls a track while shoveling snow from the gauge of the track on which the locomotive is located (and on which blue signal is applied). This mechanical department employee's primary duties involve the inspection, testing, repair, or servicing of rolling equipment. As such, shoveling snow off the track to access the locomotive is performing duties incidental to his or her primary duties. FRA would consider this employee a "worker" under § 218.5, and if the railroad elected to utilize the paragraph (a) exception in this section, the employee could use the railroad's blue signal procedures as opposed to establishing on-track safety under part 214.
- A railroad engineering department employee who is assigned to repair a switch in a locomotive shop area is a "roadway worker" who requires on-track safety compliant with part 214 because the primary duties of engineering department employees do not typically include testing, inspecting, servicing, or repairing rolling equipment. Rather, the primary duties of engineering department employees typically involve the maintenance and repair of railroad track.
- A railroad employee replacing concrete in front of the doors of a shop to ensure an adequate flangeway for the wheels on rolling stock must establish on-track safety under part 214, because such duties are not "incidental" to work on, under, or between rolling equipment and because the work likely requires the presence of a person qualified under § 213.7.

FRA understands not all examples will be so obvious, particularly on smaller railroads where one employee may fill many roles. In such instances FRA would look to the primary purpose of the work being performed, and whether such work was related to that performed on, under, or between rolling equipment. As a practical matter, if an employee of a small railroad routinely performs varying jobs' functions involving both maintenance-of-way work, work traditionally thought of as mechanical work on rolling equipment, the employee already must be trained the on-track safety requirements of part 214 when performing "roadway worker" duties, and likewise, must be trained on blue signal protection under part 218 when working on, under, or between rolling equipment.

In developing this final rule, FRA considered adopting a requirement for RWICs of roadway work groups performing work within the limits of locomotive shop or car shop repair track areas to notify the person in charge of workers in the shop prior to beginning work. FRA believes such a notification procedure may be useful in situations where unknown to the person in charge of the workers in the shop area, a roadway work group uses derails or other protections to establish working limits in the shop area. Due to cost considerations, FRA is not adopting such a notification requirement in this rule. However, FRA encourages railroads, as circumstances may warrant, to adopt such a procedure. FRA will continue to monitor this issue and may implement such a notification requirement in a future rulemaking.

Upon the effective date of this final rule, FRA Technical Bulletins G–05–21 and G–08–03 are supplanted. Those technical bulletins are no longer valid in light of the adoption of new § 214.318 here.

Section 214.319 Working Limits, Generally

Existing § 214.319 sets forth the requirements for establishing working limits consistent with subpart C. FRA is making several changes to this section in the final rule. First, FRA redesignated the last sentence of the existing introductory text of this section as paragraph (a), and redesignated existing paragraphs (a)–(c) of this section as paragraphs (a)(1) through (3). This amendment is only structural and not intended to be substantive in nature to accommodate adding new paragraph (b) of this section (discussed below).

As proposed in the NPRM, FRA is replacing "roadway worker" in newly designated paragraphs (a)(1) and (2) with "roadway worker in charge." These revisions are consistent with the use of the new term "roadway worker in charge" discussed in the Section-by-Section analysis of that term in § 214.7 and clarify that only a roadway worker who is qualified in accordance with § 214.353 can establish or have control over working limits for the purpose of establishing on-track safety.

In the NPRM, FRA also proposed amending the introductory paragraph of § 214.319 to reference the "verbal protection" method of establishing working limits proposed in new § 214.324. However, as explained above, in this final rule FRA is not adopting the proposed "verbal protection" provision, so the reference to that section is no longer necessary.

Next, FRA is adding new paragraphs (b) and (c) to this section. In the NPRM, in response to NTSB Safety Recommendation R–08–06, FRA asked if railroads should be required to utilize redundant forms of working limits protection when a roadway work group depends on a train dispatcher or control operator to provide signal protection when working limits are established in signalized controlled track territories. NTSB issued Safety Recommendation R–08–06, after a 2007 accident near Woburn, Massachusetts in which two Massachusetts Bay Transportation Authority (MBTA) maintenance-of-way employees died. At the time of the accident, MBTA's rules required roadway workers to shunt track circuits to provide redundant signal protections to prevent trains or other rolling equipment from entering working limits. NTSB found the roadway work group involved in the accident did not comply with that rule and cited two probable causes of the accident: (1) The roadway work group's failure to apply a shunting device under the railroad's rule; and (2) the train dispatcher's failure to maintain blocking that provided signal protection for the track segment occupied by the working group.[6] In Safety Recommendation R–08–06, NTSB recommends that FRA "[r]equire redundant signal protection, such as shunting, for maintenance of way work crews who depend on the train dispatcher to provide signal protection." In 2013, NTSB reiterated Safety Recommendation R–08–06 to FRA after an accident in which a Metro-North maintenance-of-way employee was struck and killed by a train in Connecticut.[7]

FRA notes that both the 2007 MBTA and the 2013 Metro-North accidents involved violations of the existing requirements of subpart C. In both instances the train dispatchers did not maintain the required blocking devices, allowing train movements into the roadway work groups' established working limits without the relevant RWIC's knowledge. *See, e.g.,* § 214.321(d). Despite the fact that FRA's regulations already prohibit the actions that led to these accidents, FRA recognizes more can be done to try to prevent these types of mistakes from causing future tragedies.

In response to FRA's request for comment regarding a potential redundant protection requirement, AAR, NTSB, SEPTA, BMWED/BRS, APTA, MTA, NJT, and an individual, submitted comments. NTSB urged FRA to add a provision in this final rule requiring using redundant forms of protection such as shunting. AAR urged FRA not to adopt such a provision, indicating it would be counterproductive from a safety perspective. AAR stated such a provision would be counterproductive because shunting cannot be relied on due to: (1) The characteristics of track infrastructure that lead to periodic loss of shunt for certain equipment; (2) the susceptibility of shunts to work only intermittently when used near signal islands; and (3) the lack of reliability of individual locomotives or roadway maintenance machines to shunt. AAR's comment pointed to the safety issues shunting presents in some circumstances, specifically grade crossing warning device malfunctions and signal system interference, and to concerns related to cost, training, and the practicality of shunting requirements (*e.g.,* trying to shunt as a roadway worker conducts walking track inspections or mobile weed spray operations). BMWED/BRS supported using redundant forms of protection, if it does not interfere with grade crossing warning devices. BMWED/BRS also indicated a requirement for roadway workers to use shunts would necessitate additional training to ensure using shunts did not interfere with grade crossing warning devices or signal systems' operation.

In its comment, SEPTA recommended that the use of redundant protections be left up to individual railroads because each railroad is in the best position to evaluate the using such a requirement on its property. NJT commented a requirement to use shunts could pose a problem when work is performed within the limits of an interlocking containing a moveable bridge, because if a roadway work group planned to let a train(s) pass through the group's working limits, the shunts would have to be removed and replaced for each train to allow the signal system to clear to permit the bridge operator to open or close the bridge. MTA commented shunting can result in unintended consequences, including grade crossing malfunctions and signal system disruptions. Citing a discussion in the preamble to a 2003 FRA rule (68 FR 44388, 44390) addressing roadway maintenance machines (RMMs), individual commenters expressed support for a redundant protection requirement. Noting that RMMs do not reliably shunt signal systems, these commenters stated a uniform requirement for protection beyond those provided by a dispatcher would improve safety.

Subsequent to publication of the NPRM and NTSB issuing Safety Recommendations R–08–06 and R–13–17, on December 4, 2015, the President signed into law the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1686 (Dec. 4, 2015) (FAST Act). Section 11408 of the FAST Act (Section 11408) addresses redundant signal protections and requires FRA (as the Secretary of Transportation's delegate) to promulgate a rule requiring railroads, whenever practicable and consistent with other safety requirements, to implement redundant signal protections for roadway work groups who depend on train dispatchers to provide signal protection. Section 11408 also requires FRA to consider exempting from any redundant signal protection requirements each segment of track for which operations are governed by a PTC system. Thus, to fulfill the mandates of Section 11408 and address the NPRM's request for comment, FRA is adopting new paragraphs (b) and (c) of this section. Paragraph (b) requires Class I and II railroads and intercity passenger and commuter railroads utilizing controlled track working limits in signalized territory to establish on-track safety to adopt redundant signal protection procedures. Paragraph (c) explains the procedures to request an exemption from the redundant signal protections for segments of track governed by a functioning PTC system.

Under the discretion Section 11408 affords, FRA is not specifically requiring railroads to utilize shunting as a redundant signal protection. Consistent with the views of several commenters, including BMWED/BRS and AAR, FRA is concerned that in many instances shunting presents new risks. As the NTSB stated in its report on the 2007 MBTA accident at Woburn, shunting by maintenance-of-way crews is not a common practice in the railroad industry. Track shunts have traditionally been designed as a tool to test signal systems rather than to provide protection to roadway workers. Shunting procedures can be disruptive to signal systems and grade crossing warning systems (improper use may violate 49 CFR parts 234 and 236) and,

[6] *See* NTSB Accident Report NTSB/RAR–0801, "Collision of Massachusetts Bay Transportation Authority Train 322 and Track Maintenance Equipment near Woburn, Massachusetts, January 9, 2007;" available online at: *http://www.ntsb.gov/doclib/reports/2008/RAR0801.pdf.*

[7] *http://www.ntsb.gov/doclib/recletters/2013/R-13-17.pdf*.

in certain situations, employees applying shunts may be unnecessarily exposed to electrical hazards and other environmental hazards along the railroad right-of-way. Shunts are also not failsafe and do not guarantee the signal system will protect a roadway work group. FRA is concerned a mandatory shunting requirement nationwide could increase certain railroad safety risks involving highway-rail grade crossing warning devices and railroad signal systems. Further illustrating the risks shunting can present, FRA is currently investigating a fatality that occurred in February 2016 when a railroad employee was attempting to install shunts to conduct an operational test and was struck by a train.

In developing this final rule, FRA conducted a preliminary cost-benefit analysis of a nationwide requirement to shunt, or to otherwise adopt a redundant signal protection involving manipulating the signal system or implementing a technology-based solution allowing roadway work groups to prevent train incursions into established working limits. FRA's analysis indicates the costs of a specific shunting or similar requirement would significantly outweigh the potential benefits and would cost the railroad industry well in excess of $100 million annually.

For the above reasons, FRA concurs with SEPTA's comment that an individual railroad is in the best position to determine what method of providing redundant signal protections is appropriate for its own operations. Thus, paragraph (b) requires Class I or II and passenger railroads that establish on-track safety using controlled track working limits (§§ 214.321–214.323) in signalized territories to evaluate their particular operations and identify what type of redundant signal protection(s) is appropriate. This evaluation must be completed by July 1, 2017. Varying signal systems, physical characteristics, equipment, operating rules, and other factors make a one-size fits all Federal mandate to shunt, or to adopt a specific form of redundant signal protection, impractical and not the safest course of action.

After railroads conduct the required evaluation, paragraph (b) requires them to adopt (if such procedures are not currently in place) an appropriate method of redundant signal protections in their on-track safety program by January 1, 2018, and to comply with the adopted procedure(s). FRA may object to a railroad's method of providing redundant signal protections under the review procedures specified in § 214.307, or may take other appropriate enforcement action if a railroad neglects to evaluate, adopt, and comply with appropriate redundant protection procedures.

Paragraph (b)(1) explains that for purposes of this section, the term "redundant signal protections" means risk mitigation measures or safety redundancies adopted to ensure the proper establishment and maintenance of signal protections for controlled track working limits until such working limits are released by the roadway worker in charge. In other words, "redundant signal protections" are intended to protect against dispatchers or control operators unintentionally or mistakenly allowing train or other on-track movements into working limits before a roadway work group has released its authority (*e.g.*, by removing a signal blocking device). Redundant signal protections could include various individual risk mitigation measures (or a combination of measures) such as technology, training, supervision, or operating-based procedures; or could include use of redundant signal protection such as shunting, designed to prevent signal system-related incursions into established controlled track working limits.

Permissible redundant signal protections under new paragraph (b) do not have to require members of the roadway work group or the RWIC to manipulate the signal system. Instead, redundant protections under this section could involve redundant actions by the control operator or train dispatcher operating the signal system. As noted above, NTSB cited apparent errors by the train dispatchers involved in both the 2007 MBTA and 2013 Metro-North accidents as probable causes of the accidents. Thus, FRA intends that appropriate redundant procedures required of the dispatcher involving operation of the signal system could also fulfill the requirement of new paragraph (b).

FRA notes a railroad is free to utilize shunting procedures to comply with paragraph (b) if the railroad's evaluation identifies such procedures as an appropriate way to provide redundant protections. FRA believes many railroads have already implemented redundant protections other than shunting procedures meeting the requirements of new paragraph (b). For example, at least one Class I railroad utilizes a technology-based procedure in its dispatching system that, if implemented properly, could satisfy the requirements of paragraph (b). FRA understands that dispatching system will not allow a dispatcher to release controlled track working limits until the RWIC affirmatively indicates via an electronic prompt that he or she is releasing working limits authority. Other railroads use extended job briefing procedures between the RWIC and dispatcher before a dispatcher may remove a blocking device, and/or monitor dispatcher job performance with extra operational tests and audits involving the removal of blocking devices. As an example of an additional briefing procedure (via radio communication) that would be an appropriate component of a railroad's redundant signal protections, a railroad could adopt in its railroad rules a prohibition on dispatchers releasing working limits and removing blocking devices until the RWIC confirms all roadway workers and equipment are clear of the track to be released. Similarly, a railroad rule requiring an additional member of the roadway work group to make the same confirmation to the dispatcher that the track to be released is clear of roadway workers and equipment could also be one component of a railroad's procedures adopted to comply with this new redundant signal protections requirement.

As additional background, on November 25, 2014, FRA published Safety Advisory 2014–02 (Advisory) regarding clear communication, compliance with existing rules and procedures, and ensuring appropriate safety redundancies are in place. 79 FR 70268; correction published at 79 FR 71152, Dec. 1, 2014. The Advisory recommended, in part, that railroads monitor their employees for compliance with existing applicable rules and procedures and examine their train dispatching systems, rules, and procedures to ensure appropriate safety redundancies are in place in the event of miscommunication or error. *Id.* at 70270. FRA issued the Advisory in response to then-open NTSB Safety Recommendation R–08–05, open Safety Recommendation R–08–06, and other incidents where roadway workers were either outside of working limits authority, or where working limits were no longer protected due to dispatcher error. The Advisory discussed available technologies to establish redundant signal protections for roadway work groups (not involving shunting) that, depending on a railroad's specific operating situation, could serve as appropriate forms of redundant protection under new paragraph (b) of this section. Specifically, the Advisory discussed the Enhanced Employee Protection System (EEPS). *Id.* at 70269. FRA understands certain railroads are deploying the EEPS system. And, the NTSB deemed Metro-North's response to Safety Recommendation R–13–17 (redundant signal protections recommendation to Metro-North specifically) as "Closed-Acceptable Action" after Metro-North implemented EEPS on its system.[8] FRA encourages railroads to use new technologies such as EEPS as they become available to provide redundant signal protections for roadway work groups and to comply with new paragraph (b). As is FRA's practice, it polled railroads to evaluate what, if any, actions railroads took to address the recommendations in the Advisory. A review of responses indicates many railroads' existing procedures already comply with new paragraph (b), as redundancies currently exist within their train dispatching procedures and procedures governing the release of controlled track working limits in signalized territory. FRA is also aware that in addition to these existing safety redundancies, many railroads' roadway maintenance machines are being equipped with modern shunting devices that more effectively shunt track while operating.

Each railroad subject to paragraph (b) must conduct the required evaluation of its on-track safety program by July 1, 2017. This evaluation must be completed even if the railroad believes its existing on-track safety program already provides appropriate redundancies. A railroad's on-track safety program must specifically identify and implement any redundancies by January 1, 2018. FRA believes this amount of time is adequate for each railroad to conduct the evaluation required by paragraph (b), formulate any necessary additions to the on-track safety program, and train roadway workers, train dispatchers, and control operators on any new redundant protections a railroad adopts.

Given operational and practicability considerations, new paragraph (b), requiring redundant protections, applies only to Class I and II railroads and intercity passenger and commuter railroads. By limiting the applicability of this requirement to these larger railroads, FRA is addressing nearly all of the controlled, signalized track in this country, and not imposing an unnecessary burden on smaller entities (Class III railroads). For purposes of this final rule, FRA considers carriers providing "intercity rail passenger transportation" and "commuter rail passenger transportation" to be the same as those defined at 49 U.S.C. 24102 (definitions of passenger railroads required to install PTC systems under 49 U.S.C. 20157(a)).

FRA must evaluate the costs and benefits of all new regulatory requirements and the burdens of those requirements on small businesses. In short, the safety issues requiring the redundant signal protections contemplated by paragraph (b) of this section are not typically present on the smallest railroads. Generally, Class III railroads do not have signalized controlled track where the redundant protections provision of paragraph (b) would even apply and Class III railroad operations are typically lower speed operations as compared to passenger and Class I or II railroad operations. The accidents NTSB's Safety Recommendation R–08–06 and R–13–07 address both occurred on commuter railroads and the more recent notable accidents described in the Advisory all occurred on either Class I or commuter railroads. Regarding the costs/burden of this new requirement, as discussed above, FRA polled the Class I and II railroads and certain passenger railroads to determine what actions railroads have taken to implement the recommendations in the Advisory. Most railroads that responded indicated they had redundant protections in place prior to FRA issuing the Advisory through their existing dispatching and on-track safety procedures. FRA does not believe there will be prohibitive costs to implement this new requirement, particularly with the flexibility that this final rule provides. A more detailed discussion of the estimated costs and benefits of this new provision is in the RIA accompanying this final rule.

New paragraph (c) of § 214.319 implements the "alternative safety measures" provision of Section 11408 paragraph (b). That paragraph requires FRA to consider exempting from the redundant signal protections requirements "a segment of track for which operations are governed by a [PTC] system certified under [49 U.S.C. 20157], or any other safety technology or practice that would achieve an equivalent or greater level of safety in providing additional signal protection." Paragraph (c) establishes how railroads may request FRA consideration of such an exemption for a segment of track.

FRA's regulations governing the implementation of PTC systems are in 49 CFR part 236, subpart I. Among other safety protections, part 236 requires PTC systems to prevent incursions into established roadway worker working limits. 49 CFR 236.1005(a)(1)(iii). To comply with this requirement, railroads generally have numerous system design options. In FRA's 2010 initial final rule on PTC, however, FRA explained it would scrutinize a railroad's PTC development and safety plans to determine if the plans left any opportunity for a single point human failure with regard to incursions into work zones (*e.g.*, any opportunity for a dispatcher to remove a blocking device in error as occurred in the 2007 MBTA accident described above). 75 FR 2598, 2613. As noted in that rule, FRA funded the development of a portable terminal allowing an RWIC to control the entry of trains (and restrict train speed) into established working limits, and prohibiting a dispatcher from releasing working limits in the absence of verification of a desired release from the RWIC. *Id.* In the 2010 final rule, FRA strongly recommended railroads utilize terminals with such functionality in implementing PTC. *Id.*

FRA believes a PTC system involving dual protections for roadway work groups (such as described above) would improve roadway worker safety and be consistent with allowing an appropriate PTC exemption from the redundant protection requirements in paragraph (b) of this section. However, without knowing the particular PTC system a railroad is using at a given location, and to ensure this type of dual protection system is successfully implemented, FRA cannot provide a universal exemption without performing a detailed review of each PTC system's working limits' incursion protections. Moreover, a railroad may use a solution to the PTC standard that is not necessarily redundant and would not fulfill the FAST Act's signal protections mandate.

Thus, new paragraph (c) requires a railroad seeking to exempt a segment of track governed by a PTC system from the redundant signal protections requirement of paragraph (b) to submit a written request for exemption to FRA's Associate Administrator for Railroad Safety and Chief Safety Officer. The written request for approval must include all relevant details regarding how the PTC system at a given location prevents train incursions into established working limits, and discuss how such a PTC system eliminates a single point human failure in the enforcement of established working limits. Paragraph (c) specifies that FRA will provide notice of approval or disapproval of a railroad's request within 90 days, and will specify the basis for FRA's decision if the request is disapproved. Of course, a railroad may choose to implement appropriate

[8] *http://www.ntsb.gov/investigations/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-13-017.*

redundant signal protections under new § 214.319(b) on segments of track governed by an operative PTC system to provide an extra measure of safety for roadway workers.

Both MBTA and Metro-North (the railroads that experienced the accidents which led NTSB to issue Safety Recommendation R–08–06) are required to install PTC. FRA already accounted for the cost of PTC installation and the corresponding benefits of preventing other types of unintended work zone incursions in the final PTC rule. 75 FR 2598; *see* accompanying FRA RIA, Docket No. 2008–0132–0060; available online at *www.regulations.gov*. The Advisory discussed above also reiterated the probability of certain types of work zone incidents occurring as a result of non-compliance with existing rules and regulations could be significantly reduced by effective implementation of PTC systems. FRA believes paragraph (b)'s new redundant protections provision, along with implementation of PTC systems under part 236, will greatly reduce the likelihood of future injuries and deaths resulting from incursions into controlled track working limits in signalized territory. However, FRA will continue to evaluate this issue, and, as new technologies evolve, may revisit the topic of redundant signal protections.

Section 214.320 Roadway Maintenance Machine Movements Over Signalized Non-Controlled Track

In the NPRM, FRA proposed to amend § 214.301 to address a potential safety issue resulting from roadway maintenance machine movements under that section on non-controlled track. Section 214.301 allows train or on-track equipment movements on non-controlled track without authorization from a train dispatcher or control operator.[9] Typically, movements on non-controlled track are governed by railroad operating rules limiting movements to speeds not exceeding restricted speed. Section 214.7 defines restricted speed as a speed that will permit a train or other equipment to stop within one-half the range of vision of the person operating the train or other equipment, but not exceeding 20 miles per hour, unless further restricted by the operating rules of the railroad. The requirement to stop within one-half the range of vision prevents collisions between any equipment operating on the same non-controlled track. As such, under existing § 214.301(c), operations at restricted speed allow roadway maintenance machines to safely travel over non-controlled track without having to establish working limits. However, some non-controlled track is equipped with automatic block signal (ABS) systems. ABS systems are designed to prevent collisions while allowing trains to operate at speeds greater than restricted speed. As discussed in the NPRM, this scenario is problematic for purposes of the movement of roadway maintenance machines on non-controlled track under existing paragraph (c) because roadway maintenance machines do not all shunt track circuits. Absent the establishment of inaccessible track working limits or other protections, nothing in existing part 214 prevents a train operating on non-controlled ABS-signaled track at greater than restricted speed from colliding with roadway maintenance machines traveling on the same track that do not shunt the signal system (no authority is needed to occupy non-controlled track and trains are not required to stop within one-half their operator's range of vision).

As noted in the NPRM, one Class I railroad had a significant stretch of ABS non-controlled track and a train traveling at greater than restricted speed struck a hi-rail vehicle.[10] To address this safety concern, in the NPRM, FRA proposed allowing roadway maintenance machine movements on signalized non-controlled track under § 214.301(c) (*i.e.,* without establishing working limits) only if train and locomotive speeds on the track are limited to speeds at or below restricted speed.

With the exception of block register territories (addressed in proposed § 214.327(a)(7) below), FRA believes railroad operations over most non-controlled track are already limited to restricted speed. For example, FRA understands yard track is typically non-controlled track with operations limited to restricted speed. Thus, FRA did not believe this proposed requirement would represent a cost burden to the industry. To provide additional flexibility on this point, however, in the NPRM FRA also proposed allowing the movement of roadway maintenance machines over non-controlled track without establishing working limits under operating rules other than restricted speed that are demonstrated to provide an equivalent level of protection as restricted speed rules. This proposal only referred to train and locomotive speeds on non-controlled track, and not to the speeds at which roadway maintenance machines are authorized to travel over non-controlled track. Existing § 214.341 already requires each railroad's on-track safety program to address the spacing between machines and the maximum working and travel speeds for machines depending on weather, visibility, and stopping capabilities. Roadway maintenance machines typically have stopping capabilities far in excess of that of trains. FRA intended this proposal to address situations where trains and locomotives are not required to stop within one-half the range of vision on non-controlled track, and could collide with roadway maintenance machines in travel mode under railroad operating rules that do not shunt signal systems.

AAR commented on this proposal. AAR's comment suggested altering FRA's proposed language by specifying that "restricted speed" would permit train and equipment movements at up to 25 miles per hour (mph). AAR also suggested specific rule text for alternate procedures if FRA allowed speeds greater than restricted speed (versus the NPRM proposal requiring FRA approve or disapprove of any alternative procedures adopted by railroads). AAR's comment estimated a cost of $297 million over a 20-year period for one railroad "if no other relief were granted."[11]

In this final rule, FRA is adding new § 214.320 addressing the movement of roadway maintenance machines on non-controlled track without establishing working limits. For purposes of this new section, FRA defines restricted speed as movements prepared to stop within one-half the range of vision but not exceeding 25 mph. The 25-mph maximum speed is consistent with the meaning of restricted speed for purposes of new § 214.317(c) (discussed above) in which FRA adopted an RSAC-consensus provision allowing on-track roadway maintenance machines to conduct snow removal and weed spraying operations while traveling over non-controlled track without establishing working limits. The 25-mph maximum speed is also consistent with AAR's recommended revisions and will minimize the potential costs, if any, of this new paragraph. This new section requires roadway workers moving roadway maintenance machines over non-controlled track equipped with an ABS signal system, and over which trains are permitted to operate at speeds over restricted speed (above 25 mph), to establish working limits under § 214.327. Because no control operator or dispatcher controls movements over non-controlled track, and roadway maintenance machines may not shunt the track while traveling over it, this new section helps prevent roadway maintenance machines from colliding with trains or other on track equipment where movements are made at speeds in excess of restricted speed on non-controlled track.

To address this situation, AAR suggested specific rule text requiring dispatchers or control operators to provide permission for a train to move into or within non-controlled track. By definition, however, FRA believes this would make the track "controlled track." *See* § 214.7 definition of "controlled track". If track is "controlled track," then this provision as proposed and as adopted in new § 214.320 would not even apply. FRA also notes AAR's recommended procedure is very similar to the procedures in new § 214.327(a)(8) adopted in this final rule for establishing working limits on non-controlled track. Thus, a railroad may choose to comply with new § 214.327(a)(8) if it does not want to comply with the restricted speed provision of new § 214.320 or an FRA-approved alternate procedure under that section.

In this new section, FRA provides flexibility for railroads to adopt alternate procedures to move roadway maintenance machines over non-controlled track and to utilize those procedures instead of establishing working limits or restricting on-track movements to restricted speed. With the new methods of establishing working limits on non-controlled track discussed below in § 214.327, the flexibility provided in this new § 214.320, and the small number of situations when § 214.320 will apply, FRA believes railroads have sufficient flexibility to conduct train movements at track speed over signalized non-controlled track, while at the same time providing for the safe movement of non-shunting roadway maintenance machines traveling over the same non-controlled track.

AAR's comment estimated one railroad would incur costs of $297 million as a result of this provision. FRA disagrees with AAR's calculation. According to AAR, this one railroad identified 13 locations covered by the NPRM proposal. The railroad then estimated 252 trains operating over those 13 locations daily, with an additional 126 "opposing trains delayed" per day at these locations, for a total of 378 trains affected daily. AAR then estimated delay costs for each of the 378 trains, for every single day of the year, for a 20-year period. AAR stated the delay costs are due to trains being delayed as a result of having to travel at restricted speed.

AAR's calculation is flawed. Nothing in the NPRM or this final rule requires trains to travel at restricted speed at any of the identified 13 locations. This provision merely requires roadway workers, at the periodic times when roadway maintenance machines travel over non-controlled track, to establish working limits under § 214.327. If a railroad does not want to require its roadway workers to establish working limits under these circumstances, new § 214.320 allows railroads to adopt alternative procedures providing an equivalent level of protection to restricted speed protections. These alternative procedures, once demonstrated to provide an equivalent level of safety as restricted speed protections and approved by FRA, would permit roadway maintenance machines to travel over these locations without establishing working limits.

AAR's basis for its train delay estimate is also unfounded because as mentioned above, neither the NPRM nor this final rule require any trains to travel at restricted speed. This provision only requires roadway workers to establish working limits if no alternative procedures are adopted, which would only affect a fraction of train traffic at these 13 locations. If for some reason a railroad chooses not to adopt alternative procedures providing an equivalent level of protection for roadway maintenance machines movements, FRA is unsure any of these trains would be affected, because even under the existing railroad rules, trains permitted to operate at greater than restricted speed on non-controlled track already have to somehow yield to roadway maintenance machine movements travelling over the same track to avoid colliding with the machines. As explained in the accompanying RIA, FRA does not believe new § 214.320 will impose any significant costs. FRA understands the one railroad estimating costs for this NPRM provision revised its procedures to designate some track in question "controlled track" and is now using new procedures that may already comply with this section. Thus, via existing industry practices, FRA does not believe there are any large costs to implement this provision. FRA believes this final rule will, at most, only impose de minimis costs in light of the additional methods of establishing working limits via § 214.327 proposed in the NPRM that are akin to AAR's proposal in its comment discussed above. Also, as explained above, FRA has specified restricted speed is a maximum of 25 mph (stopping within one-half the range of vision) for purposes of this provision, per the request made in AAR's comment. This further alleviates any stated cost concerns.

Section 214.321 Exclusive Track Occupancy

Existing § 214.321 sets forth the requirements for establishing working limits on controlled track through exclusive track occupancy procedures. In the NPRM, FRA proposed several amendments to this section, including both Working Group consensus items and non-consensus items. FRA proposed to replace the words "roadway worker" in existing paragraphs (a) and (b) with "roadway worker in charge." As discussed previously, this change is intended to clarify the existing variety of generic references to roadway workers in charge and, in this section in particular, to clarify that an authority for exclusive track occupancy must be communicated to the "roadway worker in charge," as opposed to the "roadway worker" as currently stated in existing paragraph (b) of this section (per existing § 214.319, only a roadway worker in charge can establish working limits).

Next, existing paragraph (b) of this section states a "data transmission" may be used to transmit an exclusive track occupancy authority to a roadway worker (*i.e.,* a roadway worker in charge). However, existing paragraph (b)(2) states only that the roadway worker in charge must maintain possession of a "written or printed authority" while the authority for working limits is in effect, and does not currently account for authorities conveyed via data transmission displayed on the screen of an electronic device. In the NPRM, FRA proposed to amend paragraph (b)(2) to clarify that an authority displayed on an electronic screen may be used in place of the "written or printed" authority existing § 214.321(b)(2) requires. FRA is adopting this amendment in this final

[9] Section 214.7 defines "non-controlled track" as track upon which trains are permitted by railroad rule or special instruction to move without receiving authorization from a train dispatcher or control operator.

[10] Another Class I railroad with non-controlled, signaled track, moves roadway maintenance machines over the track by creating working limits via a dispatcher controlling the signals at either end of the non-controlled limits to make the track inaccessible.

[11] FRA notes the calculation in AAR's comment incorrectly indicates AAR's $297 million estimated cost relates to the NPRM's proposed RSAC consensus definition of the term "controlled point" (see the title of Attachment B to AAR's comment). In reviewing AAR's comment, however, it is clear the $297 million cost estimate actually pertains to FRA's proposal to amend existing § 214.301(c) to address a safety risk that occurs when roadway maintenance machines travel over signalized non-controlled track.

rule. FRA notes that electronic authorities must also comply with the requirements of new § 214.322, discussed in the Section-by-Section analysis below.

The Working Group recommended consensus language requiring exclusive track occupancy authorities to specify a unique roadway work group number, an employee name, or other unique identifier. In the NPRM, FRA proposed language consistent with this Working Group recommendation as new paragraph (b)(4) to § 214.321.

AAR and NJT submitted comments about this proposal. AAR supported this proposal, but noted an inconsistency between the preamble discussion and proposed rule text. AAR noted the preamble discussion implied using an employee name to identify an exclusive track occupancy authority when conveying working limits would not be permitted, but the proposed rule text allowed using an employee name. FRA agrees and notes that as proposed and as adopted in this final rule, paragraph (b)(4) of this section permits using an employee's name to identify an exclusive track occupancy authority.

NJT requested clarification of the language in paragraph (b)(4) which required railroads to adopt procedures requiring precise communication between trains and other on-track equipment and the RWIC or lone worker controlling the working limits in accordance with § 214.319. Specifically, NJT asked if the language was meant to require a train to communicate with every piece of on-track equipment in a roadway work group, in addition to communicating with the RWIC, when seeking to pass through working limits. NJT indicated that if this proposal required such communication, both locomotive engineers and roadway work groups could become distracted due to excessive sounding of the locomotive horn as the train passed through working limits. FRA clarifies this language, as proposed in the NPRM and adopted in this final rule, is intended to require a train or other on-track equipment to communicate only with the RWIC (or lone worker) of the working limits through which the train or on-track equipment seeks to enter or travel through. FRA addresses NJT's comment on potential excessive sounding of the locomotive horns in these circumstances in the Section-by-Section analysis for § 214.339 below.

Next, as proposed, FRA is amending existing paragraph (d) to refer to the "roadway worker in charge" rather than to the "roadway worker" having control over the working limits. As discussed elsewhere in this preamble, FRA is making similar changes in multiple locations in this final rule to replace the varying existing language generically referring to the "roadway worker in charge" throughout subpart C. Existing paragraph (d) of this section requires the movement of trains and other on-track equipment within exclusive track occupancy working limits be made only under the direction of the RWIC. As discussed in the preamble to the NPRM, in 2005 FRA issued Technical Bulletin G–05–22 addressing paragraph (d) and recognizing there may be times, such as during an emergency, when a RWIC cannot be contacted by a train or other on-track equipment seeking to move into or through the RWIC's working limits. In this final rule, FRA intends new paragraph (b)(4) to work in conjunction with the requirements of existing paragraph (d). New paragraph (b)(4) requires railroads to adopt procedures governing communications between trains and RWICs. FRA expects railroads to adopt procedures addressing what actions employees must take if there is an emergency and a RWIC cannot be contacted by a train crew or the operator of other on-track equipment. Upon the effective date of this final rule, Technical Bulletin G–05–22 is supplanted.

In addition, as explained in the NPRM, the existing text of the beginning of the second sentence of paragraph (d) currently reads that "[s]uch movements shall be restricted speed." FRA proposed to amend that text to instead state "[s]such movements shall be made *at* restricted speed." (Emphasis added.) For clarity and readability, FRA is adopting this proposed revision.

Finally, in the NPRM, FRA proposed adding new paragraph (e) to this section. This paragraph proposed minimum safety requirements when an exclusive track occupancy authority is given to a RWIC (or lone worker) before the roadway work group (or lone worker) is to occupy the limits, or when train(s) may be occupying the same limits. As explained in the NPRM, these authorities are referred to as "occupancy behind," "conditional," or "do not foul the limits ahead of" authorities [12] and enable a train dispatcher or control operator to issue an authority allowing a roadway work group (or lone worker) to occupy a track, if such occupancy only occurs after certain trains or other on-track equipment pass. At the time occupancy behind authorities are issued to roadway work groups (or lone workers), trains may still be ahead of the point the roadway worker(s) will be occupying, or in some cases may be past the point to be occupied but still within the working limits. Railroads have a history of using "occupancy behind" authorities and expressed to FRA using such authorities is crucial for efficient railroad operations. The Working Group discussed potential problems with miscommunications involving "occupancy behind" authorities, but did not reach consensus on recommended regulatory text addressing the issue. However, FRA believes it is necessary to adopt minimum safety requirements for using such authorities when RWICs (or lone workers) are establishing exclusive track occupancy working limits.

As proposed, paragraph (e)(1) requires the RWIC or lone worker to confirm affected train(s) are past the point the roadway worker(s) intend to occupy or foul before working limits may be established under paragraph (e). Paragraph (e)(2), as proposed, requires a railroad's operating rules to include procedures prohibiting affected train(s) from making reverse moves into the limits roadway worker(s) are authorized to foul or occupy when a RWIC or lone worker confirms the passage of affected train(s) by visually identifying the train(s). Paragraph (e)(3), as proposed, requires the RWIC or lone worker, after confirming the affected train(s) had passed the point the roadway worker(s) intended to occupy or foul, to record "on the authority" the time the train(s) passed and locomotive number(s) of the affected train(s). As proposed, paragraph (e)(4) prohibits roadway workers located between the rear end of the last affected train and the RWIC, or who are still located ahead of any affected train, from fouling or occupying the track until the RWIC confirms and records affected train(s) passed under paragraphs (e)(1) and (3) and provides the roadway worker(s) permission to occupy or foul the track.

NTSB, SEPTA, BMWED/BRS, and AAR commented on this proposal. After careful consideration of each of these comments, in this final rule, FRA is adopting paragraphs (e)(1) through (3) as proposed and paragraph (e)(4) with slight modifications from that proposed. FRA believes adoption of this paragraph's minimum standards for establishing "occupancy behind" working limit authorities codifies best practices and will help ensure safety. A detailed discussion of FRA's responses to comments received on to new paragraph (e) is below.

[12] FRA notes 49 CFR 220.61 requires issuing "mandatory directives" via radio transmission for both trains and on-track equipment. Exclusive track occupancy authority to establish working limits granted by a train dispatcher or control operator to a RWIC are sometimes also considered "mandatory directives" under that section. The existing requirements in § 214.321 are in addition to the requirements of existing § 220.61.

NTSB indicated its awareness of the perceived benefits of "occupancy behind" track authorities, but cited four train accidents occurring between 1996 and 2004 involving the use of these types of authorities. NTSB urged FRA not to adopt the proposed changes in a final rule, indicating such changes would diminish safety. FRA appreciates and understands NTSB's point of view on this issue, but FRA believes adopting minimum safety standards for "occupancy behind" authorities will improve safety. The use of conditional authorities, such as those contemplated by paragraph (e), currently occurs in the railroad industry. The existing on-track safety regulations of subpart C do not address this practice. By adopting paragraph (e) in this final rule, FRA is establishing minimum Federal safety requirements for this practice and believes these standards will further improve track-related safety issues, as roadway workers and dispatchers will continue to be able to maximize the time available for roadway workers to perform quality track inspections as required by 49 CFR part 213. If FRA prohibited using occupancy behind authorities, the time available for roadway workers to conduct track inspections in busy rail corridors would likely decrease as authorities for roadway workers to occupy or foul track could not be issued until after all trains passed the point the roadway worker(s) need to occupy or foul track. FRA believes more frequent and quality track inspections will improve railroad safety, as track-caused derailments are one of the leading causes of railroad accidents.

SEPTA requested clarification of the requirements in proposed paragraphs (e)(3) and (4). SEPTA asked how, under proposed paragraph (e)(3), a RWIC could confirm in writing the train passed if the roadway worker received the authority through a data transmission. SEPTA also asked if under proposed paragraph (e)(4) every roadway worker between the RWIC and the affected train(s) would have to be qualified to the level of a RWIC, or whether each additional work group would be required to have an employee qualified as a RWIC.

In response, FRA clarifies that if an authority is conveyed electronically, a RWIC or lone worker may, under paragraph (e)(3), record the time of passage and engine numbers of trains passing the point to be occupied or fouled in one of two ways. First, a railroad could program its system to issue electronic authorities so roadway workers can enter the required information electronically onto the authority and maintain access to that information while the authority is in effect. Second, as discussed in the NPRM, an RWIC could write the time of passage and engine numbers on a paper and maintain that paper while the authority is in effect. This written information is considered part of the authority, and must be kept by the RWIC while the authority is in effect.

In response to SEPTA's request for clarification of paragraph (e)(4), in this final rule, FRA is amending the text to clarify the paragraph refers to separate roadway work groups. FRA intended this provision to allow separate roadway work groups (or lone workers) located between the rear end of affected trains and the RWIC to have a roadway worker qualified under § 214.353 communicate with the RWIC holding the authority.

BMWED/BRS opposed amending the regulations to accommodate issuing "conditional authorities" to establish working limits. Noting the Working Group did not reach consensus on this point, the labor organizations stated working limits should only be in effect after all trains and on-track equipment have reported clear of the working limits. BMWED/BRS indicated that if conditional authorities such as those proposed are permitted, all trains and on-track equipment traveling within working limits must be required to operate at restricted speed.

In response, FRA notes that in many instances, particularly in high-volume corridors, the potential economic costs of requiring all trains to travel at restricted speed within authority limits in occupancy behind situations would likely outweigh the economic benefits of such a requirement. FRA also reiterates that in the absence of FRA action in this final rule, occupancy behind authorities would continue to be used regularly by the railroad industry without this final rule's minimum safety requirements addressing such use. Thus, FRA believes this provision improves safety.

AAR's comment stated paragraph (e)(3)'s requirement that the RWIC record the time of passage and engine numbers of a train after the train has passed is problematic and unnecessary. AAR asked where a RWIC should record such information if an electronic authority is used. AAR also stated it is unaware of an instance where the information regarding time of passage and train engine numbers would have been useful.

AAR's comment also stated that paragraph (e)(4)'s requirement regarding additional RWICs could be costly, as a RWIC might have roadway workers acting under his or her working limits authority located miles apart. AAR asserted this requirement could necessitate additional communication within a roadway group, and could lead to confusion in large work gangs accustomed to a single source for confirmation regarding whether it is safe to foul a track. Finally, AAR's comment questioned what constitutes a separate roadway work group under paragraph (e)(4), stating the reasonable approach is that when all the workers are engaged in a common task only one employee qualified as a RWIC should be required.

In response to AAR's first question regarding where a roadway worker who is utilizing an electronic authority should copy the time of passage and engine numbers of a passing train, FRA refers to the response to SEPTA's similar inquiry above, and to the NPRM's discussion regarding a separate written document. 77 FR 50344. The RWIC can copy that information in writing so it can be compared to the information in the electronic authority. The written information must be kept by the RWIC while the authority is in effect under § 214.321(b). 77 FR 50344. FRA believes roadway workers must copy this information, because if a dispatcher gives a roadway worker authority behind or after the passage of a train(s), the engine numbers are a simple check to ensure the train that has passed the RWIC's location is indeed the train the dispatcher had intended would pass before roadway workers fouled track. FRA staff is aware of situations when there was confusion over whether the roadway workers could occupy a track after a particular train passed. This provision helps eliminate any confusion, and, in some instances, will save time by alleviating the need for additional dispatcher communication to verify the appropriate trains have passed the point to be occupied.

Regarding paragraph (e)(4)'s requirement addressing an additional RWIC for roadway work groups that might piggyback within the working limits of the RWIC named on the authority, FRA also refers to the response to SEPTA's comment above. Consistent with FRA's intent in the NPRM, FRA is clarifying in this final rule that this requirement only applies to separate roadway work groups at a location away from the RWIC listed on the authority. Regarding AAR's inquiry about what constitutes a separate roadway work group, FRA agrees a roadway work group is composed of roadway workers ". . . organized to work together on a common task" as stated in the definition of the term "roadway work group" at existing § 214.7. In this regard, roadway workers

who are part of the same group will continue to follow the instructions of the RWIC when fouling track, as is required in all instances under the existing regulation. So, a large roadway work group that might be spread out over some distance will not be permitted to foul the track in question until the RWIC indicates the members of the roadway work group may do so (and after the passage of the trains listed on the authority).

In this final rule, FRA retains the NPRM's text addressing a RWIC of a roadway work group away from the location of the initial group. If a second roadway work group wishes to "piggyback" on an occupancy behind authority, the RWIC of the second group must also have a copy of the authority and confirm the affected trains have passed the group's location before the group occupies the track. As an example, if the RWIC of a tie gang establishes working limits authority under paragraph (e), and a bridge gang two miles away wishes to piggyback on that authority, the bridge gang must have its own RWIC communicate with the tie gang's RWIC before permitting the bridge gang to foul the track. In many regards, this is the same way roadway work groups are used under another RWIC's authority under existing part 214. FRA notes this procedure is not limited to two roadway work groups, but multiple groups may be involved.

FRA believes that from a safety perspective these requirements are necessary. Where an additional roadway work group is located a distance from the RWIC listed on the authority, the only safe way for that additional roadway work group to ensure affected trains have passed their location is to make the required confirmation of train engine numbers. This is necessary because a second roadway work group may have arrived at location either before or after an affected train listed on the authority has already passed that location. Meaning, unless confirmation is made by each roadway work group, the group may not know how many affected trains have already passed (or if a train exited the track to be occupied, or stopped, before reaching a roadway work group's location). If the RWIC listed on an authority is not physically present at a separate roadway work group's location, which may be some distance away, he or she cannot know whether a train has actually passed that other location to be able to tell an additional roadway work group it is safe to foul the track yet. The RWIC at the particular location where the piggybacking group wishes to foul track must make that determination. This procedure is necessary to avoid miscommunications between separate roadway work groups on an occupancy behind authority, and addresses safety concerns regarding occupancy behind authorities discussed by the Working Group. Such qualification is necessary to ensure the RWIC of a separate work group utilizing another group's authority has been trained on, and can apply, the rules regarding occupancy behind procedures. It also ensures a RWIC is present to recognize whether appropriate on-track safety measures are in place and to address any potential good faith challenges.

As mentioned above, FRA is slightly amending the rule text of (e)(4) based on further evaluation of this issue, to more clearly account for situations where additional roadway work groups are located at the same place as the RWIC listed on the authority. In that instance, the RWIC who obtained authority may confirm the passage of affected train(s), and may communicate to an additional roadway work group it is safe to foul the track (without need for an additional RWIC to have a copy of the authority). If the RWIC can see the affected trains are past a separate roadway work group's location, the RWIC of the authority can verbally inform the other roadway work group it is permissible to foul the track without need for that second group to have a copy of the authority per paragraphs (e)(4)(i) and (ii).

With regard to the requirements and application of new paragraph (e) as a whole, paragraph (e)(1) states an authority is only in effect after the RWIC or lone worker confirms affected train(s) have passed the point to be occupied or fouled by the roadway work group or lone worker. This is necessary because in many instances the train(s) listed in the roadway worker in charge's authority may still be ahead of (*i.e.,* may have not yet reached and traveled past) the point to be occupied or fouled. The text permits such confirmation to be made in three ways: (1) By visually identifying the affected train(s); (2) by direct radio contact with a crew member of the affected train(s); or (3) by receiving information about the affected train(s) from the dispatcher or control operator.

Paragraph (e)(2) states that when such confirmation is made by the RWIC visually identifying the affected train(s), the railroad's operating rules must include procedures to prohibit such trains from making a reverse movement into the limits being fouled or occupied (this provision, in addition to the requirements of proposed § 214.321(e)(4) below, protects roadway worker(s) located ahead of the point to be occupied who intend to "piggyback" on a RWIC's exclusive track occupancy authority). FRA believes this is necessary, as this confirmation method does not require the RWIC to actually talk to the crew of the affected train(s) (or for the train dispatcher to talk with the crew or verify that that train is beyond the point to be occupied), such that the crew may not be cognizant of the working limits or point to be occupied. In this final rule, FRA has also added the word "within" to this provision, as whether a reverse movement is made into, or within the working limits, by a train after having passed the point to be occupied presents the same risk to a roadway work group that will be fouling the track.

Paragraph (e)(3) requires that after confirmation of the passage of affected train(s) is made, the RWIC must record on the authority document (or display) both the time of passage and the engine (locomotive) numbers of the affected train(s). If passage confirmation is made via radio communication with the train crew, the time of that communication along with the engine numbers must be recorded on the authority. When confirmation of the passage of the affected train(s) is made via the train dispatcher or control operator, the time of such confirmation and the engine numbers must be recorded on the authority. If the time and engine numbers are not recorded on the authority itself, as explained above (and in the NPRM), FRA considers a separate written document used to record information regarding passing trains to be a component of the authority. That separate document must be maintained with the authority while it is in effect.

Paragraph (e)(4) states separate roadway work groups who are located away from the RWIC listed on the authority may only foul track under an occupancy behind authority after receiving permission to do so from the RWIC who received the authority and after the RWIC fulfilled the provisions of proposed § 214.321(e)(1) and (3). As explained above in response to the AAR and SEPTA comments, FRA has amended the NPRM's reference to "roadway workers" in paragraph (e)(4) to instead refer to a "separate roadway work group." FRA's intent was that each additional roadway work group piggybacking on the initial roadway work group's authority would also have its own roadway worker qualified under § 214.353. For the reasons explained above, the RWIC of another roadway work group piggybacking on an occupancy behind authority is also required to have a copy of such authority and fulfill the requirements of § 214.321(e)(1) and (3) before working limits may be occupied or fouled at a particular location. The authority information may be verbally transmitted by the RWIC to the additional roadway work group utilizing the working limits.

FRA removed what was proposed paragraph (e)(5) in the NPRM from this final rule. Proposed (e)(5) would have reiterated that lone workers who wished to utilize this occupancy behind procedure must comply with the same procedures a RWIC of a roadway work group is required to adhere to under paragraph (e). This paragraph was unnecessary, however, as paragraph (e)(1) and the amended definition of "roadway worker in charge" already account for lone workers utilizing the procedures under this paragraph.

New paragraph (e)(5) (formerly proposed paragraph (e)(6)) establishes any train movements within working limits after passage of the affected trains listed on the authority will continue to be governed by existing § 214.321(d), or under the direction of the RWIC.

Section 214.322 Exclusive Track Occupancy, Electronic Display

Existing § 214.321(b) permits an exclusive track occupancy authority to be issued via data transmission from the train dispatcher or control operator to the RWIC. Certain railroads utilize electronic devices to display such authorities received via data transmission. FRA anticipates that using such electronic devices to display working limits authorities will continue to grow, especially with the implementation of PTC systems. As such, the Working Group considered this topic, and contemplated minimum requirements for using such electronic displays. The Working Group agreed in principle to basic concepts for using electronic display for working limits. However, the Working Group did not agree to consensus language.

Paragraph (a), as proposed in the NPRM, contained the items agreed to in principle by the Working Group, and established that an electronically displayed authority must be readily viewable by the RWIC while such authority is in effect. Proposed paragraph (a)(1) stated that when a device malfunctions or fails, or cannot otherwise display an authority in effect (*e.g.,* batteries powering the electronic device displaying the authority lose charge), the RWIC must instruct all roadway workers to stop and occupy a place of safety until a written or printed copy of the authority can be obtained, or another form of on-track safety can be established. FRA requested comment regarding whether to first allow the RWIC the opportunity to obtain a written copy of an authority before requiring the members of the roadway work group to stop work and occupy a place of safety (and if a written authority could not immediately be obtained, *then* requiring the work group to occupy a place of safety).

Paragraph (a)(2), as proposed in the NPRM, stated the RWIC must conduct an on-track job safety briefing to determine the safe course of action with the roadway work group. Proposed paragraph (a)(2) attempted to provide flexibility in situations where an electronic display fails and the RWIC cannot communicate with the train dispatcher via radio, which might occur in a deep rock cut or a tunnel, and a roadway work group may have to move within established working limits to a location where they can occupy a place of safety and/or re-establish communication with the dispatcher.

FRA received comments from BMWED/BRS, AAR, and SEPTA about proposed paragraph (a). The BMWED/BRS comment supported proposed paragraph (a)'s requirement that, in the event of an electronic display failure, roadway workers must stop and occupy a place of safety until a copy of the authority could be obtained or another form of on-track safety could be established. The comment indicated there is no reason to delay the order to occupy a place of safety while the RWIC tries to get access to the authority or establish another form of on-track safety.

AAR's comment stated a RWIC should have an opportunity to obtain a written copy of the authority expeditiously before work is required to stop, indicating there is no reason to stop work immediately when a momentary lapse in the visibility of the authority occurs. AAR stated the display failure will have no effect if a written copy of the authority is obtained without delay. AAR also stated that a roadway worker having a written copy of the authority at all times (either paper or on an electronic display) is inconsistent with authorization of verbal protection (as was proposed in the NPRM but not adopted in this final rule). AAR also questioned what would constitute a place of safety for a worker on a bridge or in a tunnel if the electronic display failed.

The SEPTA comment disagreed with the proposed requirement that roadway workers stop work and occupy a place of safety until a written copy of the authority is obtained or another form of on-track safety is obtained. SEPTA stated that as long as the working limits are not released, the roadway workers would be no less safe than they were before the display failure. Rather than require a work stoppage, SEPTA suggested the RWIC should have an opportunity to obtain an alternate copy of the authority, stating that there is no logical reason to stop work unless the actual work conditions change.

After evaluating this issue and the comments received, FRA decided to consolidate proposed (a)(1) and (2) into a single paragraph (b). FRA decided to allow the RWIC an opportunity to obtain a written or printed copy of an authority without delay before requiring roadway workers to occupy a place of safety. FRA believes that as long as an authority is still in effect, and the only issue is the display failure, in many instances the track on which working limits have been established is the safest place for a roadway worker to occupy. However, FRA is specifying that any moving roadway maintenance machines must stop if an electronic display fails, so if there is a question about the limits of an authority, there is no risk of roadway workers traveling outside of protected working limits on a moving machine. If a new authority cannot be obtained or another form of on-track safety cannot be established, work must stop and roadway workers are required to occupy a place of safety. A job safety briefing must then be conducted with the roadway work group to determine the safe course of action. FRA believes this is the appropriate course from a safety perspective when a new authority cannot be obtained, because if questions arise regarding the on-track safety being provided, the working limits authority cannot be referenced or amended if necessary. Of course, a method to prevent this situation from even occurring is for a RWIC to also print a copy of the authority after it is issued via data transmission. If a display fails, a copy of the authority is then already available for reference.

FRA added the words "without delay" to describe how the RWIC must obtain another version of the authority if an electronic display fails. This means the RWIC must contact the dispatcher or obtain new authority directly upon noticing a display failure. If, for example, the dispatcher responds by instructing the RWIC to call back at a later time to obtain a new authority, then the roadway work group would have to stop work and occupy a place of safety until an authority can be obtained. If a dispatcher or control operator does not respond to contact attempts by the RWIC, the work group must stop work and occupy a place of

safety. In response to AAR's comment about a tunnel or bridge and what constitutes a place of safety, FRA understands the track on which working limits have been established may be the best, or only, place of safety in such instances. As such, FRA would not take exception to such situations, and expects the on-track job safety briefing following a display failure to be used to determine the safest course of action for the group, even if the safest course of action is to continue to occupy the track on which working limits had been established. In this final rule, FRA also added reference to hi-rail vehicles in paragraph (b), as FRA recognizes a hi-rail vehicle on track is not always considered an "on-track roadway maintenance machine" as defined by § 214.7 if used to inspect track. Thus, this provision also applies to an electronic authority being used by a roadway worker(s) occupying track in a hi-rail vehicle.

Paragraphs (c)–(h) (proposed as paragraphs (b)–(g)) address technical attributes of the electronic display of exclusive track occupancy authorities, and are safety and security-related. FRA is largely adopting the rule text proposed as discussed below. FRA received comment on these proposals from the BMWED/BRS. Their comments supported these security provisions, but suggested four changes. The comment stated FRA should add a provision on display survivability, addressing the ability of an electronic device to stand up to environmental conditions such as heat and cold. The comment also suggested a provision regarding readability by a roadway worker, indicating the display must be legible in all environmental conditions and appearing in text, with supplemental graphic displays allowed. The comment next suggested that authorities transmitted electronically must be retained for one year (versus the proposed 72 hours) and the authority must be available for review, recall, and printing by the requesting employee during that time. Last, the comment suggested roadway workers should have the absolute right to speak to the dispatcher via voice communications rather than via data transmission to ensure proper on-track safety is in place.

FRA is declining to adopt these suggested revisions. First, FRA believes the environmental requirements are unnecessary, as FRA has established requirements to provide for roadway worker safety if a display fails. Also, because of continuous improvement in technology, such technical standards for a display device would quickly become outdated, and also might be so costly they could not be justified economically. Nevertheless, FRA expects railroads to take into account the environment such devices will be subject to during use. As noted in the NPRM, railroads are always allowed to implement more restrictive security requirements provided the requirements do not conflict with Federal regulation.

FRA also believes that regulation text requiring electronic authorities to be in text and the RWIC to have an absolute right to talk to a dispatcher via voice communication instead of via data transmission are unnecessary. Under existing § 214.313(c), roadway workers are already required to ascertain that on-track safety is being provided before fouling a track. If there is any question regarding on-track safety, FRA urges roadway workers to clarify the extent of the working limits (or any other questions that may arise), and notes § 214.313(d) already provides for a good faith challenge procedure. If roadway workers are required to foul track while uncertain of the extent of the on-track safety being provided, FRA urges roadway workers to raise a good faith challenge and to not foul track until those questions have been resolved. Further, the required on-track job safety briefing required to take place before track is fouled is also a tool to resolve any potential questions regarding the on-track safety being provided.

With regard to the BMWED/BRS suggestion that all authorities be retained for one-year, FRA believes such a requirement is unnecessary. First, FRA is already specifying that for electronic devices used to obtain an authority where an accident is then involved, such authority data must be kept for one year, and for 72 hours in the absence of an accident. FRA notes there are no similar requirements for written authorities under the sections in part 214 addressing working limits. For cost reasons, FRA chose not to adopt any similar requirements for written authorities (though 49 CFR part 228's requirements apply to certain dispatcher-created records), and also because traditionally FRA has not had issue obtaining copies of written authorities after an accident, and can review dispatcher records and radio recordings. As such, FRA is not certain what utility a one-year electronic retention requirement in the absence of an accident would provide, and is not reasonably certain any utility would outweigh potential costs.

With regard to application of new § 214.322, paragraphs (c) and (d) require identification and authentication of users. A user is the RWIC and train dispatcher or control operator, as they are most often involved in an exclusive track occupancy authority transaction. A user could also be a process or a system that accesses or attempts to access an electronic display system to perform tasks or process an authority. Identification is the process through which a user presents an identifier uniquely associated with that user to gain access to an electronic authority display system.

Authentication is the process through which an individual user's identity is validated. Most authentication techniques follow the "challenge-response" model by prompting the user (the challenge) to provide some private information (the response). Basic authentication factors for individual users could involve information an individual knows, something an individual possesses, or something an individual is (*e.g.*, personal characteristics or "biometrics" such as a fingerprint or voice pattern).

Paragraph (d) requires any authentication scheme utilized to ensure the confidentiality of authentication data and protect that data from unauthorized access. Such schemes must utilize algorithms approved by the Federal government's National Institute of Standards and Technology (NIST), or any similarly recognized standards body.[13] This requirement parallels a similar requirement for PTC systems at 49 CFR 236.1033(b),[14] and is intended to help prevent deliberate "spoofing" or "man in the middle" attacks on exclusive track occupancy authority information communicated and displayed via electronic device.

Paragraph (e) addresses transmission, reception, processing, and storing exclusive track occupancy authority data, and is proposed to help ensure the integrity of such data. Data integrity is the property of data not being altered since the time data was created, transmitted, or stored, and generally refers to the validity of the data. This paragraph establishes that new electronic authority display systems placed into service on or after July 1, 2017 are required to utilize message authentication codes (MACs) to ensure data integrity. Similar to the requirements of paragraph (d), MACs would have to utilize algorithms approved by NIST or a similarly recognized standards body. Unlike Cyclical Redundancy Codes (CRCs), MACs protect against malicious interference. Paragraph (e) permits the use of systems implemented prior to July 1, 2017 to utilize CRCs, but requires that the collision rate for the CRCs' checks utilized be less than or equal to 1 in 2^{32} (*i.e.* two to the 32nd power). This collision rate helps provide reasonable protection against accidental or non-malicious errors on channels subject to transmission errors, and is based on a Department of Defense standard. Existing systems using CRCs that do not meet this minimum standard must be retired and replaced with systems that utilize MACs not later than July 1, 2018. Paragraph (e)(2) requires that MACs' or CRCs' checks only be used to verify the accuracy of a message, and that an authority must fail if the checks do not match.

Paragraph (f) requires the actual electronic device used to display an authority issued via data transmission to retain any authorities issued for a minimum of 72-hours after expiration of such authority. This minimum requirement is primarily for investigation purposes, as it gives railroad safety investigating bodies such as FRA or the NTSB an opportunity to study authority data in non-reportable accident/incident situations, and to compare it to a dispatcher or control operator's corresponding electronic authority transmission records. This requirement will also be helpful for compliance audits.

Paragraph (g) is the same as 49 CFR 229.135(e) of FRA's Railroad Locomotive Safety Standards. Section 229.135(e) governs preserving data from locomotive event recorders or other locomotive mounted recorders if there is an accident. Paragraph (g) requires railroads to preserve data from any electronic device used to display an authority for one year from the date of a reportable accident/incident under 49 CFR part 225, unless FRA or the NTSB notifies the railroad in writing the data is desired for analysis.

Paragraph (h) requires new electronic display systems implemented on or after July 1, 2017 to provide Level 3 assurance as defined by the August 2013, version of NIST Special Publication 800–63–2, "Electronic Authentication Guideline." NIST is the Federal agency that works with industry to develop and apply technology, measurements, and standards. FRA is incorporating by reference this NIST Special Publication into this paragraph. NIST Special Publication 800–63–2 provides technical guidelines for widely used methods of electronic authentication, and is reasonably available to all interested parties online at *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-2.pdf*, or by contacting NIST via the contact information in new § 214.322(h). Additionally, FRA will maintain a copy available for review.

The incorporation of NIST Special Publication 800–63–2 is a change from the NPRM proposal that referenced the earlier version of the same standard, which was issued in December 2011 (NIST Special Publication 800–63–1). The updated standard incorporated by reference in this paragraph is a limited update, and substantive changes are made only in section 5 of the document. FRA understands the changes in the more updated version are related to improvement in issuing credentials.[15]

Systems implemented prior to July 1, 2017 must provide at least Level 2 assurance as described in NIST Special Publication 800–63–2, and systems that do not provide Level 2 assurance or higher must be retired or updated to provide such assurance no later than July 1, 2018. These assurance levels govern the elements of the authentication process. Level 2 assurance requires some identity proofing and passwords are accepted (but not PINS). Level 3 assurance requires more stringent identity proofing and multi-factor authentication, typically a password or a biometric factor used in combination with a software or hardware token.

In the NPRM, FRA requested comment on whether existing electronic display systems in use already comply with the above requirements, to include potential cost on information. FRA received no comments in response to that request.

Section 214.323 Foul Time

Existing § 214.323 sets forth the requirements for establishing working limits on controlled track using foul time. In the NPRM, FRA proposed several amendments to this section. First, FRA proposed to add the words "or other on track equipment" to existing paragraph (a), which currently provides that foul time may be provided only after the relevant train dispatcher or control operator has withheld authority "of all trains" to move into or within the working limits. This change is only for consistency within this existing section, as existing paragraph (c) prohibits the movement of both trains and on-track equipment from moving into working limits while foul time is in effect. This revision also acknowledges that the incursion of on-track equipment into or within working limits while foul time is in effect presents the same safety risk to roadway workers as train movements into or within working limits.

Consistent with the revisions made throughout this final rule, FRA also proposed to amend the reference to "roadway worker" in existing paragraph (b) to "roadway worker in charge."

In the NPRM, FRA also proposed to add a new paragraph (d) to this section. As proposed, paragraph (d) would prohibit the RWIC from permitting the movement of trains or other on-track equipment into or within working limits protected by foul time.

BMWED/BRS recommended paragraph (d) include lone workers in addition to RWICs, as lone workers are also permitted to establish foul time working limits. FRA concurs, and, as discussed above, the definition of "roadway worker in charge" in this final rule includes lone workers who establish working limits to provide on-track safety for themselves.

Although not proposed in the NPRM, in this final rule FRA is also adding "or track identifier" to paragraph (b) of this section. Existing paragraph (b) requires an RWIC receiving foul time verbally to "repeat the track number, track limits and time limits" of the foul time to the issuing employee for confirmation before the foul time is effective. FRA believes railroads and roadway workers understand existing subpart C allows them to use "a track identifier" (in addition to the track number and track limits) to positively identify the track(s) where working limits are being established. As discussed in the NPRM, AAR's post-RSAC comments to proposed § 214.324 addressing "verbal protection" also suggested adding "track identifier," and proposed § 214.324 shared much of the same language as existing § 214.323. FRA is adding "track identifier" in this section. Other than BMWED/BRS's comment, FRA received no other comments on its proposed revisions to § 214.343, so this final rule adopts the revisions to this section.

Section 214.325 Train Coordination

In the NPRM, FRA proposed a minor amendment to existing § 214.325. Section 214.325 governs the establishment of working limits on controlled track by train coordination (direct coordination between the RWIC or lone worker and a train crew). Unlike the other controlled track working limits provisions (§§ 214.321 and 214.323), the existing text of § 214.325 does not state it applies to working limits established on controlled track. Therefore, FRA proposed to add "on controlled tracks" to the first sentence of the introductory paragraph in § 214.325. Consistent with

[13] NIST is responsible for defining cryptographic algorithms for non-Department of Defense entities.

[14] 75 FR 2598, 2676, Jan. 15, 2010.

[15] *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-2.pdf.*

revisions made elsewhere in this final rule, FRA also proposed to add the words "in charge" after "roadway worker" in the first sentence of the introductory paragraph. FRA received no comments on this NPRM proposal, other than the BMWED/BRS comment recommending the definition of "roadway worker in charge" include "lone workers." For the reasons explained above and in the NPRM, in this final rule, FRA is adopting the proposed amendments to § 214.325.

Section 214.327 Inaccessible Track

Section 214.327 governs the establishment of working limits on non-controlled track.[16] To establish working limits on non-controlled track, § 214.327 requires the track to be made physically inaccessible and provides five methods to do so. In the NPRM, consistent with the recommendations of the Working Group, FRA proposed to add three new methods for making non-controlled track physically inaccessible.

First, proposed new paragraph (a)(6) would allow using a manned locomotive (with or without cars coupled to it) to establish a point of inaccessibility into working limits. In this final rule, FRA is adopting paragraph (a)(6) as proposed. To establish a locomotive as a point of inaccessibility under proposed § 214.327(a)(6)(i), a RWIC must communicate with the train crew in control of the locomotive and determine that: (1) He or she can see the locomotive; and (2) the locomotive is stopped. Once this initial communication and determination is made, proposed paragraph (a)(6)(ii) prohibits further movement of the locomotive except as permitted by the RWIC.[17] Paragraph (a)(6)(iii) prohibits the crew of the locomotive from leaving the locomotive unattended or going off duty unless the crew communicates with the RWIC and the RWIC establishes an alternate means of on track-track safety. As noted in the NPRM, "attended" means the crew is in a position to readily control the locomotive (the locomotive engineer does not need to remain at the control position for the entire time working limits are in effect). *See* 49 CFR 232.103(n).[18] Finally, paragraph (a)(6)(iv) applies if cars are coupled to a locomotive being used to make a track inaccessible under this section. As proposed, this paragraph requires cars coupled to the end of the locomotive nearest the roadway workers to be connected to the train's air brake system, and the air brake system must be charged with air to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the opposite end of the roadway workers must have sufficient braking capability to control movement.

In response to proposed paragraph (a)(6), MTA suggested that FRA not limit this proposed provision to use of locomotives only and instead allow the use of other types of on-track equipment to render track inaccessible. After considering this request, for several reasons, FRA declines to adopt MTA's suggestion. First, the Working Group did not recommend it. Second, using other on-track equipment that may weigh substantially less than a locomotive, and might not have a similar level of positive air brake protection as provided by a locomotive, will not provide as much resistance to rolling equipment as a locomotive would. Third, another piece of on-track equipment adjacent to a roadway work group is likely part of the roadway work group and likely being used to perform roadway maintenance duties. FRA does not want to require an equipment operator engaged in the performance of substantive work to also be required to provide for the on-track safety of a roadway work group by serving as a physical block. FRA believes this could diminish the safety of the roadway workers being protected by the physical block and lead to confusion.

Consistent with the Working Group's consensus recommendation, paragraph (a)(7) proposed to allow using a railroad's block register territory rules as a method to render track inaccessible and establish working limits on non-controlled track.[19] In this final rule, FRA is adopting paragraph (a)(7) substantially as proposed, but is specifying a RWIC or lone worker maintains the absolute right to render track physically inaccessible by an alternative method authorized by this section.

Generally, in block register territory a train can occupy a block of track only after its crew reviews a log book or register to ensure no other trains or equipment are occupying that block. After verifying that no other trains are occupying a block, a train crew wishing to occupy a particular block would then indicate in the log book their train is occupying the block. Upon exiting the block, the crew would indicate in the log book, that their train cleared the block. The Working Group recommended a RWIC or lone worker be allowed to utilize a railroad's procedures governing block register territory to establish working limits on non-controlled track. Existing § 214.313(a) requires roadway workers to follow a railroad's on-track safety rules and procedures.

Under this new paragraph (a)(7), working limits are established when a RWIC or lone worker complies with all applicable railroad procedures for occupying a block register territory (including making the required log entries to indicate the block is occupied). When the log indicates a roadway worker or work group is occupying a track, the railroad's operating rules must prohibit the entry of any other trains or other on-track equipment into the block. Proposed paragraph (a)(7) provided the RWIC or lone worker with the absolute right to choose to use the procedures in paragraphs (a)(1) through (6) of this section (any of the five existing methods of establishing working limits on non-controlled track or the proposed method allowing for the use of a locomotive to make a track inaccessible) as opposed to a railroad's block register procedures. FRA requested comment on if newly proposed paragraph (a)(8) (providing for the establishment of working limits by bulletin on non-controlled main track within yard limits or restricted limits) should be included in that list, as proposed paragraph (a)(8) would be another method to establish inaccessible track working limits authorized by § 214.327. In response, BMWED/BRS's comment stated the regulation must allow RWICs to render non-controlled block register territory and main tracks within yard limits or restricted limits (the tracks affected by proposed paragraph (a)(8)) physically inaccessible. FRA agrees, and has adopted in this final rule a provision providing a RWIC or lone worker with the absolute right to use any other provision of § 214.327 to make track in a block register territory inaccessible if, for any reason, they choose to do so. This amendment provides the flexibility for the RWIC or lone worker to utilize paragraphs (a)(1)–(6) or paragraph (a)(8) of this section to establish working limits rather than utilizing this block register territory procedure.

As recommended by the Working Group, proposed paragraph (a)(8) of this section addressed establishing working limits by bulleting on non-controlled main tracks within yard and restricted limits. As proposed, paragraph (a)(8) would require railroad operating rules to ensure train or engine crew or operators of on-track equipment are notified of any working limits in effect on main track in yard limits or restricted limits before entering the limits. Under paragraph (a)(8), railroad operating rules must prohibit movements on main track within yard limits or restricted limits unless the crew or operator of the on-track equipment is first required to receive notification of any working limits in effect. Before occupying the track where any notification of working limits are in effect, the crew or operator must receive permission from the RWIC to enter the working limits. The Working Group intended this provision to apply to planned work activities (activities railroads know about and plan for in advance enabling railroads to produce bulletins or other forms of notification ahead of time to be issued to train crews or operators).

As proposed, if the maximum authorized speed is restricted speed (as defined by § 214.7), paragraph (a)(8) requires the display of red flags or signs at the limits of the roadway worker(s) working limits. As noted in the NPRM, this requirement provides an extra measure of safety by providing train crews notice to stop their movement unless they have the RWIC's permission to enter the working limits. Where restricted speed is in effect, proposed paragraph (a)(8) requires train crews or operators to stop their movement within one-half the range of vision (one-half the distance to the flag). Where the maximum authorized speed is over restricted speed, proposed paragraph (a)(8) requires advance warning flags or signs, as physical characteristics permit to ensure an approaching crew or operator is able to stop his or her train or other on-track equipment short of the working limits.

In response to this proposal, BMWED/BRS's submitted comments opposing allowing any train to operate in excess of restricted speed under paragraph (a)(8). BMWED/BRS recommended revising paragraph (a)(8) to require a train or engine receiving notification of any working limits in effect to operate at restricted speed and prepared to stop within half the range of vision of any stop signs or flags marking working limits. BMWED/BRS also proposed amended rule text giving the RWIC or lone worker the absolute right to utilize another applicable provision of § 214.327(a) to render track inaccessible other than proposed paragraph (a)(8).

After carefully evaluating this issue and BMWED/BRS's comment, FRA is adopting paragraph (a)(8) as proposed, with a minor modification. FRA has added reference to "other on-track equipment" in addition to the Working Group's consensus reference to trains or engines in this paragraph. As discussed above in the analysis for § 214.323 (foul time), an incursion into working limits by a piece of on-track equipment that might not be part of the roadway work group presents the same hazards to roadway workers as an incursion by a train or locomotive.

FRA is not adopting BMWED/BRS's recommended modifications to paragraph (a)(8), because it is an RSAC consensus recommendation that both BMWED and BRS agreed to. Also, as discussed above, the procedure of paragraph (a)(8) is intended for use when railroads are conducting planned work activities and, as such, the procedure is comparable to longstanding existing requirements for establishing working limits on controlled track under § 214.321. The procedures of § 214.321 are proven to be safe when complied with, even though those procedures are typically used on main track over which train operate at much higher speeds than that contemplated under paragraph (a)(8) of this section. Also, under existing paragraph § 214.327(a)(1), railroads are permitted to use flagmen (without the benefit of bulletins to train crews or mandatory use of advance flags) to make non-controlled track inaccessible. Appropriately placed stop boards (or flags), designating the point at which trains or other on-track equipment may not travel any further without permission, effectively serves the same function as flagmen. Paragraph (a)(8)'s requirement that bulletins be issued to train crews before the crews can operate into a roadway worker or work group's limits, and that advance flags be placed, when possible, where speeds higher than restricted speed are authorized, represent two additional measures of safety not in § 214.327's existing provision authorizing the use of flagmen. Further, FRA believes most situations will not involve speeds exceeding restricted speed, as U.S. railroads' operating rules traditionally require compliance with restricted speed operating rules when trains or other on-track equipment are traveling over main track within yard limits or restricted limits. Because it is not always possible (or useful) to place advance flags warning of upcoming working limits, FRA is not adopting an absolute requirement for advance flags for all movements above restricted speed. For example, if there are many entrance switches from a railroad yard to a section of non-controlled main track, advance flags might not be practical and may serve no useful purpose for a train leaving the yard track at restricted speed to enter the main track where a higher speed is authorized. Historically, railroads' own operating rules have addressed the use of advance flags, and contain specific provisions for when advance flags are not necessary (*e.g.*, when entering a railroad's yard limits from a foreign railroad's track, where advance flags cannot be practically located).

Section 214.329 Train Approach Warning Provided by Watchmen/Lookouts

Section 214.329 addresses using watchmen/lookouts to provide warning of approaching trains to roadway workers in a roadway work group who foul track outside of working limits. In the NPRM, FRA proposed four amendments to this section. First, FRA proposed to amend paragraph (a) of this section to accommodate proposed new § 214.338(a)(2)(iii) regarding passenger station platform snow removal. However, as discussed above, FRA is not adopting proposed § 214.338 in this final rule. Thus, FRA is not adopting the proposed amendment to paragraph (a) of § 214.329 referencing the snow removal provision.

In the NPRM, FRA also proposed to amend paragraph (a) to change the reference to "maximum speed authorized" to "maximum authorized speed." This amendment reflects the Working Group's recommended consensus definition of "maximum authorized speed" to e clarify existing sections §§ 214.329(a) and 214.337(c)(4). FRA proposed to amend these two sections merely to properly order the words in the Working Group recommended and which FRA adopted in this final rule.

FRA also proposed to amend paragraph (a) of this section by adding a sentence to the end of the paragraph prohibiting the use of a track as a place of safety to be occupied upon the approach of a train, unless working

[16] "Non-controlled track" means "track upon which railroads are permitted by railroad rule or special instruction to move without receiving authorization from a train dispatcher or control operator." 49 CFR 214.7.

[17] As FRA noted in the NPRM, these proposed requirements parallel the existing requirements of § 214.325's train coordination provision, but this proposed procedure differs from train coordination because it is a way to establish working limits on non-controlled track (and as such additional trains could move into the same segment of track at any time).

[18] A remote control locomotive may be used to provide working limits under this proposal. If a remote control locomotive is used, the remote control operator must attend to (be on or near) the remote control locomotive while it is used to provide working limits.

[19] As discussed in the NPRM, block register territory is generally considered non-controlled track, but when a train dispatcher or other employee must authorize occupancy or movement on a track in block register territory, the track becomes controlled track and proposed paragraph (a)(7) would not apply. Instead, the on-track safety methods for controlled track under subpart C would apply (§§ 214.319, 214.321, 214.323 or 214.325).

limits are established on that track. As explained in the NPRM, this language is already in existing § 214.337(d), which governs on-track safety procedures for lone workers. This requirement is also the subject of FRA Technical Bulletin G–05–10. As explained in that Technical Bulletin, it is expected that roadway workers would clear all tracks when given a train approach warning. Clearing onto another track where only train approach warning (or no form on-track safety) is provided presents an extremely dangerous situation which may potentially trap workers if multiple train movements occur simultaneously. FRA has long interpreted existing § 214.329 to already prohibit using another track as a place of safety, and this amendment merely codifies that interpretation.

AAR commented this proposal is infeasible for Amtrak. AAR stated that in Penn Station, roadway workers do clear to a live track protected by a watchman/lookout. AAR suggested revising this proposal in a final rule to allow such scenarios by adding ". . . or that track is protected by a watchman/lookout" to the rule text. FRA declines to alter this proposal for safety reasons. As explained above, FRA has long interpreted existing § 214.329 to already prohibit using another track as a place of safety and issued Technical Bulletin G–05–10 to address this particular situation. If a place of safety is designated as another track protected by a watchman/lookout, but a train approaches on that track (which is designated as the place of safety) while roadway workers clear toward it, the situation is the same as having no on-track safety at all. Common sense dictates that if roadway workers are given train approach warning and clear onto another track where nothing stops a train from also approaching on that track at the same time, it endangers roadway workers who are left without a place of safety to go to. Thus, a general exclusion in the regulation allowing such a situation to occur is not appropriate from a safety perspective. If a unique situation exists at a particular location such as Penn Station where roadway workers will always have an appropriate place of safety to occupy when a train approaches, FRA believes a waiver application from this safety-critical requirement could be appropriate to address such unique situations. FRA Technical Bulletin G–05–10 is supplanted upon the effective date of this final rule.

Last, FRA proposed to add a new paragraph (h) to this section. This paragraph would have prohibited the use of train approach warning as an acceptable form of on-track safety for a roadway work group using equipment or material that cannot be readily removed by hand from the track to be cleared. FRA did not adopt this proposal in the final rule as explained in detail in section VIII.A.4 above.

While FRA did not to adopt a provision in this final rule addressing the removal of equipment or material by hand under train approach warning, FRA is addressing a related matter where questions occasionally arise under part 214. In part 214, no rule text prohibits the use of train approach warning outside working limits to provide on-track safety when on-track roadway maintenance machine foul track (except § 214.336(f), which governs when a component of a roadway maintenance machine fouls an adjacent controlled track). Such blanket rule text is not appropriate because train approach warning (or individual train detection under § 214.337) must sometimes be used when a hi-rail or other on-track machine sets on a track to begin traveling (perform roadway inspection duties) under the operating rules of the railroad. In certain instances, depending on applicable railroad operating rules and the operational conditions at a location, using train approach warning or individual train detection can be appropriate.

However, FRA notes that using train approach warning to provide on-track safety for roadway workers who are performing roadway work involving using on-track equipment would most often be in violation of existing § 214.329. In a recent example, FRA inspectors observed a roadway work group using multiple pieces of on-track equipment spread out over nearly a mile. Upon investigation, FRA learned the roadway work gang was apparently using train approach warning under § 214.329 as a form of on-track safety, with a watchman/lookout stationed at each end of the roadway work group. The location where FRA observed this violation was on non-controlled track where trains were required to travel at restricted speed. In this situation, it was not possible for the railroad to comply with § 214.329. The machine operators were operating noisy, distracting machinery that would require them to look in a particular direction at the time of the warning to receive such warning, in violation of § 214.329(e). Second, the distance the group was spread over, and the type of work being performed by the group, made it impossible for a watchman/lookout far away to be able to provide train approach warning to all members of the roadway work group, which is also in violation of § 214.329. It appears in this instance the railroad was relying on the requirement that movements must be made at restricted speed to protect the roadway work group. As explained in the 1996 RWP final rule, the RWP regulation does not recognize restricted speed as a sole means of providing on-track safety. 61 FR 65969. The final rule stated that "unusual circumstances at certain locations where [restricted speed] might be considered sufficient would have to be addressed by the waiver process." *Id.* at 65962. Thus, in the above-described instance, the use of qualified flagmen to establish working limits (or any other method of establishing working limits under § 214.327) rather than the use of watchman/lookouts would have been appropriate.

Aside from noise, distraction, and distance from a watchmen/lookout, using train approach warning might also not be permissible to provide on-track safety under part 214 for another reason. Roadway workers who are operating such machines under train approach warning would have to be able to stop a machine, dismount a machine, and then move to occupy a place of safety at least 15 seconds prior to the arrival of a train traveling at maximum authorized speed at the roadway workers location. In such instances, compliance with § 214.329 is not possible. An operator inside the cab of a machine requires much more time to occupy a place of safety versus a roadway worker who might merely be standing in the foul of a track and can easily move to a place of safety. In addition, where train speeds are permitted to exceed restricted speed, in almost all instances, only the establishment of working limits is appropriate to establish on-track safety. To illustrate, even assuming proper train approach warning could be given to roadway workers operating on-track machinery so they could occupy a place of safety at least 15 seconds before a train's arrival, if trains are permitted to travel in excess of restricted speed, nothing prevents a train from colliding with the on-track equipment left on the occupied track. Railroad operating rules are generally the mechanism relied upon to prevent the collision of trains and on-track roadway maintenance. However, the strict guidelines in § 214.329 and common sense dictate that, in most instances where roadway workers are performing work on an occupied track with on-track machinery, approach warning is not an appropriate or permissible method to provide on-track safety for roadway workers.

Last, as discussed in the NPRM, FRA Technical Bulletin G–05–28 addresses using portable radios and cell phones. That technical bulletin explains that under existing § 214.329, such devices cannot be used as the sole communication to provide train approach warning to roadway workers. These devices are not among those expressly listed in the existing watchman/lookout definition in § 214.7. Further, FRA believes this practice is dangerous; especially if these devices fail in any manner as a train approaches a roadway work group. While FRA has no objection to using a radio or a cell phone to supplement the equipment issued to a watchman/lookout to provide train approach warning, these devices cannot be used to provide the sole auditory warning under this part.

Section 214.331 Definite Train Location

In the NPRM, FRA proposed to amend § 214.331 to require railroads to discontinue using definite train location as a form of on-track safety within one year. NTSB and BMWED/BRS submitted comments supporting this proposal. Thus, FRA is adopting the proposal in this final rule.

Section 214.333 Informational Line-Ups of Trains

For the reasons explained in the NPRM, FRA proposed to amend § 214.333 to require railroads to discontinue using informational line-ups of trains within one year. NTSB and BMWED/BRS submitted comments supporting the NPRM proposal. Thus, FRA is adopting the proposal in this final rule.

Section 214.335 On-Track Safety Procedures for Roadway Work Groups, General

Section 214.335 contains the general on-track safety procedures for roadway work groups. Under this section, before a member of a roadway work group fouls a track, on-track safety must be established under subpart C. FRA proposed four amendments to this section. FRA received no comments on these proposals, and, as explained below, has adopted two of the four proposed amendments. Because FRA is not adopting proposed new § 214.324 (verbal protection) or § 214.338 (snow removal), FRA is not amending existing paragraph (a) of this section to reference those sections as proposed. In the NPRM, FRA proposed to update the list of acceptable methods to establish working limits, FRA is amending paragraph (a) to reference § 214.336 (adjacent track protections) because that section took effect on July 1, 2014. For the reasons explained in the NPRM, FRA is also removing "and" from the existing text of paragraph (a) listing the available acceptable methods of establishing working limits and replacing it with "or." FRA is also incorporating the new term "roadway worker in charge" in existing paragraph (b) of this section for the reasons discussed above.

Section 214.337 On-Track Safety Procedures for Lone Workers

Section 214.337 governs the on-track safety procedures for lone workers. In the NPRM, FRA proposed to adopt two Working Group consensus recommendations changing this section, including: (1) Amending existing paragraph (c)(3) to allow the use of individual train detection (ITD) at controlled points consisting of signals only; and (2) adding a new paragraph (g) prohibiting the use of ITD by lone workers using equipment or material that cannot be readily removed from a track by hand. In response to the proposed amendment to paragraph (c)(3), and in light of the new definitions FRA proposed for "controlled point" and "interlocking, manual" in § 214.7, both AAR and BMWED/BRS expressed concern about the effect of those definitions on § 214.337(c)(3)'s restrictions on the use of ITD by lone workers. FRA addresses these concerns in the Section-by-Section analysis of § 214.7 above.

As discussed in the NPRM, existing paragraph (c)(3) of § 214.337 prohibits lone workers from using ITD to establish on-track safety within the limits of a manual interlocking, a controlled point, or a remotely controlled hump yard facility. The Working Group recommended expanding the locations where ITD can be used by lone workers to include controlled points consisting of signals only. FRA is adopting this consensus recommendation in this final rule as proposed.

As noted above, in the NPRM, FRA also proposed to adopt the Working Group's consensus recommendation to add a new paragraph (g) to this section. As recommended by the Working Group, new paragraph (g) would prohibit using ITD as a form of on-track safety for a lone worker using machinery, equipment, or material they cannot readily remove from a track by hand. For the reasons discussed in the NPRM, FRA is adopting this revision as proposed.

Section 214.339 Audible Warning From Trains

Based on the Working Group's recommendations, in the NPRM, FRA proposed revisions to existing § 214.339's requirement that trains sound their locomotive whistles and bells when approaching roadway workers "on or about the track." As recommended by the Working Group, FRA proposed to require railroads to adopt and comply with written procedures providing for "effective . . . audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines . . . on the track on which the movement is occurring, or about the track if the roadway workers or roadway maintenance machines are at a risk of fouling the track."

After considering comments received, in this final rule, FRA is adopting the revisions as proposed. As discussed in detail in the NPRM, four FRA Technical Bulletins (G–05–08, G–05–15, G–05–26, and G–05–27) currently provide guidance on the requirements of § 214.339. These technical bulletins are supplanted upon the effective date of this final rule.[20]

NJT, BMWED/BRS, and 3M commented on the proposed revisions to this section. 3M did not directly address the specifics of FRA's proposed revised requirements for audible warnings of trains approaching roadway workers. Like their comments on proposed § 214.338, 3M recommended requiring roadway workers to wear high visibility safety apparel to alert approaching train crews to their presence on or near track. Referencing the NPRM's preamble discussion of the passage of large roadway work groups, such as tie and surfacing production crews spaced out over a long distance, NJT commented the requirement that the locomotive horn be sounded upon the approach of each unit of a work crew will create quality of life complaints about noise in many municipalities. BMWED/BRS supported FRA's proposed revisions to this section.

In response to 3M's comment, FRA considered requiring certain roadway workers to wear highly visible clothing. *See* section VIII.A.1 of this preamble discussing proposed § 214.338 not

[20] The NPRM discussed these Technical Bulletins and various issues the bulletins addressed in detail (audible warnings during shoving movements, operation of multiple-unit passenger train equipment no equipped with a bell, audible warnings over a large work area and duration of those warnings). FRA refers the reader to the NPRM for more information. 77 FR 50324, 50354, Aug. 20, 2012.

adopted in this final rule. Although in this final rule FRA is not adopting this specific requirement, FRA obviously encourages using highly visible reflective clothing and personal protective equipment to help clearly showed the presence of roadway workers on or near railroad tracks to locomotive engineers and other on-track equipment operators. FRA also notes most railroad rules already require roadway workers to wear highly visible clothing.

In response to NJT's comment, FRA understands complaints railroads receive about field noise from train horns, particularly at highway-rail grade crossings, and where a roadway work group is working at a particular point in time. FRA understands the potential sensitivity to noise of residents who live in close proximity to railroad tracks. However, providing an audible warning to roadway workers of an approaching train is a longstanding safety-critical component of the RWP regulation and any railroad's on-track safety program—even within highway-rail grade crossing quiet zones. FRA notes the amendments to this section in this final rule are not a substantive change to the particular issue raised by NJT, and FRA's discussion in the NPRM preamble merely restated FRA's longstanding expectation that trains must provide audible warning to roadway workers on or near the track upon the approach of each unit of a work crew. As explained in Technical Bulletin G–05–08 issued in 2005, existing § 214.339 requires trains to provide an audible warning when approaching each roadway worker or roadway work group located within a large scale maintenance project.

§ 214.343 Training and Qualification, General

Existing § 214.343 sets forth the general training and qualification requirements for roadway workers. Paragraph (c) of existing § 214.343 requires railroad employees other than roadway workers associated with on-track safety procedures, and whose primary duties involve the movement and protection of trains, to be trained "to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee."

In the NPRM, FRA proposed to amend paragraph (c) to account for proposed new § 214.353 addressing training employees other than roadway workers (typically transportation employees such as conductors) who act as RWICs. MTA commented on this proposal, supporting the training and qualification of transportation employees under the procedures the railroad prescribes for the primary position of the employee. Thus, FRA is adopting revision to paragraph (c) of this section as proposed. However, FRA did receive comments in response to the NPRM proposal for § 214.353 that implicate this section and addresses those comments in the Section-by-Section analysis for § 214.353 below.

§ 214.345 Training for All Roadway Workers

Existing § 214.345 has the minimum training contents for roadway workers required by existing subpart C. FRA proposed to amend this section to incorporate two Working Group consensus recommendations. First, to clarify and reinforce the requirements of the existing RWP regulation, FRA proposed adding "[c]onsistent with § 214.343(b)" to the beginning of the first sentence of the existing introductory paragraph of the section. Section 214.343(b) requires employers to provide all roadway workers initial or recurrent training once every calendar year on the on-track safety rules and procedures they are required to follow. In this final rule, FRA is adopting this revision as proposed. As noted in the NPRM, Technical Bulletin G–05–16 provides guidance on existing § 214.345 and is supplanted upon the effective date of this final rule.

In the NPRM, FRA also proposed adding a new paragraph (f) to this section reflecting the Working Group's consensus recommendation requiring all roadway workers' training to include instruction on an employer's procedures governing how roadway workers should determine if it is safe to walk across railroad tracks. FRA removed that consensus item from § 214.317(b), and proposed to include it as new paragraph (f) of this section. In this final rule, FRA is adopting this requirement as proposed.

In preparing this final rule, FRA noticed in the NPRM preamble discussion, it incorrectly intermingled discussion of the periodic "qualification" of roadway workers with the existing roadway worker annual training requirement. *See* 77 FR 50330. Since the original RWP rule first took effect in 1997, it has required roadway workers to receive annual training on the on-track safety procedures they must follow. *See* 49 CFR 214.343(b). As exemplified by the inclusion of costs for annual training for all roadway workers (including lone workers, watchmen/lookouts, flagmen, and RWICs), in the RIA for the 1996 final rule, and the assessment of the paperwork burden for annual training in the Paperwork Reduction Act information collection estimates provided by FRA in the 1996 final rule, this annual training requirement includes training for all roadway worker qualifications. Further, in 2005, FRA issued Technical Bulletin G–05–16, clarifying that the required time frame for the unspecified "periodic" qualification for additional roadway worker qualifications is separate from the annual training requirement of § 214.345 and applies across all the additional roadway worker qualifications. The existing definition of the term "watchmen/lookout" also states it means an employee who has been annually trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Technical Bulletin G–05–16 further explained that because subpart C does not specify a timeframe for the required "periodic qualification" of roadway workers, determining an appropriate timeframe is at the discretion of individual railroads and should be specified in each railroad's on-track safety program. Therefore, the annual training requirement existing since the RWP regulations were promulgated is unchanged by this final rule.

§ 214.347 Training and Qualification for Lone Workers

Section 214.347 sets forth the training and qualification requirements applicable to lone workers and requires the initial and "periodic" qualification of lone workers to be "evidenced by demonstrated proficiency." In the NPRM, FRA proposed to amend this section by incorporating the Working Group's consensus recommendation to require the training of lone workers on alternative means to access the information in a railroad's on-track safety manual when his or her duties make it impractical to carry the manual. In this final rule, FRA is adopting this provision substantially as proposed. FRA is making minor adjustments to the language in response to BMWED/BRS's comment on § 214.309 noting that lone workers are not literally required to "carry" the on-track safety manual at all times, but rather that the manual must be readily available to them at all times. FRA is also correcting a typographical error in the rule text of this proposed revision by removing the extra word "to" in proposed paragraph (a)(5).

In the NPRM, FRA also asked for comment on two additional issues on the training and qualification of lone workers. First, FRA noted the Working Group's consensus recommendation to require requalification of roadway workers every 24 months, and recurrent lone worker training every calendar year, did not parallel the separate RSAC recommendation resulting from the mandate of Section 401 of the Rail Safety Improvement Act of 2008 (Section 401) for FRA to set minimum training standards for "each class and craft of safety-related railroad employee." [21] Thus, FRA asked for comment on how to proceed regarding an appropriate time interval for "periodic" qualification in a final rule. Second, FRA asked if it should require a physical characteristics qualification for lone workers.

Since publication of the NPRM, based on the recommendations of the RSAC Training Standards Working Group, FRA published a final rule addressing the mandate of Section 401. 79 FR 66460, Nov. 7, 2014 (Training Standards Rule; part 243). The rule includes minimum training standards for roadway workers and extensive refresher qualification requirements for roadway workers.

In response to this request for comment, SEPTA, BMWED/BRS, AAR, and two individuals submitted comments. SEPTA suggested that in this final rule, FRA should defer to the three-year interval for training and qualification in the Training Standards Rule. SEPTA asked why, when under the Training Standards Rule, training and re-certification for safety-critical positions such as conductors, engineers, and train dispatchers only has to occur every three years, roadway workers would be treated differently and trained annually. SEPTA asserted existing § 217.9 (requiring operational testing of employees) and § 243.205 (Training Standards Rule training and qualification interval) are adequate to ensure employees know how to perform their work properly.

Noting that at the time of its comment 44 roadway worker fatalities had occurred since 1997, BMWED/BRS supported an annual training and qualification requirement for all roadway workers, and opposed FRA not adopting the Working Group's consensus recommendation for a 24-month periodic qualification interval.

Consistent with SEPTA's comment, AAR asserted no basis exists for determining more frequent refresher training or qualification should be required for roadway workers than for other safety-related employees under the Training Standards Rule. Pointing to FRA's RIA for the Training Standards NPRM, AAR also expressed the view that the Working Group's consensus recommendation could not be justified from a cost-benefit perspective due to lack of a safety benefit from more frequent training.

Individual commenters supported the Working Group's consensus recommendation to require annual training and periodic qualification every 24 months, stating generally that more frequent refresher training will have better results. These commenters believe the benefits of more frequent refresher programs would outweigh the cost of the programs' development and implementation. The individual commenters pointed to OSHA's training standards as a model, and urged FRA to adopt a uniform standard of appropriate time intervals for refresher training. The comment did note that implementing programs similar to OSHA's would be burdensome.

As stated in the discussion of § 214.343 above, in this final rule FRA is not amending the existing annual training requirements of subpart C. FRA did not intend this rulemaking to decrease the training roadway workers receive via existing requirements, and believes it reasonable to continue the existing annual training requirement. Because subpart C already requires annual training for roadway workers, this approach will not result in any additional costs.

In this final rule, FRA is, however, adding a new paragraph § 214.347(b) requiring lone workers to be qualified under part 243 and to be based on evidence of a lone worker's demonstrated proficiency. Part 243 requires covered employees to be qualified at least every three calendar years. The costs for this qualification requirement are already accounted for in the Training Standards Rule. Although FRA encourages railroads to conduct refresher qualifications more often than the minimum of once every three calendar years under part 243, FRA agrees with AAR that from a cost-benefit basis, the evidence does not support a more frequent qualification requirement for roadway workers than other safety-critical employees subject to part 243 (*e.g.*, locomotive engineers). FRA also agrees with SEPTA that existing § 217.9's requirements for operational testing already provide a much more frequent opportunity for observations by railroad officials to determine employee proficiency with rules' compliance than does either a two- or three-year required interval for determining qualification via demonstrated proficiency.

A lone worker's "demonstrated proficiency" under this new paragraph (b) refers to the longstanding requirement FRA explained in the original 1996 RWP rule. In that rule, FRA stated a roadway worker must show

> sufficient understanding of the subject that the employee can perform the duties for which qualification is conferred in a safe manner. Proficiency may be demonstrated by successful completion of a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these.

61 FR 65972.

Many of part 243's requirements will not take effect for a number of years, depending on a railroad's total employee work hours. *See* 49 CFR 243.101(a). In the interim, FRA encourages railroads to comply with part 243's requirements as soon as possible, and, consistent with Technical Bulletin G–05–16, continue to specify in their on-track safety programs the interval at which "periodic" roadway work qualifications will take place. Upon the relevant applicability date of part 243's requirements for a particular railroad, that railroad must comply with part 243's qualification requirements (and the requalification of roadway workers must be at least every three calendar years).

Last, as discussed in section VIII.A above, in the NPRM, FRA asked if it should require physical characteristics qualification for lone workers. For the reasons explained in section VIII.A, FRA is not adopting this requirement in this final rule.

§ 214.349 Training and Qualification for Watchmen/Lookouts

Section 214.349 sets forth the training and qualification requirements applicable to watchmen/lookouts and, consistent with existing § 214.347 applicable to lone workers, requires the initial and "periodic" qualification of lone workers to be "evidenced by demonstrated proficiency." In the NPRM, FRA requested comment on how to address the Working Group's consensus recommendation to require requalification of roadway workers, including watchmen/lookouts, every 24 months. For the reasons discussed in the Section-by-Section analysis of § 214.347 above, FRA is not adopting this consensus recommendation in this final rule. Instead, this final rule requires periodic qualification for watchmen/lookouts to be performed consistent with the Training Standards Rule (every three calendar years) and be

[21] Public Law 110–432, Division A, 122 Stat. 4848 (codified at 49 U.S.C. 20162).

based on evidence of demonstrated proficiency.

Consistent with its request for comment on § 214.347 discussed above, FRA asked if it should require a physical characteristics qualification for watchmen/lookouts. For the reasons explained in section VIII.A above, FRA is not adopting such a requirement in this final rule.

§ 214.351 Training and Qualification for Flagmen

Section 214.351 sets forth the training and qualification requirements applicable to flagmen and, consistent with existing § 214.347 applicable to lone workers and § 214.349 applicable to watchmen/lookouts, requires the initial and "periodic" qualification of flagmen to be "evidenced by demonstrated proficiency." In the NPRM, FRA requested comment on how to address the Working Group's consensus recommendation to require requalification of roadway workers, including flagmen, every 24 months. For the reasons discussed in the Section-by-Section analysis of § 214.347 above, FRA is not adopting this consensus recommendation in this final rule. Instead, this final rule is requiring that periodic qualification for watchmen/lookouts be performed consistent with the Training Standards Rule (every three calendar years) and be based on evidence of demonstrated proficiency.

Section 214.353 Training and Qualification of Each Roadway Worker in Charge

Existing § 214.353 is titled "Training and qualification of roadway workers who provide on-track safety for roadway work groups." Paragraph (a) of existing § 214.353 lists the minimal contents of RWIC training and paragraph (b) specifies that a RWICs initial and periodic qualification must be evidenced by a "recorded examination." In the NPRM, FRA proposed several changes to this section. BMWED/BRS and AAR submitted comments responding to some of the proposed changes.

First, to reflect the new term "roadway worker in charge," FRA proposed to change the title of this section to "[t]raining and qualification of each roadway worker in charge." FRA received no comments on proposals and in this final rule is amending the title as proposed.

Second, consistent with the Working Group's recommendation, FRA proposed to add a new paragraph (a)(5) to this section. Proposed paragraph (a)(5) would require RWICs to be trained on procedures ensuring they remain immediately accessible to the roadway workers working within the working limits they establish. This paragraph parallels new § 214.315(a)(5) requiring on-track safety job briefings conducted by RWICs to include information on the accessibility of the RWIC, and on alternate procedures if the RWIC is no longer accessible to members of the roadway work group. FRA received no comments on this NPRM proposal, and in this final rule is adopting new paragraph (a)(5) as proposed.

In its comment, BMWED/BRS recommended adding a new paragraph to this section requiring RWICs to be trained on the content and application of the railroad rules governing the resolution of good faith challenges. BMWED/BRS noted that regardless of class or craft of a RWIC, RWICs must understand the good faith challenge procedures and their responsibility to promptly and equitably resolve the challenges. FRA concurs with BMWED/BRS's statement that RWICs must understand the good faith challenge procedures and their responsibility to resolve such challenges, but believes the existing regulations already require RWICs to be trained on a railroad's good faith challenge procedures. Under existing §§ 213.311–214.313, good faith challenges may be raised by roadway workers and must be promptly and equitably resolved. Indeed, under those sections, railroads must adopt procedures to address such good faith challenges. Existing § 214.343(b) requires recurrent training every calendar year for the on-track safety rules and procedures each roadway worker is required to follow, and this includes a railroad's rules and procedures on good faith challenges for a RWIC. *See also* § 214.353(b) (RWIC training requirements).

Nonetheless, FRA believes BMWED/BRS's comment has merit because the RWIC is typically involved in resolving roadway workers' good faith challenges. As noted in the NPRM, Technical Bulletin G–05–04 specifies that persons acting as RWICs must be qualified on good faith challenge procedures, but the text of part 214 does not expressly state such. Given the importance of ensuring RWICs are trained in a railroad's good faith challenge procedures, FRA believes good faith challenge procedures should be included as a required training and qualification topic in paragraph (a) of § 214.353. Thus, in this final rule FRA is adding the words "including the railroad's procedures governing good faith challenges in §§ 214.311(b) and (c) and 214.313(d)" to existing paragraph (a)(1). While another railroad employee or supervisor other than a RWIC may ultimately resolve a roadway worker's good faith challenge to the on-track safety provided, an a RWIC is typically involved in that resolution and must at least know the railroad's procedures governing the handling of such a challenge.

BMWED/BRS's comment also suggested FRA amend paragraph (b) of this section to require all RWICs, regardless of craft, to be annually trained and qualified. As discussed further below, FRA believes the amendments already made to paragraph (a) of this section, and to § 214.343 as discussed above, address this issue. As amended by this final rule, § 214.353 clarifies that all RWICs, regardless of craft, must be trained annually on the items in § 214.353. As discussed in the Section-by-Section analysis for §§ 214.343, 214.345, 214.347, and 214.351 above, FRA is deferring to the training standards rulemaking's three-year qualification interval for all roadway worker qualifications.

In the NPRM, FRA proposed an additional amendment to existing paragraph (a) of this section to address situations where employees other than roadway workers act as RWICs. FRA proposed to expressly require in paragraph (a) that any employee acting as a RWIC (*e.g.*, a conductor or a brakemen), who provides for the on-track safety of roadway workers through the establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen be trained and qualified consistent with § 214.353. BMWED/BRS submitted a comment supporting this proposal and FRA is adopting it, as proposed, in this final rule. For a detailed discussion of this change, see the preamble to the NPRM. 77 FR 50356–50357.

Regarding the training and qualification requirements of paragraph (b) of this section, for the reasons explained in the Section-by-Section analysis of § 214.347 above, FRA is addressing the frequency of training and qualification requirements for RWICs the same way as the requirements applicable to lone workers, flagmen, and watchmen/lookouts (§§ 214.347, 214.349, and 214.351). While annual training for RWICs is still required under the existing regulation, the periodic qualification of RWICs will be controlled by the Training Standards Rule, which requires recurrent qualification every three calendar years.

Also related to the training and qualification requirements applicable to RWICs, in the NPRM, FRA requested comment on the practice of bifurcating certain RWIC duties (*i.e.*, splitting of RWIC duties between two individuals).

Specifically, in the NPRM FRA indicated it was contemplating whether it should continue to be allow bifurcation of RWIC duties, such as when one employee obtains a track permit for another employee who is acting as the RWIC. FRA was considering adopting a requirement that would only permit the splitting of qualifications in situations where a conductor or other railroad employee serves as a pilot to a RWIC (or employee acting as a RWIC) who was not qualified on the physical characteristics of a particular territory where work was being performed. FRA considered such because every roadway work group already must have a RWIC, and under the amendment to paragraph (a) in this final rule discussed above, any employee acting as a roadway worker in charge must be trained on the substantive requirements listed in § 214.353.

AAR commented on this proposal suggesting another situation where the bifurcating of RWIC duties should be acceptable. AAR suggested that in situations where one employee obtains a working limits authority for a roadway work group, but is not responsible for any other aspect of the group's on-track safety, requiring the employee to be trained and tested on all the responsibilities of a RWIC would not serve any purpose. Consistent with AAR's comment, FRA notes existing Technical Bulletin G–05–04 allows one employee to obtain a track permit for another employee who is acting as the RWIC. FRA can also envision other operating situations where one employee's ability to obtain authority on behalf of an RWIC is desirable and necessary. For example, in the case of a large system gang, a local track inspector may obtain authority from the dispatcher for the system gang's RWIC. The BMWED/BRS comment also addressed this topic, indicating that since each roadway work group must have a RWIC qualified on physical characteristics under § 214.353, bifurcation was unnecessary and could cause confusion.

After further evaluating this issue and considering the comments, FRA concludes bifurcation of RWIC duties can be safely done in the two limited scenarios discussed above involving physical characteristics qualifications (pilot) and when obtaining track authority for an RWIC. FRA will continue to allow the practice of splitting RWIC duties in these scenarios. For gangs working across a large system, FRA recognizes it may not always be possible for an RWIC to be qualified on the physical characteristics, and using a pilot who is qualified on the physical characteristics can help safely facilitate compliance with this section. As discussed more fully in the NPRM and Technical Bulletin G–05–04, FRA also does not take exception to providing a "limited" qualification for a RWIC who would only perform certain RWIC duties in certain situations. For example, a RWIC who was performing such duties on a railroad consisting entirely of non-controlled track could have a limited qualification only involving the RWIC being trained and qualified to establish working limits via the inaccessible track procedures (in addition to being trained on all other §§ 214.343, 214.345, and 214.353 requirements).

§ 214.355 Training and Qualification in On-Track Safety for Operators of Roadway Maintenance Machines

Section 214.355 sets forth the on-track safety training and qualification requirements for roadway maintenance machine operators. In the NPRM, FRA requested comment on one potential change to this existing section in the final rule on how best to proceed regarding the appropriate time interval for "periodic" qualification under existing paragraph (b). The Working Group recommended consensus amendments that would have expressly required recurrent qualification every 24 months for roadway maintenance machine operators. As discussed in the preamble above for § 214.347, however, the RSAC consensus recommendation does not parallel the refresher qualification requirements in the statutorily mandated Training Standards Rule (minimum three calendar year interval).

FRA received comments in response to this request from SEPTA, BMWED/BRS, AAR, and two individuals. Those comments are summarized above in the preamble discussion for § 214.347. For the reasons also explained above, in this final rule, the Training Standards Rule requiring recurrent qualification at a minimum of every three calendar years will control.

FRA notes the Training Standards Rule included a provision addressing the training and qualification for operators of roadway maintenance machines equipped with a crane. 79 FR 66501. Those requirements are in a new § 214.357. FRA directs the public to the Training Standards Rule preamble's Section-by-Section analysis for an explanation of new § 214.357's requirements. *Id.* at 66474–66476.

Appendix A to Part 214—Schedule of Civil Penalties

FRA is amending appendix A of this part to add guidance on penalties for violations of new and amended sections of subpart C in this final rule. Appendix A specifies the civil penalty FRA will ordinarily assess for the violation of a particular provision of this rule. However, consistent with 49 CFR part 209, appendix A, FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, FRA reserves the right to assess a penalty up to the statutory maximum. Further, a penalty may be assessed against an individual only for a willful violation. FRA did not solicit public comment on appendix A as it is a statement of FRA policy.

X. Regulatory Impact and Notices

A. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated consistent with existing policies and procedures and determined to be a non-significant regulatory action under Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. FRA prepared and placed a RIA addressing the economic impact of this final rule in the Docket (No. FRA–2008–0086). Document inspection and copying facilities are available at Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

As part of the RIA, FRA assessed quantitative measurements of the cost and benefit streams expected to result from the implementation of the final rule. Overall, the final rule would result in safety benefits and expected business benefits for the railroad industry. It would also, however, generate an additional burden on railroads mainly due to the additional requirements for job briefings under certain circumstances and various training requirements.

Table 1 summarizes the quantified costs and benefits expected to accrue over a 20-year period. It presents costs associated with expanded job briefing requirements under § 214.315 Supervision and Communication, the identification and implementation of redundant protections under § 214.319 Working Limits, Generally, railroad policy change under § 214.339 Audible Warning from Trains, and training of various types of employees under §§ 214.318, 214.345, 214.347, and 214.353.

The RIA also presents the quantified benefits expected to accrue over a 20-year period. These benefits are primarily cost savings or business benefits. They largely accrue due to time savings because of the proposed amendments, including the new exception for on-track snow blowing and weed spraying operations under § 214.317, new methods of using inaccessible track under § 214.327, and using individual train detection under § 214.337. Savings will also accrue due to the additional flexibility provided by new § 214.318 allowing mechanical employees to utilize blue signal protection in some instances. All other amendments result in no cost or benefits because they represent current industry practice and/or the adoption of current FRA Technical Bulletins.

For the 20-year period analyzed, the estimated quantified costs to the railroad industry total $20,965,962, discounted to $11,491,330 (present value (PV), 7 percent) and $15,832,099 (PV, 3 percent). For the same 20-year period, the estimated quantified benefits total $53,109,702, discounted to $28,132,247 (PV, 7 percent) and $39,506,913 (PV, 3 percent). Net benefits total $32,143,740, discounted to $16,640,917 (PV, 7 percent) and $23,674,814 (PV, 3 percent). This analysis demonstrates that the benefits for this final rule would exceed the costs.

Table 2. Summary of Quantified Costs and Benefits

Costs		Year 1	2 - 20	*Total 20 year*	*7% PV*	*3% PV*
214.315	Job Briefings	$179,468	$179,468	*$3,589,356*	*$1,901,284*	*$2,670,028*
214.318	Training for Locom. & Car Shop Areas	226,601	226,601	*4,532,015*	*2,400,617*	*3,371,247*
214.319	Working Limits, generally	611,658	509,091	*7,725,137*	*4,465,867*	*5,975,983*
214.339	Audible Warning from Trains	29,105	0	*29,105*	*27,200*	*28,237*
214.345	Training on Safe Crossing of Trucks	90,640	90,640	*1,812,806*	*960,245*	*1,348,499*
214.347	Training on Access to Manual	13,596	13,596	*271,921*	*144,087*	*203,275*
214.353	Training RWIC	150,282	150,282	*3,005,632*	*1,592,086*	*2,235,811*
Total		$1,301,349	$1,169,678	$20,965,962	$11,491,330	$15,832,099
Benefits		**Year 1**	**2 - 20**	***Total 20 year***	***7% PV***	***3% PV***
214.317	Track Snow Removal	367,093	367,093	*7,341,864*	*3,888,991*	*5,461,420*
214.318	Locomotive Service & Shop Areas	1,964,466	1,964,466	*39,289,322*	*20,817,582*	*29,226,295*
214.327	Inaccessible Track	255,946	255,946	*5,118,911*	*2,711,491*	*3,807,823*
214.337	ITD	67,980	67,980	*1,359,605*	*720,183*	*1,011,374*
Total:		$2,655,485	$2,655,485	*$53,109,702*	*$28,132,247*	*$39,506,913*
NET BENEFITS		$1,354,136	$1,485,807	$32,143,740	$16,640,917	$23,674,814

Note: *Dollars are discounted over a 20-year period.*

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. FRA developed the final rule consistent with Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a threshold analysis to determine if the proposed rule will or may have a significant economic impact on a substantial number of small entities (SEISNOSE) or not. Then, it must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies a rule is not expected to have a SEISNOSE.

As discussed earlier, FRA is amending its regulations on railroad workplace safety to resolve interpretative issues that have arisen since the 1996 promulgation of the original RWP regulation. In particular, this final rule adopts certain terms, resolves miscellaneous interpretive issues, codifies certain FRA Technical Bulletins, adopts new requirements governing redundant signal protections and the movement of roadway maintenance machinery over signalized non-controlled track, amends certain qualification requirements for roadway workers, and codifies FAST Act mandates. FRA is also deleting three incorporations by reference of industry standards in existing sections of part 214, subpart B that address Bridge Worker Safety Standards and instead is referencing existing OSHA regulations.

The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as "feeders" to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although the relative interests of various railroads may not always coincide, the relationship between the large and small entity segments of the railroad industry are more supportive and co-dependent than competitive.

It is also extremely rare for small railroads to compete with each other. Small railroads generally serve smaller, lower-density markets and customers. They exist, and often thrive, doing business in markets where there is not enough traffic to attract the larger carriers designed to handle large volumes over distance at a profit. As there is usually not enough traffic to attract service by a large carrier, there is also not enough traffic to sustain more than one smaller carrier. In combination with the huge barriers to entry in the railroad industry (due to the need to own the right-of-way, build track, purchase a fleet, etc.), small railroads rarely find themselves in competition with each other. Thus, even to the extent the proposed rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

1. Description of Regulated Entities and Impacts

The "universe" of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. For the rule there is only one type of small entity that is affected: small railroads.

"Small entity" is defined in 5 U.S.C. 601. Section 601(3) defines a "small entity" as having the same meaning as "small business concern" under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of "small entities" not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations.

The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars. *See* "Size Eligibility Provisions and Standards," 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA published a final statement of agency policy that formally establishes "small entities" or "small businesses" as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The $20 million limit is based on the Surface Transportation Board's (STB) revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is using this definition for this rulemaking. FRA received no comments pertinent to its use in response to the NPRM.

Included in the entities impacted by this final rule are governmental jurisdictions or transit authorities—most of which are not small for purposes of this certification. There are two privately owned commuter railroads that would be considered small entities. However, both entities are owned by Class III freight railroads and, therefore, are already considered small entities for purposes of this certification.

Railroads

There are approximately 729 small railroads.[22] Class III railroads do not report to the STB, and the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially all small railroads (a substantial number) could be impacted by this regulation. However, because of certain characteristics these railroads typically have, there should be very little impact on most, if not all of them. A large number of these small railroads only have single-track operations. Some small railroads, such as the tourist and historic railroads, operate on the lines of other railroads that would bear the burden or impact of the final rule's requirements. Finally, other small railroads, if they do have more than a single track, typically have operations infrequent enough such that the railroads have generally always performed the pertinent trackside work with the track and right-of-way taken out of service, or is conducted during hours that the track is not used.

Almost all commuter railroads do not qualify as small entities. This is likely because almost all passenger/commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population. As noted above, two of these commuter railroads are privately owned and would be considered small. However, they are already considered to be small because they are owned by a Class III freight railroad. FRA is uncertain how many contractor companies would be involved with this issue. FRA is aware that some railroads hire contractors to conduct some of the functions of roadway workers on their properties. However, the costs for the burdens associated with the requirements of this final rule would get passed on to the pertinent railroad. Most likely the contracts would be written to reflect that, and the contractor would bear no additional burden for the proposed requirements. Since contractors would not be the entities directly impacted by any burdens, it is not necessary to assess them in the certification.

No other small businesses (non-railroads) will be impacted by this final rule.

The process used to develop most of this final rule provided outreach to small entities in two ways. First, the RSAC Working Group had at least one representative from a small railroad association, namely, ASLRRA. Second, members of the RSAC itself include the ASLRRA and other organizations that represent small entities. Thus, FRA concludes that small entities had an opportunity for input as part of the process to develop a consensus-based

[22] FRA data for 2014 shows there are 779 Railroads. Thus, 779 Total Railroads—7 Class I Railroads—12 Class II Railroads (includes Alaska RR)—31 Commuter/Amtrak (non-small) = 729 Small Railroads.

RSAC recommendation made to the FRA Administrator.

Impacts

The impacts from this regulation are primarily a result of the requirements for certain changes to the existing roadway worker protection regulations, particularly regarding job briefings and training of roadway workers.

The RIA for this rulemaking estimates that for the 20-year period analyzed, the estimated quantified costs to the railroad industry total $20,965,962, discounted to $11,491,330 (present value (PV), 7 percent) and $15,832,099 (PV, 3 percent). FRA believes nearly all of this cost will fall to railroads other than small railroads. Short line railroads, the vast majority of which are Class III railroads, represent an estimated 8 percent of the railroad industry. Since small railroads generally collect carloads in such small numbers and low densities, at low speeds, they require much less track maintenance. Also, several parts of the new regulation do not apply to Class III railroads. Furthermore, generally, small railroads have single tracks that are not active around the clock. As such, road work can be done when the track is not active, greatly reducing the burden of having to provide roadway worker protection. As such, the cost of this rulemaking is very minimal to the small railroad segment of the industry. Eight percent of the total 20-year cost is $1,677,277 (an average annual cost of $115 per small railroad).[23] Although the rule may impact a substantial number of small entities, FRA is confident that this final rule does not impose a significant burden.

2. Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies this final rule will not have a significant economic impact on a substantial number of small entities. FRA invited all interested parties to submit data and information regarding the potential economic impact that will result from the proposals in the NPRM. FRA did not receive any comments concerning this certification in the public comment process.

C. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted upon publication in the **Federal Register** for Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.119—Part 214 Railroad Workplace Safety Violation Report.	350 Safety Inspectors	120 forms	4 hours	480
214.307—Railroad On-Track Safety Programs (**Revised Requirements**)—RR Programs that comply with this Part + copies at System/Division Headquarters.	722 Railroads	722 programs + 851 copies.	2 hours + 2 minutes	1,472
—RR Notification to FRA not less than one month before on-track safety program takes effect.	722 Railroads	825 notices	20 minutes	275
—RR Amended On-Track Safety Programs after FRA Disapproval.	722 Railroads	34 programs	4 hours	136
—RR Written Response in Support of Disapproved Program.	722 Railroads	2 written responses	40 hours	80
214.309—**New Requirements**—On-Track Safety Manual.	722 Railroads	722 provisions	60 minutes	722
—RR Provisions for Alternative Access to Information in On-Track Safety Manual.	60 Railroads	100 bulletins/notices	60 minutes	100
—RR Publication of Bulletins/Notices reflecting changes in on-track safety manual.				
214.311—RR Written Procedure to achieve prompt and equitable resolution of Good Faith Employee Challenges.	50 New Railroads	25 generic procedures + 25 developed procedures.	30 minutes + 24 hours	613
214.313—Good Faith Challenges to On-Track Safety Rules.	20 Railroads	80 challenges	8 hours per challenge	640
214.315/335—Supervision +communication	50,000 Rdwy Workers	16,350,000 brf	2 minutes	545,000
—Job Briefings.				
—Adjacent-Track Safety Briefings	24,500 Rdwy Workers	2,403,450 brf.	30 seconds	20,029
—Information on Accessibility of Roadway Worker in Charge (RWIC) and Alternative Procedures in Event RWIC is No Longer Accessible to Work Gang (**New Requirement**).	300 Roadway Work Gangs (10 Employees in each gang × 59,400 briefings).	594,000 briefings	20 seconds	3,300
214.317—On-Track Procedures for Snow Removal (**New Requirements**).	20 Railroads	20 operating	60 minutes	20
—On-Track Procedures for Weed Spray Equipment.	722 Railroads	722 operating procedures.	60 minutes	722
—Roadway Worker in Charge (RWIC) Designation of alternative place of safety other than tunnel niche or clearing bay.	722 Railroads	25 designation	5 minutes	2

[23] $20,965,962 * .08 = $1,677,277/20 years/729 small railroads = $115 per year per small railroad.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
214.318—Procedures established by Railroads for workers to perform duties incidental to those of inspecting, testing, servicing, or repairing rolling equipment (**New Requirement**).	722 Railroads	722 rules/procedures	3 hours	2,166
214.319(b)(1)—New Requirements—Class I & II Railroads evaluation of its on-track safety program and identification of appropriate method to provide redundant protections for roadway work groups.	47 Railroads	47 On-track program evaluations.	40 hours + 16 hours	1,568
(b)(2)—Implementing redundant protections—safety briefings.	47 Railroads	77,394 safety briefings	4 minutes	5,160
(c) Railroad written request to FRA requesting exemption from requirements of section 214.319(b) for each segment of track governed by Positive Train Control.	47 Railroads	5 written requests	60 minutes	5
214.320—Roadway Maintenance Machines Movement over Signalized Non-controlled Track—RR request to FRA for equivalent level of protection to that of Working Limits(**New Requirement**).	722 Railroads	5 requests	4 hours	20
214.322—**New Requirements**) Exclusive Track Occupancy, Electronic Display—Written Authorities/Printed Authority Copy If Electronic Display Fails or Malfunctions.	3 Class I Railroads	500 written authorities	10 minutes	83
—On-Track Safety Briefings in Event Written Authority/Printed Authority Copy Cannot Be Obtained.	722 Railroads	100 briefings	6 minutes	10
—Data File Records Relating to Electronic Display Device Involved in Part 225 Reportable Accident/Incident.	3 Class I Railroads	25 data file records	2 hours	50
—Request to FRA for NIST Publication 800–63–2, "Electronic Authentication Guideline".	722 Railroads	3 requests + 3 copies	30 minutes + 2 minutes	2
214.325—Train Coordination (**Revised Requirement**)—Working Limits Established on Controlled Track through Train Coordination: Verbal communication by roadway worker establishing working limits.	50,000 Roadway Workers.	36,500 verbal messages.	15 seconds	152
214.327—Inaccessible Track—Working Limits Established by Locomotive With/Without Cars to Prevent Access—Communication by RWIC with Locomotive Crew Member (**New Requirement**).	10 Railroads	9,125 talks/messages	10 minutes	1,521
—Notification to Train or Engine Crew on Any Working Limits in Effect That Prohibit Train Movement until RWIC gives permission to enter Working Limits (**New Requirement**).	10 Railroads	1,750 notices	60 minutes	1,750
—Working Limits on Non-controlled Track: Notifications.	722 Railroads	50,000 notifications	10 minutes	8,333
214.329—Train Approach Warning Provided by Watchmen/Lookouts—Communications.	722 Railroads	795,000 non- yard messages + 79,500 yard messages.	30 seconds + 10 seconds.	6,846
—Written Designation of Watchmen/Lookouts.	722 Railroads	26,250 designations	30 seconds	219
214.336—*Procedures for Adjacent-Track Movements Over 25 mph*—Notifications/Watchmen/Lookout Warnings.	100 Railroads	10,000 notices	15 seconds	42
—Roadway Worker Communication with Train Engineers or Equipment Operators.	100 Railroads	3,000 talks	1 minute	50
—*Procedures for Adjacent-Track Movements 25 mph or less*—Notifications/Watchmen/Lookout Warnings.	100 Railroads	3,000 notices	15 seconds	13
—Roadway Worker Communication with Train Engineers or Equipment Operators.	100 Railroads	1,500 talks	1 minute	25
—Exceptions to the requirements in paragraphs (a), (b), and (c) for adjacent—controlled-track on-track safety: Work activities involving certain equipment and purposes—On-Track Job Safety Briefings.	100 Railroads	2,403,450 briefings	15 seconds	10,014
214.337—On-Track Safety Procedures for Lone Workers: Statements by Lone Workers.	722 Railroads	2,080,000 statements	30 seconds	17,333

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Statement of On-Track Safety Using Individual Train Detection on Track Outside Manual Interlocking, a Controlled Point, or a Remotely Controlled Hump Yard Facility.	722 Railroads	200 statements	30 seconds	2
214.339—Audible Warning from Trains (**Revised Requirement**)—Written Procedures That Prescribe Effective Requirements for Audible Warning by Horn and/or Bell for Trains.	44 Railroads	44 written procedures	13 hours	572
214.343/345/347/349/351/353/355—Annual Training for All Roadway Workers (RWs) (**New/Revised Requirements**).	50,000 Rdwy Workers	50,000 tr. RW	4.5 hours	225,000
—Training of Trainmen (Conductors & Brakemen) to Act as RWIC and Training of Station Platform Work Coordinators (**New Requirement**).	810 RR Workers	810 trained workers	2 hours	1,620
—Additional adjacent on-track safety training for Roadway Workers.	35,000 Rdwy Workers	35,000 tr. RW	5 minutes	2,917
—Records of Training	50,000 Roadway Workers.	50,000 records	2 minutes	1,667
214.503—Good Faith Challenges; Procedures for Notification and Resolution—Notifications for Non-Compliant Roadway Maintenance Machines or Unsafe Condition.	50,000 Rdwy Workers	125 notices	10 minutes	21
—Resolution Procedures	644 Railroads/200 contractors.	10 procedures	2 hours	20
214.505—Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs.	644 Railroads/200 contractors.	500 lists	1 hour	500
—Designations/Additions to List	644 Railroads/200 contractors.	150 additions/designations.	5 minutes	13
214.507—A-Built Light Weight on New Roadway Maintenance Machines.	644 Railroads/200 contractors.	1,000 stickers/stencils	5 minutes	83
214.511—Required Audible Warning Devices For New On-Track Roadway Maintenance Machines.	644 Railroads/200 contractors.	3,700 identified mechanisms.	5 minutes	308
214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines.				
—Identification of Triggering Mechanism—Horns.	703 Railroads/200 contractors.	200 I.D. mechanisms	5 minutes	17
214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines.	644 Railroads/200 contractors.	500 requests + 500 responses.	10 minutes; 20 minutes	250
214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After Jan. 1, 1991.	644 Railroads/200 contractors.	500 stencils/displays	5 minutes	42
214.518—Safe and Secure Position for riders	644 Railroads/200 contractors.	1,000 stencils	5 minutes	83
—Positions identified by stencilings/markings/notices.				
214.523—Hi-Rail Vehicles	644 Railroads/200 contractors.	2,000 records	60 minutes	2,000
—Non-Complying Conditions	644 Railroads/200 contractors.	500 tags + 500 reports	10 minutes + 15 minutes.	208
214.527—Inspection for Compliance; Repair Schedules.	644 Railroads/200 contractors.	550 tags + 550 reports	5 minutes + 15 minutes	184
214.533—Schedule of Repairs; Subject to Availability of Parts.	644 Railroads/200 contractors.	250 records	15 minutes	63

All estimates include the time to review instructions; search existing data sources; gather or maintain the needed data; and review the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, FRA Office of Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kim Toone, FRA Office of Information Technology, Information Clearance Officer, at 202–493–6132.

OMB must make a decision concerning the collection of information requirements this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number. If required, FRA will obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action before the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed consistent with the principles and criteria in Executive Order 13132. This final rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this final rule consistent with the principles and criteria in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined preparation of a federalism summary impact statement for this final rule is not required.

E. Environmental Impact

FRA has evaluated this final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999). FRA has determined this final rule is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures, ''Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.'' *See* 64 FR 28547. Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and, thus, do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Under section 4(c) and (e) of FRA's Procedures, FRA has further concluded no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to finalize a number of railroad worker safety practices developed by the RSAC, some required by the FAST Act, and additional rules to decrease railroad worker accidents and injuries. FRA does not anticipate any environmental impacts from these requirements and finds that there are no extraordinary circumstances present in connection with this final rule.

F. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA evaluated this final rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

G. Executive Order 13175 (Tribal Consultation)

FRA evaluated this final rule under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

H. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that

before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1

year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement

detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $155,000,000 or more (adjusted annually for inflation) in any one year. Thus, preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA evaluated this final rule consistent with Executive Order 13211. FRA has determined this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and, thus, is not a "significant energy action" under Executive Order 13211.

J. Trade Impact

The Trade Agreements Act of 1979 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this final rule on foreign commerce and believes its requirements are consistent with the Trade Agreements Act. The requirements imposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade.

K. Privacy Act

Interested parties should be aware that anyone can search the electronic form of all written comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477–19478, Apr. 11, 2000) or you may visit *http://www.dot.gov/privacy.html.*

L. Analysis Under 1 CFR Part 51

As 1 CFR 51.5 requires, FRA has summarized the standard incorporated by reference and shown its reasonable availability in the Section-by-Section analysis above.

List of Subjects in 49 CFR Part 214

Bridges, Incorporation by reference, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons discussed in the preamble, FRA amends part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 214—[AMENDED]

■ 1. The authority citation for part 214 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Amend § 214.7 as follows:
■ a. Add the definitions, in alphabetical order, for "controlled point", "interlocking, manual", "maximum authorized speed", "on-track safety manual", "roadway worker in charge";
■ b. Revise the definitions for "effective securing device" and "watchman/lookout".

The additions and revisions read as follows:

§ 214.7 Definitions.

* * * * *

Controlled point means a location where signals and/or other functions of a traffic control system are controlled from the control machine.

* * * * *

Effective securing device means a vandal and tamper resistant lock, keyed for application and removal only by the roadway worker(s) for whom the protection is provided. In the absence of a lock, it is acceptable to use a spike driven firmly into a switch tie or a switch point clamp to prevent the use of a manually operated switch. It is also acceptable to use portable derails secured with specifically designed metal wedges. Securing devices without a specially keyed lock shall be designed in such a manner that they require railroad track tools for installation and removal and the operating rules of the railroad must prohibit removal by employees other than the class, craft, or group of employees for whom the protection is being provided. Regardless of the type of securing device, the throwing handle or hasp of the switch or derail shall be uniquely tagged. If there is no throwing handle, the securing device shall be tagged.

* * * * *

Interlocking, manual means an arrangement of signals and signal appliances operated from an interlocking machine and so interconnected by means of mechanical and/or electric locking that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication.

* * * * *

Maximum authorized speed means the highest speed permitted for the movement of trains permanently established by timetable/special instructions, general order, or track bulletin.

* * * * *

On-track safety manual means the entire set of on-track safety rules and instructions maintained together in one manual designed to prevent roadway workers from being struck by trains or other on-track equipment. These instructions include operating rules and other procedures concerning on-track safety protection and on-track safety measures.

* * * * *

Roadway worker in charge means a roadway worker who is qualified under § 214.353 to establish on-track safety for roadway work groups, and lone workers qualified under § 214.347 to establish on-track safety for themselves.

* * * * *

Watchman/lookout means an employee who has been trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air horn, white disk, red flag, lantern, fuse. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning to employees before arrival of trains/on-track equipment.

* * * * *

■ 3. Revise § 214.113(b) to read as follows:

§ 214.113 Head protection.

* * * * *

(b) Helmets required by this section shall conform to the requirements of 29 CFR 1910.135(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

■ 4. Revise § 214.115(b) to read as follows:

§ 214.115 Foot protection.

* * * * *

(b) Foot protection equipment required by this section shall conform to the requirements of 29 CFR 1910.136(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

■ 5. Revise § 214.117(b) to read as follows:

§ 214.117 Eye and face protection.

* * * * *

(b) Eye and face protection equipment required by this section shall conform to the requirements of 29 CFR 1910.133(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

* * * * *

Subpart C—Roadway Worker Protection

■ 6. Revise § 214.301(c) to read as follows:

§ 214.301 Purpose and scope.

* * * * *

(c) This subpart prescribes safety standards related to the movement of roadway maintenance machines where such movements affect the safety of roadway workers. Except as provided for in § 214.320, this subpart does not otherwise affect movements of roadway maintenance machines that are conducted under the authority of a train dispatcher, a control operator, or the operating rules of the railroad.

§ 214.302 [Removed and Reserved]

■ 7. Remove and reserve § 214.302.

§ 214.305 [Removed and Reserved]

■ 8. Remove and reserve § 214.305.
■ 9. Revise § 214.307 to read as follows:

§ 214.307 On-track safety programs.

(a) Each railroad subject to this part shall maintain and have in effect an on-track safety program which complies with the requirements of this subpart. New railroads must have an on-track safety program in effect by the date on which operations commence. The on-track safety program shall be retained at a railroad's system headquarters and division headquarters, and shall be made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this part applies is authorized to retain its program by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

(b) Each railroad shall notify, in writing, the Associate Administrator for Safety and Chief Safety Officer, Federal Railroad Administration, RRS–15, 1200 New Jersey Avenue SE., Washington, DC 20590, not less than one month before its on-track safety program becomes effective. The notification shall include the effective date of the program and the name, title, address and telephone number of the primary person to be contacted with regard to review of the program. This notification procedure shall also apply to subsequent changes to a railroad's on-track safety program.

(c) Upon review of a railroad's on-track safety program, the FRA Associate Administrator for Railroad Safety and Chief Safety Officer may, for cause stated, may disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Railroad Safety and Chief Safety Officer disapproves the program:

(1) The railroad has 35 days from the date of the written notification of such disapproval to:

(i) Amend its program and submit it to the Associate Administrator for Railroad Safety and Chief Safety Officer for approval; or

(ii) Provide a written response in support of its program to the Associate Administrator for Railroad Safety and Chief Safety Officer.

(2) FRA's Associate Administrator for Railroad Safety and Chief Safety Officer will subsequently issue a written decision either approving or disapproving the railroad's program.

(3) Failure to submit to FRA an amended program or provide a written response in accordance with this paragraph will be considered a failure to implement an on-track safety program under this subpart.

■ 10. Revise § 214.309 to read as follows:

§ 214.309 On-track safety manual.

(a) The applicable on-track safety manual (as defined by § 214.7) shall be readily available to all roadway workers. Each roadway worker in charge responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the on-track safety manual.

(b) When it is impracticable for the on-track safety manual to be readily available to a lone worker, the employer shall establish provisions for such worker to have alternative access to the information in the manual.

(c) Changes to the on-track safety manual may be temporarily published in bulletins or notices. Such publications shall be retained along with the on-track safety manual until fully incorporated into the manual.

■ 11. In § 214.315, revise paragraphs (a)(3), (a)(4), (b), the first sentence of paragraphs (c) through (e) and add paragraph (a)(5) to read as follows:

§ 214.315 Supervision and communication.

(a) * * *

(3) Information about any adjacent tracks, on-track safety for such tracks, if required by this subpart or deemed necessary by the roadway worker in charge, and identification of any roadway maintenance machines that will foul such tracks;

(4) A discussion of the nature of the work to be performed and the characteristics of the work location to ensure compliance with this subpart; and

(5) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to the members of the roadway work group.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker(s) has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker in charge designated by the employer to provide on-track safety for all members of the group. * * *

(d) Before any member of a roadway work group fouls a track, the roadway worker in charge designated under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. * * *

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive an on-track safety job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. * * *

■ 12. Revise § 214.317 to read as follows:

§ 214.317 On-track safety procedures, generally.

(a) Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of §§ 214.319 through 214.337.

(b) Roadway workers may walk across any track provided that they can safely be across and clear of the track before a train or other on-track equipment would arrive at the crossing point under the following circumstances:

(1) Employers shall adopt, and roadway workers shall comply with, applicable railroad safety rules governing how to determine that it is safe to cross the track before starting across;

(2) Roadway workers shall move directly and promptly across the track; and

(3) On-track safety protection is in place for all roadway workers who are actually engaged in work, including inspection, construction, maintenance or repair, and extending to carrying tools or material that restricts motion, impairs sight or hearing, or prevents an employee from detecting and moving rapidly away from an approaching train or other on-track equipment.

(c) On non-controlled track, on-track roadway maintenance machines engaged in weed spraying or snow removal may proceed under the provisions of § 214.301(c), under the following conditions:

(1) Each railroad shall establish and comply with an operating procedure for on-track snow removal and weed spray equipment to ensure that:

(i) All on-track movements in the affected area are informed of such operations;

(ii) All on-track movements shall operate at restricted speed as defined in § 214.7, except on other than yard tracks and yard switching leads, where all on-track movements shall operate prepared to stop within one-half the range of vision but not exceeding 25 mph;

(iii) A means for communication between the on-track equipment and other on-track movements is provided; and

(iv) Remotely controlled hump yard facility operations are not in effect, and kicking of cars is prohibited unless agreed to by the roadway worker in charge.

(2) Roadway workers engaged in such snow removal or weed spraying operations subject to this section shall retain an absolute right to use the provisions of § 214.327 (inaccessible track).

(3) Roadway workers assigned to work with this equipment may line switches (or derails operated via a switch stand) for the machine's movement but shall not engage in any roadway work activity unless protected by another form of on-track safety.

(4) Each roadway maintenance machine engaged in snow removal or weed spraying under this provision shall be equipped with and utilize:

(i) An operative 360-degree intermittent warning light or beacon;

(ii) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(iii) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions;

(iv) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and

(v) A rearward viewing device, such as a rearview mirror.

(d) Tunnel niches or clearing bays in existence prior to April 1, 2017 that are designed to permit roadway workers to occupy a place of safety when trains or other on-track equipment pass the niche or clearing bay, but are less than four feet from the field side of the nearest rail, may continue to be used as a place of safety provided:

(1) Such niches or clearing bays are visually inspected by the roadway worker in charge or lone worker prior to making the determination that the niche or clearing bay is suitable for use as a place of safety;

(2) There is adequate sight distance to permit a roadway worker or lone worker to occupy the place of safety in the niche or clearing bay at least 15 seconds prior to the arrival of a train or other on-track equipment at the work location in accordance with §§ 214.329 and 214.337; and

(3) The roadway worker in charge or lone worker shall have the absolute right to designate a place of safety as a location other than that of a tunnel niche or clearing bay described by this paragraph (d), or to establish working limits.

■ 13. Add § 214.318 to read as follows:

§ 214.318 Locomotive servicing and car shop repair track areas.

(a) In lieu of the requirements of this subpart, workers (as defined by § 218.5 of this chapter) within the limits of locomotive servicing and car shop repair track areas (as both are defined by § 218.5 of this chapter) may utilize procedures established by a railroad in accordance with part 218, subpart B, of this chapter (Blue Signal Protection) to perform duties incidental to inspecting, testing, servicing, or repairing rolling equipment when those incidental duties involve fouling a track that is protected by Blue Signal Protection. A railroad utilizing Blue Signal Protection in lieu of the requirements of this subpart must have rules in effect governing the applicability of those protections to the incidental duties being performed.

(b) Paragraph (a) of this section applies to employees of a contractor to a railroad if such incidental duties are performed under the supervision of a railroad employee qualified (as defined by § 217.4 of this chapter) on the railroad's rules and procedures implementing the Blue Signal Protection requirements.

(c) Any work performed within the limits of a locomotive servicing or car shop repair track area with the potential of fouling a track which requires a person qualified under § 213.7 of this chapter to be present to inspect or supervise such work must be performed in accordance with the requirements of this subpart.

■ 14. Revise § 214.319 to read as follows:

§ 214.319 Working limits, generally.

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, § 214.323 Foul time, or § 214.325 Train coordination. Working limits established on non-controlled track shall conform to the provision of § 214.327 Inaccessible track.

(a) Working limits established under any procedure shall, in addition, conform to the following provisions:

(1) Only a roadway worker in charge who is qualified in accordance with § 214.353 shall establish or have control over working limits for the purpose of establishing on-track safety.

(2) Only one roadway worker in charge who is qualified in accordance with § 214.353 shall have control over working limits on any one segment of track.

(3) All affected roadway workers shall be notified before working limits are released for the operation of trains. Working limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329.

(b) Each Class I or Class II railroad or each railroad providing regularly scheduled intercity or commuter rail passenger transportation that utilizes controlled track working limits as a form of on-track safety (under §§ 214.321 through 214.323) in signalized territory shall:

(1) By July 1, 2017, evaluate its on-track safety program and identify an appropriate method(s) of providing redundant signal protections for roadway work groups who depend on a train dispatcher or control operator to provide signal protection in establishing controlled track working limits. For purposes of this section, redundant signal protections means risk mitigation measures or safety redundancies adopted to ensure the proper establishment and maintenance of signal protections for controlled track working limits until such working limits are released by the roadway worker in charge. Appropriate redundant protections could include the use of various risk mitigation measures (or a combination of risk mitigation measures) such as technology, training, supervision, or operating-based procedures; or could include use of redundant signal protection, such as shunting, designed to prevent signal system-related incursions into established controlled track working limits; and

(2) By January 1, 2018, specifically identify, implement, and comply with the method(s) of providing redundant protections in its on-track safety program.

(c) Upon a railroad's request, FRA will consider an exemption from the requirements of paragraph (b) of this section for each segment of track(s) for which operations are governed by a positive train control system under part 236, subpart I, of this chapter. A request for approval to exempt a segment of track must be submitted in writing to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer. The FRA Associate Administrator for Railroad Safety and Chief Safety Officer will review a railroad's submission and will notify a railroad of its approval or disapproval in writing within 90 days of FRA's receipt of a railroad's written request, and shall specify the basis for any disapproval decision.

■ 15. Add § 214.320 to read as follows:

§ 214.320 Roadway maintenance machine movements over signalized non-controlled track.

Working limits must be established for roadway maintenance machine movements on non-controlled track equipped with automatic block signal systems over which trains are permitted to exceed restricted speed (for purposes of this section, on-track movements prepared to stop within on-half the range of vision but not exceeding 25 mph). This section applies unless the railroad's operating rules protect the movements of roadway maintenance machines in a manner equivalent to that provided for by limiting all train and locomotive movements to restricted speed, and such equivalent level of protection is first approved in writing by FRA's Associate Administrator for Railroad Safety and Chief Safety Officer.

■ 16. In § 214.321, revise paragraphs (a) introductory text, (b) introductory text, (b)(2), and (d) and add paragraphs (b)(4) and (e) to read as follows:

§ 214.321 Exclusive track occupancy.

* * * * *

(a) The track within working limits shall be placed under the control of one roadway worker in charge by either:

* * * * *

(b) An authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker in charge by the train dispatcher or control operator in charge of the track.

* * * * *

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect. A data transmission of an authority displayed on an electronic screen may be used as a substitute for a written or printed document required under this paragraph. Electronic displays of authority shall comply with the requirements of § 214.322.

* * * * *

(4) An authority shall specify a unique roadway work group number, an employee name, or a unique identifier. A railroad shall adopt procedures that require precise communication between trains and other on-track equipment and the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319. The procedures may permit communications to be made directly between a train or other on-track equipment and a roadway worker in charge or lone worker, or through a train dispatcher or control operator.

* * * * *

(d) Movements of trains and roadway maintenance machines within working limits established through exclusive track occupancy shall be made only under the direction of the roadway worker in charge of the working limits. Such movements shall be at restricted speed unless a higher authorized speed has been specifically authorized by the roadway worker in charge of the working limits.

(e) Working limits established by exclusive track occupancy authority may occur behind designated trains moving through the same limits in accordance with the following provisions:

(1) The authority establishing working limits will only be considered to be in effect after it is confirmed by the roadway worker in charge or lone worker that the affected train(s) have passed the point to be occupied or fouled by:

(i) Visually identifying the affected trains(s); or

(ii) Direct radio contact with a crew member of the affected train(s); or

(iii) Receiving information about the affected train from the train dispatcher or control operator.

(2) When utilizing the provisions of paragraph (e)(1)(i) of this section, a railroad's operating rules shall include procedures prohibiting the affected train(s) from making a reverse movement into or within the limits being fouled or occupied.

(3) After the roadway worker in charge or lone worker has confirmed that the affected trains(s) have passed the point to be occupied or fouled, the roadway worker in charge shall record on the authority the time of passage and engine number(s) of the affected trains(s). If the confirmation is by direct communication with the train(s), or through confirmation by the train dispatcher or control operator, the roadway worker in charge shall record the time of such confirmation and the engine number(s) of the affected trains on the authority.

(4) A separate roadway work group afforded on-track safety by the roadway worker in charge of authority limits, and that is located away from the roadway worker in charge of authority limits, shall:

(i) Occupy or foul the track only after receiving permission from the roadway worker in charge to occupy the working limits after the roadway worker charge has fulfilled the provisions of paragraph (e)(1) of this section; and

(ii) Be accompanied by an employee qualified to the level of a roadway worker in charge who shall also have a copy of the authority and who shall

independently execute the required communication requirements of paragraphs (e)(1) and (3) of this section.

(5) Any subsequent train or on-track equipment movements within working limits after the passage of the affected train(s) shall be governed by paragraph (d) of this section.

■ 17. Add § 214.322 to read as follows:

§ 214.322 Exclusive track occupancy, electronic display.

(a) While it is in effect, all the contents of an authority electronically displayed shall be readily viewable by the roadway worker in charge that is using the authority to provide on-track safety for a roadway work group.

(b) If the electronic display device malfunctions, fails, or cannot display an authority while it is in effect, the roadway worker in charge shall either obtain a written or printed copy of the authority in accordance with § 214.321 (except that on-track roadway maintenance machine and hi-rail movements must stop) or establish another form of on-track safety without delay. In the event that a written or printed copy of the authority cannot be obtained or another form of on-track safety cannot be established after failure of an electronic display device, the roadway worker in charge shall instruct all roadway workers to stop work and occupy a place of safety and conduct an on-track safety job briefing to determine the safe course of action with the roadway work group.

(c) All authorized users of an electronic display system shall be uniquely identified to support individual accountability. A user may be a person, a process, or some other system that accesses or attempts to access an electronic display system to perform tasks or process an authority.

(d) All authorized users of an electronic display system must be authenticated prior to being granted access to such system. The system shall ensure the confidentiality and integrity of all internally stored authentication data and protect it from access by unauthorized users. The authentication scheme shall utilize algorithms approved by the National Institute of Standards and Technology (NIST), or any similarly recognized and FRA approved standards body.

(e) The integrity of all data must be ensured during transmission/reception, processing, and storage. All new electronic display systems implemented on or after July 1, 2017 shall utilize a Message Authentication Code (MAC) to ensure that all data is error free. The MAC shall utilize algorithms approved by NIST, or any similarly recognized and FRA approved standards body. Systems implemented prior to July 1, 2017 may utilize a Cyclical Redundancy Code (CRC) to ensure that all data is error free provided:

(1) The collision rate for the CRC check utilized shall be less than or equal to 1 in 2^{32}. Systems implemented prior to July 1, 2017 that do not utilize a CRC with a collision rate less than or equal to 1 in 2^{32} must be retired or updated to utilize a MAC no later than July 1, 2018.

(2) MAC and CRC checks shall only be used to verify the accuracy of an electronic authority data message and shall not be used in an error correction reconstruction of the data. An authority must fail if the MAC or CRC checks do not match.

(f) Authorities transmitted to each electronic display device shall be retained in the device's non-volatile memory for not less than 72 hours.

(g) If any electronic display device used to obtain an authority is involved in an accident/incident that is required to be reported to FRA under part 225 of this chapter, the railroad or employer that was using the device at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA. This preservation requirement permits the railroad or employer to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire one (1) year after the date of the accident unless FRA or the National Transportation Safety Board notifies the railroad in writing that the data are desired for analysis.

(h) New electronic display systems implemented on or after July 1, 2017 shall provide Level 3 assurance as defined by NIST Special Publication 800–63–2, Electronic Authentication Guideline, "Computer Security," August 2013. Systems implemented prior to July 1, 2017 shall provide Level 2 assurance. Systems implemented prior to July 1, 2017 that do not provide Level 2 or higher assurance must be retired, or updated to provide Level 2 assurance, no later than July 1, 2018. The incorporation by reference of this NIST Special Publication was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated document from the National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800–63–2.pdf.* You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

■ 18. In § 214.323, revise paragraphs (a), (b), and (c) and add paragraph (d) to read as follows:

§ 214.323 Foul time.

* * * * *

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains or other on-track equipment to move into or within the working limits during the foul time period.

(b) Each roadway worker in charge to whom foul time is transmitted orally shall repeat the track number or identifier, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

(c) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment into working limits protected by foul time until the roadway worker in charge who obtained the foul time has reported clear of the track.

(d) The roadway worker in charge shall not permit the movement of trains or other on-track equipment into or within working limits protected by foul time.

■ 19. In § 214.325, revise the introductory text to read as follows:

§ 214.325 Train coordination.

Working limits established on controlled track by a roadway worker in charge through the use of train coordination shall comply with the following requirements:

* * * * *

■ 20. In § 214.327, add paragraphs (a)(6), (7), and (8) to read as follows:

§ 214.327 Inaccessible track.

(a) * * *

(6) A locomotive with or without cars placed to prevent access to the working limits at one or more points of entry to the working limits, provided the following conditions are met:

(i) The roadway worker in charge who is responsible for establishing working limits communicates with a member of the crew assigned to the locomotive and determines that:

(A) The locomotive is visible to the roadway worker in charge that is establishing the working limits; and

(B) The locomotive is stopped.

(ii) Further movements of the locomotive shall be made only as permitted by the roadway worker in charge controlling the working limits;

(iii) The crew of the locomotive shall not leave the locomotive unattended or go off duty unless communication occurs with the roadway worker in charge and an alternate means of on-track safety protection has been established by the roadway worker in charge; and

(iv) Cars coupled to the locomotive on the same end and on the same track as the roadway workers shall be connected to the train line air brake system and such system shall be charged with compressed air to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers shall have sufficient braking capability to control their movement.

(7) A railroad's procedure governing block register territory that prevents trains and other on-track equipment from occupying the track when the territory is under the control of a lone worker or roadway worker in charge. The roadway worker in charge or lone worker shall have the absolute right to render block register territory inaccessible under the other provisions of paragraph (a) of this section.

(8) Railroad operating rules that prohibit train or engine or other on-track equipment movements on a main track within yard limits or restricted limits until the train or engine or on-track equipment receives notification of any working limits in effect and prohibit the train or engine or on-track equipment from entering working limits until permission is received by the roadway worker in charge. Such working limits shall be delineated with stop signs (flags), and where speeds are in excess of restricted speed and physical characteristics permit, also with advance signs (flags).

* * * * *

■ 21. Amend § 214.329 by revising paragraph (a) to read as follows:

§ 214.329 Train approach warning provided by watchmen/lookouts.

* * * * *

(a) Train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum authorized speed on that track can pass the location of the roadway worker. The place of safety to be occupied upon the approach of a train may not be on a track, unless working limits are established on that track.

* * * * *

■ 22. In § 214.331, add paragraph (e) to read as follows:

§ 214.331 Definite train location.

* * * * *

(e) Each on-track safety program that provides for the use of definite train location shall discontinue such use by June 12, 2017.

■ 23. Revise § 214.333(c) to read as follows:

§ 214.333 Informational line-ups of trains.

* * * * *

(c) Each on-track safety program that provides for the use of informational line-ups shall discontinue such use by June 12, 2017.

■ 24. Revise § 214.335 to read as follows:

§ 214.335 On-track safety procedures for roadway work groups, general.

(a) No employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of § 214.319, § 214.321, § 214.323, § 214.325, § 214.327, § 214.329, § 214.331, or § 214.336.

(b) No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker in charge of the roadway work group that on-track safety is provided.

■ 25. In § 214.337, revise paragraph (c)(3) and add paragraph (g) to read as follows:

§ 214.337 On-track safety procedures for lone workers.

* * * * *

(c) * * *

(3) On track outside the limits of a manual interlocking, a controlled point (except those consisting of signals only), or a remotely controlled hump yard facility;

* * * * *

(g) Individual train detection shall not be used to provide on-track safety for a lone worker using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

■ 26. Revise § 214.339 to read as follows:

§ 214.339 Audible warning from trains.

(a) Each railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if the roadway workers or roadway maintenance machines are at risk of fouling the track. At a minimum, such written procedures shall address:

(1) Initial horn warning;

(2) Subsequent warning(s); and

(3) Alternative warnings in areas where sounding the horn adversely affects roadway workers (*e.g.*, in tunnels and terminals).

(b) Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

■ 27. Revise § 214.343(c) to read as follows:

§ 214.343 Training and qualification, general.

* * * * *

(c) Except as provided for in § 214.353, railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

* * * * *

■ 28. In § 214.345, revise the introductory text and add paragraph (f) to read as follows:

§ 214.345 Training for all roadway workers.

Consistent with § 214.343(b), the training of all roadway workers shall include, as a minimum, the following:

* * * * *

(f) Instruction on railroad safety rules adopted to comply with § 214.317(b).

■ 29. In § 214.347, add paragraph (a)(5) and revise paragraph (b) to read as follows:

§ 214.347 Training and qualification for lone workers.

* * * * *

(a) * * *

(5) Alternative means to access the information in a railroad's on-track safety manual when a lone worker's duties make it impracticable for the on-track safety manual to be readily available.

(b) Initial and periodic (as specified by § 243.201 of this chapter) qualification of a lone worker shall be evidenced by demonstrated proficiency.

■ 30. Revise § 214.349(b) to read as follows:

§ 214.349 Training and qualification of watchmen/lookouts.

* * * * *

(b) Initial and periodic (as specified by § 243.201 of this chapter) qualification of a watchman/lookout shall be evidenced by demonstrated proficiency.

■ 31. Revise § 214.351(b) to read as follows:

§ 214.351 Training and qualification of flagmen.

* * * * *

(b) Initial and periodic (as specified by § 243.201 of this chapter) qualification of a flagman shall be evidenced by demonstrated proficiency.

■ 32. In § 214.353, revise the section heading and paragraphs (a) introductory text, (a)(1), and (b) and add paragraph (a)(5) to read as follows:

§ 214.353 Training and qualification of each roadway worker in charge.

(a) The training and qualification of each roadway worker in charge, or any other employee acting as a roadway worker in charge (*e.g.*, a conductor or a brakeman), who provides for the on-track safety of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, at a minimum:

(1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected, including the railroad's procedures governing good faith challenges in §§ 214.311(b) and (c) and 214.313(d).

* * * * *

(5) The procedures required to ensure that the roadway worker in charge of the on-track safety of group(s) of roadway workers remains immediately accessible and available to all roadway workers being protected under the working limits or other provisions of on-track safety established by the roadway worker in charge.

(b) Initial and periodic (as specified by § 243.201 of this chapter) qualification of a roadway worker in charge shall be evidenced by demonstrated proficiency.

■ 33. In § 214.355, revise the section heading and paragraph (b) to read as follows:

§ 214.355 Training and qualification of each roadway worker in on-track safety for operators of roadway maintenance machines.

* * * * *

(b) Initial and periodic (as specified by § 243.201 of this chapter) qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

■ 34. In appendix A to part 214, add footnote number 2 to the table heading "Section" and, under subpart C, revise the entries for §§ 214.303(b), 214.307, 214.309, 214.315(a), 214.317, 214.319, 214.329(a), 214,339, and 214.353 and add entries for §§ 214.318, 214.320, 214.321(b)(4) and (e), 214.322, 214.323(c) and (d), 214.331(e), and 214.337(g) to read as follows:

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
* * * * * *		*
Subpart C—Roadway Worker Protection Rule		
214.303 Railroad on-track safety programs, generally:		
* * * * * *		*
(b) Failure of a railroad to include and use internal monitoring procedure	5,000	10,000
* * * * * *		*
214.307 On-track safety programs:		
(a)(i) Failure to adopt On-Track Safety Program	10,000	13,000
(ii) Failure to provide On-track Safety Program to FRA upon request	1,000	5,000
(b) Failure to notify FRA of adoption or change to On-Track Safety Program	1,000	5,000
(c) Failure to amend or provide written response after disapproval of On-track Safety Program	10,000	20,000
214.309 On-track safety manual:		
(a) On-track Safety Manual not provided to prescribed employees	2,000	5,000
(b) Failure to establish provision for lone worker to have alternative access to On-track Safety Manual	5,000	10,000
(c) Failure to maintain entire set of on-track safety rules and instructions, including updates temporarily published in bulletins or notices, in one On-Track Safety Manual	2,000	5,000
* * * * * *		*
214.315 Supervision and communication:		
(a)(1)Complete failure of employer to provide on-track safety job briefing	5,000	10,000
(2)–(5) Partial failure of employer to provide on-track safety job briefing	2,000	4,000
* * * * * *		*
214.317 On-track safety procedures, generally:		
(a) On-track safety rules conflict with this part	5,000	10,000
(b) Failure to adopt or comply with rules governing safe crossing of track	2,000	5,000
(3) Failure to establish on-track safety if required	2,000	5,000
(c)(1) Failure to adopt or comply with operating procedure if this section is utilized in lieu of establishing working limits	3,000	5,000
(2) Failure to grant absolute right to establish working limits if requested by RWIC or lone worker	3,000	5,000

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(3) Except as permitted, roadway worker fouling track without on-track safety	3,000	5,000
(4) Roadway maintenance machine not properly equipped or utilized	3,000	5,000
(d)(1) Failure to inspect tunnel niche or clearing bay	3,000	5,000
(2) Lack of adequate sight distance	3,000	5,000
(3) Failure to grant absolute right to establish other place of safety or to establish working limits if requested by RWIC or lone worker	5,000	10,000
214.318 Locomotive servicing and car shop repair track areas:		
(a)–(c)	3,000	5,000
214.319 Working limits, generally:		
(a)(1)Non-qualified RWIC of working limits	5,000	10,000
(a)(2) More than one RWIC of working limits on the same track segment	2,000	5,000
(a)(3)(i) Working limits released without notifying all affected roadway workers	5,000	10,000
(a)(3)(ii) Working limits released before all affected roadway workers are otherwise protected	5,000	10,000
(b)(1) Failure to adopt redundant protections in on-track safety program	5,000	10,000
(b)(2) Failure to comply with redundant protections identified in on-track safety program when controlled track working limits are established	5,000	10,000
214.320 Roadway maintenance machine movements over signalized non-controlled track	5,000	7,500
214.321 Exclusive track occupancy:		
* * * * * *		*
(b) * * *.		
(4) (i) Failure to specify unique roadway work group number, employee name, or unique identifier	3,000	5,000
(ii) Failure to adopt procedure requiring precise communication between RWIC or lone worker and trains or other on-track equipment	3,000	5,000
* * * * * *		*
(e)(1)–(4) Failure to comply with occupancy behind requirements	5,000	10,000
214.322 Exclusive track occupancy, electronic display:		
(a) Contents of authority electronically displayed not readily viewable	3,000	5,000
(b) Failure to timely obtain written/printed authority or occupy place of safety if electronic display fails while authority is in effect	3,000	5,000
(c)–(h)	2,000	4,000
214.323 Foul time:		
* * * * * *		*
(c) Train dispatcher or control operator permitting movement of trains or other on-track equipment into working limits prior to RWIC reporting clear of track	5,000	10,000
(d) RWIC permitting movement of trains or on-track equipment into or within working limits	5,000	10,000
* * * * * *		*
214.329 Train approach warning provided by watchmen/lookouts:		
(a)(i) Failure to give timely warning of approaching train	5,000	10,000
(ii) Failure to use maximum authorized speed in formulating sight distance	3,000	5,000
(iii) Use of another track as a place of safety without establishing working limits on that track	3,000	5,000
* * * * * *		*
214.331 Definite train location:		
* * * * * *		*
(e) Failure to discontinue use of definite train location by required date	9,500	13,000
* * * * * *		*
214.337 On-track safety procedures for lone workers:		
* * * * * *		*
(g) Use of individual train detection while using machine, equipment, or material that cannot be readily removed by hand	2,000	4,000
214.339 Audible warning from trains:		
(a)–(b) Failure to adopt or comply with audible warning procedures	2,000	4,000
* * * * * *		*
214.353 Training and qualification of roadway workers in charge	2,000	4,000
* * * * * *		*

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. Failure to observe any condition(s) of an exception set forth in paragraph (e) of § 214.336 deprives the railroad or contractor of the benefit of the exception and makes the railroad or contractor, and any responsible individuals, liable for penalty under the particular regulatory provision(s) from which the exception would otherwise have granted relief.

[2] The penalty schedule uses section numbers from 49 CFR part 214. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Issued in Washington, DC, on May 26, 2016.

Sarah E. Feinberg,

Administrator.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 219

Control of Alcohol and Drug Use: Coverage of Maintenance of Way (MOW) Employees and Retrospective Regulatory Review-Based Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA–2009–0039, Notice No. 3]

RIN 2130–AC10

Control of Alcohol and Drug Use: Coverage of Maintenance of Way (MOW) Employees and Retrospective Regulatory Review-Based Amendments

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to Congress' mandate in the Rail Safety Improvement Act of 2008 (RSIA), FRA is expanding the scope of its drug and alcohol regulation to cover MOW employees. This rule also codifies guidance from FRA compliance manuals, responds to National Transportation Safety Board (NTSB) recommendations, and adopts substantive amendments based upon FRA's regulatory review of 30 years of implementation of this part.

The final rule contains two significant differences from FRA's July 28, 2014 Notice of Proposed Rulemaking (NPRM). First, it adopts part 214's definition of "roadway worker" to define "MOW employee" under this part. Second, because FRA has withdrawn its proposed peer support requirements, subpart K contains a revised version of the troubled employee identification requirements previously in subpart E.

DATES: This rule is effective June 12, 2017. Petitions for reconsideration must be received on or before August 9, 2016. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before September 13, 2016.

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I. Executive Summary

In the first major updating of its drug and alcohol regulation (49 CFR part 219) since its inception in 1985, FRA is expanding the scope of part 219 to cover Maintenance-of-Way (MOW) employees. Historically, FRA has conducted only post-mortem post-accident toxicological (PAT) testing of MOW employees, since an MOW employee, unlike a covered service employee, has been subject to part 219 testing only when he or she has died as the result of a reportable railroad accident or incident. Even in this comparatively small sample of post-mortem results, however, FRA found a disproportionately high level of positive test results among deceased MOW employees compared to the PAT testing and random testing results of covered employees who are already wholly subject to part 219.

Congress, in the Rail Safety Act of 2008 (RSIA), recognized the substance abuse problem among MOW employees by directing FRA to make them fully subject to the policies and protections of part 219. Partly in response to comments received, FRA is adopting the definition of roadway worker in part 214 of this chapter to define who is an MOW employee for purposes of part 219. FRA will introduce MOW employees to random drug and alcohol

perform MOW activities for them, but also the roles and responsibilities of contractors and subcontractors who provide MOW services to railroads on a contract basis. As has been its practice, FRA is holding railroads, contractors, and subcontractors equally responsible for ensuring that their employees who perform MOW activities are in compliance with the requirements of this rule. FRA is also continuing its practice of counting only a railroad's total number of covered employees to determine whether that railroad qualifies for certain exceptions as a small entity.

In addition, FRA has used this lookback at part 219 to conduct a complete retrospective regulatory review of the rule. As a result, FRA has largely restructured and rewritten large sections of this rule and incorporated longstanding compliance guidance, to make part 219's requirements easier to read, find, and implement.

Finally, in response to widespread opposition from commenters, FRA is not adopting its proposal to require peer support programs. FRA is instead transferring part 219's requirements for troubled employee programs to a new subpart in a revised, expanded, and clarified format.

Costs and Benefits of Final Rule

The final rule will impose costs that are outweighed by the quantified safety benefits. For the 20-year period analyzed, the estimated costs that will be imposed on industry total approximately $24.3 million (undiscounted), with discounted costs totaling $14.2 million (Present Value (PV), 7 percent) and $18.9 million (PV, 3 percent). The estimated quantified benefits for this 20-year period total approximately $115.8 million (undiscounted), with discounted benefits totaling $57.4 million (PV, 7 percent) and $83.6 million (PV, 3 percent).

The costs will primarily be derived from implementation of the statutory mandate to expand the scope of part 219 to cover MOW employees. The benefits will primarily accrue from the expected injury, fatality, and property damage avoidance resulting from the expansion of part 219 to cover MOW employees, as well as the PAT testing threshold increase. The table below summarizes the quantified costs and benefits expected to accrue over a 20-year period from adoption of the final rule and identifies the statutory costs and benefits (those required by the RSIA mandate to expand part 219 to MOW employees) and the discretionary costs and benefits (those that are due to the non-RSIA requirements).

	Statutory	Discretionary	Total
Costs (20 year)			
PAT Testing—Adding MOW	$ 52,000		$ 52,000
PAT Testing—Impact Def + Xing		$241,974	241,974
Reasonable Suspicion Testing	842,398		842,398
Pre-Employment Testing—Adding MOW	673,897		673,897
Pre-Employment Testing—Sm, RR		29,904	29,904
Random Testing	20,863,074		20,863,074
Annual Reporting	160,911		160,911
Recordkeeping Requirement	1,397,840		1,397,840
Costs Subtotal	23,990,120	271,878	24,261,998
Benefits (20 year)			
Accident Reduction	115,369,281		115,369,281
PAT Testing Threshold Reduction		388,295	388,295
Benefits Subtotal	115,369,281	388,295	115,757,576
Net Benefit	91,379,161	116,417	91,495,578

II. Rulemaking Proceedings

On July 28, 2014, in response to a

On September 15, 2014, in a jointly filed petition, the American Public Transportation Association (APTA),

submission, as well as comments from APTA, the NRCMA, the NTSB, SMART (the American Train Dispatchers

publication of the NPRM, or August 27, 2014).

In this final rule, FRA will not address comments that raised issues outside the scope of, or not specific to, the proposals in the NPRM, or comments submitted after the extended comment period had closed. In addition, the NPRM proposed to make this part more user-friendly, by reorganizing sections, re-designating paragraphs, updating terms, and amending language for consistency. Because FRA received no comment on these minor edits, FRA is not repeating the NPRM's discussion of them.

III. Effective Date

FRA received only one comment concerning the rule's effective date. The Associations requested that the final rule become effective two years after its publication, to allow for the implementation of new testing policies and procedures, and for the creation of random testing pools for MOW employees. FRA notes, however, that many MOW employees are already subject to drug and alcohol testing under Federal authority, company authority, or both. For example, any MOW employee whose duties require the holding of a Commercial Driver's License (CDL) is subject to Federal Motor Carrier Safety Administration (FMCSA) testing requirements. MOW employees may also be subject to testing under company authority, often in a "look-alike" (a company testing program that mirrors FRA standards and procedures) program. This familiarity with drug and alcohol programs will facilitate the implementation of part 219 requirements for MOW employees.

Moreover, railroads have thirty years of experience implementing part 219 requirements for their covered service employees; while employers who are newly subject to part 219, such as contractors who provide MOW service to railroads, have service agents (*e.g.*, random testing consortia and third party administrators) readily available to facilitate adoption and compliance with this part. Given the experience and resources railroads and contractors have to draw on, FRA believes a one year implementation window is reasonable for the requirements in this rule.

IV. Maintenance-of-Way Employees and Contractors

A. Definitions

As proposed, FRA is expanding the scope of part 219 to cover employees and contractors who perform MOW activities. This rule also adopts FRA's proposal to define the term "employee" to include employees, volunteers, and probationary employees of railroads and contractors (including subcontractors) to railroads, and to adopt the term "regulated service" to encompass both covered service and MOW activities. Performance of regulated service makes an individual a "regulated employee" subject to part 219, regardless of whether the individual is employed by a railroad or a contractor to a railroad.

In the NPRM, FRA requested comment on who should be subject to the expanded scope of this part. As alternatives, FRA asked whether part 219's definition of MOW employee should: (1) Be identical to the roadway worker definition in part 214, Roadway Workplace Safety; (2) include all employees subject to disqualification under 49 CFR 209.303, as recommended by the NTSB; or (3) incorporate a modified version of part 214's definition of roadway worker which would include certain roadway worker functions but not others, as proposed in the NPRM. Of those who commented on FRA's proposed definition of MOW activities, SEPTA stated that the definition of MOW activities in part 219 should be consistent with the definition of roadway worker duties in part 214. While the Associations supported FRA's proposed exclusions from MOW activities, they agreed with SEPTA's view that part 219's definition of MOW activities and § 214.7's definition of roadway worker duties should be consistent. SMART, however, commented that FRA's proposed MOW activities definition was both too inclusive and too exclusive, while the NRCMA unqualifiedly supported the proposed definition.

In its comments, the NTSB continued to advocate for adoption of Recommendation R–08–07, which recommended that FRA expand the scope of part 219 to include all employees subject to § 209.303. No other commenter supported so wide an expansion. As noted in the NPRM, § 209.303 encompasses many employees besides those who perform covered service and MOW activities, no matter how such activities are defined. As examples, § 209.303 includes employees who conduct tests and training, and mechanics who maintain locomotives, and freight and passenger cars, among others.

In *Skinner* v. *Railway Labor Executives' Assn.*, 489 U.S. 602 (1989), the Supreme Court held that an alcohol or drug test conducted under FRA authority is a Fourth Amendment search, and in its determination of who should be subject to part 219 testing, FRA must carefully balance public safety interests against individual privacy rights. FRA has done so, and can find no overriding safety interest that would justify making every employee covered by § 209.303 subject to part 219 testing. In its comment to the NPRM, the NTSB cited no accidents or data to support adoption of R–08–07. To date, FRA has no data suggesting that the functions of testers, trainers, and mechanics are of such a safety-sensitive nature that employees who perform these functions should be subject to drug and alcohol testing. FRA therefore finds no compelling reason to expand the scope of part 219 to equal that of § 209.303.

Upon consideration of the other comments, however, FRA has reevaluated its proposed definition of MOW employee. Almost all commenters pointed out that an employee who performs activities on or near a railroad's roadbed or track is by definition one who performs work that could pose risks to the safety of both the employee and the public. As demonstrated by the high positive rate among MOW employee fatalities (detailed in the NPRM), the misuse of drugs or alcohol by these employees can have disastrous consequences. Congress determined when it enacted the RSIA, that an employee who performs MOW activities performs work that is sufficiently safety-sensitive to trigger FRA's drug and alcohol requirements. Adoption of the NPRM's proposed definition of MOW employee would have required railroads to maintain fine distinctions among MOW activities, since the performance of certain activities would make an employee subject to both parts 214 and 219, while the performance of others would make an employee subject only to part 214 or to part 219.

FRA's proposed MOW definition could have potentially required a railroad or contractor to establish three different categories of coverage, with the attendant administrative burdens necessary to sort and maintain such categories. In contrast, because the term "roadway worker" has been long established by part 214, the railroad industry is already familiar with its meaning and application. FRA is therefore adopting, for its definition of MOW employee, § 214.7's definition of roadway worker, which includes "any employee of a railroad or a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of roadway track; bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section." By doing so, FRA is adopting the recommendation of the majority of commenters, who asserted that an individual subject to roadway worker protection under part 214 should also be a MOW employee subject to drug and alcohol testing under part 219.

B. MOW Employees and the Small Railroad Exception

Since the inception of its alcohol and drug program in 1985, FRA has counted the number of covered employees a railroad has (including covered service contractors and volunteers) as one factor in determining the railroad's risk of alcohol and drug-related accidents. *See* 50 FR 31529, Aug. 2, 1985. Historically, a small railroad, defined by FRA as one that has 15 or fewer covered employees and no joint operations with other railroads, has proven less likely to have a drug and alcohol-related accident than a larger railroad. Therefore, FRA has always required a larger railroad (defined as one that has 16 or more covered employees or is engaged in joint operations) to implement all of part 219, while § 219.3 previously excepted a small railroad from the requirements of subpart D (reasonable suspicion and reasonable cause testing), subpart E (previously identification of troubled employees), subpart F (pre-employment testing), and subpart G (random alcohol and drug testing); these exceptions lessened part 219's regulatory burden on small railroads.

As proposed, FRA is continuing its longstanding approach of counting only a railroad's covered employees for purposes of determining whether the railroad qualifies for the small railroad exception (the railroad also cannot participate in any joint operations) because FRA believes this is the best measure of the risks posed by the railroad's operations. FRA received no objections to this proposal.

C. MOW Contractors and the Small Railroad Exception

With respect to a contractor who performs MOW activities for a railroad, FRA is amending § 219.3 to apply part 219 to an MOW contractor to the same extent as it applies to the railroad for which the MOW contractor performs regulated service. As proposed, a contractor's level of part 219 compliance will be determined by the size of the railroad for which it is performing regulated service, regardless of the size of the contractor itself. New language in the small railroad exception states that a contractor who performs MOW activities exclusively for small railroads that are excepted from full compliance with part 219 will also be excepted from full compliance. For example, an MOW contractor with five employees who perform regulated service for a large railroad must implement a full part 219 program if the railroad for which it performs regulated service must do so, while an MOW contractor with 20 employees does not have to implement a full part 219 program if it performs regulated service for a small railroad that is excepted from full compliance with part 219.

FRA recognizes that an MOW contractor may perform regulated service for multiple railroads, some of which may not be required to comply fully with part 219. To simplify application, FRA is adding new language to the small railroad exception requiring an MOW contractor who performs regulated service for multiple railroads to implement a full part 219 program if the contractor performs regulated service for at least one large railroad fully subject to part 219. If an MOW contractor performs regulated service for at least one large railroad, it must incorporate all of its regulated employees into a full part 219 program, even if only some of these employees perform regulated service for large railroads, regardless of whether or not a particular employee is currently performing regulated service for a large or a small railroad. This approach allows an MOW contractor to flexibly allocate its employees between small and large railroads. To ensure that it does not encourage the hiring of MOW contractors in lieu of MOW employees, FRA is excluding both contractor employees who perform MOW activities and railroad employees who perform MOW activities, for purposes of the employee count to determine whether a railroad qualifies as a small railroad. Labor supported FRA's decision.

D. Railroad and Contractor Responsibility for Compliance

FRA is adopting its proposal to hold both a railroad and its contractor(s) responsible for ensuring that any contractor employees who perform regulated service for the railroad are in compliance with part 219. In their comments, the Associations objected that the RSIA mandated that part 219 cover contractors who perform regulated service, but did not make railroads responsible for ensuring that compliance, and that a contractor who performs regulated service for more than one railroad would be required to comply with the drug and alcohol training requirements of multiple railroads. The TC&W commented that FRA should audit the drug and alcohol compliance of contractors who perform regulated service.

FRA notes that making a railroad responsible for its contractor's compliance, and making a contractor who performs regulated service responsible for its own compliance, are not new requirements, because existing § 219.9 makes every person—including a railroad, an independent contractor and an employee of an independent contractor—who violates or causes a violation of a part 219 requirement subject to a civil penalty. To avoid confusion, FRA is discussing a contractor's options to ensure part 219 compliance for its regulated employees below, while the corresponding railroad options to ensure that its contractor employees who perform regulated service are in compliance will be discussed below in the section-by-section analysis of § 219.609.

A contractor who must establish a random testing program for its regulated service employees may do so through any of the following methods. As discussed in the NPRM, a contractor may choose to:

- Establish its own part 219 program and provide the railroad with documentation of its compliance with part 219. If a contractor chooses this option, FRA will not audit the contractor but will instead require the railroad to maintain the contractor's documentation for FRA audit purposes. If the contractor's documentation or program contains a deficiency or violation that the railroad could not have reasonably detected, FRA may use its enforcement discretion to take action solely against the contractor. As discussed earlier in the preamble, the extent of a regulated service contractor's responsibilities will be determined by the size of the railroad(s) with which it contracts.
- Contract with a consortium to administer its part 219 program. The consortium may either place the contractor's regulated employees in a stand-alone random testing pool or in a random testing pool with the regulated employees of other regulated service contractors. The contractor must then submit documentation of its membership in the consortium and its compliance with part 219 to the contracting railroad. As with the option described above, if the contractor's documentation or program contains a deficiency or violation that the railroad could not have reasonably detected, FRA may use its enforcement discretion to take action only against the contractor. Upon request, FRA will

assist a railroad in reviewing the part 219 documentation of its regulated service contractors.

• Ensure that any employees who perform regulated service for a railroad are incorporated into the railroad's part 219 program.

To facilitate part 219 implementation for railroads and contractors, FRA has developed two sets of model drug and alcohol plans (including testing plans); a set for an entity subject to all of part 219 and another for an entity that qualifies for the small railroad exception. Both sets are currently available at FRA's Web site: *http://www.fra.dot.gov/Page/P0345.*

FRA had proposed an alternative two-pronged approach, which would require a contractor to provide a railroad with: (1) Written certification that all of its regulated employees are in compliance with part 219, and (2) a summary of its part 219 data at least every six months. The NRCMA commented that it was unnecessary to require certification of compliance with part 219, noting that railroad contracts routinely require a contractor to certify compliance with all relevant Federal, state, and local laws and regulations. The NCRMA also objected to providing summary data, commenting that this was both unnecessary and an undue administrative burden. FRA agrees, and has decided not to adopt these proposed requirements.

A railroad has the additional option of accepting a contractor's plan for random testing, regardless of whether that plan is managed by the contractor or by a consortium/third party administrator (C/TPA). If a railroad adopts this approach, the contractor must:

• Certify in writing to the railroad that all of its regulated employees are subject to part 219 (including, as applicable, random testing under subpart G, pre-employment drug testing under subpart F, and a previous employer background check as required by § 40.25); and

• Report, in an FRA model format, summary part 219 testing data to the railroad at least every six months.

The railroad should review this summary data since it remains responsible for monitoring the contractor's compliance.

E. Pre-Employment Drug Testing of MOW Employees

As proposed, FRA is exempting all current MOW employees from subpart F pre-employment drug testing (with certain limitations, pre-employment alcohol testing is authorized but not required). Only MOW employees hired after the effective date of this rule must have a negative DOT pre-employment drug test result before performing regulated service for the first time. As with its initial minimum random testing rates, FRA used a similar approach to exempt current covered employees from pre-employment drug testing in 1986. Although these employees do not have to be pre-employment drug tested, current MOW employees are subject to FRA's initial minimum random drug testing rate of 50%.

FRA realizes that a large percentage of MOW employees may already have a negative pre-employment drug test result under the alcohol and drug testing regulations of another DOT agency; usually these MOW employees are required by their employers to hold a Commercial Driver's License (CDL), and are therefore subject to the regulations of both FRA and FMCSA. To hold a CDL, an individual must have a negative FMCSA pre-employment drug test. *See* § 382.301. To ease the compliance burden on both employees and employers, an employing railroad may use a negative pre-employment drug test conducted under the rules and regulations of another DOT agency to satisfy FRA's pre-employment drug test requirements for employees initially transferring into regulated service after the effective date of this rule. This amendment adopts previous FRA guidance on pre-employment drug testing.

F. Initial MOW Employee Random Testing Rates

This rule makes MOW employees subject to FRA random testing, with the exception of those who perform regulated service solely for a small railroad. For covered employees, FRA has annually set minimum random drug and alcohol testing rates determined by the overall railroad random testing violation rates for covered employees. FRA determines this overall rate from program data that railroads submit to its Management Information System (MIS). *See* 49 CFR 219.602 and 219.608. When FRA first established minimum random testing rates for covered employees, it set the initial minimums for drugs and alcohol at the top end of their respective ranges, at 50 percent for drugs and 25 percent for alcohol. At that time, FRA had no rail industry random testing data because the MIS had been newly established. FRA later lowered both minimum annual random testing rates to the bottom of their ranges after MIS data showed consistently low overall random testing violation rates for covered employees. These minimum rates, which have been unchanged since 2000, are 25 percent for drugs and 10 percent for alcohol in 2016.

Similarly, because MOW employees are being introduced to random testing, FRA has no overall railroad random testing violation rate data for these employees. To develop this data, FRA is setting the initial minimum random testing rates for MOW employees at 50 percent for drugs and 25 percent for alcohol, as it initially did for covered employees. A railroad must therefore create and maintain a separate random testing pool for its MOW employees, both to allow these employees to be tested at their own minimum random testing rates and, from those railroads required to file an MIS report, to establish a separate database. As it did with covered employees, FRA could lower these minimum random testing rates in the future if the data for MOW employees show consistently low overall random testing violation rates.

G. MOW Employee Minimum Random Testing Pool Size

As proposed, to maintain the deterrent effect of random testing for very small railroads and contractors, FRA is requiring each individual random testing pool established under subpart G to select and randomly test at least one entry per quarter, even if fewer tests are needed to meet FRA's minimum random testing rates. Conversely, the requirement to conduct at least four tests throughout the year does not excuse a railroad (or contractor to a railroad, or a C/TPA) from complying with FRA's minimum random testing rates. For example, a railroad that maintains a pool of 16 MOW employees must conduct at least eight, not four, random drug tests in a year to comply with a minimum random drug testing rate of 50%.

V. Restructuring of Part 219

A. Division of Reasonable Suspicion and Reasonable Cause Testing Into Subparts D and E

Previously, the requirements for both reasonable suspicion and reasonable cause testing were found in subpart D. Because of their similar names and their location in the same subpart, railroads and employees often confused the two types of testing, even though reasonable suspicion and reasonable cause testing have very different requirements. To clarify the substantive differences between the two, the requirements for reasonable suspicion testing will remain in subpart D, while the requirements for reasonable cause testing have been moved to subpart E, which formerly addressed voluntary referral and co-worker report policies ("Identification of Troubled Employees," now found in subpart K). This differentiation is important since small railroads are required to conduct reasonable suspicion testing, but not reasonable cause testing. FRA received no objections to its proposal to divide reasonable suspicion and reasonable cause testing into two distinct subparts.

B. Transfer of Revised and Retitled Troubled Employee Requirements to Subpart K

To accommodate the placement of reasonable cause testing into subpart E, FRA has transferred a revised and retitled version of the "Identification of Troubled Employees" requirements previously in subpart E to new subpart K. (As noted above, this is in lieu of FRA's proposal to require peer support programs in subpart K, which, for the reasons discussed below, FRA is not adopting).

VI. Section-by-Section Analysis

As discussed earlier, throughout most of part 219 FRA is substituting "regulated employee" and "regulated service" where the terms "covered employee" and "covered service" formerly appeared. "Regulated employee" and "regulated service" are terms-of-art encompassing all individuals and duties subject to part 219, including both covered service and MOW activities. The terms "covered employee" and "covered service," however, are retained where necessary, such as in § 219.12, which addresses issues of overlap between part 219 and the HOS laws that apply only to covered employees.

Authority Citation

The authority citation for part 219 adds a reference to Section 412 of the RSIA, which mandated the expansion of part 219 to cover all employees of railroads and contractors or subcontractors to railroads who perform MOW activities.

Subpart A—General

Section 219.1—Purpose and Scope

This section now includes a reference to the new definition of "employee" in § 219.5, which includes any individual (including a volunteer or a probationary employee) who performs regulated activities for a railroad or a contractor to a railroad.

Section 219.3—Application

The small railroad exception in § 219.3(b)(2) has provided, in part, that a railroad with 15 or fewer covered employees that does not engage in joint operations with another railroad is not subject to the requirements for reasonable suspicion or reasonable cause testing (both previously found in subpart D), identification of troubled employees (previously subpart E), pre-employment drug testing (subpart F), or random testing (subpart G).

FRA is modifying the small railroad exception so that small railroads are no longer excepted from the reasonable suspicion testing requirements of subpart D. Subpart D requires a railroad to conduct Federal reasonable suspicion testing whenever one or more trained supervisors reasonably suspects that an employee has violated an FRA prohibition against the use of alcohol or drugs. *See* § 219.300(a). FRA's decision not to authorize small railroads to conduct FRA-authority reasonable cause testing (moved to subpart E of this rule) remains unchanged, however.

FRA is also amending the small railroad exception so that small railroads are no longer excepted from subpart F. As is already required for larger railroads, a small railroad must conduct a pre-employment drug test and obtain a negative result before allowing an individual to perform regulated service for the first time. *See* § 219.501(a). As with larger railroads, this requirement applies only to those regulated employees hired by a small railroad after the effective date of this final rule, because all regulated employees hired before the effective date of this rule are exempted from pre-employment drug testing.

FRA received no comments on the clarifications in this section, which are adopted without further comment.

Section 219.5—Definitions

As proposed, FRA is amending this section by adding, clarifying, and deleting definitions. Additional or clarified definitions include:

Administrator

FRA is defining "Administrator" to include the Administrator of the FRA or the Administrator's delegate.

Associate Administrator

FRA is clarifying that "Associate Administrator" means both the FRA's Associate Administrator for Railroad Safety and the Associate Administrator's delegate.

Contractor

As proposed, FRA's new definition of "contractor" includes both a contractor and a subcontractor performing functions for a railroad.

DOT-Regulated Employee

A "DOT-regulated employee" means a person who is subject to drug or alcohol testing, or both, under any DOT agency regulation, including an individual currently performing DOT safety-sensitive functions and an applicant for employment subject to DOT pre-employment drug testing.

DOT Safety-Sensitive Duty or DOT Safety-Sensitive Function

The performance of a "DOT safety-sensitive duty" or "DOT safety-sensitive function" makes a person subject to the drug testing and/or alcohol testing requirements of a DOT agency. The performance of regulated service is a DOT safety-sensitive duty or function under this part.

Drug and Alcohol Counselor or DAC

FRA is adopting this part's definition for "Drug and Alcohol Counselor" or "DAC" from § 242.7 of its conductor certification rule.

Employee

An "employee" is any person, including a volunteer, and a probationary employee, who performs activities for a railroad or a contractor to a railroad.

Evacuation

Under § 219.201(a)(1)(ii)(A), one of the criteria for a "major train accident" requiring PAT testing is an evacuation. To qualify as an evacuation, an event must involve the relocation of at least one person who is not a railroad employee to a safe area to avoid exposure to a hazardous material release. This relocation would normally be ordered by local authorities and could be either mandatory or voluntary. This definition does not include the closure of public roadways for hazardous material spill containment purposes, unless that closure was accompanied by an evacuation order.

Flagman or Flagger

FRA is adopting its proposal to define a "flagman" (also known as a "flagger") and "watchman/lookout" in § 219.5 as those terms are currently defined in § 214.7.

Highway-Rail Grade Crossing

FRA is adopting the definition of "highway-rail grade crossing" found in § 225.5 of its accident and incident reporting regulation, which includes all crossing locations within industry and rail yards, ports, and dock areas.

Highway-Rail Grade Crossing Accident/Incident

This definition is essentially identical to the description of highway-rail grade crossing impacts found in the definition for "accident/incident" in FRA's accident and incident reporting regulation. *See* 49 CFR 225.5.

Joint Operations

The phrase "rail operations" in this definition encompasses dispatching and other types of operations. As examples, even if Railroad A has fewer than sixteen covered employees, Railroad A is engaged in joint operations with Railroad B if it either dispatches trains for Railroad B and/or enters Railroad B's yard to perform switching operations. Railroad A is also engaged in joint operations with Railroad B if they operate over the same track at different times of the day.

Railroad A is *not*, however, engaged in joint operations with Railroad B, if they operate over the same track but are physically separated (*e.g.*, through a split rail derail or the removal of a section of rail), since this separation prevents Railroad A's operations from overlapping with those of Railroad B. FRA is also excluding from joint operations certain minimal operations on the same track for the purposes of interchange, so long as these operations: (1) Do not exceed 20 mph; (2) are conducted under restricted speed; (3) proceed no more than three miles; (4) and, if extending into another railroad's yard(s), operate into another railroad's yard(s) solely to set out or pick up cars on a designated interchange track. FRA is excluding these minimal operations from its new "joint operations" definition because of their comparatively lesser safety risk.

On-Track or Fouling Equipment

This new definition includes any railroad equipment positioned on or over the rails or fouling a track.

Other Impact Accident

An "other impact accident" includes any accident/incident involving contact between on-track or fouling equipment that is not otherwise classified as another type of collision (*e.g.*, a head-on collision, rear-end collision, side collision, raking collision, or derailment collision). This new definition also includes an impact in which a single car or cut of cars is damaged during operations involving switching, train makeup, setting out, etc.

Person

As amended, this definition adopts the existing language in § 219.9 and adds an independent contractor who provides goods or services to a railroad to the scope of whom or what is considered a "person" under this part (*e.g.*, a service agent such as a collection site or laboratory) *See* 49 CFR part 40, subpart Q—Roles and Responsibilities of Service Agents. Service agents are already required to comply with both part 219 and part 40, so this amendment is a clarification that makes no substantive changes.

Plant Railroad

For clarification, FRA has added language defining when an entity's operations do *not* qualify for plant railroad status.

Raking Collision

As newly defined, a "raking collision" occurs when there is a collision between parts, with the lading of a train on an adjacent track, or with a structure such as a bridge. A collision that occurs at a turnout is not a raking collision.

Regulated Employee and Regulated Service

A regulated employee is any employee subject to this part: a covered employee, an MOW employee, and an employee of a railroad or a contractor to a railroad who performs covered service or MOW activities. Correspondingly, regulated service is any duty which makes an employee subject to this part.

Side Collision

A side collision occurs when one consist strikes the side of another consist at a turnout, including a collision at a switch or at a railroad crossing at grade.

Tourist, Scenic, Historic, or Excursion Operation That Is Not Part of the General Railroad System of Transportation

To be considered not part of the general railroad system of transportation, a tourist, scenic, historic, or excursion operation must be conducted only on track used exclusively for that purpose (*i.e.*, there are no freight, intercity passenger, or commuter passenger railroad operations on the track).

Watchman/Lookout

This definition is identical to that in § 214.7, subpart C of part 214, roadway worker protection.

Revised definitions include:

Covered Employee

As revised, a "person" includes an employee, volunteer, and probationary employee. FRA has also updated the reference to the hours of service laws (49 U.S.C. ch. 211). Neither change is substantive.

Covered Service

FRA is adding examples of covered service and a reference to appendix A to 49 CFR part 228, Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation. No substantive changes are intended.

FRA Representative

As proposed, the definition of "FRA representative" is amended to include the oversight contractor for FRA's Drug and Alcohol Program and the staff of FRA's Associate Administrator for Railroad Safety.

Impact Accident

In its initial implementation of this part, FRA excepted derailment and raking collisions from its definition of "impact accident" because it formerly believed these types of collisions were not caused by human factors. (*See* 50 FR 31539 and 31542, Aug. 2, 1985 and 54 FR 39647, Sep. 27, 1989). FRA is removing these exceptions after learning that human factors such as fatigue and impairment can and do contribute to both derailment and raking collisions.

As additional clarification, FRA is excluding the impact of rail equipment with "naturally-occurring obstructions such as fallen trees, rock or snow slides, livestock, etc." from its definition of an impact accident. FRA is also incorporating guidance stating that an impact with a derail does not qualify as an "impact with a deliberately-placed obstruction, such as a bumping post," since bumping posts are usually permanently placed at the end of a line, while derails can easily be moved from place to place.

Medical Facility

As amended, a "medical facility" is an independent (*i.e.*, not maintained by the railroad) site which is able to collect blood and urine specimens for PAT testing and, if necessary, treat an employee who has been injured in a PAT testing event.

Railroad Property Damage or Damage to Railroad Property

As proposed, the amended definition of "railroad property damage or damage to railroad property" means damage to railroad property, including damage to on-track equipment, signals, track, track structure, or roadbed; and labor costs, including hourly wages, transportation costs, and hotel expenses; but excluding damage to lading and the cost of clearing a wreck; *except that* the cost of contractor services, of renting and operating machinery, and of any additional damage caused while clearing the wreck *is* included when calculating railroad property damage to determine whether PAT testing is required under FRA's regulations. These clarifications are meant to enable easier compliance with this part, and no substantive changes are intended.

Train Accident

As amended, the definition of "train accident" refers to rail equipment accidents under § 225.19(c) which include, but are not limited to, collisions, derailments, and other events involving the operation of on-track or fouling equipment.

Train Incident

As amended, a "train incident" is defined as an event involving the operation of on-track or fouling equipment that results in a casualty, but does not result in damage to railroad property exceeding the applicable reporting threshold.

Deleted Definitions

As proposed, FRA is deleting the definitions of "General Railroad System of Transportation," and "Train," since these terms have been superseded by newly added definitions and amendments in this rule. FRA received no comments on these deletions.

Section 219.11—General Conditions for Chemical Tests

In its comments, the NCRMA asked FRA to impose conditions on urine specimen collections conducted under this part (*e.g.*, that FRA require a railroad to transport an employee to a company owned or contracted facility, or that drinking water not be used during the urine specimen collection process). With the exception of its PAT testing program, which is discussed below, FRA is prohibited from doing so, because the Department's Procedures for Workplace Drug and Alcohol Testing Programs (49 CFR part 40 or part 40) control the procedures and facilities used in FRA (non-PAT) and other DOT agency testing. FRA is authorized to enforce railroad compliance with part 40 requirements, but may not impose new requirements of its own. Therefore, for example, FRA cannot specify that only non-drinking water sources be used during random testing, because part 40 already regulates collection site conditions.

Because it predates part 40, FRA PAT testing is exempt from part 40's requirements. FRA therefore has the authority to set its own PAT testing protocols, which are found in appendix C to this part. PAT testing blood and urine specimens must be collected at an independent medical facility, such as a hospital or physician's office. By definition an independent medical facility cannot be railroad owned or controlled, and it meets the NCRMA's requests for privacy, heat, and sanitation during specimen collection.

New paragraph (a)(2) clarifies that a regulated employee who is required to participate in Federal testing under part 219 must be on duty and subject to performing regulated service at the time of a breath alcohol test or urine specimen collection. This requirement does not apply to pre-employment drug testing of applicants for regulated service positions.

Paragraph (b)

Paragraph (b)(1) clarifies that regulated employees must participate in Federal testing as required by part 219 and as implemented by a representative of the railroad or an employing contractor.

As proposed, in paragraph (b)(2), FRA is replacing the phrase "has sustained a personal injury" with "is suffering a substantiated medical emergency," to allow treatment for medical emergencies that do not involve a personal injury (*e.g.*, a stroke) to take priority over required FRA testing. A medical emergency must be an acute medical condition requiring immediate medical care, and a railroad may require an employee to submit proof that that he or she had experienced one by providing, within a reasonable time period after, verifiable documentation of the emergency from a credible outside professional.

Paragraph (g)

In addition to the PAT testing requirements of subpart C and the signs and symptoms of drug and alcohol influence, intoxication, and misuse, paragraph (g) now requires a supervisor to be trained on the signs and symptoms of certain prescription drugs that can have acute behavioral and apparent physiological effects. To facilitate this training, FRA is developing a module for both supervisors and employees that will cover the required material and be made available on its Web site. In lieu of the previous minimum of three hours of training, FRA is requiring a supervisor to be able to demonstrate an understanding of the course material, usually through a written or oral examination at the end of the course.

PAT and Reasonable Suspicion Testing

Paragraph (a) adopts FRA's long-established guidance that a railroad may exceed employee HOS limitations if all three of the following conditions are met: (1) The excess service was necessary and solely caused by the railroad's completion of PAT or reasonable suspicion testing; (2) the railroad used due diligence to minimize the excess service; and (3) the railroad collected the PAT or reasonable suspicion specimens within the time limits of § 219.203(d) (for PAT testing) or § 219.305 (for reasonable suspicion testing). The railroad must still submit an excess service report, however.

Reasonable Cause Testing

Reasonable cause testing, like PAT and reasonable suspicion testing, is triggered by the occurrence of a specified but unpredictable event (in this case, a train accident, train incident, or rule violation, the cause or severity of which may be linked to a safety issue involving alcohol or drug use by a regulated employee). For this reason, FRA will not pursue an HOS violation if any excess service was caused solely by a railroad's decision to conduct reasonable cause testing, provided the railroad used reasonable due diligence to complete the test and did so within the time limitations of § 219.407 (*i.e.*, within eight hours of the observation, event or supervisory notification that was the basis for the test). However, because reasonable cause testing, unlike both PAT and reasonable suspicion testing, is authorized, but not required by part 219, paragraph (b) correspondingly authorizes, but does not require, a railroad to exceed HOS limitations to complete reasonable cause testing. As with mandatory PAT and reasonable suspicion testing, a railroad must file an excess service report if it decides to exceed HOS limitations to conduct optional reasonable cause testing.

Random Testing

As proposed, paragraph (c) adopts FRA's longstanding guidance that completion of a random test does *not* excuse compliance with a regulated employee's HOS limits, *unless* the circumstances of the employee's test require the employee to provide a directly observed urine specimen. A directly observed urine collection must be performed whenever an employee's previous test results or current behavior indicate the possibility of specimen tampering (see § 40.67). As with PAT, reasonable suspicion, and reasonable cause tests, the occurrence of such

circumstances is unpredictable. FRA will therefore not pursue an HOS violation provided the railroad conducts the random test with due diligence and files an excess service report.

Paragraph (d)

As proposed, paragraph (d) clarifies that because follow-up tests, like random tests, are scheduled by the railroad, follow-up testing must be completed within a covered employee's HOS limits. A railroad may place an employee on duty solely for the purpose of a follow-up *drug* test any time the employee is subject to being called for duty; a railroad may place an employee on duty for a follow-up *alcohol* test *only* if the employee's return-to-duty agreement requires total abstention from alcohol use, since legitimate alcohol use is allowed so long as it is in compliance with the prohibitions of § 219.101. A railroad that chooses to place an employee on duty solely for the purpose of follow-up testing must document why it did so and provide the documentation to FRA upon request.

Paragraph (c)

As proposed, a railroad can make this part's required educational materials available to its regulated employees by posting them continuously in an easily visible location at a designated reporting place, provided the railroad also supplies a copy to each labor organization representing a class or craft of regulated employees (if applicable). Alternatively, a railroad can make these materials available by posting them on a Web site accessible to all regulated employees; any distribution method that can ensure the accessibility of these materials to all regulated employees is acceptable.

For MOW employees only, however, FRA is initially requiring distribution of individual hard copies of educational materials, since these employees are being introduced to the requirements of part 219. This individual distribution requirement applies for three years after the effective date of this final rule, although it does not apply to an applicant for a regulated service position who refuses a pre-employment test or has a pre-employment test result indicating a part 219 violation.

Section 219.25—Previous Employer Drug and Alcohol Checks

This new section reminds railroads and contractors that they must comply with § 40.25, which requires an employer to conduct a search (for non-negative test results, *e.g.*, positives, substitutions, and adulterations) of a new hire's past two years of drug and alcohol test records before that individual can perform any DOT safety-sensitive functions. This requirement applies only to the railroad or contractor's direct employees (*e.g.*, a railroad has no responsibility to conduct a background check on a contractor's direct employees, since that responsibility belongs to the contractor). A railroad must also comply with the prior drug and alcohol conduct requirements of § 240.119(c) for certified locomotive engineers and § 242.115(e) for certified conductors.

Subpart B—Prohibitions

Section 219.101—Alcohol and Drug Use Prohibited

Paragraph (a)(1)

In the NPRM, FRA had asked for comment on whether it should remove part 219.101's prohibitions against the on-duty possession of alcohol and controlled substances. FRA modeled these prohibitions after those in Rule G, a longstanding railroad operating rule which originally prohibited the on-duty use and possession of alcohol, and was later amended to include controlled substances as well. *See* 49 FR 24266, June 12, 1984.

Many commonly prescribed drugs, such as muscle relaxants and pain relievers, are controlled substances. As strictly read, § 219.101 prohibits the on-duty possession of not only illicit drugs but many prescription drugs with legitimate medical uses (with the exception of any controlled substance prescribed in accordance with § 219.103). Similarly, because § 219.101 prohibits the on-duty possession of alcohol, if strictly read, this section also bans the on-duty possession of any over-the-counter cough and cold remedy that contains alcohol. In the NPRM, FRA asked for comment on whether it should remove § 219.101's prohibitions against on-duty possession of controlled substances and alcohol because they could be construed to prohibit the possession of legal drugs and remedies on railroad property. FRA noted that no other DOT agency prohibits the on-duty possession of both controlled substances and alcohol, and that a railroad remains free to impose discipline for such possession under its own authority.

Labor commented that FRA should clarify its policy on prescription use, as did the NTSB. The NTSB opposed FRA's proposal to remove 219.101's prohibitions against the on-duty possession of controlled substances and alcohol, without explanation.

As proposed, FRA is therefore retaining but clarifying this prohibition, which, as amended, prohibits the use or possession of controlled substances and alcohol by a regulated employee while "on duty and subject to performing regulated service for a railroad." This prohibition applies not only when a regulated employee is actually performing regulated service, but also when the employee is subject to performing regulated service.

Paragraph (a)(4)

Paragraph (a)(4) prohibits an employee whose Federal test indicates an alcohol concentration of 0.02 or greater, but less than 0.04, from performing covered service until the start of his or her next regularly scheduled duty period, but not less than eight hours from the administration of the test. However, since an alcohol concentration of 0.02 or greater but less than 0.04 is not a violation of § 219.101, an alcohol test result in this range may not be used for locomotive engineer or conductor certification purposes under part 240 or part 242.

As proposed, FRA is adding new paragraph (a)(4)(ii) to clarify that a railroad is not prohibited from taking further action under its own authority against an employee whose Federal test result indicates an alcohol concentration 0.02 or greater but less than 0.04, since a result in this range indicates the presence of alcohol in the employee's system. Although Labor opposed allowing a railroad to impose discipline under its own authority in this circumstance, this is not a substantive change, since FRA guidance has long allowed this narrow exception.

Paragraph (a)(5)

Paragraph (a)(5) states that a Federal test result with an alcohol concentration below 0.02 is a negative result that a railroad may not use as evidence of alcohol misuse, either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may conduct additional company testing only if it has an independent basis for doing so.

As proposed, FRA is amending this paragraph to adopt its previously stated policy that a railroad has an independent basis for a subsequent company authority alcohol test only when an employee continues to exhibit signs and symptoms of alcohol use after having had a negative FRA reasonable suspicion alcohol test result. If a railroad has an independent basis to conduct a subsequent alcohol test under company authority, the company test result stands independent of the prior FRA test result.

Section 219.103—Use of Prescription and Over-the-Counter Drugs

In the NPRM, FRA asked railroads to submit comments on their 30 years of administering this section, which has been unchanged since the inception of part 219 in 1985. The NTSB, the sole responder, commented that this section did not adequately address the safety concerns raised by the use of prescription and over-the-counter (OTC) drugs, particularly diphenhydramine and other sedating antihistamines that could impair performance. In its comment, the NTSB reiterated R–13–01, in which it recommended that FRA address employees' underlying medical conditions by developing medical certification regulations, a recommendation that is beyond the scope of this rule.

In response to the NTSB's other concerns, however, FRA is developing a training module which will cover the more commonly used prescription and OTC drugs that could have adverse effects, including diphenhydramine. This module, which will be downloadable for free on FRA's Web site, will also contain general information on the best practices to follow when using prescription and OTC drugs. FRA will inform its regulated entities when this module is available for distribution.

Section 219.104—Responsive Action

FRA is amending this section to clarify that: (1) With the exception of the right to a hearing, an applicant for regulated service who has refused to take a pre-employment test is entitled to all of the protections of this part; (2) the notice a railroad must provide to a regulated employee before removing him or her from regulated service must be in writing; and (3) a regulated employee is entitled to request a hearing under this section following an alleged violation of § 219.101 or § 219.102.

Paragraph (a)

Paragraph (a)(2) emphasizes that none of the requirements in this section apply to tests conducted under company authority. FRA is also removing the word "mandatory" because it is inaccurate, since neither reasonable cause nor pre-employment alcohol testing are mandated by part 219. If, however, a railroad does decide to conduct a reasonable cause or pre-employment alcohol test under FRA authority, a regulated employee or applicant for regulated service who refuses the test is subject to the consequences for refusals found in this section.

Paragraph (b)

Previously, paragraph (b) required a railroad, before "withdrawing" an employee from covered service, to provide notice to the employee of the reason for his or her withdrawal. This notice must be in writing, although a railroad may first notify an employee verbally, if the railroad provides written notice to the employee as soon as practicable. In its written removal notice, the railroad must include a statement prohibiting the employee from performing any DOT safety-sensitive functions until he or she has successfully completed the evaluation, referral, and treatment processes required for return-to-duty under part 40. FRA believes receipt of this information will discourage an employee from job hopping in an effort to avoid compliance with part 40's return-to-duty requirements. A railroad may use this notice to comply with § 40.287's requirement to provide each employee who violates a DOT drug and alcohol regulation with a listing of SAPs who are both readily available to the employee and acceptable to the railroad, by providing the contact information (name, address, telephone number, and, if applicable, email address) for each SAP on its list. (Of course, a railroad may also provide this information separately.)

Paragraph (c)

Previously, paragraph (c)(1) allowed an employee to request a hearing if the employee denied "that the test result is valid evidence of alcohol or drug use prohibited by this subpart." FRA has removed this phrase because the removal from duty and hearing procedures in this section also apply to violations of § 219.101 or § 219.102 that have *not* been detected through testing (*e.g.*, a refusal or a violation of the prohibition against possessing alcohol). An employee may demand a hearing for any violation of § 219.101 or § 219.102, regardless of whether the alleged violation was based on a test result.

Similarly, FRA is amending paragraph (c)(4) to clarify that its statement that part 219 does not limit any procedural rights or remedies available (*e.g.*, at common law or through an applicable bargaining agreement) to an employee, applies to all violations of part 219, not just those based on test results.

Paragraph (d)

As stated above, FRA PAT testing predates part 40 and has always been excepted from DOT's testing procedures. Because the primary purpose of FRA PAT testing is accident investigation, FRA has always tested a wider variety of specimens (*i.e.*, blood, post-mortem tissue specimens) for a wider variety of substances (*e.g.*, barbiturates and benzodiazepines) than part 40 testing does. A regulated employee can therefore have a PAT test with a positive result that would not be detectable or duplicable under DOT procedures (*e.g.*, a positive PAT blood test result for benzodiazepines). With respect to responsive action, however, PAT testing follows part 40 requirements, by requiring a negative return-to-duty test and a minimum of six negative follow-up tests for the substance of the original positive in the first 12 months after returning to regulated service (certified locomotive engineers and conductors have different follow-up testing minimums, *see* §§ 240.119(d)(2) and 242.115(f)(2)).

To ensure that any regulated employee who has had a positive PAT test result is in compliance with FRA's return-to-duty and follow-up requirements, in addition to Part 40 tests, FRA is allowing company tests to fulfill these requirements where necessary. If and only if, the substance of the employee's original PAT positive is not a drug listed in § 40.5's definition of "Drug," a railroad may conduct return-to-duty and follow-up tests for that substance under its own authority, provided the railroad's procedures mirror those of part 40 and the substance is on the company test's panel. FRA is allowing company testing in this limited circumstance because of the important role return-to-duty and follow-up tests play in maintaining an employee's abstinence from substance abuse in the first year following the employee's return to performing regulated service.

Paragraph (e)

FRA is adding new paragraph (e) to clarify when § 219.104's requirements do *not* apply.

The language formerly in paragraph (a)(3)(i), which stated that the requirements of this section do not apply to actions based on alcohol or drug testing that is not conducted under part 219, can now be found in paragraph (e)(1).

Paragraph (e)(2) clarifies that this section's requirements do *not* apply to Federal alcohol tests with a result less than 0.04. As mentioned above in FRA's discussion of § 219.101(a)(4), a Federal test result that is .02 or greater but less than .04 proves that an employee has recently used alcohol, but not that the employee is impaired. Because an employee who has a test result in this range is not in violation of § 219.101,

the only consequence allowed under this part is the removal of the employee from regulated service for a minimum of eight hours. All other actions following an alcohol test result below .04, including the administration of return-to-duty or follow-up tests, must therefore be conducted under a railroad's own authority.

Paragraph (e)(3) clarifies that although parts 240 and 242 require a substance abuse evaluation for a locomotive engineer or conductor who has had an off-duty conviction for, or a completed state action to, cancel, revoke, suspend, or deny a motor vehicle-driver's license for operating while under the influence of or impaired by alcohol or a controlled substance, an off-duty conviction or completed state action is not a violation of § 219.101 or § 219.102.

Paragraph (e)(4) clarifies that this section does not apply to an applicant who declines to participate in pre-employment testing before the test begins.

Similarly, paragraph (e)(5) clarifies that the hearing procedures in paragraph (c) of this section do not apply to an applicant who tests positive or refuses a DOT pre-employment test.

In contrast, paragraph (e)(6) clarifies that an applicant who has tested positive or refused a DOT pre-employment test must complete the return-to-duty requirements in paragraph (d) before performing DOT safety-sensitive functions subject to the drug and alcohol regulation of any DOT agency. Section 40.25(j) prohibits an employee who has tested positive or refused a test from performing any DOT safety-sensitive functions until and unless the employee documents successful completion of part 40's return-to-duty process.

Section 219.105—Railroad's Duty To Prevent Violations

Paragraph (a)

Paragraph (a) of this section provides that a railroad may not with "actual knowledge" permit an employee to remain or go on duty in covered service in violation of either § 219.101 or § 219.102. FRA is clarifying that a railroad's "actual knowledge" of such a violation is limited to the knowledge of a railroad manager or supervisor in the employee's chain of command. A manager or supervisor is considered to have actual knowledge of a violation when he or she: (1) Personally observes an employee violating part 219 by either using or possessing alcohol, or by using drugs (observing potential signs and symptoms of alcohol/drug use does not by itself constitute actual knowledge); (2) learns from a § 40.25 background check of a previous employer's drug and alcohol records that an employee had a § 219.101 or § 219.102 violation and did not complete § 219.104's return-to-duty requirements; or (3) receives an employee's admission of prohibited alcohol possession or misuse or drug abuse.

Paragraph (b)

FRA is not amending paragraph (b) of this section. Instead, as guidance FRA is reprinting the 1989 preamble discussion which, in proposing this section, explained its purpose as:

> to describe the limitations on railroad liability with respect to the prevention of the violations of the Subpart B prohibitions. . . . In summary, the provisions require the railroad to exercise a high degree of care to prevent violations, but do not impose liability where, despite such efforts, an individual employee uses alcohol or drugs in a manner that is prohibited (and the railroad is not aware of the conduct).

54 FR 39649, Sep. 27, 1989. While this paragraph places an affirmative duty on a railroad to use due diligence to prevent violations of § 219.101 or § 219.102, a railroad that can show it has done so has only limited liability under this part for violations of its prohibitions by individual employees. Since what constitutes due diligence under this provision varies on a case-by-case basis, a railroad that is uncertain about its applicability in a given situation should contact FRA for guidance.

Paragraph (c)

New paragraph (c) prohibits the design and implementation of any railroad drug and/or alcohol education, prevention, identification, intervention, or rehabilitation program or policy that circumvents or otherwise undermines the requirements of part 219. A railroad must make all documents, data, or other records related to such programs or policies available to FRA upon request.

Paragraph (d)

Rule G Observations

In its guidance, FRA required a railroad's supervisors to make and record each quarter a total number of "Rule G" observations equivalent, at a minimum, to the railroad's total number of covered employees. Each Rule G observation should be made sufficiently close to an employee to enable the supervisor to determine whether the employee was displaying signs and symptoms of impairment requiring a reasonable suspicion test.

In the NPRM, FRA requested comment on whether § 219.105 should adopt this guidance by requiring a specific number of Rule G observations; FRA was particularly interested in the safety benefits versus the costs and paperwork burdens of such a requirement. In response, the Associations commented that FRA's requirement for each supervisor to be trained in signs and symptoms of drug and alcohol abuse already ensured that railroad supervisors were automatically aware of what to look for when observing an employee's demeanor and behavior. Therefore, according to the Associations, requiring a specific number of what were essentially constant supervisory observations to be systematically recorded would be a paperwork exercise that added nothing to safety.

Because reasonable suspicion and reasonable cause testing share the same check box on DOT's drug and alcohol chain of custody forms, FRA's MIS data does not distinguish between tests conducted under mandatory reasonable suspicion authority and tests conducted under discretionary reasonable cause. While there is no direct correlation showing that Rule G observations increase or result in reasonable suspicion tests, FRA believes that each year's consistently low total of reasonable suspicion tests indicates the continuing need to focus supervisory attention on the use and importance of reasonable suspicion testing as deterrence. To make Rule G observations both more meaningful and less burdensome, new paragraph (d) adopts FRA's previous guidance requirements but: (1) Decreases the minimum annual number of observations supervisors must make and record from four to two times a railroad's total number of covered employees, and (2) requires each observation to be sufficiently up close and personal to determine if a covered employee is displaying signs and symptoms indicative of a violation of the prohibitions in this part. The latter requirement is intended to ensure that supervisory observations are of individuals rather than collective sweeps of multiple employees.

Section 219.107—Consequences of Refusal

This section requires an employee who has refused to provide breath or body fluid specimens when required by part 219 to be disqualified from performing covered service for nine months. As suggested by SAPlist.com, FRA is deleting the word "unlawful" from the title of this section, since it implies that there are "lawful" refusals. This is not a substantive change.

Paragraph (b)

Paragraph (b) requires a railroad, before withdrawing an employee from regulated service, to provide notice to the employee of the reason for the withdrawal and the procedures in § 219.104(c) under which the employee may request a hearing. As proposed, FRA is clarifying that this notice must be in writing, although a railroad may initially provide an employee with verbal notice if the railroad provides written notice to the employee as soon as practicable.

Paragraph (c)

This section prohibits a railroad with notice that an employee has been withdrawn from regulated service from authorizing or permitting the employee to perform any regulated service on its behalf. The railroad may, however, authorize or permit the employee to perform non-regulated service.

Subpart C—Post-Accident Toxicological Testing

Section 219.201—Events for Which Testing Is Required

Paragraph (a)

This section defines the types of accidents or incidents for which PAT testing is required and states that a railroad must make a good faith determination as to whether an event meets the criteria for PAT testing. Specifically, existing paragraph (a) requires a railroad to conduct PAT testing after the following qualifying events: (1) Major train accidents; (2) impact accidents; (3) fatal train incidents; and (4) passenger train accidents. As proposed, FRA is amending the definitions of these qualifying events and adding a new qualifying event that requires PAT testing, "Human-Factor Highway-rail Grade Crossing Accident/Incident."

- Major Train Accidents

As proposed, FRA is clarifying that the fatality criteria for a major train accident is met by the death of "any person," including an individual who is not an employee of the railroad.

Also as proposed, FRA is increasing the property damage threshold for major train accidents from $1,000,000 to $1,500,000 to account for inflation since January 1, 1995, when FRA last raised the damages threshold for major train accidents from $500,000 to $1,000,000. As noted by the AAR in its comment supporting this amendment, reducing the number of events qualifying as major train accidents correspondingly reduces the number of employees subject to PAT testing, which reduces such railroad costs as lost opportunities and wages.

- Impact Accidents

See discussion in § 219.5 above.

Human-Factor Highway-Rail Grade Crossing Accident/Incident

In § 219.201(b), FRA prohibits PAT testing after a highway-rail grade crossing accident. FRA carved out this PAT testing exception after concluding that there was no justification for testing members of the train crew since they could not have played any role in the cause or severity of the highway-rail grade crossing accident. By the time a train crew spots a vehicle or other obstruction on the track, the weight and momentum of the train prevent the crew from stopping in time to avoid a collision.

FRA continues to believe that the members of a train crew should be excepted from PAT testing after the occurrence of a highway-rail grade crossing accident. As proposed, however, FRA is narrowing this blanket exception by adding a new qualifying event, "Human-factor highway-rail grade crossing accident/incident" in paragraph (a)(5), to allow the PAT testing of a signal maintainer, flagman, or other employee only if a railroad's preliminary investigation indicates that the employee may have played a role in the cause or severity of the accident. This amendment responds to NTSB Recommendation R–01–17, in which the NTSB had recommended that FRA narrow its exception for highway-rail grade crossing accidents to require PAT testing of any railroad signal, maintenance, or other employee whose actions at or near a grade crossing may have contributed to the cause or severity of a highway-rail grade crossing accident.

New paragraph (a)(5)(i) contains the criteria for a "human-factor highway-rail grade crossing accident/incident." This paragraph requires PAT testing after a highway-rail grade crossing accident/incident whenever there is reason to believe that a regulated employee has interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system. Because this language is adapted from the prohibition against such interference in FRA's grade crossing regulation (*see* 49 CFR 234.209), a grade crossing accident/incident involving a § 234.209 violation qualifies as a human-factor highway-rail grade crossing accident/incident for purposes of PAT testing.

Under paragraphs (a)(5)(ii) and (iii), PAT testing after a highway-rail grade crossing accident/incident is also required if the event involved violations of the flagging duties found in FRA's grade crossing regulation'. *See* 49 CFR 234.105(c), 234.106, and 234.107(c)(1)(i). The sections referenced in these paragraphs permit trains to operate through malfunctioning grade crossings if an appropriately equipped flagger, law enforcement officer, or crewmember provides warning for each direction of highway traffic. For example, when a false activation occurs, § 234.107(c)(1)(i) requires flagging by an appropriately equipped flagger if one is available. Under paragraphs (a)(5)(ii) and (iii), an employee who fails to comply with this flagging requirement is subject to PAT testing if a highway-rail grade crossing accident/incident then occurs. Under paragraph (a)(5)(iv), FRA is further narrowing its PAT testing exception for highway-rail grade crossing accident/incidents by requiring PAT testing if a fatality of a regulated employee is involved. As with fatal train incidents, a deceased regulated employee is subject to post-mortem PAT testing regardless of whether the employee was at fault. For example, a regulated employee who died while operating an on-rail truck that collided with a motor vehicle at a highway-rail grade crossing is subject to post-mortem PAT testing regardless of who was at fault for the collision.

Similarly, paragraph (a)(5)(v) requires PAT testing after a highway-rail grade crossing accident/incident if a violation of an FRA regulation or railroad operating rule by a regulated employee may have played a role in the cause or severity of the accident/incident. While paragraphs (a)(5)(i)–(iv) of this section specify the circumstances under which PAT testing is required for highway-rail grade crossing accidents/incidents involving human-factor errors, paragraph (a)(5)(v) serves as a catch-all provision that requires PAT testing for highway-rail grade crossing accidents/incidents that involve human-factor errors other than those specified in paragraphs (a)(5)(i)–(iv).

Paragraph (b)

As discussed above, FRA is narrowing this grade crossing exception to allow PAT testing for human-factor highway-rail grade crossing accident/incidents, and is amending the language in this paragraph accordingly.

SEPTA had asked FRA to clarify whether the contributing action of a

motor vehicle operator within a grade crossing could trigger the PAT testing of a MOW employee. Any employee involved in a highway-rail grade crossing accident is excepted from PAT testing *unless* a railroad's preliminary investigation indicates that the employee's actions may have contributed to the occurrence or severity of the accident; this general exception applies to all regulated employees and is not affected by the addition of MOW employees to this part.

Section 219.203—Responsibilities of Railroads and Employees

Paragraph (a)(1)

Paragraph (a)(1) requires a regulated employee whose actions may have played a role in the cause or severity of a PAT testing qualifying event (*e.g.*, an operator, dispatcher, or signal maintainer) to provide blood and urine samples for PAT testing, regardless of whether the employee was present or on-duty at the time or location of the qualifying event, as required by FRA's amended PAT testing recall provisions in paragraph (e) of this section.

Paragraph (a)(2)

Paragraph (a)(2) specifies that the remains of an on-duty employee who has been fatally injured in a qualifying PAT testing event must undergo post-mortem PAT testing if the employee dies within 12 hours of the event. This requirement applies regardless of whether the employee was performing regulated service, was at fault, or was a direct employee, volunteer, or contractor to a railroad. Part 219 already requires such fatality testing. *See* §§ 219.11(f) and 219.203(a)(4)(ii).

Paragraph (a)(3)

Paragraph (a)(3) specifies which regulated employees must be tested for major train accidents. In paragraph (a)(3)(i), FRA requires all crew members of *on-track equipment* involved in a major train accident to be PAT tested, regardless of fault—a requirement that already applies to all train crew members involved in a major train accident. *See* § 219.203(a)(3). In addition, paragraph (a)(3)(ii) requires a regulated employee who is not an assigned crew member of an involved train or other on-track equipment to be PAT tested, if it can be immediately determined that the regulated employee may have played a role in the cause or severity of the major train accident.

Paragraph (a)(4)

In paragraph (a)(4), which applies specifically to fatal train incidents, FRA proposed that an individual must die within 12 hours of the incident to qualify for post-mortem PAT testing. The NTSB suggested that FRA instead define a PAT testing fatality as one that occurred within 30 days of the incident, to match its own definition and that of FMCSA's. FRA's proposed 12-hour time limit applies to the post-mortem *testing* of a fatality, however, not to the *reporting* of its occurrence, as the NTSB and FMCSA time limits do. The result of a post-mortem PAT test conducted up to 30 days later would fail to indicate an individual's condition at the time of an incident, and would have no probative value because any alcohol and most controlled substances present in the individual when the accident occurred would have metabolized long before the test was conducted. FRA is therefore adopting its proposal that post-mortem PAT testing is required only if an individual dies within 12 hours of an incident.

Paragraph (a)(5)

Paragraph (a)(5) specifies which regulated employees must be PAT tested following human-factor highway-rail grade crossing accidents/incidents. Under § 219.201(a)(5)(i), only a regulated employee who interfered with the normal functioning of a grade crossing signal system and whose actions may have contributed to the cause or severity of the event must be PAT tested. Paragraphs (a)(5)(ii) and (iii) clarify the testing requirements for human-factor highway-rail grade crossing accidents/incidents under § 219.201(a)(5)(ii) and (iii). If a grade crossing activation failure occurs, these paragraphs require PAT testing of a regulated employee responsible for flagging (either flagging highway traffic or acting as an appropriately equipped flagger as defined in § 234.5), if the employee either fails to flag or to ensure that the required flagging occurs, or if the employee contributes to the cause or severity of the accident/incident.

Paragraph (a)(5)(iv) states that only the remains of a fatally-injured regulated employee(s) involved in a human-factor highway-rail grade crossing accident/incident under § 219.201(a)(5)(iv) must be post-mortem PAT tested.

Paragraph (a)(5)(v) states that only a regulated employee who has violated an FRA regulation or railroad operating rule and whose actions may have contributed to the cause or severity of the event must be PAT tested in the event of a human-factor highway-rail grade crossing accident/incident.

Paragraph (a)(6)

Paragraph 219.203(a)(3) requires a railroad to exclude from PAT testing an employee involved in an impact accident or passenger train accident with injury, or a surviving employee involved in a fatal train incident, if the railroad can immediately determine that the employee had no role in the cause or severity of the event. If a railroad determines that an event qualifies for PAT testing, the railroad must consider the same immediately available information to determine whether an employee should be subject to or excluded from PAT testing.

Correspondingly, paragraph (a)(6) requires a railroad to make a PAT testing determination when an employee survives a human-factor highway-rail grade crossing accident/incident. There is no determination to be made, however, when a regulated employee has been involved in a major train accident or an employee has been fatally injured in a qualifying event while on-duty; in these circumstances the employee must be post-mortem PAT tested, as specified in paragraphs (a)(6)(i) and (ii).

Paragraph (b)—Railroad Responsibility

Paragraph (b)(1) requires a railroad to take all practicable steps to ensure that each regulated employee subject to PAT testing provides the required specimens. This includes a regulated employee who may not have been present or on-duty at the time of the PAT testing event, but who may have played a role in its cause or severity, since paragraph (e) of this section amends FRA's recall provisions to allow employee recall in such circumstances.

Paragraph (b)(3) adopts longstanding FRA guidance that FRA PAT testing takes precedence over any toxicological testing conducted by state or local law enforcement officials. *See* Interpretive Guidance Manual at 20.

Paragraph (c)—Alcohol Testing

Paragraph (c) allows a railroad to require a regulated employee who is subject to PAT testing to undergo additional PAT breath alcohol testing if the employee is still on, and has never left, railroad property.

Paragraph (d)—Timely Specimen Collection

New paragraph (d)(1) requires a railroad: (1) To make "every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident," and, (2) if the railroad was unable to collect specimens within four hours of the qualifying event, to prepare and maintain a record stating why the test was not promptly administered (the railroad is still required to collect the specimens as soon thereafter as possible, however, under § 219.203(b)(1)).

Previously, § 219.209(c) required a railroad to notify FRA's Drug and Alcohol Program Manager immediately by phone whenever a specimen collection took longer than four hours, and to prepare a written explanation for any delay in specimen collection beyond four hours; submission of that report, however, was required only upon request by FRA. As amended in § 219.203(d)(1), FRA is reiterating most of the requirements formerly in § 219.209(c), but is now requiring a railroad to submit its written report within 30 days after expiration of the month during which the qualifying event occurred.

Paragraph (e)—Employee Recall

As proposed, FRA eliminated its previous requirement that a qualifying PAT event had to have occurred during the employee's duty tour.

FRA has simplified its employee recall provisions by requiring a regulated employee to be immediately recalled and placed on duty for PAT testing if only two conditions are met: (1) The railroad could not retain the employee in duty status because the employee went off duty under normal carrier procedures before the railroad instructed the employee to remain on duty pending its testing determination; *and* (2) the railroad's preliminary investigation indicates a clear probability that the employee played a role in the cause or severity of the accident/incident. An employee who has been transported to receive medical care is considered to be on-duty for purposes of PAT testing. A railroad may also PAT test an employee who has failed to remain available for PAT testing as required.

Paragraph (e)(3) requires an employee to be recalled regardless of whether the qualifying event occurred while the employee was on duty, although a railroad is prohibited from recalling an employee if more than 24 hours has passed since the event. An employee who has been recalled for PAT testing must be placed on duty before he or she is PAT tested.

Paragraph (e)(4) specifies that both urine and blood specimens must be collected from an employee who has been recalled for PAT testing. An employee who left railroad property before being recalled can be PAT tested for drugs only, since the employee could have legitimately used alcohol after leaving. For this reason, a recalled employee can be PAT tested for alcohol only if the employee never left the railroad's property and the railroad completely prohibits the use of alcohol on its property.

Paragraph (e)(5) requires a railroad to document its attempts to contact an employee who has to be recalled for PAT testing. If a railroad cannot contact and obtain a specimen from an employee subject to mandatory recall within 24 hours of a qualifying event, the railroad must notify and submit a narrative report to FRA as required by paragraph (d)(1). In its report, the railroad must show that it made a good faith effort to contact the employee, recall the employee, place the employee on duty, and obtain specimens from the employee.

Paragraph (f)—Place of Specimen Collection

Paragraph (f) states that an independent medical facility is required only for the mandatory collection of PAT urine and blood specimens since a breath alcohol PAT test (which is authorized, but not required) is not an invasive procedure. Section 219.203(c) authorizes a railroad to conduct FRA breath alcohol testing following a qualifying event, provided this testing does not interfere with the timely collection of urine and blood specimens (as specified in the PAT testing specimen collection procedures in appendix C to this part.

Although FRA still considers it a best practice for a railroad to pre-designate medical facilities for PAT testing, FRA has removed this requirement, which is impracticable for several reasons. First, because the prompt treatment of injured employees must take precedence over any railroad pre-designation, an emergency responder may take an injured employee to a closer but non-designated medical facility. Second, even if a railroad has pre-designated a medical facility, the facility's responding employees may not be aware of or honor this designation.

Paragraph (f)(1) states that a phlebotomist (a certified technician trained and qualified to draw blood in accordance with state requirements) is a "qualified medical professional" who may draw blood specimens for PAT testing. (A qualified medical professional does not need to meet the requirements of part 40, since part 40 does not apply to FRA PAT testing.) A qualified railroad or hospital contracted collector may also collect or assist in the collection of specimens, provided the medical facility has no objections.

Paragraph (f)(2) clarifies that employees who are subject to performing regulated service are deemed to have consented to PAT testing under § 219.11(a), just as employees who perform covered service already are. For PAT testing only, FRA allows urine to be collected from an injured regulated employee who has already been catheterized for medical purposes, regardless of whether the employee is conscious. PAT testing is not subject to part 40's prohibition against collecting urine from an unconscious person.

Paragraph (g)—Obtaining Cooperation of Facility

In the NPRM, FRA had proposed replacing 1–800–424–8801 with 1–800–424–8802 as the contact number for the National Response Center (NRC). A railroad must contact the NRC when a treating medical facility refuses to collect blood specimens because an employee is unable to provide consent. A commenter suggested that FRA instead replace both 1–800–424–8801 and 1–800–424–8802 with 1–800–424–0201, a toll-free phone number specific to FRA. As the commenter noted, listing 1–800–424–0201 as the contact number for the NRC would make this part consistent with §§ 229.17, 230.22 and 234.7 of this chapter (respectively, Locomotive Safety Standards, Steam Locomotive Inspection and Maintenance Standards, and Grade Crossing Safety). FRA agrees, and is listing 1–800–424–0201 as its sole NRC contact number, in this paragraph, and in §§ 219.207(b) and 219.209(a)(1) of this part.

Section 219.205—Specimen Collection and Handling

Paragraph (c)

A railroad may no longer order a PAT testing kit directly from the designated FRA PAT testing laboratory (the laboratory specified in appendix B to part 219); the railroad must instead contact FRA's Drug and Alcohol Program Manager to request an order form to obtain a PAT testing kit from the laboratory. FRA will continue to follow its standard practice of making fatality PAT testing kits available only to Class I, Class II, and commuter railroads. If a small railroad has a PAT testing event involving a fatality to an on-duty employee, the small railroad should contact the National Railroad Response Center. FRA will then provide a fatality kit to a medical examiner or assist the small railroad in obtaining one from a larger railroad.

As proposed, FRA is removing paragraph (c)(3), which states that a limited number of shipping kits are

available at FRA's field offices, since FRA field offices no longer have these kits.

Paragraph (d)

For greater flexibility, FRA has amended this paragraph to allow a railroad to use other shipment methods besides air freight, provided the 24-hour delivery requirement is met. FRA is also allowing a railroad to hold specimens in a secure refrigerator for a maximum of 72 hours if a specimen's delivery cannot be ensured within 24 hours due to a suspension in delivery services.

Paragraph (e)

To ensure greater specimen security, FRA is prohibiting a railroad or medical facility from opening a specimen kit or a transport box after it has been sealed, even if it is later discovered that an error had been made either with the specimens or the chain of custody form. If such an error is discovered, the railroad or medical facility must make a contemporaneous written record of it and send that record to the laboratory, preferably with the transport box.

Section 219.207—Fatality

As discussed above, FRA is replacing 1–800–424–8801 and 1–800–424–8802, the phone numbers for the NRC previously listed in paragraph (b), with 1–800–424–0201. A railroad supervisor who is having difficulty obtaining post-mortem specimens from the local authority or custodian should call 1–800–424–0201 to notify the NRC duty officer.

In paragraph (d), FRA is clarifying that the information in "Appendix C to this part [which] specifies body fluid and tissue specimens for toxicological analysis in the case of a fatality," is also available in the "instructions included inside the shipping kits."

Section 219.209—Reports of Tests and Refusals

Paragraph (a)(1)

As discussed above, FRA is replacing 1–800–424–8802, the phone number previously listed in this paragraph for the NRC, with 1–800–424–0201. A railroad should call the latter number to notify the NRC of the occurrence of a qualifying post-accident event. The railroad must also notify the FRA Drug and Alcohol Manager; the contact number for doing so, 202–493–6313, is unchanged.

Previously, paragraph (a)(2)(v) of this section required a railroad reporting PAT tests and refusals to include the number, names, and occupations of the involved employees. To protect employee privacy interests and reduce railroads, reporting burdens, FRA is requiring railroads to report only the number of employees tested.

Paragraph (b) required a railroad to provide a "concise narrative report" to FRA if, as a result of the non-cooperation of an employee or any other reason, the railroad was unable to obtain PAT testing specimens from an employee subject to PAT testing. As amended, a railroad must also notify FRA's Drug and Alcohol Program Manager immediately by phone of the failure. If a railroad representative is unable to speak directly to the FRA Drug and Alcohol Program Manager, the representative must leave a detailed voicemail explaining the circumstances and reasons for the railroad's failure to obtain PAT specimens. The purpose of this telephonic report is to assist both railroads and FRA in determining whether a refusal has occurred.

Paragraph (c) previously required a railroad to maintain records explaining why PAT testing was not performed within four hours of a qualifying event. FRA is deleting this requirement from § 219.209 because it is already addressed in § 219.203(d)(1), as discussed above in the section-by-section analysis for that section.

Section 219.211—Analysis and Follow-Up

Since part 40 does not apply to FRA PAT testing, FRA is amending paragraph (b) of this section to adopt part 40's prohibition on standing down (temporarily removing from service) an employee based solely upon a laboratory's confirmation of a non-negative test result, before the railroad's Medical Review Officer (MRO) has completed the result's verification. *See* § 40.21(a). As in part 40, a railroad may remove an employee from regulated service only after an MRO has verified that the employee has had a confirmed positive test, an adulterated test, or a substituted test.

As amended, paragraph (c) now provides the address of the FRA Associate Administrator for Railroad Safety.

For consistency throughout this part, in paragraph (e), FRA is substituting "Drug and Alcohol Program Manager" for "Alcohol/Drug Program Manager." Also, to enable employees to respond to their test results more easily, FRA is allowing responses to be sent by email.

Paragraph (g)(3) previously provided that FRA's PAT testing program does not authorize railroads to hold an employee out of service pending the receipt of the test results, "nor does it restrict a railroad from taking such action in an appropriate case." As clarification, FRA is adding that a railroad must have additional information regarding an employee's actions or inaction, independent of the employee's involvement in a qualifying event, to justify holding the employee out of service under company authority. As with paragraph (b)'s prohibition against standing down an employee based solely on a confirmed laboratory test result, reports, an employee's involvement in a PAT testing event is not in itself a basis for a railroad's holding the employee out of regulated service.

Section 219.213—Refusals; Consequences

Paragraph (b) now requires a railroad to provide *written* notice to an employee who is being withdrawn from service under this part for refusing to provide a specimen for PAT testing. As with § 219.107, FRA is adopting *SAPlist.com's* suggestion to delete the term "unlawful" from this section's heading, since it implies that there are "lawful" refusals. This is not a substantive change.

Subpart D—Reasonable Suspicion Testing

As proposed, reasonable suspicion testing remains in subpart D while reasonable cause testing is now in subpart E; this division underscores the importance of the differences between these types of tests, despite their similarity in names. (To accommodate this restructuring, the Identification of Troubled Employees requirements previously in subpart E have been moved to new subpart K.)

Section 219.301—Mandatory Reasonable Suspicion Testing

Paragraph (a) clarifies that a reasonable suspicion alcohol test is not required to confirm an on-duty employee's possession of alcohol.

Paragraph (c) requires all reasonable suspicion tests to comply with § 219.303 (which is generally consistent with the requirements previously found in § 219.300(b) and is discussed in more detail below).

Paragraph (d) requires a regulated employee to undergo reasonable suspicion testing if the employee's condition has stabilized within eight hours.

Section 219.303—Reasonable Suspicion Observations

This section contains the requirements for reasonable suspicion observations that were formerly in § 219.300(b).

Paragraph (b)

In paragraph (b), FRA clarifies that although two supervisors are required to make the required observations for reasonable suspicion drug testing, only one of these supervisors must be on-site and trained in accordance with § 219.11(g). This amendment incorporates long-standing FRA guidance, since two on-site trained supervisors are rarely available.

Before a reasonable suspicion drug test can take place, a trained on-site supervisor must describe the signs and symptoms that the on-site supervisor has observed of an employee's appearance and behavior to an off-site supervisor, who must confirm that these observations provide a reasonable basis to suspect the employee of drug abuse. Because of privacy concerns, this communication between supervisors may be made by telephone, but not by radio or email.

Paragraph (c)

New paragraph (c) prohibits a railroad from holding a regulated employee out of service from the time of the employee's reasonable suspicion test to the time of the railroad's receipt of the employee's verified test result (a practice known as "stand down"). A railroad may, however, use its own authority to hold an employee out of service during this period if the railroad has an independent basis for doing so (*e.g.*, the employee is continuing to exhibit signs and symptoms of alcohol use).

Paragraph (d)

Paragraph (d) requires an on-site supervisor to document as soon as practicable the observed signs and symptoms that were the basis for the supervisor's decision to reasonable suspicion test a regulated employee. FRA is not adopting Labor's suggested alternate language, which essentially restates FRA's own without adding any clarification.

Section 219.305—Prompt Specimen Collection; Time Limits

Paragraph (a)

Paragraph (a) reiterates language formerly in § 219.302(a), which states consistent with the need to protect life and property, reasonable suspicion testing must be promptly conducted following the observations upon which the reasonable suspicion determination was based.

Paragraph (b)

Paragraph (b) requires a railroad to prepare and maintain a record explaining the reasons for the delay whenever the railroad does not collect reasonable suspicion breath and/or urine specimens within two hours of the determination to test. If, however, a railroad has failed to collect reasonable suspicion testing specimens within eight hours of its determination to test, the railroad must discontinue its collection attempts and record why the test could not be conducted. The eight-hour deadline is met when the railroad has delivered the employee to a collection site where a collector is present and asked the collector to begin specimen collection.

Paragraph (b) also requires a railroad to submit its reasonable suspicion testing records upon request of the FRA Drug and Alcohol Program Manager.

Paragraph (c)

Subpart E—Reasonable Cause Testing

As discussed above, FRA is dividing reasonable suspicion and reasonable cause testing into separate subparts to emphasize that despite the similarity in names, the authority and criteria for mandatory reasonable suspicion testing is very different from that for discretionary reasonable cause testing. Formerly, reasonable suspicion and reasonable cause testing were both located in subpart D; reasonable suspicion testing remains in subpart D while reasonable cause testing is moved to subpart E. In addition, subpart E contains new rule violations tailored to the activities of MOW employees. FRA has re-designated the provisions of former subpart E as new subpart K.

Section 219.401—Authorization for Reasonable Cause Testing

Previously, a railroad had three options whenever the conditions for reasonable cause testing were met; the railroad could choose to: (1) Conduct a reasonable cause test under FRA authority, (2) conduct a reasonable cause test under its own (company) authority, or (3) not conduct a reasonable cause test. The railroad could switch among these choices without advance notice. For example, a railroad could conduct one employee's reasonable cause test under FRA authority, and another's under company authority, without any explanation. In many instances, an employee who had received a reasonable cause test was unsure as to what authority the test had been conducted under, while the lack of a consistency requirement led to frequent complaints about disparate treatment among employees.

FRA is now requiring a railroad to choose between using FRA authority or company authority for reasonable cause testing. A railroad that chooses to use FRA authority must announce its choice to its employees and must use that FRA authority exclusively, by (1) providing notice of its selection of FRA authority in its educational materials; (2) specifying that FRA testing is authorized only after "train accidents" and "train incidents," as defined in § 219.5; and (3) adding new rule violations or other errors to § 219.403 as bases to test. Once a railroad has announced that it will be using FRA authority exclusively for reasonable cause testing, the railroad is prohibited from conducting reasonable cause tests under its own authority after an event listed in § 219.403. The railroad may always, however, use its own authority to test for events that are outside of the FRA criteria for reasonable cause testing listed in this subpart.

Section 219.403—Requirements for Reasonable Cause Testing

This section authorizes FRA reasonable cause testing after "train accidents" and "train incidents" as defined in § 219.5, but not after all part 225 reportable "accidents/incidents." As amended, railroads are authorized to conduct FRA reasonable cause testing for additional rule violations or other errors that reflect the expansion of part 219 to MOW workers, relate to signal systems and highway-rail grade crossing warning systems, and reflect recent amendments to 49 CFR part 218, Railroad Operating Practices.

Paragraph (a)

Section 219.301(b)(2) previously authorized reasonable cause testing following "an accident or incident reportable under part 225" when "a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident." In this rule, FRA is clarifying that the terms "accident/incident" and "accident or incident reportable under part 225" in § 219.301(b)(2) do not authorize FRA reasonable cause testing after all part 225 reportable accidents/incidents.

As defined in § 225.5, the term "accident/incident" includes employee injuries and illnesses that conform with OSHA's recordkeeping/reporting requirements, but do not otherwise fall within FRA's railroad safety jurisdiction. *See* Accident Reporting Guide at 1–2 ("FRA's accident/incident reporting regulations that concern railroad occupational casualties should be maintained, to the extent practicable,

in general conformity with OSHA's recordkeeping and reporting regulations").

In its audits, FRA has found numerous instances where this confusion in terms has resulted in a railroad deciding to conduct an FRA reasonable cause test after every reportable injury, even if that injury was unconnected with the movement of on-track equipment (*e.g.*, a slip, trip, or fall that was not related to the movement of on-track equipment where the railroad had no basis to believe that the employee's act or omission contributed to the injury (which is also a violation of existing § 219.301(b)(2)).

Furthermore, the § 225.5 definition of "accident/incident" includes occupational illnesses, such as carpal tunnel syndrome, carbon monoxide poisoning, noise-induced hearing loss, and dust diseases of the lungs, as well as circumstances such as a suicide attempt made by an on-duty employee, that do not authorize FRA reasonable cause testing. *See* Accident Reporting Guide at 33, and at Appendix E–2 through E–5.

To correct this confusion, FRA is specifying in § 219.403(a) that reasonable cause testing is authorized following "train accidents" and "train incidents," as defined by § 219.5, when a responsible railroad supervisor has a reasonable belief, based on specific, articulable facts, that the individual employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident. By using the terms "train accident" and "train incident," FRA is attempting to limit the circumstances under which FRA reasonable cause testing is authorized to a subset of part 225 reportable accident/incidents. (A railroad may, of course, perform a reasonable cause test under its own authority for an accident/incident that does not qualify as a train accident or train incident.)

For consistency with the remainder of this subpart, FRA is also substituting the term "responsible railroad supervisor" for "supervisory employee."

Paragraph (b)

Paragraph (b) contains a list of rule violations and other errors that are grounds for FRA reasonable cause testing whenever a regulated employee is directly involved. The rule violations and other errors previously in § 219.301(b)(3) can now be found in paragraphs (b)(1)–(4), (b)(6)–(8), and (b)(10) of this section, without any substantive amendments. Paragraphs (b)(5), (b)(9), (b)(11)–(12), and (b)(13)–(18) contain additional rule violations and other errors that are new grounds for FRA reasonable cause testing, as discussed below.

• Additional Rule Violations or Other Errors Related to Railroad Operating Practices

In paragraphs (b)(5) and (9), FRA is adding two new categories to the rule violations or other errors that are grounds for reasonable cause testing. These additional categories reflect recent amendments to 49 CFR part 218—Railroad Operating Practices.

In 2008, FRA amended part 218 to require railroads to adopt and comply with operating rules regarding shoving and pushing movements and the operation of switches. Many of these operating rule requirements for switches already provided bases for FRA reasonable cause testing, such as "[a]lignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch" and "[e]ntering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed." § 219.301(b)(3)(iv) and (vii). Nevertheless, in paragraph (b)(5), FRA is authorizing reasonable cause testing if a regulated employee fails to restore and secure a main track switch when required.

Although § 218.99 requires a railroad to adopt specific operating rules governing shoving and pushing movements, FRA is authorizing reasonable cause testing only for § 218.99 violations that can pose significant safety concerns, as discussed below. For instance, a railroad is authorized to conduct FRA reasonable cause testing on a regulated employee who fails to provide point protection in accordance with § 218.99(b)(3), but is not authorized to do so if a regulated employee fails to conduct a job briefing.

• Additional Rule Violations or Other Errors Related to MOW Employees

Paragraphs (b)(13)–(17) authorize FRA reasonable cause testing for additional rules violations and errors related to the performance of MOW activities: Paragraph (b)(13) authorizes testing for the failure of a machine operator that results in a collision between a roadway maintenance machine and/or other on-track equipment or a regulated employee; paragraph (b)(14) authorizes testing for the failure of a roadway worker-in-charge to notify all affected employees when releasing working limits; paragraph (b)(15) authorizes testing for the failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment; paragraph (b)(16) authorizes testing for the failure to ascertain on-track safety before fouling a track; and paragraph (b)(17) authorizes testing for the improper use of individual train detection (ITD) in a manual interlocking or control point.

• Additional Rule Violations or Other Errors Related to Covered Service

As proposed, FRA is authorizing reasonable cause testing for three additional rule violations or other errors primarily addressing the actions of covered employees.

First, paragraph (b)(11) authorizes a railroad to conduct FRA reasonable cause testing if a regulated employee has interfered with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device (*e.g.*, by temporarily installing a jumper cable and failing to remove it after finishing repairs or testing). This includes the types of unlawful interference described in § 234.209 (grade crossing systems) and § 236.4 (signals).

Second, paragraph (b)(12) authorizes a railroad to conduct FRA reasonable cause testing if a regulated employee has failed to perform required stop-and-flag duties after a malfunction of a grade crossing signal system.

Third, paragraph (b)(18) authorizes a railroad to conduct FRA reasonable cause testing on a regulated employee whose failure to apply three point protection (by fully applying the locomotive and train brakes, centering the reverser, and placing the generator field switch in the off position) results in a reportable injury to a regulated employee.

A contracting company that performs regulated service for a railroad is authorized, but not required, to conduct FRA reasonable cause tests on its regulated employees. Conversely, a railroad is authorized to conduct FRA reasonable cause testing on its contractors when they are performing regulated service on the railroad's behalf.

Section 219.405—Documentation Requirements

Although reasonable cause testing remains discretionary, a railroad must create and maintain written documentation of the basis for a reasonable cause test if that test is conducted under FRA authority.

Accordingly, the railroad supervisor who made the determination that reasonable cause exists must promptly document the observations or facts (*e.g.*, the amount of property damage, the rule that was violated, the role of the employee) that were the basis for this determination, although the documentation does not have to be completed before the FRA reasonable cause testing has been conducted.

Section 219.407—Prompt Specimen Collection; Time Limitations

This section clarifies that the eight-hour time period for conducting a reasonable cause test runs from the time a railroad supervisor is notified of the occurrence of the train accident, train incident, or rule violation that is the basis for the test.

Section 219.409—Limitations on Authority

Paragraph (a)

This paragraph contains an amended version of language that was previously in § 219.301(e), As amended, this paragraph states that: (1) If an event qualifies for mandatory PAT testing, a railroad is prohibited from conducting FRA reasonable cause tests in lieu of, or in addition to, the required PAT tests. Second, FRA is removing the word "compulsory," which misleadingly implies that FRA reasonable cause testing is required, when it is optional but authorized in certain situations. Third, FRA is removing the second sentence of § 219.301(e), which, in part, stated that "breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of an accident and conduct of such tests does not materially impede the collection of specimens under Subpart C of this part." FRA believes this sentence is confusing because FRA is proposing, in § 219.203(c), to allow only PAT breath alcohol testing, although such testing should be recorded on DOT's alcohol custody and control form.

Paragraph (b)

For reasons similar to those discussed in § 219.211(b), paragraph (b) of this section prohibits a railroad from holding a regulated employee out of service pending the results of an FRA reasonable cause test. A railroad may, however, hold an employee out of service under its own authority.

Paragraph (c)

Paragraph (c) requires a supervisor to make a separate reasonable cause determination for each individual in a train crew, rather than a collective decision to test the crew as a whole.

Subpart F—Pre-Employment Tests

Section 219.501—Pre-Employment Drug Testing

Paragraph (a)

A regulated railroad employee must have a negative Federal pre-employment drug test result for each railroad for which the employee performs regulated service. This requirement does not apply to contractor employees who perform regulated service for the railroad.

Paragraph (b)

As proposed, FRA is moving language previously in this paragraph to paragraph (e), where it will be discussed below.

Paragraph (b) now addresses the pre-employment drug testing requirements for contractor employees. In contrast to the pre-employment drug testing requirements for regulated employees discussed in paragraph (a) above, FRA is not requiring a contractor employee who performs regulated service for multiple railroads to have a negative Federal pre-employment drug test result for each railroad. Instead, each railroad only has to verify and document that the contractor employee has a negative Federal pre-employment drug test result on file with the contractor who is his or her direct employer. However, a contractor employee is required to have a new Federal pre-employment drug test if he or she switches direct employers by working for a different contractor who provides regulated service to railroads.

Paragraph (c)

A railroad is not required to conduct an FRA pre-employment drug test on an applicant or first-time transfer to regulated service if the railroad has already conducted a pre-employment drug test with a negative test result on the applicant or first-time transfer under the authority of another DOT agency. In most cases, this agency will be FMCSA, because railroads often require signal maintainers and MOW employees to hold a CDL as a condition of their employment, and a negative FMCSA pre-employment drug test result is one of the prerequisites to obtaining a CDL. *See* 49 CFR 382.301. This amendment increases a railroad's hiring flexibility by allowing the railroad to transfer a CDL holder to first-time regulated service without having to conduct an FRA pre-employment drug test or having to wait for a negative test result (a railroad could, however, choose to perform a new pre-employment drug test under its own authority). Since many MOW employees already hold CDLs because their jobs require the operation of railroad commercial motor vehicles, this limited exception will substantially lessen the number of pre-employment drug tests railroads will have to perform after the effective date of this final rule.

This exception applies, however, only when an applicant or first-time transfer's negative DOT pre-employment drug test result is the result of a test conducted by the railroad itself. In other words, a CDL holder who performs regulated service for multiple railroads must have a separate negative pre-employment drug test result for each railroad. For example, a CDL holder who already has a negative DOT pre-employment drug test for Railroad A must still have a negative FRA pre-employment drug test result for Railroad B before he or she can begin performing regulated service for Railroad B.

Paragraph (d)

As proposed, new paragraph (d) specifies that an applicant must withdraw his or her application before the drug testing process begins if the applicant wants to decline a pre-employment drug test and have no record kept of that declination.

Paragraph (e)

In new paragraph (e), FRA exempts from pre-employment drug testing: (1) An employee who began performing *MOW activities* for a railroad before the effective date of this final rule; and (2) an employee who began performing *regulated service* for a *small* railroad (as defined in § 219.3(c)) before the effective date of this final rule. Both exemptions apply only so long as the employee continues to work for the same railroad that he or she was working for before the effective date of the final rule.

Section 219.502—Pre-Employment Alcohol Testing

This section addresses optional pre-employment alcohol testing.

Paragraph (a)(5)

Paragraph (a)(5) prohibits a railroad from permitting a regulated employee with an alcohol concentration of 0.04 or greater from performing regulated service until the employee has completed the return-to-duty process in § 219.104(d).

Paragraph (b)

Paragraph (b) of this section (addressing pre-employment alcohol

testing) previously contained language identical to § 219.501(b) (addressing pre-employment drug testing), which provides that, as used in subpart H, the term covered employee includes an applicant for pre-employment testing only. It also provided that no record may be maintained if an applicant declines to be tested and withdraws his or her application for employment. As discussed above in § 219.501(b), FRA has amended the language in § 219.502(b) to clarify that an individual must decline to participate in a pre-employment alcohol test by withdrawing his or her application before the testing process begins. As defined by DOT in § 40.243(a), the testing process begins when an individually wrapped or sealed mouthpiece is selected by the collector or the employee.

Section 219.503—Notification; Records

The first and second sentences of this section require railroads to provide medical review of pre-employment drug tests and to "notify" an applicant of the "results of the drug and alcohol test" as provided for by subpart H. FRA is amending both of these sentences to clarify that subpart H adopts the requirements found in part 40. FRA is also amending the second sentence to clarify that a railroad must provide written notice to an applicant who has had any type of non-negative FRA test result (*i.e.*, not just a positive, but also an adulteration, substitution, or refusal). A railroad is not required, however, to provide written notification to an applicant who has had a negative FRA pre-employment alcohol or drug test result.

FRA is also amending the third sentence of this section to clarify that a railroad must maintain a record of each application it denies because of the applicant's non-negative FRA pre-employment test. A railroad must maintain a record for each individual who has had a non-negative test result on a FRA pre-employment test, even if the railroad denied the individual's application for employment, because an individual who has had such a result must comply with the return-to-service and follow-up testing requirements of part 40 before he or she can begin performing DOT safety-sensitive functions for any employer regulated by a DOT agency. A railroad does not have to maintain a record, however, if an applicant withdraws his or her application to perform regulated service before the testing process begins.

Section 219.505—Non-Negative Tests and Refusals

Previously, this section prohibited an individual who "refuses" a pre-employment test from performing covered service based upon the application and examination with respect to which such refusal was made. As proposed, FRA has amended this section to specifically prohibit an individual who has refused or who had a non-negative (*i.e.*, a positive, adulterated, or substituted test result) pre-employment test result from performing DOT safety-sensitive functions for any DOT-regulated employer until the individual has completed the Federal return-to-duty process in § 219.104(d). As amended, this section conforms with § 40.25(e), which prohibits an employer who has information that an individual has violated a DOT agency drug or alcohol regulation from using that individual to perform DOT safety-sensitive functions until the employer receives information that the individual has complied with the return-to-duty requirements of part 40 or any DOT agency.

Subpart G—Random Alcohol and Drug Testing Programs

To achieve deterrence, a random testing program must ensure that each covered employee (including volunteers and probationary employees of a railroad or a contractor to a railroad), believes that he or she is subject to random testing without advance notice each time the employee is on duty and subject to performing covered service.

FRA received no objections to its proposal to subject an employee who performs MOW activities to the same random testing requirements as one who performs covered service. Accordingly, each railroad must submit for FRA approval a random testing plan that ensures each regulated employee believes he or she is subject to random testing without advance warning each time the employee is on-duty and subject to performing regulated service.

As proposed, FRA is revising and expanding subpart G,-to clarify and consolidate requirements and to-incorporate longstanding published FRA guidance. FRA received no comment on the majority of these changes, which are adopted as proposed without additional discussion.

Subpart H—Drug and Alcohol Testing Procedures

FRA received no comments on its minor editorial changes to this section, which are adopted as proposed.

Subpart I—Annual Report

Section 219.800—Annual Reports

FRA received no comments on its minor editorial changes to this section, which are adopted as proposed.

Subpart J—Recordkeeping Requirements

Section 219.901—Retention of Alcohol and Drug Testing Records

FRA received no comments on its proposals to ease recordkeeping burdens by consolidating requirements, removing others, and allowing still others to be maintained electronically. Accordingly, FRA is adopting these proposals without further discussion, except for proposed paragraph (c)(4)(iv), which contained an incorrect reference to prescription drug training records under § 219.103 and FRA has not adopted.

Subpart K—Referral Programs

For a variety of reasons, commenters found FRA's proposal to replace its self-referral, co-worker report, and alternative policy requirements with peer support program requirements, to be both confusing and ill-advised. NCRMA and SMART (from this point forward collectively referred to as "Labor," unless a comment was submitted by only one labor organization), in particular, raised objections and called for clarifications. As Labor noted, the concept of a voluntary peer referral program arose from "Operation Redblock," a private rail industry initiative to address alcohol abuse. Labor expressed deep misgivings, both that FRA's proposed peer support programs could harm these existing railroad programs, and that FRA's proposal to audit each program would invade individual privacy and undermine employee trust in the program. Labor also criticized FRA's proposal to allow an EAP counselor to function as an alternative to a trained drug and alcohol counselor, because an EAP counselor rarely has specific expertise in abuse and addiction issues. (Typically, an EAP program addresses a broad range of issues, such as marital or financial problems.) Similarly, Labor objected to using peer counselors, noting that a peer is usually a volunteer who provides empathy and advice based on his or her own drug and alcohol problems, without a counseling or medical degree.

The Associations suggested that FRA use the term "peer prevention" instead of "peer support" to emphasize that these programs should be proactive in nature. The Associations also warned that FRA should audit and release aggregate program data only, because an employee could be discouraged from self-referring if the employee knew that his or her individual data would be subject to FRA examination. Like Labor, the Associations noted that a peer support group is usually composed of selected peers and volunteers rather than medical professionals; the Associations therefore supported allowing an employee who self-refers to have the option of receiving counseling and treatment from a Drug Abuse Counselor (DAC). Overall, the Associations found FRA's proposed subpart K flawed and redundant of the voluntary referral provisions already in § 219.403.

After consideration, FRA agrees that its proposal to mandate the establishment of peer support programs was unnecessary, since privately run railroad programs and FRA's own subpart E policies have both proven effective in identifying and helping employees with drug and alcohol abuse issues. FRA also agrees that its proposed peer support programs could interfere with, or possibly even be detrimental to, existing railroad self-referral programs. Therefore, instead of requiring the adoption of peer prevention programs, FRA is revising and moving its voluntary referral, co-worker report, and alternative policy requirements from subpart E (which has been revised to address reasonable cause testing) to new subpart K.

With the exception of its proposal for non-peer referral programs, which FRA is authorizing but not requiring under this rule, FRA is not adopting its proposal to require peer support programs. To correspond with this decision, FRA is retitling this subpart "Referral Programs" instead of the proposed "Peer Support Programs." As explained in the NPRM, FRA believes subpart E's previous title "Identification of Troubled Employees," to be outdated since the primary purpose of that subpart had always been to evaluate and treat, not merely identify, employees who have substance abuse issues. FRA is also, as proposed, substituting the more commonly used term "program" for "policy."

In addition, FRA is adopting the Associations' recommendation to simplify this rule by requiring all the evaluation, counseling, treatment, and recommendation required by this part to be performed by a DAC. As defined in 49 CFR 242.7, a DAC meets all the credentialing and qualifying requirements of a Substance Abuse Professional (SAP). Title 49 CFR 40.3 defines an SAP A SAP as an individual who evaluates an employee who has violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. By definition, therefore, a SAP cannot perform a role in a voluntary referral program. In contrast, a DAC can treat and evaluate an employee enrolled in a voluntary referral program, since the DAC's involvement is not triggered by an employee's drug or alcohol violation. With this caveat, a DAC serves the same function in part this part as a SAP does in part 40.

As mentioned above, FRA is adding an option for a "non-peer referral" program, which authorizes, but does not require, a railroad to accept referrals from family members, supervisors, labor representatives, and other individuals who are not co-workers but who have knowledge of an employee's drug abuse problems. FRA received no objections to its proposal of this additional referral program. To accommodate this third program, FRA is retitling its required "co-worker report" program as a "co-worker referral" program so that henceforth these three programs—voluntary, co-worker, and non-peer—will collectively be referred to as "referral programs."

With the addition of the option for a non-peer program, FRA is reprinting requirements formerly found in subpart E, in a format that breaks these requirements down to make them easier to understand and implement. Both partially excepted small railroads and contractors are excluded from subpart K. Class III railroads that do not qualify for the small railroad exception must comply, however.

Section 219.1001—Requirements for Referral Programs

Paragraph (b)

This paragraph generally outlines the purposes of mandatory voluntary referral and co-worker referral programs. The descriptions of these programs are reworded from those previously in subpart E, and no substantive changes are intended.

Paragraph (c)

This paragraph generally outlines the purposes of optional non-peer referral and alternative programs. The description of an alternate program is reworded from the one previously in subpart E, and no substantive change is intended.

Paragraph (c)(1)

Although FRA is not otherwise adopting its proposal to require "peer support groups," FRA is authorizing a railroad to establish a "non-peer referral" program if it chooses to do so. A "non-peer" is an individual who is not considered to be an employee's co-worker, such as a trained supervisor, representative of an employee's collective bargaining organization, or family member.

Paragraphs (d)(1), (2), and (5)

These paragraphs restate general conditions for referral programs previously found in subpart E. No substantive changes are intended.

Paragraphs (d)(3)–(4)

These paragraphs prohibit referral programs from interfering with the return-to-duty requirements in subpart B and the reasonable suspicion testing requirements in subpart D.

Section 219.1003—Referral Program Conditions

With the exception of the paragraphs discussed below, the required allowances, conditions, and procedures in this section were previously contained in subpart E.

Paragraph (g)

As proposed, FRA is removing its previous minimum of 45 days leave of absence to allow the DAC to determine the period of time an employee needs.

Paragraph (h)(3)

Formerly, only co-worker referrals allowed railroads to condition an employee's return to regulated service upon successful completion of a return-to-service medical evaluation. As proposed, a railroad may impose this condition on self-referrals and non-peer referrals as well.

Paragraph (h)(4)

As proposed, a railroad must return an employee to regulated service within five working days of a DAC's recommendation that the employee is fit to return.

Paragraph (i)

As proposed, this paragraph prohibits a person or entity from changing a DAC's evaluation of an employee or recommendation for assistance. Only the DAC who made the initial evaluation may modify that evaluation and any follow-up recommendations based upon new or additional information.

Paragraph (j)

As proposed, the confidentiality conditions in this paragraph, which had previously applied only to candidates

for locomotive certification and locomotive engineers, have been expanded to cover candidates for conductor certification and conductors. Similarly, these requirements no longer apply only to voluntary referrals; co-worker and non-peer referrals are also covered.

Paragraph (k)

As proposed, a regulated employee who enters a co-worker or non-peer referral for a verified violation of § 219.101 or § 219.102 must contact a DAC within a reasonable period of time, as specified by the railroad's programs. If a regulated employee does not contact a DAC within this time period, the railroad may investigate the employee's cooperation and compliance with the referral program.

Paragraph (l)

As proposed, paragraph (l) requires a DAC to complete a regulated employee's evaluation within 10 working days of the employee's entering a referral program and contacting the DAC. If more than one evaluation is required, the DAC must complete these evaluations within 20 working days. These time frames, which had previously applied only to co-worker referrals, now apply to voluntary and non-peer referrals as well.

Paragraph (m)

As proposed, a referral program may not require follow-up treatment, care, or testing that exceeds 24 months beyond the regulated employee's removal from service, unless the regulated employee had committed a substantiated part 219 violation.

Section 219.1005—Optional Provisions

This section describes provisions that a railroad is authorized, but not required to, include in its referral program. The inclusion of any of these provisions may be conditioned on the agreement of an affected labor organization.

Paragraph (a) permits a referral program to waive confidentiality if a regulated employee refuses to cooperate in a course of education, counseling, or treatment recommended by a DAC or if the railroad determines later, after investigation, that a regulated employee was involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct. This text was previously found in subpart E for voluntary referrals.

Paragraph (a) specifies that nothing in subpart K prevents a railroad or labor organization from adopting, publishing, and implementing referral program policies that offer more favorable conditions to regulated employees with substance abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102. This language was previously found in subpart E.

Paragraph (b) requires an alternate program to have the concurrence of the recognized representatives of the regulated employees as shown by a collective bargaining agreement or other document describing the class or craft of employees to which the alternate program applies. This agreement must expressly reference subpart K and the intention of the railroad and the employee representatives that the alternate program applies in lieu of the programs required by subpart K. This language is similar to that previously found in subpart E.

Paragraph (c) requires a railroad to submit a copy of the agreement or other document described in paragraph (b), along with a copy of the alternate program described in paragraph (a), to the FRA Drug and Alcohol Program Manager for approval. FRA will review the program to see if it meets the general standards and intent of § 219.1003. If an alternate policy is amended or revoked, the railroad must notify FRA at least 30 days before the amendment or revocation's effective date. This last requirement was previously in subpart E.

Paragraph (d) specifies that § 219.1007 does not excuse a railroad from the requirement to adopt, publish, and implement § 219.1003 programs for any group of regulated employees not covered by an approved alternate program. A virtually identical provision was previously located in subpart E.

Paragraph (e) references § 219.105(c), which specifies that FRA has the authority to audit any railroad alcohol and/or drug use education, prevention, identification, and rehabilitation program (including, but not limited to, alternate referral programs), to ensure that the program is not designed or implemented to circumvent or otherwise undermine Federal requirements.

Appendix A

Appendix A to this part contains a schedule of civil penalties for use in enforcing this part's requirements. FRA has revised the penalty schedule to correspond to the restructuring of and addition of new sections to this part. Because such penalty schedules are statements of agency policy, notice and comment are not required before their issuance. See 5 U.S.C. 553(b)(3)(A). Nonetheless, FRA has revised the penalty schedule consistent with the previous, public schedule.

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant, under both Executive Orders 12866, and 13563, and DOT policies and procedures. *See* 44 FR 11034, Feb. 26, 1979. FRA has prepared and placed in the docket (No. FRA–2009–0039) a regulatory impact analysis (RIA) addressing the economic impact of this final rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. As part of the RIA, FRA has assessed quantitative measurements of the cost and benefit streams expected to result from implementation of this final rule. Overall, the final rule will result in safety benefits and potential business benefits for the railroad industry. It will also, however, generate an additional burden on railroads and railroad contractors, mainly due to the expenses associated with increased drug and alcohol testing and program administration, particularly regarding MOW employees.

The costs will primarily be derived from implementation of the statutory mandate to expand the scope of part 219 to cover MOW employees. The benefits will primarily accrue from the expected injury, fatality, and property damage avoidance resulting from the expansion of part 219 to cover MOW employees, as well as the PAT testing threshold increase.

Table 1 summarizes the quantified costs and benefits expected to accrue from implementation of the final rule over a 20-year period. It presents costs associated with the various types of drug and alcohol testing in the final rule and details the statutory costs (those required by the RSIA mandate to expand part 219 to MOW employees), discretionary costs (those that are due to the non-RSIA requirements), and the total of the two types of costs. Table 1 also presents the quantified benefits expected to accrue over a 20-year period and details the statutory benefits (those that result from implementation of the RSIA mandate to expand part 219 to MOW employees) and the discretionary benefits (those that are due to the non-RSIA requirements). The benefits include not only injury, fatality, and property damage avoidance (accident reduction benefits), but also the savings, or benefit, that will accrue from fewer PAT tests being conducted due to FRA's increasing the property damage threshold for major train accidents.

For the 20-year period analyzed, the estimated quantified cost that will be imposed on industry totals approximately $24.3 million (undiscounted), with discounted costs totaling $14.2 million (Present Value (PV), 7 percent) and $18.9 million (PV, 3 percent). The estimated quantified benefits for this 20-year period total approximately $115.8 million (undiscounted), with discounted benefits totally $57.4 million (PV, 7 percent) and $83.6 million (PV, 3 percent).

	Statutory	Discretionary	Total
Costs (20 year)			
PAT Testing—Adding MOW	$52,000		$52,000
PAT Testing—Impact Def + Xing		$241,974	241,974
Reasonable Suspicion Testing	842,398		842,398
Pre-Employment Testing—Adding MOW	673,897		673,897
Pre-Employment Testing—Sm, RR		29,904	29,904
Random Testing	20,863,074		20,863,074
Annual Reporting	160,911		160,911
Recordkeeping Requirement	1,397,840		1,397,840
Costs Subtotal	23,990,120	271,878	24,261,998
Benefits (20 year)			
Accident Reduction	115,369,281		115,369,281
PAT Testing Threshold Reduction		388,295	388,295
Benefits Subtotal	115,369,281	388,295	115,757,576
Net Benefits	91,379,161	116,417	91,495,578

Overall, the RIA demonstrates that the costs, both statutory and discretionary, associated with implementing the final rule are expected to be outweighed by the benefits resulting from reduced injuries, fatalities, and property damage attributable to drug and alcohol misuse by regulated employees. FRA has also found that the costs will be outweighed by injury and fatality mitigation alone, and benefits will further accrue due to reduced property damage. Specifically, the statutory requirements incur a discounted 20-year cost of $14.1 million (PV, 7 percent) and $18.6 million (PV, 3 percent). The discretionary portion of the costs to incur over the next 20-years is $143,665 (PV, 7 percent) and $202,023 (PV, 3 percent), with discounted 20-year benefits of $205,574 (PV, 7 percent) and $288,776 (PV, 3 percent).

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

FRA developed the final rule in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered. Furthermore, FRA invited all interested parties to submit data and information regarding the Initial Regulatory Flexibility Analysis (IRFA) and did receive two comments about it during the public comment period.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

The final rule will apply to all employees of railroad carriers, contractors, or subcontractors to railroad carriers who perform maintenance-of-way activities. Based on information available, FRA estimates that less than 14 percent of the total railroad costs associated with implementing the final rule will be borne by small entities. This percentage is based directly upon the percentage of affected employees estimated to be working for small entities. Small entities were exempt from certain requirements of the prior rule, continue to be exempt from certain requirements of this final rule, and otherwise bear proportional burden for the requirements based upon the number of regulated employees each entity employs. Small entities will not incur greater costs per employee than the larger entities.

FRA generally uses conservative assumptions in its costing of rules; based on those assumptions, FRA estimates that the cost for the final rule will be approximately $24 million for the next 20 years for the railroad industry. There are 695 railroads that are considered small for purposes of this analysis, and together they comprise approximately 93 percent of the railroads impacted directly by this final regulation. The 14 percent of the burden will be spread amongst the 695 entities, based proportionally upon the number of employees each has. Thus, although a substantial number of small entities in this sector will likely be impacted, the economic impact on them will likely be insignificant. This RFA is not intended to be a stand-alone document. To get a better understanding of the total costs for the railroad industry (which form the basis for the estimates in this RFA), or more cost detail on any specific requirement, please see the RIA that FRA has placed in the docket for this rulemaking.

1. Description of Regulated Entities

The "universe" of the entities considered in an RFA generally includes only those small entities that can reasonably expect to be directly regulated by this final action. The types of small entities potentially affected by this final rule are: (1) Small railroads;

(2) small contractors that engage in MOW operations; and (3) small contractors that provide HOS services (such as dispatching, signal, and train and engine services).

"Small entity" is defined in 5 U.S.C. 601(3) as having the same meaning as "small business concern" under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of "small entities" not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is "for profit" may be and still be classified as a "small entity" is 1,500 employees for "Line Haul Operating Railroads" and 500 employees for "Switching and Terminal Establishments." Additionally, 5 U.S.C. 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. (See 68 FR 24891; May 9, 2003, codified at appendix C to 49 CFR part 209.) The $20 million limit is based on the STB's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

An estimated 1,095 entities will be affected by the rule. FRA estimates that there are approximately 400 MOW contractor companies and 695 small railroads on the general system. FRA estimates that 86 percent of employees that will be regulated under this rule work for these 74 railroads and contractors. Most railroads must comply with all provisions of part 219. However, as previously indicated, FRA has a "small railroad" definition associated with part 219 that limits compliance requirements for railroads with 15 HOS employees or less and no joint operations to reduce burden on the smallest of railroads.

There are approximately 695 small railroads (as defined by revenue size). Class II and Class III railroads do not report to the STB, and although the number of Class II railroads is known, the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially, all small railroads could be impacted by this final regulation. Part 219 has a small railroad exception for all railroads with 15 or fewer covered employees, except when these railroads have joint operations with another railroad, therefore increasing risk. Thus a railroad with such characteristics shall be called a "partially excepted small railroad" in this analysis, and is a subsection of the "small entities" as defined by the STB and FRA, addressed above. Currently, there are 288 partially excepted small railroads and, as FRA is not amending to the substantive criteria of classification, there should be no change in the number of partially excepted small railroads associated with the final rule.

All commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.

As mentioned, all railroads must comply with all or limited subparts of part 219. For partially excepted small railroads, per FRA's definition, the significant burden involves the costs of adding MOW employees to the existing testing programs, and adding reasonable suspicion and pre-employment drug testing (which they have not needed to comply with).

A significant portion of the MOW industry consists of contractors. FRA has determined that risk lies as heavily with contractors as with railroad employees, so contractors and subcontractors will be subject to the same provisions of part 219 as the railroads for which they do contract work. Whether contractors must comply with all or part of the provisions of part 219 will depend on the size of the largest railroad (assumed to have the largest risk) for which the contractor works.

FRA discussed with industry representatives how to ascertain the number of contractors that will be involved with this rulemaking. FRA is aware that some railroads hire contractors to conduct some or all of the MOW worker functions on their railroads. Generally, the costs for the burdens associated with this rulemaking will get passed on from the contractor to the pertinent railroad. FRA has determined that there are approximately 400 MOW-related contractor companies who will be covered by the final rule. Of those, 370 are considered to be a "small entity." FRA has sought estimates of the number of contractors that may be fully compliant and how many may be partially excepted, depending on the size of the largest railroad for which they work.

FRA expects that some HOS small contractors will be impacted based upon the compliance requirements for part 219 small railroads to now include reasonable suspicion testing and pre-employment drug testing. This burden is estimated to be minimal, as reasonable suspicion tests occur extremely infrequently on small railroads (average less than one time per year for all small railroads), and pre-employment drug tests, the least costly of all tests, will only be required for new employees.

No other small businesses (non-railroad related) are expected to be negatively impacted significantly by this rulemaking. Conversely, this final regulation will bring business to consortiums, collectors, testing labs, and other companies involved in the drug and alcohol program business.

Expanding the program to cover MOW employees will only have a small effect in terms of testing burden for railroads, based upon the cost of pre-employment drug testing for new employees and the testing of MOW employees. FRA estimates that 90 percent of small railroads already conduct pre-employment drug testing under their own company authority. Many of these contractors have employees with commercial drivers' licenses (CDLs), and therefore fall under the drug and alcohol program requirements of the Federal Motor Carrier Safety Administration (FMCSA). Therefore, an estimated 40 percent of MOW contracted employees already participate in a DOT drug and alcohol testing program. Furthermore, FRA estimates that as many as 50–75 percent of all MOW contractor companies have some form of a drug and alcohol testing program, and that around 25 percent of these companies currently complete random testing (the most burdensome type of testing).

Consortia are companies that provide testing, random selection, collection, policy development, and training services to help employers stay compliant. Consortia alleviate much of the administrative burden of a testing program and negotiate volume discounts on behalf of their clients. It is likely that all part 219 small railroads already have a compliant testing program for employees that have been covered under the regulation. It should also be noted that approximately 125 of the small railroads that will be impacted are subsidiaries of large short line holding companies with resources comparable to larger railroads. Additionally, many small railroads are members of ASLRRA, which was consulted throughout the development of this regulation. ASLRRA has helped create a consortium for its members in the past, and FRA will work to ensure that small entities, as well as large, have the ability to adhere to the regulation as easily as possible. The consortium market will be affected in a positive manner due to new business from this rulemaking; this is a secondary benefit not discussed in this RFA.

Significant Economic Impact Criteria

Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of that average annual revenue per small railroad is $47,000. FRA realizes that some railroads will have lower revenue than $4.7 million. However, FRA estimates that small railroads will not have any additional expenses over the next ten years to comply with the new requirements in this final regulation. Based on this, FRA concludes that the expected burden of this final rule will not have a significant impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

Substantial Number Criteria

This final rule will likely burden all small railroads that are not exempt from its scope or application (see 49 CFR 219.3). Thus, as noted above this final rule will impact a substantial number of small railroads.

2. Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. FRA invited all interested parties to submit data and information regarding the potential economic impact that will result from adoption of the proposals in the NPRM. FRA did receive comments concerning the initial regulatory flexibility analysis in the public comment process. The final rule addresses these concerns by continuing FRA's longstanding approach of counting only a railroad's covered employees for purposes of determining whether the railroad qualifies for the small railroad exception (the railroad also cannot participate in any joint operations) because FRA believes this is the best measure of the risks posed by the railroad's operations. FRA received no objections to this proposal and adopted in its final rule.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this final rule for review and approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.4—Petition for Recognition of a Foreign Railroad's Workplace Testing Program.	2 Railroads	2 petitions	40 hours	80
219.7—Waivers	722 railroads + 400 MOW contractors.	4 waivers	2 hours	8
219.9—Joint Operating Agreement between Railroads Assigning Responsibility for Compliance with this Part Amongst Themselves (**Revised Requirement**).	722 railroads + 400 MOW contractors.	525 agreements	30 minutes	263
—Request to railroad for documents by employee engaged in joint operation and subject to adverse action after being required to participate in breath/body fluid testing under subpart C, D, or E of part 219 (**Revised Requirement**).	722 railroads + 400 MOW contractors.	2 requests/documents	1 hour	2
—Document by railroad/contractor delineating responsibility for Compliance with this part (**Revised Requirement**).	722 railroads + 400 MOW contractors.	10 documents	2 hours	20
219.11—Employee consent to participate in body fluid testing under subpart C.	722 railroads + 400 MOW contractors.	30 consent forms	2 minutes	1
—Notification to employees for testing (**New Requirement**).	142,000 employees	9,508 notices	5 seconds	13
—RR Alcohol & Drug Program that provides training to supervisors and information on criteria for post-accident toxicological testing contained in part 219, subpart C, and appendix C (**Revised Requirement**).	722 railroads + 400 MOW contractors.	722 modified Programs	1 hour	722
—Alcohol and Drug Programs —New RRs	5 railroads	5 programs	3 hours	15
—Training of Supervisory Employees in signs/symptoms of alcohol/drug influence.	722 railroads + 400 MOW contractors.	2,462 trained supervisors.	3 hours	7,386
219.12—RR Documentation on need to place employee on duty for follow-up tests (**New Requirement**).	722 railroads + 400 MOW contractors.	5 documents	30 minutes	3
219.23—Educational materials concerning the effects of alcohol/drug misuse on individual employees.	722 railroads + 400 MOW contractors.	1,098 revised educational documents.	1 hour	1,098
—Copies of educational materials to employees.	142,000 employees	142,000 copies of documents.	2 minutes	4,733

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.104—Removal of employee from regulated service (**Rev. Requirement**) Verbal Notice + Follow-up Written Letter.	722 railroads + 400 MOW contractors.	500 notices + 500 letters.	30 seconds + 2 minutes	21
—Request for Hearing by Employee who Denies Test Result or other Information is Valid Evidence of part 219 Violation.	722 railroads + 400 MOW contractors.	50 requests + 50 hearings.	2 minutes + 4 hours	202
—Applicants Declining Pre-Employment Testing and Withdrawing Employment Application– Communications (**Revised Requirement**).	722 railroads + 400 MOW contractors.	60 notices/communications.	2 minutes	2
219.105—**Revised Requirements** RR Duty to prevent violation—Documents provided to FRA after agency request regarding RR's Alcohol and/or Drug Use Education/Prevention/Etc.	722 railroads + 400 MOW contractors.	2 documents	5 minutes	.17
—RR Supervisor Rule G observations and records of regulated employees.	722 railroads/400 MOW contractors.	280,000 Rule G observations + 280,000 records.	2 seconds + 2 seconds	310
219.201(c)—Report by RR concerning decision by person other than RR representative about whether an accident/incident qualifies for testing.	722 railroads + 400 MOW contractors.	2 reports	30 minutes	1
219.203/207—Major train accidents—Post Accident Toxicological Testing Forms				
—Completion of FRA F 6180.73	142,000 employees	240 forms	10 minutes	40
—Determination by RR representative to test non-crew member regulated employees based on specific information (New **Requirement**).	722 railroads + 400 MOW contractors.	80 decisions/determinations.	15 minutes	20
—Determination by RR representative to exclude surviving crewmember from testing (**New Requirement**).	722 railroads + 400 MOW contractors.	50 decisions/determinations.	5 minutes	4
—Verbal notification and subsequent written report of failure to collect urine/blood specimens within four hours (**New Requirement**).	722 railroads + 400MOW contractors.	80 notifications + 80 reports.	2 minutes + 30 minutes	43
—RR determination after accident to make crew available for toxicological testing (New Requirement).	722 railroads + 400 MOW contractors.	25 decisions/determinations.	10 minutes	4
—RR call for train relief crew (New Requirement).	722 railroads + 400 MOW contractors.	25 calls	5 minutes	2
—Recall of employees for testing and Narrative Report Completion (**New Requirement**).	722 railroads + 400 MOW contractors.	4 calls + 4 reports	2 minutes + 30 minutes	2
—RR Reference to part 219 requirements and FRA's post-accident toxicological kit in seeking to obtain facility cooperation (**New Requirement**).	722 railroads + 400 MOW contractors.	80 references	15 minutes	20
—RR Notification to National Response Center of injured employee unconscious or otherwise unable to give testing consent.	722 railroads + 400 MOW contractors.	2 phone calls	10 minutes	.33
219.205—Specimen Handling/Collection—Completion of Form FRA F 6180.74 by train crew members after accident.	722 railroads + 400 MOW contractors.	240 forms	15 minutes	60
—RR representative request to medical facility representative to complete remaining information on FRA F 6180.74.	722 railroads + 400 MOW contractors.	80 ph. requests	2 minutes	3
—RR representative completion of Form FRA F 6180.73.	722 railroads + 400 MOW contractors.	80 forms	10 minutes	13
—Request to FRA Alcohol and Drug Program Manager for order form for Standard Shipping Kits (**new requirement**).	722 railroads + 400 MOW contractors.	5 requests	2 minutes	.17
—Request to National Response Center (NRC) for Post-Mortem Shipping Kit (**New Requirement**).	722 railroads + 400 MOW contractors.	1 request	2 minutes	.03333
—RR Request to Medical Facility to Transfer Sealed Toxicology Kit.	722 railroads + 400 MOW contractors.	40 ph. requests	2 minutes	1
—Documentation of chain of custody of sealed toxicology kit from medical facility to lab delivery.	722 railroads + 400 MOW contractors.	40 documents	2 minutes	1
—RR/Medical Facility Record of Kit Error (**New Requirement**).	722 RRs + 400 contr.	20 written records	2 minutes	1

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.209(a)—Notification to NRC and FRA of Accident/Incident where Samples were Obtained.	722 railroads + 400 MOW contractors.	40 phone reports	2 minutes	1
219.209(c)—Record of Part 219 Test not Administered within 4 Hours Following Accident/Incident.	722 railroads + 400 MOW contractors.	40 records	30 minutes	20
219.211(b)—Results of post-accident toxicological testing to RR MRO and RR Employee.	722 railroads + 400 MOW contractors.	10 reports	15 minutes	3
(c)—MRO Report to FRA of positive test for alcohol/drugs of surviving employee.	722 railroads + 400 MOW contractors.	10 reports	15 minutes	3
219.303—Reasonable Suspicion Observations (Drug Test)				
—Communication between On-Site and Off-Site Supervisors regarding Reasonable Suspicion Observation.	722 railroads + 400 MOW contractors.	50 phone communications.	2 minutes	2
—RR Written Documentation of Observed Signs/Symptoms for Reasonable Suspicion Determination.	722 railroads + 400 MOW contractors.	30 documents	5 minutes	3
219.305—RR Written Record Stating Reasons Test was Not Promptly Administered (**New Requirement**).	722 railroads + 400 MOW contractors.	30 records	2 minutes	1
219.401—Notification to Employee regarding Reasonable Cause Testing (**New Requirement**).	722 railroads + 400 MOW contractors.	50 notifications	15 minutes	13
219.405—RR Documentation Describing Basis of Reasonable Cause Testing (**New Requirements**).	722 railroads + 400 MOW contractors.	50 documents	15 minutes	13
—RR Documentation of Rule/Part 225 Violation for Each Reasonable Cause Test (**New Requirement**).	722 railroads + 400 MOW contractors.	20 documents	15 minutes	5
219.407—Prompt specimen collection time limitation exceeded—Record (**Revised Requirement**).	722 railroads + 400 MOW contractors.	15 records	15 minutes	4
219.501—RR Documentation of Negative Pre-Employment Drug Tests (**New Requirement**).	722 railroads + 400 MOW contractors.	1,200 tests + 1,200 documents.	15 minutes + 5 minutes	400
219.605—Submission of random testing plan (**Revised Requirement**): Existing RRs.	5 railroads	5 plans	1 hour	5
—New Railroads submission of random testing plans (**Revised Requirement**).	722 railroads + 400 MOW contractors.	20 amendments	1 hour	20
—Amendments to Currently-Approved FRA Random Testing Plan (**Revised Requirement**).	722 railroads + 400 MOW contractors.	21 resubmitted plans	15 minutes	5
—Resubmitted random testing plans after notice of FRA disapproval (**New Requirement**).	722 railroads + 400 MOW contractors.	50 amendments	10 minutes	8
—Non-Substantive Amendment to an Approved Plan (**New Requirement**).	722 railroads + 400 MOW contractors.	20 random testing plans.	15 minutes	5
—New/Combined/Amended Random Testing Plans Incorporating New Categories of Regulated Employees (**New Requirement**).	722 railroads + 400 MOW contractors.	200 plans	1 hour	200
219.607—RR Requests to Contractor or Service Agent to Submit Part 219 Compliant Random Testing Plan on Its Behalf (**New Requirement**).	722 railroads + 400 MOW contractors.	50 requests	15 minutes	13
—Contractor Random Testing Plan (**New Requirement**).	722 MOW contractors	50 plans	1 hour	50
219.609—Inclusion of Regulated Service Contractor Employees/Volunteers in RR Random Testing Plan (**New Requirement**).	722 railroads + 400 MOW contractors.	15 plans	10 minutes	3
—Addenda to RR Random Testing Plan Describing Method Used to Test Contractor/Volunteer Employees in Non-Random Testing Plan (**New Requirement**).	722 railroads + 400 MOW contractors.	15 addenda	10 minutes	3
219.611—Random Alcohol and Drug Test Pools: Good Faith Determinations and Evaluations of Employee Likelihood of Performing Regulated Service (**New Requirement**).	722 railroads + 400 MOW contractors.	25,000 determinations + 25,000 evaluations.	30 seconds + 30 seconds.	417
—Random Testing Pool Updates (**New Requirement**).	722 railroads + 400 MOW contractors.	13,176 pool updates	5 minutes	1,098
—Documents on RR Multiple Random Testing Pools (**New Requirement**).	722 railroads + 400 MOW contractors.	96 documents	5 minutes	8

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.613—RR Identification of Total Number of Eligible Employees for Random Testing (**New Requirement**).	722 railroads + 400 MOW contractors.	2,196 IDs	2 minutes	73
—RR Records/Explanation of Discarded Selection Draws (**New Requirement**).	722 railroads + 400 MOW contractors.	10 records/e explanations.	2 minutes	.33
—Electronic or Hard Copy of RR Snapshot of Each Random Testing Pool (**New Requirement**).	722 railroads + 400 MOW contractors.	13,176 snapshots/ records.	2 minutes	1,098
219.615—Incomplete Random Testing Collections—Documentation (**New Requirement**).	722 railroads + 400 MOW contractors.	2,000 documents	.5 minute	17
219.617—Employee Exclusion from Random alcohol/drug testing after providing verifiable evidence from credible outside professional (**Revised Requirement**).	722 railroads + 400 MOW contractors.	5 documents	1 hour	5
219.619—Report by MRO of Verified Positive Test or by Breath Alcohol Technician of Breath Alcohol Specimen of 0.04 or Greater (**New Requirement**).	722 railroads + 400 MOW contractors.	88 reports	5 minutes	7
219.623—Random Testing Records (**New Requirement**).	722 railroads + 400 MOW contractors.	40,000 records	1 minute	667
219.901—RR Alcohol and Drug Misuse Prevention Records for MOW Employees Kept by FRA—Two Year Maintenance (**Revised Requirement**).	722 railroads + 400 MOW contractors.	16,960 records	5 minutes	1,413
219.1001—RR Change of Service Provider or Policy for Referral Program.	722 railroads + 400 MOW contractors.	40 programs	3 hours	120
—New Railroads Adoption of Referral Program.	5 railroads	5 programs	3 hours	15
—Co-worker Report that Employee is Unsafe to work with/in Violation of Part 219 or Railroad's Drug/Alcohol Rules.	722 railroads + 400 MOW contractors.	602 reports	5 minutes	50
219.1003—RR Designation of DAC and expectations when self-referral is allowed.	722 railroads + 400 MOW contractors.	40 designations/R RR expectations.	20 minutes	13
—RR Employee Self-Referral	722 railroads + 400 MOW contractors.	602 self-referrals	10 seconds	2
—Referral for treatment/evaluation of regulated employee by co-worker as unsafe to work with or in violation of part 219 or RR alcohol/drug rules.	722 railroads + 400 MOW contractors.	602 treatment referrals/ evaluations.	30 minutes	301
—After non-per referral, removal of employee from service and confirmation by RR representative that employee is unsafe to work with or in violation of part 219 or RR drug/alcohol rule (**New Requirement**).	722 railroads + 400 MOW contractors.	3 removal confirmations	4 hours	12
—Regulated employee waiver of investigation on RR rule charge and contact of DAC within reasonable time period (**New Requirement**).	722 railroads + 400 MOW contractors.	3 waivers + 3 DAC contacts.	3 hours + 20 minutes	10
—Employee evaluation by qualified DAC after self-referral, co-worker referral, or non-peer referral.	722 railroads + 400 MOW contractors.	602 evaluations	2 hours	1,204
—DAC recommendation of leave of absence for regulated employee.	722 railroads + 400 MOW contractors.	602 mentions/recommendation.	1 hour	602
—DAC Notification to RR that employee is fit to return to regulated service.	722 railroads + 400 MOW contractors.	602 notices	10 minutes	100
—DAC modification of initial evaluation of regulated employee.	722 railroads + 400 MOW contractors.	60 modified evaluations	10 minutes	10
219.1005—Referral Programs with Labor Organization Approvals that Include Optional Provisions (**New Requirement**).	722 railroads + 400 MOW contractors.	10 referral programs	20 hours	200
219.1007—Filing of Documents/Records with FRA of Labor Concurrences for Alternate Referral Programs (**New Requirement**).	722 railroads + 400 MOW contractors.	10 documents	1 hour	10
—Notice to FRA of Amendment or Revocation of FRA Approved Referral Program (**New Requirement**).	722 railroads + 400 MOW contractors.	1 notice/amended peer referral program.	1 hour	1
Appendix C—Completion of Form FRA F 6180.75 after rail accident/incident resulting in fatality.	722 railroads + 400 MOW contractors.	10 completed forms	20 minutes	3

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, FRA Office of Railroad Safety, Information Collection Clearance Officer, at 202–493–6292, or Ms. Kim Toone, FRA Office of Information Technology, Information Clearance Officer, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should send them directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action before the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This rule complies with a statutory mandate and will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this rule will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

However, FRA notes that this part could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed and codified at 49 U.S.C. 20106 (Sec. 20106). Sec. 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to Sec. 20106.

In sum, FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106 and 20119. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this rule is not required.

E. Environmental Impact

FRA has evaluated this final rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999). FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's NEPA Procedures, ''Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.'' *See* 64 FR 28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to expand the scope of FRA's drug and alcohol regulations to cover MOW workers as per Congress' mandate in the RSIA. Specifically, the rule adopts part 214's definition of ''Roadway Worker'' to define ''MOW employee'' under part 214, contains a revised version of the troubled employee identification requirements, and updates and restructures the rule to make it more user-friendly. FRA does not anticipate any environmental impacts from this or any other requirement of the final rule. FRA also finds that there are no extraordinary circumstances present in connection with this final rule.

F. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10,

2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

G. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

H. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

I. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. This rule will not result in the expenditure of more than $100,000,000 (as adjusted annually for inflation) by the public sector in any one year, and thus preparation of such a statement is not required.

J. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this rule in accordance with Executive Order 13211, and determined that it will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

K. Privacy Act Information

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov* or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Rule

For the reasons stated above, FRA amends part 219 as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 1. The authority citation for part 219 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Div. A, Pub. L. 110–432, 122 Stat. 4889 (49 U.S.C. 20140, note); and 49 CFR 1.89.

Subpart A—General

■ 2. Revise § 219.1(a) to read as follows:

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

* * * * *

■ 3. Revise § 219.3 to read as follows:

§ 219.3 Application.

(a) *General.* This part applies to all railroads and contractors, except as provided in paragraphs (b), (c), and (d) of this section, and except for:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 219.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation, as defined in § 219.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) *Annual report requirements.* (1) Subpart I of this part does not apply to any domestic or foreign railroad that has fewer than 400,000 total annual employee work hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States, but also while outside the United States.

(2) Subpart I of this part does not apply to any contractor that performs regulated service exclusively for railroads with fewer than 400,000 total annual employee work hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States, but also while outside the United States.

(3) When a contractor performs regulated service for at least one railroad with fewer than 400,000 total annual employee hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States, but also while outside the United States, subpart I of this part applies as follows:

(i) A railroad with more than 400,000 total annual employee work hours must comply with subpart I regarding any contractor employees it integrates into its own alcohol and drug testing program under this part; and

(ii) If a contractor establishes its own independent alcohol and drug testing program that meets the requirements of this part and is acceptable to the railroad, the contractor must comply with subpart I if it has 200 or more regulated employees.

(c) *Small railroad exception.* (1) Subparts E and G of this part do not apply to small railroads, and a small railroad may not perform the Federal alcohol and drug testing authorized by these subparts. For purposes of this part, a small railroad means a railroad that:

(i) Has a total of 15 or fewer employees who are covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, or who would be subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105 if their services were performed in the United States; and

(ii) Does not have joint operations, as defined in § 219.5, with another railroad that operates in the United States, except as necessary for purposes of interchange.

(2) An employee performing only MOW activities, as defined in § 219.5, does not count towards a railroad's total number of covered employees for the purpose of determining whether it qualifies for the small railroad exception.

(3) A contractor performing MOW activities exclusively for small railroads also qualifies for the small railroad exception (*i.e.,* is excepted from the requirements of subparts E and G of this part). A contractor is not excepted if it performs MOW activities for at least one or more railroads that does not qualify for the small railroad exception under this section.

(4) If a contractor is subject to all of part 219 of this chapter because it performs regulated service for multiple railroads, not all of which qualify for the small railroad exception, the responsibility for ensuring that the contractor complies with subparts E and G of this part is shared between the contractor and any railroad using the contractor that does not qualify for the small railroad exception.

(d) *Foreign railroad.* (1) This part does not apply to the operations of a foreign railroad that take place outside the United States. A foreign railroad is required to conduct post-accident toxicological testing or reasonable suspicion testing only for operations that occur within the United States.

(2) Subparts F, G, and K of this part do not apply to an employee of a foreign railroad whose primary reporting point is outside the United States if that employee is:

(i) Performing train or dispatching service on that portion of a rail line in the United States extending up to 10 route miles from the point that the line crosses into the United States from Canada or Mexico; or

(ii) Performing signal service in the United States.

■ 4. In § 219.4, revise paragraphs (a)(1), (b)(1), and (b)(2) to read as follows:

§ 219.4 Recognition of a foreign railroad's workplace testing program.

(a) * * *

(1) To be so considered, the petition must document that the foreign railroad's workplace testing program contains equivalents to subparts B, F, G, and K of this part:

* * * * *

(b) * * *

(1) Upon FRA's recognition of a foreign railroad's workplace alcohol and drug use program as compatible with the return-to-service requirements in subpart B of this part and the requirements of subparts F, G, and K of this part, the foreign railroad must comply with either the specified provisions of § 219.4 or with the standards of its recognized program, and any imposed conditions, with respect to its employees whose primary reporting point is outside the United States and who perform train or dispatching service in the United States. The foreign railroad must also, with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such train or dispatching service in the United States, comply with either subpart F of this part or the standards of its recognized program.

(2) The foreign railroad must comply with subparts A (general), B (prohibitions, other than the return-to-service provisions in paragraph (d) of this section), C (post-accident toxicological testing), D (reasonable suspicion testing), I (annual report requirements), and J (recordkeeping requirements) of this part. Drug or alcohol testing required by these subparts (except for post-accident toxicological testing required by subpart C) must be conducted in compliance with all applicable provisions of the DOT Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

* * * * *

■ 5. Section 219.5 is amended by:

■ a. Revising the introductory text;

■ b. Adding new definitions of "Administrator", "Associate Administrator", "category of regulated employee", and "contractor" in alphabetical order;

■ c. Revising the definitions of "covered employee" and "covered service";

■ d. Adding new definitions of "DOT, The Department, or DOT agency", "DOT-regulated employee", "DOT safety-sensitive duties or DOT safety-sensitive functions", "Drug and Alcohol Counselor or DAC," "employee", "evacuation", "flagman or flagger" and "fouling a track" in alphabetical order;

■ e. Revising the definition of "FRA representative";

■ f. Removing the definition of "general railroad system of transportation";

■ g. Adding new definitions of "highway-rail grade crossing" and "highway-rail grade crossing accident/incident" in alphabetical order;

■ h. Revising the definition of "impact accident";

■ i. Adding new definitions of "joint operations" and "maintenance-of-way employee or MOW employee" in alphabetical order;

■ j. Revising the definition of "medical facility";

■ k. Adding new definitions of "non-peer", "on-track or fouling equipment", "other impact accident", "person", and "plant railroad" in alphabetical order;

■ l. Revising the definition of "railroad property damage or damage to railroad property";

■ m. Adding new definitions of "raking collision", "regulated employee", "regulated service", "responsible railroad supervisor", "side collision", and "tourist, scenic, historic, or

excursion operations that are not part of the general railroad system of transportation" in alphabetical order;

■ n. Removing the definition of "train";

■ o. Revising the definitions of "train accident" and "train incident"; and

■ p. Adding a new definition of "watchman/lookout" in alphabetical order.

The revisions and additions read as follows:

§ 219.5 Definitions.

As used in this part only—

* * * * *

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Railroad Safety, Federal Railroad Administration, or the Associate Administrator's delegate.

Category of regulated employee means a broad class of either covered service or maintenance-of-way employees (as defined in this section). For the purpose of determining random testing rates under § 219.625, if an individual performs both covered service and maintenance-of-way activities, he or she belongs in the category of regulated employee that corresponds with the type of regulated service comprising more than 50 percent of his or her regulated service.

* * * * *

Contractor means a contractor or subcontractor performing functions for a railroad.

* * * * *

Covered employee means an employee (as defined in this section to include an employee, volunteer, or probationary employee performing activities for a railroad or a contractor to a railroad) who is performing covered service under the hours of service laws at 49 U.S.C. 21101, 21104, or 21105 or who is subject to performing such covered service, regardless of whether the person has performed or is currently performing covered service. (An employee is not a "covered employee" under this definition exclusively because he or she is an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform covered service in the United States.

Covered service means service in the United States as a train employee, a dispatching service employee, or a signal employee, as those terms are defined at 49 U.S.C. 21101, but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

* * * * *

DOT, The Department, or DOT agency means all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the United States Coast Guard (USCG) (for purposes of part 40 coverage only), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

DOT-regulated employee means any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing DOT safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing conducted under the provisions of 49 CFR part 40, the term employee has the same meaning as the term "donor" as found on the Custody and Control Form and related guidance materials produced by the Department of Health and Human Services.

DOT safety-sensitive duties or DOT-safety sensitive functions means functions or duties designated by a DOT agency, the performance of which makes an individual subject to the drug testing and/or alcohol testing requirements of that DOT agency. For purposes of this part, regulated service has been designated by FRA as a DOT safety-sensitive duty or function.

* * * * *

Drug and Alcohol Counselor or DAC means a person who meets the credentialing and qualification requirements described in § 242.7 of this chapter.

Employee means any individual (including a volunteer or a probationary employee) performing activities for a railroad or a contractor to a railroad.

Evacuation means the mandatory or voluntary relocation of at least one person who is not a railroad employee for the purpose of avoiding exposure to a hazardous material release. It does not include the closure of public transportation roadways for the purpose of containing a hazardous material release, unless the closure is accompanied by an evacuation order.

Flagman or Flagger means any person designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for maintenance-of-way employees, while engaged solely in performing that function.

* * * * *

Fouling a track means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.

* * * * *

FRA representative means the Associate Administrator for Railroad Safety of FRA and staff, the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel of FRA, the Chief Counsel's delegate, or FRA's Drug and Alcohol Program oversight contractor.

* * * * *

Highway-rail grade crossing means:

(1) A location where a public highway, road, or street, or a private roadway, including associated sidewalks, crosses one or more railroad tracks at grade; or

(2) A location where a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others that crosses one or more railroad tracks at grade. The term "sidewalk" means that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or, on easements of private property, that portion of a street that is paved or improved and intended for use by pedestrians.

Highway-rail grade crossing accident/incident means any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing. The term "highway user" includes pedestrians, as well as automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, and all other modes of surface transportation motorized and un-motorized.

Impact accident, (1) Impact accident means a train accident, as defined in this section, consisting either of—

(i) A head-on or rear-end collision between on-track equipment;

(ii) A side collision, derailment collision, raking collision, switching collision, or "other impact accident," as defined by this section;

(iii) Impact with a deliberately-placed obstruction, such as a bumping post (but not a derail); or

(iv) Impact between on-track equipment and any railroad equipment fouling the track, such as an impact between a train and the boom of an off-rail vehicle.

(2) The definition of "impact accident" does not include an impact with naturally-occurring obstructions such as fallen trees, rock or snow slides, livestock, etc.

* * * * *

Joint operations means rail operations conducted by more than one railroad on the same track (except for minimal joint operations necessary for the purpose of interchange), regardless of whether such operations are the result of contractual arrangements between the railroads, order of a governmental agency or a court of law, or any other legally binding directive. For purposes of this part only, minimal joint operations are considered necessary for the purpose of interchange when:

(1) The maximum authorized speed for operations on the shared track does not exceed 20 mph;

(2) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer;

(3) The maximum distance for operations on the shared track does not exceed 3 miles; and

(4) Any operations extending into another railroad's yard are for the sole purpose of setting out or picking up cars on a designated interchange track.

Maintenance-of-way employee or MOW employee means a roadway worker as defined in § 214.7 of this chapter.

Medical facility means a hospital, clinic, physician's office, or laboratory where post-accident toxicological testing specimens can be collected according to recognized professional standards, and where an individual's post-accident medical needs can be attended to.

* * * * *

Non-peer means a supervisor (other than a co-worker), labor organization representative, or family member of a regulated employee.

On-track or fouling equipment means any railroad equipment that is positioned on the rails or that is fouling the track, and includes, but is not limited to, the following: A train, locomotive, cut of cars, single car, motorcar, yard switching train, work train, inspection train, track motorcar, highway-rail vehicle, push car, crane, or other roadway maintenance machine, such as a ballast tamping machine, if the machine is positioned on or over the rails or is fouling the track.

Other impact accident means an accident or incident, not classified as a head-on, rear-end, side, derailment, raking, or switching collision, that involves contact between on-track or fouling equipment. This includes impacts in which single cars or cuts of cars are damaged during operations involving switching, train makeup, setting out, etc.

* * * * *

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad, such as a service agent performing functions under part 40 of this title; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

* * * * *

Railroad property damage or damage to railroad property means damage to railroad property (specifically, on-track equipment, signals, track, track structure, or roadbed) and must be calculated according to the provisions for calculating costs and reportable damage in the FRA Guide for Preparing Accident/Incident Reports (see § 225.21 of this chapter for instructions on how to obtain a copy). Generally, railroad property damage includes labor costs and all other costs to repair or replace in-kind damaged on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed. (Labor costs that must be accounted for include hourly wages, transportation costs, and hotel expenses.) It does not include the cost of clearing a wreck; however, additional damage to the above-listed items caused while clearing the wreck must be included in the damage estimate. It also includes the cost of rental and/or operation of machinery such as cranes and bulldozers, including the services of contractors, to replace or repair the track right-of-way and associated structures. Railroad property damage does not include damage to lading. Trailers/containers on flatcars are considered to be lading and damage to these is not to be included in on-track equipment damage. Damage to a flat car carrying a trailer/container, however, is included in railroad property damage. Railroads should refer directly to the FRA Guide for Preparing Accident/Incident Reports for additional guidance on what constitutes railroad property damage.

Raking collision means a collision between parts or lading of a consist on an adjacent track, or with a structure such as a bridge.

Regulated employee means a covered employee or maintenance-of-way employee who performs regulated service for a railroad subject to the requirements of this part.

Regulated service means covered service or maintenance-of-way activities, the performance of which makes an employee subject to the requirements of this part.

* * * * *

Responsible railroad supervisor means any responsible line supervisor (*e.g.,* a trainmaster or road foreman of engines) or superior official in authority over the regulated employees to be tested.

* * * * *

Side collision means a collision at a turnout where one consist strikes the side of another consist.

* * * * *

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

Train accident means a rail equipment accident described in § 225.19(c) of this chapter involving damage in excess of the current reporting threshold (see § 225.19(e) of this chapter), including an accident involving a switching movement. Rail

equipment accidents include, but are not limited to, collisions, derailments, and other events involving the operations of on-track or fouling equipment (whether standing or moving).

Train incident means an event involving the operation of railroad on-track or fouling equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

* * * * *

Watchman/lookout means an employee who has been annually trained and qualified to provide warning of approaching trains or on-track equipment. Watchmen/lookouts must be properly equipped to provide visual and auditory warning by such means as a whistle, air horn, white disk, red flag, lantern, or fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning to employees before the arrival of trains/on-track equipment.

■ 6. Revise § 219.9 to read as follows:

§ 219.9 Responsibility for compliance.

(a) *General.* Although the requirements of this part are stated in terms of the duty of a railroad, when any person, as defined by § 219.5, performs any function required by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

(b) *Joint operations.* (1) In the case of joint operations, primary responsibility for compliance with subparts C, D, and E of this part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad that is consistent with this part. However, nothing in this paragraph restricts railroads engaged in joint operations from appropriately assigning responsibility for compliance with this part amongst themselves through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with this part against the host railroad, the employing railroad, or both.

(2) When an employee of a railroad engaged in joint operations is required to participate in breath or body fluid testing under subpart C, D, or E of this part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad engaged in the joint operations must be made available to the employee and his or her employing railroad on a reasonable basis.

(c) *Contractor responsibility for compliance.* As provided by paragraph (a) of this section, any independent contractor or other entity that performs regulated service for a railroad, or any other services under this part or part 40 of this title, has the same responsibilities as a railroad under this part with respect to its employees who perform regulated service or other service required by this part or part 40 of this title for the railroad. The entity's responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad treating the entity's regulated employees as if they were the railroad's own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of a clear delineation of responsibility, FRA may hold the railroad and the other entity jointly and severally liable for compliance.

■ 7. Add § 219.10 to read as follows:

§ 219.10 Penalties.

Any person, as defined by § 219.5, who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $105,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, *e.g.*, § 219.105, which is construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues constitutes a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

■ 8. Amend § 219.11 by revising paragraphs (a), (b)(1) and (2), and (c) through (h) to read as follows:

§ 219.11 General conditions for chemical tests.

(a)(1) Any regulated employee who is subject to performing regulated service for a railroad is deemed to have consented to testing as required in subparts B, C, D, E, F, G, and K of this part.

(2) A regulated employee required to participate in alcohol and/or drug testing under this part must be on duty and subject to performing regulated service when the specimen collection is initiated and the alcohol testing/urine specimen collection is conducted (with the exception of pre-employment testing under subpart F of this part).

(b)(1) Each regulated employee must participate in such testing, as required under the conditions set forth in this part and implemented by a representative of the railroad or employing contractor.

(2) In any case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under this part, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimen(s). A medical emergency is an acute medical condition requiring immediate medical care. A railroad may require an employee to substantiate a medical emergency by providing verifiable documentation from a credible outside professional (*e.g.*, doctor, dentist, hospital, or law enforcement officer) substantiating the medical emergency within a reasonable period of time.

* * * * *

(c) A regulated employee who is required to be tested under subparts C, D, or E of this part and who is taken to a medical facility for observation or treatment after an accident or incident is deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid specimen taken by the medical facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such specimen;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the medical facility on such specimen;

(3) The identity, dosage, and time of administration of any drugs administered by the medical facility before the time specimens were taken by the medical facility or before the time specimens were taken in compliance with this part; and

(4) The results of any breath tests for alcohol conducted by or for the medical facility.

(d) Any person required to participate in body fluid testing under subpart C of this part (post-accident toxicological testing) shall, if requested by a representative of the railroad or the medical facility, evidence consent to the taking of specimens, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. A regulated employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the railroad, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

(e)(1) A regulated employee who is notified of selection for testing under this part must cease to perform his or her assigned duties and proceed to the testing site either immediately or as soon as possible without adversely affecting safety.

(2) A railroad must ensure that the absence of a regulated employee from his or her assigned duties to report for testing does not adversely affect safety.

(3) Nothing in this part may be construed to authorize the use of physical coercion or any other deprivation of liberty to compel breath or body fluid testing.

(f) Any employee performing duties for a railroad who is involved in a qualifying accident or incident described in subpart C of this part, and who dies within 12 hours of that accident or incident as the result thereof, is deemed to have consented to the removal of body fluid and/or tissue specimens necessary for toxicological analysis from the remains of such person, and this consent is implied by the performance of duties for the railroad (*i.e.*, a consent form is not required). This consent provision applies to all employees performing duties for a railroad, and not just regulated employees.

(g) Each supervisor responsible for regulated employees (except a working supervisor who is a co-worker as defined in § 219.5) must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol, the major drug groups on the controlled substances list, and other impairing drugs. The program must also provide training on the qualifying criteria for post-accident toxicological testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and appendix C of this part.

(h) Nothing in this subpart restricts any discretion available to the railroad to request or require that a regulated employee cooperate in additional breath or body fluid testing. However, no such testing may be performed on urine or blood specimens provided under this part. For purposes of this paragraph (h), all urine from a void constitutes a single specimen.

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■ 9. Add § 219.12 to read as follows:

§ 219.12 Hours-of-service laws implications.

(a) A railroad is not excused from performing alcohol or drug testing under subpart C (post-accident toxicological testing) and subpart D (reasonable suspicion testing) of this part because the performance of such testing would violate the hours-of-service laws at 49 U.S.C. ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely because it was required to conduct post-accident toxicological testing or reasonable suspicion testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.203(d) (for post-accident toxicological testing) or § 219.305 (for reasonable suspicion testing), although the railroad must still report any excess service to FRA.

(b) A railroad may perform alcohol or drug testing authorized under subpart E (reasonable cause testing) of this part even if the performance of such testing would violate the hours-of-service laws at 49 U.S.C. ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely by its decision to conduct authorized reasonable cause testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.407, although the railroad must still report any excess service to FRA.

(c) A railroad must schedule random alcohol and drug tests under subpart G of this part so that sufficient time is provided to complete the test within a covered employee's hours-of-service limitations under 49 U.S.C. ch. 211. However, if a direct observation collection is required during a random test per the requirements of part 40 of this title, then the random test must be completed regardless of the hours-of-service law limitations, although the railroad must still report any excess service to FRA. A railroad may not place a regulated employee on-duty for the sole purpose of conducting a random alcohol or drug test under subpart G of this part.

(d) A railroad must schedule follow-up tests under § 219.104 so that sufficient time is provided to complete a test within a covered employee's hours-of-service limitations under 49 U.S.C. ch. 211. If a railroad is having a difficult time scheduling the required number of follow-up tests because a covered employee's work schedule is unpredictable, there is no prohibition against the railroad placing an employee (who is subject to being called to perform regulated service) on duty for the purpose of conducting the follow-up tests; except that an employee may be placed on duty for a follow-up alcohol test only if he or she is required to completely abstain from alcohol by a return-to-duty agreement, as provided by § 40.303(b) of this title. A railroad must maintain documentation establishing the need to place the employee on duty for the purpose of conducting the follow-up test and provide this documentation for review upon request of an FRA representative.

■ 10. Revise § 219.23 to read as follows:

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad (either through a railroad employee or a designated agent, such as a contracted collector) must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations and is being conducted under Federal authority. The railroad must also provide the employee clear and unequivocal written notice of the type of test that is required (*e.g.*, reasonable suspicion, reasonable cause, random selection, follow-up, etc.). These notice requirements are satisfied if:

(1) For all FRA testing except mandatory post-accident toxicological testing under subpart C of this part, a railroad uses the mandated DOT alcohol or drug testing form, circles or checks off the box corresponding to the type of test, and shows this form to the employee before testing begins; or

(2) For mandatory post-accident toxicological testing under subpart C of this part, a railroad uses the approved FRA form and shows this form to the employee before testing begins.

(b) Use of the mandated DOT alcohol or drug testing forms for non-Federal

tests or mandatory post-accident toxicological testing under subpart C of this part is prohibited (except for post-accident breath alcohol testing permitted under § 219.203(c)). Use of the approved FRA post-accident toxicological testing form for any testing other than that mandated under subpart C is prohibited.

(c) Each railroad must develop and publish educational materials, specifically designed for regulated employees that clearly explain the requirements of this part, as well as the railroad's policies and procedures with respect to meeting those requirements. The railroad must ensure that a copy of these materials is distributed to each regulated employee hired for or transferred to a position that requires alcohol and drug testing under this part. (This requirement does not apply to an applicant for a regulated service position who either refuses to provide a specimen for pre-employment testing or who has a pre-employment test with a result indicating a violation of the alcohol or drug prohibitions of this part.) A railroad may satisfy this requirement by either—

(1)(i) Continually posting the materials in a location that is easily visible to all regulated employees going on duty at their designated reporting place and, if applicable, providing a copy of the materials to any employee labor organization representing a class or craft of regulated employees of the railroad; or

(ii) Providing a copy of the materials in some other manner that will ensure regulated employees can find and access these materials explaining the critical aspects of the program (*e.g.*, by posting the materials on a company Web site that is accessible to all regulated employees); or

(2) For a minimum of three years after June 12, 2017, also ensuring that a hard copy of these materials is provided to each maintenance-of-way employee.

(d) *Required content.* The materials to be made available to regulated employees under paragraph (c) of this section must, at a minimum, include clear and detailed discussion of the following:

(1) The position title, name, and means of contacting the person(s) the railroad designates to answer employee questions about the materials;

(2) The specific classes or crafts of employees who are subject to the provisions of this part, such as engineers, conductors, MOW employees, signal maintainers, or train dispatchers;

(3) Sufficient information about the regulated service functions those employees perform to make clear that the period of the work day the regulated employee is required to be in compliance with the alcohol prohibitions of this part is that period when the employee is on duty and is required to perform or is available to perform regulated service;

(4) Specific information concerning regulated employee conduct that is prohibited under subpart B of this part (*e.g.*, the minimum requirements of §§ 219.101, 219.102, and 219.103);

(5) The requirement that a railroad utilizing the reasonable cause testing authority provided by subpart E of this part must give prior notice to regulated employees of the circumstances under which they will be subject to reasonable cause testing;

(6) The circumstances under which a regulated employee will be tested under this part;

(7) The procedures used to test for the presence of alcohol and controlled substances, protect the regulated employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee;

(8) The requirement that a regulated employee submit to alcohol and drug tests administered in accordance with this part;

(9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences;

(10) The consequences for a regulated employee found to have violated subpart B of this part, including the requirement that the employee be removed immediately from regulated service, and the responsive action requirements of § 219.104;

(11) The consequences for a regulated employee who has a Federal alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04; and

(12) Information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a co-worker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol and drugs, and the names, addresses, and telephone numbers of DACs and counseling and treatment programs.

(e) Optional provisions. The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration that are based on the railroad's company authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on the railroad's independent company authority.

■ 11. Add § 219.25 to subpart A to read as follows:

§ 219.25 Previous employer drug and alcohol checks.

(a) As required by § 219.701(a) and (b), a railroad must conduct drug or alcohol testing under this part in compliance with part 40 of this title (except for post-accident toxicological testing under subpart C of this part). A railroad must therefore comply with § 40.25 of this title by checking the alcohol and drug testing record of any direct regulated employee (a regulated employee who is not employed by a contractor to the railroad) it intends to use for regulated service before the employee performs such service for the first time. A railroad is not required to check the alcohol and drug testing record of contractor employees performing regulated service on its behalf (the alcohol and drug testing record of those contractor employees must be checked by their direct employers).

(b) When determining whether a person may become or remain certified as a locomotive engineer or a conductor, a railroad must comply with the requirements in § 240.119(c) (for engineers) or § 242.115(e) (for conductors) of this chapter regarding the consideration of Federal alcohol and drug violations that occurred within a period of 60 consecutive months before the review of the person's records.

Subpart B—Prohibitions

■ 12. Revise § 219.101(a) to read as follows:

§ 219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No regulated employee may use or possess alcohol or any controlled substance when the employee is on duty and subject to performing regulated service for a railroad.

(2) No regulated employee may report for regulated service, or go or remain on duty in regulated service, while—

(i) Under the influence of or impaired by alcohol;

(ii) Having 0.04 or more alcohol concentration in the breath or blood; or

(iii) Under the influence of or impaired by any controlled substance.

(3) No regulated employee may use alcohol for whichever is the lesser of the following periods:

(i) Within four hours of reporting for regulated service; or

(ii) After receiving notice to report for regulated service.

(4)(i) No regulated employee tested under the provisions of this part whose Federal test result indicates an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform regulated service for a railroad, nor may a railroad permit the regulated employee to perform or continue to perform regulated service, until the start of the regulated employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(ii) Nothing in this section prohibits a railroad from taking further action under its own independent company authority when a regulated employee tested under the provisions of this part has a Federal test result indicating an alcohol concentration of 0.02 or greater, but less than 0.04. However, while a Federal test result of 0.02 or greater but less than 0.04 is a positive test and may be a violation of a railroad's operating rules, it is not a violation of this section and cannot be used to decertify an engineer under part 240 of this chapter or a conductor under part 242 of this chapter.

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test is negative and is not evidence of alcohol misuse. A railroad may not use a Federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so. An independent basis for subsequent company authority testing will exist only when, after having a negative Federal reasonable suspicion alcohol test result, the employee exhibits additional or continuing signs and symptoms of alcohol use. If a company authority test then indicates a violation of the railroad's operating rules, this result is independent of the Federal test result and must stand on its own merits.

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■ 13. Revise § 219.102 to read as follows:

§ 219.102 Prohibition on abuse of controlled substances.

No regulated employee may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103.

■ 14. Revise § 219.104 to read as follows:

§ 219.104 Responsive action.

(a) *Removal from regulated service.* (1) If a railroad determines that a regulated employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from regulated service and the procedures described in paragraphs (b) through (d) of this section apply.

(2) If a regulated employee refuses to provide a breath or body fluid specimen or specimens when required to by the railroad under a provision of this part, a railroad must immediately remove the regulated employee from regulated service, and the procedures described in paragraphs (b) through (d) of this section apply. This provision also applies to Federal reasonable cause testing under subpart E of this part (if the railroad has elected to conduct this testing under Federal authority).

(b) *Notice.* Before or upon removing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice to the employee as soon as possible. In addition to the reason for the employee's withdrawal from regulated service, the written notice must also inform the regulated employee that he may not perform any DOT safety-sensitive duties until he completes the return-to-duty process of part 40.

(c) *Hearing procedures.* (1) Except as provided in paragraph (e)(5) of this section, if a regulated employee denies that a test result or other information is valid evidence of a § 219.101 or § 219.102 violation, the regulated employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with §§ 219.101 and 219.102.

(2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the regulated employee may demand that the hearing be convened within 10 calendar days of the employee's suspension or, in the case of a regulated employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the regulated employee becomes available for the hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under sec. 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c).

(4) With respect to a removal or other adverse action taken as a consequence of a positive test result or refusal in a test authorized or required by this part, nothing in this part may be deemed to abridge any procedural rights or remedies consistent with this part that are available to a regulated employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law.

(5) Nothing in this part restricts the discretion of a railroad to treat a regulated employee's denial of prohibited alcohol or drug use as a waiver of any privilege the regulated employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) A railroad must comply with the requirements for Substance Abuse Professional evaluations, the return-to-duty process, and follow-up testing contained in part 40 of this title.

(1) *Post-accident toxicology testing exception.* If a regulated employee has a post-accident toxicology test result under subpart C of this part that is positive for a drug not listed in § 40.5's definition of "Drugs," a railroad may conduct the employee's return-to-duty and follow-up tests under part 40, or may conduct the employee's return-to-duty and follow-up tests under its own authority to comply with the requirements of paragraph (d) of this section, so long as its testing procedures are otherwise identical to those of part 40, and include the specific drug for which the violation occurred, on an expanded drug testing panel.

(e) *Applicability.* (1) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (*e.g.*, testing under a company medical policy, testing for cause wholly independent of the subpart E Federal authority of this part, or testing under a labor agreement).

(2) This section does not apply to Federal alcohol tests indicating an alcohol concentration of less than 0.04.

(3) This section does not apply to a locomotive engineer or conductor who has an off-duty conviction for, or a completed state action to cancel, revoke,

suspend, or deny a motor vehicle driver's license for operating while under the influence of or impaired by alcohol or a controlled substance. (However, this information remains relevant for the purpose of locomotive engineer or conductor certification, according to the requirements of parts 240 or 242 of this chapter.)

(4) This section does not apply to an applicant who declines to be subject to pre-employment testing and withdraws an application for employment before the test begins. The determination of when a drug or alcohol test begins is made according to the provisions found in subparts E and L of part 40 of this title.

(5) Paragraph (c) of this section does not apply to an applicant who tests positive or refuses a DOT pre-employment test.

(6) As provided by § 40.25(j) of this title, paragraph (d) of this section applies to any DOT-regulated employer seeking to hire for DOT safety-sensitive functions an applicant who tested positive or who refused a DOT pre-employment test.

■ 15. Revise § 219.105 to read as follows:

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit a regulated employee to go or remain on duty in regulated service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the actual knowledge imputed to the railroad is limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending regulated employee's chain of command. A railroad management or supervisory employee has actual knowledge of a violation when he or she:

(1) Personally observes a regulated employee use or possess alcohol or use drugs in violation of this subpart. It is not sufficient for actual knowledge if the supervisory or management employee merely observes the signs and symptoms of alcohol or drug use that require a reasonable suspicion test under § 219.301;

(2) Receives information regarding a violation of this subpart from a previous employer of a regulated employee, in response to a background information request required by § 40.25 of this title; or

(3) Receives a regulated employee's admission of prohibited alcohol possession or prohibited alcohol or drug use.

(b) A railroad must exercise due diligence to assure compliance with §§ 219.101 and 219.102 by each regulated employee.

(c) A railroad's alcohol and/or drug use education, prevention, identification, intervention, and rehabilitation programs and policies must be designed and implemented in such a way that they do not circumvent or otherwise undermine the requirements, standards, and policies of this part. Upon FRA's request, a railroad must make available for FRA review all documents, data, or other records related to such programs and policies.

(d) Each year, a railroad's supervisors must conduct and record a number of "Rule G" employee observations at a minimum equal to twice the railroad's total number of regulated employees. Each "Rule G" observation must be made sufficiently close to an individual regulated employee to determine whether the employee is displaying signs and symptoms indicative of a violation of the prohibitions of this part.

■ 16. Revise § 219.107 to read as follows:

§ 219.107 Consequences of refusal.

(a) A regulated employee who refuses to provide a breath or body fluid specimen or specimens when required to by the railroad under a provision of this part must be withdrawn from regulated service for a period of nine (9) months. Per the requirements of part 40 of this title, a regulated employee who provides an adulterated or substituted specimen is deemed to have refused to provide the required specimen and must be withdrawn from regulated service in accordance with this section.

(b) *Notice.* Before or upon withdrawing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action, and the procedures described in § 219.104(c) apply. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice as soon as possible.

(c) The withdrawal required by this section applies only to an employee's performance of regulated service for any railroad with notice of such withdrawal. During the period of withdrawal, a railroad with notice of such withdrawal must not authorize or permit the employee to perform any regulated service for the railroad.

(d) The requirement of withdrawal for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the nine month period described in this section, a railroad may permit an employee to return to regulated service only under the conditions specified in § 219.104(d), and the regulated employee must be subject to return-to-duty and follow-up tests, as provided by that section.

Subpart C—Post-Accident Toxicological Testing

■ 17. In § 219.201, revise paragraphs (a) and (b) to read as follows:

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, FRA post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (5) of this section:

(1) *Major train accident.* Any train accident (*i.e.,* a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:

(i) A fatality to any person;

(ii) A release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.,* from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of $1,500,000 or more.

(2) *Impact accident.* Any impact accident (*i.e.,* a rail equipment accident defined as an "impact accident" in § 219.5) that involves damage in excess of the current reporting threshold, resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of $150,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to an on-duty employee (as defined in § 219.5) who dies within 12 hours of the incident as a result of the operation of on-track equipment, regardless of whether that employee was performing regulated service.

(4) *Passenger train accident.* Any train accident (*i.e.,* a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train and a reportable injury to any person.

(5) *Human-factor highway-rail grade crossing accident/incident.* A highway-rail grade crossing accident/incident when it involves:

(i) A regulated employee who interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for the safety of highway traffic that depends on the normal functioning of such system, as prohibited by § 234.209 of this chapter;

(ii) A train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of the grade crossing system, as provided by § 234.105(c)(3) of this chapter;

(iii) A regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5 of this chapter) due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105(c)(1) and (2), § 234.106, or § 234.107(c)(1)(i) of this chapter;

(iv) A fatality to any regulated employee performing duties for the railroad, regardless of fault; or

(v) A regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.

(b) *Exceptions.* Except for a human-factor highway-rail grade crossing accident/incident described in paragraph (a)(5) of this section, no test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a highway/rail grade crossing. No test may be required for an accident/incident the cause and severity of which are wholly attributable to a natural cause (*e.g.,* flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

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■ 18. Revise § 219.203 to read as follows:

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* A regulated employee subject to post-accident toxicological testing under this subpart must cooperate in the provision of specimens as described in this part and appendix C to this part.

(1) *General.* Except as otherwise provided for by this section, following each qualifying event described in § 219.201, a regulated employee directly involved in a qualifying event under this subpart must provide blood and urine specimens for toxicological testing by FRA. This includes any regulated employee who may not have been present or on-duty at the time or location of the event, but whose actions may have played a role in its cause or severity, including, but not limited to, an operator, dispatcher, or signal maintainer.

(2) *Fatalities.* Testing of the remains of an on-duty employee (as defined in § 219.5) who is fatally injured in a qualifying event described in § 219.201 is required, regardless of fault, if the employee dies within 12 hours of the qualifying event as a result of such qualifying event.

(3) *Major train accidents.* For an accident or incident meeting the criteria of a major train accident in § 219.201(a)(1)—

(i) All assigned crew members of all trains or other on-track equipment involved in the qualifying event must be subjected to post-accident toxicological testing, regardless of fault.

(ii) Other surviving regulated employees who are not assigned crew members of an involved train or other on-track equipment (*e.g.,* a dispatcher or a signal maintainer) must be tested if a railroad representative can immediately determine, on the basis of specific information, that the employee may have had a role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any such information that is immediately available at the time the qualifying event determination is made under § 219.201.

(4) *Fatal train incidents.* For a fatal train incident under § 219.201(a)(3), the remains of any on-duty employee (as defined in § 219.5) performing duties for a railroad who is fatally injured in the event are always subject to post-accident toxicological testing, regardless of fault.

(5) *Human-factor highway-rail grade crossing accident/incidents.* (i) For a human-factor highway-rail grade crossing accident/incident under § 219.201(a)(5)(i), only a regulated employee who interfered with the normal functioning of a grade crossing signal system and whose actions may have contributed to the cause or severity of the event is subject to testing.

(ii) For a human-factor highway-rail grade crossing accident/incident under § 219.201(a)(5)(ii), only a regulated employee who was a train crew member responsible for flagging highway traffic to stop due to an activation failure of a grade crossing system (or who was on-site and directly responsible for ensuring that flagging was being performed), but who failed to do so, and whose actions may have contributed to the cause or severity of the event, is subject to testing.

(iii) For a human-factor highway-rail grade crossing accident/incident under § 219.201(a)(5)(iii), only a regulated employee who was responsible for performing the duties of an appropriately equipped flagger (as defined in § 234.5 of this chapter), but who failed to do so, and whose actions may have contributed to the cause or severity of the event is subject to testing.

(iv) For a human-factor highway-rail grade crossing accident/incident under § 219.201(a)(5)(iv), only the remains of any fatally-injured employee(s) (as defined in § 219.5) performing regulated service for the railroad are subject to testing.

(v) For a human-factor highway-rail grade crossing accident/incident under § 219.201(a)(5)(v), only a regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have contributed to the cause or severity of the event is subject to testing.

(6) *Exception.* For a qualifying impact accident, passenger train accident, fatal train incident, or human-factor highway-rail grade crossing accident/incident under § 219.201(a)(2) through (5), a surviving crewmember or other regulated employee must be excluded from testing if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any information that is immediately available at the time the qualifying event determination is made under § 219.201.

(i) This exception is not available for assigned crew members of all involved trains if the qualifying event also meets the criteria for a major train accident under § 219.201(a)(1) (*e.g.,* this exception is not available for an Impact Accident that also qualifies as a major train accident because it results in damage to railroad property of $1,500,000 or more).

(ii) This exception is not available for any on-duty employee who is fatally-injured in a qualifying event.

(b) *Railroad responsibility.* (1) A railroad must take all practicable steps to ensure that all surviving regulated employees of the railroad who are subject to FRA post-accident toxicological testing under this subpart provide blood and urine specimens for the toxicological testing required by FRA. This includes any regulated employee who may not have been

present or on-duty at the time or location of the event, but whose actions may have played a role in its cause or severity, including, but not limited to, an operator, dispatcher, or signal maintainer.

(2) A railroad must take all practicable steps to ensure that tissue and fluid specimens taken from fatally injured employees are subject to FRA post-accident toxicological testing under this subpart.

(3) FRA post-accident toxicological testing under this subpart takes priority over toxicological testing conducted by state or local law enforcement officials.

(c) *Alcohol testing.* Except as provided for in paragraph (e)(4) of this section, if the conditions for mandatory post-accident toxicological testing exist, a railroad may also require an employee to provide breath for testing in accordance with the procedures set forth in part 40 of this title and in this part, if such testing does not interfere with timely collection of required urine and blood specimens.

(d) *Timely specimen collection.* (1) A railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident, preferably within four hours. Specimens that are not collected within four hours after a qualifying accident or incident must be collected as soon thereafter as practicable. If a specimen is not collected within four hours of a qualifying event, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202–493–6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also submit a concise, written narrative report of the reasons for such a delay to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC 20590. The report must be submitted within 30 days after the expiration of the month during which the accident or incident occurred. This report may also be submitted via email to an email address provided by the FRA Drug and Alcohol Program Manager.

(2) The requirements of paragraph (d) of this section must not be construed to inhibit an employee who is required to be post-accident toxicological tested from performing, in the immediate aftermath of an accident or incident, any duties that may be necessary for the preservation of life or property. Where practical, however, a railroad must utilize other employees to perform such duties.

(3) If a passenger train is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew should be made immediately available for post-accident toxicological testing. A relief crew must be called to relieve the train crew as soon as possible.

(4) A regulated employee who may be subject to post-accident toxicological testing under this subpart must be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete specimen collection.

(e) *Recall of employees for testing.* (1) Except as otherwise provided for in paragraph (e)(2) of this section, a regulated employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Furthermore, nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (*e.g.,* an employee who is absent without leave). However, subsequent testing does not excuse a refusal by the employee to provide the specimens in a timely manner.

(2) A railroad must immediately recall and place on duty a regulated employee for post-accident drug testing, if—

(i) The employee could not be retained in duty status because the employee went off duty under normal railroad procedures before being contacted by a railroad supervisor and instructed to remain on duty pending completion of the required determinations (*e.g.,* in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time he or she went off duty); and

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a role in the cause or severity of the accident/incident.

(3) If the criteria in paragraph (e)(2) of this section are met, a regulated employee must be recalled for post-accident drug testing regardless of whether the qualifying event happened or did not happen during the employee's tour of duty. However, an employee may not be recalled for testing if more than 24 hours have passed since the qualifying event. An employee who has been recalled must be placed on duty for the purpose of accomplishing the required post-accident drug testing.

(4) Urine and blood specimens must be collected from an employee who is recalled for testing in accordance with this section. If the employee left railroad property before being recalled, however, the specimens must be tested for drugs only. A railroad is prohibited from requiring a recalled employee to provide breath specimens for alcohol testing, unless the regulated employee has remained on railroad property since the time of the qualifying event and the railroad has a company policy completely prohibiting the use of alcohol on railroad property.

(5) A railroad must document its attempts to contact an employee subject to the recall provisions of this section. If a railroad is unable, as a result of the non-cooperation of an employee or for any other reason, to obtain specimen(s) from an employee subject to mandatory recall within the 24-hour period after a qualifying event and to submit specimen(s) to FRA as required by this subpart, the railroad must contact FRA and prepare a concise narrative report according to the requirements of paragraph (d)(1) of this section. The report must also document the railroad's good faith attempts to contact and recall the employee.

(f) *Place of specimen collection.* (1) With the exception of Federal breath testing for alcohol (when conducted as authorized under this subpart), an employee must be transported to an independent medical facility for specimen collection. In all cases, blood may be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional (*e.g.,* a phlebotomist). A collector contracted by a railroad or medical facility may collect and/or assist in the collection of specimens at the medical facility if the medical facility does not object and the collector is qualified to do so.

(2) If an employee has been injured, a railroad must ask the treating medical facility to obtain the specimens. Urine may be collected from an injured employee (conscious or unconscious) who has already been catheterized for medical purposes, but an employee may not be catheterized solely for the purpose of providing a specimen under this subpart. Under § 219.11(a), an employee is deemed to have consented to FRA post-accident toxicological testing by the act of being subject to performing regulated service for a railroad.

(g) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a specimen under this subpart, a railroad must, as necessary, make specific reference to the requirements of this subpart and the instructions in FRA's post-accident toxicological shipping kit.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood and/or urine specimens after having been informed of the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8802, stating the employee's name, the name and location of the medical facility, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required specimens.

(h) *Discretion of physician.* Nothing in this subpart may be construed to limit the discretion of a medical professional to determine whether drawing a blood specimen is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

■ 19. Revise § 219.205 to read as follows:

§ 219.205 Specimen collection and handling.

(a) *General.* Urine and blood specimens must be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, the instructions provided inside the FRA post-accident toxicological shipping kit, and the technical specifications set forth in appendix C to this part.

(b) *Information requirements.* Basic information concerning the accident/incident and any treatment administered after the accident/incident is necessary to process specimens, analyze the significance of laboratory findings, and notify railroads and employees of test results. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the specimens. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must ask an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. A Form 6180.73 must be forwarded in the shipping kit with each group of specimens. A Form 6180.74 must be forwarded in the shipping kit for each employee who provides specimens. A Form 6180.73 and either a Form 6180.74 or a Form 6180.75 (for fatalities) are included in the shipping kit. (See paragraph (c) of this section.)

(c) *Shipping kits.* (1) FRA and the laboratory designated in appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of post-accident toxicological specimens under this subpart. Specimens must be placed in the shipping kit and prepared for shipment according to the instructions provided in the kit and appendix C to this part.

(2) Standard shipping kits may be ordered directly from the laboratory designated in appendix B to this part by first requesting an order form from FRA's Drug and Alcohol Program Manager at 202–493–6313. In addition to the standard kit for surviving employees, FRA also has distributed a post-mortem shipping kit to Class I, II, and commuter railroads. The post-mortem kit may not be ordered by other railroads. If a smaller railroad has a qualifying event involving a fatality to an on-duty employee, the railroad should advise the NRC at 1–800–424–8802 of the need for a post-mortem kit, and FRA will send one overnight to the medical examiner's office or assist the railroad in obtaining one from a nearby railroad.

(d) *Shipment.* Specimens must be shipped as soon as possible by pre-paid air express (or other means adequate to ensure delivery within 24 hours from time of shipment) to the laboratory designated in appendix B to this part. However, if delivery cannot be ensured within 24 hours due to a suspension in air express delivery services, the specimens must be held in a secure refrigerator until delivery can be accomplished. In no circumstances may specimens be held for more than 72 hours. Where express courier pickup is available, the railroad must ask the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the specimens are collected or if for any other reason a prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the specimens to the most expeditious point of shipment via air express. The railroad must maintain and document a secure chain of custody of the kit(s) from its release by the medical facility to its delivery for transportation, as described in appendix C to this part.

(e) *Specimen security.* After a specimen kit or transportation box has been sealed, no entity other than the laboratory designated in appendix B to this part may open it. If the railroad or medical facility discovers an error with either the specimens or the chain of custody form after the kit or transportation box has been sealed, the railroad or medical facility must make a contemporaneous written record of that error and send it to the laboratory, preferably with the transportation box.

§ 219.207—[Amended]

■ 20. Section 219.207 is amended by—

■ a. In paragraph (a), removing the word "and/or" and adding, in its place, the word "and"; removing the words "timely collected" and adding, in their place, "collected in a timely fashion"; removing the word "shipping" and adding, in its place, "post-mortem shipping"; and removing the words "if a person" and adding, in their place, "if the custodian is someone";

■ b. In the introductory text of paragraph (b), removing "(800) 424–8801 or";

■ c. In paragraph (c), removing the word "and/or" and adding, in its place, the word "and"; and

■ d. In paragraph (d), removing the word "specifies" and adding, in its place, the words "and the instructions included inside the shipping kits specify".

■ 21. In § 219.209, revise paragraphs (a)(2)(iv), (a)(2)(v), and (b), and remove paragraph (c), to read as follows:

§ 219.209 Reports of tests and refusals.

(a) * * *

(2) * * *

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing (*e.g.,* impact accident with a reportable injury); and

(v) Number of employees tested.

(b) If a railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a specimen and provide it to FRA as required by this subpart, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202–493–6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also provide a concise narrative written report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under part 225 of this chapter and must also

be mailed to the FRA Drug and Alcohol Program Manager at 1200 New Jersey Avenue SE., Washington, DC 20590.

■ 22. Section 219.211 is amended by—

■ a. Adding a sentence at the end of paragraph (b);

■ b. Revising the second sentence of paragraph (c) and the second sentence of paragraph (e); and

■ c. Revising paragraph (g)(3).

The revisions and additions read as follows:

§ 219.211 Analysis and follow-up.

* * * * *

(b) * * * An employer is prohibited from temporarily removing an employee from the performance of regulated service based only on a report from the laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

(c) * * * The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590. * * *

(e) * * * An employee wishing to respond may do so by email or letter addressed to the Drug and Alcohol Program Manager, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 within 45 days of receipt of the test results. * * *

* * * * *

(g) * * *

(3) This provision does not authorize holding any employee out of service pending receipt of PAT testing results. It also does not restrict a railroad from taking such action based on the employee's underlying conduct, so long as it is consistent with the railroad's disciplinary policy and is taken under the railroad's own authority.

* * * * *

§ 219.213 [Amended]

■ 23. In § 219.213, paragraphs (a) and (b), revise all references to "covered service" to read "regulated service," and in paragraph (b), add "written" in front of the word "notice".

■ 24. Revise subpart D to read as follows:

Subpart D—Reasonable Suspicion Testing

Sec.
219.301 Mandatory reasonable suspicion testing.
219.303 Reasonable suspicion observations.
219.305 Prompt specimen collection; time limitations.

Subpart D—Reasonable Suspicion Testing

§ 219.301 Mandatory reasonable suspicion testing.

(a) Each railroad must require a regulated employee to submit to a breath alcohol test when the railroad has reasonable suspicion to believe that the regulated employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A Federal reasonable suspicion alcohol test is not required to confirm the on-duty possession of alcohol.

(b) Each railroad must require a regulated employee to submit to a drug test when the railroad has reasonable suspicion to believe that the regulated employee has violated the prohibitions of subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(c) Reasonable suspicion observations made under this section must comply with the requirements of § 219.303.

(d) As provided by § 219.11(b)(2), in any case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under this subpart, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimens. However, when the employee's condition is stabilized, reasonable suspicion testing must be completed if within the eight-hour limit provided for in § 219.305.

§ 219.303 Reasonable suspicion observations.

(a) With respect to an alcohol test, the required observations must be made by a responsible railroad supervisor (defined by § 219.5) trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct the reasonable suspicion testing on that regulated employee.

(b) With respect to a drug test, the required observations must be made by two responsible railroad supervisors (defined by § 219.5), at least one of whom must be both on site and trained in accordance with § 219.11(g). If one of the supervisors is off site, the on-site supervisor must communicate with the off-site supervisor, as necessary, to provide him or her the information needed to make the required observation. This communication may be performed via telephone, but not via radio or any other form of electronic communication.

(c) This subpart does not authorize holding any employee out of service pending receipt of toxicological analysis for reasonable suspicion testing, nor does it restrict a railroad from taking such action based on the employee's underlying conduct, provided it is consistent with the railroad's policy and taken under the railroad's own authority.

(d) The railroad must maintain written documentation that specifically describes the observed signs and symptoms upon which the determination that reasonable suspicion exists is based. This documentation must be completed promptly by the trained supervisor.

§ 219.305 Prompt specimen collection; time limitations.

(a) Consistent with the need to protect life and property, testing under this subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test required by this subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this subpart is not administered within eight hours of a determination made under this subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the specimens within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager.

(c) A regulated employee may not be tested under this subpart if that individual has been released from duty under the normal procedures of a railroad. An individual who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (*i.e.*, who is absent without leave).

■ 25. Revise subpart E to read as follows:

Subpart E—Reasonable Cause Testing

Sec.
219.401 Authorization for reasonable cause testing.
219.403 Requirements for reasonable cause testing.
219.405 Documentation requirements.
219.407 Prompt specimen collection; time limitations.
219.409 Limitations on authority.

Subpart E—Reasonable Cause Testing

§ 219.401 Authorization for reasonable cause testing.

(a) Each railroad may, at its own discretion, elect to conduct Federal reasonable cause testing authorized by this subpart. If a railroad chooses to do so, the railroad must use only Federal authority for all reasonable cause testing that meets the criteria of § 219.403. In addition, the railroad must notify its regulated employees of its decision to use Federal reasonable cause testing authority in the employee educational policy required by § 219.23(e)(5). The railroad must also provide written notification of its decision to FRA's Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC 20590.

(b) If a railroad elects to conduct reasonable cause testing under the authority of this subpart, the railroad may, under the conditions specified in this subpart, require any regulated employee, as a condition of employment in regulated service, to cooperate with breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

§ 219.403 Requirements for reasonable cause testing.

Each railroad's decision process regarding whether reasonable cause testing is authorized must be completed before the reasonable cause testing is performed and documented according to the requirements of § 219.405. The following circumstances constitute reasonable cause for the administration of alcohol and/or drug tests under the authority of this subpart.

(a) *Train accident or train incident.* A regulated employee has been involved in a train accident or train incident (as defined in § 219.5) reportable under part 225 of this chapter, and a responsible railroad supervisor (as defined in § 219.5) has a reasonable belief, based on specific, articulable facts, that the individual employee's acts or omissions contributed to the occurrence or severity of the accident; or

(b) *Rule violation.* A regulated employee has been directly involved in one or more of the following railroad or FRA rule violations or other errors:

(1) Noncompliance with a train order, track warrant, track bulletin, track permit, stop and flag order, timetable, signal indication, special instruction or other directive with respect to movement of railroad on-track equipment that involves—

(i) Occupancy of a block or other segment of track to which entry was not authorized;

(ii) Failure to clear a track to permit opposing or following movements to pass;

(iii) Moving across a railroad crossing at grade without authorization; or

(iv) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(2) Failure to protect on-track equipment, including leaving on-track equipment fouling an adjacent track;

(3) Operation of a train or other speedometer-equipped on-track equipment at a speed that exceeds the maximum authorized speed by at least 10 miles per hour or by 50% of such maximum authorized speed, whichever is less;

(4) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under on-track equipment, or unauthorized running through a switch;

(5) Failure to restore and secure a main track switch as required;

(6) Failure to apply brakes or stop short of a derail as required;

(7) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(8) Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed;

(9) Failure to provide point protection by visually determining that the track is clear and giving the signals or instructions necessary to control the movement of on-track equipment when engaged in a shoving or pushing movement;

(10) In the case of a person performing a dispatching function or block operator function, issuance of a mandatory directive or establishment of a route that fails to provide proper protection for on-track equipment;

(11) Interference with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but is not limited to, failure to provide alternative methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system;

(12) Failure to perform stop-and-flag duties necessary as a result of a malfunction of a grade crossing signal system;

(13) Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a regulated employee;

(14) Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits;

(15) Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment;

(16) Failure to ascertain that provision was made for on-track safety before fouling a track;

(17) Improper use of individual train detection in a manual interlocking or control point; or

(18) Failure to apply three point protection (fully apply the locomotive and train brakes, center the reverser, and place the generator field switch in the off position) that results in a reportable injury to a regulated employee.

§ 219.405 Documentation requirements.

(a) Each railroad must maintain written documentation that specifically describes the basis for each reasonable cause test it performs under Federal authority. This documentation must be completed promptly by the responsible railroad supervisor; although it does not need to be completed before the reasonable cause testing is conducted.

(b) For a rule violation, the documentation must include the type of

rule violation and the involvement of each tested regulated employee. For a train accident or train incident reportable under part 225 of this chapter, a railroad must describe either the amount of railroad property damage or the reportable casualty and the basis for the supervisor's belief that the employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident.

§ 219.407 Prompt specimen collection; time limitations.

(a) Consistent with the need to protect life and property, testing under this subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test conducted pursuant to the authority of this subpart is not administered within two hours following the observations upon which the testing decision is based, the railroad must prepare and maintain on file a record stating the reasons the test was not conducted within that time period. If an alcohol or drug test authorized by this subpart is not administered within eight hours of the event under this subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour time period begins at the time a responsible railroad supervisor receives notice of the train accident, train incident, or rule violation. The eight-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of specimen(s) within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager.

(c) A regulated employee may not be tested under this subpart if that individual has been released from duty under the normal procedures of the railroad. An individual who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of a regulated employee who has failed to remain available for testing as required (*i.e.*, who is absent without leave).

§ 219.409 Limitations on authority.

(a) The alcohol and/or drug testing authority conferred by this subpart does not apply with respect to any event that meets the criteria for post-accident toxicological testing required under subpart C of this part.

(b) This subpart does not authorize holding an employee out of service pending receipt of toxicological analysis for reasonable cause testing because meeting the testing criteria is only a basis to inquire whether alcohol or drugs may have played a role in the accident or rule violation. However, this subpart does not restrict a railroad from holding an employee out of service based on the employee's underlying conduct, so long as it is consistent with the railroad's policy and the action is taken under the railroad's own authority.

(c) When determining whether reasonable cause testing is justified, a railroad must consider the involvement of each crewmember in the qualifying event, not the involvement of the crew as a whole.

Subpart F—Pre-Employment Tests

■ 26. Revise § 219.501 to read as follows:

§ 219.501 Pre-employment drug testing.

(a) Before an individual performs regulated service the first time for a railroad, the railroad must ensure that the individual undergoes testing for drugs in accordance with the regulations of a DOT agency. No railroad may allow a direct employee (a railroad employee who is not employed by a contractor to the railroad) to perform regulated service, unless that railroad has conducted a DOT pre-employment test for drugs on that individual with a result that did not indicate the misuse of controlled substance. This requirement applies both to a final applicant for direct employment and to a direct employee seeking to transfer for the first time from non-regulated service to duties involving regulated service. A regulated employee must have a negative DOT pre-employment drug test for each railroad for which he or she performs regulated service as the result of a direct employment relationship.

(b) Each railroad must ensure that each employee of a contractor who performs regulated service on the railroad's behalf has a negative DOT pre-employment drug test on file with his or her employer. The railroad must also maintain documentation indicating that it had verified that the contractor employee had a negative DOT pre-employment drug test on file with his or her direct employer. A contractor employee who performs regulated service for more than one railroad does not need to have a DOT pre-employment drug test for each railroad for which he or she provides service.

(c) If a railroad has already conducted a DOT pre-employment test resulting in a negative for a regulated service applicant under the rules and regulations of another DOT agency (such as the Federal Motor Carrier Safety Administration), FRA will accept the result of that negative DOT pre-employment test for purposes of the requirements of this subpart.

(d) As used in subpart H of this part with respect to a test required under this subpart, the term regulated employee includes an applicant for pre-employment testing only. If an applicant declines to be tested and withdraws an application for employment before the pre-employment testing process commences, no record may be maintained of the declination.

(e) The pre-employment drug testing requirements of this section do not apply to covered employees of railroads qualifying for the small railroad exception (see § 219.3(c)) or maintenance-of-way employees who were performing duties for a railroad before June 12, 2017. However, a grandfathered employee must have a negative pre-employment drug test before performing regulated service for a new employing railroad after June 12, 2017.

■ 27. In § 219.502, revise paragraph (a) introductory text, (a)(1), (a)(2), (a)(5), and (b) to read as follows:

§ 219.502 Pre-employment alcohol testing.

(a) A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements:

(1) The railroad must conduct a pre-employment alcohol test before the first performance of regulated service by an employee, regardless of whether he or she is a new employee or a first-time transfer to a position involving the performance of regulated service.

(2) The railroad must treat all employees performing regulated service the same for the purpose of pre-employment alcohol testing (*i.e.*, a railroad must not test some regulated employees and not others.)

* * * * *

(5) If a regulated employee's Federal pre-employment test indicates an alcohol concentration of 0.04 or greater, a railroad may not allow him or her to begin performing regulated service until he or she has completed the Federal return-to-duty process under § 219.104(d).

(b) As used in subpart H of this part with respect to a test authorized under this subpart, the term regulated employee includes an applicant for pre-employment testing only. If an applicant declines to be tested before the testing process commences, no record may be maintained of the declination. The determination of when an alcohol test commences must be made according to the provisions of § 40.243(a) of this title.

■ 28. Revise § 219.503 to read as follows:

§ 219.503 Notification; records.

Each railroad must provide for medical review of drug test results according to the requirements of part 40 of this title, as provided in subpart H of this part. The railroad must also notify the applicant in writing of the results of any Federal drug and/or alcohol test that is a positive, adulteration, substitution, or refusal in the same manner as provided for employees in part 40 of this title and subpart H of this part. Records must be maintained confidentially and be retained in the same manner as required under subpart J of this part for employee test records, except that such records need not reflect the identity of an applicant who withdrew an application to perform regulated service before the commencement of the testing process.

■ 29. Revise § 219.505 to read as follows:

§ 219.505 Non-negative tests and refusals.

An applicant who has tested positive or refused to submit to pre-employment testing under this section may not perform regulated service for any railroad until he or she has completed the Federal return-to-duty process under § 219.104(d). An applicant may also not perform DOT safety-sensitive functions for any other employer regulated by a DOT agency until he or she has completed the Federal return-to-duty process under § 219.104(d). This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

■ 30. Revise subpart G to read as follows:

Subpart G—Random Alcohol and Drug Testing Programs

Sec.
219.601 Purpose and scope of random testing programs.
219.603 General requirements for random testing programs.
219.605 Submission and approval of random testing plans.
219.607 Requirements for random testing plans.
219.609 Inclusion of contractor employees and volunteers in random testing plans.
219.611 Random alcohol and drug testing pools.
219.613 Random testing selections.
219.615 Random testing collections.
219.617 Participation in random alcohol and drug testing.
219.619 Positive alcohol and drug test results and refusals; procedures.
219.621 Use of service agents.
219.623 Records.
219.625 FRA Administrator's determination of random alcohol and drug testing rates.

§ 219.601 Purpose and scope of random testing programs.

(a) *Purpose.* The purpose of random alcohol and drug testing is to promote safety by deterring regulated employees from misusing drugs and abusing alcohol.

(b) *Regulated employees.* Each railroad must ensure that a regulated employee is subject to being selected for random testing as required by this subpart whenever the employee performs regulated service on the railroad's behalf.

(c) *Contractor employees and volunteers.* A regulated employee who is a volunteer or an employee of a contractor to a railroad may be incorporated into the random testing program of more than one railroad if:

(1) The contractor employee or volunteer is not already part of a random testing program that meets the requirements of this subpart and has been accepted by the railroad for which he or she performs regulated service (as described in § 219.609); or

(2) The railroad for which the contractor employee or volunteer performs regulated service is unable to verify that the individual is part of a random testing program acceptable to the railroad that meets the requirements of this subpart.

(d) *Multiple DOT agencies.* (1) If a regulated employee performs functions subject to the random testing requirements of more than one DOT agency, a railroad must ensure that the employee is subject to selection for random drug and alcohol testing at or above the current minimum annual testing rate set by the DOT agency that regulates more than 50 percent of the employee's DOT-regulated functions.

(2) A railroad may not include a regulated employee in more than one DOT random testing pool for regulated service performed on its behalf, even if the regulated employee is subject to the random testing requirements of more than one DOT agency.

§ 219.603 General requirements for random testing programs.

(a) *General.* To the extent possible, each railroad must ensure that its FRA random testing program is designed and implemented so that each employee performing regulated service on its behalf should reasonably anticipate that he or she may be called for a random test without advance warning at any time while on duty and subject to performing regulated service.

(b) *Prohibited selection bias.* A random testing program may not have a selection bias or an appearance of selection bias, or appear to provide an opportunity for a regulated employee to avoid complying with this section.

(c) *Plans.* As required by §§ 219.603 through 219.609, each railroad must submit for FRA approval a random testing plan meeting the requirements of this subpart. The plan must address all regulated employees, as defined in § 219.5.

(d) *Pools.* Each railroad must construct and maintain random testing pools in accordance with § 219.611.

(e) *Selections.* Each railroad must conduct random testing selections in accordance with § 219.613.

(f) *Collections.* Each railroad must perform random testing collections in accordance with § 219.615.

(g) *Cooperation.* Each railroad and its regulated employees must cooperate with and participate in random testing in accordance with § 219.617.

(h) *Responsive action.* Each railroad must handle positive random tests and verified refusals to test in accordance with § 219.619.

(i) *Service agents.* Each railroad may use a service agent to perform its random testing responsibilities in accordance with § 219.621.

(j) *Records.* Each railroad must maintain records required by this subpart in accordance with § 219.623.

§ 219.605 Submission and approval of random testing plans.

(a) *Plan submission.* (1) Each railroad must submit for review and approval a random testing plan meeting the requirements of §§ 219.607 and 219.609 to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC 20590. A railroad commencing start-up operations must submit its plan no later than 30 days before its date of commencing operations. A railroad that must comply with this subpart because it no longer qualifies for the small railroad exception under § 219.3 (due to a change in operations or its number of covered employees) must submit its plan no later than 30 days after it becomes

subject to the requirements of this subpart. A railroad may not implement a Federal random testing plan or any substantive amendment to that plan before FRA approval.

(2) A railroad may submit separate random testing plans for each category of regulated employees (as defined in § 219.5), combine all categories into a single plan, or amend its current FRA-approved plan to add additional categories of regulated employees, as defined by this part.

(b) *Plan approval notification.* FRA will notify a railroad in writing whether its plan is approved. If the plan is not approved because it does not meet the requirements of this subpart, FRA will inform the railroad of its non-approval, with specific explanations of any required revisions. The railroad must resubmit its plan with the required revisions within 30 days of the date of FRA's written notice. Failure to resubmit the plan with the necessary revisions will be a failure to submit a plan under this part.

(c) *Plan implementation.* Each railroad must implement its random testing plan no later than 30 days from the date of FRA approval.

(d) *Plan amendments.* (1) Each railroad must submit to FRA a substantive amendment to an approved plan at least 30 days before its intended effective date. A railroad may not implement any substantive amendment before FRA approval.

(2) Each railroad must provide a non-substantive amendment to an approved plan (such as the replacement or addition of service providers) to the FRA Drug and Alcohol Program Manager in writing (by letter or email) before its effective date. However, FRA pre-approval is not required.

(e) *Previously approved plans.* A railroad is not required to resubmit a random testing plan that FRA had approved before June 12, 2017, unless the railroad must amend the plan to comply with the requirements of this subpart. A railroad must submit new plans, combined plans, or amended plans incorporating new categories of regulated employees (*i.e.,* maintenance-of-way employees) for FRA approval at least 30 days before June 12, 2017.

§ 219.607 Requirements for random testing plans.

(a) *General.* A random testing plan that a railroad submits under this subpart must address and comply with the requirements of this subpart. The railroad must also comply with these requirements in implementing the plan.

(b) *Model random testing plan.* A railroad (or a contractor or service agent that submits a part 219-compliant random testing plan to a railroad for submission as a part of the railroad's random testing plan) may complete, modify if necessary, and submit a plan based on the FRA model random testing plan that can be downloaded from FRA's Drug and Alcohol Program Web site.

(c) *Specific plan requirements.* Each random testing plan must contain the following items of information, each of which must be contained in a separate, clearly identified section:

(1) Total number of covered employees, including covered service contractor employees and volunteers;

(2) Total number of maintenance-of-way employees, including maintenance-of-way contractor employees and volunteers;

(3) Names of any contractors who perform regulated service for the railroad, with contact information;

(4) Method used to ensure that any regulated service contractor employees and volunteers are subject to the requirements of this subpart, as required by § 219.609;

(5) Name, address, and contact information for the railroad's Designated Employer Representative (DER) and any alternates (if applicable);

(6) Name, address, and contact information for any service providers, including the railroad's Medical Review Officers (MROs), Substance Abuse and Mental Health Services Administration (SAMHSA) certified drug testing laboratory(ies), Drug and Alcohol Counselors (DACs), Substance Abuse Professionals (SAPs), and C/TPA or collection site management companies. Individual collection sites do not have to be identified;

(7) Number of random testing pools and the proposed general pool entry assignments for each pool. If using a C/TPA, a railroad must identify whether its regulated employees are combined into one pool, contained in separate pools, or combined in a larger pool with other FRA or other DOT agency regulated employees, or both.

(8) Target random testing rates;

(9) Method used to make random selections, including a detailed description of the computer program or random number table selection process employed;

(10) Selection unit(s) for each random pool (*e.g.,* employee name or ID number, job assignment, train symbol) and whether the individual selection unit(s) will be selected for drugs, alcohol, or both;

(11) If a railroad makes alternate selections, under what limited circumstances these alternate selections will be tested (see § 219.613);

(12) Frequency of random selections (*e.g.,* monthly);

(13) Designated testing window. A designated testing window extends from the beginning to the end of the designated testing period established in the railroad's FRA-approved random plan (see § 219.603), after which time any individual selections for that designated testing window that have not been collected are no longer active (valid); and

(14) Description of how the railroad will notify a regulated employee that he or she has been selected for random testing.

§ 219.609 Inclusion of contractor employees and volunteers in random testing plans.

(a) Each railroad's random testing plan must demonstrate that all of its regulated service contractor employees and volunteers are subject to random testing that meets the requirements of this subpart. A railroad can demonstrate that its regulated service contractor employees and volunteers are in compliance with this subpart by either:

(1) Directly including regulated service contractor employees and volunteers in its own random testing plan and ensuring that they are tested according to that plan; or

(2) Indicating in its random testing plan that its regulated service contractor employees and volunteers are part of a random testing program which is compliant with the requirements of this subpart, *e.g.,* conducted by a contractor or C/TPA ("non-railroad random testing program"). If a railroad chooses this option, the railroad must append to its own random testing plan one or more addenda describing the method it will use to ensure that the non-railroad random testing program is testing its regulated service contractor employees and volunteers according to the requirements of this subpart. A railroad may comply with this requirement by appending the non-railroad random testing program or a detailed description of the program and how it complies with this subpart.

(b) Each railroad's random testing plan(s) and any addenda must contain sufficient detail to fully document that the railroad is meeting the requirements of this subpart for all personnel performing regulated service on its behalf.

(c) If a railroad chooses to use regulated service contractor employees and volunteers who are part of a non-railroad random testing program, the railroad remains responsible for ensuring that the non-railroad program is testing the regulated service contractor employees and volunteers according to the requirements of this subpart.

(d) FRA does not pre-approve contractor or service agent random testing plans, but may accept them as part of its approval process of a railroad's plan.

§ 219.611 Random alcohol and drug testing pools.

(a) *General.* Each railroad must ensure that its random testing pools include all regulated employees who perform regulated service on its behalf, except that a railroad's random testing pools do not have to include regulated employees who are part of a non-railroad random testing program that is compliant with the requirements of this subpart and that has been accepted by the railroad.

(b) *Pool entries.* Each railroad must clearly indicate who will be tested when a specific pool entry is selected.

(1) Pool entries may be employee names or identification numbers, train symbols, or specific job assignments, although all the entries in a single pool must be of generally consistent sizes and types.

(2) Pool entries must not allow a field manager or field supervisor to have discretion over which employee is to be tested when an entry is selected.

(3) Pool entries must be constructed and maintained so that all regulated employees have an equal chance of being selected for random testing for each selection draw.

(c) *Minimum number of pool entries.* A railroad (including a service agent used by a railroad to carry out its responsibilities under this subpart) may not maintain a random testing pool with less than four pool entries. Placeholder pool entries (entries that do not represent legitimate selections of regulated employees) are not permitted. A railroad or contractor with less than four regulated employees can comply with this requirement by having its regulated employees incorporated into a railroad or non-railroad random testing pool that contains more than four entries.

(d) *Pool construction.* (1) An individual who is not subject to the random testing requirements of FRA or another DOT agency may not be placed in the same pool as a regulated employee.

(2) A railroad may not include a regulated employee in more than one random testing pool established under the regulations of a DOT agency.

(3) A regulated employee may be placed in a random testing pool with employees subject to the random testing requirements of another DOT agency, only if all entries in the pool are subject to testing at the highest minimum random testing rate required by the regulations of a DOT agency for any single member in the pool.

(4) A regulated employee does not have to be placed in separate pools for random drug and random alcohol testing selection.

(5) A regulated employee must be incorporated into a random testing pool as soon as possible after his or her hire or first transfer into regulated service.

(e) *Frequency of regulated service.* (1) A railroad may not place a person in a random testing pool for any selection period in which he or she is not expected to perform regulated service.

(2) A railroad employee who performs regulated service on average less than once a quarter is a de minimis safety concern for random testing purposes, and does not have to be in a random testing program. A railroad that chooses to random test de minimis employees must place them in a separate random testing pool from employees who perform regulated service on a regular basis (*e.g.,* engineers, conductors, dispatchers, and signal maintainers).

(3) A railroad must make a good faith effort to determine the frequency of an employee's performance of regulated service and must evaluate the employee's likelihood of performing regulated service in each upcoming selection period.

(f) *Pool maintenance.* Pool entries must be updated at least monthly, regardless of how often selections are made, and a railroad must ensure that each of its random testing pools is complete and does not contain outdated or inappropriate entries.

(g) *Multiple random testing pools.* A railroad may maintain more than one random testing pool if it can demonstrate that its random testing program is not adversely impacted by the number and types of pools or the construction of pool entries, and that selections from each pool will meet the requirements of this subpart.

§ 219.613 Random testing selections.

(a) *General.* Each railroad must ensure that each regulated employee has an equal chance of being selected for random testing whenever selections are made. A railroad may not increase or decrease an employee's chance of being selected by weighting an entry or pool.

(b) *Method of selection.* (1) Each railroad must use a selection method that is acceptable to FRA and meets the requirements of this subpart, such as a computer selection program, proper use of a random number table, or an alternative method which FRA has approved as part of the railroad's random testing plan.

(2) A selection method must be free of bias or apparent bias and employ objective, neutral criteria to ensure that every regulated employee has an equal statistical chance of being selected within a specified time frame. The selection method may not utilize subjective factors that permit a railroad to manipulate or control selections in an effort to either target or protect any employee, job, or operational unit from testing.

(3) The randomness of a selection method must be verifiable, and, as required by § 219.623, any records necessary to document the randomness of a selection must be retained for not less than two years from the date the designated testing window for that selection expired.

(c) *Minimum random testing rate.* (1) Each railroad must distribute random tests reasonably throughout the calendar year and make sufficient selections to ensure that each random testing pool meets the Administrator's minimum annual random testing rates as established according to § 219.625.

(2) Each railroad must continually monitor changes in its workforce to ensure that the required number of selections and tests are conducted each year.

(d) *Selection frequency.* Each railroad must select at least one entry from each of its random testing pools every three months.

(e) *Discarded selection draws.* Each selection draw must identify who will be subject to random testing. A railroad cannot discard a selection draw without an acceptable explanation (*e.g.,* the selection was drawn from an incomplete or inaccurate pool). A railroad must document and retain records for all discarded selection draws, including the specific reason the selection draw was not used, as required by § 219.623.

(f) *Increasing random selections.* A railroad that is unable to complete a collection for each selection made during a designated testing period may increase the number of selections in a subsequent selection period to ensure that it meets the annual minimum random testing rate for the calendar year.

(g) *Selection snapshots.* Each railroad must capture and maintain an electronic or hard copy snapshot of each random testing pool at the time it makes a testing selection. A railroad must not re-create pool entries from records after the time of the original selection. The railroad must maintain this snapshot for

a period of two years, as required by subpart J of this part.

(h) *Multiple DOT agencies.* Each railroad must ensure that each regulated employee who performs functions subject to the random testing requirements of more than one DOT agency is subject to random selection at or above the current minimum annual testing rate set by the DOT agency that regulates more than 50 percent of the employee's DOT-regulated functions.

§ 219.615 Random testing collections.

(a) *Minimum random testing rates.* Each railroad must complete a sufficient number of random alcohol and drug testing collections from each of its random testing pools to meet the Administrator's minimum annual testing rates established in accordance with § 219.625.

(b) *Designated testing window.* Each railroad must complete the collection for a selected pool entry within the FRA-approved designated testing window for that selection. Once a designated testing window has closed, any selections not collected during that window are no longer valid and may not be subject to random testing.

(c) *Collection timing.* (1) A regulated employee may be subject to random testing only while on duty and subject to performing regulated service.

(2) Each railroad's random alcohol and drug testing collections must be unannounced and spread reasonably throughout the calendar year. Collections must also be distributed unpredictably throughout the designated testing window and must reasonably cover all operating days of the week (including operating weekends and holidays), shifts, and locations.

(3) Random alcohol test collections must be performed unpredictably and in sufficient numbers at either end of an operating shift to attain an acceptable level of deterrence throughout the entire shift. At a minimum, a railroad must perform 10% of its random alcohol tests at the beginning of shifts and 10% of its random alcohol tests at the end of shifts.

(4) If a regulated employee has been selected for both random drug and alcohol testing, a railroad may conduct these tests separately, so long as both required collections can be completed by the end of the employee's shift and the railroad does not inform the employee that an additional collection will occur later.

(d) *Collection scheduling.* While pool entries must be selected randomly, a railroad may schedule each random test collection during a designated testing window according to its approved plan.

(1) A railroad may schedule a collection based on the availability of the selected pool entry, the logistics of performing the collection, and any other requirements of this subpart.

(2) If a selected pool entry does not identify the selection by name (*i.e.,* train crews or job functions), a railroad may not use its scheduling discretion to deliberately target or protect a particular employee or work crew. Unless otherwise approved in a random testing plan, railroad field supervisors or field management personnel may not use discretion to choose or to change collection dates or times if that choice could intentionally alter who is to be tested.

(e) *Notification requirements.* (1) A railroad may notify a regulated employee that he or she has been selected for random testing only during the duty tour in which the collection is to be conducted, and only so far in advance as is reasonably necessary to ensure the employee's presence at the scheduled collection time and place.

(2) A railroad must make collections as soon as possible. Each collection must begin within two hours after the railroad has notified the employee of his or her selection for random testing, unless the railroad has an acceptable reason for the delay. A railroad should monitor each employee after notification and, whenever possible, arrange for the employee to be immediately escorted by supervisory or management personnel to the collection location.

(3) A railroad must inform a regulated employee that he or she has been selected for random testing at the time the employee is notified. Completion of the Federal Drug Testing Custody and Control Form (CCF) or the DOT Alcohol Testing Form (ATF) indicating the basis of the test satisfies this requirement, so long as the employee has been shown and directed to sign the CCF or ATF as required by §§ 40.73 and 40.241 of this title.

(f) *Incomplete collections.* A railroad must use due diligence to ensure that a random testing collection is completed for each selected pool entry, unless it has an acceptable explanation for not conducting the collection. All reasons for incomplete collections must be fully documented and are subject to inspection by FRA upon request.

(g) *Hours-of-service limitations.* (1) Except as provided by paragraph (g)(2) of this section, a railroad must immediately terminate a random collection and may not reschedule it if the collection is not completed within a covered employee's hours-of-service limitations.

(2) If a random collection requires a direct observation collection under § 40.67 of this title, the directly observed collection must immediately proceed until completed. A railroad must submit an excess service report, as required by part 228 of this chapter, if completion of the directly observed collection causes the covered employee to exceed his or her hours-of-service limitations.

§ 219.617 Participation in random alcohol and drug testing.

(a) *Railroad responsibility.* (1) A railroad must, under the conditions specified in this subpart and subpart H of this part, require a regulated employee selected for random testing to cooperate in alcohol and/or drug testing.

(2) If an employee is performing regulated service at the time he or she is notified of his or her selection for random testing, the railroad must ensure that the employee immediately ceases to perform regulated service and proceeds to the collection site without adversely affecting safety. A railroad must also ensure that the absence of an employee from his or her assigned duties to report for testing does not adversely affect safety. Once an employee begins the testing process, he or she may not be returned to regulated service until the testing process is complete.

(3) A railroad may excuse an employee who has been notified of or her selection for random testing only if the employee can substantiate that a medical emergency involving the employee or an immediate family member (*e.g.,* birth, death, or medical emergency) supersedes the requirement to complete the test. A medical emergency is defined in this part as an acute medical condition requiring immediate emergency care. To be eligible for exclusion from random testing, the employee must provide verifiable documentation of the emergency situation from a credible outside professional within a reasonable period of time (*e.g.,* a doctor, dentist, hospital, law enforcement officer, or school authority). A railroad may not test an employee who has been excused from testing under the same random selection.

(b) *Employee responsibility.* (1) A regulated employee subject to the random testing requirements of this subpart must cooperate with the selection and testing process, and must proceed to the testing site upon notification that he or she has been selected for random testing.

(2) A regulated employee must fully cooperate and comply with the urine drug collection and/or breath alcohol testing procedures required by subpart H of this part, and provide the required specimen(s), and must, upon request, complete the required paperwork and certifications.

§ 219.619 Positive alcohol and drug test results and refusals; procedures.

Section 219.104 contains the procedures for administrative handling by the railroad or contractor in the event a urine specimen provided under this subpart is reported as a verified positive by the Medical Review Officer, a breath alcohol specimen is reported at 0.04 or greater by the Breath Alcohol Technician, or a refusal to test has occurred. The responsive action required in § 219.104 is not stayed pending the result of the testing of a split urine specimen or a challenge to any part of the testing process or procedure.

§ 219.621 Use of service agents.

(a) A railroad may use a service agent (such as a consortium/third party administrator (C/TPA)) to act as its agent to carry out any role in random testing specifically permitted under subpart Q of part 40 of this title, such as maintaining random pools, conducting random selections, and performing random urine drug collections and breath alcohol tests.

(b) A railroad may not use a service agent to notify a regulated employee that he or she has been selected for random testing. A regulated employee who has been selected for random testing must otherwise be notified of the selection by his or her employer. A service agent may also not perform any role that § 40.355 of this title specifically reserves to an employer, which, for purposes of this subpart, is defined as a railroad or a contractor performing railroad-accepted testing.

(c) A railroad is primarily responsible for compliance with the random alcohol and drug testing of this subpart, but FRA reserves the right to bring an enforcement action for noncompliance against the railroad, its service agents, its contractors, and/or its employees.

(d) If a railroad conducts random drug and/or alcohol testing through a C/TPA, the number of employees required to be tested may be calculated for each individual railroad belonging to the C/TPA, or may be based on the total number of regulated employees covered by the C/TPA in a larger combined railroad or DOT agency random pool. Selections from combined railroad random pools must meet or exceed the highest minimum annual percentage rate established under this subpart or any DOT agency drug testing rule that applies to any member of that pool.

§ 219.623 Records.

(a) As provided by § 219.901, each railroad is required to maintain records related to random testing for a minimum of two years.

(b) Contractors and service agents performing random testing responsibilities under this subpart must provide records required by this subpart whenever requested by the contracting railroad or by FRA. A railroad remains responsible for maintaining records demonstrating that it is in compliance with the requirements of this subpart.

§ 219.625 FRA Administrator's determination of random alcohol and drug testing rates.

(a) *Notice.* Each year, the Administrator publishes a **Federal Register** notice announcing the minimum annual random alcohol and drug testing rates which take effect on January 1 of the following calendar year. These rates are based on the railroad industry's random testing violation rates for the preceding two consecutive calendar years, which are determined using annual railroad alcohol and drug program data required to be submitted to the FRA's Management Information System (MIS) under § 219.800.

(b) *Information.* Data from MIS reports provide the information used for this determination. In order to ensure reliability of the data, the Administrator may consider the quality and completeness of the reported data, obtain additional information or reports from railroads, or make appropriate modifications in calculating the industry positive rate.

(c) *Initial minimum annual random testing rates.* The Administrator has established an initial minimum annual random testing rate of 50 percent for drugs and 25 percent for alcohol for any new category of regulated employees added to those already being tested under this part.

(1) These initial testing rates are subject to amendment by the Administrator in accordance with paragraphs (d) and (e) of this section after at least 18 months of MIS data have been compiled for the new category of regulated employees.

(2) The Administrator will determine separate minimum annual random testing rates for each added category of regulated employees for a minimum of three calendar years after that category is incorporated into random testing under this part.

(3) The Administrator may move to combine categories of regulated employees requiring separate determinations into a single determination once the categories' testing rates are identical for two consecutive years.

(d) *Drug testing rate.* The Administrator may set the minimum annual random drug testing rate for the railroad industry at either 50 percent or 25 percent.

(1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower the rate to 25 percent if the Administrator determines that the MIS data for two consecutive calendar years show that the reported random testing positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the MIS data for any calendar year show that the reported random testing positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

(e) *Alcohol testing rate.* The Administrator may set the minimum annual random alcohol testing rate for the railroad industry at 50 percent, 25 percent, or 10 percent.

(1) When the minimum annual percentage rate for random alcohol testing is 50 percent or 25 percent, the Administrator may lower this rate to 10 percent if the Administrator determines that the MIS data for two consecutive calendar years show that the random testing violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower the rate to 25 percent if the Administrator determines that the MIS data for two consecutive calendar years show that the random testing violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(3) When the minimum annual percentage rate for random alcohol testing is 25 percent, and the MIS data for that calendar year show that the random testing violation rate for drugs is equal to or greater than 0.5 percent but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

(4) When the minimum annual percentage rate for random alcohol testing is 10 percent or 25 percent, and the MIS data for any calendar year show that the random testing violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent.

Subpart H—Drug and Alcohol Testing Procedures

§ 219.701 [Amended]

■ 31. Revise § 219.701 by:
■ a. In paragraphs (a) and (b), removing the phrase "B, D, F, and G" wherever it appears and adding, in its place, "B, D, E, F, G, and K (but only for co-worker or non-peer referrals that involve a violation of the prohibitions of this subpart)"; and
■ b. Removing paragraph (c).

Subpart I—Annual Report

■ 32. In § 219.800, revise the last sentence of paragraph (b) and the first sentence of paragraph (d) and add a new paragraph (f) to read as follows:

§ 219.800 Annual reports.

* * * * *

(b) * * * For information on where to submit MIS forms and for the electronic version of the form, see: *http://www.fra.dot.gov/eLib/details/L02639.*

* * * * *

(d) As a railroad, if you have a regulated employee who performs multi-DOT agency functions (*e.g.,* an employee drives a commercial motor vehicle and performs switchman duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. * * *

* * * * *

(f) A railroad required to submit an MIS report under this section must submit separate reports for covered employees and MOW employees.

Subpart J—Recordkeeping Requirements

■ 33. Revise § 219.901 to read as follows:

§ 219.901 Retention of alcohol and drug testing records.

(a) *General.* (1) In addition to the records part 40 of this title requires keeping, a railroad must also maintain alcohol and drug misuse prevention program records in a secure location with controlled access under this section's requirements.

(2) A railroad must maintain for two years, rather than one year, the records to which § 40.333(a)(4) of this title applies (*i.e.,* records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02). A railroad may maintain legible and accessible scanned or electronic copies of these records for the second year.

(b) *Records maintained for a minimum of five years.* Each railroad must maintain the following records for a minimum of five years:

(1) A summary record or the individual files of each regulated employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol and drug misuse prevention program (if required to submit the report under § 219.800(a)).

(c) *Records maintained for a minimum of two years.* Each railroad must maintain the following records for a minimum of two years:

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process, including the railroad's approved random testing plan and FRA's approval letter for that plan;

(iii) Documents generated in connection with decisions to administer Federal reasonable suspicion or reasonable cause alcohol or drug tests;

(iv) Documents generated in connection with decisions on post-accident testing; and

(v) Documents verifying the existence of a medical explanation for the inability of a regulated employee to provide an adequate specimen;

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test;

(ii) The railroad's copy of the drug test custody and control form, including the results of the test;

(iii) Documents related to any regulated employee's refusal to submit to an alcohol or drug test required under this part; and

(iv) Documents a regulated employee presented to dispute the result of an alcohol or drug test administered under this part;

(3) Records related to other violations of this part; and

(4) Records related to employee training:

(i) Materials on alcohol and drug abuse awareness, including a copy of the railroad's policy on alcohol and drug abuse;

(ii) Documentation of compliance with the requirements of § 219.23; and

(iii) Documentation of training (including attendance records and training materials) the railroad provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for reasonable suspicion or post-accident alcohol and drug testing.

■ 34. Revise § 219.903 to read as follows:

§ 219.903 Access to facilities and records.

(a) Release of regulated employee information contained in records required to be maintained under § 219.901 must be in accordance with part 40 of this title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must grant access to all facilities used to comply with this part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its regulated employees.

(c) Each railroad must make available copies of all results for its drug and alcohol testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or regulated employee.

§ 219.905 [Removed and Reserved]

■ 35. Remove and reserve § 219.905.
■ 36. Add a new subpart K to read as follows:

Subpart K—Referral Programs

Sec.
219.1001 Requirement for referral programs.
219.1003 Referral program conditions.
219.1005 Optional provisions.
219.1007 Alternate programs.

Subpart K—Referral Programs

§ 219.1001 Requirement for referral programs.

(a) The purpose of this subpart is to help prevent the adverse effects of drug and alcohol abuse in connection with regulated employees.

(b) A railroad must adopt, publish, and implement the following programs:

(1) *Self-referral program.* A program designed to encourage and facilitate the identification of a regulated employee who abuses drugs or alcohol by providing the employee the opportunity to obtain counseling or treatment before the employee's drug or alcohol abuse manifests itself in a detected violation of this part; and

(2) *Co-worker referral program.* A program designed to encourage co-worker participation in preventing violations of this part.

(c) A railroad may adopt, publish, and implement the following programs:

(1) *Non–peer referral program.* A program designed to encourage non-peer participation in preventing violations of this part; and

(2) *Alternate program(s).* An alternate program or programs meeting the specific requirements of § 219.1003 or complying with § 219.1007, or both.

(d) Nothing in this subpart may be construed to:

(1) Require payment of compensation for any period a regulated employee is restricted from performing regulated service under a voluntary, co-worker, or non-peer referral program;

(2) Require a railroad to adhere to a voluntary, co-worker, or non-peer referral program when the referral is made for the purpose, or with the effect, of anticipating or avoiding the imminent and probable detection of a rule violation by a supervising employee;

(3) Interfere with the subpart D requirement for Federal reasonable suspicion testing when a regulated employee is on duty and a supervisor determines the employee is exhibiting signs and symptoms of alcohol and/or drug use;

(4) Interfere with the requirements in § 219.104(d) for responsive action when a violation of § 219.101 or § 219.102 is substantiated; or

(5) Limit the discretion of a railroad to dismiss or otherwise discipline a regulated employee for specific rule violations or criminal offenses, except as this subpart specifically provides.

§ 219.1003 Referral program conditions.

(a) *General.* A referral program must specify the allowances, conditions, and procedures under which a self-referral, co-worker referral, and, if adopted, a non-peer referral, can occur, as follows:

(1) For a self-referral, a railroad must identify one or more designated DAC contacts (including telephone number and email (if available)) and any expectations regarding when the referral is allowed to take place (such as during non-duty hours, or while the employee is unimpaired, or both, as § 219.1005 permits);

(2) For a co-worker referral, a railroad may accept a referral under this subpart only if it alleges that the regulated employee was apparently unsafe to work with or in violation of this part or the railroad's drug and alcohol abuse rules. The employee must waive investigation of the rule charge and must contact the DAC within a reasonable period of time;

(3) For a non-peer referral, a railroad may remove a regulated employee from service only if a railroad representative confirms that the employee is unsafe to work with or in violation of this part or the railroad's drug and alcohol abuse rules. The employee must waive investigation of the rule charge and must contact the DAC within a reasonable period of time.

(b) *Employment maintained.* A regulated employee who is affected by a drug or alcohol abuse problem may maintain an employment relationship with a railroad if:

(1) The employee seeks assistance through the railroad's voluntary referral program for his or her drug or alcohol abuse problem or a co-worker or a non-peer refers the employee for such assistance; and

(2) The employee successfully completes the education, counseling, or treatment program a DAC specifies under this subpart.

(c) *Employment action.* If a regulated employee does not choose to seek assistance through a referral program, or fails to cooperate with a DAC's recommended program, the disposition of the employee's relationship with the railroad is subject to normal employment action.

(d) *Qualified DAC evaluation.* (1) A DAC acceptable to the railroad must evaluate a regulated employee entering a self-referral, co-worker referral, or non-peer referral program;

(2) The DAC must meet any applicable state standards and comply with this subpart; and

(3) The DAC must determine the appropriate level of care (education, counseling, or treatment, or all three) necessary to resolve any identified drug or alcohol abuse problems.

(e) *Removal from regulated service.* A referral program must stipulate that a regulated employee a DAC has evaluated as having an active drug abuse disorder may not perform regulated service until the DAC can report that safety is no longer affected.

(f) *Confidentiality maintained.* Except as provided under paragraph (l) of this section, a railroad must treat a regulated employee's referral and subsequent handling (including education, counseling, and treatment) as confidential. Only personnel who administer the railroad's referral programs may have access to the identities of the individuals in these programs.

(g) *Leave of absence.* A railroad must grant a regulated employee the minimum leave of absence the DAC recommends to complete a primary education, counseling, or treatment program and to establish control over the employee's drug or alcohol abuse problem.

(h) *Return to regulated service.* (1) Except as §§ 219.1001(d)(4) and 219.1005 may provide, a railroad must return an regulated employee to regulated service upon the DAC's recommendation that the employee has established control over his or her drug or alcohol abuse problem, has a low risk to return to drug or alcohol abuse, and has complied with any recommended return-to-service requirements.

(2) The DAC determines the appropriate number and frequency of required follow-up tests. The railroad determines the dates of testing.

(3) The railroad may condition an employee's return to regulated service on successful completion of a return-to-service medical evaluation.

(4) A railroad must return an employee to regulated service within five working days of the DAC's notification to the railroad that the employee is fit to return to regulated service, unless the employee has a disqualifying medical condition. (*i.e.,* the employee is at a low risk to return to drug or alcohol abuse).

(i) *Rehabilitation plan.* No person—whether an employing railroad, managed care provider, service agent, individual, or any person other than the DAC who conducted the initial evaluation—may change in any way the DAC's evaluation or recommendations for assistance. The DAC who made the initial evaluation may modify the employee's initial evaluation and follow-up recommendation(s) based on new or additional information.

(j) *Locomotive engineers and conductors.* Consistent with §§ 240.119(e) and 242.115(g) of this chapter, for a certified locomotive engineer, certified conductor, or a candidate for engineer or conductor certification, the referral program must state that confidentiality is waived (to the extent the railroad receives from a DAC official notice of the active drug abuse disorder and suspends or revokes the certification, as appropriate) if the employee at any time refuses to cooperate in a recommended course of counseling or treatment.

(k) *Contacting a DAC.* If a regulated employee does not contact a DAC within the railroad's specified time limits, the railroad may begin an investigation to assess the employee's cooperation and compliance with its referral program.

(l) *Time requirements for DAC evaluations.* Once a regulated employee has contacted the designated DAC, the DAC's evaluation must be completed within 10 working days. If the employee needs more than one evaluation, the evaluations must be completed within 20 working days.

(m) *Time limitations on follow-up treatment, care, or testing.* Any follow-up treatment, care, or testing established under a referral program must not

exceed 24 months beyond an regulated employee's initial removal from regulated service, unless the regulated employee's entry into the program involved a substantiated part 219 violation.

§ 219.1005 Optional provisions.

A railroad's referral program may include any of the following provisions at the option of the railroad and with the approval of the labor organization(s) affected:

(a) The program may provide that the rule of confidentiality is waived if:

(1) The regulated employee at any time refuses to cooperate in a DAC's recommended course of education, counseling, or treatment; or

(2) The railroad determines, after investigation, that the regulated employee has been involved in a drug- or alcohol-related disciplinary offense growing out of subsequent conduct.

(b) The program may require successful completion of a return-to-service medical examination as a further condition of reinstatement in regulated service.

(c) The program may provide that it does not apply to a regulated employee whom the railroad has previously assisted under a program substantially consistent with this section.

(d) The program may provide that, in order to invoke its benefits, the regulated employee must report to the railroad's designated contact either:

(1) During non-duty hours (*i.e.*, at a time when the regulated employee is off duty); or

(2) While unimpaired and otherwise in compliance with the railroad's drug and alcohol rules consistent with this subpart.

§ 219.1007 Alternate programs.

(a) Instead of the referral programs required under § 219.1001, a railroad is permitted to develop, publish, and implement alternate programs that meet the standards established in § 219.1001. Such programs must have the written concurrence of the recognized representatives of the regulated employees. Nothing in this subpart restricts a railroad or labor organization from adopting, publishing, and implementing programs that afford more favorable conditions to regulated employees troubled by drug or alcohol abuse problems, consistent with a railroad's responsibility to prevent violations of §§ 219.101, 219.102, and 219.103.

(b) The concurrence of the recognized representatives of the regulated employees in an alternate program may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate program applies. The agreement or other document must make express reference to this subpart and to the intention of the railroad and employee representatives that the alternate program applies instead of the program required by this subpart.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section along with the requested alternate program it submits for approval with the FRA Drug and Alcohol Program Manager. FRA will base its approval on whether the alternative program meets the § 219.1001 objectives. The alternative program does not have to include each § 219.1001 component, but must meet the general standards and intent of § 219.1001. If a railroad amends or revokes an approved alternate policy, the railroad must file a notice with FRA of such amendment or revocation at least 30 days before the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing, and implementing the programs § 219.1001 requires for any group of regulated employees not falling within the coverage of an appropriate, approved alternate program.

(e) Consistent with § 219.105(c), FRA has the authority to inspect the aggregate data of any railroad alcohol and/or drug use education, prevention, identification, and rehabilitation program or policy, including alternate peer support programs, to ensure that they are not designed or implemented in such a way that they circumvent or otherwise undermine Federal requirements, including the requirements in this part regarding peer support programs.

■ 37. Revise appendix A to read as follows:

Appendix A to Part 219—Schedule of Penalties

The following chart lists the schedule of civil penalties:

PENALTY SCHEDULE [1]

Section [2]	Violation	Willful violation
Subpart A—General		
219.3 Application:		
(a) Railroad or contractor does not have required program	$5,000	$7,500
(c) Railroad or contractor improperly tests under subpart E or G of this part	2,500	5,000
219.9 Responsibility for compliance:		
(b)(1) Host railroad failed to take responsibility for compliance or other railroad or contractor did not take responsive action of direction of host railroad during joint operations	5,000	7,500
219.11 General conditions for chemical tests:		
(b)(1) Employee unlawfully refuses to participate in testing	2,500	5,000
(b)(2) Employer fails to give priority to medical treatment	3,000	8,000
(b)(3) Employee fails to remain available	2,500	5,000
(d) Employee unlawfully required to execute a waiver of rights	2,500	5,000
(e)(1) Failure to direct employee to proceed to collection site as soon as possible without affecting safety	2,500	5,000
(e)(3) Railroad used or authorized the use of coercion to obtain specimens	5,000	7,500
(g) Failure to meet supervisory training requirements or program of instruction not available or program not complete	2,500	5,000
(h) Urine or blood specimens provided for Federal testing were used for non-authorized testing	2,500	5,000
219.12 Hours-of-service laws implications:		
(a)–(d) Failure to exceed Hours of Service to conduct required testing or exceeding HOS when not authorized to conduct testing	2,500	5,000
219.23 Railroad policies:		
(a) Failure to provide written notice of FRA test	1,000	4,000
(a)(1) Failure to provide written notice of basis for FRA test	1,000	4,000

PENALTY SCHEDULE [1]—Continued

Section [2]	Violation	Willful violation
(a)(2) Use of a non-approved FRA form for mandatory post-accident toxicological testing	1,000	4,000
(b) Improper use of Federal drug or alcohol testing form or use of Subpart C form for other test	1,000	4,000
(c) Failure to make required educational materials available	2,500	5,000
(d) Failure to provide required minimum educational content	2,500	5,000
(e) Non-Federal provisions are not clearly described as independent authority	2,500	5,000
219.25 Previous employer drug and alcohol checks:		
(a)(1)Failure to conduct previous employer drug and alcohol check or failure to provide response to previous employer when requested	2,500	5,000
(a)(2) Failure to perform and complete FRA and DOT-required background checks in a timely manner	2,500	5,000
(a)(3) Failure to document due diligence in completing FRA and DOT-required background checks	2,500	5,000
(b) Failure to comply with § 240.119(c) (for engineers) or § 242.115(e) (for conductors) of this chapter regarding the consideration of Federal alcohol and drug violations that occurred within a period of 60 consecutive months prior to the review of the person's records	2,500	5,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited:		
(a) Railroad with actual knowledge of use, possession or impairment from alcohol or controlled substances permits employee to go on duty or remain on duty		10,000
219.103 Prescribed and over-the-counter drugs:		
(a) Failure to train employee properly on requirements	2,500	5,000
219.104 Responsive action:		
(a) Failure to remove employee from regulated service immediately	5,000	7,500
(b) Failure to provide written notice for removal	2,500	5,000
(c) Failure to provide prompt hearing within 10 calendar days	2,500	5,000
(d) Employee improperly returned to regulated service	5,000	7,500
(e) Failure to ensure certified locomotive engineers and conductors received required follow-up testing minimums as per § 240.119(d)(2) and § 242.115(f)(2) of this chapter	2,500	5,000
219.105 Railroad's duty to prevent violations:		
(a) Employee improperly permitted to remain in regulated service	7,500	10,000
(b) Failure to exercise due diligence to assure compliance with prohibition	5,000	7,500
(d) Failure to conduct and record minimum number of Rule G observations	2,500	5,000
219.107 Consequences of unlawful refusal:		
(a) Failure to disqualify an employee for nine months following a refusal	5,000	7,500
(b) Fail to provide written notice of withdrawal to employee	2,500	5,000
(c) Employee unlawfully returned to service	5,000	7,500
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required:		
(a) Failure to test after qualifying event (each regulated employee not tested is a violation)	5,000	7,500
(c)(1)(i) Failure to make good faith determination	5,000	7,500
(c)(1)(ii) Failure to provide requested decision report to FRA	2,500	5,000
(c)(2) Testing performed after non-qualifying event	5,000	10,000
219.203 Responsibilities of railroads and employees:		
(a)(1)(i) and (a)(2)(i) Failure to properly test/exclude from testing	5,000	7,500
(a)(1)(ii) and (a)(2)(ii) Non-regulated service employee tested	5,000	7,500
(b)(1) Delay in obtaining specimens due to failure to make every reasonable effort	2,500	5,000
(c) Independent medical facility not utilized	2,500	5,000
(d) Failure to report event or contact FRA when intervention required	1,000	3,000
(d)(1) Failure to collect specimens in a timely manner	2,500	5,000
(e)(2) Failure to recall employee for testing when conditions met	2,500	5,000
(e)(5) Failure to document why employee could not be recalled	2,500	5,000
(f)(1) Specimen collection not completed at an independent medical facility	2,500	5,000
219.205 Specimen collection and handling:		
(a) Failure to observe requirements with respect to specimen collection, marking and handling	2,500	5,000
(b) Failure to provide properly prepared forms with specimens	2,500	5,000
(d) Failure to promptly or properly forward specimens	2,500	5,000
219.207 Fatality:		
(a) Failure to collect specimens	5,000	7,500
(a)(1) Failure to ensure timely collection and shipment of required specimens	2,500	5,000
(b) Failure to request assistance when necessary	2,500	5,000
219.209 Reports of tests and refusals:		
(a)(1) Failure to provide telephonic report	1,000	2,000
(b) Failure to provide written report of refusal to test	1,000	2,000
(c) Failure to maintain report explaining why test not conducted within 4 hours	1,000	2,000
219.211 Analysis and follow-up:		
(c) Failure of the MRO to report MRO downgrades and/or verified non-negative results to FRA in a timely manner	2,500	5,000
(g)(3) Unauthorized withholding of regulated employee out of regulated service pending receipt of PAT testing results	2,500	5,000

PENALTY SCHEDULE [1]—Continued

Section [2]	Violation	Willful violation
Subpart D—Reasonable Suspicion Testing		
219.301 Mandatory reasonable suspicion testing:		
(a) Failure to conduct breath alcohol test when reasonable suspicion testing criteria met or conduct breath alcohol test under reasonable suspicion when criteria not met	5,000	7,500
(b) Failure to conduct drug test when reasonable suspicion testing criteria met or conduct drug test under reasonable suspicion when criteria not met	5,000	7,500
219.303 Testing when reasonable suspicion criteria not met:		
(a) Failure to use a trained supervisor when conducting a reasonable suspicion determination for alcohol	2,500	5,000
(b) Failure to use two supervisors, one of which must have been trained, when conducting a reasonable suspicion determination for drugs	2,500	5,000
(c) Improperly holding employee out of service	2,500	5,000
(d) Failure to provide adequate written documentation for the reasons for a reasonable suspicion test	2,500	5,000
219.305 Prompt specimen collections; time limitations:		
(a) Fail to promptly conduct test	2,500	5,000
(b) Failure to document why test not administered within time limits	2,500	5,000
(c) Improper recall of employee	2,500	5,000
Subpart E—Reasonable Cause Testing		
219.401 Authorization for reasonable cause testing:		
(a) Failure to declare which authority (Federal or company) is being used for reasonable cause testing	2,500	5,000
(b) Testing conducted after regulated employee is released from duty	2,500	5,000
219.403 Requirements for reasonable cause testing:		
(a) Testing when event did not meet the criteria for train accident or train incident	2,500	5,000
(b) Testing when event did not meet the criteria for rule violation	2,500	5,000
219.405 Documentation requirements:		
(a) Failure to provide adequate written documentation for the reasons for a reasonable cause test	1,000	2,500
(b) Failure to document specific type of rule violation and the involvement of each tested regulated employee	1,000	2,500
219.407 Prompt Specimen Collection; Time Limitations:		
(a) Failure to perform a test in a timely	2,500	5,000
(b) Failure to document why test not administered within time limits	1,000	2,500
(c) Improper recall of employee	2,500	5,000
219.409 Limitations on authority:		
(b) Improper withholding of regulated employee from regulated service pending test results	2,500	5,000
Subpart F—Pre-Employment Tests		
219.501 Pre-employment drug testing:		
(a) Failure to conduct a Federal pre-employment test before a final applicant or employee transfer performs regulated service	2,500	5,000
(b) Failure to conduct a Federal pre-employment test before an employee of a contractor performs regulated service	2,500	5,000
(e) Pre-employment testing of grandfathered regulated employee	1,000	2,500
219.502 Pre-employment alcohol testing:		
(a)(1) Failure to conduct alcohol testing of a regulated employee after choosing to perform Federal pre-employment alcohol testing	2,500	5,000
(a)(2) Failure to treat all regulated employees the same for purposes of Federal pre-employment alcohol testing	2,500	5,000
219.503 Notification; records:		
Failure to notify the applicant in writing of non-negative test results or refusal	1,000	2,500
Subpart G—Random Alcohol and Drug Testing Programs		
219.601 Purpose and scope of random testing programs:		
(b) Failure to ensure regulated employee is subject to random testing	2,500	5,000
(c) Contractor or volunteer not included in random testing while subject to performing regulated service	2,500	5,000
(d)(1) Regulated employee not subject to random testing at minimum rate set by agency covering more than 50% of employee's regulated functions	2,500	5,000
219.605 Submission and approval of random testing plans:		
(a)(1) Failure to obtain FRA approval of random testing program	2,500	5,000
(c) Failure to implement random testing plan within 30 days of notification of FRA approval	2,500	5,000
(d)(1) Failure to implement substantive plan amendment within 30 days of notification of FRA approval, or failure to obtain FRA approval before implementing substantive plan amendment before implementation	2,500	5,000
(d)(2) Failure to submit non-substantive plan amendment before implementation	2,500	5,000
219.607 Requirements for random testing plans:		
(a) Railroad implementation failed to comply with approved plan	2,500	5,000
(c) Failure to contain required plan elements	2,500	5,000
219.609 Inclusion of contractor employees and volunteers in random testing plans:		
(a) Failure to demonstrate that regulated service contractor employees and volunteers are subject to random testing	2,500	5,000

PENALTY SCHEDULE [1]—Continued

Section [2]	Violation	Willful violation
(c) Failure to ensure regulated service contractor and volunteers are tested in accordance with this subpart	2,500	5,000
219.611 Random drug and alcohol and drug testing pools:		
(a) Failure of railroad to ensure that all regulated employees including contractors and volunteers are included in random testing pools	2,500	5,000
(b)(2) Improper criteria for pool entries which allows for employer discretion over who is to be tested	2,500	5,000
(b)(3) Failure to construct and maintain pool entries that will ensure regulated employees have an equal chance of being selected randomly for each draw	2,500	5,000
(c) Maintaining a random testing pool with less than four pool entries	2,500	5,000
(d)(1) Failure to ensure that pools do not contain non-regulated employees	2,500	5,000
(d)(2) Regulated employee included in more than one DOT random pool	2,500	5,000
(d)(3) Failure to maintain pools and/or pool entries that meet FRA/DOT regulations	2,500	5,000
(d)(5) Failure to add or remove regulated employees to or from the proper random pool in a timely manner	2,500	5,000
(e)(2) Failure to remove employees who perform de minimis service from pools which include employees who perform regulated service on a regular basis	2,500	5,000
(f) Failure to have an effective mechanism to update and maintain pools	2,500	5,000
219.613 Random testing selections:		
(b)(1) Failure to use an FRA-acceptable selection procedure	2,500	5,000
(b)(2) Failure to ensure every regulated employee has an equal chance at being selected at each draw	2,500	5,000
(b)(3) Failure to have necessary documentation verifying the selection process for testing window	2,500	5,000
(c)(1) Failure to select pool entries at a rate which ensures compliance with FRA required random rates or fail to reasonably distribute selections throughout the selection year	2,500	5,000
(d) Railroad failed to select at least one entry from each of its random testing pools every three months	2,500	5,000
(e) Railroad discarded selection draws without an acceptable explanation	2,500	5,000
(g) Failure to capture and maintain electronic or hard copy snapshot of each random testing pool at the time it makes a testing selection	2,500	5,000
219.615 Random testing collections:		
(a) Failure to comply with minimum annual random collection testing rates	2,500	5,000
(b) Failure to test selections within the approved testing window	2,500	5,000
(c)(1) Testing a regulated employee while not on duty or testing a regulated employee not randomly selected or testing a non-regulated employee	2,500	5,000
(c)(2) Failure to distribute collections reasonably throughout all shifts, days of the week, weeks of the month, and months of the year	2,500	5,000
(c)(3) Failure to perform at least 10% of its random alcohol tests at the beginning of shifts and at least 10% of random alcohol tests at the end of shifts	2,500	5,000
(e)(1) Advance notification given to employees selected for testing	2,500	5,000
(e)(2) Fail to begin collection within two hours of notice of random selection without an acceptable reason for the delay	2,500	5,000
(f) Failure to test a selection without an FRA-acceptable reason	2,500	5,000
(g)(1) Fail to immediately terminate random collection due to hours of service expiration	2,500	5,000
219.617 Participation in random alcohol and drug testing:		
(a)(1) Failure to test regulated employee when properly selected for random test	2,500	5,000
(a)(2) Failure to restrict regulated employee from performing regulated service prior to completion of random testing	2,500	5,000
(a)(3) Improperly excused without substantiated medical emergency	2,500	5,000
219.621 Use of Service Agents:		
(g) Improper use a service agent to notify a regulated employee that they have been selected for random testing	2,500	5,000
219.623 Records		
(a) Failure of railroads to meet recordkeeping requirements	2,500	5,000
(g) Failure of contractors and service agents to provide required random testing records when requested by the contracting railroad or FRA	2,500	5,000
219.625 FRA Administrator's determination of random alcohol and drug rates		
(d) Failure to meet the required FRA random testing rate for drugs	2,500	5,000
(e) Failure to meet the required FRA random testing rate for alcohol	2,500	5,000
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing:		
(a) Failure to comply with part 40 procedures in subpart B, D, E, F, G and K testing	5,000	7,500
Subpart I—Annual Report		
219.800 Annual Reports:		
(a) Failure to submit MIS report on time	2,500	5,000
(c) Failure to submit accurate MIS report	2,500	5,000
(d) Failure to include required data	2,500	5,000
Subpart J—Recordkeeping Requirements		
219.901 Retention of alcohol and drug testing records:		

PENALTY SCHEDULE [1]—Continued

Section [2]	Violation	Willful violation
(a) Failure to maintain records required to be kept by part 40 of this chapter	2,500	5,000
(b) Failure to maintain records required to be kept for five years	2,500	5,000
(c) Failure to maintain records required to be kept for two years	2,500	5,000
219.903 Access to facilities and records:		
(a) Failure to release records in this subpart in accordance with part 40 of this chapter	2,500	5,000
(b) Failure to permit access to facilities	2,500	5,000
(c) Failure to provide access to results of railroad alcohol and drug testing programs	2,500	5,000
Subpart K—Referral Programs		
219.1001 Requirement for referral programs:		
(b)(1) Failure to adopt or implement required self-referral program or alternate program that meets the requirements of this subpart	2,500	5,000
(b)(2) Failure to adopt or implement required co-worker referral program or alternate program that meets the requirements of subpart K of this part	2,500	5,000
(d) Violation of referral program prohibitions	2,500	5,000
219.1003 Referral program conditions:		
(a) Failure to comply with referral program conditions	2,500	5,000
(b) Failure to maintain employment	2,500	5,000
(c) Failure to disqualify regulated employee when referral conditions not met	2,500	5,000
(d) Use of unqualified DAC	2,500	5,000
(e) Allowing person evaluated as having active substance abuse disorder to perform regulated service	2,500	5,000
(f) Breach of confidentiality	2,500	5,000
(g) Failure to allow recommended leave of absence	2,500	5,000
(h)(1)–(3) Failure to meet return to service conditions	2,500	5,000
(h)(4) Failure to return to service when conditions met	2,500	5,000
(i) Improper modification to rehabilitation plan	2,500	5,000
(l) Failure to complete DAC evaluation within time limit	2,500	5,000
(m) Exceeding 24 month time limit on aftercare when not associated with a substantiated part 219 violation	2,500	5,000
219.1007 Alternate programs:		
(c) Failure to obtain FRA approval of alternate program	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to $105,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. See 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 219; and if more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties. For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation.

Issued in Washington, DC, on May 27, 2016.

Amitabha Bose,

Acting Administrator.

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 425

Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations—Revised Benchmark Rebasing Methodology, Facilitating Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 425

[CMS–1644–F]

RIN 0938–AS67

Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations—Revised Benchmark Rebasing Methodology, Facilitating Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: Under the Medicare Shared Savings Program (Shared Savings Program), providers of services and suppliers that participate in an Accountable Care Organization (ACO) continue to receive traditional Medicare fee-for-service (FFS) payments under Parts A and B, but the ACO may be eligible to receive a shared savings payment if it meets specified quality and savings requirements. This final rule addresses changes to the Shared Savings Program, including: Modifications to the program's benchmarking methodology, when resetting (rebasing) the ACO's benchmark for a second or subsequent agreement period, to encourage ACOs' continued investment in care coordination and quality improvement; an alternative participation option to encourage ACOs to enter performance-based risk arrangements earlier in their participation under the program; and policies for reopening of payment determinations to make corrections after financial calculations have been performed and ACO shared savings and shared losses for a performance year have been determined.

DATES: *Effective date:* The provisions of this final rule are effective on August 9, 2016.

Applicability dates: In the **SUPPLEMENTARY INFORMATION** section of this final rule, we provide a table (Table 1) that lists key changes in this final rule that have an applicability date other than the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Elizabeth November, (410) 786–8084. Email address: *aco@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Table 1 lists key changes that have an applicability date other than 60 days after the date of publication of this final rule. By indicating that a provision is applicable to a performance year (PY) or agreement period, activities related to implementation of the policy may precede the start of the performance year or agreement period.

TABLE 1—APPLICABILITY DATES OF SELECT PROVISIONS OF THE FINAL RULE

Preamble section	Section title/description	Applicability date
II.A.2	Integrating regional factors in resetting ACO benchmarks	Second or subsequent agreement periods beginning in 2017 and subsequent years.
II.A.2.e.3	For factors based on National FFS expenditures used in establishing the ACO's historical benchmark: Use expenditures for assignable beneficiaries to determine trend factors and truncation thresholds.	Agreement periods beginning in 2017 and subsequent years. For 2014 starters electing the participation option to defer by 1 year entrance into a second agreement period under a two-sided model, 2015 starters, and 2016 starters/renewals, historical benchmarks will be adjusted for the 2017 performance year and any subsequent years in the current agreement period.
II.A.2.e.3	For factors based on National FFS expenditures used in benchmark calculations and performance year expenditure calculations during the agreement period: Use expenditures for assignable beneficiaries to determine the annual benchmark update, and the truncation thresholds for determining performance year expenditures.	Performance year 2017 and subsequent performance years.
II.C	An additional participation option that would allow eligible Track 1 ACOs to defer by 1 year their entrance into a performance-based risk model (Track 2 or 3) for their second agreement period.	Second agreement period beginning in 2017 and subsequent years.

Acronyms

ACO Accountable Care Organization
APM Alternative Payment Model
AWI Area Wage Index
BY Benchmark Year
CAHPS Consumer Assessment of Healthcare Providers and Systems
MACRA Medicare Access and CHIP Reauthorization Act of 2015
MedPAC Medicare Payment Advisory Commission
MIPS Merit-Based Incentive Payment System
MLR Minimum Loss Rate
MSA Metropolitan Statistical Area

I. Executive Summary and Background

A. Executive Summary

1. Purpose

Section 1899 of the Social Security Act (the Act) established the Shared Savings Program, which promotes

Transition to Performance-Based Risk, and Administrative Finality of Financial Calculations" (2016 proposed rule), which appeared in the February 3, 2016 **Federal Register** (81 FR 5824). In the 2016 proposed rule, we proposed changes to the regulations for the Shared Savings Program that were promulgated in November 2011 and June 2015, and codified at 42 CFR part 425. Our intent in this rulemaking is to make refinements to the Shared Savings Program to address concerns raised by stakeholders regarding the benchmarking methodology, and to establish additional options for ACOs to enter performance-based risk arrangements, as well as to address policies for reopening of payment determinations to make corrections after financial calculations have been performed and ACO shared savings and shared losses for a performance year have been determined.

2. Summary of the Major Provisions

The policies adopted in this final rule are designed to improve program function and transparency in the following areas:

- Modifying the methodology for rebasing and updating ACO historical benchmarks when an ACO renews its participation agreement for a second or subsequent agreement period to incorporate regional expenditures, thereby making the ACO's cost target more independent of its historical expenditures and more reflective of FFS spending in its region.
- Applying a methodology for risk adjustment to account for the health status of the ACO's assigned population in relation to FFS beneficiaries in the ACO's regional service area in determining the regional adjustment that is applied to the ACO's rebased historical benchmark.
- Adding a participation agreement renewal option to encourage ACOs to enter performance-based risk arrangements earlier in their participation in the Shared Savings Program.
- Defining circumstances under which we would reopen payment determinations to make corrections after changes to the current methodology for adjusting ACO benchmarks for ACO Participant List changes, to specify that the regional adjustment to the ACO's rebased historical benchmark will be redetermined annually using the most recent certified ACO Participant List for the relevant performance year.

3. Summary of Costs and Benefits

As a result of this final rule, the median estimate of the financial impact of the Shared Savings Program for CYs 2017 through 2019 is net federal savings of $110 million greater than what would have been saved if no changes were made. Although this is the best estimate of the financial impact of the Shared Savings Program during CYs 2017 through 2019, a relatively wide range of possible outcomes exists. While approximately two-thirds of the stochastic trials resulted in an increase in net program savings, the 10th and 90th percentiles of the estimated distribution show a net increase in costs of $240 million to net savings of $480 million, respectively.

Overall, our analysis projects that improvements in the accuracy of benchmark calculations, including through the introduction of a regional adjustment to the ACO's rebased historical benchmark, are expected to result in increased overall participation in the program. These changes are also expected to improve the incentive for ACOs to invest in effective care management efforts, increase the attractiveness of participation under performance-based risk in Track 2 or 3 for certain ACOs with lower beneficiary expenditures, and result in overall greater gains in savings on FFS benefit claims costs than the associated increase in expected shared savings payments to ACOs. We intend to monitor emerging results for effects on claims costs, changing participation (including risk for cost due to selective changes in participation), and unforeseen bias in benchmark adjustments due to diagnosis coding intensity shifts. Such monitoring will be used to inform future rulemaking, such as if the Secretary determines that a lower weight should be used in calculating the regional

public laws include a number of provisions designed to improve the quality of Medicare services, support innovation and the establishment of new payment models, better align Medicare payments with provider costs, strengthen Medicare program integrity, and put Medicare on a firmer financial footing.

Section 3022 of the Affordable Care Act amended Title XVIII of the Act (42 U.S.C. 1395 *et seq.*) by adding section 1899 to the Act to establish a Shared Savings Program. This program is a key component of the Medicare delivery system reform initiatives included in the Affordable Care Act and is a new approach to the delivery of health care. The purpose of the Shared Savings Program is to promote accountability for a population of Medicare beneficiaries, improve the coordination of FFS items and services, encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery, and promote higher value care. ACOs that successfully meet quality and savings requirements share a percentage of the achieved savings with Medicare. Consistent with the purpose of the Shared Savings Program, in establishing the program, we focused on developing policies aimed at achieving the three-part aim consisting of: (1) Better care for individuals; (2) better health for populations; and (3) lower growth in expenditures.

We published the final rule entitled "Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations" (November 2011 final rule), which appeared in the November 2, 2011 **Federal Register** (76 FR 67802) to establish the program. We viewed this final rule as a starting point for the program, and because of the scope and scale of the program and our limited experience with shared savings initiatives under FFS Medicare, we built a great deal of flexibility into the program rules. We anticipated that subsequent rulemaking for the Shared Savings Program would be informed by lessons learned from our experience with the program as well as from testing through the Pioneer ACO Model and other initiatives conducted by the

administrative burden, and improve program function and transparency in a number of areas, such as eligibility for program participation and data sharing. Additionally, we modified policies related to the financial model, in response to stakeholder feedback, to encourage greater and continued ACO participation, for example, by offering ACOs the opportunity to continue participating under the one-sided model for a second agreement period, modifying the existing two-sided performance-based risk track (Track 2), and offering an alternative two-sided performance-based risk track (Track 3). Track 3 includes prospective beneficiary assignment and a higher sharing rate for shared savings as well as the potential for greater liability for shared losses, among other features, informed by CMS' experience with the Pioneer ACO Model. We finalized new policies for resetting an ACO's financial benchmark in a second or subsequent agreement period, by adding back a portion of the ACO's savings generated during the previous agreement period and equally weighting the historical benchmark years, to encourage ACOs to seek to continue their participation in the program and to address stakeholder concerns about the benchmark rebasing methodology. We also stated our intention to address other modifications to program rules in future rulemaking in the near term including modifying the methodology for resetting benchmarks by incorporating regional trends and costs.

We are encouraged by the high degree of interest in participation in the Shared Savings Program. As of January 1, 2016, over 400 ACOs were participating in the Shared Savings Program. This includes 147 ACOs with 2012 and 2013 agreement start dates that entered into a new 3-year agreement effective January 1, 2016, to continue their participation in the program, and 100 ACOs that entered the program for a first agreement period beginning January 1, 2016. See Fact Sheet: CMS Welcomes New Medicare Shared Savings Program (Shared Savings Program) Participants, (January 11, 2016) available online at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-01-11-2.html*.

We continue to look to experience gained by the Innovation Center in testing ACO models. In January 2016, we announced that 21 ACOs would be participating in the first performance year of the Next Generation ACO Model, a new ACO initiative being tested by the Innovation Center. The Next Generation ACO Model allows ACOs that are experienced in coordinating care for populations of patients to assume higher levels of financial risk and reward than are available under the Pioneer ACO Model and Shared Savings Program. See HHS press release: New hospitals and health care providers join successful, cutting-edge federal initiative that cuts costs and puts patients at the center of their care (January 11, 2016) available online at *http://www.hhs.gov/about/news/2016/01/11/new-hospitals-and-health-care-providers-join-successful-cutting-edge-federal-initiative.html*.

In the 2016 proposed rule (81 FR 5824), we proposed further modifications to the program's regulations, addressing several policy areas that we believed should be revisited in light of the additional experience we have gained during program implementation, including the methodology for resetting benchmarks, participation options to encourage ACOs to enter performance-based risk tracks, and reopening of payment determinations to make corrections.

II. Provisions of the Final Regulations and Responses to Public Comments

We received a total of 74 timely comments on the 2016 proposed rule (81 FR 5824). Stakeholders offered comments that addressed both high level issues related to the Shared Savings Program as well as our specific proposals and requests for comments. We extend our deep appreciation to the public for their interest in the program and the many thoughtful comments that were made in response to our proposed policies. In some instances, the public comments offered were outside the scope of the proposed rule, for example: Suggested revisions to the Shared Savings Program quality performance standard; suggestions for implementing the Skilled Nursing Facility (SNF) 3-day rule waiver for eligible Shared Savings Program ACOs; requests to modify the approach used to account for the costs of Critical Access Hospitals participating in Shared Savings Program ACOs; suggestions for limiting the liability of individual providers for shared losses incurred by ACOs; suggestions for modifying the financial incentives within the Shared Savings Program to encourage ACOs to use innovative treatments, technologies and diagnostics; suggestions for CMS to provide greater support for beneficiary engagement in their health care; and suggestions for the development of regulations pursuant to the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA). These comments will not be addressed in this final rule, but we have shared them with the appropriate subject matter experts in CMS. Summaries of the public comments that are within the scope of this rule and our responses to those comments are set forth in the various sections of this final rule under the appropriate headings. In this introduction to section II of this final rule, we address several global comments related to the Shared Savings Program. The remainder of this section of the final rule is organized to give an overview of each issue and the relevant proposals, to summarize and respond to public comments on the proposals, and to describe our final policy decisions based upon our review of the public comments received.

Comment: Some commenters are encouraged by the momentum of the program in attracting organizations and advancing our goal of transitioning providers away from traditional FFS to arrangements focused on value-based payments. However, some pointed to the statistics on the number of ACOs eligible for shared savings payments in the initial performance years of the Shared Savings Program and the attrition rate from the program as evidence of the need for changes to the program including: (1) Policy changes to provide greater rewards to ACOs for their cost reductions and quality improvements for Medicare beneficiaries; (2) policy options to reward organizations of differing provider compositions, sophistication and cost history; and (3) additional resources from CMS, such as more timely and actionable data, to support their success. Commenters addressing the sustainability of the program over the longer term often pointed to the intersections of various policy factors as being influential, most commonly the need for a benchmarking methodology that allows ACOs to continue to generate sufficient returns over time to support their care coordination and quality improvement activities to meet the program's goals, and the need for policies to reduce beneficiary churn in an ACO's assigned beneficiary population (for example, through prospective beneficiary assignment in all program Tracks and implementation of an attestation process for beneficiaries to voluntarily align to an ACO). Some commenters underscored the challenges for ACOs in moving FFS providers towards payment models based on value instead of volume and for already efficient organizations to realize further reward within the Shared Savings Program.

In general, some commenters pointed to the need for sufficient stability and predictability in the program to effectively drive ACOs to enter performance-based risk models. Some commenters, including commenters representing rural providers, suggested CMS consider allowing ACOs to remain under a one-sided model for a long period, and perhaps even indefinitely, particularly ACOs that continue to generate savings.

Response: We thank all commenters for helping us continue to develop the Shared Savings Program. We appreciate commenters' support for the program generally, as well as their thoughtful remarks on overarching considerations for the future of the Shared Savings Program.

The ACOs participating in the Shared Savings Program are recognized as being a critical part of the Administration's goal to help drive Medicare and the health care system at large towards rewarding the quality of care as opposed to the quantity of care provided to beneficiaries. In January 2015, the Administration announced an ambitious goal of tying 30 percent of Medicare FFS payments to quality and value by 2016 and by 2018 making 50 percent of payments through alternative payment models, such as the Shared Savings Program (*https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-01-26-3.html*). In March 2016, the Administration announced that it estimated having achieved this first goal, 11 months ahead of schedule, in part a result of entry by new ACOs in CMS ACO initiatives including the Shared Savings Program (*https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-03-03-2.html*).

With these goals in mind, we believe this final rule will further strengthen the Shared Savings Program. In particular we believe it is critical to ensuring the sustainability of the program to make an ACO's benchmark incrementally less dependent on the ACO's historical spending and more reflective of spending in the ACO's region as the ACO continues in the program for multiple agreement periods. We also believe that the benchmarking methodology is only one of several factors that are important to ACOs' success in the Shared Savings Program. For example, we believe refinements to the Shared Savings Program's data sharing policies, finalized in the June 2015 final rule, including a streamlined process for ACOs to access Medicare beneficiary claims data and expanding the data that is made available through informational program reports, will facilitate ACOs' health care operations. Further, we believe that ACOs are more likely to become successful in achieving the goals of the accountable care model over time, as indicated by performance results showing that ACOs with more experience in the program are more likely to generate shared savings (CMS Fact Sheet: Medicare ACOs Provide Improved Care While Slowing Cost Growth in 2014, available online at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-08-25.html*).

We also recognize the needs of the Shared Savings Program are dynamic and will continue to change as CMS and ACOs gain more experience with the accountable care model being implemented on a national scale. We welcome and encourage stakeholders' engagement with CMS on future program improvements and policy considerations, including through the rulemaking process.

Comment: Some commenters requested that CMS address broader market dynamics, particularly in relation to aligning financial and quality targets between the Shared Savings Program and Medicare Advantage (MA). Several commenters pointed to this alignment as allowing for more equitable comparison between traditional FFS Medicare, MA and ACOs. Some pointed to the need for this alignment when indicating that Shared Savings Program ACOs and MA plans compete. A commenter explained that competition between traditional FFS Medicare, ACOs and MA plans would maximize value for Medicare beneficiaries and the Medicare program.

Response: We appreciate commenters' continued interest in developing the design of the Shared Savings Program to foster greater comparability between Medicare payment models. As explained in the June 2015 final rule, we continue to believe there are important distinctions between MA plans and the accountable care model in the Shared Savings Program. The Shared Savings Program is not a managed care program like MA. Under the Shared Savings Program, providers and suppliers receive traditional FFS Medicare payments, and Medicare FFS beneficiaries retain all rights and benefits under traditional Medicare, including the right to see any physician of their choosing. In addition, Medicare FFS beneficiaries do not enroll in the Shared Savings Program (see 80 FR 32696). However, in the 2016 proposed rule we acknowledged that one consideration in developing the proposed methodology for use of county-FFS data in calculating expenditures for an ACO's regional service area was to align more closely with the MA ratesetting methodology (see 81 FR 5829). Although we have relied on our experience in other Medicare programs, including MA, to help develop program requirements and design elements for the Shared Savings Program, many Shared Savings Program requirements deviate from those in the other programs precisely because the intent of this program is not to recreate or replace MA or other Medicare programs (see 80 FR 32697).

As discussed elsewhere in this final rule, we are finalizing, with certain modifications, our proposal to determine an ACO's regional FFS expenditures based on the county FFS expenditures for the ACO's regional service area for populations of beneficiaries according to Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). Although this approach differs from the MA rate-setting methodology (with respect to calculation of values for the ESRD population, and the number of years of data used in the calculating county FFS expenditures), we believe it continues to be a substantial step towards aligning the Shared Savings Program benchmarking methodology with the MA rate-setting methodology.

A. Modifications to the Benchmarking Methodology

1. Background on Establishing, Updating, and Resetting the Benchmark

Section 1899(d)(1)(B)(ii) of the Act addresses how ACO benchmarks are to be established and updated. This provision specifies that the Secretary shall estimate a benchmark for each agreement period for each ACO using the most recent available 3 years of per beneficiary expenditures for Parts A and B services for Medicare FFS beneficiaries assigned to the ACO. Such benchmark shall be adjusted for beneficiary characteristics and such other factors as the Secretary determines appropriate and updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. Such benchmark shall be reset at the start of each agreement period. In addition to the statutory benchmarking methodology established in section 1899(d) of the Act, section 1899(i)(3) of the Act grants the Secretary the authority to use other payment models, including payment models that would use alternative benchmarking methodologies, if the Secretary

determines that doing so would improve the quality and efficiency of items and services furnished under this title and the alternative methodology would result in program expenditures equal to or lower than those that would result under the statutory payment model.

In the November 2011 final rule establishing the Shared Savings Program, we adopted policies for establishing, updating and resetting the benchmark at § 425.602. Under this methodology, we use national FFS spending and trends as part of establishing, updating and resetting ACO-specific benchmarks. Specifically, we calculate a benchmark for each ACO using a risk-adjusted average of per capita Parts A and B expenditures for original Medicare FFS beneficiaries who would have been assigned to the ACO in each of the 3 calendar years prior to the start of the agreement period. In calculating an ACO's benchmark expenditures, we include individually beneficiary identifiable payments made under a demonstration, pilot or time limited program, and we make an adjustment to exclude IME payments and DSH and uncompensated care payments. We trend forward each of the first 2 benchmark years' per capita risk adjusted expenditures to third benchmark year (BY3) dollars based on the national average growth rate in Parts A and B per capita FFS expenditures verified by the CMS Office of the Actuary (OACT). In establishing the benchmark for an ACO's first agreement period, the first benchmark year is weighted 10 percent, the second benchmark year is weighted 30 percent, and the third benchmark year is weighted 60 percent. This weighting creates a benchmark that more accurately reflects the latest expenditures and health status of the ACO's assigned beneficiary population.

For each performance year, we adjust the ACO's historical benchmark for changes in the health status and demographic factors of the ACO's assigned beneficiaries (§ 425.604(a), § 425.606(a), § 425.610(a)). Consistent with section 1899(d)(1)(B)(ii) of the Act, we update the ACO's benchmark annually, based on our estimate of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original FFS program. Additionally, as described further in section II.B of this final rule, we also adjust ACO historical benchmarks annually based on changes to the ACO's certified ACO Participant List. In making this adjustment, the historical benchmark period remains constant, but beneficiary assignment is revised to reflect the influence of the ACO Participant List changes.

In trending forward the historical benchmark, adjusting for changes in beneficiary characteristics, and annually updating the benchmark by growth in national per capita Medicare FFS expenditures, we make calculations for populations of beneficiaries in each of the following Medicare enrollment types: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. Furthermore, to minimize variation from catastrophically large claims, we truncate an assigned beneficiary's total annual Parts A and B FFS per capita expenditures at a threshold of the 99th percentile of national Medicare FFS expenditures for the applicable Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

Under section 1899(d)(1)(B)(ii) of the Act and § 425.602(c) of the Shared Savings Program regulations, an ACO's benchmark must be reset at the start of each new agreement period. In the June 2015 final rule, we revised § 425.602(c) to specify that in resetting the historical benchmark for ACOs in their second or subsequent agreement period we: (1) Weight each benchmark year equally; and (2) make an adjustment to reflect the average per capita amount of savings earned by the ACO in its prior agreement period, reflecting the ACO's financial and quality performance, during that prior agreement period. The additional per capita amount is applied as an adjustment to the ACO's rebased historical benchmark for a number of assigned beneficiaries (expressed as person years) not to exceed the average number of assigned beneficiaries (expressed as person years) under the ACO's prior agreement period. If an ACO was not determined to have generated net savings in its prior agreement period, we do not make any adjustment to the ACO's rebased historical benchmark. We use performance data from each of the ACO's performance years under its prior agreement period in resetting the ACO's benchmark for its second or subsequent agreement period. In the June 2015 final rule, in which this adjustment was finalized, we stated that we believed it would be critical to revisit the policy of accounting for an ACO's savings generated in a prior agreement period when resetting its benchmark in conjunction with any future changes to the benchmarking methodology to incorporate regional FFS expenditures (see 80 FR 32791; see also 80 FR 32795 through 32796).

The June 2015 final rule also included a discussion of several options and methods for incorporating regional factors when establishing, updating, and resetting the benchmark, and CMS committed to engaging in additional rulemaking around modifications to the Shared Savings Program's methodology for resetting benchmarks (see 80 FR 32791 through 32796; see also 79 FR 72839 through 72843 (discussing options for revising the methodology for resetting an ACO's historical benchmark)). The 2016 proposed rule expanded upon the issues discussed in the June 2015 final rule. The proposed changes (reviewed in greater detail within this final rule) focused on incorporating regional FFS expenditures into the methodology for establishing, adjusting, and updating an ACO's historical benchmark for its second or subsequent agreement period.

2. Integrating Regional Factors When Resetting ACOs' Benchmarks

a. Overview

In the June 2015 final rule, we summarized comments received on three approaches to account for regional FFS expenditures in ACO benchmarks and technical issues related to these alternatives (80 FR 32791 through 32796). We committed to engaging in additional rulemaking to propose modifications to the Shared Savings Program's methodology for resetting ACO benchmarks. We signaled our anticipated policy direction by outlining an approach to rebasing that would account for regional expenditures and identified additional methodological issues we would need to address in implementing this approach (80 FR 32795 through 32796).

In the 2016 proposed rule, we acknowledged that any proposed changes to the benchmark rebasing policies would require consideration of tradeoffs among several criteria that were initially described in the June 2015 final rule (81 FR 5828):

- Strong incentives for ACOs to improve efficiency and to continue participation in the program over the long term.
- Benchmarks which are sufficiently high to encourage ACOs to continue to meet the three-part aim, while also safeguarding the Medicare Trust Funds against the possibility that ACOs' reset benchmarks become overly inflated to the point where ACOs need to do little to maintain or change their care practices to generate savings.
- Generating benchmarks that reflect ACOs' actual costs in order to avoid potential selective participation by (and excessive shared payments to) ACOs with high benchmarks.

Further, we explained the addition of the following guiding principles to our considerations for modifying the benchmarking methodology (81 FR 5828):

- Transparency: Developed based on identifiable sources of data, and where possible publicly available data and data sets, in order to allow stakeholders to understand and model impacts.
- Predictability: Enable ACOs to anticipate their updated benchmark targets and their likely performance under the program.
- Simplicity: Methodology can be explained in relatively simple terms and in sufficient detail to be readily understood by ACOs and stakeholders.
- Accuracy: Methodology generates benchmarks that are an accurate reflection of the ACOs' expenditures and relevant regional expenditures, and can be accurately implemented and calculated, validated and disseminated in a timely manner.
- Maintain program momentum and market stability by providing sufficient notice of methodological changes and phase-in of these changes.

Applying these principles, we proposed the following changes, to the methodology for resetting an ACO's benchmark for a second or subsequent agreement period beginning on or after January 1, 2017:

- Replace the national trend factors with regional trend factors for establishing the ACO's rebased historical benchmark, and remove the adjustment to explicitly account for savings generated under the ACO's prior agreement period.
- Make an adjustment when establishing the ACO's rebased historical benchmark, to reflect a percentage of the difference between regional FFS expenditures in the ACO's regional service area and the ACO's historical expenditures. A higher percentage would be used in calculating this adjustment to the ACO's rebased historical benchmark for the ACO's third agreement period and all subsequent agreement periods. We further proposed to apply this phased approach to transitioning to the use of a higher weight in the calculation of the regional adjustment for ACOs with 2012 and 2013 agreement start dates that elected to continue their participation in the program for a second 3-year agreement period effective January 1, 2016, beginning in their third agreement period (starting in 2019).
- Annually, update the rebased benchmark to account for changes in regional FFS spending, replacing the current update, which is based solely on the absolute amount of projected growth in national FFS spending.

We proposed to define an ACO's regional service area to include any county where one or more assigned beneficiaries reside and to weight county-level FFS costs by the proportion of the ACO's assigned beneficiaries in the county. We proposed to calculate risk adjusted county FFS expenditures for the ACO's regional service area using the assignable beneficiary population, as a subset of the broader FFS population, residing in counties included in the ACO's regional service area. We proposed to align the calculation of regional FFS expenditures with the approach to calculating an ACO's benchmark and performance year expenditures. We also proposed a program-wide policy, to use beneficiaries eligible for ACO assignment instead of all FFS beneficiaries as the basis for program calculations using regional and national FFS expenditures. As part of the process of incorporating the revised rebasing methodology, we also proposed a number of technical changes to the program regulations to clarify the regulations text on the benchmarking methodology.

In the 2016 proposed rule we explained that the proposed approach to incorporating regional expenditures would make the ACO's cost target more independent of its historical expenditures and more reflective of FFS spending in its region (81 FR 5825). We also explained that adding the regional adjustment and replacing the current benchmark trend factor and annual update (calculated based on National FFS expenditures) with regional growth rates, would have mixed effects on ACOs overall by increasing or decreasing benchmarks for ACOs in various circumstances. For example, we explained that the proposed regional adjustment would likely benefit existing low spending ACOs operating in regions with relatively higher spending and/or higher growth in expenditures (81 FR 5834). We further explained that a phased-approach to transitioning to use of a higher weight in the calculation of the regional adjustment balanced our preference for quickly transitioning ACOs to a rebasing methodology that is more reflective of expenditures in the ACO's region than the ACO's historical expenditures with our concerns about the opportunity for arbitrage, and the potential for ACOs to alter their healthcare provider and beneficiary compositions or take other such actions in order to achieve more favorable performance relative to their region without actually changing their efficiency (81 FR 5834 through 5836). We also explained that the use of regional trend factors in resetting ACO benchmarks and regional growth rates to update benchmarks annually would likely result in relatively higher benchmarks for ACOs that are low growth in their region compared to benchmarks for ACOs that are high growth relative to their region (81 FR 5838 through 5840).

We anticipated these changes would strengthen the incentives for ACOs to invest in infrastructure and care redesign necessary to improve quality and efficiency and meet the goals of the Shared Savings Program (81 FR 5859). However, we expressed uncertainty about the effect on the level of ACO participation, provider and supplier response to the financial incentives under the program, interactions with other value-based payment models and programs, and the ultimate effectiveness of the changes in care delivery (81 FR 5860).

In section II.A.2 of this final rule, we discuss our final actions on the proposals for modifying the Shared Savings Program benchmarking methodology. Table 2 summarizes the final actions discussed in this section of the final rule. We begin this discussion by addressing comments on broader considerations for revising the benchmarking methodology.

Comment: Most commenters addressed the proposed changes to the benchmarking methodology, with the majority expressing support, in general, for incorporating regional FFS expenditures into ACOs' benchmarks. Many commenters offered specific suggestions on the proposed policies.

Some commenters detailed concerns, more generally, about the sustainability of the current rebasing methodology. A principal concern raised by commenters is that the current rebasing methodology forces ACOs to continually beat their own performance, by using historical expenditures from the performance years under an ACO's prior agreement period to reset the benchmark. Commenters raised a variety of concerns about the effects of this approach, including: ACOs that have performed well in the past are penalized under this methodology, while those who have performed poorly are rewarded; ACOs with lower spending have relatively lower benchmarks (and less opportunity for reward) compared to those with higher historical spending, including ACOs operating in different markets (with differing spending trends) as well as ACOs operating within the same market; over time there will be

diminishing opportunities to produce savings, that are used in part to support ACO operations (including investments that result in the provision of high value care), and ACOs will ultimately be forced to leave the program or participation in the program will be discouraged more generally. Many commenters explained that making an ACO's benchmark more independent of its historical expenditures and performance and more reflective of FFS spending and the healthcare environment in the ACO's region would be an improvement over the current approach.

Several commenters recognized that incorporating regional factors when resetting ACO benchmarks accounts for geographic variation in healthcare utilization. While some commenters considered this a necessary methodological development to ensure the sustainability of the Shared Savings Program, a commenter specified that this would be antithetical to CMS' larger goal of decreasing variability in per beneficiary spending on a nationwide scale. A commenter suggested CMS delay finalizing the proposed changes in light of CMS' concerns (including the potential for arbitrage or behavioral changes by ACOs) and the uncertainties about the impact of the alternative rebasing methodology, and further suggested CMS revisit the proposed changes in future rulemaking, after further analysis and once the Merit-Based Incentive Payment System (MIPS) and Alternative Payment Model (APM) requirements are proposed. However, even among those commenters that raised concerns about the details of the proposed policies, very few suggested that CMS abandon altogether an approach for incorporating regional FFS expenditures into ACO benchmarks.

The discussion in the comments also reflects commenters' consideration of the tradeoffs CMS identified in the proposed rule related to providing sufficiently strong incentives for ACOs to improve efficiency and continue participation in the program, while guarding the Trust Funds against the possibility that over inflating certain ACOs' reset benchmarks would result in selective participation by and excessive payments to ACOs with high benchmarks. Commenters illuminated that the balance of these concerns is complicated due to the diversity of the program's participants and regional variations/market circumstances.

Many commenters recognized that the benchmarking methodology, including any changes adopted in this final rule, will be crucial for determining the profile/characteristics of organizations that will have an incentive to enter and remain in the program over time. Comments discussed the effects of the proposed changes to the benchmarking methodology, including the following:

- Many commenters generally agreed that the proposed changes would encourage participation by ACOs that are historically efficient (low spending) in relation to their region, especially in high spending regions. Many commenters expressed support for the proposed policies to encourage participation by efficient ACOs. However, some commenters believe the resulting incentives would still be inadequate to encourage these ACOs to enter or remain in the program over the long term, citing concerns about diminishing returns when a component of the ACO's rebased historical benchmark continues to be based on expenditures under the ACO's prior agreement period and thereby reflects the ACO's past success.
- Some commenters expressed concern there may be little incentive for ACOs with spending equal to or higher than their region to enter the Shared Savings Program or continue participating under the proposals.
- Several commenters expressed concerns that the proposed changes could disadvantage certain ACOs, especially those in ACO-heavy markets and ACOs in existing low cost regions, as well as smaller ACOs comprised of geographically distant small- and mid-sized providers.
- Others expressed concern about the potential that the proposed changes would have unanticipated effects on particular organizations, pointing to the discussion in the proposed rule that "a wide range of potential outcomes" exist regarding financial performance under the proposed changes. Some commenters expressed uncertainty about the potential effects of the proposed changes and indicated that they lacked sufficient information to determine what outcomes they may have.

Some commenters addressed these concerns by suggesting CMS offer various benchmarking options to allow ACOs greater flexibility in determining the methodology that would be applied to determine their benchmark. Some commenters also suggested CMS stratify the regional benchmarking methodologies for historically low and high cost ACOs (in relation to their regions).

Response: We appreciate commenters' thoughtful remarks on the proposed changes to the benchmarking methodology, including the tradeoffs that we identified as relevant to the consideration of any revisions to the methodology for resetting an ACO's historical benchmark for a second or subsequent agreement period. The discussion in the latter sections of this final rule reflect our continued consideration of these important issues during the development of the policies in this final rule, and we believe the policies we are finalizing represent a balance of these considerations. We also believe the policies we are finalizing are responsive to a principal concern among stakeholders, as reflected in the comments, about the way in which ACOs' past performance is reflected in their benchmarks over time.

As explained in the 2016 proposed rule, the policy modifications are designed to reduce the impact of past performance and better reflect regional expenditures. We continue to believe an approach that incorporates regional FFS expenditures into an ACO's rebased historical benchmark will have mixed effects, increasing or decreasing benchmarks for ACOs in various circumstances. However, we believe that taking an incremental approach to incorporating regional elements when resetting the ACO's benchmark offers a balance between requests for faster or slower phase-in of these changes, and is responsive to the circumstances of differently situated organizations as we transition to this revised approach. When taking these issues into consideration, on the whole, we believe that this approach is consistent with a sustainable vision for the future of the Shared Savings Program, under which a variety of organizations will have sufficient incentive to enter and continue in the program, working to achieve the program's goals of better care for individuals, better health for populations, and lower growth in expenditures.

While we acknowledge the variation across ACOs participating in the program, in terms of their patient populations, location, and organizational structure, among other factors, we do not believe it is desirable or operationally feasible to implement an approach that would allow each ACO to select from a menu of options for customizing the benchmark methodology that would apply in any given performance year or agreement period. Doing so would introduce considerable operational complexity into the program's benchmarking methodology. Further an approach that allows an ACO to choose the more favorable of several methodologies for establishing its cost target would exacerbate our concerns about the potential for benchmarks to become overly inflated to the point where ACOs need to do little to maintain or change their care practices to generate savings. We are concerned that this flexibility could lead to opportunities for arbitrage and may dull incentives for ACOs to improve their performance under the Shared Savings Program.

Comment: Several commenters also, generally, agreed with the importance of transparency, predictability, simplicity, accuracy, and stability as guiding principles in developing a revised rebasing methodology, and provided feedback on how to accomplish these aims.

Response: We appreciate commenters' acknowledgement and support of the principles that guided our consideration of potential revisions to the methodology for resetting an ACO's historical benchmark for a second or subsequent agreement period. These principles also guided the development of our final policies, as reflected in the discussion throughout this section of this final rule.

Comment: A few commenters suggested alternative rebasing methodologies exceeding the scope of the modifications described in the proposed rule (for instance, allowing ACOs, particularly small and rural ACOs, to choose whether to move to the revised rebasing methodology; transitioning to pure regional benchmarks, or pure national benchmarks, or using a combination of ACO historical costs and blended regional/national costs in benchmarks; adopting the Next Generation ACO model methodology into the Shared Savings Program; and eliminating rebasing or reducing the frequency of rebasing). A commenter questioned whether CMS could establish a benchmark floor, an actuarial number beyond which CMS would not lower an ACO's benchmark. Another commenter suggested CMS adopt an option to allow Shared Savings Program ACOs to transition to a different payment model altogether such as a capitated payment model or population-based payments.

Response: Although we appreciate commenters' thoughtful recommendations for alternative methodologies for resetting the ACO's historical benchmark, and other approaches for improving the rewards under the Shared Savings Program, we consider these suggestions to be beyond the scope of this final rule, and decline at this time to adopt commenters' recommendations.

Comment: A commenter expressed concern about CMS' use of inconsistent terminology when describing the benchmarking methodology. In particular, the commenter noted that CMS used the words "reset" or "rebase" interchangeably. The commenter also noted a lack of clarity regarding the use of "trend" or "trending." This commenter, pointing to the length of the program's rulemaking documents and the complexity of the policies discussed therein, encouraged CMS to be precise in its language.

Response: We thank the commenter for raising this concern about the language used in technical discussions within rulemaking for the Shared Savings Program. To clarify, we consider the references to reset/resetting and rebase/rebasing an ACO's historical benchmark to be synonymous (see for example, 76 FR 67912 (specifying ". . . the benchmark would be reset (or rebased) [at] the start of each agreement period.")) However, the use of the words trend and trending could have a meaning specific to the context in which the term is used. For example, we refer to the use of trend factors (or trending) when discussing the existing policy for restating BY1 and BY2 expenditures in terms of BY3 expenditures when establishing an ACO's historical benchmark. However, "trends" may refer more generally to historical Medicare spending and cost experience.

b. Regional Definition

As explained in the 2016 proposed rule (see 81 FR 5829 through 5830), we consider an ACO's region to be synonymous with the service area from which it derives its assigned beneficiaries. Furthermore, as discussed in this section of this final rule, issues related to the definition of an ACO's regional service area include: (1) The selection of the geographic unit of measure to define this area; and (2) identification of the population of beneficiaries to include in this area. Calculation of the FFS expenditures for this area is discussed in detail in sections II.A.2.b.2 and II.A.2.e.2 of this final rule.

A fundamental concept underlying our consideration of the definition of an ACO's regional service area is that this geographic definition bear a relationship to the area of residence of the ACO's assigned beneficiaries, as a means of accounting for the geographic spread of the ACO's assigned population. In some cases, an ACO's assigned beneficiary population may span multiple geographic boundaries, for example in cases where an ACO provides services to beneficiaries residing in multiple counties within a single state or multiple states. The approach of defining an ACO's regional service area based on the area of residence of its assigned beneficiaries would therefore reflect regionally-related factors unique to the region the ACO serves, including the health status of the region's population, the geographic composition of the region (such as rural versus urban areas), and socio-economic differences within the regional population.

(1) Defining the ACO's Regional Service Area

In the 2016 proposed rule, we considered the geographic unit of measure to use in defining an ACO's regional service area for the purpose of determining the corresponding regional FFS expenditures to be used in calculations based on regional spending in the modified approach to establishing, adjusting and updating the ACO's rebased historical benchmark (see 81 FR 5829). We explained that these regional FFS expenditures would be used in determining the regional adjustment to an ACO's rebased historical benchmark and in calculating the growth rates in regional spending used in establishing and updating the ACO's rebased historical benchmark.

We proposed to determine an ACO's regional service area by the counties of residence of the ACO's assigned beneficiary population. We explained our belief that county-level data offers a number of advantages over the other options, including Core Based Statistical Areas (CBSAs), Metropolitan Statistical Area (MSAs), Combined Statistical Area (CSAs), States/territories, and Hospital Referral Regions (HRR). Our considerations included the following:

- Counties tend to be stable regional units compared to some alternatives, as the definition of county borders tends not to change.
- The agency has experience with identifying populations of beneficiaries by county of residence and calculating county-level rates based on their costs, including using county-level data to set cost targets for value based purchasing initiatives. CMS used counties to define the service areas of Physician Group Practice (PGP) demonstration sites (a predecessor of CMS' ACO initiatives) and used Parts A and B spending by county as part of setting benchmarks for these organizations. We also use county-level FFS expenditure data, in combination with other adjustments, to establish the benchmarks used for setting local MA rates.
- In terms of determining regional costs, smaller areas (such as counties) better capture regional variation in Medicare expenditures, and allow for more customized regional definitions for each ACO, but risk being dominated

by expenditures from a single ACO or group of ACOs, which could potentially reduce ACO benchmarks in clustered markets. We explained that we can guard against the potential bias from this effect by using a sufficiently large county-based population.

• Currently, we produce quarterly and annual reports for Shared Savings Program ACOs that include aggregate data on distribution of assigned beneficiary residence by county.

Consistent with this proposed definition of regional service area, we proposed to define regional costs as county FFS expenditures for the counties in which the ACO's assigned beneficiaries reside calculated using the methodology discussed in section II.A.2.e.2 of this final rule. We explained that use of county-level FFS data in calculating expenditures for an ACO's regional service area would permit ACOs to be viewed as being on the spectrum between traditional FFS Medicare and MA, a concept some commenters in response to the December 2014 proposed rule and stakeholders have urged CMS to articulate. Additionally, we noted that use of county FFS expenditure data, which are publicly available, would allow for increased transparency in ACO benchmark calculations and would ease ACOs' and stakeholders' access to data for use in modeling and predictive analyses.

These proposals were reflected in our proposed addition of a new definition of "ACO's regional service area" to § 425.20 and in a proposed new § 425.603 describing the calculations that would be used in resetting an ACO's historical benchmark for a second or subsequent agreement period. We sought comment on these proposals and on the alternatives for defining an ACO's regional service area, specifically use of CBSA, MSA, CSA or State/territory designations.

Comment: Many of the commenters addressing the regional definition favored the proposed use of counties of residence of an ACO's assigned beneficiaries as the geographic unit of measure in defining an ACO's regional service area. Commenters explaining their support for the proposal cited a variety of reasons, including: Counties provide a stable, clearly defined geographic unit; counties will be effective in capturing regional variation, and allow for greater customization of the ACO's regional definition; and use of county-level data will further align ACOs with MA and other CMS initiatives. Of the few comments on alternatives discussed in the proposed rule (CBSAs, MSAs, CSAs, HRRs, states/territories), opinions tended to split for and against these approaches. A commenter pointed to the need for CMS to more consistently use the same geographic unit of measure for defining a region across its initiatives, preferring use of MSAs, which are also used by CMS in other payment systems and models. Several commenters raised alternatives not considered in the proposed rule. For instance, a commenter suggested CMS consider using a more sophisticated and granular methodology such as Primary Care Service Areas (PCSAs), pointing to consideration for use of this geographic unit in the Part B Drug Payment Model. Another commenter advised against using census regions.

Response: We are finalizing our proposal to define an ACO's regional service area by the counties of residence of the ACO's assigned beneficiary population. We continue to believe that using counties as the geographic unit of measure offers advantages over other approaches, as supported by some commenters. Counties tend to be stable geographic units. Use of counties in setting the ACO's regional service area more easily allows for the use of county FFS expenditures in calculating regional factors, an approach that will more closely align the Shared Savings Program methodology for incorporating regional FFS expenditures into ACO benchmarks with the MA rate-setting methodology. We have experience with use of county level data not only through MA but also previously with the PGP demonstration. In addition, we currently provide informational reports to Shared Savings Program ACOs that include aggregate data on distribution of assigned beneficiary residence by county. Given the short timeframe for implementing the changes in the benchmarking methodology described in this final rule, we believe this operational experience with use of county-level data within the Shared Savings Program will facilitate implementation of the revised methodology. We also believe that by using counties, rather than larger geographic units, we can more accurately reflect the geographic areas that the ACO serves. We decline at this time to use a different methodology to establish an ACO's regional service area, particularly alternatives that were not contemplated in the 2016 proposed rule, which may prove challenging to implement within a short period of time for the Shared Savings Program and without notice to ACOs and other stakeholders. We also recognize that CMS uses different geographic units of measure across payment models, but continue to believe that use of counties, similar to the approach used in Medicare Advantage, is an appropriate methodology for the Shared Savings Program.

FINAL ACTION: We are finalizing our proposal to determine an ACO's regional service area by the counties of residence of the ACO's assigned beneficiary population. Furthermore, we are finalizing our proposal to define regional costs as county FFS expenditures for the counties in which the ACO's assigned beneficiaries reside calculated using the methodology discussed in greater detail in section II.A.2.e of this final rule. These final policies are reflected in the addition of a new definition of "ACO's regional service area" to § 425.20 and new § 425.603 describing the calculations that will be used in resetting an ACO's historical benchmark for a second or subsequent agreement period.

(2) Establishing the Beneficiary Population Used To Determine Expenditures for an ACO's Regional Service Area

In the 2016 proposed rule we explained that the population that is the basis for calculating regional FFS costs must be sufficiently large to produce statistically stable mean expenditure estimates (avoiding biases that result from small numbers), and must be representative of the demographic mix, health status and cost trends of the beneficiary population within the ACO's regional service area. Therefore, as discussed in section II.A.2.b.1 of this final rule, we proposed to define the ACO's regional service area to include any county where one or more of the ACO's assigned beneficiaries reside.

We also proposed to calculate county FFS expenditures using the expenditures for all assignable FFS beneficiaries (a subset of the broader FFS population) residing within the county, including ACO assigned beneficiaries. We stated that we believed that this approach would result in the most accurate and predictable regional expenditure factor for each ACO (81 FR 5831).

We detailed in a different section of the 2016 proposed rule proposals related to the definition of assignable FFS beneficiaries (81 FR 5843). (See also the discussion in section II.A.2.e of this final rule.) In discussing which expenditures should be included in these calculations, we explained that the overall FFS population includes beneficiaries who are not eligible for assignment to an ACO. Including expenditures for all FFS beneficiaries would introduce bias into the calculation of the ACO's regional service area expenditures.

We also considered whether to include the ACO's assigned beneficiaries within the population used to determine expenditures for the ACO's regional service area. We concluded that attempting to identify regional FFS expenditures for only non-ACO beneficiaries (or customizing the calculation of regional FFS expenditures for each ACO by excluding its own beneficiaries) would add significant complexity and create potential bias. Furthermore, excluding the ACO's assigned beneficiaries from the population used to determine regional FFS expenditures may also produce biased results where an ACO tends to serve beneficiaries of a particular Medicare enrollment type, demographic or socio-economic status (for example, ACOs serving largely dual-eligible populations) and when an ACO tends to dominate (serve a large proportion of FFS beneficiaries) in a region.

We considered addressing the circumstance of ACOs that are dominant in their region, by expanding the scope of the ACO's region (for example, by including adjoining counties) to allow the ACO's regional service area to include a greater mix of beneficiaries who are not assigned to the ACO. However, we explained our belief that this approach may be challenging to apply consistently and accurately given the potential for variation of populations across and within regional areas, and would be a potentially cumbersome policy to maintain as ACOs continue to develop across the country. Therefore, we indicated we would monitor for cases where an ACO tends to serve a large proportion of FFS beneficiaries in its region, and consider the effect of these circumstances on ACO benchmarks. If warranted, we would explore developing adjustments to the definition of an ACO's regional service area to account for this circumstance in future rulemaking.

Further, we proposed to weight an ACO's regional expenditures relative to the proportion of its assigned beneficiaries in each county, determined by the number of the ACO's assigned beneficiaries residing in the county in relation to the ACO's total number of assigned beneficiaries. We explained that absent this weighting, we could overstate or understate the influence of the expenditures for a county where relatively few or many of an ACO's assigned beneficiaries reside.

These proposals on the calculation of county FFS expenditures and regional FFS expenditures were reflected in the proposed new § 425.603. We sought comment on alternatives to the proposal to use assignable beneficiaries, including beneficiaries assigned to the ACO, in establishing the expenditures for an ACO's regional service area, such as using all Medicare FFS beneficiaries in determining these expenditures.

Comment: While some commenters expressed support for the proposal to include any county in which at least one assigned beneficiary resides in an ACO's regional service area, many other commenters opposed this proposal. Some commenters questioned whether including data from counties with small numbers of assigned beneficiaries sufficiently improves the accuracy of the benchmark to justify the added complexity and administrative burden. The most commonly suggested alternative was to specify a higher threshold for the minimum number of assigned beneficiaries residing in a county included in the ACO's regional service area. For instance, commenters suggested we include in the definition of the ACO's regional service area counties where at least 1 percent of an ACO's assigned beneficiaries reside. Commenters also pointed out that publicly available ACO assignment data files (made available to support modeling of the proposed policies) as well as the PGP Demonstration methodology, omitted counties with less than 1 percent of ACO assigned beneficiaries.

Response: We are finalizing our proposal to include in the definition of an ACO's regional service area any county where one or more beneficiaries assigned to the ACO reside. We continue to believe this approach is necessary to accurately reflect the diversity of the ACO's assigned beneficiary population and to provide a complete picture of the ACO's regional service area. Based on our initial modeling of this policy using preliminary assignment data for 433 ACOs participating in the program for performance year 2016, we observed that ACOs have on average about 7 percent of their assigned beneficiaries residing in counties in which less than 1 percent of the ACO's total assigned beneficiary population resides. In this analysis, we observed a median of approximately 6 percent of assigned beneficiaries residing in counties where less than 1 percent of the ACO's total assigned beneficiary population resides, a minimum of approximately 2 percent, and a maximum of approximately 44 percent. We also observed that for nearly 20 percent of these ACOs (78 of the 433) more than 10 percent of the ACO's assigned beneficiaries were dispersed across counties in which less than 1 percent of the ACO's total assigned beneficiary population resides. Applying a threshold for including counties within the ACO's regional service area would likely affect ACOs differently depending on the size of the ACO's assigned beneficiary population residing in counties below the threshold because the remaining counties would need to be weighted proportionately higher, which could have a significant impact on the calculation of regional expenditures for an ACO. Further, we believe our approach to weighting county FFS expenditures, described later in this section of this final rule, will result in counties with very few assigned beneficiaries having a proportionately small effect on the expenditures for the ACO's regional service area.

Comment: The vast majority of commenters discussing the proposal to base regional FFS expenditures on assignable beneficiaries (instead of all FFS beneficiaries), favored an approach that would exclude from these calculations beneficiaries who would not meet the requirements for being assigned (such as non-utilizers of primary care services). A commenter expressed support for use of all Medicare beneficiaries from a particular region, instead of only assignable beneficiaries, in calculating regional expenditures. This commenter indicated that including expenditures for all Medicare FFS beneficiaries in these calculations accounts for beneficiaries seeking care within and outside the ACO, addresses concerns about smaller populations biasing the calculation, and is in line with other CMS initiatives that use calculations based on the entire Medicare population.

While some commenters favored the proposed inclusion of ACO assigned beneficiaries in the regional expenditure calculations, many opposed this proposal. Those opposed usually suggested that CMS exclude from these calculations either the ACO's assigned beneficiaries or all beneficiaries assigned to participants in any CMS ACO initiative (Shared Savings Program, Pioneer ACO Model, Next Generation ACO Model) or more broadly to participants in any alternative payment model. Commenters expressed concerns that including ACO beneficiaries' expenditures would skew regional expenditure calculations by reflecting ACOs' efforts to coordinate care and reduce expenditures for their assigned populations. Commenters indicated these concerns were more pronounced for ACOs that have significant market saturation, for

example, in cases where an ACO is dominant in its market, or where many ACOs have formed within the same market (referred to as "ACO-heavy" regions). A commenter expressed a concern which was also reflected in other comments, that this would create another dynamic where an ACO must compete against its own historical performance. Another commenter noted that inclusion of an ACO's assigned population in a comparison group would be unusual in a commercial ACO contract.

Among the commenters expressing support for the inclusion of the ACO's assigned beneficiaries in expenditure calculations for the ACO's regional service area, some indicated that the approach would protect both ACOs and the Trust Funds. A commenter explained this approach would reduce the impact of the regional adjustment impact, particularly in less densely populated areas, but did not detail the reason for this belief. Another commenter specified that if ACOs are successful in limiting growth of expenditures, then including their beneficiaries in calculations of county FFS spending would serve to control the growth in calculated regional FFS spending, and ultimately allow the Medicare program to capture further savings as ACOs' benchmarks move toward the regional average. Several commenters explained that removing the ACO's assigned beneficiaries from the population used to determine regional FFS expenditures could bias results, but did not explain the nature of this potential bias. A commenter expressed concern that excluding the ACO's assigned beneficiaries from the population used to determine regional FFS expenditures could effectively penalize ACOs for caring for the sickest patients, particularly if these ACOs are dominant in their markets. Some commenters also urged CMS to consider whether the proposed use of assignable beneficiaries in regional benchmark calculations could disadvantage rural ACOs, by showing artificially lower utilization rates in rural communities.

Response: We are finalizing as proposed the policy to include the expenditures for all assignable FFS beneficiaries (including ACO assigned beneficiaries) residing in the counties that make up the ACO's regional service area in calculating county FFS expenditures.

We discuss in detail, in section II.A.2.e.3 of this final rule, the definition of assignable beneficiaries. Some commenters seemed to misunderstand the scope of beneficiaries included within the assignable population (perceiving it as a broader population than the population currently used to calculate factors based on national FFS expenditures). To clarify, assignable FFS beneficiaries are a subset of the broader FFS population (see 81 FR 5843). The assignable beneficiary population, as defined in this final rule, would include any beneficiary receiving a primary care service from a primary care physician or from a physician with one of the primary specialty designations included in § 425.402(c). This primary care service must be one that is billed for under traditional FFS Medicare with a date of service during the 12-month assignment window as defined under § 425.20.

For the reasons discussed in the proposed rule, and as summarized previously in this section of the final rule, we continue to believe that including the ACO's assigned beneficiaries within the assignable population used to calculate county FFS expenditures for the ACO's regional service area will reduce the chance of bias in the calculations, particularly in the case of ACOs serving higher cost beneficiaries within the region. We believe that including the ACO's assigned beneficiaries among the population used to calculate risk adjusted county level expenditures (applying full CMS–HCC risk adjustment, as discussed in section II.A.2.e.2 of this final rule) is critical to ensuring regional expenditures accurately reflect the cost and acuity of beneficiaries in the ACO's region. Additionally, we have significant operational concerns with commenters' suggestions that CMS remove each ACO's assigned beneficiaries from the ACO's regional service area. This approach would entail calculating county rates tailored for each ACO for each benchmark and performance year, as opposed to the proposed approach of calculating county rates program-wide and determining on an ACO-specific basis which county expenditures to use and how to weight these expenditures. We are deeply concerned that this alternative approach would not be transparent because of the highly individualized nature of the exclusions that would be required for each ACO's county FFS expenditure calculations. In addition, we believe determining ACO-specific county-level FFS expenditures would be time intensive given the complexity of these calculations, and prevent timely provision of program reports based on these data to ACOs.

Furthermore, we continue to believe that the approach to determining county FFS expenditures based on assignable Medicare beneficiaries (as opposed to all Medicare beneficiaries) may avoid bias in these calculations, including biases that may be more pronounced in certain geographic regions as a result of healthcare patterns and population demographics. In the 2016 proposed rule, we explained our belief that including expenditures for all FFS beneficiaries would introduce bias into the calculations of the ACO's regional service area expenditures. We explained that regional FFS expenditures, which are calculated based on relatively smaller populations than the national FFS population currently used in benchmark calculations based on national FFS expenditures, may be more susceptible to the influence of this bias. For example, in counties where the health status of the overall beneficiary population leads more beneficiaries to be non-utilizers of services, a bias in the direction of relatively lower regional expenditures may be more pronounced. On the other hand, a bias in the direction of relatively higher regional expenditures may be more pronounced in counties where there are established patterns of accessing primary care services through specialists who are not the basis for assignment. We also noted that ultimately, such differences could factor more prominently in certain counties that are used to compute an ACO's regional service area expenditures (see 81 FR 5830 and 5831). Thus, using only assignable beneficiaries in expenditure calculations avoids biases that could result from including non-utilizers, among other factors, and that would be present in calculations based on the larger Medicare FFS population.

Comment: Commenters concerned about the situation of ACOs that have a regional service area population that is too small (particularly as a result of excluding ACO assigned beneficiaries) suggested alternatives for expanding the ACO's regional service area and encouraged CMS to adopt such an approach in the final rule (as opposed to monitoring the issue). Most commonly, commenters suggested including adjacent counties in the ACO's regional definition (for example, citing the approach used in the Pioneer ACO model, or describing details of an alternative approach), as well as increasing the number of years of data included in the calculations (for example, using a 5-year rolling average for county-level spending estimates, along the lines of the approach used by MA). Some commenters suggested increasing the weight given to the counties that have a lower proportion of ACO assigned beneficiaries in relation to the population of Medicare FFS beneficiaries. However, a commenter acknowledged that any methodology for expanding the scope of an ACO's region would be both cumbersome and challenging to apply consistently.

Response: We appreciate commenters' suggestions for alternative approaches to defining the ACO's regional service area. In section II.A.2.e.2 of this final rule, we address commenters' suggestions to use additional years of data to calculate county FFS expenditures. We decline at this time to adopt alternatives suggested by commenters for expanding the ACO's regional service area population, particularly in relation to requests to exclude ACO assigned beneficiaries from the assignable population. We do not believe these adjustments are necessary under the methodology we are finalizing for determining the ACO's regional service area using the assignable FFS beneficiary population, including ACO assigned beneficiaries. As we implement the revised rebasing methodology established with this final rule, we will consider the impact of including ACO assigned beneficiaries within the population used to calculate the regional FFS expenditures, including the potential for bias in regional FFS expenditure calculations for ACOs that are dominant in their regions and ACO-heavy regions. In the event we determine that any changes to are necessary to address these issues, we will address them in future rulemaking.

Comment: Although not discussed in the proposed rule, a few commenters made suggestions to include or exclude MA beneficiaries in the population used to determine expenditures for the ACO's regional service area.

Response: As an initial matter, we wish to clarify the following: (1) The assignable population under this final rule could include beneficiaries who are enrolled in MA during part of the 12-month assignment-window; and (2) the assignable population excludes beneficiaries who have no primary care services billed under traditional FFS Medicare and thus do not meet the definition of an "assignable beneficiary" under this final rule, such as beneficiaries who received services only through a MA plan for the entirety of the 12-month assignment window. Underlying our proposal to use assignable beneficiaries in calculating regional and national FFS expenditures was our intent to ensure these calculations were based on beneficiaries that have some chance of being assigned to the ACO. Accordingly, we decline at this time to include in regional FFS expenditure calculations beneficiaries who have only received services through a MA plan during the 12-month assignment window used to determine assignable beneficiaries and who could not be eligible to be assigned to an ACO. However, we wish to clarify that some beneficiaries who meet the definition of "assignable beneficiary" adopted in this final rule will ultimately be excluded from assignment to an ACO for purposes of determining the ACO's benchmark or performance year expenditures because they fail to meet the assignment criteria specified under § 425.401(a).

Comment: Almost all commenters discussing the proposal to weight expenditures by the proportion of the ACO's assigned beneficiaries in each county supported the proposed approach. Commenters underscored the importance of this weighting for accurately reflecting expenditure levels in the ACO's market in regional calculations. Absent this weighting, CMS could over or understate the influence of expenditures for a county. A commenter indicated that the need to perform this weighting illustrated the inaccuracies and lack of precision with using county-level data, and recommended the use of an alternative methodology to define the ACO's regional service area (such as CBSAs, MSAs, and CSAs). Some commenters requested clarification of what the proposed methodology for establishing an ACO's regional service area would mean for ACOs that use a model of geographically distant providers to aggregate to the required minimum number of 5,000 assigned beneficiaries.

Response: We are finalizing as proposed the policy of weighting an ACO's regional expenditures relative to the proportion of its assigned beneficiaries in each county, determined by the number of the ACO's assigned beneficiaries residing in the county in relation to the ACO's total number of assigned beneficiaries. For the reasons discussed in the proposed rule and raised by commenters who supported this approach, we believe that weighting county-level FFS expenditures by the proportion of assigned beneficiaries in each county will accurately reflect expenditure levels in the ACO's market in regional FFS expenditure calculations.

We also note that the need to weight the expenditures is not necessarily specific to the choice of counties as the geographic unit in the regional definition. Some approach to weighting would be necessary in any methodology for calculating expenditures for an ACO's regional service area, since ACOs often serve beneficiaries in multiple counties within a state or across several states as discussed in the 2016 proposed rule (81 FR 5831). As a result, we disagree with the comment indicating that use of weighting in a methodology for calculating regional FFS expenditures is somehow indicative of a lack of precision with using county-level data.

Further, in response to the request for clarification on the application of the weighting methodology to smaller ACOs with geographically dispersed ACO participants, we note that the methodology for determining an ACO's regional service area and calculating regional FFS expenditures will be applied consistently across ACOs, regardless of ACO size, composition, or geographic location.

We did not receive comments specifically addressing how county-level FFS expenditures should be weighted for purposes of determining regional FFS expenditures for the ACO's regional service area. In the proposed rule, we outlined an approach in the proposed § 425.603(f). However, following further consideration of this issue, we now believe that the proposed provision should be revised to more clearly reflect our intended approach. We wish to clarify that when determining expenditures for an ACO's regional service area, we intend to calculate each county's expenditures by enrollment type, and to weight these expenditures by the ACO's proportion of assigned beneficiaries in the county for the applicable enrollment type. We will then aggregate these values, across counties within the ACO's regional service area, for each population by Medicare enrollment type. This will result in a separate value for each of the four populations identified by Medicare enrollment type, representing county-weighted regional FFS expenditures for that Medicare enrollment type. We will apply to each of these aggregate expenditure values (specific to a Medicare enrollment type) a weight reflecting the ACO's overall proportion of assigned beneficiaries in that Medicare enrollment type, as determined in relation to its entire assigned population for the relevant benchmark or performance year in order to determine the ACO's risk adjusted regional expenditures for that enrollment type. We are making clarifying revisions to the provision at § 425.603(f) to reflect this approach.

FINAL ACTION: We are finalizing our proposal to define the ACO's regional service area to include any county where one or more assigned beneficiaries reside, and to reflect this policy through the addition of a new definition of "ACO's regional service

area" to § 425.20. We are finalizing several proposals, among others described elsewhere in this final rule, on the calculation of county FFS expenditures and an ACO's regional FFS expenditures as reflected in new § 425.603 to: (1) Include expenditures for all assignable FFS beneficiaries (including ACO assigned beneficiaries) residing within the county to calculate the county's FFS expenditures; and (2) weight an ACO's regional expenditures relative to the ACO's proportion of its assigned beneficiaries in each county, determined by the number of the ACO's assigned beneficiaries residing in the county in relation to the ACO's total number of assigned beneficiaries. As discussed in this section of this final rule, we are making revisions to § 425.603(f), to clarify the weighting of county-level expenditures by the ACO's proportion of beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) in each county for purposes of determining the ACO's regional expenditures. We will monitor the effects of this methodology on calculations of regional FFS expenditures, particularly for bias in the calculations among ACOs that are dominant in their regions, as well as in ACO-heavy regions, and will address any necessary adjustments to this methodology through future rulemaking.

c. Applying Regional Expenditures to the ACO's Rebased Benchmark

(1) Background

In the 2016 proposed rule (81 FR 5832), we summarized our discussion of benchmark alternatives in recent rulemaking, indicating there is an array of options for incorporating regional expenditures in ACO benchmarks. We explained our agreement with commenters on the previous rulemaking regarding the benefits of incorporating regional expenditures in rebased benchmarks, and indicated our interest in moving to an alternative rebasing approach that builds on the program's existing benchmarking methodology established under the authority of section 1899(d)(1)(B)(ii) of the Act and codified in the Shared Savings Program regulations at § 425.602.

As we stated in the proposed rule, over 400 ACOs have voluntarily entered the Shared Savings Program under the financial models (Track 1 and Track 2) established in the November 2011 final rule and as modified by the June 2015 final rule (adding a choice of Track 3 for agreement periods beginning January 1, 2016). Furthermore, 147 ACOs with 2012 and 2013 agreement start dates elected to continue their participation in the program for a second 3-year agreement period effective January 1, 2016, to which the current rebasing methodology, finalized in the June 2015 final rule applies. We explained that the value proposition of the program's financial models, which is largely determined by the methodology used to establish ACO benchmarks, is an important consideration for organizations deciding whether to engage (or continue to engage) in this new approach to the delivery of health care. Therefore, in considering how to incorporate regional expenditures into the benchmarking methodology, we expressed our belief that building from the existing benchmarking methodology will help maintain the stability of the program and ultimately result in revised policies that are more easily understood by ACOs and program stakeholders, and more readily implemented by CMS.

Principally, we considered using the Secretary's discretion under section 1899(d)(1)(B)(ii) of the Act to adjust the historical benchmark by "such other factors as the Secretary determines appropriate" in order to incorporate regional FFS expenditures into the rebased historical benchmark. In the 2016 proposed rule (81 FR 5832 through 5836), we discussed two approaches to calculating an adjustment to an ACO's rebased historical benchmark to account for regional FFS expenditures for the ACO's regional service area, and described how the adjustment would be applied to the rebased historical benchmark.

We discussed our belief that although the plain language of section 1899(d)(1)(B)(ii) of the Act demonstrates Congress' intent that the benchmark established for a Shared Savings Program ACO would reflect the ACO's historical expenditures in the 3 most recent years prior to the start of the ACO's agreement period, Congress also recognized that this historical benchmark should be adjusted "for beneficiary characteristics and such other factors as the Secretary determines appropriate." Therefore, to the extent an ACO's rebased benchmark continues to be based on the ACO's historical expenditures in the 3 years preceding the start of the new agreement period, we expressed our belief that adjusting those historical expenditures to account for regional FFS expenditures for the ACO's regional service area falls within the Secretary's discretion to make adjustments to the historical benchmark for "other factors" under section 1899(d)(1)(B)(ii) of the Act.

We explained that we currently make several adjustments to an ACO's historical benchmark under the Secretary's discretion under section 1899(d)(1)(B)(ii) of the Act, including to: (1) Adjust benchmark year expenditures to exclude IME and DSH payments (§ 425.602(a)(1)(i)); (2) adjust the historical benchmark for the addition and removal of ACO participants (§ 425.602(a)(8)); (3) adjust the rebased historical benchmark to account for the average per capita amount of savings generated during the ACO's previous agreement period (§ 425.602(c)(2)(ii)); and (4) adjust the historical benchmark for changes in demographics and health status of the ACO's performance year assigned beneficiary population (§§ 425.604(a)(1) through (3), 425.606(a)(1) through (3), 425.610(a)(1) through (3)). We expressed our belief that it is appropriate to further adjust ACO historical benchmarks to reflect FFS expenditures in the ACO's regional service area. Furthermore, in relation to the use of regional FFS expenditures in developing the ACO's rebased benchmark, we explained our belief that it is appropriate to forgo making an additional adjustment to account for savings generated by the ACO in its prior agreement period (81 FR 5832).

(2) Adjusting the Reset ACO Historical Benchmark To Reflect Regional FFS Expenditures

In the 2016 proposed rule we described two options for calculating the regional FFS adjustment and the ACO's rebased historical benchmark. The first option would be to calculate a regional adjustment based on a regionally-trended version of the ACO's prior historical benchmark. The second option would be based on a regional average determined using county FFS expenditures (81 FR 5832 and 5833). We proposed to adopt the second option.

Specifically, we proposed to calculate the ACO's rebased historical benchmark using the current rebasing methodology established in the June 2015 final rule under which an ACO's rebased benchmark is calculated based on the 3 years prior to the start of its current agreement period. Consistent with the current policy we would equally weight the 3 benchmark years. However, in trending forward benchmark year (BY) 1 and BY2 expenditures to BY3 dollars, we proposed to use regional growth rates (instead of national growth rates) for Parts A and B FFS expenditures (81 FR 5833 and 5838).

Furthermore, in calculating the ACO's rebased historical benchmark, we proposed not to apply the current adjustment to account for savings generated by the ACO under its prior agreement period. We explained our observation that for ACOs generating savings, a rebasing methodology that accounts for regional FFS expenditures would generally leave a similar or slightly greater share of measured savings in an ACO's rebased benchmark for its ensuing agreement period. By contrast, for ACOs generating losses, a rebasing methodology that accounts for regional FFS expenditures would tend to carry forward a significant portion of measured losses into their rebased benchmarks and push benchmarks lower than the current rebasing policy. We expressed our belief that in transitioning to a benchmark rebasing methodology that incorporates an adjustment for regional FFS expenditures, it is important to forgo the current adjustment to account for shared savings generated by the ACO under its prior agreement period.

We proposed to calculate the regional FFS adjustment to the ACO's rebased historical benchmark based on a regional average determined using county FFS expenditures. The calculation of regional average expenditures would generally involve the following key steps:

- Calculate risk adjusted regional per capita FFS expenditures using county level Parts A and B expenditures for the ACO's regional service area for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible); weighted based on the proportion of ACO assigned beneficiaries residing in each county for the most recent benchmark year. We also proposed a risk adjustment approach that would be used in these calculations to adjust for differences in health status between an ACO and its regional service area (81 FR 5846 through 5848; and as discussed in detail elsewhere within this section of this final rule).
- Weight the resulting regional expenditures by the proportion of assigned beneficiaries for the most recent benchmark year for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

We described in detail and sought comment on the alternative option, under which we would calculate the regional FFS adjustment based on a regionally-trended version of the ACO's prior historical benchmark (81 FR 5833). In comparing the features of the two options, we expressed our belief that using regional average expenditures offered a preferred approach. While we believed both options would avoid penalizing ACOs that improve their spending relative to that of their region, the approach of using regional average expenditures would not depend on older historical data in calculations as would be required under the alternative involving calculation of a regionally-trended amount. In general, from an operational standpoint, we anticipated that using a regional average as part of calculating regional FFS expenditures for an ACO's regional service area would be easier for ACOs and other stakeholders to understand as well as for us to implement in comparison to the alternative considered, and would more closely align with the MA ratesetting methodology.

We also considered how the adjustment based on regional FFS expenditures should be applied to the ACO's rebased historical benchmark. Our preferred approach was to use the following steps to adjust the ACO's rebased historical benchmark:

- Calculations of the ACO's rebased historical benchmark and regional average expenditures, as described previously in this section of the final rule, would result in average per capita values of expenditures for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).
- For each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) we would determine the difference between the average per capita regional amount and the average per capita amount of the ACO's rebased historical benchmark. These values may be positive or negative. For example, for a particular Medicare enrollment type, if the value of the ACO's rebased historical benchmark is greater than the regional average amount, the difference between these values will be expressed as a negative number.
- Multiply the resulting difference, for each Medicare enrollment type by a percentage determined for the relevant agreement period. The value of this percentage is described in detail later in this section of the final rule. The products (one for each Medicare enrollment type) resulting from this step are the amounts of the regional adjustments that will be applied to the ACO's historical benchmark.
- Apply the adjustment to the ACO's rebased historical benchmark by adding the adjustment amount for the Medicare enrollment type to the truncated, trended and risk adjusted average per capita value of the ACO's rebased historical benchmark for the same Medicare enrollment type.
- Multiply the adjusted value of the ACO's rebased historical benchmark for each Medicare enrollment type by the proportion of the ACO's assigned beneficiary population for that Medicare enrollment type, based on the ACO's assigned beneficiary population for benchmark year 3 of the rebased historical benchmark.
- Sum expenditures across the four Medicare enrollment types to determine the ACO's adjusted rebased historical benchmark.

In a separate section of the 2016 proposed rule, we considered issues related to risk adjustment when using regional expenditures in resetting ACO benchmarks, including considerations raised in prior rulemaking (see 81 FR 5846 through 5848). We discussed our concern that using CMS–HCC risk scores for an ACO's assigned beneficiary population in resetting the ACO's benchmark has the potential to benefit ACOs that have systematically engaged in coding initiatives during their prior agreement period. We explained that this effect would have been limited in the corresponding performance years due to the application of our current approach to risk adjusting during the agreement period according to the ACO's newly and continuously assigned beneficiary populations. We noted that initial financial performance results (for the performance years ending December 31, 2013 and 2014) do not show strong evidence that concerns about systematic coding practices by ACOs have materialized, but complete data are not yet available to analyze the effect of coding initiatives in the initial rebasing of ACO benchmarks, as initial program entrants (ACOs with 2012 and 2013 agreement start dates) only began their second agreement periods on January 1, 2016.

To balance our concerns regarding ACO coding practices with the recommendations of commenters received through earlier rulemaking, we proposed to risk adjust to account for the health status of the ACO's assigned population in relation to FFS beneficiaries in the ACO's regional service area as part of the methodology for determining the adjustment to the ACO's rebased historical benchmark to reflect regional FFS expenditures, and indicated we would rigorously monitor for the impact of coding initiatives on ACO benchmarks and make necessary refinements to the program's risk adjustment methodology through future rulemaking if program results show adverse impacts due to increased coding intensity. We outlined the methodology of the proposed risk adjustment approach. We indicated that we would compute for each Medicare enrollment type a measure of risk-adjusted regional expenditures that would account for the differences between the average CMS–

HCC risk scores of the ACO's assigned beneficiaries and the average CMS–HCC risk scores in the ACO's regional service area. This adjustment would also capture differences in patient mix between the ACO's assigned population and the FFS population in the ACO's regional service area. We noted our belief that this combined approach (risk adjustment in combination with monitoring for coding intensity) was reasonable given the lack of strong evidence to date that ACOs are engaging in more intensive coding practices and given a number of factors, described in the 2016 proposed rule (81 FR 5847 through 5848), that we believe would mitigate the potential impact of coding intensity on ACO financial calculations. We noted that the proposed approach would not apply in the calculation of benchmarks for ACOs in their first agreement period or in the second agreement period for ACOs that started the program in 2012 and 2013 and started a new agreement period on January 1, 2016. We also noted that for all ACOs we would continue to use the current methodology to adjust the ACO's benchmark annually to account for the health status and demographic factors of the ACO's performance year assigned beneficiaries (according to the newly and continuously assigned populations).

We sought comment on this proposed approach and on the alternatives considered that might be employed in the future to limit the impacts of intensive coding while still accounting for changes in health status within an ACO's assigned beneficiary population, including: (1) Applying the methodology currently used to adjust the ACO's benchmark annually to account for the health status and demographic factors of the ACO's performance year assigned beneficiaries (according to newly and continuously assigned populations) when rebasing the ACO's historical benchmark; or (2) developing a coding intensity adjustment by looking at risk score changes over time for beneficiaries assigned to the ACO for at least two consecutive years, as well as in each respective diagnosis collection year (similar to the population referred to as stayers under the MA methodology) relative to the greater FFS population.

In another section of the 2016 proposed rule, we proposed program-wide changes to the methodology used to adjust the ACO's benchmark for changes in ACO participant (TIN) composition (81 FR 5850 and 5851). In that discussion, we proposed to redetermine the regional FFS adjustment to account for changes to the ACO's certified ACO Participant List. Specifically, we would redetermine the ACO's regional service area during the reference year (benchmark year 3 (BY3)) based on the residence of the ACO's assigned beneficiaries for the reference year determined using the new ACO Participant List. We would also use this assigned population to determine the ACO's proportion of beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) to be used in calculating the regional adjustment. We would then redetermine the regional FFS adjustment to the ACO's rebased historical benchmark, based on regional average expenditures for the ACO's updated regional service area. In redetermining the regional FFS adjustment, we would also adjust for differences between the health status of the ACO's assigned beneficiaries determined using the new ACO Participant List and the population of assignable beneficiaries in the ACO's regional service area based on the reference year (BY3). Although we will discuss our proposed revisions to the methodology for adjusting benchmarks to account for changes in ACO participant composition in more detail in section II.B of this final rule, we believe it is appropriate to address the issue of redetermining the regional FFS adjustment based on changes in the ACO's participant composition in this section of this final rule.

Consistent with our proposal to incorporate an adjustment for regional expenditures into an ACO's rebased benchmark, we proposed to revise § 425.602 in order to limit the scope of the provision to establishing, adjusting, and updating the benchmark for an ACO's first agreement period. We proposed to explain how the benchmark would be reset for a subsequent agreement period, including the methodology for adjusting an ACO's rebased historical benchmark to reflect FFS expenditures in the ACO's regional service area in the ACO's second or subsequent agreement period starting on or after January 1, 2017, in a new provision of the Shared Savings Program regulations at § 425.603. We also proposed to include the risk adjustment approach to account for differences in health status between the ACO's assigned beneficiary population and the broader FFS population in the ACO's regional service area in the revised benchmark rebasing methodology under § 425.603. In addition, we proposed to specify in the new provision at § 425.603 that CMS will redetermine the regional adjustment amount annually based on the ACO's assigned beneficiaries for BY3 determined using the most recent certified ACO Participant List for the relevant performance year.

Furthermore, we proposed to make conforming and clarifying revisions to the provisions of § 425.602, including to: Revise the title of the section; remove paragraph (c) and incorporate this paragraph in the new § 425.603; and add a paragraph that describes the adjustments made to the ACO's historical benchmark during an ACO's first agreement period to account for changes in severity and case mix for newly and continuously assigned beneficiaries as presently specified under § 425.604, § 425.606, and § 425.610. We also proposed to specify in § 425.20 that the acronym "BY" stands for benchmark year.

We sought comments on our proposals for incorporating regional expenditures into rebased ACO benchmarks and on the alternative approach of using a regionally-trended amount developed from the ACO's historical benchmark for a prior agreement period instead of regional average expenditures to adjust the ACO's rebased historical benchmark. In particular, we welcomed comments on the design of the approaches for calculating the regional adjustment to the ACO's rebased historical benchmark described in the 2016 proposed rule, as well as any concerns about implementing the regional adjustment.

Comment: A few commenters supported the proposal to eliminate the adjustment to the ACO's historical benchmark for savings achieved by the ACO in the previous agreement period. However, most commenters strongly opposed the proposal to discontinue the current adjustment to the ACO's rebased benchmark for savings generated in the prior agreement period. Commenters explained that eliminating the adjustment makes it harder for ACOs that have successfully met the goals of the program in a prior agreement period to achieve future savings. These commenters were critical of CMS' explanation that incorporating regional expenditures sufficiently offsets the loss of the adjustment for savings in the prior agreement period. Some commenters specified that removing the adjustment would undermine the sustainability of the program, citing concerns including the following:

- Further reducing benchmarks for ACOs with higher historical costs compared to their region that would be negatively affected by the introduction of a regional adjustment. Several commenters suggested that retaining the adjustment could have the effect of more gradually lowering the rebased benchmarks for ACOs harmed by the integration of regional expenditures over subsequent agreement periods.
- Discouraging successful ACOs from remaining in the program as they face increasingly lower benchmarks and diminishing returns, with a commenter indicating that the current adjustment helps the many existing ACOs that have generated savings but not been eligible to share in those savings.
- The need to provide further incentives to retain ACOs with comparatively lower historical spending compared to their regions.

Some commenters pointed to CMS' rationale for the adjustment specified in earlier rulemaking as reason to retain it.[1] Several commenters pointed to the need to allow for additional time to evaluate the effects of the adjustment, which was applicable beginning in 2016, before changing the policy. Some commenters urged CMS to evaluate the rationale for accounting for savings in a prior agreement period separately from its consideration of incorporating regional cost data into benchmarks, believing these to be distinct issues that have distinguishable effects on ACOs. A commenter, urged that the adjustment be retained, pointing to the need for alignment between federal and state value based payment programs, citing as an example a state of New York initiative that has committed to including shared savings (or losses) when calculating its program benchmarks.

Many commenters favored CMS maintaining the current adjustment. Some commenters made suggestions, creating opposing alternatives, for CMS broadening or narrowing the amount of the adjustment. Although not discussed in the proposed rule, several commenters suggested incrementally lowering the adjustment amount over time. For example, a commenter suggested adding a percentage of prior savings that would be reduced in relation to the proposed phase-in to a higher weight in calculating the regional adjustment. A commenter, anticipating that ACOs in efficient, low-cost areas will be harmed by the proposed transition to benchmarks reflecting regional expenditures, encouraged CMS to abandon the proposed benchmark rebasing changes, including the removal of the adjustment for prior savings and the proposed regional FFS adjustment to the ACO's rebased benchmark, and recommended CMS continue to explore alternative methodologies for rebasing ACO benchmarks.

Some comments regarding the adjustment for savings generated in a prior agreement period seemed to reflect commenters' misunderstanding of the methodology for calculating the adjustment described in the June 2015 final rule (see 80 FR 32788 through 32791). For example, some commenters incorrectly described the methodology as based on savings earned (indicating only the amount of shared savings payments to eligible ACOs) as opposed to savings generated (accounting for savings by ACOs that may have lowered expenditures, but not by enough to earn a shared savings payment). A commenter stated that the current adjustment accounts for half of the savings achieved by the ACO. However, the adjustment takes into account the ACO's final sharing rate, which depends on the ACO's track as well as its quality performance.

Response: We believe our intent to propose eliminating the adjustment for prior savings was made clear in the discussion in the June 2015 final rule of moving to a rebasing approach that accounts for regional FFS costs and trends. In outlining our preferred methodology, we specified we would calculate the ACO's rebased historical benchmark—based on the 3 most recent years prior to the start of the ACO's new agreement period—including equally weighting these benchmark years but excluding the addition of a portion of savings generated over the same 3 most recent years (80 FR 32796). We also specified that in a future rule we would put forward details on a revised rebasing approach that would address, among other issues, how the revised benchmark rebasing methodology using ACO and regional cost trends fits in with the existing approach for establishing the ACO's historical benchmark for its first agreement period and the modifications to the rebasing methodology finalized in the June 2015 final rule. We also indicated that we would consider whether additional adjustment would be needed to transition ACOs to the revised benchmark rebasing methodology when they have been previously rebased under the methodology established with the June 2015 final rule (80 FR 32796).

We continue to believe that for ACOs generating savings, a rebasing methodology that accounts for regional FFS expenditures would generally leave a similar or slightly greater share of measured savings in an ACO's rebased benchmark for its ensuing agreement period. We disagree with comments suggesting that we either maintain the current adjustment without modification or broaden the scope of the adjustment for savings generated in the ACO's prior agreement period to make it more generous. We believe that as a result, benchmarks could become overly inflated for some ACOs (particularly those benefiting from the regional FFS adjustment) to the point where ACOs would need to do little to maintain or change their care practices to generate savings. Further, continued application of the current adjustment for savings generated in an ACO's prior agreement period, without modification, further ties an ACO's historical benchmark to its past performance, rather than making an ACO's benchmark more reflective of FFS spending in its region, an important aim of the revisions to the rebasing methodology in this final rule.

Therefore, as proposed, we will apply the revised rebasing methodology in the new regulation at § 425.603 to reset an ACO's historical benchmark for a second or subsequent agreement period beginning in 2017 and subsequent years, and will not include an adjustment for savings generated in the ACO's prior agreement period.

Comment: Most commenters discussing the regional adjustment to the ACO's rebased historical benchmark favored the proposed use of regional average expenditures in the calculation. Some commenters cited reasons for preferring the proposed approach instead of the alternative considered in the proposed rule, under which we would calculate the regional FFS adjustment using a regionally-trended amount based on an ACO's historical benchmark from a prior agreement period, including that the use of regional averages more closely aligns with the MA rate-setting methodology and would not depend on older historical data. A commenter explained that the reliance on older historical data under the regionally-trended approach would decrease the attainability and

[1] For example, in the June 2015 final rule we explained our belief that the adjustment for savings generated in the ACO's prior agreement period is important for encouraging ongoing program participation by ACOs that were successful in achieving the three-part aim in their first agreement, by lowering expenditures and improving both the quality of care provided to Medicare FFS beneficiaries and the overall health of those beneficiaries. Absent this adjustment, an ACO that previously achieved success in the program may elect to terminate its participation in the program rather than face a lower benchmark that reflects the lower costs for its patient population during the three most recent prior years (see 80 FR 32788). However, as noted elsewhere in this final rule, in the June 2015 final rule we stated our belief that it would be critical to revisit the policy of accounting for an ACO's savings generated in a prior agreement period when resetting its benchmark in conjunction with any future changes to the benchmarking methodology to incorporate regional FFS expenditures (see 80 FR 32791). See also discussion of the policy in the December 2014 proposed rule (79 FR 72838 through 72839).

accuracy of the resulting benchmarks over time. In particular, the commenter indicated that the: (1) Comparison of ACO assigned beneficiaries to non-ACO assigned beneficiaries will not remain stable over time as ACO participation in the Shared Savings Program grows or declines in a region; and (2) risk adjustment under this approach may not be adequate to account for changes in the ACO's composition over time in relation to its region.

A few commenters expressed support for the alternative (use of a regionally-trended amount) or a somewhat similar approach. For example, a commenter cited concerns that use of regional averages would disadvantage ACOs with historically high-cost providers, such as skilled nursing facilities, and ultimately incent ACOs to remove these providers as participants in order to generate savings below their benchmark. Another commenter, detailing findings based on extensive modeling, favored an approach under which the historical benchmark for the initial agreement period would be updated for subsequent agreement periods to account for regional spending growth and for compositional changes in ACO beneficiaries or providers without rebasing it to reflect the historical costs for the ACO from the most recent years prior to the start of the subsequent agreement period.

Some commenters addressed the anticipated effects of the regional FFS adjustment on benchmarks of ACOs with spending relatively lower and higher than their region. Commenters explained that the proposed approach rewards an ACO with lower spending than its region by increasing the ACO's benchmark value. For an ACO with higher spending than its region, the proposed approach was anticipated to decrease the ACO's benchmark value. Some commenters expressed particular concern about the latter group, explaining that the proposed policy could create a disincentive for continued participation by ACOs that were successful in earning shared savings payments in their initial agreement period, but have spending higher than the regional average for their regional service area.

Response: We are finalizing our proposal to calculate the regional adjustment to the ACO's historical benchmark as a percentage of the difference between the average per capita expenditure amount for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). We continue to believe there are benefits to using a regional average in calculating the adjustment, rather than the alternative approach of using a regionally-trended amount, including: greater alignment with the MA rate-setting methodology; lack of dependence on older historical data; greater transparency for ACOs and other stakeholders; and easier integration and alignment with our existing approach to adjusting the historical benchmark when an ACO makes ACO Participant List changes.

We agree with commenters that the regional FFS adjustment will have differing effects on an ACO's benchmark depending on whether the ACO's spending is relatively lower or higher than the spending for its regional service area. As discussed in this section of this final rule, we outlined our preferred approach to calculating the adjustment in the 2016 proposed rule (see 81 FR 5833 and 5834). We specified that we would determine the difference between the average per capita regional amount and the average per capita amount of the ACO's rebased historical benchmark for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). We indicated that the difference would be expressed as a negative number if the value of the ACO's rebased historical benchmark for a particular Medicare enrollment type is greater than the regional average amount for that enrollment type. The difference would be expressed as a positive number if the value of the ACO's rebased historical benchmark for a particular Medicare enrollment type is less than the regional average amount. We anticipate the regional adjustment value will differ by Medicare enrollment type for each ACO, and it will be possible to have a mix of positive and negative values for the regional adjustment amount across these Medicare enrollment types.

Generally, we anticipate several aspects of the revised rebasing methodology will mitigate concerns about the potential negative effects of the regional adjustment. First, as discussed in section II.A.2.b of this final rule, we believe the inclusion of ACO assigned beneficiaries in the calculation of regional FFS expenditures will be important in capturing the cost and health status of the beneficiary population served by the ACO. For example, for a high spending ACO operating in a lower spending region, including the ACO's assigned population in the regional FFS expenditures would likely result in a relatively higher regional adjustment value than if these beneficiaries were excluded. Second, we anticipate the risk adjustment methodology used in calculating the regional FFS adjustment will help mitigate the incentive for ACOs to avoid relatively higher cost providers and higher cost, higher acuity beneficiaries. As discussed in section II.A.2.e.2 of this final rule, we will use CMS–HCC scores to risk adjust county FFS expenditures when determining expenditures for the ACO's regional service area, thereby accounting for the severity of health status and case mix of this population. Additionally, as discussed elsewhere in this section of this final rule, we are finalizing our proposal to account for the difference in health status between the ACO's population and the ACO's regional service area in calculating the regional FFS adjustment. Under this approach, if an ACO's population is healthier than the assignable beneficiaries in the ACO's regional service area, with lower average risk scores for the relevant period, the risk adjustment would reduce the amount of the regional FFS adjustment. Similarly, if the ACO's assigned beneficiary population is comparably sicker than the assignable beneficiaries in the ACO's regional service area, with higher average risk scores for the relevant period, the risk adjustment would increase the amount of the regional FFS adjustment. Third, we believe our proposed phase-in approach, as described in section II.A.2.c.3. of this final rule, will ease the transition to this revised methodology for ACOs with historical spending higher than that of their region.

With respect to a more technical consideration for calculating the regional FFS adjustment, we note that the proposed regulations text specified that in calculating the regional adjustment we would determine the ACO's regional expenditures for benchmark year 3. We did not receive comments specifically addressing this proposal. We are finalizing the policy of using benchmark year 3 data in calculating the regional average used to determine the regional FFS adjustment as proposed. We believe that calculating the regional adjustment based on data from the most recent year prior to the start of the ACO's new agreement period will ensure the adjustment reflects the most recent historical expenditures. Although there were no comments directed specifically to the number of years of data used in calculating the regional adjustment, we believe comments suggesting CMS consider use of additional years of data in calculating county FFS expenditures (described in section II.A.2.e.2 of this final rule) raise an important issue. These comments provoked our consideration of the possibility of using additional years of data in calculating the regional average, including what factors to use to trend the multiple years of data in computing the regional average. We anticipate continuing to explore this issue as we gain experience with the methodology described in this final rule. For example, we will consider whether use of additional years of data would add greater precision to calculation of regional averages. In the event we determine that any changes to the methodology would be appropriate, we would address this issue in future rulemaking, particularly in advance of applying a higher weight (70 percent) in the regional adjustment calculation as discussed in section II.A.2.c.3. of this final rule.

Comment: Many commenters expressed support for CMS' proposal to adjust for an ACO's risk relative to that of assignable beneficiaries in its region when determining the regional adjustment to the rebased historical benchmark. A commenter expressed support generally for a risk adjustment approach that adequately accounts for the higher costs of ACOs that include providers and health systems that care for the sickest patients and are providing medically necessary care to chronically-ill populations. Further, a commenter recommended that in blending regional FFS spending with ACO historical spending, the per capita spending for each should be similarly risk adjusted.

However, a commenter disagreed with CMS' proposal to compute a measure of risk-adjusted regional expenditures for each Medicare enrollment type that would account for differences in the average CMS–HCC score of the ACO's assigned beneficiary population and the average CMS–HCC risk scores in the ACO's regional service area, describing this as a change in methodology. This commenter expressed concern about the accuracy of using averages in risk adjustment calculations.

Some commenters raised a variety of concerns about the Shared Savings Program's use of the CMS–HCC prospective risk adjustment model, or offered alternative risk adjustment approaches. For example, some commenters encouraged CMS to consider factors beyond CMS–HCC risk scores when performing risk adjustment in the Shared Savings Program, including socio-economic and/or socio-demographic factors. Some commenters questioned whether the CMS–HCC risk adjustment model could effectively account for increasing acuity in a patient's condition over time, clinically complex patients, case mix among patient populations, and geographic variation. A commenter explained that concerns regarding the current risk adjustment methodology have the effect of discouraging participation in the program. A few commenters supported better aligning risk adjustment in the Shared Savings Program with MA, for example, suggesting that the Shared Savings Program adopt the proposed refinements to the MA risk adjustment model aimed at improving the accuracy of payments to plans serving low-income and dual eligible beneficiaries. Other commenters suggested greater transparency by CMS in regards to its use of CMS–HCC scores. For example commenters suggested making publicly available additional resources on the specifications of the CMS–HCC risk adjustment process and developing educational resources about improved coding for providers.

Response: We are finalizing our proposal to risk adjust to account for the health status of the ACO's assigned population in relation to FFS beneficiaries in the ACO's regional service area as part of the methodology for adjusting the ACO's rebased historical benchmark to reflect regional FFS expenditures in the ACO's regional service area as proposed. We will use full CMS–HCC risk scores in performing this adjustment. We agree with comments received in support of our proposal. We believe that failure to risk adjust regional FFS expenditures to reflect differences between the risk of the ACO's assigned beneficiary population and the risk of the broader FFS population in the ACO's regional service area would provide an incentive for ACOs to avoid serving sicker beneficiaries, an undesired result.

While the incorporation of risk-adjusted regional expenditures into historical benchmarks is a new approach, we disagree that the use of average risk scores when performing risk adjustment constitutes a change of methodology. Our current methodology risk-adjusts expenditures between years using mean CMS–HCC risk scores among an ACO's assigned beneficiaries within a particular enrollment type. We therefore believe that the approach for risk-adjusting the regional adjustment amount that we are adopting in this final rule is consistent with current risk-adjustment practices.

We appreciate the concerns raised by commenters and the suggestions offered for refining the Shared Savings Program's general risk adjustment methodology, which relies on the CMS–HCC prospective risk adjustment model. We consider these suggestions beyond the scope of this final rule. We decline at this time to adopt commenters' suggestions for use of alternative risk adjustment models, for example accounting for socio-economic or socio-demographic factors outside of the CMS–HCC risk adjustment model. To the extent that new information, such as social determinants of health, is incorporated into the CMS–HCC risk adjustment model in the future, we will account for this when using risk scores in the Shared Savings Program methodology.

Comment: Few commenters directly addressed CMS' plan to rigorously monitor for coding intensity efforts in combination with the agency's proposal to risk adjust for the health status of an ACO's assigned beneficiaries relative to the FFS population in its regional service area. A few commenters appreciated CMS' concerns about the potential for upcoding and a commenter explicitly supported the agency's monitoring plans, noting that differences in coding practices between ACO clinicians and other FFS clinicians should be taken into account when blending regional FFS spending into ACO benchmarks to ensure equity.

A number of commenters expressed the belief that additional coding intensity adjustments are not justified, given the various mitigating factors cited by CMS in the 2016 proposed rule such as routine changes in the assignment of beneficiaries to the ACO from year to year, and the inability of ACOs to submit supplemental codes as occurs in MA. Some commenters specified that the proposed use of regional trend calculations in resetting the benchmark served as a mitigating factor as well. Another commenter warned that even if high levels of coding are observed, this could be the direct result of providing more comprehensive, patient-centered care and that provider efforts to care for complex, chronically ill patients should not be penalized.

Several commenters expressed opinions, sometimes conflicting, on what type of coding intensity adjustment CMS should adopt for the Shared Savings Program if some type of adjustment is deemed necessary. Several commenters supported an approach similar to that used in MA in which a coding intensity adjustment is developed based on beneficiaries assigned for at least 2 consecutive risk adjustment data years. Another commenter expressed opposition to adopting a MA-like approach because they believe it unfairly penalizes

physician organizations engaged in accurate coding practices.

Although CMS sought comment on whether the methodology currently used to adjust the ACO's benchmark annually to account for the health status and demographic factors of the ACO's performance year assigned beneficiaries (according to newly and continuously assigned populations) should also be applied when rebasing the ACO's historical benchmark, many commenters expressed their opposition to the current use of this methodology in adjusting an ACO's benchmark for each performance year and requested that the agency revise the policy. A chief concern raised by many commenters is that the approach does not accurately reflect the potential for individuals to become sicker and more expensive to care for over time (circumstances referred to by some commenters as resulting in a higher "disease burden"). Several commenters noted that it was unreasonable to assume that a provider organization, however effective, can manage a population such that patient conditions never worsen. Some commenters added that this policy particularly disadvantages ACOs that care for more complex patients, such as those that include tertiary care facilities or academic medical centers. A commenter noted that while it appreciated concerns about the potential for upcoding, it believed such concerns to be irrelevant relative to the negative impact it perceives the current policy for risk adjusting an ACO's benchmark for each performance year has on program participants.

A number of commenters also expressed the belief that the continued use of the newly/continuously assigned policy as a remedy for upcoding lacks justification. A commenter believed that CMS has not provided evidence that actual upcoding is occurring among ACOs, or that it would occur in the future. Another commenter opined that any adjustments for coding intensity should reflect actual, not perceived, coding intensity. Among other concerns raised about the methodology, a commenter opined that the approach transfers too much risk to ACOs and is responsible for deterring ACOs from entering two-sided risk models. Another commenter noted that the policy makes the role of the risk scores opaque to participating providers, making it difficult to anticipate how risk scores may affect performance.

In light of the previously noted concerns, many commenters urged CMS to allow risk scores to increase year-over-year within an agreement period for the continuously assigned beneficiary population, or to allow them to increase within limits. A commenter recommended that if CMS is unwilling to allow risk scores to increase year-over-year for all ACOs, the agency should consider allowing increases for participants in two-sided risk models, which could encourage progression to higher levels of risk. Another commenter thought that CMS should, at a minimum, develop a list of conditions that are high cost and not subject to efforts to improve documentation and coding (for example, ESRD and cancer) and allow the CMS–HCC score for beneficiaries with these conditions to increase to reflect the increased illness of the beneficiary.

Some commenters suggested approaches for limiting the impact of intensive coding not discussed in the 2016 proposed rule. For example, some commenters recommended that if CMS deems a coding adjustment necessary, the agency should consider a method that compares CMS–HCC risk scores with changes in self-reported health status through the Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey. Several other commenters thought CMS should consider approaches used by the Next Generation ACO model, including accounting for the difference in average CMS–HCC risk scores for the baseline and performance-year assigned beneficiaries, and limiting the change in an ACO's average risk score between the baseline and performance year to plus or minus 3 percent.

Response: We appreciate the suggestions made by commenters regarding the development of a coding intensity adjustment for the Shared Savings Program. We also appreciate commenters' feedback on the current policy for adjusting an ACO's historical benchmark for the health status of the ACO's performance year assigned population. At this time, we believe that continued use of this policy in the determination of an ACO's updated benchmark in combination with the use of full CMS–HCC risk adjustment in the calculation of the rebased historical benchmark strikes a balance between the need to recognize changes in beneficiary health status over time with the need to protect against intensive coding practices.

We plan to monitor for the impact of coding initiatives on ACO benchmarks, particularly as we gain more experience with the new rebasing methodology. In the event that a formal coding intensity adjustment is deemed necessary in the future, we would make necessary refinements to the program's risk adjustment methodology through future rulemaking.

FINAL ACTION: We are finalizing our proposals to revise the methodology used to rebase ACO benchmarks for new agreement periods starting on or after January 1, 2017 to incorporate a regional FFS adjustment to the ACO's rebased historical benchmark. We are finalizing the proposed approach to calculating the regional FFS adjustment using average per capita expenditures for benchmark year 3 for assignable beneficiaries in the ACO's regional service area, and to risk adjust to account for the health status of the ACO's assigned population in relation to the assignable FFS beneficiaries in the ACO's regional service area in determining the regional FFS adjustment. We are also finalizing our proposal to add new § 425.603 that incorporates our policies for resetting, adjusting and updating the benchmark for a second or subsequent agreement period.

We did not receive any comments on the specific proposal to redetermine the regional FFS adjustment to account for changes to the ACO's certified ACO Participant List. We believe this redetermination is necessary to ensure that the regional FFS adjustment reflects the ACO's participant composition under the new ACO Participant List. Therefore, we are finalizing our proposal to redetermine the regional FFS adjustment, consistent with the current approach to adjusting an ACO's historical benchmark to account for changes in the ACO's certified ACO Participant List during the agreement period. This policy is also incorporated in new § 425.603.

We are also finalizing as proposed the conforming and clarifying revisions to the provisions of § 425.602, including to: Revise the title of the section; remove paragraph (c) and incorporate this paragraph in new § 425.603 to address the methodology for establishing, adjusting, and updating the historical benchmark for ACOs that entered a second agreement period in 2016; and to add a paragraph that describes the adjustments made to the ACO's historical benchmark during an ACO's first agreement period to account for changes in severity and case mix for newly and continuously assigned beneficiaries as presently specified under § 425.604, § 425.606, and § 425.610. We are also finalizing as proposed a change to § 425.20, to specify that the acronym "BY" stands for benchmark year.

(3) Transitioning to a Higher Weight in Calculating the Adjustment for Regional FFS Expenditures

In the 2016 proposed rule, we considered both the potential positive and negative consequences of quickly transitioning to use of a greater weight (70 percent) in calculating the regional adjustment to ACOs' rebased historical benchmarks. We explained our belief that placing a greater weight on regional expenditures in adjusting an ACO's historical benchmark will encourage existing low spending ACOs in higher spending and/or higher growth regions to enter and continue their participation in the Shared Savings Program. We reiterated our view, expressed in the June 2015 final rule, that the benchmarking methodology should be revised to help ensure that an ACO that has previously achieved success in the program will be rebased under a methodology that encourages its continued participation in the program (see 80 FR 32788). Further, we again noted the importance of quickly moving to a benchmark rebasing approach that accounts for regional FFS expenditures and trends in addition to the ACO's historical expenditures and trends (see 81 FR 5834).

We also explained our concern that existing low spending ACOs operating in regions with relatively higher spending and/or higher growth in expenditures may be positioned to generate savings under the proposed revisions to the rebasing methodology because of the regional adjustment to their rebased historical expenditures rather than as a result of actual gains in efficiency, creating an opportunity for arbitrage. In particular, we expressed concern about the potential for ACOs to alter their healthcare provider and beneficiary compositions or take other such actions in order to achieve more favorable performance relative to their region without actually changing their efficiency. We anticipated these effects would be more pronounced the larger the percentage that is applied to the difference between the average expenditures for the ACO's regional service area and the ACO's rebased historical expenditures when calculating the regional adjustment. However, we expressed our belief that there is uncertainty around the magnitude of these possible negative consequences of adjusting the ACO's rebased benchmark based on regional expenditures in the ACO's regional service area which have yet to be observed. We noted that we believed these concerns are likely to be outweighed by the benefits of encouraging more efficient care through a benchmark rebasing methodology that encourages continued participation by ACOs that are efficient relative to their regional service area by placing greater weight on regional expenditures when resetting the ACO's benchmark over subsequent agreement periods. We explained that the use of a higher percentage in calculating the regional adjustment would create strong incentives for higher spending ACOs to be more efficient relative to their regional service areas while also improving the quality of care provided to their beneficiaries. Furthermore, we explained that this approach would also ensure that ACOs' rebased benchmarks continue to reflect in part their historical spending.

To balance these concerns, we proposed to adopt a phased approach to transitioning to greater weights in calculating the adjustment amount, expressed as a percentage of the difference between regional average expenditures for the ACO's regional service area and the ACO's rebased historical expenditures. Under this approach we would increase the weight used in calculating the adjustment over time, making an ACO's benchmark gradually more reflective of expenditures in its region and less reflective of the ACO's own historical expenditures. This proposed phase-in approach included the following features:

- Maintain the current methodology for establishing the benchmark for an ACO's first agreement period in the Shared Savings Program based on the historical expenditures for beneficiaries assigned to the ACO with no adjustment for expenditures in the ACO's regional service area in order to provide continued stability to the program and the momentum for attracting new organizations. As over 400 ACOs have voluntarily entered the program under this methodology, we believe the current methodology is an important part of facilitating entry into the program by organizations located throughout the nation that have differing degrees of experience with accountable care models and have varying provider compositions.
- Increase the percentage used in calculating the regional adjustment amount, applied to the ACO's rebased historical benchmark, over subsequent agreement periods.

++ We proposed to calculate the regional adjustment in the ACO's second agreement period by applying a weight of 35 percent to the difference between regional average expenditures for the ACO's regional service area and the ACO's rebased historical benchmark expenditures.

++ We proposed that in the ACO's third and subsequent agreement periods, the percentage used in this calculation would be set at 70 percent unless the Secretary determines a lower weight should be applied as specified through future rulemaking.

We discussed that in making a determination of whether a lower weight should be used in calculating the adjustment, the Secretary would assess what effects the regional adjustment (and other modifications to the program made under this rule) are having on the Shared Savings Program, considering factors such as, but not limited to: The effects on net program costs; the extent of participation in the Shared Savings Program; and the efficiency and quality of care received by beneficiaries. As part of this determination, the Secretary may also take into account other factors, such as the effect of implementation of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) on the Shared Savings Program by incentivizing physicians and certain other practitioners to participate more broadly in alternative payment models (APMs).

We noted that such a determination could potentially occur in advance of the first application of this higher percentage. For example, the determination could be made in advance of the agreement period beginning January 1, 2020, which is the start of the third agreement period for ACOs that entered the program in January 2014 and the first group of ACOs to which the revised rebasing methodology being adopted in this final rule will apply. Any necessary modifications to program policies as a result of the Secretary's determination, such as reducing the long-term weight used in calculating the regional adjustment below 70 percent or making other program changes (for example, refinements to the risk adjustment methodology) would be proposed in future rulemaking, such as through the calendar year (CY) 2020 Physician Fee Schedule rule. Subsequently, we would periodically assess the effects of the regional adjustment over time and address any needed modifications to program policies in future rulemaking.

- For ACOs that started in the program in 2012 and 2013 and started their second agreement period on January 1, 2016, we proposed to apply this phased approach when rebasing for their third and fourth (and subsequent) agreement periods, as discussed in section II.A.2.f. of this final rule.

We explained our belief that this phased approach to moving to a higher percentage in calculating the adjustment for regional expenditures would give ACOs sufficient notice of the transition to benchmarks that reflect regional expenditures. Furthermore, we believed this approach to phasing in the use of a greater percentage to calculate the regional adjustment provides a smoother transition for ACOs to benchmarks reflective of regional FFS expenditures, giving ACOs more time to prepare for this change and therefore ultimately maintaining the stability of ACOs, the Shared Savings Program and the markets where ACOs operate. Accordingly, we proposed to incorporate these policies regarding the transition to greater weights in calculating the regional adjustment amount in the new regulation at § 425.603.

We sought public comment on our proposed approach to phase in the weight used in calculating the regional adjustment. We were particularly interested in understanding commenters' thoughts and suggestions about the percentage that should be used in calculating the adjustment for regional FFS expenditures. We also sought comment on the alternatives we considered in the proposed rule including: (1) Limiting the weight used in the calculation of the adjustment to 50 percent (instead of 70 percent) in the ACO's third and subsequent agreement period; (2) a more gradual transition to use of a higher percentage in calculating the adjustment (such as 35 percent in the second agreement period, 50 percent in the third agreement period, and 70 percent in the fourth and subsequent agreement period); and (3) a phase-in approach that uses regional (instead of national) FFS expenditures to trend benchmark year expenditures when establishing and updating the benchmark during an ACO's first agreement period (for agreement periods beginning on or after January 1, 2017). We also sought comment on alternative approaches to address our concerns about selective program participation and arbitrage opportunities that would facilitate our use of a higher percentage in calculating the amount of the adjustment.

Comment: A few commenters shared CMS' concerns about the potential for negative consequences that could result from transitioning to use of factors based on regional FFS expenditures in resetting ACO historical benchmarks, including selective participation creating an opportunity for arbitrage. These commenters were somewhat divided as to the ultimate outcome of these changes. For example, a commenter explained that benchmarking ACOs against their region will have the effect of more seamlessly encouraging transformative physician care, while simultaneously discouraging agreements with entities unwilling or unable to make meaningful changes in care delivery. Further, this commenter encouraged CMS to implement safeguards that deter the negative consequences of transitioning to the use of factors based on regional FFS expenditures in resetting ACO benchmarks (for instance, protecting against ACOs that increase their spending to lock in a higher benchmark, and protecting against benchmarks becoming overly inflated to the point where ACOs need to do little to maintain or change their care practices to generate savings). Another commenter, concerned about discouraging participation by ACOs with expenditures higher than their regions and those with losses in their first agreement period, and behavioral responses by providers to the revised methodology (for example, ACO avoidance of high-cost beneficiaries), encouraged CMS to delay finalizing the proposed modifications. A commenter identified the availability of traditional FFS, under which providers and suppliers can continue to be paid based on the quantity of services provided (thereby maintaining their status quo for reimbursement rather than entering value based payment models), as being a greater concern for the Trust Funds than the potential threat of arbitrage by ACOs under the revised rebasing methodology. The commenter also noted that the fact that only a portion of ACOs have actually been eligible to share in savings to date is an indication that there is little reason for concern about arbitrage by ACOs. Another commenter counseled that the arbitrage concerns overestimate the flexibility of markets, pointing to the existence of ongoing relationships between healthcare providers, tied to a range of risk bearing contracts, as an example of a mitigating factor. A few commenters specifically encouraged CMS to engage in ongoing monitoring of the effects of the changes, if implemented, with a commenter suggesting CMS address arbitrage concerns by requiring additional reporting by ACOs regarding their use of shared savings payments.

Response: We greatly appreciate commenters' careful consideration of the concerns we specified in the 2016 proposed rule, including the participation incentives that could result from the transition to a rebasing methodology that places a greater weight on a regional FFS adjustment over time. We decline to delay finalizing the changes to rebasing methodology altogether because of concerns about the potential negative effects that could result from these changes, as recommended by a commenter. For the reasons we described in the 2016 proposed rule (and reiterated in this final rule), we believe a phased approach to transitioning to a higher weight in calculating the regional adjustment offers the appropriate balance between our concerns about the potential negative effects of a revised rebasing approach that places a greater weight on regional FFS expenditures and the anticipated benefits of the revised rebasing policies for the sustainability of the program. Elsewhere in this section of this final rule, we discuss in detail issues related to the application of the revised rebasing methodology to ACOs with higher spending than their region. In addition, we will consider the concerns raised in the comments as we monitor the effects of the revised rebasing methodology and as we consider whether further modifications to the rebasing policies are necessary. Any changes to the rebasing methodology would be addressed in future rulemaking.

Comment: Most of the commenters discussing the phase-in of the weights used in calculating the adjustment, generally expressed support for taking an incremental approach to incorporating regional elements when resetting an ACO's benchmark. Some commenters expressed support for the proposed phased-approach to applying an increasing weight in calculating the regional adjustment: To initially calculate the adjustment using a 35 percent weight in rebasing the ACO's second agreement period benchmark and then increase to using a 70 percent weight for subsequent agreement periods. A commenter explained that the proposed phased approach to incorporating regional spending into the benchmark gives ACOs ample time to adjust to the methodological changes. Several commenters were supportive of monitoring the weight (percentage) used in calculating the regional adjustment over time, to assure balance is struck in setting benchmarks. A commenter expressed support for examining the results of the adjustment before switching to a higher weight for the regional spending component. A commenter emphasized the need to assess the effects of the modifications to the benchmarking methodology and to make needed revisions to the policies in future rulemaking in order to ensure small entities and hospitals (more generally), particularly those in rural and underserved areas, are not placed at a disadvantage.

Many commenters urged CMS to provide more options and greater flexibility to ACOs (referred to by some as establishing a "glide path") as they transition to benchmarks containing regional cost data. A few commenters cited the importance of this flexibility to encourage continued participation by small and rural ACOs. Commenters' suggestions focused on allowing ACOs the choice of the proposed approach, as well as options for a faster or slower phase-in, ultimately reaching a weight of 70 percent, over the course of one to three agreement periods (beginning with the ACO's first agreement period), including options for incremental increases in the weight used to calculate the regional adjustment within an agreement period.

Some commenters suggested that CMS apply the phase-in differently for individual ACOs depending on certain characteristics, such as their historical spending, financial performance in the program, or their participation in performance-based risk tracks (Tracks 2 and 3). Some commenters suggested phasing-in the weight differently depending on whether an ACO's historical expenditures were above or below the regional average, encouraging adoption of faster phase-in options to more quickly benefit ACOs with low spending compared to their region, and slower phase-in options to mitigate the anticipated benchmark reductions for ACOs with high spending compared to their region. Commenters suggested allowing additional flexibility on the pace of the phase-in for high performing ACOs and ACOs entering a performance-based risk model (Track 2 or 3).

Many commenters suggested a variety of alternatives to afford ACOs greater choice over the timing of applicability (in particular for ACOs that entered the Shared Savings Program in 2012 and 2013 and started their second agreement period January 1, 2016, as discussed in greater detail in section II.A.2.f of this final rule), and the phase-in to the proposed maximum percentage (for example, within an agreement period).

Commenters supporting incorporation of regional cost data into an ACO's benchmark for its first agreement period in the Shared Savings Program cited perceived benefits including: consistent application of the benchmarking methodology across the program; the potential to create more equitable benchmarks within a market (noting that urban and suburban ACOs tend to have overlapping service areas); and attracting new participants to the Shared Savings Program. When discussing the weight that should be applied when calculating the regional adjustment for an ACO's first agreement period, commenters suggested a range of options, typically with a maximum weight of either 30 or 35 percent. Some commenters suggested applying an increasing weight when calculating the adjustment for the ACO's first agreement period, such as 10 percent in year 1, 20 percent in year 2, and 30 percent (or 35 percent) in year 3.

Several commenters suggested alternative approaches to the methodology proposed, such as: (1) Applying a 100 percent weight when calculating the regional FFS adjustment for ACOs with costs lower than their region, and zero percent weight when calculating the adjustment for ACOs with costs higher than their region; (2) an alternative methodology for calculating the adjustment that would both lower the weight on the regional component and slow its rate of increase; and (3) setting limits on the amount of reduction in the benchmark value that could occur as a result of the regional FFS adjustment.

Response: We are finalizing with modifications our proposal to phase-in a higher weight in calculating the regional adjustment over time starting in an ACO's second agreement period beginning in 2017 and subsequent years and to apply this phased approach to ACOs that entered the program in 2012 and 2013 (that started a second agreement period on January 1, 2016) when rebasing for their third and subsequent agreement periods (as discussed in section II.A.2.f of this final rule). We are persuaded by commenters' concerns that the phase-in outlined in the proposed rule would be too rapid for ACOs with relatively higher spending compared to their region, for which the regional FFS adjustment will be negative and result in lower benchmark values. We are especially concerned that the revised benchmarking methodology could result in attrition from the Shared Savings Program by ACOs that are striving to meet the program's goals, including ACOs that have been previously successful in generating shared savings. We agree with comments suggesting a phase-in approach that applies differing weights in the regional adjustment calculation depending on whether an ACO's historical expenditures were above or below the regional average for the same period. Specifically, we agree with the commenters that suggested use of a lower weight in calculating the adjustment for ACOs with higher spending compared to their region.

Accordingly, we are finalizing an approach that will apply a lower weight in calculating the regional adjustment the first and second time that an ACO's benchmark is rebased under the revised rebasing methodology, for those ACOs determined to have spending higher than their region. However, we will ultimately apply a weight of 70 percent in calculating the adjustment for all ACOs beginning no later than the third time the ACO's benchmark is rebased using the revised methodology. Under this approach, we will make an initial determination about whether the ACO has higher spending compared to its regional service area as part of establishing the ACO's rebased historical benchmark for the applicable agreement period. Consistent with the approach we are finalizing for redetermining the regional FFS adjustment when an ACO makes changes to its certified ACO Participant List within an agreement period, we will also redetermine whether the ACO has higher spending compared to its region, and therefore whether the lower weight should be used in calculating the regional adjustment.

The determination of whether to apply the lower weight in calculating the regional FFS adjustment will include the following steps:

- For each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) we will determine the difference between the average per capita expenditure amount for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark. We will multiply the difference for each Medicare enrollment type by the proportion of the ACO's assigned beneficiary population for that Medicare enrollment type, based on the ACO's assigned beneficiary population for benchmark year 3 of the rebased historical benchmark.
- Take the sum of the differences weighted by the ACO's proportion of assigned beneficiaries by Medicare enrollment type (determined in the previous step). As summarized in Table 2, the result of this step will determine the percentage weight applied in calculating the regional FFS adjustment:

++ If this sum is a net positive value, we will apply the proposed weights for calculating the regional FFS adjustment for the agreement period: 35 percent the first time the benchmark is rebased using the revised methodology; 70 percent the second time the benchmark

is rebased under this methodology, and in all subsequent agreement periods.

++ If this sum is a net negative value, we will apply a relatively lower weight in calculating the regional FFS adjustment in the first two rebasings for which the regional adjustment applies: 25 percent the first time the benchmark is rebased under the revised methodology; and 50 percent the second time the benchmark is rebased under this methodology. A weight of 70 percent will be used in the calculation of the regional adjustment for ACOs that are determined to have higher spending compared to their regional service area during the third rebasing in which this regional adjustment is applied, and in all subsequent agreement periods.

TABLE 2—PERCENTAGE WEIGHT APPLIED IN CALCULATING THE REGIONAL FFS ADJUSTMENT

Agreement period (for example, 2014 starters renewing for 2017)	ACO's spending relative to its region	Weight used to calculate regional adjustment (percent)
Performance year within an agreement period to which regional adjustment is applied for the first time (for example, second agreement period beginning in 2017).	ACO spending is higher than its regional service area.	25
	ACO spending is lower than its regional service area.	35
Performance year within an agreement period to which regional adjustment is applied for the second time (for example, third agreement period beginning in 2020).	ACO spending is higher than its regional service area.	50
	ACO spending is lower than its regional service area.	70
Performance year within an agreement period to which regional adjustment is applied for the third time (for example, fourth agreement period beginning in 2023 and subsequent years).	ACO spending is higher than its regional service area.	70
	ACO spending is lower than its regional service area.	70

After making the determination of the weight to be applied in calculating the regional FFS adjustment, we follow the remaining steps for calculating the regional FFS adjustment described in section II.A.2.c.2 of this final rule:

• Multiply the difference between the average per capita expenditure amount for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark for each Medicare enrollment type by the applicable percentage shown in Table 2. This is the adjustment amount for each Medicare enrollment type.

• Apply the adjustment to the ACO's rebased historical benchmark by adding the adjustment amount for the Medicare enrollment type to the truncated, trended and risk adjusted average per capita value of the ACO's rebased historical benchmark for the same Medicare enrollment type.

• Multiply the adjusted value of the ACO's rebased historical benchmark for each Medicare enrollment type by the proportion of the ACO's assigned beneficiary population for that Medicare enrollment type, based on the ACO's assigned beneficiary population for benchmark year 3 of the rebased historical benchmark.

• Sum expenditures across the four Medicare enrollment types to determine the ACO's adjusted rebased historical benchmark.

We reiterate that, as we explained in the 2016 proposed rule, the Secretary will assess what effects the regional adjustment (and other modifications to the program made under this rule) are having on the Shared Savings Program to determine whether a lower weight (than 70 percent) should be used in calculating the regional adjustment. Any necessary modifications to program policies as a result of the Secretary's determination, such as reducing the long-term weight used in calculating the regional adjustment below 70 percent or making other program changes would be proposed in future rulemaking.

We believe this phased approach represents a middle ground between the comments supporting the proposal, as well as recommendations for relatively faster or slower phase-in of the adjustment based on the historical costs of the ACO compared to its region. We chose the lower weights of 25 percent (compared to 35 percent) and 50 percent (compared to 70 percent) to balance providing a more gradual phase in to ACOs with higher spending compared to their region with our projected estimates of the impact of this policy on the Medicare Trust Funds. We believe these lower weights align with commenters' suggestions for application of a weight less than 35 percent (for example, between 10 percent and 30 percent), as well as our consideration of a more gradual phase-in of the adjustment by applying weights of 35 percent, 50 percent, and 70 percent in calculating the regional adjustment over the course of 3 agreement periods under the revised rebasing methodology as discussed in the 2016 proposed rule.

Incrementally lowering benchmarks for ACOs determined to have higher spending than their region over the course of multiple agreement periods will afford these ACOs time to adapt to the revised rebasing methodology. This gradual phase in may be especially important for successful ACOs with relatively higher costs that may otherwise leave the program if faced with a more rapid phase-in to a rebased benchmark reflecting factors based on regional FFS expenditures. We decline to forgo applying the regional adjustment altogether to ACOs with costs higher than their region, as recommended by the comment suggesting use of a zero percent weight in calculating the regional adjustment for these ACOs. We believe such an approach, which would ensure that the benchmark for these ACOs would continue to be based largely on their own historical spending, would undermine the purpose of a policy that seeks to incrementally make an ACO's benchmark less dependent on its own historical spending and more reflective of spending in its regional service area.

We also continue to believe this phased approach mitigates our concerns about the opportunity for arbitrage that could result from establishing higher benchmarks for ACOs with relatively lower spending compared to their region; a concern that is heightened when considering a more rapid phase-in to a higher weight in calculating the regional adjustment. Specifically, an approach that would more quickly produce more generous benchmarks for ACOs could hasten organizations to alter their behavior or composition to better position themselves to achieve favorable performance relative to their region under this methodology without actually changing their efficiency. For this reason, we decline to adopt alternative approaches recommended by commenters that would apply higher weights in the regional adjustment calculation for ACOs that are lower spending compared to their regions (such as applying a 100 percent weight in calculating the adjustment).

The approach we are finalizing recognizes that changes in the ACO's certified ACO Participant List during an agreement period could result in changes in the ACO's historical spending patterns and accordingly would result in a change to the weight used in calculating the regional adjustment. We believe this approach is responsive to commenters' requests for a flexible approach, particularly because it would ensure that we always apply the most advantageous weight in calculating the adjustment for each performance year within the agreement period according to whether the ACO's historical spending based on its most recent certified ACO Participant List is relatively higher or lower compared to spending in its regional service area.

We decline at this time to adopt commenters' suggestions to apply differing weights in the calculation of the regional adjustment depending on other characteristics of ACOs, such as past performance in the Shared Savings Program, or participation in a performance-based risk track. At this time, we believe the most significant consideration in determining the weight applied in the calculation of the regional adjustment is the level of the ACO's historical spending compared to its regional service area. Consistent with our decision to finalize the proposal to remove the adjustment for savings generated under the ACO's prior agreement period in calculating the ACO's rebased historical benchmark, as we discuss in section II.A.2.c.2 of this final rule, we also decline to otherwise account for an ACO's prior savings in determining the regional FFS adjustment that is applied to the ACO's rebased historical benchmark.

We are concerned that offering the broader flexibility suggested by commenters, including allowing ACOs to choose from a menu of options for when the revised rebasing methodology would apply and the weight that would be used to calculate the regional adjustment, may invite selective participation by those ACOs that would be most advantaged by the new benchmarking methodology, thereby increasing the opportunity for arbitrage. As previously noted in this final rule, we do not believe it would be operationally feasible to apply customized benchmarking methodologies to ACOs across the program.

In contrast, we believe commenters make a convincing argument for a phased approach to incorporating regional factors into ACO benchmarks beginning with the ACO's initial agreement period in the Shared Savings Program. We find particularly persuasive the suggestion that this approach may offer the optimal glide-path for ACOs, and also result in greater consistency across program benchmark calculations. However, given the diversity of comments suggesting faster and slower phase-in of the regional adjustment, we believe it will be important to gain experience with the use of the regional adjustment as part of the rebasing methodology before seeking to adopt the adjustment as part of the methodology used to establish the ACO's first agreement period benchmark. Therefore, we plan to explore, the possibility of extending the phase-in by applying the regional adjustment to an ACO's first agreement period benchmark with a weight equal to or lower than 35 percent, in combination with using alternative factors to trend the ACO's historical benchmark (BY1 and BY2 to BY3) and to update the benchmark during the agreement period (discussed in section II.A.2.d. of this final rule). Any changes to the methodology used to establish an ACO's benchmark for its first agreement period would be addressed in future rulemaking.

FINAL ACTION: We are finalizing with modifications a phased approach to transitioning to greater weights in calculating the regional adjustment amount, which is expressed as a percentage of the difference between regional average expenditures for the ACO's regional service area and the ACO's rebased historical expenditures. This approach maintains the current methodology for establishing the benchmark for an ACO's first agreement period in the Shared Savings Program based on the historical expenditures for beneficiaries assigned to the ACO with no adjustment for expenditures in the ACO's regional service area, and the current methodology for resetting the historical benchmark for the second agreement period for ACOs that entered the program in 2012 and 2013 and started a new agreement period on January 1, 2016.

We will apply the regional adjustment to the ACO's rebased historical benchmark for ACOs entering a second or subsequent agreement period in 2017 and subsequent years. We will use the following phased-approach to determine the weight used in calculating the adjustment, which includes applying a lower weight the first and second time the ACO's benchmark is rebased using the regional adjustment if the ACO is determined to have spending higher than its region:

• The first time that an ACO's benchmark is rebased using the regional adjustment:

++ CMS uses a weight of 35 percent of the difference between the average per capita expenditure amount for the ACO's regional service area and the ACO's rebased historical benchmark amount, if the ACO is determined to have lower spending than its regional service area;

++ The percentage used in this calculation will be set at 25 percent if the ACO is determined to have higher spending than its regional service area.

• The second time that an ACO's benchmark is rebased using the regional adjustment:

++ CMS uses a weight of 70 percent of the difference between the average per capita expenditure amount for the ACO's regional service area and the ACO's rebased historical benchmark amount if the ACO is determined to have lower spending than the ACO's regional service area, unless the Secretary determines a lower weight should be applied, as specified through future rulemaking;

++ The percentage used in this calculation will be set at 50 percent if the ACO is determined to have higher spending than the ACO's regional service area.

• The third or subsequent time that the ACO's benchmark is rebased using the regional adjustment, the percentage used in this calculation will be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking.

• If CMS adjusts the ACO's benchmark during the term of the agreement period to reflect the addition or removal of ACO participants or ACO providers/suppliers, CMS will redetermine whether the ACO is considered to have lower spending or higher spending compared to the ACO's regional service area for purposes of determining the percentage to be used in calculating the regional adjustment.

We are incorporating this phased approach to transitioning to greater weights in calculating the regional adjustment in new § 425.603.

As discussed in section II.A.2.f of this final rule, this phased approach will apply to ACOs that entered the program

in 2012 and 2013 and started their second agreement period on January 1, 2016, for the first time in calculating their rebased historical benchmark for their third agreement period (beginning in 2019).

d. Parity Between Establishing and Updating the Rebased Historical Benchmark

(1) Background

In the 2016 proposed rule we provided background on policies regarding the historical benchmark trend factors and annual benchmark updates during the agreement period, including our previous consideration of whether to base these trend and update factors on State, local or regional expenditures instead of national FFS expenditures (see 81 FR 5836 through 5838).

In the initial rulemaking to establish the Shared Savings Program, we identified the need to trend forward the expenditures in each of the 3 years making up the historical benchmark. As explained in earlier rulemaking, because the statute requires the use of the most recent 3 years of per-beneficiary expenditures for Parts A and B services for FFS beneficiaries assigned to the ACO to estimate the benchmark for each ACO, the per capita expenditures for each year must be trended forward to current year dollars before they are averaged using the applicable weights to obtain the benchmark (see 76 FR 19609). In the November 2011 final rule, we finalized an approach under § 425.602(a)(5) for trending forward benchmark expenditures based on national FFS Medicare growth rates for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible (76 FR 67924 and 67925). We also explained that making separate calculations for specific groups of beneficiaries—specifically the aged/dual eligible, aged/non-dual eligible, disabled, and ESRD populations—accounts for variation in costs of these groups of beneficiaries, resulting in more accurate calculations (76 FR 67924). We considered using national, State or local growth factors to trend forward historical benchmark expenditures (76 FR 19609 through 19610 and 76 FR 67924 through 67925).

Among other considerations, we explained that the anticipated net effect of using the same trending factor based on the national growth rate for all ACOs would be to provide a relatively higher benchmark for low growth/low spending ACOs and a relatively lower benchmark for high growth/high spending ACOs. ACOs in high cost, high growth areas would therefore have an incentive to reduce their rate of growth more to bring their costs more in line with the national average; while ACOs in low cost, low growth areas would have an incentive to continue to maintain or improve their overall lower spending levels (see 76 FR 67925). We also explained that use of the national growth rate could also disproportionately encourage the development of ACOs in areas with historical growth rates below the national average (see 76 FR 19610). These ACOs would benefit from having a relatively higher benchmark, which would increase the chances for shared savings. On the other hand, ACOs in areas with historically higher growth rates above the national average would have a relatively lower benchmark, and might be discouraged from participating in the program (see 76 FR 19610).

In contrast, as we explained in the initial rulemaking to establish the Shared Savings Program, trending expenditures based on State or local area growth rates in Medicare Parts A and B expenditures may more accurately reflect the experience in an ACO's area and mitigate differential incentives for participation based on location (see 76 FR 19610). We considered, but did not finalize, an option to trend the benchmark by the lower of the national projected growth rate or the State or the local growth rate (see 76 FR 19610 and 76 FR 67925). This option balanced providing a more accurate reflection of local experience with not rewarding historical growth higher than the national average. We believed this method would instill stronger saving incentives for ACOs in both high growth and low growth areas (see 76 FR 19610).

Section 1899(d)(1)(B)(ii) of the Act states that the benchmark shall be updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. Further, the Secretary's authority under section 1899(i)(3) of the Act, for implementing other payment models, allows for alternatives to using national expenditures for updating the benchmark, as long as the Secretary determines the approach improves the quality and efficiency of items and services furnished under Medicare and does not to result in additional program expenditures.

In the initial rulemaking, we finalized our policy under § 425.602(b) to update the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program as specified under section 1899(d)(1)(B)(ii) of the Act. Further, consistent with the final policies for calculating the historical benchmark (among other aspects of the Shared Savings Program's financial models) the calculations for updating the benchmark are made for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible (76 FR 67926 and 67927). In developing this policy, we also considered using our authority under section 1899(i)(3) of the Act to update the benchmark by the lower of the projected absolute amount of growth in national per capita expenditures and the projected absolute amount of growth in local/state per capita expenditures (see 76 FR 19610 and 19611).

Among other considerations, we explained that using a flat dollar increase, which would be the same for all ACOs, provides a relatively higher expenditure benchmark for low growth, low spending ACOs and a relatively lower benchmark for high growth, high spending ACOs. Therefore, ACOs in high spending, high growth areas must reduce their rate of growth more (compared to ACOs in low spending, low growth areas) to bring their costs more in line with the national average (see 76 FR 19610). We also indicated that these circumstances could contribute to selective program participation by ACOs favored by the national flat-dollar update, and ultimately result in Medicare costs from shared savings payments that result from higher benchmarks rather than an ACO's care coordination activities (see 76 FR 19610 through 19611 and 19635). Incorporating more localized growth factors reflects the expenditure and growth patterns within the geographic area served by ACO participants, potentially providing a more accurate estimate of the updated benchmark based on the area from which the ACO derives its patient population (76 FR 19610).

In the June 2015 final rule, we discussed comments received on benchmark rebasing alternatives discussed in the December 2014 proposed rule that would include using regional FFS expenditures, instead of national FFS expenditures, to develop the historical benchmark trend factors and to update the benchmark during the agreement period (79 FR 72839; 79 FR 72841 through 72843; 80 FR 32792, 32794). We indicated our plan to consider further what additional adjustments should be made to the benchmarking methodology when moving to a rebasing approach that accounts for regional FFS trends, including whether to incorporate regional FFS expenditures in updating an ACO's historical benchmark each performance year or to maintain the policy under which we update an ACO's benchmark based on the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original FFS program (80 FR 32796).

(2) Regional Growth Rate as a Benchmark Trending Factor

We proposed to replace the national trend factors currently used for trending an ACO's BY1 and BY2 expenditures to BY3 in calculating an ACO's rebased historical benchmark with regional trend factors derived from a weighted average of risk adjusted FFS expenditures in the counties where the ACO's assigned beneficiaries reside. Further, we proposed to calculate and apply these trend factors for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. We proposed to incorporate these changes in a new regulation at § 425.603.

To align with the proposed methodology for calculating regional FFS expenditures for an ACO's regional service area, we considered the following approach for calculating regional FFS trend factors:

- For each benchmark year, calculate risk adjusted county FFS expenditures for the ACO's regional service area. County FFS expenditures would be determined consistent with other proposals discussed in the 2016 proposed rule, by using total county-level FFS Parts A and B expenditures for assignable beneficiaries, excluding IME, DSH, and uncompensated care payments, but including beneficiary identifiable payments made under a demonstration, pilot or time limited program; regional expenditures would be calculated for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible);
- For each benchmark year, compute a weighted average of risk adjusted county-level FFS expenditures using weights that reflect the proportion of an ACO's assigned beneficiaries residing in each county within the ACO's regional service area. Calculations would be done by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) based on the ACO's benchmark year assigned population.
- Compute the average growth rates from BY1 to BY3, and from BY2 to BY3, using the weighted average of risk-adjusted county level FFS expenditures for the respective benchmark years, for each Medicare enrollment type.

We explained that we would apply these regional trend factors to the ACO's historical benchmark expenditures, which are also adjusted based on the CMS–HCC model, to account for the severity and case mix of the ACO's assigned beneficiaries in each benchmark year.

We discussed that using regional trend factors, instead of national trend factors to trend forward expenditures in the benchmark period, would further incorporate regional FFS spending and population dynamics specific to the ACO's regional service area in the ACO's rebased benchmark. We explained our belief that there are number of relevant considerations for moving to use of regional trend factors, including the following:

- Regional trend factors would more accurately reflect the cost growth experience in an ACO's regional service area compared to use of national trend factors.
- Regional trend factors would reflect the change in the health status of the FFS population that makes up the ACO's regional service area, the region's geographic composition (such as rural versus urban areas), and socio-economic differences that may be regionally related.
- Regional trend factors could better capture location-specific changes in Medicare payments (for example, the area wage index) compared to use of national trend factors.

We also considered how use of regional trend factors in resetting ACO benchmarks could affect participation by relatively high- and low-growth ACOs operating in regions with high and low growth in Medicare FFS expenditures. We anticipated the following:

- Using regional trend factors would result in relatively higher benchmarks for ACOs that are low growth in relation to their region compared to benchmarks for ACOs that are high growth relative to their region. Therefore, use of regional FFS trends could disproportionately encourage the development of and continued participation by ACOs with rates of growth below that of their region. These ACOs would benefit from having a relatively higher benchmark, which would increase their chances for shared savings. On the other hand, ACOs with historically higher rates of growth above the regional average would have a relatively lower benchmark and may be discouraged from participating if they are not confident of their ability to bring their costs in line with costs in their region.
- In using regional growth rates specific to an ACO's regional service area and composition (by Medicare enrollment type), there would likely be significant variation in the growth rates between health care markets in different regions of the country and even between ACOs operating in the same markets. This approach would be a departure from the current methodology, which applies a single set of national growth factors calculated for each benchmark year by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). However, ACOs familiar with the composition of their assigned population and cost trends in their regional service area may find they can more readily anticipate what these trend factors may be. We indicated that stakeholders may find it helpful to observe differences in county FFS expenditures using the data files made publicly available in conjunction with the 2016 proposed rule.

We sought comment on the proposed change to the rebased historical benchmark trend factor. We also considered and sought comment on several alternative approaches, including:

- Using regional trend factors for trending forward an ACO's BY1 and BY2 expenditures to BY3 in establishing and resetting historical benchmarks under the approach to resetting ACO benchmarks established with the June 2015 final rule (under which we equally weight the benchmark years, and account for savings generated under the ACO's prior agreement period), as an alternative to adopting the approach to adjusting rebased benchmarks to reflect FFS expenditures in the ACO's regional service area, as discussed in the 2016 proposed rule.
- Applying regional trend factors for trending forward BY1 and BY2 expenditures to BY3 in establishing the benchmark for an ACO's first agreement period under § 425.602(a), allowing this policy to be applied consistently program-wide beginning with an ACO's first agreement period.

Comment: Some commenters discussed issues relevant both to the proposal to replace national growth rates with regional growth rates for trending the rebased benchmark (BY1 and BY2 expenditures to BY3) and the proposed use of regional growth rates instead of a national flat dollar amount to update the benchmark each performance year. The following

summary reflects these more general considerations, while later in this section of this final rule we discuss comments specific to each of these proposals. Comments were somewhat divided between support for and concerns about the proposals on using regional FFS expenditures instead of national FFS expenditures in calculating trend and update factors. Broader considerations reflected in the comments, relevant to both proposals include the following:

• Among commenters supporting the proposed use of regional growth rates instead of factors based on national FFS expenditures in benchmark calculations, some believed this approach generally would result in benchmarks that better reflect the regional patterns in spending and costs. Additionally, several commenters explained that the use of national FFS expenditures as a component of the benchmark does not accurately reflect what is possible for ACOs to achieve, in terms of controlling growth in Medicare spending, within their geographic area or with respect to their assigned patient population.

• Some commenters disagreed with the proposed use of regional growth rates in benchmark calculations, perceiving that these modifications could negatively impact benchmarks by, for example: (1) Allowing individual provider anomalies to have a material impact on an ACO's benchmark; (2) lowering benchmarks (compared to the current methodology) for ACOs in low growth regions, with a commenter noting that ACOs in higher-growth areas would be rewarded with higher benchmarks; (3) lowering benchmarks in regions where ACOs have been successful in reducing growth in expenditures (particularly for successful ACOs that are dominant in a region, or ACO-heavy regions).

• Some commenters were concerned about the discussion in the proposed rule indicating that the proposed changes could have mixed effects, increasing and decreasing benchmarks for ACOs depending on their circumstances.

• Several commenters expressed support for adopting the use of regional trend and update factors across all ACOs, including ACOs within their first agreement period. A commenter explained that applying different methodologies in the first and subsequent agreement periods adds complexity and reduces predictability of the benchmark values.

A few commenters noted CMS' larger goal of reducing regional variation in health care utilization and costs. A commenter expressed concern that using regional factors to formulate benchmarks for Shared Savings Program ACOs may exacerbate geographic variation and is antithetical to CMS' broader goal of reducing this variation. However, another commenter stated that use of regional expenditure growth rates rather than national expenditure growth rates in benchmark calculations will better facilitate CMS' goal of encouraging Shared Savings Program ACOs to transition to risk bearing arrangements.

Response: We appreciate commenters' support of the proposed use of growth rates based on regional FFS expenditures to trend forward BY1 and BY2 expenditures to BY3 when establishing the ACO's rebased historical benchmark and to annually update the ACO's rebased historical benchmark, as well as comments describing concerns with use of regional growth rates in these calculations. We agree with comments indicating the use of regional growth rates for the trend and update factors will have mixed effects on ACOs' rebased benchmarks, increasing or decreasing the benchmark values depending on the growth rates determined for the ACO's regional service area as we described in the 2016 proposed rule and reiterate in this final rule. As discussed in greater detail in section II.A.2.d.3 of this final rule, we plan to explore through future rulemaking alternative approaches to calculating the trend and update factors that may help mitigate concerns raised by some commenters about the potential disadvantages for some ACOs of transitioning from national to regional trend and update factors. We also plan to explore through future rulemaking suggestions by some commenters to begin to incorporate regional factors in the ACO's first agreement period.

On the whole, for the reasons described in the 2016 proposed rule and echoed in some comments, we believe these policy changes are an important step towards making an ACO's rebased historical benchmark more reflective of the ACO's regional service area including better reflecting the region's cost experience, location-specific Medicare payment changes, as well as the health status of the region's FFS population. We believe these changes to the methodology are responsive to stakeholders' requests that we incorporate regional FFS expenditures into the ACO's rebased historical benchmark, and therefore are critical to ensuring the sustainability of the program.

Comment: Commenters also offered suggestions specific to the proposed use of regional growth rates for trending the rebased benchmark. Although some commenters were supportive of the proposed methodology for calculating the growth rates to be used as trend factors in establishing an ACO's rebased historical benchmark, a commenter conditioned support for use of regional trend factors on the ACO's spending being compared to spending for the regional Medicare FFS population excluding beneficiaries assigned to the ACO or any other ACO in the region. Some commenters disagreed with the proposed change from using national FFS expenditures to using regional FFS expenditures to calculate the trend factors used to establish an ACO's rebased historical benchmark, for reasons previously described in this section of this final rule.

Response: We are finalizing as proposed the use of regional growth rates to calculate the trend factor for establishing an ACO's rebased historical benchmark. We appreciate commenters' support for this approach, which we believe will more quickly transition the program to benchmark calculations reflecting spending, and spending growth, in the ACO's regional service area and is consistent with the approach we are finalizing for calculating the annual update to the ACO's rebased historical benchmark. For these reasons, we decline the suggestion by some commenters to continue using trend factors based on national FFS expenditures in establishing an ACO's rebased historical benchmark.

In section II.A.2.b of this final rule, we discuss comments suggesting exclusion of ACO assigned beneficiaries from the population used to determine expenditures for the ACO's regional service area, and the reasons why we believe it is appropriate to include ACO assigned beneficiaries when calculating regional FFS expenditures. For the same reasons, we believe it is appropriate to include expenditures for these ACO assigned beneficiaries when determining regional trend and update factors.

Comment: A few commenters recommended alternative approaches to using regional growth rates for trending benchmark expenditures to establish an ACO's rebased historical benchmark not discussed in the proposed rule. For example, a commenter suggested a methodology that would account for both national and regional FFS expenditure trends, expressing concern that replacing the national trend factor with only a regional trend factor would pose additional challenges for ACOs in low-cost regions to meet the benchmark. Another commenter suggested allowing ACOs a choice of regional or national trend factors, explaining that this choice would allow each ACO to take into consideration the many competitive factors driving change within its local market.

Response: We decline to adopt any of the alternative approaches recommended by commenters for calculating the trend factors. Elsewhere in this section of this final rule we discuss concerns that use of regional growth rates in benchmark calculations for the trend factors and the annual update will result in relatively lower benchmarks for ACOs in regions where spending growth is limited compared to areas with higher spending growth. In section II.A.2.d.3 of this final rule, we discuss our plan to explore an alternative approach to calculating the annual update, and also the benchmark trend factors, using standardized national FFS expenditures. We believe this approach has the potential to address the concerns raised by the commenter that suggested using an approach to determining trend factors that accounts for both national and regional FFS expenditure trends. We also decline at this time to adopt the commenter's suggestion for an approach that (by design) would allow ACOs the choice between trend factors (national or regional). Such an approach could lead to opportunities for arbitrage and may dull incentives for ACOs to improve their performance under the Shared Savings Program, as well as create additional operational complexities for implementing the policy.

Comment: Some commenters supported using a similar approach to calculate both the trend factors used in establishing the ACO's rebased historical benchmark and the annual update to the rebased benchmark, as described in the 2016 proposed rule. A commenter expressed concern that the descriptions of the calculations for the proposed regional trend factors and annual update were based on different parameters but arrived at the same outcome.

Response: In the 2016 proposed rule (81 FR 5838 and 5839), we outlined the steps for calculating the regional growth rates for the regional trend factors used in establishing the ACO's rebased benchmark and for the annual update to the ACO's rebased benchmark. We appreciate the commenter's attention to the details in the descriptions of our proposed methodologies for trending and updating the benchmark. The methodologies used to calculate the growth rates for the trend factor and annual update are the same: for both the trend factor and the annual update, we will determine risk-adjusted county FFS expenditures for the ACO's regional service area, calculated by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) for the relevant reference years, and determine the percentage change in regional FFS expenditures for the ACO's regional service area. However, there are certain necessary differences in the reference years used for purposes of trending and updating the benchmark. Specifically, the trend factors represent the growth rates between the ACO's historical benchmark years (trend factor of BY1 and BY2 to BY3), whereas the annual update represents the growth rate between benchmark year 3 and the performance year. Therefore, both growth rates will reflect changes in expenditures for the ACO's regional service area (according to the counties of residence of the ACO's assigned beneficiaries) for each of the 2 reference years used in determining the applicable growth rate. We believe that the approaches are generally consistent and together they will result in a benchmark that consistently reflects the rate of growth in expenditures for the ACO's region.

FINAL ACTION: We are finalizing as proposed the use of regional growth rates, derived from a weighted average of risk adjusted FFS expenditures for the ACO's regional service area, determined by the counties where the ACO's assigned beneficiaries reside, to trend forward an ACO's BY1 and BY2 expenditures to BY3 in calculating an ACO's rebased historical benchmark. We will calculate and apply these trend factors for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. We are incorporating this methodology at § 425.603(c)(5).

(3) Updating the Reset Benchmark During the Agreement Period

Using the authority of section 1899(i)(3) of the Act, we proposed to include a provision in a new regulation at § 425.603 to specify that for ACOs in their second or subsequent agreement period whose rebased historical benchmark incorporates an adjustment to reflect regional expenditures, the annual update to the benchmark will be calculated as a growth rate that reflects growth in risk adjusted regional per beneficiary FFS spending for the ACO's regional service area. Further, we proposed to calculate and apply separate update factors based on risk adjusted regional FFS expenditures for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. We proposed that this approach would replace the annual update to the historical benchmark for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program under section 1899(d)(1)(B)(ii) of the Act. We explained our considerations in developing this proposal and sought comment on the proposed methodology.

We considered the following issues in developing our proposed modification to the methodology for updating the ACO's rebased historical benchmark:

• Using an update factor based on the regional FFS expenditures for the ACO's regional service area to update an ACO's rebased historical benchmark during the ACO's second or subsequent agreement period would align with our proposal to use regional FFS expenditures in developing the trend factors for the rebased historical benchmark (to trend BY1 and BY2 expenditures to BY3) and our proposal to adjust the ACO's rebased historical benchmark to reflect regional FFS expenditures.

• Updating the benchmark based on regional FFS expenditures annually, during the course of the agreement period, would result in a benchmark used to determine shared savings and shared losses for a performance year that reflects trends in regional FFS growth for the ACO's regional service area for the corresponding year. We explained that calculating the update factor using regional FFS expenditures would better capture the cost experience in the ACO's region, the health status and socio-economic dynamics of the regional population, and location-specific Medicare payments, when compared to using national FFS expenditures.

• Adopting this approach would require our use of authority under section 1899(i)(3) of the Act as it is a departure from the methodology for annually updating the benchmark specified under section 1899(d)(1)(B)(ii) of the Act.

We considered using the following approach to calculate the regional update amount for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible):

• For each calendar year corresponding to a performance year, calculate risk adjusted county FFS expenditures for the ACO's regional service area. As described in the 2016 proposed rule, county FFS expenditures would be determined using total county-level FFS Parts A and B

expenditures for assignable beneficiaries, excluding IME, DSH, and uncompensated care payments, but including beneficiary identifiable payments made under a demonstration, pilot or time limited program, truncated and risk adjusted for each Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). The ACO's regional service area would be defined based on the ACO's assigned beneficiary population used to perform financial reconciliation for the relevant performance year.

• Compute a weighted average of risk adjusted county-level FFS expenditures with weights based on the proportion of an ACO's assigned beneficiaries residing in each county of the ACO's regional service area. Calculations would be done by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible) based on the ACO's assigned population used to perform financial reconciliation for the relevant performance year.

• Although not specified in the 2016 proposed rule, a necessary step in this calculation is computing the growth rates as the ratio of weighted average risk-adjusted county level FFS expenditures for the applicable 2 years. To clarify, we would determine the regional growth rates by comparing expenditures determined in the previous step for the relevant performance year with expenditures for BY3.

We considered whether to calculate a flat dollar equivalent of the projected absolute amount of growth in regional per capita expenditures for Parts A and B FFS services, or whether to calculate the percentage change in growth in regional FFS expenditures for the ACO's regional service area. We discussed issues related to use of a growth rate or a flat dollar amount in the initial rulemaking to establish the Shared Savings Program, including our view that a growth rate would more accurately reflect each ACO's historical experience, but could also perpetuate current regional differences in medical expenditures (see 76 FR 19609 through 19610 and 76 FR 67924). Based on the reasons discussed in the earlier rulemaking, we noted our belief that using growth rates to determine the annual update would more effectively capture changes in the ACO's regional service area expenditures and changes in the health status of the ACO's population in comparison to the health status of the population of the ACO's regional service area over time. We explained that using a growth rate to update ACOs' benchmarks would also result in proportionately larger updates for higher spending ACOs in the region and lower updates for lower spending ACOs in the region and would strike a balance with the flat-dollar average regional expenditures used to adjust the ACOs historical benchmark.

We further described the anticipated effects of the proposed change to the methodology for calculating the update to an ACO's rebased historical benchmark, including:

• The use of an update factor based on regional FFS spending offers different incentives compared to an update factor reflecting only growth in national FFS spending. For instance, accounting for national FFS spending in an ACO's benchmark update would provide a relatively higher expenditure benchmark for low spending ACOs in low growth areas and a relatively lower benchmark for high spending ACOs in high growth areas. In contrast, accounting for changes in regional FFS spending between the benchmark and the performance year by updating the benchmark according to changes in regional FFS expenditures would ensure that the benchmark continues to reflect recent trends in FFS spending growth in the ACO's region throughout the duration of the ACO's agreement period.

• The use of an update factor based on regional FFS spending will likely result in significant variation in annual benchmark updates for individual ACOs, reflecting the cost experience in each ACO's individualized regional service area along with changes in the health status of the population of patients served by the ACO as well as changes in the types of Medicare entitlement status in the ACO's assigned beneficiary population. The degree of year-to-year change in expenditures will likely vary in both existing low- and high-growth regions and could also vary significantly from expectations. We explained, based on our past experience with calculating the 2012 national FFS growth factors (as used for interim reconciliation for the 2012 starters), the potential for negative updates and corresponding decreases in benchmark values.

We also considered how to apply the update to the ACO's rebased historical benchmark adjusted for expenditures in the ACO's regional service area. We specified that the update would be applied after all adjustments are made to the ACO's rebased benchmark. We detailed a sequence for these adjustments and the application of the update that would maintain the overall structure of the program's current methodology, and align with the other revisions to the methodology used to calculate an ACO's rebased historical benchmark described in the 2016 proposed rule.

We explained it would be necessary to use the discretionary authority in section 1899(i)(3) of the Act to adopt a policy under which we would calculate the benchmark update using regional FFS expenditures. Section 1899(i)(3) of the Act authorizes the Secretary to use other payment models in place of the payment model outlined in section 1899(d) of the Act as long as the Secretary determines these other payment models will improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without additional program expenditures. We explained our belief that updating an ACO's rebased historical benchmark based on regional FFS spending, rather than national FFS spending, would have positive effects for the Shared Savings Program and Medicare beneficiaries. As described in the regulatory impact analysis of the 2016 proposed rule, we noted the proposed changes to the payment model used in the Shared Savings Program, including updating the ACO's rebased historical benchmark based on regional FFS spending, were anticipated to increase overall participation in the program, improve incentives for ACOs to invest in effective care management efforts, and increase the accuracy of benchmarks in capturing the experience in an ACO's regional service area compared to the use of national FFS expenditures. Therefore, we believed these changes would result in improved quality of care furnished to Medicare beneficiaries, and greater efficiency of items and services furnished to these beneficiaries, as more ACOs enter and remain in the Shared Savings Program and continue to work to meet the program's three-part aim of better care for individuals, better health for populations and lower growth in expenditures.

We noted that section 1899(i)(3)(B) of the Act provides that the requirement that the other payment model not result in additional program expenditures "shall apply . . . in a similar manner as [subparagraph (b) of paragraph (2) of section 1899(i)] applies to the payment model under [section 1899(i)(2)]." Section 1899(i)(2) of the Act provides discretion for the Secretary to use a partial capitation model rather than the payment model described in section 1899(d) of the Act. Section 1899(i)(2)(B) of the Act provides that payments to an ACO for items and services for beneficiaries for a year under the partial capitation model shall be established in a manner that does not result in spending more for such ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented, as estimated by the Secretary.

We explained that we had not previously addressed this provision in rulemaking. We stated our belief that we could use a number of approaches to address this statutory requirement, for example: Through an initial estimation that the model does not result in additional expenditures that spans multiple years of implementation; by a periodic assessment that the model does not result in additional program expenditures; or by structuring the model in a way such that CMS could not spend more for an ACO for such beneficiaries than would otherwise be expended for such ACO for such beneficiaries for such year if the model were not implemented. However, because section 1899(i)(3)(B) of the Act states only that the requirement that the payment model not result in additional program expenditures must be applied in "a similar manner" to the requirement under section 1899(i)(2)(B) of the Act, we explained our belief that we have some discretion to tailor this requirement to the payment framework that is being adopted under the other payment model.

The regulatory impact analysis of the 2016 proposed rule discussed our analysis of the requirement under section 1899(i)(3)(B) of the Act that the other payment model must not result in additional program expenditures, and our initial assessment of the costs associated with a payment model that includes changes to the manner in which we update the benchmark during an ACO's agreement period. We compared all current policies and proposed policies to policies that could be implemented under section 1899(d)(1)(B)(ii) of the Act, and assessed that for the period spanning 2017 through 2019 there would be net federal savings. Therefore, we believed that the proposed alternative payment model under section 1899(i)(3) of the Act, which includes the use of regional FFS expenditures to update an ACO's rebased historical benchmark and the use of FFS expenditures of assignable beneficiaries to calculate the national benchmark update for ACOs in their first agreement period and those ACOs that started a second agreement period on January 1, 2016, as well as policies established using the authority of section 1899(i)(3) of the Act in earlier rulemaking, meets the requirement under section 1899(i)(3)(B) of the Act. We anticipated that the costs of this alternative payment model would be periodically reassessed as part of the impact analysis for subsequent rulemaking regarding the payment models used under the Shared Savings Program. However, we explained that in the event we do not undertake additional rulemaking, we intend to periodically reassess whether a payment model established under authority of section 1899(i)(3) of the Act continues to improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without resulting in additional program expenditures. If we determine the payment model no longer satisfies the requirements of section 1899(i)(3) of the Act, for example if the alternative payment model results in net program costs, we would undertake additional notice and comment rulemaking to make adjustments to our payment methodology to assure continued compliance with the statutory requirements.

We clarified that the current methodology for calculating the annual update would continue to apply in updating an ACO's historical benchmark during its first agreement period, as well as in updating the rebased historical benchmark for the second agreement period for ACOs that started in the program in 2012 or 2013, and entered their second agreement period on January 1, 2016. That is, for these ACOs, we would continue to update the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program. Consistent with the discussion in section II.A.2.e.3 of this final rule, these calculations will be performed based on assignable beneficiaries.

We also discussed and sought comment on alternatives to the proposed approach, including: (1) Calculating the update factor as the flat dollar equivalent of the projected absolute amount of growth in regional per capita expenditures for Parts A and B services for the ACO's regional service area; and (2) using regional FFS expenditures, instead of national FFS expenditures, to update an ACO's historical benchmark beginning with its first agreement period.

Comment: In section II.A.2.d.2 of this final rule, we describe and respond to comments regarding the use of regional growth rates in trending the ACO's rebased historical benchmark and updating the ACO's rebased historical benchmark annually during the agreement period. Commenters also offered suggestions specific to the proposed use of regional growth rates for updating the rebased benchmark. Some commenters expressed support for the proposed use of growth rates based on regional FFS expenditures to annually update the ACO's rebased historical benchmark. A commenter seemed to support this approach because it would yield larger update amounts for ACOs in higher growth regions, compared to the current use of an update factor based on national FFS expenditures.

Of the few comments discussing whether the annual update should be calculated using regional growth rates or regional flat dollar amounts, commenters expressed a preference for the use of regional growth rates. Some commenters explained their preference for CMS to use the same formula to determine the regional trend and update factors. Because CMS proposed that regional trend factors would be calculated as growth rates, these commenters opposed use of regional flat dollar amounts in calculating the annual update in order to assure a consistent methodology would be used to trend and update the ACO's rebased historical benchmark using factors based on regional FFS expenditures.

Some commenters opposed the proposed use of regional FFS expenditures, instead of national FFS expenditures, to determine the annual update to the ACO's rebased historical benchmark. Some commenters expressed concern that the proposed approach would have a variable impact on ACOs across the country, increasing and decreasing benchmarks for ACOs depending on the circumstances. A principal concern expressed by these commenters was that the proposed methodology would result in relatively lower update amounts for ACOs in low growth areas (including as a result of ACOs' success in lowering growth in expenditures) compared to the update amounts for ACOs in higher growth areas. A commenter further explained that the wrong incentives will result because for regions where there is a substantial amount of managed care, or a dominant, successful ACO, the rate of FFS spending growth per capita in the region would be limited and the update to ACO benchmarks would be lowered by the success of risk-based coordinated care. Another commenter indicated a similar concern specific to ACO-heavy regions, pointing to a discussion of the issue in the 2016 proposed rule regulatory impact analysis (81 FR 5859).

Some commenters suggested CMS forgo the proposed modification, and some recommended alternative

approaches to use of regional growth rates for updating the ACO's rebased benchmark, including the following:

• Several commenters (including MedPAC) expressed support for modifying the benchmark update methodology to better account for changes in factors outside the ACO's control that affect regional spending, but expressed concern about the proposal to move to use of regional FFS expenditures in calculating the annual update. MedPAC explained that ACOs' incentives to control spending growth would be limited if the update to the benchmark would be reduced by their success in reducing spending growth, particularly in circumstances where an ACO is dominant in its region. MedPAC suggested CMS investigate continuing to use a national update amount, and excluding IME, DSH and uncompensated care payments as provided under our current regulations, but also adjusting for changes in factors outside the ACO's control that affect regional spending such as area wage index changes (for example the region's hospital wage index). Along similar lines, another commenter suggested CMS adopt the Next Generation ACO model methodology. The Next Generation ACO Model is currently testing a benchmarking method that includes use of a prospectively calculated trend-adjustment factor, applied to baseline claims, which includes a national projected trend adjusted for regional changes in geographic adjustment factors (such as area wage index (AWI) and geographic practice cost index (GPCI)). See Next Generation ACO Model Benchmarking Methods (December 15, 2015), available online at *https://innovation.cms.gov/Files/x/nextgenaco-methodology.pdf*).

• Allow ACOs a choice between the higher of the national or regional update amount, particularly in the agreement period when the rebasing methodology including factors based on regional FFS expenditures is applied to the ACO for the first time.

• Reduce the frequency of, or eliminate altogether, the benchmark update.

Response: We are finalizing as proposed the use of regional growth rates to calculate the annual update to the ACO's rebased historical benchmark. We believe this approach will more quickly transition the program to benchmark calculations reflecting spending and spending growth in the ACO's regional service area.

However, we do share commenters' concerns about creating significant variation in the update amount across ACOs participating in the Shared Savings Program. We are also concerned about the longer term effects on participation resulting from relatively lower benchmark updates for regions with lower growth rates, reflecting ACOs' success in lowering growth in expenditures in those regions or a more general pattern of lower growth in the regions. We considered the approach suggested by MedPAC, under which the benchmark update would be calculated using standardized national FFS expenditures, adjusted for factors including the area wage index, to be an elegant alternative to use of regional growth rates in calculating the benchmark update. We are not adopting this approach in this final rule because this option was not discussed in the proposed rule, and therefore ACOs and other stakeholders have not had an opportunity to comment on this approach. Further, we would need to undertake additional analysis and modeling of this approach before deciding whether to propose it.

We anticipate exploring an alternative approach to calculating the update similar to MedPAC's recommendation, and may address the details of this approach in future rulemaking. Under this approach we would consider standardizing national FFS expenditures, for example: By calculating the benchmark update using a national growth rate adjusted for factors including IME, DSH, uncompensated care, as well as the AWI and GPCI; or by removing all geographic based payments and other add on payments similar to the approach for standardizing claims under the Physician Value Based Payment Modifier and Hospital Value-Based Purchasing programs. See for example, Basics of Payment Standardization (June 2015) and Detailed Payment Standardization Methods (updated May 2015), available at *http://www.qualitynet.org/dcs/ContentServer?c=Page&pagename=QnetPublic%2FPage%2FQnetTier4&cid=1228772057350*. We also believe the Innovation Center's experience with the Next Generation ACO Model methodology will be informative when evaluating use of geographic adjustments within the Shared Savings Program benchmarking methodology.

We would also explore, through future rulemaking, how broadly to apply an alternative approach, including whether to apply the same methodology consistently in calculating both the trend factors and the annual update. We would also consider whether to apply the same methodology consistently across the program for benchmark calculations, regardless of whether the ACO is participating in its first, or a subsequent agreement period. For example, we may consider calculating the trend and update factors using regional growth rates, as provided in this final rule, in benchmark calculations for an ACO's first agreement period. Alternatively, we may consider applying consistently across the program an alternative approach to calculating the regional trend and update factors, such as using standardized national FFS expenditures. Another consideration would be whether to apply an alternative approach to calculating the trend and update factors, such as using standardized national FFS expenditures, only in calculating an ACO's first agreement period benchmark, as a means of facilitating ACOs' transition to a benchmarking methodology in subsequent agreement periods that includes use of regional growth rates to trend and update the benchmark.

FINAL ACTION: Under the authority of section 1899(i)(3) of the Act, we are finalizing our proposal that for ACOs in their second or subsequent agreement period whose rebased historical benchmark incorporates an adjustment to reflect regional expenditures, the annual update to the benchmark will be calculated as a growth rate that reflects growth in risk adjusted regional per beneficiary FFS spending for the ACO's regional service area, for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. We are incorporating this methodology at § 425.603(d). We note that this final provision includes some minor revisions to the proposed regulatory language in order to ensure that the final methodology for updating the rebased benchmark is described accurately and consistently.

We note that section IV.E of this final rule contains an updated assessment of all policies that are being implemented under the authority of section 1899(i)(3). Specifically, we compared all current policies along with the policies that are being adopted in this final rule to policies that could be implemented under section 1899(d)(1)(B)(ii) of the Act, and concluded that for the period from 2017 to 2019 there would be net federal savings. As discussed in the proposed rule, we anticipate that the costs of this alternative payment model will be periodically reassessed as part of the impact analysis for subsequent rulemaking regarding the payment models used in the Shared Savings Program. However, in the event we do not undertake additional rulemaking, we intend to periodically reassess whether the payment model established under the authority of section 1899(i)(3) of the Act continues to improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without resulting in additional program expenditures. If we determine the payment model no longer satisfies the requirements of section 1899(i)(3) of the Act, for example if the alternative payment model results in net program costs, we will undertake additional notice and comment rulemaking to make adjustments to our payment methodology to assure continued compliance with the statutory requirements. In adopting this approach, we believe that the alternative payment model under section 1899(i)(3) of the Act that is set forth in this final rule, which includes using regional FFS expenditures to update an ACO's rebased historical benchmark, using FFS expenditures of assignable beneficiaries to calculate the national benchmark update for ACOs in their first agreement period and those that started a second agreement period on January 1, 2016, as well as existing policies established using the authority of section 1899(i)(3) of the Act, meets the requirement of section 1899(i)(3)(B) of the Act.

e. Parity Between Calculation of ACO, Regional and National FFS Expenditures

(1) Background

In the November 2011 final rule, we established a methodology for determining ACO benchmark and performance year expenditures for Medicare FFS beneficiaries assigned to the ACO. Under that methodology, we take into account payments made from the Medicare Trust Funds for Parts A and B services for assigned Medicare FFS beneficiaries, including individually beneficiary identifiable payments made under a demonstration, pilot or time limited program, when computing average per capita Medicare expenditures under the ACO. We exclude IME payments and DSH and uncompensated care payments from both benchmark and performance year expenditures. This adjustment to benchmark expenditures falls under the Secretary's discretion established by section 1899(d)(1)(B)(ii) of the Act to adjust the benchmark for beneficiary characteristics and such other factors as the Secretary determines appropriate. However, section 1899(d)(1)(B)(i) of the Act only provides authority to adjust expenditures in the performance period for beneficiary characteristics and does not provide authority to adjust for "other factors." Therefore, to remove IME and DSH payments from performance year expenditures, we used our authority under section 1899(i)(3) of the Act, which authorizes use of other payment models, in order to make this adjustment (see 76 FR 67920 through 67922). We allow for a 3-month run out of claims data and apply a claims completion factor (percentage), to more accurately determine an ACO's benchmark and performance year expenditures (76 FR 67837 and 67838). To minimize variation from catastrophically large claims we truncate an assigned beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of national Medicare FFS expenditures as determined for each benchmark year and performance year (76 FR 67914 through 67916).

We perform many of these calculations separately for each of the following populations of beneficiaries: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. For example, we calculate benchmark and performance year expenditures, determine truncation thresholds, and risk adjust ACO expenditures separately for each of these four Medicare enrollment types. As part of this methodology, we account for circumstances where a beneficiary is enrolled in a Medicare enrollment type for only a fraction of a year, through a process that results in a calculation of "person years" for a given year. We calculate the number of months that each beneficiary is enrolled in Medicare in each Medicare enrollment type, and divide by 12. When we sum the fraction of the year enrolled in Medicare for all the beneficiaries in each Medicare enrollment type, the result is total person years for the beneficiaries assigned to the ACO.

We currently apply these policies consistently across the program, as specified in the provisions for establishing, updating and resetting the benchmark under § 425.602, and for determining performance year expenditures under § 425.604 for Track 1 ACOs and under § 425.606 for Track 2 ACOs. Further, in developing Track 3, we determined that it would be appropriate to calculate expenditures consistently program-wide (see 80 FR 32776 through 32777). Accordingly, the provisions in § 425.602 governing establishing, updating, and resetting the benchmark also apply to ACOs under Track 3, and we adopted the same approach for determining performance year expenditures as is used in Track 1 and Track 2 in § 425.610 for Track 3 ACOs.

(2) Calculation of County FFS Expenditures

As part of our proposal to adjust the historical benchmark to reflect regional FFS expenditures, we expressed our belief that it is important to calculate FFS expenditures for an ACO's region in a manner consistent with the methodology used to calculate the ACO's benchmark and performance year expenditures. Several sections of the 2016 proposed rule discussed proposals related to calculating county FFS expenditures: one section described proposals for determining county FFS expenditures (see 81 FR 5831 and 5832); a separate section described related proposals for adjusting county FFS expenditure data to assure parity between regional FFS expenditure calculations and other program expenditure calculations (81 FR 5841 through 5843). Further, the discussion of the definition of the ACO's regional service area included a proposal to use statewide (instead of county level) values for the ESRD population (81 FR 5829 and 5830). We are consolidating our discussion of these proposals within this section of this final rule.

Consistent with our proposed definition of regional service area, we proposed to define regional costs as county FFS expenditures for the counties in which the ACO's assigned beneficiaries reside. We proposed that the calculations of county FFS expenditures would be undertaken separately according to the following populations of beneficiaries (identified by Medicare enrollment type): ESRD, disabled, aged/dual eligible, aged/non-dual eligible (see 81 FR 5830). We explained that consistent with the use of beneficiary person years in calculating ACO benchmark and performance year expenditures for each Medicare enrollment type, we would also calculate beneficiary person years when determining county FFS expenditures for each Medicare enrollment type (see 81 FR 5841 through 5843).

We proposed to compute per capita expenditures and average risk scores for the ESRD population at the state level, and to apply those state-level values to all counties in the state. We explained that this approach would address issues associated with small numbers of ESRD beneficiaries in certain counties that can lead to statistical instability in expenditures for this complex population, and is consistent with the approach used in MA. We explained that our concern about small numbers of ESRD beneficiaries was particularly acute for ACOs operating in rural areas

that tend to be more sparsely populated (see 81 FR 5830).

To increase predictability and stability, and avoid bias, we proposed to apply the same approach to calculating county FFS expenditures for factors based on regional expenditures as is currently used in calculating benchmark and performance year expenditures. We explained consistent application of program methodology in calculating FFS expenditures would result in more predictable and stable calculations across the program over time, for example as ACOs transition from a benchmarking methodology that incorporates factors based on national FFS expenditures to one that incorporates factors based on regional FFS expenditures. In addition, use of an alternative approach to calculating regional FFS expenditures could introduce bias because different types of payments could be included in or excluded from these expenditures, as compared to historical benchmark expenditures and performance year expenditures.

Therefore, we proposed to take the following steps in calculating county FFS expenditures used to determine expenditures for an ACO's regional service area:

• Determine county FFS expenditures based on the expenditures of the assignable population of beneficiaries in each county, where assignable beneficiaries are identified for the 12-month period corresponding to the applicable calendar year (see section II.A.2.e.3 of this final rule). We will make separate expenditure calculations according to the following populations of beneficiaries (identified by Medicare enrollment type): ESRD, disabled, aged/dual eligible, aged/non-dual eligible.

• Calculate assignable beneficiary expenditures using the payment amounts included in Parts A and B FFS claims with dates of service in the 12-month calendar year for the relevant benchmark or performance year, allowing for a 3-month claims run out and applying a completion factor. The completion factor will be calculated based on national FFS assignable beneficiary expenditures (see section II.A.2.e.3 of this final rule).

++ These calculations will exclude IME, DSH, and uncompensated care payments.

++ These calculations will take into consideration individually beneficiary identifiable payments made under a demonstration, pilot or time limited program.

• Truncate a beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of national Medicare FFS assignable beneficiary expenditures as determined for the relevant year, in order to minimize variation from catastrophically large claims (see section II.A.2.e.3 of this final rule). We would determine truncation thresholds separately for each of the four Medicare enrollment types (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

• Adjust county FFS expenditures for severity and case mix of assignable beneficiaries in the county using prospective CMS- Hierarchical Condition Category (HCC) risk scores. We would determine average risk scores separately for each of the four Medicare enrollment types (ESRD, disabled, aged/dual eligible, aged/non-dual eligible).

We explained our plan to make county level data used in Shared Savings Program calculations publicly available annually. For example, a publicly available data file would indicate for each county: Average per capita FFS assignable beneficiary expenditures and average risk scores for all assignable beneficiaries by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). In response to requests from ACOs and other stakeholders for data to allow for modeling of the proposed changes to the benchmark rebasing methodology, CMS made new data files available through the Shared Savings Program Web site, to coincide with the issuance of the 2016 proposed rule (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Statutes-Regulations-Guidance.html*). These files included: average per capita county-level FFS spending and risk scores for three historical years; and ACO-specific data on the total number of assigned beneficiaries residing in each county where at least 1 percent of the ACO's assigned beneficiaries reside, for three historical years. We described these data files and considerations for their use, including comparability of ACO-specific data across programmatic datasets in the proposed rule (81 FR 5867 through 5868).

We proposed to incorporate this methodology for calculating county FFS expenditures in a new regulation at § 425.603. We sought comment on this proposed methodology as well as any additional factors we would need to consider in calculating risk adjusted county FFS expenditures for an ACO's regional service area.

Comment: The few commenters addressing the sections of the rule containing proposals for determining county FFS expenditures, as well as the related section describing parity between regional FFS expenditure calculations and other program expenditure calculations, were generally supportive of the proposed approach. However, a commenter expressed concerns that the proposed approach to calculating regional expenditures will incorporate historical geographic payment disparities that have never been adequately addressed in fee schedule and wage index rulemaking. Commenters offered specific suggestions regarding the proposals, as described in the remaining comment and response summaries within this section of this final rule.

Several commenters expressed support for the proposal to calculate expenditures by Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). Commenters generally shared CMS' concern about small numbers of ESRD beneficiaries at the county-level. While a few commenters believed that the proposed use of state level data would adequately address this concern as well as align with the methodology used in MA, many commenters expressed uncertainty about whether using state-level data for the ESRD population would be the best solution. These commenters urged CMS to release additional data and further explain how use of state-level data is the optimal solution, with some suggesting CMS revisit this issue in future rulemaking. Commenters offered a variety of alternatives, including: approaches similar to alternatives for ensuring a sufficiently large regional population, and several approaches that would rely on an ACO's historical costs for its assigned ESRD population. Some commenters preferred use of county-level data for the ESRD population. A commenter suggested use of statewide values only if county level values did not meet a threshold of sufficient statistical stability. A commenter explained that applying state-level data for all counties within a state may skew results for certain ACOs, in particular those ACOs operating only in certain areas of a state.

Response: We are finalizing as proposed the use of county level data to determine regional FFS expenditures for the assignable beneficiary population in the ACO's regional service area. We will perform these calculations separately according to the following populations of beneficiaries (identified by Medicare enrollment type): ESRD, disabled, aged/dual eligible, aged/non-dual eligible. However, we are making a modification to the methodology for calculating county FFS expenditures.

Based on commenters' recommendations, we carefully considered alternatives to the proposed approach of aggregating the expenditures for the ESRD population at the state level and applying this value consistently to each county within the State. Specifically, we reconsidered the option of using county-level data for the ESRD population, and determined that it would be appropriate to finalize a policy of calculating expenditures for the ESRD population at the county level. We believe there are a number of advantages of calculating expenditures for the ESRD population at the county level, consistent with the approach we proposed and are finalizing for determining county level expenditures for the other populations of beneficiaries (disabled, aged/dual eligible, aged/non-dual eligible). We believe a consistent approach to calculating expenditures for each Medicare enrollment type will be less operationally burdensome compared to an approach that calculates expenditures for the ESRD population differently than the expenditures for the disabled, aged/dual eligible, and aged/non-dual eligible populations. We also anticipate this consistency will allow for greater comparability between the values for each Medicare enrollment type to facilitate analysis by CMS and ACOs of expenditure trends for these populations over time. Further, this approach will reflect the variation in expenditures within states and the regional service areas that ACOs serve, a concept supported by comments underscoring the importance of reflecting regional spending variation in the methodology for resetting the ACO's historical benchmark.

We believe our concern about the small numbers of ESRD beneficiaries at the county level will be mitigated by certain factors. For one, while ESRD beneficiaries exhibit higher mean expenditures, they also exhibit significantly lower variation due in part to the stability of regular dialysis services for which payments are bundled in a highly standardized fashion. Second, we are finalizing an approach of weighting regional FFS expenditures by the proportion of assigned beneficiaries by Medicare enrollment in each county as discussed in section II.A.2.b.2 of this final rule. Specifically, for ACOs with a small proportion of ESRD beneficiaries within their assigned beneficiary population, the county-level ESRD expenditures will have a relatively low weight within the ACO's regional FFS expenditures. On the other hand, in the case of ACOs serving a large proportion of ESRD beneficiaries within a county, this approach could accommodate commenters' requests that the regional FFS expenditures more directly reflect the historical costs for the ACO's assigned ESRD beneficiaries. Additionally, we believe that the methodology for truncating the assignable beneficiary expenditures used to determine county FFS expenditures at the 99th percentile of national Medicare FFS assignable beneficiary expenditures will help reduce the potential for variation in county expenditure values with respect to the ESRD population in the same way as for the disabled, aged/dual eligible and aged/non-dual eligible populations.

We appreciate commenters' support for a methodology for determining regional FFS expenditures for use in the Shared Savings Program benchmark rebasing methodology that aligns with the MA rate-setting methodology. Although the approach we are finalizing does not follow the MA methodology for aggregating expenditures for the ESRD population statewide, and applying these values to each county in the state, we believe our overall approach for calculating county level expenditures risk adjusted using CMS–HCC prospective risk scores is a substantial step towards aligning with the MA rate-setting approach.

We decline at this time to adopt an alternative approach that (by design) only bases regional FFS expenditures for the ESRD population on the ACO's assigned ESRD beneficiaries, because it would systematically tie an ACO's rebased historical benchmark to its past performance, rather than allowing an ACO's benchmark to be more reflective of FFS spending in its region.

With respect to the commenter's concern that the proposed methodology for calculating regional expenditures would incorporate geographic payment disparities, we recognize there are geographic variations in Medicare payments. However, it is beyond the scope of this final rule, as well as the Shared Savings Program in general, to address broader Medicare payment policies regarding geographic adjustments.

Comment: Some commenters suggested increasing the number of years of data included in the calculations of county FFS expenditures, for example, using a 5-year rolling average for county-level spending estimates, along the lines of the approach used by MA.

Response: We are finalizing without modification our proposal to calculate county FFS expenditures for assignable beneficiaries residing in a county using the payment amounts included in Parts A and B FFS claims with dates of service in the 12-month calendar year for the relevant benchmark or performance year, allowing for a 3-month claims run out and applying a completion factor, and adjusted for other factors as described elsewhere in this section of this final rule. We believe that use of a single year of data in calculating county FFS expenditures will be approximately equivalent to using multiple years of data that have been trended using regional growth factors developed using historical FFS expenditures for the county. We believe using growth factors to trend forward historical county data would be approximately equivalent to the use of county level expenditures for the applicable year because each growth factor would be derived from the same historical county data it would be tasked with inflating.

Comment: Some commenters expressed support for the proposed adjustment to exclude IME, DSH and uncompensated care payments from the calculation of county FFS expenditures. Although a commenter suggested further normalizing payment methodologies to account for differences in payment policies for certain rural providers, for example rural health clinics (RHCs) and hospitals receiving the status of sole community hospital. A commenter also expressed support for including individually beneficiary identifiable payments made under a demonstration, pilot or time limited program in the determination of county FFS expenditures. This commenter underscored the importance of including these payments to give an accurate representation of actual FFS payments during the measurement period, and urged that we allow adequate time for other CMS payment demonstrations to complete final reconciliation to ensure that our calculation of county FFS expenditures accounts for actual FFS expenditures.

Response: We appreciate commenters' support for adjusting county FFS expenditures for IME, DSH and uncompensated care payments and for including individually beneficiary identifiable payments made under a demonstration, pilot, or time limited program, to remain consistent with the methodology used in calculating ACO and national FFS expenditures. We are finalizing these policies, as proposed.

Currently, the Shared Savings Program coordinates across initiatives within CMS to obtain the most recent available, final non-claims based beneficiary-identifiable payments for use in program financial calculations and informational reports.

We decline to adopt the commenter's recommendations to account for differences in cost and payment among providers and suppliers, such as RHCs and sole community hospitals, in calculating county FFS expenditures. As explained in response to related considerations in the November 2011 final rule, we continue to believe this approach would create an inaccurate and inconsistent picture of ACO spending and may limit innovations in ACOs' redesign of care processes or cost reduction strategies (76 FR 67919 and 67920).

Comment: A commenter expressed support, in general, for an approach that minimizes the impact of catastrophically large claims in the calculation of the benchmark. Several commenters offered alternatives to the proposal to truncate a beneficiary's total annual Parts A and B FFS per capita expenditures at the 99th percentile of national Medicare FFS assignable beneficiary expenditures as determined for the relevant year. A commenter disagreed with limiting the population used to calculate the truncation threshold to assignable beneficiaries (instead of all FFS beneficiaries). Another commenter, concerned about the potential for year-to-year variability in threshold amounts, suggested CMS explore approaches that would provide greater predictability for these values, such as fixed absolute dollar thresholds.

Response: We are finalizing without modification our proposal to truncate a beneficiary's total annual Parts A and B FFS per capita expenditures when determining county FFS expenditures, and to define the truncation threshold as the 99th percentile of national Medicare FFS assignable beneficiary expenditures as determined for the relevant year for the applicable Medicare enrollment type (ESRD, disabled, aged/dual eligible, aged/non-dual eligible). We do not believe the concern raised by the commenter about the increase in the truncation thresholds as a result of using expenditures for assignable beneficiaries instead of all FFS beneficiaries is sufficient to warrant modification to the proposal. We estimate that the approach of using expenditures for assignable beneficiaries would result in approximately a 0.1 percent increase in the amount of the truncation thresholds. We believe this differential is small and therefore does not warrant either a change in approach or a delay in adopting a policy change that we believe will result in less biased calculations. We also decline at this time to revise the methodology for calculating the thresholds to specify a fixed amount that would not vary based on year-to-year changes in population and payment amounts, as suggested by a commenter. In the 2016 proposed rule we did not propose or seek comment on an alternative basis for truncating claims such as using a flat dollar amount (that does not vary year to year) instead of an annually determined percentile, and at this time we do not believe this alternative would be a preferred approach. As we explained in the November 2011 final rule, we believe that truncating claims at the 99th percentile (as opposed to alternative suggestions for differing threshold amounts) achieves an appropriate balance between limiting catastrophic costs and continuing to hold ACOs accountable for those costs that are likely to be within their control (see 76 FR 67914 and 67915).

Comment: A number of commenters expressed general support for CMS' proposed approach for calculating risk-adjusted county expenditures using CMS–HCC risk scores. While no commenters explicitly opposed this proposal, several commenters raised concerns about CMS–HCC risk adjustment more broadly and some offered suggestions for improving or refining the program's general risk adjustment methodology. For a more detailed description of these comments, see section II.A.2.c.2. of this final rule.

Response: We are finalizing our proposal to risk adjust county FFS expenditures by Medicare enrollment type, using the CMS–HCC risk scores. We appreciate the general support received from commenters on our proposed approach for calculating risk-adjusted county expenditures. We acknowledge the concerns raised by commenters about the program's general risk adjustment methodology, which relies on CMS–HCC risk scores, and appreciate the suggestions for improvement. As we gain more experience in the Shared Savings Program we will continue to evaluate the appropriateness and effectiveness of our risk adjustment methodology and, as necessary, will propose refinements through future notice and comment rulemaking.

Comment: While commenters applauded the release of data to support modeling of the proposed benchmarking changes, some voiced dissatisfaction with the data and pointed to concerns indicating a "persisting lack of transparency." For instance, some commenters believed that too little time was allowed for ACOs and other stakeholders to model the proposed changes, and that insufficient data were released (for example, requesting county level instead of statewide ESRD data, and citing a lack of data to support modeling of the proposed revisions to the methodology for adjusting an ACO's benchmark for changes in ACO participant composition). Some comments included analyses based on publicly available data and other data sources, as described in more detail in section IV.G. of this final rule. Several commenters pointed to the complexity of the proposed changes and difficulty in accessing complete data to support modeling as reasons for CMS to provide resources and tools to help ACOs and other stakeholders understand the impact of the changes adopted in this final rule.

Some commenters applauded CMS' stated intention to release annual data files. Some commenters underscored the need for these annual files to be comprehensive (for example, ACO assigned beneficiary data should include counties with less than 1 percent of the assigned population to align with the definition of the ACO's regional service area, if finalized as proposed) and timely (for example, data should be made available in time to be used to support organizations' participation decisions). A commenter encouraged CMS to provide comparable data, to the extent feasible, for beneficiaries enrolled in MA plans, as a step towards aligning Medicare payments across ACOs and MA. A commenter further urged CMS to supply data related to benchmark calculations directly to ACOs, including data on the performance of other providers in the ACO's region, change over time, and risk adjustment.

Response: We appreciate commenters' feedback on the release of the data to support modeling of the proposed changes to the Shared Savings Program benchmark rebasing methodology. It is our goal to encourage transparency and understanding of program calculations. To this end we provided detailed descriptive information in the 2016 proposed rule on our proposed approach for implementing the proposed revisions to the rebasing methodology, and made publicly available informational data files as well as descriptive details on the parameters for and limitations in using these data.

We anticipate releasing annual data files to support our goal of transparency in program calculations, as well as to allow ACOs and other stakeholders to model impacts. We believe it is important for these data to be as complete and accurate as possible and, consistent with our methodology for performing financial reconciliation, will include claims data with a 3-month claims run out. As a result, we anticipate releasing county-level expenditure and risk score data following the conclusion of the calendar year to which the data relate. We believe this dataset will provide ACOs and other program stakeholders the inputs needed to calculate the regional adjustment to their historical benchmark as well as to understand the level of county level expenditures in their regional service area, including any changes to that level once multiple years of data are available.

In addition, we plan to make public ACO-specific, aggregate data on counties of residence for the ACO's assigned population for each performance year so the public at large has a better understanding of the ACOs in various counties and regions across the country. We anticipate including these details on county of residence for ACO assigned beneficiaries as part of the annual Shared Savings Program public use files on ACO financial and quality performance.

In response to the commenter's request for release of comparable MA data, we note that MA rates and statistics are publicly available through the CMS Web site (available at *https://www.cms.gov/medicare/health-plans/medicareadvtgspecratestats/*). We encourage stakeholders to review these data in combination with the informational data files that CMS plans to release related to the revised Shared Savings Program benchmark rebasing methodology we are finalizing in this final rule.

We also anticipate updating the operational guidance documents available to the public and ACOs, to facilitate understanding by ACOs, other stakeholders, and the public (more generally) of the changes to the Shared Savings Program's benchmarking methodology resulting from this final rule.

We recognize there may be additional opportunities to improve program transparency. Therefore, we thank the commenters for their suggestions and will continue to look for ways we can engage with ACOs and other program stakeholders.

FINAL ACTION: We are finalizing our proposed methodology for calculating county FFS expenditures in new § 425.603, with one modification. We are finalizing as proposed the use of county level data to determine regional FFS expenditures for the assignable beneficiary population in the ACO's regional service area, and to perform these calculations separately according to the following populations of beneficiaries (identified by Medicare enrollment type): ESRD, disabled, aged/dual eligible, aged/non-dual eligible. However, we are not finalizing our proposal to aggregate the expenditures for the ESRD population at the state level and to apply this value consistently to each county within the State. Instead, we are finalizing a policy of calculating expenditures for the ESRD population at the county level. We are also finalizing our proposal to calculate county FFS expenditures in the same way that is currently used to calculate ACO expenditures in order to assure parity with the calculation of ACO benchmark and performance year expenditures as specified under the Shared Savings Program regulations.

(3) Modifying the Calculation of National FFS Expenditures, Completion Factors, and Truncation Thresholds Based on Assignable Beneficiaries

In the 2016 proposed rule we explained our belief that it is timely to reconsider the beneficiary population that should be used in program calculations for the national FFS population at the same time as we are establishing our policies for determining regional FFS expenditures, including the beneficiary population that will be used in those calculations. Several elements of the existing Shared Savings Program financial calculations are based on expenditures for all Medicare FFS beneficiaries regardless of whether they are eligible to be assigned to an ACO, including: The national growth rates used to trend forward expenditures during the benchmark period; the projected absolute amount of growth in national per capita expenditures for Parts A and B services used to update the benchmark; the completion factors applied to benchmark and performance year expenditures; and the truncation thresholds set at the 99th percentile of national Medicare FFS expenditures. In calculating these factors based on national FFS expenditures, we take into account Parts A and B expenditures for all Medicare FFS beneficiaries, and exclude IME payments and DSH and uncompensated care payments to align with our methodology for calculating benchmark and performance year expenditures.

We explained our concern that using expenditures for all Medicare FFS beneficiaries, including beneficiaries ineligible for assignment, in calculating factors that are based on the expenditures of the broader FFS population as opposed to using only expenditures for the narrower population of FFS beneficiaries eligible for assignment to an ACO, can bias those calculations. There may be differences in the health status and health care cost experience of Medicare beneficiaries excluded from the assignment "pre-step" compared to those who are eligible for assignment, based on their health conditions and the providers from whom they receive care. Thus, including the expenditures for non-assignable beneficiaries, such as non-utilizers of health care services, can result in lower overall per capita expenditures. These biases may have a more pronounced effect in calculations of regional FFS expenditures, which are based on relatively smaller populations of beneficiaries, as compared to calculations based on the national FFS population.

We described how we identify the pool of "assignable" Medicare beneficiaries (a subset of the larger population of Medicare FFS beneficiaries) as a pre-step to the two-step assignment process under § 425.402 for determining the beneficiaries who will be assigned to an ACO. We explained our preferred approach would be to apply a similar logic to identify the beneficiary population that would be used in program calculations for both national and regional FFS populations. As part of this pre-step, we determine if a beneficiary received at least one primary care service from a physician within the ACO whose services are used in assignment:

- For performance year 2016 and subsequent performance years, the beneficiary must have received a primary care service, as defined under § 425.20, with a date of service during the 12-month assignment window, as defined under § 425.20.
- The service must have been furnished by a primary care physician as defined under § 425.20 or by a physician with one of the primary specialty designations included in § 425.402(c). Therefore, beneficiaries who have not received any primary care service, or who have only received primary care services from physicians with a primary specialty code not specified in § 425.402(c) (see 80 FR 32753 through 32754, Table 5 Physician Specialty Codes Excluded From Assignment Step 2), or from non-physician practitioners are excluded from assignment to an ACO.

This pre-step is designed to satisfy the statutory requirement under section 1899(c) of the Act that beneficiaries be assigned to an ACO based on their use of primary care services furnished by physicians (80 FR 32756; § 425.402(b)(1)).

We discussed that one factor related to calculating expenditures for assignable beneficiaries is the assignment window used to identify

this population, with options including: The 12-month period used to assign beneficiaries to Track 1 and 2 ACOs based on a calendar year, and an off-set 12-month period used to assign beneficiaries prospectively to an ACO in Track 3. (See definition of assignment window under § 425.20 and related discussion in the June 2015 final rule at 80 FR 32699.) We expressed our belief that it is important to calculate regional and national FFS expenditures consistently across the three tracks of the program, so as not to advantage or disadvantage an organization simply on this basis. This consistency would help to ensure a level playing field in markets where multiple ACOs are present, and would also simplify program operations. Accordingly, we proposed to calculate county FFS expenditures and average risk scores, as well as factors based on national FFS expenditures, using the assignable beneficiary population identified using the assignment window for the 12-month calendar year corresponding to the benchmark or performance year. This is the same assignment window that is currently used to assign beneficiaries under Track 1 and Track 2. We specified our plan to monitor for observable differences in the health status (for example, as identified by CMS–HCC risk scores) and expenditures of the assignable beneficiaries identified using the 12-month calendar year assignment window, as compared to assignable beneficiaries identified using an assignment window that is the off-set 12-month period prior to the benchmark or performance year (for example, October through September preceding the calendar year). In the event that we conclude that additional adjustments (for instance, as part of risk adjusting county FFS expenditures) are necessary to account for the use of assignable beneficiaries identified using an assignment window that is different from the assignment window used to assign beneficiaries to the ACO, we would address this issue through future rulemaking.

We clarified that we will continue to apply an update based on national FFS expenditures to ACOs in their first agreement period and for ACOs that entered their second agreement period on January 1, 2016. However, to the extent that we were proposing to change our methodology in order to use only assignable beneficiaries instead of all Medicare FFS beneficiaries in calculating the benchmark update based on national FFS expenditures, we believed we would need to use the authority under section 1899(i)(3) of the Act to adopt other payment models to implement this change.

Section 1899(d)(1)(B)(ii) of the Act states that the benchmark shall be updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program, as estimated by the Secretary. The plain language of section 1899(d)(1)(B)(ii) of the Act demonstrates Congress' intent that the benchmark update be calculated based on growth in expenditures for the national FFS population, as opposed to a subset of this population. Therefore, in order to allow us to use only assignable beneficiaries in determining the amount of growth in per capita expenditures for Parts A and B services for purposes of determining the benchmark update for ACOs in their first agreement period and those ACOs that started a second agreement period on January 1, 2016, we believed it was necessary to rely upon our authority under section 1899(i)(3) of the Act. Section 1899(i)(3) of the Act authorizes the Secretary to use other payment models in place of the payment model outlined in section 1899(d) of the Act as long as the Secretary determines these other payment models will improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without additional program expenditures.

We explained our belief that using our authority under section 1899(i)(3) of the Act to adopt a payment model that includes calculating the benchmark update for ACOs in their first agreement period and for ACOs that started a second agreement period on January 1, 2016, using national FFS expenditures for assignable beneficiaries, rather than for all FFS beneficiaries, would improve the quality and efficiency of items and services furnished to Medicare beneficiaries. We believed this approach would increase the accuracy of benchmarks, by determining the national update using a population that more closely resembles the population that could be assigned to ACOs. Further, we believed using assignable beneficiaries across all program calculations based on national and regional FFS expenditures would result in factors that are generally more comparable. As a result, these calculations will be more predictable and stable across the program over time, for example as ACOs transition from a benchmarking methodology that incorporates national FFS expenditures to one that incorporates factors based on regional FFS expenditures. Ultimately, we believed this policy could increase overall participation in the program, thereby resulting in more organizations working to meet the program's three-part aim of better care for individuals, better health for populations and lower growth in expenditures.

As explained in section II.A.2.d.3 of this final rule, section 1899(i)(3)(B) of the Act also specifies that the other payment model must not result in additional program expenditures. We discussed our analysis of this requirement, and our initial assessment that for the period spanning 2017 through 2019 there would be net federal savings associated with a payment model under section 1899(i)(3) of the Act that includes the proposed changes to the manner in which we update the benchmark during an ACO's agreement period as part of the regulatory impact analysis for the proposed rule.

Taking these considerations into account, we believed applying a payment methodology that includes calculating the benchmark update consistently based on assignable FFS beneficiaries, instead of all FFS beneficiaries, would meet the requirements under section 1899(i)(3) of the Act that the payment model improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without additional program expenditures. However, we also discussed our intention to revisit this determination periodically. If we determine the payment model no longer satisfies the requirements of section 1899(i)(3) of the Act, for example if the model results in net program costs, we would undertake additional notice and comment rulemaking to make adjustments to the model to assure continued compliance with the statutory requirements.

Accordingly, we proposed to use the authority under section 1899(i)(3) of the Act to revise the regulation at § 425.602(b)(1) to specify that the annual update to the benchmark will be based on the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program for assignable beneficiaries. We further proposed to specify in this provision of the regulations that we would identify assignable beneficiaries for the purpose of calculating the update based on national FFS expenditures using the 12-month calendar year corresponding to the year for which the update is being calculated. We sought comment on these proposed provisions.

We also proposed to make conforming changes to the regulations to specify that assignable Medicare FFS beneficiaries, identified based on the 12-month period corresponding to the calendar year for which the calculations are being made, will be used to perform the following calculations: (1) Truncation thresholds for limiting the impact of catastrophically large claims on ACO expenditures under § 425.602(a)(4), § 425.604(a)(4), § 425.606(a)(4), § 425.610(a)(4); and (2) national growth rates used to trend forward expenditures during the benchmark period under § 425.602(a)(5). We specified that we would provide additional information through subregulatory guidance regarding the process for using assignable beneficiaries to perform these calculations, as well as the calculation of the claims completion factor applied under § 425.602(a)(1), § 425.604(a)(5), § 425.606(a)(5), § 425.610(a)(5).

Similarly, as discussed in sections II.A.2.b. and II.A.2.e.2 of this final rule, we proposed to specify in a new provision of the Shared Savings Program regulations at § 425.603 that would govern the methodology for resetting, adjusting, and updating an ACO's benchmark for a second or subsequent agreement period starting on or after January 1, 2017, that county FFS expenditures would be based on assignable Medicare FFS beneficiaries determined using the 12-month period corresponding to the calendar year for which the calculations are being made.

We proposed that regulatory changes regarding use of assignable beneficiaries in calculations based on national FFS expenditures would apply for the 2017 performance year and all subsequent performance years. Under this proposed provision, these changes would apply to ACOs that are in the middle of an agreement period, specifically ACOs that started their first agreement period in 2015 or 2016 and ACOs that started their second agreement period on January 1, 2016. We would adjust the benchmarks for these ACOs at the start of the first performance year in which these changes apply so that the benchmark for the ACO reflects the use of the same methodology that would apply in expenditure calculations for the corresponding performance year.

We sought comment on these proposals. We also sought comment on whether expenditures for all Medicare FFS beneficiaries should be used to calculate these elements for ACOs in their first agreement period or a second agreement period that started on January 1, 2016, while expenditures for assignable Medicare FFS beneficiaries are used to calculate these elements for an ACO's second and subsequent agreement period starting on or after January 1, 2017, in combination with the use of the assignable beneficiary population to determine expenditures for the ACO's regional service area.

Comment: Among the comments addressing this aspect of our proposed methodology, almost all commenters were supportive of the proposal to use assignable beneficiaries, rather than all FFS beneficiaries, when calculating both national and regional expenditures. A commenter generally agreed with all proposed modifications described in the relevant section of the proposed rule (81 FR 5843 through 5845). As discussed in section II.A.2.b.2 of this final rule, some commenters disfavored including ACO assigned beneficiaries within the population of assignable beneficiaries that would be the basis for calculating these factors. As discussed in section II.A.2.e.2 of this final rule, a commenter disagreed with limiting the population to assignable beneficiaries (instead of all FFS beneficiaries) when calculating the truncation thresholds.

Response: We appreciate the commenters' support for our proposed approach. We are finalizing, with one modification, our proposal to calculate factors based on national and regional FFS expenditures using the population of assignable Medicare FFS beneficiaries, identified based on the 12-month period corresponding to the calendar year for which the calculations are being made. See previous discussion in this final rule of related comments and responses, specifically: Section II.A.2.b.2 for comments concerning the inclusion of ACO assigned beneficiaries within the assignable population; and section II.A.2.e.2 for discussion of the comment concerning calculation of truncation thresholds based on expenditures for assignable beneficiaries instead of the broader FFS population.

As specified in the 2016 proposed rule, we plan to monitor for observable differences in the health status (for example, as identified by CMS–HCC risk scores) and expenditures of the assignable beneficiaries identified using the 12-month calendar year assignment window, as compared to assignable beneficiaries identified using an assignment window that is the off-set 12-month period prior to the benchmark or performance year (for example, October through September preceding the calendar year). In the event that we conclude that additional adjustments (for instance, as part of risk adjusting county FFS expenditures) are necessary to account for the use of assignable beneficiaries identified using an assignment window that is different from the assignment window used to assign beneficiaries to the ACO, we would address this issue through future rulemaking.

Although commenters did not discuss in detail their consideration of our proposal to determine completion factors based on assignable Medicare FFS beneficiaries instead of all Medicare FFS beneficiaries, we have reconsidered the need for this proposed change. The completion factors are determined based on multiple years of Medicare FFS claims submission data, and reflect claim submission patterns across the Medicare program. The concern about potential bias resulting from calculations based on beneficiaries that are not eligible for assignment, such as non-utilizers, is not prominent in the calculation of a claims completion factor. For instance, in the case of non-utilizers, there would be no relevant data to consider on the timing of receipt of claims data, because there would be no claims with dates of service for these beneficiaries in the relevant period examined for the purpose of calculating the completion factor. Further, in calculating the completion factors, the use of more comprehensive data based on the timing of submission of claims across the entire Medicare FFS population, as is reflected in our current approach, would result in the most accurate factors as compared to use of a subset of Medicare FFS beneficiaries (such as assignable beneficiaries under the Shared Savings Program) for these calculations. For these reasons, we are not finalizing our proposal to replace the current approach for calculating the claims completion factors using all Medicare FFS beneficiaries with an approach to calculating these factors based on assignable Medicare FFS beneficiaries at this time.

Comment: A commenter noted that beneficiaries receiving only services provided by allied providers (non-physician practitioners) are excluded from the proposed definition of assignable beneficiary. This commenter suggested that these providers be included in determining assignable beneficiaries because of the increasing role of non-physician practitioners in efforts to lower the cost of care for patients with low acuity healthcare needs.

Response: We continue to believe it is important to align the definition of assignable beneficiary with the statutory requirement that beneficiaries be assigned to an ACO based on their use of primary care services furnished by physicians and with the methodology for identifying assignable beneficiaries described in the 2016 proposed rule and also discussed earlier in this section of the final rule. Applying the same

definition of assignable beneficiary as is used in the assignment process will help to ensure that program calculations based on national and regional FFS expenditures reflect the expenditures and acuity of patients that could be assigned to ACOs. Therefore we decline at this time to adopt the commenter's suggestion to also use services furnished by non-physician providers as a basis for identifying assignable beneficiaries.

Comment: Several commenters addressed the timing of applicability of the revised methodology for determining factors based on national FFS expenditures using the assignable beneficiary population instead of all FFS beneficiaries. A commenter noted support for the proposal that this methodology would apply for the 2017 performance year and all subsequent performance years and would apply to ACOs that are in the middle of an agreement period. One comment, which seemed to reflect the commenter's misunderstanding of the proposed policy, interpreted the proposal as failing to address the applicability of the proposed changes to ACOs with 2014 agreement start dates.

Response: We are finalizing with modifications our proposal that regulatory changes regarding the use of assignable beneficiaries in calculations based on national FFS expenditures would apply for the 2017 performance year and all subsequent performance years. The proposed rule specified revisions to the provisions at § 425.602(b), § 425.604(a)(1) through (3), § 425.606(a)(1) through (3), and § 425.610(a)(1) through (3) in order to differentiate between the methodology that applied for performance years before 2017 and the methodology that would apply for the 2017 performance year and all subsequent performance years. We believe it is important to clarify the timing of applicability of these changes, which will be reflected in the regulations finalized with this final rule:

- In establishing or resetting an ACO's historical benchmark for agreement periods beginning in 2017 and subsequent years, we will apply the methodology for use of assignable beneficiaries in determining factors based on national FFS expenditures and regional FFS expenditures.
- In calculations made during a performance year, including updating an ACO's historical benchmark and determining an ACO's performance year expenditures, for performance year 2017 and subsequent years, we will apply the methodology for use of assignable beneficiaries in determining factors based on national FFS expenditures and regional FFS expenditures.
- To ensure consistency in the way in which expenditure calculations are performed across the program, we will apply the revised methodology to ACOs that are in the middle of an agreement period, including: ACOs that started their first agreement period in 2015 or 2016; ACOs that entered the program in 2014 and elect the participation option established with this final rule to defer by 1 year entrance into a second agreement period under a two-sided model; and ACOs that started their second agreement period on January 1, 2016. We will adjust the benchmarks for these ACOs at the start of the 2017 performance year, the first performance year in which these changes apply, and in any subsequent years in the agreement period, so that the benchmarks established for these ACOs will reflect the use of the same methodology that will apply in expenditure calculations for the corresponding performance year, including determining the benchmark update and the ACO's expenditures for the performance year.

We wish to clarify that for any performance year prior to the applicability date for the regulatory change, we will continue to apply the current methodology under which factors based on national FFS expenditures are calculated using all FFS beneficiaries.

FINAL ACTION: We are finalizing our proposal to use assignable beneficiaries in all national and regional FFS calculations with one modification. We are not finalizing our proposal to determine completion factors based on assignable Medicare FFS beneficiaries, and will continue to determine these completion factors based on the timing of submission of claims across the entire Medicare FFS population. However, as proposed, we will limit the Medicare FFS population used in all other program calculations to "assignable" Medicare beneficiaries who meet the following requirements: (1) Received at least one primary care service, as defined under § 425.20, with a date of service during the 12-month assignment window; and (2) this primary care service was provided by a primary care physician, as defined under § 425.20, or by a physician with one of the primary specialty designations included in § 425.402(c). The assignable beneficiary population will be identified consistently across program tracks using the assignment window for the 12-month calendar year corresponding to the benchmark or performance year. This revised methodology will apply to all ACOs, including those ACOs with 2015 and 2016 agreement start dates that are in the middle of an agreement period, as well as ACOs that entered the program in 2014 and elect the participation option established with this final rule to defer by 1 year entrance into a second agreement period under a two-sided model. We will adjust the benchmarks for these ACOs at the start of the 2017 performance year and in any subsequent years in the agreement period so that the benchmarks established for these ACOs will reflect the methodology used in expenditure calculations for the performance year. We will provide additional information through subregulatory guidance regarding the process for using assignable beneficiaries to perform these calculations. We will revise the regulations to reflect these changes as follows:

- Revise the regulation at § 425.602(b)(1) using the authority under section 1899(i)(3) of the Act to provide that the historical benchmark will be updated annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare FFS program for assignable beneficiaries identified for the 12-month calendar year corresponding to the year for which the update is calculated. As discussed in section II.A.2.d.3 of this final rule, section IV.E of this final rule contains an updated assessment of all policies that are being implemented under the authority of section 1899(i)(3) of the Act. We anticipate that the costs of this alternative payment model will be periodically reassessed as part of the impact analysis for subsequent rulemaking regarding the payment models used in the Shared Savings Program. However, in the event we do not undertake additional rulemaking, we intend to periodically reassess whether the payment model established under the authority of section 1899(i)(3) of the Act continues to improve the quality and efficiency of items and services furnished to Medicare beneficiaries, without resulting in additional program expenditures. If we determine the payment model no longer satisfies the requirements of section 1899(i)(3) of the Act, for example if the alternative payment model results in net program costs, we will undertake additional notice and comment rulemaking to make adjustments to our payment methodology to assure continued compliance with the statutory requirements.

- Make conforming changes to the regulations on: (1) Truncation thresholds for limiting the impact of catastrophically large claims on ACO expenditures under § 425.602(a)(4), § 425.604(a)(4), § 425.606(a)(4), § 425.610(a)(4); and (2) growth rates used to trend forward expenditures during the benchmark period under § 425.602(a)(5) to specify that assignable Medicare FFS beneficiaries identified based on the 12-month period corresponding the calendar year for which the calculation is being made will be used to perform these calculations.
- Specify in a new provision of the Shared Savings Program regulations at § 425.603 that county FFS expenditures that are used in the methodology for resetting, adjusting, and updating an ACO's benchmark will be based on assignable Medicare FFS beneficiaries determined using the 12-month period corresponding to the calendar year for which the calculations are being made.

f. Timing of Applicability of Revised Rebasing and Updating Methodology

In the 2016 proposed rule, we discussed an approach under which the revised rebasing methodology could be applied to new agreement periods beginning on or after January 1, 2017, in a manner that allows for a phase-in to a greater percentage in calculating the regional adjustment for all ACOs:

- All ACOs would have the benchmark for their first agreement period set and updated under the methodology under § 425.602(a) and (b).
- The 2014, 2015, and 2016 starters and subsequent cohorts entering their second agreement periods on or after January 1, 2017, would be rebased under the new methodology for adjusting an ACO's rebased historical benchmark to reflect expenditures in the ACO's regional service area, and the ACO's rebased benchmark would be updated during the agreement period by growth in regional FFS expenditures. In calculating the regional adjustment to the rebased historical benchmark for an ACO's second agreement period, the percentage applied to the difference between the ACO's regional service area expenditures and the ACO's rebased historical benchmark expenditures would be set at 35 percent. In an ACO's third or subsequent agreement period this percentage would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking.
- With respect to the ACOs that started in the program in 2012 and 2013 and entered a second agreement period beginning in 2016, we applied the current rebasing methodology, under which we equally weight the benchmark years and account for savings generated during the ACO's prior agreement period, in rebasing their historical benchmark for their second agreement period. We would apply the methodology specified under § 425.602(b) for updating the benchmark annually for each year of their second agreement period. We would apply the new rebasing policies, including the phase in of the percentage used in calculating the regional adjustment, to these ACOs for the first time in calculating their rebased historical benchmark for their third agreement period (beginning in 2019), as if the ACOs were entering their second agreement period. Accordingly, the 2012 and 2013 starters would have the same transition to the use of a higher percentage in calculating the regional adjustment as all other ACOs.

We explained that this approach to phasing in the application of the new methodology for adjusting an ACO's rebased historical benchmark to reflect regional FFS expenditures would give ACOs and other stakeholders greater opportunity to prepare for, understand the effects of, and adjust to the application of benchmarks that incorporate regional expenditures.

Therefore, we proposed to make these changes applicable to ACOs starting a second or subsequent agreement period on or after January 1, 2017. These changes would initially apply in resetting benchmarks for the second agreement period for all ACOs other than those ACOs that started in the program in 2012 and 2013 (who entered their second agreement period on January 1, 2016). Furthermore, we proposed that 2012 and 2013 starters would have the same transition to regional adjustments to their rebased historical benchmarks as all other ACOs: In calculating the regional adjustment to the ACO's rebased historical benchmark for its third agreement period (in 2019), the percentage applied to the difference between the ACO's regional service area expenditures and ACO's rebased historical benchmark expenditures would be set at 35 percent; in its fourth or subsequent agreement period this percentage would be set at 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. We requested comment on this proposed approach to phasing in the application of the revised rebasing and updating methodology.

Comment: A commenter expressed support for the proposed phase-in of the new benchmark rebasing methodology based on an ACO's individual agreement renewal schedule rather than moving all ACOs to the new standard at one time. Many commenters opposed the proposal to phase-in the revised methodology to 2012 and 2013 starters beginning in their third agreement periods (starting January 1, 2019). Instead, commenters suggested options that would allow 2012 and 2013 starters the choice of the proposed approach or having the revised methodology apply during their second agreement period (for example, applying the methodology for performance year 2017 and onward, or allowing eligible ACOs to enter a new agreement period under the revised methodology that would begin in 2017). A commenter, in favor of applying the revised rebasing methodology to all ACOs in their second agreement period, suggested retroactively applying the changes to the first performance year (2016) of the 2012 and 2013 starters' second agreement period. Another commenter suggested allowing 2012 and 2013 starters that meet certain eligibility criteria (such as a quality performance threshold) to enter a new agreement period under the revised methodology beginning 2017, and permitting those ACOs participating under a performance-based risk model to have a weight greater than 35 percent applied in the calculation of the regional FFS adjustment. Alternatively, a commenter suggested applying the 70 percent weight (instead of 35 percent, as proposed) in calculating the regional adjustment for 2012 and 2013 starters beginning with their third agreement period.

Many commenters seemed to view the delay in applying the revised rebasing methodology to 2012 and 2013 starters until their third agreement period as a misfortune of timing. Commenters who perceived the proposed adjustment as beneficial explained that delaying application of the revised methodology would penalize 2012 and 2013 starters (or stated another way, unfairly advantage later entrants into the program) and perpetuate differences in benchmarks between ACOs in the same region. These commenters believed that this delay may cause attrition of these ACOs from the program. A commenter pointed out that applying the revised methodology to 2014 starters who begin a new agreement period in 2017, but delaying its application to 2012 and 2013 starters until 2019, could inadvertently lead to provider movement between ACOs depending on which benchmarking approach applies and is more financially favorable to the

ACO. A commenter suggested giving 2014 starters the option of delaying application of the revised methodology until their third agreement period, citing uncertainty about the policies to be finalized as these organizations decide whether to continue in the program.[2]

Response: In section II.A.2.c.3 of this final rule, we discuss our response to comments requesting broader flexibility to allow ACOs to choose from a menu of options on when the revised rebasing methodology would apply, and the weight with which the regional adjustment would be calculated.

ACOs that entered the Shared Savings Program in 2012 and 2013 renewed their agreements beginning January 1, 2016, with the understanding that the benchmark rebasing methodology finalized in the June 2015 final rule would be applied to their second agreement period. Under this rebasing methodology, described elsewhere in this final rule, we equally weight the ACO's historical benchmark years, and apply an adjustment for savings generated under the ACO's prior agreement period. While this methodology is substantially different from the rebasing approach we are establishing in this final rule, we are in fact applying to these ACOs a rebasing methodology that is intended to help mitigate the effects of an ACO's past successful performance on its current benchmark. The adjustment for savings generated in the ACO's prior agreement period increases the ACO's rebased historical benchmark by an amount that reflects the ACO's past financial and quality performance, and takes into account the size of the ACO's assigned beneficiary population. Equally weighting the benchmark years (corresponding to the three performance years of the prior agreement period) in resetting the ACO's historical benchmark mitigates reductions to the benchmark that would result from placing a higher weight on more recent prior benchmark years (corresponding to later years in the ACO's prior agreement period), in which ACOs are anticipated to show greater expenditure reductions. This methodology was designed to encourage continued participation in the Shared Savings Program and performance improvement by ACOs entering a second or subsequent agreement period, and therefore improve the overall sustainability of the program. These goals are consistent with the goals for the policies adopted in this final rule that incorporate regional FFS expenditures into the rebasing methodology.

Additionally, the 2016 proposed rule did not address the possibility of applying the revised rebasing methodology to these ACOs' second agreement periods spanning January 1, 2016 through December 31, 2018. As a result, we do not believe it would be appropriate to adopt a policy in this final rule under which we would apply the revised methodology to these ACOs prior to the start of their third agreement period in 2019. Applying this revised methodology in the middle of an ACO's second agreement period could prove disruptive to ACOs that have structured their operations and legal arrangements (including the ACO's Participant Agreements with ACO participant TINs) to reflect the application of the current benchmarking methodology. We also believe that more immediate application of the revised policies to 2012 and 2013 starters during their second agreement periods could undermine the ability of these ACOs to adapt to this change, possibly causing organizations to terminate their participation prior to the end of their second agreement period.

Furthermore, we do not believe it would be possible to allow these ACOs to terminate their current agreement period in order to start a new agreement period under the revised rebasing methodology, as suggested by some commenters. Section 425.222 addresses the circumstances under which an ACO may re-apply to participate in the Shared Savings Program after the ACO's agreement has been terminated. Section 425.222(a) specifies that an ACO that has been terminated from the Shared Savings Program under §§ 425.218 or 425.220 may participate in the Shared Savings Program again only after the date on which the term of the original participation agreement would have expired if the ACO had not been terminated. We believe that this provision, without further modification, would prohibit CMS from allowing ACOs with 2012 and 2013 agreement start dates to terminate their current second agreement and re-enter the program under the revised benchmark rebasing methodology for a new second agreement period beginning January 1, 2017.

Taking these factors into consideration, we decline at this time to modify the Shared Savings Program regulations to offer the flexibility for 2012 and 2013 starters to terminate their agreements beginning January 1, 2016, and to reapply for a new second agreement period beginning January 1, 2017, under the revised rebasing methodology that is being adopted in this final rule.

Comment: Some commenters suggested alternatives not discussed in the proposed rule. Some commenters urged incorporating greater regulatory flexibility to apply the revised methodology when establishing the benchmarks for ACOs transitioning to the Shared Savings Program after completing a contract period under another CMS alternative payment methodology, including the Pioneer and Next Generation ACO Models. For example, with respect to the proposed phase-in approach, some commenters specified that former Pioneer ACOs and Next Generation ACOs entering their first agreement period under the Shared Savings Program should be allowed the option to be considered as entering a second or subsequent agreement period in order to allow their benchmark to be established using the regional benchmarking approach. A commenter explained that moving back to a benchmark calculated using national FFS factors would be taking a step backwards in terms of the evolution of the ACO model and unnecessarily expose these ACOs to additional risk.

Response: We greatly appreciate commenters' thoughtful suggestions for the transition of ACOs from other CMS ACO initiatives into the Shared Savings Program. We did not propose or discuss related changes to the Shared Savings Program regulations in the 2016 proposed rule. We agree with commenters that many organizations participating under other CMS ACO initiatives (such as the Pioneer ACO model and the Next Generation ACO model), which use factors based on regional FFS expenditures in setting ACO benchmarks, may find it disadvantageous to enter the Shared Savings Program under the methodology used to establish an ACO's benchmark for its first agreement period, and would prefer to be treated as if they were entering the program in a second or subsequent agreement period in order to receive a benchmark established using the rebasing methodology adopted in this final rule. We believe there are complexities to this issue that would need to be explored further, including the determination of which organizations would be eligible to be treated as entering the Shared Savings Program under a later agreement period and the applicability of other program requirements that relate to the agreement period in which an ACO is participating, including the selection of risk track and the quality performance standard. We anticipate considering these issues further in future rulemaking.

FINAL ACTION: We are finalizing our proposal to make the new benchmark rebasing policies described in this final rule, including the phase in of the percentage used in calculating the regional adjustment, applicable to ACOs entering into a second or subsequent agreement period in 2017 or subsequent years. With respect to ACOs that started in the program in 2012 and 2013 that have renewed their agreements for a second agreement period beginning in 2016:

- We applied the rebasing methodology established with the June 2015 final rule, under which we equally weight the benchmark years and account for savings generated during the ACO's prior agreement period, in rebasing their historical benchmark for their second agreement period (beginning in 2016). With the conforming changes made to the regulations text in this final rule, this methodology is incorporated in new § 425.603(b). We will apply the methodology specified under § 425.602(b) to update the benchmark annually for each year of the second agreement period for these ACOs.
- We will apply the new rebasing policies, including the revised phase in of the percentage used in calculating the regional adjustment that we are adopting in this final rule, to these ACOs for the first time in calculating their rebased historical benchmark for their third agreement period (beginning in 2019), as if the ACOs were entering their second agreement period. Accordingly, the 2012 and 2013 starters will have the same transition to the use of a higher percentage in calculating the regional adjustment as all other ACOs.

[2] The application/renewal cycle for the January 1, 2017 Shared Savings Program start date began in spring 2016. See the Shared Savings Program Web site, How to Apply Web page, available at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Application.html.*

TABLE 3—CHARACTERISTICS OF BENCHMARKING APPROACHES BY AGREEMENT PERIOD

Source of methodology	Agreement period	Historical benchmark trend factors (trend BY1, BY2 to BY3)	Adjustment to the historical benchmark for regional FFS expenditures (percentage applied in calculating adjustment)	Adjustment to the historical benchmark for savings in prior agreement period?	Adjustment to the historical benchmark for ACO participant list changes	Adjustment to the historical benchmark for health status and demographic factors of performance year assigned beneficiaries	Update to the historical benchmark for growth in FFS spending
November 2011 final rule.	First	National	No	No	Calculated using benchmark year assignment based on the ACO's certified ACO Participant List for the performance year.	Newly assigned beneficiaries adjusted using CMS–HCC model; continuously assigned beneficiaries adjusted using demographic factors alone unless CMS–HCC risk scores result in a lower risk score.	National
As modified by June 2015 final rule.	Second (beginning 2016).	National	No	Yes	Same as methodology for first agreement period.	Same as methodology for first agreement period.	National
As modified by this final rule: Rebasing Methodology for second or subsequent agreement periods beginning 2017 and subsequent years.	Second (third for 2012/2013 starters).	Regional	Yes (35 percent, or 25 percent if ACO is determined to have higher spending compared to its region).	No	Same as methodology for first agreement period; regional adjustment redetermined based on ACO's certified ACO Participant List for the performance year.	No change	Regional
	Third (fourth for 2012/2013 starters).	Regional	Yes (70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking, or 50 percent if ACO is determined to have higher spending compared to its region).	No	Same as methodology for second agreement period beginning 2017 and subsequent years.	No change	Regional
	Fourth and subsequent (fifth and subsequent for 2012/2013 starters).	Regional	Yes (70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking).	No	Same as methodology for second agreement period beginning 2017 and subsequent years.	No change	Regional

B. Adjusting Benchmarks for Changes in ACO Participant (TIN) Composition

In the initial rulemaking establishing the Shared Savings Program, we acknowledged that the addition or removal of ACO participants or ACO providers/suppliers (identified by TINs and NPIs, respectively) during the term of an ACO's participation agreement could affect a number of different aspects of the ACO's participation in the Shared Savings Program. The 2016 proposed rule provided detailed background on the regulatory and subregulatory history of how CMS sets

and adjusts benchmarks to reflect ACO participant composition (see 81 FR 5848–5850).

We explained that under the current methodology, we set an ACO's historical benchmark at the start of an agreement period based on the assigned population in each of the three benchmark years by using the ACO Participant List certified by the ACO. The ACO must submit a new certified ACO Participant List at the start of each new performance year. CMS adjusts an ACO's historical benchmark at the start of a performance year if the ACO Participant List that the ACO certified at the start of the new performance year differs from the one it certified at the start of the prior performance year. We use the updated certified ACO Participant List to assign beneficiaries to the ACO in the benchmark period (the 3 years prior to the start of the ACO's agreement period) in order to determine the ACO's adjusted historical benchmark. As a result of changes to the ACO's certified ACO Participant List, we may adjust the historical benchmark upward or downward. Under this methodology, the historical benchmarks for ACOs with ACO Participant List changes from one performance year to the next continue to reflect the ACOs' historical costs in relation to the current composition of the ACO.

During the program's initial performance years, we experienced a high volume of change requests from ACOs, both adding and removing ACO participants. We adjusted the historical benchmarks for 162 of 220 ACOs (74 percent) with 2012 and 2013 start dates for the 2014 performance year to reflect changes in ACO participants. For the 2015 performance year, we adjusted benchmarks for 245 of 313 ACOs (78 percent) with 2012, 2013 or 2014 start dates to reflect changes in ACO participants.

While the current methodology ensures that a benchmark that has been adjusted based on changes in the ACO's participant composition accurately reflects benchmark year assignment using the most recent certified ACO Participant List, a primary drawback is that this methodology is operationally burdensome. To adjust benchmarks to account for ACO Participant List changes made by ACOs for each new performance year, we must repeat the assignment process for all 3 benchmark years for each starter cohort. Furthermore, with the addition of Track 3, we will need to perform two assignment runs for each benchmark year for a starter cohort, given that assignment for Track 3 ACOs is based on an offset beneficiary assignment window of the most recent 12-month period preceding the relevant calendar year for which data are available (for example, the period spanning October-September prior to the start of the benchmark year) that differs from the calendar year beneficiary assignment window used for Track 1 and Track 2 ACOs.

In light of the operational burden of adjusting benchmarks to reflect changes in ACO participants under the current policy, and the considerations associated with our proposals to adopt a benchmark rebasing methodology that requires additional calculations, we proposed to replace the current approach for calculating adjusted historical benchmarks for ACOs that make ACO Participant List changes with a more streamlined approach on a program-wide basis. The proposed approach would start with an ACO's historical benchmark based on the ACO's certified ACO Participant List for the most recent prior performance year and make adjustments using a ratio that is based on expenditures during a reference year for: (1) The ACO's beneficiaries assigned using both the ACO Participant List for the new performance year and the ACO Participant List for the most recent prior performance year (stayers); and (2) expenditures for the ACO's beneficiaries assigned using only the ACO Participant List for the ACO's most recent prior performance year (stayers and leavers) for the same reference year, defined as benchmark year 3 of the ACO's current agreement period. This figure would then be combined with reference year expenditures for beneficiaries assigned using only the ACO Participant List for the new performance year (joiners) to obtain the overall adjusted benchmark. Calculations of the adjustment would be made, and applied to the historical benchmark, for each of the following populations of beneficiaries, according to Medicare enrollment type: ESRD, disabled, aged/dual eligible, aged/non-dual eligible. In the event an ACO's new ACO Participant List resulted in zero stayers, we proposed to continue to apply the current methodology for adjusting the ACO's historical benchmark for ACO Participant List changes.

We proposed to incorporate this adjustment to the historical benchmark for ACOs in their first agreement period and those ACOs that started a second agreement period on January 1, 2016, by adding a paragraph to § 425.602. In addition, we proposed to specify that the adjustment would apply to an ACO's rebased historical benchmark under the revised rebasing methodology in a new provision of the Shared Savings Program regulations at § 425.603. We also proposed to add definitions for "stayers," "joiners," and "leavers" to § 425.20.

We stated in the proposed rule that we believe that this approach would offer the right balance between approximating the accuracy of the current methodology for adjusting historical benchmarks (which requires performing beneficiary assignment for all 3 of an ACO's historical benchmark years with the new ACO Participant List) and operational ease. Initial modeling suggested that benchmarks calculated using this alternative methodology are highly correlated with those calculated using the current methodology.

We also examined and sought comment on a second alternative under which we would calculate the average per capita expenditures for leavers in the reference year and use this value, along with the relative person years for leavers and stayers, to impute average per capita reference year expenditures for stayers from the historical benchmark. The imputed expenditures for stayers would then be combined with average per capita reference year expenditures for joiners to obtain the overall adjusted benchmark.

Comment: While a few commenters expressed support for the proposed methodology to streamline adjustments for ACO Participant List changes, many commenters felt that CMS did not provide adequate information for stakeholders to properly evaluate the proposal, noting that the agency did not provide detailed results of its own modeling or sufficient data to allow others to perform their own analyses. A number of commenters urged the agency to make additional information available and to postpone finalization of the proposal at this time.

Response: In light of commenters' suggestions that we allow additional time to analyze the proposal, we are not finalizing the proposed new streamlined methodology at this time. We continue to believe the proposed approach has the potential to reduce operational burden without sacrificing accuracy. Therefore, we anticipate revisiting this issue in future notice and comment rulemaking. We believe that delaying adoption of a new approach to adjust historical benchmarks for ACO Participant List changes will allow CMS to gain more experience in the program and will allow more opportunity for the agency and stakeholders to evaluate the merits and tradeoffs associated with the proposed methodology or other alternatives. To that end, we anticipate making more information available to aid stakeholder evaluation of this approach through future notice and comment rulemaking.

Comment: Some commenters expressed concerns about the accuracy of a "proxy" measure for adjusting benchmarks, or the potential for some ACOs to see large differences between the proposed and current methodologies for adjusting an ACO's benchmark for ACO Participant List changes, even if the two approaches produce similar results on average. Several commenters noted that differences of even one or two percentage points between the proposed and existing methodology could be quite substantial for an individual ACO. Some commenters also warned that using an expenditure ratio based on a single year of data could be less accurate or equitable than the current methodology that redetermines beneficiary assignment for each of an ACO's three benchmark years. A commenter stated CMS should not use a proxy method for adjusting the benchmark and that the agency should not let expediency threaten the accuracy of the program.

Response: We appreciate the concerns raised by commenters regarding the accuracy of the proposed streamlined approach for adjusting historical benchmarks for ACO Participant List changes and the potential for the proposed approach to have varied effects across ACOs. We believe that delaying finalization of this proposal will allow stakeholders further opportunity to study the implications of this or other alternatives, which may assuage some of the concerns initially raised about this proposal.

We want to take this occasion to clarify a statement in the proposed rule that referred to a magnitude of change for most ACOs of between −2 percent and +2 percent. Some commenters seemed to interpret this statement as referring to differences between the current methodology for computing adjusted benchmarks and the proposed streamlined methodology. In fact, the statement referred to differences between benchmarks calculated using the current methodology but based on different ACO Participant Lists (previous performance year and updated). In our modeling, comparing adjusted benchmarks computed under the proposed and current methodologies for 88 ACOs that began the program in 2014 and made ACO Participant List Changes for performance year 2015, we found that for close to two-thirds of these ACOs, the difference between the two methods was within half of a percentage point in either direction. For over 80 percent of these ACOs, the difference was within 1 percentage point. Only one ACO among the 88 saw a difference greater than two percentage points, with the proposed approach producing a benchmark that was 2.3 percent lower than the benchmark calculated under the current methodology. The mean difference between the two methods (proposed minus current) was −0.2 percent and the median was −0.1 percent.

Comment: Some commenters suggested other alternatives for CMS' consideration in conjunction with the proposed approach. A few commenters indicated that if CMS did decide to finalize the proposal to streamline the calculation of adjusted benchmarks, the agency should broaden the set of circumstances under which the current methodology would apply. Some commenters suggested that, rather than reverting to the current methodology only in the unlikely instance of zero "stayers," the agency should adopt a low-volume threshold for stayers, below which the current methodology would be used to adjust for ACO Participant List changes. Another commenter called for adjusting benchmarks for ACO Participant List changes more frequently, such as within 30 days of an ACO notifying CMS of an ACO participant's resignation or removal from the list. Another commenter wanted to see the proposed methodology coupled with efforts by CMS to promote better data collection and information sharing.

Several commenters acknowledged that they understood CMS' desire to reduce operational complexity, but they expressed concern that CMS proposed a proxy method for adjusting benchmarks for ACO Participant List changes without first addressing other aspects of the existing methodology that commenters perceived to be flawed. Some commenters detailed alternative approaches. For example, some commenters suggested that adjustments to the ACO's benchmark for composition changes should be made for changes in ACO providers/suppliers, identified by National Provider Identifiers (NPIs), rather than for changes in ACO participants identified by TINs, or should account for changes in both NPIs and TINs. Their rationale was that only ACOs themselves can determine which physicians and non-physician practitioners are functioning as primary care providers and should be used in determining beneficiary assignment. Another commenter suggested that using NPIs instead of TINs could better account for changes in ACO composition over time. Some commenters also felt that CMS should address instability and inaccuracies introduced into benchmarks by ACO Participant List changes when such changes result in a difference in the acuity of patients assigned to the ACO in the benchmark period versus those assigned to the ACO for the performance year. A few commenters noted that some ACOs have had artificially low benchmarks due to innocuous changes in TINs, such as restructurings, where CMS did not make a correction or accommodation. These commenters further explained, for example, that when an ACO introduces a new service line for complex patients within an existing TIN during an agreement period, there would be no history of treating such patients in the baseline period and the benchmark would be understated. Another commenter opined that CMS should perform additional analysis and policy development on the fundamentals of benchmarking before developing a proxy process for making adjustments to benchmarks.

Response: We appreciate the suggestions raised by commenters and will take them into consideration when revisiting this issue in future rulemaking. However, we note that some of the suggestions offered, for example adjusting benchmarks for ACO Participant List changes more frequently, would likely offset, if not negate, the expected reduction in operational burden associated with the streamlined approach, which was the primary rationale behind its development. Thus it will be important to weigh the tradeoffs posed by any suggested modifications.

Further, in the 2016 proposed rule, CMS did not contemplate changes to the underlying methodology used to assign beneficiaries to ACOs, including how ACO participants are defined for purposes of assignment, or to policies surrounding when or under what circumstances CMS will make adjustments or corrections to an ACO's benchmark. We appreciate the concerns raised by commenters and will continue to review existing policies as we gain additional experience in the program. That being said, we do not believe that we should necessarily forgo opportunities to reduce administrative complexity in the near term if alternative methodologies have the potential to lower operational burden without sacrificing accuracy when calculating the adjustment for changes in the ACO's certified ACO Participant List.

FINAL ACTION: After consideration of the public comments received and

the concerns raised by many commenters, at this time, we are not finalizing our proposal to replace the current approach for calculating adjusted historical benchmarks for ACOs that make ACO Participant List changes with a new program-wide approach that would adjust an ACO's historical benchmark using an expenditure ratio based on single reference year. Relatedly, we are not finalizing the proposed definitions of "stayers," "leavers," and "joiners" in § 425.20 at this time. Although we are not finalizing the proposal to adopt a more streamlined approach for adjusting historical benchmarks for ACO Participant List changes in this rule, we continue to believe this alternative approach has merit as a means for reducing operational burden without sacrificing accuracy in ACO benchmarks. As such, we anticipate revisiting this proposal in future notice and comment rulemaking, and making more information available at that time to aid stakeholder evaluation. However, we are finalizing as proposed clarifying revisions to the description of the current approach to calculating adjusted historical benchmarks for ACOs that make ACO Participant List changes at § 425.602(a)(8), to specify that the benchmark is adjusted to take into account the expenditures for beneficiaries who would have been assigned to the ACO in any of the 3 most recent years prior to the agreement period using the most recent certified ACO Participant List for the relevant performance year. In addition, we will include a similar provision in new § 425.603 to provide that the same adjustment for ACO Participant List changes will be made to an ACO's rebased historical benchmark.

C. Facilitating Transition to Performance-Based Risk

1. Overview

As discussed in detail in the proposed rule (81 FR 5851 through 5853), we continue to believe that in order for the Shared Savings Program to be effective and sustainable over the long term, we need to further strengthen our efforts to transition the Shared Savings Program to a two-sided performance-based risk program in which ACOs share in both savings and losses. Currently, for its initial agreement period, an ACO applies to participate in a particular financial model or track of the program as specified under § 425.600(a). If the ACO's application is accepted, the ACO must remain under that financial model for the duration of its 3-year agreement. ACOs entering the program under the one-sided shared savings model (Track 1) that meet eligibility criteria may continue their participation under this model for a second 3-year agreement period as specified under § 425.600(b). In response to suggestions from ACOs and other stakeholders, and based on our experience with the first group of ACOs eligible for renewal for a second agreement period starting in 2016 in which nearly all such ACOs applied to remain in Track 1 for an additional agreement period, we further considered whether it would be appropriate to offer an additional participation option to encourage ACOs to move more quickly from the one-sided shared savings model to a performance-based risk model when renewing their agreements.

2. Additional Option for ACOs Participating Under Track 1 to Apply to Renew for a Second Agreement Period Under a Two-Sided Track

To respond to stakeholder concerns and to provide additional flexibility for ACOs that are willing to accept performance-based risk arrangements, we proposed to add a participation option that would allow eligible Track 1 ACOs to defer by 1 year their entrance into a performance-based risk model (Track 2 or 3) by extending their first agreement period under Track 1 for a fourth performance year. ACOs that would be eligible to elect this proposed new participation option would be those ACOs eligible to renew for a second agreement period under Track 1 but instead are willing to move to a performance-based risk track 2 years earlier, after continuing under Track 1 for 1 additional year. This option would assist ACOs in transitioning to a two-sided risk track when they need only one additional year in Track 1 rather than a full 3-year agreement period in order to prepare to accept performance-based risk. The additional year could allow such ACOs to further develop necessary infrastructure to meet the program's goals, such as further developing their care management services, adopting additional mechanisms for measuring and improving quality performance, finalizing implementation and testing of electronic medical records, and performing data analytics. We proposed to make this option available to Track 1 ACOs whose first agreement period is scheduled to end on or after December 31, 2016. Under this proposal, ACOs that elect this new participation option would continue under their first agreement period for a fourth year, deferring benchmark rebasing as well as deferring entrance to a two-sided risk track if they are approved for renewal.

More specifically, we proposed to provide an additional option for ACOs participating under Track 1 to apply to renew for a second agreement period under a two-sided track (Track 2 or Track 3) under the renewal process specified at § 425.224. If the ACO's renewal request is approved, the ACO would be able to defer entering the new agreement period under a performance-based risk track for 1 year. Further, as a result of this deferral, we would also defer rebasing the ACO's benchmark for 1 year. At the end of this fourth performance year under Track 1, the ACO would transition to the selected performance-based risk track for a 3-year agreement period. Accordingly, we proposed to amend the participation agreement requirements at § 425.200 to provide that an ACO that defers entering its new agreement period will be able to continue participating under its first agreement for an additional year (for an agreement period that would total 4 years).

An ACO electing this option would still be required to undergo the renewal process specified at § 425.224 prior to the end of its initial agreement (PY 3) and meet all other renewal requirements including the requirement that the ACO demonstrate that it is capable of repaying shared losses as required to enter a performance-based risk track. Because the ACO would be committing under the renewal application to transition to a performance-based risk track following completion of PY 4 under Track 1, the ACO would be required to demonstrate as part of its renewal application that it has established an adequate repayment mechanism as specified at § 425.204(f) to assure CMS of its ability to repay losses for which it may be liable during the new agreement period. We proposed to make this option available to Track 1 ACOs whose first agreement period is scheduled to end on or after December 31, 2016. Therefore, this proposed option would be available to ACOs with 2014 start dates seeking to renew their participation agreements in order to enter their second agreement period beginning in 2017. Under this proposal, we would update the ACO's benchmark as specified at § 425.602(b) for performance year 4 of the initial participation agreement. However, we would defer resetting the benchmark as specified at proposed § 425.603 until the beginning of the ACO's second agreement period (that is, the ACO's first agreement period under the selected performance-based risk track). The benchmark would be reset under the policies in place for that time period, including the regional adjustment we are finalizing in this rule. Also, we proposed that the quality performance standard that would apply for performance year 4 of the initial participation agreement would be the same as for the ACO's performance year 3, consistent with § 425.502(a)(2). Specifically, we proposed that during the fourth performance year of the ACO's first agreement period, the ACO must continue to report all measures and the ACO will be assessed on performance based on the quality performance standard in place for the third performance year of the ACO's first agreement period.

In addition, we proposed that if a Track 1 ACO finishing its initial agreement period chooses to elect this option during the renewal of its participation in the Shared Savings Program, the ACO would be required to transition to the selected performance-based risk track at the end of the fourth performance year under Track 1. The term of the second agreement period would be 3 performance years.

If such an ACO subsequently decides during the fourth performance year that it no longer wants to transition to the performance-based risk track it selected in its application for a second agreement period, then the currently established close-out procedures and payment consequences of early termination under § 425.221 would apply. For example, if the ACO voluntarily terminates its agreement under § 425.221(a), effective December 31 of its fourth performance year, and completes all required close-out procedures, then as specified by § 425.221(b), the ACO would be eligible to share in any shared savings for its fourth performance year.

In addition, to provide some incentive for ACOs to honor their commitment to participate early in a performance-based risk track, we proposed that if an ACO that has been approved for an extension of its initial agreement period terminates its participation agreement prior to the start of the first performance year of the second agreement period, then the ACO would be considered to have terminated its participation agreement for the second agreement period under § 425.220. Such an ACO would not be eligible to participate in the Shared Savings Program again until after the date on which the term of that second agreement period would have expired if the ACO had not terminated its participation, consistent with § 425.222.

In the proposed rule, we also noted that if an ACO that goes on to participate under a two-sided track under this proposed option voluntarily terminates its agreement during its second agreement period, then the currently established close-out procedures and payment consequences of early termination under § 425.221 would apply. If an ACO terminates its agreement under its selected performance-based risk track and subsequently decides to reapply to participate in the Shared Savings Program, then the requirements under § 425.222 for re-application after termination would apply. For example, consistent with our current policy, such an organization would be required to apply to participate under a two-sided model and would have to wait the remaining duration of the agreement period before reapplying.

In developing this proposal to support our policy goal of providing additional flexibility to ACOs that are considering transitioning to two-sided risk, we also considered an alternative option that would permit the ACO to transition to a two-sided risk track during a subsequent 3-year agreement period under Track 1, instead of extending the first agreement period for an additional year. Under this alternative approach, we indicated that we would allow the ACO to remain in Track 1 for the first performance year of the second 3-year agreement period. The ACO would then be required to transition to Track 2 or 3 for the final 2 performance years of the agreement period. An ACO choosing this option would be required to satisfy all the requirements for a performance-based risk track at the time of renewal, including the requirement that the ACO demonstrate that it is capable of repaying shared losses as required to enter a performance-based risk track. Under this approach, we would rebase the ACO's benchmark as provided under proposed § 425.603, effective for the first year of the second 3-year agreement period. Further, we would calculate shared savings for the first year of the second 3-year agreement period under the one-sided model as specified at § 425.604. During the second and third performance years of the second agreement period, we would calculate shared savings and shared losses, as applicable, under either Track 2 (as determined at § 425.606) or Track 3 (as determined at § 425.610). We did not elect to propose this alternative option because we believed there could be a stronger incentive for some ACOs to transition to two-sided performance-based risk if we were to defer resetting the ACO's benchmark until the beginning of the ACO's second agreement period. Additionally, we noted that the alternative approach could raise concerns about risk selection since an ACO could participate for the first performance year of the second agreement period under this alternative, learn midway through the second performance year that its expenditures for the first performance year were below the negative MSR, and withdraw from the program before being subjected to reconciliation under performance-based risk.

We welcomed comments on our proposal and the alternative approach, as well as on other possible alternatives to provide flexibility and encourage ACOs to enter into and honor their participation agreements under performance-based risk tracks, and any related issues.

Comment: Commenters generally supported the proposed new participation option, believing that this additional participation option could assist some ACOs with transitioning to a two-sided risk track more quickly by giving eligible ACOs an additional year to further develop the infrastructure needed to achieve success under a performance-based risk track. Some commenters thought the alternative approach, in which we would allow the ACO to remain in Track 1 for the first performance year of its second 3 year agreement period before transitioning to a performance-based risk track in year 2, should also be offered, and might even be advantageous for ACOs in some situations. For example, some commenters suggested that this alternative participation option could be advantageous if it were integrated with the APM requirements under MACRA; that is, if the first year of a new two-sided risk contract under the alternative option could qualify as being "more than nominal financial risk" and therefore enable the ACO's physicians and other eligible clinicians to receive bonus payments equal to 5 percent of their covered Medicare professional services. A number of commenters also indicated that it was difficult for them to fully evaluate the proposed option and the alternative approach without first having policies in place for implementing MACRA, so that it would be clearer whether these new participation options might qualify as an APM under MACRA.

To provide yet even more flexibility for ACOs prepared to accept performance-based risk, some commenters recommended that CMS allow ACOs to "move up" the risk tracks (that is, to move from Track 1 to Track 2 or 3, or move from Track 2 to Track 3) between performance years without being required to wait for the

start of a new agreement period. These commenters suggested that allowing an ACO to accept varying degrees of risk within an agreement period would position the ACO to best balance its exposure to and tolerance for financial risk and would create a true glide path for providers.

However, many commenters indicated that while they supported adding one or more additional participation options, they also cautioned that adding such participation options might not have much impact on ACOs' willingness to participate under a performance-based risk track. These commenters suggested that if a Track 1 ACO is uncertain about its ability to successfully manage financial risk, the ACO would more likely simply choose to continue under Track 1 for a second agreement period. Another commenter stated that the anticipated impact of the proposed regional benchmark rebasing methodology is not as significant as hoped for and therefore the proposal to facilitate transition to performance-based risk by extending an ACO's agreement period into a fourth year without rebasing is not a meaningful incentive. This commenter recommended that CMS consider lowering the minimum savings rate of two percent under § 425.604(b) as a way to support ACOs by improving the probability that they will be eligible to share in any savings they achieve as they transition to performance-based risk, particularly for ACOs that demonstrate a commitment to the Shared Savings Program through their years of participation and meet sufficient size requirements for statistical reliability.

A commenter expressed concern that adding the proposed additional participation option could slow the move away from FFS payment arrangements. This commenter believes that the ultimate goal is for providers to take on full financial responsibility for caring for a population of patients for a fixed payment. On balance, however, the commenter preferred the proposed alternative for transition to participation under Track 2 or Track 3, over the option to renew for an additional 3-year agreement period under Track 1, as previously finalized in the June 2015 rule.

Response: We appreciate the general support received from commenters on our proposal to provide an additional option for ACOs participating under Track 1 to apply to renew for a second agreement period under a two sided track (Track 2 or Track 3), under which the ACO, if approved by CMS, may defer entering the new agreement period under a performance-based risk track, and extend participation under the initial participation agreement, for 1 year (that is, the initial agreement period would total 4 years). We acknowledge the concerns raised by commenters that this new participation option might not significantly affect ACOs' willingness to assume performance-based risk, but agree with commenters that such an option may influence some ACOs to transition to a performance-based risk track sooner than they otherwise might have.

As we gain experience with this new participation option in the Shared Savings Program, we will continue to evaluate the appropriateness and effectiveness of our incentives to encourage ACOs to transition to a performance-based risk track and, as necessary, may propose refinements through future notice and comment rulemaking. Although we are not adopting the alternative approach that we discussed in the proposed rule (that would permit the ACO to transition to a two-sided risk track during a subsequent 3-year agreement period under Track 1, instead of deferring entry into a new agreement period under a two-sided risk track and extending the first agreement period for an additional year), we may revisit it along with possible other approaches, including those suggested by commenters, in the future. As we gain additional experience under the Shared Savings Program, we may propose, if warranted, one or more additional participation options through future rulemaking to increase ACOs' willingness to assume performance-based risk. We would also note that the Department of Health and Human Services recently issued a Notice of Proposed Rulemaking that includes its proposals for implementation of the bonus payment for participants in eligible APMs under MACRA, 81 FR 28162 (May 9, 2016).

Comment: A commenter disagreed with our proposal that if an ACO that has been approved for an extension of its initial agreement period terminates its participation agreement prior to the start of the first performance year of the second agreement period, the ACO would be considered to have terminated its participation agreement for the second agreement period under § 425.220. We included this proposal because we believe it will provide an incentive for ACOs to honor their commitment to participate early in a performance-based risk track. The commenter believes that the proposed approach overlooks the fact that unanticipated changes can have a material impact on an ACO's readiness to assume risk. To illustrate, this commenter suggested that a significant change in the ACO's Participant List could have a material impact on the ACO's readiness and ability to follow through on its prior commitment to transition to a performance-based risk track. To address such situations, this commenter recommended that CMS create a "hold harmless" provision for ACOs that choose to renew their participation under the new participation option but then subsequently decide they are unable to assume performance-based risk due to a material change in their structure. Under this suggested hold harmless provision, an ACO that is unable to honor its commitment to participate in a performance-based risk track should have its benchmark rebased, so that it can be treated as being in PY1 of its second agreement period under Track 1. This commenter encouraged CMS to work with stakeholders to define a comprehensive list of material events that would enable an ACO to qualify for the hold harmless provision.

Response: We are not persuaded that it is necessary to revise the proposal to include a "hold harmless" provision. We continue to believe it would be appropriate under this new participation option to provide an incentive for ACOs to honor their commitment to participate early in a performance-based risk track. We would expect that ACOs considering this new participation option would share their process and systems knowledge with potential new ACO participants to increase the likelihood that new ACO participants could be successfully integrated in to the ACO, but ultimately ACOs should make their own determination as to whether a TIN is ready to join it in assuming performance-based risk. Alternatively, if the change in the ACO's composition is due the loss of one or more key ACO participant TINs, we believe it would be appropriate for the ACO to make its own determination as to whether to honor its commitment to assume performance-based risk or terminate its participation agreement. Also, we already have an adjustment to the historical benchmark in place that accounts for changes in an ACO's certified ACO Participant List, as discussed in section II.B of this final rule. This policy allows for more accurate benchmarks that reflect the historical spending patterns of the ACO and its assigned beneficiaries. Therefore, we are finalizing as proposed the policy that, if an ACO that has been approved for an extension of its initial agreement period terminates its participation agreement prior to the start of the first performance year of the second agreement period, the ACO will be considered to have terminated its participation agreement for the second agreement period under § 425.220. Such an ACO will not be eligible to participate in the Shared Savings Program again until after the date on which the term of that second agreement period would have expired if the ACO had not terminated its participation, consistent with § 425.222.

Comment: Commenters provided a variety of other suggestions that they believe might also encourage ACOs to transition to a performance-based risk track earlier. For example, a commenter preferring retrospective beneficiary assignment under Track 2 rather than prospective assignment under Track 3, suggested that Track 2 could be made more attractive to participants if CMS were to make enhancements that are currently available only under Track 3, such as the waiver of the SNF 3-Day Rule, available under Track 2. Similar to comments we received in prior rulemaking, a number of commenters requested that CMS allow ACOs to include partial or "split TINs" among their ACO participants to allow large organizations, such as academic medical centers and their faculty practice plans, to participate in the program under a performance-based risk track with a subset of their providers.

Another commenter urged CMS to create stronger incentives for ACOs to assume downside risk in Track 2 and Track 3, such as by reducing the final sharing rate for eligible ACOs under Track 1 to perhaps 20 percent for the second agreement period, to minimize the number of ACOs renewing under Track 1. Otherwise, the commenter suggests many Track 1 ACOs may decide that Track 1 benefits, including having no risk of shared losses, exceed the marginal reduction of their shared savings payments during the second renewal term. This commenter also believes that CMS should provide a clearer and more certain path for ACOs willing to share in risk by, for example, also offering prospective beneficiary assignment for ACOs moving to Track 2 and providing more timely Part D expenditure data for assigned beneficiaries. The commenter believes that these changes would help ACOs predict the expected baseline Medicare spending and savings and reduce uncertainty.

Response: Although we are not addressing these additional suggestions as part of this rulemaking, we will further consider these and other suggestions from ACOs and other stakeholders that might encourage ACOs to enter performance-based risk arrangements earlier. As we discussed in the June 2015 final rule (80 FR 32810 and 32811), we appreciate the flexibilities that could be afforded to ACOs if a methodology could be developed that would permit ACOs to split ACO participants or ACO providers/suppliers into two different risk tracks. Under such a model, ACOs could progressively move providers participating in their organizations into risk in a step-wise fashion. Therefore, we continue to be interested in exploring operational processes that could permit such a design while also ensuring appropriate beneficiary protections. We intend to continue considering this issue and may revisit it in future rulemaking as infrastructure evolves to support this new alternative.

FINAL ACTION: We are finalizing our proposal to provide an additional option for ACOs participating under Track 1 to apply to renew for a second agreement period under a two-sided track (Track 2 or Track 3) under the renewal process specified at § 425.224. If the ACO's renewal request is approved, the ACO may defer entering the new agreement period under the performance-based risk track for 1 year and extend its first agreement period under Track 1 for a fourth performance year. Further, as a result of this deferral and extension, we will also defer rebasing the ACO's benchmark for 1 year. At the end of the fourth performance year under Track 1, the ACO will transition to the selected performance-based risk track for a 3-year agreement period. Accordingly, we are amending the participation agreement requirements at § 425.200 to provide that an ACO in its first agreement period under Track 1 that has applied and been approved for a second agreement period under a performance-based risk track that defers entering its new agreement period under the performance-based risk track will be able to continue participating under its first agreement for an additional year (for an agreement period that would total 4 years).

In addition, we are finalizing our proposal that if an ACO that has been approved for an extension of its initial agreement period terminates its participation agreement prior to the start of the first performance year of the second agreement period, then the ACO will be considered to have terminated its participation agreement for the second agreement period under § 425.220. Such an ACO will not be eligible to participate in the Shared Savings Program again until after the date on which the term of that second agreement period would have expired if the ACO had not terminated its participation, consistent with § 425.222.

D. Administrative Finality: Reopening Determinations of ACO Savings or Losses to Correct Financial Reconciliation Calculations, and a Conforming Change

1. Overview

ACOs enter into agreements with CMS to participate in the Shared Savings Program, under which ACOs that meet quality performance requirements and reduce the Medicare Parts A and B expenditures for their assigned beneficiaries below their benchmark by a specified margin are eligible to share a percentage of savings with the Medicare program. Further, ACOs participating under a two-sided risk track, whose Medicare Parts A and B expenditures for their assigned beneficiaries exceed their benchmarks by a specified margin, are liable for sharing losses with CMS. After each performance year, CMS calculates whether an ACO has generated shared savings by comparing its actual expenditures for its assigned beneficiaries in the PY with its updated benchmark. Savings are generated if actual Medicare Parts A and B expenditures for assigned beneficiaries are less than the updated benchmark expenditures and shared with the ACO if they exceed the ACO's minimum savings rate, and the ACO meets the minimum quality performance standards and otherwise maintains its eligibility to participate in the Shared Savings Program. For an ACO under a two-sided risk track, losses are generated if actual Medicare Parts A and B expenditures for assigned beneficiaries are greater than the updated benchmark expenditures and the ACO is liable for shared losses if the losses exceed the ACO's minimum loss rate.

To date, we have announced 2 years of financial performance results for ACOs participating in the Shared Savings Program, in Fall 2014 for 220 ACOs with 2012 and 2013 start dates for PY 1 (concluding December 31, 2013), and in August 2015 for 333 ACOs with 2012, 2013 and 2014 start dates for PY 2014. As discussed in detail in the proposed rule (81 FR 5853 through 5854), several months after the release of PY 1 financial reconciliation results and shared savings payments to eligible ACOs, we discovered that there was an issue with one of the source input data fields used in the final financial reconciliation calculations. As a result,

the PY 1 shared savings payments were overstated for some ACOs and shared losses were understated for some other ACOs. We ultimately determined this issue resulted in an estimated 5 percent overstatement of PY 1 shared savings payments to ACOs and an understatement of shared losses (81 FR 5853 and 5854). The impact on individual ACOs varied depending on the extent to which services provided to the ACO's assigned beneficiaries were furnished by providers that receive DSH payments. The issue did not result in understated PY 1 shared savings payments or overstated PY 1 shared loss recoupments for any ACO.

The financial reconciliation calculation/methodology and the amount of shared savings an ACO might earn, including all underlying financial calculations, are not appealable. That is, the determination of whether an ACO is eligible for shared savings under section 1899(d) of the Act, and the amount of such shared savings, as well as the underlying financial calculations are precluded from administrative and judicial review under section 1899(g)(4) of the Act and § 425.800(a)(4). However, under § 425.314(a)(4), if as a result of any inspection, evaluation, or audit, it is determined that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS reserves the right to reopen the initial determination and issue a revised initial determination. (See also the CMS Web site at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/Reconsideration-Review-Process-Guidance.pdf*).

As noted in the proposed rule, we have not previously specified the actions that we would take under circumstances when we identify an error in a prior payment determination, such as the error that occurred in the calculation of PY 1 shared savings and shared losses. We are concerned that the current uncertainty regarding the timeframes and other circumstances in which we would reopen a payment determination to correct financial calculations under the Shared Savings Program could introduce financial uncertainty which could seriously limit an ACO's ability to invest in additional improvements (such as IT solutions and process development, staffing, population management, care coordination, and patient education) to increase quality and efficiency of care. This uncertainty could also limit an ACO's ability to get a clean opinion from its financial auditors, which could, for example, harm the ACO's ability to obtain necessary capital for additional program improvements. This could be especially challenging for ACOs seeking to enter or continue under a two-sided performance-based risk track since under the requirements at § 425.204(f)(2), such an ACO must, as part of its application for a two-sided performance-based risk track, demonstrate its ability to repay shared losses to the Medicare program, which it may do by placing funds in escrow, obtaining a surety bond, establishing a line of credit (as evidenced by a letter of credit that the Medicare program can draw upon), or establishing a combination of such repayment mechanisms, that will ensure its ability to repay the Medicare program. These arrangements can often require that an ACO or its financial supporters or both make an assessment of the ACO's level of financial risk for possible repayments. We are particularly concerned that uncertainty regarding past financial results could discourage ACOs from moving more quickly from the one-sided shared savings track to a performance-based risk track when renewing their agreements.

We considered an approach under which we would always reopen a determination of ACO shared savings or shared losses to correct any issue that might arise with respect to a financial calculation, identified within 4 years after the release of final financial reconciliation results. We did not propose this option because we were concerned that this approach of correcting even very minor errors might result in significant operational burdens for ACOs and CMS, including multiple financial reconciliation re-runs and off-cycle payment/recoupment activities that could have the potential for significant and unintended operational consequences, and could jeopardize the certainty of performance results for both ACOs and CMS. We also considered whether to adopt a policy under which we would never correct for errors after performing the financial calculations and making initial determinations of ACO shared savings and shared losses. However, we did not propose this option because we believed it would be appropriate to reopen financial calculations in certain circumstances, such as in the case of fraud or similar fault as defined at § 405.902, or for errors with a significant impact on the computation of ACOs' shared savings/shared losses. Therefore, we proposed a finality policy for financial calculations and shared savings payments or shared loss recoupments in which we would allow for corrections, under certain circumstances and within a defined timeframe, after financial calculations have been performed and the determination of ACO shared savings and shared losses has been made.

2. Circumstances for Reopening Initial Determinations and Final Agency Determinations of ACO Shared Savings or Shared Losses to Correct Financial Reconciliation Calculations

In developing the proposals in this section, we considered the following issues: (1) The type of issue/error that we would correct; (2) the timeframes for reopening a payment determination; and (3) whether we should establish a materiality threshold as an indicator of a material effect on shared savings and shared losses that would warrant a correction, and if so, at what level.

First, we proposed that CMS would have discretion to reopen a payment determination at any time in the case of fraud or "similar fault," as defined in § 405.902. It is longstanding policy in the Medicare program that a determination may be reopened at any time if it was procured by fraud or "similar fault," (see, for example, § 405.980(b)(3); 74 FR 65296, 65313 (December 9, 2009)). Second, we proposed that in certain circumstances we would reopen a payment determination for good cause. For consistency and to decrease program complexity, we proposed to follow the same approach to reopening for good cause as applies to the reopening of Parts A and B claims determinations under § 405.986. Specifically, we proposed that CMS would have the discretion to reopen a payment determination, within 4 years after the date of notification to the ACO of the initial determination of shared savings or shared losses for the relevant performance year, if there is good cause. We proposed that good cause may be established if there is new and material evidence that was not available or known at the time of the payment determination, and which may result in a different conclusion, or if the evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination.

We indicated that new and material evidence or an obvious error could come to CMS' attention through a variety of means, such as identification by CMS through CMS program integrity reviews or audits, or identification through audits conducted by independent federal oversight entities such as the Office of Inspector General (OIG) or the Government Accountability Office (GAO). CMS program integrity reviews and audits include reviews and audits conducted by CMS' contractors. We proposed to establish a 4-year time period (that is, 4 years from initial notification of the payment determination) for reopening Shared Savings Program payment determinations for good cause to provide sufficient time to initiate and complete CMS program integrity reviews or audits by oversight entities like OIG or GAO and to evaluate errors identified through those processes. We proposed that good cause would not be established by changes in substantive law or interpretative policy. A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, would not be a basis for reopening a payment determination under the proposal. Further, we proposed CMS would have sole discretion to determine whether good cause exists for reopening a payment determination under this section. Under the proposal, the determination of whether an error was made, whether a correction would be appropriate based on these proposed criteria, and the timing and manner of any correction would be within the sole discretion of CMS. We also indicated in the proposal that we did not intend to propose an exhaustive list of potential issues that would or would not constitute good cause, but instead intended to provide additional subregulatory guidance on this issue. We also noted that good cause would not be established by a reconsideration, appeal, or other administrative or judicial review of any determinations precluded under § 425.800.

In addition, we indicated we would not reopen a payment determination to consider, or otherwise consider as part of a reopening, additional claims information submitted following the end of the 3-month claims run out and the use of the completion factor. We would continue to use claims submitted prior to the end of the 3-month claims run out with a completion factor to calculate an ACO's per capita expenditures for each performance year, consistent with §§ 425.604(a)(5), 425.606(a)(5) and 425.610(a)(5). Also, consistent with established policy, under this proposed policy, we would not reopen a determination if an ACO's ACO participants submitted additional claims or submitted corrected claims after the 3-month claims run out period following the end of the performance year.

In order to provide an opportunity for CMS to consider updated information and make other adjustments to payment determinations across all ACOs, and to minimize program disruptions for ACOs resulting from multiple reopenings, we indicated that we would, to the extent feasible, make corrections for a given performance year in a unified reopening (as opposed to multiple reopenings). In addition, we indicated we would consider other ways to reduce operational burdens for both ACOs and CMS that could result from making payment adjustments.

In addition, in discussing the proposal regarding reopenings for good cause, we proposed that we would also consider whether the error is material and thus warrants a correction by reviewing the nature and particular circumstances of the error. We did not propose specific criteria for determining materiality but we indicated our intent to provide additional information for ACOs through subregulatory guidance, as appropriate. For example, in the case of technical errors by CMS such as CMS data source file errors and CMS computational errors, we stated we would consider limiting reopenings of payment determinations under the Shared Savings Program to issues/errors that have a material effect on the net amount of ACO shared savings and shared losses computed for the applicable performance year for all ACOs, and thus warrant a correction due to the magnitude of the error.

We also initially considered applying a materiality threshold for each ACO, rather than evaluating materiality based on the effect on total net shared savings and shared losses for all ACOs, in determining whether to exercise our reopening discretion to correct a CMS technical error. However, we indicated in the proposed rule that we believed it would be appropriate to limit reopenings to correct CMS technical errors that more widely affect the program rather than reopening determinations for specific issues for each of the hundreds of ACOs participating in the Shared Savings Program absent evidence of fraud or similar fault, or good cause established by evidence of other errors. Otherwise, a relatively broad scope and extended timeframe for reopening could seriously limit an ACO's ability to invest in additional improvements to increase quality and efficiency of care. This uncertainty could also limit an ACO's ability to get a clean opinion from its financial auditors, which could, for example, harm the ACO's ability to obtain necessary capital for additional program improvements. This could be especially challenging for ACOs seeking to enter or continue under a two-sided performance-based risk track since under the requirements at § 425.204(f), such an ACO must, as part of its application for a two-sided performance-based risk track, demonstrate its ability to repay shared losses to the Medicare program, which it may do by placing funds in escrow, obtaining a surety bond, establishing a line of credit (as evidenced by a letter of credit that the Medicare program can draw upon), or establishing a combination of such repayment mechanisms, that will ensure its ability to repay the Medicare program. These arrangements can often require that an ACO and/or its financial supporters make an assessment of the ACO's level of financial risk for possible repayments. Uncertainty over past financial results could significantly affect an ACO's ability to obtain and maintain these arrangements with financial institutions, and thus discourage ACOs from moving more quickly from the one-sided shared savings track to a performance-based risk track when renewing their agreements. (81FR 5854).

Therefore, after considering these issues, we proposed to revise § 425.314 to remove paragraph (a)(4) and add a new paragraph (e) to specify the circumstances under which we would reopen a payment determination under §§ 425.604(f), 425.606(h), 425.610(h), 425.804, or 425.806. Specifically, we proposed that, if CMS determines that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS may reopen the earlier payment determination and issue a revised initial determination. We proposed that a payment determination may be reopened: (1) At any time in the case of fraud or similar fault, as defined in § 405.902; or (2) not later than 4 years after the date of notification to the ACO of the initial determination of shared savings or shared losses for the relevant performance year under § 425.604(f), § 425.606(h) or § 425.610(h), for good cause. We proposed that good cause may be established when there is new and material evidence of an error or errors, that was not available or known at the time of the payment determination and may result in a different conclusion, or the evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination. Good cause would not be established by a change of legal

interpretation or policy by CMS in a regulation, CMS ruling or CMS general instruction, whether made in response to judicial precedent or otherwise. We would have sole discretion to determine whether good cause exists for reopening a payment determination under this section. Also, good cause would not be established by a reconsideration, appeal, or other administrative or judicial review of any determinations precluded under § 425.800.

Under the proposal, the determination of whether an error was made, whether a correction would be appropriate based on the proposed criteria, and the timing and manner of any correction would be within the sole discretion of CMS. We proposed that if CMS determines that the specified criteria were met and exercises its discretion to reopen, CMS would recompute the financial results for all ACOs affected by the error or errors. In light of this policy proposal, we indicated we would not reopen and revise the PY 1 payment determinations solely affected by the data source error described previously because we had not previously specified, either through regulations or program guidance, the criteria CMS would apply in determining whether to reopen a payment determination. However, we indicated we would reopen and revise these PY 1 payment determinations for other errors satisfying the proposed criteria for reopening for good cause or for fraud or similar fault (81 FR 5857). Finally, we proposed to amend § 425.800(a)(4), expressly to include a revised initial determination in the list of determinations that are precluded from administrative and judicial review.

We invited comments on this proposal, including the proposed criteria for reopening, on alternative approaches for defining the time period for reopenings of payment determinations, on the criteria for establishing good cause, whether the time period for reopenings for good cause should be longer or shorter than 4 years, and on any other criteria that we should consider for the final rule to address issues related to financial reconciliation calculations and the determination of ACO shared savings and shared losses.

Comment: Commenters generally appreciated efforts to further define parameters around reopening payment determinations within the Shared Savings Program. A few commenters concurred with the provisions as proposed; however, most commenters expressed concerns about one or more aspects of the proposal. In particular, many commenters suggested limiting the timeframe for good cause redeterminations to a shorter period such as 2 years, instead of 4, to provide ACOs with more financial certainty. These commenters stated that requiring ACOs to repay CMS for errors made potentially several years earlier would pose an excessive administrative burden on both ACOs and the Medicare program, create financial uncertainty and could discourage ACOs from participating in the program.

Response: We believe a 4 year time frame for reopenings for good cause, which is based on the timeframe for reopening of Parts A and B claims determinations under § 405.986, would also be appropriate under the Shared Savings Program. We acknowledge that a shorter timeframe for good cause determinations might provide more financial certainty for ACOs. However, based on a review of comments, we continue to believe the proposed approach carefully balances a desire to provide more financial certainty for ACOs while also addressing program integrity and other concerns. We are especially concerned that a shorter time period could make it difficult for CMS to make corrections based on program integrity reviews or audits by OIG or GAO. Similarly, a longer time period might make it feasible for CMS to make additional corrections based on program integrity reviews or audits by OIG or GAO, but could provide less financial certainty for ACOs.

Comment: Many commenters are concerned that CMS reserves for itself sole discretion to determine whether good cause exists for reopening. These commenters requested that CMS include a specific "appeal process" or other process in which individual ACOs could submit information and data to CMS regarding errors and other anomalies.

Response: As discussed earlier in this section, the financial reconciliation calculation/methodology and the amount of shared savings an ACO might earn, including all underlying financial calculations, are not appealable. That is, the determination of whether an ACO is eligible for shared savings under section 1899(d) of the Act, and the amount of such shared savings, as well as the underlying financial calculations are precluded from administrative and judicial review under section 1899(g)(4) of the Act and § 425.800(a)(4). Accordingly, we are not establishing an appeal process for ACOs to submit information to us regarding errors they believe were made in the financial reconciliation calculation or in determining the amount of shared savings earned by the ACO. We believe it is appropriate that the determination of whether an error was made, whether a correction would be appropriate based on these proposed criteria, and the timing and manner of any correction that would be made would be within the sole discretion of CMS. However, we also did not intend to imply that there would be no opportunity for ACOs to bring concerns about data errors or other anomalies to our attention. As noted in the June 2015 final rule (80 FR 32699), there are numerous existing processes through which ACOs can submit information and data to CMS regarding alleged data errors and other anomalies. For example, each ACO is assigned a CMS point of contact, we provide ACOs with a dedicated email box for ACOs to submit questions for subject matter experts to address, and we hold numerous webinars that include opportunities for ACOs to raise questions and concerns. CMS will consider information about potential errors or anomalies provided by ACOs in conducting its own reviews of prior payment determinations.

Comment: Some commenters requested that CMS propose the specific good cause criteria including a materiality threshold through rulemaking instead of through sub-regulatory guidance so that the criteria are transparent and available for public comment. Many commenters requested that CMS establish a policy for a materiality threshold at an individual ACO level instead of across all ACOs to recognize that although determinations may have an insignificant effect on the program as a whole, a negative impact could be financially devastating to an individual ACO. Many of these commenters suggested a lower materiality threshold for individual ACOs, such as one percent or two percent, although there were a few commenters that indicated five percent might be acceptable if the materiality threshold was applied at the individual ACO level. Some commenters requested that CMS consider adopting a tiered materiality threshold for ACOs of varying size, practice-mix, patient population, and overall level of sophistication. For example, according to this commenter, an error affecting a smaller or newer ACO or an ACO serving a high-need population should be subject to a lower materiality threshold. Some commenters believe it is important to maintain flexibility and that CMS should consider individual materiality thresholds for differing ACOs to help ACOs that are facing financial strain and duress.

Response: We appreciate the suggestions that commenters provided regarding issues related to the materiality of a payment error and when CMS should reopen a payment determination for good cause. Based on a review of the comments, we believe that it would be appropriate to address issues related to the materiality of an error through subregulatory guidance rather than through regulations. We believe that both CMS and ACOs would benefit from gaining additional experience with issues related to reopenings of payment determinations in the Shared Savings Program before further considering whether additional regulations would be appropriate. However, we are concerned that it could be very complex and burdensome for CMS to tailor materiality considerations to the particular characteristics or circumstances of a given ACO, as suggested by some commenters. In considering when to reopen an error for good cause, we intend to strike a careful balance between important Medicare program integrity concerns that payments be made timely and accurately under the Shared Savings Program with our desire to minimize unnecessary operational burdens for ACOs and CMS, and to support the ACOs' ability to invest in additional improvements to increase quality and efficiency of care. To achieve this careful balance in objectives for reopenings to address CMS technical errors, we may consider whether the error satisfies a materiality threshold, such as 3 percent of the total amount of net shared savings and shared losses for all ACOs for the applicable performance year. As described in the 2016 proposed rule, we plan to provide additional information about how we may consider the materiality of an error in subregulatory guidance (see 81 FR 5856 through 5857). To illustrate, under such an approach, we could exercise our discretion to reopen the financial reconciliation for a performance year if we determined that a correction to address a CMS technical error would affect total net shared savings and shared losses (that is, the amount of shared savings after the amount of shared losses has been subtracted) for all ACOs for the affected performance year by 3 or more percent. We may consider a higher threshold, such as 5 percent, or a lower threshold, such as 1 or 2 percent. However, based on a review of guidance from the GAO for financial audits of federal entities, we believe that 3 percent could generally be a reasonable threshold for "material effect." The GAO guidance was developed to assist auditors in assessing material effect for planning the audit scope for federal entities to ensure that financial statement audits achieve their intended outcomes of providing enhanced accountability over taxpayer-provided resources. This guidance has been used for a number of years by GAO financial auditors for performing financial statement audits of federal entities. (See the GAO Web site at *http://www.gao.gov/special.pubs/01765G/vol1_complete.pdf.*) Although ACOs are not federal entities, we believe it would be reasonable to consider the GAO guidance in determining when a technical error has a material effect across all ACOs, such that we should use our discretion to reopen for good cause. The Shared Savings Program is a relatively large federal program administered within HHS, including over 400 ACOs (as of January 1, 2016). Accordingly, we believe that the GAO guidance on federal entity audits, while not directly applicable, provides a relevant and appropriate resource in considering when errors in certain payment determinations under the Shared Savings Program are material and whether we should exercise our discretion to reopen for good cause.

Comment: Commenters did not directly address the PY1 payment determinations affected by the data source error described in the proposed rule. However, some commenters more broadly urged that CMS hold ACOs harmless for payment determination errors made by CMS. These commenters believe that ACOs "should not be penalized for CMS errors" because ACOs may have already used the affected funds to improve beneficiary care.

Response: Except as discussed in the proposed rule for the PY 1 data source error, we do not believe it would be appropriate to establish a finality policy to hold ACOs harmless for payment determination errors made by CMS. We acknowledge that from year to year, corrections could sometimes advantage individual ACOs and sometimes disadvantage individual ACOs. We anticipate that, over time, this approach would not likely have a biased effect on ACOs or Medicare expenditures since the impact of reopenings over time would be equally likely to increase/decrease net shared savings and losses. We also believe there would be program integrity concerns if we were to hold ACOs harmless for payment determination errors made by CMS.

Comment: A few commenters recommended that payment and recoupment activities associated with reopenings and revised initial payment determinations be administered as stand-alone activities rather than being combined with subsequent years' savings or losses. Their rationale is that ACOs are still evolving and their compositions are changing, sometimes dramatically, from year to year; therefore, recalculation of the financial reconciliation should impact the ACO participants from the corresponding performance year, and not the ACO participants in a subsequent performance year.

Response: We indicated in the proposal that we would consider ways to minimize program disruptions for ACOs that could result from one or more reopenings. Our intent is to reduce operational burdens, when feasible, that might result if an ACO were subject to one or more reopenings. The net effect on payments as a result of a reopening will not be different whether we perform the reopening independently or in conjunction with payment reconciliation for another performance year. In either case, we would provide ACOs with details regarding any necessary adjustments in their shared savings or shared losses resulting from reopened financial calculations for each performance year affected. We expect that ACOs would have sufficient information to be able to internally attribute any changes in shared savings/shared losses for a prior performance year as the ACO believes appropriate and consistent with the ACO's agreements with its ACO participants. Therefore, to the extent feasible, we will make corrections in a unified reopening (as opposed to multiple reopenings) to correct errors for a given performance year. In addition, we will consider other ways to reduce operational burdens for both ACOs and CMS that could result from making payment adjustments. For example, if we determine that a correction needs to be made to a prior performance year's results for good cause, we would seek to potentially adjust shared savings payments to the ACO or shared loss recoupments from the ACO for a subsequent performance year. To illustrate, if an ACO that generated shared savings for the second performance year of its agreement period owed CMS money based on a correction made to the payment determination for the prior performance year, we might be able to deduct the amount owed prior to making the current year shared savings payments (subject to the general requirement, discussed in the proposed rule, for ACOs to repay monies owed to CMS within 90 days of notification of the obligation). In either case, we expect to be able to provide ACOs with sufficient details regarding these corrections that they will be able to attribute the

additional payment or recoupment arising from the reopening internally and, as applicable, distribute additional funds to or collect amounts from the appropriate ACO participants from the prior PY.

FINAL ACTION: We are finalizing the administrative finality policy as proposed. Specifically, we are finalizing that if CMS determines that the amount of shared savings due to an ACO or the amount of shared losses owed by an ACO has been calculated in error, CMS may reopen the earlier payment determination and issue a revised initial determination: (1) At any time in the case of fraud or similar fault, as defined in § 405.902; or (2) not later than 4 years after the date of notification to the ACO of the initial determination of shared savings or shared losses for the relevant performance year under § 425.604(f), § 425.606(h) or § 425.610(h), for good cause. Good cause may be established when there is new and material evidence of an error or errors, that was not available or known at the time of the payment determination and may result in a different conclusion, or the evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination. Good cause will not be established by a change of legal interpretation or policy by CMS in a regulation, CMS ruling or CMS general instruction, whether made in response to judicial precedent or otherwise. We will have sole discretion to determine whether good cause exists for reopening a payment determination. Also, good cause will not be established by a reconsideration, appeal, or other administrative or judicial review of any determinations precluded under § 425.800.

If we determine that the reopening criteria are met, we will recompute the financial results for all ACOs affected by the error or errors. We will not reopen and revise PY 1 payment determinations to address the data source error described previously. We will address issues regarding when an error is material such that it would be appropriate to exercise our discretion to reopen for good cause through subregulatory guidance.

We note that the current requirements for ACO repayment of shared losses after notification of the initial determination of shared losses will not be affected by any of the policies that we are adopting in this section of this final rule. As described under § 425.606(h)(3) (Track 2) and § 425.610(h)(3) (Track 3), if an ACO has shared losses, the ACO must make payment in full to CMS within 90 days of receipt of notification. These current requirements will continue to apply for repayment by ACOs for shared losses. For example, an ACO will not be able to delay recoupment of any payments required under § 425.606(h)(3) or § 425.610(h)(3) by notifying CMS of a possible error that could merit reopening. Instead, if we later determine that a correction should be made, we would subsequently combine, if feasible, the revised calculation of shared savings or shared losses for the affected performance year with the financial reconciliation for the most recent performance year. For example, we would add any amount owed to the ACO as a result of the reopening, to any shared savings payments for which the ACO is eligible for the most recent performance year. Finally, we had proposed to include these administrative finality provisions as a revision to § 425.314 (Audits and record retention) by removing (a)(4) and adding a new paragraph (e) to specify the circumstances under which we would reopen a payment determination under §§ 425.604(f), 425.606(h), 425.610(h), 425.804, or 425.806. However, we now believe these administrative finality provisions are a sufficiently distinct topic from "audits and record retention" that it would be clearer to instead incorporate these administrative finality provisions in a new, separate section at § 425.315 (Reopening Determinations of ACO Savings or Losses to Correct Financial Reconciliation Calculations). Accordingly, we are revising § 425.314 by removing (a)(4) and are adding a new § 425.315 to specify the circumstances under which we would reopen a payment determination under §§ 425.604(f), 425.606(h), 425.610(h), 425.804, or 425.806.

3. Conforming Change

As discussed earlier in the overview for this section, the determination of whether an ACO is eligible for shared savings, and the amount of such shared savings, and the limit on the total amount of shared savings as well as the underlying financial calculations are excluded from administrative and judicial review under section 1899(g) of the Act. Accordingly, in the November 2011 final rule establishing the Shared Savings Program, we adopted the regulation at § 425.800 to preclude administrative and judicial review of the determination of whether an ACO is eligible for shared savings and the amount of shared savings under Track 1 and Track 2 (§ 425.800(a)(4)), and the limit on total amount of shared savings that may be earned under Track 1 and Track 2 (§ 425.800(a)(5)). In the June 2015 final rule, we amended the Shared Savings Program regulations by adding a new provision at § 425.610 to establish a new performance-based risk option (Track 3) that includes prospective beneficiary assignment and a higher sharing rate. However, in the June 2015 final rule we inadvertently did not also update § 425.800 to include references to determinations under § 425.610 (Track 3) in the list of determinations under this part for which there is no reconsideration, appeal, or other administrative or judicial review. Therefore, we proposed a conforming change to amend § 425.800 to add determinations under § 425.610 (Track 3) to the list of determinations under § 425.800(a)(4) and (a)(5) for which there is no reconsideration, appeal, or other administrative or judicial review.

Comment: We did not receive comments on this proposed conforming change.

Response: We will finalize this conforming change to the regulations to include determinations for Track 3 ACOs to the list of determinations for which there is no reconsideration, appeal, or other administrative or judicial review.

FINAL ACTION: We are amending § 425.800 to add determinations under § 425.610 (Track 3) to the list of determinations under § 425.800(a)(4) and (a)(5) for which there is no reconsideration, appeal, or other administrative or judicial review.

III. Collection of Information Requirements

As stated in section 3022 of the Affordable Care Act, Chapter 35 of title 44, United States Code, shall not apply to the Shared Savings Program. Consequently, the information collection requirements contained in this final rule need not be reviewed by the Office of Management and Budget.

IV. Regulatory Impact Analysis

A. Statement of Need

This final rule is necessary in order to make certain payment and policy changes to the Medicare Shared Savings Program established under section 1899 of the Act. The Shared Savings Program promotes accountability for a patient population, fosters the coordination of items and services under Medicare Parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery. These changes are focused on calculations for resetting the financial benchmark for an ACO's second or subsequent agreement period, thereby fulfilling a goal communicated in the Shared Savings Program June 2015 final rule (80 FR 32692), and further discussed in the 2016 proposed rule, to take into account regional expenditures when resetting an ACO's financial benchmark for a second or subsequent agreement period.

B. Overall Impact

We examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is "economically significant" as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA, which to the best of our ability presents the costs and benefits of the rulemaking.

In keeping with our standard practice, the main analysis presented in this RIA compares the expected outcomes of the modifications finalized with this rulemaking to the expected outcomes under current regulations. We provide our analysis of the expected costs of the payment model under section 1899(i)(3) of the Act compared to the costs that would be incurred under the statutory payment model under section 1899(d) of the Act in section IV.E of this final rule.

C. Anticipated Effects

1. Effects on the Medicare Program

The Shared Savings Program is a voluntary program involving an innovative mix of financial incentives for demonstrating quality of care and efficiency gains within FFS Medicare. As a result, the changes to the Shared Savings Program adopted in this final rule could result in a range of possible outcomes. While evaluation of the program's overall impact to date is ongoing, the quality and financial results of the first 2 performance years are within the range originally projected for the program in the November 2011 final rule (see Table 8, 76 FR 67963). Also, at this point, we have seen no evidence of selective ACO participation that would systematically bias overall program performance as measured by ACO benchmarks.

In the June 2015 final rule, we established a policy for rebasing an ACO's financial benchmark for a second or subsequent agreement period by weighting each benchmark year equally and taking into account savings generated by the ACO in the previous agreement period. We also discussed potential future modifications to the rebasing methodology that would account for regional FFS expenditures and remove the policy of adding savings generated by the ACO in the previous agreement period. In the 2016 proposed rule, we proposed modifications to the program's regulations, focused on incorporating regional expenditures into ACOs' rebased historical benchmarks. In this final rule, we are adopting an alternative benchmarking approach for ACOs starting a second agreement period in 2017 and subsequent years. The rebasing methodology promulgated in the June 2015 rule will apply to ACOs that entered a second agreement period in 2016. The revised rebasing methodology promulgated in this final rule will apply to these ACOs starting in their third agreement period. Under the revised benchmarking methodology adopted in this final rule, an ACO's reset benchmark will be adjusted by a percentage of the difference between the average per capita expenditure amount for the ACO's regional service area and the ACO's rebased historical benchmark amount (described in section II.A.2.c of this final rule). Under the phased approach to using a higher percentage in calculating the adjustment for regional expenditures (described in section II.A.2.c.3 of this final rule): in the ACO's first agreement period in which the regional FFS adjustment is applied the percentage used in calculating the regional adjustment will be set as high as 35 percent; in the ACO's second agreement period in which the regional FFS adjustment is applied and subsequent agreement periods, the percentage will be set as high as 70 percent unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. This approach will further limit the link between an ACO's performance in prior agreement periods and its benchmark in subsequent agreement periods by making the benchmark more reflective of costs in the ACO's regional service area. These changes are intended to strengthen the incentives for ACOs to invest in infrastructure and care redesign necessary to improve quality and efficiency and meet the goals of the Shared Savings Program. In response to comments, we are finalizing a modification that will moderate the phase-in of the regional FFS adjustment for ACOs that have higher costs than their region and for which the regional adjustment will reduce the ACO's benchmark. In such cases, the weight placed on the regional FFS adjustment will be reduced to 25 percent (down from 35 percent) in the first agreement period in which the regional FFS adjustment is applied, and 50 percent (down from 70 percent) in the second. By the third agreement period under the revised rebasing methodology, the weight placed on the regional FFS adjustment will be 70 percent for all ACOs, unless the Secretary determines a lower weight should be applied, as specified through future rulemaking.

Another key modification to the benchmark rebasing methodology involves refining certain calculations that currently rely on national FFS expenditures and corresponding trends so that they are instead determined according to county FFS trends observed in each ACO's unique assignment-weighted regional service area. Annual average per capita costs will be tabulated for assignable FFS beneficiaries in each county. For each ACO, a regional weighted average

expenditure will be found by applying ACO assigned-beneficiary weights to the average expenditures tabulated for each county. Changes in an ACO's regional service area average per capita expenditures (and relative risk reflected in associated HCC risk scores) will define a regional trend specific to each ACO's region. This regional trend will be utilized in two specific areas of the existing benchmark methodology to replace the: (1) National expenditure trend in calculations establishing the ACO's rebased historical benchmark; and (2) existing national "flat dollar" growth amount for updating the rebased historical benchmark for each performance year.

By replacing the national average FFS expenditure trend and "flat dollar" update with trends observed for county level FFS assignable beneficiaries in each ACO's unique assignment-weighted regional service area, benchmark calculations will be better structured to account for exogenous trend factors particular to each ACO's region and the pool of potentially-assignable beneficiaries therein (for example, higher trend due to a particularly acute flu season or an unusually large area wage index adjustment or change).

Although the policy will have mixed effects—increasing or decreasing benchmarks for ACOs in various circumstances—an overall increase in program savings will likely result from taking into account service-area trends in benchmark calculations. In some cases lower benchmarks will be produced, preventing shared savings payments to certain ACOs for whom national average trends and updates would have provided higher updated benchmarks. For other ACOs, such a policy will be more sensitive to regional circumstances outside of the ACO's control causing higher trends for the ACO's service area. In such cases, a higher benchmark could improve program cost savings in the long run by reducing the likelihood the ACO would choose to drop out of the program because a shared loss would otherwise have been assessed due to exogenous factors unrelated to the ACO's changes in care delivery.

In addition, applying the regional trend as a percentage (rather than "flat dollar") when updating the benchmark to a performance year basis is anticipated to further reduce program costs by improving the accuracy of updated benchmarks, particularly for ACOs that have historical benchmarks significantly below or above average. The November 2011 final rule discussed the risk that large nominal "flat dollar" growth updates could compound over an agreement period to excessively inflate benchmarks for ACOs with relatively low historical benchmark cost and could lead to predictable bias and resulting cost for selective participation in the program (76 FR 67964). Such risk has not materialized in program experience to date, largely due to the historically low national program trend used to update ACO benchmarks through the first 3 years of the program. However, the per capita trend for the Medicare FFS program is anticipated to be higher in future years associated with the period governed by this final rule in contrast to the relatively moderate growth in cost experienced over the first 3 years of the program's implementation.[3] The changes to the methodology for updating the benchmark included in this final rule will apply regional trends to update ACO benchmarks and therefore prevent the increased program cost the current update methodology risks by employing an average "flat dollar" update that compounds over the 3 years of an ACO's agreement period.

Program participation and ACO beneficiary assignment are not homogenously distributed geographically. ACOs tend to have service areas overlapping those of other ACOs in the same urban or suburban market(s). Therefore, to the extent that ACOs in these areas produce significant reductions in expenditures, a greater proportion of such savings will affect ACO-service-area trends than the average effect felt at the national program level, effectively reducing the average ACO's updated benchmark compared to what the use of a national trend alone would have produced. While such effect has the potential to reduce program costs by reducing net shared savings payments it could be seen as a disadvantage to participating organizations in "ACO-heavy regions" that manage to broadly increase efficiency at the overall regional market level.[4] However, on the whole, we anticipate this effect to be a reasonable trade-off that will not prevent an overall improvement in the incentive for ACOs to improve efficiency in care delivery in the context of periodic benchmark rebasing as a result of the policies adopted in this final rule. As described previously in this rule, we acknowledge the potential advantages of alternative approaches to determining benchmark updates, for example utilizing the national growth rate adjusted for regional price variation, and we anticipate exploring such approaches in future rulemaking.

Additionally, we anticipate significant program savings will result from ending the policy from the June 2015 rule under which savings generated in the previous agreement period are taken into account when resetting the benchmark in an ACO's second or subsequent agreement period. However, savings from this modification are not wholly retained by the program but are largely redistributed to ACOs that are measured to have demonstrated efficiency in a more standardized way, using a regional FFS adjustment to their benchmarks. As commenters on the 2016 proposed rule noted, roughly two-thirds of ACOs in the 2014 public use data released in conjunction with the 2016 proposed rule showed lower expenditures than their county-weighted FFS averages and would therefore likely benefit from the regional FFS adjustment.

Changes to the existing benchmark calculations described previously are expected to benefit program cost savings by producing rebased benchmarks with improved accuracy (for example, reflecting regional trends rather than national average trends and 'flat dollar' updates) and of somewhat lower per capita cost on average (due to removing the effect of the savings adjustment to the rebased benchmark and because regional trend calculations typically reflect a higher proportion of ACO assigned beneficiary experience than national average trend calculations). However, such savings are expected to be partly offset by increasing shared savings payments to ACOs benefiting from the adjustment to the rebased historical benchmark to reflect a portion of the difference between the average per capita expenditure amount for the ACO's regional service area and the ACO's rebased historical benchmark amount. This trade-off reflects our intent to strengthen the reward for attainment of efficiency in an absolute sense, complementing the existing program's focus on rewarding improvement relative to an ACO's recent baseline.

[3] Traditional fee-for-service Medicare Part A and B annual per capita cost trend is expected to reach approximately 5 percent in 2019, as detailed in the 2017 Medicare Advantage Early Preview accessible at: *https://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/EarlyPreview2017GrowthRates.pdf.*

[4] Similarly, certain regions may be targeted for other care delivery reforms, for example certain Center for Medicare and Medicaid Innovation models. A downward bias on an ACO's benchmark could be felt to the extent that such activity reduces expenditures for beneficiaries in the ACO's region but not in a proportional way within the ACO's assigned population. Such scenarios are more likely when competing models are specifically targeted at beneficiaries not assigned to an ACO.

Making a regional adjustment to the ACO's rebased historical benchmark will strengthen an ACO's incentives to generate and maintain efficient care delivery over the long run by weakening the link between an ACO's prior performance and its future benchmark. This adjustment is expected to marginally increase program participation in agreement periods where risk (Track 2 or 3) is mandatory for an ACO since a significant portion of ACOs will have knowledge that a favorable baseline expenditure comparison to their FFS region will mitigate their risk of being assessed a shared loss in a subsequent agreement period. It is also expected to reduce the frequency with which ACOs in Track 2 or 3 drop out of the program during an agreement period because such ACOs will have somewhat greater certainty regarding the extent to which savings achieved in the prior agreement period will continue to be reflected in a rebased benchmark that incorporates a regional adjustment.

However, more predictable relationships, that is, an ACO's knowledge of its costs relative to FFS expenditures in its region, also create the risk of added cost to the Shared Savings Program by way of—(1) Increasing shared savings payments to ACOs exhibiting expenditures significantly below their region at baseline especially in cases where such differences are related to factors exogenous to efficiency in the delivery of care (where shared savings payments could be further inflated by increased selection of Track 3 over Track 2); (2) potentially losing participation from ACOs with expenditures high above their region at baseline—reducing the opportunity to impact beneficiary populations with the greatest potential for improvements in the cost and quality of care;[5] and (3) from structural shifts by ACOs in ways that would reduce assignment of relatively high cost beneficiaries and increase assignment of relatively healthy populations or shift the geography of their service area to similarly effect a more favorable benchmark adjustment. A primary uncertainty and significant potential concern is whether complex patients will continue to have their care successfully coordinated by ACO providers/suppliers under the revised benchmark methodology. If the regional adjustment results in unattainable benchmarks for ACOs serving at-risk and medically complex populations then the program would likely exhibit decreasing participation from providers serving populations where the greatest potential for savings through better care coordination and quality improvement would otherwise be present and therefore we would expect significantly lower savings for the program than currently anticipated.

In addition to the uncertainty with respect to the relationship of the potential offsetting effects noted previously, there remains broader uncertainty as to the number of ACOs that will participate in the program (especially under performance-based risk in Track 2 or Track 3), provider and supplier response to financial incentives offered by the program, interactions with other value based models and programs from CMS and other payers, and the ultimate effectiveness of the changes in care delivery that may result as ACOs work to improve the quality and efficiency of patient care. Certain ACOs that have achieved shared savings in their first agreement period may find that they receive significantly lower benchmarks under these revisions (especially in cases where regional expenditures are much lower than expenditures for the ACO's assigned beneficiary population). Other ACOs may seek to maximize sharing in savings by selecting Track 3 if they have assigned beneficiaries with significantly lower expenditures at baseline relative to their region. These uncertainties continue to complicate efforts to assess the financial impacts of the Shared Savings Program and result in a wide range of potential outcomes regarding the net impact of the changes included in this final rule on Medicare expenditures.

To best reflect these uncertainties, we continue to utilize a stochastic model that incorporates assumed probability distributions for each of the key variables that will affect the overall financial impact of the Shared Savings Program. A summary of assumptions and assumption ranges utilized in the model includes the following:

- Approximately 100, 100, and 200 ACOs will consider renewing in 2017, 2018, and 2019, respectively.
- ACOs will choose not to renew if—
  - ++ Under the current policy: The ACO's gross loss in the prior performance year was 5 percent or greater; or
  - ++ Under the policies included in this final rule: The ACO's gross loss is 3 percent or greater in the prior performance year after accounting for the expected effect of the revised rebasing methodology (for example, considering differences between the ACO's spending and that of its region) and adjusting for ACO participant changes that result in baseline cost reduction of 2 percent on average (see discussion elsewhere in this final rule).

In either scenario, the thresholds are calibrated to approximate the level of baseline loss an ACO would correlate to an expected shared loss from its rebased benchmark. The magnitude of the loss is roughly equal to the revenue ACO participating physicians may have gained from the 5 percent incentive payment under MACRA[6] that is potentially available to physicians and certain other practitioners in certain ACOs for participation in the Shared Savings Program. The policies included in this final rule are assumed to result in a lower tolerance for renewal after a prior agreement period loss because the regional adjustment to the rebased benchmark is expected to be more consistent from year to year whereas the current rebasing methodology would be expected to generate a higher benchmark reflecting to a greater degree the actual spending from the prior agreement period that led to the prior loss. However, ACOs that do renew under the policies included in this final rule are expected to be more likely to remain in the program for the entire agreement period because the benchmark adjustment improves the likelihood that favorable changes to the methodology for rebasing the benchmark that led the ACO to renew its agreement will continue to be evidenced in future performance years.

- Renewing ACO will choose higher risk in Track 3 if—
  - ++ Under the current policies: The ACO's gross savings in prior performance year are 4 percent or greater; or
  - ++ Under the policies included in this final rule: The ACO's prior performance year gross savings adjusted by regional expenditures are 2 percent or greater.

In either scenario, similar to the renewal assumption, policies included in the final rule offer greater certainty that adjusted prior performance will correlate to future performance and therefore the threshold for selecting

[5] Early program results indicate that ACOs with expenditures significantly above their risk-adjusted FFS regional average have produced greater than average reductions in expenditures than ACOs with low baseline expenditures relative to their region; however it is not yet evident that such early savings achieved for such relatively high cost populations are likely to grow to an extent that their expenditures would reach parity with their region.

[6] The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) established new incentives to encourage physicians and certain other practitioners to participate in alternative payment models; pending final rulemaking, such incentive payments may equate to approximately 5 percent of physician fee schedule revenue to eligible clinicians participating in certain qualifying ACOs.

Track 3 is lower than what is assumed for the baseline scenario.

• Marginal gross savings will increase by between 0.0 percent to 1.0 percent for ACOs selecting higher performance-based risk in Track 3 and between 0.0 percent to 0.2 percent for all ACOs due to the adjusted rebasing methodology. These ranges were chosen to encompass a range of relative savings rates observed for performance-based risk accepted by ACOs participating in the Pioneer ACO Model relative to Shared Savings Program ACOs, the vast majority of which have elected to participate under the one-sided shared savings model (Track 1).

• ACOs experiencing a loss during the rebased agreement period are assumed to drop out prior to the second or third performance year if a shared loss from the prior performance year exceeds 2 percent. While Pioneer ACO Model experience would predict a lower tolerance for remaining in the program after a loss, 2 percent was chosen to approximate the incentive payment under MACRA that may be made available (pending final rulemaking) to physicians and certain other practitioners participating in ACOs in Track 2 and Track 3, which was not available to participants in Pioneer ACOs.

• ACOs will make adjustments to their ACO Participant Lists that reduce their cost relative to region by approximately 2 percent on average. This assumption is based on empirical analysis of 2015 ACO Participant List change requests and resulting impact on ACO baseline expenditures due to changes in assignment; the magnitude of bias is assumed to be greater for ACOs starting higher than their corresponding regional average expenditures and/or with a relatively small assigned beneficiary population and lower for ACOs starting below regional average expenditures and/or with a relatively large assigned beneficiary population.

• ACOs will achieve a mean quality score of 80 percent (based on analysis of Shared Savings Program ACO quality scores in 2013 and 2014).

• ACO savings will have an impact on regional expenditures and trends proportional to ACO assignment saturation of the FFS beneficiary population in the market.

Assumptions for ACO baseline costs, including variations in trends for ACOs and their relationship to their respective regions were determined by analyzing existing ACO expenditures and corresponding regional expenditures back to 2009, the first benchmark year used for the first wave of ACOs that entered the program in 2012. (Note, associated data for the 2012 through 2014 time period were released in conjunction with the 2016 proposed rule to assist commenters in modeling implications of the proposed policy changes.) The empirical time series data were randomly extrapolated to form baseline time series data through the end of the rebased agreement period by applying growth rates to ACOs and their regions by randomly sampling empirical growth rates for ACOs (and their respective regions) with similar characteristics in terms of size and relative cost to region.

Using a Monte Carlo simulation approach, the model randomly draws a set of extrapolated ACO baseline trends and specific values for each variable, reflecting the expected covariance among variables, and calculates the program's financial impact based on the specific set of assumptions. We repeated the process for a total of 1,000 random trials, tabulating the resulting individual cost or savings estimates to produce a distribution of potential outcomes that reflects the assumed probability distributions of the incorporated variables.

Table 4 details our estimate of the 3-year net impact of the policy changes included in this final rule on net FFS benefit claims costs, net shared savings payments to ACOs, and the resulting impact on net Federal cost. Projected impacts are detailed for the first 3 cohorts of ACOs that would be renewing agreements under these changes, renewing respectively for agreement periods starting in 2017, 2018, and 2019. During these agreement periods, a 35 percent weight would be placed on the benchmark expenditure adjustment for regional FFS expenditures (or a lower 25 percent weight in cases where the ACO's rebased costs are higher than its regional FFS average). In such agreement periods, total savings from these changes to the methodology for calculating and trending expenditures during the benchmark period in order to establish and update the benchmark, as well as anticipated savings from marginally increased program participation and improved incentives for creating efficiency, are expected to be greater than the increase in cost of net shared savings payments due to selective participation in response to adjustments that are predictably significant (either favorable or unfavorable) upon examination of how expenditures for the ACO's historically assigned beneficiary population compare to the expenditure level for the ACO's regional service area at baseline. For this reason the net Federal impact is projected to be a savings (that is, a negative change in net Federal cost) for the first 3 years for each renewing cohort, and correspondingly a $110 million net Federal savings for the first 3 calendar years of the projection window, 2017 through 2019. Such median impact on net Federal cost results from a projected increase in savings on net benefit claims costs of $410 million partially offset by a $300 million increase in net shared savings payments to ACOs. The last two rows of Table 4 enumerate the range of potential net Federal cost impacts our modeling projected, specifically the 10th percentile of simulation outcomes (a $240 million net Federal increase in cost) and the 90th percentile ($480 million net Federal savings). Overall, approximately two-thirds of trials resulted in combined net Federal savings over 2017 to 2019.

The estimate for this final rule reflects $10 million higher net Federal cost than the impact estimated for the 2016 proposed rule. As a result of finalizing a phase-in approach that reduces the weight for the regional FFS adjustment during an ACO's first and second agreement periods under the revised rebasing methodology in cases where it decreases the ACO's rebased benchmark, we estimate: (1) An increase in shared savings payments net of shared losses of $50 million over 2017 through 2019 compared to the corresponding estimate in the proposed rule, mainly because of increases to certain ACOs' rebased benchmarks; (2) a decrease in gross claims costs due to increased participation of $40 million relative to the corresponding estimate in the 2016 proposed rule.

TABLE 4—ESTIMATED 3-YEAR IMPACT OF CHANGES (INCLUDING A MAXIMUM 35 PERCENT WEIGHT USED IN DETERMINING REGIONAL ADJUSTMENT AMOUNT) ON NET BENEFIT COSTS, NET PAYMENTS TO ACOS, AND OVERALL NET FEDERAL COSTS CYS 2017 THROUGH 2019

[Impacts are Median Results Unless Otherwise Noted]

Calendar year	2017	2018	2019	3-Year total
Impact on Net Claims Costs ($Million):				
ACOs Renew 2017	−70	−70	−80	−220
ACOs Renew 2018		−60	−70	−130
ACOs Renew 2019			−60	−60
All ACO Total	−70	−130	−210	−410
Impact on Net Shared Savings Pay ($Million):				
ACOs Renew 2017	50	40	40	130
ACOs Renew 2018		40	40	80
ACOs Renew 2019			90	90
All ACO Total	50	80	170	300
Overall Impact on Net Federal Costs ($Million):				
ACOs Renew 2017	−20	−30	−40	−90
ACOs Renew 2018		−20	−30	−50
ACOs Renew 2019			30	30
All ACO Total	−20	−50	−40	−110
Low (10th %-ile)	20	50	170	240
High (90th %-ile)	−70	−160	−250	−480

The stochastic model and resulting financial estimates were prepared by the CMS Office of the Actuary (OACT). The median result of $110 million increase in savings in net Federal cost is a reasonable "point estimate" of the impact of the changes included in this final rule on the Shared Savings Program during the period between 2017 through 2019. However, we emphasize the possibility of outcomes differing substantially from the median estimate, as illustrated by the estimate distribution. Accordingly, this RIA presents the costs and benefits of this final rule to the best of our ability. As further data emerge and are analyzed, we may improve the precision of future financial impact estimates.

To the extent that the Shared Savings Program will result in net savings or costs to Part B of Medicare, revenues from Part B beneficiary premiums will also be correspondingly lower or higher. In addition, because MA payment rates depend on the level of spending within traditional FFS Medicare, savings or costs arising from the Shared Savings Program will result in corresponding adjustments to MA payment rates. Neither of these secondary impacts has been included in the analysis shown.

a. Effects of the Final Rule in Subsequent Agreement Periods

For an ACO's third agreement period (that is, the second rebased agreement period under the revised benchmarking methodology, for example the 3-year period covering 2020 through 2022 for ACOs renewing for a second agreement period in 2017) the weight on the adjustment to the benchmark for regional FFS expenditures will increase to 70 percent (except in cases where the ACO's rebased costs are higher than costs for its region in which case the weight will increase to 50 percent for the second rebased agreement period). Increasing the weight of the adjustment reduces the strength of the link between an ACO's effect on the cost of care for its assigned beneficiaries and the benchmark calculated for an ensuing agreement period. Weakening this link may increase the incentive for ACOs to make investments in care delivery reforms because resulting potential savings will be more likely to be rewarded over multiple agreement periods rather than being 'baked' back into the benchmark at the next rebasing. On the other hand, efficiency gains will need to be significantly greater than those currently achieved by the ACOs participating in the program to result in budget neutrality by sufficiently offsetting increased shared savings payments to ACOs favored by a regional adjustment with a 70 percent weight. As discussed previously, we are setting the maximum weight of the regional adjustment at 70 percent for ACOs with lower costs than their region in their second agreement period under the revised benchmarking methodology, and for all ACOs in their third and all subsequent agreement periods under this methodology, unless the Secretary determines a lower weight should be applied, as specified through future rulemaking. This determination, which could be made in advance of the agreement period beginning January 1, 2020, may be based on an assessment of the effects of the regional adjustment (and other modifications to the program made under this rule) on the Shared Savings Program such as: The effects on net program costs; the extent of participation in the Shared Savings Program; and the efficiency and quality of care received by beneficiaries.

ACOs demonstrate a wide range of differences in expenditures relative to risk adjusted expenditure levels for their region (for the sample of roughly 200 ACOs that started in the program in 2012 or 2013 the percentage by which ACO per capita expenditures exceed or are exceeded by their respective risk-adjusted regional per capita expenditures varies with a standard deviation of approximately 10 percent). Transitioning to a 70 percent weight to calculate the regional adjustment effectively down-weights the savings generated by the changes we are making to the existing benchmark calculation, since an ACO's benchmark would have increased dependence on the regional FFS expenditures and correspondingly a decreasing dependence on the historical expenditures for the ACO. At the same

time, increasing the weight used to calculate the regional adjustment could result in selective participation and increases in shared savings payments to ACOs that have low beneficiary expenditures at baseline. If that were to happen, the overall anticipated cost of net shared savings payments would rise and outweigh the anticipated potential gains from additional care management and associated improvements in net benefit costs spurred by the improved incentives for efficiency generated by partially delinking ACO benchmarks from their own historical costs.

An element of the regional adjustment which becomes apparent when reviewing the accompanying data files and the performance of ACOs in 2013 and 2014 (for those roughly 200 ACOs that started in 2012 and 2013) is that ACOs that are above or below the regional service area expenditure amount used to adjust their rebased benchmark in 1 year tend to have a similar bias in the following year. Placing a 100 percent weight on the regional service area expenditure amount illustrates this. Of the 50 ACOs that were the furthest below their estimated regional service area expenditure level in 2013, all were at least 10 percent below and their average expenditures were roughly 15 percent below the expenditures for the region. In the subsequent year, 2014, none of these ACOs exceeded its regional service area expenditure level, and the average expenditure difference only moved by about 2 percentage points. Similar yet less glaring results occur in those ACOs above their regional service area expenditure level, with the 50 ACOs the furthest above their regional service area expenditure level having costs an average of approximately 10 percent above the regional service area expenditure level in 2013—an average difference for the group that only moved by about 2 percentage points the following year.

Of the approximately 150 ACOs that were more than 0.5 percent below their regional service area expenditure level, only about 10 percent were above their regional service area expenditure level in the following year. Again, ACOs above their regional service area expenditure level follow a similar pattern, though less drastic. Of the ACOs above their regional service area expenditure level by more than 0.5 percent, approximately 25 percent performed below their regional service area expenditure level in the following year. Notwithstanding the potential for behavioral changes, this illustrates that for a significant portion of existing ACOs, there is evidence of a bias when compared to their regional service area expenditure level and that bias is likely to be predictable over time. We have accounted for cost associated with program selection for ACOs favored by such bias and considered attrition in participation by ACOs disfavored by such bias. However, for some ACOs of the latter condition, it may take multiple years to sufficiently redesign their care delivery processes in order to generate savings substantial enough to offset high expenditures relative to their region at baseline. We note that this analysis is based on data from the first 2 years of program operations, and longer term effects may emerge to mitigate bias for certain ACOs with high expenditures at baseline.

Additionally, the passage of MACRA established new incentives to encourage providers to participate in alternative payment models. Paying for value and incentivizing better care coordination and integration is a top priority for us, and we have been implementing policies that encourage a shift towards paying for value instead of volume. MACRA provides additional tools to encourage care integration and value-based payment. Although implementation of MACRA is ongoing and many details are still to be finalized through rulemaking, the incentives created by MACRA could result in increased market pressure on providers to participate in ACOs. This may lower the risk of selective participation and potentially lead to higher expected net Federal savings.

Emerging data will be monitored in order to provide additional information for updating projections as part of the use of a higher percentage (70 percent) in calculating the regional adjustment amount for ACOs entering a third or subsequent agreement period. For example, if ACOs respond by generating new efficiencies in care beyond those that are anticipated, and/or potential selective participation responses are lower than expected, then a 70 percent weight could potentially be associated with revised expectations regarding net costs or net savings. However, it is also possible that gains in efficiency will fail to materialize and/or selective participation and other behavioral responses will increase cost beyond the level that is currently anticipated; in such scenario, we would consider further rulemaking as necessary to protect the Medicare Trust Funds (for example, in order to apply a lower percent weight in calculating the regional adjustment amount).

b. Further Considerations

This final rule introduces regional expenditure trends and a regional adjustment to the rebased historical benchmark that includes prospective HCC risk adjustment to ensure trending and the regional adjustment appropriately account for differences in risk between an ACO's assigned beneficiary population and its regional service area assignable beneficiary population. Current program experience supports the hypothesis that the current approach of applying conditional reliance on demographic risk ratios for a continuously-assigned subset of beneficiaries for purposes of adjusting the historical benchmark to a performance year basis provides a reasonable balance between accounting for changes in risk of the population and limiting the risk that coding intensity shifts would artificially inflate ACO benchmarks. This final rule retains this policy for adjusting the historical benchmark to a performance year basis.

However, for the changes involving the use of regional expenditure trends (to trend forward the benchmark years and to update the ACO's rebased historical benchmark) and the adjustment to the rebased benchmark for expenditures in the ACO's regional service area, we are not implementing any additional explicit policy for limiting coding intensity sensitivity at this time (beyond what is described in section II.A of this final rule), but rely on the difference between the average prospective HCC scores for the ACO's assigned beneficiary population and its regional service area assignable beneficiary population. Regional trend calculations for the rebased historical base years are expected to mitigate the risk of sensitivity to potential coding intensity efforts by ACO providers/suppliers for several reasons. The benchmark years for the new agreement period correspond to performance years from a prior agreement period where incentives for coding intensity changes were already actively limited by the continuously assigned demographic alternative calculation. In addition, coding intensity shifts that are uniform over a prior agreement period would not affect the trending of historical expenditures from the first 2 years to the third year of such period because such historical adjustments are only sensitive to risk score changes between the first 2 years and the third year of such baseline period. The CMS–HCC model has been updated for 2016 in ways that reduce its sensitivity to subjective coding levels for chronic conditions that are known to have historically accounted for differences in coding levels for MA beneficiaries relative to FFS Medicare. Lastly, ACOs tend to neighbor each other in markets where any ACO coding intensity shifts would then likely drive similar market-wide effects (including effects from market spillover affecting diagnosis codes submitted for patients receiving care from ACO providers/suppliers but who are not ultimately assigned to an ACO) that would tend to net out any coding shifts in the calculation of risk scores relative to the ACO's region. This final consideration also offers a degree of reassurance that the calculation of the adjustment reflecting the difference between an ACO's expenditures relative to its region would be less likely to be materially biased by ACO coding intensity shifts.

We intend to carefully monitor emerging program data to assess whether the overall benchmark methodology as revised remains appropriately balanced between sensitivity to real changes in assigned population risk and protection from making shared savings payments due to potential coding intensity shifts. Of particular concern for close monitoring (and potential future rulemaking changes, if necessary) are the unique circumstances related to the use of a prospective beneficiary assignment methodology in Track 3 and the associated benchmark calculations for Track 3 ACOs. Prospective assignment creates an overlap between the claims considered for purposes of determining beneficiary assignment to the ACO and the period in which diagnosis submissions from claims are utilized for calculating a beneficiary's prospective HCC score for the year during which the beneficiary will be assigned to the ACO. A related area for monitoring is whether regional FFS expenditures tabulated at a county level for assignable beneficiaries determined using the assignment methodology used in Track 1 and Track 2 would provide an unbiased comparison to a beneficiary population assigned under the prospective assignment methodology for Track 3. For these reasons, as part of our monitoring we will consider the potential necessity to undertake rulemaking in order to make adjustments to regional calculations for Track 3 ACOs to avoid biasing the results.

2. Effects on Beneficiaries

As explained in more detail previously, we believe the changes included in this final rule will provide additional incentive for ACOs to improve care management efforts and maintain program participation. In addition, ACOs with low baseline expenditures relative to their region are more likely to transition to and sustain participation in a risk track (Tracks 2 or 3) in future agreement periods. Consequently, the changes in this final rule will also benefit beneficiaries through broader improvements in accountability and care coordination (such as through the use of the waiver of the 3-day stay SNF rule by Track 3 ACOs) than would occur under current regulations. Also, in this final rule we are finalizing a modified version of our proposal in order to provide a more gradual phase-in of the regional adjustment for ACOs with higher costs than their region. It is anticipated this modification will improve the ability of ACOs serving at-risk and medially complex populations to continue to participate and succeed in the program over the medium to long run.

Additionally, we intend to continue to analyze emerging program data to monitor for any potential unintended effect that the introduction of a regional adjustment to the ACO's rebased historical benchmark could potentially have on the incentive for ACOs to serve vulnerable populations (and for ACOs to maintain existing partnerships with providers and suppliers serving such populations). Further refinements that could be addressed in future rulemaking if monitoring ultimately revealed such problems could include reducing the percentage applied to the adjustment to the benchmark for regional expenditures, introducing additional adjustments (for example, enhancements or complements to the prospective CMS–HCC risk model) to control for exogenous factors impacting an ACO's costs relative to its region, or otherwise modifying the benchmark calculation to improve the balance between rewarding attainment and improvement in the efficiency and quality of care delivery for the full spectrum of beneficiaries enrolled in FFS Medicare.

3. Effects on Providers and Suppliers

We anticipate that including an adjustment to an ACO's historical benchmark reflecting a percentage of the difference between the ACO's regional service area average per capita expenditure amount and the ACO's rebased historical benchmark amount will provide an additional incentive for ACOs to make investments to improve care coordination. At the same time, this change in methodology also shifts the benchmark policy focus from rewarding improvement in trend relative to an ACO's original baseline to an incentive that places more weight on attainment of efficiency—how an ACO compares in absolute expenditures to its region. Certain ACOs that joined the program from a high expenditure baseline relative to their region and that showed savings under the first agreement period benchmark methodology will likely expect lower benchmarks and greater likelihood of shared losses under a methodology that includes at least a 25 percent weight on the regional expenditure adjustment. Additionally, certain ACOs that joined the program with relatively low expenditures relative to their region may now expect significant shared savings payments even if they failed to generate shared savings in their first agreement period under the existing benchmark methodology.

4. Effect on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most physician practices, hospitals, and other providers are small entities either by virtue of their nonprofit status or by qualifying as a small business under the Small Business Administration's size standards (revenues of less than $7.5 to $38.5 million in any 1 year; NAIC Sector-62 series). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's Web site at *http://www.sba.gov/content/small-business-size-standards*. For purposes of the RFA, approximately 95 percent of physicians are considered to be small entities. There are over 1 million physicians, other practitioners, and medical suppliers that receive Medicare payment under the Physician Fee Schedule.

Although the Shared Savings Program is a voluntary program and payments for individual items and services will continue to be made on a FFS basis, we acknowledge that the program can affect many small entities and have developed our rules and regulations accordingly in order to minimize costs and administrative burden on such entities as well as to maximize their opportunity to participate. For example, networks of individual practices of ACO professionals are eligible to form an ACO. Also, the use of a MSR under Track 1, and, if elected by the ACO under Tracks 2 and 3, that varies by the size of the ACO's population that is calculated using a lower confidence

interval allows the MSRs (and, if applicable, MLRs) for smaller ACOs to be significantly lower than they would have been had CMS applied the higher confidence intervals used to derive MSRs (and MLRs) applicable to medium and large size ACOs. Further, eligible ACOs may remain under the one-sided model for a second agreement period to give them additional time to gain experience with the accountable care model before undertaking performance-based risk.

Small entities are both allowed and encouraged to participate in the Shared Savings Program, provided the ACO has a minimum of 5,000 assigned beneficiaries, thereby potentially realizing the economic benefits of receiving shared savings resulting from the utilization of enhanced and efficient systems of care and care coordination. Therefore, a solo, small physician practice or other small entity may realize economic benefits as a function of participating in this program and the utilization of enhanced clinical systems integration, which otherwise may not have been possible. We believe the policies included in this final rule, including facilitating the transition to performance-based risk (see section II.C of this final rule), may further encourage participation by small entities. For example, smaller entities (among others) that are risk averse but ready to transition to a performance-based risk track may elect the option that would defer by one year their entrance into a two-sided model. Once under a two-sided model, ACOs will have the opportunity for greater reward compared to participation under the one-sided model although they will be at risk for shared losses.

As detailed in this RIA, total median shared savings payments net of shared losses are expected to increase by $300 million over the 2017 to 2019 period as a result of changes that will increase benchmarks for certain ACOs participating in the Shared Savings Program and therefore increase the average small entity's shared savings revenue. However, the impact on any single small entity may depend on its relationship to costs calculated for the counties comprising its regional service area.

5. Effect on Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. Although the Shared Savings Program is a voluntary program, this final rule will have a significant impact on the operations of a substantial number of small rural hospitals. We are changing our regulations such that benchmark trend calculations and adjustments for ACOs that include rural hospitals as ACO participants will reflect FFS costs and trends in the ACO's regional service area. Overall, we expect the average ACO to receive greater shared savings revenue under these changes ($300 million greater net sharing anticipated over 2017 through 2019). However, the impact on individual ACOs and their participating small rural hospitals may differ from the program average.

Comment: A commenter acknowledged that the impact on small entities and rural hospitals remains to be seen and suggested that CMS monitor the effects of the benchmarking changes to ensure that small entities and hospitals, particularly in rural and underserved areas, are not placed at a disadvantage.

Response: We appreciate the commenter's suggestion. This final rule describes a number of issues for monitoring and future consideration with respect to the changes being finalized to the methodology for resetting the ACO's benchmark, including: The approach to calculating regional FFS expenditures (in particular in relation to the methodology for defining the ACO's regional service area and use of assignable beneficiaries for determining county FFS expenditures), factors for consideration in relation to the weight applied in calculating the regional adjustment to the ACO's rebased historical benchmark, and the impact of coding initiatives on ACO benchmarks. This monitoring will include considerations relevant across the ACOs participating in the Shared Savings Program, which represent diverse interests by virtue of their ACO participant composition, patient populations, locations, and organizational structures, among other factors.

Comment: Although not discussing the specifics of data modeling, comments from stakeholders representing rural ACOs supported moving to the use of regional comparison data when resetting ACO benchmarks, indicating their belief that this approach creates a more meaningful comparison group and better reflects the health care environment in which the ACO operates.

Response: We appreciate commenters' feedback and also share commenters' beliefs that the revised rebasing methodology may benefit ACOs, including ACOs located in rural areas, by the increasing the weight on regional FFS expenditures in calculating the benchmark, and moving away from benchmarks based on the ACO's historical spending.

6. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that is approximately $146 million. This final rule does not include any mandate that would result in spending by state, local or tribal governments, in the aggregate, or by the private sector in the amount of $146 million in any 1 year. Furthermore, participation in this program is voluntary and is not mandated.

D. Alternatives Considered

As indicated in the June 2015 final rule (see 80 FR 32795 through 32796), and as discussed in the 2016 proposed rule (see 81 FR 5833 through 5834), we also considered an alternative method for establishing benchmarks for subsequent agreement periods that would incorporate regional trends. Under such method we would apply the regional trend to inflate an ACO's historical benchmark from the prior (that is, first) agreement period to represent expenditures expected for the most recent base year preceding the ACO's subsequent agreement period. This approach would therefore be delinked from an ACO's performance over the prior agreement period (except to the extent an ACO's assigned population impacts its wider regional trend)—improving the incentive for ACOs to invest in efforts to improve efficiency. In contrast to the methodology for calculating a regional adjustment established with this rule, it would also retain sensitivity to baseline costs demonstrated by beneficiaries assigned to the ACO in the prior agreement period, potentially mitigating concerns regarding certain types of program selection and possibly providing a more incremental transition for ACOs familiar with the existing benchmark methodology.

Specifically it was estimated that blending an ACO's rebased benchmark with its prior (first) historical benchmark inflated by a regional trend would produce an overall budget neutral change in net program cost for the subsequent agreement period if the blending were accomplished via a 70 percent weight on an ACO's trended prior benchmark and a 30 percent weight on its rebased benchmark. While such blend would reasonably be expected to result in an improvement in program incentives for ACOs to generate new efficiencies in care delivery despite rebasing concerns, other considerations impacted the decision to ultimately set forth the different approach detailed in this final rule.

Primarily, program experience to date indicates that many ACOs make significant changes to their provider composition over the course of an agreement period. Attempting to lock-in a first historical benchmark that would be trended to form 70 percent of the historical benchmark for future agreement periods would invariably be complicated and in many cases biased by changes in provider composition made years after the ACO's first entry into the program. Such operational complications and potential biases would invariably grow in magnitude for subsequent agreement periods, necessitating modifications to future rebasing, for example by reducing the weight on the regionally-trended component of the benchmark or requiring the regionally trended component always to be sourced from the rebased benchmark from the prior agreement period—changes that would likely dampen the incentive for ACOs to make significant investments in redesigning care in efficient ways. Furthermore, the rebasing methodology adopted in this final rule has the comparative advantage of linking the regional adjustment to an ACO's historical expenditures to its region's contemporary standardized cost as opposed to the level of cost (and associated efficiency) that happened to be exhibited in an ACO's prior historical benchmark period. Therefore, it was determined that the approach we are adopting in this final rule generally offers a less complicated and more consistent and equitable mechanism for adjusting ACO rebased benchmarks to reflect regional expenditures over the long term.

E. Compliance With Requirements of Section 1899(i)(3)(B) of the Act

As previously discussed in this final rule, certain policies, including both existing policies and new policies adopted in this final rule, rely upon the authority granted in section 1899(i)(3) of the Act to use other payment models that the Secretary determines will improve the quality and efficiency of items and services furnished to Medicare FFS beneficiaries. Section 1899(i)(3)(B) requires that such other payment model must not result in additional program expenditures. Policies falling under the authority of section 1899(i)(3) of the Act include: Performance-based risk, refining the calculation of national expenditures used to update the historical benchmark to use the assignable subpopulation of total FFS enrollment, updating benchmarks with regional trends as opposed to national average absolute growth in per capita spending, and adjusting performance year expenditures to remove IME, DSH, and uncompensated care payments.

A comparison was constructed between the projected impact of the payment methodology that incorporates all changes and a hypothetical baseline payment methodology that excludes the elements described previously that require section 1899(i)(3) of the Act authority—most importantly performance based risk in Tracks 2 and 3 and updating benchmarks using regional trends. The hypothetical baseline was assumed to include adjustments allowable under section 1899(d)(1)(B)(ii) of the Act including the provision from the June 2015 final rule whereby an ACO's rebased benchmark might include an adjustment reflecting a portion of savings measured during the ACO's prior agreement period and the 35 percent weight used in calculating the regional adjustment to the ACO's rebased historical benchmark in this rule (or 25 percent weight should such regional adjustment be negative, as specified in this rule). The stochastic model and associated assumptions described previously in this section were adapted to reflect the agreement period spanning 2017 through 2019 for roughly 100 ACOs expected to renew in 2017. Such analysis estimated approximately $130 million greater average net program savings under the alternative payment model that includes all policies that require the authority of section 1899(i)(3) than would be expected under the hypothetical baseline in total over the 2017 to 2019 agreement period cycle.

Furthermore, approximately 79 percent of stochastic trials resulted in greater or equal net program savings. The alternative payment model, as adopted in this final rule, is projected to result in both greater savings on benefit costs and net payments to ACOs. Participation in performance-based risk under Track 2 and Track 3 is assumed to improve the incentive for ACOs to increase the efficiency of care for beneficiaries (similar to as assumed in the modeling of the impacts, described previously). Such added savings are partly offset by lower participation associated with the requirement to transition to performance-based risk. Correspondingly, net shared savings payments are also expected to be greater under the alternative payment model under section 1899(i)(3) of the Act than under the hypothetical baseline, mainly driven by the higher sharing rates and potentially lower minimum savings requirements in Track 2 and Track 3, but partly offset mainly by lower benchmarks resulting from ending the policy adopted in the June 2015 final rule of adding a portion of savings to the rebased benchmark, the use of more accurate regional benchmark updates, and new shared loss revenue.

Additionally, we projected a lower net federal savings of approximately $10 million would result from using the hypothetical baseline described previously, but without the adjustment to account for a portion of savings generated during the ACO's prior agreement period, which we eliminated from the hypothetical baseline's rebased benchmarks. We believe ending the adjustment for savings generated in the ACO's prior agreement period will enable us to place a greater weight on the amount of the regional adjustment in the future, while not over crediting or penalizing an ACO for its prior performance (discussed in section II.A.2.c of this final rule). This alternative hypothetical baseline more closely resembles the future hypothetical baseline that would be used in our analysis of the application of a higher weight in calculating the regional adjustment in subsequent agreement periods (for example, if we undertake future rulemaking further amending the methodology for rebasing and updating the benchmark, as discussed previously in this final rule).

Relative savings projected for the ACOs starting a second agreement period in 2017 participation cycle are reasonably assumed to be proportional for ACOs starting a second agreement period in 2018 and 2019 because the assumptions and parameters would be the same or similar. Accordingly, the requirement under section 1899(i)(3)(B) of the Act that an alternative payment model not result in additional program expenditures is therefore satisfied for the period 2017 through 2019. As discussed elsewhere in this final rule, we will reexamine this projection in the future to ensure that the requirement under section 1899(i)(3)(B) of the Act that an alternative payment model not result in additional program

expenditures continues to be satisfied, taking into account, for example, increasing the weight placed on the regional adjustment to an ACO's rebased historical benchmark, which will increase to 70 percent for an ACO's second (or third for ACOs with higher costs than their region) and subsequent agreement periods under the revised rebasing methodology (unless the Secretary determines a lower weight should be applied, as specified through future rulemaking). In the event that we conclude that the payment model established under section 1899(i)(3) of the Act no longer meets this requirement, we would undertake additional notice and comment rulemaking to make adjustments to the payment model to assure continued compliance with the statutory requirements.

F. Accounting Statement and Table

As required by OMB Circular A–4 under Executive Order 12866, in Table 5, we have prepared an accounting statement showing the change in net federal monetary transfers resulting from provisions of this final rule as compared to baseline.

TABLE 5—ACCOUNTING STATEMENT ESTIMATED IMPACTS

[CYs 2017–2019]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
Impact on Net Federal Cost From Finalized Changes to Medicare Shared Savings Program				
Annualized monetized: Discount rate: 7%	−36.2 million	76.6 million	−155.9 million	Table 4.
Annualized monetized: Discount rate: 3%	−36.5 million	78.5 million	−158.2 million.	
Notes: Amounts are expressed in 2016 dollars.	Negative values reflect reduction in federal net cost resulting from care management by ACOs. Estimates may be a combination of benefits and transfers. To the extent that the incentives created by Medicare payments change the amount of resources society uses in providing medical care, the more accurate categorization of effects would be as costs (positive values) or benefits/cost savings (negative values), rather than as transfers.			

G. Publicly Available Data

In response to requests from ACOs and other stakeholders for data to allow for modeling of proposed changes to the benchmark rebasing methodology, CMS made new data files available through the Shared Savings Program's Web site, to coincide with the issuance of the 2016 proposed rule (*https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Statutes-Regulations-Guidance.html*). These files included: Average per capita county-level FFS spending and risk scores for 3 historical years; and ACO-specific data, on the total number of assigned beneficiaries residing in each county where at least 1 percent of the ACO's assigned beneficiaries reside, for 3 historical years. A listing of all publicly available Shared Savings Program ACO data and ACO performance data sources maintained by CMS is available through the Shared Savings Program Web site (see the guide titled "Medicare Shared Savings Program Publicly available ACO data and ACO performance data sources maintained by CMS" available online at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/index.html*).

Comment: Some commenters modeled the proposed benchmarking changes using the publicly available data files released with the 2016 proposed rule, and other sources of Shared Savings Program performance data, and included remarks about their findings within their comment letters. For example, several comments reflect estimates that approximately two-fifths to two-thirds of ACOs will have their benchmarks upwardly adjusted as a result of the revised rebasing methodology. A commenter described its analysis as indicating some ACOs will experience significant and unexpected swings in their reset historical benchmarks (when comparing the benchmark values resulting from the current methodology versus the revised methodology). Another commenter explained its analysis showed relatively high-cost ACOs face increasing headwinds as their benchmarks converge with their region, whereas relatively low-cost ACOs would have more favorable benchmarks. Another commenter specified that the 35 percent weight used to calculate the regional adjustment for an ACO's first agreement period under the revised rebasing methodology would result in a benchmark reduction of about 2 percent for ACOs with spending one standard deviation above the regional mean, and noted this would be substantial relative to estimated savings.

Response: We appreciate commenters' careful attention to the details of the 2016 proposed rule, modeling of the proposed policies, and informative comments including their analyses. We note that the analyses provided by commenters pertaining to the key change to the methodology—institution of a regional FFS adjustment to the rebased benchmark—are generally in harmony with CMS' calculations in developing the rule and this impact analysis, providing reassurance that the data provided were a sufficient tool to allow the public to analyze the general impact of the new method for rebasing. We took into account commenters' observations regarding ACOs with high baseline costs for which a positive savings adjustment under the prior methodology will be replaced by a negative regional FFS adjustment. By reducing the weight applied to the regional FFS adjustment during the first two agreement periods under the revised rebasing methodology in cases where it lowers ACOs' benchmarks, this final rule will encourage continued participation by certain ACOs with significant potential to generate additional savings despite high baseline costs. We believe this change in policy from the proposed rule addresses concerns raised by commenters and illustrated in their analyses that the regional adjustment could disadvantage certain ACOs that have shown cost savings but may require longer than one agreement period to bring costs down toward the regional average in order to avoid a significant negative adjustment to their rebased benchmarks.

H. Conclusion

The analysis in this section, together with the remainder of this preamble, provides a regulatory impact analysis. As a result of this final rule, the median estimate of the financial impact of the Shared Savings Program for CYs 2017 through 2019 is net federal savings of $110 million greater than what would have been saved if no changes were made. Although this is the best estimate of the financial impact of the Shared Savings Program during CYs 2017 through 2019, a relatively wide range of possible outcomes exists. While approximately two-thirds of the stochastic trials resulted in an increase in net program savings, the 10th and 90th percentiles of the estimated distribution show a net increase in costs of $240 million to net savings of $480 million, respectively.

Overall, our analysis projects that improvements in the accuracy of benchmark calculations, including through the introduction of a regional adjustment to the ACO's rebased historical benchmark, are expected to result in increased overall participation in the program. These changes are also expected to improve the incentive for ACOs to invest in effective care management efforts, increase the attractiveness of participation under performance-based risk in Track 2 or 3 for certain ACOs with lower beneficiary expenditures, and result in overall greater gains in savings on FFS benefit claims costs than the associated increase in expected shared savings payments to ACOs. We intend to monitor emerging results for effects on claims costs, changing participation (including risk for cost due to selective changes in participation), and unforeseen bias in benchmark adjustments due to diagnosis coding intensity shifts. Such monitoring will be used to inform future rulemaking, such as if the Secretary determines that a lower weight should be used in calculating the regional adjustment amount.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 425

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR part 425 as set forth below:

PART 425—MEDICARE SHARED SAVINGS PROGRAM

■ 1. The authority citation for part 425 is revised to read as follows:

Authority: Secs. 1102, 1106, 1871, and 1899 of the Social Security Act (42 U.S.C. 1302, 1306, 1395hh, and 1395jjj).

■ 2. Amend § 425.20 by adding in alphabetical order definitions for "ACO's regional service area", "Assignable beneficiary", and "BY" to read as follows:

§ 425.20 Definitions.

* * * * *

ACO's regional service area means all counties where one or more beneficiaries assigned to the ACO reside.

* * * * *

Assignable beneficiary means a Medicare fee-for-service beneficiary who receives at least one primary care service with a date of service during a specified 12-month assignment window from a Medicare-enrolled physician who is a primary care physician or who has one of the specialty designations included in § 425.402(c).

* * * * *

BY stands for benchmark year.

* * * * *

■ 3. Amend § 425.200 as follows:

■ A. In paragraph (b)(2) introductory text by removing the phrase "all subsequent years" and adding in its place the phrase "through 2016".

■ B. By adding paragraph (b)(3).

■ C. By adding paragraph (e).

The additions read as follows:

§ 425.200 Participation agreement with CMS.

* * * * *

(b) * * *

(3) For 2017 and all subsequent years—

(i) The start date is January 1 of that year; and

(ii) The term of the participation agreement is 3 years, except the term of an ACO's initial agreement period under Track 1 (as described under § 425.604) may be extended, at the ACO's option, for an additional year for a total of 4 performance years if the conditions specified in paragraph (e) of this section are met.

* * * * *

(e) *Optional fourth year.* (1) To qualify for a fourth performance year as described in paragraph (b)(3)(ii) of this section, the ACO must meet all of the following conditions:

(i) Is currently participating in its first agreement period under Track 1.

(ii) Has requested renewal of its participation agreement in accordance with § 425.224.

(iii) Has selected a two-sided model (as described under § 425.606 or § 425.610 of this part) in its renewal request.

(iv) Has requested an extension of its current agreement period and a 1-year deferral of the start of its second agreement period in a form and manner specified by CMS.

(v) CMS approves the ACO's renewal, extension, and deferral requests.

(2) An ACO that is approved for renewal, extension, and deferral that terminates its participation agreement before the start of the first performance year of the second agreement period is—

(i) Considered to have terminated its participation agreement for the second agreement period under § 425.220; and

(ii) Not eligible to participate in the Shared Savings Program again until after the date on which the term of that second agreement period would have expired if the ACO had not terminated its participation, consistent with § 425.222.

§ 425.314 [Amended]

■ 4. Amend § 425.314 by removing paragraph (a)(4).

■ 5. Add § 425.315 to read as follows:

§ 425.315 Reopening Determinations of ACO Shared Savings or Shared Losses to Correct Financial Reconciliation Calculations.

(a) *Reopenings.* (1) If CMS determines that the amount of shared savings due to the ACO or the amount of shared losses owed by the ACO has been calculated in error, CMS may reopen the initial determination or a final agency determination under subpart I of this part and issue a revised initial determination:

(i) At any time in the case of fraud or similar fault as defined in § 405.902; or

(ii) Not later than 4 years after the date of the notification to the ACO of the initial determination of savings or losses for the relevant performance year under § 425.604(f), § 425.606(h) or § 425.610(h), for good cause.

(2) Good cause may be established when—

(i) There is new and material evidence that was not available or known at the time of the payment determination and may result in a different conclusion; or

(ii) The evidence that was considered in making the payment determination clearly shows on its face that an obvious error was made at the time of the payment determination.

(3) A change of legal interpretation or policy by CMS in a regulation, CMS ruling or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening a payment determination under this section.

(4) CMS has sole discretion to determine whether good cause exists for reopening a payment determination under this section.

(b) [Reserved]

■ 6. Amend § 425.602 by:

■ A. Revising the section heading.

■ B. Revising paragraphs (a)(4), (5), and (8).

■ C. Adding paragraph (a)(9).

■ D. Revising paragraphs (b)(1) and (2).

■ E. Removing paragraph (c).

The revisions and additions read as follows:

§ 425.602 Establishing, adjusting, and updating the benchmark for an ACO's first agreement period.

(a) * * *

(4) Truncation of expenditures:

(i) For agreement periods beginning before 2017—

(A) Truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures as determined for each benchmark year in order to minimize variation from catastrophically large claims; and

(B) For the 2017 performance year and any subsequent performance years in agreement periods beginning in 2014, 2015 and 2016, the benchmark is adjusted to reflect the use of assignable beneficiaries in determining the 99th percentile of Medicare fee-for-service expenditures for purposes of truncating expenditures for assigned beneficiaries during each benchmark year as specified in paragraph (a)(4)(ii) of this section.

(ii) For agreement periods beginning in 2017 and subsequent years, truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to each benchmark year in order to minimize variation from catastrophically large claims.

(5) Trending expenditures:

(i) For agreement periods beginning before 2017—

(A) Using CMS Office of the Actuary national Medicare expenditure data for each of the years making up the historical benchmark, determines national growth rates and trends expenditures for each benchmark year (BY1 and BY2) to the third benchmark year (BY3) dollars.

(B) To trend forward the benchmark, CMS makes separate calculations for expenditure categories for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(C) For the 2017 performance year and any subsequent performance years in agreement periods beginning in 2014, 2015 and 2016, the benchmark is adjusted to reflect the use of assignable beneficiaries to perform each of these calculations as specified in paragraph (a)(5)(ii) of this section.

(ii) For agreement periods beginning in 2017 and subsequent years—

(A) Using CMS Office of the Actuary national Medicare expenditure data for each of the years making up the historical benchmark, determines national growth rates for assignable beneficiaries identified for the 12-month calendar year corresponding to each benchmark year, and trends expenditures for each benchmark year (BY1 and BY2) to the third benchmark year (BY3) dollars.

(B) To trend forward the benchmark, CMS makes separate calculations for expenditure categories for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

* * * * *

(8) The benchmark is adjusted to take into account the expenditures for beneficiaries who would have been assigned to the ACO in any of the 3 most recent years prior to the agreement period using the most recent certified ACO participant list for the relevant performance year.

(9) The historical benchmark is further adjusted at the time of reconciliation for a performance year to account for changes in severity and case mix for newly and continuously assigned beneficiaries using prospective HCC risk scores and demographic factors as described under §§ 425.604(a)(1) through (3), 425.606(a)(1) through (3), and 425.610(a)(1) through (3).

(b) * * *

(1) For performance years before 2017, CMS updates the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program.

(i) CMS updates the fixed benchmark by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program using data from CMS' Office of the Actuary.

(ii) To update the benchmark, CMS makes expenditure calculations for separate categories for each of the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(2) For the 2017 performance year and subsequent performance years, CMS updates the historical benchmark annually for each year of the agreement period based on the flat dollar equivalent of the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries identified for the 12-month calendar year corresponding to the year for which the update is calculated.

(i) CMS updates the fixed benchmark by the projected absolute amount of growth in national per capita expenditures for Parts A and B services under the original Medicare fee-for-service program for assignable beneficiaries identified for the 12-month calendar year corresponding to the year for which the update is being calculated using data from CMS' Office of the Actuary.

(ii) To update the benchmark, CMS makes expenditure calculations for separate categories for each of the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

■ 7. Add § 425.603 to read as follows:

§ 425.603 Resetting, adjusting, and updating the benchmark for a subsequent agreement period.

(a) An ACO's benchmark is reset at the start of each subsequent agreement period.

(b) For second agreement periods beginning in 2016, CMS establishes, adjusts, and updates the rebased historical benchmark in accordance with § 425.602(a) and (b) with the following modifications:

(1) Rather than weighting each year of the benchmark using the percentages provided at § 425.602(a)(7), each benchmark year is weighted equally.

(2) An additional adjustment is made to account for the average per capita amount of savings generated during the ACO's previous agreement period. The adjustment is limited to the average number of assigned beneficiaries (expressed as person years) under the ACO's first agreement period.

(c) For second or subsequent agreement periods beginning in 2017 and subsequent years, CMS establishes the rebased historical benchmark by determining the per capita Parts A and B fee-for-service expenditures for beneficiaries who would have been assigned to the ACO in any of the 3 most recent years before the agreement period using the certified ACO participant list submitted before the start of the agreement period as required under § 425.118. CMS does all of the following:

(1) Calculates the payment amounts included in Parts A and B fee-for-service claims using a 3-month claims run out with a completion factor. The calculation—

(i) Excludes IME and DSH payments; and

(ii) Considers individually beneficiary identifiable payments made under a demonstration, pilot or time limited program.

(2) Makes separate expenditure calculations for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(3) Adjusts expenditures for changes in severity and case mix using prospective HCC risk scores.

(4) Truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year corresponding to each benchmark year in order to minimize variation from catastrophically large claims.

(5) Trends forward expenditures for each benchmark year (BY1 and BY2) to the third benchmark year (BY3) dollars using regional growth rates based on expenditures for the ACO's regional service area as determined under paragraphs (e) and (f) of this section, making separate expenditure calculations for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(6) Restates BY1 and BY2 trended and risk-adjusted expenditures in BY3 proportions of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(7) Weights each benchmark year equally.

(8) The ACO's benchmark will be adjusted in accordance with § 425.118(b) for the addition and removal of ACO participants or ACO providers/suppliers during the term of the agreement period. To adjust the benchmark, CMS does the following:

(i) Takes into account the expenditures for beneficiaries who would have been assigned to the ACO in any of the 3 most recent years prior to the agreement period using the most recent certified ACO participant list for the relevant performance year.

(ii) Redetermines the regional adjustment amount under paragraph (c)(9) of this section, according to the ACO's assigned beneficiaries for BY3 resulting from the most recent certified ACO participant list for the relevant performance year.

(9) Adjusts the historical benchmark based on the ACO's regional service area expenditures, making separate calculations for the following populations of beneficiaries: ESRD, disabled, aged/dual eligible Medicare and Medicaid beneficiaries, and aged/non-dual eligible Medicare and Medicaid beneficiaries. CMS does all of the following:

(i) Calculates an average per capita amount of expenditures for the ACO's regional service area as follows:

(A) Determines the counties included in the ACO's regional service area based on the ACO's BY3 assigned beneficiary population.

(B) Determines the ACO's regional expenditures as specified under paragraphs (e) and (f) of this section for BY3.

(C) Adjusts for differences in severity and case mix between the ACO's assigned beneficiary population and the assignable beneficiary population for the ACO's regional service area identified for the 12-month calendar year that corresponds to BY3.

(ii) Calculates the adjustment as follows:

(A) Determines the difference between the average per capita amount of expenditures for the ACO's regional service area as specified under paragraph (c)(9)(i) of this section and the average per capita amount of the ACO's rebased historical benchmark determined under paragraphs (c)(1) through)(8) of this section, for each of the following populations of beneficiaries:

(*1*) ESRD.

(*2*) Disabled.

(*3*) Aged/dual eligible Medicare and Medicaid beneficiaries.

(*4*) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(B) Applies a percentage, determined as follows:

(*1*) The first time an ACO's benchmark is rebased using the methodology described under paragraph (c) of this section, CMS calculates the regional adjustment as follows:

(*i*) Using 35 percent of the difference between the average per capita amount of expenditures for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark, if the ACO is determined to have lower spending than the ACO's regional service area;

(*ii*) Using 25 percent of the difference between the average per capita amount of expenditures for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark, if the ACO is determined to have higher spending than the ACO's regional service area.

(*2*) The second time that an ACO's benchmark is rebased using the methodology described under paragraph (c) of this section, CMS calculates the regional adjustment to the historical benchmark as follows:

(*i*) Using 70 percent of the difference between the average per capita amount of expenditures for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark, unless the Secretary determines a lower weight should be applied, if the ACO is determined to have lower spending than the ACO's regional service area;

(*ii*) Using 50 percent of the difference between the average per capita amount of expenditures for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark, if the ACO is determined to have higher spending than the ACO's regional service area.

(*3*) The third or subsequent time that an ACO's benchmark is rebased using the methodology described under paragraph (c) of this section, CMS calculates the regional adjustment to the historical benchmark using 70 percent of the difference between the average per capita amount of expenditures for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark, unless the Secretary determines a lower weight should be applied.

(*4*) To determine if an ACO has lower or higher spending compared to the ACO's regional service area, CMS does the following:

(*i*) Multiplies the difference between the average per capita amount of expenditures for the ACO's regional service area and the average per capita amount of the ACO's rebased historical benchmark for each population of beneficiaries (ESRD, Disabled, Aged/dual eligible Medicare and Medicaid beneficiaries, Aged/non-dual eligible Medicare and Medicaid beneficiaries) as calculated under paragraph (c)(9)(ii)(A) of this section by the applicable proportion of the ACO's assigned beneficiary population (ESRD, Disabled, Aged/dual eligible Medicare and Medicaid beneficiaries, Aged/non-dual eligible Medicare and Medicaid beneficiaries) for benchmark year 3 of the rebased historical benchmark.

(*ii*) Sums the amounts determined in paragraph (c)(9)(ii)(B)(*4*)(*i*) of this section across the populations of beneficiaries (ESRD, Disabled, Aged/dual eligible Medicare and Medicaid beneficiaries, Aged/non-dual eligible Medicare and Medicaid beneficiaries).

(*iii*) If the resulting sum is a net positive value, the ACO is considered to have lower spending compared to the ACO's regional service area. If the resulting sum is a net negative value, the ACO is considered to have higher spending compared to the ACO's regional service area.

(*iv*) If CMS adjusts the ACO's benchmark for the addition or removal of ACO participants or ACO providers/suppliers during the term of the agreement period as specified in paragraph (c)(8) of this section, CMS redetermines whether the ACO is considered to have lower spending or higher spending compared to the ACO's regional service area for purposes of determining the percentage used in calculating the adjustment in paragraphs (c)(9)(ii)(B)(*1*) and (*2*) of this section.

(10) The historical benchmark is further adjusted at the time of reconciliation for a performance year to account for changes in severity and case mix for newly and continuously assigned beneficiaries using prospective HCC risk scores and demographic factors as described under §§ 425.604(a)(1) through (3), 425.606(a)(1) through (3), and 425.610(a)(1) through (3).

(d) For second or subsequent agreement periods beginning in 2017 and subsequent years, CMS updates the rebased historical benchmark under paragraph (c) of this section, annually for each year of the agreement period by the growth in risk adjusted regional per beneficiary FFS spending for the ACO's regional service area by doing all of the following:

(1) Determining the counties included in the ACO's regional service area based on the ACO's assigned beneficiary population used to determine financial reconciliation for the relevant performance year.

(2) Determining growth rates based on expenditures for counties in the ACO's regional service area calculated under paragraphs (e) and (f) of this section, for the performance year compared to BY3 for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(3) Updating the benchmark by making separate calculations for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(e) For second or subsequent agreement periods beginning in 2017 and subsequent years, CMS does all of the following to determine risk adjusted county fee-for-service expenditures for use in calculating the ACO's regional fee-for-service expenditures:

(1)(i) Determines average county fee-for-service expenditures based on expenditures for the assignable population of beneficiaries in each county, where assignable beneficiaries are identified for the 12-month calendar year corresponding to the relevant benchmark or performance year.

(ii) Makes separate expenditure calculations for each of the following populations of beneficiaries:

(A) ESRD.

(B) Disabled.

(C) Aged/dual eligible Medicare and Medicaid beneficiaries.

(D) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(2) Calculates assignable beneficiary expenditures using the payment amounts included in Parts A and B fee-for-service claims with dates of service in the 12-month calendar year for the relevant benchmark or performance year, using a 3-month claims run out with a completion factor. The calculation—

(i) Excludes IME and DSH payments; and

(ii) Considers individually beneficiary identifiable payments made under a demonstration, pilot or time limited program.

(3) Truncates a beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures for assignable beneficiaries identified for the 12-month calendar year that corresponds to the relevant benchmark or performance year, in order to minimize variation from catastrophically large claims.

(4) Adjusts fee-for-service expenditures for severity and case mix of assignable beneficiaries in the county using prospective CMS–HCC risk scores. The calculation is made according to the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(f) For second or subsequent agreement periods beginning in 2017 and subsequent years, CMS calculates an ACO's risk adjusted regional expenditures by—

(1) Weighting the risk-adjusted county-level fee-for-service expenditures determined under paragraph (e) of this section according to the ACO's proportion of assigned beneficiaries in the county, determined by the number of the ACO's assigned beneficiaries in the applicable population (according to Medicare enrollment type) residing in the county in relation to the ACO's total number of assigned beneficiaries in the applicable population (according to Medicare enrollment type) for the relevant benchmark or performance year for each of the following populations of beneficiaries:

(i) ESRD.

(ii) Disabled.

(iii) Aged/dual eligible Medicare and Medicaid beneficiaries.

(iv) Aged/non-dual eligible Medicare and Medicaid beneficiaries.

(2) Aggregating the values determined under paragraph (f)(1) of this section for each population of beneficiaries (according to Medicare enrollment type) across all counties within the ACO's regional service area; and

(3) Weighting the aggregate expenditure values determined for each population of beneficiaries (according to Medicare enrollment type) under paragraph (f)(2) of this section by a weight reflecting the proportion of the ACO's overall beneficiary population in the applicable Medicare enrollment type for the relevant benchmark or performance year.

■ 8. Amend § 425.604 as follows:

■ A. In paragraphs (a)(1) and (a)(2)(i) and (ii) by removing the phrase "adjust for changes" and adding in its place the phrase "adjust the benchmark for changes".

■ B. In paragraph (a)(3) introductory text by removing the phrase "In adjusting for health status" and adding in its place the phrase "In adjusting the benchmark for health status".

■ C. Redesignating paragraph (a)(4) as paragraph (a)(4)(i).

■ D. In newly redesignated paragraph (a)(4)(i) by removing the phrase "To minimize variation" and adding in its place the phrase "For performance years before 2017 to minimize variation".

■ E. Adding paragraph (a)(4)(ii).

The addition reads as follows:

§ 425.604 Calculation of savings under the one-sided model.

(a) * * *

(4) * * *

(ii) For the 2017 performance year and subsequent performance years, to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures as determined for the applicable performance year for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

* * * * *

■ 9. Amend § 425.606 as follows:

■ A. In paragraphs (a)(1) and (a)(2)(i) and (ii) by removing the phrase "adjust for changes" and adding in its place the phrase "adjust the benchmark for changes".

■ B. In paragraph (a)(3) introductory text by removing the phrase "In adjusting for health status" and adding in its place the phrase "In adjusting the benchmark for health status".

■ C. Redesignating paragraph (a)(4) as paragraph (a)(4)(i).

■ D. In newly redesignated paragraph (a)(4)(i) by removing the phrase "To minimize variation" and adding in its place the phrase "For performance years before 2017 to minimize variation".

■ E. Adding paragraph (a)(4)(ii).

The addition reads as follows:

§ 425.606 Calculation of shared savings and losses under Track 2.

(a) * * *

(4) * * *

(ii) For the 2017 performance year and subsequent performance years, to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures as determined for the applicable performance year for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

* * * * *

■ 10. Amend § 425.610 as follows:

■ A. In paragraphs (a)(1) and (a)(2)(i) and (ii) by removing the phrase "adjust for changes" and adding in its place the phrase "adjust the benchmark for changes".

■ B. In paragraph (a)(3) introductory text by removing the phrase "In adjusting for health status" and adding in its place the phrase "In adjusting the benchmark for health status".

■ C. Redesignating paragraph (a)(4) as paragraph (a)(4)(i).

■ D. In newly redesignated paragraph (a)(4)(i) by removing the phrase "To minimize variation" and adding in its place the phrase "For performance years before 2017 to minimize variation".

■ E. Adding paragraph (a)(4)(ii).

The addition reads as follows:

§ 425.610 Calculation of shared savings and losses under Track 3.

(a) * * *

(4) * * *

(ii) For the 2017 performance year and subsequent performance years, to minimize variation from catastrophically large claims, CMS truncates an assigned beneficiary's total annual Parts A and B fee-for-service per capita expenditures at the 99th percentile of national Medicare fee-for-service expenditures as determined for the applicable performance year for assignable beneficiaries identified for the 12-month calendar year corresponding to the performance year.

* * * * *

§ 425.800 [Amended]

■ 11. Amend § 425.800 as follows:

■ A. In paragraph (a)(4) by—

■ i. Removing the phrase "The determination of whether" and adding in its place the phrase "The initial determination or revised initial determination of whether".

■ ii. Removing the phrase "including the determination" and adding in its place the phrase "including the initial determination or revised initial determination".

■ iii. Removing the cross-reference "§ 425.602, § 425.604, and § 425.606" and adding in its place the cross-reference "§§ 425.602, 425.604, 425.606, and 425.610".

■ B. In paragraph (a)(5) by removing the cross-reference "§ 425.604 and 425.606" and adding in its place "§§ 425.604, 425.606, and 425.610".

Dated: May 27, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 3, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

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Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 46, et al.

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Department of Health and Human Services

45 CFR Parts 144, 146, et al.

Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 46, 54, 57, and 301

[REG–135702–15]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 146, 147, 148, and 158

[CMS–9932–P]

RIN 0938–AS93

Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rule.

SUMMARY: This document contains proposed regulations on the rules for expatriate health plans, expatriate health plan issuers, and qualified expatriates under the Expatriate Health Coverage Clarification Act of 2014 (EHCCA). This document also includes proposed conforming amendments to certain regulations to implement the provisions of the EHCCA. Further, this document proposes standards for travel insurance and supplemental health insurance coverage to be considered excepted benefits and revisions to the definition of short-term, limited-duration insurance for purposes of the exclusion from the definition of individual health insurance coverage. These proposed regulations affect expatriates with health coverage under expatriate health plans and sponsors, issuers and administrators of expatriate health plans, individuals with and plan sponsors of travel insurance and supplemental health insurance coverage, and individuals with short-term, limited-duration insurance. In addition, this document proposes to amend a reference in the final regulations relating to prohibitions on lifetime and annual dollar limits and proposes to require that a notice be provided in connection with hospital indemnity and other fixed indemnity insurance in the group health insurance market for it to be considered excepted benefits.

DATES: Comments are due on or before August 9, 2016.

ADDRESSES: Comments, identified by "Expatriate Health Plans and other issues," may be submitted by one of the following methods:

Hand delivery or mail: Written comment submissions may be submitted to CC:PA:LPD:PR (REG–135702–15), Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Comment submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–135702–15).

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Comments received will be posted without change to *www.regulations.gov* and available for public inspection. Any comment that is submitted will be shared with the Department of Labor (DOL) and Department of Health and Human Services (HHS). Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, with respect to the treatment of expatriate health plan coverage as minimum essential coverage under section 5000A of the Internal Revenue Code, John Lovelace, at 202–317–7006; with respect to the provisions relating to the health insurance providers fee imposed by section 9010 of the Affordable Care Act, Rachel Smith, at 202–317–6855; with respect to the definition of expatriate health plans, expatriate health insurance issuers, and qualified expatriates, and the provisions relating to the market reforms (such as excepted benefits, and short-term, limited-duration coverage), R. Lisa Mojiri-Azad of the IRS Office of Chief Counsel, at 202–317–5500, Elizabeth Schumacher or Matthew Litton of the Department of Labor, at 202–693–8335, Jacob Ackerman of the Centers for Medicare & Medicaid Services, Department of Health and Human Services, at 301–492–4179. Concerning the submission of comments or to request a public hearing, Regina Johnson. (202) 317–6901 (not toll-free numbers).

Customer Service Information: Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline, at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). In addition, information from HHS on private health insurance for consumers can be found on the Centers for Medicare & Medicaid Services (CMS) Web site (*www.cms.gov/cciio*) and information on health reform can be found at *www.HealthCare.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This document contains proposed amendments to Department of the Treasury (Treasury Department) regulations at 26 CFR part 1 (Income taxes), 26 CFR part 46 (Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements), 26 CFR part 54 (Pension and excise taxes), 26 CFR part 57 (Health insurance providers fee), and 26 CFR part 301 (relating to procedure and administration) to implement the rules for expatriate health plans, expatriate health plan issuers, and qualified expatriates under the Expatriate Health Coverage Clarification Act of 2014 (EHCCA), which was enacted as Division M of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130). This document also contains proposed amendments to DOL regulations at 29 CFR part 2590 and HHS regulations at 45 CFR part 147, which are substantively identical to the amendments to 26 CFR part 54.

The EHCCA generally provides that the requirements of the Affordable Care Act [1] (ACA) do not apply with respect to expatriate health plans, expatriate health insurance issuers for coverage under expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans, except that: (1) An expatriate health plan shall be treated as minimum essential coverage under section

[1] The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, was enacted on March 30, 2010. They are collectively known as the "Affordable Care Act."

5000A(f) of the Internal Revenue Code of 1986, as amended (the Code) and any other section of the Code that incorporates the definition of minimum essential coverage; (2) the employer shared responsibility provisions of section 4980H of the Code continue to apply; (3) the health care reporting provisions of sections 6055 and 6056 of the Code continue to apply but with certain modifications relating to the use of electronic media for required statements to enrollees; (4) the excise tax provisions of section 4980I of the Code continue to apply with respect to coverage of certain qualified expatriates who are assigned (rather than transferred) to work in the United States; and (5) the annual health insurance providers fee imposed by section 9010 of the ACA takes into account expatriate health insurance issuers for certain purposes for calendar years 2014 and 2015 only.

This document also contains proposed amendments to 26 CFR part 54, 29 CFR part 2590, and 45 CFR parts 146 and 148, which would specify conditions for travel insurance, supplemental health insurance coverage, and hospital indemnity and other fixed indemnity insurance to be considered excepted benefits. Excepted benefits are exempt from the requirements that generally apply under title XXVII of the Public Health Service Act (PHS Act), part 7 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Chapter 100 of the Code. In addition, this document contains proposed amendments to (1) the definition of "short-term, limited-duration insurance," for purposes of the exclusion from the definition of "individual health insurance coverage" and (2) the definition of "essential health benefits," for purposes of the prohibition on annual and lifetime dollar limits in 26 CFR part 54, 29 CFR 2590, and 45 CFR parts 144 and 147.

This document clarifies an exemption set forth in 45 CFR 153.400(a)(1)(iii) related to the transitional reinsurance program. Section 1341 of the Affordable Care Act provides for the establishment of a transitional reinsurance program in each State to help pay the cost of treating high-cost enrollees in the individual market in the 2014 through 2016 benefit years. Section 1341(b)(3)(B) of the ACA and 45 CFR 153.400(a)(1) require contributing entities to make reinsurance contributions for major medical coverage that is considered to be part of a commercial book of business.

This document also contains proposed conforming amendments to 45 CFR part 158 that address the separate medical loss ratio (MLR) reporting requirements for expatriate policies that are not expatriate health plans under the EHCCA.

General Statutory Background and Enactment of ACA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191 (110 Stat. 1936), added title XXVII of the PHS Act, part 7 of ERISA, and Chapter 100 of the Code, which impose portability and nondiscrimination rules with respect to health coverage. These provisions of the PHS Act, ERISA, and the Code were later augmented by other consumer protection laws, including the Mental Health Parity Act of 1996, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act, the Genetic Information Nondiscrimination Act of 2008, the Children's Health Insurance Program Reauthorization Act of 2009, Michelle's Law, and the ACA.

The ACA reorganizes, amends, and adds to the provisions of part A of title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. For this purpose, the term "group health plan" includes both insured and self-insured group health plans.[2] The ACA added section 715(a)(1) of ERISA and section 9815(a)(1) of the Code to incorporate the provisions of part A of title XXVII of the PHS Act (generally, sections 2701 through 2728 of the PHS Act) into ERISA and the Code to make them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans.

Expatriate Health Plans, Expatriate Health Plan Issuers and Qualified Expatriates

Prior to the enactment of the EHCCA, employers, issuers and covered individuals had expressed concerns about the application of the ACA market reform rules to expatriate health plans and whether coverage under expatriate health plans was minimum essential coverage for purposes of section 5000A of the Code. To address these concerns on an interim basis, on March 8, 2013, the Departments of Labor, HHS, and the Treasury (collectively, the Departments[3]) issued Affordable Care Act Implementation Frequently Asked Questions (FAQs) Part XIII, Q&A–1, providing relief from the ACA market reform requirements for certain expatriate group health insurance coverage.[4] For plan years ending on or before December 31, 2015, the FAQ provides that, with respect to expatriate health plans, the Departments will consider the requirements of subtitles A and C of title I of the ACA to be satisfied if the plan and issuer comply with the pre-ACA version of title XXVII of the PHS Act. For purposes of the relief, an expatriate health plan is an insured group health plan with respect to which enrollment is limited to primary insureds who reside outside of their home country for at least six months of the plan year and any covered dependents, and its associated group health insurance coverage. The FAQ also states that coverage provided under an expatriate group health plan is a form of minimum essential coverage under section 5000A of the Code. On January 9, 2014, the Departments issued Affordable Care Act Implementation FAQs Part XVIII, Q&A–6 and Q&A–7, which extended the relief of Affordable Care Act Implementation FAQs Part XIII, Q&A–1 for insured expatriate health plans to subtitle D of title I of the ACA and also provided that the relief from the requirements of subtitles A, C, and D of title I of the ACA would apply for plan years ending on or before December 31, 2016.[5]

Subsequently, the EHCCA was enacted on December 16, 2014. Section 3(a) of the EHCCA provides that the ACA generally does not apply to expatriate health plans, employers with respect to expatriate health plans but solely in their capacity as plan sponsors of these plans, and expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans. Under section 3(b) of the EHCCA, however, the ACA continues to apply to expatriate health plans with respect to the employer shared responsibility provisions of section 4980H of the Code, the reporting requirements of sections 6055 and 6056

[2] The term "group health plan" is used in title XXVII of the PHS Act, part 7 of ERISA, and Chapter 100 of the Code, and is distinct from the term "health plan," as used in other provisions of title I of the ACA. The term "health plan" does not include self-insured group health plans.

[3] Note, however, that in sections under headings listing only two of the three Departments, the term "Departments" generally refers only to the two Departments listed in the heading.

[4] Frequently Asked Questions about Affordable Care Act Implementation (Part XIII), available at *http://www.dol.gov/ebsa/pdf/faq-aca13.pdf* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-andFAQs/ACA_implementation_faq13.html.*

[5] Frequently Asked Questions about Affordable Care Act Implementation (Part XVIII), available at *https://www.dol.gov/ebsa/faqs/faq-aca18.html* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs18.html.*

of the Code, and the excise tax provisions of section 4980I of the Code. Section 3(b) of the EHCCA further provides that an expatriate health plan offered to primary enrollees described in sections 3(d)(3)(A) and (B) of the EHCCA shall be treated as an eligible employer sponsored plan under section 5000A(f)(2) of the Code, and that an expatriate health plan offered to primary enrollees described in section 3(d)(3)(C) of the EHCCA shall be treated as a plan in the individual market under section 5000A(f)(1)(C) of the Code. Section 3(c) of the EHCCA sets forth rules for expatriate health plans with respect to the annual health insurance providers fee imposed by section 9010 of the ACA.

Sections 4375 and 4376 of the Code impose the Patient-Centered Outcomes Research Trust Fund (PCORTF) fee only with respect to individuals residing in the United States. Final regulations regarding the PCORTF fee exempt any specified health insurance policy or applicable self-insured group health plan designed and issued specifically to cover employees who are working and residing outside the United States from the fee. The exclusion from the ACA for expatriate health plans, employers with respect to expatriate health plans but solely in their capacity as plan sponsors of these plans, and expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans would apply to the PCORTF fee to the extent an expatriate health plan was not already excluded from the fee.

Section 1341 of the ACA establishes a transitional reinsurance program to help stabilize premiums for non-grandfathered health insurance coverage in the individual health insurance market from 2014 through 2016. Section 1341(b)(3)(B) of the ACA and the implementing regulations at 45 CFR 153.400(a)(1) require health insurance issuers and certain self-insured group health plans ("contributing entities") to make reinsurance contributions for major medical coverage that is considered to be part of a commercial book of business. This language has been interpreted to exclude "expatriate health coverage."[6] As such, HHS regulation at 45 CFR 153.400(a)(1)(iii) provides that a contributing entity must make reinsurance contributions for lives covered by its self-insured group health plans and health insurance coverage, except to the extent that such plan or coverage is expatriate health coverage, as defined by the Secretary of HHS, or for the 2015 and 2016 benefit years only, is a self-insured group health plan with respect to which enrollment is limited to participants who reside outside of their home country for at least six months of the plan year and any covered dependents of such participants. As noted in the March 8, 2013 Affordable Care Act Implementation FAQs Part XIII, Q&A–1, the FAQ definition of "expatriate health plan" was extended to the definition of "expatriate health coverage" under 45 CFR 153.400(a)(1)(iii).

Section 3(a) of the EHCCA provides that the ACA generally does not apply to expatriate health plans, employers with respect to expatriate health plans but solely in their capacity as plan sponsors of expatriate health plans, and expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans. Accordingly, under the EHCCA, the transitional reinsurance program contribution obligation under section 1341 of the ACA does not apply to expatriate health plans.

Section 5000A of the Code, as added by section 1501 of the ACA, provides that, for each month, taxpayers must have minimum essential coverage, qualify for a health coverage exemption, or make an individual shared responsibility payment when filing a federal income tax return. Section 5000A(f)(1)(B) of the Code provides that minimum essential coverage includes coverage under an eligible employer-sponsored plan. Section 5000A(f)(2) of the Code and 26 CFR 1.5000A–2(c) provide that an eligible employer-sponsored plan means, with respect to an employee, group health insurance coverage that is a governmental plan or any other plan or coverage offered in the small or large group market within a State, or a self-insured group health plan. Under section 5000A(f)(1)(C) of the Code, minimum essential coverage includes coverage under a health plan offered in the individual market within a State.

Section 3(b)(1)(A) of the EHCCA provides that an expatriate health plan that is offered to primary enrollees who are qualified expatriates described in sections 3(d)(3)(A) and 3(d)(3)(B) of the EHCCA is treated as an eligible employer-sponsored plan within the meaning of section 5000A(f)(2) of the Code. Section 3(b)(1)(B) of the EHCCA provides that, in the case of an expatriate health plan that is offered to primary enrollees who are qualified expatriates described in section 3(d)(3)(C) of the EHCCA, the coverage is treated as a plan in the individual market within the meaning of section 5000A(f)(1)(C) of the Code, for purposes of sections 36B, 5000A and 6055 of the Code.

Under section 6055 of the Code, as added by section 1502 of the ACA, providers of minimum essential coverage must file an information return with the Internal Revenue Service (IRS) and furnish a written statement to covered individuals reporting the months that an individual had minimum essential coverage. Under section 6056 of the Code, as added by section 1514 of the ACA, an applicable large employer (as defined in section 4980H(c)(2) of the Code and 26 CFR 54.4980H–1(a)(4) and 54.4980H–2) must file an information return with the IRS and furnish a written statement to its full-time employees reporting details regarding the minimum essential coverage, if any, offered by the employer. Under both sections 6055 and 6056 of the Code, reporting entities may satisfy the requirement to furnish statements to covered individuals and employees, respectively, by electronic means only if the individual or employee affirmatively consents to receiving the statements electronically.[7]

Under section 4980H of the Code, as added by section 1513 of the ACA, an applicable large employer that does not offer minimum essential coverage to its full-time employees (and their dependents) or offers minimum essential coverage that does not meet the standards for affordability and minimum value will owe an assessable payment if a full-time employee is certified as having enrolled in a qualified health plan on an Exchange with respect to which a premium tax credit is allowed with respect to the employee.

Section 3(b)(2) of the EHCCA provides that the reporting requirements of sections 6055 and 6056 of the Code and the provisions of section 4980H of the Code relating to the employer shared responsibility provisions for applicable large employers continue to apply with respect to expatriate health plans and qualified expatriates. Section 3(b)(2) of the EHCCA provides a special rule for the use of electronic media for statements required under sections 6055 and 6056 of the Code. Specifically, the required statements may be provided to a primary insured for coverage under an expatriate health plan using electronic media unless the primary insured has explicitly refused to consent to receive the statement electronically.

[6] See HHS Notice of Benefit and Payment Parameters for 2014 (78 FR 15410) (March 11, 2013) and HHS Notice of Benefit and Payment Parameters for 2016 (80 FR 10750) (February 27, 2015).

[7] See 26 CFR 1.6055–2(a)(2)(i) and 301.6056–2(a)(2)(i).

Section 4980I of the Code, as added by section 9001 of the ACA, imposes an excise tax if the aggregate cost of applicable employer-sponsored coverage provided to an employee exceeds a statutory dollar limit. Section 3(b)(2) of the EHCCA provides that section 4980I of the Code continues to apply to applicable employer-sponsored coverage (as defined in section 4980I(d)(1) of the Code) of a qualified expatriate (as described in section 3(d)(3)(A)(i) of the EHCCA) who is assigned (rather than transferred) to work in the United States.

Section 9010 of the ACA imposes a fee on covered entities engaged in the business of providing health insurance for United States health risks. Section 3(c)(1) of the EHCCA excludes expatriate health plans from the health insurance providers fee imposed by section 9010 of the ACA by providing that, for calendar years after 2015, a qualified expatriate (and any spouse, dependent, or any other individual enrolled in the plan) enrolled in an expatriate health plan is not considered a United States health risk. Section 3(c)(2) of the EHCCA provides a special rule solely for purposes of determining the health insurance providers fee imposed by section 9010 of the ACA for the 2014 and 2015 fee years.

Section 162(m)(6) of the Code, as added by section 9014 of the ACA, in general, limits to $500,000 the allowable deduction for remuneration attributable to services performed by certain individuals for a covered health insurance provider. For taxable years beginning after December 31, 2012, section 162(m)(6)(C)(i) of the Code and 26 CFR 1.162–31(b)(4)(A) provide that a health insurance issuer is a covered health insurance provider if not less than 25 percent of the gross premiums that it receives from providing health insurance coverage during the taxable year are from minimum essential coverage. Section 3(a)(3) of the EHCCA provides that the provisions of the ACA (including section 162(m)(6) of the Code) do not apply to expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans.

Section 3(d)(2) of the EHCCA provides that an expatriate health plan means a group health plan, health insurance coverage offered in connection with a group health plan, or health insurance coverage offered to certain groups of similarly situated individuals, provided that the plan or coverage meets a number of specific requirements. Section 3(d)(2)(A) of the EHCCA provides that substantially all of the primary enrollees of an expatriate health plan must be qualified expatriates. For this purpose, primary enrollees do not include individuals who are not nationals of the United States and reside in the country of their citizenship. Section 3(d)(2)(B) of the EHCCA provides that substantially all of the benefits provided under a plan or coverage must be benefits that are not excepted benefits. Section 3(d)(2)(C) of the EHCCA provides that the plan or coverage must provide coverage for inpatient hospital services, outpatient facility services, physician services, and emergency services that are comparable to the emergency services coverage that was described in or offered under 5 U.S.C. 8903(1) for the 2009 plan year.[8] Also, coverage for these services must be provided in certain countries. For qualified expatriates described in section 3(d)(3)(A) of the EHCCA (category A) and qualified expatriates described in section 3(d)(3)(B) of the EHCCA (category B), coverage for these services must be provided in the country or countries where the individual is working, and such other country or countries as the Secretary of HHS, in consultation with the Secretary of the Treasury and the Secretary of Labor, may designate. For qualified expatriates who are members of a group of similarly situated individuals described in section 3(d)(3)(C) of the EHCCA (category C), the coverage must be provided in the country or countries that the Secretary of HHS, in consultation with the Secretary of the Treasury and the Secretary of Labor, may designate.

Section 3(d)(2)(D) of the EHCCA provides that a plan qualifies as an expatriate health plan under the EHCCA only if the plan sponsor reasonably believes that benefits under the plan satisfy a standard at least actuarially equivalent to the level provided for in section 36B(c)(2)(C)(ii) of the Code (that is, "minimum value"). Section 3(d)(2)(E) of the EHCCA provides that dependent coverage of children, if offered under the expatriate health plan, must continue to be available until the individual attains age 26 (unless the individual is the child of a child receiving dependent coverage). Section 3(d)(2)(G) of the EHCCA provides that an expatriate health plan must satisfy the provisions of title XXVII of the PHS Act, Chapter 100 of the Code, and part 7 of subtitle B of title I of ERISA, that would otherwise apply if the ACA had not been enacted. These provisions are sometimes referred to as the HIPAA portability and nondiscrimination requirements.

Section 3(d)(1) of the EHCCA provides that an expatriate health insurance issuer means a health insurance issuer that issues expatriate health plans. Section 3(d)(2)(F)(i) of the EHCCA provides that an expatriate health plan or coverage must be issued by an expatriate health plan issuer, or administered by an administrator, that together with any person in the issuer's or administrator's controlled group: (1) Maintains network provider agreements that provide for direct claims payments (directly or through third-party contracts), with health care providers in eight or more countries; (2) maintains call centers (directly or through third-party contracts) in three or more countries and accepts calls in eight or more languages; (3) processes at least $1 million in claims in foreign currency equivalents each year; (4) makes global evacuation/repatriation coverage available; (5) maintains legal and compliance resources in three or more countries; and (6) has licenses to sell insurance in more than two countries. In addition, section 3(d)(2)(F)(ii) of the EHCCA provides that the plan or coverage must offer reimbursement for items or services under such plan or coverage in the local currency in eight or more countries.

Section 3(d)(3) of the EHCCA describes three categories of qualified expatriates. A category A qualified expatriate, under section 3(d)(3)(A) of the EHCCA, is an individual whose skills, qualifications, job duties, or expertise has caused the individual's employer to transfer or assign the individual to the United States for a specific and temporary purpose or assignment tied to the individual's employment and who the plan sponsor has reasonably determined requires access to health insurance and other related services and support in multiple countries, and is offered other multinational benefits on a periodic basis (such as tax equalization, compensation for cross-border moving expenses, or compensation to enable the expatriate to return to the expatriate's home country). A category B qualified expatriate, under section 3(d)(3)(B) of the EHCCA, is a primary insured who is working outside the United States for at least 180 days during a consecutive 12-month period that overlaps with the plan year. A category C qualified expatriate, under section 3(d)(3)(C) of the EHCCA, is an individual who is a member of a group of similarly situated individuals that is formed for the

[8] These are emergency services comparable to emergency services offered under a government-wide comprehensive health plan under the Federal Employees Health Benefits (FEHB) program prior to the enactment of the ACA.

purpose of traveling or relocating internationally in service of one or more of the purposes listed in section 501(c)(3) or (4) of the Code, or similarly situated organizations or groups, provided the group is not formed primarily for the sale of health insurance coverage and the Secretary of HHS, in consultation with the Secretary of the Treasury and the Secretary of Labor, determines the group requires access to health insurance and other related services and support in multiple countries.

Section 3(d)(4) of the EHCCA defines the United States as the 50 States, the District of Columbia, and Puerto Rico.

Section 3(f) of the EHCCA provides that, unless otherwise specified, the requirements of the EHCCA apply to expatriate health plans issued or renewed on or after July 1, 2015.

IRS Notice 2015–43

On July 20, 2015, the Treasury Department and the IRS issued Notice 2015–43 (2015–29 IRB 73) to provide interim guidance on the implementation of the EHCCA and the application of certain provisions of the ACA to expatriate health insurance issuers, expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans. The Departments of Labor and HHS reviewed and concurred with the interim guidance of Notice 2015–43. Comments were received in response to Notice 2015–43, and these comments have been considered in drafting these proposed regulations. The relevant portions of Notice 2015–43 and the related comments are discussed in the Overview of Proposed Regulations section of this preamble.[9]

IRS Notices 2015–29 and 2016–14

On March 30, 2015, the Treasury Department and the IRS issued Notice 2015–29 (2015–15 IRB 873) to provide guidance implementing the special rule of section 3(c)(2) of the EHCCA for fee years 2014 and 2015 with respect to the health insurance providers fee imposed by section 9010 of the ACA. Notice 2015–29 defines expatriate health plan by reference to the definition of expatriate policies in the MLR final rule issued by HHS[10] (MLR final rule definition) solely for the purpose of applying the special rule for fee years 2014 and 2015. The Treasury Department and the IRS determined that the MLR final rule definition of expatriate policies was sufficiently broad to cover potential expatriate health plans described in section 3(d)(2) of the EHCCA. The MLR final rule defines expatriate policies as predominantly group health insurance policies that provide coverage to employees, substantially all of whom are: (1) Working outside their country of citizenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country.

On January 29, 2016, the Treasury Department and the IRS issued Notice 2016–14 (2016–7 IRB 315) to provide guidance implementing the definition of expatriate health plan for fee year 2016 with respect to the health insurance providers fee imposed by section 9010 of the ACA. Like Notice 2015–29, Notice 2016–14 provides that the definition of expatriate health plan will be the same as provided in the MLR final rule definition, solely for the purpose of the health insurance providers fee imposed by section 9010 of the ACA for fee year 2016.[11]

The Consolidated Appropriations Act, 2016, Public Law 114–113, Division P, Title II, § 201, Moratorium on Annual Fee on Health Insurance Providers (the Consolidated Appropriations Act), suspends collection of the health insurance providers fee for the 2017 calendar year. Thus, health insurance issuers are not required to pay the fee for 2017.

Excepted Benefits

Sections 2722 and 2763 of the PHS Act, section 732 of ERISA, and section 9831 of the Code provide that the respective requirements of title XXVII of the PHS Act, part 7 of ERISA, and Chapter 100 of the Code generally do not apply to the provision of certain types of benefits, known as "excepted benefits." These excepted benefits are described in section 2791(c) of the PHS Act, section 733(c) of ERISA, and section 9832(c) of the Code.

There are four statutorily enumerated categories of excepted benefits. One category, under section 2791(c)(1) of the PHS Act, section 733(c)(1) of ERISA, and section 9832(c)(1) of the Code, identifies benefits that are excepted in all circumstances, including automobile insurance, liability insurance, workers compensation, and accidental death and dismemberment coverage. Under section 2791(c)(1)(H) of the PHS Act (and the parallel provisions of ERISA and the Code), this category of excepted benefits also includes "[o]ther similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits."

The second category of excepted benefits is limited excepted benefits, which may include limited scope vision or dental benefits, and benefits for long-term care, nursing home care, home health care, or community-based care. Section 2791(c)(2)(C) of the PHS Act, section 733(c)(2)(C) of ERISA, and section 9832(c)(2)(C) of the Code authorize the Secretaries of HHS, Labor, and the Treasury (collectively, the Secretaries) to issue regulations establishing other, similar limited benefits as excepted benefits. The Secretaries exercised this authority previously with respect to certain health flexible spending arrangements.[12] To be an excepted benefit under this second category, the statute provides that these limited benefits must either: (1) Be provided under a separate policy, certificate, or contract of insurance; or (2) otherwise not be an integral part of a group health plan, whether insured or self-insured.[13]

The third category of excepted benefits, referred to as "noncoordinated excepted benefits," includes both coverage for only a specified disease or illness (such as cancer-only policies), and hospital indemnity or other fixed indemnity insurance. These benefits are excepted under section 2722(c)(2) of the PHS Act, section 732(c)(2) of ERISA, and section 9831(c)(2) of the Code only if all of the following conditions are met: (1) The benefits are provided under a separate policy, certificate, or contract of insurance; (2) there is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor; and (3) the benefits are paid with respect to any event without regard to whether benefits are provided under any group health plan maintained by the same plan sponsor. In the group market, the regulations further provide that to be hospital indemnity or other fixed indemnity insurance, the insurance must pay a fixed dollar amount per day (or per other time period) of hospitalization or illness (for example, $100/day) regardless of the amount of expenses incurred.[14]

Since the issuance of these regulations, the Departments have released FAQs to address various requests for clarification as to what types of coverage meet the conditions

[9] See 26 CFR 601.601(d)(2)(ii)(B).

[10] 45 CFR 158.120(d)(4).

[11] See 26 CFR 601.601(d)(2)(ii)(B).

[12] 26 CFR 54.9831–1(c)(3)(v), 29 CFR 2590.732(c)(3)(v), 45 CFR 146.145(b)(3)(v).

[13] PHS Act section 2722(c)(1), ERISA section 732(c)(1), Code section 9831(c)(1).

[14] 26 CFR 54.9831–1(c)(4)(i), 29 CFR 2590.732(c)(4)(i), 45 CFR 146.145(b)(4)(i).

necessary to be hospital indemnity or other fixed indemnity insurance that are excepted benefits. Affordable Care Act Implementation FAQs Part XI, Q&A–7 clarified that group health insurance coverage in which benefits are provided in varying amounts based on the type of procedure or item, such as the type of surgery actually performed or prescription drug provided is not a hospital indemnity or other fixed indemnity insurance excepted benefit because it does not meet the condition that benefits be provided on a per day (or per other time period, such as per week) basis, regardless of the amount of expenses incurred.[15]

The fourth category, under section 2791(c)(4) of the PHS Act, section 733(c)(4) of ERISA, and section 9832(c)(4) of the Code, is supplemental excepted benefits. Benefits are supplemental excepted benefits only if they are provided under a separate policy, certificate, or contract of insurance and are Medicare supplemental health insurance (also known as Medigap), TRICARE supplemental programs, or "similar supplemental coverage provided to coverage under a group health plan." The phrase "similar supplemental coverage provided to coverage under a group health plan" is not defined in the statute or regulations. However, the Departments' regulations clarify that one requirement to be similar supplemental coverage is that the coverage "must be specifically designed to fill gaps in primary coverage, such as coinsurance or deductibles."[16]

In 2007 and 2008, the Departments issued guidance on the circumstances under which supplemental health insurance would be considered excepted benefits under section 2791(c)(4) of the PHS Act (and the parallel provisions of ERISA, and the Code).[17] The guidance identifies several factors the Departments will apply when evaluating whether supplemental health insurance will be considered to be "similar supplemental coverage provided to coverage under a group health plan." Specifically the Departments' guidance provides that supplemental health insurance will be considered an excepted benefit if it is provided through a policy, certificate, or contract of insurance separate from the primary coverage under the plan and meets all of the following requirements: (1) The supplemental policy, certificate, or contract of insurance is issued by an entity that does not provide the primary coverage under the plan; (2) the supplemental policy, certificate, or contract of insurance is specifically designed to fill gaps in primary coverage, such as coinsurance or deductibles, but does not include a policy, certificate, or contract of insurance that becomes secondary or supplemental only under a coordination of benefits provision; (3) the cost of the supplemental coverage is 15 percent or less of the cost of primary coverage (determined in the same manner as the applicable premium is calculated under a COBRA continuation provision); and (4) the supplemental coverage sold in the group health insurance market does not differentiate among individuals in eligibility, benefits, or premiums based upon any health factor of the individual (or any dependents of the individual).

On February 13, 2015, the Departments issued Affordable Care Act Implementation FAQs Part XXIII, providing additional guidance on the circumstances under which health insurance coverage that supplements group health plan coverage may be considered supplemental excepted benefits.[18] The FAQ states that the Departments intend to propose regulations clarifying the circumstances under which supplemental insurance products that do not fill in cost-sharing under the primary plan are considered to be specifically designed to fill gaps in primary coverage. Specifically, the FAQ provides that health insurance coverage that supplements group health coverage by providing coverage of additional categories of benefits (as opposed to filling in cost-sharing gaps under the primary plan) would be considered to be designed to "fill in the gaps" of the primary coverage only if the benefits covered by the supplemental insurance product are not essential health benefits (EHB) in the State in which the product is being marketed. The FAQ further states that, until regulations are issued and effective, the Departments will not take enforcement action under certain conditions for failure to comply with the applicable insurance market reforms with respect to group or individual health insurance coverage that provides coverage of additional categories of benefits that are not EHBs in the applicable State. States were encouraged to exercise similar enforcement discretion.

Short-Term, Limited-Duration Insurance Coverage

Short-term limited duration insurance is a type of health insurance coverage that is designed to fill in temporary gaps in coverage when an individual is transitioning from one plan or coverage to another plan or coverage. Although short-term, limited-duration insurance is not an excepted benefit, it is similarly exempt from PHS Act requirements because it is not individual health insurance coverage. Section 2791(b)(5) of the PHS Act provides that the term "individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term, limited-duration insurance. The PHS Act does not define short-term, limited-duration insurance. Under existing regulations, short-term, limited-duration insurance means "health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract."[19]

Prohibition on Lifetime and Annual Limits

Section 2711 of the PHS Act, as added by the ACA, generally prohibits group health plans and health insurance issuers offering group or individual health insurance coverage from imposing lifetime and annual dollar limits on EHB, as defined in section 1302(b) of the ACA. These prohibitions apply to both grandfathered and non-grandfathered health plans, except the annual limits prohibition does not apply to grandfathered individual health insurance coverage.

Under the ACA, self-insured group health plans, large group market health plans, and grandfathered health plans are not required to offer EHB, but they generally cannot place lifetime or annual dollar limits on covered services that are considered EHB. The Departments' regulations provide that, for plan years (in the individual market, policy years) beginning on or after January 1, 2017, a plan or issuer that is

[15] Frequently Asked Questions about Affordable Care Act Implementation (Part XI), available at *http://www.dol.gov/ebsa/faqs/faq-aca11.html* and *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs11.html.*

[16] 26 CFR 54.9831–1(c)(5)(i)(C), 29 CFR 2590.732(c)(5)(i)(C), and 45 CFR 146.145(b)(5)(i)(C).

[17] See EBSA Field Assistance Bulletin No. 2007–04 (available at *http://www.dol.gov/ebsa/regs/fab2007-4.html*); CMS Insurance Standards Bulletin 08–01 (available at *http://www.cms.gov/CCIIO/Resources/Files/Downloads/hipaa_08_01_508.pdf*); and IRS Notice 2008–23 (available at *http://www.irs.gov/irb/2008-07_IRB/ar09.html*).

[18] Frequently Asked Questions about Affordable Care Act Implementation (Part XXIII), available at *http://www.dol.gov/ebsa/pdf/faq-aca23.pdf* and *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Supplmental-FAQ_2-13-15-final.pdf.*

[19] 26 CFR 54.9801–2, 29 CFR 2590.701–2, 45 CFR 144.103.

not required to provide EHB may select from among any of the 51 base-benchmark plans selected by a State or applied by default pursuant to 45 CFR 156.100, or one of the three FEHBP options specified at 45 CFR 156.100(a)(3), for purposes of complying with the lifetime and annual limits prohibition in section 2711 of the PHS Act.[20]

II. Overview of the Proposed Regulations

A. Expatriate Health Plans

In General

Section 3(a) of the EHCCA provides that the ACA generally does not apply to expatriate health plans, employers with respect to expatriate health plans but solely in their capacity as plan sponsors of expatriate health plans, and expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans. Consistent with this provision, the proposed regulations provide that the market reform provisions enacted or amended as part of the ACA, included in sections 2701 through 2728 of the PHS Act and incorporated into section 9815 of the Code and section 715 of ERISA, do not apply to an expatriate health plan, an employer, solely in its capacity as plan sponsor of an expatriate health plan, and an expatriate health insurance issuer with respect to coverage under an expatriate health plan. Similarly, section 162(m)(6) of the Code does not apply to an expatriate health insurance issuer with respect to premiums received for coverage under an expatriate health plan. In addition, under the EHCCA, the PCORTF fee under sections 4375 and 4376 of the Code and the transitional reinsurance program fee under section 1341 of the ACA do not apply to expatriate health plans. The EHCCA excludes expatriate health plans from the health insurance providers fee imposed by section 9010 except that the EHCCA provides a special rule solely for purposes of determining the fee for the 2014 and 2015 fee years. The EHCCA also designates certain coverage by an expatriate health plan as minimum essential coverage under section 5000A(f) of the Code, and provides special rules for the application of the reporting rules under sections 6055 and 6056 of the Code to expatriate health plans.

Definition of Expatriate Health Insurance Issuer

Consistent with sections 3(d)(1) and (d)(2)(F) of the EHCCA, the proposed regulations define "expatriate health insurance issuer" as a health insurance issuer (as defined under 26 CFR 54.9801–2, 29 CFR 2590.701–2 and 45 CFR 144.103) that issues expatriate health plans and satisfies certain requirements.[21] The requirements for the issuer to be an expatriate health insurance issuer include that, in the course of its normal business operations, the issuer: (1) Maintains network provider agreements that provide for direct claims payments with health care providers in eight or more countries; (2) maintains call centers in three or more countries, and accepts calls from customers in eight or more languages; (3) processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year; (4) makes global evacuation/repatriation coverage available; (5) maintains legal and compliance resources in three or more countries; and (6) has licenses or other authority to sell insurance in more than two countries, including the United States. For purposes of meeting the $1 million threshold for claims processed in foreign currency equivalents, the proposed regulations provide that the dollar value of claims processed is determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year.[22] Comments are requested regarding whether use of the calendar year as the basis for measuring the dollar amount of claims processed presents administrative challenges, and how the resulting challenges, if any, may be addressed. The proposed regulations provide that each of the applicable requirements may be satisfied by two or more entities (including one entity that is the health insurance issuer) that are members of the health insurance issuer's controlled group or through contracts between the expatriate health insurance issuer and third parties.

Definition of Expatriate Health Plan

Consistent with section 3(d)(2) of the EHCCA, the proposed regulations define "expatriate health plan" as a plan offered to qualified expatriates and that satisfies certain requirements. With respect to qualified expatriates in categories A or B, the plan must be a group health plan (whether or not insured). In contrast, with respect to qualified expatriates in category C, the plan must be health insurance coverage that is not a group health plan. In addition, consistent with section 3(d)(2)(A) of the EHCCA, the proposed regulations require that substantially all primary enrollees in the expatriate health plan must be qualified expatriates. The proposed regulations define a primary enrollee as the individual covered by the plan or policy whose eligibility for coverage is not due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual. However, notwithstanding this definition, an individual is not a primary enrollee if the individual is not a national of the United States and the individual resides in his or her country of citizenship. Further, the proposed regulations provide that, for this purpose, a "national of the United States" has the meaning used in the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.) and 8 CFR parts 301 to 392, including U.S. citizens. Thus, for example, an individual born in American Samoa is a national of the United States at birth for purposes of the EHCCA and the proposed regulations.

Comments in response to Notice 2015–43 requested clarification of the "substantially all" enrollment requirement, with one comment suggesting that 93 percent of the enrollees would be an appropriate threshold. In response to the request for clarification, the proposed regulations provide that a plan satisfies the "substantially all" enrollment requirement if, on the first day of the plan year, less than 5 percent of the primary enrollees (or less than 5 primary enrollees if greater) are not qualified expatriates (effectively a 95 percent threshold). Consistent with section 3(d)(2)(B) of the EHCCA, the proposed regulations further provide that substantially all of the benefits provided under an expatriate health plan must be benefits that are not excepted benefits as described in 26

[20] 26 CFR 54.9815–2711(c), 29 CFR 2590.715–2711(c), 45 CFR 147.126(c).

[21] Section 3(d)(1) of the EHCCA provides that the term "expatriate health insurance issuer" means a health insurance issuer that issues expatriate health plans; section 3(d)(5)(A) of the EHCCA provides that the term "health insurance issuer" has the meaning given in section 2791 of the PHS Act. The definition of health insurance issuer in section 9832(b)(2) of the Code and section 733(b)(2) of ERISA and underlying regulations are substantively identical to the definition under section 2791 of the PHS Act and its underlying regulations.

As discussed in the section of this preamble entitled "Definition of Expatriate Health Plan" a health insurance issuer as defined in section 2791 of the PHS Act is limited to an entity licensed to engage in the business of insurance in a State and subject to State law that regulates insurance.

[22] The most recent Treasury Department currency exchange rate can be found at *https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/currentRates.htm.*

CFR 54.9831–1(c), 29 CFR 2590.732(c), 45 CFR 146.145(b) and 148.220, as applicable. The Departments intend that the first day of the plan year approach, which has been used in other contexts, will be simple to administer.[23] Moreover, the 95% threshold has been used in certain other circumstances in applying a "substantially all" standard.[24] The Departments solicit comment on this regulatory approach and whether the current regulatory language is sufficient to protect against potential abuses, or whether any further anti-abuse provision is necessary.

Consistent with section 3(d)(2)(C) of the EHCCA, the proposed regulations also require that an expatriate health plan cover certain types of services. Specifically, an expatriate health plan must provide coverage for inpatient hospital services, outpatient facility services, physician services, and emergency services (comparable to emergency services coverage that was described in and offered under section 8903(1) of title 5, United States Code for plan year 2009). Coverage for such services must be available in certain countries depending on the type of qualified expatriates covered by the plan. The statute authorizes the Secretary of HHS, in consultation with the Secretary of the Treasury and Secretary of Labor, to designate other countries where coverage for such services must be made available to the qualified expatriate.

Consistent with section 3(d)(2)(D) of the EHCCA, the proposed regulations provide that in the case of an expatriate health plan, the plan sponsor must reasonably believe that benefits provided by the plan satisfy the minimum value requirements of section 36B(c)(2)(C)(ii) of the Code.[25] For this purpose, the proposed regulations provide that the plan sponsor is permitted to rely on the reasonable representations of the issuer or administrator regarding whether benefits offered by the group health plan or issuer satisfy the minimum value requirements unless the plan sponsor knows or has reason to know that the benefits fail to satisfy the minimum value requirements. Consistent with section 3(d)(2)(D) of the EHCCA, in the case of an expatriate health plan that provides dependent coverage of children, the proposed regulations provide that such coverage must be available until the individual attains age 26, unless the individual is the child of a child receiving dependent coverage. Additionally, consistent with section 3(d)(2)(F)(ii) of the EHCCA, the plan or coverage must offer reimbursements for items or services in the local currency in eight or more countries.

Consistent with section 3(d)(2)(F) of the EHCCA, the proposed regulations also provide that the policy or coverage under an expatriate health plan must be issued by an expatriate health insurance issuer or administered by an expatriate health plan administrator. With respect to qualified expatriates in categories A or B (generally, individuals whose travel or relocation is related to their employment with an employer), the coverage must be under a group health plan (whether insured or self-insured). With respect to qualified expatriates in category C (generally, groups of similarly situated individuals travelling for certain tax-exempt purposes), the coverage must be under a policy issued by an expatriate health insurance issuer.

Finally, consistent with section 3(d)(2)(G) of the EHCCA, the proposed regulations provide that an expatriate health plan must satisfy the provisions of Chapter 100 of the Code, part 7 of subtitle B of title I of ERISA and title XXVII of the PHS Act that would otherwise apply if the ACA had not been enacted. Among other requirements, those provisions limited the ability of a group health plan or group health insurance issuer to impose preexisting condition exclusions (which are now prohibited for grandfathered and non-grandfathered group health plans and health insurance coverage offered in connection with such plans, and non-grandfathered individual health insurance coverage under the ACA), including a requirement that the period of any preexisting condition exclusion be reduced by the length of any period of creditable coverage the individual had without a 63-day break in coverage.

Prior to the enactment of the ACA, HIPAA and underlying regulations also generally required that plans and issuers provide certificates of creditable coverage when an individual ceased to be covered by a plan or policy and upon request. Following the enactment of the ACA, the regulations under these provisions have eliminated the requirement for providing certificates of creditable coverage beginning December 31, 2014, because the requirement is generally no longer relevant to plans and participants as a result of the prohibition on preexisting condition exclusions. The Departments recognize that reimposing the requirement to provide certificates of creditable coverage on expatriate health plans would only be useful in situations in which an individual transferred from one expatriate health plan to another and that reimposing the requirement on all health plans would require certificates that would be unnecessary except in limited cases, such as for an individual who ceased coverage with a health plan or policy and began coverage under an expatriate health plan that imposed a preexisting condition exclusion. Because reimposing the requirement to provide certificates of creditable coverage would be inefficient and overly broad, and relevant in only limited circumstances, the proposed regulations do not require expatriate health plans to provide certificates of creditable coverage. However, expatriate health plans imposing a preexisting condition exclusion must still comply with certain limitations on preexisting condition exclusions that would otherwise apply if the ACA had not been enacted. Therefore, the proposed regulations require expatriate health plans to ensure that individuals who enroll in the expatriate health plan are provided an opportunity to demonstrate creditable coverage to offset any preexisting condition exclusion. For example, an email from the prior issuer (or former plan administrator or plan sponsor) providing information about past coverage could be sufficient confirmation of prior creditable coverage.

Comments in response to Notice 2015–43 requested clarification of the treatment of health coverage provided by a foreign government. Specifically, comments requested that health coverage provided by a foreign government be treated as minimum essential coverage under section 5000A of the Code, and that, for purposes of the employer shared responsibility provision of section 4980H of the Code, an offer of such coverage be treated as an offer of minimum essential coverage for certain foreign employees working in the United States. These issues are generally beyond the scope of these proposed regulations. Under the existing regulations under section 5000A(f)(1)(E) of the Code, there are procedures for health benefits coverage not otherwise designated under section 5000A(f)(1) of the Code as minimum essential coverage to be recognized by the Secretary of HHS, in coordination with the Secretary of the Treasury, as minimum essential coverage. The Secretary of HHS has provided that coverage under a group health plan

[23] 26 CFR 54.9831–1(b), 29 CFR 2590.732(b), 45 CFR 146.145(b).

[24] See *e.g.*, 26 CFR 1.460–6(d)(4)(i)(D)(*1*).

[25] For this purpose, generally "minimum value" takes into account the provision of "essential health benefits" as defined in section 1302(b)(1) of the Affordable Care Act.

provided through insurance regulated by a foreign government is minimum essential coverage for expatriates who meet specified conditions.[26] Furthermore, plan sponsors of health coverage that is not recognized as minimum essential coverage through statute, regulation, or guidance may submit an application to CMS for minimum essential coverage recognition pursuant to 45 CFR 156.604.[27] For a complete list of coverage recognized by CMS as minimum essential coverage under section 5000A(f)(1)(E) of the Code, see *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/minimum-essential-coverage.html*.

Comments also requested that policies sold by non-United States health insurance issuers be treated as minimum essential coverage under section 5000A of the Code, or as expatriate health plans. Section 3(d)(5)(A) of the EHCCA specifies that the terms "health insurance issuer" and "health insurance coverage" have the meanings given those terms by section 2791 of the PHS Act. Section 2791 of the PHS Act (and parallel provisions in section 9832(b) of the Code and section 733(b) of ERISA) define those terms by reference to an entity licensed to engage in the business of insurance in a State and subject to State law that regulates insurance. Under section 2791 of the PHS Act, the term "State" means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Consistent with those provisions, these proposed regulations limit an expatriate health insurance issuer to a health insurance issuer within the meaning of those sections (and that meets the other requirements set forth in the proposed regulations). As such, a non-United States health insurance issuer does not qualify as an expatriate health insurance issuer within the meaning of the EHCCA, and coverage issued by a non-United States issuer that is not otherwise minimum essential coverage is not minimum essential coverage pursuant to the EHCCA.

Definition of Expatriate Health Plan Administrator

The proposed regulations define "expatriate health plan administrator," with respect to self-insured coverage, as an administrator of self-insured coverage that generally satisfies the same requirements as an "expatriate health insurance issuer."

Definition of Qualified Expatriate

Consistent with section 3(d)(3) of the EHCCA, the proposed regulations define "qualified expatriate" as one of three types of individuals. The first type of qualified expatriate, a category A expatriate, is an individual who has the skills, qualifications, job duties, or expertise that has caused the individual's employer to transfer or assign the individual to the United States for a specific and temporary purpose or assignment that is tied to the individual's employment with the employer. A category A expatriate may only be an individual who: (1) The plan sponsor has reasonably determined requires access to health coverage and other related services and support in multiple countries, (2) is offered other multinational benefits on a periodic basis (such as tax equalization, compensation for cross-border moving expenses, or compensation to enable the individual to return to the individual's home country), and (3) is not a national of the United States. The proposed regulations provide that an individual who is not expected to travel outside the United States at least one time per year during the coverage period would not reasonably "require access" to health coverage and other related services and support in multiple countries. Furthermore, under the proposed regulations, the offer of a one-time *de minimis* benefit would not meet the standard for the "periodic" offer of "other multinational benefits."

Section 3(d)(3)(B) of the EHCCA provides that a second type of qualified expatriate, a category B expatriate, is an individual who works outside the United States for a period of at least 180 days in a consecutive 12-month period that overlaps with the plan year. A comment requested that the regulations clarify that the 12-month period could either be within a single plan year, or across two consecutive plan years. Consistent with the statutory language, the proposed regulations provide that a category B expatriate is an individual who is a national of the United States and who works outside the United States for at least 180 days in a consecutive 12-month period that is within a single plan year, or across two consecutive plan years. Section 3(d)(2)(C)(ii) of the EHCCA requires an expatriate health plan provided to category B expatriates to cover certain specified services, such as inpatient and outpatient services, in the country in which the individual is "present in connection" with his employment. The Departments request comments on whether it would be helpful to provide further administrative clarification of this statutory language regarding the country or countries in which the services must be provided, and, if so, whether there are facts or circumstances that will present particular challenges in applying this rule.

Finally, consistent with section 3(d)(3)(C) of the EHCCA, the proposed regulations provide that a third type of qualified expatriate, a category C expatriate, is an individual who is a member of a group of similarly situated individuals that is formed for the purpose of traveling or relocating internationally in service of one or more of the purposes listed in section 501(c)(3) or (4) of the Code, or similarly situated organizations or groups, and meets certain other conditions.[28] A category C expatriate does not include an individual in a group that is formed primarily for the sale or purchase of health insurance coverage. To qualify as this type of qualified expatriate, the Secretary of HHS, in consultation with the Secretary of the Treasury and the Secretary of Labor, must determine that the group requires access to health coverage and other related services and support in multiple countries. The proposed regulations clarify that a category C expatriate does not include an individual whose international travel or relocation is related to employment. Thus, an individual whose travel is employment-related may be a qualified expatriate only in category A or B. The proposed regulations also provide that, in the case of a group organized to travel or relocate outside the United States, the individual must be expected to travel or reside outside the United States for at least 180 days in a consecutive 12-month period that overlaps with the policy year (or in the case of a policy year that is less than 12 months, at least

[26] See CMS Insurance Standards Bulletin Series. CCIIO Sub-Regulatory Guidance: Process for Obtaining Recognition as Minimum Essential Coverage (Oct. 31, 2013), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/mec-guidance-10-31-2013.pdf*.

[27] See CMS Insurance Standards Bulletin Series. CCIIO Sub-Regulatory Guidance: Process for Obtaining Recognition as Minimum Essential Coverage (Oct. 31, 2013), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/mec-guidance-10-31-2013.pdf*. See also CMS Insurance Standards Bulletin Series. CCIIO Sub-Regulatory Guidance: Minimum Essential Coverage.

[28] Code section 501(c)(3) describes an organization formed for religious, charitable, scientific, public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, and not for political candidate campaign or legislative purposes or propaganda. Code section 501(c)(4) describes an organization operated exclusively for the promotion of social welfare.

half of the policy year), and in the case of a group organized to travel or relocate within the United States, the individual must be expected to travel or reside in the United States for not more than 12 months. The proposed regulations provide that a group of category C expatriates must also meet the test for having associational ties under section 2791(d)(3)(B) through (F) of the PHS Act (42 U.S.C. 300gg–91(d)(3)(B) through (F)).

For purposes of section 3(d)(3)(C)(iii) of the EHCCA, the proposed regulations provide that the Secretary of HHS, in consultation with the Secretary of the Treasury and the Secretary of Labor, has determined that, in the case of a group of similarly situated individuals that meets all of the criteria in the proposed regulations, the group requires access to health coverage and other related services and support in multiple countries.

Comments in response to Notice 2015–43 requested that category C expatriates not be limited to individuals expected to travel or reside in the United States for 12 or fewer months. While the EHCCA does not include a time limit for category C expatriates, section 3(e) of the EHCCA provides that the Departments "may promulgate regulations necessary to carry out this Act, including such rules as may be necessary to prevent inappropriate expansion of the exclusions under the Act from applicable laws and regulations." In the group market, the EHCCA and the proposed regulations define a category A expatriate with respect to a "specific and temporary purpose or assignment" tied to the individual's employment in the United States. It is the view of HHS, in consultation with the Departments of Labor and the Treasury, that similar safeguards are necessary in the individual market to prevent inappropriate expansion of the exception for category C expatriates.

Comments are requested on all aspects of the proposed definition of a category C expatriate. Comments are also requested on the time limit for category C expatriates being expected to travel or reside in the United States, and what standards, if any, may be adopted in lieu of the 12-month maximum that would ensure that the definition does not permit inappropriate expansion of the exception. For example, comments are requested on whether a "specific and temporary purpose" standard should be adopted for category C expatriates, consistent with the standard for category A expatriates, or whether category C expatriates should be expected to seek medical care outside the United States at least one time per year in order to be considered to reasonably require access to health coverage and other related services and support in multiple countries. Comments are also requested on the proposed standard with respect to category C expatriates being expected to travel or reside outside the United States for at least 180 days in a consecutive 12-month period that overlaps with the policy year, and whether there are fact patterns in which the 12-month period could either be within a single policy year, or across two consecutive policy years.

Definitions of Group Health Plan and United States

Consistent with section 3(d)(5)(A) of the EHCCA, for purposes of applying the definition of expatriate health plan, "group health plan" means a group health plan as defined under 26 CFR 54.9831–1(a)(1), 29 CFR 2590.732(a)(1) or 45 CFR 146.145(a)(1), as applicable. Consistent with section 3(d)(4) of the EHCCA, the proposed regulations define "United States" to mean the 50 States, the District of Columbia and Puerto Rico.

Section 9010 of the ACA

Section 3(c)(1) of the EHCCA provides that, for purposes of the health insurance providers fee imposed by section 9010 of the ACA, a qualified expatriate enrolled in an expatriate health plan is not a United States health risk for calendar years after 2015. Section 3(c)(2) of the EHCCA provides a special rule applicable to calendar years 2014 and 2015. The Treasury Department and the IRS issued Notices 2015–29 and 2016–14 to address the definition of expatriate health plan for purposes of the health insurance providers fee imposed by section 9010 for the 2014, 2015, and 2016 fee years. No fee is due in the 2017 fee year because the Consolidated Appropriations Act suspends collection of the health insurance providers fee imposed by section 9010 of ACA for 2017.

These proposed regulations provide that, for any fee that is due on or after the date final regulations are published in the **Federal Register**, a qualified expatriate enrolled in an expatriate health plan as defined in these proposed regulations is not a United States health risk. These proposed regulations also authorize the IRS to specify in guidance in the Internal Revenue Bulletin the manner of determining excluded premiums for qualified expatriates in expatriate health plans. Until the date the final regulations are published in the **Federal Register**, taxpayers may rely on these proposed regulations with respect to any fee that is due beginning with the 2018 fee year.

Federal Tax Provision: Section 162(m)(6) of the Code

Section 162(m)(6) of the Code, as added by section 9014 of the ACA, in general, limits to $500,000 the allowable deduction for remuneration attributable to services performed by certain individuals for a covered health insurance provider. For taxable years beginning after December 31, 2012, section 162(m)(6)(C)(i) of the Code and 26 CFR 1.162–31(b)(4)(A) provide that a health insurance issuer is a covered health insurance provider if not less than 25 percent of the gross premiums that it receives from providing health insurance coverage during the taxable year are from minimum essential coverage. Section 3(a)(3) of the EHCCA provides that the provisions of the ACA (which include section 162(m)(6) of the Code) do not apply to expatriate health insurance issuers with respect to coverage offered by such issuers under expatriate health plans. Consistent with this rule, the proposed regulations exclude from the definition of the term "premium" for purposes of section 162(m)(6) of the Code amounts received in payment for coverage under an expatriate health plan. As a result, those amounts received are included in neither the numerator nor the denominator for purposes of determining whether the 25 percent standard under section 162(m)(6)(C)(i) of the Code and 26 CFR 1.162–31(b)(4)(A) is met, and they have no impact on whether a particular issuer is a covered health insurance provider.

Federal Tax Provision: Section 4980I of the Code

Section 3(b)(2) of the EHCCA provides that section 4980I of the Code applies to employer-sponsored coverage of a qualified expatriate who is assigned, rather than transferred, to work in the United States. As amended by section 101 of Division P of the Consolidated Appropriations Act, section 4980I of the Code first applies to coverage provided in taxable years beginning after December 31, 2019. Comments in response to Notice 2015–43 requested additional guidance on what it means for an employer to assign rather than transfer an employee. These proposed regulations do not address the interaction of the EHCCA and section 4980I of the Code because the Treasury Department and the IRS anticipate that this issue will be addressed in future

guidance promulgated under section 4980I of the Code.

Federal Tax Provision: Section 5000A of the Code and Minimum Essential Coverage

The proposed regulations provide that, beginning January 1, 2017, coverage under an expatriate health plan that provides coverage for a qualified expatriate qualifies as minimum essential coverage for all participants in the plan. If the expatriate health plan provides coverage to category A or category B expatriates, the coverage of any participant in the plan is treated as an eligible employer-sponsored plan under section 5000A(f)(2) of the Code. If the expatriate health plan provides coverage to category C expatriates, the coverage of any enrollee in the plan is treated as a plan in the individual market under section 5000A(f)(1)(C) of the Code.

Federal Tax Provision: Sections 6055 and 6056 of the Code

Section 3(b)(2) of the EHCCA permits the use of electronic media to provide the statements required under sections 6055 and 6056 of the Code to individuals for coverage under an expatriate health plan unless the primary insured has explicitly refused to receive the statement electronically. The proposed regulations provide that, for an expatriate health plan, the recipient is treated as having consented to receive the required statement electronically unless the recipient has explicitly refused to receive the statement in an electronic format. In addition, the proposed regulations provide that the recipient may explicitly refuse either electronically or in a paper document. For a recipient to be treated as having consented under this special rule, the furnisher must provide a notice in compliance with the general disclosure requirements under sections 6055 and 6056 that informs the recipient that the statement will be furnished electronically unless the recipient explicitly refuses to consent to receive the statement in electronic form. The notice must be provided to the recipient at least 30 days prior to the due date for furnishing of the first statement the furnisher intends to furnish electronically to the recipient. Absent receipt of this notice, a recipient will not be treated as having consented to electronic furnishing of statements. Treasury and IRS request comments on further guidance that will assist issuers and plan sponsors in providing this notice in the least burdensome manner while still ensuring that the recipient has sufficient information and opportunity to opt out of the electronic reporting if the recipient desires. For example, Treasury and the IRS specifically request comments on whether the ability to provide this notice as part of the enrollment materials for the coverage would meet these goals.

Federal Tax Provision: PCORTF Fee

The proposed regulations provide that the excise tax under sections 4375 and 4376 of the Code (the PCORTF fee) does not apply to an expatriate health plan as defined at 26 CFR 54.9831–1(f)(3). Section 4375 of the Code limits the application of the fee to policies issued to individuals residing in the United States. Existing regulations under sections 4375, 4376, and 4377 of the Code exclude coverage under a plan from the fee if the plan is designed specifically to cover primarily employees who are working and residing outside the United States. A comment requested clarification about the existing PCORTF fee exemption for plans that primarily cover employees working and residing outside the United States. Consistent with the provisions of the EHCCA, the proposed regulations expand the exclusion from the PCORTF fee to also exclude an expatriate health plan regardless of whether the plan provides coverage for qualified expatriates residing or working in or outside the United States if the plan is an expatriate health plan.

Section 1341 of the ACA: Transitional Reinsurance Program

A comment also requested that the current exclusion under the PCORTF fee regulations for individuals working and residing outside the United States be applied to the transitional reinsurance fee under section 1341 of the ACA. Existing regulations relating to section 1341 of the ACA include an exception for certain expatriate health plans,[29] including expatriate group health coverage as defined by the Secretary of HHS and, for the 2015 and 2016 benefit years, self-insured group health plans with respect to which enrollment is limited to participants who reside outside their home country for at least six months of the plan year, and any covered dependents. HHS solicits comment on whether amendments are needed to 45 CFR 153.400(a)(1)(iii) to clarify the alignment with the EHCCA and exempt all expatriate plans from the requirement to make reinsurance contributions.

[29] 45 CFR 153.400(a)(1)(iii).

Section 2718 of the PHS Act: MLR Program

Section 2718 of the PHS Act, as added by sections 1001 and 10101 of the ACA, generally requires health insurance issuers to provide rebates to consumers if issuers do not achieve specified MLRs, as well as to submit an annual MLR report to HHS. The proposed regulations provide that expatriate policies described in 45 CFR 158.120(d)(4) continue to be subject to the reporting and rebate requirements of 45 CFR part 158, but update the description of expatriate policies in 45 CFR 158.120(d)(4) to exclude policies that are expatriate health plans under the EHCCA. Given this modification, issuers may find that the number of expatriate policies that remain subject to MLR requirements is low, and that it is administratively burdensome and there is no longer a qualitative justification for continuing separate reporting of such policies. Therefore, comments are requested on whether the treatment of expatriate policies for purposes of the MLR regulations should be amended so that expatriate policies that do not meet the definition of expatriate health plan under the EHCCA would not be required to be reported separately from other health insurance policies.

Section 833(c)(5) of the Code, as added by section 9016 of the ACA, and amended by section 102 of Division N of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, 128 Stat. 2130), provides that section 833(a)(2) and (3) do not apply to any organization unless the organization's MLR for the taxable year was at least 85 percent. In describing the MLR computation under section 833(c)(5), the statute and implementing regulations provide that the elements in the MLR computation are to be "as reported under section 2718 of the Public Service Health Act." Accordingly, the proposed regulations under section 2718 of the PHS Act would effectively apply the EHCCA exemption to section 833(c)(5) of the Code by carving out expatriate health plans under the EHCCA from the section 833(c)(5) requirements as well.

Excepted Benefits

Supplemental Health Insurance Coverage

The proposed regulations incorporate the guidance from the Affordable Care Act Implementation FAQs Part XXIII addressing supplemental health insurance products that provide categories of benefits in addition to those in the primary coverage. Under the proposed regulations, if group or

individual supplemental health insurance coverage provides benefits for items and services not covered by the primary coverage (referred to as providing "additional categories of benefits"), the coverage would be considered to be designed "to fill gaps in primary coverage," for purposes of being supplemental excepted benefits if none of the benefits provided by the supplemental policy are an EHB, as defined for purposes of section 1302(b) of the ACA, in the State in which the coverage is issued. Conversely, if any benefit provided by the supplemental policy is an EHB in the State where the coverage is issued, the insurance coverage would not be supplemental excepted benefits under the proposed regulations. This standard is proposed to apply only to the extent that the supplemental health insurance provides coverage of additional categories of benefits. Supplemental health insurance products that both fill in cost sharing in the primary coverage, such as coinsurance or deductibles, and cover additional categories of benefits that are not EHB, also would be considered supplemental excepted benefits under these proposed regulations provided all other criteria are met.

Travel Insurance

The Departments are aware that certain travel insurance products may include limited health benefits. However, these products typically are not designed as major medical coverage. Instead, the risks being insured relate primarily to: (1) The interruption or cancellation of a trip (2) the loss of baggage or personal effects; (3) damages to accommodations or rental vehicles; or (4) sickness, accident, disability, or death occurring during travel, with any health benefits usually incidental to other coverage.

Section 2791(c)(1)(H) of the PHS Act, section 733(c)(1)(H) of ERISA, and section 9832(c)(1)(H) of the Code provide that the Departments may, in regulations, designate as excepted benefits "benefits for medical care that are secondary or incidental to other insurance benefits." Pursuant to this authority, and to clarify which types of travel-related insurance products are excepted benefits under the PHS Act, ERISA, and the Code, the proposed regulations provide that certain travel-related products that provide only incidental health benefits are excepted benefits. The proposed regulations define the term "travel insurance" as insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of a trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage. For this purpose, travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed. This definition is consistent with the definition of travel insurance under final regulations for the health insurance providers fee imposed by section 9010 of the ACA issued by the Treasury Department and the IRS,[30] which uses a modified version of the National Association of Insurance Commissioners (NAIC) definition of travel insurance.

Hospital Indemnity and Other Fixed Indemnity Insurance

These proposed regulations also include an amendment to the "noncoordinated excepted benefits" category as it relates to hospital indemnity and other fixed indemnity insurance in the group market. Since the issuance of final regulations defining excepted benefits, the Departments have become aware of some hospital indemnity and other fixed indemnity insurance policies that provide comprehensive benefits related to health care costs. In addition, although hospital indemnity and other fixed indemnity insurance under section 2791 of the PHS Act, section 733 of ERISA, and section 9832 of the Code is not intended to be major medical coverage, the Departments are aware that some group health plans that provide coverage through hospital indemnity or other fixed indemnity insurance policies that meet the conditions necessary to be an excepted benefit have made representations to participants that the coverage is minimum essential coverage under section 5000A of the Code. The Departments are concerned that some individuals may incorrectly understand these policies to be comprehensive major medical coverage that would be considered minimum essential coverage.

To avoid confusion among group health plan enrollees and potential enrollees, the proposed regulations revise the conditions necessary for hospital indemnity and other fixed indemnity insurance in the group market to be excepted benefits so that any application or enrollment materials provided to enrollees and potential enrollees at or before the time enrollees and potential enrollees are given the opportunity to enroll in the coverage must include a statement that the coverage is a supplement to, rather than a substitute for, major medical coverage and that a lack of minimum essential coverage may result in an additional tax payment. The proposed regulations include specific language that must be used by group health plans and issuers of group health insurance coverage to satisfy this notice requirement, which is consistent with the notice requirement for individual market fixed indemnity coverage under regulations issued by HHS.[31] The Departments request comments on this proposed notice requirement as well as whether any additional requirements should be added to prevent confusion among enrollees and potential enrollees regarding the limited coverage provided by hospital indemnity and other fixed indemnity insurance. The Departments anticipate that conforming changes will be made in the final regulations to ensure the notice language in the individual market is consistent with the notice language in the group market, and solicit comments on this approach.

Additionally, the Departments have become aware of hospital indemnity or other fixed indemnity insurance policies that provide benefits for doctors' visits at a fixed amount per visit, for prescription drugs at a fixed amount per drug, or for certain services at a fixed amount per day but in amounts that vary by the type of service. These types of policies do not meet the condition that benefits be provided on a per day (or per other time period, such as per week) basis. Accordingly, the proposed regulations clarify this standard by stating that the amount of benefits provided must be determined without regard to the type of items or services received. The proposed regulations add two examples demonstrating that group health plans and issuers of group health insurance coverage that provide coverage through hospital indemnity or fixed indemnity insurance policies that provide benefits based on the type of item or services received do not meet the conditions necessary to be an excepted benefit. The first example would incorporate into regulations guidance previously provided by the Departments in Affordable Care Act Implementation FAQs Part XI, which clarified that if a policy provides benefits in varying amounts based on the type of procedure or item received, the policy does not satisfy the condition that benefits be provided on a per day (or per other time period, such as per week) basis. The second example demonstrates that a hospital indemnity or other fixed indemnity insurance policy that provides benefits for certain services at a fixed amount per day, but in varying amounts depending on the type of service, does not meet the condition that benefits be provided on a per day (or per other time period, such as per week) basis. The Departments request comments on these examples specifically, as well as on the requirement that hospital indemnity and other fixed indemnity insurance in the group market that are excepted benefits must provide benefits on a per day (or per other time period, such as per week) basis in an amount that does not vary based on the type of items or services received. The Departments also request comments on whether the conditions for hospital indemnity or other fixed indemnity insurance to be considered excepted benefits should be more substantively aligned between the group and individual markets. For example, the requirements for hospital indemnity or other fixed indemnity insurance in the individual market could be modified to be consistent with the group market provisions of these proposed regulations by limiting payment strictly on a per-period basis and not on a per-service basis.

Specified Disease Coverage

The Departments have been asked whether a policy covering multiple specified diseases or illnesses may be considered to be excepted benefits. The statute provides that the noncoordinated excepted benefits category includes "coverage of a specified disease or illness" if the coverage meets the conditions for being offered as independent, noncoordinated benefits, and the Departments' implementing regulations identify cancer-only policies as one example of specified disease coverage.[32] The Departments are concerned that individuals who purchase a specified disease policy covering multiple diseases or illnesses (including policies that cover one overarching medical condition such as "mental illness" as opposed to a specific condition such as depression) may incorrectly believe they are purchasing comprehensive medical coverage when, in fact, these polices may not include many of the important consumer protections under the PHS Act, ERISA, and the Code. The Departments solicit comments on this issue and on whether, if such policies are permitted to be considered excepted benefits, protections are needed to ensure such policies are not mistaken for comprehensive medical coverage. For example, the Departments solicit comments on whether to limit the number of diseases or illnesses that may be covered in a specified disease policy that is considered to be excepted benefits or whether issuers should be required to disclose that such policies are not minimum essential coverage under section 5000A(f) of the Code.

Short-Term, Limited-Duration Insurance

Under existing regulations, short-term, limited-duration insurance means "health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract."[33] Before enactment of the ACA, short-term, limited-duration insurance was an important means for individuals to obtain health coverage when transitioning from one job to another (and from one group health plan to another) or in a similar situation. But with the guaranteed availability of coverage and special enrollment period requirements in the individual health insurance market under the ACA, short-term, limited-duration insurance is no longer the only means to obtain transitional coverage.

The Departments recently have become aware that short-term, limited-duration insurance is being sold to address situations other than the situations that the exception was initially intended to address.[34] In some instances individuals are purchasing this coverage as their primary form of health coverage and, contrary to the intent of the 12-month coverage limitation in the current definition of short-term, limited-duration insurance, some issuers are providing renewals of the coverage that extend the duration beyond 12 months. The Departments are concerned that these policies, because they are exempt from market reforms, may have significant limitations, such as lifetime and annual dollar limits on EHBs and pre-existing condition exclusions, and therefore may not provide meaningful health coverage. Further, because these policies can be medically underwritten based on health status, healthier individuals may be targeted for this type of coverage, thus adversely impacting the risk pool for ACA-compliant coverage.

To address the issue of short-term, limited-duration insurance being sold as a type of primary coverage, the proposed regulations revise the definition of short-term, limited-duration insurance so that the coverage must be less than three months in duration, including any period for which the policyholder renews or has an option to renew with or without the issuer's consent. The proposed regulations also provide that a notice must be prominently displayed in the contract and in any application materials provided in connection with enrollment in such coverage with the following language: THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES.

This change would align the definition more closely with the initial intent of the regulation: To refer to coverage intended to fill temporary coverage gaps when an individual transitions between primary coverage. Further, limiting the coverage to less than three months improves coordination with the exemption from the individual shared responsibility provision of section 5000A of the Code for gaps in coverage of less than three months (the short coverage gap exemption), 26 CFR 1.5000A–3. Under current law, individuals who are enrolled in short-term, limited-duration coverage instead of minimum essential coverage for three months or more are generally not eligible for the short coverage gap exemption. The proposed regulations help ensure that individuals who purchase short-term, limited-duration coverage will still be eligible for the short coverage gap exemption (assuming other requirements are met) during the temporary coverage period.

In addition to proposing to reduce the length of short-term, limited-duration insurance to less than three months, the proposed regulations add the words "with or" in front of "without the issuer's consent" to address the Departments' concern that some issuers are taking liberty with the current

[30] 26 CFR 57.2(h)(4).

[31] 45 CFR 148.220(b)(4)(iv).

[32] 26 CFR 54.9831–1(c)(4), 29 CFR 2590.732(c)(4), 45 CFR 146.145(b)(4) and 148.220(b)(3).

[33] 26 CFR 54.9801–2, 29 CFR 2590.702–2, 45 CFR 144.103.

[34] See *e.g.*, Mathews, Anna W. "Sales of Short-Term Health Policies Surge," *The Wall Street Journal* April 10, 2016, available at *http://www.wsj.com/articles/sales-of-short-term-health-policies-surge-1460328539*.

definition of short-term, limited-duration insurance either by automatically renewing such policies or having a simplified reapplication process with the result being that such coverage lasts much longer than 12 months and serves as an individual's primary coverage but does not contain the important protections of the ACA. As indicated above, this type of coverage should only be sold for the purpose of providing coverage on a short-term basis such as filling in coverage gaps as a result of transitioning from one group health plan to another. The addition of the words "with or" clarifies that short-term, limited-duration insurance must be less than 3 months in total taking into account any option to renew or to reapply for the same or similar coverage.

The Departments seek comment on this proposal, including information and data on the number of short-term, limited-duration insurance policies offered for sale in the market, the types of individuals who typically purchase this coverage, and the reasons for which they purchase it.

Definition of EHB for Purposes of the Prohibition on Lifetime and Annual Limits

On November 18, 2015, the Departments issued final regulations implementing section 2711 of the PHS Act.[35] The final regulations provide that, for plan years beginning on or after January 1, 2017, a plan or issuer that is not required to provide EHBs must define EHB, for purposes of the prohibition on lifetime and annual dollar limits, in a manner consistent with any of the 51 EHB base-benchmark plans applicable in a State or the District of Columbia, or one of the three FEHBP base-benchmarks, as specified under 45 CFR 156.100.

The final regulations under section 2711 of the PHS Act include a reference to selecting a "base-benchmark" plan, as specified under 45 CFR 156.100, for purposes of determining which benefits cannot be subject to lifetime or annual dollar limits. The base-benchmark plan selected by a State or applied by default under 45 CFR 156.100, however, may not reflect the complete definition of EHB in the applicable State. For that reason, the Departments propose to amend the regulations at 26 CFR 54.9815–2711(c), 29 CFR 2590.715–2711(c), and 45 CFR 147.126(c) to refer to the provisions that capture the complete definition of EHB in a State. Specifically, the Departments propose to replace the phrase "in a manner consistent with one of the three Federal Employees Health Benefit Program (FEHBP) options as defined by 45 CFR 156.100(a)(3) or one of the base-benchmark plans selected by a State or applied by default pursuant to 45 CFR 156.100" in each of the regulations with the following: "In a manner that is consistent with (1) one of the EHB-benchmark plans applicable in a State under 45 CFR 156.110, and includes coverage of any additional required benefits that are considered essential health benefits consistent with 45 CFR 155.170(a)(2); or (2) one of the three Federal Employees Health Benefit Program (FEHBP) options as defined by 45 CFR 156.100(a)(3), supplemented, as necessary, to meet the standards in 45 CFR 156.110." This change reflects the possibility that base-benchmark plans, including the FEHBP plan options, could require supplementation under 45 CFR 156.110, and ensures the inclusion of State-required benefit mandates enacted on or before December 31, 2011 in accordance with 45 CFR 155.170, which when coupled with a State's EHB-benchmark plan, establish the definition of EHB in that State under regulations implementing section 1302(b) of the ACA.[36] The Departments seek comment on the requirement that, when one of the FEHBP plan options is selected as the benchmark, it would be supplemented, as needed, to ensure coverage in all ten statutory EHB categories, and the benchmark plan options that should be available for this purpose.

Proposed Applicability Date and Reliance

Except as otherwise provided herein, these proposed regulations are proposed to be applicable for plan years (or, in the individual market, policy years) beginning on or after January 1, 2017. Issuers, employers, administrators, and individuals are permitted to rely on these proposed regulations pending the applicability date of final regulations in the **Federal Register**. To the extent final regulations or other guidance is more restrictive on issuers, employers, administrators, and individuals than these proposed regulations, the final regulations or other guidance will be applied without retroactive effect and issuers, employers, administrators, and individuals will be provided sufficient time to come into compliance with the final regulations.

III. Economic Impact and Paperwork Burden

A. Summary—Department of Labor and Department of Health and Human Services

As stated above, the proposed regulations would provide guidance on the rules for expatriate health plans, expatriate health plan issuers, and qualified expatriates under the EHCCA. The EHCCA generally provides that the requirements of the ACA do not apply with respect to expatriate health plans, expatriate health insurance issuers for coverage under expatriate health plans, and employers in their capacity as plan sponsors of expatriate health plans.

The proposed regulations address how certain requirements relating to minimum essential coverage under section 5000A of the Code, the health care reporting provisions of sections 6055 and 6056 of the Code, and the health insurance providers fee imposed by section 9010 of the ACA continue to apply subject to certain provisions while providing that the excise tax under sections 4375 and 4376 of the Code do not apply to expatriate health plans.

The proposed regulations also propose amendments to the Departments' regulations concerning excepted benefits, which would specify the conditions for supplemental health insurance products that are designed "to fill gaps in primary coverage" by providing additional categories of benefits (as opposed to filling in gaps in cost sharing) to constitute supplemental excepted benefits, and clarify that certain travel-related insurance products that provide only incidental health benefits constitute excepted benefits. The proposed regulations also require that, to be considered hospital indemnity or other fixed indemnity insurance in the group market, any application or enrollment materials provided to participants at or before the time participants are given the opportunity to enroll in the coverage must include a statement that the coverage is a supplement to, rather than a substitute for, major medical coverage and that a lack of minimum essential

[35] 80 FR 72192.

[36] In the HHS Notice of Benefit and Payment Parameters for 2016 published February 27, 2015 (80 FR 10750), HHS instructed States to select a new base-benchmark plan to take effect beginning with plan or policy years beginning in 2017. The new final EHB base-benchmark plans selected as a result of this process are publicly available at *downloads.cms.gov/cciio/Final%20List%20of%20BMPs_15_10_21.pdf*. Additional information about the new base-benchmark plans, including plan documents and summaries of benefits, is available at *www.cms.gov/CCIIO/Resources/Data-Resources/ehb.html*. The definition of EHB in each of the 50 states and the District of Columbia is based on the base-benchmark plan, and takes into account any additions to the base-benchmark plan, such as supplementation under 45 CFR 156.110, and State-required benefit mandates in accordance with 45 CFR 155.170.

coverage may result in an additional tax payment. Further, the regulations clarify that hospital indemnity and other fixed indemnity insurance must pay a fixed dollar amount per day (or per other time period, such as per week) regardless of the type of items or services received.

The regulations also propose revisions to the definition of short-term, limited-duration insurance so that the coverage has to be less than 3 months in duration (as opposed to the current definition of less than 12 months in duration), and that a notice must be prominently displayed in the contract and in any application materials provided in connection with the coverage that provides that such coverage is not minimum essential coverage.

The proposed regulations also include amendments to 45 CFR part 158 to clarify that the MLR reporting requirements do not apply to expatriate health plans under the EHCCA.

Finally, the proposed regulations propose to amend the definition of "essential health benefits" for purposes of the prohibition of annual and lifetime dollar limits for group health plans and health insurance issuers that are not required to provide essential health benefits.

The Departments are publishing these proposed regulations to implement the protections intended by the Congress in the most economically efficient manner possible. The Departments have examined the effects of this rule as required by Executive Order 13563 (76 FR 3821, January 21, 2011), Executive Order 12866 (58 FR 51735, September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

B. Executive Orders 12866 and 13563—Department of Labor and Department of Health and Human Services

Executive Order 12866 (58 FR 51735) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 (76 FR 3821, January 21, 2011) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action that is likely to result in a final rule—(1) having an annual effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects (for example, $100 million or more in any 1 year), and a "significant" regulatory action is subject to review by the OMB. The Departments have determined that this regulatory action is not likely to have economic impacts of $100 million or more in any one year, and therefore is not significant within the meaning of Executive Order 12866. The Departments expect the impact of these proposed regulations to be limited because they do not require any additional action or impose any requirements on issuers, employers and plan sponsors.

1. Need for Regulatory Action

Consistent with the EHCCA, enacted as Division M of the Consolidated Clarification Continuing Appropriations Act, 2015 Public Law 113–235 (128 Stat. 2130), these proposed regulations provide that the market reform provisions enacted as part of the ACA generally do not apply to expatriate health plans, any employer solely in its capacity as a plan sponsor of an expatriate health plan, and any expatriate health insurance issuer with respect to coverage under an expatriate health plan. Further, the proposed regulations define the benefit and administrative requirements for expatriate health issuers, expatriate health plans, and qualified expatriates and provide clarification regarding the applicability of certain fee and reporting requirements under the Code.

Consistent with section 2 of the EHCCA, these proposed regulations are necessary to carry out the intent of Congress that (1) American expatriate health insurance issuers should be permitted to compete on a level playing field in the global marketplace; (2) the global competitiveness of American companies should be encouraged; and (3) in implementing the health insurance providers fee imposed by section 9010 of the ACA and other provisions of the ACA, the unique and multinational features of expatriate health plans and the United States companies that operate such plans and the competitive pressures of such plans and companies should continue to be recognized.

In response to feedback the Departments have received from stakeholders, the proposed regulations would also clarify the conditions for supplemental health insurance and travel insurance to be considered excepted benefits. These clarifications will provide health insurance issuers offering supplemental insurance coverage and travel insurance products with a clearer understanding of whether these types of coverage are subject to the market reforms under title XXVII of the PHS Act, part 7 of ERISA, and Chapter 100 of the Code. The proposed regulations also would amend the definition of short-term, limited-duration insurance and impose a new notice requirement in response to recent reports that this type of coverage is being sold for purposes other than for which the exclusion for short-term, limited-duration insurance was initially intended to cover.

2. Summary of Impacts

These proposed regulations would implement the rules for expatriate health plans, expatriate health insurance issuers, and qualified expatriates under the EHCCA. The proposed regulations also outline the conditions for travel insurance and supplemental insurance coverage to be considered excepted benefits, and revise the definition of short-term, limited-duration insurance.

Based on the NAIC 2014 Supplemental Health Care Exhibit Report,[37] which generally uses the definition of expatriate coverage in the MLR final rule at 45 CFR 158.120(d)(4),[38] there are an estimated

[37] NAIC, 2014 Supplemental Health Care Exhibit Report, Volume 1 (2015), available at *http://www.naic.org/documents/prod_serv_statistical_hcs_zb.pdf*.

[38] Section 45 CFR 158.120(d)(4) defines expatriate policies as predominantly group health insurance policies that provide coverage to employees, substantially all of whom are: (1) Working outside their country of citizenship; (2) working outside their country of citizenship and outside the employer's country of domicile; or (3) non-U.S. citizens working in their home country.

eight issuers (one issuer in the small group market and seven issuers in the large group market) domiciled in the United States that provide expatriate health plans for approximately 270,349 enrollees. While the Departments acknowledge that some expatriate health insurance issuers and employers in their capacity as plan sponsor of an expatriate health plan may incur costs in order to comply with certain provisions of the EHCCA and these proposed regulations, as discussed below, the Departments believe that these costs will be relatively insignificant and limited.

The vast majority of expatriate health plans described in the EHCCA would qualify as expatriate health plans under the transitional relief provided in the Departments' Affordable Care Act Implementation FAQs Part XVIII, Q&A–6 and Q&A–7. The FAQs provide that expatriate health plans with plan years ending on or before December 31, 2016 are exempt from the ACA market reforms and provide that coverage provided under an expatriate group health plan is a form of minimum essential coverage under section 5000A of the Code. The EHCCA permanently exempts expatriate health plans with plan or policy years beginning on or after July 1, 2015 from the ACA market reform requirements and provides that coverage provided under an expatriate health plan is a form of minimum essential coverage under section 5000A of the Code.

Because the Departments believe that most, if not all, expatriate health plans described in the EHCCA would qualify as expatriate health plans under the Departments' previous guidance, and the proposed regulations codify the provisions of the EHCCA by making the temporary relief in the Departments' Affordable Care Act Implementation FAQs Part XVIII, Q&A–6 and Q&A–7 permanent for specified expatriate health plans, the Departments believe that the proposed regulations will result in only marginal, if any, impact on these plans. Furthermore, the Departments believe the proposed regulations outlining the conditions for travel insurance and supplemental insurance coverage to be considered excepted benefits are consistent with prevailing industry practice and will not result in significant cost to health insurance issuers of these products.

The Departments believe that any costs incurred by issuers of short-term, limited-duration insurance and hospital indemnity and other fixed indemnity insurance to include the required notice in application or enrollment materials will be negligible since the Departments have provided the exact text for the notice. Further, the Departments note that issuers of hospital indemnity and other fixed indemnity insurance in the individual market already provide a similar notice.

As a result, the Departments have concluded that the impacts of these proposed regulations are not economically significant. The Departments request comments on the assumptions used to evaluate the economic impact of these proposed regulations, including specific data and information on the number of expatriate health plans.

C. Paperwork Reduction Act

1. Department of the Treasury

The collection of information in these proposed regulations are in 26 CFR 1.6055–2(a)(8) and 301.6056–2(a)(8). The collection of information in these proposed regulations relates to statements required to be furnished to a responsible individual under section 6055 of the Code and statements required to be furnished to an employee under section 6056 of the Code. The collection of information in these proposed regulations would, in accordance with the EHCCA, permit a furnisher to furnish the required statements electronically unless the recipient has explicitly refused to consent to receive the statement in an electronic format. The collection of information contained in this notice of proposed rulemaking will be taken into account and submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) in connection with the next review of the collection of information for IRS Form 1095–B (OMB # 1545–2252) and IRS Form 1095–C (OMB # 1545–2251).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 9, 2016. Comments are sought on whether the proposed collection of information is necessary for the proper performance of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques and other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information. Comments on the collection of information should be received by August 9, 2016.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

2. Department of the Treasury, Department of Labor, and Department of Health and Human Services

The proposed regulations provide that to be considered hospital or other fixed indemnity excepted benefits in the group market for plan years beginning on or after January 1, 2017, a notice must be included in any application or enrollment materials provided to participants at or before the time participants are given the opportunity to enroll in the coverage, indicating that the coverage is a supplement to, rather than a substitute for major medical coverage and that a lack of minimum essential coverage may result in an additional tax payment. The proposed regulations also provide that to be considered short-term, limited-duration insurance for policy years beginning on or after January 1, 2017, a notice must be prominently displayed in the contract and in any application materials, stating that the coverage is not minimum essential coverage and that failure to have minimum essential coverage may result in an additional tax payment. The Departments have provided the exact text for these notice requirements and the language will not need to be customized. The burden associated with these notices is not subject to the Paperwork Reduction Act of 1995 in accordance with 5 CFR 1320.3(c)(2) because they do not contain a "collection of information" as defined in 44 U.S.C. 3502(11).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes

certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

The RFA generally defines a "small entity" as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA) (13 CFR 121.201); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of "small entity.") The Departments use as their measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

These proposed regulations are not likely to impose additional costs on small entities. According to SBA size standards, entities with average annual receipts of $38.5 million or less would be considered small entities for these North American Industry Classification System codes. The Departments believe that, since the majority of small issuers belong to larger holding groups, many if not all are likely to have non-health lines of business that would result in their revenues exceeding $38.5 million. Therefore, the Departments certify that the proposed regulations will not have a significant impact on a substantial number of small entities. In addition, section 1102(b) of the Social Security Act requires agencies to prepare a regulatory impact analysis if a rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. These proposed regulations would not affect small rural hospitals. Therefore, the Departments have determined that these proposed regulations would not have a significant impact on the operations of a substantial number of small rural hospitals.

E. Special Analysis—Department of the Treasury

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. For applicability of RFA, see paragraph D of this section III.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, these proposed rules do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $146 million adjusted for inflation since 1995.

G. Federalism—Department of Labor and Department of Health and Human Services

Executive Order 13132 outlines fundamental principles of federalism. It requires adherence to specific criteria by Federal agencies in formulating and implementing policies that have "substantial direct effects" on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have these federalism implications must consult with State and local officials, and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the final regulation.

In the Departments' view, these proposed regulations do not have federalism implications, because they do not have direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government.

H. Congressional Review Act

These proposed regulations are subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and, if finalized, will be transmitted to the Congress and to the Comptroller General for review in accordance with such provisions.

I. Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS Web site at *http://www.irs.gov.*

IV. Statutory Authority

The Department of the Treasury regulations are proposed to be adopted pursuant to the authority contained in sections 7805 and 9833 of the Code.

The Department of Labor regulations are proposed pursuant to the authority contained in 29 U.S.C. 1135,and 1191c; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

The Department of Health and Human Services regulations are proposed to be adopted pursuant to the authority contained in sections 2701 through 2763, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

List of Subjects

26 CFR Part 1

Income taxes.

26 CFR Part 46

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 54

Pension and excise taxes.

26 CFR Part 57

Health insurance providers fee.

26 CFR Part 301

Procedure and administration.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Parts 144, 146 and 147

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health

insurance, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 158

Health insurance, Medical loss ratio, Reporting and rebate requirements.

John Dalrymple,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Signed this 1st day of June 2016.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Dated: June 2, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: June 3, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 46, 54, 57, and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805.* * *

■ 2. Section 1.162–31 is amended by adding paragraph (b)(5)(v) to read as follows:

§ 1.162–31 The $500,000 deduction limitation for remuneration provided by certain health insurance providers.

* * * * *

(b) * * *

(5) * * *

(v) *Expatriate health plan coverage.* For purposes of this section, amounts received in payment for expatriate health plan coverage, as defined in § 54.9831–1(f)(3), are not premiums.

* * * * *

■ 3. Section 1.5000A–2 is amended by adding paragraphs (c)(1)(i)(D) and (d)(3) to read as follows:

§ 1.5000A–2 Minimum essential coverage.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) A group health plan that is an expatriate health plan within the meaning of § 54.9831–1(f)(3) of this chapter if the requirements of § 54.9831–1(f)(3)(i) of this chapter are met by providing coverage for qualified expatriates described in § 54.9831–1(f)(6)(i) or (ii) of this chapter.

* * * * *

(d) * * *

(3) *Certain expatriate health plans.* An expatriate health plan within the meaning of § 54.9831–1(f)(3) of this chapter that is not an eligible employer-sponsored plan under paragraph (c)(1)(i)(D) of this section is a plan in the individual market.

* * * * *

■ 4. Section 1.6055–2 is amended by adding paragraph (a)(8) to read as follows:

§ 1.6055–2 Electronic furnishing of statements.

(a) * * *

(8) *Special rule for expatriate health plan coverage*—(i) *In general.* In the case of an individual covered under an expatriate health plan (within the meaning of § 54.9831–1(f)(3) of this chapter), the recipient is treated as having consented under paragraph (a)(2) of this section unless the recipient has explicitly refused to consent to receive the statement in an electronic format. The refusal to consent may be made electronically or in a paper document. A recipient's request for a paper statement is treated as an explicit refusal to receive the statement in electronic format. A furnisher relying on this paragraph (a)(8) must satisfy the requirements of paragraphs (a)(3) through (7) of this section, except that the statement required under paragraph (a)(3) must be provided at least 30 days prior to the time for furnishing under § 1.6055–1(g)(4)(i)(A) of this chapter of the first statement that the furnisher intends to furnish electronically to the recipient, and the other requirements of paragraph (a)(3) are modified to reflect that the statement will be furnished electronically unless the recipient explicitly refuses to consent to receive the statement in an electronic format.

(ii) *Manner and time of notifying recipient.* The IRS may specify in other guidance published in the Internal Revenue Bulletin the manner and timing for the initial notification of recipients that the statement required under paragraph (a)(3) of this section will be furnished electronically unless the recipient explicitly refuses to consent to receive the statement in an electronic format. See § 601.601(d)(2)(ii)(B) of this chapter.

(iii) *Effective/applicability date.* The provisions of this paragraph (a)(8) apply as of January 1, 2017.

* * * * *

PART 46—EXCISE TAXES, HEALTH CARE, HEALTH INSURANCE, PENSIONS, REPORTING AND RECORDKEEPING

■ 5. The authority citation for part 46 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ 6. Section 46.4377–1 is amended by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 46.4377–1. Definitions and special rules.

* * * * *

(c) *Treatment of expatriate health plans.* For policy years and plan years that end after January 1, 2017, the fees imposed by sections 4375 and 4376 do not apply to an expatriate health plan within the meaning of § 54.9831–1(f)(3).

* * * * *

PART 54—PENSION AND EXCISE TAXES

■ 7. The authority citation for part 54 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

■ 8. Section 54.9801–2 is amended by:

■ a. Adding in alphabetical order definitions for "expatriate health insurance issuer", "expatriate health plan", and "qualified expatriate;"

■ b. Revising the definition of "short-term, limited-duration insurance"; and

■ c. Adding in alphabetical order a definition for "travel insurance".

The additions and revisions read as follows:

§ 54.9801–2 Definitions.

* * * * *

Expatriate health insurance issuer means an expatriate health insurance issuer within the meaning of § 54.9831–1(f)(2).

Expatriate health plan means an expatriate health plan within the meaning of § 54.9831–1(f)(3).

* * * * *

Qualified expatriate means a qualified expatriate within the meaning of § 54.9831–1(f)(6).

Short-term, limited-duration insurance means health insurance coverage provided pursuant to a contract with an issuer that:

(1) Has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder with or without the issuer's consent) that is less than 3 months after the original effective date of the contract; and

(2) Displays prominently in the contract and in any application materials provided in connection with enrollment in such coverage in at least 14 point type the following: "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

* * * * *

Travel insurance means insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage. For this purpose, the term travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed.

* * * * *

■ 9. Section 54.9815–2711 is amended by revising paragraph (c) to read as follows:

§ 54.9815–2711 No lifetime or annual limits.

* * * * *

(c) *Definition of essential health benefits.* The term "essential health benefits" means essential health benefits under section 1302(b) of the Patient Protection and Affordable Care Act and applicable regulations. For this purpose, a group health plan or a health insurance issuer that is not required to provide essential health benefits under section 1302(b) must define "essential health benefits" in a manner that is consistent with—

(1) One of the EHB-benchmark plans applicable in a State under 45 CFR 156.110, and includes coverage of any additional required benefits that are considered essential health benefits consistent with 45 CFR 155.170(a)(2); or

(2) One of the three Federal Employees Health Benefit Program (FEHBP) options as defined by 45 CFR 156.100(a)(3), supplemented, as necessary, to meet the standards in 45 CFR 156.110.

* * * * *

§ 54.9831–1 [Amended]

■ 10. Section 54.9831–1 is amended in paragraph (b)(1) by removing the reference "54.9812–1T" and adding in its place the reference "54.9812–1, 54.9815–1251 through 54.9815–2719A," and in paragraph (c)(1) by removing the reference "54.9811–1T, 54.9812–1T" with the phrase "54.9811–1, 54.9812–1, 54.9815–1251 through 54.9815–2719A".

■ 11. Section 54.9831–1 is amended:

■ a. In paragraph (c)(2)(vii) by removing "and" at the end;

■ b. In paragraph (c)(2)(viii) by adding "and" at the end;

■ c. Adding paragraph (c)(2)(ix);

■ d. Revising paragraph (c)(4)(i);

■ e. Adding paragraph (c)(4)(ii)(D);

■ f. Revising paragraphs (c)(4)(iii) and (c)(5)(i)(C); and

■ g. Adding paragraph (f).

The revisions and additions read as follows:

§ 54.9831–1 Special rules relating to group health plans.

* * * * *

(c) * * *

(2) * * *

(ix) Travel insurance within the meaning of § 54.9801–2 of this section.

* * * * *

(4) *Noncoordinated benefits*—(i) *Excepted benefits that are not coordinated.* Coverage for only a specified disease or illness (for example, cancer-only policies) or hospital indemnity or other fixed indemnity insurance is excepted only if the coverage meets each of the conditions specified in paragraph (c)(4)(ii) of this section.

(ii) * * *

(D) To be hospital indemnity or other fixed indemnity insurance, the insurance must pay a fixed dollar amount per day (or per other time period, such as per week) of hospitalization or illness (for example, $100/day) without regard to the amount of expenses incurred or the type of items or services received and—

(*1*) The plan or issuer must provide, in any application or enrollment materials provided to participants at or before the time participants are given the opportunity to enroll in the coverage, a notice that prominently displays in at least 14 point type the following language: "THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

(*2*) If participants are required to reenroll (in either paper or electronic form) for renewal or reissuance, the notice described in paragraph (c)(4)(ii)(D)(*1*) of this section must be displayed in the reenrollment materials that are provided to the participants at or before the time participants are given the opportunity to reenroll in the coverage.

(*3*) If a notice satisfying the requirements of this paragraph (c)(4)(ii)(D) is timely provided to a participant, the obligation to provide the notice is satisfied for both the plan and the issuer.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits only for hospital stays at a fixed percentage of hospital expenses up to a maximum of $100 a day.

(ii) *Conclusion.* In this *Example 1,* because the policy pays a percentage of expenses incurred rather than a fixed dollar amount per day (or per other time period, such as per week), the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (c)(4). This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

Example 2. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits for doctors' visits at $50 per visit, hospitalization at $100 per day, various surgical procedures at different dollar rates per procedure, and prescription drugs at $15 per prescription.

(ii) *Conclusion.* In this *Example 2,* for doctors' visits, surgery, and prescription drugs, payment is not made on a per-period basis, but instead is based on whether a procedure or item is provided, such as whether an individual has surgery or a doctor visit or is prescribed a drug, and the amount of payment varies based on the type of procedure or item. Because benefits related to office visits, surgery, and prescription drugs are not paid based on a fixed dollar amount per day (or per other time period, such as per week), as required under paragraph (c)(4) of this section, the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (c)(4).

Example 3. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits for certain services at a fixed dollar amount per day, but the dollar amount varies by the type of service.

(ii) *Conclusion.* In this *Example 3,* because the policy provides benefits in a different amount per day depending on the type of service, rather than one specific dollar amount per day regardless of the type of service, the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (c)(4).

(5) * * *

(i) * * *

(C) *Similar supplemental coverage provided to coverage under a group health plan.* To be similar supplemental coverage, the coverage must be specifically designed to fill gaps in the primary coverage. The preceding sentence is satisfied if the coverage is designed to fill gaps in cost sharing in the primary coverage, such as coinsurance or deductibles, or the coverage is designed to provide benefits for items and services not covered by the primary coverage and that are not essential health benefits in the State where the coverage is issued, or the coverage is designed to both fill such gaps in cost sharing under, and cover such benefits not covered by, the primary coverage. Similar supplemental coverage does not include coverage that becomes secondary or supplemental only under a coordination-of-benefits provision.

* * * * *

(f) *Expatriate health plans and expatriate health insurance issuers*—(1) *In general.* With respect to coverage under an expatriate health plan, the requirements of section 9815 of the Code and implementing rules and regulations (incorporating sections 2701 through 2728 of the Public Health Service Act) do not apply to—

(i) An expatriate health plan (as defined in paragraph (f)(3) of this section),

(ii) An employer, solely in its capacity as plan sponsor of an expatriate health plan, and

(iii) An expatriate health insurance issuer (as defined in paragraph (f)(2) of this section) with respect to coverage under an expatriate health plan.

(2) *Definition of expatriate health insurance issuer*—(i) *In general.* Expatriate health insurance issuer means a health insurance issuer, within the meaning of § 54.9801–2, that issues expatriate health plans and that in the course of its normal business operations—

(A) Maintains network provider agreements that provide for direct claims payments, with health care providers in eight or more countries;

(B) Maintains call centers in three or more countries, and accepts calls from customers in eight or more languages;

(C) Processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year, determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year;

(D) Makes global evacuation/repatriation coverage available;

(E) Maintains legal and compliance resources in three or more countries; and

(F) Has licenses or other authority to sell insurance in more than two countries, including in the United States.

(ii) *Additional rules.* For purposes of meeting the requirements of this paragraph (f)(2), two or more entities, including one entity that is the expatriate health insurance issuer, that are members of the expatriate health insurance issuer's controlled group (as determined under § 57.2(c) of this chapter) are treated as one expatriate health insurance issuer. Alternatively, the requirements of this paragraph (f)(2) may be satisfied through contracts between an expatriate health insurance issuer and third parties.

(3) *Definition of expatriate health plan.* Expatriate health plan means a plan that satisfies the requirements of paragraphs (f)(3)(i) through (iii) of this section.

(i) *Substantially all qualified expatriates requirement.* Substantially all primary enrollees in the expatriate health plan must be qualified expatriates. For purposes of this paragraph (f)(3)(i), the primary enrollee is the individual covered by the plan or policy whose eligibility for coverage is not due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual. Notwithstanding the foregoing, an individual is not a primary enrollee if the individual is not a national of the United States and the individual resides in his or her country of citizenship. A plan satisfies the requirement of this paragraph (f)(3)(i) for a plan or policy year only if, on the first day of the plan or policy year, less than 5 percent of the primary enrollees (or less than 5 primary enrollees if greater) are not qualified expatriates.

(ii) *Substantially all benefits not excepted benefits requirement.* Substantially all of the benefits provided under the plan or coverage must be benefits that are not excepted benefits described in § 54.9831–1(c).

(iii) *Additional requirements.* To qualify as an expatriate health plan, the plan or coverage must also meet the following requirements:

(A) The plan or coverage provides coverage for inpatient hospital services, outpatient facility services, physician services, and emergency services (comparable to emergency services coverage that was described in and offered under section 8903(1) of title 5, United States Code for plan year 2009) in the following locations—

(*1*) In the case of individuals described in paragraph (f)(6)(i) of this section, in the United States and in the country or countries from which the individual was transferred or assigned, and such other country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate;

(*2*) In the case of individuals described in paragraph (f)(6)(ii) of this section, in the country or countries in which the individual is present in connection with his employment, and such other country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate; or

(*3*) In the case of individuals described in paragraph (f)(6)(iii) of this section, in the country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate.

(B) The plan sponsor reasonably believes that benefits provided by the plan or coverage satisfy the minimum value requirements of section 36B(c)(2)(C)(ii). For this purpose, a plan sponsor is permitted to rely on the reasonable representations of the issuer or administrator regarding whether benefits offered by the issuer or group health plan satisfy the minimum value requirements unless the plan sponsor knows or has reason to know that the benefits fail to satisfy the minimum value requirements.

(C) In the case of a plan or coverage that provides dependent coverage of children, such coverage must be available until an individual attains age 26, unless an individual is the child of a child receiving dependent coverage.

(D) The plan or coverage is:

(*1*) In the case of individuals described in paragraph (f)(6)(i) or (ii) of this section, a group health plan (including health insurance coverage offered in connection with a group health plan), issued by an expatriate health insurance issuer or administered by an expatriate health plan administrator. A group health plan will not fail to be an expatriate health plan merely because any portion of the coverage is provided through a self-insured arrangement.

(*2*) In the case of individuals described in paragraph (f)(6)(iii) of this section, health insurance coverage issued by an expatriate health insurance issuer.

(E) The plan or coverage offers reimbursements for items or services in local currency in eight or more countries.

(F) The plan or coverage satisfies the provisions of Chapter 100 and regulations thereunder as in effect on March 22, 2010. For this purpose, the plan or coverage is not required to comply with section 9801(e) (relating to certification of creditable coverage) and underlying regulations. However, to the extent the plan or coverage imposes a preexisting condition exclusion, the plan or coverage must ensure that individuals with prior creditable coverage who enroll in the plan or coverage have an opportunity to demonstrate that they have creditable coverage offsetting the preexisting condition exclusion.

(iv) *Example.* The rule of paragraph (f)(3)(i) of this section is illustrated by the following example:

Example. (i) *Facts.* Business has health plan X for 250 U.S. citizens working outside of the United States in Country Y. All of the U.S. citizens working in Country Y satisfy the requirements to be qualified expatriates under § 54.9831–1(f)(6)(ii). In addition to the 250 U.S. citizens, Business employs 100 citizens of Country Y who reside in Country Y and do not satisfy the requirements to be qualified expatriates under § 54.9831–1(f)(6)(ii). Health plan X covers both the U.S. citizens and citizens of Country Y.

(ii) *Conclusion.* Health plan X satisfies the requirement of § 54.9831–1(f)(3)(i) that substantially all primary enrollees of an expatriate health plan be qualified expatriates because 100 percent of the primary enrollees are qualified expatriates. The 100 citizens of Country Y who reside in Country Y are not treated as primary enrollees for purposes of the substantially all requirement of § 54.9831–1(f)(3)(i) because they are not nationals of the United States and they reside in the country of their citizenship.

(4) *Definition of expatriate health plan administrator*—(i) *In general.* Expatriate health plan administrator means an administrator that in the course of its regular business operations—

(A) Maintains network provider agreements that provide for direct claims payments, with health care providers in eight or more countries,

(B) Maintains call centers, in three or more countries, and accepts calls from customers in eight or more languages,

(C) Processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year, determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year,

(D) Makes global evacuation/repatriation coverage available,

(E) Maintains legal and compliance resources in three or more countries, and

(F) Has licenses or other authority to sell insurance in more than two countries, including in the United States.

(ii) *Additional rules.* For purposes of meeting the requirements of this paragraph (f)(4), two or more entities, including one entity that is the expatriate health plan administrator, that are members of the expatriate health plan administrator's controlled group (as determined under § 57.2(c) of this chapter) are treated as one expatriate health plan administrator. Alternatively, the requirements of this paragraph (f)(4) may be satisfied through contracts between an expatriate health plan administrator and third parties.

(5) *Definition of group health plan.* Group health plan, for purposes of this section, means a group health plan as defined in § 54.9831–1(a).

(6) *Definition of qualified expatriate.* Qualified expatriate, for purposes of this section, means an individual who is described in paragraph (f)(6)(i), (ii), or (iii) of this section.

(i) *Individuals transferred or assigned by their employer to work in the United States.* An individual is described in this paragraph (f)(6)(i) only if such individual has the skills, qualifications, job duties, or expertise that has caused the individual's employer to transfer or assign the individual to the United States for a specific and temporary purpose or assignment that is tied to the individual's employment with such employer. This paragraph (f)(6)(i) applies only to an individual who the plan sponsor has reasonably determined requires access to health coverage and other related services and support in multiple countries, and is offered other multinational benefits on a periodic basis (such as tax equalization, compensation for cross-border moving expenses, or compensation to enable the individual to return to the individual's home country), and does not apply to any individual who is a national of the United States. For purposes of this paragraph (f)(6)(i), an individual who is not expected to travel outside the United States at least one time per year during the coverage period would not reasonably require access to health coverage and other related services and support in multiple countries. Furthermore, the offer of a one-time *de minimis* benefit would not meet the standard for the offer of other multinational benefits on a periodic basis.

(ii) *Individuals working outside the United States.* An individual is described in this paragraph (f)(6)(ii) only if the individual is a national of the United States who is working outside the United States for at least 180 days in a consecutive 12-month period that overlaps with a single plan year, or across two consecutive plan years.

(iii) *Individuals within a group of similarly situated individuals.* (A) An individual is described in this paragraph (f)(6)(iii) only if:

(*1*) The individual is a member of a group of similarly situated individuals that is formed for the purpose of traveling or relocating internationally in service of one or more of the purposes listed in section 501(c)(3) or (4), or similarly situated organizations or groups. For example, a group of students that is formed for purposes of traveling and studying abroad for a 6-month period is described in this paragraph (f)(6)(iii);

(*2*) In the case of a group organized to travel or relocate outside the United States, the individual is expected to travel or reside outside the United States for at least 180 days in a consecutive 12-month period that overlaps with the policy year (or in the case of a policy year that is less than 12 months, at least half the policy year);

(*3*) In the case of a group organized to travel or relocate within the United States, the individual is expected to travel or reside in the United States for not more than 12 months;

(*4*) The individual is not traveling or relocating internationally in connection with an employment-related purpose; and

(*5*) The group meets the test for having associational ties under section 2791(d)(3)(B) through (F) of the PHS Act (42 U.S.C. 300gg–91(d)(3)(B) through (F)).

(B) This paragraph (f)(6)(iii) does not apply to a group that is formed primarily for the sale or purchase of health insurance coverage.

(C) If a group of similarly situated individuals satisfies the requirements of this paragraph (f)(6)(iii), the Secretary of Health and Human Services, in consultation with the Secretary and the Secretary of Labor, has determined that the group requires access to health coverage and other related services and support in multiple countries.

(7) *Definition of United States.* Solely for purposes of this paragraph (f), United States means the 50 States, the District of Columbia, and Puerto Rico.

(8) *National of the United States.* For purposes of this paragraph (f), national of the United States, when referring to an individual, has the meaning used in the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and includes U.S.

citizens and non-citizen nationals. Thus, for example, an individual born in American Samoa is a national of the United States at birth.

■ 12. Section 54.9833–1 is amended by adding a sentence at the end to read as follows:

§ 54.9833–1 Effective dates.

* * * Notwithstanding the previous sentence, the definition of "short-term limited duration insurance" in §§ 54.9801–2 and 5.9831–1(c)(5)(i)(C) and (f) apply for policy years and plan years beginning on or after January 1, 2017.

PART 57—HEALTH INSURANCE PROVIDERS FEE

■ 13. The authority citation for part 57 continues to read in part as follows:

Authority: 26 U.S.C. 7805; sec. 9010, Pub. L. 111–148 (124 Stat. 119 (2010)). * * *

■ 14. Section 57.2 is amended by revising paragraph (n) to read as follows:

§ 57.2 Explanation of terms.

* * * * *

(n) *United States health risk.*—(1) *In general.* The term *United States health risk* means the health risk of any individual who is—

(i) A United States citizen;

(ii) A resident of the United States (within the meaning of section 7701(b)(1)(A)); or

(iii) Located in the United States (within the meaning of paragraph (i) of this section) during the period such individual is so located.

(2) *Qualified expatriates, spouses, and dependents.* The term *United States health risk* does not include the health risk of any individual who is a qualified expatriate (within the meaning of § 54.9831–1(f)(6)) enrolled in an expatriate health plan (within the meaning of § 54.9831–1(f)(3)). For purposes of this paragraph, a qualified expatriate includes any spouse, dependent, or any other individual enrolled in the expatriate health plan.

* * * * *

■ 15. Section 57.4 is amended by adding a sentence to the end of paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 57.4 Fee calculation.

* * * * *

(b) * * *

(2) * * * This presumption does not apply to excluded premiums for qualified expatriates in expatriate health plans as described in § 57.2(n)(2).

(3) *Manner of determining excluded premiums for qualified expatriates in expatriate health plans.* The IRS may specify in other guidance published in the Internal Revenue Bulletin the manner of determining excluded premiums for qualified expatriates in expatriate health plans as described in § 57.2(n)(2).

* * * * *

■ 16. Section 57.10 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 57.10 Effective/applicability dates.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, §§ 57.1 through 57.9 apply to any fee that is due on or after September 30, 2014.

* * * * *

(c) *Qualified expatriates in expatriate health plans.* Section 57.2(n)(2), the last sentence of § 57.4(b)(2), and § 57.4(b)(3) apply to any fee that is due on or after the date the final regulations are published in the **Federal Register**. Until the date the final regulations are published in the **Federal Register**, taxpayers may rely on these rules for any fee that is due on or after September 30, 2018.

PART 301—PROCEDURE AND ADMINSTRATION

■ 17. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 18. Section 301.6056–2 is amended by adding paragraph (a)(8) to read as follows:

§ 301.6056–2. Electronic furnishing of statements.

(a) * * *

(8) *Special rule for expatriate health plan coverage*—(i) *In general.* In the case of an individual covered under an expatriate health plan (within the meaning of § 54.9831–1(f)(3) of this chapter), the recipient is treated as having consented under paragraph (a)(2) of this section unless the recipient has explicitly refused to consent to receive the statement in an electronic format. The refusal to consent may be made electronically or in a paper document. A recipient's request for a paper statement is treated as an explicit refusal to receive the statement in electronic format. A furnisher relying on this paragraph (a)(8) must satisfy the requirements of paragraphs (a)(3) through (7) of this section, except that the statement required under paragraph (a)(3) must be provided at least 30 days prior to the time for furnishing under § 301.6056–1(g)(4)(i)(A) of this chapter of the first statement that the furnisher intends to furnish electronically to the recipient, and the other requirements of paragraph (a)(3) are modified to reflect that the statement will be furnished electronically unless the recipient explicitly refuses consent to receive the statement in an electronic format.

(ii) *Manner and time of notifying recipient.* The IRS may specify in other guidance published in the Internal Revenue Bulletin the manner and timing for the initial notification of recipients that the statement required under paragraph (a)(3) of this section will be furnished electronically unless the recipient explicitly refuses to consent to receive the statement in an electronic format. See § 601.601(d)(2)(ii)(B) of this chapter.

(iii) *Effective/applicability date.* The provisions of this paragraph (a)(8) apply as of January 1, 2017.

* * * * *

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 19. The authority citation for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 20. Section 2590.701–2 is amended by:

■ a. Adding in alphabetical order definitions for "expatriate health insurance issuer", "expatriate health plan", and "qualified expatriate";

■ b. Revising the definition of "short-term, limited-duration insurance"; and

■ c. Adding in alphabetical order a definition for "travel insurance".

The additions and revisions read as follows:

§ 2590.701–2 Definitions.

* * * * *

Expatriate health insurance issuer means an expatriate health insurance issuer within the meaning of § 2590.732(f)(2).

Expatriate health plan means an expatriate health plan within the meaning of § 2590.732(f)(3).

* * * * *

Qualified expatriate means a qualified expatriate within the meaning of § 2590.732(f)(6).

Short-term, limited-duration insurance means health insurance coverage provided pursuant to a contract with an issuer that:

(1) Has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder with or without the issuer's consent) that is less than 3 months after the original effective date of the contract; and

(2) Displays prominently in the contract and in any application materials provided in connection with enrollment in such coverage in at least 14 point type the following: "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

* * * * *

Travel insurance means insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage. For this purpose, the term travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed.

* * * * *

■ 21. Section 2590.715–2711 is amended by revising paragraph (c) to read as follows:

§ 2590.715–2711 No lifetime or annual limits.

* * * * *

(c) *Definition of essential health benefits.* The term "essential health benefits" means essential health benefits under section 1302(b) of the Patient Protection and Affordable Care Act and applicable regulations. For this purpose, a group health plan or a health insurance issuer that is not required to provide essential health benefits under section 1302(b) must define "essential health benefits" in a manner that is consistent with—

(1) One of the EHB-benchmark plans applicable in a State under 45 CFR 156.110, and includes coverage of any additional required benefits that are considered essential health benefits consistent with 45 CFR 155.170(a)(2); or

(2) One of the three Federal Employees Health Benefit Program (FEHBP) options as defined by 45 CFR 156.100(a)(3), supplemented, as necessary, to meet the standards in 45 CFR 156.110.

* * * * *

■ 22. Section 2590.732 is amended:

■ a. In paragraph (c)(2)(vii) by removing "and" at the end;

■ b. In paragraph (c)(2)(viii) by adding "and" at the end;

■ c. Adding paragraph (c)(2)(ix);

■ d. Revising paragraph (c)(4)(i);

■ e. Adding paragraph (c)(4)(ii)(D);

■ f. Revising paragraphs (c)(4)(iii) and (c)(5)(i)(C); and

■ g. Adding paragraph (f).

The revisions and additions read as follows:

§ 2590.732 Special rules relating to group health plans.

* * * * *

(c) * * *

(2) * * *

(ix) Travel insurance, within the meaning of § 2590.701–2 of this part.

* * * * *

(4) *Noncoordinated benefits*—(i) *Excepted benefits that are not coordinated.* Coverage for only a specified disease or illness (for example, cancer-only policies) or hospital indemnity or other fixed indemnity insurance is excepted only if the coverage meets each of the conditions specified in paragraph (c)(4)(ii) of this section.

(ii) * * *

(D) To be hospital indemnity or other fixed indemnity insurance, the insurance must pay a fixed dollar amount per day (or per other time period, such as per week) of hospitalization or illness (for example, $100/day) without regard to the amount of expenses incurred or the type of items or services received and—

(*1*) The plan or issuer must provide, in any application or enrollment materials provided to participants at or before the time participants are given the opportunity to enroll in the coverage, a notice that prominently displays in at least 14 point type the following language: "THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

(*2*) If participants are required to reenroll (in either paper or electronic form) for renewal or reissuance, the notice described in paragraph (c)(4)(ii)(D)(*1*) of this section must be displayed in the reenrollment materials that are provided to the participants at or before the time participants are given the opportunity to reenroll in the coverage.

(*3*) If a notice satisfying the requirements of this paragraph (c)(4)(ii)(D) is timely provided to a participant, the obligation to provide the notice is satisfied for both the plan and the issuer.

(iii) *Examples.* The rules of this paragraph (c)(4) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits only for hospital stays at a fixed percentage of hospital expenses up to a maximum of $100 a day.

(ii) *Conclusion.* In this *Example 1,* because the policy pays a percentage of expenses incurred rather than a fixed dollar amount per day (or per other time period, such as per week), the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (c)(4). This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

Example 2. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits for doctors' visits at $50 per visit, hospitalization at $100 per day, various surgical procedures at different dollar rates per procedure, and prescription drugs at $15 per prescription.

(ii) *Conclusion.* In this *Example 2,* for doctors' visits, surgery, and prescription drugs, payment is not made on a per-period basis, but instead is based on whether a procedure or item is provided, such as whether an individual has surgery or a doctor visit or is prescribed a drug, and the amount of payment varies based on the type of procedure or item. Because benefits related to office visits, surgery, and prescription drugs are not paid based on a fixed dollar amount per day (or per other time period, such as per week), as required under paragraph (c)(4) of this section, the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (c)(4).

Example 3. (i) *Facts.* An employer sponsors a group health plan that provides coverage

through an insurance policy. The policy provides benefits for certain services at a fixed dollar amount per day, but the dollar amount varies by the type of service.

(ii) *Conclusion.* In this *Example 3*, because the policy provides benefits in a different amount per day depending on the type of service, rather than one specific dollar amount per day regardless of the type of service, the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (c)(4).

(5) * * *

(i) * * *

(C) *Similar supplemental coverage provided to coverage under a group health plan.* To be similar supplemental coverage, the coverage must be specifically designed to fill gaps in the primary coverage. The preceding sentence is satisfied if the coverage is designed to fill gaps in cost sharing in the primary coverage, such as coinsurance or deductibles, or the coverage is designed to provide benefits for items and services not covered by the primary coverage and that are not essential health benefits in the State where the coverage is issued, or the coverage is designed to both fill such gaps in cost sharing under, and cover such benefits not covered by, the primary coverage. Similar supplemental coverage does not include coverage that becomes secondary or supplemental only under a coordination-of-benefits provision.

* * * * *

(f) *Expatriate health plans and expatriate health insurance issuers*—(1) *In general.* With respect to coverage under an expatriate health plan, the requirements of section 715 of ERISA and implementing rules and regulations (incorporating sections 2701 through 2728 of the Public Health Service Act) do not apply to—

(i) An expatriate health plan (as defined in paragraph (f)(3) of this section),

(ii) An employer, solely in its capacity as plan sponsor of an expatriate health plan, and

(iii) An expatriate health insurance issuer (as defined in paragraph (f)(2) of this section) with respect to coverage under an expatriate health plan.

(2) *Definition of expatriate health insurance issuer*—(i) *In general.* Expatriate health insurance issuer means a health insurance issuer, within the meaning of § 2590.701–2, that issues expatriate health plans and that in the course of its normal business operations—

(A) Maintains network provider agreements that provide for direct claims payments, with health care providers in eight or more countries;

(B) Maintains call centers in three or more countries, and accepts calls from customers in eight or more languages;

(C) Processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year, determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year;

(D) Makes global evacuation/repatriation coverage available;

(E) Maintains legal and compliance resources in three or more countries; and

(F) Has licenses or other authority to sell insurance in more than two countries, including in the United States.

(ii) *Additional rules.* For purposes of meeting the requirements of this paragraph (f)(2), two or more entities, including one entity that is the expatriate health insurance issuer, that are members of the expatriate health insurance issuer's controlled group (as determined under 26 CFR 57.2(c)) are treated as one expatriate health insurance issuer. Alternatively, the requirements of this paragraph (f)(2) may be satisfied through contracts between an expatriate health insurance issuer and third parties.

(3) *Definition of expatriate health plan.* Expatriate health plan means a plan that satisfies the requirements of paragraphs (f)(3)(i) through (iii) of this section.

(i) *Substantially all qualified expatriates requirement.* Substantially all primary enrollees in the expatriate health plan must be qualified expatriates. For purposes of this paragraph (f)(3)(i), the primary enrollee is the individual covered by the plan or policy whose eligibility for coverage is not due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual. Notwithstanding the foregoing, an individual is not a primary enrollee if the individual is not a national of the United States and the individual resides in his or her country of citizenship. A plan satisfies the requirement of this paragraph (f)(3)(i) for a plan or policy year only if, on the first day of the plan or policy year, less than 5 percent of the primary enrollees (or less than 5 primary enrollees if greater) are not qualified expatriates.

(ii) *Substantially all benefits not excepted benefits requirement.* Substantially all of the benefits provided under the plan or coverage must be benefits that are not excepted benefits described in § 2590.732(c).

(iii) *Additional requirements.* To qualify as an expatriate health plan, the plan or coverage must also meet the following requirements:

(A) The plan or coverage provides coverage for inpatient hospital services, outpatient facility services, physician services, and emergency services (comparable to emergency services coverage that was described in and offered under section 8903(1) of title 5, United States Code for plan year 2009) in the following locations—

(*1*) In the case of individuals described in paragraph (f)(6)(i) of this section, in the United States and in the country or countries from which the individual was transferred or assigned, and such other country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate;

(*2*) In the case of individuals described in paragraph (f)(6)(ii) of this section, in the country or countries in which the individual is present in connection with his employment, and such other country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate; or

(*3*) In the case of individuals described in paragraph (f)(6)(iii) of this section, in the country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate.

(B) The plan sponsor reasonably believes that benefits provided by the plan or coverage satisfy the minimum value requirements of Internal Revenue Code section 36B(c)(2)(C)(ii). For this purpose, a plan sponsor is permitted to rely on the reasonable representations of the issuer or administrator regarding whether benefits offered by the issuer or group health plan satisfy the minimum value requirements unless the plan sponsor knows or has reason to know that the benefits fail to satisfy the minimum value requirements.

(C) In the case of a plan or coverage that provides dependent coverage of children, such coverage must be available until an individual attains age 26, unless an individual is the child of a child receiving dependent coverage.

(D) The plan or coverage is:

(*1*) In the case of individuals described in paragraph (f)(6)(i) or (ii) of this section, a group health plan (including health insurance coverage offered in connection with a group health plan), issued by an expatriate health insurance issuer or administered by an expatriate health plan administrator. A group health plan will not fail to be an expatriate health plan

merely because any portion of the coverage is provided through a self-insured arrangement.

(*2*) In the case of individuals described in paragraph (f)(6)(iii) of this section, health insurance coverage issued by an expatriate health insurance issuer.

(E) The plan or coverage offers reimbursements for items or services in local currency in eight or more countries.

(F) The plan or coverage satisfies the provisions of this part as in effect on March 22, 2010. For this purpose, the plan or coverage is not required to comply with section 701(e) (relating to certification of creditable coverage) and underlying regulations. However, to the extent the plan or coverage imposes a preexisting condition exclusion, the plan or coverage must ensure that individuals with prior creditable coverage who enroll in the plan or coverage have an opportunity to demonstrate that they have creditable coverage offsetting the preexisting condition exclusion.

(iv) *Example.* The rule of paragraph (f)(3)(i) of this section is illustrated by the following example:

Example. (i) *Facts.* Business has health plan X for 250 U.S. citizens working outside of the United States in Country Y. All of the U.S. citizens working in Country Y satisfy the requirements to be qualified expatriates under § 2590.732(f)(6)(ii). In addition to the 250 U.S. citizens, Business employs 100 citizens of Country Y who reside in Country Y and do not satisfy the requirements to be qualified expatriates under § 2590.732(f)(6)(ii). Health plan X covers both the U.S. citizens and citizens of Country Y.

(ii) *Conclusion.* Health plan X satisfies the requirement of § 2590.732(f)(3)(i) that substantially all primary enrollees of an expatriate health plan be qualified expatriates because 100 percent of the primary enrollees are qualified expatriates. The 100 citizens of Country Y who reside in Country Y are not treated as primary enrollees for purposes of the substantially all requirement of § 2590.732(f)(3)(i) because they are not nationals of the United States and they reside in the country of their citizenship.

(4) *Definition of expatriate health plan administrator*—(i) *In general.* Expatriate health plan administrator means an administrator that in the course of its regular business operations—

(A) Maintains network provider agreements that provide for direct claims payments, with health care providers in eight or more countries,

(B) Maintains call centers, in three or more countries, and accepts calls from customers in eight or more languages,

(C) Processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year, determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year,

(D) Makes global evacuation/repatriation coverage available,

(E) Maintains legal and compliance resources in three or more countries, and

(F) Has licenses or other authority to sell insurance in more than two countries, including in the United States.

(ii) *Additional rules.* For purposes of meeting the requirements of this paragraph (f)(4), two or more entities, including one entity that is the expatriate health plan administrator, that are members of the expatriate health plan administrator's controlled group (as determined under 26 CFR 57.2(c)) are treated as one expatriate health plan administrator. Alternatively, the requirements of this paragraph (f)(4) may be satisfied through contracts between an expatriate health plan administrator and third parties.

(5) *Definition of group health plan.* Group health plan, for purposes of this section, means a group health plan as defined in § 2590.732(a).

(6) *Definition of qualified expatriate.* Qualified expatriate, for purposes of this section, means an individual who is described in paragraph (f)(6)(i), (ii) or (iii) of this section.

(i) *Individuals transferred or assigned by their employer to work in the United States.* An individual is described in this paragraph (f)(6)(i) only if such individual has the skills, qualifications, job duties, or expertise that has caused the individual's employer to transfer or assign the individual to the United States for a specific and temporary purpose or assignment that is tied to the individual's employment with such employer. This paragraph (f)(6)(i) applies only to an individual who the plan sponsor has reasonably determined requires access to health coverage and other related services and support in multiple countries, and is offered other multinational benefits on a periodic basis (such as tax equalization, compensation for cross-border moving expenses, or compensation to enable the individual to return to the individual's home country), and does not apply to any individual who is a national of the United States. For purposes of this paragraph (f)(6)(i), an individual who is not expected to travel outside the United States at least one time per year during the coverage period would not reasonably require access to health coverage and other related services and support in multiple countries. Furthermore, the offer of a one-time *de minimis* benefit would not meet the standard for the offer of other multinational benefits on a periodic basis.

(ii) *Individuals working outside the United States.* An individual is described in this paragraph (f)(6)(ii) only if the individual is a national of the United States who is working outside the United States for at least 180 days in a consecutive 12-month period that overlaps with a single plan year, or across two consecutive plan years.

(iii) *Individuals within a group of similarly situated individuals.* (A) An individual is described in this paragraph (f)(6)(iii) only if:

(*1*) The individual is a member of a group of similarly situated individuals that is formed for the purpose of traveling or relocating internationally in service of one or more of the purposes listed in Internal Revenue Code section 501(c)(3) or (4), or similarly situated organizations or groups. For example, a group of students that is formed for purposes of traveling and studying abroad for a 6-month period is described in this paragraph (f)(6)(iii);

(*2*) In the case of a group organized to travel or relocate outside the United States, the individual is expected to travel or reside outside the United States for at least 180 days in a consecutive 12-month period that overlaps with the policy year (or in the case of a policy year that is less than 12 months, at least half the policy year);

(*3*) In the case of a group organized to travel or relocate within the United States, the individual is expected to travel or reside in the United States for not more than 12 months;

(*4*) The individual is not traveling or relocating internationally in connection with an employment-related purpose; and

(*5*) The group meets the test for having associational ties under section 2791(d)(3)(B) through (F) of the PHS Act (42 U.S.C. 300gg–91(d)(3)(B) through (F)).

(B) This paragraph (f)(6)(iii) does not apply to a group that is formed primarily for the sale or purchase of health insurance coverage.

(C) If a group of similarly situated individuals satisfies the requirements of this paragraph (f)(6)(iii), the Secretary of Health and Human Services, in consultation with the Secretary and the Secretary of the Treasury, has determined that the group requires access to health coverage and other related services and support in multiple countries.

(*7*) *Definition of United States.* Solely for purposes of this paragraph (f),

United States means the 50 States, the District of Columbia, and Puerto Rico.

(8) *National of the United States.* For purposes of this paragraph (f), national of the United States, when referring to an individual, has the meaning used in the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and includes U.S. citizens and non-citizen nationals. Thus, for example, an individual born in American Samoa is a national of the United States at birth.

■ 23. Section 2590.736 is amended by adding a sentence at the end to read as follows:

§ 2590.736 Applicability dates.

* * * Notwithstanding the previous sentences, the definition of "short-term, limited-duration insurance" in §§ 2590.701–2 and 2590.732(c)(5)(i)(C) and (f) apply for plan years beginning on or after January 1, 2017.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Chapter 1

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 144, 146, 147, 148, and 158 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 24. The authority citation for part 144 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act, 42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92.

■ 25. Section 144.103 is amended by:
■ a. Adding in alphabetical order definitions for "expatriate health insurance issuer", "expatriate health plan", and "qualified expatriate";
■ b. Revising the definition of "short-term, limited-duration insurance"; and
■ c. Adding in alphabetical order a definition for "travel insurance".

The additions and revision read as follows:

§ 144.103 Definitions.

* * * * *

Expatriate health insurance issuer means an expatriate health insurance issuer within the meaning of § 147.170(b) of this subchapter.

Expatriate health plan means an expatriate health plan within the meaning of § 147.170(c) of this subchapter.

* * * * *

Qualified expatriate means a qualified expatriate within the meaning of § 147.170(f) of this subchapter.

Short-term, limited-duration insurance means health insurance coverage provided pursuant to a contract with an issuer that:

(1) Has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder with or without the issuer's consent) that is less than 3 months after the original effective date of the contract; and

(2) Displays prominently in the contract and in any application materials provided in connection with enrollment in such coverage in at least 14 point type the following: "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

* * * * *

Travel insurance means insurance coverage for personal risks incident to planned travel, which may include, but is not limited to, interruption or cancellation of trip or event, loss of baggage or personal effects, damages to accommodations or rental vehicles, and sickness, accident, disability, or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverage. For this purpose, the term travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including, for example, those working overseas as an expatriate or military personnel being deployed.

* * * * *

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 26. The authority citation for part 146 continues to read as follows:

Authority: Secs. 2702 through 2705, 2711 through 2723, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–1 through 300gg–5, 300gg–11 through 300gg–23, 300gg–91, and 300gg–92.

■ 27. Section 146.145 is amended by:
■ a. Adding paragraph (b)(2)(ix);
■ b. Revising paragraph (b)(4)(i);
■ c. Adding paragraph (b)(4)(ii)(D); and
■ d. Revising paragraph (b)(5)(i)(C).

The additions and revisions read as follows:

§ 146.145 Special rules relating to group health plans.

* * * * *

(b) * * *

(2) * * *

(ix) Travel insurance, within the meaning of § 144.103 of this subchapter.

* * * * *

(4) *Noncoordinated benefits*—(i) *Excepted benefits that are not coordinated.* Coverage for only a specified disease or illness (for example, cancer-only policies) or hospital indemnity or other fixed indemnity insurance is excepted only if the coverage meets each of the conditions specified in paragraph (b)(4)(ii) of this section.

(ii) * * *

(D) To be hospital indemnity or other fixed indemnity insurance, the insurance must pay a fixed dollar amount per day (or per other time period, such as per week) of hospitalization or illness (for example, $100/day) without regard to the amount of expenses incurred or the type of items or services received and—

(*1*) The plan or issuer must provide, in any application or enrollment materials provided to participants at or before the time participants are given the opportunity to enroll in the coverage, a notice that prominently displays in at least 14 point type the following language: "THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

(*2*) If participants are required to reenroll (in either paper or electronic form) for renewal or reissuance, the notice described in paragraph (b)(4)(ii)(D)(*1*) of this section must be displayed in the reenrollment materials that are provided to the participants at or before the time participants are given the opportunity to reenroll in the coverage.

(*3*) If a notice satisfying the requirements of this paragraph (b)(4)(ii)(D) is timely provided to a participant, the obligation to provide the notice is satisfied for both the plan and the issuer.

(iii) *Examples.* The rules of this paragraph (b)(4) are illustrated by the following examples:

Example 1. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits only for hospital stays at a fixed percentage of hospital expenses up to a maximum of $100 a day.

(ii) *Conclusion.* In this *Example 1,* because the policy pays a percentage of expenses incurred rather than a fixed dollar amount per day (or per other time period, such as per week), the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (b)(4). This is the result even if, in practice, the policy pays the maximum of $100 for every day of hospitalization.

Example 2. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits for doctors' visits at $50 per visit, hospitalization at $100 per day, various surgical procedures at different dollar rates per procedure, and prescription drugs at $15 per prescription.

(ii) *Conclusion.* In this *Example 2,* for doctors' visits, surgery, and prescription drugs, payment is not made on a per-period basis, but instead is based on whether a procedure or item is provided, such as whether an individual has surgery or a doctor visit or is prescribed a drug, and the amount of payment varies based on the type of procedure or item. Because benefits related to office visits, surgery, and prescription drugs are not paid based on a fixed dollar amount per day (or per other time period, such as per week), as required under paragraph (b)(4) of this section, the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (b)(4).

Example 3. (i) *Facts.* An employer sponsors a group health plan that provides coverage through an insurance policy. The policy provides benefits for certain services at a fixed dollar amount per day, but the dollar amount varies by the type of service.

(ii) *Conclusion.* In this *Example 3,* because the policy provides benefits in a different amount per day depending on the type of service, rather than one specific dollar amount per day regardless of the type of service, the policy is not hospital indemnity or other fixed indemnity insurance that is an excepted benefit under this paragraph (b)(4).

(5) * * *

(i) * * *

(C) *Similar supplemental coverage provided to coverage under a group health plan.* To be similar supplemental coverage, the coverage must be specifically designed to fill gaps in the primary coverage. The preceding sentence is satisfied if the coverage is designed to fill gaps in cost sharing in the primary coverage, such as coinsurance or deductibles, or the coverage is designed to provide benefits for items and services not covered by the primary coverage and that are not essential health benefits in the State where the coverage is issued, or the coverage is designed to both fill such gaps in cost sharing under, and cover such benefits not covered by, the primary coverage. Similar supplemental coverage does not include coverage that becomes secondary or supplemental only under a coordination-of-benefits provision.

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 28. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 29. Section 147.126 is amended by revising paragraph (c) to read as follows:

§ 147.126 No lifetime or annual limits.

* * * * *

(c) *Definition of essential health benefits.* The term "essential health benefits" means essential health benefits under section 1302(b) of the Patient Protection and Affordable Care Act and applicable regulations. For this purpose, a group health plan or a health insurance issuer that is not required to provide essential health benefits under section 1302(b) must define "essential health benefits" in a manner that is consistent with—

(1) One of the EHB-benchmark plans applicable in a State under 45 CFR 156.110, and includes coverage of any additional required benefits that are considered essential health benefits consistent with 45 CFR 155.170(a)(2); or

(2) One of the three Federal Employees Health Benefit Program (FEHBP) options as defined by 45 CFR 156.100(a)(3), supplemented, as necessary, to meet the standards in 45 CFR 156.110.

* * * * *

■ 30. Section 147.170 is added to read as follows:

§ 147.170 Expatriate health plans and expatriate health insurance issuers.

(a) *In general.* With respect to coverage under an expatriate health plan, the requirements of (including any amendment made by) the Patient Protection and Affordable Care Act and of title I and subtitle B of title II of the Health Care and Education and Reconciliation Act of 2010, and implementing rules and regulations do not apply to—

(1) An expatriate health plan (as defined in paragraph (c) of this section),

(2) An employer, solely in its capacity as plan sponsor of an expatriate health plan, and

(3) An expatriate health insurance issuer (as defined in paragraph (b) of this section) with respect to coverage under an expatriate health plan.

(b) *Definition of expatriate health insurance issuer*—(1) *In general.* Expatriate health insurance issuer means a health insurance issuer, within the meaning of § 144.103 of this subchapter, that issues expatriate health plans and that in the course of its normal business operations—

(i) Maintains network provider agreements that provide for direct claims payments, with health care providers in eight or more countries;

(ii) Maintains call centers in three or more countries, and accepts calls from customers in eight or more languages;

(iii) Processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year, determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year;

(iv) Makes global evacuation/repatriation coverage available;

(v) Maintains legal and compliance resources in three or more countries; and

(vi) Has licenses or other authority to sell insurance in more than two countries, including in the United States.

(2) *Additional rules.* For purposes of meeting the requirements of this paragraph (b), two or more entities, including one entity that is the expatriate health insurance issuer, that are members of the expatriate health insurance issuer's controlled group (as determined under 26 CFR 57.2(c)) are treated as one expatriate health insurance issuer. Alternatively, the requirements of this paragraph (b) may be satisfied through contracts between an expatriate health insurance issuer and third parties.

(c) *Definition of expatriate health plan.* Expatriate health plan means a plan that satisfies the requirements of paragraphs (c)(1) through (3) of this section.

(1) *Substantially all qualified expatriates requirement.* Substantially all primary enrollees in the expatriate health plan must be qualified expatriates. For purposes of this paragraph (c)(1), the primary enrollee is the individual covered by the plan or policy whose eligibility for coverage is not due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual. Notwithstanding the foregoing, an individual is not a primary enrollee if the individual is not a national of the United States and the individual resides in his or her country of citizenship. A plan satisfies the requirement of this

paragraph (c)(1) for a plan or policy year only if, on the first day of the plan or policy year, less than 5 percent of the primary enrollees (or less than 5 primary enrollees if greater) are not qualified expatriates.

(2) *Substantially all benefits not excepted benefits requirement.* Substantially all of the benefits provided under the plan or coverage must be benefits that are not excepted benefits described in § 146.145(b) and § 148.220 of this subchapter.

(3) *Additional requirements.* To qualify as an expatriate health plan, the plan or coverage must also meet the following requirements:

(i) The plan or coverage provides coverage for inpatient hospital services, outpatient facility services, physician services, and emergency services (comparable to emergency services coverage that was described in and offered under section 8903(1) of title 5, United States Code for plan year 2009) in the following locations—

(A) In the case of individuals described in paragraph (f)(1) of this section, in the United States and in the country or countries from which the individual was transferred or assigned, and such other country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate;

(B) In the case of individuals described in paragraph (f)(2) of this section, in the country or countries in which the individual is present in connection with his employment, and such other country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate; or

(C) In the case of individuals described in paragraph (f)(3) of this section, in the country or countries the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and Secretary of Labor, may designate.

(ii) The plan sponsor reasonably believes that benefits provided by the plan or coverage satisfy the minimum value requirements of section 36B(c)(2)(C)(ii) of the Internal Revenue Code. For this purpose, a plan sponsor is permitted to rely on the reasonable representations of the issuer or administrator regarding whether benefits offered by the issuer or group health plan satisfy the minimum value requirements unless the plan sponsor knows or has reason to know that the benefits fail to satisfy the minimum value requirements.

(iii) In the case of a plan or coverage that provides dependent coverage of children, such coverage must be available until an individual attains age 26, unless an individual is the child of a child receiving dependent coverage.

(iv) The plan or coverage is:

(A) In the case of individuals described in paragraphs (f)(1) or (f)(2) of this section, a group health plan (including health insurance coverage offered in connection with a group health plan), issued by an expatriate health insurance issuer or administered by an expatriate health plan administrator. A group health plan will not fail to be an expatriate health plan merely because any portion of the coverage is provided through a self-insured arrangement.

(B) In the case of individuals described in paragraph (f)(3) of this section, health insurance coverage issued by an expatriate health insurance issuer.

(v) The plan or coverage offers reimbursements for items or services in local currency in eight or more countries.

(vi) The plan or coverage satisfies the provisions of title XXVII of the Public Health Service Act (42 U.S.C. 300gg *et seq.*) and regulations thereunder as in effect on March 22, 2010. For this purpose, the plan or coverage is not required to comply with section 2701(e) (relating to certification of creditable coverage) and underlying regulations. However, to the extent the plan or coverage imposes a preexisting condition exclusion, the plan or coverage must ensure that individuals with prior creditable coverage who enroll in the plan or coverage have an opportunity to demonstrate that they have creditable coverage offsetting the preexisting condition exclusion.

(v) Example. The rule of paragraph (c)(1) of this section is illustrated by the following example:

Example. (i) *Facts.* Business has health plan X for 250 U.S. citizens working outside of the United States in Country Y. All of the U.S. citizens working in Country Y satisfy the requirements to be qualified expatriates under § 147.170(f)(2). In addition to the 250 U.S. citizens, Business employs 100 citizens of Country Y who reside in Country Y and do not satisfy the requirements to be qualified expatriates under § 147.170(f). Health plan X covers both the U.S. citizens and citizens of Country Y.

(ii) *Conclusion.* Health plan X satisfies the requirement of § 147.170(c)(1) that substantially all primary enrollees of an expatriate health plan be qualified expatriates because 100 percent of the primary enrollees are qualified expatriates. The 100 citizens of Country Y who reside in Country Y are not treated as primary enrollees for purposes of the substantially all requirement of § 147.170(c)(1) because they are not nationals of the United States and they reside in the country of their citizenship.

(d) *Definition of expatriate health plan administrator*—(1) *In general.* Expatriate health plan administrator means an administrator that in the course of its regular business operations—

(i) Maintains network provider agreements that provide for direct claims payments, with health care providers in eight or more countries,

(ii) Maintains call centers, in three or more countries, and accepts calls from customers in eight or more languages,

(iii) Processed at least $1 million in claims in foreign currency equivalents during the preceding calendar year, determined using the Treasury Department's currency exchange rate in effect on the last day of the preceding calendar year,

(iv) Makes global evacuation/repatriation coverage available,

(v) Maintains legal and compliance resources in three or more countries, and

(vi) Has licenses or other authority to sell insurance in more than two countries, including in the United States.

(2) *Additional rules.* For purposes of meeting the requirements of this paragraph (d), two or more entities, including one entity that is the expatriate health plan administrator, that are members of the expatriate health plan administrator's controlled group (as determined under 26 CFR 57.2(c)) are treated as one expatriate health plan administrator. Alternatively, the requirements of this paragraph (d) may be satisfied through contracts between an expatriate health plan administrator and third parties.

(e) *Definition of group health plan.* Group health plan, for purposes of this section, means a group health plan as defined in § 146.145(a) of this subchapter.

(f) *Definition of qualified expatriate.* Qualified expatriate, for purposes of this section, means an individual who is described in paragraph (f)(1), (2), or (3) of this section.

(1) *Individuals transferred or assigned by their employer to work in the United States.* An individual is described in this paragraph (f)(1) only if such individual has the skills, qualifications, job duties, or expertise that has caused the individual's employer to transfer or assign the individual to the United States for a specific and temporary purpose or assignment that is tied to the individual's employment with such employer. This paragraph (f)(1) applies only to an individual who the plan sponsor has reasonably determined requires access to health coverage and other related services and support in multiple countries, and is offered other multinational benefits on a periodic basis (such as tax equalization, compensation for cross-border moving expenses, or compensation to enable the individual to return to the individual's home country), and does not apply to any individual who is a national of the United States. For purposes of this paragraph (f)(1), an individual who is not expected to travel outside the United States at least one time per year during the coverage period would not reasonably require access to health coverage and other related services and support in multiple countries. Furthermore, the offer of a one-time *de minimis* benefit would not meet the standard for the offer of other multinational benefits on a periodic basis.

(2) *Individuals working outside the United States.* An individual is described in this paragraph (f)(2) only if the individual is a national of the United States who is working outside the United States for at least 180 days in a consecutive 12-month period that overlaps with a single plan year, or across two consecutive plan years.

(3) *Individuals within a group of similarly situated individuals.* (i) An individual is described in this paragraph (f)(3) only if:

(A) The individual is a member of a group of similarly situated individuals that is formed for the purpose of traveling or relocating internationally in service of one or more of the purposes listed in section 501(c)(3) or (4) of the Internal Revenue Code, or similarly situated organizations or groups. For example, a group of students that is formed for purposes of traveling and studying abroad for a 6-month period is described in this paragraph (f)(3);

(B) In the case of a group organized to travel or relocate outside the United States, the individual is expected to travel or reside outside the United States for at least 180 days in a consecutive 12-month period that overlaps with the policy year (or in the case of a policy year that is less than 12 months, at least half the policy year);

(C) In the case of a group organized to travel or relocate within the United States, the individual is expected to travel or reside in the United States for not more than 12 months;

(D) The individual is not traveling or relocating internationally in connection with an employment-related purpose; and

(E) The group meets the test for having associational ties under section 2791(d)(3)(B) through (F) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3)(B) through (F)).

(ii) This paragraph (f)(3) does not apply to a group that is formed primarily for the sale or purchase of health insurance coverage.

(iii) If a group of similarly situated individuals satisfies the requirements of this paragraph (f)(3), the Secretary, in consultation with the Secretary of the Treasury and the Secretary of Labor, has determined that the group requires access to health coverage and other related services and support in multiple countries.

(g) *Definition of United States.* Solely for purposes of this section, United States means the 50 States, the District of Columbia, and Puerto Rico.

(h) *National of the United States.* For purposes of this section, national of the United States, when referring to an individual, has the meaning used in the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and includes U.S. citizens and non-citizen nationals. Thus, for example, an individual born in American Samoa is a national of the United States at birth.

(i) *Applicability date.* The provisions of this section apply for plan years (in the individual market, policy years) beginning on or after January 1, 2017.

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 31. The authority citation for part 148 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 32. Section 148.220 is amended by adding paragraph (a)(9) to read as follows:

§ 148.220 Excepted benefits.

* * * * *

(a) * * *

(9) Travel insurance, within the meaning of § 144.103 of this subchapter.

* * * * *

PART 158—ISSUER USE OF PREMIUM REVENUE: REPORTING AND REBATE REQUIREMENTS

■ 33. The authority citation for part 158 continues to read as follows:

Authority: Section 2718 of the Public Health Service Act (42 U.S.C. 300gg–18), as amended.

■ 34. Section 158.120 is amended by revising paragraph (d)(4) to read as follows:

§ 158.120 Aggregate Reporting.

* * * * *

(d) * * *

(4) An issuer with group policies that provide coverage to employees, substantially all of whom are: Working outside their country of citizenship; working outside of their country of citizenship and outside the employer's country of domicile; or non-U.S. citizens working in their home country, must aggregate and report the experience from these policies on a national basis, separately for the large group market and small group market, and separately from other policies, except that coverage offered by an issuer with respect to an expatriate health plan (within the meaning of § 147.170(c) of this subchapter) is not subject to the reporting and rebate requirements of 45 CFR part 158.

* * * * *

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Part VII

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Proposed 2017–18 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2016–0051; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BB40

Migratory Bird Hunting; Proposed 2017–18 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2017–18 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings, describes the proposed regulatory alternatives for the 2017–18 duck hunting seasons, and requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: *Comments:* Following subsequent **Federal Register** notices, the public will be given an opportunity to submit comments on this proposed rule and the subsequent proposed frameworks by January 15, 2017. Tribes must submit proposals and related comments on or before December 1, 2016.

Meetings: The SRC will conduct an open meeting on June 15, 2016, to identify and discuss preliminary issues concerning the 2017–18 migratory bird hunting regulations. The meeting will commence at approximately 11:00 a.m. EDT. The SRC will meet to consider and develop proposed regulations for the 2017–18 migratory game bird hunting seasons on October 25–26, 2016. Meetings on both days will commence at approximately 8:30 a.m.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2016–0051.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2016–0051; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that your entire submission—including any personal identifying information—will be posted on the Web site. See the Public Comments section, below, for more information.

Meetings: The June 15, 2016, SRC meeting will be available to the public in the Rachel Carson conference room at 5275 Leesburg Pike, Falls Church, VA 22041. The October 25–26, 2016, SRC meeting will be at the U.S. Fish and Wildlife Service, 5600 American Boulevard, Bloomington, MN 55437.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

New Process for the Annual Migratory Game Bird Hunting Regulations

As part of DOI's retrospective regulatory review, we developed a schedule for migratory game bird hunting regulations that is more efficient and provides hunting season dates much earlier than was possible under the old process. The new process makes planning much easier for the States and all parties interested in migratory bird hunting. Beginning last year with the development of the 2016–17 hunting seasons, we are using a new schedule for establishing our annual migratory game bird hunting regulations. We combine the previously used early- and late-season regulatory processes into a single process, and make decisions for harvest management based on predictions derived from long-term biological information and established harvest strategies to establish migratory bird hunting seasons much earlier than the system we used for many years. Under the new process, we develop proposed hunting season frameworks for a given year in the fall of the prior year. We then finalize those frameworks a few months later, thereby enabling the State agencies to select and publish their season dates in early summer.

This proposed rule is the first in a series of rules for the establishment of the 2017–18 hunting seasons.

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg" of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory game bird management is a cooperative effort of State, Tribal, and Federal governments.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies (AFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation entities and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the

biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest. After frameworks are established for season lengths, bag limits, and areas for migratory game bird hunting, States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

Service Migratory Bird Regulations Committee Meetings

The SRC will meet October 25–26, 2016, to review information on the current status of migratory game birds and develop 2017–18 migratory game bird regulations recommendations for these species. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this August, September and October. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

Atlantic Flyway Council: October 6–7, Hyatt Regency, 225 East Coastline Drive, Jacksonville, FL.

Mississippi Flyway Council: August 25–26, Hyatt Regency, 311 South 4th Street, Louisville, KY.

Central Flyway Council: September 22–23, Sheraton Steamboat Resort, 2200 Village Inn Court, Steamboat Springs, CO.

Pacific Flyway Council: September 30, Sun Valley Resort, 1 Sun Valley Road, Sun Valley, ID.

Notice of Intent To Establish Open Seasons

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2017–18 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2017–18 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under **Proposed 2017–18 Migratory Game Bird Hunting Regulations (Preliminary)** in this document. We published definitions of waterfowl flyways and mourning dove management units, and a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2017–18

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2017–18 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black Ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled Ducks
   - viii. Wood Ducks
   - ix. Youth Hunt
   - x. Mallard Management Units
   - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Early Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-Fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

The proposed regulatory alternatives for the 2017–18 duck hunting seasons are contained at the end of this document. We plan to publish final regulatory alternatives in late July. We plan to publish proposed season frameworks in mid-December 2016. We plan to publish final season frameworks in late February 2017.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2017–18 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2016–17 regulations and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2017–18 season. We seek additional information and comments on this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal

guidelines and proposals, tribes should contact the following personnel:

Region 1 (Idaho, Oregon, Washington, Hawaii, and the Pacific Islands)—Nanette Seto, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Greg Hughes, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Tom Cooper, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; (612) 713–5101.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico and Virgin Islands, South Carolina, and Tennessee)—Laurel Barnhill, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Pam Toschik, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; (413) 253–8610.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—Casey Stemler, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Pete Probasco, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Region 8 (California and Nevada)—Eric Davis, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825–1846; (916) 414–6727.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates, season length, and daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife-management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2017–18 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations; and

(3) Tribal capabilities to enforce migratory game bird hunting regulations.

For those situations where it could be shown that failure to limit Tribal harvest could seriously impact the migratory game bird resource, we also request information on the methods employed to monitor harvest and any potential steps taken to limit level of harvest.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season

length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2017–18 hunting season should submit their proposals no later than December 1, 2016. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption **Consolidation of Notices**. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section. We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA 22041.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

National Environmental Policy Act (NEPA) Consideration

The programmatic document, "Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139)," filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being "Duck Hunting Regulations for 2016–17," with its corresponding March 10, 2016, finding of no significant impact. In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT.**

Endangered Species Act Consideration

Before issuance of the 2017–18 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in **Regulatory Flexibility Act** section below). We will use this analysis again for the 2017–18 season. This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. We also chose Alternative 3 for the 2009–10, the 2010–11, the 2011–12, the 2012–13, the 2014–15, the 2015–16, and the 2016–17 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2016–0051.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2016–0051.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This proposed rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2017–18 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2017–18 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: May 19, 2016.

Karen Hyun,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2017–18 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. No changes from the 2016–17 frameworks are being proposed at this time. Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2017–18 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. (We enact other hunting regulations for species of special concern, such as canvasbacks, scaup, and pintails).

Atlantic, Mississippi, Central, and Pacific Flyways

The prescribed regulatory alternative for the Atlantic, Mississippi, Central, and Pacific Flyways is based on the status of mallards that contributes primarily to each Flyway. In the Atlantic Flyway, we set hunting regulations based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in the Northeast and the mid-Atlantic region). In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America (Federal survey strata 13–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In the Pacific Flyway, we set hunting regulations based on the status and dynamics of western mallards. Western mallards are those breeding in Alaska and the northern Yukon Territory (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys).

For the 2017–18 season, we recommend continuing to use independent optimization to determine the optimal regulatory choice for each mallard stock. This means that we would develop regulations for eastern mallards, mid-continent mallards and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this AHM decision framework for western and mid-continent mallards in the July 24, 2008, **Federal Register** (73 FR 43290) and for eastern mallards in the July 20, 2012, **Federal Register** (77 FR 42920).

Supplemental Environmental Impact Statement (SEIS) Changes to the AHM Process

Beginning with the 2016–17 season, migratory bird hunting regulations are based on predictions from models derived from long-term biological information or the most recently collected monitoring data, and established harvest strategies. Since 1995, the Service and Flyway Councils have applied the principles of adaptive management to inform harvest management decisions in the face of uncertainty while trying to learn about system (bird populations) responses to harvest regulations and environmental changes. Prior to the timing and process changes necessary for implementation of SEIS 2013, the annual AHM process began with the observation of the system's status each spring followed by an updating of model weights and the derivation of an optimal harvest policy that was then used to inform a regulatory decision (*i.e.*, breeding population estimates were used with a policy matrix to determine optimal regulatory decisions). The system then evolves over time in response to the decision and natural variation in population dynamics. The following spring, the monitoring programs observe the status of the system and the iterative decision-making process continues forward in time. However, with the changes in decision timing specified by the SEIS, the post-survey AHM process will not be possible because monitoring information describing the system will not be available at the time the decision must be made. As a result, the optimization framework used to derive the current harvest policy can no longer calculate current and future harvest values as a function of the current system and model weights. To address this issue, we adjusted the optimization procedures to calculate harvest values conditional on the last observation of the system and regulatory decision.

Results and analysis of our work is contained in a technical report that provides a summary of revised methods and assessment results based on updated AHM protocols developed in response to the preferred alternative specified in the SEIS. The report describes necessary changes to optimization procedures and decision processes for the implementation of AHM for midcontinent, eastern and western mallards, northern pintails, and scaup decision frameworks.

Results indicate that the necessary adjustments to the optimization procedures and AHM protocols to account for changes in decision timing are not expected to result in major changes to expected management performance for mallard, pintail, and scaup AHM. In general, pre-survey (or pre-SEIS necessary changes) harvest policies were similar to harvest policies based on new post-survey (or post-SEIS necessary changes) AHM protocols. We found some subtle differences in the degree to which strategies prescribed regulatory changes in the pre-survey policies with a reduction in the number of cells indicating moderate regulations. In addition, pre-survey policies became more liberal when the previous regulatory decisions were more conservative. These patterns were consistent for each AHM decision-making framework. Overall, a comparison of simulation results of the pre- and post-survey protocols did not suggest substantive changes in the frequency of regulations or in the expected average population size. These results suggest that the additional form of uncertainty that the change in decision timing introduces is not expected to limit our expected harvest management performance with the adoption of the pre-survey AHM protocols.

A complete copy of the AHM report can be found on *http://www.regulations.gov* or at *http://www.fws.gov/migratorybirds/pdf/management/AHM/SEIS&AHMReportFinal.pdf.*

Final 2017–18 AHM Protocol

We will detail the final AHM protocol for the 2017–18 season in the supplemental proposed rule, which we will publish in late July (see **Schedule of Biological Information Availability, Regulations Meetings and Federal Register Publications for the 2017–18 Seasons** at the end of this proposed rule for further information). We will propose a specific regulatory alternative for each of the Flyways to use for their 2017–18 seasons after information becomes available in late August 2016.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the "moderate" and "liberal" regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501; March 19, 2002).

For 2017–18, we propose to utilize the same regulatory alternatives that are in effect for the 2016–17 season (see accompanying table for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative.

C. Zones and Split Seasons

Zones and split seasons are "special regulations" designed to distribute hunting opportunities and harvests according to temporal, geographic, and demographic variability in waterfowl and other migratory game bird populations. For ducks, States have been allowed the option of dividing their allotted hunting days into two (or in some cases three) segments to take advantage of species-specific peaks of abundance or to satisfy hunters in different areas who want to hunt during the peak of waterfowl abundance in their area. However, the split-season option does not fully satisfy many States who wish to provide a more equitable distribution of harvest opportunities. Therefore, we also have allowed the establishment of independent seasons in up to four zones within States for the purpose of providing more equitable distribution of harvest opportunity for hunters throughout the State.

In 1978, we prepared an environmental assessment (EA) on the use of zones to set duck hunting regulations. A primary tenet of the 1978 EA was that zoning would be for the primary purpose of providing equitable distribution of duck hunting opportunities within a State or region and not for the purpose of increasing total annual waterfowl harvest in the zoned areas. In fact, target harvest levels were to be adjusted downward if they exceeded traditional levels as a result of zoning. Subsequent to the 1978 EA, we conducted a review of the use of zones and split seasons in 1990. In 2011, we prepared a new EA analyzing some specific proposed changes to the zone and split-season guidelines. The current guidelines were then finalized in 2011 (76 FR 53536; August 26, 2011).

Currently, every 5 years, States are afforded the opportunity to change the zoning and split-season configuration within which they set their annual duck hunting regulations. The next regularly scheduled open season for changes to zone and split-season configurations was in 2016, for use during the 2016–20 period. However, as we discussed in the September 23, 2014, **Federal Register** (79 FR 56864), the April 13, 2015, **Federal Register** (80 FR 19852), and the August 6, 2015, **Federal Register** (80 FR 47388), we implemented significant changes to the annual regulatory process as outlined in the 2013 SEIS. As a result, the previously identified May 1, 2016, due date for zone and split-season configuration changes that was developed under the old regulatory process was too late for those States wishing to change zone and split-season configurations for implementation in the 2016–17 season. Under the new regulatory schedule implemented last year, we published the proposed rule for all migratory bird seasons the following fall in early December. A final rule tentatively would be published about 75 days after the proposed rule (but no later than April 1). This new schedule precluded inclusion of some States' new zone descriptions in the 2016–17 proposed rule as had been done in past open seasons. Thus, we utilized a two-phase approach. For those States able to change zone and split-season configurations in time for the 2016–17 season, we included new configuration and zone descriptions in the 2016–17 hunting regulations. States that do not send in new zone and split-season configuration changes at that time had until the previously identified May 1, 2016, deadline. Those changes will be implemented in the 2017–18 hunting season. The next scheduled open season would remain in 2021 for the 2021–25 seasons, and all States will then resume on the same 5-year schedule regardless of how long their previous zone-split configuration was in place.

For the current open season, the guidelines for duck zone and split-season configurations will be as follows:

Guidelines for Duck Zones and Split Seasons

The following zone and split-season guidelines apply only for the regular duck season:

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

(2) Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

(3) Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

(4) Once a zone and split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone and split-season configuration must conform to one of the following options:

(1) No more than four zones with no splits,

(2) Split seasons (no more than 3 segments) with no zones, or

(3) No more than three zones with the option for 2-way (2-segment) split seasons in one, two, or all zones.

Grandfathered Zone and Split Arrangements

When we first implemented the zone and split guidelines in 1991, several States had completed experiments with zone and split arrangements different from our original options. We offered those States a one-time opportunity to continue ("grandfather") those arrangements, with the stipulation that only minor changes could be made to zone boundaries. If any of those States now wish to change their zone and split arrangement:

(1) The new arrangement must conform to one of the 3 options identified above; and

(2) The State cannot go back to the grandfathered arrangement that it previously had in place.

Management Units

We will continue to utilize the specific limitations previously established regarding the use of zones and split seasons in special management units, including the High Plains Mallard Management Unit. We note that the original justification and objectives established for the High Plains Mallard Management Unit provided for additional days of hunting opportunity at the end of the regular duck season. In order to maintain the integrity of the management unit, current guidelines prohibit simultaneous zoning and/or 3-way split seasons within a management unit and the remainder of the State. Removal of this limitation would allow additional proliferation of zone and split configurations and compromise the original objectives of the management unit.

D. Special Seasons/Species Management

iv. Canvasbacks

From 1994–2015, we followed a canvasback harvest strategy whereby if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining an objective of 500,000 birds the following spring, the season on canvasbacks should be opened. A partial season would be allowed if the estimated allowable harvest was below that associated with a 1-bird daily bag limit for the entire season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

Since the existing harvest strategy relies on information that will not yet be available at the time we need to establish proposed frameworks under the new regulatory process, the canvasback harvest management strategy is not usable for the 2016–17 season and beyond. At this time we do not have a new harvest strategy to propose for use in the future. Thus, as we did for the 2016–17 season, we will review the most recent information on canvasback populations, habitat conditions, and harvests with the goal of compiling the best information available for use in making a harvest management decision. We will share these results with the Flyways during their fall meetings, with the intention of adopting a decision-making approach in October for the 2017–18 seasons. Over the next year, we will continue to work with the Flyway technical committees and councils to develop a new biologically based process for informing harvest management decisions for use in subsequent years.

16. Doves

As we discussed in the April 13 (80 FR 19852), July 21 (80 FR 43266), and August 6 (80 FR 47388), 2015, **Federal Registers**, 2016 was the next open season for changes to dove zone and split configurations for the 2016–20 period. The current guidelines were approved in 2006 (see July 28, 2006, **Federal Register**, 71 FR 43008), for the use of zones and split seasons for doves with implementation beginning in the 2007–08 season. While the initial period was for 4 years (2007–10), we further stated that beginning in 2011, zoning would conform to a 5-year period.

As discussed above under **C. Zones and Split Seasons** for ducks, because of unintentional and unanticipated issues with changing the regulatory schedule for the 2016–17 season, we decided that a two-phase approach was appropriate. For those States able to change zone and split-season configurations in time for the 2016–17 season, we included that new configuration and zone descriptions in the 2016–17 hunting seasons. For those States unable to do so last year, we will accept zone and split-season configuration changes until the previously identified May 1, 2016, deadline. We will implement these changes in the 2017–18 hunting season. The next normally scheduled open season will be in 2021 for the 2021–25 seasons.

For the current open season, the guidelines for dove zone and split-season configurations will be as follows:

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

(1) A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

(2) States may select a zone and split option during an open season. The option must remain in place for the following 5 years except that States may make a one-time change and revert to their previous zone and split configuration in any year of the 5-year period. Formal approval will not be required, but States must notify the Service before making the change.

(3) Zoning periods for dove hunting will conform to those years used for ducks, *e.g.*, 2016–20.

(4) The zone and split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

(5) States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

For the 2016–20 period, any State may continue the configuration used in 2011–15. If changes are made, the zone and split-season configuration must conform to one of the options listed above. If Texas uses a new configuration for the entirety of the 5-year period, it cannot go back to the grandfathered arrangement that it previously had in place.

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PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2017-18 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	50	30	45	60	39	60	74	60	86	107
Daily Bag	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

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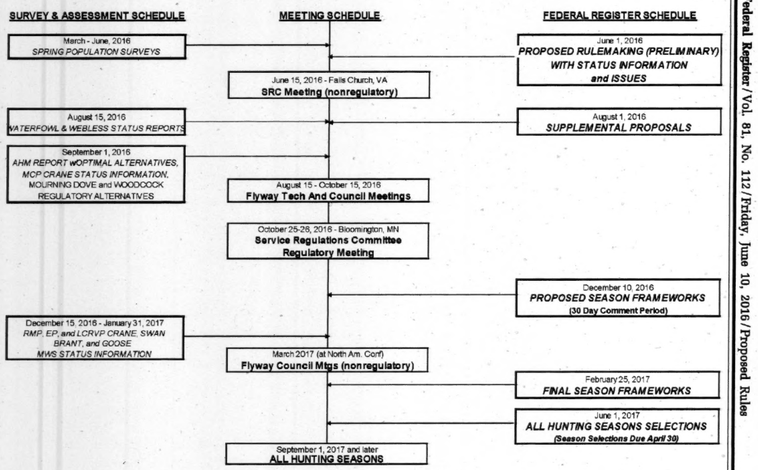

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Federal Register
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Monday, June 13, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–15–0002]

RIN 0563–AC48

Common Crop Insurance Regulations; Texas Citrus Fruit Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Texas Citrus Fruit Crop Insurance Provisions, to provide policy changes to better meet the needs of policyholders, to clarify existing policy provisions, and to reduce vulnerability to program fraud, waste, and abuse. Specifically, this final rule modifies or clarifies certain definitions, clarifies unit establishment, clarifies substantive provisions for consistency with terminology changes, modifies the insured causes of loss, clarifies required timing for loss notices, modifies portions of loss calculation formulas, and addresses potential misinterpretations or ambiguity related to these issues. The changes will be effective for the 2018 and succeeding crop years.

DATES: This rule is effective July 13, 2016.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205,

Background

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Texas Citrus Fruit Crop Insurance Provisions that were published by FCIC on January 12, 2016, as a notice of proposed rulemaking in the **Federal Register** at 81 FR 1337–1345. The public was afforded 60 days to submit comments after the regulation was published in the **Federal Register**.

A total of 26 comments were received from 4 commenters. The commenters were insurance providers, an insurance service organization, and a grower organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated they agree with the proposed changes in the following sections: Definitions, Unit Division, Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities, Duties in the Event of Damage or Loss, and Settlement of Claim.

Response: FCIC appreciates the support for these changes.

Comment: Several commenters recommended changing the term "insured crop" to "citrus fruit group" throughout the Crop Provisions. For example, the commenters stated that section 2(a) indicates basic units will be established for each insured crop. However, since the definition of crop has been removed from these provisions, this can easily lead to confusion as to whether basic units can be by citrus fruit commodity, commodity type, or citrus fruit group. The background information from the proposed rule indicates the intent is that separate basic units will be established for each citrus fruit group because FCIC proposes to treat each citrus fruit group as a separate insured crop. Therefore, the commenter recommended that the word "crop" be replaced by "citrus fruit group" which is the defined term in these Crop Provisions and the intent of these provisions based on the background information. This would then clearly indicate to anyone reading this provision as to the intent for how exist by using the generic term "crop" which is not a defined term.

Response: FCIC agrees that in some instances it may be clearer to refer to the "citrus fruit group" in addition to the "insured crop." FCIC has made this change in section 2 (unit division) and as appropriate throughout the Crop Provisions in the final rule. In addition to this change in section 2, FCIC has revised section 2(c)(2) by changing the phrase "non-contiguous land" to "if each optional unit is located on non-contiguous land." This change is intended to provide clarification and is consistent with language contained in other crop insurance policies for perennial crops such as apples and peaches.

Comment: Several commenters stated that the proposed definitions of "citrus fruit commodity," "citrus fruit group," "commodity type" and other related revisions are part of the Acreage Crop Reporting Streamlining Initiative (ACRSI) and are similar to what was done in the 2014 Florida Citrus Fruit Crop [Insurance] Provisions proposed rule and the 2015 Arizona-California Citrus Crop Insurance Provisions proposed rule. Some of the concerns that were expressed in comments to the Florida Citrus Fruit Proposed Rule were addressed in the final rule responses, so these proposed changes are better understood this time around, though this is still a "work in progress." The chart on page 1339 of the proposed rule is helpful in showing the expected groupings of citrus fruit commodities, commodity types, intended uses, and citrus fruit groups.

Response: In the proposed rule background, FCIC continued to address issues previously raised in the proposed rules for the Florida Citrus Fruit Crop Provisions and the Arizona-California Citrus Crop Provisions, which contained some similar changes. FCIC appreciates hearing the ACRSI changes are better understood and that the background information from the proposed and final rules for the citrus crops has contributed to that increased understanding. FCIC has made no change to the final rule.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: The last sentence in section 3(e)(3) states "We will reduce

crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage." Several commenters asked what if the event that occurred was something that only affects the crop for the year in question and has no carryover effect on the yield into the next crop year? The word "will" should be changed to "may" so that approved insurance providers have the flexibility to either reduce or not reduce the yield for the subsequent crop year depending on whether the effect of the damage will carry over to the subsequent year. The word "will" implies that the yield must be reduced even if the event that occurred will have no impact on the crop yield for the following year. This language needs to be revised to allow the approved insurance providers to have some flexibility in determining whether the approved APH yield should be reduced for the subsequent year. A commenter noted that FCIC responded to similar comments to the Peach Proposed Rule by saying that approved insurance providers already have that flexibility according to the opening statement [3(c) of the Peach Crop Provisions refers to reducing the yield ". . . as necessary, based on our estimate of the effect . . ."]. However, the commenter still has a concern with this language as proposed as the word "may" allows more flexibility to administer this provision. The commenter would like FCIC to confirm that if the event that occurred in the current crop year has been determined to have no yield impact for the subsequent year that approved insurance providers have the ability to not reduce the yield the subsequent crop year even though this provision indicates that it must be reduced by using the word "will." A commenter noted that the draft version of these provisions prior to being published as a proposed rule did use the word "may" which is how this provision should be worded. The background information also indicates that this provision is similar to the provisions that FCIC recently added to other perennial crop policies such as the Arizona-California Citrus Crop Insurance Provisions. It should be noted that the Arizona-California Citrus Crop Insurance Provisions were published as a final rule and for this exact same policy provision used the word "may" rather than "will". The commenter emphasized that FCIC should use the same language of "may" that was used in the final version of the Arizona-

use and it will make the language in these provisions consistent with the language used in the Arizona-California Citrus Crop Insurance Provisions.

Response: As the language indicates, the provision only requires a yield reduction if a circumstance occurs that reduces productive capacity of the trees for the subsequent year. Use of the term "will" in the provision does not require a reduction in the yield if a reduction in productive capacity does not exist or is not expected for the subsequent year. FCIC has made no change to the final rule.

Comment: The provision in section 3(e) is proposed to be moved to section 3(f) with no other changes to the language in this provision. A commenter stated the language in this provision suggests that in the event of damage or changes to the grove, the yield is established by another method (appraisal of the potential of the insured acreage for the crop year). The commenter is concerned that as written, the provision is too vague and allows for different interpretations. The commenter requested FCIC provide further clarification/procedures of how and when this should be done. The commenter stated that it seems more clarification will be provided in the new 3(e), but not for the new 3(f).

Response: FCIC agrees that, relative to current changes, as currently worded this existing provision could be misinterpreted, especially the phrase "another method." Although the provision only refers generically to the method described in the new paragraph 3(e), FCIC intends to minimize the risk of misinterpretation. This language is no longer needed with the addition of the new paragraph 3(e). Therefore, to prevent potential confusion FCIC is revising the provision in the final rule by removing the duplicative information.

Section 7—Insured Crop

Comment: A commenter stated the provision in section 7(a) is beneficial to indicate that the insured crop will be each citrus fruit group but this still does not change the need to replace the term "crop" with "citrus fruit group" as recommended in various other sections of these Crop Provisions since this is the defined term.

Response: As stated in response to a previous comment, FCIC has revised the final rule by including the term "citrus fruit group" in addition to the term "insured crop" where appropriate.

Comment: Several commenters asked for clarification on what is meant by the

section 7(d)] because there is a lag year for fruit production in the APH [Actual Production History]. For example, the commenter asked if "previous year" means the most recent year harvested or does it mean the last year of the database.

Response: The crop year for the Texas Citrus Fruit Crop Provisions spans more than one calendar year. The Crop Provisions require production reporting from two crop years ago for APH purposes because the prior crop year harvest is generally not completed before beginning of the next crop year. For this same reason, the minimum production requirement contained in the newly designated section 7(a)(4) is not typically assessed from the previous crop year. Therefore, FCIC is revising this provision in the final rule to clarify that the provision refers to the crop year reported in accordance with section 3(g), which is the crop year two years prior to the current crop year.

Section 8—Insurable Acreage

Comment: Several commenters asked for clarification on the provisions in section 8 regarding whether a producer may have different fruit groups interplanted with each other, as any other citrus fruit group would qualify as "another perennial agricultural commodity."

Response: The provision in section 8 states that a citrus fruit group planted with another perennial agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy. A citrus fruit group would typically qualify as a perennial agricultural commodity, under the "agricultural commodity" definition in the Basic Provisions. Therefore, a citrus fruit group interplanted with another citrus fruit group may be insurable unless an inspection reveals the citrus fruit group for which coverage is sought does not meet the policy terms. FCIC has made no change to the final rule.

Section 9—Insurance Period

Comment: A commenter recommended removing ". . . during the 10-day period . . ." when the application is received between November 11 and November 21 from section 9(a)(1). The requirement that the approved insurance provider inspection must take place within a 10-day period is unnecessary and burdensome.

Response: The purpose of this language is allowing the approved insurance provider adequate time to

insurance attaching if the application is received after November 11. While the provision references inspection authority, it does not necessarily require an inspection to be completed during the 10-day period. Therefore, FCIC disagrees this provision is burdensome. In addition, the proposed rule indicated no intended changes to this provision. However, FCIC wishes to further clarify whether the provision is referring to the 10-day period between November 11 and November 21 or the 10-day period between the time the application is received and when insurance attaches, when those time periods are not the same. Therefore, FCIC has revised the provision in the final rule to clarify the 10-day period raised in the comment refers to the period that begins when the application is received, if it is received after November 11.

Section 10—Causes of Loss

Comment: Several commenters asked for clarification on whether citrus canker (a disease affecting citrus species caused by the bacterium *Xanthomonas axonopodis*) is an insurable or uninsurable peril for Texas Citrus Fruit.

Response: Citrus canker is insurable under the revised Texas Citrus Fruit Crop Provisions unless excluded through the Special Provisions. FCIC currently does not intend to exclude citrus canker through the Special Provisions. FCIC has made no change to the final rule.

Comment: A commenter stated that producers may be concerned if there is a premium rate increase if citrus greening is added as an insurable cause of loss. Producers may want an option to opt out of this coverage.

Response: As stated in the background section of the proposed rule, FCIC intends to exclude citrus greening from insurability through the Special Provisions. FCIC does not foresee making coverage available for citrus greening. FCIC has made no change to the final rule.

Comment: A commenter stated the provisions in section 10 are of most concern to growers in Texas. The commenter asked if the new language is saying that citrus greening is covered. More importantly, the commenter asked what is covered. The commenter states it is very unclear. The commenter states that growers in Texas have many questions as to how changes to the cause of loss section will affect the premium rates. The commenter states it is impossible to plan without this information.

Response: As stated in the proposed rule, FCIC intends to exclude citrus greening from insurability through the Special Provisions. Therefore, citrus greening is not an insurable cause of loss because the Special Provisions are a part of the policy. Any insect or other plant disease not excluded through the Special Provisions will be insurable as long as the loss of production is not due to damage resulting from insufficient or improper application of control measures as recommended by agricultural experts. Presently, FCIC does not foresee excluding any other disease besides citrus greening. Although loss experience may impact premium rates, FCIC does not expect these current cause of loss changes to have an immediate impact on premium rates. Insects and plant disease were already insurable causes of loss under the Crop Provisions, provided they were linked to an insurable cause of loss under specific terms of the prior policy language. FCIC has made no change to the final rule.

Comment: Several commenters stated that producers do not harvest trees afflicted with citrus greening separately from trees that are not affected. Assessing the amount of production lost to citrus greening, an uninsurable cause, may be difficult if production is commingled. The commenters stated FCIC must develop procedures governing how to separate insurable damage from uninsurable damage.

Response: The current methods for assessing uninsured damage would apply equally to citrus greening. It is not uncommon for groves or trees within a grove to contain insurable damaged fruit, uninsurable damaged fruit, and undamaged fruit. However, FCIC will assess the impacts of the changes to these Crop Provisions and revise the loss adjustment procedures if necessary. FCIC intends to give approved insurance providers an opportunity to review and provide feedback on the proposed changes to the loss adjustment procedures prior to publication. FCIC has made no change to the final rule.

Comment: Several commenters stated they agree with the comments in the background section made by FCIC regarding citrus greening and agree that citrus greening should be excluded as a cause of loss in the Special Provisions. The proposed provision in section 10(a)(9) also provides FCIC with the flexibility in the future to exclude additional causes of loss for insects or disease that should not be covered.

Response: FCIC appreciates the feedback and support for this proposed change. In addition to providing flexibility for excluding causes of loss, the Special Provisions also provide flexibility for providing additional information needed to determine other causes of loss such as excess wind. The proposed definition of "excess wind" was intended to allow additional weather reporting stations to be identified through the Special Provisions to be used to verify excess wind. However, FCIC has determined the proposed wording in the definition of "excess wind" could be misinterpreted to mean that the phrase "operating nearest to the insured acreage at the time of damage," only applies to non-US National Weather Service stations identified in the Special Provisions. Therefore, FCIC has revised the definition of "excess wind" to clarify that the phrase "operating nearest to the insured acreage at the time of damage," applies to both U.S. National Weather Service reporting station and any other weather reporting station identified in the Special Provisions.

Section 11—Duties in the Event of Damage or Loss

Comment: Several commenters stated that section 11(a) indicates "we will determine which trees must remain unharvested so that we may inspect them in accordance with FCIC procedures." This language could be difficult to administer without clear and concise guidance from FCIC in procedures. The background information for this section indicates that the FCIC intends to issue crop specific guidance for the approved insurance providers to use to instruct the insured on which trees must remain unharvested. The commenters requested FCIC make sure the procedures are clearly laid out to ensure this new section of the Crop Provisions is not unduly difficult to administer. A commenter requested FCIC to confirm that in addition to the procedures being clear that they will also ensure they will not be unreasonably difficult for approved insurance providers to administer.

Response: As stated in response to a previous comment, FCIC will assess the impacts of the changes to the Crop Provisions and revise the loss adjustment procedures if necessary. FCIC will make every effort to ensure procedures are clear and unduly difficult for approved insurance providers to administer. FCIC intends to give approved insurance providers an opportunity to review and provide feedback on the proposed changes to the loss adjustment procedures prior to publication. FCIC has made no change to the final rule.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has not reviewed this rule.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FCIC has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FCIC will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by law.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance, Texas citrus fruit, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2018 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 457.119 as follows:
■ a. In the introductory text by removing "2000" and adding "2018" in its place;
■ b. By removing the undesignated paragraph immediately preceding section 1;
■ c. In section 1:
■ i. By adding in alphabetical order the definitions of "citrus fruit commodity," "citrus fruit group," "commodity type," and "intended use";
■ ii. By removing the definitions of "crop," "local market price," and "varieties";
■ iii. In the definition of "crop year" by removing the term "citrus" and adding the term "insured" in its place;
■ iv. In the definition of "direct marketing" by adding the term "insured" directly preceding the term "crop" in the second sentence;
■ v. In the definition of "excess rain" by adding the term "insured" directly preceding the term "crop";
■ vi. By revising the definitions of "excess wind," "interplanted," and "production guarantee (per acre)"; and
■ d. In section 2 by revising paragraphs (a) and (c);
■ e. In section 3:
■ i. In the introductory paragraph by removing the phrase "(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)" immediately following the words "section 3";
■ ii. By revising paragraphs (a) and (b);
■ iii. In paragraph (d) introductory text by removing the term "type" and adding the phrase "commodity type and intended use" in its place;
■ iv. In paragraph (d)(4) by removing the phrase "perennial crop, and anytime" and replacing it with the phrase "agricultural commodity and any time";
■ v. In paragraph (d)(4)(i) by removing the phrase "crop, and type" and adding the phrase "agricultural commodity and commodity type," in its place;
■ vi. By redesignating paragraphs (e) and (f) as (f) and (g) respectively;
■ vii. By designating the undesignated paragraph following paragraph (d)(4)(iii) as paragraph (e); and
■ viii. By revising the newly designated paragraphs (e), (f) and (g);
■ f. In section 4 by removing the phrase "(Contract Changes)" immediately following the words "section 4";
■ g. In section 5 by removing the phrase "(Life of Policy, Cancellation, and Termination)" immediately following the words "section 2";
■ h. In section 6 by removing the phrase "(Annual Premium)" immediately following the words "section 7";
■ i. In section 7 by:
■ i. Designating the undesignated introductory paragraph as paragraph (a) and redesignating paragraphs (a) through (f) as (a)(1) through (6) respectively;
■ ii. Revising the newly designated paragraph (a);
■ iii. In the newly designated paragraph (a)(2) by removing the term "are" and adding the phrase "is grown on trees" in its place;
■ iv. In the newly designated paragraph (a)(3) by removing the term "are" and adding the term "is" in its place;
■ v. In the newly designated paragraph (a)(4) by removing the phrase "previous year" and adding the phrase "the crop year from two years prior reported in accordance with section 3(g)" in its place; and
■ vi. Adding a new paragraph (b);
■ j. Revise section 8;
■ k. In section 9:
■ i. In paragraph (a) by removing the phrase "(Insurance Period)" immediately following the words "section 11";
■ ii. By revising paragraph (a)(1); and
■ iii. In paragraph (b) by removing the phrase "(Insurance Period)" immediately following the words "section 11";
■ l. In section 10:
■ i. In paragraph (a) by removing the phrase "(Causes of Loss)" immediately following the words "section 12";
■ ii. In paragraph (a)(7) by removing the word "or";
■ iii. In paragraph (a)(8) by removing the period and adding "; or" in its place;
■ iv. By adding a new paragraph (a)(9); and
■ v. By revising paragraph (b);
■ m. In section 11:
■ i. By redesignating paragraph (a) as (b)(1); and
■ ii. By redesignating paragraph (b) as (b)(2) and revising the newly designated paragraph (b)(2);
■ iii. By designating the undesignated introductory paragraph as paragraph (b) introductory text;
■ iv. By adding a new paragraph (a); and
■ v. In the newly designated paragraph (b) by removing the phrase "(Duties in the Event of Damage or Loss)" immediately following the words "section 14";
■ n. In section 12:
■ i. By revising paragraph (b)(1);
■ ii. In paragraph (b)(2) by removing the phrase "crop, or variety, if applicable" and adding the phrase "combination of commodity type and intended use" in its place;
■ iii. In paragraph (b)(4) by removing the phrase "variety, if applicable," and adding the phrase "combination of commodity type and intended use" in its place;
■ iv. In paragraph (c)(1)(iv) by removing the term "crop" in all three places it appears and adding the term "insured crop" in its place;
■ v. In paragraph (d) by adding the phrase "insured with an intended use of juice" after the phrase "Any citrus fruit"; and
■ vi. By revising paragraph (e).

The revisions and additions read as follows:

§ 457.119 Texas citrus fruit crop insurance provisions.

* * * * *

1. Definitions

Citrus fruit commodity. Includes the following:
(a) Oranges;
(b) Grapefruit; and
(c) Any other citrus fruit designated as a "citrus fruit commodity" in the actuarial documents.

Citrus fruit group. A designation in the Special Provisions used to identify combinations of citrus fruit commodity types and intended uses within a citrus fruit commodity that may be grouped together for the purposes of electing coverage levels and identifying the insured crop.

Commodity type. A specific subcategory of a citrus fruit commodity having a characteristic or set of characteristics distinguishable from other subcategories of the same citrus fruit commodity.

* * * * *

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour (50 knots) recorded at the weather reporting station (U.S. National Weather Service reporting station or any other weather reporting station identified in the Special Provisions) operating nearest to the insured acreage at the time of damage.

* * * * *

Intended use. The insured's expected end use or disposition of the commodity at the time the commodity is reported. Insurable intended uses will be specified in the Special Provisions.

Interplanted. In lieu of the definition contained in section 1 of the Basic Provisions, acreage on which two or more agricultural commodities are planted in any form of alternating or mixed pattern and at least one of these agricultural commodities constitutes an insured crop under these Crop Provisions.

Production guarantee (per acre). In lieu of the definition contained in section 1 of the Basic Provisions, the production guarantee will be determined by stage as follows:

* * *

(b) Second stage production guarantee. The quantity of citrus (in tons) determined by multiplying the yield determined in accordance with section 3(e) of these Crop Provisions by the coverage level percentage you elect.

* * * * *

2. Unit Division

(a) Basic units will be established for each insured crop (citrus fruit group) in accordance with section 1 of the Basic Provisions.

* * * * *

(c) Optional units may be established by either of the following, but not both:
(1) In accordance with section 34(c) of the Basic Provisions, except as provided in section 2(b) of these Crop Provisions; or
(2) If each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election and coverage level for each insured crop (citrus fruit group designated in the Special Provisions) that you elect to insure.

(1) The price election you choose for each insured crop (citrus fruit group) need not bear the same percentage relationship to the maximum price offered by us for each insured crop (citrus fruit group). For example, if you choose one hundred percent (100%) of the maximum price election for one insured crop (citrus fruit group) (*e.g.*, the citrus fruit group for early and midseason oranges), you may choose seventy-five percent (75%) of the maximum price election for another insured crop (citrus fruit group) (*e.g.*, the citrus fruit group for late oranges).

(2) If separate price elections are available by commodity type or intended use within an insured crop (citrus fruit group), the price elections you choose within the insured crop (citrus fruit group) must have the same percentage relationship to the maximum price offered by us for each other commodity type or intended use within the insured crop (citrus fruit group). For example, if separate price elections are available for commodity type ruby red grapefruit with an intended use of fresh, and commodity type ruby red grapefruit with an intended use of juice, and you choose one hundred percent (100%) of the price election for commodity type ruby red grapefruit with an intended use of fresh, you must also choose one hundred percent (100%) of the price election for commodity type ruby red grapefruit with an intended use of juice.

(b) The production guarantee per acre is progressive by stage and increases from the first stage production guarantee to the second stage production guarantee. The stages are as follows:

(1) The first stage extends from the date insurance attaches through April 30 of the calendar year of normal bloom.

(2) The second stage extends from May 1 of the calendar year of normal bloom until the end of the insurance period.

* * * * *

(e) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any circumstance that may reduce your yields from previous levels. Examples of these circumstances that may reduce yield may include, but are not limited to: Interplanted agricultural commodities; removal, topping, hedging, or pruning of trees; damage; and change in practices. If the circumstance occurred:

(1) Before the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the circumstance was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Before or after the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 12(c) of these Crop Provisions due to uninsured causes. We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.

(f) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions.

(g) In lieu of the provisions in section 3 of the Basic Provisions that require reporting your production for the previous crop year, for each crop year you must report your production from two crop years ago (*e.g.*, on the 2018 crop year production report, you will provide your 2016 crop year production).

* * * * *

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the insured crop will be each citrus fruit group you elect to insure and for which a premium rate is provided by the actuarial documents:

* * * * *

(b) For each insured crop (citrus fruit group), administrative fees will be assessed in accordance with section 6 of the Catastrophic Risk Protection Endorsement and section 7 of the Basic Provisions.

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to an insured crop interplanted with another agricultural commodity, interplanted acreage is uninsurable, except a citrus fruit group interplanted with another perennial agricultural commodity is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

* * * * *

9. Insurance Period

(a) * * *

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period that begins when the application is received by us and determine that it does not meet insurability requirements. You must provide any information that we require for the insured crop (citrus fruit

group) or to determine the condition of the grove.

* * * * *

10. Causes of Loss

* * * * *

(a) * * *

* * * * *

(9) Insects and plant disease, unless excluded or otherwise restricted through the Special Provisions, provided the loss of production is not due to damage resulting from insufficient or improper application of control measures as recommended by agricultural experts.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the citrus for any reason other than actual physical damage from an insurable cause of loss specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples. In lieu of the requirements of section 14(c)(3) of the Basic Provisions, we will determine which trees must remain unharvested so that we may inspect them in accordance with FCIC procedures.

(b) * * *

* * * * *

(2) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest, or within 24 hours if damage is discovered during harvest, so we may have an opportunity to inspect the unit. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

12. Settlement of Claim

* * * * *

(b) * * *

(1) Multiplying the insured acreage for each combination of commodity type and intended use by its respective production guarantee;

* * * * *

(e) Any citrus fruit insured with an intended use of fresh that is not marketable as fresh fruit due to insurable causes will be adjusted by multiplying the number of tons of such citrus fruit by the applicable Fresh Fruit Factor contained in the Special Provisions.

* * * * *

Signed in Washington, DC, on June 6, 2016.

Michael Alston,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2016–13770 Filed 6–10–16; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 31

[Docket No. FAA–2016–5424; Special Conditions No. 31–001–SC]

Special Conditions: Ultramagic, S.A., Mark–32 Burner Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This action proposes special conditions for the Ultramagic, S.A., balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90. These models will have a novel or unusual design feature associated with having the new Mark–32 Burner series. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These final special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective June 13, 2016 and is applicable beginning May 25, 2016.

FOR FURTHER INFORMATION CONTACT: John VanHoudt, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Programs and Procedures Branch, ACE–114, 901 Locust, Kansas City, MO 64106; telephone (816) 329–4142; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2014, Ultramagic, S.A. (Ultramagic) applied for a change to Type Certificate No. B02CE to incorporate the new Mark-32 (MK–32) Burner series in balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90. The MK–32 Burner series is a derivative of the MK–10 Burner series, which are currently approved under TCDS B02CE. The MK–32 burner does introduce a particular novel aspect in terms of operation and performance—the primary modification being an oxygen augmented igniter system.

Type Certification Basis

Under the provisions of § 21.101, Ultramagic must show that the balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90, as changed, continues to meet the applicable provisions incorporated by reference in Type Certificate No. B02CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The Direccion General de Aviacion Civil originally type certificated this aircraft under its type certificate Numbers 3, 4, 18, 61, 147, and 247. The FAA validated these products under U.S. Type Certificate Number B02CE. On September 28, 2003, EASA began oversight of this product on behalf of Spain. The regulations incorporated by reference in B02CE are as follows:

a. 14 CFR 21.29.

b. 14 CFR part 31, effective on January 1990, as amended by 31–1 through 31–5 inclusive. Application for Type Certificate dated June 5, 1997.

c. Equivalent Level of Safety (ELOS) Findings per provision of 14 CFR 21.21(b)(1):

(1) ACE–08–15,[1] August 1, 2008, Burners, 14 CFR 31.47(d).

(2) ACE–08–15A,[2] November 05, 2013, Burners, 14 CFR 31.47(d), for Model S–70.

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

[2] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 31) do not contain adequate or appropriate safety standards for balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101. The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Model Numbers F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 balloons will incorporate the following novel and unusual design feature:

The oxygen augmentation and hydraulic control.

Discussion

Based on the provisions of §§ 21.17 and 21.29 and the U.S.-EASA Technical Implementation Procedures for Airworthiness and Environmental Certification Between the Federal Aviation Administration of the United States of America and the European Aviation Safety Agency of the European Union, the following airworthiness requirements are applicable to this project and will remain active for three years from the date of application and form the Certification Basis:

a. Part 31, amendment 7 (The certification basis complied with according to the Ultramagic part 31 compliance checklist.).

b. ELOS Findings: The FAA notes that it has issued equivalent level of safety findings per provision of 14 CFR 21.21(b)(1), specifically ACE–08–15[3] on August 1, 2008, Burners, § 31.47(d) and then extended the ELOS as ACE–08–15A[4] on November 05, 2013, Burners, § 31.47(d), for the Model S–70. This ELOS has not been applied to the MK–32 and therefore not applicable.

3. Special conditions: The FAA notes that Ultramagic elected to comply with certain provisions of CS–23, amendment 3, that apply to oxygen systems. These provisions are applicable because there is an oxygen augmented igniter system available for the MK–32 burner. The following 14 CFR regulations, except § 23.1445, are harmonized with their CS–23, amendment 3, counterpart regulations and form the basis of this special condition.

Section	Title	Paragraph	Amendment
§ 23.1445	Oxygen distribution system	(a) and (b)	23–62
§ 23.1451	Fire protection for oxygen equipment	(a), (b), and (c)	23–49
§ 23.1453	Protection of oxygen equipment from rupture	(a) and (b)	23–49

Section 23.1445 mentions the only significant regulatory difference, regarding common sources oxygen with passengers. The oxygen system is not utilized for breathing; hence, this Significant Standard Difference (SSD) does not apply.

In addition, the FAA notes that Ultramagic offers an optional hydraulic kit. This kit is a hydraulic system that actuates the burners' fuel valve. Since part 31 does not have provisions for hydraulic systems, § 23.1435, Hydraulic systems, will provide the basis for the hydraulic system special conditions contained herein. No SSD is associated with this regulation.

Discussion of Comments

Notice of proposed special conditions No. 31–16–01–SC for the Ultramagic, S.A., MK–32 Burner Series was published in the **Federal Register** on April 5, 2016 (81 FR 19502). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model Numbers F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 balloons. Should Ultramagic, S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Ultramagic, S.A., Model Numbers F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 balloons is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of burners. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the balloons.

List of Subjects in 14 CFR Part 31

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

[3] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

[4] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgELOS.nsf/0/BE4DB369A87F7A7A86257C210072E48A?OpenDocument&Highlight=ace-08-15.*

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Ultramagic, S.A., balloon models F–18, H–56, H–65, H–77, M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, V–105, and Z–90 modified by Ultramagic, S.A.

1. Certification of the MK–32 Burner Series under 14 CFR part 31.

(a) In addition to the provisions of part 31, amendment 7, the applicant must design the MK–32 Burner to comply with the requirements, as described below, with respect to the igniter oxygen augmentation system and hydraulic burner valve actuation system:

Oxygen Distribution System

(1) Except for flexible lines from oxygen outlets to the dispensing units, or where shown to be otherwise suitable to the installation, nonmetallic tubing must not be used for any oxygen line that is normally pressurized during flight.

(2) Nonmetallic oxygen distribution lines must not be routed where they may be subjected to elevated temperatures, electrical arcing, and released flammable fluids that might result from any probable failure.

Fire Protection for Oxygen Equipment

Oxygen equipment and lines must:

(1) Not be installed in any designated fire zones.

(2) Be protected from heat that may be generated in, or escape from, any designated fire zone.

(3) Be installed so that escaping oxygen cannot come in contact with and cause ignition of grease, fluid, or vapor accumulations that are present in normal operation or that may result from the failure or malfunction of any other system.

Protection of Oxygen Equipment From Rupture

(1) Each element of the oxygen system must have sufficient strength to withstand the maximum pressure and temperature, in combination with any externally applied loads arising from consideration of limit structural loads that may be acting on that part of the system.

(2) Oxygen pressure sources and the lines between the source and the shutoff means must be:

(i) Protected from unsafe temperatures; and

(ii) Located where the probability and hazard of rupture in a crash landing are minimized.

Hydraulic Systems

(1) Design. Each hydraulic system must be designed as follows:

(i) Each hydraulic system and its elements must withstand, without yielding, the structural loads expected in addition to hydraulic loads.

(ii) A means to indicate the pressure in each hydraulic system which supplies two or more primary functions must be provided to the flight crew.

(iii) There must be means to ensure that the pressure, including transient (surge) pressure, in any part of the system will not exceed the safe limit above design operating pressure and to prevent excessive pressure resulting from fluid volumetric changes in all lines which are likely to remain closed long enough for such changes to occur.

(iv) The minimum design burst pressure must be 2.5 times the operating pressure.

(2) Tests. Each system must be substantiated by proof pressure tests. When proof tested, no part of any system may fail, malfunction, or experience a permanent set. The proof load of each system must be at least 1.5 times the maximum operating pressure of that system.

(3) Accumulators. A hydraulic accumulator or reservoir may be installed on the engine side of any firewall, if—

(i) It is an integral part of an engine or propeller system; or

(ii) The reservoir is nonpressurized and the total capacity of all such nonpressurized reservoirs is one quart or less.

(b) Ultramagic, through EASA, will provide the FAA with all Airworthiness Directives issued against the changed type design, if any, and a plan for resolving the unsafe conditions for the FAA type design.

Issued in Kansas City, Missouri, on May 25, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13556 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2016–7005; Airspace Docket No. 16–AEA–4]

RIN 2120–AA66

Amendment of Restricted Areas R–6602A, R–6602B, and R–6602C; Fort Pickett, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action updates the using agency information for restricted areas R–6602A, R–6602B, and R–6602C, Fort Pickett, VA. This is an administrative change to reflect the current organization tasked with using agency responsibilities for the restricted areas. It does not affect the boundaries, designated altitudes, time of designation or activities conducted within the restricted areas.

DATES: *Effective date:* 0901 UTC, September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it updates the using agency for restricted areas R–6602A, R–6602B and R–6602C; Fort Pickett, VA, to reflect the current organization responsible for the restricted areas.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by updating the using agency name for restricted areas R–6602A, R–6602B and R–6602C; Fort Pickett, VA, by removing the words "Commander, Fort Lee, VA," and adding the words "Virginia National Guard, Commander, Fort Pickett, VA." The name change reflects the current organization assigned using agency responsibilities for the restricted areas. This is an administrative change that does not affect the boundaries, designated altitudes, or activities conducted within the restricted areas; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5.d. This airspace action is an administrative change to the description of restricted areas R–6602A, R–6602B and R–6602C; Fort Pickett, VA, to update the using agency name. It does not alter the dimensions, altitudes, time of designation, or use of the airspace; therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.66 [Amended]

■ 2. Section 73.66 is amended as follows:

* * * * *

R–6602A Fort Pickett, VA [Amended]

By removing the words "Using agency. Commander, Fort Lee, VA" and adding in their place "Using agency. Virginia National Guard, Commander, Fort Pickett, VA."

R–6602B Fort Pickett, VA [Amended]

By removing the words "Using agency. Commander, Fort Lee, VA" and adding in their place "Using agency. Virginia National Guard, Commander, Fort Pickett, VA."

R–6602C Fort Pickett, VA [Amended]

By removing the words "Using agency. Commander, Fort Lee, VA" and adding in their place "Using agency. Virginia National Guard, Commander, Fort Pickett, VA."

* * * * *

Issued in Washington, DC, on June 6, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–13934 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 478

[Docket No. ATF 2015R–26; AG Order No. 3681–2016]

RIN 1140–AA50

Recordkeeping Regulations

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule; technical amendments.

SUMMARY: This final rule makes technical amendments to regulations pertaining to certain firearms recordkeeping requirements to provide clarity and enhance uniformity. The technical changes are being made in the wording of three tables to reflect the same wording in the body of the regulations associated with the tables regarding the required description of firearms for recordkeeping purposes.

DATES: This rule is effective June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Shermaine Kenner, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue NE., Washington, DC 20226; telephone: (202) 648–7070 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) administers regulations published in 27 Code of Federal Regulations (CFR) part 478. ATF has identified three technical amendments needed to provide clarity and uniformity to the recordkeeping requirements prescribed in 27 CFR 478.125(e) and (f)(1) and 478.125a(a)(4) and the tables titled, "Firearms Acquisition and Disposition Record," "Firearms Collectors Acquisition and Disposition Record," and "Disposition Record of Personal Firearms," associated with §§ 478.125(e) and (f)(2), and 478.125a(a)(4) respectively. Specifically, there is a discrepancy between the wording used in the body of the regulations found at §§ 478.125(e) and (f)(1) and 478.125a(a)(4) and the wording used in the tables, listed above, regarding the required description of firearms for recordkeeping purposes.

The regulations at §§ 478.125(e) and (f)(1) and 478.125a(a)(4) prescribe substantive recordkeeping requirements for the receipt and disposition of firearms by certain licensed parties, to include the prescribed format for recording required information. Specifically, licensed parties must record "the name of the manufacturer and importer (if any)" associated with the firearms acquired and disposed of by the licensed party. The regulations at §§ 478.125(e) and (f)(2) and 478.125a(a)(4) include tables that illustrate the format required for recording the receipt and disposition of firearms. ATF has identified a discrepancy between the language used in the body of these regulations, which requires a record of, inter alia, "the name of the manufacturer and importer (if any)" and the language used in the corresponding tables, which calls for the "manufacturer and/or importer." Therefore, these tables associated with §§ 478.125(e) and (f) and 478.125a(a)(4) are being amended to ensure agreement between the wording in the tables with the wording in the body of the regulations by replacing "Manufacturer and/or importer" with "Manufacturer and importer (if any)."

II. Statutory Orders and Executive Review

A. Executive Order 12866 and Executive Order 13563

This final rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), The Principles of Regulation, and Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b). This rule pertains to agency organization, management, or personnel matters as described by Executive Order 12866, section 3(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order.

B. Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, "Federalism," the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform."

D. Administrative Procedure Act

The revisions to the regulations in this final rule are matters of agency organization, procedure, and practice that will not affect individual rights and obligations. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), (b)(A), and (d)(3). Moreover, the Department finds good cause for exempting the rule from those requirements. Because this final rule makes technical corrections to improve the clarity of the regulations, the Department finds it unnecessary to publish this rule for public notice and comment. Similarly, because delaying the effective date of this rule would serve no purpose, the Department also finds good cause to make this rule effective upon publication.

E. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis is not required for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

G. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year; will not significantly or uniquely affect small governments and does not contain significant intergovernmental mandates. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1535.

H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

I. Congressional Review Act

This action pertains to agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). *See* 5 U.S.C. 804(3). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Customs duties and inspection, Exports, Imports, Intergovernmental relations, Law enforcement officers, Military personnel, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR part 478 is amended as follows:

PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 1. The authority citation for 27 CFR part 478 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–931; 44 U.S.C. 3504(h).

§ 478.125 [Amended]

■ 2. Amend § 478.125:

■ a. In paragraph (e) by removing the words "Manufacturer and/or Importer" in the associated table and adding in their place the words "Manufacturer and importer (if any)"; and

■ b. In paragraph (f)(2) by removing the words "Manufacturer and/or importer" in the associated table and adding in their place the words "Manufacturer and importer (if any)".

§ 478.125a [Amended]

■ 3. Amend § 478.125a in paragraph (a)(4) by removing the words "Manufacturer and/or importer" in the associated table and adding in their place the words "Manufacturer and importer (if any)".

Dated: June 7, 2016.

Loretta E. Lynch,

Attorney General.

[FR Doc. 2016–13878 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–0272]

RIN 1625–AA08

Special Local Regulations; Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating the regulation that governs recurring special local regulations in the Seventh Coast Guard District. These regulations will apply to all recurring events held on navigable waters of the Seventh District, such as regattas and parades. This update is to ensure that all known recurring marine events are included in the final regulation and to allow respective Captains of the Port greater ease in enacting or modifying those portions of the regulation which apply to their respective areas.

DATES: This rule is effective July 13, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2013–0272 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this final rulemaking, call or email Eugene Stratton, Coast Guard District Seven Waterways Management, (305) 415–6750, email *Eugene.Stratton@uscg.mil* or Lieutenant Commander Brendan Sullivan, Coast Guard District Seven Legal, U.S. Coast Guard; telephone (305) 415–6957, email *Brendan.Sullivan@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

On January 25, 2008, 33 CFR 100.701 was published in the **Federal Register** (73 FR 4461) to provide permanent notice of recurring marine events in the Seventh Coast Guard District. Since that time, it was amended, (March 14, 2012 (77 FR 14962)) to remove several lines in Table 100.701 with incorrect information and to add lines regarding marine event dates, geographic locations, and corresponding regulated areas. The Coast Guard is now revising the table of events contained within this regulation to ensure that it accurately captures all recurring marine events in the Seventh Coast Guard District and to allow respective Captains of the Port greater ease in managing events occurring in their zones.

On January 21, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulations; Marine Events in the Seventh Coast Guard District; 81 FR 3362. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended February 22, 2016, we received zero comments.

III. Legal Authority and Need for Rule

33 U.S.C. 1233 provides the legal basis for the Coast Guard's authority to establish special local regulations. The purpose of the rule is to provide for the safety of life on the navigable waters of the Seventh Coast Guard District during recurring marine events.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 21, 2016. The final regulatory text implemented through this rule made two minor changes to the table proposed rule in the NPRM. First, the Gasparilla Boat Parade proposed under the COTP Zone St. Petersburg, 33 CFR 100.701(d)(2), was deleted because it is largely duplicative of the Annual Gasparilla Marine Parade regulation currently implemented under 33 CFR 100.734. Second, language describing the location of the Charleston Harbor Christmas Parade of Boats in 33 CFR 100.734(g)(6) was changed to reflect the renaming of "Shutes Folly" to "Bennis Reach." No other changes were made to the text proposed in the NPRM.

This rule revises the list of permanent special regulations contained in 33 CFR 100.701 for recurring marine events within the geographic boundary of the Seventh Coast Guard District. In general, the Seventh Coast Guard District is comprised of the land areas and U.S. navigable waters adjacent to South Carolina, Georgia, Florida, and Puerto Rico. For a detailed description of the geographical area of the District and each Coast Guard Sector, please refer to 33 CFR 3.35.

At present, there are many annually recurring marine events within the Seventh Coast Guard District. These events are currently listed in a single table, with no demarcation by which to easily identify specific events. This amendment to the regulation includes breaking the table into seven distinct sections, one for each Captain of the Port (COTP) zone. Each event within each COTP section will be assigned a line number, which will result in each event being easily identifiable based on its location within a table and line thereby making future editing or enforcement of any event a more streamlined process.

Additionally, the Coast Guard seeks to update the regulation to ensure that it accurately reflects all recurring events within the Seventh District, to include marine events which started on a recurring basis since the last revision of this regulation and any marine events which may have been left off of the last revision.

Amendments to this rule will reduce the administrative burden on the Coast Guard by ensuring all recurring events are represented in the table and by minimizing the need to duplicate the rulemaking process for repeat events. Generally, the public will be advised of these events and specific information, including exact dates, specific areas, and description of the regulated area, through Local Notice to Mariners and Broadcast Notice to Mariners. The notices will contain the following information:

(i) Name and sponsoring organization of event;
(ii) Expected number of participants;
(iii) Course of event;
(iv) Regulated area;
(v) Spectator Area, if applicable; and
(vi) Dates and times of event and enforcement of regulations.

The Coast Guard realizes that some large scale events, such as those with many participants or spectators, or those that could severely restrict navigation or pose a significant hazard, may still require separate special local regulations or safety zones that address the specific peculiarities of the event. In those situations, the Coast Guard will create special local regulations or safety zones specifically for the event, and those regulations will supersede the final regulations in this rule. However, the Coast Guard believes that a majority of the events held on the waters of the Seventh Coast Guard District may be adequately regulated by the requirements of this final rule.

Due to the activities involved, the large number of participants and spectators present, and event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels transiting through the regulated areas. In order to protect the safety of all waterway users including event participants and spectators, this final rule would establish special local regulations for the time and location of each marine event.

This final rule will prevent vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port, or

designated Coast Guard Patrol Commander. A designated "Patrol Commander" includes Coast Guard commissioned, warrant, or petty officers who have been designated by the Captain of the Port to act on their behalf. Patrol Commanders may be augmented by local, State, or Federal officials authorized to act in support of the Coast Guard.

Only event sponsors, designated participants, and official patrol vessels will be allowed to enter regulated areas unless otherwise given permission by the Patrol Commander or the Captain of the Port. Spectators may be confined to a designated spectator area to view events. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

The Coast Guard revises 33 CFR 100.701 by adding 18 new recurring marine events as special local regulations listed in this section. Furthermore, the Coast Guard modifies 14 existing regulated areas and removes 111 regulated areas that are no longer active.

V. Regulatory Analyses

We developed this final rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the following factors: (1) The regulations will be enforced for short, predefined periods of time; (2) persons and vessels may enter, transit through, anchor in or otherwise access the restricted areas with authorization from the respective Captains of the Port; (3) the Coast guard will provide advance notification of the regulations to the local community by issuing Notice of Enforcements, Broadcast Notice to Mariners, and Patrol Commanders. Moreover, in the majority of cases, vessels will be able to safely transit around restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this final rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this final rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

C. Collection of Information

This final rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this final rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this final rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this final rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this final rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this final rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This final rule involves amending and republication of a table of recurring marine events for special regulations issued in conjunction with a regatta or marine parade. The events themselves are permitted by the Coast Guard before this regulation would be utilized and the permitting process involves a thorough environmental review. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this final rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Amend section 100.701 by revising Table 1 to Sec. 100.701 to read as follows:

§ 100.701 Special Local Regulations; Marine Events in the Seventh Coast Guard District.

* * * * *

TABLE TO § 100.701

No./date	Event	Sponsor	Location
1. 2nd or 3rd Weekend in June.	Rotary Club of Fort Lauderdale New River Raft Race.	Rotary Club of Fort Lauderdale.	All waters of the New River contained within the following points: Starting at Point 1 in position 26°07′10″ N., 80°08′52″ W.; thence southeast to Point 2 in position 26°07′05″ N., 80°08′34″ W.; thence southwest to Point 3 in position 26°07′04″ N., 80°08′35″ W.; thence northwest to Point 4 in position 26°07′08″ N., 80°08′52″ W.; thence north back to origin.
2. 2nd or 3rd weekend in April.	Stuart Sailfish Regatta	Stuart Sailfish, Inc	All waters of Indian River located northeast of Ernest Lyons Bridge and south of Joes Cove that are encompassed within a line connecting the following points, with the exception of the spectator area: Starting at Point 1 in position 27°12′47″ N., 80°11′43″ W.; thence southeast to Point 2 in position 27°12′22″ N., 80°11′28″ W.; thence northeast to Point 3 in position 27°12′35″ N., 80°11′00″ W.; thence northwest to Point 4 in position 27°12′47″ N., 80°11′04″ W.; thence northeast to Point 5 in position 27°13′05″ N., 80°11′01″ W.; thence southeast back to origin.
3. 2nd or 3rd week in April	Ft. Lauderdale Air Show ..	Lauderdale Air Show LLC	(1) Exclusion area. All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within a line connecting the following points: Starting at Point 1 in position 26°10′39″ N., 80°05′47″ W.; thence southeast to Point 2 in position 26°10′32″ N., 80°04′39″ W.; thence southwest to Point 3 in position 26°06′33″ N., 80°05′08″ W.; thence northwest to Point 4 in position 26°06′40″ N., 80°06′15″ W.; thence northeast back to origin. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the exclusion area. (2) Limited access area. All waters of the Atlantic Ocean in the vicinity of Fort Lauderdale, Florida that are encompassed within a line connecting the following points: Starting at Point 1 in position 26°05′41″ N., 80°06′59″ W.; thence southeast to Point 2 in position 26°05′26″ N., 80°06′51″ W.; thence northeast to Point 3 in position 26°05′32″ N., 80°05′24″ W.; thence north to Point 4 in position 26°05′42″ N., 80°05′24″ W.; thence southwest back to origin. All vessels 500 gross tons or greater are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.
4. 2nd or 3rd weekend in April.	Red Bull Candola	Red Bull North America ...	All waters of the New River between the Esplanade Park and slightly east of the South Andrews Avenue Bascule Bridge encompassed between the following points: Point 1 in position 26°07′09″ N., 80°08′52″ W. and Point 2 in position 26°07′04″ N., 80°08′34″ W.
5. 2nd or 3rd weekend in May.	Miami Superboat Grand Prix.	Super Boat International Productions, Inc.	All waters of the Atlantic Ocean east of Miami Beach, FL encompassed within a line connecting the following points: Starting at Point 1 in position 25°49′14″ N., 80°07′13″ W.; thence east to Point 2 in position 25°49′13″ N., 80°06′48″ W.; thence southwest to Point 3 in 25°46′00″ N., 80°07′26″ W.; thence west to Point 4 in position 25°46′00″ N., 80°07′51″ W.; thence northeast back to origin.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
6. 1st or 2nd weekend in June.	West Palm Beach Triathlon.	Game On Sports Marketing Group.	All waters of the Intracoastal Waterway in West Palm Beach, Florida between the Flagler Memorial Bridge to the Royal Palm Way Bridge.
7. 2nd or 3rd weekend in September.	Publix Escape to Miami Triathlon.	US Road Sports and Entertainment of Florida, LLC.	All waters of Biscayne Bay, east of Margaret Pace Park, Miami, FL encompassed within a line connecting the following points: Starting at Point 1 in position 25°47′40″ N., 80°11′07″ W.; thence northeast to Point 2 in position 25°48′13″ N., 80°10′48″ W.; thence southeast to Point 3 in 25°47′59″ N., 80°10′34″ W.; thence south to Point 4 in position 25°47′52″ N., 80°10′34″ W.; thence southwest to Point 5 in position 25°47′33″ N., 80°11′07″ W.; thence north back to origin.
8. 2nd or 3rd weekend in October.	Ironman 70.3	Miami Tri Events	All waters of Biscayne Bay located east of Bayfront Park and encompassed within a line connecting the following points: Starting at Point 1 in position 25°46′44″ N., 080°11′00″ W.; thence southeast to Point 2 in position 25°46′24″ N., 080°10′44″ W.; thence southwest to Point 3 in position 25°46′18″ N., 080°11′05″ W.; thence north to Point 4 in position 25°46′33″ N., 080°11′05″ W.; thence northeast back to origin. All coordinates are North American Datum 1983.
9. 2nd or 3rd week in October.	West Palm Beach World Championship.	Offshore Powerboat Association LLC.	All waters of the Atlantic Ocean east of Jupiter, FL encompassed within a line connecting the following points: Starting at Point 1 in position 26°56′06″ N., 80°04′06″ W.; thence northeast to Point 2 in position 26°56′11″ N., 80°03′38″ W.; thence southeast to Point 3 in 26°53′11″ N., 80°02′35″ W.; thence southwest to Point 4 in position 26°53′03″ N., 80°03′06″ W.; thence northwest back to origin.
10. 1st or 2nd weekend in November.	Red Bull Flugtag	Red Bull North America	All waters of Biscayne Bay, Miami, FL between Bayfront Park and the Intercontinental-Miami Hotel encompassed within a line connecting the following points: Starting at point 1 in position 25°46′32″ N., 80°11′06″ W.; thence southeast to point 2 in position 25°46′30″ N., 80°11′04″ W.; thence south to point 3 in position 25°46′26″ N., 80°11′04″ W.; thence southwest to point 4 in position 25°46′25″ N., 80°11′06″ W.; thence north back to origin.
11. 1st or 2nd weekend in December.	Boynton & Delray Holiday Boat Parade.	Boynton Reach Community Redevelopment Agency.	All waters within a moving zone that will begin at Boynton Inlet and end at the C–15 Canal, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
12. 1st or 2nd weekend in December.	Palm Beach Holiday Boat Parade.	Marine Industries Association of Palm Beach County.	All waters within a moving zone that will begin at Lake Worth Daymarker 28 in North Palm Beach and end at Loxahatchee River Daymarker 7 east of the Glynn Mayo Highway Bridge in Jupiter, FL, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
13. 2nd or 3rd weekend in December.	Miami Outboard Club Holiday Boat Parade.	Miami Outboard Club	All waters within a moving zone that will transit as follows: the marine parade will begin at the Miami Outboard Club on Watson Island, head north around Palm Island and Hibiscus Island, head east between Di Lido Island, south through Meloy Channel, west through Government Cut to Bicentennial Park, south to the Dodge Island Bridge, south in the Intracoastal Waterway to Claughton Island, circling back to the north in the Intracoastal Waterway to end at the Miami Outboard Club. This will include a buffer zone extending to 50 yards ahead of the lead vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
14. 2nd or 3rd weekend in December.	Seminole Hard Rock Winterfest Holiday Boat Parade.	Winterfest, Inc	All waters within a moving zone that will begin at Cooley's Landing Marina and end at Lake Santa Barbara, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
15. 2nd or 3rd weekend in December.	City of Pompano Beach Holiday Boat Parade.	Greater Pompano Beach Chamber of Commerce.	All waters within a moving zone that will begin at Lake Santa Barbara and head north on the Intracoastal Waterway to end at the Hillsboro Bridge, which will include a buffer zone extending 50 yards ahead of the lead parade vessel and 50 yards astern of the last participating vessel and 50 yards on either side of the parade.
(b) COTP Zone San Juan; Special Local Regulations			
1. 1st Friday, Saturday, and Sunday of February.	CNSJ International Regatta.	Club Nautico de San Juan.	San Juan, Puerto Rico; (1) Outer Harbor Race Area. All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°28.4′ N., 66°07.6′ W.; then south to Point 2 in position 18°28.1′ N., 66°07.8′ W.; then southeast to Point 3 in position 18°27.8′ N., 66°07.4′ W.; then southeast to point 4 in position 18°27.6′ N., 66°07.3′ W.; then west to point 5 in position 18°27.6′ N., 66°07.8′ W.; then north to point 6 in position 18°28.4′ N., 66°07.8′ W.; then east to the origin. (2) Inner Harbor Race Area; All waters of Bahia de San Juan within a line connecting the following points: Starting at Point 1 in position 18°27.6′ N., 66°07.8′ W.; then east to Point 2 in position 18°27.6′ N., 66°07.1′ W.; then southeast to Point 3 in position 18°27.4′ N., 66°06.9′ W.; then west to point 4 in position 18°27.4′ N., 66°07.7′ W.; then northwest to the origin.
2. Last Full Weekend of March.	St. Thomas International Regatta.	St. Thomas Yacht Club	St. Thomas, U.S. Virgin Islands; All waters of St. Thomas Harbor encompassed within the following points: Starting at Point 1 in position 18°19.9′ N., 64°55.9′ W.; thence east to Point 2 in position 18°19.97′ N., 64°55.8′ W.; thence southeast to Point 3 in position 18°19.6′ N., 64°55.6′ W.; thence south to point 4 in position 18°19.1′ N., 64°55.5′ W.; thence west to point 5 in position 18°19.1′ N., 64°55.6′ W.; thence north to point 6 in position 18°19.6′ N., 64°55.8′ W.; thence northwest back to origin at Harbor, St. Thomas, San Juan.
3. Last week of April	St. Thomas Carnival	Virgin Islands Carnival Committee.	St. Thomas, U.S. Virgin Islands; (1) Race Area. All waters of the St. Thomas Harbor located around Hassel Island, St. Thomas, U.S. Virgin Island encompassed within the following points: Starting at Point 1 in position 18°20.2′ N., 64°56.1′ W.; thence southeast to Point 2 in position 18°19.7′ N., 64°55.7′ W.; thence south to Point 3 in position 18°19.4′ N., 64°55.7′ W.; thence southwest to point 4 in position 18°19.3′ N., 64°56.0′ W.; thence northwest to point 5 in position 18°19.9′ N., 64°56.5′ W.; thence northeast to point 6 in position 18°20.2′ N., 064°56.3′ W.; thence east back to origin. (2) Jet Ski Race Area. All waters encompassed the following points: Starting at Point 1 in position 18°20.1′ N., 64°55.9′ W.; thence west to Point 2 in position 18°20.1′ N., 64°56.1′ W.; thence north to Point 3 in position 18°20.3′ N., 64°56.1′ W.; thence east to Point 4 in position 18°20.3′ N., 64°55.9′ W.; thence south back to origin. (3) Buffer Zone. All waters of the St. Thomas Harbor located around Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3′ N., 64°55.9′ W.; thence southeast to Point 2 in position 18°19.7′ N., 64°55.7′ W.; thence south to Point 3 in position 18°19.3′ N., 64°55.72′ W.; thence southwest to Point 4 in position 18°19.2′ N., 64°56′ W.; thence northwest to Point 5 in position 18°19.9′ N., 64°56.5′ W.; thence northeast to Point 6 in position 18°20.3′ N., 64°56.3′ W.; thence east back to origin. (4) Spectator Area. All waters of the St. Thomas Harbor located east of Hassel Island, encompassed within the following points: Starting at Point 1 in position 18°20.3′ N., 64°55.8′ W.; thence southeast to Point 2 in position 18°19.9′ N., 64°55.7′ W.; thence northeast to Point 3 in position 18°20.2′ N., 64°55.5′ W.; thence northwest back to origin.

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No./date	Event	Sponsor	Location
4. 1st Sunday of May	Ironman 70.3 St. Croix	Project St. Croix, Inc	St. Croix (Christiansted Harbor), U.S. Virgin Islands; All waters encompassed within the following points: point 1 on the shoreline at Kings Wharf at position 17°44′51″ N., 064°42′16″ W., thence north to point 2 at the southwest corner of Protestant Cay in position 17°44′56″ N., 064°42′12″ W., then east along the shoreline to point 3 at the southeast corner of Protestant Cay in position 17°44′56″ N., 064°42′08″ W., thence northeast to point 4 at Christiansted Harbor Channel Round Reef Northeast Junction Lighted Buoy RR in position 17°45′24″ N., 064°41′45″ W., thence southeast to point 5 at Christiansted Schooner Channel Lighted Buoy 5 in position 17°45′18″ N., 064°41′43″ W., thence southwest to point 6 at Christiansted Harbor Channel Buoy 15 in position 17°44′56″ N., 064°41′56″ W., thence southwest to point 7 on the shoreline north of Fort Christiansted in position 17°44′51″ N., 064°42′05″ W., thence west along the shoreline to origin.
5. July 4th	Fireworks Display	St. John Festival & Cul., Org.	St. John (West of Cruz Bay/Northeast of Steven Cay), U.S. Virgin Islands; All waters from the surface to the bottom for a radius of 200 yards centered around position 18°19′55″ N., 064°48′06″ W.
6. 3rd Week of July, Sunday.	San Juan Harbor Swim	Municipality of Cataño	San Juan Harbor, San Juan, Puerto Rico; All waters encompassed within the following points: point 1: La Puntilla Final, Coast Guard Base at position 18°27′33″ N., 066°07′00″ W., then south to point 2: Cataño Ferry Pier at position 18°26′36″ N., 066°07′00″ W., then northeast along the Cataño shoreline to point 3: Punta Cataño at position 18°28′40″ N., 066°06′48″ W., then northwest to point 4: Pier 1 San Juan at position 18°27′40″ N., 066°06′49″ W., then back along the shoreline to origin.
7. 1st Sunday of September.	Cruce A Nado International.	Cruce a Nado Inc	Ponce Harbor, Bahia de Ponce, San Juan; All waters of Bahia de Ponce encompassed within the following points: Starting at Point 1 in position 17°58.9′ N., 66°37.5′ W.; thence southwest to Point 2 in position 17°57.5′ N., 66°38.2′ W.; thence southeast to Point 3 in position 17°57.4′ N., 66°37.9′ W.; thence northeast to point 4 in position 17°58.7′ N., 66°37.3′ W.; thence northwest along the northeastern shoreline of Bahia de Ponce to the origin.
8. 2nd Sunday of October	St. Croix Coral Reef Swim.	The Buccaneer Resort	St. Croix, U.S. Virgin Islands; All waters of Christiansted Harbor within the following points: Starting at Point 1 in position 18°45.7′ N., 64°40.6′ W.; then northeast to Point 2 in position 18°47.3′ N., 64°37.5 W.; then southeast to Point 3 in position 17°46.9′ N., 64°37.2′ W.; then southwest to point 4 in position 17°45.51′ N., 64°39.7′ W.; then northwest to the origin.
9. December 31st	Fireworks St. Thomas, Great Bay.	Mr. Victor Laurenza, Pyrotecnico, New Castle, PA.	St. Thomas (Great Bay area), U.S. Virgin Islands; All waters within a radius of 600 feet centered around position 18°19′14″ N., 064°50′18″ W.
10. December—1st week	Christmas Boat Parade	St. Croix Christmas Boat Committee.	St. Croix (Christiansted Harbor), U.S. Virgin Islands; 200 yards off-shore around Protestant Cay beginning in position 17°45′56″ N., 064°42′16″ W., around the cay and back to the beginning position.
11. December—2nd week	Christmas Boat Parade	Club Nautico de San Juan.	San Juan, Puerto Rico; Parade route. All waters of San Juan Harbor within a moving zone that will begin at Club Nautico de San Juan, move towards El Morro and then return, to Club Nautico de San Juan; this zone will at all times extend 50 yards in front of the lead vessel, 50 yards behind the last vessel, and 50 yards out from all participating vessels.
(c) COTP Zone Key West; Special Local Regulations			
1. January 1st	Blessing of the Fleet	Islamorada Charter Boat Association.	From Whale Harbor Channel to Whale Harbor Bridge, Islamorada, Florida.
2. January through April, last Monday or Tuesday.	Wreckers Cup Races	Schooner Wharf Bar	Key West Harbor to Sand Key, Florida (Gulf of Mexico side).
3. 3rd Week of January, Monday–Friday.	Yachting Key West Race Week.	Premiere Racing, Inc	Inside the reef on either side of main ship channel, Key West Harbor Entrance, Key West, Florida.

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No./date	Event	Sponsor	Location
4. 1st Saturday of February.	The Bogey	Florida Bay Outfitters	Blackwater Sound (entire sound), Key Largo, Florida.
5. 1st Sunday of February	The Bacall	Florida Bay Outfitters	Blackwater Sound (entire sound), Key Largo, Florida.
6. 3rd Weekend of April	Miami to Key Largo Sailboat Race.	MYC Youth Sailing Foundation, Inc.	Biscayne Bay and Intracoastal Waterway from the Rickenbacker Causeway in Miami, Florida to Key Biscayne to Cape Florida to Soldier Key to Sands Key to Elliot Key to Two Stacks to Card Sound to Barnes Sound to Blackwater Sound in Key Largo, Florida no closer than 500 feet from each vessel.
7. Last Friday of April	Conch Republic Navy Parade and Battle.	Conch Republic	All waters approximately 150 yards offshore from Ocean Key Sunset Pier, Mallory Square and the Hilton Pier within the Key West Harbor in Key West, Florida.
8. 1st Weekend of June	Swim around Key West	Florida Keys Community College.	Beginning at Smather's Beach in Key West, Florida. The regulated area will move, west to the area offshore of Fort Zach State Park, north through Key West Harbor, east through Flemming Cut, south on Cow Key Channel and west back to origin. The center of the regulated area will at all times remain approximately 50 yards offshore of the island of Key West Florida; extend 50 yards in front of the lead safety vessel preceding the first race participants; extend 50 yards behind the safety vessel trailing the last race participants; and at all times extend 100 yards on either side of the race participants and safety vessels.
9. 2nd Week of November, Wednesday–Sunday.	Key West World Championship.	Super Boat International Productions, Inc.	In the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.
10. 1st Thursday of December.	Boot Key Harbor Christmas Boat Parade.	Dockside Marina	Boot Key Harbor (entire harbor), Marathon, Florida.
11. 2nd Sunday of December.	Key Colony Beach Holiday Boat Parade.	Key Colony Beach Community Association.	Key Colony Beach, Marathon, Florida, between Vaca Cut Bridge and Long Key Bridge.
12. 3rd Saturday of December.	Key Largo Boat Parade	Key Largo Boat Parade	From Channel Marker 41 on Dusenbury Creek in Blackwater Sound to tip of Stillwright Point in Blackwater Sound, Key Largo, Florida.
13. 3rd Saturday of December.	Key West Lighted Boat Parade.	Schooner Wharf Bar	All waters between Christmas Tree Island and Coast Guard Station thru Key West Harbor to Mallory Square, approximately 35 yards from shore.
(d) COTP Zone St. Petersburg; Special Local Regulations			
1. 3rd Saturday of January	Gasparilla Children's Parade Air show.	Air Boss and Consulting	All waters of Hillsborough Bay north of an line drawn at 27°55′ N., west of Davis Islands, and south of the Davis Island Bridge.
2. Last Friday, Saturday, and Sunday of March.	Honda Grand Prix	Honda Motor Company and City of St. Petersburg.	Demens Landing St. Petersburg Florida; All waters within 100 ft. of the seawall.
3. Last Friday, Saturday, and Sunday of March.	St. Pete Grand Prix Air show.	Honda Motor Company and City of St. Petersburg.	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida, within two nautical miles of the Albert Whitted Airport.
4. Last Sunday of April	St. Anthony's Triathlon	St. Anthony's Healthcare	Gulf of Mexico, St. Petersburg, Florida within one nautical mile of Spa Beach.
5. July 4th	Freedom Swim	None	Peace River, St. Petersburg, Florida within two nautical miles of the US 41 Bridge.
6. 1st Sunday of July	Suncoast Offshore Grand Prix.	Suncoast Foundation for the Handicapped.	Gulf of Mexico in the vicinity of Sarasota, Florida from New Pass to Siesta Beach out to eight nautical miles.
7. 3rd Friday, Saturday, and Sunday of September.	Homosassa Raft Race	Citrus 95 FM radio	Homosassa River in Homosassa, Florida Between Private Green Dayboard 81 east located in approximate position 28°46′58.937″ N., 082°37′25.131″ W. to private Red Dayboard 2 located in approximate position 28°47′19.939″ N., 082°36′44.36″ W.
8. September 30th	Clearwater Superboat Race.	Superboat International	(1) Race Area; All waters of the Gulf of Mexico near St. Petersburg, Florida, contained within the following points: 27°58.96′ N., 82°50.05′ W., thence to position 27°58.60′ N., 82°50.04′ W., thence to position 27°58.64′ N., 82°50.14′ W., thence to position 28°00.43′ N., 82°50.02′ W., thence to position 28°00.45′ N., 82°50.13′ W., thence back to the start/finish position;

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No./date	Event	Sponsor	Location
			(2) Buffer Area; All waters of the Gulf of Mexico encompassed within the following points: 27°58.4′ N., 82°50.2′ W., thence to position 27°58.3′ N., 82°49.9′ W., thence to position 28°00.6′ N., 82°50.2′ W., thence to position 28°00.7′ N., 82°49.7′ W., thence back to position 27°58.4′ N., 82°50.2′ W. (3) Spectator Area; All waters of Gulf of Mexico seaward of the following points: 27°58.6′ N., 82°50.2′ W., thence to position 28°00.5′ N., 82°50.2′ W.
9. Last weekend of September.	Cocoa Beach Grand Prix of the Seas.	Powerboat P1–USA, LLC	Atlantic ocean at Cocoa Beach, Florida. Sheppard Park. All waters encompassed within the following points: Starting at point 1 in position 28°22.285′ N., 80°36.033′ W.; thence east to Point 2 in position 28°22.253′ N., 80°35.543′ W.; thence south to Point 3 in position 28°21.143′ N., 80°35.700′ W.; thence west to Point 4 in position 28°21.195′ N., 80°36.214′ W.; thence north back to the origin.
10. 2nd Friday, Saturday, and Sunday of October.	St. Petersburg Airfest	City of St. Petersburg	South Yacht Basin, Bayboro Harbor, Gulf of Mexico, St. Petersburg, Florida all waters within 2 nautical miles of the Albert Whitted Airport.
11. 3rd Thursday, Friday, and Saturday of November.	Ironman World Championship Triathlon.	City of Clearwater & Ironman North America.	Gulf of Mexico, Clearwater, Florida within 2 nautical miles of Clearwater Beach FL.
(e) COTP Zone Jacksonville; Special Local Regulations			
1. Last Saturday of February.	El Cheapo Sheepshead Tournament.	Jacksonville Offshore Fishing Club.	Mayport Boat Ramp, Jacksonville, Florida; 500 foot radius from the boat ramp.
2. 1st Saturday of March ..	Jacksonville Invitational ...	Stanton Rowing Foundation (May vary).	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
3. 1st Saturday of March ..	Stanton Invitational (Rowing Race).	Stanton Rowing Foundation.	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
4. 1st weekend of March ..	Hydro X Tour	H2X Racing Promotions ..	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N., 81°43′41″ W.; thence south to Point 2 in position 28°47′53″ N., 81°43′41″ W.; thence east to Point 3 in position 28°47′53″ N., 81°43′19″ W.; thence north to Point 4 in position 28°47′59″ N., 81°43′19″ W.; thence west back to origin.
5. 2nd Full Weekend of March.	TICO Warbird Air Show ...	Valiant Air Command	Titusville; Indian River, FL: All waters encompassed within the following points: Starting at the shoreline then due east to Point 1 at position 28°31′25.15″ N., 080°46′32.73″ W., then south to Point 2 located at position 28°30′55.42″ N., 080°46′32.75″ W., then due west to the shoreline.
6. 3rd Weekend of March	Tavares Spring Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
7. Palm Sunday in March or April.	Blessing of the Fleet—Jacksonville.	City of Jacksonville Office of Special Events.	St. Johns River, Jacksonville, Florida in the vicinity of Jacksonville Landing between the Main Street Bridge and Acosta Bride.
8. Palm Sunday in March or April.	Blessing of the Fleet—St. Augustine.	City of St. Augustine	St. Augustine Municipal Marina (entire marina), St. Augustine Florida.
9. 1st Full Weekend of April (Saturday and Sunday).	Mount Dora Yacht Club Sailing Regatta.	Mount Dora Yacht Club ...	Lake Dora, Mount Dora, Florida—500 feet off Grantham Point.
10. 3rd Saturday of April ..	Jacksonville City Championships.	Stanton Rowing Foundation.	Ortega River Race Course, Jacksonville, Florida; South of Timuquana Bridge.
11. 3rd weekend of April ..	Florida Times Union Redfish Roundup.	The Florida Times-Union	Sister's Creek, Jacksonville, Florida; All waters within a 100 yard radius of Jim King Park and Boat Ramp at Sister's Creek Marina, Sister's Creek.
12. 2nd Weekend in May	Saltwater Classic—Port Canaveral.	Cox Events Group	All waters of the Port Canaveral Harbor located in the vicinity of Port Canaveral, Florida encompassed within the following points: Starting at Point 1 in position 28°24′32″ N., 080°37′22″ W., then north to Point 2 28°24′35″ N., 080°37′22″ W., then due east to Point 3 at 28°24′35″ N., 080°36′45″ W., then south to Point 4 at 28°24′32″ N., 080°36′45″, then west back to the original point.
13. 1st Friday of May	Isle of Eight Flags Shrimp Festival Pirate Landing and Fireworks.	City of Fernandina Beach	All waters within a 500 yard radius around approximate position 30°40′15″ N., 81°28′10″ W.
14. 1st Saturday of May ...	Mug Race	The Rudder Club of Jacksonville, Inc.	St. Johns River; Palatka to Buckman Bridge.

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No./date	Event	Sponsor	Location
15. 3rd Friday—Sunday of May.	Space Coast Super Boat Grand Prix.	Super Boat International Productions, Inc.	Atlantic Ocean in the vicinity of Cocoa Beach, Florida includes all waters encompassed within the following points: Starting at Point 1 in position 28°22′16″ N., 80°36′04″ W.; thence east to Point 2 in position 28°22′15″ N., 80°35′39″ W.; thence south to Point 3 in position 28°19′47″ N., 80°35′55″ W.; thence west to Point 4 in position 28°19′47″ N., 80°36′22″ W.; thence north back to origin.
16. 4th weekend of May ...	Memorial Day RiverFest ..	City of Green Cove Springs.	St. Johns River, Green Cove Springs, Florida; All waters within a 500-yard radius around approximate position 29°59′39″ N., 081°40′33″ W.
17. Last full week of May (Monday–Friday).	Bluewater Invitational Tournament.	Northeast Florida Marlin Association.	There is a no-wake zone in affect from the St. Augustine City Marina out to the end of the St. Augustine Jetty's 6 a.m.–8 a.m. and 3 p.m.–5 p.m. during the above days.
18. 2nd weekend of June	Hydro X Tour	H2X Racing Promotions ..	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N., 81°43′41″ W.; thence south to Point 2 in position 28°47′53″ N., 81°43′41″ W.; thence east to Point 3 in position 28°47′53″ N., 81°43′19″ W.; thence north to Point 4 in position 28°47′59″ N., 81°43′19″ W.; thence west back to origin.
19. 1st Saturday of June ..	Florida Sport Fishing Association Offshore Fishing Tournament.	Florida Sport Fishing Association.	Port Canaveral, Florida from Sunrise Marina to the end of Port Canaveral Inlet.
20. 2nd weekend of June (Saturday and Sunday).	Kingfish Challenge	Ancient City Game Fish Association.	There is a no-wake zone in affect from the St. Augustine City Marina in St. Augustine, Florida out to the end of the St. Augustine Jetty's 6 a.m.–8 a.m. and 3 p.m.–5 p.m.
21. 3rd Friday–Sunday of June.	Daytona Beach Grand Prix of the Sea.	Powerboat P1–USA	All waters of the Atlantic Ocean East of Cocoa Beach, Florida encompassed within the following points: Starting at Point 1 in position 29°14′60″ N., 81°00′77″ W.; thence east to Point 2 in position 29°14′78″ N., 80°59′802″ W.; thence south to Point 3 in position 28°13′860″ N., 80°59′76″ W.; thence west to Point 4 in position 29°13′68″ N., 81°00′28″ W.; thence north back to origin.
22. 3rd Saturday of July ...	Halifax Rowing Association Summer Regatta.	Halifax Rowing Association.	Halifax River, Daytona, Florida, south of Memorial Bridge—East Side.
23. 3rd week of July	Greater Jacksonville Kingfish Tournament.	Jacksonville Marine Charities, Inc.	Jacksonville, Florida; All waters of the St. Johns River, from lighted buoy 10 (LLNR 2190) in approximate position 30°24′22″ N., 081°24′59″ W. to Lighted Buoy 25 (LLNR 7305).
24. Last weekend of September.	Jacksonville Dragon Boat Festival.	In the Pink Boutique, Inc	St. John's River, Jacksonville, Florida. In front of the Landing, between the Acosta & Main Street bridges From approximate position 30°19′26″ N., 081°39′47″ W. to approximate position 30°19′26″ N., 81°39′32″ W.
25. 2nd week of October ..	First Coast Head Race	Stanton Rowing Foundation.	St. Johns River and Arlington River, Jacksonville, Florida, starting near the Arlington Marina and ending on the Arlington River near the Atlantic Blvd. Bridge.
26. 1st weekend of November.	Hydro X Tour	H2X Racing Promotions ..	Lake Dora, Tavares, Florida; All waters encompassed within the following points: Starting at Point 1 in position 28°47′59″ N., 81°43′41″ W.; thence south to Point 2 in position 28°47′53″ N., 81°43′41″ W.; thence east to Point 3 in position 28°47′53″ N., 81°43′19″ W.; thence north to Point 4 in position 28°47′59″ N., 81°43′19″ W.; thence west back to origin.
27. 3rd Weekend of November.	Tavares Fall Thunder Regatta.	Classic Race Boat Association.	Lake Dora, Florida, waters 500 yards seaward of Wooten Park.
28. 2nd Saturday of December.	St. Johns River Christmas Boat Parade.	St. Johns River Christmas Boat Parade, Inc.	St. Johns River, Deland, Florida; Whitehair Bridge, Deland to Lake Beresford.
29. 2nd Saturday of December.	Christmas Boat Parade (Daytona Beach/Halifax River).	Halifax River Yacht Club	Daytona Beach, Florida; Halifax River from Seabreeze Bridge to Halifax Harbor Marina.
(f) COTP Zone Savannah; Special Local Regulations			
1. May, 2nd weekend, Sunday.	Blessing of the Fleet—Brunswick.	Knights of Columbus—Brunswick.	Brunswick River from the start of the East branch of the Brunswick River (East Brunswick River) to the Golden Isles Parkway Bridge.
2. 3rd full weekend of July	Augusta Southern Nationals Drag Boat Races.	Augusta Southern Nationals.	Savannah River, Augusta, Georgia, from the US Highway 1 (Fifth Street) Bridge at mile 199.5 to Eliot's Fish Camp at mile 197.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
3. Last weekend of September.	Ironman 70.3	Ironman	All waters of the Savannah River encompassed within the following points: Starting at Point 1 in position 33°28′44″ N., 81°57′53″ W.; thence northeast to Point 2 in position 33°28′50″ N., 81°57′50″ W.; thence southeast to Point 3 in position 33°27′51″ N., 81°55′36″ W.; thence southwest to Point 4 in position 33°27′47″ N., 81°55′43″ W.; thence northwest back to origin.
4. 1st Saturday after Thanksgiving Day in November.	Savannah Harbor Boat Parade of Lights and Fireworks.	Westin Resort, Savannah	Savannah River, Savannah Riverfront, Georgia, Talmadge bridge to a line drawn at 146 degrees true from Dayboard 62.
5. 2nd Saturday of November.	Head of the South Regatta.	Augusta Rowing Club	Savannah River, Augusta, Georgia; All waters within a moving zone, beginning at Daniel Island Pier in approximate position 32°51′20″ N., 079°54′06″ W., South along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N., 079°53′49″ W., South along the coast of Mt. Pleasant, S.C., to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N., 079°54′39″ W. There will be a temporary Channel Closer from 0730 to 0815 on June 01, 2013 between Wando River Terminal Buoy 3 (LLNR 3305), and Wando River Terminal Buoy 5 (LLNR 3315). The zone will at all times extend 75 yards in front of the lead safety vessel preceding the first race participants; 75 yards behind the safety vessel trailing the last race participants; and at all times extending 100 yards on either side of the race participants and safety vessels.
(g) COTP Zone Charleston; Special Local Regulations			
1. 2nd and 3rd weekend of April.	Charleston Race Week	Sperry Top-Sider	Charleston Harbor and Atlantic Ocean, South Carolina, All waters encompassed within an 800 yard radius of position 32°46′39″ N., 79°55′10″ W., All waters encompassed within a 900 yard radius of position 32°45′48″ N., 79°54′46″ W., All waters encompassed within a 900 yard radius of position 32°45′44″ N., 79°53′32″ W.
2. 1st week of May	Low Country Splash	Logan Rutledge	Wando River, Cooper River, Charleston Harbor, South Carolina, including the waters of the Wando River, Cooper River, and Charleston Harbor from Daniel Island Pier, in approximate position 32°51′20″ N., 079°54′06″ W., south along the coast of Daniel Island, across the Wando River to Hobcaw Yacht Club, in approximate position 32°49′20″ N., 079°53′49″ W., south along the coast of Mt. Pleasant, South Carolina, to Charleston Harbor Resort Marina, in approximate position 32°47′20″ N., 079°54′39″ W., and extending out 150 yards from shore.
3. 2nd week of June	Beaufort Water Festival	City of Beaufort	Atlantic Intracoastal Waterway, Bucksport, South Carolina; All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39′11.5″ N., 079°05′36.8″ W.; thence west to point 2 in position 33°39′12.2″ N., 079°05′47.8″ W.; thence south to point 3 in position 33°38′39.5″ N., 079°05′37.4″ W.; thence east to point 4 in position 33°38′42.3″ N., 79°05′30.6″ W.; thence north back to origin.
4. 3rd week of September	Swim Around Charleston	Kathleen Wilson	Wando River, main shipping channel of Charleston Harbor, Ashley River, Charleston, South Carolina; A moving zone around all waters within a 75-yard radius around Swim Around Charleston participant vessels that are officially associated with the swim. The Swim Around Charleston swimming race consists of a 10-mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N., 79°54′27″ W., crosses the main shipping channel of Charleston Harbor, and finishes at the General William B. Westmoreland Bridge on the Ashley River in approximate position 32°50′14″ N., 80°01′23″ W.
5. 2nd week of November	Head of the South	Augusta Rowing Club	Upper Savannah River mile marker 199 to mile marker 196, Georgia.

TABLE TO § 100.701—Continued

No./date	Event	Sponsor	Location
6. 2nd week December	Charleston Harbor Christmas Parade of Boats.	City of Charleston	Charleston harbor, South Carolina, from Anchorage A through Bennis Reach, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina.

Dated: June 2, 2016.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–13875 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0432]

Safety Zone; Southern California Annual Fireworks for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Sea World Fireworks on the waters of Mission Bay, CA on specific evenings from Memorial Day to Labor Day. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the events, and general users of the waterway. Our regulation for the southern California annual fireworks for the San Diego Captain of the Port Zone identifies the regulated area for the events. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1123, Table 1, Item 7, will be enforced from 8:30 p.m. through 10:30 p.m. on May 28 through May 30, June 11 through June 12, June 16 through June 19, June 24 through June 30, July 1 through July 3, July 5 through July 31, August 1 through August14, August 20 through August 21, August 27 through August 28, and September 3 through September 5, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email Petty Officer Randolph Pahilanga, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1123 for a safety zone for the Sea World Fireworks on the waters of Mission Bay, CA in 33 CFR 165.1123, Table 1, Item 7 of that section, from 8:30 p.m. through 10:30 p.m. on specific evenings from Memorial Day to Labor Day. This action is being taken to provide for the safety of life on navigable waterways during the fireworks events. Our regulation for southern California annual fireworks events for the San Diego Captain of the Port Zone identifies the regulated area for the events. Under the provisions of 33 CFR 165.1123, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1123 and 5 U.S.C. 552(a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: May 25, 2016.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2016–13927 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0424]

RIN 1625–AA00

Safety Zone; Ohio River Mile 25.2 to Mile 25.6, Beaver, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Ohio River from mile 25.2–25.6. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

DATES: This rule is effective on July 2, 2016 from 8:30 p.m. until 10:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0424 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the

Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard received notice on April 28, 2016 that this fireworks display would take place. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by July 2, 2016. The fireworks display has been advertised and the local community has prepared for the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on July 2, 2016. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone on July 2, 2016 from 8:30 p.m. until 10:30 p.m. The safety zone will cover all navigable waters on the Ohio River from mile 25.2 to mile 25.6. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway and for a limited duration of two hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue broadcast notices to mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry on the Ohio River between mile 25.2 and mile 25.6, during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0424 to read as follows:

§ 165.T08–0424 Safety Zone, Ohio River, Beaver, PA.

(a) *Location.* The following area is a safety zone: Ohio River mile 25.2 to mile 25.6.

(b) *Enforcement.* This rule will be enforced, from 8:30 p.m. until 10:30 p.m. on July 2, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh or a designated representative. The Captain of the Pittsburgh representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information broadcasts.* The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

L. Mcclain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–13864 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0854]

Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zone for fireworks displays taking place at Urbanna Creek, Urbanna, VA on July 2, 2016. This action is necessary to ensure safety of life on navigable waters during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District identifies the regulated area for this fireworks display event. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 165.506, listed as event (c) 22 in the Table to 33 CFR 165.506 will be enforced from 5:30 p.m. to 1 a.m. on July 2, 2016; and in the case of inclement weather enforcement will be from 5:30 p.m. to 1 a.m. on July 3, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Ensign Sarah Reid, U.S. Coast Guard Sector Hampton Roads (WWM); telephone 757–668–5582, email *Sarah.C.Reid@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone in 33 CFR 165.506 from 5:30 p.m. until 1 a.m. on July 2, 2016, for the Urbanna Creek, VA fireworks display. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District, § 165.506, specifies the location of the regulated area for this safety zone as a circular shaped area that includes all waters of Urbanna Creek within a 350 foot radius of the fireworks launch site at latitude 37°38′09″ N., longitude 076°34′03″ W., located on land near the east shoreline of Urbanna Creek and south of Bailey Point. As specified in § 165.506(d), during the enforcement period, no vessel may not enter, remain in, or transit through the safety zone without approval from the Captain of the Hampton Roads (COTP) or a COTP designated representative. The Coast Guard may be assisted by other Federal, state or local law enforcement agencies in enforcing this regulation. If the Captain of the Port or his designated on-scene Patrol Commander determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

This notice of enforcement is issued under authority of 33 CFR 165.506(d) and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, local radio stations and area newspapers.

Dated: May 24, 2016.

Christopher S. Keane,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads, VA.

[FR Doc. 2016–13932 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0544; FRL–9947–30–OAR]

RIN 2060–AS94

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to amend the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (Secondary Aluminum NESHAP). This direct final rule amends the final rule that was published in the **Federal Register** on September 18, 2015, by correcting inadvertent errors, clarifying rule requirements for initial performance tests and submittal of malfunction reports, providing an additional option for new round top furnaces to account for unmeasured emissions during compliance testing, and clarifying what constitutes a change in furnace operating mode. The direct final rule also updates Web site addresses for the EPA's Electronic Reporting Tool (ERT) and the Compliance and Emissions Data Reporting Interface (CEDRI). These amendments will help to improve compliance and implementation of the rule.

DATES: This rule is effective on September 12, 2016 without further notice, unless the EPA receives adverse comment by July 28, 2016 If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by June 20, 2016 we will hold a public hearing on June 28, 2016 on the EPA campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0544, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Rochelle Boyd, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1390; fax number: (919) 541–3207; and email address: *boyd.rochelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The information in this preamble is organized as follows:

I. General Information
- A. Why is the EPA publishing a direct final rule?
- B. Does this direct final rule apply to me?
- C. What should I consider as I prepare my comments for the EPA?

II. What are the amendments made by this direct final rule?

III. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act (PRA)
- C. Regulatory Flexibility Act (RFA)
- D. Unfunded Mandates Reform Act (UMRA)
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act (NTTAA)
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act (CRA)

I. General Information

A. Why is the EPA publishing a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to amend the Secondary Aluminum NESHAP, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment on all or a distinct portion of this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

B. Does this direct final rule apply to me?

Categories and entities potentially regulated by this direct final rule include:

Category	NAICS code [1]
Primary Aluminum Production Facilities.	331312
Secondary Aluminum Production Facilities.	331314
Aluminum Sheet, Plate, and Foil Manufacturing Facilities.	331315
Aluminum Extruded Product Manufacturing Facilities.	331316
Other Aluminum Rolling and Drawing Facilities.	331319
Aluminum Die Casting Facilities.	331521
Aluminum Foundry Facilities ...	331524

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this direct final rule. To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.1500. If you have any questions regarding the applicability of any aspect of this action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13.

C. What should I consider as I prepare my comments for the EPA?

Do not submit information containing CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0544.

II. What are the amendments made by this direct final rule?

This direct final rule amends the table in Appendix A titled "Appendix A to Subpart RRR of Part 63—General Provisions Applicability to Subpart RRR." As published in the **Federal Register** on September 18, 2015, the table consisted of three columns labeled "Citation," "Applies to RRR," and "Comment." The EPA had intended to include a fourth column labeled "Requirement," but this column was inadvertently omitted from the September 18, 2015, publication in the **Federal Register**. We are revising the table by adding a column labeled "Requirement," which contains a brief description of the cited General Provision and republishing the entire table with appropriate updated information and clarifications. This amendment will provide additional information to the public on the content of the General Provision citations.

In response to stakeholder feedback, this direct final rule also amends 40 CFR 63.1514(e), which contains the limits on the frequency of changing furnace operating mode. The amendment clarifies that a change from one operating mode and subsequently back to the initial mode constitutes a single change. With respect to the options available to new round top furnaces to account for unmeasured emissions during compliance testing, this direct final rule also amends 40 CFR 63.1512(e)(5) to extend to new round top furnaces a compliance testing option to account for unmeasured emissions during compliance testing that is already available to uncontrolled group 1 furnaces. With this amendment, new round top furnaces will now have the option of assuming an 80-percent capture efficiency for the furnace exhaust during testing. We are adding 40 CFR 63.1516(b)(4) of the reporting requirements to clarify that malfunction reports required by 40 CFR 63.1516(d) must be submitted as part of the semiannual excess emissions/summary reports required by 40 CFR 63.1516(b). With respect to reconstructed sources, we are revising 40 CFR 63.1511(b) to clarify that under this provision reconstructed sources will be treated like new sources. In addition to correcting several minor typographical errors, we are correcting the inadvertent deletion of 40 CFR 63.1510(e)(1) and (2) from the regulatory text. These provisions relate to equipment accuracy and calibration and were previously codified when the Secondary Aluminum NESHAP was originally promulgated in 2000. The September 18, 2015, action mistakenly removed these provisions. This rulemaking replaces these provisions in the regulatory text to ensure that the regulated community has a clear understanding of the applicable compliance requirements.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart RRR), and has assigned OMB control number 2060–0433. This action does not change the information collection requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not create any new requirements or burdens and no costs are associated with this direct final action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. There are no secondary aluminum production facilities owned or operated by tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this section will *not* have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. This action does not affect the level of protection provided to human health or the environment. The final amendments are either clarifications or corrections of compliance alternatives that will neither increase or decrease environmental protection.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 27, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency is amending title 40, chapter I, part 63 of the Code of Federal Regulations (CFR) as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

■ 2. Section 63.1510 is amended by revising paragraph (b) introductory text and adding paragraphs (e)(1) and (2) to read as follows:

§ 63.1510 Monitoring requirements.

* * * * *

(b) *Operation, maintenance, and monitoring (OM&M) plan.* The owner or operator must prepare and implement for each new or existing affected source and emission unit, a written OM&M plan. The owner or operator of an existing affected source must submit the OM&M plan to the permitting authority for major sources, or the Administrator for area sources no later than the compliance date established by § 63.1501. The owner or operator of any new affected source must submit the OM&M plan to the permitting authority for major sources, or the Administrator for area sources within 90 days after a successful initial performance test under § 63.1511(b), or within 90 days after the compliance date established by § 63.1501 if no initial performance test is required. The plan must be accompanied by a written certification by the owner or operator that the OM&M plan satisfies all requirements of this section and is otherwise consistent with the requirements of this subpart. The owner or operator must comply with all of the provisions of the OM&M plan as submitted to the permitting authority for major sources, or the Administrator for area sources, unless and until the plan is revised in accordance with the following procedures. If the permitting authority for major sources, or the Administrator for area sources determines at any time after receipt of the OM&M plan that any revisions of the plan are necessary to satisfy the requirements of this section or this subpart, the owner or operator must promptly make all necessary revisions and resubmit the revised plan. If the owner or operator determines that any other revisions of the OM&M plan are necessary, such revisions will not become effective until the owner or operator submits a description of the changes and a revised plan incorporating them to the permitting authority for major sources, or the Administrator for area sources. Each plan must contain the following information:

* * * * *

(e) * * *

(1) The accuracy of the weight measurement device or procedure must be ±1 percent of the weight being measured. The owner or operator may apply to the permitting agency for approval to use a device of alternative accuracy if the required accuracy cannot be achieved as a result of equipment layout or charging practices. A device of alternative accuracy will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standard.

(2) The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, or if no calibration schedule is specified, at least once every 6 months.

* * * * *

■ 3. Section 63.1511 is amended by revising paragraph (b) introductory text and paragraph (i) heading to read as follows:

§ 63.1511 Performance test/compliance demonstration general requirements.

* * * * *

(b) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). The owner or operator of any affected source constructed before February 14, 2012, for which an initial performance test is required to demonstrate compliance must conduct this initial performance test no later than the date for compliance established by § 63.1501. The owner or operator of any affected source constructed or reconstructed after February 14, 2012, for which an initial performance test is required must conduct this initial performance test within 180 days after the date for compliance established by § 63.1501. Except for the date by which the performance test must be conducted, the owner or operator must conduct each performance test in accordance with the requirements and procedures set forth in § 63.7(c). Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/F. Owners or operators of sweat furnaces meeting the specifications of § 63.1505(f)(1) are not required to conduct a performance test.

* * * * *

(i) *Testing of commonly-ducted units not within a secondary aluminum processing unit.* * * *

* * * * *

■ 4. Section 63.1512 is amended by revising paragraph (e)(4) introductory text, paragraph (e)(4)(v), and paragraph (e)(5) to read as follows:

§ 63.1512 Performance test/compliance demonstration requirements and procedures.

* * * * *

(e) * * *

(4) When testing an existing uncontrolled furnace, the owner or operator must comply with the requirements of either paragraphs (e)(4)(i), (ii), or (iii) of this section at the next required performance test required by § 63.1511(e).

* * * * *

(v) Round top furnaces constructed before February 14, 2012, and reconstructed round top furnaces are exempt from the requirements of paragraphs (e)(4)(i), (ii), and (iii) of this section. Round top furnaces must be operated to minimize unmeasured emissions according to paragraph (e)(7) of this section.

(5) When testing a new uncontrolled furnace, other than a new round top furnace, constructed after February 14, 2012, the owner or operator must comply with the requirements of paragraph (e)(5)(i) or (ii) of this section at the next required performance test required by § 63.1511(e). When testing a new round top furnace constructed after February 14, 2012, the owner or operator must comply with the requirements of either paragraphs (e)(5)(i), (ii), or (iii) of this section at the next required performance test required by § 63.1511(e).

(i) Install hooding that meets ACGIH Guidelines (incorporated by reference, see § 63.14), or

(ii) At least 180 days prior to testing petition the permitting authority for major sources, or the Administrator for area sources, that such hoods are impractical under the provisions of paragraph (e)(6) of this section and propose testing procedures that will minimize unmeasured emissions during the performance test according to the paragraph (e)(7) of this section, or

(iii) Assume an 80-percent capture efficiency for the furnace exhaust (*i.e.*, multiply emissions measured at the furnace exhaust outlet by 1.25). If the source fails to demonstrate compliance using the 80-percent capture efficiency assumption, the owner or operator must re-test with a hood that meets the ACGIH Guidelines within 180 days, or petition the permitting authority for major sources, or the Administrator for area sources, within 180 days that such hoods are impractical under the provisions of paragraph (e)(6) of this section and propose testing procedures that will minimize unmeasured emissions during the performance test according to paragraph (e)(7) of this section.

(iv) The 80-percent capture efficiency assumption is not applicable in the event of testing conducted under an approved petition submitted pursuant to paragraphs (e)(5)(ii) or (iii) of this section.

* * * * *

■ 5. Section 63.1513 is amended by revising paragraph (f)(2) to read as follows:

§ 63.1513 Equations for determining compliance.

* * * * *

(f) * * *

(2) For periods of startup and shutdown, divide your measured emissions in lb/hr or μg/hr or ng/hr by the feed/charge rate in tons/hr or Mg/hr from your most recent performance test associated with a production rate greater than zero, or the rated capacity of the affected source if no prior performance test data are available.

■ 6. Section 63.1514 is amended by revising paragraphs (e) heading and (e)(1) to read as follows:

§ 63.1514 Change of furnace classification.

* * * * *

(e) *Limit on frequency of changing furnace operating mode.* (1) A change in furnace operating mode, which consists of changing from one furnace operating mode to another and subsequently back to the initial operating mode, as provided in paragraphs (a) through (d) of this section, may not be done more frequently than 4 times in any 6-month period unless you receive approval from the permitting authority or Administrator for additional changes pursuant to paragraph (e)(2).

* * * * *

■ 7. Section 63.1515 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.1515 Notifications.

* * * * *

(b) *Notification of compliance status report.* Each owner or operator of an existing affected source must submit a notification of compliance status report within 60 days after the compliance date established by § 63.1501. Each owner or operator of a new affected source must submit a notification of compliance status report within 90 days after conducting the initial performance test required by § 63.1511(b), or within 90 days after the compliance date established by § 63.1501 if no initial performance test is required. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (a)(1) through (10) of this section. The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, the owner or operator must provide duplicate notification to the applicable Regional Administrator. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously submitted. A complete notification of compliance status report must include:

* * * * *

■ 8. Section 63.1516 is amended by revising paragraph (b)(3)(i)(A), adding paragraph (b)(4), and revising paragraph (d) to read as follows:

§ 63.1516 Reports.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(A) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*), you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

* * * * *

(4) A malfunction report that is required under paragraph (d) of this section shall be submitted

simultaneously with the semiannual excess emissions/summary report required by paragraph (b) of this section.

* * * * *

(d) If there was a malfunction during the reporting period, the owner or operator must submit a report that includes the emission unit ID, monitor ID, pollutant or parameter monitored, beginning date and time of the event, end date and time of the event, cause of the deviation or exceedance and corrective action taken for each malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must include a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions, including, but not limited to, product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.1506(a)(5).

* * * * *

■ 9. Section 63.1517 is amended by revising paragraph (b)(18)(ii) to read as follows:

§ 63.1517 Records.

* * * * *

(b) * * *

(18) * * *

(ii) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.1506(a)(5), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

■ 10. Table 1 to Subpart RRR of part 63 is revised to read as follows:

BILLING CODE 6560–50–P

Table 1 to Subpart RRR of Part 63—Emission Standards for New and Existing Affected Sources

Affected source/ Emission unit	Pollutant	Limit	Units
All new and existing affected sources and emission units that are controlled with a PM add-on control device and that choose to monitor with a continuous opacity monitor (COM); and all new and existing aluminum scrap shredders that choose to monitor with a COM or to monitor visible emissions	Opacity	10	percent
New and existing aluminum scrap shredder	PM	0.01	gr/dscf
New and existing thermal chip dryer	THC D/F[a]	0.80 2.50	lb/ton of feed µg TEQ/Mg of feed
New and existing scrap dryer/delacquering kiln/decoating kiln	PM HCl THC D/F[a]	0.08 0.80 0.06 0.25	lb/ton of feed lb/ton of feed lb/ton of feed µg TEQ/Mg of feed
Or			
Alternative limits if afterburner has a design residence time of at least 1 second and operates at a temperature of at least 1400°F	PM HCl THC D/F[a]	0.30 1.50 0.20 5.0	lb/ton of feed lb/ton of feed lb/ton of feed µg TEQ/Mg of feed
New and existing sweat furnace	D/F[a]	0.80	ng TEQ/dscm 11% O_2[b]
New and existing dross-only furnace	PM	0.30	lb/ton of feed
New and existing in-line fluxer[c]	HCl PM	0.04 0.01	lb/ton of feed lb/ton of feed
New and existing in-line fluxer with no reactive fluxing		No Limit	Work practice: no reactive fluxing
New and existing rotary dross cooler	PM	0.04	gr/dscf
New and existing clean furnace (Group 2)		No Limit	Work practices: clean charge only and no reactive fluxing
New and existing group 1 melting/holding furnace (processing only clean charge)[c]	PM HF[h] HCl	0.80 0.40 0.40 or 10	lb/ton of feed lb/ton of feed lb/ton of feed percent of the HCl upstream of the add-on control device
New and existing group 1 furnace[c]	PM HF[h] HCl	0.40 0.40 0.40 or	lb/ton of feed lb/ton of feed lb/ton of feed

Affected source/ Emission unit	Pollutant	Limit	Units
		10	percent of the HCl upstream of the add-on control device
	D/F[a]	15.0	µg TEQ/Mg of feed
New and existing group 1 furnace with clean charge only[c]	PM	0.40	lb/ton of feed
	HF[h]	0.40	lb/ton of feed
	HCl	0.40	lb/ton of feed
		or	
		10	percent of the HCl upstream of an add-on control device
	D/F[a]	No Limit	Clean charge only
New and existing secondary aluminum processing unit[a,d] (consists of all existing group 1 furnaces and existing in-line flux boxes at the facility, or any combination of new group 1 furnaces and new in-line fluxers)	PM[e]	$L_{t_{PM}} = \frac{\sum_{i=1}^{n}(L_{i_{PM}} \times T_i)}{\sum_{i=1}^{n}(T_i)}$ (Eq. 1)	
	HCl and HF[f, h]	$L_{t_{HCl/HF}} = \frac{\sum_{i=1}^{n}(L_{i_{HCl/HF}} \times T_i)}{\sum_{i=1}^{n}(T_i)}$ (Eq.2)	
	D/F[g]	$L_{t_{D/F}} = \frac{\sum_{i=1}^{n}(L_{i_{D/F}} \times T_i)}{\sum_{i=1}^{n}(T_i)}$ (Eq. 3)	

[a] D/F limit applies to a unit at a major or area source.

[b] Sweat furnaces equipped with afterburners meeting the specifications of § 63.1505(f)(1) are not required to conduct a performance test.

[c] These limits are also used to calculate the limits applicable to secondary aluminum processing units.

[d] Equation definitions: L_{iPM} = the PM emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; T_i = the feed rate for individual emission unit i in the secondary aluminum processing unit; L_{tPM} = the overall PM emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{iHCl/HF}$ = the HCl or HF emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{tHCl/HF}$ = the overall HCl or HF emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{iD/F}$ = the D/F emission limit for individual emission unit i [µg (TEQ)/Mg (gr TEQ/ton) of feed]; $L_{LD/F}$ = the overall D/F emission limit for the secondary aluminum processing unit [µg TEQ/Mg (gr TEQ/ton) of feed]; n = the number of units in the secondary aluminum processing unit.

[e] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

[f] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl and HF limit. Controlled group 1 furnaces cannot be included in the HF emissions calculation because

■ 11. Table 2 to Subpart RRR of part 63 is amended by revising the entry "Group 1 furnace without add-on air pollution controls (including those that are part of a secondary aluminum processing unit)" to read as follows:

TABLE 2 TO SUBPART RRR OF PART 63—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements
* * *	* * *	* * *
Group 1 furnace without add-on air pollution controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate	Maintain the total reactive chlorine flux injection rate and total reactive fluorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.
* * *	* * *	* * *

* * * * *

■ 12. Table 3 to Subpart RRR of part 63 is amended by:

■ a. Revising the entry "In-line fluxer with lime-injected fabric filter;"

■ b. Revising the entry "Group 1 furnace with lime-injected fabric filter:" and

■ c. Revising footnote d to Table 3.

The revisions read as follows:

TABLE 3 TO SUBPART RRR OF PART 63—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements
* * *	* * *	* * *
In-line fluxer with lime-injected fabric filter.	Bag leak detector or	Install and operate in accordance with manufacturer's operating instructions.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	Reactive flux injection rate	Weight measurement device accuracy of ±1%;[b] calibrate according to manufacturer's specifications or at least once every 6 months; record time, weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive chlorine flux injection rate and the total reactive fluorine flux injection rate for each operating cycle or time period used in performance test; or Alternative flux injection rate determination procedure per § 63.1510(j)(5). For solid flux added intermittently, record the amount added for each operating cycle or time period used in the performance test.
* * *	* * *	* * *
Group 1 furnace with lime-injected fabric filter.	Bag leak detector or	Install and operate in accordance with manufacturer's operating instructions.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 part CFR 63; determine and record 6-minute block averages.
	Lime injection rate	For continuous injection systems, record feeder setting daily and inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.[c] Verify monthly that the lime injection rate is no less than 90 percent of the rate used during the compliance demonstration test.
	Reactive flux injection rate	Weight measurement device accuracy of ±1%;[b] calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive chlorine flux injection rate and the total reactive fluorine flux injection rate for each operating cycle or time period used in performance test; or Alternative flux injection rate deter-

[c] Permitting authority for major sources, or the Administrator for area sources may approve other alternatives including load cells for lime hopper weight, sensors for carrier gas pressure, or HCl monitoring devices at fabric filter outlet.

[d] The frequency of volumetric flow rate measurements may be decreased to once every 5 years if daily differential pressure measures, daily fan RPM, or daily fan motor amp measurements are made in accordance with § 63.1510(d)(2)(ii)–(iii). The frequency of annual verification of a permanent total enclosure may be decreased to once every 5 years if negative pressure measurements in the enclosure are made daily in accordance with § 63.1510(d)(2)(iv). In lieu of volumetric flow rate measurements or verification of permanent total enclosure, sweat furnaces may demonstrate annually negative air flow into the sweat furnace opening in accordance with § 63.1510(d)(3).

* * * * * * *

■ 13. Revise Appendix A to Subpart RRR of part 63 to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
§ 63.1(a)(1)–(4)	General Applicability	Yes.	
§ 63.1(a)(5)		No	[Reserved].
§ 63.1(a)(6)		Yes.	
§ 63.1(a)(7)–(9)		No	[Reserved].
§ 63.1(a)(10)–(12)		Yes.	
§ 63.1(b)	Initial Applicability Determination	Yes	EPA retains approval authority.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)		Yes	§ 63.1500(e) exempts area sources subject to this subpart from the obligation to obtain Title V operating permits.
§ 63.1(c)(3)–(4)		No	[Reserved].
§ 63.1(c)(5)		Yes.	
§ 63.1(d)		No	[Reserved].
§ 63.1(e)	Applicability of Permit Program	Yes.	
§ 63.2	Definitions	Yes	Additional definitions in § 63.1503.
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(2)	Prohibited Activities	Yes.	
§ 63.4(a)(3)–(5)		No	[Reserved].
§ 63.4(b)	Circumvention	Yes.	
§ 63.4(c)	Fragmentation	Yes.	
§ 63.5(a)	Applicability of Preconstruction Review and Notification.	Yes.	
§ 63.5(b)(1)	Requirements for Existing, Newly, Constructed Sources and Reconstructed Sources.	Yes.	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(4)		Yes.	
§ 63.5(b)(5)		No	[Reserved].
§ 63.5(b)(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction or Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction or Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction or Reconstruction Based on Prior State Preconstruction Review.	Yes.	
§ 63.6(a)	Applicability for Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(b)(1)–(5)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.1501 specifies dates.
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes.	
§ 63.6(c)(1)	Compliance Dates for Existing Sources.	Yes	§ 63.1501 specifies dates.
§ 63.6(c)(2)		Yes.	
§ 63.6(c)(3)–(4)		No	[Reserved].
§ 63.6(c)(5)		Yes.	
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)(i)	Operation and Maintenance Requirements.	No	See § 63.1506(a)(5) for general duty requirement. Any other cross reference to § 63.6(3)(1)(i) in any other general provision referenced shall be treated as a cross reference to § 63.1506(a)(5).

APPENDIX A TO SUBPART RRR OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
§ 63.6(e)(1)(ii)		No.	
§ 63.6(e)(2)		No	[Reserved].
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	No.	
§ 63.6(f)(1)	Compliance with Nonopacity Emission Standards.	No.	
§ 63.6(f)(2)		Yes.	
§ 63.6(g)	Use of an Alternative Nonopacity Emission Standard.	No.	
§ 63.6(h)(1)	Applicability for Compliance with Opacity and Visible Emission Standards.	No.	
§ 63.6(h)(2)	Methods for Determining Compliance.	Yes.	
§ 63.6(h)(3)		No	[Reserved].
§ 63.6(h)(4)–(9)		Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Exemption from Compliance	Yes.	
§ 63.7(a)	Applicability and Performance Test Dates.	Yes	Except § 63.1511 establishes dates for initial performance tests.
§ 63.7(b)	Notification of Performance Test	Yes.	
§ 63.7(c)	Quality Assurance Program	Yes.	
§ 63.7(d)	Performance Testing Facilities	Yes.	
§ 63.7(e)(1)	Conduct of Performance Tests	No.	
§ 63.7(e)(2)		Yes.	
§ 63.7(e)(3)		Yes.	
§ 63.7(f)	Use of an Alternative Test Method	Yes.	
§ 63.7(g)(1)–(3)	Data Analysis, Recordkeeping, and Reporting.	Yes	Except for § 63.7(g)(2), which is reserved.
§ 63.7(h)(1)–(5)	Waiver of Performance Tests	Yes.	
§ 63.8(a)(1)	Applicability for Monitoring Requirements.	Yes.	
§ 63.8(a)(2)		Yes.	
§ 63.8(a)(3)		No	[Reserved].
§ 63.8(a)(4)		Yes.	
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)(i)	Operation and Maintenance of Continuous Monitoring Systems (CMS).	No	See § 63.1506(a)(5) for general duty requirement.
§ 63.8(c)(1)(ii)		Yes.	
§ 63.8(c)(1)(iii)		No.	
§ 63.8(c)(2)–(8)		Yes.	
§ 63.8(d)(1)–(2)	Quality Control Program	Yes.	
§ 63.8(d)(3)		Yes, except for last sentence, which refers to an SSM plan. SSM plans are not required.	
§ 63.8(e)	Performance Evaluation of CMS	Yes.	
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	No	§ 63.1501(w) includes provisions for monitoring alternatives.
§ 63.8(f)(6)	Alternative to the Relative Accuracy Test.	Yes.	
§ 63.8(g)(1)	Reduction of Monitoring Data	Yes.	
§ 63.8(g)(2)		No	§ 63.1512 requires five 6-minute averages for an aluminum scrap shredder.
§ 63.8(g)(3)–(5)		Yes.	
§ 63.9(a)	Applicability and General Information for Notification Requirements.	Yes.	
§ 63.9(b)(1)–(5)	Initial Notifications	Yes	Except § 63.9(b)(3) is reserved.
§ 63.9(c)	Request for Compliance Extension	Yes.	
§ 63.9(d)	Notification that Source is Subject to Special Compliance Requirements.	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes.	
§ 63.9(f)	Notification of Opacity and Visible Emission Observations.	Yes.	
§ 63.9(g)	Additional Notification Requirement for Sources with CMS.	Yes.	

APPENDIX A TO SUBPART RRR OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes	Except § 63.1515 establishes dates notification of compliance status reports.
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5)–(6)		Yes.	
§ 63.9(i)	Adjustment of Deadlines for Required Communications.	Yes.	
§ 63.9(j)	Change in Information Already Provided.	Yes.	
§ 63.10(a)	Applicability and General Information for Recordkeeping and Reporting Requirements.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes.	
§ 63.10(b)(2)(i), (ii), (iv), (v)		No.	
§ 63.10(b)(2)(iii), (vi)–(xiv)		Yes	§ 63.1517 includes additional requirements.
§ 63.10(b)(3)	Recordkeeping Requirement for Applicability Determinations.	Yes.	
§ 63.10(c)(1)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(2)–(4)		No	[Reserved].
§ 63.10(c)(5)		Yes.	
§ 63.10(c)(6)		Yes.	
§ 63.10(c)(7)–(8)		Yes.	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c)(10)–(13)		Yes.	
§ 63.10(c)(14)		Yes.	
§ 63.10(c)(15)		No.	
§ 63.10(d)(1)	General Reporting Requirements	Yes.	
§ 63.10(d)(2)	Reporting Results of Performance Tests.	Yes.	
§ 63.10(d)(3)	Reporting Results of Opacity or Visible Emission Observations.	Yes.	
§ 63.10(d)(4)	Progress Reports	No	See § 63.1516(d).
§ 63.10(d)(5)	Periodic Startup, Shutdown, and Malfunction Reports.	No	See § 63.1516(d).
§ 63.10(e)(1)–(2)	Additional Reporting Requirements for Sources with CMS.	Yes.	
§ 63.10(e)(3)	Excess Emissions and CMS Performance Report and Summary Report.	Yes	Reporting deadline given in § 63.1516.
§ 63.10(e)(4)	Continuous Opacity Monitoring System (COMS) Data Produced During a Performance Test.	Yes.	
§ 63.10(f)	Waiver of Recordkeeping or Reporting Requirements.	Yes.	
§ 63.11(a)–(e)	Control Device and Work Practice Requirements.	No	Flares not applicable.
§ 63.12(a)–(c)	State Authority and Delegations	Yes	EPA retains authority for applicability determinations.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporations by Reference	Yes	ACGIH Guidelines, ASTM D7520–13, and Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update.
§ 63.15	Availability of Information and Confidentiality.	Yes.	
§ 63.16	Performance Track Provisions	No.	

[FR Doc. 2016–13505 Filed 6–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0858; FRL–9946–16]

Alcohols, $C_{>14}$, Ethoxylated; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an exemption from the requirement of a tolerance for residues of α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, and α alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100 (herein referred to as ''AAAs'' (alkyl alcohol alkoxylates)) to include alcohols, $C_{>14}$, ethoxylated, Chemical Abstract Service Registry Number (CAS Reg. No.) 251553–55–6 when used as an inert ingredient (surfactant) in pesticide formulations. Baker Petrolite LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an amendment to an existing exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of alcohols, $C_{>14}$, ethoxylated.

DATES: This regulation is effective June 13, 2016. Objections and requests for hearings must be received on or before August 12, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0858, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0858 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 12, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0858, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of August 5, 2009 (74 FR 38935) (FRL–8430–1), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7534) by The Joint Inerts Task Force (JITF), Cluster Support Team Number 1 (CST1), c/o CropLife America, 1156 15th Street NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910, 40 CFR 180.930, 40 CFR 180.940(a), and 40 CFR 180.960 be amended by establishing exemptions from the requirement of a tolerance for residues of a group of substances known as AAAs. The exemptions narratively describe the subject chemical as α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and specify the individual chemicals covered by the exemptions by a listing of CAS Reg. Nos. The current petition seeks to expand these exemptions by adding an additional chemical, alcohols, $C_{>14}$, ethoxylated, identified by CAS Reg. No. 251553–55–6.

In the **Federal Register** of March 16, 2016 (81 FR 14032) (FRL– 9942–86), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346A, announcing the filing of a pesticide petition (IN–10889) by Baker Petrolite LLC (12645 W. Airport Blvd., Sugar Land, TX 77478). The petition requested

that 40 CFR 180.910, 180.930, 180.940(a), and 180.960 be amended by modifying the exemption from the requirement of a tolerance for residues of AAAs by adding residues of alcohols, $C_{>14}$, ethoxylated which meets the chemical identity α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons. In cases where the minimum number average molecular weight is 1,100 or more, the request is to include the alcohols, $C_{>14}$, ethoxylated under 40 CFR 180.960. For lower the molecular weights the request is to amend the existing exemption from the requirement of a tolerance under 40 CFR 180.910, 180.930, and 180.940(a).

Based upon review of the data supporting the petition, EPA has confirmed that the requested CAS Reg. No. is acceptable for consideration under the currently approved descriptor. This determination is based on the Agency's risk assessment which can be found at *http://www.regulations.gov in document* "IN–10544. Requesting to Amend the Exemption from the Requirement of a Tolerance for α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons, and α-alkyl- ω-hydroxypoly (oxypropylene) and/or poly(oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100, under 40 CFR 180.910, 180.930, 180.940(a) or 180.960." in docket ID number EPA–HQ–OPP–2013–2010.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for AAAs including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with AAAs follows.

The Agency agrees with the petitioner that alcohols, $C_{>14}$, ethoxylated, CAS Reg. No. 251553–55–6, is an AAA having a molecular structure conforming to the chemical description given in the tolerance exemption expression, *i.e.*, α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and which do not contain additional structural elements that are not included within the tolerance exemption expression description. In 2009, in establishing the exemption for the AAAs, EPA assessed their safety generally using worst case exposure assumptions. (August 5, 2009 (74 FR 38935)). EPA concluded that that assessment showed that exempting the AAAs from the requirement from a tolerance would be safe. Inclusion of additional chemicals described above in the risk assessment for the AAAs would in no way alter that prior risk assessment given the generic findings on toxicity and the worst case exposure assumptions used in that risk assessment. Accordingly, based on the findings in that earlier rule, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to AAAs, by including the additional chemicals described above, under reasonably foreseeable circumstances. Therefore, the amendment of an exemption from the requirement of a tolerance under 40 CFR 180.910, 180.930, 180.940(a), and 180.960, for residues of AAAs to include the chemical described above is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex not established a MRL for AAAs.

C. Response to Comments

No comments have been received.

VI. Conclusions

Therefore, the exemptions from the requirement of a tolerance under 40 CFR 180.910, 180.930, 180.940(a), and 180.960 for α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers when used as an inert ingredient as a surfactant in pesticide formulations applied to growing crops, animals, or food contact surfaces are amended to add the CAS Reg. No. 251553–55–6 to the description of AAAs.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, the table is amended by revising the following inert ingredient(s) to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. Nos.: 9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8;. 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2)	.....	Surfactants, related adjuvants of surfactants.
* * * * *	*	*

■ 3. In § 180.930, the table is amended by revising the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * *	*	*
α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. Nos.: 9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2).	.....	Surfactants, related adjuvants of surfactants.
* * * * *	*	*

■ 4. In § 180.940, the table is amended by revising the following entry to the table in paragraph (a):

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * * * *	*
α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons (CAS Reg. No 251553–55–6).	9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2.	
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■ 5. In § 180.960, the table is amended by revising the following entry to read as follows:

§ 180.960; Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
* * *	* * * * *
α-alkyl-ω-hydroxypoly (oxypropylene) and/or poly (oxyethylene) polymers where the alkyl chain contains a minimum of six carbons and a minimum number average molecular weight (in amu) 1,100	9002–92–0; 9004–95–9; 9004–98–2; 9005–00–9; 9035–85–2; 9038–29–3; 9038–43–1; 9040–05–5; 9043–30–5; 9087–53–0; 25190–05–0; 24938–91–8; 25231–21–4; 251553–55–6; 26183–52–8; 26468–86–0; 26636–39–5; 27252–75–1; 27306–79–2; 31726–34–8; 34398–01–1; 34398–05–5; 37251–67–5; 37311–00–5; 37311–01–6; 37311–02–7; 37311–04–9; 39587–22–9; 50861–66–0; 52232–09–4; 52292–17–8; 52609–19–5; 57679–21–7; 59112–62–8; 60828–78–6; 61702–78–1; 61725–89–1; 61791–13–7; 61791–20–6; 61791–28–4; 61804–34–0; 61827–42–7; 61827–84–7; 62648–50–4; 63303–01–5; 63658–45–7; 63793–60–2; 64366–70–7; 64415–24–3; 64415–25–4; 64425–86–1; 65104–72–5; 65150–81–4; 66455–14–9: 66455–15–0; 67254–71–1; 67763–08–0; 68002–96–0; 68002–97–1; 68131–39–5; 68131–40–8; 68154–96–1; 68154–97–2; 68154–98–3; 68155–01–1; 68213–23–0; 68213–24–1; 68238–81–3; 68238–82–4; 68409–58–5; 68409–59–6; 68439–30–5; 68439–45–2; 68439–46–3; 68439–48–5; 68439–49–6; 68439–50–9; 68439–51–0; 68439–53–2; 68439–54–3; 68458–88–8; 68526–94–3; 68526–95–4; 68551–12–2; 68551–13–3; 68551–14–4; 68603–20–3; 68603–25–8; 68920–66–1; 68920–69–4; 68937–66–6; 68951–67–7; 68954–94–9; 68987–81–5; 68991–48–0; 69011–36–5; 69013–18–9; 69013–19–0; 69227–20–9; 69227–21–0; 69227–22–1; 69364–63–2; 70750–27–5; 70879–83–3; 70955–07–6; 71011–10–4; 71060–57–6; 71243–46–4; 72066–65–0; 72108–90–8; 72484–69–6; 72854–13–8; 72905–87–4; 73018–31–2; 73049–34–0; 74432–13–6; 74499–34–6; 78330–19–5; 78330–20–8; 78330–21–9; 78330–23–1; 79771–03–2; 84133–50–6; 85422–93–1; 97043–91–9; 97953–22–5; 102782–43–4; 103331–86–8; 103657–84–7; 103657–85–8; 103818–93–5; 103819–03–0; 106232–83–1; 111905–54–5; 116810–31–2; 116810–32–3; 116810–33–4; 120313–48–6; 120944–68–5; 121617–09–2; 126646–02–4; 126950–62–7; 127036–24–2; 139626–71–4; 152231–44–2; 154518–36–2; 157627–86–6; 157627–88–8; 157707–41–0; 157707–43–2; 159653–49–3; 160875–66–1; 160901–20–2; 160901–09–7; 160901–19–9; 161025–21–4; 161025–22–5; 166736–08–9; 169107–21–5; 172588–43–1; 176022–76–7; 196823–11–7; 287935–46–0; 288260–45–7; 303176–75–2; 954108–36–2.
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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0350; FRL–9946–48]

D-glucurono-6-deoxy-L-manno-D-glucan, Acetate, Calcium Magnesium Potassium Sodium Salt (Diutan Gum); Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) Chemical Abstract Service Registration Number ((CAS Reg. No.) 595585–15–2) when used as an inert ingredient stabilizer/suspension agent applied to crops pre- and post-harvest and to food contact surfaces. Keller and Heckman on behalf of CP Kelco U.S., Inc submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum).

DATES: This regulation is effective June 13, 2016. Objections and requests for hearings must be received on or before August 12, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0350, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0350 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 12, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0350, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of Monday, April 25, 2016 (81 FR 24046) (FRL–9944–86), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–10815) by Keller and Heckman LLP (1001 G Street NW., Suite 500 West, Washington, DC 20001), on behalf of CP Kelco U.S., Inc (3100 Cumberland Blvd., Suite 600, Atlanta, GA 30339). The petition requested that 40 CFR 180.910 and 40 CFR 180.940 be amended by establishing an exemption from the requirement of a tolerance for residues of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) (CAS Reg. No. 595585–15–2) when used as an inert ingredient stabilizer/suspension agent in pesticide formulations applied to crops pre- and post-harvest and to food contact surfaces. That document referenced a summary of the petition prepared by Keller and Heckman on behalf of CP Kelco U.S., Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments of substance received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) exhibits low levels of acute toxicity. The oral lethal dose $(LD)_{50}$ in the rat is greater than 5 grams/kilograms (g/kg) (5,000 milligrams/kilograms (mg/kg)). The inhalation lethal concentration $(LC)_{50}$ in the rat is > 0.316 milligram/Liter (mg/L) (~81.9 mg/kg). It is minimally irritating to the rabbit eye. It is not an irritant to the rabbit skin and it was not a skin sensitizer in Dunkin-Hartley guinea pigs.

In a 28-day repeat dose oral toxicity (OECD Test Guideline 407) study there were no treatment-related adverse toxicological effects at doses up to 1,000 mg/kg/day. The NOAEL is 1,000 mg/kg/day.

The reverse gene mutation assay with *Salmonella typhimurium* and *Escherichia coli* and a chromosome aberration test with human lymphocytes show that the compound is neither mutagenic nor clastogenic, respectively.

In a metabolism study in male and female rats the compound was absorbed, metabolized and excreted rapidly. The major route of excretion was the feces. There was no bioaccumulation.

No toxicological point of departure (toxicological endpoint) was identified due to the low levels of toxicity exhibited and due to the very large molecular weight and lack of systemic absorption.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

No toxicological point of departure (toxicological endpoint) was identified due to the low levels of acute and subchronic toxicity exhibited and due to the very large molecular weight and lack of systemic absorption.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to D-glucurono-6-deoxy-L-

manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum), EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) in food as follows:

Dietary exposure can occur from eating foods containing residues of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum). Because no hazard endpoint of concern was identified for acute and chronic dietary assessment (food and drinking water), a quantitative dietary exposure risk assessment was not conducted.

2. *Dietary exposure from drinking water.* Residues of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) might be found in drinking water. However, since no toxicological endpoint of concern was identified for dietary risk assessment (food and drinking water), a quantitative dietary was not conducted.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) could be used in products that could result in short- or intermediate-term residential exposures. However, based on the lack of toxicity, a quantitative exposure assessment from residential exposures was not performed.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) to share a common mechanism of toxicity with any other substances, and D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum), EPA concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children. As part of its qualitative assessment, the Agency did not use safety factors for assessing risk and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

Based on the lack of any toxicological endpoints of concern, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to residues of D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum).

V. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 and 40 CFR 180.940(a) for D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) (CAS Reg. No. 595585–15–2) when used as an inert ingredient (stabilizer/suspension agent) in pesticide formulations applied to growing crops pre- and post-harvest and to food contact surfaces.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910 add alphabetically the inert ingredients to the table to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * * * * *		
D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum) (CAS Reg. No. 595585–15–2).	.....	Stabilizer/suspension agent.
* * * * * * *		

■ 3. In § 180.940(a) add alphabetically the inert ingredients to the table to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food contact surface sanitizing solutions).

(a) * * *

* * * * *

Pesticide chemical	CAS Registration No.	Limits
* * * * * * *		
D-glucurono-6-deoxy-L-manno-D-glucan, acetate, calcium magnesium potassium sodium salt (diutan gum).	(CAS No. 595585–15–2)	None.
* * * * * * *		

* * * * *

[FR Doc. 2016–13805 Filed 6–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 370

[EPA–HQ–SFUND–2010–0763; FRL 9945–07–OLEM]

RIN 2050–AG85

Hazardous Chemical Reporting: Community Right-to-Know; Revisions to Hazard Categories and Minor Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is amending its hazardous chemical reporting regulations due to the changes in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS). OSHA's HCS was recently revised to conform to the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Under the revised HCS, chemical manufacturers and importers are

required to evaluate their chemicals according to the new criteria adopted from GHS to ensure that they are classified and labeled appropriately. Manufacturers and importers are also required to develop standardized Safety Data Sheets (formerly known as "Material Safety Data Sheets") and distribute them to downstream users of their chemicals. These changes in HCS affect the reporting requirements under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Based on the new classification criteria that OSHA adopted, EPA is revising the existing hazard categories for hazardous chemical inventory form reporting under EPCRA Section 312 and for list reporting under section 311. In this action, EPA is also making a few minor corrections in the hazardous chemical reporting regulations.

DATES: *Effective Date:* This final rule is effective June 13, 2016.

Compliance Date: The compliance date is January 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2010–0763. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington DC 20004; telephone number: (202) 564–8019; email address: *jacob.sicy@epa.gov.* Also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington, DC metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC metropolitan area.) You may wish to visit the Office of Emergency Management (OEM) Internet site at *http://www.epa.gov/emergencies.*

SUPPLEMENTARY INFORMATION:

I. Background

EPA is amending its hazardous chemical reporting regulations at 40 CFR part 370 to conform to the revisions of OSHA's HCS due its adoption of the GHS classification and labeling of chemicals. The Occupational and Safety and Health Administration published a final rule to revise the HCS on March 26, 2012 (77 FR 17574), codified in 29 CFR 1910.1200. Among the recent HCS modifications, the classification of chemicals adopted from GHS affect the reporting requirements under EPCRA Sections 311 and 312. OSHA's HCS adopted certain terms used in GHS provisions, such as "Safety Data Sheet (SDS)" instead of the term "Material Safety Data Sheet (MSDS)." EPCRA Sections 311 and 312 and the implementing regulations use the term "Material Safety Data Sheet (MSDS)." In this action, EPA is also revising the regulations to use both terms and their acronyms as they have the same meaning. This action is also making some minor corrections in the regulations at 40 CFR part 370. EPA anticipates that closer correlation with the OSHA HCS and GHS will provide greater clarification to the regulated community and facilitate emergency planning.

II. Revisions to Hazard Categories

Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and its implementing regulations at 40 CFR part 370 apply to the owners and operators of facilities required to prepare or have a MSDS for any hazardous chemical defined under OSHA and its implementing regulations. EPCRA Section 311(e) defines the term "hazardous chemical" to be the same meaning as it is given in 29 CFR 1910.1200(c), except for certain substances exempted in EPCRA Section 311(e).

Section 311 of EPCRA requires facilities to submit MSDSs of hazardous chemicals or a list of hazardous chemicals grouped into categories of physical and health hazards as defined in OSHA's HCS to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department with jurisdiction over the facility. Section 312 of EPCRA requires these facilities to submit an emergency and hazardous chemical inventory form to the SERC, LEPC, and the local fire department, annually by March 1. The inventory form provides the physical or health hazard of each hazardous chemical as well as the locations and quantities present at the facility during the previous calendar year. There are two reporting tiers, Tier I and Tier II. Tier I inventory forms provide only general information on hazardous chemicals. Tier II inventory forms provide specific information on each hazardous chemical, which is used by many LEPCs for developing or modifying their local emergency response plans. Currently, all states require facilities to submit the federal Tier II form or the form developed by the states, including electronic reporting and submission. The regulations including the information required on the Tier I and Tier II inventory forms were first promulgated in 1987 and are codified in 40 CFR part 370.

As stated earlier in this document, the statute specifies that the list reporting under section 311 and the inventory reporting under section 312 should be based on the physical and health hazards established under OSHA regulations. Sections 311 and 312 also provide that EPA may modify the physical and health hazards set forth under the Occupational Safety and Health Act and regulations promulgated under that Act. Accordingly, in 1987, EPA modified OSHA's 23 physical and health hazards into five hazard categories (three physical and two health hazard categories) for facilities to use for reporting under sections 311 and 312. These categories are defined currently in the regulations at 40 CFR 370.66. Facilities have been using these five hazard categories since 1987 to report under sections 311 and 312.

Prior to the adoption of the GHS, OSHA's HCS was performance-oriented. It established requirements for hazard determination but did not provide the specific language to convey the information or a format in which to provide to the users of the chemicals. This meant that chemical producers were able to use whatever language or format they chose to provide the necessary information. With the adoption of GHS provisions, OSHA's HCS 2012 final rule established consistent and standardized hazard communication to the users of the chemicals, to anyone exposed to the chemicals, and to emergency responders.

GHS is a standardized approach for classifying chemicals by their health, physical and environmental effects and communicating this information to

downstream users by using consistent signal words, pictograms, hazard statements, etc., on labels and SDSs. GHS establishes a set of criteria and provisions that regulatory authorities, such as OSHA, can incorporate into their existing regulations or standards, or use to develop a new system. Regulatory authorities are not required to adopt all of the criteria that are defined in GHS, only those that are appropriate to their specific regulations. Accordingly, OSHA adopted the classification criteria and provisions that are appropriate to its existing standards for hazard communication for labeling and SDSs. The revised HCS provisions also include developing SDSs using the standardized 16-section format with consistent headings adopted from GHS.

The definitions of hazards in GHS are more specific, detailed criteria than they were in OSHA's HCS prior to the 2012 revisions. Under the GHS, each hazard is considered to be a hazard class and the classes are then generally sub-divided into categories of hazard. For example, under the original HCS, a chemical is either a potential carcinogen or it is not. Under the revised HCS, this is further divided according to the degree of severity of the hazard. That is, carcinogenicity has two hazard categories. Category 1 includes known or presumed human carcinogens, while Category 2 includes suspected human carcinogens. Category 1 is also sub-divided into Category 1A and 1B. Such detailed criteria provides more accurate hazard determinations and more consistency among various suppliers of the same chemical. EPA believes that such detailed criteria will be valuable to emergency planners and responders.

OSHA also revised the definition of the term "hazardous chemical." Prior to March 26, 2012, OSHA's HCS defined the term "hazardous chemical" as any chemical which is a physical or health hazard. OSHA has revised the definition of the term "hazardous chemical" to add the term "classified" and to list specifically certain hazards already covered by HCS but not addressed in GHS at the time of the March 2012 final rule. The revised definition of "hazardous chemical" is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified. OSHA added the three hazards, simple asphyxiant, combustible dust and pyrophoric gas, to the definition of "hazardous chemical" to ensure that the regulated community would understand that these are still covered under the revised HCS. The definition of hazardous chemical also includes the term "hazard not otherwise classified" (HNOC) for those chemicals that do not fit into any of the hazard classes adopted from GHS.

Although the physical and health hazards in OSHA's HCS prior to the 2012 revisions are the same as the revised hazards, the descriptions are slightly different. See the following table for descriptions of physical hazard class before and after adopting GHS provisions.

Physical hazards (prior to GHS adoption)	Physical hazards (after adoption, revised in 2012)
Combustible liquid	Flammable (gases, aerosols, liquids, or solids).
Compressed Gas	Gas under pressure.
Explosive	Explosive.
Flammable	Self-heating.
Pyrophoric	Pyrophoric (liquid or solid).
Oxidizer	Oxidizer (liquid, solid or gas).
Organic Peroxide	Organic peroxide.
Unstable (Reactive)	Self-reactive.
Water-Reactive	In contact with water emits flammable gas.
	Corrosive to metal.
	Hazard Not Otherwise Classified (HNOC).

The following table lists OSHA HCS health hazard class prior to and after adoption of GHS provisions.

Health hazards (prior to GHS adoption)	Health hazards (after adoption, revised in 2012)
Carcinogens	Carcinogenicity.
Toxic or highly toxic agents	Acute toxicity (any route of exposure).
Reproductive toxins	Reproductive toxicity.
Irritants; Corrosives	Skin Corrosion or Irritation.
Sensitizers	Respiratory or Skin Sensitization.
Agents which damage the lungs, skin, eyes, or mucous membranes	Serious eye damage or eye irritation.
Hepatotoxins	Specific target organ toxicity (single or repeated exposure).
Nephrotoxins	Germ cell mutagenicity.
Neurotoxins	Aspiration Hazard.
Agents which act on the hematopoietic system	Hazard Not Otherwise Classified (HNOC).

In addition to the hazards listed in the previous tables, OSHA specifically added the following hazards in the March 2012 final rule, simple asphyxiant, combustible dust, pyrophoric gas, and hazard not otherwise classified, to the definition of hazardous chemical as mentioned earlier in this document.

Hazardous chemical reporting under EPCRA Sections 311 and 312 requires facilities to report the physical and health hazards of chemicals as established under OSHA and its regulations. EPCRA provides that EPA may modify the OSHA categories as necessary.

Currently, the definition of the term "hazard category" in the regulations at 40 CFR 370.66 is the consolidation of OSHA's 23 original hazard categories

into five hazard categories. The following table lists the physical and health hazard categories (consolidated from OSHA's original 23 hazard categories) that facilities have been using since 1987 to comply with EPCRA Sections 311 and 312.

Physical Hazard
Fire (Flammable, Combustible liquid, Pyrophoric, Oxidizer).
Sudden Release of Pressure (Explosive, Compressed Gas).
Reactive (Unstable Reactive, Organic Peroxide, Water Reactive).

Health Hazard (Immediate-Acute)
Highly Toxic; Toxic; Irritant; Sensitizer; Corrosives & other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of a short term exposure and is of short duration.

Health Hazard (Delayed-Chronic)
Carcinogens & other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long term exposure and is of long duration.

Soon after OSHA's HCS 2012 final rule was published, many stakeholders requested EPA adopt physical and health hazard classes as they are described in the revised HCS. The stakeholders expressed that, if the EPA adopted these physical and hazard classes, it would be less burdensome to the regulated community as they would only need to copy the chemical hazard information from the MSDS (or SDS) and implementing agencies could more easily compare the hazard information provided on each MSDS (or SDS) with the information provided on the list of hazardous chemicals and the inventory form.

Therefore, EPA has decided to replace the existing five hazard categories (Fire, Sudden Release of Pressure, Reactive, Immediate (Acute) health hazard, Delayed (Chronic) health hazard) in 40 CFR part 370 with each specific hazard class listed in the revised OSHA HCS as well as the four hazards that GHS did not address (simple asphyxiant, combustible dust, pyrophoric gas, and hazard not otherwise classified). The following table lists the physical and health hazards that EPA is adopting from the revised HCS.

Physical hazards	Health hazards
Flammable (gases, aerosols, liquids, or solids)	Carcinogenicity.
Gas under pressure	Acute toxicity (any route of exposure).
Explosive	Reproductive toxicity.
Self-heating	Skin Corrosion or Irritation.
Pyrophoric (liquid or solid)	Respiratory or Skin Sensitization.
Oxidizer (liquid, solid or gas)	Serious eye damage or eye irritation.
Organic peroxide	Specific target organ toxicity (single or repeated exposure).
Self-reactive	Aspiration Hazard.
Pyrophoric gas	Germ cell mutagenicity.
Corrosive to metal	Simple Asphyxiant.
In contact with water emits flammable gas	Hazard Not Otherwise Classified (HNOC).
Combustible Dust	
Hazard Not Otherwise Classified (HNOC)	

The four hazards that are specifically listed in the definition of "hazardous chemical" in the revised HCS are listed in the table as either a physical or health hazard. The hazard, HNOC (hazard not otherwise classified), would be both a physical and health hazard, as listed in the previous table.

Sections 311 and 312 use the term "hazard category," so EPA will continue to use the term "hazard category" in the definition section in 40 CFR 370.66 but will replace the five hazard categories with those hazards listed in the previous table. This technical amendment would also delete any reference to the consolidated five hazard categories in the regulations, specifically in sections 370.41 and 370.42(s)(5).

The hazard categories on both inventory forms (Tier I and Tier II) and the instructions to these forms would be replaced with the list of physical and health hazards as identified in the previous table. As mentioned earlier, the revised HCS requires chemical producers to provide detailed criteria of each hazard on the MSDS (or SDS) as adopted from GHS. So, in addition to the hazards listed in the previous table, facilities complying with sections 311 and 312 may report the detailed criteria for each hazard as provided on the SDS, which would be beneficial for emergency planners and responders.

EPA will be modifying Tier2 Submit, the software developed for reporting under section 312, to include the new physical and health hazards as well as the four specifically listed hazards that EPA adopted from OSHA's revised HCS. For states that have their own reporting software for section 312, EPA is providing flexibility to allow states to modify their software by January 1, 2018. Facilities are required to comply with reporting the new physical and health hazards on their Tier II inventory form for reporting year 2017, by March 1, 2018. In the meantime, EPA encourages facilities to provide the most accurate information available on potential hazards of each chemical at their facility to the SERC, LEPC, and the local fire department with jurisdiction over the facility.

Some states may already have amended their regulations to include the new hazards, consistent with the revised HCS, which EPA is finalizing in this action. Facilities should contact their state for any additional reporting and submission requirements.

III. Other Revisions to 40 CFR Part 370

As mentioned previously, the OSHA HCS adopted some terms used in the GHS provisions, such as, "Safety Data Sheet (SDS)" instead of the term, "Material Safety Data Sheet (MSDS)." Although EPCRA Sections 311 and 312 refer to the term, "Material Safety Data Sheet", the implementing regulations would be revised to use both terms in 40 CFR part 370. The term "Safety Data Sheet (SDS)" is now more commonly used by all stakeholders.

In this action, EPA is correcting a typographical error in 40 CFR 370.30(a) and revising EPA's Web site address in 40 CFR 370.40(a), 370.64(a), and 370.64(b).

In this action, EPA is also revising the definition section, 40 CFR 370.66, by replacing the list of "hazard category" by the specific physical and health hazards listed in the revised HCS. The term "Safety Data Sheet (SDS)" will be added to the definition section in alphabetical order.

IV. Authority Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, "when an Agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest," the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because this final rule simply adopts the hazard classes established in OSHA's revised HCS as directed by EPCRA Sections 311 and 312. The burden for facilities associated with reclassifying their chemicals into the new criteria that OSHA HCS adopted from GHS is already accounted for in the OSHA HCS March 2012 final rule. Facilities required to comply with EPCRA Sections 311 and 312 would simply need to copy the hazards found on each MSDS (or SDS) of the hazardous chemical, to comply with the inventory reporting under EPCRA Section 312, and for the list of chemicals submitted under section 311. There is no additional burden incurred for facilities due to this technical amendment to 40 CFR part 370. The burden for developing an MSDS (or SDS) is already considered under the OSHA HCS. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

V. Do any of the statutory and Executive Order reviews apply to this action?

This final rule simply adopts the hazard categories set forth in OSHA HCS for reporting on the inventory form and the list of hazardous chemicals as directed by sections 311 and 312 of EPCRA. It does not impose any new burden on the regulated community or the implementing agencies.

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act (2 U.S.C. 1531–1538). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

VI. Congressional Review Act

This action is subject to the Congressional Review Act (CRA), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section IV of this document, including the basis for that finding.

List of Subjects in 40 CFR Part 370

Environmental protection, Extremely hazardous substances, GHS, Hazard categories, Hazard class, Hazardous chemicals, OSHA HCS, Tier II Inventory Form.

Dated: May 26, 2016.

Mathy Stanislaus,

Assistant Administrator, Office of Land and Emergency Management.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 370 continues to read as follows:

Authority: Sections 302, 311, 312, 322, 324, 325, 327, 328, and 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (Pub. L. 99–499, 100 Stat. 1613, 42 U.S.C. 11002, 11021, 11022, 11042, 11044, 11045, 11047, 11048, and 11049).

§§ 370.10, 370.12, 370.13, 370.14, 370.20, 370.30, 370.31, 370.32, 370.33, 370.60, 370.62, 370.63, 370.64, and 370.66 [Amended]

■ 2. In 40 CFR part 370, after the text "MSDS", add the words "(or SDS)" in the following places:

■ a. Section 370.10(b)(1), two times;
■ b. Section 370.12(a) and (b);
■ c. Section 370.13 introductory text;
■ d. Section 370.14(a)(1) two times; (a)(2), two times; and (b), three times;
■ e. Section 370.20, two times;
■ f. Undesignated center heading before § 370.30;
■ g. Section 370.30(a)(1), (a)(2) and (b) two times;
■ h. Section 370.31, five times;
■ i. Section 370.32, two times;
■ j. Section 370.33, four times;
■ k. Section 370.60, section heading and four times;
■ l. Section 370.62, three times;
■ m. Section 370. 63(b);
■ n. Section 370.64(a); and
■ o. Section 370.66 (definition of "*Material Safety Data Sheet or MSDS*").

In addition to the amendments set forth above:

§ 370.1 [Amended]

■ 3. In § 370.1, paragraph (a), after the text "(MSDS)", add the words "or Safety Data Sheet (SDS)".

§ 370.10 [Amended]

■ 4. In § 370.10, paragraph (a) introductory text, after the text "(MSDS)", add the words "(or Safety Data Sheet (SDS))".

§ 370.14 [Amended]

■ 5. In § 370.14, paragraphs (a)(1) and (2), after the text "MSDSs", add the words "(or SDSs)", four times.

§ 370.30 [Amended]

■ 6. Amend § 370.30 by:
■ a. In paragraph (a), removing the text "§ 1A370.10", and adding "§ 370.10" in its place; and
■ b. Revising paragraph (a)(2).

The revised text reads as follows:

§ 370.30 What information must I provide and what format must I use?

(a) * * *

(2) Submitting a list of all hazardous chemicals present at your facility at or above the applicable threshold levels. The hazardous chemicals on your list must be grouped by the specific health and physical hazards as defined in § 370.66. The list must contain the chemical or common name of each hazardous chemical as provided on the MSDS (or SDS).

* * * * *

§ 370.40 [Amended]

■ 7. Amend § 370.40, paragraph (b), by removing the text "*http://www.epa.gov/emergencies*", and adding "*http://www.epa.gov/epcra*" in its place.

■ 8. Amend § 370.41 by revising the introductory text to read as follows:

§ 370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. The hazard categories (physical and health hazards) are defined in § 370.66. Tier I inventory form includes the following data elements:

* * * * *

■ 9. Amend § 370.42 by revising paragraphs (s)(1), (3), and (5) to read as follows:

§ 370.42 What is Tier II inventory information?

* * * * *

(s) For each hazardous chemical that you are required to report, you must:

(1) *Pure Chemical:* Provide the chemical name (or the common name of the chemical) as provided on the Material Safety Data Sheet (MSDS) (or Safety Data Sheet (SDS)) and provide the Chemical Abstract Service (CAS) registry number of the chemical provided on the MSDS (or SDS).

Note to Paragraph (s)(1): If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in § 370.64(a).

* * * * *

(3) *Mixture.* If you are reporting a mixture, enter the mixture name, product name or trade name as provided on the Material Safety Data Sheet (MSDS) (or Safety Data Sheet (SDS)) and provide the Chemical Abstract Service (CAS) registry number of the mixture provided on the MSDS (or SDS). If there is no CAS number provided or it is not known, check the box "Not Available."

* * * * *

(5) *Pure Chemical or Mixture:* Indicate which hazard categories (or hazard classes) apply to the chemical or the mixture. The hazard categories (or physical and health hazards) are defined in § 370.66.

* * * * *

§ 370.64 [Amended]

■ 10. Amend § 370.64 by removing "*http://www.epa.gov/emergencies*" and adding "*http://www.epa.gov/epcra*" in its place, two times.

■ 11. Amend § 370.66 by revising the definition "*Hazard category*", and adding in alphabetical order the definition "*Safety Data Sheet or SDS*" to read as follows:

§ 370.66 How are key words in this part defined?

* * * * *

Hazard category is divided into two categories, health and physical hazards.

(1) Health hazard means a chemical which poses one of the following hazardous effects: Carcinogenicity; acute toxicity (any route of exposure); aspiration hazard; reproductive toxicity; germ cell mutagenicity; skin corrosion or irritation; respiratory or skin sensitization; specific target organ toxicity (single or repeated exposure); simple asphyxiant; and hazard not otherwise classified (HNOC).

(2) Physical hazard means a chemical which poses one of the following hazardous effects: Flammable (gases, aerosols, liquids or solids); gas under pressure; explosive; self-heating; pyrophoric (liquid or solid); pyrophoric gas; oxidizer (liquid, solid or gas); organic peroxide; self-reactive; in contact with water emits flammable gas; combustible dust; corrosive to metal; and hazard not otherwise classified (HNOC).

* * * * *

Safety Data Sheet or SDS means the sheet required to be developed under 29 CFR 1910.1200(g). This term means the same as the term "material safety data sheet or MSDS" defined in this section.

* * * * *

[FR Doc. 2016–13582 Filed 6–10–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 535

[Docket No. 16–09]

RIN 3072–AC65

Optional Method of Filing Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Confirmation of effective date of direct final rule.

SUMMARY: The Federal Maritime Commission (Commission) is publishing this document to confirm the effective date of the direct final rule published on April 27, 2016.

DATES: The direct final rule published on April 27, 2016 (81 FR 24703) will become effective on June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001. *Phone:* (202) 523–5725. *Email: secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On April 27, 2016 (81 FR 24703), the Commission published a direct final rule (DFR) amending 46 CFR part 535 relating to the filing of Ocean Common Carrier and Marine Terminal Operator Agreements to provide for optional filing of these agreements through a new electronic filing system. The Commission indicated that if it did not receive any significant adverse comments by May 27, 2016, the DFR would go into effect on June 13, 2016.

The Commission received only one comment that was not a significant adverse comment, but rather in support of the amendments. The commenter stated that the amendments are a "win-win" and will make the filing process of agreements and amendments more efficient, expeditious, and effective. The Commission agrees with the commenter that the optional filing system will facilitate more efficient filing, review, and publication of these agreements.

Therefore, because the Commission received no significant adverse comments, the amendments to 46 CFR part 535 will become effective on June 13, 2016.

By the Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–13889 Filed 6–10–16; 8:45 am]

BILLING CODE 6731–AA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02]

RIN 0648–XE674

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of the 2016 Gulf of Mexico Private Angling Recreational Red Snapper Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; extension.

SUMMARY: NMFS extends the recreational fishing season for the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. NMFS previously determined the private angling component would reach its annual catch target (ACT) for Gulf red snapper by 12:01 a.m., local time, June 10, 2016. However, due to recent severe weather conditions in the eastern Gulf, fishing opportunities were restricted during the recreational fishing season for the private angling component. NMFS has projected the private angling component will not reach its ACT by the current closure date. Therefore, NMFS is extending the recreational red snapper fishing season for the private angling component for 2 days to allow the ACT to be harvested. The intent of this action is to provide the recreational private angling component the opportunity to harvest its red snapper ACT, and the opportunity to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: The extension is effective from 12:01 a.m., local time, June 10, 2016, until 12:01 a.m., local time, June 12, 2016. The beginning of the 2017 Federal recreational fishing season for the private angling component begins on June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *steve.branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes red snapper and is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 28, 2016, NMFS announced in the **Federal Register** the 2016 recreational fishing seasons for the private angling and Federal charter vessel/headboat (for-hire) components for red snapper in the Gulf EEZ (81 FR 25583, April 28, 2016). The Federal recreational seasons for red snapper in the Gulf began on June 1, 2016. Regulations at 50 CFR 622.41(q)(2)(i) require NMFS to close the respective recreational fishing seasons for Gulf red snapper in Federal waters when the respective recreational component ACT, specified in 50 CFR 622.41(q)(2)(iii), is met or projected to be met. For recreational harvest by the private angling component, NMFS determined that the season would end at 12:01 a.m., local time, on June 10, 2016, which constituted a 9-day fishing season.

Landings and effort data are not available in-season to determine if the recreational ACT for the private angling component will be met on June 9, 2016. However, the eastern Gulf experienced severe weather conditions from Tropical Storm Colin during the 2016 red snapper recreational fishing season and it is likely that fishing effort and landings for the private angling component are less than NMFS projected. The majority of red snapper recreational harvest in the Gulf comes from the eastern Gulf. Because of the assumed effort reduction as a result of severe weather, NMFS has determined that the recreational private angling component will not harvest its red snapper ACT by the previously estimated June 10, 2016, closing date. Based on the assumption that weather conditions will improve and recreational fishing effort will return to expected rates, NMFS projects the recreational red snapper season for the private angling component can be extended for an additional 2 days, and will therefore close at 12:01 a.m., local time, on June 12, 2016.

The Federal season for the Federal for-hire component began at 12:01 a.m., local time, June 1, 2016, and will close at 12:01 a.m., local time, July 17, 2016 (81 FR 25583, April 28, 2016). The Federal recreational fishing season for the for-hire component will not be revised by NMFS as a result of the recent severe weather, because the comparatively longer component fishing season allows for greater flexibility in scheduling fishing trips and greater opportunity to harvest the component ACT.

The 2017 Federal recreational fishing seasons for both private angling and for-hire components begin on June 1, 2017.

On and after the effective date of a recreational component closure, the bag and possession limits for red snapper in the respective component are zero. When the Federal charter vessel/headboat component or entire recreational sector is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf red snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.8(c) and 622.41(q)(2)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA), finds that the need to immediately implement this action to extend the season for the private angling component for the red snapper recreational sector constitute good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule implementing the recreational red snapper ACLs and ACTs, and the rule

implementing the requirement to close the recreational components when the ACTs are projected to be reached have already been subject to notice and comment, and all that remains is to notify the public of the extension. Providing prior notice and opportunity for public comment are contrary to the public interest because of the need to immediately implement this action to allow for a limited extended season. Prior notice and opportunity for public comment would require time and would not allow for the extension of the season.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13909 Filed 6–8–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151211999–6343–02]

RIN 0648–XE670

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trimester Total Allowable Catch Area Closure for the Common Pool Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; area closure.

SUMMARY: This action closes the witch flounder Trimester Total Allowable Catch Area to Northeast multispecies common pool vessels fishing with trawl gear for the remainder of Trimester 1, through August 31, 2016. The closure is required by regulation because the common pool fishery has caught 90 percent of its Trimester 1 quota for witch flounder. This closure is intended to prevent an overage of the common pool's quota for this stock.

DATES: This action is effective June 8, 2016, through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Liz Scheimer, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION: Federal regulations at § 648.82(n)(2)(ii) require the Regional Administrator to close a common pool Trimester Total Allowable Catch (TAC) Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The closure applies to all common pool vessels fishing with gear capable of catching that stock for the remainder of the trimester.

As of May 31, 2016, the common pool fishery caught approximately 62 percent of the Trimester 1 TAC (2.1 mt) for witch flounder. We project that 90 percent of the Trimester 1 TAC will be caught by June 8, 2016. The fishing year 2016 common pool sub-annual catch limit (sub-ACL) for witch flounder is 8 mt.

Effective June 8, 2016, the witch flounder Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2016, to all common pool vessels fishing with trawl gear. The witch flounder Trimester TAC Area consists of statistical areas 512, 513, 514, 515, 521, 522, and 525. The area reopens at the beginning of Trimester 2 on September 1, 2016.

If a vessel declared its trip through the Vessel Monitoring System (VMS) or the interactive voice response system, and crossed the VMS demarcation line prior to June 8, 2016, it may complete its trip within the Trimester TAC Area.

Any overage of the Trimester 1 or 2 TACs must be deducted from the Trimester 3 TAC. If the common pool fishery exceeds its sub-ACL for the 2016 fishing year, the overage must be deducted from the common pool's sub-ACL for fishing year 2017. Any uncaught portion of the Trimester 1 and Trimester 2 TACs is carried over into the next trimester. However, any uncaught portion of the common pool's sub-ACL may not be carried over into the following fishing year.

Weekly quota monitoring reports for the common pool fishery are on our Web site at: *http://www.greateratlantic.fisheries.noaa.gov/ro/fso/MultiMonReports.htm.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, VMS catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations require the Regional Administrator to close a trimester TAC area to the common pool fishery when 90 percent of the Trimester TAC for a stock has been caught. Updated catch information only recently became available indicating that the common pool fishery has caught 90 percent of its Trimester 1 TAC for witch flounder as of June 8, 2016. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, prevents the immediate closure of the witch flounder Trimester 1 TAC Area. This increases the likelihood that the common pool fishery exceeds its quota of witch flounder to the detriment of this stock, which could undermine management objectives of the Northeast Multispecies Fishery Management Plan. Additionally, an overage of the common pool quota could cause negative economic impacts to the common pool fishery as a result of overage paybacks in a future trimester or fishing year.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13929 Filed 6–8–16; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863–6211–02]

RIN 0648–XE669

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole for Vessels Participating in the BSAI Trawl Limited Access Fishery in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2016 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access fishery in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 8, 2016, through 2400 hrs, A.l.t., December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2016 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access fishery in the BSAI is 14,979 metric tons (mt) as established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2016 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access fishery in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,879 mt, and is setting aside the remaining 100 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for yellowfin sole for vessels participating in the BSAI trawl limited access fishery in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels fishing in the BSAI trawl limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 7, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13952 Filed 6–8–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 113
Monday, June 13, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6898; Directorate Identifier 2016–NM–010–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model MD–90–30 airplanes. This proposed AD was prompted by reports of stick shaker activation at airspeeds that were above the stall protection system's stick shaker schedule. This proposed AD would require installing angle-of-attack (AOA) sensor external case heaters and AOA sensors, changing wires, and doing a functional test and applicable corrective actions. We are proposing this AD to correct water intrusion and subsequent ice formation between the AOA sensor vane and face plate, which could cause the vane to become immobilized. If the vane becomes immobilized, the stall protection system could become unreliable or non-functional, which could result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by July 28, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet by searching for and locating Docket No. FAA–2016–6898.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6898; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Igama, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5388; fax: 562–627–5210; email: *roderick.igama@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6898; Directorate Identifier 2016–NM–010–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of stick shaker activation at airspeeds that were above the stall protection system's stick shaker schedule. Stall protection system anomalies have been reported on Model 717–200 airplanes related to the AOA sensor becoming immobilized and reporting incorrect AOA alpha values. Boeing investigated and found potential water intrusion and subsequent ice formation between the AOA sensor vane and face plate could cause the vane to become immobilized until the airplane is operated at temperatures above freezing. Model MD–90 airplanes use the same AOA sensors as the Model 717 airplanes and the same potential for AOA vane immobilization exists. This condition, if not corrected, could cause the vane to become immobilized. If the vane becomes immobilized, the stall protection system could become unreliable or non-functional, which could result in loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin MD90–30A029, dated November 25, 2015. The service information describes procedures for installing AOA sensor external case heaters and AOA sensors, changing wires, and doing a functional test and applicable corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6898.

The phrase "corrective actions" is used in this proposed AD. "Corrective actions" are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 95 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of AOA sensor external case heaters and AOA sensors, changing wires, and doing a functional test.	Up to 44 work-hours (depending on the group number) × $85 per hour = $3,740.	Up to $1,220 (depending on the group number).	Up to $4,960 (depending on the group number).	Up to $471,200 (depending on the group number).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–6898; Directorate Identifier 2016–NM–010–AD.

(a) Comments Due Date

We must receive comments by July 28, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of stick shaker activation at airspeeds that were above the stall protection system's stick shaker schedule. We are issuing this AD to correct water intrusion and subsequent ice formation between the angle-of-attack (AOA) sensor vane and face plate, which could cause the vane to become immobilized. If the vane becomes immobilized, the stall protection system could become unreliable or non-functional, which could result in loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Installation of AOA Sensor External Case Heater

Within 6 years after the effective date of this AD, install AOA sensor external case heaters and AOA sensors, change wires, and do a functional test and applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–30A029, dated November 25, 2015. All applicable corrective actions must be done before further flight.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of

paragraphs (h)(4)(i) and (h)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(i) Related Information

(1) For more information about this AD, contact Eric Igama, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5388; fax: 562–627–5210; email: *roderick.igama@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13734 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7048; Directorate Identifier 2016–CE–014–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes installed with an affected engine mounting frame assembly. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as longitudinal material separation on the internal surface of the engine mounting frame assembly tubes. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 28, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Pilatus Aircraft Ltd., Customer Support PC–12, CH–6371 Stans, Switzerland; phone: +41 41 619 33 33; fax: +41 41 619 73 11; email: *SupportPC12@pilatus-aircraft.com;* Internet: *www.pilatus-aircraft.com*. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7048; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7048; Directorate Identifier 2016–CE–014–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2016–0081, dated April 25, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

> The PC–12 Engine Mounting Frame Assembly (hereafter referred to as "EMF" in this AD), Part Number (P/N) 571.20.12.036, is a welded structure including three special tubes, P/N 571.20.12.073, P/N 571.20.12.074 and P/N 571.20.12.107, the ends of which are subject to a special swaging process during manufacturing. Longitudinal material separation on the internal surface of the special tubes was detected on few EMFs on new production aeroplanes. Investigations identified the root cause to be an incorrect accomplishment of the swaging process.
>
> This condition, if not detected and corrected, could lead to growth of the material separation and subsequent partial or complete failure of the structural joint, possibly resulting in in-flight detachment of the engine and consequent reduced control, or loss of control, of the aeroplane.
>
> To address this potential unsafe condition, Pilatus issued Service Bulletin (SB) No. 71–009, now at Revision 2 (hereafter referred to as "the SB" in this AD), to provide inspection instructions for the affected EMF to detect indications of material separation.
>
> For the reason described above, this AD requires identification and inspection of the affected EMF and, depending on the findings, their replacement with serviceable EMF.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7048.

Related Service Information Under 1 CFR Part 51

PILATUS AIRCRAFT LTD. has issued PILATUS PC–12 Service Bulletin No: 71–009, Reference No: 345, Modification No: EC–15–0632, Revision 2, dated March 18, 2016; Pilatus Powerplant Mounting Frame, Removal/Installation, Date module/Technical publication 12–A–71–00–05–00A–920A–A, dated February 26, 2010, found in Pilatus Model type—PC–12, PC–12/45, PC–12/47 MSN–101–888 Aircraft Maintenance Manual (AMM), Document No. 02049, 12–A–AM–00–00–00–I; and Pilatus Powerplant Mounting Frame, Removal/Installation, Date module/Technical publication 12–B–71–00–05–00A–920A–A, dated October 4, 2010, found in Pilatus Model type—PC–12/47E MSN–1001–UP Aircraft Maintenance Manual (AMM), Document No. 02300, 12–B–AM–00–00–00–I. The service information describes procedures for determining if an affected engine mounting frame assembly (EMF) is installed, inspecting the EMF, and replacing the EMF with a serviceable EMF. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 888 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $226,440, or $255 per product.

In addition, we estimate that any necessary follow-on actions would cost the following amounts. We have no way of determining the number of products that may need these actions.

The visual and eddy current inspections would take about 3 work-hours for a cost of $255 per product.

The replacement of the EMF would take about 90 work-hours and require parts costing $33,336, for a cost of $40,986 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

PILATUS AIRCRAFT LTD: Docket No. FAA–2016–7048; Directorate Identifier 2016–CE–014–AD.

(a) Comments Due Date

We must receive comments by July 28, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS AIRCRAFT LTD. Models PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes, all serial numbers, that are:

(1) Installed with an affected serial number engine mounting frame assembly (EMF), part number (P/N) 571.20.12.036, listed in figure 1 of paragraph (c)(1) of this AD; and

FIGURE 1 TO PARAGRAPH (c)(1) OF THIS AD—EMF P/N 571.20.12.036, AFFECTED SERIAL NUMBERS

0001 through 1200 inclusive.
1202 through 1272 inclusive.
1275 through 1323 inclusive.
1325 through 1328 inclusive.
1334 through 1338 inclusive.
1340 and 1342.
1344 through 1346 inclusive.
1348 and 1349.
1358, 1361, and 1365.

(2) Certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Power Plant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI

describes the unsafe condition as longitudinal material separation on the internal surface of the engine mounting frame assembly tubes (EMF). We are issuing this AD to detect and correct material separation on the internal surface of the engine mounting frame assembly tubes, which could lead to partial or complete failure of the structural joint and possibly result in in-flight detachment of the engine with consequent loss of control.

(f) Actions and Compliance

Do the actions in paragraphs (f)(1) through (7) of this AD. If paragraphs (f)(1) through (6) of this AD have already been done before the effective date of this AD, then only paragraph (f)(7) of this AD applies.

(1) Within the compliance time identified in figure 2 of paragraph (f)(1) of this AD, do an ultrasonic inspection of the swaged engine mounting tube ends of the affected EMF following the instructions of paragraph 3.B.(1) of PILATUS AIRCRAFT LTD PILATUS PC–12 Service Bulletin No: 71–009, Reference No: 345, Modification No: EC–15–0632, Revision 2, dated March 18, 2016.

FIGURE 2 TO PARAGRAPH (f)(1) OF THIS AD—INITIAL COMPLIANCE TIME

A or B, whichever occurs later:
A Before the EMF exceeds 11,000 hours time-in-service (TIS) or 13,500 flight cycles (FC), whichever occurs first since first installation of the EMF on an airplane.
B Within 1,000 hours TIS or 1,000 FC or 6 months, whichever occurs first after the effective date of this AD.

(2) If an indication with an echo of less than 40 percent full screen height is detected on an EMF during the ultrasonic inspection required in paragraph (f)(1) of this AD, except for paragraph (f)(7), no further actions are required for this AD. Document compliance with this AD in the maintenance records.

(3) If an indication with an echo of 40 percent full screen height or more is detected on an EMF during the ultrasonic inspection required in paragraph (f)(1) of this AD, do the actions in paragraphs (f)(3)(i) through (iii) of this AD, as applicable.

(i) Before further flight and repetitively thereafter at intervals not to exceed 600 hours TIS or 12 months, whichever occurs first, do a visual inspection of the welding and do an eddy current inspection of the tubes at the indication point detected during the ultrasonic inspection. Use the instructions of paragraphs 3.B.(2) and 3.B.(3) of PILATUS AIRCRAFT LTD PILATUS PC–12 Service Bulletin No: 71–009, Reference No: 345, Modification No: EC–15–0632, Revision 2, dated March 18, 2016.

(ii) If any cracks are found during any of the visual inspections or if an indication with a signal of 20 percent or more is detected during any of the eddy current inspections required in paragraph (f)(3)(i) of this AD, before further flight, replace the EMF with a serviceable EMF following the instructions in the service information listed in paragraph (f)(5) of this AD, including all subparagraphs as applicable.

(iii) Unless already done as required by paragraph (f)(3)(ii) of this AD, within 1,800 hours TIS or 36 months after the initial visual and eddy current inspections of the affected EMF required by paragraph (f)(3)(i) of this AD, whichever occurs first, replace the EMF with a serviceable EMF following the instructions in the service information listed in paragraph (f)(5) of this AD, including all subparagraphs as applicable.

(4) For the purpose of this AD, a serviceable EMF is defined as any EMF that is not listed in figure 1 of paragraph (c)(1) of this AD or an affected EMF that is listed in figure 1 of paragraph (c)(1) of this AD but has had the ultrasonic inspection required in paragraph (f)(1) of this AD and had an indication with an echo of less than 40 percent full screen height.

(5) For replacement of the EMF, follow the instructions listed in paragraphs (f)(5)(i) and (ii), as applicable.

(i) *For Models PC–12, PC–12/45, and PC–12/47, manufacturer serial numbers (MSN) 101–888:* Pilatus Powerplant Mounting Frame, Removal/Installation, Date module/Technical publication 12–A–71–00–05–00A–920A–A, dated February 26, 2010, found in Pilatus Model type—PC–12, PC–12/45, PC–12/47 MSN–101–888 Aircraft Maintenance Manual (AMM), Document No. 02049, 12–A–AM–00–00–00–I.

(ii) *For Model PC–12/47E, MSN 1001 and up:* Pilatus Powerplant Mounting Frame, Removal/Installation, Date module/Technical publication 12–B–71–00–05–00A–920A–A, dated October 4, 2010, found in Pilatus Model type—PC–12/47E MSN–1001–UP Aircraft Maintenance Manual (AMM), Document No. 02300, 12–B–AM–00–00–00–I.

(6) If an EMF has an indication with an echo of 40 percent or more during the ultrasonic inspection required in paragraph (f)(1) of this AD, you may replace the EMF with a serviceable EMF in lieu of the visual or eddy current inspections required in paragraph (f)(3)(i) of this AD. For replacement of the EMF, follow the instructions in the service information listed in paragraph (f)(5) of this AD, including all subparagraphs as applicable.

(7) As of the effective date of this AD, do not install an EMF P/N 571.20.12.036 unless it has been determined to be a serviceable EMF as specified in paragraph (f)(4) of this AD.

(8) Airplanes with an MSN of 1556 or higher are not affected by this AD provided that the EMF has not been replaced since its manufacture. A review of the maintenance records, Airworthiness Approval Tag (FAA Form 8130–3), or other positive form of parts identification such as a shipping ticket, invoice, or direct ship authority letter, can be used to determine the serial number of the EMF.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

(1) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2016–0081, dated April 25, 2016, for related information pertaining to this AD.

(2) You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7048. For service information related to this AD, contact Pilatus Aircraft Ltd., Customer Support PC–12, CH–6371 Stans, Switzerland; phone: +41 41 619 33 33; fax: +41 41 619 73 11; email: *SupportPC12@pilatus-aircraft.com;* Internet: *www.pilatus-aircraft.com*.

(3) You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 3, 2016.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13854 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2008–0012]

RIN 1218–AC40

Tree Care Operations

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of stakeholder meeting.

SUMMARY: OSHA invites interested parties to participate in an informal stakeholder meeting concerning tree care operations on July 13, 2016, in Washington, DC. This meeting is a continuation of OSHA's information collection on tree care operations. OSHA plans to use the information gathered at this meeting, together with other information in the record, to explore the possible development of a proposed standard to protect workers from hazards, fatalities, and injuries in tree care operations.

DATES: *Stakeholder meeting:* The stakeholder meeting will be from 9 a.m. to 5 p.m., Tuesday, July 13, 2016.

Deadline for registering to participate in or observe the stakeholder meeting: You must submit (postmark, send, transmit) your registration by Friday, July 1, 2016. If space remains after the deadline, OSHA may allow additional participants and observers. Individuals who submit their registration after July 1, 2016, may not receive confirmation from OSHA and should contact Ms. Amy Wangdahl (see **FOR FURTHER INFORMATION CONTACT**) to confirm space is available.

ADDRESSES: *Stakeholder meeting:* The stakeholder meeting will be held in Room C–5515–1A/1B, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Registration to participate in or observe the stakeholders meeting: Submit your registration to participate in or observe the stakeholder meeting using one of the methods below:

Electronic: Register at: *https://projects.erg.com/conferences/osha/register-osha-tree-meeting.htm*. (Follow the instructions online.)

Facsimile: Fax your request to (202) 693–1663, labeled "Attention: Tree Care Operations Stakeholder Meeting Registration."

Regular mail, express delivery, hand (courier) delivery, and messenger service: Submit your registration to OSHA Tree Care Operations Stakeholder Meeting Registration, Attention: Ms. Amy Wangdahl, OSHA, Room N–3621, 200 Constitution Avenue NW., Washington, DC 20210. Due to security related procedures, receipt of registration by regular mail may experience significant delays.

For additional information about registering for the stakeholder meeting see the **SUPPLEMENTARY INFORMATION** section of this notice.

Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at: *http://www.osha.gov*.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov*.

General and technical information: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA Directorate of Standards and Guidance, Room N–3621, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2066, email: *wangdahl.amy@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Tree care operations, such as tree trimming and removal, expose workers to a number of dangerous hazards. These dangers include falling from trees or aerial equipment; being hit by falling trees/branches, flying objects and vehicular traffic; being cut by high-speed chain saws and chippers; and coming into contact with energized power lines. The hazards present in tree care operations have resulted in many fatalities and serious injuries, such as falls, being struck by falling objects, and electrocutions. On December 8, 2008, OSHA issued an Advanced Notice of Proposed Rulemaking (ANPR) seeking information on tree care operations (73 FR 54118 (9/18/2008), Docket No. OSHA–2008–0012). The Agency requested data, information, and comment on the hazards present in tree care operations as well as the measures to control those hazards and reduce the high rate of incidents, injuries, and fatalities. OSHA received 69 comments in response to the ANPR.

Based upon those responses, other information in the record and a review of data and scientific literature, OSHA is considering what action, if any, the Agency should take to control hazards related to tree care operations. One option the Agency is considering is developing a standard to eliminate or reduce workers' exposure to hazards when they perform tree care tasks such as trimming and removing branches and trees; using tree care equipment (*e.g.*, chain saws, chippers, ladders) and vehicles (*e.g.*, bucket trucks, aerial lifts); removing tree stumps; and disposing of branches, brush and trees.

The Agency believes that an informal discussion with a diverse range of stakeholders (*e.g.*, employers, tree care companies, workers, labor organization, tree care and arboriculture organizations, occupational safety and health professionals, equipment manufacturers, government, the public) would be beneficial in determining how to proceed in eliminating and reducing hazards in tree care operations.

II. Stakeholder Meeting

The stakeholder meeting will be interactive group discussions on participants' views, concerns, and issues on tree care hazards and how best to control them. To encourage as much group interaction as possible, formal presentations by stakeholders will not be permitted.

The stakeholder meeting discussions will center on a variety of tree care topics, including fall, struck-by (*e.g.*, falling branches/trees, vehicular traffic) and electrical hazards; climbing and working in trees; tree trimming and removal; rigging; personal protection equipment [PPE]; safe use of tools, equipment, machines and vehicles; effective engineering and work practice controls; and medical service and first aid. The stakeholder meeting also will include in-depth discussions on specific issues, such as the following:

- *Fatalities and injuries:* As mentioned, fatalities in tree care operations primarily result from falls, being struck by falling objects or vehicles, and electrocutions. What are the primary causes, circumstances and factors that have led to those and other types of fatalities and injuries in your company and in the tree care industry? What actions does your company take when an accident, fatality or injury occurs (*e.g.*, accident review, job hazard analysis, safety meetings, training)?
- *New technology in the tree care industry:* What new technology, equipment, machines, vehicles and work practices are currently being used in the tree care industry? What new technology has your company found to be effective in controlling hazards and preventing tree care workers from being killed or injured?
- *National consensus and State Plan State standards:* ANSI standards applicable to tree care operations include ANSI Z133 Safety Requirements for Arboricultural Operations and the ANSI A300 Standards for tree care operations. In addition, five states have issued standards on tree care operations: California, Maryland, Michigan, Oregon, and Virginia. What provisions and requirements in these state standards has your company found to be particularly effective in controlling and preventing hazards in tree care operations, and which provisions/requirements should OSHA consider?
- *Vehicles and mobile equipment:* To what extent and frequency does your company and the tree care industry now

use vehicles and mobile equipment (*e.g.*, bucket trucks, aerial lifts, cranes) to perform tree care operations? What are the best practices for, as well as concerns with, using vehicles and mobile equipment in tree care operations? What controls (*e.g.*, engineering controls, PPE) and safety practices has your company implemented to protect workers operating and working on and near vehicles and mobile equipment?

• *Information and training.* What occupational safety and health information and training does your company or the tree care industry provide to workers? What topics does the training cover? What does your company do to ensure workers understand the information and training? For example, how do you communicate information so temporary workers, non-English speaking workers, and workers with limited literacy understand it?

III. Public Participation

The stakeholder meeting will accommodate approximately 30 participants. In addition, as space permits, interested persons may observe, rather than participate in, the meeting. To participate in or observe the stakeholder meeting you must register electronically, by facsimile, or by hard copy. To receive confirmation to participate in or observe the meeting, register as soon as possible and by July 1, 2016. If space is still available after that date, registration for participating in or observing the meeting will remain open. However, late registrants may not receive confirmation and should contact Ms. Wangdahl to confirm that space is available. As space permits, OSHA will accommodate observers who do not register for the meeting.

To register electronically, follow the instructions provided on the Web site. To register by hard copy or facsimile, please provide the following information:

• Name;
• Professional Title;
• Organization for which you work or represent;
• Address;
• Phone;
• Email address;
• The interest you represent (*e.g.*, tree care employer/company; worker; labor organization; trade or professional association/organization; insurance company; manufacturer; government; public).
• The type of participation: Participant at the main table ("I will actively discuss topics that come up"); observer making comments ("I may have limited comments on one or more key areas"); observer only ("I will not be speaking"); Press.
• If necessary, OSHA may select participants in order to ensure the meeting includes a fair representation of interests and diverse viewpoints. OSHA staff will participate in discussions with the stakeholder participants and Eastern Research Group (ERG), Inc., will facilitate the meeting. In addition, ERG will compile notes summarizing the stakeholder discussions, but the notes will not identify participants by name. ERG also will make an audio recording solely for the purpose of ensuring the accuracy of the summary notes. The recording will not be transcribed or put in the public docket. The summary notes will be posted in the Tree Care Operations docket (Docket No. OSHA–2008–0012) and will be available at *http://www.regulations.gov,* the Federal eRulemaking Portal.

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available on the OSHA Web page at: *http://www.osha.gov.*

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, and under authority granted by 29 U.S.C. 651, 653, and 655; Secretary of Labor's Order No. 1–2012 (77 FR 3912); and 29 CFR part 1911.

Signed at Washington, DC, on June 6, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–13844 Filed 6–10–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0032]

RIN 1625–AA11

Regulated Navigation Areas; Escorted Submarines Sector Jacksonville Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulated navigation areas (RNA) covering the St. Marys Entrance Channel, portions of the Cumberland Sound, and the Atlantic Ocean, that will be in effect whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard and operating within the jurisdictional waters of the Sector Jacksonville Captain of the Port Zone. These RNAs are necessary to help ensure the safety and security of submarines, their Coast Guard escorts, and the public. The RNAs will do so by requiring all persons and vessels located within a RNA to follow orders and/or directions given to them by Coast Guard escort personnel. Additionally, these proposed RNAs will supersede the current temporary safety/security zone for Cumberland Sound, Georgia and St. Mary's River Entrance Channel. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 13, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0032 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Coast Guard Sector Jacksonville, Chief of Waterways Management, telephone (904) 564–7563, email *Allan.H.Storm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Navy submarines frequently operate within the Cumberland Sound and the St. Marys Entrance Channel. When transiting these areas, the submarines and the vessels towing them are restricted in ability to maneuver and are unable to keep out of the way of other vessels. Due to the safety concern of the submarines being severely restricted in their ability to deviate from course and other various security concerns involved with submarine operations near shore in restricted waters, the Coast Guard provides submarine escorts when they are operating in those areas and offshore in the Atlantic Ocean.

Currently, there are two regulatory options the Coast Guard uses to safeguard the movement of submarines, their Coast Guard escorts, and the public in and around the Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean. The primary, and most often used, option comes from the authorities contained in the Naval Vessel Protection Zone (NVPZ) regulations found in 33 CFR 165.2025. The NVPZ provides a 500-yard regulated area of water surrounding large U.S. naval vessels. However, this 500-yard regulated area can be insufficient at times due to the narrow confines of the Cumberland Sound and the St. Marys Entrance Channel, because it forces the submarines and their Coast Guard escorts to come into close quarters contact with other vessels. The Captain of the Port (COTP) Jacksonville, Florida can also activate the safety/security zone, published in 33 CFR 165.731, to protect the safety and security of naval assets and the public; however this regulation may provide greater restrictions on vessel traffic than would be necessary through these proposed RNAs. Additionally, the method of activating the safety/security zone is generally a broadcast notice to mariners, which alerts the public to the location of submarines and exposes the submarines to potential threats. Under these proposed RNAs, military vessel locations and movements would not be broadcast, therefore mitigating threats to the safety and security of the naval vessels and their Coast Guard escort assets. These RNAs supersede the temporary safety/security zone mentioned above.

The RNAs established by this rule will allow Coast Guard escort personnel adequate time to effectively order and/or direct persons and vessels operating within a RNA to stop, move, change orientation, *etc.*, as needed to ensure safety and/or security. The ability to order and/or direct persons and vessels will help avoid unnecessary and potentially dangerous close quarters contact between Coast Guard escorts and the maritime public within Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean. In addition, it will give Coast Guard escorts an additional tool for determining the intention of vessels that are operating in close vicinity to an escorted submarine. The RNAs will mitigate the risks associated with these issues, and ensure the safety and security of the submarines, their Coast Guard escorts, and the maritime public.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

As stated in Section II above, submarines that transit within the Cumberland Sound and the St. Marys Entrance Channel are severely restricted in their ability to deviate from their course and encounter a variety of security concerns involved with submarine operations near shore in very restricted waters. To better protect the movement of submarines, Coast Guard escorts and the public in and around the Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean, the Coast Guard proposes to establish RNAs when Navy submarines (foreign or domestic) are escorted by Coast Guard vessels within the Sector Jacksonville Captain of the Port Zone territorial seas. The proposed regulation applies in two locations.

One area would encompass all waters within one (1) nautical mile of the charted center of the navigation channel from Crab Island in the Cumberland Sound, Georgia, to the St. Marys Entrance Channel and its approach extending eastward to lighted buoy "STM". This portion of the proposed regulation would allow Coast Guard vessels to direct waterway traffic in any portion of this confined channel when a submarine is being escorted.

Additionally, a regulated area will encompass waters within one (1) nautical mile of any Navy submarine while it is transiting territorial seas within the Sector Jacksonville Captain of the Port Zone. All persons and vessels located within the RNA are required to follow orders and/or directions given to them by Coast Guard escort personnel.

Lastly, these proposed RNAs supersede the temporary safety/security zone found in 33 CFR 165.731(b); thus requiring revision to 33 CFR 165.731. These amendments include a title change to the regulation, the removal of the temporary safety/security zone, and the addition of the term "designated representatives" for enforcement authorities.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard made this determination based on the fact that (1) the RNAs are only enforced for the short periods of time when submarines are operating in the St. Marys Entrance Channel, portions of the Cumberland Sound, and Atlantic Ocean and escorted by the Coast Guard or anytime a submarine is operating and escorted by the Coast Guard within the Sector Jacksonville Captain of the Port Zone territorial seas and (2) vessels may freely operate within the RNAs to the extent permitted by other law or regulation unless given an order and/or direction by Coast Guard escort personnel.

The Coast Guard has determined that this proposal, superseding the temporary safety/security zone implemented under 33 CFR 165.731(b), does not constitute a "significant regulatory action" under E.O. 12866 based on the size and location of the security zone. The permanent security zone currently implemented under 33 CFR 165.731(a) remains in effect and covers approximately 5 square nautical miles of a sparsely populated section of Cumberland Sound and tributaries where few recreational or commercial vessels transit. Vessels transiting this area of Cumberland Sound can transit around the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons

stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of RNAs, thereby removing the temporary safety/security zone covering the St. Marys Entrance Channel, portions of the Cumberland Sound, and Atlantic Ocean, that will be enforced whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard and operating within the jurisdictional waters of the Sector Jacksonville Captain of the Port Zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.731 to read as follows:

§ 165.731 Security Zone: Cumberland Sound, Georgia.

(a) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville, Florida in the enforcement of the regulated areas.

(b) *Location.* A permanent security zone is established within the following coordinates, the area enclosed by a line starting at 30°44′55″ N., 081°29′39″ W.; thence to 30°44′55″ N., 081°29′18″ W.; thence to 30°46′35″ N., 081°29′18″ W.; thence to 30°47′02″ N., 081°29′34″ W.; thence to 30°47′21″ N., 081°29′39″ W.; thence to 30°48′00″ N., 081°29′42″ W.; thence to 30°49′07″ N., 081°29′56″ W.; thence to 30°49′55″ N., 081°30′35″ W.; thence to 30°50′15″ N., 081°31′08″ W.; thence to 30°50′14″ N., 081°31′30″ W.; thence to 30°49′58″ N., 081°31′45″ W.; thence to 30°49′58″ N., 081°32′03″ W.; thence to 30°50′12″ N., 081°32′17″ W.; thence following the land based perimeter boundary to the point of origin.

(c) *Regulations.* (1) No person or vessel may enter or remain within the security zone without the permission of the COTP Jacksonville or designated representative.

(2) All persons and vessels in authorized permission to enter the security zone shall immediately obey any direction or order of the COTP Jacksonville or designated representative.

(3) This regulation does not apply to persons or vessels operating under the authority of the United States Navy or to authorized law enforcement agencies.

■ 3. Add § 165.732 to read as follows:

§ 165.732 Escorted Submarines Sector Jacksonville Captain of the Port Zone.

(a) *Location.* The following areas are regulated navigation areas (RNA) whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard within the Sector Jacksonville Captain of the Port Zone territorial seas:

(1) All waters within 1 nautical mile of any Navy submarine operating within the Sector Jacksonville Captain of the Port Zone territorial seas; and

(2) All waters within 1 nautical mile of the charted center of the navigation channel from Crab Island in the Cumberland Sound, Georgia to the St. Marys Entrance Channel and its approach extending eastward to lighted buoy "STM".

(b) *Regulations.* All persons and vessels located within a RNA created by paragraph (a) shall follow all orders and/or directions given to them by Coast Guard escort personnel. 33 CFR 165, Subpart B, contains additional provisions applicable to the RNA created in paragraph (a).

(c) *Notification.* The Coast Guard escort will attempt, when necessary and practicable, to notify any persons or vessels inside or approaching the vicinity of a RNA created in paragraph (a) of this section of its existence via VHF Channel 16 and/or any other means reasonably available.

Dated: June 2, 2016.

S.A. Buschman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2016–13861 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2010–0544; FRL–9947–29–OAR]

RIN 2060–AS94

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (Secondary Aluminum NESHAP). In the "Rules and Regulations" section of this **Federal Register**, we are publishing a direct final rule, without a prior proposed rule, that amends the final rule that was published in the **Federal Register** on September 18, 2015, to correct inadvertent errors, to clarify rule requirements for initial performance tests and submittal of malfunction reports, to provide an additional option for new round top furnaces to account for unmeasured emissions during compliance testing and to clarify what constitutes a change in furnace operating mode. The direct final rule also updates Web site addresses for the EPA's Electronic Reporting Tool (ERT) and the Compliance and Emissions Data Reporting Interface (CEDRI). If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by July 28, 2016.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by June 20, 2016, we will hold a public hearing on June 28, 2016 on the EPA campus at 109 T.W. Alexander Drive, Research Triangle Park, North Carolina.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0544, at *http://www.regulations.gov*.

Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Ms. Rochelle Boyd, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1390; fax number: (919) 541–3207; and email address: *boyd.rochelle@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why is the EPA publishing this proposed rule?

The EPA is proposing to amend the Secondary Aluminum NESHAP. In addition, the EPA has published a direct final rule amending the Secondary Aluminum NESHAP in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. The direct final rule will correct inadvertent errors, clarify rule requirements for initial performance tests and submittal of malfunction reports, extend to new round top furnaces a compliance testing option to account for unmeasured emissions during compliance testing that is already available to uncontrolled group 1 furnaces and clarify what constitutes a change in furnace operating mode. The direct final rule also updates Web site addresses for the EPA's ERT and CEDRI. We have

explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on all or a distinct portion of this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that some or all of the direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

If we receive adverse comment on a distinct provision of the direct final rule, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out in the direct final rule, notwithstanding adverse comment on any other provision. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The regulatory text for this proposal is identical to that for the direct final rule published in the "Rules and Regulations" section of this **Federal Register**. For further supplementary information, the detailed rationale for this proposal, and the regulatory revisions, see the direct final rule published in the "Rules and Regulations" section of this **Federal Register**.

II. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS code [1]
Primary Aluminum Production Facilities.	331312
Secondary Aluminum Production Facilities.	331314
Aluminum Sheet, Plate, and Foil Manufacturing Facilities.	331315
Aluminum Extruded Product Manufacturing Facilities.	331316
Other Aluminum Rolling and Drawing Facilities.	331319
Aluminum Die Casting Facilities ...	331521
Aluminum Foundry Facilities	331524

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rule. To determine whether your facility is affected, you should examine the applicability criteria in 40 CFR 63.1500. If you have any questions regarding the applicability of any aspect of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

III. Statutory and Executive Orders

For a complete discussion of the rationale, regulatory text, and all of the administrative requirements applicable to this action, see the direct final rule in the "Rules and Regulations" section of this **Federal Register**.

Dated: May 27, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–13504 Filed 6–10–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 150908833–6479–01]

RIN 0648–BF37

Mariana Archipelago Fisheries; Remove the CNMI Medium and Large Vessel Bottomfish Prohibited Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would remove the medium and large vessel bottomfish prohibited fishing areas in the Commonwealth of the Northern Mariana Islands (CNMI). Conditions in the fishery that led to establishing the prohibited areas are no longer present, and the restriction is no longer necessary. The Western Pacific Fishery Management Council recommended Amendment 4 to the Fishery Ecosystem Plan for the Mariana Archipelago (FEP) to remove these prohibited areas, and this proposed rule would implement the recommended change. The intent of the proposed rule is to improve the viability of the CNMI bottomfish fishery and promote optimum yield while preventing overfishing. This proposed rule would also make an administrative housekeeping change to the regulations for the CNMI management subarea crustacean fishing.

DATES: NMFS must receive comments by July 28, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0115, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0115,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) and NMFS prepared an environmental analysis that describes the potential impacts on the human environment that could result from the proposed rule. The environmental analysis and other supporting documents are available at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, NMFS PIRO Sustainable Fisheries, 808–725–5173.

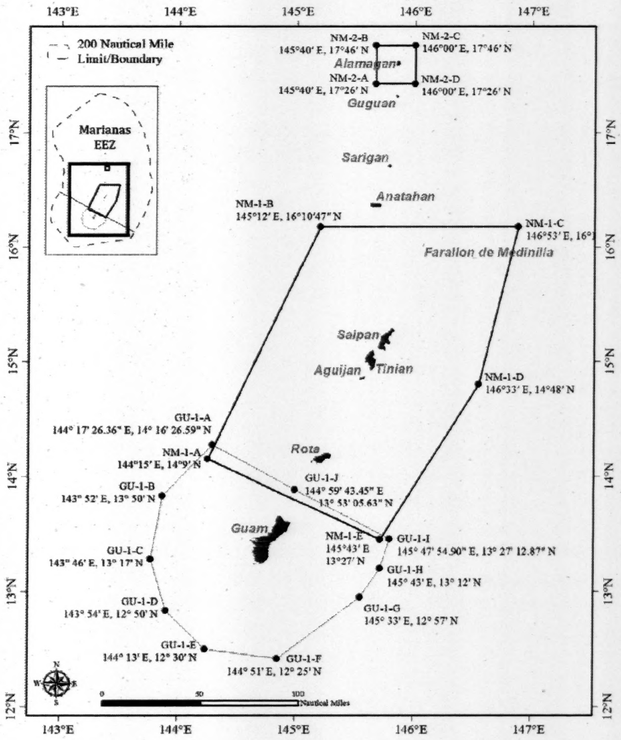
SUPPLEMENTARY INFORMATION: In 2008, the Council recommended establishing, and NMFS implemented, prohibited areas for commercial fishing for Mariana bottomfish management unit species (BMUS) in the CNMI. Federal regulations currently prohibit medium and large vessels (40 ft and greater) from commercial fishing for BMUS in certain Federal waters around the CNMI. The prohibited areas include waters within approximately 50 nm of the Southern Islands (*i.e.,* Rota, Aguigan (alt. Aguijan), Tinian, Saipan, and Farallon de Medinilla) and within 10 nm of Alamagan Island. The Council established the prohibited areas to prevent large bottomfish vessels based in Guam from traveling to CNMI fishing grounds. At the time, the Council was concerned that the Guam vessels could negatively affect fish stocks and local fisheries through stock depletion, catch competition, and gear conflicts. You may read more about the establishment of the prohibited areas in the 2008 proposed rule (73 FR 51992, September

8, 2008) and final rule (73 FR 75615, December 12, 2008).

The CNMI bottomfish fishery has changed since 2008, and the conditions that led the Council and NMFS to establish the prohibited areas are no longer present. Large vessels from Guam have not shown interest in fishing for CNMI bottomfish. The prohibited areas may also be negatively impacting the CNMI bottomfish fishery. Only a few small vessels have been operating on a regular basis, and the few medium and large vessels have faced declining participation, possibly resulting from higher fuel costs that prevent them from traveling beyond the prohibited areas. The prohibited areas may be contributing to the potential under-utilization of the bottomfish resource in CNMI and removing them may promote optimum yield.

To address fishery conditions resulting from the CNMI prohibited areas, the Council recommended that NMFS remove them. The Council and NMFS would continue to manage the fishery under a suite of management requirements that include the specification of annual catch limits and accountability measures, post-season review of catches and effort including against ACLs, requirements for vessel markings, Federal catch and sales reporting, and the vessel monitoring system. The fishing requirements for the Marianas Trench Marine National Monument would also remain unchanged. Figure 1 shows the current prohibited areas.

Figure 1. Current CNMI medium and large vessel prohibited areas and Guam large vessel prohibited area. This proposed rule would remove the areas that start with "NM."



This proposed rule is intended to improve the efficiency and economic viability of the CNMI bottomfish fishery. The Council and NMFS would annually review the effects of the proposed action. Any proposed changes would be subject to additional environmental review and opportunity for public review and comment.

This proposed rule would also include two administrative housekeeping changes: Corrections to the description of the CNMI management subarea and to the CNMI permit area designation for crustacean fishing. First, prior to 2013, the CNMI management subarea was divided into an inshore area (the EEZ within 3 nm of the shoreline) and an offshore area (the EEZ seaward of 3 nm from the shoreline). In 2013, under Public Law 113–34 (which amended Public Law 94–435) the United States transferred nearshore waters (0–3 nm) to the CNMI, so this distinction is no longer necessary. Second, the regulations at § 665.442(a)(1) currently incorrectly refer to Permit Area 3, which is associated with American Samoa. The correct reference for the CNMI is Crustacean Permit Area 5.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Regulatory Flexibility Act: Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

The Western Pacific Fishery Management Council recommended a prohibited area in the U.S. Exclusive Economic Zone around the Commonwealth of the Mariana Islands (CNMI), among other requirements, for medium and large (*i.e.*, vessels 40 ft and greater) vessels commercially fishing for bottomfish to separate the fishing activity of these vessels from that of smaller vessels. NMFS implemented the Council's recommendation in 2008 (73 FR 75615; December 12, 2008).

The Council established the prohibited area as a precaution in response to concerns expressed by CNMI fishermen that Guam bottomfish fishermen would travel to fish in CNMI waters after establishment of the large vessel prohibited fishing area in Guam. CNMI fishermen were concerned that such additional fishing by the vessels from Guam would create localized depletion of bottomfish, gear conflicts, and catch competition. Few medium and large vessels, however, are capable of bottomfish fishing, and it appears that few medium and large vessels would enter the CNMI bottomfish fishery. Recent CNMI bottomfish harvests are far below recent Annual Catch Limits set for the fishery. Therefore, the current prohibited area may not be needed to ensure the sustainability of the CNMI bottomfish fishery and, in fact, may be constraining it.

This proposed rule would provide economic relief to the CNMI medium and large bottomfish vessel fleet, through removing the prohibition from commercial fishing for BMUS within the prohibited areas. The proposed action would allow the medium and large longline vessels to fish within additional areas within Federal waters. The proposed action would improve the efficiency and economic viability of the CNMI bottomfish longline fleet.

The proposed action would directly apply to operators of medium and large bottomfish vessels that would potentially fish within CNMI currently prohibited areas, in particular, CNMI and Guam bottomfish permit holders. This permit is required of all vessels commercially fishing for, landing, or transshipping BMUS in the EEZ around the CNMI.

Based on information presented below, NMFS has determined that all affected entities are small entities under the SBA definition of a small entity, *i.e.*, they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have gross annual receipts below $20.5 million (NAICS code: 114111). Since 2012, NMFS has issued fewer than five CNMI and Guam bottomfish permits to medium or large vessels annually. Between 2012 and 2014 NMFS issued an average of eight CNMI Bottomfish permits with less than one classified as CNMI medium or large bottomfish vessel. In Guam, only large bottomfish vessels (50 ft or greater) are required to have a permit. Between 2012 and 2014, NMFS issued an average of two Guam bottomfish permits. During that same time, annual revenue from all bottomfish species landed by the CNMI bottomfish fishery ranged from $23,947–$85,294, and ranged from $13,650–$65,676 when only considering BMUS catch. For Guam based bottomfish boats, revenue earned from bottomfish catch ranged from $18,433–$36,635. Therefore, NMFS estimates that this action would potentially affect up to five medium to large bottomfish vessels directly, at least initially before the potential for expansion of the larger boat sector is realized.

This proposed action would lift restrictions for the directly affected entities without imposing obligations. Bottomfish vessel owners could choose to upgrade to larger vessels or continue fishing with their current vessels. NMFS does not expect the rule to have disproportionate economic impacts between large and small entities directly affected by this rule, although the small vessels currently allowed to fish throughout the prohibited areas may be indirectly affected by the potential increase in the number of medium and large bottomfish vessels fishing within a portion of the prohibited areas. There would be no disproportionate economic impacts among the universe of potentially affected vessels based on gear, or vessel length. However, due to their proximity to the prohibited areas, vessels based in CNMI would stand to see greater benefit from this action, relative to those based in Guam.

The implementation of this action will not result in significant adverse economic impacts to individual vessels. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on a substantial number of small entities (as discussed above), organizations, or government jurisdictions. As such, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, Commonwealth of the Northern Mariana Islands, Mariana Archipelago Fisheries, Fisheries, Fishing, Guam, Permits, Reporting and recordkeeping requirements.

Dated: June 7, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.402, revise paragraphs (b) and (c) to read as follows:

§ 665.402 Management subareas.

* * * * *

(b) *CNMI Management Subarea* means the EEZ seaward of the CNMI, with the inner boundary defined as a line coterminous with the seaward boundary of the CNMI.

(c) The outer boundary of each fishery management area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is coterminous with adjacent international maritime boundaries. The boundary between the fishery management areas of Guam and the CNMI extends to those points which are equidistant between Guam and the island of Rota in the CNMI. CNMI and Guam management subareas are divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E. long., 16° N. lat.

§ 665.403 [Amended]

■ 3. In § 665.403, remove and reserve paragraph (b).

■ 4. In § 665.405, revise paragraphs (e) and (f), and remove paragraphs (g) and (h) to read as follows:

§ 665.405 Prohibitions.

* * * * *

(e) Use a vessel to fish commercially for Mariana bottomfish MUS in the CNMI management subarea without a valid CNMI commercial bottomfish permit registered for use with that vessel, in violation of § 665.404(a)(2).

(f) Falsify or fail to make, keep, maintain, or submit a Federal logbook as required under § 665.14(b) when using a vessel to engage in commercial fishing for Mariana bottomfish MUS in the CNMI management subarea in violation of § 665.14(b).

■ 6. In § 665.442, revise paragraph (a)(1) to read as follows:

§ 665.442 Permits.

(a) * * *

(1) The owner of any vessel used to fish for lobster in Permit Area 5 must have a permit issued for such a vessel.

* * * * *

[FR Doc. 2016–13852 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 113
Monday, June 13, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Forest Service, intends to grant to Allison Tree, LLC of Verona, Wisconsin, an exclusive license to U.S. Provisional Patent Application Serial No. 62/220,773, "DEVICE TO DETECT STRUCTURAL INTEGRITY OF TREES AND WOOD USING BOTH STRESS WAVE TIME OF FLIGHT AND FREQUENCY CAPTURES AND LIMITS" filed on September 18, 2015.

DATES: Comments must be received on or before July 13, 2016.

ADDRESSES: Send comments to: Janet I. Stockhausen, Patent Advisor, USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53726–2398.

FOR FURTHER INFORMATION CONTACT: Janet I. Stockhausen of the USDA Forest Service at the Madison address given above; telephone: (608) 231–9502; fax: (608) 231–9508; or email: *jstockhausen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The patent rights in this invention are co-owned by the United States of America, as represented by the Secretary of Agriculture and Allison Tree, LLC of Verona, Wisconsin. The prospective exclusive license will grant to the co-owner, Allison Tree, LLC, an exclusive license to the Federal Government's patent rights. It is in the public interest to so license this invention as Allison Tree, LLC of Verona, Wisconsin has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2016–13831 Filed 6–10–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Submission for OMB Review; Comment Request

June 7, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 13, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Registration Requirements.

OMB Control Number: 0583–0128.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S. C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry are safe, wholesome, unadulterated, and properly labeled and packaged. According to the regulations, (9 CFR 320.5 and 381.179), parties required to register with FSIS must do so by submitting form FSIS Form 5020–1, "Registration of Meat and Poultry Handlers."

Need and Use of the Information: FSIS will collect the name, address of all locations at which they conduct the business that requires them to register, and all trade or business names under which they conduct the businesses. FSIS uses this information to maintain a database of these businesses. If the information were not collected, it would reduce the effectiveness of the meat and poultry inspection program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1200.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 300.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–13888 Filed 6–10–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Tuesday, June 28, 2016 at 6:00 p.m. at the Forest Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATE: June 28, 2016

ADDRESSES: Forest Supervisor's Office, 31374 U.S. Hwy. 2, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: JeriAnn Chapel, Committee Coordinator, Kootenai National Forest at (406) 283–7643, or email *jchapel@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda will include a review and vote on project proposals. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Missoulian, based in Missoula, Montana.

Dated: May 31, 2016.

Christopher Savage,

Forest Supervisor.

[FR Doc. 2016–13868 Filed 6–10–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne and Mariposa Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne and Mariposa Counties Resource Advisory Committee (RAC) will meet in Sonora, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held on July 11, 2016, from 12:00 p.m. to 3:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Stanislaus National Forest Supervisor's Office, Tuolumne Room, 19777 Greenley Road, Sonora, California. A phone line will be available to attend the meeting via conference call, for the conference line information please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Stanislaus National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Beth Martinez, RAC Coordinator, by phone at 209–532–3671 extension 321 or via email at *bethmartinez@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide RAC updates, and
2. Review project proposal submittals.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by at least a week in advance to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Beth Martinez, RAC Coordinator, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370; by email to *bethmartinez@fs.fed.us,* or via facsimile to Attention: Beth Martinez at 209–533–1890.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 6, 2016.

Jeanne M. Higgins,

Forest Supervisor.

[FR Doc. 2016–13874 Filed 6–10–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council (Council) will meet via teleconference. The Council is authorized under section 9 of the Cooperative Forestry Assistance Act, as amended by title XII, section 1219 of Public Law 101–624 (the Act) (16 U.S.C. 2105g) and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II). Additional information concerning the Council, can be found by visiting the Council's Web site at: *http://www.fs.fed.us/ucf/nucfac.shtml.*

DATES: The teleconference will be held on Wednesday, July 13, 2016, from 10:30 a.m. to 12:45 p.m., Eastern Daylight Time (EDT) or until Council business is completed.

All meetings are subject to cancellation. For an updated status of the teleconference prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held via teleconference. For anyone who would like to attend the teleconference, please visit the Web site listed in the **SUMMARY** section or contact Nancy Stremple at *nstremple@fs.fed.us* for further details. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Forest Service, Sidney Yates Building., Room 3SC–01C, 201 14th Street SW., Washington DC 20024. Please call ahead at 202–205–7829 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff,

National Urban and Community Forestry Advisory Council, by telephone at 202–205–7829, or by email at *nstremple@fs.fed.us*, or by cell phone at 202–309–9873, or via facsimile at 202–690–5792.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review the 2016 Work Plan;
2. Update on the 2016 Grants and status of 2017 grant proposals;
3. Develop the 2018 grant categories;
4. Listen to local constituents with urban forestry concerns;
5. Discuss the National ten year action plan (2016–2026) implementation;
6. Receive Forest Service budget and program updates; and
7. Discuss development of the annual accomplishments/recommendations report.

The teleconference is open to the public. However, the public is strongly encouraged to RSVP prior to the teleconference to ensure all related documents are shared with public meeting participants. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by July 1, 2016, to be scheduled on the agenda. Council discussion is limited to Forest Service staff and Council members, however anyone who would like to bring urban and community forestry matters to the attention of the Council may file written statements with the Council's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Nancy Stemple, Executive Staff, National Urban and Community Forestry Advisory Council, Sidney Yates Building, Room 3SC–01C, 201 14th Street SW., Washington, DC 20024, or by email at *nstremple@fs.fed.us*.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 7, 2016.

Steve Marshall,

Assistant Director, Cooperative Forestry.

[FR Doc. 2016–13843 Filed 6–10–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2003]

Approval of Subzone Status—Cummins, Inc., Lakewood and Jamestown, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the County of Erie, grantee of Foreign-Trade Zone 23, has made application to the Board for the establishment of a subzone at the facilities of Cummins, Inc., located in Lakewood and Jamestown, New York, (FTZ Docket B–8–2016, docketed February 17, 2016);

Whereas, notice inviting public comment has been given in the **Federal Register** (81 FR 8682, February 22, 2016) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby approves subzone status at the facilities of Cummins, Inc., located in Lakewood and Jamestown, New York (Subzone 23D), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 2nd day of June 2016.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2016–13923 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–81–2016]

Foreign-Trade Zone 44—Morris County, New Jersey; Application for Subzone; Givaudan Flavors Corporation. East Hanover, New Jersey

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the State of New Jersey, Department of State, grantee of FTZ 44, requesting subzone status for the facilities of Givaudan Flavors Company (Givaudan), located in East Hanover. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on June 3, 2016.

The proposed subzone would consist of the following sites: *Site 1* (57.9 acres) 245 Merry Lane, East Hanover; and, *Site 2* (1.23 acres) 901 Murray Road, East Hanover. A notification of proposed production activity has been submitted and will be published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 44.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 25, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 8, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*.

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or at (202) 482–1346.

Dated: June 3, 2016.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2016–13919 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2000]

Reorganization and Expansion of Foreign-Trade Zone 21 Under Alternative Site Framework; Charleston, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, submitted an application to the Board (FTZ Docket B–14–2015, docketed February 25, 2015) for authority to reorganize and expand under the ASF with a service area of the Counties of Charleston, Berkeley, Dorchester, Orangeburg, Williamsburg, Georgetown, Horry (portion), Florence (portion), Marion (portion), Colleton, Jasper, Hampton and Beaufort, in and adjacent to the Charleston (South Carolina), Georgetown (South Carolina) and Savannah (Georgia) Customs and Border Protection ports of entry, FTZ 21's existing Sites 5 (as modified), 9, 16 and 18 would be categorized as magnet sites, and the grantee proposes seven initial usage-driven sites (Sites 6, 15, 26, 28, 30, 31 and 32);

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 11632–11633, March 4, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied if approval of the service area is limited to the Counties of Charleston, Berkeley, Dorchester, Orangeburg, Williamsburg, Georgetown, Colleton, Jasper, Hampton and Beaufort;

Now, therefore, the Board hereby orders:

The application to reorganize and expand FTZ 21 under the ASF is approved with a service area of the Counties of Charleston, Berkeley, Dorchester, Orangeburg, Williamsburg, Georgetown, Colleton, Jasper, Hampton and Beaufort, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Sites 9, 16 and 18 if not activated within five years from the month of approval, and to an ASF sunset provision for usage-driven sites that would terminate authority for Sites 6, 15, 26, 28, 30, 31 and 32 if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the month of approval.

Signed at Washington, DC, this 2nd day of June 2016.

Paul Piquado, Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–13947 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1999]

Reorganization of Foreign-Trade Zone 38 (Expansion of Service Area) Under Alternative Site Framework, Spartanburg County, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, submitted an application to the Board (FTZ Docket B–80–2015, docketed November 18, 2015) for authority to expand the service area of the zone to include Pickens, Greenwood, and Abbeville Counties, as described in the application, adjacent to the Greenville/Spartanburg Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 73700–73701, November 25, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby orders:

The application to reorganize FTZ 38 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 2 day of June 2016.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2016–13924 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2002]

Approval of Expansion of Subzone 78A; Nissan North America, Inc.; Smyrna, Tennessee

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Metropolitan Government of Nashville and Davidson County, grantee of Foreign-Trade Zone 78, has made application to the Board to expand Subzone 78A on behalf of Nissan North America, Inc., located in Smyrna, Tennessee (FTZ Docket B–84–2015, docketed December 23, 2015);

Whereas, notice inviting public comment has been given in the **Federal Register** (81 FR 63, January 4, 2016) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 78A on behalf of Nissan North America, Inc., as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 2nd day of June 2016.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–13946 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request; Correction

Agency: International Trade Administration (ITA). Department of Commerce.

Title: Procedures for Importation of Supplies for Use in Emergency Relief Work.

OMB Control Number: 0625–0256.

Type of Request: Regular Submission.

In the **Federal Register** of April 11, 2016, FR Vol. 81, No, 69, Page 21315–21316, under Section II. "Method of Collection," the second line in the paragraph after Attention: should read "Enforcement and Compliance" instead of "Import Administration."

Dated: June 8, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–13859 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–036]

Certain Biaxial Integral Geogrid Products from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Susan Pulongbarit, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1394, or (202) 482–4031, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On February 16, 2016, the Department of Commerce ("Department") published a notice initiating an antidumping duty investigation of certain biaxial integral geogrid products from the People's Republic of China ("PRC").[1] Section 733(b)(1)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.205(b)(1) state that the Department will make a preliminary determination no later than 140 days after the date of the initiation (*i.e.,* February 8, 2016). Accordingly, the preliminary determination of this antidumping duty investigation is currently due no later than June 27, 2016.

On May 27, 2016, Tensar Corporation ("Petitioner"), made a timely request, pursuant to 19 CFR 351.205(e), for postponement of the preliminary determination, in order to facilitate the Department's analysis of respondents' questionnaire responses and interested parties' surrogate value data submissions. Because there are no compelling reasons to deny the request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days.[2]

For the reasons stated above, the Department, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination to no later than 190 days after the date on which the Department initiated this investigation. Therefore, the new deadline for the preliminary determination is August 16, 2016. In accordance with section 735(a)(1) of the Act, the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

[1] *See Certain Biaxial Integral Geogrid Products from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 81 FR 7755 (February 16, 2016).

[2] *See* Letter to the Secretary of Commerce from Petitioner "Request to Postpone Preliminary Determination" (May 27, 2016).

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13953 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request by interested parties,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey.[2] The period of review (POR) is May 1, 2014, to April 30, 2015. [3] The Department preliminarily determines that Toscelik made U.S. sales of subject merchandise below normal value (NV) while Borusan did not make sales of subject merchandise below NV. In addition, the Department preliminarily finds that Erbosan and the Yucel Group had no reviewable shipments during the POR. The preliminary results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on the preliminary results of this review.

DATES: Effective Date: June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, Scott Hoefke, or Robert James at (202) 482–4475, (202) 482–4947, or (202) 482–0649, respectively; AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is welded pipe and tube. The welded pipe and tube subject to the order is currently classifiable under subheading 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2013–2014 Administrative Review" (Preliminary Decision Memorandum), which is hereby adopted by this notice. The written description of the scope of the order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B–8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Preliminary Determination of No Shipments

On July 2, 2015 and July 17, 2015, Erbosan and the Yucel Group, respectively, submitted letters to the Department certifying that they had no sales, shipments, or entries of the subject merchandise to the United States during the POR. [4] Erbosan further certified that it did not know or have reason to know that any of its customers would subsequently export or sell Erbosan's merchandise to the United States during the POR. On August 11, 2015, consistent with our practice, the Department issued "No Shipment Inquiries" to U.S. Customs and Border Protection (CBP) to confirm that there were no entries of welded pipe and tube from Turkey exported by either Erbosan or Yucel Group during the POR.[5] We received no information from CBP that contradicted the Yucel Group's no shipment claim.

The Department did however, receive information from CBP indicating possible shipments from Erbosan. As further discussed in the Preliminary Decision Memo, subsequent to these Preliminary Resuls, we intend to solicit comments from interested parties concerning Erbosan's no shipment claim.[6]

Based the foregoing, we preliminarily determine that Erbosan and Yucel Group had no reviewable shipments during the POR. Also, consistent with our practice, the Department finds that it is not appropriate to rescind the review with respect to Erbosan or the Yucel Group, but rather to complete the review with respect to both Erbosan and the Yucel Group, and to issue appropriate instructions to CBP based on the final results of this review.[7] Thus, if we continue to find that Erbosan and Yucel Group had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by Erbosan or Yucel Group, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[8]

Rates for Non-Examined Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy

[1] Wheatland Tube Company, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret requested the instant administrative review.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 37588 (July 1, 2015) (*Initiation Notice*). The Department subsequently published a second initiation notice to correct the spelling of two company names in that notice. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 45947 (August 3, 2015).

[3] This review covers the following companies: Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (collectively, Borusan); Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. (collectively, Toscelik); Toscelik Metal Ticaret A.S. (Toscelik Metal);1 Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); and Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Cayirova Boru Sanayi ve Ticaret A.S. (collectively, the Yucel Group).

We note that in prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as the same legal entity. *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 71087, 71088 n.8 (December 1, 2014). However, in a prior review, we found that Toscelik Metal has ceased to exist. *Id.* There is no record evidence for altering this treatment. Therefore, for these preliminary results, we are treating Toscelik and Tosyali as the same legal entity, and continue to find that Toscelik Metal no longer exists. Additionally we note that in prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as the same legal entity. *See, e.g., Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013–2014,* 80 FR 76674, 76674 n.2 (December 10, 2015). We preliminarily determine that there is no evidence on the record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as the same legal entity. Finally, as noted above, we initiated a review of (1) Borusan Birlesik; (2) Borusan Gemlik, (3) Borusan Ihracat, (4) Borusan Ithicat, and (5) Tubeco. *See Initiation Notice.* Although the Department may have treated these companies as part of a "Borusan Group" entity in prior segments, the current record does not support treating these companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. entity. Accordingly, as discussed *infra,* each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review.

[4] *See* Letter to the Department from Erbosan entitled "No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. ("ERBOSAN") in the 2013–2014 Administrative Review of the Antidumping Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated July 2, 2015; *see also* Letter to the Department from Yucel Group entitled "Welded Carbon Steel Pipe & Tube Products from Turkey: Notification of No Shipments" dated July 17, 2015.

[5] *See* Customs email message number 5223304, dated August 11, 2015 (Erbosan); *see also* Customs email message number 5223305, dated August 11, 2015 (Yucel Group).

[6] See Preliminary Decision Memorandum at 4.

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted- average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review, we have preliminarily calculated a weighted-average dumping margin for Toscelik that is not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, the Department preliminarily assigned to the companies not individually examined (Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco) the 0.96 percent weighted-average dumping margin calculated for Toscelik.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period May 1, 2014 through April 30, 2015 are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S [9]	0.00
Toscelik Profil ve Sac Endustrisi A.S [10]	0.96
Borusan Birlesik Boru Fabrikalari San ve Tic	0.96
Borusan Gemlik Boru Tesisleri A.S	0.96
Borusan Ihracat Ithalat ve Dagitim A.S	0.96
Borusan Ithicat ve Dagitim A.S	0.96
Tubeco Pipe and Steel Corporation	0.96

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[11] Interested parties may submit cases briefs no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the due date for filing case briefs.[13] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14] Case and rebuttal briefs should be filed using ACCESS.[15] In order to be properly filed, ACCESS must successfully receive an electronically-filed document in its entirety by 5 p.m. Eastern Time.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.[16] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Unless otherwise extended, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

If Borusan's or Toscelik's weighted-average dumping margins are not zero or *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where either a respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the "Rate for Non-Examined Companies" section, above.

With respect to Erbosan and Yucel Group, if we continue to find that Erbosan and Yucel Group had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by Erbosan or Yucel Group, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Borusan and Toscelik will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.74 percent, the all-others rate established in the LTFV investigation.[18] These deposit requirements, when imposed, shall remain in effect until further notice.

[9] Also includes Borusan Istikbal Ticaret T.A.S. *See* footnote 4.

[10] Also includes Tosyali Dis Ticaret A.S. *See* footnote 3.

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

[16] *See* 19 CFR 351.310(c).

[17] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010).

[18] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey*, 51 FR 17784 (May 15, 1986).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Determination of No Shipments
5. Rates for Non Examined Companies
6. Comparisons to Normal Value
7. Product Comparisons
8. Date of Sale
9. Export Price
10. Normal Value
11. Currency Conversion
12. Recommendation

[FR Doc. 2016–13968 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964; A–201–838]

Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Final Results of the Full Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the Department of Commerce ("the Department") finds that revocation of the antidumping duty orders on seamless refined copper pipe and tube ("copper pipe and tube") from the People's Republic of China ("PRC") and Mexico would likely lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Reviews" section of this notice.

DATES: Effective Date: June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2923.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2010, the Department published the antidumping duty orders on copper pipe and tube from the PRC and Mexico.[1] On October 1, 2015, the Department published the notice of initiation of the sunset reviews of the *Orders* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[2] The Ad Hoc Coalition for Domestically Produced Seamless Refined Copper Pipe and Tube and its individual members, Cerro Flow Products, LLC, Wieland Copper Products, LLC, Howell Metal Company, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "domestic interested parties"), submitted adequate and timely notices of intent to participate in these sunset reviews within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i). On November 2, 2015, domestic interested parties and respondent interested party Golden Dragon[3] submitted adequate substantive responses to the notice of initiation within the 30-day deadline specified in 19 CFR 351.218(d)(3). As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(ii), the Department conducted full sunset reviews of the *Orders*.

On January 26, 2016, the Department published the *Preliminary Results*[4] of this review. The parties were permitted to submit comments within 50 days of the publication of our *Preliminary Results*, pursuant to 19 CFR 351.309(c)(1)(i). The Department received no comments.

Scope of the Orders

For the purpose of these *Orders*, the products covered are all seamless circular refined copper pipes and tubes. The products subject to the *Orders* are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Products subject to the *Orders* may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065 and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

For a full description of the scope of the *Orders*, see the "Preliminary Decision Memorandum."[5]

Final Results of Sunset Reviews

For the reasons expressed in the *Preliminary Results*, pursuant to section 751(c) of the Act, the Department determines that revocation of the *Orders* would likely lead to continuation or recurrence of dumping at weighted-average dumping margins up to 60.85 percent for the PRC and up to 27.16 percent for Mexico.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: June 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13956 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico*, 75 FR 71070 (November 22, 2010) ("*Orders*").

[2] *See Seamless Refined Copper Pipe and Tube From China and Mexico; Institution of Five-Year Reviews*, 80 FR 59186 (October 1, 2015) ("*Initiation FR Notice*").

[3] In case number A–570–964 (the PRC), the substantive response was filed on behalf of Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd. and GD Copper (U.S.A.), Inc. In case number A–201–838 (Mexico), the substantive response was filed on behalf of GD Affiliates S. de R.L. de C.V., GD Copper S. de R.L. de C.V., Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., GD Copper Cooperatief UA, Golden Dragon Holding (Hong Kong) International, Ltd. and GD Copper (U.S.A.), Inc. The Department refers to all of these companies collectively as "Golden Dragon".

[4] *See Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Preliminary Results of the Sunset Reviews of the Antidumping Duty Orders*, 81 FR 4252 (January 26, 2016) ("*Preliminary Results*").

[5] *See* Preliminary Decision Memorandum for the Full Sunset Reviews of the Antidumping Duty Orders on Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico, dated January 19, 2016 ("Preliminary Decision Memorandum"). The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/*.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–046]

Countervailing Duty Investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China; Postponement of Preliminary Determination

AGENCY: Enforcement and Compliance International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; Telephone: 202–482–2243.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2016, the Department of Commerce (the "Department") initiated the countervailing duty investigation of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid ("HEDP") from the People's Republic of China ("PRC").[1] Currently, the preliminary determination is due no later than June 24, 2016.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the "Act"), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1) of the Act permits the Department to postpone making the preliminary determination until no later than 130 days after the date on which it initiated the investigation if, among other reasons, the petitioner makes a timely request for a postponement, or the Department concludes that the parties concerned are cooperating and determines that the investigation is extraordinarily complicated.

Currently, while the Department has not yet chosen mandatory respondents, we determine that, thus far, the parties concerned are cooperating because each has made an entry of appearance in this investigation.[2] Also, the Department must analyze four complicated alleged subsidy programs[3] for each respondent, including companies that are cross-owned with each respondent, and likely issue multiple supplemental questionnaires. For all these reasons, the Department finds this investigation to be extraordinarily complicated within the meaning of section 703(c)(1)(B) of the Act, and is hereby fully postponing the preliminary countervailing duty determination by 130 days.[4] Therefore, pursuant to the discretion afforded to the Department under section 703(c)(1)(B) of the Act, we are postponing the due date for the preliminary determination to no later than August 29, 2016.[5]

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–13954 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from People's Republic of China: Initiation of Countervailing Duty Investigation,* 81 FR 25383 (April 28, 2016) ("Initiation"). Although the *Initiation* inadvertently stated the effective date of initiation was February 20, 2016, the correct effective date is April 20, 2016. *Id.*

[2] *See, e.g.,* Entry of Appearance Letters by: Compass Chemical International LLC dated April 5, 2016; Nantong Uniphos Chemicals Co., Ltd, dated May 4, 2016; Qingshuiyuan Technology Co., Ltd., dated May 5, 2016; Shandong Taihe Chemicals Co., Ltd., dated May 10, 2016; Changzhou Yao's Tongde Chemical Co., Ltd., dated May 10, 2016; and Jianghai Environmental Protection Co., Ltd., May 23, 2016.

[3] The number of programs may be found in the "Countervailing Duty Investigation Initiation Checklist: 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China from the People's Republic of China," at 5–8.

[4] We note that section 351.205(f)(1) of the Department's regulations stipulates that parties to this proceeding will be notified of an extension 20 days in advance of the preliminary determination. *See* 19 CFR 351.205(f)(1). We note that 20 days before the preliminary determination is June 4, 2016. However, because this date falls on a Saturday, the due date is the next business day, June 6, 2016. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005) ("*Next Business Day Rule*").

[5] We note that 130 days after initiation is August 28, 2016. However, because this date falls on a Sunday, the due date is the next business day, August 29, 2016. *See Next Business Day Rule.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–850]

Certain Oil Country Tubular Goods from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain oil country tubular goods (OCTG) from Taiwan. The period of review (POR) is July 18, 2014, through August 31, 2015. The Department preliminarily determines that the sole producer/exporter subject to the review, Tension Steel Industries Co., Ltd. (Tension Steel), did not make sales of subject merchandise at less than normal value. We invite interested parties to comment on these preliminary results.

DATES: Effective Date: June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is certain OCTG. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

Methodology

The Department is conducting this administrative review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of Review

As a result of this administrative review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for Tension Steel Industries Co., Ltd., for the period July 18, 2014, through August 31, 2015.

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[2] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[3]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[4] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If Tension Steel's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). If Tension Steel's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* "{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.".[5]

For entries of subject merchandise during the POR produced by Tension Steel for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this review for all shipments of OCTG Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Tension Steel will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.34 percent,[6] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation

[1] *See* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Taiwan" dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* 19 CFR 351.309(d).

[3] *See* 19 CFR 351.309(c)(2) and (d)(2).

[4] *See* 19 CFR 351.310(c).

[5] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[6] *See Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691, 53693 (September 10, 2014).

of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Methodology
Comparisons to Normal Value
A. Determination of Comparison Method
B. Results of Differential Pricing Analysis
Product Comparisons
Date of Sale
Constructed Export Price
Normal Value
A. Home-Market Viability and Comparison Market
B. Level of Trade
C. Cost of Production
1. Calculation of Cost of Production
2. Test of Comparison-Market Sales Prices
3. Results of the COP Test
D. Calculation of Normal Value Based on Comparison Market Prices
E. Calculation of Normal Value Based on Constructed Value
Currency Conversion
Recommendation

[FR Doc. 2016–13950 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Advisory Council on Doing Business in Africa: Meeting of the President's Advisory Council on Doing Business in Africa

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Advisory Council on Doing Business in Africa (Council) will hold a meeting to deliberate on recommendations related to strengthening commercial engagement between the United States and Africa. Topics may include: The U.S. Government Power Africa initiative and energy infrastructure, the upcoming U.S.-Africa Business Forum, vocational and skills training, transportation infrastructure, and initiating tax treaties with African countries. The final agenda will be posted at least one week in advance of the meeting on the Council's Web site at *http://trade.gov/pac-dbia.*

DATES: June 29, 2016 at 2:00 p.m. (EDT)

ADDRESSES: The President's Advisory Council on Doing Business in Africa meeting will be broadcast via live webcast on the Internet at *http://whitehouse.gov/live.*

FOR FURTHER INFORMATION CONTACT: Tricia Van Orden, Executive Secretary, President's Advisory Council on Doing Business in Africa, Room 4043, 1401 Constitution Avenue NW., Washington, DC, 20230, telephone: 202–482–5876, email: *dbia@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: President Barack Obama directed the Secretary of Commerce to establish the President's Advisory Council on Doing Business in Africa by Executive Order No. 13675 dated August 5, 2014. The Council was established by Charter on November 4, 2014, to advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012. This Council is established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

Public Submissions: The public is invited to submit written statements to the President's Advisory Council on Doing Business in Africa. Statements must be received by 5:00 p.m. (EDT) June 27, 2016 by either of the following methods:

a. Electronic Submissions

Submit statements electronically to Tricia Van Orden, Executive Secretary, President's Advisory Council on Doing Business in Africa, via email: *dbia@trade.gov.*

b. Paper Submissions

Send paper statements to Tricia Van Orden, Executive Secretary, President's Advisory Council on Doing Business in Africa, Room 4043, 1401 Constitution Avenue NW., Washington, DC, 20230.

Statements will be provided to the members in advance of the meeting for consideration and also will be posted on the President's Advisory Council on Doing Business in Africa Web site (*http://trade.gov/pac-dbia*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Meeting minutes: Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting on the Council's Web site at *http://trade.gov/pac-dbia.*

Dated: June 9, 2016.

Tricia Van Orden,

Executive Secretary, President's Advisory Council on Doing Business in Africa.

[FR Doc. 2016–14039 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–968]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, In Part; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to multiple requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order [1] on aluminum extrusions from the People's Republic of China (PRC). The period of review (POR) is January 1, 2014 through December 31, 2014. We preliminarily determine that the companies selected for individual examination (the mandatory respondents)—Jangho [2] and Zhongya [3] [4] received countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results of review.

DATES: *Effective Date:* June 13, 2016.

FOR FURTHER INFORMATION CONTACT: Davina Friedmann, Tyler Weinhold or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0698, (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTSUS"): 9405.99.40.20, 8424.90.90.80, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.[5]

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each program identified as bestowing a countervailable subsidy, we preliminarily find that there is a government-provided financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying all of the Department's conclusions, see the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be access directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Rate for Non-Selected Companies Under Review

As stated in the *Initiation Notice,* the Department issued quantity and value (Q&V) questionnaires based on import

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[1] *See Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (*Order*).

[2] For purposes of this administrative review, "Jangho" refers to the cross-owned entity consisting of the following members and affiliates of the Jangho Group: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. (Guangzhou Jangho); Guangzhou Jangho's parent company, Jangho Group Co., Ltd. (Jangho Group Company); Jangho Group Company's corporate parent, Beijing Jiangheyuan Holding Com., Ltd. (Beijing Jiangheyuan), and Jangho Group Company's producer subsidiaries, Beijing Jangho Curtain Wall System Engineering Co., Ltd. (Beijing Jangho); Shanghai Jangho Curtain Wall System Engineering Co., Ltd. (Shanghai Jangho), and Chengdu Jangho Curtain Wall System Engineering Co., Ltd. (Chengdu Jangho). As stated above, we have used "Jangho" to refer to the cross-owned entity, the entity to which we will assign a subsidy rate. *See* "Preliminary Results of Administrative Review," below. We have used "the Jangho Group" and "Jangho Group" to refer to the corporate group consisting of Jangho Group Company and its subsidiaries (*i.e.,* not including Beijing Jiangheyuan and Jangho Group Company's other corporate parent, Xinjiang Jianghe Huizhong Equity Investment Limited Partnership (Jianghe Huizhong). We have used "the Jangho companies," to refer to the members of the Jangho Group as well as Beijing Jiangheyuan and Jianghe Huizhong. Further, Jangho Curtain Wall Hong Kong Ltd. (Jangho HK) is an affiliated Hong Kong reseller/trading company and member of the Jangho Group. For these preliminary results, we are treating Jangho HK as a Hong Kong, or non-PRC company, and as such, we are not making a cross-ownership determination or attributing any subsidies to Jangho HK, consistent with 19 CFR 351.525(b)(6) and (7). Any shipments of subject merchandise to the United States by Jangho HK will be subject to the Department's cash deposit requirements, as set forth in the section of this notice entitled, "Cash Deposit Requirements."

[3] For purposes of this FR notice, only, "Zhongya" refers to the following companies: Guangdong Zhongya Aluminium Company Limited (Guangdong Zhongya), Zhaoqing New Zhongya Aluminum Co., Ltd. (Zhaoqing New Zhongya), New Zhongya Aluminum Factory, and Karlton Aluminum Company Ltd. (Karlton) (collectively, "Zhongya"); however, this does not imply a cross-ownership determination with respect to any of these companies in this administrative review. For these preliminary results, we are treating Zhongya Shaped Aluminum (HK) Holding Limited (Zhongya HK) as a Hong Kong, or non-PRC company, and as such, we are not making a cross-ownership determination or attributing any subsidies to Zhongya HK, consistent with 19 CFR 351.525(b)(6) and (7).

[4] In a letter to the Department in the instant review period, Zhongya indicated that Zhaoqing New Zhongya Aluminum Co., Ltd. is a predecessor company of Guangdong Zhongya Aluminum Company. In this same letter, Zhongya also indicated that while still part of Zhongya, New Zhongya Aluminum Factory changed its name to Guangdong Zhongya Aluminum Company Limited. *See* letter From Zhongya to the Department regarding, "Aluminum Extrusions from China," dated August 12, 2015.

[5] *See* the *Order.*

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Results of the 2014 Countervailing Duty Administrative Review of Aluminum Extrusions from the People's Republic of China," dated concurrently with this notice (Preliminary Decision Memorandum).

Continued

values in the CBP data to select respondents for individual examination.[8] The Department received timely responses from each company to which it issued Q&V questionnaires, including *pro se* companies, required to submit such responses. For further discussion of this determination, refer to the section in the Preliminary Decision Memorandum entitled, "Background."

Between July 1, 2015 and August 1, 2015, the Department received timely no-shipment certifications from certain companies. Because there is no evidence on the record to indicate that these companies had entries of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3), we preliminarily intend to rescind the review with respect to these companies. These companies are listed in Appendix II to this notice. A final decision regarding whether to rescind the review of these companies will be issued with the final results of this review.

Additionally, for those companies named in the *Initiation Notice* for which all review requests have been timely withdrawn, we preliminarily intend to rescind this administrative review in accordance with 19 CFR 351.213(d)(1). These companies are listed at Appendix II to this notice. A final decision regarding whether to rescind the review of these companies will be issued with the final results of review.

There are 43 companies for which a review was requested and not rescinded, but were not selected as mandatory respondents. We preliminarily did not calculate the non-selected rate using a methodology of weight-averaging the rates of Jangho and Zhongya because the preliminary subsidy rate for Zhongya is based on total AFA. Instead, we preliminarily based the non-selected rate on Jangho's subsidy rate. For further information, refer to the section in the Preliminary Decision Memorandum entitled, "*Ad Valorem* Rate for Non-Selected Companies Under Review."

Preliminary Results of Administrative Review

As a result of this administrative review, we preliminarily determine the listed net subsidy rates for 2014:

Company	2014 Ad Valorem rate (percent)
Jangho	20.62
Zhongya	199.27

[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 80 FR 37588 (July 1, 2015) (*Initiation Notice*).

Company	2014 Ad Valorem rate (percent)
Allied Maker Limited	20.62
A-Plus Industries Ltd.	20.62
Asia Pacific Industrial (Group) Co., Ltd.	20.62
Birchwoods (Lin'an) Leisure Products Co., Ltd.	20.62
Changzhou Jinxi Machinery Co., Ltd.	20.62
Classic & Contemporary Inc.	20.62
Dongguang Aoda Aluminum Co., Ltd.	20.62
Dongguan Dazhan Metal Co., Ltd.	20.62
Dongguan Golden Tiger Hardware Industrial Co., Ltd.	20.62
ETLA Technology (Wuxi) Co., Ltd.	20.62
Fenghua Metal Product Factory	20.62
Foshan Golden Source Aluminum Products Co., Ltd	20.62
Foshan Guangcheng Aluminium Co., Ltd.	20.62
Genimex Shanghai, Ltd.	20.62
Global Hi-Tek Precision Limited	20.62
Global Point Technology (Far East) Limited	20.62
Golden Dragon Precise Copper Tube Group, Inc.	20.62
Gold Mountain International Development, Ltd.	20.62
Guangdong Whirlpool Electrical Appliances Co., Ltd.	20.62
Guang Ya Aluminium Industries Co., Ltd.	20.62
Hebei Xusen Wire Mesh Products Co., Ltd.	20.62
Jackson Travel Products Co., Ltd.	20.62
Jiangsu Shengrun Industry Co, Ltd.	20.62
Jiangsu Zhenhexiang New Material Technology Co., Ltd.	20.62
Johnson Precision Engineering (Suzhou) Co Ltd.	20.62
Kam Kiu Aluminum Products Sdn Bhd	20.62
Markem Imaje China (China) Co. Ltd	20.62
Metaltek Group Co., Ltd.	20.62
Ningbo Haina Machine Co., Ltd.	20.62
Ningbo Innopower Tengda Machinery Co., Ltd.	20.62
Ningbo Yinzhou Sanhua Electric Machine Factory	20.62
Precision Metal Works Ltd.	20.62
Sapa Profiles (Shanghai) Co., Ltd.	20.62
Shanghai Automobile Air-Conditioner Accessories Co., Ltd	20.62
Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.	20.62
Summit Heat Sinks Metal Co., Ltd.	20.62
Suzhou New Hongji Precision Part Co.	20.62
Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.	20.62
Taizhou United Imp & Export Corp., Ltd.	20.62
Tianjin Jinmao Import & Export Corp., Ltd.	20.62
Whirlpool Canada L.P.	20.62
Whirlpool Microwave Products Development Ltd.	20.62
Zhejiang Dongfeng Refrigeration Components Co., Ltd.	20.62

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[9] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Rebuttals to case briefs may be filed no later than five days after the deadline for filing case briefs, and all rebuttal comments must be limited to comments raised in the case briefs.[11] Case and rebuttal briefs should be filed electronically using ACCESS.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[13] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the date and time of the hearing to be held at the U.S. Department of Commerce, 14th Street

[9] *See* 19 CFR 351.224(b).
[10] *See* 19 CFR 351.309(c)(2) and (d)(2).
[11] *See* 19 CFR 351.309 (d).
[12] *See* 19 CFR 351.303.
[13] *See* 19 CFR 351.310(c).

and Constitution Avenue NW., Washington, DC 20230.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in all written case briefs, within 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above for each company listed on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Intent to Partially Rescind Review
Extension of Preliminary Results
Scope of the Order
Subsidies Valuation Information
Loan Benchmark Rates
Use of Facts Otherwise Available and Adverse Inferences
Programs Determined to be Countervailable
Programs Determined to Not Confer Measurable Benefit or Not Used
Ad Valorem Rate for Non-Selected Companies Under Review
Ad Valorem Rate for Non-Cooperative Company Under Review

Appendix II

List of Companies on Which We Are Preliminarily Rescinding This Administrative Review [14]

1. Acro Import and Export Co.
2. Activa International Inc.
3. Alnan Aluminum Co. Ltd.
4. Aluminicaste Fundicion de Mexico
5. Bracalente Metal Products (Suzhou) Co., Ltd.[15]
6. Changshu Changshen Aluminum Products Co., Ltd.
7. Changzhou Tenglong Auto Parts Co., Ltd.
8. China Zhongwang Holdings, Ltd.
9. Chiping One Stop Industrial & Trade Co., Ltd.
10. Clear Sky Inc.
11. Cosco (J.M.) Aluminum Co., Ltd.
12. Danfoss Micro Channel Heat Exchangers (Jia Xing) Co., Ltd.[16]
13. Dragonluxe Limited
14. Dynabright International Group (HK) Limited
15. Dynamic Technologies China
16. Ever Extend Ent. Ltd.[17]
17. First Union Property Limited
18. Foreign Trade Co. of Suzhou New & High-Tech. Industrial Development Zone
19. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
20. Foshan Jinlan Aluminum Co. Ltd.
21. Foshan JMA Aluminum Company Limited
22. Foshan Shanshui Fenglu Aluminum Co., Ltd.
23. Foshan Shunde Aoneng Electrical Applicances Co., Ltd
24. Foshan Yong Li Jian Aluminum Co., Ltd.
25. Fujian Sanchuan Aluminum Co., Ltd.
26. Global PMX Dongguan Co., Ltd.
27. Gran Cabrio Capital Pte. Ltd.
28. Gree Electric Appliances
29. GT88 Capital Pte. Ltd.
30. Guangdong Hao Mei Aluminum Co., Ltd.
31. Guangdong Jianmei Aluminum Profile Company Limited
32. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
33. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
34. Guangdong Weiye Aluminum Factory Co., Ltd.
35. Guangdong Xingfa Aluminum Co., Ltd.
36. Guangdong Xin Wei Aluminum Products Co., Ltd.[18]
37. Guangdong Yonglijian Aluminum Co., Ltd
38. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
39. Hangzhou Xingyi Metal Products Co., Ltd.
40. Hanwood Enterprises Limited
41. Hao Mei Aluminum Co., Ltd.
42. Hao Mei Aluminum International Co., Ltd.
43. Hanyung Alcoba Co., Ltd.
44. Hanyung Alcobis Co., Ltd.
45. Hanyung Metal (Suzhou) Co., Ltd.
46. Henan New Kelong Electrical Appliances Co., Ltd.
47. Hong Kong Gree Electric Appliances Sales Limited
48. Honsense Development Company
49. Hui Mei Gao Aluminum Foshan Co., Ltd.
50. IDEX Dinglee Technology (Tianjin) Co., Ltd.[19]
51. IDEX Health [20]
52. IDEX Technology Suzhou Co., Ltd.[21]
53. Innovative Aluminum (Hong Kong) Limited
54. iSource Asia
55. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
56. Jiangsu Changfa Refrigeration Co.
57. Jiangsu Susun Group (HK) Co., Ltd.
58. Jiangyin Trust International Inc.
59. Jiangyin Xinhong Doors and Windows Co., Ltd.
60. Jiaxing Jackson Travel Products Co., Ltd.
61. Jiaxing Taixin Metal Products Co., Ltd.
62. Jiuyan Co., Ltd.
63. Justhere
64. Kanal Precision Aluminum Product Co., Ltd.
65. Kromet International Inc.
66. Kunshan Giant Light Metal Technology Co., Ltd.
67. Liaoning Zhongwang Group Co., Ltd.
68. Liaoyang Zhongwang Aluminum Profiled Co. Ltd.
69. Longkou Donghai Trade Co., Ltd.
70. Metaltek Metal Industry Co., Ltd.
71. Midea Air Conditioning Equipment Co., Ltd.
72. Midea International Training Co., Ltd./Midea International Trading Co., Ltd.
73. Miland Luck Limited
74. Nanhai Textiles Import & Export Co., Ltd.
75. New Asia Aluminum & Stainless Steel Product Co., Ltd.
76. Nidec Sankyo (Zhejang) Corporation
77. Nidec Sankyo Singapore Pte. Ltd.
78. Ningbo Coaster International Co., Ltd.
79. Ningbo Hi Tech Reliable Manufacturing Company
80. Ningbo Ivy Daily Commodity Co., Ltd.
81. Ningbo Yili Import and Export Co., Ltd.[22]
82. North China Aluminum Co., Ltd.
83. North Fenghua Aluminum Ltd.
84. Northern States Metals
85. PanAsia Aluminum (China) Limited
86. Pengcheng Aluminum Enterprise Inc.
87. Permasteelisa Hong Kong Ltd.[23]
88. Permasteelisa South China Factory [24]
89. Pingguo Aluminum Company Limited
90. Pingguo Asia Aluminum Co., Ltd.
91. Popular Plastics Company Limited
92. Press Metal International Ltd
93. Samuel, Son & Co., Ltd.
94. Sanchuan Aluminum Co., Ltd.
95. Shangdong Huasheng Pesticide Machinery Co.
96. Shangdong Nanshan Aluminum Co., Ltd.
97. Shanghai Canghai Aluminum Tube Packaging Co., Ltd

[14] According to information on the record of this review, certain companies listed below made no shipments to the United States during the instant review period. Each such company is identified as a "no shipments company."
[15] No shipments company.
[16] No shipments company.
[17] No shipments company.
[18] No shipments company.
[19] No shipments company.
[20] No shipments company.
[21] No shipments company.
[22] No shipments company.
[23] No shipments company.
[24] No shipments company.

98. Shanghai Dongsheng Metal
99. Shanghai Shen Hang Imp & Exp Co., Ltd.
100. Shenyang Yuanda Aluminum Industry Engineering Co. Ltd.
101. Shenzhen Hudson Technology Development Co., Ltd.
102. Shenzhen Jiuyuan Co., Ltd.
103. Sihui Shi Guo Yao Aluminum Co., Ltd.
104. Sincere Profit Limited
105. Skyline Exhibit Systems (Shanghai) Co., Ltd.
106. Suzhou JRP Import & Export Co., Ltd.
107. Tai-Ao Aluminum (Taishan) Co. Ltd.
108. Taizhou Lifeng Manufacturing Corporation
109. tenKsolar (Shanghai) Co., Ltd.
110. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
111. Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.
112. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
113. Tiazhou Lifeng Manufacturing Corporation/Taizhou Lifeng Manufacturing Corporation, Ltd.
114. Top-Wok Metal Co., Ltd.
115. Traffic Brick Network, LLC
116. Union Industry (Asia) Co., Ltd.
117. USA Worldwide Door Components (Pinghu) Co., Ltd.
118. Wenzhou Shengbo Decoration & Hardware
119. Whirlpool (Guangdong)
110. WTI Building Products, Ltd.
111. Xin Wei Aluminum Co.[25]
112. Xin Wei Aluminum Company Limited[26]
113. Xinya Aluminum & Stainless Steel Product Co., Ltd.
114. Yongji Guanghai Aluminium Industry Co., Ltd.[27]
115. Zahoqing China Square Industry Limited/Zhaoqing China Square Industry Limited
116. Zhaoqing Asia Aluminum Factory Company Ltd.
117. Zhaoqing China Square Industrial Ltd.
118. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
119. Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.
120. Zhejiang Zhengte Group Co., Ltd.
121. Zhenjiang Xinlong Group Co., Ltd.
122. Zhongshan Daya Hardware Co., Ltd.
123. Zhongshan Gold Mountain Aluminum Factory Ltd.
124. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

[FR Doc. 2016–13830 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–DS–P

[25] No shipments company.

[26] No shipments company.

[27] In the third administrative review, the role of this company was that of an input supplier. Absent information to the contrary placed on the record of this administrative review, we are treating this company as an input supplier, and therefore, preliminarily intend to rescind the review of this company.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE677

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning Committee will hold a public meeting.

DATES: The meeting will be held on Thursday July 7, 2016, from 9 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the BWI Airport Marriott, 1743 West Nursery Road, Linthicum, MD 21090; telephone: (410) 859–8300. A webinar connection will also be available. Information on how to connect via webinar will be posted to *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; Web site: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The MAFMC's Ecosystem and Ocean Planning (EOP) Committee will meet to discuss the Council's Unmanaged Forage Omnibus Amendment. This amendment will prohibit the development of new and expansion of existing directed commercial fisheries on unmanaged forage species in Mid-Atlantic Federal waters until the Council has had an adequate opportunity to both assess the scientific information relating to any new or expanded directed fisheries and consider potential impacts to existing fisheries, fishing communities, and the marine ecosystem. At this meeting, the EOP Committee will consider comments received during public hearings on the amendment, as well as recommendations from the EOP Advisory Panel. The EOP Committee will develop recommendations to the full Council for final action on the amendment. The Council plans to take final action on this amendment at their meeting in Virginia Beach on August 8–11, 2016. More information on the EOP Committee meeting, and the August Council meeting, including agendas and background materials, will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 8, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13892 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Antarctic Marine Living Resources Conservation and Management Measures.

OMB Control Number: 0648–0194.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 1 research entity; 2 vessel owners; 50 dealers.

Average Hours per Response: One hour to apply for a CEMP research permit; 1 hour to report on research; 28 hours to supply information on potential new or exploratory fishing; 2 hours to apply for a harvesting permit; 2 minutes to transmit information by radio; 4 hours to install a vessel monitoring device (VMS); 2 hours for annual VMS maintenance; 45 minutes to mark a vessel; 40 minutes to mark buoys; 10 hours to mark pot gear; 6 minutes to mark trawl nets; 15 minutes to apply for a dealer permit to import and/or re-export Antarctic marine living resources; 15 minutes to complete and submit a toothfish catch document; 15 minutes to apply for pre-approval of toothfish imports; 15 minutes to complete and submit re-export catch documents; 15 minutes to submit import tickets.

Burden Hours: 290.

Needs and Uses: This request is for extension of a currently approved information collection.

The 1982 Convention on the Conservation of Antarctic Marine Living Resources (Convention) established the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The United States is a Contracting Party to the Convention. The Antarctic Marine Living Resources Convention Act (AMLRCA) directs and authorizes the United States to take actions necessary to meet its treaty obligations as a Contracting Party to the Convention. The regulations implementing AMLRCA are at 50 CFR part 300, subpart G. The record keeping and reporting requirements at 50 CFR part 300 form the basis for this collection of information. This collection of information concerns research in, and the harvesting and importation of, marine living resources from waters regulated by CCAMLR related to ecosystem research, U.S. harvesting permit application and/or harvesting vessel operators and to importers and re-exporters of Antarctic marine living resources. The collection is necessary in order for the United States to meet its treaty obligations as a contracting party to the Convention.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–13834 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: International Dolphin Conservation Program.

OMB Control Number: 0648–0387.

Form Number(s): None.

Type of Request: Regular (revision of a currently approved information collection).

Number of Respondents: 279.

Average Hours per Response: 35 minutes for a vessel permit application; 10 minutes for an operator permit application, a notification of vessel arrival or departure, a change in permit operator; a notification of a net modification or a monthly tuna storage removal report; 30 minutes for a request for a waiver to transit the ETP without a permit (and subsequent radio reporting) or for a special report documenting the origin of tuna (if requested by the NOAA Administrator); 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 35 minutes for written notification to request active status for a small tuna purse seine vessel; 5 minutes for written notification to request inactive status for a small tuna purse seine vessel or for written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag; 60 minutes for a tuna tracking form or for a monthly tuna receiving report; 30 minutes for IMO application or exemption request; 30 minutes for chain of custody recordkeeping reporting requirement.

Burden Hours: 248.

Needs and Uses: This request is for revision of a currently approved information collection. The chain of custody recordkeeping requirements approved under an emergency revision per an interim final rule filed on March 22, 2016 (81 FR 15444), will become a permanent part of the collection. National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act (Act). The Act allows entry of yellowfin tuna into the United States (U.S.), under specific conditions, from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of "dolphin-safe" and "non-dolphin safe" tuna products from catch through the U.S. market.

The regulations implementing the Act are at 50 CFR parts 216 and 300. The recordkeeping and reporting requirements at 50 CFR parts 216 and 300 form the basis for this collection of information. This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, chain of custody recordkeeping requirements and certain other information necessary to implement the Act.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and upon request.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: June 8, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–13902 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE678

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning Advisory Panel (AP) will hold a public meeting.

DATES: The meeting will be held on Wednesday, July 6, 2016, from 9 a.m. to 4 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the BWI Airport Marriott, 1743 West Nursery Road, Linthicum, MD 21090; telephone: (410) 859–8300. A webinar connection will also be available. Information on how to connect via

webinar will be posted to *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The MAFMC's Ecosystem and Ocean Planning Advisory Panel (AP) will meet to develop recommendations for final action on the Council's Unmanaged Forage Omnibus Amendment. This amendment will prohibit the development of new and expansion of existing directed commercial fisheries on unmanaged forage species in Mid-Atlantic Federal waters until the Council has had an adequate opportunity to both assess the scientific information relating to any new or expanded directed fisheries and consider potential impacts to existing fisheries, fishing communities, and the marine ecosystem. At this meeting, the AP will consider comments received during public hearings and will develop recommendations to the Council's Ecosystem and Ocean Planning Committee and to the full Council for final action on the amendment. An EOP Committee meeting on the same topic will be held on July 7, 2016. The Council plans to take final action on the amendment at their meeting in Virginia Beach on August 8–11, 2016. More information on the EOP AP meeting, the EOP Committee meeting, and the August Council meeting, including agendas and background materials, will be posted to *www.mafmc.org.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 8, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–13893 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Community Connectivity Initiative—Webinar Series

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meetings, monthly webinars.

SUMMARY: The National Telecommunications and Information Administration (NTIA), as part of its BroadbandUSA program, will host a nine-part series of monthly webinars to engage stakeholders to inform the development of the Community Connectivity Initiative (Initiative). The objective of the Initiative is to support communities working to accelerate broadband access, improve digital inclusion, strengthen policies, and support local community priorities. The webinar series will convene stakeholders to discuss the role that broadband plays in achieving local priorities and will solicit input on the development of the Initiative, which is a compilation of three new resources for local communities featuring: (1) A Community Connectivity framework; (2) an online self-assessment tool; and (3) a report and recommendations. Through collaborative sessions, participants will: Review the Community Connectivity framework; review assessment questions and response options; co-design the structure and content for the report and recommendations; and identify supporting resources and tools that will support the local communities' use of the tools in 2017 and beyond.

DATES: The Community Connectivity Initiative monthly webinars will be held on the second Thursday of each month from 2:00–3:00 p.m., Eastern Time, starting on July 14, 2016 and ending on March 9, 2017.

ADDRESSES: This is a virtual meeting. Participants can register for one or more webinars in the series at NTIA's Web site at *http://www2.ntia.doc.gov/CommunityConnectivityWebinars.*

FOR FURTHER INFORMATION CONTACT: Barbara Brown, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4889, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 280–8260; email: *bbrown@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

NTIA's BroadbandUSA program provides expert advice and field-proven tools for assessing broadband adoption, planning new infrastructure and engaging a wide range of partners in broadband projects. BroadbandUSA convenes workshops on a regular basis to bring stakeholders together to discuss ways to improve broadband policies, share best practices, and connect communities to other federal agencies and funding sources for the purpose of expanding broadband infrastructure and adoption throughout America's communities. Experts from NTIA's BroadbandUSA program are available to provide technical assistance and to connect communities with additional resources, such as best practices, guides and program models.

NTIA's BroadbandUSA team is developing new tools to support communities working to expand broadband access, adoption and use. The Initiative will provide communities with a comprehensive self-assessment tool and report to enable communities to better understand how their current policies and programs support broadband connectivity; an index or comparative community connectivity score; technical assistance with broadband planning and implementation; and access to an expanding community of practice. This webinar series will address the development of each of these components, including the planning framework, online self-assessment tool, and report with recommendations. Each webinar will include a 15–20 minute overview and update on the Community Connectivity Initiative and a discussion topic pertinent to the 2016 development and program roll-out. The proposed focus areas for each meeting are listed below:

July 14: Initiative update and framework and assessment design discussion
Aug. 11: Initiative update and discussion of the report and recommended output
Sept.8: Initiative update and recommendations discussion
Oct. 13: Initiative update and discussion on user support requirements
Nov. 10: Initiative update and evaluation discussion
Dec. 8: Initiative update and discussion of training requirements
Jan. 12: Initiative update and discussion of roll-out timeline
Feb. 9: Initiative update and communication discussion
March 9: Initiative update and next steps discussion

Participants are welcome to attend one or many webinars. General

questions and comments are welcome at any time during webinars via email to *BroadbandUSA@ntia.doc.gov.* The webinars are open to the public and press. Pre-registration is recommended. NTIA asks registrants to provide their first and last names and email addresses for both registration purposes and to receive any updates on the BroadbandUSA Community Connectivity Initiative at *http://www2.ntia.doc.gov/CommunityConnectivityWebinars* or via email at *BroadbandUSA@ntia.doc.gov.* Meeting agendas and relevant documents, including information on how to register for one or more webinars, will be also available on NTIA's Web site at *http://www2.ntia.doc.gov/CommunityConnectivityWebinars.*

Individuals requiring accommodations, such as language interpretation or other ancillary aids, are asked to notify the NTIA contact listed above at least seven (7) business days before the meeting.

Dated: June 8, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–13903 Filed 6–10–16; 8:45 am]

BILLING CODE 3510–60–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2016–0029]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Regulation I: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (12 CFR 1009)."

DATES: Written comments are encouraged and must be received on or before July 13, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- Electronic: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OMB: Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov (this link active on the day following publication of this notice).* Select "Information Collection Review," under "Currently under Review," use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulation I: Disclosure Requirements for Depository Institutions Lacking Federal Deposit Insurance (12 CFR 1009).

OMB Control Number: 3170–0062.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Respondents: 136.

Estimated Total Annual Burden Hours: 3,652.

Abstract: Regulation I applies to all depository institutions lacking Federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of Federal deposit insurance.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on March 23, 2016 (81 FR 15509). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 7, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–13837 Filed 6–10–16; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0027]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for a revised generic clearance titled, "Generic Information Collection Plan for Qualitative Consumer Education and Engagement Information Collections."

DATES: Written comments are encouraged and must be received on or before July 13, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building,

Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select "Information Collection Review," under "Currently under review, use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at *www.regulations.gov*. Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov*. Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Qualitative Consumer Education, and Engagement Information Collections.

OMB Control Number: 3170–0036.

Type of Review: Extension with change of a currently approved collection.

Affected Public: Individuals or households, State, Local, or Tribal governments; Private Sector.

Estimated Number of Respondents: 4,000.

Estimated Total Annual Burden Hours: 2,000.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Section 1013(d), the Bureau's Office of Financial Education is responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions. The Bureau seeks to obtain approval of a generic information collection plan to collect qualitative data on effective strategies and consumer experiences from both financial education practitioners and consumers through a variety of methods, including in-person meetings, interviews, focus groups, qualitative surveys, online discussion forums, social media polls, and other qualitative methods as necessary. The information collected through these processes will increase the Bureau's understanding of consumers' financial experiences, financial education and empowerment programs, and practices that can improve financial decision-making skills and outcomes for consumers. This information will also enable the Bureau to better communicate to consumers about the availability of Bureau tools and resources that consumers can use to make better informed financial decisions.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on May 16, 2016 (81 FR 30255). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 7, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–13839 Filed 6–10–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0020]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice A0381–20 DAMI, entitled "Badge and Credential Files" in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system is used to maintain control and accountability over Counterintelligence Badge and Credentials or Representative Credentials.

DATES: Comments will be accepted on or before July 13, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905 or by calling (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy, Civil Liberties, and Transparency Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on May 23, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal

Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD **Federal Register** *Liaison Officer, Department of Defense.*

A0381–20 DAMI

SYSTEM NAME:

Badge and Credential Files (February 22, 1993, 58 FR 10002)

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Counterintelligence (CI) Badge and Credentials (B&Cs) Files."

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, U.S. Army Intelligence Center of Excellence, ATTN: IATD (Badge and Credentials), Room 1279, Building 51005, 2520 Healy Street, Fort Huachuca, AZ 85613–7050."

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "U.S. Army military service members (active duty, reservist, or National Guard) and Department of the Army civilian employees, who currently possess, or previously possessed Counterintelligence (CI) Badge and Credential (B&Cs) or Representative Credentials (Rep Creds)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Full name (last, first, middle, suffix), Social Security Number (SSN), date of birth, grade, issue status, accountable unit, badge number and/or intelligence credential number."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army; E.O. 12333, U.S. Intelligence Activities, 2.3—Collection of Information; Department of Defense Instruction 5240.25, Counterintelligence Badges and Credentials; Army Regulation 381–20, Army Counterintelligence Program; and E.O. 9397 (SSN), as amended."

PURPOSE:

Delete entry and replace with "To maintain control and accountability over CI B&Cs and Rep Creds issued."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to Federal investigative and/or intelligence agencies to ascertain if a U.S. Army military service member (active duty, reservist, or National Guard) or Army civilian employee legally possesses or possessed CI B&Cs or Rep Creds.

DoD Blanket Routine Uses set forth at the beginning of the Army compilation of system of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Paper records and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Name and/or SSN."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) with an official need to know who are responsible for servicing the record in performance of their official duties. Persons are properly screened and cleared for access. Access to electronic data is restricted by passwords. In addition, integrity of automated data is ensured by internal audit procedures, data base access accounting reports and controls to preclude unauthorized disclosure."

RETENTION AND DISPOSAL:

Delete entry and replace with "Keep in central filing area until no longer needed for conducting business, but not longer than 6 years after the event, then destroy by shredding and deleting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Counterintelligence Programs; HQ, USAICoE, ATTN: IATD Badge and Credentials, Room 1279, Building 51005, 2520 Healy Street, Fort Huachuca, AZ 85613–7050."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to HQ, USAICoE, ATTN: IATD, Room 1279, Building 51005, 2520 Healy Street, Fort Huachuca, AZ 85613–7050.

Individual should provide full name and SSN.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'"

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the HQ, USAICoE, ATTN: IATD, Room 1279, Building 51005, 2520 Healy Street, Fort Huachuca, AZ 85613–7050.

Individual should provide full name and SSN.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'"

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, The Army Privacy Program or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the individual and security records."

* * * * *

[FR Doc. 2016–13858 Filed 6–10–16; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0021]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of Records.

SUMMARY: The Department of the Army proposes to alter a system of records notice AAFES 0410.01, entitled "Employee Travel Files" to process official travel requests for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of individual's dependents to travel; to obtain necessary clearance where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries and danger zones.

DATES: Comments will be accepted on or before July 13, 2016. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Rogers, Chief, FOIA and Privacy, Department of the Army, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905; telephone (703) 428–7499.

SUPPLEMENTARY INFORMATION: The Department of the Army's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/*. The proposed systems reports, as required by 5 U.S.C. 552a of the Privacy Act, as amended, were submitted on May 23, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0410.01

SYSTEM NAME:

Employee Travel Files (July 23, 2003, 68 FR 43502).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Army and Air Force Exchange Service, 3911 South Walton Walker Boulevard, Dallas, TX 75236–1598; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Employees of the Army and Air Force Exchange Service (Exchange) and their family members authorized to perform official travel."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Documents pertaining to travel of persons on official Government business, and/or their dependents, including travel assignment orders, authorized leave en route, availability of quarters and/or shipment of household goods and personal effects, application for passport/visas; security clearance; travel expense vouchers; and similar related documents. This includes the full name of the employee and/or dependent, dependent's relationship to employee, last five digits of the employee's SSN, DoD ID Number, current pay grade level, current duty station, new duty station, home address, home phone number, work number, cell number, personal email address, and emergency contact's name and phone number; employee/dependent biographical information, passport number, security clearance, dependent's home phone number and address, and employee/dependent date of birth."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Title 10 U.S.C. 3013, Secretary of the Army; Title 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; Army Regulation 215–8/AFI 34–211(I), Army and Air Force Exchange Service Operations; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "To process official travel requests for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of individual's dependents to travel; to obtain necessary clearance where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries and danger zones."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to attached or law enforcement authorities of foreign countries.

To the U.S. Department of Justice or Department of Defense legal/intelligence/investigative agencies for security, investigative, intelligence, and/or counterintelligence operations.

The DoD blanket routine uses set forth at the beginning of the Army's compilation of system of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*"

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Delete entry and replace with "Paper records and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Employee's name, SSN and/or DoD ID Number."

SAFEGUARDS:

Delete entry and replace with "Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) with an official 'need to know' who are responsible for servicing the record in performance of their official duties. Persons are properly screened and cleared for access. Access to computerized data is role-based and further restricted by passwords, which are changed periodically."

RETENTION AND DISPOSAL:

Delete entry and replace with "Employee Travel Files, MAC Transportation Authorizations, Ticketing Service Files, and Permanent Change of Station Orders are cutoff at the close of the fiscal year and destroyed 2 years after the cutoff.

Passport Files are destroyed when employee is separated, or when the passport has expired without request for renewal, or been revoked, whichever is sooner.

Records maintained for accounting purposes; including expense vouchers, invoices, receipted bills, copies of travel orders, travel authorizations, letters of credit and supporting documents are kept as followed: Temporary Duty Travel Files are cutoff at the close of the calendar year and destroyed 3 years after the cutoff; Permanent Change of Station files are cutoff at the close of the calendar year and destroyed 8 years after the cutoff; all other travel document copies are cutoff at the close of the calendar year and destroyed 2 years after the cutoff.

Paper files are destroyed by shredding and electronic files are deleted from database by erasure."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director/Chief Executive Officer, Army and Air Force Exchange Service, 3911 South Walton Walker Boulevard, Dallas, TX 75236–1598."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 South Walton Walker Boulevard, Dallas, TX 75236–1598.

Requests should contain the individual's full name, SSN (last four) or DoD ID number, current address, telephone number, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'"

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director/Chief Executive Officer, Army and Air Force Exchange Service, ATTN: FOIA/Privacy Manager, 3911 South Walton Walker Boulevard, Dallas, TX 75236–1598.

Requests should contain the individuals' full name, SSN (last four) or DoD ID number, current address, telephone number, and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'"

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in 32 CFR part 505, Army Privacy Program or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "From the Exchange employee or other DoD agencies."

* * * * *

[FR Doc. 2016–13894 Filed 6–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0072]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DSCA 03, entitled "Regional Center Persons/Activity Management System (RCPAMS)." The Regional Center Persons/Activity Management System (RCPAMS) will provide: a solution for Regional Center staff to manage operational, logistical and cost details about people, events, enrollments and organizations; a tool for reporting on all data related to Regional Center events; a platform for sharing common processes, terminology and data elements to facilitate efficient communication between the Regional Centers; a single view of each person with whom any of the Regional Centers have a relationship, representing the current snapshot and historical record of events and biographical information; an interface to other systems with which the Regional Centers must exchange data for use by other users and organizations; and an enterprise-class Customer Relationship Management platform to manage two-way communication between SAN and RCPAMS related to events and their participants.

DATES: Comments will be accepted on or before July 13, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and

Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/*.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 23, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," (See email from Denise on this citation.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DSCA 03

SYSTEM NAME:

Regional Center Persons/Activity Management System (RCPAMS) (January 28, 2013, 78 FR 5781)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "AutoNomic Resources Cloud Platform, 200 Cascade Pointe Lane, Cary, NC 27513–5763."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "DoD military and civilian employees, students, contractors, alumni, and subject matter experts affiliated with the following Defense Security Cooperation Agency's (DSCA) five regional centers: Africa Center for Strategic Studies (ACSS), Asia-Pacific Center for Security Studies (APCSS), William J. Perry Center for Hemispheric Defense Studies (CHDS), George Marshall European Center for Security Studies (GCMC), and Near-East-South Asia Center for Strategic Studies (NESA)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures Required by International Agreements Routine Use:

A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Cut off on closure of study or event; destroy 25 years after cut off."

SYSTEM MANAGER AND ADDRESS:

Delete entry and replace with "Regional Center Persons/Activity Management Program Manager, Defense Security Cooperation Agency, ATTN: PGM/CMO—RCPAMS Program Manager, 201 12th Street South, Suite 203, Arlington, VA 22202–4306."

NOTIFICATION PROCEDURES:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Regional Center Persons/Activity Management Program Manager, Defense Security Cooperation Agency, ATTN: STR/TNG—RCPAMS Program Manager, 201 12th Street South, Suite 203, Arlington, VA 22202–4306.

Signed, written requests should include the full name, current address and telephone number, and the name and number of this system of records notice."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name, current address and telephone number, and the name and number of this system of records notice."

* * * * *

[FR Doc. 2016–13890 Filed 6–10–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

Correction

In notice document 2016–12469 beginning on page 33481 in the issue of Thursday, May 26, 2016, make the following correction:

1. On pages 33491–33492, the table is corrected to read as set forth below:

BILLING CODE 1505–01–D

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
	01/01 - 12/31	139		92		231	10/01/2012
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]							
	06/01 - 11/30	167		88		255	12/01/2015
	12/01 - 05/31	195		88		283	12/01/2015
HUMACAO							
	01/01 - 12/31	139		92		231	10/01/2012
LUIS MUNOZ MARIN IAP AGS							
	06/01 - 11/30	167		88		255	12/01/2015
	12/01 - 05/31	195		88		283	12/01/2015
LUQUILLO							
	01/01 - 12/31	139		92		231	10/01/2012
MAYAGUEZ							
	01/01 - 12/31	109		112		221	09/01/2010
PONCE							
	01/01 - 12/31	149		89		238	09/01/2012
RIO GRANDE							
	01/01 - 12/31	169		123		292	06/01/2012
SABANA SECA [INCL ALL MILITARY]							
	06/01 - 11/30	167		88		255	12/01/2015
	12/01 - 05/31	195		88		283	12/01/2015
SAN JUAN & NAV RES STA							
	12/01 - 05/31	195		88		283	12/01/2015
	06/01 - 11/30	167		88		255	12/01/2015
VIEQUES							
	01/01 - 12/31	175		95		270	03/01/2012
VIRGIN ISLANDS (U.S.)							
ST. CROIX							
	04/15 - 12/14	247		110		357	06/01/2015
	12/15 - 04/14	299		116		415	06/01/2015
ST. JOHN							
	05/01 - 12/03	170		107		277	08/01/2015
	12/04 - 04/30	230		113		343	08/01/2015
ST. THOMAS							
	01/01 - 12/31	240		112		352	08/01/2015

LOCALITY		MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WAKE ISLAND							
WAKE ISLAND							
	01/01 - 12/31	172		66		239	07/01/2014

[FR Doc. C1–2016–12469 Filed 6–10–16; 8:45 am]
BILLING CODE 1505–01–C

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Newmarket Creek CAP Section 205, City of Hampton, VA, NEPA Scoping Meeting and Public Comment Period

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: NEPA Scoping meeting and public comment period.

SUMMARY: Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4370, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the U.S. Army Corps of Engineers (USACE) plans to prepare a Feasibility Study with an integrated Environmental Assessment (EA) to evaluate environmental impacts from reasonable project alternatives and to determine the potential for significant impacts related to an evaluation of structural and non-structural measures that could be implemented as a part of a Federal project, under the Section 205 Continuing Authorities Program (CAP), to reduce the flood risk in the portion of the Newmarket Creek watershed within the City boundaries. The Newmarket Creek watershed is subject to flooding from both rainfall and tidal events, and there is a history of flood damage within the watershed. If the USACE determines that there is a potential for a significant environmental impact, the USACE will issue a Notice of Intent to prepare an Environmental

Impact Statement in the **Federal Register**.

DATES: Scoping comments may be submitted until July 14, 2016.

ADDRESSES: The public is invited to submit NEPA scoping comments at the meeting and/or submit comments to Mr. David Schulte, Department of the Army, U.S. Army Corps of Engineers, Norfolk District, Fort Norfolk, 803 Front St., Norfolk, VA 23510 or via email: *David.M.Schulte@usace.army.mil.* The project title and the commenter's contact information should be included with submitted comments.

FOR FURTHER INFORMATION CONTACT: David Schulte, (757) 201–7007.

SUPPLEMENTARY INFORMATION: The Newmarket Creek watershed is subject to flooding from both rainfall and tidal events, and there is a history of flood damage within the watershed. USACE is investigating measures to reduce future flood risk in ways that support the long-term resilience and sustainability of the surrounding communities, and reduce the economic costs and risks associated with flood and tidal events.

USACE is the lead federal agency and the city of Hampton will be the non-federal sponsor for the study. The city of Hampton has experienced an accelerating increase in nuisance flooding due to storms and tidal events of varying magnitude, with large storms (nor'easters and hurricanes) often causing major flooding in many areas of the City. The feasibility study will address potential structural and non-structural alternatives to mitigate impacts from flooding and determining the Federal interest in cost-sharing for those alternatives.

As required by Council on Environmental Quality's Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies all reasonable alternatives to the proposed Federal action that meet the purpose and need will be considered in the EA. These alternatives will include no action and a range of reasonable alternatives for reducing flood risk within the Newmarket Creek and its watershed within the city of Hampton.

Scoping/Public Involvement. The public NEPA scoping meeting will be held on July 14, 2016, from 5 p.m.–8 p.m. It will be held at the West Hampton Community Center, 1638 Briarfield Rd., Hampton, VA 23661. Federal, state, and local agencies, Indian tribes, and the public are invited to provide scoping comments to identify issues and potentially significant effects to be considered in the analysis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–13817 Filed 6–10–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Undergraduate International Studies and Foreign Language Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Undergraduate International Studies and Foreign Language (UISFL) Program.

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.016A.

Dates:

Applications Available: June 13, 2016.

Deadline for Transmittal of Applications: July 22, 2016.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The UISFL Program provides grants for planning, developing, and carrying out programs to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Priorities: This notice contains two competitive preference priorities and two invitational priorities. Competitive Preference Priority 1 is from the notice of final priority, published in the **Federal Register** on June 11, 2014 (79 FR 33432). Competitive Preference Priority 2 is from 34 CFR 658.35(a).

Competitive Preference Priorities: For FY 2016, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional two or three points depending on whether and how an application meets Competitive Preference Priority 1, and we award up to an additional two points to an application that meets Competitive Preference Priority 2.

These priorities are:

Competitive Preference Priority 1. (2 or 3 points)

Applications from Minority-Serving Institutions (MSIs) (as defined in this notice) or community colleges (as defined in this notice), whether as individual applicants or as part of a consortium of institutions of higher education (IHEs) (consortium) or a partnership between nonprofit educational organizations and IHEs (partnership).

An application from a consortium or partnership that has an MSI or community college as the lead applicant will receive more points under this priority than applications in which the MSI or community college is a member of a consortium or partnership but not the lead applicant.

A consortium or partnership must undertake activities designed to incorporate foreign languages into the curriculum of the MSI or community college and to improve foreign language and international or area studies instruction on the MSI or community college campus.

For the purpose of this priority:

Community college means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an institution of higher education (as defined in section 101 of the HEA) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent) or master's, professional, or other advanced degrees.

Minority-Serving Institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Note: We will award either two or three points to an application that meets this priority. If an MSI or community college is a single applicant, or the lead applicant in a consortium or partnership, the application will receive three additional points. If an MSI or community college is a member of a consortium or partnership, but not the lead applicant, the application will receive two additional points. No application will receive more than three additional points for this priority.

Note: You may view lists of title III- and title V-eligible institutions at the following link:*https://www2.ed.gov/about/offices/list/ope/idues/t3t5-eligibles-2015.pdf.* The eligibility status is still current for institutions listed at the link above. You may also view the list of Historically Black Colleges and Universities at 34 CFR 608.2.

Competitive Preference Priority 2. (2 points)

Applications from an institution of higher education (IHE), a consortium of institutions of higher education (consortium), or a partnership between nonprofit educational organizations and IHEs (partnership) that require entering students to have successfully completed at least two years of secondary school foreign language instruction or that require each graduating student to earn two years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Invitational Priorities: For FY 2016, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Priority Languages Selected from the U.S. Department of Education's List of Less Commonly Taught Languages (LCTLs).

Applications that propose programs or activities focused on language instruction or the development of area or international studies programs to include language instruction in any of the 78 priority languages selected from the U.S. Department of Education's list of LCTLs: Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Area of National Need: In accordance with section 601(c) of the HEA (20 U.S.C. 1121(c)), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account, and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on the following Web site: *http://www2.ed.gov/about/offices/list/ope/iegps/consultation-2016.pdf.*

Invitational Priority 2—Developing Interdisciplinary Curriculum.

Applicants that create innovative curricula that combine the teaching of international studies with one of the following academic fields of study: business, economics, public health, international and comparative education, science, technology, engineering, or mathematics. Programs can be located within the applicant's home IHE or within the IHE(s) that form(s) part of the consortium/partnership applying for the grant (including those that are eligible to receive assistance under part A or B of title III or under title V).

Program Authority: 20 U.S.C. 1124.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 34 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 34 CFR part 3474. (d) The regulations in 34 CFR parts 655 and 658. (e) The notice of final priority, published in the **Federal Register** on June 11, 2014 (79 FR 33432).

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,257,434.

Estimated Range of Awards:

For single applicant grants: $70,000–$95,000 each 12-month budget period.

For consortia or partnership grants: $90,000–$150,000 each 12-month budget period.

Estimated Average Size of Awards:

For single applicant grants: $86,824.

For consortia or partnership grants: $120,000.

Maximum Award: We will reject any application from a single applicant that proposes a budget exceeding $95,000 for a single budget period of 12 months, or from an applicant that is a consortium or partnership that proposes a budget exceeding $150,000 for a single budget period of 12 months.

Estimated Number of Awards: 24.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period:

For single applicant grants: Up to 24 months.

For consortia or partnership grants: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) IHEs; (2) consortia of IHEs; (3) partnerships between nonprofit educational organizations and IHEs; and (4) public and private nonprofit agencies and organizations, including professional and scholarly associations.

2. *Cost Sharing or Matching:* This program has a matching requirement under section 604(a)(3) of the HEA, 20 U.S.C. 1124(a)(3), and the regulations for this program in 34 CFR 658.41. UISFL Program grantees must provide matching funds in either of the following ways: (i) Cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (ii) a combination of institutional and non-institutional cash or in-kind contributions including State and private sector corporation or foundation contributions, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III or under title V of the HEA that have submitted an application that demonstrates a need for a waiver or reduction.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. See paragraph 4(D) in section V of this notice for further information regarding this requirement.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.016A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) by contacting the person listed under For **FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 40 pages, using the following standards:

• A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The 40-page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, Budget Information—Non-Construction Programs (ED 524); Part IV, assurances, certifications, and the response to section 427 of the General Education Provisions Act (GEPA); the table of contents; the one-page project abstract; the appendices; or the line item budget. However, the page limit does apply to all of the application narrative section. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative for the purpose of the page-limit requirement.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 13, 2016.

Deadline for Transmittal of Applications: July 22, 2016.

Applications for grants under this program must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 664.33. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: *http://fedgov.dnb.com/webform.* A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the UISFL Program, CFDA number 84.016A, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as

described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the UISFL Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.016, not 84.016A).

Please note the following:

• When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*

• You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this program to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a read-only, non-modifiable Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF (*e.g.*, Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the project narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique a PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after we determine whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability

of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tanyelle Richardson, U.S. Department of Education, 400 Maryland Ave. SW., Room 3E211, Washington, DC 20202–4260. FAX: (202) 453–5780.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and three copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), 550 12th Street, SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope—and, if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. Selection Criteria: The selection criteria for this program are from 34 CFR 658.31, 658.32, 658.33, and 655.32 and are listed in this section. The maximum score for all of the criteria, including the competitive preference priorities, is 105 points.

All Applications. All applications will be evaluated based on the following criteria: (a) Plan of operation (15 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); and (d) Adequacy of resources (5 points).

Applications from IHEs, Consortia, or Partnerships. All applications submitted by an IHE or a consortia or partnership will also be evaluated based on the following criteria: (e) Commitment to international studies (15 points); (f) Elements of the proposed international studies program (10 points); and (g) Need for and prospective results of the proposed program (15 points).

Applications from Public and Private Nonprofit Agencies and Organizations, Including Professional and Scholarly Associations. All applications from public and private nonprofit agencies and organizations, including professional and scholarly associations, will also be evaluated based on the following criterion: Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level (40 points).

The evaluation plan will be scored separately as described in the *Review and Selection Process* section of this notice.

Additional information regarding these criteria is in the application package for this program. The total number of points available under these selection criteria, combined with the competitive preference priorities, is as follows:

Selection criteria	UISFL IHEs	UISFL Consortia and partnerships	UISFL public and private nonprofit agencies and organizations, including professional and scholarly associations
(a) Plan of Operation	15	15	15
(b) Quality of Key Personnel	10	10	10
(c) Budget & Cost Effectiveness	10	10	10
(d) Adequacy of Resources	5	5	5
(e) Commitment to International Studies	15	15	n/a
(f) Elements of Proposed International Studies Program	10	10	n/a
(g) Need for & Prospective Results of Proposed Program	15	15	n/a
(h) Need for & Potential Impact of the Proposed Project in Improving International Studies & the Study of Modern Foreign Languages at the Undergraduate Level	n/a	n/a	40
Competitive Preference Priority #1 (Optional)	3	3	n/a
Competitive Preference Priority #2 (Optional)	2	2	n/a
Sub-Total	85	85	80
(i) Evaluation Plan	20	20	20
Total Possible Points	105	105	100

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

For the UISFL grant applications, the Department will use a two-tier review process to review and score eligible applications. Under the first—tier review, content reviewers will review and score eligible applications on the following selection criteria: (a) Plan of operation; (b) Quality of key personnel; (c) Budget and cost effectiveness; (d) Adequacy of resources; (e) Commitment to international studies; (f) Elements of the proposed international studies program; (g) Need for and prospective results of the proposed program as applicable; as well as (h) Need for and potential impact of the proposed project in improving international studies and the study of modern foreign languages at the undergraduate level, if the applicant is from a public or private nonprofit agency or organization. These reviewers will also review and score the applications that address the competitive preference priorities. Under the second-tier review, the top 60 ranked applications from the first tier will have the remaining criterion, Evaluation plan, reviewed and scored by a different panel of peer reviewers with evaluation expertise. Evaluation peer reviewers will be responsible for assessing the feasibility of evaluation plans and the proposed performance measure form [PMF]. The PMF includes the Project Goals, Performance Measures, and Activities that all applicants must submit to demonstrate how their projects' performance will be assessed. Both tier scores will then be combined and the combined score will be used to rank the top-scoring applications.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Application Requirements:* In addition to any other requirements outlined in the application package for this program, section 604(a)(7) of the HEA, 20 U.S.C. 1124(a)(7), requires that each application from an IHE, consortia, or partnership include—

(A) Evidence that the applicant has conducted extensive planning prior to submitting the application;

(B) An assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(C) An assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the UISFL Program;

(D) An assurance that each applicant, consortium, or partnership will use the Federal assistance provided under the UISFL Program to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(E) A description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(F) An explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views, and generate debate on world regions and international affairs, where applicable; and

(G) A description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic

version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as specified by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the online data and reporting system, the International Resource Information System (IRIS), to complete their interim and final reports. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case, the Secretary establishes a data collection period.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, as updated by the GPRA Modernization Act of 2010 on January 4, 2011, the Department will use the following performance measures to evaluate the success of the UISFL Program: percentage of UISFL projects that added or enhanced courses in international studies in critical world areas and priority foreign languages; and percentage of UISFL consortium projects that established certificate and/or undergraduate degree programs in international or foreign language studies.

If funded, you will be required to collect and report data in IRIS on those measures and steps taken toward improving performance on those outcomes. Consequently, applicants are advised to include these outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Their measurement should be a part of the proposed project evaluation plan, along with measures of progress and on the goals and objectives specific to your project.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for these performance measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress toward meeting the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Tanyelle Richardson, U.S. Department of Education, 400 Maryland Ave, SW., room 3E211, Washington, DC 20202–4260. Telephone: (202) 453–6391 or by email: *tanyelle.richardson@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search function at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 8, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning and Innovation, Delegated the Duties of Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–13933 Filed 6–10–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Notice of Interest Rates of Federal Student Loans Made Under the William D. Ford Federal Direct Loan Program on or After July 1, 2013

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.268.

DATES: This notice is effective June 13, 2016.

SUMMARY: The Chief Operating Officer for Federal Student Aid announces the interest rates for loans made under the William D. Ford Federal Direct Loan (Direct Loan) Program on or after July 1, 2016, but before July 1, 2017.

FOR FURTHER INFORMATION CONTACT: Rene Tiongquico, U.S. Department of Education, 830 First Street NE., 11th Floor, Washington, DC 20202. Telephone: (202) 377–4270 or by email: *Rene.Tiongquico@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Section 455(b) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1087e(b)), provides formulas for determining the interest rates charged to borrowers for loans made under the

Direct Loan Program including: Federal Direct Subsidized Stafford Loans (Direct Subsidized Loans); Federal Direct Unsubsidized Stafford Loans (Direct Unsubsidized Loans); Federal Direct PLUS Loans (Direct PLUS Loans); and Federal Direct Consolidation Loans (Direct Consolidation Loans).

Direct Subsidized Loans, Direct Unsubsidized Loans, and Direct PLUS Loans (collectively, Direct Loans) first disbursed on or after July 1, 2013, have a fixed interest rate that is calculated based on the high yield of the 10-year Treasury notes auctioned at the final auction held before June 1 of each year, plus a statutory add-on percentage (a "margin"). Therefore, while the interest rate determination for new loans will be different from year to year, each of these loans will have a fixed interest rate for the life of the loan. In each case the calculated rate is capped by a maximum interest rate. On Wednesday, May 11, 2016, the United States Treasury Department held a 10-year Treasury note auction that resulted in a high yield of 1.710%.

The following chart contains specific information on the calculation of the interest rates for Direct Loans first disbursed on or after July 1, 2016, but before July 1, 2017. We publish a separate notice containing the interest rates for Direct Loans that were made in prior years.

FIXED-RATE DIRECT SUBSIDIZED LOANS, DIRECT UNSUBSIDIZED LOANS, AND DIRECT PLUS LOANS FIRST DISBURSED ON OR AFTER 7/1/2016 BUT BEFORE 7/1/2017

Loan type	Student grade level	Cohort		Index rate	Margin (%)	Fixed rate (%)	Max. rate (%)
		First disbursed on/after	First disbursed before	10-Year treasury note (%)			
Subsidized	Undergraduates	7/1/2016	7/1/2017	1.710	2.05	3.76	8.25
Unsubsidized	Undergraduates	7/1/2016	7/1/2017	1.710	2.05	3.76	8.25
Unsubsidized	Graduate and Professional Students.	7/1/2016	7/1/2017	1.710	3.60	5.31	9.50
PLUS	Parents of Dependent Undergraduates.	7/1/2016	7/1/2017	1.710	4.60	6.31	10.50
PLUS	Graduate and Professional Students.	7/1/2016	7/1/2017	1.710	4.60	6.31	10.50

If an application for a Direct Consolidation Loan is received by the Department on or after July 1, 2013, the interest rate on that loan is the weighted average of the consolidated loans, rounded up to the nearest higher ⅛ of 1 percent. These Direct Consolidation Loans do not have an interest rate cap.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087, *et seq.*

Dated: June 8, 2016.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2016–13937 Filed 6–10–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0067]

Agency Information Collection Activities; Comment Request; Fund for the Improvement of Postsecondary Education (FIPSE) Annual Performance Report

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 12, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0067. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stacey Slijepcevic, 202–453–6150.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate;

(4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fund for the Improvement of Postsecondary Education (FIPSE) Annual Performance Report.

OMB Control Number: 1840–0793.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 4,000.

Abstract: The Fund for the Improvement of Postsecondary Education (FIPSE) works to improve postsecondary education through grants to postsecondary educational institutions and agencies. Such grants are awarded to non-profit organizations on the basis of competitively reviewed applications submitted to FIPSE under the First in the World (FITW) Program. This collection includes a performance report for use with FITW programs 84.116F and 84.116X. We request clearance of one annual performance report for FITW programs 84.116F and 84.116X that will serve the dual purpose of an annual and final performance report. In this collection there is one (1) form, the annual performance report for FITW programs that includes a FITW program burden statement. The collection of the requested data in the performance report is necessary for the evaluation and assessment of FITW-funded programs and for assessment of continuation funding for each grantee.

Dated: June 8, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–13865 Filed 6–10–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. BLR–006]

Notice of Petition for Waiver From Johnston Boiler Company From the Department of Energy Commercial Packaged Boiler Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and request for public comments.

SUMMARY: This notice announces receipt of a petition for waiver from Johnston Boiler Company (Johnston) seeking an exemption from specified portions of the U.S. Department of Energy (DOE) test procedure applicable to commercial packaged boilers. Johnston contends that some of their commercial packaged boilers cannot be accurately tested using the currently applicable DOE test procedure and, as a result, seeks to use an alternate test procedure to test these basic models. DOE solicits comments, data, and information concerning Johnston's petition and the suggested alternate test procedure.

DATES: DOE will accept comments, data, and information with respect to the Johnston petition until July 13, 2016.

ADDRESSES: You may submit comments, identified by case number "BLR–006," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. BLR–006] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit *http://www.regulations.gov.* Available documents include the following items: (1) This notice; (2) public comments received; and (3) the petition for waiver.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–9496. Email: *Peter.Cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In a petition received July 21, 2015, Johnston requested that the U.S. Department of Energy ("DOE") grant a waiver to certain models of larger commercial package boilers that cannot be tested under the existing DOE test procedure. The models of commercial packaged boilers at issue are models with higher input capacities that typically require higher steam pressure and alternative instrumentation due to the large quantities of fluids being measured.

I. Background and Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6311 *et seq.*), established the Energy Conservation Program for certain industrial equipment, which includes commercial packaged boilers.[1] Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) With respect to commercial packaged boilers, Part C requires DOE to use industry test procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) or the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES[2] Standard 90.1, "Energy Standard for Buildings Except Low-Rise Residential Buildings." (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE is required to amend its test procedure to be consistent with the amended industry test procedure, unless it determines, by rule published

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

[2] Illuminating Engineering Society.

in the **Federal Register** and supported by clear and convincing evidence, that the amended test procedure would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, and estimated operating costs of that equipment during a representative average use cycle. (42 U.S.C. 6314(a)(4)(B)). The test procedure for commercial packaged boilers is contained in 10 CFR part 431, subpart E.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii).

DOE may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(2). As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 431.401(l).

II. Petition for Waiver of Test Procedure

On July 21, 2015, Johnston submitted a petition for waiver from the DOE test procedure for certain basic models of its commercial packaged boilers. The DOE test procedure for commercial packaged boilers is set forth at 10 CFR 431.86 and incorporates by reference Hydronics Institute (HI) BTS–2000, "Method to Determine Efficiency of Commercial Space Heating Boilers" (BTS–2000).

According to Johnston, there are several issues that make BTS–2000 incompatible with larger commercial packaged boilers, including those identified in its petition for waiver. Johnston stated that the requirements to use test conditions specified in BTS–2000 and the instrumentation requirements are outdated. Specifically, Johnston indicated the following regarding the test conditions:

- The 0 to 2 psig test pressure for steam boilers may be adequate for residential and small commercial (cast iron) boilers sized [commercial packaged] boilers, however such steam pressures are not compatible with large [commercial packaged] boilers as it will cause water carryover in large quantities, and an inability to meet design water flow rates and firing rates;
- Typically test steam pressures in the range of 10 to 12 psig are required; and
- Test temperatures defined for hot water [commercial packaged] boilers cause thermal shock problems in large [commercial packaged] boilers.

Johnston also indicated the following regarding the instrumentation chart in Table 1 of section 6.0, "Instruments," of BTS–2000:

- Steam pressure cannot be measured by mercury manometer as the use of mercury in instruments and controls is banned; the correct instrument is a Bourdon Tube Gauge for pressures of 0 to 30 psig;
- Large boilers typically fire into a positive pressure combustion chamber, thus gas pressure, firebox pressure and vent/flue pressure instruments all need to reflect this;
- The use of scales to measure water/condensate/moisture flow rates is incompatible with the volume of these fluids being used or generated by large [commercial packaged] boilers; water flow meters should be used and in the case of moisture content, current practice is to use a throttling calorimeter;
- The measurement of carbon dioxide as a means of calculating excess air or oxygen is considered obsolete in the large [commercial packaged] boiler industry; direct measurement of excess oxygen is the preferred method as modern oxygen meters can easily be calibrated against the oxygen in the ambient air;
- Carbon Monoxide levels are no longer measured as a percentage; the current preferred unit is parts per million (ppm).

To address these concerns, Johnston proposes to use the newly published American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) 1500–2015, "Standard for Performance Rating of Commercial Space Heating Boilers" (ANSI/AHRI Standard 1500–2015) in place of BTS–2000. AHRI developed ANSI/AHRI Standard 1500–2015 as a replacement for BTS–2000 in order to make the test procedure suitable for use with larger commercial packaged boilers, as well as improve and clarify the test method. Johnston claims that use of this ANSI/AHRI Standard 1500–2015 is necessary as it is compatible with the size of commercial packaged boilers they manufacture.

Additionally, for the large commercial packaged boilers capable of supplying either steam or hot water identified in this petition, Johnston requests that, when determining the combustion efficiency in hot water mode based on testing in steam mode only, the combustion efficiency rating be determined based on an adjusted combustion efficiency. Johnston requests that an adjustment be made to the measured stack temperature to be used in calculating combustion efficiency based on the relative difference between the flue gas temperature and the bulk fluid temperature when operating in steam mode as opposed to hot water using the following relationship:

$$T_{stack,\ hw} = (T_{stack,\ steam} - T_{sat}) + T_{bulk,\ hw}$$

where $T_{stack,\ hw}$ is the stack temperature to be used to determine the combustion efficiency in hot water mode, $T_{stack,\ steam}$ is the measured stack temperature when testing on steam, T_{sat} is the saturation temperature of steam at the test pressure, and $T_{bulk,\ hw}$ is the temperature of the outlet water when testing in hot water mode and is equal to 180 °F. According to Johnston, using this adjusted stack temperature to calculate combustion efficiency is a more accurate representation of the actual efficiency when operating as a hot water commercial packaged boiler than simply using combustion efficiency value for steam mode.

Johnston also requests to use the vertical stack arrangement shown on their "Drawing #327A0040 Johnston Boiler General Arrangement D.O.E. Efficiency Test (attachment B)." DOE's existing test procedure incorporates section 7.0 "Apparatus" of BTS–2000 with respect to test setup including flue connection requirements. (DOE notes that the term "flue," not "stack," is used throughout its test procedure regulations as well as BTS–2000). The flue requirements differ depending on the characteristics of the commercial packaged boiler, including:

- Whether the unit is oil-fired or gas-fired, and if gas-fired;
- Whether the unit is direct vent;
- Whether the unit has an input rating of more than 400,000 Btu/h;
- Whether the unit is discharges vent gases horizontally or vertically; and
- Whether the unit is condensing.

According to Johnston, the large volume of flue gas in relation to the flue

diameter results in relatively high velocities and therefore creates turbulence. Johnston indicates that this straight stack arrangement is shown in their operating manual and in the American Boiler Manufacturer Association's (ABMA) "Packaged Boiler Engineering Manual." DOE requests comment on how turbulence affects measured efficiency under the current test procedure, and how use of the vertical stack arrangement shown in the drawing provided by Johnston would prevent turbulence.

In addition, Johnston stated that ANSI/AHRI Standard 1500–2015 does not clarify whether there is an upper limit for fuel input rate to which the standard applies. However, the scope of ANSI/AHRI Standard 1500–2015 is identified as "commercial space heating boilers" in section 1.1. (Note: The term "commercial space heating boiler" is not defined in ANSI/AHRI Standard 1500–2015.) Johnston suggested that the upper fuel input rate limit be established at 12,500,000 Btu/hr. Johnston stated that the two major safety standards for the industry are American Society of Mechanical Engineers (ASME) CSD–1 Controls and Safety Devices for Automatically Fired Boilers (ASME CSD–1) and National Fire Protection Association (NFPA)–85–2015 Boiler and Combustion Systems Hazard Code (NFPA–85). Johnston further indicated that the scope of ASME CSD–1 is for commercial boilers with inputs from 400,000 to 12,500,000 Btu/hr and the scope for NFPA–85 is for industrial boilers over 12,500,000 Btu/hr. DOE notes that neither the existing DOE test procedure or energy standards establish an upper limit in terms of fuel input rate for which they apply. Consequently, DOE is declining to consider Johnston's request for an upper limit for the fuel input rate which would limit the scope of applicability of the test procedure in this proceeding.

DOE notes that it has published a notice of proposed rulemaking (NOPR) to amend its test procedure for commercial packaged boilers prescribed in 10 CFR part 431 subpart E (March 2016 CPB TP NOPR). 81 FR 14641 (Mar. 17, 2016). The proposed amended test procedure addresses, among other changes, most of the issues raised in this waiver request by incorporating by reference ANSI/AHRI Standard 1500–2015 as a replacement for BTS–2000 in the DOE test procedure for commercial packaged boilers. In addition to adopting ANSI/AHRI Standard 1500–2015 as a replacement for BTS–2000, DOE further proposes several modifications to its test procedure that are not captured in ANSI/AHRI Standard 1500–2015 in order to improve repeatability, add clarification, and accommodate testing of some equipment that has experienced difficulty in testing to the existing DOE test procedure. Among these changes, DOE proposes to adopt the stack temperature adjustment described by Johnston when using the tested combustion efficiency of large steam commercial packaged boilers to represent the combustion efficiency of large commercial packaged boilers in hot water mode.

The following basic models are included in Johnston's petition:

509 Series	
4-Pass Scotch Marine	
PFT_50–4S	PFT_50–4W
PFT_75–4S	PFT_75–4W
PFT_80–4S	PFT_80–4W
PFT_100–4S	PFT_100–4W
PFT_125–4S	PFT_125–4W
PFT_150–4S	PFT_150–4W
PFT_200–4S	PFT_200–4W
PFT_250–4S	PFT_250–4W
PFT_300–4S	PFT_300–4W
PFT_350–4S	PFT_350–4W
PFT_400–4S	PFT_400–4W
PFT_500–4S	PFT_500–4W
PFT_600–4S	PFT_600–4W
PFT_750–4S	PFT_750–4W
PFT_800–4S	PFT_800–4W
PFT_900–4S	PFT_900–4W
PFT_1000–4S	PFT_1000–4W
PFT_1200–4S	PFT_1200–4W
PFT_1500–4S	PFT_1500–4W
PFT_1600–4S	PFT_1600–4W

509 Series	
3-Pass Scotch Marine	
PFT_50–3S	PFT_50–3W
PFT_75–3S	PFT_75–3W
PFT_80–3S	PFT_80–3W
PFT_100–3S	PFT_100–3W
PFT_125–3S	PFT_125–3W
PFT_150–3S	PFT_150–3W
PFT_200–3S	PFT_200–3W
PFT_250–3S	PFT_250–3W
PFT_300–3S	PFT_300–3W
PFT_350–3S	PFT_350–3W
PFT_400–3S	PFT_400–3W
PFT_500–3S	PFT_500–3W
PFT_600–3S	PFT_600–3W
PFT_750–3S	PFT_750–3W
PFT_800–3S	PFT_800–3W
PFT_900–3S	PFT_900–3W
PFT_1000–3S	PFT_1000–3W
PFT_1200–3S	PFT_1200–3W
PFT_1500–3S	PFT_1500–3W
PFT_1600–3S	PFT_1600–3W
PFT_1800–3S	PFT_1800–3W
PFT_2000–3S	PFT_2000–3W
PFT_2500–3S	PFT_2500–3W

XID Series	
2-Pass Scotch Marine	
PFX_100–2S	PFX_100–2W
PFX_150–2S	PFX_150–2W
PFX_200–2S	PFX_200–2W
PFX_250–2S	PFX_250–2W
PFX_300–2S	PFX_300–2W
PFX_350–2S	PFX_350–2W
PFX_400–2S	PFX_400–2W
PFX_500–2S	PFX_500–2W
PFX_600–2S	PFX_600–2W
PFX_700–2S	PFX_700–2W
PFX_800–2S	PFX_800–2W
PFX_900–2S	PFX_900–2W
PFX_1000–2S	PFX_1000–2W
PFX_1200–2S	PFX_1200–2W
PFX_1500–2S	PFX_1500–2W
PFX_1600–2S	PFX_1600–2W
PFX_1800–2S	PFX_1800–2W
PFX_2000–2S	PFX_2000–2W
PFX_2500–2S	PFX_2500–2W

309 Series	
3-Pass Scotch Marine	
PFB_100–3S	PFB_100–3W
PFB_125–3S	PFB_125–3W
PFB_150–3S	PFB_150–3W
PFB_200–3S	PFB_200–3W
PFB_250–3S	PFB_250–3W
PFB_300–3S	PFB_300–3W
PFB_350–3S	PFB_350–3W
PFB_400–3S	PFB_400–3W
PFB_500–3S	PFB_500–3W
PFB_600–3S	PFB_600–3W
PFB_750–3S	PFB_750–3W

III. Summary and Request for Comments

Through this notice, DOE is publishing Johnston's petition for waiver pursuant to 10 CFR 431.401(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure applicable to measurement of energy efficiency of certain models of commercial packaged boilers manufactured by Johnston.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure. Pursuant to 10 CFR 431.401(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: David C. Reinink, President, Johnston Boiler Company, 300 Pine Street, P.O. Box 300, Ferrysburg, MI 49409–0300. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on June 3, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Johnston Boiler Company
300 Pine Street
P.O. Box 300
Ferrysburg, MI 49409–0300

Application for Waiver for the Efficiency Rating of Commercial Space Heating Boilers

In accordance with the provisions of the Code of Federal Regulations Part 431, paragraph 431.401, Johnston Boiler Company is hereby petitioning for a waiver from the following test procedures specified for Commercial Packaged Boilers:

1. Paragraph 431.86 Uniform test method for the measurement of energy efficiency of commercial packaged boilers. This section requires the boilers be tested using the provisions of HI BTS–2000. We propose to use the newly published AHRI 1500, 2015 Standard for Performance Rating of Commercial Space Heating Boilers. There are several issues that make BTS 2000 incompatible with the larger boilers that were identified in previous waiver requests. AHRI has worked diligently over the past year to revise BTS–2000 in order to address those issues and make BTS–2000 suitable for use with larger boilers. AHRI Standard 1500 is the result of that work. Use of this new standard is required as it is compatible with the size boilers we manufacture.

2. Paragraph 431.86(c)(1)(iv) The requirement to use test conditions specified in BTS–2000 specifically the requirements for the test pressure for steam boilers, the required water temperatures for hot water boilers and instrumentation requirements seem to refer back to the middle of the last century rather than the present day, for example:

- The 0 to 2 psig test pressure for steam boilers may be perfectly adequate for residential and small commercial (cast iron) boilers sized boilers, however is not compatible with large boilers as it will cause water carryover in large quantities, and an inability to meet design water flow rates and firing rates. Typically test pressures in range 10 to 12 psig are required.
- Test temperatures defined for hot water boilers are guaranteed to cause thermal shock problems in large boilers.
- The instrumentation chart, Table 1, has several problem areas, as follows:
  - Steam pressure cannot be measured by mercury manometer as the use of mercury in instruments and controls is banned. The correct instrument is a Bourdon Tube Gauge 0 to 30 psig
  - Large boilers typically fire into a positive pressure combustion chamber, thus gas pressure, firebox pressure and vent/flue pressure instruments all need to reflect this.
  - The use of scales to measure water/condensate/moisture flow rates is incompatible with the sheer volume of these fluids being used or generated by large boilers. Water flow meters should be used and in the case of moisture content, current practice is to use a throttling calorimeter.
  - The measurement of carbon dioxide as a means of calculating excess air or oxygen is considered obsolete in the large boiler industry. Direct measurement of excess oxygen is the preferred method as modern oxygen meters can easily be calibrated against the oxygen in the ambient air.
  - Carbon Monoxide levels are no longer measured as a percentage. The current preferred unit is ppm.

AHRI 1500 has taken into account these changes.

3. Paragraph 431.86(c)(2)(iii)(B) Rating. This paragraph specifies that for boilers capable of supplying either steam or hot water, that they are tested on steam only, the hot water efficiency shall be based on the testing in the steam mode. We propose to use an adjusted steam efficiency for hot water when testing on steam only. The adjustment is made to the measured stack temperature to be used in calculating efficiency based on the relative difference between the flue gas temperature and the bulk fluid temperature when operating on steam v hot water using the following relationship:

$Tstack_{hw} = (Tstack_{steam} - T_{sat}) + Tbulk_{hw}$

Where:

$Tstack_{hw}$ = Stack temperature to be used to determine the efficiency on hot water

$Tstack_{steam}$ = Measured stack temperature when testing on steam

T_{sat} = Saturation temperature of steam at the test pressure

$Tbulk_{hw}$ = 180 °F

The dominant heat transfer variable for both steam and hot water boilers is the gas side coefficient and there is very little difference in the overall heat transfer coefficient between steam and hot water boilers. It is possible therefore to determine what a hot water boiler stack temperature will be, based on a steam test and the bulk fluid temperature difference within the boiler. We believe that using this adjusted stack temperature to calculate efficiency is a more accurate representation of the actual efficiency when operating as a hot water boiler than simply using the steam efficiency value.

4. We will use the vertical stack arrangement shown on our Drawing #327A0040 Johnston Boiler General Arrangement D.O.E. Efficiency Test (attachment B). The large volume of our flue gas in relation to the flue diameter results in relatively high velocities with resulting turbulence. This straight stack arrangement is shown in our operating manual and ABMA's "*Packaged Boiler Engineering Manual*".

5. AHRI Standard 1500, Page 1, Section 2, Paragraph 1.1 and 2.2. It is not clear if there is an upper limit for input rating. However, the stated purpose of the AHRI standard 1500 is for *Commercial Space Heating Boilers*. We suggest that the upper input limit be established at 12,500,000 Btu/hr.

The two major safety standards for our industry are American Society of Mechanical Engineers (ASME CSD–1 Controls and Safety Devices for Automatically Fired Boilers) and National Fire Protection Association (2015 NFPA–85 Boiler and Combustion Systems Hazard Code). The scope of CSD–1 is for *Commercial Boilers* with inputs from 400,000 to 12,500,000 Btu/hr. The scope for NFPA–85 is for *Industrial Boilers* over 12,500,000 Btu/hr.

The basic models that this request is applicable to are as follows:

See attachment A

Other known Manufacturers of similar products are listed below. These manufacturers will be notified by Johnston Boiler Company of this waiver, if and when the deviation is granted, in accordance with paragraph 431.401(c).

AESYS Technologies, LLC
Bryan Steam
Burnham Commercial
Cleaver Brooks
Easco
Fulton Boiler Works
Hurst
Johnston Boiler Company
Lattner Boiler Company
Miura
Precision Boilers LLC
Superior Boiler Works
Unilux
Vapor Power International LLC
Victory Energy Operations LLC
Williams & Davis

Best Regards,

David C. Reinink,
President, Johnston Boiler Company

Attachment A

Johnston Boiler Company—Ferrysburg, Michigan—Boiler Model Numbers

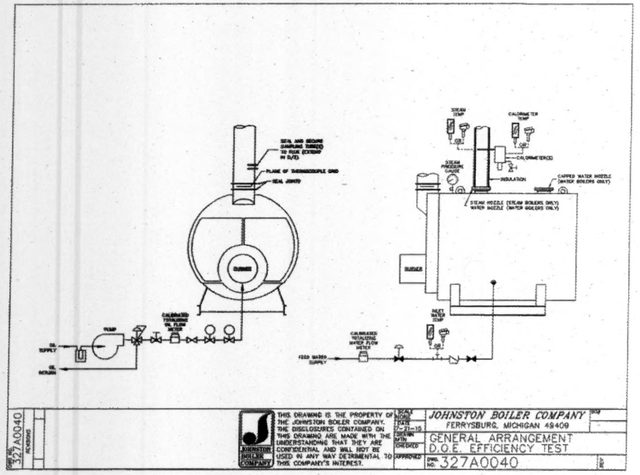
509 Series	
4-Pass Scotch Marine	
PFT_50–4S	PFT_50–4W
PFT_75–4S	PFT_75–4W
PFT_80–4S	PFT_80–4W
PFT_100–4S	PFT_100–4W
PFT_125–4S	PFT_125–4W
PFT_150–4S	PFT_150–4W
PFT_200–4S	PFT_200–4W
PFT_250–4S	PFT_250–4W
PFT_300–4S	PFT_300–4W
PFT_350–4S	PFT_350–4W
PFT_400–4S	PFT_400–4W
PFT_500–4S	PFT_500–4W
PFT_600–4S	PFT_600–4W
PFT_750–4S	PFT_750–4W
PFT_800–4S	PFT_800–4W
PFT_900–4S	PFT_900–4W
PFT_1000–4S	PFT_1000–4W
PFT_1200–4S	PFT_1200–4W
PFT_1500–4S	PFT_1500–4W
PFT_1600–4S	PFT_1600–4W

509 Series	
3-Pass Scotch Marine	
PFT_50–3S	PFT_50–3W
PFT_75–3S	PFT_75–3W
PFT_80–3S	PFT_80–3W
PFT_100–3S	PFT_100–3W
PFT_125–3S	PFT_125–3W
PFT_150–3S	PFT_150–3W
PFT_200–3S	PFT_200–3W
PFT_250–3S	PFT_250–3W
PFT_300–3S	PFT_300–3W
PFT_350–3S	PFT_350–3W
PFT_400–3S	PFT_400–3W
PFT_500–3S	PFT_500–3W
PFT_600–3S	PFT_600–3W
PFT_750–3S	PFT_750–3W
PFT_800–3S	PFT_800–3W
PFT_900–3S	PFT_900–3W
PFT_1000–3S	PFT_1000–3W
PFT_1200–3S	PFT_1200–3W
PFT_1500–3S	PFT_1500–3W
PFT_1600–3S	PFT_1600–3W
PFT_1800–3S	PFT_1800–3W
PFT_2000–3S	PFT_2000–3W
PFT_2500–3S	PFT_2500–3W

XID Series	
2-Pass Scotch Marine	
PFX_100–2S	PFX_100–2W
PFX_150–2S	PFX_150–2W
PFX_200–2S	PFX_200–2W
PFX_250–2S	PFX_250–2W
PFX_300–2S	PFX_300–2W
PFX_350–2S	PFX_350–2W
PFX_400–2S	PFX_400–2W
PFX_500–2S	PFX_500–2W
PFX_600–2S	PFX_600–2W
PFX_700–2S	PFX_700–2W
PFX_800–2S	PFX_800–2W
PFX_900–2S	PFX_900–2W
PFX_1000–2S	PFX_1000–2W
PFX_1200–2S	PFX_1200–2W
PFX_1500–2S	PFX_1500–2W
PFX_1600–2S	PFX_1600–2W
PFX_1800–2S	PFX_1800–2W
PFX_2000–2S	PFX_2000–2W
PFX_2500–2S	PFX_2500–2W

309 Series	
3-Pass Scotch Marine	
PFB_100–3S	PFB_100–3W
PFB_125–3S	PFB_125–3W
PFB_150–3S	PFB_150–3W
PFB_200–3S	PFB_200–3W
PFB_250–3S	PFB_250–3W
PFB_300–3S	PFB_300–3W
PFB_350–3S	PFB_350–3W
PFB_400–3S	PFB_400–3W
PFB_500–3S	PFB_500–3W
PFB_600–3S	PFB_600–3W
PFB_750–3S	PFB_750–3W

ATTACHMENT B



[FR Doc. 2016–13891 Filed 6–10–16; 8:45 am]

BILLING CODE 8450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–112–000.

Applicants: West Valley Power, LLC.

Description: West Valley Power, LLC Response to Commission May 25, 2016 Data Request.

Filed Date: 6/3/16.

Accession Number: 20160603–5288.

Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: EC16–127–000.

Applicants: Verso Corporation, Verso Maine Energy LLC, Rumford Paper Company, NewPage Energy Services LLC.

Description: Application for Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act of Verso Corporation, et al.

Filed Date: 6/2/16.

Accession Number: 20160602–5481.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: EC16–128–000.

Applicants: Electricity Maine, LLC, Electricity NH, LLC, Provider Power MASS, LLC, Spark Holdco, LLC.

Description: Application For Authorization Under Section 203 Of The Federal Power Act And Requests For Waiver Of Filing Requirements, Expedited Consideration And Shortened Comment Period Of Electricity Maine, LLC et al.

Filed Date: 6/2/16.

Accession Number: 20160602–5483.

Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: EC16–129–000.

Applicants: Macquarie Wind Farm LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action and Abbreviated Comment Period of Macquarie Wind Farm LLC.

Filed Date: 6/3/16.

Accession Number: 20160603–5271.

Comments Due: 5 p.m. ET 6/24/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–109–000.

Applicants: Tyler Bluff Wind Project, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Tyler Bluff Wind Project, LLC.

Filed Date: 6/6/16.

Accession Number: 20160606–5235.

Comments Due: 5 p.m. ET 6/27/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–917–001; ER14–2458–001; ER11–3013–005; ER10–2872–005; ER10–2870–006; ER10–2868–005; ER10–2865–006; ER10–2860–007.

Applicants: TC Ironwood LLC, TransCanada Power Marketing Ltd, TransCanada Energy Sales Ltd., TC Ravenswood, LLC, TransCanada Maine Wind Development Inc., TransCanada Hydro Northeast Inc., Ocean State Power LLC, Coolidge Power LLC.

Description: Second Amendment to March 2, 2016 Notice of Non-Material Change in Status of TransCanada MBR Sellers, et al.

Filed Date: 6/3/16.

Accession Number: 20160603–5291.

Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER15–1535–002.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–06–06_SA 6507 White Pine 1 SSR Agreement Compliance Filing to be effective 4/16/2015.

Filed Date: 6/6/16.

Accession Number: 20160606–5131.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1107–002.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: Compliance filing: 2016–06–06_ALLETE–GRE Zonal Agreement Compliance Filing to be effective 5/8/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5174.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1108–002.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: Compliance filing: 2016–06–06_SA 2905 ALLETE–GRE Zonal Agreement WDS Compliance Filing to be effective 5/8/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5175.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1879–000.

Applicants: New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: Executed Interconnection Agreement and Notice of Cancellation to be effective 5/5/2016.

Filed Date: 6/3/16.

Accession Number: 20160603–5245.

Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1880–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSCo PRPA LaPorte PPA 174 0.0.0 Filing to be effective 5/31/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5151.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1881–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: PSCo SSC E&P 382 NOC Filing to be effective 6/7/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5152.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1883–000.

Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.

Description: § 205(d) Rate Filing: 2016–06–06_SA 2787 MidAmerican-Interstate Power & Light WDS (George, IA) to be effective 9/1/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5197.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1884–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised Service Agreement No. 1878, Queue No. AA2–127 to be effective 5/6/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5198.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1885–000.

Applicants: MidAmerican Energy Company, Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2016–06–06_SA 2902 MidAmerican-Interstate Power & Light WDS (St. Joseph, IA) to be effective 9/1/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5208.

Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: ER16–1886–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2016–06–06 Tariff Amendment to Implement Pricing Enhancements to be effective 9/7/2016.

Filed Date: 6/6/16.

Accession Number: 20160606–5227.

Comments Due: 5 p.m. ET 6/27/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13895 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–56–000.
Applicants: Lobo Pipeline Company LLC.
Description: Tariff filing per 284.123(e) + (g): Lobo Pipeline Company LLC Revised Statement of Operating Conditions to be effective 6/1/2016; Filing Type: 1280.
Filed Date: 6/1/2016.
Accession Number: 201606015354, *http://elibrary.ferc.gov/idmws/doc_info.asp?accession_num=20160415-5222.*
Comments Due: 5 p.m. ET 6/22/16.
284.123(g) Protests Due: 5 p.m. ET 8/1/16.

Docket Number: PR16–57–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b)(1)/.: COH SOC effective 5–31–2016 to be effective 5/31/2016; Filing Type: 980.
Filed Date: 6/3/16.
Accession Number: 201606035209.
Comments/Protests Due: 5 p.m. ET 6/24/16.

Docket Numbers: RP16–971–000.
Applicants: GDF SUEZ Energy Marketing NA, Inc.,GDF Suez Energy North America, Inc.,ANP Fuel Services, Inc.,Atlas Power Finance, LLC.
Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations, and Related Tariff Provisions of the GSENA Natural Gas Entities, et al.
Filed Date: 5/25/16.
Accession Number: 20160525–5186.
Comments Due: 5 p.m. ET 6/9/16.

Docket Numbers: RP16–1014–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Clean-Up Filing—June 2016 to be effective 7/3/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5223.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: RP16–1015–000.
Applicants: UGI Mt. Bethel Pipeline.
Description: Compliance filing New Tariff Compliance Filing to be effective 7/1/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5350.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: RP16–1016–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: Annual Fuel Retention and Cash Out Adjustment to be effective 7/1/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5431.
Comments Due: 5 p.m. ET 6/14/16.

Docket Numbers: RP16–1017–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Non-Conforming Agreement PSEG Power 911359 to be effective 6/6/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5030.
Comments Due: 5 p.m. ET 6/15/16.

Docket Numbers: RP16–1018–000.
Applicants: EQT Energy, LLC,Statoil Natural Gas LLC.
Description: Joint Petition for Temporary Waiver of Commission Policies, Capacity Release Regulations and Related Tariff Provisions and Request for Expedited Action of EQT Energy, LLC and Statoil Natural Gas LLC under RP16–1018.
Filed Date: 6/3/16.
Accession Number: 20160603–5287.
Comments Due: 5 p.m. ET 6/10/16.

Docket Numbers: RP16–1019–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Seasonal Service June—September 2016 to be effective 6/1/2016.
Filed Date: 6/6/16.
Accession Number: 20160606–5172.
Comments Due: 5 p.m. ET 6/20/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–850–001.
Applicants: Trans-Union Interstate Pipeline, L.P.
Description: Compliance filing Compliance Filing to be effective 4/1/2016.
Filed Date: 6/2/16.
Accession Number: 20160602–5180.
Comments Due: 5 p.m. ET 6/14/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13899 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL16–78–000; QF90–203–007]

Saguaro Power Company; Notice of Petition for Waiver

Take notice that on June 6, 2016, pursuant to section 292.205(c) of the Federal Energy Regulatory Commission's (Commission or FERC) implementing the Public Utility Regulatory Policies Act of 1978, Saguaro Power Company (Saguaro) filed a petition for limited waiver of FERC's qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR 292.205(a)(1)–(2) for calendar years 2016 and 2017, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the

"eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on June 28, 2016.

Dated: June 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13921 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1003–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: Non-Conforming Agreement—Narragansett 510209 to be effective 6/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5124.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1004–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (QEP 37657 to Trans LA 46521) to be effective 6/2/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5181.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1005–000.
Applicants: Equitrans, L.P.
Description: § 4(d) rate filing per 154.204: Negotiated Capacity Release Agreements—6/01/2016 to be effective 6/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5227.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1006–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5289.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1007–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) rate filing per 154.204: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5290.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1009–000.
Applicants: Crossroads Pipeline Company.
Description: § 4(d) rate filing per 154.204: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5293.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1010–000.
Applicants: Central Kentucky Transmission Company.
Description: § 4(d) rate filing per 154.204: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5300.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1011–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) rate filing per 154.204: Operational Sales at Pool Filing to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5301.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1012–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) rate filing per 154.204: Neg Rate 2016–06–01 Perm Partial BP to be effective 6/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5338.
Comments Due: 5 p.m. ET 6/13/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 2, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13896 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–110–000.
Applicants: Kelly Creek Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Kelly Creek Wind, LLC.
Filed Date: 6/6/16.
Accession Number: 20160606–5238.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: EG16–111–000.
Applicants: Great Western Wind Energy, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Great Western Wind Energy, LLC.
Filed Date: 6/7/16.
Accession Number: 20160607–5169.
Comments Due: 5 p.m. ET 6/28/16.

Docket Numbers: EG16–112–000.
Applicants: Salt Fork Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Salt Fork Wind, LLC.
Filed Date: 6/7/16.
Accession Number: 20160607–5173.
Comments Due: 5 p.m. ET 6/28/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–1301–002.
Applicants: Elwood Energy, LLC, Exelon Generation Company, LLC.
Description: Informational filing of Elwood Energy, LLC and Exelon Generation Company, LLC regarding allocation of reactive revenue requirements.
Filed Date: 6/2/16.
Accession Number: 20160602–5491.
Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: ER16–120–002.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO compliance to remove certain RMR language to be effective 10/20/2015.

Filed Date: 6/7/16.
Accession Number: 20160607–5179.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–758–000.
Applicants: New England Power Company.
Description: Report Filing: Refund Report re Amendments to Schedule III–B IFA Provisions to be effective N/A.
Filed Date: 6/7/16.
Accession Number: 20160607–5151.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1275–001.
Applicants: Innovative Solar 46, LLC.
Description: Tariff Amendment: Amendment to 1 to be effective 12/31/9998.
Filed Date: 6/7/16.
Accession Number: 20160607–5182.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1887–000.
Applicants: Apple Energy LLC.
Description: Baseline eTariff Filing: Apple Energy LLC MBR Tariff Application to be effective 8/5/2016.
Filed Date: 6/6/16.
Accession Number: 20160606–5243.
Comments Due: 5 p.m. ET 6/27/16.
Docket Numbers: ER16–1888–000.
Applicants: Tidal Energy Marketing Inc.
Description: Baseline eTariff Filing: Tidal baseline tariff to be effective 8/5/2016; also filed was a Supplement to June 6, 2016 Tidal Energy Marketing Inc. tariff filing (Asset and Affiliate Index).
Filed Date: 6/6/16.
Accession Number: 20160606–5244, 20160606–5345.
Comments Due: 5 p.m. ET 6/27/16.
Docket Numbers: ER16–1889–000.
Applicants: American Transmission Systems, Incorporated, Metropolitan Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI and MetEd submit SA Nos. 4464, 4465, 4466. and 4467 to be effective 6/8/2016.
Filed Date: 6/7/16.
Accession Number: 20160607–5070.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1890–000.
Applicants: OriGen Energy LLC.
Description: Notice of cancellation of market based tariff of OriGen Energy LLC.
Filed Date: 6/6/16.
Accession Number: 20160606–5331.
Comments Due: 5 p.m. ET 6/27/16.
Docket Numbers: ER16–1891–000.
Applicants: Engelhart CTP (US) LLC.
Description: **Compliance filing: Engelhart—Market-Based Rate Tariff to be effective 6/7/2016.**
Filed Date: 6/7/16.
Accession Number: 20160607–5082.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1892–000.
Applicants: Copper Mountain Solar 2, LLC.
Description: § 205(d) Rate Filing: Copper Mountain Solar 2, LLC Amended Joint Use Agreement for Gen-tie Poles to be effective 6/8/2016.
Filed Date: 6/7/16.
Accession Number: 20160607–5101.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1893–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: Amendment to PWC Fayetteville PSA RS No. 184 to be effective 1/1/2015.
Filed Date: 6/7/16.
Accession Number: 20160607–5114.
Comments Due: 5 p.m. ET 6/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13898 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–11–000]

Commission Information Collection Activities (FERC Form Nos. 6, 580, 1, 1–F, and 3–Q); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden[1] of the information collections described below.

DATES: Comments on the collections of information are due August 12, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–11–000) by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

Comments: Comments are invited on: (1) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC Form No. 6, Annual Report of Oil Pipeline Companies [2]

OMB Control No.: 1902–0022

Abstract: Under the Interstate Commerce Act (ICA), (Section 20, 54 Stat. 916), the Interstate Commerce Commission (ICC) was authorized and empowered to make investigations and to collect and record data to the extent considered necessary or useful for the purpose of carrying out the provisions of the ICA.

In 1977, the Department of Energy Organization Act transferred to the Commission from the ICC the responsibility to regulate oil pipeline companies. In accordance with the transfer of authority, the Commission was delegated the responsibility to require oil pipelines to file annual reports of information necessary for the Commission to exercise its statutory responsibilities.[3] The transfer included the Form P, the predecessor to the FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form 6).[4]

To reduce burden on industry, the FERC Form No. 6 has three tiers of reporting requirements:

1. Each oil pipeline carrier whose annual jurisdictional operating revenues has been $500,000 or more for each of the three previous calendar years must file FERC Form No. 6. Oil pipeline carriers submitting a complete FERC Form No. 6 must submit FERC Form 6–Q.[5] Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed.

2. Oil pipeline carriers exempt from filing FERC Form No. 6 whose annual jurisdictional operating revenues have been more than $350,000 but less than $500,000 for each of the three previous calendar years must prepare and file page 301, "Operating Revenue Accounts (Account 600), and page 700, "Annual cost of Service Based Analysis Schedule," of FERC Form No. 6. When submitting pages 301 and 700, each exempt oil pipeline carrier must include page 1 of the FERC Form No. 6, the Identification and Attestation schedules.

3. Oil pipeline carriers exempt from filing FERC Form No. 6 and page 301 and whose annual jurisdictional operating revenues were $350,000 or less for each of the three previous calendar years must prepare and file page 700, "Annual Cost of Service Based Analysis Schedule," of FERC Form No. 6.

The Commission uses the FERC Form No. 6 information in:

- implementation of its financial audits and programs, the continuous review of the financial condition of regulated companies, and the assessment of energy markets
- various rate proceedings and economic analyses
- background research for use in litigation
- programs relating to the administration of the ICA
- computation of annual charges, which are required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986.

Type of Respondent: Oil Pipelines.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden [6] and cost [7] for the FERC Form No. 6 information collection as follows.

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC–6	198	1	198	161.06 hrs.; $11,998.97	31.889.88 hrs.; $2,375,796.06	$11,998.97

FERC Form No. 580, Interrogatory on Fuel and Energy Purchase Practices

OMB Control No.: 1902–0137

Abstract: FERC Form No. 580 is collected in even numbered years. The Public Utility Regulatory Policies Act (PURPA) [8] amended the Federal Power Act (FPA) and directed the Commission to make comprehensive biennial reviews of certain matters related to automatic adjustment clauses (AACs) in wholesale rate schedules used by public utilities subject to the Commission's jurisdiction. Specifically, the Commission is required to examine whether the clauses effectively provide the incentives for efficient use of resources and whether the clauses reflect only those costs that are either "subject to periodic fluctuations" or "not susceptible to precise determinations" in rate cases prior to the time the costs are incurred.

The Commission is also required to review the practices of each public utility under AACs "to insure efficient use of resources under such clauses." [9] In response to the PURPA directive, the Commission (Docket Number IN79–6–000) established an investigation. Beginning in 1982, the Commission collected "Interrogatory on Fuel and Energy Purchase Practices" data every other year.

[2] The renewal request for the FERC Form No. 6 in this IC docket is for the current form, with no change to the reporting requirements.

The FERC Form No. 6 is also part of the Forms Refresh effort (started in Docket No. AD15–11), which is a separate activity and not addressed in this Notice.

In addition, there is a pending Docket No. RM15–19 which is a separate activity and is not addressed in this Notice.

[3] Section 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7172 provides that; "[t]here are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or established the valuation of any such pipeline."

[4] The ICC developed the Form P to collect information on an annual basis to enable it to carry out its regulation of oil pipeline companies under the Interstate Commerce Act. A comprehensive review of the reporting requirements for oil pipeline companies was performed on September 21, 1982, when the Commission issued Order 260 revising the former ICC Form P, "Annual Report of Carriers by Pipeline" and redesignating it as FERC Form No. 6, "Annual Report of Oil Pipeline Companies".

[5] FERC Form 6–Q is covered separately and is approved by OMB under OMB Control No. 1902–0206. It is not a subject of this Notice; FERC Form 6–Q is being addressed separately in Docket No. IC16–7–000.

[6] The burden associated with the one-time re-filing of Page 700 data for Years 2009–2011 has been completed and is not included.

[7] The cost is based on FERC's 2016 average cost (salary plus benefits) of $74.50/hour. The Commission staff believes that the industry's level and skill set is comparable to FERC.

[8] Enacted November 8, 1978

[9] The review requirement is set forth in two paragraphs of Section 208 of PURPA, 49 Stat.851; 16 U.S.C. 824d.

Based on filer comments in response to the new electronic form used in the 2014 collections, FERC recommends the following changes to the instructions. FERC is not changing the requirements of the information collection.

Question 2a

—Revise Question 2a columns as follows:

From	To
Docket number under which rate schedule containing AAC through which costs were passed during 2012 and/or 2013 was accepted for filing by FERC.	Docket number under which rate schedule containing AAC through which costs were passed during 2014 and/or 2015 was accepted for filing by FERC.
Was rate schedule superseded or abandoned during 2012–2013? If so, provide dates.	Was rate schedule superseded or abandoned during 2014–2015? If so, provide dates.

Question 2b

—Revise the paragraph under Question 2b to read:

From	To
If any of the Utility's wholesale rate and/or service agreements containing an AAC listed in Question 2a, that was used during 2012 and/or 2013, was filed with the Commission before January 1, 1990, attach an electronic copy of it with this filing. List the documents you are submitting below. Note: Once this information is submitted electronically in a text-searchable format it will not be necessary to submit it in future Form 580 filings. See: *http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp* for listing of Commission accepted document types.	If any of the Utility's wholesale rate and/or service agreements containing an AAC listed in Question 2a, that was used during 2014 and/or 2015, was filed with the Commission before January 1, 1990, attach an electronic copy of it with this filing. List the documents you are submitting below. Note: Once this information is submitted electronically in a text-searchable format it will not be necessary to submit it in future Form 580 filings. See: *http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp* for listing of Commission accepted document types.

Question 3

—Revise the paragraph under Question 3 to read:

From	To
If during the 2012–2013 period, the Utility had any contracts or agreements for the purchase of either energy or capacity under which all or any portion of the purchase costs were passed through a fuel adjustment clause (FAC), for each purchase from a PURPA Qualifying Facility (QF) or Independent Power Producer (IPP) provide the information requested in the non-shaded columns of the table below. Provide the information separately for each reporting year 2012 and 2013. Do not report purchased power where none of the costs were recovered through an FAC. For each purchase where costs were flowed through an FAC, fill-in the non-shaded columns and either "Only energy charges" or "The total cost of the purchase of economic power" columns, whichever apply.	If during the 2014–2015 period, the Utility had any contracts or agreements for the purchase of either energy or capacity under which all or any portion of the purchase costs were passed through a fuel adjustment clause (FAC), for each purchase from a PURPA Qualifying Facility (QF) or Independent Power Producer (IPP) provide the information requested in the non-shaded columns of the table below. Provide the information separately for each reporting year 2014 and 2015. Do not report purchased power where none of the costs were recovered through an FAC. For each purchase where costs were flowed through an FAC, fill-in the non-shaded columns and either "Only energy charges" or "The total cost of the purchase of economic power" columns, whichever apply.

Question 4a

—Revise Question 4a columns as follows:

From	To
If emission allowance costs were incurred by the Utility in 2012 and/or 2013 and were recovered through a FAC, provide the following information.	If emission allowance costs were incurred by the Utility in 2014 and/or 2015 and were recovered through a FAC, provide the following information.
Dollar value of emission allowance cost passed through a FAC: 2012–2013.	Dollar value of emission allowance cost passed through a FAC: 2014–2015.

Question 5

—Revise the paragraph under Question 5 as follows:

From	To
Provide the information requested below regarding the Utility's fuel procurement policies and practices in place during 2012 and/or 2013 for fuels whose costs were subject to 18 CFR 35.14. Note: Responses to this question may be filed as Privileged. To do so, skip this question now and answer it via the Fuel Procurement Policies and Practices Privileged Addendum provided. Otherwise, answer it here and your responses will be made public.	Provide the information requested below regarding the Utility's fuel procurement policies and practices in place during 2014 and/or 2015 for fuels whose costs were subject to 18 CFR 35.14. Note: Responses to this question may be filed as Privileged. To do so, skip this question now and answer it via the Fuel Procurement Policies and Practices Privileged Addendum provided. Otherwise, answer it here and your responses will be made public.

Question 6

—Revise the paragraph under Question 6 as follows:

From	To
For each fuel supply contract, of longer than one year in duration, in force at any time during 2012 and/or 2013, where costs were subject to 18 CFR 35.14, (including informal agreements with associated companies), provide the requested information. Report the information individually for each contract, for each calendar year. [No response to any part of Question 6 for fuel oil no. 2 is necessary.] Report all fuels consumed for electric power generation and thermal energy associated with the production of electricity. Information for only coal, natural gas, and oil should be reported.	For each fuel supply contract, of longer than one year in duration, in force at any time during 2014 and/or 2015, where costs were subject to 18 CFR 35.14, (including informal agreements with associated companies), provide the requested information. Report the information individually for each contract, for each calendar year. [No response to any part of Question 6 for fuel oil no. 2 is necessary.] Report all fuels consumed for electric power generation and thermal energy associated with the production of electricity. Information for only coal, natural gas, and oil should be reported.

Question 7

—Revise the paragraph under Question 6 as follows:

From	To
For each fuel supply contract, including informal agreements with associated or affiliated companies in force at any time during 2012 or 2013 WHERE CONTRACT SHORTFALL COSTS WERE PASSED THROUGH an FAC subject to 18 CFR 35.14, provide for each contract separately the information requested below. Only report the information requested for shortfalls that occurred under your contracts during reporting years 2012 or 2013 and that are not under dispute i.e. parties agree there was indeed a shortfall.	For each fuel supply contract, including informal agreements with associated or affiliated companies in force at any time during 2014 or 2015 WHERE CONTRACT SHORTFALL COSTS WERE PASSED THROUGH an FAC subject to 18 CFR 35.14, provide for each contract separately the information requested below. Only report the information requested for shortfalls that occurred under your contracts during reporting years 2014 or 2015 and that are not under dispute i.e. parties agree there was indeed a shortfall.

Question 8

—Revise the paragraph under Question 8 as follows:

From	To
For each fuel supply contract that was bought-out or bought-down, including informal agreements with associated or affiliated companies in force at any time during 2012 or 2013 WHERE CONTRACT BUY-OUT AND/OR BUY-DOWN COSTS WERE PASSED THROUGH an FAC subject to 18 CFR 35.14, provide for each contract separately the information requested below. Only report the information requested for contract buy-downs and buy-outs that occurred under your contracts during reporting years 2012 or 2013 and that are not under dispute i.e. parties agree there was indeed a shortfall.	For each fuel supply contract that was bought-out or bought-down, including informal agreements with associated or affiliated companies in force at any time during 2014 or 2015 WHERE CONTRACT BUY-OUT AND/OR BUY-DOWN COSTS WERE PASSED THROUGH an FAC subject to 18 CFR 35.14, provide for each contract separately the information requested below. Only report the information requested for contract buy-downs and buy-outs that occurred under your contracts during reporting years 2014 or 2015 and that are not under dispute i.e. parties agree there was indeed a shortfall.

[10] The attached form is for illustrative purposes only and does not include all the interactive features of the actual form.

Access to the Revised Materials: A copy of the form, desk reference, and glossary are attached to this Notice, but they will not be published in the **Federal Register**.[10] Interested parties can see the form electronically as part of this notice in FERC's eLibrary (*http://www.ferc.gov/docs-filing/elibrary.asp*) by searching Docket No. IC16–11–000.

Type of Respondent: Large electric public utilities within FERC jurisdiction.

Estimate of Annual Burden[11]: The Commission estimates the annual[12] public reporting burden for the information collection as:

FERC FORM 580 (INTERROGATORY ON FUEL AND ENERGY PURCHASE PRACTICES)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[13] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
Respondents with FACs	37	0.5	18.5	103 hrs.; $7,673.50	1,905.5 hrs.; $141,959.75.	$3,836.75
Respondents with AACs, but no FACs.	10	0.5	5	20 hrs.; $1,490	100 hrs.; $7,450	$745
Respondents with no AACs nor FACs.	35	0.5	17.5	2 hrs.; $149	35 hrs.; $2,607.50	$74.50
Total			41		2,040.5 hrs.; $152,017.25.	

[13] The estimates for cost per response are derived using the 2016 FERC average salary plus benefits of $154,647/year (or $74.50/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others

OMB Control No.: 1902–0021

Abstract: The FERC Form No. 1 (Form No.1) is a comprehensive financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits by Major electric utilities, licensees and others. Major is defined as having in each of the three previous calendar years, sales or transmission services that exceed one of the following: (1) One million megawatt hours of total annual sales; (2) 100 megawatt hours of annual sales for resale; (3) 500 megawatt hours of annual power exchanges delivered; or (4) 500 megawatt hours of annual wheeling for others (deliveries plus losses).[14]

The Form No.1 is designed to collect financial and operational information and is considered to be a non-confidential public use form. The Form No.1 includes a basic set of financial statements: Comparative Balance Sheet, Statement of Income, Statement of Retained Earnings, Statement of Cash Flows, Statements of Accumulated Comprehensive Income, Comprehensive Income, and Hedging Activities; and Notes to Financial Statements. Supporting schedules contain supplementary information and outlines of corporate structure and governance; information on formula rates; and description of important changes during the year. Other schedules provide information on revenues and the related quantities of electric sales and electricity transmitted; account balances for all electric operation and maintenance expenses; selected plant cost data; and other statistical information.

Type of Respondent: Major electric utilities

Estimate of Annual Burden: The estimated annual burden and cost[15] follow:

FORM NO. 1

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
210	1	210	1,169 hrs.; $91,953.54	245,490 hrs.; $19,310,243.40	$91,953.54

[10] The attached form is for illustrative purposes only and does not include all the interactive features of the actual form.

[11] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[12] The FERC Form 580 data is collected on a biennial basis. In order to represent the burden appropriately, the "Annual Number of Responses per Respondent" is assigned a figure of 0.5. This figure means that one response per respondent is received on average for each two year period. The "Total Annual Burden Hours & Total Annual Cost" figures are all annual figures based on the biennial frequency assumption.

[14] As detailed in 18 CFR 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provision of the Federal Power Act, General Instructions) and 18 CFR 141.1.

[15] The cost estimate (wages plus benefits) is $78.66/hour and is used for the Form Nos. 1, 1–F, and 3–Q. The $78.66/hour (wages plus benefits) is based on figures from the Bureau of Labor Statistics National Industry-Specific Occupational and Employment Wage Estimates (May 2015 estimates at *http://www.bls.gov/oes/current/naics2_22.htm*, and benefits information for December 2015 at *http://www.bls.gov/news.release/ecec.nr0.htm*) and is an average of the following:

- Management (code 11–0000) of $88.94/hour
- business and financial operations occupations (code 13–0000) of $56.86/hour
- legal (code 23–0000) of $128.94/hour
- office and administrative support (code 43–0000) of $39.91/hour.

FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees

OMB Control No.: 1902–0029

Abstract: The FERC Form No. 1–F (Form No.1–F) is a financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits by Nonmajor electric utilities and licensees. Nonmajor is defined as having total annual sales of 10,000 megawatt-hours or more in the previous calendar year and not classified as Major.[16]

The Form No.1–F is designed to collect financial and operational information and is considered to be a non-confidential public use form. The Form No.1–F includes a basic set of financial statements: Comparative Balance Sheet, Statement of Retained Earnings, Statement of Cash Flows, Statement of Comprehensive Income and Hedging Activities, and Notes to Financial Statements. Supporting schedules contain supplementary information and include revenues and the related quantities of electric sales and electricity transmitted; account balances for all electric operation and maintenance expenses; selected plant cost data; and other statistical information.

Type of Respondent: Nonmajor electric utilities

Estimate of Annual Burden: The estimated annual burden and cost follow. (The estimated hourly cost used for the Form No. 1–F is $78.66 (wages plus benefits) and is described above, under the Form No. 1.):

FORM NO. 1–F

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
5	1	5	123 hrs.; $9,675.18	615 hrs.; $48,375.90	$9,675.18

FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies

OMB Control No.: 1902–0205

Abstract: The FERC Form No. 3–Q (Form No. 3–Q) is a quarterly financial and operating report for rate regulation, market oversight analysis, and financial audits which supplements the (a) Form Nos. 1 and 1–F for the electric industry, or the (b) Form No. 2 (Major Natural Gas Pipeline Annual Report; OMB Control No. 1902–0028) and Form No. 2–A (Nonmajor Natural Gas Pipeline Annual Report; OMB Control No. 1902–0030) (for the natural gas industry). The Form No. 3–Q is submitted for all Major and Nonmajor electric utilities and licensees; and natural gas companies[17].

Form No. 3–Q includes a basic set of financial statements: Comparative Balance Sheet, Statement of Income and Statement of Retained Earnings, Statement of Cash Flows, Statement of Comprehensive Income and Hedging Activities and supporting schedules containing supplementary information. Electric respondents report revenues and the related quantities of electric sales and electricity transmitted; account balances for all electric operation and maintenance expenses; selected plant cost data; and other statistical information. Natural gas respondents include monthly and quarterly quantities of gas transported and associated revenues; storage, terminaling and processing services; natural gas customer accounts and details of service; and operational expenses, depreciation, depletion and amortization of gas plant.

Type of Respondent: Major and nonmajor electric utilities and natural gas pipelines.

Estimate of Annual Burden: The estimated annual burden and cost (as rounded) follow. (The estimated hourly cost used for the Form No. 3–Q is $78.66 (wages plus benefits) and is described above, under the Form No. 1.):

FORM NO. 3–Q

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Annual cost per respondent ($) (5) ÷ (1)
FERC 3–Q (electric)	213[18]	3	639	168 hrs.; $13,214.88	107,352 hrs.; $8,444,308	$39,644.64
FERC 3–Q (gas)	167	3	501	167 hrs.; $13,136.22	83,667 hrs.; $6,581,246	$39,408.66
Total for FERC 3–Q.			1,140		191,019 hrs.; $15,025,554	

[18] The estimated number of electric filers of the Form No. 3–Q is 213 (rather than the 215 total for the number of filers of the Form Nos. 1 and 1–F) due to standing waivers for two coops who do not file the Form No. 3–Q.

[16] As detailed in 18 CFR 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provision of the Federal Power Act, General Instructions) and 18 CFR 141.2.

[17] 18 CFR § 260.1(b) states that for natural gas companies, Major, as defined by the Natural Gas Act, pertains to a company whose combined gas transported or stored for a fee exceed 50 million Dth in each of the three previous calendar years. 18 CFR § 260.2(b) states that for natural gas companies, Nonmajor as defined by the Natural Gas Act, pertains to a company not meeting the filing threshold for Major, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years.

DATED: June 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13922 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1000–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated & Non-Conforming Service Agreement—Kentucky Power to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5595.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1001–000.
Applicants: Discovery Gas Transmission LLC.
Description: § 4(d) Rate Filing: 2016 FL&U Submittal to be effective 7/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5604.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1002–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Non-Conforming Agreements—Colonial 510025 and Narragansett 510075 to be effective 6/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5614.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1003–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Non-Conforming Agreement—Narragansett 510209 to be effective 6/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5124.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1004–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (QEP 37657 to Trans LA 46521) to be effective 6/2/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5181.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1005–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—6/01/2016 to be effective 6/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5227.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1006–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5289.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1007–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: § 4(d) Rate Filing: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5290.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1008–000.
Applicants: UGI Sunbury, LLC.
Description: Compliance Tariff Filing [of Pro Forma tariff sheets—CP15–525] and Request for Waiver of UGI Sunbury, LLC.
Filed Date: 5/31/16.
Accession Number: 20160531–5736.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1009–000.
Applicants: Crossroads Pipeline Company.
Description: § 4(d) Rate Filing: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5293.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1010–000.
Applicants: Central Kentucky Transmission Company.
Description: § 4(d) Rate Filing: GEH—Multi-Party Contracts to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5300.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1011–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Operational Sales at Pool Filing to be effective 7/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5301.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1012–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2016–06–01 Perm Partial BP to be effective 6/1/2016.
Filed Date: 6/1/16.
Accession Number: 20160601–5338.
Comments Due: 5 p.m. ET 6/13/16.

Docket Numbers: RP16–1013–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: Quarterly Fuel Adjustment Filing of MarkWest Pioneer, L.L.C. under RP16–1013.
Filed Date: 6/1/16.
Accession Number: 20160601–5391.
Comments Due: 5 p.m. ET 6/13/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–549–002.
Applicants: PGPipeline LLC.
Description: Compliance filing NAESB 3.0 Compliance Filing to be effective 4/1/2016.
Filed Date: 5/31/16.
Accession Number: 20160531–5607.
Comments Due: 5 p.m. ET 6/13/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 6, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13897 Filed 6–10–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–63–Region 2]

Notice of Availability of Final NPDES General Permit for Small Municipal Separate Storm Sewer Systems and Federal Facilities Within the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final NPDES General Permit.

SUMMARY: The Director of the Caribbean Environmental Protection Division (CEPD), Environmental Protection Agency—Region 2 (EPA), is issuing this Notice of a Final National Pollutant Discharge Elimination System (NPDES) general permit, PRR040000/PRR04000F, for discharges from small municipal separate storm sewer systems (small MS4) from urbanized areas within the Commonwealth of Puerto Rico to waters of the United States. This NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions and management practices for discharges of storm water from small MS4s urbanized areas. A prior Notice of Availability of a general permit was issued by EPA in November 2006. EPA has substantially modified and reissuing the general permit pursuant to 40 CFR part 124. The EPA is issuing this permit for five years.

DATES: The general permit will become effective on July 1, 2016. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2006 Small MS4 General Permit on November 5, 2011. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on July 1, 2016. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Section 1.2 of the 2016 Small MS4 General Permit. The 2016 Small MS4 General Permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES Small MS4 General Permit, contact the Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, US EPA Region 2, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069; telephone: 787–977–5870; or by email: *bosques.sergio@epa.gov.*

The general permit is based on an administrative record available at EPA—Region 2, Caribbean Environmental Protection Division, at the above mentioned address. A reasonable fee may be charged for copying requests. However, the general permit and fact sheet are available at EPA's updated Web site posting of June 11, 2014: *www.epa.gov/region02/water/permits.html.*

SUPPLEMENTARY INFORMATION: EPA is reissuing the NPDES general permit for the discharge of stormwater from small MS4s to waters within the Commonwealth of Puerto Rico. The permit describes four distinct small MS4s. These are the Conventional cities and towns; Non-Conventional State, Federal and other publicly owned systems; Non-Conventional transportation systems; and Non-Conventional State flood control pump station.

The conditions in the general permit are established pursuant to Clean Water Act (CWA) Part 402(p)(3)(iii) to ensure that pollutant discharges from small municipal separate storm sewer systems (small MS4s) are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate water quality requirements of the CWA. The term small municipal separate storm sewer system is available in 40 CFR part 122.26(b). In addition, this term also includes systems similar to separate storm sewer systems and flood management conveyances in municipalities such as military bases, large hospital, highways, and flood control pump stations, and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. For example, an armory located in an urbanized area would not be considered a regulated small MS4.

The general permit sets forth the requirements for the small MS4 to "reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods" (See Section 402(p)(3)(B)(iii) of the CWA). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes that implementation of best management practices (BMPs) designed to control storm water runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR 122.44(k), the permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of CWA also authorizes EPA to include in an MS4 permit "such other provisions as [EPA] determine[s] appropriate for control of . . . pollutants." This provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. See *Defenders of Wildlife* v. *Browner,* 191 F.3d 1159, 1166–67 (9th Cir. 1999); 64 FR 68722, 68753, 68788 (Dec. 8, 1999). Accordingly, the permit contains the water quality-based effluent limitations, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA.

EPA issued a final general permit to address stormwater discharges from small MS4s on November 6, 2006. The 2006 general permit required small MS4s to develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. The 2016 general permit builds on the requirements of the previous general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. Compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a conventional and/or a non-conventional municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the general permit reflect the iterative process of MEP. Accordingly, the general permit contains more specific tasks and details than the 2006 general permit.

EPA has explained in the general permit fact sheet a summary of permit conditions. The general permit and fact sheet are available at EPA's Web site posting of June 11, 2014: *www.epa.gov/region02/water/permits.html.*

Other Legal Requirements

A. Endangered Species Act (ESA)

The provisions related to the ESA have been enhanced from those in the 2006 permit. EPA consulted with the appropriate Federal services (U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service

(NMFS)) in connection with the 2014 draft Small MS4 General Permit.

On July 8, 2014, EPA initiated an informal consultation with the USFWS and the National Oceanic and Atmosphere Administration, National Marine Fisheries Service (NMFS) pursuant to Section 7 of the ESA, for the reissuance of a proposed 2014 NPDES Small MS4 General Permit. Based on the information, EPA believes that the issuance of the NPDES Small MS4 General Permit (PRR040000), may affect, but is not likely to adversely affect any threatened or endangered species.

On August 22, 2014, the USFWS indicated that the Antillean manatee may be affected. This species is found near shore waters around Puerto Rico where stormwater may be discharged. In addition, USFWS indicated they concur with EPA's determination.

On August 28, 21014, NMFS had questions regarding EPA's proposed 2014 NPDES Small MS4 General Permit. EPA ensured to provide a response to each of NMFS's questions by October 1, 2014. A follow up conference call was held on October 7, 2014 to discuss the responses. On December 18, 2014, EPA held another conference call where the NMFS requested to see examples of EPA inspection reports performed to MS4s and Municipal Stormwater Management Program. EPA provided six (6) documents of coastal municipalities on December 19, 2014. EPA followed up with a letter dated July 24, 2015 seeking NMFS to concur on EPA's determination that stormwater discharges from MS4s and discharge related activities are not likely to adversely affect any federal threatened or endangered listed species or designated habitat.

EPA's decision to issue this general permit is consistent with section 7(d) because it does not foreclose either the formulation by the NMFS, or the implementation by EPA, of any alternatives that might be determined in the consultation to be needed to comply with section 7(a)(2). If the completion of consultation results in new information warranting modifications or conditions to protect listed species or critical habitat, EPA will modify this permit under 40 CFR 122.62(a)(2) to incorporate those non-numerical effluent limits or conditions.

B. Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0004.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not "rules" subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA.

E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on Tribal, State, and local governments and the private sector. However, general NPDES permits are not "rules" subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the RFA or the UMRA.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 18, 2016.

José C. Font,

Director, Caribbean Environmental Protection Division.

[FR Doc. 2016–13913 Filed 6–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9947–58–Region 3]

Delegation of Authority to the Commonwealth of Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On April 7, 2016, the Environmental Protection Agency (EPA) sent the Commonwealth of Virginia (Virginia) a letter acknowledging that Virginia's delegation of authority to implement and enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public, EPA is making available a copy of EPA's letter to Virginia through this notice.

DATES: On April 7, 2016, EPA sent Virginia a letter acknowledging that Virginia's delegation of authority to implement and enforce federal NESHAPs had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. Copies of Virginia's submittal are also available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, (215) 814–2061, or by email at *chalmers.ray@epa.gov*.

SUPPLEMENTARY INFORMATION: On February 10, 2016, Virginia notified EPA that Virginia had updated its incorporation by reference of federal NESHAPs to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2015. On April 7, 2016, EPA sent Virginia a letter acknowledging that Virginia now has the authority to implement and enforce the NESHAPs as specified by Virginia in its notice to EPA, as provided for under previously approved automatic delegation mechanisms. All notifications, applications, reports and other correspondence required pursuant to the delegated NESHAPs must be submitted to both the US EPA Region III and to the Virginia Department of Environmental Quality, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the Virginia Department of Environmental Quality. A copy of EPA's letter to Virginia follows:

"Michael G. Dowd, Director
Air Division
Virginia Department of Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, Virginia 23218

Dear Mr. Dowd:

The United States Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Virginia (Virginia) the authority to implement and enforce various federal

National Emissions Standards for Hazardous Air Pollutants (NESHAPs) found at 40 CFR parts 61 and 63. In those actions, EPA also delegated to Virginia the authority to implement and enforce any future EPA NESHAPs on the condition that Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated February 10, 2016, Virginia informed EPA that Virginia had updated its incorporation by reference of federal NESHAPs to include many such standards, as they were published in final form in the Code of Federal Regulations dated July 1, 2015. Virginia explained that its intent in updating its incorporation by reference of the NESHAPs was to retain the authority to enforce all standards included in the revisions, as per the provisions of EPA's previous delegation actions. Virginia committed to enforcing the federal standards in conformance with the terms of EPA's previous delegations of authority. Virginia made only allowed wording changes.

EPA notes that Virginia provided a copy of the State's regulatory action that states: "[t]he amendments update state regulations that incorporate by reference certain U.S. Environmental Protection Agency regulations to reflect the Code of Federal Regulations as published on July 1, 2015. No new NESHAPs or MACTs are being incorporated. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version." Virginia's regulatory action indicates that "[t]he revised regulations have an effective date of February 10, 2016."

EPA also notes that Virginia provides in its regulatory action that "[t]he Environmental Protection Agency National Emission Standards for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR part 63 and designated in 9VAC5–60–100 are, unless indicated otherwise, incorporated by reference into the regulations of the board [State Air Pollution Control Board] as amended by the word or phrase substitutions given in 9VAC5–60–110. The complete text of the subparts in 9VAC5–60–100 incorporated herein by reference is contained in 40 CFR part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5–60–100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR *2015* in effect July 1, *2015*."

EPA further notes that Virginia provides in its regulatory action that "[t]he Environmental Protection Agency National Emission Standards (NESHAPs) as promulgated in 40 CFR part 61 and designated in 9VAC5–60–70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5–60–80. The complete text of the subparts in 9VAC5–60–70 incorporated herein by reference is contained in 40 CFR part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5–60–70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR *2015* in effect July 1, *2015*."

In response to Virginia's submittal, EPA acknowledges that Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP standards which Virginia has adopted by reference in Virginia's revised regulations 9 VAC 5–60–100 and 9 VAC 5–60–70, both effective on February 10, 2016.

Please note that on December 19, 2008, in *Sierra Club* v. *EPA*,[1] the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions, which are found at 40 CFR 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 CFR part 63. Because Virginia incorporated 40 CFR part 63 by reference, Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR part 63 due to the Court's ruling in *Sierra Club vs. EPA*.

EPA appreciates Virginia's continuing NESHAP enforcement efforts, and also Virginia's decision to take automatic delegation of more recent NESHAP by adopting them by reference.

Sincerely,

Nikos Singelis, Acting Director
Air Protection Division"

This notice acknowledges the update of Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

[1] *Sierra Club* v. EPA, 551 F.3rd 1019 (D.C. Cir. 2008).

Dated June 1, 2016.

Nikos Singelis,

Acting Director, Air Protection Division, Region III.

[FR Doc. 2016–13912 Filed 6–10–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0599]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 12, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0599.

Title: Section 90.187, Trunking in the Bands Between 150–512 MHz; and Sections 90.425 and 90.647, Station Identification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 4,757 respondents and 4,757 responses.

Estimated Time per Response: 0.25–3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 309(j) and 332, as amended.

Total Annual Burden: 5,242 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information contained in this collection sets forth frequency coordination requirements under Section 90.187, and station identification requirements under Section 90.647 and 90.425.

The information requested in this collection is used by the Commission staff to enable the FCC to evaluate the accuracy of frequency coordination pursuant to its rule under 47 CFR 90.187, 90.425 and 90.647.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary.

[FR Doc. 2016–13832 Filed 6–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Saints Avenue Bancshares, Inc.,* St. Charles, Missouri; to become a bank holding company by acquiring 43.90 percent of New London Bancshares, Inc., and thereby indirectly acquire RCSBank, both in New London, Missouri.

Board of Governors of the Federal Reserve System, June 8, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13885 Filed 6–10–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Smith & Hood Holding Company, L.L.C.,* Amite, Louisiana; to become a bank holding company by acquiring 10.49 percent of the outstanding shares of First Guaranty Bancshares, Inc., Hammond, Louisiana.

Board of Governors of the Federal Reserve System, June 7, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13820 Filed 6–10–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ruth A. Kehl S–T Declaration of Trust, Ruth A. Kehl, Trustee,* both of Dubuque, Iowa; to join the previously approved Kehl Family Control Group and retain 25 percent or more of the voting shares of Savanna-Thomson Investment, Inc., Savanna, Illinois, and thereby indirectly retain voting shares of Savanna-Thomson State Bank, Thomson, Illinois.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Edgar Ray Smith III, William K. Hood, Savannah K. Conti, William K. Conti, Amite Mini Storage, LLC, Hood Investments, LLC, and WKH Management, Inc.,* each of Amite, Louisiana; *Sophia M. Pray and Hudson M. Pray,* both of Hammond, Louisiana; and *Big 4 Investments, LLC,* Roseland, Louisiana; to acquire 10 percent or more of the shares of First Guaranty Bancshares, Inc., and thereby indirectly acquire voting shares of First Guaranty Bank, both in Hammond, Louisiana.

Board of Governors of the Federal Reserve System, June 7, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13819 Filed 6–10–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ottawa Savings Bancorp, MHC,* Ottawa, Illinois; to convert to stock form and merge with and into Ottawa Savings Bancorp, Inc., Ottawa, Illinois. In connection with this application, Ottawa Savings Bancorp, Inc. will be merged into Ottawa Bancorp, Inc., which has applied to become a savings and loan holding company by acquiring 100 percent of the voting shares of Ottawa Savings Bank, Ottawa, Illinois.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Bancorp 34, Inc.;* to become a savings and loan holding company by acquiring 100 percent of Bank 34, both in Alamogordo, New Mexico. Upon the conversion of AF Mutual Holding Company to stock form, AF Mutual Holding Company and Alamogordo Financial Corp, both in Alamogordo, New Mexico, will cease to exist, and Bank 34 will become a wholly-owned subsidiary of Bancorp 34, Inc.

Board of Governors of the Federal Reserve System, June 8, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–13884 Filed 6–10–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0045; Docket 2016–0053; Sequence 19]

Submission for OMB Review; Bid Guarantees, Performance and Payment Bonds, and Alternative Payment Protections

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comment regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning bid guarantees, performance and payment bonds, and alternative payment protections.

DATES: Submit comments on or before August 12, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0045, Bid, Performance, and Payment Bonds". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street, NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0045, Bid Guarantees,

Performance, and Payment Bonds, and Alternative Payment Protections.

Instructions: Please submit comments only and cite Information Collection 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kathlyn Hopkins, Procurement Analyst, Contract Policy Division, at 202–969–7226 or email *kathlyn.hopkins@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subparts 28.1 and 28.2; FAR clauses at 52.228–1, 52.228–2, 52.228–13, 52.228–15, 52.228–16; and associated FAR standard forms implement the statutory requirements of the Miller Act (40 U.S.C. 3131 *et seq.*), which requires performance and payment bonds for any construction contract exceeding $150,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. In addition, the note to 40 U.S.C. 3132, entitled "Alternatives to Payment Bonds Provided by the Federal Acquisition Regulation," is implemented in the FAR, which requires alternative payment protection for construction contracts that exceed $30,000 but do not exceed $150,000.

Although not required by statute, under certain circumstances the FAR permits the Government to require bonds on other than construction contracts. In addition to the contract clauses at FAR 52.228–1, 52.228–2, 52.228–13, 52.228–15, 52.228–16, this information collection covers the following FAR standard forms (SF) as prescribed at FAR Subparts 28.1 and 28.2: SF 25, Performance Bond; SF 25A, Payment Bond; SF 273, Reinsurance Agreement for a Miller Act Performance Bond; SF 274, Reinsurance Agreement for a Bonds Statute Payment Bond; SF 24, Bid Bond; SF 25B, Continuation Sheet (For Standard Forms 24, 25, and 25A); Standard Form 34, Annual Bid Bond; Standard Form 275, Reinsurance Agreement in Favor of the United States; Standard Form 1416, Payment Bond for Other Than Construction Contracts; Standard Form 1418, Performance Bond for Other Than Construction Contracts; and Standard Form 35, Annual Performance Bond. The information collected under this clearance provides the Government with a form of security that the contractor will not withdraw a bid or assures that the contractor will perform its obligations under a contract. A notice published in the **Federal Register** at 81 FR 15304 on March 22, 2016. No comments were received.

B. Annual Reporting Burden

Respondents: 974.

Responses per Respondent: 1.

Total Responses: 974.

Hours per Response: 1.

Total Burden Hours: 974.

C. Public Comments

Public Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0045, Bid Guarantees, Performance, and Payment Bonds, and Alternative Payment Protections, in all correspondence.

Dated: June 8, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–13860 Filed 6–10–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Opportunity To Co-Sponsor Two AHRQ Research Conferences

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of opportunity to co-sponsor AHRQ conferences.

SUMMARY: AHRQ announces the opportunity for non-Federal public and private-sector entities to co-sponsor two AHRQ research conferences in the DC area: One in the fall of 2017 and one in the fall of 2019. Potential co-sponsors must have a demonstrated interest and experience in health services research, implementation, and evaluation. Potential co-sponsors must also be capable of managing the day-to-day operations associated with the conference and be willing to participate substantively in the co-sponsored activity.

DATES: To receive consideration for this opportunity, a proposal to participate as a co-sponsor must be received by AHRQ by 5 p.m. EDT no later than 30 days after the date of publication at the address listed below. Requests will meet the deadline if they are either (1) received or (2) postmarked on or before the deadline. Privately metered postmarks will not be accepted as proof of timely mailing. Proposals received after the established deadline will not be considered.

ADDRESSES: Requests for co-sponsorship should be sent to Ms. Jaime Zimmerman, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, MD 20857. Requests may also be emailed to *Jaime.zimmerman@ahrq.hhs.gov.* Emails should be received no later than 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Jaime Zimmerman, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, MD 20857; (301) 427–1456; *jaime.zimmerman@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Description

AHRQ was originally created as the Agency for Health Care Policy and Research on December 19, 1989, under the Omnibus Budget Reconciliation Act of 1989, as a Public Health Service Agency in the U.S. Department of Health and Human Services (HHS). The agency was reauthorized on December 6, 1999, by the Healthcare Research and Quality Act of 1999 and re-named the Agency for Healthcare Research and Quality.

AHRQ's mission is to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within HHS and other partners to make sure that the evidence is understood and used.

Three areas in which AHRQ makes a difference:

- AHRQ invests in research and evidence to understand how to make health care safer and improve quality.
- AHRQ creates materials to teach and train health care systems and professionals how to catalyze improvements in care.
- AHRQ generates measures and data used to track and improve performance and to evaluate the progress of the U.S. health system.

The purpose of the conference, consistent with AHRQ's mission, is to bring together grantees, contractors, and others who produce AHRQ-supported research and products with stakeholders who can use them to achieve measurable improvements in the health care that patients receive. The conference provides additional opportunities to ensure that AHRQ-supported research delivers anticipated results. More specifically, the conference's goal is to share best practices based on AHRQ-supported research, and to demonstrate how these research findings and best practices provide solutions for the challenges facing today's health care system. The conference also offers time for interaction among grantees, contractors, and users who can implement research-based solutions to improve care.

The co-sponsors will assist with conference and agenda development, strategic messaging, coordination, financial management, and meeting logistics in conjunction with AHRQ staff. The co-sponsors can charge registration fees to recover their share of the event's costs; however, registration fees may not be set at an amount higher than necessary to recover related conference expenses.

Eligibility for Co-Sponsorship

To be eligible, a potential co-sponsor shall: (1) Have a demonstrated understanding, commitment, and experience in conducting and/or sponsoring health services research, especially as it relates to one or more of AHRQ's priority areas; (2) be knowledgeable about strategies for disseminating and implementing research findings, products, and tools and fostering changes in practice and health care policy; (3) have a track record in using a variety of methods for evaluating research impact; (4) participate substantively in the co-sponsored activity, not just provide funding or logistical support; and (5) have an organizational mission that is consistent with AHRQ and HHS.

The selected co-sponsoring organization shall furnish the necessary personnel, materials, services, and facilities to administer its responsibility for the conference. These duties will be outlined in a cosponsorship agreement with AHRQ that will set forth the details of the cosponsored activity, including the requirements that any fees collected by the co-sponsor shall be limited to the amount necessary to cover the co-sponsor's related conference expenses.

Co-Sponsorship Proposal

Each co-sponsorship proposal shall contain a description of: (1) The entity or organization's background and history, (2) its ability to satisfy the co-sponsorship criteria detailed above, and (3) its proposed involvement in the co-sponsored activity.

Evaluation Criteria

After engaging in exploratory discussions with potential co-sponsors that respond to this notice, representatives of AHRQ will select the co-sponsor or co-sponsors using the following evaluation criteria:

(1) Qualifications and capability to fulfill co-sponsorship responsibilities;

(2) Creativity related to enhancing the conference, including options for interactive sessions and ideas for improving the event based on the 2015 conference offerings;

(3) Potential for reaching and generating attendees from among key stakeholders, including Federal, State and local policymakers, health care providers, consumers and patients, purchasers and payers, and other health officials and underserved/special populations;

(4) Experience administering conferences;

(5) Past or current work specific to health services research;

(6) Personnel names, professional qualifications, and specific expertise with conference planning;

(7) Availability and description of facilities needed to participate in and support the conference planning process, including office space, information technology, and telecommunication resources;

(8) Description of financial management expertise, including demonstration of experience in developing a budget and collecting and managing monies from organizations and individuals; and

(9) Proposed plan for managing a conference with AHRQ.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–13918 Filed 6–10–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16AOP; Docket No. CDC–2016–0049]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection entitled "TRAUMATIC BRAIN INJURY (TBI) SURVEILLANCE SYSTEM." CDC will use the information collected to determine how many children and adults experience a traumatic brain injury (TBI) each year in the United States, and to collect information about the circumstances that identifies groups most at risk for TBI.

DATES: Written comments must be received on or before August 12, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0049 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov,* including any personal information provided. For

access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

TRAUMATIC BRAIN INJURY (TBI) SURVEILLANCE SYSTEM—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC requests a three-year OMB approval for a new Traumatic Brain Injury (TBI) Surveillance System data collection. TBI is a significant public health concern in the United States, contributing to an estimated 2.2 million Emergency Department (ED) visits, 280,000 hospitalizations, and 50,000 deaths in 2010. These numbers, however, underestimate the true public health and economic burden of TBI in the U.S. because they are based on healthcare administrative data that only capture information on the number of ED visits, hospitalizations, and deaths identified as TBI-related.

A surveillance system will accurately determine how many children and adults experience a TBI each year in the United States, and will collect information about the circumstances that identifies groups most at risk for TBI. By administering the surveillance system over time, the surveillance system can monitor trends and allow for an understanding of whether TBIs are increasing or decreasing, and whether prevention efforts are effective.

Data will be collected through household survey conducted as a random digit dial telephone survey utilizing both landline and cellphones; adult respondents will be asked about their own TBI history while adult respondents with children 5–17 years of age will serve as proxies and answer questions about their children's TBI history.

Information collected will produce nationally representative incidence estimates of all TBI, with a particular focus on the incidence of sports- and recreation-related TBI (SRR–TBI) among youth 5–21 years of age. Another use of the data is to produce nationally-representative estimates of TBI-related disability.

Participation in the information collection is voluntary. The survey will be conducted among English or Spanish speaking participants living in the United States. The estimated annual burden hours are 3,979. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adults 18 or older	Adult Eligibility Screener	2,611	1	2/60	87
	Adult Screener	14,164	1	12/60	2,833
	Adult Survey	2,500	1	18/60	750
Adolescent 12 to 17 years of age	Adolescent Screener	2,058	1	5/60	172
	Adolescent Survey	686	1	12/60	137
Total Annual Burden Hours					3,979

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13848 Filed 6–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0974]

Agency Forms Undergoing Paperwork Reduction Act Review

As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Centers for Disease Control and Prevention (CDC) has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et. seq.*). The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (OMB Control No. 0920–0974, Expiration Date June 30, 2016)—Revision—Center for Surveillance, Epidemiology, and Laboratory Sciences, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This revision in the information collection activity is being requested primarily to reflect a simultaneous increase in (1) the number of programs in the Center due to a reorganization in 2014, (2) interest in electronic survey methods, and (3) need for customer input to and satisfaction with program Web sites and materials. The activity will garner increased qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 16,957.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Users of CSELS products	Online survey	5,665	11	16/60
Users of CSELS products	Individual interview	15	7	55/60
Users of CSELS products	Focus group	54	3	90/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13847 Filed 6–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Requirements and Registration for Healthcare Associated Venous Thromboembolism Prevention Challenge; Amendment of Notice

Authority: 15 U.S.C. 3719.

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

AWARD APPROVING OFFICIAL: Thomas R. Frieden, MD, MPH, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces an amendment to its notice entitled, Announcement of Requirements and Registration for Healthcare Associated Venous Thromboembolism Prevention Challenge. This amendment is being made to reflect an increase in the number of Champions and change the maximum total prize disbursement. There are no other changes to the September 22, 2015 notice.

FOR FURTHER INFORMATION CONTACT: Michele Beckman, Division of Blood Disorders, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–64, Atlanta, GA 30329, Telephone: 404–498–6474, Fax: 404–498–6799, Attention: HA–VTE Prevention Challenge, Email: *havtechallenge@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: On September 22, 2015 CDC announced the Requirements and Registration for Healthcare Associated Venous Thromboembolism Prevention Challenge (80 FR 57187). This notice announces an increase in the number of organizations. Champions were recognized as HA–VTE Prevention Champions and will receive a cash award of $10,000. A maximum of $80,000 will now be awarded in this challenge, an increase of $10,000. Additional honorable mention awards were also made to deserving entries. Federal and international winners received non-monetary recognition but no prize.

Authority: 15 U.S.C. 3719.

Dated: June 7, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–13850 Filed 6–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–16–16CA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology to minimize the information collection burden.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Update seat belt fit recommendation for children—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is seeking OMB approval to conduct a new information collection for a study entitled, "Update Seat Belt Fit Recommendation for Children," over a period of three years.

CDC seeks to measure how seat belts fit children in vehicles with and without booster seats. The scientific basis for the current height recommendation for when children can transition from using a booster seat to just a seat belt is from a 1993 study that is outdated (Durbin *et al.*, 2011; Reed *et al.*, 2013). The goal of the new collection is to use the latest technology among the largest sample of children to date to help inform when children can safely transition from using a booster seat with a seat belt to using only a seat belt.

Findings from this data collection will inform CDC's child passenger safety recommendation regarding when children can safely transition from using a booster seat with the seat belt to using only the seat belt. This study will also provide information on ways to further reduce motor vehicle-related injuries and deaths among children.

Prospective study participants will be children aged 6–12 years old in the greater District of Columbia (DC) area. Parents of prospective study participants will answer a series of screening questions to determine eligibility. Children who meet the screening criteria and are willing to participate will complete an in-person measurement session. Data will be analyzed using descriptive statistics, mean, standard deviation, and logistic regression. Selected findings will eventually be published in a peer-

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Parent/guardian of children aged 6–12 years	Screener Script Guide	667	1	10/60
Child participants aged 6–12 years	Seat Belt Fit Measurements	142	1	2.5

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13849 Filed 6–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–142 and CMS–588]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov*. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail. You may mail written comments to the following address:* CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–142 Examination and Treatment for Emergency Medical Conditions and Women in Labor;

CMS–588 Electronic Funds Transfer Authorization Agreement

information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Examination and Treatment for Emergency Medical Conditions and Women in Labor; *Use:* In accordance with to regulation sections 488.18, 489.20 and 489.24, during Medicare surveys of hospitals and State agencies CMS will review hospital records for lists of on-call physicians, and will review and obtain the information which must be recorded on hospital medical records for individuals with emergency medical conditions and women in labor, and the emergency department reporting information Medicare participating hospitals and Medicare State survey agencies must pass on to CMS. Additionally, CMS will use the QIO Report assessing whether an individual had an emergency condition and whether the individual was stabilized to determine whether to impose a CMP or physician exclusion sanctions. Without such information, CMS will be unable to make the hospital emergency services compliance determinations that Congress expects CMS to make under sections 1154, 1866 and 1867 of the Act. *Form Number:* CMS–R–142 (OMB control number: 0938–0667); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 6,149;

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Electronic Funds Transfer Authorization Agreement; *Use:* The information is needed to allow providers to receive funds electronically in their bank accounts. *Form Number:* CMS–588 (OMB control number: 0938–0626); *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 45,807; *Total Annual Responses:* 45,807; *Total Annual Hours:* 22,543. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–4645.)

Dated: June 7, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–13800 Filed 6–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10105, CMS–10191, CMS–10525, CMS–10623, and CMS–R–246]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 12, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development.

Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10105 National Implementation of In-Center Hemodialysis CAHPS Survey

CMS–10191 Medicare Parts C and D Program Audit Protocols and Data Requests

CMS–10525 Program of all-Inclusive Care for the Elderly (PACE) Quality Data Entry in CMS Health Plan Monitoring System

CMS–10623 Testing Experience and Functional Tools Demonstration: Personal Health Record (PHR) User Survey

CMS–R–246 Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Implementation of the In-Center Hemodialysis CAHPS Survey; *Use:* Data collected in the national implementation of the In-center Hemodialysis Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey will be used to: (1) Provide a source of information from which selected measures can be publicly reported to beneficiaries as a decision aid for dialysis facility selection, (2) aid facilities with their internal quality improvement efforts and external benchmarking with other facilities, (3) provide CMS with information for monitoring and public reporting purposes, and (4) support the end-stage renal disease value-based purchasing program. *Form Number:* CMS–10105 (OMB control number: 0938–0926). *Frequency:* Occasionally; *Affected Public:* Individuals or households; *Number of Respondents:* 109,328; *Total Annual Responses:* 109,328; *Total Annual Hours:* 59,037. (For policy questions regarding this collection contact Elizabeth Goldstein at 410–786–6665.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Parts C and D Program Audit Protocols and Data Requests; *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and implementing regulations at 42 CFR parts 422 and 423, Medicare Part D plan sponsors and Medicare Advantage organizations are required to comply with all Medicare Parts C and D program requirements. In 2010, the explosive growth of these sponsoring organizations forced CMS to develop an audit strategy to ensure we continue to obtain meaningful audit results. As a result, CMS' audit strategy reflected a move to a more targeted, data-driven and risk-based audit approach. We focused on high-risk areas that have the greatest potential for beneficiary harm.

To maximize resources, CMS will focus on assisting the industry to improve their operations to ensure beneficiaries receive access to care. One way to accomplish this is CMS will develop an annual audit strategy which describes how sponsors will be selected for audit and the areas that will be audited. CMS has developed several audit protocols and these are posted to the CMS Web site each year for use by sponsors to prepare for their audit. Currently CMS utilizes the following 7 protocols to audit sponsor performance: Formulary Administration (FA), Coverage Determinations, Appeals & Grievances (CDAG), Organization Determination, Appeals and Grievances (ODAG), Special Needs Model of Care (SNPMOC) (only administered on organizations who operate SNPs), Compliance Program Effectiveness (CPE), Medication Therapy Management (MTM) and Provider Network Accuracy (PNA). The data collected is detailed in each of these protocols and the exact fields are located in the record layouts, at the end of each protocol. In addition, questionnaires are distributed as part of our CDAG, ODAG and CPE audits. These questionnaires are also included in this package.

As part of a robust audit process, CMS also requires sponsors who have been audited and found to have deficiencies to undergo a validation audit to ensure correction. The validation audit utilizes the same audit protocols, but only tests the elements where deficiencies were found, as opposed to re-administering the entire audit. Finally, to assist in improving the audit process, CMS sends sponsors a link to a survey (Appendix D) at the end of each audit to complete in order to obtain the sponsors' feedback. The sponsor is not required to complete the survey. *Form Number:* CMS–10191 (OMB control number: 0938–1000); *Frequency:* Yearly; *Affected Public:* Private Sector (business or other for-profit and not-for-profit institutions); *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours:* 13,640. (For policy questions regarding this collection contact Dawn Johnson at 410–786–3159.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Program of all-Inclusive Care for the Elderly (PACE) Quality Data Entry in CMS Health Plan Monitoring System; *Use:* PACE organizations coordinate the care of each participant enrolled in the program based on his or her individual needs with the goal of enabling older individuals to remain in their community. To be eligible to enroll in PACE, an individual must: be 55 or older, live in the service area of a PACE organization (PO), need a nursing home-level of care (as certified by the state in which he or she lives), and be able to live safely in the community with assistance from PACE (42 CFR 460.150(b)).

The PACE program provides comprehensive care whereby an interdisciplinary team of health professionals provides individuals with coordinated care. The overall quality of care is analyzed by information collected and reported to CMS related to specific quality indicators that may cause potential or actual harm. CMS analyzes the quality data to identify opportunities to improve the quality of care, safety and PACE sustainability and growth.

Previously, quality reporting was identified as Level I or Level II reporting. Level I reporting requirements refer to those data elements that POs regularly report to CMS via the CMS Health Plan Management System (HPMS) PACE monitoring module. (Please see Appendix A for the list of data elements.) POs have been collecting, submitting and reporting data to CMS and State administering agencies (SAA) since 1999.

When analyzing the Level I data, findings may or may not trigger a Quality Improvement (QI) process of analysis (*e.g.*, Plan, Do, Study, Act known as PDSA). Findings may indicate the need for a change in policies, procedures, systems, clinical practice or training. Level II reporting requirements apply specifically to unusual incidents that result in serious adverse participant outcomes, or negative national or regional notoriety related to PACE.

In this PRA package, we are making title changes from Level I and Level II to PACE Quality Data. We are requesting to update and implement previously collected PACE data elements known as Level I and Level II into PACE quality data. Additionally, we are establishing three PACE Quality measures adopted from the National Quality Forum (NQF) and modified for PACE use. These modified PACE quarterly measures are Falls, Falls with Injury, and Pressure Injury Prevalence/Prevention. Currently, the existing Level I and Level II elements have not been tested for reliability or feasibility. By adopting NQF defined reliable data collection process for these elements, certain existing Level I and Level II elements will then officially meet quality measures collection standards. These measures will be used to improve quality of care for participants in PACE. PACE Quality measures will be implemented via the existing HPMS. POs will be educated on data criteria, entry and will report quarterly. *Form Number:* CMS–10525 (OMB control number: 0938–1264); *Frequency:* Quarterly and occasionally; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 100; *Total Annual Responses:* 29,500; *Total Annual Hours:* 211,500. (For policy questions regarding this collection contact Tamika Gladney at 410–786–0648).

4. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Testing Experience and Functional Tools Demonstration: Personal Health Record (PHR) User Survey; *Use:* The PHR user survey is important to the TEFT Program Evaluation and understanding the impact of the TEFT PHR on Medicaid CB–LTSS beneficiaries. The TEFT evaluation team's approach includes monitoring state PHR implementation efforts and fielding a follow-up questionnaire to CB–LTSS program participants that asks about their experiences using the PHR. The evaluation seeks to measure the degree to which the PHR is implemented in an accessible manner for Medicaid beneficiaries of CB–LTSS. The survey also is designed to assess the user experience of the PHR, including access and usability, as well as some measures of user satisfaction and perceived impacts of PHR use. *Form Number:* CMS–10623 (OMB control number: 0938-New); *Frequency:* Once; *Affected Public:* Individuals and households; *Number of Respondents:* 824; *Total Annual Responses:* 824; *Total Annual Hours:* 192,113 (For policy questions regarding this collection contact Kerry Lida at 410–786–4826).

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare

Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey; *Use:* The primary purpose of the Medicare consumer assessment of healthcare providers and systems (CAHPS) surveys is to provide information to Medicare beneficiaries to help them make more informed choices among health and prescription drug plans available to them. The surveys also provides data to help CMS and others monitor the quality and performance of Medicare health and prescription drug plans and identify areas to improve the quality of care and services provided to enrollees of these plans. *Form Number:* CMS–R–246 (OMB control number: 0938–0732); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 799,650; *Total Annual Responses:* 799,650; *Total Annual Hours:* 192,113 (For policy questions regarding this collection contact Sarah Gaillot at 410–786–4637).

Dated: June 8, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–13917 Filed 6–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10066, CMS–R–193, and CMS–R–282]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 13, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Detailed Notice of Discharge (DND) and Supporting Regulations in 42 CFR 405.1206 and 422.622; *Use:* A beneficiary or enrollee who wishes to appeal a determination by a Medicare health plan (for a managed care enrollee) or hospital (for an original Medicare beneficiary) that inpatient care is no longer necessary may request Quality Improvement Organization (QIO) review of the determination. On the date the QIO receives the beneficiary's/enrollee's request, it must notify the plan and hospital that the beneficiary/enrollee has filed a request for an expedited determination. The plan or hospital, in turn, must deliver a DND to the enrollee/beneficiary. In this iteration the DND has been minimally changed to include language informing beneficiaries of their rights under the Rehabilitation Act of 1973 (section 504), by alerting the beneficiary to CMS's nondiscrimination practices and the availability of alternate forms of this notice if needed. There are no substantive changes to the DND form and instructions. *Form Number:* CMS–10066 (OMB control number: 0938–1019); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 6,137; *Total Annual Responses:* 22,515; *Total Annual Hours:* 22,515. (For policy questions regarding this collection contact Janet Miller at 404–562–1799.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Important Message from Medicare (IM); *Use:* Hospitals have used the IM to inform original Medicare, Medicare Advantage, and other Medicare plan beneficiaries who are hospital inpatients about their hospital rights and discharge rights. In particular, the IM provides information about when a beneficiary will and will not be liable for charges for a continued stay in a hospital and offers a detailed description of the Quality Improvement Organization review process. Please note that this iteration proposes non-substantive changes to the form. *Form Number:* CMS–R–193 (OMB control number: 0938–0692). *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 6,142; *Total Annual Responses:* 23,680,000; *Total Annual Hours:* 3,404,000. (For policy questions regarding this collection contact Janet Miller at 404–562–1799.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Appeals and Grievance Data Disclosure Requirements (42 CFR 422.111); *Use:* Medicare Advantage (MA) organizations and demonstrations are required to collect and disclose information pertaining to the number of disputes, and their disposition in the aggregate, with the categories of grievances and appeals to any individual eligible to elect an MA organization who requests this information. The CMS continues to need the same format and form for reporting. *Form Number:* CMS–R–282 (OMB control number: 0938–0778); *Frequency:* Annually and semi-annually; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 741; *Total Annual Responses:* 55,300; *Total Annual Hours:* 5,906. (For policy questions regarding this collection contact Stephanie Simons at 206–615–2420.)

Dated: June 8, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–13916 Filed 6–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–0307]

Submission for OMB Review; Comment Request; State Court Improvement Program

The Court Improvement Program (CIP) is a mandatory formula grant funded under section 438 of the Social Security Act, and most recently reauthorized under the Child and Family Services Improvement and Innovation Act of 2012 (Pub. L. 112–34). The purpose of the CIP is to facilitate the handling of child welfare cases in the courts. All 50 states, Puerto Rico, and the District of Columbia receive grants under the program. The program requires two submissions annually from grantees that constitute information collections under the Paperwork Reduction Act.

The purpose of this notice is to request an extension of the Office of Management and Budget Control Number 0907–0307 permitting continued use of the information collections required by ACF–CB–PI–12–02. The burden estimates are provided below. The Administration on Children, Youth, and Families anticipates issuing a new Program Instruction for federal fiscal year 2017.

Following the publication of the first **Federal Register** notice, the Children's Bureau engaged in a number of outreach activities to seek additional input from grantees and experts in the field on how best to reduce grantee burden, ensure that the reporting process was useful to grantees, and maximize the ability to evaluate the program overall. These efforts have resulted in the decision to require one annual submission, as opposed to two submissions.

The annual submission will include: (1) A self-assessment, and (2) a strategic plan. The self-assessment requires the grantees to identify the topical work areas of the last year, identify strengths, challenges and need for technical assistance. The self-assessment has been designed with user/grantee input with the intention of minimizing burden and maximizing usefulness of the process and product to the grantee. The strategic plan identifies projects and activities and intended results for the coming year. The strategic plan was also developed with grantee input. A full application will be due once every five years. The full application will require a five year strategic plan, letters of commitment from the highest court of appeal and state title IV–E/IV–B agency, a budget narrative, and a list of all statewide task force members.

Taken together, the changes reduce the overall burden hours from years past and those anticipated in the previous **Federal Register** notice by approximately 50%.

Respondents: Highest State Court.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Full Application	52	1	40	2080
Updated Strategic Plan	52	1	12	624
Self-Assessment	52	1	36	1772

Estimated Total Annual Burden Hours: 4476.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–13928 Filed 6–10–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration

(HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 13, 2016.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: HIV Quality Measures Module OMB No. 0915–XXXX, New

Abstract: The Ryan White HIV/AIDS Program (RWHAP) provides entities funded by the Program with flexibility to respond effectively to the changing HIV epidemic, with an emphasis on providing life-saving and life-extending services for people living with HIV. All RWHAP recipients must follow certain legislative requirements, such as the establishment of clinical quality management programs, to assess their HIV services according to the most recent Public Health Service guidelines and to develop strategies to improve access to quality HIV services. The HIV Quality Measures Module (HIVQM Module) is a new voluntary data system that recipients funded under all Parts of the RWHAP may use to monitor their performance in providing quality HIV services. Recipients may enter data into the module on their HIV/AIDS Bureau (HAB) performance measures and then generate reports to assess their performance. Recipients may also compare their performance regionally and nationally against other recipients. The HAB performance measures comprise the following categories: (1) Core, (2) all ages, (3) adolescent/adult, (4) HIV-positive children, (5) HIV-exposed children, (6) medical case management, (7) oral health, (8) AIDS Drug Assistance Program (RWHAP's drug assistance program), and (9) systems-level. HAB created the HIVQM Module as an online tool to facilitate recipients in meeting the clinical quality management program requirement. The use of the module is voluntary for RWHAP recipients, but strongly encouraged.

Need and Proposed Use of the Information: The HIVQM Module will provide recipients an easy-to-use and structured platform to voluntarily continually monitor their performance in serving their clients, particularly in access to care and the provision of quality HIV services. The main purpose for the module is to help recipients set goals and monitor performance measures and their quality improvement projects. HRSA expects the HIVQM Module to better support clinical quality management, performance measurement, service delivery, and client monitoring at both the recipient and client levels. In addition, for recipients and sub-recipients participating in the Centers for Medicare and Medicaid Incentive Programs, such as the Medicare and Medicaid Electronic Health Records Incentive Program and the Physician Quality Reporting System, the module will be consistent to qualify and comply with the requirements to receive incentives from these programs.

The module will be available for data entry three times a year. The module will be accessible via the Ryan White Services Report (RSR), an existing online tool that grant recipients already use for required data collection of their services. Recipients will choose which performance measures they want to monitor and enter data accordingly. Reports or performance measures can be generated and reviewed by the recipients and their sub-recipients and can be compared with other RWHAP recipients by provider type, by region, and at the national level.

Likely Respondents: Ryan White HIV/AIDS Program Part A, Part B, Part C, and Part D recipients and sub-recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
HIVQM Module	2,316	3	6,948	1	6,948
Total	2,316		6,948		6,948

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–13846 Filed 6–10–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0275–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for revision of the approved information collection

assigned OMB control number 0990–0275, which expires on 08/31/2016. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before August 12, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0275–60D for reference.

Information Collection Request Title: Performance Data System (PDS) (OMB No. 0990–0275).

Abstract: This request for clearance is to revise data collection activities and extend by three (3) years a currently approved collection using the OMB approved Performance Data System (PDS) (OMB No. 0990–0275), the tool used by the Office of Minority Health (OMH) to collect program management and performance data for all OMH-funded projects. The revised data collection activities pertain only to current questions about grantee use of social media. The modified social media questions in PDS will be more applicable to OMH grantees, more easily understood, and collect more accurate quantitative metrics. Grantee data collection via the UDS (original data collection system) was first approved by OMB on June 7, 2004 (OMB No. 0990–275). OMB approval was also received for modifications to the UDS (August 23, 2007), which upgraded the data collection tool from the UDS to the PDS (August 31, 2010). A 3-year extension without change of the approved PDS collection was approved August 1, 2013. Clearance is due to expire on August 31, 2016.

Need and Proposed Use of the Information: The clearance is needed to continue data collection using the PDS, a system that enables OMH to comply with Federal reporting requirements and monitor and evaluate performance by enabling the efficient collection of performance-oriented data tied to OMH-wide performance reporting needs. The ability to monitor and evaluate performance in this manner, and to work towards continuous program improvement are basic functions that OMH must be able to accomplish in order to carry out its mandate with the most effective and appropriate use of resources. The revision of the social media questions is necessary because social media platforms, such as Facebook, Twitter, and blogs, are becoming increasingly utilized by grantees for their usability, free access, and ability to reach a larger audience. The revised questions will lead to increased data collection completeness and quality.

Likely Respondents: Respondents for this data collection include the project directors for OMH-funded projects and/or the date entry persons for each OMH-funded project. Affected public includes non-profit institutions, State, Local, or Tribal Governments.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
PDS	100	4	1.5	600
Total	100	4	1.5	600

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–13833 Filed 6–10–16; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Diagnostics, Prognostics and Detection.

Date: June 15, 2016.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W032/034, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerard Lacourciere, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20892–9750, 240–276–5457, *gerard.lacourciere@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Cancer Institute Special Emphasis Panel, Software for Measuring Environmental Effects on Cancer.

Date: June 30, 2016.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W030 Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Gerard Lacourciere, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W248, Rockville, MD 20892–9750, 240–276–5457, *gerard.lacourciere@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13930 Filed 6–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of Requirements and Registration for "$100,000 for Start a SUD Startup" Challenge

SUMMARY: The National Institute on Drug Abuse (NIDA), one of the components of the National Institutes of Health (NIH), announces the "$100,000 for Start a SUD Startup" Challenge. The Challenge goal is to support research ideas that would further an understanding of neurobiology as it relates to Substance Use Disorders (SUD) and that are intended to be the basis for the development of a new and potentially successful start-up. NIDA hopes that participation in the contest will enable scientists to test the hypothesis that their research idea can be fostered into a biotech startup, and that eventually any newly created startups will contribute to the pool of innovative small business companies that can successfully compete for NIDA's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) funding. Each Challenge winner will receive $10,000. The Challenge total purse is up to $100,000.

DATES: The Challenge begins June 13, 2016.

Submission Period: June 13, 2016 to September 16, 2016, 11:59 p.m., ET.

Judging Period: September 19, 2016 to October 21, 2016.

Winners Announced: October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Irina Sazonova, Ph.D., M.Sc., Health Scientist Administrator, Office of Translational Initiatives and Program Innovations (OTIPI), NIDA Challenge Administrator, National Institute on Drug Abuse (NIDA), 6001 Executive Blvd. Room 4206, MSC 9555 Bethesda, MD 20892–9555. Phone: (301) 827–9564, Email: *irina.sazonova@nih.gov.*

SUPPLEMENTARY INFORMATION: *The Institute's Statutory Authority to Conduct the Challenge.* NIDA is conducting this Challenge under the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Reauthorization Act of 2010, 15 U.S.C. 3719. The general purpose of NIDA is to conduct and support biomedical and behavioral research, health-services research, research training, and health-information dissemination with respect to the prevention of drug abuse and the treatment of drug abusers. This Challenge is consistent with and advances the mission of NIDA as described in 42 U.S.C. 285o in that it supports new and potential biotech start-ups in the development of research ideas that would further an understanding of neurobiology as it relates to SUD.

Subject of Challenge. NIDA is excited to announce the first competition for biomedical scientists with the goal to support research ideas that would further an understanding of neurobiology as it relates to SUD and that are intended to be the basis for the development of a new and potentially successful start-up. NIDA hopes that participation in the contest will enable scientists to test whether their research ideas can be fostered into a biotech startup. In 2016, NIDA will award up to $100,000 in prizes to up to 10 winners of the contest, $10,000 each.

Are you a biomedical scientist who believes that he/she has a research idea for a biotech start-up? This Challenge is unique because NIDA intends to fund the "would be" startup Founders much earlier than most investors, incubators, or traditional modes of research funding (*e.g.* small business grants).

What does it take to participate in the Challenge? The team or an individual must have a research idea that could further the understanding of SUD and is intended to be the basis of the development of a new and potentially successful startup. The research "idea" is the product that your future startup will offer. Here, the term startup "product" is used in its broadest definition. Product is any source of value for the people who become customers. Services, subscriptions, software as a service (SaaS), physical/tangible products, aggregations, etc. could all provide value and thus be considered startup products. The startup product could be the result of novel scientific discoveries, repurposing an existing technology for a new use, extending a research observation into a different area, devising a new business model or distribution/delivery channel that unlocks value currently concealed, or simply bringing a product or service to previously underserved set of customers. The Founder (the teams or an individual) must demonstrate through the Submission the passion, drive, discipline, ability to work collaboratively and willingness to push forward under conditions of extreme business uncertainty.

The winners of this Challenge are encouraged to use the prize funds to develop a minimum viable proof (MVP) as quickly as possible and to obtain customer feedback to discover if MVP meets the customer needs. If the product prototype is successfully validated, winners are encouraged to create or further advance their biotech startup no later than 6 months after the prize is awarded. Post Challenge, as with all other NIH grant applicants, NIDA staff will provide dedicated assistance and guidance about the NIH grant submission process, including submissions for the SBIR/STTR grants.

The research idea must be broad enough to address multiple conditions, diseases, or indications consistent with SUD or be specific for prevention and treatments of SUD. For example, if your idea can only work for cancer or diabetes, entering this Challenge is not appropriate. However, if the plan is to test an idea for a research tool that would further an understanding of neurobiology or epigenetics relevant to SUD to progress faster and with greater fidelity, entering this Challenge is appropriate.

Rules for Participating in the Challenge. The Challenge is open to any Founder 18 years of age or older. No prior startup experience is necessary. A

Founder may be (i) an entity or (ii) an individual or group of individuals (*i.e.*, a team assembled with the purpose of participating in this Challenge).

(1) To be eligible to win a prize under this Challenge, an individual or entity:

a. Shall have registered to participate in the Challenge under the rules promulgated by NIDA as published in this Notice;

b. Shall have complied with all the requirements set forth in this Notice;

c. In the case of a private entity, shall be incorporated in and maintain a primary place of business or research activity in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States. However, non-U.S. citizens and non-permanent residents can participate as a member of a team that otherwise satisfies the eligibility criteria. Non-U.S. citizens and non-permanent residents are not eligible to win a monetary prize (in whole or in part). Their participation as part of a winning team, if applicable, may be otherwise recognized when the results are announced.

d. May not be a Federal entity;

e. May not be a Federal employee acting within the scope of the employee's employment and further, in the case of HHS employees, may not work on their submission(s) during assigned duty hours;

f. May not be an employee of the NIH, a judge of the challenge, or any other party involved with the design, production, execution, or distribution of the Challenge or the immediate family of such a party (*i.e.*, spouse, parent, step-parent, child, or step-child).

g. Must be a potential start-up (*i.e.* not yet formed) or a new start-up (*i.e.* in the early stage of formation and development).

(2) Federal grantees may not use Federal funds to develop their Challenge submissions.

(3) Federal contractors may not use Federal funds from a contract to develop their Challenge submissions or to fund efforts in support of their Challenge submission.

(4) Submissions must not infringe upon any copyright or any other rights of any third party.

(5) By participating in this Challenge, each Founder (whether competing singly or in a group) and entity agrees to assume any and all risks and waive claims against the Federal government and its related entities (as defined in the COMPETES Act), except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this Challenge, whether the injury, death, damage, or loss arises through negligence or otherwise.

(6) Based on the subject matter of the Challenge, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, property damage, or loss potentially resulting from Challenge participation, no Founder (whether competing singly or in a group) or entity participating in the Challenge is required to obtain liability insurance or demonstrate financial responsibility in order to participate in this Challenge.

(7) By participating in this Challenge, each Founder (whether competing singly or in a group) and entity agrees to indemnify the Federal government against third party claims for damages arising from or related to Challenge activities.

(8) A Founder or entity shall not be deemed ineligible because the Founder or entity used Federal facilities or consulted with Federal employees during the Challenge if the facilities and employees are made available to all individuals and entities participating in the Challenge on an equitable basis.

(9) By participating in this Challenge, each Founder (whether participating singly or in a group) or entity retains title and full ownership in and to their submission and each participant expressly reserves all intellectual property rights (*e.g.*, copyright) in their submission.

(10) NIDA reserves the right, in its sole discretion, to (a) cancel, suspend, or modify the Challenge, and/or (b) not award any prizes if no entries are deemed worthy.

(11) Each Founder (whether participating singly or in a group) or entity agrees to follow all applicable Local, State, and Federal laws and regulations.

(12) Each Founder (whether participating singly or in a group) and entity participating in this Challenge must comply with all terms and conditions of these rules, and participation in this Challenge constitutes each such contestant's full and unconditional agreement to abide by these rules. Winning is contingent upon fulfilling all requirements herein.

(13) Scientists working on the projects that are directly applicable or adaptable to benefit the SUD field, NIDA's mission area, are especially encouraged to apply. A team can also include engineers, IT, business or other professionals in the biomedical science/health care field;

(14) Winners are encouraged to submit the minimum viable proof (MVP) report 6 months after the prize payment.

Registration Process for Contestants. To participate in this Challenge visit *www.challenge.gov*, search for "Start a Startup" Challenge and follow the instructions.

Submission Requirements. Each submission for this Challenge requires a complete "Submission Package." The Submission Package includes a 4-page written proposal describing an idea and 5-min video introducing the team. Both the idea and the Founders will be evaluated.

(1) In the proposal:

1. Describe your research idea that would further an understanding of neurobiology as it relates to SUD and that is intended to be the basis for a successful start-up. (1 page)

2. Convince the Challenge reviewers of your technical competence as a biomedical scientist. Be brief, selective and persuasive. Do not use the NIH Bibliographic Sketch format. (0.5 page)

3. Describe, in as many details as possible, what the prototype of your product would look like. Then, walk the Challenge reviewers through the typical use of the product, using simple terms and instructions. (1.5 pages)

4. Explain the methods you will use (how, when, where, whom) to determine whether the product is needed by the target audience and whether that audience would be willing to pay for the product. (1 page)

The proposal must consist of a PDF file with at least 1 inch margins and no more than four (4) pages long. Font size must be no smaller than 11 point Arial. All submissions must be in English. The Contestants must not use HHS's logo or official seal or the logo of NIH or NIDA in the submissions, and must not claim federal government endorsement.

(2) A brief video (link to YouTube) must be no longer than five (5) minutes. If the Challenge submission is from the team of Founders, the entire team must participate in the submitted video. In the YouTube video:

- Tell NIDA something, in one minute or less, that can illustrate the drive or the desire of each founder to develop a product that would further an understanding of neurobiology as it relates to SUD and that is intended to be the basis for a successful start-up.
- Tell NIDA something about each founder that shows a high level of scientific and entrepreneurial ability.
- Tell NIDA something about each founder that shows a high level of perseverance and grit.
- Tell NIDA about a time when your great idea was rejected. What was your response?

• Tell NIDA how you design scientific experiments in general.

Amount of the Prize; Award Approving Official. Up to ten monetary prizes will be awarded. The total prize award pool is up to $100,000. No institutional indirect costs are allowed. The names of the winners and the titles of their submissions will be posted on the NIDA Web site. The award approving official for this Challenge is the Director of the National Institute on Drug Abuse.

Payment of the Prize. Prizes awarded under this Challenge will be paid by electronic funds transfer and may be subject to Federal income taxes. The NIH/NIDA will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis upon Which the Winner Will Be Selected. The judging panel will make recommendations to the award approving official based upon the following 5 criteria. Each criterion will be scored with the maximum of 10 points.

(1) Significance and Unmet Needs (0–10 points). Are there significant needs for your product or service? Does the project address an important problem or a critical barrier to progress in the field of drug abuse research? If the aims of the project are achieved, how will scientific knowledge, technical capability, service or clinical practice be improved?

(2) Innovation (0–10 points). Does the submission seek to shift current paradigms by utilizing novel theoretical concepts, approaches, methodologies, instrumentation, service or interventions for drug abuse research? Is your product novel in a broad sense? Is a refinement, improvement or new application of theoretical concepts, approaches or methodologies instrumentation or interventions proposed?

(3) Approach (0–10 points). Are the overall strategy, methodology, and analyses well-reasoned and appropriate to test the proposed idea? Has feedback from end users been incorporated into the validity of the idea proposed?

(4) Team expertise (0–10 points). Does the individual or team demonstrate high level of ability, perseverance and grit?

(5) Commercialization (0–10 points). Is there a clear path for the product/service to reach the market? Are the product users and purchasers clearly identified?

Submissions that are responsive and comply with the entry requirements will be reviewed by a panel of judges consisting of federal employees. The responsive and compliant submissions entries will be scored in accordance with the judging criteria outlined above. Final recommendations will be determined by a vote of the judges based on score. Scores from each criterion will be weighted equally, but failure to meet a minimum standard for any one criterion might disqualify a submission. The score for each submission will be the sum of the scores from each of the voting judges.

Authority: 15 U.S.C. 3719

Dated: June 7, 2016.

Nora D. Volkow,

Director, National Institute on Drug Abuse, National Institutes of Health.

[FR Doc. 2016–13936 Filed 6–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK15–030 Type 1 Diabetes Pathfinder Award (DP2).

Date: July 14, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Program Projects (P01).

Date: July 22, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Minor Endoscopic Sphincterotomy for Recurrent Acute Pancreatitis with Pancreas Divisum.

Date: July 25, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Psychological and Behavioral Mechanisms in Bariatric Surgery (R01).

Date: July 26, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 6, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13828 Filed 6–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is

hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; CVRS Member Conflicts and Continuous Submissions.

Date: June 28, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Olga A. Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental and Motor Disability.

Date: July 6, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: July 7–8, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovative Strategies to Reduce HIV Incidence—iKnow Projects.

Date: July 7, 2016.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Washington DC, 2401 M Street NW., Washington, DC 20008.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.

Date: July 7, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jessica Bellinger, Ph.D., Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: July 12–13, 2016.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol, Neurotoxicology and Drugs.

Date: July 13–14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Selmanoff, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5164, MSC 7844, Bethesda, MD 20892, 301–435–1119, *selmanom@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: July 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Microbial Pathogenesis.

Date: July 13, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–16–005: Environmental Influences on Child Health Outcomes (ECHO) Data Analysis Center (DAC).

Date: July 13, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pain and Chemosensory Mechanisms.

Date: July 13–14, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Novel Genomic Technology Development.

Date: July 13, 2016.

Time: 10:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapeutics.

Date: July 13, 2016.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomarkers, Bioassays, Animal Models and Related Technologies for Neurologic Disorders.

Date: July 13, 2016.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yvonne Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 7, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13827 Filed 6–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the National Cancer Institute Clinical Trials and Translational Research Advisory Committee was renewed for an additional two-year period on April 14, 2016.

It is determined that the National Cancer Institute Clinical Trials and Translational Research Advisory Committee is in the public interest in connection with the performance of duties imposed on the National Cancer Institute and National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov*.

Dated: June 7, 2016.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13829 Filed 6–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0372]

Certificates of Alternative Compliance, First Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that the First Coast Guard District's Prevention Department has issued certificates of alternative compliance with the International Regulations for Preventing Collisions at Sea (72 COLREGS), to vessels of special construction or purpose that cannot fully comply with the light, shape, and sound signal provisions of 72 COLREGS without interfering with their special function. This notice promotes the Coast Guard's maritime safety and stewardship missions.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Mr. Kevin Miller, First Coast Guard District's Towing Vessel and Barge Safety Specialist at (617) 223–8272 or [*Kevin.L.Miller2@uscg.mil*].

SUPPLEMENTARY INFORMATION:

Discussion

The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972, as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, and sound signal provisions of 72 COLREGS. Under statutory law [1] and Coast Guard regulation,[2] a vessel may instead meet alternative requirements and the vessel's owner, builder, operator, or agent may apply for a certificate of alternative compliance (COAC). The Chief of the Inspections and Investigations Branch in each Coast Guard District office determines whether the vessel for which the COAC is sought complies as closely as possible with 72 COLREGS, and decides whether to issue the COAC. Once issued, a COAC remains valid until information supplied in the application for the COAC, or the terms of the COAC, become inapplicable to the vessel. Under the governing statute [3] and regulation,[4] the Coast Guard must publish notice of each COAC issued by the District office.

The First Coast Guard District issued COACs to the following vessels from January 2016 to May 2016:

Year	Vessel name	Details
2016	JACK T MORAN	This certificate authorized the placement of the vessel's sidelights in a position 13′ 5.25″ from the vessel's side, mounted to the top of the pilot house. Additionally, this certificate authorized the placement of the vessel's stern light and towing lights in a position 3′ 5.75″ aft of Frame 20, mounted on the top of the pilot house.
2016	GRACIE M REINAUER	This certificate authorized the placement of the vessel's sidelights in a position 7′ 1.75″ from the vessel's side, mounted to the deckhouse overhead.
2016	COOPER MORAN	This certificate authorized the placement of the vessel's sidelights in a position 13′ 5.25″ from the vessel's side, mounted to the top of the pilot house. Additionally, this certificate authorized the placement of the vessel's stern light and towing lights in a position 3′ 5.75″ aft of Frame 20, mounted on the top of the pilot house.

[1] 33 U.S.C. 1605.

[2] 33 CFR 81.3.

[3] 33 U.S.C. 1605(c).

[4] 33 CFR 81.18.

This notice is issued under authority of 5 U.S.C. 552(a), 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: May 31, 2016.

B. L. Black,

Captain, U.S. Coast Guard, Chief of Prevention, First Coast Guard District.

[FR Doc. 2016–13926 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1621]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 12, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1621, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 31, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Yavapai County, Arizona, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 16–09–1388S Preliminary Date: April 1, 2016	
City of Prescott	Public Works Department, 201 South Cortez Street, Prescott, AZ 86303.
Unincorporated Areas of Yavapai County	Yavapai County Flood Control District Office, 1120 Commerce Drive, Prescott, AZ 86305.
Delaware County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 14–05–6087S Preliminary Date: July 22, 2015	
City of Muncie	Delaware County Building, 100 West Main Street, Room 206, Muncie, IN 47305.
Town of Yorktown	Yorktown Town Hall, 9800 West Smith Street, Yorktown, IN 47396.
Unincorporated Areas of Delaware County	Delaware County Building, 100 West Main Street, Room 206, Muncie, IN 47305.
Tippecanoe County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 14–05–6086S Preliminary Date: April 17, 2015	
City of Lafayette	City Hall, 20 North 6th Street, Lafayette, IN 47901.
Town of Shadeland	Shadeland Town Hall, 3125 South 175 West, Lafayette, IN 47909.
Unincorporated Areas of Tippecanoe County	Tippecanoe County Office, 20 North 3rd Street, Lafayette, IN 47901.
Humboldt County, Iowa, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–07–0903S Preliminary Date: July 30, 2015	
City of Bradgate	City Hall, 202 South Garfield Street, Bradgate, IA 50520.
City of Dakota City	City Hall, 26 5th Street South, Dakota City, IA 50529.
City of Humboldt	City Hall, 29 5th Street South, Humboldt, IA 50548.
City of Livermore	City Hall, 401 4th Avenue, Livermore, IA 50558.
City of Lu Verne	City Hall, 109 Dewitt Street, Lu Verne, IA 50560.
City of Rutland	City Hall, 201 Sheridan Avenue, Rutland, IA 50582.
City of Thor	City Hall, 223 North Ann Street, Thor, IA 50591.
Unincorporated Areas of Humboldt County	Humboldt County Courthouse, 203 Main Street, Dakota City, IA 50529.

[FR Doc. 2016–13815 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes In Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed

since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 19, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arkansas:					
Benton, (FEMA Docket No.: B–1600).	City of Rogers (15–06–1201P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	City Hall, 301 West Chestnut Street, Rogers, AR 72756..	Apr. 5, 2016	050013
Pulaski, (FEMA Docket No.: B–1600).	City of Sherwood (14–06–4719P).	The Honorable Virginia Hillman Young, Mayor, City of Sherwood, P.O. Box 6256, Sherwood, AR 72124.	City Hall, 2199 East Kiehl Avenue, Sherwood, AR 72120.	Apr. 8, 2016	050235
Colorado:					
Boulder, (FEMA Docket No.: B–1605).	City of Boulder (16–08–0051P).	The Honorable Suzanne Jones, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Planning and Development Services Department, 1739 Broadway Street, Boulder, CO 80302.	Apr. 26, 2016	080024
Jefferson, (FEMA Docket No.: B–1600).	City of Golden (15–08–1205P).	The Honorable Marjorie Sloan, Mayor, City of Golden, 911 10th Street, Golden, CO 80401.	Public Works Department, 1445 10th Street, Golden, CO 80401.	Apr. 22, 2016	080090
Weld, (FEMA Docket No.: B–1605).	Town of Milliken (15–08–0943P).	The Honorable Milt Tokunaga, Mayor, Town of Milliken, 1101 Broad Street, Milliken, CO 80543.	Town Hall, 1101 Broad Street, Milliken, CO 80543.	May 4, 2016	080187
Weld, (FEMA Docket No.: B–1605).	Unincorporated areas of Weld County (15–08–0943P).	The Honorable Barbara Kirkmeyer, Chair, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	Weld County Planning and Zoning Department, 1555 North 17th Avenue, Greeley, CO 80631.	May 4, 2016	080266
Florida:					
Bay, (FEMA Docket No.: B–1600).	City of Lynn Haven (15–04–6857P).	The Honorable Margo Anderson, Mayor, City of Lynn Haven, 825 Ohio Avenue, Lynn Haven, FL 32444.	Building Department, 907 Pennsylvania Avenue, Lynn Haven, FL 32444.	Apr. 4, 2016	120009
Bay, (FEMA Docket No.: B–1600).	Unincorporated areas of Bay County (15-04-6857P).	The Honorable Guy M. Tunnell, Chairman, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning and Zoning Department, 840 West 11th Street, Panama City, FL 32401.	Apr. 4, 2016	120004
Brevard, (FEMA Docket No.: B–1605).	City of Indian Harbour Beach (15–04–1302P).	The Honorable David Panicola, Mayor, City of Indian Harbour Beach, 2055 South Patrick Drive, Indian Harbour Beach, FL 32937.	City Hall, 2055 South Patrick Drive, Indian Harbour Beach, FL 32937.	Apr. 28, 2016	125116
Broward, (FEMA Docket No.: B–1600).	City of Pompano Beach (15–04–4261P).	The Honorable Lamar Fisher, Mayor, City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060..	Building Division, 100 West Atlantic Boulevard, Pompano Beach, FL 33060..	Apr. 6, 2016	120055
Broward, (FEMA Docket No.: B–1605).	City of Pompano Beach (15–04–7209P).	The Honorable Lamar Fisher, Mayor, City of Pompano Beach, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	Building Division, 100 West Atlantic Boulevard, Pompano Beach, FL 33060.	May 5, 2016	120055

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Broward, (FEMA Docket No.: B–1600).	Unincorporated areas of Broward County (15–04–4261P).	The Honorable Tim Ryan, Mayor, Broward County Commission, 115 South Andrews Avenue, Room 413, Fort Lauderdale, FL 33301.	Broward County Building Permitting Division, 1 North University Drive, Suite 201A, Plantation, FL 33324.	Apr. 6, 2016	125093
Charlotte, (FEMA Docket No.: B–1600).	Unincorporated areas of Charlotte County (15–04–9981P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	Apr. 4, 2016	120061
Collier, (FEMA Docket No.: B–1600).	City of Marco Island (16–04–0095X).	The Honorable Bob Brown, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	City Hall, 50 Bald Eagle Drive, Marco Island, FL 34145.	Apr. 4, 2016	120426
Duval, (FEMA Docket No.: B–1600).	City of Jacksonville (15–04–A463P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Development Services Division, 214 North Hogan Street, Room 2100, Jacksonville, FL 32202.	Apr. 17, 2016	120077'
Hillsborough, (FEMA Docket No.: B–1600).	City of Plant City (15–04–0825P).	The Honorable Rick A. Lott, Mayor, City of Plant City, 302 West Reynolds Street, Plant City, FL 33563.	Engineering Division, 302 West Reynolds Street, Plant City, FL 33563.	Apr. 7, 2016	120113
Lee, (FEMA Docket No.: B–1600).	Town of Fort Myers Beach (15–04–6044P).	The Honorable Anita Cereceda, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Public Works Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Apr. 4, 2016	120673
Lee, (FEMA Docket No.: B–1605).	Unincorporated areas of Lee County (15–04–7181P).	The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, District 5, P.O. Box 398, Fort Myers, FL 33902.	Lee County Community Development Department, 1500 Monroe Street, Fort Myers, FL 33901.	May 4, 2016	125124
Manatee, (FEMA Docket No.: B–1600).	Unincorporated areas of Manatee County (15–04–3585P).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, 1112 Manatee Avenue West, 9th Floor, Bradenton, FL 34205.	Manatee County Public Works Department, 1022 26th Avenue East, Bradenton, FL 34208.	Apr. 5, 2016	120153
Miami-Dade, (FEMA Docket No.: B–1605).	City of Miami (15–04–A406P).	The Honorable Tomás P. Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Building Department, 444 Southwest 2nd Avenue, Miami, FL 33130.	Apr. 4, 2016	120650
Miami-Dade, (FEMA Docket No.: B–1605).	City of Sunny Isles Beach (15–04–8034P).	The Honorable George "Bud" Scholl, Mayor, City of Sunny Isles Beach, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Building Department, 18070 Collins Avenue, Sunny Isles Beach, FL 33160.	Apr. 26, 2016	120688
Nassau, (FEMA Docket No.: B–1600).	Unincorporated areas of Nassau County (15–04–7268P).	The Honorable Pat Edwards, Chairman, Nassau County Board of Commissioners, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place, Yulee, FL 32097.	Apr. 7, 2016	120170
Seminole, (FEMA Docket No.: B–1605).	City of Longwood (15–04–9353P).	The Honorable Joe Durso, Mayor, City of Longwood, 175 West Warren Avenue, Longwood, FL 32750.	Community Development Division, 174 West Church Avenue, Longwood, FL 32750.	May 6, 2016	120292
Georgia:					
Columbia, (FEMA Docket No.: B–1600).	Unincorporated areas of Columbia County (15–04–3832P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, 630 Ronald Reagan Drive, Building A, East Wing, Evans, GA 30809.	Apr. 7, 2016	130059
Columbia, (FEMA Docket No.: B–1605).	Unincorporated areas of Columbia County (15–04–A572P).	The Honorable Ron C. Cross, Chairman, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, 630 Ronald Reagan Drive, Building A, East Wing, Evans, GA 30809.	May 6, 2016	130059
Lee, (FEMA Docket No.: B–1605).	City of Leesburg (15–04–3743P).	The Honorable Jim Quinn, Mayor, City of Leesburg, P.O. Box 890, Leesburg, GA 31763.	City Hall, 107 Walnut Avenue South, Leesburg, GA 31763.	Apr. 21, 2016	130348
Lee, (FEMA Docket No.: B–1605).	Unincorporated areas of Lee County (15–04–3743P).	The Honorable Rick Muggridge, Chairman, Lee County Board of Commissioners, 110 Starksville Avenue North, Leesburg, GA 31763.	Lee County Administration Building, 110 Starksville Avenue North, Leesburg, GA 31763.	Apr. 21, 2016	130122

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Mississippi: Rankin, (FEMA Docket No.: B–1600).	City of Richland (15–04–6709P).	The Honorable Mark Scarborough, Mayor, City of Richland, P.O. Box 180609, Richland, MS 39218.	City Hall, 380 Scarbrough Street, Richland, MS 39218.	Apr. 21, 2016	280299
New York: Rockland, (FEMA Docket No.: B–1555).	Town of Clarkstown (15–02–0462P).	The Honorable Alexander J. Gromack, Supervisor, Town of Clarkstown, 10 Maple Avenue, New City, NY 10956.	Town Hall, 10 Maple Avenue, New City, NY 10956.	Apr. 19, 2016	360679
North Carolina: Watauga, (FEMA Docket No.: B–1600).	Town of Blowing Rock (15–04–2144P).	The Honorable J.B. Lawrence, Mayor, Town of Blowing Rock, P.O. Box 47, Blowing Rock, NC 28605.	Planning and Inspections Department, 1038 Main Street, Blowing Rock, NC 28605.	Apr. 21, 2016	370252
Ohio:					
Franklin, (FEMA Docket No.: B–1605).	City of Columbus (15–05–3155P).	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street,, 2nd Floor, Columbus, OH 43215.	City Hall, 1250 Fairwood Avenue, Columbus, OH 43206.	Apr. 20, 2016	390170
Franklin, (FEMA Docket No.: B–1605).	City of Grandview Heights (15–05–3155P).	The Honorable Ray DeGraw, Mayor, City of Grandview Heights, 1016 Grandview Avenue, Grandview Heights, OH 43212.	City Hall, 1016 Grandview Avenue, Grandview Heights, OH 43212.	Apr. 20, 2016	390172
Oklahoma:					
Cleveland, (FEMA Docket No.: B–1600).	City of Moore (15–06–1047P).	The Honorable Stephen O. Eddy, Manager, City of Moore, 301 North Broadway Street, Moore, OK 73160.	City Hall, 301 North Broadway Street, Moore, OK 73160.	Apr. 27, 2016	400044
Cleveland, (FEMA Docket No.: B–1600).	City of Oklahoma City (15–06–1047P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma City, OK 73102.	Department of Public Works, 420 West Main Street, Suite 700, Oklahoma City, OK 73102.	Apr. 27, 2016	405378
Oklahoma, (FEMA Docket No.: B–1600).	City of Edmond (15–06–3272P).	The Honorable Charles Lamb, Mayor, City of Edmond, P.O. Box 2970, Edmond, OK 73083.	Planning and Public Works Department, 10 South Littler, Edmond, OK 73084.	Apr. 7, 2016	400252
Oklahoma, (FEMA Docket No.: B–1605).	City of Oklahoma City (15–06–0551P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker , 3rd Floor, Oklahoma City, OK 73102.	Planning Department, 420 West Main, 9th Floor, Oklahoma City, OK 73102.	May 4, 2016	405378
Oklahoma, (FEMA Docket No.: B–1605).	City of Oklahoma City (15–06–3108P).	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102.	Planning Department, 420 West Main, 9th Floor, Oklahoma City, OK 73102.	Apr. 26, 2016	405378
Oklahoma, (FEMA Docket No.: B–1605).	Unincorporated areas of Oklahoma County (15–06–3108P).	The Honorable Ray Vaughn, Oklahoma County, Commissioner, District 3, 320 Robert S. Kerr Avenue, Suite 621, Oklahoma City, OK 73102.	Oklahoma County Planning Department, 320 Robert S. Kerr Avenue, Suite 101, Oklahoma City, OK 73102.	Apr. 26, 2016	400466
Pennsylvania:					
Chester, (FEMA Docket No.: B–1605).	Township of Caln (15–03–1479P).	The Honorable John Contento, President, Township of Caln Board of Commissioners, 253 Municipal Drive, Thorndale, PA 19372.	Township Municipality Building, 253 Municipal Drive, Thorndale, PA 19372.	Apr. 26, 2016	422247
Chester, (FEMA Docket No.: B–1605).	Borough of Downingtown (15–03–1479P).	The Honorable Joshua Maxwell, Mayor, Borough of Downingtown, 4 West Lancaster Avenue, Downingtown, PA 19335.	Borough Hall, 4 West Lancaster Avenue, Downingtown, PA 19335.	Apr. 26, 2016	420275
South Carolina:					
Charleston, (FEMA Docket No.: B–1600).	Town of Mount Pleasant (16–04–0085P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Planning and Development Department, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Apr. 28, 2016	455417
Lexington, (FEMA Docket No.: B–1605).	Unincorporated areas of Lexington County (15–04–7104P).	The Honorable Johnny W. Jeffcoat, Chairman, Lexington County Board of Commissioners, 212 South Lake Drive, Suite 601, Lexington, SC 29072.	Lexington County Planning Department, 212 South Lake Drive, Suite 302, Lexington, SC 29072.	Apr. 29, 2016	450129
Tennessee: Knox, (FEMA Docket No.: B–1600).	City of Knoxville (15–04–6041P).	The Honorable Madeline Rogero, Mayor, City of Knoxville, P.O. Box 1631, Knoxville, TN 37901.	Stormwater Engineering Division, 400 Main Street, Suite 480, Knoxville, TN 37902.	Apr. 8, 2016	475434
Texas:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Bell, (FEMA Docket No.: B–1605).	City of Belton (15–06–2989P).	The Honorable Marion Grayson, Mayor, City of Belton, P.O. Box 120, Belton, TX 76513.	City Hall, 333 Water Street, Belton, TX 76513.	Apr. 29, 2016	480028
Dallas, (FEMA Docket No.: B–1605).	City of Carrollton (15–06–4000P).	The Honorable Matthew Marchant, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	Apr. 18, 2016	480167
Harris and, Waller, (FEMA Docket No.: B–1605).	City of Katy (15–06–1824P).	The Honorable Fabol R. Hughes, Mayor, City of Katy, P.O. Box 617, Katy, TX 77493.	City Hall, 910 Avenue C, Katy, TX 77493	Apr. 22, 2016	480301
Johnson, (FEMA Docket No.: B–1600).	City of Burleson (15–06–3404P).	The Honorable Ken Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	Development Services Department, 141 West Renfro Street, Burleson, TX 76028.	Apr. 18, 2016	485459
McClennan, (FEMA Docket No.: B–1600).	City of Hewitt (15–06–2410P).	The Honorable Ed Passaligo, Mayor, City of Hewitt, 105 Tampico Drive, Hewitt, TX 76643.	City Hall, 105 Tampico Drive, Hewitt, TX 76643.	Apr. 4, 2016	480458
McClennan, (FEMA Docket No.: B–1600).	City of Waco (15–06–2410P).	The Honorable Malcolm Duncan Jr., Mayor, City of Waco, 300 Austin Avenue, Waco, TX 76702.	Engineering Services Department, 401 Franklin Avenue, Waco, TX 76701.	Apr. 4, 2016	480461
Virginia:					
Fauquier, (FEMA Docket No.: B–1605).	Unincorporated areas of Fauquier County (15–03–1168P).	The Honorable Chester W. Stribling, Chairman, Fauquier County Board of Supervisors, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	Fauquier County Department of Community Development, 29 Ashby Street, Suite 310, Warrenton, VA 20186.	Apr. 28, 2016	510055
Montgomery, (FEMA Docket No.: B–1605).	Unincorporated areas of Montgomery County (14–03–0497P).	The Honorable Bill Brown, Chairman, Montgomery County Board of Supervisors, 755 Roanoke Street,, Suite 2E, Christiansburg, VA 24073.	Montgomery County Planning Department, 755 Roanoke Street, Suite 2A, Christiansburg, VA 24073.	May 5, 2016	510099

[FR Doc. 2016–13813 Filed 6–10–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1617]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 12, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1617, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 19, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
Lower Trinity Watershed	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Chambers County, Texas, and Incorporated Areas	
City of Mont Belvieu	City Hall, 11607 Eagle Drive, Mont Belvieu, TX 77523.
City of Old River-Winfree	City Hall, 4818 North Farm to Market 565 Road, Old River-Winfree, TX 77523.
Unincorporated Areas of Chambers County	Chambers County Road and Bridge Department, 201 Airport Road, Anahuac, TX 77514.
Liberty County, Texas, and Incorporated Areas	
City of Daisetta	Municipal Building, 410 B Main Street, Daisetta, TX 77533.
City of Dayton	City Hall, 117 Cook Street, Dayton, TX 77535.
City of Dayton Lakes	Liberty County Engineering Department, 2103 Cos Street, Liberty, TX 77575.
City of Devers	Liberty County Engineering Department, 2103 Cos Street, Liberty, TX 77575.
City of Hardin	Hardin City Hall, 142 County Road 2010, Liberty, TX 77575.
City of Liberty	City Hall, Inspection Department, 1829 Sam Houston Street, Liberty, TX 77575.
City of Mont Belvieu	City Hall, 11607 Eagle Drive, Mont Belvieu, TX 77523.
Town of Kenefick	Kenefick Town Hall, 3564 Farm to Market Road 1008, Dayton, TX 77535.
Unincorporated Areas of Liberty County	County Engineering Department, 2103 Cos Street, Liberty, TX 77575.
San Jacinto County, Texas, and Incorporated Areas	
Unincorporated Areas of San Jacinto County	San Jacinto County Courthouse, Permit Department, 1 State Highway 150, Room 3, Coldspring, TX 77331.

II. Non-watershed-based studies:

Community	Community map repository address
Nassau County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–04–1944S Preliminary Date: January 15, 2016	
City of Fernandina Beach	City Hall, 204 Ash Street, Fernandina Beach, FL 32034.

Community	Community map repository address
Unincorporated Areas of Nassau County	Nassau County Building Department, 96161 Nassau Place, Yulee, FL 32097.
Volusia County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 11–04–1998S Preliminary Date: January 21, 2016	
City of Daytona Beach	City Hall, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.
City of Daytona Beach Shores	City Hall, 2990 South Atlantic Avenue, Daytona Beach Shores, FL 32118.
City of Deltona	Department of Development Services, 2345 Providence Boulevard, Deltona, FL 32725.
City of Edgewater	Building and Planning Department, 104 North Riverside Drive, Edgewater, FL 32132.
City of Flagler Beach	City Hall, 105 South 2nd Street, Flagler Beach, FL 32136.
City of Holly Hill	City Hall, City Planner's Office, 1065 Ridgewood Avenue, Holly Hill, FL 32117.
City of New Smyrna Beach	City Hall, 210 Sams Avenue, New Smyrna Beach, FL 32168.
City of Oak Hill	City Hall, 234 South US Highway 1, Oak Hill, FL 32759.
City of Ormond Beach	City Hall, City Manager's Office, 22 South Beach Street, Ormond Beach, FL 32174.
City of Port Orange	City Hall, 1000 City Center Circle, Port Orange, FL 32129.
City of South Daytona	City Hall, 1672 South Ridgewood Avenue, South Daytona, FL 32119.
Town of Ponce Inlet	Town Hall, 4300 South Atlantic Avenue, Ponce Inlet, FL 32127.
Unincorporated Areas of Volusia County	Volusia County Office of Growth Management, 123 West Indiana Avenue, DeLand, FL 32720.
Colleton County, South Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 06–04–C556S Preliminary Date: November 20, 2015	
City of Walterboro	City Hall, 242 Hampton Street, Walterboro, SC 29488.
Town of Cottageville	Municipal Complex, 72 Salley Ackerman Drive, Cottageville, SC 29435.
Town of Edisto Beach	Town Hall, 2414 Murray Street, Edisto Beach, SC 29438.
Town of Smoaks	Town Hall, 176 New Street, Smoaks, SC 29481.
Town of Williams	Office of the Clerk, 143 Supply Road, Williams, SC 29493.
Unincorporated Areas of Colleton County	Colleton County Building Code Administration, 31 Klein Street, 3rd Floor Harrelson Building, Walterboro, SC 29488.
Lexington County, South Carolina, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 10–04–4870S Preliminary Date: October 30, 2015	
City of Cayce	City Hall, 1800 12th Street, Cayce, SC 29033.
City of Columbia	Department of Utilities and Engineering, 1136 Washington Street, Columbia, SC 29201.
City of West Columbia	City Hall, 200 North 12th Street, West Columbia, SC 29169.
Town of Batesburg-Leesville	Town Hall, 120 West Church Street, Suite A, Batesburg-Leesville, SC 29006.
Town of Gaston	Town Hall, 131 North Carlisle Street, Gaston, SC 29053.
Town of Gilbert	Town Hall, 345 Hampton Street, Gilbert, SC 29054.
Town of Irmo	Town Hall, 7300 Woodrow Street, Irmo, SC 29063.
Town of Lexington	Town Hall, 111 Maiden Lane, Lexington, SC 29072.
Town of Pelion	Town Office, 1010 Main Street, Pelion, SC 29123.
Town of Pine Ridge	Pine Ridge Town Hall, 2757 Fish Hatchery Road, West Columbia, SC 29172.
Town of South Congaree	South Congaree Town Hall, 119 West Berry Road, West Columbia, SC 29172.
Town of Springdale	Town Hall, 2915 Platt Springs Road, Springdale, SC 29170.
Town of Swansea	Town Hall, 300 West 3rd Street, Swansea, SC 29160.
Unincorporated Areas of Lexington County	Lexington County Planning Department, County Administration Building, 212 South Lake Drive, Lexington, SC 29072.

[FR Doc. 2016–13809 Filed 6–10–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1622]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 19, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arizona:						
Maricopa	Town of Carefree (15–09–2627P).	The Honorable Les Peterson, Mayor, Town of Carefree, 8 Sundial Circle, Carefree, AZ 85377.	Town Council Chambers, 100 Easy Street, Carefree, AZ 85377.	*http://www.msc.fema.gov/lomc*	Jun. 16, 2016	040126
Mohave	Unincorporated areas of Mohave County (15–09–3028P).	The Honorable Jean Bishop, Chair, Board of Supervisors, Mohave County, 700 West Beale Street, Kingman, AZ 86402.	County Administration Building, 700 West Beale Street, Kingman, AZ 86402.	*http://www.msc.fema.gov/lomc*	Jun. 20, 2016	040058

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Pima	City of Tucson (15–09–2996P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Regional Flood Control District, 210 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	Jul. 26, 2016	040076
Pima	City of Tucson (16–09–0139P).	The Honorable Jonathan Rothschild, Mayor, City of Tucson, City Hall, 255 West Alameda Street, 10th Floor, Tucson, AZ 85701.	Planning and Development Services, 201 North Stone Avenue, 1st Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	Aug. 8, 2016	040076
Pima	Unincorporated areas of Pima County (15–09–2996P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Regional Flood Control District, 210 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	Jul. 26, 2016	040073
Pima	Unincorporated areas of Pima County (15–09–3190P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Regional Flood Control District, 210 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	Jun. 28, 2016	040073
Pinal	Town of Florence (15–09–2494X).	The Honorable Tom J. Rankin, Mayor, Town of Florence, 775 North Main Street, Florence, AZ 85132.	Department of Public Works, 425 East Ruggles Street, Florence, AZ 85132.	*http://www.msc.fema.gov/lomc*	Jul. 1, 2016	040084
Pinal	Unincorporated areas of Pinal County (15–09–2494X).	The Honorable Cheryl Chase, Chair, Board of Supervisors, Pinal County, 135 North Pinal Street, Florence, AZ 85132.	Engineering Department, 31 North Pinal Street, Building F, Florence, AZ 85132.	*http://www.msc.fema.gov/lomc*	Jul. 1, 2016	040077
California:						
Alameda	City of Fremont (15–09–3135P).	The Honorable Bill Harrison, Mayor, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538.	City Hall, 3300 Capitol Avenue, Fremont, CA 94538.	*http://www.msc.fema.gov/lomc*	Jul. 12, 2016	065028
Orange	City of San Clemente (16–09–0544P).	The Honorable Bob Baker, Mayor, City of San Clemente, 100 Avenida Presidio, San Clemente, CA 92672.	City Hall, 100 Avenida Presidio, San Clemente, CA 92672.	*http://www.msc.fema.gov/lomc*	Jun. 27, 2016	060230
Ventura	City of Simi Valley (15–09–3074P).	The Honorable Bob Huber, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	City Hall, 2929 Tapo Canyon Road, Simi Valley, CA 93063.	*http://www.msc.fema.gov/lomc*	Jul. 1, 2016	060421
Nevada: Clark	Unincorporated areas of Clark County (16–09–0518P).	The Honorable Steve Sisolak, Chairman, Board of Supervisors, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	*http://www.msc.fema.gov/lomc*	Jun. 20, 2016	320003

[FR Doc. 2016–13811 Filed 6–10–16; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5952–N–01]

Authority To Accept Unsolicited

ACTION: Notice.

SUMMARY: This notice announces that HUD's Office of Policy Development and Research (PD&R) has the authority to accept unsolicited research proposals that address current research priorities. In accordance with statutory requirements, the research projects must be funded at least 50 percent by philanthropic entities or Federal, state

should be included in any research proposal.

DATES: There are no set deadlines. Proposals may be submitted at any time and will be evaluated as they are received; however, available funds will be awarded as proposals are received, evaluated, and approved, until funds are exhausted.

FOR FURTHER INFORMATION CONTACT:

the Department of Housing and Urban Development, Office of University Partnerships, 451 7th Street SW., Room 8226, Washington, DC 20410. These are not toll-free numbers. Persons with speech or hearing impairments may access these number through TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

I. Funding Opportunity Description

A. Program Description, Requirements and Purpose

HUD developed the Research Partnerships vehicle to allow greater flexibility in addressing important policy questions and to better utilize external expertise in evaluating the local innovations and effectiveness of programs impacting residents of urban, suburban, rural and tribal areas. Through this notice, HUD is able to accept unsolicited research proposals that address current research priorities and allow PD&R to participate in innovative research projects that inform HUD's policies and programs. These projects are meant to align with PD&R's research priorities and help the HUD answer key policy and programmatic questions in ways that can inform new policy and program development efforts.

B. Authority

The Consolidated Appropriations Act, 2016, (Pub. L. 114–53, approved December 11, 2015) (FY 2016 appropriation) authorizes PD&R to enter into non-competitive cooperative agreements for research projects that are aligned with PD&R's research priorities and that will help inform HUD's policies and programs.

C. Program Description

1. *Research Priorities.* The two primary documents that provide a framework for HUD's research priorities are the *FY2010–2015 Strategic Plan* (available at, *http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/stratplan*), which specifies the Department's mission and strategic goals for program activities, and the *HUD Research Roadmap* (available at, *https://www.huduser.gov/portal/about/pdr_roadmap.html*), which takes the strategic plan as a starting point and integrates extensive input from diverse stakeholder groups to define a five-year research agenda. PD&R developed and published this research agenda to focus research resources on timely, policy-

which is the accompanying need for PD&R to collaborate with other research organizations to support their comparative advantage in areas that are mutually important.

The authority that Congress provided HUD to enter into noncompetitive cooperative agreements for research is a central tool for fulfilling the *Roadmap's* vision for research collaboration. Research proposals should be developed that inform important policy and program objectives of HUD that are not otherwise being addressed and that focus on one of HUD's research priorities, including:

(1) *Strengthening Housing Markets: Homeownership and Housing Finance.* HUD is interested in research in many areas of homeownership and housing finance, which include, but are not limited to:

(a) Improving outcomes for struggling homeowners and communities in the areas of foreclosures, mortgage modification protocols, and real-estate owned properties;

(b) Finding ways that are safer for both borrowers and lenders to extend mortgage credit to first-time homebuyers and homeowners with less-than-stellar credit; and

(c) Updating federal support structures for single-family and multifamily housing finance in a reformed housing finance system.

(2) *Affordable Quality Rental Housing.* HUD is interested in research that improves the efficiency and effectiveness of HUD's housing programs (*e.g.,* public housing, Housing Choice Vouchers, assisted multifamily programs, and FHA insurance) which include, but are not limited to:

(a) Improving program operations and responses to changing market conditions;

(b) Identifying rent subsidy approaches that could more efficiently and beneficially meet the full range of housing needs; and

(c) Better understanding how HUD's programs are affected by tenant and landlord behavior.

(3) *Housing as a platform for improving quality of life.* HUD is interested in how HUD-provided housing assistance can be best used to improve quality of life, including, but not limited to:

(a) Improving educational outcomes and early learning and development;

(b) Improving health outcomes;

(c) Increasing economic security and self-sufficiency and

those individuals and families at risk of becoming homeless.

To evaluate the ability of housing assistance to positively affect these various outcomes requires reaching beyond the sphere of housing to health, education, and other areas, which may involve targeted provision of cost-effective services in association with housing.

(4) *Resilient and inclusive communities.* HUD's goal of advancing resilient and inclusive communities seeks innovative and transformational evidence-based approaches to deal with long-standing and emerging community development challenges in suburban, rural and tribal areas. HUD is interested in research questions such as, but not limited to:

(a) Leveraging cost-effective housing technology in HUD-funded housing or other housing to accomplish key HUD priority goals;

(b) Understanding and addressing persistent segregation along racial, ethnic and economic lines, including the role of promising community development and housing strategies for strengthening communities;

(c) Strengthening community resilience in the face of climate change, disasters, pestilence and energy shocks;

(d) Improving integrated and regional planning for cross-agency alignment, such as land use and transportation.

(5) *HUD Assets.* HUD has made, and continues to make, significant investments in "Research Assets," as described below, including program demonstrations and in the production of datasets, that PD&R is interested in seeing leveraged in ways that may, or may not, be specifically referenced in the *Research Roadmap* or HUD's *Strategic Plan.* Such studies demonstrate a broader usefulness of HUD's Research Assets that further increases the return on these investments for the taxpayer.

2. *HUD's Research Assets.* In considering potential research partnerships, PD&R urges organizations to consider ways to take advantage of key research assets that the *Research Roadmap* identifies as part of HUD's comparative advantage.

(1) *HUD demonstrations.* HUD values demonstrations as a method for evaluating new policy and program initiatives and significantly advancing evidence-based policy, especially when rigorous random-assignment methods are feasible. HUD also is interested in research opportunities that take

continue to answer relevant policy questions using the existing data. Examples of demonstrations that are underway include Choice Neighborhoods, Family Options, the Rental Assistance Demonstration, Pre-Purchase Counseling Outcome Study, and Rent Reform. Electronic versions of published HUD research can be found at: *https://www.huduser.gov/portal/publications/pdrpubli.html.*

(2) *HUD data infrastructure.* HUD makes significant investments to improve and support the nation's housing data, so submitting institutions are encouraged to consider opportunities to use HUD-sponsored survey data and administrative data. The American Housing Survey (AHS) is one of HUD's largest research investments. The AHS provides a wealth of data on size and composition of the nation's housing inventory that researchers could use more effectively to address questions about housing market dynamics. The AHS, the 2012 Rental Housing Finance Survey, and other datasets sponsored by PD&R, along with HUD administrative data made available by PD&R, represent HUD research assets that PD&R encourages the use, and further analysis of, through Research Partnerships. Data assets are described at: *https://www.huduser.gov/portal/pdrdatas_landing.html.*

D. Other Requirements

1. *Protection of Human Research Subjects.* HUD will require successful applicants to comply with requirements of the federal Common Rule (45 CFR part 46) for protecting human research subjects when applicable. Compliance may require grantees to seek review and approval of research plans by an Institutional Review Board (IRB). For research requiring an IRB review, work plans shall identify the IRB that the awardee will use and factor in the necessary cost and time involved in that review. HUD will require awardees to provide appropriate assurances and certifications of compliance before human subjects research begins.

2. *Privacy.* Submission of any information to databases (whether Web site, computer, paper, or other format) of personal identifiable information is subject to the protections of the Privacy Act of 1974. You should also check to ensure you meet state and local privacy regulations.

3. *Cost Sharing.* The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 CFR part 200, shall apply to this Federal award. Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute.) Applicants should refer to 2 CFR 200.306 for specific requirements.

4. *Data Only Requests.* For those who are interested in requesting only HUD data (no funds), a HUD data license agreement will be required. To obtain a copy of the data license application go to the following Web site: *https://www.huduser.gov/portal/research/pdr_data-license.html.* Please be advised that a data license will only be considered for research that is in alignment with one of the research priorities listed in this notice. Applications may be submitted to HUD at *DataLicense@hud.gov.* Upon receipt, the application will be forwarded to the appropriate PD&R office for review and approval.

II. Description of Awards

A. Available Funds

HUD is making approximately $1 million available for Research Partnerships. Additional funds may become available for award as a result of HUD's efforts to recapture unused funds or use carryover funds. Use of these funds will be subject to statutory constraints.

B. Number of Awards

The number of awards will be based on the number of proposals HUD reviews, approves, and funds.

C. Period of Performance

The period of performance will be determined by the applicant's proposal and subject to negotiation by HUD.

D. Type of Funding Instrument

Funding Instrument Type: Cooperative Agreement.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants under this Notice include academic institutions, philanthropic entities, state and units of local government, not-for-profit and for-profit institutions located in the United States. For-profit firms are not allowed to earn a fee (*i.e.,* make a profit from the project).

B. Cost Sharing

Cost sharing is required for research projects to be eligible for funding through HUD's non-competitive cooperative agreement authority. Research projects must include at least a 50 percent cost share from philanthropic organizations, Federal, state, local government agencies, or a combination of these entities. For the purposes of the cost-sharing requirement, HUD defines a philanthropic entity as the subset of 501(c)(3) organizations that directly fund research activities. These include private foundations, educational institutions that may have a separate foundation, public charities, and operating foundations. Philanthropic entities may include foreign entities. HUD will not count waiver of overhead or similar costs as cost-sharing contributions.

IV. Proposal and Submission Information

A. Proposal Submission

All proposals should be submitted electronically to *ResearchPartnerships@hud.gov,* or by mail to: U.S. Department of Housing and Urban Development, Office of University Partnerships, 451 7th Street SW., Room 8226, Washington, DC 20410, ATTENTION: Research Partnerships

B. Content and Form of Proposal Submission

Proposals should contain sufficient information for PD&R to identify whether the research would meet statutory requirements for cost sharing and alignment with the research priorities identified in Section I.C.1 of this Notice. At a minimum, proposals must include:

1. *Proposal Abstract.* Applicants should provide a Proposal Abstract with the project title, the names and affiliations of all investigators, a summary of the objectives, study design and expected results, and the total funds requested.

2. *Points of Contact.* Applicants should clearly identify the name of the entity(s) submitting the proposal and detailed contact information for the point of contact;

3. *Key Personnel.* Applicants should provide information on key personnel that will be engaged with the project. HUD will assess the qualifications of key personnel to carry out the proposed study as evidenced by academic and professional background, publications, and recent (within the past 5 years) research experience. The proposed Principal Investigator must directly represent and be compensated directly by the applicant for his or her role in the proposed study. Publications and/or research experience are considered relevant if they required the acquisition and use of knowledge and skills that can be applied in the planning and execution of the technical study that is proposed.

4. *Research Proposal Description.* Applicants should provide a clear

description of the research project, including the methodology being used, and its alignment with the PD&R research priorities identified. Specific components should include:

(1) Clearly and thoroughly describe your proposed study and its design, and identify the major objectives;

(2) The study should be presented as a logical sequence of steps or phases with individual tasks described for each phase;

(3) Your narrative should reflect the relevant literature, which should be thoroughly cited in your application. Your proposed study will be judged in part on the soundness of the underlying body of research upon which it is based and the clarity and soundness of your summary and interpretation of this research base;

(4) Describe the statistical basis for your study design and demonstrate that you would have adequate statistical power to test your stated hypotheses and achieve your study objectives;

(5) Discuss your plans for data management, analysis, and archiving;

(6) You should identify any important "decision points" in your study plan;

(7) You should describe/list deliverables and associated timeframes; and

(8) You should demonstrate that it is clearly feasible to complete the study within the proposed period of performance and successfully achieve your objectives.

5. *Budget.* Applicants should provide a detailed budget with line items including the amount of the HUD share and the contributions of any partners (cost sharing component) and/or the submitting institution. HUD strongly encourages using form HUD–424CBW to detail your budget request. The form is available at: *https://www.hudexchange.info/resource/304/hud-form-424cbw/.* Proposals for research partnerships that have already been submitted to HUD as part of a grant competition are ineligible as the subject of a non-competitive cooperative agreement.

C. Review and Selection Process

1. Proposals that meet all of the threshold requirements will be eligible for review and rating.

2. Proposals will be reviewed by individuals who are knowledgeable in the field covered by the research proposal.

3. As required by the statutory authority within the appropriations bill, HUD will report each award provided through a cooperative agreement in the Federal Funding Accountability and Transparency Act Sub-award Reporting System created under the Federal Funding Accountability and Transparency Act of 2006.

Dated: June 7, 2016.

Matthew E. Ammon

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–13945 Filed 6–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5921–N–07]

Implementation of the Privacy Act of 1974, as Amended New System of Records, Choice Neighborhoods Evaluation

AGENCY: Office of Policy Development and Research, HUD.

ACTION: New system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), as amended, notice is hereby given that the Department of Housing and Urban Development (HUD), Office of Policy Development and Research provides public notice regarding its Choice Neighborhoods Evaluation System of Records. This evaluation will study HUD's Choice Neighborhoods program, which is intended to help people living in HUD-assisted housing developments and surrounding distressed neighborhoods improve their quality of life. This study will allow the Department to evaluate the benefits and impacts of the Choice Neighborhoods program, to determine whether it accomplishes its goals, and to inform policymaking decisions. The data sources covered in this notice are gathered from Federal, local, and private databases, and directly from individuals that the program intends to help. A more detailed description of the proposed requirements is contained in the purpose section of this notice.

DATES: *Effective Date:* The notice will be effective July 13, 2016, unless comments are received that would result in a contrary determination. [Comments due date]: July 13, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Communications should refer to the above docket number and title. Faxed comments are not accepted. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6828 (this is not a toll-free number). Individuals who are hearing- and speech-impaired may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The new SORN will encompass data collected by the Department's Office of Policy Development and Research in order to evaluate the Choice Neighborhoods program. The Choice Neighborhoods program supports the implementation of plans that transform distressed HUD housing and address challenges impacting people living in surrounding distressed areas: Boston, Chicago, New Orleans, San Francisco, and Seattle. The new notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records, and the types of exemptions in place for the records. The notice also includes the business address of the HUD officials who will inform interested persons of how they may gain access to and/or request amendments to records pertaining to themselves. Publication of this notice allows the Department to provide new information about its system of records notices in a clear and cohesive format. The Privacy Act places on Federal agencies principal responsibility for compliance with its provisions, by requiring Federal agencies to safeguard an individual's records against an invasion of personal privacy; protect the records contained in an agency system of records from unauthorized disclosure; ensure that the records collected are relevant, necessary, current, and collected only for their intended use; and adequately safeguard the records to prevent misuse of such information. In addition, this notice demonstrates the Department's focus on industry best practices and laws that protect interest such as personal privacy and privacy protect records from inappropriate release.

Pursuant to the Privacy Act and the Office of Management and Budget (OMB) guidelines, a report of the amended system of records was submitted to OMB, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and

Government Reform, as instructed by paragraph 4c of Appendix 1 to OMB Circular No. A–130, "Federal Agencies Responsibilities for Maintaining Records About Individuals," November 28, 2000.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: May 10, 2016.

Patricia A. Hoban-Moore,

Senior Agency Official for Privacy.

SYSTEM OF RECORDS NO.:

PD&R/RRE.07

SYSTEM NAME:

Choice Neighborhoods Evaluation.

SYSTEM LOCATION:

Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; HUD Data Center, Charleston, West Virginia; Urban Institute, 2100 M Street NW., Washington, DC 20037, and at the location of the service providers under contract with HUD.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

HUD program participants, and other residents (not assisted by HUD) living in Choice Neighborhoods program cities: Boston, Chicago, New Orleans, San Francisco, and Seattle.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data sets will contain the following categories of records:

• Responses to baseline survey: Include participants name, date of birth, address, phone number, and email address, demographic data, economic characteristics, educational characteristics, health, subjective well-being, and information about the household member living environment, contact information of a family member or friend who could help locate the survey respondent in the future if they move, and unique study identifier assigned to the program participant.

• Responses to follow-up survey: Include participants name, date of birth, address, phone number, and email addresses, demographic data, economic characteristics, educational characteristics, health, subjective well-being, and information about the household member living environment, contact information of a family member or friend who could help locate the survey respondent in the future if they move. The follow-up survey will collect information very similar to the baseline survey, in order to show how the experience of Choice Neighborhoods residents has changed over time, and unique study identifier assigned to the program participant.

• Administrative data: Include data on households available through HUD administrative data, collections will be brought into the dataset directly from HUD's Inventory Management System, including information pertaining to the participating family structure, household size, household income, race and demographics, address, and participation in other HUD programs.

• Locational data: Include data such as the address and location of participating household. These data sets will be drawn from a variety of sources, including the National Change of Address database, proprietary databases such as Accurint, and directly from participating households.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 502(g) of the Housing and Urban Development Act of 1970 (Pub. L. 91–609) (12 U.S.C. 1701z–1; 1701z–2(d) and (g)).

PURPOSE(S):

The purpose of the Choice Neighborhoods Evaluation is to track the effects of the Choice Neighborhoods program in the five cities: Boston, Chicago, New Orleans, San Francisco, and Seattle that received implementation grants in 2011. Choice Neighborhoods is meant to transform distressed neighborhoods, with a focus on HUD assisted developments (public housing or project-based section 8). This transformation is intended to help the people living in the targeted developments and surrounding distressed neighborhoods improve their quality of life. The evaluation will track the experiences of a statistical sample of individuals living in five Choice Neighborhoods sites, to determine whether the program improves their quality of life in a variety of dimensions, including employment, education, health, and subjective well-being. This analysis will inform HUD leadership, policymakers, and HUD partners that implement community development programs. The data collected for the Choice Neighborhood Evaluation will be used and stored solely for research purposes, and will not be used to identify individuals or make decisions that affect the rights, benefits, or privileges of specific individuals. The data in this system will include location data, which will be used to analyze the neighborhoods in which people affected by the initiative live. The data in the system will also include information about household composition, income, education, and many quality of life measures, which will be used to analyze the extent to which people's lives are being improved by the Choice Neighborhoods Program. The data in this system will be analyzed using statistical methods and only reported in the aggregate. Resulting reports will not disclose or identify any individuals or sensitive personal information. The Choice Neighborhoods Evaluation is in direct service of the mission of HUD's Office of Policy Development and Research, which is to "inform policy development and implementation to improve life in American communities through conducting, supporting, and sharing research, surveys, demonstrations, program evaluations, and best practices."

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, HUD may disclose information contained in this system of records:

(1) To a recipient who has provided the agency with advance, adequate written assurance that the record provided from this system of records will be used solely for statistical research or reporting purposes. Records under this condition will be disclosed or transferred in a form that does not identify an individual.

(2) To contractors, grantees, experts, consultants, Federal agencies, and non-Federal entities, including, but not limited to, State and local governments, and other research institutions or their parties, and entities and their agents with whom HUD has a contract, service agreement, grant, or cooperative agreement, when necessary to accomplish an agency function, related to this system of records for the purposes of statistical analysis and research in support of program operations, management, performance monitoring, evaluation, risk management, and policy development, or to otherwise support the Department's mission. Records under this routine use may not be used in whole or in part to make decisions that affect the rights, benefits or privileges of specific individuals. The results of the matched information may not be disclosed in identifiable form.

(3) To appropriate agencies, entities, and persons when:

(a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

(b) HUD has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft, or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and

(c) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

(4) Appropriate agencies, entities, and persons to the extent such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I, HUD's Routine Use Inventory notice [1] published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE: Records are stored on secure servers administered by HUD's Office of Policy Development and Research, and on secure servers administered by the Urban Institute under contract with HUD. There are no paper-based records associated with this study.

RETRIEVABILITY: Records will be retrieved by a unique study identifier.

SAFEGUARDS: Access to any server, security, storage, backup, and infrastructure equipment is monitored, restricted to only those with a need-to-have system access, including being secured by administrative password and authentication methods. All system users are required to sign a confidentiality pledge to abide by corporate policies and by HUD policies.

RETENTION AND DISPOSAL: Records (Electronic data) files are maintained in accordance with HUD Records Disposition Schedule 67.9.b and 67.9.f.[2] The records will be retained for a minimum of 10 years then archived. As such, when projects are satisfactorily closed and records are no longer needed for administrative purposes, the records will be destroyed when the destruction date is reached. Manual records are destroyed by shredding or burn; electronic records are destroyed in accordance with HUD's IT Security Handbook 2400.25, Section 4.7.6 [3]. Electronic records will be stored on HUD data servers in Charleston, WV.

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=routine_use_inventory.pdf.*

[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=22256x67ADMH.pdf.*

[3] *http://portal.hud.gov/hudportal/documents/huddoc?id=240025ClOH.pdf.*

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Program Evaluation, Department of Housing and Urban Development, Office of Policy Development and Research, 451 Seventh Street SW., Room 8120, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For Information, assistance, or inquiries about the existence of records contact, Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6828. When seeking records about yourself from this system of records or any other HUD system of records, your request must conform to the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity by providing your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

a. Explain why you believe HUD would have information on you.

b. Identify which office of HUD you believe has the records about you.

c. Specify when you believe the records would have been created.

d. Provide any other information that will help the Freedom of Information Act (FOIA) staff determine which HUD office may have responsive records.

If your request is seeking records pertaining to another living individual, you must obtain a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA office may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16.3, "Procedures for inquiries." Additional assistance may be obtained by contacting Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 2130, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10110, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

(1) Baseline survey, collected directly from individuals who have agreed to participate in the study, (2) follow up survey, collected directly from individuals who have agreed to participate in the study, (3) administrative data derived from HUD IMS system, and (4) Locational data from non-federal proprietary databases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2016–13942 Filed 6–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16GC009PLSS00]

National Cooperative Geologic Mapping Program (NCGMP) and National Geological and Geophysical Data Preservation Program (NGGDPP) Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of annual meeting: audio conference.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP and NGGDPP Advisory Committee will hold an audio conference call on August 8, 2016, from 9 a.m.–5 p.m. Mountain Standard Time. The Advisory Committee, comprising representatives from Federal agencies, State agencies, academic institutions, and private companies, shall advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping and data preservation programs.

The Committee will hear updates on progress of the NCGMP toward fulfilling the purposes of the National Geological Mapping Act of 1992, as well as updates on the NGGDPP toward fulfilling the purposes of the Energy Policy Act of 2005.

DATES: August 8, 2016, from 9 a.m.–5 p.m. Mountain Standard Time.

FOR FURTHER INFORMATION CONTACT: For the phone number and access code, please contact Michael Marketti, U.S. Geological Survey, Mail Stop 908, National Center, Reston, Virginia 20192, (703) 648–6976.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program and National Geological and Geophysical Data Preservation Program Advisory Committee are open to the Public.

Dated: June 8, 2016.

John C. Brock,

Program Coordinator, NCGMP, Designated Federal Officer.

[FR Doc. 2016–13886 Filed 6–10–16; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

[GX16EN05ESB0500]

Nomination Period for Northeastern State Government Members of the Advisory Committee on Climate Change and Natural Resource Science

AGENCY: U.S. Geological Survey, Interior

ACTION: Notice.

SUMMARY: The Advisory Committee on Climate Change and Natural Resource Science (Committee) has a vacancy for a representative from state government in the region covered by the Northeast Association of Fish and Wildlife Agencies.

DATES: Written nominations must be received by July 13, 2016.

ADDRESSES: Send nominations to: Robin O'Malley, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192, *romalley@usgs.gov*.

FOR FURTHER INFORMATION CONTACT: Robin O'Malley, Policy and Partnership Coordinator, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 516, Reston, VA 20192, *romalley@usgs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Climate Change and Natural Resource Science (Committee) provides advice on matters and actions relating to the establishment and operations of the U.S. Geological Survey National Climate Change and Wildlife Science Center and the DOI Climate Science Centers. See: *https://nccwsc.usgs.gov/acccnrs* for more information. See *http://www.neafwa.org/members.html* for the area covered by the Northeast Association of Fish and Wildlife Agencies.

The committee charter calls for representatives from state government (see below for membership categories), and the historically has had four such representatives, one from each of the four regional associations of state fish and wildlife management agencies. At present, there is no representative from the Northeastern U.S. and the Department seeks to fill this vacancy.

Nominations should include a resume that describes the nominee's qualifications in enough detail to enable us to make an informed decision regarding meeting the membership requirements of the Committee and to contact a potential member.

The Committee is composed of approximately 25 members from the Federal Government, and the following interests: (1) State and local governments, including state membership entities; (2) Non-governmental organizations, including those whose primary mission is professional and scientific and those whose primary mission is conservation and related scientific and advocacy activities; (3) American Indian tribes and other Native American entities; (4) Academia; (5) Landowners, businesses, and organizations representing landowners or businesses.

In addition, the Committee may include scientific experts, and will include rotating representation from one or more of the institutions that host the DOI Climate Science Centers.

The Committee will meet approximately 2–4 times annually, and at such times as designated by the DFO. The Secretary of the Interior will appoint members to the Committee. Members appointed as special Government employees are required to file on an annual basis a confidential financial disclosure report.

No individual who is currently registered as a Federal lobbyist is eligible to serve as a member of the Committee.

Robin O'Malley,

Designated Federal Officer, ACCCNRS.

[FR Doc. 2016–13887 Filed 6–10–16; 8:45 am]

BILLING CODE 4311–MP–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–20687; PPPWSEKI00/PX.DSEKI1303.00.1]

Final Environmental Impact Statement for the Restoration of Native Species in High Elevation Aquatic Ecosystems Plan, Sequoia and Kings Canyon National Parks, Fresno and Tulare Counties, California

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Plan and Final Environmental Impact Statement for the restoration of native species in high elevation aquatic ecosystems within Sequoia and Kings Canyon National Parks (SEKI)—(Restoration Plan/Final EIS). The Restoration Plan/Final EIS will guide management actions by the NPS to restore and conserve the native species diversity and ecological function of selected high elevation aquatic ecosystems that have been adversely impacted by human activities and to increase the resistance and resilience of these species and ecosystems to human induced environmental modifications, such as nonnative fish, disease, and climate change. The Restoration Plan/Final EIS would be implemented over a period of 20 to 35 years, depending on the alternative selected, with an internal evaluation of management effectiveness scheduled every 5 to 10 years.

DATES: The NPS will execute a Record of Decision not sooner than 30 days from the date of publication of the U.S. Environmental Protection Agency's notice of availability for the Restoration Plan/Final EIS in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nancy Hendricks, Environmental Compliance and Planning Coordinator, Sequoia and Kings Canyon National Parks, 47050 Generals Highway, Three Rivers, CA 93271, (559)565–3102. Electronic versions of the complete document are available online at *http://parkplanning.nps.gov/aquatics*. Request printed documents or CDs through email (*seki_planning@nps.gov*) (type "Restoration Plan/Final EIS" in the subject line) or telephone (559)565–3102.

SUPPLEMENTARY INFORMATION: The National Park Service has prepared the Final Environmental Impact Statement for the Restoration of Native Species in High Elevation Aquatic Ecosystems Plan. This process was conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR part 1502.9).

The overall goal of this Restoration Plan/Final EIS is to restore clusters of waterbodies to their naturally fishless state in strategic locations across SEKI to create high elevation ecosystems having more favorable habitat conditions for the persistence of native species and ecosystem processes. Preserving and restoring native wildlife and the communities and ecosystems in which they occur is one of the guiding principles for managing biological resources in national parks and is among the desired conditions

established in SEKI's General Management Plan/Final Environmental Impact Statement, approved in 2007.

From 1870 to 1988, nonnative fish were introduced into many heretofore fishless waterbodies throughout SEKI. Surveys conducted from 1997 to 2002 determined that self-sustaining nonnative trout populations had become established in approximately 575 lakes, ponds, and marshes, plus connecting streams, and nearly all streams that drain these sites from high to low elevations. Impacts of nonnative trout on high elevation aquatic and adjacent terrestrial ecosystems are well documented and occur at all levels of the food web. Nonnative trout impact native species directly through predation and indirectly through competition for food resources. Nonnative trout can disrupt the type and distribution of species, and thus the natural function of aquatic ecosystems.

Two species of mountain yellow-legged frogs (MYLFs) are integral components of SEKI's high elevation aquatic ecosystems. Formerly abundant MYLFs are today among the world's endangered amphibians: Over 92% of their populations in the Sierra Nevada have disappeared, and most of the remaining populations are much smaller and more isolated than they were historically. Extensive research has identified two primary factors for this decline. The first factor is the introduction of nonnative trout. Nonnative trout have several direct effects on MYLFs, including predation, competition for food, restriction of breeding to marginal habitat, and fragmentation of remaining populations. The second factor is the recent spread of chytridiomycosis, a disease caused by amphibian chytrid fungus, which has infected and imperiled most remaining MYLF populations. A third emerging factor is global climate change, which has begun to dry up smaller, shallower ponds in SEKI. Ponds have become important habitat for MYLFs because, in basins where nonnative trout occur, fish occupy most of the larger lakes, which are more resistant to climate change. This has restricted many MYLF populations to smaller waterbodies that are more vulnerable to drought and warming.

The Restoration Plan/Final EIS therefore proposes to recover smaller relatively-simple habitats using physical tools and larger more-complex habitats (including whole basins) using alternative tools. Because eradication of nonnative fish from larger, more-complex habitats has been determined infeasible using gill nets and electrofishers, the NPS is considering alternatives using piscicides (rotenone) in order to restore these ecologically significant habitats.

Alternative A: No-action/Status Quo would continue the ongoing ecosystem restoration effort for 25 waterbodies, but no new fish eradication activities would be initiated. Physical treatment methods (gill netting, electrofishing, disturbing redds, and/or temporarily covering spawning habitat with boulders) would continue to be utilized until 2017. Native species and ecological processes in high elevation aquatic ecosystems would be monitored. Research on native species, ecological processes, and their stressors would continue in accordance with NPS policy. After all treatments are completed, self-sustaining nonnative trout populations would continue to exist in 550 waterbodies (252 lakes, 235 ponds, 63 marshes) and hundreds of miles of stream.

Alternative B (NPS preferred alternative) would include physical and piscicide treatments preceding restoration. Under this alternative, a prescription (detailed plan of action) for restoration would be developed for each proposed restoration area based on the criteria for basin selection, pre-treatment surveys, habitat size, basin topography, wilderness values, visitor use, and field crew safety. Prescriptions would consider the actual distribution of fish, results of amphibian surveys, and whether any unique habitats were detected (such as springs). Physical treatment as described under alternative A, plus trapping, would be utilized. Piscicide treatment methods would be considered for waterbodies determined infeasible for physical treatment. Based on current knowledge of the proposed fish eradication sites, physical treatment would be applied in 52 waterbodies (27 lakes, 24 ponds, 1 marsh; total of 492 ac/199 ha) and 15 mi (25 km) of streams in 17 basins, and piscicide treatment would be applied in 33 waterbodies (4 lakes, 25 ponds, and 4 marshes; total of 142 ac/57 ha) and 16 mi (25 km) of streams in 9 basins. In addition, any unsurveyed habitat adjacent to treated lakes, ponds, marshes, and streams found to contain nonnative fish would also require treatment in order to eradicate fish from the geographic area. After all treatments are completed, self-sustaining nonnative trout populations would continue to exist in 465 waterbodies (221 lakes, 186 ponds, 58 marshes) and hundreds of miles of stream.

Alternative C would use physical treatment methods only to eradicate nonnative fish, and blasting rock to create vertical fish barriers (if needed). In comparison to alternative B, excluded from the list of proposed restoration waterbodies are long reaches of stream, several large lakes, and interconnected lake complexes that are too large for effective physical treatment. Physical treatment methods would be applied in 52 waterbodies (27 lakes, 24 ponds, and 1 marsh; total of 492 ac/199 ha) and 15 mi (25 km) of streams contained in 17 basins. In addition, any unsurveyed habitat adjacent to treated lakes, ponds, marshes, and streams found to contain nonnative fish would be treated to eradicate fish from the entire scope of the restoration area. After all treatments are completed, self-sustaining nonnative trout populations would continue to exist in 498 waterbodies (225 lakes, 211 ponds, 62 marshes) and hundreds of miles of stream.

Alternative D emphasizes speed in recovering habitat because MYLF populations are declining rapidly. To achieve this, only piscicide treatment would be used for nonnative fish eradication, which can be conducted faster than using physical methods. Piscicide treatment would be used for 85 waterbodies (31 lakes, 49 ponds, and 5 marshes; total of 634 ac/257 ha), approximately 31 mi (50 km) of streams, and connected fish-containing habitat as necessary. After all treatments are completed, self-sustaining nonnative trout populations would continue to exist in 465 waterbodies (221 lakes, 186 ponds, 58 marshes) and hundreds of miles of stream.

Dated: March 25, 2016.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2016–13840 Filed 6–10–16; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–SAGU–20976; PPIMIMLAE6 PS.SIMLA0044.00.1]

Minor Boundary Revision at Saguaro National Park

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of Saguaro National Park is modified to include 273.08 acres of land located in Pima County, Arizona, immediately adjacent to the boundary of the park. Subsequent to the proposed boundary revision, the United States will acquire the land by donation from The Trust for Public Land, a nonprofit conservation organization.

DATES: The effective date of this boundary revision is June 13, 2016.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Land Resources Program Center, Intermountain Region, 12795 West Alameda Parkway, Denver, Colorado 80228 and National Park Service, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief Realty Officer Steve Muyskens, National Park Service, Land Resources Program Center, Intermountain Region, 12795 West Alameda Parkway, Denver, Colorado 80228, telephone (303) 969–2610.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 54 U.S.C. 100506(c)(1)(B), the boundary of Saguaro National Park is modified to include 273.08 acres of adjacent land identified as Tract 01–177. The boundary revision is depicted on Map No. 151/117,410A, dated April 7, 2015.

54 U.S.C. 100506(c)(1)(B) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. This boundary revision and subsequent acquisition will ensure preservation and protection of a significant riparian corridor and habitat at the park.

Dated: May 2, 2016.

Colin Campbell,

Acting Regional Director, Intermountain Region.

[FR Doc. 2016–13842 Filed 6–10–16; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2016–0009; OMB Control Number 1014–0004: [164E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Oil and Gas Well-Completion Operations; Proposed Collection; Comment Request

ACTION: 60-Day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns renewal to the paperwork requirements in the regulations under Subpart E, *Oil and Gas Well-Completion Operations.*

DATE: You must submit comments by August 12, 2016.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov* and search for BSEE–2016–0009. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *regs@bsee.gov* or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; Attention: Kelly Odom; 45600 Woodland Road; Sterling, Virginia 20166. Please reference ICR 1014–0004 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Kelly Odom, Regulations and Standards Branch at (703) 787–1775 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.

OMB Control Number: 1014–0004.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to the mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop mineral resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to BSEE to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection (IC) request addresses the regulations at 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations, and any associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

Regulations at 30 CFR part 250 implement these statutory requirements. We use the information to ensure that planned well-completion operations will protect personnel and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, BSEE uses the information to ensure: (a) Compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion operations are conducted on well casings that are structurally competent;

and (e) sustained casing pressures are within acceptable limits.

The BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection;* and 30 CFR part 252, *OCS Oil and Gas Information Program.* No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Responses are generally weekly, monthly, annually, and vary by section.

Description of Respondents: Potential respondents comprise Federal OCS oil, gas, and sulphur lessees and holders of pipeline rights-of-way.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 40,183 hours. This submission requests 13,223 burden hours. The adjustment decrease of 26,960 hours is due to the publication of the final blowout preventer regulations which moved many of the requirements of Subpart F into the new Subpart G regulations, *Well Operations and Equipment.* The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart E	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours (rounded)
500–531	General departure and alternative compliance requests not specifically covered elsewhere in Subpart E regulations.	Burden covered under Subpart A—1014–0022		0
513	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APD, the burdens for which are covered under its own information collection.	APD burden covered under 1014–0025		0
513(a); 518(f); 526(a); 527	These sections contain references to information, approvals, requests, payments, etc., which are submitted with an APM, the burdens for which are covered under its own information collection.	APM burden covered under 1014–0026		0
511	Record weekly results of traveling-block safety device in operations log.	1.5	360 completions × 2 recordings = 720.	1,080
512	Request establishment, amendment, or cancellation of well-completion field rules.	11	28 field rules	308
513(c), (d)	Submit EOR (BSEE–0125) to District Manager 30-day after completion; including additional supporting information and public information copies.	Burden covered under Subpart D—1014–0018		0
514(c)	Post the number of stands of drill pipe/collars that may be pulled and equivalent well-control fluid volume.	1.5	741 postings	1,112
524	Retain records of casing pressure and diagnostic tests for 2 years or until the well is abandoned.	1.75	3,017 records	5,280
526(b); 528	Submit a casing pressure request; any additional information as needed.	9	484 requests	4,356
530(a)	Notify BSEE after completion of corrected action within 30 days.	14	68 plans	952
530(b)	Submit the casing pressure diagnostic test data within 14 days.	2.5	54 submittals	135
Total Hour Burden			5,112 Responses	13,223

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ". . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . .". Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Nicole Mason (703) 787–1607.

Dated: June 3, 2016.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2016–13862 Filed 6–10–16; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–019]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 16, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1071 (Second Review) (Alloy Magnesium from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on June 30, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 8, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–14045 Filed 6–9–16; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–020]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 22, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–541 and 731–TA–1284 and 1286 (Final) (Cold-Rolled Steel Flat Products from China and Japan). The Commission is currently scheduled to complete and file its determinations and views of the Commission on July 5, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 8, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–14044 Filed 6–9–16; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Sigma Aldrich Research Biochemicals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before August 12, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on February 1, 2016, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760–2447 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Mephedrone (4-Methyl-N-methylcathinone) (1248)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I

Controlled substance	Schedule
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
N-Benzylpiperazine (7493)	I
MDPV (3,4-Methylenedioxypyrovalerone) (7535)	I
Methylone (3,4-Methylenedioxy-N-methylcathinone) (7540)	I
Heroin (9200)	I
Normorphine (9313)	I
Norlevorphanol (9634)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

Dated: June 7, 2016.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–13914 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0023]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection—Import/Export Declaration for List I and List II Chemicals, DEA Forms 486, 486A

AGENCY: Drug Enforcement Administration, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Clifton A. Coward, Jr., Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Import/Export Declaration for List I and List II Chemicals.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 486, 486A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: Section 1018 of the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 971) and Title 21 Code of Federal Regulations (21 CFR) Part 1313 require any persons who import, export, or conduct international transactions involving list I and list II chemicals are required to establish a system of recordkeeping and report certain information regarding those transactions to the DEA. The chemicals subject to control are used in the clandestine manufacture of controlled substances.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The below table presents information regarding the number of respondents, responses and associated burden hours.

	Number of annual respondents*	Number of annual responses	Average time per response (minutes)	Total annual hours
DEA–486—Import (paper)	342	1,359	17	385
DEA–486—Import (online)		855	17	242
DEA–486—Export (paper)		2,533	20	844
DEA–486—Export (online)		7,743	20	2,581
DEA–486—International (paper)		422	17	120
DEA–486A—Import (paper)		333	20	111
DEA–486A—Import (online)		416	20	139
Total	342	13,661		4,422

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 4,442 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: June 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13908 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0009]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Controlled Substances Import/Export Declaration DEA Form 236

AGENCY: Drug Enforcement Administration, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Clifton A. Coward, Jr., Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Controlled Substances Import/Export Declaration (DEA Form 236).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: DEA Form 236. The Department of Justice component is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): None.

Abstract: DEA Form 236 enables the DEA to monitor and control the importation and exportation of controlled substances. Analysis of these documents provides the DEA with important intelligence regarding the international commerce in controlled substances and assists in the identification of suspected points of diversion.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that there are 157 total respondents for this information collection. In total, 157 respondents submit 6,321 responses, with each response taking 17 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 1,779 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: June 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13907 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0004]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection Application for Permit To Export Controlled Substances, Application for Permit To Export Controlled Substances for Subsequent Re-export, DEA Forms 161, 161R

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have comments on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Clifton A. Coward, Jr., Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information proposed to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Permit to Export Controlled Substances; Application for Permit to Export Controlled Substances for Subsequent Reexport.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 161, 161R. The applicable component within the Department of Justice is the Drug Enforcement Administration, Office of Diversion Control.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: Title 21, Code of Federal Regulations (21 CFR), Sections 1312.21 and 1312.22 require that any person who desires to export or reexport controlled substances listed in schedules I or II, any narcotic substance listed in schedules III or IV, or any non-narcotic substance in schedule III which the Administrator has specifically designated by regulation in § 1312.30, or any non-narcotic substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, must have an export permit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 134 respondents, with 6,116 responses annually to this collection. The DEA estimates that it takes .5 hour to complete the form.

6. *An estimate of the total public burden (in hours) associated with the proposed collection:* The DEA estimates that this collection takes 3,301 annual burden hours.

If additional information is required please contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3E.405B, Washington, DC 20530.

Dated: June 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13906 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Executive Office for United States

[OMB Number 1105–0084]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension With Change, of a Previously Approved Collection. Application for Approval as a Nonprofit Budget and Credit Counseling Agency (Application).

AGENCY: Executive Office for United States Trustees, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Executive Office for United States Trustees (EOUST) will be submitting an extension of information collection, through its Application for Approval as a Nonprofit Budget and Credit Counseling Agency, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection with instructions, of if you need additional

information, please contact Carrie Weinfeld, Department of Justice, EOUST, at 441 G Street NW., Suite 6150, Washington, DC 205330 (phone: (202) 307–1399).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Approval as a Nonprofit Budget and Credit Counseling Agency (Application).

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number. The applicable component within the Department of Justice is the Executive Office for United States Trustees.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Agencies that wish to offer credit counseling services pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), and codified at 11 U.S.C. 109(h) and 111, and Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees, 78 FR 16,138 (March 14, 2013) (Rule).

The BAPCPA requires any individual who wishes to file for bankruptcy to obtain credit counseling, within 180 days before filing for bankruptcy relief, from a nonprofit budget and credit counseling agency that has been approved by the United States Trustee. The Application collects information from such agencies in order to ensure compliance with the law and the Rule.

5. *Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 122 respondents will complete the application; initial applicants will complete the application in approximately ten (10) hours, while renewal applicants will complete the application in approximately four (4) hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 560 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13904 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0085]

Executive Office for United States Trustees; Agency Information Collection Activities; Proposed Collection, Comments Requested; Extension With Change, of a Previously Approved Collection Application for Approval as a Provider of a Personal Financial Management Instructional Course

AGENCY: Executive Office for United States Trustees, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Executive Office for United States Trustees (EOUST) will be submitting an extension of information collection, through its Application for Approval as a Provider of a Personal Financial Management Instructional Course, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until August 12, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection with instructions, or if you need additional information, please contact Carrie Weinfeld, Department of Justice, EOUST, at 441 G Street NW., Suite 6150, Washington DC 205330 (phone: (202) 307–1399).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Application for Approval as a Provider of a Personal Financial Management Instructional Course

3. *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no form number. The applicable component within the Department of Justice is the Executive Office for United States Trustees.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals and entities that wish to offer instructional courses to debtors concerning personal financial

management pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Public Law 109–8, 119 Stat. 23, 37, 38 (April 20, 2005), and codified at 11 U.S.C. 109(h) and 111, and Application Procedures and Criteria for Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees, 78 FR 16,159 (March 14, 2013) (Rule).

The BAPCPA requires individual debtors in bankruptcy cases to complete a personal financial management instructional course from a provider that has been approved by the United States Trustee as a condition of receiving a discharge. The Application collects information from such providers in order to ensure compliance with the law and the Rule.

5. Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 195 respondents will complete the application; initial applicants will complete the application in approximately ten (10) hours, while renewal applicants will complete the application in approximately four (4) hours. In addition, it is estimated that approximately 966,868 debtors will complete a survey evaluating the effectiveness of an instructional course in approximately one (1) minute.

6. An estimate of the total public burden (in hours) associated with the collection: The estimated total annual public burden associated with this application is 17,014.5 hours; the applicants' burden is 900 hours and the debtors' burden is 16,114.5 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: June 8, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–13905 Filed 6–10–16; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Young Parents Demonstration Project Evaluation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, "Young Parents Demonstration Project Evaluation," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 13, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201507-1205-009* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority to reinstate, with revisions, the Young Parents Demonstration Project (YPDP) Evaluation information collection. Information collected under this proposed ICR would be used to evaluate the YPDP, a grant program designed to provide educational and occupational skills training that fosters family economic self-sufficiency to young parents (both mothers and fathers) and expectant parents ages 16–24, including, as applicable, those in high-risk categories such as victims of child abuse, children of incarcerated parents, court-involved youth, youth at risk of court involvement, homeless and runaway youth, Native American youth, migrant youth, youth in or aging out of foster care, and youth with disabilities. YPDP grantees are required to develop a mentoring model, which includes an intensive professional staff mentoring specifically for education, employment, and training and specifically for pregnant and parenting teens and young parents. Grantees are to implement this intervention as an additional level of services in addition to existing services currently provided intended to increase an individual's education, job training, and employment. Major information collections consist of a participant tracking system, field-based implementation site visits, and follow-up surveys with program participants.

The ETA temporarily discontinued this information collection in May 2015, the original expiration date, in order to ensure the agency met all PRA requirements before continuing data collection. This reinstatement would change the collection in two ways. First, the evaluation will no longer conduct the 36-month follow-up survey. Second, the evaluation team found it to be important to conduct a second set of visits to the sites to ensure they track any changes to implementation since 12 months after random assignment and to clarify any information as needed. Workforce Investment Act sections 171(b) and 172, as well as Workforce Innovation and Opportunity Act section 169 authorize this information collection. *See* 29 U.S.C. 2916(b), 2917, 3224.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition,

notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on July 8, 2015 (80 FR 39161).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0494. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Young Parents Demonstration Project Evaluation.

OMB Control Number: 1205–0494.

Affected Public: Individuals or Households, Private Sector—not-for-profit institutions.

Total Estimated Number of Respondents: 2,971.

Total Estimated Number of Responses: 11,168.

Total Estimated Annual Time Burden: 2,116 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 7, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–13900 Filed 6–10–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Containing Procedures for Handling of Retaliation Complaints

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) revision titled, "Regulations Containing Procedures for Handling of Retaliation Complaints," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 13, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Regulations Containing Procedures for Handling of Retaliation Complaints information collection. The OSHA administers and enforces a number of provisions in various Federal laws and regulations prohibiting retaliatory action by an employer against an employee who is believed to have reported a possible violation of those laws or regulations, or who otherwise engages in an activity protected specified by an anti-retaliation provision. Any person may file a complaint alleging the employer violated these protection provisions with the OSHA for investigation. This ICR has been classified as a revision, because it seeks OMB approval to implement a revised whistleblower complaint form, titled "Notice of Whistleblower Complaint," Form OSHA 8–60.1. The Web-based form enables submitting whistleblower complaints directly to the OSHA 24-hours a day. Additionally, the revised form includes interactive features that make it easier to understand and complete. The revised form also provides information about worker protections enforced by other agencies, in order better to direct complainants to the proper investigative agencies.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0236. The current approval is scheduled to expire on July 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 17, 2016 (81 FR 8103).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0236.

The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Regulations Containing Procedures for Handling of Retaliation Complaints.

OMB Control Number: 1218–0236.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 7,516.

Total Estimated Number of Responses: 7,516.

Total Estimated Annual Time Burden: 7,516 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 7, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–13901 Filed 6–10–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterans Supplement to the Current Population Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Veterans Supplement to the Current Population Survey," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 13, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201511-1220-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov*. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the annual Veterans Supplement to the Current Population Survey information collection. The Department of Veterans Affairs and the DOL's Veterans' Employment and Training Service co-sponsor this supplement. Data collected through this supplement is used by the co-sponsors to determine policies that better meet the needs of our Nation's veteran population. The supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. In addition, location of service questions separately identify Afghanistan, Iraq, and Vietnam veterans. Data are provided by period of service and a range of demographic characteristics. The supplement also provides information about veterans' participation in various transition and employment training programs. Respondents are veterans who are not currently on active duty or are members of a household where a veteran lives. The BLS Authorizing statute authorizes this information collection. *See* 29 U.S.C. 1–9.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0102.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 5, 2016 (81 FR 253).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0102. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Veterans Supplement to the Current Population Survey.

OMB Control Number: 1220–0102.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 9,000.

Total Estimated Number of Responses: 9,000.

Total Estimated Annual Time Burden: 300 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 6, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–13818 Filed 6–10–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Centennial Challenges Vascular Tissue Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

(16–041)

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 51 U.S.C. 20144(c). The Vascular Tissue Challenge is open and teams that wish to compete may now register. Centennial Challenges is a program of prize competitions to stimulate innovation in technologies of interest and value to NASA and the nation. The Vascular Tissue Challenge is a prize competition with a $500,000 prize purse for teams that can successfully create thick, human vascularized organ tissue in an *in vitro* environment while maintaining metabolic functionality similar to their *in vivo* functionality throughout a 30-day survival period. NASA is providing the prize purse. The Methuselah Foundation's New Organ Alliance is the Allied Organization managing the competition.

DATES: This is a "first to demonstrate" competition. Teams may submit their intent to compete beginning June 13, 2016 and the competition will remain open until the requirements of the rules are met and a winner is announced or until the Challenge Deadline of September 30th, 2019.

ADDRESSES: The Vascular Tissue Challenge will be conducted and judged at the laboratory facilities of the participants.

FOR FURTHER INFORMATION CONTACT: To register for or get additional information regarding the Vascular Tissue Challenge, please visit: *https://www.neworgan.org/vtc-prize.php.*

For general information on the NASA Centennial Challenges Program please visit: *http://www.nasa.gov/challenges.* General questions and comments regarding the program should be addressed to Monsi Roman, Centennial Challenges Program, NASA Marshall Space Flight Center Huntsville, AL 35812. Email address: *hq-stmd-centennialchallenges@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Summary

Competitors will be asked to produce an in-vitro vascularized tissue that is ≥ 1 centimeter in thickness in all dimensions at the launch of the trial and maintains ≥85% survival of the required parenchymal cells throughout a 30-day period. Tissues must provide adequate blood perfusion without uncontrolled leakage into the bulk tissue to maintain metabolic functionality similar to their in-vivo native cells. Histological measurement of the quality and amount of functional performance will be required to determine survival of parenchymal tissue. Teams must demonstrate 3 successful trials with at least a 75% trial success rate to win an award. In addition to the in-vitro trials, teams must also submit a Spaceflight Experiment Concept that details how they would further advance some aspect of their tissue vascularization research through a microgravity experiment that could be conducted in the U.S. National Laboratory (ISS–NL) onboard the International Space Station.

I. Prize Amounts

The total Vascular Tissue Challenge prize purse is $500,000 (five hundred thousand U.S. dollars). First place will receive $300,000 (three hundred thousand U.S. dollars). Two runners-up may be awarded $100,000 (one hundred thousand U.S. dollars) each. Entries must meet specific requirements detailed in the Rules to be eligible for prize awards.

II. Eligibility

To be eligible to win a prize, competitors must;

(1) Register and comply with all requirements in the rules and Team Agreement;

(2) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(3) Not be a Federal entity or Federal employee acting within the scope of their employment.

III. Rules

The complete rules for the Vascular Tissue Challenge can be found at: *https://www.neworgan.org/vtc-prize.php.*

Cheryl Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2016–13795 Filed 6–10–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, June 16, 2016.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Rules and Regulations, Technical Amendments to Community Development Revolving Loan Fund.
2. NCUA's Rules and Regulations, Statutory Inflation Adjustment of Civil Money Penalties.
3. Board Briefing, Interest Rate Risk Supervision and Adding 'S' to CAMEL.

RECESS: 11:00 a.m.

TIME AND DATE: 11:15 a.m., Thursday, June 16, 2016.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Supervisory Matter. Closed pursuant to Exemptions (8), (9)(i)(B), and (9)(ii).

FOR FURTHER INFORMATION CONTACT: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2016–14022 Filed 6–9–16; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On April 21 & April 29, 2016 the National Science Foundation published a notice in the **Federal Register** of a permit applications received. The permits were issued on June 5, 2016 to:

1. Kristin O'Brien—Permit No. 2017–001
2. Deneb Karentz—Permit No. 2017–002

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–13920 Filed 6–10–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting

DATE: June, 13, 20, 27, July 4, 11, 18, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 13, 2016

There are no meetings scheduled for the week of June 13, 2016.

Week of June 20, 2016—Tentative

Monday, June 20, 2016

9:00 a.m. Meeting with Department of Energy Office of Nuclear Energy (Public Meeting); (Contact: Albert Wong: 301–415–3081)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 23, 2016

9:00 a.m. Discussion of Security Issues (Closed Ex. 3)

Week of June 27, 2016—Tentative

Tuesday, June 28, 2016

9:30 a.m. Briefing on Human Capital and Equal Opportunity Employment (Public Meeting); (Contact: Kristin Davis: 301–287–0707)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 4, 2016—Tentative

Thursday, July 7, 2016

9:30 a.m. Strategic Programmatic Overview of the Reactors Operating Business Line (Public Meeting); (Contact: Trent Wertz: 301–415–1568)

Week of July 11, 2016—Tentative

There are no meetings scheduled for the week of July 11, 2016.

Week of July 18, 2016—Tentative

Thursday, July 21, 2016

9:30 a.m. Briefing on Project Aim (Public Meeting); (Contact: Janelle Jessie: 301–415–6775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 8, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–13993 Filed 6–9–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423; NRC–2016–0109]

Dominion Nuclear Connecticut, Inc., et al.; Millstone Power Station, Unit No. 3

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Dominion Nuclear Connecticut, Inc., et al. (the licensee), for operation of the Millstone Power Station, Unit No. 3 (MPS3). The proposed amendment would revise the Technical Specifications (TSs) to enable the use of Dominion nuclear safety and reload core design methods for MPS3, address the issues identified in three Westinghouse communication documents, and update approved reference methodologies in the TSs. The amendment would also relocate certain equations, supporting descriptions, and surveillance requirements from the TSs to licensee-controlled documents.

DATES: Submit comments by July 13, 2016. A request for a hearing or petition for leave to intervene must be filed by August 12, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0109. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the

individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Richard V. Guzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1030; email: *Richard.Guzman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0109 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0109.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated May 8, 2015, as supplemented by letters dated January 28, February 25, March 23, March 29, and May 2, 2016, are available in ADAMS under Accession Nos. ML15134A244, ML16034A216, ML16057A812, ML16088A140, ML16095A233 and ML16130A563, respectively.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0109 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Dominion Nuclear Connecticut, Inc. for operation of MPS3 located in New London County, Connecticut.

The proposed license amendment, initially submitted by application dated May 8, 2015 (ADAMS Accession No. ML15134A244), would modify the MPS3 TSs to (1) allow the use of Dominion nuclear safety and reload core design methods; (2) allow the use of applicable departure from nucleate boiling ratio design limits for VIPRE–D; (3) update the approved reference methodologies cited in TS 6.9.1.6.b; (4) remove the base load mode of operation that is not a feature of the Dominion Relaxed Power Distribution Control power distribution control methodology; and (5) address the issues identified in Westinghouse Nuclear Safety Advisory Letter (NSAL–09–5), Rev. 1, NSAL–15–1, and Westinghouse Communication 06–IC–03. Additionally, the proposed changes would involve, in part, the relocation of certain equations, supporting descriptions and surveillance requirements from the TSs to licensee-controlled documents. The NRC staff previously made a proposed determination that the amendment request dated May 8, 2015, involves no significant hazards consideration (80 FR 52804; September 1, 2015). This notice supersedes the previous notice and is intended to include the added clarification that the proposed changes involve the relocation of TS information either to the TS Bases or the Core Operating Limits Report which are both licensee-controlled documents. There are no changes to the staff's proposed no significant hazards consideration determination as originally noticed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The NRC has made a proposed determination that the amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed [amendment] involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The Dominion analysis methods do not make any contribution to the potential accident initiators and thus do not increase the probability of any accident previously evaluated. The use of the approved Dominion analysis methods will not increase the probability of an accident because plant systems, structures, and components (SSC) will not be affected or operated in a different manner, and system interfaces will not change.

Since the applicable safety analysis and nuclear core design acceptance criteria will be satisfied when the Dominion analysis methods are applied to MPS3, the use of the approved Dominion analysis methods does not increase the potential consequences of any accident previously evaluated. The use of the approved Dominion methods will not result in a significant impact on normal operating plant releases, and will not increase the predicted radiological consequences of postulated accidents described in the FSAR [final safety analysis report]. The proposed resolution of Westinghouse notification documents NSAL–09–5, Rev. 1, 06–1C–03 and NSAL–15–1 is intended to address deficiencies identified within the existing MPS3 Technical Specifications to return them to their as designed function and does not result in actions that would increase the probability of any accident previously evaluated.

Therefore, the proposed amendment does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

2. Does the proposed [amendment] create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The use of Dominion analysis methods and the Dominion statistical design limit (SDL) for fuel departure from nucleate boiling ratio (DNBR) and fuel critical heat flux (CHF) does not impact any of the applicable core design criteria. All pertinent licensing basis limits and acceptance criteria will continue to be met. Demonstrated adherence to these limits and acceptance criteria precludes new challenges to SSCs that might introduce a new type of accident. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the Dominion methods does not involve any alteration to plant equipment or procedures that might introduce any new or unique operational modes or accident precursors. The proposed resolution of Westinghouse notification documents NSAL–09–5, Rev. 1, 06–IC–03 and NSAL–15–1 does not involve the alteration of plant equipment or introduce unique operational modes or accident precursors.

Therefore, the proposed amendment does not create [the possibility of] a new or different kind of accident from any accident previously evaluated.

3. Does the proposed [amendment] involve a significant reduction in the margin of safety?

Response: No.

Nuclear core design and safety analysis acceptance criteria will continue to be satisfied with the application of Dominion methods. Meeting the analysis acceptance criteria and limits ensure that the margin of safety is not significantly reduced. Nuclear core design and safety analysis acceptance criteria will continue to be satisfied with the application of Dominion methods. In particular, use of [the model] VIPRE–D with the proposed safety limits provides at least a 95% probability at a 95% confidence level that DNBR will not occur (the 95/95 DNBR criterion). The required DNBR margin of safety for MPS3, which is the margin between the 95/95 DNBR criterion and clad failure, is therefore not reduced. The proposed resolution of Westinghouse notification documents NSAL–09–5, Rev. 1, 06–IC–03 and NSAL–15–1 does not propose actions that would result in a significant reduction in margin to safety.

Therefore, the proposed amendment does not involve a significant reduction in [the] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period provided if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the

date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 12, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 12, 2016.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html*. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by email to *MSHD.Resource@nrc.gov*, or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this action, see the application for amendment, dated May 8, 2015, as supplemented by letters dated January 28, February 25, March 23, March 29, and May 2, 2016, in ADAMS.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Travis L. Tate.

Dated at Rockville, Maryland, this 6th day of June 2016.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–13882 Filed 6–10–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78004; File No. SR–Phlx–2016–61]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules Governing Trading of Index Options

June 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules governing trading of index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending various rules regarding index options. The amendments delete certain outdated language relating primarily to index options which the Exchange no longer lists. The amendments also conform certain language in the Phlx rules to that of Chapter XIV, Index Rules, of the NASDAQ Options Market LLC ("NOM"), and make a number of grammatical and technical corrections.

Deletions of Obsolete Rule Text

The Exchange is deleting references to the following in Rule 1001A, Position Limits, Rule 1009A, Designation of the Index, Sections (g) and (h), and Rule 1101A, Terms of Options Contracts, Section (a) and Commentary .01, as applicable, relating to indexes on which the Exchange no longer lists options: SIG Energy MLP Index, NASDAQ China Index, MSCI EM Index, MSCI EAFE Index, PHLX Computer Box Maker Index, PHLX Defense Index, PHLX Drug Index, PHLX Europe Index, PHLX World Energy Index, SIG Investment Managers Index, SIG Cable, Media & Entertainment Index, SIG Semiconductor Equipment Index, SIG Semiconductor Device Index, SIG Specialty Retail Index, SIG Steel

Producers Index, SIG Footwear and Athletic Index, SIG Education Index, SIG Restaurant Index, SIG Coal Producers Index, U.S. Top 100 Index, the OTC Industrial Average Index, TheStreet.com Internet Sector Index, Wellspring Bioclinical Trials Index, Hapoalim American Israeli Index, Hapoalim Index, SIG KCI Coal Index, NASDAQ Internet Index, Full Value MSCI EM Index, Full Value MSCI EAFE Index, Value Line Composite Index, National Over-the-Counter Index and the SIG Casino Gaming Index.

The Exchange is also deleting obsolete language from Rule 1000A(14), the definition of "expiration date" regarding index options expiring prior to February 1, 2015. It is also deleting Rule 1101A(b)(iv), Quarterly Expiring Index Options, and is also amending the definition of "expiration date" in Rule 1000A(b)(14) because the Exchange no longer lists quarterly expiring index options.

Rules Amended To Conform to NOM Rules

The Exchange has amended certain rules to conform more closely to NOM rules governing the same subject matter. In Rule 1000A(b)(5) the word "securities" replaces the word "stocks" in the definition of "underlying security" or "underlying securities".[3] In Rule 1000A(b)(13), the definition of European options is amended to take into account the case of an option expiring on a day that is not a business day.[4] The Exchange has also added to Rule 1000A(b) in section (17) a new definition of "American option" or "American-style index option".[5]

Rules Amended To Correct Cross References or Provide Clarity

The Exchange has rewritten Rule 1001A, Position Limits, subsection (a) solely for clarity. No change in meaning is intended. As revised, the rule states that "[t]he position limit for a broad-based (market) index option shall be 25,000 contracts on the same side of the market except as provided below. Certain positions must be aggregated in accordance with paragraph (d) or (e) below".

Rule 1001A, Commentary .04, Delta-Based Index Hedge Exemption is amended at section (C) in the definition of "permitted pricing model" by replacing an incorrect reference to "Commentary .09(c)(3), Exchange Rule 1001", which was recently deleted, with a reference to "Exchange Rule 1001(n)" which replaced it. For the same reason, in Section (D)(2)(i) of that Commentary, an incorrect reference to "Commentary .06 to Exchange Rule 1001" is replaced with a reference to Exchange Rule 1001(k). Rule 1000A(b)(14) which defines "expiration date" is amended by the deletion of a reference to the Exchange "on which such option is listed," since the rule applies only to options listed on Phlx.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by updating and clarifying outdated rules relating to index options trading. The proposed rule change is also consistent with Section 6(b)(1) of the Act[8] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The amendments should enable Phlx members to better understand the Exchange's index options rules and the Exchange to better enforce compliance with those rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the rule merely updates and clarifies outdated rules relating to index options and conforms certain Phlx rules to NOM rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–Phlx–2016–61 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–Phlx–2016–61*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–Phlx–2016–61* and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13824 Filed 6–10–16; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* NOM Chapter XIV, Section 2(q).

[4] *See* NOM Chapter XIV, Section 2(h).

[5] *See* NOM Chapter XIV, Section 2(b).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78s(b)(3)(a)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78000; File No. SR–NYSEMKT–2016–58]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE MKT Rules 1600 et seq. and to Changes to the Names and Operation of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund

June 7, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 24, 2016, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rules 1600 *et seq.* (Trading of Trust Units), pursuant to which the Exchange currently lists and trades shares of the Nuveen Diversified Commodity Fund (the "Diversified Fund") and the Nuveen Long/Short Commodity Total Return Fund (the "Long/Short Fund," with the Diversified Fund and the Long/Short Fund each being referred to herein as a "Fund," and collectively, as the "Funds"), and to reflect changes to the names and operation of the Funds, as described herein. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE MKT Rules 1600 *et seq.* (Trading of Trust Units), pursuant to which the Exchange currently lists and trades shares ("Shares") of the Funds.[4] In addition, the Exchange proposes to (1) reflect changes to the operation of the Funds, as described herein, and (2) permit the continued listing and trading of Shares of the Funds on the Exchange pursuant to NYSE MKT Rules 1600 *et seq.*, as proposed to be amended, following changes to the operation of the Funds, as described below.[5]

The Funds are currently structured as actively managed closed-end commodity pools. On December 19, 2014, Nuveen Investments, parent company of Nuveen Commodities Asset Management, LLC (the "Manager"), announced (the "Conversion Plan Announcement") that the Manager had approved a plan to convert the Funds into exchange-traded products ("ETPs") that utilize a creation/redemption mechanism, subject to approval by shareholders of each Fund (such plan, with respect to each Fund, is referred to herein as the "Conversion," and collectively, the "Conversions"). Subsequently, at meetings of shareholders in 2015, shareholders of each Fund likewise approved the Conversions. The purpose of the Conversions, which would implement a process for continual creation and redemption of Shares at net asset value ("NAV") after receipt of an order in proper form on any business day (as described below), is to promote the trading of the Funds' Shares at prices equal to or near their NAV. Indeed, since the Conversion Plan Announcement, each Fund has traded at a substantially reduced discount to NAV,[6] which suggests that the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission approved listing and trading of Shares of the Funds on the Exchange in Securities Exchange Act Release Nos. 61807 (March 31, 2010), 75 FR 17818 (April 7, 2010) (SR–NYSEAmex–2010–09) (order approving amendments to NYSE Amex LLC Rule 1600 and listing and trading of shares of the Nuveen Diversified Commodity Fund) ("Prior Diversified Order"); and 67223 (June 20, 2012) (SR–NYSEAmex–2012–24) (order approving listing and trading on NYSE Amex LLC of shares of the Nuveen Long/Short Commodity Total Return Fund under NYSE Amex LLC Rule 1600) ("Prior Long/Short Order"). *See also* Securities Exchange Act Release No. 61571 (February 23, 2010), 75 FR 9265 (March 1, 2010) (SR–NYSE Amex–2010–09) (notice of filing of proposed rule change amending NYSE Amex LLC Trust Unit rules and proposing the listing of the Nuveen Diversified Commodity Fund) (the "Prior Diversified Notice" and, together with the Prior Diversified Order, the "Prior Diversified Release"); and Securities Exchange Act Release No. 66887 (May 1, 2012), 77 FR 26798 (May 7, 2012) (SR–NYSEAmex–2012–24) (notice of filing of proposed rule change relating to listing Nuveen Long/Short Commodity Total Return Fund under NYSE Amex LLC Rule 1600) (the "Prior Long/Short Notice" and, together with the Prior Long/Short Order, the "Prior Long/Short Release," with the Prior Diversified Release and the Prior Long/Short Release each being referred to herein as a "Prior Release," and collectively, as the "Prior Releases").

[5] *See*, for the Diversified Fund, Pre-Effective Amendment No. 1 to the registration statement on Form S–3 (File No. 333–205590), filed on November 30, 2015; *see also*, for the Long/Short Fund, Pre-Effective Amendment No. 1 to the registration statement on Form S–3 (File No. 333–205587), filed on November 30, 2015 (collectively referred to herein as the "Registration Statement").

[6] From December 18, 2014, to March 9, 2016, the discount to NAV has been reduced for the Diversified Fund from 18.02% to 5.11% and for the Long/Short Fund from 19.80% to 3.75%.

Conversion will achieve its intended purpose, to the benefit of shareholders.

Accordingly, the Exchange proposes to amend NYSE MKT Rules 1600 *et seq.* to accommodate the implementation of continual creation and redemption of shares of Trust Units listed or traded pursuant to Rules 1600 *et seq.* in the manner set forth above. The proposed amendments to Rules 1600 *et seq.* will provide that Trust Units, which include Shares of the Funds, will be issued and redeemed on a continuous basis in specified aggregate amounts at NAV next determined.

Amendments to NYSE MKT Rules 1600 *et seq.*

To achieve the foregoing changes, the Exchange proposes to amend NYSE MKT Rules 1600 *et seq.* as described below. NYSE MKT Rule 1600 defines a Trust Unit as a security that is issued by a trust ("Trust") or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, and/or commodities. The Exchange proposes to amend Rule 1600 in several respects.

First, the Exchange proposes amending Rule 1600(b)(i) to delete reference to Section 1(a)(4) of the Commodity Exchange Act ("CEA") and to state that the term "commodity" is defined in Section 1(a)(9) of the CEA. Section 1(a)(4) of the CEA was renumbered as Section 1(a)(9) under amendments adopted under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[7] Next, the Exchange proposes amending Rule 1600(b)(ii) to: (1) Add the phrase "and/or securities" to the enumerated financial instruments in which Trust Units may invest (proposed Rule 1600(b)(i));[8] and (2) provide that Trust Units are issued and redeemed continuously in specified aggregate amounts at the NAV next determined (proposed Rule 1600(b)(ii)).

The Exchange also proposes adding new rules. Proposed NYSE MKT Rule 1600(b)(iii) would define "Disclosed Portfolio" as the identities and quantities of the assets held by a Trust that will form the basis for that Trust's calculation of the NAV at the end of the business day. Proposed Rule 1600(b)(iv) would define "Intraday Indicative Value" as the estimated indicative value of a Trust Unit based on current information regarding the value of the assets in the Disclosed Portfolio.

Proposed Rule 1600(b)(v) would define "Reporting Authority" as, in respect of a particular series of Trust Units, the Exchange, an institution, or a reporting or information service designated by the Trust or the Exchange or by the exchange that lists a particular series of Trust Units (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, (i) the Intraday Indicative Value, (ii) the Disclosed Portfolio, (iii) the amount of any cash distribution to holders of Trust Units, (iv) NAV, and (v) other information relating to the issuance, redemption, or trading of Trust Units. A series of Trust Units may have more than one Reporting Authority, each having different functions.[9]

Proposed Commentary .04 to Rule 1600 would provide that, if a Trust's advisor is affiliated with a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio.

The Exchange proposes to amend Rule 1602(a)(ii) to provide that the Exchange will obtain a representation from the issuer of each series of Trust Units that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Additionally, the Exchange proposes amendments to Rule 1602(b)(ii) to replace the term "portfolio holdings" with "Disclosed Portfolio" and to provide that, if the Exchange becomes aware that the Disclosed Portfolio or NAV per share with respect to a series of Trust Units is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the Disclosed Portfolio or NAV per share is available to all market participants. Proposed Rule 1602(b)(iii) would provide that each series of Trust Units will be listed and/or traded subject to application of the following criteria: (1) The Intraday Indicative Value for shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Units trade on the Exchange; (2) the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time; and (3) the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[10]

The Exchange also proposes to delete the text of current NYSE MKT Rule 1603, which is obsolete,[11] and to amend NYSE MKT Rule 1605 to provide that none of the Exchange, the Reporting Authority or any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the Disclosed Portfolio; any value of underlying futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities; the current value of positions or interests if required to be deposited to the Trust in connection with issuance of Trust Units; NAV; or other information relating to the purchase, redemption or trading of Trust Units, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or any agent of the Exchange, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications

[7] 12 U.S.C. 5301 *et seq.*

[8] This proposed provision is identical to the definition of Trust Units in NYSE Arca Equities Rule 8.500(b)(2).

[9] Proposed Rules 1600(b)(iii)–(v) are substantively similar to the current NYSE Arca Equities Rules 8.600(c)(2)–(4).

[10] These proposed amendments and rule additions are substantively similar to the current NYSE Arca Equities Rule 8.600(d).

[11] NYSE MKT Rule 1603 would be reserved. Current Rule 1603 provides that if a Designated Market Maker ("DMM") is operating under Rule 98 (Former)—Equities, Rule 105(b) (Former)—Equities and section (m) of the Guidelines thereunder shall be deemed to prohibit a DMM, his or her member organization, other member, or approved person of such member organization or employee or officer thereof from acting as a market maker or functioning in any capacity involving market-marking responsibilities in an underlying asset or commodity, related futures or options on futures, or any related derivative. The Exchange has deleted NYSE MKT Rule 98 (former). *See* Securities Exchange Act Release No. 72535 (July 3, 2014), 79 FR 39024 (July 9, 2014) (SR–NYSEMKT–2014–22), in which the Exchange stated that "[a]ll DMMs are now approved to operate under Rule 98 and are no longer subject to 'Rule 98 (former).'" The Exchange deleted NYSE MKT Rule 105 in SR–NYSEMKT–2012–68. *See* Securities Exchange Act Release No. 68306 (November 28, 2012), 77 FR 71846 (December 4, 2012) (notice of filing and immediate effectiveness of proposed rule change amending Exchange rules to delete obsolete and outdated rules).

or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in the Trust Units, futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.[12]

Description of the Funds

As set forth in each Fund's respective Prior Release, each Fund is a commodity pool managed by the Manager. The Manager is a Delaware limited liability company that is registered as a commodity pool operator (the "CPO") with the Commodity Futures Trading Commission ("CFTC"). The Manager is a wholly-owned subsidiary of Nuveen Investments, Inc. ("Nuveen Investments"), which is an indirect wholly-owned subsidiary of TIAA, a national financial services organization. The Manager is responsible for determining the Funds' overall investment strategies and overseeing their implementation. The Manager also manages the Funds' business affairs and provides certain legal, accounting and other administrative services to the Funds.

Also as described in the Prior Releases, Gresham Investment Management LLC (the "Commodity Subadviser"), an affiliate of the Manager, manages each Fund's commodity futures investment strategy (which is described more fully below). The Commodity Subadviser is a Delaware limited liability company and is registered with the CFTC as a commodity trading advisor and as a CPO, and is a member of the National Futures Association ("NFA"). The Commodity Subadviser also is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act").

As set forth in the Prior Releases, Nuveen Asset Management, LLC (the "Collateral Subadviser" and, together with the Commodity Subadviser, the "Subadvisers"), an affiliate of the Manager, manages each Fund's investments in U.S. government securities, other short-term, high grade fixed income securities and cash equivalents ("collateral"). The Collateral Subadviser is registered with the Commission as an investment adviser under the Advisers Act.

As the Commodity Subadviser and the Collateral Subadviser are each registered as investment advisers under the Advisers Act, the Subadvisers and their respective related personnel are (and any future subadviser to the Funds will be) subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of their relationship to clients, as well as their compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has: (i) Adopted and implemented written policies and procedures reasonably designed to detect and prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review of the adequacy of the policies and procedures described in clause (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering such policies and procedures.

State Street Bank and Trust Company ("State Street" or the "Transfer Agent") serves as transfer agent, registrar for the Shares, and custodian and administrator of the assets of each Fund, pursuant to which it performs NAV calculations, accounting and other fund administrative services, and, after the Conversions, it also will receive and process orders from Authorized Participants to create and redeem an aggregate of Shares of each Fund ("Baskets").

Current Operation of the Funds Prior to Conversion

Diversified Fund. As described in the Prior Diversified Release, the Fund's current investment objective is to generate attractive risk-adjusted total returns as compared to investments in commodity indexes.

Currently, the Fund pursues its investment objective by utilizing: (a) An actively managed rules-based commodity investment strategy, whereby the Fund invests in a diversified basket of commodity futures and forward contracts with an aggregate notional value substantially equal to the net assets of the Fund; and (b) an options strategy designed to moderate the overall risk and return characteristics of the Fund's commodity investments, pursuant to which the Fund writes (sells) "out-of-the-money" commodity call options to obtain option premium cash flow, on individual futures and forward contracts, on baskets of commodities or on broad based commodity indices.

Currently, as described in the Prior Diversified Release, the Fund typically: (i) Invests in commodity futures and forward contracts[13] that are traded either on U.S. or non-U.S. commodity futures exchanges; and (ii) sells call options on commodity futures and forward contracts that are traded either on U.S. or non-U.S. exchanges. The Fund may also purchase put options on commodity futures and forward contracts that are traded either on U.S. or non-U.S. exchanges or may purchase OTC commodity put options through dealers pursuant to negotiated, bi-lateral arrangements. The Fund invests in commodity futures and forward contracts, options on commodity futures and forward contracts and over-the-counter commodity options in the following commodity groups: Energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers. The Fund also may invest in other commodity contracts that are presently, or may hereafter become, the subject of commodity futures trading. Except for certain limitations described below, there are no restrictions or limitations on the specific commodity investments in which the Fund may invest.

As stated in the Prior Diversified Release, to support its commodity investments, the Fund maintains collateral that is invested in short-term debt instruments with maturities of up to two years that, at the time of investment, are investment grade quality, including obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, as well as corporate obligations and asset-backed securities.

Currently, to achieve the Fund's investment objective, the Fund invests on a notional basis substantially all of its assets in commodity futures and forward contracts pursuant to the Commodity Subadviser's Tangible Asset Program ("TAP"), an actively managed, rules-based[14] commodity investment

[12] Proposed NYSE MKT Rule 1605, as amended, is substantively similar to current NYSE Arca Equities Rule 8.600(e).

[13] While forward contracts generally are traded over the counter ("OTC"), "forward contracts" in this context refer to contracts that are traded on the London Metal Exchange and operate substantially as futures contracts. As such, all of the contracts in which the Diversified Fund invests are exchange-traded.

[14] Pursuant to TAP® the Fund invests in commodity futures and forward contracts, for commodities in each of the following groups:

strategy. TAP is fundamental in nature and is designed to maintain consistent, fully collateralized exposure to commodities as an asset class. TAP does not require the existence of price trends in order to be successful.

Pursuant to the Fund's risk management program, the Fund writes (or sells) commodity call options that may be up to 20% "out-of-the-money" on a continual basis on up to approximately 50% of the notional value of each of its commodity futures and forward contract positions that have sufficient option trading volume and liquidity. The Commodity Subadviser writes call options on individual futures and forward contracts held by the Fund, on baskets of commodities or on broad based commodity indices.

According to the Prior Diversified Release, in order to seek protection against significant asset value declines, the Fund may from time to time purchase "out-of-the-money" put options on broad-based commodity indices such as the DJ–UBS Commodity Index® (subsequently renamed the Bloomberg Commodity Index), the S&P GSCI Commodity Index, or on certain custom indices, whose prices are expected to closely correspond to a substantial portion of the long commodity futures and forward contracts held by the Fund. The Fund also may purchase put options on baskets of commodities and on individual futures and forward contracts held by it.

According to the Prior Diversified Release, the Fund intends to make monthly distributions to its shareholders (stated in terms of a fixed cents per share distribution rate) based on past and projected performance of the Fund. The Fund seeks to establish a distribution rate that roughly corresponds to the Manager's projections of the total return that could reasonably be expected to be generated by the Fund over an extended period of time, although the distribution rate will not be solely dependent on the amount of income earned or capital gains realized by the Fund. The Fund's ability to make regular monthly distributions depends on a number of factors, including, most importantly, the long-term total returns generated by the Fund's portfolio investments and the risk management program.

Long/Short Fund. As described in the Prior Long/Short Release, the Fund's current investment objective is to generate attractive total returns. The Fund is actively managed and seeks to outperform its benchmark, the Morningstar Long/Short Commodity Index.

The Fund's investment strategy utilizes the Commodity Subadviser's long/short commodity investment program, which has three principal elements:

- an actively managed long/short portfolio of exchange-traded commodity futures contracts;
- a portfolio of exchange-traded commodity option contracts; and
- a collateral portfolio of cash equivalents and short-term, high-grade debt securities.

In pursuing its investment objective, the Fund currently invests directly in a diverse portfolio of exchange-traded commodity futures contracts that represent the main commodity sectors and are among the most actively traded futures contracts in the global commodity markets. Generally, individual commodity futures positions may be either long or short (or flat in the case of energy futures contracts) depending upon market conditions.

According to the Prior Long/Short Release, this long/short commodity investment program is an actively managed, fully collateralized, rules-based commodity investment strategy that seeks to capitalize on opportunities in both up and down commodity markets. The Fund invests in a diverse portfolio of exchange-traded commodity futures contracts with an aggregate notional value substantially equal to the net assets of the Fund. The Fund makes investments in the most actively traded commodity futures contracts in the four main commodity sectors in the global commodities markets: Energy; agriculture; metals; and livestock.

During temporary defensive periods or during adverse market circumstances,[15] the Fund may deviate from its investment objective and policies. The Subadvisers may invest 100% of the total assets of the Fund in short-term, high-quality debt securities and money market instruments to respond to adverse market circumstances. The Fund may invest in such instruments for extended periods, depending on the Commodity Subadviser's assessment of market conditions. These debt securities and money market instruments may include shares of mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, and bonds that are rated AAA. Generally, the program rules are used to determine the specific commodity futures contracts in which the Fund invests, the relative weighting for each commodity, and whether a position is either long or short (or flat in the case of energy futures contracts). The Fund invests in those commodity futures contracts and option contracts that are listed on an exchange with the greatest dollar volume traded in those contracts.

The Fund also currently employs a commodity option writing strategy that seeks to produce option premiums for the purpose of enhancing the Fund's risk-adjusted total return over time. Pursuant to the options strategy, the Fund may sell commodity call or put options, which are all exchange-traded, on a continual basis on up to approximately 25% of the notional value of each of its corresponding commodity futures contracts that, in the Commodity Subadviser's determination, have sufficient option trading volume and liquidity. According to the Prior Long/Short Release, if the Commodity Subadviser buys the commodity futures contract, it will sell a call option on the same underlying commodity futures contract. If the Commodity Subadviser shorts the commodity futures contract, it will sell a put option on the same underlying commodity futures contract (except in the case of energy futures contracts).

When initiating new trades, the Fund expects to sell covered in-the-money options. Because the Fund holds options until expiration, the Fund may have uncovered out-of-the-money options in its portfolio depending on price movements of the underlying futures contracts.

Generally, the Fund expects to sell short-term commodity options with terms of one to three months. Subject to the foregoing limitations, the implementation of the options strategy is within the Commodity Subadviser's discretion. Over extended periods of time, the "moneyness" of the commodity options may vary significantly. Upon sale, the commodity options may be "in-the-money," "at-the-money," or "out-of-the-money."

The Commodity Subadviser will employ a proprietary methodology in assessing commodity market movements and in determining the Fund's long/short commodity futures positions. Generally, the Commodity Subadviser will employ momentum-based modeling (quantitative formulas that evaluate trend relationships between the changes in prices of futures contracts and trading volumes for a

Energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers.

[15] Adverse market circumstances would include large downturns in the broad market value of two or more times current average volatility, where the Commodity Subadviser views such downturns as likely to continue for an extended period of time.

specific commodity) to estimate forward-looking prices and to evaluate the return impact of futures contract rolls. To determine the direction of the commodity futures position, either long or short (or flat in the case of energy futures contracts), the Commodity Subadviser will calculate a roll-adjusted price that accounts for the current spot price and the impact of roll yield. The Commodity Subadviser may exercise discretion in its long/short decisions and the timing and implementation of the Fund's commodity investments to seek to benefit from trading on commodity price momentum.

According to the Prior Long/Short Release, the Fund's commodity investments will, at all times, be fully collateralized (*i.e.*, the "notional value"—the value of the underlying commodity at the contract's spot price—of the Fund's commodity exposure will not exceed the market value of the Fund's net assets). The Fund's commodity investments generally do not require significant outlays of principal. Approximately 25% of the Fund's net assets are used to secure the futures contracts.[16] These assets are placed in one or more commodity futures accounts and will be held in cash or invested in U.S. Treasury bills and other direct or guaranteed debt obligations of the U.S. government maturing within less than one year at the time of investment.

The remaining collateral (approximately 75% of the Fund's net assets) are held in a separate collateral investment account managed by the Collateral Subadviser. Such assets are invested in cash equivalents or short-term debt securities with final terms not exceeding one year at the time of investment. These collateral investments shall be rated at all times at the applicable highest short-term or long-term debt or deposit rating or money market fund rating as determined by at least one nationally recognized statistical rating organization. These collateral investments consist primarily of direct and guaranteed obligations of the U.S. government and senior obligations of U.S. government agencies and may also include, among others, money market funds and bank money market accounts invested in U.S. government securities, as well as repurchase agreements collateralized with U.S. government securities.

According to the Prior Long/Short Release, the potential Fund investments in futures contracts and options on such futures contracts are traded on U.S. and non-U.S. exchanges, including the Chicago Board of Trade ("CBOT"), the Chicago Mercantile Exchange ("CME"), the ICE Futures Europe, the ICE Futures U.S., the New York Mercantile Exchange ("NYMEX") and the New York Commodities Exchange ("COMEX"), and the Kansas City Board of Trade ("KBOT").

Also according to the Prior Long/Short Release, the Fund (like the Diversified Fund) intends to make monthly distributions to its shareholders (stated in terms of a fixed cents per share distribution rate) based on past and projected performance of the Fund. The Fund seeks to establish a distribution rate that roughly corresponds to the Manager's projections of the total return that could reasonably be expected to be generated by the Fund over an extended period of time, although the distribution rate will not be solely dependent on the amount of income earned or capital gains realized by the Fund. The Fund's ability to make regular monthly distributions depends on a number of factors, including, most importantly, the long-term total returns generated by the Fund's portfolio investments and the risk management program.

Operation of the Funds Following Conversion

Generally

Following the Conversions, each Fund, through use of a rules-based investment methodology, will seek to obtain returns that, over time, generally match (before fees and expenses) the returns of a commodity-linked index. The Diversified Fund will take long positions in the components of the Gresham Adaptive Commodity Index (the "Adaptive Index"), while the Long/Short Fund will take positions either long or short in the components of the Gresham Long/Short Commodity Index (the "Long/Short Index"). Each of the Adaptive Index and the Long/Short Index also is referred to herein as an "Index" and, collectively, as the "Indexes."

In contrast to certain representations made in the Prior Releases and described above, after the Conversions each Fund: (i) Will no longer invest in forwards (and instead will invest solely in futures contracts), (ii) will no longer hold options or utilize options strategies, and (iii) will no longer make monthly distributions to its shareholders.

Names; Investment Objectives

After the Conversion, the name of the Diversified Fund will change to the "NuShares Gresham Adaptive Commodity ETF" and the name of the Long/Short Fund will change to the "NuShares Gresham Long/Short Commodity ETF." Each Fund's investment objective will be to generate attractive total returns by generally tracking its respective Index. Each Fund will continue to seek to achieve its investment objective by investing in a diverse portfolio of exchange-traded commodity futures contracts that provide exposure to the global commodity markets (such futures contracts are referred to herein as "Commodity Futures"). Generally, each Fund will invest in Commodity Futures that are included in a Fund's respective Index; however, each Fund also may invest in other commodity futures contracts that are not included in the Indexes (at times when the Commodity Subadviser believes such investments will improve a Fund's profitability and/or reduce the potential for losses, as described more fully below).

The Funds' Investments

After the Conversions, each Fund's principal investments are not expected to change. Under normal market conditions,[17] each Fund will continue to invest in (i) Commodity Futures traded on U.S. and non-U.S. futures exchanges[18] having various expiration dates, and (ii) collateral consisting of U.S. government securities and cash equivalents, some of which are maintained on deposit with a Fund's commodity broker as margin, to collateralize a Fund's positions in the Commodity Futures. As stated above,

[16] Such assets will be committed as "initial" or "variation" margin. Initially, when a Fund invests in a commodity futures contract, it will be required to deposit an amount of cash equal to a specified percentage of the contract amount. This amount is known as "initial margin." The margin deposit is intended to ensure completion of the contract if it is not terminated prior to the specified delivery date. Minimum initial margin requirements are established by the futures exchanges and may be revised. Subsequent payments, called "variation margin," will be made on a daily basis as the price of the underlying commodity fluctuates, making the futures contract more or less valuable, a process known as marking the contract to market.

[17] With respect to each Fund, the term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[18] Not more than 10% of the net assets of a Fund, in the aggregate, shall consist of futures contracts whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.

the Funds will not invest in forwards or options following the Conversions.

Futures contracts on commodities reflect the expected future value of an underlying commodity on which the contract is based. Pursuant to such futures contracts, one party agrees to buy, and the other to sell, a set amount of the reference asset (or a cash equivalent) at a pre-determined price (the "spot price") on a pre-determined future date (the "expiration date"). As the expiration date for any given Commodity Futures contract draws closer, the Commodity Subadviser will roll that Commodity Futures contract, prior to its expiration, on an ongoing basis, so as to ensure that each Fund maintains a position in such Commodity Futures contract.

For each Fund, the Commodity Subadviser employs a proprietary methodology in assessing commodity market movements. Generally, the Commodity Subadviser employs momentum-based modeling to estimate forward-looking prices and to evaluate the return impact of futures contract rolls. The Commodity Subadviser will calculate a roll-adjusted price that accounts for the current spot price and the impact of roll yield. The Commodity Subadviser may exercise discretion in its decisions and the timing and implementation of the Fund's commodity investments to seek to benefit from trading on commodity price momentum. Specifically, following the Conversion, the Diversified Fund weightings will be determined on a monthly basis—if the price of a commodity contract is higher than its six-month simple moving average, the commodity contract will be held at its target weight; conversely, if the price is below the six-month simple moving average, the commodity weight will be reduced by half. Following the Conversion, for the Long/Short Fund, the momentum-based model will employ shorter-term moving averages (such as 6-months) to determine whether a commodity futures position in the Index is held long or short (or flat, for petroleum-related commodities).

Each Fund's Commodity Futures investments will, at all times, be fully collateralized (*i.e.*, the "notional value"—the value of the underlying commodity at the contract's spot price—of the Fund's commodity exposure will not exceed the market value of the Fund's net assets). However, whereas the Prior Releases represented that 25% of that Fund's Collateral will be committed as "initial" and "variation" margin, the Funds now represent that, following the Conversions, approximately 10–25% of each Fund's Collateral will be committed as initial and variation margin and be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, to secure the futures contract positions. Those assets will be held in a commodity futures account maintained by SG Americas Securities, LLC ("SG"), the Funds' clearing broker, which serves as a futures commission merchant and broker-dealer registered with the CFTC and the Commission.

The remaining 75–90% of a Fund's Collateral (as opposed to a set 75%, as noted in the Prior Releases) will continue be held in a separate collateral investment account managed by the Collateral Subadviser. However, the eligible Collateral investments will change following the Conversion. The Funds will no longer invest in money market funds or repurchase agreements; instead, they will invest in short-term U.S. government securities and cash equivalents.

The Funds' Investment Strategies

Following the Conversions, each Fund will employ a rules-based commodity investment strategy in seeking to achieve its investment objective: The Diversified Fund will use a long-biased strategy, and the Long/Short Fund will use a long/short strategy. In doing so, each Fund, as they currently do prior to the Conversion, will invest in a diverse portfolio of exchange-traded Commodity Futures that have an aggregate notional value less than or substantially equal to the net assets of such Fund. Generally, those Commodity Futures will be components of each Fund's respective Index; however, each Fund also may invest in other commodity futures contracts that are not included in the Indexes in seeking to improve profitability and/or reduce the potential for loss.

Each Fund will make investments in Commodity Futures in the six principal groups within the global commodities markets: Agriculture; energy; foods and fibers; industrial metals; livestock; and precious metals. To provide diversification, each Fund will take positions in Commodity Futures related to approximately 30 commodities; its rules-based strategy will limit the weight of any individual Commodity Futures and also will limit the allocations to the largest two commodity groups to allow for higher allocations to the smaller commodity groups. Each Fund will continue to allocate its investments to Commodity Futures pursuant to the Commodity Subadviser's proprietary strategy.

Typically, each Fund expects to follow certain rules pertaining to eligible commodities, weights, diversification, rebalancing, and annual reconstitution that are the same as those for its respective Index, so as to minimize the divergence between the price behavior of a Fund's Commodity Futures portfolio and the price behavior of its Index (such divergence is referred to as "tracking error"). As such, each Fund's investment results, before the deduction of fees and other expenses, are expected generally to correspond to the changes, positive or negative, in the levels of its respective Index over time.

Although each Fund generally will seek to track the performance of its Index (before fees and expenses), the Funds will remain actively managed and therefore will not be obligated to always invest in the components of the Indexes. From time to time, a Fund may invest in commodity futures contracts not included in its Index and/or that have differing expiration dates and terms. Such variations from an Index are market-driven and opportunistic, and are designed to improve a Fund's profitability and reduce the potential for losses. Additionally, each Fund will continue to deviate temporarily from its investment objective and policies during adverse market circumstances.

Description of the Indexes

According to the Registration Statement, each Index is a proprietary index developed by the Commodity Subadviser's senior management team. The methodology for commodity selection and target weight calculation for each Index is based on the Commodity Subadviser's TAP strategy. Annual rebalancing for the TAP strategy follows a systematic, disciplined approach for establishing new target weights for commodities in the portfolio and encompasses a diverse mix of tangible Commodity Futures. TAP currently allocates to Commodity Futures relating to approximately 30 different commodities. TAP scales its position according to rankings of individual commodities based on three factors: (i) Historical global production; (ii) historical global trade; and (iii) historical contract liquidity. The TAP strategy employs portfolio construction constraints that seek liquidity, a robust and fair regulatory framework, avoidance of foreign exchange risk, and transparency, as it trades only in markets where exchange settlements are publicly disseminated. In order to ensure a high level of commodity diversification at each annual rebalance, the TAP strategy maintains certain

limits on amounts allocated to commodity groups.

Each Index is rebalanced annually. Between rebalance dates, Index weights vary based on the performance of the commodity contract positions in each Index. On a monthly basis, each Index utilizes historical price trends to determine its positions and rolls its contracts to implement the new positions.

Adaptive Index. According to the Registration Statement, by maintaining a long-bias, the Adaptive Index seeks to benefit from rising commodity markets while still affording flexibility to reduce its target investment exposure by half of the target weighting to certain individual commodities when appropriate. On a monthly basis, each commodity's weight in the Adaptive Index will be maintained or reduced after comparing the price of each commodity with its six-month simple moving average. If the price of a commodity is higher than its six-month simple moving average, the commodity is held at its target weight; conversely, if the price is below the six-month simple moving average, the commodity's weight is reduced by half.

Long/Short Index. The Long/Short Index seeks to take advantage of the persistent trends in commodities prices, often referred to as "momentum." The central principle of a persistence or momentum investment process is that if the price of an asset is rising (or falling), it is expected to continue to do so. The Long/Short Index employs a momentum rule to determine if exposure to a particular constituent Commodity Futures contract should be held long or short (or "flat," in the case of petroleum-related commodities contracts, as described below).

Whether a Long/Short Index position will be long or short (or flat) is currently determined on a monthly basis by comparing the price of each Commodity Futures contract to its six-month simple moving average. If the price of a commodity is higher than its six-month simple moving average, the commodity is assigned a long position; conversely, if the price is below the six-month simple moving average, it is assigned a short position. A long position will increase in market value if the price of the Commodity Futures is rising during the period when the position is open, whereas a short position will increase in market value if the price of the Commodity Futures is falling during the period when the position is open.

The Long/Short Index is currently constructed such that, when the price of a petroleum-related Commodity Futures contract (*e.g.*, WTI Crude, Brent Crude, Heating Oil, RBOB Gasoline or Gas Oil) is below its six-month simple moving average, the weight of that commodity is moved to the collateral portfolio (*i.e.*, the position is "flat"). The price of petroleum-related commodities historically have been extremely sensitive to geopolitical events and less driven by supply and demand imbalances; as such, holding flat positions in petroleum-related commodities could serve to protect the Long/Short Fund from losses arising from such geopolitical risks. A flat position in a petroleum-related Commodity Futures contract will not provide futures market exposure to that contract.

During transitions from long to short positions or vice versa, the Fund may temporarily hold both long and short positions on the same Commodity Futures contract. In accordance with the Long/Short Fund's "long/short" commodity investment strategy, each Commodity Futures contract will be assigned a target weight and may be held in the portfolio as a long position or a short position (or flat position).

Composition of the Indexes

Eligible Contracts. Listed below are the main categories of Commodity Futures contracts that are eligible to become components of each Index as of February 1, 2016. Each commodity may have several different types of individual Commodity Futures contracts (*e.g.*, hard winter wheat and soft red wheat). The Commodity Subadviser has discretion over Commodity Futures contract selection and may choose from the available contract types. As noted above, each Fund will invest in Commodity Futures that are traded on both U.S. and non-U.S. exchanges. If the Commodity Futures in which a Fund will invest are listed on multiple exchanges, a Fund may invest in those contracts that are listed on the exchange with the greatest dollar volume traded in those contracts.

Group	Commodity	Primary exchange	Trading hours (eastern time)
Energy	WTI Crude Oil	New York Mercantile Exchange.	09:00–14:30
	Brent Crude Oil	ICE Futures Europe	20:00–18:00
	Gas Oil	ICE Futures Europe	20:00–18:00
	Gasoline	New York Mercantile Exchange.	09:00–14:30
	Heating Oil	New York Mercantile Exchange.	09:00–14:30
	Natural Gas	New York Mercantile Exchange.	09:00–14:30
Foods and Fibers	Cotton #2	ICE Futures US	21:00–14:20
	Sugar #11	ICE Futures US	03:30–13:00
	White Sugar	ICE Futures Europe	03:45–12:55
	Coffee	ICE Futures US	04:15–13:30
	Cocoa	ICE Futures US	04:45–13:30
Agriculture	Robusta Coffee	ICE Futures Europe	04:00–12:30
	Corn	Chicago Board of Trade	09:30–14:15
	Soybean Meal	Chicago Board of Trade	09:30–14:15
	Soybean Oil	Chicago Board of Trade	09:30–14:15
	Soybeans	Chicago Board of Trade	09:30–14:15
	Kansas City Wheat	Chicago Board of Trade	09:30–14:15
	Minneapolis Wheat	Minneapolis Grain Exchange	20:00–14:30
	Wheat	Chicago Board of Trade	09:30–14:15
Base Metals	Aluminum	London Metal Exchange	15:00–14:45
	Copper (LME)	London Metal Exchange	15:00–14:45
	Copper (COMEX)	Commodity Exchange, Inc.	08:01–13:00
	Nickel	London Metal Exchange	15:00–14:45

Group	Commodity	Primary exchange	Trading hours (eastern time)
	Zinc	London Metal Exchange	15:00–14:45
	Lead	London Metal Exchange	15:00–14:45
Precious Metals	Gold	COMEX	08:20–13:30
	Palladium	New York Mercantile Exchange.	08:30–13:00
	Platinum	New York Mercantile Exchange.	08:20–13:05
	Silver	COMEX	08:30–13:00
Livestock	Feeder Cattle	Chicago Mercantile Exchange	09:30–14:00
	Lean Hogs	Chicago Mercantile Exchange	09:30–14:00
	Live Cattle	Chicago Mercantile Exchange	09:30–14:00

Index Composition. Listed below are the target weights for each commodity as of February 1, 2016. These target weights are the same for each Index.

Commodity group	Commodity	Composition (%)
Energy	WTI Crude Oil	9.3
	Brent Crude Oil	9.4
	Natural Gas	7.0
	Gas Oil	3.2
	Heating Oil	2.5
	Gasoline	3.6
		35.0
Agriculture	Corn	3.8
	Kansas City Wheat	0.7
	Minneapolis Wheat	0.2
	Wheat	2.8
	Soybean Meal	2.4
	Soybean Oil	1.1
	Soybeans	5.0
		16.0
Livestock	Live Cattle	7.0
	Feeder Cattle	2.0
	Lean Hogs	2.3
		11.3
Foods and Fibers	Sugar #11	2.2
	Cocoa	1.0
	White Sugar	0.2
	Robusta Coffee	0.3
	Coffee	1.8
	Cotton #2	1.5
		7.0
Base Metals	Copper (LME)	7.1
	Copper (COMEX)	1.4
	Aluminum	5.3
	Nickel	1.7
	Zinc	1.8
	Lead	0.9
		18.2
Precious Metals	Gold	8.8
	Silver	2.5
	Platinum	0.7
	Palladium	0.5
		12.5
Total		100.0

Summary of Other Aspects Regarding the Conversion of the Funds

As set forth in its respective Prior Release, each Fund is currently structured as a closed-end commodity pool. As part of the Conversion, each Fund plans to convert to an ETP structure, which requires an amendment to each Fund's Agreement and Declaration of Trust (with respect to each Fund, the "Amendment," and collectively, the "Amendments"). Each

Fund's shareholders approved the respective Amendment at annual shareholder meetings in 2015. When executed, the Amendments will add to the Funds' legal structure the creation and redemption basket features described below, which the current versions of the Funds' governing documents do not include.

After the Conversion: (i) Each Fund will remain a commodity pool, (ii) investors will own the same Shares as they did before the Conversion, and (iii) investors will continue to be able to buy and sell Shares on an exchange throughout each business day at then-prevailing market prices. The Funds currently disclose portfolio holdings daily, and will continue to do so following the Conversions. However, following the Conversion, each Fund will issue and redeem Shares on a continuous basis through the creation/redemption process used by ETPs (as described below), which is intended to facilitate the trading of Shares at prices equal to or near their NAV.

The Shares will be assigned new CUSIP numbers at the time of the Conversion. Moreover, as stated above, following the Conversions, the name of the Diversified Fund will change to the NuShares Gresham Adaptive Commodity ETF, and the name of the Long/Short Fund will change to the NuShares Gresham Long/Short Commodity ETF. The Funds are not currently, and after the Conversions will not be, mutual funds or any other type of investment company within the meaning of the Investment Company Act of 1940, as amended.

In connection with the Conversions, the Manager intends to implement additional changes to both Funds that the Manager believes will better align the Funds' features with their newly-adopted ETP structure. The charts below summarize those changes.

Changes to Diversified Fund

	Before conversion	After conversion
Fund name	Nuveen Diversified Commodity Fund	NuShares Gresham Adaptive Commodity ETF.
Ticker	CFD	GAC.
Distribution Policy	Pays regular monthly distributions	Discontinue regular monthly distributions.
Share Repurchases	Active share repurchase program	Discontinue share repurchase Program.
Investment Strategy	Long-only commodity strategy	Long-biased commodity strategy-weightings determined on a monthly basis; if the price of a commodity contract is higher than its six-month simple moving average, the commodity contract will be held at its target weight; conversely, if the price is below the six-month simple moving average, the commodity weight will be reduced by half.
	Option writing program	Discontinue option writing program.
	Collateral invested in cash equivalents, U.S. government securities and other short-term high-grade debt securities, including corporate debt, with terms not exceeding one year.	Collateral invested in U.S. government securities, with terms not exceeding one year, and cash equivalents.

Changes to Long/Short Fund

	Before conversion	After conversion
Fund name	Nuveen Long/Short Commodity Total Return Fund	NuShares Gresham Long/Short Commodity ETF.
Ticker	CTF	GLS.
Distribution Policy	Pays regular monthly distributions	Discontinue regular monthly distributions.
Share Repurchases	Active share repurchase Program	Discontinue share repurchase Program.
Investment Strategy	Long/short commodity futures strategy based on the Morningstar Long/Short Commodity Index.	Long/short commodity futures strategy based on the Gresham Long/Short Commodity Index.
	Uses momentum-based model to calculate 12-month moving price averages that are used to determine whether a commodity futures position is held long or short.	Long/short commodity strategy— Momentum-based model will employ shorter-term moving averages (such as 6-months) to determine whether a commodity futures position in the Index is held long or short (or flat, for petroleum-related commodities). Weightings are determined on a monthly basis; if the price of a commodity contract is higher than its six-month simple moving average, the commodity is assigned a long position; conversely, if the price is below the six-month simple moving average, it is assigned a short position.
	Will not short energy futures-if model signals to short energy futures, positions will instead be held "flat" (*i.e.,* in cash).	Will not short petroleum-based futures-if model signals to short petroleum-based futures, positions will instead be held "flat" (*i.e.,* in cash).
	Option writing program	Discontinue option writing program.
	Collateral invested in cash equivalents, U.S. government securities and other short-term high-grade debt securities, including corporate debt, with terms not exceeding one year.	Collateral invested in short-term U.S. government securities and cash equivalents.

The Manager will announce in advance the expected effective date of the Conversions via press releases and Form 8–K filings. Those press releases also will include a summary of changes to the Funds that will occur in

connection with the Conversions. The Exchange will also issue a notice to members approximately 10 days prior to the date of effectiveness of the Conversion, and another notice to members on the business day prior to the date Shares of the Funds will trade under the new CUSIP.

The Manager expects that the Conversions will have the effect of further narrowing the discount in each Fund's Share price as compared to its NAV.

Creation and Redemption of Shares

Following the Conversion, the Funds will issue and redeem Shares in "Baskets" of 50,000 Shares each on a continuous basis to "Authorized Participants" in exchange for cash equal to the total value of the futures contracts, cash and collateral assets (*i.e.*, cash equivalents) that comprise one Basket ("Basket Amount"). Similarly, an Authorized Participant is entitled to receive the corresponding Basket Amount in exchange for each Basket surrendered for redemption. The Basket represents one Creation Unit of a Fund. Except when aggregated in Baskets, the Shares are not redeemable securities of a Fund. The size of a Basket will be subject to change.

Only Authorized Participants may place orders to create and redeem Baskets. An "Authorized Participant" must (1) be a registered broker-dealer or other securities market participant, such as a bank or other financial institution exempt from registration as a broker-dealer to engage in securities transactions, (2) be a participant in The Depository Trust Company ("DTC"), and (3) have entered into a Participant Agreement. The Participant Agreement sets forth the procedures for the creation and redemption of Baskets and for the delivery of the Basket Amount required for such creations or redemptions. The Manager will have engaged at least two market participants to act as Authorized Participants with respect to the Funds prior to completing the Conversions.

Authorized Participants may sell the individual Shares included in the Baskets and purchased from each Fund to other investors on the Exchange. Otherwise, Shares will not be individually redeemable. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant.

The Manager expects that purchasers of Creation Units will include institutional investors and arbitrageurs and that secondary market purchasers of Shares will include both institutional investors and retail investors. The Manager also expects that the price at which Shares of each Fund trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV. The Manager believes that a conversion from the current closed-end structure to one that utilizes a creation/redemption process will serve to reduce the Shares' discount to NAV, to the benefit of current shareholders.

On any business day that NYSE MKT is open for regular trading, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets. Creation orders must be placed by 10:00 a.m., Eastern time. The creation order date is the day on which the Transfer Agent receives an order in proper form to purchase the Shares in one or more Baskets. The day on which a creation order is settled is the creation order settlement date. The creation order settlement date may occur up to 3 business days after the creation order date.

The total cash payment required to create each Basket is equal to the NAV of 50,000 Shares of a Fund as of the closing time of the NYSE MKT on the creation order date. Because orders to purchase Baskets must be placed by 10:00 a.m., Eastern time, but the total payment required to create a Basket will not be determined until 4:00 p.m., Eastern time, on the date the creation order is received, Authorized Participants will not know the total amount of the payment required to create a Basket at the time they submit the creation order for the Basket.[19]

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets.

The redemption proceeds from each Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Basket(s) of a Fund requested in the Authorized Participant's redemption order as of the closing time of the NYSE MKT or the last to close of the exchanges on which its futures contracts are traded, whichever is later, on the redemption order date. The Manager will distribute the cash redemption amount at the redemption order settlement date as of 2:45 p.m., Eastern time, on the redemption order settlement date through DTC to the account of the Authorized Participant as recorded on DTC's book-entry system.

The redemption proceeds due from each Fund are delivered to the Authorized Participant at 2:45 p.m., Eastern time, on the redemption order settlement date if, by such time, a Fund's DTC account has been credited with the Baskets to be redeemed. If a Fund's DTC account has not been credited with all of the Baskets to be redeemed by such time, the redemption distribution is delivered to the extent of whole Baskets received.

For either Fund, the Manager may, in its discretion, suspend the right of redemption, or postpone the redemption order settlement date, for (1) any period during which an emergency exists as a result of which the redemption distribution is not reasonably practicable, or (2) such other period as the Manager determines to be necessary for the protection of the shareholders.

Shareholders who are not Authorized Participants will have no right to purchase or redeem their Shares directly from or to the Funds. Instead, such shareholders will continue to have the ability to purchase or sell their Shares on an exchange.

Net Asset Value

According to the Registration Statement, a Fund's NAV is calculated as of the close of the exchange on which it trades, on each day that such exchange is open. NAV per Share is computed by dividing the value of all assets of a Fund (including any accrued interest and dividends), less all liabilities (including accrued expenses and distributions declared but unpaid), by the total number of Shares outstanding. Each Fund publishes its NAV on its Web site on a daily basis, rounded to the nearest cent.

For purposes of determining the NAV of a Fund, portfolio instruments will be valued using prices provided primarily by independent pricing services approved by the Manager. A Fund's Commodity Futures generally will be valued at their final settlement price, if available, as determined by the principal exchange on which they are traded. Non-exchange traded instruments pledged as collateral will generally be valued using prices provided by independent pricing

[19] ETPs that invest in commodity contracts traded on the LME commonly adopt an order cut-off time prior to the close of regular trading on the LME (5 p.m., London time, or 12 p.m. Eastern time) in order to permit sufficient time to conduct necessary trading on the LME in response to creation and redemption activity. *See, e.g.*, PowerShares DB Commodity Index Tracking Fund (DBC) (order cut-off time of 10:00 a.m., Eastern time) and United State Commodity Index Fund (USCI) (order cut-off time of the earlier of 10:30 a.m., Eastern time, or the close of regular trading on the NYSE Arca). Although Authorized Participants who place creation or redemption orders are exposed to market movements until the ETPs' NAV is struck (typically, 4 p.m., Eastern time), they are able to hedge their exposure such that they are willing and able to engage in creation and redemption activity for the purpose of capturing arbitrage opportunities.

services, or prices may be obtained from other sources, such as broker-dealer quotations. Independent pricing services typically value non-exchange traded instruments using a range of market-based inputs and assumptions. For example, when available, pricing services may utilize inputs such as benchmark yields, reported trades, broker-dealer quotes, spreads, and transactions for comparable instruments. In pricing certain instruments, the pricing services may consider information about an instrument's issuer or market activity provided by the Manager. Independent pricing service valuations of non-exchange traded instruments represent the service's good faith opinion as to what the holder of an instrument would receive in an orderly transaction for an institutional round lot position under current market conditions. It is possible that these valuations could be materially different from the value that a Fund realizes upon the sale of an instrument.

If the pricing services are unable to price an instrument, if the Manager deems the pricing services valuation to be unreliable, or if a significant event occurs such that the valuation provided is deemed unreliable, a Fund may value portfolio instruments(s) at their fair value, which is generally the amount that a Fund might reasonably expect to receive upon the current sale or closing of a position. The fair value of an instrument is based on the Manager's good faith judgment and may differ from subsequent quoted or published prices. For example, events may occur after the close of the relevant market but prior to the time as of which a Fund's NAV is calculated, which materially impact the instrument's value, and the fair value on a given day would take such events into account.

Availability of Information Regarding the Shares

The Web site for the Funds, *http://www.nuveen.com/CommodityInvestments*, will be publicly accessible at no charge and, following the Conversion, will contain the following information for each Fund, updated daily: (a) The prior business day's NAV and the reported closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price")[20]; (b) calculation of the premium or discount of the closing price or Bid/Ask Price against the NAV; (c) data in chart format displaying the frequency of the discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; (d) the prospectus; and (e) other applicable quantitative information.

After the Conversion, on each business day before commencement of trading in Shares on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day.[21]

Each Fund's portfolio holdings (as of the previous day's close) will also be disclosed and updated on the Funds' Web site on each business day that the Exchange is open for trading. Such disclosure of the Funds' portfolio holdings will include, as applicable to the type of holding: Ticker symbol, name or other identifier, if any; a description of the holding (including the type of holding, such as the type of futures contract); the identity of the security, commodity or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio. The values of each Fund's portfolio holdings will, in each case, be determined in accordance with the Funds' valuation policies.

The daily settlement prices for the Commodity Futures contracts are publicly available on the Web sites of the futures exchanges trading the particular contracts. Various data vendors and news publications publish futures prices and data. The Exchange represents that futures quotes and last sale information for the commodity contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The relevant futures exchanges also provide delayed futures contract information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. Price information for Collateral will be available from major market data vendors. In addition, the Intraday Indicative Value ("IIV")[22] will be widely disseminated at least every 15 seconds during trading on the Exchange by one or more major market data vendors.[23] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund and provide a close estimate of that value throughout the trading day. In addition, a Basket composition file, which includes the names and weights of the instruments required to be delivered in exchange for a Fund's Basket, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange.

As described above, the NAV for each Fund will be calculated and disseminated daily. The Manager has represented to the Exchange that the NAV and all portfolio holdings will be disseminated to all market participants at the same time. The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV. The closing price and settlement prices of the futures contracts held by the Funds are also readily available from the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Exchange

[20] The Bid/Ask Price of the Funds' Shares will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[21] Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[22] The IIV is an approximate per Share value of a Fund's portfolio holdings, which is disseminated every fifteen seconds throughout the trading day by one or more market data vendors. The IIV will be based on the current market value of a Fund's Disclosed Portfolio. The IIV does not necessarily reflect the precise composition of the current portfolio holdings of a Fund at a particular point in time. The IIV should not be viewed as a "real-time" update of the NAV of a Fund because the approximate value may not be calculated in the same manner as the NAV. The quotations for certain investments may not be updated during U.S. trading hours if such holdings do not trade in the U.S., except such quotations may be updated to reflect currency fluctuations.

[23] It is the Exchange's current understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

will provide a hyperlink on its Web site to the Funds' Web site.

As noted above, the NAV of each Fund will be calculated once each trading day shortly after 4:00 p.m. ET. The NAV will be disclosed on the Funds' Web site and the Exchange's Web site.

Criteria for Continued Listing

The Funds will be subject to the criteria in Rule 1602 for continued listing of the Shares. A minimum of 100,000 Shares of a Fund will be required to be outstanding at the start of trading upon such Fund's Conversion. The Exchange believes that the anticipated minimum number of shares outstanding at the start of trading upon the Conversions is sufficient to provide adequate market liquidity and to further each Fund's objectives. Each Fund has represented to the Exchange in its Prior Release, and continues to represent here, that, for continued listing of the Shares, it will be in compliance with Section 803 of the NYSE MKT Company Guide (Independent Directors and Audit Committee) and Rule 10A–3 under the Act.[24]

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to NYSE MKT Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, DMM responsibilities and account opening and customer suitability (NYSE MKT Rule 405).

Shares of each Fund will trade on the Exchange until 4 p.m. ET each business day and will trade in the minimum price variants established under NYSE MKT Rule 62. Trading rules pertaining to odd-lot trading in NYSE MKT equities (NYSE MKT Rule 124) will also apply.

The Exchange states that NYSE MKT Rule 15A complies with Rule 611 of Regulation NMS, which requires, among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. The trading of the Shares will be subject to certain conflict of interest provisions set forth in NYSE MKT Equities Rule 1604.

According to NYSE MKT Rule 1602, trading in Shares of a Fund will be halted if the circuit breaker parameters of NYSE MKT Rule 80B have been reached. In addition, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the underlying futures contracts; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule or by the halt or suspension of the trading of the underlying futures contracts.

In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider all factors, such as those set forth in NYSE MKT Rule 953NY(a), in addition to other factors that also may be relevant. In particular, if the portfolio holdings and NAV per Share are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or NAV per Share occurs.

Information Circular

The Exchange will distribute an Information Circular ("Circular") to its members in connection with the trading of the Shares. The Circular will discuss the special characteristics and risks associated with trading this type of security. Specifically, the Circular, among other things, will discuss: (i) What the Shares are; (ii) NYSE MKT Rule 405, which imposes a duty on member organizations to have a reasonable basis to believe that a customer is suitable for the particular investment prior to recommending to customers transactions in the Shares; (iii) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (iv) how information regarding the IIV and the Disclosed Portfolio is disseminated; (v) the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (vi) applicable NYSE MKT rules; and (vii) trading information.

The Circular will also explain that each Fund is subject to various fees and expenses described in its Registration Statement. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and the respective jurisdictions of the Commission and CFTC over the trading of physical commodities.

The Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission or the staff from any rules under the Act. The Circular will disclose that the NAV for Shares will be calculated shortly after 4:00 p.m. ET each trading day.

Surveillance

The Exchange represents that, upon conversion of the Funds, trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[25] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Commodity Futures with other markets that are members of the ISG, and the Exchange or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Commodity Futures from such markets. In addition, the Exchange may obtain information regarding trading in the Shares and Commodity Futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[26]

Not more than 10% of the net assets of a Fund, in the aggregate, shall consist of futures contracts whose principal market is not a member of the ISG or a market with which the Exchange has in

[24] 17 CFR 240.10A–3.

[25] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[26] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

place a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Sections 1001 through 1010 of the NYSE MKT Company Guide.

Except for the changes noted above, all other facts presented and representations made in the Prior Releases are unchanged.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[27] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule amendments to NYSE MKT Rules 1600 *et seq.* are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. The Conversions will be made in a fair an orderly manner, as each Fund largely will be structured following its Conversion in the same way as it was before its Conversion: It will remain a commodity pool; shareholders will continue to own the same Shares of a Fund as they owned prior to the Conversion (*i.e.*, there is no forced redemption of currently outstanding Shares, which will continue to be listed and traded on the Exchange); and shareholders will continue to be able to buy and sell Shares of each Fund on the Exchange throughout each business day at then prevailing market prices.

The Exchange believes that the Conversion is consistent with the Act in that the only significant change in the operation of the Funds from that described in the Prior Releases is that each Fund will issue and redeem Shares using a creation/redemption process. The shareholders of each Fund have approved each Fund's Conversion. Prior to the date of the Conversions, the Manager expects to engage multiple Authorized Participants with respect to the Funds, which the Manager believes will increase the trading volume of the Shares, and reduce the Shares' discount to NAV. The Manager represents that it believes that, by converting each Fund into an ETP structure that utilizes a creation/redemption process, Shares of each Fund are likely to trade at prices equal to or near NAV. The Manager also expects that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option to continually purchase or redeem Creation Units at their NAV. The Manager believes that there will be a positive impact to this arbitrage mechanism as a result of the conversion from a closed-end structure to one that implements a creation and redemption process, and that investors in the Funds' Shares will benefit from the increased likelihood of a closer alignment between the Funds' Share prices and their NAV. Moreover, the proposed amendments to the definition of Trust Units in NYSE MKT Rule 1600(b) to provide for continuous issuance and redemption, the addition of requirements relating to the Disclosed Portfolio in NYSE MKT Rule 1600(b)(iii) and the IIV in NYSE MKT Rule 1600(b)(iv), would provide an additional level of transparency and enhanced pricing information for Trust Units comparable to requirements applicable to certain other ETPs, such as Managed Fund Shares.

Proposed Commentary .04 to Rule 1600 would provide that, if an issuer's adviser is affiliated with a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. The proposed amendments to Rule 1602(a)(ii) will provide that the Exchange will obtain a representation from the issuer of each series of Trust Units that the Disclosed Portfolio as well as the NAV will be made available to all market participants at the same time. Rule 1602(b)(ii) will provide for trading halt procedures comparable to those applied to certain other ETPs, including if the circuit breaker parameters have been reached or if the Disclosed Portfolio, the NAV per Share, or the IIV are not being disseminated as required. Proposed new Rule 1602(b)(iii) would provide that each series of Trust Units will be listed and/or traded subject to application of specified continued listing criteria, including that the IIV for shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Units trade on the Exchange, that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time; and that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The text of NYSE MKT Rule 1603 would be deleted because it is obsolete, as described above. The proposed amendments to Rule 1605 would make clearer the financial instruments that would be covered by the rule's limitation of liability provisions.

With respect to the Shares, the proposed rule changes are designed to promote just and equitable principles of trade and to protect investors and the public interest. The Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rules 1600 *et seq.* All of the commodity futures contracts in which the Funds will invest will be traded on regulated exchanges. The Funds will not invest in options on commodity futures contracts, swaps, or over-the-counter derivatives. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information regarding trading in the Shares and Commodity Futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of a Fund, in the aggregate, shall consist of futures contracts whose principal market is not a member of the ISG or a market with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily settlement prices of the futures contracts held by the Funds are readily available from the Web sites of the relevant futures exchanges,

[27] 15 U.S.C. 78f(b)(5).

automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. Quotation and last-sale information for the Shares will be available via CTA. In addition, the Funds' Web site will display each Fund's daily NAV. An up-to-date value for each Fund's respective Index will be available through Bloomberg and other market data vendors every 15 seconds. The Funds' portfolio holdings will be disclosed on the Funds' Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Each of the Manager, SG, the Commodity Subadviser, and the Collateral Subadviser has erected and maintains firewalls within its respective institution to prevent the flow and/or use of non-public information regarding the portfolio of underlying instruments from the personnel involved in the development and implementation of the investment strategy to others such as sales and trading personnel. In addition, the Commodity Subadviser, the Collateral Subadviser, any subadviser of either, and the respective related personnel of both are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics.

Each issuer of Shares has represented that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is (and after the Conversion, will continue to be) publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IIV applicable to each Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Funds trade on the Exchange. On each business day, before commencement of trading in Shares on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for that Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The Web site for the Funds will include the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Moreover, as discussed previously, the Exchange will inform its member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares prior to the commencement of trading.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the continued listing and trading of additional types of actively managed ETPs that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the continued listing and trading of an additional type of ETP and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–58 and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13821 Filed 6–10–16; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78001; File No. SRndash;Phlxndash;2016–63]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to a Proposal To Relocate and Update the Existing Provisions of Rule 1080.07 to New Rule 1098

June 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, a proposal to relocate and update the existing provisions of Rule 1080.07 to new Rule 1098.and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to a proposal to relocate and update the existing provisions of Rule 1080.07 to new Rule 1098.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to move the existing provisions regarding complex orders from Rule 1080.07 to new Rule 1098, Complex Orders. The Exchange intends to update and reorganize its rule book in a number of ways. The Exchange believes that the complex orders provisions are easier to read and follow if organized into a separate rule. Various references to Rule 1080.07 within Rule 1080 and in Rules 1047 and 1066 will be changed to refer to Rule 1098.[3]

In addition, the Exchange proposes to make a few minor changes. First, the Exchange proposes to replace incorrect references in subparagraph (a)(i) of Rule 1080.07 to Nasdaq Options Services LLC and its abbreviation NOS with Nasdaq Execution Services, LLC and NES. The Exchange now uses NES for this purpose.[4] This will be reflected in new Rule 1098(a)(i).

Second, the Exchange proposes to amend subparagraph (c)(ii)(E) to replace the reference to the risk monitor mechanism with "automatic removal of quotes" and to delete the reference to Rule 1093, which was previously deleted and replaced with Rule 1095.[5]

Third, the Exchange proposes to refer to the "System" in new Rule 1098 rather than Phlx XL or Phlx XL II to parallel the rules of its affiliated options exchanges[6] and move away from that specific system name in the rules.[7] As a result, the terms "Phlx XL participant" will now be referred to as "participant" and "Phlx XL market maker" will now be referred to as a "Phlx electronic market maker."

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, by rendering the complex orders provision easier to read. The proposed relocation and other changes are minor and administrative.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal merely makes minor organizational corrections and changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Previously, Rule 1080.07 was Rule 1080.08. Securities Exchange Act Release No. 75436 (July 13, 2015), 80 FR 42566 (July 17, 2015) (SR–Phlx–2015–55). Two incorrect references to Rule 1080.08 remain in Rule 1080.07(e)(i)(B)(1) and (e)(vi)(B), which is now being changed to refer to Rule 1098.

[4] The Exchange replaced references to NOS with NES throughout its rule book but this particular reference was inadvertently omitted. Securities Exchange Act Release No. 71417 (January 28, 2014), 79 FR 6253 (February 3, 2014) (SR–Phlx–2014–04).

[5] Rule 1095 now covers various risk tools, including the risk monitor mechanism (which is now known as the Percentage-Based Threshold), the Volume-Based Threshold and the Multi-Trigger Threshold. Securities Exchange Act Release No. 76295 (October 29, 2015), 80 FR 68338 (November 4, 2015) (SR–Phlx–2015–83).

[6] *See e.g.,* NOM Chapter VI, Section 1(a) defining "System" in general terms.

[7] Separately, the Exchange intends to make this change throughout the rules.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(a)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–63, and should be submitted on or before July 5, 2016.

[12] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13822 Filed 6–10–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78005; File No. SR–BATS–2015–100]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 5 To Proposed Rule Change, as Modified by Amendments Nos. 1, 3, and 4 thereto, To Amend Rule 14.11(i) To Adopt Generic Listing Standards for Managed Fund Shares

June 7, 2016.

I. Introduction

On November 18, 2015, BATS Exchange, Inc. (now known as Bats BZX Exchange, Inc., "Exchange" or "BZX")[1] filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 14.11(i) by, among other things, adopting generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 25, 2015.[4] On January 4, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On February 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule change,[6] which replaced the originally filed proposed rule change in its entirety.[7] On February 11, 2016, the Exchange both filed and withdrew Amendment No. 2 to the proposed rule change. On February 11, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[8] On February 17, 2016, the Exchange filed Amendment No. 4 to the proposed rule change.[9] On February 22, 2016, the Commission issued notice of filing of Amendment Nos. 1, 3, and 4 to the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act[10] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto.[11] In the Order

[1] In March 2016, BATS changed its name from "BATS Exchange, Inc." to "Bats BZX Exchange, Inc." *See* Securities Act Release No. 77307 (Mar. 7, 2016), 81 FR 12996 (Mar. 11, 2016) (SR–BATS–2016–25) (publishing notice of the name change to Bats BZX Exchange, Inc.).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 76478 (Nov. 19, 2015), 80 FR 73841 ("Notice").

[5] *See* Securities Exchange Act Release No. 76820, 81 FR 989 (Jan. 8, 2016). The Commission designated February 23, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See id.*

[6] Amendment No. 1: (1) Clarifies the proposed treatment of convertible securities under the proposed generic listing criteria; (2) modifies the proposed criterion regarding American Depositary Receipts ("ADRs") to provide that no more than 10% of the equity weight of the portfolio shall consist of non-exchange traded (rather than unsponsored) ADRs; (3) modifies the proposed portfolio limit on listed derivatives to require that at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement ("CSSA"); (4) provides that a portfolio's investments in listed and over-the-counter derivatives will be calculated for purposes the proposed limits on such holdings as the total absolute notional value of the derivatives; (5) makes certain other conforming and clarifying changes. The amendments to the proposed rule change are available at: *http://www.sec.gov/comments/sr-bats-2015-100/bats2015100.shtml*.

[7] *See* Amendment No. 1, *supra* note 6, at 4.

[8] Amendment No. 3 deletes from the proposal the following two sentences: (1) "Such limitation will not apply to listed swaps because swaps are listed on swap execution facilities ("SEFs"), the majority of which are not members of ISG." and (2) "Such limitation would not apply to listed swaps because swaps are listed on SEFs, the majority of which are not members of ISG." Amendment No. 3 also corrects an erroneous statement in Item 11 to indicate that an Exhibit 4 was included in Amendment No. 1.

[9] Amendment No. 4 deletes from the proposal the following sentence: "Thus, if the limitation applied to swaps, there would effectively be a cap of 10% of the portfolio invested in listed swaps." Amendment No. 4 also amends two representations as follows (*added* language in brackets): The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares [and their underlying components] with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded[, or with which the Exchange has in place a CSSA.] In addition, the Exchange or FINRA[,] on behalf of the Exchange[,] may obtain information regarding trading in Managed Fund Shares [and their underlying components] from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA."

[10] 15 U.S.C. 78s(b)(2)(B).

[11] *See* Securities Exchange Act Release No. 77202, 81 FR 9889 (Feb. 26, 2016) ("Order Instituting Proceedings"). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national

Continued

Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.[12] On May 20, 2016, the Commission designated a longer period for Commission action on the proposed rule change.[13] The Commission has not received any comments on the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto.

Pursuant to Section 19(b)(1) of the Act[14] and Rule 19b-4 thereunder,[15] notice is hereby given that, on June 3, 2016, the Exchange filed Amendment No. 5 to the proposed rule change,[16] which replaced the originally filed proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 5 thereto, is as described in Items II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5 thereto, from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a rule change to adopt generic listing standards for shares listed under BZX Rule 14.11(i) ("Managed Fund Shares").

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 5 to SR–BATS–2015–100 amends and replaces in its entirety Amendment No. 1 to the proposal (and subsequent amendments thereto), which was filed on February 10, 2016, which amended and replaced in its entirety the proposal as originally submitted on November 15, 2015. The Exchange submits this Amendment No. 5 in order to clarify certain points about the proposal, to describe more accurately how investments in derivative securities will be treated, and provide an example of how portfolio exposure will be calculated.

The Exchange proposes to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares. Under the Exchange's current rules, a proposed rule change must be filed with the Securities and Exchange Commission ("SEC" or "Commission") for the listing and trading of each new series of Managed Fund Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 14.11(i) that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process. Prior to listing pursuant to proposed amended Rule 14.11(i), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Background

Rule 14.11(i) sets forth certain rules related to the listing and trading of Managed Fund Shares.[17] Under Rule 14.11(i)(3)(A), the term "Managed Fund Share" means a security that:

(a) Represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser (hereafter "Adviser") consistent with the Investment Company's investment objectives and policies;

(b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and

(c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Effectively, Managed Fund Shares are securities issued by an actively-managed open-end Investment Company (*i.e.*, an exchange-traded fund ("ETF") that is actively managed). Because Managed Fund Shares are actively-managed, they do not seek to replicate the performance of a specified passive index of securities. Instead, they

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securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." *See id.*, 81 FR at 9897.

[12] *See id.*

[13] *See* Securities Exchange Act Release No. 77871, 81 FR 33567 (May 26, 2016) (designating July 22, 2016 as the date by which the Commission must either approve or disapprove the proposed rule change).

[14] 15 U.S.C. 78s(b)(1).

[15] 17 CFR 240.19b–4.

[16] Amendment No. 5: (1) Clarifies the context of "system failures" in the definition of Normal Market Conditions; (2) clarifies the scope of "equity" securities to also include U.S. Component Stocks, Non-U.S. Component Stocks, Derivative Securities Products, and Linked Securities listed pursuant to equivalent rules of another national securities exchange; (3) clarifies the exclusion of U.S. Department of Treasury securities and government-sponsored entity securities from the minimum diversification requirements applicable to fixed income securities; (4) provides that the calculation for complying with the percentage limitations with respect to listed derivatives and OTC derivatives (as defined herein) will be based on aggregate gross notional values of the derivatives; (5) provides additional minimum diversification requirements with respect to listed derivatives, to be calculated based on aggregate gross notional values, including gross notional exposures; (6) clarifies that, to the extent that listed or OTC derivatives (as defined herein) are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure is required to meet the criteria set forth in Rule 14.11(i)(4)(C)(i) and (ii) (including gross notional exposures), respectively; (7) provides examples on how the percentage limitations applicable to listed and OTC derivatives (as defined herein) would be calculated; and (8) confirms that (a) an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements, and (b) if the series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures.

[17] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) (Order Approving Proposed Rule Change to Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange) (the "Approval Order"). The Approval Order approved the rules permitting the listing of both Tier I and Tier II securities on the Exchange and the requirements associated therewith, which includes the listing and trading of Index Fund Shares and Managed Fund Shares, trading hours and halts, and listing fees originally applicable to Managed Fund Shares.

generally use an active investment strategy to seek to meet their investment objectives. In contrast, an open-end Investment Company that issues Index Fund Shares, listed and traded on the Exchange pursuant to Rule 14.11(c), seeks to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

All Managed Fund Shares listed pursuant to Rule 14.11(i) are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange and, as such, are subject to the full panoply of Exchange rules and procedures that currently govern the trading of securities on the Exchange.[18]

In addition, Rule 14.11(i) currently provides for the criteria that Managed Fund Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Fund Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Managed Fund Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Rule 14.11(i)(2)(A) specifies that the Exchange will file separate proposals under Section 19(b) of the Act (hereafter, a "proposed rule change") before the listing of Managed Fund Shares, which, in conjunction with the proposal to create generic listing standards for Managed Fund Shares, the Exchange is proposing to delete.

Proposed Changes to Rule 14.11(i)

The Exchange is proposing to amend Rule 14.11(i) to specify that the Exchange may approve Managed Fund Shares for listing pursuant to SEC Rule 19b–4(e) under the Act, which pertains to derivative securities products ("SEC Rule 19b–4(e)").[19] SEC Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[20] if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which "passive" ETFs are listed under Rule 14.11.

The Exchange would also specify within Rule 14.11(i)(4)(C) that components of Managed Fund Shares listed pursuant to SEC Rule 19b–4(e) must satisfy the requirements of Rule 14.11(i) on an initial and continued basis, which includes certain specific criteria that the Exchange is proposing to include within Rule 14.11(i)(4)(C), as described in greater detail below. As proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares with components that do not satisfy the additional criteria described below or components other than those specified below. For example, if the components of a Managed Fund Share exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading such Managed Fund Share. Similarly, if the components of a Managed Fund Share included a security or asset that is not specified below, the Exchange would file a separate proposed rule change.

The Exchange would also amend the definition of the term "Disclosed Portfolio" under Rule 14.11(i)(3)(B) in order to require that the Web site for each series of Managed Fund Shares listed on the Exchange disclose the following information regarding the Disclosed Portfolio, to the extent applicable: Ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio.[21]

The Exchange would also add to Rule 14.11(i)(4)(A) by specifying that all Managed Fund Shares must have a stated investment objective, which must be adhered to under normal market conditions.[22]

Finally, the Exchange would also amend the continued listing requirement in Rule 14.11(i)(4)(B) by changing the requirement that an Intraday Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that an Intraday Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours, as defined in Exchange Rule 1.5(w).

Proposed Managed Fund Share Portfolio Standards

The Exchange is proposing standards that would pertain to Managed Fund Shares to qualify for listing and trading pursuant to SEC Rule 19b–4(e). These standards would be grouped according to security or asset type. The Exchange notes that the standards proposed for a Managed Fund Share portfolio that holds equity securities, Derivative Securities Products, and Linked Securities are based in large part on the existing equity security standards applicable to Index Fund Shares in Exchange Rule 14.11(c)(3). The standards proposed for a Managed Fund Share portfolio that holds fixed income securities are based in large part on the existing fixed income security standards applicable to Index Fund Shares in Rule 14.11(c)(4). Many of the standards proposed for other types of holdings in a Managed Fund Share portfolio are based on previous proposed rule changes for specific series of Managed Fund Shares.[23]

[18] *See* Rule 14.11(i)(2).

[19] 17 CFR 240.19b–4(e). As provided under SEC Rule 19b–4(e), the term "new derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

[20] 17 CFR 240.19b–4(c)(1). As provided under SEC Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

[21] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding. *See, e.g.*, Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (the "PIMCO Total Return Use of Derivatives Approval").

[22] The Exchange would also add a new defined term under Rule 14.11(i)(3)(E) to specify that the term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[23] Securities Exchange Act Release Nos. 74193 (February 3, 2015), 80 FR 7066 (February 9, 2015) (SR–BATS–2014–054) (the "iShares Short Maturity Municipal Bond Approval"); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR–BATS–2014–056) (the "iShares U.S. Fixed Income Balanced Risk Approval"); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (the "PIMCO Total Return Approval"); the PIMCO Total Return Use of Derivatives Approval; 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR–NYSEArca–2013–08) (the "SPDR Blackstone/GSO Senior Loan Approval"); 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca–2012–139) (the

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Proposed Rule 14.11(i)(4)(C)(i) would describe the standards for a Managed Fund Share portfolio that holds equity securities, which are defined to be U.S. Component Stocks,[24] Non-U.S. Component Stocks,[25] Derivative Securities Products,[26] and Linked Securities[27] listed on a national securities exchange. For Derivative Securities Products and Linked Securities, no more than 25% of the equity weight of the portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Linked Securities. To the extent that a portfolio includes convertible securities, the equity security into which such security is converted shall meet the criteria of this Rule 14.11(i)(4)(C)(i) after converting.

As proposed in Rule 14.11(i)(4)(C)(i)(a), the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(1) Component stocks (excluding Derivative Securities Products and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Linked Securities) each must have a minimum market value of at least $75 million;[28]

(2) Component stocks (excluding Derivative Securities Products and Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Linked Securities) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;[29]

(3) The most heavily weighted component stock (excluding Derivative Securities Products and Linked Securities) must not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Linked Securities) must not exceed 65% of the equity weight of the portfolio;[30]

(4) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there would be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;[31]

(5) Except as provided in proposed Rule 14.11(i)(4)(C)(i)(a), equity securities in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS;[32] and

(6) American Depositary Receipts ("ADRs") may be exchange traded or non-exchange traded. However no more than 10% of the equity weight of the portfolio shall consist of non-exchange traded ADRs.

As proposed in Rule 14.11(i)(4)(C)(i)(b), the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(1) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;[33]

(2) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;[34]

(3) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;[35]

(4) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Linked Securities constitute, at least in part, components underlying a series

"First Trust Preferred Securities and Income Approval"); 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (the "International Bear Approval"); 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR–NYSEArca–2010–04) (the "WisdomTree Real Return Approval"); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR–NYSEArca–2012–25) (the "WisdomTree Brazil Bond Approval"). Certain standards proposed herein for Managed Fund Shares are also based on previously proposed rule changes for specific index-based series of Index Fund Shares that did not satisfy the standards for those products on their respective listing exchange and for which Commission approval was required prior to listing and trading. *See* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92); 63881(February 9, 2011), 76 FR 9055 (February 16, 2011) (SR–NYSEArca–2010–120); 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR–NYSEArca–2010–94); and 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR–NYSEArca–2012–108) (the "NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval").

[24] For the purposes of Rule 14.11(i) and this proposal, the term "U.S. Component Stocks" will have the same meaning as defined in Rule 14.11(c)(1)(D).

[25] For the purposes of Rule 14.11(i) and this proposal, the term "Non-U.S. Component Stocks" will have the same meaning as defined in Rule 14.11(c)(1)(E).

[26] For the purposes of Rule 14.11(i) and this proposal, the term "Derivative Securities Products will have the same meaning as defined in Rule 14.11(c)(3)(A)(i)(a) and will include both those Derivative Securities Products listed on the Exchange as well as each of the equivalent security types listed on another national securities exchange.

[27] Linked Securities are securities listed on the Exchange under Rule 14.11(d) and each of the equivalent security types listed on another national securities exchange.

[28] The proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(a), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Linked Securities.

[29] This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(b), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Linked Securities.

[30] This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(c), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Linked Securities.

[31] This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(d), except for the omission of the reference to "index," which is not applicable, the addition of the reference to Linked Securities, the reference to the equity portion of the portfolio not including Non-U.S. Component Stocks, and the reference to the 100% limitation applying to the "equity weight" of the portfolio—this last difference is included because the proposed standards in Rule 14.11(i)(4)(C) permit the inclusion of non-equity securities, whereas Rule 14.11(c)(3) applies only to equity securities.

[32] 17 CFR 240.600. This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(i)(e), except for the addition of "equity" to make clear that the standard applies to "equity securities" and the omission of the reference to "index," which is not applicable.

[33] The proposed text is identical to the corresponding representation from the Non-U.S. Components Release, as defined in footnote 24, below. The proposed text is also identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(a), except for the omission of the reference to "index," which is not applicable, and that each Non-U.S. Component Stock must have a minimum market value of at least $100 million instead of the 70% required under Rule 14.11(c)(3)(A)(ii)(a).

[34] The proposed text is identical to the corresponding representation from the Non-U.S. Components Release, as defined in footnote 24, below. This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(b), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Linked Securities.

[35] This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(c), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Linked Securities.

of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; [36] and

(5) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.[37]

The Exchange notes that, as approved by the Commission for certain Managed Fund Shares [38] and also not required under corresponding Rule 14.11(c)(3)(A)(ii) related to Index Fund Shares,[39] it is not proposing to require that any of the equity portion of the equity portfolio composed of Non-U.S. Component Stocks be listed on markets that are either a member of the Intermarket Surveillance Group ("ISG") or a market with which the Exchange has a comprehensive surveillance sharing agreement ("CSSA").[40] However, as further detailed below, the Exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded.

Proposed Rule 14.11(i)(4)(C)(ii) would describe the standards for a Managed Fund Share portfolio that holds fixed income securities, which are debt securities [41] that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities,[42] and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted shall meet the criteria of proposed Rule 14.11(i)(4)(C)(ii) after converting. The components of the fixed income portion of a portfolio shall meet the following criteria initially and on a continuing basis:

(1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio shall each have a minimum original principal amount outstanding of $100 million or more; [43]

(2) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) shall not in the aggregate account for more than 65% of the fixed income weight of the portfolio; [44]

(3) An underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Rule 14.11(i)(4)(C)(i); [45]

(4) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and

(5) Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

Proposed Rule 14.11(i)(4)(C)(iii) describes the standards for a Managed Fund Share portfolio that holds cash and cash equivalents.[46] Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months. There would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments would include the following: [47] (1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements and reverse repurchase agreements; (5) bank time deposits, which are monies kept on deposit with banks or savings

[36] This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(d), except for the omission of the reference to "index," which is not applicable, the addition of the reference to Linked Securities, the reference to the equity portion of the portfolio including Non-U.S. Component Stocks, and the reference to the 100% limitation applying to the "equity weight" of the portfolio—this last difference is included because the proposed standards in Rule 14.11(i)(4)(C) permit the inclusion of non-equity securities, whereas Rule 14.11(c)(3) applies only to equity securities.

[37] 17 CFR 240.600. This proposed text is identical to the corresponding text of Rule 14.11(c)(3)(A)(ii)(e), except for the addition of "equity" to make clear that the standard applies to "equity securities" and the omission of the reference to "index," which is not applicable.

[38] *See* Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR–NYSEArca–2014–100) (the "Non-U.S. Components Release").

[39] Under Rule 14.11(c)(3)(A)(ii), index fund shares with components that include Non-U.S. Component Stocks can hold a portfolio that is entirely composed of Non-U.S. Component Stocks that are listed on markets that are neither members of ISG, nor with which the Exchange has in place a CSSA.

[40] ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. *See https://www.isgportal.org/home.html.*

[41] Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities.

[42] The Exchange notes that, for purposes of this proposal, the issuer of asset backed securities will be considered the issuer of the underlying debt.

[43] This proposed text of 14.11(i)(4)(C)(ii)(a)(1) is based on the corresponding text of 14.11(c)(4)(B)(i)(b).

[44] This proposed rule text is identical to the corresponding text of Rule 14.11(c)(4)(B)(i)(d), except for the omission of the reference to "index," which is not applicable, and the exclusion of "GSE Securities," which is consistent with the corresponding text of NYSE Arca, Inc. ("Arca") Commentary .02(a)(4) to Rule 5.2(j)(3).

[45] This proposed text is similar to the corresponding text of Rule 14.11(c)(4)(B)(i)(e), except for the omission of the reference to "index," which is not applicable and the provision that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in proposed Rule 14.11(i)(4)(C)(i).

[46] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include cash and cash equivalents. *See, e.g.,* iShares U.S. Fixed Income Balanced Risk Approval at 9789, SPDR Blackstone/GSO Senior Loan Approval at 19768–69, and First Trust Preferred Securities and Income Approval at 76150.

[47] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly specified short-term instruments with respect to their inclusion in Managed Fund Share holdings. *See, e.g.,* First Trust Preferred Securities and Income Approval at 76150–51.

and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which are short-term unsecured promissory notes; and (7) money market funds.

Proposed Rule 14.11(i)(4)(C)(iv) describes the standards for a Managed Fund Share portfolio that holds listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.[48] There would be no limitation to the percentage of the portfolio invested in such holdings; provided, however, that, in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates or for which the principal market is a market with which the Exchange has a CSSA, calculated using the aggregate gross notional value of such holdings.[49] In addition, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). The Exchange notes that, for purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the gross notional value of the listed derivatives.

Proposed Rule 14.11(i)(4)(C)(v) describes the standards for a Managed Fund Share portfolio that holds over the counter ("OTC") derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.[50] Proposed Rule 14.11(i)(4)(C)(v) also provides that the aggregate gross notional value of OTC Derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).

Proposed Rule 14.11(i)(4)(C)(vi) provides that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Rule 14.11(i)(4)(C)(i) and 14.11(i)(4)(C)(ii) (including gross notional exposures), respectively. The Exchange notes that, for purposes of this proposal, a portfolio's investment in OTC derivatives will be calculated as the gross notional value of the OTC derivatives.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Fund Shares. Additionally, the Exchange believes that the proposed portfolio standards for listing and trading Managed Fund Shares, many of which track existing Exchange rules relating to Index Fund Shares, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

As an example of how the Exchange would determine whether a series of Managed Fund Shares meets these proposed portfolio exposure requirements, see the following examples based on a hypothetical portfolio. For purposes of these examples, it will be assumed that the portfolio meets proposed Rules 14.11(i)(4)(C)(i)(a)(1), (2), (4), (5), and (6), 14.11(i)(4)(C)(i)(b)(1), (2), (4), and (5), and 14.11(i)(4)(C)(ii)(a), (c), and (d).

Instrument type	Units	Price ($)	Market value	Percent of portfolio
U.S. Equity 1	15,000	25	375,000	7.50
U.S. Equity 2	10,000	50	500,000	10.00
U.S. Equity 3	5,000	100	500,000	10.00
U.S. Equity 4	1,200	150	180,000	3.60
U.S. Equity 5	1,000	250	250,000	5.00
Int'l Equity 1	9,000	25	225,000	4.50
Int'l Equity 2	5,000	50	250,000	5.00
Int'l Equity 3	5,000	100	500,000	10.00
Int'l Equity 4	10,000	75	750,000	15.00
Int'l Equity 5	2,000	75	150,000	3.00
Fixed Income 1	5,000	25	125,000	2.50
Fixed Income 2	6,400	50	320,000	6.40
Fixed Income 3 (Private label ABS)	2,000	75	150,000	3.00
TBill 1 (2 months)	12,500	50	625,000	12.50
TBill 2 (6 months)	2,000	50	100,000	2.00
Total Equity				3,680,000
Total Fixed Income				1,320,000
Total			5,000,000	100.00

[48] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include listed derivatives. *See, e.g.,* Securities Exchange Act Release Nos. 75 FR 13616 (March 22, 2010) (SR–NYSEArca–2010–04) at 13617; and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR–NYSEArca–2012–25) at 32163.

[49] *See* supra note 40.

[50] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Shares to include OTC derivatives, specifically OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS and therefore would not satisfy the requirements of Rule 14.11(c)(3)(A)(i) or the analogous rule on another listing exchange. *See, e.g.,* Securities Exchange Act Release No. 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR–NYSEArca–2012–108) at 23602.

In this hypothetical portfolio, proposed Rule 14.11(i)(4)(C)(i)(a)(3) is met because the most heavily weighted single U.S. equity component stock (both U.S. Equity 2 and U.S. Equity 3) represents 13.6% of the equity weight of the portfolio (500,000/3,680,000) and the five most heavily weighted U.S. equity component stocks represent 49% of the equity weight of the portfolio (1,805,000/3,680,000) and proposed Rule 14.11(i)(4)(C)(i)(b)(3) is met because the most heavily weighted Non-U.S. Component Stock composes 20.4% of the equity weight of the portfolio (750,000/3,680,000) and the five most heavily weighted Non-U.S. Component Stocks compose 51% of the equity weight of the portfolio (1,875,000/3,680,000). Proposed Rules 14.11(i)(4)(C)(ii)(b) and (e) are met because the most heavily weighted fixed income security (excluding Treasury Securities) represents 24.2% of the fixed income weight of the portfolio (320,000/1,320,000), the five most heavily weighted fixed income securities (excluding Treasury Securities) represent 45% of the fixed income weight of the portfolio (595,000/1,320,000), and the non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components represent 11.4% of the fixed income weight of the portfolio (150,000/1,320,000). For purposes of this analysis, both TBill 1 and TBill 2 will be counted as fixed income securities even though TBill 1 would be included in the definition of cash and cash equivalents. There is no portfolio analysis specific to the cash and cash equivalents portion of the portfolio because there are no limitations to the percentage of the portfolio invested in instruments that qualify as cash and cash equivalents.

Suppose that the hypothetical portfolio laid out above added the following instruments:

Instrument type	Units of reference asset in the contract(s)	Price or face value of reference asset	Absolute notional exposure	Precent of portfolio (including gross notional exposures)
Listed Derivative 1 (Option on U.S. Equity 1)	10,000	20	200,000	3.20
Listed Derivative 2 (Treasury Futures)	5	100,000	500,000	8.00
Listed Derivative 3 (Commodity Swap)	200	250	50,000	0.80
OTC Derivative 1 (Credit Default Swap)	N/A	500,000	500,000	8.00
Total Derivative			1,250,000	
Listed Derivative			750,000	
Derivative Equity			200,000	
Derivative FI			500,000	
Derivative Other			550,000	
Total Equity			3,880,000	
Total Fixed Income			1,820,000	
Total			6,250,000	

In this hypothetical portfolio, proposed Rule 14.11(i)(4)(C)(vi) provides that the calculations provided above related to Rules 14.11(i)(4)(C)(i) and (ii) would now need to include the aggregate gross notional value of Listed Derivative 1 and Listed Derivative 2, respectively. As such, the $200,000 absolute notional exposure from Listed Derivative 1 would be added to the existing exposure to U.S. Equity 1 and proposed Rule 14.11(i)(4)(C)(i)(a)(3) would be met because the most heavily weighted single U.S. equity component stock (now U.S. Equity 1) represents 14.8% of the equity weight of the portfolio (575,000/3,880,000) and the five most heavily weighted U.S. equity component stocks represent 51.7% of the equity weight of the portfolio (2,005,000/3,880,000). Similarly, proposed Rule 14.11(4)(C)(i)(b)(3) is met because the additional $500,000 in aggregate gross notional exposure to fixed income securities (in particular, Treasury Securities) gained through Listed Derivative 2 is added included in the calculation such that the most heavily weighted fixed income security (excluding Treasury Securities) represents 17.6% of the fixed income weight of the portfolio (320,000/1,820,000), the five most heavily weighted fixed income securities (excluding Treasury Securities) represent 32.7% of the fixed income weight of the portfolio (595,000/1,820,000), and the non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components represent 8.2% of the fixed income weight of the portfolio (150,000/1,820,000). Proposed Rule 14.11(4)(C)(iv)(a) would be met if both Listed Derivative 1 and Listed Derivative 2 are derivatives for which the Exchange may obtain information via the ISG, from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement [((500,000 + 200,000)/750,000) = 93%>90%]. However, if Listed Derivative 1 or Listed Derivative 2 did not meet that requirement, the portfolio would not meet proposed Rule 14.11(4)(C)(iv)(a) [((500,000 + 50,000)/750,000) = 73.3%<90%; ((200,000 + 50,000)/750,000) = 33.3% < 90%]. Proposed Rule 14.11(4)(C)(iv)(b) is met because the aggregate gross notional value of listed derivatives is 12% of the portfolio (750,000/6,250,000), which is less than both standards in the proposed rule. Proposed Rule 14.11(4)(C)(v) would be met because the aggregate gross notional exposure of OTC Derivatives is 8% of the weight of the portfolio (500,000/6,250,000).

In support of this proposal, the Exchange represents that: (1) Generically listed Managed Fund Shares will conform to the initial and continued listing criteria under Rule 14.11(i)(4)(A) and (B); (2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares; (3) prior to the

commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Members in an information circular of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under Rule 3.7, the risks involved in trading the Managed Fund Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated, how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated, prospectus delivery requirements, and other trading information. In addition, the information circular will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4 p.m. ET each trading day; and (4) the issuer of a series of Managed Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under Rule 14.10(c)(3).

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Members or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [51] in general and Section 6(b)(5) of the Act [52] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. Specifically, after more than six years under the current process, whereby an exchange is required to file a proposed rule change with the Commission for the listing and trading of each new series of Managed Fund Shares, the Exchange believes that it is appropriate to codify certain rules within Rule 14.11(i) that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Fund Shares that have investment portfolios that are similar to investment portfolios for Index Fund Shares, which have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission. In this regard, the Exchange notes that the standards proposed for Managed Fund Share portfolios that include equity securities, Derivative Securities Products, and Linked Securities are based in large part on the existing equity security standards applicable to Index Fund Shares based on either a U.S. index or portfolio or an international or global index or portfolio found in Rule 14.11(c)(3)(A)(i) [53] and (ii), [54] respectively, and that the standards proposed for Managed Fund Share portfolios that include fixed income securities are based in large part on the existing fixed income standards applicable to Index Fund Shares in 14.11(c)(4). Additionally, many of the standards proposed for other types of holdings of series of Managed Fund Shares are based on previous proposed rule changes for specific series of Managed Fund Shares.[55] The Exchange notes that prior to listing pursuant to proposed amended Rule 14.11(i), an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

With respect to the proposed addition to the criteria of Rule 14.11(i)(3)(B) to provide that the Web site for each series of Managed Fund Shares shall disclose certain information regarding the Disclosed Portfolio, to the extent applicable, the Exchange notes that proposed rule changes approved by the Commission for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding.[56] With respect to the proposed exclusion of Derivative Securities Products and Linked Securities from the requirements of proposed Rule 14.11(i)(4)(C)(i)(a) and (b), the Exchange believes it is appropriate to exclude Linked Securities as well as Derivative Securities Products from certain component stock eligibility criteria for Managed Fund Shares in so far as Derivative Securities Products and Linked Securities are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such securities are listed. Derivative Securities Products and Linked Securities that are components of a fund's portfolio would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act [57] or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act [58] or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b-4(e) under the Act.[59] The Exchange also notes that Derivative Securities Products and Linked Securities are derivatively priced, and, therefore, the Exchange believes that it would not be necessary to apply the proposed generic quantitative criteria (*e.g.*, market capitalization, trading volume, or portfolio component weighting) applicable to equity securities other than Derivative Securities Products or Linked Securities (*e.g.*, common stocks) to such products.

With respect to the proposed amendment to the continued listing requirement in Rule 14.11(i)(4)(B)(i) to require dissemination of an Intraday Indicative Value at least every 15 seconds during Regular Trading Hours, such requirement conforms to the requirement applicable to the dissemination of the Intraday Indicative Value for Index Fund Shares in Rule 14.11(c)(3)(C) and 14.11(c)(6)(A). In addition, such dissemination is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[60]

[51] 15 U.S.C. 78f.

[52] 15 U.S.C. 78f(b)(5).

[53] *See* supra notes 28 through 32.

[54] *See* supra notes 33 through 40.

[55] *See* supra note 23.

[56] *See* supra note 21.

[57] 15 U.S.C. 78s(b)(2).

[58] 15 U.S.C. 78s(b)(3)(A).

[59] 17 CFR 240.19b–4(e).

[60] *See* supra note 23.

As proposed, pursuant to Rule 14.11(i)(4)(C)(ii)(c) an underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers, provided, however, that there would be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities. The Exchange notes that when evaluated in conjunction with proposed Rule 14.11(i)(4)(C)(ii)(b), the proposed rule is consistent with current Rules 14.11(c)(4)(B)(i)(d) and (e) in that it provides for a maximum weighting of a fixed income security in the fixed income portion of the portfolio of a fund that is comparable to the existing rules applicable to Index Fund Shares based on fixed income indexes.

With respect to the proposed amendment to Rule 14.11(i)(4)(C)(iii) relating to cash and cash equivalents, while there is no limitation on the amount of cash and cash equivalents can make up of the portfolio, such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility. Further, the requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[61]

With respect to proposed Rule 14.11(i)(4)(C)(iv) relating to listed derivatives, the Exchange believes that it is appropriate that there be no limit to the percentage of a portfolio invested in such holdings, provided that, in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement CSSA, calculated using the aggregate gross notional value of such holdings. Such a requirement would facilitate information sharing among market participants trading shares of a series of Managed Fund Shares as well as futures and options that such series may hold. In addition, the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). Such a requirement would act to limit the concentration of any single or group of five or fewer underlying reference assets in the portfolio. In addition, listed swaps would be centrally cleared, reducing counterparty risk and thereby furthering investor protection.[62]

With respect to proposed Rule 14.11(i)(4)(C)(v) relating to OTC derivatives, the Exchange believes that the limitation to 20% of a fund's assets would assure that, to the extent that a fund holds derivatives, the preponderance of fund investments would not be in derivatives that are not listed and centrally cleared. The Exchange believes that such a limitation is sufficient to mitigate the risks associated with price manipulation because a 20% cap on OTC derivatives will ensure that any series of Managed Fund Shares will be sufficiently broad-based in scope to minimize potential manipulation associated with OTC derivatives because the remaining 80% of the portfolio will consist of instruments subject to numerous restrictions designed to prevent manipulation, including equity securities (which, as proposed, would be subject to market cap, trading volume, and diversity requirements, among others), fixed income securities (which, as proposed, would be subject to principal amount outstanding, diversity, and issuer requirements, among others), cash and cash equivalents (which, as proposed, would be limited to short-term, highly liquid, and high credit quality instruments), and/or listed derivatives (which, as proposed, 90% of the weight of futures and options will be futures and options whose principal market is a member of ISG). With respect to proposed Rule 14.11(i)(4)(C)(vi) related to a fund's use of listed or OTC derivatives to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the Exchange notes that such exposure would be required to meet the numerical and other criteria set forth in proposed Rule 14.11(i)(4)(C)(i) and 14.11(i)(4)(C)(ii), respectively.

Quotation and other market information relating to listed futures and options is available from the exchanges listing such instruments as well as from market data vendors. With respect to centrally-cleared swaps[63] and non-centrally-cleared swaps regulated by the Commodity Futures Trading Commission (the "CFTC"),[64] the Dodd-Frank Act mandates that swap information be reported to swap data repositories ("SDRs").[65] SDRs provide a central facility for swap data reporting and recordkeeping and are required to comply with data standards set by the CFTC, including real-time public reporting of swap transaction data to a derivatives clearing organization or SEF.[66] SDRs require real-time reporting of all OTC and centrally cleared derivatives, including public reporting of the swap price and size. The parties responsible for reporting swaps information are CFTC-registered swap dealers ("RSDs"), major swap participants, and SEFs. If swap counterparties do not fall into the above categories, then one of the parties to the swap must report the trade to the SDR. Cleared swaps regulated by the CFTC must be executed on a Designated Contract Market ("DCM") or SEF. Such cleared swaps have the same reporting requirements as futures, including end-of-day price, volume, and open interest. CFTC swaps reporting requirements require public dissemination of, among other items, product ID (if available); asset class; underlying reference asset, reference issuer, or reference index; termination date; date and time of execution; price, including currency; notional amounts, including currency; whether direct or indirect counterparties include an RSD; whether cleared or un-cleared; and platform ID of where the contract was executed (if applicable).

With respect to security-based swaps regulated by the Commission, the Commission has adopted Regulation SBSR under the Act implementing requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act. Regulation SBSR provides for the reporting of security-based swap information to registered security-based swap data repositories ("Registered SDRs") or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by Registered SDRs.[67]

Price information relating to forwards and OTC options will be available from major market data vendors.

The Exchange notes that a fund's investments in derivative instruments would be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company can obtain. A fund's investments would be consistent with its investment objective and would not be used to enhance leverage. To limit the potential risk associated with a fund's use of derivatives, a fund will segregate or "earmark" assets determined to be liquid by a fund in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. A fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2xs or 3xs) of a fund's broad-based securities market index (as defined in Form N–1A).[68]

The proposed rule change is also designed to protect investors and the public interest because Managed Fund Shares listed and traded pursuant to Rule 14.11(i), including pursuant to the proposed new portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange, as further described in the Approval Order.

The proposed rule change is also designed to protect investors and the public interest as well as to promote just and equitable principles of trade in that any Non-U.S. Component Stocks will each meet the following criteria initially and on a continuing basis: (1) Have a minimum market value of at least $100 million; (2) have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; and (4) each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting. The Exchange believes that such quantitative criteria are sufficient to mitigate any concerns that may arise on the basis of a series of Managed Fund Shares potentially holding 100% of its assets in Non-U.S. Component Stocks that are neither listed on members of ISG nor exchanges with which the Exchange has in place a CSSA because, as stated above, such criteria are either the same or more stringent than the portfolio requirements for Index Fund Shares that hold Non-U.S. Component Stocks and there are no such requirements related to such securities being listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA. Further, the Exchange has not encountered and is not aware of any instances of manipulation or other negative impact in any series of Index Fund Shares that has occurred by virtue of the Index Fund Shares holding such Non-U.S. Component Stocks. As such, the Exchange believes that there should be no difference in the portfolio requirements for Managed Fund Shares and Index Fund Shares as it relates to holding Non-U.S. Component Stocks that are not listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Fund Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 14.11(i). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares and their underlying components with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA. In addition, the Exchange or FINRA on behalf of the Exchange may obtain information regarding trading in Managed Fund Shares and their underlying components from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b–4(e) under the Act by allowing Managed Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares that do not satisfy the additional criteria described above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Fund Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Fund Shares more competitive by applying uniform listing standards with respect to Managed Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[61] *See supra* note 46.

[62] The Commission has noted that "[c]entral clearing mitigates counterparty risk among dealers and other institutions by shifting that risk from individual counterparties to [central counterparties ("CCPs")], thereby protecting CCPs from each other's potential failures." See Securities Exchange Act Release No. 67286 (June 28, 2012) (File No. S7–44–10) (Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies).

[63] There are currently five categories of swaps eligible for central clearing: Interest rate swaps; credit default swaps; foreign exchange swaps; equity swaps; and commodity swaps. The following entities provide central clearing for OTC derivatives: ICE Clear Credit (U.S.); ICE Clear (E.U.); CME Group; LCH.Clearnet; and Eurex.

[64] Pursuant to the Dodd-Frank Act, OTC and centrally-cleared swaps are regulated by the CFTC with the exception of security-based swaps, which are regulated by the Commission.

[65] The following entities are provisionally registered with the CFTC as SDRs: BSDR LLC. Chicago Mercantile Exchange, Inc., DTCC Data Repository, and ICE Trade Vault.

[66] Approximately 21 entities are currently temporarily registered with the CFTC as SEFs.

[67] *See* Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information).

[68] *See, e.g.*, Securities Exchange Act Release No. 7482 (April 29, 2015), 86 FR 25723 (May 5, 2015) (SR–NYSEArca-2014–89) (order approving listing and trading of shares of eight PIMCO exchange-traded funds).

IV. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 5 Thereto, and Timing for Commission Action

Section 19(b)(2) of the Act[69] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The Commission determined that it was appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change.[70] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[71] designated July 22, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 5 thereto (File No. SR–BATS–2015–100).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 5 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2015–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–100 and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13825 Filed 6–10–16; 8:45 am]

BILLING CODE 8011–01–P

[69] 15 U.S.C. 78s(b)(2).

[70] *See supra* note 13 and accompanying text.

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32140; File No. 812–14525]

Guggenheim Funds Trust, et al.; Notice of Application

June 6, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act ("BDCs"), and registered unit investment trusts (collectively, "Underlying Funds") that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Guggenheim Funds Trust and Guggenheim Variable Funds Trust, each a Delaware statutory trust and registered under the Act as an open-end management investment company with multiple series (each, a "Trust"); Guggenheim Partners Investment Management, LLC, a Delaware limited liability company ("GPIM"), and Security Investors, LLC, a Kansas limited liability company ("Security Investors"), each registered as an investment adviser under the Investment Advisers Act of 1940; and Guggenheim Funds Distributors, LLC, a Delaware limited liability company, registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on July 31, 2015, and amended on December 16, 2015 and April 13, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 1, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Guggenheim Funds Trust, Guggenheim Variable Funds Trust, and Guggenheim Funds Distributors, LLC, 805 King Farm Boulevard, Suite 600, Rockville, MD 20850; Security Investors, LLC, 330 Madison Avenue, 10th Floor, New York, NY 10022; and Guggenheim Partners Investment Management, LLC, 100 Wilshire Boulevard, 5th Floor, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) a Fund[1] (each a "Fund of Funds") to acquire shares of Underlying Funds[2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies or series thereof, their principal underwriters and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[4] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Certain Underlying Funds may invest up to 25% of their assets in a wholly-owned and controlled subsidiary of the Underlying Fund organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction (each, a "Cayman Sub"), in order to invest in commodity-related instruments and certain other instruments. Applicants state that these Cayman Subs are created for tax purposes in order to ensure that the Underlying Fund would remain qualified as a regulated investment company for U.S. federal income tax purposes.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same "group of investment companies" as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13826 Filed 6–10–16; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request that the order apply to each existing and future series of the Trusts and to each existing and future registered open-end investment company or series thereof that is advised by GPIM or Security Investors or their successors or by any other investment adviser controlling, controlled by, or under common control with GPIM or Security Investors or their successors and is part of the same "group of investment companies" as the Trusts (each, a "Fund"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term "group of investment companies" means any two or more registered investment companies, including closed-end investment companies or BDCs, that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund ("ETF").

[3] Applicants do not request relief for the Funds of Funds to invest in reliance on the order in BDCs and registered closed-end investment companies that are not listed and traded on a national securities exchange.

[4] A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from section 17(a) to permit a Fund of Funds to purchase or redeem shares from the ETF. A Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund or BDC through secondary market transactions at market prices rather than through principal transactions with the closed-end fund or BDC. Accordingly, applicants are not requesting section 17(a) relief with respect to transactions in shares of closed-end funds (including BDCs).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78003; File No. SR–NYSEArca–2015–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of Shares of the Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

June 7, 2016.

On November 24, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Cumberland Municipal Bond ETF, a series of the ETFis Series Trust I. The proposed rule change was published for comment in the **Federal Register** on December 14, 2015.[3] On December 29, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76590 (Dec. 8, 2015), 80 FR 77384 ("Notice").

[4] In Amendment No. 1, the Exchange clarified that each Municipal Bond (as defined herein) held by the Fund must be a constituent of a deal where the deal's original offering amount was at least $100 million, clarified whether certain securities would be exchange-traded or over-the-counter, deleted a statement relating to redemption of Shares, clarified pricing information for certain assets, and corrected a typographical error. Because Amendment No. 1 to the proposed rule change is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1, which amended and replaced the original proposal in its entirety, is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-93/nysearca201593-1.pdf*.

January 21, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 10, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.[8] In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.[9] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[10] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on December 14, 2015.[11] The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is June 11, 2016.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1 thereto.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates August 10, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto (File No. SR–NYSEArca–2015–93).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13823 Filed 6–10–16; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 76955, 81 FR 4724 (Jan. 27, 2016). The Commission designated March 11, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See* Securities Exchange Act Release No. 76955A (Mar. 2, 2016), 81 FR 12174 (Mar. 8, 2016) (correcting the date to "March 11, 2016" as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 77340, 81 FR 14163 (Mar. 16, 2016) ("Order Instituting Proceedings"). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." *See id.*, 81 FR at 14165–66.

[9] *See id.*, 81 FR at 14166.

[10] 15 U.S.C. 78s(b)(2).

[11] *See supra* note 3 and accompanying text.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(57).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14734 and #14735]

Mississippi Disaster #MS–00087

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 06/06/2016.

Incident: Torrential Rains and Flooding.

Incident Period: 03/09/2016 through 03/14/2016.

Effective Date: 06/06/2016.

Physical Loan Application Deadline Date: 08/05/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/06/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Walthall

Contiguous Counties:

Mississippi: Lawrence, Lincoln, Marion, Pike

Louisiana: Washington

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14734 6 and for economic injury is 14735 0.

The States which received an EIDL Declaration # are Mississippi, Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 6, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–13876 Filed 6–10–16; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2016–0066]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Centers for Medicare and Medicaid Services (CMS))—Match Number 1076

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on April 19, 2016.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with CMS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Glenn Sklar,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Centers for Medicare and Medicaid Services (CMS)

A. Participating Agencies

SSA and CMS.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the terms, conditions, and safeguards under which CMS will disclose to us certain individuals' admission and discharge information for care received in a nursing care facility. We will use this information to administer the Supplemental Security Income (SSI) program efficiently and to identify Special Veterans' Benefits (SVB) beneficiaries who are no longer residing outside of the United States.

C. Authority for Conducting the Matching Program

The legal authority for this agreement is the Privacy Act (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the regulations promulgated thereunder.

Legal authority for the SSI portion of the matching program is contained in sections 1611(e)(1) and 1631(f) of the Social Security Act (42 U.S.C. 1382(e)(1) and 1383(f)), and 20 CFR 416.211. Section 1611(e)(1)(B) of the Act (42 U.S.C. 1382(e)(1)(B)) limits the amounts of SSI benefits that eligible individuals or their eligible spouse may receive when that individual is, throughout any month, in a medical treatment facility receiving payments (with respect to such individual or spouse), under a State plan approved under Title XIX of the Act, or the amount of benefits an eligible child under 18 may receive who is receiving payments under any health insurance policy issued by a private provider.

The legal authorities for the SVB portion of the matching program are contained in sections 801 and 806(a) and (b) of the Act. (42 U.S.C. 1001 and 1006(a) and (b)).

The legal authority for CMS' disclosures under this CMA to our data request is section 1631(f) of the Act (42 U.S.C. 1383(f)), which requires Federal agencies to provide us with such information as necessary to establish eligibility for SSI payments, or the amount of benefits owed, and 45 CFR 164.512(a) Standard: Uses and disclosures required by law (Health Insurance Affordability and Accountability Act of 1996 (HIPPA) Privacy Rule).

The legal authority for the agencies to enter this interagency transaction is the Economy Act, 31 U.S.C. 1535.

D. Categories of Records and Persons Covered by the Matching Program

We will use this information to administer the SSI program efficiently and to identify SVB beneficiaries who are no longer residing outside of the United States. We will provide CMS with a finder file on a monthly basis extracted from our Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB), SSA/ODSSIS 60–0103, last published on December 19, 2007 (72 FR 69723).

CMS will match our finder file against the system of records that applies to individuals on the Long Term Care–Minimum Data Set (LTC/–MDS 09–70–0528) and submit its response file to us no later than 21 days after receipt of our finder file.

This matching program employs CMS systems that contain Protected Health Information (PHI), as defined by 45 CFR 160.103, and disclosures of PHI are permitted under 45 CFR 164.512(a).

E. Inclusive Dates of the Matching Program

The effective date of this matching program is June 6, 2016, provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and, if both agencies meet certain conditions, it may extend for an additional 12 months thereafter.

[FR Doc. 2016–13803 Filed 6–10–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0095]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Karen Filipponi, Deputy Director, Departmental Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below may be selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on June 6, 2016.

Keith Washington,

Deputy Assistant Secretary for Administration.

Department of Transportation

Federal Highway Administration

Alicandri, Elizabeth
Alonzi, Achille
Arnold, Robert
Audet, Anne
Ayele, Moges
Bezio, Brian
Brown, Janice
Christian, James
Echikson, Thomas
Elston, Debra
Evans, Monique
Everett, Thomas
Finfrock, Arlan
Fleury, Nicolle
Furst, Anthony
Griffith, Michael
Hartmann, Joseph
Hughes Rayman, Caitlin
Kalla, Hari
Kehrli, Mark
Kim, David
Knopp, Martin
Leonard, Kenneth
Lindley, Jeffrey
Lucero, Amy
Mammano, Vincent
Marchese, April
Osborn, Peter
Otto, Sandra
Petty, Kenneth
Pridemore, Virgil
Ridenour, Melisa
Rohlf, John
Saunders, Ian
Schaftlein, Shari
Schmidt, Robert
Shepherd, Gloria
Shores, Sarah
Solomon, Gerald
Stephanos, Peter
Suarez, Ricardo
Trentacoste, Michael
Turner, Derrell
Waidelich, Walter
Walker, Cheryl
Winter, David

Federal Motor Carrier Administration

Collins, Anne
Delorenzo, Joseph
Fromm, Charles
Horan, Charles
Jefferson, Daphne
Keane, Thomas
Kuo, John
Miller, Robert
Minor, Larry
Paden, William
Quade, William
Reed, Pamela
Regal, Geraldine
Riddle, Kenneth
Smith, Steven
Thomas, Curtis
Van Steenburg, John

Federal Railroad Administration

Arseneau, Bernard
Hartong, Mark
Hill, Corey
Inderbitzin, Sarah
Lauby, Robert
Lestingi, Michael
Nissenbaum, Paul
Pennington, Rebecca
Rennert, Jamie
Riggs, Tamela
Tunna, John
Warren, Patrick

Federal Transit Administration

Ahmad, Mokhtee
Biehl, Scott
Buchanan-Smith, Henrika
Crouch, Matthew
Flowers, Carolyn
Garcia Crews, Theresa
Garliauskas, Lucy
Gehrke, Linda
Littleton, Thomas
Mello, Mary
Nifosi, Dana
Partridge, Ellen
Patrick, Rober
Simon, Marisol
Taylor, Yvette
Tuccillo, Robert
Valdes, Vincent
Welbes, Matthew

Maritime Administration

Bohnert, Roger
Brand, Lauren
Brohl, Helen
Cahill, William
Davis, Delia
Doherty, Owen
Dunlap, Susan
Helis, James
Kumar, Shashi
Mc Mahon, Christopher
Moschkin, Lydia
Pixa, Rand
Quinn, John
Szabat, Joe
Tokarski, Kevin

National Highway Traffic Safety Administration

Beuse, Nathaniel
Blackman, Anita
Blincoe, Lawrence
Borris, Frank
Brown, Michael
Coggins, Colleen
Donaldson, K. John
Giuseppe, Jeffrey
Gunnels, Mary
Hemmersbaugh, Paul
Hines, David
Johnson, Tim
Marshall, John
Mclaughlin, Susan
Michael, Jeffrey
Posten, Raymond
Shelton, Terry
Sprague, Mary
Wood, Stephen

Office of the Secretary

Abraham, Julie
Amerling, Kristin
Augustine, John
Aylward, Anne
Baldwin, Kristen
Carlson, Terence
Chang, William
Farley, Audrey
Filipponi, Karen
Fleming, Gregg
Geier, Paul
Herlihy, Thomas
Homan, Tod
Horn, Donald
Hu, Patricia
Hurdle, Lana
Ishihara, David
Jackson, Ronald
Kaleta, Judith
Lawrence, Christine
Lefevre, Maria
Lowder, Michael
Martin, Harold
Mccann, Barbara
Mcdermott, Susan
Medina, Yvonne
Moss, Jonathan
Orndorff, Andrew
Paiewonsky, Luisa
Petrosinowoolverton, Marie
Popkin, Stephen
Roat, Maria
Schmitt, Rolf
Smith, Willie
Washington, Keith
Widawski, Louis
Womack, Kevin
Workie, Blane
Ziff, Laura

Pipeline and Hazardous Materials Safety Administration

Daugherty, Linda
Domotor, Stephen
El-Sibaie, Magdy
Mayberry, Alan
Schoonover, William
Summitt, Monica
Tsaganos, Vasiliki

Saint Lawrence Seaway Development Corporation

Lavigne, Thomas

Middlebrook, Craig

[FR Doc. 2016–13870 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic galvanized steel cable, galvanized cylindrical sockets, galvanized spherical nuts, galvanized open spelter socket, and stainless steel bollard lamps for the San Elijio Lagoon Pedestrian Bridge/I–5 North Bikeway in the State of California.

DATES: The effective date of the waiver is June 14, 2016.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, telephone at 202–366–1562, or via email at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. William Winne, FHWA Office of the Chief Counsel, telephone at 202–366–1397, or via email at *william.winne@dot.gov*. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s Web site at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov/nara*.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic galvanized steel cable, galvanized cylindrical sockets, galvanized spherical nuts, galvanized open spelter socket, and stainless steel bollard lamps for the San Elijio Lagoon Pedestrian Bridge/I–5 North Bikeway in the State of California

In accordance with Division K, section 122 of the Consolidated and Further Continuing Appropriations Act of 2015 (PL 113–235), FHWA published a notice of intent to issue a waiver on its Web site (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=122*) on March 29th. The FHWA received no comments in response to the publication. Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers of galvanized steel cable, galvanized cylindrical sockets, galvanized spherical nuts, galvanized open spelter socket, and stainless steel bollard lamps that meets the corrosion protection specifications for the San Elijio Lagoon Pedestrian Bridge/I–5 North Bikeway in the State of California

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (PL 110–244, 122 Stat. 1572), FHWA is providing this notice of finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: June 3, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–13877 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2015–0117]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt five individuals from the regulatory requirement that interstate commercial motor vehicle (CMV) drivers have "no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV." The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on September 12, 2015. The exemptions expire on September 12, 2017.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

II. Background

On August 12, 2015, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to operate a CMV in interstate commerce and requested comments from the public (80 FR 48406). The public comment period closed on September 11, 2015, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to five individuals would achieve a level of safety equivalent to or greater than the

level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8)*, paragraphs 3, 4, and 5.]

The advisory criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.*, drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

As a result of medical examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner based on the physical qualification standards and medical best practices.

In reaching the decision to grant these exemption requests, the Agency considered the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The January 15, 2013 (78 FR 3069) **Federal Register** notice provides the current MEP recommendations which is the criteria the Agency uses to grant seizure exemptions.

Five of the twelve applicants have been seizure-free over a range of 11 to 26 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last two years. In each of these cases, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially. A summary of each applicant's seizure history was discussed in the August 12, 2015 **Federal Register** notice and will not be repeated in this notice.

III. Discussion of Comments

One anonymous commenter opposes granting exemptions to 49 CFR 391.41(b)(8) because of the unpredictability of seizure disorders and the risk this presents to commercial driving. The commenter believes that the physical qualification standards are in place to provide the minimum physical standard to drive commercially and granting these exemptions would "increase the likelihood of a terrible accident due to an unexpected seizure".

The Agency acknowledges this commenter's concerns regarding the safety of individuals with a history of seizure driving commercially. The Agency's decision to grant seizure exemptions is based on the 2007 Evidence Report, the 2007 MEP Recommendations, and an individual evaluation of the driver's medical history and driving record to ensure an acceptable level of safety for drivers who have been seizure-free for an extended period of time.

IV. Basis for Exemption Determination

The Agency has determined that five applicants should be granted an exemption. Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System (CDLIS) for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these five applicants from the epilepsy/seizure standard in 49 CFR 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption. A decision will be made on the other seven applicants on a later date.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and includes the following: (1) Each individual must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each individual must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each individual must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each individual must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d979706mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

VI. Conclusion

Based upon its evaluation of the five exemption applications, FMCSA exempts the following drivers from the epilepsy/seizure standard in 49 CFR 391.41(b)(8), subject to the requirements cited above: Eric Joseph Barnwell (MI); Jason S. Coleman (NJ); Charles A. McCarthy III (MA); Randy P. Schuelke (WI); and Cory R. Wagner (IL).

In accordance with 49 U.S.C. 31315(b)(1), each exemption is valid for 2 years, unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The individual fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315. If the exemption is still effective at the end of the 2-year period, the individual may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 3, 2016.

Larry W. Minor,

Associate Administrator for Policyal.

[FR Doc. 2016–13867 Filed 6–10–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0069]

Agency Information Collection Activities: Request for Comments; Clearance of a New Information Collection(s): U.S. Department of Transportation Accessibility Concern Form

AGENCY: Department of Transportation—Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1994, (44 U.S.C. 3501 *et seq.*), this notice announces the U.S. Department of Transportation's (DOT) intention to request the Office of Management and Budget's (OMB) approval for the utilization of the U.S. Department of Transportation Accessibility Concern Form when reporting accessibility challenges faced during travel on our Nation's streets, sidewalks, crosswalks, buses, trains, airports, and planes. The system will provide an accessible, coordinated, and seamless web-based portal for the traveling public to submit accessibility problems or challenges they face during travel on the Nation's streets, sidewalks, crosswalks, buses, trains, airports, and planes. The establishment of the system is in response the President's National Council on Disability (NCD) Report, "Transition Update: Where We've Been and What We've Learned," released in 2015, as well as a letter to the Secretary of Transportation from the NCD dated May 12, 2015. The information received through the system will strengthen DOT's ability to understand the challenges and impacts that passengers with disabilities face every day when they use our nation' transportation systems.

DATES: Comments on this notice must be received by August 12, 2016.

ADDRESSES: You may submit comments identified by Docket No. DOT–OST–2016–0069 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, excepted on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 new Jersey Avenue SE., Washington, DC 20590; 202–366–4648; *adaconcerns@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: XXXX–NEW.

Title: Transportation Accessibility Concern Form.

Form Numbers: None.

Type of Review: OMB Approval.

Background: The current process for submitting concerns about American with Disabilities Act, as amended, (ADA) and other related civil rights violations is fragmented across the Department—sometimes being time consuming and cumbersome for the traveling public. Establishing a streamlined and consistent process would respond directly to the President's National Council on Disability, and more importantly, the information received through this new system would strengthen our ability to understand the challenges and impacts that persons with disabilities face every day as they travel using our nation's transportation systems. This would also offer significant improvements to ensuring that access to all modes of transportation is available to persons with disabilities and members of the public.

Estimated Number of Respondents: the U.S. Department of Transportation currently collects data on ADA and other civil rights-related concerns based on information provided by the public via written submission, or through a toll-free telephone number. Based on our analysis of data collected through present formats, DOT receives approximately 850 separate responses from the general public on accessibility-related concerns, including:

- 150 pieces of correspondence on one-time accessibility-related incidents
- 120 email messages
- 400 telephone calls
- 172 formal accessibility-related complaints.

Currently, the estimated Total Burden on Respondents: 15 to 30 minutes per submission.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including, (a) whether the proposed collection of information is necessary for the proper processing of transportation-related accessibility issues; (b) the accuracy of the estimated burden; (c) ways for the DOT to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. All responses to the notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on June 6, 2016.

Habib Azarsina,

OST Privacy and PRA Officer.

[FR Doc. 2016–13872 Filed 6–10–16; 8:45 am]

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Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Battery Chargers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2008–BT–STD–0005]

RIN 1904–AB57

Energy Conservation Program: Energy Conservation Standards for Battery Chargers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975, as amended ("EPCA" or in context, "the Act"), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including battery chargers. EPCA also requires the U.S. Department of Energy ("DOE" or, in context, "the Department") to determine whether Federal energy conservation standards for a particular type of product or equipment would be technologically feasible and economically justified, and would save a significant amount of energy. On March 27, 2012, DOE published a notice of proposed rulemaking ("NOPR") to establish energy conservation standards for battery chargers. Responding to stakeholder comments, DOE updated its analysis and revised its proposed approach, resulting in a supplemental notice of proposed rulemaking ("SNOPR") published on September 1, 2015. After considering all the stakeholder comments responding to the SNOPR, DOE is adopting the proposed energy conservation standards for battery chargers in this final rule. DOE has determined that these standards will result in the significant conservation of energy and are technologically feasible and economically justified.

DATES: The effective date of this rule is August 12, 2016. Compliance with the adopted standards established for battery chargers in this final rule is required starting on June 13, 2018.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2008-BT-STD-0005*. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *battery_chargers_and_external_power_supplies@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *michael.kido@hq.doe.gov*.

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I. Synopsis of the Final Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 ("EPCA" or, in context, "the Act"), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include battery chargers, the subject of this document.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either (1) a notice of determination that standards for the product do not need to be amended or (2) a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1))

DOE had previously proposed to establish new energy conservation standards for battery chargers in March 2012. See 77 FR 18478 (March 27, 2012). Since the publication of that proposal, the State of California finalized new energy conservation standards for battery chargers sold within that State. See 45Z Cal. Reg. 1663, 1664 (Nov. 9, 2012) (summarizing proposed regulations and their final effective dates). Those new standards were not factored into DOE's analysis supporting its initial battery charger proposal. To assess whether DOE's proposal would satisfy the requirements under 42 U.S.C. 6295, DOE revisited its analysis in light of these new California standards. Consequently, DOE proposed new energy conservation standards for battery chargers in September 2015. See 80 FR 52850. (September 1, 2015). After evaluating the comments it received, DOE is adopting the energy conservation standards for battery chargers proposed in the SNOPR. These standards will apply to all products listed in Table I–1 and manufactured in, or imported into, the United States starting on June 13, 2018. This lead-in period, which is consistent with DOE's proposal, is based on information provided by commenters as well as research conducted by DOE with respect to the efforts made by battery charger manufacturers in response to the CEC energy conservation standards—both of which suggest that a two-year period would be sufficient to enable manufacturers to readily meet the standards adopted in this rule.

TABLE I–1—ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

[Compliance starting June 13, 2018]

Product class	Product class description	Battery energy	Special characteristic or battery voltage	Adopted standard as a function of battery energy (kWh/yr)
1	Low-Energy	≤5 Wh	Inductive Connection in Wet Environments.	3.04
2	Low-Energy, Low-Voltage	<100 Wh	<4 V	$0.1440 * E_{batt} + 2.95$
3	Low-Energy, Medium-Voltage		4–10 V	For E_{batt} <10Wh, UEC = 1.42 kWh/y E_{batt} ≥10 Wh, UEC = $0.0255 * E_{batt} + 1.16$
4	Low-Energy, High-Voltage		>10 V	$0.11 * E_{batt} + 3.18$
5	Medium-Energy, Low-Voltage	100–3000 Wh	<20 V	$0.0257 * E_{batt} + .815$
6	Medium-Energy, High-Voltage		≥20 V	$0.0778 * E_{batt} + 2.4$
7	High-Energy	>3000 Wh		$0.0502 * E_{batt} + 4.53$

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (April 30, 2015).

A. Benefits and Costs to Consumers

Table I–2 presents DOE's evaluation of the economic impacts of the adopted standards on consumers of battery chargers, as measured by the average life-cycle cost ("LCC") savings and the simple payback period ("PBP").[3] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of battery chargers, which is estimated to be between 3.5 and 9.7 years, depending on product class ("PC") (see section IV.F.6).

TABLE I–2—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF BATTERY CHARGERS

Product class	Average LCC savings (2013$)	Simple payback period (years)	Average lifetime (years)
PC 1—Low E, Inductive	0.71	1.5	5.0
PC 2—Low E, Low Voltage	0.07	0.6	4.0
PC 3—Low E, Medium Voltage	0.08	0.8	4.9
PC 4—Low E, High Voltage	0.11	1.4	3.7
PC 5—Medium E, Low Voltage	0.84	2.7	4.0
PC 6—Medium E, High Voltage	1.89	1.1	9.7
PC 7—High E	51.06	0.0	3.5

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value ("INPV") is the sum of the discounted cash flows to the industry from the reference year through the end of the analysis period (2015 to 2047). Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of battery chargers in the no-standards case is $79.9 billion in 2013$. Under the adopted standards, DOE expects that manufacturers may lose up to 0.7 percent of this INPV, which is approximately $529 million. Additionally, based on DOE's interviews with the domestic manufacturers of battery chargers, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole to result from the standards for battery chargers.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in section IV.J of this document.

C. National Benefits and Costs [4]

DOE's analyses indicate that the adopted energy conservation standards for battery chargers would save a significant amount of energy. Relative to the case without new standards, the lifetime energy savings for battery chargers purchased in the 30-year period that begins in the anticipated year of compliance with the standards (2018–2047), amount to 0.173 quadrillion British thermal units ("Btu"), or "quads." [5] This represents a savings of 11.2 percent relative to the energy use of these products in the case without adopted standards (referred to as the "no-standards case").

The cumulative net present value ("NPV") of total consumer costs and savings of the standards for battery chargers ranges from $0.6 billion (at a 7-percent discount rate) to $1.2 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for battery chargers purchased in 2018–2047.

In addition, the standards for battery chargers are projected to yield significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas ("GHG") emission reductions (over the same period as for energy savings) of 10.79 million metric tons (Mt) [6] of carbon dioxide (CO_2), 6.58 thousand tons of sulfur dioxide (SO_2), 18.83 thousand tons of nitrogen oxides (NO_X), 43.6 thousand tons of methane (CH_4), 0.136 thousand tons of nitrous oxide (N_2O), and 0.024 tons of mercury (Hg).[7] The cumulative reduction in CO_2 emissions through 2030 amounts to 4.4 Mt, which is equivalent to the emissions resulting from the annual electricity use of approximately 600,000 homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the "Social Cost of Carbon" or "SCC") developed by a Federal interagency working group.[8] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I–3), DOE estimates that the net present monetary value of the CO_2 emissions reduction (not including CO_2-equivalent emissions of other gases with global warming potential) is between $0.086 billion and $1.121 billion, with a value of $0.370 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates that the net present monetary value of the NO_X emissions reduction to be $20.84 million at a 7-percent discount rate, and $41.55 million at a 3-percent discount rate.[9]

[3] The average LCC savings are measured relative to the efficiency distribution in the no-standards case, which depicts the market in the compliance year in the absence of standards (see section IV.F.10). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline model (see section IV.C.1).

[4] All monetary values in this section are expressed in 2013 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[5] A quad is equal to 10^{15} Btu. The quantity refers to full-fuel-cycle ("FFC") energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[8] United States Government–Interagency Working Group on Social Cost of Carbon. Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866. May 2013. Revised July 2015. Available at *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*.

[9] DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the Regulatory Impact Analysis for the Clean Power Plan Final Rule, published in August 2015 by EPA's

Table I–3 summarizes the economic benefits and costs expected to result from the adopted standards for battery chargers.

TABLE I–3—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS (TSL 2) *

Category	Present value (billion 2013$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	0.7	7
	1.4	3
CO_2 Reduction Monetized Value ($12.2/t case) **	0.1	5
CO_2 Reduction Monetized Value ($40.0/t case) **	0.4	3
CO_2 Reduction Monetized Value ($62.3/t case) **	0.6	2.5
CO_2 Reduction Monetized Value ($117/t case) **	1.1	3
NO_X Reduction Monetized Value †	0.02	7
	0.04	3
Total Benefits ††	1.1	7
	1.8	3
Costs		
Consumer Incremental Installed Costs	0.1	7
	0.2	3
Total Net Benefits		
Including Emissions Reduction Monetized Value ††	1.0	7
	1.6	3

* This table presents the costs and benefits associated with battery chargers shipped in 2018–2047. These results include benefits to consumers which accrue after 2047 from the products purchased in 2018–2047. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor. The value for NO_X is the average of high and low values found in the literature.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.*, 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.*, 2011), the values would be nearly two-and-a-half times larger.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

The benefits and costs of the adopted standards for battery chargers sold in 2018–2047 can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value of the benefits from consumer operation of products that meet the new standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase prices and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[10]

Although combining the values of operating savings and CO_2 emission reductions provides a useful perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of battery chargers shipped in 2018–2047. Because CO_2 emissions have a very long residence time in the atmosphere,[11] the SCC values in future years reflect future

Office of Air Quality Planning and Standards. Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See section IV.L.2 for further discussion. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al.*, Order in Pending Case, 136 S.Ct. 999 (2016). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan. DOE is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2011), the values would be nearly two-and-a-half times larger.

[10] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.*, 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I–3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, which yields the same present value.

[11] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ (2005), ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' '' *J. Geophys. Res.* 110. pp. D14105.

CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the adopted standards are shown in Table I–4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the SCC series that has a value of $40.0/t in 2015, the estimated cost of the standards in this rule is $9 million per year in increased equipment costs, while the estimated annual benefits are $68 million per year in reduced equipment operating costs, $20 million in CO_2 reductions, and $1.92 million in reduced NO_X emissions. In this case, the net benefit amounts to $81 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series has a value of $40.5/t in 2015, the estimated cost of the standards is $10 million per year in increased equipment costs, while the estimated annual benefits are $75 million per year in reduced operating costs, $20 million in CO_2 reductions, and $2.25 million in reduced NO_X emissions. In this case, the net benefit amounts to $88 million per year.

TABLE I–4—ANNUALIZED BENEFITS AND COSTS OF STANDARDS FOR BATTERY CHARGERS (TSL 2)

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	68	68	69.
	3	75	74	76.
CO_2 Reduction Monetized Value ($12.2/t case) **	5	6	6	6.
CO_2 Reduction Monetized Value ($40.0/t case) **	3	20	20	20.
CO_2 Reduction Monetized Value ($62.3/t case) **	2.5	29	29	29.
CO_2 Reduction Monetized Value ($117/t case) **	3	61	61	61.
NO_X Reduction Monetized Value †	7	1.92	1.92	4.34.
	3	2.25	2.25	5.13.
Total Benefits ††	7 plus CO_2 range	76 to 131	76 to 131	80 to 134.
	7	90	90	94.
	3 plus CO_2 range	82 to 136	82 to 136	83 to 138.
	3	97	97	101.
Costs				
Consumer Incremental Product Costs	7%	9	9	6.
	3	10	10	6.
Net Benefits				
Total ††	7% plus CO_2 range	67 to 122	67 to 121	73 to 128.
	7	81	81	87.
	3 plus CO_2 range	74 to 128	73 to 128	81 to 136.
	3	88	87	95.

* This table presents the annualized costs and benefits associated with battery chargers shipped in 2018–2047. These results include benefits to consumers which accrue after 2047 from the products purchased in 2018–2047. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the Annual Energy Outlook for 2015 ("*AEO 2015*") Reference case, Low Economic Growth case, and High Economic Growth case, respectively. Additionally, the High Benefits Estimates include a price trend on the incremental product costs.

** The CO_2 values represent global monetized values of the SCC, in 2013$ per metric ton (t), in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor. The value for NOx is the average of high and low values found in the literature.

† DOE estimated the monetized value of NO_X emissions reductions associated with electricity savings using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. For the Primary Estimate and Low Net Benefits Estimate, DOE used a national benefit-per-ton estimate for NO_X emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.*, 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.*, 2011), which are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

Based on the analyses culminating in this final rule, DOE found the benefits to the Nation of the standards (energy savings, consumer LCC savings, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some users of these products). DOE has concluded that the standards in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy.

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical

background related to the establishment of standards for battery chargers. Generally, battery chargers are power conversion devices that transform input voltage to a suitable voltage for the battery they are powering. A portion of the energy that flows into a battery charger flows out to a battery and, thus, cannot be considered to be consumed by the battery charger.

A. Authority

Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles,[12] a program covering most major household appliances (collectively referred to as "covered products"). Battery chargers are among the products affected by these provisions.

Section 309 of the Energy Independence and Security Act ("EISA 2007") amended EPCA by directing DOE to prescribe, by rule, definitions and test procedures for the power use of battery chargers (42 U.S.C. 6295(u)(1)), and to issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or to determine that no energy conservation standard is technologically feasible and economically justified. (42 U.S.C. 6295(u)(1)(E))

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission ("FTC") is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedures as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for battery chargers appear at title 10 of the Code of Federal Regulations ("CFR") part 430, subpart B, appendix Y.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including battery chargers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including battery chargers, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group: (A) C onsume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 ("EISA 2007"), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures and new standards adopted in this final rule for battery chargers address standby mode and off mode energy use.

Section 135 of the Energy Policy Act of 2005 ("EPACT 2005"), Public Law 109–58 (Aug. 8, 2005), amended sections 321 (42 U.S.C. 6291) and 325 (42 U.S.C. 6295) of EPCA by defining the term "battery charger." That provision also directed DOE to prescribe definitions and test procedures related to the energy consumption of battery chargers and to issue a final rule that determines whether to set energy conservation standards for battery chargers or classes of battery chargers. (42 U.S.C. 6295(u)(1)(A) and (E))

B. Background

1. Current Standards

Currently, there are no Federal energy conservation standards for battery chargers.

2. History of Standards Rulemaking for Battery Chargers

On December 8, 2006, consistent with EPACT 2005, DOE published a final rule that prescribed test procedures for a variety of products. 71 FR 71340, 71365–71375. That rule, which was codified in multiple sections of the CFR, included a definition and test procedures for battery chargers. The test procedures for these products are found in 10 CFR part 430, subpart B, Appendix Y ("Uniform Test Method for Measuring the Energy Consumption of Battery Chargers").

On December 19, 2007, Congress enacted EISA 2007. Section 309 of EISA 2007 amended section 325(u)(1)(E) of EPCA by directing DOE to issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or to determine that no energy conservation standard is technologically feasible and economically justified. (42 U.S.C. 6295(u)(1)(E))

EISA 2007 (section 310) also established definitions for active, standby, and off modes, and directed DOE to amend its test procedures for battery chargers to include a means to measure the energy consumed in standby mode and off mode. (42 U.S.C. 6295(gg)(2)(B)(i)) Consequently, DOE published a final rule incorporating standby- and off-mode measurements into the DOE test procedures for battery chargers. 74 FR 13318, 13334–13336 (March 27, 2009). Additionally, DOE amended the test procedures for battery chargers to include an active mode measurement. 76 FR 31750 (June 1, 2011).

DOE initiated its current rulemaking effort for these products by issuing the Energy Conservation Standards Rulemaking Framework Document for Battery Chargers and External Power Supplies (the Framework Document). See *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0005-0005*. The Framework Document explained the issues, analyses, and process DOE anticipated using to develop energy conservation standards for those products. DOE also published a notice announcing the availability of the Framework Document, announcing a public meeting to discuss the proposed analytical framework, and inviting written comments concerning the development of standards for battery chargers and external power supplies ("EPSs"). 74 FR 26816 (June 4, 2009). DOE held the Framework Document public meeting on July 16, 2009. Manufacturers, trade associations, environmental advocates, regulators, and other interested parties attended the meeting and submitted comments.

On September 15, 2010, after having considered comments from interested parties, gathered additional information, and performed preliminary analyses for the purpose of developing potential amended energy conservation standards for Class A EPSs and new energy conservation standards for battery chargers and non-Class A EPSs, DOE announced a public meeting and the availability of a preliminary technical support document ("preliminary TSD"). 75 FR 56021. The preliminary TSD is available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2008-BT-STD-0005-0031*. The preliminary TSD discussed the comments DOE received at the framework stage of this rulemaking and described the actions DOE took in response to those comments. That document also described in detail the analytical framework DOE used, and the content and results of DOE's preliminary analyses. *Id.* at 56023–56024. DOE convened the public meeting to discuss and receive comments on: (1) The product classes DOE analyzed, (2) the analytical framework, models, and tools that DOE was using to evaluate potential standards, (3) the results of the preliminary analyses performed by DOE, (4) potential standard levels that DOE might consider, and (5) other issues participants believed were relevant to the rulemaking. *Id.* at 56021 and 56024. DOE also invited written comments on these matters. The public meeting took place on October 13, 2010. Many interested parties participated, twelve of whom submitted written comments during the comment period; two additional parties filed comments following the close of the formal comment period.

After considering all of these comments, DOE published its notice of proposed rulemaking ("NOPR"). 77 FR 18478 (March 27, 2012). DOE also released the NOPR technical support document ("TSD"), which incorporated the analyses DOE conducted and accompanying technical documentation. The TSD included the LCC spreadsheet, the national impact analysis ("NIA") spreadsheet, and the manufacturer impact analysis ("MIA") spreadsheet—all of which are available at: *http://www.regulations.gov/#!document Detail;D=EERE-2008-BT-STD-0005-0070*. In the March 2012 NOPR, DOE proposed establishing energy conservation standards for battery chargers according to the following classes:

TABLE II–1—NOPR PROPOSED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

Product class	Product class description	Proposed standard as a function of battery energy (kWh/yr)
1	Low-Energy, Inductive	3.04.
2	Low-Energy, Low-Voltage	0.2095 * (E_{batt}) + 5.87.
3	Low-Energy, Medium-Voltage	For E_{batt} < 9.74 Wh, 4.68; For E_{batt} ≥ 9.74 Wh, = 0.0933 * (E_{batt}) + 3.77.
4	Low-Energy, High-Voltage	For E_{batt} < 9.71 Wh, 9.03; For E_{batt} ≥ 9.71 Wh, = 0.2411 * (E_{batt}) + 6.69.

[12] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

TABLE II–1—NOPR PROPOSED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS—Continued

Product class	Product class description	Proposed standard as a function of battery energy (kWh/yr)
5	Medium-Energy, Low-Voltage	For E_{batt} < 355.18 Wh, 20.06; For E_{batt} ≥ 355.18 Wh, = 0.0219 * (E_{batt}) + 12.28.
6	Medium-Energy, High-Voltage	For E_{batt} < 239.48 Wh, 30.37; For E_{batt} ≥ 239.48 Wh, = 0.0495 * (E_{batt}) + 18.51.
7	High-Energy	0.0502 * (E_{batt}) + 4.53.
8	Low-Voltage DC Input	0.1140 * (E_{batt}) + 0.42; For E_{batt} < 1.17 Wh, 0.55 kWh/yr.
9	High-Voltage DC Input	No Standard.
10a	AC Output, VFD (Voltage and Frequency Dependent)	For Ebatt < 37.2 Wh, 2.54; For Ebatt ≥ 37.2 Wh, 0.0733 * (E_{batt}) − 0.18.
10b	AC Output, VI (Voltage Independent)	For Ebatt < 37.2 Wh, 6.18; For Ebatt ≥ 37.2 Wh, 0.0733 * (E_{batt}) + 3.45.

In the March 2012 NOPR, DOE identified 24 specific issues on which it sought the comments and views of interested parties. *Id.* at 18642–18644. In addition, DOE also specifically requested comments and data that would allow DOE to clarify certain issues and potential solutions to address them. DOE also held a public meeting in Washington, DC, on May 2, 2012, to receive public comments on its proposal. DOE also received many written comments responding to the March 2012 NOPR. All commenters, along with their corresponding abbreviations and organization type, are listed in Table II–2 of this section.

TABLE II–2—LIST OF NOPR COMMENTERS

Organization	Abbreviation	Organization type	Comment
Actuant Electric	Actuant Electric	Manufacturer	146
ARRIS Group, Inc	ARRIS Broadband	Manufacturer	90
Appliance Standards Awareness Project	ASAP	Energy Efficiency Advocates	162
ASAP, ASE, ACEEE, CFA, NEEP, and NEEA	ASAP, *et al.*	Energy Efficiency Advocates	136
Association of Home Appliance Manufacturers	AHAM	Industry Trade Association	124
Brother International Corporation	Brother International	Manufacturer	111
California Buliding Industry Association	CBIA	Industry Trade Association	126
California Energy Commission	California Energy Commission	State Entity	117
California Investor-Owned Utilities	CA IOUs	Utilities	138
City of Cambridge, MA	City of Cambridge, MA	Local Government	155
Cobra Electronics Corporation	Cobra Electronics	Manufacturer	130
Consumer Electronics Association	CEA	Industry Trade Association	106
Delta-Q Technologies Corp	Delta-Q Technologies	Manufacturer	113
Duracell	Duracell	Manufacturer	109
Earthjustice	Earthjustice	Energy Efficiency Advocates	118
ECOVA	ECOVA	Private Entity	97
Energizer	Energizer	Manufacturer	123
Flextronics Power	Flextronics	Manufacturer	145
GE Healthcare	GE Healthcare	Manufacturer	142
Information Technology Industry Council	ITI	Industry Trade Association	131
Korean Agency for Technology and Standards	Republic of Korea	Foreign Government	148
Lester Electrical	Lester	Manufacturer	87, 139
Microsoft Corporation	Microsoft	Manufacturer	110
Motorola Mobility, Inc	Motorola Mobility	Manufacturer	121
National Electrical Manufacturers Association	NEMA	Industry Trade Association	134
Natural Resources Defense Council	NRDC	Energy Efficiency Advocate	114
Nebraska Energy Office	Nebraska Energy Office	State Government	98
Nintendo of America Inc	Nintendo of America	Manufacturer	135
Nokia Inc	Nokia	Manufacturer	132
Northeast Energy Efficiency Partnerships	NEEP	Energy Efficiency Advocate	144, 160
Panasonic Corporation of North America	Panasonic	Manufacturer	120
PG&E	PG&E	Utility	16
PG&E and SDG&E	PG&E and SDG&E	Utilities	163
Philips Electronics	Philips	Manufacturer	128
Power Sources Manufacturers Association	PSMA	Industry Trade Association	147
Power Tool Institute, Inc	PTI	Industry Trade Association	133
Power Tool Institute, Inc., Association of Home Appliance Manufacturers, Consumer Electronics Association.	PTI, AHAM, CEA	Industry Trade Association	161
NOPR Public Meeting Transcript, various parties	Pub. Mtg. Tr	Public Meeting	104
Representatives of Various State Legislatures	States	State Government	159
Salcomp Plc	Salcomp Plc	Manufacturer	73
Schneider Electric	Schneider Electric	Manufacturer	119
Schumacher Electric	Schumacher Electric	Manufacturer	143
Southern California Edison	SCE	Utility	164
Telecommunications Industry Association	TIA	Industry Trade Association	127

TABLE II–2—LIST OF NOPR COMMENTERS—Continued

Organization	Abbreviation	Organization type	Comment
Wahl Clipper Corporation	Wahl Clipper	Manufacturer	153

Of particular interest to commenters was the potential interplay between DOE's proposal and a competing battery charger energy efficiency requirement that had been approved by the California Energy Commission ("the CEC") on January 12, 2012. (The CEC is California's primary energy policy and planning agency.) The CEC standards, which took effect on February 1, 2013,[13] created an overlap between the classes of battery chargers covered by the CEC rule and those classes of battery chargers DOE proposed to regulate in the March 2012 NOPR. Additionally, the standards proposed by DOE differed from the ones issued by the CEC, with some being more stringent and others being less stringent than the CEC standards. To better understand the impact of the CEC standards on the battery charger market in the U.S., DOE published a request for information ("RFI") on March 26, 2013 that sought stakeholder comment on a variety of issues related to the CEC standards. 78 FR 18253.

TABLE II–3—LIST OF RFI COMMENTERS

Organization	Abbreviation	Organization type	Comment
AHAM, CEA, PTI, TIA Joint Comments	AHAM, et al	Industry Trade Association	203
Alliance for Wireless Power	A4WP	Standard Development Organization.	196
ASAP, NRDC, ACEEE, CFA, NCLC, NEEA, NPCC Joint Comments.	ASAP, NRDC, ACEEE, CFA, NCLC, NEEA, NPCC.	Energy Efficiency Advocates	206
Association of Home Appliance Manufacturers	AHAM	Industry Trade Association	202
Brother International Corporation	Brother International	Manufacturer	204
California Energy Commission	California Energy Commission	State Entity	199
California IOUs	CA IOUs	Utilities	197
Consumer Electronics Association	CEA	Industry Trade Association	208
Dual-Lite, a division of Hubbell Lighting	Dual-Lite	Manufacturer	189
Energizer Holdings	Energizer	Manufacturer	213
Garmin International	Garmin	Manufacturer	194
Information Technology Industry Council	ITI	Industry Trade Association	201
Ingersoll Rand (Club Car)	Ingersoll Rand	Manufacturer	195
Jerome Industries, a subsidiary of Astrodyne	Jerome	Manufacturer	191
Mercury Marine	Mercury	Manufacturer	212
National Marine Manufacturers Association	NMMA	Industry Trade Association	190
NEEA and NPCC	NEEA and NPCC	Industry Trade Association	200
P&G (Duracell)	Duracell	Manufacturer	193
Panasonic	Panasonic	Manufacturer	210
Philips	Philips	Manufacturer	198
Power Tool Institute	PTI	Industry Trade Association	207
Schneider Electric	Schneider Electric	Manufacturer	211
Schumacher Electric	Schumacher Electric	Manufacturer	192
Telecommunications Industry Association	TIA	Industry Trade Association	205

Many of these RFI comments reiterated the points that commenters made in response to the NOPR. Additionally, many commenters listed in the table above indicated that there was evidence that the market had accepted the CEC standards and that technology improvements were made to meet the CEC standards at costs aligned with DOE's estimates in the March 2012 NOPR. (See AHAM et al., No. 203 at p. 5) Some manufacturers argued that while some of their units are CEC-compliant, they continue to sell non-compliant units in other parts of the U.S. for various reasons associated with cost. (See Schumacher Electric, No. 192 at p. 2) DOE addressed these comments by updating and revising its analysis in the September 2015 SNOPR by considering, among other things, the impacts attributable to the standards issued by the CEC. Specifically, based on the responses to the RFI, DOE collected additional data on new battery chargers identified in the CEC database as being compliant with the CEC standards. These data supplemented DOE's earlier analysis from the March 2012 NOPR. DOE's analysis and testing of units within the CEC database showed that many battery chargers are CEC-compliant. The teardown and economic analysis incorporating these units also showed that setting standards that approximated the CEC standards were technologically feasible and economically justified for the U.S. as a whole. Therefore, the SNOPR outlined standards that were approximately equivalent, or where justified, more stringent than the CEC standards. The revisions to the analysis, which addressed the comments received from stakeholders in response to DOE's RFI, are explained in the analysis sections below and summarized in Table II–4.

In addition to updating its proposal to account for the impact of the CEC standards, DOE made several other changes in preparing these revised standards—including adjusting its analyses in line with updated information and data. These post-NOPR changes are presented in Table II–4.

[13] *http://www.energy.ca.gov/appliances/battery_chargers/.*

TABLE II–4—SUMMARY OF SIGNIFICANT CHANGES BETWEEN NOPR AND SNOPR

Item	NOPR	Changes for SNOPR
Proposed Standard Levels		
Proposed Standard for PC 1	= 3.04	No Change.
Proposed Standard for PC 2	= 0.2095(E_{batt}) + 5.87	0.1440(E_{batt}) + 2.95.
Proposed Standard for PC 3	For E_{batt} < 9.74 Wh, = 4.68 For E_{batt} ≥ 9.74 Wh, = 0.0933(E_{batt}) + 3.77.	For E_{batt} < 10Wh, = 1.42; E_{batt} ≥ 10 Wh, 0.0255(E_{batt}) + 1.16.
Proposed Standard for PC 4	For E_{batt} < 9.71 Wh, = 9.03 For E_{batt} ≥ 9.71 Wh, = 0.2411(E_{batt}) + 6.69.	0.11(E_{batt}) + 3.18.
Proposed Standard for PC 5	For E_{batt} < 355.18 Wh, = 20.06 For E_{batt} ≥ 355.18 Wh, = 0.0219(E_{batt}) + 12.28.	For E_{batt} < 19 Wh, 1.32 kWh/yr; For E_{batt} ≥ 19 Wh, 0.0257(E_{batt}) + .815.
Proposed Standard for PC 6	For E_{batt} < 239.48 Wh, = 30.37 For E_{batt} ≥ 239.48 Wh, = 0.0495(E_{batt}) + 18.51.	For E_{batt} < 18 Wh, 3.88 kWh/yr; For E_{batt} ≥ 18 Wh, 0.0778(E_{batt}) + 2.4.
Proposed Standard for PC 7	= 0.0502(E_{batt}) + 4.53	No Change.
Proposed Standard for PC 8	= 0.1140(E_{batt})+ 0.42 For Ebatt < 1.17 Wh, = 0.55 kWh/yr.	Removed, covered under PC 2 proposed standards.
Proposed Standard for PC 9	No Standard	No Change.
Proposed Standard for PC 10a	For Ebatt < 37.2 Wh, = 2.54 For Ebatt ≥ 37.2 Wh, = 0.0733(Ebatt)—0.18.	Deferred to Future Rulemaking.
Proposed Standard for PC 10b	For Ebatt < 37.2 Wh, = 6.18 For Ebatt ≥ 37.2 Wh, = 0.0733(Ebatt) + 3.45.	Deferred to Future Rulemaking.
Changes in Analysis		
Engineering Analysis—Representative Units.	Combination of test data and manufacturer inputs	Used new or updated units in PC 2, PC 3, PC 4, and PC 5, while keeping the same representative units for PC 1, PC 6, and PC 7 and same Max Tech units for all PCs.
Usage Profiles	Weighted average of application specific usage	PC 2, PC 3, PC 4, PC 5, and PC 6 usage profiles updated based on new shipment data (See Section IV.F.3).
Efficiency Distributions	From Market Assessment	Obtained from the CEC's database of Small Battery Chargers.

DOE announced that it will investigate the potential benefits and burdens of Federal efficiency standards for Computers and Battery Backup Systems in a Framework Document [14] published on July 11, 2014. DOE had planned to include uninterruptible power supplies ("UPSs") within the scope of coverage of that rulemaking effort and as a result, DOE did not consider these products within the scope of the battery chargers rulemaking. However, since the publication of the SNOPR and Computer and Battery Backup Systems Framework document, DOE, after consideration of stakeholder comments, is now considering including UPSs within the scope of its battery charger regulations. Accordingly, DOE published a Notice of Proposed Test Procedure for Battery Chargers proposing specific testing requirements for UPSs on May 19, 2016. See 81 FR 31542. DOE is not finalizing standards for UPSs at this time, but will continue to conduct rulemaking activities to consider test procedures and energy conservation standards for UPSs as part of ongoing and future battery charger rulemaking proceedings.

Lastly, in the September 2015 SNOPR, DOE identified 10 specific issues on which it sought comments and views of interested parties. *Id.* at 52931–52932. DOE also held a public meeting in Washington, DC, on September 15, 2015, to receive public comments on its revised proposal. DOE also received written comments responding to the September 2015 SNOPR, which are further presented and addressed throughout this document. All commenters, along with their corresponding abbreviations and organization type, are listed in Table II–5 of this Preamble.

TABLE II–5—LIST OF SNOPR COMMENTERS

Organization	Abbreviation	Organization type	Comment
ARRIS Group, Inc. and Cisco Systems, Inc	ARRIS and Cisco	Manufacturer	250
Association of Home Appliance Manufacturers	AHAM	Standard Development Organization.	246
California Energy Commission	CEC	State Agency	241
California Investor Owned Utilities	CA IOUs	Utility Association	251
Delta-Q Technologies Corp	Delta-Q Technologies	Manufacturer	238
Environmental Defense Fund, Institute for Policy Integrity at NYU School of Law, Natural Resources Defense Council, Union of Concerned Scientists.	EDF, Institute for Policy Integrity, NRDC, UCS.	Energy Efficiency Advocacy Group.	239
Information Technology Industry Council	ITI	Trade Association	248
Ingersoll Rand	Ingersoll Rand	Manufacturer	240

[14] *http://www.regulations.gov/#!document Detail;D=EERE-2014-BT-STD-0025-0001.*

TABLE II–5—LIST OF SNOPR COMMENTERS—Continued

Organization	Abbreviation	Organization type	Comment
iRobot Corporation	iRobot	Manufacturer	237
National Electrical Manufacturers Association	NEMA	Trade Association	246
Natural Resources Defense Council, Appliance Standards Awareness Project, Northwest Energy Efficiency Alliance.	NRDC, ASAP, NEEA	Energy Efficiency Advocate Group.	252
Philips Electronics North America Corporation	Philips	Manufacturer	245
People's Republic of China	P. R. China	Foreign Government	254
Power MergerCo, Inc	Power MergerCo	Standard Development Organization.	247
Power Tool Institute, Inc	PTI	Trade Association	244
Schneider Electric	Schneider	Manufacturer	253
SNOPR Public Meeting Transcript, various parties	Pub. Mtg. Tr	Public Meeting	234
U.S. Chamber of Commerce, ACC, ACCCI, AF&PA, AFPM, API, BIA, CIBO, NAM, NMA, NOPA, PCA.	U.S. Chamber of Commerce, et al.	Trade Association	242
Wahl Clipper Corporation	Wahl Clipper	Manufacturer	243

After considering and responding to all comments submitted by these stakeholders, DOE is adopting the proposed standards for battery chargers from the SNOPR in this final rule. Table II–6 of this Preamble presents major changes between the SNOPR and the final rule.

TABLE II–6—SUMMARY OF SIGNIFICANT CHANGES BETWEEN SNOPR AND FINAL RULE

Item	SNOPR	Changes for final rule
Standard for PC 1	= 3.04	No Change.
Standard for PC 2	0.1440(E_{batt}) + 2.95	No Change.
Standard for PC 3	For E_{batt} < 10Wh, = 1.42; E_{batt} ≥ 10 Wh, 0.0255(E_{batt}) + 1.16.	No Change.
Standard for PC 4	0.11(E_{batt}) + 3.18	No Change.
Standard for PC 5	For E_{batt} < 19 Wh, 1.32 kWh/yr; For E_{batt} ≥ 19 Wh, 0.0257(E_{batt}) + .815.	0.0257(E_{batt})+.815 (Removed Boundary Condition).
Standard for PC 6	For E_{batt} < 18 Wh, 3.88 kWh/yr; For E_{batt} ≥ 18 Wh, 0.0778(E_{batt}) + 2.4.	0.0778(E_{batt})+2.4 (Removed Boundary Condition).
Standard for PC 7	= 0.0502(E_{batt}) + 4.53	No Change.
Standard for PC 8	Removed, covered under PC 2 proposed standards	No Change.
Standard for PC 9	No Standard	No Change.
Standard for PC 10a	No Standard	No Change.
Standard for PC 10b	No Standard	No Change.

III. General Discussion

DOE developed this final rule after considering verbal and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Test Procedure

Prior to the publication of the SNOPR regarding energy conservation standards for battery chargers, DOE also published a NOPR proposing to clarify certain aspects related to the battery charger test procedure. These revisions include harmonizing with the instrumentation resolution and uncertainty requirements of the second edition of the International Electrotechnical Commission ("IEC") 62301 standard for standby power measurements, updates to the battery selection criteria for multi-voltage, multi-capacity battery chargers to eliminate ambiguity, exclusion of back-up battery chargers from scope, a provision for the conditioning of lead acid batteries prior to testing and updates to the requirements for certification and enforcement testing of battery chargers. DOE has since finalized the proposed revisions and has updated the test procedures for battery chargers in Appendix Y to 10 CFR part 430 subpart B. DOE notes that none of the amendments to the battery charger test procedure will have an impact on the standards adopted in this document and advises stakeholders to review them in Appendix Y to 10 CFR part 430 subpart B.[15]

[15] DOE notes that its procedures found at 10 part CFR 430, subpart C, appendix A provide general procedures, interpretations, and policies to guide DOE in the consideration and promulgation of new or revised efficiency standards under EPCA for consumer products. While these procedures are a general guide to the steps DOE typically follows in promulgating energy conservation standards, appendix A recognizes that DOE can and will, on occasion deviate from the typical process. Accordingly, to the extent that such deviation may occur, such as with the publication timing of the relevant test procedure and standards final rule notices, DOE has concluded that there is no basis to delay the final rule adopting standards for battery chargers.

B. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE often divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

C. Federal Preemption and Compliance Date

Since the publication of its SNOPR regarding energy conservation standards for battery chargers, DOE has received several stakeholder comments related to Federal preemption of the CEC's

standards for battery chargers and the compliance date of any new Federal energy conservation standards that DOE may adopt for these products. First, NRDC argued that DOE's adoption of the SNOPR standards as a final rule will preempt CEC's standard for UPSs, which, in its view, will result in a loss of potential energy savings. NRDC specifically requested either the removal of UPSs from covered products under this rulemaking or the adoption of standards proposed in the NOPR for UPSs. NRDC also requested that any final rule issued by DOE clarify the application of Federal preemption in such a way to ensure that UPSs will remain covered under the CEC standards until DOE sets standards for these devices. (NRDC, Pub. Mtg. Tr., No. 234, p. 22–24) Additionally, NEEA inquired if State standards for battery chargers are preempted at the publication of Federal final rule or when the Federal final rule becomes effective. (NEEA, Pub. Mtg. Tr., No. 234, p. 24–25) ITI submitted comments emphasizing the need for clarity in the scope of both the test procedures and energy conservation standards for battery chargers in terms of Federal preemption. (ITI, No. 248, p. 1) Similarly, iRobot recommended that DOE add clarifying language in this rulemaking stating that all battery chargers will be covered regardless of connectivity or use except where explicitly exempted. In iRobot's view, if a category of battery charger is not covered, preemption would not apply and States could then develop their own efficiency standards. (iRobot, No. 237, p. 1) PTI inquired whether Product Class 9 is still subject to Federal preemption even if DOE is proposing a no-standard standard for it. (PTI, Pub. Mtg. Tr., No. 234, p. 19).

DOE notes that under 42 U.S.C. 6295(ii), the preemption of any State or local energy conservation standard that has already been prescribed or enacted for battery chargers prior to DOE's issuance of energy conservation standards for these products shall not apply until the DOE standards take effect. In DOE's view, the standards for these products do not take effect until the compliance date has been reached. Accordingly, the CEC standards, along with any other State or local standards, including for back-up battery chargers and UPSs, prescribed or enacted before publication of this final rule, will not be preempted until the compliance date of Federal energy conservation standards for battery chargers—in this case, 2018. (42 U.S.C. 6295(ii)(1)).

DOE also received stakeholder comments on the compliance date of energy conservation standards for battery chargers. AHAM supported a compliance date of two (2) years after the publication of any final rule establishing energy conservation standards for battery chargers provided that the adopted levels do not exceed EL 1 for PC 1, and EL 2 for PCs 2,3, and 4. If DOE adopts anything more stringent than these levels, AHAM requested that a second SNOPR be issued seeking comments on the newly proposed levels and accompanying compliance date. Lastly, in the absence of an opportunity to comment on levels other than EL 2 for PCs 2, 3, 4 and EL 0 or EL 1 for PC 1, AHAM opposed a compliance date lead-time of only two years but offered no alternative and accompanying rationale for DOE to consider. (AHAM, No. 249, p. 4)

DOE has made an effort to consider candidate standards levels for battery chargers that closely approximate the CEC standards and as a result, for PCs 2 through 6, the standards DOE is adopting for these classes are approximately equivalent to the corresponding CEC standards. DOE's efficiency distribution analysis for the SNOPR also shows that 95 percent of battery chargers sold in the United States already meet the CEC standards. Therefore, for PCs 2 through 6, a vast majority (95 percent) of the battery chargers sold in the United States will already comply with the standards DOE is adopting for these battery charger classes.

For PCs 1 and 7, DOE is adopting standards more stringent than the comparable CEC standards. These more stringent levels were determined to be both technically feasible and economically justified under DOE's detailed analysis. This analysis also indicates that the battery charger industry is characterized by rapid product development lifecycles. These rapid development lifecycles have led DOE to conclude that a two-year lead-time is sufficient to enable manufacturers of battery chargers that do not currently comply with the standards that DOE is adopting in this rule (*i.e.* PCs 1 and 7 and the remaining 5 percent of battery chargers falling under PCs 2 through 6 that do not meet the current CEC standards) to satisfy these new standards by the time the 2018 compliance date is reached.

D. Technological Feasibility

The following sections address the manner in which DOE assessed the technological feasibility of the new standards adopted in this final rule. Energy conservation standards promulgated by DOE must be technologically feasible.

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially-available products or in working prototypes to be technologically feasible. See, *e.g.* 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i) (providing that "technologies incorporated in commercially-available products or in working prototypes will be considered technologically feasible.").

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. See 10 CFR part 430, subpart C, appendix A, section 4(a)(4). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level ("EL"). Section I.B of this final rule discusses the results of the screening analysis for battery chargers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

Additionally, DOE notes that it has received no comments from interested parties regarding patented technologies and proprietary designs that would inhibit manufacturers from achieving the energy conservation standards contained in its September 2015 supplemental proposal, which this rule adopts. At this time, based on the information analyzed and relied on in support of this rulemaking, DOE believes that the standards adopted in this rule will not require the use of any such technologies.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for battery chargers by examining a variety of relevant sources of information, including the design parameters used by the most efficient products available on the market, conducting interviews with manufacturers, vetting available manufacturer data with subject matter experts, and obtaining public feedback on DOE's analytical results.

In preparing this final rule, which incorporates into its analysis the max-tech levels for the seven product classes initially addressed in DOE's preliminary analysis, DOE developed a means to create max-tech levels for those classes that were previously not assigned max-tech levels. For the product classes that DOE had previously not generated max-tech efficiency levels, DOE used multiple approaches to develop levels for these classes. During the NOPR phase, DOE solicited manufacturers for information and extrapolated performance parameters from its best-in-market efficiency levels. Extrapolating from the best-in-market performance efficiency levels required an examination of the devices. From this examination, DOE determined which design options could be applied and what effects they would likely have on the various battery charger performance parameters. (See Chapter 5, Section 5.4 of the accompanying final rule TSD.) Table III–1 of this Preamble shows the reduction in energy consumption when increasing efficiency from the no-standards to the max-tech efficiency level.

TABLE III–1—REDUCTION IN ENERGY CONSUMPTION AT MAX-TECH FOR BATTERY CHARGERS

Product class	Max-tech unit energy consumption (kWh/yr)	Reduction of energy consumption relative to the no-standards case (Percentage)
1 (Low-Energy, Inductive)	1.29	85
2 (Low-Energy, Low-Voltage)	1.11	79
3 (Low-Energy, Medium-Voltage)	0.70	80
4 (Low-Energy, High-Voltage)	3.05	75
5 (Medium-Energy, Low-Voltage)	9.45	89
6 (Medium-Energy, High-Voltage)	16.79	86
7 (High-Energy)	131.44	48

Additional discussion of DOE's max-tech efficiency levels can be found in the discussion of efficiency levels ("ELs") in Section IV.C.4. Specific details regarding which design options were considered for the max-tech efficiency levels (and all other ELs) can be found in Chapter 5, Section 5.4 of the accompanying final rule TSD, which has been developed as a stand-alone document for this final rule and supports all of the standard levels adopted.

E. Energy Savings

1. Determination of Savings

For each trial standard level ("TSL"), DOE projected energy savings from application of the TSL to battery chargers purchased in the 30-year period that begins in the year of compliance with any adopted standards (2018–2047). The savings are measured over the entire lifetime of products purchased in the 30-year analysis period.[16] DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-standards case. The no-standards case represents a projection of energy consumption in the absence of new energy conservation standards, and considers market forces and policies that may affect future demand for more efficient products.

DOE used its national impact analysis ("NIA") spreadsheet models to estimate energy savings from potential new standards for battery chargers. The NIA spreadsheet model (described in section I.H of this final rule) calculates savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE calculates national energy savings on an annual basis in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate primary energy savings from site electricity savings, DOE derives annual conversion factors from data provided in the Energy Information Administration's ("EIA") most recent *Annual Energy Outlook* (*AEO*).

In addition to primary energy savings, DOE also calculates full-fuel-cycle ("FFC") energy savings. As discussed in DOE's statement of policy and notice of policy amendment, the FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards. 76 FR 51281 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information, see section IV.H.6.

2. Significance of Savings

To adopt standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term "significant" is not defined in the Act, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended "significant" energy savings in the context of EPCA to be savings that are not "genuinely trivial." The energy savings for all the TSLs considered in this rulemaking, including the adopted standards, are nontrivial, and, therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

[16] In the past DOE presented energy savings results for only the 30-year period that begins in the year of compliance. In the calculation of economic impacts, however, DOE considered operating cost savings measured over the entire lifetime of products purchased in the 30-year period. DOE has chosen to modify its presentation of national energy savings to be consistent with the approach used for its national economic analysis.

F. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential new standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) Industry net present value (*i.e.* INPV), which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP (*i.e.* the payback period) associated with new standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with the new standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new standards. DOE's LCC and PBP analysis is discussed in further detail in section I.F.

c. Energy Savings

Although the significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section I.H, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this final rule would not reduce the utility or performance of the products under consideration in this rulemaking. DOE received no comments that these standards would increase battery charger size and reduce their convenience, increase the length of time to charge a product, shorten the intervals between chargers, or cause any other significant adverse impacts on consumer utility.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from DOE's adoption of a given standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE followed this requirement after publication of the March 2012 NOPR. DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE also provided DOJ with a copy of its supplemental proposal in September 2015. DOE received no adverse comments from DOJ regarding either proposal.

f. Need for National Energy Conservation

In general, the energy savings from new standards are likely to provide improvements to the security and reliability of the Nation's energy system. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) Consistent with this result, the energy savings from the adopted standards are also likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section M.

Additionally, apart from the savings described above, the adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section I.K; the emissions impacts are reported in section 6 of this final rule. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section I.L.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under "other factors."

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential new (or amended) energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section V.B.1.c of this final rule.

G. General Comments

During the September 15, 2015, public meeting, and in subsequent written comments responding to the SNOPR, stakeholders provided input regarding general issues pertinent to the rulemaking, such as issues regarding the proposed standard levels. These issues are discussed in this section.

1. Proposed Standard Levels

In response to the standard level proposed for product class ("PC") 1, AHAM suggested that DOE update its analysis by further interviewing manufacturers and conducting more testing. AHAM suggested setting a standard at CSL 0. (AHAM, No. 249, p. 4) Philips did not support DOE's proposed standard for PC 1 and asserted that the standard for inductive chargers in PC 1 should be less stringent than for direct connect chargers in PC 2. (Philips, No. 245, p. 2) DOE notes that its analysis is based on the latest available data, which includes manufacturer interviews, testing, and product tear downs. DOE's analysis shows that the standard levels adopted for each product class are economically justified. PC 1 has only two applications, whereas PC 2 has many applications with a variety of usage profiles. The standard for PC 1 that DOE is adopting in this final rule specifically targets the two analyzed applications of PC 1 to capture maximum energy savings while being technically feasible and economically justified for both applications. The standard for PC 2 that DOE is adopting in this final rule covers numerous applications and captures maximum energy savings while being technically feasible and economically justified for all applications, which have varying levels of fixed energy loss. Stakeholders did not provide DOE with any additional data that could be used to update the analysis.

In response to the standard level proposed for PC 2, the CEC, CA IOUs, NRDC, ASAP, and NEEA urged DOE to consider setting a standard at CSL 2 instead of CSL 1, based on the LCC results for PC 2. (CEC, No. 241, p. 2–3; CA IOUs, No. 251, p. 2–4; NRDC, ASAP, NEEA, No. 252, p. 4–6) In contrast, AHAM, PTI, and ITI supported DOE's proposal of CSL 1 for PC 2. (AHAM, No. 249, p. 2–3; PTI, No. 244, p. 2; ITI, No. 248, p. 5)

In response to the standard levels proposed for PCs 4, 5, and 6, Ingersoll Rand supported DOE's proposed standard levels. (Ingersoll Rand, No. 240, p. 2)

The Department appreciates the stakeholder comments with regard to its proposed standards. In selecting a given standard, DOE must choose the level that achieves the maximum energy savings that is determined to be technologically feasible and economically justified. In making such a determination, DOE must consider, to the extent practicable, the benefits and burdens based on the seven criteria described in EPCA (see 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)). DOE's weighing of the benefits and burdens based on the final rule analysis and rationale for the standard selection is discussed in section V.

With regard to PC 2 specifically, DOE notes that the SNOPR analysis showed that the distribution of impacts at CSL 2 is such that a small proportion of consumers experience a very positive LCC result, skewing the average to appear nearly as favorable as CSL 1, despite significantly more consumers being negatively impacted. Additionally, the application-specific LCC results for PC 2 show that half of all applications analyzed, including the two applications with the largest shipments (smartphones and mobile phones), have negative average LCC results. At CSL 1, no application in PC 2 has a negative average LCC. Finally, in the SNOPR consumer subgroup analysis, DOE identified the small business subgroup as being negatively impacted by a standard set at CSL 2 for PC 2, whereas no subgroup is negatively impacted by a standard set at CSL 1. For these reasons, DOE determined that CSL 2 for PC 2 was not economically justified in the SNOPR. DOE's analysis and determination have not changed for the final rule. Results are discussed further in section V of this document and in Chapter 11 of the final rule TSD.

IV. Methodology and Discussion

This section addresses the analyses DOE has performed for this rulemaking with regard to battery chargers. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. First, DOE used a spreadsheet that calculates the LCC and PBP of the new energy conservation standards. Second, the NIA uses a second spreadsheet that provides shipments forecasts and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. Third, DOE uses the Government Regulatory Impact Model ("GRIM") to assess manufacturer impacts of potential standards. These three spreadsheet tools are available in the docket for this rulemaking: *http://www.regulations.gov/#!docketDetail;D=EERE-2008-BT-STD-0005*. Additionally, DOE used output from the latest version of EIA's *Annual Energy Outlook* (*"AEO"*), a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of battery chargers. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Products Included in This Rulemaking

This section addresses the scope of coverage for this final rule and details which products are subject to the standards adopted in this document. The comments DOE received on the scope of these standards are also summarized and addressed in this section.

A battery charger is a device that charges batteries for consumer products, including battery chargers embedded in other consumer products. (42 U.S.C. 6291(32)) Functionally, a battery charger is a power conversion device used to transform input voltage to a suitable voltage for charging the battery. Battery chargers are used in conjunction with other end-use consumer products, such as cell phones and digital cameras. However, the battery charger definition prescribed by Congress is not limited solely to products that are only powered from AC mains (or "mains")—*i.e.* products that plug into a wall outlet. Further, battery chargers may be wholly embedded in another consumer product, wholly separate from another consumer product, or partially inside and partially outside another consumer product. While devices that meet the statutory definition are within the scope of this rulemaking, DOE is not setting standards for all battery chargers. The following subsections summarize and address stakeholder comments received on the SNOPR regarding the scope of this rulemaking.

a. Consumer Products

EPCA defines a consumer product as any article of a type that consumes or is designed to consume energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. See 42 U.S.C. 6291(1). Manufacturers of battery chargers are advised to use this definition (in conjunction with the battery charger definition) to determine whether a given device is subject to the battery charger standards adopted in this final rule. Consistent with these definitions, any battery charger that is of a type that is capable of charging batteries for a consumer product is considered a covered product and possibly subject to DOE's energy conservation standards, without regard to whether that battery charger was in fact distributed in U.S. commerce to operate a consumer product. Only those battery chargers that have identifiable design characteristics that would make them incapable of charging batteries for a consumer product would be considered to not meet EPCA's definition of a battery charger. DOE considers the inability of a battery charger to operate using residential mains power—Standard 110–120 VAC, 60 Hz input—as an identifiable design characteristic when considering whether a battery charger is not capable of charging the batteries of a consumer product.

DOE received comments on the SNOPR from Delta Q requesting that DOE follow the CEC's lead in setting energy conservation standards for non-consumer and high-power (above 2 kW input power or with higher input voltages) battery chargers. Delta Q also suggested that DOE explicitly specify that the CEC's standards for non-consumer and high-power battery chargers will not be preempted in case DOE decides not to regulate these battery chargers. (Delta Q, No. 238, p. 2) DOE's authority to establish energy conservation standards for battery chargers comes from Title III, Part B of EPCA, which empowers DOE to establish energy conservation standards for consumer products other than automobiles. As such, DOE does not have the statutory authority to establish energy conservation standards for battery chargers that do not meet the definition prescribed by EPCA. See 42 U.S.C. 6291(1). Furthermore, this final rule does not set, nor does it rely on, minimum or maximum input power restrictions for its scope of covered consumer products. A product that meets the definition of a battery charger as stated in 10 CFR 430.2 (and that charges a product that is consistent with EPCA's consumer product definition) is a covered product under the scope of this rulemaking and subject to Federal preemption in a manner consistent with 42 U.S.C. 6295(ii) and 6297. DOE notes that some of the products that meet these conditions can also be employed in commercial applications and as such, DOE's analysis has taken into consideration the impact of this regulation on commercial entities that are affected by it.

b. Basic Model of Battery Charger

This rule requires manufacturers to certify compliance of the basic models of their battery chargers to the energy conservation standards DOE is adopting. In response to the SNOPR, DOE received comments from AHAM highlighting that the definition of basic model in 10 CFR 430.2 indicates that manufacturers may group into one basic model products having "essentially identical electrical, physical, and functional . . . characteristics that affect . . . energy efficiency". AHAM requested DOE to expressly indicate in this rulemaking or in the definition of basic model that in determining whether a product has the same electrical or physical characteristics that affect energy efficiency, the battery charging phase is the relevant phase, not the usage phase. (AHAM. No. 249, p. 7)

DOE believes it is sufficiently unambiguous that a basic model as defined in 10 CFR 430.2 applies solely to the covered product, regardless of whether or not that product is embedded in another end-use product. Since the energy conservation standards set forth in this final rule pertains only to battery chargers, it is the charging components that must meet the criteria of a basic model as defined in 10 CFR 430.2.

c. Wireless Power

Although DOE's May 15, 2014 NODA (79 FR 27774) sought input on wireless charging stations that are specifically designed to operate in dry environments, DOE did not explicitly consider these products when first developing the battery charger test procedures. In the battery charger test procedure NOPR, DOE stated that it planned to address wireless chargers designed for dry environments in a separate rulemaking. See 80 FR 46855 (August 6, 2015). DOE received comments on the SNOPR from ITI and Power MergerCo requesting that DOE promptly issue a determination for wireless charging systems such that, under section 6295(o)(3)(B), establishment of energy conservation standards for wireless charging systems designed to operate in dry environments will not result in significant conservation of energy or that the establishment of such a standard is not technologically feasible or economically justified at this time. (ITI, No. 248, p. 3, Power MergerCo, No. 247, p. 4) Similarly, DOE received comments from iRobot recommending that DOE expressly state that PCs 2 through 7 are specific to galvanic coupled battery chargers. (iRobot, No. 237, p. 1)

DOE reiterates that only battery chargers with inductive connections that are designed to operate in wet conditions are addressed by the standards laid out for PC 1 devices in this final rule. In making this determination, DOE considered the loss of utility and performance likely to result from the promulgation of a standard for a nascent technology such as wireless charging. This approach allows DOE to set standards for the mature technology found in electric toothbrushes while avoiding unintentional restrictions on the development of new inductively-charged products. In response to iRobot's comment, DOE interprets 'Non-galvanic coupled' chargers to be wireless battery chargers. As such, wireless battery chargers that do not meet the scope of PC 1 will not be subject to any other standard adopted in this final rule.

d. USB-Charged Devices

DOE received comments on the SNOPR from ITI claiming there are a number of USB-charged devices peripheral to computers, televisions and other consumer products where the burden of testing and certifying the products exceeds any possible energy efficiency benefits. ITI argued these USB-charged devices are not dependent on AC mains input and will have significant margins when compared to battery chargers covered under the regulation with alternating current/direct current ("AC/DC") power supplies. In its view, regulation of these products at either the federal or state level would not be economically justified. (ITI, No. 248, p. 4)

The peripheral USB-charged devices mentioned by ITI fall both into Product Classes 2 and 8. While PC 8 covers products that require a DC input, these devices can also be operated using an EPS, which reclassifies these products as having an AC input and DC output and essentially also places them into PC 2. As described in the SNOPR, DOE has determined that there are no products falling into PC 8 that do not also fall into PC 2 and that the battery chargers previously analyzed in PC 8 do not technically or functionally differ from those found in PC 2. ITI's claim that these USB-charged devices are not dependent on mains input is true but it does not refute DOE's determination that these devices can be operated using an EPS. Furthermore, DOE's battery charger test procedure requires that all battery chargers be tested using an external power supply, and provides sufficient instructions in section 3.4(c) of Appendix Y to Subpart B of Part 430 in the event the required external power supply is either not packaged with the battery charger or a suitable one is not recommended by the manufacturer. The test procedure indicates that in such an event, the battery charger shall be tested with either 5.0V DC for products drawing power from a computer USB port or the mid-point of the rated input voltage range for all other products. Hence, the peripheral devices in ITI's comment will be tested using an EPS, which makes them comparable to all other battery chargers using an EPS, and subject to the standard adopted for PC 2. Furthermore, DOE's engineering, manufacturer impact and national impact analyses show that the adopted standard for PC 2 is technologically feasible and economically justified.

e. Spare and Replacement Parts for Battery Chargers

ITI asked that DOE provide a 7-year exemption for spare and replacement parts for battery chargers once the final rule is issued. ITI argued that the requested exemption will allow manufacturer compliance with State parts retention laws and avoid premature disposal of functional equipment already in the marketplace. (ITI, No. 248, p. 4) Congress has not provided any exemptions for spare and replacement parts for battery chargers nor has Congress given DOE the authority to do so as it did with EPSs. See EPS Service Parts Act of 2014, Public Law 113–263 (December 18, 2014) (codified in relevant part at 42 U.S.C. 6295(u)(5)). Furthermore, in the case of battery chargers embedded in end-use products, it is not clear which applications would be involved. Therefore, DOE is unable to provide any exemptions for spare and replacement parts for battery chargers.

f. Medical Products

In the SNOPR, DOE decided to refrain from setting standards for medical devices that require Federal Food and Drug Administration ("FDA") listing and approval as a life-sustaining or life-supporting device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)). While setting standards for these devices may yield energy savings, DOE also wishes to avoid any action that could potentially impact their reliability and safety. In the absence of sufficient data and stakeholder comments on this issue, and consistent with DOE's obligation to consider such adverse impacts when identifying and screening design options for improving the efficiency of a product, DOE is finalizing its decision of refraining from setting standards for medical device battery chargers that require FDA listing and approval as a life-sustaining or life-supporting device at this time.

2. Market Assessment

To characterize the market for battery chargers, DOE gathered information on the products that use them. DOE refers to these products as end-use consumer products or battery charger "applications." This method was chosen for two reasons. First, battery chargers are nearly always bundled with, or otherwise intended to be used with, a given application; therefore, the demand for applications drives the demand for battery chargers. Second, because most battery chargers are not stand-alone products, their shipments, lifetimes, usage profiles, and power requirements are all determined by the associated application.

DOE analyzed the products offered by online and brick-and-mortar retail outlets to determine which applications use battery chargers and which battery charger technologies are most prevalent. The list of applications analyzed and a full explanation of the market assessment methodology can be found in chapter 3 of the accompanying final rule TSD.

While DOE identified the majority of battery charger applications, some may not have been included in the NOPR analysis. This is due in part because the battery chargers market is dynamic and constantly evolving. As a result, some applications that use a battery charger were not initially found because they either made up an insignificant market share or were introduced to the market after the NOPR analysis was conducted. The battery chargers for any other applications not explicitly analyzed in the market assessment would still be subject to the proposed standards as long as they fall into one of the battery charger classes outlined in Table I–1. That is, DOE's omission of any particular battery charger application

from its analysis is not, by itself, an indication that the battery charger that powers that application is not subject to the battery chargers standards.

DOE relied on published market research to estimate base-year shipments for all applications. In the NOPR, DOE estimated that in 2009, a total of 437 million battery chargers were shipped for final sale in the United States. For the final rule, DOE conducted additional research and updated its shipments estimates to provide shipments data for 2011. Where more recent data were available, DOE updated the shipments data based on the more recent shipments data collected. Where more recent information could not be found, DOE derived the 2011 shipments value based on the 2009 estimates, and used its shipments model as described in section IV.G.1 to project the 2009 shipments to 2011. In 2011, DOE estimated that a total of 506 million battery chargers units were shipped. The complete shipment analysis can be found in Chapter 9 of the final rule TSD.

3. Product Classes

When necessary, DOE divides covered products into classes by the type of energy used, the capacity of the product, and any other performance-related feature that could justify different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) DOE then conducts its analysis and considers establishing or amending standards to provide separate standard levels for each product class.

DOE created 11 product classes for battery chargers based on various electrical characteristics shared by particular groups of products. As these electrical characteristics change, so does the utility and efficiency of the devices.

a. Product Class 1

DOE has received stakeholder comments on the SNOPR from PTI, OPEI and iRobot expressing concerns regarding the range of PC 1. PTI, OPEI and iRobot noted that all the products evaluated for the establishment of an energy conservation standard for PC 1 fell in the low range of battery energy (0.5Wh to 1.8Wh); yet, the proposed standard based upon the evaluation of these low battery energy products extends to 100Wh, which, in their view, raised questions regarding the proposed standard. These stakeholders expressed further concern that the proposed standard for PC 1 can potentially undermine the development of new inductively-charged products with battery energies greater than those of electric toothbrushes. (PTI and OPEI, No. 244, p. 3, iRobot, No. 237, p. 2)

PC 1 covers battery chargers with low battery energy and inductive charging capability, which is a utility-related characteristic designed to promote safe and clean operation of a battery charger in a wet environment. In a wet environment, these inductive battery chargers ensure that the user is isolated from AC mains by transferring power to the battery through induction rather than conduction. When developing the energy conservation standard for PC 1, DOE considered two applications—electric toothbrushes and water jets. DOE believes that the technology deployed in these two applications are sufficiently mature, such that establishing an energy conservation standard for them would not hinder their further technological development. DOE was not able to identify any other battery charger application specifically designed for wet environments. While DOE primarily found devices in these two applications with battery energies ranging from 0.5 to 1.8 Wh, the CEC database of compliant small battery chargers includes electric toothbrushes with battery energies up to 3.84 Wh. An overall analysis of the electric toothbrush marketplace and existing battery technology leads DOE to believe that the battery energy of electric toothbrushes will not exceed 5 Wh. Therefore, DOE agrees with the stakeholder concern that the proposed range for the PC 1 standard may unintentionally undermine the development of new 1:1 inductively-charged products with battery energies greater than those of electric toothbrushes. To mitigate this risk, DOE is limiting the range of PC 1 to less than and equal to 5 Wh. This approach allows DOE to focus its efforts on setting standards for the mature technology already found in electric toothbrushes and water jets without unintentionally imposing restrictions on the development of new inductively-charged products.

b. Product Classes 5 and 6

DOE received comments during the SNOPR public meeting held on September 15, 2015 as well as written comments from the People's Republic of China seeking to clarify the boundary conditions for the proposed standards for PCs 5 and 6. Specifically, the SNOPR proposed boundary conditions at 19Wh and 18Wh (so that a different unit energy consumption ("UEC") equation was used for battery chargers above and below the respected boundary condition) for PCs 5 and 6, respectively, while the product classes themselves only cover products having battery energies greater than 100Wh. (Philips Chloride, Pub. Mtg. Tr., No. 234, p. 12–13; P. R. China, No. 254, p. 3)

DOE generated boundary conditions for its conservation standards to fix the UEC requirement below a certain threshold of battery energy and recognized that below these thresholds the fixed components of the UEC equation, such as maintenance mode power, become an increasingly bigger percentage of the device's overall power consumption that may not diminish with decreasing battery energy. Including these boundary conditions allows DOE to account for the fact that even if the battery energy approaches zero, the device will continue to consume a finite amount of non-zero power. Accordingly, these boundary conditions help create better fitting equations and enable DOE to promulgate standards that more accurately reflect the characteristics of a given product class.

For PCs 5 and 6, the derived boundary conditions begin at 19 Wh and 18 Wh respectively. However, in response to the comments received, DOE recognizes that PCs 5 and 6 cover battery chargers with battery energies ranging from 100–3000 Wh and that the boundary conditions at 19 Wh and 18 Wh for these two classes become unnecessary and will never be used. While the presence of these boundary conditions does not affect covered products in PC 5 and 6, DOE realizes that it may lead to misinterpretation and ambiguity. Therefore, DOE is removing these boundary conditions from the final rule.

c. Product Classes 8, 9, 10a, and 10b

Compared to the NOPR, DOE reduced the number of product classes for which it is adopting energy conservation standards in this final rule. Specifically, DOE is not adopting standards for battery chargers falling into PCs 8, 9, 10a, and 10b as initially proposed in its NOPR. DOE chose to reduce the number of affected classes in response to comments on the SNOPR from ITI, Schneider, NRDC, ASAP and NEEA opposing the exclusion of PCs 8, 9 and 10 from the scope of this rulemaking. ITI expressed concern regarding DOE's unknown future plans for regulating products in these classes and about the potential loss of energy savings resulting from the exclusion of PCs 8, 9 and 10. (ITI, No. 248, p. 1) Schneider requested that DOE adopt the energy conservation standards set by the CEC for PCs 10a and 10b, and in particular, a no-standards standard for PC 10b. (Schneider, No. 253, p. 1) Additionally, the CEC, NRDC, ASAP and NEEA

requested DOE to explicitly exclude PCs 10a and 10b from the scope of this rulemaking rather than setting a no-standards standard for these product classes. These stakeholders argued that this approach will prevent confusion regarding coverage of PCs 10a and 10b, and avoid potential backsliding on energy savings from standards set by the CEC. [CEC, No. 241, p. 4–5, NRDC, ASAP, NEEA, No, 252, p. 3–4)

DOE notes that products falling into PC 8 from the NOPR are still covered under the scope of this rulemaking and subject to the standards adopted in this rule. DOE has determined that the battery chargers previously analyzed in PC 8 do not technically differ from those found in PC 2 and that there are no products falling into PC 8 that do not also fall into PC 2. For this reason, DOE has combined all previously analyzed products, and related shipments in PC 8 with PC 2. Consequently, what were previously PC 8 devices are now subject only to the energy conservation standard of PC 2.

Regarding the absence of a standard for PC 9, DOE directs the reader to the March 2012 NOPR LCC results where DOE ran a number of analyses in an attempt to ascertain whether an appropriate efficiency level could be created for PC 9. The engineering and LCC analyses found no efficiency level to exhibit positive LCC savings and DOE has not received any evidence since that time suggesting otherwise. This fact, combined with the minimal UECs found for products in this category indicated that setting a standard for PC 9 at this time would not be economically justifiable under the framework set out by EPCA. As such, DOE has determined that the legal requirements necessary for setting standards for PC 9 could not be met. While products falling into this category are still covered under the scope of this rulemaking and are subject to federal preemption, DOE is not promulgating a standard for chargers that would have fallen into PC 9 at this time.

Lastly, DOE has determined that the current battery charger test procedure does not adequately capture the energy consumption of products in PCs 10a and 10b, which include UPSs. DOE has proposed to amend the test procedure for battery chargers to include a specific test for UPSs to capture their energy consumption. Issued April 29, 2016 UPS TP NOPR. DOE will not establish a standard for Product Class 10a and 10b until a test procedure for these products has been prescribed.

DOE received further comments on the SNOPR from Emerson, ITI, NEMA and Schneider requesting DOE to ensure that direct current UPSs are not unintentionally regulated under PC 7 if UPSs are excluded from the scope of this rulemaking. (Emerson, Pub. Mtg. Tr., No. 234, p. 24; ITI, No. 248, p. 4; NEMA, No. 246 p. 2; Schneider, No. 253, p. 1) Direct current ("DC") UPSs meet the definition of uninterruptible power supplies proposed in the battery charger test procedure NOPR, which proposed a specific test for UPSs. Under that proposal, the existing testing requirements for battery chargers would apply to battery chargers other than UPSs, and separate testing requirements would apply to UPSs. Issued April 29, 2016 UPS TP NOPR DOE will not establish standards for UPSs until a test procedure for these products has been prescribed.

4. Technology Assessment

In the technology assessment, DOE identifies technology options that appear to be feasible for improving product efficiency. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. The following discussion provides an overview of the technology assessment for battery chargers. Chapter 3 of the final rule TSD provides additional detail and descriptions of the basic construction and operation of battery chargers, followed by a discussion of technology options to improve their efficiency and power consumption in various modes.

a. Battery Charger Modes of Operation and Performance Parameters

DOE found that there are five modes of operation in which a battery charger can operate at any given time—active (or charge) mode, maintenance mode, no-battery (or standby) mode, off mode, and unplugged mode. During active mode, a battery charger is charging a depleted battery, equalizing its cells, or performing functions necessary for bringing the battery to the fully charged state. In maintenance mode, the battery is plugged into the charger, has reached full charge, and the charger is performing functions intended to keep the battery fully charged while protecting it from overcharge. No-battery mode involves a battery charger plugged into AC mains but without a battery connected to the charger. Off mode is similar to no-battery mode but with all manual on-off switches turned off. Finally, during unplugged mode, the battery charger is disconnected from mains and not consuming any electrical power.[17]

For each battery charger mode of operation, DOE's battery charger test procedures have a corresponding test that is performed that outputs a metric for energy consumption in that mode. The tests to obtain these metrics are described in greater detail in DOE's battery charger test procedures. When performing a test in accordance with these procedures, certain items play a key role in evaluating the efficiency performance of a given battery charger—24-hour energy, maintenance mode power, no-battery mode power, and off-mode power. (10 CFR part 430 Appendix Y to Subpart B)

First, there is the measured 24-hour energy of a given charger. This quantity is defined as the power consumption integrated with respect to the time of a fully metered charge test that starts with a fully depleted battery. In other words, this is the energy consumed to fully charge and maintain at full charge a depleted battery over a period that lasts 24 hours or the length of time needed to charge the tested battery plus 5 hours, whichever is longer in duration. Next, is maintenance mode power, which is a measurement of the average power consumed while a battery charger is in maintenance mode. No-battery (or standby) mode power is the average power consumed while a battery charger is in no-battery or standby mode (only if applicable).[18] Off-mode power is the average power consumed while an on-off switch-equipped battery charger is in off mode (*i.e.* with the on-off switch set to the "off" position). Finally, unplugged mode power consists of the average power consumed while the battery charger is not physically connected to a power source. (This quantity is always 0.)

Additional discussion on how these parameters are derived and subsequently combined with assumptions about usage in each mode of operation to obtain a value for the UEC is discussed below in section IV.C.2.

[17] Active mode, maintenance mode, standby mode, and off mode are all explicitly defined by DOE in Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery chargers.

[18] If the product contains integrated power conversion and charging circuitry, but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable. (Section 5.11.d Standby Mode Energy Consumption Measurement, 10 CFR part 430 Appendix Y to Subpart B).

b. Battery Charger Technology Options

Since most consumer battery chargers contain an AC to DC power conversion stage, similar to that found in an EPS, DOE examined many of the same technology options for battery chargers as it did for EPSs in the EPS final rule. See 79 FR 7845 (Feb. 10, 2014). The technology options used to decrease EPS no-load power can decrease battery charger energy consumption in no-battery and maintenance modes (and off mode, if applicable), while those options used to increase EPS conversion efficiency can decrease battery charger energy consumption in active and maintenance modes.

DOE considered many technology options for improving the active-mode charging efficiency as well as the no-battery and maintenance modes of battery chargers. The following list, organized by charger type, describes technology options that DOE evaluated during the NOPR, the SNOPR and again in this final rule. Although many of these technology options could be used in both fast and slow chargers, doing so may be impractical due to the cost and benefits of each option for the two types of chargers.[19] Therefore, in the list below, the options are grouped with the charger type where they would be most practical.

Slow charger technology options include:

• *Improved Cores:* The efficiency of line-frequency transformers, which are a component of the power conversion circuitry of many slow chargers, can be improved by replacing their cores with ones made of lower-loss steel.

• *Termination:* Substantially decreasing the charge current to the battery after it has reached full charge, either by using a timer or sensor, can significantly decrease maintenance-mode power consumption.

• *Elimination/Limitation of Maintenance Current:* Constant maintenance current is not required to keep a battery fully charged. Instead, the battery charger can provide current pulses to "top off" the battery as needed.

• *Elimination of No-Battery Current:* A mechanical AC line switch inside the battery charger "cup" automatically disconnects the battery charger from the mains supply when the battery is removed from the charger.

[19] The distinction between the two types of battery chargers is based on the charge rate (also referred to as C-rate). DOE considers battery chargers with charge rates less than 0.2C to be slow chargers and anything above that rate to be fast chargers. Please refer to Chapter 3 of the accompanying Technical Support Document for further detail.

• *Switched-Mode Power Supply:* To increase efficiency, line-frequency (or linear) power supplies can be replaced with switched-mode EPSs, which greatly reduce the biggest sources of loss in a line-frequency EPS—the transformer.

Fast charger technology options include:

• *Low-Power Integrated Circuits:* The efficiency of the battery charger's switched-mode power supply can be further improved by substituting low-power integrated circuit ("IC") controllers for traditional IC controllers.

• *Elimination/Limitation of Maintenance Current:* See above.

• *Schottky Diodes and Synchronous Rectification:* Both line-frequency and switched-mode EPSs use diodes to rectify output voltage. Schottky diodes and synchronous rectification can replace standard diodes to reduce rectification losses, which are increasingly significant at low voltage.

• *Elimination of No-Battery Current:* See above.

• *Phase Control to Limit Input Power:* Even when a typical battery charger is not delivering its maximum output current to the battery, its power conversion circuitry continues to draw significant power. A phase control circuit, like the one present in most common light dimmers, can be added to the primary side of the battery charger power supply circuitry to limit input current in lower-power modes.

An in-depth discussion of these technology options can be found in Chapter 3 of the accompanying final rule TSD.

B. Screening Analysis

DOE uses the following four screening criteria to determine which design options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* DOE considers technologies incorporated in commercial products or in working prototypes to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercially-available consumer products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE considers that technology practicable to manufacture, install, and service.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

See generally 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

For battery chargers, after considering the four criteria, DOE screened out:

1. Non-inductive chargers for use in wet environments because of potential adverse impacts on safety;

2. Capacitive reactance because of potential adverse impacts on safety; and

3. Lowering charging current or increasing battery voltage because of potential adverse impacts on product utility to consumers.

For additional details, please see Chapter 4 of the final rule TSD.

C. Engineering Analysis

In the engineering analysis (detailed in Chapter 5 of the final rule TSD), DOE establishes the relationship between the manufacturer selling price ("MSP") and increases in battery charger efficiency. The efficiency values range from that of an inefficient battery charger sold today (*i.e.,* the no-standards case) to the maximum technologically feasible efficiency level. For each efficiency level examined, DOE determines the MSP; this relationship is referred to as a cost-efficiency curve.

DOE structured its engineering analysis around two methodologies: (1) A "test and teardown" approach, which involves testing products for efficiency and determining cost from a detailed bill of materials ("BOM") derived from tear-downs and (2) the efficiency-level approach, where the cost of achieving increases in energy efficiency at discrete levels of efficiency are estimated using information gathered in manufacturer interviews that was supplemented and verified through technology reviews and subject matter experts ("SMEs"). When analyzing the cost of each EL—whether based on existing or theoretical designs—DOE differentiates the cost of the battery charger from the cost of the associated end-use product.

When developing the engineering analysis for battery chargers, DOE selected representative units for each product class. For each representative unit, DOE tested a number of different products. After examining the test

results, DOE selected ELs that set discrete levels of improved battery charger performance in terms of energy consumption. Subsequently, for each EL, DOE used either teardown data or information gained from manufacturer interviews to generate costs corresponding to each EL for each representative unit. Finally, for each product class, DOE developed scaling relationships using additional test results and generated UEC equations based on battery energy.

The following sections discuss the engineering analysis in detail.

Submitted comments regarding the various aspects of the analysis are noted in each section.

1. Representative Units

For each product class, DOE selected a representative unit on which it conducted its engineering analysis and developed a cost-efficiency curve. The representative unit is meant to be an idealized battery charger typical of those used with high-volume applications in its product class. Because results from the analysis of these representative units would later be extended, or applied to other units in each respective product class, DOE selected high-volume and/or high-energy-consumption applications that use batteries that are typically found across battery chargers in the given product class. The analysis of these battery chargers is pertinent to all the applications in the product class under the assumption that all battery chargers with the same battery voltage and energy provide similar utility to the user, regardless of the actual end-use product with which they work. Table IV–1 shows the representative units for each product class that DOE analyzed.

TABLE IV–1—BATTERY CHARGER REPRESENTATIVE UNITS FOR EACH PRODUCT CLASS

Product class #	Input/output type	Battery energy (Wh)	Special characteristic or battery voltage	Rep. unit battery voltage (V)	Rep. unit battery energy (Wh)
1	AC In, DC Out	≤10	Inductive Connection	3.6	1.5
2		<100	<4 V	2.4	1
3			4–10 V	7.2	10
4			>10 V	12	20
5		100–3000	<20 V	12	800
6			≥20 V	24	400
7		>3000		48	3,750

During the public meeting for the SNOPR, Dell inquired whether DOE looked at multi-voltage, multi-capacity battery chargers when selecting representative units. (Dell, Pub. Mtg. Tr., No. 234, p. 50–51) DOE confirms that in the course of the engineering analysis, several lithium and nickel multi-voltage, multi-capacity battery chargers were tested, torn down and compared against similar single-voltage units. The recently amended battery charger test procedure prescribes that a multi-voltage charger be tested at its highest output power, which is also its most efficient operating point. Issued May 6, 2016. At this level, DOE could not find any appreciable difference in efficiency between the multi-voltage, multi-capacity units versus single-voltage devices operating at similar output powers and employing similar power conversion and charge termination technology. Additional details on the battery charger representative units can be found in Chapter 5 of the accompanying final rule TSD.

2. Battery Charger Efficiency Metric

In the NOPR and SNOPR regarding energy conservation standards for battery chargers, DOE introduced and used the UEC metric to represent the efficiency of battery chargers. AHAM supported the use of UEC as a single metric to represent the energy consumption of battery chargers, (AHAM, No. 249, p. 4–5), but Ingersoll Rand opposed it. In particular, Ingersoll Rand argued that the usage of battery chargers is highly dependent on the target market for a given product and varies across segments, which makes the determination of product efficiency levels, and possibly even class definitions, unnecessarily difficult. Ingersoll Rand recommended that DOE adopt the metrics used by the CEC, as manufacturers are already familiar with the CEC metrics and it would, in its view, be easier to implement and enforce standards based on those metrics. (Ingersoll Rand, No. 240, p. 2–3)

EPCA requires DOE to regulate standby and off modes in a single metric unless it is technically infeasible to do so. See 42 U.S.C. 6295(gg)(3). Standby mode, as defined by 42 U.S.C. 6295(gg)(3), occurs when the energy-consuming product is connected to the mains and offers user-oriented or protective functions such as facilitating the activation or deactivation of other functions (including active mode) by a remote switch (including remote control), internal sensor, or timer. See 42 U.S.C. 6295(gg)(1)(A)(iii). Maintenance mode, as used in this final rule, meets the statutory definition of standby mode and DOE must incorporate maintenance and off mode into a single metric. The CEC standards for small battery charger systems use two standards for regulation. The first standard collectively regulates the maximum 24-hour charge and maintenance energy and the second standard collectively regulates the maximum maintenance mode and standby mode power. Hence, adopting the CEC approach would be inconsistent with the single metric approach laid out by Congress, as the CEC uses two standards that both separately incorporate maintenance mode.

Further, DOE notes that aggregating the performance parameters of battery chargers into one metric and applying a usage profile will allow manufacturers more flexibility in terms of improving performance during the modes of operation that will be the most beneficial to their consumers rather than being required to improve the performance in each mode of operation, some of which may not provide any appreciable benefit. For example, in certain cases, a power tool battery charger may be in standby mode, also referred to as the no-battery mode in this final rule, for longer periods of time during the day than a battery charger used for a cordless house phone, which is likely to spend a significant portion of every day in maintenance mode. Consequently, in light of these differences, consumers would see greater energy savings if power tool battery charger manufacturers improved standby mode efficiency and home phone battery charger manufacturers improved maintenance mode efficiency. Because the UEC metric is indifferent to

how a manufacturer implements changes to improve efficiency, a manufacturer can tailor its battery chargers to better fit the individual conditions that its particular charger is likely to face. For these reasons, DOE is adopting the UEC metric in this final rule to help ensure that manufacturers have sufficient flexibility in improving the energy efficiency performance of their battery chargers.

3. Calculation of Unit Energy Consumption

UEC is based on a calculation designed to give the total annual amount of energy lost by a battery charger from the time spent in each mode of operation. The UEC of a battery charger basic model is calculated using one of the following equations:

Primary Equation

$$UEC = 365\left(n\left(E_{24} - 5P_m - E_{batt}\right)\frac{24}{t_{cd}} + \left(P_m\left(t_{a\&m} - (t_{cd} - 5)n\right)\right) + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

Secondary Equation

For some battery chargers, the equation described above is not appropriate and an alternative calculation is necessary. Specifically, in cases where the charge test duration (as determined according to section 5.2 of Appendix Y to Subpart B of Part 430) minus 5 hours multiplied by the number of charges per day (n) is greater than the time assumed in active and maintenance mode ($t_{a\&m}$), an inconsistency is seen between the measurements for the test product and DOE's usage profile assumptions. To avoid this inconsistency, DOE requires that the following secondary equation be used to calculate UEC for such devices at the threshold:

$$UEC = 365\left(n\left(E_{24} - 5P_m - E_{batt}\right)\frac{24}{(t_{cd} - 5)} + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

The threshold criteria to determine when to use the secondary equation itself can be summarized as follows:

$$t_{cd} - 5 > \frac{t_{a\&m}}{n}$$

In the battery charger NOPR from 2012, DOE calculated and published the threshold Charge Time ($t_{a\&m}/n$) for each product class. These values were brought forward unchanged from the NOPR to the September 2015 SNOPR. DOE has since revisited these published numbers and discovered calculation and rounding errors in computing the threshold value ($t_{a\&m}/n$). While the final presented values for Threshold Charge Time ($t_{a\&m}/n$) were calculated using unrounded numbers, the values for $t_{a\&m}$ and n were shown in rounded form. This left the reader unable to replicate the final values themselves using the above equation. Therefore, DOE has updated the table to present final values that are properly calculated according to the threshold equation without any rounding errors. For PC 2, there was a typographical error which has also been corrected. The difference between the previously published values and what the values should have been is shown in Table IV–2 below. It is important to note that neither the criteria used nor the values for $t_{a\&m}$ or n has changed. DOE has corrected the tables in this final rule.

TABLE IV–2—THRESHOLD CHARGE TIMES

Product class	$T_{a\&m}$ (time spent in active and maintenance mode	n (number of full charges per day)	Incorrectly calculated SNOPR threshold charge time (hr)	Correctly calculated final rule threshold charge time (hr)
1	20.66	0.15	135.41	137.73
2	7.82	0.54	19.00	14.48
3	6.42	0.1	67.21	64.20
4	16.84	0.5	33.04	33.68
5	6.52	0.11	56.83	59.27
6	17.15	0.34	50.89	50.44
7	8.14	0.32	25.15	25.44

In the battery charger energy conservation standards SNOPR, DOE proposed to add the above mentioned UEC equations and the associated battery charger usage profiles in 10 CFR 430.32(z). See 80 FR 52932. However, as explained in the recent battery charger test procedure final rulemaking, DOE is instead including the above mentioned UEC equations and the associated battery charger usage profiles in the battery charger test procedure codified at appendix Y to subpart B of 10 CFR part 430. Issued May 6, 2016.

4. Battery Charger Efficiency Levels

After selecting its representative units for battery chargers, DOE examined the cost-efficiency relationship of each representative unit to evaluate the viability of potential energy efficiency standards. As described in the technology assessment and screening analysis, there are numerous design options available for improving efficiency and each incremental technology improvement increases the battery charger efficiency along a continuum. The engineering analysis

develops cost estimates for several ELs along that continuum.

ELs are often based on (1) efficiencies already available in the market; (2) voluntary specifications or mandatory standards that cause manufacturers to develop products at particular efficiency levels; and (3) the maximum technologically feasible level.[20]

Currently, there are no federal energy conservation standards for battery chargers. Therefore, DOE based the ELs for its battery charger engineering analysis on the efficiencies obtainable through the design options presented previously (see section IV.A). These options are readily seen in various commercially-available units. DOE selected commercially-available battery chargers at the representative-unit battery voltage and energy levels from the high-volume applications identified in the market survey. DOE then tested these units in accordance with the DOE battery charger test procedure. See 71 FR 31750 (June 1, 2011). For each representative unit, DOE then selected ELs to correspond to the efficiency of battery charger models that were comparable to each other in most respects, but differed significantly in UEC (*i.e.* efficiency).

In general, for each representative unit, DOE chose the no-standards case (EL 0) unit to be the one with the highest calculated unit energy consumption, and the best-in-market (EL 2) to be the one with the lowest. Where possible, the energy consumption of an intermediate model was selected as the basis for EL 1 to provide additional resolution to the analysis.

Unlike the previous three ELs, EL 3 was not based on an evaluation of the efficiency of individual battery charger units in the market, since battery chargers with maximum technologically feasible efficiency levels are not commercially-available due to their high cost. Where possible, DOE analyzed manufacturer estimates of max-tech costs and efficiencies. In some cases, manufacturers were unable to offer any insight into efficiency levels beyond the best ones currently available in the market. Therefore, DOE projected the efficiency of a max-tech unit by estimating the impacts of adding any remaining energy efficiency design options to the EL unit analyzed.

[20] The "max-tech" level represents the most efficient design that is commercialized or has been demonstrated in a prototype with materials or technologies available today. "Max-tech" is not constrained by economic justification, and is typically the most expensive design option considered in the engineering analysis.

In analyzing potential efficiency levels, DOE examined, among other things, the California standards for small battery chargers,[21] which are based on two metrics—one for 24-hour energy use and one for the combined maintenance mode and standby mode power usage. Using the usage profiles it developed to translate these standards into a UEC value, DOE compared its ELs with the California levels and found that, in most cases, the California standards generally corresponded closely with one of DOE's ELs for each product class when the standards were converted into a UEC value (using DOE's usage profile assumptions). However, once compliance with the CEC standards was required, DOE again analyzed the market and found new technology options that have been widely adopted by battery charger manufacturers to meet the CEC standards. DOE accounted for these results and the changes in technology within the marketplace when developing ELs for each product class. This methodology is outlined in more detail in Chapter 5 of the accompanying TSD.

Table IV–3 below shows which EL aligns most closely with the California standards for each product class.

TABLE IV–3—ELS APPROXIMATE TO CALIFORNIA STANDARDS

Product class	EL approximate to CEC standard
1 (Low-Energy, Inductive)	EL 0
2 (Low-Energy, Low-Voltage)	EL 1
3 (Low-Energy, Medium-Voltage).	EL 1
4 (Low-Energy, High-Voltage)	EL 1
5 (Medium-Energy, Low-Voltage).	EL 2
6 (Medium-Energy, High-Voltage).	EL 2
7 (High-Energy)	EL 1

With the exception of the max tech level, the ELs presented in the March 2012 NOPR for all product classes were based on commercially-available products and the costs to reach these levels were independently verified by manufacturers and subject matter experts. For the SNOPR and this final rule, DOE attempted to align at least one EL in each product class subject to this final rule as closely as possible to the CEC standards to address comments to the NOPR suggesting that DOE create a new EL that more closely aligns with the CEC levels.

[21] The term "small battery charger system" is defined by the CEC as a battery charger system "with a rated input power of 2 kW or less, and includes golf car battery charger systems regardless of the output power." 20 Cal. Code 1602(w) (2014).

DOE has also received stakeholder comments from PTI and OPEI expressing concern that multi-port battery chargers are not treated any differently than single-port battery chargers under the proposed standard levels, which according to these commenters, creates disincentive for more efficient multi-port battery chargers. PTI and OPEI recommended that DOE provide an allowance of 0.25W per additional port in standby power for multi-port battery chargers. PTI and OPEI further noted that the above requested allowance in standby power for multi-port battery chargers equates to 0.08 kWh/yr increase in the proposed standard levels for PC 4. (PTI and OPEI, No. 244, p. 3) In DOE's engineering analysis, DOE evaluated, tested and performed tear downs on numerous multi-port battery chargers but did not find sufficient reason to treat multi-port battery chargers differently from single-port battery chargers. The adopted standards for these products already accommodate multi-port battery chargers because they scale with the battery energy of the additional batteries that may be charged with multi-port battery chargers. Further, the increase in UEC resulting from the recommended allowance in standby power is minute and will not have a significant impact on the represented value of UEC for multi-port battery chargers. As such, DOE is not adopting the additional allowance suggested by PTI and OPEI.

5. Manufacturer Interviews

The engineering analysis also relies in part on information obtained through interviews with several battery charger manufacturers. These manufacturers consisted of companies that manufacture battery chargers and original equipment manufacturers ("OEMs") of battery-operated products who package (and sometimes design, manufacture, and package) battery chargers with their end-use products. DOE followed this interview approach to obtain data on the possible efficiencies and resultant costs of consumer battery chargers. Aggregated information from these interviews is provided in Chapter 5 of the final rule TSD. The interviews also provided manufacturer inputs and comments in preparing the manufacturer impact analysis, which is discussed in detail in section IV.J.

DOE attempted to obtain teardown results for all of its product classes, but encountered difficulties in obtaining

useful and accurate teardown results for one of its products classes—namely, PC 1 (*e.g.*, electric toothbrushes). For this product class, DOE relied heavily on information obtained from manufacturer interviews. DOE found that when it attempted to teardown PC 1 devices, most contained potting (*i.e.*, material used to waterproof internal electronics). Removal of the potting also removed the identifying markings that IHS Technology (formerly i-Suppli)—DOE's technical consultant—needed to estimate a cost for the components. As a result, manufacturer interview data helped furnish the necessary information to assist DOE in estimating these costs.

6. Design Options

Design options are technology options that remain viable for use in the engineering analysis after applying the screening criteria as discussed above in section IV.B. DOE notes that all technology options that are not eliminated in the screening analysis (see section IV.B) become design options that are considered in the engineering analysis. Most ELs, except for those related to max-tech units and chargers falling into product classes for which DOE did not tear down units (*i.e.* PC 1 and PC 6), are based on actual teardowns of units manufactured and sold in today's battery charger market. Consequently, DOE did not control which design options were used at each EL. No technology options were preemptively eliminated from use with a particular product class. Similarly, if products are being manufactured and sold using these technology options, that fact indicates that the use of these options is unlikely to cause any significant loss in utility, such as an extremely limited operating temperature range or shortened cycle-life. Accordingly, the available facts indicate that all ELs can be met with technologies that are technologically feasible and that fit the intended application. Details on the technology associated with each EL can be found in Chapter 5 of the accompanying final rule TSD.

For the max-tech designs, which are not commercially-available, DOE developed these levels in part with a focus on maintaining product utility as projected energy efficiency improved. Although some features, such as decreased charge time, were considered as added utilities, DOE did not assign any monetary value to such features. Additionally, DOE did not assume that such features were undesirable, particularly if the incremental improvement in performance causes a significant savings in energy costs. Finally, to the extent possible, DOE considered durability, reliability, and other performance and utility-related features that affect consumer behavior. See final rule TSD, Chapter 5 for additional details.

7. Cost Model

This final rule continues to apply the same approach used in the SNOPR, NOPR and preliminary analysis to generate the MSPs for the engineering analysis. For those product classes other than PC 1, DOE's MSPs rely on the teardown results obtained from IHS Technology. The bills of materials provided by IHS Technology were multiplied by a markup based on product class. For those product classes for which DOE could not estimate MSPs using the IHS Technology teardowns—*i.e.* PC 1—DOE relied on aggregate manufacturer interview data. Additional details regarding the cost model and the markups assumed for each product class are presented in Chapter 5 of the final rule TSD. DOE's cost estimates reflect real world costs and have been updated where necessary for the final rule. The Department did not receive any further stakeholder comments on this aspect of its analysis.

8. Battery Charger Engineering Results

The results of the engineering analysis are reported as cost-efficiency data (or "curves") in the form of MSP (in dollars) versus unit energy consumption (in kWh/yr). These data form the basis for this final rule's analyses and this section illustrates the results that DOE obtained for all seven product classes in its engineering analysis. The Department did not receive any stakeholder comments on this aspect of its analysis.

a. Product Class 1

No changes were made to the engineering results for PC 1 since the publication of the SNOPR. These results are shown below in Table IV–4. More details on these engineering analysis results can be found in Chapter 5 of the final rule TSD.

TABLE IV–4—PRODUCT CLASS 1 (INDUCTIVE CHARGERS) ENGINEERING ANALYSIS RESULTS

EL Description	EL 0	EL 1	EL 2	EL 3
	Baseline	Intermediate	Best in market	Max tech
24-Hour Energy (Wh)	26.7	19.3	10.8	5.9
Maintenance Mode Power (W)	1.2	0.8	0.4	0.2
No-Battery Mode Power (W)	0.5	0.4	0.2	0.1
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	8.73	6.10	3.04	1.29
MSP [$]	$2.05	$2.30	$2.80	$6.80

b. Product Class 2

No changes were made to the engineering results for PC 2 since the publication of the SNOPR. These results are shown below in Table IV–5. More details on these engineering analysis results can be found in Chapter 5 of the final rule TSD.

TABLE IV–5—PRODUCT CLASS 2 (LOW-ENERGY, LOW-VOLTAGE) ENGINEERING ANALYSIS RESULTS

EL description	EL 0	EL 1	EL 2	EL 3	EL 4
	Baseline	Intermediate	2nd intermediate	Best in market	Max tech
24-Hour Energy (Wh)	25.79	13.6	8.33	8.94	6.90
Maintenance Mode Power (W)	1.1	0.5	0.13	0.1	0.04

TABLE IV–5—PRODUCT CLASS 2 (LOW-ENERGY, LOW-VOLTAGE) ENGINEERING ANALYSIS RESULTS—Continued

EL description	EL 0	EL 1	EL 2	EL 3	EL 4
	Baseline	Intermediate	2nd intermediate	Best in market	Max tech
No-Battery Mode Power (W)	0.3	0.3	0.03	0.02	0.10
Off-Mode Power (W)	0.0	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	5.33	3.09	1.69	1.58	1.11
MSP [$]	$1.16	$1.20	$1.49	$2.43	$4.31

c. Product Class 3

No changes were made to the engineering results for PC 3 since the publication of the SNOPR. These results are shown below in Table IV–6. More details on these engineering analysis results can be found in Chapter 5 of the final rule TSD.

TABLE IV–6—PRODUCT CLASS 3 (LOW-ENERGY, MEDIUM-VOLTAGE) ENGINEERING ANALYSIS RESULTS

EL description	EL 0	EL 1	EL 2	EL 3
	Baseline	Intermediate	Best in market	Max tech
24-Hour Energy (Wh)	42.60	28.00	17.0	15.9
Maintenance Mode Power (W)	1.70	0.50	0.26	0.26
No-Battery Mode Power (W)	0.30	0.30	0.20	0.20
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	3.65	1.42	0.74	0.70
MSP [$]	$1.12	$1.20	$4.11	$5.51

d. Product Class 4

No changes were made to the engineering results for PC 4 since the publication of the SNOPR. These results are shown below in Table IV–7. More details on these engineering analysis results can be found in Chapter 5 of the final rule TSD.

TABLE IV–7—PRODUCT CLASS 4 (LOW-ENERGY, HIGH-VOLTAGE) ENGINEERING ANALYSIS RESULTS

EL description	EL 0	EL 1	EL 2	EL 3
	Baseline	Intermediate	Best in market	Max tech
24-Hour Energy (Wh)	60.75	44.00	29.30	27.2
Maintenance Mode Power (W)	2.40	0.50	0.50	0.4
No-Battery Mode Power (W)	0.30	0.30	0.50	0.3
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	12.23	5.38	3.63	3.05
MSP [$]	$1.79	$2.60	$5.72	$18.34

e. Product Class 5

No changes were made to the engineering results for PC 5 since the publication of the SNOPR. These results are shown below in Table IV–8. More details on these engineering analysis results can be found in Chapter 5 of the final rule TSD.

TABLE IV–6—PRODUCT CLASS 5 (LOW-ENERGY, MEDIUM-VOLTAGE) ENGINEERING ANALYSIS RESULTS

EL description	EL 0	EL 1	EL 2	EL 3
	Baseline	Intermediate	Best in market	Max tech
24-Hour Energy (Wh)	2036.9	1647.3	1292.00	1025.64
Maintenance Mode Power (W)	21.2	11.9	0.50	0.0
No-Battery Mode Power (W)	20.1	11.6	0.30	0.0
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	84.60	56.09	21.39	9.11
Incremental MSP [$]	$18.48	$21.71	$26.81	$127.00

f. Product Class 6

No changes were made to the engineering results for PC 6 since the publication of the SNOPR. These results are shown below in Table IV–9. More details on these engineering analysis results can be found in Chapter 5 of the final rule TSD.

TABLE IV–9—PRODUCT CLASS 6 (MEDIUM-ENERGY, HIGH-VOLTAGE) ENGINEERING ANALYSIS RESULTS

EL description	EL 0	EL 1	EL 2	EL 3
	Baseline	Intermediate	Best in market	Max tech
24-Hour Energy (Wh)	891.6	786.1	652.00	466.20
Maintenance Mode Power (W)	10.6	6.0	0.50	0.0
No-Battery Mode Power (W)	10.0	5.8	0.30	0.0
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	120.60	81.72	33.53	8.15
Incremental MSP [$]	$18.48	$21.71	$26.81	$127.00

g. Product Class 7

For PC 7, DOE's SNOPR contained a typographical error that presented the proposed standard for PC 7 as "0.502 * E_{Batt} + 4.53" rather than "0.0502 * E_{Batt} + 4.53." The SNOPR TSD, along with the earlier NOPR and SNOPR public meeting presentations, all contained the correct standard. DOE's analyses were all based on the correct standard. DOE acknowledges this typographical error and reiterates that the adopted standard for PC 7 is "0.0502 * E_{Batt} + 4.53". The engineering results for PC 7 are shown below in Table IV–10.

TABLE IV–10—PRODUCT CLASS 7 (HIGH-ENERGY) ENGINEERING ANALYSIS RESULTS

EL description	EL 0	EL 1	EL 2
	Baseline	Intermediate	Max tech
24-Hour Energy (Wh)	5884.2	5311.1	4860.0
Maintenance Mode Power (W)	10.0	3.3	2.6
No-Battery Mode Power (W)	0.0	1.5	0.0
Off-Mode Power (W)	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	255.05	191.74	131.44
Incremental MSP [$]	$88.07	$60.86	$164.14

9. Scaling of Battery Charger Efficiency Levels

In preparing its standards for products within a product class (which would address all battery energies and voltages falling within that class), DOE used a UEC-based scaling approach. After developing the engineering analysis results for the representative units, DOE had to determine a methodology for extending the UEC at each EL to all other ratings not directly analyzed for a given product class. In the NOPR, DOE proposed making UEC a function of battery energy. DOE also indicated that it based this proposed UEC function on the test data that had been obtained up through the NOPR. See 77 FR 18478.

For PCs 2–7, DOE created equations for UEC that scale with battery energy. Specifically, as explained in the recent battery charger test procedure final rulemaking, the maximum allowed UEC for PCs 2–7 scales with the rated battery discharge energy, as determined by the statistical requirements outlined in 10 CFR 429.39(a). See Issued May 6, 2016. In contrast, for PC 1, each EL was represented by one flat, nominal standard. For this product class, DOE found in testing that the UEC did not vary with battery energy or voltage. As a result, while DOE opted to maintain its approach from the NOPR to adopt a constant standard across all battery energies for PC 1, the analysis limited the scope of the product class to battery energies of less than or equal to 5 Wh.

DOE generated boundary conditions for its efficiency levels to make the UEC requirement constant below a certain threshold of battery energy. Including these boundary conditions allows DOE to account for the fact that even if the battery energy approaches zero, the battery charger will continue to consume a finite amount of non-zero power. As explained in section IV.A.3.b, DOE notes that PCs 5 and 6 cover battery chargers with battery energies ranging from 100–3000 Wh and that the boundary conditions at 19 Wh and 18 Wh for these two PCs become unnecessary and will never be used. While the presence of these boundary conditions does not affect covered products in PCs 5 and 6, DOE realizes that it may lead to misinterpretation and ambiguity. Therefore, DOE is removing these boundary conditions from the final rule.

For additional details and the exact EL equations developed for each product class, please see Chapter 5 in the accompanying final rule TSD.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the MSP estimates derived in the engineering analysis to consumer prices. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. Given the variety of products that use battery chargers, distribution varies depending on the product class and application. As such, similar to the approach used in the NOPR, DOE assumed that the dominant path to market establishes the retail price and, thus, the markup for a given application. The markups applied to end-use products that use battery chargers are approximations of the battery charger markups.

In the case of battery chargers, the dominant path to market typically involves an end-use product manufacturer (*i.e.,* an OEM) and retailer. DOE developed OEM and retailer markups by examining annual financial filings, such as Securities and Exchange Commission ("SEC") 10–K reports, from more than 80 publicly-traded OEMs, retailers, and distributors engaged in the manufacturing and/or sales of consumer applications that use battery chargers.

DOE calculated two markups for each product in the markups analysis. A markup applied to the baseline component of a product's cost (referred to as a baseline markup) and a markup applied to the incremental cost increase that would result from energy conservation standards (referred to as an incremental markup). The incremental markup relates the change in the MSP

of higher-efficiency models (the incremental cost increase) to the change in the retailer's selling price.

In response to the SNOPR, AHAM objected to DOE's use of incremental markups in its analysis. (AHAM, No. 249, p. 6) DOE recognizes that retailers may seek to preserve margins. However, DOE's approach assumes that appliance retail markets are reasonably competitive, so that an increase in the manufacturing cost of appliances is not likely to contribute to a proportionate rise in retail profits, as would be expected to happen if markups remained constant. DOE's methodology for estimating markups is based on a mix of economic theory, consultation with industry experts, and data from appliance retailers.[22] In conducting research, DOE has found that empirical evidence is lacking with respect to appliance retailer markup practices when a product increases in cost (due to increased efficiency or other factors). DOE understands that real-world retailer markup practices vary depending on market conditions and on the magnitude of the change in cost of goods sold associated with an increase in appliance efficiency. DOE acknowledges that detailed information on actual retail practices would be helpful in evaluating changes in markups on products after appliance standards take effect. For this rulemaking, DOE requested data from stakeholders in support of alternative approaches to markups, as well as any data that shed light on actual practices by retailers; however, no such data were provided. Thus, DOE's analysis continues using an approach that is consistent with the conventionally-accepted economic theory of firm behavior in competitive markets.

Chapter 6 of the final rule TSD provides details on DOE's development of markups for battery chargers.

E. Energy Use Analysis

The energy use analysis estimates the range of energy use of battery chargers in the field, *i.e.,* as they are actually used by consumers. The energy use analysis provides the basis for the other analyses DOE uses when assessing the costs and benefits of setting standards for a given product. Particularly dependent on the energy analysis are assessments of the energy savings and the savings in consumer operating costs that could result from the adoption of new standards.

Battery chargers are power conversion devices that transform input voltage to a suitable voltage for the battery they are powering. A portion of the energy that flows into a battery charger flows out to a battery and, thus, cannot be considered to be consumed by the battery charger. However, to provide the necessary output power, other factors contribute to the battery charger energy consumption, *e.g.,* internal losses and overhead circuitry.[23] Therefore, the traditional method for calculating energy consumption—by measuring the energy a product draws from mains while performing its intended function(s)—is not appropriate for a battery charger because that method would not factor in the energy delivered by the battery charger to the battery, and would overstate the battery charger's energy consumption. Instead, DOE considered energy consumption to be the energy dissipated by the battery chargers (losses) and not delivered to the battery as a more accurate means to determine the energy consumption of these products. Once the energy and power requirements of those batteries were determined, DOE considered them fixed, and DOE focused its analysis on how standards would affect the energy consumption of the battery chargers themselves.

Applying a single usage profile to each application, DOE calculated the unit energy consumption for battery chargers. In addition, as a sensitivity analysis, DOE examined the usage profiles of multiple user types for applications where usage varies widely (for example, a light user and a heavy user).

In response to the SNOPR, AHAM noted that as efficiency levels increase, infrequently used products such as shavers, trimmers, and toothbrushes may only be charged once per month or less. (AHAM, No. 249, p. 5) DOE has based its estimate of usage profiles and efficiency distributions on responses from the manufacturer interviews, as well as on best available data, for each application and product class. Based on this information, the usage profiles used in the analysis provide a reasonable average usage approximation of the products falling within each product class and application. As a result, DOE did not change these usage profiles for the final rule.

Chapter 7 of the final rule TSD provides details on DOE's energy use analysis for battery chargers.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential battery charger energy conservation standards. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-standards case, which reflects the estimated efficiency distribution of battery chargers in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of consumers. For each sampled consumer, DOE determined the energy consumption for the battery charger and the appropriate electricity price. By developing a representative sample of consumers, the analysis captured the variability in energy consumption and energy prices associated with the use of battery chargers.

[22] An extensive discussion of the methodology and justification behind DOE's general approach to markups calculation is presented in Larry Dale, et al., "An Analysis of Price Determination and Markups in the Air-Conditioning and Heating Equipment Industry." LBNL–52791 (2004). Available for download at *http://eetd.lbl.gov/sites/all/files/an_analysis_of_price_determiniation_and_markups_in_the_air_conditioning_and_heating_equipment_industry_lbnl-52791.pdf.*

[23] Internal losses are energy losses that occur during the power conversion process. Overhead circuitry refers to circuits and other components of the battery charger, such as monitoring circuits, logic circuits, and LED indicator lights, that consume power but do not directly contribute power to the end-use application.

Inputs to the calculation of total installed cost include the cost of the product—which includes MSPs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially-available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and battery charger user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 consumers per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new product in the expected year of compliance with new standards. Any national standards would apply to battery chargers manufactured two years after the publication of the final standard. Therefore, for purposes of its analysis, DOE used 2018 as the first year of compliance with new standards.

Table IV–11 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model and the inputs made to the LCC and PBP analyses are contained in chapter 8 of the final rule TSD and its appendices.

TABLE IV–11—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived from the Engineering Analysis through manufacturer interviews and test/teardown results. Adjusted component breakdowns and prices based on updated cost data from IHS Technology and SME feedback for Product Classes 2 through 6.
Markups	Considered various distribution channel pathways for different applications. Applied a reduced "incremental" markup to the portion of the product price exceeding the baseline price.
Sales Tax	Derived weighted-average tax values for each Census division and large State using data provided by the Sales Tax Clearinghouse.
Installation Costs	Assumed to be zero.
Annual Energy Use	Determined for each application based on battery characteristics and usage profiles.
Energy Prices	Price: Based on EIA's 2012 Form EIA–861 data. Separated top tier and peak time-of-use consumers into separate subgroup analyses. Variability: Regional energy prices determined for 13 regions. DOE also considered subgroup analyses using electricity prices for low-income consumers and top tier marginal price consumers.
Energy Price Trends	Based on *AEO 2015* price forecasts.
Repair and Maintenance Costs	Assumed to be zero.
Product Lifetime	Determined for each application based on multiple data sources.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Sectors Analyzed	All reference case results represent a weighted average of the residential and commercial sectors.
Base Case Market Efficiency Distribution.	Where possible, DOE derived market efficiency distributions for specific applications within a product class.
Compliance Date	2018.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD.

The following sections discuss the LCC and PBP analyses in detail. Submitted comments regarding the various aspects of the analyses are noted in each section.

1. Product Cost

a. Manufacturer Selling Price

In the preliminary analysis, DOE used a combination of test and teardown results and manufacturer interview results to develop MSPs. DOE conducted tests and teardowns on a large number of additional units and applications for the NOPR, and incorporated these findings into the MSP. For the SNOPR, DOE adjusted component breakdowns and prices based on updated cost data from IHS Technology (formerly i-Suppli) and SME feedback for Product Classes 2, 3, 4, 5 and 6. DOE adjusted its MSPs based on these changes. DOE retained the SNOPR prices in the final rule. Further detail on the MSPs can be found in chapter 5 of the final rule TSD.

Examination of historical price data for a number of appliances that have been subject to energy conservation standards indicates that an assumption of constant real prices and costs may overestimate long-term trends in appliance prices. Economic literature and historical data suggest that the real costs of these products may in fact trend downward over time according to "learning" or "experience" curves. On February 22, 2011, DOE published a NODA stating that DOE may consider refining its analysis by addressing equipment price trends. (76 FR 9696) It also raised the possibility that once sufficient long-term data are available on the cost or price trends for a given product subject to energy conservation standards (such as battery chargers), DOE would consider these data to forecast future trends.

To forecast a price trend for the NOPR, DOE considered the experience curve approach, in which an experience rate parameter is derived using two historical data series on price and cumulative production. But in the absence of historical shipments of battery chargers and sufficient historical Producer Price Index ("PPI") data for small electrical appliance manufacturing from the U.S. Department of Labor's Bureau of Labor Statistics ("BLS"),[24] DOE could not use this approach. This situation is partially due to the nature of battery charger designs. Battery chargers are made up of many electrical components whose size,

[24] Series ID PCU33521–33521; *http://www.bls.gov/ppi/*.

cost, and performance rapidly change, which leads to relatively short design lifetimes. DOE also considered performing an exponential fit on the deflated AEO's Projected Price Indices that most narrowly include battery chargers. However, DOE believes that these indices are too broad to accurately capture the trend for battery chargers. Furthermore, battery chargers are not typical consumer products; they more closely resemble commodities that OEMs purchase.

Given the uncertainty involved with these products, DOE did not incorporate product price changes into either the NOPR or SNOPR analyses and is not including them in the final rule. For the NIA, DOE also analyzed the sensitivity of results to two alternative battery charger price forecasts. Appendix 10–B of the final rule TSD describes the derivation of alternative price forecasts.

In response to the SNOPR, AHAM supported DOE's use of a constant price index to project future battery charger prices. (AHAM, No. 249, p. 6) No other comments were received.

b. Markups

DOE applies a series of markups to the MSP to account for the various distribution chain markups applied to the analyzed product. These markups are evaluated for each application individually, depending on its path to market. Additionally, DOE splits its markups into "baseline" and "incremental" markups. The baseline markup is applied to the entire MSP of the baseline product. The incremental markups are then applied to the marginal increase in MSP over the baseline's MSP. Further detail on the markups can be found in chapter 6 of the final rule TSD.

c. Sales Tax

As in the NOPR, DOE obtained State and local sales tax data from the Sales Tax Clearinghouse. The data represented weighted averages that include county and city rates. DOE used the data to compute population-weighted average tax values for each Census division and four large States (New York, California, Texas, and Florida). For the final rule, DOE retained this methodology and used sales tax data from the Sales Tax Clearinghouse.[25] As in the SNOPR, DOE also obtained population estimates from the U.S. Census Bureau for the final rule.[26]

d. Product Price Forecast

As noted in section IV.F.1, to derive its central estimates DOE assumed no change in battery charger prices over the 2018–2047 period. In addition, DOE conducted a sensitivity analysis using two alternative price trends based on AEO price indices. These price trends, and the NPV results from the associated sensitivity cases, are described in appendix 10–B of the final rule TSD.

2. Installation Cost

As detailed in the SNOPR, DOE considered installation costs to be zero for battery chargers because installation would typically entail a consumer simply unpacking the battery charger from the box in which it was sold and connecting the device to mains power and its associated battery. See 80 FR at 52885. Because the cost of this "installation" (which may be considered temporary, as intermittently used devices might be unplugged for storage) is not quantifiable in dollar terms, DOE considered the installation cost to be zero.

3. Annual Energy Consumption

The final rule analysis uses the same approach for determining UECs as the approach used in the SNOPR. The UEC was determined for each application based on battery characteristics and usage profiles. Further detail on the UEC calculations can be found in section IV.E of this final rule and in chapter 7 of the final rule TSD.

4. Energy Prices

DOE determined energy prices by deriving regional average prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large States (New York, Florida, Texas, and California) treated separately. The derivation of prices was based on the then-latest available EIA data (2012). For the final rule analysis, DOE used updated data from EIA's *Annual Energy Outlook* (*AEO*) *2015* to project electricity prices to the end of the product lifetime,[27] which contained reference, high- and low-economic-growth scenarios.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance while maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products. In the final rule analysis, DOE did not include repair or maintenance costs for battery chargers. DOE recognized that in some cases the service life of a stand-alone battery charger typically exceeds that of the consumer product it powers. Furthermore, DOE noted that the cost to repair the battery charger might exceed the initial purchase cost, as these products are relatively low-cost items. Thus, DOE estimated that it would be extremely unlikely that a consumer would incur repair or maintenance costs for a battery charger—the charger would more likely be discarded and a new one purchased to replace it. Further discussion on repair and maintenance costs can be found in chapter 8 of the final rule TSD.

6. Product Lifetime

For the final rule analysis, DOE considered the lifetime of a battery charger to start from the moment it is purchased for end-use up until the time when it is permanently retired from service. Because the typical battery charger is purchased for use with a single associated application, DOE assumed that it would remain in service for as long as the application does. Even though many of the technology options to improve battery charger efficiencies may result in an increased useful life for the battery charger, the lifetime of the battery charger is still directly tied to the lifetime of its associated application. The typical consumer will not continue to use a battery charger once its application has been discarded. For this reason, DOE used the same lifetime estimate for the baseline and standard level designs of each application for the LCC and PBP analyses. Further detail on product lifetimes and how they relate to applications can be found in chapter 3 of the final rule TSD.

7. Discount Rates

The final rule analysis derived residential discount rates by identifying all possible debt or asset classes that might be used to purchase and operate products, including household assets that might be affected indirectly. DOE estimated the average shares of the various debt and equity classes in the average U.S. household equity and debt portfolios using data from the Survey of Consumer Finances from 1989 to

[25] Sales Tax Clearinghouse, Aggregate State Tax Rates. *https://thestc.com/STRates.stm*.

[26] The U.S. Census Bureau. Annual Estimates of the Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2013. *http://www.census.gov/popest/data/state/totals/2013/tables/NST-EST2013-01.xls*.

[27] U.S. Department of Energy. Energy Information Administration. Annual Energy Outlook 2015. May, 2015. Washington, DC. *http://www.eia.gov/forecasts/aeo/*.

2010.[28] DOE used the mean share of each class across the seven sample years as a basis for estimating the effective financing rate for products. DOE estimated interest or return rates associated with each type of equity using data from the U.S. Federal Reserve[29] and Damodaran. The analysis calculates the risk-free rate using a 40-year average return on 10-year U.S. Treasury notes, as reported by the U.S. Federal Reserve, and the equity risk premium using the geometric average return on the S&P 500 over a 40-year time period. The mean real effective rate across the classes of household debt and equity, weighted by the shares of each class, was 5.2 percent.

For the commercial sector, DOE derived the discount rate from the cost of capital of publicly-traded firms that manufacture products that involve the purchase of battery chargers. To obtain an average discount rate value for the commercial sector, DOE used the share of each industry category in total paid employees provided by BLS,[30] as well as employment data from both the U.S. Office of Personnel Management[31] and the U.S. Census Bureau.[32] By multiplying the discount rate for each industry category by its share of paid employees, DOE derived a commercial discount rate of 5.1 percent.

For further details on discount rates, see chapter 8 and appendix 8D of the final rule TSD.

8. Sectors Analyzed

The final rule analysis included an examination of a weighted average of the residential and commercial sectors as the reference case scenario. Additionally, all application inputs were specified as either residential or commercial sector data. Using these inputs, DOE then sampled each application based on its shipment weighting and used the appropriate residential or commercial inputs based on the sector of the sampled application. This approach provided specificity as to the appropriate input values for each sector, and permitted an examination of the LCC results for a given product class in total. For further details on sectors analyzed, see chapter 8 of the final rule TSD.

9. Efficiency Distribution in the No-Standards Case

For purposes of conducting the LCC analysis, DOE analyzed ELs relative to a no-standards case (*i.e.,* a case without Federal energy conservation standards). This analysis required an estimate of the distribution of product efficiencies in the no-standards case (*i.e.,* what consumers would have purchased in 2018 in the absence of Federal standards). Rather than analyzing the impacts of a particular standard level assuming that all consumers will purchase products at the baseline efficiency level, DOE conducted the analysis by taking into account the breadth of product energy efficiencies that consumers are expected to purchase under the no-standards case.

DOE derived base case market efficiency distributions that were specific to each application where it had sufficient data to do so. This approach helped to ensure that the market distribution for applications with fewer shipments was not disproportionately skewed by the market distribution of the applications with the majority of shipments. DOE factored into its efficiency distributions the current efficiency regulations in California. See section IV.G.3. See chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

10. Compliance Date

The compliance date is the date when a new standard becomes operative, *i.e.,* the date by which battery charger manufacturers must manufacture products that comply with the standard. There are no requirements for the compliance date for battery charger standards, but DOE has chosen to provide a two-year lead-time period for manufacturers to comply with these standards for two reasons. First, manufacturers are already complying with the current CEC standards, which serve as the basis for a majority of the standards being adopted in this rule. As a result, because affected manufacturers are already meeting these levels, that fact suggests that a two-year time frame would be reasonable. Second, this time-frame is consistent with the one that DOE initially proposed to apply for external power supplies, which were previously bundled together with battery chargers as part of DOE's initial efforts to regulate both of these products. DOE calculated the LCCs for all consumers as if each would purchase a new product in the year that manufacturers would be required to meet the new standard (2018). However, DOE bases the cost of the equipment on the most recently available data, with all dollar values expressed in 2013$.

As discussed in Section III.C, DOE received one comment from AHAM regarding the proposed compliance date. AHAM supported a compliance date of two (2) years after the publication of any final rule establishing energy conservation standards for battery chargers provided that the adopted levels do not exceed EL 1 for PC 1, and EL 2 for PCs 2, 3, and 4. As discussed in Section III.C, DOE's analysis shows that the battery charger industry is characterized by rapid product development lifecycles. These rapid development lifecycles have led DOE to conclude that a two-year lead-time is sufficient to enable manufacturers of battery chargers that do not currently comply with the standards that DOE is adopting in this rule to satisfy these new standards by the time the 2018 compliance date is reached.

11. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered from reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that energy price trends and discount rates are not needed; only energy prices for the year the standard becomes required for compliance (2018 in this case) are needed.

As noted above, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

[28] The Federal Reserve Board, Survey of Consumer Finances. Available at: *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[29] The Federal Reserve Board, Statistical Releases and Historical Data, Selected Interest Rates (Daily)—H.15. *http://www.federalreserve.gov/releases/H15/data.htm.*

[30] U.S. Bureau of Labor Statistics. Labor Force Statistics from the Current Population Survey. Table 17—Employed Persons by Industry, Sex, Race, and Occupation. *http://www.bls.gov/cps/cpsaat17.pdf.*

[31] U.S. Office of Personnel Management. Federal Employment Reports. Historical Federal Workforce Tables. *http://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/historical-tables/total-government-employment-since-1962.*

[32] U.S. Census Bureau. Government Employment and Payroll. 2012 State and Local Government. *http://www2.census.gov/govs/apes/12stlall.xls.*

For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the new standards would be required.

G. Shipments Analysis

Projections of product shipments are needed to forecast the impacts that standards are likely to have on the Nation. DOE develops shipment projections based on an analysis of key market drivers for each considered product. In DOE's shipments model, shipments of products were calculated based on current shipments of product applications powered by battery chargers. The inventory model takes an accounting approach, tracking remaining shipments and the vintage of units in the existing stock for each year of the analysis period.

Based on comments received on the Preliminary Analysis, DOE conducted a sensitivity analysis to examine how increases in end-use product prices resulting from standards might affect shipment volumes. To DOE's knowledge, elasticity estimates are not readily available in existing literature for battery chargers, or the end-use consumer products that DOE is analyzing in this rulemaking. Because some applications using battery chargers could be considered more discretionary than major home appliances, which have an estimated relative price elasticity of −0.34,[33] DOE believed a higher elasticity of demand was possible. In its sensitivity analysis, DOE assumed a price elasticity of demand of −1, meaning a given percentage increase in the final product price would be accompanied by that same percentage decrease in shipments.

Even under this relatively high assumption for price elasticity of demand, DOE's battery charger standards are unlikely to have a significant effect on the shipment volumes of those battery charger applications mentioned by stakeholders, with forecasted effects ranging from a decrease of 0.004 percent for electric shavers to a decrease of 0.1 percent for do-it-yourself ("DIY") power tools with detachable batteries. Results for all battery charger applications are contained in appendix 9A to the final rule TSD. The corresponding impacts on national energy savings ("NES") and NPV are included in appendix 10A. The following sections discuss the shipments analysis in detail. Submitted comments regarding the various aspects of the analysis are noted in each section.

1. Shipment Growth Rate

As in the SNOPR, DOE based its shipments projections such that the per-capita consumption of battery chargers will remain steady over time, and that the overall number of individual units that use battery chargers will grow at the same rate as the U.S. population.

The final rule analysis estimated future market size while assuming no change in the per-capita battery charger purchase rate by using the projected population growth rate as the compound annual market growth rate. Population growth rate values were obtained from the U.S. Census Bureau 2012 National Projections. DOE took the average annual population growth rate, 0.62 percent, and applied this rate to all battery charger product classes. In its shipment forecasts, DOE projects that by 2018, shipments of battery chargers will be 4.4% percent greater than they were in 2011. For more information on shipment projections, see chapter 9 of the final rule TSD.

In response to the SNOPR, NRDC, ASAP, and NEEA commented that DOE's shipments projections based on population growth are unrealistically low, and that DOE should reconsider its approach and assumptions. (NRDC, ASAP, NEEA, No. 252, p. 6–7) DOE disagrees that its shipment projections are unrealistic. While some applications that use battery chargers are experiencing higher than average growth, the product classes are very broad and include many applications that are not experiencing the same level of growth or are declining. To avoid overstating the benefits of standards on battery chargers, DOE retained the more measured approach used in the SNOPR for the final rule.

2. Product Class Lifetime

For the final rule, DOE calculated product class lifetime profiles using the percentage of shipments of applications within a given product class, and the lifetimes of those applications. These values were combined to estimate the percentage of units of a given vintage remaining in use in each year following the initial year in which those units were shipped and placed in service.

For more information on the calculation of product class lifetime profiles, see chapter 10 of the final rule TSD.

3. Forecasted Efficiency in the No-Standards Case and Standards Cases

A key component of the NIA is the trend in energy efficiency forecasted for the no-standards case (without new standards) and each of the standards cases. To project the trend in efficiency over the entire forecast period, DOE considered recent standards, voluntary programs such as ENERGY STAR, and other trends.

For battery charger efficiency trends, DOE considered three key factors: European standards, the EPA's ENERGY STAR program, and the battery charger standards that took effect on February 1, 2013, in California.

The EU included battery chargers in a preparatory study on eco-design requirements that it published in January 2007.[34] However, it has still not yet announced plans to regulate battery chargers. Thus, DOE did not adjust the efficiency distributions that it calculated for battery chargers between the present-day and the compliance date in 2018 to account for European standards.

DOE examined the ENERGY STAR voluntary program for battery charging systems and found that as of October 19, 2012, less than 350 battery charging systems had been qualified as ENERGY STAR-rated products.[35] DOE recognizes that unforeseen new or revised energy efficiency specifications are a possibility and that these factors would impact the distribution of efficiency in the market. It is also possible that DOE's battery charger standards could cause other organizations to tighten their efficiency specifications as well. However, EPA's ENERGY STAR program for battery chargers ended on December 30, 2014, and the ENERGY STAR label is no longer available for this product category.[36] Thus, DOE did not adjust its battery charger efficiency distributions to account for any potential market effects of a future ENERGY STAR program.

DOE estimated the no-standards case efficiency distributions for the base year 2013 in the original battery charger March 2012 NOPR and updated the distributions based on new market conditions for the base year 2018 in the September 2015 SNOPR. The SNOPR

[33] Dale, L. and S. Fujita. (2008) "An Analysis of the Price Elasticity of Demand for Household Appliances". Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–326E. Available at: *https://ees.lbl.gov/publications/analysis-price-elasticity-demand.*

[34] Available here: *http://www.eceee.org/ecodesign/products/battery_chargers/Final_Report_Lot7.*

[35] EPA, "Qualified Product (QP) List for ENERGY STAR Qualified Battery Charging Systems." Retrieved on October 18, 2012 from *http://downloads.energystar.gov/bi/qplist/Battery_Charging_Systems_Product_List.xls?5728-8a42.*

[36] *https://www.energystar.gov/sites/default/files/specs//BCS%20Final%20Decision%20Sunset%20Memo.pdf.*

efficiency distribution remains unchanged for this final rule.

The CEC battery charger standards that took effect in 2013, affect most, if not all, of the battery chargers within the scope of DOE's rulemaking. In the SNOPR analysis, DOE assumed that the CEC standards, effective since February 1, 2013, had moved the market not just in California, but nationally as well. To reach this conclusion, DOE solicited stakeholder comments through a Request for Information published on March 26, 2013, conducted additional manufacturer interviews, and performed its own examination of the efficiency of products sold nationally. See 78 FR 18253. In response to the RFI, many commenters indicated that there was evidence that the market had accepted the CEC standards and that technology improvements were already being incorporated to meet the CEC standards. DOE found products available for sale in physical locations outside of California and available for sale online that met CEC standards, each of which also displayed the accompanying CEC mark. Finally, additional manufacturer interviews supported the view that the majority of products sold in California (and thus meeting CEC standards) were sold nationally as well.

Therefore, DOE re-developed its efficiency distribution analysis, and based it on the CEC database [37] of certified small battery chargers (downloaded in November 2014 and containing 12652 unique models). Each model was assigned an appropriate product class and application based on its battery characteristics. Application-specific efficiency distributions were then developed using the reported energy performance for each model in that application. If an application had less than 20 identified models, it was assigned the efficiency distribution of the overall product class. Due to slight variations between the CEC and DOE metrics, products were conservatively assigned to the higher efficiency level (EL) (in order to not overstate savings) when their UECs were within 5% of the next highest EL compliance line compared to the distance between the compliance lines of the higher and lower ELs.

DOE's analysis acknowledges, however, that units not complying with CEC standards can still be sold outside of California, but assumes the percentage of such units is small. For this analysis, DOE conservatively assumed 5% of units sold nationally do not meet CEC standards. Without this assumption, DOE's analysis would likely significantly overestimate the energy savings resulting from the adoption of energy conservation standards for battery chargers by not sufficiently accounting for the fraction of the market that is already utilizing more efficient technology. This assumption is further motivated by manufacturers' input that the majority of products sold in California are sold nationally as well. To implement this assumption, each application's efficiency distribution, derived from CEC data, was multiplied by 95%, and then 5% was added to the EL below the CEC approximate EL. These became the no-standards case efficiency distributions shown in the table below. DOE did not find or receive any data showing consistent long-term efficiency improvement trends for battery chargers, in the absence of regulatory actions. As a result, no further changes in the base-case efficiency distributions were assumed to occur after the first year of the analysis. For reference, Table IV–12 below also lists the tested UECs defining each EL from the final rule engineering analysis and the estimated shipments in 2018 from the final rule shipments analysis.

TABLE IV–12—NO-STANDARDS CASE FINAL RULE EFFICIENCY DISTRIBUTIONS IN 2018

Product class		No-standards case efficiency distributions in 2018					Estimated shipments in 2018
		EL 0	EL 1	EL 2	EL 3	EL 4	
1	Efficiency Distribution	7%	56%	33%	4%	N/A	15,772,035
	UEC	8.73	6.1	3.04	1.29	N/A	
2	Efficiency Distribution	9%	42%	9%	15%	25%	400,052,285
	UEC	5.33	3.09	1.69	1.58	1.11	
3	Efficiency Distribution	6%	35%	2%	58%	N/A	27,088,679
	UEC	3.65	1.42	0.74	0.7	N/A	
4	Efficiency Distribution	6%	8%	12%	74%	N/A	80,146,173
	UEC	12.23	5.38	3.63	3.05	N/A	
5	Efficiency Distribution	0%	5%	95%	0%	N/A	4,717,743
	UEC	88.1	58.3	21.39	9.45	N/A	
6	Efficiency Distribution	0%	5%	95%	0%	N/A	668,489
	UEC	120.71	81.82	33.53	16.8	N/A	
7	Efficiency Distribution	80%	20%	0%	N/A	N/A	238,861
	UEC	255.05	191.74	131.44	N/A	N/A	
8	Efficiency Distribution	No standards adopted.					
	UEC						
9	Efficiency Distribution						
	UEC						
10	Efficiency Distribution						
	UEC						

To support the assumption that 95% of the national market meets the CEC standard levels, DOE examined the top-selling products for various battery charger applications at several national online and brick & mortar retailers (with an online portal). These data represent products sold not just in California, but available nationally. DOE focused its search on the top-selling 20 products (separately for each retailer) in applications with the highest

[37] http://www.appliances.energy.ca.gov/AdvancedSearch.aspx.

shipments. DOE also looked at products in a variety of product classes. The applications examined cover over 50% of all battery charger shipments. If the battery charger model number was found in the CEC's database of certified products, or if the product was available for sale or pick-up in a physical store in California, then the product was assumed to meet CEC standard levels. Over 90% of products in each application examined met CEC standard levels (these results are lower bounds since battery charger model numbers were not always available). These results are therefore consistent with DOE's assumption that 95% of the national market for battery chargers meets the CEC standards. Table IV–13 below summarizes the results of DOE's market examination.

TABLE IV–13—SUMMARY OF DOE MARKET EXAMINATION OF CEC UNITS BY APPLICATION

Application	Product class	Percentage of total BC shipments in application	Retailers examined *	Percentage of models examined in CEC database or sold in California
Smartphones	2	21	Amazon, Best Buy, Sears	100
Media Tablets	2	8	Amazon, Best Buy, Sears	93
MP3 Players	2	8	Amazon, Best Buy, Sears	93
Notebook Computers	4	8	Amazon, Best Buy, Sears	93
Digital Cameras	2	6	Amazon, Best Buy, Sears	97
Power Tools (includes DIY and professional)	2, 3, 4	2	Amazon, Home Depot, Sears	90
Toy Ride-On Vehicles	3, 5	1	Walmart, Toys R Us	93

See chapter 9 of the final rule TSD for more details on the development of no-standards case efficiency distributions.

To estimate efficiency trends in the standards cases, DOE has used "roll-up" and/or "shift" scenarios in its standards rulemakings. Under the "roll-up" scenario, DOE assumes: (1) Product efficiencies in the base case that do not meet the standard level under consideration would "roll-up" to meet the new standard level; and (2) product efficiencies above the standard level under consideration would not be affected. Under the "shift" scenario, DOE reorients the distribution above the new minimum energy conservation standard. For this rule, DOE used the "roll-up" scenario.

For further details about the forecasted efficiency distributions, see chapter 9 of the final rule TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the national net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new standards at specific efficiency levels.[38] ("Consumer" in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of battery chargers sold from 2018 through 2047.

DOE evaluates the impacts of new standards by comparing a case without such standards with standards-case projections. The no-standards case characterizes energy use and consumer costs for each product class in the absence of new energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-standards case with projections characterizing the market for each product class if DOE adopted new standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV–14 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the final rule TSD for further details.

The following sections discuss the national impacts analysis in detail. Submitted comments regarding the various aspects of the analysis are noted in each section.

TABLE IV–14—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model. Shipment growth rate is 0.62 percent annually using population growth projections from U.S. Census.
Compliance Date of Standard	2018.
Efficiency Trends	No-Standards case: Efficiency distributions remain unchanged throughout the forecast period. Standard cases: "Roll-up" scenario.
Annual Energy Consumption per Unit	Annual shipment weighted-average marginal energy consumption values for each product class.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL.

[38] The NIA accounts for impacts in the 50 states and U.S. territories.

TABLE IV–14—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Assumed to be zero.
Energy Prices	*AEO 2015* forecasts (to 2040) and extrapolation beyond.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO 2015*.
Discount Rate	3% and 7%.
Present Year	2015.

1. Product Price Trends

As noted in section IV.F.1, DOE assumed no change in battery charger pricing over the 2018–2047 period in the reference case. DOE acknowledges that it is difficult to predict the consumer electronics market far in advance. To derive a price trend for battery chargers, DOE did not have any historical shipments data or sufficient historical Producer Price Index (PPI) data for the small electrical appliance manufacturing industry from BLS.[39] Therefore, DOE examined a projection based on the price indices that were projected for *AEO 2015*. DOE performed an exponential fit on two deflated projected price indices that may include the products of which battery chargers are components: Information equipment (Chained price index—investment in non-residential equipment and software—information equipment), and consumer durables (Chained price index—other durable goods). However, DOE believes that these indices are too broad to accurately capture the trend for battery chargers. Furthermore, most battery chargers are unlike typical consumer products in that they are typically not purchased independently by consumers. Instead, they are similar to other commodities and typically bundled with end-use products.

Given the above considerations, DOE decided to use a constant price assumption as the default price factor index to project future battery charger prices in 2018 and out to 2047. While a more conservative method, following this approach helped ensure that DOE did not understate the incremental impact of standards on the consumer purchase price. Thus, DOE's product prices forecast for the LCC, PBP, and NIA analyses for the final rule were held constant for each efficiency level in each product class. DOE also conducted a sensitivity analysis using alternative price trends based on AEO indices. These price trends, and the NPV results from the associated sensitivity cases, are described in Appendix 10B of the final rule TSD.

[39] Series ID PCU33521–33521; *http://www.bls.gov/ppi/*.

2. Unit Energy Consumption and Savings

DOE uses the efficiency distributions for the no-standards case along with the annual unit energy consumption values to estimate shipment-weighted average unit energy consumption under the no-standards and standards cases, which are then compared against one another to yield unit energy savings values for each considered efficiency level.

As discussed in section IV.G.3, DOE assumed that energy efficiency will not improve after 2018 in the base case. Therefore, the projected UEC values in the analysis, as well as the unit energy savings values, do not vary over time. Consistent with the roll-up scenario, the analysis assumes that manufacturers would respond to a standard by improving the efficiency of underperforming products but not those that already meet or exceed the standard.

For further details on the calculation of unit energy savings for the NIA, see chapter 10 of the final rule TSD.

3. Unit Costs

DOE uses the efficiency distributions for the no-standards case along with the unit cost values to estimate shipment-weighted average unit costs under the no-standards and standards cases, which are then compared against one another to give incremental unit cost values for each TSL. For further details on the calculation of unit costs for the NIA, see chapter 10 of the final rule TSD.

4. Repair and Maintenance Cost per Unit

DOE assumed repair and maintenance costs to be zero. For further discussion of this issue, see section IV.F.5 above.

5. Energy Prices

While the focus of this rulemaking is on consumer products found in the residential sector, DOE is aware that many products that employ battery chargers are located within commercial buildings. Given this fact, the final rule analysis relied on calculated energy cost savings from such products using commercial sector electricity rates, which are lower in value than residential sector rates. DOE used this approach to avoid overstating energy cost savings in calculating the NPV.

In order to determine the energy usage split between the residential and commercial sectors, DOE first separated products into residential-use and commercial-use categories. Then, for each product class, using shipment values for 2018, average lifetimes, and base-case unit energy consumption values, DOE calculated the approximate annual energy use split between the two sectors. DOE applied the resulting ratio to the electricity pricing to obtain a sector-weighted energy price for each product class. This ratio was held constant throughout the period of analysis.

To estimate energy prices in future years, DOE multiplied the average regional energy prices by the forecast of annual national-average residential energy price changes in the Reference case from *AEO*, which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10A of the final rule TSD.

For further details on the determination of energy prices for the NIA, see chapter 10 of the final rule TSD.

6. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products in each potential standards case (TSL) with consumption in the case with no new energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product

(by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.*, the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2015*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use FFC—*i.e.* full-fuel-cycle—measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System ("NEMS") is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector[40] that EIA uses to prepare its *Annual Energy Outlook*. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the final rule TSD.

7. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period. The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget ("OMB") to Federal agencies on the development of regulatory analysis.[41] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

For further details about the calculation of net present value, see chapter 10 of the final rule TSD.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this final rule, DOE analyzed the impacts of the considered standard levels on the following consumer subgroups of interest—low-income consumers, small businesses, top tier electricity price consumers, peak time-of-use electricity price consumers, and consumers of specific applications within a product class. For each subgroup, DOE considered variations on the standard inputs to the general LCC model.

For further details on the consumer subgroup analysis, see chapter 11 of the final rule TSD.

J. Manufacturer Impact Analysis

DOE conducted an MIA on battery charger applications to estimate the financial impact of new energy conservation standards on this industry. The MIA is both a quantitative and qualitative analysis. As noted earlier, the quantitative part of the MIA relies on the GRIM, an industry cash flow model customized for battery charger applications covered in this rulemaking. The key MIA output is industry net present value, or INPV. DOE used the GRIM to calculate cash flows using standard accounting principles and to compare the difference in INPV between the no-standards case and various TSLs (the standards cases). The difference in INPV between the no-standards and standards cases represents the financial impact of the new standards on battery chargers application manufacturers. Different sets of assumptions (scenarios) produce different results.

DOE calculated the MIA impacts of new energy conservation standards by creating a GRIM for battery charger application manufacturers. In the GRIM, DOE grouped similarly impacted products to better analyze the effects that the new standards will have on the industry. DOE presented the battery charger application impacts by the major product class groupings for which TSLs were selected (PC 1; PCs 2, 3, and 4; PCs 5 and 6; and PC 7). When appropriate, DOE also presented the results for differentially-impacted industries within and across those groupings. This is necessary because a given industry, depending upon how narrowly it is defined, may span several product classes. By segmenting the results into these similar industries, DOE can discuss how subgroups of battery charger application manufacturers will be impacted by new energy conservation standards.

DOE outlined its complete methodology for the MIA in the SNOPR. 80 FR at 52893–96 DOE did not receive any comments on the MIA methodology from the SNOPR and did not change the methodology used in the SNOPR in this final rule. The complete MIA is also presented in chapter 12 of the final rule TSD.

The following sections discuss the manufacturer impacts analysis in detail. Submitted comments regarding the various aspects of the analysis are noted in each section.

1. Manufacturer Production Costs

The engineering analysis analyzes how changes in battery charger efficiency impact the manufacturer production cost ("MPC") of a battery charger application. DOE used two critical inputs to calculate the impacts of battery charger standards on battery charger application manufacturers. The first input is the price a battery charger

[40] For more information on NEMS, refer to *The National Energy Modeling System: An Overview*, DOE/EIA–0581 (98) (Feb. 1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

[41] United States Office of Management and Budget. Circular A–4: Regulatory Analysis," (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

application manufacturer charges to sell its application to its first customer. This is called the MSP of the battery charger application and is used to calculate battery charger application manufacturers' revenue. The second input is the cost battery charger application manufacturers incur for the range of analyzed battery chargers used in their applications. This input impacts the MPC of the battery charger application.

For the first input, the battery charger application MSP, DOE determined representative retail prices for each application by surveying popular online retailer Web sites to sample a number of price points of the most commonly-sold products for each application. The price of each application can vary greatly depending on many factors (such as the features of each individual product). For each application, DOE used the average application price found in the product survey. DOE then discounted this representative retail price back to the application MSP using the retail markups derived from annual SEC 10–K reports in the Markups Analysis, as discussed in section I.D.

DOE calculated the second input, the price of the battery charger itself at each EL, in the engineering analysis. In this analysis, DOE calculated a separate cost efficiency curve for each of the seven battery charger product classes. Based on product testing data, tear-down data, and manufacturer feedback, DOE created a BOM at the original device manufacturer-level to which markups were applied to calculate the MSP of the battery charger at each EL. DOE then allocated the battery charger MSPs of each product class to all the applications within each product class. In this way, DOE arrived at the cost to the application OEM of the battery charger for each application.

DOE used the same MPCs in this final rule analysis that were used in the SNOPR analysis.

2. Shipment Projections

DOE estimated total domestic shipments of each analyzed application for 2015 that is sold with a battery charger. DOE then distributed the associated shipments among the seven product classes. See chapter 12 of the final rule TSD for a complete list of the applications DOE included in each of the seven product classes. In the GRIM, DOE used the battery charger shipment projections from 2015 to 2047 that were generated by the shipment analysis. See chapter IV.G for a complete description of the shipment analysis.

DOE used the same shipment projections in this final rule analysis that were used in the SNOPR analysis.

3. Markup Scenarios

The revenue DOE calculates for the battery charger GRIM is the revenue generated from the sale of the application that incorporates the covered battery charger. It is the revenue earned by the OEM on the sale of the product to the OEM's first customer (*e.g.*, usually the retailer). After calculating the average retail price from the product price survey as discussed in section IV.J.1. DOE discounted the price by the appropriate retailer markup (calculated in the market and technology assessment) to calculate the per-unit revenue the OEM generates for each application. To calculate the potential impacts on manufacturer profitability in the standards case, DOE analyzed how the incremental costs of more efficient battery chargers would impact this revenue stream on an application-by-application basis.

DOE acknowledges that new standards have the potential to increase product prices and disrupt manufacturer profitability, particularly as the market transitions to meet new energy conservation standards. This change could force manufacturers to alter their markups on products as a result of new energy conservation standards. To account for this uncertainty, DOE analyzes three profitability, or manufacturer markup, scenarios in the GRIM: The flat markup scenario, the pass-through markup scenario, and the constant price markup scenario.

DOE used the same markup scenarios in this final rule analysis that were used in the SNOPR analysis.

4. Capital and Product Conversion Costs

New energy conservation standards will cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance with the new standards. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities so that new product designs can be fabricated and assembled. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs focused on making product designs comply with the new energy conservation standards.

DOE used the same product and capital conversion costs in this final rule analysis that were used in the SNOPR analysis.

5. Comments From Interested Parties

Several stakeholders commented on DOE's SNOPR MIA. These comments were made either in writing during the comment period following the publication of the battery charger SNOPR in the Federal Registry or during the SNOPR public meeting for battery chargers.

a. Manufacturer Interviews

AHAM noted that DOE did not conduct manufacturer interviews in the three-year period between the NOPR and SNOPR. It suggested interviews during this period would have allowed DOE to seek further information on new efficiency levels. (AHAM, No. 249 at p. 3) DOE notes that even though no new manufacturer interviews were conducted during the period between the NOPR and SNOPR, the stakeholder feedback DOE received in response to the NOPR led DOE to conduct further analyses on new and upcoming battery charger technologies. The results of those efforts are reflected in the modified product class list and the change in TSL to EL mappings for PCs 2, 3, and 4 between the NOPR and the SNOPR.

b. TSL to EL Mapping

Some manufacturers expressed strong support for the proposed TSL to EL mapping and standard of EL 1 for PCs 2, 3, and 4 in the SNOPR. In their view, performing an MIA along these mappings accurately reflects the nature of the products covered. (PTI, No. 244 at p. 2) (ITI, No. 248 at p. 5) (AHAM, No. 249 p. 2, 3) AHAM raised concerns about DOE remapping the TSL to EL for PCs 2, 3, and 4. AHAM pointed out remapping would necessitate further manufacturer interviews and require DOE to redo its analysis, which would cause further delays in the regulatory process. It suggested DOE retain the TSL to EL mapping proposed in the SNOPR. (AHAM, No. 249 at p. 3) AHAM pointed out that setting standards higher than the proposed EL 1 for PC 2 in the SNOPR would disadvantage manufacturers of shavers and other applications much greater than manufacturers of products such as smartphones. (AHAM, No. 249 at p. 3)

Other interested parties suggested modifying the TSL to EL mapping and increasing the stringency of the standard proposed in the SNOPR from EL 1 to EL 2 for PC 2. These interested parties suggested that a higher standard for PC 2 will be economically justified and increase energy savings. (CA IOUs, No. 251 at pp. 2–4) (CEC, No. 241 at pp. 2–3) (NRDC, ASAP, NEEA, No. 252 at p. 4–6) DOE is retaining the TSL to EL mapping for PCs 2, 3, and 4 proposed in the SNOPR as they use generally similar technology options and cover the exact same range of battery energies, as discussed in section V.A.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015*. The methodology is described in chapter 13 and 15 of the final rule TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[42] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the final rule TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[43] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[44] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,[45] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[46] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[47] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into AEO 2015, so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[48] Therefore, DOE

[42] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[43] IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[44] See *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[45] See *EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[46] See *EPA* v. *EME Homer City Generation*, 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[47] See *Georgia* v. *EPA*, Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

[48] DOE notes that the Supreme Court recently remanded EPA's 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units.

believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[49] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this final rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015*, which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this final rule.

For this final rule, DOE relied on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. The basis for these values is summarized in the next section, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the final rule TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council[50] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[51] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV–15 presents the values in the 2010 interagency group report,[52] which is reproduced in appendix 14A of the final rule TSD.

TABLE IV–15—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this final rule were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[53]

Table IV–16 shows the sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14B of the final rule TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

See *Michigan* v. *EPA* (Case No. 14–46, 2015). DOE has tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[49] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[50] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use*, National Academies Press: Washington, DC (2009).

[51] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[52] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[53] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

TABLE IV–16—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[54]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2013$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2013$). DOE derived values after 2050 based on the trend in 2010–2050 in each of the four cases.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

In response to the SNOPR, the U.S. Chamber of Commerce objected to the use of the SCC until more rigorous review is available. (U.S. Chamber of Commerce, No. 242, p. 4) AHAM commented that 2010 values of SCC should be used until a complete review of the 2013 values is completed. (AHAM, No. 249, p. 6) In contrast, EDF and UCS supported DOE's use of the Interagency Working Group estimates of SCC. (EDF, UCS, No. 239, p. 21–22)

In response, in conducting the interagency process that developed the SCC values, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. Key uncertainties and model differences transparently and consistently inform the range of SCC estimates. These uncertainties and model differences are discussed in the interagency working group's reports, which are reproduced in appendix 14A and 14B of the final rule TSD, as are the major assumptions. Specifically, uncertainties in the assumptions regarding climate sensitivity, as well as other model inputs such as economic growth and emissions trajectories, are discussed and the reasons for the specific input assumptions chosen are explained. However, the three integrated assessment models used to estimate the SCC are frequently cited in the peer-reviewed literature and were used in the last assessment of the IPCC. In addition, new versions of the models that were used in 2013 to estimate revised SCC values were published in the peer-reviewed literature (see appendix 14B of the final rule TSD for discussion). Although uncertainties remain, the revised estimates that were issued in November 2013 are based on the best available scientific information on the impacts of climate change. The current estimates of the SCC have been developed over many years, using the best science available, and with input from the public. In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015, OMB published a detailed summary and formal response to the many comments that were received.[55] DOE stands ready to work with OMB and the other members of the interagency working group on further review and revision of the SCC estimates as appropriate.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions from electricity generation using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule,* published in August 2015 by EPA's Office of Air Quality

[54] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015 OMB published a detailed summary and formal response to the many comments that were received. *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

[55] *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* OMB also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

Planning and Standards.[56] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent; these values are presented in chapter 14 of the final rule TSD. DOE primarily relied upon the low estimates to be conservative.[57] DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030. DOE developed values specific to the end-use category for battery chargers using a method described in appendix 14C.

DOE multiplied the emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3-percent and 7-percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make any appropriate updates in energy conservation standards rulemakings.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapter 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end-use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end-users on energy; (2) reduced spending on new energy supplies by the utility industry; (3) increased consumer spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by BLS.[58] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[59] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies, Version 3.1.1 ("ImSET").[60] ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" ("I–O") model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

[56] Available at *www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See Tables 4A–3, 4A–4, and 4A–5 in the report. The U.S. Supreme Court has stayed the rule implementing the Clean Power Plan until the current litigation against it concludes. *Chamber of Commerce, et al.* v. *EPA, et al.*, Order in Pending Case, 136 S.Ct. 999 (2016). However, the benefit-per-ton estimates established in the Regulatory Impact Analysis for the Clean Power Plan are based on scientific studies that remain valid irrespective of the legal status of the Clean Power Plan.

[57] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits are primarily based on an estimate of premature mortality derived from the ACS study (Krewski et al. 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al. 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the final rule TSD for further description of the studies mentioned above.)

[58] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.*

[59] See Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), U.S. Department of Commerce (1992).

[60] J. M. Roop, M. J. Scott, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

O. Marking Requirements

In the SNOPR regarding energy conservation standards for battery chargers, DOE declined to propose marking requirements for battery chargers. DOE received comments from AHAM supporting its decision to refrain from setting marking requirements for battery chargers. (AHAM, No. 249, p. 5) However, DOE also received comments from CEC, NRDC, ASAP, NEEA and Delta Q requesting that marking requirements be established for battery chargers. The CEC argued that a required mark will make it easier to gauge compliance with DOE's energy conservation standards for battery chargers and make alignment with international standards possible. (CEC, No. 241, p. 3–4) NRDC, ASAP and NEEA asserted that a required marking would facilitate standards enforcement, help identify non-compliant products, and drive accountability from the retailer throughout the supply-chain. (NRDC, ASAP, NEEA, No. 252, p. 6) Delta Q advised DOE to either adopt the CEC's "BC" product mark or pre-empt it with an alternate mark to avoid a scenario where two marks are required. (Delta Q, No. 238, p. 2)

As discussed in the SNOPR's response to stakeholder comments received on the NOPR, mandating a marking requirement for battery chargers does not offer significant benefits in terms of gauging compliance with, or facilitating enforcement of, DOE's energy conservation standards for battery chargers. Manufacturers of battery chargers must certify compliance with applicable DOE's energy conservation standards using the Compliance Certification Management System ("CCMS") as a condition of sale in the United States, which effectively holds manufacturers accountable for ensuring compliance of their covered products. As a result, battery charger compliance with DOE's standards can be as easily verified using DOE's compliance certification database, rendering a compliance mark on the product redundant and an unnecessary burden to manufacturers. Therefore, DOE is not mandating any marking requirements for battery chargers in this final rule.

P. Reporting Requirements

Manufacturers (which includes importers), as defined in 42 U.S.C. 6291(10), will be required to report the applicable certification data to the Department through DOE's CCMS on or before the compliance date of the standards finalized in this rulemaking.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for battery chargers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for battery chargers, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this final rule.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for battery chargers. These TSLs were developed by combining specific efficiency levels for each of the product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the final rule TSD. Table V–1 presents the TSLs and the corresponding efficiency levels for battery chargers. TSL 4 represents the maximum technologically feasible ("max-tech") improvements in energy efficiency for all product classes. While DOE examined most product classes individually, there were two groups of product classes that use generally similar technology options and cover the exact same range of battery energies. Because of this situation, DOE grouped all three low-energy, non-inductive, product classes (*i.e.*, 2, 3, and 4) together and examined the results. Similarly, DOE grouped the two medium energy product classes, PCs 5 and 6, together when it examined those results.

TABLE V–1—TRIAL STANDARD LEVELS FOR BATTERY CHARGERS

Product class	Trial standard level			
	TSL 1	TSL 2	TSL 3	TSL 4
PC 1—Low E, Inductive	EL 1	EL 2	EL 2	EL 3
PC 2—Low E, Low Voltage	EL 1	EL 1	EL 2	EL 4
PC 3—Low E, Medium Voltage	EL 1	EL 1	EL 2	EL 3
PC 4—Low E, High Voltage	EL 1	EL 1	EL 2	EL 3
PC 5—Medium E, Low Voltage	EL 1	EL 2	EL 3	EL 3
PC 6—Medium E, High Voltage	EL 1	EL 2	EL 3	EL 3
PC 7—High E	EL 1	EL 1	EL 2	EL 2

For battery charger PC 1 (low-energy, inductive), DOE examined trial standard levels corresponding to each of three ELs developed in the engineering analysis. TSL 1 is an intermediate level of performance above the baseline. TSLs 2 and 3 are equivalent to the best-in-market and corresponds to the maximum consumer NPV. TSL 4 is the max-tech level and corresponds to the greatest NES.

For its second set of TSLs, which covers PCs 2 (low-energy, low-voltage), 3 (low-energy, medium-voltage), and 4 (low-energy, high-voltage), DOE examined four TSLs of different combinations of the various efficiency levels found for each product class in the engineering analysis. In this grouping, TSLs 1 and 2 are intermediate efficiency levels above the baseline for each product class and corresponds to the maximum consumer NPV. TSL 3 corresponds to an incremental efficiency level below best-in-market for PC 2, and the best-in-market efficiency level for PCs 3 and 4. Finally, TSL 4 corresponds to the max-tech efficiency level for all product classes and therefore, the maximum NES. Note that for PC 2 only, EL 3 (corresponding to a best-in-market efficiency level) was not analyzed in a given TSL due to the negative LCC savings results for this product class at EL 3 and the fact that only four TSLs were analyzed.

DOE's third set of TSLs corresponds to the grouping of PCs 5 (medium-energy, low-voltage) and 6 (medium-energy, high-voltage). For both product classes, TSL 1 is an intermediate efficiency level above the baseline. TSL 2 corresponds to the best-in-market efficiency level for both product classes and is the level with the highest consumer NPV. Finally, TSLs 3 and 4 correspond to the max-tech efficiency

level for both product classes and the maximum NES.

For PC 7 (high-energy), DOE examined only two ELs because of the paucity of products available on the market. TSLs 1 and 2 correspond to an efficiency level equivalent to the best-in-market and maximizes consumer NPV. TSLs 3 and 4 comprise the max-tech level corresponding to the level with the maximum NES.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on battery charger consumers by looking at the effects potential standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.*, product price plus installation costs), and operating costs (*i.e.*, annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V–2 through Table V–15 show the LCC and PBP results for the TSL efficiency levels considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the impacts are measured relative to the efficiency distribution in the in the no-standards case in the compliance year (see section IV.F.10 of this final rule).

TABLE V–2—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 1

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	4.39	1.08	4.71	9.10	.....	5.0
1	1	4.72	0.76	3.29	8.01	1.1	5.0
2	2	5.37	0.38	1.64	7.01	1.5	5.0
3	2	5.37	0.38	1.64	7.01	1.5	5.0
4	3	10.62	0.16	0.69	11.32	7.4	5.0

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline (EL 0) product.

TABLE V–3—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 1

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	0.0	0.08
2	2	0.0	0.71
3	2	0.0	0.71
4	3	96.3	−3.44

*The calculation includes households with zero LCC savings (no impact).

TABLE V–4—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 2

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	2.62	0.43	1.43	4.05	.....	4.0
1	1	2.68	0.27	0.86	3.54	0.6	4.0
2	1	2.68	0.27	0.86	3.54	0.6	4.0
3	2	3.11	0.16	0.45	3.57	2.5	4.0
4	4	7.31	0.11	0.31	7.62	19.5	4.0

TABLE V–5—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 2

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	1.2	0.07
2	1	1.2	0.07

TABLE V–5—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 2—Continued

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
3	2	33.1	0.06
4	4	73.8	−2.79

TABLE V–6—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 3

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	2.59	0.52	2.30	4.89	.....	4.9
1	1	2.70	0.18	0.82	3.52	0.8	4.9
2	1	2.70	0.18	0.82	3.52	0.8	4.9
3	2	6.84	0.10	0.43	7.27	21.6	4.9
4	3	8.83	0.09	0.41	9.24	31.2	4.9

TABLE V–7—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 3

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	0.6	0.08
2	1	0.6	0.08
3	2	39.0	−1.36
4	3	40.8	−2.17

TABLE V–8—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 4

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	3.75	1.61	5.62	9.37	.....	3.7
1	1	4.89	0.67	2.28	7.17	1.4	3.7
2	1	4.89	0.67	2.28	7.17	1.4	3.7
3	2	9.29	0.45	1.55	10.84	5.2	3.7
4	3	27.06	0.38	1.30	28.36	20.7	3.7

TABLE V–9—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 4

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	1.3	0.11
2	1	1.3	0.11
3	2	12.6	−0.38
4	3	25.8	−4.91

TABLE V–10—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 5

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	46.58	11.68	68.85	115.43	.....	4.0
1	1	51.37	7.74	45.38	96.75	2.3	4.0
2	2	58.94	2.87	16.36	75.30	2.7	4.0
3	3	207.68	1.26	7.10	214.77	29.1	4.0
4	3	207.68	1.26	7.10	214.77	29.1	4.0

TABLE V–11—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 5

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	0.0	0.00
2	2	0.6	0.84
3	3	99.7	−138.63
4	3	99.7	−138.63

TABLE V–12—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 6

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	45.39	15.93	113.08	158.47	.....	9.7
1	1	50.14	10.81	77.60	127.74	1.0	9.7
2	2	57.64	4.45	33.33	90.98	1.1	9.7
3	3	205.07	2.24	16.94	222.01	12.5	9.7
4	3	205.07	2.24	16.94	222.01	12.5	9.7

TABLE V–13—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 6

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	0.0	0.00
2	2	0.0	1.89
3	3	100.0	−129.15
4	3	100.0	−129.15

TABLE V–14—AVERAGE LCC AND PBP RESULTS BY TSL FOR PRODUCT CLASS 7

TSL	EL	Average costs (2013$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	221.94	29.42	95.03	316.97	.....	3.5
1	1	181.55	22.09	70.81	252.36	0.0	3.5
2	1	181.55	22.09	70.81	252.36	0.0	3.5
3	2	334.87	15.14	48.60	383.47	8.1	3.5
4	2	334.87	15.14	48.60	383.47	8.1	3.5

TABLE V–15—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR PRODUCT CLASS 7

TSL	EL	Life-cycle cost savings	
		% of Consumers that experience net cost	Average savings* (2013$)
1	1	0.0	51.06
2	1	0.0	51.06
3	2	100.0	−80.05
4	2	100.0	−80.05

The LCC results for battery chargers depend on the product class being considered. See Table V–2 through Table V–15. LCC savings results for PC 1 are positive through TSL 3. For the low-energy product classes (PCs 2, 3, and 4), LCC results are positive through TSL 2 and become negative at TSL 3, with PC 2 becoming negative at TSL 4. The medium-energy product classes (PCs 5 and 6) are positive through TSL 2 but become negative at TSL 3. The high-energy product class (PC 7) has positive LCC savings through TSL 2, and then becomes negative at TSL 3.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs for low-income consumers, small businesses, residential top tier electricity price consumers, time-of-use peak electricity price consumers, and consumers of specific applications. LCC and PBP results for consumer subgroups are presented in Table V–16 through Table V–22. The abbreviations are described after Table V–22. The ensuing discussion presents the most significant results from the LCC subgroup analysis.

TABLE V–16—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 1

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	All
1	0.08	0.00	0.26	0.39	0.08	1.1	0.0	0.3	0.2	1.1
2	0.71	0.00	2.88	4.31	0.71	1.5	0.0	0.5	0.3	1.5
3	0.71	0.00	2.88	4.31	0.71	1.5	0.0	0.5	0.3	1.5
4	(3.46)	0.00	0.44	3.00	(3.44)	7.4	0.0	2.3	1.6	7.4

TABLE V–17—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 2

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	ALL
1	0.06	0.08	0.17	0.29	0.07	0.5	0.6	0.2	0.1	0.6
2	0.06	0.08	0.17	0.29	0.07	0.5	0.6	0.2	0.1	0.6
3	0.05	(0.01)	0.58	0.96	0.06	2.4	3.8	0.9	0.6	2.5
4	(2.76)	(3.29)	(2.05)	(1.56)	(2.79)	18.6	25.2	6.9	4.8	19.5

TABLE V–18—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 3

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	ALL
1	0.07	0.14	0.23	0.36	0.08	0.8	0.2	0.2	0.2	0.8
2	0.07	0.14	0.23	0.36	0.08	0.8	0.2	0.2	0.2	0.8
3	(1.38)	(1.10)	(0.86)	(0.43)	(1.36)	22.0	4.8	6.9	4.8	21.6
4	(2.19)	(1.85)	(1.65)	(1.20)	(2.17)	31.3	6.6	10.0	7.0	31.2

TABLE V–19—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 4

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	ALL
1	0.15	0.06	0.57	0.68	0.11	0.9	1.5	0.3	0.3	1.4
2	0.15	0.06	0.57	0.68	0.11	0.9	1.5	0.3	0.3	1.4
3	(0.49)	(0.27)	0.07	0.53	(0.38)	4.0	5.5	1.2	1.1	5.2
4	(5.80)	(3.83)	(5.07)	(3.79)	(4.91)	15.6	21.7	4.7	4.3	20.7

TABLE V–20—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 5

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	ALL
1	0.00	0.00	0.00	0.00	0.00	2.3	0.0	0.8	0.5	2.3
2	0.84	0.00	3.14	4.64	0.84	2.7	0.0	0.9	0.6	2.7
3	(138.81)	0.00	(118.82)	(105.75)	(138.63)	29.1	0.0	9.8	6.8	29.1
4	(138.81)	0.00	(118.82)	(105.75)	(138.63)	29.1	0.0	9.8	6.8	29.1

TABLE V–21—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 6

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	ALL
1	0.00	0.00	0.00	0.00	0.00	1.0	0.0	0.3	0.2	1.0
2	1.87	0.00	6.24	9.10	1.89	1.1	0.0	0.4	0.3	1.1
3	(129.38)	0.00	(93.98)	(70.73)	(129.15)	12.6	0.0	4.0	2.8	12.5
4	(129.38)	0.00	(93.98)	(70.73)	(129.15)	12.6	0.0	4.0	2.8	12.5

TABLE V–22—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS FOR PRODUCT CLASS 7

TSL	Average life-cycle cost savings (2013$)					Simple payback period (years)				
	LI	SB	TT	P–TOU	ALL	LI	SB	TT	P–TOU	ALL
1	51.88	49.36	89.56	116.93	51.06	0.0	0.0	0.0	0.0	0.0
2	51.88	49.36	89.56	116.93	51.06	0.0	0.0	0.0	0.0	0.0
3	(93.28)	(82.08)	(39.75)	62.98	(80.05)	20.1	8.0	6.4	1.6	8.1
4	(93.28)	(82.08)	(39.75)	62.98	(80.05)	20.1	8.0	6.4	1.6	8.1

Where:
LI = Low-income consumers
SB = Small businesses
TT = Top tier electricity price consumers
P–TOU = Peak time-of-use electricity price consumers
All = Entire population

Low-Income Consumers

For low-income consumers, the LCC impacts and PBPs are different from the general population. As part of this subgroup analysis, DOE considers only the residential sector, and uses an adjusted population distribution from population distribution than the general population. To account for this difference, DOE adjusted population distributions for each region analyzed according to the shift between general and low-income populations.

The LCC savings and PBPs of low-income consumers are similar to that of the total population of consumers. In general, low-income consumers experience slightly reduced LCC savings, with the exceptions of TSL 4 of Product Class 2 and TSLs 1 and 2 of PCs 4 and 7. None of the changes in LCC

Small Businesses

For small business customers, the LCC impacts and PBPs are different from the general population. This subgroup analysis considers only the commercial sector, and uses an adjusted discount rate from the reference case scenario. DOE found that small businesses typically have a cost of capital that is 4.16 percent higher than the industry average, which was applied to the discount rate for the small business consumer subgroup analysis.

The small business consumer

considers commercial applications. In the reference case scenario, the LCC results are strongly influenced by the presence of residential applications, which typically comprise the majority of application shipments. Note that PCs 1, 5, and 6 have no results for small businesses because there are no commercial applications for these product classes. No LCC results that were positive for all consumers become negative in the small business subgroup analysis, with the exception of PC 2, which became −$0.01 at TSL 3. No negative LCC results for all consumers became positive for small businesses. These observations indicate that small business consumers would experience similar LCC impacts as the general population.

Top Tier Electricity Price Consumers

For top tier electricity price consumers, the LCC impacts and PBPs are different from the general population. Tiered pricing is generally only used for residential electricity rates, so the analysis for this subgroup only considers the residential sector. With tiered pricing (also known as inclining block rates), the price of electricity increases in discrete steps as overall electricity consumption increases. For example, the price of electricity can differ between the first 100 kWh of consumption, and the next 100 kWh of consumption, in a given billing cycle. Under such pricing systems, a consumer's marginal electricity price can be significantly higher than the national average. DOE researched upper tier inclined marginal block rates for the electricity, resulting in a price of $0.359 per kWh.

Consumers in the top tier electricity price bracket generally experience greater LCC savings than those in the reference case scenario. This result occurs because these consumers pay more for their electricity than other consumers, and, therefore, experience greater savings when using products that are more energy efficient. This subgroup analysis changed the negative LCC savings for PC 1 at TSL 4 and PC 4 at TSL 3 to positive LCC savings.

Peak Time-of-Use Electricity Price Consumers

For peak time-of-use electricity price consumers (*i.e.* those electricity consumers who purchase electricity at peak rates, depending on either the time of day or season), the LCC impacts and PBPs are different from the general population. Time-of-use pricing is available for both residential and commercial electricity rates, so both sectors were considered. DOE researched upper tier inclined marginal block rates for electricity, resulting in adjusted electricity prices of $0.514 per kWh for residential and $0.494 for commercial consumers.

This subgroup analysis increased the LCC savings of most of the representative units significantly. This subgroup analysis changed the following negative LCC results to positive savings: PC 1 at TSL 4, PC 4 at TSL 3, and PC 7 at TSLs 3 and 4. Some product classes would still have negative LCC savings, which indicates that these classes have increasing installed costs (purchase price plus installation costs, the latter of which are assumed to be zero) at higher TSLs that cannot be overcome through operating cost savings using peak time-of-use electricity prices.

Consumers of Specific Applications

DOE performed an LCC and PBP analysis on every application within each product class. This subgroup analysis used each application's specific inputs for lifetime costs, markups, base case market efficiency distribution, and UEC. Many applications in each product class experienced LCC impacts and PBPs that were different from the average results across the product class. Because of the large number of applications considered in the analysis, some of which span multiple product classes, DOE did not present application-specific LCC results here. Detailed results on each application are available in chapter 11 of the final rule TSD.

DOE noted a few trends highlighted by the application-specific subgroup. For PC 2, the top two application LCC savings representing 46 percent of shipments are negative beyond TSL 1, but frequently-used applications within that class—*e.g.*, answering machines, cordless phones, and home security systems—experience positive LCC savings. Because these applications have significantly positive LCC savings, they balance out the negative savings from the top two applications. Some PC 4 applications at TSLs 1 through 3 featured results that were positive where the shipment-weighted results were negative, or vice versa. However, shipments and magnitude of the LCC savings were not enough to change the overall direction (positive or negative) of the weighted average. In the other battery charger product classes, the individual application results reflected the same trend as the overall results for the product class. See chapter 11 of the final rule TSD for further detail.

c. Rebuttable Presumption Payback

As discussed in section III.F, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for battery chargers. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V–23 presents the rebuttable-presumption payback periods for the considered TSLs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. Table V–23 shows considered TSLs for the battery charger product classes where the rebuttable presumption PBPs show they are economically justified.

TABLE V–23—TRIAL STANDARD LEVELS WITH REBUTTABLE PAYBACK PERIOD LESS THAN THREE YEARS

Product class	Description	Trial standard level	Candidate standard level	Rebuttable presumption PBP years
1	Low-Energy, Inductive	1	1	1.1
		2	2	1.5
		3	2	1.5
2	Low-Energy, Low-Voltage	1	1	0.6
		2	1	0.6
		3	2	2.5
3	Low-Energy, Medium-Voltage	1	1	0.8
		2	1	0.8
4	Low-Energy, High-Voltage	1	1	1.4
		2	1	1.4
5	Medium-Energy, Low-Voltage	1	1	2.3
		2	2	2.7
6	Medium-Energy, High-Voltage	1	1	1.0
		2	2	1.1
7	High-Energy	1	1	0.0
		2	1	0.0

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new energy conservation standards on manufacturers of battery charger applications. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

The INPV results refer to the difference in industry value between the no-standards case and the standards cases, which DOE calculated by summing the discounted industry cash flows from the reference year (2015) through the end of the analysis period. The discussion also notes the difference in the annual cash flow between the no-standards case and the standards cases in the year before the compliance date of new energy conservation standards. This figure provides a proxy for the magnitude of the required conversion costs, relative to the cash flow generated by the industry in the no-standards case.

DOE reports INPV impacts at each TSL for the four product class groupings. When appropriate, DOE also discusses the results for groups of related applications that would experience impacts significantly different from the overall product class group to which they belong.

In general, two major factors drive the INPV results: (1) The relative difference between a given application's MSP and the incremental cost of improving its battery charger; and (2) the dominant no-standards case battery charger technology that a given application uses, which is approximated by the application's efficiency distribution.

With respect to the first factor, the higher the MSP of the application relative to the battery charger cost, the lower the impacts of battery charger standards on OEMs of the application. For example, an industry that sells an application for $500 would be less affected by a $2 increase in battery charger costs than one that sells its application for $10. On the second factor regarding the no-standards case efficiency distribution, some industries, such as producers of laptop computers, already incorporate highly efficient battery chargers. Therefore, a higher standard would be unlikely to impact the laptop industry as it would other applications using baseline technology in the same product class.

DOE analyzed three markup scenarios—constant price, pass-through, and flat markup. The constant price scenario analyzes the situation in which application manufacturers are unable to pass on any incremental costs of more efficient battery chargers to their customers. This scenario generally results in the most significant negative impacts because no incremental costs added to the application—whether driven by higher battery charger component costs or depreciation of required capital investments—can be recouped.

In the pass-through scenario, DOE assumes that manufacturers are able to pass the incremental costs of more efficient battery chargers through to their customers, but not with any markup to cover overhead and profit. Therefore, though less severe than the constant price scenario in which manufacturers absorb all incremental costs, this scenario results in negative cash flow impacts due to margin compression and greater working capital requirements.

Finally, DOE considers a flat markup scenario to analyze the upper bound (least severe) of profitability impacts. In this scenario, manufacturers are able to maintain their no-standards case gross margin, as a percentage of revenue, at higher ELs, despite the higher product costs associated with more efficient battery chargers. In other words, manufacturers can fully pass on—and markup—the higher incremental product costs associated with producing more efficient battery chargers.

Product Class 1

Table V–24 through Table V–27 summarize information related to the analysis performed to project the potential impacts on Product Class 1 battery charger application manufacturers.

TABLE V–24—APPLICATIONS IN PRODUCT CLASS 1

Product class 1
Rechargeable Toothbrushes
Rechargeable Water Jets

TABLE V–25—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 1 BATTERY CHARGER APPLICATIONS—FLAT MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ Millions	497	497	496	496	519
Change in INPV	2013$ Millions		0	(1)	(1)	22
	(%)		0.0	(0.1)	(0.1)	4.5
Product Conversion Costs	2013$ Millions		0.1	1.7	1.7	5.1
Capital Conversion Costs	2013$ Millions		0.0	1.5	1.5	2.3
Total Investment Required	2013$ Millions		0.1	3.2	3.2	7.4

TABLE V–26—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 1 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	497	491	470	470	348
Change in INPV	2013$ millions		(6)	(27)	(27)	(149)
	(%)		(1.1)	(5.4)	(5.4)	(29.9)
Product Conversion Costs	2013$ millions		0.1	1.7	1.7	5.1
Capital Conversion Costs	2013$ millions		0.0	1.5	1.5	2.3
Total Investment Required	2013$ millions		0.1	3.2	3.2	7.4

TABLE V–27—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 1 BATTERY CHARGER APPLICATIONS—CONSTANT PRICE MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	497	478	412	412	122
Change in INPV	2013$ millions		(18)	(84)	(84)	(375)
	(%)		(3.7)	(16.9)	(16.9)	(75.5)
Product Conversion Costs	2013$ millions		0.1	1.7	1.7	5.1
Capital Conversion Costs	2013$ millions		0.0	1.5	1.5	2.3
Total Investment Required	2013$ millions		0.1	3.2	3.2	7.4

PC 1 has only two applications: Rechargeable toothbrushes and water jets. Rechargeable toothbrushes represent over 99 percent of the PC 1 shipments. DOE found the majority of these models include Ni-Cd battery chemistries, although products with NiMH and Li-ion chemistries exist in the market. During interviews, manufacturers indicated that energy efficiency was not a primary selling point in this market. As a consequence, manufacturers expect that stringent standards would likely impact the low-end of the market, where price competition is most fierce and retail selling prices are lowest.

TSL 1 sets the efficiency level at EL 1 for PC 1. At TSL 1, DOE estimates impacts on the change in INPV to range from −$18 million to less than one million dollars, or a change in INPV of −3.7 percent to less than 0.1 percent. At TSL 1, industry free cash flow is estimated to decrease to $36 million, or a decrease of 8 percent, compared to the no-standards case value of $39 million in 2017.

Percentage impacts on INPV range from significantly negative to slightly positive at TSL 4. DOE anticipates that some PC 1 battery charger application manufacturers could lose a significant portion of their INPV at TSL 4. DOE projects that in the expected year of compliance, 2018, 4 percent of all PC 1 battery charger applications would meet the efficiency levels required at TSL 4. DOE expects conversion costs to increase from $3.2 million at TSL 2 and TSL 3 to $7.4 million at TSL 4. This is still relatively a modest amount compared to the no-standards case INPV of $497 million and annual cash flow of $39 million for PC 1 battery charger applications. At TSL 4, the battery charger MPC increases to $6.80 compared to the baseline MPC value of $2.05. This represents a moderate increase in the application price when compared to the shipment-weighted average application MPC of $40.06.

corresponds to less than one percent in 2017, the year leading up to new energy conservation standards.

Percentage impacts on INPV are slightly negative at TSL 1. DOE does not anticipate that PC 1 battery charger application manufacturers would lose a significant portion of their INPV at this TSL. DOE projects that in the expected year of compliance, 2018, 93 percent of all PC 1 battery charger applications would meet or exceed the efficiency levels required at TSL 1. Consequently, DOE expects conversion costs to be small at TSL 1, since so many applications already meet or exceed this requirement.

TSL 2 and TSL 3 set the efficiency level at EL 2 for PC 1. At TSL 2 and TSL 3, DOE estimates impacts on the change in INPV to range from −$84 million to −$1 million, or a change in INPV of −4.5 percent. At TSL 4, industry free cash flow is estimated to decrease to $36 million, or a decrease of 8 percent, compared to the no-standards case value of $39 million in 2017.

Percentage impacts on INPV range from significantly negative to slightly positive at TSL 4. DOE anticipates that some PC 1 battery charger application manufacturers could lose a significant portion of their INPV at TSL 4. DOE projects that in the expected year of compliance, 2018, 4 percent of all PC 1 battery charger applications would meet the efficiency levels required at TSL 4. DOE expects conversion costs to increase from $3.2 million at TSL 2 and TSL 3 to $7.4 million at TSL 4. This is still relatively a modest amount compared to the no-standards case INPV of $497 million and annual cash flow of $39 million for PC 1 battery charger applications. At TSL 4, the battery charger MPC increases to $6.80 compared to the baseline MPC value of $2.05. This represents a moderate increase in the application price when compared to the shipment-weighted average application MPC of $40.06.

Product Classes 2, 3, and 4

The following tables (Table V–28 through Table V–34) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into PCs 2, 3, and 4.

TABLE V–28—APPLICATIONS IN PRODUCT CLASSES 2, 3, AND 4

Product class 2	Product class 3	Product class 4
Answering Machines	Air Mattress Pumps	DIY Power Tools (External).
Baby Monitors	Blenders	Flashlights/Lanterns.
Beard and Moustache Trimmers	Camcorders	Handheld Vacuums.
Bluetooth Headsets	DIY Power Tools (External)	Netbooks.
Can Openers	DIY Power Tools (Integral)	Notebooks.
Consumer Two-Way Radios	Handheld Vacuums	Portable Printers.
Cordless Phones	LAN Equipment	Professional Power Tools.
Digital Cameras	Mixers	Rechargeable Garden Care Products.
DIY Power Tools (Integral)	Portable DVD Players	Robotic Vacuums.
E-Books	Portable Printers	Stick Vacuums.
Hair Clippers	RC Toys	Universal Battery Chargers.
Handheld GPS	Stick Vacuums	
Home Security Systems	Toy Ride-On Vehicles	
In-Vehicle GPS	Universal Battery Chargers	
Media Tablets	Wireless Speakers	
Mobile Internet Hotspots		
Mobile Phones		
MP3 Players		
MP3 Speaker Docks		
Personal Digital Assistants		
Portable Video Game Systems		
Shavers		
Smartphone		
Universal Battery Chargers		
Video Game Consoles		
Wireless Headphones		

TABLE V–29—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 2, 3, AND 4 BATTERY CHARGER APPLICATIONS—FLAT MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	76,791	76,782	76,782	76,774	77,290
Change in INPV	2013$ millions		(10)	(10)	(17)	499
	(%)		(0.0)	(0.0)	(0.0)	0.6
Product Conversion Costs	2013$ millions		11.5	11.5	90.1	280.5
Capital Conversion Costs	2013$ millions		1.8	1.8	25.6	67.3
Total Investment Required	2013$ millions		13.4	13.4	115.7	347.8

TABLE V–30—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 2, 3, AND 4 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	76,791	76,740	76,740	76,322	71,407
Change in INPV	2013$ millions		(51)	(51)	(469)	(5,384)

TABLE V–31—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 2, 3, AND 4 BATTERY CHARGER APPLICATIONS—CONSTANT MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	76,791	76,650	76,650	75,392	62,307
Change in INPV	2013$ millions		(141)	(141)	(1,400)	(14,484)
	(%)		(0.2)	(0.2)	(1.8)	(18.9)
Product Conversion Costs	2013$ millions		11.5	11.5	90.1	280.5
Capital Conversion Costs	2013$ millions		1.8	1.8	25.6	67.3
Total Investment Required	2013$ millions		13.4	13.4	115.7	347.8

Taken together, PCs 2, 3, and 4 include the greatest number of applications and account for approximately 96 percent of all battery charger application shipments in 2018, the anticipated compliance year for new energy conservation standards.

TSL 1 and TSL 2 set the efficiency level at EL 1 for all product classes in this grouping. At TSL 1 and TSL 2, DOE estimates impacts on the change in INPV to range from −$141 million to −$10 million, or a change in INPV of −0.2 percent to less than −0.1 percent. At TSL 1 and TSL 2, industry free cash flow is estimated to decrease to $6,018 million, or a decrease of under one percent, compared to the no-standards case value of $6,024 million in 2017.

Percentage impacts on INPV are slightly negative at TSL 1 and TSL 2. DOE does not anticipate that most PC 2, 3, and 4 battery charger application manufacturers would lose a significant portion of their INPV at TSL 1 or TSL 2. DOE projects that in the expected year of compliance, 2018, 91 percent of all PC 2 battery charger applications, 94 percent of all PC 3 battery charger applications, and 94 percent of all PC 4 battery charger applications would meet or exceed the efficiency levels required at TSL 1 and TSL 2. Consequently, DOE expects conversion costs to be small at TSL 1 and TSL 2, approximately $13.4 million since so many applications already meet or exceed this requirement.

TSL 3 sets the efficiency level at EL 2 for all product classes in this grouping. At TSL 3, DOE estimates impacts on the change in INPV to range from −$1,400 million to −$17 million, or a change in INPV of −1.8 percent to less than −0.1 percent. At TSL 3, industry free cash flow is estimated to decrease to $5,973 million, or a decrease of 1 percent, compared to the no-standards case value of $6,024 million in 2017.

Percentage impacts on INPV are slightly negative at this TSL. DOE does not anticipate that most PC 2, 3, and 4 battery charger application manufacturers would lose a significant portion of their INPV at this TSL. DOE projects that in the expected year of compliance, 2018, 49 percent of all PC 2 battery charger applications, 60 percent of all PC 3 battery charger applications, and 86 percent of all PC 4 battery charger applications would meet or exceed the efficiency levels required at TSL 3. DOE expects conversion costs to increase from $13.4 million at TSL 1 and TSL 2 to $115.7 million at TSL 3. This represents a relatively modest amount compared to the no-standards case INPV of $76.8 billion and annual cash flow of $6.02 billion for PC 2, 3, and 4 battery charger applications.

TSL 4 sets the efficiency level at EL 3 for PCs 3 and 4 and EL 4 for PC 2. These efficiency levels represent max-tech for all the product classes in this grouping. At TSL 4, DOE estimates impacts on the change in INPV to range from −$14.48 billion to $499 million, or a change in INPV of −18.9 percent to 0.6 percent. At TSL 4, industry free cash flow is estimated to decrease to $5.87 billion, or a decrease of 3 percent, compared to the no-standards case value of $6.02 billion in 2017.

Percentage impacts on INPV range from moderately negative to slightly positive at TSL 4. DOE anticipates that some PC 2, 3, and 4 battery charger application manufacturers could lose a significant portion of their INPV at TSL 4. DOE projects that in the expected year of compliance, 2018, 25 percent of all PC 2 battery charger applications, 58 percent of all PC 3 battery charger applications, and 74 percent of all PC 4 battery charger applications would meet the efficiency levels required at TSL 4.

DOE expects conversion costs to significantly increase from $115.7 million at TSL 3 to $347.8 million at TSL 4. At TSL 4, the PC 2 battery charger MPC increases to $4.31 compared to the baseline MPC value of $1.16. This represents a small application price increase considering that the shipment-weighted average PC 2 battery charger application MPC is $127.73. For PC 3, the MPC increases to $5.51 compared to the baseline MPC value of $1.12. This estimate also represents a small application price increase since the shipment-weighted average PC 3 battery charger application MPC is $61.11. For PC 4, the battery charger MPC increases to $18.34 compared to the baseline battery charger MPC of $1.79. While DOE recognizes that this projected increase of $16.55 in the battery charger MPC from the baseline to the max-tech may seem significant, its impact is modest when compared to the shipment-weighted average PC 4 battery charger application MPC of $192.40—in essence, it represents an 8.6 percent increase in the average battery charger application MPC.

These product classes also include a wide variety of applications, characterized by differing shipment volumes, no-standards case efficiency distributions, and MSPs. Because of this variety, this product class grouping, more than any other, requires a greater level of disaggregation to evaluate specific industry impacts. Presented only on a product class basis, industry impacts are effectively shipment-weighted and mask impacts on certain industry applications that vary substantially from the aggregate results. Therefore, in addition to the overall product class group results, DOE also presents results by industry subgroups—consumer electronics, power tools, and small appliances—in the pass-through scenario, which approximates the mid-point of the potential range of INPV impacts. These results highlight impacts at various TSLs.

As discussed in the previous section, these aggregated results can mask differentially-impacted industries and manufacturer subgroups. Nearly 90 percent of shipments in PCs 2, 3 and 4 fall under the broader consumer electronics category, with the remaining share split between small appliances and power tools. Consumer electronics applications have a much higher shipment-weighted average MPC

($147.29) than the other product categories ($58.32 for power tools and $43.63 for small appliances). Consequently, consumer electronics manufacturers are better able to absorb higher battery charger costs than small appliance and power tool manufacturers. Further, consumer electronics typically incorporate higher efficiency battery chargers already, while small appliances and power tool applications tend to cluster around baseline and EL 1 efficiencies. These factors lead to proportionally greater impacts on small appliance and power tool manufacturers in the event they are not able to pass on and markup higher battery charger costs.

Table V–32 through Table V–34 present INPV impacts in the pass-through markup scenario for consumer electronic, power tool, and small appliance applications, respectively. The results indicate manufacturers of power tools and small appliances would face disproportionately adverse impacts, especially at the higher TSLs, as compared to consumer electronics manufacturers and the overall product group's results (shown in Table V–29 through Table V–31), if they are not able to mark up the incremental product costs.

TABLE V–32—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 2, 3, AND 4 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO—CONSUMER ELECTRONICS

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	73,840	73,805	73,805	73,511	69,568
Change in INPV	2013$ millions		(36)	(36)	(329)	(4,272)
	(%)		(0.0)	(0.0)	(0.4)	(5.8)
Product Conversion Costs	2013$ millions		10.2	10.2	77.6	242.2
Capital Conversion Costs	2013$ millions		1.7	1.7	20.0	56.3
Total Investment Required	2013$ millions		11.9	11.9	97.6	298.5

TABLE V–33—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 2, 3, AND 4 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO—POWER TOOLS

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	2,190	2,179	2,179	2,102	1,351
Change in INPV	2013$ millions		(11)	(11)	(88)	(839)
	(%)		(0.5)	(0.5)	(4.0)	(38.3)
Product Conversion Costs	2013$ millions		0.9	0.9	7.3	22.3
Capital Conversion Costs	2013$ millions		0.0	0.0	3.3	5.5
Total Investment Required	2013$ millions		1.0	1.0	10.6	27.8

TABLE V–34—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 2, 3, AND 4 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO—SMALL APPLIANCES

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	761	756	756	709	487
Change in INPV	2013$ millions		(5)	(5)	(52)	(273)
	(%)		(0.6)	(0.6)	(6.8)	(35.9)
Product Conversion Costs	2013$ millions		0.4	0.4	5.1	16.0
Capital Conversion Costs	2013$ millions		0.1	0.1	2.4	5.5
Total Investment Required	2013$ millions		0.5	0.5	7.5	21.5

Product Classes 5 and 6

The following tables (Table V–35 through Table V–38) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into PCs 5 and 6.

TABLE V–35—APPLICATIONS IN PRODUCT CLASSES 5 AND 6

Product Class 5	Product Class 6
Marine/Automotive/RV Chargers.	Electric Scooters.
Mobility Scooters	Lawn Mowers.

TABLE V–35—APPLICATIONS IN PRODUCT CLASSES 5 AND 6—Continued

Product Class 5	Product Class 6
Toy Ride-On Vehicles	Motorized Bicycles.
Wheelchairs	Wheelchairs.

TABLE V–36—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 5 AND 6 BATTERY CHARGER APPLICATIONS—FLAT MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	1,493	1,493	1,493	2,065	2,065
Change in INPV	2013$ millions		0	0	572	572
	(%)		0.0	0.0	38.3	38.3
Product Conversion Costs	2013$ millions		0.0	1.1	33.1	33.1
Capital Conversion Costs	2013$ millions		0.0	0.2	6.4	6.4
Total Investment Required	2013$ millions		0.0	1.3	39.6	39.6

TABLE V–37—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 5 AND 6 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	1,493	1,491	1,370	878	878
Change in INPV	2013$ millions		(2)	(123)	(615)	(615)
	(%)		(0.2)	(8.2)	(41.2)	(41.2)
Product Conversion Costs	2013$ millions		0.0	1.1	33.1	33.1
Capital Conversion Costs	2013$ millions		0.0	0.2	6.4	6.4
Total Investment Required	2013$ millions		0.0	1.3	39.6	39.6

TABLE V–38—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 5 AND 6 BATTERY CHARGER APPLICATIONS—CONSTANT MARKUP SCENARIO

	Units	No-standards case	Trial standard level			
			1	2	3	4
INPV	2013$ millions	1,493	1,486	1,145	586	586
Change in INPV	2013$ millions		(7)	(348)	(907)	(907)
	(%)		(0.5)	(23.3)	(60.8)	(60.8)
Product Conversion Costs	2013$ millions		0.0	1.1	33.1	33.1
Capital Conversion Costs	2013$ millions		0.0	0.2	6.4	6.4
Total Investment Required	2013$ millions		0.0	1.3	39.6	39.6

Product Classes 5 and 6 together comprise seven unique applications. Toy ride-on vehicles represent over 70 percent of the Product Class 5 and 6 shipments. DOE found that all PC 5 and 6 shipments are at either EL 1 or EL 2. The battery charger cost associated with each EL is the same for PC 5 and 6 applications, but the energy usage profiles are different.

TSL 1 sets the efficiency level at EL 1 for Product Classes 5 and 6. At TSL 1, DOE estimates impacts on the change in INPV to range from −$7 million to no change at all, or a change in INPV of −0.5 percent to no change at all. At TSL 1, industry free cash flow is estimated to remain at $117 million in 2017.

Percentage impacts on INPV range from slightly negative to unchanged at TSL 1. DOE does not anticipate that PC 5 and 6 battery charger application manufacturers would lose a significant portion of their INPV at TSL 1. DOE projects that in the expected year of compliance, 2018, all PC 5 and 6 battery charger applications would meet or exceed the efficiency levels required at TSL 1. Consequently, DOE does not expect there to be any conversion costs at TSL 1.

TSL 2 sets the efficiency level at EL 2 for PCs 5 and 6. At TSL 2, DOE estimates impacts on the change in INPV to range from −348 million to less than one million dollars, or a change in INPV of −23.3 percent to less than 0.1 percent. At TSL 2, industry free cash flow is estimated to decrease to $117 million, or a decrease of less than one percent, compared to the no-standards case value of $117 million in 2017.

Percentage impacts on INPV range from moderately negative to slightly positive at TSL 2. DOE projects that in the expected year of compliance, 2018, 95 percent of all PC 5 battery charger applications and 95 percent of all PC 6 battery charger applications would meet or exceed the efficiency levels required at TSL 2. DOE expects conversion costs to slightly increase to $1.3 million at TSL 2.

TSL 3 and TSL 4 set the efficiency level at EL 3 for PCs 5 and 6. This efficiency level represents max-tech for PCs 5 and 6. At TSL 3 and TSL 4, DOE estimates impacts on the change in INPV to range from −$907 million to $572 million, or a change in INPV of −60.8 percent to 38.3 percent. At TSL 3 and TSL 4, industry free cash flow is estimated to decrease to $100 million, or a decrease of 15 percent, compared to the no-standards case value of $117 million in 2017.

Percentage impacts on INPV range from significantly negative to significantly positive at TSL 3 and TSL 4. This large INPV range is related to the significant increase in battery charger MPC required at TSL 3 and TSL 4. DOE believes that as MPC significantly increases manufacturers will have greater difficulty in marking up prices to

reflect these incremental costs. This would imply that the negative INPV impact is a more realistic scenario than the positive INPV impact scenario. DOE anticipates that most PC 5 and 6 battery charger application manufacturers could lose a significant portion of their INPV at TSL 3 and TSL 4. DOE projects that in the expected year of compliance, 2018, no PC 5 or 6 battery charger applications would meet the efficiency levels required at TSL 3 and TSL 4. DOE expects conversion costs to significantly increase from $1.3 million at TSL 2 to $39.6 million at TSL 3 and TSL 4. At TSL 3 and TSL 4, the PC 5 and 6 battery charger MPC increases to $127.00 compared to the baseline battery charger MPC value of $18.48. This represents a huge application price increase considering that the shipment-weighted average PC 5 and 6 battery charger application MPC in the no-new standards case is $131.14 and $262.21 respectively.

Product Class 7

The following tables (Table V–39 through Table V–42) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into PC 7.

TABLE V–39—APPLICATIONS IN PRODUCT CLASS 7

Product class 7
Golf Cars

TABLE V–40—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 7 BATTERY CHARGER APPLICATIONS—FLAT MARKUP SCENARIO

	Units	No-standards case	Trial Standard Level			
			1	2	3	4
INPV	2013$ millions	1,124	1,116	1,116	1,143	1,143
Change in INPV	2013$ millions		(8)	(8)	20	20
	(%)		(0.7)	(0.7)	1.7	1.7
Product Conversion Costs	2013$ millions		1.3	1.3	3.3	3.3
Capital Conversion Costs	2013$ millions		0.4	0.4	1.8	1.8
Total Investment Required	2013$ millions		1.7	1.7	5.1	5.1

TABLE V–41—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 7 BATTERY CHARGER APPLICATIONS—PASS-THROUGH MARKUP SCENARIO

	Units	No-standards case	Trial Standard Level			
			1	2	3	4
INPV	2013$ millions	1,124	1,134	1,134	1,091	1,091
Change in INPV	2013$ millions		11	11	(32)	(32)
	(%)		0.9	0.9	(2.9)	(2.9)
Product Conversion Costs	2013$ millions		1.3	1.3	3.3	3.3
Capital Conversion Costs	2013$ millions		0.4	0.4	1.8	1.8
Total Investment Required	2013$ millions		1.7	1.7	5.1	5.1

TABLE V–42—MANUFACTURER IMPACT ANALYSIS FOR PRODUCT CLASS 7 BATTERY CHARGER APPLICATIONS—CONSTANT MARKUP SCENARIO

	Units	No-standards case	Trial Standard Level			
			1	2	3	4
INPV	2013$ millions	1,124	1,168	1,168	998	998
Change in INPV	2013$ millions		44	44	(126)	(126)
	(%)		3.9	3.9	(11.2)	(11.2)
Product Conversion Costs	2013$ millions		1.3	1.3	3.3	3.3
Capital Conversion Costs	2013$ millions		0.4	0.4	1.8	1.8
Total Investment Required	2013$ millions		1.7	1.7	5.1	5.1

Golf cars are the only application in PC 7. Approximately 80 percent of the market incorporates baseline battery charger technology—the remaining 20 percent employs technology that meets the efficiency requirements at EL 1. The cost of a battery charger in PC 7, though higher relative to other product classes, remains a small portion of the overall selling price of a golf car. This analysis, however, focuses on the application manufacturer (OEM). DOE identified one small U.S. manufacturer of golf car battery chargers. The impacts of standards on small businesses is addressed in the Regulatory Flexibility Analysis (see section VII.B for the results of that analysis).

TSL 1 and TSL 2 set the efficiency level at EL 1 for PC 7. At TSL 1 and TSL 2, DOE estimates impacts on the change in INPV to range from −$8 million to $44 million, or a change in INPV of −0.7 percent to 3.9 percent. At TSL 1 and TSL 2, industry free cash flow is estimated to decrease to $87 million, or a decrease of 1 percent, compared to the no-standards case value of $88 million in 2017.

Percentage impacts on INPV range from slightly negative to slightly positive at TSL 1 and TSL 2. DOE does not anticipate that PC 7 battery charger

application manufacturers, the golf car manufacturers, would lose a significant portion of their INPV at this TSL. DOE projects that in the expected year of compliance, 2018, 20 percent of all PC 7 battery charger applications would meet or exceed the efficiency levels required at TSL 1 and TSL 2. DOE expects conversion costs to be $1.7 million at TSL 1 and TSL 2.

TSL 3 and TSL 4 set the efficiency level at EL 2 for PC 7. This represents max-tech for PC 7. At TSL 3 and TSL 4, DOE estimates impacts on the change in INPV to range from −$126 million to $20 million, or a change in INPV of −11.2 percent to 1.7 percent. At TSL 3 and TSL 4, industry free cash flow is estimated to decrease to $86 million, or a decrease of 3 percent, compared to the no-standards case value of $88 million in 2017.

Percentage impacts on INPV range from moderately negative to slightly positive at TSL 3 and TSL 4. DOE projects that in the expected year of compliance, 2018, no PC 7 battery charger applications would meet the efficiency levels required at TSL 3 and TSL 4. DOE expects conversion costs to increase from $1.7 million at TSL 1 and TSL 2 to $5.1 million at TSL 3 and TSL 4. This represents a relatively modest amount compared to the no-standards case INPV of $1,124 million and annual cash flow of $88 million for PC 7 battery charger applications. At TSL 3 and TSL 4 the battery charger MPC increases to $164.14 compared to the baseline battery charger MPC value of $88.07. This change represents only a moderate increase in the application price since the shipment-weighted average application MPC is $2,608.09.

b. Impacts on Employment

DOE attempted to quantify the number of domestic workers involved in battery charger production. Based on manufacturer interviews and reports from vendors such as Hoovers, Dun and Bradstreet, and Manta, the vast majority of all small appliance and consumer electronic applications are manufactured abroad. When looking specifically at the battery charger component, which is typically designed by the application manufacturer but sourced for production, the same dynamic holds to an even greater extent. That is, in the rare instance when an application's production occurs domestically, it is very likely that the battery charger component is still produced and sourced overseas. For example, DOE identified several power tool applications with some level of domestic manufacturing. However, based on more detailed information obtained during interviews, DOE believes the battery charger components for these applications are sourced from abroad.

Also, DOE was able to find a few manufacturers of medium and high-power applications with facilities in the U.S. However, only a limited number of these companies produce battery chargers domestically for these applications. Therefore, based on manufacturer interviews and DOE's research, DOE believes that golf cars are the only application with U.S.-based battery charger manufacturing. Any change in U.S. production employment due to new battery charger energy conservation standards is likely to come from changes involving these particular products.

At the adopted efficiency levels, domestic golf car manufacturers will need to decide whether to attempt to manufacture more efficient battery chargers in-house and try to compete with a greater level of vertical integration than their competitors, move production to lower-wage regions abroad, or outsource their battery charger manufacturing. Based on available data, DOE believes one of the latter two strategies would be more likely for domestic golf car manufacturers. DOE describes the major implications for golf car employment in section VII.B because the major domestic manufacturer is also a small business manufacturer. DOE does not anticipate any major negative changes in the domestic employment of the design, technical support, or other departments of battery charger application manufacturers located in the U.S. in response to new energy conservation standards. Standards may require some companies to redesign their battery chargers, change marketing literature, and train some technical and sales support staff. However, during interviews, manufacturers, when asked if their domestic employment levels would change due to new standards, generally agreed these changes would not lead to positive or negative changes in employment, outside of the golf car battery charger industry.

c. Impacts on Manufacturing Capacity

DOE does not anticipate that the standards adopted by this final rule would adversely impact manufacturer capacity. The battery charger application industry is characterized by rapid product development lifecycles. DOE believes a compliance date of two years after the publication of the final rule would provide sufficient time for manufacturers to ramp up capacity to meet the adopted standards for battery chargers.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate is not adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE addressed manufacturer subgroups in the MIA, by breaking out manufacturers by application grouping (consumer electronics, small appliances, power tools, and high energy application). Because certain application groups are disproportionately impacted compared to the overall product class groupings, DOE reports those manufacturer application group results individually so they can be considered as part of the overall MIA. For the results of this manufacturer subgroup, see section V.B.2.a.

DOE also identified small businesses as a manufacturer subgroup that could potentially be disproportionally impacted. DOE discusses the impacts on the small business subgroup in the regulatory flexibility analysis, section VI.B.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. DOE believes that a standard level is not economically justified if it contributes to an unacceptable cumulative regulatory burden. While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part

of its rulemakings pertaining to product efficiency.

For the cumulative regulatory burden analysis, DOE looks at other regulations that could affect battery charger application manufacturers that will take effect approximately three years before or after the compliance date of new energy conservation standards for these products. The compliance years and expected industry conversion costs of relevant new energy conservation standards are indicated in Table V–43.

TABLE V–43—OTHER DOE REGULATIONS POTENTIALLY AFFECTING BATTERY CHARGER APPLICATION MANUFACTURERS

Federal energy conservation standards	Approximate compliance date	Estimated total industry conversion expense
External Power Supplies 79 FR 7846 (February 10, 2014)	2016	$43.4 million (2012$)
Computer and Battery Backup Systems	2019*	N/A†

* The dates listed are an approximation. The exact dates are pending final DOE action.
† For energy conservation standards for rulemakings awaiting DOE final action, DOE does not have a finalized estimated total industry conversion cost.

DOE is aware that the CEC already has energy conservation standards in place for battery chargers. As of the compliance date for the standards established in this rule is reached, the CEC standards will be preempted. Therefore, DOE did not consider the CEC standards as contributing to the cumulative regulatory burden of this rulemaking.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for battery chargers, DOE compared their energy consumption under the no-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with new standards (2018–2047). Table V–44 and Table V–45 present DOE's projections of the national energy savings for each TSL considered for battery chargers. The savings were calculated using the approach described in section IV.H of this document.

TABLE V–44—BATTERY CHARGERS: CUMULATIVE PRIMARY NATIONAL ENERGY SAVINGS FOR PRODUCTS SHIPPED IN 2018–2047 (QUADS)

Product class	Trial standard level			
	1	2	3	4
1	0.004	0.048	0.048	0.086
2, 3, 4	0.088	0.088	0.311	0.428
5, 6	0.000	0.017	0.132	0.132
7	0.012	0.012	0.027	0.027

TABLE V–45—BATTERY CHARGERS: CUMULATIVE FFC NATIONAL ENERGY SAVINGS FOR PRODUCTS SHIPPED IN 2018–2047 (QUADS)

Product class	Trial standard level			
	1	2	3	4
1	0.004	0.050	0.050	0.090
2, 3, 4	0.092	0.092	0.325	0.448
5, 6	0.000	0.018	0.138	0.138
7	0.013	0.013	0.028	0.028

OMB Circular A–4 [61] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of product shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[62] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to battery chargers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a nine-year analytical period are

[61] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[62] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 8-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

presented in Table V–46. The impacts are counted over the lifetime of battery chargers purchased in 2018–2026.

TABLE V–46—BATTERY CHARGERS: CUMULATIVE FFC NATIONAL ENERGY SAVINGS FOR PRODUCTS SHIPPED IN 2018–2026 (QUADS)

Product class	Trial standard level			
	1	2	3	4
1	0.001	0.015	0.015	0.027
2, 3, 4	0.028	0.028	0.098	0.136
5, 6	0.000	0.005	0.041	0.041
7	0.004	0.004	0.008	0.008

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for battery chargers. In accordance with OMB's guidelines on regulatory analysis,[63] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V–47 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2018–2047.

TABLE V–47—BATTERY CHARGERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2018–2047

[2013$ billions]

Discount rate	Trial standard level (billion 2013$)			
	1	2	3	4
3 percent	0.9	1.2	−16.2	−47.9
7 percent	0.5	0.6	−9.5	−27.9

The NPV results based on the aforementioned 9-year analytical period are presented in Table V–48. The impacts are counted over the lifetime of products purchased in 2018–2026. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V–48—BATTERY CHARGERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2018–2026

[2013$ billions]

Discount rate	Trial standard level (billion 2013$)			
	1	2	3	4
3 percent	0.3	0.4	−6.2	−18.1
7 percent	0.2	0.3	−4.8	−14.1

c. Indirect Impacts on Employment

DOE expects energy conservation standards for battery chargers to reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced.

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this rule, DOE has concluded that the standards adopted in this final rule would not reduce the utility or performance of the battery chargers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards. DOE has also declined to adopt battery charger marking requirements as part of this final rule, providing manufacturers with more flexibility in the way that they design, label, and market their products.

[63] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis," section E, (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition this is likely to result from the adopted standards. The Attorney General of the United States (Attorney General) determines the impact, if any, of any lessening of competition likely to result from a proposed standard and is required to transmit such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making this determination, DOE provided the Department of Justice ("DOJ") with copies of the SNOPR and the accompanying SNOPR TSD for review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for battery chargers are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the final rule TSD presents the estimated reduction in generating capacity, relative to the no-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from standards for battery chargers is expected to yield environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V–49 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD. The energy conservation standards established by this rule are economically justified under EPCA with regard to the added benefits achieved through reduced emissions of air pollutants and greenhouse gases.

TABLE V–49—BATTERY CHARGERS: CUMULATIVE EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2018–2047

	Trial Standard Level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	6.49	10.25	32.08	41.78
SO_2 (*thousand tons*)	4.10	6.48	20.29	26.44
NO_X (*thousand tons*)	7.02	11.09	34.68	45.16
Hg (*tons*)	0.015	0.024	0.075	0.098
CH_4 (*thousand tons*)	0.582	0.919	2.877	3.749
N_2O (thousand tons)	0.083	0.131	0.409	0.533
Upstream Emissions				
CO_2 (*million metric tons*)	0.342	0.542	1.697	2.209
SO_2 (*thousand tons*)	0.064	0.102	0.318	0.415
NO_X (*thousand tons*)	4.89	7.75	24.26	31.57
Hg (*tons*)	0.000	0.000	0.001	0.001
CH_4 (*thousand tons*)	27.0	42.7	133.8	174.1
N_2O (thousand tons)	0.003	0.005	0.016	0.021
Total FFC Emissions				
CO_2 (*million metric tons*)	6.83	10.79	33.77	43.99
SO_2 (*thousand tons*)	4.17	6.58	20.61	26.86
NO_X (*thousand tons*)	11.91	18.83	58.94	76.73
Hg (*tons*)	0.015	0.024	0.076	0.099
CH_4 (*thousand tons*)	27.6	43.6	136.6	177.8
CH_4 (*thousand tons CO_2eq*)*	772	1222	3826	4979
N_2O (*thousand tons*)	0.086	0.136	0.424	0.553
N_2O (*thousand tons CO_2eq*)*	22.7	35.9	112.5	146.6

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for battery chargers. As discussed in section IV.L of this document, for CO_2, DOE used recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2013$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing

damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V–50 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the final rule TSD.

TABLE V–50—BATTERY CHARGERS: ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2018–2047

TSL	SCC Case* (million 2013$)			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	51.9	223.6	350.4	676.9
2	81.5	351.9	551.8	1065.8
3	254.2	1099.4	1724.3	3329.9
4	331.4	1432.8	2246.9	4339.5
Upstream Emissions				
1	2.7	11.6	18.3	35.3
2	4.2	18.4	28.9	55.7
3	13.1	57.4	90.2	174.2
4	17.1	74.8	117.5	226.8
Total FFC Emissions				
1	54.6	235.3	368.7	712.2
2	85.7	370.3	580.6	1121.5
3	267.3	1156.8	1814.5	3504.1
4	348.6	1507.6	2364.4	4566.3

*For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2013$).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for battery chargers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V–51 presents the cumulative present values for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.53.

TABLE V–51—BATTERY CHARGERS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2018–2047

TSL	Million 2013$	
	3% discount rate	7% discount rate
Power Sector Emissions		
1	15.7	8.0
2	24.6	12.5
3	76.7	38.8
4	99.9	50.6
Upstream Emissions		
1	10.8	5.4
2	17.0	8.4
3	52.9	26.0

TABLE V–51—BATTERY CHARGERS: ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2018–2047—Continued

TSL	Million 2013$	
	3% discount rate	7% discount rate
4	69.0	33.9
Total FFC Emissions		
1	26.5	13.4
2	41.6	20.8
3	129.6	64.8
4	168.9	84.6

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis. As for those particular battery chargers that DOE is declining to regulate at this time, the reasons underlying that decision are discussed above.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V–52 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V–52—BATTERY CHARGERS: NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% Discount rate added with: (Billion 2013$)			
	SCC case $12.2/t and 3% low NO_X values	SCC case $40.0/t and 3% low NO_X values	SCC case $62.3/t and 3% low NO_X values	SCC case $117/t and 3% low NO_X values
1	0.9	1.1	1.3	1.6
2	1.3	1.6	1.8	2.4
3	−15.8	−14.9	−14.3	−12.6
4	−47.4	−46.3	−45.4	−43.2
TSL	**Consumer NPV at 7% Discount rate added with: (Billion 2013$)**			
	SCC Case $12.2/t and 7% low NO_X values	SCC Case $40.0/t and 7% low NO_X values	SCC Case $62.3/t and 7% low NO_X values	SCC Case $117/t and 7% low NO_X values
1	0.5	0.7	0.8	1.2
2	0.7	1.0	1.2	1.8
3	−9.2	−8.3	−7.7	−6.0
4	−27.5	−26.3	−25.5	−23.3

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2018 to 2047. Because CO_2 emissions have a very long residence time in the atmosphere,[64] the SCC values in future years reflect future climate-related impacts that continue beyond 2100.

C. Conclusion

When considering standards, the new or amended energy conservation standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)). The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

[64] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,'' '' *J. Geophys. Res.* 110. pp. D14105 (2005).

For this final rule, DOE considered the impacts of new standards for battery chargers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[65]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[66] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Battery Charger Standards

Table V–53 and Table V–54 summarize the quantitative impacts estimated for each TSL for battery chargers. The efficiency levels contained in each TSL are described in section V.B of this document.

TABLE V–53—BATTERY CHARGERS: SUMMARY OF NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC Energy Savings *quads*				
	0.109	0.173	0.540	0.703
NPV of Consumer Costs and Benefits *2013$ billion*				
3% discount rate	0.9	1.2	−16.2	−47.9
7% discount rate	0.5	0.6	−9.5	−27.9
Cumulative FFC Emissions Reduction				
CO_2 *million metric tons*	6.83	10.79	33.77	43.99
SO_2 *thousand tons*	4.17	6.58	20.61	26.86
NO_X *thousand tons*	11.91	18.83	58.94	76.73
Hg *tons*	0.015	0.024	0.076	0.099
CH_4 *thousand tons*	27.6	43.6	136.6	177.8
CH_4 *thousand tons* CO_2eq*	772	1222	3826	4979
N_2O *thousand tons*	0.086	0.136	0.424	0.553
N_2O *thousand tons* CO_2eq*	22.7	35.9	112.5	146.6
Value of Emissions Reduction				
CO_2 *2013$ billion***	0.055 to 0.712	0.086 to 1.121	0.267 to 3.504	0.349 to 4.566

[65] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[66] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*).

TABLE V–53—BATTERY CHARGERS: SUMMARY OF NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
NO_X—3% discount rate *2013$ million*	26.5 to 60.4	41.6 to 94.7	129.6 to 295.4	168.9 to 385.1
NO_X—7% discount rate *2013$ million*	13.4 to 30.3	20.8 to 47.0	64.8 to 146.0	84.6 to 190.7

Parentheses indicate negative (−) values.
* CO_2eq is the quantity of CO_2 that would have the same GWP.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V–54—BATTERY CHARGERS: SUMMARY OF MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*
Manufacturer Impacts				
Industry NPV (2013$ million) (*No-standards case INPV = 79,904*)	79,782–79,887	79,375–79,887	77,387–80,479	64,012–81,017
Industry NPV (*% change*)	(0.2)–(0.0)	(0.7)–(0.0)	(3.2)–0.7	(19.9)–1.4
Consumer Average LCC Savings (*2013$*)				
PC 1—Low E, Inductive*	0.08	0.71	0.71	(3.44)
PC 2—Low E, Low-Voltage	0.07	0.07	0.06	(2.79)
PC 3—Low E, Medium-Voltage	0.08	0.08	(1.36)	(2.17)
PC 4—Low E, High-Voltage	0.11	0.11	(0.38)	(4.91)
PC 5—Medium E, Low-Voltage*	0.00	0.84	(138.63)	(138.63)
PC 6—Medium E, High-Voltage*	0.00	1.89	(129.15)	(129.15)
PC 7—High E	51.06	51.06	(80.05)	(80.05)
Consumer Simple PBP (*years*)				
PC 1—Low E, Inductive*	1.1	1.5	1.5	7.4
PC 2—Low E, Low-Voltage	0.6	0.6	2.5	19.5
PC 3—Low E, Medium-Voltage	0.8	0.8	21.6	31.2
PC 4—Low E, High-Voltage	1.4	1.4	5.2	20.7
PC 5—Medium E, Low-Voltage*	2.3	2.7	29.1	29.1
PC 6—Medium E, High-Voltage*	1.0	1.1	12.5	12.5
PC 7—High E	0.0	0.0	8.1	8.1
% of Consumers that Experience Net Cost				
PC 1—Low E, Inductive*	0.0	0.0	0.0	96.3
PC 2—Low E, Low-Voltage	1.2	1.2	33.1	73.8
PC 3—Low E, Medium-Voltage	0.6	0.6	39.0	40.8
PC 4—Low E, High-Voltage	1.3	1.3	12.6	25.8
PC 5—Medium E, Low-Voltage*	0.0	0.6	99.7	99.7
PC 6—Medium E, High-Voltage*	0.0	0.0	100.0	100.0
PC 7—High E	0.0	0.0	100.0	100.0

* Parentheses indicate negative (−) values.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 0.703 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be −$27.9 billion using a discount rate of 7 percent, and −$47.9 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 43.99 Mt of CO_2, 76.73 thousand tons of NO_X, 26.86 thousand tons of SO_2, 0.099 ton of Hg, 177.8 thousand tons of CH_4, and 0.553 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 4 ranges from $0.349 billion to $4.566 billion.

At TSL 4, the average LCC impact is a cost of $3.44 for PC 1, $2.79 for PC 2, $2.17 for PC 3, $4.91 for PC 4, $138.63 for PC 5, $129.15 for PC 6, and $80.05 for PC 7. The simple payback period is 7.4 years for PC 1, 19.5 years for PC 2, 31.2 years for PC 3, 20.7 years for PC 4, 29.1 years for PC 5, 12.5 years for PC 6, and 8.1 years for PC 7. The fraction of consumers experiencing a net LCC cost is 96.3 percent for PC 1, 73.8 percent for PC 2, 40.8 percent for PC 3, 25.8 percent for PC 4, 99.7 percent for PC 5, 100 percent for PC 6, and 100 percent for PC 7.

At TSL 4, the projected change in INPV ranges from a decrease of $15,892 million to an increase of $1,113 million, equivalent to −19.9 percent and 1.4 percent, respectively.

The Secretary concludes that at TSL 4 for battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on consumers (demonstrated by a negative NPV and LCC for all product classes), and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3. TSL 3 would save 0.540 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be −$9.5 billion using a discount rate of 7 percent, and −$16.2 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 33.77 Mt of CO_2, 58.94

thousand tons of NO_X, 20.61 thousand tons of SO_2, 0.076 ton of Hg, 136.6 thousand tons of CH_4, and 0.424 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 3 ranges from $0.267 billion to $3.504 billion.

At TSL 3, the average LCC impact is a savings of $0.71 for PC 1 and $0.06 for PC 2, and a cost of $1.36 for PC 3, $0.38 for PC 4, $138.63 for PC 5, $129.15 for PC 6, and $80.05 for PC 7. The simple payback period is 1.5 years for PC 1, 2.5 years for PC 2, 21.6 years for PC 3, 5.2 years for PC 4, 29.1 years for PC 5, 12.5 years for PC 6, and 8.1 years for PC 7. The fraction of consumers experiencing a net LCC cost is 0.0 percent for PC 1, 33.1 percent for PC 2, 39.0 percent for PC 3, 12.6 percent for PC 4, 99.7 percent for PC 5, 100 percent for PC 6, and 100 percent for PC 7.

At TSL 3, the projected change in INPV ranges from a decrease of $2,517 million to an increase of $574 million, equivalent to −3.2 percent and 0.7 percent, respectively.

The Secretary concludes that at TSL 3 for battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on consumers (demonstrated by a negative NPV and LCC for most product classes), and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.173 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.6 billion using a discount rate of 7 percent, and $1.2 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 10.79 Mt of CO_2, 18.83 thousand tons of NO_X, 6.58 thousand tons of SO_2, 0.024 ton of Hg, 43.6 thousand tons of CH_4, and 0.136 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 2 ranges from $0.086 billion to $1.121 billion.

At TSL 2, the average LCC impact is a savings of $0.71 for PC 1, $0.07 for PC 2, $0.08 for PC 3, $0.11 for PC 4, $0.84 for PC 5, $1.89 for PC 6, and $51.06 for PC 7. The simple payback period is 1.5 years for PC 1, 0.6 years for PC 2, 0.8 years for PC 3, 1.4 years for PC 4, 2.7 years for PC 5, 1.1 years for PC 6, and 0.0 years for PC 7. The fraction of consumers experiencing a net LCC cost is 0.0 percent for PC 1, 1.2 percent for PC 2, 0.6 percent for PC 3, 1.3 percent for PC 4, 0.6 percent for PC 5, 0.0 percent for PC 6, and 0.0 percent for PC 7.

At TSL 2, the projected change in INPV ranges from a decrease of $529 million to a decrease of $18 million, equivalent to −0.7 percent and less than −0.1 percent, respectively.

The Secretary concludes that at TSL 2 for battery chargers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

After considering the analysis and the benefits and burdens of TSL 2, the Secretary concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, based on the above considerations, DOE is adopting energy conservation standards for battery chargers at TSL 2. The energy conservation standards for battery chargers are shown in Table V–55.

TABLE V–55—ADOPTED ENERGY CONSERVATION STANDARDS FOR BATTERY CHARGERS

Product class	Description	Maximum unit energy consumption (kWh/yr)
1	Low-Energy, Inductive	3.04.
2	Low-Energy, Low-Voltage	0.1440* E_{batt} + 2.95.
3	Low-Energy, Medium-Voltage	For E_{batt} <10Wh, UEC = 1.42 kWh/y; E_{batt} ≥10 Wh, UEC = 0.0255 * E_{batt} + 1.16
4	Low-Energy, High-Voltage	= 0.11 * E_{batt} + 3.18.
5	Medium-Energy, Low-Voltage	0.0257 * E_{batt} + .815.
6	Medium-Energy, High-Voltage	0.0778 * E_{batt} + 2.4.
7	High-Energy	= 0.0502(E_{batt}) + 4.53.

2. Summary of Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2013$) of the benefits from operating products that meet the adopted standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[67]

Table V–56 shows the annualized values for battery chargers under TSL 2, expressed in 2013$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions (for which DOE used a 3-percent discount rate along with the average SCC series corresponding to a value of $40.0/ton in 2015 (2013$)), the estimated cost of the adopted standards for battery chargers is $9 million per year in increased equipment costs, while the estimated benefits are $68 million per year in reduced equipment operating costs, $20 million per year in CO_2 reductions, and $1.92 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $81 million per year.

[67] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

Using a 3-percent discount rate for all benefits and costs and the average SCC series corresponding to a value of $40.0/ton in 2015 (in 2013$), the estimated cost of the adopted standards for battery chargers is $10 million per year in increased equipment costs, while the estimated annual benefits are $75 million in reduced operating costs, $20 million in CO_2 reductions, and $2.25 million in reduced NO_X emissions. In this case, the net benefit amounts to $88 million per year.

TABLE V–56—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (TSL 2) FOR BATTERY CHARGERS

	Discount rate	Million 2013$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7%	68	68	69
	3%	75	74	76
CO_2 Reduction Monetized Value ($12.2/t case) **	5%	6	6	6
CO_2 Reduction Monetized Value ($40.0/t case) **	3%	20	20	20
CO_2 Reduction Monetized Value ($62.3/t case) **	2.5%	29	29	29
CO_2 Reduction Monetized Value ($117/t case) **	3%	61	61	61
NO_X Reduction Monetized Value †	7%	1.92	1.92	4.34
	3%	2.25	2.25	5.13
Total Benefits ††	7% plus CO_2 range	76 to 131	76 to 131	80 to 134
	7%	90	90	94
	3% plus CO_2 range	83 to 138	83 to 137	87 to 142
	3%	97	97	101
Costs				
Consumer Incremental Product Costs	7%	9	9	6
	3%	10	10	6
Net Benefits				
Total ††	7% plus CO_2 range	67 to 122	67 to 121	73 to 128
	7%	81	81	87
	3% plus CO_2 range	74 to 128	73 to 128	81 to 136
	3%	88	87	95

* This table presents the annualized costs and benefits associated with battery chargers shipped in 2018–2047. These results include benefits to consumers which accrue after 2047 from the products purchased in 2018–2047. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Estimate, and High Estimate, respectively. Additionally, the High Benefits Estimates include a price trend on the incremental product costs.

** The CO_2 values represent global monetized values of the SCC, in 2013$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor. The value for NO_X is the average of high and low values found in the literature.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.)* See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency used a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the adopted standards for battery chargers are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE

attempts to qualify some of the external benefits through use of social cost of carbon values.

In addition, DOE has determined that this regulatory action is not a "significant regulatory action" under Executive Order 12866. Therefore, DOE did not present for review to the Office of Information and Regulatory Affairs (OIRA) in the OMB the draft rule and other documents prepared for this rulemaking, including a regulatory impact analysis (RIA).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) E.O. 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis ("FRFA") for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following FRFA for the products that are the subject of this rulemaking.

1. Description of the Need for and Objectives of, the Rule

A description of the need for, and objectives of, the rule is set forth elsewhere in the preamble and not repeated here.

2. Description of Significant Issues Raised by Public Comment

DOE received no comments specifically on the initial regulatory flexibility analysis prepared for this rulemaking. Comments on the economic impacts of the rule are discussed elsewhere in the preamble and did not necessitate changes to the analysis required by the Regulatory Flexibility Act.

3. Description of Comments Submitted by the Small Business Administration

The Small Business Administration did not submit comments on DOE's earlier proposal detailing the standards that DOE is adopting in this rule.

4. Description on Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For manufacturers of battery chargers, the SBA has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Battery charger manufacturing is classified under NAICS 335999, "All Other Miscellaneous Electrical Equipment and Component Manufacturing." The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using available public information to identify potential small battery charger manufacturers. DOE's research involved industry trade association membership directories, product databases, individual company Web sites, and the SBA's Small Business Database to create a list of every company that could potentially manufacture products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at previous DOE public meetings. DOE contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered battery chargers. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a "small business," or are foreign-owned and operated.

Based on this screening, DOE identified several companies that could potentially manufacture battery chargers covered by this rulemaking. DOE eliminated most of these companies from consideration as small business manufacturers based on a review of product literature and Web sites. When those steps yielded inconclusive information, DOE contacted the companies directly. As part of these efforts, DOE identified Lester Electrical, Inc. (Lincoln, Nebraska), a manufacturer of golf car battery chargers, as the only small business that appears to produce covered battery chargers domestically.

b. Manufacturer Participants

Before issuing the NOPR for this rulemaking, DOE contacted the potential small business manufacturers of battery chargers it had identified. One small business consented to being interviewed during the MIA interviews which were conducted prior to the publication of the NOPR. DOE also

obtained information about small business impacts while interviewing large manufacturers.

c. Industry Structure

With respect to battery chargers, industry structure is typically defined by the characteristics of the industry of the application(s) for which the battery chargers are produced. In the case of the small business DOE identified, however, the battery charger itself is the product the small business produces. That is, the company does not also produce the applications with which the battery charger is intended to be used—in this case, battery chargers predominantly intended for golf cars (PC 7).

A high level of concentration exists in the market for battery chargers used for golf cars. Two golf car battery charger manufacturers account for the vast majority of the golf car battery charger market and each have a similar share. Both competitors in the golf car battery charger market are, in terms of the number of their employees, small entities: One is foreign-owned and operated, while the other is a domestic small business, as defined by SBA. Despite this concentration, there is considerable competition for three main reasons. First, each golf car battery charger manufacturer sells into a market that is almost as equally concentrated: three golf car manufacturers supply the majority of the golf cars sold domestically and none of them manufactures golf car battery chargers. Second, while there are currently only two major suppliers of golf car battery chargers to the domestic market, the constant prospect of potential entry from other foreign countries has ceded substantial buying power to the three golf car OEMs. Third, golf car manufacturers can choose not to build electric golf cars (eliminating the need for the battery charger) by opting to build gas-powered products. DOE examines a price elasticity sensitivity scenario for this in appendix 12–B of the final rule TSD to assess this possibility. Currently, roughly three-quarters of the golf car market is electric-based, with the remainder gas-powered.

The majority of industry shipments flow to the "fleet" segment—*i.e.*, battery chargers sold to golf car manufacturers who then lease the cars to golf courses. Most cars are leased for the first few years before being sold to smaller golf courses or other individuals for personal use. A smaller portion of golf cars are sold as new through dealer distribution.

Further upstream, approximately half of the battery chargers intended for golf car use is manufactured domestically, while the other half is foreign-sourced. During the design cycle of the golf car, the battery charger supplier and OEM typically work closely together when designing the battery charger.

The small business manufacturer is also a relatively smaller player in the markets for wheelchair and industrial lift battery chargers. Most wheelchair battery chargers and the wheelchairs themselves are manufactured overseas. Three wheelchair manufacturers supply the majority of the U.S. market, but do not have domestic manufacturing. DOE does not anticipate the adopted standard to have a negative impact on motorized wheelchair operations because the standard for PC 5 inherently scales with battery energy. Irrespective of the size of the battery used in wheelchair applications, charge current will only terminate when the battery has reached a predetermined max voltage and is fully charged. DOE therefore has no reason to believe that compliant chargers would undercharge certain types of batteries and affect a wheelchairs runtime and performance. Further, battery chargers at the adopted standard already exists in the marketplace and these battery chargers have shown to charge wheelchair batteries effectively.

d. Comparison Between Large and Small Entities

As discussed in the previous section, there are two major suppliers in the golf car battery charger market. Both are small entities, although one is foreign-owned and operated and does not qualify as a small business per the SBA definition. These two small entities have a similar market share and sales volumes. DOE did not identify any large businesses with which to compare the projected impacts on small businesses.

5. Description and Estimate of Compliance Requirements

The U.S.-owned small business DOE identified manufactures battery chargers for golf cars (PC 7). DOE anticipates the adopted rule will require both capital and product conversion costs to achieve compliance. The ELs adopted for PCs 5, 6, and 7 will drive different levels of small business impacts. The compliance costs associated with the adopted TSLs are present in Table VI–1 through Table VI–3.

DOE does not expect the adopted TSL to require significant capital expenditures. Although some new assembly equipment and tooling would be required, the magnitude of these expenditures would be unlikely to cause significant adverse financial impacts. PC 7 drives the majority of these costs. See Table VI–1 for the estimated capital conversion costs for a typical small business.

TABLE VI—1 ESTIMATED CAPITAL CONVERSION COSTS FOR A SMALL BUSINESS

Product class and estimated capital conversion cost	TSL 1	TSL 2*	TSL 3	TSL 4
Product Classes 5 and 6	EL 1	EL 2	EL 3	EL 3
Product Class 7	EL 1	EL 1	EL 2	EL 2
Estimated Capital Conversion Costs (2013$)	$0.1	$0.1	$0.2	$0.2

*This is the TSL adopted in this final rule.

The product conversion costs associated with standards are more significant for the small business manufacturer than the projected capital conversion costs. TSL 2 for PC 7 reflects a technology change from a linear battery charger or less efficient high-frequency design battery charger at the baseline to a more efficient switch-mode or high-frequency design battery charger. This change would require manufacturers that produce linear or less efficient high-frequency design battery chargers to invest in the development of a new product design, which would require investments in engineering resources for R&D, testing and certification, and marketing and training changes. Again, the level of expenditure at each TSL is driven almost entirely by the changes required for PC 7 at each TSL. Additionally, based on market research conducted during the analysis period of this final rule, DOE has found that manufacturers (including those based domestically) who previously sold exclusively, or primarily, linear battery chargers, are now selling switch-mode battery chargers, which are capable of charging

batteries equal to similar batteries charged by linear battery chargers offered by the same manufacturer. See Table VI–2 for the estimated product conversion costs for a typical small business.

TABLE VI—2 ESTIMATED PRODUCT CONVERSION COSTS FOR A SMALL BUSINESS

Product class and estimated product conversion cost	TSL 1	TSL 2*	TSL 3	TSL 4
Product Classes 5 and 6	EL 1	EL 2	EL 3	EL 3
Product Class 7	EL 1	EL 1	EL 2	EL 2
Estimated Product Conversion Costs (2013$)	$1.8	$2.0	$5.1	$5.1

* This is the TSL adopted in this rulemaking.

Table VI–3 displays the total capital and product conversion costs associated with each TSL.

TABLE VI—3 ESTIMATED TOTAL CONVERSION COSTS FOR A SMALL BUSINESS

Product class and estimated total conversion cost	TSL 1	TSL 2*	TSL 3	TSL 4
Product Classes 5 and 6	EL 1	EL 2	EL 3	EL 3
Product Class 7	EL 1	EL 1	EL 2	EL 2
Estimated Total Conversion Costs (2013$)	$1.9	$2.1	$4.3	$4.3

* This is the TSL adopted in this final rule rulemaking.

Based on its engineering analysis, manufacturer interviews and public comments, DOE believes TSL 2 for PC 7 would establish an efficiency level that standard linear battery chargers could not cost-effectively achieve. Not only would the size and weight of such chargers potentially conflict with end-user preferences, but the additional steel and copper requirements would make such chargers cost-prohibitive in the marketplace. Baseline linear designs are already significantly more costly to manufacture than the more-efficient switch-mode designs, as DOE's cost efficiency curve shows in the engineering section (see Table IV–10).

While several battery chargers manufactured by the one small business DOE identified would need to be modified to meet the adopted standards for PC 7, this manufacturer also sells several switch-mode battery chargers. Therefore, DOE anticipates that this manufacturer could comply with the proposal by modifying their existing switch-mode battery charger specifications. This would require significantly fewer R&D resources than completely redesigning all of their production line. Additionally, DOE acknowledges that some or all existing domestic linear battery charger manufacturing could be lost due to the adopted standards, since it is likely that switch-mode battery charger manufacturing would take place abroad.

6. Description of Steps Taken To Minimize Impacts to Small Businesses

The discussion in the previous sections analyzes impacts on small business that would result from the other TSLs DOE considered. Though TSLs lower than the adopted TSL are expected to reduce the impacts on small entities, DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in a significant conservation of energy. Once DOE determines that a particular TSL meets those requirements, DOE adopts that TSL in satisfaction of its obligations under EPCA.

With respect to TSL 4, DOE estimates that while there would be an additional 0.525 quads of energy savings at TSL 4 compared to the adopted standards, TSL 2, it would cause consumers to lose $27.9 billion using a 7-percent discount rate or $47.9 billion using a 3-percent discount rate, compared to consumers saving $0.6 billion using a 7-percent discount rate or saving $1.2 billion using a 3 percent discount rate at the adopted standards, TSL 2. Also, manufacturers could lose up to 19.9 percent of their INPV at TSL 4. DOE determined that the additional high cost to consumers and the potential reduction in manufacturer INPV, would outweigh the potential energy savings benefits. For TSL 3, DOE estimates that while there would be an additional 0.364 quads of energy savings at TSL 3 compared to the adopted standards, TSL 2, it would cause consumers to lose $9.5 billion using a 7-percent discount rate or $16.2 billion using a 3-percent discount rate, compared to consumers saving $0.6 billion using a 7-percent discount rate or saving $1.2 billion using a 3 percent discount rate at the adopted standards, TSL 2. Also manufacturers could lose up to 3.2 percent of their INPV at TSL 3. DOE determined that the additional cost to consumers and the potential reduction in manufacturer INPV, would outweigh the potential energy savings benefits.

In addition, while TSL 1 would reduce the impacts on small business manufacturers, it would come at the expense of a significant reduction in energy savings and NPV benefits to consumers, achieving 36 percent lower energy savings and 17 to 25 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 2.

EPCA requires DOE to establish standards at the level that would achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Based on its analysis, DOE concluded that TSL 2 achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified. Therefore, DOE did not establish standards at the levels considered at TSL 3 and TSL 4 because DOE determined that they were not economically justified. DOE's analysis of economic justification considers impacts on manufacturers, including small businesses. While TSL 1 would reduce the impacts on small business manufacturers, EPCA prohibits DOE from adopting TSL 1.

In summary, DOE concluded that establishing standards at TSL 2 balances the benefits of the energy savings and the NPV benefits to consumers at TSL

2 with the potential burdens placed on battery charger application manufacturers, including small business manufacturers. Accordingly, DOE did not adopt any of the other TSLs considered in the analysis, or the other policy alternatives detailed as part of the regulatory impacts analysis included in chapter 17 of the final rule TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of battery chargers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for battery chargers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including battery chargers. 76 FR 12422 (March 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that this rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 (Actions to conserve energy or water) and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this rule is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism." 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit

timely input by elected officers of State, local, and Tribal governments on a "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE has concluded that this final rule may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) Investment in research and development and in capital expenditures by battery charger manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency battery chargers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. (2 U.S.C. 1532(c)). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), this final rule establishes energy conservation standards for battery chargers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this final rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth energy conservation standards for battery chargers, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." Id at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a "major rule" as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on May 6, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by adding paragraph (z) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(z) *Battery chargers.* (1) Battery chargers manufactured on or after June 13, 2018, must have a unit energy consumption (UEC) less than or equal to the prescribed "Maximum UEC" standard when using the equations for the appropriate product class and corresponding rated battery energy as shown in the following table:

Product class	Product class description	Rated battery energy (Ebatt**)	Special characteristic or battery voltage	Maximum UEC (kWh/yr) (as a function of Ebatt**)
1	Low-Energy	≤5 Wh	Inductive Connection*	3.04
2	Low-Energy, Low-Voltage	<100 Wh	<4 V	0.1440 * E_{batt} + 2.95
3	Low-Energy, Medium-Voltage		4–10 V	For E_{batt} <10 Wh, 1.42 kWh/y E_{batt} ≥10 Wh, 0.0255 * E_{batt} + 1.16
4	Low-Energy, High-Voltage		>10 V	0.11 * E_{batt} + 3.18
5	Medium-Energy, Low-Voltage	100–3000 Wh	<20 V	0.0257 * E_{batt} + .815
6	Medium-Energy, High-Voltage		≥20 V	0.0778 * E_{batt} + 2.4
7	High-Energy	>3000 Wh		0.0502 * E_{batt} + 4.53

* Inductive connection and designed for use in a wet environment (*e.g.* electric toothbrushes).
** E_{batt} = Rated battery energy as determined in 10 CFR part 429.39(a).

(2) A battery charger shall not be subject to the standards in paragraph (z)(1) of this section if it is a device that requires Federal Food and Drug Administration (FDA) listing and approval as a life-sustaining or life-supporting device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)).

Appendix

Note: The following letter from the Department of Justice will not appear in the Code of Federal Regulations.

DEPARTMENT OF JUSTICE

Antitrust Division

WILLIAM J. BAER

Assistant Attorney General
Main Justice Building, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645 (Fax)

October 30, 2015.

Anne Harkavy
Deputy General Counsel for Litigation, Regulation and Enforcement,
U.S. Department of Energy, Washington, DC 20585.

Dear Deputy General Counsel Harkavy: I am responding to your September 1, 2015, letter seeking views of the Attorney General about the impact on competition of proposed energy conservation standards for battery chargers. Your request was submitted under Section 325(o)(2)(B)(i)(V), which required the Attorney General to make determination of the impact of any lessening of competition this is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Supplemental Notice of Proposed Rulemaking (80 Fed. Reg. 52,850, Sep. 1, 2015) and the related Technical Support Documents. We have also reviewed information presented at the public meeting held on the proposed standards on September 15, 2015.

Based on this review, our conclusion is that the proposed energy conservation standards for battery chargers are unlikely to have a significant adverse impact on competition.

Sincerely,
William J. Baer.

[FR Doc. 2016–12835 Filed 6–10–16; 8:45 am]

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Part III

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Dehumidifiers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2012–BT–STD–0027]

RIN 1904–AC81

Energy Conservation Program: Energy Conservation Standards for Dehumidifiers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including dehumidifiers. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this final rule, DOE is adopting more-stringent energy conservation standards for dehumidifiers. It has determined that the amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is August 12, 2016. Compliance with the amended standards established for dehumidifiers in this final rule is required on and after June 13, 2019.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2012-BT-STD-0027*. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *dehumidifiers@EE.Doe.Gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

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I. Synopsis of the Final Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include dehumidifiers, the subject of this document.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m))

In accordance with these and other statutory provisions discussed in this document, DOE is adopting amended energy conservation standards for dehumidifiers. The amended standards, which are expressed in the minimum allowable integrated energy factor (IEF), expressed in liters (L) of moisture removed per kilowatt-hour (kWh), are shown in Table I.1. These standards apply to all products listed in Table I.1 and manufactured in, or imported into, the United States on and after June 13, 2019.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR DEHUMIDIFIERS (COMPLIANCE STARTING JUNE 13, 2019)

Portable dehumidifier product capacity (pints/day)	Minimum integrated energy factor (L/kWh)
25.00 or less	1.30
25.01–50.00	1.60
50.01 or more	2.80
Whole-home dehumidifier product case volume (cubic feet)	
8.0 or less	1.77
More than 8.0	2.41

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the adopted standards on consumers of dehumidifiers, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings are positive or zero for all product classes, and the PBP is less than the average lifetime of portable and whole-home dehumidifiers, which is estimated to be 11 years and 19 years, respectively (see section IV.F).

TABLE I.2—IMPACTS OF AMENDED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF DEHUMIDIFIERS

Product class	Average LCC savings (2014$)	Simple payback period (years)
PC1: Portable Dehumidifier: ≤25.00 pints/day	107	0.5
PC2: Portable Dehumidifier: 25.01–50.00 pints/day	119	0.4
PC3: Portable Dehumidifier: ≥50.01 pints/day	142	4.5
PC4: Whole-home Dehumidifier: ≤8ft³.		
PC5: Whole-home Dehumidifier: >8ft³.		

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2016 to 2048). Using a real discount rate of 8.4 percent, DOE estimates that the INPV for manufacturers of dehumidifiers in the case without amended standards is $179.5 million in 2014$. Under the adopted standards, DOE expects that manufacturers may lose up to 20.9 percent of this INPV, which is approximately $37.5 million. Additionally, DOE identified five other DOE regulations that impact dehumidifier manufacturers and considered potential manufacturer impacts associated with the cumulative burden of these regulations, as discussed in section V.B.2.e of this document. Based on DOE's interviews with the manufacturers of dehumidifiers and impacts analysis, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole to result from the standards for dehumidifiers.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in section IV.J of this document.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[3] The average LCC savings are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of standards (see section IV.F.9). The simple PBP, which is designed to compare specific dehumidifier efficiency levels, is measured relative to the baseline model (see section IV.C.1.a).

C. National Benefits and Costs [4]

DOE's analyses indicate that the adopted energy conservation standards for dehumidifiers would save a significant amount of energy. Relative to the case without amended standards the lifetime energy savings for dehumidifiers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2019–2048), amount to 0.30 quadrillion Btu (quads).[5] This represents a savings of 7.4 percent relative to the energy use of these products in the case without amended standards (referred to as the "no-new-standards case").

The cumulative net present value (NPV) of total consumer costs and savings of the standards for dehumidifiers ranges from $1.28 billion (at a 7-percent discount rate) to $2.71 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for dehumidifiers purchased in 2019–2048.

In addition, the standards for dehumidifiers are projected to yield significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas emission reductions (over the same period as for energy savings) of 18.6 million metric tons (Mt) [6] of carbon dioxide (CO_2), 11.0 thousand tons of sulfur dioxide (SO_2), 33.1 tons of nitrogen oxides (NO_X), 77.9 thousand tons of methane (CH_4), 0.23 thousand tons of nitrous oxide (N_2O), and 0.04 tons of mercury (Hg).[7] The cumulative reduction in CO_2 emissions through 2030 amounts to 5.3 Mt.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the "Social Cost of Carbon," or SCC) developed by a Federal interagency working group.[8] The derivation of the SCC values is discussed in section 0. Using discount rates appropriate for each set of SCC values, DOE estimates that the net present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.1 billion and $1.9 billion, with a value of $0.6 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates that the net present monetary value of the NO_X emissions reduction to be $0.03 billion at a 7-percent discount rate, and $0.07 billion at a 3-percent discount rate.[9]

Table I.3 summarizes the national economic benefits and costs expected to result from the adopted standards for dehumidifiers.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF AMENDED ENERGY CONSERVATION STANDARDS FOR DEHUMIDIFIERS *

Category	Present value (billion 2014$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	1.4	7
	2.9	3
CO_2 Reduction Value ($12.2/t case) **	0.1	5
CO_2 Reduction Value ($40.0/t case) **	0.6	3
CO_2 Reduction Value ($62.3/t case) **	1.0	2.5
CO_2 Reduction Value ($117/t case) **	1.9	3
NO_X Reduction Value †	0.03	7
	0.07	3
Total Benefits ††	2.0	7
	3.6	3
Costs		
Consumer Incremental Installed Costs	0.11	7
	0.19	3
Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value ††	1.9	7
	3.4	3

* This table presents the costs and benefits associated with dehumidifiers shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

[4] All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[5] The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2.

[6] A metric ton is equivalent to 1.1 short tons. Results for NO_X and Hg are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards-case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case, which generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[8] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government. May 2013; revised November 2013. Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf*.

[9] DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis*.) See section IV.L.2 for further discussion. Note that the agency is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section 0. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. Note that the agency is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

The benefits and costs of the adopted standards, for dehumidifiers sold in 2019–2048, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of (1) the national economic value of the benefits in reduced consumer operating costs, minus (2) the increases in product purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[10]

Although the value of operating cost savings and CO_2 emission reductions are both important, two issues are relevant. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of dehumidifiers shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[11] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the adopted standards are shown in Table I.4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, (for which DOE used a 3-percent discount rate along with the SCC series that has a value of $40.0/t in 2015),[12] the estimated cost of the standards in this rule is $11 million per year in increased equipment costs, while the estimated annual benefits are $136 million in reduced equipment operating costs, $34 million in CO_2 reductions, and $2.9 million in reduced NO_X emissions. In this case, the net benefit amounts to $163 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series has a value of $40.0/t in 2015, the estimated cost of the standards is $10 million per year in increased equipment costs, while the estimated annual benefits are $162 million in reduced operating costs, $34 million in CO_2 reductions, and $3.7 million in reduced NO_X emissions. In this case, the net benefit amounts to $189 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR DEHUMIDIFIERS *

	Discount rate	Million 2014$/year		
		Primary estimate	Low net benefits estimate	High net benefits estimate
Benefits				
Consumer Operating Cost Savings	7%	136	131	141.
	3%	162	154	169.
CO_2 Reduction Value ($12.2/t case) **	5%	10	10	11.
CO_2 Reduction Value ($40.0/t case) **	3%	34	34	35.
CO_2 Reduction Value ($62.3/t case) **	2.5%	50	49	51.
CO_2 Reduction Value ($117/t case) **	3%	104	102	106.
NO_X Reduction Value †	7%	2.9	2.9	6.7.
	3%	3.7	3.7	8.6.
Total Benefits ††	7% plus CO_2 range	150 to 243	144 to 236	159 to 254.
	7%	173	167	183.
	3% plus CO_2 range	176 to 269	168 to 260	188 to 284.
	3%	200	192	213.
Costs				
Consumer Incremental Product Costs	7%	11	11	10.
	3%	10	12	10.
Net Benefits				
Total ††	7% plus CO_2 range	139 to 232	132 to 224	148 to 244.

[10] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.*, 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

[11] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ (2005), "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming.' " *J. Geophys. Res.* 110. pp. D14105.

[12] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR DEHUMIDIFIERS *—Continued

	Discount rate	Million 2014$/year		
		Primary estimate	Low net benefits estimate	High net benefits estimate
	7%	163	156	173.
	3% plus CO_2 range	165 to 259	157 to 248	178 to 274.
	3%	189	180	203.

* This table presents the annualized costs and benefits associated with dehumidifiers shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the dehumidifiers purchased from 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Benefits Estimate, and a high decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.F.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency used a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

Based on the analyses culminating in this final rule, DOE found the benefits to the nation of the standards (energy savings, consumer LCC savings, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (loss of INPV and LCC increases for some users of these products). DOE has concluded that the standards in this final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy.

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for dehumidifiers.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as "covered products"), which includes the dehumidifiers that are the subject of this rulemaking. (42 U.S.C. 6295(cc)) EPCA, as amended, prescribed energy conservation standards for dehumidifiers [13] manufactured on or after October 1, 2007, and more stringent energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. (42 U.S.C. 6295(cc)) Under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for dehumidifiers currently appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix X.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including dehumidifiers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including dehumidifiers, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42

[13] Dehumidifiers are defined as self-contained, electrically operated, and mechanically encased assemblies consisting of: (1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere; (2) a refrigerating system, including an electric motor; (3) an air-circulating fan; and (4) a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34))

U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA, as codified, also contains what is known as an "anti-backsliding" provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of products that has the same function or intended use if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

EPCA also requires that, for any final rule for new or amended energy conservation standards promulgated after July 1, 2010, DOE must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's test procedures for dehumidifiers address standby mode and off mode energy use, as do the amended standards adopted in this final rule.

B. Background

1. Current Standards

EPCA prescribes energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. In a final rule published on March 23, 2009, DOE codified these standards at 10 CFR 430.32(v)(2). 74 FR 12058. These standards are set forth in Table II.1.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR DEHUMIDIFIERS *

Product class * (pints/day)	Energy factor (EF) ** (L/kWh)
Up to 35.00	1.35
35.01–45.00	1.50
45.01–54.00	1.60
54.01–75.00	1.70
75.01 or more	2.5

* Product capacity in pints/day is measured according to the DOE test procedure in appendix X of 10 CFR 430.

** EF is a measure of the water removed from the air per unit of energy consumed by a dehumidifier and is calculated according to appendix X.

2. History of Standards Rulemaking for Dehumidifiers

EPCA, as amended, established the first energy conservation standards for dehumidifiers manufactured as of October 1, 2007, based on the EF metric. As discussed in section II.B.1, subsequent amendments prescribed energy conservation standards for dehumidifiers manufactured on or after October 1, 2012. DOE is conducting this rulemaking pursuant to 42 U.S.C. 6295(m)(1), which requires DOE, no later than 6 years after issuance of any final rule establishing or amending a standard, to publish either a notice of determination that standards for the product do not need to be amended, or a NOPR that includes new proposed energy conservation standards.

DOE initiated this rulemaking by issuing an analytical Framework Document, "Energy Conservation Standards Rulemaking Framework Document for Dehumidifiers." 77 FR 49739 (Aug. 17, 2012). The Framework Document explained the issues, analyses, and process that DOE anticipated using to develop energy conservation standards for dehumidifiers.

DOE held a public meeting on September 24, 2012, to solicit comments from interested parties regarding the Framework Document and DOE's proposed analytical approach. DOE sought feedback from interested parties on these subjects and provided information regarding the rulemaking process that DOE would follow. Interested parties discussed the following major issues at the public meeting: Rulemaking schedule; test procedure revisions; product classes; technology options; efficiency levels; and approaches for each of the analyses performed by DOE as part of the rulemaking process.

Comments received following the publication of the framework document helped DOE identify and resolve issues related to the subsequent preliminary analysis. In the preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary technical support document (TSD) that presented the methodology and results of each of these analyses is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0027-0015.*

DOE also conducted, and included in the preliminary TSD, several other analyses that supported the major analyses. These analyses included: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis,[14] which contributes to the LCC and PBP analysis and national impact analysis (NIA). In addition to these analyses, DOE began preliminary work on the manufacturer impact analysis (MIA) and identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis.

DOE published a notice of public meeting and availability of the preliminary TSD on May 22, 2014. 79 FR 29380. DOE subsequently held a public meeting on June 13, 2014, to discuss and receive comments on the preliminary TSD. DOE received comments on topics including: Whole-home dehumidifier coverage and test procedures, product classes, design options, efficiency levels, use of experience curves, shipments projections, social cost of carbon estimates and the associated monetization of carbon dioxide, and small business impacts. After reviewing these comments, DOE gathered additional information, held further discussions with manufacturers, and completed and revised the various analyses described in the preliminary analysis.

On June 3, 2015, DOE published a notice of proposed rulemaking (hereafter, the "June 2015 NOPR") and notice of public meeting. 80 FR 31645. The June 2015 NOPR and accompanying TSD presented the results of DOE's updated analyses and proposed amended standards for dehumidifiers. On July 7, 2015, DOE held a public meeting to discuss the issues detailed in the June 2015 NOPR. Interested parties commented on various aspects of the proposed rule and submitted supplemental written comments. Following the public meeting, DOE gathered additional information and performed additional analyses to supplement the analyses presented in the June 2015 NOPR. The results of these analyses are detailed in the TSD accompanying this final rule, available in the docket at the *regulations.gov* Web site. DOE considered the comments received since publication of the June 2015 NOPR, including those received at the NOPR public meeting, in developing amended standards for dehumidifiers.

III. General Discussion

DOE developed this final rule after considering comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Existing energy conservation standards divide portable and whole home dehumidifiers into five product classes based on product capacity in the number of pints per day (pints/day) of moisture that the product removes from ambient air at test conditions, as measured by the applicable DOE test procedure, appendix X. In this rulemaking, DOE is establishing new product classes that differentiate dehumidifiers not only by product capacity but by product configuration as well (*i.e.*, between portable and whole-home configurations). For portable dehumidifiers, DOE is establishing the following three product classes based on the product capacity:[15] (1) 25.00 pints/day or less; (2) 25.01 to 50.00 pints/day; and (3) 50.01 pints/day or more. For whole-home dehumidifiers, DOE is adopting the following two product classes based on product case volume:[16] (1) Less than or equal to 8.0 ft^3; and (2) greater than 8.0 ft^3.

The product classes for portable dehumidifiers analyzed for this final rule are different from those examined in DOE's initial analysis and the June 2015 NOPR, while the product classes for whole-home dehumidifiers are the same. In the May 2014 Preliminary TSD, DOE initially analyzed five product classes for portable dehumidifiers based on product capacity. Due, in part, to comments received on the preliminary TSD, DOE proposed only three product classes for portable dehumidifiers in the June 2015 NOPR: (1) 30.00 pints/day or less; (2) 30.01 to 45.00 pints/day; and (3) 45.01 pints/day or more. For this final rule, DOE adjusted the product capacity thresholds between these three product classes after considering comments and conducting additional discussions with manufacturers and further analysis. Comments received relating to the scope of coverage and product classes are discussed in section IV.A of this final rule.

B. Test Procedure

DOE's current energy conservation standards for dehumidifiers are expressed in terms of EF, in L/kWh, and are a function of the product capacity, expressed in pints/day. (*See* 10 CFR 430.32(v)(2)).

EPCA specifies that the dehumidifier test criteria used under the ENERGY STAR[17] program in effect as of January 1, 2001,[18] must serve as the basis for the DOE test procedure for dehumidifiers, unless revised by DOE. (42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria required that American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) Standard DH–1, "Dehumidifiers," be used to measure product capacity while the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), "Performance of Dehumidifiers," be used to calculate the EF. The version of AHAM Standard DH–1 in use at the time the ENERGY STAR test criteria were adopted was AHAM Standard DH–1–1992. In 2006, DOE adopted these test criteria, along

[14] Industry data track shipments from manufacturers into the distribution chain. Data on national unit retail sales are lacking, but are presumed to be close to shipments under normal circumstances.

[15] Note that the test conditions for the new product classes are different from those for the existing product classes.

[16] Product case volume is the rectangular volume that the product case occupies, exclusive of any duct attachment collars or other external components.

[17] For more information on the ENERGY STAR program, please visit *www.energystar.gov.*

[18] "Energy Star Program Requirements for Dehumidifiers", Version 1.0, U.S. Environmental Protection Agency (EPA), available online at: *www.energystar.gov/products/specs/system/files/DehumProgReqV1.0.pdf.*

with related definitions and tolerances, as its test procedure for dehumidifiers at 10 CFR part 430, subpart B, appendix X. 71 FR 71340, 71347, 71366–71368 (Dec. 8, 2006).

On October 31, 2012, DOE published a final rule to establish a new test procedure for dehumidifiers that references ANSI/AHAM Standard DH–1–2008, "Dehumidifiers," (ANSI/AHAM DH–1–2008) for both energy use and product capacity measurements. 77 FR 65995 (Oct. 31, 2012). The final rule also adopted standby and off mode provisions that satisfy the requirement in EPCA for DOE to include measures of standby mode and off mode energy consumption in its test procedures for residential products, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) This new DOE test procedure, codified at that time at 10 CFR part 430, subpart B, appendix X1, established a new metric, IEF, which incorporates measures of active, standby, and off mode energy use, in addition to the existing EF metric.

DOE subsequently removed the existing test procedures at appendix X and redesignated the test procedures at appendix X1 as appendix X. 79 FR 7366 (Feb. 7, 2014). Any representations of energy use, including standby mode or off mode energy consumption, or efficiency of portable dehumidifiers must be made in accordance with the results of testing pursuant to the redesignated appendix X.

On May 21, 2014, DOE published a NOPR (the "May 2014 Test Procedure NOPR") proposing further amendments to the dehumidifier test procedures in appendix X. 79 FR 29272. In addition to making clarifications and corrections in appendix X, DOE proposed creating a new appendix, appendix X1, which would: (1) Require certain active mode testing at a lower ambient temperature; (2) add a measure of fan-only mode energy consumption in the IEF metric; and (3) include testing methodology and measures of performance for whole-home dehumidifiers.

On February 4, 2015, DOE published a supplemental notice of proposed rulemaking (the "February 2015 Test Procedure SNOPR"). 80 FR 5994. In the SNOPR, DOE maintained its proposals from the NOPR, except that DOE proposed: (1) Adjustments and clarifications to the whole-home dehumidifier test setup and conduct; (2) a method to determine whole-home dehumidifier case volume; (3) a method for measuring energy use in off-cycle mode, including any fan operation; (4) a clarification to the relative humidity and product capacity equations; and (5) additional technical corrections and clarifications.

In response to the May 2014 Test Procedure NOPR, June 2014 public meeting, and February 2015 Test Procedure SNOPR, DOE received comments from interested parties related to the test procedure. DOE addressed these issues in the test procedure final rule to establish a new appendix X1 published on July 31, 2015 (the "July 2015 Test Procedure Final Rule," 80 FR 45801), and based its analysis in this notice on product capacities and efficiencies determined according to the appendix X1 test procedure.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this document discusses the results of the screening analysis for dehumidifiers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for dehumidifiers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C of this final rule and in chapter 5 of the final rule TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (TSL), DOE projected energy savings from application of the TSL to dehumidifiers purchased in the 30-year period that begins in the year of compliance with any amended standards (2019–2048).[19] The savings are measured over the entire lifetime of products purchased in the 30-year analysis period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its NIA spreadsheet models to estimate energy savings from potential amended standards for dehumidifiers. The NIA spreadsheet model (described in section IV.H of this document) calculates savings in site energy, which is the energy directly consumed by products at the locations where they are used. Based on the site energy, DOE calculates national energy savings (NES) in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of

[19] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

energy conservation standards.[20] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document. For natural gas, the primary energy savings are considered to be equal to the site energy savings.

2. Significance of Savings

To adopt standards for a covered product, DOE must determine that such action would result in "significant" energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term "significant" is not defined in the Act, the U.S. Court of Appeals, for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated opined that Congress intended "significant" energy savings in the context of EPCA to be savings that were not "genuinely trivial." The energy savings for all the TSLs considered in this rulemaking, including the adopted standards, are nontrivial, and, therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted in this preamble, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate.

[20] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts applicable to a particular rulemaking. DOE also evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section IV.H, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards adopted in this final rule would not reduce the utility or performance of the products under consideration in this rulemaking. DOE discusses potential impacts on product utility in section IV.C.1.b of this document.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE transmitted a copy of its proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE received no adverse comments from DOJ regarding the proposed rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M of this document.

The adopted standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under "other factors."

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this final rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to dehumidifiers. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/55*. Additionally, DOE used output from the latest version of the Energy Information Administration's (EIA) *Annual Energy Outlook (AEO)*, a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly-available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of dehumidifiers. The key findings of DOE's market assessment are summarized below. See chapter 3 of the final rule TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

EPCA defines a dehumidifier as product that is self-contained, electrically operated, mechanically encased, and a product that incorporates a refrigerated surface to condense moisture from the atmosphere. It further defines it as having a refrigerating system with an electric motor; a fan for air circulation; and a means for collecting or disposing of the condensate. (42 U.S.C. 6291(34)) In the July 2015 Test Procedure Final Rule, DOE clarified that this definition of a dehumidifier, codified at 10 CFR 430.2, does not apply to portable air conditioners, room air conditioners, or packaged terminal air conditioners. 80 FR 45801, 45804–45805 (July 31, 2015).[21]

In the July 2015 Test Procedure Final Rule, DOE also added definitions to 10 CFR 430.2 for portable dehumidifiers and whole-home dehumidifiers. Portable dehumidifiers are designed to operate within the dehumidified space without ducting attached, although ducting may be attached optionally. Whole-home dehumidifiers are designed to be installed with inlet ducting for return process air and outlet ducting that supplies dehumidified process air to one or more locations in the dehumidified space. In the July 2015 Test Procedure Final rule, DOE further established that dehumidifiers that are able to operate as both a portable and whole-home dehumidifier be tested and rated for both configurations. 80 FR 45801, 45805–45806 (July 31, 2015).

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, by capacity, or by other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Under 42 U.S.C. 6295(cc)(2), standards are established for five product classes of dehumidifiers, based on the capacity of the unit in pints of water extracted per day, as shown in Table IV.1. Representations of capacity to comply with the current dehumidifier energy conservation standards are determined based on the current DOE test procedure in appendix X, as designated in the test procedure final rule published on February 7, 2014. 79 FR 7366.

TABLE IV.1—CURRENT DEHUMIDIFIER PRODUCT CLASSES

Capacity (*pints/day*):
Up to 35.00.
35.01–45.00.
45.01–54.00.
54.01–75.00.
75.00 or more.

a. Preliminary Analysis and NOPR Proposals

In the preliminary analysis conducted for this rulemaking, DOE considered the following portable dehumidifier product classes that were based on the existing product classes, but with capacities adjusted for the lower ambient temperature proposed in the May 2014 Test Procedure NOPR.

TABLE IV.2—PRELIMINARY ANALYSIS PORTABLE DEHUMIDIFIER PRODUCT CLASSES

Capacity (*pints/day*):
20.00 or less.
20.01 to 30.00.
30.01 to 35.00.
35.01 to 45.00.
45.01 or more.

In the preliminary analysis, DOE also considered two product classes for whole-home dehumidifiers, differentiated by product case volume.

TABLE IV.3—PRELIMINARY ANALYSIS WHOLE-HOME DEHUMIDIFIER PRODUCT CLASSES

Case Volume (*cubic feet*):
less than or equal to 8.0.
greater than 8.0.

In response to the preliminary analysis, DOE received comments stating that the test procedure changes proposed in the May 2014 Test Procedure NOPR would increase test-to-test variation and make it more difficult to establish product classes based on capacity thresholds for the portable dehumidifiers. DOE subsequently conducted additional analysis that indicated that product construction and performance under the proposed test conditions were similar for products with capacities of 20 pints/day or less and 20.01 to 30 pints/day. DOE observed the same similarities between products in the 30.01 to 35 pints/day and 35.01 to 45 pints/day product classes. DOE, therefore, proposed to establish only three portable product classes based on capacity and maintained the same two proposed product classes for whole-home dehumidifiers. DOE proposed the revised product class structure in the June 2015 NOPR. 80 FR 31645, 31656–31658 (June 3, 2015).

TABLE IV.4—JUNE 2015 NOPR DEHUMIDIFIER PRODUCT CLASSES

Portable (*capacity, pints/day*):
30.00 or less.
30.01 to 45.00.
45.01 or more.
Whole-Home (*case volume, cubic feet*):
less than or equal to 8.0.
greater than 8.0.

b. Comments and Responses

Scope of Coverage

Aprilaire Inc. (Aprilaire) stated that not requiring air conditioners to meet dehumidifier standards results in unfair competition because air conditioners often provide a dehumidification mode, yet are regulated only for cooling mode. (Aprilaire, No. 34 at p. 3; Aprilaire, Public Meeting Transcript, No. 35 at p. 27)[22] [23] DOE notes that the definition for dehumidifier in 10 CFR 430.2 specifically excludes portable air conditioners, room air conditioners, and packaged terminal air conditioners because these products are the subject of either existing energy conservation standards (*e.g.*, room air conditioners and packaged terminal air conditioners (42 U.S.C. 6295(c) and 42 U.S.C. 6313(a)(3)) or a current rulemaking considering new standards (*e.g.*, portable air conditioners). The existing or proposed energy conservation standards for these products address representative energy use in active, standby, and off modes. When evaluating new or amended standards, DOE will consider all relevant operating modes, including any dehumidification mode.

Aprilaire does not believe that portable dehumidifiers and whole-home dehumidifiers should be classified and regulated under the same standards for the same reason that DOE does not regulate space heaters and home heaters in the same category. (Aprilaire, No. 34 at p. 3) Although portable dehumidifiers and whole-home dehumidifiers have different applications and overall performance, they both: (1) Fall under the statutory definition of a dehumidifier; (2) provide the same dehumidification function: And (3) can be characterized with the same energy efficiency performance metric. In contrast, EPCA provides separate definitions of "furnace," "heat pump," and "unit heater" as mutually exclusive covered products (42 U.S.C. 6291(23), (24), and (45)), subject to separate energy conservation standards (42 U.S.C. 6295(f), (d), and (aa)). In the absence of statutory differentiation between portable dehumidifiers and whole-home dehumidifiers, DOE is addressing both product configurations in this rulemaking for amended dehumidifier standards. DOE, however, is establishing separate product classes for portable and whole-home dehumidifiers.

Definitions

Aprilaire suggested that DOE re-evaluate the definition for whole-home dehumidifiers because both whole-home dehumidifiers and portable dehumidifiers may or may not include ducting. Aprilaire stated that the correct distinction between the two is that whole-home dehumidifiers come with integral or external controls that allow the dehumidifier to function in concert with the central air distribution system. Aprilaire commented that a definition based on a distinction of controls compatibility with a central air system would include air conditioners, which DOE specifically excluded from

[21] Room air conditioners and packaged terminal air conditioners are defined as a separate covered products under EPCA. (42 U.S.C. 6292(a)(2), 6295(c), 6311((1)(I), 6311(10)(A), and 6313(a)(3)) Portable air conditioners were determined by DOE to be covered products under EPCA in a final determination published on 80 FR 45801, 45805–45806 (July 31, 2015).

[22] A notation in the form "Aprilaire, No. 34 at p. 3" identifies a written comment: (1) Made by Aprilaire Inc.; (2) recorded in document number 34 that is filed in the docked of this standards rulemaking (Docket No. EERE–2012–BT–STD–0027) and available for review at *www.regulations.gov;* and (3) which appears on page 3 of document number 34.

[23] A notation in the form "Aprilaire, Public Meeting Transcript, No. 35 at p. 27" identifies an oral comment that DOE received during the July 7, 2015, dehumidifier energy conservation standards NOPR public meeting. Oral comments were recorded in the public meeting transcript and are available the dehumidifier energy conservation standards rulemaking docket (Docket No. EERE–2012–BT–STD–0027). This particular notation refers to a comment: (1) Made by Aprilaire Inc. during the public meeting; (2) recorded in document number 35, which is the public meeting transcript that is filed in the docket of this energy conservation standards rulemaking; and (3) which appears on page 27 of document number 35.

coverage. Further, Aprilaire commented that the definitions of the two types of dehumidifiers should reflect a number of other distinctions, including: Application flexibility, air flow rates, typical installation, and necessary installation expertise. (Aprilaire, No. 34 at pp. 3–4; Aprilaire, Public Meeting Transcript, No. 35 at p. 28) In addition to establishing definitions for portable dehumidifiers and whole-home dehumidifiers, DOE acknowledged in the July 2015 Test Procedure Final Rule that certain dehumidifiers offer optional or removable ducting, and therefore can be operated as either a portable dehumidifier or a whole-home dehumidifier. DOE has addressed these types of products in appendix X1 by requiring manufacturers to test and rate these products in both configurations. For all other products available on the market, the presence of ducts or lack thereof is the only reliably identifiable characteristic to differentiate between the two product types. For certain units, the additional characteristics identified by Aprilaire may also differentiate between portable dehumidifiers and whole-home dehumidifiers, but information on those characteristics may be subjective or not publicly available. Therefore, DOE is maintaining the presence of ducts as the primary differentiator between portable dehumidifiers and whole-home dehumidifiers.

Product Classes

Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (California Investor-Owned Utilities (IOUs)) supported DOE's proposal to consolidate dehumidifiers into fewer product classes; however, they requested that DOE consider whether capacity or physical size and weight is the more appropriate attribute for setting product classes. They stated that if dehumidifiers are typically available in two size and weight ranges and that physical size defines unique utility, product class definitions should account for physical size in addition to capacity. They warned that setting product classes based solely on capacity ratings may inadvertently encourage manufacturers to build units rated for low capacity by simply using larger components that increase weight, resulting in negative impacts on portability and a corresponding loss of utility to consumers. (California IOUs, No. 41 at pp. 1–2) Therma-Stor LLC (Therma-Stor) and Aprilaire disagreed with the proposed product classes based on capacity and/or physical size for the purpose of applying substantially different minimum efficiency levels. They commented that the establishment of classes is arbitrary and may not have sufficient granularity. (Therma-Stor, No. 38 at p. 1; Aprilaire, Public Meeting Transcript, No. 35 at p. 25; Aprilaire, No. 34 at p. 2) During interviews, multiple manufacturers of portable dehumidifiers stated that their products are typically built upon two product platforms with different case sizes. They noted that the two product sizes provide consumers with unique utility because the smaller units are more portable and weigh less than the large units. Typically, condensate removal capacity is also correlated with case size. The manufacturers stated that DOE should ensure that both product platforms are maintained with any amended energy conservation standards to provide consumers the option of purchasing the smaller, more portable products. Consistent with 42 U.S.C. 6295(q), DOE retained multiple portable dehumidifier product classes based on product capacity in this final rule. In its engineering analysis, however, DOE did not consider technology changes that would significantly impact the portability of the two lower-capacity product classes. Manufacturers may choose different pathways to improve efficiency, including by increasing component sizes and weights, but DOE's analysis shows that there are pathways to improving efficiency that would not affect consumer utility.

For whole-home dehumidifiers, certain space-constrained installation locations limit the case size that may be installed. Accordingly, manufacturers of these space-constrained products would be limited in their ability to increase component sizes to achieve higher efficiencies. Because some technologies are only able to be implemented in larger case volumes, DOE continues to base the whole-home dehumidifier product classes on case volume to ensure that space-constrained whole-home dehumidifiers would be able to maintain their smaller product volumes at the analyzed efficiency levels.

Electrolux Major Appliances—North America (Electrolux) suggested that the second portable dehumidifier product class include units with capacities from 30.01 to 50.00 pints/day because, under the capacity thresholds proposed in the June 2015 NOPR, units previously rated at 70 pints/day would inappropriately be categorized into the highest-capacity proposed portable dehumidifier product class. According to Electrolux, these products would be rated at 46 pints/day under appendix X1, but based on DOE's description of products in each proposed product class, Electrolux expects that DOE intended for these products to be classified in the middle-capacity portable dehumidifier product class. Electrolux stated that the current 70 pint/day unit, which is a very high volume and popular capacity, would effectively be eliminated from the market under the proposed standard level for the highest-capacity portable dehumidifier product class. (Electrolux, No. 36 at p. 1)

AHAM noted that the reduced temperature conditions for portable dehumidifiers in appendix X1 decrease the measured capacity by about 35 percent, on average, as compared to the previous test conditions. Therefore, although AHAM and GE Appliances (GE) agreed with the establishment of three product classes, they suggested that the proposed product classes be slightly revised to reflect results from the test procedure at appendix X1. They suggested that the new portable dehumidifier product classes be: (1) less than 25.00 pints/day; (2) 25.01–50.00 pints/day; and (3) 50.01 pints/day or greater. (AHAM, No. 39 at pp. 2–4; GE, No. 42 at p. 1) Based on the comments in response to the June 2015 NOPR and on information gathered during confidential manufacturer interviews, DOE has revised the portable dehumidifier product classes, consistent with AHAM's recommendation, to better reflect how portable dehumidifiers are expected to perform when tested according to appendix X1. DOE estimates that the distribution of portable dehumidifier models among the three revised product classes is the same as was originally determined in the NOPR analysis because the rated capacity of these models would adjust in the same proportion as the capacity thresholds between the classes.

c. Final Rule Product Classes

After reviewing comments received in response to the June 2015 NOPR and evaluating additional information, DOE determined that an adjustment of the portable dehumidifier product classes is appropriate. DOE notes that these revised product classes more accurately capture the intent of DOE's original proposals when considering the impacts of the new test procedure at appendix X1, and are supported by data from manufacturers. In summary, DOE is establishing the following three portable dehumidifier product classes, based on product capacity, and two whole-home dehumidifier product classes, based on case volume, in this final rule.

TABLE IV.5—FINAL RULE DEHUMIDIFIER PRODUCT CLASSES

Portable (*capacity, pints/day*):
25.00 or less.
25.01 to 50.00.
50.01 or more.
Whole-Home (*case volume, cubic feet*):
less than or equal to 8.0.
greater than 8.0.

2. Technology Options

In the market analysis and technology assessment for the June 2015 NOPR, DOE identified 14 technology options that would be expected to improve the efficiency of dehumidifiers, as measured by the DOE test procedure (80 FR 31645, 31659 (June 3, 2015)):

TABLE IV.6—NOPR TECHNOLOGY OPTIONS FOR DEHUMIDIFIERS

1. Built-in hygrometer/humidistat.
2. Improved compressor efficiency.
3. Improved condenser and evaporator performance.
4. Improved controls.
5. Improved defrost methods.
6. Improved demand-defrost controls.
7. Improved fan and fan-motor efficiency.
8. Improved flow-control devices.
9. Low-standby-loss electronic controls.
10. Washable air filters.
11. Pre-cooling air-to-air heat exchanger.
12. Heat pipes.
13. Improved refrigeration system insulation.
14. Refrigerant-desiccant systems.

In the public meeting for the June 2015 NOPR, interested parties discussed the use of alternative refrigerants as another possible technology option for dehumidifiers. Aprilaire noted that dehumidifiers are a relatively small market and there are currently no alternative refrigerant compressors available for these products. (Aprilaire, Public Meeting Transcript, No. 35 at p. 47) Southern Company suggested that alternative refrigerants are currently being explored for refrigerators, which will likely impact the dehumidifier and other similar product's market in the near future. (Southern Company, Public Meeting Transcript, No. 35 at p. 47) GE stated that dehumidifiers would not transition to alternative refrigerants within the next five years. (GE, Public Meeting Transcript, No. 35 at p. 48) DOE included alternative refrigerants as a technology option for consideration in the final rule analysis because available information indicates that there are potential efficiency gains associated with this change.

After identifying all potential technology options for improving the efficiency of dehumidifiers, DOE performed a screening analysis (section IV.B of this document and chapter 4 of the final rule TSD) to determine which technologies merited further consideration. See chapter 5 of the final rule TSD for additional information on the technology options included in the engineering analysis.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further. 10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b).

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded ("screened out") based on the screening criteria.

1. Screened-Out Technologies

For the June 2015 NOPR, DOE screened out pre-cooling air-to-air heat exchangers and heat pipes for portable dehumidifiers with capacities up to 45 pints/day because the likely increases in case size and overall weight would result in adverse impacts on product utility to consumers. 80 FR 31645, 31659–31660 (June 3, 2015).

Therma-Stor objected to the screening analysis determination that certain technology options are not suitable for low-capacity portable dehumidifiers. Therma-Stor believes that the improvements considered by DOE are applicable for all capacities and sizes of dehumidifiers. (Therma-Stor, No. 38 at p. 2) DOE agrees that these technology options are feasible for dehumidifiers of all capacities. However, as discussed in the June 2015 NOPR, DOE found that pre-cooling air-to-air heat exchangers and heat pipes are not currently incorporated in low-capacity portable dehumidifiers. DOE determined that including these technologies would require significantly larger case sizes for the low-capacity portable dehumidifiers, resulting in adverse impacts on consumer utility. For high-capacity portable dehumidifiers, DOE observes that certain products available on the market already incorporate air-to-air heat exchangers and a similar case size increase would be required for heat pipes. Therefore, DOE has maintained air-to-air heat exchangers and heat pipes as potential design options for this larger-capacity portable dehumidifier product class.

Although, as discussed in section b of this document, DOE is establishing the high-capacity portable dehumidifier product class for products with capacity greater than 50 pints/day rather than the 45 pints/day proposed in the June 2015 NOPR, the models that DOE considered to be high-capacity portable units in the preliminary analysis would remain classified in this product class based on available test data. Therefore, the determination to screen out pre-cooling air-to-air heat exchangers and heat pipes for portable dehumidifiers other than high-capacity dehumidifiers remains unchanged. DOE has retained these technology options for portable dehumidifiers with capacities greater than 50 pints/day and whole-home dehumidifiers.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 met all four screening criteria to be examined further as design

options in DOE's final rule analysis. In summary, DOE did not screen out the following technology options:

TABLE IV.7—FINAL RULE REMAINING DESIGN OPTIONS FOR DEHUMIDIFIERS

1. Built-in hygrometer/humidistat.
2. Improved compressor efficiency.
3. Improved condenser and evaporator performance.
4. Improved controls.
5. Improved defrost methods.
6. Improved demand-defrost controls.
7. Improved fan and fan-motor efficiency.
8. Improved flow-control devices.
9. Low-standby-loss electronic controls.
10. Washable air filters.
11. Pre-cooling air-to-air heat exchanger (high-capacity portable and whole-home dehumidifiers).
12. Heat pipes (high-capacity portable and whole-home dehumidifiers).
13. Improved refrigeration system insulation.
14. Refrigerant-desiccant systems.
15. Alternative refrigerants.

DOE determined that these design options are technologically feasible because they are technologies included in commercially available products or working prototypes. DOE also finds that all of the remaining design options meet the other screening criteria (*i.e.*, practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). For additional details, see chapter 4 of the final rule TSD.

C. Engineering Analysis

In the engineering analysis, DOE establishes the relationship between the manufacturer production cost (MPC) and improved dehumidifier efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline product to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products. The efficiency ranges from that of the least-efficient dehumidifier sold today (*i.e.*, the baseline) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the MPC; this relationship is referred to as a cost-efficiency curve.

1. Efficiency Levels

a. Baseline Efficiency Levels

A baseline unit is typically a product that just meets current Federal energy conservation standards and provides basic consumer utility. DOE uses the baseline unit for comparison in several phases of its rulemaking analyses, including the engineering analysis, LCC analysis, PBP analysis, and NIA. To determine energy savings that will result from an amended energy conservation standard, DOE compares energy use at each of the higher efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an amended energy conservation standard, DOE compares the price of a unit at each higher efficiency level to the price of a unit at the baseline.

For the June 2015 NOPR, DOE determined baseline efficiency levels by adjusting the existing minimum EF levels to IEF values as would be measured under appendix X1. DOE determined the appropriate adjusted baseline efficiency levels based on its test sample, which included a market-representative range of manufacturers, capacities, and efficiencies, and additional numerical adjustments for baseline features identified through market analysis. The most significant adjustments accounted for the lower ambient test temperature, and energy consumption in standby mode, off mode, and fan-only mode. Where DOE combined portable dehumidifier product classes between the preliminary analysis and the June 2015 NOPR, it set the baseline efficiency level for the combined product classes at the lower of the two baseline IEF levels considered in the preliminary analysis for the two previously separate product classes, which represents the minimum IEF, as determined according to appendix X1, that DOE expects from any dehumidifiers within the combined product class that are currently compliant with the existing standards. DOE also proposed separate baseline efficiencies for the two whole-home dehumidifier product classes. 80 FR 31645, 31661 (June 3, 2015). Table IV.8 and Table IV.9 present the baseline efficiency levels proposed in the NOPR analysis.

TABLE IV.8—NOPR PORTABLE DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Capacity (pints/day)	IEF (L/kWh)
30.00 or less	0.77
30.01–45.00	0.94
45.01 or more	2.07

TABLE IV.9—NOPR WHOLE-HOME DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Case Volume (cubic feet)	IEF (L/kWh)
8.0 or less	1.77
More than 8.0	2.41

AHAM noted that DOE began the rulemaking analysis before the compliance date of the current energy conservation standards, and therefore the test sample may not represent products currently on the market. AHAM offered to share performance data if it received data from at least three manufacturers. (AHAM, Public Meeting Transcript, No. 35 at p. 40; AHAM, No. 39 at pp. 3–4) Although DOE conducted initial testing and analysis on units manufactured prior to October 1, 2012, DOE also supplemented that test sample when units complying with the most recent standards became available, beginning in 2013. In preparing and conducting the preliminary analysis, DOE acquired 12 additional portable dehumidifiers and conducted testing and teardowns to assess whether any technologies had changed to meet the currently applicable standards. DOE found that manufacturers incorporated more efficient compressors and larger heat exchangers to meet the new standards, but otherwise the products were similar in construction. DOE considered the more efficient components as technology options in the engineering analysis for the preliminary analysis, the June 2015 NOPR, and this final rule. DOE did not receive any additional performance data for this final rule.

Following publication of the June 2015 NOPR, DOE became aware of portable dehumidifiers available on the market with capacities greater than 50 pints/day (as measured under the new test procedure in appendix X1) that were not previously considered. The dehumidifiers previously considered in this higher-capacity portable dehumidifier product class are constructed similar to whole-home dehumidifiers, with more robust construction materials and components, but are not designed to be installed with duct connections. The newly considered products are constructed similar to portable dehumidifiers with capacities less than 50 pints/day, with cases primarily made of plastic. DOE assessed the performance of these newly considered dehumidifiers with capacities greater than 50 pints/day and determined that they often include fan operation during off-cycle mode, as is common for portable dehumidifiers with lower capacities. Therefore, DOE determined that the baseline for this product class should be updated to account for fan operation in off-cycle mode, thereby reducing the baseline IEF. Based on test data, DOE estimated a fan power of 96.5 watts (W) for the greater than 50 pints/day product class, which was higher than the fan power estimated for the two lower-capacity portable dehumidifier product classes in order to maintain the necessary airflow through larger heat exchangers. DOE also incorporated the highest inactive mode or off-mode power, 2.12 W, observed in DOE's test sample to estimate inactive and off-mode energy use for the high-capacity portable dehumidifier product class.

Table IV.10 and Table IV.11 show the baseline efficiency levels for portable dehumidifiers and whole-home dehumidifiers covered in this final rule, respectively. Note that the whole-home dehumidifier baseline efficiency levels are unchanged from the June 2015 NOPR.

TABLE IV.10—FINAL RULE PORTABLE DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Capacity (pints/day)	IEF (L/kWh)
25.00 or less	0.77
25.01–50.00	0.94
50.01 or more	1.73

TABLE IV.11—FINAL RULE WHOLE-HOME DEHUMIDIFIER BASELINE EFFICIENCY LEVELS

Case Volume (cubic feet)	IEF (L/kWh)
8.0 or less	1.77
More than 8.0	2.41

Additional details on the selection of baseline units may be found in chapter 5 of the final rule TSD.

b. Higher Energy Efficiency Levels

For the June 2015 NOPR, DOE considered incremental efficiency levels beyond the baseline based on existing efficiency levels (*e.g.*, the ENERGY STAR level) available in the market and observed during investigative testing. Similar to the baseline efficiency levels discussed above, DOE adjusted the efficiency levels to reflect values that would be obtained when using appendix X1. In addition, DOE proposed that the first incremental efficiency level beyond the baseline for each portable dehumidifier product class, except for the highest-capacity product class, be achieved by the elimination of fan-only mode.

DOE further proposed max-tech efficiency levels that incorporate additional design options beyond those observed in its test sample. DOE then modeled the performance associated with these design options to estimate the max-tech IEF levels. 80 FR 31645, 31662–31663 (June 3, 2015).

Table IV.12 and Table IV.13 present the efficiency levels DOE considered in the June 2015 NOPR analysis.

TABLE IV.12—NOPR PORTABLE DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)		
		30.00 pints/day or less	30.01–45.00 pints/day	45.01 pints/day or more
Baseline	Current Baseline with Maximum Observed Off-cycle Mode Power	0.77	0.94	2.07
1	Current Baseline with no Fan Operation During Off-cycle Mode/Gap Fill 1	1.10	1.20	2.40
2	Gap Fill 1/Gap Fill 2	1.20	1.40	2.80
3	Gap Fill 2/Max Tech	1.30	1.60	3.66
4	Max Tech	1.57	1.80	

TABLE IV.13—NOPR WHOLE-HOME DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)	
		8.0 ft³ or less (case volume)	More than 8.0 ft³ (case volume)
Baseline	Minimum Available	1.77	2.41
1	Gap Fill 1	2.09	2.70
2	Gap Fill 2/Max Tech	2.53	3.52
3	Max Tech		4.50

Additional details on the selection of incremental efficiency levels may be found in chapter 5, section 5.3.2 of the June 2015 NOPR TSD.

Fan Operation in Off-Cycle Mode

AHAM and GE suggested that elimination of fan operation in off-cycle mode at Efficiency Level 1 for portable dehumidifiers would impact air sampling and humidity control, and could require a change from active defrost to passive defrost. AHAM and GE also expect that Efficiency Level 1 would be difficult to achieve using other technology options, should a manufacturer choose to maintain fan operation in off-cycle mode. Therefore, they suggested that DOE include a gap fill efficiency level between baseline and Efficiency Level 1 that would not require the elimination of fan operation

in off-cycle mode. AHAM and GE further suggested that an IEF of 1.10 for portable dehumidifiers less than 30.00 pints/day is not an accurate representation of baseline efficiency with no fan operation in off-cycle mode. (AHAM, No. 39 at p. 5; GE, No. 42 at p. 2)

Due to the significant IEF decrease associated with continuous fan operation in off-cycle mode and the low cost of eliminating continuous fan operation, DOE continues to expect that manufacturers would eliminate fan operation in off-cycle mode as a first step to improving efficiency. Many dehumidifiers currently available on the market do not continuously operate the fan in off-cycle mode. DOE sought comment on this issue both in the proposed rule and in manufacturer interviews conducted in support of this final rule. DOE received comments and feedback that there would be no impact on consumer utility associated with removing continuous fan operation in off-cycle mode, and that many dehumidifiers either run the fan intermittently or for a short period of time during off-cycle mode. DOE also notes that, although it expects manufacturers to remove continuous fan operation in off-cycle mode to reach Efficiency Level 1, manufacturers may elect to switch from continuous fan operation to intermittent or short periods of fan operations along with other design options to improve efficiency. For its estimates of the IEF at the baseline, DOE assumed a baseline unit with continuous operation of the highest power fan motor in off-cycle mode, as observed in DOE's test sample. For Efficiency Level 1, DOE assumed that the continuous highest-power fan operation would be replaced by the typical off-cycle mode power consumption without a fan running, as observed in its test sample.

Heat Exchanger Modifications

Aprilaire agreed with DOE that adjusting the size of the heat exchanger coil is one of the primary means of improving dehumidifier efficiency, and that modifying the blower motor has less of an impact on efficiency. However, Aprilaire stated that installation size restrictions for whole-home dehumidifiers often inhibit a manufacturer's ability to increase the heat exchanger sizes to meet higher efficiency levels. (Aprilaire, Public Meeting Transcript, No. 35 at p. 49; Aprilaire, No. 34 at p. 2) DOE recognizes the constraints on case volume for whole-home dehumidifiers based on the installation location. Therefore, DOE constructed the whole-home dehumidifier product classes to ensure that units with case volume restrictions (*i.e.*, case volume of 8.0 cubic feet or less) would not be held to the same energy conservations standards as those without size constraints (*i.e.*, case volume more than 8.0 cubic feet).

Electrolux requested additional information on how DOE determined the increased heat exchanger size. (Electrolux, Public Meeting Transcript, No. 35 at p. 52) When adjusting the heat exchanger size in its model, DOE typically either added or removed a row of tube passes. The fins and other components of the heat exchangers were adjusted accordingly to accommodate the additional tube row, and the performance impacts were determined through modeling. When discussing increased heat exchanger size, DOE often refers to the resulting change in frontal surface area, although other associated heat exchanger characteristics were also adjusted.

Compressor Efficiency

In a joint comment, Appliance Standards Awareness Project (ASAP), Alliance to Save Energy, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, and Northwest Energy Efficiency Alliance (hereinafter the "Joint Commenters") commented that although variable-speed compressors, which can achieve significant energy savings in the field, would not improve dehumidifier efficiency as measured by the DOE test procedure, these compressors generally have higher efficiencies at full power compared to traditional compressors currently used in dehumidifiers. For example, the Joint Commenters stated that one compressor manufacturer offers R–410A permanent-magnet inverter rotary compressors with energy efficiency ratio (EER) values of 11.0–11.8 for cooling capacities of 7,600–13,700 British thermal units per hour. (Joint Commenters, No. 40 at p. 2) While DOE is not aware of any dehumidifiers currently available on the market or any prototypes that incorporate variable-speed compressors, DOE considered high-efficiency compressors for the higher efficiency levels. Specifically, DOE accounted for compressors with EERs up to 11.2, within the range identified by the Joint Commenters for variable-speed compressors in its engineering analysis. See chapter 5 of the final rule TSD for additional information.

The California IOUs recommended that DOE account for likely changes in the room air conditioner and portable air conditioner markets, including energy conservation standards that may lead to greater availability of high efficiency compressors in the future. (California IOUs, No. 41 at p. 3) In this engineering analysis, DOE has considered the most efficient compressors currently available that are suitable for dehumidifiers. While DOE expects that dehumidifier manufacturers may shift to using more efficient available compressors in response to these amended standards, DOE does not necessarily expect that the maximum available compressor efficiency would increase in response to standards for dehumidifiers or closely related air conditioning products. If DOE becomes aware of more efficient compressors available or in working prototypes, it may consider those as potential technology options in any future rulemaking.

The California IOUs also recommended that DOE consider whether compressor availability, and the potential unavailability of dehumidifiers with certain capacities, would negatively impact consumers, assuming that other dehumidifiers with higher capacities were still available. Further, the California IOUs suggested that lower-capacity units provide no distinct utility from higher capacity units; instead, the product size and weight are more appropriate characteristics to define utility. (California IOUs, No. 41 at pp. 3–4) As discussed in section IV.A.1 of this document, DOE has established product classes for portable dehumidifiers based on product capacity, which is the primary consumer utility offered by dehumidifiers. DOE agrees with the California IOUs that lower product size and weight provide certain utility to consumers of low-capacity portable dehumidifiers. However, DOE observed that size and weight are directly correlated to product capacity, which is a measure of the primary function of the product to remove moisture from the conditioned space; therefore, DOE maintains capacity as the product class differentiator for portable dehumidifiers.

Additional Portable Dehumidifier Efficiency Level

The California IOUs, Joint Commenters, and ASAP recommended that DOE analyze an efficiency level for portable dehumidifiers at the maximum available efficiency, which would fall between Efficiency Level 3 and Efficiency Level 4 in the June 2015 NOPR and would closely align with Efficiency Level 4 from the preliminary analysis. According to these commenters, such an additional efficiency level would capture a

majority of the additional energy savings that would be associated with standards at the max-tech level while remaining cost-effective. The California IOUs further requested that DOE consider evaluating an additional efficiency level at "near max-tech," excluding a shift to the highest-efficiency compressors. Acknowledging that the availability of high-efficiency compressors is currently a limiting factor, the California IOUs believe cost-effective energy savings would be achieved by optimizing other components without the use of the highest-efficiency compressors. (California IOUs, No. 41 at pp. 2–3; Joint Commenters, No. 40 at pp. 4–6; ASAP, Public Meeting Transcript, No. 35 at pp. 10, 38)

In the June 2015 NOPR analysis, DOE proposed the highest efficiency level at the maximum technologically feasible efficiency, which for dehumidifiers was slightly higher than the maximum efficiency available on the market. Because the difference between the max-tech and maximum available efficiencies was small (0.05 L/kWh) for the two lower-capacity portable dehumidifier product classes, DOE did not consider maintaining those maximum available efficiencies as separate efficiency levels in the June 2015 NOPR. Further, DOE notes that the same concerns regarding compressor availability would exist at a "near max-tech" level as at the max-tech. Accordingly, DOE did not analyze an additional efficiency level at the maximum available efficiency.

High-Capacity Portable Dehumidifier Efficiency Levels

Therma-Stor commented that the proposed efficiency levels are increased by a greater percentage for the higher-capacity portable dehumidifiers than for the lower-capacity portable dehumidifiers. Therma-Stor stated that high-capacity portable dehumidifiers already incorporate one or more efficiency features, yet of its seven current higher-capacity portable dehumidifier models, only one exceeds the proposed standard level. (Therma-Stor, No. 38 at pp. 2–3) For each product class analyzed in the standards rulemaking, DOE analyzed a representative sample of products to determine an appropriate baseline efficiency and improved efficiency levels. For the high-capacity portable dehumidifiers (50.01 pints/day or greater), DOE has updated the analysis for this product class to reflect new products on the market; however, DOE notes that multiple products in its test sample tested higher than the Efficiency Level 3 proposed in the June 2015 NOPR.

Whole-Home Dehumidifier Efficiency Levels

Aprilaire expressed concern that DOE's analysis of whole-home dehumidifiers, with only two efficiency levels, lacked the granularity of the portable dehumidifier analysis, and therefore may not properly evaluate the whole-home dehumidifier market. (Aprilaire, No. 34 at p. 2) The efficiency levels considered in the engineering analysis are developed based on the performance of products on the market and in DOE's test sample with different combinations of design options. Based on product testing and teardowns, DOE opted to include only one gap fill efficiency level for whole-home dehumidifiers with a case volume less than 8.0 cubic feet and two gap fill efficiency levels for whole-home dehumidifiers with case volumes greater than 8.0 cubic feet. DOE explains the design options associated with products at each of these efficiency levels in chapter 5 of the final rule TSD.

Therma-Stor commented that DOE's analysis of the whole-home dehumidifier market is incomplete due to the relatively small size of the segment, and the lack of substantial field studies. (Therma-Stor, No. 38 at p. 2) As described above for high-capacity portable dehumidifiers, DOE analyzed a representative sample of products for each whole-home dehumidifier product class to determine an appropriate baseline efficiency and improved efficiency levels.

Impact of Efficiency Levels

Southern Company recommended that DOE perform additional analysis to ensure that product utility is maintained at low temperatures when increasing the minimum efficiency under normal operating conditions. (Southern Company, Public Meeting Transcript, No. 35 at p. 38) In the rulemaking that established appendix X1, DOE determined that the representative operating condition for portable dehumidifiers is 65 degrees Fahrenheit (°F) dry-bulb temperature, and established this as the updated test condition for portable dehumidifiers. Accordingly, DOE based this final rule analysis on this test condition, which is lower than the dry-bulb temperature specified in the currently applicable test procedure, appendix X. As Southern Company suggested, lower operating temperatures may cause certain dehumidifiers to initiate defrosts, and thereby reduce overall performance. However, while some units designed to meet current energy conservation standards may enter a defrost mode at the 65 °F test condition, DOE expects that manufacturers would adjust their refrigeration systems to avoid defrosts due to any decrease in IEF required by amended standards. DOE does not expect the design options considered in this analysis to result in more frequent defrosts or any other impacts on performance at the representative operating conditions that would affect consumer utility compared to units currently available on the market.

In sum, DOE modified the baseline efficiency level from that proposed in the June 2015 NOPR and inserted a new Efficiency Level 1 for the high-capacity portable dehumidifier product class, and maintained all other efficiency levels as analyzed in the June 2015 NOPR. Table IV.14 and Table IV.15 present the efficiency levels DOE considered in this final rule analysis.

TABLE IV.14—FINAL RULE PORTABLE DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)		
		25.00 pints/day or less	25.01–50.00 pints/day	50.01 pints/day or more
Baseline	Current Baseline with Maximum Observed Off-cycle Mode Power	0.77	0.94	1.73
1	Current Baseline with no Fan Operation During Off-cycle Mode	1.10	1.20	2.15
2	Gap Fill 1	1.20	1.40	2.40
3	Gap Fill 2	1.30	1.60	2.80
4	Max Tech	1.57	1.80	3.66

TABLE IV.15—FINAL RULE WHOLE-HOME DEHUMIDIFIER EFFICIENCY LEVELS

Efficiency level	Efficiency level source	Integrated energy factor efficiency levels (L/kWh)	
		8.0 ft³ or less (case volume)	More than 8.0 ft³ (case volume)
Baseline	Minimum Available	1.77	2.41
1	Gap Fill 1	2.09	2.70
2	Gap Fill 2/Max Tech	2.53	3.52
3	Max Tech	.....	4.50

Additional details on the selection of incremental efficiency levels may be found in chapter 5 of the final rule TSD.

2. Manufacturer Production Cost Estimates

Based on product teardowns and cost modeling, DOE developed overall cost-efficiency relationships for each product class considered in that analysis. DOE selected products covering the range of efficiencies available on the market for the teardown analysis. During the teardown process, DOE created detailed bills of materials (BOMs) that included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as an input to a cost model, which was used to calculate the MPC for products covering the range of efficiencies available on the market. The MPC accounts for labor, material, overhead, and depreciation costs that a manufacturer would incur in producing a specific dehumidifier. DOE also developed BOMs and MPCs for theoretical units that would implement the identified max-tech components for dehumidifiers.

DOE estimated that the costs for these products reflected the costs for typical units at their respective efficiency levels, consistent with the efficiency-level approach. DOE then used the design-option approach to determine what changes would be needed for a particular unit to meet each incrementally higher efficiency level. DOE constructed cost-efficiency curves for multiple manufacturers to reflect the incremental MPC corresponding to each manufacturer's product line and available platforms. DOE combined the individual cost-efficiency curves based on estimates of each manufacturer's market share to develop an overall cost-efficiency curve representative of the entire industry.

In improving the max-tech efficiencies beyond the maximum available, as discussed in section IV.C.1.b of the June 2015 NOPR, DOE determined that this was a technologically feasible change that would improve product efficiencies. DOE's determination was based on the general availability of these components, efficiency gains associated with these technology options, and the minimal cost impacts beyond the additional costs of the components. The MPCs for the June 2015 NOPR analysis reflected this design option, as well as others, at the max-tech efficiency level. 80 FR 31645, 31666 (June 3, 2015).

Table IV.16 presents the MPC estimates DOE developed for the June 2015 NOPR. *Id.*

TABLE IV.16—NOPR DEHUMIDIFIER INCREMENTAL MANUFACTURER PRODUCTION COSTS

[2013$]

Efficiency level	Portable product class capacities (pints/day)			Whole-home product class case volume (ft³)	
	≤30.00	30.01–45.00	>45.00	≤8.0	>8.0
EL1	$—	$—	$42.81	$15.30	$6.20
EL2	1.69	2.39	53.66	129.22	37.20
EL3	4.27	8.07	120.33	N/A	161.39
EL4	19.38	22.42	N/A	N/A	N/A

Chapter 5 of the June 2015 NOPR TSD contains additional details on the analysis conducted in support of developing these MPC estimates.

Electrolux commented that a consumer would have to pay a cost adder of approximately $40 to buy a unit rated at 30 pints/day under the new test procedure at appendix X1 instead of a unit rated at 30 pints/day under the current appendix X, because the unit rated under appendix X1 would be a larger design that achieves 50 pints/day under appendix X). Electrolux was unsure whether the rated capacities at retail would shift lower (with no cost impact) or remain the same and result in much higher costs to consumers. (Electrolux, No. 36 at p. 1) As a result of discussions with manufacturers in confidential interviews, DOE has concluded that manufacturers will likely educate consumers to explain the reduction in rated capacity under appendix X1. Therefore, DOE believes that a consumer who previously would have purchased a 70 pints/day dehumidifier rated under appendix X would now purchase a similarly constructed unit with a rated capacity between 25 and 50 pints/day.

In this final rule, DOE estimated, as it did previously with portable dehumidifiers at lower capacities, that the cost to move from the baseline efficiency level to Efficiency Level 1 for portable dehumidifiers with capacities greater than 50 pints/day would not require any increase in manufacturer production costs, as the removal of fan operation in off-cycle mode is essentially a controls programming adjustment. DOE further notes that the same design options and subsequent efficiency improvements previously considered in the June 2015 NOPR for this product class are still applicable.

In this final rule DOE also updated the MPCs to 2014$, the most recent year for which full-year data was available at the time of this analysis. DOE notes that when updating the costs to current dollars, some variables based on changing costs (*e.g.*, materials, shipping, *etc.*) increased while others decreased.

TABLE IV.17—FINAL RULE DEHUMIDIFIER INCREMENTAL MANUFACTURER PRODUCTION COSTS

[2014$]

Efficiency level	Portable product class capacities (pints/day)			Whole-Home product class case volume (ft³)	
	≤25.00	25.01–50.00	>50.00	≤8.0	>8.0
EL1	.....	.....	.....	$15.78	$6.46
EL2	$1.69	$2.33	$49.27	125.95	38.82
EL3	4.29	8.00	61.32	N/A	183.42
EL4	19.63	22.62	173.63	N/A	N/A

Additional details on the development of the incremental cost estimates may be found in chapter 5 of the final rule TSD.

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the MPC estimates derived in the engineering analysis to consumer prices. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For dehumidifiers, the main parties in the distribution chain are manufacturers and retailers.

The manufacturer markup converts MPC to manufacturer selling price (MSP). DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes dehumidifiers.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more efficient products (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price. DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[24]

Aprilaire urged that the analysis be expanded for whole-home dehumidifiers to include the additional costs of shipping larger and heavier products and additional installation costs for larger units. (Aprilaire, No. 34 at p. 5)

As in the preliminary and NOPR analyses, DOE used two different distribution channels for portable dehumidifiers and whole-home dehumidifiers. For the final rule analysis, DOE amended the distribution channel of the high-capacity portable dehumidifier product class, PC3. A share of the PC3 market uses the same distribution channel as PC1 and PC2: Units move from manufacturer to retailer to consumer. For the other share of the PC3 market, the distribution channel reflects its larger size and uses the whole-home dehumidifier distribution channel. To represent additional steps in the purchase of a larger unit, the whole-home dehumidifier distribution channel reflects two additional markups to include wholesalers and contractors used in the purchase of the larger dehumidifiers, including the third portable dehumidifier product class and whole-home dehumidifiers. As a result, DOE concluded that the wholesaler and contractor markups for the larger units include additional costs of shipping and installation.

AHAM made the following comments regarding the use of incremental markups for appliance retailers to estimate future prices of efficient products: (1) The incremental markup approach relies on an assumption of perfect competition, which is an outdated model of the economy; (2) Relatively constant percent gross margins observed in aggregated appliance retail industry data imply the use of fixed-percent markups over time; (3) Interview responses from appliance retailers are consistent with the use of fixed-percent markups. (AHAM, No. 39 at p. 7)

DOE responds to these points as follows:

(1) DOE's incremental markup approach is based on the widely accepted economic view that prices closely reflect marginal costs in competitive markets and in markets with some degree of concentration.[25] In the absence of data to support a different assumption, DOE retains its assumption for this rulemaking.

(2) In examining the relatively constant appliance retail percent margin trend and its underlying prices, DOE found that the average inflation-adjusted prices of appliances are relatively fixed during this period as well. This set of historical data has no bearing on firm markup behavior under product price increases, such as DOE projects would occur when higher-efficiency products are introduced. If prices are relatively constant, the incremental markup approach will arrive at the same price prediction as applying fixed-percent margin; hence, the historically constant percent margins do not necessarily imply a constant percent margin in the future, especially in the case of increased input prices. DOE evaluated time series margin and price data from three industries that experienced rapidly changing input prices—the LCD television retail market,[26] the U.S. oil and gasoline market,[27] and the U.S. housing market.[28] The results indicate that dollar margins vary across different markets to reflect changes in input price, but the percent margins do not remain fixed over time in any of these industries. Appendix 6B in the TSD describes DOE's findings.

(3) Regarding the interviews with appliance retailers, it is difficult for DOE to evaluate the characterization of the responses without knowing what questions were posed to the retailers. DOE's analysis necessarily considers a simplified version of appliance retailing: Namely, a situation in which nothing changes except for those changes in appliance offerings that

[24] U.S. Census, *2012 Annual Retail Trade Survey* (*ARTS*), Electronics and Appliance Stores sectors.

[25] Pindyck, R. and Rubinfeld, D. *Microeconomics*. 8th Edition. Prentice Hall, 2012.

[26] LCD television data from DisplaySearch, a market research company affiliated with NPD Group.

[27] U.S. Energy Information Agency, Oil price: Spot price in Cushing, Oklahoma for 42 gallon barrel of oil; Retail gas price: U.S. average retail price of gasoline, all grades and formulations.

[28] Standard and Poors, Case-Shiller home price index, CPI-adjusted; REAL Trends, *http://www.realtrends.com.*

occur in response to new standards. DOE implicitly asks: Assuming the product cost increases while the other costs remain constant (no change in labor, material and operating costs), are retailers still able to keep the same markup over time as before? DOE recognizes that retailers are likely to seek to maintain the same markup on appliances if the price they pay goes up as a result of appliance standards, but DOE concludes that, over time, adjustment is likely to occur due to competitive pressures. Other retailers may find that they can gain sales by reducing the markup and maintaining the same per-unit operating profit. The incremental markup approach embodies the same perspective as the "preservation of per-unit operating profit markup scenario" used in the MIA (see section IV.J of this document).

DOE concludes that there is not sufficient evidence to support the application of fixed percent markups to the cost increment on efficient equipment. Firms generally cannot maintain fixed percent margins in the long run under changing cost conditions. Thus, DOE continues to apply the incremental markup approach to estimate the price increase for more efficient products.

Chapter 6 of the final rule TSD provides details on DOE's development of markups for dehumidifiers.

E. Energy Use Analysis

DOE's energy use analysis estimated the range of energy use of dehumidifiers in the field, *i.e.*, as they are actually used by consumers. The energy use analysis provided the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended standards.

A dehumidifier uses energy when the compressor is operating to remove moisture from the air. When the compressor is not operating, the dehumidifier may use energy by operating the fan to circulate air through the unit to sample the ambient relative humidity and to defrost the evaporator coils. When neither the fan nor the compressor is operating, energy is used in standby mode or off mode to supply power for functions such as keeping a user panel lit.[29]

DOE determined the annual energy consumption of dehumidifiers by multiplying the capacity (liters per day) by the hours of operation in dehumidification mode, dividing that quantity by the product efficiency, and adding the energy use for the fan mode and the standby and off mode.

The efficiency and capacity values were measured using a temperature of 73 °F for whole-home dehumidifiers, 65 °F for portable dehumidifiers, and a humidity set point of 60 percent, as stipulated in the test procedure for dehumidifiers in appendix X1.

To estimate hours of operation in each mode, DOE used two recent field studies that measured daily hours of use in each operating mode for both portable and whole-home dehumidifiers.[30] DOE paired these data with estimates of the number of months that dehumidifiers are used in a representative sample of U.S. households. DOE used data from the EIA's *2009 Residential Energy Consumption Survey* (RECS 2009), which was the most recent such survey available at the time of DOE's analysis.[31] RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. RECS 2009 questioned each household on two aspects of dehumidifier use: (1) Ownership and (2) number of months of dehumidifier use. DOE estimated that consumers leave the dehumidifier to cycle on and off for the entire month or months of the dehumidification season.

DOE estimated the energy use for off-cycle mode and the standby and off mode using the hours of operation described above, along with data on average power in off-cycle and standby modes from the field studies.

Therma-Stor believes that there are many factors which influence dehumidifier operation and that there is no correlation between dehumidifier capacity and the amount of water vapor which must be removed. Therma-Stor stated that a dehumidifier will be run as long as required to reduce humidity until it reaches the consumer's setting. (Therma-Stor, No. 38 at pp. 1–2)

Based on available data, DOE has accounted for the factors influencing dehumidifier operation in its analysis. The engineering analysis provided data on capacities and efficiencies, field metered data in available literature showed ranges of time percentages spent in different modes of operation, and the RECS household sample showed variation in months of dehumidifier use as reported by consumers. DOE assumed that consumers use readily available guides when deciding the size of dehumidifier they need to purchase given the amount of humidity they experience.

Chapter 7 of the final rule TSD provides details on DOE's energy use analysis for dehumidifiers.

F. Life-Cycle Cost and Payback Period Analysis

In determining whether an energy conservation standard is economically justified, DOE considers the economic impact of potential standards on consumers. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- LCC (life-cycle cost) is the total consumer cost of an appliance or product, generally over the life of the appliance or product. The LCC calculation includes total installed cost (equipment manufacturer selling price, distribution chain markups, sales tax, and installation costs), operating costs (energy, repair, and maintenance costs), equipment lifetime, and discount rate. Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance or product.
- PBP (payback period) measures the amount of time it takes consumers to recover the estimated higher purchase price of a more energy-efficient product through reduced operating costs. Inputs to the payback period calculation include the installed cost to the consumer and first-year operating costs.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the market in the absence of new or amended energy conservation standards, and includes baseline products as well as products with higher efficiency. In contrast, the PBP for a given efficiency level is measured relative to the baseline product only.

For each product class efficiency level, DOE calculated the LCC and PBP for a nationally representative set of housing units. As stated previously, DOE developed household samples with RECS 2009 data. For each sample household, DOE determined the energy consumption for the dehumidifier and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of dehumidifiers.

The LCC and PBP analyses are designed to support DOE's consideration of the economic impact of potential standards on consumers of the products subject to the standard, as required by EPCA. (42 U.S.C. 6295(o)(2)(B)(i)(II)) The use of RECS 2009 to develop a consumer sample and to provide data for estimation of product energy use allows DOE to characterize the range of conditions in which covered appliances are operated. As a result, DOE is able to estimate how the energy savings would vary among households for each considered efficiency level.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball™ (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and dehumidifier user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run.

DOE calculated the LCC and PBP for all customers as if each were to purchase a new product in the expected year of compliance with amended standards. The amended standards apply to dehumidifiers manufactured 3 years after the date on which the amended standards for dehumidifiers are published. Therefore, for purposes of its analysis, DOE used 2019 as the first year of compliance with these amended standards.

Table IV.18 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the final rule TSD and its appendices.

TABLE IV.18—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/Method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast product costs.
Installation Costs	For portable dehumidifiers, DOE assumed no installation costs with the baseline unit and no cost with efficiency level. For whole-home dehumidifiers, baseline installation cost were determined with data from RS Means Residential Cost Data. DOE assumed incremental installation costs with efficiency level.
Annual Energy Use	The total annual energy use derived from power demand of each mode multiplied by the hours per year. Average number of hours based on field data. Variability: Based on the 2009 RECS.
Energy Prices	Average and Marginal Electricity: Based on EEI 2014. Variability: Regional energy prices determined for 27 regions.
Energy Price Trends	Based on *AEO 2015* price forecasts.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Appliance Magazine (2005), ACEEE (2001), Northeast Energy Star Lighting and Appliance.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances** for 1995, 1998, 2001, 2004, 2007, 2010, and 2013.
Compliance Date	2019.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the final rule TSD.
** Survey of Consumer Finances.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described in this preamble (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from the 2015 R.S. Means Residential Cost Data book to estimate the baseline installation cost for whole-home dehumidifiers. DOE assumed that installation costs would not be impacted with increased efficiency levels in the NOPR analysis.

Aprilaire commented that large whole-home units will require additional installation work. (Aprilaire, No. 34 at p. 2) For this final rule, DOE reviewed the R.S. Means Residential Data, and estimated incremental installation costs for each efficiency level based on additional labor costs for larger sizes of HVAC ventilation work. See chapter 8 of the final rule TSD for further information on the derivation of the installation costs for whole-home dehumidifiers.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a dehumidifier at different efficiency levels using the approach described in section IV.E of this document.

4. Energy Prices

DOE derived marginal residential electricity and natural gas prices for 27 geographic areas.[32] Marginal prices are

[29] The energy use operating mode names used in this standards final rule to characterize energy use and subsequent analyses, reflect dehumidifier use in the field and are not the same as the test procedure operating mode names.

[30] Willem, H., *et al.*, *Using Field-Metered Data to Quantify Annual Energy Use of Residential Portable Unit Dehumidifiers*, Lawrence Berkeley National Laboratory (Nov. 2013); Burke, T., *et al.*, Whole-Home Dehumidifiers Energy Use: A Field-Monitoring Study, Lawrence Berkeley National Laboratory (Dec. 2015).

[31] U.S. Department of Energy: Energy Information Administration, *Residential Energy Consumption Survey: 2009 RECS Survey Data* (2013) (Available at: *http://www.eia.gov/consumption/residential/data/2009/*).

[32] DOE characterized the geographic distribution into 27 geographic areas to be consistent with the 27 states and group of states reported in RECS 2009.

appropriate for determining energy cost savings associated with possible changes to efficiency standards.

For electricity, DOE derived marginal and average prices which vary by season, region, and baseline electricity consumption level. DOE estimated these prices using data published with the Edison Electric Institute (EEI), Typical Bill and Average Rates reports for summer and winter 2014.[33] For the residential sector each report provides, for most of the major investor-owned utilities (IOUs) in the country, the total bill assuming household consumption levels of 500, 750, and 1,000 kWh for the billing period. DOE defined the average price as the ratio of the total bill to the total electricity consumption. DOE also used the EEI data to define a marginal price as the ratio of the change in the bill to the change in energy consumption.

For the residential sector, DOE defined the average price as the ratio of the total bill to the total electricity consumption. DOE also used the EEI data to define a marginal price as the ratio of the change in the bill to the change in energy consumption. DOE first calculated weighted-average values for each geographic area for each type of price. Each EEI utility in an area was assigned a weight based on the number of consumers it serves. Consumer counts were taken from the most recent EIA Form 861 data (2012).[34]

DOE assigned seasonal average prices to all households in the LCC sample based on its location and its baseline monthly electricity consumption for an average summer or winter month. For sampled households who were assigned a product efficiency greater than or equal to the considered level for a standard, DOE then assigned marginal price to each household based on its location and the decremented electricity consumption. In the LCC sample, households could be assigned to one of 27 geographic areas.

To estimate future trends in electricity and natural gas prices, DOE used price forecasts in *AEO 2015*. To arrive at prices in future years, DOE multiplied the average and marginal prices described above by the forecast of annual average changes in national-average residential electricity and natural gas prices. Because the *AEO 2015* forecasts prices only to 2040, DOE used the average rate of change during 2025–2040 to estimate the price trends beyond 2040.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs.

During the 2013 preliminary analysis phase of the rulemaking, DOE requested information as to whether maintenance and repair costs are a function of efficiency level and product class. Manufacturers responded that these costs would not increase with efficiency. As a result, DOE assumed that repair and maintenance costs do not scale with the efficiency of dehumidifiers.

6. Product Lifetime

For portable dehumidifiers, DOE used lifetime estimates from the *Appliance Magazine* (2005),[35] an appliance lifetime report (Kubo, *et al.*, 2001),[36] and Northeast Energy Star Lighting and Appliance.[37] DOE assumed whole-home dehumidifiers have the same life span as residential room air conditioners and applied the lifetime parameters derived for room air conditioners in the 2011 rulemaking to whole-home dehumidifiers.[38] The analysis yielded an estimate of mean lifetime of approximately 11 years for portable dehumidifiers and approximately 19 years for whole-home dehumidifiers. DOE also used the data to develop a survival function that was incorporated as a probability distribution in the LCC analysis. See chapter 8, section 8.2.2.8 of the final rule TSD for further details on the method and sources DOE used to develop product lifetimes.

AHAM commented that DOE should use 10 years as the lifetime for portable dehumidifiers. (AHAM, No. 39 at p. 5) DOE used publically data and information including the three studies cited above to conclude that 11 years is the average lifetime for portable dehumidifiers.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for dehumidifiers based on consumer financing costs and opportunity cost of funds related to appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings and maintenance costs. DOE then estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (SCF) for 1995, 1998, 2001, 2004, 2007, 2010, and 2013.[39] Using the SCF and other sources, DOE then developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each class, is 4.4 percent. See chapter 8, section 8.2.3 of the final rule TSD for further details on the development of consumer discount rates.

8. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution of product efficiencies in the no-new-standards case (*i.e.*, the case without new energy efficiency standards). DOE refers to this distribution of product efficiencies as a no-new-standards case efficiency distribution.

To estimate the efficiency distribution of dehumidifiers for 2019, DOE analyzed its Compliance Certification Database for dehumidifiers. To project the efficiency trend between 2019 and 2048, DOE used a 0.25 percent annual increase in shipment-weighted efficiency, as discussed in section IV.H. See chapter 8 of the final rule TSD for further information on the derivation of the efficiency distributions.

9. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. PBPs are expressed in years. PBPs that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by multiplying the energy savings by the average energy price forecast for the year in which compliance with the amended standard would be required. The results of the rebuttable presumption PBP analysis are summarized in section V.B.1.c of this document.

G. Shipments Analysis

DOE uses forecasts of annual product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows.[40] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

To determine shipments to the replacement market, DOE estimated a stock of dehumidifiers by vintage by integrating historical shipments starting from 1972 for portable dehumidifiers and from 2004 for whole-home dehumidifiers. Over time, some units are retired and removed from the stock, triggering the shipment of a replacement unit. Depending on the vintage, a certain percentage of each type of unit will fail and need to be replaced. DOE based the retirement function on a probability distribution for the product lifetime that was developed in the LCC analysis. The shipments model assumes that no units are retired below a minimum product lifetime and that all units are retired before exceeding a maximum product lifetime.

To calibrate the estimated shipments with the historical data, DOE introduced into the model a market segment identified as existing households without dehumidifiers, also referred to as first-time owners. Based on the calibration, DOE estimated that 0.35 percent of existing households without a dehumidifier would annually purchase this product over the analysis period, 2019–2048.

For the final rule analysis, DOE applied price and efficiency elasticity parameters to estimate the effect of new standards on dehumidifier shipments. DOE estimated the price and efficiency elasticity parameters from a regression analysis that incorporated shipments, purchase price, and efficiency data specific to several residential appliances during 1989–2009. Based on evidence that the price elasticity of demand is significantly different over the short run and long run for other consumer goods (*i.e.*, automobiles), DOE assumed that these elasticities decline over time. DOE estimated shipments in each standards case using the price and efficiency elasticity along with the change in the product price and operating costs between a standards case and the no-new-standards case. For details on the shipments analysis, see chapter 9 of the final rule TSD.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the national net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[41] ("Consumer" in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[42] For the present analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of dehumidifiers sold from 2019 through 2048.

DOE evaluates the impacts of new and amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.*, the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

[33] Edison Electric Institute. Typical Bills and Average Rates Report. Winter 2014 published April 2014, Summer 2014 published October 2014. Available at: *http://www.eei.org/resourcesandmedia/products/Pages/Products.aspx*.

[34] U. S. Department of Energy, Energy Information Administration. Form EIA–861 Annual Electric Power Industry Database. *http://www.eia.doe.gov/cneaf/electricity/page/eia861.html*.

[35] The Life Expectancy/Replacement Picture. *Appliance Magazine*, September, 2005. Vol. 62, No. 9.

[36] Kubo, T., S. Nadel, and H. Sachs. Opportunities for New Appliance and Equipment Efficiency Standards: Energy and Economic Savings Beyond Current Standards Programs, September, 2001. Washington, DC: American Council for an Energy Efficient Economy (ACEEE). Report Number A016. <*http://aceee.org/research-report/a016*>.

[37] Northeast Energy Star Lighting and Appliance. *Dehumidifiers*. Accessed June 26, 2006. <*http://www.myenergystar.com/Dehumidifiers.aspx*>

[38] DOE-Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products, Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment, Residential Clothes Dryers and Room Air Conditioners (2011) (Available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053*).

[39] Note that two older versions of the SCF are also available (1989 and 1992). These surveys were not used in this analysis because they do not provide all of the necessary types of data (*e.g.*, credit card interest rates). DOE determines that the 15-year span covered by the six surveys included is sufficiently representative of recent debt and equity shares and interest rates.

[40] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general one would expect a close correspondence between shipments and sales.

[41] The NIA accounts for impacts in the 50 states and U.S. territories.

[42] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.19 summarizes the inputs and methods DOE used for the NIA analysis for the final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the final rule TSD for further details.

TABLE IV.19—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2019.
Efficiency Trends	No-New-Standards case: Shipment-Weighted Integrated Energy Factor (SWIEF) determined in 2019 for each of the considered products classes. Annual growth rate of 0.25 percent assumed for determining SWIEF between 2019 and 2048. Standard cases: Roll-up and shift scenario for 2019.
Annual Energy Consumption per Unit.	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates forecast of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit.	Annual values do not change with efficiency level.
Energy Prices	*AEO 2015* forecasts (to 2040) and extrapolation through 2048.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor derived from *AEO 2015*.
Discount Rate	Three and seven percent real.
Present Year	Future costs and savings are discounted to 2015.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.8 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the first year of the forecast period. To project the trend in efficiency for dehumidifiers over the entire shipments projection period, DOE employed shipments-weighted integrated energy factors (SWIEF) as a starting point for 2014 and assumed a 0.25 percent annual increase in shipment-weighted efficiency between 2014 and 2048. The approach is further described in chapter 10 of the final rule TSD.

For the standards cases, DOE used a "roll-up" scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2019). In this scenario, the market of products in the no-new-standards case that do not meet the standard under consideration would "roll up" to meet the new standard level, and the market share of products above the standard would remain unchanged. For its projected efficiencies of TSLs, in addition to a "roll-up" scenario, DOE developed a shift scenario. In the shift scenario DOE developed growth trends for each trial standard level that maintained the same per-unit average total installed cost difference for the year 2019 between the no-new-standards case and each standards case over the entire projection period (2019–2048).

2. National Energy Savings

In 2011, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector[43] that EIA uses to prepare its *Annual Energy Outlook*. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10C of the final rule TSD.

Aprilaire commented that DOE should separately show energy savings of whole-home dehumidifiers and portable dehumidifiers and stated that DOE has not shown that whole-home dehumidifier regulation will meet the requirement of "substantial" energy savings nor has DOE shown it meets the term used in the public meeting as "non-trivial." (Aprilaire, No. 38 at p. 5) DOE shows energy savings for each product class in the National Impact Analysis. However when analyzing whether standards meet the EPCA requirement of "significant" energy savings, DOE considers the product type as a whole.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period.

As discussed in section IV.F.1 of this document, DOE developed dehumidifier price trends based on historical Producer Price Index (PPI) data. Within the portable and whole-home product groups, DOE applied the same trends to forecast prices for each product class at each considered efficiency level. By 2048, which is the end date of the forecast period, the average dehumidifier price is forecasted to drop 37 percent relative to 2013. DOE's projection of product prices for dehumidifiers is described in further detail in appendix 10C of the final rule TSD.

To evaluate the effect of uncertainty regarding price trends, DOE examined the effect of various product price forecasts on the consumer NPV for the considered TSLs for dehumidifiers. In addition to the default price trend, DOE considered separate product price sensitivity cases for portable dehumidifiers and whole-home dehumidifiers. For portable dehumidifiers, DOE considered a case for a low price decline based on estimating an experience curve using PPI data for "small electric household appliances" from 1990 to 2009. A case for high price decline was based on the price forecast of the "furniture and appliances" series from *AEO 2015*. For whole-home dehumidifiers, a case for a low price decline was based on an exponential fit to the PPI from 1978 to 2014 for "air-conditioning, refrigeration, and forced air heating equipment." The high price decline was based on the price forecast of the "furniture and appliances" series from *AEO 2015*. The approach used to forecast the price trends and the results of the sensitivity cases are described in appendix 10C of the final rule TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average and marginal energy prices by the forecast of annual national-average residential energy price changes in the reference case from *AEO 2015*, which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this final rule, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[44] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this final rule, DOE analyzed the impacts of the considered standard levels on low-income households and senior-only households. Chapter 11 in the final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of dehumidifiers and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of forecasted industry cash flows, the INPV, investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more-stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various TSLs. To capture the uncertainty relating to manufacturer pricing strategy following amended standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE conducted detailed interviews with manufacturers and prepared a profile of the dehumidifier manufacturing industry. During manufacturer interviews, DOE discussed engineering, manufacturing, and financial topics in order to identify concerns and to inform and validate assumptions used in the GRIM. See appendix 5A and 5B of the final rule TSD for a copy of the interview guides. See section IV.J.4 for a description of the key issues raised by manufacturers during the interviews.

Based on these manufacturer interviews, the market and technology assessment, and publicly available information, DOE derived financial inputs for the GRIM (*e.g.*, revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and R&D expenses). The public sources

[43] For more information on NEMS, refer to *The National Energy Modeling System: An Overview*, DOE/EIA–0581 (98) (Feb.1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

[44] United States Office of Management and Budget, "Circular A–4: Regulatory Analysis," Section E (Sept. 17, 2003) (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html.http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

of information DOE used in developing its characterization of the dehumidifier manufacturing industry, include company filings of form SEC 10–K filings,[45] corporate annual reports, the U.S. Census Bureau's Economic Census,[46] and Hoover's reports.[47]

In Phase 2 of the MIA, DOE prepared an industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures (derived during Phase 1). In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and changes in sales volumes.

In Phase 3 of the MIA, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups always include small business manufacturers, but may also include low-volume manufacturers (LVMs), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one dehumidifier manufacturer subgroup for which average cost assumptions may not hold: Small businesses.

To identify small businesses for this analysis, DOE applied the size standards published by the Small Business Administration (SBA) to determine whether a company is considered a small business. *See* 13 CFR part 121. To be categorized as a small business manufacturer of dehumidifiers under North American Industry Classification System (NAICS) codes 333415 ("Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing") or 335210 ("Small Electrical Appliance Manufacturing"), a dehumidifier manufacturer and its affiliates may employ a maximum of 1,250 employees or 1,500 employees, respectively. These thresholds include all employees in a business' parent company and any other subsidiaries. Using these classifications in conjunction with a search of industry databases and the SBA member directory, DOE identified five manufacturers of dehumidifiers that qualify as small businesses, all of which are manufacturers of whole-home dehumidifiers and high-capacity portable dehumidifiers.

The dehumidifier manufacturer subgroup analysis is discussed in greater detail in chapter 12 of the final rule TSD and in section V.B.2.d of this document.

In Phase 3, DOE also analyzed impacts of amended energy conservation standards for dehumidifiers on manufacturing capacity, direct employment, and cumulative regulatory burdens. Section V.B.2 discusses the findings of these analyses.

2. Government Regulatory Impact Model (GRIM)

DOE uses the GRIM to quantify the changes in industry cash flows resulting from amended energy conservation standards. The GRIM uses manufacturer costs, markups, shipments, and industry financial information to arrive at a series of no-new-standards-case annual cash flows absent new or amended standards, beginning with the present year, 2016, and continuing through 2048. The GRIM then models changes in costs, investments, shipments, and manufacturer margins that may result from new or amended energy conservation standards and compares these results against those in the no-new-standards-case forecast of annual cash flows. The primary quantitative output of the GRIM is the INPV, which DOE calculates by summing the stream of annual discounted cash flows over the full analysis period. For manufacturers of dehumidifiers, DOE used a real discount rate of 8.43 percent, the weighted-average cost of capital derived from industry financials and modified based on feedback received during confidential interviews with manufacturers.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and the various TSLs. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended standard on manufacturers at that particular TSL. As discussed previously, DOE collected the necessary information to develop key GRIM inputs from a number of sources, including publicly available data and interviews with manufacturers (described in section IV.J.4 of this document). The GRIM results are shown in section V.B.2.a of this document. Additional details about the GRIM can be found in chapter 12 of the final rule TSD.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex and typically more costly components. The changes in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making product cost data key GRIM inputs for DOE's analysis. For each efficiency level for each product class, DOE used the MPCs developed in the engineering analysis, as described in section IV.C.2 of this document and further detailed in chapter 5 of the final rule TSD. Additionally, DOE used information from its teardown analysis, described in section IV.C of this final rule, to disaggregate the MPCs into material and labor costs. These cost breakdowns and equipment markups were validated with manufacturers during interviews.

No-New-Standards-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM used the NIA's annual shipment forecasts derived from the shipments analysis from 2016 (the base year) to 2048 (the end of the analysis period). See chapter 9 of the final rule TSD for additional details on the shipments analysis.

Standards-Case Shipments Forecast

For each standards case, the GRIM assumes a small, constant percentage shift in shipments to higher efficiency levels, reflecting the idea that some efficiency improvements will occur independent of amended standards. The GRIM also assumes all remaining shipments of products below the projected minimum standard levels would roll up (*i.e.*, be added) to the standard efficiency levels in response to an increase in energy conservation standards. The GRIM also assumes that demand for higher-efficiency products (that are above the minimally compliant level) is a function of price, and is independent of the standard level.

Product and Capital Conversion Costs

Amended energy conservation standards may cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance with the new standards. For the purpose of the MIA, DOE classified these conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, and marketing, focused on making product designs comply with the new energy conservation standard. Capital conversion expenditures are investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

Stranded Assets

If new or amended energy conservation standards require investment in new manufacturing capital, there also exists the possibility that they will render existing manufacturing capital obsolete. If the obsolete manufacturing capital is not fully depreciated at the time new or amended standards go into effect, these assets would be stranded and the manufacturer would have to write-down the residual value that had not yet been depreciated.

DOE used multiple sources of data to evaluate the level of product and capital conversion costs and stranded assets manufacturers would likely face to comply with amended dehumidifier energy conservation standards. DOE used manufacturer interviews to gather data on the level of investment anticipated at each proposed efficiency level and validated these assumptions using estimates of capital requirements derived from the product teardown analysis and engineering model described in section IV.C of this final rule. These estimates were then aggregated and scaled to derive total industry estimates of product and capital conversion costs and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year the final rule is published and the year by which manufacturers must comply with the new or amended standards. The investment figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the final rule TSD.

b. Government Regulatory Impact Model Scenarios

No-New-Standards-Case Markup

As discussed in section IV.D of this final rule, MSPs include direct manufacturing production costs (*i.e.*, labor, material, overhead, and depreciation estimated in DOE's MPCs) and all non-production costs (*i.e.*, SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis. Based on publicly available financial information for manufacturers of dehumidifiers and comments from manufacturer interviews, DOE assumed the industry average no-new-standards-case markup on production costs to be 1.45. This markup takes into account the two-tiered sourcing structure of the majority of the portable dehumidifier segment, detailed below, in addition to the traditional one-tiered structure of the domestically-produced whole-home (and similarly constructed high-capacity portable) dehumidifier segment.

Lower-capacity portable dehumidifiers (product classes 1 and 2) and some high-capacity dehumidifiers (product class 3) are manufactured under contract by an overseas original equipment manufacturer (OEM). The engineering analysis, as detailed in chapter 5 of the final rule TSD, estimates the cost of manufacturing at the OEM. This production cost is marked up once by the OEM to the company contracting its manufacturer and again by the contracting company who imports the product and sells it to retailers. For imported portable dehumidifiers, the industry average baseline markup breaks down as follows:

TABLE IV.20—INDUSTRY-AVERAGE BASELINE MARKUPS

OEM to Contracting Company Markup	1.20
Contracting Company to First Customer Markup	1.21
Overall OEM to First Customer Markup	1.45

Markup Scenarios

Modifying the aforementioned no-new-standards-case markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) A preservation of gross margin[48] (percentage) scenario; and (2) a preservation of per-unit operating profits scenario. These scenarios lead to different markups values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

The preservation of gross margin as a percentage of revenues markup scenario assumes that the baseline markup of 1.45 is maintained for all products in the standards case. Typically, this scenario represents the upper bound of industry profitability as manufacturers are able to fully pass through additional costs due to standards to their customers under this scenario.

The preservation of per-unit operating profits markup scenario is similar to the preservation of gross margin as a percentage of revenues markup scenario with the exception that in the standards case, minimally compliant products lose a fraction of the baseline markup. Typically, this scenario represents the lower bound profitability and a more substantial impact on the industry as manufacturers accept a lower margin in an attempt to offer price competitive entry level products while maintaining the same level of absolute operating profits, on a per-unit basis, that they saw prior to amended standards. Under this scenario, gross margin as a percentage decreases in the standards case.

3. Discussion of Comments

Manufacturers and trade organizations provided several comments on the potential impact of amended energy conservation standards on manufacturers. These comments are outlined below. DOE considered these comments when updating the analysis for this final rule.

AHAM cautioned that DOE not overlook the considerable capital and product conversion expenditures that manufacturers must face in redesigning significant component systems to meet TSL 3 with the new test procedure, appendix X1. AHAM commented that DOE should revise its analysis based on

[45] U.S. Securities and Exchange Commission, Annual 10–K Reports (Various Years) (Available at: *http://www.sec.gov/edgar/searchedgar/companysearch.html*).

[46] U.S. Census Bureau, Annual Survey of Manufacturers: General Statistics: Statistics for Industry Groups and Industries (2011) (Available at: *http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t*).

[47] Hoovers Inc. Company Profiles. Various Companies. *www.hoovers.com*.

[48] "Gross margin" is defined as revenues minus cost of goods sold. On a unit basis, gross margin is selling price minus manufacturer production cost. In the GRIMs, markups determine the gross margin because various markups are applied to the manufacturer production costs to reach manufacturer selling price.

additional data from AHAM and manufacturer interviews, which may show that TSL 3 is no longer justified. (AHAM, No. 39 at p. 6) Additionally, AHAM commented that DOE should consider marketing costs necessary to explain to the public the change in capacities of units. (AHAM, No. 39 at p. 3)

DOE recognizes that the revised test procedure resulted in changes in capacity and efficiency. 80 FR 45802 (July 31, 2015). To ensure that the conversion cost estimates provided by manufacturers were reflective of the conversion costs dehumidifier manufacturers will face as a result of amended energy conservation standards, DOE conducted another round of manufacturer interviews following the June 2015 NOPR publication. DOE solicited information on all conversion costs during these interviews and was particularly interested in understanding the product conversion costs necessary for marketing, training, consumer education, and labeling that would help buyers of these products understand the new ranges of capacity and efficiency. (See the final rule TSD appendix 12A for the list of topics included in post-NOPR manufacturer interviews.) Based on feedback from these interviews, DOE has revised its conversion cost estimates, where applicable, for this final rule. See section V.B.2 of this final rule and chapter 12 of the final rule TSD for details on the revised industry conversion costs.

Aprilaire and Therma-Stor provided comments describing the potential impacts on the high-capacity portable dehumidifier and whole-home dehumidifier market segments. Aprilaire commented that it does not support DOE regulating the whole-home dehumidifier industry at this time, as it believes the small American-based businesses would face high, disproportionate impacts. (Aprilaire, No. 34 at p. 1) Additionally, Aprilaire commented that any decrease in market size and jobs for whole-home dehumidifiers would have a disproportionate effect on employment in the United States, and the job market specifically in Wisconsin. (Aprilaire, No. 34 at p. 5) Therma-Stor, also a small manufacturer located in Wisconsin, commented that if the June 2015 NOPR proposal goes into effect unchanged, it could put them and other domestic manufacturers out of business. Therma-Stor stated that it expects to reduce its employment headcount by one-half under the June 2015 NOPR proposal, which it stated was biased against manufacturers of high-capacity portable dehumidifiers and whole-home dehumidifiers. (Therma-Stor, No. 38 at p. 3)

DOE acknowledges that amended energy conservation standards for dehumidifiers could disproportionately impact small domestic manufacturers. As mentioned above, as a result of these and other comments submitted in response to the June 2015 NOPR, DOE solicited additional information from small and large dehumidifier manufacturers on the expected financial burdens related to compliance with the standard levels considered in the NOPR. Based on new feedback, for this final rule, DOE has updated the MIA, including its analysis of small business impacts and discussions of potential impacts on domestic production employment and manufacturing capacity. DOE based its selection of efficiency levels in this final rule on its updated analysis. See section V.B.2 of this final rule for DOE's updated analysis of INPV impacts, and direct employment and manufacturing capacity impacts. See section VII.B of this final rule for a discussion of disproportionate impacts on small domestic dehumidifier manufacturers.

Regarding the baseline and incremental efficiency levels analyzed in the June 2015 NOPR, Therma-Stor commented that DOE's determination that low-capacity portable dehumidifiers cannot be designed with efficiency enhancements to establish a minimum efficiency level two to three times less than high capacity portable dehumidifiers and whole-home dehumidifiers leads to an unfair and anti-competitive bias in favor of the manufacturers and importers of low-capacity portable dehumidifiers. (Therma-Stor, No. 38 at p. 2) Aprilaire commented that the whole-home dehumidifier industry has been analyzed at only two efficiency levels and asked why DOE did not analyze other efficiency levels, which may have less of an impact on the small businesses and the whole-home dehumidifier industry. (Aprilaire, Public Meeting Transcript, No. 35 at p. 83)

As described in section IV.C.1 of this final rule, DOE analyzed a representative sample of products in each product class to determine an appropriate baseline efficiency level and subsequent improved efficiency levels. For high-capacity portable dehumidifiers (50.01 pints/day or greater), DOE has updated the analysis and included an additional efficiency level for this product class to reflect products currently available on the market. Based on product testing and teardowns, DOE included only one gap fill efficiency level for whole-home dehumidifiers with a case volume less than 8.0 cubic feet and two gap fill efficiency levels for whole-home dehumidifiers with case volumes greater than 8.0 cubic feet. Based on the new feedback from interested parties, DOE has updated the MIA in this final rule, including its analysis of small, domestic business impacts, and its analysis of potential impacts on domestic production employment and manufacturing capacity. This updated analysis has directly impacted the selection of standard efficiency levels in this final rule. See section V.B.2 of this final rule for DOE's updated analysis of INPV impacts, and direct employment and manufacturing capacity impacts.

4. Manufacturer Interviews

As a result of public comments received from interested parties following the publication of the June 2015 NOPR and DOE's amended test procedure,[49] DOE conducted additional confidential interviews with manufacturers. During interviews, DOE asked manufacturers to describe their recommendations relating to updates to the June 2015 NOPR analyses, particularly those that would be affected by the new dehumidifier test procedure. Specifically, DOE solicited feedback on product classes, efficiency levels, and industry conversion costs. Technical data obtained during these interviews informed updates to the engineering analysis for this final rule, where applicable. See sections IV.A.1 and IV.C.1 of this document for information about the changes to product classes and efficiency levels for this final rule.

The following sections describe the issues identified by manufacturers relating to DOE's June 2015 NOPR analyses. These concerns are also presented in chapter 12 of the final rule TSD.

Unavailability of Products

Most manufacturers interviewed expressed concern that the proposed dehumidifier standards were too aggressive and could result in the unavailability of products of certain capacities. In particular, manufacturers stated that the efficiency levels proposed in the June 2015 NOPR for high-capacity portable dehumidifiers and whole-home dehumidifiers are too stringent relative to those for lower-capacity dehumidifiers. Manufacturers stated that this would reduce the

[49] Section IV.C.1.a describes the updated engineering analysis based on the test procedure in appendix X1.

competitiveness of high-capacity portable dehumidifiers and whole-home dehumidifiers, making them uneconomical to produce. Relatedly, other manufacturers noted that they would not enter the high-capacity portable dehumidifier market in the future because the high standard efficiency levels for these products would make it difficult to meet their price targets. Public comments relating to the impact of this rulemaking on the availability of certain product types are discussed in sections IV.J.3 and V.C of this final rule.

Impacts on Small Business

Similarly, manufacturers expressed concerns that small business manufacturers currently producing high-capacity portable dehumidifiers and whole-home dehumidifiers may have to exit the market if the standards proposed in the June 2015 NOPR become final. This would negatively impact domestic manufacturing employment and capacity in the dehumidifier market.

In addition to the prohibitive capital costs associated with compliance with the standard levels proposed in the June 2015 NOPR, small manufacturers of whole-home dehumidifiers cited the re-education of distributors as a source of substantial financial burden resulting from the new test procedure and amended standards for whole-home products. Public comments relating to small business impacts are addressed in section IV.J.3 of this final rule.

Consumer Confusion

Finally, manufacturers expressed concerns regarding the potential confusion faced by consumers as a result of new product capacity ratings under the appendix X1 test procedure. Manufacturers believe this confusion will be particularly detrimental in the short-term, when consumers will have a selection of both newly rated products and the existing inventory of products rated using the appendix X test procedure. One manufacturer commented that it would like DOE to develop a standardized label for dehumidifiers to help educate consumers on the new ratings. Public comments relating to consumer confusion and labeling are discussed in section IV.J.3 of this final rule. Additionally, as stated in section II.A of this final rule, the FTC is primarily responsible for the labeling of consumer products.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015*, as described in section IV.M. The methodology is described in chapter 13 and 15 of the final rule TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[50] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the final rule TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[51] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[52] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR,[53] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[54] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[55] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015*, so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not significant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is

[50] Available at: *http://www2.epa.gov/climateleadership/center-corporate-climate-leadership-ghg-emission-factors-hub.*

[51] IPCC, 2013: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[52] See *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[53] See *EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[54] *See EPA* v. *EME Homer City Generation*, 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[55] See *Georgia* v. *EPA*, Order (D.C. Cir. filed October 23, 2014) (No. 11–1302).

enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[56] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[57] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this final rule for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015*, which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for CO_2 and NO_X emissions and presents the values considered in this final rule.

For this final rule, DOE relied on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. The basis for these values is summarized in the next section, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the final rule TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b)(6) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council [58] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and

[56] DOE notes that the Supreme Court remanded EPA's 2012 rule regarding national emission standards for hazardous air pollutants from certain electric utility steam generating units. See *Michigan* v. *EPA* (Case No. 14–46, 2015). DOE has tentatively determined that the remand of the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, while the remand of the MATS rule may have an impact on the overall amount of mercury emitted by power plants, it does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[57] CSAPR also applies to NO_X and it supersedes the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

[58] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use*, National Academies Press: Washington, DC (2009).

monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[59] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.21 presents the values in the 2010 interagency group report,[60] which is reproduced in appendix 14A of the final rule TSD.

TABLE IV.21—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

[59] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[60] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

The SCC values used for this document were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[61] Table IV.22 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC estimates between 2010 and 2050 is reported in appendix 14B of the final rule TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.22—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount Rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.[62]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2014$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 based on the trend in 2010–2050 in each of the four cases.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis *for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards.[63] The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent;[64] these values are presented in chapter 14 of the final rule TSD. DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030. DOE developed values specific to the end-use category for dehumidifiers using a method described in appendix 14C.

DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3-percent and 7-percent as appropriate. DOE will continue to evaluate the monetization of avoided NO_X emissions and will make any appropriate updates in energy conservation standards rulemakings.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

[61] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[62] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015 OMB published a detailed summary and formal response to the many comments that were received. *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.* It also stated its intention to seek independent expert advice on opportunities to improve the estimates, including many of the approaches suggested by commenters.

[63] Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.* See Tables 4A–3, 4A–4, and 4A–5 in the report.

[64] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits (derived from benefit-per-ton values) are primarily based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.*, 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the final rule TSD for further description of the studies mentioned in this preamble.)

AHAM commented that monetization of avoided CO_2 emissions should include a more comprehensive analysis to understand the total environmental impact. It stated that any CO_2 analysis should include CO_2 emissions that are caused indirectly, as well as directly, from a standards change, such as increased carbon emissions required to manufacture a given standard level, the increased transportation and related emissions required for a given standard level, and reduced carbon emissions from peak load reductions. (AHAM, No. 39 at p. 7)

In response, DOE notes that EPCA directs DOE to consider the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard when determining whether a standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE interprets this to include energy used in the generation, transmission, and distribution of fuels used by appliances or equipment. In addition, DOE is using the FFC measure, which includes the energy consumed in extracting, processing, and transporting primary fuels. DOE's current accounting of primary energy savings and the FFC measure are directly linked to the energy used by appliances or equipment. DOE believes that energy used in manufacturing or transporting appliances or equipment falls outside the boundaries of "directly" as intended by EPCA. Thus, DOE did not consider such energy use and air emissions in the NIA or in the emissions analysis. DOE's analysis does account for impacts on CO_2 emissions from electricity load reduction.

The U.S. Chamber of Commerce objected to the continued use of the SCC in the cost-benefit analysis performed. AHAM stated that DOE should wait for comments on the 2013 interagency report to be resolved before it relies on the 2013 estimates, and, until that time DOE should rely on the 2010 estimates as it has done in rulemakings prior to May 2013. (U.S. Chamber of Commerce, No. 37 at p. 4; AHAM, No. 39 at p. 7)

The 2013 report provides an update of the SCC estimates based solely on the latest peer-reviewed version of the models, replacing model versions that were developed up to ten years ago in a rapidly evolving field. It does not revisit other assumptions with regard to the discount rate, reference case socioeconomic and emission scenarios, or equilibrium climate sensitivity. Improvements in the way damages are modeled are confined to those that have been incorporated into the latest versions of the models by the developers themselves in the peer-reviewed literature. Given the above, using the 2010 estimates would be inconsistent with DOE's objective of using the best available information in its analyses. As noted previously, OMB published a detailed summary and formal response to the many comments that were received on the 2013 interagency report.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power generation industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the final rule TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[65] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[66] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this final rule using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[67]

[65] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov*.

[66] See Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II), U.S. Department of Commerce (1992).

[67] J.M. Roop, M.J. Scott, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies*, PNNL–18412, Pacific Northwest National Laboratory

ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the final rule TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for dehumidifiers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for dehumidifiers, and the standards levels that DOE is adopting in this final rule. Additional details regarding DOE's analyses are contained in the final rule TSD supporting this document.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for dehumidifiers. These TSLs were developed by combining specific efficiency levels for each of the five product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the final rule TSD. Table V.1 presents the TSLs and the corresponding efficiency levels for dehumidifiers. TSL 4 represents the max-tech energy efficiency for all product classes. TSL 3 consists of the efficiency levels below the max-tech level for all product classes. The efficiency level for TSL 2 for product classes 1, 2, and 3 is one below the max-tech level, the same level as TSL3. The efficiency level for TSL 2 for product classes 4 and 5 is the baseline. TSL 1 consists of Efficiency Level 2 for product classes 1, 2, and 3 and the baseline for product classes 4 and 5.

TABLE V.1—TRIAL STANDARD LEVELS FOR DEHUMIDIFIERS

TSL	PC1		PC2		PC3		PC4		PC5	
	≤25.00 pints/day		25.01–50.00 pints/day		≥50.01 pints/day		≤8.0 ft³		>8.0 ft³	
	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)	EL	AEU (kWh/yr)
	0	505	0	808	0	867	0	809	0	967
1	2	460	2	688	2	778	0	809	0	967
2	3	422	3	603	3	665	0	809	0	967
3	3	422	3	603	3	665	1	681	2	660
4	4	351	4	534	4	509	2	565	3	519

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on dehumidifier consumers by looking at the effects potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.*, product price plus installation costs), and operating costs (*i.e.*, annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.3 show the LCC and PBP results for the TSL efficiency levels considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of Efficiency Level 0 (baseline) and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

(2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf.*)

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC1

[≤25.00 pints/day]

TSL	EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	208	78	736	944		11
1	2	210	71	674	884	0.4	11
2, 3	3	214	66	622	836	0.5	11
4	4	238	56	525	763	1.3	11

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline (EL 0) product.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR DEHUMIDIFIER PC1

[≤25.00 pints/day]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2014$)	Percent of consumers that experience net cost (%)
1	2	60	0
2, 3	3	107	0.1
4	4	110	11.5

*The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC2

[25.01–50.00 pints/day]

TSL	EL	Average costs (2014$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	252	124	1,173	1,425		11
1	2	255	107	1,010	1,265	0.2	11
2, 3	3	264	95	895	1,158	0.4	11
4	4	286	85	800	1,086	0.9	11

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC2

[25.01–50.00 pints/day]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2014$)	Percent of consumers that experience net cost (%)
1	2	157	0
2,3	3	119	0.7
4	4	191	5.1

*The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC3

[>50.00 pints/day]

TSL	EL	Average costs (2014$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	1,302	134	1,269	2,571	.....	11
1	2	1,407	121	1,147	2,554	8.2	11
2,3	3	1,433	105	994	2,427	4.5	11
4	4	1,673	83	782	2,455	7.2	11

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC3

[>50.00 pints/day]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2014$)	Percent of consumers that experience net cost (%)
1	2	17	44.9
2,3	3	142	28.7
4	4	96	54.3

*The savings represent the average LCC for affected consumers.

TABLE V.8—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC4

[≤8.0 ft³]

TSL	EL	Average costs (2014$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1,2	0	1,733	129	1,893	3,626	.....	19
3	1	1,769	110	1,613	3,382	1.9	19
4	2	1,977	93	1,361	3,339	6.8	19

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.9—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC4

[≤8.0 ft³]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2014$)	Percent of consumers that experience net cost (%)
1,2	0		
3	1	242	9.9
4	2	242	42.6

*The savings represent the average LCC for affected consumers.

TABLE V.10—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC5

[>8.0 ft³]

TSL	EL	Average costs (2014$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
1,2	0	2,233	153	2,250	4,483	.....	19

TABLE V.10—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR DEHUMIDIFIER PC5—Continued

[>8.0 ft³]

TSL	EL	Average costs (2014$)				Simple PBP (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
3	2	2,325	108	1,581	3,906	2.0	19
4	3	2,617	87	1,273	3,890	5.8	19

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.11—AVERAGE LCC SAVINGS RELATIVE TO THE BASE-CASE EFFICIENCY DISTRIBUTION FOR DEHUMIDIFIER PC5

[>8.0 ft³]

TSL	EL	Life-cycle cost savings	
		Average LCC savings* (2014$)	Percent of consumers that experience net cost (%)
1,2	1	.....	.....
3	2	479	10.8
4	3	386	43.4

*The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

As described in section IV.I of this document, DOE estimated the impact of the considered TSLs on low-income households and senior-only households. Table V.12 through Table V.16 compare the average LCC savings at each efficiency level for the two consumer subgroups, along with the average LCC savings for the entire sample. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the final rule TSD presents the complete LCC and PBP results for the two subgroups.

TABLE V.12—DEHUMIDIFIER PC1 (>25.00 PINTS/DAY): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	55	48	60	0.4	0.5	0.4
2,3	99	86	107	0.6	0.7	0.5
4	101	85	110	1.4	1.6	1.3

TABLE V.13—DEHUMIDIFIER PC2 (25.01–50.00 PINTS/DAY): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	149	127	157	0.2	0.2	0.2
2,3	112	97	119	0.4	0.5	0.4
4	178	151	191	0.9	1.1	0.9

TABLE V.14—DEHUMIDIFIER PC3 (>50.00 PINTS/DAY): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1	9	(6)	17	8.6	9.9	8.2
2,3	126	95	142	4.7	5.5	4.5
4	69	17	96	7.5	8.7	7.2

TABLE V.15—DEHUMIDIFIER PC4 (>8.0 FT³): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1,2	.....	.....	.....	.....	.....	.....
3	135	251	242	2.7	1.8	1.9
4	64	259	242	9.6	6.5	6.8

TABLE V.16—DEHUMIDIFIER PC5 (>8.0 FT³): COMPARISON OF IMPACTS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Average life-cycle cost savings (2014$)			Simple payback period (years)		
	Low-income households	Senior-only households	All households	Low-income households	Senior-only households	All households
1,2	.....	.....	.....	.....	.....	.....
3	261	496	479	2.9	2.0	2.0
4	105	409	386	8.3	5.6	5.8

c. Rebuttable Presumption Payback

As discussed in this preamble, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption PBP for the considered standard levels, DOE used discrete values and, as required by EPCA, based the energy use calculation on the DOE test procedure for dehumidifiers in appendix X1. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions for input values, with energy use based on field studies and RECS data.

Table V.17 presents the rebuttable-presumption PBPs for the considered TSLs.[68] While DOE examined the rebuttable-presumption criterion, it further considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

TABLE V.17—DEHUMIDIFIERS: REBUTTABLE PAYBACK PERIOD (YEARS)

Product class	Trial standard level			
	1	2	3	4
PC1 (≤25.00 pints/day)	0.5	0.6	0.6	1.6
PC2 (25.00–50.00 pints/day)	0.2	0.5	0.5	1.0
PC3 (≥50.01 pints/day)	8.7	4.8	4.8	7.7
PC4 (≤8.0 ft³)	.....	.....	2.2	7.8
PC5 (>8.0 ft³)	.....	.....	2.3	6.7

[68] The PBPs in Table V.17 differ from those shown in Tables V.2, V.4, V.6, V.8 and V.10 because the rebuttable PBPs are calculated with energy use based on the DOE test procedure, whereas the PBPs in the earlier tables are calculated with energy use based on field studies and RECS data.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of dehumidifiers. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

The following tables illustrate the estimated financial impacts (represented by changes in INPV) of amended energy conservation standards on manufacturers of dehumidifiers, as well as the conversion costs that DOE estimates manufacturers would incur for each product class at each TSL. To evaluate the range of cash-flow impacts on the dehumidifier manufacturing industry, DOE used two different markup scenarios to model the range of anticipated market responses to amended energy conservation standards.

To assess the lower (less severe) end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a flat markup of 1.45 (*i.e.*, the baseline manufacturer markup) is applied across all efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the amended energy conservation standards case. Manufacturers have indicated that it is optimistic to assume that they would be able to maintain the same gross margin markup as their production costs increase in response to a new or amended energy conservation standard, particularly at higher TSLs.

To assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of per-unit operating profit markup scenario, which assumes that manufacturers would not be able to preserve the same overall gross margin, but instead would cut their markup for minimally compliant products to maintain a cost competitive product offering while maintaining the same overall level of operating profit in absolute dollars as in the no-new-standards case. The two tables below show the range of potential INPV impacts for manufacturers of dehumidifiers. Table V.18 reflects the lower bound of impacts (higher profitability) and Table V.19 represents the upper bound of impacts (lower profitability).

Each scenario results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the sum of discounted cash flows through 2048, the difference in INPV between the no-new-standards case and each standards case, and the total industry conversion costs required for each standards case.

TABLE V.18—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO FOR ANALYSIS PERIOD

[2016–2048]

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	2014$ Millions	179.5	176.5	145.5	140.7	126.9
Change in INPV	2014$ Millions	.....	(3.0)	(34.0)	(38.7)	(52.6)
	(%)	.....	(1.7%)	(18.9%)	(21.6%)	(29.3%)
Free Cash Flow (2018)	2014$ Millions	15.0	13.2	(4.2)	(6.7)	(19.7)
Change in Free Cash Flow (2018)	(%)	.....	(12.4%)	(128.3%)	(144.9%)	(231.4%)
Product Conversion Costs	2014$ Millions	.....	3.0	29.9	35.4	55.2
Capital Conversion Costs	2014$ Millions	.....	2.1	22.6	24.5	39.1
Total Conversion Costs	2014$ Millions	.....	5.1	52.5	59.8	94.3

Parentheses indicate negative (−) values.

TABLE V.19—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO FOR ANALYSIS PERIOD

[2016–2048]

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	2014$ Millions	179.5	175.8	142.0	137.1	106.8
Change in INPV	2014$ Millions	.....	(3.6)	(37.5)	(42.4)	(72.7)
	(%)	.....	(2.0%)	(20.9%)	(23.6%)	(40.5%)
Free Cash Flow (2018)	2014$ Millions	15.0	13.2	(4.2)	(6.7)	(19.7)
Decrease in Free Cash Flow (2018)	(%)	.....	(12.4%)	(128.3%)	(144.9%)	(231.4%)
Product Conversion Costs	2014$ Millions	.....	3.0	29.9	35.4	55.2
Capital Conversion Costs	2014$ Millions	.....	2.1	22.6	24.5	39.1
Total Conversion Costs	2014$ Millions	.....	5.1	52.5	59.8	94.3

Parentheses indicate negative (−) values.

Beyond impacts on INPV, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards take effect to provide perspective on the short-run cash flow impacts in the discussion of the results below.

At TSL 1, DOE estimates the impact on INPV for manufacturers of dehumidifiers to range from −$3.6 million to −$3.0 million, or a change in INPV of −2.0 percent to −1.7 percent under the preservation of per-unit operating profit markup scenario and

preservation of gross margin percentage markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 12.4 percent to $13.2 million, compared to the no-new-standards-case value of $15.0 million in 2018, the year before the projected compliance date.

At TSL 1, the industry as a whole is expected to incur $3.0 million in product conversion costs attributed to upfront research, development, testing, and certification, as well as $2.1 million in investments in property, plant and equipment (PP&E) necessary to manufacture redesigned platforms. Industry conversion cost burden at TSL 1 would be felt by manufacturers of both lower-capacity and high-capacity portable dehumidifiers, although 83 percent of conversion costs relate to higher-capacity portable dehumidifier platform redesigns. At TSL 1, approximately 1 percent of portable platforms will require complete platform redesigns to reach the improved efficiency, which involve moving to a new case size to accommodate larger heat exchangers. These changes require upfront capital investments for new tooling to manufacturing production lines, among other changes. Additionally, it is assumed that manufacturers of high-capacity portable dehumidifiers, the majority of which are small business manufacturers, will have to outsource testing of their products to third-party testing facilities, contributing to greater product conversion costs. In contrast, the large manufacturers of portable dehumidifiers are assumed to have in-house testing capabilities, which significantly reduce the cost of testing. DOE confirmed these assumptions regarding testing burdens during manufacturer interviews.

At TSL 2, DOE estimates the impact on INPV for dehumidifier manufacturers to range from −$37.5 million to −$34.0 million, or a change in INPV of −20.9 percent to −18.9 percent under the preservation of per-unit operating profit markup scenario and the preservation of gross margin percentage markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 128.3 percent to −$4.2 million, compared to the no-new-standards-case free cash flow of $15.0 million in 2018, the year before the projected compliance date.

At TSL 2, the industry as a whole is expected to incur $29.9 million in product conversion costs associated with upfront research, development, testing, and certification, as well as $22.6 million in investments in PP&E to manufacture products requiring platform redesigns. At TSL 2, the industry conversion cost burden will be felt by manufacturers of both low-capacity and high-capacity portable dehumidifiers, as approximately 50 percent of portable dehumidifier platforms will require complete platform redesigns. Platform redesigns at TSL 2 will include moving to a new case size to accommodate larger heat exchangers, and will necessitate upfront capital investments for new tooling. Because lower-capacity portable units represent approximately 98.5 percent of the market, conversion costs associated with this segment have a significant impact on total industry conversion costs for TSL 2.

At TSL 3, DOE estimates the impact on INPV for dehumidifier manufacturers to range from −$42.4 million to −$38.7 million, or a change in INPV of −23.6 percent to −21.6 percent under the preservation of per-unit operating profit markup scenario and the preservation of gross margin percentage markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 144.9 percent to −$6.7 million, compared to the no-new-standards-case free cash flow of $15.0 million in 2018, the year before the projected compliance date.

At TSL 3, the industry as a whole is expected to spend $35.4 million in product conversion costs associated with upfront research, development, testing, and certification, as well as $24.5 million in investments in PP&E to manufacture redesigned platforms. While conversion costs remain constant for manufacturers of portable dehumidifiers between TSLs 2 and 3, the conversion costs for manufacturers of whole-home dehumidifiers increase substantially at TSL 3, as nearly 80 percent of these products will require total platform redesigns. As with the portable dehumidifier market segment, platform redesigns for whole-home units will consist of moving products to a new case size to accommodate larger heat exchangers, and in turn will require capital investments in new tooling for larger cases. This upfront investment is in addition to higher R&D and testing expenditures. Despite increased conversion costs associated with the whole-home segment, because lower-capacity portable units represent approximately 98.5 percent of the market, conversion costs associated with this segment have a significant impact on total industry conversion costs for TSL 3.

At TSL 4, DOE estimates the impact on INPV for manufacturers of dehumidifiers to range from −$72.7 million to −$52.6 million, or a change in INPV of −40.5 percent to −29.3 percent the preservation of per-unit operating profit markup scenario and the preservation of gross margin percentage markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 231.4 percent to −$19.7 million, compared to the no-new-standards-case free cash flow of $15.0 million in 2018, the year before the projected compliance date.

At TSL 4, the industry as a whole is expected to spend $55.2 million in product conversion costs associated with upfront research, development, testing, and certification, as well as $40.5 million in investments in PP&E for platform redesigns. At TSL 4, approximately 63 percent of dehumidifier platforms will require complete redesigns in the form of larger chassis. Again, since lower-capacity portable units represent approximately 98.5 percent of the market, conversion costs associated with this segment have a significant impact on total industry conversion costs for TSL 4.

b. Impacts on Direct Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the no-new-standards case and at each TSL from 2016 to 2048. DOE used statistical data from the U.S. Census Bureau's 2013 *Annual Survey of Manufactures*, the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels at each TSL. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant. The total labor expenditures in each year are calculated by multiplying the MPCs by the labor percentage of MPCs. DOE estimates that all whole-home dehumidifiers and 50 percent of high-capacity portable dehumidifiers are produced domestically. This represents approximately 1 percent of dehumidifiers sold in the United States.

The total labor expenditures in the GRIM were then converted to domestic production employment levels by dividing production labor expenditures by the annual payment per production worker (production worker hours times the labor rate found in the U.S. Census Bureau's 2013 Annual Survey of Manufactures). The production worker estimates in this section only cover workers up to the line-supervisor level who are directly involved in fabricating

and assembling a product within an original equipment manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this rulemaking.

Because production employment expenditures are assumed to be a fixed percentage of cost of goods sold and the MPCs typically increase with more efficient products, labor tracks the increased prices in the GRIM. As efficiency of dehumidifiers increase, so does the complexity of the products, generally requiring more labor to produce. Based on industry feedback, DOE believes that manufacturers that use domestic production currently will continue to produce the same scope of covered products in domestic production facilities. DOE does not expect production to shift to lower labor cost countries. However, in public comments submitted in response to the NOPR and in manufacturer interviews, stakeholders provided feedback indicating that amended energy conservation standards could have a negative impact on domestic production employment, depending on the standard level.

Using the GRIM, DOE estimates that in the absence of amended energy conservation standards, there would be 88 domestic production workers in the dehumidifier industry. As noted previously, DOE estimates that 1 percent of dehumidifier units sold in the United States are manufactured domestically. Table V.20 shows the range of the impacts of potential amended energy conservation standards on U.S. production workers of dehumidifiers. A complete description of the assumptions used to generate these upper and lower bounds can be found in chapter 12 of the final rule TSD.

TABLE V.20—CHANGE IN TOTAL NUMBER OF DOMESTIC PRODUCTION EMPLOYEES IN 2019 IN THE DEHUMIDIFIER INDUSTRY

	No-new-standards case*	TSL 1	TSL 2	TSL 3	TSL 4
Change in Total Number of Domestic Production Workers in 2019.**	.....	0 to 1	0 to 1	(44) to 2	(88) to 11

* No-new-standards case estimates 88 domestic production workers in the dehumidifier industry in 2019.
** Parentheses indicate negative values.

The upper end of the range estimates the maximum increase in the number of production workers in the dehumidifier industry after implementation of an emended energy conservation standard. It assumes that manufacturers would continue to produce the same scope of covered products within the United States and would require some additional labor to produce more efficient products.

The lower end of the range represents the maximum decrease in total number of U.S. production workers that could result from an amended energy conservation standard and is based on direct feedback from interested parties. Feedback from manufacturers during interviews indicated that some domestic small businesses in the dehumidifier industry (specifically in the high-capacity portable dehumidifier and whole-home dehumidifier segments) may be forced to reduce employment, shift production abroad, or exit the dehumidifier market as a result of amended energy conservation standards. This lower bound of direct employment impacts reflects the worst-case scenario of impacts.

This conclusion is independent of any conclusions regarding indirect employment impacts in the broader U.S. economy, which are documented in Chapter 16 of the TSD.

c. Impacts on Manufacturing Capacity

As noted previously, the majority of dehumidifiers sold in the United States are not produced domestically. However, in response to standard levels analyzed in the June 2015 NOPR, domestic manufacturers of high-capacity portable dehumidifiers and whole-home dehumidifiers commented that production of these products could shift to lower-cost countries or halt altogether as a result of amended energy conservation standards, depending on the level selected. This could lead to a permanently lower production capacity within the dehumidifier industry.

d. Impacts on Subgroups of Manufacturers

Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. Using average cost assumptions to develop an industry cash-flow estimate is inadequate to assess differential impacts among manufacturer subgroups.

For dehumidifier equipment, DOE identified and evaluated the impact of amended energy conservation standards on one subgroup: Small manufacturers. The SBA defines a "small business" as having 1,250 employees or less for NAICS 333415 ("Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing") or 1,500 employees or less for NAICS 335210 ("Small Electrical Appliance Manufacturing"). Based on this definition, DOE identified five manufacturers in the dehumidifier equipment industry that are small businesses.

For a discussion of the impacts on the small manufacturer subgroup, see the Regulatory Flexibility Analysis in section VII.B of this final rule and chapter 12 of the final rule TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. DOE believes that a standard level is not economically justified if it contributes to an unacceptable cumulative regulatory burden. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected

future returns than competing products. In addition to DOE's energy conservation regulations for dehumidifiers, several other existing and pending regulations apply to these products and other equipment produced by the same manufacturers. DOE looks at these regulations that could affect dehumidifier manufacturers that will take effect approximately 3 years before or after the 2019 compliance date of amended energy conservation standards for dehumidifiers. Additionally, DOE will evaluate its approach to assessing cumulative regulatory burden for use in future rulemakings to ensure that it is effectively capturing the overlapping impacts of its regulations. In particular, DOE will assess whether looking at rules where any portion of the compliance period potentially overlaps with the compliance period for the subject rulemaking would yield a more accurate reflection of cumulative regulatory burden. For example, DOE recognizes that if it were to undertake a rulemaking to amend the standards for room air conditioners pursuant to the 6-year look back requirement under 42 U.S.C. 6295(m), any future room air conditioner rule could have a cumulative impact on manufacturers of dehumidifiers during the compliance period for these dehumidifiers standards.

The compliance years and expected industry conversion costs of energy conservation standards that may also impact dehumidifier manufacturers are indicated in Table V.21. For each rule, the table also contains the number of affected dehumidifier original equipment manufacturers (OEMs). DOE excludes companies that import and relabel dehumidifiers from this count, as DOE's analysis indicates that OEMs bear the majority of the economic burden for a given rule. Only 50 percent of the companies selling dehumidifiers in the United States are OEMs (12 of 24). None of the OEMs identified in this table are domestic in terms of ownership or manufacturing site.

TABLE V.21—OTHER FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING DEHUMIDIFIER OEMS

DOE Regulation	Number of manufacturers *	Estimated INPV *** (No new standards case)	Estimated total industry conversion costs	Compliance date	Number of affected dehumidifier OEMs
Microwave Ovens, 78 FR 36316 (June 17, 2013).	12	1,386.5 Million (2011$).	43.1 Million (2011$)	2016	1
Residential Clothes Washers, 77 FR 32308 (May 31, 2012).	16	2,586.0 Million (2010$).	418.5 Million (2010$)	2018	2
Ceiling Fans, 81 FR 1688, (January 13, 2016).	31	1,308.7 Million (2014$).	9.4 Million (2014$) ...	** 2019	1
Furnace Fans, 79 FR 38129 (July 3, 2014)	37	349.6 Million (2013$)	40.6 Million (2013$)	2019	2
Portable Air Conditioners Pre-publication NOPR issued on April 27, 2016.	29	725.5 Million (2014$)	302.8 Million (2014$)	** 2021	4

* The number of manufacturers listed in the final rule for the energy conservation standard that is contributing to cumulative regulatory burden.
** The dates listed are an approximation. The exact dates are pending final DOE action.
*** The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period of the rulemaking (typically 30 years).

In addition to other Federal energy conservation standards, manufacturers cited third-party certification programs (*e.g.*, UL safety standards certification for dehumidifiers) as a source of cumulative regulatory burden for dehumidifier manufacturers. For more details, see chapter 12 of the final rule TSD.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for dehumidifiers, DOE compared the energy consumption of those products under the base case to their anticipated energy consumption under each TSL.

Table V.22 presents DOE's projections of the national energy savings for each TSL considered for dehumidifiers shipped in the 2019–2048 period. The savings were calculated using the approach described in section IV.H.1 of this document.

TABLE V.22—DEHUMIDIFIERS: CUMULATIVE NATIONAL ENERGY SAVINGS

[Shipments in 2019–2048]

Savings	Trial standard level			
	1	2	3	4
Primary Energy Savings (*quads*)	0.07	0.29	0.30	0.79
FFC Energy Savings (*quads*)	0.07	0.30	0.31	0.82

OMB Circular A–4 [69] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of, and compliance with, such revised standards.[70] The review

[69] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[70] Under 42 U.S.C. 6295(m)(1), no later than 6 years after DOE issues a final rule establishing or amending an energy conservation standard, DOE must publish a notice of determination that

Continued

timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to dehumidifiers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.23. The impacts are counted over the lifetime of dehumidifiers purchased in 2019–2027.

TABLE V.23—DEHUMIDIFIERS: CUMULATIVE NATIONAL ENERGY SAVINGS FOR PRODUCTS SHIPPED IN 2019–2027

Savings	Trial standard level			
	1	2	3	4
Primary Energy Savings (*quads*)	0.02	0.09	0.10	0.23
FFC Energy Savings (*quads*)	0.02	0.10	0.10	0.25

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the standard levels considered for dehumidifiers. In accordance with the OMB's guidelines on regulatory analysis,[71] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V.24 shows the consumer NPV results for each TSL DOE considered for dehumidifiers. The impacts are counted over the lifetime of products purchased in 2019–2048.

TABLE V.24—DEHUMIDIFIERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2048

Discount rate	Trial standard level (Billion 2014$)			
	1	2	3	4
3 percent	0.61	2.71	2.77	6.74
7 percent	0.28	1.28	1.30	3.04

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.25. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.25—DEHUMIDIFIERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2019–2027

Discount rate	Trial standard level (Billion 2014$)			
	1	2	3	4
3 percent	0.22	1.05	1.07	2.41
7 percent	0.14	0.65	0.66	1.47

The above results reflect the use of a default trend to estimate the change in price for dehumidifiers over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the final rule TSD. In the high price decline case, the NPV of consumer benefits is higher than in the default case. In the low price decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for dehumidifiers to reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2019–2048), where these uncertainties are reduced.

standards for the product do not need to be amended or a NOPR that includes new proposed standards. The 9-year analytical period includes this 6-year period and an additional 3 years to issue the final rule and allow time for industry compliance.

[71] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis," Section E, (September 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

The results suggest that the adopted standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this rule, discussed in section IV.C of this document, DOE has concluded that the standards adopted in this final rule would not reduce the utility or performance of the dehumidifiers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

5. Impact of Any Lessening of Competition

As discussed in section e, the Attorney General of the United States (Attorney General) determines the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination in writing to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making such determination, DOE provided the Department of Justice (DOJ) with copies of the NOPR and the TSD for review. In its assessment letter responding to DOE, DOJ concluded that the proposed energy conservation standards for dehumidifiers are unlikely to have a significant adverse impact on competition. DOE is publishing the Attorney General's assessment at the end of this final rule.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the final rule TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from amended standards for dehumidifiers is expected to yield environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V.26 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the final rule TSD.

TABLE V.26—CUMULATIVE EMISSIONS REDUCTION FOR DEHUMIDIFIERS SHIPPED IN 2019–2048

	Trial standard level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	4.0	17.7	18.1	47.5
SO_2 (*thousand tons*)	2.4	10.8	11.1	29.0
NO_X (*thousand tons*)	4.4	19.3	19.7	52.0
Hg (*tons*)	0.01	0.04	0.04	0.11
CH_4 (*thousand tons*)	0.4	1.5	1.6	4.1
N_2O (thousand tons)	0.05	0.22	0.22	0.59
Upstream Emissions				
CO_2 (*million metric tons*)	0.2	1.0	1.0	2.6
SO_2 (*thousand tons*)	0.0	0.2	0.2	0.5
NO_X (*thousand tons*)	3.2	13.8	14.1	37.4
Hg (*tons*)	0.0	0.0	0.0	0.0
CH_4 (*thousand tons*)	17.4	76.4	78.1	206.6
N_2O (thousand tons)	0.00	0.01	0.01	0.02
Total FFC Emissions				
CO_2 (*million metric tons*)	4.2	18.6	19.0	50.1
SO_2 (*thousand tons*)	2.5	11.0	11.3	29.5
NO_X (*thousand tons*)	7.5	33.1	33.9	89.4
Hg (*tons*)	0.01	0.04	0.04	0.11
CH_4 (*thousand tons*)	17.8	77.9	79.7	210.7
CH_4 (thousand *tons CO_2eq*)*	498	2,182	2,231	5,900
N_2O (thousand tons)	0.05	0.23	0.23	0.61
N_2O (*thousand tons CO_2eq*)*	13.7	60.5	61.8	162.2

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).

As part of the analysis for this rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for dehumidifiers. As discussed in section IV.K of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V.27 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the final rule TSD.

TABLE V.27—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2019–2048

TSL	SCC case * (million 2014$)			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	29.2	131.0	207.2	398.6
2	129.7	580.0	916.2	1,763
3	132.6	592.9	936.6	1,802
4	343.9	1,547	2,447	4,705
Upstream Emissions				
1	1.6	7.1	11.3	21.7
2	7.0	31.4	49.7	95.6
3	7.1	32.1	50.8	97.7
4	18.5	84.2	133.4	256.3
Total FFC Emissions				
1	30.8	138.2	218.5	420.3
2	136.7	611.4	965.9	1,859
3	139.7	625.0	987.4	1,900
4	362.4	1,631	2,580	4,961

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.*, not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for dehumidifiers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.28 presents the cumulative present value for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values, which reflect DOE's primary estimate. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V.29.

TABLE V.28—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR DEHUMIDIFIERS SHIPPED IN 2019–2048 *

TSL	Million 2014$	
	3% discount rate	7% discount rate
Power Sector Emissions		
1	8.7	3.9
2	38.9	17.6
3	39.7	18.0
4	102.9	45.7

TABLE V.28—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR DEHUMIDIFIERS SHIPPED IN 2019–2048 *—Continued

TSL	Million 2014$	
	3% discount rate	7% discount rate
Upstream Emissions		
1	6.2	2.7
2	27.7	12.2
3	28.3	12.5
4	73.6	31.8
Total FFC Emissions		
1	15.0	6.6
2	66.6	29.8
3	68.0	30.4
4	176.5	77.4

* Results are based on the low benefit-per-ton values.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider

any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.29 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.29—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with: (Billion 2014$)			
	SCC case $12.2/metric ton and 3% low NO_X value	SCC case $40.0/metric ton and 3% low NO_X value	SCC case $62.3/metric ton and 3% low NO_X value	SCC case $117/metric ton and 3% low NO_X value
1	0.7	0.8	0.8	1.0
2	2.9	3.4	3.7	4.6
3	3.0	3.5	3.8	4.7
4	7.3	8.5	9.5	11.9

TSL	Consumer NPV at 7% discount rate added with: (billion 2014$)			
	SCC Case $12.2/ metric ton and 7% low NO_X value	SCC Case $40.0/ metric ton and 7% low NO_X value	SCC Case $62.3/ metric ton and 7% low NO_X value	SCC Case $117/ metric ton and 7% low NO_X value
1	0.3	0.4	0.5	0.7
2	1.4	1.9	2.3	3.2
3	1.5	2.0	2.3	3.2
4	3.5	4.7	5.7	8.1

Note: The SCC case values represent the global SCC in 2015, in 2014$, for each case.

In considering the above results, two issues are relevant. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2019 to 2048. Because CO_2 emissions have a very long residence time in the atmosphere,[72] the SCC values in future years reflect future climate-related impacts that continue beyond 2100.

C. Conclusion

When considering standards, the new or amended energy conservation standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)). The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In the June 2015 NOPR, DOE proposed energy conservation standards for dehumidifiers at TSL 3, as constructed for that analysis. The minimum IEFs corresponding to TSL 3 from the June 2015 NOPR are shown in Table V.30. 80 FR 31645, 31696 (June 3, 2015).

TABLE V.30—NOPR PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR DEHUMIDIFIERS

Portable dehumidifier product capacity (pints/day)	Minimum integrated energy factor (L/kWh)
30.00 or less	1.30
30.01–45.00	1.60
45.01 or more	2.80
Whole-home dehumidifier product case volume (cubic feet)	
8.0 or less	2.09
More than 8.0	3.52

Aprilaire encouraged DOE to analyze portable dehumidifiers and whole-home dehumidifiers as separate markets with separate regulations and test procedures and to suspend proposed regulations on the whole-home dehumidifier market. Aprilaire suggested that in lieu of proposing whole-home dehumidifier standards, that DOE use the Build America program to better understand the market and applications. (Aprilaire, No. 34 at pp. 1, 3) Further, Aprilaire commented that because whole-home dehumidifiers are a subsystem of energy control in the home, regulating that market may have a detrimental effect on the overall goal of reducing energy use in the home. (Aprilaire, Public Meeting Transcript, No. 35 at pp. 94–95) In this final rule, DOE considered multiple TSLs representing both energy conservation standards at the baseline efficiency level and higher efficiency levels for whole-home dehumidifiers. Section V.C.1 of this document describes how DOE selected the energy conservation standards established in this final rule.

Therma-Stor recommended a single minimum efficiency level be established for all portable dehumidifiers and a single minimum efficiency level be established for whole-home dehumidifiers based upon the test procedure in appendix X1. (Therma-Stor, No. 38 at pp. 2–3) As discussed in section IV.A.1 of this document, DOE separated both portable dehumidifiers and whole-home dehumidifiers into multiple product classes to ensure that consumer utility is maintained under any amended energy conservation standards. Section IV.C.1 of this final rule explains the efficiency levels DOE analyzed for each of the product classes. In that discussion, DOE explains how different IEF values define each efficiency level for the different product classes. In constructing TSLs for this final rule, DOE selected efficiency levels for each individual product class. Accordingly, DOE considered different minimum efficiency levels for the individual product classes in each TSL.

Therma-Stor commented that only two of its seven whole-home dehumidifier models exceed the proposed minimum efficiency level from the June 2015 NOPR. Therma-Stor cautioned that the proposed regulation would reduce the number of efficient high-capacity portable dehumidifier and whole-home dehumidifier choices available to consumers who would instead purchase one, or multiple, inefficient low-capacity portable dehumidifiers. (Therma-Stor, No. 38 at pp. 2–3) In this final rule analysis, DOE updated its estimates of manufacturer impacts at the different analyzed efficiency levels. (See section IV.J of this document.) DOE considered these impacts for each TSL when determining appropriate standards for dehumidifiers. Section V.C.1 of this document details the benefits and burdens of each TSL considered in this final rule.

Therma-Stor stated that the test procedure for whole-home dehumidifiers in appendix X1 specifies an external static pressure which increases the necessary fan power beyond that specified for portable dehumidifiers. Therefore, Therma-Stor expressed concern that, although there are no whole-home dehumidifiers currently in the market that are more efficient than a similar-capacity portable dehumidifier, the proposed efficiency level for "large" whole-home dehumidifiers is 26 percent higher than the level proposed for high-capacity portable dehumidifiers. (Therma-Stor, No. 38 at pp. 2–3) Although whole-home dehumidifiers are tested with a ducted setup that imposes an external static pressure on the unit, which increases power consumption, the higher ambient test temperature increases overall dehumidification capacity compared to a portable dehumidifier. As a result, a whole-home dehumidifier would typically have a higher rated IEF than a portable dehumidifier with similar components.

ASAP and the Joint Commenters supported the proposed levels for high-capacity portable dehumidifiers and whole-home dehumidifiers, while they urged DOE to consider adopting TSL 4 in the final rule for the two portable dehumidifier product classes with capacities less than or equal to 45 pints/day. (ASAP, Public Meeting Transcript, No. 35 at pp. 9–10; Joint Commenters, No. 40 at pp. 1–4) The Joint Commenters stated that multiple market and policy changes will likely increase the demand for high-efficiency compressors for room air conditioners, which would increase the availability of high-efficiency compressors for dehumidifiers. The Joint Commenters commented that impacts on manufacturers would be substantially reduced by maintaining the proposed TSL 3 for high-capacity portable dehumidifiers and whole-home dehumidifiers while adopting the proposed TSL 4 for portable dehumidifiers with capacities ≤45 pints/day. They stated that adopting the proposed TSL 3 for high-capacity portable dehumidifiers and whole-home dehumidifiers would limit impacts on small domestic manufacturers and eliminate DOE's concern regarding the availability of high-efficiency compressors for high-capacity portable dehumidifiers and whole-home dehumidifiers. (Joint Commenters, No. 40 at pp. 1, 3–4)

AHAM disagreed with adopting the proposed TSL 4 instead of the proposed TSL 3 for portable dehumidifiers less than 45 pints per day. AHAM noted that TSL 4 is the max-tech level for which no units are currently on the market, and stated that selecting TSL 4 may contribute to the potential unavailability of products at certain capacities across that product class. To meet TSL 4, AHAM suggested that manufacturers would have to incorporate the highest efficiency compressors, but few are available; therefore, several dehumidifier platforms could be unable to meet the max-tech IEF. (AHAM, No. 39 at p. 6)

DOE reviewed the comments submitted by ASAP, the Joint Commenters, and AHAM that directly addressed the proposed standards and TSLs analyzed in the June 2015 NOPR. In this final rule, DOE reassessed the benefits and burdens of the TSLs, including newly constructed TSLs for this final rule analysis, while considering all comments received, as detailed below.

For this final rule, DOE considered the impacts of amended standards for dehumidifiers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example,

[72] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming.'" *J. Geophys. Res.* 110. pp. D14105 (2005).

between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[73]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[74] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Dehumidifier Standards

Table V.31 and Table V.32 summarize the quantitative impacts estimated for each TSL for dehumidifiers. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.31—DEHUMIDIFIER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC Energy Savings (quads)				
	0.07	0.30	0.31	0.82.
NPV of Customer Benefits (2014$ billion)				
3% discount rate	0.61	2.71	2.77	6.74.
7% discount rate	0.28	1.28	1.30	3.04.
Cumulative FFC Emissions Reduction				
CO_2 *(million metric tons)*	4.2	18.6	19.0	50.1.
NO_X *(thousand tons)*	7.5	33.1	33.9	89.4.
Hg *(tons)*	0.01	0.04	0.04	0.11.
N_2O *(thousand tons)*	0.05	0.23	0.23	0.61.
N_2O *(thousand tons CO_2eq *)*	13.7	60.5	61.8	162.2.
CH_4 *(thousand tons)*	17.8	77.9	79.7	210.7.
CH_4 *(thousand tons CO_2eq *)*	498	2,182	2,231	5,900.
SO_2 *(thousand tons)*	2.5	11.0	11.3	29.5.
Value of Emissions Reduction				
CO_2 *(2014$ million)***	31 to 420	137 to 1,859	140 to 1,900	362 to 4,961.
NO_X—3% discount rate *(2014$ million)*	15.0 to 34.2	66.6 to 151.8	68.0 to 155.1	176.5 to 402.3.
NO_X—7% discount rate *(2014$ million)*	6.6 to 14.9	29.8 to 67.1	30.4 to 68.6	77.4 to 174.6.

Parentheses indicate negative (−) values.
*CO_2eq is the quantity of CO_2 that would have the same GWP.
**Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.32—DEHUMIDIFIER TRIAL STANDARD LEVELS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Industry NPV (2014$ millions) *(No-New-Standards INPV = 179.5).*	175.8 to 176.5	142.0 to 145.5	137.1 to 140.7	106.8 to 126.9.
Industry NPV *(% change)*	(2.0%) to (1.7%)	(20.9%) to (18.9%)	(23.6%) to (21.6%)	(40.5%) to (29.3%).

[73] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[74] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*).

TABLE V.32—DEHUMIDIFIER TRIAL STANDARD LEVELS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
Consumer Average LCC Savings (2014$)				
PC1 (≤25.00 pints/day)	60	107	107	110.
PC2 (25.01–50.00 pints/day)	157	119	119	191.
PC3 (>50.00 pints/day)	17	142	142	96.
PC4 (≤8.0 ft³)			242	242.
PC5 (≤8.0 ft³)			479	386.
Consumer Simple PBP (years)				
PC1 (≤25.00 pints/day)	0.4	0.5	0.5	1.3.
PC2 (25.01–50.00 pints/day)	0.2	0.4	0.4	0.9.
PC3 (>50.00 pints/day)	8.2	4.5	4.5	7.2.
PC4 (≤8.0 ft³)			1.9	6.8.
PC5 (≤8.0 ft³)			2.0	5.8.
% of Consumers That Experience Net Cost				
PC1 (≤25.00 pints/day)	0	0.1	0.1	11.5.
PC2 (25.01–50.00 pints/day)	0	0.7	0.7	5.1.
PC3 (>50.00 pints/day)	44.9	28.7	28.7	54.3.
PC4 (≤8.0 ft³)			9.9	42.6.
PC5 (≤8.0 ft³)			10.8	43.4.

Parentheses indicate negative (−) values.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 0.82 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $3.04 billion using a discount rate of 7 percent, and $6.74 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 50.1 Mt of CO_2, 89.4 thousand tons of NO_X, 29.5 thousand tons of SO_2, 0.11 ton of Hg, 0.61 thousand tons of N_2O, and 210.7 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $362 million to $4,961 million.

At TSL 4, the average LCC impact is a savings of $110 for PC1, $191 for PC2, $96 for PC3, $242 for PC4, and $386 for PC5. The simple PBP is 1.3 years for PC1, 0.9 years for PC2, 7.2 years for PC3, 6.8 years for PC4, and 5.8 years for PC5. The fraction of consumers experiencing a net LCC cost is 11.5 percent for PC1, 5.1 percent for PC2, 54.3 percent for PC3, 42.6 percent for PC4, and 43.4 percent for PC5.

At TSL 4, the projected change in INPV ranges from a decrease of $72.7 million to a decrease of $52.6 million. If the high end of the range of impacts is reached, TSL 4 could result in a net loss of up to 40.5 percent in INPV for manufacturers. Products that meet the efficiency standards specified by this TSL are estimated to represent less than 2 percent of current annual shipments. As such, manufacturers would have to redesign nearly all products by the expected 2019 projected compliance date to meet demand. Redesigning all units to meet the current max-tech efficiency levels would require considerable capital and product conversion expenditures. At TSL 4, the capital conversion costs total as much as $39.1 million, 3.8 times the industry annual ordinary capital expenditure in 2018 (the year leading up to amended standards). DOE estimates that complete platform redesigns would cost the industry $55.2 million in product conversion costs. These conversion costs largely relate to the extensive research programs required to develop new products that meet the efficiency standards at TSL 4. These costs are equivalent to 10.9 times the industry annual budget for research and development. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 4 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 4. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, especially in the lower-capacity portable dehumidifier segment, DOE expects that TSL 4 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss to manufacturers of 40.5 percent of INPV. Additionally, TSL 4 could result in a net loss to whole-home dehumidifier manufacturers of 174.7 percent of INPV, or cause some domestic manufacturers to exit the whole-home dehumidifier market altogether.

Beyond the direct financial impact on manufacturers, TSL 4 may also contribute to the potential unavailability of products at certain capacities across the five product classes. To meet TSL 4, all products would be required to incorporate the highest efficiency compressors; however, manufacturers indicated that few such compressors are available in the range of compressor capacities suitable for dehumidifiers, and it is unlikely that substantially more would become available if standards at TSL 4 were adopted. In addition, the specific compressor capacities available at any given time are driven largely by the markets for other products with higher shipments (*e.g.*, room air conditioners), and thus dehumidifier manufacturers may be constrained in their design choices. Because DOE assumed manufacturers would optimize all components at TSL 4, including the use of high-efficiency compressors as well as larger heat exchangers and permanent-magnet blower motors, DOE expects that those dehumidifier platforms for which a suitable high efficiency compressor is not available would be unable to meet the max-tech efficiency levels associated with TSL 4. While this would likely not eliminate entire product classes from the market,

it has the potential to eliminate dehumidifiers of certain capacities within a given product class. The potential for this impact on manufacturers of high-capacity portable dehumidifiers and whole-home dehumidifiers is exacerbated by this segment's low production volumes, which limits manufacturers' ability to influence the availability of higher efficiency components from their vendors.

Therefore, the Secretary concludes that at TSL 4 for dehumidifiers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential impact on product availability, and the impacts on manufacturers, including significantly negative impacts on small domestic manufacturers of high-capacity portable and whole-home dehumidifiers. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which would save an estimated 0.31 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.30 billion using a discount rate of 7 percent, and $2.77 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 19.0 Mt of CO_2, 33.9 thousand tons of NO_X, 11.3 thousand tons of SO_2, 0.04 tons of Hg, 0.23 thousand tons of N_2O, and 79.7 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $140 million to $1,900 million.

At TSL 3, the average LCC impact is a savings of $107 for PC1, $119 for PC2, $142 for PC3, $242 for PC4, and $479 for PC5. The simple PBP is 0.5 years for PC1, 0.4 and PC2, 4.5 years for PC3, 1.9 years for PC4, and 2.0 years for PC5. The fraction of consumers experiencing a net LCC cost is 0.1 percent for PC1, 0.7 percent for PC2, 28.7 percent for PC3, 9.9 percent for PC4, and 10.8 percent for PC5.

At TSL 3, the projected change in INPV ranges from a decrease of $42.4 million to a decrease of $38.7 million. If the high end of the range of impacts is reached, TSL 3 could result in a net loss of up to 23.6 percent in INPV for manufacturers, with high disproportionate impacts to small, domestic manufacturers of whole-home and high-capacity portable dehumidifiers. The capital conversion costs required by whole-home dehumidifier manufacturers (which includes four small, domestic manufacturers and one larger foreign manufacturer) in order to comply with TSL 3 are estimated to be $1.8 million, 5.4 times the whole-home dehumidifier industry annual ordinary capital expenditure in 2018 (the year leading up to amended standards). DOE estimates that complete platform redesigns would cost the industry $5.5 million in product conversion costs, equivalent to 32.7 times the whole-home dehumidifier industry annual budget for research and development. As a result, TSL 3 could result in a net loss to whole-home dehumidifier industry of 101.4 percent of INPV or cause some domestic manufacturers to exit the whole-home dehumidifier market altogether. Additionally, the manufacturers with the greatest share of the whole-home dehumidifier market are small and domestic and also produce high-capacity portable dehumidifiers. Accordingly, these manufacturers will incur the added burden of compliance with EL 3 for their high-capacity portable dehumidifiers as well as with standards above the baseline for their whole-home dehumidifiers. In aggregate, as detailed in section VII.B of this document, at TSL 3, the typical small manufacturer may incur $2.3 million in capital and product conversion costs in order to maintain existing product lines for both portable and whole-home dehumidifiers. This equates to approximately 56.1 percent of the typical small manufacturer's annual revenue and 945.1 percent of its annual operating profit.

Although some portable dehumidifiers may require higher efficiency compressors, the efficiency levels specified at TSL 3 offer manufacturers multiple design pathways to meet the standard. This in turn would allow manufacturers to maintain product offerings should a high efficiency compressor be unavailable at a given compressor capacity. In addition, a wide variety of units are already available that meet the efficiency levels for portable dehumidifiers specified at TSL 3.

The Secretary concludes that at TSL 3 for dehumidifiers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the significantly negative impacts on small domestic manufacturers of high-capacity portable and whole-home dehumidifiers. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which would save an estimated 0.30 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.28 billion using a discount rate of 7 percent, and $2.71 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 18.6 Mt of CO_2, 33.1 thousand tons of NO_X, 11.0 thousand tons of SO_2, 0.04 tons of Hg, 0.23 thousand tons of N_2O, and 77.9 thousand tons of CH_4. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $137 million to $1,859 million.

At TSL 2, the average LCC impact is a savings of $107 for PC1, $119 for PC2, $142 for PC3, $0 for PC4, and $0 for PC5. The simple PBP is 0.5 years for PC1, 0.4 and PC2, 4.5 years for PC3, and zero years for PC4 and PC5. The fraction of consumers experiencing a net LCC cost is 0.1 percent for PC1, 0.7 percent for PC2, 28.7 percent for PC3, and zero percent for PC4 and PC5 because TSL 2 is set at the baseline efficiency level for PC4 and PC5.

At TSL 2, the projected change in INPV ranges from a decrease of $37.5 million to a decrease of $34.0 million. If the high end of the range of impacts is reached, TSL 2 could result in a net loss of up to 20.9 percent in INPV for manufacturers. In contrast to TSL 3 and TSL 4, TSL 2 would not result in disproportionate impacts to the whole-home dehumidifier industry because TSL 2 corresponds to the baseline efficiency level for the whole-home product classes. Products that meet the efficiency standards specified at this TSL level represent 39 percent of shipments of all dehumidifiers in 2018 (the year leading up to amended standards). In order to bring the remaining products into compliance with TSL 2, the portable dehumidifier industry may incur capital and product conversion costs of $22.6 million and $29.9 million, respectively. Although, at TSL 2, three out of the five small, domestic manufacturers will incur some costs associated with redesigning high-capacity portable products, only one of these five manufacturers limits its product offerings in the dehumidifier market to the high-capacity portable segment, with most of its products comprising commercial units that are not covered products under this rulemaking. The other two small, domestic manufacturers that produce high-capacity portable products also manufacture whole-home dehumidifiers, and thus their impacts at TSL 2 will be significantly lower than at TSL 3 and TSL 4. TSL 2 will result

in little to no adverse impacts for whole-home dehumidifier manufacturing, including the two small, domestic manufacturers that focus exclusively on these dehumidifiers. For these reasons, TSL 2 will minimize disproportionate impacts to small, domestic dehumidifier manufacturers relative to TSL 3 and TSL 4.

Although some dehumidifiers may require higher efficiency compressors, the efficiency levels specified at TSL 2 offer manufacturers multiple design pathways to meet the standard. This allows manufacturers to maintain product offerings should a high efficiency compressor be unavailable at a given compressor capacity. In addition, units are already available that meet the efficiency levels specified at TSL 2.

The Secretary concludes that at TSL 2 for dehumidifiers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, estimated monetary value of the CO_2 emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers of portable dehumidifiers.

After carefully considering the analysis and the benefits and burdens of TSL 2, the Secretary concludes that this TSL will offer the maximum improvement in energy efficiency that is technologically feasible and economically justified, and will result in significant conservation of energy without eliminating or making unavailable any product classes or portions of product classes. Therefore, DOE is establishing amended energy conservation standards for dehumidifiers at TSL 2, as indicated in Table V.33.

TABLE V.33—AMENDED ENERGY CONSERVATION STANDARDS FOR DEHUMIDIFIERS

Portable dehumidifier product capacity (pints/day)	Minimum integrated energy factor (L/kWh)
25.00 or less	1.30
25.01–50.00	1.60
50.01 or more	2.80
Whole-home dehumidifier product case volume (cubic feet)	
8.0 or less	1.77
More than 8.0	2.41

2. Summary of Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of CO_2 and NO_X emission reductions.[75]

Table V.34 shows the annualized values for dehumidifiers under TSL 3, expressed in 2014$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $40.5/ton in 2015 (in 2014$), the estimated cost of the proposed standards for dehumidifiers is $11 million per year in increased equipment costs, while the estimated annualized benefits are $136 million per year in reduced equipment operating costs, $34 million per year in CO_2 reductions, and $2.9 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $163 million per year.

Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $40.5/ton in 2015 (in 2014$), the estimated cost of the proposed standards for dehumidifiers in today's rule is $10 million per year in increased equipment costs, while the benefits are $162 million per year in reduced operating costs, $34 million per year in CO_2 reductions, and $3.7 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $189 million per year.

TABLE V.34—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 3) FOR DEHUMIDIFIERS SOLD IN 2019–2048

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	136	131	141.
	3%	162	154	169.
CO_2 Reduction at $12.2/t**	5%	10	10	11.
CO_2 Reduction at $40.0/t**	3%	34	34	35.
CO_2 Reduction at $62.3/t**	2.5%	50	49	51.
CO_2 Reduction at $117/t**	3%	104	102	106.
NO_X Reduction†	7%	2.9	2.9	6.7.
	3%	3.7	3.7	8.6.
Total Benefits††	7% plus CO_2 range	150 to 243	144 to 236	159 to 254.
	7%	173	167	183.

[75] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2014. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table V.22. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

TABLE V.34—ANNUALIZED BENEFITS AND COSTS OF PROPOSED AMENDED STANDARDS (TSL 3) FOR DEHUMIDIFIERS SOLD IN 2019–2048—Continued

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
	3% plus CO_2 range	176 to 269	168 to 260	188 to 284.
	3%	200	192	213.
Costs				
Consumer Incremental Product Costs	7%	11	11	10.
	3%	10	12	10.
Total Net Benefits				
Total ††	7% plus CO_2 range	139 to 232	132 to 224	148 to 244.
	7%	163	156	173.
	3% plus CO_2 range	165 to 259	157 to 248	178 to 274.
	3%	189	180	203.

* This table presents the costs and benefits associated with dehumidifiers shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section 0. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the *Regulatory Impact Analysis for the Clean Power Plan Final Rule*, published in August 2015 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.*) See section IV.L.2 for further discussion. Note that the agency is primarily using a national benefit-per-ton estimate for NO_X emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski *et al.*, 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele *et al.*, 2011), the values would be nearly two-and-a-half times larger.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

VI. Certification Reporting and Enforcement Requirements

In the July 2015 Test Procedure Final Rule, DOE amended the sampling plan and certification reporting requirements for dehumidifiers in 10 CFR 429.36 to clarify how manufacturers must make representations of capacity, and for whole-home dehumidifiers, the case volume of a basic model. DOE also amended the certification reporting requirements to specify the product-specific information that must be reported for each basic model. 80 FR 45801, 45819 (July 31, 2015).

In this final rule, DOE further amends section 10 CFR 429.36(a) to provide rounding instructions for the reported IEF and to require that products capable of operating as both a portable and whole-home dehumidifier be rated and certified under both configurations, and section 10 CFR 429.36(b)(2) to detail the specific reporting requirements when testing according to appendix X and appendix X1.

In the July 2015 Test Procedure Final Rule, DOE amended the enforcement requirements for dehumidifiers in 10 CFR 429.134(f). *Id.* In this final rule, DOE amends the enforcement provisions to update the referenced efficiency metric to also include IEF.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the adopted standards for dehumidifiers are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances that are not captured by the users of such equipment. These benefits include externalities related to public health, environmental protection and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to qualify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an "economically" significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following FRFA for the products that are the subject of this rulemaking.

1. Statement of the Need for, and Objectives of, the Rule

The need for, and objectives of this final rule are stated elsewhere in the preamble and not repeated here.

2. Significant Issues Raised by Public Comment

Significant issues raised by public comment in response to the initial regulatory flexibility analysis and the economic impacts of the rule are provided in section IV.J.3 and not repeated here. As discussed in section IV.J.3, based on those comments, DOE updated its analysis of manufacturer impacts, including small business impacts, for this final rule. The standard levels adopted in this final rule were selected based on updated engineering and economic analyses.

3. Response to Comments From the Small Business Administration's Chief Counsel for Advocacy

The SBA's Chief Counsel for Advocacy did not submit comments on this rulemaking.

4. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For the manufacturers of dehumidifiers, the SBA has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the Regulatory Flexibility Act. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at: *www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Manufacturing of whole-home dehumidifiers is classified under NAICS codes 333415: Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing, whereas manufacturing of portable dehumidifiers is classified under 335210: Small Electrical Appliance Manufacturing. The SBA sets a threshold of 1,250 employees or less and 1,500 employees or less for an entity to be considered as a small business in these industry categories, respectively.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using available public information to identify potential small manufacturers. DOE's research included searches of public databases (*e.g.*, DOE's Compliance Certification Database,[76] the SBA Database[77]), individual company Web sites, and market research tools (*e.g.*, Hoovers Web site[78]) to create a list of companies that manufacture or sell products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at DOE public meetings. DOE reviewed publicly available data and contacted select companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered dehumidifiers. DOE screened out companies that do not manufacture products covered by this rulemaking, do not meet the

[76] See *http://www.regulations.doe.gov/certification-data/.*

[77] See *http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm.*

[78] See *http://www.hoovers.com/.*

definition of a "small business," or are foreign owned and operated.

DOE initially identified 25 manufacturers of dehumidifier products sold in the United States. DOE then determined that of the 25 companies, 20 were either large manufacturers, exclusively import products manufactured overseas, or are foreign owned and operated. DOE identified the remaining five manufacturers as domestic manufacturers that meet the SBA's definition of a "small business" and manufacture products covered by this rulemaking.

The five domestic small business manufacturers of dehumidifiers identified account for a small fraction of total industry shipments. In 2015, 98.5 percent of dehumidifiers sold in the United States were small portable units (belonging to product classes 1 and 2) and were made by large, diversified manufacturers. The remaining 1.5 percent of the market consists of high-capacity portable and whole-home dehumidifiers, which are primarily manufactured by small business manufacturers. It is estimated that small, domestic manufacturers account for 50 percent of high-capacity portable U.S. shipments and the overwhelming majority of whole-home dehumidifier U.S. shipments. The two small, domestic manufacturers that account for the greatest share of the combined high-capacity portable and whole-home market segments manufacture both high-capacity portable and whole-home products. Of the remaining small, domestic manufacturers, one produces only high-capacity portable dehumidifiers and two produce only whole-home dehumidifiers.

b. Manufacturer Participation

Before issuing this final rule, DOE attempted to contact all the small business manufacturers of dehumidifiers identified. Two of these small business manufacturers responded to DOE and consented to being interviewed as part of the manufacturing impact analysis. DOE also obtained information about small business impacts while interviewing large manufacturers.

c. Comparison of Large and Small Entities

Several factors may contribute to a disproportionate burden on small business manufacturers from amended energy conservation standards for dehumidifiers relative to their larger counterparts. One way in which small manufacturers could be at a disadvantage is that they may be disproportionately affected by product and capital conversion costs. Product redesign, testing, and certification costs tend to be fixed per basic model and do not scale with sales volume. Both large and small business manufacturers must make investments in R&D to redesign their products, but small businesses lack the sales volumes to sufficiently recoup these upfront investments without substantially marking up their products. Similarly, upfront capital investments in new manufacturing capital for platform redesigns, as well as depreciated manufacturing capital, can be spread across a lower volume of shipments for small business manufacturers.

In addition, because small business manufacturers typically have fewer engineers than large manufacturers, they must allocate a greater portion of their available human resources to meet an amended regulatory standard. Because engineers may need to spend more time redesigning and testing existing models as a result of the amended standard, they may have less time to develop new products.

Furthermore, smaller manufacturers may lack the purchasing power of larger manufacturers. For example, because fan motor suppliers give volume discounts to manufacturers based on the number of motors they purchase, larger manufacturers may have a pricing advantage because they make higher volume purchases. This purchasing power difference between high-volume and low-volume orders applies to other dehumidifier components as well, including compressors and heat exchangers. DOE expects that certain larger manufacturers of lower-capacity portable dehumidifiers may even manufacture heat exchangers in-house. Additionally, because small business manufacturers produce higher-capacity dehumidifiers, they typically require larger and/or custom-made components (*e.g.*, larger compressors and heat exchangers), compared to the lower-capacity portable dehumidifier manufacturers that account for the majority of the dehumidifier market. Because of the low-volume nature of the high-capacity portable dehumidifier and whole-home dehumidifier market, certain technological improvements to components may be developed only for lower-capacity portable products, or with significant lag time for application in high-capacity portable dehumidifier and whole-home dehumidifier products.

In terms of cumulative regulatory burden faced by small domestic dehumidifier manufacturers, the small manufacturers with the greatest dehumidifier market share are more specialized and concentrated in dehumidifier manufacturing and, thus, manufacture a smaller range of products than larger companies. The other products that some of the small manufacturers also produce include humidifiers, air purifiers and desiccant wheels. None of these are currently regulated by DOE.

However, one small manufacturer (with low market share among small dehumidifier manufacturers) also produces residential furnaces. This small manufacturer produces only whole-home dehumidifiers and would not be burdened by the whole-home standard level established in this document.

In terms of access to the capital required to cover the conversion costs associated with reaching the proposed standards, small business manufacturers would likely need to take on additional debt, whereas larger diversified manufacturers of small portable products would be better equipped to fund purchases with existing cash flow from operations. Additionally, since the recession of 2007 and 2008, small business lending has dropped substantially due to a combination of tightened lending standards, increasing collateral requirements and reduced focus on small business credit markets. Thus, small businesses generally have less access to capital than larger companies.

5. Description and Estimate of Compliance Requirements

DOE derived industry conversion costs using a top-down approach described in section IV.J.2.a. Using product platform counts by product class and manufacturer, DOE estimated the distribution of industry conversion costs between small manufacturers and large manufacturers. Using its count of manufacturers, DOE calculated capital conversion costs (Table VII.1) and product conversion costs (Table VII.2) for an average small manufacturer versus an average large manufacturer. To provide context on the size of the conversion costs relative to the size of the businesses, DOE presents the conversion costs relative to annual revenue and annual operating profit at each TSL for the average small manufacturer (Table VII.3) and the average large manufacturer (Table VII.4). The current annual revenue and annual operating profit estimates are derived from the GRIM's industry revenue calculations and the market share breakdowns of small versus large manufacturers.

TABLE VII.1—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S CAPITAL CONVERSION COSTS

Trial standard level	Capital conversion costs for typical small manufacturer (2014 $M)	Capital conversion costs for typical large manufacturer (2014 $M)
TSL 1	$0.2	$0.1
TSL 2	0.2	1.3
TSL 3	0.6	1.3
TSL 4	0.8	2.1

TABLE VII.2—COMPARISON OF TYPICAL SMALL AND LARGE MANUFACTURER'S PRODUCT CONVERSION COSTS

Trial standard level	Product conversion costs for typical small manufacturer (2014 $M)	Product conversion costs for typical large manufacturer (2014 $M)
TSL 1	$0.5	$0.0
TSL 2	0.8	1.5
TSL 3	1.7	1.5
TSL 4	2.4	2.5

TABLE VII.3—IMPACTS OF CONVERSION COSTS ON A TYPICAL SMALL MANUFACTURER

Trial standard level	Capital conversion costs (2014 $M)	Product conversion costs (2014 $M)	Conversion costs/ annual revenue (%)	Conversion costs/ annual operating profit (%)	Conversion costs/ conversion period revenue * (%)	Conversion costs/ conversion period operating profit * (%)
TSL 1	$0.2	$0.5	15.3	258.1	5.1	86.0
TSL 2	0.2	0.8	24.9	419.1	8.3	139.7
TSL 3	0.6	1.9	56.1	945.1	18.7	315.0
TSL 4	0.8	2.5	78.0	1313.8	26.0	437.9

* **Note:** The conversion period, the time between the final rule publication year and the compliance year for this rulemaking, is 3 years. Annual Revenues, and Operating Profit figures are for 2015.

TABLE VII.4—IMPACTS OF CONVERSION COSTS ON A TYPICAL LARGE MANUFACTURER

Trial standard level	Capital conversion costs (2014 $M)	Product conversion costs (2014 $M)	Conversion costs/ annual revenue (%)	Conversion costs/ annual operating profit (%)	Conversion costs/ conversion period revenue * (%)	Conversion costs/ conversion period operating profit * (%)
TSL 1	$0.1	$0.0	0.0	0.6	0.0	0.2
TSL 2	1.3	1.5	0.8	13.1	0.3	4.4
TSL 3	1.3	1.5	0.8	13.1	0.3	4.4
TSL 4	2.1	2.5	1.3	21.4	0.4	7.1

* **Note:** The conversion period, the time between the final rule publication year and the compliance year for this rulemaking, is 3 years. Annual Revenues, and Operating Profit figures are for 2015.

At the established standard level (TSL 2), DOE estimates total conversion costs associated with amended energy conservation standards for an average small manufacturer to be $1.01 million, which is approximately 24.9 percent of annual revenue and 419.1 percent of annual operating profit. This suggests that an average small manufacturer would need to reinvest roughly 139.7 percent of its operating profit per year over the conversion period to comply with standards. At this TSL, the standard level for whole-home dehumidifiers is the baseline. Accordingly three of the five small, domestic manufacturers may incur costs associated only with the high-capacity portable segment of their business.

The total conversion costs associated with new and amended energy conservation standards for an average large manufacturer is $2.79 million, which is approximately 0.8 percent of annual revenue and 13.1 percent of annual operating profit. This suggests that an average large manufacturer would need to reinvest roughly 4.4 percent of its operating profit per year over the 3-year conversion period.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from the adopted standards, represented by TSL 2. In reviewing alternatives to the adopted standards, DOE examined an energy conservation standard set at both higher and lower efficiency levels.

As discussed in section V. C., DOE's analysis shows that TSL 3 achieves

approximately 3 percent higher energy savings than TSL 2. TSL 4 achieves approximately 173 percent higher savings than TSL 2. However, as discussed in section V.C., DOE rejected these TSLs in part due to the negative INPV results and substantial small business impacts. The estimated conversion costs for small business manufacturers are significantly higher at TSL 3 and TSL 4 than at TSL 2. To comply with TSL 3, the average small manufacturer must make $2.27 million in conversion cost investments, which is $1.26 million more than at TSL 2. At TSL 3, the projected change in INPV also ranges from a decrease of $42.4 million to a decrease of $38.7 million. If the high end of the range of impacts is reached, TSL 3 could result in a net loss of up to 23.6 percent in INPV for manufacturers, with high disproportionate impacts to whole-home dehumidifier manufacturers, the majority of which are small, domestic companies. The capital conversion costs required by whole-home dehumidifier manufacturers to comply with TSL 3 are estimated to be $1.8 million, 5.4 times the whole-home dehumidifier industry annual ordinary capital expenditure in 2018 (the year leading up to amended standards). DOE estimates that complete platform redesigns would cost the industry $5.5 million in product conversion costs, equivalent to 32.7 times the whole-home dehumidifier industry annual budget for research and development. As a result, TSL 3 could result in a net loss to whole-home dehumidifier manufacturers of 101.4 percent of INPV (compared to no impacts at TSL 2) or cause some domestic manufacturers to exit the whole-home dehumidifier market altogether. To comply with TSL 4, the average small manufacturer must make $3.15 million in conversion cost investments, which is $2.15 million more than at TSL 2. INPV losses and impacts to the industry, and particularly to small manufacturers, would be even more significant than at TSL 3. DOE's analysis also shows that while TSL 1 would reduce the impacts on small business manufacturers ($0.62 million conversion costs for the typical small manufacturers), it would come at the expense of a reduction in energy savings. TSL 1 achieves 77-percent lower energy savings compared to the energy savings at TSL 2.

DOE has concluded that establishing standards at TSL 2 balances the benefits of the energy savings at TSL 2 with the potential burdens placed on dehumidifier manufacturers, including small business manufacturers. As required by EPCA, DOE adopts in this final rule the energy conservation standards that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Accordingly, DOE is not adopting one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impacts analysis and included in chapter 17 of the final rule TSD.

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure. (See 10 CFR 431.401) Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent "special hardship, inequity, or unfair distribution of burdens" that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of dehumidifiers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for dehumidifiers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including dehumidifiers. *See generally* 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx.*

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism." 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and

prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE has concluded that this final rule does not require expenditures of $100 million or more in any one year on the private sector. The final rule is likely to result in expenditures of $100 million or more, but there is no requirement that mandates that result. Such expenditures may include: (1) Investment in research and development and in capital expenditures by dehumidifier manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency dehumidifiers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. (2 U.S.C. 1532(c)). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this document and chapter 17 of the TSD for this final rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. In accordance with the statutory provisions discussed in this document, this final rule establishes amended energy conservation standards for dehumidifiers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this final rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A "significant

energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that this regulatory action, which sets forth amended energy conservation standards for dehumidifiers, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." Id at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a "major rule" as defined by 5 U.S.C. 804(2).

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Energy conservation, Household appliances, Imports.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on May 20, 2016.

David Friedman,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 430 of chapter II of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.36 is amended by adding paragraphs (a)(5) and (6) and revising paragraph (b)(2) to read as follows:

§ 429.36 Dehumidifiers.

(a) * * *

(5) Round the value of energy factor or integrated energy factor for a basic model to two decimal places.

(6) Dehumidifiers distributed in commerce by the manufacturer with the ability to operate as both a portable and whole-home dehumidifier by means of installation or removal of an optional ducting kit, must be rated and certified under both configurations.

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report must include the following public product-specific information:

(i) For dehumidifiers tested in accordance with appendix X: The energy factor in liters per kilowatt hour (liters/kWh) and capacity in pints per day.

(ii) For dehumidifiers tested in accordance with appendix X1: The integrated energy factor in liters per kilowatt hour (liters/kWh), capacity in pints per day, and for whole-home dehumidifiers, case volume in cubic feet.

■ 3. Section 429.134 is amended by revising paragraph (f) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(f) *Dehumidifiers*—(1) *Verification of capacity.* The capacity will be measured pursuant to the test requirements of part 430 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of capacity certified by the manufacturer for the basic model. The certified capacity will be considered valid only if the measurement is within five percent, or 1.00 pint per day, whichever is greater, of the certified capacity.

(i) If the certified capacity is found to be valid, the certified capacity will be used as the basis for determining the minimum energy factor or integrated energy factor allowed for the basic model.

(ii) If the certified capacity is found to be invalid, the average measured capacity of the units in the sample will be used as the basis for determining the minimum energy factor or integrated energy factor allowed for the basic model.

(2) Verification of whole-home dehumidifier case volume. The case volume will be measured pursuant to the test requirements of part 430 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of case volume certified by the manufacturer for the basic model. The certified case volume will be considered valid only if the measurement is within two percent, or 0.2 cubic feet, whichever is greater, of the certified case volume.

(i) If the certified case volume is found to be valid, the certified case volume will be used as the basis for determining the minimum integrated energy factor allowed for the basic model.

(ii) If the certified case volume is found to be invalid, the average measured case volume of the units in the sample will be used as the basis for determining the minimum integrated energy factor allowed for the basic model.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 4. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 5. Section 430.32 is amended by adding paragraph (v)(3) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(v) * * *

(3) Dehumidifiers manufactured on or after June 13, 2019, shall have an integrated energy efficiency ratio that meets or exceeds the following values:

	Minimum integrated energy efficiency factor (liters/kWh)
Portable dehumidifier Product Capacity (pints/day)	
25.00 or less	1.30
25.01–50.00	1.60
50.01 or more	2.80
Whole-home dehumidifier product case volume (cubic feet)	
8.0 or less	1.77
More than 8.0	2.41

* * * * *

[FR Doc. 2016–12881 Filed 6–10–16; 8:45 am]

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Part IV

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Portable Air Conditioners; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2013–BT–STD–0033]

RIN 1904–AD02

Energy Conservation Program: Energy Conservation Standards for Portable Air Conditioners

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, sets forth various provisions designed to improve energy efficiency for consumer products and certain commercial and industrial equipment. In addition to specifying a list of covered residential products and commercial equipment, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. The U.S. Department of Energy (DOE) has previously published a proposed determination of coverage to classify portable air conditioners (ACs) as covered consumer products under the applicable provisions in EPCA. In this document, DOE proposes energy conservation standards for portable ACs following its notice of final determination of coverage. This document also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: *Comments:* DOE will accept comments, data, and information regarding this NOPR before and after the public meeting, but no later than August 12, 2016. See section VIII, "Public Participation," for details.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section before August 12, 2016.

Meeting: DOE will hold a public meeting on Wednesday, July 20, 2016, from 9:00 a.m. to 4:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VIII, "Public Participation" for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585.

Instructions: Any comments submitted must identify the NOPR for Energy Conservation Standards for Portable Air Conditioners, and provide docket number EERE–2013–BT–STD–0033 and/or regulatory information number (RIN) number 1904–AD02. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: PortableAC2013STD0033@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Room 6094, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section VIII of this document ("Public Participation").

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* before July 13, 2016. Please indicate in the "Subject" line of your email the title and Docket Number of this rulemaking notice.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/79.* This Web page will contain a link to the docket for this proposed rulemaking on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VIII, "Public Participation," for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *portable_ACs@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Telephone: 202–586–1777; Email: *Sarah.Butler@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] In addition to specifying a list of covered residential products and commercial equipment, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) In a final determination of coverage published in the **Federal Register** on April 18, 2016 (the "April 18, 2016 final coverage determination"), DOE classified portable ACs as covered consumer products under EPCA. 81 FR 22514.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

In accordance with these and other statutory provisions discussed in this proposed rule, DOE proposes new energy conservation standards for portable ACs. The proposed standards, which correspond to trial standard level (TSL) 2 (described in section V.A), are minimum allowable combined energy efficiency ratio (CEER) standards, which are expressed in British thermal units (Btu) per watt-hour (Wh), are shown in Table I.1. These proposed standards, if adopted, would apply to all single-duct portable ACs and dual-duct portable ACs that are manufactured in, or imported into, the United States starting on the date five years after the publication of the final rule for this rulemaking.[3]

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[3] For more information regarding portable ACs for which DOE is not proposing energy conservation standards in this NOPR, see section IV.A.1 and section IV.A.2 of this notice.

Table I.1 Proposed Energy Conservation Standards for Portable Air Conditioners

Portable Air Conditioner Product Class	Minimum CEER (Btu/Wh)
Single-duct and dual-duct portable air conditioners	$1.14 \times \frac{SACC}{(2.7447 \times SACC^{0.6829})}$
Seasonally Adjusted Cooling Capacity (SACC) in Btu/h determined in accordance with Appendix CC	

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of portable ACs, as measured by the average life-cycle cost (LCC) savings and the payback period (PBP).[4] The average LCC savings are positive and the PBP is less than the average lifetime for portable ACs, which is approximately 10 years (see section IV.F.6).

TABLE I.2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF PORTABLE AIR CONDITIONERS

Consumer type	Average LCC savings (2014$)	Simple payback period (years)
Residential	144	2.2
Commercial	292	1.2
All	162	2.1

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this NOPR.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2016 to 2050). Using a real discount rate of 6.60 percent,[5] DOE estimates that the INPV for manufacturers of portable ACs is $725.5 million.[6] Under the proposed standards, DOE expects that manufacturers may lose up to 30.6 percent of their INPV, which is approximately $221.7 million over the 35 years of the analysis period. DOE also recognizes there may be additional compliance burden for those manufacturers of portable ACs that also produce other appliances which are currently regulated by DOE. DOE has identified existing or pending Federal energy conservation standards for three other appliance categories with compliance dates that will take effect 3 years before or after the anticipated 2021 compliance date of the portable AC rule. This cumulative regulatory burden is described in more detail in section V.B.2.e of this notice. However, based on DOE's interviews with the manufacturers of portable ACs, DOE does not expect significant impacts on domestic manufacturing capacity or loss of employment for the industry as a whole to result from the proposed standards for portable ACs.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this proposed rule.

C. National Benefits and Costs

DOE's analyses indicate that the proposed energy conservation standards for portable ACs would save a significant amount of energy. Relative to the case without new standards, the lifetime energy savings for portable ACs purchased in the 30-year period that begins in the anticipated year of compliance with the new standards (2021–2050) amount to 0.53 quadrillion Btu (quads).[7] This represents a savings of 8.6 percent relative to the energy use of these products in the case without new standards (referred to as the "no-new-standards case").

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for portable ACs ranges from $2.15 billion (at a 7-percent discount rate) to $5.20 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for portable ACs purchased in 2021–2050.

In addition, the proposed standards for portable ACs are projected to yield significant enviornmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 37.7 million metric tons (Mt) [8] of carbon dioxide (CO_2), 20.2 thousand tons of sulfur dioxide (SO_2), 69.6 thousnd tons of nitrogen oxides (NO_X), 165.3 thousand tons of methane (CH_4), 0.4 thousnad tons of nitrous oxide (N_XO), and 0.07 tons of mercury (Hg).[9] The cumulative reduction in CO_2

[4] The average LCC savings are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the compliance year in the absence of standards (see section IV.F.9). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline model (see section IV.C.1.a).

[5] The real discount rate is the weighted-average cost of capital derived from industry financials and modified based on feedback received during confidential interviews with manufacturers.

[6] All monetary values in this section are expressed in 2014 dollars; discounted values are discounted to 2015 unless explicitly stated otherwise.

[7] A quad is equal to 10^{15} British thermal units (Btu). The quantity refers to full-fuel-cycle (FFC) energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2.

[8] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presetned in short tons.

[9] DOE calculated emissions reduction relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case. *AEO 2015* generally represents current legislation environmental regulations for which implementing regulations were available as of October 31, 2014.

emissions through 2030 amounds to 6.7 Mt, which is the equilavent to the emissions resulting from the annual electricity use of over 900,000 homes.

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the "Social Cost of Carbon", or SCC) developed by a Federal interagency working group.[10] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I.3), DOE estimates the present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.3 billion and $3.6 billion, with a value of $1.2 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates the present monetary value of the NO_X emissions reduction to be $0.05 billion at a 7-percent discount rate and $0.12 billion at a 3-percent discount rate.[11]

Table I.3 summarizes the national economic benefits and costs expected to result from the proposed standards for portable ACs. Table I.4 presents the impacts to manufacturers and consumers expected to result from these proposed standards.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PORTABLE AIR CONDITIONERS (TSL 2) 2021–2050 *

Category	Present values (billion 2014$)	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	2.4	7
	5.7	3
CO_2 Reduction Monetized Value ($12.2/t case) **	0.3	5
CO_2 Reduction Monetized Value ($40.0/t case) **	1.2	3
CO_2 Reduction Monetized Value ($62.3/t case) **	1.9	2.5
CO_2 Reduction Monetized Value ($117/t case) **	3.6	3
NO_X Reduction Monetized Value †	0.05	7
	0.12	3
Total Benefits ††	3.6	7
	7.0	3
Costs		
Consumer Incremental Installed Costs	0.27	7
	0.51	3
Total Net Benefits		
Including CO_2 and NO_X Reduction Monetized Value ††	3.4	7
	6.5	3

* This table presents the costs and benefits associated with portable ACs shipped in 2021–2050. These results include benefits to consumers which accrue after 2050 from the products purchased in 2021–2050. The costs account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor. The value for NO_X is the average of high and low values found in the literature.

† The $/ton values used for NO_X are described in section IV.L.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

[10] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf).*

[11] DOE is currently investigating valuation of avoided SO_2 and Hg emissions.

TABLE I.4—MANUFACTURER (2016–2050) AND CONSUMER (2021–2050) IMPACTS FROM PROPOSED ENERGY CONSERVATION STANDARDS FOR PORTABLE AIR CONDITIONERS (TSL 2)

Manufacturer Impacts	
Industry NPV (*2014$ millions*) (*Base Case INPV = 725.5*).	503.8 to 521.7.
Industry NPV (% *change*).	(30.6%) * to (28.1%).*
Consumer Average LCC Savings (2014$)	
Residential	144.
Commercial	292.
All	162.
Consumer Simple PBP (years)	
Residential	2.2.
Commercial	1.2.
All	2.1.
% of Consumers that Experience Net Cost	
Residential	13.
Commercial	2.
All	12.

* Parentheses indicate negative (−) values.

The benefits and costs of the proposed standards, for portable ACs sold in 2021–2050, can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are the sum of: (1) The national economic value of the benefits in reduced operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of the benefits of CO_2 and NO_X emission reductions, all annualized.[12]

Although the values of operating cost savings and CO_2 emission reductions are both important, two issues are relevant. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of portable ACs shipped in 2021–2050. Because CO_2 emissions have a very long residence time in the atmosphere,[13] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I.5. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0/t in 2015),[14] the estimated cost of the standards proposed in this rule is $30 million per year in increased equipment costs, while the estimated annual benefits are $273 million in reduced equipment operating costs, $70 million in CO_2 reductions, and $ 5.4 million in reduced NO_X emissions. In this case, the net benefit amounts to $318 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0/t in 2015, the estimated cost of the proposed standards is $30 million per year in increased equipment costs, while the estimated annual benefits are $338 million in reduced operating costs, $70 million in CO_2 reductions, and $7.2 million in reduced NO_X emissions. In this case, the net benefit amounts to $385 million per year.

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PORTABLE AIR CONDITIONERS (TSL 2) 2021–2050

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate * ‡	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	273	125	296.
	3%	338	153	371.
CO_2 Reduction Value ($12.2/t case) **	5%	21	10	23.
CO_2 Reduction Value ($40.0/t case) **	3%	70	33	75.
CO_2 Reduction Value ($62.3/t case) **	2.5%	102	48	109.
CO_2 Reduction Value ($117/t case) **	3%	213	100	228.
NO_X Reduction Monetized Value †	7%	5.4	3	12.9.
	3%	7.2	3	17.4.
Total Benefits ††	7% plus CO_2 range	300 to 492	137 to 227	331 to 537.
	7%	348	160	383.
	3% plus CO_2 range	366 to 558	167 to 256	411 to 616.
	3%	415	189	463.
Costs				
Consumer Incremental Installed Product Costs	7%	30	31	27.
	3%	30	31	26.
Net Benefits				
Total ††	7% plus CO_2 range	269 to 462	106 to 196	304 to 510.
	7%	318	129	357.
	% plus CO_2 range	336 to 528	135 to 225	385 to 590.

[12] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.*, 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I.3. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

[13] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ (2005), "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming.'" *J. Geophys. Res.* 110. pp. D14105.

[14] DOE used a 3-percent discount rate because the SCC values for the series used in the calculation were derived using a 3-percent discount rate (see section IV.L).

TABLE I.5—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR PORTABLE AIR CONDITIONERS (TSL 2) 2021–2050—Continued

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate * ‡	High net benefits estimate *
	3%	385	158	437.

* This table presents the annualized costs and benefits associated with portable ACs shipped in 2021–2050. These results include benefits to consumers which accrue after 2050 from the products purchased in 2021–2050. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the EIA's *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Benefits Estimate, and a high decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

‡ In addition to the *AEO 2015* Low Economic Growth case, the Low Net Benefits Estimate reflects a 50 percent reduction in the number of operating hours. Details of the sensitivity analysis can be found in appendix 8F.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this proposed rule.

D. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard efficiency levels are already commercially available for the products covered by this proposal. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more stringent energy efficiency levels as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this proposed rule and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this proposed rule that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for portable ACs.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (codified as 42 U.S.C. 6291–6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as "covered products").

EPCA, as amended, grants DOE authority to prescribe an energy conservation standard for any type (or class) of covered products of a type specified in 42 U.S.C. 6292(a)(19) [15] if the requirements of 42 U.S.C. 6295(o) and (p) are met and the Secretary determines that—

(1) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (kWh) (or its Btu equivalent) for any 12-month period ending before such determination;

(2) the aggregate household energy use within the United States by products of such type (of class) exceeded 4,200,000,000 kWh (or its Btu equivalent) for any such 12-month period;

(3) Substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(4) the application of a labeling rule under 42 U.S.C. 6294 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(l)(1))

DOE has determined that portable ACs meet the four criteria outlined in 42 U.S.C. 6295(l)(1) to prescribe energy conservation standards for new covered products. Specifically, DOE has determined that the average per household energy use within the United States by portable ACs exceeded 150 kWh for a 12-month period ending before such determination (see chapter 7 of the NOPR technical support document (TSD)). DOE has also determined that the aggregate household energy use within the United States by portable ACs exceeded 4,200,000,000 kWh (or its Btu equivalent) for such a 12-month period (see chapter 10 of the NOPR TSD). Further, DOE has determined that substantial improvement in the energy efficiency of portable ACs is technologically feasible (see section IV.C of this NOPR and chapter 5 of the NOPR TSD), and has determined that the application of a labeling rule under 42 U.S.C. 6294 to portable ACs is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, portable ACs that achieve the maximum energy efficiency which is technologically feasible and economically justified (see chapter 17 of the NOPR TSD).

[15] On April 18, 2016, DOE published a final coverage determination in which DOE determined that portable ACs qualify as a covered product because classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for portable ACs is likely to exceed 100 kilowatt-hours per year. 81 FR 22514.

Pursuant to EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedure for portable ACs was recently established in a Final Rule issued on April 26, 2016 (the "April 26, 2016 TP Final Rule"), and appears at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix CC (appendix CC).

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including portable ACs. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including portable ACs, if no test procedure has been established for the product, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA states that the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6294(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's recently established test procedures for portable ACs address standby mode and off mode energy use. In this rulemaking, DOE proposes to adopt a single energy conservation standard that addresses active, off, and standby modes.

B. Background

DOE has not previously conducted an energy conservation standards rulemaking for portable ACs. Consequently, there are currently no Federal energy conservation standards for portable ACs.

Under the authority established in EPCA, DOE published the April 18, 2016 final coverage determination that portable ACs qualify as a covered product because classifying products of such type as a covered product is necessary or appropriate to carry out the purposes of EPCA, and the average U.S. household energy use for portable ACs

is likely to exceed 100 kWh per year. 81 FR 22514 (April 18, 2016).

DOE published a notice of data availability (NODA) on May 9, 2014 (the May 2014 NODA), reviewing various industry test procedures for portable ACs and presenting results from its investigative testing. DOE requested comment and additional information regarding the results and potential methodologies. 79 FR 26639. Comments received on the May 2014 NODA helped DOE identify issues related to the provisional analyses, as well as informed the analysis for the test procedure rulemaking.

On February 27, 2015, DOE published an energy conservation standards notice of public meeting and notice of availability of preliminary TSD for portable ACs (February 2015 Preliminary Analysis). In the preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary TSD that presented the methodology and results of each of these analyses is available at *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-STD-0033-0007*.

DOE also conducted, and included in the preliminary TSD, several other analyses that supported the major analyses or were expanded upon for this NOPR. These analyses included: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis,[16] which contributes to the LCC and PBP analysis and national impact analysis (NIA). In addition to these analyses, DOE began preliminary work on the manufacturer impact analysis and identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. 80 FR 10628 (Feb. 27, 2015).

DOE held a public meeting on March 18, 2015, to discuss the analyses and solicit comments from interested parties regarding the preliminary analysis it conducted. The meeting covered the analytical framework, models, and tools that DOE uses to evaluate potential standards; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product; and any other issues relevant to the development of energy conservation standards for portable ACs.

Interested parties discussed at the public meeting and followed up with written comments regarding the following major issues: Rulemaking schedule with respect to the test procedure availability and timing; covered product configurations; product classes and impacts on consumer utility; technology options; efficiency levels (ELs); incremental costs; sources of data; and cumulative regulatory burden.

Comments received in response to the February 2015 Preliminary Analysis helped DOE identify and resolve issues related to the preliminary analysis. After reviewing these comments, DOE gathered additional information, held further discussions with manufacturers, and completed and revised the various analyses described in the preliminary analysis. The results of these analyses are presented in this NOPR.

III. General Discussion

DOE developed this proposed rule after considering verbal and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

In the February 2015 Preliminary Analysis, DOE did not consider energy conservation standards for portable ACs other than single-duct or dual-duct protable ACs, as the test procedure proposed at that time did not include provisions for testing other portable ACs, and DOE did not separate portable ACs into multiple product classes following a determination that there is no unique utility associated with single-duct or dual-duct portable ACs.

In this NOPR, DOE maintains the proposals from the February 2015 Preliminary Analysis to consider standards for one product class for all single-duct and dual-duct portable ACs. Comments received relating to the scope of coverage and product classes are discussed in section IV.A of this proposed rule.

B. Test Procedure

DOE initiated a test procedure rulemaking by publishing the May 2014 NODA to request feedback on potential testing options. In the May 2014 NODA, DOE discussed various industry test procedures and presented results from its investigative testing that evaluated existing methodologies and alternate approaches adapted from these methodologies that could be incorporated in a future DOE test procedure, should DOE determine that portable ACs are covered products. 79 FR 26639 (May 9, 2014).

On February 25, 2015, DOE published a NOPR (hereinafter referred to as "February 2015 TP NOPR") in which it proposed to establish test procedures for single-duct and dual-duct portable ACs. The proposed test procedures were based upon industry methods to determine energy consumption in active modes, off-cycle mode, standby modes, and off mode, with certain modifications to ensure the test procedures are repeatable and representative. 80 FR 10211.

On November 27, 2015, DOE published a supplemental notice of proposed rulemaking (SNOPR) (hereinafter referred to as "November 2015 TP SNOPR"), in which it proposed revisions to the test procedure proposed in the February 2015 TP NOPR, to improve repeatability, reduce test burden, and ensure the test procedure is representative of typical consumer usage. 80 FR 74020.

On April 26 2016, DOE issued the April 2016 TP Final Rule that established appendix CC. DOE based its analysis in this proposed rule on capacities and CEERs determined according to the appendix CC test procedure.

DOE received comments expressing concern about the timing of the portable AC test procedure rulemaking in relation to the February 2015 Preliminary Analysis and this NOPR.

The Association of Home Appliance Manufacturers (AHAM) expressed concern that the preliminary analysis was developed in the absence of a final test procedure, which it expected would be published around the same time as this NOPR. AHAM stated that if a test procedure is not finalized in a sufficient period of time before a proposed rule is issued, interested parties will not have sufficient opportunity to evaluate design options and proposed standard levels.

[16] Industry data track shipments from manufacturers into the distribution chain. Data on national unit retail sales are lacking, but are presumed to be close to shipments under normal circumstances.

AHAM commented that the industry is unable to determine and provide market representative performance data to DOE without a final test procedure, and that DOE's test and teardown sample of units may not be suitable to inform appropriate baseline and higher efficiency levels representative of the majority of products currently on the market. However, AHAM believes that once the final test procedure is published, manufacturers would be more willing to test their products and determine performance according to the DOE portable AC test procedure. Therefore, AHAM urged DOE to release the final test procedure before it continues with its standards analysis and manufacturer interviews. (AHAM, Public Meeting Transcript, No. 11 at pp. 9–11, 21–22, 57; AHAM, No. 16 at pp. 1–4) [17] [18] De' Longhi Appliances s.r.l. (De' Longhi) agreed that energy conservation standards can only be developed when a test procedure has been completely defined. (De' Longhi, Public Meeting Transcript, No. 11 at p. 5; De' Longhi, No. 12 at p. 1)

As described previously in this section, on April 26, 2016 DOE issued the April 26, 2016 TP Final Rule to establish the portable AC test procedure in appendix CC. April 2016 issued TP Final Rule. Manufacturers may use appendix CC to test their products and evaluate the standard levels proposed in this NOPR.

Other comments that DOE received from interested parties related to specific provisions of the portable AC test procedure were addressed in that rulemaking. For further information, please see the docket for test procedures for portable ACs: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-TP-0014*. In this NOPR analysis, all presented product capacities and efficiencies are consistent with the appendix CC test procedures.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv). Additionally, it is DOE policy not to include in its analysis any proprietary technology that is a unique pathway to achieve a certain efficiency level. Section IV.B of this proposed rule discusses the results of the screening analysis for portable ACs, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt a new or amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible ("max-tech") improvements in energy efficiency for portable ACs, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1.b of this proposed rule and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings at the TSL for portable ACs purchased in the 30-year period that begins in the year of compliance with the proposed standards (2021–2050).[19] The savings are measured over the entire lifetime of portable ACs purchased in the above 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of any energy conservation standards.

DOE used its NIA spreadsheet model to estimate energy savings from potential new standards for portable ACs. The NIA spreadsheet model (described in section IV.H of this proposed rule) calculates savings in site energy, which is the energy directly consumed by products at the locations where they are used. Based on the site energy, DOE calculates national energy savings (NES) in terms of primary energy savings at the site or at power plants, and also in terms of full-fuel-cycle (FFC) energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.*, coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[20] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this proposed rule.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in "significant" energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term "significant" is not defined in the

[17] A notation in the form "AHAM, Public Meeting Transcript, No. 11 at pp. 9–11, 21–22, 57" identifies an oral comment that DOE received on March 18, 2015 during the Preliminary Analysis public meeting, was recorded in the public meeting transcript in the docket for this test procedure rulemaking (Docket No. EERE–2013–BT–STD–0033). This particular notation refers to a comment (1) made by the Association of Home Appliance Manufacturers (AHAM) during the public meeting; (2) recorded in document number 11, which is the public meeting transcript that is filed in the docket of this test procedure rulemaking; and (3) which appears on pages 9 through 11, 21 through 22, and 57 of document number 11.

[18] A notation in the form "AHAM, No. 16 at pp. 1–4" identifies a written comment: (1) Made by AHAM; (2) recorded in document number 16 that is filed in the docket of this standards rulemaking (Docket No. EERE–2013– BT–TP–0033) and available for review at *www.regulations.gov;* and (3) which appears on pages 1 through 4 of document number 16.

[19] Each TSL is comprised of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[20] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended "significant" energy savings in the context of EPCA to be savings that were not "genuinely trivial." The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards (presented in section V.B.3.a), are nontrivial, and, therefore, DOE considers them "significant" within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

As noted above, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of potential new standards on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared To Increase in Price

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers will purchase the covered products in the first year of compliance with new standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this proposed rule would not reduce the utility or performance of the products under consideration in this rulemaking. For more information on consumer utility and product performance of portable ACs, see section IV.A.2 and section IV.C of this proposed rule.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii))

To assist the Attorney General in making such determination, DOE will provide the Department of Justice (DOJ) with copies of the NOPR and NOPR TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (GHGs) associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section V.B.3 of this proposed rule. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under "other factors."

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.9 of this proposed rule.

IV. Methodology and Discussion

This section addresses the analyses DOE has performed for this rulemaking with regard to portable ACs. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates LCC savings and PBP of potential new energy conservation standards. The national impact analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *https://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/76*. Additionally, DOE used output from the latest version of Energy Information Administration (EIA)'s *Annual Energy Outlook* (*AEO*), a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include: (1) A determination of the scope of the rulemaking and product classes; (2) manufacturers and industry structure; (3) existing efficiency programs; (4) shipments information; (5) market and industry trends; and (6) technologies that could improve the energy efficiency of portable ACs. The key findings of DOE's market assessment are summarized below. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Definition and Scope of Coverage

DOE conducted the February 2015 Preliminary Analysis based on the portable AC definition proposed in the February 2015 Test Procedure NOPR, which stated that a portable AC is an encased assembly, other than a "packaged terminal air conditioner," "room air conditioner," or "dehumidifier," that is designed as a portable unit to deliver cooled, conditioned air to an enclosed space. A portable AC is powered by single-phase power and may rest on the floor or elevated surface. It includes a source of refrigeration and may include additional means for air circulation and heating. 80 FR 10212, 10215 (Feb. 25, 2015).

In the April 18, 2016 final coverage determination, DOE codified this definition at 10 CFR 430.2, with minor editorial revisions that do not modify the intent or scope of the definition:

A portable encased assembly, other than a "packaged terminal air conditioner," "room air conditioner," or "dehumidifier," that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for air circulation and heating. 81 FR 22514.

The Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SCGC), Southern California Edison (SCE), and San Diego Gas and Electric Company (SDG&E) (hereinafter the "California IOUs"), AHAM, and De' Longhi supported the analysis of portable ACs for future energy conservation standards. (California IOUs, No. 15 at p. 1; AHAM, No. 16 at pp. 1–2; De' Longhi, Public Meeting Transcript, No. 11 at p. 5; De' Longhi, No. 12 at p. 1)

DENSO expressed concern about defining covered products on the basis of supply power, noting that some commercial/industrial portable ACs are powered by single-phase power. According to DENSO, commercial units may be differentiated from residential ones on the basis of more rugged construction and the tendency to be larger and heavier for a given cooling capacity. (DENSO, No. 13 at pp. 3–4)

DOE notes that the definition for "portable air conditioner" in 10 CFR 430.2 excludes units that could not be normally used as a consumer product. Therefore, a product that requires three-phase power, a requirement that is not appropriate for consumer products, is not covered under the definition of portable AC. Conversely, any product with single-phase power that otherwise meets the definition for a portable AC

would be considered by DOE to be such a covered product regardless of the manufacturer-intended application or installation location. DOE also recognized that certain portable ACs that exhaust condenser air within the conditioned space ("spot coolers") do not provide net cooling to the typical conditioned consumer space. In addition, spot coolers incorporate different design features and a wider variety of installation types and usage patterns than single-duct and dual-duct portable ACs. For these reasons, DOE did not identify a test procedure that would measure representative performance of spot coolers. DOE instead established a test procedure for single-duct and dual-duct portable ACs in its recent rulemaking that established appendix CC (80 FR 10211, 10213, 10214–10215 (Feb. 25, 2015); April 26, 2016 issued TP Final Rule), and correspondingly is proposing standards only for single-duct and dual-duct portable ACs in this NOPR. DOE welcomes comment on this decision and its rationale for proposing standards for single-duct and dual-duct portable ACs.

2. Product Classes

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Portable ACs only recently became a covered product when DOE issued the April 18, 2016 final coverage determination, and therefore do not have previous energy conservation standards or product class divisions. 81 FR 22515

a. Preliminary Analysis Proposals

Following an evaluation of the portable AC market in preparation of the February 2015 Preliminary Analysis, DOE determined that there are three types of duct configurations that affect product performance: Single-duct, dual-duct, and spot cooler. DOE noted in the February 2015 Preliminary Analysis that the DOE test procedure proposed in the February 2015 Test Procedure NOPR did not include measures of spot cooler performance, and therefore as discussed previously, DOE did not consider standards for spot coolers. See chapter 3 of the preliminary TSD for more information.

DOE further evaluated if there was any consumer utility associated with the single-duct and dual-duct configurations under consideration. As detailed in chapter 3 of the preliminary TSD, DOE investigated installation locations and noise levels, and found that duct configuration had no impact on either of these key consumer utility variables. Therefore, DOE determined in the February 2015 Preliminary Analysis that a single product class is appropriate for portable ACs.

b. Comments and Responses

Spot Coolers

DENSO supported the exclusion of spot coolers from potential energy conservation standards. It commented that its spot coolers, which may also be operated with optional adapters to configure them as single-duct or dual-duct portable ACs, are typically installed in commercial applications such as a warehouses, auto repair shops, or similar businesses, and are not appropriate for a typical retail commercial establishment or residential application. DENSO believes that these units should therefore be exempt from the rulemaking, particularly due to the low market volume compared to other currently covered products. According to DENSO, annual shipments of spot coolers are approximately 15,000 units, or about 1.6 percent of the DOE-estimated portable AC market. DENSO further commented that there is little differentiation in energy efficiency ratio (EER) across all spot coolers on the market with capacities ranging from 12,000 to 60,000 Btu/hr. (DENSO, No. 13 at pp. 1, 5, 9) DENSO expressed concern regarding the features that DOE proposed to distinguish commercial and industrial portable ACs from residential portable ACs. According to DENSO, it is presumed to be mutually agreed that units powered from a three-phase power source are commercial/industrial units, but there are some units powered by single-phase power which are clearly commercial/industrial products. (DENSO, No. 13 at pp. 3–4)

The California IOUs urged DOE to include spot coolers in the energy conservation standards rulemaking analyses and to adopt active mode test procedures for spot coolers utilizing existing industry test procedures such as ANSI/ASHRAE Standard 128–2011. The California IOUs noted that 321 of the 427 spot cooler models in the California Energy Commission (CEC) Appliance Efficiency Database have cooling capacities below 14,000 Btu/hr and as low as 4,000 Btu/hr. Assuming this distribution is an indicator of widespread market availability of products below 14,000 Btu/hr, the California IOUs urged DOE to adopt test procedures and performance standards for spot coolers. (California IOUs, No. 15 at p. 2)

While the portable AC definition excludes products with a 3-phase power supply, DOE agrees with DENSO that certain spot coolers that operate with a single-phase power supply would meet the portable AC definition. Because spot coolers with a single-phase power supply could be used as a consumer product, DOE is maintaining the approach in the February 2015 Preliminary Analysis in which such spot coolers would be included as covered products. As discussed in section IV.A.1, however, DOE has established a test procedure for single-duct and dual-duct portable ACs at this time and is proposing energy conservation standards only for these portable ACs in this NOPR. DOE further notes that, upon review of the spot cooler entries in the CEC Appliance Efficiency Database,[21] it concludes that a number of listed products would meet DOE's definitions of single-duct or dual-duct portable ACs.

Single Product Class

The Appliance Standards Awareness Project (ASAP), Alliance to Save Energy (ASE), American Council for an Energy-Efficient Economy (ACEEE), National Consumer Union (CU), and Northwest Energy Efficiency Alliance (NEEA) (hereinafter the "Joint Commenters") and the California IOUs agreed with DOE that there is no unique consumer utility associated with duct configuration and support establishing a single product class for portable ACs. The California IOUs noted that the negative pressure within a room created by a single-duct portable AC can lead to more infiltration air from outside the conditioned space, which can result in lower efficiencies than for dual-duct units. The California IOUs, therefore, asserted that adopting performance standards for a single product class that includes both single-duct and dual-duct portable ACs would incentivize manufacturers to produce higher efficiency units. (ASAP, Public Meeting Transcript, No. 11 at p. 17; Joint Commenters, No. 14 at p. 1; California IOUs, No. 15 at pp. 1–2)

AHAM and De' Longhi commented that duct configuration warrants

[21] The CEC Appliance Efficiency Database is accessible at: *https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx.*

separate product classes. They believe that single-duct portable ACs offer unique consumer utility in terms of smaller size and slimmer profiles, greater portability and versatility, and easier installation. AHAM stated that portability and size are a key issue for consumers, and that consumers indicate to manufacturers that they prefer slimmer designs. According to AHAM, maintaining smaller unit sizes can impact a manufacturer's ability to improve efficiency because of limitations on air flow, which in turn impact performance. AHAM further commented that if manufacturers are required to improve efficiency while maintaining smaller, more portable units, then noise would increase, thereby impacting consumer utility. AHAM further stated that single-duct and dual-duct portable ACs may have different applications. For example, dual-duct units are more often used in commercial applications, such as computer server rooms. AHAM suggested that without separate product classes, single-duct portable ACs would likely be eliminated from the market. (AHAM, No. 16 at p. 2; De' Longhi, No. 12 at p. 2)

DOE reviewed the comments and, with the input from manufacturer interviews and additional research, further analyzed the differences between single-duct and dual-duct portable ACs. DOE recognizes that the additional duct for dual-duct units results in shipping packages that are slightly larger than for single-duct units, with a corresponding impact on shipping costs and consumer portability prior to unpacking. However, the size differences do not significantly impact product availability or consumer utility during operation. Additionally, DOE found that window mounting brackets are typically the same size, regardless of whether they are configured for one or two ducts, and therefore a mounting bracket for two ducts would not reduce consumer utility. Further, DOE estimates from its engineering analysis that a dual-duct portable AC would be less than 5 pounds heavier than a comparable single-duct unit with the same capacity, and with wheels on all units, portability of a dual-duct unit is not reduced when relocating the unit within the home. DOE also determined that many portable AC profiles and chassis sizes are a function of the heat exchanger dimensions rather than the number of ducts. The potential standards that DOE is contemplating would impose no restrictions on what side of the unit a duct should be located, and therefore manufacturers are free to determine the form factor of their portable ACs to suit customer preferences. Noise is a concern for consumers when operating all portables ACs, but DOE did not find a substantive difference in noise levels between the two duct configurations. DOE believes that insulation and case sealing to reduce infiltration air would offset any additional noise associated with the increased fan power of a dual-duct portable AC. DOE received feedback from manufacturers during interviews indicating that their customers are not typically aware of any functional difference between single-duct and dual-duct units, and that consumer preference hinges primarily on the aesthetics of the product, rated cooling capacity, and purchase price. Additionally, DOE is not aware of any significant difference between the typical applications of single-duct and dual-duct portable ACs. Therefore, DOE has found no unique consumer utility associated with the number of ducts for portable ACs that would warrant a division of single-duct and dual-duct units into separate product classes. Furthermore, as described in section IV.C, testing according to the test procedure in appendix CC results in no significant performance differences between single-duct and dual-duct portable ACs. Therefore, due to the lack of consumer utility differences and lack of energy efficiency differentiation, DOE has determined that separate product classes for single-duct and dual-duct portable ACs are not warranted.

The definitions established in the April 26, 2016 TP Final Rule for single-duct and dual-duct portable ACs describe the various duct configurations based on differences in air flow patterns. DOE further established, in the April 26, 2016 TP Final Rule, that single-duct and dual-duct portable ACs distributed in commerce with multiple duct configuration options must be tested in each applicable configuration and the performance in each tested configuration must comply with any applicable energy conservations standards. April 2016 issued TP Final Rule. This NOPR analysis was performed in accordance with appendix CC established by the issued April 2016 TP Final Rule.

c. NOPR Proposals

In summary, DOE proposes to maintain the February 2015 Preliminary Analysis approach, in which only single-duct and dual-duct portable ACs would be considered, and would be classified as one product class, for the purposes of energy conservation standards. For portable ACs that can be optionally configured in both single-duct and dual-duct configurations, DOE further proposes that operation with both duct configurations be certified under any future portable AC energy conservation standards.

3. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 16 technology options in four different categories that would be expected to improve the efficiency of portable ACs, as shown in the following Table IV.1:

TABLE IV.1—TECHNOLOGY OPTIONS FOR PORTABLE AIR CONDITIONERS—PRELIMINARY ANALYSIS

Increased Heat-Transfer Surface Area:
1. Increased frontal coil area.
2. Increased depth of coil (add tube rows).
3. Increased fin density.
4. Add subcooler to condenser coil.
Increased Heat-Transfer Coefficients:
5. Improved fin design.
6. Improved tube design.
7. Spray condensate onto condenser coil.
8. Microchannel heat exchangers.
Component Improvements:
9. Improved compressor efficiency.
10. Improved blower/fan efficiency.
11. Low-standby-power electronic controls.
12. Ducting insulation.
13. Improved duct connections.
14. Case insulation.
Part-Load Technology Improvements:
15. Variable-speed compressors.
16. Thermostatic or electronic expansion valves.

AHAM commented that the Significant New Alternatives Policy (SNAP) final rule, published by the Environmental Protection Agency (EPA) on April 10, 2015, approved the use of propane (R–290) and R–32 for portable ACs. 80 FR 19454. AHAM asserted that these refrigerants would result in capacity and efficiency improvements, compared with the common refrigerants currently in use. AHAM suggested that DOE consult with manufacturers regarding their plans to use these refrigerants in future designs and determine the associated performance improvements. (AHAM, No. 16 at p. 9) DOE observes that propane refrigerant is widely used for portable ACs manufactured and sold internationally, and that R–32 is being introduced in some markets outside the United States for portable and room ACs, albeit primarily because it has a low global warming potential (GWP). Based on this product availability and discussions with manufacturers, DOE agrees that

propane and possibly other alternative refrigerants could improve portable AC efficiencies. Accordingly, DOE has included alternative refrigerants as a potential technology option in the technology assessment.

DOE also notes that a potential means of improving portable AC efficiencies, air flow optimization, was not included as a technology option in the February 2015 Preliminary Analysis. DOE did, however, consider optimized air flow in the engineering analysis in both the February 2015 Preliminary Analysis and has addressed this technology further in this NOPR. Accordingly, DOE has included it as a technology option in the technology assessment. Therefore, in addition to the technology options considered in the preliminary analysis, DOE additionally considered alternative refrigerants and air flow optimization when conducting this NOPR analysis, as shown in Table IV.2.

TABLE IV.2—TECHNOLOGY OPTIONS FOR PORTABLE AIR CONDITIONERS—NOPR ANALYSIS

Increased Heat-Transfer Surface Area:
1. Increased frontal coil area.
2. Increased depth of coil (add tube rows).
3. Increased fin density.
4. Add subcooler to condenser coil.
Increased Heat-Transfer Coefficients:
5. Improved fin design.
6. Improved tube design.
7. Spray condensate onto condenser coil.
8. Microchannel heat exchangers.
Component Improvements:
9. Improved compressor efficiency.
10. Improved blower/fan efficiency.
11. Low-standby-power electronic controls.
12. Ducting insulation.
13. Improved duct connections.
14. Case insulation.
Part-Load Technology Improvements:
15. Variable-speed compressors.
16. Thermostatic or electronic expansion valves.
Alternative Refrigerants:
17. Propane and R–32.
Reduced Infiltration Air:
18. Air flow Optimization.

After identifying all potential technology options for improving the efficiency of portable ACs, DOE performed a screening analysis (see section IV.B of this proposed rule and chapter 4 of the NOPR TSD) to determine which technologies merited further consideration in the engineering analysis.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(10 CFR part 430, subpart C, appendix A, 5(b))

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded ("screened out") based on the screening criteria.

1. Screened-Out Technologies

Ducting Insulation

In the February 2015 Preliminary Analysis, DOE identified duct insulation as a potential means for improving portable AC efficiency, as less heat from the condenser air would be transferred through the duct wall and would instead be transferred out of the conditioned space. During interviews, manufacturers indicated that they have considered insulated ducts to improve performance but have not identified any insulated ducts that are collapsible for packaging and shipping. No portable AC in DOE's teardown sample for the engineering analysis included insulated ducts. In the absence of a collapsible design, such an insulated duct would need to be packaged for shipment in its fully expanded configuration, significantly increasing the package size. Because of this significantly increased packaging size for non-collapsible insulated ducts and unavailability on the market of collapsible designs, DOE determined that insulated ducts are not technologically feasible, are impractical to manufacture and install, and would impact consumer utility. Therefore, DOE screened out insulated ducts as a design option for portable ACs in the February 2015 Preliminary Analysis. DOE received no feedback on this tentative proposal and maintains this approach for the NOPR analysis.

Alternative Refrigerants

The SNAP rule limits the maximum allowable charge of alternative refrigerants in portable ACs to 300 grams for R–290 (propane), 2.45 kilograms for R–32, and 330 grams for R–441A. The SNAP rule limits were consistent with those included for portable room ACs in Underwriter's Laboratories (UL) Standard 484, "Standard for Room Air Conditioners" (UL 484), eighth edition. However, the most recent version of UL 484, the ninth edition, reduces the allowable amount of flammable refrigerant (*e.g.*, propane and R–441A) to less than 40 percent of the SNAP limits. Manufacturers informed DOE that the new UL charge limits for portable ACs are not feasible for providing the necessary minimum cooling capacity, and therefore it would not be feasible to manufacture a portable AC with an alternative refrigerant for the U.S. market while complying with the UL safety standard. DOE reviewed propane refrigerant charges for portable ACs available internationally and found a typical charge of 300 grams. DOE also investigated other similar AC products that utilize propane refrigerant and found that the minimum charge for capacities in a range expected for portable ACs was 265 grams, which is still above the maximum allowable propane charge for portable ACs in the ninth edition of UL 484. Therefore, although portable ACs are currently available internationally with amounts of flammable refrigerants acceptable under the SNAP rule, manufacturers are unable to sell those products in the U.S.

market while complying with the ninth edition of UL 484. In addition, DOE is aware of very few portable or room ACs available commercially in other markets that utilize the mildly flammable R–32. Therefore, DOE screened out alternative refrigerants as a design option for portable ACs as they are not practicable to manufacture at this time while meeting all relevant safety standards. DOE invites comment on the determination that alternative refrigerants should be screened out as a design option for portable ACs.

2. Additional Comments

Improved Compressor Efficiency

DENSO suggested that the portable AC industry is too small to drive compressor efficiencies. DENSO further stated that there is little efficiency improvement available associated with compressors. (DENSO, No. 13 at p. 7) AHAM commented that improved compressor efficiency would increase the stack height of the compressor motor, increasing the size and weight of the portable AC. (AHAM, No. 16 at p. 8) DOE notes that the units in its teardown sample implemented compressors with a range of efficiencies and capacities (see chapter 5 of the NOPR TSD for additional information regarding DOE's test sample and teardown observations). DOE further researched the maximum efficiency of compressors available on the market with capacities suitable for portable ACs. As discussed further in section IV.C.1.b, DOE considered compressor improvements associated with the compressor types currently implemented in portable ACs up to the maximum available efficiency on the market or those compressor types that may be implemented in portable ACs in the foreseeable future, which would not impact the size or weight of the portable ACs to the extent that consumer utility would be significantly affected. Accordingly, DOE did not eliminate compressor efficiency improvements from further consideration in the NOPR analysis.

Increased Heat-Transfer Surface Area

AHAM and DENSO stated that larger heat exchangers, fans with higher air flow rates, and larger ducting components would increase efficiency, but size and noise would limit the extent those design options could be implemented. They further commented that increasing the frontal coil area, depth of the coil, and fin density would increase product sizes, due to larger heat exchangers or fans. In addition, AHAM and DENSO believe that increased fin density may cause reliability and safety concerns because it would result in increased dust and dirt accumulation. (AHAM, No. 16 at p. 8; DENSO, No. 13 at p. 6) DOE agrees that increased heat exchanger areas may require an increase in enclosure size. For that reason, the heat exchanger changes that DOE considered in the February 2015 Preliminary Analysis were limited to a 10-percent increase at the highest efficiency level. In this NOPR analysis, DOE considered further heat exchanger area increases, up to 20 percent of the existing heat exchanger area for the units in DOE's test sample, discussed in section IV.C.1.b and in chapter 5 of the NOPR TSD. DOE observed in its test sample that heat exchanger areas varied significantly from unit to unit. Additionally, DOE observed a significant range in heat exchanger area among the units in its test sample. The range in observed heat exchanger area suggests that manufacturers have more latitude to increase heat exchanger areas for a substantial number of units than DOE had estimated in the February 2015 Preliminary Analysis. Based on the range of observed heat exchanger areas in its test sample and the strong correlation between heat exchanger area and cooling capacity, DOE determined that a 20-percent increase in area is a more appropriate limit. See chapter 5 of the NOPR TSD for additional details regarding the 20-percent threshold. DOE considered all subsequent component and chassis size increases related to this heat exchanger size increase. Accordingly, while there may be some increase in product sizes with increased heat exchanger area, DOE did not eliminate this technology option from further consideration because consumer utility could be maintained. DOE did not screen out increased fin density due to reliability concerns from dirt or dust accumulation because these issues could potentially be prevented with better inlet air filtering. However, increased fin density is not a design option that DOE assumed manufacturers would pursue to reach higher efficiencies because, as discussed further in chapter 5 of the NOPR TSD, other design options are more effective in achieving efficiency improvements.

Improved Blower/Fan Efficiency

DENSO expressed concern that improved blower motor efficiency would require an electronically commutated motor (ECM), which, according to DENSO, would add substantial cost and control complexity. (DENSO, Public Meeting Transcript, No. 11 at pp. 34–35; DENSO, No. 13 at p. 7) As discussed in chapter 3 of the NOPR TSD, DOE considered blower motor efficiency improvements associated with substituting an ECM, with efficiencies as high as 80 percent, for the typical permanent split capacitor (PSC) motor with efficiencies ranging from 60 to 65 percent. Although an ECM is more expensive than a PSC motor, this is not a criteria for screening out a particular technology option. Therefore, DOE has retained this technology option in its NOPR analysis. DOE has factored the incremental cost associated with the ECM and its controls into the engineering analysis (see section IV.C of this NOPR and chapter 5 of the NOPR TSD).

Variable-Speed Compressors

AHAM observed that any efficiency improvement due to variable-speed compressors would not be captured under the proposed test procedure because portable ACs would be tested at the maximum fan speed and therefore commented that DOE should not consider variable-speed compressors in its analysis for proposed standards. (AHAM, No. 16 at p. 8) DOE notes that variable-speed compressors offer the highest efficiencies available in the capacity range appropriate for portable ACs whether operating at single or variable speeds. Because this technology option meets the screening criteria set forth in 10 CFR part 430, subpart C, appendix A, 4, DOE has retained it for consideration in the engineering analysis for this NOPR.

3. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the identified technologies, with the exception of insulated ducts and alternative refrigerants, as discussed in section IV.B.1, met all four screening criteria to be examined further as design options in DOE's NOPR analysis, as shown in Table IV.3. For additional details, see chapter 4 of the NOPR TSD.

TABLE IV.3—REMAINING DESIGN OPTIONS FOR PORTABLE AIR CONDITIONERS

Increased Heat-Transfer Surface Area:
1. Increased frontal coil area.
2. Increased depth of coil (add tube rows).
3. Increased fin density.
4. Add subcooler to condenser coil.
Increased Heat-Transfer Coefficients:
5. Improved fin design.
6. Improved tube design.
7. Spray condensate onto condenser coil.
8. Microchannel heat exchangers.
Component Improvements:

TABLE IV.3—REMAINING DESIGN OPTIONS FOR PORTABLE AIR CONDITIONERS—Continued

9. Improved compressor efficiency.
10. Improved blower/fan efficiency.
11. Low-standby-power electronic controls.
12. Improved duct connections.
13. Case insulation.
Part-Load Technology Improvements:
14. Variable-speed compressors.
15. Thermostatic or electronic expansion valves.
Reduced Infiltration Air:
16. Air flow Optimization.

C. Engineering Analysis

In the engineering analysis DOE establishes the relationship between the manufacturer production cost (MPC) and improved portable AC efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products.

In the preliminary engineering analysis, DOE used a hybrid approach of the design-option and reverse-engineering approaches described above. This approach involved physically disassembling commercially available products, reviewing publicly available cost information, and modeling equipment cost. From this information, DOE estimated the MPCs for a range of products available at that time on the market. DOE then considered the steps manufacturers would likely take to improve product efficiencies. In its analysis, DOE determined that manufacturers would likely rely on certain design options to reach higher efficiencies. From this information, DOE estimated the cost and efficiency impacts of incorporating specific design options at each efficiency level.

For this NOPR, DOE followed the same general approach as for the preliminary engineering analysis, but modified the analysis based on the newly established appendix CC test procedure, comments from interested parties, and the most current available information. This section provides more detail on how DOE selected the efficiency levels used for its analysis and developed the MPC at each level. Chapter 5 of the NOPR TSD contains further description of the engineering analysis.

1. Efficiency Levels

a. Baseline Efficiency Levels

A baseline unit typically just meets current energy conservation standards and provides basic consumer utility. Because there are no existing energy conservation standards for portable ACs, DOE observed whether units tested with lower efficiencies incorporated similar design options or features, and considered these features when defining a baseline configuration. To determine energy savings that will result from a new energy conservation standard, DOE compares energy use at each of the higher efficiency levels to the energy consumption of the baseline unit. Similarly, to determine the changes in price to the consumer that will result from an energy conservation standard, DOE compares the price of a unit at each higher efficiency level to the price of a unit at the baseline.

DOE noted in chapter 5 of the preliminary analysis TSD that the air flow pattern through a portable AC has a significant effect on measured cooling capacity and energy efficiency ratio. For units that draw air from the conditioned space over the condenser and then exhaust it outside of the conditioned space, an equivalent amount of infiltration air must enter the conditioned space due to the net negative pressure differential that is created between the conditioned and unconditioned spaces. Because the test conditions proposed in the February 2015 Test Procedure NOPR (the current proposal at the time of the preliminary analysis) specify that infiltration air would be at a higher temperature than the conditioned air, the infiltration air offsets a portion of the cooling provided by the portable AC. The greater the amount of infiltration air, the lower the overall cooling capacity will be. Based on the measured condenser exhaust air flow rates and the corresponding calculated magnitudes of the infiltration air heating effect, DOE determined in the February 2015 Preliminary Analysis that single-duct units (*i.e.,* units that draw all of the condenser intake air from within the conditioned space and exhaust to the unconditioned space via a duct) would represent the baseline efficiency level for portable ACs.

After the February 2015 Preliminary Analysis, DOE established the portable AC test procedure in appendix CC, which incorporates two cooling mode test conditions and weighting factors to determine overall performance. Because the additional test condition is at a lower outdoor temperature and has a significantly larger weighting factor than the original test condition, the impact of infiltration air on overall performance is greatly reduced. Therefore, the approach of considering a baseline unit to be a single-duct portable AC with typical system components is no longer valid for this rulemaking. DOE instead pursued an alternate analysis approach in this NOPR, which utilizes the results from all units in DOE's test sample, including 24 portable ACs (one test sample was tested in both a single-duct and dual-duct configuration) covering a range of configurations, product capacities, and efficiency as tested according the DOE test procedure in appendix CC.

DOE developed a relationship between cooling mode power and seasonally adjusted cooling capacity (SACC), which is a measure of cooling capacity that weights the performance at each of the cooling mode test conditions in appendix CC, using a best fit curve. DOE then used this relationship to develop an equation to determine nominal CEER for a given SACC based on the results of DOE's testing according to the test procedure in appendix CC, shown below.

$$Nominal\ CEER = \frac{SACC}{(2.7447 \times SACC^{0.6829})}$$

DOE assessed the relative efficiency of each unit in the test sample by comparing the measured CEER from testing to the nominal CEER as defined by the equation above (DOE will refer to this ratio of actual CEER to nominal

CEER as the performance ratio (PR) for a given unit). DOE proposes to define baseline performance as a PR of 0.72, which is based on the minimum PR observed for units in the test sample. Additional details on the baseline units may be found in chapter 5 of the NOPR TSD DOE invites comment on the baseline performance level proposal and the determination based on the minimum PR observed in DOE's test sample.

b. Higher Energy Efficiency Levels

Preliminary Analysis Proposal

For the February 2015 Preliminary Analysis, DOE developed incremental efficiency levels based on the design options manufacturers would likely use to improve portable AC efficiency. Recognizing that the presence of infiltration air has a large impact on unit performance, DOE expected that when improving efficiencies beyond the baseline, manufacturers would first make improvements to incrementally reduce the amount of infiltration air. While certain technology options identified in Table IV.1 of this NOPR and discussed in chapter 3 of the preliminary analysis TSD meet all the screening criteria and may produce energy savings in certain real-world situations, DOE did not further consider them in the preliminary analysis because specific efficiency gains were either not clearly defined or the DOE test procedure would not capture those potential improvements. Thus, DOE did not expect manufacturers to rely on these features to meet higher efficiency levels. Such technology options included: (1) Adding a subcooler or condenser coil, (2) increasing the heat transfer coefficients, (3) improving duct connections, (4) improving case insulation, and (5) implementing part-load technologies. Further discussion of these technology options and the reasons why DOE tentatively concluded that they would be unlikely to be implemented to improve efficiency can be found in chapter 5 of the preliminary analysis TSD.

The first efficiency level beyond the baseline in the February 2015 Preliminary Analysis, Efficiency Level 1 (EL 1), represented the first improvement a manufacturer would make for a single-duct unit. This efficiency level assumed manufacturers would convert single-duct units to a dual-duct configuration, although the units would still have infiltration air flow equal to half of the total air flow over the condenser (*i.e.,* half of the condenser air flow is from the conditioned space, and the other half is from the unconditioned space via the condenser inlet duct). This amount of infiltration air flow was approximately equal to the average value observed for the dual-duct units in DOE's test sample.

Efficiency Level 2 (EL 2) in the February 2015 Preliminary Analysis represented dual-duct units with infiltration air flow reduced to 25 percent of the total condenser air flow. Efficiency Level 3 (EL 3) represented a dual-duct unit that is perfectly sealed with no infiltration air, such that 100 percent of the condenser air flow is drawn from outside the conditioned space. DOE noted in the preliminary analysis that it did not observe units with zero infiltration air in its test sample, but included such a configuration in the analysis because DOE tentatively concluded it is technically feasible and would result in a significant increase in efficiency.

Efficiency Level 4 (EL 4) in the February 2015 Preliminary Analysis corresponded to the max-tech level as determined by DOE. This level combined the ideal dual-duct air flow configuration described for EL 3 with additional design option changes to improve efficiency. Although DOE did not observe any portable ACs in its sample with these additional design options, DOE regarded each of them as options that manufacturers would likely consider incorporating to achieve the highest possible efficiencies. At EL 4, units would incorporate more efficient compressors and blower motors, larger heat exchangers, and low-standby-power electronic controls. Similar to EL 3, DOE's test sample did not include any portable ACs incorporating all of the design options associated with EL 4, but DOE estimated the potential performance improvements for products incorporating these design changes based on available information and modeling described in chapter 5 of the preliminary analysis TSD.

From this data, DOE derived relationships between cooling capacity [22] and cooling mode energy efficiency ratio, EER_{cm}, at each of the efficiency levels. DOE presented the following general relationship in the February 2015 Preliminary Analysis, based on observed trends at each efficiency level:

$$EER_{cm} = \frac{Cooling\ Capacity}{(A \times Cooling\ Capacity + B)}$$

Table IV.4 below provides the coefficients A, in Wh/Btu, and B, in watts (W), for each analyzed efficiency level in the February 2015 Preliminary Analysis that would be used to determine EER_{cm} in Btu/Wh. Figure IV–1 plots each efficiency level curve for cooling capacities from 0 to 10,000 Btu/h. DOE noted that the cooling capacity and EER_{cm} were based upon how products would be expected to perform under the test procedure proposed in the February 2015 TP NOPR, and thus the range of values for each metric in DOE's analysis did not necessarily correspond to manufacturer-advertised ratings or data in the CEC Appliance Efficiency Database.

TABLE IV.4—PORTABLE AIR CONDITIONER EFFICIENCY LEVEL EQUATION COEFFICIENTS—PRELIMINARY ANALYSIS

Efficiency level	A coefficient (Wh/Btu)	B coefficient (W)
Baseline	0.113	855.5
EL1	0.1201	685.4
EL2	0.1222	566.3
EL3	0.1256	426.9
EL4	0.1205	355.1

[22] DOE notes that the cooling capacity analyzed in the preliminary analysis is equal to the adjusted cooling capacity (ACC) as proposed in the February 2015 Test Procedure NOPR.

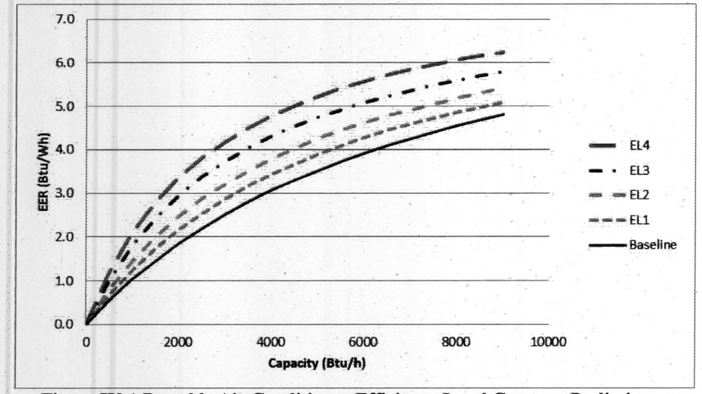

Figure IV-1 Portable Air Conditioner Efficiency Level Curves – Preliminary Analysis

Comments and Responses

1. Efficiency Versus Capacity Relationship

In response to the February 2015 Preliminary Analysis, DOE received multiple comments regarding its proposal to define efficiency levels as a function of cooling capacity.

The Joint Commenters, California IOUs, and AHAM agreed that DOE's test data showed a relationship between capacity and efficiency for units in the test sample when measured by the proposed DOE test procedure. However, these commenters did not agree that there is an inherent relationship between capacity and efficiency for all portable ACs, variously citing the following reasons:

(1) Both metrics are sensitive to infiltration air and other heating effects;

(2) other product features or configurations may contribute to efficiency, including improved air flow and compressor or blower motor efficiency;

(3) the observed trend between efficiency and capacity is specific only to DOE's test sample and is not representative of the market in its entirety; and

(4) this trend is atypical of heating and cooling equipment, which typically show a general decline in efficiency with increased cooling capacity.

The California IOUs stated that portable ACs with lower capacities may be capable of increasing EER via design options that do not affect capacity, so that lower standard levels for these units may fail to capture technologically feasible energy savings. The Joint Commenters noted that while the current standards for dehumidifiers (refrigeration-based products similar to portable ACs with comparable capacities) are higher for units with higher capacities, the difference in required efficiency for small-capacity and large-capacity dehumidifiers is significantly less than the range of efficiencies within each proposed portable AC efficiency level curve. According to the Joint Commenters, the availability of dehumidifiers with capacities as low as 25 pints/day that meet the current ENERGY STAR specification (which specifies the same energy factor for all dehumidifiers with capacities up to 75 pints/day) also suggests that there may not be an inherent relationship between capacity and efficiency for portable ACs. Accordingly, the Joint Commenters and the California IOUs urged DOE to consider portable AC standards that would require the same minimum efficiency level for all units. DENSO recommended that DOE evaluate the trends in room AC efficiency as a function of capacity because the engineering analysis in the February 2015 Preliminary Analysis was based in part on room ACs. (ASAP, Public Meeting Transcript, No. 11 at pp. 17–18, 40; Joint Commenters, No. 14 at pp. 2–4; California IOUs, No. 15 at pp. 2–3; AHAM, No. 16 at p. 5; DENSO, No. 13 at p. 5)

DOE's test sample included 24 portable ACs covering a range of configurations and product capacities. Although this sample represents only a portion of the portable AC market, DOE observed little substantive variation in the design and construction between the test units and expects that all units available on the market use similar technologies. Therefore, DOE expects that the results from this test sample likely reflect typical performance of the overall portable AC market.

Although DOE expected that manufacturers would rely on air flow optimization to reach higher efficiency levels as part of the February 2015 Preliminary Analysis, DOE agrees that certain design options would increase efficiency at a relatively constant capacity. However, for the preliminary analysis, DOE estimated that air flow optimization was the most cost-effective pathway for manufacturers to move to higher efficiency levels. In this NOPR analysis, DOE based its analysis on the portable AC test procedure in appendix CC. Under this test procedure, air flow optimization does not have a significant impact on efficiency. Accordingly, DOE has revised its engineering analysis to reflect primarily a component-based approach to achieving higher efficiencies.

DOE notes that although room ACs have similar components as portable ACs, the efficiency versus capacity trends for room ACs do not necessarily apply to portable ACs due to the

significant chassis size constraints on room ACs. Therefore, each product must be analyzed separately due to unique consumer use, installation, and component configuration. Similarly, although dehumidifiers and portable ACs utilize many of the same internal components, the configuration of these components significantly impacts the resulting functionality and delivered benefit to consumers. Dehumidifiers are arranged in a configuration to optimize latent heat transfer or removal of condensate, while portable ACs are configured to provide sensible cooling, with latent heat removal as a secondary function. Further, the two products are tested with different test procedures that produce incomparable capacity and efficiency metrics. Therefore, although they share many components, dehumidifier trends in efficiency versus capacity do not necessarily inherently apply to portable ACs.

DENSO commented that efficiency levels should be based on inherent product characteristics and not on performance related to installation. DENSO stated this would be consistent with packaged central ACs, which are typically installed as ducted units but are tested unducted, with the rating based on unit performance with a modest allowance for ducting. (DENSO, No. 13 at p. 4) The efficiency levels developed for this NOPR analysis are based on testing in accordance with the DOE test procedure for portable ACs in appendix CC. The DOE test procedure, which incorporates industry standards, establishes a repeatable test setup and method to determine representative and repeatable measure of portable AC performance that is comparable among single-duct and dual-duct configurations. DOE further notes that packaged central ACs differ from portable ACs in that the duct exhausting the hot condenser air is outside the conditioned space, and it is only the cooler evaporator ducts that interface with the conditioned space. Therefore, the impacts of duct heat transfer to the conditioned space would be significantly different for portable ACs than for packaged central ACs, and the general approach for testing packaged central ACs is not applicable to portable ACs.

2. Efficiency Level Equations

Several commenters expressed concern about the distillation of DOE's data points into discrete efficiency levels. The Joint Commenters[23] stated that modeled EER_{cm} values do not all fall along the efficiency level curves. For example, they commented that units in DOE's sample with cooling capacities at EL 4 ranging from about 3,500 to 9,500 Btu/h achieve modeled EER_{cm} values as high as approximately 7 Btu/Wh, but, the EL 4 curve does not exceed 6.5 Btu/Wh for cooling capacities up to 10,000 Btu/h. The Joint Commenters asserted, therefore, that it is inappropriate to use average values in determining the efficiency levels, particularly the max-tech EL 4. (ASAP, Public Meeting Transcript, No. 11 at pp. 48–49; Joint Commenters, No. 14 at pp. 4–5) DENSO suggested that the R-squared value for the curve fits may be low, and therefore the equations may not represent the data accurately. (DENSO, Public Meeting Transcript, No. 11 at pp. 43–45)

DOE notes that because there are currently no energy conservation standards for portable ACs, the limited data that are available are not necessarily measured on a consistent basis. DOE therefore conducted testing and modeling to characterize the performance of portable ACs on the market. For the February 2015 Preliminary Analysis, DOE's modeling of air flow optimization resulted in a range of product efficiencies. To minimize potential impacts of outliers or error in the modeling, DOE used best-fit curves to characterize the efficiency versus capacity trends for each corresponding design option. For the NOPR analysis, DOE determined efficiency levels based on the range of observed and modeled performance according to appendix CC for units in its test sample. The baseline efficiency level represents the lowest observed efficiency and the max-tech efficiency level represents the highest modeled efficiency. Accordingly, the efficiency levels for the NOPR analysis span the range of observed and modeled data and no longer rely on best-fit trends for a set of data points at a given efficiency level.

The Joint Commenters encouraged DOE to ensure that units with negative cooling capacities would not be able to meet potential efficiency standards. They noted that at negative cooling capacities, the EER_{cm} values for all efficiency levels above the baseline are lower than the baseline values, and the units tested by DOE that have negative cooling capacities have EER_{cm} values that are higher than all of the efficiency levels evaluated. (ASAP, Public Meeting Transcript, No. 11 at pp. 46–48; Joint Commenters, No. 14 at pp. 7–8) The data presented in the February 2015 Preliminary Analysis showed the potential for negative efficiencies and cooling capacities. However, the preliminary analysis was based on the test procedure proposed in the February 2015 TP NOPR. The newly established test procedure in appendix CC incorporates a lower-temperature outdoor condition and weights performance under this condition heavily in the final performance calculations. As a result, DOE does not expect any negative SACC or CEER results, and is not proposing standards that would account for these negative values.

3. Design Approaches for Higher Efficiency Levels

AHAM and De' Longhi expressed concern about basing higher efficiency levels on reduced or zero infiltration air, pointing out that DOE did not find any portable ACs with zero infiltration air. De' Longhi suggested that completely sealed dual-duct portable ACs should not be considered as an efficiency level because these units are hypothetical and only included in the analysis based on their technical feasibility. (AHAM, No. 16 at p. 4; De' Longhi, No. 12 at pp. 2–3, 5–6; De' Longhi, Public Meeting Transcript, No. 11 at pp. 6, 38, 42)

As discussed previously in section IV.C.1.a of this NOPR, DOE revised its analysis for this NOPR, including updated efficiency levels based on the newly established test procedure in appendix CC. Under testing according to appendix CC, air flow optimization that would lead to zero infiltration air is no longer associated with improved efficiencies.

The Joint Commenters stated that, in general, portable ACs with higher cooling capacities typically employ higher-capacity compressors, larger heat exchangers, and more powerful fans than units with lower cooling capacities. The Joint Commenters objected to DOE not including these design options at higher capacities. They also noted that units in DOE's test sample may include various design features that impact efficiency, some of which may not be captured in DOE's modeling of design options. For example, they referred to DOE's finding in the February 2015 TP NOPR that uninsulated ducts and leaks in duct connections contributed 460 to 1,300 Btu/h in its test sample, which correlated to percentages of uninsulated cooling capacity ranging from 18 to 199 percent. 80 FR 10212, 10227 (Feb. 25, 2015). The Joint Commenters asserted that these data suggest that some current

[23] For some issues, the Appliance Standards Awareness Project submitted substantively similar comments both individually and as a signatory to the Joint Commenters' submission. In those instances, DOE provides citations to both comments.

designs are more effective than others at minimizing duct heat transfer and leakage. (ASAP, Public Meeting Transcript, No. 11 at pp. 48–49; Joint Commenters, No. 14 at pp. 4–5)

The California IOUs recommended that DOE consider product component improvements, including increased heat exchanger area, improved compressor efficiency, improved blower motor efficiency, and low-standby-power electronic controls for all efficiency levels and not just the max-tech EL 4. Because DOE's analysis did not show a significant increase in capacity when moving from EL 3 to EL 4, the California IOUs believe that these component improvements may increase EER_{cm} without affecting product capacity. By not limiting these component improvements to the max-tech level, DOE would ensure that these technology options would be considered for potential standards. (California IOUs, No. 15 at p. 3) In the February 2015 Preliminary Analysis, DOE expected that when improving efficiencies beyond the single-duct baseline, manufacturers would first make improvements to incrementally reduce the amount of infiltration air. Those changes would likely be made prior to component changes, such as more efficient compressors or blower motors or larger heat exchangers, due to their lower cost and significant improvement in capacity and efficiency. Although DOE no longer considered duct configuration and air flow optimization in the development of efficiency levels, DOE maintained the component improvement approach for this NOPR analysis, wherein increasing heat exchanger area, compressor efficiency, and blower motor efficiency all result in improved portable AC efficiencies. The estimated MPCs associated with these changes at each efficiency level are discussed in section IV.C.2 of this proposed rule. DOE also notes that, depending upon their current product designs, manufacturers may choose to achieve higher efficiencies using combinations of component improvements that may vary from the expected component improvements for the units in DOE's test sample.

The Joint Commenters questioned DOE's approach to use an industry average for the max-tech efficiency level (EL 4). ASAP and AHAM were concerned about DOE's use of modeling to determine the max-tech efficiency level, which is higher than the efficiencies observed in the limited test sample. (Joint Commenters, No. 14 at pp. 4–5; ASAP, Public Meeting Transcript, No. 11 at pp. 49–50; AHAM, No. 16 at p. 3) Although DOE used an average-performance approach to define each efficiency level in the February 2015 Preliminary Analysis, DOE has revised its efficiency level construction in this NOPR. DOE based the NOPR analysis efficiency levels on the performance of units in its test sample. The baseline level is established by the least efficient unit in the test sample, EL 2 corresponds to the maximum available efficiency that can be achieved across a range of capacities, EL 3 represents an incremental improvement above EL 2 and is the single most efficient unit in DOE's test sample, and EL 4, the max-tech level, is a theoretical level representing the maximum modeled efficiency after applying additional component improvements to EL 3. EL 1 represents an intermediate gap-fill level within the range of tested efficiencies.

De' Longhi commented that increased heat exchanger sizes at EL 4 may significantly impact portability, in terms of both larger product dimensions and heavier weight. (De' Longhi, No. 12 at p. 3) DOE limited its preliminary analysis to a 10-percent increase in heat exchanger size, the maximum heat exchanger size increase that it deemed acceptable without impacting consumer utility. However, for this NOPR analysis, DOE has increased the maximum heat exchanger size increases to 20 percent. As described in chapter 5 of the NOPR TSD, DOE observed in its test sample that heat exchanger areas varied significantly from unit to unit. DOE determined the relationship between SACC and heat exchanger area, and observed that the heat exchangers areas for units in the test sample ranged from approximately 20 percent below to 20 percent above the average trend. The range in observed heat exchanger areas suggests that manufacturers have an opportunity to increase heat exchanger areas beyond what DOE had estimated for the February 2015 Preliminary Analysis. Based on the range of observed heat exchanger areas in its test sample and the strong correlation between heat exchanger area and cooling capacity, DOE determined that a 20-percent increase in heat exchanger area is a more appropriate limit. DOE does not expect this increase in heat exchanger size, and the resulting increase in case size, to impact product portability, in part because all single-duct and dual-duct portable ACs that DOE identified incorporate wheels. DOE is not aware of any significant changes in a consumer's ability to move, install, or store the product if the case dimensions were to change to accommodate a 20-percent larger heat exchanger.

The Joint Commenters encouraged DOE to consider room AC efficiencies in evaluating efficiency levels for portable ACs. They noted that the current CEER standards for room ACs are 1.7 to 2.3 times higher than the max-tech EER_{cm} values at EL 4 that DOE proposed for portable ACs for a similar range of cooling capacities, and that the difference in calculating CEER and EER_{cm} are not substantive. Similarly, the Joint Commenters noted that the CEER values for room ACs in the ENERGY STAR 4.0 specification are 1.9 to 2.5 times higher than the max-tech portable AC EER_{cm} values. They noted that the primary difference between room ACs and portable ACs is that room ACs do not use ducts. However, they do not believe that this difference fully explains the gap in performance between the two types of cooling equipment. The Joint Commenters also noted that the difference between the two products may be due to DOE's use of average values in determining each efficiency level. Therefore, they encourage DOE to consider the efficiency levels of room ACs in evaluating the achievable efficiency of portable ACs and to investigate whether the achievable efficiency levels of portable ACs may be higher than the EL 4 in the preliminary analysis. (Joint Commenters, No. 14 at pp. 5–6) De' Longhi stated that data from room ACs are not relevant for this analysis. (De' Longhi, No. 12 at p. 3)

Although room ACs and portable ACs incorporate similar components, the DOE room AC test procedure (10 CFR part 430, subpart B, appendix F) differs substantively from that in appendix CC for portable ACs. Notably, portable ACs are tested under two different outdoor conditions while room ACs only use a single condition. Additionally, the impacts of infiltration air and duct heat transfer affect portable AC cooling capacity and CEER, but are not applicable to room ACs. Therefore, the two product types would not necessarily be able to achieve the same efficiency for a given cooling capacity. Each product must be analyzed independently to determine appropriate efficiency levels for potential standards based on the design options and their subsequent impacts on capacity and efficiency as determined by the relevant test procedures.

The Joint Commenters and California IOUs encouraged DOE to consider additional component efficiency improvements beyond those considered at EL 4. The Joint Commenters further stated that additional heat exchanger increases would be feasible, and that DOE neglected to incorporate

microchannel heat exchangers (found to increase coefficient of performance (COP) by 6 to 10 percent, as discussed in chapter 3 of the preliminary analysis TSD) and permanent magnet motors in the preliminary engineering analysis. These commenters also noted that the design options incorporated in the 2011 final rule for room ACs, including increased heat transfer surface area, microchannel heat exchangers, improved compressor and fan motor efficiency, and standby power reductions, resulted in a 24 to 33-percent increase in CEER relative to the baseline. The Joint Commenters note that for portable ACs, the max-tech EL 4 represents an increase in EER_{cm} of only about 10 percent over the EER_{cm} at EL 3. They believe that because portable ACs are not currently subject to energy conservation standards, greater improvements in efficiency, similar to those from the 2011 room AC final rule, would be expected from component efficiency improvements. (Joint Commenters, No. 14 at pp. 6–7; California IOUs, No. 15 at p. 3)

DOE noted in the February 2015 Preliminary Analysis that manufacturers do not currently implement microchannel designs in existing heat exchangers, and there is limited data on the potential efficiency improvements for portable ACs. DOE therefore did not consider that design option in the preliminary engineering analysis. DOE emphasizes that efficiency and capacity gains associated with specific design options for other related products do not necessarily translate to portable ACs due to variations in installation and typical consumer usage that are reflected in their respective test procedures. DOE incorporated the other mentioned design options, improved compressor and fan motor efficiency and standby power reductions, in its preliminary analysis at EL 4.

NOPR Proposal

For the NOPR analysis, DOE updated the efficiency levels to reflect performance based on the newly established DOE test procedure for portable ACs in appendix CC, which was modified from the test procedure proposal that was the basis of the February 2015 Preliminary Analysis. Appendix CC includes a second cooling mode outdoor test condition for dual-duct units and infiltration air condition for both single-duct and dual-duct units, modifying the CEER metric for both single-duct and dual-duct units to address performance at the two cooling mode test conditions. Appendix CC also no longer includes provisions from the test procedure NOPR for measuring case heat transfer, which substantively affected this NOPR analysis. Issued April 2016 TP Final Rule.

As discussed in the February 2015 Preliminary Analysis, although the initial test procedure proposal included a CEER metric that combined energy use in cooling mode with that in heating mode and various low-power modes, the preliminary analysis was conducted using EER_{cm} as the basis for energy conservation standards instead of CEER. DOE analyzed EER_{cm} because cooling is the primary function for portable ACs, and DOE expected that manufacturers would likely focus on improving efficiency in this mode to achieve higher CEERs. Because the test procedure established in appendix CC does not include a heating mode test and includes a second cooling mode test condition, the CEER metric as codified combines the performance at both cooling mode test conditions with energy use in the low-power modes. Accordingly, DOE utilized CEER as the basis for its proposed portable AC energy conservation standards in this NOPR. DOE also based the NOPR analysis on the SACC measured in appendix CC, a weighted combination of the adjusted cooling capacities at the two cooling mode test conditions.

The two cooling mode test conditions in appendix CC are weighted based on the percentage of annual hours for each test condition, on average, for geographical locations that correspond to expected portable AC ownership. The majority (80 percent) of the total hours were estimated to relate to the lower of the two outdoor temperatures, 83 degrees Fahrenheit (°F) dry-bulb. Because at this lower outdoor temperature, there is only a 3 °F dry-bulb temperature differential and subsequent 0.38 Btu per pounds of dry air enthalpy differential between the indoor and outdoor air, the potential impact of infiltration air heating effects on the overall CEER metric is substantially reduced. For this reason, DOE now finds no significant relationship between duct configuration or air flow optimization and improved efficiency, and therefore alternatively considered component efficiency improvements as the primary means to increase CEER. Accordingly, in this NOPR DOE has defined its efficiency levels, other than the max-tech, based on the performance observed in its test sample, independent of duct configuration or level of air flow optimization.

As discussed previously in section IV.C.1.a, DOE characterized and compared performance among all portable ACs in its test sample and determined a relationship between SACC and a general representation of expected CEER as follows:

$$Nominal\ CEER = \frac{SACC}{(2.7447 \times SACC^{0.6829})}$$

As discussed in section IV.C.1.a, DOE assessed individual unit performance relative to this CEER relationship and identified a baseline efficiency level at PR = 0.72, with PR defined as the ratio of actual CEER to nominal CEER.

For EL 2, DOE determined the PR that corresponded to the maximum available efficiency across a full range of capacities (1.14), and then selected an intermediate efficiency level for EL 1 based on a PR between the baseline and EL 2 (0.94). For EL 3, DOE identified the PR for the single highest efficiency unit observed in its test sample (1.31).

Due to the variations in performance among units in DOE's test sample, DOE conducted additional performance modeling to augment its test data when estimating efficiency and manufacturing costs at each efficiency level. DOE numerically modeled component improvements for each of the 21 out of 24 test units for which detailed component information were available to estimate potential efficiency improvements to existing product configurations. The component improvements were performed in three steps for each unit.

The first incremental improvement for each unit included a 10-percent increase in heat exchanger frontal area and raising the compressor energy efficiency ratio (EER) to 10.5 Btu/Wh, the maximum compressor efficiency identified at the time of the February 2015 Preliminary Analysis.

The second incremental component efficiency improvement step for each unit included a 15-percent increase in heat exchanger frontal area from the original test unit and an improvement in compressor efficiency to an EER of 11.1 Btu/Wh, which DOE identified as the

maximum efficiency for currently available single-speed R-410A rotary compressors of the type typically found in portable ACs and other similar products. As with the 10-percent heat exchanger area increase, DOE expects that a chassis size and weight increase would be necessary to fit a 15-percent increased heat exchanger, but believes portability and consumer utility would not be significantly impacted.

DOE included all available design options in the third efficiency improvement step for each unit, including a 20-percent increase in heat exchanger frontal area from the original test unit, more efficient ECM blower motor(s), and a variable-speed compressor with an EER of 13.7 Btu/Wh. DOE believes that a 20-percent increase in heat exchanger size is the maximum allowable increase for consumer utility and portability to be retained. DOE also improved standby controls efficiency in this final step, adjusting the standby power for each test unit to the minimum observed standby power of 0.46 W in its test sample. With these design options modeled for units in its test sample, DOE found that the single, theoretical maximum-achievable efficiency among all modeled units corresponded to a PR of 1.75, which DOE defined as EL 4.

Table IV.5 summarizes the specific improvements DOE made to model the performance of higher efficiency design options applied to each test unit.

TABLE IV.5—COMPONENT IMPROVEMENTS SUMMARY

Heat exchanger area (% increase)	Compressor EER (Btu/Wh)	Blower motor (type)	Standby (watts)
10	10.5 (single-speed)	(1)	
15	11.1 (single-speed)		
20	13.7 (variable-speed)	ECM (variable-speed)	0.46

[1] No blower motor or standby power changes were applied to the first two incremental steps.

Table IV.5 does not necessarily represent the design options associated with each efficiency level beyond the baseline. Baseline through EL 3 are defined by the range of test data, while EL 4 is defined by the maximum theoretical PR after modeling all design options listed in Table IV.5.

In this NOPR, DOE analyzed efficiency levels based on test samples and modeled performance according to the following equation and the PR values listed in Table IV.6:

$$Minimum\ CEER = PR \times \frac{SACC}{(2.7447 \times SACC^{0.6829})}$$

TABLE IV.6—PORTABLE AIR CONDITIONER EFFICIENCY LEVELS AND PERFORMANCE RATIOS—NOPR ANALYSIS

Efficiency level	Efficiency level description	Performance ratio (PR)
Baseline	Minimum Observed	0.72
EL 1	Intermediate Level	0.94
EL 2	Maximum Available for All Capacities	1.14
EL 3	Maximum Observed	1.31
EL 4	Max-Tech (Maximum of Modeled Component Improvements)	1.75

Figure IV–2 plots each efficiency level curve for SACCs from 50 to 10,000 Btu/h, based on the nominal CEER curve scaled by the PR assigned to each efficiency level.

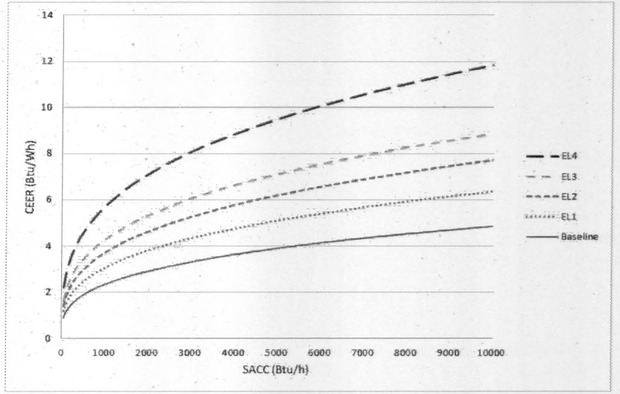

Figure IV-2 Portable Air Conditioner Efficiency Level Curves – NOPR Analysis

Additional details on the selection of efficiency levels may be found in chapter 5 of the NOPR TSD.

2. Manufacturer Production Cost Estimates

Based on product teardowns and cost modeling conducted in the preliminary analysis, DOE developed overall cost-efficiency relationships for each considered efficiency level. DOE selected products covering the range of efficiencies available on the market for the teardown analysis. During the teardown process, DOE created detailed BOMs that included all components and processes used to manufacture the products. DOE used the BOMs from the teardowns as an input to a cost model, which calculated the MPC for products covering the range of efficiencies available on the market. The MPC accounts for labor, material, overhead, and depreciation costs that a manufacturer would incur in producing a specific portable AC.

For the preliminary analysis, DOE estimated that the costs for these products reflected the costs for typical units at their respective efficiency levels, consistent with the efficiency-level approach. DOE then used the design-option approach to apply the technology options it determined manufacturers were most likely to incorporate, air flow optimization and improved component efficiencies, to evaluate the necessary changes to each unit in DOE's teardown sample and the associated capacity and efficiency changes at each efficiency level. DOE constructed cost-efficiency curves for each unit and then averaged the costs for all units at each efficiency level to determine the industry-representative incremental MPC. Table IV.7 shows the incremental MPCs developed in the preliminary analysis for each product class at each of the analyzed efficiency levels compared to the baseline MPC. For the preliminary analysis, EL 1 through EL 3 represented changes to the air flow to reduce or eliminate infiltration air by means of a dual-duct configuration. The small incremental costs at these efficiency levels represented the cost for an additional duct and larger blower motor. At EL 4, the incremental MPC was significantly higher due to higher-cost design options incorporated at this level, including larger heat exchangers (and the additional cost of a larger case and other internal component adjustments) and more efficient compressors and blower motors. The incremental MPCs were presented in 2013 dollars (2013$), which reflected the year in which the preliminary analysis teardowns and modeling were performed.

TABLE IV.7—PORTABLE AIR CONDITIONER INCREMENTAL MANUFACTURER PRODUCTION COSTS (2013$)—PRELIMINARY ANALYSIS

Efficiency level	Incremental MPC (2013$)
Baseline	
EL1	$ 4.09
EL2	4.67
EL3	5.26
EL4	47.76

Chapter 5 of the preliminary analysis TSD contains additional details on the analysis conducted in support of developing these MPC estimates.

DOE received several comments from interested parties on the MPC estimates developed for the preliminary analysis. AHAM commented that it would attempt to provide DOE with MPC data. (AHAM No. 16 at p. 8) DOE did not receive any manufacturer cost information from AHAM for consideration in the NOPR analysis.

DENSO questioned what capacity was used to determine the incremental costs, since an incremental efficiency improvement at lower capacities would entail different MPCs than the same efficiency improvement at higher capacities. (DENSO, Public Meeting Transcript, No. 11 at p. 52) The incremental costs presented in the preliminary analysis were an average across all of the units in DOE's test

sample. The sample included units covering the range of available capacities, and therefore the incremental MPCs reflected the average of all costs associated with units of varying capacities. Additional information can be found in chapter 5 of the preliminary TSD.

For the NOPR analysis, DOE updated the incremental MPC estimates from the preliminary analysis based on the changes to the efficiency levels detailed above in section IV.C.1, and also based on feedback from interested parties and on information gathered in additional manufacturer interviews. When assigning costs to efficiency levels in this analysis, DOE considered all units that performed between two efficiency levels as representative of the lower of the two efficiency levels. DOE determined an average baseline MPC based on the units in DOE's test sample with a CEER below EL 1 (PR = 0.94). Six units in the test sample tested below EL 1. DOE expects the average MPCs from these units to reflect the baseline for the overall portable AC market because the average capacity of these units was within approximately 200 Btu/hr of the overall average capacity for the entire test sample.

DOE subsequently determined the costs for all other torn-down and modeled units, and determined the average costs associated with each incremental component efficiency improvement when moving between efficiency levels. In addition to the costs associated with the improved components themselves, DOE also considered the increased costs associated with other related product changes, such as increasing case sizes to accommodate larger heat exchangers.

Although DOE's test and modeled data resulted in a range of PRs from 0.72 to 1.75, DOE observed that not all units in its test sample were capable of reaching higher PRs with the identified design option changes. For example, the modeled max-tech PR represents a unit in the test sample that had a high PR as a starting point (near EL 3). Modeling increased heat exchanger sizes and a more efficient compressor in this unit resulted in a higher modeled PR than could be achieved theoretically by applying the same design options to baseline units. For these units that start at lower PRs, DOE expects that manufacturers would have to undertake a complete product redesign and optimization to reach higher PRs, rather than just apply the identified design options. As a result, manufacturers of these units would incur higher MPCs to reach the higher efficiency levels and also significant conversion costs associated with updating their product lines. These conversion costs are discussed further in sections IV.J and V.B.2 of this proposed rule and chapter 12 of the NOPR TSD.

With this approach, DOE found that only three units in the teardown sample would be capable of reaching EL 3 without significant product redesign (*i.e.,* the one unit that tested at EL 3 and two units that could theoretically achieve EL 3 with highest efficiency single-speed compressors and increasing the heat exchanger area no more than 20 percent). At EL 4 (max-tech), DOE expects all products to require redesigns. EL 4 represents the maximum modeled efficiency with a 20-percent increase in heat exchanger area and the most efficient variable-speed compressor. DOE expects that manufacturers would undertake a product redesign when switching from a single-speed to a variable-speed compressor. Additionally, DOE notes that the ability of a product to reach EL 3 or EL 4 would be dependent on the availability of the most efficient components. However, compressor availability for portable ACs is largely driven by the room AC industry, so the most efficient single-speed and variable-speed compressors may not be available over the entire range of capacities necessary for all portable AC product capacities. As a result, moving to EL 3 or EL 4 may necessitate manufacturers to remove certain portable AC cooling capacities from the market.

Products that would require a redesign to reach a certain efficiency level with the identified design options would subsequently incur additional incremental MPCs to achieve any improvement beyond that efficiency. Although DOE does not expect manufacturers to actually implement the associated design changes for the reasons discussed below, DOE included them for completeness to estimate MPCs representative of the full capacity range at all efficiency levels. To estimate increased material costs after manufacturers undertake a product redesign, DOE allowed the heat exchanger area to increase beyond the 20-percent limit where necessary, resulting in higher costs for the heat exchangers and associated case changes. Similarly, DOE modeled compressors with efficiencies higher than those that it is aware of on the market to simulate the increased component costs after a product redesign (*i.e.,* DOE used the price premium associated with more efficient compressors to estimate the costs associated with other component changes that would be made in a product redesign). While DOE's estimates related to product redesigns resulted in increased MPCs at the higher efficiency levels, the more significant financial impact of a redesign would be associated with the conversion costs incurred by manufacturers, as described in sections IV.J and V.B.2 of this NOPR and in chapter 12 of the NOPR TSD.

DOE calculated all MPCs in 2014$, the most recent year for which full-year data was available at the time of this NOPR analysis. Table IV.8 presents the updated MPC estimates DOE developed for this NOPR.

TABLE IV.8—PORTABLE AIR CONDITIONER INCREMENTAL MANUFACTURER PRODUCTION COSTS (2014$)—NOPR ANALYSIS

Efficiency level	Incremental MPC (2014$)
Baseline	.....
EL1	$29.78
EL2	45.13
EL3	60.35
EL4	108.99

Additional details on the development of the incremental cost estimates may be found in chapter 5 of the NOPR TSD.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the manufacturer selling price (MSP) estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis and in the MIA. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For portable ACs, the main parties in the distribution chain are manufacturers, retailers, and consumers.

The manufacturer markup converts MPC to MSP. DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes portable ACs.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more-efficient products (incremental markups). Incremental markups are coefficients that relate the change in the MSP of higher-efficiency models to the change in the retailer sales price. DOE relied on economic data from the U.S.

Census Bureau to estimate average baseline and incremental markups.

AHAM objected to DOE's reliance on the concept of incremental markups, stating that this theory has been disproved and it is in contradiction to empirical evidence. (AHAM, No. 16 at p. 8) In an attachment to AHAM's comment, Shorey Consulting, Inc. stated that (1) DOE requires a strong form of economic theory, since it is saying that something will happen solely because theory says it should; and (2) an *a priori* resort to economic theory without clear empirical support is highly problematic. Shorey Consulting interviewed a sample of local/regional and national appliance retailers and reported that, with very few exceptions, they reacted to the DOE concept that percentage margins will be lower in a post-standards situation with incredulity. It concluded that DOE needs to abandon the incremental margin approach and revert to the average margin approach that corresponds to actual industry practice. (AHAM, No. 16 at pp. A–10–11)

DOE disagrees that the theory behind the concept of incremental markups has been disproved. The concept is based on a simple notion: An increase in profitability, which is implied by keeping a fixed markup when the product price goes up, is not likely to be viable over time in a business that is reasonably competitive. DOE agrees that empirical data on markup practices would be desirable, but such information is closely held and difficult to obtain.

Regarding the interviews with appliance retailers, it is difficult for DOE to evaluate the characterization of the responses without knowing what questions were posed to the retailers. DOE's analysis necessarily considers a very simplified version of the world of appliance retailing: Namely, a situation in which nothing changes except for those changes in appliance offerings that occur in response to new standards. DOE implicitly asks: Assuming the product cost increases while the other costs remain constant (no change in labor, material and operating costs), are retailers still able to keep the same markup over time as before? DOE recognizes that retailers are likely to seek to maintain the same markup on appliances if the price they pay goes up as a result of appliance standards, but DOE believes that over time adjustment is likely to occur due to competitive pressures. Other retailers may find that they can gain sales by reducing the markup and maintaining the same per-unit operating profit. The incremental markup approach embodies the same perspective as the "preservation of per-unit operating profit markup scenario" used in the MIA (see section IV.J of this document).

In summary, DOE acknowledges that its approach to estimating retailer markup practices after new standards take effect is an approximation of real-world practices that are both complex and varying with business conditions. However, DOE continues to believe that its assumption that standards do not facilitate a sustainable increase in profitability is reasonable. DOE welcomes information that could support improvement in its methodology.

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for portable ACs.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of portable ACs at different efficiencies in representative U.S. homes.[24] The energy use analysis estimates the range of energy use of portable ACs in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

DOE determined a range of annual energy use consumption of portable ACs as a function of the unit's annual operating hours to meet the cooling demand, which depends on the efficiency of the unit, power (watts) of three modes of operation (cooling, fan, and standby), and the percentage of time in each mode.

EIA's Residential Energy Consumption Survey (RECS) provides information on whether households use a room AC. Because portable ACs and room ACs often serve a similar function,[25] DOE developed a sample of households that use room ACs from RECS 2009, which is the latest available RECS.[26] DOE selected the subset of RECS 2009 records that met relevant criteria.[27]

To estimate the cooling operating hours of room ACs, DOE used the same method as was used in the 2011 direct final rule for room ACs. 76 FR 22454 (Apr. 21, 2011). For each sample household, RECS provides the estimated energy use for cooling by room ACs. After assigning an efficiency and capacity to the room AC, DOE could then estimate its operating hours in cooling mode. DOE then adjusted the operating hours in cooling mode to account for the likelihood that improvement in building shell efficiency would reduce the cooling load and operating hours.[28] The estimated average cooling operating hours for a room AC is 585 hours/year.

The annual operating hours of the existing room AC were used as a proxy for the operating hours of a baseline portable AC. DOE then estimated what the operating hours would be if portable ACs of higher efficiency units were used instead. Generally, higher efficiency reduces the operating hours required to meet a given cooling demand.

To estimate the number of hours in fan-only mode, DOE utilized a field metering analysis of a sample of portable ACs in 19 homes.[29] The survey provided data on cooling-mode and fan-only mode hours of operation. DOE derived a distribution of the ratio of fan-only mode hours to cooling-mode hours, and used this distribution to randomly assign a ratio to each of the sample households, which allows estimation of fan-only mode hours of operation. DOE assumed portable ACs would only be plugged in during months with 5 or more cooling degree days. The annual hours in standby mode were derived by subtracting the cooling-mode and fan-only mode hours of operation from the total number of hours in a months with 5 or more cooling degree days.

To estimate the operating hours of portable ACs used in commercial

[24] DOE estimated that 12 percent of portable ACs are used in used retail or office buildings, and it also estimated energy use by these consumers. The percentage is equivalent to the market distribution of residential and commercial installations of residential room AC products.

[25] It is assumed that portable ACs may perform supplemental cooling to a particular space, but that the cooling loads between room ACs and portable ACs are similar. For example, a portable AC may be used to provide cooling to a single room in place of a central AC to cool an entire home. For the purposes of estimating energy use, DOE assumed that portable ACs are operated under similar cooling loads as room ACs, given their similar cooling capacities.

[26] U.S. Department of Energy—Energy Information Administration. *Residential Energy Consumption Survey.* 2009. <*http://www.eia.gov/consumption/residential/data/2009/*>.

[27] RECS household use criteria: (1) At least one room AC was present in the household; (2) The energy consumption of the room AC was greater than zero; (3) The capacity of the room AC was less than 14,000 Btu/hr (a cooling capacity comparable to portable ACs as measured by industry test methods); and (4) The room being cooled measured no more than 1,000 square feet.

[28] To account for increased building efficiency at the time that the proposed standard would take effect, DOE used the 2021 building shell index factor of 0.97 for space cooling in all residences from the EIA's Annual Energy Outlook. (Energy Information Administration. *Annual Energy Outlook 2014 with Projections to 2014.* April 2014.)

[29] Burke, Thomas, *et al.* 2014. *Using Field-Metered Data to Quantify Annual Energy Use of Portable Air Conditioners. http://www.osti.gov/scitech/servlets/purl/1166989.*

settings, DOE developed a building sample from the 2003 Commercial Buildings Energy Consumption Survey (CBECS),[30] again using the operating hours of room ACs as a proxy. The method is described in chapter 7 of the NOPR TSD. DOE invites comment on the energy use methodology and data sources/studies described here and in Chapter 7.

Commenting on the preliminary TSD, AHAM asserted that DOE's energy use analysis is based on insufficient and inaccurate data. AHAM noted that consumers use portable ACs and room ACs differently, including the time of year and frequency of use. AHAM expressed concern that DOE is reliant on RECS data that are appropriate for room ACs, but do not include data specific to portable ACs. (AHAM, No. 16 at pp. 5–6) DENSO also questioned the accuracy of DOE's energy use assumptions. (DENSO, No. 13 at p. 8)

DOE believes that portable ACs are used similarly to room ACs and assumes that in some residential and commercial scenarios, portable ACs may perform supplemental cooling to central ACs. DOE has based the NOPR energy use analysis on room AC usage data as DOE believes such data is the closest proxy available. To account for any potential differences between consumer use of portable ACs and room ACs, DOE also conducted a sensitivity analysis which assumes lower annual hours of use for portable ACs in comparison to room ACs. Specifically, in this sensitivity analysis for use differences between products, DOE scaled the room AC cooling mode hours of use by 50 percent while maintaining the assumption that portable ACs are used during the same time of year as room ACs, since the use of both types of cooling equipment is likely to be consistent seasonally. The results of this sensitivity analysis estimate half the energy bill savings relative to the primary estimate. More details are presented in appendix 8F and appendix 10E of the NOPR TSD. DOE welcomes any specific data on operation of portable ACs that could inform further analysis on consumer use.

DENSO commented that room AC operating hours are not representative of industrial portable AC (I–PAC) operating hours. DOE is not analyzing industrial products (including I–PACS) in this rulemaking.

OceanAire inquired whether DOE's estimate for "commercial" referred to portable ACs in commercial settings or commercial units. (DENSO, No. 13 at pp. 7–8; OceanAire, Public Meeting Transcript, No. 11 at p. 62) The proposed rule applies to single-duct and dual-duct portable ACs that meet the definitions in 10 CFR 430.2, and DOE considered such units that operate in light commercial settings, such as food service, office and retail buildings.

Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for portable ACs.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for portable ACs. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that the new standard is assumed to take effect.

For a given efficiency level, DOE calculates LCC savings as the change in LCC in a standards case relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of portable ACs in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units and commercial buildings that use portable ACs. DOE used the EIA's 2009 RECS to develop household samples for portable ACs based on households that use room ACs. DOE also used the EIA's 2003 CBECS to develop a sample of commercial buildings that use portable ACs, again based on buildings that use room ACs. For each sample household or commercial building, DOE determined the energy consumption for the portable ACs and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of portable ACs.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Note in the case of portable ACs, DOE assumed that installation costs would not change with efficiency. So the difference of installation cost between the baseline and higher efficiency levels is then $0. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime and discount rates with probabilities attached to each value, to account for their uncertainty and variability. Sales tax and electricity prices are tied to the geographic locations of purchasers drawn from the residential and commercial samples.

The model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulation randomly samples input values from the probability distributions and portable AC user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units or commercial buildings per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new product in the expected year of compliance with new standards. Any new standards would apply to portable ACs manufactured 5 years after the date on which any new standard is published. (42 U.S.C. 6295(l)(2)) At this time, DOE estimates publication of a final rule in 2016. Therefore, for purposes of its analysis, DOE used 2021 as the first year of compliance with any new standards.

Table IV.9 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. For energy use, RECS and CBECS were used for number of hours of use. A field metering report provided information regarding the fan-mode of portable ACs.[31] Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

[30] U.S. Department of Energy—Energy Information Administration. *Commercial Buildings Energy Consumption Survey*. 2003. *http://www.eia.gov/consumption/commercial/data/2003/.*

TABLE IV.9—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Producer Price Index (PPI) series for small household electronics fit to an exponential model.
Installation Costs	Assumed no installation costs with baseline unit and no cost with efficiency level.
Annual Energy Use	Power in each mode multiplied by the hours per year in each mode. Average number of hours based on 2009 RECS, 2003 CBECS, and field metering data. Variability: Based on the 2009 RECS and 2003 CBECS.
Energy Prices	Electricity: Based on 2014 average and marginal electricity price data from the Edison Electric Institute. Variability: Marginal electricity prices vary by season, U.S. region, and baseline electricity consumption level.
Energy Price Trends	Based on *AEO 2015* price forecasts. Trends are dependent on census divisions.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Weibull distribution using parameters from room ACs.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2021.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

1. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described above (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to "learning" or "experience" curves. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level.[32] DOE used the most representative Producer Price Index (PPI) series for portable ACs to fit to an exponential model to develop an experience curve. DOE obtained historical PPI data for "small electric household appliances, except fans" from the Labor Department's Bureau of Labor Statistics (BLS) for 1983 to 2014.[33] Although this PPI series encompasses more than portable ACs, no PPI data specific to portable ACs were available. The PPI data reflect nominal prices, adjusted for changes in product quality. DOE calculated an inflation-adjusted (deflated) price index by dividing the PPI series by the Gross Domestic Product Chained Price Index.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. Available evidence indicated that no installation costs would be incurred for baseline installation or be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household and building, DOE determined the energy consumption for a portable AC at different efficiency levels using the approach described in section IV.E of this proposed rule.

4. Energy Prices

DOE used average prices (for baseline products) and marginal prices (for higher-efficiency products) which vary by season, region, and baseline electricity consumption level for the LCC. DOE estimated these prices using data published with the Edison Electric Institute (EEI) Typical Bills and Average Rates reports for summer and winter 2014.[34] For the residential sector each report provides, for most of the major investor-owned utilities (IOUs) in the country, the total bill assuming household consumption levels of 500, 750, and 1,000 kWh for the billing period. For the commercial sector the report provides typical bills for several combinations of monthly electricity peak demand and total consumption.

For both the residential and commercial sectors, DOE defined the average price as the ratio of the total bill to the total electricity consumption. For the residential sector, DOE used the EEI data to also define a marginal price as the ratio of the change in the bill to the change in energy consumption. For the commercial sector, marginal prices cannot be estimated directly from the EEI data, so DOE used a different approach, as described in chapter 8 of the NOPR TSD.

Regionally weighted-average values for each type of price were calculated for the nine census divisions and four large states (CA, FL, NY and TX). Each EEI utility in a division was assigned a weight based on the number of consumers it serves. Consumer counts were taken from the most recent EIA Form 861 data (2012).[35] DOE adjusted these regional weighted-average prices to account for systematic differences between IOUs and publicly-owned utilities, as the latter are not included in the EEI data set.

DOE assigned seasonal average and marginal prices to each household or commercial building in the LCC sample based on its location and its baseline monthly electricity consumption for an

[31] Burke, Thomas, *et al.* 2014. *Using Field-Metered Data to Quantify Annual Energy Use of Portable Air Conditioners. http://www.osti.gov/scitech/servlets/purl/1166989.*

[32] Taylor, M. and Fujita, K.S. *Accounting for Technological Change in Regulatory Impact Analyses: The Learning Curve Technique.* LBNL–6195E. Lawrence Berkeley National Laboratory, Berkeley, CA. April 2013. *http://escholarship.org/uc/item/3c8709p4#page-1.*

[33] U.S. Department of Labor Bureau of Labor Statistics./Producer Price Index for 1983–2013/. PPI series ID: PCU335210335521014. (Last accessed September 8, 2014.) *http://www.bls.gov/ppi/.*

[34] Edison Electric Institute. *Typical Bills and Average Rates Report.* Winter 2014 published April 2014, Summer 2014 published October 2014. See *http://www.eei.org/resourcesandmedia/products/Pages/Products.aspx.*

[35] U.S. Department of Energy, Energy Information Administration. *Form EIA–861 Annual Electric Power Industry Database. http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

average summer or winter month. For a detailed discussion of the development of electricity prices, see appendix 8F of the NOPR TSD.

To estimate future prices, DOE used the projected annual changes in average residential and commercial electricity prices in the Reference case projection in *AEO 2015*. The AEO price trends do not distinguish between marginal and average prices, so DOE used the same trends for both. DOE reviewed the EEI data for the years 2007 to 2014 and determined that there is no systematic difference in the trends for marginal vs. average prices in the data.

5. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance. Maintenance costs are associated with maintaining the operation of the product. Based on available data and low product purchase prices, DOE concluded that repair frequencies are low and do not increase for higher-capacity or higher-efficiency units. DOE assumed a zero cost for all efficiency levels.

6. Product Lifetime

The product lifetime is the age at which the product is retired from service. Given similar mechanical components and uses, DOE considered that the lifetime distribution of portable ACs is the same as that of room ACs, as estimated for the 2011 direct final rule. 76 FR 22454 (April 21, 2011). The average lifetime is 10 years. Chapter 8 of the NOPR TSD provides details on DOE's development of lifetimes for portable ACs.

DENSO noted that DOE had limited data regarding portable AC lifetimes and stated that since portable ACs are used less frequently than room ACs, the lifetime should reflect the usage difference. (DENSO, No. 13 at p. 7) DOE acknowledges that lower usage of portable ACs compared to room ACs could lead to longer lifetimes for portable ACs. However given limited supporting data, DOE is concerned that using a longer lifetime could bias upwards the LCC savings from higher efficiency. Therefore, for this analysis, DOE continued to use room AC lifetime as a proxy for portable AC lifetime.

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential and commercial discount rates for portable ACs based on consumer financing costs and opportunity cost of funds related to appliance energy cost savings and maintenance costs.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. DOE estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [36] (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010. Using the SCF and other sources,[37] DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which new standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.63 percent. See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

To establish commercial discount rates for the LCC analysis, DOE estimated the cost of capital for companies that purchase a portable AC. The weighted average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing as estimated from financial data for publicly traded firms in the sectors that purchase computers. For this analysis, DOE used Damadoran [38] online as the source of information about company debt and equity financing. The average rate across all types of companies, weighted by the shares of each type, is 4.9 percent. See chapter 8 of the NOPR TSD for further details on the development of commercial discount rates.

8. Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies in the no-new-standards case (*i.e.*, the case without amended or new energy conservation standards). For the preliminary analysis, to estimate the efficiency distribution of portable ACs, DOE summed the number of portable AC models available from online retailers to obtain the percentages of single-duct and dual-duct models. The single-duct models were allocated to the baseline efficiency level. The dual-duct models were split between EL 1 and EL 2. For the NOPR analysis, DOE estimated the no-new standards case based on 24 portable AC units tested in development of the engineering analysis (chapter 5 of this NOPR TSD). DOE assumed that the efficiency distribution of units tested is representative of the market as a whole.

Commenting on the preliminary analysis, De' Longhi wondered how efficiency distribution was tied to product duct configuration. (De' Longhi, No. 11 at p. 73) Based on the engineering analysis, DOE found that gains in efficiency were achieved by utilizing more efficient components in existing test units. DOE used product component characteristics to estimate the current efficiency distribution of portable ACs on the market. As discussed above, DOE based EL 1, EL2, and EL 3 on the performance observed in its test sample. Therefore, DOE estimated a share of 29 percent at the baseline, 50 percent for EL 1, 21 percent for EL 2, and no share at EL 3. EL 3 represents the maximum performance observed in DOE's test sample; however, the test unit representing EL 3 performed significantly better than the next most efficient units, and does not represent the maximum available across a full range of capacities that would comprise a significant portion of the market. Accordingly, DOE has not assigned any market share to this efficiency level. The estimated market shares for the no-new-standards case for portable ACs and the average EER and CEER values for each efficiency level are shown in Table IV.10. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

[36] The Federal Reserve Board, SCF 1989, 1992, 1995, 1998, 2001, 2004, 2007, 2010. *http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.*

[37] Federal Reserve Board time-series data, Cost of Savings Index data, annual returns on the Standard and Poor's. See the reference section of chapter 8 of the NOPR TSD for on-line data locations.

[38] Damodaran, A. *Cost of Capital by Sector.* January 2014. (Last accessed September 25, 2014.) New York, NY. *http://people.stern.nyu.edu/adamodar/New_Home_Page/datafile/wacc.htm.*

TABLE IV.10—PORTABLE AIR CONDITIONER NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION

Efficiency level	EER	CEER	Market share (%)
Baseline	5.09	5.07	29
1	5.99	5.97	50
2	7.20	7.19	21
3	8.48	8.47	0
4	10.54	10.52	0

9. Payback Period Analysis

The PBP is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. PBPs are expressed in years. PBPs that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not applied.

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the new standards would be required.

G. Shipments Analysis

DOE uses forecasts of annual product shipments to calculate the national impacts of potential new energy conservation standards on energy use, NPV, and future manufacturer cash flows. The shipments model takes an accounting approach, tracking the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

In the preliminary analysis for portable ACs, DOE used a model with two market segments to estimate shipments of portable ACs: Replacement of existing products and first-time owners. AHAM stated that DOE's assumption that portable ACs account for approximately ten percent of the total shipments of room air conditioners is not accurate. Based on AHAM room AC shipment data for 2012–2014, the percentage assumed in the preliminary analysis for portable ACs is not consistent and, therefore, room AC shipments do not appear to be an accurate proxy for portable AC shipments. (AHAM, No. 16 at p. 7) DENSO also objected to DOE's use of room AC shipments to derive portable AC shipments. (DENSO, No. 13 at p. 9)

Subsequent to the preliminary analysis, DOE received data on portable AC shipments in 2014 from manufacturer interviews, so it was not necessary to use room AC shipments data as a proxy for portable AC shipments for the NOPR analysis. DOE also used information obtained in manufacturer interviews which suggested that the average annual growth in portable AC shipments between 2004 and 2013 was 30 percent. To estimate historical shipments prior to 2004, DOE interpolated between 1985 (the date that portable ACs were introduced to the residential market) and 2004.

To project future shipments, DOE estimated a saturation rate to project shipments of portable ACs. DOE assumed that the portable AC saturation rate would be no greater than half the current room AC saturation rate (based on RECS 2009) by the end of the analysis period, *i.e.*, 2050. For each year of the projection period, the saturation rate of portable ACs was determined from a combination of the total stock of the product and total housing stock. The total stock of portable ACs was based on product lifetime and the survival function developed in the LCC analysis. DOE used total housing stock from *AEO 2015*. Based on this revised approach, DOE estimated that the shipments of portable ACs would increase from 1.32 million in 2014 to 1.67 million in 2050 at an annual growth rate of 0.65 percent.

For the NOPR analysis, DOE applied price and efficiency elasticity parameters to estimate the effect of new standards on portable AC shipments. DOE estimated the price and efficiency elasticity parameters from a regression analysis that incorporated shipments, purchase price, and efficiency data specific to several residential appliances during 1989–2009. Based on evidence that the price elasticity of demand is significantly different over the short run and long run for other consumer goods (*i.e.*, automobiles), DOE assumed that these elasticities decline over time. DOE estimated shipments in each standards case using the price and efficiency elasticity along with the change in the product price and operating costs between a standards case and the no-new-standards case.

For details on the shipments analysis, see chapter 9 of the NOPR TSD for further information.

H. National Impact Analysis

The NIA assesses the NES and the national NPV from a national perspective of total consumer [39] costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[40] DOE calculates the NES and NPV based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of portable ACs sold from 2021 through 2050.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new energy conservation

[39] "Consumer" in this context refers to consumers of the product being regulated.

[40] The NIA accounts for impacts in the 50 States and the U.S. territories.

standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.*, the TSLs or standards cases). For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities on the *Input and Summary* worksheet within the spreadsheet *https://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0033*. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.11 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.11—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2021.
Efficiency Trends	No-new-standards case: Annual increase in efficiency of 0.25 percent between 2021 and 2050. Standards cases: Roll-up plus shift scenario.
Annual Energy Consumption per Unit.	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL. Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit.	Annual values do not change with efficiency level.
Energy Prices	Average and marginal electricity prices for residential and commercial sectors from life-cycle cost and payback period analysis.
Energy Price Trend	*AEO 2015* forecasts (to 2040) and extrapolation through 2050 for residential and commercial sectors
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on *AEO 2015*.
Discount Rate	Three and seven percent.
Present Year	2015.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the forecast period. To project the trend in efficiency for portable ACs over the entire shipments projection period, DOE used as a starting point the shipments-weighted cooling energy efficiency ratio ($SWEER_{cm}$) estimated for 2021 in the LCC analysis and assumed an annual increase in efficiency equal to the increase estimated for room AC in the 2011 direct final rule: 0.25 percent between 2021 and 2050. 76 FR 22454 (April 21, 2011).

For the standards cases, DOE used a "roll-up" scenario to establish the shipments-weighted average energy efficiency for 2021. Using this approach, product energy efficiencies in the no-new-standards case that do not meet the standard level under consideration would "roll up" to meet the new standard level. Product energy efficiencies in the no-new-standards case that exceed the standard level under consideration would not be affected. For years after 2021, DOE developed $SWEER_{cms}$ growth trends for each standard level that maintained, throughout the analysis period (2021–2050), the same difference in per-unit average cost as was determined between the no-new-standards case and each standards case in 2021. The approach is further described in chapter 10 of the NOPR TSD.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products in each potential standards case (TSL) with consumption in the case with no-new or new energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new-standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.*, the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2015*. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In 2011, in response to the recommendations of a committee on "Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards" appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and GHG and other emissions in the NIA and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [41] that EIA uses to prepare its *AEO*. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period.

As discussed in section IV.F.1 of this proposed rule, DOE developed portable AC price trends based on historical PPI data. DOE applied the same trends to forecast prices at each considered efficiency level. By 2050, which is the end date of the forecast period, the average portable AC price is projected to drop 51 percent relative to 2013. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price forecasts on the consumer NPV for the considered TSLs for portable ACs. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) A high price decline case based on the *AEO 2015* deflator for "furniture and appliances"; and (2) a low price decline case based on BLS' inflation-adjusted PPI for small electric household appliances spanning 1998–2014. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional electricity prices by the forecast of annual national-average residential and commercial electricity price changes in the Reference case from *AEO 2015*, which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2020 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10C of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[42] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the "social rate of time preference," which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. For this NOPR, DOE analyzed the impacts of the considered standard levels on low-income households and senior-only households for the residential sector and small businesses for the commercial sector. DOE found that low-income households and senior-only households would experience higher LCC savings than would the national population. Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new energy conservation standards on manufacturers of portable ACs and to estimate the potential impacts of such standards on employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of forecasted industry cash flows, the INPV, investments in research and development (R&D) and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how new energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards would contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the GRIM, an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of new energy conservation standards on the portable AC industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various TSLs in the standards case. To capture the uncertainty relating to manufacturer pricing strategy following new standards, the GRIM estimates a range of possible impacts under different markup scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the portable AC manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. This included a top-down analysis of portable AC manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.*, revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (SG&A); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the portable AC manufacturing industry, including SEC 10–K filings,[43] Standard & Poor's stock

[41] For more information on NEMS, refer to *The National Energy Modeling System: An Overview*, DOE/EIA–0581 (98) (Feb.1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

[42] United States Office of Management and Budget. Circular A–4: Regulatory Analysis," (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

[43] Available online at *www.sec.gov*.

reports,[44] and corporate annual reports released by both public and privately held companies.

In Phase 2 of the MIA, DOE prepared a framework industry cash flow analysis to quantify the impacts of new energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the effective date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) Create a need for increased investment; (2) raise production costs per unit; and (3) alter revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of portable ACs in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, manufacturing capacity, industry competitiveness, and subgroup impacts.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 for a description of the key issues raised by manufacturers during the interviews. In Phase 3, DOE used manufacturer feedback to qualitatively assess impacts of new standards on manufacturing capacity, direct employment, and cumulative regulatory burden.

Additionally, as part of Phase 3, DOE evaluated subgroups of manufacturers that may be disproportionately impacted by new standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (LVMs), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified one potential portable AC manufacturer subgroup (small businesses) for which average cost assumptions may not hold.

Based on the size standards published by the Small Business Administration (SBA),[45] to be categorized as a small business manufacturer of portable ACs under North American Industry Classification System (NAICS) code 333415 ("Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing"), a portable AC manufacturer and its affiliates may not employ more than 1,250 employees. The 1,250-employee threshold includes all employees in a business' parent company and any subsidiaries. Using this classification in conjunction with a search of industry databases and the SBA member directory, DOE did not identify any domestic small business manufacturers of single-duct and dual-duct portable ACs that would be subject to the standards proposed in this notice.[46]

The portable AC manufacturer subgroup analysis is discussed in greater detail in chapter 12, of the NOPR TSD and in section V.B.2.d of this proposed rule.

2. Government Regulatory Impact Model (GRIM)

DOE uses the GRIM to quantify the changes in industry cash flows resulting from new or amended energy conservation standards. The GRIM uses manufacturer costs, markups, shipments, and industry financial information to arrive at a series of no-new-standards case annual cash flows absent new or amended standards, beginning with the present year, 2016, and continuing through 2050. The GRIM then models changes in costs, investments, shipments, and manufacturer margins that may result from new or amended energy conservation standards and compares these results against those in the base-case forecast of annual cash flows. The primary quantitative output of the GRIM is the INPV, which DOE calculates by summing the stream of annual discounted cash flows over the full analysis period. For manufacturers of portable ACs, DOE used a real discount rate of 6.60 percent, the weighted-average cost of capital derived from industry financials and modified based on feedback received during confidential interviews with manufacturers.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and the various TSLs. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the new standard on manufacturers at that particular TSL. As discussed previously, DOE collected the necessary information to develop key GRIM inputs from a number of sources, including publicly available data and interviews with manufacturers (described in the next section). The GRIM results are shown in section V.B.2.a of this proposed rule. Additional details about the GRIM can be found in chapter 12 of the NOPR TSD.

a. Government Regulatory Impact Model Key Inputs

Manufacturer Production Costs

Manufacturing a higher efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex and typically more costly components. The changes in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making product cost data key GRIM inputs for DOE's analysis. For each efficiency level, DOE used the MPCs developed in the engineering analysis, as described in section IV.C.2 of this proposed rule and further detailed in chapter 5 of the NOPR TSD. Additionally, DOE used information from its teardown analysis, described in section IV.C of this proposed rule, to disaggregate the MPCs into material and labor costs. These cost breakdowns and equipment markups were validated with manufacturers during interviews.

No-New-Standards Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM used the NIA's annual shipment forecasts derived from the shipments analysis from 2016 (the base year) to 2050 (the end of the analysis period). See chapter 9 of the NOPR TSD for additional details on the shipments analysis.

[44] Available online at *www.standardandpoors.com.*

[45] 65 FR 30836 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000).

[46] In the February 2015 TP NOPR, DOE estimated that there was one small business that manufactured portable ACs. DOE subsequently determined that this small business no longer manufactures portable ACs and, therefore, DOE estimates that there are no domestic manufacturers that meet the SBA's definition of "small business" that currently manufacture products covered by this rulemaking.

Standards Case Shipments Forecast

For each standards case, the GRIM assumes a small, constant percentage shift in shipments to higher efficiency levels, reflecting the idea that some efficiency improvements will occur independent of new standards. The GRIM also assumes all remaining shipments of products below the projected minimum standard levels would roll up (*i.e.,* be added) to the standard levels in response to an increase in energy conservation standards. The GRIM also assumes that demand for higher-efficiency equipment (that is, above the minimally compliant level) is a function of price, and is independent of the standard level.

Product and Capital Conversion Costs

New energy conservation standards may cause manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance with the new standards. (See chapter 12 of the NOPR TSD.) For the purpose of the MIA, DOE classified these one-time conversion costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, and marketing, focused on making product designs comply with the new energy conservation standard. Capital conversion expenditures are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

Stranded Assets

If new or amended energy conservation standards require investment in new manufacturing capital, there also exists the possibility that they will render existing manufacturing capital obsolete. If the obsolete manufacturing capital is not fully depreciated at the time new or amended standards go into effect, these assets would be stranded and the manufacturer would have to write-down the residual value that had not yet been depreciated.

DOE used multiple sources of data to evaluate the level of product and capital conversion costs and stranded assets manufacturers would likely face to comply with new energy conservation standards. DOE used manufacturer interviews to gather data on the level of investment anticipated at each proposed efficiency level and validated these assumptions using estimates of capital requirements derived from the product teardown analysis and engineering model described in section IV.C of this proposed rule. These estimates were then aggregated and scaled to derive total industry estimates of product and capital conversion costs and to protect confidential information.

In general, DOE assumes that all conversion-related investments occur between the year the final rule is published and the year by which manufacturers must comply with the new or amended standards. The investment figures used in the GRIM can be found in section V.B.2 of this proposed rule. For additional information on the estimated product conversion and capital conversion costs, see chapter 12 of the NOPR TSD.

b. Government Regulatory Impact Model Scenarios

No-New-Standards Case Markup

As discussed in section IV.D of this proposed rule, MSPs include direct manufacturing production costs (*i.e.,* labor, material, overhead, and depreciation estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis. Based on publicly available financial information for manufacturers of portable ACs and comments from manufacturer interviews, DOE assumed the industry average no-new-standards case markup on production costs to be 1.42. This markup takes into account the two sourcing structures that characterize the portable AC market. Single-duct and dual-duct portable ACs sold in the United States are manufactured by overseas original equipment manufacturers (OEMs) either for sale by contract to an importer or for direct sale to retailers and builders. The engineering analysis, as detailed in chapter 5 of the NOPR TSD, estimates the cost of manufacturing at the OEM. For the OEM to importer sourcing structure, this production cost is marked up once by the OEM and again by the contracting the company who imports the product and sells it to retailers.

Markup Scenarios

Modifying the aforementioned base-case markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new energy conservation standards: (1) A preservation of gross margin[47] (percentage) scenario; and (2) a preservation of per-unit operating profits scenario. These scenarios lead to different markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

The preservation of gross margin as a percentage of revenues markup scenario assumes that the baseline markup of 1.42 is maintained for all products in the standards case. Typically, this scenario represents the upper bound of industry profitability as manufacturers are able to fully pass through additional costs due to standards to their customers under this scenario.

The preservation of per-unit operating profits markup scenario is similar to the preservation of gross margin as a percentage of revenues markup scenario with the exception that in the standards case, minimally compliant products lose a fraction of the baseline markup. Typically, this scenario represents the lower bound profitability and a more substantial impact on the industry as manufacturers accept a lower margin in an attempt to offer price competitive entry level products while maintaining the same level of absolute operating profits, on a per-unit basis, that they saw prior to new or amended standards. Under this scenario, gross margin as a percentage decreases in the standards case.

3. Manufacturer Interviews

To inform the MIA, DOE interviewed manufacturers with an estimated combined market share of 65 to 70 percent. These confidential interviews provided information that DOE used to evaluate the impacts of new energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels in the portable AC industry.

During the interviews, DOE asked manufacturers to describe the major issues they anticipate to result from the energy conservation standards proposed in this rulemaking. DOE notes that manufacturer comments and concerns expressed during these interviews (and outlined below) relate to the engineering analysis presented in the February 2015 Preliminary Analysis. Information gained during these interviews helped to inform the updated analysis and

[47] "Gross margin" is defined as revenues minus cost of goods sold. On a unit basis, gross margin is selling price minus manufacturer production cost. In the GRIMs, markups determine the gross margin because various markups are applied to the manufacturer production costs to reach manufacturer selling price.

proposal reflected in this NOPR.[48] The following sections describe the most significant issues identified by manufacturers relating to DOE's preliminary analysis, some of which have been addressed by the updated analysis in this NOPR. These concerns are also presented in chapter 12 of the NOPR TSD.

Ramifications of a Single Product Class

Most manufacturers interviewed expressed concerns over the classification of single-duct and dual-duct portable ACs as in one product class for the purpose of DOE's analysis of proposed standards for portable ACs, as this means that the two inherently different product configurations will be required to meet the same standard level. Manufacturers stated that DOE should create multiple product classes defined by different product configurations and capacity ranges, similar to DOE's treatment of room ACs and dehumidifiers. Manufacturers' justification for multiple product classes related to differences in product utility between single-duct and dual-duct portable ACs, and the potential cost burden associated with having to redesign single-duct portable AC platforms to accommodate an additional condenser duct.

Manufacturers stated that the lower price point for single-duct units offers a distinct utility relative to more expensive dual-duct portable ACs. Most manufacturers agreed that U.S. portable AC consumers are intolerant to price changes. They think that a 5 to 20-percent increase in price will significantly harm the portable AC industry overall, with customers instead purchasing room ACs if price increases necessitated by standards become intolerable. Additionally, some manufacturers claimed that single-duct products are less complex, easier to use, more portable, and take up less space. Other manufacturers stated that the two product types are intended and used for different applications. Single-duct units are intended to cool a zone, rather than an entire space, and are well-suited for placement in garages and warehouses when localized cooling is desired. Conversely, dual-duct products are able to cool entire spaces and can be used similarly to room ACs.

However, some of the same manufacturers also commented that consumers typically do not understand the difference between single-duct and dual-duct products. These manufacturers stated that consumers buy single-duct units expecting to be able to cool an entire space, and that the lack of such capability has led to product returns. No manufacturer could identify a situation in which a dual-duct portable AC could not be installed in the same location as a single-duct portable AC.

Manufacturers indicated that there would be substantial conversion costs related to redesigning single-duct platforms to accommodate an additional condenser duct. At a minimum, this change would require manufacturers to retool the back of the case, which would require significant upfront investments.

DOE responds to similar concerns expressed in public comments in section IV.A.2.b of this proposed rule. Details regarding DOE's updated engineering analysis approach can be found in section IV.C of this proposed rule.

Feasibility of Design Options

Besides the cost burdens associated with adding a second duct to single-duct portable ACs, some manufacturers commented that reaching zero-percent infiltration air is not feasible using existing assembly lines, and would require an increased duct diameter in order to overcome the static pressure.

DOE's updated engineering approach no longer assumed manufacturers would rely on airflow optimization to improve efficiency. Details regarding DOE's updated engineering analysis approach can be found in section IV.C of this proposed rule.

Test Procedure

All of the manufacturers interviewed stated that a standardized test procedure that would establish a consistent rating system for portable AC capacity and efficiency is vital for the industry. Manufacturers commented that, as a result of the lack of standardized test procedure, some portable AC manufacturers have been able to misrepresent the capacity of their products.

As discussed in section III.B of this proposed rule, the April 2016 issued TP Final Rule established the current portable AC test procedure included in appendix CC.

Impacts on Small Foreign Businesses

Some manufacturers interviewed believe that small overseas manufacturers producing portable ACs for the U.S. market may not be able to handle the potentially large investments needed to comply with new standards and test procedures. One manufacturer further noted that, at a minimum, to stay competitive, these small manufacturers would have to narrow their product offering to one or two platforms.

DOE outlines the criteria for a manufacturer to be analyzed as a small business in section IV.J.1 of this proposed rule. As discussed in that section, DOE did not identify any domestic small business manufacturers of single-duct or dual-duct portable ACs.

Impact on Shipping

Manufacturers expressed concern that transitioning from manufacturing single-duct to dual-duct units would increase shipping costs. This change would increase the size of the unit packaging and reduce the number of units that can be shipped in a standard shipping container, consequently increasing the shipping cost per unit.

For this NOPR, DOE has revised its engineering analysis approach, and no longer assumes that manufacturers would switch from single-duct to dual-duct configuration to meet any of the considered efficiency levels (the additional duct was the main driver for concerns relating to impacts on shipping costs). Details regarding DOE's updated engineering analysis approach can be found in section IV.C of this proposed rule.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional GHG, CH_4 and N_2O, as well as the reductions to emissions of all species due to "upstream" activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO 2015*, as described in section IV.M. The methodology is described in chapter 13 and chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[49] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and "fugitive" emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the NIA.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' GWP over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[50] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (D.C.). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and D.C. were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[51] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (Aug. 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR,[52] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the D.C. Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[53] On October 23, 2014, the D.C. Circuit lifted the stay of CSAPR.[54] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015*, so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force, the difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU.[55] Therefore, DOE believes that energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[56] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other facilities. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015*, which incorporates the MATS.

[48] Section IV.C of this NOPR describes the updated engineering analysis based on the test procedure in Appendix CC.

[49] Available at: *http://www2.epa.gov/climateleadership/center-corporate-climate-leadership-ghg-emission-factors-hub.*

[50] Intergovernmental Panel on Climate Change (IPCC), 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

[51] See *North Carolina* v. *EPA*, 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA*, 531 F.3d 896 (D.C. Cir. 2008).

[52] See *EME Homer City Generation, LP* v. *EPA*, 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted*, 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[53] *See EPA* v. *EME Homer City Generation*, 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[54] *See Georgia* v. *EPA*, Order *(D.C. Cir. filed October 23, 2014) (No. 11–1302).*

[55] DOE notes that the Supreme Court recently determined that EPA erred by not considering costs in the finding that regulation of hazardous air pollutants from coal- and oil-fired electric utility steam generating units is appropriate. See *Michigan* v. *EPA* (Case No. 14–46, 2015). The Supreme Court did not vacate the MATS rule, and DOE has tentatively determined that the Court's decision on the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions. Further, the Court's decision does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[56] CSAPR also applies to NO_X and it supersedes the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this NOPR.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, "assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council[57] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

The interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing CO_2 emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[58] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV.12 presents the values in the 2010 interagency group report,[59] which is reproduced in appendix 14A of the NOPR TSD.

[57] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use*, National Academies Press: Washington, DC (2009).

TABLE IV.12—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this proposed rule were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[60] Table IV.13 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC values between 2010 and 2050 is reported in appendix 14B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV.13—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing

[58] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[59] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*. Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

[60] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866*, Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

knowledge of the science and economics of climate impacts, as well as improvements in modeling.[61]

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2014$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy conservation standards would decrease power sector NO_X emissions in those 22 States not affected by the CAIR. DOE estimated the monetized value of net NO_X emissions reductions resulting from each of the TSLs considered for this NOPR based on estimates developed by EPA for 2016, 2020, 2025, and 2030. The values reflect estimated mortality and morbidity per ton of directly emitted NO_X reduced by electricity generating units. EPA developed estimates using a 3-percent and a 7-percent discount rate to discount future emissions-related costs. The values in 2016 are $5,562/ton using a 3-percent discount rate and $4,920/ton using a 7-percent discount rate (2014$). DOE extrapolated values after 2030 using the average annual rate of growth in 2016–2030. DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from the NEMS associated with *AEO 2015*. NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the BLS.[62] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[63] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.*, the utility sector) to more labor-intensive sectors (*e.g.*, the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[64] ImSET is a special-purpose version of the "U.S. Benchmark National Input-Output" (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

[61] In November 2013, OMB announced a new opportunity for public comment on the interagency technical support document underlying the revised SCC estimates. 78 FR 70586. In July 2015 OMB published a detailed summary and formal response to the many comments that were received. *https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions.*

[62] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.*

[63] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, U.S. Department of Commerce (1992).

[64] J.M. Roop, M.J. Scott, and R.W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies*, PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf).*

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential energy conservation standards for portable ACs. It addresses the TSLs examined by DOE and the projected impacts of each of these levels if adopted as energy conservation standards for portable ACs. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this proposed rule.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for portable ACs. These TSLs were developed by combining specific efficiency levels for each of the product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table V.1 presents the TSLs, corresponding efficiency levels, and average EERs and CEERs at each level for portable ACs. TSL 4 represents the maximum technologically feasible ("max-tech") energy efficiency. TSL 3 consists of an intermediate efficiency level below the max-tech level, corresponding to the single highest efficiency observed in DOE's test sample. TSL 2 represents the maximum available efficiency across the full range of capacities, and TSL 1 represents an intermediate level between the baseline and TSL 2.

TABLE V.1—TRIAL STANDARD LEVELS FOR PORTABLE AIR CONDITIONERS

TSL	EL	EER	CEER
1	1	5.99	5.97
2	2	7.20	7.19
3	3	8.48	8.47
4	4	10.54	10.52

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on portable AC consumers by looking at the effects potential new standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Increase of purchase price, and (2) decrease of annual operating costs. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.*, product price plus installation costs), and operating costs (*i.e.*, annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.7 show the LCC and PBP results for the TSL and efficiency levels considered for portable ACs for both sectors, residential, and commercial. The LCC results presented in Table V.2 and Table V.3 combined the results for residential and commercial users, which means that DOE had to assign an appropriate weight to the results for each type of user. Using the weighting from the room AC rulemaking,[65] DOE assumed that 88 percent of shipments are to the residential sector and 12 percent are to the commercial sector. In the first of each pair of tables, the simple payback is measured relative to the baseline product (EL 0). In the second table, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F of this proposed rule). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of EL 0 and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL, RESIDENTIAL SETTING

TSL	EL	Average costs 2014$				Simple payback years	Average lifetime years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	583	125	1,067	1,650	.....	10
1	1	629	110	937	1,565	3.0	10
2	2	652	94	800	1,452	2.2	10
3	3	676	82	697	1,372	2.1	10
4	4	750	67	573	1,324	2.9	10

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline (EL 0) product.

[65] Room AC Standards Rulemaking, Direct Final Rule, Chapter 8, page 51. April 18, 2011. *http://www.regulations.gov/#!documentDetail;D=EERE-2007-BT-STD-0010-0053.*

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR RESIDENTIAL SETTING

TSL	EL	Average LCC savings* 2014$	Percent of consumers that experience net cost
1	1	84	9
2	2	144	13
3	3	194	19
4	4	242	31

*The savings represent the average LCC for affected consumers.

TABLE V.4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL, COMMERCIAL SETTING

TSL	EL	Average costs 2014$				Simple payback years	Average lifetime years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	583	234	1,881	2,463	.....	10
1	1	629	205	1,648	2,276	1.6	10
2	2	652	175	1,403	2,055	1.2	10
3	3	676	152	1,219	1,895	1.1	10
4	4	750	126	1,008	1,759	1.5	10

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline (EL 0) product.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR COMMERCIAL SETTING

TSL	EL	Average LCC savings* 2014$	Percent of consumers that experience net cost
1	1	188	2
2	2	292	2
3	3	392	3
4	4	528	9

*The savings represent the average LCC for affected consumers.

TABLE V.6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL, BOTH SECTORS

TSL	EL	Average costs 2014$				Simple payback years	Average lifetime years
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	0	583	139	1,165	1,747	.....	10
1	1	629	122	1,022	1,651	2.8	10
2	2	652	104	872	1,524	2.1	10
3	3	676	90	759	1,435	2.0	10
4	4	750	74	626	1,376	2.7	10

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline (EL 0) product.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR BOTH SECTORS

TSL	EL	Average LCC savings* 2014$	Percent of consumers that experience net cost
1	1	97	9
2	2	162	12
3	3	218	17
4	4	276	28

*The savings represent the average LCC for affected consumers.

As discussed in section IV.E, DOE conducted a sensitivity analysis that assumes consumers use portable ACs 50 percent less than room ACs. For the proposed standard, TSL 2, the average LCC savings declines to $60 and 26 percent of consumers experience a net cost under the sensitivity analysis. See appendix 8F of the NOPR TSD for additional information.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households, senior-only households, and small businesses. Table V.8 compares the average LCC savings and PBP at each EL for the three consumer subgroups, along with the average LCC savings for the entire sample. In most cases, the average LCC savings and PBP for low-income households and small businesses at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.8—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS PLUS LIGHT-COMMERCIAL ESTABLISHMENTS

TSL	Average life-cycle cost savings (2014$)				Simple payback period (years)			
	Low-income households	Senior-only households	Small businesses	Both sectors	Low-income households	Senior-only households	Small Businesses	Both sectors
1	115	84	171	97	2.4	3.0	1.6	2.8
2	187	144	267	162	1.8	2.2	1.2	2.1
3	250	194	358	218	1.7	2.1	1.1	2.0
4	324	242	477	276	2.4	2.9	1.5	2.7

c. Rebuttable Presumption Payback

As discussed in section III.E.2, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for portable ACs. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions for input values, with energy use based on field metering studies and RECS data.

Table V.9 presents the rebuttable-presumption payback periods for the considered TSLs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. Table V.9 shows the rebuttable presumption PBPs for the considered TSLs for portable ACs.

TABLE V.9—PORTABLE AIR CONDITIONERS: REBUTTABLE PBPS

[Years]

	Trial standard level			
	1	2	3	4
Residential	2.1	1.5	1.5	2.0
Commercial	2.8	2.1	2.0	2.8
Both sectors	2.2	1.6	1.6	2.1

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new energy conservation standards on portable AC manufacturers. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

The following tables illustrate the estimated financial impacts (represented by changes in INPV) of new energy conservation standards on portable AC manufacturers, as well as the conversion costs that DOE estimates manufacturers would incur at each TSL. To evaluate the range of cash-flow impacts on the portable AC manufacturing industry, DOE used two different markup scenarios to model the range of anticipated market responses to new energy conservation standards.

To assess the lower (less severe) end of the range of potential impacts, DOE modeled a preservation of gross margin percentage markup scenario, in which a flat markup of 1.42 (*i.e.*, the baseline manufacturer markup) is applied across all efficiency levels. In this scenario, DOE assumed that a manufacturer's absolute dollar markup would increase as production costs increase in the new energy conservation standards case. During interviews, manufacturers have indicated that it is optimistic to assume that they would be able to maintain the same gross margin markup as their production costs increase in response to a new energy conservation standard, particularly at higher TSLs.

To assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of per-unit operating profit markup scenario, which assumes that manufacturers would not be able to preserve the same overall gross margin, but instead would cut their markup for minimally compliant

products to maintain a cost competitive product offering while maintaining the same overall level of operating profit in absolute dollars as in the no-new-standards case. The two tables below show the range of potential INPV impacts for manufacturers of portable ACs. Table V.10 reflects the lower bound of impacts (higher profitability) and Table V.11 represents the upper bound of impacts (lower profitability).

Each scenario results in a unique set of cash flows and corresponding industry values at each TSL. In the following discussion, the INPV results refer to the sum of discounted cash flows through 2050, the difference in INPV between the no-new-standards case and each standards case, and the total industry conversion costs required for each standards case.

TABLE V.10—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF GROSS MARGIN PERCENTAGE MARKUP SCENARIO FOR ANALYSIS PERIOD

[2016–2050]

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	*2014$ Millions*	725.5	637.9	521.7	419.1	404.5
Change in INPV	*2014$ Millions*		(87.6)	(203.8)	(306.2)	(320.9)
	(%)		(12.1%)	(28.1%)	(42.2)	(44.2%)
Free Cash Flow (2020)	*2014$ Millions*	49.2	(6.8)	(72.2)	(131.7)	(146.4)
Change in Free Cash Flow (2020)	*(%)*		(113.7%)	(246.7%)	(367.5%)	(397.2%)
Product Conversion Costs	*2014$ Millions*		53.4	113.9	161.8	170.8
Capital Conversion Costs	*2014$ Millions*		86.5	188.9	282.0	305.7
Total Conversion Costs	*2014$ Millions*		139.9	302.8	443.8	476.5

Parentheses indicate negative (–) values.

TABLE V.11—MANUFACTURER IMPACT ANALYSIS UNDER THE PRESERVATION OF PER-UNIT OPERATING PROFIT MARKUP SCENARIO FOR ANALYSIS PERIOD

[2016–2050]

	Units	No-new-standards case	Trial standard level			
			1	2	3	4
INPV	*2014$ Millions*	725.5	631.3	503.8	378.6	301.9
Change in INPV	*2014$ Millions*		(94.2)	(221.7)	(346.8)	(423.5)
	(%)		(13.0%)	(30.6%)	(47.8%)	(58.4%)
Free Cash Flow (2020)	*2014$ Millions*	49.2	(6.8)	(72.2)	(131.7)	(146.4)
Change in Free Cash Flow (2020)	*(%)*		(113.7%)	(246.7%)	(367.5%)	(397.2%)
Product Conversion Costs	*2014$ Millions*		53.4	113.9	161.8	170.8
Capital Conversion Costs	*2014$ Millions*		86.5	188.9	282.0	305.7
Total Conversion Costs	*2014$ Millions*		139.9	302.8	443.8	476.5

Parentheses indicate negative (–) values.

Beyond impacts on INPV, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before new standards take effect to provide perspective on the short-run cash flow impacts in the discussion of the results below.

At TSL 1, DOE estimates the impact on INPV for manufacturers of portable ACs to range from –94.2 million to –$87.6 million, or a decrease in INPV of 13.0 percent to 12.1 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 113.7 percent to $6.8 million, compared to the no-new-standards case value of $49.2 million in 2020, the year before the projected compliance date.

At TSL 1, the industry as a whole is expected to incur $53.4 million in product conversion costs attributed to upfront research, development, testing, and certification; as well as $86.5 million in one-time investments in property, plant, and equipment (PP&E) necessary to manufacture updated platforms. The industry conversion cost burden at TSL 1 would be associated with updates for portable ACs sold in the U.S. that are currently at the baseline, approximately 38 percent of platforms and 29 percent of shipments. At TSL 1, roughly half of non-compliant platforms will require some new components, including a higher efficiency heat exchanger (with increases in efficiency ranging from 10 to 20 percent). Higher efficiency heat exchangers are larger and will necessitate larger chassis sizes. The remaining non-compliant portable ACs will likely require a complete platform redesign, necessitating all new components and high associated re-tooling and R&D costs.

At TSL 2, DOE estimates the impact on INPV for manufacturers of portable ACs to range from –$221.7 million to –203.8 million, or a decrease in INPV of 30.6 percent to 28.1 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 246.7 percent to –$72.2 million, compared to the no-new-standards case value of $49.2 million in 2020, the year before the projected compliance date.

At TSL 2, the industry as a whole is expected to incur $113.9 million in product conversion costs associated with the upfront research, development,

testing, and certification; as well as $188.9 million in one-time investments in PP&E for products requiring platform updates. The industry conversion cost burden at this TSL would be associated with updates for portable ACs sold in the U.S. that are currently below the efficiency level corresponding to TSL 2, approximately 77 percent of platforms and 79 percent of shipments. At TSL 2, roughly 40 percent of non-compliant platforms will require some new components, including a higher efficiency heat exchanger (with increases in efficiency ranging from 10 to 20 percent). Higher efficiency heat exchangers are larger and will necessitate larger chassis sizes. The remaining non-compliant portable ACs will likely require a complete platform redesign, necessitating all new components and high associated re-tooling and R&D costs.

At TSL 3, DOE estimates the impact on INPV for manufacturers of portable ACs to range from −$346.8 million to −$306.2 million, or a decrease in INPV of 47.8 percent to 42.2 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 367.5 percent to −$131.7 million, compared to the no-new-standards case value of $49.2 million in 2020, the year before the projected compliance date.

At TSL 3, the industry as a whole is expected to incur $161.8 million in product conversion costs associated with the upfront research, development, testing, and certification; as well as $282.0 million in one-time investments in PP&E for products requiring platform redesigns. Again, the industry conversion cost burden at this TSL would be associated with updates for portable ACs sold in the U.S. that are currently below the efficiency level corresponding to TSL 3, approximately 100 percent of platforms and 100 percent of shipments. At TSL 3, roughly 16 percent of non-compliant platforms will require some new components, including a higher efficiency heat exchanger (with increases in efficiency ranging from 10 to 20 percent). Higher efficiency heat exchangers are larger and will necessitate larger chassis sizes. The remaining 84 percent of non-compliant portable ACs will likely require a complete platform redesign, necessitating all new components and high associated re-tooling and R&D costs.

At TSL 4, DOE estimates the impact on INPV for manufacturers of portable ACs to range from −$423.5 million to −$320.9 million, or a decrease in INPV of 58.4 percent to 44.2 percent under the preservation of gross margin percentage markup scenario and the preservation of per-unit operating profit markup scenario, respectively. At this TSL, industry free cash flow is estimated to decrease by approximately 397.2 percent to −$146.4 million, compared to the base-case value of $49.2 million in 2020, the year before the projected compliance date.

At TSL 4, the industry as a whole is expected to spend $170.8 million in product conversion costs associated with the research and development and testing and certification, as well as $305.7 million in one-time investments in PP&E for complete platform redesigns. The industry conversion cost burden at this TSL would be associated with updates for portable ACs sold in the U.S. that are currently below the efficiency level corresponding to TSL 4, approximately 100 percent of platforms and 100 percent of shipments. At TSL 4, 100 percent of non-compliant portable ACs will likely require a complete platform redesign, necessitating all new components and high associated re-tooling and R&D costs.

b. Impacts on Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the no-new-standards case and at each TSL from 2016 to 2050. DOE used statistical data from the U.S Census Bureau's 2013 *Annual Survey of Manufactures*, the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels at each TSL. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

DOE notes that the MIA assessment of impacts on manufacturing employment focuses specifically on the production workers manufacturing the covered products in question, rather than a manufacturer's broader operations. Thus, the estimated number of impacted employees in the MIA is separate and distinct from the total number of employees used to determine whether a manufacturer is a small business for purposes of analysis under the Regulatory Flexibility Act.

The estimates of production workers in this section only cover those up to and including the line-supervisor level that are directly involved in fabricating and assembling a product within the OEM facility. In addition, workers that perform services that are closely associated with production operations are included. Employees above the working-supervisor level are excluded from the count of production workers. Thus, the labor associated with non-production functions (*e.g.*, factory supervision, advertisement, sales) is explicitly not covered.[66] In addition, DOE's estimates only account for production workers that manufacture the specific products covered by this rulemaking. Finally, because DOE does not expect that this standard will impact shipments, this analysis also does not factor in the dependence by some manufacturers on production volume to make their operations viable.

In the GRIM, DOE used the labor content of each product and the manufacturing production costs from the engineering analysis to estimate the annual labor expenditures in the portable AC manufacturing industry. DOE used information gained through interviews with manufacturers to estimate the portion of the total labor expenditures that can be attributed to domestic production labor.

Because industry research and manufacturer feedback indicates that there are no single-duct or dual-duct portable ACs produced in the United States, DOE does not provide an estimate of direct employment impacts. Employment impacts in the broader U.S. economy are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

As noted in the previous section, no single-duct or dual-duct portable ACs are manufactured in the United States. Therefore, new energy conservation standards would have no impact on U.S. production capacity.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash flow estimate is not adequate for assessing differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers

[66] The U.S. Census Bureau's 2013 *Annual Survey of Manufactures* provides the following definition: "The 'production workers' number includes workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, storing, handling, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial and guard services, product development, auxiliary production for plant's own use (*e.g.*, power plant), recordkeeping, and other services closely associated with these production operations at the establishment covered by the report. Employees above the working-supervisor level are excluded from this item."

exhibiting a cost structure that differs significantly from the industry average could be affected differently. DOE used the results of the industry characterization to group manufacturers exhibiting similar characteristics.

As previously mentioned, DOE did not identify any domestic small business manufacturers of single-duct or dual-duct portable ACs.

Additional information about the small business analysis is found in chapter 12 of the NOPR TSD and section V.B of this proposed rule.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden is the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry.

Companies that produce a wider range of regulated products, including those that producecomponents of other products subject to regulation, may be faced with more capital and product development expenditures than their competitors. This can prompt those companies to exit the market or reduce their product offerings, potentially reducing competition. Smaller companies can be especially affected, since they have lower sales volumes over which to amortize the costs of compliance with new regulations.

DOE aims to recognize and seeks to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products, components and other equipment. In addition to DOE's proposed energy conservation regulations for portable ACs, several other existing and pending regulations apply to portable ACs products and other equipment produced by the same manufacturers. DOE evaluates these regulations that could affect portable AC manufacturers that will take effect approximately 3 years before or after the 2021 compliance date of the new energy conservation standards for portable ACs and the associated costs of these rulemakings Additionally, DOE will evaluate its approach to assessing cumulative regulatory burden for use in future rulemakings to ensure that it is effectively capturing the overlapping impacts of its regualtions. In particular, DOE will assess whether looking at rules where any portion of the compliance period potentially overlaps with the compliance period for the subject rulemaking would yield more a more accurate reflection of cumulative regulatory burdens. In this regard, DOE recognizes that if it were to undertake a rulemaking to amend the standards for Consumer Room ACs pursuant to the 6-year look back requirement under 42 U.S.C. 6295(m), that future Consumer Room AC rule could have a cumulative impact with this PACs rule during the portable ACs compliance period. The compliance years and expected industry conversion costs of energy conservation standards that may also impact portable AC manufacturers are indicated in Table V.12. DOE seeks public comment on the cumulative regulatory burden to manufacturers associated with the proposed portable AC standard and on the approach DOE used in evaluating cumulative regulatory burden, including the timeframes and regulatory dates evaluated.

TABLE V.12—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF DOE FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING PORTABLE AC MANUFACTURERS

DOE regulation	Approximate compliance dates	Estimated total industry conversion costs
Microwave Ovens 78 FR 36316 (June 17, 2013)	June 17, 2016	43.1 M (2011$)
Residential Clothes Washers 77 FR 32308 (May 31, 2012)	January 1, 2018	$418.5M (2010$)
Dehumidifiers 80 FR 31646 (June 3, 2015)	June 2019	$50.7M (2013$)†

† The final rule for this energy conservation standard has not been published. Therefore, the compliance date is an estimate and analysis of conversion costs have not been finalized at this time. If a value is provided for total industry conversion costs, this value represents an estimate from the NOPR.

In addition to other Federal energy conservation standards, manufacturers cited potential restrictions on the use of certain refrigerants and State-level refrigerant recovery regulations as sources of cumulative regulatory burden for portable AC manufacturers. For more details, see chapter 12, section 12.7.3 of the NOPR TSD.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for portable ACs, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with new standards (2021–2050). Table V.13 presents DOE's projections of the NES for each TSL considered for portable ACs. The savings were calculated using the approach described in section IV.H.2 of this proposed rule.

TABLE V.13—CUMULATIVE NATIONAL ENERGY SAVINGS FOR PORTABLE AIR CONDITIONERS SHIPPED IN 2021–2050

Savings	Trial standard level (quads)			
	1	2	3	4
Source Energy Savings	0.21	0.51	0.75	1.10
Full Fuel Cycle Energy Savings	0.22	0.53	0.78	1.15

OMB Circular A–4 [67] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using nine, rather than 30, years of product shipments. The choice of a nine-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[68] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to portable ACs. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a nine-year analytical period are presented in Table V.14. The impacts are counted over the lifetime of portable ACs purchased in 2021–2050.

TABLE V.14—CUMULATIVE NATIONAL ENERGY SAVINGS FOR PORTABLE AIR CONDITIONERS; NINE YEARS OF SHIPMENTS (2021–2029)

Savings	Trial standard level (quads)			
	1	2	3	4
Source Energy Savings	0.04	0.14	0.23	0.34
Full-Fuel-Cycle Energy Savings	0.05	0.14	0.24	0.36

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for portable ACs. In accordance with OMB's guidelines on regulatory analysis,[69] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.15 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2021–2050.

TABLE V.15—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PORTABLE AIR CONDITIONERS SHIPPED IN (2021–2050)

Discount rate	Trial standard level (billion 2014$)			
	1	2	3	4
3 percent	2.08	5.20	7.64	10.64
7 percent	0.81	2.15	3.23	4.46

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.16. The impacts are counted over the lifetime of products purchased in 2021–2029. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.16—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PORTABLE AIR CONDITIONERS; NINE YEARS OF SHIPMENTS (2021–2029)

Discount rate	Trial standard level (billion 2014$)			
	1	2	3	4
3 percent	0.55	1.78	2.87	4.05
7 percent	0.30	1.01	1.63	2.28

The above results reflect the use of a default trend to estimate the change in price for portable ACs over the analysis period (see section IV.F.1 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR

[67] U.S. OMB, "Circular A–4: Regulatory Analysis" (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[68] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

[69] U.S. Office of Management and Budget, "Circular A–4: Regulatory Analysis," section E, (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for portable ACs to reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE 9understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2021–2050), where these uncertainties are reduced.

The results suggest that the proposed standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

Based on testing conducted in support of this proposed rule, discussed in chapter 5 of the NOPR TSD, DOE has tentatively concluded that the standards proposed in this NOPR would not reduce the utility or performance of the portable ACs under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

5. Impact of Any Lessening of Competition

As discussed in section III.E.1.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with any analysis of the nature and extent of such impact. To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, interested parties may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 in the NOPR TSD presents the estimated reduction in generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from new standards for portable ACs is expected to yield environmental benefits in the form of reduced emissions of air pollutants and GHGs. Table V.17 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.17—CUMULATIVE EMISSIONS REDUCTION FOR PORTABLE AIR CONDITIONERS SHIPPED IN 2021–2050

	Trial standard level			
	1	2	3	4
Power Sector Emissions				
CO_2 (*million metric tons*)	14.6	35.7	52.7	77.2
SO_2 (*thousand tons*)	8.0	19.8	29.3	43.0
NO_X (*thousand tons*)	16.5	40.2	59.3	86.9
Hg (*tons*)	0.03	0.07	0.11	0.16
CH_4 (*thousand tons*)	1.2	2.9	4.2	6.2
N_2O (*thousand tons*)	0.2	0.4	0.6	0.9
Upstream Emissions				
CO_2 (*million metric tons*)	0.8	2.1	3.0	4.4
SO_2 (*thousand tons*)	0.2	0.4	0.6	0.8
NO_X (*thousand tons*)	12.2	29.4	43.2	63.2
Hg (*tons*)	0.00	0.00	0.00	0.00
CH_4 (*thousand tons*)	67.3	162.5	238.8	349.3
N_2O (*thousand tons*)	0.01	0.02	0.03	0.04
Total FFC Emissions				
CO_2 (*million metric tons*)	15.5	37.7	55.7	81.6
SO_2 (*thousand tons*)	8.2	20.2	29.9	43.9
NO_X (*thousand tons*)	28.7	69.6	102.6	150.1
Hg (*tons*)	0.03	0.07	0.11	0.16
CH_4 (*thousand tons*)	68.5	165.3	243.0	355.5
CH_4 (*thousand tons CO_2eq*)*	1,917	4,629	6,804	9,954
N_2O (*thousand tons*)	0.2	0.4	0.6	0.9
N_2O (*thousand tons CO_2eq*)*	45.5	111.8	165.6	242.8

* CO_2eq is the quantity of CO_2 that would have the same GWP.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for portable ACs. As discussed in section IV.L of this document, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and environmental) as the projected magnitude of climate change increases.

Table V.18 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the NOPR TSD.

TABLE V.18—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2021–2050

TSL	SCC case* (million 2014$)			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	96	450	718	1,374
2	241	1,119	1,781	3,411
3	362	1,666	2,648	5,078
4	532	2,445	3,885	7,452
Upstream Emissions				
1	5	26	41	79
2	14	64	102	195
3	20	95	150	288
4	30	139	221	423
Total FFC Emissions				
1	101	476	760	1,453
2	255	1,182	1,882	3,606
3	382	1,761	2,799	5,367
4	562	2,584	4,106	7,875

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.*, not CO_{2eq} of other GHGs).

DOE is aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for portable ACs. The dollar-per-ton value that DOE used is discussed in section IV.L of this document. Table V.19 presents the cumulative present values for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates.

TABLE V.19—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR PORTABLE AIR CONDITIONERS SHIPPED IN 2021–2050

TSL	Million 2014$	
	3% Discount rate	7% Discount rate
Power Sector Emissions		
1	26.6	10.1
2	67.4	27.0
3	101.2	41.4
4	148.8	61.2
Upstream Emissions		
1	21.3	7.9
2	53.5	21.0
3	80.0	32.1
4	117.5	47.4
Total FFC Emissions		
1	47.9	18.0
2	120.9	47.9
3	181.2	73.5

TABLE V.19—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR PORTABLE AIR CONDITIONERS SHIPPED IN 2021–2050—Continued

TSL	Million 2014$	
	3% Discount rate	7% Discount rate
4	266.3	108.6

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.20 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V.20—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% Discount rate added with: (Billion 2014$)			
	SCC Case $12.2/metric ton and 3% NO_X value	SCC Case $40.0/metric ton and 3% NO_X value	SCC Case $62.3/metric ton and 3% NO_X value	SCC Case $117/metric ton and 3% NO_X value
1	2.2	2.6	2.9	3.6
2	5.6	6.5	7.2	8.9
3	8.2	9.6	10.6	13.2
4	11.5	13.5	15.0	18.8
TSL	Consumer NPV at 7% Discount rate added with: (Billion 2014$)			
	SCC Case $12.2/metric ton and 7% NO_X value	SCC Case $40.0/metric ton and 7% NO_X value	SCC Case $62.3/metric ton and 7% NO_X value	SCC Case $117/metric ton and 7% NO_X value
1	0.9	1.3	1.6	2.3
2	2.5	3.4	4.1	5.8
3	3.7	5.1	6.1	8.7
4	5.1	7.1	8.7	12.4

Two issues are relevant in considering the above results. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2021 to 2050. Because CO_2 emissions have a very long residence time in the atmosphere,[70] the SCC values in future years reflect future CO_2-emissions impacts that continue beyond 2100.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also "result in significant conservation of energy." (42 U.S.C. 6295(o)(3)(B))

DOE considered the impacts of standards at each TSL, beginning with a maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest TSL that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard (see section V.B.2.d).

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other

[70] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, "Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,' " *J. Geophys.Res.* 110. pp. D14105 (2005).

difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (that is, renter versus owner; builder versus purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution).

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products used by consumers, this decreases the potential energy savings from an energy conservation standard. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[71]

In its energy use and economic analyses, DOE did not consider product switching as a result of setting portable AC standards. There is no literature informing whether a substitution effect may be occurring between portable ACs or room ACs. Therefore, DOE is requesting input and data from interested parties as to whether product switching is occurring between these different types of cooling products and, if so, whether switching to room or central ACs would be significantly increased due to DOE establishing portable AC standards.

DOE did consider the impact of portable AC standards on product utilization through the use of a direct rebound effect. Higher-efficiency portable ACs reduce the operating costs for a consumer, which can lead to greater use of the product. A direct rebound effect occurs when a piece of equipment that is made more efficient is used more intensively, such that the expected energy savings from the efficiency improvement may not fully materialize. For the NOPR analysis, DOE examined a 2009 review of empirical estimates of the rebound effect for various energy-using products.[72] There are relatively few estimates of the direct rebound effect for household cooling. The two studies discussed in the review are relatively old studies, conducted during the period of rising energy prices and using small sample sizes. One shows a short-run rebound effect of 4 percent,[73] while the other reported a wide range of 1–26 percent.[74] In the recent NOPR for residential furnaces, DOE chose to use a rebound effect of 15 percent, which is roughly in the center of the range reported for household cooling. 80 FR 13120, 13148 (May 12, 2015).[75] For consistency, DOE used a rebound effect of 15 percent for portable ACs in all of the estimates in this rulemaking.

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[76] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of Trial Standard Levels Considered for Portable ACs

Table V.21 and Table V.22 summarize the quantitative impacts estimated for each TSL for portable ACs. The efficiency levels contained in each TSL are described in section V.A of this proposed rule.

TABLE V.21—SUMMARY OF ANALYTICAL RESULTS FOR PORTABLE AIR CONDITIONER TSLS: (NATIONAL IMPACTS, 2021–2050)

Category	TSL 1	TSL 2	TSL 3	TSL 4
Cumulative FFC National Energy Savings (quads)				
	0.22	0.53	0.78	1.15.
NPV of Consumer Costs and Benefits (2014$ billion)				
3% discount rate	2.08	5.20	7.64	10.64.
7% discount rate	0.81	2.15	3.23	4.46.
Cumulative FFC Emissions Reduction (Total FFC Emission)				
CO_2 (*million metric tons*)	15.5	37.7	55.7	81.6.

[71] P.C. Reiss and M.W. White, *Household Electricity Demand,* Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[72] Steven Sorrell, *et al., Empirical Estimates of the Direct Rebound Effect: A Review,* 37 Energy Pol'y 1356–71 (2009).

[73] Hausman, J.A. *Individual Discount Rates and the Purchase and Utilization of Energy-Using Durables.* The Bell Journal of Economics. 1979. 10(1): pp. 33–54.

[74] Dubin, J.A., A.K. Miedema, and R.V. Chandran. *Price effects of energy-efficient technologies—a study of residential demand for heating and cooling.* Rand Journal of Economics. 1976. 17(3): pp. 310–25.

[75] U.S. Department of Energy-Office of Energy Efficiency and Renewable Energy. **Federal Register**. May 12, 2015. vol. 80, no. 97: pp. 28851–28852. (Last accessed August 12, 2015.) *http://www.gpo.gov/fdsys/pkg/FR-2015-05-20/pdf/2015-12218.pdf.*

[76] Alan Sanstad, *Notes on the Economics of Household Energy Consumption and Technology Choice,* Lawrence Berkeley National Laboratory (2010) (Available at: *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf).*

TABLE V.21—SUMMARY OF ANALYTICAL RESULTS FOR PORTABLE AIR CONDITIONER TSLS: (NATIONAL IMPACTS, 2021–2050)—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4
SO_2 (*thousand tons*)	8.2	20.2	29.9	43.9.
NO_X (*thousand tons*)	28.7	69.6	102.6	150.1.
Hg (*tons*)	0.03	0.07	0.11	0.16.
CH_4 (*thousand tons*)	68.5	165.3	243.0	355.5.
CH_4 (*thousand tons CO_2eq*)*	1,917	4,629	6,804	9,954.
N_2O (*thousand tons*)	0.2	0.4	0.6	0.9.
N_2O (*thousand tons CO_2eq*)*	45.5	111.8	165.6	242.8.
Value of Emissions Reduction (Total FFC Emissions)				
CO_2 (*2014$ billion*)**	0.101 to 1.453	0.255 to 3.606	0.382 to 5.367	0.562 to 7.875.
NO_X—3% discount rate (*2014$ million*)	47.9 to 109.3	120.9 to 275.6	181.2 to 413.2	266.3 to 607.2.
NO_X—7% discount rate (*2014$ million*)	18.0 to 40.6	47.9 to 108.1	73.5 to 165.7	108.6 to 244.8.

* CO_2eq is the quantity of CO_2 that would have the same GWP.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V.22— PORTABLE AIR CONDITIONER TRIAL STANDARD LEVELS: MANUFACTURER (2016–2050) AND CONSUMER IMPACTS (2021–2050)

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Industry NPV (*2014$ millions*) (*Base Case INPV = 725.5*).	631.3 to 637.9	503.8 to 521.7	378.6 to 419.2	301.9 to 404.5.
Industry NPV (*% change*).	(13.0%) to (12.1%)	(30.6%) to (28.1%)	(47.8%) to (42.2%)	(58.4%) to (44.2%).
Consumer Average LCC Savings (2014$)				
Residential	84	144	194	242.
Commercial	188	292	392	528.
All	97	162	218	276.
Consumer Simple PBP (years)				
Residential	3.0	2.2	2.1	2.9.
Commercial	1.6	1.2	1.1	1.5.
All	2.8	2.1	2.0	2.7.
% of Consumers that Experience Net Cost				
Residential	9	13	19	31.
Commercial	2	2	3	9.
All	9	12	17	28.

Parentheses indicate negative (−) values.

DOE first considered TSL 4, which represents the max-tech efficiency level. TSL 4 would save 1.15 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $4.46 billion using a discount rate of 7 percent, and $10.64 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 81.6 Mt of CO_2, 43.9 thousand tons of SO_2, 150.1 thousand tons of NO_X, 0.16 tons of Hg, 355.5 thousand tons of CH_4, and 0.9 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 4 ranges from $562 million to $7,875 million.

At TSL 4, the average LCC impact is a savings of $242 for residential, $528 for commercial, and $276 for both sectors. The simple payback period is 2.9 years for residential, 1.5 years for commercial, and 2.7 years for both sectors. The fraction of all consumers experiencing a net LCC cost is 28 percent.

At TSL 4, the projected change in INPV ranges from a decrease of $423.5 million to a decrease of $320.9 million, which correspond to decreases of 58.4 percent and 44.2 percent, respectively. DOE estimates that no portion of the market will meet the efficiency standard specified by this TSL in 2020, the year before the compliance year. As such, manufacturers would have to redesign all products by the expected 2021 compliance date to meet demand. Redesigning all units to meet the max-tech efficiency level would require considerable capital and product conversion expenditures. At TSL 4, the capital conversion costs total as much as $305.7 million, roughly 13.1 times the industry annual ordinary capital expenditure in 2020 (the year leading up to new standards). DOE estimates that complete platform redesigns would cost the industry $170.8 million in product conversion costs. These conversion costs largely relate to the extensive research programs required to develop new products that meet the efficiency standards at TSL 4. These costs are equivalent to 17.8 times the industry annual budget for research and development. As such, the conversion costs associated with the changes in products and manufacturing facilities

required at TSL 4 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 4. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, especially in the lower-capacity portable segment, DOE expects that TSL 4 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss to manufacturers of 58.4 percent of INPV.

Beyond the direct financial impact on manufacturers, TSL 4 may also contribute to the unavailability of portable ACs at certain cooling capacities. The efficiency at TSL 4 is a theoretical level that DOE developed by modeling the most efficient components available. However, DOE is aware that the highest-efficiency compressors that are necessary to meet TSL 4 may not be available to all manufacturers for the full range of capacities of portable ACs. Because specific high-efficiency components available are driven largely by the markets for other products with higher shipments (*e.g.*, room ACs), portable AC manufacturers may be constrained in their design choices. This may have the potential to eliminate portable ACs of certain cooling capacities from the market, should TSL 4 be selected.

The Secretary tentatively concludes that at TSL 4 for portable ACs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on some consumers, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which would save an estimated 0.78 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $3.23 billion using a discount rate of 7 percent, and $7.64 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 55.7 Mt of CO_2, 29.9 thousand tons of SO_2, 102.6 thousand tons of NO_X, 0.11 tons of Hg, 243.0 thousand tons of CH_4, and 0.6 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 3 ranges from $382 million to $5,367 million.

At TSL 3, the average LCC impact is a savings of $194 for residential, $392 for commercial, and $218 for both sectors. The simple payback period is 2.1 years for residential, 1.1 years for commercial, and 2.0 years for both sectors. The fraction of all consumers experiencing a net LCC cost is 17 percent.

At TSL 3, the projected change in INPV ranges from a decrease of $346.8 million to a decrease of $306.2 million, which correspond to decreases of 47.8 percent and 42.2 percent, respectively. Again, DOE estimates that no portion of the market will meet the efficiency standard specified by this TSL in 2020, the year before the compliance year. As such, manufacturers would have to make upgrades to all products by the 2021 projected compliance date to meet demand. Redesigning all units to meet TSL 3 would require considerable capital and product conversion expenditures. The estimated capital conversion costs total as much as $282.0 million, which is 12.1 times the industry annual capital expenditure in 2020 (the year leading up to the new standards). DOE estimates that the redesigns necessary to meet these standards would cost the industry $161.8 million in product conversion costs. These conversion costs largely relate to the research programs and re-testing required to develop products that meet the efficiency standards set forth by TSL 3, and are 16.8 times the industry annual budget for research and development in 2020, the year leading up to new standards. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 3 would still require significant use of manufacturers' financial reserves, impacting other areas of business that compete for these resources and significantly reducing INPV. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 3 would yield impacts closer to the high end of the range of INPV impacts as indicated by the preservation of per-unit operating profit markup scenario. If this is the case, TSL 3 could result in a net loss of 47.8 percent in INPV to manufacturers of portable ACs.

Similar to TSL 4, beyond the direct financial impact on manufacturers, TSL 3 may also contribute to the unavailability of portable ACs at certain cooling capacities. TSL 3 is based on the single highest efficiency unit in DOE's test sample. However, DOE believes few, if any, other units on the market are able to achieve these efficiencies and that the highest efficiency single-speed compressors likely necessary to meet TSL 3 may not be available to all manufacturers for the full range of capacities of portable ACs. Because high-efficiency components available at any given time are driven largely by the markets for other products with higher shipments (*e.g.*, room ACs), portable AC manufacturers may be constrained in their design choices. This may have the potential to eliminate portable ACs of certain cooling capacities from the market.

The Secretary tentatively concludes that at TSL 3 for portable ACs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a large reduction in INPV for manufacturers. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which would save an estimated 0.53 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $2.15 billion using a discount rate of 7 percent, and $5.20 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 37.7 Mt of CO_2, 20.2 thousand tons of SO_2, 69.6 thousand tons of NO_X, 0.07 tons of Hg, 165.3 thousand tons of CH_4, and 0.4 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 2 ranges from $255 million to $3,606 million.

At TSL 2, the average LCC impact is a savings of $144 for residential, $292 for commercial, and $162 for both sectors. The simple payback period is 2.2 years for residential, 1.2 years for commercial, and 2.1 years for both sectors. The fraction of all consumers experiencing a net LCC cost is 12 percent.

At TSL 2, the projected change in INPV ranges from a decrease of $221.7 million to a decrease of $203.8 million, which correspond to decreases of 30.6 percent and 28.1 percent, respectively. DOE estimates that approximately 23 percent of available platforms and 21 percent of shipments will meet the efficiency standards specified by this TSL in 2020, the year before the compliance year. As such, manufacturers would have to make upgrades to 77 percent of platforms by

the 2021 projected compliance date to meet demand. At TSL 2, manufacturers will incur conversion costs associated with the integration of higher efficiency components. The estimated capital conversion costs total as much as $188.9 million, which is 8.1 times the industry annual capital expenditure in 2020 (the year leading up to the new standards). DOE estimates that the redesigns necessary to meet these standards would cost the industry $113.9 million in product conversion costs. These conversion costs largely relate to the research programs and re-testing required to develop products that meet the efficiency standards set forth by TSL 2, and are 11.8 times the industry annual budget for research and development in 2020, the year leading up to new standards. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 2 would yield impacts closer to the high end of the range of INPV impacts as indicated by the preservation of per-unit operating profit markup scenario. If this is the case, TSL 2 could result in a net loss of 30.6 percent in INPV to manufacturers of portable ACs.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at TSL 2 for portable ACs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers. Accordingly, the Secretary has tentatively concluded that TSL 2 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy.

Therefore, based on the above considerations, DOE proposes to adopt the energy conservation standards for portable ACs at TSL 2. The proposed new energy conservation standards for portable ACs, which are expressed as CEER, are shown in Table V.23.

Table V.23 Proposed Energy Conservation Standards for Portable Air Conditioners

Portable Air Conditioner Product Class	Minimum CEER (Btu/Wh)
Single-duct and dual-duct portable air conditioners	$Minimum\ CEER = 1.14 \times \frac{SACC}{(2.7447 \times SACC^{0.6829})}$
CEER is Combined Energy Efficiency Ratio in in Btu/Wh Seasonally Adjusted Cooling Capacity (SACC) in Btu/h determined in accordance with Appendix CC	

2. Summary of Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is the sum of: (1) The annualized national economic value (expressed in 2014$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[77]

Table V.24 shows the annualized values for portable ACs under TSL 2, expressed in 2014$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reductions (for which DOE used a 3-percent discount rate along with the average SCC series corresponding to a value of $40.0/ton in 2015 (2014$)), the estimated cost of the proposed standards for portable ACs is $30 million per year in increased equipment costs, while the estimated benefits are $273 million per year in reduced equipment operating costs, $70 million per year in CO_2 reductions, and $5.4 million per year in reduced NO_X emissions. In this case, the net benefit amounts to $318 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series corresponding to a value of $40.0/ton in 2015 (2014$), the estimated cost of the proposed standards for portable ACs is $30 million per year in increased equipment costs, while the estimated annual benefits are $338 million in reduced operating costs, $70 million in CO_2 reductions, and $7.2 million in reduced NO_X emissions. In this case, the net benefit amounts to $385 million per year.

TABLE V.24—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR PORTABLE AIR CONDITIONERS

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate * ‡	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	273	125	296.

[77] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

TABLE V.24—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 2) FOR PORTABLE AIR CONDITIONERS—Continued

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate * ‡	High net benefits estimate *
CO_2 Reduction at $12.2/t**	3%	338	153	371.
	5%	21	10	23.
CO_2 Reduction at $40.0/t**	3%	70	33	75.
CO_2 Reduction at $62.3/t**	2.5%	102	48	109.
CO_2 Reduction at $117/t**	3%	213	100	228.
NO_X Reduction at $2,684/t††	7%	5.4	3	12.9.
	3%	7.2	3	17.4.
Total ††	7% plus CO_2 range	300 to 492	137 to 227	331 to 537.
	7%	348	160	383.
	3% plus CO_2 range	366 to 558	167 to 256	411 to 616.
	3%	415	189	463.
Costs				
Consumer Incremental Product Costs	7%	30	31	27.
	3%	30	31	26.
Total Net Benefits				
Total ††	7% plus CO_2 range	269 to 462	106 to 196	304 to 510.
	7%	318	129	357.
	3% plus CO_2 range	336 to 528	135 to 225	385 to 590.
	3%	385	158	437.

* This table presents the annualized costs and benefits associated with portable ACs shipped in 2021–2050. These results include benefits to consumers which accrue after 2050 from the products purchased in 2021–2050. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary, Low Benefits, and High Benefits Estimates utilize projections of energy prices from the *AEO 2015* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental product costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Benefits Estimate, and a high decline rate in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

‡ In addition to the *AEO 2015* Low Economic Growth case, the Low Net Benefits Estimate reflects a 50-percent reduction in the number of operating hours. Details of the sensitivity analysis can be found in appendix 8F.

VI. Certification Reporting and Enforcement Requirements

In a recent test procedure rulemaking, DOE established sampling plan requirements for portable ACs in 10 CFR 429.62, to enable manufacturers to make representations of energy consumption or efficiency metrics. DOE proposes in this rulemaking that certain product specific information be included when a manufacturer wishes to certify their products with DOE and demonstrate compliance with any energy conservation standards established as a result of this rulemaking. DOE proposes in this NOPR that portable AC certification reports include CEER and SACC, as determined by the DOE test procedure in appendix CC, in addition to the duct configuration (single-duct, dual-duct, or ability to operate in both configurations), presence of heating function, and primary condensate removal feature (auto-evaporation, gravity drain, removable internal collection bucket, or condensate pump).

In this NOPR, DOE is also establishing a new section within 10 CFR 429.134 to include enforcement requirements for portable ACs. The enforcement provisions clarify how the SACC would be used for determining the minimum allowable CEER for a tested basic model.

DOE requests comment on the proposed certification reporting requirements and enforcement requirements for portable ACs.

VII. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this NOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases the benefits of more efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances and equipment

that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and GHGs that impact human health and global warming. DOE attempts to quantify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

Furthermore, the Administrator of OIRA has determined that the proposed regulatory action is an "economically" significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the TSD for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of portable ACs, the SBA has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Manufacturing of portable ACs is classified under NAICS 333415, "Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing Other Major Household Appliance Manufacturing." The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE first surveyed the AHAM member directory. DOE then consulted publicly available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine the number of manufacturers with manufacturing facilities located within the United States that meet the SBA's definition of a "small business manufacturing facility." DOE screened out companies that do not manufacture products covered by this rulemaking or are foreign owned and operated. In the February 2015 TP NOPR, DOE estimated that there was one small business that manufactured portable ACs. DOE subsequently determined that this small business no longer manufactures portable ACs and, therefore, DOE estimates that there are no domestic manufacturers of single-duct or dual-duct portable ACs that meet the SBA's definition of a "small business."

Based on the discussion above, DOE certifies that the standards for portable ACs set forth in this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit this certification to the SBA as required by 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

DOE has determined that portable ACs are a covered product under EPCA. 81 FR 22514 (April 18, 2016). Because portable ACs are a covered product, manufacturers would need to certify to

DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including portable ACs. 76 FR 12422 (Mar. 7, 2011); 80 FR 5099 (Jan. 30, 2015). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)–(5). The proposed rule fits within this category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx/*.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 199

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531) For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

This proposed rule does not contain a Federal intergovernmental mandate because it does not require expenditures of $100 million or more in any one year by the private sector. The proposed rule will likely result in a final rule that could result in expenditures of $100 million or more, but there is no proposed requirement that mandates that result. Potential expenditures may include: (1) Investment in R&D and in capital expenditures by portable AC manufacturers in the years between the final rule and the projected compliance date for the new standards, and (2) incremental additional expenditures by

consumers to purchase higher-efficiency portable ACs, starting at the projected compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(o), this proposed rule would establish energy conservation standards for portable ACs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights" 53 FR 8859 (Mar. 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S,C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes new energy conservation standards for portable ACs, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The "Energy Conservation Standards Rulemaking Peer Review Report" dated February 2007 has been disseminated and is available at the following Web site: *http://energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0.*

VIII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.*

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov*) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/79.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this proposed rulemaking. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this proposed rule. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of

comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The proposal to maintain one product class for single-duct and dual-duct portable ACs (see section IV.A.2 of this proposed rule or chapter 3 of the NOPR TSD).

2. The determination that alternative refrigerants should be screened out as a design option for portable ACs because products incorporating these refrigerants are not practicable to manufacture at this time while meeting all applicable safety standards (see section IV.B.1 of this proposed rule or chapter 4 of the NOPR TSD).

3. Data from interested parties that characterize portable AC performance based on the DOE test procedure in appendix CC (see section IV.C.1 of this proposed rule or chapter 5 of the NOPR TSD).

4. The general approach and technological feasibility of the efficiency levels considered for this analysis. Specifically, the determination that the baseline performance be represented by the minimum performance ratio observed for units in DOE's test sample. DOE also seeks comment on potential utility impacts at any of the analyzed efficiency levels (see section IV.C.1 of this proposed rule or chapter 5 of the NOPR TSD).

5. The specific efficiency improvements associated with microchannel designs in portable AC heat exchangers (see section IV.C.1 of this proposed rule or chapter 5 of the NOPR TSD).

6. Whether to promote installation of any of the design options, including thermostatic or electronic expansion valves, even though the resulting efficiency gains would not be measurable with the existing test procedure (see section IV.C.1 of this proposed rule or chapter 5 of the NOPR TSD).

7. The incremental manufacturer production costs DOE estimated at each efficiency level (see section IV.C.2 of this proposed rule or chapter 5 of the NOPR TSD).

8. The use of room AC consumer usage data from *RECS* 2009 to establish operating hours for portable ACs. DOE's literature review performed to establish a distribution of energy use values for portable ACs revealed limited available data pertaining to how portable ACs are operated in the field. DOE assumed that the distribution of use calculated for rooms ACs represented the hours of use in cooling mode for a baseline portable AC unit. DOE conducted a sensitivity analysis that assumed hours of operation to be 50 percent of the hours used in the LCC analysis. DOE seeks data on operating hours and seasonal usage specific to portable AC (see section IV.E of this proposed rule, chapter 7 of the NOPR TSD, or appendix 8F of the NOPR TSD).

9. The determination that there are no domestic small business manufacturers of single-duct and dual-duct portable ACs that would be impacted by the proposed standards (see sections IV.J and V.B.2.d of this proposed rule or chapter 12 of the NOPR TSD).

10. The market share distribution of portable ACs in residential (88 percent) and commercial (12 percent) settings (see section V.B.1.a of this proposed rule or chapter 9 of the NOPR TSD).

11. The use of room AC lifetime as input data to determine portable AC lifetime (see section IV.F of this proposed rule or chapter 8 of the NOPR TSD).

12. Data on historic trends in portable AC efficiency (see section IV.F of this proposed rule or chapter 8 of the NOPR TSD).

13. The proposed certification reporting requirements for portable ACs (see section VI of this proposed rule).

14. Information demonstrating that product switching is occurring between portable ACs and room or central ACs. If data demonstrates switching is occurring, additional data on whether switching to room or central ACs would be significantly increased due to DOE establishing portable AC standards.

15. DOE seeks public comment on the cumulative regulatory burden to manufacturers associated with the proposed portable AC standard and on the approach DOE used in evaluating cumulative regulatory burden, including the timeframes and regulatory dates evaluated.

IX. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on April 27, 2016.

David Friedman,

Principal Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of chapter II, subpart C, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section § 429.12 is amended by:

■ a. Removing in paragraph (b)(13) "§§ 429.14 through 429.60" and adding in its place, "§§ 429.14 through 429.62"; and

■ b. Adding a ninth row to the table in paragraph (d) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(d) * * *

Portable air conditioners	February 1.

* * * * *

■ 3. Section § 429.62 [proposed at 81 FR 35242 (June 1, 2016)] is amended by adding paragraph (b) to read as follows:

§ 429.62 Portable Air Conditioners.

* * * * *

(b) *Certification reports.* (1) The requirements of § 429.12 are applicable to single-duct and dual-duct portable air conditioners; and

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The combined energy efficiency ratio (CEER in British thermal units per Watt-hour (Btu/Wh)), the seasonally adjusted cooling capacity in British thermal units per hour (Btu/h), the duct configuration (single-duct, dual-duct, or ability to operate in both configurations), presence of heating function, and primary condensate removal feature (auto-evaporation, gravity drain, removable internal collection bucket, or condensate pump).

■ 4. Section § 429.134 is amended by adding paragraph (n) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(n) *Portable air conditioners. Verification of seasonally adjusted cooling capacity.* The seasonally adjusted cooling capacity will be measured pursuant to the test requirements of 10 CFR part 430 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of seasonally adjusted cooling capacity certified by the manufacturer. The certified seasonally adjusted cooling capacity will be considered valid only if the average measured seasonally adjusted cooling capacity is within five percent of the certified seasonally adjusted cooling capacity.

(1) If the certified seasonally adjusted cooling capacity is found to be valid, the certified value will be used as the basis for determining the minimum allowed combined energy efficiency ratio for the basic model.

(2) If the certified seasonally adjusted cooling capacity is found to be invalid, the average measured seasonally adjusted cooling capacity will be used to determine the minimum allowed combined energy efficiency ratio for the basic model.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. In § 430.32, add paragraph (z) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(z) *Portable air conditioners.* Single-duct portable air conditioners and dual-duct portable air conditioners manufactured on or after [DATE 5 YEARS AFTER THE PUBLICATION OF THE FINAL RULE] must have a combined energy efficiency ratio (CEER) in Btu/Wh no less than:

$$CEER = 1.14 \times \frac{SACC}{(2.7447 \times SACC^{0.6829})}$$

SACC: Seasonally adjusted cooling capacity in Btu/h

[FR Doc. 2016–13549 Filed 6–10–16; 8:45 am]

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Part V

Commodity Futures Trading Commission

17 CFR Parts 37, 38, and 150

Position Limits for Derivatives: Certain Exemptions and Guidance; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 37, 38, and 150

RIN 3038–AD99

Position Limits for Derivatives: Certain Exemptions and Guidance

AGENCY: Commodity Futures Trading Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing revisions and additions to regulations and guidance proposed in 2013 concerning speculative position limits in response to comments received on that proposal. The Commission is proposing new alternative processes for designated contract markets ("DCMs") and swap execution facilities ("SEFs") to recognize certain positions in commodity derivative contracts as non-enumerated bona fide hedges or enumerated anticipatory bona fide hedges, as well as to exempt from federal position limits certain spread positions, in each case subject to Commission review. In this regard, the Commission proposes to amend certain of the regulations proposed in 2013 regarding exemptions from federal position limits and exchange-set position limits to take into account these new alternative processes. In connection with these changes, the Commission proposes to further amend certain relevant definitions, including to clearly define the general definition of bona fide hedging for physical commodities under the standards in CEA section 4a(c). Separately, the Commission proposes to delay for DCMs and SEFs that lack access to sufficient swap position information the requirement to establish and monitor position limits on swaps.

DATES: Comments must be received on or before July 13, 2016.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD99, by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov;*
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581;
- *Hand delivery/courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC regulations at 17 CFR part 145.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Senior Economist, Division of Market Oversight, (202) 418–5452, *ssherrod@cftc.gov;* Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418–5494, *radriance@cftc.gov;* Lee Ann Duffy, Assistant General Counsel, Office of General Counsel, 202–418–6763, *lduffy@cftc.gov;* or Steven Benton, Industry Economist, Division of Market Oversight, (202) 418–5617, *sbenton@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission has long established and enforced speculative position limits for futures and options contracts on certain agricultural commodities in accordance with the Commodity Exchange Act ("CEA" or "Act").[1] The part 150 federal position limits regime[2] generally includes three components: (1) The level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot month, an individual month, and all months combined,[3] (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions,[4] and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.[5]

In late 2013, the CFTC proposed to amend its part 150 regulations governing speculative position limits. These proposed amendments were intended to conform to the requirements of part 150 to particular changes to the CEA introduced by the Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank Act").[6] The proposed amendments included the adoption of federal position limits for 28 exempt and agricultural commodity futures and option contracts and swaps that are "economically equivalent" to such contracts.[7] In addition, the

[1] 7 U.S.C. 1 *et seq.*

[2] *See* 17 CFR part 150. Part 150 of the Commission's regulations establishes federal position limits (that is, position limits established by the Commission, as opposed to exchange-set limits) on certain enumerated agricultural contracts; the listed commodities are referred to as enumerated agricultural commodities. The position limits on these agricultural contracts are referred to as "legacy" limits because these contracts on agricultural commodities have been subject to federal position limits for decades. *See also* Position Limits for Derivatives, 78 FR 75680 at 75723, note 370 and accompanying text (Dec. 12, 2013) ("December 2013 position limits proposal").

[3] *See* 17 CFR 150.2.

[4] *See* 17 CFR 150.3.

[5] *See* 17 CFR 150.4.

[6] The Commission previously had issued proposed and final rules in 2011 to implement the provisions of the Dodd-Frank Act regarding position limits and the bona fide hedge definition. Position Limits for Derivatives, 76 FR 4752 (Jan. 26, 2011); Position Limits for Futures and Swaps, 76 FR 71626 (Nov. 18, 2011). A September 28, 2012, order of the U.S. District Court for the District of Columbia vacated the November 18, 2011 rule, with the exception of the rule's amendments to 17CFR 150.2. *International Swaps and Derivatives Association* v. *United States Commodity Futures Trading Commission,* 887 F. Supp. 2d 259 (D.D.C. 2012). *See generally* the materials and links on the Commission's Web site at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_26_PosLimits/index.htm.* The Commission issued the December 2013 position limits proposal, among other reasons, to respond to the District Court's decision in *ISDA* v. *CFTC. See generally* the materials and links on the Commission's Web site at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/PositionLimitsforDerivatives/index.htm.*

[7] *See* CEA section 4a(a)(5), 7 U.S.C. 6a(a)(5) (providing that the Commission establish limits on economically equivalent contracts); CEA section 4a(a)(6), 7 U.S.C. 6a(a)(6) (directing the Commission to establish aggregate position limits on futures, options, economically equivalent swaps, and certain foreign board of trade contracts in agricultural and exempt commodities (collectively, "referenced contracts")). *See* December 2013 position limits proposal 78 FR at 75825. Under the December 2013 position limits proposal, "referenced contracts" would have been defined as futures, options, economically equivalent swaps, and certain foreign board of trade contracts, in physical commodities, and been subject to the proposed federal position limits. The Commission proposed that federal position limits would apply to referenced contracts, whether futures or swaps,

Commission proposed to require that DCMs and SEFs that are trading facilities (collectively, "exchanges") establish exchange-set limits on such futures, options and swaps contracts.[8] Further, the Commission proposed to (i) revise the definition of bona fide hedging position (which includes a general definition with requirements applicable to all hedges, as well as an enumerated list of bona fide hedges),[9] (ii) revise the process for market participants to request recognition of certain types of positions as bona fide hedges, including anticipatory hedges and hedges not specifically enumerated in the proposed bona fide hedging definition;[10] and (iii) revise the exemptions from position limits for transactions normally known to the trade as spreads.[11]

II. Proposal To Supplement and Revise the December 2013 Position Limits Proposal

The CFTC is now proposing revisions and additions to regulations and guidance proposed in 2013 concerning speculative position limits in response to comments received on that proposal. The Commission is proposing new alternative processes for DCMs and SEFs to recognize certain positions in commodity derivative contracts as non-enumerated bona fide hedges or enumerated anticipatory bona fide hedges, as well as to exempt from federal position limits certain spread positions, in each case subject to Commission review. In this regard, the Commission proposes to amend certain of the regulations proposed in 2013 regarding exemptions from federal position limits and exchange-set position limits to take into account these new alternative processes. In connection with these changes, the Commission proposes to further amend certain relevant definitions, including to clearly define the general definition of bona fide hedging for physical commodities under the standards in CEA section 4a(c). Separately, the Commission proposes to delay for DCMs and SEFs that lack access to sufficient swap position information the requirement to establish and monitor position limits on swaps at this time.

Because this proposal supplements the December 2013 position limits proposal, it must be read in conjunction with that notice of proposed rulemaking, such that where this supplemental proposal sets out a proposed rule text in full, as in four definitions which this supplement proposes to amend, the rule text is intended to replace what was proposed in the December 2013 position limits proposal. Where this supplemental proposal reserves a subsection proposed in the December 2013 position limits proposal, the intention is to provide additional time for Commission consideration of that subsection. For the avoidance of doubt, the Commission is still reviewing comments received on such reserved subsections and does not seek further comment on such reserved subsections.

A. Proposed Guidance Regarding Exchange-Set Limitations on Swap Positions

As noted above, in December 2013 the Commission proposed federal position limits on futures and swaps in physical commodities.[12] Since that time, the Commission has worked with industry to improve the quality of swap position reporting to the Commission under part 20.[13] In light of the improved quality of the swap position reporting, the Commission intends to rely on part 20 swap position data, given adjustments for obvious errors (*e.g.*, data reported based on a unit of measure, such as an ounce, rather than a futures equivalent number of contracts), to establish initial levels of federal non-spot month limits on futures and swaps in a final rule. Moreover, the Commission notes that the improved quality allows the Commission to utilize part 20 swap position data when monitoring market participants' compliance with such federal position limits on futures and swaps.

However, the Commission notes that with respect to exchange-set limits on swaps, exchanges, on the other hand, generally do not have access to swap position information. Unlike futures contracts—which are proprietary to a particular DCM and typically cleared at a single DCO affiliated with the DCM—swaps in a particular commodity are not proprietary to any particular trading facility or platform. Market participants may execute swaps involving a particular commodity on or subject to the rules of multiple exchanges or, in some circumstances, over the counter ("OTC"). Further, under the Commission regulations, data with respect to a particular swap transaction may be reported to any swap data repository ("SDR").[14]

In addition, it should be noted that although CEA section 2(h)(8) requires that swap transactions required to be cleared under CEA section 2(h)(7) must be traded on either a DCM or a SEF if a DCM or SEF "makes the swap available to trade," [15] there currently is neither a requirement for mandatory clearing of a swap on a physical commodity,[16] nor has a swap on a physical commodity been made available to trade.[17] Consequently, swaps on physical commodities may use means of execution other than on a DCM or SEF.

Even if an exchange had access to cleared swap data from a particular DCO, an exchange may need access to data from additional DCOs in order to have a sufficient understanding of a market participant's cleared swap position, because a market participant may clear economically equivalent swaps on multiple DCOs. Further, DCO cleared swap data would not provide an exchange with data regarding economically equivalent uncleared swaps. While SDR data would include

regardless of where the futures or swaps positions were established. *See* December 2013 positions limits proposal at 78 FR 75826 (proposed § 150.2).

[8] *See* December 2013 position limits proposal 78 FR at 75754–8. Consistent with DCM Core Principle 5 and SEF Core Principle 6, the Commission proposed at § 150.5(a)(1) that for any commodity derivative contract that is subject to a speculative position limit under § 150.2, [a DCM] or [SEF] that is a trading facility shall set a speculative position limit no higher than the level specified in § 150.2.

[9] *See* December 2013 position limits proposal 78 FR at 75706–11, 75713–18.

[10] *See* December 2013 position limits proposal 78 FR at 75718.

[11] *See* December 2013 position limits proposal 78 FR at 75735–6. CEA section 4a(a)(1), 7 U.S.C. 6a(a)(1), permits the Commission to exempt transactions normally known to the trade as "spreads" from federal position limits.

[12] CEA section 4a(a)(5) requires federal position limits for swaps that are "economically equivalent" to futures and options that are subject to mandatory position limits under CEA section 4a(a)(2). *See* December 2013 position limits proposal at 78 FR 75681–5 (providing the Commission's interpretation of the statute as mandating that the Commission impose limits on futures, options, and swaps, in agricultural and exempt commodities).

[13] The Commission stated in the December 2013 position limits proposal that it preliminarily had decided not to use the swaps data then reported under part 20 for purposes of setting the initial levels of the proposed single and all-months-combined positions limits due to concerns about the reliability of such data. December 2013 position limits proposal, 78 FR at 75533. The Commission also stated that it might use part 20 swaps data should it determine such data to be reliable, in order to establish higher initial levels in a final rule. *Id.* at 75734.

[14] *See* §§ 45.3, 45.4, and 45.10 of the Commission's regulations, 17 CFR 45.3, 45.4, and 45.10. *See generally* CEA sections 4r (reporting and recordkeeping for uncleared swaps) and 21 (swap data repositories), 7 U.S.C. 6r and 24a.

[15] CEA section 2(h)(8), 7 U.S.C. 2(h)(8) (the "trading mandate").

[16] *See* CEA section 2(h) and part 50 of the Commission's regulations. 7 U.S.C. 2(h) and 17 CFR part 50.

[17] For example, under rule 37.10, a swap execution facility may make a swap available to trade, pursuant to CEA section 2(h)(8). See current list of swaps made available to trade at *http://www.cftc.gov/idc/groups/public/@otherif/documents/file/swapsmadeavailablechart.pdf.*

swap data regarding both cleared and uncleared swaps, such data would need to be converted to a futures-equivalent position in order to measure compliance with an exchange-set limit set at a level no higher than that of the federal position limit. The Commission acknowledges that if an exchange does not have access to sufficient data regarding individual market participants' open swap positions, then it cannot effectively monitor swap position limits.

In light of the above, and based on (i) comments received on the December 2013 position limits proposal; [18] (ii) viewpoints expressed during a Roundtable on Position Limits; [19] (iii) several Commission advisory committee meetings that each provided a focused forum for participants to discuss some aspects of the December 2013 position limits proposal; [20] and (iv) information obtained in the course of ongoing Commission review of SEF registration applications,[21] the Commission has determined to revise and amend certain parts of the December 2013 position limits proposal. The Commission proposes to temporarily delay for exchanges that lack access to sufficient swap position information the requirement to establish and monitor position limits on swaps by: (i) Adding Appendix E to part 150 to provide guidance regarding § 150.5; and (ii) revising guidance on DCM Core Principle 5 and SEF Core Principle 6.[22]

The CEA requires in SEF Core Principle 6(B) that a SEF: (i) Set its exchange-set limit on swaps at a level no higher than that of the federal position limit; and (ii) monitor positions established on or through the SEF for compliance with the federal position limit and any exchange-set limit.[23] Similarly, for any contract subject to a federal position limit, including a swap contract, DCM Core Principle 5(B) requires that DCMs must set a position limit at a level no higher than that of the federal position limit.[24]

The December 2013 position limits proposal specified that federal position limits would apply to referenced contracts,[25] whether futures or swaps, regardless of where the futures or swaps positions are established.[26] Consistent with DCM Core Principle 5 and SEF Core Principle 6, the Commission proposed at § 150.5(a)(1) that, for any commodity derivative contract that is subject to a speculative position limit under § 150.2, [a DCM] or [SEF] that is a trading facility shall set a speculative position limit no higher than the level specified in § 150.2.[27]

Three commenters on proposed regulation § 150.5 recommended that the Commission not require SEFs to establish position limits.[28] Two noted that because SEF participants may use more than one derivatives clearing organization ("DCO"), a SEF may not know when a position has been offset.[29] Further, during the ongoing SEF registration process,[30] a number of persons applying to become registered as SEFs told the Commission that they lack access to information that would enable them to knowledgeably establish position limits or monitor positions.[31] The Commission observes that this information gap would also be a concern for DCMs in respect of swaps, because DCMs lacking access to swap position information also would not be able to reliably establish position limits on swaps or monitor swap positions.

The Commission acknowledges that, if an exchange does not have access to sufficient data regarding individual market participants' open swap positions, then it cannot effectively monitor swap position limits. The Commission believes that most exchanges do not have access to sufficient swap position information to effectively monitor swap position limits.[32] In this regard, the Commission believes that an exchange would have or could have access to sufficient swap position information to effectively monitor swap position limits if, for example: (1) It had access to daily information about its market participants' open swap positions; or (2) it knows that its market participants regularly engage on its exchange in large volumes of speculative trading activity

[18] Comments on the December 2013 position limits proposal are accessible on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1436.*

[19] A transcript of the June 19, 2014 Roundtable on Position Limits is available on the Commission's Web site at *http://www.cftc.gov/idc/groups/public/@swaps/documents/dfsubmission/dfsubmission_061914-trans.pdf.*

[20] Information regarding the December 9, 2014 and September 22, 2015 meetings of the Agricultural Advisory Committee, sponsored by Chairman Massad, is accessible on the Commission's Web site at *http://www.cftc.gov/About/CFTCCommittees/AgriculturalAdvisory/aac_meetings.* Information regarding February 26, 2015 and the July 29, 2015 meetings of the Energy & Environmental Markets Advisory Committee ("EEMAC"), sponsored by Commission Giancarlo, is accessible on the Commission's Web site at *http://www.cftc.gov/About/CFTCCommittees/EnergyEnvironmentalMarketsAdvisory/emac_meetings.*

[21] Added by the Dodd-Frank Act, section 5h(a) of the CEA, 7 U.S.C. 7b-3, requires SEFs to register with the Commission. *See generally* "Core Principles and Other Requirements for Swap Execution Facilities," 78 FR 33476 (Aug. 5, 2013). Information regarding the SEF application process is available on the Commission's Web site at *http://www.cftc.gov/IndustryOversight/TradingOrganizations/SEF2/sefhowto.*

[22] DCM Core Principle 5, Position Limitations or Accountability, is contained in CEA section 5(d)(5), 7 U.S.C. 7(d)(5). SEF Core Principle 6, Position Limits or Accountability, is contained in CEA section 5h(f)(6), 7 U.S.C. 7b–3(f)(6).

[23] CEA section 5h(f)(6)(B), 7 U.S.C. 7b–3(f)(6)(B) (SEF Core Principle 6(B)). The Commission codified SEF Core Principle 6(B), added by the Dodd-Frank Act, in § 37.600 of its regulations, 17 CFR 37.600. *See generally* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33533–4 (June 4, 2013).

[24] CEA section 5(d)(5)(B), 7 U.S.C. 7(d)(5)(B) (DCM Core Principle 5(B)). The Commission codified DCM Core Principle 5(B), as amended by the Dodd-Frank Act, in § 38.300 of its regulations, 17 CFR 38.300. *See generally* Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612, 36639 (June 19, 2012).

[25] Under the December 2013 position limits proposal, "referenced contracts" are defined as futures, options, economically equivalent swaps, and certain foreign board of trade contracts, in physical commodities, and are subject to the proposed federal position limits. *See* December 2013 position limits proposal 78 FR at 75825.

[26] *See* December 2013 positions limits proposal at 78 FR 75826 (proposed § 150.2).

[27] *See* December 2013 position limits proposal at 78 FR 75754–8.

[28] Commodity Markets Council ("CMC"), on February 10, 2014, ("CL–CMC–59634"), at 14–15; Futures Industry Association ("FIA"), on March 30, 2015 ("CL–FIA–60392"), at 10. One commenter stated that SEFs should be exempt from the requirement to set positions limits because SEFs are in the early stages of development and could be harmed by limits that restrict liquidity. International Swaps and Derivatives Association, Inc. ("ISDA") and Securities Industry and Financial Markets Association ("SIFMA"), on February 10, 2014 ("CL–ISDA/SIFMA–59611"), at 35.

[29] CL–CMC–59634 at 14–15; CL–FIA–60392 at 10.

[30] Under CEA section 5h(a)(1), no person may operate a facility for trading swaps unless the facility is registered as a SEF or DCM. 7 U.S.C. 7b–3(a)(1).

[31] For example, in a submission to the Commission under part 40 of the Commission's regulations, BGC Derivative Markets, L.P. states that "[t]he information to administer limits or accountability levels cannot be readily ascertained. Position limits or accountability levels apply market-wide to a trader's overall position in a given swap. To monitor this position, a SEF must have access to information about a trader's overall position. However, a SEF only has information about swap transactions that take place on its own Facility and has no way of knowing whether a particular trade on its facility adds to or reduces a trader's position. And because swaps may trade on a number of facilities or, in many cases, over-the-counter, a SEF does not know the size of the trader's overall swap position and thus cannot ascertain whether the trader's position relative to any position limit. Such information would be required to be supplied to a SEF from a variety of independent sources, including SDRs, DCOs, and market participants themselves. Unless coordinated by the Commission operating a centralized reporting system, such a data collection requirement would be duplicative as each separate SEF required reporting by each information sources." BGC Derivative Markets, L.P., Rule Submission 2015–09 (Oct. 6, 2015), available at *http://www.cftc.gov/filings/orgrules/rule100615bgcsef001.pdf.*

[32] The Commission is aware of one SEF that may have access to sufficient swap position information by virtue of systems integration with affiliates that are CFTC registrants and shared personnel. This SEF requires that all of its listed swaps be cleared on an affiliated DCO, which reports to an affiliated SDR.

(it may gain that knowledge through surveillance of heavy trading activity), that would cause reasonable surveillance personnel at an exchange to inquire further about a market participant's intentions[33] and total open swap positions.

It is possible that an exchange could obtain an indication of whether a swap position established on or through a particular exchange is increasing a market participant's swap position beyond a federal or exchange-set limit, if that exchange has data about some or all of a market participant's open swap position from the prior day and combines it with the transaction data from the current day, to obtain an indication of the market participant's current open swap position. By way of example, part 20 requires clearing organizations, clearing members and swap dealers to report to the Commission routine position reports for physical commodity swaps; the part 20 swaps data identifies for the Commission a market participant's reported open swap positions from the prior trading day. If part 20 swaps data were made available to an exchange, it could use it to add to any swap positions established on or through that exchange during the current trading day to get an indication of a potential position limit violation.[34] The indication would alert the exchange to contact the market participant to inquire about that participant's total open swap position.

While this indication would not include the market participant's activity transacted away from that particular exchange, the Commission believes that such monitoring would comply with the requirement in CEA section 5h(f)(6)(B)(ii) that the SEF monitor positions established on or through the SEF for compliance with the limits set by the Commission and the SEF. However, the Commission understands that exchanges generally do not currently have access to a data source that identifies a market participant's reported open swap positions from the prior trading day.[35] The Commission does not believe that it would be practicable for an exchange to require that market participants self-report their total open swap positions.[36] And with only the transaction data from a particular exchange, it would be impracticable, if not impossible, for that exchange to monitor and enforce position limits for swaps.

Moreover, the Commission has neither required any DCO[37] or SDR[38] to provide such swap data to exchanges,[39] nor provided any exchange with access to swaps data collected under part 20 of the Commission's regulations.[40]

In light of the foregoing, the Commission is proposing a delay in implementation of exchange-set limits for swaps only, and only for exchanges without sufficient swap position information. After consideration of the circumstances described above, and in an effort to accomplish the policy objectives of the Dodd-Frank Act regulatory regime, including to facilitate trade processing of any swap and to promote the trading of swaps on SEFs,[41] this current proposal amends the guidance in the appendices to parts 37 and 38 of the Commission's regulations regarding SEF core principle 6 and DCM core principle 5, respectively. The revised guidance clarifies that an exchange need not demonstrate compliance with SEF core principle 6 or DCM core principle 5 as applicable to swaps until it has access to sufficient swap position information, after which the guidance would no longer be applicable.[42] For clarity, this current proposal includes the same guidance in a new appendix E to proposed part 150 in the context of the Commission's proposed regulations regarding exchange-set position limits.

Although the Commission is proposing to delay implementing the core principles regarding position limits on swaps, nothing in this current proposal would prevent an exchange from nevertheless establishing position limits on swaps. However, it does seem unlikely that an exchange would implement position limits before acquiring sufficient swap position information because of the ensuing difficulty of enforcing such a limit. The Commission believes that providing the proposed delay for those exchanges that need it both preserves flexibility for subsequent Commission rulemaking and allows for phased implementation of limitations on swaps by exchanges, as practicable.[43]

The Commission observes that courts have upheld relieving regulated entities of their statutory obligations where compliance is impossible or impracticable.[44] The Commission believes that it would be impracticable, if not impossible, for an exchange to monitor and enforce position limits for swaps with only the transaction data from that particular exchange. Accordingly, the Commission believes that it is reasonable at this time to delay implementation of this discrete aspect of position limits, only with respect to swaps position limits, and only for exchanges that lack access to sufficient swap position information. The Commission believes that this approach would further the policy objectives of the Dodd-Frank Act regulatory regime, including the facilitation of trade processing of swaps and the promotion of trading swaps on SEFs. While this approach would delay the requirement for certain exchanges to establish and monitor exchange-set limits on swaps at this time, the Commission notes that, under the December 2013 position limits proposal, federal position limits would apply to swaps that are economically equivalent to futures contracts subject to federal position limits.

Request for comment ("RFC") 1. The Commission requests comment on all aspects of the proposed delay in implementing the requirements of SEF core principle 6(B) and DCM core principle 5(B) with respect to the setting and monitoring by exchanges of position limits for swaps. Does any DCM or SEF currently have access to sufficient data regarding individual market participants' open swaps positions to so set and monitor swaps position limits other than by special call? If yes, please describe in detail how such access could be obtained.[45] If no, how easy or difficult would it be for an exchange to obtain access to sufficient swap position information by means of contract or other arrangements?

B. Proposal To Amend the Definition of Bona Fide Hedging Position

As discussed below, the Commission is now proposing a general definition of bona fide hedging position that incorporates only the standards in CEA section 4a(c)(2), regarding physical commodity derivatives. Conforming the standards of a general definition of bona fide hedging position to those of the statute requires eliminating two components of the general definition of bona fide hedging position in current § 1.3(z)(1): The incidental test and the orderly trading requirement.[46] Thus, the Commission is now proposing to eliminate the incidental test and the orderly trading requirement, as discussed below.

1. December 2013 Proposal

In the December 2013 position limits proposal, the Commission proposed a new definition of "bona fide hedging position" in proposed § 150.1, to replace the current definition in § 1.3(z). The opening paragraph of the proposed definition is a general definition of a bona fide hedging position. As is the case in the current definition in § 1.3(z), that general definition contained two requirements for a bona fide hedging position that are not included in CEA section 4a(c)(2): An incidental test and an orderly trading requirement.[47]

The incidental test is a component of the December 2013 proposed bona fide hedging position definition requiring that the risks offset by a commodity derivative position must be incidental to the position holder's commercial operations.[48] The orderly trading requirement is a component of the December 2013 proposed bona fide hedging position definition requiring that a bona fide hedge position must be established and liquidated in an orderly manner in accordance with sound commercial practices.[49]

2. Comments on the December 2013 Proposed Definition of Bona Fide Hedging Position

Commenters generally objected to the inclusion in the general definition of bona fide hedging position of the incidental test and the orderly trading requirement. For example, one commenter objected to the incidental test, since that test is not included in CEA section 4a(c) with respect to physical commodity hedges.[50]

Commenters urged the Commission to eliminate the orderly trading requirement, because, in the context of the over-the-counter markets, the concept of orderly trading is not defined, yet the requirement would impose a duty on end users to monitor market activities to ensure they do not cause a significant market impact.[51] Commenters noted the anti-disruptive

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[33] For instance, heavy trading activity at a particular exchange might cause that exchange to ask whether a market participant is building a large speculative position or whether the heavy trading activity is merely the result of a market participant making a market across several exchanges.

[34] Nonetheless, that market participant may have conducted other swap transactions in the same commodity, away from a particular exchange, that reduced its swap position.

[35] As noted above, although the Commission receives swaps position data pursuant to Part 20, the Commission has not made this information available to any exchange.

[36] An exchange could theoretically obtain swap position data directly from market participants, for example, by requiring a market participant to report its swap positions, as a condition of trading on the exchange. However, the Commission thinks it is unlikely that a single exchange would unilaterally impose a swaps reporting regime on market participants.

The Commission abandoned the approach of requiring market participants to report futures positions directly to the Commission many years ago. *See* Reporting Requirements for Contract Markets, Futures Commission Merchants, Members of Exchanges and Large Traders, 46 FR 59960 (Dec. 8, 1981). Instead, the Commission and DCMs rely on a large trader reporting system where futures positions are reported by sources other than the position holder itself, including futures commission merchants, clearing members and foreign brokers. *See generally* part 19 of the Commission's regulations, 17 CFR part 19. *See also,* for example, the discussion of an exchange's large trader reporting system in the Division of Market Oversight Rule Enforcement Review of the Chicago Mercantile Exchange and the Chicago Board of Trade, July 26, 2013, at 24–7, available at *http://www.cftc.gov/idc/groups/public/@iodcms/documents/file/rercmecbot072613.pdf.*

Further, as noted above, exchanges do not have authority to demand swap position data from derivative clearing organizations or swap data repositories; nor do exchanges have general authority to demand market participants' swap position data from clearing members of DCOs or swap dealers (as the Commission does under part 20).

[37] Core principle M for DCOs addresses information sharing only for the purpose of the DCO's carrying out its risk management program as "appropriate and applicable," but does not address information sharing for other purposes, and does not address information sharing with exchanges. CEA section 5b(c)(2)(M), 7 U.S.C. 7a–1(c)(2)(M), and § 39.22, 17 CFR 39.22. The Commission has access to DCO information relating to trade and clearing details under § 39.19, 17 CFR 39.19, as is necessary to conduct its oversight of a DCO. However, the Commission has not used its general rulemaking authority under CEA section 8a(5), 7 U.S.C. 12a(5), to require DCOs to provide registered entities access to swap information, although the Commission could impose such a requirement by rule. CEA section 5b(c)(2)(A)(i), 7 U.S.C. 7a–1(c)(2)(A)(i).

[38] An SDR has a duty to provide direct electronic access to the Commission, or a designee of the Commission who may be a registered entity (such as an exchange). CEA section 21(c)(4), 7 U.S.C. 24a(c)(4). *See* 76 FR 54538 at 54551, note 141 and accompanying text (Sept. 1, 2011). However, the Commission has not designated any exchange as a designee of the Commission for that purpose. Further, the Commission has not used its general rulemaking authority under CEA section 8a(5), 7 U.S.C. 12a(5), to require SDRs to provide registered entities (such as exchanges) access to swap information, although the Commission could impose such a requirement by rule. CEA section 21(a)(3)(A)(ii), 7 U.S.C. 24a(a)(3)(A)(ii).

[39] Even if such information were to be made available to exchanges, the swaps positions would need to be converted to futures-equivalent positions for purposes of monitoring position limits on a futures-equivalent basis, which would place an additional burden on exchanges. *See* December 2013 positions limits proposal at 78 FR75825 for the proposed definition of futures-equivalent; *see also* the discussion, below, regarding this current notice's amendments to that proposed definition. If at some future time, the Commission were to consider requiring DCOs or SDRs to provide swap data to exchanges, or to provide the exchanges with swap data collected under part 20, the Commission would then consider the burden that would be placed on the exchange by the need to convert swap positions into futures equivalents.

[40] The part 20 swaps data is reported in futures equivalents, but does not include data specifying where (*e.g.,* OTC or a particular exchange) reportable positions in swaps were established.

[41] *See, e.g.,* CEA sections 5h(b)(1)(B) and 5h(e), 7 U.S.C. 7b–3(b)(1)(B) and 7b–3(e), respectively.

[42] Once the guidance was no longer applicable, a DCM or a SEF would be required to file rules with the Commission to implement the relevant position limits and demonstrate compliance with Core Principle 5 or 6, as appropriate. The Commission notes that, for the same reasons regarding swap position data discussed above in respect of CEA section 5h(f)(6)(B), the proposed guidance also would temporarily delay the requirement for SEFs to comply with their statutory obligation under CEA section 5h(f)(6)(A).

[43] Although this current proposal would provide position limits relief to SEFs and to DCMs in regards to swaps, it would not alter the definition of referenced contract (including economically equivalent swaps) as proposed in December 2013. *See* December 2013 position limits proposal 78 FR at 75825. The Commission continues to review and consider comments received regarding the definition of referenced contract.

[44] *See, e.g., Ass'n of Irritated Residents* v. *EPA,* 494 F.3d 1027, 1031 (D.C. Cir. 2007) (allowing regulated entities to enter into consent agreements with EPA—without notice and comment—that deferred prosecution of statutory violation until such time as compliance would be practicable); *Catron* v. *County Bd. Of Commissioners* v. *New Mexico Fish & Wildlife Serv.,* 75 F.3d 1429, 1435 (10th Cir.1966) (stating that "Compliance with [the National Environmental Protection Act] is excused when there is a statutory conflict with the agency's authorizing legislation that prohibits or renders compliance impossible."). Further, it is axiomatic that courts will avoid reading statutes to reach absurd or unreasonable consequences. *See, e.g., Griffin* v. *Oceanic Contractors, Inc.,* 458 U.S. 564 (1982). To require an exchange to monitor position limits on swaps, when it currently has extremely limited visibility into a market participant's swap position, is arguably absurd and certainly appears unreasonable.

[45] The Commission expects that any DCM or SEF that has access to sufficient swap position information will report this to the Commission in a comment letter that will be publicly available in the comment file for this current proposal on the Commission's Web site.

[46] The inclusion of the incidental test and the orderly trading requirement in the definition of bona fide hedging has a long history. As noted in the December 2013 Position Limits proposal, "In response to the 1974 legislation, the Commission's predecessor adopted in 1975 a bona fide hedging definition in § 1.3(z) of its regulations stating, among other requirements, that transactions or positions would not be classified as hedging unless their bona fide purpose was to offset price risks incidental to commercial cash or spot operations, and such positions were established and liquidated in an orderly manner and in accordance with sound commercial practices. Shortly thereafter, the newly formed Commission sought comment on amending that definition. Given the large number of issues raised in comment letters, the Commission adopted the predecessor's definition with minor changes as an interim definition of bona fide hedging transactions or positions, effective October 18, 1975." *See* December 2013 Position Limits Proposal at 75703. The Commission is also proposing a non-substantive change to subsection (1)(ii)(B) of the bona fide hedging definition by deleting from the definition proposed in the December 2013 position limits proposal the lead in words "such position."

[47] *See* December 2013 Position Limits Proposal at 75706–7 (stating "Bona fide hedging position means any position whose purpose is to offset price risks incidental to commercial cash, spot, or forward operations, and such position is established and liquidated in an orderly manner in accordance with sound commercial practices, . . .").

[48] *See* December 2013 Position Limits Proposal at 75707.

[49] *Id.*

[50] *See, e.g.,* CME Group, Inc. ("CME Group"), on February 10, 2014 ("CL–CME–59718") at 47.

[51] *See* Coalition of Physical Energy Companies ("COPE") on February 10, 2014 ("CL–COPE–59662") at 13, Duke Energy Utilities ("DEU") on February 10, 2014 ("CL–DEU–59631") at 5–7, and The Commercial Energy Working Group ("Working Group") CL–Working Group–59693 at 14.

trading prohibitions and polices would apply regardless of whether there is an orderly trading requirement.[52] Commenters requested that if the Commission were to retain the orderly trading requirement, the Commission interpret such requirement in a manner consistent with the Commission's disruptive trading practices interpretation (*i.e.*, a standard of intentional or reckless conduct); commenters also requested that the Commission not apply a negligence standard.[53]

3. Proposal To Amend the Definition

For the reasons discussed below, and in response to the comments received, the Commission is proposing to eliminate the incidental test and orderly trading requirement from the general definition of bona fide hedging position. For clarity, the Commission is herein publishing, in proposed § 150.1, a general definition of bona fide hedging position for physical commodity derivatives that incorporates only the standards of CEA section 4a(c), but notes that the definition is subject to further requirements not inconsistent with those statutory standards and the policy objectives of position limits.

i. Incidental Test

The Commission proposes to eliminate the incidental test. As noted above, the incidental test and the orderly trading requirement have been part of the rule 1.3(z)(1) definition of bona fide hedging since 1975.[54] These provisions were not separately explained in the 1974 notice proposing the adoption of rule 1.3(z)(1) (the notice observed only that the "proposed definition otherwise deviates in only minor ways from the hedging definition presently contained in [CEA section 4a(3)]").[55] The then-current statutory definition of bona fide hedging position in CEA section 4a(3) used the concepts of "good faith" (regarding the amount of a commodity a person expects to raise) and a "reasonable hedge" (regarding hedges of inventory).

The Commission adopted the concept of economically appropriate in 1977, after finding its definition of bona fide hedging inadequate due to changes in commercial practices and the diverse nature of commodities now under regulation, but did not address whether the concept of economically appropriate overlapped with the incidental test.[56] The economically appropriate test requires that a bona fide hedging position be economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise.[57] While in the 1977 rulemaking defining bona fide hedging the Commission discussed the concept of economically appropriate as an expansive standard, the incidental test appears to have simply been left in the definition as an historical carryover. In the December 2013 position limits proposal, the Commission noted that it believed the incidental test's concept of commercial cash market activities is embodied in the economically appropriate test for physical commodities in CEA section 4a(c)(2).[58] In light of this connection between the concept of commercial cash market activities and the economically appropriate test, the Commission notes that it included in the December 2013 positions limits proposal the intention to apply the economically appropriate test to hedges in an excluded commodity.[59]

In both the current and December 2013 proposed definitions of bona fide hedging position, the incidental test requires a reduction in price risk. Although the Commission is now proposing to eliminate the incidental test from the first paragraph of its proposed bona fide hedge definition, the Commission notes that it interprets risk, in the economically appropriate test, to mean price risk. Commenters suggested the Commission adopt a broader interpretation of risk (including, for example, execution and logistics risk and credit risk).[60] However, a broader interpretation appears to be inconsistent with the policy objectives of position limits in CEA section 4a(a)(3)(B) regarding physical commodities, particularly: Diminishing excessive speculation that causes sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity; deterring manipulation, squeezes, and corners; and ensuring the price discovery function is not disrupted.

ii. Orderly Trading Requirement

The Commission proposes to eliminate the orderly trading requirement. While that provision has been a part of the regulatory definition of bona fide hedge since 1975,[61] and previously was found in the statutory definition of bona fide hedge prior to the 1974 amendment removing the statutory definition from CEA section 4a(3), the Commission is not aware of a denial of recognition of a position as a bona fide hedge as a result of a lack of orderly trading on an exchange. Further, the Commission notes that the meaning of the orderly trading requirement is unclear in the context of the over-the-counter swap market, as well as in the context of permitted off-exchange transactions (*e.g.*, exchange of derivatives for related positions). In addition, the Commission observes that disruptive trading activity by a commercial entity engaged in establishing or liquidating a hedging position would generally appear to be contrary to its economic interests. However, the Commission notes that an exchange may use its own discretion to condition its recognition of a bona fide

[52] Section 747 of the Dodd-Frank Act amended the CEA to expressly prohibit certain disruptive trading practices. Specifically, CEA section 4c(a)(5), 7 U.S.C. 6c(a)(5), states that it is unlawful for a person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that (A) violates bids or offers; (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or (C) is, of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution). *See also*, Antidisruptive Practices Authority, 78 FR 31890 (May 28, 2103) (providing a policy statement and guidance).

[53] *See, e.g.*, FIA on February 7, 2014 ("CL–FIA–59595"), at 5, 33–34, the Edison Electric Institute and the Electric Power Supply Association ("EEI–EPSA") on February 10, 2014 "CL–EEI–EPSA–59602") at 14–15, CL–ISDA/SIFMA–59611 at 4, 39, CL–CME–59718 at 67, and IntercontinentalExchange, Inc. ("ICE") on February 10, 2014 ("CL–ICE–59669") at 11.

[54] 40 FR 11560 (March 12, 1975).

[55] *See* 39 FR 39731 (Nov. 11, 1974). CEA section 4a(3) then stated that no order issued under its paragraph (1) shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms as shall be defined by the Commission within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this chapter. 7 U.S.C. 6a(3) 1974. As noted in the **Federal Register** release adopting the definition, the definition was proposed pursuant to section 404 of the Commodity Futures Trading Commission Act of 1974 (P.L. 93–463), which directed the Secretary of Agriculture to promulgate regulations defining "bona fide hedging transactions and positions." 39 FR at 39731 (Nov. 11, 1974).

[56] 42 FR 42748 (August 24, 1977). In the **Federal Register** release adopting the amended definition, the Commission stated that it was adopting amendments to its general regulations to "generally broaden the scope of the hedging definition to include current commercial risk shifting practices in the markets now under regulation. The Commission has also recognized the potential for market disruption if certain trading practices are carried out during the delivery period of any future. The definition therefore restricts the classification of certain transactions and positions as bona fide hedging during the last five days of trading. In addition, the Commission has amended its regulations to include reporting requirements for some new types of bona fide hedging which will now be recognized." 42 FR 42718 (Aug. 24, 1977).

[57] *See* CEA section 4a(c)(2)(A)(ii).

[58] *See* December 2013 Proposal at 75707.

[59] *Id.*

[60] *See, e.g.*, CMC on March 30, 2015, ("CL–CMC–60391") at 2.

[61] *See* 40 FR 11560 (March 12, 1975).

hedging position on an orderly trading requirement.

The Commission notes the anti-disruptive trading prohibitions of CEA section 4c(a)(5), as added by the Dodd-Frank Act, apply to trading on registered entities, but not to over-the-counter transactions, regardless of whether the trading is related to hedging activities. Specifically, the anti-disruptive trading prohibitions in CEA section 4c(a)(5) make it unlawful to engage in trading on a registered entity that "demonstrates intentional or reckless disregard for orderly execution of trading during the closing period." In this regard, the Commission notes that it also has the authority, under CEA section 4c(a)(6), to prohibit the intentional or reckless disregard for the orderly execution of transactions on a registered entity outside of the closing period.

C. Proposed Rules Related to Recognition of Bona Fide Hedging Positions and Granting of Spread Exemptions

In sections D, E, and F, below, this current proposal discusses three sets of proposed Commission rules that would enable an exchange to submit to the Commission exchange rules under which the exchange could take action to recognize certain bona fide hedging positions and to grant certain spread exemptions, with regard to both exchange-set and federal position limits. In each case, the proposed Commission rules would establish a formal CFTC review process that would permit the Commission to revoke all such exchange actions.

If the changes in this current proposal are adopted, exchanges would be able to: (i) Recognize certain non-enumerated bona fide hedging positions ("NEBFHs"), *i.e.*, positions that are not enumerated by the Commission's rules (pursuant to proposed § 150.9);[62] (ii) grant exemptions to position limits for certain spread positions (pursuant to proposed § 150.10);[63] and (iii) recognize certain enumerated anticipatory bona fide hedging positions (pursuant to proposed § 150.11).[64]

The Commission's authority to permit certain exchanges to recognize positions as bona fide hedging positions is found, in part, in CEA section 4a(c)(1).[65] CEA section 4a(c)(1) provides that no CFTC rule applies to "transaction or positions which are shown to be bona fide hedging transactions or positions," as those terms are defined by Commission rule consistent with the purposes of the CEA. The Commission notes that "shown to be" is passive voice, which could encompass either a position holder or an exchange being able to "show" that a position is entitled to treatment as a bona fide hedge, and does not specify that the Commission must determine in advance whether the position or transaction was shown to be bona fide. The Commission interprets CEA section 4a(c)(1) to authorize the Commission to permit certain SROs (*i.e.*, DCMs and SEFs, meeting certain criteria) to recognize positions as bona fide hedges for purposes of federal limits, subject to Commission review.

When determining whether to recognize positions as bona fide hedges, an exchange would be required to apply the standards in the Commission's general definition of bona fide hedging position, which incorporates the standards in CEA section 4a(c)(2),[66] and the exchange's conclusions would be subject to Commission review and, if necessary, remediation.[67]

In addition, the Commission would permit certain exchanges to exempt positions normally known to the trade as spreads, subject to a consideration of the four policy objectives of position limits found in CEA section 4a(a)(3)(B).[68] The Commission notes that nothing in CEA section 4a(a)(1) prohibits the Commission from exempting such spreads.[69] The Commission interprets this provision as CEA statutory authority to exempt spreads that are consistent with the other policy objectives for position limits, such as those in CEA section 4a(a)(3)(B).[70] The Commission finds, pursuant to CEA section 8a(5), that permitting certain exchanges to recognize such spreads, subject to subsequent Commission review of such actions, is reasonably necessary to effectuate the CEA's policy objectives.[71]

[62] *See* note 73 below.

[63] The Commission has authority to exempt spread positions under CEA section 4a(a)(1), which provides that the Commission may exempt transactions normally known to the trade as "spreads" from federal position limits. Under this current proposal, applicants may rely on an exchange's grant of a spread exemption absent notice from such exchange or the Commission to the contrary.

[64] Unlike exemptions for spreads, no exemption is needed for bona fide hedging transactions or positions as under CEA section 4a(c)(1), no rule, regulation or order issued under CEA section 4a(a) applies to transactions or positions shown to be bona fide hedging transactions or positions. 7 U.S.C. 6a(c)(1). Accordingly, Commission regulation 1.3(z)((3), for example, provides that upon request, the Commission may recognize (rather than "exempt") certain transactions and positions as bona fide hedges. By notifying the applicant that the Commission, based on the information provided, recognizes that the applicant's position has been shown to be a bona fide hedge, the Commission is basically providing a safe harbor from position limits in connection with that position for the applicant. For ease of administration, the Commission now proposes, with respect to federal position limits, to extend this recognition process to exchanges' "recognition" of positions as NEBFHs or anticipatory enumerated bona fide hedges with respect to federal limits subject to subsequent Commission review. Under this current proposal, positions recognized by exchanges as NEBFHs or anticipatory enumerated bona fide hedges will not be subject to federal limits absent notice from an exchange or the Commission to the contrary. DCMs currently grant non-enumerated exemptions to exchange-set limits that are consistent with current § 1.3(z)(1), 17 CFR 1.3(z)(3). In addition, DCMs currently grant bona fide exemptions to exchange-set limits for sales or purchases for future delivery of unsold anticipated production or unfilled anticipated requirements consistent with, and enumerated in, § 1.3(z)(2)(i)(B) or § 1.3(z)(2)(ii)(C), 17 CFR 1.3(z)(2) (i)(B) or 1.3(z)(2)(ii)(C).

[65] Further, under CEA section 8a(5), the Commission may make such rules as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

[66] CEA section 4a(c)(2), adopted by the Dodd-Frank Act, directs the Commission to define (including to narrow the scope of) what constitutes a bona fide hedging position, for the purpose of implementing federal position limits on physical commodity derivatives. In response to that directive, in the December 2013 position limits proposal, the Commission proposed to add a definition of bona fide hedging position in § 150.1, to replace the definition in current § 1.3(z). *See infra* notes 104–108 and accompanying text; *see also supra* preamble Section II.B.3 (describing the Commission's current proposal to further amend its general definition of bona fide hedging position as proposed in the December 2013 position limits proposal).

[67] *See infra* preamble Section II.D.3 (discussing the proposed requirements that the exchanges: Make recognitions pursuant to exchange rules submitted to the Commission; keep related records; make reports to the Commission; and provide transparency to the public). After review, the Commission could, for example, revoke or confirm an exchange-granted exemption. *See also* proposed § 150.9.

[68] As discussed below, the proposed rules would require the exchanges: To issue exemptions pursuant to exchange rules submitted to the Commission; to keep records; to make reports to the Commission; and to provide transparency to the public. *See infra* Section II.E; *see also* proposed § 150.10.

[69] *See* CEA section 4a(a)(1) (stating that "[n]othing in this section shall be construed to prohibit the Commission from . . . from exempting transactions normally known to the trade as 'spreads'. . .")

[70] CEA section 4a(a)(3)(B) provides that the Commission shall set limits to the maximum extent practicable, in its discretion—to diminish, eliminate, or prevent excessive speculation as described under this section; to deter and prevent market manipulation, squeezes, and corners; to ensure sufficient market liquidity for bona fide hedgers; and to ensure that the price discovery function of the underlying market is not disrupted." In addition, CEA section 4a(a)(7) authorizes the Commission to exempt any class of transaction from any requirement it may establish with respect to position limits.

[71] The Commission notes that the proposed process for exchange exemptions of spread positions, in a similar manner to the proposed process for exchange recognition of a position as bona fide hedge, would require the exchange to apply the standards required under proposed § 150.10(a)((3)(ii)) (requiring the exchange to determine that exempting the spread position would further the purposes of CEA section

Further, the Commission would permit certain exchanges to recognize certain enumerated anticipatory hedging positions under the Commission's definition of bona fide hedging position, essentially as an administrative collection of certain information, but subject to Commission review. Under proposed § 150.11, the exchange would be required to follow defined administrative procedures that require the market participant to file certain information with the exchange, including the information the market participant would be required to file with the Commission under § 150.7 as proposed in the December 2013 position limits proposal; in the alternative, the market participant could choose to file that same information directly with the Commission under proposed § 150.7.[72]

Each of the exchange-administered processes under proposed §§ 150.9,[73] 150.10,[74] and 150.11 [75] would be subject to Commission review.[76] The three proposed processes would allow market participants to rely on an exchange's recognition of an NEBFH, spread, or anticipatory exemption until an exchange or the Commission notifies them to the contrary. However, the proposed processes would not protect exchanges or applicants from charges of violations of applicable sections of the CEA or other Commission regulations, other than position limits. For instance, a market participant's compliance with position limits or an exemption does not confer any type of safe harbor or good faith defense to a claim that the market participant had engaged in an attempted manipulation, a perfected manipulation or deceptive conduct, as is the case under both current § 150.6 as well as § 150.6 as proposed in the December 2013 position limits proposal.[77]

The Commission views this current proposal, enabling exchanges to elect to administer these three processes, to be suitable since each process requires that: (i) An exchange submit implementing rules subject to Commission review, under the ordinary rule submission procedures of the Commission's part 40 regulations; (ii) the standards for receiving the recognition or exemption be those set out under the statute; [78] (iii) each exchange's actions under these processes be reviewed under the Commission's rule enforcement review program; [79] and (iv) all exchange actions under such implementing rules are subject to Commission review.[80]

The Commission observes that for decades, exchanges have operated as self-regulatory organizations ("SROs").[81] These SROs are charged with carrying out regulatory functions, including, since 2001, complying with core principles, and operate subject to the regulatory oversight of the Commission pursuant to the CEA as a whole, and more specifically, sections 5 and 5h.[82] As SROs, exchanges do not act only as independent, private actors.[83] When the Act is read as a whole, as the Commission noted in 1981, "it is apparent that Congress envisioned cooperative efforts between the self-regulatory organizations and the Commission. Thus, the exchanges, as well as the Commission, have a continuing responsibility in this matter

4a(3)(B)), and the exchanges conclusions would be subject to Commission review and, if necessary, remediation (after review, the Commission could, for example, revoke or confirm an exchange-granted exemption). *See* proposed § 150.10.

[72] As discussed below, the proposed rules would require the exchanges: To make administrative recognitions pursuant to exchange rules submitted to the Commission; to keep records; and to make reports to the Commission. There is no need for an exchange to provide transparency to the public in regard to the existence of a type of enumerated bona fide hedging position, as the enumerated bona fide hedge positions are already listed in the Commission's proposed definition of bona fide hedging position. *See infra* Section II.F; *see also* proposed § 150.11.

[73] Specifically, exchanges will be able to: (1) Grant exemptions from exchange-set limits for NEBFHs pursuant to proposed §§ 150.9, 150.3(a)(1)(i) and § 150.5(a)(2); and (2) recognize NEBFHs (pursuant to proposed §§ 150.9 and 150.3(a)(1)(i)) that will not be subject to federal limits absent notice from an exchange or the Commission to the contrary.

[74] Specifically, exchanges will be able to: (1) Grant exemptions from exchange-set limits for certain spread positions pursuant to proposed §§ 150.10, 150.3(a)(1)(iv) and 150.5(a)(2); and (2) grant exemptions from federal limits for certain spread positions pursuant to proposed §§ 150.10 and 150.3(a)(1)(iv).

[75] Specifically, exchanges will be able to: (1) Grant exemptions from exchange-set limits for enumerated anticipatory bona fide hedges pursuant to proposed §§ 150.11, 150.3(a)(1)(i) and § 150.5(a)(2); and (2) recognize enumerated anticipatory bona fide hedges (pursuant to proposed §§ 150.11 and 150.3(a)(1)(i)) that will not be subject to federal limits absent notice from an exchange or the Commission to the contrary.

[76] The three processes are non-exclusive because there are alternative methods to seek recognition of a position as a bona fide hedge or to receive an exemption for a spread position, including requests for no-action letters under § 140.99 or exemptive relief under CEA section 4a(a)(7), per the December 2013 position limits proposal. *See* December 2013 position limits proposal, 78 FR at 75719–20.

[77] *See* the discussion of § 150.6 as proposed in the December 2013 position limits proposal, 78 FR at 75746–7.

[78] *See, e.g.*, proposed § 150.9(a)(3) (requiring exchanges that elect to process NEBFH applications to solicit sufficient information to allow it to determine why a derivative position satisfies the requirements of section 4a(c) of the Act), and proposed § 150.9(a)(4) (requiring exchanges that elect to process NEBFH applications to determine whether a derivative position for which a complete application has been submitted satisfies the requirements of section 4a(c) of the Act), and proposed § 150.10(a)(4)(vi) (requiring exchanges that elect to process spread exemptions applications to determine that exempting a spread position would further the purposes of CEA section 4a(a)(3)(B)). *See also infra* discussion in Section II.D.3 and III.E.2 (each providing discussion of the standards for exchange determinations).

[79] *See* note 126 for further information regarding the Commission's rule enforcement review program.

[80] *See* proposed §§ 150.9(a)(d), 150.10(a)(d), and 150.11(a)(d). The Commission notes that its de novo review of exchange actions may be upon the Commission's own initiative or in response to a request for an interpretation under § 140.99 by a market participant whose application for recognition of a position as a bona fide hedge was rejected by an exchange.

[81] CFTC regulation 1.3(ee) defines SRO to mean a DCM, SEF, or registered futures association (such as the National Futures Association). Under the Commission's regulations, SROs have certain delineated regulatory responsibilities, which are carried out under Commission oversight and which are subject to Commission review. *See also* note 126 (describing reviews of DCMs carried out by the Commission).

[82] 7 U.S.C. 7 and 7 U.S.C. 7b–3, respectively. *See also* note 126 below.

[83] The Commission views as instructive the following examples of case law addressing grants of authority by an agency (the Securities and Exchange Commission, the "SEC") to a self-regulatory organization ("SRO") (in the SEC cases the SRO was NASD, now FINRA), providing insight into the factors addressed by the court regarding oversight of an SRO.

First, in 1952, the Second Circuit reviewed an SEC order that failed to set aside a penalty fixed by NASD suspending the defendant broker-dealer from membership. Citing Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940), the Second Circuit found that, in light of the statutory provisions vesting the SEC with power to approve or disapprove NASD's rules according to reasonably fixed statutory standards, and the fact that NASD disciplinary actions are subject to SEC review, there was "no merit in the contention that the Maloney Act unconstitutionally delegates power to the NASD." R.H. Johnson v. Securities and Exchange Commission, 198 F. 2d 690, 695 (2d Cir. 1952).

In 1977, the Third Circuit, in Todd & Co. v. Securities and Exchange Commission ("Todd"), 557 F.2d 1008 (3rd Cir. 1977), likewise concluded that the Act did not unconstitutionally delegate legislative power to a private institution. The Todd court articulated critical factors that kept the Maloney Act within constitutional bounds. First, the SEC had the power, according to reasonably fixed statutory standards, to approve or disapprove NASD's rules before they could go into effect. Second, all NASD judgments of rule violations or penalty assessments were subject to SEC review. Third, all NASD adjudications were subject to a de novo (non-deferential) standard of review by the SEC, which could be aided by additional evidence, if necessary. *Id.* at 1012. Based on these factors, the court found that "[NASD's] rules and its disciplinary actions were subject to full review by the SEC, a wholly public body, which must base its decision on its own findings" and thus that the statutory scheme was constitutional. *Id.*, at 1012–13. *See also* First Jersey Securities v. Bergen, 605 F.2d 690 (1979), applying the same three-part test delineated in Todd, and then upholding a statutory narrowing of the Todd test.

Further, in 1982, the Ninth Circuit considered the constitutionality of Congress' delegation to NASD in Sorrel v. Securities and Exchange Commission, 679 F. 2d 1323 (9th Cir. 1982). Sorrel followed R.H. Johnson, Todd and First Jersey in holding that because the SEC reviews NASD rules according to reasonably fixed standards, and the SEC can review any NASD disciplinary action, the Maloney Act does not impermissibly delegate power to NASD.

under the Act." [84] The Commission's approach to its oversight of its SROs was subsequently ratified by Congress in 1982, when it gave the CFTC authority to enforce exchange set limits.[85] As the Commission observed in 2010, "since 1982, the Act's framework explicitly anticipates the concurrent application of Commission and exchange-set speculative position limits." [86] The Commission further noted that the "concurrent application of limits is particularly consistent with an exchange's close knowledge of trading activity on that facility and the Commission's greater capacity for monitoring trading and implementing remedial measures across interconnected commodity futures and option markets." [87]

The Commission notes that it retains the power to approve or disapprove the rules of exchanges, under standards set out pursuant to the CEA, and to review an exchange's compliance with those rules. By way of example, the Commission notes that its Division of Market Oversight would conduct "rule enforcement reviews" [88] of each exchange's compliance with the rules it files under this current proposal. Such reviews would include an examination of how effectively an exchange administers these three proposed processes, including review of recognitions and exemptions granted under the rules. Exchanges, as SROs, are also subject to comprehensive Commission regulation.[89]

The Commission—in adopting and administering a regime that permits certain SROs (*i.e.*, DCMs and SEFs that meet certain criteria) to recognize positions as bona fide hedges subject to Commission review, modification, or rejection—proposes building upon the experience and expertise of the DCMs in administering their own processes for recognition of bona fide hedging positions under current § 1.3(z).[90] Consistent with current market practice, the three proposed exchange-administered processes will accomplish fact gathering regarding large positions for the Commission, without much expense of Commission resources. The information obtained by means of fact gathering during the application processes will be available to the Commission at any time upon request and pursuant to the recordkeeping and recording provisions at proposed §§ 150.9 (b) and (c), 150.10(b) and (c), and 150.11(b) and (c). The Commission believes that the initial disposition of applications through the exchange-administered processes should establish a reasonable basis for a Commission determination that an application should be subsequently approved or denied. The Commission anticipates that exchanges will advise and consult with Commission staff regarding the effectiveness of these programs, once implemented by the exchanges, and their utility in advancing the policy objectives of the Act.

Moreover, the Commission is not diluting its ability to recognize or not recognize bona fide hedging positions [91] or to grant or not grant spread exemptions. The Commission has reserved to itself the ability to review any exchange action, and to review any application by a market participant to an exchange, whether prior to or after disposition of such application by an exchange. An exchange may ask the Commission to consider an NEBFH application (proposed § 150.9(a)(8)), spread application (proposed § 150.10(a)(8)), or enumerated anticipatory bona fide hedge application (proposed § 150.11(a)(6)). The Commission may also on its own initiative at any time—before or after action by an exchange—review any application submitted to an exchange for recognition of an NEBFH (proposed § 150.9(d)(1)), a spread exemption (proposed § 150.10(d)(1)), or an enumerated anticipatory bona fide hedge (proposed § 150.11(d)(1)).[92] And, as noted above, market participants will still be able to request a staff interpretive letter under § 140.99 from the Commission or seek exemptive relief under CEA section 4a(a)(7) from the Commission, as an alternative to the three proposed exchange-administered processes.[93]

[84] Establishment of Speculative Position Limits, 46 FR 50938, 50939 (Oct. 16, 1981). As the Commission noted at that time that "[s]ince many exchanges have already implemented their own speculative position limits on certain contracts, the new rule merely effectuates completion of a regulatory philosophy the industry and the Commission appear to share." *Id.* at 50940. The Commission believes this is true for the current proposal.

[85] *See* Futures Trading Act of 1982, Public Law 97–444, 96 Stat. 2299–30 (1983). In 2010, the Commission noted that the 1982 legislation "also gave the Commission, under section 4a(5) of the Act, the authority to directly enforce violations of exchange-set, Commission-approved speculative position limits in addition to position limits established directly by the Commission through orders or regulations." Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations, 75 FR 4144, 4145 (Jan. 36, 2010) ("2010 Position Limits Proposal for Referenced Energy Contracts"). Section 4a(5) has since been redesignated as section 4a(e) of the Act. 7 U.S.C. 4a(e).

[86] 2010 Position Limits for Referenced Energy Contracts at 4145.

[87] *Id.*

[88] *See* note126 for further information regarding the Commission's rule enforcement review program.

[89] *See, e.g.*, § 1.52 of the Commission's regulations, 17 CFR 1.52 (Self-regulatory organization adoption and surveillance of minimum financial requirements); part 37, 17 CFR part 37 (Swap Execution Facilities); part 38, 17 CFR part 38 (Designated Contract Markets); and part 40, 17 CFR part 40 (Provisions Common to Registered Entities).

[90] *See* note 116, and accompanying text (pointing to ICE Futures U.S. and CME Group comment letters noting their experience overseeing position limits, position accountability levels, and the recognition of bona fide hedges.)

[91] In connection with recognition of bona fide hedging positions, the Commission notes that the statute is silent or ambiguous with respect to the specific issue—whether the CFTC may authorize SROs to recognize positions as bona fide hedging positions. CEA section 4a(c) provides that no Commission rule establishing federal position limits applies to positions which are shown to be bona fide hedging positions, as such term shall be defined by the CFTC. As noted above, the "shown to be" phrase is passive voice, which could encompass either a position holder or an exchange being able to "show" that a position is entitled to treatment as a bona fide hedge, and does not specify that the Commission must be the party determining in advance whether the position or transaction was shown to be bona fide; the Commission interprets that provision to permit certain SROs (*i.e.*, DCMs and SEFs, meeting certain criteria) to recognize positions as bona fide hedges for purposes of federal limits when done so within a regime where the Commission can review and modify or overturn such determinations. Under the proposal, an SRO's recognition is tentative, because the Commission would reserve the power to review the recognition, subject to the reasonably fixed statutory standards in CEA section 4a(c)(2) (directing the CFTC to define the term bona fide hedging position). An SRO's recognition would also be constrained by the SRO's rules, which would be subject to CFTC review under the proposal. The SROs are parties that are subject to Commission authority, their rules are subject to Commission review and their actions are subject to Commission de novo review under the proposal—SRO rules and actions may be changed by the Commission at any time.

[92] Under the review process set forth in proposed §§ 150.9(d) and 150.10(d), the Commission will give notice to the exchange and the applicable applicant that they have 10 business days to provide any supplemental information to the Commission. The review process set forth in proposed § 150.11(d) is simpler because the Commission does not anticipate that applications for recognition of enumerated anticipatory bona fide hedge positions would be based on novel facts and circumstances; instead the review of such an application would focus on whether the application met the filing requirements contained in proposed § 150.11(a). If the filing was not complete, then proposed § 150.11(d) would provide an opportunity to supplement to the applicant and the exchange.

During the review process, when the Commission considers an exchange's disposition of an application, the Commission will consider not only the Act but the Commission's relevant regulations and interpretations. That is, the Commission will apply the same standards during review as the exchange should or would have applied in disposing of an application.

[93] The December 2013 position limits proposal provides that market participants can request a staff interpretive letter under § 140.99 from Commission staff or seek exemptive relief under CEA section 4a(a)(7) from the Commission. *See, e.g.*, 78 FR at 75719–20. As noted above, the process of requesting interpretations under § 140.99 would also be available to market participants whose application for recognition of a position as a bona fide hedge was rejected by an exchange. *See supra* note 76; *see also infra* note 109 and accompanying text.

The Commission notes that CEA section 8a(5) authorizes the Commission to make such rules as, in its judgment, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act.[94] The Commission currently views the proposed processes to be reasonably necessary to implement CEA section 4a(a)(1), including for the purpose of diminishing, eliminating, or preventing the burden of excessive speculation.[95] As pointed out by the Commission in 1981: "Section [4a(a)(1)] represents an express Congressional finding that excessive speculation is harmful to the market, and a finding that speculative limits are an effective prophylactic measure. Section 8a(5), accordingly would authorize the Commission to develop regulations necessary to effectuate the purposes of the Act, one of which is expressed in section [4a(a)(1)]. Consistent with this approach, the Commission fashioned rule 1.61 [current rule 150.5] to assure that the exchanges would have an opportunity to employ their knowledge of their individual contract markets to propose the position limits they believe most appropriate." [96]

In addition, section 8a(7) of the Act provides the Commission with authority to alter or supplement the rules of a registered entity, including DCMs and SEFs, if the Commission determines that such changes are necessary or appropriate.[97] Consequently, as the Commission noted in 1981, "CEA section 8a(7) further underscores the fact that Congress affirmatively contemplated a regulatory system whereby the exchanges would act in the first instance to adopt rules which would protect persons producing, handling, processing or consuming any commodity traded for future delivery. Secondarily, the Commission has express authority to mandate any modifications to an exchange's rules to protect such persons." [98]

D. Exchange Recognition of Positions as Non-Enumerated Bona Fide Hedges

1. Background

DCMs have for some time set their own position limits on numerous physical commodity futures contracts pursuant to DCM Core Principle 5.[99] DCMs have established exchange-set limits for futures contracts, including for futures contracts currently subject to Commission-set limits under current § 150.2, as well as other futures contracts not subject to federal position limits. Pursuant to the guidance of current § 150.5(d), DCMs may grant exemptions to exchange-set position limits for positions that meet the Commission's general definition of bona fide hedging position in current § 1.3(z)(1).[100] Current § 1.3(z)(2) provides a list of enumerated bona fide hedging positions. In addition, current § 1.3(z)(3) provides a procedure for market participants to seek recognition from the Commission for NEBFHs for contracts subject to federal position limits under current § 150.2. DCMs generally have granted NEBFH exemptions pursuant to exchange rules that incorporate the Commission's general definition of bona fide hedging positions in current § 1.3(z)(1).

In contrast to the longstanding DCM experience monitoring position limits on futures contracts and granting exemptions to those exchange-set limits on futures contracts, exchanges generally do not currently administer speculative position limits on swaps. Previously, facilities operating under CEA section 2(h)(3) as exempt commercial markets ("ECMs") were subject to CFTC regulation under authority granted by Congress in 2008 (although that authority was subsequently superseded by the Dodd-Frank Act).[101] Under that 2008 authority, the Commission issued guidance that an ECM should establish spot month position limits on any swap contract that the Commission determined to be a significant price discovery contract ("SPDC").[102] However, since the Dodd-Frank Act, exchanges have "futurized" (or converted into futures contracts) those SPDCs.[103] Thus, the Commission understands that exchanges generally do not currently have speculative position limits applicable to swaps contracts.

CEA section 4a(c) provides generally that federal position limits do not apply to positions that are shown to be bona fide hedging positions.[104] CEA section 4a(c)(2), adopted by the Dodd-Frank Act, directs the Commission to narrow the scope of what constitutes a bona fide hedging position, for the purpose of implementing federal position limits on physical commodity derivatives, within specific parameters.[105] In response to that directive, the Commission proposed to add a definition of bona fide hedging position in § 150.1, to replace the definition in current § 1.3(z).[106]

The December 2013 position limits proposal would replace the process for Commission recognition of NEBFHs under current § 1.3(z)(3) [107] and § 1.47 [108] of the Commission's regulations with proposed § 150.3(e), which would provide guidance for persons seeking non-enumerated hedging exemptions through the filing of a petition under section 4a(a)(7) of the Act or by requesting an interpretation under § 140.99.[109] When discussing non-enumerated hedges in the December 2013 position limits proposal, the Commission noted that "[u]nder the proposal for physical commodities, additional enumerated hedges could only be added to the definition of bona fide hedging position by way of notice and comment rulemaking," and asked whether it should "adopt, as an alternative, an administrative procedure that would allow the Commission to add additional enumerated bona fide hedges without requiring notice and comment rulemaking." [110] The Commission recognized that "there are complexities to analyzing the various price risks applicable to particular commercial circumstances in order to determine whether a hedge exemption is warranted." [111]

Historically, the Commission has recognized bona fide hedges where a demonstrated physical price risk has been shown.[112] In addition, when summarizing the disposition of the Working Group petition requests in the December 2013 position limits proposal, the Commission observed that "context is essential to determining the nature of any price risk that has been realized and could support the existence of a bona fide hedge," and "the only way to evaluate the nature of any price risk would be for the Commission to be provided with particulars of the transaction." [113]

2. Comments on the December 2013 Process for Recognition of a Position as a Bona Fide Hedge

Some commenters have suggested that the Commission permit exchanges to process applications for non-enumerated bona fide hedges ("NEBFHs").[114] For example, ICE Futures U.S. ("ICE Futures U.S.") commented that the Commission should not now undertake the daily administration of NEBFHs when its resources are limited,[115] and stated that it has extensive, direct experience overseeing position limits, position accountability levels, and the recognition of bona fide hedges.[116] "The

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[94] 7 U.S.C. 12a(5).

[95] 7 U.S.C. 6a(a)(1). The proposal also is reasonably necessary to accomplish the purposes of the Act delineated in CEA section 3(b): "to deter and prevent price manipulation or any other disruptions to market integrity. 7 U.S.C. 5(b). Further, the proposal is reasonably necessary to accomplish the purposes of the Act delineated in CEA section 4a(c)(1) "to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs." 7 U.S.C. 6a(c)(1).

[96] 46 FR 50938, 50940 (Oct. 16, 1981). Commission § 1.61 required all contract markets not subject to federal speculative position limits to adopt and enforce exchange-set speculative position limits; in 1999, as part of the Commission's simplification and reorganization of its position limit rules, the substance of rule 1.61's requirements were relocated to Part 150 of the Commission's rules, "thereby incorporating within that Part all Commission rules relating to speculative position limits." 64 FR 24038, 24040 (May 5, 1999).

[97] CEA section 8a(7) provides the Commission with authority "to alter or supplement the rules of a registered entity insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a registered entity that such registered entity effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such registered entity has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such registered entity, or the product or byproduct thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such registered entity." 7 U.S.C. 12a(7).

[98] 46 FR 50938, 50940 (Oct. 16, 1981). *See also* the Commission's statement in 1999, that the Commission and the exchanges "share responsibility for enforcement of speculative position limits," noting that "the Commission can directly take enforcement actions against violations of exchange-set speculative position limits as well as those provided under Commission rules." 64 FR 24038, note 3 and accompanying text (May 5, 1999).

[99] 7 U.S.C. 7(d)(5). As explained in the December 2013 position limits proposal, "the CFMA core principles regime concerning position limitations or accountability for exchanges had the effect of undercutting the mandatory rules promulgated by the Commission in § 150.5. Since the CFMA amended the CEA in 2000, the Commission has retained § 150.5, but only as guidance on, and acceptable practice for, compliance with DCM core principle 5." December 2013 position limits proposal, 78 FR at 75754.

Prior to the Commodity Futures Modernization Act of 2000 ("CFMA"), DCMs set position limits pursuant to the requirements of § 150.5, adopted on May 5, 1999. 17 CFR 150.5; *see* 64 FR 24038 (May 5, 1999) (codifying various policies related to the requirement that DCMs set speculative position limits); *see also* 46 FR 50938 (Oct. 16, 1981) (requiring DCMs to set speculative position limits in active futures markets for which no exchange or Commission imposed limits were then in effect). There are only nine commodity futures contracts currently subject to federal position limits pursuant to § 150.2 of the Commission's regulations. 17 CFR 150.5.

[100] 17 CFR 1.3(z)(1).

[101] The CFTC Reauthorization Act of 2008, H.R. 2419, sec. 13201 (May 22, 2008) (promulgating 7 U.S.C. 2(h)(7)(C)(ii)(IV) (Core Principles Applicable to Significant Price Discovery Contracts—Position Limitations or Accountability). The Dodd-Frank Act amended CEA section 2(h), effective July 16, 2011, H.R. 4173, sec. 734(a) (July 21, 2010), replacing the provisions governing ECMs with clearing requirements in regards to swaps.

[102] 17 CFR part 36. It should be noted that prior to the Dodd-Frank Act, ECMs could require clearing of swaps at a particular DCO and, thus, could gain access to information on open positions in a particular swap from a single affiliated DCO. The Dodd-Frank Act altered the playing field, providing market participants with a choice as to which DCO they wish to use. CEA section 5h(f)(11)(B) generally does not permit a SEF to impose any material anticompetitive burden on clearing. 7 U.S.C. 7b–3(f)(11)(B).

[103] In 2012, ICE (which listed the only contracts that had been determined by the Commission to be SPDCs) "futurized" the SPDC contracts listed on its ECM by listing them instead on its DCM (as it noted at that time, its plan was to "convert 251 Energy Contracts to futures contracts that would be listed for trading on the Exchange's electronic trading platform," along with a request that the Commission issue an order transferring the swap open interest carried at the DCO for the ICE ECM OTC contracts to futures and options open interest carried at the DCO for ICE, the DCM. ICE Submission No. 12–45, August 15, 2012).

[104] 7 U.S.C. 6a(c)(1).

[105] CEA section 4a(c)(2) generally requires the Commission to define a bona fide hedging position as a position that: (a) Meets three tests (a position (1) is a substitute for activity in the physical marketing channel ("temporary substitute test"), (2) is economically appropriate to the reduction of risk, and (3) arises from the potential change in value of current or anticipated assets, liabilities or services); or (b) reduces the risk of a swap that was executed opposite a counterparty for which such swap would meet the three tests ("pass-through swap offset requirement"). 7 U.S.C. 6a(c)(2). In contrast, the definition of a bona fide hedge in current § 1.3(z): Does not include the temporary substitute test, but instead includes guidance that a bona fide hedging position should normally represent a substitute for transactions in the physical marketing channel; and does not include the pass-through swap offset requirement. *See* December 2013 positions limits proposal at 75708–9.

[106] *See* December 2013 position limits proposal 78 FR at 75706, 75823.

[107] 17 CFR 1.3(z)(3) (providing authority for the Commission to recognize bona fide hedge positions other than those enumerated in § 1.3(z)(2)).

[108] 17 CFR 1.47 (providing a process for persons to demonstrate NEBFH falls within the scope of § 1.3(z)(1)). As noted in the December 2013 position limits proposal, "Section 1.47 of the Commission's regulations was removed and reserved by the vacated part 151 Rulemaking. On September 28, 2012, the District Court for the District of Columbia vacated the part 151 Rulemaking with the exception of the amendments to § 150.2. 887 F. Supp. 2d 259 (D.D.C. 2012). Vacating the part 151 Rulemaking, with the exception of the amendments to § 150.2, means that as things stand now, it is as if the Commission had never adopted any part of the part 151 Rulemaking other than the amendments to § 150.2. That is, . . . § 1.47 is still in effect." December 2013 position limits proposal, 78 FR at 75740, note 478. The full text of current § 1.47 can be found at *https://www.gpo.gov/fdsys/pkg/CFR-2010-title17-vol1/pdf/CFR-2010-title17-vol1-sec1-47.pdf. See* 17 CFR 1.3(z) (2010). Similarly, the full text of current § 1.3(z)(3) can be found at *https://www.gpo.gov/fdsys/pkg/CFR-2010-title17-vol1/pdf/CFR-2010-title17-vol1-sec1-3.pdf. See* 17 CFR 1.3(z) (2010).

[109] 7 U.S.C. 6a(a)(7) and 17 CFR 140.99, respectively.

[110] December 2013 position limits proposal, 78 FR at 75718.

[111] *Id.* at 75703.

[112] *Id.*

[113] *Id.* at 75719–20. As noted above, under the December 2013 position limits proposal, the Commission could consider the facts and circumstances if the party either requested a staff interpretive letter under § 140.99 or exemptive relief under CEA section 4a(a)(7). *See also* note 76 and accompanying text.

[114] *See, e.g.,* comment of Tom LaSala, CME Group, that "the exchanges would be open to a 1.47-like process" where the exchanges would review requests for recognition of non-enumerated bona fide hedge positions on behalf of the Commission, Transcript, Roundtable on Position Limits, June 19, 2014, p. 125, available at *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff061914;* Futures Industry Association (FIA), on July 31, 2014 ("CL–FIA–59931"), at 8 (recommending exchange review of non-enumerated hedge applications in the first instance); ISDA and SIFMA on July 7, 2014 ("CL–ISDA/SIFMA–59917"), at 4 (suggesting that the Commission include in the final rulemaking a process for market participants to apply to registered exchanges for bona fide hedging exemptions); Natural Gas Supply Association ("NGSA") on Aug. 4, 2014 ("CL–NGSA–59941"), at 9 [requesting the Commission to consider using ICE and CME Group to continue to administer hedge exemptions); Working Group on March 30, 2015 ("CL–Working Group–60396"), at 6 (recommending that DCMs be able to grant bona fide hedge exemptions in the energy industry either on an enumerated or non-enumerated basis); International Energy Credit Association ("IECreditAssn") on Aug. 4, 2014 ("CL–IECreditAssn–59957"), at 6 (stating that "the [IECreditAssn] is generally supportive of a pre-approval procedure for nonenumerated hedging exemptions, whereby a commercial end-user could first seek and obtain review and approval by a CFTC-regulated Exchange"); ICE on March 30, 2015 ("CL–ICE–60387"), at 8 (noting that "the exchanges should continue to exercise the authority to grant non-enumerated hedge exemption requests pursuant to their rules and procedures"); COPE on March 30, 2015 ("CL–COPE–60388"), at 6–8 (supporting Working Group's suggestion that DCMs administer enumerated and non-enumerated hedge exemptions). *See also* Plains All-American Pipeline, L.P. ("PAAP") on Aug. 4, 2014 ("CL–PAAP–59951"), at 3–4; BG Group Energy Merchants ("BG Energy") on March 30, 2015 ("CL–BG Energy–60383"), at 7–8; Sempra Energy ("Sempra") on March 30, 2015 ("CL–SEMP–60384"), at 5. *Contra* Occupy the SEC on Aug. 7, 2014 ("CL–OSEC–59972") at 4 (maintaining that permitting exchanges to "self-define" hedging exceptions "would likely create an environment conducive to producing a 'race to the bottom' among exchanges as they would have incentives to attract and retain participants seeking to take advantage of the loosest rules"); Institute for Agriculture and Trade Policy on March 30, 2015 ("CL–IATP–60394") at 3 (arguing that the Commission should not permit the exchanges "to manage position limits"). *See also* Transcript, Agricultural Advisory Committee Meeting, Sept. 22, 2015, pp. 124–51 available at *http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/aac_transcript092215.pdf* (discussing exchange-administered processes for NEBFHs); Transcript, Energy and Environmental Markets Advisory Committee Meeting, Feb. 26, 2015, pp. 239–44, available at *http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/emactranscript022615.pdf* (offering a general discussion touching on alternative processes).

[115] ICE Futures U.S., on March 30, 2015 ("CL–ICEUS–60378"), at 3–4. *See also* CL–CME–60406, at 5 (stating that "CME Group is sympathetic to the fact that the Commission faces resource constraints that would prevent it from administering a workable non-enumerated hedge exemption in real time . . . .").

[116] CL–ICEUS–60378 at 1. *See also* CL–CME–60406 at 5 (noting that "[E]xchanges have years of experience reviewing requests for hedge exemptions and approving or denying those requests based on a facts-and-circumstances approach."); statement of R. Oppenheimer on behalf of the Working Group, Energy and Environmental Markets Advisory Committee meeting, July 29, 2015 (asserting that "The exchanges have the knowledge,

rules and procedures developed and used by . . . [ICE Futures U.S.] to perform this important function were designed to incorporate the specific needs and differing practices of the commercial participants in each of its markets as those needs and practices have developed over time." [117] These commenters generally espoused the view that the Commission should continue in its broad oversight role in the granting of hedge exemptions and should not begin to become involved in the daily administration of hedge exemptions. One academic suggested that permitting the exchanges to process NEBFH applications would be acceptable so long as the Commission surveils the work of the exchanges.[118]

3. Proposed NEBFH Recognition Process

In light of DCM experience in granting NEBFH exemptions to exchange-set position limits for futures contracts, and after consideration of comments recommending exchange review of NEBFH requests, the Commission now proposes to permit exchanges to recognize NEBFHs with respect to the proposed federal speculative position limits. Under proposed § 150.9, an exchange, as an SRO [119] that is under Commission oversight and whose rules are subject to Commission review,[120] could establish rules under which the exchange could recognize as NEBFHs positions that meet the general definition of bona fide hedging position in proposed § 150.1, which implements the statutory directive in CEA section 4a(c) for the general definition of bona fide hedging positions in physical commodities.[121] The exchange's recognition would be subject to review by the Commission. Exchange recognition of a position as a NEBFH would allow the market participant to exceed the federal position limit to the extent that it relied upon the exchange's recognition unless and until such time that the Commission notified the market participant to the contrary.[122] The Commission could issue such a notification in accordance with the proposed review procedures. That is, if a party were to hold positions pursuant to a NEBFH recognition granted by the exchange, such positions would not be subject to federal position limits, unless or until the Commission were to determine that such NEBFH recognition is inconsistent with the CEA or CFTC regulations thereunder. Under this framework, the Commission would continue to exercise its authority in this regard by reviewing an exchange's determination and verifying whether the facts and circumstances in respect of a derivative position satisfy the requirements of the general definition of bona fide hedging position proposed in § 150.1.[123] If the Commission determined that the exchange-granted recognition was inconsistent with section 4a(c) of the Act and the Commission's general definition of bona fide hedging position in § 150.1 and so notified a market participant relying on such recognition, the market participant would be required to reduce the derivative position or otherwise come into compliance with position limits within a commercially reasonable amount of time.

The Commission believes that permitting exchanges to so recognize NEBFHs is consistent with its statutory obligation to set and enforce position limits on physical commodity contracts, because the Commission is retaining its authority to determine ultimately whether any NEBFH so recognized is in fact a bona fide hedging position. The Commission's authority to set position limits does not extend to any position that is shown to be a bona fide hedging position.[124] Further, most, if not all, DCMs already have a framework and application process to recognize non-enumerated positions, for purposes of exchange-set limits, as within the meaning of the general bona fide hedging definition in § 1.3(z)(1).[125] The Commission has a long history of overseeing the performance of the DCMs in granting appropriate exemptions under current exchange rules regarding exchange-set position limits [126] and

the expertise, and the regulatory incentive to carefully scrutinize the exemption process, and they already engage in a parallel process for their own interest in self-regulating and ensuring convergence and orderly liquidation of futures contracts as they come to expiry.")

[117] CL–ICEUS–60378 at 1.

[118] John Parsons, Transcript, Roundtable on Position Limits, June 19, 2014, at 135–6.

[119] As noted above, under the Commission's regulations, SROs have certain delineated regulatory responsibilities, which are carried out under Commission oversight and which are subject to Commission review. *See also*, note 126 (describing reviews of DCMs carried out by the Commission).

[120] *See* CEA section 5c(c), 7 U.S.C. 7a–2(a) (providing Commission with authority to review rules and rule amendments of registered entities, including DCMs).

[121] As previously noted, Congress has required in CEA section 4a(c) that the Commission, within specific parameters, define what constitutes a bona fide hedging position for the purpose of implementing federal position limits on physical commodity derivatives, including, as previously stated, the inclusion in new section 4a(c)(2) of a directive to narrow the bona fide hedging definition for physical commodity positions from that currently in Commission regulation § 1.3(z). *See supra* notes 32 and 105 and accompanying text; *see also* December 2013 positions limits proposal at 75705. In response to that mandate, the Commission proposed in its December 2013 position limits proposal to add a definition of bona fide hedging position in § 150.1, to replace the definition in current § 1.3(z) *See* 78 FR at 75706, 75823.

For the avoidance of doubt, the Commission is still reviewing comments received on these provisions. The Commission intends to finalize the general definition of bona fide hedging position based on the standards of CEA section 4a(c), and may further define the bona fide hedging position definition consistent with those standards.

[122] *See generally* the discussion of proposed § 150.9(d) and the requirements regarding the review of applications by the Commission, below. The Commission notes that exchange participation is voluntary, not mandatory and that exchanges could elect not to administer the process. Market participants could still request a staff interpretive letter under § 140.99 or seek exemptive relief under CEA section 4a(a)(7), per the December 2013 position limits proposal. The process does not protect exchanges or applicants from charges of violations of applicable sections of the CEA or other Commission regulations. For instance, a market participant's compliance with position limits or an exemption thereto would not confer any type of safe harbor or good faith defense to a claim that he had engaged in an attempted manipulation, a perfected manipulation or deceptive conduct; *see* the discussion of § 150.6 (Ongoing application of the Act and Commission regulations) as proposed in the December 2013 position limits proposal, 78 FR at 75746–7.

[123] *See, e.g.* the general discussion of the Commission's review process proposed in § 151.9(c), which would support the Commission's surveillance program by facilitating the tracking of NEBFHs recognized by exchanges, keeping the Commission informed of the manner in which an exchange is administering its procedures for recognizing such NEBFHs.

[124] CEA section 4a(c)(1), 7 U.S.C. 6a(c)(1). *See also supra* note 65.

[125] Rulebooks for some DCMs can be found in the links to their associated documents on the Commission's Web site at *http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations.*

[126] The Commission bases this view on its long experience overseeing DCMs and their compliance with the requirements of CEA section 5 and part 38 of the Commission's regulations, 17 CFR part 38. Under part 38, a DCM must comply, on an initial and ongoing basis, with twenty-three Core Principles established in section 5(d) of the CEA, 7 U.S.C. 7(d), and part 38 of the CFTC's regulations and with the implementing regulations under part 38. The Division of Market Oversight's Market Compliance Section conducts regular reviews of each DCM's ongoing compliance with core principles through the self-regulatory programs operated by the exchange in order to enforce its rules, prevent market manipulation and customer and market abuses, and ensure the recording and safe storage of trade information. These reviews are known as rule enforcement reviews ("RERs"). Some periodic RERs examine a DCM's market surveillance program for compliance with Core Principle 4, Monitoring of Trading, and Core Principle 5, Position Limitations or Accountability. On some occasions, these two types of RERs may be combined in a single RER. Market Compliance can also conduct horizontal RERs of the compliance of multiple exchanges in regard to particular core principles. In conducting an RER, the Division of Market Oversight (DMO) staff examines trading and compliance activities at the exchange in question over an extended time period selected by DMO, typically the twelve months immediately preceding the start of the review. Staff conducts extensive review of documents and systems used by the exchange in carrying out its self-regulatory responsibilities; interviews compliance officials and

Continued

believes that it would be efficient and in the best interest of the markets, in light of current resource constraints,[127] to rely on the exchanges to initially process applications for recognition of positions as NEBFHs. In addition, because many market participants are familiar with current DCM practices regarding bona fide hedges, permitting DCMs to build on current practice may reduce the burden on market participants. Moreover, the process outlined below should reduce duplicative efforts because market participants seeking recognition of an NEBFH would be able to file one application for relief, only to an exchange, rather than to both an exchange with respect to exchange-set limits and to the Commission with respect to federal limits.[128]

i. Proposed § 150.9(a)—Requirements For Exchange Application Process

a. Submission of Exchange Rules Under Part 40

The Commission contemplates in proposed § 150.9(a)(1) that exchanges may voluntarily elect to process NEBFH applications by filing new rules or rule amendments with the Commission pursuant to part 40 of the Commission's regulations. The Commission anticipates that, consistent with current practice, most exchanges will self-certify such new rules or rule amendments pursuant to § 40.6. The self-certification process should be a low burden for exchanges, especially for those that already recognize non-enumerated positions meeting the general definition of bona fide hedging position in § 1.3(z)(1).[129] In the Commission's view, allowing DCMs to continue to follow current practice, and extend that practice to exchange recognition of NEBFHs for purposes of the federal position limits, will permit the Commission to more effectively allocate its limited resources to oversight of the exchanges' actions.[130]

RFC 2. Are there any facts and circumstances specific to DCMs that, for purposes of exchange limits, currently recognize non-enumerated positions meeting the general definition of bona fide hedging position in § 1.3(z)(1), that the Commission should accommodate in any final regulations regarding the processing of NEBFH applications?

RFC 3. Are there any concerns regarding an exchange that elects to stop processing NEBFH applications? For example, what should be the status of a previously recognized NEBFH, if the exchange that recognized a NEBFH no longer provides for an annual review?

b. Requirements for an Exchange To Process Applications

Proposed § 150.9(a)(1) provides that exchange rules must incorporate the general definition of bona fide hedging position in § 150.1. It also provides that, with respect to a commodity derivative position for which an exchange elects to process NEBFH applications, (i) the position must be in a commodity derivative contract that is a referenced contract; (ii) the exchange must list such commodity derivative contract for trading; (iii) such commodity derivative contract must be actively traded on such exchange; (iv) such exchange must have established position limits for such commodity derivative contract; and (v) such exchange must have at least one year of experience administering exchange-set position limits for such commodity derivative contract. The requirement for one year of experience is intended as a proxy for a minimum level of expertise gained in monitoring futures or swaps trading in a particular physical commodity.

staff of the exchange; and prepares a detailed written report of findings. In nearly all cases, the RER report is made available to the public and posted on CFTC.gov. *See* materials regarding RERs of DCMs at *http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmruleenf* on the Commission's Web site. Recent RERs conducted by DMO covering DCM Core Principle 5 and exemptions from position limits have included the Minneapolis Grain Exchange, Inc. ("MGEX") (June 5, 2015), ICE Futures U.S. (July 22, 2014), the Chicago Mercantile Exchange ("CME") and the Chicago Board of Trade ("CBOT") (July 26, 2013), and the New York Mercantile Exchange (May 19, 2008). While DMO may sometimes identify deficiencies or make recommendations for improvements, it is the Commission's view that it should be permissible for DCMs to process applications for exchange recognition of positions as NEBFHs. Consistent with the fifteen SEF core principles established in section 5h(f) of the CEA, 7 U.S.C. 7b–3(f), and with the implementing regulations under part 37, 17 CFR part 37, the Commission will perform similar RERs for SEFs. The Commission's preliminary view is that it should be permissible for SEFs to process applications as well, after obtaining the requisite experience administering exchange-set position limits discussed below.

[127] Since the enactment of the Dodd-Frank Act, Commissioners, CFTC staff, and public officials have expressed repeatedly and publicly that Commission resources have not kept pace with the CFTC's expanded jurisdiction and increased responsibilities. The Commission anticipates there may be hundreds of applications for NEBFHs. This is based on the number of exemptions currently processed by DCMs. For example, under the existing process, during the period from June 15, 2011 to June 15, 2012, the Market Surveillance Department of ICE Futures U.S. received 142 exemption applications, 121 of which related to bona fide hedging requests, while 21 related to arbitrage or cash-and-carry requests; 92 new exemptions were granted. Rule Enforcement review of ICE Futures U.S., July 22, 2014, p. 40. Also under the existing process, during the period from November 1, 2010 to October 31, 2011, the Market Surveillance Group from the CME Market Regulation Department took action on and approved 420 exemption applications for products traded on CME and CBOT, including 114 new exemptive applications, 295 applications for renewal, 10 applications for increased levels, and one temporary exemption on an inter-commodity spread. Rule Enforcement Review of the Chicago Mercantile Exchange and the Chicago Board of Trade, July 26, 2013, p. 54. These statistics are now a few years old, and it is possible that the number of applications under the processes outlined in this proposal will increase relative to the number of applications described in the RERs. The CFTC would need to shift substantial resources, to the detriment of other oversight activities, to process so many requests and applications and has determined, as described below, to permit exchanges to process applications initially. The Commission anticipates it will regularly, as practicable, check a sample of the exemptions granted, including in cases where the facts warrant special attention, retrospectively as described below, including through RERs.

[128] One commenter specifically requested that the Commission streamline duplicative processes. American Gas Association ("AGA") on March 30, 2015 ("CL–AGA–60382") at 12 (stating that "AGA . . . urges the Commission to ensure that hedge exemption requests and any hedge reporting do not require duplicative filings at both the exchanges and the Commission, and therefore recommends revising the rules to streamline the process by providing that an applicant need only apply to and report to the exchanges, while the Commission could receive any necessary data and applications by coordinating data flow between the exchanges and the Commission."). *See also* CL—Working Group—60396 (explaining that "To avoid employing duplicative efforts, the Commission should simply rely on DCMs to administer *bona fide* hedge exemptions from federal speculative position limits as they carry out their core duties to ensure orderly markets.")

[129] DCMs currently process applications for exemptions from exchange-set position limits for certain NEBFHs and enumerated anticipatory bona fide hedges, as well as for exemptions from exchange-set position limits for certain spread positions, pursuant to CFMA-era regulatory guidance. *See* note 102, above, and accompanying text. This practice continues because, among other things, the Commission has not finalized the rules proposed in the December 2013 position limits proposal.

As noted above and as explained in the December 2013 position limits proposal, while current § 150.5 regarding exchange-set position limits pre-dates the CFMA "the CFMA core principles regime concerning position limitations or accountability for exchanges had the effect of undercutting the mandatory rules promulgated by the Commission in § 150.5. Since the CFMA amended the CEA in 2000, the Commission has retained § 150.5, but only as guidance on, and acceptable practice for, compliance with DCM core principle 5." December 2013 position limits proposal 78 FR at 75754.

[130] If the Commission becomes concerned about an exchange's general processing of NEBFH applications, the Commission may review such processes pursuant to a periodic rule enforcement review or a request for information pursuant to Commission regulation § 37.5. Separately, under proposed § 150.9(d), the proposal provides that the Commission may review a DCM's determinations in the case of any specific NEBFH application.

The DCM application processes for bona fide hedge exemptions from exchange-set position limits generally reference or incorporate the general definition of bona fide hedging position contained in current § 1.3(z)(1), and the Commission believes the exchange processes for approving non-enumerated bona fide hedge applications are at least to some degree informed by the Commission process outlined in current § 1.47.

The Commission believes that the exchange NEBFH process should be limited only to those exchanges that have at least one year of experience overseeing exchange-set position limits in an actively traded referenced contract in a particular commodity because an individual exchange may not be familiar enough with the specific needs and differing practices of the commercial participants in those markets for which the exchange does not list any actively traded referenced contract in a particular commodity. Thus, if a referenced contract is not actively traded on an exchange that elects to process NEBFH applications for positions in such referenced contract, that exchange might not be incentivized to protect or manage the relevant commodity market, and its interests might not be aligned with the policy objectives of the Commission as expressed in CEA section 4a. The Commission expects that an individual exchange will describe how it will determine whether a particular listed referenced contract is actively traded in its rule submission, based on its familiarity with the specific needs and differing practices of the commercial participants in the relevant market.[131]

The Commission is also mindful that some market participants, such as commercial end users in some circumstances, may not be required to trade on an exchange, but may nevertheless desire to have a particular derivative position recognized as a NEBFH. The Commission believes that commercial end users should be able to avail themselves of an exchange's NEBFH application process in lieu of requesting a staff interpretive letter under § 140.99 or seeking CEA section 4a(a)(7) exemptive relief. This is because the Commission believes that exchanges that list particular referenced contracts will have enough information about the markets in which such contracts trade and will be sufficiently familiar with the specific needs and differing practices of the commercial participants in such markets in order to knowledgeably recognize NEBFHs for derivatives positions in commodity derivative contracts included within a particular referenced contract. The Commission also views this to be consistent with the efficient allocation of Commission resources.

RFC 4. Are there circumstances in which the Commission should permit an exchange to process an NEBFH application for a position in a commodity derivative contract where that contract is a referenced contract that is not actively traded on such exchange or for which the exchange has less than one year of experience administering position limits?

RFC 5. Should the Commission define "actively traded" in terms of a minimum monthly volume of trading, such as an average monthly trading volume of 1,000 futures-equivalent contracts over a twelve month period?

RFC 6. Are there any concerns if a market participant applies for recognition of a NEBFH on one exchange, intending to execute the trades comprising the recognized position away from that exchange (*e.g.*, over the counter)?

RFC 7. Are there concerns regarding the applicability of NEBFH positions in the spot month? Should the Commission, parallel to the requirements of current regulation 1.3(z)(2) (*i.e.*, the "five-day rule"), provide that such positions not be recognized as NEBFH positions during the lesser of the last five days of trading or the time period for the spot month?[132]

RFC 8. If the Commission permits NEBFH positions to be held into the spot month, should recognition of NEBFH positions be conditioned upon additional filings to the exchange—similar to the proposed Form 504 filings required for the proposed conditional spot month limit exemption?[133] As proposed, Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this alternative, market participants would submit daily cash position information to the exchanges in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.9(c)(2).

RFC 9. Alternatively, if the Commission permits NEBFH positions to be held into the spot month, should the Commission require market participants to file the Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate, although the Commission could share such a filing with the exchanges. The Commission would adjust the title of the Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c).

Consistent with the restrictions regarding the offset of risks arising from a swap position in CEA section 4a(c)(2)(B), proposed § 150.9(a)(1) would not permit an exchange to recognize an NEBFH involving a commodity index contract and one or more referenced contracts. That is, an exchange may not recognize an NEBFH where a bona fide hedge position could not be recognized for a pass through swap offset of a commodity index contract.[134]

c. Exchanges May Establish a Dual-Track Application Process

Proposed § 150.9(a)(2) permits an exchange to establish a less expansive application process for NEBFHs previously recognized and published on such exchange's Web site than for NEBFHs based on novel facts and circumstances. This is because the Commission believes that some lesser degree of scrutiny may be adequate for applications involving recurring fact patterns, so long as the applicants are similarly situated. However, the Commission understands that DCMs currently use a single-track application process to recognize non-enumerated positions, for purposes of exchange limits, as within the meaning of the general bona fide hedging definition in § 1.3(z)(1).[135] The Commission does not know whether any exchange will elect to establish a separate application process for NEBFHs based on novel versus non-novel facts and circumstances, or what the salient differences between the two processes might be, or whether a dual-track application process might be more likely to produce inaccurate results, *e.g.*, inappropriate recognition of positions that are not bona fide hedges within the parameters set forth by Congress in CEA section 4a(c).[136] In proposing to permit separate application processes for novel and non-novel NEBFHs, the Commission seeks to provide flexibility for exchanges, but will insist on fair and open access for market participants to seek recognition of compliant positions as NEBFHs.

RFC 10. Would separate application processes for novel and non-novel NEBFHs be more likely to produce inaccurate results, *e.g.*, inappropriate recognition of positions that are not bona fide hedges within the parameters set forth by Congress in section 4a(c) of the Act?

d. Market Participant's Facts and Circumstances

The Commission believes that there is a core set of information and materials necessary to enable an exchange to determine, and the Commission to verify, whether the facts and circumstances attendant to a position satisfy the requirements of CEA section 4a(c). Accordingly, the Commission proposes to require in § 150.9(a)(3)(i), (iii) and (iv) that all applicants submit certain factual statements and representations. Proposed § 150.9(a)(3)(i) requires a description of the position in the commodity derivative contract for which the application is submitted and the offsetting cash positions.[137] Proposed § 150.9(a)(3)(iii) requires a statement concerning the maximum size of all gross positions in derivative contracts to be acquired during the year after the application is submitted.[138] Proposed § 150.9(a)(3)(iv) requires detailed information regarding the applicant's activity in the cash markets for the commodity underlying the position for which the application is submitted during the past three years.[139] These proposed application requirements are similar to existing requirements for recognition under current § 1.48 of a NEBFH.

The Commission also proposes to require in § 150.9(a)(3)(ii) and (v) that all applicants submit detailed information to demonstrate why the position satisfies the requirements of CEA section 4a(c)[140] and any other information necessary to enable the exchange to determine, and the Commission to verify, whether it is appropriate to recognize such a position as an NEBFH.[141] The Commission anticipates that such detailed information may include both a factual and legal analysis indicating why recognition is justified for such applicant's position. The Commission expects that if the materials submitted in response to proposed § 150.9(a)(3)(ii) are relatively comprehensive, requests for additional information pursuant to proposed § 150.9(a)(3)(v) will be relatively infrequent. Nevertheless, the Commission believes that it is important to include the requirement in proposed § 150.9(a)(3)(v) that applicants submit any other information necessary to enable the exchange to determine, and the Commission to verify, that it is appropriate to recognize a position as a non-enumerated bona fide hedge so that DCMs can protect and manage their markets.

Under the proposal, the Commission would permit an exchange to recognize a smaller than requested position for purposes of exchange-set limits. For instance, an exchange might recognize a smaller than requested position that otherwise satisfies the requirements of CEA section 4a(c) if the exchange determines that recognizing a larger position would be disruptive to the exchange's markets. This is consistent with current exchange practice. This is also consistent with DCM and SEF core principles. DCM core principle 5(A) provides that, "[t]o reduce the potential threat of market manipulation or congestion (especially during trading during the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators."[142] SEF core principle 6(A) contains a similar provision.[143]

By requiring in proposed § 150.9(a)(3) that all applicants submit a core set of information and materials, the Commission anticipates that all exchanges will develop similar NEBFH application processes. However, the Commission intends that exchanges have sufficient discretion to accommodate the needs of their market participants. The Commission also intends to promote fair and open access for market participants to obtain recognition of compliant derivative positions as NEBFHs.

[131] For example, a DCM ("DCM A") may list a commodity derivative contract ("KX," where "K" refers to contract and "X" refers to the commodity) that is a referenced contract, actively traded, and DCM A has the requisite experience and expertise in administering position limits in that one contract KX. DCM A can therefore recognize NEBFHs in contract KX. But DCM A is not limited to recognition of just that one contract KX–DCM A can also recognize any other contract that falls within the meaning of referenced contract for commodity X. So a market participant could, for example, apply to DCM A for recognition of a position in any contract that falls within the meaning of referenced contract for commodity X. However, that market participant would still need to seek separate recognition from each exchange where it seeks an exemption from that other exchange's limit for a commodity derivative contract in the same commodity X.

[132] 17 CFR 1.3(z)(2). *See also, e.g.*, the "bona fide hedging position" definition proposed in the December 2013 position limits proposal, 78 FR at 75823–24.

[133] The conditional spot month limit exemption and the related Form 504 were discussed in the December 2013 position limits proposal (78 FR 75580 at 75736–8). A copy of the proposed form was submitted to the **Federal Register** (*id.* at 75803–8) to ensure the public has the opportunity to comment on the information required by the proposed form. The Commission estimated the number of market participants that would be required to file the form in the December 2013 position limits proposal (*id.* at 75783). Commenters are encouraged to review and comment on the proposed Form 504 under the context of this current proposal.

[134] This is consistent with the Commission's interpretation in the December 2013 position limits proposal that CEA section 4a(c)(2)(b) is a direction from Congress to narrow the scope of what constitutes a bona fide hedge in the context of index trading activities. "Financial products are not substitutes for positions taken or to be taken in a physical marketing channel. Thus, the offset of financial risks from financial products is inconsistent with the proposed definition of bona fide hedging for physical commodities." December 2013 position limits proposal, 78 FR at 75740. *See also* the discussion of the temporary substitute test in the December 2013 position limits proposal, 78 FR at 75708–9.

[135] 17 CFR 1.3(z)(1).

[136] 7 U.S.C. 6a(c). The Commission notes that it could, under the proposal, review determinations made by a particular exchange, for example, that recognizes an unusually large number of bona fide hedges, relative to those of other exchanges.

[137] *See* § 1.47(b)(1), 17 CFR 1.47(b)(1), requiring a description of the futures positions and the offsetting cash positions.

[138] *See* § 1.47(b)(4), 17 CFR 1.47(b)(4), requiring the maximum size of gross futures positions which will be acquired during the following year.

[139] *See* §§ 1.47(b)(6), 1.48(b)(1)(i) and (2)(i), 17 CFR 1.47(b)(6), 1.48(b)(1)(i) and 2(i), requiring three years of history of production or usage.

[140] Although many commenters have requested that the Commission retain the pre-Dodd Frank Act standard contained in current § 1.3(z), 17 CFR 1.3(z), there is explicit and implicit support in the comments on the December 2013 position limits proposal for pegging what applicants must demonstrate to the current statutory provision as amended by the Dodd-Frank Act. One commenter requested that the Commission "publicly clarify that hedge positions are bona fide when they satisfy the hedge definition codified by Congress in section 4a(c)(2) of the Act, as added by the Dodd-Frank Act." CME Group, on Feb. 10, 2014 ("CL–CME–59718"), at 46. Another commenter supported a "process for Commission approval of a 'non-enumerated' hedge that . . . complies with the statutory definition of the term 'bona fide hedge.'" NGSA on Feb. 10, 2014 ("CL–NGSA–59673"), at 2.

CEA section 4a(c)(2) contains standards for positions that constitute bona fide hedges. The Commission expects that exchanges will consider the Commission's relevant regulations and interpretations, when determining whether a position satisfies the requirements of CEA section 4a(c)(2). However, exchanges may confront novel facts and circumstances with respect to a particular applicant's position, dissimilar to facts and circumstances previously considered by the Commission. In these cases, an exchange may request assistance from the Commission; *see* the discussion of proposed § 150.9(a)(6), below.

[141] *See* § 1.47(b)(2), 17 CFR 1.47(b)(2), requiring detailed information to demonstrate that the futures positions are economically appropriate to the reduction of risk in the conduct and management of a commercial enterprise. *See also* § 1.47(b)(3), 17 CFR 1.47(b)(3), requiring, upon request, such other information necessary to enable the Commission to determine whether a particular futures position meets the requirements of the general definition of bona fide hedging. Under current application processes, market participants provide similar information to DCMs, make various representations required by DCMs and agree to certain terms imposed by DCMs with respect to exemptions granted. The Commission has recognized that DCMs already consider any information they deem relevant to requests for exemptions from position limits. *See, e.g.*, Rule Enforcement Review of ICE Futures U.S., July 22, 2014, p. 41.

[142] CEA section 5(d)(5)(A), 7 U.S.C. 7(d)(5)(A); § 38.300, 17 CFR 38.300. The Commission proposed, consistent with previous Commission determinations, a preliminary finding that speculative position limits are necessary in the December 2013 position limits proposal. December 2013 position limits proposal, 78 FR at 75685.

[143] CEA § 5h(f)(6)(A), 7 U.S.C. 7b–3(f)(6)(A); § 38.300, 17 CFR 38.300.

RFC 11. Is the proposed core set of information required of market participants adequate for an exchange to review applications for NEBFHs?

e. Application Process Timeline

Proposed § 150.9(a)(4) sets forth certain timing requirements that an exchange must include in its rules for the NEBFH application process. A person intending to rely on an exchange's recognition of a position as a NEBFH would be required to submit an application in advance and to reapply at least on an annual basis. This is consistent with commenters' views and DCMs' current annual exemption review process.[144] Proposed § 150.9(a)(4) would require an exchange to notify an applicant in a timely manner whether the position was recognized as a NEBFH or rejected, including the reasons for any rejection.[145] On the other hand, and consistent with the status quo, proposed § 150.9(a)(4) would allow the exchange to revoke, at any time, any recognition previously issued pursuant to proposed § 150.9 if the exchange determines the recognition is no longer in accord with section 4a(c) of the Act.[146]

The Commission does not propose to prescribe time-limited periods (*e.g.*, a specific number of days) for submission or review of NEBFH applications. The Commission proposes only to require that an applicant must have received recognition for a NEBFH position before such applicant exceeds any limit then in effect, and that the exchange administer the process, and the various steps in the process, in a timely manner. This means that an exchange must, in a timely manner, notify an applicant if a submission is incomplete, determine whether a position is an NEBFH, and notify an applicant whether a position will be recognized, or the application rejected. The Commission anticipates that rules of an exchange may nevertheless set deadlines for various parts of the application process. The Commission does not believe that reasonable deadlines or minimum review periods are inconsistent with the general principle of timely administration of the application process. An exchange could also establish different deadlines for a dual-track application process. The Commission believes that the individual exchanges themselves are in the best position to evaluate how quickly each can administer the application process, in order best to accommodate the needs of market participants. In addition to review of an exchange's timeline when it submits its rules for its application process under part 40, the Commission would review the exchange's timeliness in the context of a rule enforcement review.

RFC 12. The Commission invites comment regarding the discretion proposed for exchanges to process NEBFH applications in a timely manner.

f. NEBFH Deemed Recognized Upon Exchange Recognition

Proposed § 150.9(a)(5) makes it clear that the position will be deemed to be recognized as a NEBFH when an exchange recognizes it; proposed § 150.9(d) provides the process through which the exchange's recognition would be subject to review by the Commission.[147] As noted above, DCMs currently exercise discretion with regard to exchange-set limits to approve exemptions meeting the general definition of bona fide hedge. The Commission works cooperatively with DCMs to enforce compliance with exchange-set speculative position limits. The Commission believes a continuation of this cooperative process, and an extension to the proposed federal position limits, would be consistent with the policy objectives in CEA section 4a(3)(B).[148]

g. Market Participant Reporting Requirements

Proposed § 150.9(a)(6) requires exchanges that elect to process NEBFH applications to promulgate reporting rules for applicants who own, hold or control positions recognized as NEBFHs. The Commission expects that the exchanges will promulgate enhanced reporting rules in order to obtain sufficient information to conduct an adequate surveillance program to detect and potentially deter excessively large positions that may disrupt the price discovery process. At a minimum, these rules should require applicants to report when an NEBFH position has been established, and to update and maintain the accuracy of such reports. These rules should also elicit information from applicants that will assist exchanges in complying with proposed § 150.9(c) regarding exchange reports to the Commission.

RFC 13. Should the Commission provide further guidance regarding the types of information that exchanges should seek to elicit from reporting rules with respect to NEBFH positions?

h. Transparency to Market Participants

Proposed § 150.9(a)(7) requires an exchange to publish on its Web site, no less frequently than quarterly, a description of each new type of derivative position that it recognizes as a NEBFH. The Commission envisions that each description would be an executive summary. The description must include a summary describing the type of derivative position and an explanation of why it qualifies as a NEBFH. The Commission believes that the exchanges are in the best position when quickly crafting these descriptions to accommodate an applicant's desire for trading anonymity while promoting fair and open access for market participants to information regarding which positions might be recognized as NEBFHs. As discussed below, the Commission proposes to spot check these summaries pursuant to proposed § 150.9(e).

RFC 14. Should the Commission prescribe that exchanges publish any

[144] *See, e.g.*, statement of Ron Oppenheimer on behalf of the Working Group (supporting an annual NEBFH application), statement of Erik Haas, Director, Market Regulation, ICE Futures U.S., (describing the DCM's annual exemption review process), and statement of Tom LaSala, Chief Regulatory Officer, CME Group, (envisioning market participants applying for NEBFHs on a yearly basis), transcript of the EEMAC open meeting, July 29, 2015, at 40, 53, and 58, available at *http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/emactranscript072915.pdf*.

[145] *See, e.g.*, statement of Ron Oppenheimer on behalf of the Working Group (noting that exchanges retain the ability to revoke an exemption if market circumstances warrant), transcript of the EEMAC open meeting, July 29, 2015, at 57, available at *http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/emactranscript072915.pdf*.

[146] As noted above, the current proposal does not impair the ability of any market participant to request an interpretation under § 140.99 for recognition of a position as a bona fide hedge if an exchange rejects their recognition application or revokes recognition previously issued. *See supra* note 78 and accompanying text.

[147] *See supra* notes 121–123 and accompanying text; *see also* the discussion of proposed § 150.9(d), review of applications by the Commission, below. Exchange recognition of a position as a NEBFH would allow the market participant to exceed the federal position limit until such time that the Commission notified the market participant to the contrary, pursuant to the proposed review procedure that the exchange action was dismissed. That is, if a party were to hold positions pursuant to a NEBFH recognition granted by the exchange, such positions would not be subject to federal position limits, unless or until the Commission were to determine that such NEBFH recognition is inconsistent with the CEA or CFTC regulations thereunder. Under this framework, the Commission would continue to exercise its authority in this regard by reviewing an exchange's determination and verifying whether the facts and circumstances in respect of a derivative position satisfy the requirements of the Commission's general definition of bona fide hedging position in § 150.1. If the Commission determines that the exchange-granted recognition is inconsistent with section 4a(c) of the Act and the Commission's general definition of bona fide hedging position in § 150.1, a market participant would be required to reduce the derivative position or otherwise come into compliance with position limits within a commercially reasonable amount of time.

[148] 7 U.S.C. 6a(3)(B).

specific information regarding recognized NEBFHs based on novel facts and circumstances?

RFC 15. Should the Commission require exchanges to publish summary statistics, such as the number of recognized NEBFHs based on non-novel facts and circumstances?

i. Requests for Commission Consideration

An exchange may elect to request the Commission review an NEBFH application that raises novel or complex issues under proposed § 150.9(a)(8), using the process set forth in proposed § 150.9(d), discussed below.[149] If an exchange makes a request pursuant to proposed § 150.9(a)(8), the Commission, as would be the case for an exchange, would not be bound by a time limitation. This is because the Commission proposes only that NEBFH applications be processed in a timely manner.[150] Essentially, this proposed provision largely preserves the Commission's review process under current § 1.47,[151] except that a market participant first seeks recognition of a NEBFH from an exchange.

RFC 16. Does the proposed flexibility for exchanges to request Commission review provide market participants with a sufficient process for review of a potential NEBFH?

ii. Proposed § 150.9(b)—Recordkeeping Requirements

Proposed § 150.9(b) outlines recordkeeping requirements for exchanges that elect to process non-enumerated bona fide hedge applications under proposed § 150.9(a). Exchanges must maintain complete books and records of all activities relating to the processing and disposition of applications in a manner consistent with the Commission's existing general regulations regarding recordkeeping,[152] with certain minor conforming changes. In consideration of the fact that DCMs currently recognize NEBFHs for periods of up to a year and that the proposal would require annual updates, the Commission proposes that exchanges keep books and records until the termination, maturity, or expiration date of any recognition of a NEBFH and for a period of five years after such date. Five years should provide an adequate time period for Commission reviews, whether that be a review of an exchange's rule enforcement or a review of a market participant's representations.

Exchanges would be required to store and produce records pursuant to current § 1.31 of the Commission's regulations, and would be subject to requests for information pursuant to other applicable Commission regulations including, for example, § 38.5. Consistent with current § 1.31,[153] the Commission expects that these records would be readily accessible until the termination, maturity, or expiration date of the recognition and during the first two years of the subsequent five year period.[154] The Commission does not intend in proposed § 150.9(b)(1) to create any new obligation for an exchange to record conversations with applicants, which includes their representatives; however, the Commission does expect that an exchange would preserve any written or electronic notes of verbal interactions with such parties.

Finally, the Commission emphasizes that parties who avail themselves of exemptions under proposed § 150.3(a), as revised herein, are subject to the recordkeeping requirements of § 150.3(g), as well as requests from the Commission for additional information under § 150.3(h), each as proposed in the December 2013 position limits proposal. The Commission may request additional information, for example, in connection with review of an application.[155]

iii. Proposed § 150.9(c)—Exchange Reporting

The Commission proposes, in § 150.9(c)(1), to require an exchange that elects to process NEBFH applications to submit a weekly report to the Commission. The proposed report would provide information regarding each commodity derivative position recognized by the exchange as an NEBFH during the course of the week. Information provided in the report would include the identity of the applicant seeking such recognition, the maximum size of the derivative position that is recognized by the exchange as an NEBFH,[156] and, to the extent that the exchange determines to limit the size of such bona fide hedge position under the exchange's own speculative position limits program, the size of any limit established by the exchange.[157] The Commission envisions that the proposed report would specify the maximum size and/or size limitations by contract month and/or type of limit (*e.g.* spot month, single month, or all-months-combined), as applicable.[158] The proposed report would also provide information regarding any revocation of,

[149] If the exchange determines to request under proposed § 150.9(a)(8) that the Commission consider the application, the exchange must, under proposed § 150.9(a)(4)(v)(C), notify an applicant in a timely manner that the exchange has requested that the Commission review the application. This provision provides the exchanges with the ability to request Commission review early in the review process, rather than requiring the exchanges to process the request, make a determination and only then begin the process of Commission review provided for under proposed § 150.9(d). The Commission notes that although most of its reviews would occur after the exchange makes its determination, the Commission could, as provided for in proposed § 150.9(d)(1), initiate its review, in its discretion, at any time.

[150] Novel facts and circumstances may present particularly complex issues that could benefit from extended consideration, given the Commission's current resource constraints.

[151] 17 CFR 1.47.

[152] Requirements regarding the keeping and inspection of all books and records required to be kept by the Act or the Commission's regulations are found at § 1.31, 17 CFR 1.31. DCMs and SEFs are already required to maintain records of their business activities in accordance with the requirements of § 1.31 and 17 CFR 38.951.

[153] Proposed § 150.9(b) is analogous to the requirement in § 1.31 for records to be kept regarding any swap or related cash forward transaction until the termination, maturity, expiration, transfer, assignment, or novation date of such transaction and for a period of five years after such date. 17 CFR 1.31(a)(1). Other Commission requirements for swap record retention take a similar approach: DCMs must retain required records with respect to each swap throughout the life of the swap and for a period of at least five years following the final termination of the swap, 17 CFR 45.2(c), and the records that exchanges are required to retain shall be readily accessible throughout the life of the swap and for two years following the final termination of the swap, 17 CFR 45.2(e)(1).

[154] In addition, the Commission expects that records required to be maintained by an exchange pursuant to this section would be readily accessible during the pendency of any application, and for two years following any disposition that did not recognize a derivative position as a bona fide hedge.

[155] In the December 2013 position limits proposal, persons claiming exemptions under proposed § 150.3 must still "maintain complete books and records concerning all details of their related cash, forward, futures, options and swap positions and transactions. Furthermore, such persons must make such books and records available to the Commission upon request under proposed § 150.3(h), which would preserve the 'special call' rule set forth in current 17 CFR 150.3(b)." 78 FR 75741 (footnote omitted).

[156] An exchange could determine to recognize all, or a portion, of the commodity derivative position in respect of which an application for recognition has been submitted, as an NEBFH, provided that such determination is made in accordance with the requirements of proposed § 150.9 and is consistent with the Act and the Commission's regulations.

[157] As proposed in the December 2013 position limits proposal, § 150.5(a)(2)(iii) provides, *inter alia*, that for any commodity derivative contract that is subject to a speculative position limit under § 150.2, an exchange may limit bona fide hedging positions which the exchange determines are not in accord with sound commercial practices, or which exceed an amount that may be established and liquidated in an orderly fashion. Such proposal largely mirrors the second half of current § 150.5(d), although updated to specify DCMs instead of "contract markets" as well as to include SEFs.

[158] An exchange could determine to recognize all, or a portion, of the commodity derivative position in respect of which an application for recognition has been submitted, as an NEBFH, for different contract months or different types of limits (*e.g.*, a separate limit level for the spot month).

or modification to the terms and conditions of, a prior determination by the exchange to recognize a commodity derivative position as an NEBFH. In addition, the report would include any summary of a type of recognized NEBFH that was, during the course of the week, published or revised on the exchange's Web site pursuant to proposed § 150.9(a)(7).

The proposed weekly report would support the Commission's surveillance program by facilitating the tracking of NEBFHs recognized by exchanges,[159] keeping the Commission informed of the manner in which an exchange is administering its procedures for recognizing such NEBFHs. For example, the report would make available to the Commission, on a regular basis, the summaries of types of recognized NEBFHs that an exchange posts to its Web site pursuant to proposed § 150.9(a)(7). This would facilitate any review by the Commission of such summaries, pursuant to proposed § 150.9(e), and would help to ensure, if the Commission determines that revisions to a summary are necessary, that such revisions are carried out in a timely manner by the exchange.

In certain instances, information included in the proposed weekly report may prompt the Commission to request records required to be maintained by an exchange pursuant to proposed § 150.9(b). For example, it is proposed that, for each derivative position recognized by the exchange as an NEBFH, or any revocation or modification of such recognition, the report would include a concise summary of the applicant's activity in the cash markets for the commodity underlying the position. It is the Commission's expectation that this summary would focus on the facts and circumstances upon which an exchange based its determination to recognize a commodity derivative position as an NEBFH, or to revoke or modify such recognition. In light of the information provided in the summary, or any other information included in the proposed weekly report regarding the position, the Commission may decide that it is appropriate to request the exchange's complete record of the application for recognition of the position as an NEBFH—in order to determine, for example, whether the application presents novel or complex issues that merit additional analysis pursuant to proposed § 150.9(d)(2), or to evaluate whether the disposition of the application by the exchange was consistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1.

Proposed § 150.9(c)(2) would require an exchange to submit to the Commission any report made to the exchange by an applicant, pursuant to proposed § 150.9(a)(6), notifying the exchange that the applicant owns or controls a commodity derivative position that the exchange has recognized as an NEBFH.[160] Unless the Commission instructs otherwise,[161] the exchange would be required to submit such applicant reports to the Commission no less frequently than monthly.[162] The exchange's submission of these reports would provide the Commission with notice that an applicant has taken a commodity derivative position that the exchange has recognized as an NEBFH, and would also show the applicant's offsetting positions in the cash markets. Requiring an exchange to submit these applicant reports to the Commission would therefore support the Commission's surveillance program, by facilitating the tracking of NEBFHs recognized by the exchange, and helping the Commission to ensure that an applicant's activities conform to the terms of recognition that the exchange has established.

Proposed § 150.9(c)(3)(i) and (ii) would require an exchange, unless instructed otherwise by the Commission,[163] to submit weekly reports under proposed § 150.9(c)(1), and applicant reports under proposed § 150.9(c)(2). Proposed § 150.9(c)(3)(i) and (ii) contemplate that, in order to facilitate the processing of such reports, and the analysis of the information contained therein, the Commission will establish reporting and transmission standards, and may require reports to be submitted to the Commission using an electronic data format, coding structure and electronic data transmission procedures approved in writing by the Commission, as specified on the Forms and Submissions page at *www.cftc.gov*.[164] Proposed § 150.9(c)(3)(iii) would require such reports to be submitted to the Commission no later than 9:00 a.m. Eastern time on the third business day following the report date, unless the exchange is otherwise instructed by the Commission.[165]

RFC 17. The Commission requests comment on all aspects of the proposed reporting requirements.

iv. Proposed § 150.9(d)—Review of Applications by the Commission

One participant at the June 19, 2014 Roundtable on Position Limits commented that if the Commission were to permit exchanges to administer a process for NEBFHs, the Commission should continue to do "a certain amount of de novo analysis and review."[166] The Commission agrees. Proposed § 150.9(d) provides for Commission review of applications to ensure that the processes administered by the exchange, as well as the results of such processes, are consistent with the requirements of CEA section 4a(c) of the Act and the Commission's regulations thereunder.[167] The Commission proposes to review records required to be maintained by an exchange pursuant to proposed § 150.9(b); however, the Commission may request additional information under proposed § 150.9(d)(1)(ii) if, for example, the Commission finds additional information is needed for its own review.

The Commission could decide to review a pending application prior to disposition by an exchange, but anticipates that it will most likely review applications after some action has already been taken by an exchange. The Commission's proposal in § 150.9(d)(2) and (3) requires the Commission to notify the exchange and the applicable applicant that they have 10 business days to provide any supplemental information. This approach provides the exchanges and the particular market participant with an opportunity to respond to any issues raised by the Commission.

During the period of any Commission review of an application, an applicant could continue to rely upon any recognition previously granted by the exchange. If the Commission determines that remediation is necessary, the Commission would provide for a commercially reasonable amount of time for the market participant to comply with limits after announcement of the Commission's decision under proposed § 150.9(d)(4). In determining a commercially reasonable amount of time, the Commission may consider factors such as current market conditions and the protection of price discovery in the market.[168]

RFC 18. The Commission requests comments on all aspects of the proposed review process.

v. Proposed § 150.9(e)—Commission Review of Summaries

While the Commission proposes to rely on the expertise of the exchanges to summarize and post executive summaries of NEBFHs to their respective Web sites under proposed § 150.9(a)(7), it also proposes, in § 150.9(e), to review such executive summaries to ensure they provide adequate disclosure to market participants of the potential availability of relief from speculative position limits. The Commission believes that an adequate disclosure would include generic facts and circumstances sufficient to alert similarly situated market participants to the possibility of receiving recognition of a NEBFH. Such market participants may use this information to help evaluate whether to apply for recognition of a NEBFH. Thus, adequate disclosure should help ensure fair and open access to the application process. Due to resource constraints, the Commission may not be able to pre-clear each summary, so the Commission proposes to spot check executive summaries after the fact.

E. Process for Exemption From Position Limits for Certain Spread Positions

1. Background

The Commission proposes to permit exchanges, by rule, to exempt from federal position limits certain spread transactions, as authorized by CEA section 4a(a)(1),[169] and in light of the provisions of CEA section 4a(a)(3)(B) and CEA section 4a(c)(2)(B).[170] In particular, CEA section 4a(a)(1) provides the Commission with authority to exempt from position limits transactions normally known to the trade as "spreads" or "straddles" or "arbitrage" or to fix limits for such transactions or positions different from limits fixed for other transactions or positions. The Dodd-Frank Act amended the CEA by adding section 4a(a)(3)(B), which now directs the Commission, in establishing position limits, to ensure, to the maximum extent practicable and in its discretion, "sufficient market liquidity for bona fide hedgers."[171] In addition, the Dodd-Frank Act amendments to the CEA in section 4a(c)(2)(B) limited the definition of a bona fide hedge to only those positions (in addition to those included under CEA section 4a(c)(2)(A))[172] resulting from a swap that was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction, in the event the party to the swap is not itself using the swap as a bona fide hedging transaction. In this regard, the Commission interprets this statutory definition to preclude spread exemptions for a swap position that was executed opposite a counterparty for which the transaction would *not* qualify as a bona fide hedging transaction.

Prior to the passage of the Dodd-Frank Act, the Commission exercised its exemptive authority pertaining to spread transactions in promulgating current § 150.3. Current § 150.3 provides that the position limits set in § 150.2 may be exceeded to the extent such positions are spread or arbitrage positions between single months of a futures contract and/or, on a futures-equivalent basis, options thereon, outside of the spot month, in the same crop year; provided, however, that such spread or arbitrage positions, when combined with any other net positions in the single month, do not exceed the all-months limit set forth in § 150.2. In addition, the Commission has permitted DCMs, in setting their own position

[159] The Commission believes that the exchange's assignment of a unique identifier to each of the non-enumerated bona fide hedge applications that the exchange receives, and, separately, the exchange's assignment of a unique identifier to each type of commodity derivative position that the exchange recognizes as an NEBFH, would assist the Commission's tracking process. Accordingly, the Commission suggests that, as a "best practice," the exchange's procedures for processing NEBFH applications contemplate the assignment of such unique identifiers. Pursuant to proposed § 150.9(c)(1)(i), an exchange that assigns such unique identifiers would be required to include the identifiers in the exchange's weekly report to the Commission.

[160] Proposed § 150.9(a)(6) would require an exchange to have in place rules requiring an applicant to report to the exchange when the applicant owns, holds or controls a commodity derivative position that the exchange has recognized as an NEBFH, and for the applicant to report its offsetting cash positions. Pursuant to proposed § 150.9(a)(6), such rules must require an applicant to update and maintain the accuracy of any such report to the exchange. Accordingly, a exchange's submission to the Commission pursuant to proposed § 150.9(c)(2) would be expected to include any updates, corrections or other modifications made by an applicant to a report previously submitted to the exchange.

[161] The Commission proposes, in § 150.9(f)(1)(ii), to delegate to the Director of the Commission's Division of Market Oversight, or such other employee or employees as the Director may designate from time to time, the authority to provide instructions regarding the submission to the Commission of information required to be reported by an exchange pursuant to proposed § 150.9(c).

[162] Proposed § 150.9(c)(2) addresses the submission by an exchange of applicant reports to the Commission. The timeframe within which an applicant would be required to report to the exchange that the applicant owns or controls a commodity derivative position that the exchange has recognized as an NEBFH, would be established by the exchange in its rules, as appropriate and in accordance with proposed § 150.9(a)(6). An exchange could decide to require such a report from an applicant more frequently than monthly.

[163] The Commission proposes to delegate to the Director of the Commission's Division of Market Oversight, or such other employee or employees as the Director may designate from time to time, the authority to provide instructions for such submissions in proposed § 150.9(f)(1)(ii).

[164] The Commission proposes, in § 150.9(f)(1)(ii), to delegate to the Director of the Commission's Division of Market Oversight, or such other employee or employees as the Director may designate from time to time, the authority to specify on the Forms and Submissions page at *www.cftc.gov* the manner for submitting to the Commission information required to be reported by an exchange pursuant to proposed § 150.9(c), and to determine the format, coding structure and electronic data transmission procedures for submitting such information.

[165] Proposed § 150.9(c)(2) would require reports submitted to an exchange pursuant to proposed § 150.9(a)(6), from applicants owning or controlling commodity derivative positions that the exchange has recognized as NEBFHs, to be submitted to the Commission no less frequently than monthly. For purposes of proposed § 150.9(c)(2), the timeframe set forth in proposed § 150.9(c)(3)(iii) would be calculated from the date of a exchange's submission to the Commission, and not from the date of an applicant's report to the exchange.

[166] John Parsons, Roundtable on Position Limits, June 19, 2014, transcript at p. 135.

[167] *See supra* note 66 and accompanying text. As noted above, under the proposal, the SRO's recognition is tentative, because the Commission would reserve the power to review the recognition, subject to the reasonably fixed statutory standards in CEA section 4a(c)(2) (directing the CFTC to define the term bona fide hedging position) that are incorporated into the Commission's proposed general definition of bona fide hedging position in § 150.1. The SRO's recognition would also be constrained by the SRO's rules, which would be subject to CFTC review under the proposal. The SROs are parties subject to Commission authority, their rules are subject to Commission review and their actions are subject to Commission de novo review under the proposal—SRO rules and actions may be changed by the Commission at any time. In addition, it should be noted that the exchange is required to make its determination consistent with both CEA section 4a(c) and the Commission's general definition of bona fide hedging position in § 150.1. Further, the Commission notes that CEA section 4a(c)(1) requires a position to be shown to be bona fide as defined by the Commission.

[168] In the December 2013 position limits proposal, when discussing the provision of a commercially reasonable time period as necessary to exit the market in an orderly manner, the Commission stated that, generally, it "believes such time period would be less than one business day." 78 FR 75680 at 75713.

[169] 7 U.S.C. 6a(a)(1) (authorizing the Commission to exempt transactions normally known to the trade as "spreads"). DCMs currently process applications for exemptions from exchange-set position limits for certain spread positions pursuant to CFMA-era regulatory parameters. *See* note 101 for further background.

It should be noted that, in current § 150.3(a)(3), the Commission exempts spread positions "between single months of a futures contract and/or, on a futures-equivalent basis, options thereon, outside of the spread month, in the same crop year," subject to certain limitations. 17 CFR 150.3(a)(3).

[170] 7 U.S.C. 6a(a)(3)(B) and 7 U.S.C. 6a(c)(2)(B), respectively.

[171] CEA section 4a(a)(3)(B) also directs the Commission, in establishing position limits, to diminish, eliminate, or prevent excessive speculation; to deter and prevent market manipulation, squeezes, and corners; and to ensure that the price discovery function of the underlying market is not disrupted.

[172] 7 U.S.C. 6a(c)(2)(A). As explained above in note 66, CEA section 4a(c)(2) generally requires the Commission to define a bona fide hedging position as a position that in CEA section 4a(c)(2)(A): Meets three tests (a position (1) is a substitute for activity in the physical marketing channel, (2) is economically appropriate to the reduction of risk, and (3) arises from the potential change in value of current or anticipated assets, liabilities or services); or, in CEA section 4a(c)(2)(B), reduces the risk of a swap that was executed opposite a counterparty for which such swap would meet the three tests.

limits under the terms of current § 150.5(a), to exempt spread, straddle or arbitrage positions or to fix limits that apply to such positions which are different from limits fixed for other positions.[173]

The December 2013 position limits proposal deleted the exemption in current § 150.3(a)(3) for spread or arbitrage positions between single months of a futures contract or options thereon, outside the spot month; the Commission instead proposed to maintain the current practice in § 150.2 of setting single-month limits at the same levels as all-months limits, rendering the "spread" exemption unnecessary.[174] In particular, the spread exemption set forth in current § 150.3(a)(3) permits a spread trader to exceed single month limits only to the extent of the all months limit. Since § 150.2 as proposed in the December 2013 position limits proposal sets single month limits at the same level as all months limits, the existing spread exemption no longer provides useful relief.

Further, the December 2013 position limits proposal would codify guidance in proposed § 150.5(a)(2)(ii) to allow an exchange to grant exemptions from exchange-set position limits for intramarket and intermarket spread positions (as those terms are defined in § 150.1 as proposed in the December 2013 position limits proposal) involving commodity derivative contracts subject to the federal limits. To be eligible for exemption under § 150.5(a)(2)(ii) as proposed in the December 2013 position limits proposal, intermarket and intramarket spread positions would have to be outside of the spot month for physical delivery contracts, and intramarket spread positions could not exceed the federal all-months limit when combined with any other net positions in the single month. As proposed in the December 2013 position limits proposal, § 150.5(a)(2)(iii) would require traders to apply to the exchange for any exemption, including spread exemptions, from its speculative position limit rules.

Several commenters have requested that the Commission provide a spread exemption to federal position limits.[175] Of these commenters, most urged the Commission to recognize spread exemptions in the spot month as well as non-spot months.[176] Several of these commenters noted that the Commission's proposal would permit exchanges to grant spread exemptions for exchange-set limits in commodity derivative contracts subject to Federal limits, and recommended that the Commission establish a process for granting such spread exemptions for purposes of Federal limits.[177]

In response to these comments, the Commission now proposes to permit exchanges to process and grant applications for spread exemptions from federal position limits. Most, if not all, DCMs already have rules in place to process and grant applications for spread exemptions from exchange-set position limits pursuant to Part 38 of the Commission's regulations (in particular, current §§ 38.300 and 38.301) and current § 150.5. As noted above, the Commission has a long history of overseeing the performance of the DCMs in granting appropriate spread exemptions under current exchange rules regarding exchange-set position limits and believes that it would be efficient, and in the best interest of the markets, in light of current resource constraints, to rely on the exchanges to process applications for spread exemptions from federal position limits. In addition, the Commission observes because many market participants may be familiar with current DCM practices regarding spread exemptions, permitting DCMs to build on current practice may lower the burden on market participants and reduce duplicative filings at the exchanges and the Commission. As noted, this plan would permit exchanges to provide market participants with spread exemptions, pursuant to exchange rules submitted to the Commission; however, the Commission would retain the authority to review—and, if necessary, reverse—the exchanges' actions.

RFC 19. Would permitting exchanges to process applications for spread exemptions from federal limits, subject to Commission review, provide for an efficient implementation of the Commission's statutory authority to exempt such spread positions?

2. Spread Exemption Proposal

i. Proposed § 150.10(a)—Requirements for Application Process

The Commission contemplates in proposed § 150.10(a)(1) that exchanges may voluntarily elect to process spread exemption applications, by filing new rules or rule amendments with the Commission pursuant to part 40 of the Commission's regulations.[178] The proposed process under § 150.10(a) is substantially similar to that described above for proposed § 150.9(a). For example, proposed § 150.10(a)(1) provides that, with respect to a commodity derivative position for which an exchange elects to process spread exemption applications, (i) the exchange must list for trading at least one component of the spread or must list for trading at least one contract that is a referenced contract included in at least one component of the spread; and (ii) any such exchange contract must be actively traded and subject to position limits for at least one year on that exchange. As noted with respect to the process outlined above for proposed § 150.9(a), the Commission believes it is appropriate that an exchange may process spread exemptions only if it has at least one year of experience overseeing exchange-set position limits in an actively traded referenced contract that is in the same commodity as that of at least one component of the spread. The Commission believes that an exchange may not be familiar enough with the specific needs and differing practices of the participants in those markets for which an individual exchange does not list any actively traded referenced contract in a particular commodity. If a component of a spread is not actively traded on an exchange that elects to process spread exemption applications, such exchange might not be incentivized to protect or manage the relevant commodity market, and the interests of such exchange might not be aligned with the policy objectives of the Commission as expressed in CEA section 4a(a)(3)(B). The Commission expects that an individual exchange will describe how it will determine whether a particular component of a spread is actively traded in its rule submission, based on its familiarity with the specific needs and differing practices of the participants in the relevant market.

[173] Current § 150.5 applies as non-exclusive guidance and acceptable practices for compliance with DCM core principle 5. *See* December 2013 position limits proposal, 78 FR at 75750–2.

[174] December 2013 position limits proposal, 78 FR at 75736.

[175] *See, e.g.,* CL–CMC–59634 at 15; Olam International Ltd. on February 10, 2014 ("CL–Olam–59658") at 7; CME Group on February 10, 2014 ("CL–CME –59718") at 69–71; Citadel LLC on February 10, 2014 ("CL–Citadel–59717") at 8, 9; Armajaro Asset Management ("Amajaro") on February 10, 2014 ("CL–Armajaro–59729") at 2; ICE Futures U.S. on February 10, 2014 ("CL–ICEUS–59645") at 8–10.

[176] *See* CL–CMC–59634 at 15; CL–Olam–59658 at 7; CL–CME–59718 at 71; CL–Armajaro–59729 at 2; CL–ICEUS–59645 at 8–10.

[177] *See* CL–Olam–59658 at 7; CL–CME–59718 at 71; CL–ICEUS–59645 at 10.

[178] *See* note 63, regarding Commission authority to recognize spreads under CEA section 4a(a)(1). Any action of the exchange to recognize a spread, pursuant to rules filed with the Commission, would be subject to review and revocation by the Commission.

Consistent with the restrictions regarding the offset of risks arising from a swap position in CEA section 4a(c)(2)(B), proposed § 150.10(a)(1) would not permit an exchange to recognize a spread between a commodity index contract and one or more referenced contracts. That is, an exchange may not grant a spread exemption where a bona fide hedge position could not be recognized for a pass through swap offset of a commodity index contract.[179]

The Commission notes that for inter-commodity spreads in which different components of the spread are traded on different exchanges, the exemption granted by one exchange would be recognized by the Commission as an exemption from federal limits for the applicable referenced contract(s), but would not bind the exchange(s) that list the other components of the spread to recognize the exemption for purposes of that other exchange(s)' position limits. In such cases, a trader seeking such inter-commodity spread exemptions would need to apply separately for a spread exemption from each exchange-set position limit.

Proposed § 150.10(a)(2) specifies the type of spreads that an exchange may exempt from position limits, including calendar spreads; quality differential spreads; processing spreads (such as energy "crack" or soybean "crush" spreads); and product or by-product differential spreads. This list is not exhaustive, but reflects common types of spread activity that may enhance liquidity in commodity derivative markets, thereby facilitating the ability of bona-fide hedgers to put on and offset positions in those markets. For example, trading activity in many commodity derivative markets is concentrated in the nearby contract month, but a hedger may need to offset risk in deferred months where derivative trading activity may be less active. A calendar spread trader could provide such liquidity without exposing himself or herself to the price risk inherent in an outright position in a deferred month. Processing spreads can serve a similar function. For example, a soybean processor may seek to hedge his or her processing costs by entering into a "crush" spread, *i.e.,* going long soybeans and short soybean meal and oil. A speculator could facilitate the hedger's ability to do such a transaction by entering into a "reverse crush" spread (*i.e.,* going short soybeans and long soybean meal and oil). Quality differential spreads, and product or by-product differential spreads, may serve similar liquidity-enhancing functions when spreading a position in an actively traded commodity derivatives market such as CBOT Wheat against a position in another actively traded market, such as MGEX Wheat.

The Commission anticipates that a spread exemption request might include spreads that are "legged in," that is, carried out in two steps, or alternatively are "combination trades," that is, all components of the spread are executed simultaneously.

This proposal would not limit the granting of spread exemptions to positions outside the spot month, unlike the existing spread exemption provisions in current § 150.3(a)(3), or in § 150.5(a)(2)(ii) as proposed in the December 2013 position limits proposal. The proposal herein responds to specific requests of commenters to permit spread exemptions in the spot month. For example, the CME recommended "the Commission reaffirm in DCMs the discretion to apply their knowledge of individual commodity markets and their judgement, as to whether allowing intermarket spread exemptions in the spot month for physical-delivery contracts is appropriate."[180]

The Commission proposes to revise the December 2013 position limits proposal in the manner described above because, as noted in the examples above, permitting spread exemptions in the spot month would further one of the four policy objectives set forth in section 4a(a)(3)(b) of the Act: To ensure sufficient market liquidity for bona fide hedgers.[181] This policy objective is incorporated into the proposal in its requirements that: (i) The applicant provide detailed information demonstrating why the spread position should be exempted from position limits, including how the exemption would further the purposes of CEA section 4a(a)(3)(B);[182] and (ii) the exchange determines whether the spread position (for which a market participant was seeking an exemption) would further the purposes of CEA section 4a(a)(3)(B).[183] Moreover, the Commission retains the ability to review the exchange rules as well as to review how an exchange enforces those rules.[184]

The Commission, however, remains concerned, among other things, about protecting the price discovery process in the core referenced futures contracts, particularly as those contracts approach expiration. Accordingly, as an alternative, the Commission is also considering whether to prohibit an exchange from granting spread exemptions that would be applicable during the lesser of the last five days of trading or the time period for the spot month.

RFC 20: Are there concerns regarding the applicability of spread exemptions in the spot month that the Commission should consider? Should the Commission, parallel to the requirements of current § 1.3(z)(2), provide that such spread positions not be exempted during the lesser of the last five days of trading or the time period for the spot month?[185]

RFC 21: If the Commission permits exchanges to grant spread positions applicable in the spot month, should recognition of NEBFH positions be conditioned upon additional filings similar to the proposed Form 504 that is required for the proposed conditional spot month limit exemption?[186] Proposed Form 504 would require additional information on the market participant's cash market holdings for each day of the spot month period. Under this alternative, market participants would submit daily cash position information to an exchange in a format determined by the exchange, which would then be required to forward that information to the Commission in a process similar to that proposed under § 150.10(c)(2).

RFC 22: Alternatively, if the Commission permits exchanges to grant

[179] This proposal is consistent with the Commission's interpretation in the December 2013 position limits proposal that CEA section 4a(c)(2)(b) is a mandate from Congress to narrow the scope of what constitutes a bona fide hedge in the context of index trading activities. "Financial products are not substitutes for positions taken or to be taken in a physical marketing channel. Thus, the offset of financial risks from financial products is inconsistent with the proposed definition of bona fide hedging for physical commodities." December 2013 position limits proposal, 78 FR at 75740. *See also* the discussion of the temporary substitute test, *id.* at 75708–9.

[180] *See* CL–CME–59718 at 71.

[181] CEA section 4a(a)(3)(B)(iii); 7 U.S.C. 6a(a)(3)(B)(iii). *See also* the discussion of proposed § 150.10(a)(3)(ii), below.

[182] *See* proposed § 150.10(a)(3)(ii).

[183] *See* proposed § 150.10(a)(4)[vi].

[184] The Commission could, for example, revoke or confirm exchange-granted exemptions.

[185] *See also supra* notes 56 and 132 and accompanying text.

[186] The conditional spot month limit exemption and the related Form 504 were discussed in the December 2013 position limits proposal (78 FR 75680 at 75736–8). A copy of the proposed form was submitted to the **Federal Register** (*id.* at 75803–8) to ensure the public had the opportunity to comment on the information required by the proposed form. The Commission estimated the number of market participants that would be required to file the form in the December 2013 position limits proposal (*id.* at 75783). Commenters are encouraged to review and comment on proposed Form 504 in the context of this current proposal.

spread exemptions applicable in the spot month, should the Commission require market participants to file proposed Form 504 with the Commission? Under this alternative, the relevant cash market information would be submitted directly to the Commission, eliminating the need for the exchange to intermediate. The Commission would adjust the title of proposed Form 504 to clarify that the form would be used for all daily spot month cash position reporting purposes, not just the proposed requirements of the conditional spot month limit exemption in proposed § 150.3(c).

Proposed 150.10(a)(3) sets forth a core set of information and materials that all applicants must submit to enable an exchange to determine, and the Commission to verify, whether the facts and circumstances attendant to a position further the policy objectives of CEA section 4a(a)(3)(B). In particular, the applicant must demonstrate, and the exchange must determine, that exempting the spread position from position limits would, to the maximum extent practicable, ensure sufficient market liquidity for bona fide hedgers, but not unduly reduce the effectiveness of position limits to diminish, eliminate or prevent excessive speculation; deter and prevent market manipulation, squeezes, and corners; and ensure that the price discovery function of the underlying market is not disrupted.[187]

One DCM, ICE Futures U.S., currently grants certain types of spread exemptions that the Commission is concerned may not be consistent with these policy objectives.[188] ICE Futures U.S. allows "cash-and-carry" spread exemptions to exchange-set limits, which permit a market participant to hold a long position greater than the speculative limit in the spot month and an equivalent short position in the following month in order to guarantee a return that, at minimum, covers its carrying charges, *i.e.*, the cost of financing, insuring, and storing the physical inventory until the next expiration.[189] Market participants are able to take physical delivery in the nearby month and redeliver the same product in a deferred month, often at a profit. The Commission notes that while market participants are permitted to re-deliver the physical commodity, they are under no obligation to do so.

ICE Futures U.S.'s rules condition the cash-and-carry spread exemption upon the applicant's agreement that "before the price of the nearby contract month rises to a premium to the second (2nd) contract month, it will liquidate all long positions in the nearby contract month." [190] The Commission understands that ICE Futures U.S. requires traders to provide information about their expected cost of carry, which is used by the exchange to determine the levels by which the trader has to reduce the position. Those exit points are then communicated to the applicant when the exchange responds to the trader's hedge exemption request.

The Commission is considering whether to impose on the exchange a requirement to ensure exit points in cash-and-carry spread exemptions are appropriate to facilitate an orderly liquidation in the expiring futures contract. The Commission is concerned that a large demand for delivery on cash and carry positions may distort the price of the expiring futures price upwards. This may particularly be a concern in those commodity markets where the cash spot price is discovered in the expiring futures contract.

In a recent Rule Enforcement Review, ICE Futures U.S. opined that such exemptions are "beneficial for the market, particularly when there are plentiful warehouse stocks, which typically is the only time when the opportunity exists to utilize the exemption," maintaining that the exchange's rules and procedures are effective in ensuring orderly liquidations.[191] The Commission remains concerned, however, about these exemptions and their impact on the spot month price. The Commission is still reviewing the effectiveness of the exchange's cash-and-carry spread exemptions and the procedure by which they are granted.

As an alternative to providing exchanges with discretion to consider granting cash-and-carry spread exemptions, the Commission is considering prohibiting cash-and-carry spread exemptions to position limits. In this regard, the Commission does not grant such exemptions to current federal position limits. As another alternative, the Commission is considering permitting exchanges to grant cash-and-carry spread exemptions, but would require suitable safeguards be placed on such exemptions. For example, the Commission could require cash-and-carry spread exemptions be conditioned on a market participant reducing positions below speculative limit levels in a timely manner once current market prices no longer permit entry into a full carry transaction, rather than the less stringent condition of ICE Futures U.S. that a trader reduce positions "before the price of the nearby contract month rises to a premium to the second (2nd) contract month."

RFC 23: Do cash-and-carry spread exemptions further the policy objectives of the Act, as outlined in proposed § 150.10(a)(3)? Why or why not? Do cash and carry spread exemptions facilitate an orderly liquidation? Do these exemptions impede convergence or distort the price of the expiring futures contract?

RFC 24: If cash-and-carry spread exemptions are allowed, what conditions should be placed on the exemptions? For example, on what basis should a trader be required to exit futures positions above position limit levels? Should such exemptions be conditioned, for example, to require a market participant to reduce the positions below speculative limit levels in a timely manner once current market prices no longer permit entry into a full carry transaction? Are there other types of spread exemptions that may not further the policy objectives of CEA section 4a and, thus, should be prohibited or conditioned?

RFC 25: With cash-and-carry spread exemptions still under review by the Commission, should the proposed rules allow such exemptions to be granted under proposed § 150.10? Why or why not?

RFC 26: If the proposed rules do not prohibit such exemptions, an exchange could determine that cash-and-carry spread exemptions—or another type of spread exemption—further the policy objectives in proposed § 150.10(a)(3) and so begin to grant such exemptions from federal position limits. If, after finishing its review, the Commission

[187] *See also infra* note 192 and accompanying text (describing the DCM's responsibility under its application process to make this determination in a timely manner).

[188] *See* ICE Futures U.S. Rule 6.29(e).

[189] Carrying charges include insurance, storage fees, and financing costs, as well as other costs such as aging discounts that are specific to individual commodities. The ICE Futures U.S. rules require an applicant to provide: (i) Its cost of carry; (ii) the minimum spread at which the applicant will enter into a straddle position and which would result in an profit for the applicant; and (iii) the quantity of stocks in exchange-licensed warehouses that it already owns. The applicant's entire long position carried into the notice period must have been put on as a spread at a differential that covers the applicant's cost of carry. *See* Rule Enforcement Review of ICE Futures U.S., July 22, 2014 ("ICE Futures U.S. Rule Enforcement Review"), at 44–45, available at *http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmruleenf.*

[190] ICE Futures U.S. Rule 6.29(e) (at the time of the target period of the ICE Futures U.S. Rule Enforcement Review (June 15, 2011 to June 15, 2012), the cash-and-carry provision currently found in ICE Futures U.S. Rule 6.29(e) was found in ICE Futures U.S. Rule 6.27(e)). Further, under the exchange's rules, additional conditions may also apply.

[191] ICE Futures U.S. Rule Enforcement Review, at 45.

disagrees with the exchange's determination, is the proposed process in § 150.10(d) for reviewing exemptions sufficient to address any concerns raised?

Under the proposal, an exchange's rules would require an applicant to submit to the exchange a core set of information and materials that would include, at a minimum: (i) A description of the spread position for which the application is submitted, including details on all components of the spread; (ii) detailed information to demonstrate why the spread position should be exempted from position limits, including how the exemption would further the purposes of CEA section 4a(a)(3)(B); and (iii) a statement concerning the maximum size of all gross positions in derivative contracts to be acquired by the applicant during the year after the application is submitted. Further, an exchange would not be permitted to grant a spread exemption request that would be contrary to the requirements for a pass-through swap offset position in CEA section 4a(c)(2)(B), which the Commission interprets to preclude spread exemptions for a swap position that was executed opposite a counterparty for which the transaction would *not* qualify as a bona fide hedging transaction. The requirement that an applicant specify a maximum size of all gross positions to be acquired will enable an exchange to more effectively set a cap on a market participant's spread position. Such a cap could reasonably take into account the specific liquidity needs of the marketplace and the ability of the spread position to be put on and offset in an orderly fashion and without causing market disruptions. The Commission expects that an exchange would be particularly attentive to the size of any component of a spread position it permits to be held in the spot month in light of its obligation to consider, in granting such spread exemptions, the goals of deterring and preventing market manipulation, squeezes, and corners.

RFC 27: Does the application process solicit sufficient information for an exchange to consider whether a spread exemption would, to the maximum extent practicable, further the policy objectives of CEA section 4a(a)(3)(B)? For example, how would an exchange determine whether an applicant for a spread exemption may provide liquidity, such that the goal of ensuring sufficient market liquidity for bona-fide hedgers would be furthered by the spread exemption?

RFC 28: How would exchanges oversee or monitor exemptions that have been granted, and, if the exchange determines it necessary, revoke the exemption?

Proposed § 150.10(a)(4) sets forth certain timing requirements that an exchange must include in its rules for the spread application process. While these timing requirements are similar to those under proposed § 150.9(a)(4),[192] the exchange under proposed § 150.10(a)(4) must also determine in a timely manner whether the facts and circumstances attendant to a position further the policy objectives of CEA section 4a(a)(3)(B).[193] Finally, the spread exemption application processes proposed in § 150.10(a)(5), (6), (7), and (8) are all substantially similar to those proposed under § 150.9(a)(5), (6), (7), and (8).

ii. Recordkeeping and Reporting Requirements, and Review of Applications and Summaries by Commission

The proposed processes under § 150.10(b) Recordkeeping, § 150.10(c) Reports to the Commission; § 150.10(d) Review of Applications by the Commission; § 150.10(e) Review of Summaries by the Commission; and § 150.10(f) Delegation of Authority to the Director of the Division of Market Oversight are substantially similar to the corresponding provisions in § 150.9(b) through (f), as described above.[194] Hence, the Commission does not repeat the discussion here.

RFC 29: Is it appropriate to have the same processes under § 150.10(b) through (f) for spread exemptions as proposed for NEBFHs outlined under § 150.09(b) through (f)? If no, explain why and how those processes should differ.

F. Recognition of Positions as Enumerated Anticipatory Bona Fide Hedges

1. Background

In the December 2013 position limits proposal, the Commission proposed § 150.7, requirements for anticipatory bona fide hedging position exemptions,[195] to replace current § 1.48,[196] which provides requirements for classification of certain anticipatory bona fide hedge positions under current § 1.3(z)(2) (i)(B) or (ii)(C) of the Commission's regulations. As proposed in the December 2013 position limits proposal, § 150.7 would require market participants to file statements with the Commission regarding certain anticipatory hedges, which would become effective absent Commission action or inquiry ten days after submission.[197] The Commission now proposes to supplement the process proposed in the December 2013 position limits proposal by allowing exchanges, as an alternative, to review requests for recognition of such enumerated anticipatory bona fide hedging exemptions pursuant to exchange rules submitted to the Commission.

In response to the December 2013 position limits proposal, the Commission has received comments that suggested that the exchanges would be better equipped to recognize non-enumerated hedge positions and anticipatory hedging positions.

For example, one commenter noted that the exchanges have a long history of enforcing position limits and are in a much better position than the Commission to judge the applicant's hedging needs and to set an appropriate level for the hedge.[198] According to another commenter, providing the

[192] For example, proposed 150.9(a)(4) provides that: (i) A person intending to rely on a exchange's exemption from position limits would be required to submit an application in advance and to reapply at least on an annual basis; (ii) the exchange would be required to notify an applicant in a timely manner whether the position was exempted, and reasons for any rejection; and (iii) the exchange would be able to revoke, at any time, any recognition previously issued pursuant to proposed § 150.9 if the exchange determined the recognition was no longer in accord with section 4a(c) of the Act.

[193] *See supra* note 171 and accompanying text.

[194] *See* the discussion of the NEBFH application process in Sections II(C)(3)(ii)–(v) of the Supplementary Information above.

[195] As proposed in the December 2013 position limits proposal, § 150.7 provides a process for recognition as bona fide hedge positions for: Unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedges under the provisions of paragraphs (3)(iii), (4)(i), (4)(iii), 4(iv) or (5), respectively, of the definition of bona fide hedging position in § 150.1. These types of anticipatory positions do not implicate commodity index contracts, in contrast to the positions discussed in notes 134 and 180 and the accompanying text.

[196] 17 CFR 1.48 (providing a process for persons to demonstrate NEBFH falls within the scope of § 1.3(z)(1)). As noted in the December 2013 position limits proposal, "On September 28, 2012, the District Court for the District of Columbia vacated the part 151 Rulemaking with the exception of the amendments to § 150.2. 887 F. Supp. 2d 259 (D.D.C. 2012). Vacating the part 151 Rulemaking, with the exception of the amendments to § 150.2, means that as things stand now, it is as if the Commission had never adopted any part of the part 151 Rulemaking other than the amendments to § 150.2." December 2013 position limits proposal, 78 FR at 75740, note 478.

Current § 1.48 can be found at *https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR&searchPath=Title+17%2FChapter+I%2FPart+1%2FSubjgrp&oldPath=Title+17%2FChapter+I%2FPart+1&isCollapsed=true&selectedYearFrom=2010&ycord=594.*

[197] *See* December 2013 position limits proposal, 78 FR at 75746.

[198] CL–AGA–60382 at 13.

exchanges with the ability to grant hedge exemptions for federal limits in conjunction with the grant of an exchange hedge exemption would create consistency and efficiency, and take advantage of the expertise gained by exchanges in granting hedge exemptions from position limits over many years.[199] A third asserted that the proposed requirement to file Form 704 is "unduly burdensome and commercially impracticable," and requests that the Commission "allow the exchanges to continue to grant annual hedge exemptions, which do not include onerous reporting requirements."[200] A fourth commenter requested that the Commission consider incorporating the proposed position limits regime into the existing framework managed by the exchanges, stating that market participants and exchanges alike are comfortable and have a unique familiarity with the current futures-exchange-set position limits and aggregation processes, and have developed an effective working relationship.[201] This commenter also stated its belief that the current framework regarding hedge exemptions provides commercial market participants with the efficacy and the timeliness needed to ensure they are able to hedge their risks.[202]

2. Enumerated Anticipatory Bona Fide Hedge Exemption Proposal

While the Commission continues to consider comments regarding proposed § 150.7, it is expected that a number of anticipatory bona fide hedging positions will be enumerated in the final rule, as proposed.[203] In this current proposal, the Commission proposes that exchanges, pursuant to exchange rules submitted to the Commission, could review requests for recognition of such enumerated anticipatory bona fide hedging exemptions, as an alternative to the process set forth in the December 2013 position limits proposal that required market participants to file a statement with the Commission.[204] Similar to the current DCM rule framework and application process noted above for the recognition of NEBFH positions for purposes of exchange limits, most, if not all, DCMs already have some sort of framework and application process allowing market participants to request exemptions from exchange position limits for anticipatory bona fide hedge positions.

Proposed § 150.11 would permit exchanges to recognize certain anticipatory bona fide hedge positions, such as unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedges. Under proposed § 150.11, market participants could continue to work with exchanges to request the exemption. In addition, proposed § 150.11 would allow exchanges to adopt a shorter timeline for processing the exemption applications than under § 150.7 as proposed in the December 2013 position limits proposal. Under proposed § 150.11, an exchange could potentially recognize a position as a bona fide hedge in fewer than ten days after filing. In contrast, § 150.7 as proposed in the December 2013 position limits proposal, would provide the Commission with a full ten days after receipt of a filing to reject the position as a bona fide hedge before a filing would become effective.

The process under proposed § 150.11(a) is like the process under proposed § 150.9(a) described above. For example, an exchange with at least one year of experience and expertise administering position limits could elect to adopt rules to recognize commodity derivative positions as enumerated anticipatory bona fide hedges. However, it is different from the process under proposed § 150.9(a) in that the Commission does not propose to permit separate processes for applications based on novel versus non-novel facts and circumstances. The Commission determined to define certain anticipatory positions as enumerated bona fide hedges when it adopted current § 1.3(z)(2). The December 2013 position limits proposal does not change this determination. Consequently, the Commission does not anticipate that applications for recognition of enumerated anticipatory bona fide hedge positions would be based on novel facts and circumstances. For the same reason, proposed § 150.11(a) does not require exchanges to post summaries of any enumerated anticipatory bona fide hedge positions. Other simplifications follow from this difference.

In addition, the application process established by exchanges under proposed § 150.11(a) addresses the information exchanges should elicit in the application process by citing to the information required under § 150.7(d) as proposed in the December 2013 position limits proposal. Moreover, the reporting requirements for applicants under proposed § 150.11(a)(5) differ from the reporting requirements under proposed § 150.9(a)(6). Under proposed § 150.11(a)(5), applicants would be required to file a report with the Commission pursuant to § 150.7 as proposed in the December 2013 position limits proposal and a copy with the exchange. Proposed § 150.9(a)(6), on the other hand, requires the applicant to file reports with the exchange recognizing the position, and additionally requires under proposed § 150.9(c)(2) that the exchange would provide such information to the Commission on a monthly basis.

RFC 30: The Commission requests comments on all aspects of proposed § 150.11, including whether the Commission should consider any other factors in addition to those listed in proposed § 150.11(a)(1)(i), (ii), (iii), (iv) and (v).

Finally, in order to correct some errors, the Commission is proposing technical edits to § 150.7 as it was proposed in the December 2013 position limits proposal. The reference to paragraph (f) in the last sentence in § 150.7(b) as proposed in the December 2013 position limits proposal should instead be a reference to paragraph (h). And the introductory language to § 150.7(h) as proposed in the December 2013 position limits proposal, "Sales or purchases of commodity derivative contracts considered to be bona fide hedging positions under paragraphs 3(iii)(A) or 4(i) of the bona fide hedging position definition in § 150.1 . . ." should instead read as ". . . under paragraphs 3(iii)(A), 4(i), 4(iii) or 4(iv) of the bona fide hedging position definition in § 150.1, or any cross-commodity hedges thereof, ..."

G. Delegation of Authority

The Commission proposes to delegate certain of its authorities under proposed § 150.9, § 150.10 and § 150.11 to the Director of the Commission's Division of Market Oversight, or such other employee or employees as the Director may designate from time to time. Proposed § 150.9(f)(1)(ii), § 150.10(f)(1)(ii) and § 150.11(e)(1)(ii) would delegate the Commission's authority to the Division of Market Oversight ("DMO") to provide instructions regarding the submission of information required to be reported to the Commission by an exchange, and to specify the manner and determine the format, coding structure, and electronic data transmission procedures for submitting such information. Proposed § 150.9(f)(1)(v) and § 150.10(f)(1)(v) would delegate the Commission's review authority under proposed § 150.9(e) and § 150.10(e), respectively, to DMO with respect to summaries of types of recognized non-enumerated bona fide hedges, and types of spread exemptions, that are required to be posted on an exchange's Web site pursuant to proposed § 150.9(a)(7) and § 150.10(a)(7), respectively.

Proposed § 150.9(f)(1)(i), § 150.10(f)(1)(i) and § 150.11(e)(1)(i) would delegate the Commission's authority to DMO to agree to or reject a request by an exchange to consider an application for recognition of an NEBFH or enumerated anticipatory bona fide hedge, or an application for a spread exemption. Proposed § 150.9(f)(1)(iii), § 150.10(f)(1)(iii) and § 150.11(e)(1)(iii) would delegate the Commission's authority to review any application for recognition of an NEBFH or enumerated anticipatory bona fide hedge, or application for a spread exemption, and all records required to be maintained by an exchange in connection with such application. Proposed § 150.9(f)(1)(iii), § 150.10(f)(1)(iii) and § 150.11(e)(1)(iii) would also delegate the Commission's authority to request such records, and to request additional information in connection with such application from the exchange or from the applicant.

Proposed § 150.9(f)(1)(iv) and § 150.10(f)(1)(iv) would delegate the Commission's authority, under proposed § 150.9(d)(2) and § 150.10(d)(2), respectively, to determine that an application for recognition of an NEBFH, or an application for a spread exemption, requires additional analysis or review, and to provide notice to the exchange and the particular applicant that they have 10 days to supplement such application.

The Commission does not propose to delegate its authority under proposed § 150.9(d)(3) or § 150.10(d)(3) to make a final determination as to the exchange's disposition. The Commission believes that if an exchange's disposition raises concerns regarding consistency with the Act or presents novel or complex issues, then the Commission should make the final determination, after taking into consideration any supplemental information provided by the exchange or the applicant.

However, the Commission proposes, in § 150.11(e)(iv), to delegate its authority to determine, under proposed § 150.11(d)(2), that it is not appropriate to recognize a commodity derivative position as an enumerated anticipatory bona fide hedge, or that the disposition by an exchange of an application for such recognition is inconsistent with the filing requirements of proposed § 150.11(a)(2). The delegation would also provide DMO with the authority, after any such determination was made, to grant the applicant a reasonable amount of time to liquidate its commodity derivative position or otherwise come into compliance. This proposed combined delegation takes into account that applications processed by an exchange under proposed § 150.11 would be for positions that should satisfy the requirements for enumerated hedges set forth in the Commission's rules, and should therefore be less likely to raise novel issues of interpretation, or novel issues with respect to consistency with the filing requirements of proposed § 150.11(a)(2), than applications processed under proposed § 150.9 or § 150.10. Such delegation is consistent with the Commission's longstanding delegation to DMO of its authority to review applications for recognition of enumerated bona fide hedges under current § 1.48, as well as consistent with the more streamlined approach to Commission review of enumerated anticipatory bona fide hedge applications in proposed § 150.7.

RFC 31: The Commission invites comments on its proposed delegation of authority in § 150.11(e)(iv), and on all other aspects of its proposed delegation of authority in § 150.9(f), § 150.10(f) and § 150.11(e).

H. Related Changes to § 150.3 and § 150.5—Exemptions and Exchange-Set Speculative Position Limits

In the December 2013 position limits proposal, the Commission proposed to replace both current § 150.3, which establishes exemptions from federal position limits, and current § 150.5(a), which provides guidance to DCMs for exchange-set position limits. The changes to § 150.3 as proposed in the December 2013 position limits proposal would have provided for recognition of enumerated bona fide hedge positions, but would not have exempted any spread positions from federal limits. For any commodity derivative contracts subject to federal position limits, § 150.5(a)(2) as proposed in the December 2013 position limits proposal would have established requirements under which exchanges could recognize exemptions from exchange-set position limits, including hedge exemptions and spread exemptions. Because the Commission is now proposing to permit exchanges to recognize NEBFH positions under proposed § 150.9, to grant spread exemptions from federal limits under proposed § 150.10, and to recognize certain enumerated anticipatory bona fide hedge positions under proposed § 150.11, the Commission proposes corresponding changes to § 150.3[205] and § 150.5(a)(2).

Further, in the December 2013 position limits proposal, the Commission proposed § 150.5(b) to establish requirements and acceptable practices for commodity derivative contracts not subject to federal position limits. The Commission now proposes to revise § 150.5(b)(5) as proposed in the December 2013 position limits proposal to permit exchanges to recognize NEBFHs, as well as spreads, to conform to the instant proposal. The Commission notes that it is no longer proposing to prohibit recognizing spreads during the spot month, although such exemptions would not have been permitted under §§ 150.5(a)(2) or (b)(5) as proposed in the December 2013 position limits proposal. Instead, this current proposal would, in part, maintain the status quo: Exchanges that currently recognize spreads in the spot month under current § 150.5(a) will be able to continue to do so.[206] However, exchanges would be responsible for determining whether recognizing spreads, including spreads in the spot month, would further the policy objectives in section 4a(3) of the Act.

I. Changes to the Definitions of Futures-Equivalent, Intermarket Spread Position, and Intramarket Spread Position

1. Changes to the Definition of "Futures-Equivalent"

In the December 2013 position limits proposal, the Commission proposed to broaden the definition of the term "futures-equivalent" found in current § 150.1(f) of the Commission's

[199] PAAP on February 10, 2014 ("CL–PAAP–59664") at 3.

[200] BG Energy on February 10, 2014 ("CL–BG Energy–59656") at 11.

[201] EDF Trading on March 30, 2015 ("CL–EDF–60398") at 3–4.

[202] CL–EDF–60398 at 5.

[203] As noted above, the December 2013 position limits proposal provided a process, under § 150.7, for recognition as bona fide hedging positions for unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedges under the provisions of paragraphs (3)(iii), (4)(i), (4)(iii), 4(iv) or (5), respectively, of the definition of bona fide hedging position in § 150.1. *See supra* note 196 and accompanying text.

[204] *See* December 2013 position limits proposal, 78 FR at 75746.

[205] As noted above, in the regulatory text below where the CFTC sets out the proposed changes to the CFR, the Commission has designated certain appendices and subsections, such as appendices (A) through (D), § 150.3(a)(ii), § 150.3(a)(iii), and § 150.5(a)(3) through (6), among others, as "[Reserved]." For the avoidance of doubt, the Commission is still reviewing comments received on such reserved provisions and does not seek further comment on such reserved provisions. *See supra* preamble Section II.

[206] Under current § 150.5(a), a DCM may exempt from exchange-set speculative position limits any position normally known to the trade as a spread, straddle, or arbitrage position.

regulations,[207] and to expand upon clarifications included in the current definition relating to adjustments and computation times.[208] The Dodd-Frank Act amendments to CEA section 4a,[209] in part, direct the Commission to apply aggregate federal position limits to physical commodity futures contracts and to swaps contracts that are economically equivalent to such physical commodity futures contracts on which the Commission has established limits. In order to aggregate positions in futures, options and swaps contracts, it is necessary to adjust the position sizes, since such contracts may have varying units of trading (*e.g.*, the amount of a commodity underlying a particular swap contract could be larger than the amount of a commodity underlying a core referenced futures contract). The Commission proposed to adjust position sizes to an equivalent position based on the size of the unit of trading of the core referenced futures contract. The December 2013 position limits proposal would extend the current definition of "futures equivalent" in current § 150.1(f), that is applicable only to an option contract, to both options and swaps.

The Commission now proposes two further clarifications to the definition of the term "futures-equivalent." First, the Commission proposes to address circumstances in which a referenced contract for which futures equivalents must be calculated is itself a futures contract. This may occur, for example, when the referenced contract is a futures contract that is a mini-sized version of the core referenced futures contract (*e.g.*, the mini-corn and the corn futures contracts).[210] The Commission proposes to clarify in proposed § 150.1 that the term "futures-equivalent" includes a futures contract which has been converted to an economically equivalent amount of an open position in a core referenced futures contract. This clarification mirrors the expanded definition of "futures-equivalent" in the December 2013 position limits proposal, as it would pertain to swaps.

Second, the Commission proposes to clarify the definition of the term "futures-equivalent" to provide that, for purposes of calculating futures equivalents, an option contract must also be converted to an economically equivalent amount of an open position in a core referenced futures contract. This clarification addresses situations, for example, where the unit of trading underlying an option contract (that is, the notional quantity underlying an option contract) may differ from the unit of trading underlying a core referenced futures contract.[211]

These clarifications are consistent with the methodology the Commission used to provide its analysis of unique persons over percentages of the proposed position limit levels in the December 2013 position limits proposal.[212]

2. Changes to the Definitions of "Intermarket Spread Position" and "Intramarket Spread Position"

In the December 2013 position limits proposal, the Commission proposed to add to current § 150.1 new definitions of the terms "intermarket spread position" and "intramarket spread position."[213] In connection with its proposal to permit exchanges to process applications for exemptions from federal position limits for certain spread positions, the Commission now proposes to expand the definitions of these terms as proposed in the December 2013 position limits proposal.

The Commission now proposes to define an "intermarket spread position" to mean "a long (short) position in one or more commodity derivative contracts in a particular commodity, or its products or its by-products, at a particular designated contract market, and a short (long) position in one or more commodity derivative contracts in that same, or similar, commodity, or its products or its by-products, away from that particular designated contract market." Similarly, the Commission now proposes to define an "intramarket spread position" to mean "a long position in one or more commodity derivative contracts in a particular commodity, or its products or its by-products, and a short position in one or more commodity derivative contracts in the same, or similar, commodity, or its products or its by-products, on the same designated contract market."

The expanded definitions that the Commission now proposes would take into account that a market participant may take positions in multiple commodity derivative contracts to establish an intermarket spread position or an intramarket spread position. The expanded definitions would also take into account that such spread positions may be established by taking positions in derivative contracts in the same commodity, in similar commodities, or in the products or by-products of the same or similar commodities. By way of example, the expanded definitions would include a short position in a crude oil derivative contract and long positions in a gasoline derivative contract and a diesel fuel derivative contract (collectively, a reverse crack spread).

RFC 32: The Commission invites comment on all aspects of its proposed expanded definitions of "intermarket spread position" and "intramarket spread position."

III. Related Matters

A. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

In December 2013, the Commission proposed, among other things, to establish speculative position limits for 28 contracts, to revise the process recognizing certain market participant positions as bona fide hedges, and to revise exemptions for spreads.[214] The December 2013 position limits proposal invited the public to comment on the Commission's consideration of the costs and benefits of the proposals, identify and assess any costs and benefits not discussed therein, as well as, provide possible alternative proposals.

As discussed in Sections I and II of this release, the Commission now proposes: (a) To delay implementing the requirements of SEF core principle 6(B) and DCM core principle 5(B) with respect to the setting and monitoring of position limits for swaps; (b) to revise the process for recognizing certain positions as non-enumerated bona fide hedges; (c) to revise the process for exempting spreads, as well as expanding the types of spreads that may be exempted from position limits; and (d) to add a recognition process for enumerated anticipatory bona fide hedges. This release, in large part, is a response to comments to the December 2013 position limits proposal. As discussed earlier, commenters urged the Commission to rely on the exchanges' long-standing experience in overseeing position limits, recognizing bona fide hedges, and reviewing spreads.

This supplemental proposal adds new provisions to and otherwise modifies some of the proposed rules identified and discussed in the December 2013 position limits proposal. The baseline against which the Commission considers the benefits and costs of this supplemental proposal is the same as that employed in the December 2013 position limits proposal: The statutory requirements of the CEA and the Commission regulations now in effect—in particular the Commission's Part 150 regulations and rules 1.47 and 1.48.[215]

1. Guidance for DCM Core Principle5(B), SEF Core Principle 6(B), and Part 150

As explained in Section IIA above, the Commission received comments in response to the December 2013 position limits proposal that most exchanges do not have the ability to effectively monitor all swap positions held by a market participant across exchanges. The Commission now proposes to amend its guidance regarding DCM core principle 5(B) and SEF core principle 6(B), and add Appendix E to Part 150. The proposed amendments would have the effect of delaying the implementation of exchanges' obligation to adopt swap position limits until there is sufficient access to swap position information regarding market participants' swap positions.

ii. Baseline

The baselines for these changes are DCM Core Principle 5, SEF Core Principle 6, and Part 150.

iii. Benefits and Costs

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its discretionary actions with respect to rules and orders. Though guidance, the Commission is also considering the costs and benefits of changes to the proposed amendments to the appendices to parts 37, 38, and 150 of the Commission's regulations. As discussed in Section IIA, the Commission appreciates that the proposed amendments to guidance will delay implementation of exchanges' obligation to monitor and enforce federal position limits for swaps. As a result, this delay will likely confer benefits and will likely reduce costs. For instance, exchanges and market participants will benefit from not investing in technology and personnel to assess position limits. Instead, both exchanges and market participants will be able to allocate such resources to other functions, like surveillance and product innovation, within the businesses. In terms of costs, the Commission believes that there might be a cost to the market associated with this delay because excessive positions cannot be monitored in real-time by exchanges.[216]

iv. Request for Comment

RFC 33: The Commission requests comment on its consideration of the benefits and costs associated with the proposed amendments to guidance. Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data, or other information of support for such assessments. Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.

2. Section 150.1—Definitions

a. Bona Fide Hedging Position

i. Summary of Changes

As discussed earlier, the Commission proposed in December 2013 a new definition of bona fide hedging position in proposed § 150.1, to replace the current definition in § 1.3(z). The December 2013 position limits proposal proposed a general definition of bona fide hedging position that contained two requirements for a bona fide hedging position: An incidental test and an orderly trading requirement.[217] The Commission is now proposing the following changes to proposed § 150.1. First, the Commission is proposing to strike the opening paragraph to the definition of bona fide hedging position in proposed § 150.1. By removing the opening paragraph, the Commission has eliminated the incidental test and orderly trading requirement from the general definition of bona fide hedging position. Second, the Commission is proposing to add sub-part 150.1(2)(i)(D)(2) to the definition of bona fide hedging position. The proposed addition reiterates the Commission's authority to permit exchanges to recognize bona fide positions and those positions are subject to CEA section 4a(c) standards as well as Commission review.

ii. Baseline

The baseline for this change is the definition for "bona fide hedging transactions and positions for excluded commodities," set forth in current § 1.3(z).[218]

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[207] 17 CFR 150.1(f) currently defines "futures-equivalent" only for an option contract, adjusting the open position in options by the previous day's risk factor, as calculated at the close of trading by the exchange.

[208] The December 2013 position limits proposal defines "futures-equivalent" for: (1) An option contact, adjusting the position size by an economically reasonable and analytically supported risk factor, computed as of the previous day's close or the current day's close or contemporaneously during the trading day; and (2) a swap, converting the position size to an economically equivalent amount of an open position in a core referenced futures contract. *See* December 2013 position limits proposal, 78 FR at 75698–9.

[209] Amendments to CEA section 4a(1) authorize the Commission to extend position limits beyond futures and option contracts to swaps traded on an exchange and swaps not traded on an exchange that perform or affect a significant price discovery function with respect to regulated entities. 7 U.S.C. 6a(a)(1). In addition, under new CEA sections 4a(a)(2) and 4a(a)(5), speculative position limits apply to agricultural and exempt commodity swaps that are "economically equivalent" to DCM futures and option contracts. 7 U.S.C. 6a(a)(2) and (5).

[210] Under current § 150.2, for purposes of compliance with federal position limits, positions in regular sized and mini-sized contracts are aggregated. The Commission's practice of aggregating futures contracts, when a DCM lists for trading two or more futures contracts with substantially identical terms, is to scale down a position in the mini-sized contract, by multiplying the position in the mini-sized contract by the ratio of the unit of trading in the mini-sized contract to that of the regular sized contract. *See* paragraph (b)(2)(D) of app. C to part 38 of the Commission's regulations for guidance regarding the contract size or trading unit for a futures or futures option contract.

[211] For an example of a futures-equivalent conversion of a swaption, *see* example 6, WTI swaptions, app. A to part 20 of the Commission's regulations.

[212] *See* Table 11 in the December 2013 position limits proposal, 78 FR at 75731–3.

[213] In the December 2013 position limits proposal, the Commission proposed to define an "intermarket spread position" as "a long position in a commodity derivative contract in a particular commodity at a particular designated contract market or swap execution facility and a short position in another commodity derivative contract in that same commodity away from that particular designated contract market or swap execution facility." The Commission also proposed to define an "intramarket spread position" as "a long position in a commodity derivative contract in a particular commodity and a short position in another commodity contract in the same commodity on the same designated contract market or swap execution facility." *See* December 2013 position limits proposal, 78 FR at 75699–700.

[214] 78 FR 75680–842.

[215] See chart listing current regulations, December 2013 position limits proposal at 75712.

[216] As stated in Section IIA, the Commission foresees various possibilities in remediating this current inability to monitor position limits in real-time in the future.

[217] *See* December 2013 Position Limits Proposal at 75706–7.

[218] 17 CFR 1.3(z).

iii. Benefits and Costs

In the December 2013 position limits proposal, the Commission discussed the benefits and costs associated with the proposed amendments to the definition of bona fide hedging position.[219] In this proposal, the Commission proposes changes that were not discussed in the December 2013 position limits proposal. The changes to the definition of bona fide hedging position discussed herein provide substantive benefits and costs.

In terms of benefits, the Commission has made the definition of bona fide hedging position conform more closely to the CEA's statutory language by eliminating the incidental test. As explained in Section IIB3(ii), the Commission considers the incidental test superfluous because the idea of commercial cash market activities is covered in the economically appropriate test. Therefore, by discarding the incidental test, market participants benefit from greater regulatory certainty and less redundancy.

By deleting the orderly trading requirement from the definition of bona fide hedging position, the Commission seeks to eliminate a source of potential confusion for exchanges and market participants. The Commission sets forth a definition that is consistent with the CEA. More directly, CEA 4c(a)(5) separately states that intentional or reckless disregard for orderly trading execution is unlawful. Thus, market participants benefit from having a definition that lessens or eliminates the confusion between having two different standards, that is, an orderly-trading requirement and an intentional or reckless disregard standard.

The addition of proposed sub-part 150.1(2)(i)(D)(2) to the definition of bona fide hedging position represents a non-substantive modification. The actual benefits and costs associated with this proposed sub-part arise from recognitions under proposed § 150.9(a).

iv. Request for Comment

RFC 34: The Commission requests comment on its consideration of the benefits and costs associated with the proposed revisions to the definition of "bona fide hedging position." Are there additional costs and benefits that the Commission should consider? Has the Commission misidentified any costs or benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data and other information of support for such assessments.

[219] December 2013 position limits proposal at 75761–64.

RFC 35: Futures contracts function to hedge price risk because they lock-in prices and quantities at designated points in time. Futures contracts, thereby, create price certainty for market participants.[220] Thus, the Commission believes that bona fide hedging positions need to ultimately result in hedging against some form of price risk as discussed in Section IIB3(i), above. Is the Commission reasonable in concluding that by eliminating the incidental test market participants will benefit from regulatory certainty and reduced compliance costs because they need only focus on price risk or other risks that can be transformed into price risk?

RFC 36: It is challenging to interpret the orderly-trading requirement in the context of the over-the-counter swaps market and permitted off-exchange transactions as discussed in Section IIB3(ii), above. Given this challenge, is it reasonable for the Commission to conclude that by eliminating the orderly-trading requirement, market participants benefit from avoiding the compliances costs of an unclear requirement?

RFC 37: The Commission recognizes that there exist alternatives to the proposed definition of "bona fide hedging position." These alternatives include: (i) Maintaining the status quo in current § 1.3(z), or (ii) pursuing the changes in the December 2013 position limits proposal.[221] Are there additional alternatives that the Commission has not identified? If so, please describe these additional alternatives and provide a discussion of the associated qualitative and quantitative costs and benefits.

b. Futures Equivalent

i. Summary of Changes

In the December 2013 position limits proposal, the Commission proposed to expand the definition of "futures-equivalent" from the narrow scope of an option contract. The term "futures-equivalent," as proposed in the December 2013 position limits proposal, would include certain options contracts and swaps, converted to economically equivalent amounts. The Commission now proposes two further revisions to the definition of "futures-equivalent."

[220] Futures contracts and futures equivalents are tools by which market participants can lock-in price risk. They are limited in that regard. Other derivatives contracts, however, enable market participants to hedge other types of risk, beyond price risks, because contract terms and conditions can be tailored to the specific risks.

[221] The costs and benefits of these alternatives were discussed in the December 2013 position limits proposal at 75761–64.

First, the Commission proposes to clarify that the term "futures-equivalent" includes a futures contract which has been converted to an economically equivalent amount of an open position in a core referenced futures contract. Second, the Commission proposes to clarify that, for purposes of calculating futures equivalents, an option contract must also be converted into an economically-equivalent amount of an open position in a core referenced futures contract.

ii. Baseline

The baseline for this change to the definition of "futures equivalent" is the current § 150.1(f) definition of "futures-equivalent".

iii. Benefits and Costs

As explained in the December 2013 position limits proposal, the Commission's view is that non-substantive changes to the definitional provisions of § 150.1 do not have any benefit or cost implications. With the exception of the term "bona fide hedging position," any benefits or costs attributable to substantive definitional changes and additions to § 150.1 as proposed in the December 2013 position limits proposal were considered in the discussion of the rule in which such new or amended term was proposed to be operational.[222]

The Commission also explained in 2013 that the definition of "futures-equivalent" in current § 150.1(f) was too narrow in light of the Dodd-Frank Act amendments to CEA section 4a. To conform to the statutory changes and to fit within the broader position limits regime, the Commission proposed a more descriptive definition of "futures-equivalent" in the December 2013 position limits proposal. Upon further review, the Commission is now proposing to add more explanatory text to the "futures-equivalent" definition so that it comports better with the statutory changes. The proposed revisions reflect more clearly the Commission's intent as discussed in the December 2013 position limits proposal. Thus, the Commission believes that there are no cost or benefit implications to these further clarifications.

iv. Request for Comment

RFC 38: Are there any benefits or costs associated with the proposed revisions to the definition of "futures equivalent"? If yes, commenters are encouraged to include both quantitative and qualitative assessments of these

[222] December 2013 position limits proposal at 75761.

costs and benefits, as well as data or other information to support such assessments.

RFC 39: The Commission recognizes that one possible alternative to the clarifications made to the "futures-equivalent" definition is to retain the definition of "futures-equivalent" as proposed in the December 2013 position limits proposal. Additional alternatives may exist as well. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.

c. Intermarket Spread Position and Intramarket Spread Position

i. Summary of Changes

Current part 150 does not contain definitions for the terms "intermarket spread position" or "intramarket spread position." In the December 2013 position limits proposal, the Commission proposed definitions for both terms. The Commission now proposes to expand the scope of these two definitions. The expanded definitions would now include positions in multiple commodity derivative contracts so that market participants can establish an intermarket spread position or an intramarket spread position that would be taken into account under the proposed position limits regime and exemption processes. The expanded definitions also would cover spread positions established by taking positions in derivative contracts in the same commodity, in similar commodities, or in the products or by-products of the same or similar commodities.

ii. Baseline

Current § 150.1 does not include definitions for the terms "intermarket spread position" and "intramarket spread position." Therefore, the baseline is a market where "intermarket" and "intramarket" spread positions are not explicitly exempted from federal position limits.

iii. Benefits and Costs

The proposed changes to "intermarket spread position" and "intermarket spread positions" broaden the scope of the two terms in comparison to the definitions proposed in the December 2013 position limits proposal. In the Commission's view, the proposed changes are only operative in proposed §§ 150.3, 150.5 and 150.10, which address exemptions from position limits for certain spread positions. The two definitions operate in conjunction with proposed § 150.10, which sets forth a proposed process for exchanges to administer spread exemptions, because the proposed definitions and proposed § 150.10, together, will enable market participants to obtain relief from position limits for these types of spreads, among others.

iv. Request for Comment

RFC 40: Are there benefits or costs associated with the definitions of "intermarket spread position" and "intramarket spread position"? If yes, commenters are specifically encouraged to include both quantitative and qualitative assessments of these costs and benefits, as well as data or other information to support such assessments.

RFC 41: The Commission recognizes that one possible alternative to the proposed definitions of "intermarket spread position" and "intramarket spread position" is to retain the definitions proposed in the December 2013 position limits proposal. Additional alternatives may exist as well. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such alternative provided.

3. Section 150.3—Exemptions

a. Rule Summary

CEA Section 4a(a)(7) authorizes the Commission to exempt, conditionally or unconditionally, any person, swap, futures contract, or option—as well as any class of the same—from the position limits requirements that the Commission establishes. In the December 2013 position limits proposal, the Commission proposed revisions to current § 150.3(a)[223] The 2013 revisions would have provided for Commission recognition of enumerated bona fide hedge positions, and provided guidance about seeking relief from the Commission for non-enumerated positions, but would not have exempted any spread positions from federal limits. In this supplemental proposal, the Commission is proposing in § 150.3(a)(1) that commodity derivative positions recognized by exchanges as NEBFHs under proposed § 150.9 or enumerated anticipatory bona fide hedge positions under proposed § 150.11, and certain exempt spread positions under § 150.10, may exceed federal position limits established under § 150.2 as proposed in the December 2013 position limits proposal. Proposed § 150.3(a)(1) should not be read alone but in conjunction with proposed §§ 150.9, 150.10, and 150.11.

[223] See 17 CFR 150.3 (list of exemptions that may exceed position limits set forth in § 150.2).

As discussed above in more detail, the Commission has proposed to delay the requirement that exchanges set position limits on swaps because, among other reasons, of the impracticability of exchanges being able to enforce swap position limits. As a result, the Commission believes that it would be unlikely that exchanges would establish exchange-set limits and, thus, market participants would not have a need for exemptions to exchange-set limits for swaps.

b. Baseline

The baseline is the same as it was in the December 2013 position limits proposal: Current § 150.3 of the Commission's regulations.

c. Benefits and Costs

The costs and benefits associated with the changes to proposed § 150.3 will be considered in the sections that discuss proposed §§ 150.9, 150.10, and 150.11.

4. Section 150.5—Exemptions From Exchange-Set Limits

a. Rule Summary

In the December 2013 position limits proposal, the Commission proposed to replace current § 150.5(a), which provides guidance to exchanges for exchange-set limits. For any commodity derivative contracts subject to federal position limits, § 150.5(a)(2) as proposed in the December 2013 position limits proposal, would have established requirements under which exchanges could recognize exemptions from exchange-set position limits, including hedge exemptions and spread exemptions. Because the Commission is now proposing to permit exchanges to recognize NEBFH positions under proposed § 150.9, to grant spread exemptions from federal limits under proposed § 150.10, and to recognize certain enumerated anticipatory bona fide hedge positions under proposed § 150.11, the Commission proposes related changes to § 150.5(a)(2). For commodity derivative contracts not subject to federal position limits, the Commission now proposes to revise § 150.5(b)(5), as proposed in the December 2013 position limits proposal, to permit exchanges to recognize NEBFHs, as well as spreads. The Commission notes that it is no longer proposing to prohibit recognizing spreads during the spot month, although such exemptions would not have been permitted under §§ 150.5(a)(2) or (b)(5), as proposed in the December 2013 position limits proposal.

b. Baseline

The baseline is the same as it was in the December 2013 position limits proposal: The current reasonable discretion afforded to exchanges to exempt market participant from their exchange-set position limits.

c. Benefits and Costs

The costs and benefits associated with the changes to proposed § 150.5 will be discussed in the sections that discuss proposed §§ 150.9, 150.10, and 150.11.

5. Section 150.9—Exchange Recognition of NEBFHs

In response to comments to the December 2013 position limits proposal, the Commission now proposes to permit exchanges to elect to administer a process to recognize certain commodity derivative positions as NEBFHs under proposed § 150.9. Subject to certain conditions set forth in proposed § 150.3(a)(1), positions recognized as NEBFHs by exchanges pursuant to the proposed § 150.9 application process would be exempt from federal position limits. Proposed § 150.9 works in concert with the following three proposed rules:

- Proposed § 150.3(a)(1)(i), with the effect that recognized NEBFH positions may exceed federal position limits;
- proposed § 150.5(a)(2), with the effect that recognized NEBFH positions may exceed exchange-set position limits for contracts subject to federal position limits; and
- proposed § 150.5(b)(5), with the effect that recognized NEBFH positions may exceed exchange-set position limits for contracts not subject to federal position limits.

a. Rule Summary

The proposed NEBFH process has six sub-parts: (a) Through (f). The first three sub-parts—§ 150.9(a), (b), and (c)—require exchanges that elect to have an NEBFH process and market participants that seek relief under the NEBFH process to carry out certain duties and obligations. The latter three sub-parts—§ 150.9(d), (e), and (f)—delineate the Commission's role and obligations in reviewing NEBFH recognition requests.

i. § 150.9(a)—Exchange-Administered NEBFH Application Process

In sub-part (a) of proposed § 150.9, the Commission identifies the process and information required for an exchange to assess whether it should grant a market participant's request that its derivative position(s) be recognized as an NEBFH. As an initial step under proposed § 150.9(a)(1), exchanges that voluntarily elect to process NEBFH applications are required to notify the Commission of their intention to do so by filing new rules or rule amendments with the Commission under part 40 of the Commission's regulations. In proposed § 150.9(a)(2), the Commission offers guidelines for exchanges to establish adaptable application processes by permitting different processes for "novel" versus "substantially similar" applications for NEBFH recognitions. Proposed § 150.9(a)(3) describes in general terms the type of information that exchanges should collect from applicants. Proposed § 150.9(a)(4) obliges applicants and exchanges to act timely in their submissions and notifications, respectively, and that exchanges retain revocation authority. Proposed § 150.9(a)(5) provides that the position will be deemed recognized as an NEBFH when an exchange recognizes it. Proposed § 150.9(a)(6) instructs exchanges to have rules requiring applicants that receive NEBFH recognitions to report those positions and offsetting cash positions. Proposed § 150.9(a)(7) requires an exchange to publish on their Web site descriptions of unique types of derivative positions recognized as NEBFHs based on novel facts and circumstances.

ii. § 150.9(b)—NEBFH Recordkeeping Requirements

Under proposed § 150.9(b), exchanges would be required to maintain complete books and records of all activities relating to the processing and disposition of NEBFH applications. As explained in proposed § 150.9(b)(1) through (b)(2), the Commission instructs exchanges to retain applicant-submission materials, exchange notes, and determination documents. Moreover, consistent with current § 1.31, the Commission expects that these records would be readily accessible until the termination, maturity, or expiration date of the bona fide hedge recognition and during the first two years of the subsequent, five-year retention period.

iii. § 150.9(c)—NEBFH Reporting Requirements

The Commission proposes weekly and monthly reporting obligations by exchanges for positions recognized as NEBFHs. Both reports also will be subject to the Commission's proposed formatting requirements as explained in proposed § 150.9(c)(3). In addition to submitting reports to the Commission, proposed § 150.9(c)(1)(ii) provides that exchanges post NEBFH summaries on their Web sites.

iv. § 150.9(d) and (e)—Commission Review

The Commission proposes that under certain circumstances market participants and exchanges must respond to Commission requests.

b. Baseline

For the NEBFH process, the baseline for NEBFH subject to federal position limits is current § 1.47. For NEBFH exemptions to exchange-set position limits, the baseline is the current exchange regulations and practices as well as the Commission's guidance to exchanges in current § 150.5(d), which provides, generally, that an exchange may recognize bona fide hedging positions in accordance with the general definition of bona fide hedging position in current § 1.3(z)(1).

c. Benefits

The Commission recognizes that there are positions that reduce price risks incidental to commercial operations. For that reason, among others, such positions that are considered to be bona fide hedging positions under CEA Section 4a(c) are not subject to position limits. Market participants have several options regarding bona fide hedging positions. A market participant could conclude that a commodity derivative position comports with the definition of bona fide hedging position under § 150.1, as proposed in the December 2013 position limits proposal. Also as discussed in the December 2013 position limits proposal, market participants may request a staff interpretive letter under § 140.99 or seek exemptive relief under CEA section 4(a)(7). The Commission proposes in this supplemental proposal another option for participants to hold commodity derivative positions that exceed speculative limits: They may file an application with an exchange for recognition of an NEBFH under proposed § 150.9.

While all of the aforementioned options are viable, proposed § 150.9 in this supplemental proposal outlines a framework similar to existing exchange practices that recognize non-enumerated bona fide hedge exemptions to exchange-set limits. These practices are familiar to many market participants. As a consequence, there are sizeable benefits to the proposed § 150.9 process that are not easily quantifiable. The benefits are heavily dependent on the individual characteristics of the applicant, its use of commodity derivatives, its commercial needs, and market idiosyncrasies. Because of these varying characteristics, a qualitative

discussion is more appropriate, and therefore, discussed herein.

Under proposed § 150.9, the Commission will be able to leverage exchanges' existing practices and expertise in administering exemptions. Thus, proposed § 150.9 should reduce the need to invent new procedures to recognize NEBFHs. For example, many exchanges already evaluate hedging strategies in connection with setting and enforcing exchange-set position limits; thus, many exchanges should be able readily to identify bona fide hedges.[224] Exchanges also may be familiar with the applicant-market participant's needs and practices so there would be an advanced understanding for why certain trading strategies are pursued. Furthermore, by having the availability of the exchange's analysis and a macro-view of the markets, which includes the Commission's access to regulatory swap data, the Commission would likely be better informed should it become necessary for the Commission to review a determination under proposed § 150.9(d), and determine whether a commodity derivative position should be recognized as an NEBFH. This may benefit market participants, in the form of administrative efficiency, because the Commission would be able to initiate its review based on materials already submitted by the applicant under proposed § 150.9, as well as the analysis by the exchanges.

For applicants seeking recognition of an NEBFH, proposed § 150.9 should reduce duplicative efforts because applicants would be saved the expense of applying to both an exchange for relief from exchange-set position limits and to the Commission for relief from federal limits. Because many exchanges already possess similar application processes and market participants are probably somewhat accustomed to the exchanges' existing application processes, administrative certainty should be increased in the form of reduced application-production time by market participants and reduced response time by exchanges.

Another probable benefit of proposed § 150.9 is the creation and retention of records that may be used as reference material in the future for similar bona fide hedge recognition requests either by relevant exchanges or the Commission. Over time, retained records will help the Commission to ensure that an exchange's determinations are internally consistent and consistent with the Act and the Commission's regulations thereunder. There is also the additional benefit that records would be accessible if they are needed for a potential enforcement action.

An exchange's submission of reports under proposed § 150.9(c) would provide the Commission with notice that an applicant has taken a commodity derivative position that the exchange has recognized as an NEBFH, and also would show the applicant's offsetting positions in the cash markets. This is beneficial to the public because such reports would support the Commission's surveillance program. Reports would facilitate the tracking of NEBFHs recognized by the exchanges, and would assist the Commission in ensuring that a market participant's activities conform to the exchange's terms of recognition and to the Act. The web-posting of summaries also would benefit market participants in general by providing transparency and open access to the NEBFH recognition process. In addition, reporting and posting gives market participants seeking recognition of an NEBFH an understanding of the types of commodity derivative positions an exchange may recognize as an NEBFH, thereby providing greater administrative and legal certainty.

d. Costs

To a large extent, exchanges and market participants have incurred already many of the compliance costs associated with proposed § 150.9 because most, if not all, exchanges currently administer similar processes for recognizing NEBFHs. Nevertheless, the Commission has detailed a number of the readily-quantifiable costs for exchanges and market participants associated with processing NEBFH recognitions under proposed § 150.9 in Tables A1 to G1, below. The Commission estimates that six entities would elect to process NEBFH applications and file new rules or rule amendments pursuant to part 40 of the Commission's regulations. Even though the number of applicants and associated applications will likely vary based on the referenced contract, the Commission forecasts the number of applicants based on the Commission's past experience. The costs are broken down in the tables below. In short, most of the quantified costs are related to the time, effort, and materials that will be spent on producing, processing, reviewing, granting, and retaining applications for NEBFH recognitions.

There are, however, other costs that are not easily quantified. These are qualitative costs that are related to the specific attributes and needs of individual market participants that are hedging. Given that qualitative costs are highly-specific, the Commission believes that market participants would choose to incur § 150.9-related costs only if doing so is less costly than complying with position limits and not executing the desired hedge position. Thus, by providing market participants with an option to apply for relief from speculative position limits under proposed § 150.9, the Commission believes it is offering market participants a way to ease overall compliance costs because it is reasonable to assume that entities would seek recognition of NEBFHs only if the outcome of doing so justifies the costs. The Commission also believes that market participants would consider how the costs of applying for recognition of an NEBFH under proposed § 150.9 would compare to the costs of requesting a staff interpretive letter under § 140.99, or seeking exemptive relief under CEA section 4a(a)(7). Likewise, exchanges must consider qualitative costs in their decision to create an NEBFH application process or revise an existing program.

The Commission acknowledges that there may also be other costs to market participants if the Commission disagrees with an exchange's decision to recognize an NEBFH under proposed § 150.9 or under an independent Commission request or review under proposed § 150.9(d) or (e). These costs would include time and effort spent by market participants associated with a Commission review. In addition, market participants would lose amounts that the Commission can neither predict nor quantify if it became necessary to unwind trades or reduce positions were the Commission to conclude that an exchange's disposition of an NEBFH application is inconsistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.

The Commission recognizes that costs may result if the Commission disagrees with an exchange's disposition of an NEBFH application under proposed § 150.9, the Commission, however, believes such situations would be limited based on the history of exchanges approving similar applications for exemptions to exchange-set limits. Exchanges have strong incentives to protect market participants from the harms that position limits are intended to prevent, such as manipulation, corners, and squeezes. In addition, an exchange that recognizes a market participant's NEBFH that enables the participant to exceed position limits must then deter

[224] *See* note 108 (for text of 17 CFR 1.47 and discussion). *For a discussion on the history of exemptions, see December 2013 position limits proposal at 75703–06.*

the same market participant from trading in a manner that causes adverse price impacts on the market. For example, this might mean that as part of recognizing a NEBFH, the exchange directs the market participant to execute no more than ten contracts per day over a five-day period rather than executing 50 contracts in one trading day. This approach may be necessary for the exchange to ensure sufficient market liquidity because the exchange believes that the particular contract market cannot absorb the execution of 50 contracts by one market participant in one day without an inordinately large price impact. If the exchange fails to deter (or instruct), other market participants will likely face greater costs in the form of transactions fees and other trading-implementation costs, which includes foregone trading opportunities because market prices moved against the trader and prevented the trader from executing at the desired prices. In other words, the exchange's mismanagement of the market participant that took advantage of the NEBFH would cause the other market participants' costs to implement trades to increase. Such an outcome would likely discredit the exchange and the proposed § 150.9 program, as well as reduce the exchange's overall trading commissions. The Commission believes that the exchanges have little incentive to engage in such behavior because of reputational risk and economic incentives.

i. Costs To Create or Amend Exchange Rules for NEBFH Application Programs

The Commission believes that exchanges electing to process NEBFH applications under proposed § 150.9(a) are likely to already administer similar processes and would need to file with the Commission amendments to existing exchange rules rather than create new rules. The exchanges would only have to file amendments once. As discussed in the Paperwork Reduction Act discussion below, the Commission forecasts an average annual filing cost of $610 per exchange that files new rules or modifications per proposed process that an exchange adopts.

TABLE A1

Proposed regulation/file or amend rules	Total average labor hours	Total average labor costs per hour	Total average annual cost per exchange
§ 150.9(a)(1)	5	$122	$610 [5 × $122]

ii. Costs To Review Applications Under Proposed Processes

An exchange that elects to process applications also will incur costs related to the review and disposition of such applications pursuant to proposed § 150.9(a). For example, exchanges will need to expend resources on reviewing and analyzing the facts and circumstances of each application to determine whether the application meets the standards established by the Commission. Exchanges also will need to expend effort in notifying applicants of the exchanges' disposition of recognition or exemption requests. The Commission believes that exchanges electing to process NEBFH applications under proposed § 150.9(a) are likely to have processes for the review and disposition of such applications currently in place. As such, an e3.xchange's cost to comply with the proposed rules are likely to be incrementally less costly than having to create process from inception because the exchange would already have staff, policies, and procedures established to accomplish its duties under the proposed rules. Thus, the Commission has forecast that the average annual cost for each exchange to process applications for NEBFH recognitions is $122,850.

TABLE B1

Proposed regulation/review applications	Total average applications processed per exchange	Total average labor hours per application	Average total hours for total applications reviewed per exchange	Total average labor costs per hour	Total average annual cost per exchange
§ 150.9(a)(2)	185	5	925 [185 × 5]	$122	$112,850 [$122 × 925]

iii. Costs To Post Summaries for NEBFH Recognitions

Exchanges that elect to process the applications under proposed § 150.9 will incur costs to publish on their Web sites summaries of the unique types of NEBFH positions. The Commission has estimated an average annual cost of $18,300 for the web-posting of NEBFH summaries.

TABLE C1

Proposed regulation/web-posting	Total average summaries per exchange	Total average labor hours per application	Average total hours for total applications reviewed per exchange	Total average labor costs per hour	Total average annual cost per exchange
§ 150.9(a)	30	5	150 [30 × 5]	$122	18,300 [150 × $122]

iv. Costs To Market Participants Who Would Seek NEBFH Relief From Position Limits

Under proposed § 150.9(a)(3), market participants must submit applications that provide sufficient information to allow the exchanges to determine, and the Commission to verify, whether it is appropriate to recognize such position as an NEBFH. These applications would be updated annually. Proposed § 150.9(a)(6) would require applicants to file a report with the exchanges when an applicant owns, holds, or controls a derivative position that has been recognized as an NEBFH. The Commission estimates that each market participant seeking relief from position limits under proposed § 150.9 would likely incur approximately $2,440 annually in application costs.[225]

TABLE D1

Proposed regulation/market participants seeking relief from position limits	Number of market participants	Total average applications per market participant	Total average labor hours per application	Average total hours for each application filed per exchange	Total average labor costs per hour	Total average annual cost per market participant
§ 150.9(a)(3), (6)	222	5	4	20 [4 × 5]	$122	$2,440 [20 × $122]

v. Costs for NEBFH Recordkeeping

The Commission believes that exchanges that currently process applications for spread exemptions and bona fide hedging positions maintain records of such applications as required pursuant to other Commission regulations, including § 1.31. The Commission, however, also believes that the proposed rules may confer additional recordkeeping obligations on exchanges that elect to process applications for NEBFHs. The Commission estimates that each exchange electing to administer the proposed NEBFH process would likely incur approximately $3,660 annually to retain records for each proposed process.

TABLE E1

Proposed regulation/recordkeeping	Number of DCMs	Total average labor hours for recordkeeping	Total average labor costs per hour	Total average annual recordkeeping cost per exchange
§ 150.9(b)	6	30	$122	$3,660 [30 × $122]

vi. Costs for Weekly and Monthly NEBFH Reporting to the Commission

The Commission anticipates that exchanges that elect to process NEBFH applications will be required to file two types of reports. The Commission is aware that five exchanges currently submit reports each month, on a voluntary basis, which provide information regarding exchange-processed exemptions of all types. The Commission believes that the content of such reports is similar to the information required of the reports in proposed rule § 150.9(c), but the frequency of such required reports would increase under the proposed rule. The Commission estimates an average cost of approximately $19,032 per exchange for weekly reports under proposed § 150.9(c).

[225] Assuming that exchanges administer exemptions to exchange-set limits, these costs are incrementally higher.

TABLE F1

Proposed regulation/weekly reporting	Estimated number of DCMs	Estimated number of hours per response	Average reports annually by each exchange	Total average labor costs per hour	Total average annual reporting cost per exchange
§ 150.9(c)	6	3	52	$122	$19,032 [3 × 52 × $122]

For the monthly report, the Commission anticipates a minor cost for exchanges because the proposed rules would require exchanges essentially to forward to the Commission notices received from applicants who own, hold, or control the positions that have been recognized or exempted. The Commission estimates an average cost of approximately $2,928 per exchange for monthly reports under proposed § 150.9(c).

TABLE G1

Proposed regulation/monthly reporting	Estimated number of DCMs	Estimated number of hours per response	Average reports annually by each exchange	Total average labor costs per hour	Total average annual reporting average cost per exchange
§ 150.9(c)	6	2	12	$122	$2,928 [2 × 12 × $122]

vii. Costs Related to Subsequent Monitoring

Exchanges would have additional surveillance costs and duties with respect to NEBFH that the Commission believes would be integrated with their existing self-regulatory organization surveillance activities as an exchange.

e. Request for Comment

RFC 42. The Commission requests comment on its considerations of the benefits of proposed § 150.9. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

RFC 43. The Commission requests comment on its considerations of the costs of proposed § 150.9. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

RFC 44. The Commission requests comment on whether a Commission administered process promotes more consistent and efficient decision-making. Commenters are encouraged to include both quantitative and qualitative assessments, as well as data or other information to support such assessments.

RFC 45. The Commission recognizes there exist alternatives to proposed § 150.9. These include such alternatives as: (1) Not permitting exchanges to administer any process to recognize NEBFHs; or (2) maintaining the status quo. The Commission requests comment on whether an alternative to what is proposed would result in a superior cost-benefit profile, with support for any such position provided.

RFC 46. The Commission requests comment on whether the options for recognizing NEBFHs outlined in the December 2013 position limits proposal are superior from a cost-benefit perspective to proposed § 150.9.[226] If yes, please explain why.

6. Section 150.10—Spread Exemptions

As discussed in Section IID above, the Commission has the authority under CEA section 4a(a)(1) to exempt certain spreads from position limits. Before the Dodd-Frank Act, the Commission exempted certain spreads from position limits under current § 150.3. In the December 2013 position limits proposal, the Commission proposed changing current § 150.3 to eliminate exemptions for spreads outside the spot month, and placed limitations on inter- and intramarket spreads.[227] After reviewing comments, the Commission has refined its spread exemption proposal to permit spread exemptions from federal position limits, and, combined with changes to the definitions of "intermarket spread position" and "intramarket spread position," authorized such spreads to exceed position limits during spot and non-spot months.

a. Rule Summary

The Commission proposes to authorize exchanges to exempt spread positions from federal position limits. The proposed § 150.10 process lists four types of spreads as defined and proposed in § 150.1 of the December 2013 positions limits proposal and modified in this supplemental proposal. Proposed § 150.10 works in concert with the following three proposed rules:

- Proposed § 150.3(a)(1)(iv), with the effect that exempt spread positions may exceed federal position limits;
- proposed § 150.5(a)(2), with the effect that exempt spread positions may exceed exchange-set position limits for contracts subject to federal position limits; and
- proposed § 150.5(b)(5)(ii)(C), with the effect that exempt spread positions may exceed exchange-set position limits for contracts not subject to federal position limits.

[226] 78 FR at 75711–73.

[227] For cost-benefit discussion on spread exemptions, see December 2013 position limits proposal at 75774–76.

The proposed § 150.10 process is analogous to the application process for recognition of NEBFHs under proposed § 150.9. The proposed spread exemption process has six sub-parts: (a) Through (f). The first three sub-parts—§ 150.10(a), (b), and (c)—require exchanges that elect to have a spread exemption process, and market participants that seek relief under the spread exemption process, to carry out certain duties and obligations. The latter four sub-parts—§ 150.10(d), (e), and (f)—delineate the Commission's role and obligations in reviewing requests for spread exemptions.

i. Section 150.10(a)—Exchange-Administered Spread Exemption

In sub-part (a) of proposed § 150.10, the Commission identifies the process and information required for an exchange to grant a market participant's request that its derivative position(s) be recognized as an exempt spread position. As an initial step under proposed § 150.10(a)(1), exchanges that voluntarily elect to process spread exemption applications are required to notify the Commission of their intention to do so by filing new rules or rule amendments with the Commission under part 40 of the Commission's regulations. In proposed § 150.10(a)(2), the Commission identifies four types of spreads that an exchange may approve. Proposed § 150.10(a)(3) describes in general terms the type of information that exchanges should collect from applicants. Proposed § 150.10(a)(4) obliges applicants and exchanges to act timely in their submissions and notifications, respectively, and require exchanges to retain revocation authority. Proposed § 150.10(a)(6) instructs exchanges to have rules requiring applicants who receive spread exemptions to report those positions, including each component of the spread. Proposed § 150.10(a)(7) requires exchanges to publish on its Web site a summary describing the type of spread position and explaining why it was exempted.

ii. Section 150.10(b)—Spread Exemption Recordkeeping Requirements

Exchanges must maintain complete books and records of all activities relating to the processing and disposition of spread exemption applications under proposed § 150.10(b). This is similar to the record retention obligations of exchanges for positions recognized as NEBFHs.

iii. Section 150.10(c)—Spread Exemption Reporting Requirements

Exchanges would have weekly and monthly reporting obligations for spread exemptions under proposed § 150.10(c). This is similar to the reporting obligations of exchanges for positions recognized as NEBFHs.

b. Baseline

For the proposed spread exemption process for positions subject to federal limits, the baseline is CEA section 4a(a)(1). In that statutory section, the Commission is authorized to recognize certain spread positions. That statutory provision is currently implemented in a limited calendar-month spread exemption in § 150.3(a)(3). For exchange-set position limits, the baseline for spreads is the guidance in current § 150.5(a), which provides generally that exchanges may recognize exemptions for positions that are normally known to the trade as spreads.

c. Benefits

CEA section 4a(a)(1) authorizes the Commission to exempt certain spreads from speculative position limits. In exercising this authority, the Commission recognizes that spreads can have considerable benefits for market participants and markets. The Commission now proposes a spread exemption framework that utilizes existing exchanges-resources and exchanges-expertise so that fair access and liquidity are promoted at the same time market manipulations, squeezes, corners, and any other conduct that would disrupt markets are deterred and prevented. Building on existing exchange processes preserves the ability of the Commission and exchanges to monitor markets and trading strategies while reducing burdens on exchanges that will administer the process, and market participants, who will utilize the process.

In addition to these benefits, there are other benefits related to proposed § 150.10 that would inure to markets and market participant. Yet, there is difficulty in quantifying these benefits because benefits are dependent on the characteristics, such as operation size and needs, of the market participants that would seek spread exemptions, and the markets in which the participants trade. Accordingly, the Commission considers the qualitative benefits of proposed § 150.10.

For both exchanges and market participants, proposed § 150.10 would likely alleviate compliance burdens to the status quo. Exchanges would be able to build on established procedures and infrastructure. As stated earlier, many exchanges already have rules in place to process and grant applications for spread exemptions from exchange-set position limits pursuant to Part 38 of the Commission's regulations (in particular, current § 38.300 and § 38.301) and current § 150.5. In addition, exchanges may be able to use the same staff and electronic resources that would be used for proposed § 150.9 and § 150.11. Market participants also may benefit from spread-exemption reviews by exchanges that are familiar with the commercial needs and practices of market participants seeking exemptions. Market participants also might gain legal and regulatory clarity and consistency that would help in developing trading strategies.

Proposed § 150.10 would authorize exchanges to approve spread exemptions that permit market participants to continue to enhance liquidity, rather than being restricted by a position limit. For example, by allowing speculators to execute intermarket and intramarket spreads in accordance with proposed § 150.3(a)(1)(iv) and § 150.10, speculators would be able to hold a greater amount of open interest in underlying contract(s), and, therefore, bona fide hedgers may benefit from any increase in market liquidity. Spread exemptions might lead to better price continuity and price discovery if market participants who seek to provide liquidity (for example, through entry of resting orders for spread trades between different contracts) receive a spread exemption and, thus, would not otherwise be constrained by a position limit.

Here are two examples of positions that could benefit from the spread exemption in proposed § 150.10:

- Reverse crush spread in soybeans on the CBOT subject to an intermarket spread exemption. In the case where soybeans are processed into two different products, soybean meal and soybean oil, the crush spread is the difference between the combined value of the products and the value of soybeans. There are two actors in this scenario: The speculator and the soybean processor. The spread's value approximates the profit margin from actually crushing (or mashing) soybeans into meal and oil. The soybean processor may want to lock in the spread value as part of its hedging strategy, establishing a long position in soybean futures and short positions in soybean oil futures and soybean meal futures, as substitutes for the processor's expected cash market transactions (purchase of the anticipated inputs for

processing and sale of the anticipated products). On the other side of the processor's crush spread, a speculator takes a short position in soybean futures against long positions in soybean meal futures and soybean oil futures. The soybean processor may be able to lock in a higher crush spread, because of liquidity provided by such a speculator who may need to rely upon a spread exemption. It is important to understand that the speculator is accepting basis risk represented by the crush spread, and the speculator is providing liquidity to the soybean processor. The crush spread positions may result in greater correlation between the futures prices of soybeans and those of soybean oil and soybean meal, which means that prices for all three products may move up or down together in a closer manner.

• Wheat spread subject to intermarket spread exemptions. There are two actors in this scenario: The speculator and the wheat farmer. In this example, a farmer growing hard wheat would like to reduce the price risk of her crop by shorting a MGEX wheat futures. There, however, may be no hedger, such as a mill, that is immediately available to trade at a desirable price for the farmer. There may be a speculator willing to offer liquidity to the hedger; the speculator may wish to reduce the risk of an outright long position in MGEX wheat futures through establishing a short position in CBOT wheat futures (soft wheat). Such a speculator, who otherwise would have been constrained by a position limit at MGEX or CBOT, may seek exemptions from MGEX and CBOT for an intermarket spread, that is, for a long position in MGEX wheat futures and a short position in CBOT wheat futures of the same maturity. As a result of the exchanges granting an intermarket spread exemption to such a speculator, who otherwise may be constrained by limits, the farmer might be able to transact at a higher price for hard wheat than might have existed absent the intermarket spread exemptions. Under this example, the speculator is accepting basis risk between hard wheat and soft wheat, reducing the risk of a position on one exchange by establishing a position on another exchange, and potentially providing liquidity to a hedger. Further, spread transactions may aid in price discovery regarding the relative protein content for each of the hard and soft wheat contracts.

Finally, the Commission is no longer proposing to prohibit recognizing and exempting spreads during the spot and non-spot month as explained in the preamble. There may be considerable benefits that evolve from spreads exempted during the spot month, in particular. Besides enhancing the opportunity for market participants to use strategies involving spread trades into the spot month, this proposed relief may improve price discovery in the spot month for market participants. And, as in the intermarket wheat example above, the proposed spread relief in the spot month may better link prices between two markets, *e.g.*, the price of MGEX wheat futures and the price of CBOT wheat futures. Put another way, the prices in two different but related markets for substitute goods may be more highly correlated, which benefits market participants with a price exposure to the underlying protein content in wheat generally, rather than that of a particular commodity.

d. Costs

Similar to proposed § 150.9, exchanges and market participants may have made already many of the financial outlays for administering the application process and applying for spread exemptions, respectively. Because of that history, the Commission is able to quantify some of the costs that will arise from proposed § 150.10 in Tables A3 through E3, below. Like the costs for proposed § 150.9, the Commission estimates that six entities would elect to process spread-exemption applications and file new rules or rule amendments pursuant to part 40 of the Commission's regulations, and the number of spread exemption applicants and applications will likely vary based on the referenced contract. Relying on its past experience, the Commission forecasts the number of applicants and breaks down the annual costs in the tables below. Most of the monetary costs are related to the time, effort, and materials spent for administering and retaining records for spread exemptions.

Although the Commission is able to quantify some costs, other costs related to proposed § 150.10 are not easily quantifiable. As previously stated, other costs are more dependent on individual markets and market participants seeking a spread exemption, and are more readily considered qualitatively. Because costs, quantitative or qualitative, can be particular, the Commission believes that market participants will determine whether costs associated with seeking a proposed § 150.10 spread exemption are worth the benefits. If the costs are too high, then market participants may choose not to apply for a spread exemption and not to execute a spread transaction that would exceed position limits. For instance, speculators that execute exempted spreads would bear the risk of adverse price changes in the spread, but a speculator who does not receive an exemption may be unwilling to bear the higher risk of an outright position, if a position limit would restrict her ability to establish a risk reducing position in another contract. In general, the Commission believes that proposed § 150.10 should provide exchanges and market participants greater regulatory and administrative certainty and that costs will be small relative to the benefits of having an additional trading tool under proposed § 150.10.

Note: The activities that are priced in the following Tables A2 to G2 are similar, if not the same types of activities discussed in the section affiliated with Tables A1 through G1, for proposed § 150.9. Unless there is a significant difference in the anticipated acts to implement proposed § 150.10, the Commission will not re-describe the activities valued in Tables A2 through G2.

TABLE A2—COSTS TO CREATE OR AMEND EXCHANGE RULES FOR SPREAD-EXEMPTION APPLICATION REVIEWS

Proposed regulation/ file or amend rules	Total average labor hours	Total average labor costs per hour	Total average annual cost per exchange
§ 150.10(a)(1)	5	$122	$610 [5 × $122]

TABLE B2—COSTS TO REVIEW SPREAD-EXEMPTION APPLICATIONS

Proposed regulation/ review applications	Total average applications processed per exchange	Total average labor hours per application	Average total hours for total applications reviewed per exchange	Total average labor costs per hour	Total average annual cost per exchange
§ 150.10(a)(2)	50	5	250 [50 × 5]	$122	$30,500 [$122 × 250]

TABLE C2—COST TO POST SPREAD-EXEMPTION SUMMARIES

Proposed regulation/web-posting	Total average summaries per exchange	Total average labor hours per application	Average total hours for total applications reviewed per exchange	Total average labor costs per hour	Total average annual cost per exchange
§ 150.10(a)	10	5	50 [10 × 5]	$122	$6,100 [50 × $122]

Regarding the following Table D2, note that reports are also required to be sent to the Commission in the case of exempt spread positions under § 150.10(a)(5).

TABLE D2—COSTS TO MARKET PARTICIPANTS WHO WOULD SEEK SPREAD-EXEMPTION RELIEF FROM POSITION LIMITS

Proposed regulation/market participants seeking relief from position limits	Number of market participants	Total average applications per market participant	Total average labor hours per application	Average total hours for each application filed per exchange	Total average labor costs per hour	Total average annual cost per market participant
§ 150.10(a)(3), (6)	25	2	3	6 [2 × 3]	$122	$732 [6 × $122]

TABLE E2—COSTS FOR SPREAD-EXEMPT RECORDKEEPING

Proposed regulation/ recordkeeping	Number of DCMs	Total average labor hours for recordkeeping	Total average labor costs per hour	Total average annual recordkeeping cost per exchange
§ 150.10(b)	6	30	$122	$3,660 [30 × $122]

TABLE F2—COSTS FOR WEEKLY SPREAD-EXEMPTION REPORTING

Proposed regulation/reporting	Estimated number of DCMs	Estimated number of hours per response	Average reports annually by each exchange	Total average labor costs per hour	Total average annual reporting cost per exchange
§ 150.10(c) [weekly]	6	3	52	$122	$19,032 [3 × 52 × $122]

TABLE G2—COSTS FOR MONTHLY SPREAD-EXEMPTION REPORTING

Proposed regulation/monthly reporting	Estimated number of DCMs	Estimated number of hours per response	Average reports annually by each exchange	Total average labor costs per hour	Total average annual reporting average cost per exchange
§ 150.10(c)	6	2	12	$122	$2,928 [2 × 12 × $122]

Exchanges would have additional surveillance costs and duties that the Commission believes would be integrated with their existing self-regulatory organization surveillance activities as an exchange. For example, exchanges that elect to grant spread exemptions will have to adapt and develop procedures to determine whether a particular spread exemption furthers the goals of CEA section 4a(a)(3)(B) as well as monitor whether applicant speculators are, in fact, providing liquidity to other market participants.

Other costs could arise from proposed § 150.11 if the Commission disagrees with an exchanges' disposition of a spread application, or costs from a Commission request or review under proposed § 150.11(d) or (e). These costs are not easily quantified because they depend on the specifics of the Commission's request or review.

e. Request for Comment

RFC 47. The Commission requests comment on its considerations of the benefits of proposed § 150.10. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of benefits as well as data or other information of support such assessments.

RFC 48. The Commission requests comment on its considerations of the costs of proposed § 150.10. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of costs as well as data or other information of support such assessments.

RFC 49. The Commission recognizes 2013 position limits proposal. The Commission requests comment on whether retaining the framework for spread exemptions as proposed in the December 2013 position limits proposal is superior from a cost-benefit perspective to proposed § 150.10. If yes, please explain why. The Commission requests comment on whether any alternatives to proposed § 150.10 would result in a superior cost-benefit profile, with support for any such alternative provided.

7. Section 150.11—Enumerated Anticipatory Bona Fide Hedges

After reviewing comments in response to the December 2013 position limits proposal, the Commission is now proposing another method by which market participants may have enumerated anticipatory bona fide hedge positions recognized. As proposed in the December 2013 position limits proposal, § 150.7 would require market participants to file statements with the Commission regarding certain anticipatory hedges which would become effective absent Commission action or inquiry ten days after submission. The second method in proposed § 150.11 is an exchange-administered process to determine whether certain enumerated anticipatory bona fide hedge positions, such as unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedges should be recognized as bona fide hedge positions. Proposed § 150.11 works in concert with the following three proposed rules:

- Proposed § 150.3(a)(1)(i), with the effect that recognized anticipatory enumerated bona fide hedge positions may exceed federal position limits;
- proposed § 150.5(a)(2), with the effect that recognized anticipatory enumerated bona fide hedge positions may exceed exchange-set position limits for contracts not subject to federal position limits.

a. Rule Summary

The proposed § 150.11 process is somewhat analogous to the application process for recognition of NEBFHs under proposed § 150.9. The proposed § 150.11 recognition process for enumerated anticipatory bona fide hedge positions has five sub-parts: (a) through (e). The first three sub-parts—§ 150.11(a), (b), and (c)—require exchanges that elect to have a process for recognizing enumerated anticipatory bona fide hedge positions, and market participants that seek position-limit relief for such positions, to carry out certain duties and obligations. The fourth and fifth sub-parts—§ 150.11(d), and (e)—delineate the Commission's role and obligations in reviewing requests for recognition of enumerated anticipatory bona fide hedge positions.

i. Section 150.11(a)—Exchange-Administered Enumerated Anticipatory Bona Fide Hedge Process

Under proposed § 150.11(a)(1), exchanges that voluntarily elect to process enumerated anticipatory bona-fide hedge applications are required to notify the Commission of their intention to do so by filing new rules or rule amendments with the Commission under part 40 of the Commission's regulations. In proposed § 150.11(a)(2), the Commission identifies certain types of information necessary for the application, including information required under proposed § 150.7(d). In proposed § 150.11(a)(3), the Commission states that applications must be updated annually and that the exchanges have ten days in which to recognize an enumerated anticipatory bona fide hedge. In addition, exchanges must retain authority to revoke recognitions. Proposed § 150.11(a)(4) states that once an enumerated

reports that must be filed by applicants holding exempted an enumerated anticipatory bona fide hedge positions. Proposed 150.11(a)(6) explains that exchanges may choose to seek Commission review of an application and the Commission has ten days in which to respond.

ii. Section 150.11(b)—Enumerated Anticipatory Bona Fide Hedge Recordkeeping Requirements

Exchanges must maintain complete books and records of all activities relating to the processing and disposition of spread-exemption applications under proposed § 150.11(b). This is similar to the record-retention obligations of exchanges for positions recognized as NEBFHs under proposed § 150.9, and exempted as spreads under proposed § 150.10.

iii. Section 150.11(c)—Enumerated Anticipatory Bona Fide Hedge Reporting Requirements

Exchanges would have weekly reporting obligations under proposed § 150.11(c). Unlike NEBFHs and spreads, exchanges would have no monthly reporting or web-posting obligations for enumerated anticipatory bona fide hedges.

b. Baseline

The baseline is the same as it was in the December 2013 position limits proposal: The current filing process detailed in current § 1.48.

c. Benefits

There are significant benefits that would likely accrue should proposed § 150.11 be adopted. Similar to the benefits for recognizing positions as NEBFH positions under § 150.9, recognizing anticipatory positions as bona fide hedges under § 150.11 would provide market participants with potentially a more expeditious recognition process than the Commission proposal for a 10-day Commission recognition process under proposed 150.7. The benefit of prompter recognitions, though, is not readily quantifiable, and, in most circumstances, is subject to the characteristics and needs of markets as well as market participants. So while it is challenging to quantify the benefits that would likely be associated with proposed § 150.11, there are qualitative benefits that the Commission can discuss.

For example, exchanges would be able to use existing resources and knowledge in the administration and assessment of enumerated anticipatory bona fide hedge positions. The Commission and exchanges have evaluated these types of positions for years (as discussed in the December position limits proposal). Utilizing this experience and familiarity would likely produce such benefits as prompt but reasoned decision making and streamlined procedures. In addition, proposed § 150.11 permits exchanges to act in less than ten days—a timeframe that would be less than the Commission's process under current § 1.48, or under § 150.7 as proposed in the December 2013 position limits proposal.[228] This could potentially enable commercial market participants to pursue trading strategies in a more timely fashion to advance their commercial and hedging needs to reduce risk.

Proposed § 150.11, similar to proposed § 150.9 and § 150.10, also would provide the benefit of enhanced record-retention and reporting of positions recognized as enumerated anticipatory bona fide hedges. As previously discussed, records retained for specified periods would enable exchanges to develop consistent practices and afford the Commission accessible information for review, surveillance, and enforcement efforts. Likewise, weekly reporting under § 150.11 would facilitate the tracking of positions, provide transparency to the enumerated anticipatory bona fide hedge process to the public, and improve open access and administrative and legal certainty.

d. Costs

The costs for proposed § 150.11 are similar to the costs for proposed §§ 150.9 and 150.10, with many of the cost considerations not changing. The costs that can be quantified are in Tables A3 through G3. Other costs associated with proposed § 150.11, like those for proposed §§ 150.9 and 150.10, are more qualitative in nature and hinge on specific market and participant attributes. With this in mind, the Commission believes that exchanges and market participants will incur the costs related to § 150.11 if they believe that administering the process under proposed § 150.11, or applying for recognition under proposed § 150.11 and establishing a recognized position, respectively, are less costly than not administering the process under proposed § 150.11 recognitions, or not executing such trades, respectively.

Other costs could arise from proposed § 150.11 if the Commission disagrees with an exchange's disposition of an enumerated anticipatory bona fide hedge position application, or costs from a Commission request or review under proposed § 150.11(d) These costs would include time and effort spent by market participants associated with a Commission review. In addition, market participants would lose amounts that the Commission can neither predict nor quantify if it became necessary to unwind trades or reduce positions were the Commission to conclude that an exchange's disposition of an enumerated anticipatory bona fide hedge application is not appropriate or is inconsistent with the Act. The Commission believes that such disagreements will be rare based on the Commission's past experience and review of exchanges' efforts. Nevertheless, the Commission notes that assessing whether a position is for the reduction of risk arising from anticipatory needs or excessive speculation is complicated.

Note: For a general description of proposed rules identified in the following Tables A3 to E3, see Section IIIA5, above.

TABLE A3—COSTS TO CREATE OR AMEND EXCHANGE RULES FOR ENUMERATED ANTICIPATORY BONA FIDE HEDGE APPLICATIONS

Proposed regulation/file or amend rules	Total average labor hours	Total average labor costs per hour	Total average annual cost per exchange
§ 150.11(a)(1)	5	$122	$610

TABLE B3—COSTS TO REVIEW ENUMERATED ANTICIPATORY BONA FIDE HEDGE APPLICATIONS

Proposed regulation/review applications	Total average applications processed per exchange	Total average labor hours per application	Average total hours for total applications reviewed per exchange	Total average labor costs per hour	Total average annual cost per exchange
§ 150.11(a)(2)	50	5	250	$122	$30,500 [$122 × 250]

TABLE C3—COSTS TO MARKET PARTICIPANTS WHO WOULD SEEK ENUMERATED ANTICIPATORY BONA FIDE HEDGE RELIEF FROM POSITION LIMITS

Proposed regulation/market participants seeking relief from position limits	Number of market participants	Total average applications per market participant	Total average labor hours per application	Average total hours for each application filed per exchange	Total average labor costs per hour	Total average annual cost per market participant
§ 150.11(a)(2), (6)	25	2	3	6 [2 × 3]	$122	$732 [6 × $122]

TABLE D3—COSTS FOR ENUMERATED ANTICIPATORY BONA FIDE HEDGE RECORDKEEPING

Proposed regulation/recordkeeping	Number of DCMs	Total average labor hours for recordkeeping	Total average labor costs per hour	Total average annual recordkeeping cost per exchange
§ 150.11(b)	6	30	$122	$3,660 [30 × $122]

TABLE E3—COSTS FOR ENUMERATED ANTICIPATORY BONA FIDE HEDGE WEEKLY REPORTING

Proposed regulation/weekly reporting	Estimated number of DCMs	Estimated number of hours per response	Average reports annually by each exchange	Total average labor costs per hour	Total average annual reporting cost per exchange
§ 150.11(c)	6	3	52	$122	$19,032 [3 × 52 × $122]

Exchanges would have additional surveillance costs and duties that the Commission believes would be integrated with their existing self-regulatory organization surveillance activities as an exchange.

f. Request for Comment

RFC 50. The Commission requests comment on its considerations of the benefits of proposed § 150.11. Are there additional benefits that the Commission should consider? Has the Commission misidentified any benefits? Commenters are encouraged to include both quantitative and qualitative assessments of these benefits, as well as data or other information to support such assessments.

RFC 51. The Commission requests comment on its considerations of the costs of proposed § 150.11. Are there additional costs that the Commission should consider? Has the Commission misidentified any costs? What other relevant cost information or data, including alternative cost estimates, should the Commission consider and why? Commenters are encouraged to include both quantitative and qualitative assessments of these costs, as well as data or other information to support such assessments.

RFC 52. The Commission recognizes that there may exist alternatives to proposed § 150.11, such as maintaining the status quo, or adopting only § 150.7 as proposed in the December 2013 position limits proposal.[229] The Commission requests comment on whether alternatives to proposed § 150.11 would result in a superior cost-benefit profile, with support for any such alternative provided. The Commission requests comment on whether the framework for recognizing enumerated anticipatory bona fide hedging positions as proposed in the December 2013 position limits proposal would be superior from a cost-benefit perspective to proposed § 150.11. If yes, please explain why.

[229] See December 2013 position limits proposal at 75776–77.

8. CEA Section 15(a) Factors

CEA section 15(a) requires the Commission to consider the costs and benefits of its actions in light of five factors, which it proposes to do below. The Commission welcomes comments on its discussion of the proposed rules in this supplemental proposal and the CEA 15(a) factors.

i. Protection of Market Participants and the Public

The imposition of position limits is intended to protect the markets and market participants from manipulation and excessive speculation. Yet, there are

circumstances where position limits may be exceeded by bona fide hedge positions or spread positions, as provided in the CEA. By proposing the rules in this supplemental proposal, the Commission is offering market participants several reasonable alternatives by which they may establish bona fide hedge positions or spread positions that exceed position limits. The proposed alternatives require, among other things, exchanges to document and record their decisions to recognize bona fide hedge positions or to exempt spread positions. The Commission believes that the discipline of having exchanges review and document such decisions protects hedgers, speculators, and markets from abuse of recognitions and exemptions. In general, exchanges have strong incentives, such as preserving the revenue from trading, maintaining credibility, and protecting markets and market participants from excessive speculation, manipulation, corners, and squeezes. In addition, the proposed rules would enable the Commission to protect markets and market participants because the Commission would be able to perform second-level reviews of exchange-administered processes regarding exemptions from speculative position limits, if necessary, and have available documentation for surveillance and enforcement actions.

RFC 53: Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges further the goals of CEA section 4a(a)(3)(B) and properly protect market participants and the public? Please explain.

RFC 54: Does permitting the exchanges to administer application processes for NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges affect excess speculation? Please explain.

RFC 55: Will the ability to assume larger positions by way of exemptions under this supplemental proposal facilitate effective market manipulation by market participants availing themselves of such exemptions? Are existing safeguards and deterrents to market manipulation sufficient to prevent manipulation or does the Commission need to impose position limits without exchange-granted exemptions to prevent manipulation, prophylactically? Please explain.

ii. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Market manipulation and excessive speculation harm the efficiency, competitiveness, and financial integrity of markets. Position limits are intended to prevent market manipulation and excessive speculation. There are, however, positions that may exceed position limits, such as those permitted by proposed §§ 150.9, 150.10, and 150.11, that promote market efficiency and competitiveness. For example, the proposed rules require an exchange to consider the policy objectives of position limits, prior to granting a spread exemption. If a market participant exerts market power, it might adversely affect market integrity because other market participants might perceive the underlying pricing process to be unfair. The proposed rules are designed, in part, to give exchanges the ability and information to guard against accumulation and exercise of market power that may result from excessive speculation, and, therefore, promote financial integrity and confidence in the markets.

RFC 56: Is market integrity adversely affected by the proposed rules in this supplemental proposal? If so, how might the Commission mitigate any harmful impact?

RFC 57: Should the Commission provide more guidance to exchanges on how to assess recognitions under this supplemental proposal, for example, guidance on cash-and-carry spreads, or any other spreads involving the spot-month contract?

RFC 58: What costs and benefits would accrue to exchanges and market participants should the Commission provide additional guidance to exchanges on how to assess recognitions under this supplemental proposal? Please explain.

RFC 59: Are there any anti-competitive effects between exchanges, or exchanges and SEFs, because the rules proposed in this supplemental proposal have the practical effect of allowing exchanges to recognize and grant exemptions from position limits? If so, what are they? Please explain.

iii. Price Discovery

The Commission believes that the recognition and exemption processes proposed to be administered by exchanges in this supplemental proposal will foster liquidity and potentially improve price discovery. Because exchanges possess knowledge about the commercial needs of market participants and the needs of markets, the proposed rules will enable exchanges to recognize and exempt positions in a timely and reasonable manner to help facilitate more stable prices. With more stable prices, market participants will have the ability to trade in and out of derivative positions more easily and with lower costs of execution.

RFC 60: How might the rules proposed in this supplemental proposal affect price discovery? Please explain.

RFC 61: How might the rules proposed in this supplement proposal affect liquidity?

RFC 62: Will price discovery be improved on exchanges because of the exemptions outlined in this supplemental proposal?

RFC 63: How might spread exemptions that go into the spot month affect price discovery?

RFC 64: What price-discovery costs and benefits would accrue for spread exemptions that go into the spot month? Please explain.

iv. Sound Risk Management Practices

Under the proposed rules, market participants must explain and document the methods behind their hedging strategies to exchanges, and exchanges would have to evaluate them. As a result, the Commission believes that the exchange-administered processes discussed in this supplemental proposal should help market participants, exchanges, the Commission, and the public to understand better the risk management techniques and objectives of various market participants.

RFC 65: How might the rules proposed in this supplemental proposal affect sound risk management practices?

v. Other Public Interest Considerations

Except as discussed above, the Commission has not identified any other public interest considerations.

RFC 66: Are there any other public interest considerations that the Commission should consider?

RFC 67: The Commission seeks comments on all aspects of its cost and benefit considerations. To the extent that any of the proposed rules in this supplemental proposal have an impact on activities outside the United States, the Commission requests comment on whether the associated costs and benefits are likely to be different from those associated with their impact on activities within the United States; and, if so, in what particular ways and to what extent. While at this point in time the Commission does not foresee any other costs or benefits that might be associated with the cross-border implications of this proposal, it seeks further any comment on this topic. For instance, would price discovery move to a foreign board of trade because of this proposed rulemaking? On all issues, commenters are encouraged to supply data and quantify where practical.

RFC 68: The Commission requests comment on whether there will be any lost benefits related to position limits because of the recognitions and exemptions in the proposed rules in this supplemental proposal.

9. CEA Section 15(b) Considerations

Section 15(b) of the CEA requires the Commission to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives, policies and purposes of the CEA, before promulgating a regulation under the CEA or issuing certain orders. The Commission preliminarily believes that the rules and guidance proposed in this supplemental notice of proposed rulemaking are consistent with the public interest protected by the antitrust laws.

The Commission acknowledges that, with respect to exchange qualifications to recognize or grant NEBFHs, spread exemptions, and anticipatory bona fide hedges for federal position limit purposes, the threshold experience requirements that it proposes will advantage certain more-established incumbent DCMs ("incumbent DCMs") over smaller DCMs seeking to expand or future entrant DCMs (collectively "entrant DCMs") or SEFs.[230] Specifically, incumbent DCMs—based on their past track records of listing actively traded reference contracts and setting and administering exchange-set limits applicable to those contracts for at least a year—will be immediately eligible to submit rules to the Commission under part 40 to process trader applications for recognition of NEBFHs, spread exemptions,[231] and anticipatory bona fide hedges; in contrast, entrant DCMs and SEFs will be foreclosed until such time as they have met the eligibility criteria to do so. However, subject to consideration of any comments supporting a contrary view, the Commission does not perceive that an ability to process applications for NEBFHs, spread exemptions and/or anticipatory bona fide hedges is a necessary function for a DCM or SEF to compete effectively as a trading facility. In the event an incumbent DCM declines to process a trader's request for hedging recognition or a spread exemption,[232] the trader may seek the recognition or exemption directly from the Commission in order to trade on an entrant DCM or SEF. Accordingly, the Commission does not view the proposed threshold experience requirements as establishing a barrier to entry or competitive restraint likely to facilitate anticompetitive effects in any relevant antitrust market for contract trading.[233]

The Commission requests comment on any considerations related to the public interest to be protected by the antitrust laws and potential anticompetitive effects of the proposal, as well as data or other information to support such considerations. Is the Commission correct that the proposed threshold criteria for an exchange to qualify to process applications for recognition of NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges is unlikely to create a competitive barrier to entry or expansion that will insulate incumbent DCMs from competition for contract trading or otherwise contribute to anticompetitive effects in any relevant antitrust market(s) for contract trading?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact. A regulatory flexibility analysis or certification typically is required for "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to" the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b). The requirements related to the proposed amendments fall mainly on registered entities, exchanges, FCMs, swap dealers, clearing members, foreign brokers, and large traders. The Commission has previously determined that registered DCMs, FCMs, swap dealers, major swap participants, eligible contract participants, SEFs, clearing members, foreign brokers and large traders are not small entities for purposes of the RFA. While the requirements under the proposed rulemaking may impact non-financial end users, the Commission notes that position limits levels apply only to large traders. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein would not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the 2013 Position Limits Proposal.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget ("OMB"). Certain provisions of the proposed rules would result in amendments to previously-approved collection of information requirements within the meaning of the PRA. Therefore, the Commission is submitting to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 the information collection requirements proposed in this rulemaking proposal as an amendment to the previously-approved collection associated with OMB control number 3038–0013.

If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, titled "Commission Records and Information." In addition, the Commission emphasizes that section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records pursuant to the Privacy Act of 1974.

On December 12, 2013, the Commission published in the **Federal Register** a notice of proposed modifications to parts 1, 15, 17, 19, 32, 37, 38, 140, and 150 of the Commission's regulations (as defined above, the "December 2013 position limits proposal"). The modifications addressed, among other things, speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are "economically equivalent" to such contracts. The Commission is now proposing revisions to the December 2013 position limits proposal.

Specifically, the Commission is now proposing that the position limits set forth in § 150.2 may be exceeded to the extent that a commodity derivative position is recognized, as an NEBFH, exempt spread position, or enumerated anticipatory bona fide hedge, by a derivatives contract market or swap execution facility. A designated contract market or swap execution facility that elects to process applications pursuant to the proposed rules must file new rules or rule amendments with the Commission pursuant to Part 40. Such new rules or rule amendments must comply with certain conditions set forth in proposed §§ 150.9(a), 150.10(a), and/or 150.11(a), as applicable. Further, such rules must state that in order to apply for an exemption with a particular designated contract market or swap execution facility, a person would need to meet certain criteria and file an application with the relevant derivatives contract market or swap execution facility in accordance with proposed §§ 150.9(a), 150.10(a), or 150.11(a), as applicable.

2. Methodology and Assumptions

It is not possible at this time to accurately determine the number of respondents affected by the proposed revisions to the December 2013 position limits proposal. This current proposal permits designated contract markets and swap execution facilities to elect to process applications for recognition of NEBFHs, exempt spread positions, or enumerated anticipatory bona fide hedges. Accordingly, the Commission does not know which, or how many, designated contract markets and swap execution facilities may elect to offer such recognition processes, or which, or how many market participants may submit applications. Further, the Commission is unsure of how many designated contract markets, swap execution facilities, and market participants not currently active in the market may elect to incur the estimated burdens in the future.

These limitations notwithstanding, the Commission has made best-effort estimations regarding the likely number of affected entities for the purposes of calculating burdens under the PRA. The Commission used data currently provided by designated contract markets to estimate the number of respondents for each of the proposed obligations subject to the PRA. The Commission estimated the number of exchanges that may elect to process applications for recognition of NEBFHs, exempt spread positions, or enumerated anticipatory bona fide hedges, and the number of market participants who may file for relief from position limit requirements under the proposed processes. The Commission also used information from testimony given at Commission advisory committee meetings. Further, the Commission asked several questions of the five exchanges that, in the Commission's knowledge, currently process applications for exemptions to exchange-set position limits, to ascertain the burdens on the exchanges that may arise should such exchanges elect to process applications under proposed §§ 150.9, 150.10, and/or 150.11. The Commission received responses to its questions regarding the administration of current exchange processes for approving exemptions from position limits from representatives of four exchanges. The Commission preliminarily believes that the burden estimates provided by these four exchanges are sufficiently representative of all potentially affected entities, and is providing average estimates in order to estimate the potential impact on all entities, particularly those which do not currently process exemption applications. Thus, the Commission proposes to use these estimates, as well as figures provided in testimony from the Energy and Environmental Markets Advisory Committee and Agricultural Advisory Committee meetings, to calculate burdens for the purposes of the Paperwork Reduction Act. The Commission welcomes comment on its estimates and the methodology described above.

The Commission's estimates concerning wage rates are based on 2013 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The Commission is using a figure of $122 per hour, which is derived from a weighted average of salaries across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year, adjusted to account for the average rate of inflation in 2013. This figure was then multiplied by 1.33 to account for benefits, and further by 1.5 to account for overhead and administrative expenses. The Commission anticipates that compliance with the provisions would require the work of an information technology professional; a compliance manager; an accounting professional; and an associate general counsel. Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight); "programmer (average of senior and non-senior)" (15% weight), "senior accountant" (15%) "compliance manager" (30%), and "assistant/associate general counsel" (40%). All monetary estimates below have been rounded to the dollar.

The Commission welcomes comment on its assumptions and estimates.

3. Collections of Information—Information Provided by Reporting Entities and Recordkeeping Duties

(a) Requirements for Designated Contract Markets and Swaps Execution Facilities Filing New or Amended Rules Pursuant to Part 40

Proposed §§ 150.9(a), 150.10(a), and 150.11(a) require that designated contract markets and swap execution facilities file new rules or rule amendments pursuant to Part 40 of this chapter, establishing or amending its application process for recognition of NEBFHs, exempt spread positions, or enumerated anticipatory bona fide hedges, respectively, consistent with the requirements of proposed §§ 150.9, 150.10, and 150.11. Further, proposed §§ 150.9(a), 150.10(a), and 150.11(a) require that designated contract markets and swap execution facilities post to their Web sites a summary describing the type of derivative positions that are recognized as exempt non-enumerated hedge positions.

The Commission estimates that, at most, 6 entities will file new rules or rule amendments pursuant to Part 40 to elect to process NEBFH applications. The Commission determined this estimate by analyzing how many exchanges currently list actively traded contracts for the 28 commodities for which federal position limits will be set, because proposed §§ 150.9(a), 150.10(a), and 150.11(a) require a referenced contract to be listed by and actively traded on any exchange that elects to process NEBHF applications for

[230] Proposed rules §§ 150.9(a)(1), 150.10(a)(1), and 150.11(a)(1).

[231] In the case of qualifications to exempt certain spread positions, the contract may be either a referenced contract or a component of the spread. *See* proposed rule § 150.10(a)(1)(i).

[232] The Commission recognizes that in certain circumstances it might be in an exchange's economic interest to deny processing a particular trader's application for hedge recognition or a spread exemption. For example, this might occur in a circumstance in which a trader has reached the exchange-set limit and the exchange determines that liquidity is insufficient to maintain a fair and orderly contract market if the trader's position increases.

[233] *See, e.g., Brown Shoe Co.* v. *U.S.*, 370 U.S. 294, 324–25 (1962) ("The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and the substitutes for it"); *U.S.* v. *E.I. du Pont de Nemours & Co.*, 353 U.S. 586, 593 (1957) ("Determination of the relevant market is a necessary predicate to finding a violation"); *Rebel Oil* v. *Atl. Richfield Co.*, 51 F. 3d 1421, 1434 (9th Cir. 1995) ("A 'market' is any grouping of sales whose sellers, if unified by a monopolist or a hypothetical cartel would have market power in dealing with any group of buyers," quoting Phillip Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 518.1b, at 534 (Supp. 1993)).

recognition of positions in such referenced contract. The Commission anticipates that the exchanges that elect to process NEBFH applications under proposed § 150.9(a) are likely to have processes for recognizing such exemptions currently, and so would need to file amendments to existing exchange rules rather than adopt new rules. This filing would be required only once. Thus, the Commission approximates an average per entity burden of 5 labor hours. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $610 per entity for filings under proposed § 150.9(a).

Similarly, the Commission anticipates that the exchanges that elect to process spread exemption applications under proposed § 150.10(a) are likely to have processes for recognizing such exemptions currently, and so would need to file amendments to existing exchange rules rather than adopt new rules. This filing would be required only once. Thus, the Commission approximates an average per entity burden of 5 labor hours. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $610 per entity for filings under proposed § 150.10(a).

In addition, the Commission anticipates that the exchanges that elect to process enumerated anticipatory bona fide hedge applications under proposed § 150.11(a) are likely to have processes for recognizing such exemptions currently, and so would need to file amendments to existing exchange rules rather than adopt new rules. This filing would be required only once. Thus, the Commission approximates an average per entity burden of 5 labor hours. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $610 per entity for filings under proposed § 150.11(a).

Review and Disposition of Applications

An exchange that elects to process applications may incur a burden related to the review and disposition of such applications pursuant to proposed §§ 150.9(a), 150.10(a), and 150.11(a). The review of an application is required to include analysis of the facts and circumstances of such application to determine whether the application meets the standards established by the Commission. Exchanges are required to notify the applicant regarding the disposition of the application, including whether the application was approved, denied, referred to the Commission, or requires additional information.

The Commission anticipates that the exchanges that elect to process NEBFH applications under proposed § 150.9(a) are likely to have processes for the review and disposition of such applications currently in place. The Commission preliminarily believes that in such cases, complying with the proposed rules is likely to be less burdensome because the exchange would already have staff, policies, and procedures established to accomplish its duties under the proposed rules. Thus, the Commission estimates that each exchange would process an average of 185 NEBFH applications per year and that each application would require 5 hours to process, for an average per entity burden of 925 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $112,850 per entity under proposed § 150.9(a).

The Commission anticipates that the exchanges that elect to process spread exemption applications under proposed § 150.10(a) are likely to have processes for the review and disposition of such applications currently in place. The Commission preliminarily believes that in such cases, complying with the proposed rules is likely to be less burdensome because the exchange would already have staff, policies, and procedures established to accomplish its duties under the proposed rules. Thus, the Commission estimates that each exchange would process about 50 spread exemption applications per year and that each application would require 5 hours to process, for an average per entity burden of 250 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $30,500 per entity under proposed § 150.10(a).

The Commission anticipates that the exchanges that elect to process enumerated anticipatory bona fide hedge applications under proposed § 150.11(a) are likely to have processes for the review and disposition of such applications currently in place. The Commission preliminarily believes that in such cases, complying with the proposed rules is likely to be less burdensome because the exchange would already have staff, policies, and procedures established to accomplish its duties under the proposed rules. Thus, the Commission estimates that each entity would process about 50 anticipatory hedging applications per year and that each application would require 5 hours to process, for an average per entity burden of 250 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $30,500 per entity under proposed § 150.11(a).

Publication of Summaries

Further, exchanges that elect to process the applications under proposed §§ 150.9 and 150.10 may incur burdens to publish on their Web sites summaries of the unique types of NEBFH positions and spread positions, respectively. Although this requirement is new even for exchanges that already have a similar process under exchange-set limits, the Commission preliminarily believes that the proposed summaries will not be overly burdensome in part because they are anticipated to be concise.

The Commission preliminarily believes that complying with the requirements under proposed § 150.9(a) for summaries of recognized NEBFHs would require the work of an analyst to write and a supervisor to approve a summary. The summary would also need to be published on the exchange's Web site. The Commission estimates that a single summary would require 5 hours to write, approve, and post. The Commission notes that exchanges likely would need to post more summaries in the first year of the process, as over time the applications may become more routine. The Commission thus estimates that each exchange would post approximately 30 summaries per year, for an average per entity burden of 5 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $18,300 per entity under proposed § 150.9(a).

The Commission preliminarily believes that complying with the requirements under proposed § 150.10(a) for summaries of recognized spread exemptions would require the work of an analyst to write and a supervisor to approve the summary. The summary would also need to be published on the exchange's Web site. The Commission estimates that a single summary would require 5 hours to write, approve, and post. The Commission notes that exchanges likely would need to post more summaries in the first year of the process, as over time the applications may become more routine. The Commission thus estimates that each entity would post approximately 10 summaries per year, for an average per entity burden of 50 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $6,100 per entity under proposed § 150.10(a).

(b) Requirements for Market Participants

Proposed §§ 150.9(a)(3), 150.10(a)(3), and 150.11(a)(2), would require electing designated contract markets and swap execution facilities to establish an application process that elicits sufficient information to allow the designated contract market or swap execution facility to determine, and the Commission to verify, whether it is appropriate to recognize a commodity derivative position as an NEBFH, exempt spread position or enumerated anticipatory bona fide hedge. Pursuant to §§ 150.9(a)(4)(i), 150.10(a)(4), and 150.11(a)(3), an applicant would be required to update an application at least on an annual basis. Further, §§ 150.9(a)(6), 150.10(a)(6), and 150.11(a)(5) require that any such applicant file a report with the designated contract market or swap execution facility (and with the Commission in the case of 150.10(a)(5)) when such applicant owns or controls a derivative position that such has been recognized as an NEBFH, exempt spread, or enumerated anticipatory bona fide hedge, respectively.

The Commission anticipates that market participants would be mostly familiar with the NEBFH application provided by exchanges that currently process such applications, and thus preliminarily believes that the burden for applying to an exchange would be minimal. Information included in the application is required to be sufficient to allow the exchange to determine, and the Commission to verify, whether the position meets the requirements of CEA section 4a(c), but specific data fields are left to the exchanges to determine. The Commission believes that there would be a slight additional burden for market participants to submit the notice that must be filed when such participant owns or controls the position that has been recognized as a NEBFH.

The Commission estimates that 222 entities will file an average of 5 applications each year to obtain recognition of certain positions as NEBFHs and that each application, including the notice filing when the participant owns or controls such positions, would require approximately 4 burden hours to complete and file. Thus, the Commission estimates an average per entity burden of 20 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $2,440 per entity for applications under proposed § 150.9(a)(3).

The Commission anticipates that market participants would be mostly familiar with the spread exemption application provided by exchanges that currently process such applications, and thus preliminarily believes that the burden for applying to an exchange would be minimal. Information included in the application is required to be sufficient to allow the exchange to determine, and the Commission to verify, whether the position fulfills the objectives of CEA section 4a(a)(3)(B), but specific data fields are left to the exchanges to determine. The Commission believes that there would be a slight additional burden for market participants to submit the notice that must be filed when such participant owns or controls the spread position that has been exempted from position limits. The Commission estimates that 25 entities will file an average of 2 applications each year to obtain an exemption for certain spread positions and that each application, including the notice filing when the participant owns or controls such positions, would require approximately 3 burden hours to complete and file. Thus, the Commission approximates an average per entity burden of 6 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $732 per entity for applications under proposed § 150.10(a)(2).

The Commission anticipates that market participants would be mostly familiar with the enumerated anticipatory bona fide hedge application provided by exchanges that currently process such applications, and thus preliminarily believes that the burden for applying to an exchange would be minimal. The application is required to include, at minimum, the information required under proposed § 150.7(d). The Commission estimates that 25 entities will file an average of 2 applications each year to obtain recognition that certain positions are enumerated anticipatory bona fide hedges and that each application would require approximately 3 burden hours to complete and file. Thus, the Commission estimates an average per entity burden of 6 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $732 per entity for applications under proposed § 150.11(a)(2).

(c) Recordkeeping and Reporting

Proposed §§ 150.9(b), 150.10(b), and 150.11(b), would require electing designated contract markets and swap execution facilities to keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing and disposition of applications for recognition of NEBFHs, exempt spread positions, and enumerated anticipatory bona fide hedges. Further, proposed §§ 150.9(c), 150.10(c), and 150.11(c), would require designated contract markets and swap execution facilities that elect to process NEBFH applications to submit to the Commission a report for each week as of the close of business on Friday showing various information concerning the derivative positions that have been recognized by the designated contract market or swap execution facility as an NEBFH, exempt spread position, or enumerated anticipatory bona fide hedge position, and for any revocation, modification or rejection of such recognition. Finally, proposed §§ 150.9(c) and 150.10(c) also require a designated contract market or swap execution facility that elects to process applications for NEBFHs and exempt spread positions to submit to the Commission (i) a summary of any NEBFH and exempt spread position newly published on the designated contract market or swap execution facility's Web site; and (ii) no less frequently than monthly, any report submitted by an applicant to such designated contract market or swap execution facility pursuant to rules required under proposed §§ 150.9(a)(6)and 150.10(a)(6), respectively.

The Commission preliminarily believes that exchanges that currently process applications for recognition of NEBFHs, exempt spread positions, and enumerated anticipatory bona fide hedges maintain records of such applications as required pursuant to other Commission regulations, including § 1.31. However, the Commission also believes that the proposed rules may confer additional recordkeeping obligations on exchanges that elect to process applications for recognition of NEBFHs, exempt spread positions, and enumerated anticipatory bona fide hedges. The Commission estimates that 6 entities will have recordkeeping obligations pursuant to proposed § 150.9. Thus, the Commission approximates an average per entity burden of 30 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $3,660 per entity for records and filings under proposed § 150.9.

The Commission estimates that 6 entities will have recordkeeping obligations pursuant to proposed § 150.10. Thus, the Commission estimates an average per entity burden of 30 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $3,660 per entity for

records and filings under proposed § 150.10.

The Commission estimates that 6 entities will have recordkeeping obligations pursuant to proposed § 150.11. Thus, the Commission estimates an average per entity burden of 30 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $3,660 per entity for records and filings under proposed § 150.11.

Finally, the Commission anticipates that exchanges that elect to process applications for recognition of NEBFHs, spread exemptions, and enumerated anticipatory bona fide hedges will be required to file two types of reports, as stated above. The Commission understands that 5 exchanges currently submit reports, on a voluntary basis each month, which provide information regarding exchange-recognized exemptions of all types. The Commission preliminarily believes that the content of such reports is similar to the information required of the reports in proposed §§ 150.9(c), 150.10(c), and 150.11(c), but the frequency of such reports would increase under the proposed rules.

The Commission estimates that 6 entities will have weekly reporting obligations pursuant to proposed § 150.9(c). The Commission also estimates that the weekly report will require a burden of approximately 3 hours to complete and submit. Thus, the Commission estimates an average per entity burden of 156 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $19,032 per entity for weekly reports under proposed rules 150.9(c).

The Commission estimates that 6 entities will have weekly reporting obligations pursuant to proposed § 150.10(c). The Commission also estimates that the weekly report will require a burden of approximately 3 hours to complete and submit. Thus, the Commission estimates an average per entity burden of 156 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $19,032 per entity for weekly reports under proposed § 150.10(c).

The Commission estimates that 6 entities will have weekly reporting obligations pursuant to proposed § 150.11(c). The Commission also estimates that the weekly report will require a burden of approximately 3 hours to complete and submit. Thus, the Commission approximates an average per entity burden of 156 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $19,032 per entity for weekly reports under proposed § 150.11(c).

For the monthly report, the Commission anticipates a minor burden for exchanges because the proposed rules require exchanges essentially to forward to the Commission notices received from applicants who own or control the positions that have been recognized or exempted.

The Commission estimates that 6 entities will have monthly reporting obligations pursuant to proposed § 150.9(c). The Commission also estimates that the monthly report will require a burden of approximately 2 hours to complete and submit. Thus, the Commission approximates an average per entity burden of 24 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $2,928 per entity for monthly reports under proposed § 150.9(c).

The Commission estimates that 6 entities will have monthly reporting obligations pursuant to proposed § 150.10(c). The Commission also estimates that the monthly report will require a burden of approximately 2 hours to complete and submit. Thus, the Commission approximates an average per entity burden of 24 labor hours annually. At an estimated labor cost of $122, the Commission estimates an average cost of approximately $2,928 per entity for monthly reports under proposed § 150.10(c). The above estimates are summarized in the following table:

Type of respondent	Estimated number of respondents	Report or record	Average reports annually by each respondent	Total annual responses	Estimated number of hours per response	Annual burden in fiscal year
a	b	c	d	e [234]	f	g [235]
Exchanges	6	§ 150.9(a) Rule Filing	1	6	5	30
	6	§ 150.10(a) Rule Filing	1	6	5	30
	6	§ 150.11(a) Rule Filing	1	6	5	30
	6	§ 150.9(a) Review	185	1,110	5	5,550
	6	§ 150.10(a) Review	50	300	5	1,500
	6	§ 150.11(a) Review	50	300	5	1,500
	6	§ 150.9(a) Summaries	30	180	5	900
	6	§ 150.10(a) Summaries	10	60	5	300
	6	§ 150.9(a) Recordkeeping	1	6	30	180
	6	§ 150.10(a) Recordkeeping.	1	6	30	180
	6	§ 150.11(a) Recordkeeping.	1	6	30	180
	6	§ 150.9(a) Weekly Report	52	312	3	936
	6	§ 150.10(a) Weekly Report.	52	312	3	936
	6	§ 150.11(a) Weekly Report.	52	312	3	936
	6	§ 150.9(a) Monthly Report	12	72	2	144
	6	§ 150.10(a) Monthly Report.	12	72	2	144
Market Participants	222	§ 150.9(a)(3) Application & Notice.	5	1,110	4	4,440
	25	§ 150.10(a)(3) Application & Notice.	2	50	3	150
	25	§ 150.11(a)(2) Application & Notice.	2	50	3	150
Total	278 (distinct entities or persons).			4,276	4.26 (average number of hours per response).	18216

4. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRA-submissions@omb.eop.gov*. Please provide the Commission with a copy of comments submitted so that all comments can be summarized and addressed in the final regulation preamble. Refer to the Addresses section of this notice for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov*. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully considered if received by OMB (and the Commission) within 30 days after the publication of this notice of proposed rulemaking.

List of Subjects

17 CFR Part 37

Registered entities, Registration application, Reporting and recordkeeping requirements, Swaps, Swap execution facilities.

17 CFR Part 38

Block transaction, Commodity futures, Designated contract markets, Reporting and recordkeeping requirements, Transactions off the centralized market.

17 CFR Part 150

Bona fide hedging, Commodity futures, Cotton, Grains, Position limits, Referenced Contracts, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. In Appendix B to part 37, under the heading Core Principle 6 of Section 5h of the Act—Position Limits or Accountability, revise paragraphs (A) and (B) to read as follows:

Appendix B to Part 37—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 6 of Section 5h of the Act—Position Limits or Accountability

(A) *In general.* To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) *Position limits.* For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall:

(1) Set its position limitation at a level not higher than the Commission limitation; and

(2) Monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

(a) *Guidance.* (1) Until a swap execution facility has access to sufficient swap position information, a swap execution facility that is a trading facility need not demonstrate compliance with Core Principle 6(B). A swap execution facility has access to sufficient swap position information if, for example:

(i) It has access to daily information about its market participants' open swap positions; or

(ii) It knows, including through knowledge gained in surveillance of heavy trading activity occurring on or pursuant to the rules of the swap execution facility, that its market participants regularly engage in large volumes of speculative trading activity that would cause reasonable surveillance personnel at a swap execution facility to inquire further about a market participant's intentions or open swap positions.

(2) When a swap execution facility has access to sufficient swap position information, this guidance is no longer applicable. At such time, a swap execution facility is required to demonstrate compliance with Core Principle 6(B).

(b) *Acceptable practices.* [Reserved]

* * * * *

PART 38—DESIGNATED CONTRACT MARKETS

■ 3. The authority citation for part 38 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 4. In Appendix B to part 38, under the heading Core Principle 5 of section 5(d) of the Act: Position Limitations or Accountability, revise paragraphs (A) and (B) to read as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 5 of section 5(d) of the Act: POSITION LIMITATIONS OR ACCOUNTABILITY

(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

(a) *Guidance.* (1) Until a board of trade has access to sufficient swap position information, a board of trade need not demonstrate compliance with Core Principle 5(B) with respect to swaps. A board of trade has access to sufficient swap position information if, for example:

(i) It has access to daily information about its market participants' open swap positions; or

(ii) It knows, including through knowledge gained in surveillance of heavy trading activity occurring on or pursuant to the rules of the designated contract market, that its market participants regularly engage in large volumes of speculative trading activity that would cause reasonable surveillance personnel at a board of trade to inquire further about a market participant's intentions or open swap positions.

(2) When a board of trade has access to sufficient swap position information, this guidance is no longer applicable. At such time, a board of trade is required to demonstrate compliance with Core Principle 5(B) with respect to swaps.

[234] Column b times column d.

[235] Column e times column f. Burdens have been rounded to the nearest whole number where appropriate.

(b) *Acceptable Practices.* [Reserved]

* * * * *

PART 150—LIMITS ON POSITIONS

■ 5. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 6. Revise § 150.1 to read as follows:

§ 150.1 Definitions.

As used in this part—

Bona fide hedging position means—

(1) *Hedges of an excluded commodity.* For a position in commodity derivative contracts in an excluded commodity, as that term is defined in section 1a(19) of the Act:

(i) Such position is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

(ii)(A) Is enumerated in paragraph (3), (4) or (5) of this definition; or

(B) Is recognized as a bona fide hedging position by the designated contract market or swap execution facility that is a trading facility, pursuant to such market's rules submitted to the Commission, which rules may include risk management exemptions consistent with Appendix A of this part; and

(2) *Hedges of a physical commodity.* For a position in commodity derivative contracts in a physical commodity:

(i) Such position:

(A) Represents a substitute for transactions made or to be made, or positions taken or to be taken, at a later time in a physical marketing channel;

(B) Is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise;

(C) Arises from the potential change in the value of—

(*1*) Assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(*2*) Liabilities which a person owes or anticipates incurring; or

(*3*) Services that a person provides, purchases, or anticipates providing or purchasing; and

(D) Is—

(*1*) Enumerated in paragraph (3), (4) or (5) of this definition; or

(*2*) Recognized as shown to be a non-enumerated bona fide hedges by either a designated contract market or swap execution facility, each in accordance with § 150.9(a); or by the Commission; or

(ii)(A) *Pass-through swap offsets.* Such position reduces risks attendant to a position resulting from a swap in the same physical commodity that was executed opposite a counterparty for which the position at the time of the transaction would qualify as a bona fide hedging position pursuant to paragraph (2)(i) of this definition (a pass-through swap counterparty), provided that no such risk-reducing position is maintained in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery commodity derivative contract; and

(B) *Pass-through swaps.* Such swap position was executed opposite a pass-through swap counterparty and to the extent such swap position has been offset pursuant to paragraph (2)(ii)(A) of this definition.

(3) *Enumerated hedging positions.* A bona fide hedging position includes any of the following specific positions:

(i) *Hedges of inventory and cash commodity purchase contracts.* Short positions in commodity derivative contracts that do not exceed in quantity ownership or fixed-price purchase contracts in the contract's underlying cash commodity by the same person.

(ii) *Hedges of cash commodity sales contracts.* Long positions in commodity derivative contracts that do not exceed in quantity the fixed-price sales contracts in the contract's underlying cash commodity by the same person and the quantity equivalent of fixed-price sales contracts of the cash products and by-products of such commodity by the same person.

(iii) *Hedges of unfilled anticipated requirements.* Provided that such positions in a physical-delivery commodity derivative contract, during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery contract, do not exceed the person's unfilled anticipated requirements of the same cash commodity for that month and for the next succeeding month:

(A) Long positions in commodity derivative contracts that do not exceed in quantity unfilled anticipated requirements of the same cash commodity, and that do not exceed twelve months for an agricultural commodity, for processing, manufacturing, or use by the same person; and

(B) Long positions in commodity derivative contracts that do not exceed in quantity unfilled anticipated requirements of the same cash commodity for resale by a utility that is required or encouraged to hedge by its public utility commission on behalf of its customers' anticipated use.

(iv) *Hedges by agents.* Long or short positions in commodity derivative contracts by an agent who does not own or has not contracted to sell or purchase the offsetting cash commodity at a fixed price, provided that the agent is responsible for merchandising the cash positions that are being offset in commodity derivative contracts and the agent has a contractual arrangement with the person who owns the commodity or holds the cash market commitment being offset.

(4) *Other enumerated hedging positions.* A bona fide hedging position also includes the following specific positions, provided that no such position is maintained in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery contract:

(i) *Hedges of unsold anticipated production.* Short positions in commodity derivative contracts that do not exceed in quantity unsold anticipated production of the same commodity, and that do not exceed twelve months of production for an agricultural commodity, by the same person.

(ii) *Hedges of offsetting unfixed-price cash commodity sales and purchases.* Short and long positions in commodity derivative contracts that do not exceed in quantity that amount of the same cash commodity that has been bought and sold by the same person at unfixed prices:

(A) Basis different delivery months in the same commodity derivative contract; or

(B) Basis different commodity derivative contracts in the same commodity, regardless of whether the commodity derivative contracts are in the same calendar month.

(iii) *Hedges of anticipated royalties.* Short positions in commodity derivative contracts offset by the anticipated change in value of mineral royalty rights that are owned by the same person, provided that the royalty rights arise out of the production of the commodity underlying the commodity derivative contract.

(iv) *Hedges of services.* Short or long positions in commodity derivative contracts offset by the anticipated change in value of receipts or payments due or expected to be due under an executed contract for services held by the same person, provided that the contract for services arises out of the production, manufacturing, processing, use, or transportation of the commodity underlying the commodity derivative contract, and which may not exceed one year for agricultural commodities.

(5) *Cross-commodity hedges.* Positions in commodity derivative contracts described in paragraphs (2)(ii), (3)(i) through (iv), and (4)(i) through (iv) of this definition may also be used to offset the risks arising from a commodity other than the same cash commodity underlying a commodity derivative contract, provided that the fluctuations in value of the position in the commodity derivative contract, or the commodity underlying the commodity derivative contract, are substantially related to the fluctuations in value of the actual or anticipated cash position or pass-through swap and no such position is maintained in any physical-delivery commodity derivative contract during the lesser of the last five days of trading or the time period for the spot month in such physical-delivery contract.

Futures-equivalent means—

(1) An option contract, whether an option on a future or an option that is a swap, which has been adjusted by an economically reasonable and analytically supported risk factor, or delta coefficient, for that option computed as of the previous day's close or the current day's close or contemporaneously during the trading day, and converted to an economically equivalent amount of an open position in a core referenced futures contract;

(2) A futures contract which has been converted to an economically equivalent amount of an open position in a core referenced futures contract; and

(3) A swap which has been converted to an economically equivalent amount of an open position in a core referenced futures contract.

Intermarket spread position means a long (short) position in one or more commodity derivative contracts in a particular commodity, or its products or its by-products, at a particular designated contract market or swap execution facility, and a short (long) position in one or more commodity derivative contracts in that same, or similar, commodity, or its products or its by-products, away from that particular designated contract market or swap execution facility.

Intramarket spread position means a long position in one or more commodity derivative contracts in a particular commodity, or its products or its by-products, and a short position in one or more commodity derivative contracts in the same, or similar, commodity, or its products or its by-products, on the same designated contract market or swap execution facility.

■ 7. Revise § 150.3 to read as follows:

§ 150.3 Exemptions.

(a) *Positions which may exceed limits.* The position limits set forth in § 150.2 may be exceeded to the extent that:

(1) Such positions are:

(i) Bona fide hedging positions that either:

(A) Comply with the definition in § 150.1; or

(B) Are recognized by a designated contract market or swap execution facility as:

(*1*) Non-enumerated bona fide hedges in accordance with the general definition in § 150.1 and the process in § 150.9(a), *provided that* the person has not otherwise been notified by the Commission under § 150.9(d)(4) or by the designated contract market or swap execution facility under rules adopted pursuant to § 150.9(a)(4)(iv)(B); or

(*2*) Anticipatory bona fide hedge positions under paragraphs (3)(iii), (4)(i), (4)(iii), (4)(iv) and (5) of the bona fide hedging position definition in § 150.1, *provided that* for anticipatory bona fide hedge positions under this paragraph the person complies with the filing requirements found in § 150.7 or the filing requirements adopted by a designated contract market or swap execution facility in accordance with § 150.11(a)(3), as applicable;

(ii) [Reserved];

(iii) [Reserved];

(iv) Spread positions recognized by a designated contract market or swap execution facility in accordance with § 150.10(a), *provided that* the person has not otherwise been notified by the Commission under § 150.10(d)(4) or by the designated contract market or swap execution facility under rules adopted pursuant to § 150.10(a)(4)(iv)(B); or

(v) Other positions exempted under paragraph (e) of this section; and that

(2) [Reserved]

(3) [Reserved]

(b) through (j) [Reserved]

■ 8. Revise § 150.5 to read as follows:

§ 150.5 Exchange-set speculative position limits.

(a) *Requirements and acceptable practices for futures and futures option contracts subject to federal position limits.* (1) For any commodity derivative contract that is subject to a speculative position limit under § 150.2, a designated contract market or swap execution facility that is a trading facility shall set a speculative position limit that is no higher than the level specified in § 150.2.

(2) *Exemptions under § 150.3*—(i) *Grant of exemption.* Any designated contract market or swap execution facility that is a trading facility may grant exemptions from any speculative position limits it sets under paragraph (a)(1) of this section, provided that such exemptions conform to the requirements specified in § 150.3.

(ii) *Application for exemption.* Any designated contract market or swap execution facility that grants exemptions under paragraph (a)(2)(i) of this section:

(A) Must require traders to file an application requesting such exemption;

(B) Must require, for any exemption granted, that the trader reapply for the exemption at least on an annual basis; and

(C) May deny any such application, or limit, condition, or revoke any such exemption, at any time, including if it determines such positions would not be in accord with sound commercial practices, or would exceed an amount that may be established and liquidated in an orderly fashion.

(3) through (6) [Reserved]

(b) *Requirements and acceptable practices for futures and future option contracts that are not subject to the limits set forth in § 150.2, including derivative contracts in a physical commodity as defined in § 150.1 and in an excluded commodity as defined in section 1a(19) of the Act*—

(1) through (4) [Reserved]

(5) *Exemptions*—(i) *Hedge exemption.* Any hedge exemption rules adopted by a designated contract market or swap execution facility that is a trading facility must conform to the definition of bona fide hedging position in § 150.1 or provide for recognition as a non-enumerated bona fide hedge in a manner consistent with the process described in § 150.9(a).

(ii) *Other exemptions.* A designated contract market or swap execution facility may grant exemptions for:

(A) [Reserved];

(B) [Reserved].

(C) *Intramarket spread positions and intermarket spread positions,* each as defined in § 150.1, *provided that* the designated contract market or swap execution facility, in considering whether to grant an application for such exemption, should take into account whether exempting the spread position from position limits would, to the maximum extent practicable, ensure sufficient market liquidity for bona fide hedgers, and not unreasonably reduce the effectiveness of position limits to:

(*1*) Diminish, eliminate, or prevent excessive speculation;

(*2*) Deter and prevent market manipulation, squeezes, and corners; and

(3) Ensure that the price discovery function of the underlying market is not disrupted.

(D) *For excluded commodities,* a designated contract market or swap execution facility may grant, in addition to the exemptions under paragraphs (b)(5)(i) and (b)(5)(ii)(A) through (C) of this section, a limited risk management exemption pursuant to rules submitted to the Commission, consistent with the guidance in Appendix A of this part.

(iii) [Reserved]

(6) through (9) [Reserved]

(c) [Reserved]

■ 9. Add § 150.9 to read as follows:

§ 150.9 Process for recognition of positions as non-enumerated bona fide hedges.

(a) *Requirements for a designated contract market or swap execution facility to recognize non-enumerated bona fide hedge positions.* (1) A designated contract market or swap execution facility that elects to process non-enumerated bona fide hedge applications to demonstrate why a derivative position satisfies the requirements of section 4a(c) of the Act shall maintain rules, submitted to the Commission pursuant to part 40 of this chapter, establishing an application process for recognition of non-enumerated bona fide hedges consistent with the requirements of this section and the general definition of bona fide hedging position in § 150.1. A designated contract market or swap execution facility may elect to process non-enumerated bona fide hedge applications for positions in commodity derivative contracts only if, in each case:

(i) The commodity derivative contract is a referenced contract;

(ii) Such designated contract market or swap execution facility lists such commodity derivative contract for trading;

(iii) Such commodity derivative contract is actively traded on such designated contract market or swap execution facility;

(iv) Such designated contract market or swap execution facility has established position limits for such commodity derivative contract; and

(v) Such designated contract market or swap execution facility has at least one year of experience and expertise administering position limits for such commodity derivative contract. A designated contract market or swap execution facility shall not recognize a non-enumerated bona fide hedge involving a commodity index contract and one or more referenced contracts.

(2) A designated contract market or swap execution facility may establish different application processes for persons to demonstrate why a derivative position constitutes a non-enumerated bona fide hedge under novel facts and circumstances and under facts and circumstances substantially similar to a position for which a summary has been published on such designated contract market's or swap execution facility's Web site, pursuant to paragraph (a)(7) of this section.

(3) Any application process that is established by a designated contract market or swap execution facility shall elicit sufficient information to allow the designated contract market or swap execution facility to determine, and the Commission to verify, whether the facts and circumstances in respect of a derivative position satisfy the requirements of section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1, and whether it is appropriate to recognize such position as a non-enumerated bona fide hedge, including at a minimum:

(i) A description of the position in the commodity derivative contract for which the application is submitted and the offsetting cash positions;

(ii) Detailed information to demonstrate why the position satisfies the requirements of section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1;

(iii) A statement concerning the maximum size of all gross positions in derivative contracts to be acquired by the applicant during the year after the application is submitted;

(iv) Detailed information regarding the applicant's activity in the cash markets for the commodity underlying the position for which the application is submitted during the past three years; and

(v) Any other information necessary to enable the designated contract market or swap execution facility to determine, and the Commission to verify, whether it is appropriate to recognize such position as a non-enumerated bona fide hedge.

(4) Under any application process established under this section, a designated contract market or swap execution facility shall:

(i) Require each person intending to exceed position limits to submit an application, to reapply at least on an annual basis by updating that application, and to receive notice of recognition from the designated contract market or swap execution facility of a position as a non-enumerated bona fide hedge in advance of the date that such position would be in excess of the limits then in effect pursuant to section 4a of the Act;

(ii) Notify an applicant in a timely manner if a submitted application is not complete. If an applicant does not amend or resubmit such application within a reasonable amount of time after such notice, a designated contract market or swap execution facility may reject the application;

(iii) Determine in a timely manner whether a derivative position for which a complete application has been submitted satisfies the requirements of section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1, and whether it is appropriate to recognize such position as a non-enumerated bona fide hedge;

(iv) Have the authority to revoke, at any time, any recognition issued pursuant to this section if it determines the recognition is no longer in accord with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1; and

(v) Notify an applicant in a timely manner:

(A) That the derivative position for which a complete application has been submitted has been recognized by the designated contract market or swap execution facility as a non-enumerated bona fide hedge under this section, and the details and all conditions of such recognition;

(B) That its application is rejected, including the reasons for such rejection; or

(C) That the designated contract market or swap execution facility has asked the Commission to consider the application under paragraph (a)(8) of this section.

(5) An applicant's derivatives position shall be deemed to be recognized as a non-enumerated bona fide hedge exempt from federal position limits at the time that a designated contract market or swap execution facility notifies an applicant that such designated contract market or swap execution facility will recognize such position as a non-enumerated bona fide hedge.

(6) A designated contract market or swap execution facility that elects to process non-enumerated bona fide hedge applications shall file new rules or rule amendments pursuant to part 40 of this chapter, establishing or amending requirements for an applicant to file a report with such designated contract market or swap execution facility when such applicant owns or controls a derivative position that such designated contract market or swap execution facility has recognized as a non-enumerated bona fide hedge, and for such applicant to report the offsetting cash positions. Such rules shall require an applicant to update and maintain the accuracy of any such report.

(7) After recognition of each unique type of derivative position as a non-enumerated bona fide hedge, based on novel facts and circumstances, a designated contract market or swap execution facility shall publish on its Web site, on at least a quarterly basis, a summary describing the type of derivative position and explaining why it was recognized as a non-enumerated bona fide hedge.

(8) If a non-enumerated bona fide hedge application presents novel or complex issues or is potentially inconsistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1, a designated contract market or swap execution facility may ask the Commission to consider the application under the process set forth in paragraph (d) of this section. The Commission may, in its discretion, agree to or reject any such request by a designated contract market or swap execution facility.

(b) *Recordkeeping.* (1) A designated contract market or swap execution facility that elects to process non-enumerated bona fide hedge applications shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof, including the recognition by the designated contract market or swap execution facility of any derivative position as a non-enumerated bona fide hedge, the revocation or modification of any such recognition, the rejection by the designated contract market or swap execution facility of an application, or the withdrawal, supplementation or updating of an application by the applicant. Included among such records shall be:

(i) All information and documents submitted by an applicant in connection with its application;

(ii) Records of oral and written communications between such designated contract market or swap execution facility and such applicant in connection with such application; and

(iii) All information and documents in connection with such designated contract market's or swap execution facility's analysis of and action on such application.

(2) All books and records required to be kept pursuant to this section shall be kept in accordance with the requirements of § 1.31 of this chapter.

(c) *Reports to the Commission.* (1) A designated contract market or swap execution facility that elects to process non-enumerated bona fide hedge applications shall submit to the Commission a report for each week as of the close of business on Friday showing the following information:

(i) For each commodity derivative position that has been recognized by the designated contract market or swap execution facility as a non-enumerated bona fide hedge, and for any revocation or modification of such a recognition:

(A) The date of disposition,

(B) The effective date of the disposition,

(C) The expiration date of any recognition,

(D) Any unique identifier assigned by the designated contract market or swap execution facility to track the application,

(E) Any unique identifier assigned by the designated contract market or swap execution facility to a type of recognized non-enumerated bona fide hedge,

(F) The identity of the applicant,

(G) The listed commodity derivative contract to which the application pertains,

(H) The underlying cash commodity,

(I) The maximum size of the commodity derivative position that is recognized by the designated contract market or swap execution facility as a non-enumerated bona fide hedge,

(J) Any size limitation established for such commodity derivative position on the designated contract market or swap execution facility, and

(K) A concise summary of the applicant's activity in the cash markets for the commodity underlying the commodity derivative position; and

(ii) The summary of any non-enumerated bona fide hedge published pursuant to paragraph (a)(7) of this section, or revised, since the last summary submitted to the Commission.

(2) Unless otherwise instructed by the Commission, a designated contract market or swap execution facility that elects to process non-enumerated bona fide hedge applications shall submit to the Commission, no less frequently than monthly, any report submitted by an applicant to such designated contract market or swap execution facility pursuant to rules required under paragraph (a)(6) of this section.

(3) Unless otherwise instructed by the Commission, a designated contract market or swap execution facility that elects to process non-enumerated bona fide hedge applications shall submit to the Commission the information required by paragraphs (c)(1) and (2) of this section, as follows:

(i) As specified by the Commission on the Forms and Submissions page at *www.cftc.gov*;

(ii) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission; and

(iii) Not later than 9:00 a.m. Eastern time on the third business day following the date of the report.

(d) *Review of applications by the Commission.* (1) The Commission may in its discretion at any time review any non-enumerated bona fide hedge application submitted to a designated contract market or swap execution facility, and all records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application, for any purpose, including to evaluate whether the disposition of the application is consistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1.

(i) The Commission may request from such designated contract market or swap execution facility records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application.

(ii) The Commission may request additional information in connection with such application from such designated contract market or swap execution facility or from the applicant.

(2) If the Commission preliminarily determines that any non-enumerated bona fide hedge application or the disposition thereof by a designated contract market or swap execution facility presents novel or complex issues that require additional time to analyze, or that an application or the disposition thereof by such designated contract market or swap execution facility is potentially inconsistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1, the Commission shall:

(i) Notify such designated contract market or swap execution facility and the applicable applicant of the issues identified by the Commission; and

(ii) Provide them with 10 business days in which to provide the Commission with any supplemental information.

(3) The Commission shall determine whether it is appropriate to recognize the derivative position for which such application has been submitted as a non-enumerated bona fide hedge, or whether the disposition of such application by such designated contract market or swap execution facility is consistent with section 4a(c) the Act and the general definition of bona fide hedging position in § 150.1.

(4) If the Commission determines that the disposition of such application is inconsistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1, the Commission shall notify the applicant and grant the applicant a commercially reasonable amount of time to liquidate the derivative position or otherwise come into compliance. This notification will briefly specify the nature of the issues raised and the specific provisions of the Act or the Commission's regulations with which the application is, or appears to be, inconsistent.

(e) *Review of summaries by the Commission.* The Commission may in its discretion at any time review any summary of a type of non-enumerated bona fide hedge required to be published on a designated contract market's or swap execution facility's Web site pursuant to paragraph (a)(7) of this section for any purpose, including to evaluate whether the summary promotes transparency and fair and open access by all market participants to information regarding bona fide hedges. If the Commission determines that a summary is deficient in any way, the Commission shall notify such designated contract market or swap execution facility, and grant to the designated contract market or swap execution facility a reasonable amount of time to revise the summary.

(f) *Delegation of authority to the Director of the Division of Market Oversight.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(i) In paragraph (a)(8) of this section to agree to or reject a request by a designated contract market or swap execution facility to consider a non-enumerated bona fide hedge application;

(ii) In paragraph (c) of this section to provide instructions regarding the submission to the Commission of information required to be reported by a designated contract market or swap execution facility, to specify the manner for submitting such information on the Forms and Submissions page at *www.cftc.gov,* and to determine the format, coding structure, and electronic data transmission procedures for submitting such information;

(iii) In paragraph (d)(1) of this section to review any non-enumerated bona fide hedge application and all records required to be kept by a designated contract market or swap execution facility in connection with such application, to request such records from such designated contract market or swap execution facility, and to request additional information in connection with such application from such designated contract market or swap execution facility or from the applicant;

(iv) In paragraph (d)(2) of this section to preliminarily determine that a non-enumerated bona fide hedge application or the disposition thereof by a designated contract market or swap execution facility presents novel or complex issues that require additional time to analyze, or that such application or the disposition thereof is potentially inconsistent with section 4a(c) of the Act and the general definition of bona fide hedging position in § 150.1, to notify the designated contract market or swap execution facility and the applicable applicant of the issues identified, and to provide them with 10 business days in which to file supplemental information; and

(v) In paragraph (e) of this section to review any summary of a type of non-enumerated bona fide hedge required to be published on a designated contract market's or swap execution facility's Web site, to determine that any such summary is deficient, to notify a designated contract market or swap execution facility of a deficient summary, and to grant such designated contract market or swap execution facility a reasonable amount of time to revise such summary.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

■ 10. Add § 150.10 to read as follows:

§ 150.10 Process for designated contract market or swap execution facility exemption from position limits for certain spread positions.

(a) *Requirements for a designated contract market or swap execution facility to exempt from position limits certain positions normally known to the trade as spreads.* (1) A designated contract market or swap execution facility that elects to process applications for exemptions from position limits for certain positions normally known to the trade as spreads shall maintain rules, submitted to the Commission pursuant to part 40 of this chapter, establishing an application process for exempting positions normally known to the trade as spreads consistent with the requirements of this section. A designated contract market or swap execution facility may elect to process applications for such spread exemptions only if, in each case:

(i) Such designated contract market or swap execution facility lists for trading at least one contract that is either a component of the spread or a referenced contract that is a component of the spread; and

(ii) The contract in paragraph (a)(1)(i) of this section is actively traded and has been subject to position limits of the designated contract market or swap execution facility for at least one year. A designated contract market or swap execution facility shall not approve a spread exemption involving a commodity index contract and one or more referenced contracts.

(2) Spreads that a designated contract market or swap execution facility may approve under this section include:

(i) Calendar spreads;

(ii) Quality differential spreads;

(iii) Processing spreads; and

(iv) Product or by-product differential spreads.

(3) Any application process that is established by a designated contract market or swap execution facility under this section shall elicit sufficient information to allow the designated contract market or swap execution facility to determine, and the Commission to verify, whether the facts and circumstances demonstrate that it is appropriate to exempt a spread position from position limits, including at a minimum:

(i) A description of the spread position for which the application is submitted;

(ii) Detailed information to demonstrate why the spread position should be exempted from position limits, including how the exemption would further the purposes of section 4a(a)(3)(B) of the Act;

(iii) A statement concerning the maximum size of all gross positions in derivative contracts to be acquired by the applicant during the year after the application is submitted; and

(iv) Any other information necessary to enable the designated contract market or swap execution facility to determine, and the Commission to verify, whether it is appropriate to exempt such spread position from position limits.

(4) Under any application process established under this section, a designated contract market or swap execution facility shall:

(i) Require each person requesting an exemption from position limits for its spread position to submit an application, to reapply at least on an annual basis by updating that application, and to receive approval in advance of the date that such position would be in excess of the limits then in effect pursuant to section 4a of the Act;

(ii) Notify an applicant in a timely manner if a submitted application is not complete. If an applicant does not amend or resubmit such application within a reasonable amount of time after such notice, a designated contract market or swap execution facility may reject the application;

(iii) Determine in a timely manner whether a spread position for which a complete application has been submitted satisfies the requirements of paragraph (a)(4)(vi) of this section, and whether it is appropriate to exempt such spread position from position limits;

(iv) Have the authority to revoke, at any time, any spread exemption issued pursuant to this section if it determines the spread exemption no longer satisfies the requirements of paragraph (a)(4)(vi) of this section and it is no longer appropriate to exempt the spread from position limits;

(v) Notify an applicant in a timely manner:

(A) That a spread position for which a complete application has been submitted has been exempted by the designated contract market or swap execution facility from position limits, and the details and all conditions of such exemption;

(B) That its application is rejected, including the reasons for such rejection; or

(C) That the designated contract market or swap execution facility has asked the Commission to consider the application under paragraph (a)(8) of this section; and

(vi) Determine whether exempting the spread position from position limits would, to the maximum extent practicable, ensure sufficient market liquidity for bona fide hedgers, and not unreasonably reduce the effectiveness of position limits to:

(A) Diminish, eliminate or prevent excessive speculation;

(B) Deter and prevent market manipulation, squeezes, and corners; and

(C) Ensure that the price discovery function of the underlying market is not disrupted.

(5) An applicant's derivatives position shall be deemed to be recognized as a spread position exempt from federal position limits at the time that a designated contract market or swap execution facility notifies an applicant that such designated contract market or swap execution facility will exempt such spread position.

(6) A designated contract market or swap execution facility that elects to process applications to exempt spread positions from position limits shall file new rules or rule amendments pursuant to part 40 of this chapter, establishing or amending requirements for an applicant to file a report with such designated contract market or swap execution facility when such applicant owns, holds, or controls a spread position that such designated contract market or swap execution facility has exempted from position limits, including for such applicant to report each component of the spread. Such rules shall require such applicant to update and maintain the accuracy of any such report.

(7) After exemption of each unique type of spread position, a designated contract market or swap execution facility shall publish on its Web site, on at least a quarterly basis, a summary describing the type of spread position and explaining why it was exempted.

(8) If a spread exemption application presents complex issues or is potentially inconsistent with the purposes of section 4a(a)(3)(B) of the Act, a designated contract market or swap execution facility may ask the Commission to consider the application under the process set forth in paragraph (d) of this section. The Commission may, in its discretion, agree to or reject any such request by a designated contract market or swap execution facility.

(b) *Recordkeeping.* (1) A designated contract market or swap execution facility that elects to process spread exemption applications shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof, including the exemption of any spread position, the revocation or modification of any exemption, the rejection by the designated contract market or swap execution facility of an application, or the withdrawal, supplementation or updating of an application by the applicant. Included among such records shall be:

(i) All information and documents submitted by an applicant in connection with its application:

(ii) Records of oral and written communications between such designated contract market or swap execution facility and such applicant in connection with such application; and

(iii) All information and documents in connection with such designated contract market's or swap execution facility's analysis of and action on such application.

(2) All books and records required to be kept pursuant to this section shall be kept in accordance with the requirements of § 1.31 of this chapter.

(c) *Reports to the Commission.* (1) A designated contract market or swap execution facility that elects to process spread exemption applications shall submit to the Commission a report for each week as of the close of business on Friday showing the following information:

(i) The disposition of any spread exemption application, including the exemption of any spread position, the revocation or modification of any exemption, or the rejection of any application, as well as the following details:

(A) The date of disposition,

(B) The effective date of the disposition,

(C) The expiration date of any exemption,

(D) Any unique identifier assigned by the designated contract market or swap execution facility to track the application,

(E) Any unique identifier assigned by the designated contract market or swap execution facility to a type of exempt spread position,

(F) The identity of the applicant,

(G) The listed commodity derivative contract to which the application pertains,

(H) The underlying cash commodity,

(I) The size limitations on any exempt spread position, specified by contract month if applicable, and

(J) Any conditions on the exemption; and

(ii) The summary of any exempt spread position newly published pursuant to paragraph (a)(7) of this section, or revised, since the last summary submitted to the Commission.

(2) Unless otherwise instructed by the Commission, a designated contract market or swap execution facility that elects to process applications to exempt spread positions from position limits shall submit to the Commission, no less frequently than monthly, any report submitted by an applicant to such designated contract market or swap execution facility pursuant to rules required by paragraph (a)(6) of this section.

(3) Unless otherwise instructed by the Commission, a designated contract market or swap execution facility that elects to process applications to exempt spread positions from position limits shall submit to the Commission the information required by paragraphs (c)(1) and (2) of this section, as follows:

(i) As specified by the Commission on the Forms and Submissions page at *www.cftc.gov;*

(ii) Using the format, coding structure, and electronic data transmission

procedures approved in writing by the Commission; and

(iii) Not later than 9:00 a.m. Eastern time on the third business day following the date of the report.

(d) *Review of applications by the Commission.* (1) The Commission may in its discretion at any time review any spread exemption application submitted to a designated contract market or swap execution facility, and all records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application, for any purpose, including to evaluate whether the disposition of the application is consistent with the purposes of section 4a(a)(3)(B) of the Act.

(i) The Commission may request from such designated contract market or swap execution facility records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application.

(ii) The Commission may request additional information in connection with such application from such designated contract market or swap execution facility or from the applicant.

(2) If the Commission preliminarily determines that any application to exempt a spread position from position limits, or the disposition thereof by a designated contract market or swap execution facility, presents novel or complex issues that require additional time to analyze, or that an application or the disposition thereof by such designated contract market or swap execution facility is potentially inconsistent with the Act, the Commission shall:

(i) Notify such designated contract market or swap execution facility and the applicable applicant of the issues identified by the Commission; and

(ii) Provide them with 10 business days in which to provide the Commission with any supplemental information.

(3) The Commission shall determine whether it is appropriate to exempt the spread position for which such application has been submitted from position limits, or whether the disposition of such application by such designated contract market or swap execution facility is consistent with the purposes of section 4a(a)(3)(B) of the Act.

(4) If the Commission determines that it is not appropriate to exempt the spread position for which such application has been submitted from position limits, or that the disposition of such application is inconsistent with the Act, the Commission shall notify the applicant and grant the applicant a commercially reasonable amount of time to liquidate the spread position or otherwise come into compliance. This notification will briefly specify the nature of the issues raised and the specific provisions of the Act or the Commission's regulations with which the application is, or appears to be, inconsistent.

(e) *Review of summaries by the Commission.* The Commission may in its discretion at any time review any summary of a type of spread position required to be published on a designated contract market's or swap execution facility's Web site pursuant to paragraph (a)(7) of this section for any purpose, including to evaluate whether the summary promotes transparency and fair and open access by all market participants to information regarding spread exemptions. If the Commission determines that a summary is deficient in any way, the Commission shall notify such designated contract market or swap execution facility, and grant to the designated contract market or swap execution facility a reasonable amount of time to revise the summary.

(f) *Delegation of authority to the Director of the Division of Market Oversight.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(i) In paragraph (a)(8) of this section to agree to or reject a request by a designated contract market or swap execution facility to consider a spread exemption application;

(ii) In paragraph (c) of this section to provide instructions regarding the submission to the Commission of information required to be reported by a designated contract market or swap execution facility, to specify the manner for submitting such information on the Forms and Submissions page at *www.cftc.gov*, and to determine the format, coding structure, and electronic data transmission procedures for submitting such information;

(iii) In paragraph (d)(1) of this section to review any spread exemption application and all records required to be kept by a designated contract market or swap execution facility in connection with such application, to request such records from such designated contract market or swap execution facility, and to request additional information in connection with such application from such designated contract market or swap execution facility, or from the applicant;

(iv) In paragraph (d)(2) of this section to preliminarily determine that a spread exemption application or the disposition thereof by a designated contract market or swap execution facility presents complex issues that require additional time to analyze, or that such application or the disposition thereof is potentially inconsistent with the Act, to notify the designated contract market or swap execution facility and the applicable applicant of the issues identified, and to provide them with 10 business days in which to file supplemental information; and

(v) In paragraph (e) of this section to review any summary of a type of spread exemption required to be published on a designated contract market's or swap execution facility's Web site, to determine that any such summary is deficient, to notify a designated contract market or swap execution facility of a deficient summary, and to grant such designated contract market or swap execution facility a reasonable amount of time to revise such summary.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

■ 11. Add § 150.11 to read as follows:

§ 150.11 Process for recognition of positions as bona fide hedges for unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedge positions.

(a) *Requirements for a designated contract market or swap execution facility to recognize certain enumerated anticipatory bona fide hedge positions.* (1) A designated contract market or swap execution facility that elects to process applications for recognition of positions as hedges of unfilled anticipated requirements, unsold anticipated production, anticipated royalties, anticipated service contract payments or receipts, or anticipatory cross-commodity hedges under the provisions of paragraphs (3)(iii), (4)(i), (iii), (iv), or (5), respectively, of the definition of bona fide hedging position in § 150.1 shall maintain rules, submitted to the Commission pursuant to part 40 of this chapter, establishing an application process for such anticipatory bona fide hedges consistent with the requirements of this section. A designated contract market or swap execution facility may elect to process

such anticipatory hedge applications for positions in commodity derivative contracts only if, in each case:

(i) The commodity derivative contract is a referenced contract;

(ii) Such designated contract market or swap execution facility lists such commodity derivative contract for trading;

(iii) Such commodity derivative contract is actively traded on such derivative contract market;

(iv) Such designated contract market or swap execution facility has established position limits for such commodity derivative contract; and

(v) Such designated contract market or swap execution facility has at least one year of experience and expertise administering position limits for such commodity derivative contract.

(2) Any application process that is established by a designated contract market or swap execution facility shall require, at a minimum, the information required under § 150.7(d).

(3) Under any application process established under this section, a designated contract market or swap execution facility shall:

(i) Require each person intending to exceed position limits to submit an application, and to reapply at least on an annual basis by updating that application, to file the supplemental reports required under § 150.7(e), and to receive notice of recognition from the designated contract market or swap execution facility of a position as a bona fide hedge in advance of the date that such position would be in excess of the limits then in effect pursuant to section 4a of the Act;

(ii) Notify an applicant in a timely manner if a submitted application is not complete. If the applicant does not amend or resubmit such application within a reasonable amount of time after notification from the designated contract market or swap execution facility, the designated contract market or swap execution facility may reject the application;

(iii) Inform an applicant within ten days of receipt of such application by the designated contract market or swap execution facility that:

(A) The derivative position for which a complete application has been submitted has been recognized by the designated contract market or swap execution facility as a bona fide hedge, and the details and all conditions of such recognition;

(B) The application is rejected, including the reasons for such rejection; or

(C) The designated contract market or swap execution facility has asked the Commission to consider the application under paragraph (a)(6) of this section; and

(iv) Have the authority to revoke, at any time, any recognition issued pursuant to this section if it determines the position no longer complies with the filing requirements under paragraph (a)(2) of this section.

(4) An applicant's derivatives position shall be deemed to be recognized as a bona fide hedge at the time that a designated contract market or swap execution facility notifies an applicant that such designated contract market or swap execution facility will recognize such position as a bona fide hedge.

(5) A designated contract market or swap execution facility that elects to process bona fide hedge applications shall file new rules or rule amendments pursuant to part 40 of this chapter, establishing or amending requirements for an applicant to file a report with the Commission pursuant to § 150.7, and file a copy of such report with such designated contract market or swap execution facility when such applicant owns or controls a derivative position that such designated contract market or swap execution facility has recognized as a bona fide hedge, and for such applicant to report the offsetting cash positions. Such rules shall require an applicant to update and maintain the accuracy of any such report.

(6) A designated contract market or swap execution facility may ask the Commission to consider any application made under this section. The Commission may, in its discretion, agree to or reject any such request by a designated contract market or swap execution facility; provided that, if the Commission agrees to the request, it will have 10 business days from the time of the request to carry out its review.

(b) *Recordkeeping.* (1) A designated contract market or swap execution facility that elects to process bona fide hedge applications under this section shall keep full, complete, and systematic records, which include all pertinent data and memoranda, of all activities relating to the processing of such applications and the disposition thereof, including the recognition of any derivative position as a bona fide hedge, the revocation or modification of any recognition, the rejection by the designated contract market or swap execution facility of an application, or withdrawal, supplementation or updating of an application. Included among such records shall be:

(i) All information and documents submitted by an applicant in connection with its application;

(ii) Records of oral and written communications between such designated contract market or swap execution facility and such applicant in connection with such application; and

(iii) All information and documents in connection with such designated contract market's or swap execution facility's analysis of and action on such application.

(2) All books and records required to be kept pursuant to this section shall be kept in accordance with the requirements of § 1.31 of this chapter.

(c) *Reports to the Commission.* (1) A designated contract market or swap execution facility that elects to process bona fide hedge applications under this section shall submit to the Commission a report for each week as of the close of business on Friday showing the following information:

(i) The disposition of any application, including the recognition of any position as a bona fide hedge, the revocation or modification of any recognition, as well as the following details:

(A) The date of disposition,

(B) The effective date of the disposition,

(C) The expiration date of any recognition,

(D) Any unique identifier assigned by the designated contract market or swap execution facility to track the application,

(E) Any unique identifier assigned by the designated contract market or swap execution facility to a bona fide hedge recognized under this section;

(F) The identity of the applicant,

(G) The listed commodity derivative contract to which the application pertains,

(H) The underlying cash commodity,

(I) The maximum size of the commodity derivative position that is recognized by the designated contract market or swap execution facility as a bona fide hedge,

(J) Any size limitation established for such commodity derivative position on the designated contract market or swap execution facility, and

(K) A concise summary of the applicant's activity in the cash market for the commodity underlying the position for which the application was submitted.

(2) Unless otherwise instructed by the Commission, a designated contract market or swap execution facility that elects to process bona fide hedge applications shall submit to the Commission the information required by paragraph (c)(1) of this section, as follows:

(i) As specified by the Commission on the Forms and Submissions page at *www.cftc.gov;*

(ii) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission; and

(iii) Not later than 9:00 a.m. Eastern time on the third business day following the date of the report.

(d) *Review of applications by the Commission.* (1) The Commission may in its discretion at any time review any bona fide hedge application submitted to a designated contract market or swap execution facility under this section, and all records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application, for any purpose, including to evaluate whether the disposition of the application is consistent with the Act.

(i) The Commission may request from such designated contract market or swap execution facility records required to be kept by such designated contract market or swap execution facility pursuant to paragraph (b) of this section in connection with such application.

(ii) The Commission may request additional information in connection with such application from such designated contract market or swap execution facility or from the applicant.

(2) If the Commission preliminarily determines that any anticipatory hedge application is inconsistent with the filing requirements of § 150.11(a)(2), the Commission shall:

(i) Notify such designated contract market or swap execution facility and the applicable applicant of the deficiencies identified by the Commission; and

(ii) Provide them with 10 business days in which to provide the Commission with any supplemental information.

(3) If the Commission determines that the anticipatory hedge application is inconsistent with the filing requirements of § 150.11(a)(2), the Commission shall notify the applicant and grant the applicant a commercially reasonable amount of time to liquidate the derivative position or otherwise come into compliance. This notification will briefly specify the specific provisions of the filing requirements of § 150.11(a)(2), with which the application is, or appears to be, inconsistent.

(e) *Delegation of authority to the Director of the Division of Market Oversight.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(i) In paragraph (a)(6) of this section to agree to or reject a request by a designated contract market or swap execution facility to consider a bona fide hedge application;

(ii) In paragraph (c) of this section to provide instructions regarding the submission to the Commission of information required to be reported by a designated contract market or swap execution facility, to specify the manner for submitting such information on the Forms and Submissions page at *www.cftc.gov,* and to determine the format, coding structure, and electronic data transmission procedures for submitting such information;

(iii) In paragraph (d)(1) of this section to review any bona fide hedge application and all records required to be kept by a designated contract market or swap execution facility in connection with such application, to request such records from such designated contract market or swap execution facility, and to request additional information in connection with such application from such designated contract market or swap execution facility or from the applicant; and

(iv) In paragraph (d)(2) of this section to determine that it is not appropriate to recognize a derivative position for which an application for recognition has been submitted as a bona fide hedge, or that the disposition of such application by a designated contract market or swap execution facility is inconsistent with the Act, and, in connection with such a determination, to grant the applicant a reasonable amount of time to liquidate the derivative position or otherwise come into compliance.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

Appendices A Through D to Part 150 [Reserved]

■ 12. Add reserved appendices A through D to part 150.

■ 13. Add appendix E to part 150 to read as follows:

Appendix E to Part 150—Guidance Regarding Exchange-Set Speculative Position Limits

This appendix provides guidance regarding § 150.5, as follows:

Guidance for designated contract markets. (1) Until a board of trade has access to sufficient swap position information, a board of trade need not demonstrate compliance with Core Principle 5(B) with respect to swaps. A board of trade has access to sufficient swap position information if, for example:

(i) It has access to daily information about its market participants' open swap positions; or

(ii) It knows, including through knowledge gained in surveillance of heavy trading activity occurring on or pursuant to the rules of the designated contract market, that its market participants regularly engage in large volumes of speculative trading activity, that would cause reasonable surveillance personnel at an exchange to inquire further about a market participant's intentions or open swap positions.

(2) When a board of trade has access to sufficient swap position information, this guidance is no longer applicable. At such time, a board of trade is required to demonstrate compliance with Core Principle 5(B) with respect to swaps.

Guidance for swap execution facilities. (1) Until a swap execution facility that is a trading facility has access to sufficient swap position information, the swap execution facility need not demonstrate compliance with Core Principle 6(B). A swap execution facility has access to sufficient swap position information if, for example:

(i) It has access to daily information about its market participants' open swap positions; or

(ii) If it knows, including through knowledge gained in surveillance of heavy trading activity occurring on or pursuant to the rules of the swap execution facility, that its market participants regularly engage in large volumes of speculative trading activity that would cause reasonable surveillance personnel at an exchange to inquire further about a market participant's intentions or open swap positions.

(2) When a swap execution facility has access to sufficient swap position information, this guidance is no longer applicable. At such time, a swap execution facility that is a trading facility is required to file rules with the Commission to demonstrate compliance with Core Principle 6 (B).

Issued in Washington, DC, on May 27, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices To Position Limits for Derivatives: Certain Exemptions and Guidance—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

Today, the CFTC has taken a significant step toward finalizing its rules on position limits this year.

The supplemental rule we have unanimously proposed today would ensure that commercial end-users can continue to engage in bona fide hedging efficiently for risk management and price discovery. It would permit the exchanges to recognize certain positions as bona fide hedges, subject to CFTC oversight.

For years, exchanges have worked with the CFTC's general definition of a "bona fide hedging position" to grant these exemptions to exchange-set limits. Under this supplemental proposal, they would do so for federal limits, subject to strict oversight by the CFTC. Today's action comes after listening closely to the concerns of market participants, and in particular commercial-end users, who use these markets every day to hedge commercial risk. Today's proposal would also make some helpful clarifications to definitions used in our earlier proposal, including the definition of "bona fide hedging position," to conform it to the statutory language.

This proposal is a critical piece of our effort to complete the position limits rule this year. Another key piece of that effort was the Commission's 2015 proposal to streamline the process for waiving aggregation requirements when one entity does not control another's trading, even if they are under common ownership. We are also working to review exchange estimates of deliverable supply so that spot month limits may be set based on current data.

Federal position limits for agricultural contracts have been in place in our markets for decades, and exchange-set position limits for most other physical commodity contracts have been in place for years. It is critical that we fulfill our statutory responsibility to adopt a position limits rule. As I have said previously, we appreciate the importance and complexity of the issues surrounding the position limits rule. No current Commissioner was in office when these rules were proposed, and therefore we have taken the time to listen to market participants and consider the proposals very carefully.

I thank our staff for their excellent work on this proposal. I also thank my fellow Commissioners Bowen and Giancarlo for their input and support. And I look forward to hearing the views of market participants and to completing a position limits rule this year.

Appendix 3—Statement of Commissioner J. Christopher Giancarlo

I support issuing for public comment today's proposal to supplement and revise the Commission's 2013 proposed rule to establish federal position limits for certain core referenced futures, options and swaps contracts. The supplemental proposal appears responsive to a broad range of public comments. I believe it is a positive step forward in devising a final rule that will take into account certain practical realities associated with administering a workable position limits regime.

The proposal appropriately recognizes that most exchanges do not have access to sufficient swap positon information to effectively monitor swap position limits. If adopted, it would seem to relieve designated contract markets (DCMs) and swap execution facilities (SEFs) from setting and monitoring exchange limits on swaps until such time as DCMs and SEFs have access to data that is necessary to be able to do so. Position limits for swaps would still be set and monitored by the CFTC. The proposal simply acknowledges that the Commission cannot require exchanges to do the impossible.

The proposal also recommends changes to the definitions of "bona fide hedging position," "futures equivalent," "intermarket spread position" and "intramarket spread position." The elimination of the incidental test and the orderly trading requirement from the general definition of bona fide hedging position makes sense as the incidental test is already included in the economically appropriate test and the orderly trading requirement is addressed in other provisions of the Commodity Exchange Act (CEA).[1] Further, as discussed in the preamble, because the meaning of the orderly trading requirement in the context of over-the-counter swaps markets is unclear, those markets will benefit from greater precision by its removal. The proposed amendments to the definitions of "futures equivalent," "intermarket spread positon" and "intramarket spread position" appear to be helpful clarifications. I look forward to public comment on whether the proposed changes are appropriate.

Importantly, the proposal would also allow certain spread exemptions from federal position limits. It would establish a process to permit exchanges to recognize exemptions from exchange and federal position limits for non-enumerated bona fide hedging positions (NEBFH) and spread positions. The proposal would also provide an expedited process for exchange recognition of enumerated anticipatory bona fide hedges.

Exchanges are in the best position to initially recognize the foregoing exemptions from position limits. They have both the expertise and the resources[2] to perform this task in a responsible way as demonstrated by the long history of DCMs analyzing and granting requests for NEBFH exemptions in the context of exchange-set limits. Moreover, the CFTC has a long history of overseeing the performance of DCMs in doing so. In addition, DCMs already have a long-existing framework in place for recognizing exemptions from exchange-set limits with which market participants are well familiar. The supplemental proposal, when incorporated into a final rule, would build upon the existing framework for exchange-set limits. It also would lower unreasonable burdens on market participants under the Commission's 2013 proposal, including provisions that would have required hedge exemption applicants to file duplicative requests with both the CFTC and the exchanges.

In short, the supplemental proposal leverages exchange expertise and resources to enable exemptions to be granted in an efficient and timely manner without sacrificing market integrity. The Commission would remain the ultimate arbiter of exemptions from position limits by retaining the authority to review and reverse any exchange-granted exemption.

I commend Commission staff for their responsiveness to broad-based concerns of market participants. I appreciate the professionalism of my fellow commissioners in persevering to make this rule more workable. I look forward to taking additional steps to ensure that the practical issues raised by the agricultural and end-user communities are addressed in the final rule.

Now and always, prosperity requires durable and vibrant markets. We must balance regulatory burdens with clear economic benefits if we are to maintain liquid commodity hedging markets that support our American way of life.

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[1] *See* CEA sections 4c(a)(5) and 4c(a)(6).

[2] As noted in footnote 127 of the preamble, from June 15, 2011 to June 15, 2012 ICE Futures U.S. received 142 exemption applications, 92 of which were granted. From November 1, 2010 to October 31, 2011 the Market Surveillance Group from the Chicago Mercantile Exchange (CME) Regulation Department approved 420 exemption applications for products traded on the CME and the Chicago Board of Trade. This is old data, but one could reasonably predict that the number of applications have increased over time and will continue to increase in the future as trading levels increase. Given its current resources, the CFTC is not in a position to timely process the hundreds of applications that likely will be filed with the exchanges each year.

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Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 219

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northwest Fisheries Science Center Fisheries Research; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 219

[Docket No. 151027994–6421–01]

RIN 0648–BF47

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Northwest Fisheries Science Center Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS' Office of Protected Resources has received a request from NMFS' Northwest Fisheries Science Center (NWFSC) for authorization to take marine mammals incidental to fisheries research conducted in the Pacific Ocean off the northwest United States, over the course of five years from the date of issuance. As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations.

DATES: Comments and information must be received no later than July 13, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0060, by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the federal e-Rulemaking Portal. Go to *www.regulations.gov,* enter 0648–BF47 in the "Search" box, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. To help NMFS process and review comments more efficiently, please use only one method to submit comments. All comments received are a part of the public record and will generally be posted on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of NWFSC's application and any supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This proposed rule, to be issued under the authority of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), would establish a framework for authorizing the take of marine mammals incidental to the NWFSC's fisheries research activities in the California Current and Pacific Northwest.

The NWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the NWFSC designs and executes the studies and funds vessel time.

We received an application from the NWFSC requesting five-year regulations and authorization to take multiple species of marine mammals. Take would occur by Level B harassment incidental to the use of active acoustic devices, as well as by visual disturbance of pinnipeds, and by Level A harassment, serious injury, or mortality incidental to the use of fisheries research gear. The regulations would be valid from 2016 to 2021. Please see "Background" below for definitions of harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

The following provides a summary of some of the major provisions within the proposed rulemaking for the NWFSC fisheries research activities. We have preliminarily determined that the NWFSC's adherence to the proposed mitigation, monitoring, and reporting measures listed below would achieve the least practicable adverse impact on the affected marine mammals. They include:

- Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of certain research gear.
- Required use of acoustic deterrent devices on surface trawl nets.
- Required implementation of the mitigation strategy known as the "move-on rule mitigation protocol" which incorporates best professional judgment, when necessary during certain research fishing operations.

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1371 (a)(5)(A) and (D)) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact

on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On August 10, 2015, we received an adequate and complete request from NWFSC for authorization to take marine mammals incidental to fisheries research activities. We received an initial draft of the request on January 2, 2015, followed by a revised draft on April 28, 2015. On August 28, 2015 (80 FR 52256), we published a notice of receipt of NWFSC's application in the **Federal Register**, requesting comments and information related to the NWFSC request for thirty days. We received comments jointly from The Humane Society of the United States and Whale and Dolphin Conservation, which we considered in development of this proposed rule and which are available on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm*.

NWFSC proposes to conduct fisheries research using trawl gear used at various levels in the water column, hook-and-line gears (including longlines with multiple hooks, rod and reel, and troll deployments), purse seine/tangle net gear, and other gear. If a marine mammal interacts with gear deployed by NWFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.*, any injury that will likely result in mortality), or mortality. Therefore, NWFSC has pooled the estimated number of incidents of take that could reasonably result from gear interactions, and we have assessed the potential impacts accordingly. NWFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out may also occur, as a result of visual disturbance from vessels conducting NWFSC research. The proposed regulations would be valid for five years from the date of issuance.

NWFSC requests authorization to take individuals of sixteen species by Level A harassment, serious injury, or mortality (hereafter referred to as M/SI + Level A) and of 34 species by Level B harassment.

Description of the Specified Activity

Overview

The NWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the NWFSC designs and executes the studies and funds vessel time. The NWFSC proposes to administer and conduct approximately 36 survey programs over the five-year period. The gear types used fall into several categories: Towed nets fished at various levels in the water column, longline and other hook and line gear, seine nets, traps, and other gear. Only use of trawl nets, hook and line gears, and purse seine nets are likely to result in interaction with marine mammals. Many of these surveys also use active acoustic devices.

The federal government has a responsibility to conserve and protect living marine resources in U.S. waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine finfish and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed fishery management decisions, Congress created six regional fisheries science centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The NWFSC is the research arm of NMFS in the northwest region of the United States. The NWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in the geographic research area described below and provides scientific information to support the Pacific Fishery Management Council and numerous other domestic and international fisheries management organizations.

Dates and Duration

The specified activity may occur at any time during the five-year period of validity of the proposed regulations. Dates and duration of individual surveys are inherently uncertain, based on congressional funding levels for the NWFSC, weather conditions, or ship contingencies. In addition, cooperative research is designed to provide flexibility on a yearly basis in order to address issues as they arise. Some cooperative research projects last multiple years or may continue with modifications. Other projects only last one year and are not continued. Most cooperative research projects go through an annual competitive selection process to determine which projects should be funded based on proposals developed by many independent researchers and fishing industry participants.

Specified Geographical Region

The NWFSC conducts research in the Pacific Northwest and California Current within three research areas: The California Current Research Area (CCRA), Puget Sound Research Area (PSRA), and Lower Columbia River Research Area (LCRRA). Please see Figures 1–2 through 1–4 in the NWFSC application for maps of the three research areas. We note here that, while the NWFSC specified geographical region extends outside of the U.S. Exclusive Economic Zone (EEZ), from the Mexican EEZ (not including Mexican territorial waters) north into the Canadian EEZ (not including Canadian territorial waters), the MMPA's authority does not extend into foreign territorial waters. In addition to general knowledge and other citations contained herein, this section relies upon the descriptions found in Sherman and Hempel (2009) and Wilkinson *et al.* (2009). As referred to here, productivity refers to fixated carbon (*i.e.*, g C/m²/yr) and can be related to the carrying capacity of an ecosystem.

The NWFSC conducts research surveys off the Pacific coast within the California Current Large Marine Ecosystem (CCE). This region is considered to be of moderately high

productivity. Sea surface temperature (SST) is fairly consistent, ranging from 9–14 °C in winter and 13–15 °C in summer. Major biogeographic breaks are found at Point Conception and Cape Mendocino, and the region includes major estuaries such as San Francisco Bay, the Columbia River, and Puget Sound. The latter two are areas of research focus for NWFSC and are described in further detail below. The shelf is generally narrow in the CCE, and shelf-break topography (*e.g.*, underwater canyons) creates localized upwelling conditions that concentrate nutrients into areas of high topographic relief.

The California Current determines the general hydrography off the coast of California. The current is part of the North Pacific Gyre, related to the anticyclonic circulation of the central North Pacific and brings cool waters southward. In general, an area of divergence parallels the coast of California, with a zone of convergence 200–300 km from the coastline. The current moves south along the western coast of North America, beginning off southern British Columbia and flowing southward past Washington, Oregon and California, before ending off southern Baja California (Bograd *et al.*, 2010). Extensive seasonal upwelling of colder, nutrient-rich subsurface waters is predominant in the area south of Cape Mendocino and supports large populations of whales, seabirds and important fisheries. Significant interannual variation in productivity results from the effects of this coastal upwelling as well as from the El Niño-Southern Oscillation and the Pacific Decadal Oscillation. Both oscillations involve transitions from cooler, more productive conditions to warmer, less productive conditions, but over different timescales.

On the shoreward side of the California Current, the California Current Front separates cold, low-salinity upwelled waters from the warmer, saltier waters close to shore. Offshore frontal filaments transport the frontal water across the entire ecosystem. In winter, the wind-driven Davidson Current is the dominant nearshore system, and its associated front forms along the boundary between inshore subtropical waters and colder offshore temperate and subarctic waters. Surface flow of the California Current appears to be diverted offshore at Point Conception and again at Punta Eugenia, while semi-permanent eddies exist south of these headlands.

NWFSC conducts research programs specific to two major estuaries of the CCE: Puget Sound and the Columbia River. Offshore of these estuaries, the CCE is affected by the Heceta Bank, which rises to within 80 m of the ocean surface and causes coastal eddies, and underwater canyons (*e.g.*, Juan de Fuca Canyon), which create upwelling conditions driving high biologic productivity. This portion of the region is also affected by high amounts of runoff from the Columbia and Fraser Rivers (the latter being the largest freshwater input to Puget Sound). The river plumes stimulate primary productivity, with the Columbia River plume creating a large surface lens of lower-salinity water in the spring and summer and the Fraser River plume carrying nutrients northwards past Vancouver Island year-round.

Puget Sound, with more than 8,000 km² of marine waters and estuarine environment and a watershed of more than 33,000 km², is one of the largest estuaries in the United States and is the only inland sea with fjords in the continental United States. Puget Sound is a place of great physical and ecological complexity and productivity, with many diverse and important habitat types. Kelp beds and eelgrass meadows cover almost 1,000 km², while other major habitat types include subtidal and intertidal wetlands, mudflats, and sandflats (Gustafson *et al.*, 2000). Concentrations of nutrients (*i.e.*, nitrates and phosphates) are consistently high throughout most of Puget Sound, largely due to the flux of oceanic water into the basin (Harrison *et al.*, 1994), with circulation driven by tides, gravity, and freshwater influx. The average surface water temperature is 12.8 °C in summer and 7.2 °C in winter (Staubitz *et al.*, 1997), but surface waters frequently exceed 20 °C in the summer and fall. With nearly six million people (doubled since the 1960s), Puget Sound is also heavily influenced by human activity.

The Columbia River is the largest in the Pacific Northwest, draining a watershed of 671,000 km². The Columbia River estuary encompasses more than 325 km² and is one of the largest on the west coast. Dams, diking, and dredging have dramatically altered the hydrologic processes that historically shaped the wetlands of the lower Columbia River. Prior to these alterations, many of the riverine islands and much of the floodplain were inundated several times a year, typically in December and again in May or June. Operation of dams has substantially reduced peak river flows and has nearly eliminated flooding in many low-lying areas. Dredging of shipping channels has required disposal of massive quantities of sediments, resulting in creation of new islands, filling of many former wetlands, and changing shoreline sediment types (OWJV, 1994).

The LCRRA includes the Columbia River from its mouth, west of Astoria, OR, to the Bonneville Dam at river mile (RM) 145. Downstream of approximately RM 120, the river widens to include a broad floodplain and elongated islands that divide the river and form sloughs and side-channels in the formerly marshy lowlands. The floodplain expands around the confluence with the Willamette River (which accounts for approximately fifteen percent of Columbia River flow) at RM 101. Downstream of approximately RM 35 the channel is dotted with low islands of deposited sediments and widens into several broad bays (OWJV, 1994).

Detailed Description of Activities

The federal government has a trust responsibility to protect living marine resources in waters of the United States. These waters extend to 200 nm from the shoreline and include the EEZ. The U.S. government has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside of the EEZ (*i.e.*, the high seas). To carry out its responsibilities over U.S. and international waters, Congress has enacted several statutes authorizing certain federal agencies to administer programs to manage and protect living marine resources. Among these federal agencies, NOAA has the primary responsibility for protecting marine finfish and shellfish species and their habitats. Within NOAA, NMFS has been delegated primary responsibility for the science-based management, conservation, and protection of living marine resources under statutes including the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Salmon Treaty Act, and the Endangered Species Act, as well as under treaties with Native American tribes inside the EEZ off the Washington Coast.

Within NMFS, six regional fisheries science centers direct and coordinate the collection of scientific information needed to inform fisheries management decisions. Each Fisheries Science Center is a distinct entity and is the scientific focal point for a particular region. NWFSC conducts research and provides scientific advice to manage fisheries and conserve protected species along the U.S. west coast, including estuaries and freshwater systems of Puget Sound and the major rivers in Washington and Oregon. NWFSC provides scientific information to support the Pacific Fishery Management Council and other

domestic and international fisheries management organizations.

The NWFSC collects a wide array of information necessary to evaluate the status of exploited fishery resources and the marine environment. NWFSC scientists conduct fishery-independent research onboard NOAA-owned and operated vessels or on chartered vessels. A few surveys are conducted onboard commercial fishing vessels, but the NWFSC designs and executes the studies and funds vessel time. The NWFSC proposes to administer and conduct approximately 36 survey programs over the five-year period.

The gear types used fall into several categories: Towed nets fished at various levels in the water column, longline and other hook and line gear, seine nets, traps, and other gear. Only use of trawl nets, hook and line gears, and purse seine nets are likely to result in interaction with marine mammals. Many of these surveys also use active acoustic devices. These surveys may be conducted aboard NOAA-operated research vessels (R/V), including the *Bell M. Shimada, Reuben Lasker,* and assorted other small vessels owned by NWFSC, aboard vessels owned and operated by cooperating agencies and institutions, or aboard charter vessels.

In the following discussion, we first summarily describe various gear types used by NWFSC and then describe specific fisheries and ecosystem research activities conducted by the NWFSC. This is not an exhaustive list of gear and/or devices that may be utilized by NWFSC but is representative of gear categories and is complete with regard to all gears with potential for interaction with marine mammals. Additionally, relevant active acoustic devices, which are commonly used in NWFSC survey activities, are described separately in a subsequent section. Please see Appendix A of NWFSC's draft EA for further description, pictures, and diagrams of research gear and vessels.

Trawl nets—A trawl is a funnel-shaped net towed behind a boat to capture fish. The codend (or bag) is the fine-meshed portion of the net most distant from the towing vessel where fish and other organisms larger than the mesh size are retained. In contrast to commercial fishery operations, which generally use larger mesh to capture marketable fish, research trawls often use smaller mesh to enable estimates of the size and age distributions of fish in a particular area. The body of a trawl net is generally constructed of relatively coarse mesh that functions to gather schooling fish so that they can be collected in the codend. The opening of the net, called the mouth, is extended horizontally by large panels of wide mesh called wings. The mouth of the net is held open by hydrodynamic force exerted on the trawl doors attached to the wings of the net. As the net is towed through the water, the force of the water spreads the trawl doors horizontally apart. The top of a net is called the headrope, and the bottom is called the footrope.

The trawl net is usually deployed over the stern of the vessel and attached with two cables (or warps) to winches on the deck of the vessel. The cables are played out until the net reaches the fishing depth. Commercial trawl vessels travel at speeds of 2–5 kn while towing the net for time periods up to several hours. The duration of the tow depends on the purpose of the trawl, the catch rate, and the target species. At the end of the tow the net is retrieved and the contents of the codend are emptied onto the deck. For research purposes, the speed and duration of the tow and the characteristics of the net must be standardized to allow meaningful comparisons of data collected at different times and locations. Active acoustic devices (described later) incorporated into the research vessel and the trawl gear monitor the position and status of the net, speed of the tow, and other variables important to the research design. NWFSC research trawling activities utilize pelagic (or midwater) and surface trawls, which are designed to operate at various depths within the water column but not to contact the seafloor, as well as bottom trawls.

NWFSC also uses beam trawls, a type of bottom trawl in which the horizontal opening of the net is provided by a heavy beam mounted at each end on guides or skids that travel along the seabed. On sandy or muddy bottoms, a series of 'tickler' chains are strung between the skids ahead of the net to stir up the fish from the seabed and chase them into the net. On rocky grounds, these ticklers may be replaced with chain matting. Several trawls are towed, one on each side of the vessel. NWFSC attaches video camera systems to some beam trawls. The trawls are towed along the seafloor at speeds of 1–1.5 kn.

Longline—Longline vessels fish with baited hooks attached to a mainline (or groundline). The length of the longline and the number of hooks depend on the species targeted, the size of the vessel, and the purpose of the fishing activity. Hooks are attached to the mainline by another thinner line called a gangion. The length of the gangion and the distance between gangions depends on the purpose of the fishing activity. Depending on the fishery, longline gear can be deployed on the seafloor (bottom longline), in which case weights are attached to the mainline, or near the surface of the water (pelagic longline), in which case buoys are attached to the mainline to provide flotation and keep the baited hooks suspended in the water. Radar reflectors, radio transmitters, and light sources are often used to help fishers determine the location of the longline gear prior to retrieval.

A commercial pelagic longline can be over 100 km long and have thousands of hooks attached, although longlines used for research surveys are shorter. The pelagic longline gear used for NWFSC research surveys typically use 500 hooks attached to a mainline less than 2 km long, with snap-on gangions less than 1 m long spaced at intervals of approximately 3 m. There are no internationally-recognized standard measurements for hook size, and a given size may be inconsistent between manufacturers. Larger hooks, as are used in longlining, are referenced by increasing whole numbers followed by a slash and a zero as size increases (*e.g.,* 1/0 up to 20/0). The numbers represent relative sizes, normally associated with the gap (the distance from the point tip to the shank). Because pelagic longline gear is not anchored to the seafloor, it floats freely in the water and may drift considerable distances between the time of deployment and the time of retrieval. Bottom longlines used for commercial fishing can be up to several miles long, but those used for NWFSC research use shorter lines with approximately thirty hooks per line.

The time period between deployment and retrieval of the longline gear is the soak time. Soak time is an important parameter for calculating fishing effort. For commercial fisheries the goal is to optimize the soak time in order to maximize catch of the target species while minimizing the bycatch rate and minimizing damage to target species that may result from predation by sharks or other predators.

Other hook and line gear—Hook and line is a general term used for a range of fishing methods that employ short fishing lines with hooks in one form or another (as opposed to longlines). This gear is similar to methods commonly used by recreational fishers and may generally include handlines, hand reels, powered reels, rod/pole and line, drop lines, and troll lines, all using bait or lures in various ways to attract target species. NWFSC uses barbed or barbless circle hooks used depending on the needs of the research (*i.e.,* to retain fish or release them with minimal injury) and would typically deploy multiple lines at once.

Other nets—NWFSC surveys utilize various small, fine-mesh, towed nets designed to sample small fish and pelagic invertebrates. These nets can be broadly categorized as small trawls (which are separated from large trawl nets due to discountable potential for interaction with marine mammals; see "Potential Effects of the Specified Activity on Marine Mammals and Their Habitat") and plankton nets.

1. The Tucker trawl is a medium-sized single-warp net used to study pelagic fish and zooplankton. The Tucker trawl consists of a series of nets that can be opened and closed sequentially via stepping motor without retrieving the net from the fishing depth. It is designed for deep oblique tows where up to three replicate nets can be sequentially operated by a double release mechanism and is typically equipped with a full suite of instruments, including inside and outside flow meters, CTD, and pitch sensor.

2. NWFSC also uses various neuston nets, which are frame trawls towed horizontally at the top of the water column in order to capture neuston (*i.e.,* organisms that inhabit the water's surface).

3. An epibenthic tow sled is an instrument designed to collect organisms that live on bottom sediments. It consists of a fine mesh net, typically 1 m x 1 m opening with 1-mm mesh, attached to a rigid frame with runners to help it move along the substrate.

The remainder of nets described here are plankton nets, which usually consist of fine mesh attached to a weighted frame which spreads the mouth of the net to cover a known surface area in order to sample plankton and fish eggs from various parts of the water column. Plankton nets used by NWFSC generally employ 20 to 500-µm mesh.

4. Ring nets are used to capture plankton with vertical tows. These nets consist of a circular frame and a cone-shaped net with a collection jar at the codend. The net, attached to a labeled dropline, is lowered into the water while maintaining the net's vertical position. When the desired depth is reached, the net is pulled straight up through the water column to collect the sample.

5. Bongo nets are towed through the water at an oblique angle to sample plankton over a range of depths. Similar to ring nets, these nets typically have a cylindrical section coupled to a conical portion that tapers to a detachable codend constructed of nylon mesh. During each plankton tow, the bongo nets are deployed to depth and are then retrieved at a controlled rate so that the volume of water sampled is uniform across the range of depths. In shallow areas, sampling protocol is adjusted to prevent contact between the bongo nets and the seafloor. A collecting bucket, attached to the codend of the net, is used to contain the plankton sample. Some bongo nets can be opened and closed using remote control to enable the collection of samples from particular depth ranges. A group of depth-specific bongo net samples can be used to establish the vertical distribution of zooplankton species in the water column at a site. Bongo nets are generally used to collect zooplankton for research purposes and are not used for commercial harvest.

Seine nets—Seine nets typically hang vertically in the water with the bottom edge held down by weights and the top edge buoyed by floats. Seine nets can be deployed from the shore as a beach seine or from a boat and are actively fished, in comparison with gillnets which may be similar but fish passively. NWFSC uses both purse seines and beach seines. Beach seines are deployed from shore to surround all fish in the nearshore area, and typically have one end fastened to the shore while the other end is set out in a wide arc and brought back to the beach. This may be done by hand or with a small boat. The beach seines used in NWFSC research are 1.8–2.4 m in depth and 36–45 m in length, with mesh sizes of less than 25 mm. A pole seine is a type of beach seine deployed by hand. The net is pulled along the bottom by hand as two or more people hold the poles and walk through the water. Fish and other organisms are captured by walking the net towards shore or tilting the poles backwards and lifting the net out of the water. The NWFSC pole seine is 12 x 2 m, with mesh smaller than 25 mm.

Purse seines are typically much larger and are deployed from vessels. Commercial fishers use purse seines to capture schooling pelagic species by encircling the fish and then using a line at the bottom that enables the net to be closed like a purse. Commercial purse seines may be more than 2,000 m in length and 200 m in depth, varying in size according to vessel, mesh size, and target species. The purse seines employed by NWFSC are between 150–450 m in length, between 9–27 m in depth and have mesh sizes ranging from 11–33 mm depending on the location in the net.

Tangle net—Tangle nets are similar to gillnets (*i.e.,* vertical panels of netting buoyed with floats at top and weighted at bottom) but are typically considered to be more selective and less lethal than gillnets, using smaller mesh sizes to allow fish to be caught by nose or jaw and thus able to be resuscitated. NWFSC uses a 180 x 12 m tangle net with 108-mm mesh.

Traps and pots—Traps and pots are submerged, three-dimensional devices, often baited, that permit organisms to enter the enclosure but make escape extremely difficult or impossible. Most traps are attached by a rope to a buoy on the surface of the water and may be deployed in series. The trap entrance can be regulated to control the maximum size of animal that can enter, and the size of the mesh in the body of the trap can regulate the minimum size that is retained. In general, the species caught depends on the type and characteristics of the pot or trap used. NWFSC uses fyke traps and sablefish (*Anoplopoma fimbria*) pots.

Fyke traps are bag-shaped nets held open by frames or hoops, often outfitted with wings and/or leaders to guide fish towards the entrance of the actual trap. Fyke trap wings can be set up to form a barrier across a channel, trapping fish that attempt to proceed through the channel. As the tide ebbs, fish eventually seek to leave the wetland channel and are then trapped. NWFSC sets fyke traps with 6.4-mm mesh in estuarine channels that are approximately 1–5 m wide. NWFSC uses conical sablefish pots to catch fish. These pots consist of a conical-frustum-shaped frame covered in nylon netting with one or more funnel-shaped entrance tunnels and are 1.2 m in diameter.

Conductivity, temperature, and depth profilers (CTD)—A CTD profiler is the primary research tool for determining chemical and physical properties of seawater (see Figure A–22 of NWFSC's EA for a photograph). A shipboard CTD is made up of a set of small probes attached to a large (1–2 m diameter) metal rosette wheel. The rosette is lowered through the water column on a cable, and CTD data are observed in real time via a conducting cable connecting the CTD to a computer on the ship. The rosette also holds a series of sampling bottles that can be triggered to close at different depths in order to collect a suite of water samples that can be used to determine additional properties of the water over the depth of the CTD cast. A standard CTD cast, depending on water depth, requires two to five hours to complete. The data from a suite of samples collected at different depths are often called a depth profile. Depth profiles for different variables can be

compared in order to glean information about physical, chemical, and biological processes occurring in the water column. Salinity, temperature, and depth data measured by the CTD instrument are essential for characterization of seawater properties.

Other instruments—NWFSC uses a continuous water pump with a thermosalinograph to measure sea surface conductivity and temperature. The pump continuously pumps seawater from a depth of 3 m near the bow of the research vessel to the thermosalinograph which sends the temperature and conductivity data to a shipboard computer. To collect physical environmental data in riverine and estuarine habitats, NWFSC uses water level and temperature loggers. These devices are placed underwater at fixed locations where they continuously record data.

Video cameras—The NWFSC uses several apparatuses to collect underwater videos of benthic habitats and organisms. These include a CamPod, a video camera sled, video beam trawls and a remotely operated vehicle (ROV). Each apparatus includes a video camera system consisting of a digital video camera, lights, and a power source. The CamPod is a lightweight, three-legged platform equipped with a video system and adequate illumination. The frame holds a 35-mm stills camera system and two video cameras—one that provides a forward-looking oblique view and a high-resolution video camera that faces downward. Designed primarily for making images of the benthic environment, the configuration of the device focuses on minimizing its hydrodynamic presence in the field of view of the cameras. The CamPod is deployed vertically through the water column on a cable and is intended to view one point on the bottom.

A video camera sled consists of a video camera system mounted on a metal frame with runners to allow it to move along the benthic substrate. A research vessel tows the sled along the seafloor, allowing the camera to capture video footage of the benthic environment. NWFSC uses a video ROV to capture underwater footage of the benthic environment. The ROV is controlled and powered from a surface vessel. Electrical power is supplied through an umbilical or tether which also has fiber optics which carry video and data signals between the operator and the ROV. This enables researchers on the vessel to control the ROV's position in the water with joysticks while they view the video feed on a monitor.

Section 1.6 of the NWFSC's application provides a detailed account of all surveys planned by NWFSC in the CCRA, PSRA, and LCRRA. We note here that active acoustic systems are used for data acquisition purposes only within the CCRA. Many of these surveys also use small trawls, plankton nets, and/or other gear; however, only gear with likely potential for marine mammal interaction is described. Table 1.1 of NWFSC's application provides summary information related to these surveys. Please see those sections for full details of survey activity planned by NWFSC. Here we provide relevant information related to a subset of survey programs with potential for marine mammal interactions.

1. *Bycatch Reduction Research*—Bycatch reduction research programs are conducted in the CCRA, from southern Oregon to Canada. This intermittent research is conducted aboard chartered commercial fishing vessels, involving thirty to ninety days at sea (DAS) from April to October, in order to test gear improvements in commercial trawls. Specific trawl gear tested varies based on survey objectives and vessel chartered. Projected annual effort is approximately forty bottom trawls per year (50–1,000 m depth; up to four hour tows), up to sixty midwater trawls per year (50–1,000 m depth; average two hour tow), and up to an additional sixty bottom trawls per year with a double-rigged shrimp trawl (100–300 m depth; thirty to eighty minute tows).

2. *Flatfish Broodstock Collection*—In order to collect fish for aquaculture development, intermittent surveys are conducted aboard charter fishing vessels or small NOAA vessels. These surveys use commercial bottom trawls and hook and line and are conducted in Puget Sound and along the Washington coast for approximately twenty DAS. The hook and line portion involves approximately eighteen trips per year with up to twelve lines in the water at once, using barbed circle hooks. Total hook-hours are dependent on target species and catch per unit effort (CPUE). Trawls (6–24 per year) are deployed for approximately ten minutes each at depths greater than 10 m.

3. *Groundfish Bottom Trawl Survey*—This survey is conducted annually from May to October for at least 190 DAS, extending throughout the U.S. west coast, and is designed to monitor groundfish distribution and biomass. Commercial fishing vessels are used to deploy Aberdeen bottom trawls (5 x 15 m mouth opening) for approximately 750 tows per year (55–1,280 m depth; fifteen minute tows).

4. *Hake Acoustic Survey/Camera Trawl Research*—These surveys are conducted annually from March to September (up to 80 DAS) from southern California to southeast Alaska, following hake (*Merluccius productus*) distribution in order to measure abundance using active acoustic systems and trawl gear. NOAA vessels as well as commercial fishing vessels may be used, deploying Aleutian Wing midwater trawls (100 m headrope) for 225 trawls per year (30–1,500 m depth; variable tow duration) and Poly Nor'Easter bottom trawls (36 m footrope x 27 m headrope) for five to ten trawls per year (variable depth and duration). Results of the survey inform assessments of several rockfish (*Sebastes* spp.) populations and may be used in assessments of central California salmon productivity. It is either conducted on a NOAA ship or a charter vessel and requires about 45 survey days. The protocols for this survey include underway multi-frequency active acoustic devices, modified-Cobb midwater trawls, various plankton tows, and CTD profiles at fixed stations. The modified-Cobb trawl is deployed for fifteen-minute tows at 2 kn during dark hours at 15–30 m depth.

5. *Juvenile Salmon Pacific Northwest Coastal Survey*—This survey complements similar surveys conducted by NMFS' Southwest Fisheries Science Center (SWFSC), is conducted annually in May, June, and September (36 DAS) from Newport, OR, to Cape Flattery, WA, aboard commercial fishing vessels, and is designed to assess ocean conditions and growth, relative abundance, and survival of juvenile salmon (*Oncorhynchus* spp.). The survey deploys the Nordic 264 surface trawl (30 m wide x 20 m deep) for 180 trawls per year (surface to 30 m depth; thirty minute tow).

6. *Marine Fish Broodstock Collection, Sampling, and Tagging*—This variable research program occurs annually for approximately ten DAS aboard charter fishing vessels along the Washington coast. In order to collect fish, commercial bottom trawls (ten trawls per year; 50–1,000 m depth, up to four hour tow duration), pelagic longline, and hook and line gear are used. Approximately thirty longline sets per year, using five hundred barbed circle hooks per set, are set at approximately 215–915 m depth (mainline length 1,370–1,830 m; soak time approximately three hours). Hook and line effort involves eight lines with barbed circle hooks deployed for six-hour fishing days for a total of ninety hours or 720 hook-hours per year.

7. *Northern Juvenile Rockfish Survey*—This survey complements similar surveys conducted by SWFSC, is conducted annually from May to June from Cape Mendocino, CA, to Cape Flattery, WA, for fifteen to thirty DAS, and targets the pelagic phase of juvenile rockfish using a modified Cobb midwater trawl net (26 m headrope; 12 x 12 m opening). It is typically conducted on a charter vessel, with approximately one hundred trawls per year (fifteen-minute tows at night; 15–30 m depth).

8. *Video Beam Trawl Collaborative Research*—This survey is conducted monthly along the continental shelf from Oregon to Washington aboard partner research vessels or chartered commercial vessels. The survey uses a 2-m beam trawl system with open codend outfitted with a digital video camera to assess the seasonal and interannual distribution of young-of-the-year groundfishes and the potential impacts of hypoxia and requires twenty DAS annually with twenty to forty trawl deployments of ten minutes each.

9. *Coastwide Groundfish Hook and Line Survey in Untrawlable Habitat*—This survey to monitor groundfish distribution and abundance along the U.S. west coast is conducted annually from May to October aboard charter sportfishing vessels (250 DAS). Hook and line gear is deployed by rod and reel, with approximately 1,000 sites visited annually. At each site, each of three anglers deploys a line with five hooks for a five-minute soak and repeats this five times. Therefore, 75 total hooks are deployed per site for five minutes each, yielding an annual total of 6,250 hook-hours.

10. *Near Coastal Ocean Purse Seining*—This study of salmon habitat use is conducted monthly from May to September nearshore near the mouth of the Columbia River aboard chartered commercial vessels (12 DAS). Purse seines (228 x 18 m or 305 x 12 m) are deployed for 75 sets per year, with generally less than one hour set duration.

11. *Beam Trawl Survey to Evaluate Effects of Hypoxia*—Conducted only in Puget Sound, with twenty DAS in summer and fall, this survey is designed to examine effects of hypoxia on demersal fish in Hood Canal. A 2-m beam trawl, primarily with open codend and outfitted with a video camera, is deployed for one tow per each of ten sites per season for a total of twenty tows (each tow at varying depths [30, 60, 90 m]; ten minute duration).

12. *Marine Fish Collections Including Flatfish*—This survey, conducted only in Puget Sound aboard charter vessels with variable monthly effort (fifteen DAS), utilizes commercial bottom trawls. Annual effort is forty trawls at 50–1,000 m depth and tow duration is up to four hours.

13. *Movement Studies of Puget Sound Species*—These surveys occur in Puget Sound aboard a variety of small boats, with year-round sampling totaling 25 DAS. Survey effort involves commercial bottom trawls (twelve tows per year at greater than 10 m depth and for ten minutes), hook and line (twenty trips per year with up to twelve barbless hooks in the water at once), and bottom longline (180-m mainline deployed to approximately 60 m depth). The latter involves three sets per year with thirty 16/0 circle hooks per set.

14. *Puget Sound Marine Pelagic Food Web*—These surveys occur in Puget Sound only about every five years from April to October aboard charter vessels and totaling thirty DAS when it occurs. The survey deploys a Kodiak surface trawl (3.1 x 6.1 m) for five hundred tows of ten minute duration and depths greater than 10 m.

15. *Skagit Bay Juvenile Salmon Survey*—This survey occurs in Puget Sound aboard chartered vessels annually from April to September for thirty DAS and uses the same Kodiak surface trawl with the same protocols as the Puget Sound marine pelagic food web survey (180 tows per year).

16. *Elwha Dam Removal*—This Puget Sound study of the effects of dam removal on nearshore fish species includes use of a beach seine (43 x 1.8 m). The survey is conducted monthly using a small vessel, totaling 20 DAS and up to 140 samples per year (less than ten minutes per sample). Separate studies ("Snohomish Juvenile Salmon Studies" [up to 200 sets annually during 50 DAS; conducted monthly and twice-monthly from February to September] and "Puget Sound Salmon Contaminant Study" [up to 100 sets annually during 30 DAS from May to July]) use similar beach seines in similar ways. Additional surveys in the Columbia River ("Estuary Tidal Habitats" [up to 100 sets annually during 25 DAS, quarterly to monthly] and "LCR Ecosystem Monitoring" [up to 200 sets annually during 16 DAS, monthly from February to December]) also use beach seines similarly.

17. *Rockfish Genetics*—Hook and line fishing gear is used to capture bottomfish for biological sampling. Conducted in Puget Sound aboard charter boats from April to November (35–41 DAS), this survey uses baited hooks or bottom jigs for approximately 750 hook-hours per year.

18. *Marine Fish Research Including Broodstock Collection, Sampling, and Tagging*—This research involves pelagic longline and hook and line survey effort conducted in Puget Sound aboard charter vessels for approximately 15 DAS with effort varying monthly. The gear specifications and effort are similar to those described previously (for pelagic longline and hook and line only) for marine fish broodstock collection in the California Current.

19. *Eulachon Arrival Timing*—This survey uses a modified Cobb midwater trawl net 26-m headrope; 12 x 12 m opening) in the Columbia River estuary and plume to determine the arrival timing and distribution of spawning eulachon. The survey is conducted from January to March (15 DAS) aboard NOAA vessels, with sixty trawls per year (fifteen-minute tow duration at 30–40 m depth).

20. *Pair Trawl Juvenile Salmon Survey*—This trawl survey is conducted in the Columbia River between approximately RM 40–50 from March to August (80 DAS) aboard small vessels. A surface pair trawl (wings 92 x 92 m; trawl body 9 m wide x 6 m deep x 18 m long) modified with an open codend (2.4 x 3 m opening) is towed near the surface for eight to fifteen hours per trawl, totaling 800–1,200 tow-hours per year. The trawl is outfitted with a flow-through Passive Integrated Transponder (PIT) tag detector to assess passage of tagged juvenile salmon.

21. *Benefits of Wetland Restoration to Juvenile Salmon*—This study, occurring throughout the LCRRA, uses purse seines (150 x 9 m), beach seines (46 x 1.8 m), and surface trawls (3 x 6 m opening) to study salmon habitat use. The surveys are typically conducted aboard small research vessels and/or skiffs, with purse seine effort occurring for 32 DAS bi-weekly from March to October (ninety sets per year; typically less than one hour set duration) and beach seines and surface trawls (fifteen minute tows) occurring quarterly from March to December. The latter portion is conducted for 16 DAS, at two sites per day with two to three hauls of each type per site.

22. *Migratory Behavior of Adult Salmon*—This LCRRA survey uses tangle nets to catch and tag fish. Tangle nets (180 x 12 m) are deployed from commercial fishing vessels for 32 DAS from spring to fall, with up to 75 sets per year deployed for 25–45 minutes each.

Description of Active Acoustic Sound Sources—This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal

inasmuch as the information is relevant to NWFSC's specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. We also describe the active acoustic devices used by NWFSC.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the "loudness" of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal [μPa]), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2-s) represents the total energy contained within a pulse, and considers both intensity and duration of exposure. For a single pulse, the numerical value of the SEL measurement is usually 5–15 dB lower than the rms sound pressure in dB re 1 μPa, with the comparative difference between measurements of rms and SEL measurements often tending to decrease with increasing range (Greene, 1997; McCauley *et al.*, 1998). Peak sound pressure is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (p-p), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.*, 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams (as for the sources considered here) or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.*, 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.*, vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.*, 1995):

- Wind and waves: The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- Precipitation: Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- Biological: Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- Anthropogenic: Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.*, a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise "ambient" or "background" sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997 in Southall *et al.*, 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.*, rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

We use generic sound exposure thresholds (see Table 1) to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. These thresholds should be considered guidelines for estimating when harassment may occur (*i.e.*, when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is currently revising these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*. NMFS has determined that the 160-dB threshold for impulsive sources is most appropriate for use in considering the potential effects of the NWFSC's activities.

TABLE 1—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater) ...	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater) ...	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).

A wide range of active acoustic devices are used in NWFSC fisheries surveys for remotely sensing bathymetric, oceanographic, and biological features of the environment. Most of these sources involve relatively high frequency, directional, and brief repeated signals tuned to provide sufficient focus and resolution on specific objects. NWFSC also uses passive listening sensors (*i.e.*, remotely and passively detecting sound rather than producing it), which do not have the potential to impact marine mammals. NWFSC active acoustic sources include various echosounders (*e.g.*, multibeam systems), scientific sonar systems, positional sonars (*e.g.*, net sounders for determining trawl position), and environmental sensors (*e.g.*, current profilers).

Mid- and high-frequency underwater acoustic sources typically used for scientific purposes operate by creating an oscillatory overpressure through rapid vibration of a surface, using either electromagnetic forces or the piezoelectric effect of some materials. A vibratory source based on the piezoelectric effect is commonly referred to as a transducer. Transducers are usually designed to excite an acoustic wave of a specific frequency, often in a highly directive beam, with the directional capability increasing with operating frequency. The main parameter characterizing directivity is the beam width, defined as the angle subtended by diametrically opposite "half power" (−3 dB) points of the main lobe. For different transducers at a single operating frequency the beam width can vary from 180° (almost omnidirectional) to only a few degrees. Transducers are usually produced with either circular or rectangular active surfaces. For circular transducers, the beam width in the horizontal plane (assuming a downward pointing main beam) is equal in all directions, whereas rectangular transducers produce more complex beam patterns with variable beam width in the horizontal plane. Please see Zykov and Carr (2014) for further discussion of electromechanical sound sources.

The types of active sources employed in fisheries acoustic research and monitoring may be considered in two broad categories here, based largely on their respective operating frequency (*e.g.*, within or outside the known audible range of marine species) and other output characteristics (*e.g.*, signal duration, directivity). As described below, these operating characteristics result in differing potential for acoustic impacts on marine mammals.

Category 1 active fisheries acoustic sources include those with high output frequencies (≤180 kHz) that are outside the known functional hearing capability of any marine mammal. Sounds that are above the functional hearing range of marine animals may be audible if sufficiently loud (*e.g.*, Møhl, 1968). However, the relative output levels of these sources mean that they would potentially be detectable to marine mammals at maximum distances of only a few meters, and are highly unlikely to be of sufficient intensity to result in behavioral harassment. These sources also generally have short duration signals and highly directional beam patterns, meaning that any individual marine mammal would be unlikely to even receive a signal that would almost certainly be inaudible.

We are aware of two recent studies (Deng *et al.*, 2014; Hastie *et al.*, 2014) demonstrating some behavioral reaction by marine mammals to acoustic signals at frequencies above 180 kHz. These studies generally indicate only that sub-harmonics could be detectable by certain species at distances up to several hundred meters. However, this detectability is in reference to ambient noise, not to NMFS' established 160 dB threshold for assessing the potential for incidental take for these sources. Source levels of the secondary peaks considered in these studies—those within the hearing range of some marine mammals—range from 135–166 dB, meaning that these sub-harmonics would either be below the threshold for behavioral harassment or would attenuate to such a level within a few meters. Beyond these important study details, these high-frequency (*i.e.*, Category 1) sources and any energy they may produce below the primary frequency that could be audible to marine mammals would be dominated by a few primary sources that are

operated near-continuously, and the potential range above threshold would be so small as to essentially discount them. Therefore, Category 1 sources are not expected to have any effect on marine mammals and are not considered further in this document.

Category 2 acoustic sources, which are present on most NWFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers with lower output frequencies than Category 1 sources. Category 2 active acoustic sources have moderate to high output frequencies (10 to 180 kHz) that are generally within the functional hearing range of marine mammals and therefore have the potential to cause behavioral harassment. However, while likely potentially audible to certain species, these sources have generally short ping durations and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. These characteristics reduce the likelihood of an animal receiving or perceiving the signal. A number of these sources, particularly those with relatively lower output frequencies coupled with higher output levels can be operated in different output modes (*e.g.*, energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impact on marine mammals.

We now describe specific acoustic sources used by NWFSC. The acoustic system used during a particular survey is optimized for surveying under specific environmental conditions (*e.g.*, depth and bottom type). Lower frequencies of sound travel further in the water (*i.e.*, good range) but provide lower resolution (*i.e.*, are less precise). Pulse width and power may also be adjusted in the field to accommodate a variety of environmental conditions. Signals with a relatively long pulse width travel further and are received more clearly by the transducer (*i.e.*, good signal-to-noise ratio) but have a lower range resolution. Shorter pulses provide higher range resolution and can detect smaller and more closely spaced objects in the water. Similarly, higher power settings may decrease the utility of collected data. Power level is also adjusted according to bottom type, as some bottom types have a stronger return and require less power to produce data of sufficient quality. Power is typically set to the lowest level possible in order to receive a clear return with the best data. Survey vessels may be equipped with multiple acoustic systems; each system has different advantages that may be utilized depending on the specific survey area or purpose. In addition, many systems may be operated at one of two frequencies or at a range of frequencies. Characteristics of these sources are summarized in Table 2.

(1) *Multi-Frequency Narrow Beam Scientific Echosounders*—Echosounders and sonars work by transmitting acoustic pulses into the water that travel through the water column, reflect off the seafloor, and return to the receiver. Water depth is measured by multiplying the time elapsed by the speed of sound in water (assuming accurate sound speed measurement for the entire signal path), while the returning signal itself carries information allowing "visualization" of the seafloor. Multi-frequency split-beam sensors are deployed from NWFSC survey vessels to acoustically map the distributions and estimate the abundances and biomasses of many types of fish; characterize their biotic and abiotic environments; investigate ecological linkages; and gather information about their schooling behavior, migration patterns, and avoidance reactions to the survey vessel. The use of multiple frequencies allows coverage of a broad range of marine acoustic survey activity, ranging from studies of small plankton to large fish schools in a variety of environments from shallow coastal waters to deep ocean basins. Simultaneous use of several discrete echosounder frequencies facilitates accurate estimates of the size of individual fish, and can also be used for species identification based on differences in frequency-dependent acoustic backscattering between species. The NWFSC operates the Simrad EK60 system, which typically transmits and receives at four frequencies ranging from 38–200 kHz.

(2) *Multibeam Echosounder and Sonar*—Multibeam echosounders and sonars operate similarly to the devices described above. However, the use of multiple acoustic "beams" allows coverage of a greater area compared to single beam sonar. The sensor arrays for multibeam echosounders and sonars are usually mounted on the keel of the vessel and have the ability to look horizontally in the water column as well as straight down. Multibeam echosounders and sonars are used for mapping seafloor bathymetry, estimating fish biomass, characterizing fish schools, and studying fish behavior. The NWFSC operates the Simrad ME70 system, which is mounted to the hull of the research vessel and emits frequencies in the 70–120 kHz range.

(3) *Single-Frequency Omnidirectional Sonar*—These sources provide omnidirectional imaging around the source with different vertical beamwidths available, which results in differential transmitting beam patterns. The cylindrical multi-element transducer allows the omnidirectional sonar beam to be electronically tilted down to −90°, allowing automatic tracking of schools of fish within the entire water volume around the vessel. NWFSC operates the Simrad SX90 system.

(4) *Acoustic Doppler Current Profiler (ADCP)*—An ADCP is a type of sonar used for measuring water current velocities simultaneously at a range of depths. Whereas current depth profile measurements in the past required the use of long strings of current meters, the ADCP enables measurements of current velocities across an entire water column. The ADCP measures water currents with sound, using the Doppler effect. A sound wave has a higher frequency when it moves towards the sensor (blue shift) than when it moves away (red shift). The ADCP works by transmitting "pings" of sound at a constant frequency into the water. As the sound waves travel, they ricochet off particles suspended in the moving water, and reflect back to the instrument. Due to the Doppler effect, sound waves bounced back from a particle moving away from the profiler have a slightly lowered frequency when they return. Particles moving toward the instrument send back higher frequency waves. The difference in frequency between the waves the profiler sends out and the waves it receives is called the Doppler shift. The instrument uses this shift to calculate how fast the particle and the water around it are moving. Sound waves that hit particles far from the profiler take longer to come back than waves that strike close by. By measuring the time it takes for the waves to return to the sensor, and the Doppler shift, the profiler can measure current speed at many different depths with each series of pings.

An ADCP anchored to the seafloor can measure current speed not just at the bottom, but at equal intervals to the surface. An ADCP instrument may be anchored to the seafloor or can be mounted to a mooring or to the bottom of a boat. ADCPs that are moored need an anchor to keep them on the bottom, batteries, and a data logger. Vessel-mounted instruments need a vessel with power, a shipboard computer to receive the data, and a GPS navigation system so the ship's movements can be subtracted from the current velocity

data. ADCPs operate at frequencies between 75 and 300 kHz.

(5) *Net Monitoring Systems*—During trawling operations, a range of sensors may be used to assist with controlling and monitoring gear. Net sounders give information about the concentration of fish around the opening to the trawl, as well as the clearances around the opening and the bottom of the trawl; catch sensors give information about the rate at which the codend is filling; symmetry sensors give information about the optimal geometry of the trawls; and tension sensors give information about how much tension is in the warps and sweeps. NWFSC uses the Simrad ITI Catch Monitoring System, which allows monitoring of the exact position of the gear and of what is happening in and around the trawl, and the Simrad FS70 Third Wire Net Sonde, which allows monitoring of the trawl opening.

TABLE 2—OPERATING CHARACTERISTICS OF NWFSC ACTIVE ACOUSTIC SOURCES

Active acoustic system	Operating frequencies (kHz)	Maximum source level	Single ping duration (ms) and repetition rate (Hz)	Orientation/directionality	Nominal beamwidth
Simrad EK60 narrow beam echosounder	38, 70, 120, 200	224 dB	1 ms at 1 Hz	Downward looking	11°.
Simrad ME70 multibeam echosounder	70–120	205 dB	2 ms at 1 Hz	Downward looking	140°.
Simrad SX90 omnidirectional multibeam sonar	70–120	206 dB	2 ms at 1 Hz	Downward omnidirectional.	0°–90° tilt angle from vertical (average).
Teledyne RD Instruments ADCP, Ocean Surveyor	75	224 dB	External trigger	Downward looking (30° tilt).	40° × 100°.
Simrad ITI Trawl Monitoring System	27–33	<200 dB	0.05–0.5 Hz	Downward looking	40° × 100°.
Simrad FS70 trawl sonar	330	216	1 ms at 120 kHz	Third wire trawl sonar for monitoring net opening and fishing conditions.	40°.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, "and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses." Note that taxonomic information for certain species mentioned in this section is provided in the following section ("Description of Marine Mammals in the Area of the Specified Activity").

The NWFSC has invested significant time and effort in identifying technologies, practices, and equipment to minimize the impact of the proposed activities on marine mammal species and stocks and their habitat. These efforts have resulted in the consideration of many potential mitigation measures, including those the NWFSC has determined to be feasible and has implemented in recent years as a standard part of sampling protocols. These measures include the move-on rule mitigation protocol (also referred to in the preamble as the move-on rule), protected species visual watches and use of acoustic pingers on trawl gear, as well as use of a marine mammal excluder device (MMED) in Nordic 264 midwater trawls.

Development of Mitigation Measures

In survey year 2008 in the CCE, NMFS' SWFSC had dramatically more incidental takes of marine mammals in research gear, in terms of both interactions and animals captured, than in any other year. The SWFSC had previously conducted over a thousand midwater trawl survey tows over more than 25 years, with very few incidents of marine mammal interactions (Hewitt, 2009), but the number of incidental takes in 2008 exceeded the aggregate total over all preceding years. Following the first SWFSC survey cruise in April 2008, during which a number of marine mammals were captured in trawl gear, the SWFSC convened a workshop involving SWFSC staff with expertise in survey design and operations and marine mammal bycatch mitigation (Hewitt, 2009). Participants worked to determine appropriate mitigation measures and to consider changes to sampling protocols in an effort to reduce marine mammal interactions.

The SWFSC also allocated resources towards the design, construction, and testing of a MMED that could be incorporated into the Nordic 264 trawl net, use of which had resulted in a large portion of takes. In 2009, the MMED was tested and use of the device added to SWFSC standard survey protocol for the Nordic 264 net (Dotson *et al.*, 2010).

These efforts resulted in the consideration of many potential mitigation measures for all NMFS Science Centers, including those the NWFSC has determined to be feasible and relevant to their operations. These measures include the move-on rule, protected species visual watches and use of acoustic pingers on certain trawl gear, as well as use of the MMED in Nordic 264 trawls.

General Measures

Coordination and communication—When NWFSC survey effort is conducted aboard NOAA-owned vessels, there are both vessel officers and crew and a scientific party. Vessel officers and crew are not composed of NWFSC staff, but are employees of NOAA's Office of Marine and Aviation Operations (OMAO), which is responsible for the management and operation of NOAA fleet ships and aircraft and is composed of uniformed officers of the NOAA Commissioned Corps as well as civilians. The ship's officers and crew provide mission support and assistance to embarked scientists, and the vessel's Commanding Officer (CO) has ultimate responsibility for vessel and passenger safety and, therefore, decision authority. When NWFSC survey effort is conducted aboard cooperative platforms (*i.e.*, non-NOAA vessels), ultimate responsibility and decision authority again rests with non-NWFSC personnel (*i.e.*, vessel's master or captain). Decision authority includes the implementation of mitigation measures (*e.g.*, whether to stop deployment of trawl gear upon observation of marine mammals). The scientific party involved in any NWFSC survey effort is composed, in part or whole, of NWFSC staff and is led by a Chief Scientist (CS). Therefore, because the NWFSC—not OMAO or any other entity that may have authority over survey platforms used by NWFSC—is the applicant to whom any incidental take authorization issued under the authority of these proposed regulations would be issued, we require that the NWFSC take all necessary measures to

coordinate and communicate in advance of each specific survey with OMAO, or other relevant parties, to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed-upon. This may involve description of all required measures when submitting cruise instructions to OMAO or when completing contracts with external entities. NWFSC will coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (CO/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. The CS will be responsible for coordination with the Officer on Deck (OOD; or equivalent on non-NOAA platforms) to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

Vessel speed—Vessel speed during active sampling rarely exceeds 5 kn, with typical speeds being 2–4 kn. Transit speeds vary from 6–14 kn but average 10 kn. These low vessel speeds minimize the potential for ship strike (see "Potential Effects of the Specified Activity on Marine Mammals and Their Habitat" for an in-depth discussion of ship strike). At any time during a survey or in transit, if a crew member standing watch or dedicated marine mammal observer sights marine mammals that may intersect with the vessel course that individual will immediately communicate the presence of marine mammals to the bridge for appropriate course alteration or speed reduction, as possible, to avoid incidental collisions.

Other gears—The NWFSC deploys a wide variety of gear to sample the marine environment during all of their research cruises. Many of these types of gear (*e.g.,* plankton nets, video camera and ROV deployments) are not considered to pose any risk to marine mammals and are therefore not subject to specific mitigation measures. However, at all times when the NWFSC is conducting survey operations at sea, the OOD and/or CS and crew will monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

Handling procedures—The NWFSC will implement a number of handling protocols to minimize potential harm to marine mammals that are incidentally taken during the course of fisheries research activities. In general, protocols have already been prepared for use on commercial fishing vessels. Because incidental take of marine mammals in fishing gear is similar for commercial fisheries and research surveys, NWFSC proposes to adopt these protocols, which are expected to increase post-release survival. In general, following a "common sense" approach to handling captured or entangled marine mammals will present the best chance of minimizing injury to the animal and of decreasing risks to scientists and vessel crew. Handling or disentangling marine mammals carries inherent safety risks, and using best professional judgment and ensuring human safety is paramount.

Captured live or injured marine mammals are released from research gear and returned to the water as soon as possible with no gear or as little gear remaining on the animal as possible. Animals are released without removing them from the water if possible and data collection is conducted in such a manner as not to delay release of the animal(s) or endanger the crew. NWFSC staff will be instructed on how to identify different species; handle and bring marine mammals aboard a vessel; assess the level of consciousness; remove fishing gear; and return marine mammals to water.

Trawl Survey Visual Monitoring and Operational Protocols

Specific mitigation protocols are required for all trawl operations conducted by the NWFSC using Nordic 264 surface trawl gear, midwater trawl gear (modified Cobb, Aleutian Wing, and various commercial nets), and bottom trawl gear (double-rigged shrimp, Poly Nor'easter, modified Aberdeen, beam, and various commercial nets). Separate protocols (described below) are in place for the Kodiak surface trawl and pair trawl gear. Marine mammal watches will be conducted for at least ten minutes prior to the beginning of the planned set and throughout the tow and net retrieval, by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). Lookouts immediately alert the OOD and CS as to their best estimate of the species and number of animals observed and any observed animal's distance, bearing, and direction of travel relative to the ship's position. The CS must confirm with the OOD that no marine mammals have been seen within 500 m (or as far as may be observed if less than 500 m) of the ship or appear to be approaching the ship during the pre-set watch period prior to the deployment of any trawl gear. During nighttime operations, visual observation may be conducted using the naked eye and available vessel lighting but effectiveness is limited. The visual observation period typically occurs during transit leading up to arrival at the sampling station, rather than upon arrival on station. However, in some cases it may be necessary to conduct a plankton tow or other small net cast prior to deploying trawl gear. In these cases, the visual watch will continue until trawl gear is ready to be deployed. Aside from pre-trawl monitoring, the OOD/CS and crew standing watch will visually scan for marine mammals during all daytime operations.

It is important to note that the 500 m distance is provided only as a frame of reference for marine mammal observations that would nominally be of greater concern as regards the potential for interaction with research fishing gear. The primary concern is to avoid all marine mammal interactions (regardless of the numbers of takes proposed for authorization here), and the most appropriate course of action to achieve this goal in any given instance is likely to be related more to event-specific elements than to an arbitrary distance from the vessel. Depending on unpredictable contextual elements, animals sighted at distances greater than 500 m could provoke mitigation action or, conversely, animals sighted at closer range could be determined to not be at risk of interacting with research fishing gear. The NWFSC considers 500 m to be the average effective observation distance, but the actual effective range is determined by numerous factors related to the weather, ship observations, and the species observed.

The primary purpose of conducting pre-trawl visual monitoring is to implement the move-on rule. If marine mammals are sighted within 500 m (or as far as may be observed if less than 500 m) of the vessel and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, NWFSC may elect to either remain onsite to see if the animals move off or may move on to another sampling location. When remaining onsite, the set is delayed (typically for at least ten minutes) and, if the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further ten minute observation period is conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area,

move-on rule mitigation protocols would begin anew. If, after moving on, marine mammals remain at risk of interaction, the CS or watch leader may decide to move again or to skip the station. Marine mammals that are sighted further than 500 m from the vessel would be monitored to determine their position and movement in relation to the vessel. If they appear to be closing on the vessel, the move-on rule protocols may be implemented even if they are initially further than 500 m from the vessel.

For surface trawl surveys (*i.e.,* those surveys deploying the Nordic 264 net), which have historically presented the greatest risk of marine mammal interaction, dedicated crew are assigned to marine mammal monitoring duty (*i.e.,* have no other tasks) and care is taken to provide some rest periods for observers to avoid fatigue. At least two pairs of binoculars are available for verification of potential sightings. As the vessel approaches the station, the OOD and at least one assigned member of the scientific party monitor for marine mammals. Within several minutes of arriving on station and finishing their sampling duties, two additional members of the scientific party are assigned to monitor for marine mammals and, for the remainder of the tow, there would be a minimum of three members of the scientific party watching for marine mammals. Depending on the situational context (*e.g.,* numbers of marine mammals seen during the station approach or expected at that particular place and season), additional crew may be assigned to stand watch as necessary to provide full monitoring coverage around the vessel. Up to eight observers in total (including ship's crew standing watch) may be on duty during active trawling. The focus on the full area around the ship continues until trawl retrieval begins, at which point observational focus turns to the stern and the trawl net itself.

For midwater and bottom trawl surveys, the pre-set watch period is conducted by the OOD and bridge crew and typically occurs during transit prior to arrival at the sampling station, but may also include time on station if other types of gear or equipment (*e.g.,* bongo nets) are deployed before the trawl. For these trawls, risk of interaction during the tow is lower and monitoring effort is reduced to the bridge crew until trawl retrieval.

For all surveys, although the minimum pre-set watch period is ten minutes, the actual monitoring period is typically longer. During standard trawl operations, at least some of the trackline to be towed is typically traversed prior to setting gear in order to check for hazards. On surface trawl surveys, CTD casts and plankton/bongo net hauls are made prior to setting the trawl. These activities can take 25–35 minutes after the vessel arrives on station, depending on water depth, and monitoring for marine mammals continues throughout these activities. Midwater trawls and bottom trawls do not typically deploy other gears before deploying trawl gear but reconnaissance of the trackline often takes ten to fifteen minutes after arriving on station. In addition, once the decision is made to deploy the trawl gear, monitoring continues while the net is unspooled, which may take about ten minutes. Before the trawl doors are deployed, the net floats closed on the surface behind the vessel, and appropriate actions can be taken if marine mammals are sighted near the ship. Therefore, the marine mammal monitoring period—which begins before the vessel arrives on station and extends continuously through gear deployment—typically extends for over thirty minutes for all trawl types.

The effectiveness of visual monitoring may be limited depending on weather and lighting conditions. The OOD, CS or watch leader will determine the best strategy to avoid potential takes of marine mammals based on the species encountered and their numbers and behavior, position, and vector relative to the vessel, as well as any other factors. For example, a whale transiting through the sampling area in the distance may only require a short move from the designated station, whereas a pod of dolphins in close proximity to the vessel may require a longer move from the station or possibly cancellation of the planned tow if the group follows the vessel.

In general, trawl operations will be conducted immediately upon arrival on station (and on conclusion of the pre-watch period) in order to minimize the time during which marine mammals (particularly pinnipeds) may become attracted to the vessel. However, in some cases it will be necessary to conduct small net tows (*e.g.,* bongo net) prior to deploying trawl gear.

Once the trawl net is in the water, the OOD, CS, and/or crew standing watch will continue to visually monitor the surrounding waters and will maintain a lookout for marine mammal presence as far away as environmental conditions allow. If marine mammals are sighted before the gear is fully retrieved, the most appropriate response to avoid marine mammal interaction will be determined by the professional judgment of the CS, watch leader, OOD and other experienced crew as necessary. This judgment will be based on past experience operating trawl gears around marine mammals (*i.e.,* best professional judgment) and on NWFSC training sessions that will facilitate dissemination of expertise operating in these situations (*e.g.,* factors that contribute to marine mammal gear interactions and those that aid in successfully avoiding such events). Best professional judgment takes into consideration the species, numbers, and behavior of the animals, the status of the trawl net operation (*e.g.,* net opening, depth, and distance from the stern), the time it would take to retrieve the net, and safety considerations for changing speed or course. We recognize that it is not possible to dictate in advance the exact course of action that the OOD or CS should take in any given event involving the presence of marine mammals in proximity to an ongoing trawl tow, given the sheer number of potential variables, combinations of variables that may determine the appropriate course of action, and the need to consider human safety in the operation of fishing gear at sea. Nevertheless, we require a full accounting of factors that shape both successful and unsuccessful decisions, and these details will be fed back into NWFSC training efforts and ultimately help to refine the best professional judgment that determines the course of action taken in any given scenario (see further discussion in "Proposed Monitoring and Reporting").

If trawling operations have been suspended because of the presence of marine mammals, the vessel will resume trawl operations (when practicable) only when the animals are believed to have departed the area. This decision is at the discretion of the OOD/CS and is dependent on the situation.

Standard survey protocols that are expected to lessen the likelihood of marine mammal interactions include standardized tow durations and distances. Standard tow durations of not more than thirty minutes at the target depth will typically be implemented, excluding deployment and retrieval time (which may require an additional thirty minutes, depending on target depth), to reduce the likelihood of attracting and incidentally taking marine mammals. Short tow durations decrease the opportunity for marine mammals to find the vessel and investigate. Trawl tow distances will be less than 3 nm—typically 1–2 nm, depending on the specific survey and trawl speed—which is expected to reduce the likelihood of attracting and incidentally taking marine mammals. In addition, care will be taken when

emptying the trawl to avoid damage to marine mammals that may be caught in the gear but are not visible upon retrieval. The gear will be emptied as quickly as possible after retrieval in order to determine whether or not marine mammals are present. The vessel's crew will clean trawl nets prior to deployment to remove prey items that might attract marine mammals. Catch volumes are typically small with every attempt made to collect all organisms caught in the trawl.

Marine mammal excluder device—Excluder devices are specialized modifications, typically used in trawl nets, which are designed to reduce bycatch by allowing non-target taxa to escape the net. These devices generally consist of a grid of bars fitted into the net that allow target species to pass through the bars into the codend while larger, unwanted taxa (*e.g.*, turtles, sharks, mammals) strike the bars and are ejected through an opening in the net. Marine turtle bycatch in the commercial shrimp trawl industry led to the development of turtle excluder devices (TED) (*e.g.*, Mitchell *et al.*, 1995) in the 1970s. TEDs are perhaps the most commonly used excluder devices, but devices designed specifically for the exclusion of marine mammals have also been developed for various fisheries around the world where marine mammal interactions are problematic (*e.g.*, Gibson and Isakssen, 1998; Northridge, 2003).

Similar to TEDs, MMEDs generally consist of a large aluminum grate positioned in the intermediate portion of the net forward of the codend and below an escape opening constructed into the upper net panel above the grate. These devices enable target species to pass through a grid or mesh barrier and into the codend while preventing the passage of marine mammals, which are ejected out through an escape opening or swim back out of the mouth of the net. The angled aluminum grate is intended to guide marine mammals through the escape opening. For full details of design and testing of the MMED designed by the SWFSC for the Nordic 264 net, please see Dotson *et al.* (2010).

MMEDs have not been proven to be fully effective at preventing marine mammal capture in trawl nets (*e.g.*, Chilvers, 2008) and are not expected to prevent marine mammal capture in NWFSC trawl surveys. It is difficult to effectively test such devices, in terms of effectiveness in excluding marine mammals as opposed to effects on target species catchability, because realistic field trials would necessarily involve marine mammal interactions with trawl nets. Use of artificial surrogates in field trials has not been shown to be a realistic substitute (Gibson and Isakssen, 1998). Nevertheless, we believe it reasonable to assume that use of MMEDs may reduce the likelihood of a given marine mammal interaction with trawl gear resulting in mortality. We do not infer causality, but note that annual marine mammal interactions with the Nordic 264 trawl net have been much reduced for the SWFSC (relative to 2008) since use of the MMED began.

Multiple types of midwater trawl nets are used in NWFSC trawl surveys. The Nordic 264 trawl net, used as a surface trawl by NWFSC, is generally much larger than the midwater trawls, is fished at faster speeds, and has a different shape and functionality than these nets. Very few marine mammal interactions with NWFSC pelagic trawl gear have involved nets other than the Nordic 264 (one of 37 total incidents since 1999; Table 4). Therefore, MMED use is not proposed for nets other than the Nordic 264.

The NWFSC has tested the MMED design used by the SWFSC and found that it caused a significant loss of some salmon species that were the target of their research. More recent experiments have used video cameras attached to the net opening and near the excluder device to test different configurations of the excluder device to minimize loss of target species. The experiments have looked at adding weight and stiffeners to the flap covering the escape hatch to keep it closed and flipping the MMED so the escape hatch faces down rather than up. Based on preliminary results, this downward-pointing escape hatch appears to be the best design for minimizing loss of target species. Additional research will be necessary to calibrate catch levels in tows with the excluder device compared to past tows that did not contain the excluder (*i.e.*, to align the new catchability rates with historical data sets). During these configuration and calibration experiments some nets will be fished without the MMED in order to provide controls for catchability. Once the NWFSC completes these experiments the MMED will be used in all future trawls with the Nordic 264. Please see "Proposed Monitoring and Reporting" for additional discussion.

Acoustic deterrent devices—Acoustic deterrent devices (pingers) are underwater sound-emitting devices that have been shown to decrease the probability of interactions with certain species of marine mammals when fishing gear is fitted with the devices. Multiple studies have reported large decreases in harbor porpoise mortality (approximately eighty to ninety percent) in bottom-set gillnets (nets composed of vertical panes of netting, typically set in a straight line and either anchored to the bottom or drifting) during controlled experiments (*e.g.*, Kraus *et al.*, 1997; Trippel *et al.*, 1999; Gearin *et al.*, 2000). Using commercial fisheries data rather than a controlled experiment, Palka *et al.* (2008) reported that harbor porpoise bycatch rates in the northeast U.S gillnet fishery when fishing without pingers was about two to three times higher compared to when pingers were used. After conducting a controlled experiment in a California drift gillnet fishery during 1996–97, Barlow and Cameron (2003) reported significantly lower bycatch rates when pingers were used for all cetacean species combined, all pinniped species combined, and specifically for short-beaked common dolphins (85 percent reduction) and California sea lions (69 percent reduction). While not a statistically significant result, catches of Pacific white-sided dolphins (which are historically one of the most frequently captured species in NWFSC surveys; see Table 4) were reduced by seventy percent. Carretta *et al.* (2008) subsequently examined nine years of observer data from the same drift gillnet fishery and found that pinger use had eliminated beaked whale bycatch. Carretta and Barlow (2011) assessed the long-term effectiveness of pingers in reducing marine mammal bycatch in the California drift gillnet fishery by evaluating fishery data from 1990–2009 (with pingers in use beginning in 1996), finding that bycatch rates of cetaceans were reduced nearly fifty percent in sets using a sufficient number of pingers. However, in contrast to the findings of Barlow and Cameron (2003), they report no significant difference in pinniped bycatch.

To be effective, a pinger must emit a signal that is sufficiently aversive to deter the species of concern, which requires that the signal is perceived while also deterring investigation. In rare cases, aversion may be learned as a warning when an animal has survived interaction with gear fitted with pingers (Dawson, 1994). The mechanisms by which pingers work in operational settings are not fully understood, but field trials and captive studies have shown that sounds produced by pingers are aversive to harbor porpoises (*e.g.*, Laake *et al.*, 1998; Kastelein *et al.*, 2000; Culik *et al.*, 2001), and it is assumed that when marine mammals are deterred from interacting with gear fitted with pingers that it is because the sounds produced by the devices are aversive.

Two primary concerns expressed with regard to pinger effectiveness in reducing marine mammal bycatch relate to habituation (*i.e.*, marine mammals may become habituated to the sounds made by the pingers, resulting in increasing bycatch rates over time; Dawson, 1994; Cox *et al.*, 2001; Carlström *et al.*, 2009) and the "dinner bell effect" (Dawson, 1994; Richardson *et al.*, 1995), which implies that certain predatory marine mammal species (*e.g.*, sea lions) may come to associate pingers with a food source (*e.g.*, fish caught in nets) with the result that bycatch rates may be higher in nets with pingers than in those without.

Palka *et al.* (2008) report that habituation has not occurred on a level that affects the bycatch estimate for the northeast U.S. gillnet fishery, while cautioning that the data studied do not provide a direct method to study habituation. Similarly, Carretta and Barlow (2011) report that habituation is not apparent in the California drift gillnet fishery, with the proportion of pinger-fitted sets with bycatch not significantly different for either cetaceans or pinnipeds between the periods 1996–2001 and 2001–09; in fact, bycatch rates for both taxa overall were lower in the latter period. We are not aware of any long-term behavioral studies investigating habituation. Bycatch rates of California sea lions, specifically, did increase during the latter period. However, the authors do not attribute the increase to pinger use (*i.e.*, the "dinner bell effect"); rather, they believe that continuing increases in population abundance for the species (Carretta *et al.*, 2015a) coincident with a decline in fishery effort are responsible for the increased rate of capture. Despite these potential limitations on the effectiveness of pingers, and while effectiveness has not been tested on trawl gear, we believe that the available evidence supports an assumption that use of pingers is likely to reduce the potential for marine mammal interactions with NWFSC trawl gear.

If one assumes that use of a pinger is effective in deterring marine mammals from interacting with fishing gear, one must therefore assume that receipt of the acoustic signal has a disturbance effect on those marine mammals (*i.e.*, Level B harassment). However, Level B harassment that may be incurred as a result of NWFSC use of pingers does not constitute take that must be authorized under the MMPA. The MMPA prohibits the taking of marine mammals by U.S. citizens or within the U.S. EEZ unless such taking is appropriately permitted or authorized. However, the MMPA provides several narrowly defined exemptions from this requirement (*e.g.*, for Alaskan natives; for defense of self or others; for Good Samaritans [16 U.S.C. 1371(b)–(d)]). Section 109(h) of the MMPA (16 U.S.C. 1379(h)) allows for the taking of marine mammals in a humane manner by federal, state, or local government officials or employees in the course of their official duties if the taking is necessary for "the protection or welfare of the mammal," "the protection of the public health and welfare," or "the non-lethal removal of nuisance animals." NWFSC use of pingers as a deterrent device, which may cause Level B harassment of marine mammals, is intended solely for the avoidance of potential marine mammal interactions with NWFSC research gear (*i.e.*, avoidance of Level A harassment, serious injury, or mortality). Therefore, use of such deterrent devices, and the taking that may result, is for the protection and welfare of the mammal and is covered explicitly under MMPA section 109(h)(1)(A). Potential taking of marine mammals resulting from NWFSC use of pingers is not discussed further in this document.

Pingers will be deployed during all surface trawl operations (*i.e.*, using the Nordic 264 net), with two pairs of pingers installed near the net opening. The vessel's crew will ensure that pingers are operational prior to deployment. Pinger brands typically used by NWFSC include the Aquatec Subsea Limited model AQUAmark and Fumunda Marine models F10 and F70, with the following attributes: (1) Operational depth of 10–200 m; (2) tones range from 200–400 ms in duration, repeated every five to six seconds; (3) variable frequency of 10–160 kHz; and (4) maximum source level of 145 dB rms re 1 μPa. Please see "Marine Mammal Hearing" below for reference to functional and best hearing ranges for marine mammals present in the CCE.

Kodiak surface trawl and pair trawl gear—The Kodiak surface trawl, used only in Puget Sound, has only limited potential for marine mammal interaction. This gear type is a small net towed at slow speeds (about 2 kn) as close to shore as the net can be fished, and these characteristics mean that marine mammals would likely be able to avoid the net or swim out of it if necessary. However, rules for cetaceans would be similar as for other net types (*i.e.*, delay and/or move-on if cetaceans observed within approximately 500 m or clearly approaching from greater distance). If killer whales are observed at any distance, the net would not be deployed and the move-on rule invoked.

The pair trawl is used only in the Columbia River, and is fished with an open codend. Although unlikely, there is some potential for pinnipeds to become entangled in the net material. NWFSC's practice, which would be allowed under section 109(h) of the MMPA, is to deter pinnipeds from encountering the net using pyrotechnic devices and other measures. Therefore, separate mitigation is not warranted, and we do not discuss NWFSC deterrence of pinnipeds associated with pair trawl surveys further in this document. Please see the NWFSC's draft Programmatic Environmental Assessment for further information about this practice.

Longline and Other Hook and Line Survey Visual Monitoring and Operational Protocols

Visual monitoring requirements for all longline surveys are similar to the general protocols described above for trawl surveys. Please see that section for full details of the visual monitoring protocol and the move-on rule mitigation protocol. In summary, requirements for longline surveys are to: (1) Conduct visual monitoring during the thirty-minute period prior to arrival on station; (2) implement the move-on rule if marine mammals are observed within the area around the vessel and maybe at risk of interacting with the vessel or gear; (3) deploy gear as soon as possible upon arrival on station (depending on presence of marine mammals); and (4) maintain visual monitoring effort throughout deployment and retrieval of the longline gear. As was described for trawl gear, the OOD, CS, or watch leader will use best professional judgment to minimize the risk to marine mammals from potential gear interactions during deployment and retrieval of gear. If marine mammals are detected during setting operations and are considered to be at risk, immediate retrieval or suspension of operations may be warranted. If operations have been suspended because of the presence of marine mammals, the vessel will resume setting (when practicable) only when the animals are believed to have departed the area. If marine mammals are detected during retrieval operations and are considered to be at risk, haul-back may be postponed. These decisions are at the discretion of the OOD/CS and are dependent on the situation. If killer whales are observed at any distance, the set would not occur and the move-on rule would be invoked.

Other types of hook and line surveys (*e.g.*, rod and reel) generally use the same protocols as longline surveys.

However, for hook and line surveys in Puget Sound the move-on rule is not required for pinnipeds because they are commonly abundant on shore nearby hook and line sampling locations. Use of the move-on rule in these circumstances would represent an impracticable impact on NWFSC survey operations, and we note that no marine mammals have ever been captured in NWFSC hook and line surveys (Table 4). However, the NWFSC would implement the move-on rule for hook and line surveys in Puget Sound for any cetaceans that are within 500 m and may be at risk of interaction with the survey operation. If killer whales are observed at any distance, fishing would not occur.

As for trawl surveys, some standard survey protocols are expected to minimize the potential for marine mammal interactions. Soak times are typically short relative to commercial fishing operations, measured from the time the last hook is in the water to when the first hook is brought out of the water. NWFSC longline protocols specifically prohibit chumming (releasing additional bait to attract target species to the gear) and spent bait and offal is retained on the vessel until all gear has been retrieved. Some hook and line surveys use barbless hooks, which are less likely to injure a hooked animal.

Seine Survey Visual Monitoring and Operational Protocols

Visual monitoring and operational protocols for seine surveys are similar to those described previously for trawl surveys, with a focus on visual observation in the survey area and avoidance of marine mammals that may be at risk of interaction with survey vessels or gear. For purse seine operations, visual monitoring is focused on avoidance of cetaceans and aggregations of pinnipeds. Individual or small numbers of pinnipeds may be attracted to purse seine operations, especially in Puget Sound, and are frequently observed to enter operational purse seines to depredate the catch and exit the net unharmed. Use of the move-on rule in these circumstances would represent an impracticable impact on NWFSC survey operations, and we note that no marine mammals have ever been captured in NWFSC seine surveys (Table 4).

If pinnipeds are in the immediate vicinity of a purse seine survey, the set may be delayed until animals move away or the move-on rule is determined to be appropriate, but the net would not be opened if already deployed and pinnipeds enter it. However, delay would not be invoked if only few pinnipeds are present (*e.g.*, less than five), and they do not appear to obviously be at risk.

If any dolphins or porpoises are observed within approximately 500 m of the purse seine survey location, the set would be delayed. If any dolphins or porpoises are observed in the net, the net would be immediately opened to free the animals. If killer whales or other large whales are observed at any distance the net would not be set, and the move-on rule would be invoked.

Beach seines are typically set nearshore by small boat crews, who visually survey the area prior to the set. The set would not be made within 200 m of any hauled pinnipeds. Otherwise, marine mammals are unlikely to be at risk of interaction with NWFSC beach seine operations, as the nets are relatively small and deployed and retrieved slowly. If a marine mammal is observed attempting to interact with the beach seine gear, the gear would immediately be lifted and removed from the water.

Tangle net protocols—Tangle nets are used only in the Columbia River. NWFSC attempts to avoid pinnipeds by rotating sampling locations on a daily basis and by avoiding fishing near haulout areas. However, as was described for NWFSC use of pair trawl gear in the LCRRA, NWFSC also deters pinnipeds from interacting with tangle net gear as necessary using pyrotechnic devices and visual presence, a practice allowed under section 109(h) of the MMPA. Therefore, we do not discuss NWFSC deterrence of pinnipeds associated with tangle net surveys further in this document. Please see the NWFSC's draft Programmatic Environmental Assessment for further information about this practice. If pinniped presence in the vicinity of tangle net surveys is so abundant as to be uncontrollable through deterrence, sampling would be discontinued for a given day.

We have carefully evaluated the NWFSC's proposed mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at a biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the NWFSC's proposed measures, as well as other measures we considered, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed NWFSC's species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of NWFSC's application, as well as to NMFS' Stock Assessment Reports (SARs; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting the information here. Table 3 lists all species with expected potential for occurrence in the specified geographical region where NWFSC proposes to conduct the specified activity and summarize information related to the population or stock, including potential biological removal (PBR). For taxonomy, we follow Committee on Taxonomy (2015). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is discussed in greater detail later in this document (see "Negligible Impact Analyses"). Species that could potentially occur in the proposed research areas but are not expected to have the potential for interaction with NWFSC research gear or that are not likely to be harassed by NWFSC's use of active acoustic devices are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. Survey abundance (as compared to stock or species abundance) is the total number of individuals estimated within the survey area, which may or may not align completely with a stock's geographic range as defined in the SARs. These surveys may also extend beyond U.S. waters.

Thirty-four species (with 43 managed stocks) are considered to have the potential to co-occur with NWFSC activities. Extralimital species or stocks in the California Current include the Bryde's whale (*Balaenoptera edeni brydei*) and the North Pacific right whale (*Eubalaena japonica*). In addition, the sea otter is found in coastal waters, with the southern sea otter (*Enhydra lutris nereis*) found in California and the northern (or eastern) sea otter (*E. l. kenyoni;* Washington stock only) found in Washington. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. All stocks are assessed in NMFS' U.S. Pacific SARs (Carretta *et al.*, 2015a,b), with the exception of the west coast transient and northern resident stocks of killer whales, the eastern North Pacific stock of the northern fur seal, and the eastern stock of the Steller sea lion, which are considered in the U.S. Alaska SARs (Allen and Angliss, 2015; Muto and Angliss, 2015). Values presented in Table 3 reflect the most recent information available (*i.e.*, final 2014 and draft 2015 reports, as appropriate).

Two populations of gray whales are recognized, eastern and western North Pacific (ENP and WNP). WNP whales are known to feed in the Okhotsk Sea and off of Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The two populations have historically been considered geographically isolated from each other; however, recent data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.*, 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.*, 2011; Burdin *et al.*, 2011), and WNP animals comprised 8.1 percent of gray whales identified during a recent field season off of Vancouver Island (Weller *et al.*, 2012). In addition, two genetic matches of WNP whales have been recorded off of Santa Barbara, CA (Lang *et al.*, 2011). More recently, Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season.

However, the NWFSC does not believe that any gray whale (WNP or ENP) would be likely to interact with its research gear, as it is extremely unlikely that a gray whale in close proximity to NWFSC research activity would be one of the approximately twenty WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would interact with NWFSC research gear is insignificant and discountable, and WNP gray whales are omitted from further analysis.

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NWFSC RESEARCH ACTIVITIES

Common name	Scientific name	Stock	Occurrence			ESA/MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
			CC	LCR	PS				
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)									
Family Eschrichtiidae									
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	X	.....	X	-; N	20,990 (0.05; 20,125; 2011).	624	132
Family Balaenopteridae (rorquals)									
Humpback whale	*Megaptera novaeangliae kuzira.*	California/Oregon/Washington (CA/OR/WA).	X	.....	X	E/D; Y	1,918 (0.03; 1,855; 2011).	[12] 11	≥5.5
Minke whale	*Balaenoptera acutorostrata scammoni.*	CA/OR/WA	X	.....	X	-; N	478 (1.36; 202; 2008)	2	0
Sei whale	*B. borealis borealis*	Eastern North Pacific	X	.....	.....	E/D; Y	126 (0.53; 83; 2008)	0.17	0
Fin whale	*B. physalus physalus*	CA/OR/WA	X	.....	.....	E/D; Y	3,051 (0.18; 2,598; 2008).	16	2.2

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NWFSC RESEARCH ACTIVITIES—Continued

Common name	Scientific name	Stock	Occurrence			ESA/MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
			CC	LCR	PS				
Blue whale	*B. musculus musculus*	Eastern North Pacific	X	.....	.....	E/D; Y	1,647 (0.07; 1,551; 2011).	[12] 2.3	0.9
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)									
Family Physeteridae									
Sperm whale	*Physeter macrocephalus*	CA/OR/WA	X	.....	.....	E/D; Y	2,106 (0.58; 1,332; 2008).	2.7	1.7
Family Kogiidae									
Pygmy sperm whale	*Kogia breviceps*	CA/OR/WA	X	.....	.....	-; N	579 (1.02; 271; 2008)	2.7	0
Dwarf sperm whale	*K. sima*	CA/OR/WA[5]	X	.....	.....	-; N	Unknown	Undet.	0
Family Ziphiidae (beaked whales)									
Cuvier's beaked whale	*Ziphius cavirostris*	CA/OR/WA	X	.....	.....	-; Y	6,590 (0.55; 4,481; 2008).	45	0
Baird's beaked whale	*Berardius bairdii*	CA/OR/WA	X	.....	.....	-; N	847 (0.81; 466; 2008)	4.7	0
Hubbs' beaked whale	*Mesoplodon carlhubbsi*	CA/OR/WA[6]	X	.....	.....	-; Y	694 (0.65; 389; 2008)	3.9	0
Blainville's beaked whale	*M. densirostris*	.....	X	.....	.....				
Ginkgo-toothed beaked whale.	*M. ginkgodens*	.....	X	.....	.....				
Perrin's beaked whale	*M. perrini*	.....	X	.....	.....				
Lesser (pygmy) beaked whale.	*M. peruvianus*	.....	X	.....	.....				
Stejneger's beaked whale.	*M. stejnegeri*	.....	X	.....	.....		.....	.....	.....
Family Delphinidae									
Common bottlenose dolphin.	*Tursiops truncatus truncatus.*	CA/OR/WA Offshore	X	.....	.....	-; N	1,006 (0.48; 684; 2008)	5.5	≥2
	.....	California Coastal	X	.....	.....	-; N	323 (0.13; 290; 2005)	2.4	0.2
Striped dolphin	*Stenella coeruleoalba*	CA/OR/WA	X	.....	.....	-; N	10,908 (0.34; 8,231; 2008).	82	0
Long-beaked common dolphin.	*Delphinus capensis capensis.*	California	X	.....	.....	-; N	107,016 (0.42; 76,224; 2009).	610	13.8
Short-beaked common dolphin.	*D. delphis delphis*	CA/OR/WA	X	.....	.....	-; N	411,211 (0.21; 343,990; 2008).	3,440	64
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	CA/OR/WA	X	.....	X	-; N	26,930 (0.28; 21,406; 2008).	171	17.8
Northern right whale dolphin.	*Lissodelphis borealis*	CA/OR/WA	X	.....	.....	-; N	8,334 (0.4; 6,019; 2008)	48	4.8
Risso's dolphin	*Grampus griseus*	CA/OR/WA	X	.....	.....	-; N	6,272 (0.3; 4,913; 2008)	39	1.6
Killer whale	*Orcinus orca*[4]	West Coast Transient[7]	X	X	X	-; N	243 (n/a; 2009)	2.4	0
	.....	Eastern North Pacific Offshore.	X	.....	.....	-; N	240 (0.49; 162; 2008)	1.6	0
	.....	Eastern North Pacific Southern Resident.	X	.....	X	E/D; Y	78[10] (n/a; 2014)	0.14	0
	.....	Eastern North Pacific Northern Resident.	X	.....	X	-; N	261 (n/a; 2011)	1.96	0
Short-finned pilot whale	*Globicephala macrorhynchus.*	CA/OR/WA	X	.....	.....	-; N	760 (0.64; 465; 2008)	4.6	0
Family Phocoenidae (porpoises)									
Harbor porpoise	*Phocoena phocoena vomerina.*	Morro Bay	X	.....	.....	-; N	2,917 (0.41; 2,102; 2012).	21	≥0.6
	.....	Monterey Bay	X	.....	.....	-; N	3,715 (0.51; 2,480; 2011).	25	0
	.....	San Francisco-Russian River.	X	.....	.....	-; N	9,886 (0.51; 6,625; 2011).	66	0
	.....	Northern CA/Southern OR.	X	.....	.....	-; N	35,769 (0.52; 23,749; 2011).	475	≥0.6
	.....	Northern OR/WA Coast	X	X	.....	-; N	21,487 (0.44; 15,123; 2011).	151	≥3
	.....	Washington Inland Waters.	.....	.....	X	-; N	10,682 (0.38; 7,841; 2003).	63	≥2.2
Dall's porpoise	*Phocoenoides dalli dalli*	CA/OR/WA	X	X	X	-; N	42,000 (0.33; 32,106; 2008).	257	≥0.4
Order Carnivora—Superfamily Pinnipedia									
Family Otariidae (eared seals and sea lions)									
Guadalupe fur seal	*Arctocephalus philippii townsendi.*	.....	X	.....	.....	T/D; Y	7,408 (n/a; 3,028; 1993)	91	[13] 0

TABLE 3—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NWFSC RESEARCH ACTIVITIES—Continued

Common name	Scientific name	Stock	Occurrence			ESA/MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
			CC	LCR	PS				
Northern fur seal	*Callorhinus ursinus*	Pribilof Islands/Eastern Pacific.	X	.....	.....	D; Y	648,534 (0.2; 548,919; 2012).	11,802	439
	.....	California	X	.....	.....	-; N	14,050[10] (n/a; 7,524; 2013).	451	1.8
California sea lion	*Zalophus californianus*	United States	X	X	X	-; N	296,750 (n/a; 153,337; 2011).	9,200	389
Steller sea lion	*Eumetopias jubatus monterlensis.*	Eastern U.S.[9]	X	X	X	D; Y	60,131–74,448 (n/a; 36,551; 2013)[11].	1,645	92.3
Family Phocidae (earless seals)									
Harbor seal	*Phoca vitulina richardii*	California	X	.....	.....	-; N	30,968 (n/a; 27,348; 2012).	1,641	43
	.....	OR/WA Coast[8]	X	X	.....	-; N	24,732 (0.12; 22,380; 1999).	Undet.	10.6
	.....	Washington Northern Inland Waters.[8]	.....	.....	X	-; N	11,036 (0.15; 7,213; 1999).	Undet.	9.8
	.....	Southern Puget Sound[8]	.....	.....	X	-; N	1,568 (0.15; 1,025; 1999).	Undet.	3.4
	.....	Hood Canal[8]	.....	.....	X	-; N	1,088 (0.15; 711; 1999)	Undet.	0.2
Northern elephant seal	*Mirounga angustirostris*	California Breeding	X	.....	X	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For three stocks of killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.*, commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2015 SARs (Carretta *et al.*, 2015b; Muto and Angliss, 2015).

[4] Transient and resident killer whales are considered unnamed subspecies (Committee on Taxonomy, 2015).

[5] No information is available to estimate the population size of dwarf sperm whales off the U.S. west coast, as no sightings of this species have been documented despite numerous vessel surveys of this region (Carretta *et al.*, 2015a). Dwarf and pygmy sperm whales are difficult to differentiate at sea but, based on previous sighting surveys and historical stranding data, it is thought that recent ship survey sightings were of pygmy sperm whales.

[6] The six species of Mesoplodont beaked whales occurring in the CCE are managed as a single stock due to the rarity of records and the difficulty in distinguishing these animals to species in the field. Based on bycatch and stranding records, it appears that *M. carlhubbsi* is the most commonly encountered of these species (Carretta *et al.*, 2008; Moore and Barlow, 2013). Additional managed stocks in the Pacific include *M. stejnegeri* in Alaskan waters and *M. densirostris* in Hawaiian waters.

[7] The abundance estimate for this stock includes only animals from the "inner coast" population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the "outer coast" subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[8] Abundance estimates for these stocks are not considered current. PBR is therefore considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates, as these represent the best available information for use in this document.

[9] The eastern distinct population segment of the Steller sea lion, previously listed as threatened, was delisted under the ESA on December 4, 2013 (78 FR 66140; November 4, 2013).

[10] These are provisional abundance estimates presented in the draft 2015 SARs.

[11] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (*i.e.*, high fecundity or low juvenile mortality).

[12] These stocks are known to spend a portion of their time outside the U.S. EEZ. Therefore, the PBR presented here is the allocation for U.S. waters only and is a portion of the total. The total PBR for blue whales is 9.3 (one-quarter allocation for U.S. waters), and the total for humpback whales is 22 (one half allocation for U.S. waters). Annual M/SI presented for these species is for U.S. waters only.

[13] This represents annual M/SI in U.S. waters. However, the vast majority of M/SI for this stock—the level of which is unknown—would likely occur in Mexican waters.

Take reduction planning—Take reduction plans are designed to help recover and prevent the depletion of strategic marine mammal stocks that interact with certain U.S. commercial fisheries, as required by Section 118 of the MMPA. The immediate goal of a take reduction plan is to reduce, within six months of its implementation, the M/SI of marine mammals incidental to commercial fishing to less than the PBR level. The long-term goal is to reduce, within five years of its implementation, the M/SI of marine mammals incidental to commercial fishing to insignificant levels, approaching a zero serious injury and mortality rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. Take reduction teams are convened to develop these plans.

For marine mammals in the California Current Ecosystem, there is currently one take reduction plan in effect (Pacific Offshore Cetacean Take Reduction Plan). The goal of this plan is to reduce M/SI of several marine mammal stocks incidental to the California thresher shark/swordfish drift gillnet fishery (CA DGN). A team was convened in 1996 and a final plan produced in 1997 (62 FR 51805; October 3, 1997). Marine mammal stocks of concern initially included the California, Oregon, and Washington stocks for all CCE beaked whales, short-finned pilot whales, pygmy sperm whales, sperm whales, and humpback whales. The most recent five-year averages of M/SI for these stocks are below PBR, and none of these species were taken in the fishery in 2012–13. More information is available on the Internet at: *www.nmfs.noaa.gov/pr/interactions/trt/poctrp.htm*. Of the stocks of concern, the NWFSC has requested the authorization of

incidental M/SI + Level A for the short-finned pilot whale only (see "Estimated Take by Incidental Harassment" later in this document). The most recent reported average annual human-caused mortality for short-finned pilot whales (2004–08) is zero animals. The NWFSC does not use drift gillnets in its fisheries research program; therefore, take reduction measures applicable to the CA DGN fisheries are not relevant to the NWFSC.

Unusual Mortality Events (UME)—A UME is defined under the MMPA as "a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response." From 1991 to the present, there have been sixteen formally recognized UMEs on the U.S. west coast involving species under NMFS' jurisdiction. The most recent of these, and the only ones involving currently ongoing investigations, involve Guadalupe fur seals and California sea lions. Increased strandings of Guadalupe fur seals (eight times the historical average) have occurred along the entire coast of California. These increased strandings were reported beginning in January 2015 and peaked from April through June 2015. Findings from the majority of stranded animals include malnutrition with secondary bacterial and parasitic infections. Beginning in January 2013, elevated strandings of California sea lion pups were observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. These UMEs are occurring in the same areas and the causes and mechanisms of this remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/guadalupefurseals2015.html; www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed December 3, 2015).

Additional UMEs in the past ten years include those involving harbor porpoises in California (2008; cause determined to be ecological factors); Guadalupe fur seals in the Northwest (2007; undetermined); large whales in California (2007; human interaction); cetaceans in California (2007; undetermined); and harbor porpoises in the Pacific Northwest (2006; undetermined). There is also an ongoing UME in the western Gulf of Alaska that involves elevated large whale mortalities and may be affecting eastern North Pacific gray whales, which also occur in the NWFSC's research areas. For more information on UMEs, please visit the Internet at: *www.nmfs.noaa.gov/pr/health/mmume/events.html.*

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* gear deployment, use of active acoustic sources, visual disturbance) may impact marine mammals and their habitat. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The "Negligible Impact Analysis" section will include an analysis of how this specific activity will impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, and the "Proposed Mitigation" section, to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we consider potential effects to marine mammals from ship strike, physical interaction with the gear types described previously, use of active acoustic sources, and visual disturbance of pinnipeds.

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. More superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans or pinnipeds are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus, 2001; Laist *et al.,* 2001; Vanderlaan and Taggart, 2007; Conn and Silber, 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.,* 2010; Gende *et al.,* 2011).

Pace and Silber (2005) found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded ninety percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne, 1999; Knowlton *et al.,* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately eighty percent at 15 kn to approximately twenty percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below fifty percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

In an effort to reduce the number and severity of strikes of the endangered North Atlantic right whale (*Eubalaena glacialis*), NMFS implemented speed restrictions in 2008 (73 FR 60173; October 10, 2008). These restrictions require that vessels greater than or equal to 65 ft (19.8 m) in length travel at less than or equal to 10 kn near key port entrances and in certain areas of right whale aggregation along the U.S. eastern seaboard. Conn and Silber (2013) estimated that these restrictions reduced total ship strike mortality risk levels by eighty to ninety percent.

For vessels used in NWFSC research activities, transit speeds average 10 kn (but vary from 6–14 kn), while vessel speed during active sampling is typically only 2–4 kn. At sampling speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than fifty percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is research activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). Commercial fishing vessels were responsible for three percent of recorded collisions, while only one such incident (0.75 percent) was reported for a research vessel during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a NOAA-chartered survey vessel traveling at low speed (5.5 kn) while conducting multi-beam mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = 0–5.5×10^{-6}; NMFS, 2013). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans or pinnipeds to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

In summary, we anticipate that vessel collisions involving NWFSC research vessels, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. No ship strikes have been reported from any fisheries research activities conducted or funded by the NWFSC in any of the three research areas. Given the relatively slow speeds of research vessels, the presence of bridge crew watching for obstacles at all times (including marine mammals), the presence of marine mammal observers on some surveys, and the small number of research cruises, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of research will not be discussed further in the following analysis.

Research Gear

The types of research gear used by NWFSC were described previously under "Detailed Description of Activity." Here, we broadly categorize these gears into those whose use we consider to have an extremely unlikely potential to result in marine mammal interaction and those whose use we believe may result in marine mammal interaction. Gears in the former category are not considered further, while those in the latter category are carried forward for further analysis. Gears with likely potential for marine mammal interaction include trawls, longlines and other hook and line gear, seines (primarily purse seines), and tangle nets.

Trawl nets, longlines, and purse seines deployed by NWFSC are similar to gear used in various commercial fisheries, and the potential for and history of marine mammal interaction with these gears through physical contact (*i.e.,* capture or entanglement) is well-documented. Read *et al.* (2006) estimated marine mammal bycatch in U.S. fisheries from 1990–99 and derived an estimate of global marine mammal bycatch by expanding U.S. bycatch estimates using data on fleet composition from the United Nations Food and Agriculture Organization (FAO). Although most U.S. bycatch for both cetaceans (84 percent) and pinnipeds (98 percent) occurred in gillnets (a gear type not generally used by NWFSC), global marine mammal bycatch in trawl nets and longlines is likely substantial given that total global bycatch is thought to number in the hundreds of thousands of individuals (Read *et al.,* 2006). In addition, global bycatch via longline has likely increased, as longlines have become the most common method of capturing swordfish and tuna since the U.N. banned the use of high seas driftnets over 2.5 km long in 1991 (high seas driftnets were previously often 40–60 km long) (Read, 2008; FAO, 2001).

Marine mammals are widely regarded as being quite intelligent and inquisitive, and when their pursuit of prey coincides with human pursuit of the same resources, it should be expected that physical interaction with fishing gear may occur (*e.g.,* Beverton, 1985). Fishermen and marine mammals are both drawn to areas of high prey density, and certain fishing activities may further attract marine mammals by providing food (*e.g.,* bait, captured fish, bycatch discards) or by otherwise making it easier for animals to feed on a concentrated food source. Provision of foraging opportunities near the surface may present an advantage by negating the need for energetically expensive deep foraging dives (Hamer and Goldsworthy, 2006). Trawling, for example, can make available previously unexploited food resources by gathering prey that may otherwise be too fast or deep for normal predation, or may concentrate calories in an otherwise patchy landscape (Fertl and Leatherwood, 1997). Pilot whales, which are generally considered to be teuthophagous (*i.e.,* feeding primarily on squid), were commonly observed in association with Atlantic mackerel (*Scomber scombrus*) trawl fisheries from 1977–88 in the northeast U.S. EEZ (Waring *et al.,* 1990). Not surprisingly, stomach contents of captured whales were observed to have high proportions of mackerel (68 percent of non-trace food items), indicating that the ready availability of a novel, concentrated, high-calorie prey item resulted in changed dietary composition (Read, 1994).

These interactions can result in injury or death for the animal(s) involved and/or damage to fishing gear. Coastal animals, including various pinnipeds, bottlenose dolphins, and harbor porpoises, are perhaps the most vulnerable to these interactions and set or passive fishing gear (*e.g.,* gillnets, traps) the most likely to be interacted with (*e.g.,* Beverton, 1985; Barlow *et al.,* 1994; Read *et al.,* 2006; Byrd *et al.,* 2014; Lewison *et al.,* 2014). Although interactions are less common for use of trawl nets and longlines (gear used by NWFSC), they do occur with sufficient frequency to necessitate the establishment of required mitigation measures for multiple U.S. fisheries using both types of gear (NMFS, 2014). It is likely that no species of marine mammal can be definitively excluded from the potential for interaction with fishing gear (*e.g.,* Northridge, 1984); however, the extent of interactions is likely dependent on the biology, ecology, and behavior of the species involved and the type, location, and nature of the fishery.

Trawl nets—As described previously, trawl nets are towed nets (*i.e.,* active fishing) consisting of a cone-shaped net with a codend or bag for collecting the fish and can be designed to fish at the bottom, surface, or any other depth in the water column. Here we refer to bottom trawls and pelagic trawls (midwater or surface, *i.e.,* any net not designed to tend the bottom while fishing). Trawl nets in general have the potential to capture or entangle marine mammals, which have been known to be caught in bottom trawls, presumably when feeding on fish caught therein,

and in pelagic trawls, which may or may not be coincident with their feeding (Northridge, 1984).

Capture or entanglement may occur whenever marine mammals are swimming near the gear, intentionally (*e.g.*, foraging) or unintentionally (*e.g.*, migrating), and any animal captured in a net is at significant risk of drowning unless quickly freed. Animals can also be captured or entangled in netting or tow lines (also called lazy lines) other than the main body of the net; animals may become entangled around the head, body, flukes, pectoral fins, or dorsal fin. Interaction that does not result in the immediate death of the animal by drowning can cause injury (*i.e.*, Level A harassment) or serious injury. Constricting lines wrapped around the animal can immobilize the animal or injure by cutting into or through blubber, muscles and bone (*i.e.*, penetrating injuries) or constricting blood flow to or severing appendages. Immobilization of the animal, if it does not result in immediate drowning, can cause internal injuries from prolonged stress and/or severe struggling and/or impede the animal's ability to feed (resulting in starvation or reduced fitness) (Andersen *et al.*, 2008).

Marine mammal interactions with trawl nets, through capture or entanglement, are well-documented. Dolphins are known to attend operating nets in order to either benefit from disturbance of the bottom or to prey on discards or fish within the net. For example, Leatherwood (1975) reported that the most frequently observed feeding pattern for bottlenose dolphins in the Gulf of Mexico involved herds following working shrimp trawlers, apparently feeding on organisms stirred up from the benthos. Bearzi and di Sciara (1997) opportunistically investigated working trawlers in the Adriatic Sea from 1990–94 and found that ten percent were accompanied by foraging bottlenose dolphins. However, pelagic trawls have greater potential to capture cetaceans, because the nets may be towed at faster speeds, these trawls are more likely to target species that are important prey for marine mammals (*e.g.*, squid, mackerel), and the likelihood of working in deeper waters means that a more diverse assemblage of species could potentially be present (Hall *et al.*, 2000).

Globally, at least seventeen cetacean species are known to feed in association with trawlers and individuals of at least 25 species are documented to have been killed by trawl nets, including several large whales, porpoises, and a variety of delphinids (Perez, 2006; Young and Iudicello, 2007; Karpouzli and Leaper, 2004; Hall *et al.*, 2000; Fertl and Leatherwood, 1997; Northridge, 1991; Song *et al.*, 2010). At least eighteen species of seals and sea lions are known to have been killed in trawl nets (Wickens, 1995; Perez, 2006; Zeeberg *et al.*, 2006). Generally, direct interaction between trawl nets and marine mammals (both cetaceans and pinnipeds) has been recorded wherever trawling and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that trawling is absent or an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported.

In evaluating risk relative to a specific fishery (or comparable research survey), one must consider the size of the net as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely. Of the net types described previously under "Trawl Nets," NWFSC has recorded marine mammal interactions primarily with the Nordic 264 surface trawl net but also has one recorded interaction with the modified Cobb midwater trawl. No marine mammal interactions have been recorded for any bottom trawl survey.

Longlines—Longlines are basically strings of baited hooks that are either anchored to the bottom, for targeting groundfish, or are free-floating, for targeting pelagic species and represent a passive fishing technique. Pelagic longlines, which notionally fish near the surface with the use of floats, may be deployed in such a way as to fish at different depths in the water column. For example, deep-set longlines targeting tuna may have a target depth of 400 m, while a shallow-set longline targeting swordfish is set at 30–90 m depth. We refer here to bottom and pelagic longlines. Any longline generally consists of a mainline from which leader lines (gangions) with baited hooks branch off at a specified interval, and is left to passively fish, or soak, for a set period of time before the vessel returns to retrieve the gear. Longlines are marked by two or more floats that act as visual markers and may also carry radio beacons; aids to detection are of particular importance for pelagic longlines, which may drift a significant distance from the deployment location. Pelagic longlines are generally composed of various diameter monofilament line and are generally much longer, and with more hooks, than are bottom longlines. Bottom longlines may be of monofilament or multifilament natural or synthetic lines.

Marine mammals may be hooked or entangled in longline gear, with interactions potentially resulting in death due to drowning, strangulation, severing of carotid arteries or the esophagus, infection, an inability to evade predators, or starvation due to an inability to catch prey (Hofmeyr *et al.*, 2002), although it is more likely that animals will survive being hooked if they are able to reach the surface to breathe. Injuries, which may include serious injury, include lacerations and puncture wounds. Animals may attempt to depredate either bait or catch, with subsequent hooking, or may become accidentally entangled. As described for trawls, entanglement can lead to constricting lines wrapped around the animals and/or immobilization, and even if entangling materials are removed the wounds caused may continue to weaken the animal or allow further infection (Hofmeyr *et al.*, 2002). Large whales may become entangled in a longline and then break free with a portion of gear trailing, resulting in alteration of swimming energetics due to drag and ultimate loss of fitness and potential mortality (Andersen *et al.*, 2008). Weight of the gear can cause entangling lines to further constrict and further injure the animal. Hooking injuries and ingested gear are most common in small cetaceans and pinnipeds, but have been observed in large cetaceans (*e.g.*, sperm whales). The severity of the injury depends on the species, whether ingested gear includes hooks, whether the gear works its way into the gastrointestinal (GI) tract, whether the gear penetrates the GI lining, and the location of the hooking (*e.g.*, embedded in the animal's stomach or other internal body parts) (Andersen *et al.*, 2008). Bottom longlines pose less of a threat to marine mammals due to their deployment on the ocean bottom but can still result in entanglement in buoy lines or hooking as the line is either deployed or retrieved. The rate of interaction between longline fisheries and marine mammals depends on the degree of overlap between longline effort and species distribution, hook style and size, type of bait and target catch, and fishing practices (such as setting/hauling during the day or at night).

As was noted for trawl nets, many species of cetaceans and pinnipeds are documented to have been killed by longlines, including several large whales, porpoises, a variety of delphinids, seals, and sea lions (Perez, 2006; Young and Iudicello, 2007; Northridge, 1984, 1991; Wickens, 1995). Generally, direct interaction between

longlines and marine mammals (both cetaceans and pinnipeds) has been recorded wherever longline fishing and animals co-occur. A lack of recorded interactions where animals are known to be present may indicate simply that longlining is absent or an insignificant component of fisheries in that region or that interactions were not observed, recorded, or reported. Hook and line (*e.g.*, rod and reel) gear also carries some lesser potential for marine mammal interaction, as the use of baited hooks in the presence of inquisitive marine mammals necessarily carries some risk. However, the scale of hook and line operations in relation to longline operations and the lack of extended, unattended soak times mean that use of other hook and line gear is much less likely to result in marine mammal interactions. However, due to the limited potential risk we carry this gear forward for further analysis with longline in a general category of hook and line gear.

In evaluating risk relative to a specific fishery (or research survey), one must consider the length of the line and number of hooks deployed as well as frequency, timing, and location of deployment. These considerations inform determinations of whether interaction with marine mammals is likely. NWFSC has not recorded marine mammal interactions with any longline survey. While a lack of historical interactions does not in and of itself indicate that future interactions are unlikely, we believe that the historical record, considered in context with the frequency and timing of these activities, as well as mitigation measures employed indicate that future marine mammal interactions with these gears would be uncommon.

Tangle nets and other set gear—As noted previously, tangle nets operate in similar fashion to gillnets. Marine mammal interactions with gillnets are well-documented, with a large proportion of species of all types of marine mammals (*e.g.*, mysticetes, odontocetes, pinnipeds) recorded as gillnet bycatch (Reeves *et al.*, 2013; Lewison *et al.*, 2014; Zollett, 2009). Reeves *et al.* (2013) note that numbers of marine mammals killed in gillnets tend to be greatest for species that are widely distributed in coastal and shelf waters. Because of the well-documented risk to marine mammals, and to coastally distributed pinnipeds and small cetaceans in particular, we believe there is some risk of interaction inherent to NWFSC use of tangle nets, as described below in "Estimated Take by Incidental Harassment, Serious Injury, or Mortality." However, this risk is limited by the fact that NWFSC uses tangle nets only in the LCRRA, for up to 75 sets of 25–45 minutes duration each.

The NWFSC also uses fyke traps and modified sablefish pots, both of which are passive fishing gear that have limited species selectivity and may be set for long durations (FAO, 2001). Thus, these gears have the potential to capture non-targeted fauna that use the same habitat as targeted species, even without the use of bait. Mortality in fyke nets can arise from stress and injury associated with anoxia, abrasion, confinement, and starvation (Larocque, 2011). In 2010, NMFS' Northeast Fisheries Science Center captured a harbor seal in a fyke trap. However, all fyke traps used by the NWFSC are wetland systems designed to target small fish, and are fished in areas where pinnipeds are rare (estuarine, wetland channels typically 1–5 m wide, including brackish and freshwater habitats) and only limited deployments (up to one hundred sets per year). Sablefish pots are likewise used in only very limited fashion, with modified pots deployed in some Puget Sound estuaries to collect herring eggs. The doors are sewed shut such that marine mammals cannot enter the pot itself, and are unlikely to become entangled in the line. Therefore, we do not believe that there is a reasonable potential for marine mammal interaction with fyke traps or pots used by the NWFSC, and these gears are not considered further in this document.

Seine nets—Purse seine gear is well-known as a potential source of marine mammal mortality due to its use in tuna fisheries of the eastern tropical Pacific Ocean (ETP), where incidental take of dolphins was very high from the late 1950s into the 1970s (Perrin, 1969). Because large yellowfin tuna (*Thunnus albacares*) and several species of dolphin associate together, dolphins were often captured along with the target species, resulting in the deaths of hundreds of thousands of dolphins. Through a series of combined actions, including passage of the MMPA in 1972, subsequent amendments, regulations, and mitigation measures, dolphin bycatch in the ETP has since decreased 99 percent in the international fishing fleet, and was eliminated by the U.S. fleet (Gerrodette and Forcada, 2005). As in the ETP tuna fisheries, the most significant risk associated with use of purse seines are when marine mammals and target species associate together, which is not the case for any NWFSC use of purse seines. Similar to longline gear, NWFSC purse seines are much smaller than those typically used in commercial fisheries. However, there is some risk associated with use of purse seines (and to a lesser extent, seine nets in general), and we therefore carry seine nets forward for further consideration.

Other research gear—The only NWFSC research gears with any record of marine mammal interactions are pelagic trawl nets (*i.e.*, Nordic 264 and modified Cobb). Because of ample evidence from commercial fishing operations, we assume that there is also risk of marine mammal interaction due to NWFSC use of bottom trawl nets, hook and line gear (primarily longlines but also including other hook and line gear), and seine gear (primarily purse seine gear but also including beach seines). All other gears used in NWFSC fisheries research (*e.g.*, a variety of plankton nets, CTDs, ROVs) do not have the expected potential for marine mammal interactions and are not known to have been involved in any marine mammal interaction anywhere. Specifically, we consider CTDs, water pump/thermosalinograph, ROVs, small surface trawls, plankton nets, and vertically deployed or towed imaging systems to be no-impact gear types.

Unlike trawl nets, seine nets, and longline gear, which are used in both scientific research and commercial fishing applications, these other gears are not considered similar or analogous to any commercial fishing gear and are not designed to capture any commercially salable species, or to collect any sort of sample in large quantities. They are not considered to have the potential to take marine mammals primarily because of their design or how they are deployed. For example, CTDs are typically deployed in a vertical cast on a cable and have no loose lines or other entanglement hazards. A Bongo net is typically deployed on a cable, whereas neuston nets (these may be plankton nets or small trawls) are often deployed in the upper one meter of the water column; either net type has very small size (*e.g.*, two bongo nets of 0.5 m^2 each or a neuston net of approximately 2 m^2) and no trailing lines to present an entanglement risk. These other gear types are not considered further in this document.

Acoustic Effects

We previously provided general background information on sound and the specific sources used by the NWFSC (see "Description of Active Acoustic Sound Sources"). Here, we first provide background information on marine mammal hearing before discussing the potential effects of NWFSC use of active acoustic sources on marine mammals.

Marine mammal hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for low-frequency cetaceans. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 25 kHz (up to 30 kHz in some species), with best hearing estimated to be from 100 Hz to 8 kHz (Watkins, 1986; Ketten, 1998; Houser *et al.*, 2001; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten *et al.*, 2007; Parks *et al.*, 2007a; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz (Johnson, 1967; White, 1977; Richardson *et al.*, 1995; Szymanski *et al.*, 1999; Kastelein *et al.*, 2003; Finneran *et al.*, 2005a, 2009; Nachtigall *et al.*, 2005, 2008; Yuen *et al.*, 2005; Popov *et al.*, 2007; Au and Hastings, 2008; Houser *et al.*, 2008; Pacini *et al.*, 2010, 2011; Schlundt *et al.*, 2011);
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus,* including the hourglass dolphin, on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn *et al.* 2009, 2010; Tougaard *et al.* 2010]): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz (Popov and Supin, 1990a,b; Kastelein *et al.*, 2002; Popov *et al.*, 2005); and
- Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 75 Hz to 100 kHz, with best hearing between 1–50 kHz (Møhl, 1968; Terhune and Ronald, 1971, 1972; Richardson *et al.*, 1995; Kastak and Schusterman, 1999; Reichmuth, 2008; Kastelein *et al.*, 2009);
- Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 100 Hz and 48 kHz for Otariidae, with best hearing between 2–48 kHz (Schusterman *et al.*, 1972; Moore and Schusterman, 1987; Babushina *et al.*, 1991; Richardson *et al.*, 1995; Kastak and Schusterman, 1998; Kastelein *et al.*, 2005a; Mulsow and Reichmuth, 2007; Mulsow *et al.*, 2011a, b).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

Thirty-four marine mammal species (28 cetacean and six pinniped [four otariid and two phocid] species) have the potential to co-occur with NWFSC research activities. Please refer to Table 3. Of the 28 cetacean species that may be present, six are classified as low-frequency cetaceans (*i.e.*, all mysticete species), eighteen are classified as mid-frequency cetaceans (*i.e.*, all delphinid and ziphiid species and the sperm whale), and four are classified as high-frequency cetaceans (*i.e.*, porpoises and *Kogia* spp.).

Potential effects of underwater sound—Please refer to the information given previously ("Description of Active Acoustic Sources") regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to NWFSC's use of active acoustic sources (*e.g.*, echosounders).

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.*, when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.*, permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that NWFSC use of active acoustic sources may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.*, 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.*, tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.*, 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.*, Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.*, 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.*, Kryter *et al.*, 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.*, Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis, and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007). NWFSC activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a "stranding" (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.*, Geraci *et al.*, 1999). However, the cause or causes of most strandings are unknown (*e.g.*, Best, 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.*, Sih *et al.*, 2004). For further description of stranding events see, *e.g.*, Southall *et al.*, 2006; Jepson *et al.*, 2013; Wright *et al.*, 2013.

1. *Temporary threshold shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the data published at the time of this writing concern TTS elicited by exposure to multiple pulses of sound.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale [*Delphinapterus leucas*], harbor porpoise, and Yangtze finless porpoise [*Neophocoena asiaeorientalis*]) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (*e.g.*, Finneran *et al.*, 2002; Nachtigall *et al.*, 2004; Kastak *et al.*, 2005; Lucke *et al.*, 2009; Popov *et al.*, 2011). In general, harbor seals (Kastak *et al.*, 2005; Kastelein *et al.*, 2012a) and harbor porpoises (Lucke *et al.*, 2009; Kastelein *et al.*, 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

2. *Behavioral effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2003; Southall *et al.*, 2007; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals

that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*; 2004; Goldbogen *et al.*, 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*; 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.*, Kastelein *et al.*, 2001, 2005b, 2006; Gailey *et al.*, 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.*, Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.*, Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.*, directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.*, Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.*, decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.*, Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose

dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

3. *Stress responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.*, Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.*, Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.*, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (*e.g.*, Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *Auditory masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.*, snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.*, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007b; Di Iorio and Clark, 2009; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.*, Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.*, 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most

of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.*, from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Potential effects of NWFSC activity—As described previously (see "Description of Active Acoustic Sound Sources"), the NWFSC proposes to use various active acoustic sources, including echosounders (*e.g.*, multibeam systems), scientific sonar systems, positional sonars (*e.g.*, net sounders for determining trawl position), and environmental sensors (*e.g.*, current profilers). These acoustic sources, which are present on most NWFSC fishery research vessels, include a variety of single, dual, and multi-beam echosounders (many with a variety of modes), sources used to determine the orientation of trawl nets, and several current profilers.

Many typically investigated acoustic sources (*e.g.*, seismic airguns, low- and mid-frequency active sonar used for military purposes, pile driving, vessel noise)—sources for which certain of the potential acoustic effects described above have been observed or inferred—produce signals that are either much lower frequency and/or higher total energy (considering output sound levels and signal duration) than the high-frequency mapping and fish-finding systems used by the NWFSC. There has been relatively little attention given to the potential impacts of high-frequency sonar systems on marine life, largely because their combination of high output frequency and relatively low output power means that such systems are less likely to impact many marine species. However, some marine mammals do hear and produce sounds within the frequency range used by these sources and ambient noise is much lower at high frequencies, increasing the probability of signal detection relative to other sounds in the environment.

As noted above, relatively high levels of sound are likely required to cause TTS in most pinnipeds and odontocete cetaceans. While dependent on sound exposure frequency, level, and duration, NMFS' acoustics experts believe that existing studies indicate that for the kinds of relatively brief exposures potentially associated with transient sounds such as those produced by the active acoustic sources used by the NWFSC, SPLs in the range of approximately 180–220 dB rms might be required to induce onset TTS levels for most species (Southall *et al.*, 2007). However, it should be noted that there may be increased sensitivity to TTS for certain species generally (harbor porpoise; Lucke *et al.*, 2009) or specifically at higher sound exposure frequencies, which correspond to a species' best hearing range (20 kHz vs. 3 kHz for bottlenose dolphins; Finneran and Schlundt, 2010). However, for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB rms or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.*, 2009). The corresponding estimates for PTS would be at very high received levels that would rarely be experienced in practice.

Based on discussion provided by Southall *et al.* (2007), Lurton and DeRuiter (2011) modeled the potential impacts of conventional echosounders on marine mammals, estimating PTS onset at typical distances of 10–100 m for the kinds of sources considered here. Kremser *et al.* (2005) modeled the potential for TTS in blue, sperm, and beaked whales (please see Kremser *et al.* [2005] for discussion of assumptions regarding TTS onset in these species) from a multibeam echosounder, finding similarly that TTS would likely only occur at very close ranges to the hull of the vessel. The authors estimated ship movement at 12 kn (faster than NWFSC vessels would typically move), which would result in an underestimate of the potential for TTS to occur, but the modeled system (Hydrosweep) operates at lower frequencies and with a wider beam pattern than do typical NWFSC systems, which would result in a likely more significant overestimate of TTS potential. The results of both studies emphasize that these effects would very likely only occur in the cone ensonified below the ship and that animal responses to the vessel (sound or physical presence) at these extremely close ranges would very likely influence their probability of being exposed to these levels. At the same distances, but to the side of the vessel, animals would not be exposed to these levels, greatly decreasing the potential for an animal to be exposed to the most intense signals. For example, Kremser *et al.* (2005) note that SPLs outside the vertical lobe, or beam, decrease rapidly with distance, such that SPLs within the horizontal lobes are about 20 dB less than the value found in the center of the beam. For certain species (*i.e.*, odontocete cetaceans and especially harbor porpoises), these ranges may be somewhat greater based on more recent data (Lucke *et al.*, 2009; Finneran and Schlundt, 2010) but are likely still on the order of hundreds of meters. In addition, potential behavioral responses further reduce the already low likelihood that an animal may approach close enough for any type of hearing loss to occur.

Various other studies have evaluated the environmental risk posed by use of specific scientific sonar systems. Burkhardt *et al.* (2007) considered both the Hydrosweep system evaluated by Kremser *et al.* (2005) and the Simrad EK60, which is used by the NWFSC, and concluded that direct injury (*i.e.*, sound energy causes direct tissue damage) and indirect injury (*i.e.*, self-damaging behavior as response to acoustic exposure) would be unlikely given source and operational use (*i.e.*, vessel movement) characteristics, and that any behavioral responses would be unlikely to be significant. Similarly, Boebel *et al.* (2006) considered the Hydrosweep system in relation to the risk for direct or indirect injury, concluding that (1) risk of TTS (please see Boebel *et al.* [2006] for assumptions regarding TTS onset) would be less than two percent of the risk of ship strike and (2) risk of behaviorally-induced damage would be essentially nil due to differences in source characteristics between scientific sonars and sources typically associated with stranding events (*e.g.*, mid-frequency active sonar, but see discussion of the 2008 Madagascar stranding event below). It should be noted that the risk of direct injury may be greater when a vessel operates sources while on station (*i.e.*, stationary), as there is a greater chance for an animal to receive the signal when the vessel is not moving.

Boebel *et al.* (2005) report the results of a workshop in which a structured, qualitative risk analysis of a range of acoustic technology was undertaken, specific to use of such technology in the Antarctic. The authors assessed a single-beam echosounder commonly used for collecting bathymetric data (12 kHz, 232 dB, 10° beam width), an array of single-beam echosounders used for mapping krill (38, 70, 120, and 200 kHz; 230 dB; 7° beam width), and a multibeam echosounder (30 kHz, 236 dB, 150° × 1° swath width). For each source, the authors produced a matrix displaying the severity of potential consequences (on a six-point scale) against the likelihood of occurrence for a given degree of severity. For the former two systems, the authors determined on the basis of the volume of water potentially affected by the system and comparisons between its output and available TTS

data that the chance of TTS is only in a small volume immediately under the transducers, and that consequences of level four and above were inconceivable, whereas level one consequences ("Individuals show no response, or only a temporary (minutes) behavior change") would be expected in almost all instances. Some minor displacement of animals in the immediate vicinity of the ship may occur. For the multibeam echosounder, Boebel *et al.* (2005) note that the high output and broad width of the swath abeam of the vessel makes displacement of animals more likely. However, the fore and aft beamwidth is small and the pulse length very short, so the risk of ensonification above TTS levels is still considered quite small and the likelihood of auditory or other injuries low. In general, the authors reached the same conclusions described for the single-beam systems but note that more severe impacts—including fatalities resulting from herding of sensitive species in narrow sea ways—are at least possible (*i.e.*, may occur in exceptional circumstances). However, the probability of herding remains low not just because of the rarity of the necessary confluence of species, bathymetry, and likely other factors, but because the restricted beam shape makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel (Boebel *et al.*, 2005). More recently, Lurton (2016) conducted a modeling exercise and concluded similarly that likely potential for acoustic injury from these types of systems is negligible, but that behavioral response cannot be ruled out.

We have, however, considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from NWFSC use of the multibeam echosounder, on the basis of a 2008 mass stranding of approximately one hundred melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder; it is important to note that all NWFSC sources operate at higher frequencies [see Table 2]) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.*, 2013). The panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.*, 2006; Brownell *et al.*, 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system.

The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.*, a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event.

The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.*, 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for scientific applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Characteristics of the sound sources predominantly used by NWFSC further reduce the likelihood of effects to marine mammals, as well as the intensity of effect assuming that an animal perceives the signal. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.*, intermittent exposure results in lower levels of TTS) (Mooney *et al.*, 2009a; Finneran *et al.*, 2010). In addition, intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.*, 2010). Although echosounder pulses are, in general, emitted rapidly, they are not dissimilar to odontocete echolocation click trains. Research indicates that marine mammals generally have extremely fine auditory temporal resolution and can detect each signal separately (*e.g.*, Au *et al.*, 1988; Dolphin *et al.*, 1995; Supin and Popov, 1995; Mooney *et al.*, 2009b), especially for species with echolocation capabilities. Therefore, it is likely that marine mammals would indeed perceive echosounder signals as being intermittent.

We conclude here that, on the basis of available information on hearing and potential auditory effects in marine mammals, high-frequency cetacean species would be the most likely to potentially incur temporary hearing loss from a vessel operating high-frequency sonar sources, and the potential for PTS to occur for any species is so unlikely as to be discountable. Even for high-frequency cetacean species, individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Additionally, given that behavioral responses typically include the temporary avoidance that might be expected (see below), the potential for auditory effects considered physiological damage (injury) is considered extremely low in relation to realistic operations of these devices. Given the fact that fisheries research survey vessels are moving, the likelihood that animals may avoid the vessel to some extent based on either its physical presence or due to aversive sound (vessel or active acoustic sources), and the intermittent nature of many of these sources, the potential for TTS is probably low for high-frequency cetaceans and very low to zero for other species.

Based on the source operating characteristics, most of these sources may be detected by odontocete cetaceans (and particularly high-frequency specialists such as porpoises) but are unlikely to be audible to mysticetes (*i.e.,* low-frequency cetaceans) and some pinnipeds. While low-frequency cetaceans and pinnipeds have been observed to respond behaviorally to low- and mid-frequency sounds (*e.g.,* Frankel, 2005), there is little evidence of behavioral responses in these species to high-frequency sound exposure (*e.g.,* Jacobs and Terhune, 2002; Kastelein *et al.,* 2006). If a marine mammal does perceive a signal from a NWFSC active acoustic source, it is likely that the response would be, at most, behavioral in nature. Behavioral reactions of free-ranging marine mammals to scientific sonars are likely to vary by species and circumstance. For example, Watkins *et al.* (1985) note that sperm whales did not appear to be disturbed by or even aware of signals from scientific sonars and pingers (36–60 kHz) despite being very close to the transducers, but Gerrodette and Pettis (2005) report that when a 38-kHz echosounder and ADCP were on (1) the average size of detected schools of spotted dolphins and pilot whales was decreased; (2) perpendicular sighting distances increased for spotted and spinner dolphins; and (3) sighting rates decreased for beaked whales. As described above, behavioral responses of marine mammals are extremely variable, depending on multiple exposure factors, with the most common type of observed response being behavioral avoidance of areas around aversive sound sources. Certain odontocete cetaceans (particularly harbor porpoises and beaked whales) are known to avoid high-frequency sound sources in both field and laboratory settings (*e.g.,* Kastelein *et al.,* 2000, 2005b, 2008a, b; Culik *et al.,* 2001; Johnston, 2002; Olesiuk *et al.,* 2002; Carretta *et al.,* 2008). There is some additional, low probability for masking to occur for high-frequency specialists, but similar factors (directional beam pattern, transient signal, moving vessel) mean that the significance of any potential masking is probably inconsequential.

Potential Effects of Visual Disturbance

During NWFSC surveys conducted in coastal areas, including rivers and estuaries, pinnipeds are expected to be hauled out and at times experience incidental close approaches by researchers in small vessels during the course of fisheries research activities. Such circumstances are expected in Puget Sound and in the Columbia River. NWFSC expects some of these animals will exhibit a behavioral response to the visual stimuli (*e.g.,* including alert behavior, movement, vocalizing, or flushing). NMFS does not consider the lesser reactions (*e.g.,* alert behavior) to constitute harassment. These events are expected to be infrequent and cause only a temporary disturbance on the order of minutes. Monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur.

In areas where disturbance of haul-outs due to periodic human activity (*e.g.,* researchers approaching on foot, passage of small vessels, maintenance activity) occurs, monitoring results have generally indicated that pinnipeds typically move or flush from the haul-out in response to human presence or visual disturbance, although some individuals typically remain hauled-out (*e.g.,* SCWA, 2012). The nature of response is generally dependent on species. For example, California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous sites. Monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010).

Upon the occurrence of low-severity disturbance (*i.e.,* the approach of a vessel or person as opposed to an explosion or sonic boom), pinnipeds typically exhibit a continuum of responses, beginning with alert movements (*e.g.,* raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed pinnipeds typically re-occupy the haul-out within minutes to hours of the stimulus.

In a popular tourism area of the Pacific Northwest where human disturbances occurred frequently, past studies observed stable populations of seals over a twenty-year period (Calambokidis *et al.,* 1991). Despite high levels of seasonal disturbance by tourists using both motorized and non-motorized vessels, Calambokidis *et al.* (1991) observed an increase in site use (pup rearing) and classified this area as one of the most important pupping sites for seals in the region. Another study observed an increase in seal vigilance when vessels passed the haul-out site, but then vigilance relaxed within ten minutes of the vessels' passing (Fox, 2008). If vessels passed frequently within a short time period (*e.g.,* 24 hours), a reduction in the total number of seals present was also observed (Fox, 2008).

Level A harassment, serious injury, or mortality could likely only occur as a result of trampling in a stampede (a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus) or abandonment of pups. However, NWFSC surveys would be unlikely to disturb any sea lion pups, and any disturbance of harbor seal pups would be unlikely to result in abandonment. The eastern stock of Steller sea lions breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California; there are no known breeding rookeries in Washington or in the Columbia River. California sea lions breed in the Gulf of California, western Baja California, and southern California. Harbor seal pups could be present at times during NWFSC research effort (harbor seal pupping in Washington inland waters occurs from approximately June through September, depending on location), but harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As such, it is unlikely that infrequent disturbance resulting from NWFSC research would interrupt the brief mother-pup bonding period within which disturbance could result in separation. In addition, NWFSC researchers take precautions to minimize disturbance and prevent any possibility of stampedes, including choosing travel routes as far away from hauled pinnipeds as possible and by moving sample site locations to avoid consistent haulout areas.

Disturbance of pinnipeds caused by NWFSC survey activities would be expected to last for only short periods of time, separated by significant amounts of time in which no disturbance occurred. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur

any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

Anticipated Effects on Marine Mammal Habitat

Effects to prey—In addition to direct, or operational, interactions between fishing gear and marine mammals, indirect (*i.e.,* biological or ecological) interactions occur as well, in which marine mammals and fisheries both utilize the same resource, potentially resulting in competition that may be mutually disadvantageous (*e.g.,* Northridge, 1984; Beddington *et al.,* 1985; Wickens, 1995). Marine mammal prey varies by species, season, and location and, for some, is not well documented. There is some overlap in prey of marine mammals and the species sampled and removed during NWFSC research surveys, with primary species of concern being hake, salmonids, and small, energy-rich, schooling species such as Pacific sardine, anchovies, and jack mackerel.

However, the total amount of these species taken in research surveys is very small relative to their overall biomass in the area (See Section 4.2.3 of the NWFSC EA for more information on fish catch during research surveys). For example, the average annual catch of Pacific hake in the course of all NWFSC research surveys during 2008–12 was approximately 1,181 metric tons (mt). Research catch is therefore negligible compared to the average commercial harvest for the same period (63,974 mt). For salmonids, in all cases the research take as a percent of either the average spawning population estimate or the average total juveniles produced is less than one tenth of one percent. For most commercial species, the average annual research catch is less than one percent of the overfishing limit (a fisheries management metric used to prevent overfishing). Other species of fish and invertebrates that are used as prey by marine mammals are taken in research surveys as well but, as indicated by these examples, the proportions of research catch compared to biomass and commercial harvest is very small.

In addition to the small total biomass taken, some of the size classes of fish targeted in research surveys are very small (*e.g.,* juvenile salmonids are typically only centimeters long), and these small size classes are not known to be prey of marine mammals. Research catches are also distributed over a wide area because of the random sampling design covering large sample areas. Fish removals by research are therefore highly localized and unlikely to affect the spatial concentrations and availability of prey for any marine mammal species. This is especially true for pinnipeds, which are opportunistic predators that consume a wide assortment of fish and squid, and judging by their increasing populations throughout their range and expanding range into the Pacific Northwest (Caretta *et al.,* 2015a), food availability does not appear to be a limiting factor (Baraff and Loughlin, 2000; Scordino, 2010). The overall effect of research catches on marine mammals through competition for prey may therefore be considered insignificant for all species.

Acoustic habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the NWFSC's use of active acoustic sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under "Acoustic Effects"), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber, 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). As described above ("Acoustic Effects"), the signals emitted by NWFSC active acoustic sources are generally high frequency, of short duration, and transient. These factors mean that the signals will attenuate rapidly (not travel over great distances), may not be perceived or affect perception even when animals are in the vicinity, and would not be considered chronic in any given location. NWFSC use of these sources is widely dispersed in both space and time. In conjunction with the prior factors, this means that it is highly unlikely that NWFSC use of these sources would, on their own, have any appreciable effect on acoustic habitat. Sounds emitted by NWFSC vessels would be of lower frequency and continuous, but would also be widely dispersed in both space and time. NWFSC vessel traffic—including both sound from the vessel itself and from the active acoustic sources—is of very low density compared to commercial shipping traffic or commercial fishing vessels and would therefore be expected to represent an insignificant incremental increase in the total amount of anthropogenic sound input to the marine environment.

Physical habitat—NWFSC conducts some bottom trawling, which may physically damage seafloor habitat. Physical damage may include furrowing and smoothing of the seafloor as well as the displacement of rocks and boulders, and such damage can increase with multiple contacts in the same area (Morgan and Chuenpagdee, 2003; Stevenson *et al.,* 2004). Damage to seafloor habitat may also harm infauna and epifauna (*i.e.,* animals that live in or on the seafloor or on structures on the seafloor), including corals. In general, physical damage to the seafloor would be expected to recover within eighteen months through the action of water currents and natural sedimentation, with the exception of rocks and boulders which may be permanently displaced (Stevenson *et al.,* 2004). Biological damage would likely recover within the same timeframe, although repeated disturbance of an area can prolong the recovery time (Stevenson *et al.,* 2004), and recovery of corals may take significantly longer. However, NWFSC catch records show that only minimal amounts of coral are captured (annual average of 55 kg of coral in all

surveys from 2008–12). Relatively small areas would be impacted by NWFSC bottom trawling and, because such surveys are conducted in the same areas but not in the exact same locations, they are expected to cause single rather than repeated disturbances in any given area. NWFSC activities would not be expected to have any other impacts on physical habitat.

As described in the preceding, the potential for NWFSC research to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant for all species. Effects to habitat will not be discussed further in this document.

Estimated Take by Incidental Harassment, Serious Injury, or Mortality

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Serious injury means any injury that will likely result in mortality (50 CFR 216.3).

Take of marine mammals incidental to NWFSC research activities could occur as a result of (1) injury or mortality due to gear interaction (Level A harassment, serious injury, or mortality); (2) behavioral disturbance resulting from the use of active acoustic sources (Level B harassment only); or (3) behavioral disturbance of pinnipeds resulting from incidental approach of researchers (Level B harassment only).

Estimated Take Due to Gear Interaction

Historical Interactions

In order to estimate the number of potential incidents of take that could occur by M/SI + Level A through gear interaction, we first consider NWFSC's record of past such incidents, and then consider in addition other species that may have similar vulnerabilities to NWFSC trawl gear as those species for which we have historical interaction records. Historical interactions with NWFSC research gear are described in Table 4. Available records are for the years 1999 through present. All historical interactions have taken place in the CCRA, offshore Washington and Oregon, and have occurred during use of the Nordic 264 surface trawl net, with a few exceptions. There is one historical interaction in the PSRA (also using the Nordic 264 surface trawl) and one CCRA historical interaction using the modified Cobb midwater trawl. NWFSC has no historical interactions for any bottom trawl, hook and line, or seine gear, and has no historical interactions in the LCRRA. Please see Figure 6–1 in the NWFSC request for authorization for specific locations of these incidents.

TABLE 4—HISTORICAL INTERACTIONS WITH RESEARCH GEAR

Gear [1]	Survey	Date	Species	Number killed	Number released alive	Total
Pelagic trawl	Juvenile Salmon Coastal (JSC)	5/24/1999	Pacific white-sided dolphin	4		4
Pelagic trawl	JSC	9/29/1999	Steller sea lion	1		1
Pelagic trawl	JSC	10/1/1999	Steller sea lion	3		3
Pelagic trawl	JSC	5/18/2000	Northern fur seal	1		1
Pelagic trawl	Piscine Predator and Forage Fish (PPFF) [2].	7/19/2001	California sea lion	1		1
Pelagic trawl	JSC	9/22/2002	Steller sea lion	1		1
Pelagic trawl	JSC	9/23/2002	Steller sea lion	1		1
Pelagic trawl	JSC	9/24/2002	Steller sea lion	2		2
Pelagic trawl	JSC	6/25/2003	Pacific white-sided dolphin	1		1
Pelagic trawl	JSC	6/30/2003	Harbor seal	1		1
Pelagic trawl	JSC	6/30/2003	Pacific white-sided dolphin	2		2
Pelagic trawl	JSC	6/18/2005	Pacific white-sided dolphin	3		3
Pelagic trawl	PPFF [2]	6/1/2006	Pacific white-sided dolphin	3		3
Pelagic trawl	PPFF [2]	8/28/2006	Pacific white-sided dolphin	2		2
Pelagic trawl	JSC	9/28/2007	California sea lion	1		1
Pelagic trawl	Skagit Bay Juvenile Salmon [3]	5/16/2009	Harbor seal		1	1
Pelagic trawl	JSC	5/23/2009	Unidentified small cetacean [4]	2		2
Pelagic trawl [5]	Northern Juvenile Rockfish	5/26/2009	California sea lion	1	1	2
Pelagic trawl	JSC	5/24/2010	Harbor seal	1		1
Pelagic trawl	JSC	6/28/2012	Pacific white-sided dolphin	3		3
Pelagic trawl	JSC	6/21/2014	Pacific white-sided dolphin	6		6
Total individuals captured (total number of interactions given in parentheses).			Northern fur seal (1)	1		1
			California sea lion (3)	3	1	4
			Pacific white-sided dolphin (8)	24		24
			Harbor seal (3)	2	1	3
			Steller sea lion (5)	8		8

[1] All incidents involved use of the Nordic 264 surface trawl, except as noted below.
[2] Survey discontinued.
[3] This incident occurred in Puget Sound; all other incidents occurred in waters offshore Washington and Oregon.
[4] Animals not identified before fishing crew returned carcasses to sea.
[5] This incident involved use of the modified Cobb midwater trawl.

Although some historical interactions resulted in the animal(s) being released alive, no serious injury determinations (NMFS, 2012a; 2012b) were made, and it is possible that some of these animals later died. In order to use these historical interaction records in a precautionary manner as the basis for the take estimation process, and because

we have no specific information to indicate whether any given future interaction might result in M/SI versus Level A harassment, we conservatively assume that all interactions equate to mortality. Over the past seventeen years, NWFSC has had only infrequent interactions with marine mammals, with 0.1–0.5 animals captured per year for the pinniped species and 1.4 animals captured per year for the Pacific white-sided dolphin. No Steller sea lion has been captured since 2002, northern fur seals have been involved in only one incident (none since 2000), and only a few California sea lions and harbor seals have been involved in interactions with research fishing gear. However, we assume that any of these species could be captured in any year.

In order to produce the most precautionary take estimates possible, we consider all of the data available to us (*i.e.*, since 1999). In consideration of these interaction records, we assume that one individual of each species of otariid pinniped could be captured per year over the course of the five-year period of validity for these proposed regulations, that two individual harbor seals could be captured per year, and that the worst case event could happen each year for Pacific white-sided dolphins (*i.e.*, six dolphins could be captured in a single trawl in each year). Table 5 shows the projected five-year total captures of these five species for this proposed rule, as described above, for trawl gear only. Although more than one individual of the two sea lion species has been captured in a single tow, interactions with these species have historically occurred only infrequently, and we believe that the above assumption appropriately reflects the likely total number of individuals involved in research gear interactions over a five-year period. We assume that two total harbor seals could be captured per year in recognition of the demonstrated vulnerability to capture in the PSRA (all other species have been captured only in the CCRA). These estimates are based on the assumption that annual effort (*e.g.*, total annual trawl tow time) over the proposed five-year authorization period will not exceed the annual effort during prior years for which we have interaction records.

TABLE 5—PROJECTED FIVE-YEAR TOTAL TAKE IN TRAWL GEAR FOR HISTORICALLY CAPTURED SPECIES

Gear	Species	CCRA average annual take (total)	PSRA average annual take (total)	Projected 5-year total [1]
Trawl	Pacific white-sided dolphin	6 (30)		30
	California sea lion	1 (5)		5
	Harbor seal	1 (5)	1 (5)	10
	Northern fur seal	1 (5)		5
	Steller sea lion	1 (5)		5

[1] Because there are no historical take records from the LCRRA, we incorporate all projected LCRRA takes in Table 7 below.

In order to estimate the total potential number of incidents of M/SI + Level A that could occur incidental to the NWFSC's use of trawl, hook and line, and seine gear over the five-year period of validity for these proposed regulations (*i.e.*, takes additional to those described in Table 4), we first consider whether there are additional species that may have similar vulnerability to capture in trawl gear as the five species described above that have been taken historically and then evaluate the potential vulnerability of these and other species to additional gears.

As background to the process of determining which species not historically taken may have sufficient vulnerability to capture in NWFSC gear to justify inclusion in the take authorization request (or whether species historically taken may have vulnerability to gears in which they have not historically been taken or additional vulnerability not reflected above due to activity in other areas such as the LCRRA), we note that the NWFSC is NMFS' research arm in the northwest portion of the West Coast Region and may be considered as a leading source of expert knowledge regarding marine mammals (*e.g.*, behavior, abundance, density) in the areas where they operate. The species for which the take request was formulated were selected by the NWFSC, and we have concurred with these decisions.

In order to evaluate the potential vulnerability of additional species to trawl and of all species to hook and line and seine gear, we first consulted NMFS' List of Fisheries (LOF), which classifies U.S. commercial fisheries into one of three categories according to the level of incidental marine mammal M/SI that is known to occur on an annual basis over the most recent five-year period (generally) for which data has been analyzed: Category I, frequent incidental M/SI; Category II, occasional incidental M/SI; and Category III, remote likelihood of or no known incidental M/SI. We provide summary information, as presented in the 2015 LOF (79 FR 77919; December 29, 2014), in Table 6. In order to simplify information presented, and to encompass information related to other similar species from different locations, we group marine mammals by genus (where there is more than one member of the genus found in U.S. waters). Where there are documented incidents of M/SI incidental to relevant commercial fisheries, we note whether we believe those incidents provide sufficient basis upon which to infer vulnerability to capture in NWFSC research gear. For a listing of all Category I, II, and II fisheries using relevant gears, associated estimates of fishery participants, and specific locations and fisheries associated with the historical fisheries takes indicated in Table 6 below, please see the 2015 LOF. For specific numbers of marine mammal takes associated with these fisheries, please see the relevant SARs. More information is available on the Internet at *www.nmfs.noaa.gov/pr/interactions/lof/* and *www.nmfs.noaa.gov/pr/sars/*.

TABLE 6—U.S. COMMERCIAL FISHERIES INTERACTIONS FOR TRAWL, HOOK AND LINE, AND SEINE GEAR FOR RELEVANT SPECIES

Species [1]	Trawl [2]	Vulnerability inferred? [3]	Hook and line [2]	Vulnerability inferred? [3]	Seine [2]	Vulnerability inferred? [3]
Gray whale	Y	N	N	n/a	N	n/a
Humpback whale	Y	N	Y	N	Y	N
Balaenoptera spp.	Y	N	Y	N	N	n/a
Sperm whale	N	n/a	Y	N	N	n/a
Kogia spp.	N	n/a	Y	Y	N	n/a
Cuvier's beaked whale	N	n/a	Y	N	N	n/a
Baird's beaked whale	N	n/a	N	n/a	N	n/a
Mesoplodon spp.	N	n/a	Y	N	N	n/a
Common bottlenose dolphin	Y	Y	Y	Y	Y	N
Stenella spp.	N	n/a	Y	Y	N	n/a
Delphinus spp.	Y	Y	Y	Y	Y	Y
Lagenorhynchus spp. [4]	n/a	n/a	N	n/a	N	n/a
Northern right whale dolphin	Y [6]	Y	N	n/a	N	n/a
Risso's dolphin	Y	Y	Y	Y	N	n/a
Killer whale	Y	N	Y	N	N	n/a
Globicephala spp.	Y	N	Y	Y	Y	N
Harbor porpoise	Y	Y	N	n/a	N	n/a
Dall's porpoise	Y	Y	Y	N	N	n/a
Guadalupe fur seal [5]	N	n/a	N	n/a	N	n/a
Northern fur seal [4]	n/a	n/a	Y	N	N	n/a
California sea lion [4]	n/a	n/a	Y [6]	Y	Y	Y
Steller sea lion [4]	n/a	n/a	Y	Y	N	n/a
Phoca spp. [4]	n/a	n/a	N	n/a	Y	Y
Northern elephant seal	Y	N	N	n/a	N	n/a

[1] Please refer to Table 3 for taxonomic reference.
[2] Indicates whether any member of the genus has documented incidental M/SI in a U.S. fishery using that gear in the most recent five-year timespan for which data is available.
[3] Where there are no documented incidents of M/SI incidental to relevant commercial fisheries, this is not applicable.
[4] This exercise is considered "not applicable" for trawl gear for those species historically captured by NWFSC gear. Historical record, rather than analogy, is considered the best information upon which to base a take estimate.
[5] It is likely that Guadalupe fur seals are taken in Mexican fisheries, but there are no records available to us.
[6] There are no records of take for California sea lions in commercial hook and line fisheries, but there have been multiple takes of California sea lions in longline surveys conducted by the SWFSC. There are no records of take for northern right whale dolphins in commercial trawl fisheries, but this species has been captured in a trawl survey conducted by the SWFSC. We therefore infer vulnerability for those species to those research gears.

Information related to incidental M/SI in relevant commercial fisheries is not, however, the sole determinant of whether it may be appropriate to authorize M/SI + Level A incidental to NWFSC survey operations. A number of factors (*e.g.*, species-specific knowledge regarding animal behavior, overall abundance in the geographic region, density relative to NWFSC survey effort, feeding ecology, propensity to travel in groups commonly associated with other species historically taken) were taken into account by the NWFSC to determine whether a species may have a similar vulnerability to certain types of gear as historically taken species. In some cases, we have determined that species without documented M/SI may nevertheless be vulnerable to capture in NWFSC research gear. Similarly, we have determined that some species groups with documented M/SI are not likely to be vulnerable to capture in NWFSC gear. In these instances, we provide further explanation below. Those species with no records of historical interaction with NWFSC research gear and no documented M/SI in relevant commercial fisheries, and for which the NWFSC has not requested the authorization of incidental take, are not considered further in this section. The NWFSC believes generally that any sex or age class of those species for which take authorization is requested could be captured.

In order to estimate a number of individuals that could potentially be captured in NWFSC research gear for those species not historically captured, we first determine which species may have vulnerability to capture in a given gear. Of those species, we then determine whether any may have similar propensity to capture in a given gear as a historically captured species. These species are limited to a few species delphinid species that we believe may have similar risk of capture as that displayed by the Pacific white-sided dolphin. For these species, we assume it is possible that a worst-case scenario of take could occur while at the same time contending that, absent significant range shifts or changes in habitat usage, capture of a species not historically captured would likely be a very rare event. The former assumption also accounts for the likelihood that, for species that often travel in groups, an incident involving capture of that species is likely to involve more than one individual.

For example, we believe that the Risso's dolphin is potentially vulnerable to capture in trawl gear and may have similar propensity to capture in that gear as does the Pacific white-sided dolphin. Because the greatest number of Pacific white-sided dolphins captured in any one trawl tow was six individuals, we assume that six Risso's dolphins could also be captured in a single incident. However, in recognition of the fact that any incident involving the capture of Risso's dolphins would likely be a rare event, we propose a total take authorization over the five-year period of the number that may result from a single, worst-case incident (six dolphins). While we do not necessarily believe that six Risso's dolphins would be captured in a single incident—and that more capture incidents involving fewer individuals could occur, as opposed to a single, worst-case incident—we believe that this is a reasonable approach to estimating

potential incidents of M/SI + Level A while balancing what could happen in a worst-case scenario with the potential likelihood that no incidents of capture would actually occur. The SWFSC historical capture of northern right whale dolphins in 2008 provides an instructive example of a situation where a worst-case scenario (six dolphins captured in a single trawl tow) did occur, but overall capture of this species was very rare (no other capture incidents before or since).

Separately, for those species that we believe may have a vulnerability to capture in given gear but that we do not believe may have a similar propensity to capture in that gear as a historically captured species, we assume that capture would be a rare event such that authorization of a single take over the five-year period is likely sufficient to capture the risk of interaction. For example, from the LOF we infer vulnerability to capture in trawl gear for the Dall's porpoise but do not believe that this species has a similar propensity for interaction in trawl gear as the Pacific white-sided dolphin.

NWFSC requested authorization of incidental take for bottlenose dolphin, for either the offshore or coastal stock. However, we have had clarifying conversations with NWFSC to more explicitly understand the interaction risk posed by NWFSC survey operations. Coastal stock dolphins are generally found within 1 km of shore, from San Francisco Bay south to Mexican waters. This distribution has very little overlap with NWFSC research survey activity and, when coupled with the limited effort involved in NWFSC survey operations in that range and the mitigation measure proposed to be implemented, we do not believe that incidental take of coastal stock bottlenose dolphins is reasonably likely and do not propose to authorize take from this stock.

Trawl—From the 2015 LOF and SWFSC historical gear interactions, we infer vulnerability to trawl gear in the CCRA for the Risso's dolphin, short- and long-beaked common dolphins, northern right whale dolphin, Dall's porpoise, harbor porpoise, and bottlenose dolphin. We consider some of these species to have a similar propensity for interaction with trawl gear as that demonstrated by the Pacific white-sided dolphin (Risso's dolphin, northern right whale dolphin) and the rest to have lower risk of interaction.

Due to their likely presence in the relevant areas and inference based on historical interactions and the LOF, we assume additional vulnerability and therefore potential take for some of these species in trawl gear used in the PSRA and LCRRA. In the PSRA, these include the harbor porpoise and Dall's porpoise and the California sea lion and Steller sea lion. In the LCRRA these include the harbor porpoise and the harbor seal, California sea lion, and Steller sea lion.

For the striped dolphin, we believe that there is a reasonable likelihood of incidental take in trawl gear although there are no records of incidental M/SI in relevant commercial fisheries. The proposed take authorization for this species was determined to be appropriate based on analogy to other similar species that have been taken either in NWFSC operations or in analogous commercial fishery operations. We believe that the striped dolphin has a similar propensity for interaction with trawl gear as that demonstrated by the Pacific white-sided dolphin.

It is also possible that a captured animal may not be able to be identified to species with certainty. Certain pinnipeds and small cetaceans are difficult to differentiate at sea, especially in low-light situations or when a quick release is necessary. For example, a captured delphinid that is struggling in the net may escape or be freed before positive identification is made. This is only likely to occur in the CCRA due to the greater diversity of pinniped and small cetacean species likely to be encountered in that area. Therefore, the NWFSC has requested the authorization of incidental M/SI + Level A for one unidentified pinniped and one unidentified small cetacean over the course of the five-year period of proposed authorization.

Hook and line—The process is the same as is described above for trawl gear. From the 2015 LOF and SWFSC historical interactions, we infer vulnerability to hook and line gear in the CCRA for the Risso's dolphin, bottlenose dolphin, striped dolphin, pygmy and dwarf sperm whale (*i.e.*, *Kogia* spp.), short- and long-beaked common dolphins, short-finned pilot whale, and California and Steller sea lions.

Due to their likely presence in the relevant areas and inference based on historical interactions and the LOF, we assume additional vulnerability and therefore potential take for some of these species in hook and line gear used in the PSRA (hook and line gear is not used in the LCRRA). These include the California sea lion and harbor seal.

Seine—The process is the same as is described above for trawl gear. From the 2015 LOF, we infer vulnerability to seine and tangle net gear in the CCRA and/or LCRRA for the short-beaked common dolphin, harbor seal, and California sea lion. Long-beaked common dolphin is not included because they are much rarer in Oregon and Washington where seine surveys are conducted. Seine gear is used infrequently in the PSRA (*e.g.*, twelve purse seine sets per year) and the move-on rule applied if any small cetacean is seen within 500 m of the planned set. We do not believe that any take in seine gear is likely in the PSRA.

We also believe that there is a reasonable potential of seine gear interaction for a number of species in the CCRA and/or LCRRA for which there are no LOF records of interaction in commercial fisheries gears. These proposed authorizations reflect the NWFSC's expert judgment regarding the distribution of these species in relation to NWFSC use of seine gear offshore Oregon and Washington. For example, several of these species have the potential to interact with NWFSC purse seine surveys in the Columbia River plume, where there are no corresponding commercial seine fisheries. Therefore, we would not expect the LOF to adequately reflect the risk of marine mammal interaction posed by NWFSC survey activities. Species for which we propose to authorize take in seine gear in the CCRA and/or LCRRA with no LOF interaction records include the Dall's porpoise, Pacific white-sided dolphin, Risso's dolphin, northern right whale dolphin, Steller sea lion, and harbor porpoise. For the harbor porpoise, we expect that there is greater vulnerability to take in these gears (*i.e.*, we expect it could be taken in both the CCRA and LCRRA) and have increased the proposed take authorization relative to the other species accordingly. NWFSC considers the delphinid species to be at risk because of their occurrence in coastal waters offshore Oregon and Washington, and because they often occur in mixed schools and could be caught together in purse seines.

TABLE 7—TOTAL ESTIMATED M/SI + LEVEL A DUE TO GEAR INTERACTION, 2016–21

Species	Estimated 5-year total, trawl [1]	Estimated 5-year total, hook and line [1]	Estimated 5-year total, seine [1]	Total, all gears
Kogia spp.[2]		1		1
Bottlenose dolphin[3]	1	1		2
Striped dolphin	6	1		7
Short-beaked common dolphin	1	1	1	3
Long-beaked common dolphin	1	1		2
Pacific white-sided dolphin	30		1	31
Northern right whale dolphin	6		1	7
Risso's dolphin	6	1	1	8
Short-finned pilot whale		1		1
Harbor porpoise[4]	3 (CCRA/PSRA/LCRRA)		2 (CCRA/LCRRA)	5
Dall's porpoise	2 (CCRA/PSRA)		1	3
Northern fur seal[5]	5			5
California sea lion	7 (5 CCRA/PSRA/LCRRA)	2 (CCRA/PSRA)	1 (LCRRA)	10
Steller sea lion	7 (5 CCRA/PSRA/LCRRA)	1	1 (LCRRA)	9
Harbor seal[4]	11 (5 CCRA/5 PSRA/LCRRA	1 (PSRA)	1 (LCRRA)	13
Unidentified pinniped	1			1
Unidentified small cetacean	1			1

[1] Please see Table 6 and preceding text for derivation of take estimates. Takes proposed for authorization are not specific to any area, but our estimates are informed by area-specific vulnerability. All takes are expected to occur in the CCRA, except where the gear-specific breakdown of expected takes per area is provided. Note that hook and line surveys are not proposed for LCRRA and only limited seine surveys are proposed for PSRA.

[2] We expect that only one *Kogia* spp. may be taken over the five-year timespan and that it could be either a pygmy or dwarf sperm whale.

[3] Incidental take is expected only from the offshore stock.

[4] Incidental take for these species may be of animals from any stock in California, Oregon, or Washington, but expected vulnerability may be assigned to CCE or Washington inland waters stocks according to the expected take proportions shown.

[5] Incidental take may be of animals from either the eastern Pacific or California stock.

For large whales, beaked whales, and killer whales, observed M/SI is extremely rare for trawl and seine gear and, for most of these species, only slightly more common in longline gear. Although large whale species could become captured or entangled in NWFSC gear, the probability of interaction is extremely low considering the lower level of effort relative to that of commercial fisheries. For example, there were estimated to be three total incidents of sperm whale M/SI in the Hawaii deep-set longline fishery from 2007–11. This fishery has 129 participants, and the fishery as a whole exerts substantially greater effort in a given year than does the NWFSC. In a very rough estimate, we can say that these three estimated incidents between 2007–11 represent an insignificant per-participant interaction rate of 0.005 per year, despite the greater effort. Similarly, there were zero documented interactions from 2007–11 in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery, despite a reported fishing effort of 8,044 sets and 5,955,800 hooks in 2011 alone (Garrison and Stokes, 2012). With an average soak time of ten to fourteen hours, this represents an approximate minimum of almost sixty million hook hours. For reference, an approximate maximum estimate of NWFSC effort in the CCRA is 52,000 hook-hours per year. Other large whales, beaked whales and killer whales have similarly low rates of interaction with commercial fisheries, despite the significantly greater effort. In addition, large whales, beaked whales, and killer whales generally have, with few exceptions, very low densities in the CCE relative to other species (see Table 10). We believe it extremely unlikely that any large whale, beaked whale, or killer whale would be captured or entangled in NWFSC research gear.

There are a number of additional species with various LOF interaction records where we do not infer vulnerability to NWFSC use of that gear. Pilot whales have demonstrated vulnerability to midwater trawl gear in Atlantic fisheries and to purse seine gear, but we do not infer vulnerability to capture during NWFSC use of these gears because of the species is not abundant in the CCRA (Table 10). Bottlenose dolphins have been captured in purse seines, but they are also very rare in the areas where NWFSC conducts seine surveys. Similarly, we do not infer vulnerability to hook and line gear for Dall's porpoise or fur seals or to trawl gear for elephant seals given the amount of research effort conducted (for hook and line) or the rare nature of fisheries interactions for elephant seals.

Estimated Take Due to Acoustic Harassment

As described previously ("Potential Effects of the Specified Activity on Marine Mammals"), we believe that NWFSC use of active acoustic sources has, at most, the potential to cause Level B harassment of marine mammals. In order to attempt to quantify the potential for Level B harassment to occur, NMFS (including the NWFSC and acoustics experts from other parts of NMFS) developed an analytical framework considering characteristics of the active acoustic systems described previously under "Description of Active Acoustic Sound Sources," their expected patterns of use, and characteristics of the marine mammal species that may interact with them. We believe that this quantitative assessment benefits from its simplicity and consistency with current NMFS acoustic guidance regarding Level B harassment but caution that, based on a number of deliberately precautionary assumptions, the resulting take estimates may be seen as an overestimate of the potential for behavioral harassment to occur as a result of the operation of these systems. Additional details on the approach used and the assumptions made that result in these estimates are described below.

The operating frequencies of active acoustic systems used by NWFSC sources only go down to 27–33 kHz for the trawl monitoring system, which is not one of the predominant sources, and to 38 kHz for the EK60 echosounder (see Table 2 and Table 8). These frequencies are above the hearing range of baleen whales (*i.e.*, mysticetes); therefore, baleen whales would not be expected to perceive signals from NWFSC active acoustic sources, and we would not expect any exposures to these signals to

result in behavioral harassment. Baleen whales are not considered further in this section.

The assessment paradigm for active acoustic sources used in NWFSC fisheries research is relatively straightforward and has a number of key simplifying assumptions. NMFS' current acoustic guidance requires in most cases that we assume Level B harassment occurs when a marine mammal receives an acoustic signal at or above a simple step-function threshold. For use of these active acoustic systems, the appropriate threshold is 160 dB re 1 μPa (rms). Estimating the number of exposures at the specified received level requires several determinations, each of which is described sequentially below:

(1) A detailed characterization of the acoustic characteristics of the effective sound source or sources in operation;

(2) The operational areas exposed to levels at or above those associated with Level B harassment when these sources are in operation;

(3) A method for quantifying the resulting sound fields around these sources; and

(4) An estimate of the average density for marine mammal species in each area of operation.

Quantifying the spatial and temporal dimension of the sound exposure footprint (or "swath width") of the active acoustic devices in operation on moving vessels and their relationship to the average density of marine mammals enables a quantitative estimate of the number of individuals for which sound levels exceed the relevant threshold for each area. The number of potential incidents of Level B harassment is ultimately estimated as the product of the volume of water ensonified at 160 dB rms or higher and the volumetric density of animals determined from simple assumptions about their vertical stratification in the water column. Specifically, reasonable assumptions based on what is known about diving behavior across different marine mammal species were made to segregate those that predominately remain in the upper 200 m of the water column versus those that regularly dive deeper during foraging and transit. Methods for estimating each of these calculations are described in greater detail in the following sections, along with the simplifying assumptions made, and followed by the take estimates. Note that NWFSC only uses active acoustic systems for data acquisition purposes in the CCRA.

Sound source characteristics—An initial characterization of the general source parameters for the primary active acoustic sources operated by the NWFSC was conducted, enabling a full assessment of all sound sources used by the NWFSC and delineation of Category 1 and Category 2 sources, the latter of which were carried forward for analysis here (see Table 2). This auditing of the active acoustic sources also enabled a determination of the predominant sources that, when operated, would have sound footprints exceeding those from any other simultaneously used sources. These sources were effectively those used directly in acoustic propagation modeling to estimate the zones within which the 160 dB rms received level would occur.

Many of these sources can be operated in different modes and with different output parameters. In modeling their potential impact areas, those features among those given previously in Table 2 (*e.g.*, lowest operating frequency) that would lead to the most precautionary estimate of maximum received level ranges (*i.e.*, largest ensonified area) were used. The effective beam patterns took into account the normal modes in which these sources are typically operated. While these signals are brief and intermittent, a conservative assumption was taken in ignoring the temporal pattern of transmitted pulses in calculating Level B harassment events. Operating characteristics of each of the predominant sound sources were used in the calculation of effective line-kilometers and area of exposure for each source in each survey.

TABLE 8—EFFECTIVE EXPOSURE AREAS FOR PREDOMINANT ACOUSTIC SOURCES ACROSS TWO DEPTH STRATA

Active acoustic system	Effective exposure area: Sea surface to 200 m depth (km^2)	Effective exposure area: Sea surface to depth at which 160-dB threshold is reached (km^2)
Simrad EK60 narrow beam echosounder	0.0142	0.1411
Simrad ME70 multibeam echosounder	0.0201	0.0201
Simrad FS70 trawl sonar	0.008	0.008
Simrad SX90 narrow beam sonar[1]	0.0654	0.1634
Teledyne RD Instruments ADCP, Ocean Surveyor	0.0086	0.0187
Simrad ITI trawl monitoring system	0.0032	0.0032

[1] Exposure area varies greatly depending on the tilt angle setting of the SX90. To approximate the varied usage this system might receive, the exposure area for each depth strata was averaged by assuming equal usage at tilt angles of 5, 20, 45, and 80 degrees.

Among Category 2 sources (Table 2), six predominant sources (Table 8) were identified as having the largest potential impact zones during operations, based on their relatively lower output frequency, higher output power, and their operational pattern of use. Estimated effective cross-sectional areas of exposure were estimated for each of the predominant sources using a commercial software package (MATLAB) and key input parameters including source-specific operational characteristics (*i.e.*, frequency, beamwidth, source level, tilt angle, and horizontal and vertical resolution; see Table 2) and environmental characteristics (*i.e.*, temperature, salinity, pH, and latitude). Where relevant, calculations were performed for different notional operational scenarios and the largest cross-sectional area used in estimating take (*e.g.*, see Figure 6.2 of NWFSC's application, which displays a simple visualization of a two-dimensional slice of modeled sound propagation to illustrate the predicted area ensonified to the 160-dB threshold by the nominal EK60 beam pattern assuming side lobes of ensonification).

In determining the effective line-kilometers for each of these predominant sources, the operational patterns of use relative to one another were further applied to determine which source was the predominant one operating at any point in time for each survey. When multiple sound sources are used simultaneously, the one with the largest potential impact zone in each relevant depth strata is considered for

use in estimating exposures. For example, when species (*e.g.*, sperm whales) regularly dive deeper than 200 m, the largest potential impact zone was calculated for both depth strata and in some cases resulted in a different source being predominant in one depth stratum or the other. This enabled a more comprehensive way of accounting for maximum exposures for animals diving in a complex sound field resulting from simultaneous sources with different spatial profiles. This overall process effectively resulted in three sound sources (Table 8; SX90, EK60, and ME70) comprising the total effective line-kilometers, their relative proportions depending on the nature of each survey.

Calculating effective line-kilometers—As described below, based on the operating parameters for each source type, an estimated volume of water ensonified at or above the 160 dB rms threshold was determined. In all cases where multiple sources are operated simultaneously, the one with the largest estimated acoustic footprint was considered to be the effective source. This was calculated for each depth stratum (0–200 m and greater than 200 m), which in some cases resulted in different sources being predominant in each depth stratum for all line-kilometers when multiple sources were in operation; this was accounted for in estimating overall exposures for species that utilize both depth strata (deep divers). The total number of line-kilometers that would be surveyed was determined, as was the relative percentage of surveyed linear kilometers associated with each source type. The total line-kilometers for each vessel, the effective percentages associated with each of the resulting three predominant source types (SX90, EK60, and ME70), and the effective total line-kilometers of operation for each source type are given below.

Calculating volume of water ensonified—The cross-sectional area of water ensonified at or above the 160 dB rms threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. We used a spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source), a reasonable approximation over the relatively short ranges involved, and accounted for the frequency-dependent absorption coefficient (α at 8 °C and 34 ppt) and beam pattern of these sound sources, which is generally highly directional. The lowest frequency was used for systems that are operated over a range of frequencies. The vertical extent of this area is calculated for two depth strata (0–200 m and surface to range at which the on-axis received level reaches 160 dB rms). These results, shown in Table 8, were applied differentially based on the typical vertical stratification of marine mammals (see Table 10).

Following the determination of effective sound exposure area for transmissions considered in two dimensions, the next step was to determine the effective volume of water ensonified at or above 160 dB rms for the entirety of each survey. For each of the three predominant sound sources, the volume of water ensonified is estimated as the athwartship cross-sectional area (in square kilometers) of sound at or above 160 dB rms (as illustrated in Figure 6.2 of NWFSC's application) multiplied by the total distance traveled by the ship. Where different sources operating simultaneously would be predominant in each different depth strata (*e.g.*, ME70 and EK60 operating simultaneously may be predominant in the shallow stratum and deep stratum, respectively), the resulting cross-sectional area calculated took this into account. Specifically, for shallow-diving species this cross-sectional area was determined for whichever was predominant in the shallow stratum, whereas for deeper-diving species this area was calculated from the combined effects of the predominant source in the shallow stratum and the (sometimes different) source predominating in the deep stratum. This creates an effective total volume characterizing the area ensonified when each predominant source is operated and accounts for the fact that deeper-diving species may encounter a complex sound field in different portions of the water column.

Marine mammal densities—One of the primary limitations to traditional estimates of behavioral harassment from acoustic exposure is the assumption that animals are uniformly distributed in time and space across very large geographical areas, such as those being considered here. There is ample evidence that this is in fact not the case, and marine species are highly heterogeneous in terms of their spatial distribution, largely as a result of species-typical utilization of heterogeneous ecosystem features. Some more sophisticated modeling efforts have attempted to include species-typical behavioral patterns and diving parameters in movement models that more adequately assess the spatial and temporal aspects of distribution and thus exposure to sound (*e.g.*, Navy, 2013). While simulated movement models were not used to mimic individual diving or aggregation parameters in the determination of animal density in this estimation, the vertical stratification of marine mammals based on known or reasonably assumed diving behavior was integrated into the density estimates used.

First, typical two-dimensional marine mammal density estimates (animals/km²) were obtained from various sources for each ecosystem area. These were estimated from marine mammal Stock Assessment Reports (Allen and Angliss, 2015; Carretta *et al.*, 2015a) and other sources (Barlow and Forney, 2007; ManTech-SRS Technologies, 2007). There are a number of caveats associated with these estimates:

(1) They are often calculated using visual sighting data collected during one season rather than throughout the year. The time of year when data were collected and from which densities were estimated may not always overlap with the timing of NWFSC fisheries surveys (detailed previously in "Detailed Description of Activities").

(2) The densities used for purposes of estimating acoustic exposures do not take into account the patchy distributions of marine mammals in an ecosystem, at least on the moderate to fine scales over which they are known to occur. Instead, animals are considered evenly distributed throughout the assessed area, and seasonal movement patterns are not taken into account.

In addition, and to account for at least some coarse differences in marine mammal diving behavior and the effect this has on their likely exposure to these kinds of often highly directional sound sources, a volumetric density of marine mammals of each species was determined. This value is estimated as the abundance averaged over the two-dimensional geographic area of the surveys and the vertical range of typical habitat for the population. Habitat ranges were categorized in two generalized depth strata (0–200 m and 0 to greater than 200 m) based on gross differences between known generally surface-associated and typically deep-diving marine mammals (*e.g.*, Reynolds and Rommel, 1999; Perrin *et al.*, 2009). Animals in the shallow-diving stratum were assumed, on the basis of empirical measurements of diving with monitoring tags and reasonable assumptions of behavior based on other indicators, to spend a large majority of their lives (*i.e.*, greater than 75 percent) at depths shallower than 200 m. Their volumetric density and thus exposure to

sound is therefore limited by this depth boundary. In contrast, species in the deeper-diving stratum were assumed to regularly dive deeper than 200 m and spend significant time at these greater depths. Their volumetric density and thus potential exposure to sound at or above the 160 dB rms threshold is extended from the surface to the depth at which this received level condition occurs (*i.e.*, corresponding to the 0 to greater than 200 m depth stratum).

The volumetric densities are estimates of the three-dimensional distribution of animals in their typical depth strata. For shallow-diving species the volumetric density is the area density divided by 0.2 km (*i.e.*, 200 m). For deeper diving species, the volumetric density is the area density divided by a nominal value of 0.5 km (*i.e.*, 500 m). The two-dimensional and resulting three-dimensional (volumetric) densities for each species in each ecosystem area are shown below.

Using area of ensonification and volumetric density to estimate exposures—Estimates of potential incidents of Level B harassment (*i.e.*, potential exposure to levels of sound at or exceeding the 160 dB rms threshold) are then calculated by using (1) the combined results from output characteristics of each source and identification of the predominant sources in terms of acoustic output; (2) their relative annual usage patterns for each operational area; (3) a source-specific determination made of the area of water associated with received sounds at either the extent of a depth boundary or the 160 dB rms received sound level; and (4) determination of a biologically-relevant volumetric density of marine mammal species in each area. Estimates of Level B harassment by acoustic sources are the product of the volume of water ensonified at 160 dB rms or higher for the predominant sound source for each portion of the total line-kilometers for which it is used and the volumetric density of animals for each species. These annual estimates are given below.

We first provide information related to relative annual usage patterns of predominant active acoustic sources. For example, the use of the ME70 and EK60 account for predominant sources during all surveys on the R/V *Bell M. Shimada*, with the EK60 used during one hundred percent of distance traveled (Table 9). When the ME70 is on, it is the dominant source in the 0–200 m depth stratum (0.0201 km² cross-sectional ensonified area versus 0.0142 km² cross-sectional ensonified area for the EK60; Table 8); therefore, the ME70 is the dominant active acoustic source for twenty percent of the line-kilometers and the EK60 is the dominant active acoustic source for the other eighty percent. However, in the deeper depth stratum, the EK60 is always the dominant source when compared with the ME70 (0.1411 km² cross-sectional ensonified area versus 0.0201 km² cross-sectional ensonified area for the ME70; Table 8); therefore, the EK60 is the dominant active acoustic source in the deeper depth stratum at all times for the *Shimada*. However, of the total line-kilometers of NWFSC survey activity aboard the *Shimada*, only forty percent are in waters greater than 200 m.

TABLE 9—ANNUAL LINEAR SURVEY KILOMETERS FOR EACH VESSEL AND ITS PREDOMINANT SOURCES WITHIN TWO DEPTH STRATA

Vessel	Line-kms/vessel	Source	% time source dominant (0–200 m)	Line-km/dominant source (0–200 m)	% time source dominant (>200 m)	Line-km/dominant source (>200 m)
Lasker	4,500	SX90	100	4,500	50	2,250
Shimada	18,494	ME70	20	3,699	0	0
		EK60	80	14,795	40	7,398

Next, we provide volumetric densities for marine mammals in the CCRA and total estimated takes by Level B harassment, by dominant source and total, for each species in the CCRA (Table 10). We also provide a sample calculation.

We first determine the source-specific ensonified volume of water (*i.e.*, the ensonified volume where we consider a specific source to be predominant and therefore have the potential to harass marine mammals) and then determine source- and species-specific exposure estimates for the shallow and deep (if applicable; Table 10) depth strata. First, we know the estimated source-specific cross-sectional ensonified area within the shallow and deep strata (Table 8) and the number of annual line-kilometers when a given source would be predominant in each stratum and use these values to derive an estimated source-specific ensonified volume. In order to estimate the additional volume of ensonified water in the deep stratum, we first subtract the cross-sectional ensonified area of the shallow stratum (which is already accounted for) from that of the deep stratum. Source- and stratum-specific exposure estimates are the product of these ensonified volumes and the species-specific volumetric densities (Table 10).

To illustrate the process, we focus on the EK60 and the sperm whale.

(1) EK60 ensonified volume; 0–200 m: 0.0142 km² * 14,795 km = 210.1 km³

(2) EK60 ensonified volume; >200 m: (0.1411 km² − 0.0142 km²) * 7,398 km = 938.8 km³

(3) Estimated exposures to sound ≥160 dB rms; sperm whale; EK60: (0.003 sperm whales/km³ * 210.1 km³ = 0.7 [rounded to 1]) + (0.003 sperm whales/km³ * 938.8 km³ = 3.2 [rounded to 3]) = 4 estimated sperm whale exposures to SPLs ≥160 dB rms resulting from use of the EK60.

TABLE 10—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT

Species	Shallow	Deep	Area density (animals/km²) [1]	Volumetric density (animals/km³) [2]	Estimated Level B harassment, 0–200 m			Estimated Level B harassment, >200 m		Total
					EK60	ME70	SX90	EK60	SX90	
Sperm whale		X	0.002	0.003	1	0	1	3	1	6

TABLE 10—DENSITIES AND ESTIMATED SOURCE-, STRATUM-, AND SPECIES-SPECIFIC ANNUAL ESTIMATES OF LEVEL B HARASSMENT—Continued

Species	Shallow	Deep	Area density (animals/km²) [1]	Volumetric density (animals/km³) [2]	Estimated Level B harassment, 0–200 m			Estimated Level B harassment, >200 m		Total
					EK60	ME70	SX90	EK60	SX90	
Kogia spp.	.....	X	0.001	0.002	0	0	1	2	0	3
Cuvier's beaked whale	.....	X	0.004	0.008	2	1	2	7	2	14
Baird's beaked whale	.....	X	0.001	0.002	0	0	1	2	0	3
Mesoplodont beaked whales	.....	X	0.001	0.002	0	0	1	2	0	3
Bottlenose dolphin	X	.....	0.002	0.009	2	1	3	0	0	6
Striped dolphin	X	.....	0.017	0.083	18	6	25	0	0	49
Long-beaked common dolphin	X	.....	0.019	0.096	20	7	28	0	0	55
Short-beaked common dolphin	X	.....	0.309	1.547	325	115	455	0	0	895
Pacific white-sided dolphin	X	.....	0.021	0.105	22	8	31	0	0	61
Northern right whale dolphin	X	.....	0.010	0.049	10	4	14	0	0	28
Risso's dolphin	X	.....	0.010	0.052	11	4	15	0	0	30
Killer whale	X	.....	0.001	0.004	1	0	1	0	0	2
Short-finned pilot whale	.....	X	0.0003	0.001	0	0	0	1	0	1
Harbor porpoise	X	.....	[4] 0.038	0.189	40	14	56	0	0	110
Dall's porpoise	X	.....	0.076	0.378	79	28	111	0	0	218
Guadalupe fur seal	X	.....	[3] 0.007	0.037	8	3	11	0	0	22
Northern fur seal	X	.....	[3] 0.649	3.245	682	241	955	0	0	1,878
California sea lion	X	.....	[3] 0.297	1.484	312	110	437	0	0	859
Steller sea lion	X	.....	[3] 0.060	0.301	63	22	89	0	0	174
Harbor seal	X	.....	[3] 0.056	0.279	59	21	82	0	0	162
Northern elephant seal	.....	X	[3] 0.179	0.358	75	27	105	336	79	622

[1] All density estimates from Barlow and Forney (2007) unless otherwise indicated.
[2] Volumetric density estimates derived by dividing area density estimates by 0.2 km (for shallow species) or 0.5 km (for deep species), corresponding with defined depth strata.
[3] Density estimates derived by NWFSC from SAR abundance estimates and notional study area of 1,000,000 km².
[4] ManTech-SRS Technologies (2007) estimated a harbor porpoise density for coastal and inland waters of Washington, which is used as the best available proxy here. There are no known density estimates for harbor porpoises in NWFSC survey areas in the CCRA.

Estimated Take Due to Physical Disturbance

Estimated take due to physical disturbance could potentially happen in the PSRA and LCRRA, and would result in no greater than Level B harassment. It is likely that some pinnipeds will move or flush from known haul-outs into the water in response to the presence or sound of NWFSC vessels or researchers, as a result of unintentional approach during survey activity. Behavioral responses may be considered according to the scale shown in Table 11 and based on the method developed by Mortenson (1996). We consider responses corresponding to Levels 2–3 to constitute Level B harassment.

TABLE 11—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach.
3	Flight	All retreats (flushes) to the water.

The NWFSC has estimated potential incidents of Level B harassment due to physical disturbance (Table 12) by considering the number of seals believed to potentially be present at affected haul-outs and the number of visits expected to be made by NWFSC researchers. The number of haul-outs disturbed and number of animals assumed to be on those haul-outs was determined by NWFSC on the basis of anecdotal evidence from researchers. Although not all individuals on "disturbed" haul-outs would necessarily actually be disturbed, and some haul-outs may experience some disturbance at distances greater than expected, we believe that this approach is a reasonable effort towards accounting for this potential source of disturbance.

TABLE 12—ESTIMATED ANNUAL LEVEL B HARASSMENT OF PINNIPEDS ASSOCIATED WITH DISTURBANCE BY RESEARCHERS

Species	Location	Estimated total number of animals on potentially disturbed haul-outs	Number of visits per year	Estimated annual Level B harassment
Harbor seal	Puget Sound	1,440	8	11,520
	Columbia River	3,000	25	75,000
California sea lion	Puget Sound	350	8	2,800

Summary of Estimated Incidental Take

Here we provide a summary of the total proposed incidental take authorization on an annual basis, as well other information relevant to the negligible impact analysis. Table 13 shows information relevant to our negligible impact analysis concerning the total annual taking that could occur for each stock from NMFS' scientific research activities when considering incidental take previously authorized for SWFSC (80 FR 58982; September 30, 2015) and take proposed for authorization for NWFSC. As footnoted in Table 13, the indicated level of take could occur to any species or stock for those species with multiple stocks (*e.g.*, Northern fur seal) or considered as a group (*e.g.*, Mesoplodont beaked whales). However, the harbor porpoise and harbor seal each have multiple stocks spanning the three NWFSC research areas, and we provide further detail regarding our consideration of potential take specific to stocks that may occur in the PSRA and LCRRA. Many stocks do not occur in those research areas and, therefore, would not be vulnerable to interaction with research gear deployed in those areas.

For harbor porpoise, we propose to authorize a total of five takes by M/SI + Level A for all stocks combined over the five-year period of validity for these proposed regulations. For the purposes of the negligible impact analysis, we assume that all of these takes could potentially be in the form of M/SI; PBR is not intended for assessment of the significance of harassment. These takes could occur to any stock; however, our proposed take authorization is informed by reasonable expectation regarding species vulnerability to gear used in the three research areas. Of the five total takes, we expect that two might occur in the CCRA, one in the PSRA, and two in the LCRRA. Therefore, corresponding with the relationship between stock ranges and the location of NWFSC research activities, the likely maximum takes that could accrue to any harbor porpoise stock from California to southern Oregon would be two, while the northern Oregon/Washington coast stock could potentially accrue four takes because it is vulnerable to the takes expected in either the CCRA or LCRRA. In Table 13 below, the proposed total take authorization column reflects the total of four takes that could occur in either the CCRA or LCRRA (and the one take expected in the PSRA, which would occur to the Washington inland waters stock). However, the estimated maximum annual take column reflects the annualized stock-specific risk, *i.e.*, any stock in the CA-southern OR grouping is expected to be vulnerable to a maximum of two takes over the five-year period (0.4/year) while the northern OR/WA coast stock could be vulnerable to as many as four takes over the five years (0.8/year). This stock-specific accounting does not change our expectation that a total of five takes would occur for all stocks combined but informs our stock-specific negligible impact analysis.

Similarly, the harbor seal has separate designated stocks that may occur in all three research areas. We propose to authorize a total of thirteen takes by M/SI + Level A for all harbor seal stocks combined, and expect that five of these may occur in the CCRA, six in the PSRA, and two in the LCRRA. Therefore, while we would expect that a maximum of five takes could accrue to the California stock, as many as seven takes could occur for the Oregon/Washington coastal stock (which is the only stock that may occur in the LCRRA). Although NMFS has split the former Washington inland waters stock of harbor seals into three separate stocks, we do not have sufficient information to assess stock-specific risk in the PSRA. Separately, we have estimated that 162 incidents of acoustic harassment may occur for harbor seals due to NWFSC use of active acoustic systems (in the CCRA only) and that, due to the physical presence of researchers, individual harbor seals on haul-outs (as many as 3,000) may be disturbed up to 25 times per year in the LCRRA. Therefore, as shown in Table 13, the California stock of harbor seals is vulnerable to only the estimated 162 acoustic harassment takes, but the OR/WA coast stock would be vulnerable to both the acoustic harassment takes as well as the physical disturbance takes. However, note that the percent of estimated population is calculated considering the number of individuals anticipated to be disturbed rather than the number of incidents of disturbance.

We previously authorized take of marine mammals incidental to fisheries research operations conducted by the SWFSC (see 80 FR 58982 and 80 FR 68512). This take would occur to some of the same stocks for which we propose to authorize take incidental to NWFSC fisheries research operations. Therefore, in order to evaluate the likely impact of the take by M/SI proposed for authorization in this rule, we consider not only other ongoing sources of human-caused mortality but the potential mortality authorized for SWFSC. As used in this document, other ongoing sources of human-caused (anthropogenic) mortality refers to estimates of realized or actual annual mortality reported in the SARs and does not include authorized or unknown mortality. Below, we consider the total taking by M/SI proposed for authorization for NWFSC and previously authorized for SWFSC together to produce a maximum annual M/SI take level (including take of unidentified marine mammals that could accrue to any relevant stock) and compare that value to the stock's PBR value, considering ongoing sources of anthropogenic mortality (as described in footnote 4 of Table 13 and in the following discussion). PBR and annual M/SI values considered in Table 13 reflect the most recent information available (*i.e.*, final 2014 and draft 2015 SARs, as appropriate).

TABLE 13—SUMMARY INFORMATION RELATED TO NWFSC PROPOSED ANNUAL TAKE AUTHORIZATION, 2016–21

Species [1]	Proposed total annual Level B harassment authorization [2]	Percent of estimated population abundance	Proposed total MSI [3] authorization, 2016–21	SWFSC total MSI authorization, 2015–20	Estimated maximum annual MSI [4]	PBR minus annual MSI (%) [5]	Stock trend [6]
n whale	6	0.3	0	0	0	n/a	?
spp.	3	0.5	1	1	0.4	2.7 (14.8)	?
rs beaked whale	14	0.2	0	0	0	n/a	↓
s beaked whale	3	0.4	0	0	0	n/a	?
olodont beaked whales	3	0.4	0	0	0	n/a	↓
nose dolphin (offshore stock)	6	0.6	2	9	2.6	3.5 (74.3)	?
d dolphin	49	0.4	7	12	4.2	82 (5.1)	↑
beaked common dolphin	55	0.1	2	12	3.2	596.2 (0.5)	↑
beaked common dolphin	895	0.2	3	12	3.4	3,376 (0.1)	?
c white-sided dolphin	61	0.2	31	35	13.6	159.2 (8.5)	?
am right whale dolphin	28	0.3	7	10	3.8	44.4 (8.6)	?
s dolphin	30	0.5	8	12	4.4	37.4 (11.8)	?
whale [7]	2	0.8	0	0	0	n/a	?
finned pilot whale	1	0.1	1	1	0.4	4.6 (8.7)	?
r porpoise (CA-southern OR stocks) [7]	110	3.8	4	5	1.8	20.4 (8.8)	?
r porpoise (Northern OR/WA coast)					2.2	148 (1.5)	?
r porpoise (WA inland waters)	0	n/a	1	0	0.2	60.8 (0.3)	?
porpoise	218	0.5	3	5	2	256.6 (0.8)	?
alupe fur seal	22	0.3	0	0	0	n/a	?
am fur seal [6]	[8] 1,878	0.3	5	5	2.4	449.4 (0.5)	↑
rnia sea lion	3,659	0.4	10	25	7.6	8,815 (0.1)	↑
r sea lion	174	[8] 0.3	9	10	4.4	1,552.7 (0.3)	↑
r seal (CA)	75,162	0.6	5	9	3.2	1,598 (0.2)	?
r seal (OR/WA coast)		12.8	2		1.8	Unknown	↑
r seal (WA inland waters)	11,520	10.5	6	0	1.2	Unknown	↑
am elephant seal	622	0.3	5	5	2.2	4,873.2 (0.1)	↑
ntified small cetacean	n/a	n/a	1	1	n/a	n/a	n/a
ntified pinniped	n/a	n/a	1	2	n/a	n/a	n/a

[1] See Tables 7, 10, and 12 and preceding text for details.
[2] species with multiple stocks or for species groups (*Kogia* spp. and Mesoplodont beaked whales), indicated level of take could occur to individuals from any stock or species except as indicated in table.
[3] evel B harassment totals include estimated take due to acoustic harassment and, for harbor seals and California sea lions, estimated take due to physical disturbance. Active acoustic devices are not used for
[4] quisition in the PSRA; therefore, no takes by acoustic harassment are expected for stocks that occur entirely or largely in inland waters (*e.g.*, resident killer whales). Takes by physical disturbance for
[5] d species represent repeated takes of smaller numbers of individuals (*e.g.*, we expect as many as 1,440 harbor seals in the PSRA to be harassed on as many as eight occasions). The "percent of esti-
[6] esent such take as a pool. For purposes of this negligible impact analysis, we assume the worst case scenario that all such takes result in mortality, serious injury, or Level A harassment. Because we do not have sufficient information to enable us to parse out these outcomes,
[7] explained earlier in this document, we assume the worst case scenario that all such takes result in mortality, serious injury, or Level A harassment. Because we do not have sufficient information to enable us to parse out these outcomes,
[8] s column represents the total number of incidents of MSI that could potentially accrue to the specified species or stock as a result of NMFS' fisheries research activities and is the number carried forward for
[9] el that the take of an unidentified pinniped or small cetacean could accrue to any given stock captured in that area. The proposed take authorization is formulated as a five-year total; the annual
[10] s value represents the calculated PBR, the average annual estimate of anthropogenic mortalities (*i.e.*, total annual human-caused MSI, which is presented in the SARs) (see Table 3). For this
[11] calculating this value, as we explicitly account for predicted future mortalities incidental to NWFSC fisheries research via the estimated maximum annual MSI + Level A column, in parentheses, we provide
[12] imated maximum annual MSI expressed as a percentage of this value.
[13] s relevant SARs for more information regarding stock status and trends, interannual increases may not be interpreted as evidence of a trend. Based on the most recent abundance estimates, harbor seal
[14] ould have reached carrying capacity and appear stable. A time series of stock-specific abundance estimates for harbor porpoise shows either increasing or stable estimates, but it is not statistically valid to
[15] trend.
[16] ese species have multiple stocks that may be affected. Values for "percent of estimated population" and "PBR—annual MSI" (where relevant) calculated for the stock with the lowest population abundance
[17] PBR (as appropriate). This approach assumes that all indicated takes would accrue to the stock in question, which is a very conservative assumption. Stocks in question are the offshore killer whale, Morro
[18] arbor porpoise, and California northern fur seal.
[19] range is provided for Steller sea lion abundance. We have used the lower bound of the given range for calculation of this value.
[20] Pribilof Islands/Eastern Pacific stock and two percent would accrue to the California stock.

Analyses and Preliminary Determinations

Negligible Impact Analysis

Introduction—NMFS has defined "negligible impact" in 50 CFR 216.103 as ". . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.*, intensity, duration), the context of any such responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status (*i.e.*, the environmental baseline).

Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, other ongoing sources of human-caused mortality, and specific consideration of take by M/SI + Level A previously authorized for other NMFS research activities).

In 1988, Congress amended the MMPA, with provisions for the incidental take of marine mammals in commercial fishing operations. Congress directed NMFS to develop and recommend a new long-term regime to govern such incidental taking (see MMC, 1994). The need to set allowable take levels incidental to commercial fishing operations led NMFS to suggest a new conceptual means for assuring that incidental take does not cause any marine mammal species or stock to be reduced or to be maintained below the lower limit of its Optimum Sustainable Population (OSP) level. That concept, potential biological removal (PBR), was incorporated in the 1994 amendments to the MMPA, which provided for the establishing a new regime governing the incidental taking of marine mammals in commercial fishing operations and stock assessments.

PBR, which is defined by the MMPA (16 U.S.C. 1362(20)) as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population," is one tool that can be used to help evaluate the effects of M/SI on a marine mammal stock. OSP is defined by the MMPA (16 U.S.C. 1362(9)) as "the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." A primary goal of the MMPA is to ensure that each stock of marine mammal either does not have a level of human-caused M/SI that is likely to cause the stock to be reduced below its OSP level or, if the stock is depleted (*i.e.*, below its OSP level), does not have a level of human-caused mortality and serious injury that is likely to delay restoration of the stock to OSP level by more than ten percent in comparison with recovery time in the absence of human-caused M/SI.

PBR, a parametric concept that relates survivorship to population size, was developed in consideration of the principle given by Holt and Talbot (1978): "Management decisions should include a safety factor to allow for the facts that knowledge is limited and institutions are imperfect" (Taylor, 1993). PBR values are calculated by NMFS as the level of annual removal from a stock that will allow that stock to equilibrate within OSP at least 95 percent of the time, and is the product of factors relating to the minimum population estimate of the stock (N_{min}); the productivity rate of the stock at a small population size; and a recovery factor. Determination of appropriate values for these three elements incorporates significant precaution, such that application of the parameter to the management of marine mammal stocks may be reasonably certain to achieve the goals of the MMPA. For example, calculation of N_{min} incorporates the precision and variability associated with abundance information and is intended to provide reasonable assurance that the stock size is equal to or greater than the estimate (Barlow *et al.*, 1995). In general, the three factors are developed on a stock-specific basis in consideration of one or more of the parameters that may be taken into account when evaluating the status of a stock, such as population size, population trend, range, and the species' life history. Although the recovery factor and the productivity rate are intended to account for the uncertainty in the population size, the N_{min} component of PBR is the only component that directly accounts for the uncertainty in the estimate of the population size. Although PBR is a simple calculation, it can be modified to incorporate additional information on the status of the stock and the species' life history to ensure that the PBR is appropriately precautionary. For example, if the population is thought to be at its OSP level, then the PBR should be set at a level that will not cause the population to decrease. If the population is thought to be below its OSP level, then the PBR should be set at a level that will cause the population to increase. If the population is thought to be at its maximum carrying capacity, then the PBR should be set at a level that will cause the population to decrease to its OSP level. If the population is thought to be at its OSP level, then the PBR should be set at a level that will cause the population to increase to its OSP level. If the population is thought to be below its OSP level, then the PBR should be set at a level that will cause the population to increase to its OSP level

marine mammal stocks. Here, we calculate a metric that incorporates information regarding ongoing anthropogenic mortality into the PBR value; *i.e.*, PBR minus the reported annual anthropogenic mortality estimate (also referred to as "residual PBR"; Wood *et al.*, 2012). We first consider maximum potential incidental M/SI for NMFS research relative to this metric for each affected stock (see Table 13), in consideration of NMFS' defined significance threshold for M/SI (ten percent of PBR [69 FR 43338; July 20, 2004]). By considering the maximum potential incidental M/SI in relation to PBR and other ongoing sources of anthropogenic mortality, we ensure that the potential incremental addition of M/SI through NMFS' fisheries research activities does not pose a risk to the stock that bears further consideration here. We also consider the interaction of those removals with incidental taking of that stock by harassment pursuant to the specified activity (*i.e.*, NWFSC fisheries research activities).

Therefore, for those stocks with total incidental M/SI less than the significance threshold (*i.e.*, ten percent of residual PBR), we consider the effects of the specified activity to represent an insignificant incremental increase in ongoing anthropogenic M/SI and need not consider other factors in making a negligible impact determination except in combination with additional incidental take by harassment. For those stocks with incidental M/SI exceeding the significance threshold, we will consider additional factors that may either increase or reduce the level of concern related to the significance of a given level of taking—such as implementation of mitigation measures or additional population stressors—in addition to considering the interaction of those removals with incidental taking of that stock by harassment.

Analysis—Please see Table 13 for information related to this analysis. The large majority of stocks that may potentially be taken by M/SI + Level A (18 of 21) fall below the significance threshold, while an additional four stocks do not have current PBR values and therefore are evaluated using other factors. We first consider stocks expected to be affected only by behavioral harassment and those stocks that fall below the significance threshold. Next, we consider those stocks above the significance threshold (*i.e.*, *Kogia* spp.; the offshore stock of bottlenose dolphin, and Risso's dolphin) and those without PBR values (harbor seals along the Oregon and Washington coasts and in Washington inland waters).

As described in greater depth previously (see "Acoustic Effects"), we do not believe that NWFSC use of active acoustic sources has the likely potential to cause any effect exceeding Level B harassment of marine mammals. In addition, for the majority of species, the proposed annual take by Level B harassment is very low in relation to the population abundance estimate (less than one percent). We have produced what we believe to be precautionary estimates of potential incidents of Level B harassment. The procedure for producing these estimates, described in detail in "Estimated Take Due to Acoustic Harassment," represents NMFS' best effort towards balancing the need to quantify the potential for occurrence of Level B harassment due to production of underwater sound with a general lack of information related to the specific way that these acoustic signals, which are generally highly directional and transient, interact with the physical environment and to a meaningful understanding of marine mammal perception of these signals and occurrence in the areas where NWFSC operates. The sources considered here have moderate to high output frequencies (10 to 180 kHz), generally short ping durations, and are typically focused (highly directional) to serve their intended purpose of mapping specific objects, depths, or environmental features. In addition, some of these sources can be operated in different output modes (*e.g.*, energy can be distributed among multiple output beams) that may lessen the likelihood of perception by and potential impacts on marine mammals in comparison with the quantitative estimates that guide our proposed take authorization.

In addition, otariid pinnipeds are less likely than other taxa to perceive acoustic signals generated by NWFSC or, given perception, to react to these signals than the quantitative estimates indicate. This group of pinnipeds has reduced functional hearing at the higher frequencies produced by active acoustic sources considered here (*e.g.*, primary operating frequencies of 40–180 kHz) and, based purely on their auditory capabilities, the potential impacts are likely much less than we have calculated as these relevant factors are not taken into account.

As described previously, there is some minimal potential for temporary effects to hearing for certain marine mammals, but most effects would likely be limited to temporary behavioral disturbance. Effects on individuals that are taken by Level B harassment will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity (*e.g.*, Southall *et al.*, 2007). Individuals may move away from the source if disturbed, but because the source is itself moving and because of the directional nature of the sources considered here, there is unlikely to be even temporary displacement from areas of significance and any disturbance would be of short duration. Although there is no information on which to base any distinction between incidents of harassment and individuals harassed, the same factors, in conjunction with the fact that NWFSC survey effort is widely dispersed in space and time, indicate that repeated exposures of the same individuals would be very unlikely. For these reasons, we do not consider the proposed level of take by acoustic disturbance to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI + Level A for any species.

Similarly, disturbance of pinnipeds on haul-outs by researchers approaching on foot or in small vessels (as is expected for harbor seals in the lower Columbia River and Puget Sound and for California sea lions in Puget Sound) are expected to be infrequent and cause only a temporary disturbance on the order of minutes. As noted previously, monitoring results from other activities involving the disturbance of pinnipeds and relevant studies of pinniped populations that experience more regular vessel disturbance indicate that individually significant or population level impacts are unlikely to occur. When considering the individual animals likely affected by this disturbance, only a small fraction (less than fifteen percent) of the estimated population abundance of the affected stocks would be expected to experience the disturbance.

For *Kogia* spp. and Risso's dolphin, maximum total potential M/SI due to NMFS' fisheries research activity (SWFSC and NWFSC combined) approaches fifteen and twelve percent of residual PBR, respectively. There are no other known sources of anthropogenic M/SI for *Kogia* spp. The only known source of other anthropogenic mortality for Risso's dolphin is in commercial fisheries, but such take is considered to be insignificant and approaching zero mortality and serious injury. For example, PBR for Risso's dolphin is currently set at 39 and the annual average of known ongoing anthropogenic M/SI is 1.6, yielding a residual PBR value of 37.4. The

maximum combined annual average M/SI incidental to NMFS fisheries research activity is 4.4, or 11.8 percent of residual PBR.

M/SI incidental to NMFS' fisheries research activities could be as much as 74 percent of residual PBR for the offshore stock of bottlenose dolphin, assuming a worst-case scenario in which take of an unidentified cetacean is applied to this stock. Fisheries bycatch of this stock occurs on an annual basis, though this ongoing level of M/SI is accounted for. The majority of takes in commercial fisheries from 2007–11 were due to interactions with the California drift gillnet fishery, and it is possible that these interactions have declined since the use of acoustic pingers was required. Any level of removals up to PBR could occur while still allowing the stock to reach or maintain its optimum sustainable population, as indicated in the definition of the PBR metric. Nevertheless, given the small PBR value, fluctuation in the amount of incidental take could result in unsustainable levels of removal from the stock. If bycatch in commercial fisheries increases, or other sources of mortality are recorded for this stock, we will use the adaptive management provisions of the proposed regulations to prescribe increased mitigation sufficient to reduce the likelihood of incidental take in NMFS fisheries research activities. No population trends are known for these three stocks.

PBR is unknown for harbor seals on the Oregon and Washington coasts and in Washington inland waters (comprised of the Hood Canal, southern Puget Sound, and Washington northern inland waters stocks). The Hood Canal, southern Puget Sound, and Washington northern inland waters stocks were formerly a single inland waters stock. Both the Oregon/Washington coast and Washington inland waters stocks of harbor seal were considered to be stable following the most recent abundance estimates (in 1999, stock abundances were estimated at 24,732 and 13,692, respectively). However, a Washington Department of Fish and Wildlife expert (S. Jeffries) stated an unofficial abundance of 32,000 harbor seals in Washington (Mapes, 2013). Therefore, it is reasonable to assume that at worst, the stocks have not declined since the last abundance estimates. Ongoing anthropogenic mortality is estimated at 10.6 harbor seals per year for the coastal stock and 13.4 for inland waters seals; therefore, we reasonably assume that the maximum potential annual M/SI incidental to NMFS' fisheries research activities (1.8 and 1.2, respectively) is a small fraction of any sustainable take level that might be calculated for either stock. For the reasons stated above, we do not consider the proposed level of take by acoustic and physical disturbance for harbor seals to represent a significant additional population stressor when considered in context with the proposed level of take by M/SI.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned mitigation measures, we preliminarily find that the total marine mammal take from NWFSC's fisheries research activities will have a negligible impact on the affected marine mammal species or stocks. In summary, this finding of negligible impact is founded on the following factors: (1) The possibility of injury, serious injury, or mortality from the use of active acoustic devices may reasonably be considered discountable; (2) the anticipated incidents of Level B harassment from the use of active acoustic devices and physical disturbance of pinnipeds consist of, at worst, temporary and relatively minor modifications in behavior; (3) the predicted number of incidents of potential mortality are at insignificant levels (*i.e.*, below ten percent of residual PBR) for a majority of affected stocks; (4) consideration of additional factors for *Kogia* spp. and Risso's dolphin do not reveal cause for concern; (5) total maximum potential M/SI incidental to NMFS fisheries research activity for bottlenose dolphin, considered in conjunction with other sources of ongoing mortality, is currently sustainable because it is below the residual PBR level; (6) available information regarding two harbor seal stocks indicates that total maximum potential M/SI is sustainable; and (7) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact. In addition, no M/SI is proposed for authorization for any species or stock that is listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors demonstrate that the specified activity will have only short-term effects on individuals (resulting from Level B harassment) and that the total level of taking will not impact rates of recruitment or survival sufficiently to result in population-level impacts.

Small Numbers Analysis

Please see Table 13 for information relating to this small numbers analysis. The total amount of taking proposed for authorization is less than one percent for a large majority of stocks. The total amount of taking for remaining stocks ranges from four to thirteen percent.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed mitigation measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving, or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

NWFSC plans to make more systematic its training, operations, data collection, animal handling and

sampling protocols, etc. in order to improve its ability to understand how mitigation measures influence interaction rates and ensure its research operations are conducted in an informed manner and consistent with lessons learned from those with experience operating these gears in close proximity to marine mammals. It is in this spirit that we propose the monitoring requirements described below.

Visual Monitoring

Marine mammal watches are a standard part of conducting fisheries research activities, and are implemented as described previously in "Proposed Mitigation." Dedicated marine mammal visual monitoring occurs as described (1) for some period prior to deployment of most research gear; (2) throughout deployment and active fishing of all research gears; (3) for some period prior to retrieval of longline gear; and (4) throughout retrieval of all research gear. This visual monitoring is performed by trained NWFSC personnel with no other responsibilities during the monitoring period. Observers record the species and estimated number of animals present and their behaviors, which may be valuable information towards an understanding of whether certain species may be attracted to vessels or certain survey gears. Separately, marine mammal watches are conducted by watch-standers (those navigating the vessel and other crew; these will typically not be NWFSC personnel) at all times when the vessel is being operated. The primary focus for this type of watch is to avoid striking marine mammals and to generally avoid navigational hazards. These watch-standers typically have other duties associated with navigation and other vessel operations and are not required to record or report to the scientific party data on marine mammal sightings, except when gear is being deployed or retrieved.

In the PSRA and LCRRA only, the NWFSC will monitor any potential disturbance of hauled-out pinnipeds, paying particular attention to the distance at which different species of pinniped are disturbed. Disturbance will be recorded according to the three-point scale, representing increasing seal response to disturbance, shown in Table 11.

Training

NWFSC anticipates that additional information on practices to avoid marine mammal interactions can be gleaned from training sessions and more systematic data collection standards. The NWFSC will conduct annual trainings for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, recording of count and disturbance observations (relevant to AMLR surveys), completion of datasheets, and use of equipment. Some of these topics may be familiar to NWFSC staff, who may be professional biologists; the NWFSC shall determine the agenda for these trainings and ensure that all relevant staff have necessary familiarity with these topics. The first training such will include three primary elements:

First, the course will provide an overview of the purpose and need for the authorization, including mandatory mitigation measures by gear and the purpose for each, and species that NWFSC is authorized to incidentally take.

Second, the training will provide detailed descriptions of reporting, data collection, and sampling protocols. This portion of the training will include instruction on how to complete new data collection forms such as the marine mammal watch log, the incidental take form (*e.g.,* specific gear configuration and details relevant to an interaction with protected species), and forms used for species identification and biological sampling. The biological data collection and sampling training module will include the same sampling and necropsy training that is used for the West Coast Regional Observer training.

NWFSC will also dedicate a portion of training to discussion of best professional judgment (which is recognized as an integral component of mitigation implementation; see "Proposed Mitigation"), including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful. We recognize that many factors come into play regarding decision-making at sea and that it is not practicable to simplify what are inherently variable and complex situational decisions into rules that may be defined on paper. However, it is our intent that use of best professional judgment be an iterative process from year to year, in which any at-sea decision-maker (*i.e.,* responsible for decisions regarding the avoidance of marine mammal interactions with survey gear through the application of best professional judgment) learns from the prior experience of all relevant NWFSC personnel (rather than from solely their own experience). The outcome should be increased transparency in decision-making processes where best professional judgment is appropriate and, to the extent possible, some degree of standardization across common situations, with an ultimate goal of reducing marine mammal interactions. It is the responsibility of the NWFSC to facilitate such exchange.

Handling Procedures and Data Collection

Improved standardization of handling procedures were discussed previously in "Proposed Mitigation." In addition to the benefits implementing these protocols are believed to have on the animals through increased post-release survival, NWFSC believes adopting these protocols for data collection will also increase the information on which "serious injury" determinations (NMFS, 2012a, b) are based and improve scientific knowledge about marine mammals that interact with fisheries research gears and the factors that contribute to these interactions. NWFSC personnel will be provided standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water and log activities pertaining to the interaction.

NWFSC will record interaction information on either existing data forms created by other NMFS programs or will develop their own standardized forms. To aid in serious injury determinations and comply with the current NMFS Serious Injury Guidelines (NMFS, 2012a, b), researchers will also answer a series of supplemental questions on the details of marine mammal interactions.

Finally, for any marine mammals that are killed during fisheries research activities, scientists will collect data and samples pursuant to Appendix D of the NWFSC DEA, "Protected Species Handling Procedures for NWFSC Fisheries Research Vessels."

Reporting

As is normally the case, NWFSC will coordinate with the relevant stranding coordinators for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that are encountered during field research activities. The NWFSC will follow a phased approach with regard to the cessation of its activities and/or reporting of such events, as

described in the proposed regulatory texts following this preamble. In addition, Chief Scientists (or cruise leader, CS) will provide reports to NWFSC leadership and to the Office of Protected Resources (OPR). As a result, when marine mammals interact with survey gear, whether killed or released alive, a report provided by the CS will fully describe any observations of the animals, the context (vessel and conditions), decisions made and rationale for decisions made in vessel and gear handling. The circumstances of these events are critical in enabling NWFSC and OPR to better evaluate the conditions under which takes are most likely occur. We believe in the long term this will allow the avoidance of these types of events in the future.

The NWFSC will submit annual summary reports to OPR including: (1) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant (see "Estimated Take by Acoustic Harassment" for further discussion), specific to each region; (2) summary information regarding use of all hook and line, seine, and trawl gear, including number of sets, hook hours, tows, etc., specific to each research area and gear; (3) accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why; (4) summary information related to any disturbance of pinnipeds, including event-specific total counts of animals present, counts of reactions according to the three-point scale shown in Table 11, and distance of closest approach; and (5) a written evaluation of the effectiveness of NWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any. The period of reporting will be annually, beginning one year post-issuance of any LOA, and the report must be submitted not less than ninety days following the end of a given year. Submission of this information is in service of an adaptive management framework allowing NMFS to make appropriate modifications to mitigation and/or monitoring strategies, as necessary, during the proposed five-year period of validity for these regulations.

NMFS has established a formal incidental take reporting system, the Protected Species Incidental Take (PSIT) database, requiring that incidental takes of protected species be reported within 48 hours of the occurrence. The PSIT generates automated messages to NMFS leadership and other relevant staff, alerting them to the event and to the fact that updated information describing the circumstances of the event has been inputted to the database. The PSIT and CS reports represent not only valuable real-time reporting and information dissemination tools, but also serve as an archive of information that may be mined in the future to study why takes occur by species, gear, region, etc.

NWFSC will also collect and report all necessary data, to the extent practicable given the primacy of human safety and the well-being of captured or entangled marine mammals, to facilitate serious injury (SI) determinations for marine mammals that are released alive. NWFSC will require that the CS complete data forms and address supplemental questions, both of which have been developed to aid in SI determinations. NWFSC understands the critical need to provide as much relevant information as possible about marine mammal interactions to inform decisions regarding SI determinations. In addition, the NWFSC will perform all necessary reporting to ensure that any incidental M/SI is incorporated as appropriate into relevant SARs.

Adaptive Management

The regulations governing the take of marine mammals incidental to NWFSC fisheries research survey operations would contain an adaptive management component. The inclusion of an adaptive management component will be both valuable and necessary within the context of five-year regulations for activities that have been associated with marine mammal mortality.

The reporting requirements associated with this proposed rule are designed to provide OPR with monitoring data from the previous year to allow consideration of whether any changes are appropriate. OPR and the NWFSC will meet annually to discuss the monitoring reports and current science and whether mitigation or monitoring modifications are appropriate. The use of adaptive management allows OPR to consider new information from different sources to determine (with input from the NWFSC regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are multiple marine mammal species listed under the ESA with confirmed or possible occurrence in the proposed specified geographical region (see Table 3). The proposed authorization of incidental take pursuant to the NWFSC's specified activity would not affect any designated critical habitat. OPR has initiated consultation with NMFS' West Coast Regional Office under section 7 of the ESA on the promulgation of five-year regulations and the subsequent issuance of LOAs to NWFSC under section 101(a)(5)(A) of the MMPA. This consultation will be concluded prior to issuing any final rule.

National Environmental Policy Act (NEPA)

The NWFSC has prepared a Draft Environmental Assessment (EA; *Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the Northwest Fisheries Science Center*) in accordance with NEPA and the regulations published by the Council on Environmental Quality. It is posted on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.* We have independently evaluated the Draft EA and are proposing to adopt it. We may prepare a separate NEPA analysis and incorporate relevant portions of NWFSC's EA by reference. Information in NWFSC's application, EA and this notice collectively provide the environmental information related to proposed issuance of these regulations for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision

of whether to sign a Finding of No Significant Impact, prior to a final decision on the incidental take authorization request.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the NWFSC request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare final rules and make final determinations on whether to issue the requested authorizations. This notice and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS is the sole entity that would be subject to the requirements in these proposed regulations, and NMFS is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a federal agency. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 219

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 6, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 219 is proposed to be amended as follows:

PART 219—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 219 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

Subpart D [Reserved]

■ 2. Add and reserve subpart D.

■ 3. Add subpart E to part 219 to read as follows:

Subpart E—Taking Marine Mammals Incidental to Northwest Fisheries Science Center Fisheries Research in the California Current

Sec.
219.41 Specified activity and specified geographical region.
219.42 Effective dates.
219.43 Permissible methods of taking.
219.44 Prohibitions.
219.45 Mitigation requirements.
219.46 Requirements for monitoring and reporting.
219.47 Letters of Authorization.
219.48 Renewals and modifications of Letters of Authorization.
219.49 [Reserved]
219.50 [Reserved]

§ 219.41 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the National Marine Fisheries Service's (NMFS) Northwest Fisheries Science Center (NWFSC) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to research survey program operations.

(b) The taking of marine mammals by NWFSC may be authorized in a Letter of Authorization (LOA) only if it occurs within the California Current Ecosystem, including Puget Sound and the Columbia River.

§ 219.42 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF FINAL RULE] through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

§ 219.43 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 and 219.47 of this chapter, the Holder of the LOA (hereinafter "NWFSC") may incidentally, but not intentionally, take marine mammals within the area described in § 219.41(b) of this chapter by Level B harassment associated with use of active acoustic systems and physical or visual disturbance of hauled-out pinnipeds and by Level A harassment, serious injury, or mortality associated with use of hook and line gear, trawl gear, and seine gear, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 219.44 Prohibitions.

Notwithstanding takings contemplated in § 219.41 and authorized by a LOA issued under §§ 216.106 and 219.47 of this chapter, no person in connection with the activities described in § 219.41 of this chapter may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under §§ 216.106 and 219.47 of this chapter;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 219.45 Mitigation requirements.

When conducting the activities identified in § 219.41(a) of this chapter, the mitigation measures contained in any LOA issued under §§ 216.106 and 219.47 of this chapter must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions: (1) NWFSC shall take all necessary measures to coordinate and communicate in advance of each specific survey with the National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) or other relevant parties on non-NOAA platforms to ensure that all mitigation measures and monitoring requirements described herein, as well as the specific manner of implementation and relevant event-contingent decision-making processes, are clearly understood and agreed upon.

(2) NWFSC shall coordinate and conduct briefings at the outset of each survey and as necessary between ship's crew (Commanding Officer/master or designee(s), as appropriate) and scientific party in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(3) NWFSC shall coordinate as necessary on a daily basis during survey cruises with OMAO personnel or other relevant personnel on non-NOAA platforms to ensure that requirements, procedures, and decision-making processes are understood and properly implemented.

(4) When deploying any type of sampling gear at sea, NWFSC shall at all times monitor for any unusual circumstances that may arise at a sampling site and use best professional judgment to avoid any potential risks to marine mammals during use of all research equipment.

(5) NWFSC shall implement handling and/or disentanglement protocols as specified in the guidance that shall be provided to NWFSC survey personnel.

(b) For all research surveys using trawl, hook and line, or seine gear in Puget Sound, the move-on rule mitigation protocol described in paragraph (c)(3) shall be implemented upon observation of killer whales at any distance.

(c) Trawl survey protocols: (1) NWFSC shall conduct trawl operations as soon as is practicable upon arrival at the sampling station.

(2) NWFSC shall initiate marine mammal watches (visual observation) a minimum of ten minutes prior to beginning of net deployment, but shall also conduct monitoring during pre-set activities including trackline reconnaissance, CTD casts, and plankton or bongo net hauls. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NWFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed within 500 m of the planned location in the ten minutes before setting the trawl gear, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, NWFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further ten minute observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the NWFSC shall move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. NWFSC may use best professional judgment in making these decisions.

(4) NWFSC shall maintain visual monitoring effort during the entire period of time that trawl gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NWFSC shall take the most appropriate action to avoid marine mammal interaction. NWFSC may use best professional judgment in making this decision.

(5) If trawling operations have been suspended because of the presence of marine mammals, NWFSC may resume trawl operations when practicable only when the animals are believed to have departed the area. NWFSC may use best professional judgment in making this determination.

(6) When conducting surface trawls using the Nordic 264 net, dedicated crew with no other tasks shall conduct required marine mammal monitoring. Marine mammal monitoring shall be staffed in a stepwise process, with a minimum of two observers beginning pre-set monitoring and increasing to a minimum of four observers prior to and during gear deployment. During the tow, a minimum of three observers shall conduct required monitoring.

(7) NWFSC shall implement standard survey protocols to minimize potential for marine mammal interactions, including maximum tow durations at target depth and maximum tow distance, and shall carefully empty the trawl as quickly as possible upon retrieval. Trawl nets must be cleaned prior to deployment.

(8) NWFSC must install and use a marine mammal excluder device at all times when the Nordic 264 trawl net is used.

(9) NWFSC must install and use acoustic deterrent devices whenever the Nordic 264 trawl net is used, with two pairs of the devices installed near the net opening. NWFSC must ensure that the devices are operating properly before deploying the net.

(10) For use of the Kodiak surface trawl in Puget Sound, trawl survey protocols described in this section apply only to cetaceans.

(11) Trawl survey protocols described in this section do not apply to use of pair trawl gear in the Columbia River.

(d) Hook and line (including longline) survey protocols: (1) NWFSC shall deploy hook and line gear as soon as is practicable upon arrival at the sampling station.

(2) NWFSC shall initiate marine mammal watches (visual observation) no less than thirty minutes prior to both deployment and retrieval of longline gear. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular). During nighttime operations, visual observation shall be conducted using the naked eye and available vessel lighting.

(3) NWFSC shall implement the move-on rule mitigation protocol, as described in this paragraph. If one or more marine mammals are observed within 500 m of the planned location in the ten minutes before gear deployment, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, NWFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further thirty minute observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different section of the sampling area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the NWFSC shall move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. NWFSC may use best professional judgment in making these decisions.

(4) NWFSC shall maintain visual monitoring effort during the entire period of gear deployment and retrieval. If marine mammals are sighted before the gear is fully deployed or retrieved,

NWFSC shall take the most appropriate action to avoid marine mammal interaction. NWFSC may use best professional judgment in making this decision.

(5) If deployment or retrieval operations have been suspended because of the presence of marine mammals, NWFSC may resume such operations when practicable only when the animals are believed to have departed the area. NWFSC may use best professional judgment in making this decision.

(6) NWFSC shall implement standard survey protocols, including maximum soak durations and a prohibition on chumming.

(7) For hook and line surveys in Puget Sound, but not including longline surveys, hook and line survey protocols described in this section apply only to cetaceans.

(e) Seine survey protocols: (1) NWFSC shall conduct seine operations as soon as is practicable upon arrival at the sampling station.

(2) NWFSC shall conduct marine mammal watches (visual observation) prior to beginning of net deployment. Marine mammal watches shall be conducted by scanning the surrounding waters with the naked eye and rangefinding binoculars (or monocular).

(3) NWFSC shall implement the move-on rule mitigation protocol, as described in this paragraph for use of purse seine gear. If one or more small cetaceans (*i.e.,* dolphin or porpoise) or five or more pinnipeds are observed within 500 m of the planned location before setting the seine gear, and are considered at risk of interacting with the vessel or research gear, or appear to be approaching the vessel and are considered at risk of interaction, NWFSC shall either remain onsite or move on to another sampling location. If remaining onsite, the set shall be delayed. If the animals depart or appear to no longer be at risk of interacting with the vessel or gear, a further ten minute observation period shall be conducted. If no further observations are made or the animals still do not appear to be at risk of interaction, then the set may be made. If the vessel is moved to a different area, the move-on rule mitigation protocol would begin anew. If, after moving on, marine mammals remain at risk of interaction, the NWFSC shall move again or skip the station. Marine mammals that are sighted further than 500 m from the vessel shall be monitored to determine their position and movement in relation to the vessel to determine whether the move-on rule mitigation protocol should be implemented. NWFSC may use best professional judgment in making these decisions.

(4) NWFSC shall maintain visual monitoring effort during the entire period of time that seine gear is in the water (*i.e.,* throughout gear deployment, fishing, and retrieval). If marine mammals are sighted before the gear is fully removed from the water, NWFSC shall take the most appropriate action to avoid marine mammal interaction. NWFSC may use best professional judgment in making this decision.

(5) If seine operations have been suspended because of the presence of marine mammals, NWFSC may resume seine operations when practicable only when the animals are believed to have departed the area. NWFSC may use best professional judgment in making this determination.

(6) If any cetaceans are observed in a purse seine net, NWFSC shall immediately open the net and free the animals.

(7) NWFSC shall not make beach seine sets within 200 m of any hauled-out pinniped, and shall immediately remove the gear from the water upon observation of any marine mammal attempting to interact with the gear.

§ 219.46 Requirements for monitoring and reporting.

(a) NWFSC shall designate a compliance coordinator who shall be responsible for ensuring compliance with all requirements of any LOA issued pursuant to §§ 216.106 and 219.47 of this chapter and for preparing for any subsequent request(s) for incidental take authorization.

(b) Visual monitoring program: (1) Marine mammal visual monitoring shall occur prior to deployment of trawl, seine, and hook and line gear, respectively; throughout deployment of gear and active fishing of research gears (not including longline soak time); prior to retrieval of longline gear; and throughout retrieval of all research gear.

(2) Marine mammal watches shall be conducted by watch-standers (those navigating the vessel and/or other crew) at all times when the vessel is being operated.

(c) Training: (1) NWFSC must conduct annual training for all chief scientists and other personnel who may be responsible for conducting dedicated marine mammal visual observations to explain mitigation measures and monitoring and reporting requirements, mitigation and monitoring protocols, marine mammal identification, completion of datasheets, and use of equipment. NWFSC may determine the agenda for these trainings.

(2) NWFSC shall also dedicate a portion of training to discussion of best professional judgment, including use in any incidents of marine mammal interaction and instructive examples where use of best professional judgment was determined to be successful or unsuccessful.

(3) NWFSC shall coordinate with NMFS' Southwest Fisheries Science Center (SWFSC) regarding surveys conducted in the California Current Ecosystem, such that training and guidance related to handling procedures and data collection is consistent.

(d) Handling procedures and data collection: (1) NWFSC must develop and implement standardized marine mammal handling, disentanglement, and data collection procedures. These standard procedures will be subject to approval by NMFS' Office of Protected Resources (OPR).

(2) When practicable, for any marine mammal interaction involving the release of a live animal, NWFSC shall collect necessary data to facilitate a serious injury determination.

(3) NWFSC shall provide its relevant personnel with standard guidance and training regarding handling of marine mammals, including how to identify different species, bring an individual aboard a vessel, assess the level of consciousness, remove fishing gear, return an individual to water, and log activities pertaining to the interaction.

(4) NWFSC shall record such data on standardized forms, which will be subject to approval by OPR. NWFSC shall also answer a standard series of supplemental questions regarding the details of any marine mammal interaction.

(e) Reporting: (1) NWFSC shall report all incidents of marine mammal interaction to NMFS' Protected Species Incidental Take database within 48 hours of occurrence and shall provide supplemental information to OPR upon request. Information related to marine mammal interaction (animal captured or entangled in research gear) must include details of survey effort, full descriptions of any observations of the animals, the context (vessel and conditions), decisions made, and rationale for decisions made in vessel and gear handling.

(2) Annual reporting: (i) NWFSC shall submit an annual summary report to OPR not later than ninety days following the end of a given year. NWFSC shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Annual line-kilometers surveyed during which the EK60, ME70, SX90 (or equivalent sources) were predominant and associated pro-rated estimates of actual take;

(B) Summary information regarding use of all hook and line, seine, and trawl gear, including number of sets, hook hours, tows, etc., specific to each gear;

(C) Accounts of all incidents of marine mammal interactions, including circumstances of the event and descriptions of any mitigation procedures implemented or not implemented and why;

(D) A written evaluation of the effectiveness of NWFSC mitigation strategies in reducing the number of marine mammal interactions with survey gear, including best professional judgment and suggestions for changes to the mitigation strategies, if any;

(E) Final outcome of serious injury determinations for all incidents of marine mammal interactions where the animal(s) were released alive; and

(F) A summary of all relevant training provided by NWFSC and any coordination with SWFSC or NMFS' West Coast Regional Office.

(f) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 219.41(a) clearly causes the take of a marine mammal in a prohibited manner, NWFSC personnel engaged in the research activity shall immediately cease such activity until such time as an appropriate decision regarding activity continuation can be made by the NWFSC Director (or designee). The incident must be reported immediately to OPR and the West Coast Regional Stranding Coordinator, NMFS. OPR will review the circumstances of the prohibited take and work with NWFSC to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The immediate decision made by NWFSC regarding continuation of the specified activity is subject to OPR concurrence. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Status of all sound source use in the 24 hours preceding the incident;

(vii) Water depth;

(viii) Fate of the animal(s); and

(ix) Photographs or video footage of the animal(s).

(2) In the event that NWFSC discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), NWFSC shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (f)(1) of this section. Activities may continue while OPR reviews the circumstances of the incident. OPR will work with NWFSC to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that NWFSC discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 219.41(a) (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), NWFSC shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. NWFSC shall provide photographs or video footage or other documentation of the stranded animal sighting to OPR.

§ 219.47 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, NWFSC must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, NWFSC may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, NWFSC must apply for and obtain a modification of the LOA as described in § 219.48 of this chapter.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

§ 219.48 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 and 219.47 of this chapter for the activity identified in § 219.41(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) OPR determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), OPR may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 and 219.47 of this chapter for the activity identified in § 219.41(a) may be modified by OPR under the following circumstances:

(1) Adaptive Management—OPR may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with NWFSC regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from NWFSC's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, OPR will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If OPR determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 and 219.47 of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

§ 219.49 [Reserved]

§ 219.50 [Reserved]

[FR Doc. 2016–13655 Filed 6–10–16; 8:45 am]

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Rules and Regulations

Federal Register
Vol. 81, No. 114
Tuesday, June 14, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1083

[Docket No.: CFPB–2016–0028]

RIN 3170–AA62

Civil Penalty Inflation Adjustments

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing for public comment an interim final rule to adjust the civil monetary penalties within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act or the Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act).

DATES: This rule is effective on July 14, 2016. Comments must be received on or before July 14, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2016–0028 or RIN 3170–AA62, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2016–0028 or RIN 3170–AA62 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kristin Bateman, Counsel, Legal Division, Consumer Financial Protection Bureau, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, requires Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016, and then by January 15 every year thereafter.[1] Agencies must make the initial 2016 adjustments through an interim final rulemaking published in the **Federal Register.**[2] Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.[3] The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

II. Method of Calculation

The Inflation Adjustment Act prescribes a specific method for calculating the inflation adjustments.[4] As amended by the 2015 Act, the Act provides that the maximum (and minimum, if applicable) amounts for each civil penalty must be increased by the "cost-of-living adjustment," a term that the Act defines. For purposes of the initial adjustments that agencies must make by July 1, 2016, the "cost-of-living adjustment" is defined as the percentage increase in the Consumer Price Index between (1) October of the calendar year during which the civil penalty amount was established or adjusted under a provision of law other than the Inflation Adjustment Act and (2) October 2015. The Consumer Price Index to be used for purposes of this calculation is the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.[5] The Office of Management and Budget (OMB) has published guidance for implementing this requirement.[6] OMB's guidance memorandum provides multipliers that agencies should use to adjust penalty amounts based on the year the penalty was established or last adjusted under authority other than the Inflation Adjustment Act.

To determine the new penalty amount, the agency must apply the multiplier reflecting the "cost-of-living adjustment"[7] to the penalty amount as it was most recently established or adjusted under a provision of law other than the Inflation Adjustment Act. The agency must then round that amount to the nearest dollar.[8] The increase made by this initial adjustment may not exceed 150 percent of the penalty amount in effect on the date the 2015 Act was enacted, November 2, 2015.

[1] *See* 28 U.S.C. 2461 note.

[2] The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 U.S.C. 2461 note. The Bureau has chosen not to make use of this exception.

[3] Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

[4] Inflation Adjustment Act section 5, *codified* at 28 U.S.C. 2461 note.

[5] U.S. Dep't of Labor, Bureau of Labor Statistics, CPI Tables, *http://www.bls.gov/cpi/#tables.*

[6] Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Feb. 24, 2016), *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[7] The multipliers reflecting the "cost-of-living adjustment" that OMB provides are rounded to five decimal places. The Bureau has used the OMB multipliers in calculating its civil penalty adjustments.

III. Description of the Interim Final Rule

This interim final rule establishes the inflation-adjusted maximum amounts for each civil penalty within the Bureau's jurisdiction. The following table lists the civil penalties within the Bureau's jurisdiction and summarizes the relevant information needed to calculate the inflation adjustments pursuant to the statutory method.

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	Penalty amount in effect on November 2, 2015
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty	$5,000	[9]2010	[10]$5,000
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty	25,000	[11]2010	[12]25,000
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty	1,000,000	[13]2010	[14]1,000,000
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation	1,000	[15]1989	[16]1,000
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap	1,000,000	[17]1989	[18]1,000,000
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure	50	[19]1990	[20]50
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap	100,000	[21]1990	[22]100,000
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	100	[23]1990	[24]100
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	25,000	[25]2008	[26]25,000
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	10,000	[27]2010	[28]10,000
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	20,000	[29]2010	[30]20,000

The Bureau followed the procedure outlined above in part II to calculate the adjusted civil penalty amounts. In accordance with the statutory requirements and OMB guidance, the Bureau multiplied each penalty amount as established or last adjusted under a provision other than the Inflation Adjustment Act by the OMB multiplier corresponding to the appropriate year, and then rounded that amount to the nearest dollar, to calculate the new, inflation-adjusted civil penalty amount. The Bureau then confirmed that the amount by which each civil penalty increased did not exceed 150 percent of the corresponding civil penalty level in effect on November 2, 2015. None of the increases exceeded this 150-percent threshold. The following chart summarizes the results of these calculations:

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB "cost-of-living adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty	$5,000	2010	1.08745	$5,437
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty	25,000	2010	1.08745	27,186

[8] In rounding to the nearest dollar, the Bureau has rounded down where the digit immediately following the decimal point is less than 5 and has rounded up where the digit immediately following the decimal point is 5 or greater.

[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1055(c)(2)(A), 124 Stat. 1376, 2030 (2010).

[10] 12 U.S.C. 5565(c)(2)(A) (2015).

[11] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1055(c)(2)(B), 124 Stat. 1376, 2030 (2010).

[12] 12 U.S.C. 5565(c)(2)(B) (2015).

[13] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1055(c)(2)(C), 124 Stat. 1376, 2030 (2010).

[14] 12 U.S.C. 5565(c)(2)(C) (2015).

[15] Department of Housing and Urban Development Reform Act, Public Law 101–235, section 111, 103 Stat. 1987, 2014 (1989).

[16] 15 U.S.C. 1717a(a)(2) (2015).

[17] Department of Housing and Urban Development Reform Act, Public Law 101–235, section 111, 103 Stat. 1987, 2014 (1989).

[18] 15 U.S.C. 1717a(a)(2) (2015).

[19] Cranston–Gonzalez National Affordable Housing Act, Public Law 101–625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

[20] 12 U.S.C. 2609(d)(1) (2015).

[21] Cranston–Gonzalez National Affordable Housing Act, Public Law 101–625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

[22] 12 U.S.C. 2609(d)(1) (2015).

[23] Cranston–Gonzalez National Affordable Housing Act, Public Law 101–625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

[24] 12 U.S.C. 2609(d)(2)(A) (2015).

[25] Housing and Economic Recovery Act of 2008, Public Law 110–289, section 1514(d)(2), 122 Stat. 2654, 2823 (2008).

[26] 12 U.S.C. 5113(d)(2) (2015).

[27] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1472(a), 124 Stat. 1376, 2189 (2010).

[28] 15 U.S.C. 1639e(k)(1) (2015).

[29] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, section 1472(a), 124 Stat. 1376, 2190 (2010).

[30] 15 U.S.C. 1639e(k)(2) (2015).

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB "cost-of-living adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty	1,000,000	2010	1.08745	1,087,450
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation	1,000	1989	1.89361	1,894
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap	1,000,000	1989	1.89361	1,893,610
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure	50	1990	1.78156	89
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap	100,000	1990	1.78156	178,156
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	100	1990	1.78156	178
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	25,000	2008	1.09819	27,455
Truth in Lending Act, 15 U.S.C. 1639e(k)(1).	First violation	10,000	2010	1.08745	10,875
Truth in Lending Act, 15 U.S.C. 1639e(k)(2).	Subsequent violations.	20,000	2010	1.08745	21,749

This rule codifies these civil penalty amounts by adding new part 1083 to title 12 of the CFR and new § 1083.1 therein.

IV. Legal Authority and Effective Date

The Bureau issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,[31] as amended by the Debt Collection Improvement Act of 1996,[32] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[33] which requires the Bureau to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

The Administrative Procedure Act (APA) generally requires an agency to publish a rule at least 30 days before its effective date.[34] This rule satisfies that requirement.

V. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule.

VI. Regulatory Requirements

Notice and Comment

Under the APA, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.[35] This interim final rule adjusts the civil penalty amounts within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The amendments in this interim final rule are technical, and they merely apply the statutory method for adjusting civil penalty amounts. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Moreover, the statute expressly requires the Bureau to make these initial adjustments through an interim final rulemaking to be published by July 1, 2016,[36] and OMB's guidance confirms that agencies need not complete a notice-and-comment process before promulgating the rule.[37] Therefore, the amendments are adopted in final form.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[38]

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[39] the Bureau reviewed this interim final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim final rule.

List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1083 to chapter X in title 12 of the Code of Federal Regulations to read as set forth below:

PART 1083—CIVIL PENALTY ADJUSTMENTS

Sec.
1083.1 Adjustments of civil penalty amounts.

Authority: 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

§ 1083.1 Adjustments of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, (28 U.S.C. 2461 note) as follows:

U.S. code citation	Civil penalty description	Adjusted maximum civil penalty amount
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	$5,437
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	27,186
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,087,450
15 U.S.C. 1717a(a)(2)	Per violation	1,894
15 U.S.C. 1717a(a)(2)	Annual cap	1,893,610
12 U.S.C. 2609(d)(1)	Per failure	89
12 U.S.C. 2609(d)(1)	Annual cap	178,156
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	178
12 U.S.C. 5113(d)(2)	Per violation	27,455
15 U.S.C. 1639e(k)(1)	First violation	10,875
15 U.S.C. 1639e(k)(2)	Subsequent violations	21,749

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after July 14, 2016, regardless of when the violation for which the penalty is assessed occurred.

Dated: June 7, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14031 Filed 6–13–16; 8:45 am]

BILLING CODE 4810–AM–P

[31] Public Law 101–410, 104 Stat. 890 (1990).

[32] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373 (1996).

[33] Public Law 114–74, section 701, 129 Stat. 584, 599 (2015).

[34] *See* 5 U.S.C. 553(d).

[35] 5 U.S.C. 553(b)(B).

[36] Inflation Adjustment Act, section 4(b)(1)(A), *codified at* 28 U.S.C. 2461 note.

[37] Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies 3 (Feb. 24, 2016), *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[38] 5 U.S.C. 603(a), 604(a).

[39] 44 U.S.C. 3506; 5 CFR 1320.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 11, 121, 125, and 135

Office of the Secretary

14 CFR Part 382

[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69; 11–60; 121–374, 125–65, 135–133]

RIN 2120–AK32

Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA) and the Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: This final rule replaces the existing process by which the Federal Aviation Administration (Agency or FAA) approves portable oxygen concentrators (POC) for use on board aircraft in air carrier operations, commercial operations, and certain other operations using large aircraft. The FAA currently assesses each POC make and model on a case-by-case basis and if the FAA determines that a particular POC is safe for use on board an aircraft, the FAA conducts rulemaking to identify the specific POC model in an FAA regulation. This final rule replaces the current process and allows passengers to use a POC on board an aircraft if the POC satisfies certain acceptance criteria and bears a label indicating conformance with the acceptance criteria. The labeling requirement only affects POCs intended for use on board aircraft that were not previously approved for use on aircraft by the FAA. Additionally, this rulemaking will eliminate redundant operational requirements and paperwork requirements related to the physician's statement. As a result, this rulemaking will reduce burdens for POC manufacturers, passengers who use POCs while traveling, and affected aircraft operators. This final rule also makes conforming amendments to the Department of Transportation's (Department or DOT) rule implementing the Air Carrier Access Act (ACAA) to require carriers to accept all POC models that meet FAA acceptance criteria as detailed in this rule.

DATES: This correction will become effective on June 23, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact DK Deaderick, 121 Air Carrier Operations Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, AFS–220, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7480; email *dk.deaderick@faa.gov.* For questions regarding the Department's disability regulation (14 CFR part 382), contact Clereece Kroha, Senior Attorney, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9041; email *clereece.kroha@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2016, the FAA published a final rule entitled, "Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft" (81 FR 33098).

This final rule affects the use of POCs on board aircraft in operations conducted under title 14 of the Code of Federal Regulations (14 CFR) parts 121, 125, and 135, by replacing the existing FAA case-by-case approval process for each make and model of POC in Special Federal Aviation Regulation (SFAR) No. 106, with FAA acceptance criteria. Under SFAR No. 106, each time the FAA approves a specific model of POC for use on board aircraft, the agency updates the list of approved POCs in the SFAR.

This final rule removes SFAR No. 106 and replaces it with POC acceptance criteria and specific labeling requirements to identify POCs that conform to the acceptance criteria. POCs that conform to the final rule acceptance criteria will be allowed on board aircraft without additional FAA review and rulemaking.

As with existing requirements for FAA approval of POCs that may be used on aircraft, the final rule acceptance criteria and labeling requirement only apply to POCs intended for use on board aircraft. Table 1 provides a comparison of the final rule acceptance criteria and labeling requirement with related SFAR No. 106.

However, the final rule was published with an incorrect amendment number, "11–59," which is the same amendment number as the rule entitled "Administrative Practices and Procedures, Reporting and Recordkeeping Requirements " (81 FR 13969), published on March 16, 2016. The correct amendment number for this rule should be "11–60."

Correction

In FR Doc. 2016–11908 beginning on page 33098 in the **Federal Register** of May 24, 2016, make the following correction:

Correction

1. On page 33098, in the first column, in the document heading, revise "[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69, 11–59, 121–374, 125–65, and 135–133]" to read "[Docket No.: FAA–2014–0554; Amdt. Nos. 1–69, 11–60, 121–374, 125–65, and 135–133]".

Issued under authority provided by 49 U.S.C. 106(f) in Washington, DC, on June 1, 2016.

Dale A. Bouffiou,

Acting Director, Office of Rulemaking.

[FR Doc. 2016–13955 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6899; Directorate Identifier 2016–NM–066–AD; Amendment 39–18558; AD 2016–12–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–09–11 for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2016–09–11 required removing fasteners, doing a rototest inspection of fastener holes, installing new fasteners, oversizing the holes and doing rototest inspections for cracks if necessary, and repairing any cracking that is found. This new AD requires the same actions as AD 2016–09–11, but includes Model A330–300 series airplanes in paragraph (g)(2) of this AD. This AD was prompted by the discovery of missing affected airplanes in paragraph (g)(2) of AD 2016–09–11 that resulted from converting a table in the proposed AD to text in AD 2016–09–11. We are issuing this AD to detect and correct cracking on certain holes of certain frames of the center wing box (CWB), which could affect the structural integrity of the airplane.

DATES: This AD is effective June 29, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 13, 2016 (81 FR 27986, May 9, 2016).

We must receive comments on this AD by July 29, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6899.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6899; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On April 21, 2016, we issued AD 2016–09–11, Amendment 39–18509 (81 FR 27986, May 9, 2016) ("AD 2016–09–11"), for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. AD 2016–09–11 was prompted by reports that cracks were found on an adjacent hole of certain frames of the CWB. AD 2016–09–11 required removing fasteners, doing a rototest inspection of fastener holes, installing new fasteners, oversizing the holes and doing rototest inspections for cracks if necessary, and repairing any cracking that was found. We issued AD 2016–09–11 to detect and correct cracking on certain holes of certain frames of the CWB that could affect the structural integrity of the airplane.

Since we issued AD 2016–09–11, we discovered missing affected airplanes in paragraph (g)(2) of AD 2016–09–11 that resulted from converting a table to text in that AD. We stated in the preamble of AD 2016–09–11 that we revised the format of paragraph (g) of that AD, at the request of the Office of the Federal Register, by converting the table to text. We also stated this change to the format does not affect the requirements of that paragraph.

However, in converting the table to text, we inadvertently omitted Model A330–300 series airplanes from paragraph (g)(2) of AD 2016–09–11. We have changed paragraph (g)(2) of this AD to include Model A330–300 series airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0149, dated June 13, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A330–200, –200 Freighter, and –300 series airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> During accomplishment of A330 Airworthiness Limitation Item (ALI) task 57–11–04 on the rear fitting of the Frame (FR) 40 between stringers 38 and 39 on both [left-hand] LH/[right-hand] RH sides, cracks were found on an adjacent hole. After reaming at second oversize of the subject hole, the crack was still present.
>
> Other crack findings on this adjacent hole have been reported on A330 and A340–200/–300 aeroplanes as a result of sampling inspections.

> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires removal of the fasteners and repetitive rototest inspections of fastener holes at FR40 vertical web located above Center Wing Box (CWB) lower panel reference and/or below CWB lower panel reference on both sides and, depending on findings, accomplishment of the applicable corrective actions.
>
> **Note:** These holes affected by this [EASA] AD are different from the ones affected by EASA AD 2009–0001 [*http://ad.easa.europa.eu/blob/easa_ad_2009_0001.pdf/AD_2009–0001_1*].
>
> Required actions also include oversizing certain holes, installing new fasteners, and repairing any cracking that is found. The initial compliance times range from 13,500 to 30,900 flight cycles, or 57,000 to 162,000 flight hours, depending on airplane operation and utilization. The repetitive compliance times are 7,400 flight cycles/24,300 flight hours or 5,950 flight cycles/40,400 flight hours from ALI embodiment. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6899.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information. The service information describes procedures for removing the fasteners and doing a repetitive rototest inspection of fastener holes at FR40 vertical web on both sides, installing new fasteners in transition fit, and oversizing the holes.

- Airbus Service Bulletin A330–57–3114, dated March 12, 2013.
- Airbus Service Bulletin A330–57–3115, dated April 4, 2013.
- Airbus Service Bulletin A330–57–3116, dated March 12, 2013.
- Airbus Service Bulletin A340–57–4123, dated March 12, 2013.
- Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.
- Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Justification and Determination of the Effective Date

We are superseding AD 2016–09–11 to correct an error in the regulatory text that we made when we converted a table to text in paragraph (g)(2) of AD 2016–09–11. No other changes have been made to AD 2016–09–11. Therefore, we determined that notice and opportunity for prior public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6899; Directorate Identifier 2016–NM–066–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 35 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	78 work-hours × $85 per hour = $6,630 per inspection cycle.	$0	$6,630 per inspection cycle	$232,050 per inspection cycle.

We estimate the following costs to do any necessary repairs that will be required based on the results of the inspection. We have no way of determining the number of airplanes that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Oversize, installation, and inspection	98 work-hours × $85 per hour = $8,330	$136,400	$144,730

We have received no definitive data that will enable us to provide cost estimates for the on-condition repair specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–09–11, Amendment 39–18509 (81 FR 27986, May 9, 2016), and adding the following new AD:

2016–12–09 Airbus: Amendment 39–18558. Docket No. FAA–2016–6899; Directorate Identifier 2016–NM–066–AD.

(a) Effective Date

This AD is effective June 29, 2016.

(b) Affected ADs

This AD replaces AD 2016–09–11, Amendment 39–18509 (81 FR 27986, May 9, 2016) ("AD 2016–09–11").

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers, except those on which Airbus Modification (Mod) 55792 or Mod 55306 has been embodied in production, and except those on which Airbus Repair Instruction R57115092 has been embodied in service on both right-hand (RH) and left-hand (LH) sides.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243 –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports that cracks were found on an adjacent hole of certain frames of the center wing box (CWB). We are issuing this AD to detect and correct cracking on certain holes of the CWB, which could affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

Do a rototest inspection of the fastener holes at the frame (FR) 40 vertical web, on both sides, as specified in paragraphs (g)(1) through (g)(6) of this AD, except as required by paragraph (k) of this AD.

(1) For Model A330–300 series airplanes in pre-mod 44360 configuration: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3114, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., "Compliance" of Airbus Service Bulletin A330–57–3114, dated March 12, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(2) For Model A330–200 and –300 series airplanes in post-mod 44360 and pre-mod 49202 configuration: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3116, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., "Compliance," of Airbus Service Bulletin A330–57–3116, dated March 12, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(3) For Model A330–200 and –300 series airplanes in pre-mod 55306 and pre-mod 55792 configuration: At the later of the times specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD, inspect above the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3115, dated April 4, 2013.

(i) At the applicable time specified in paragraph 1.E., "Compliance" of Airbus Service Bulletin A330–57–3115, dated April 4, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(4) For Model A340–200 and –300 series airplanes in pre-mod 44360 configuration: At the later of the times specified in paragraphs (g)(4)(i) and (g)(4)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4123, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., "Compliance" of Airbus Service Bulletin A330–57–4123, dated March 12, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(5) For Model A340–200 and –300 series airplanes in pre-mod 55306 and pre-mod 55792 configuration: At the later of the times specified in paragraphs (g)(5)(i) and (g)(5)(ii) of this AD, inspect above the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.

(i) At the applicable time specified in paragraph 1.E., "Compliance," of Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(6) For Model A340–200 and –300 series airplanes in post-mod 44360 and pre-mod 49202 configuration: At the later of the times specified in paragraphs (g)(6)(i) and (g)(6)(ii) of this AD, inspect below the CWB lower panel reference, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

(i) At the applicable time specified in paragraph 1.E., "Compliance," of Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(h) Follow-On Actions: No Cracking

If no crack is found during any inspection required by paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight, install new fasteners in the transition fit, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(2) Repeat the inspection required by paragraph (g) of this AD thereafter at the applicable time identified in paragraph 1.E., "Compliance," of the applicable service information identified in paragraph (g) of this AD.

(i) Follow-On Actions: Crack Findings

If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, oversize the holes to the first oversize in comparison with the current hole diameter, and do a rototest inspection for cracks, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(1) If no cracking is found during the rototest inspection required by paragraph (i) of this AD, do the actions specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Before further flight: Install new fasteners in the transition fit, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (g) of this AD.

(ii) Repeat the inspection required by paragraph (g) of this AD thereafter at the applicable time identified in paragraph 1.E., "Compliance," of the applicable service information identified in paragraph (g) of this AD.

(2) If cracking is found during the rototest inspection required by paragraph (i) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(j) Terminating Action Specifications

Accomplishment of the initial and repetitive inspections required by this AD terminates accomplishment of Airworthiness Limitation Items Tasks 57–11–04 and 57–11–02 of the Airworthiness Limitation Section (ALS) Part 2, Damage Tolerant Airworthiness Limitation Items (DT ALI).

(1) Installation of new fasteners, as specified in paragraph (h)(1) of this AD, does not terminate the repetitive inspections required by paragraph (g) of this AD.

(2) Accomplishment of the corrective actions specified in the introductory text of paragraph (i) and paragraph (i)(1) of this AD does not terminate the repetitive inspections required by paragraph (g) of this AD.

(3) Accomplishment of the repair specified in paragraph (i)(2) of this AD does not terminate repetitive inspections required by paragraph (g) of this AD, unless the approved repair method specifies otherwise.

(k) Exceptions to Service Information

(1) If the applicable service information identified in paragraph (g) of this AD specifies contacting Airbus for appropriate action: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(2) Where paragraph 1.E., "Compliance," of the applicable service information specified in paragraph (g) of this AD specifies a compliance time in terms of a "Threshold" and "Grace Period," this AD requires compliance at the later of the applicable threshold and grace period.

(3) Where paragraph 1.E., "Compliance," of the applicable service information specified in paragraph (g) of this AD specifies a threshold as "before next flight," this AD requires compliance before the next flight after the applicable finding.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (l)(1), (l)(2), (l)(3), (l)(4), (l)(5), (l)(6), (l)(7), (l)(8), or (l)(9) of this AD. This service information is not incorporated by reference in this AD.

(1) Airbus Technical Disposition LR57D11023270, Issue B, dated July 12, 2011.

(2) Airbus Technical Disposition LR57D11029171, Issue B, dated September 6, 2011.

(3) Airbus Technical Disposition LR57D11029173, Issue B, dated September 6, 2011.

(4) Airbus Technical Disposition LR57D11030741, Issue B, dated September 22, 2011.

(5) Airbus Technical Disposition LR57D11029170, Issue C, dated September 6, 2011.

(6) Airbus Technical Disposition LR57D11023714, Issue B, dated July 12, 2011.

(7) Airbus Technical Disposition LR57D11029172, Issue B, dated September 6, 2011.

(8) Airbus Technical Disposition LR57D11030740, Issue C, dated September 22, 2011.

(9) Airbus Service Bulletin A340–57–4124, dated April 4, 2013.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0149, dated June 13, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. *FAA–2016–6899*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(4) and (o)(5) of this AD.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on June 13, 2016, (81 FR 27986, May 9, 2016).

(i) Airbus Service Bulletin A330–57–3114, dated March 12, 2013.

(ii) Airbus Service Bulletin A330–57–3115, dated April 4, 2013.

(iii) Airbus Service Bulletin A330–57–3116, dated March 12, 2013.

(iv) Airbus Service Bulletin A340–57–4123, dated March 12, 2013.

(v) Airbus Service Bulletin A340–57–4124, Revision 01, dated August 22, 2013.

(vi) Airbus Service Bulletin A340–57–4125, dated March 12, 2013.

(4) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13856 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6900; Directorate Identifier 2016–NM–064–AD; Amendment 39–18559; AD 2016–12–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–09–07 for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2016–09–07 required replacing certain pitot probes on the captain, first officer, and standby sides. This new AD retains those requirements, but with a revised compliance time. Since we issued AD 2016–09–07, we received additional reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. We are issuing this AD to prevent airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane.

DATES: This AD is effective June 29, 2016.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in this AD as of June 10, 2016 (81 FR 27298, May 6, 2016).

We must receive comments on this AD by July 29, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On April 20, 2016, we issued AD 2016–09–07, Amendment 39–18505 (81 FR 27298, May 6, 2016) ("AD 2016–09–07"), for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2016–09–07 was prompted by reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. AD 2016–09–07 required replacing certain pitot probes on the captain, first officer, and standby sides with certain new pitot probes. We issued AD 2016–09–07 to prevent airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane.

Since we issued AD 2016–09–07, we have received additional reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. Certain pitot probes are susceptible to adverse environmental conditions and have a high tendency to accumulate ice crystals resulting in airspeed indication discrepancies, which could result in reduced controllability of the airplane.

As we explained in AD 2016–09–07, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, issued EASA Airworthiness Directive 2015–0205, dated October 9, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> Occurrences were reported on A320 family aeroplanes of airspeed indication discrepancies while flying at high altitudes in inclement weather conditions. Investigation results indicated that A320 aeroplanes equipped with Thales Avionics Part Number (P/N) 50620–10 or P/N C16195AA pitot probes appear to have a greater susceptibility to adverse environmental conditions than aeroplanes equipped with certain other pitot probes.
>
> Prompted by earlier occurrences, DGAC [Direction Générale de l'Aviation Civile] France issued [DGAC] AD 2001–362 [*http://ad.easa.europa.eu/ad/F-2001-362*] [which corresponds to paragraph (f) of FAA AD 2004–03–33, Amendment 39–13477 (69 FR 9936, March 3, 2004)] to require replacement of Thales (formerly known as Sextant) P/N 50620–10 pitot probes with Thales P/N C16195AA probes.
>
> Since that [DGAC] AD was issued, Thales pitot probe P/N C15195BA was designed, which improved airspeed indication behavior in heavy rain conditions, but did not demonstrate the same level of robustness to withstand high-altitude ice crystals. Based on these findings, EASA decided to implement replacement of the affected Thales [pitot] probes as a precautionary measure to improve the safety level of the affected aeroplanes.
>
> Consequently, EASA issued AD 2014–0237 (later revised) [*http://ad.easa.europa.eu/blob/easa_ad_2014_0237.pdf/AD_2014-0237*], retaining the requirements of DGAC France AD 2001–362, which was superseded, and cancelling two other [DGAC] ADs, to require replacement of Thales Avionics pitot probes P/N C16195AA and P/N C16195BA.
>
> Since EASA AD 2014–0237R1 [*http://ad.easa.europa.eu/ad/2014-0237R1*] was issued, results of further analyses have determined that the compliance time (48 months) of that AD has to be reduced in relation to the risk assessment.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0237R1, which is superseded, but reduces the compliance time [24 months].

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Airbus Service Bulletin A320–34–1170, Revision 30, dated June 18, 2015.
- Airbus Service Bulletin A320–34–1456, Revision 01, dated May 15, 2012.
- Airbus Service Bulletin A320–34–1463, Revision 01, dated May 15, 2012.

The service information describes procedures for replacing certain Thales pitot probes on the captain, first officer, and standby sides. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Explanation of Compliance Time

We have reduced the compliance time in this AD for the pitot probe replacement because of the new reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. The MCAI requires replacement within 2 years after the effective date of the original MCAI 2014–0237 (November 12, 2014). Both EASA and Airbus recommend the pitot probe replacement in accordance with the MCAI requirement. Based on new reports of airspeed indication discrepancies, our risk assessment considered the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence. In support of the MCAI compliance requirement and Airbus recommendation, we have therefore concluded that the pitot probes must be replaced by November 12, 2016. That compliance time corresponds to the date specified by the MCAI and represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. In conjunction with the manufacturer, we have determined that the new compliance time will accommodate the time necessary to ensure the availability of required parts.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6900; Directorate Identifier 2016–NM–064–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 953 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Pitot probe replacement (retained actions from AD 2016–09–07).	4 work-hours × $85 per hour = $340	$21,930	$22,270	$21,223,310

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2016–09–07, Amendment 39–18505 (81 FR 27298, May 6, 2016), and adding the following new AD:

2016–12–10 Airbus: Amendment 39–18559. Docket No. FAA–2016–6900; Directorate Identifier 2016–NM–064–AD.

(a) Effective Date

This AD is effective June 29, 2016.

(b) Affected ADs

(1) This AD replaces AD 2016–09–07, Amendment 39–18505 (81 FR 27298, May 6, 2016) ("AD 2016–09–07").

(2) This AD affects AD 2004–03–33, Amendment 39–13477 (69 FR 9936, March 3, 2004) ("AD 2004–03–33").

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of airspeed indication discrepancies during flight at high altitudes in inclement weather. We are issuing this AD to prevent airspeed indication discrepancies caused by accumulation of ice crystals during inclement weather, which, depending on the prevailing altitude, could lead to reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Pitot Probe Replacement

On or before November 12, 2016: Replace any Thales pitot probe having part number (P/N) C16195AA or P/N C16195BA with a Goodrich pitot probe having P/N 0851HL, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–34–1170, Revision 30, dated June 18, 2015. The replacement in this paragraph terminates the requirements of paragraph (f) of AD 2004–03–33 for that airplane only.

(h) Other Acceptable Compliance

(1) Replacement of the pitot probes in accordance with the Accomplishment Instructions of both Airbus Service Bulletin A320–34–1456, Revision 01, dated May 15, 2012 (pitot probes on the captain and standby sides); and Airbus Service Bulletin A320–34–1463, Revision 01, dated May 15, 2012 (pitot probes on the first officer side); is an acceptable method of compliance for the requirements of paragraph (g) of this AD.

(2) Airplanes on which Airbus Modification 25578 was embodied in production, except for post-modification 25578 airplanes on which Airbus Modification 155737 (installation of Thales pitot probes) was also embodied in production, are compliant with the requirements of paragraph (g) of this AD, provided it can be conclusively determined that no Thales pitot probe having P/N C16195AA, P/N C16195BA, or P/N 50620–10 has been installed since the date of issuance of the original certificate of airworthiness or the date of issuance of the original export certificate of airworthiness. Post-modification-25578 airplanes on which Airbus Modification 155737 (installation of Thales pitot probes) was also embodied in production must be in compliance with the requirements of paragraph (g) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before June 10, 2016 (the effective date of AD 2016–09–07), using service information identified in paragraphs (i)(1)(i) through (i)(1)(xxvi) of this AD. This service information is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A320–34–1170, Revision 04, dated May 24, 2000.

(ii) Airbus Service Bulletin A320–34–1170, Revision 05, dated September 11, 2000.

(iii) Airbus Service Bulletin A320–34–1170, Revision 06, dated October 18, 2001.

(iv) Airbus Service Bulletin A320–34–1170, Revision 07, dated December 4, 2001.

(v) Airbus Service Bulletin A320–34–1170, Revision 08, dated January 15, 2003.

(vi) Airbus Service Bulletin A320–34–1170, Revision 09, dated February 17, 2003.

(vii) Airbus Service Bulletin A320–34–1170, Revision 10, dated November 21, 2003.

(viii) Airbus Service Bulletin A320–34–1170, Revision 11, dated August 18, 2004.

(ix) Airbus Service Bulletin A320–34–1170, Revision 12, dated December 2, 2004.

(x) Airbus Service Bulletin A320–34–1170, Revision 13, dated January 18, 2005.

(xi) Airbus Service Bulletin A320–34–1170, Revision 14, dated April 21, 2005.

(xii) Airbus Service Bulletin A320–34–1170, Revision 15, dated July 19, 2005.

(xiii) Airbus Service Bulletin A320–34–1170, Revision 16, dated November 23, 2006.

(xiv) Airbus Service Bulletin A320–34–1170, Revision 17, dated February 14, 2007.

(xv) Airbus Service Bulletin A320–34–1170, Revision 18, dated October 9, 2009.

(xvi) Airbus Service Bulletin A320–34–1170, Revision 19, dated November 9, 2009.

(xvii) Airbus Service Bulletin A320–34–1170, Revision 20, dated December 1, 2010.

(xviii) Airbus Service Bulletin A320–34–1170, Revision 21, dated March 24, 2011.

(xix) Airbus Service Bulletin A320–34–1170, Revision 22, dated July 19, 2011.

(xx) Airbus Service Bulletin A320–34–1170, Revision 23, dated February 3, 2012.

(xxi) Airbus Service Bulletin A320–34–1170, Revision 24, dated April 12, 2012.

(xxii) Airbus Service Bulletin A320–34–1170, Revision 25, dated September 4, 2012.

(xxiii) Airbus Service Bulletin A320–34–1170, Revision 26, dated September 16, 2013.

(xxiv) Airbus Service Bulletin A320–34–1170, Revision 27, dated March 18, 2014.

(xxv) Airbus Service Bulletin A320–34–1170, Revision 28, dated September 1, 2014.

(xxvi) Airbus Service Bulletin A320–34–1170, Revision 29, dated February 16, 2015.

(2) This paragraph provides credit for the replacement of pitot probes on the captain and standby sides specified in paragraph (h)(1) of this AD, if the replacement was performed before June 10, 2016 (the effective date of AD 2016–09–07), using Airbus Service Bulletin A320–34–1456, dated December 2, 2009, which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the replacement of pitot probes on the first officer side as specified in paragraph (h)(1) of this AD, if those actions were performed before June 10, 2016 (the effective date of AD 2016–09–07), using Airbus Service Bulletin A320–34–1463, dated March 9, 2010, which is not incorporated by reference in this AD.

(j) Parts Installation Limitations

(1) At the applicable time specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD: No person may install on any airplane a Thales pitot probe having P/N C16195AA or P/N C16195BA.

(i) For airplanes with a Thales pitot probe having P/N C16195AA or P/N C16195BA installed: After replacement with BF Goodrich pitot probe P/N 0851HL.

(ii) For airplanes without a Thales pitot probe having P/N C16195AA or P/N C16195BA installed: As of June 10, 2016 (the effective date of AD 2016–09–07).

(2) As of June 10, 2016 (the effective date of AD 2016–09–07), no person may install on any airplane a Thales pitot probe having P/N 50620–10.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0205, dated October 9, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6900.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(4) and (m)(5) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on June 10, 2016 (81 FR 27298).

(i) Airbus Service Bulletin A320–34–1170, Revision 30, dated June 18, 2015.

(ii) Airbus Service Bulletin A320–34–1456, Revision 01, dated May 15, 2012.

(iii) Airbus Service Bulletin A320–34–1463, Revision 01, dated May 15, 2012.

(4) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on June 2, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–13857 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–5573; Airspace Docket No. 16–ASO–7]

RIN 2120–AA66

Modification of VOR Federal Airway V–552; Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VOR Federal airway V–552 by amending the route description to exclude the airspace within restricted area R–4403F, Stennis Space Center, MS, during periods when the restricted area is in use.

DATES: Effective date 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route.

History

VOR Federal airway V–552 extends between Beaumont, TX, and Monroeville, AL. In that segment of the airway between the Picayune, MS, VOR/DME and the CAESA, MS, navigation fix, restricted area R–4403F infringes on the 4 nautical mile (NM) wide protected airspace on the south side of the airway. The northernmost point of R–4403F is approximately 3.73 NM from the centerline of the airway instead of the required 4 NM clearance. R–4403F is subject to intermittent use by Notice to Airmen (NOTAM) issued at least 24 hours in advance. This action amends the V–552 airway description to exclude the airspace in R–4403F from the airway while the restricted area is activated.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be subsequently amended in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) part 71 by adding the words "The airspace within R–4403F is excluded during its times of use" to the regulatory text of VOR Federal airway V–552. Because this amendment is necessary to ensure the safe separation of airway traffic from restricted airspace when the restricted area is active, I find that notice and public procedure under 5 U.S.C. 553(b) are impractical and contrary to the public interest.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a. This airspace action consists of modifying an airway and it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015 and effective September 15, 2015, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–552 [Amended]

From Beaumont, TX, via INT Beaumont 056° and Lake Charles, LA, 272° radials; Lake Charles; INT Lake Charles 064° and Lafayette, LA, 281° radials; Lafayette; Tibby, LA; Harvey, LA; Picayune, MS; Semmes, AL; INT Semmes 063° and Monroeville, AL, 216° radials; to Monroeville. The airspace within restricted area R–4403F is excluded during its times of use.

* * * * *

Issued in Washington, DC, on June 6, 2016.

Leslie M. Swann,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–13938 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 578

[Docket No. FR–5476–I–03]

RIN 2506–AC29

Continuum of Care Program—Increasing Mobility Options for Homeless Individuals and Families With Tenant-Based Rental Assistance

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: On July 31, 2012, HUD published an interim rule entitled "Homeless Emergency Assistance and Rapid Transition to Housing: Continuum of Care Program." The Continuum of Care (CoC) program is designed to address the critical problem of homelessness through a coordinated community-based process of identifying needs and building a system of housing and services to address those needs. This rule amends the CoC program regulations to allow individuals and families to choose housing outside of a CoC's geographic area, subject to certain conditions, and to retain the tenant-based rental assistance under the CoC program. In addition to allowing individuals and families to choose housing outside of the CoC's geographic area, this interim rule exempts recipients and subrecipients from compliance with all nonstatutory regulations when a program participant moves to flee domestic violence, dating violence, sexual assault, or stalking. This relaxation of conditions is consistent with the Violence Against Women Reauthorization Act of 2013, directing greater protections for victims of domestic violence, dating violence, sexual assault, or stalking.

DATES:

Effective date: July 14, 2016.

Comment due date: August 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–7000; telephone number 202–708–4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Continuum of Care (CoC) program is authorized by the McKinney-Vento Homeless Assistance Act (McKinney-Vento), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, which is Division B of Public Law 111–22, approved May 20, 2009 (HEARTH Act). The purposes of the CoC program is to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers and by State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effective utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness. Section 1504 of the HEARTH Act directs HUD to establish regulations for the CoC program. (See 42 U.S.C. 11301 note.) On July 31, 2012, at 77 FR 45422, HUD published an interim rule to establish, in 24 CFR part 578, the regulatory framework for the CoC program and the CoC planning process.

Continuum of Care not only is the name of the program, but refers to the body responsible for carrying out the duties under the CoC program. In order to be eligible for funds under the CoC program, representatives from relevant organizations within a geographic area must establish a CoC. Representatives from relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals. Where these organizations are located within the geographic area served by the CoC, HUD expects a representative of the organization to be a part of the CoC.

Although HUD issued its July 31, 2012, rule for effect, HUD also sought public comment, and at the end of the public comment period on October 1, 2012, HUD had received 551 public comments. HUD received valuable feedback from the public comments. However, HUD did not immediately move to the next rule stage because HUD wanted to examine how the interim regulations worked in practice. HUD has gained valuable information on where modifications may need to be made to its existing CoC regulations, not only on the basis of public comments received, but also on the basis of experience with the existing regulations to date.

II. This Rule

This rule focuses on a narrow area of the existing CoC program regulations and that is the ability of an individual or family with tenant-based rental assistance funded through the CoC program to choose housing, outside of a CoC's geographic area, subject to certain conditions, and to retain the tenant-based rental assistance under the CoC program if the program participant moves outside the CoC's geographic area.

McKinney-Vento and the CoC program regulations provide that CoC program grant funds may be used for rental assistance for homeless individuals and families. Rental assistance includes tenant-based rental assistance, project-based rental assistance, or sponsor-based rental assistance. With respect to tenant-based rental assistance, § 578.51 of the CoC program regulations states that tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. However, the CoC program regulations limit use of tenant-based rental assistance to within the CoC's geographic area. This limitation was determined reasonable because to serve individuals and families outside of the CoC's geographic area may impose greater burden and cost on the recipient providing the assistance. The only exception in the CoC program regulations to the limitation for retention of tenant-based rental assistance is for program participants who are victims of domestic violence, dating violence, sexual assault, or stalking who are at imminent threat of further harm. These participants, however, must have complied with all other obligations of the program and must reasonably believe that they are imminently threatened by harm from further violence if they remain in the assisted dwelling unit.

Commenters on the July 2012 interim rule advised that the exception to retention of tenant-based rental assistance to the CoC's geographic area was too narrow. HUD received comments, generally, about high-cost housing markets and the difficulty that providers are having in locating affordable units within their CoC's geographic area because of the high cost of housing. A commenter stated that the requirement to use CoC program funds within the CoC's geographic area would cause undue hardship for clients and subrecipients due to the difficulty and time required to find affordable units in high-cost areas of their State. HUD also received comments about how the limitation requiring CoC program funds to be used within the CoC's geographic area restricted tenant-choice and limited opportunities for program participants to identify affordable housing. In response to these concerns, several commenters proposed, as a partial solution, that the regulation be changed to permit program participants to use CoC program funds to rent units outside of the CoC's geographic area.

In light of the comments received on increasing mobility in the CoC program, and HUD's recently issued Affirmatively Furthering Fair Housing final rule,

which emphasizes the importance of housing choice,[1] HUD has determined to amend the CoC program regulations to allow all individuals and families receiving tenant-based rental assistance being paid for with CoC program funds (program participants) to choose housing outside of the CoC's geographic area and to retain their tenant-based rental assistance if they move outside of the CoC's geographic area, subject to the following conditions:

- The decision of a program participant to choose housing or move outside of the CoC's geographic area is one that is made in consultation between the program participant and the recipient or subrecipient.
- The recipient or subrecipient may decline a program participant's request to choose housing or move outside of the CoC's geographic area if the recipient or subrecipient is unable to comply with all CoC program requirements in the geographic area where the housing selected by the program participant is selected, including ensuring the housing meets required safety and quality standards (at the time of publication of this rule compliance with Housing Quality Standards (HQS) is required), carrying out environmental reviews where necessary, calculating the program participant's income for determining rent contributions, conducting an annual assessment of the program participant's service needs, making supportive services available for the duration of the program participant's residence in the project, ensuring supportive services are provided in compliance with all State and local licensing codes, and providing monthly case management in the case of rapid rehousing (RRH) projects. The only reason the provider may decline a program participant's request to choose housing or move outside of the CoC's geographic area is that the recipient or subrecipient cannot reasonably meet all statutory and regulatory program requirements. If the program participant's request to move is declined, but the program participant believes the provider could have reasonably accommodated the request, the program participant may contact the CoC or HUD directly.
- The receiving CoC (the CoC with jurisdiction over the geographic area to which the program participant seeks to move) is not involved in the decision to allow a program participant to move. Since discretion to move rests with the program participant, in consultation with the recipient or subrecipient providing the tenant-based rental assistance, with the goal being continuation of service by the original recipient or subrecipient, the receiving CoC may not prohibit the program participant from moving into its geographic area.
- The program participant remains in the Homeless Management Information System of the CoC where the program participant is enrolled for assistance.

In brief, this rule provides the opportunity for persons who are experiencing homelessness to have access to additional possible housing options while still maintaining their tenant-based rental assistance from the recipient within the CoC where they were determined eligible for, and began receiving assistance. This rule will accomplish this by allowing program participants to use their tenant-based rental assistance in an area outside of the CoC's geographic area where the household presented for, and was determined eligible for CoC program-funded tenant-based rental assistance. While this interim rule allows for expanded mobility, HUD anticipates that tenant-based rental assistance will be used principally within the CoC's geographic area.

With respect to a CoC program participant who has tenant-based rental assistance and is fleeing imminent threat of further harm from domestic violence, the existing regulations allow such participant to move outside of the CoC's geographic area, but the program participant's move is subject to the program participant having complied with all program requirements during their residence in the CoC's geographic area. This rule would exempt the recipient or subrecipient from regulatory requirements (such as providing monthly case management for RRH projects and conducting an annual assessment of the service needs of the program participant that has moved), but the recipient or subrecipient would not be exempt from statutory requirements such as participating in HMIS, ensuring housing meets quality standards, and ensuring the educational needs of children are met. This amendment would facilitate ensuring the safety needs of victims of domestic violence, dating violence, sexual assault, or stalking by imposing less burdensome requirements on recipients and subrecipients while still ensuring that the housing that will be occupied by the victim of domestic violence, dating violence, sexual assault, or stalking meets all statutory requirements, including minimum quality standards.

Specific Request for Comment: HUD seeks input from providers on the impact of exempting recipients or subrecipients from nonstatutory regulatory requirements when a program participant is fleeing imminent threat of further harm from domestic violence, dating violence, sexual assault, or stalking, and moves to another CoC's geographic area.

HUD also seeks input on exempting recipients or subrecipients from non-statutory regulatory requirements when any program participant, not just a program participant fleeing imminent threat of further harm from domestic violence, dating violence, sexual assault, or stalking, wishes to move outside of the CoC's geographic area, in order to support mobility of tenants that may be moving to access better job opportunities, schools, or other resources.

III. Justification for Interim Rulemaking

In accordance with its regulations on rulemaking at 24 CFR part 10, HUD, generally, publishes its rules for advance public comment.[2] Notice and public procedures may be omitted, however, if HUD determines that, in a particular case or class of cases, notice and public comment procedures are "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1.)

In this case, HUD has determined that it would be contrary to the public interest to delay these two amendments to the existing CoC regulations. HUD's work, subsequent to the July 2012, CoC interim rule on improving the voucher portability process, and the enactment of the Violence Against Women Act of 2013[3] emphasized to HUD the need to provide for mobility for participants in its programs and not terminating tenant-based assistance. As noted in HUD's Streamlining the Portability Process final rule,[4] and in HUD's Affirmatively Furthering Fair Housing final rule, mobility allows individuals or families

[1] See Affirmatively Furthering Fair Housing final rule, published on July 16, 2015, at 80 FR 42272.

[2] The Administrative Procedure Act (5 U.S.C. Subchapter II) (APA), which governs Federal rulemaking, provides in section 553(a) that matters involving a military or foreign affairs function of the United States or a matter relating to Federal agency management or personnel or to public property, loans, grants, benefits, or contracts are exempt from the advance notice and public comment requirement of sections 553(b) and (c) of the APA. In its regulations in 24 CFR 10.1, HUD has waived the exemption for advance notice and public comment for matters that relate to public property, loans, grants, benefits, or contracts, and has committed to undertake notice and comment rulemaking for these matters.

[3] Public Law 113–4, approved March 7, 2013.

[4] See final rule published on August 20, 2015, at 80 FR 50564.

greater choice in living in the areas of their choice. As noted in the preamble, this interim rule would allow program participants, in consultation with their service providers, to move to outside of a CoC's geographic area of service. The consultation is necessary because the goal is to strive for and ensure continued CoC service to the program participant. The interim rule removes the prohibition that only allowed individuals and families who are victims of domestic violence, dating violence, sexual assault, or stalking to move outside of the CoC's geographic area of service. Additionally, this rule removes additional requirements imposed on individuals and families who are victims of domestic violence, dating violence, sexual assault, or stalking seeking to move outside of CoC's geographic area of service, which may delay the ability of such individuals or families to move to a safe location.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

HUD expects it will receive few requests from program participants who are not domestic violence victims to move outside of the CoC's geographic area where they are currently residing. HUD does expect some requests will arise from program participants residing with the jurisdictions of CoCs that cover small geographic areas. HUD expects no increase or decrease in the number of requests from program participants who are victims of domestic violence as these program participants already have this flexibility. For these reasons, HUD believes the impact of this rule would be minimal, but the flexibility to move provided would align with two major HUD rulemakings: HUD's Affirmatively Furthering Fair Housing final rule and HUD's Violence Against Women Act 2013 final rule, to be issued later this year.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Environmental Impact

This rule covers tenant-based rental assistance. Accordingly, under 24 CFR 50.19(b)(11), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the ability of individuals and families participating in the CoC program and who have tenant-based rental assistance to move outside of a CoC's geographic service area but continue to be serviced by that CoC or under the CoC program.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

List of Subjects in 24 CFR Part 578

Community facilities, Continuum of Care, Emergency solutions grants, Grant programs—housing and community development, Grant program—social programs, Homeless, Rural housing, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 578 to read as follows:

PART 578—CONTINUUM OF CARE PROGRAM

■ 1. The authority citation for part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 2. In § 578.51, paragraph (c) is revised to read as follows:

§ 578.51 Rental assistance.

* * * * *

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. Up to 5 years' worth of rental assistance may be awarded to a project in one competition.

(1) When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder of their period of participation. Program participants who are receiving rental assistance in

transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move.

(3) Program participants who have complied with all program requirements during their residence, who have been a victim of domestic violence, dating violence, sexual assault, or stalking, who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence) if they remain in the assisted unit, and who are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety. These program participants may move to a different Continuum of Care's geographic service area even if the recipient or subrecipient cannot meet all regulatory requirements of this part in the new geographic area where the unit is located. The recipient or subrecipient, however, must be able to meet all statutory requirements of the Continuum of Care program either directly or through a third-party contract or agreement.

(4) Program participants other than those described in paragraph (c)(3) of this section may choose housing outside of the Continuum of Care's geographic area if the recipient or subrecipient, through its employees or contractors, is able to meet all requirements of this part in the geographic area where the program participant chooses housing. If the recipient or subrecipient is unable to meet the requirements of this part, either directly or through a third-party contract or agreement, the recipient or subrecipient may refuse to permit the program participant to retain the tenant-based rental assistance if the program participant chooses to move outside of the Continuum of Care's geographic area.

* * * * *

Dated: May 24, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

Approved on: May 24, 2016.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–13684 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 41

[167A2100DD/AAKC001030/A0A501010.999900 253G]

RIN 1076–AF08

Grants to Tribal Colleges and Universities and Diné College

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Education is updating its regulations governing grants to Tribal colleges and universities and Diné College. The Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (TCCUA), authorizes Federal assistance to institutions of higher education that are formally controlled or have been formally sanctioned or chartered by the governing body of an Indian Tribe or Tribes. The Navajo Community College Assistance Act of 1978, as amended (NCCA) authorizes Federal assistance to the Navajo Nation in construction, maintenance, and operation of Diné College. This final rule would update implementing regulations in light of amendments to the TCCUA and the NCCA.

DATES: This rule is effective July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education (202) 208–3559.

SUPPLEMENTARY INFORMATION:

I. Background
II. The Rule's Changes to the Current Regulations
III. Comments Received on the Proposed Rule and Responses to Comments
IV. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. Unfunded Mandates Reform Act
E. Takings (E.O. 12630)
F. Federalism (E.O. 13132)
G. Civil Justice Reform (E.O. 12988)
H. Consultation with Indian Tribes (E.O. 13175)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Effects on the Energy Supply (E.O. 13211)
L. Drafting Information

I. Background

The TCCUA authorizes grants for operating and improving Tribal colleges and universities to insure [sic] continued and expanded educational opportunities for Indian students and to allow for the improvement and expansion of the physical resources of such institutions. *See,* 25 U.S.C. 1801 *et seq.* The TCCUA also authorizes grants for the encouragement of endowment funds for the operation and improvement of Tribal colleges and universities. The NCCA authorizes grants to the Navajo Nation to assist in the construction, maintenance and operation of Diné College. *See* 25 U.S.C. 640a *et seq.*

In 1968, the Navajo Nation created the first Tribal college, now called Diné College—and other Tribal colleges quickly followed in California, North Dakota, and South Dakota. Today, there are 37 Tribal colleges in 17 states. The Tribally controlled institutions were chartered by one or more Tribes and are locally managed.

Tribal colleges generally serve geographically isolated populations. In a relatively brief period of time, they have become essential to educational opportunity for American Indian students. Tribal colleges are unique institutions that combine personal attention with cultural relevance, in such a way as to encourage American Indians—especially those living on reservations—to overcome barriers to higher education.

II. The Rule's Changes to the Current Regulations

The regulations at 25 CFR part 41 were originally published in 1979. Since the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, Title I) was enacted on October 17, 1978, over 30 years of amendments to the Act have been made. These include Public Law 98–192 (December 1, 1983), Public Law 99–428 (September 30, 1996), Public Law 105–244 (October 7, 1998), and Public Law 110–315 (August 14, 2008). Similarly, the Navajo Community College Assistance Act of 1978 (Pub. L. 95–471, Title II) was amended by Public Law 110–315 (August 14, 2008). This final rule incorporates updates required by those amendments. Specifically, the final rule:

- Makes "plain language" revisions under Executive Order 12866 and 12988 and by the Presidential Memorandum of June 1, 1998;
- Updates institutional names (*e.g.,* changing "Director, Office of Indian Education Programs" to "Director of the Bureau of Indian Education");
- Adds statutory authorities and makes accompanying statutory updates; and
- Combines the purpose, scope, and definitions into a new subpart A.

Significant changes the final rule makes include clarifying that: (1) The calculation of an Indian Student Count (ISC) only includes students making satisfactory progress, as defined by the Tribal college, towards a degree or certificate; (2) no credit hours earned by a high school student that will be used towards the student's high school degree or its equivalent are included in the ISC; and (3) grantees may exclude high school students for the purpose of calculating the total number of full-time equivalent students. Changes clarify often misunderstood requirements for an ISC and when high school students cannot be counted towards an ISC. The final rule also updates definitions per amended legislation; reorganizes and clarifies institutional grant eligibility, grant application procedures, Department of the Interior (DOI) grant reporting requirements, and essential information for determining Indian student eligibility. Presently, information is embedded in extended definitions and is difficult to find; the changes increase accessibility and correct outdated language and requirements.

The final rule makes several terminology changes throughout to reflect statutory language. These include replacing "Tribally controlled community colleges" with "Tribal colleges and universities," replacing "Navajo Community College" with "Diné College," and replacing "feasibility" with "eligibility" in appropriate places. A detailed table listing changes from the current rule to the final rule can be referenced in the publication of the proposed rule, 80 FR 49946 (August 18, 2015) because there have been no significant changes from the proposed to the final version of this rule.

III. Comments Received on the Proposed Rule and Responses to Comments

The BIE received one written comment and five oral comments. The following summarizes the comments received and our responses.

A. Definitions (41.3)

One commenter stated a concern that limiting the calculation of ISC to only include students making satisfactory progress would lead to a decrease in funding that could be used to help the very students who need it. The final rule indicates satisfactory progress is defined by the Tribal college or university. Tribal colleges and universities have accreditation requirements set by a nationally recognized accrediting agency or association determined by the U.S. Secretary of Education. Therefore, each Tribal college or university sets the requirements to meet satisfactory progress towards a degree or certificate.

A commenter asked why the proposed rule failed to include a definition of "unused portion of received funds". The final rule details how the Tribal college or university reports how much funds remain unspent and how the BIE will reallocate the unspent funds, incorporating the definition. *See* 25 CFR 41.33.

B. Indian Student Count (41.5)

Three comments addressed how ISC is determined. The first comment noted there is a reduction in time for counting Full-Time Equivalents (FTEs) from the first six weeks to the first three weeks of the semester, and asked what implications this would have on Tribal colleges and universities that have an add/drop deadline after the first three-weeks. The final rule, implementing an explicit requirement at 25 U.S.C. 1801(b)(1), requires ISC to be calculated on the basis of Indian students who are registered at the conclusion of the third week.

The second comment noted there is inconsistency throughout the regulation with the use of the term "students" and requested clarification as to whether the student is Native or non-Native. The definition of "Indian student" includes a student who is a member of an Indian Tribe or a biological child of a living or deceased member of an Indian Tribe. *See* 25 U.S.C. 1801(a)(7); 25 CFR 41.3. The final rule replaces "student" with "Indian student" where applicable to clarify that the provisions address Indian students only. *See, e.g.,* 25 CFR 41.5.

The third comment asked about whether online students are included in the ISC calculation and whether those students must also be Indian students. The final rule includes distance learning students who otherwise meet the definition of "Indian student" in the ISC count. *See* 25 CFR 41.5. The final rule's definition of "Indian student" includes a student who is a member of an Indian Tribe or a biological child of a living or deceased member of an Indian Tribe; documentation is required to verify eligibility. *See* 25 U.S.C. 1801(a)(7); 25 CFR 41.3.

C. Role of the Secretary of Education (41.17)

A commenter asked what the role of the U.S. Secretary of Education is, and if there will be any consultations between the Secretary of Education, Director of the BIE, and Tribes that charter Tribal colleges and universities to discuss how they can expand their joint responsibilities. The final rule establishes the role of the Secretary of Education at § 41.17. The BIE follows the Department of the Interior Tribal Consultation Policy and consults with Tribes on policies that have a substantial direct effect on one or more Tribes.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not have any effect on small entities because only Tribal colleges and universities are recipients of funding under the program governed by this rule. The Department provides funding to Tribal colleges and universities, which were created in response to the higher education needs of American Indians and generally serve geographically isolated populations that have no other means of accessing education beyond the high school level.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more

in any one year, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. This rule is limited to addressing grants for Tribal colleges and universities that are below the stated threshold and funding for the operation and improvement of Tribal colleges and universities comes from the Federal Government budget.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking". A takings implication assessment is not required.

F. Federalism (E.O.) 13132

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements statutory provisions that authorize grants for operating and improving Tribal colleges or universities to ensure continued and expanded educational opportunities for Indian students by providing financial assistance to be used for the operating expenses of education programs. Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will further implement the grants program for Tribal colleges and universities; accordingly, we have coordinated with representatives of federally recognized Tribes throughout the development of this rule. We collaborated with the American Indian Higher Education Consortium (AIHEC), which represents Tribal colleges and universities that will be affected by the rule. Presidents of Tribal colleges and universities provided the initial comments and drafted the Preliminary Discussion Draft. The BIE held five consultation sessions in 2014 (79 FR 54936, September 15, 2014) on the Preliminary Discussion Draft. The BIE received 35 comments and those that were significant were considered into the proposed rule. Following publication of the proposed rule, BIE hosted two Tribal consultation sessions with Indian Tribes. BIE has addressed the input received during those sessions in this final rule.

I. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires Office of Management and Budget (OMB) approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. This rule contains information collection requirements that already have OMB approval and are not being revised. OMB has approved the information collections and assigned two control numbers: OMB Control Number 1076–0018, and OMB Control Number 1076–0105, each expiring on December 31, 2018, and each with an estimated annual burden of 308 hours.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. *See* 43 CFR 46.210(i). We have also determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Drafting Information

The primary authors of this document are Juanita Mendoza, Acting Chief of Staff, Bureau of Indian Education, Dawn Baum, Office of the Solicitor—Division of Indian Affairs, and Regina Gilbert, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 41

Colleges or universities, Grants programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Department of the Interior amends title 25 of the Code of Federal Regulations to revise part 41 to read as follows:

PART 41—GRANTS TO TRIBAL COLLEGES AND UNIVERSITIES AND DINÉ COLLEGE

Subpart A—Applicability and Definitions

Sec.
41.1 When does this subpart apply?
41.3 What definitions are needed?
41.5 How is ISC/FTE calculated?
41.7 What happens if false information is submitted?

Subpart B—Tribal Colleges and Universities

41.9 What is the purpose of this subpart?
41.11 Who is eligible for financial assistance under this subpart?
41.13 For what activities can financial assistance to Tribal colleges and universities be used?
41.15 What activities are prohibited?
41.17 What is the role of the Secretary of Education?
41.19 How can a Tribal college or university establish eligibility to receive a grant?
41.21 How can a Tribe appeal the results of an eligibility study?

41.23 Can a Tribal college or university request a second eligibility study?
41.25 How does the Tribal college or university apply for a grant?
41.27 When can the Tribal college or university expect a decision on its application?
41.29 How will a grant be awarded?
41.31 When will the Tribal college or university receive funding?
41.33 What if there isn't enough money to pay the full grant amount?
41.35 What will happen if the Tribal college or university doesn't receive its appropriate share?
41.37 Is the Tribal college or university eligible for other grants?
41.39 What reports does the Tribal college or university need to provide?
41.41 Can the Tribal college or university receive technical assistance?
41.43 How must the Tribal college or university administer its grant?
41.45 How does the Tribal college or university apply for programming grants?
41.47 Are Tribal colleges or universities eligible for endowments?

Subpart C—Diné College

41.49 What is the purpose of this subpart?
41.51 What is the scope of this subpart?
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Authority: Public Law 95–471, Oct. 17, 1978, 92 Stat. 1325; amended Public Law 98–192, Dec. 1, 1983, 97 Stat. 1335; Public Law 99–428, Sept. 30, 1986, 100 Stat. 982; Public Law 105–244, Oct. 7, 1998, 112 Stat. 1619; Public Law 110–315, Aug. 14, 2008, 122 Stat. 3460; 25 U.S.C. 1801 *et seq.*; Public Law 98–192, Dec. 15, 1971, 85 Stat. 646; and Public Law 110–315, Aug. 14, 2008, 122 Stat. 3468; 25 U.S.C. 640a *et seq.*

Subpart A—Applicability and Definitions

§ 41.1 When does this subpart apply?

The provisions in this subpart A apply to subparts B and C.

§ 41.3 What definitions are needed?

As used in this part:

Academic facilities mean structures suitable for use as:

(1) Classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students;

(2) Research facilities;

(3) Facilities for administration of educational or research programs;

(4) Dormitories or student services buildings; or

(5) Maintenance, storage, support, or utility facilities essential to the operation of the foregoing facilities.

Academic term means a semester, trimester, or other such period (not less than six weeks in duration) into which a Tribal college or university normally subdivides its academic year, but does not include a summer term.

Academic year means a twelve month period established by a Tribal college or university as the annual period for the operation of the Tribal college's or university's education programs.

Assistant Secretary means the Assistant Secretary—Indian Affairs of the Department of the Interior.

BIE means the Bureau of Indian Education.

College or university means an institution of higher education that is formally controlled, formally sanctioned, or chartered by the governing body of an Indian Tribe or Tribes. To qualify under this definition, the college or university must:

(1) Be the only institution recognized by the Department for the Tribe, excluding Diné College; and

(2) If under the control, sanction, or charter of more than one Tribe, be the only institution recognized by the Department for at least one Tribe that currently has no other formally controlled, formally sanctioned, or chartered college or university.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

Eligible continuing education units (CEUs) means non-degree credits that meet the criteria established by the International Association of Continuing Education and Training.

Full-time means registered for 12 or more credit hours for an academic term.

Indian Student Count (ISC) or Indian Full-Time Equivalent (FTE) means a number equal to the total number of Indian students enrolled at a Tribal college or university, determined according to the formula in § 41.5.

Indian student means a student who is a member of an Indian Tribe, or a biological child of a living or deceased member of an Indian Tribe. Documentation is required to verify eligibility as a biological child of a living or deceased member of an Indian Tribe, and may include birth certificate and marriage license; Tribal records of student's parent; Indian Health Service eligibility cards; other documentation necessary to authenticate a student as eligible to be counted as an *Indian student* under this definition.

Indian Tribe means an Indian Tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, to be listed in the **Federal Register** pursuant to 25 CFR 83.5(a) as recognized by and eligible to receive services from the Bureau of Indian Affairs.

Institution of higher education means an institution as defined by section 1001(a) of Title 20 of the United States Code, except that clause (2) of such section is not applicable and the reference to Secretary in clause (5)(A) of such section will be deemed to refer to the Secretary of the Interior.

National Indian organization means an organization which the Secretary finds to be nationally based, represents a substantial Indian constituency and has expertise in the fields of Tribal colleges and universities, and Indian higher education.

NCCA means the Navajo Community College Act of 1978, as amended (25 U.S.C. 640a *et seq.*).

Operating expenses of education programs means the obligations and expenditures of a Tribal college or university for postsecondary education, except for obligations and expenditures for acquisition or construction of academic facilities. Permissible expenditures may include:

(1) Administration;

(2) Instruction;

(3) Maintenance and repair of facilities; and

(4) Acquisition and upgrade of equipment, technological equipment, and other physical resources.

Part-time means registered for less than 12 credit hours for an academic term.

Satisfactory progress means satisfactory progress toward a degree or certificate as defined by the Tribal college or university.

Secretary, unless otherwise designated, means the Secretary of the Interior, or his/her duly authorized representative.

TCCUA means the Tribally Controlled Colleges and Universities Assistance Act of 1978, as amended (25 U.S.C. 1801 *et seq.*).

You or *your* means the Tribal college or university.

§ 41.5 How is ISC/FTE calculated?

(a) ISC is calculated on the basis of eligible registrations of Indian students as of the conclusion of the third week of each academic term.

(b) To calculate ISC for an academic term, begin by adding all credit hours of full-time Indian students and all credit hours of part-time Indian students, including full-time and part-time distance education Indian students, who are registered at the conclusion of the third week of the academic term.

(c) Credit hours earned by Indian students who have not obtained a high school degree or its equivalent may be added if you have established criteria for the admission of such students on the basis of their ability to benefit from the education or training offered. You will be presumed to have established such criteria if your admission procedures include counseling or testing that measures students' aptitude to successfully complete the courses in which they enroll.

(d) No credit hours earned by an Indian student attending high school and applied towards the student's high school degree or its equivalent may be counted toward computation of ISC; and no credit hours earned by an Indian student not making satisfactory progress toward a degree or certificate may count toward the ISC.

(e) If ISC is being calculated for a fall term, add to the calculation in paragraph (b) of this section any credits earned in classes offered during the preceding summer term.

(f) Add to the calculation in paragraph (b) of this section those credits being earned in an eligible continuing education program at the conclusion of the third week of the academic term. Determine the number of those credits as follows:

(1) For institutions on a semester system: One credit for every 15 contact hours and

(2) For institutions on a quarter system: One credit for every 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction, as described in the criteria established by the International Association for Continuing Education and Training. Limit the number of calculated eligible continuing education credits to 10 percent of your ISC.

(g) Divide by 12 the final calculation in paragraph (f) of this section. The formula for the full calculation is expressed mathematically as:

$$ISC = (FTCR + PTCR + SCR + CECR)/12$$

(h) In the formula in paragraph (g) of this section, the abbreviations used have the following meanings:

(1) FTCR = the number of credit hours carried by full-time Indian students (students carrying 12 or more credit hours at the end of the third week of each academic term); and

(2) PTCR = the number of credit hours carried by part-time Indian students (students carrying fewer than 12 credit hours at the end of the third week of each academic term).

(3) SCR = in a fall term, the number of credit hours earned during the preceding summer term.

(4) CECR = the number of credit hours being earned in an eligible continuing education program at the conclusion of the third week of the academic term, in accordance with paragraph (f)(2) of this section.

§ 41.7 What happens if false information is submitted?

Persons submitting or causing to be submitted any false information in connection with any application, report, or other document under this part may be subject to criminal prosecution under provisions such as sections 371 or 1001 of Title 18, U.S. Code.

Subpart B—Tribal Colleges and Universities

§ 41.9 What is the purpose of this subpart?

This subpart prescribes procedures for providing financial and technical assistance under the TCCUA for the operation and improvement of Tribal colleges and universities and advancement of educational opportunities for Indian students. This subpart does not apply to Diné College.

§ 41.11 Who is eligible for financial assistance under this subpart?

(a) A Tribal college or university is eligible for financial assistance under this subpart only if it:

(1) Is governed by a board of directors or board of trustees, a majority of whom are Indians;

(2) Demonstrates adherence to stated goals, a philosophy, or a plan of operation directed to meet the needs of Indians;

(3) Has a student body that is more than 50 percent Indian (unless it has been in operation for less than one year);

(4) Is either:

(i) Accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education to be a reliable authority with regard to the quality of training offered; or

(ii) Is making reasonable progress toward accreditation according to such agency or association;

(5) Has received a positive determination after completion of an eligibility study; and

(6) Complies with the requirements of § 41.19.

(b) Priority in grants is given to institutions that were in operation on October 17, 1978, and that have a history of service to Indian people.

§ 41.13 For what activities can financial assistance to Tribal colleges and universities be used?

Tribal colleges and universities may use financial assistance under this subpart to defray expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college or university.

§ 41.15 What activities are prohibited?

Tribal colleges and universities must not use financial assistance awarded under this subpart in connection with religious worship or sectarian instruction. However, nothing in this subpart will be construed as barring instruction or practice in comparative religions or cultures or in languages of Indian Tribes.

§ 41.17 What is the role of the Secretary of Education?

(a) The Secretary may enter into an agreement with the Secretary of Education to obtain assistance to:

(1) Develop plans, procedures, and criteria for eligibility studies required under this subpart; and

(2) Conduct such studies.

(b) BIE must consult with the Secretary of Education to determine the reasonable number of students required to support a Tribal college or university.

§ 41.19 How can a Tribal college or university establish eligibility to receive a grant?

(a) Before a Tribal college or university can apply for an initial grant under this part, the governing body of one or more Indian Tribes must request a determination of eligibility on the college's or university's behalf.

(b) Within 30 days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, BIE will initiate an eligibility study to determine whether there is justification to encourage and maintain a Tribal college or university.

(c) The eligibility study will analyze the following factors:

(1) Financial feasibility based upon reasonable potential enrollment; considering:

(i) Tribal, linguistics, or cultural differences;

(ii) Isolation;

(iii) Presence of alternate educational sources;

(iv) Proposed curriculum;

(2) Levels of Tribal matriculation in and graduation from postsecondary educational institutions; and

(3) The benefits of continued and expanded educational opportunities for Indian students.

(d) Based upon results of the study, the Director will send the Tribe a written determination of eligibility.

(e) The Secretary and the BIE, to the extent practicable, will consult with national Indian organizations and with Tribal governments chartering the colleges or universities being considered.

§ 41.21 How can a Tribe appeal the results of an eligibility study?

If a Tribe receives a negative determination under § 41.19(d), it may submit an appeal to the Assistant Secretary within 45 days.

(a) Following the timely filing of a Tribe's notice of appeal, the Tribal college or university and the Tribe have a right to a formal review of the eligibility study, including a hearing upon reasonable notice within 60 days. At the hearing, the Tribal college or university and the appealing Tribe may present additional evidence or arguments to justify eligibility.

(b) Within 45 days of the hearing, the Assistant Secretary will issue a written ruling confirming, modifying, or reversing the original determination. The ruling will be final and BIE will mail or deliver it within one week of its issuance.

(c) If the Assistant Secretary does not reverse the original negative determination, the ruling will specify the grounds for the decision and state the manner in which the determination relates to each of the factors in § 41.11.

§ 41.23 Can a Tribal college or university request a second eligibility study?

If a Tribe is not successful in its appeal under § 41.21, it can request another eligibility study 12 months or more after the date of the negative determination.

§ 41.25 How does a Tribal college or university apply for a grant?

(a) If the Tribal college or university receives a positive determination of the eligibility study under § 41.19(d), it is entitled to apply for financial assistance under this subpart.

(b) To be considered for assistance, a Tribal college or university must submit an application by or before June 1st of the year preceding the academic year for which the Tribal college or university is requesting assistance. The application must contain the following:

Required information	Required details
(1) Identifying information	(i) Name and address of the Tribal college or university. (ii) Names of the governing board members, and the number of its members who are Indian. (iii) Name and address of the Tribe or Tribes that control or have sanctioned or chartered the Tribal college or university.
(2) Eligibility verification	The date on which an eligibility determination was received.
(3) Curriculum materials	(i) A statement of goals, philosophy, or plan of operation demonstrating how the education program is designed to meet the needs of Indians. (ii) A curriculum, which may be in the form of a college catalog or similar publication, or information located on the Tribal college or university Web site.
(4) Financial information	(i) A proposed budget showing total expected education program operating expenses and expected revenues from all sources for the academic year to which the information applies. (ii) A description of record-keeping procedures used to track fund expenditures and to audit and monitor funded programs.
(5) Enrollment information	(i) If the Tribal college or university has been in operation for more than one year, a statement of the total number of ISC (FTE Indian students) and the total number of all FTE students. Grantees may exclude high school students for the purpose of calculating the total number of FTE students. (ii) If the Tribal college or university has not yet begun operations, or has been in operation for less than one year, a statement of expected enrollment, including the total number of FTE students and the ISC (FTE Indian students) and may also require verification of the number of registered students after operations have started.
(6) Assurances and requests	(i) Assurance that the Tribal college or university will not deny admission to any Indian student because that student is, or is not, a member of a specific Tribe. (ii) Assurance that the Tribal college or university will comply with the requirements in § 41.39 of this subpart. (iii) A request and justification for a specific waiver of any requirement of 25 CFR part 276 which a Tribal college or university believe to be inappropriate.
(7) Certification	Certification by the chief executive that the information on the application is complete and correct.

(c) Material submitted in a Tribal college's or university's initial successful grant application will be retained by the BIE. A Tribal college or university submitting a subsequent application for a grant, must either confirm the information previously submitted remains accurate or submit updated information, as necessary.

§ 41.27 When can the Tribal college or university expect a decision on its application?

Within 45 days of receiving an application, the Director will notify the Tribal college or university in writing whether or not the application has been approved.

(a) If the Director approves the application, written notice will explain when the BIE will send the Tribal college or university a grant agreement under § 41.19.

(b) If the Director disapproves the application, written notice will include:

(1) The reasons for disapproval; and

(2) A statement advising the Tribal college or university of the right to amend or supplement the Tribal college's or university's application within 45 days.

(c) The Tribal college or university may appeal a disapproval or a failure to act within 45 days of receipt following the procedures in § 41.21.

§ 41.29 How will a grant be awarded?

If the Director approves the Tribal college's or university's application, the BIE will send the Tribal college or university a grant agreement that incorporates the Tribal college's or university's application and the

provisions required by § 41.25. The Tribal college or university grant will be for the fiscal year starting after the approval date of the application.

(a) The BIE will generally calculate the amount of the Tribal college or university grant using the following procedure:

(1) Begin with a base amount of $8,000 (adjusted annually for inflation);

(2) Multiply the base amount by the number of FTE Indian students in attendance during each academic term; and

(3) Divide the resulting sum by the number of academic terms in the academic year.

(b) All grants under this section are subject to availability of appropriations.

(c) If there are insufficient funds to pay the amount calculated under paragraph (a) of this section, BIE will reduce the grant amount awarded to each eligible Tribal college or university on a pro rata basis.

§ 41.31 When will the Tribal college or university receive funding?

(a) BIE will authorize payments equal to 95 percent of funds available for allotment by either July 1 or within 14 days after appropriations become available, with the remainder of the payment made no later than September 30.

(b) BIE will not commingle funds appropriated for grants under this subpart with other funds expended by the BIE.

§ 41.33 What if there isn't enough money to pay the full grant amount?

This section applies if BIE has to reduce payments under § 41.29(c).

(a) If additional funds have not been appropriated to pay the full amount of grants under this part on or before June 1st of the year, the BIE will notify all grant recipients in writing. The Tribal college or university must submit a written report to the BIE on or before July 1st explaining how much of the grant money remains unspent.

(b) After receiving the Tribal college's or university's report under paragraph (a) of this section, BIE will:

(1) Reallocate the unspent funds using the formula in § 41.29 in proportion to the amount of assistance to which each grant recipient is entitled but has not received;

(2) Ensure that no Tribal college or university will receive more than the total annual cost of its education programs;

(3) Collect unspent funds as necessary for redistribution to other grantees under this section; and

(4) Make reallocation payments on or before August 1st of the academic year.

§ 41.35 What will happen if the Tribal college or university doesn't receive its appropriate share?

(a) If the BIE determines the Tribal college or university has received financial assistance to which the Tribal college or university was not entitled, BIE will:

(1) Promptly notify the Tribal college or university; and

(2) Reduce the amount of the Tribal college's or university's payments under this subpart to compensate for any overpayments or otherwise attempt to recover the overpayments.

(b) If a Tribal college or university has received less financial assistance than the amount to which the Tribal college or university was entitled, the Tribal college or university should promptly notify the BIE. If the BIE confirms the miscalculation, BIE will adjust the amount of the Tribal college's or university's payments for the same or subsequent academic years to compensate for the underpayments. This adjustment will come from the Department's general funds and not from future appropriated funds.

§ 41.37 Is the Tribal college or university eligible for other grants?

Yes. Eligibility for grants under this subpart does not bar a Tribal college or university from receiving financial assistance under any other Federal program.

§ 41.39 What reports does the Tribal college or university need to provide?

(a) The Tribal college or university must provide the BIE, on or before December 1 of each year, a report that includes:

(1) An accounting of the amounts and purposes for which the Tribal college or university spent assistance received under this part during the preceding academic year;

(2) An accounting of the annual cost of the Tribal college's or university's education programs from all sources for the academic year; and

(3) A final performance report based upon the criteria the Tribal college's or university's goals, philosophy, or plan of operation.

(b) The Tribal college or university must report to the BIE their FTE Indian student enrollment for each academic term of the academic year within three (3) weeks of the date the Tribal college or university makes the FTE calculation.

§ 41.41 Can the Tribal college or university receive technical assistance?

(a) If a Tribal college or university sends the BIE a written request for technical assistance, BIE will respond within 30 days.

(b) The BIE will provide technical assistance either directly or through annual contract to a national Indian organization that the Tribal college or university designates.

(c) Technical assistance may include consulting services for developing programs, plans, and eligibility studies and accounting, and other services or technical advice.

§ 41.43 How must the Tribal college or university administer its grant?

In administering any grant provided under this subpart, a Tribal college or university must:

(a) Provide services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because they either are, or are not, a member of a specific Indian Tribe; and

(c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to a Tribal college or university request and justification for a waiver.

§ 41.45 How does the Tribal college or university apply for programming grants?

(a) Tribes and Tribal entities may submit a written request to the BIE for a grant to conduct planning activities for the purpose of developing proposals for the establishment of Tribally controlled colleges and universities, or to determine the need and potential for the establishment of such colleges and universities. BIE will provide written notice to the Tribal college or university of its determination on the grant request within 30 days.

(b) Subject to the availability of appropriations, BIE may provide such grants to up to five Tribes and Tribal entities in the amount of $15,000 each.

§ 41.47 Are Tribal colleges or universities eligible for endowments?

Yes. Tribal colleges and universities are eligible for endowments under a signed agreement between the Tribal college and university and the Secretary as described in 25 U.S.C. 1832. Endowments must be invested in a trust fund and the Tribal college or university may only use the interest deposited for the purpose of defraying expenses associated with the operation of the Tribal college or university (25 U.S.C. 1833).

Subpart C—Diné College

§ 41.49 What is the purpose of this subpart?

The purpose of this subpart is to assist the Navajo Nation in providing education to the members of the Tribe and other qualified applicants through a community college, established by that Tribe, known as Diné College. To that end, the regulations in this subpart prescribe procedures for providing financial and technical assistance for Diné College under the NCCA.

§ 41.51 What is the scope of this subpart?

The regulations in this subpart are applicable to the provision of financial assistance to Diné College pursuant to NCCA, title II of the TCCUA.

§ 41.53 How does Diné College request financial assistance?

To request financial assistance, Diné College must submit an application. The application must be certified by the Diné College chief executive officer and include:

(a) A statement of Indian student enrollment and total FTE enrollment for the preceding academic year;

(b) A curriculum description, which may be in the form of a college catalog or like publication or information located on the Diné College Web site; and

(c) A proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the grant year.

§ 41.55 How are grant funds processed?

(a) BIE will identify the budget request for Diné College separately in its annual budget justification.

(b) BIE will not commingle funds appropriated for grants under this subpart with appropriations that are historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

§ 41.57 When will the application be reviewed?

Within 45 days of receiving the application the BIE will send a grant agreement for signature by the Diné College president or his or her designee in an amount determined under § 41.29(a). The grant agreement will incorporate the grant application and include the provisions required by § 41.25.

§ 41.59 When will grant funds be paid?

(a) Initial grant funds will be paid in an advance installment of not less than 40 percent of the funds available for allotment by October 1st.

(b) The remainder of the grant funds will be paid by July 1st after the BIE adjusts the amount to reflect any overpayments or underpayments made in the first disbursement.

§ 41.61 Is Diné College eligible to receive other grants?

Yes. Eligibility for grants under this subpart does not bar Diné College from receiving financial assistance under any other Federal program.

§ 41.63 How can financial assistance be used?

(a) The Diné College must use financial assistance under this subpart only for operation and maintenance, including educations programs, annual capital expenditures, major capital improvements, mandatory payments, supplemental student services, and improvement and expansion, as described in 25 U.S.C. 640c–1(b)(1);

(b) The Diné College must not use financial assistance under this subpart for religious worship or sectarian instruction. However, this subpart does not prohibit instruction about religions, cultures or Indian Tribal languages.

§ 41.65 What reports must be provided?

(a) Diné College must submit on or before December 1st of each year a report that includes:

(1) An accounting of the amounts and purposes for which Diné College spent the financial assistance during the preceding academic year;

(2) The annual cost of Diné College education programs from all sources for the academic year; and

(3) A final report of Diné College's performance based upon the criteria in its stated goals, philosophy, or plan of operation.

(b) Diné College must report its FTE Indian student enrollment for each academic term within six weeks of the date it makes the FTE calculation.

§ 41.67 Can Diné College receive technical assistance?

Technical assistance will be provided to Diné College as noted in § 41.41.

§ 41.69 How must Diné College administer its grant?

In administering any grant provided under this subpart, Diné College must:

(a) Provide all services or assistance under this subpart in a fair and uniform manner;

(b) Not deny admission to any Indian student because the student is, or is not, a member of a specific Indian Tribe; and

(c) Comply with part 276 of this chapter, unless the BIE expressly waives specific inappropriate provisions of part 276 in response to Diné College's request and its justification for a waiver.

§ 41.71 Can Diné College appeal an adverse decision under a grant agreement by the Director?

Diné College has the right to appeal to the Assistant Secretary by filing a written notice of appeal within 45 days of the adverse decision. Within 45 days after receiving notice of appeal, the Assistant Secretary will conduct a formal hearing at which time the Diné College may present evidence and argument to support its appeal. Within 45 days of the hearing, the Assistant Secretary will issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director. If the ruling does not reverse the adverse decision, the Assistant Secretary will state in detail the basis of his/her ruling. The ruling of the Assistant Secretary on an appeal will be final for the Department.

Dated: May 26, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14094 Filed 6–13–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 3, 100, and 165

[Docket Number USCG–2016–0060]

Renaming of Sector Baltimore as Sector Maryland-National Capital Region; Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Code of Federal Regulations (CFR) to reflect its renaming of Coast Guard Sector Baltimore as Coast Guard Sector Maryland-National Capital Region. These conforming amendments are necessary to ensure the CFR accurately reflects the new command name changes that were approved September 17, 2015. These amendments are not expected to have a substantive impact on the public.

DATES: This rule is effective June 14, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0060 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Dennis Sens, Fifth Coast Guard District, Prevention Division, telephone 757–398–6204, email *Dennis.M.Sens@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OFCO Operating Facility Change Order
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On September 17, 2015, the Coast Guard approved renaming Sector Baltimore as Sector Maryland-National Capital Region. The Coast Guard is renaming the Sector to more clearly identify the unit's missions and area of responsibility to the public.

We did not publish a notice of proposed rulemaking (NPRM) before this final rule. The Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2) and (b)(A) because the changes it makes are conforming amendments involving agency management and organization. The Coast Guard also finds good cause exists under 5 U.S.C. 553(b)(B) for not publishing an NPRM because the changes will have no substantive effect on the public, and notice and comment are therefore unnecessary. For the same reasons, the Coast Guard finds good cause under 5 U.S.C. 553(d)(3) to make the rule effective fewer than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 93. The purpose of this rule is to more clearly identify the functions and area of responsibility of this Coast Guard unit to the public. The Sector's location and boundaries are described in 33 CFR 3.25–15. The previous organization of Sector Baltimore is described and reflected in regulations, which also contain contact details and other references to Sector Baltimore. These conforming amendments update those regulations so that they contain current information under unit name Sector Maryland-National Capital Region.

IV. Discussion of the Rule

This rule amends existing regulations in 33 CFR to reflect the renaming of Sector Baltimore as "Sector Maryland-National Capital Region." It also removes a temporary section that mentions Sector Baltimore, § 165.T05–0767, which we intended to be a rule lasting 6 hours that was to expire in 2013 but which still appears in the CFR. There will be no relocation of units, operational assets or personnel due to the renaming of Sector Baltimore. Sector Maryland-National Capital Region will retain Captain of the Port, Federal Maritime Security Coordinator, Officer in Charge Marine Inspection, Federal on Scene Coordinator, and all other authorities, responsibilities and sub-units, as previously assigned to Sector Baltimore. Only the title of these officials will change to reflect the new name of the sector. See Operating Facility Change Order (OFCO) No. 007–16 which is available in the docket for this rule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

Executive orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. Because this rule involves internal agency organization and non-substantive changes, it will not impose any costs on the public.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general NPRM and therefore is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have considered its potential impact on small entities and found that it will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves internal administrative action involving the renaming a Coast Guard unit. It is categorically excluded from further review under paragraph 34(b) of Figure 2–1 of the Commandant Instruction.

List of Subjects

33 CFR Part 3

Organization and functions (Government agencies).

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 3, 100, and 165 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 92 & 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

§ 3.25–15 [Amended]

■ 2. In § 3.25–15, in the section heading, remove the word "Baltimore" and add in its place the words "Maryland-National Capital Region" and in the text, remove the word "Baltimore's" in the first and second sentences and add in its place the words "Sector Maryland-National Capital Region's".

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 3. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

§ 100.501 [Amended]

■ 4. In § 100.501—
■ a. In paragraph (d)(2), remove the words "Sector Baltimore" and add, in their place, the words "Sector Maryland-National Capital Region" and remove the words "Baltimore, Maryland" and add, in their place, the words "Maryland-National Capital Region"; and
■ b. In the Table to § 100.501, in heading (b.), remove the word "Baltimore" and add, in its place, the words "Maryland-National Capital Region".

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 5. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

§ 165.T05–0767 [Removed]

■ 6. Remove § 165.T05–0767.

§ 165.500 [Amended]

■ 7. In § 165.500—
■ a. In paragraph (b), remove the word "Baltimore" and add, in its place, the words "Maryland-National Capital Region"; and
■ b. In paragraphs (c)(2), remove the words "Baltimore, Maryland", and add, in their place, the words "Maryland-National Capital Region".

§ 165.502 [Amended]

■ 8. In § 165.502, in paragraph (b)(1), remove the words "Baltimore, Maryland", and add, in their place, the words "Maryland-National Capital Region".

§ 165.505 [Amended]

■ 9. In § 165.505, in paragraph (b)(1), remove the words "Baltimore, Maryland", and add, in their place, the words "Maryland-National Capital Region".

§ 165.506 [Amended]

■ 10. In § 165.506—
■ a. In paragraph (c)(2), remove the words "Sector Baltimore" and add, in their place, the words "Sector Maryland-National Capital Region" and remove the words "Baltimore, Maryland" and add, in their place, the words "Maryland-National Capital Region"; and
■ b. In the Table to § 165.506, in heading (b.), remove the word "Baltimore" and add, in its place, the words "Maryland-National Capital Region".

§ 165.507 [Amended]

■ 11. In § 165.507—
■ a. In paragraph (a) remove the words "Baltimore, Maryland" wherever they appear, and add, in their places the words "Maryland-National Capital Region"; and
■ b. In paragraphs (c)(2) and (3), remove the words "Baltimore, Maryland" wherever they appear, and add, in their places the words "Maryland-National Capital Region" and in paragraph (c)(3) remove the words "Baltimore to" and add, in their place, the words "Sector Maryland-National Capital Region".

§ 165.508 [Amended]

■ 12. In § 165.508—
■ a. In paragraph (a) remove paragraph designation (1) and remove the words "Baltimore, Maryland" wherever they appear, and add, in their places the words "Maryland-National Capital Region"; and
■ b. In paragraphs (c)(2) and (3), remove the words "Baltimore, Maryland" wherever they appear, and add, in their places the words "Maryland-National Capital Region" and in paragraph (c)(3) remove the words "Baltimore to" and add, in their place, the words "Sector Maryland-National Capital Region".

§ 165.509 [Amended]

■ 13. In § 165.509, in paragraphs (a) and (c)(2) and (3), remove the words "Baltimore, Maryland" wherever they appear, and add, in their places, the words "Maryland-National Capital Region", and in paragraph (c)(3) remove the words "Baltimore to" and add, in their place the words "Sector Maryland-National Capital Region".

§ 165.512 [Amended]

■ 14. In § 165.512—
■ a. In paragraph (a)(1), remove the words "Baltimore, Maryland" wherever they appear, and add, in their places, the words "Maryland-National Capital Region"; and remove the words "Sector Baltimore" and add, in their place, the words "Sector Maryland-National Capital Region"; and

■ b. In paragraphs (c)(2) and (3), remove the words "Baltimore, Maryland" wherever they appear, and add, in their places the words "Maryland-National Capital Region".

§ 165.513 [Amended]

■ 15. In § 165.513—

■ a. In paragraph (a) remove the words "Port Baltimore" wherever they appear, and add, in their places, the words "Port, Maryland-National Capital Region" and remove the words "Baltimore, Maryland" wherever they appear, and add, in their places the words "Maryland-National Capital Region"; and

■ b. In paragraphs (c)(2)–(4), remove the words "Port Baltimore" wherever they appear, and add, in their places, the words "Port, Maryland-National Capital Region".

§ 165.518 [Amended]

■ 16. In § 165.518, in paragraph (c)(7) remove the word "Baltimore" and add, in its place, the words "Maryland-National Capital Region", and in paragraph (c)(3) remove the words "Baltimore to" and add, in their place, the words "Sector Maryland-National Capital Region".

Dated: June 8, 2016.

Katia Kroutil,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2016–13983 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0472]

Drawbridge Operation Regulation; Middle River, Between Bacon Island and Lower Jones Tract, California

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the San Joaquin County (Bacon Island Road) highway bridge across Middle River, mile 8.6, at between Bacon Island and Lower Jones Tract, California. The deviation is necessary to allow the bridge owner to make emergency mechanical and electrical repairs. This deviation allows the bridge to be secured in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective without actual notice from June 14, 2016 until 11:59 p.m. on July 1, 2016. For the purposes of enforcement, actual notice will be used from June 8, 2016, until June 14, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0472], is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil*.

SUPPLEMENTARY INFORMATION: San Joaquin County Department of Public Works has requested a temporary change to the operation of the San Joaquin County (Bacon Island Road) highway drawbridge, mile 8.6, over Middle River, between Bacon Island and Lower Jones Tract, California. The drawbridge navigation span provides approximately 8 feet vertical clearance above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.171(a). Navigation on the waterway is commercial and recreational.

The drawspan operating machinery failed unexpectedly on May 28, 2016 and the drawspan will remain secured in the closed-to-navigation position until 11:59 p.m. on July 1, 2016, to allow the bridge owner to make emergency repairs. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will not be able to open for emergencies. Old River can be used as an alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard has also informed waterway users through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 8, 2016.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2016–13987 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1029]

RIN 1625–AA00

Safety Zones; Coast Guard Sector Ohio Valley Annual and Recurring Safety Zones Update

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending and updating its safety zones relating to recurring fireworks shows and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a safety zone. Through this rulemaking the current list of recurring safety zones is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these safety zones are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective June 14, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2015–1029 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone (502) 779–5347, email *James.C.Robinson@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Captain of the Port (COTP) Ohio Valley is establishing, amending, and updating its current list of recurring safety zones codified in Table 1 of 33 CFR 165.801, for the COTP Ohio Valley zone.

On March 7, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Sector Ohio Valley Annual and Recurring Safety Zones Update" (81 FR 11706). The public comment period ended on June 6, 2016. Before the comment period closed, the Coast Guard received information regarding two of the events. For the event listed in Table 1, Line 21, the event sponsor provided a new location and for the event listed in Table 1, Line 56, the event sponsor requested that for 2016 the event be held on July 1 instead of July 4. See Section IV. for more information on these two events.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Though we are not providing a full 30 day notice period, the Coast Guard is now providing less than 30 days notice before the first recurring event enforcement is required on July 2. It is impracticable to provide a full 30-days notice because this rule must be effective July 2, 2016.

III. Legal Authority and Need for Rule

The Coast Guard's authority for establishing a safety zone is contained at 33 U.S.C. 1231. The Coast Guard is amending and updating the safety zones under 33 CFR part 165 to include the most up to date list of recurring safety zones for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include fireworks displays, air shows, and others. The current list in Table 1 of 33 CFR 165.801 requires amending to provide new information on existing safety zones, include new safety zones expected to recur annually or biannually, and to remove safety zones that are no longer required. Issuing individual regulations for each new safety zone, amendment, or removal of an existing safety zone creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring safety zones.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received information correcting the location for one recurring event and a date change for another from the event sponsors during the NPRM comment period. Therefore for 2016, we will be issuing a temporary final rule under Docket number 2016–0502 to establish a safety zone for the Riverfront Independence Festival Fireworks event, listed in Table 1, Line 21. The temporary final rule will be issued because for 2016, the event sponsor requested to change the location of the event from Ohio River, Mile 602.0–603.5 (Indiana) to Ohio River, Mile 607.5–608.6 (Indiana). If the event sponsor decides to continue to hold the event annually at the new location, the Coast Guard will publish an NPRM in the **Federal Register** to permanently change the event location.

In addition for 2016, we will be issuing a temporary final rule under Docket number 2016–0279 to establish a safety zone for the Kindred Communications/Dawg Dazzle event, listed in Table 1, Line 56. The temporary final rule will reflect that for 2016 the event will be held on July 1 instead of July 4, which is the date listed in this final rule. If the event sponsor decides to continue to hold the event annually on July 1, the Coast Guard will publish an NPRM in the **Federal Register** to permanently change the event date.

All other proposed amendments will be adopted without change from the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes safety zones limiting access to certain areas under 33 CFR 165 within Sector Ohio Valley's AOR. The effect of this rulemaking will not be significant because these safety zones are limited in scope and duration. Additionally, the public is given advance notification through local forms of notice, the **Federal Register**, and/or Notices of Enforcement and thus will be able to plan around the safety zones in advance. Deviation from the safety zones established through this proposed rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will also inform the community of these safety zones so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the safety zone areas during periods of enforcement. The safety zones will not have a significant economic impact on a substantial number of small entities because they are limited in scope and will be in effect for short periods of time. Before the enforcement period, the Coast Guard COTP will issue maritime advisories widely available to waterway users. Deviation from the safety zones established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis.

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub.L.104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34(g)) of the Instruction because it involves establishment of safety zones.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 165.801 by revising table 1 to read as follows:

§ 165.801 Annual Fireworks displays and other events in Sector Ohio Valley's AOR.

* * * * *

Date	Sponsor/name	Location	Safety zone
1. Multiple days—April through November.	Pittsburgh Pirates/Pittsburgh Pirates Fireworks.	Pittsburgh, PA	Allegheny River, Mile 0.2–0.8 (Pennsylvania).
2. Multiple days—April through November.	Cincinnati Reds/Cincinnati Reds Season Fireworks.	Cincinnati, OH	Ohio River, Mile 470.1–470.4; extending 500 ft. from the State of Ohio shoreline (Ohio).
3. 2 days—Third Friday and Saturday in April.	Thunder Over Louisville/Thunder Over Louisville.	Louisville, KY	Ohio River, Mile 602.0–606.0 (Kentucky).
4. Last Sunday in May	Friends of Ironton	Ironton, OH	Ohio River, Mile 326.7–327.7 (Ohio).
5. 3 days—Third weekend in April	Henderson Tri-Fest/Henderson Breakfast Lions Club.	Henderson, KY	Ohio River, Mile 803.5–804.5 (Kentucky).
6. 1 day—A Saturday in July	Paducah Parks and Recreation Department/Cross River Swim.	Paducah, KY	Ohio River, Mile 934.0–936.0 (Kentucky).
7. 1 day—First weekend in June	Bellaire All-American Days	Bellaire, OH	Ohio River, Mile 93.5–94.5 (Ohio).
8. 2 days—Second weekend of June	Rice's Landing Riverfest	Rices Landing, PA	Monongahela River, Mile 68.0–68.8 (Pennsylvania).
9. 1 day—First Sunday in June	West Virginia Symphony Orchestra/Symphony Sunday.	Charleston, WV	Kanawha River, Mile 59.5–60.5 (West Virginia).
10. 1 day—Saturday before 4th of July	Riverfest Inc./Saint Albans Riverfest	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
11. 1 day—4th July	Greenup City	Greenup, KY	Ohio River, Mile 335.2–336.2 (Kentucky).
12. 1 day—4th July	Middleport Community Association	Middleport, OH	Ohio River, Mile 251.5–252.5 (Ohio).
13. 1 day—4th July	People for the Point Party in the Park	South Point, OH	Ohio River, Mile 317–318 (Ohio).

Date	Sponsor/name	Location	Safety zone
14. 1 day—Last weekend in June or first weekend in July.	Riverview Park Independence Festival	Louisville, KY	Ohio River, Mile 618.5–619.5 (Kentucky).
15. 1 day—Third or fourth week in July.	Upper Ohio Valley Italian Heritage Festival/Upper Ohio Valley Italian Heritage Festival Fireworks.	Wheeling, WV	Ohio River, Mile 90.0–90.5 (West Virginia).
16. 1 day—4th or 5th of July	City of Cape Girardeau July 4th Fireworks Show on the River.	Cape Girardeau, MO	Upper Mississippi River, Mile 50.0–52.0.
17. 1 day—Third or fourth of July	Harrah's Casino/Metropolis Fireworks	Metropolis, IL	Ohio River, Mile 942.0–945.0 (Illinois).
18. 1 day—During the first week of July.	Louisville Bats Baseball Club/Louisville Bats Firework Show.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
19. 1 day—July 4th	Waterfront Independence Festival/Louisville Orchestra Waterfront 4th.	Louisville, KY	Ohio River, Mile 603.0–604.0 (Kentucky).
20. 1 day—During the first week of July.	Celebration of the American Spirit Fireworks/All American 4th of July.	Owensboro, KY	Ohio River, Mile 755.0–759.0 (Kentucky).
21. 1 day—During the first week of July.	Riverfront Independence Festival Fireworks.	New Albany, IN	Ohio River, Mile 602.0–603.5 (Indiana).
22. 1 day—July 4th	Shoals Radio Group/Spirit of Freedom Fireworks.	Florence, AL	Tennessee River, Mile 255.0–257.0 (Alabama).
23. 1 day—Saturday before July 4th	Town of Cumberland City/Lighting up the Cumberlands Fireworks.	Cumberland City, TN	Cumberland River, Mile 103.0–105.0 (Tennessee).
24. 1 day—July 4th	Knoxville office of Special Events/Knoxville July 4th Fireworks.	Knoxville, TN	Tennessee River, Mile 647.0–848.0 (Tennessee).
25. 1 day—July 4th	NCVC/Music City July 4th	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
26. 1 day—Saturday before July 4th, or Saturday after July 4th.	Grand Harbor Marina/Grand Harbor Marina July 4th Celebration.	Counce, TN	Tennessee-Tombigbee Waterway, Mile 450.0–450.5 (Tennessee).
27. 1 day—Second Saturday in July	City of Bellevue, KY/Bellevue Beach Park Concert Fireworks.	Bellevue, KY	Ohio River, Mile 468.2–469.2 (Kentucky and Ohio).
28. 1 day—Sunday before Labor Day	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 469.2–470.5 (Kentucky and Ohio).
29. 1 day—July 4th	Summer Motions Inc./Summer Motion	Ashland, KY	Ohio River, Mile 322.1–323.1 (Kentucky).
30. 1 day—Last weekend in June or First weekend in July.	City of Point Pleasant/Point Pleasant Sternwheel Fireworks.	Point Pleasant, WV	Ohio River, Mile 265.2–266.2 (West Virginia).
31. 1 day—July 3rd or 4th	City of Charleston/City of Charleston Independence Day Celebration.	Charleston, WV	Kanawha River, Mile 58.1–59.1 (West Virginia).
32. 1 day—July 4th	Civic Forum/Civic Forum 4th of July Celebration.	Portsmouth, OH	Ohio River, Mile 355.5–356.5 (Ohio).
33. 1 day—Second Saturday in August.	Guyasuta Days Festival/Borough of Sharpsburg.	Pittsburgh, PA	Allegheny River, Mile 005.5–006.0 (Pennsylvania).
34. 1 day—Third week in October	Pittsburgh Foundation/Bob O'Connor Cookie Cruise.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5 (Pennsylvania).
35. 1 day—Second full week of August.	PA FOB Fireworks Display	Pittsburgh, PA	Allegheny River, Mile 0.8–1.0 (Pennsylvania).
36. 1 day—Third week of August	Beaver River Regatta Fireworks	Beaver, PA	Ohio River, Mile 25.2–25.8 (Pennsylvania).
37. 1 day—December 31	Pittsburgh Cultural Trust/Highmark First Night Pittsburgh.	Pittsburgh, PA	Allegheny River Mile, 0.5–1.0 (Pennsylvania).
38. 1 day—Friday before Thanksgiving	Pittsburgh Downtown Partnership/Light Up Night.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.0 (Pennsylvania).
39. Multiple days—April through November.	Pittsburgh Riverhounds/Riverhounds Fireworks.	Pittsburgh, PA	Monongahela River, Mile 0.22–0.77 (Pennsylvania).
40. 3 days—Second or third weekend in June.	Hadi Shrine/Evansville Freedom Festival Air Show.	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
41. 1 day—Second or third Saturday in June, the last day of the Riverbend Festival.	Friends of the Festival, Inc./Riverbend Festival Fireworks.	Chattanooga, TN	Tennessee River, Mile 463.5–464.5 (Tennessee).
42. 2 days—Second Friday and Saturday in June.	City of Newport, KY/Italianfest	Newport, KY	Ohio River, Miles 469.6–470.0 (Kentucky and Ohio).
43. 1 day—Last Saturday in June	City of Aurora/Aurora Firecracker Festival.	Aurora, IN	Ohio River Mile, 496.7; 1400 ft. radius from the Consolidated Grain Dock located along the State of Indiana shoreline at (Indiana and Kentucky).
44. 1 day—second weekend in June	City of St. Albans/St. Albans Town Fair.	St. Albans, WV	Kanawha River, Mile 46.3–47.3 (West Virginia).
45. 1 day—Saturday before July 4th	PUSH Beaver County/Beaver County Boom.	Beaver, PA	Ohio River, Mile 24.0–25.6 (Pennsylvania).
46. 1 day—4th of July (Rain date—July 5th).	Monongahela Area Chamber of Commerce/Monongahela 4th of July Celebration.	Monongahela, PA	Monongahela River, Mile 032.0–033.0 (Pennsylvania).
47. 1 day—Saturday Third or Fourth full week of July (Rain date—following Sunday).	Oakmont Yacht Club/Oakmont Yacht Club Fireworks.	Oakmont, PA	Allegheny River, Mile 12.0–12.5 (Pennsylvania).

Date	Sponsor/name	Location	Safety zone
48. 1 day—Week of July 4th	Three Rivers Regatta Fireworks/EQT 4th of July Celebration.	Pittsburgh, PA	Ohio River, Mile 0.0–0.5, Allegheny River, Mile 0.0–0.5, and Monongahela River, Mile 0.0–0.5 (Pennsylvania).
49. 1 day—3rd or 4th of July	City of Paducah, KY	Paducah, KY	Ohio River, Mile 934.0–936.0; Tennessee River, mile 0.0–1.0 (Kentucky).
50. 1 day—3rd or 4th of July	City of Hickman, KY	Hickman, KY	Lower Mississippi River, Mile 921.0–923.0 (Kentucky).
51. 1 day—During the first week of July.	Evansville Freedom Celebration	Evansville, IN	Ohio River, Miles 791.0–795.0 (Indiana).
52. 3 days—One of the first two weekends in July.	Madison Regatta, Inc./Madison Regatta.	Madison, IN	Ohio River, Miles 555.0–560.0 (Indiana).
53. 1 day—July 4th	Cities of Cincinnati, OH and Newport, KY/July 4th Fireworks.	Newport, KY	Ohio River, Miles 469.6–470.2 (Kentucky and Ohio).
54. 2 days—second weekend in July	Marietta Riverfront Roar/Marietta Riverfront Roar.	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
55. 1 day—1st weekend in July	Gallia County Chamber of Commerce/Gallipolis River Recreation Festival.	Gallipolis, OH	Ohio River, Mile 269.5–270.5 (Ohio).
56. 1 day—July 4th	Kindred Communications/Dawg Dazzle.	Huntington, WV	Ohio River, Mile 307.8–308.8 (West Virginia).
57. 1 day—Last weekend in August	Swiss Wine Festival/Swiss Wine Festival Fireworks Show.	Ghent, KY	Ohio River, Mile 537 (Kentucky).
58. 1 day—Saturday of Labor Day weekend.	University of Pittsburgh Athletic Department/University of Pittsburgh Fireworks.	Pittsburgh, PA	Allegheny River, Mile 0.0–0.25 (Pennsylvania).
59. Sunday, Monday, or Thursday from September through January.	Pittsburgh Steelers Fireworks	Pittsburgh, PA	Ohio River, Mile 0.3–Allegheny River, Mile 0.2 (Pennsylvania).
60. 3 days—Third weekend in September.	Wheeling Heritage Port Sternwheel Festival Foundation/Wheeling Heritage Port Sternwheel Festival.	Wheeling, WV	Ohio River, Mile 90.2–90.7 (West Virginia).
61. 1 day—Second Saturday in September.	Ohio River Sternwheel Festival Committee fireworks.	Marietta, OH	Ohio River, Mile 171.5–172.5 (Ohio).
62. 1 day—Second weekend of October.	Leukemia and Lymphoma Society/Light the Night Walk Fireworks.	Nashville, TN	Cumberland River, Mile 190.0–192.0 (Tennessee).
63. 1 day—First Saturday in October	West Virginia Motor Car Festival	Charleston, WV	Kanawha River, Mile 58–59 (West Virginia).
64. 1 day—Friday before Thanksgiving	Kittanning Light Up Night Firework Display.	Kittanning, PA	Allegheny River, Mile 44.5–45.5 (Pennsylvania).
65. 1 day—First week in October	Leukemia & Lymphoma Society/Light the Night.	Pittsburgh, PA	Ohio River, Mile 0.0–0.4 (Pennsylvania).
66. 1 day—Friday before Thanksgiving	Duquesne Light/Santa Spectacular	Pittsburgh, PA	Monongahela River, Mile 0.00–0.22, Allegheny River, Mile 0.00–0.25, and Ohio River, Mile 0.0–0.3 (Pennsylvania).

* * * * *

Dated: June 9, 2016.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–14030 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0389]

RIN 1625–AA00

Safety Zone; Ohio River Mile 43.2 to Mile 43.6, East Liverpool, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Ohio River from mile 43.2 to mile 43.6. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

DATES: This rule is effective on July 2, 2016, from 9 p.m. until 10:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0389 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard received notice on April 26, 2016 that this fireworks display would take place. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by July 2, 2016. The fireworks display has been advertised and the local community has prepared for the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For these same reasons, the Coast Guard finds good cause for implementing this rule less than thirty days before the effective date of the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on July 2, 2016. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone on July 2, 2016 from 10:00 p.m. until 11:30 p.m. The safety zone will cover all navigable waters on the Ohio River from mile 43.2 to mile 43.6. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway and for a limited duration of less than two hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue Broadcast Notices to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we

do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969, (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than two hours that will prohibit entry on the Ohio River between mile 43.2 and mile 43.6, during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0389 to read as follows:

§ 165.T08–0389 Safety Zone, Ohio River, East Liverpool, OH.

(a) *Location.* The following area is a safety zone: Ohio River mile 43.2 to mile 43.6.

(b) *Enforcement.* This rule will be enforced, from 10:00 p.m. until 11:30 p.m. on July 2, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh or a designated representative. The Captain of the Pittsburgh representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information broadcasts.* The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: May 27, 2016.

L. McClain, Jr.,

Commander, U.S. Coast Guard, Acting Captain of the Port Pittsburgh.

[FR Doc. 2016–14027 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0235; FRL–9946–75]

Chlorantraniliprole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorantraniliprole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested the tolerances associated with pesticide petition number (PP) 5E8371, under the Federal Food, Drug, and Cosmetic Act (FFDCA). Additionally, the Agency is amending the existing tolerance for egg that was inadvertently omitted in a previous action.

DATES: This regulation is effective June 14, 2016. Objections and requests for hearings must be received on or before August 15, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0235, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through

the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0235 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 15, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0235, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 26, 2015 (80 FR 51759) (FRL–9931–74), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP) 5E8371 by Interregional Research Project Number 4 (IR–4), 500 College Road East, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on nut, tree, group 14–12 at 0.02 parts per million (ppm); and fruit, stone, group 12–12 at 2.5 ppm. This petition additionally requested that 40 CFR 180.628 be amended by revising the existing tolerance in or on artichoke, globe from 4.0 ppm to 2.0 ppm; and hop, dried cones from 90 ppm to 40 ppm. Upon establishment of the tolerances associated with (PP) 5E8371, IR–4 requests to remove the following existing tolerances in 40 CFR 180.628: Nut, tree, group 14 at 0.04 ppm; pistachio at 0.04 ppm; fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; cherry, sweet at 2.0 ppm; cherry, tart at 2.0 ppm; plum, chickasaw at 2.0 ppm; and plum, damson at 2.0 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by DuPont Crop Protection, the registrant, which is available in the docket EPA–HQ–OPP–2013–0235 at *http://www.regulations.gov.*

There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for chlorantraniliprole, consistent with FFDCA section 408(b)(2).

In the **Federal Register** of February 7, 2014 (79 FR 7397) (FRL–9905–56), EPA established tolerances for residues of chlorantraniliprole in or on fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; onion, green subgroup 3–07B at 3.0 ppm; peanut, hay at 90 ppm; and peanut at 0.06 ppm. EPA is relying upon those risk assessments and the findings made in the February 7, 2014 **Federal Register** document in support of this action. The toxicity profile of chlorantraniliprole has not changed. Moreover, because EPA is simply lowering the previously assessed tolerance levels (where the EPA assumed tolerance-level residues for all crops and including the tree nut group 14–12 at 0.02 ppm), the previous dietary estimates also do not change as a result of this action. Therefore, the previously published risk assessments that supported the establishment of those tolerances remain valid.

The petitioner requested to lower currently established tolerances for residues of chlorantraniliprole in/on hops dried cones from 90 ppm to 40 ppm and globe artichoke from 4.0 ppm to 2.0 ppm in order to harmonize with the Codex maximum residue limits (MRLs). Crop field trial studies were submitted for hops and globe artichoke that indicate lowering these tolerances are appropriate and will support the existing U.S. registrations. The petitioner also requested to lower the existing tolerance of 4.0 ppm for stone fruit group 12–12, except cherry, chickasaw plum, and damson plum and remove the cherry, sweet; cherry, tart; plum, chickasaw; and plum, damson tolerances established at 2.0 ppm and establish a tolerance for stone fruit crop group 12–12 at 2.5 ppm to align with the Canadian MRL. EPA has determined that the existing residue chemistry data support this new tolerance level, which is lower than the current tolerances for some commodities and higher for others. Further, the petitioner requested to convert the tree nut crop group 14 to tree nut crop group 14–12 and to remove the tolerance for pistachio to lower the tolerance for the group (and for the now-included pistachio commodity) from 0.40 ppm to 0.02 ppm to harmonize the U.S. tolerance with the Codex and Canadian MRLs. EPA has determined that the existing residue chemistry data support the request for crop group conversion and for lowering the tolerance level.

Furthermore, EPA issued a final rule in the **Federal Register** of September 18, 2013, concerning the addition of certain commodities to the 40 CFR 180.628. The EPA determined that the tolerance level for egg should be increased from 0.2 ppm to 1.0 ppm, and EPA assessed egg using the tolerance of 1.0 ppm in 2013 as well as in February 2014. This was inadvertently omitted from the table in the 2013 Final Rule. Therefore, this document corrects that omission.

Therefore, EPA relies upon the findings made in the February 7, 2014, **Federal Register** document, as well as the review of the additional globe artichoke and dried cones hop field trial data and existing residue chemistry data in support of this rule. EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorantraniliprole residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for these tolerances, please refer to the February 7, 2014, **Federal Register** document and its supporting documents, available at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2013–0235. Further information about EPA's determination that an updated risk assessment was not necessary may be found in the document, "Chlorantraniliprole (DPX–E2Y45): Petition for Updating Crop Group Tolerances for Nut Tree Group 14–12 and Fruit Stone Group 12–12, and Amending Established Tolerances for Chlorantraniliprole in/on Artichoke Globe and Hop Dried Cones." in docket ID number EPA–HQ–OPP–2013–0235.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, liquid chromatography mass spectrometry/mass spectrometry (LC/MS/MS); Method uPont-11374, is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Based on the data supporting the petition, EPA has harmonized chlorantraniliprole tolerances in or on artichoke, globe at 2.0 ppm; hop, dried cones at 40 ppm; and nut, tree, group 14–12 at 0.02 ppm with established Codex MRLs.

C. International Trade Considerations

In this rulemaking, EPA is reducing the tolerances for hops, dried cones from 90 ppm to 40 ppm; globe artichoke from 4.0 ppm to 2.0 ppm; lowering the existing tolerance of 4.0 ppm for stone fruit group 12–12, except cherry, chickasaw plum, and damson plum and establishing a lower tolerance for stone fruit crop group 12–12 at 2.5 ppm; and converting and lowering the tree nut crop group 14 and pistachio tolerances to tree nut crop group 14–12 at 0.40 ppm to 0.02 ppm. The petitioner requested these reductions in order to harmonize with Codex and Canadian MRLs. The reduction is appropriate based on available data and residue levels resulting from registered use patterns.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures Agreement, EPA notified the WTO of the request to revise these tolerances on September 14, 2015 as WTO notification G/SPS/N/USA/2778. In this action, EPA is allowing the existing higher tolerances to remain in effect for 6 months following the publication of this rule in order to allow a reasonable interval for producers in the exporting countries to adapt to the requirements of these modified tolerances. On December 14, 2016, those existing higher tolerances will expire, and the new reduced tolerances for artichoke, globe; fruit, stone, group 12–12; hop, dried cones; and nut, tree, group 14–12 will remain to cover residues of chlorantraniliprole on those commodities. Before that date, residues of chlorantraniliprole on those commodities would be permitted up to the higher tolerance levels; after that date, residues of chlorantraniliprole on artichoke, globe; the commodities contained in stone fruit group 12–12 and tree nut group 14–12; and hop, dried cones will need to comply with the new lower tolerance levels. This reduction in tolerance is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods.

V. Conclusion

Therefore, tolerances are established for residues of chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide, in or on in or on artichoke, globe at 2.0 ppm; fruit, stone, group 12–12 at 2.5 ppm; hop, dried cones at 40 ppm; and nut, tree, group 14–12 at 0.02 ppm. Upon establishment of the aforementioned tolerances, the Agency is removing the tolerances for cherry, sweet at 2.0 ppm; cherry, tart at 2.0 ppm; plum, chickasaw at 2.0 ppm; and plum, damson at 2.0 ppm as they are subsumed within the newly established group 12–12 tolerances. The Agency is adding an expiration date of December 14, 2016 to the existing tolerances for artichoke, globe at 4.0 ppm; nut, tree, group 14 at 0.04 ppm; pistachio at 0.04 ppm; fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum at 4.0 ppm; and hop, dried cones at 90 ppm. Residues of chlorantraniliprole will be covered by these higher tolerances until the expiration date, after which time, they will need to comply with the lower tolerances being established today. Finally, the Agency is amending the existing tolerance for egg (increasing the tolerance level from 0.2 ppm to 1.0 ppm) to finalize its efforts to establish that tolerance in the **Federal Register** of September 18, 2013.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.628, in the table in paragraph (a):

■ a. Remove the entries for "Cherry, sweet," "Cherry, tart," "Plum, chickasaw," and "Plum, damson;"

■ b. Revise the entry for "Egg;"

■ c. Amend the existing entries by adding a footnote for "Artichoke, globe," "Fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum," "Hop, dried cones," "Nut, tree, group 14," and "Pistachio;" and

■ d. Add alphabetically the entries for "Artichoke, globe," "Fruit, stone, group 12–12," "Hop, dried cones," and "Nut, tree, group 14–12."

The additions and revisions read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Artichoke, globe [1]	4.0
Artichoke, globe	2.0
* * * * *	
Egg	1.0
* * * * *	
Fruit, stone, group 12–12	2.5
Fruit, stone, group 12–12, except cherry, chickasaw plum, and damson plum [1]	4.0
* * * * *	
Hop, dried cones [1]	90
Hop, dried cones	40
* * * * *	
Nut, tree, group 14 [1]	0.04
Nut, tree, group 14–12	0.02
* * * * *	
Pistachio [1]	0.04
* * * * *	

[1] This tolerance expires on December 14, 2016.

* * * * *

[FR Doc. 2016–13910 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0749; FRL–9942–23]

Clofentezine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clofentezine in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 14, 2016. Objections and requests for hearings must be received on or before August 15, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0749, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review

the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0749 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 15, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0749, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 11, 2015 (80 FR 7559) (FRL–9921–94), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E8312) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.446 be amended by establishing tolerances for residues of the acaricide clofentezine in or on avocado at 0.3 parts per million (ppm); papaya at 0.3 ppm; fruit, pome, group 11–10 at 0.5 ppm; cherry, subgroup 12–12A at 1.0 ppm; peach, subgroup 12–12B at 1.0 ppm; and fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm. Upon the approval of the aforementioned tolerances, IR–4 proposed that the existing tolerances for apple at 0.5 ppm; pear at 0.5 ppm; cherry at 1.0 ppm; nectarine at 1.0 ppm; peach at 1.0 ppm; and grape at 1.0 ppm be removed as unnecessary. That document referenced a summary of the petition prepared by Makhteshim Agan of North America, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received in response to the notice of filing, however it related to a different chemical.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for clofentezine including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with clofentezine follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Subchronic and chronic studies indicate the liver is the primary target organ for clofentezine with secondary effects on the thyroid. Body weight and body weight gain were decreased whereas liver weights were increased and hepatocellular enlargement was reported along with other observations (increases in plasma cholesterol and triglyceride levels). The induction of the liver enzyme, uridine diphosphate glucuronyltransferase (UDPGT) and the subsequent increase in the metabolism and the excretion of the thyroid

hormone T4 reduced the availability of T4 required for the general metabolism and the maintenance of homeostasis. The decreased levels of plasma T4 resulted in the stimulation of the thyroid by the pituitary gland to raise the plasma T4 levels. Thyroid changes in the form of colloid depletion, thyroid follicular cell hypertrophy and hyperplasia were observed as a means to regain the homeostasis.

Two pre-natal developmental toxicity studies are available, one in the rat and one in the rabbit. No evidence (quantitative or qualitative) of increased susceptibility was seen in either study (developmental NOAELs were set at or above the limit dose for both studies). There was no evidence (quantitative or qualitative) of increased susceptibility seen following pre-and/or post-natal exposure in rats for 2-generations in the reproduction study (NOAEL set at the highest dose tested).

Clofentezine does cause thyroid tumors in male rats after long-term high exposure resulting in progressive effects on the thyroid that leads to hyperplasia and eventual tumor formation. No mechanism or mode of action has been submitted to the Agency at this time for clofentezine. As a result, clofentezine has been classified as a possible human carcinogen based on male rat thyroid follicular cell adenoma and/or carcinoma combined tumor rates. The Q_1* value for use in clofentezine risk assessment using the ¾ inter species scaling factor is 3.76×10^{-2} (mg/kg/day)$^{-1}$. Clofentezine is not considered to be a mutagen.

Specific information on the studies received and the nature of the adverse effects caused by clofentezine as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled "Clofentezine." Human-Health Risk Assessment to Support a Section 3 Registration Request to Add New Uses on Avocado and Papaya, and New Uses for Pome Fruit Group 11–10, Cherry sub-group 12–12A, Peach sub-group 12–12B, and Small Fruit Vine Climbing except Fuzzy Kiwifruit Subgroup 13–07F based on Existing Tolerances on Representative Commodities" on page 38 in docket ID number EPA–HQ–OPP–2014–0749.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for clofentezine used for human risk assessment is shown in Table 1 of this Unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CLOFENTEZINE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	No appropriate endpoint was identified including developmental toxicity studies in rats and rabbits.		
Chronic dietary (All populations)	NOAEL= 1.25 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.013 mg/kg/day. cPAD = 0.013 mg/kg/day	1-year chronic dog study—LOAEL = 25 mg/kg based on increased liver weights, hepatocellular enlargement, and increased serum cholesterol, triglycerides and alkaline phosphatase levels.
Cancer (Oral, dermal, inhalation).	Classification: Possible human carcinogen (classification of C), Q* using the ¾ interspecies scaling factor is 3.76×10^{-2} (mg/kg/day)$^{-1}$.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clofentezine, EPA considered exposure under the petitioned-for tolerances as well as all existing clofentezine tolerances in 40 CFR 180.446. EPA assessed dietary exposures from clofentezine in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for clofentezine; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, a partially refined chronic dietary exposure and risk assessment was performed that directly

incorporated average field trial residues and used percent crop treated information.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. If quantitative cancer risk assessment is appropriate, cancer risk may be quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier non cancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that clofentezine should be classified as possible human carcinogen and a linear approach has been used to quantify cancer risk. Cancer risk was quantified using the same estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Average percent crop treated estimates were used in the chronic and cancer dietary risk assessments for the following crops that are currently registered for clofentezine: Almonds: 5%; apples: 2.5%; apricots: 2.5%; cherries: 5%; grapes: 1%; nectarines: 5%; peaches: 5%; pears: 5%; and walnuts: 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which clofentezine may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for clofentezine in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of clofentezine. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of clofentezine for chronic exposures for non-cancer and cancer assessments are estimated to be 0.062 parts per billion (ppb) for surface water and 0.041 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic and cancer dietary risk assessment, the water concentration of value 0.062 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clofentezine is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found clofentezine to share a common mechanism of toxicity with any other substances, and clofentezine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that clofentezine does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Two pre-natal developmental toxicity studies were available, one in the rat and one in the rabbit. No evidence (quantitative or qualitative) of increased susceptibility was seen in either study (developmental NOAELs were set at or above the limit dose for both studies). There was no evidence (quantitative or qualitative) of increased susceptibility seen following pre-and/or post-natal exposure in rats for 2-generations in the reproduction study (NOAEL set at the highest dose tested).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clofentezine is complete.

ii. There is no indication that clofentezine is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that clofentezine results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic and cancer analyses incorporated anticipated residues (average residues from available field trial data) for all registered and proposed commodities and the latest PCT data available. The highest estimated drinking water concentrations of clofentezine were incorporated directly into the chronic and cancer assessments. These assessments will not underestimate the exposure and risks posed by clofentezine.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, clofentezine is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clofentezine from food and water will utilize <1% of the cPAD for all population groups. There are no residential uses for clofentezine.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short- and intermediate-term adverse effect was identified; however, clofentezine is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- or intermediate-term risk), no further assessment of short- or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for clofentezine.

4. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for cancer exposure, EPA has concluded that by applying the $Q_1{}^*$ of 3.76×10^{-2} mg/kg/day to the exposure value results in a cancer risk estimate of 3.8×10^{-7} to the general U.S. population. EPA generally considers cancer risks (expressed as the probability of an increased cancer case) in the range of 1 in 1 million (or 1×10^{-6}) or less to be negligible.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to clofentezine residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs for residues on avocado and papaya.

The U.S. pome fruit tolerance of 0.5 ppm is harmonized with the Codex MRL.

The U.S. tolerance is 1.0 ppm in/on stone fruit (12–12A and 12–12B). The Codex MRL for stone fruit is 0.5 ppm. The clofentezine residues in/on representative stone fruit crops, cherry and peach, from the submitted U.S. field trial data are greater than 0.5 ppm and

setting the tolerances for 12–12A and 12–12B at 0.5 ppm to harmonize with Codex could result a tolerance exceedance for U.S. growers. Therefore, the U.S. tolerance cannot be harmonized with Codex MRL for stone fruit at this time.

The U.S. tolerance of 1.0 ppm for the crop subgroup fruit, small, vine climbing, except fuzzy kiwifruit, 13–07F does not harmonize with the Codex MRL of 2.0 ppm. The petitioner requested a 13–07F subgroup tolerance at 1.0 ppm, which would maintain the existing tolerance on grapes at 1.0 ppm consistent with the MRL at 1.0 ppm maintained by several countries including Japan and Korea. EPA is not harmonizing with Codex in order to maintain MRL harmony with several other countries to avoid potential export issues.

V. Conclusion

Therefore, tolerances are established for residues of clofentezine in or on avocado at 0.30 ppm; papaya at 0.30 ppm; fruit, pome, group 11–10 at 0.50 ppm; cherry, subgroup 12–12A at 1.0 ppm; peach, subgroup 12–12B at 1.0 ppm; and fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 1.0 ppm. In addition, the existing tolerances for apple at 0.5 ppm; pear at 0.5 ppm; cherry at 1.0 ppm; nectarine at 1.0 ppm; peach at 1.0 ppm; and grape at 1.0 ppm are removed as unnecessary.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.446, in the table in paragraph (a)(1):

■ a. Remove the entries for "Apple", "Cherry", "Grape", "Nectarine", "Peach", and "Pear"; and

■ b. Add alphabetically the entries for "Avocado", "Cherry, subgroup 12–12A", "Fruit, pome, group 11–10", "Fruit, small, vine climbing, except fuzzy kiwifruit, Subgroup 13–07F", "Papaya", and "Peach, subgroup 12–12B".

The additions read as follows:

§ 180.446 Clofentezine; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * * * *	
Avocado	0.30
Cherry, subgroup 12–12A	1.0
Fruit, pome, group 11–10	0.50
Fruit, small, vine climbing, except fuzzy kiwifruit, Subgroup 13–07F	1.0
* * * * *	
Papaya	0.30
Peach, subgroup 12–12B	1.0
* * * * *	

* * * * *

[FR Doc. 2016–13911 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 114
Tuesday, June 14, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 850

[Docket No. AU–RM–11–CBDPP]

RIN 1992–AA39

Chronic Beryllium Disease Prevention Program; Correction

AGENCY: Office of Environment, Health, Safety and Security, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and public hearings; correction.

SUMMARY: This document corrects the **ADDRESSES** section to the notice of proposed rulemaking and public hearings which published in the **Federal Register** on June 7, 2016, regarding the Chronic Beryllium Disease Prevention Program. This correction revises the addresses relating to two of the public hearings.

DATES: June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, 202–586–4714, email: *jackie.rogers@hq.doe.gov,* or Meredith Harris, 301–903–6061, email: *meredith.harris@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule document FR 2016–12547 appearing on page 36704, in the issue of Tuesday, June 7, 2016, (81 FR 36704), the following corrections should be made:

On page 36704, in the second column, the next to the last paragraph in the **ADDRESSES** section is corrected to the following:

1. Richland, WA: HAMMER Federal Training Facility, State Department Room, 2890 Horn Rapids Road, Richland, WA 99354;

On page 36704, in the third column, the first paragraph in the **ADDRESSES** section is corrected to the following:

3. Las Vegas, NV: North Las Vegas Facility, 2621 Losee Road, Building C1, Auditorium, North Las Vegas, NV 89030–4129.

Issued in Washington, DC, on June 8, 2016.

Bill McArthur,

Acting Director, Office of Health and Safety.

[FR Doc. 2016–14020 Filed 6–13–16; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 252

[Docket No. R–1540; Regulation YY]

RIN 7100 AE 54

Enhanced Prudential Standards for Systemically Important Insurance Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for public comment on the application of enhanced prudential standards to certain nonbank financial companies.

SUMMARY: Pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Board of Governors of the Federal Reserve System is inviting public comment on the proposed application of enhanced prudential standards to certain nonbank financial companies that the Financial Stability Oversight Council has determined should be supervised by the Board. The Board is proposing corporate governance, risk-management, and liquidity risk-management standards that are tailored to the business models, capital structures, risk profiles, and systemic footprints of the nonbank financial companies with significant insurance activities.

DATES: Comments must be submitted by August 17, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1540, RIN 7100 AE 54, by any of the following methods:

Agency Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: regs.comments@federalreserve.gov. Include docket R–1540, RIN 7100 AE 54 in the subject line of the message.

FAX: (202) 452–3819 or (202) 452–3102.

Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site are *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW., (between 18th and 19th Streets), Washington, DC 20551 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas Sullivan, Associate Director, (202) 475–7656, Linda Duzick, Manager, (202) 728–5881, Noah Cuttler, Senior Financial Analyst, (202) 912–4678, or Matt Walker, Senior Analyst & Insurance Team Project Manager, (202) 872–4971, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Tate Wilson, Counsel, (202) 452–3696, or Steve Bowne, Senior Attorney, (202) 452–3900, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Board of Governors of the Federal Reserve System (Board) to establish enhanced prudential standards for nonbank financial companies that the Financial Stability Oversight Council (Council) has determined should be supervised by the Board and bank holding companies with total consolidated assets equal to or greater than $50 billion in order to prevent or mitigate risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of these companies.[1] The enhanced prudential standards must include risk-based capital requirements and leverage limits, liquidity requirements, certain risk-management requirements, resolution-planning requirements, single-counterparty credit limits, and stress-test requirements. Section 165 also permits the Board to establish

[1] 12 U.S.C. 5365.

additional enhanced prudential standards, including a contingent capital requirement, an enhanced public disclosure requirement, a short-term debt limit, and any other prudential standards that the Board determines are appropriate.

In prescribing enhanced prudential standards, section 165(a)(2) of the Dodd-Frank Act permits the Board to tailor the enhanced prudential standards among companies on an individual basis, taking into consideration their "capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board . . . deems appropriate."[2] In addition, under section 165(b)(3) of the Dodd-Frank Act, the Board is required to take into account differences among bank holding companies covered by section 165 of the Dodd-Frank Act and nonbank financial companies supervised by the Board, based on statutory considerations.[3]

The factors the Board must consider include: (1) The factors described in sections 113(a) and (b) of the Dodd-Frank Act (12 U.S.C. 5313(a) and (b)); (2) whether the companies own an insured depository institution; (3) nonfinancial activities and affiliations of the companies; and (4) any other risk-related factors that the Board determines appropriate.[4] The Board must, as appropriate, adapt the required standards in light of any predominant line of business of nonbank financial companies, including activities for which particular standards may not be appropriate.[5] Section 165(b)(3) of the Dodd-Frank Act also requires the Board, to the extent possible, to ensure that small changes in the factors listed in sections 113(a) and 113(b) of the Dodd-Frank Act would not result in sharp, discontinuous changes in the enhanced prudential standards established by the Board under section 165(b)(1) of the Dodd-Frank Act.[6] The statute also directs the Board to take into account any recommendations made by the Council pursuant to its authority under section 115 of the Dodd-Frank Act.[7]

For bank holding companies with total consolidated assets equal to or greater than $50 billion and certain foreign banking organizations, the Board has issued an integrated set of enhanced prudential standards through a series of rulemakings, including the Board's capital plan rule,[8] stress-testing rules,[9] resolution plan rule,[10] and the Board's enhanced prudential standards rule under Regulation YY.[11] As part of the integrated enhanced prudential standards applicable to the largest, most complex bank holding companies, the Board also adopted enhanced liquidity requirements through the liquidity coverage ratio rule and adopted enhanced leverage capital requirements through a supplementary leverage ratio. Further, the Board issued risk-based capital charges and an enhanced supplementary leverage ratio for the most systemic bank holding companies.[12] In addition, through a final order the Board established enhanced prudential standards for General Electric Capital Corporation, a nonbank financial company designated by the Council for supervision by the Board.[13] In the preamble accompanying the final enhanced prudential standards regulation for bank holding companies, the Board stated its intent to assess thoroughly the business model, capital structure, and risk profile of each company in considering the application of enhanced prudential standards to nonbank financial companies designated by the Council, consistent with the Dodd-Frank Act.[14]

The Board invites public comment on the application of corporate governance and risk-management and liquidity risk-management standards to certain insurance-focused nonbank financial companies that the Council determined should be subject to Board supervision.[15] Specifically, the enhanced prudential standards would apply to any nonbank financial company that meets two requirements: (1) The Council has determined pursuant to section 113 of the Dodd-Frank Act that the company should be supervised by the Board and subjected to enhanced prudential standards, and (2) the company has 40 percent or more of its total consolidated assets related to insurance activities as of the end of either of the two most recently completed fiscal years (systemically important insurance companies) or otherwise has been made subject to these requirements by the Board. As of the date of publication of this document in the **Federal Register**, American International Group, Inc. (AIG), and Prudential Financial, Inc. (Prudential), would be required to comply with the proposed enhanced prudential standards, if adopted as proposed.[16]

The corporate governance and risk-management standard would build on the core provisions of the Board's SR letter 12–17, Consolidated Supervision Framework for Large Financial Institutions.[17] The proposed liquidity risk-management requirements would help mitigate liquidity risks at systemically important insurance companies. The proposal would tailor these standards to account for the differences in business models, capital structure, risk profiles, existing supervisory framework, and systemic footprints between bank holding companies and systemically important insurance companies.

The Board believes that it is appropriate to seek public comment on the application of the proposed standards in order to provide transparency regarding the regulation and supervision of systemically important insurance companies. The public comment process will provide systemically important insurance companies supervised by the Board and interested members of the public with the opportunity to comment and will help guide the Board in future application of enhanced prudential standards to other nonbank financial companies.

Question 1: The Board invites comment on all aspects of the proposed rule, including in particular the aspects noted in more detailed questions at the end of each section.

Question 2: The Board invites comment on the 40 percent threshold contained in the proposed definition of systemically important insurance company. Would an alternative measure be more appropriate? Why or why not?

II. Corporate Governance and Risk-Management Standard

A. Background

During the preceding decades and the recent financial crisis in particular, a number of insurers that experienced material financial distress had significant deficiencies in key areas of corporate governance and risk management.[18] Effective enterprise-wide risk management by large, interconnected financial companies promotes financial stability by reducing the likelihood of a large, interconnected financial company's material distress or failure. An enterprise-wide approach to risk management would allow systemically important insurance companies to appropriately identify, measure, monitor, and control risk throughout their entire organizations, including risks that may arise from intragroup transactions, unregulated entities, or centralized material operations that would not be subject to review at the legal entity level.

Accordingly, the Board is proposing to apply to systemically important insurance companies an enhanced corporate governance and risk-management standard that would build on the core provisions of SR 12–17, the Board's consolidated supervision framework for large financial institutions.[19] These standards would be applied, however, in a manner that is tailored to account for the business model, capital structure, risk profile, and activities of financial firms that are largely engaged in insurance (rather than banking) activities. Specifically, the proposal creates responsibilities for a systemically important insurance company's risk committee, chief risk officer, and chief actuary.

B. Risk Committee and Risk-Management Framework

Consistent with section 165(h)(1) of the Dodd-Frank Act, the proposed rule would require a systemically important insurance company to maintain a risk committee that approves and periodically reviews the risk-management policies of the company's global operations and oversees the operation of the company's global risk-management framework.[20] A large, interconnected financial institution's risk committee, acting in its oversight role, should fully understand the institution's corporate governance and risk-management framework and have a general understanding of its risk-management practices.

The proposal would also require that the risk committee oversee the systemically important insurance company's enterprise-wide risk-management framework, and that this framework be commensurate with the systemically important insurance company's structure, risk profile, complexity, activities, and size. An enterprise-wide risk-management framework facilitates management of and creates accountability for risks that reside in different geographic areas and lines of business. The risk-management framework would be required to include policies and procedures for establishing risk-management governance and procedures and risk-control infrastructure for the company's global operations. To implement and monitor compliance with these policies and procedures, the proposal would require the company to have processes and systems that (1) have mechanisms to identify and report risks and risk-management deficiencies, including emerging risks, and ensure effective and timely implementation of actions to address such risks and deficiencies; (2) establish managerial and employee responsibility for risk management; (3) ensure the independence of the risk-management function; and (4) integrate risk-management and associated controls with management goals and its compensation structure for its global operations.

A systemically important insurance company's risk-management framework would be strengthened by having an appropriate level of stature within its overall corporate governance framework. Accordingly, the proposal would provide that a systemically important insurance company's risk committee be an independent committee of the company's board of directors and have, as its sole and exclusive function, responsibility for the risk-management policies of the company's global operations and oversight of the operation of the company's global risk-management framework. The risk committee would be required to report directly to the systemically important insurance company's board of directors and would receive and review regular reports on not less than a quarterly basis from the company's chief risk officer. In addition, the risk committee would be required to meet at least quarterly, fully document and maintain records of its proceedings, and have a formal, written charter that is approved by the systemically important insurance company's board of directors.

Consistent with section 165(h)(3)(C) of the Dodd-Frank Act, the proposal would require that the risk committee include at least one member with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.[21] For this purpose, a financial firm would include an insurance company, a securities broker-dealer, or a bank. The individual's experience in risk management would be expected to be commensurate with the company's structure, risk profile, complexity, activities, and size, and the company would be expected to demonstrate that the individual's experience is relevant to the particular risks facing the company. While the proposal would require that only one member of the risk committee have experience in identifying, assessing, and managing risk exposures of large, complex firms, all risk committee members should have a general understanding of risk-management principles and practices relevant to the company.

Consistent with section 165(h)(3)(B) of the Dodd-Frank Act, the proposed rule also would include certain requirements to ensure that the chair of the risk committee has sufficient independence from the systemically important insurance company.[22] The proposal would require that the chair of the risk committee (1) not be an officer or employee of the company nor have been one during the previous three years; (2) not be a member of the immediate family of a person who is, or has been within the last three years, an executive officer of the company;[23] and (3) meet the requirements for an independent director under Item 407 of the Securities and Exchange Commission's (SEC) Regulation S–K, or must qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the company does not have an outstanding class of securities traded on a national securities exchange.

The Board views the active involvement of independent directors as vital to robust oversight of risk management and encourages companies

[2] 12 U.S.C. 5365(a)(2).

[3] *See* 12 U.S.C. 5365(b)(3).

[4] 12 U.S.C. 5365(b)(3)(A).

[5] 12 U.S.C. 5365(b)(3)(D).

[6] 12 U.S.C. 5365(b)(3)(B).

[7] 12 U.S.C. 5365(b)(3)(C).

[8] 12 CFR 225.8.

[9] *See* 12 CFR part 252.

[10] 12 CFR part 243.

[11] *See* 79 FR 17420 (March 27, 2014).

[12] 12 CFR 217.11(c).

[13] 80 FR 142 (July 24, 2015).

[14] *See* 79 FR 17240, 17245 (March 27, 2014).

[15] The Board intends to consider enhanced risk-based capital and leverage requirements, liquidity requirements, single-counterparty credit limits, a debt-to-equity limit, and stress testing requirements at a later date. In addition, the Board has issued a resolution plan rule that by its terms applies to all nonbank financial companies supervised by the Board.

[16] As noted above, General Electric Capital Corporation is already subject by Board order to certain enhanced prudential standards.

[17] Supervision and Regulation Letter 12–17/Consumer Affairs Letter 12–14 (December 17, 2012), available at *https://www.federalreserve.gov/bankinforeg/srletters/sr1217.htm.*

[18] *See* Standard and Poor's Ratings Services, "What May Cause Insurance Companies to Fail and How this Influences Our Criteria" (June 2013), at 11–13; *see also* U.S. House of Representatives, "Failed Promises: Insurance Company Insolvencies" (1990); Financial Crisis Inquiry Commission, "Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States" (January 2011), pg. 352, available at *http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.*

[19] SR 12–17 sets forth a framework for the consolidated supervision of large financial institutions, and has two primary objectives: (1) Enhancing resiliency of a firm to lower the probability of its failure or inability to serve as a financial intermediary, and (2) reducing the impact on the financial system and the broader economy in the event of a firm's failure or material weakness.

[20] 12 U.S.C. 5365(h)(1).

[21] *See* 12 U.S.C. 5365(h)(3)(C).

[22] *See* 12 U.S.C. 5365(h)(3)(B).

[23] For purposes of this requirement, "immediate family" would be defined pursuant to the Board's Regulation Y, 12 CFR 225.41(b)(3), and "executive officer" would be defined pursuant to the Board's Regulation O, 12 CFR 215.2(e)(1).

generally to include additional independent directors as members of their risk committees. However, the Board notes that not all members of the risk committee would be required to be independent, and involvement of directors affiliated with the company on the risk committee could complement the involvement of independent directors.

Question 3: Are there additional qualifications and experience that the Board should require of a member or members of the risk committee of a systemically important insurance company?

Question 4: The Board invites comment on whether the structure of the risk committee and the duties proposed to be assigned to the risk committee are appropriate.

C. Chief Risk Officer and Chief Actuary

Most large, interconnected financial institutions, including large insurance companies, designate a chief risk officer to facilitate an enterprise-wide approach to the identification and management of all risks within an organization, regardless of where they are originated or housed. The chief risk officer supplements the work of legal entity, risk level (*e.g.*, credit or operational risk), and line of business risk-management activities by identifying, measuring, and monitoring risks that may exist intentionally or unintentionally. The proposed rule would require each systemically important insurance company to have a chief risk officer and describes the minimum responsibilities of the chief risk officer. Under the proposal, the chief risk officer's function would extend to all risks facing the systemically important insurance company, including risks from non-insurance activities and insurance activities, such as risks arising out of unanticipated increases in reserves.

The proposal provides that the chief risk officer would be responsible for overseeing (1) the establishment of risk limits on an enterprise-wide basis and monitoring compliance with such limits; (2) the implementation of and ongoing compliance with the policies and procedures establishing risk-management governance and the development and implementation of the processes and systems related to the global risk-management framework; and (3) management of risks and risk controls within the parameters of the company's risk control framework, and monitoring and testing of such risk controls. The chief risk officer also would be responsible for reporting risk-management deficiencies and emerging risks to the risk committee.

The proposal would require the chief risk officer to have experience in identifying, assessing, and managing risk exposures of large, complex financial firms. The minimum qualifications for a chief risk officer would be similar to the risk-management experience requirement that at least one member of the company's risk committee must meet. The proposal was designed with the expectation that a systemically important insurance company would be able to demonstrate that its chief risk officer's experience is relevant to the particular risks facing the company and is commensurate with the company's structure, risk profile, complexity, activities, and size.

The proposed standard would also require systemically important insurance companies to have a chief actuary to ensure an enterprise-wide view of reserve adequacy across legal entities, lines of business, and geographic boundaries. Inadequate reserving is a common cause of insurer insolvencies.[24] Insurance companies have complex balance sheets that depend heavily on estimates concerning the amount and timing of payments. Actuaries at insurance companies serve a critical role by developing these estimates and providing other technical insights on risk and financial performance. The estimates and the related processes, methodologies, and documentation can vary across jurisdictions and lines of businesses. The systemically important insurance companies have numerous insurance company subsidiaries and lines of businesses with their own actuarial functions. The organization may not have, however, an actuarial role or roles with the appropriate amount of stature and independence from the lines of business and legal entities.

The chief actuary would be responsible for advising the chief executive officer and other members of senior management and the board's audit committee on the level of reserves. Under the proposed rule, the chief actuary would also have oversight responsibilities over (1) implementation of measures that assess the sufficiency of reserves; (2) review of the appropriateness of actuarial models, data, and assumptions used in reserving; and (3) implementation of and compliance with appropriate policies and procedures relating to actuarial work in reserving. The chief actuary would be required to ensure that the company's actuarial units perform in accordance with an articulated set of standards that govern process, methodologies, data, and documentation; comply with applicable jurisdictional regulations; and adhere to the relevant codes of actuarial conduct and practice standards. The proposed rule would permit the chief actuary to have additional responsibilities, including overseeing ratemaking for insurance products.

If a systemically important insurance company has significant amounts of life insurance and property and casualty insurance business, the proposal would allow systemically important insurance companies to have co-chief actuaries—one responsible for the company's life business and one responsible for the company's property and casualty business. Within the United States, the two different businesses have historically had separate professional organizations and correspondingly different professional examination requirements to obtain actuarial credentials. The actuarial techniques used in these two businesses starkly differ. While a single position with an enterprise-wide view of reserve adequacy is desirable, the Board recognizes that the need for chief actuaries to have the expertise necessary to carry out their duties. Thus, the proposed rule would permit, but not require, a systemically important insurance company to appoint a chief actuary with enterprise-wide responsibility for the life insurance activities and a separate chief actuary with enterprise-wide responsibility for the property and casualty insurance activities.

Under the proposed rule, the chief actuary would be expected to have experience that is relevant to the functions performed and commensurate with the company's structure, risk profile, complexity, activities, and size. This background should allow the chief actuary to discuss reserve adequacy with executive management and to communicate on actual practices and techniques with the underwriting, claims, legal, treasury, and other departments.

Under the proposed rule, the chief risk officer and chief actuary would be required to maintain a level of independence. In addition to other lines of reporting, the chief risk officer and chief actuary would be required to report directly to their board's risk committee and audit committee,

[24] *See* Standard and Poor's Ratings Services, "What May Cause Insurance Companies to Fail and How this Influences Our Criteria" (June 2013), pg. 8–10; *see also* U.S. House of Representatives, "Failed Promises: Insurance Company Insolvencies" (1990).

respectively. Requiring the chief risk officer and chief actuary to report directly to board committees provides stature and independence from the lines of businesses and legal entities, which facilitates unbiased insurance risk assessment and estimation of insurance reserves. Furthermore, the proposal would not allow the chief risk officer and chief actuary roles to be performed by the same person because the positions serve distinct and separate independent oversight functions within the company. This separation would allow the risk group to review and challenge the actuarial assumptions used to prepare financial statements and provide an extra line of defense against improper reserving.

In addition, the proposal would require a systemically important insurance company to ensure that the compensation and other incentives provided to the chief risk officer and chief actuary are consistent with their functions of providing objective assessments of a company's risks and actuarial estimates. This requirement would supplement existing Board guidance on incentive compensation, which provides, among other things, that compensation for employees in risk-management and control functions should avoid conflicts of interest and that incentive compensation received by these employees should not be based substantially on the financial performance of the business units that they review.[25] In addition, the proposed requirement would allow systemically important insurance companies wide discretion to adopt compensation structures for chief risk officers and chief actuaries, whether through a compensation committee or otherwise, as long as the structure of their compensation allows them to objectively assess risk and does not create improper incentives to take inappropriate risks.

Question 5: Are the responsibilities and requirements for the chief risk officer and the chief actuary of a systemically important insurance company appropriate? What additional responsibilities and requirements should the Board consider imposing?

Question 6: Should the Board require a single, enterprise-wide chief actuary instead of allowing the position to be split between life and property and casualty operations? Why or why not?

[25] *See* Guidance on Sound Incentive Compensation Policies, 75 FR 36395 (June 25, 2010).

III. Liquidity Risk-Management Standard

A. Background

The activities and liabilities of systemically important insurance companies generate liquidity risk. The financial crisis that began in 2007 demonstrated that liquidity can evaporate quickly and cause severe stress in the financial markets. In some cases, financial companies had difficulty in meeting their obligations as they became due because sources of funding became severely restricted. The financial crisis and past insurance failures also demonstrate that even solvent insurers may experience material financial distress, including failure, if they do not manage their liquidity in a prudent manner.[26] Although many of a systemically important insurance company's liabilities are long-term or contingent upon the occurrence of a future event, such as the death of the insured or destruction of insured property, certain insurance contracts are subject to surrender or withdrawal with little or no penalty and on short notice and may create significant unanticipated demands for liquidity. Additionally, some activities and liabilities such as securities lending, issuance of some forms of funding agreements, collateral calls on derivatives used for hedging, and other sources can create liquidity needs during stress. For systemically important insurance companies, the negative effects of their material financial distress from a liquidity shortage could be transmitted to the broader economy through the sale of financial assets in a manner that could disrupt the functioning of key markets or cause significant losses or funding problems at other firms with similar holdings.

The proposal would require that a systemically important insurance company implement a number of provisions to manage its liquidity risk. For purposes of the proposed rule, liquidity is defined as a systemically important insurance company's capacity to meet efficiently its expected and unexpected cash flows and collateral needs at a reasonable cost without adversely affecting the daily operations or the financial condition of the systemically important insurance company. Under the proposed rule, liquidity risk means the risk that a systemically important insurance company's financial condition or safety and soundness will be adversely affected by its actual or perceived inability to meet its cash and collateral obligations.

The proposed rule would require a systemically important insurance company to meet key internal control requirements with respect to liquidity risk management, to generate comprehensive cash-flow projections, to establish and monitor its liquidity risk tolerance, and to maintain a contingency funding plan to manage liquidity stress events when normal sources of funding may not be available. The proposed rule also would introduce liquidity stress-testing requirements for a systemically important insurance company and would require the company to maintain liquid assets sufficient to meet net cash outflows for 90 days over the range of liquidity stress scenarios used in the internal stress testing.

B. Internal Control Requirements

To reduce the risk of failure triggered by a liquidity event, the proposed rule would require a systemically important insurance company's board of directors, risk committee, and senior management to fulfill key corporate governance and internal control functions with respect to liquidity risk management. The proposed rule would also require a systemically important insurance company to institute an independent review function to provide an objective assessment of the company's liquidity risk-management framework.

1. Board of Directors and Risk Committee Responsibilities

The proposed rule would require a systemically important insurance company's board of directors to approve at least annually the company's liquidity risk tolerance. This liquidity risk tolerance should set forth the acceptable level of liquidity risk that a systemically important insurance company may assume in connection with its operating strategies and should take into account the company's capital structure, risk profile, complexity, activities, and size. Typically, more liquid, shorter-duration assets provide lower expected returns than similar assets with longer durations. Risk tolerances should be articulated in a way that all levels of management can clearly understand and apply these tolerances to all aspects of liquidity risk management throughout the organization. In addition, the proposal

[26] *See* U.S. Govt. Accountability Office, GAO–13–583, "Insurance Markets: Impacts of and Regulatory Response to the 2007–2009 Financial Crisis," June 2013, at 10–16, 46–48, available at *http://gao.gov/assets/660/655612.pdf*. *See also* Standard and Poor's Ratings Services, "What May Cause Insurance Companies to Fail and How this Influences Our Criteria" (June 2013).

would require the board of directors to (1) review liquidity risk practices and performance at least semi-annually to determine whether the systemically important insurance company is operating in accordance with its established liquidity risk tolerance, and (2) approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior management.

The proposal would also require the risk committee or a designated subcommittee of the risk committee to review and approve the systemically important insurance company's contingency funding plan at least annually and whenever the company materially revises the plan. As discussed below, the contingency funding plan is the systemically important insurance company's compilation of policies, procedures, and action plans for managing liquidity stress events. In fulfilling this proposed requirement, the risk committee or designated subcommittee would report the results of its review to a systemically important insurance company's board of directors.

2. Senior Management Responsibilities

To ensure that a systemically important insurance company properly implements its liquidity risk-management framework within the tolerances established by the company's board of directors, the Board is proposing to require senior management of a systemically important insurance company to be responsible for several key liquidity risk-management functions.

First, the proposed rule would require senior management to establish and implement strategies, policies, and procedures designed to manage effectively the systemically important insurance company's liquidity risk. In addition, the proposal would require that senior management oversee the development and implementation of liquidity risk measurement and reporting systems and determine at least quarterly whether the systemically important insurance company is operating in accordance with such policies and procedures and is in compliance with the liquidity risk-management, stress-testing, and buffer requirements.

Second, the proposal would require senior management to report at least quarterly to the board of directors or the risk committee on the systemically important insurance company's liquidity risk profile and liquidity risk tolerance. More frequent reporting would be warranted if material changes in the company's liquidity profile or market conditions occur.

Third, before a systemically important insurance company offers a new product or initiates a new activity that could potentially have a significant effect on the systemically important insurance company's liquidity risk profile, senior management would be required to evaluate the liquidity costs, benefits, and risks of the product or activity and approve it. As part of the evaluation, senior management would be required to determine whether the liquidity risk associated with the new product or activity (under both current and stressed conditions) is within the company's established liquidity risk tolerance. In addition, senior management would be required to review at least annually significant business activities and products to determine whether any of these activities or products creates or has created any unanticipated liquidity risk and whether the liquidity risk of each activity or product is within the company's established liquidity risk tolerance. An example of a significant business activity might include a company's securities lending operations or a particular line of business such as the issuance of funding agreements. This review should be done on a granular enough basis to allow for consideration of material differences in liquidity risk that might occur across jurisdictions or product features, such as a market value adjustment feature in an insurance contract.[27]

Fourth, senior management would be required to review the cash-flow projections (as described below) at least quarterly to ensure that the liquidity risk of the systemically important insurance company is within the established liquidity risk tolerance.

Fifth, senior management would be required to establish liquidity risk limits and review the company's compliance with those limits at least quarterly. As described in § 252.164(g) of the proposed rule, systemically important insurance companies would be required to establish limits on (1) concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk; (2) potential sources of liquidity risk arising from insurance liabilities; (3) the amount of non-insurance liabilities that mature within various time horizons; and (4) off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events. In addition, the proposal would require the size of each limit to be consistent with the company's established liquidity risk tolerance and reflect the company's capital structure, risk profile, complexity, activities, and size.

Sixth, senior management would be required to (1) approve the liquidity stress testing practices, methodologies, and assumptions as set out in § 252.165(a) of the proposed rule at least quarterly and whenever the systemically important insurance company materially revises such practices, methodologies, or assumptions; (2) review at least quarterly both the liquidity stress-testing results produced under § 252.165(a) of the proposed rule and the liquidity buffer provided in § 252.165(b) of the proposed rule; and (3) review periodically the independent review of the liquidity stress tests under § 252.165(d) of the proposed rule.

The proposal would allow a systemically important insurance company to assign these senior management responsibilities to its chief risk officer, who would be considered a member of the senior management of the systemically important insurance company.

Question 7: The Board invites comment on whether there are additional liquidity risk-management responsibilities that the rule should require of senior management.

3. Independent Review

An independent review function is a critical element of a financial institution's liquidity risk-management program because it can identify weaknesses in liquidity risk management that would be overlooked by the management functions that execute funding. Accordingly, the Board is proposing to require a systemically important insurance company to maintain an independent review function that meets frequently (but no less than annually) to review and evaluate the adequacy and effectiveness of the company's liquidity risk-management processes, including its liquidity stress-test processes and assumptions. Under the proposal, this review function would be required to be independent of management functions that execute funding (*e.g.*, the treasury function), but it would not be required to be independent of the liquidity risk-management function. In addition, the proposal would require the independent review function to assess whether the company's liquidity risk-management framework complies with applicable laws, regulations, supervisory guidance, and sound business practices, and report for corrective action any material liquidity risk-management issues to the board of directors or the risk committee.

[27] Market value adjustment features tie the surrender value of an insurance contract to changes in market conditions.

An appropriate internal review conducted by the independent review function under the proposed rule should address all relevant elements of the liquidity risk-management framework, including adherence to the established policies and procedures and the adequacy of liquidity risk identification, measurement, and reporting processes. Personnel conducting these reviews should seek to understand, test, and evaluate the liquidity risk-management processes, document their review, and recommend solutions for any identified weaknesses.

C. Cash Flow Projections

Comprehensive projections of cash flows from a firm's various operations are a critical tool to help the institution manage its liquidity risk. The proposal would require that the company produce comprehensive enterprise-wide cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over short and long-term time horizons, including time horizons longer than one year. Longer time horizons are particularly important for insurance companies, which generally have liabilities that extend far into the future. In addition, tracking cash-flow mismatches can help a systemically important insurance company identify potential liquidity issues and facilitate asset liability management, particularly as it relates to reinvestment risk from interest rate changes. The proposal would require that the systemically important insurance company update short-term cash-flow projections daily and update longer-term cash-flow projections at least monthly. These updates would not always require revisiting actuarial estimates; however, the updates would need to roll the cash flows forward and revise assumptions as needed based on new data and changing market conditions.

To ensure that the cash flow projections would sufficiently analyze liquidity risk exposure to contingent events, the proposed rule would require that a systemically important insurance company establish a methodology for making projections that include all material liquidity exposures and sources, including cash flows arising from (1) anticipated claim and annuity payments; (2) policyholder options including surrenders, withdrawals, and policy loans; (3) collateral requirements on derivatives and other obligations; (4) intercompany transactions; (5) premiums on new and renewal business; (6) expenses; (7) maturities and renewals of funding instruments, including through the operation of any provisions that could accelerate the maturity; and (8) investment income and proceeds from assets sales. The proposal would require that the methodology (1) include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures, (2) identify and quantify discrete and cumulative cash flow mismatches over various time periods, and (3) include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the systemically important insurance company, and any applicable legal and regulatory requirements. The proposal provides that analyses may be categorized by business line, currency, or legal entity.

Given the critical importance that the methodology and underlying assumptions play in liquidity risk management, a systemically important insurance company would be required to adequately document its methodology and assumptions used in making its cash flow projections.

Question 8: The Board invites comment on whether the above requirements are appropriate for managing cash flows at systemically important insurance companies. Should any aspects of this cash-flow projection requirement be modified to better address the risk of systemically important insurance companies?

Question 9: Should the Board consider a different level of frequency for requiring systemically important insurance companies to update their cash flow projections? If so, what frequency would be appropriate and why?

D. Contingency Funding Plan

Under the proposed rule, a systemically important insurance company would be required to establish and maintain a contingency funding plan for responding to a liquidity crisis, identify alternate liquidity sources that the company can access during liquidity stress events, and describe steps that should be taken to ensure that the company's sources of liquidity are sufficient to fund its normal operating requirements under stress events. These provisions require the firm to develop and put in place plans designed to ensure that the firm will have adequate sources of liquidity to meet its obligations during the normal course of business. The proposal does not itself set a minimum liquidity requirement that would apply to all firms.

The proposal would require the contingency funding plan to include a quantitative assessment, an event management process, and monitoring requirements. The proposal would also require the plan to be commensurate with a systemically important insurance company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance.

Under the proposed rule, a systemically important insurance company would perform a quantitative assessment to identify liquidity stress events that could have a significant effect on the company's liquidity, assess the level and nature of such effect, and assess available funding sources during identified liquidity events. Such an assessment should delineate the various levels of stress severity that could occur during a stress event and identify the various stages for each type of event, spanning from the event's inception until its resolution. The types of events would include temporary, intermediate, and long-term disruptions. Under the proposal, possible stress events may include deterioration in asset quality, a spike in interest rates, an insurance catastrophe such as a pandemic that results in a large number of claims, an equity market decline, multiple ratings downgrades, a widening of credit default swap spreads, operating losses, negative press coverage, or other events that call into question a systemically important insurance company's liquidity. The stress events should be forecast in a comprehensive way across legal entities to identify gaps on an enterprise-wide basis. In addition, the proposal would require a systemically important insurance company to incorporate information generated by liquidity stress testing.

The proposed rule would provide that a systemically important insurance company include in its contingency funding plan procedures for monitoring emerging liquidity stress events and identifying early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size. Early warning indicators should include negative publicity concerning an asset class owned by the company, potential deterioration of the company's financial condition, a rating downgrade, and/or a widening of the company's debt or credit default swap spreads. In addition, a systemically important insurance company's contingency funding plan would be required to at least incorporate collateral and legal entity liquidity risk monitoring.

As part of the quantitative assessment, a systemically important insurance

company would be required to include in its contingency funding plan both an assessment of available funding sources and needs and an identification of alternative funding sources that may be used during the identified liquidity stress events. To determine available and alternative funding sources, a systemically important insurance company would be expected under the proposal to analyze the potential erosion of available funding at various stages and severity levels of each stress event and identify potential cash flow mismatches that may occur. This analysis would include all material on- and off-balance sheet cash flows and their related effects, and would be based on a realistic assessment of both the behavior of policyholders and other counterparties and of a systemically important insurance company's cash inflows, outflows, and funds that would be available (after considering restrictions on the transferability of funds within the group) at different time intervals during the identified liquidity stress event. In addition, a systemically important insurance company should work proactively to have in place any administrative procedures and agreements necessary to access any alternative funding source.

The proposed rule would also require a systemically important insurance company's contingency funding plan to identify the circumstances in which the company would implement an action plan to respond to liquidity shortfalls for identified liquidity stress events. The action plan would clearly describe the strategies that a systemically important insurance company would use during such an event, including (1) the methods that the company would use to access alternative funding sources, (2) the identification of a management team to execute the action plan, (3) the process, responsibilities, and triggers for invoking the contingency funding plan, and (4) the decision-making process during the identified liquidity stress events and the process for executing the action plan's contingency measures. In addition, the proposal sets out reporting and communication requirements to facilitate a systemically important insurance company's implementation of its action plan during an identified liquidity stress event.

The proposal would require that a systemically important insurance company periodically test (1) the components of its contingency funding plan to assess its reliability during liquidity stress events, (2) the operational elements of the contingency funding plan, and (3) the methods the company would use to access alternative funding sources to determine whether those sources would be available when needed. The tests required by the proposal would focus on the operational aspects of the contingency funding plan. This can often be done via "table-top" or "war-room" type exercises. In some cases, the testing would also require actual liquidation of assets in the buffer periodically as part of the exercise. This can be critical in demonstrating treasury control over the assets and an ability to convert the assets into cash. With proper planning, this can be done in a way that does not send a distress signal to the marketplace.

Market circumstances and the composition of a systemically important insurance company's business and product mix change over time. These types of changes could affect the effectiveness of a systemically important insurance company's contingency funding plan. To ensure that the contingency funding plan remains useful and instructive, the proposal would require a systemically important insurance company to update its contingency funding plan at least annually, and more frequently when changes to market and idiosyncratic conditions warrant.

Question 10: The Board invites comment on whether the above requirements for a contingency funding plan are appropriate for systemically important insurance companies. What alternative approaches to the contingency funding requirements outlined above should the Board consider?

Question 11: Should the proposed rule allow systemically important insurance companies to plan for any delay or stay of payments to policyholders or other counterparties within their contingency funding plans? Why or why not?

Question 12: What specific information should a systemically important insurance company be required to include in its action plan to describe the strategies that the company would use to respond to liquidity shortfalls for identified liquidity stress events?

E. Collateral, Legal Entity, and Intraday Liquidity Risk Monitoring

The proposal would require a systemically important insurance company to establish and maintain procedures for monitoring collateral, legal entity, and intraday liquidity risk. Robust monitoring of collateral availability, legal entity level liquidity, and intraday liquidity risk triggers contribute to effective and appropriate management of potential or evolving liquidity stress events.

Under the proposal, the systemically important insurance company would be required to establish and maintain procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. The policies and procedures would include the frequency in which a systemically important insurance company calculates its collateral positions, requirements for a company to monitor the levels of unencumbered assets (as discussed in section III.F.2, below) available to be pledged and shifts in a company's funding patterns, and requirements for a company to track operational and timing requirements associated with accessing collateral at its physical location.

A systemically important insurance company would also be required under the proposal to establish and maintain policies and procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity among legal entities.

The proposal would require a systemically important insurance company to maintain policies and procedures for monitoring the intraday liquidity risk exposure of the company, as applicable to its business, including obligations that must be settled at a specific time within the day or where intraday events could affect a systemically important insurance company's liquidity positions in a material and adverse manner. For instance, the company should have procedures in place to monitor the risk that an intraday movement in equity prices or the price of hedge instruments could materially affect the company's liquidity position. If applicable, these procedures would be required to address, among other things, how the systemically important insurance company will prioritize payments and derivative transactions to settle critical obligations and effectively hedge its risks.

Question 13: The Board invites comments on whether there are specific activities that, if carried out by a systemically important insurance company, should result in a requirement that the company engage in intraday liquidity monitoring?

F. Liquidity Stress-Testing and Buffer Requirements

To reduce the risk of a systemically important insurance company's failure due to adverse liquidity conditions, the proposal would require a systemically important insurance company to conduct rigorous and regular stress testing and scenario analysis that incorporate comprehensive information about its funding position under both normal circumstances, when regular sources of liquidity are readily available, and adverse conditions, when liquidity sources may be limited or severely constrained. The purpose of the proposed rule's liquidity stress testing and buffer requirements would be to ensure that the holding company (or another entity within the consolidated organization that is not subject to transfer restrictions) has the ability to transfer liquid assets to a legal entity within the consolidated organization that has a liquidity need so that a liquidity crisis can be avoided.

1. Liquidity Stress-Testing Requirement

Under the proposed rule, a systemically important insurance company would be required to conduct liquidity stress tests that, at a minimum, involve macroeconomic, sector-wide, and idiosyncratic events (for example, including natural and man-made catastrophes) affecting the firm's cash flows, liquidity position, profitability, and solvency. The liquidity stress tests should span the different types of liquidity events that a systemically important insurance company could face. This includes both a fast-moving scenario in which an event triggers many withdrawal requests and collateral calls as well as a more sustained scenario where the systemically important insurance company's liquidity deteriorates slowly over the course of a year or longer. In conducting its liquidity stress tests, a systemically important insurance company would be required under the proposal to take into account its current liquidity condition, risks, exposures, strategies, and activities, as well as its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics that affect its liquidity risk profile. The proposal would require a systemically important insurance company to conduct its liquidity stress tests monthly, or more frequently as required by the Board.

In conducting its liquidity stress tests, a systemically important insurance company would be required to address the potential direct adverse effect of associated market disruptions on the company and incorporate the potential actions of counterparties, policyholders, and other market participants experiencing liquidity stresses that could adversely affect the company.

As explained above, for purposes of the proposed rule, liquidity risk would encompass risks relating to collateral posting requirements. By virtue of their hedging and non-insurance operations, insurers can have large and directional derivative positions with associated collateral requirements. A systemically important insurance company would be required by the proposal to account for such hedges in its liquidity stress testing to ensure that it would have sufficient sources of assets available for posting.

Effective liquidity stress testing should be conducted over a variety of different time horizons to capture rapidly developing events and other conditions and outcomes that may materialize in the near or long term. While some types of stresses can emerge quickly for systemically important insurance companies, such as collateral calls on derivatives positions, many insurance stresses take more time to develop and provide a slower draw on cash and funds relative to the stresses that affect other financial institutions. For instance, while a natural catastrophe might cause a large number of claims seeking reimbursement for property damage, these claims will typically be paid over a several year period as the properties are rebuilt and many claims are litigated. To ensure that a systemically important insurance company's stress testing captures such events, conditions, and outcomes, the proposed rule would require that a systemically important insurance company's liquidity stress scenarios use a minimum of four time horizons: 7 days, 30 days, 90 days, and one year. The proposal would also require systemically important insurance companies to include any other planning horizons that are relevant to its liquidity risk profile.

Under the proposal, a systemically important insurance company would be required to incorporate certain assumptions designed to ensure that its liquidity stress tests provide relevant information to support the establishment of the liquidity buffer. For stress tests less than the 90-day period used to set the liquidity buffer, cash-flow sources could not include any sales of assets that are not eligible for inclusion in the liquidity buffer, as defined below. Additionally, cash-flow sources should not include borrowings from sources such as lines of credit or the Federal Home Loan Bank. While these can provide valuable sources of liquidity, the allowance of off-balance sheet funding to decrease the liquidity buffer requirement would encourage firms to place undue reliance on these transactions, which may not be available when needed in times of stress. Additionally, the borrowings could serve to exacerbate systemic risk by spreading risk to other significant financial institutions. Systemically important insurance companies could incorporate into the stress tests other cash-flow sources, including future premiums, and would be expected to make conservative assumptions that are consistent with the stress scenario regarding the availability of these sources over the planning horizon.

In all liquidity stress tests, the proposal would require systemically important insurance companies to appropriately address assets in restricted accounts such as those in legally-insulated separate accounts and in any closed block.[28] Changes in the value of these assets can affect the rest of the insurer's balance sheet through guarantees and hedging programs. Additionally, sales or purchases of large amounts of assets in these accounts can affect the markets more broadly. Consequently, separate account assets and closed block assets could be included as cash-flow sources only in proportion to the cash flow needs in these same accounts. Separate account assets have first priority to meet separate account commitments and would not be available to meet general account liquidity needs.

The proposed rule would require a systemically important insurance company to impose a discount to the fair market value of an asset that is used as a cash-flow source to offset projected funding needs in order to help account for credit risk and market volatility of the asset when there is market stress. The discounts would be required to appropriately reflect differences in credit and market volatilities across asset types. The proposed rule would require that sources of funding used to generate cash to offset projected funding needs be sufficiently diversified throughout each stress test time horizon.

The proposed rule further provides that liquidity stress testing must be tailored to, and provide sufficient detail to reflect, a systemically important

[28] Closed blocks are discrete pools of assets that are set aside to support the dividend expectations of participating policyholders from the periods prior to demutualization. Typically, changes of their values would be largely offset by future changes in the dividend rates on these participating policies.

insurance company's capital structure, risk profile, complexity, activities, size, and other appropriate risk-related factors. This requirement is intended to ensure that the proposed liquidity stress testing is tied directly to a systemically important insurance company's business profile and the regulatory environment in which the company operates; provides for the appropriate level of aggregation; captures all appropriate risk drivers, including internal and external influences; and incorporates other key considerations that may affect the company's liquidity position. In addition, a systemically important insurance company's liquidity stress testing scenarios should appropriately capture limitations on the transfer of funds.

The proposed rule would not allow a systemically important insurance company to assume for the purposes of stress testing that the company would delay payments under insurance contracts. Although many insurance contracts allow insurers to defer payments by up to six months at the election of either the company or their insurance regulator, the proposal would not allow firms to assume such deferrals in liquidity stress testing. Crediting stays would be inconsistent with preventing the failure or material financial distress of a systemically important insurance company. Stays are measures of last resort that systemically important insurance companies would be very hesitant to invoke for reputational reasons. Because of this, assuming claims payments would be delayed also may not be realistic. Additionally, a stay by a systemically important insurance company could have substantial adverse systemic implications.

The proposed rule would impose various governance requirements related to a systemically important insurance company's liquidity stress testing. First, a systemically important insurance company would be required to establish and maintain certain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions. Second, a systemically important insurance company would be required to establish and maintain a system of controls and oversight to ensure that its liquidity stress testing processes are effective, including by ensuring that each stress test appropriately incorporates conservative assumptions around its stress test scenarios and the other elements of the stress test process. In addition, the proposal would require that the assumptions be approved by the chief risk officer and subject to review by the independent review function. Third, the proposed rule would require a systemically important insurance company to maintain management information systems and data processes sufficient to enable it to collect, sort, and aggregate data and other information related to liquidity stress testing in an effective and reliable manner.

Question 14: Are the proposed stress testing horizons ranging from seven days to one year appropriate?

Question 15: How often should systemically important insurance companies be required to conduct stress tests? What are the costs and benefits of such a frequency?

Question 16: What changes, if any, should be made to the definition of available cash-flow sources for the liquidity stress tests? How should the proposed standard treat separate account and closed block assets?

Question 17: In what scenario, if any, would delaying payments to policyholders be effective in allowing a systemically important insurance company to continue operating as a going concern without adverse impact to the company's reputation, ability to attract and retain business, and cash flows? Should systemically important insurance companies be allowed to assume that they would delay payments to policyholders in liquidity stress testing (including for purposes of calculating the liquidity buffer requirement described below)? If so, under which scenarios and planning horizons would this be appropriate and what documentation, planning, and other requirements should be placed around this? Are there historical data to support an alternative approach to the one contained in the proposal?

Question 18: What other changes, if any, should be made to the proposed liquidity stress-testing requirements (including the stress scenario requirements and required assumptions) to ensure that analyses of stress testing will provide useful information for the management of a systemically important insurance company's liquidity risk? What alternatives to the proposed liquidity stress-testing requirements, including the stress scenario requirements and required assumptions, should the Board consider? What additional parameters for the liquidity stress tests should the Board consider defining?

2. Liquidity Buffer Requirement

The proposed rule would require a systemically important insurance company to maintain a liquidity buffer sufficient to meet net cash outflows for 90 days over the range of liquidity stress scenarios used in the internal stress testing. Although the Board requires large bank holding companies to use a 30-day period for the Dodd Frank Act section 165 liquidity buffer requirement under the Board's Regulation YY, this proposed 90-day period for systemically important insurance companies is consistent with the generally longer-term nature of insurance liabilities. The 90-day period represents an intermediate view between the length of a fast-moving liquidity scenario that transpires quickly over a month or less, and the length of a persistent liquidity scenario that could take longer than a year to resolve.

For the purposes of calculating the required buffer, the proposal would exclude intragroup transactions. Including intragroup outflows within the buffer calculation would result in double counting many transactions. For instance, if intragroup transactions were included when calculating the size of the buffer, a systemically important insurance company that uses a single legal entity to enter into derivative transactions for hedging could be penalized. Such a company would have to hold buffer assets not only for the derivative transaction with a third party, but also for any offsetting intra-group transactions that transfer the benefits of this hedge back to the legal entity with the hedged item. To account for the liquidity risks of intragroup transactions, this proposal instead places limitations on where the buffer can be held.

The proposal would limit the type of assets that may be included in the buffer to highly liquid assets that are unencumbered. Limitation of the buffer to highly liquid assets would ensure that the assets in the liquidity buffer can be converted to cash over a 90-day period with little or no loss of value. The proposal's definition of highly liquid assets is tailored to reflect the assets generally held by systemically important insurance companies and the 90-day stress test period proposed for a systemically important insurance company. Over a 90-day time period, the Board would expect that a wider variety of assets could be effectively liquidated than in a shorter period (*e.g.*, 30 days).

For purposes of the proposed rule, highly liquid assets would include a range of assets, subject to the additional limitations discussed further below. Highly liquid assets would include securities backed by the full faith and credit of the U.S. government, and securities issued or guaranteed by a U.S. government sponsored enterprise if they

are investment-grade as defined by 12 CFR part 1 and the claim is senior to preferred stock. Highly liquid assets would include securities of sovereign entities outside of the U.S. as well as some international organizations, including the Bank for International Settlements, the International Monetary Fund, and the European Central Bank, if the security would have a risk weight below 20 percent under 12 CFR part 217 or the security is issued by a sovereign entity in its own currency and the systemically important insurance company holds the security in order to meet its stressed net cash outflows in the sovereign's jurisdiction.

Investment-grade corporate debt would also be eligible if the issuer's obligations have a proven record as reliable sources of liquidity during stressed market conditions. In addition, highly liquid assets would include publicly traded common equity shares if they are included in the Russell 1000 Index, issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity during stressed market conditions, and, if held by a depository institution, were not acquired in satisfaction of a debt previously contracted. Investment-grade general obligation securities issued or guaranteed by public sector entities would be eligible under the same limitations as corporate debt.

To be included as highly liquid assets, all assets other than securities issued or guaranteed by the U.S. Treasury would have to be liquid and readily-marketable. To be liquid and readily marketable under the proposal, the security must be traded in an active secondary market with more than two committed market makers. There must also be a large number of non-market maker participants on both the buying and selling sides of the transactions and there must also be timely and observable market prices. Further, trading volume must be high. These requirements would help ensure that the included assets could be quickly converted to cash.

Because of the concerns about wrong-way risk that correlates with the broader economy and exacerbates stress and because of the potential for increased systemic risk due to counterparty exposures, most instruments issued by financial institutions would be excluded from the definition of highly liquid assets. Bonds from banks or insurance companies may not be included within the buffer. Similarly bank deposits would not be eligible because of potential contagion. If a systemically important insurance company were to experience liquidity stress and withdraw its bank deposits, the stress event could be spread to other parts of the financial system as banks may be forced to liquidate assets in order to honor the withdrawals.

In addition to the enumerated assets, the proposal includes criteria that could be used to identify other assets to be included in the buffer as highly liquid assets. Specifically, the proposed definition of highly liquid assets includes any other asset that a systemically important insurance company demonstrates to the satisfaction of the Board (1) has low credit risk and low market risk, (2) is liquid and readily-marketable, and (3) is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

The proposal also would limit the type of assets in the liquidity buffer to assets that are unencumbered so as to be readily available at all times to meet a systemically important insurance company's liquidity needs. Under the proposed rule, unencumbered would be defined to mean an asset that is (1) free of legal, regulatory, contractual, and other restrictions on the ability of a systemically important insurance company promptly to liquidate, sell, or transfer the asset, and (2) not pledged or used to secure or provide credit enhancement to any transaction.

Because of intercompany restrictions on the transfer of funds, the proposal would limit where a systemically important insurance company can hold assets in the liquidity buffer. Assets held at regulated entities could be included in the buffer up to the amount of their net cash outflows as calculated under the internal liquidity stress tests plus any additional amounts that would be available for transfer to the top-tier holding company during times of stress without statutory, regulatory, contractual, or supervisory restrictions. The proposal would also require that the top-tier holding company hold an amount of highly liquid assets sufficient to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity deficit of each material entity would be calculated as that entity's amount of net stressed outflows over a 90-day planning horizon less the highly liquid assets held at the material entity. For the purposes of evaluating liquidity deficits of material entities, systemically important insurance companies would be required to treat inter-affiliate exposures in the same manner as third-party exposures.

To account for deteriorations in asset valuations when there is market stress, the proposed rule also would require a systemically important insurance company to impose a discount to the fair market value of an asset included in the liquidity buffer to reflect the credit risk and market volatility of the asset. Discounts relative to fair market value would be expected to appropriately reflect the 90-day forecast period used to calculate the buffer. Longer periods allow firms more time to liquidate assets strategically to minimize losses.

In addition, to ensure that the liquidity buffer is not concentrated in a particular type of highly liquid assets, the proposed rule provides that the pool of assets included in the liquidity buffer must be sufficiently diversified by instrument type, counterparties, geographic market, and other liquidity risk identifiers.

Question 19: Is 90 days the right planning horizon for calculation of the buffer? Why or why not?

Question 20: Do the proposed rule's stress testing and liquidity buffer requirements appropriately capture restrictions on the transferability of funds between legal entities within a consolidated organization? Why or why not?

Question 21: The Board invites comment on all aspects of the proposed definition of "highly liquid assets". Does the definition appropriately reflect the range of assets that an insurer could use to meet cash outflows over the extended 90-day time horizon?

Question 22: Should the board include specific requirements that specify when an asset can be considered a source of liquidity during stress (e.g., less than a 20 percent drop in price within 30 days)? If so, what should those requirements be?

Question 23: Should bank deposits be eligible as highly liquid assets? Why or why not?

Question 24: What changes, if any, should be made to the proposal's guidance concerning the discounting of assets relative to their fair value? How should these discounts vary based on the length of the stress test's planning horizon?

Question 25: What changes, if any, should the Board make to the proposed definition of unencumbered to ensure that assets in the liquidity buffer will be readily available at all times to meet a systemically important insurance company's liquidity needs?

Question 26: The Board requests comment on all aspects of the proposed liquidity risk-management standard. What alternative approaches to liquidity risk management should the Board consider? Are the liquidity risk-management requirements of this

proposal too specific or too narrowly defined?

IV. Transition Arrangements and Ongoing Compliance

To provide for reasonable time frames for systemically important insurance companies to develop and implement procedures, policies, and reporting, the Board is proposing to provide meaningful phase-in periods for these enhanced prudential standards. A company that is a systemically important insurance company on the effective date of the final rule would be required to comply with the corporate governance and risk-management standard and the liquidity risk-management standard of the proposed rule beginning on the first day of the fifth quarter following the effective date of the proposal. While the Board does not anticipate that, if the rule is adopted as proposed, systemically important insurance companies would be required to make extensive changes to their structures or risk governance frameworks, outside of certain improvements that the companies are already planning to implement, the five-quarter period would ensure that systemically important insurance companies would have at least one opportunity to make any needed changes at the board of directors level through a proxy vote. Systemically important insurance companies would be encouraged to comply earlier, if possible. For the liquidity risk-management standard, the five-quarter phase-in period would balance the need for this liquidity standard with the Board's expectation that more work would be required for the systemically important insurance companies to comprehensively project cash flows in a manner that supports the proposal's stress-testing requirement. A company that becomes a systemically important insurance company after the effective date of the proposed rule would be required to comply with the corporate governance and risk-management standard and the liquidity risk-management standard no later than the first day of the fifth quarter following the date on which the Council determined that the company should be supervised by the Board.

Question 27: Are the proposed transition measures and compliance dates appropriate? What aspects of the proposed rule present implementation challenges and why? The Board invites comments on the nature and impact of these challenges and whether the Board should consider implementing transitional arrangements in the rule to address these challenges.

V. Impact Assessment

In developing this proposal, the Board considered a variety of alternatives and considered an initial balancing of costs and benefits of the proposal. Based on the information currently available to the Board, the Board believes that the benefits of the proposal outweigh the relatively modest costs of the proposal. The Board notes that a number of the expected costs and benefits from the proposal, while real, are very difficult to measure or quantify. The Board invites comment and information regarding various alternatives, as well as regarding the costs and benefits of the alternatives and the Board's proposal.

The primary benefits of this proposal would be the results of improvement in the management and resiliency of affected companies that reduce the likelihood that a systemically important insurance company would fail or experience material financial distress. These improvements may also result in increased efficiencies at systemically important insurance companies through improvements in the identification of risks and resulting reductions in losses and costs of operation.

The systemically important insurance companies covered by this proposal are large, complex financial firms that the Council has determined the failure of which would likely cause risk to the financial stability of the United States. Benefits of a reduction in the probability of failure of one of these firms include avoiding: (1) The costs to the economy from the disruption of key markets or the creation of significant losses or funding problems for other firms with holdings similar to a systemically important insurance company; (2) the cost of such a failure to policyholders through lost payments and lost coverage; (3) the cost of an insurance failure to taxpayers and other insurers, who act as guarantors for large portions of a systemically important insurance company's obligations; and (4) the cost of a failure to a systemically important insurance company's creditors.

A. Analysis of Potential Costs

1. Initial and Ongoing Costs To Comply

The corporate governance and risk-management provisions of the proposal are expected to have only modest initial and ongoing costs for the affected companies. Under the proposal, systemically important insurance companies would be required to maintain a risk committee of the board of directors that approves and periodically reviews the risk-management policies of the systemically important insurance company's global operations and oversees the operation of the systemically important insurance company's global risk-management framework. The systemically important insurance companies currently have board-level engagement on key risks, and any structural modifications to establish and operate a stand-alone risk committee of the board of the directors are likely to be modest.

Under the proposal, a systemically important insurance company's global risk-management framework would be required to include policies and procedures establishing risk-management governance, risk-management procedures, and risk control infrastructure for its global operations, as well as processes and systems for implementing and monitoring compliance with such procedures; identifying and reporting risks and risk-management deficiencies; establishing managerial and employee responsibility for risk management; ensuring the independence of the risk-management function; and integrating risk-management and associated controls with management goals and its compensation structure for its global operations. The systemically important insurance companies currently have both risk-management frameworks and policies already in place. They have already invested significant resources in building up their risk-management frameworks in recent years. The Board expects that these frameworks, along with the companies' planned improvements, would largely comply with the proposed standards. The proposal is designed to ensure that these policies and procedures are maintained and are developed as the risks within the firm change. The primary costs of maintaining and adapting these policies and procedures would be from the opportunity cost of management's time to make the changes to the framework, as well as the costs of establishing or improving new management information systems to assure the timely presentation of information to these senior level officials. These costs might also include additional staffing to administer the global risk-management framework.

Under the proposal, systemically important insurance companies also would be required to have a chief risk officer and a chief actuary. The systemically important insurance companies currently have both a chief risk officer and a chief actuary or co-chief actuaries. The proposal may require the companies to modify their reporting structures and compensation to ensure that the positions have sufficient stature and independence

from individual profit centers in order to comply with the proposal. The costs associated with such changes could include, but may not be limited to, ongoing payroll and benefit costs and the opportunity cost of the time spent making the necessary changes. These costs are expected to be minimal.

Under the proposed liquidity risk-management standard, systemically important insurance companies would be required to meet key internal control requirements with respect to liquidity risk management. The companies currently have existing processes in place to oversee liquidity risk. These processes, along with planned improvements, would largely comply with the liquidity risk-management standard's internal control requirements. Some additional changes may be required pertaining to new product approval and to ensure periodic review of all significant products and activities for liquidity risk features. These costs are expected to be relatively small.

The proposed rule would also require systemically important insurance companies to generate comprehensive cash flow projections. Both companies have procedures in place to generate cash-flow projections. Additional work may be needed to ensure that all cash flows, including those in unregulated or run-off entities, are included within the projections, and to ensure that the cash-flow projections are timely and updated at the appropriate frequency. The additional frequency of updating might require systemically important insurance companies to either hire additional staff to run these projections or to build or buy new systems that can produce these comprehensive forecasts in a timely and efficient manner. Because these firms already have in place basic infrastructure to make these projections, any marginal costs to meet the minimum requirements under the proposal are expected to be relatively modest.

The proposed rule would also require systemically important insurance companies to maintain a contingency funding plan. Both systemically important insurance companies have plans in place to respond to a liquidity crisis, and both are working to develop these plans further. Some additional work on these plans may be required to meet the requirements of the proposed rule, such as quantitatively assessing cash-flow needs and sources across legal entities.

The proposed rule also would require systemically important insurance companies to conduct liquidity stress tests and require the systemically important insurance companies to maintain liquid assets sufficient to meet net cash outflows for 90 days over the range of liquidity stress scenarios used in the internal stress tests. Both of the systemically important insurance companies have systems in place to project the company's liquidity position under stressed conditions. However, the proposal may cause the systemically important insurance companies to update these systems to facilitate monthly testing and ensure that the scenarios include all exposures and entities within the systemically important insurance company. The costs associated with these improvements are expected to be modest within the context of the organizations and could include, but may not be limited to, the costs to recruit and hire staff, including ongoing payroll and benefits costs, and the costs of development and implementation of management information systems with appropriate data to support analysis and reporting on a monthly frequency.

In addition, systemically important insurance companies may need to make balance sheet adjustments in order to come into and maintain compliance with the proposed liquidity risk-management requirements, if adopted as proposed. While both systemically important insurance companies currently appear to maintain an adequate amount of liquidity on a consolidated basis, some movement of funds between legal entities may be required to provide appropriate responsiveness in times of stress.

2. Impact on Premiums and Fees

The initial and ongoing costs of complying with the standard, if adopted as proposed, could affect the premiums and fees that the systemically important insurance companies charge. Insurance products are priced to allow insurers to recover their costs and earn a fair rate of return on their capital. In the long run, all costs of providing a policy are borne by policyholders.

Because the expected costs associated with implementing the proposal, if adopted, are not expected to be material within the context of the institutions' existing budgets, there is not expected to be a material change in the pricing of systemically important insurance companies' products from the proposed standards, if adopted as proposed. Moreover, the better identification and management of risk that is expected to result from the proposal may lead to improved efficiencies, fewer losses, and lower costs in the long term, which may offset the effects of the costs of compliance on premiums.

3. Reduced Financial Intermediation

If premiums or fees increase on some or all products, it could discourage some potential customers from purchasing these products. However, the possibility of reduced financial intermediation or economic output in the United States related to the proposed rule's corporate governance and risk-management standard and liquidity risk-management standard appears unlikely.

B. Analysis of Potential Benefits

Based on an initial assessment of available information, the benefits of the proposed standards are expected to outweigh the costs. Most significantly, the intent of the proposed rule is to reduce the probability of a systemically important insurance company failing or experiencing material financial distress. Even small changes in the probability of a systemically important firm failing can confer large expected benefits because of the enormous cost of financial crises. Additionally, the proposal would have an ancillary benefit of facilitating an orderly resolution of a systemically important insurance company, and could increase consumer confidence in the companies. Moreover, as explained below, improved risk management may improve efficiency by reducing losses and costs in the long term.

1. Benefits From a Reduction in the Likelihood That a Systemically Important Insurance Company Would Fail or Experience Material Financial Distress

This proposal is intended to reduce the risk that a systemically important insurance company would experience material financial distress or fail. A reduction of this probability carries numerous direct and indirect benefits.

The most important benefit from a reduction in the probability of default of a systemically important insurance company is a decreased potential for a potential negative impact on the United States economy caused by the failure or material financial distress of a systemically important insurance company. The Council has determined that material financial distress at each of the systemically important insurance companies could cause an impairment of financial intermediation or of financial market functioning that would be sufficiently severe to inflict significant damage on the broader economy. A reduction in the probability of failure or material financial distress at both systemically important insurance companies would promote financial stability and concomitantly materially

reduce the probability that a financial crisis would occur in any given year. The proposed rule would therefore advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial potential losses associated with a higher probability of financial crises.

In addition to the benefits to the broader economy, a reduction in a systemically important insurance company's default probability benefits its counterparties. The majority of funding for systemically important insurance companies comes from policyholders. Some of these policyholders would bear losses if the company were to fail. These losses can take the form of reduced payment for claims, reduced amounts available for withdrawal from policyholder accounts, or long delays.

The overall costs of these losses to policyholders extend beyond just their dollar value. Policyholders purchase insurance policies because they provide money when it is most needed. Insurance policies can replace lost wages when a policyholder is disabled or help a policyholder afford shelter after a natural catastrophe destroys his or her home and possessions. Other policyholders might not yet have experienced a loss event, but could be unable to obtain new coverage in the event a systemically important insurance company fails. For instance, an elderly policyholder who purchased a whole life contract many years ago would likely have difficulty obtaining a replacement policy.

Reducing the probability of a systemically important insurance company's failure or distress decreases the expected costs to policyholders, taxpayers, other counterparties, other insurance companies, and the financial system generally.

The proposal is also expected to benefit other creditors of systemically important insurance companies. In the event of a failure, the lenders and general creditors of a company also experience losses. While it is not the primary goal of this proposed regulation to protect these parties, they could potentially benefit.

The savings from a reduced probability of default would also have indirect benefits. They could also translate into lower borrowing costs for systemically important insurance companies. The lower costs could also affect insurance premiums. If systemically important insurance companies expect lower guaranty fund assessment costs, these savings could be passed on to policyholders in the form of lower premiums and fees. These savings are, however, unlikely to be material.

2. A Reduction in the Impact of a Firm's Failure or Distress on the Economy

While the primary benefit of the proposed rule would be a reduction in the probability of a firm failing or experiencing material financial distress, the proposed rule is also expected to produce benefits in a resolution of a systemically important insurance company. Liquidity is valuable in resolutions, and the restrictions on the liquidity buffer that require the buffer to be held at the holding company to be down-streamed, could facilitate a variety of strategies for an orderly resolution.

3. Improved Efficiencies Resulting From Better Risk Management

The proposed rule may result in efficiencies at systemically important insurance companies through improved risk-management practices. The proposed rule is expected to improve systemically important insurance companies' internal controls and identification and management of risks that may arise through their activities and investments. For example, the increased internal controls and liquidity stress-testing requirements could result in a systemically important insurance company discovering that a product's liquidity risks are different than it previously estimated and thus result in the systemically important insurance company being able to price that product in a way that more accurately reflects its risks. If systemically important insurance companies are better able to manage risk, then over the long term, the proposed rule may result in decreased losses and related costs to systemically important insurance companies.

Question 28: The Board invites comment on all aspects of the foregoing evaluation of the costs and benefits of the proposed rule. Are there additional costs or benefits that the Board should consider? Would the magnitude of costs or benefits be different than as described above?

VI. Administrative Law Matters

A. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

B. Paperwork Reduction Act Analysis

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number is 7100–NEW. The Board reviewed the proposed rule under the authority delegated to the Board by the OMB.

The proposed rule contains requirements subject to the PRA. The recordkeeping requirements are found in sections 252.164(e)(3), 252.164(f), 252.164(h), and 252.165(a)(7). These information collection requirements would be implemented pursuant to section 165 of the Dodd-Frank Act for systemically important insurance companies.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Reserve Desk Officer.

Proposed Information Collection

Title of Information Collection: Recordkeeping Requirements Associated with Enhanced Prudential Standards (Regulation YY).

Agency Form Number: Reg YY–1.

OMB Control Number: 7100—NEW.

Frequency of Response: Annual.

Affected Public: Businesses or other for-profit.

Respondents: Systemically important insurance companies.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for nonbank financial companies that the Council has determined should be supervised by the Board. Section 165 of the Dodd-Frank Act also permits the Board to establish such other prudential standards for such companies as the Board determines are appropriate.

Current Actions: Pursuant to section 165 of the Dodd-Frank Act, the Board is proposing the application of enhanced prudential standards to certain nonbank financial companies that the Council has determined should be supervised by the Board. The Board is proposing corporate governance, risk-management, and liquidity risk-management standards that are tailored to the business models, capital structures, risk profiles, and systemic footprints of the nonbank financial companies with significant insurance activities.

Section 252.164(e)(3) would require a systemically important insurance company to adequately document its methodology for making cash flow projections and the included assumptions.

Section 252.164(f) would require a systemically important insurance company to establish and maintain a contingency funding plan that sets out the company's strategies for addressing liquidity needs during liquidity stress events and describes the steps that should be taken to ensure that the systemically important insurance company's sources of liquidity are sufficient to fund its normal operating requirements under stress events. To operate normally, a firm must have sufficient funding to pay obligations in the ordinary course as they become due and meet all solvency requirements for the writing of new and renewal policies. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant. The contingency funding plan must include specified quantitative elements, an event management process that sets out the systemically important insurance company's procedures for managing liquidity during identified liquidity stress events, and procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

Section 252.164(h)(1) would require a systemically important insurance company to establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties and sets forth minimum standards for those procedures.

Section 252.164(h)(2) would require a systemically important insurance company to establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

Section 252.164(h)(3) would require a systemically important insurance company to establish and maintain procedures for monitoring intraday liquidity risk exposure of the systemically important insurance company if necessary for its business. These procedures must address how the management of the systemically important insurance company will (1) monitor and measure expected daily gross liquidity inflows and outflows, (2) identify and prioritize time-specific obligations so that the systemically important insurance company can meet these obligations as expected and settle less critical obligations as soon as possible, (3) coordinate the purchase and sale of derivatives so as to maximize the effectiveness of their hedging programs, (4) consider the amounts of collateral and liquidity needed to meet obligations when assessing the systemically important insurance company's overall liquidity needs, and (5) where necessary, manage and transfer collateral to obtain intraday credit.

Section 252.35(a)(7) would require a systemically important insurance company to establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time. The systemically important insurance company would establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the final rule's stress-testing requirements. The systemically important insurance company would maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

Estimated Paperwork Burden

Number of Respondents: 2 systemically important insurance companies.

Estimated Burden per Response: 200 hours (Initial set-up 160 hours).

Estimated Annual Burden: 720 hours (320 hours for initial set-up and 400 hours for ongoing compliance).

C. Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act [29] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rule. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with section 165 of the Dodd-Frank Act, the Board is proposing to adopt Regulation YY (12 CFR 252 *et seq.*) to establish enhanced prudential standards for systemically important insurance companies.[30] The enhanced standards include liquidity standards and requirements for overall risk-management (including establishing a risk committee) for companies that the Council has determined pose a grave threat to financial stability.

[29] 5 U.S.C. 601 *et seq.*

[30] *See* 12 U.S.C. 5365 and 5366.

Under Small Business Administration (SBA) regulations, the finance and insurance sector includes direct life insurance carriers and direct property and casualty insurance carriers, which generally are considered "small" if a life insurance carrier has assets of $38.5 million or less or if a property and casualty insurance carrier has less than 1,500 employees.[31] The Board believes that the finance and insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, systemically important insurance companies with asset sizes of $38.5 million or less if such an entity is a life insurance carrier and less than 1,500 employees if such an entity is a property and casualty insurance carrier are small entities for purposes of the RFA.

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rule generally would apply to a systemically important insurance company, which includes only nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. Companies that are subject to the proposed rule therefore substantially exceed the $38.5 million asset threshold at which a life insurance entity and the less than 1,500 employee threshold at which a property and casualty entity is considered a "small entity" under SBA regulations. The proposed rule would apply to a systemically important insurance company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[32] It is therefore unlikely that a financial firm that is at or below the $38.5 million asset threshold for a life insurance carrier or below the 1,500 employee threshold for a property and casualty carrier would be designated by the Council under section 113 of the Dodd-Frank Act.

As noted above, because the proposed rule is not likely to apply to any life insurance carrier with assets of $38.5 million or less or to any property and casualty carrier with less than 1,500 employees, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 165 of the Dodd-Frank Act.

[31] 13 CFR 121.201.

[32] *See* 76 FR 4555 (January 26, 2011).

List of Subjects

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, chapter II of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Add subpart P to read as follows:

Subpart P—Enhanced Prudential Standards for Systemically Important Insurance Companies

Sec.
252.160 Scope.
252.161 Applicability.
252.162 [Reserved]
252.163 Risk-management and risk committee requirements.
252.164 Liquidity risk-management requirements.
252.165 Liquidity stress testing and buffer requirements.

§ 252.160 Scope.

This subpart applies to systemically important insurance companies. Unless otherwise specified, for purposes of this subpart, the term systemically important insurance company means a nonbank financial company that meets two requirements:

(a) The Council has determined pursuant to section 113 of the Dodd-Frank Act that the company should be supervised by the Board and subjected to enhanced prudential standards; and

(b) The company has 40 percent or more of its total consolidated assets related to insurance activities as of the end of either of the two most recently completed fiscal years (systemically important insurance companies) or otherwise has been made subject to this subpart by the Board.

§ 252.161 Applicability.

(a) *General applicability.* Subject to the initial applicability provisions of paragraph (b) of this section, a systemically important insurance company must comply with the risk-management and risk-committee requirements set forth in § 252.163 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.164 and 252.165 beginning on the first day of the fifth quarter following the date on which the Council determined that the company shall be supervised by the Board.

(b) *Initial applicability.* A systemically important insurance company that is subject to supervision by the Board on the date that this rule was adopted by the Board must comply with the risk-management and risk-committee requirements set forth in § 252.163 and the liquidity risk-management and liquidity stress test requirements set forth in §§ 252.164 and 252.165, beginning on [date].

§ 252.162 [Reserved].

§ 252.163 Risk-management and risk committee requirements.

(a) *Risk committee*—(1) *General.* A systemically important insurance company must maintain a risk committee that approves and periodically reviews the risk-management policies of the systemically important insurance company's global operations and oversees the operation of the systemically important insurance company's global risk-management framework. The risk committee's responsibilities include liquidity risk-management as set forth in § 252.164(b).

(2) *Risk-management framework.* The systemically important insurance company's global risk-management framework must be commensurate with its structure, risk profile, complexity, activities, and size and must include:

(i) Policies and procedures establishing risk-management governance, risk-management procedures, and risk-control infrastructure for its global operations; and

(ii) Processes and systems for implementing and monitoring compliance with such policies and procedures, including:

(A) Processes and systems for identifying and reporting risks and risk-management deficiencies, including regarding emerging risks, and ensuring effective and timely implementation of actions to address emerging risks and risk-management deficiencies for its global operations;

(B) Processes and systems for establishing managerial and employee responsibility for risk-management;

(C) Processes and systems for ensuring the independence of the risk-management function; and

(D) Processes and systems to integrate risk-management and associated controls with management goals and its compensation structure for its global operations.

(3) *Corporate governance requirements.* The risk committee must:

(i) Have a formal, written charter that is approved by the systemically important insurance company's board of directors;

(ii) Be an independent committee of the board of directors that has, as its sole and exclusive function, responsibility for the risk-management policies of the systemically important insurance company's global operations and oversight of the operation of the systemically important insurance company's global risk-management framework;

(iii) Report directly to the systemically important insurance company's board of directors;

(iv) Receive and review regular reports on not less than a quarterly basis from the systemically important insurance company's chief risk officer provided pursuant to paragraph (b)(2)(ii) of this section; and

(v) Meet at least quarterly, or more frequently as needed, and fully document and maintain records of its proceedings, including risk-management decisions.

(4) *Minimum member requirements.* The risk committee must:

(i) Include at least one member having experience in identifying, assessing, and managing risk exposures of large, complex financial firms; and

(ii) Be chaired by a director who:

(A) Is not an officer or employee of the systemically important insurance company and has not been an officer or employee of the systemically important insurance company during the previous three years;

(B) Is not a member of the immediate family, as defined in § 225.41(b)(3) of the Board's Regulation Y (12 CFR 225.41(b)(3)), of a person who is, or has been within the last three years, an executive officer of the systemically important insurance company, as defined in § 215.2(e)(1) of the Board's Regulation O (12 CFR 215.2(e)(1)); and

(C)(*1*) Is an independent director under Item 407 of the Securities and Exchange Commission's Regulation S–K (17 CFR 229.407(a)), if the systemically important insurance company has an outstanding class of securities traded on an exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) (national securities exchange); or

(*2*) Would qualify as an independent director under the listing standards of a national securities exchange, as demonstrated to the satisfaction of the Board, if the systemically important insurance company does not have an outstanding class of securities traded on a national securities exchange.

(b) *Chief risk officer*—(1) *General.* A systemically important insurance company must appoint a chief risk officer with experience in identifying, assessing, and managing risk exposures of large, complex financial firms.

(2) *Responsibilities.* (i) The chief risk officer is responsible for overseeing:

(A) The establishment of risk limits on an enterprise-wide basis and the monitoring of compliance with such limits;

(B) The implementation of and ongoing compliance with the policies and procedures set forth in paragraph (a)(2)(i) of this section and the development and implementation of the processes and systems set forth in paragraph (a)(2)(ii) of this section; and

(C) The management of risks and risk controls within the parameters of the insurance nonbank company's risk control framework, and monitoring and testing of the company's risk controls.

(ii) The chief risk officer is responsible for reporting risk-management deficiencies and emerging risks to the risk committee and resolving risk-management deficiencies in a timely manner.

(3) *Corporate governance requirements.* (i) The systemically important insurance company must ensure that the compensation and other incentives provided to the chief risk officer are consistent with providing an objective assessment of the risks taken by the systemically important insurance company; and

(ii) The chief risk officer must report directly to both the risk committee and chief executive officer of the company.

(c) *Chief actuary*—(1) *General.* A systemically important insurance company must appoint a chief actuary with the ability to assess and balance risk selection, pricing, and reserving issues across product lines and geographies. A systemically important insurance company with significant life insurance business and property and casualty insurance business may appoint co-chief actuaries, one with responsibility for the company's life business and one with responsibility for the company's property and casualty business, in which case the below requirements would apply to each chief actuary.

(2) *Responsibilities.* (i) The chief actuary is responsible for determining on an enterprise-wide basis the adequacy of reserves and reviewing and advising senior management on the level of reserves.

(ii) The chief actuary is responsible for overseeing various activities, including but not limited to:

(A) Implementation of measures that assess the sufficiency of reserves;

(B) Review of the appropriateness of actuarial models, data, and assumptions used in reserving; and

(C) Implementation of and compliance with appropriate policies and procedures relating to actuarial work in reserving.

(iii) The systemically important insurance company must ensure that the compensation and other incentives provided to the chief actuary are consistent with providing an objective assessment of the systemically important insurance company's reserves.

(iv) The chief actuary must report directly to the audit committee of the company and may also have additional lines of reporting.

§ 252.164 Liquidity risk-management requirements.

(a) *Responsibilities of the board of directors*—(1) *Liquidity risk tolerance.* The board of directors of a systemically important insurance company must:

(i) Approve the acceptable level of liquidity risk that the systemically important insurance company may assume in connection with its operating strategies (liquidity risk tolerance) at least annually, taking into account the systemically important insurance company's capital structure, risk profile, complexity, activities, and size; and

(ii) Receive and review at least semi-annually information provided by senior management to determine whether the systemically important insurance company is operating in accordance with its established liquidity risk tolerance.

(2) *Liquidity risk-management strategies, policies, and procedures.* The board of directors must approve and periodically review the liquidity risk-management strategies, policies, and procedures established by senior

management pursuant to paragraph (c)(1) of this section.

(b) *Responsibilities of the risk committee.* The risk committee (or a designated subcommittee of such committee composed of members of the board of directors) must approve the contingency funding plan described in paragraph (f) of this section at least annually, and must approve any material revisions to the plan prior to the implementation of such revisions.

(c) *Responsibilities of senior management*—(1) *Liquidity risk.* (i) Senior management of a systemically important insurance company must establish and implement strategies, policies, and procedures designed to effectively manage the risk that the systemically important insurance company's financial condition or safety and soundness would be adversely affected by its inability or the market's perception of its inability to meet its cash and collateral obligations (liquidity risk). The board of directors must approve the strategies, policies, and procedures pursuant to paragraph (a)(2) of this section.

(ii) Senior management must oversee the development and implementation of liquidity risk measurement and reporting systems, including those required by this section and § 252.165.

(iii) Senior management must determine at least quarterly whether the systemically important insurance company is operating in accordance with such policies and procedures and whether the systemically important insurance company is in compliance with this section and § 252.165 (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition warrant), and establish procedures regarding the preparation of such information.

(2) *Liquidity risk tolerance reporting.* Senior management must report to the board of directors or the risk committee regarding the systemically important insurance company's liquidity risk profile and liquidity risk tolerance at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(3) *Business activities and products.* (i) Before a systemically important insurance company offers a new product or initiates a new activity that could potentially materially adversely affect the designated insurer's liquidity, senior management must approve such product or activity after evaluating the liquidity costs, benefits, and risks associated with such product or activity. In determining whether to approve the new activity or product, senior management must consider whether the liquidity risk of the new activity or product (under both current and stressed conditions) is within the company's established liquidity risk tolerance.

(ii) Senior management must review at least annually significant business activities and products to determine whether any activity or product creates or has created any unanticipated liquidity risk, and to determine whether the liquidity risk of each activity or product is within the company's established liquidity risk tolerance.

(4) *Cash-flow projections.* Senior management must review the cash-flow projections produced under paragraph (e) of this section at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the systemically important insurance company warrant) to ensure that the liquidity risk is within the established liquidity risk tolerance.

(5) *Liquidity risk limits.* Senior management must establish liquidity risk limits as set forth in paragraph (g) of this section and review the company's compliance with those limits at least quarterly (or more often, if changes in market conditions or the liquidity position, risk profile, or financial condition of the company warrant).

(6) *Liquidity stress testing.* Senior management must:

(i) Approve the liquidity stress testing practices, methodologies, and assumptions required in § 252.165(a) at least quarterly, and whenever the systemically important insurance company materially revises its liquidity stress testing practices, methodologies or assumptions;

(ii) Review the liquidity stress testing results produced under § 252.165(a) at least quarterly;

(iii) Review the independent review of the liquidity stress tests under paragraph (d) of this section periodically; and

(iv) Approve the size and composition of the liquidity buffer established under § 252.165(b) at least quarterly.

(d) *Independent review function.* (1) A systemically important insurance company must establish and maintain a review function to evaluate its liquidity risk-management.

(2) The independent review function must:

(i) Regularly, but no less frequently than annually, review and evaluate the adequacy and effectiveness of the company's liquidity risk-management processes, including its liquidity stress test processes and assumptions;

(ii) Assess whether the company's liquidity risk-management function complies with applicable laws, regulations, supervisory guidance, and sound business practices;

(iii) Report material liquidity risk-management issues to the board of directors or the risk committee in writing for corrective action, to the extent permitted by applicable law; and

(iv) Be independent of management functions that execute funding.

(e) *Cash-flow projections.* (1) A systemically important insurance company must produce comprehensive cash-flow projections that project cash flows arising from assets, liabilities, and off-balance sheet exposures over, at a minimum, short- and long-term time horizons, including time horizons longer than one year. The systemically important insurance company must update short-term cash-flow projections daily and must update longer-term cash-flow projections at least monthly.

(2) The systemically important insurance company must establish a methodology for making cash-flow projections that results in projections that:

(i) Include cash flows arising from anticipated claim and annuity payments; policyholder options including surrenders, withdrawals, and policy loans; intercompany transactions; premiums on new and renewal business; expenses; maturities and renewals of funding instruments, including through the operation of any provisions that could accelerate the maturity; investment income and proceeds from assets sales; and other potential liquidity exposures;

(ii) Include reasonable assumptions regarding the future behavior of assets, liabilities, and off-balance sheet exposures;

(iii) Identify and quantify discrete and cumulative cash flow mismatches over these time periods; and

(iv) Include sufficient detail to reflect the capital structure, risk profile, complexity, currency exposure, activities, and size of the systemically important insurance company, and any applicable legal and regulatory requirements, and include analyses by business line, currency, or legal entity as appropriate.

(3) The systemically important insurance company must adequately document its methodology for making cash flow projections and the included assumptions.

(f) *Contingency funding plan.* (1) A systemically important insurance company must establish and maintain a contingency funding plan that sets out the company's strategies for addressing

liquidity needs during liquidity stress events and describes the steps that should be taken to ensure that the systemically important insurance company's sources of liquidity are sufficient to fund its normal operating requirements under stress events. To operate normally, a firm must have sufficient funding to pay obligations in the ordinary course as they become due and meet all solvency requirements for the writing of new and renewal policies. The contingency funding plan must be commensurate with the company's capital structure, risk profile, complexity, activities, size, and established liquidity risk tolerance. The company must update the contingency funding plan at least annually, and when changes to market and idiosyncratic conditions warrant.

(2) *Components of the contingency funding plan*—(i) Quantitative assessment. The contingency funding plan must:

(A) Identify liquidity stress events that could have a significant impact on the systemically important insurance company's liquidity;

(B) Assess the level and nature of the impact on the systemically important insurance company's liquidity that may occur during identified liquidity stress events;

(C) Identify the circumstances in which the systemically important insurance company would implement its action plan described in paragraph (f)(2)(ii)(A) of this section, which circumstances must include failure to meet any minimum liquidity requirement imposed by the Board;

(D) Assess available funding sources and needs during the identified liquidity stress events;

(E) Identify alternative funding sources that may be used during the identified liquidity stress events; and

(F) Incorporate information generated by the liquidity stress testing required under § 252.165(a).

(ii) *Liquidity event management process.* The contingency funding plan must include an event management process that sets out the systemically important insurance company's procedures for managing liquidity during identified liquidity stress events. The liquidity event management process must:

(A) Include an action plan that clearly describes the strategies the company will use to respond to liquidity shortfalls for identified liquidity stress events, including the methods that the company will use to access alternative funding sources;

(B) Identify a liquidity stress event management team that would execute the action plan described in paragraph (f)(2)(ii)(A) of this section;

(C) Specify the process, responsibilities, and triggers for invoking the contingency funding plan, describe the decision-making process during the identified liquidity stress events, and describe the process for executing contingency measures identified in the action plan; and

(D) Provide a mechanism that ensures effective reporting and communication within the systemically important insurance company and with outside parties, including the Board and other relevant supervisors, counterparties, and other stakeholders.

(iii) *Monitoring.* The contingency funding plan must include procedures for monitoring emerging liquidity stress events. The procedures must identify early warning indicators that are tailored to the company's capital structure, risk profile, complexity, activities, and size.

(3) *Testing.* The systemically important insurance company must periodically test:

(i) The components of the contingency funding plan to assess the plan's reliability during liquidity stress events;

(ii) The operational elements of the contingency funding plan, including operational simulations to test communications, coordination, and decision-making by relevant management; and

(iii) The methods the systemically important insurance company will use to access alternative funding sources to determine whether these funding sources will be readily available when needed.

(g) *Liquidity risk limits*—(1) *General.* A systemically important insurance company must monitor sources of liquidity risk and establish limits on liquidity risk, including limits on:

(i) Concentrations in sources of funding by instrument type, single counterparty, counterparty type, secured and unsecured funding, and as applicable, other forms of liquidity risk;

(ii) Potential sources of liquidity risk arising from insurance liabilities;

(iii) The amount of non-insurance liabilities that mature within various time horizons; and

(iv) Off-balance sheet exposures and other exposures that could create funding needs during liquidity stress events.

(2) *Size of limits.* Each limit established pursuant to paragraph (g)(1) of this section must be consistent with the company's established liquidity risk tolerance and must reflect the company's capital structure, risk profile, complexity, activities, and size.

(h) *Collateral, legal entity, and intraday liquidity risk monitoring.* A systemically important insurance company must establish and maintain procedures for monitoring liquidity risk as set forth in this paragraph.

(1) *Collateral.* The systemically important insurance company must establish and maintain policies and procedures to monitor assets that have been, or are available to be, pledged as collateral in connection with transactions to which it or its affiliates are counterparties. These policies and procedures must provide that the systemically important insurance company:

(i) Calculates all of its collateral positions on a weekly basis (or more frequently, as directed by the Board), specifying the value of pledged assets relative to the amount of security required under the relevant contracts and the value of unencumbered assets available to be pledged;

(ii) Monitors the levels of unencumbered assets available to be pledged by legal entity, jurisdiction, and currency exposure;

(iii) Monitors shifts in the systemically important insurance company's funding patterns, such as shifts in the tenor of obligations and collateral requirements; and

(iv) Tracks operational and timing requirements associated with accessing collateral at its physical location (for example, the custodian or securities settlement system that holds the collateral).

(2) *Legal entities, currencies, and business lines.* The systemically important insurance company must establish and maintain procedures for monitoring and controlling liquidity risk exposures and funding needs within and across significant legal entities, currencies, and business lines, taking into account legal and regulatory restrictions on the transfer of liquidity between legal entities.

(3) *Intraday exposures.* The systemically important insurance company must establish and maintain procedures for monitoring the intraday liquidity risk exposure of the systemically important insurance company if necessary for its business. If applicable, these procedures must address how the management of the systemically important insurance company will:

(i) Monitor and measure expected daily gross liquidity inflows and outflows;

(ii) Identify and prioritize time-specific obligations so that the

systemically important insurance company can meet these obligations as expected and settle less critical obligations as soon as possible;

(iii) Coordinate the purchase and sale of derivatives so as to maximize the effectiveness of their hedging programs;

(iv) Consider the amounts of collateral and liquidity needed to meet obligations when assessing the systemically important insurance company's overall liquidity needs; and

(v) Where necessary, manage and transfer collateral to obtain intraday credit.

§ 252.165 Liquidity stress testing and buffer requirements.

(a) *Liquidity stress testing requirement*—(1) *General.* A systemically important insurance company must conduct stress tests to assess the potential impact of the liquidity stress scenarios set forth in paragraph (a)(3) of this section on its cash flows, liquidity position, profitability, and solvency, taking into account its current liquidity condition, risks, exposures, strategies, and activities.

(i) The systemically important insurance company must take into consideration its balance sheet exposures, off-balance sheet exposures, size, risk profile, complexity, business lines, organizational structure, and other characteristics of the systemically important insurance company that affect its liquidity risk profile in conducting its stress test. Mechanisms that would imperil a systemically important insurance company's ability to continue operations—such as contractual stays—should not be taken into consideration as a source of liquidity in stress testing.

(ii) In conducting a liquidity stress test using the scenarios described in paragraph (a)(3) of this section, the systemically important insurance company must address the potential direct adverse impact of associated market disruptions on the systemically important insurance company and incorporate the potential actions of other market participants experiencing liquidity stresses, contract holders, and policyholders under the market disruptions that would adversely affect the systemically important insurance company.

(2) *Frequency.* The liquidity stress tests required under paragraph (a)(1) of this section must be performed at least monthly. The Board may require the systemically important insurance company to perform stress testing more frequently.

(3) *Stress scenarios.* (i) Each liquidity stress test conducted under paragraph (a)(1) of this section must include, at a minimum:

(A) A scenario reflecting adverse market conditions;

(B) A scenario reflecting an idiosyncratic stress event for the systemically important insurance company; and

(C) A scenario reflecting combined market and idiosyncratic stresses.

(ii) The systemically important insurance company must incorporate additional liquidity stress scenarios into its liquidity stress test, as appropriate, based on its financial condition, size, complexity, risk profile, scope of operations, or activities. The Board may require the systemically important insurance company to vary the underlying assumptions and stress scenarios.

(4) *Planning horizon.* Each stress test conducted under paragraph (a)(1) of this section must include a seven-day planning horizon, a 30-day planning horizon, a 90-day planning horizon, a one-year planning horizon, and any other planning horizons that are relevant to the systemically important insurance company's liquidity risk profile. For purposes of this section, a "planning horizon" is the period over which the relevant stressed projections extend. The systemically important insurance company must use the results of the stress test over the 90-day planning horizon to calculate the size of the liquidity buffer under paragraph (b) of this section.

(5) *Requirements for assets used as cash-flow sources in a stress test.* (i) To the extent an asset is used as a cash-flow source to offset projected funding needs during the planning horizon in a liquidity stress test, the fair market value of the asset must be discounted to reflect any credit risk and market volatility of the asset.

(ii) Assets used as cash-flow sources during a planning horizon must be diversified by collateral, counterparty, borrowing capacity, and other factors associated with the liquidity risk of the assets.

(iii) For stress tests with a planning horizon of 90 days or less, cash-flow sources cannot include future borrowings or the liquidation of assets unless they meet the requirement to be part of the buffer as defined in (b)(3) of this section. In all stress tests and notwithstanding the limitations on asset liquidity, separate account assets and closed block assets would be permitted to be included as cash-flow sources in proportion to the cash flow needs in these same accounts.

(6) *Tailoring.* Stress testing must be tailored to, and provide sufficient detail to reflect, a systemically important insurance company's capital structure, risk profile, complexity, activities, and size.

(7) *Governance*—(i) *Policies and procedures.* A systemically important insurance company must establish and maintain policies and procedures governing its liquidity stress testing practices, methodologies, and assumptions that provide for the incorporation of the results of liquidity stress tests in future stress testing and for the enhancement of stress testing practices over time.

(ii) *Controls and oversight.* A systemically important insurance company must establish and maintain a system of controls and oversight that is designed to ensure that its liquidity stress testing processes are effective in meeting the requirements of this section. The controls and oversight must ensure that each liquidity stress test appropriately incorporates conservative assumptions with respect to the stress scenario in paragraph (a)(3) of this section and other elements of the stress-test process, taking into consideration the systemically important insurance company's capital structure, risk profile, complexity, activities, size, business lines, legal entity or jurisdiction, and other relevant factors. The assumptions must be approved by the chief risk officer and be subject to the independent review under § 252.164(d).

(iii) *Management information systems.* The systemically important insurance company must maintain management information systems and data processes sufficient to enable it to effectively and reliably collect, sort, and aggregate data and other information related to liquidity stress testing.

(b) *Liquidity buffer requirement.* (1) A systemically important insurance company must maintain a liquidity buffer that is sufficient to meet the projected net stressed cash-flow need over the 90-day planning horizon of a liquidity stress test conducted in accordance with paragraph (a) of this section under each scenario set forth in paragraph (a)(3) of this section.

(2) *Net stressed cash-flow need.* The net stressed cash-flow need for a systemically important insurance company is the difference between the amount of its cash-flow need and the amount of its cash flow sources over the 90-day planning horizon.

(3) *Asset requirements.* The liquidity buffer must consist of highly liquid assets that are unencumbered, as defined in paragraph (b)(3)(ii) of this section:

(i) *Highly liquid asset.* A highly liquid asset includes:

(A) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(B) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully and explicitly guaranteed by the full faith and credit of the U.S. government provided that the security is liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(C) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a sovereign entity, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, European Community, or a multilateral development bank, that is:

(i) Either:

(A) Assigned no higher than a 20 percent risk weight under subpart D of Regulation Q (12 CFR part 217); or

(B) Issued by a sovereign entity in its own currency and the systemically important insurance company holds the security in order to meet its net cash outflows in the jurisdiction of the sovereign entity;

(ii) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity;

(D) A security issued by, or guaranteed as to the timely payment of principal and interest by, a U.S. government sponsored enterprise, that is investment grade under 12 CFR part 1 as of the calculation date, provided that the claim is senior to preferred stock and liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(E) A corporate debt security that is:

(i) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section

(ii) Investment grade under 12 CFR part 1 as of the calculation date;

(iii) Issued or guaranteed by an entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity; or

(F) A publicly traded common equity share that is:

(i) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(ii) Included in: The Russell 1000 Index;

(iii) Issued by an entity whose publicly traded common equity shares have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions;

(iv) Not issued by a financial sector entity and not issued by a consolidated subsidiary of a financial sector entity; and

(vi) If held by a depository institution, is not acquired in satisfaction of a debt previously contracted (DPC);

(G) A general obligation security issued by, or guaranteed as to the timely payment of principal and interest by, a public sector entity where the security is:

(i) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section;

(ii) Investment grade under 12 CFR part 1 as of the calculation date;

(iii) Issued or guaranteed by a public sector entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; and

(iv) Not an obligation of a financial sector entity and not an obligation of a consolidated subsidiary of a financial sector entity, except that a security will not be disqualified as a highly liquid asset solely because it is guaranteed by a financial sector entity or a consolidated subsidiary of a financial sector entity if the security would, if not guaranteed, meet the criteria of this section.

(H) Any other asset that the systemically important insurance company demonstrates to the satisfaction of the Board:

(1) Has low credit risk and low market risk;

(2) Liquid and readily-marketable, as defined in paragraph (b)(3)(iii) of this section and

(3) Is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

(ii) *Unencumbered.* An asset is unencumbered if it:

(A) Is free of legal, regulatory, contractual, or other restrictions on the ability of such systemically important insurance company promptly to liquidate, sell or transfer the asset; and

(B) Is not pledged or used to secure or provide credit enhancement to any transaction.

(iii) *Liquid and readily marketable.* Liquid and readily-marketable means, with respect to a security, that the security is traded in an active secondary market with:

(1) More than two committed market makers;

(2) A large number of non-market maker participants on both the buying and selling sides of transactions;

(3) Timely and observable market prices; and

(4) A high trading volume.

(iv) *Limitations on intra-group transfer of funds.* Insurance non-bank financial companies must hold enough highly liquid, unencumbered assets at the top-tier holding company to cover the sum of all stand-alone material entity net liquidity deficits. The stand-alone net liquidity deficit of each material entity would be calculated as that entity's amount of net stressed outflows over a 90-day planning horizon less the highly liquid assets held at the material entity. For the purposes of evaluating liquidity deficits of material entities, systemically important insurance companies should treat inter-affiliate exposures in the same manner as third-party exposures. The remaining highly liquid, unencumbered assets that are held to satisfy the liquidity buffer requirement can be held at a regulated company up to:

(A) The average amount of net cash outflows of the company holding the assets during the 90-day planning horizon in the scenarios set forth in paragraph (a)(3) plus.

(B) Any additional amount of assets, including proceeds from the monetization of assets that would be available for transfer to the top-tier company during times of stress without statutory, regulatory, contractual, or supervisory restrictions.

(v) *Calculating the amount of a highly liquid asset.* In calculating the amount of a highly liquid asset included in the liquidity buffer, the systemically important insurance company must discount the fair market value of the asset to reflect any credit risk and market price volatility of the asset.

(vi) *Diversification.* The liquidity buffer must not contain significant concentrations of highly liquid assets by issuer, business sector, region, or other factor related to the systemically important insurance company's risk, except with respect to cash and securities issued or guaranteed by the United States, a U.S. government agency, or a U.S. government-sponsored enterprise.

By order of the Board of Governors of the Federal Reserve System, June 9, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–14005 Filed 6–13–16; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1539]

RIN 7100 AE 53

Capital Requirements for Supervised Institutions Significantly Engaged in Insurance Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is inviting comment on an advance notice of proposed rulemaking (ANPR) regarding approaches to regulatory capital requirements for depository institution holding companies significantly engaged in insurance activities (insurance depository institution holding companies), and nonbank financial companies that the Financial Stability Oversight Council (FSOC or Council) has determined will be supervised by the Board and that have significant insurance activities (systemically important insurance companies). The Board is inviting comment on two approaches to consolidated capital requirements for these institutions: An approach that uses existing legal entity capital requirements as building blocks for insurance depository institution holding companies and a simple consolidated approach for systemically important insurance companies.

DATES: Comments must be received no later than August 17, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1539; RIN 7100 AE 53), by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include Docket No. R–1539; RIN 7100 AE 53) in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW., (between 18th and 19th Streets NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Thomas Sullivan, Associate Director, (202) 475–7656, Linda Duzick, Manager, (202) 728–5881, or Suyash Paliwal, Senior Insurance Policy Analyst, (202) 974–7033, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin W. McDonough, Special Counsel, (202) 452–2036; Tate Wilson, Counsel, (202) 452–369; David Alexander, Counsel, (202) 452–2877; or Mary Watkins, Attorney (202) 452–3722, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Robust capital is an important safeguard to protect the safety and soundness of financial institutions; enhance the resilience of financial institutions to position them to better navigate periods of financial or economic stress; and mitigate threats to financial stability that might be posed by the activities, material financial distress, or failure of financial institutions. To help achieve these benefits, various provisions of Federal law require the Board and other Federal banking agencies to establish minimum capital standards for holding companies that own insured depository institutions (IDIs) and for financial firms that are designated by the FSOC for supervision by the Board. The capital standards developed by the Board take into account the overall risk profile and the size, scope, and complexity of the operations of the institution. Further, the law allows the Board to tailor the minimum capital requirements applicable to companies that both own an IDI and significantly engage in insurance activities as well as for systemically important insurance companies.

The Board's supervisory objectives in setting capital requirements for the consolidated institution focus on the safety and soundness of the company and its IDI and on enhancing financial stability, and complement the primary mission of state legal entity insurance supervisors, which tends to focus on the protection of policyholders.[1] To achieve these objectives, the Board seeks comment on several approaches to designing a regulatory capital framework for supervised institutions significantly engaged in insurance activities that is intended to ensure that the institution has sufficient capital, commensurate with its overall institution-wide risk profile (1) to absorb losses and continue operations as a going concern throughout times of economic, financial, and insurance-related stress (*e.g.*, morbidity, mortality, longevity, natural and man-made catastrophes); (2) to serve as a source of strength to any subsidiary depository institutions;[2] and (3) to substantially mitigate any threats to financial stability that the institution might pose.

B. The Board's Consolidated Supervision of Systemically Important Insurance Companies and Insurance Depository Institution Holding Companies

This ANPR seeks comment on proposed approaches to regulatory capital requirements that are tailored to the risks of supervised insurance institutions, including both insurance depository institution holding companies and systemically important insurance companies.

The Board has broad authority to establish regulatory capital standards for savings and loan holding companies (SLHCs) and bank holding companies (BHCs)[3] under the Home Owners' Loan Act (HOLA) and Bank Holding Company Act, respectively.[4] The Board's supervisory objectives for insurance depository institution holding companies include ensuring the safe and sound operation of the consolidated firms and subsidiary IDIs, and ensuring that holding companies can serve as a source of strength for any subsidiary IDIs.[5] In addition, certain nonbank financial companies with significant insurance activities have been designated by the Council pursuant to section 113 of the Dodd-Frank Act[6] to be supervised by the Board and made subject to enhanced prudential standards. For these systemically important insurance companies, the Board is required under section 165 of the Dodd-Frank Act to establish enhanced prudential standards, including more stringent risk-based and leverage capital requirements, as well as stress tests.[7]

With respect to both insurance depository institution holding companies and systemically important insurance companies, the Board must establish minimum leverage capital requirements and minimum risk-based capital requirements that apply (1) on a consolidated basis, and (2) are at least as stringent as the generally applicable capital requirements that applied to IDIs at the time the Dodd-Frank Act was adopted, as well as current generally applicable IDI capital requirements.[8] The Dodd-Frank Act has been amended to allow the Board to tailor these minimum capital requirements as they would apply to persons regulated by state or foreign insurance regulators.[9]

The Board currently supervises twelve insurance depository institution holding companies and two systemically important insurance companies. Collectively, these firms have approximately $2 trillion in assets and represent approximately one-quarter of the assets of the U.S. insurance industry. These institutions range in size from approximately $3 billion in total assets to about $700 billion in total assets, and engage in a wide variety of insurance and non-insurance activities. Some of the firms operate exclusively in the United States, and some have material international operations. These institutions have a variety of ownership structures, including stock and mutual forms of ownership. Some of these institutions prepare financial statements according to U.S. Generally Accepted Accounting Principles (U.S. GAAP), and some do not, preparing financial statements only according to U.S. Statutory Accounting Principles (SAP) filed with their relevant state insurance regulators. The insurance depository institution holding companies tend to have simpler structures, often have an operating company, rather than a holding company, as the top-tier parent, and have a relatively greater U.S. focus in their operations. By contrast, the systemically important insurance companies are relatively larger financial institutions with substantial international operations, comparatively complex organizational structures relative to other insurance companies, and non-insurance as well as insurance activities.

The Board aims to develop regulatory capital frameworks for insurance depository institution holding companies and systemically important insurance companies that are consistent with the Board's supervisory objectives and appropriately tailored to the business of insurance. The Board is seeking comment on different frameworks that could be applied to insurance depository institution holding companies and systemically important insurance companies. As described below, this ANPR outlines two conceptual frameworks, one of which may be more appropriate for large, complex, systemically important institutions, while the other may be more appropriate for generally less complex firms such as the current population of insurance depository institution holding companies.

The Board is also seeking comment on the criteria that should be used to determine which supervised institutions are subject to regulatory capital requirements that are tailored to the business of insurance. A supervised insurance institution could become subject to tailored regulatory capital rules based on the significance of these activities for the consolidated firm. The Board could apply a threshold based on a percentage of total consolidated assets attributable to insurance activities. For example, for purposes of determining whether an SLHC is significantly engaged in insurance activities and should be subject to capital requirements that are tailored to these risks, the Board is considering using the threshold in the Board's existing capital requirements (Regulation Q).[10] Under this approach, an SLHC would be subject to the capital requirements as an insurance SLHC if it held 25 percent or more of its total consolidated assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit risk).[11] Further, the Board could define systemically important insurance companies as FSOC-designated nonbank financial companies with at least 40 percent of total consolidated assets related to insurance activities (as of the end of either of the two most recently completed fiscal years), or as otherwise ordered by the Board. These thresholds could reflect a level of insurance activity that is significant rather than incidental to the institution's activities.

The Board invites comment on all aspects of these frameworks, including whether these frameworks are workable, would enhance the resilience of these institutions, and would reduce risks to financial stability. The Board also invites comment and suggestions on other frameworks that may better achieve these purposes. In addition, the Board invites comment on the costs and benefits of these and alternate approaches, and on the various advantages and difficulties of each approach. To help the Board address specific issues raised by the regulatory capital frameworks discussed below, the Board also invites comment on the

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[1] For discussion regarding state supervision of insurance, *see, e.g.*, Financial Stability Oversight Council, Basis of the Financial Stability Oversight Council's Final Determination Regarding American International Group, Inc. (July 8, 2013), *available at https://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf;* Financial Stability Oversight Council, Basis of the Financial Stability Oversight Council's Final Determination Regarding Prudential Financial, Inc. (Sept. 19, 2013), *available at https://www.treasury.gov/initiatives/fsoc/designations/Documents/Prudential%20Financial%20Inc.pdf.*

[2] 12 U.S.C. 1831o–1. *See also,* 12 U.S.C. 1844 and Section 706, Division O, of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2242 (2015).

[3] BHCs that are financial holding companies may engage in insurance underwriting activities. 12 U.S.C. 1844(k).

[4] 12 U.S.C. 1841 *et seq.*; 12 U.S.C. 1467a(g).

[5] 12 U.S.C. 1831o–1. *See also* 12 U.S.C. 1467a(g)(5).

[6] 12 U.S.C. 5323; *see also* Basis of the Financial Stability Oversight Council's Final Determination Regarding American International Group, Inc. (July 8, 2013), *available at http://www.treasury.gov/initiatives/fsoc/designations/Documents/Basis%20of%20Final%20Determination%20Regarding%20American%20International%20Group,%20Inc.pdf;* Basis for the Financial Stability Oversight Council's Final Determination Regarding Prudential Financial, Inc. (Sept. 19, 2013), available at *http://www.treasury.gov/initiatives/fsoc/designations/Documents/Prudential%20Financial%20Inc.pdf.*

[7] 12 U.S.C. 5365. Section 165 of the Dodd-Frank Act would also direct the Board to establish consolidated capital requirements and administer stress test for any insurance depository institution holding companies that are BHCs with at least $50 billion in total consolidated assets. Presently, there are no BHCs that are also insurance depository institution holding companies.

[8] 12 U.S.C. 5371.

[9] 12 U.S.C. 5371(c)(1).

[10] 12 CFR 217.2.

[11] 12 CFR 217.2. Depository institution holding companies comprise BHCs as well as SLHCs. Presently, the population of Board-supervised insurance depository institution holding companies includes 12 SLHCs significantly engaged in insurance activities. To the extent that a BHC met the definition of an insurance depository institution holding company, the Board would need to consider whether to exclude the BHC from the Board's Regulation Q and instead apply a different approach.

specific questions listed throughout this notice.

II. Consolidated Capital Frameworks for Supervised Institutions Significantly Engaged in Insurance Activities: Two Options

In developing and evaluating potential capital frameworks, the Board relied on its experience in supervision of financial firms and with the development and application of capital standards through normal and stressed periods; discussions with affected financial firms, including firms engaged in insurance activities; the purposes of and requirements in Federal law; and information and insights provided by other supervisors, including state insurance supervisors, among other things.

Insurance supervisors, insurance companies and others have argued that because liability structures, asset classes, and asset-liability matching of insurance companies differ markedly from those of a typical BHC, the capital framework (or frameworks) should be tailored to the business mix and risk profile of insurance depository institution holding companies and systemically important insurance companies. They have also contended that leverage limits based on the ratio of equity to total assets, which are an important backstop in a banking regulatory capital framework, may have less value as a risk metric for supervised institutions significantly engaged in insurance activities because they do not address the different liability structure that is inherent to the insurance business. The Board has flexibility to develop leverage and risk-based capital requirements that are tailored to appropriately reflect the risks of supervised institutions significantly engaged in insurance activities.[12]

At the same time, supervisors and commenters recognize that a capital framework also should take into account all material risk types (insurance and non-insurance) in these institutions. Capital standards that do not account for all types of material risks tend to be ineffective and incent riskier activity. In addition, to the greatest extent possible, the capital framework should take account of risks across the entire firm—in the holding company, in regulated subsidiaries, and in unregulated subsidiaries. The financial crisis demonstrated that risks of financial distress often spread across an organization from unregulated subsidiaries to regulated subsidiaries.[13] Moreover, the framework should be as standardized as possible, rather than relying predominantly on a firm's internal capital models. Greater standardization will produce more consistent capital requirements, enhance comparability across firms, and promote greater transparency.[14]

The capital framework also should be based on U.S. regulatory and accounting standards and not foreign regulatory and accounting standards in order to best meet the needs of the U.S. financial system and insurance markets while reflecting the risks inherent in the business of insurance. The framework should strike a reasonable balance between simplicity and risk sensitivity. Achieving this balance will help ensure that risks are accurately captured while minimizing regulatory burden and increasing comparability and transparency across firms. The framework also should be executable in the short-to-medium term. Finally, the framework should contribute to the stability of the financial system and should serve as a good basis for a supervisory stress test regime to the extent these provisions apply to the regulated firm.

The Board invites comment on the considerations that should guide the development of a regulatory capital framework for insurance depository institution holding companies and systemically important insurance companies.

Question 1. *Are these identified considerations appropriate? Are there other considerations the Board should incorporate in its evaluation of capital frameworks for supervised institutions significantly engaged in insurance activities?*

Question 2. *Should the same capital framework apply to all supervised insurance institutions?*

Question 3. *What criteria should the Board use to determine whether a supervised insurance institution should be subject to regulatory capital rules tailored to the business of insurance?*

Question 4. *If multiple capital frameworks are used, what criteria should be used to determine whether a supervised insurance institution should be subject to each framework?*

Question 5. *In addition to insurance underwriting activities, what other activities, if any, should be used to determine whether a supervised institution is significantly engaged in insurance activities and should be subject to regulatory capital requirements tailored to the business mix and risk profile of insurance?*

The remainder of this section will describe two potential regulatory capital frameworks for supervised institutions significantly engaged in insurance activities; discuss the strengths and weaknesses of each approach; and suggest ways in which each approach could be effectively applied. The Board invites comment on all aspects of each approach. The Board will then use these comments to develop a specific proposal, likely based on these two approaches, and invite public comment on that specific proposal.

A. Option 1: Building Block Approach

The Board has traditionally set capital requirements for holding companies on a consolidated basis.[15] Among other things, a consolidated capital standard deters firms from placing assets in a particular legal entity, where the assets may be subject to lower, or no, capital requirements. Many SLHCs that are supervised insurance institutions because they own depository institutions do not produce consolidated financial statements.[16] This presents potential challenges to the development of consolidated capital requirements that would not impose undue burden on these institutions.

One approach that would accommodate this would aggregate capital resources and capital requirements across the different legal entities in the group to calculate combined qualifying and required capital. A firm's aggregate capital requirements generally would be the sum of the capital requirements at each subsidiary. This is a building block approach (BBA). The capital requirement for each regulated insurance or depository institution subsidiary would be based on the regulatory capital rules of that subsidiary's functional regulator—whether a state or foreign insurance regulator for insurance subsidiaries or a federal banking regulator for IDIs. The BBA would then build upon and aggregate legal entity (insurance, non-insurance financial, non-financial, and holding company) qualifying capital

[12] *See* Insurance Capital Standards Clarification Act of 2014, Public Law 113–279, 128 Stat. 3017 (2014).

[13] For example, severe losses in non-insurance subsidiaries may undermine confidence in an entire insurance organization and contribute to a firm's inability to meet obligations. Board of Governors of the Federal Reserve System, Regulatory Reform, *American International Group (AIG), Maiden Lane II and III, available at https://www.federalreserve.gov/newsevents/reform_aig.htm.*

[14] Actuarial models, as opposed to asset risk-weighting models, are nonetheless important in setting insurance reserves.

[15] *See* 12 CFR part 217.

[16] Section 171(c)(3) of the Dodd-Frank Act, as amended, prohibits the Board from requiring, pursuant to the Dodd-Frank Act or HOLA, supervised institutions that only prepare financial statements in accordance with SAP to prepare financial statements in accordance with U.S. GAAP. 12 U.S.C. 5371(c)(3)(A)–(B).

and required capital, subject to adjustments.

Under this approach, the regulatory capital requirements for a regulated insurance underwriting firm would be determined by reference to the rules of the appropriate state or foreign insurance supervisor for the firm. The regulatory capital requirement for each IDI generally would be determined under the Board's Regulation Q or under other capital rules applicable to IDIs.[17] The regulatory capital requirement for any other regulated non-insurance or unregulated subsidiary legal entity, such as a mid-tier holding company, would also be determined under the Board's Regulation Q.

As discussed further below, BBA may require the use of several types of adjustments in the calculation of a firm's enterprise-wide capital requirement. Adjustments may be necessary to conform or standardize the accounting practices under SAP among U.S. jurisdictions, and between SAP and foreign jurisdictions. Similarly, adjustments may be necessary to eliminate inter-company transactions.

Additionally, the BBA may require consideration of cross-jurisdictional differences. As discussed below, this would be achieved through the use of scalars. Scalars may, for example, be appropriate to account for differences in stringency applied by different insurance supervisors, and to ensure adequate reflection of the safety and soundness and financial stability goals, as opposed to policyholder protection, that the Board is charged with achieving.

The ratio of aggregate qualifying capital to aggregate required capital would represent capital adequacy at a consolidated level. Represented in an equation, the BBA could be summarized as follows:

$$\text{Capital Ratio (BBA)} = \frac{\sum Qualifying\ Capital(i)}{\sum[Adj.Required\ Capital(i) \cdot Scalar(i)]}$$

Question 6. *What are the advantages and disadvantages of applying the BBA to the businesses and risks of supervised institutions significantly engaged in insurance activities?*

Question 7. *What challenges and benefits do you foresee to the development, implementation, or application of the BBA? To what extent would the BBA utilize existing records, data requirements, and systems, and to what extent would the BBA require additional records, data, or systems? How readily could the BBA's calculations be performed across a supervised institution's subsidiaries and affiliates within and outside of the United States?*

Question 8. *What scalars and adjustments are appropriate to implement the BBA, and make the BBA effective in helping to ensure resiliency of the firm and comparability among firms, while minimizing regulatory burden and incentives and opportunity to evade the requirements?*

Question 9. *To what extent is the BBA prone to regulatory arbitrage?*

Question 10. *Which jurisdictions or capital regimes would pose the greatest challenges to inclusion in the BBA?*

Question 11. *How should the BBA apply to a supervised institution significantly engaged in insurance activity where the ultimate parent company is an insurer that is also regulated by a state insurance regulator? Are there other organizational structures that could present challenges?*

The key strengths of the BBA include the following: (1) It efficiently uses existing legal-entity-level regulatory capital frameworks; (2) it is an approach that could be developed and implemented expeditiously; (3) it would involve relatively low regulatory costs and burdens for the institutions; and (4) it would produce regulatory capital requirements that are tailored to the risks of each distinct jurisdiction and line of business of the institution.

The key weaknesses of the BBA include: (1) At the top-tier level, it is an aggregated, but not a consolidated, capital framework; (2) it would not discourage regulatory arbitrage within an institution due to inconsistencies across jurisdictional capital requirements and also may be vulnerable to gaming through techniques such as double leverage (*i.e.*, when an upstream entity issues debt to acquire an equity stake in a downstream entity); (3) it would need to account for inter-company transactions, which may result in extensive adjustments; (4) it would require the Board to determine scalars regarding a large number of state and foreign insurance regulatory capital regimes; and (5) it likely would require legal-entity-level stress tests, presenting challenges to appropriate reflection of diversification and inter-company risk transfer mechanisms and other transactions.

The strengths of the BBA would appear to be maximized and its weakness minimized were the BBA to be applied to insurance depository institution holding companies, which generally are less complex, less international, and not systemically important. In this context, incremental safety and soundness benefits would appear to be complemented by the lower compliance costs due to the smaller number of scalars involved. In particular, the BBA is standardized, executable, applies U.S.-based accounting principles for U.S. legal entities, accounts for material insurance risks, strikes a balance between risk-sensitivity and simplicity, and is well-tailored to the business model and risks of insurance.[18]

For the systemically important insurance companies, the BBA may not capture the full set of risks these firms impose on the financial system without significant use of adjustments and scalars, thereby negating any potential burden reduction from the approach. These firms also tend to prepare financial statements under U.S. GAAP, thereby making a consolidated capital requirement less burdensome to compute. Accordingly, the BBA may not be appropriate for systemically important insurance companies.

The Board continues to analyze whether the BBA is appropriate as a regulatory capital framework and whether it may be appropriate for all insurance depository institution holding companies or only a subset of these firms. Specifically, the Board is considering whether larger or more complex insurance depository institution holding companies should be subject to a regulatory capital framework other than the BBA.

Question 12. *Is the BBA an appropriate framework for insurance depository institution holding companies? How effective is the BBA at achieving the goal of ensuring the safety and soundness of an insurance depository institution holding company?*

Question 13. *Would the BBA be appropriate for larger or more complex insurance companies that might in the future acquire a depository institution?*

Further, the Board seeks comment on the following key issues regarding the design and implementation of the BBA.

[17] 12 CFR part 217.

[18] In addition, the BBA could be implemented in a manner consistent with section 171(c)(3) of the Dodd-Frank Act.

Baseline capital requirements at the legal-entity level. The BBA framework would begin with the baseline capital requirements at each legal entity. For example, for state-regulated insurance entities, the BBA could use different triggering thresholds from the state risk-based capital framework (*e.g.*, the Company Action Level, the Authorized Control Level), or some other level as the appropriate baseline capital requirement. For some regulated foreign insurance entities, the Board would need to decide whether the local minimum capital requirement, prescribed capital requirement, or some other requirement is the appropriate baseline. For subsidiary IDIs, the BBA could use the minimum common equity tier 1, tier 1, or total risk-based capital requirements under the standardized approach in the Board's Regulation Q, as well as the tier 1 leverage ratio. For unregulated subsidiaries, the BBA could use the risk-based capital or leverage requirements for depository institutions or some other, similarly stringent approach.

Question 14. *In applying the BBA, what baseline capital requirement should the Board use for insurance entities, banking entities, and unregulated entities?*

State-by-state and international variances in accounting or capital treatment for supervised institutions significantly engaged in insurance activities. The accounting practices for insurance companies can vary from state to state due to permitted and prescribed practices, and can result in significant differences in financial statements between similar entities filing SAP financial statements in different states. Regulators both within and outside of the U.S. have the authority to take actions with respect to insurance companies that may result in variances from standard accounting practices. The BBA would need to address international or state regulator approved variances in accounting or capital requirements for regulated insurance entities.

Question 15. *How should the BBA account for international or state regulator approved variances to accounting rules?*

Question 16. *What are the challenges in using financial data under different accounting frameworks? What adjustments and/or eliminations should be made to ensure comparability when aggregating to an institution-wide level?*

Question 17. *What approaches or strategies could the Board use to calibrate the various capital regimes without needing to make adjustments to the underlying accounting?*

Inter-company transactions. Any approach to regulatory capital for a supervised institution significantly engaged in insurance activities that aggregates qualifying capital and required capital at different legal entities within the institution should address inter-company transactions. Although inter-company transactions are naturally eliminated in consolidated accounting and regulatory frameworks, in an aggregated framework like the BBA, some inter-company transactions could generate redundancies in capital requirements, while others could reduce the required capital of a legal entity without reducing the overall risk profile of the institution. The BBA should include a treatment for inter-company transactions between different legal entities in the same supervised institution.

Question 18. *How should the BBA address inter-company transactions?*

Scalars. An important component of the BBA is that scalars would serve to bring jurisdictional capital frameworks to comparable levels of supervisory stringency. The BBA would need an appropriate scalar for each local regulatory capital regime, and therefore also would need a set of principles for determining those scalars. Any necessary scalars would be designed to reflect differences in supervisory purposes appropriate for insurance.

Question 19. *What criteria should be used to develop scalars for jurisdictions? What benefits or challenges are created through the use of scalars?*

Consolidation of qualifying capital. Under one version of a BBA framework, an insurance depository institution holding company or systemically important insurance company generally would determine its aggregate qualifying capital position by summing the qualifying capital position at each of its legal entities. A weakness of this approach is that it could enable the supervised institution to engage in substantial double leverage—that is, the institution's top-tier legal entity could fund its equity investments in its subsidiaries by substantial borrowings. Such an institution could have substantial qualifying capital positions at each of its major subsidiaries (and thus a robust BBA capital ratio) but could have a weak consolidated capital position.

To address this limitation of a simple BBA, the Board is considering adopting a version of the BBA that would determine an institution's aggregate qualifying capital position on a uniform, consolidated basis. Under such an approach, the BBA would continue to draw upon capital requirements set by the local regulators of each legal entity, but would use a single definition of qualifying capital for supervised institutions and would apply that definition to the institution on a fully consolidated basis. To implement this version of the BBA, the Board would need to develop a definition of consolidated regulatory capital for supervised institutions significantly engaged in insurance activities, including rules to address minority interests.

Question 20. *What are the costs and benefits of a uniform, consolidated definition of qualifying capital in the BBA?*

Question 21. *If the Board were to adopt a version of the BBA that employs a uniform, consolidated definition of qualifying capital, what criteria should the Board consider? What elements should be treated as qualifying capital under the BBA?*

Question 22. *Should the Board categorize qualifying capital into multiple tiers, such as the approach used in the Board's Regulation Q? If so, what factors should the Board consider in determining tiers of qualifying capital for supervised institutions significantly engaged in insurance activities under the BBA?*

B. Option 2: Consolidated Approach

The Board is also considering a consolidated approach (CA) to capital with risk segments and factors appropriate for supervised insurance institutions.

The CA is a proposed capital framework for supervised institutions significantly engaged in insurance activities that would categorize insurance liabilities, assets, and certain other exposures into risk segments; determine consolidated required capital by applying risk factors to the amounts in each segment; define qualifying capital for the consolidated firm; and then compare consolidated qualifying capital to consolidated required capital. Unlike the BBA, which fundamentally aggregates legal-entity-level qualifying capital and required capital, the CA would take a fully consolidated approach to qualifying capital and required capital. As distinguished from the Board's consolidated capital requirements for bank holding companies, the CA would use risk weights and risk factors that are appropriate for the longer-term nature of most insurance liabilities.

The foundation of the CA, for systemically important insurance companies, would be consolidated financial information based on U.S. GAAP, with adjustments for regulatory purposes. Application of the CA to insurance depository institution holding companies that do not file U.S. GAAP financial statements would require the development of a consolidated approach based on SAP. Initially, the CA could be simple in design, with broad risk segmentation, but could evolve over time to have an increasingly granular segmentation approach with greater risk sensitivity. Represented as an equation, the CA could be summarized as follows:

$$\text{Capital Ratio (CA)} = \frac{Qualifying\ Capital}{\sum[Exposure\ Amount(i) \cdot Risk\ Factor(i)]}$$

Question 23. *What are the advantages and disadvantages of applying the CA to the businesses and risks of supervised institutions significantly engaged in insurance activities?*

Question 24. *What are the likely challenges and benefits to the development, implementation, and application of the CA? To what extent could the CA efficiently use existing records, data requirements, and systems, and to what extent would the CA require additional records, data, or systems?*

Question 25. *To what extent would the CA be prone to regulatory arbitrage?*

The CA has strengths and weaknesses as a regulatory capital framework. The key strengths of the CA include the following: (1) It has a simple and transparent factor-based design; (2) it covers all material risks of supervised institutions significantly engaged in insurance activities; (3) it is a fully consolidated framework that has the potential to reduce regulatory arbitrage opportunities and the risk of double leverage; (4) it would be relatively expeditious for the Board to develop and for institutions to implement, particularly in light of its broad risk segmentation as implemented initially; and (5) it would provide a solid basis upon which to build consolidated supervisory stress tests of capital adequacy for institutions subject to stress testing requirements.

The key weaknesses of the CA include the following: (1) The initially simple design of the CA would result in relatively crude risk segments and thus limited risk sensitivity, and (2) substantial analysis would be needed to design a set of risk factors for all the major segments of assets and insurance liabilities of supervised institutions significantly engaged in insurance activities. In addition, a separate SAP-based version of the CA would need to be developed for the insurance depository institution holding company population if CA were ever applied to an insurance depository institution holding company that only uses SAP.

Based on the Board's initial analysis of the CA's strengths and weaknesses and comparing the CA against the considerations set forth above, it appears that the CA may be an appropriate regulatory capital framework for systemically important insurance companies. The CA, as a consolidated capital framework, would reduce the opportunity for regulatory arbitrage and the potential for double leverage. The CA also would more easily enable supervisory stress testing and other macroprudential features for systemically important insurance companies.

The advantages of the CA are most salient for systemically important insurance companies that, by definition, are large, and internally and externally complex institutions. For insurance depository institution holding companies, which generally are smaller and less complex, these benefits may be outweighed by the additional implementation costs.

Question 26. *Is the CA an appropriate framework to be applied to systemically important insurance companies? What are the key challenges to applying the CA to systemically important insurance companies? How effective would the CA be at achieving the goals of ensuring the safety and soundness of a systemically important insurance company as well as minimizing the risk of a systemically important insurance company's failure or financial distress on financial stability?*

Question 27. *What should the Board consider in determining more stringent capital requirements to address systemic risk? Should these requirements be reflected through qualifying capital, required capital, or both?*

Further, the Board seeks comment on the following key issues regarding the design and implementation of the CA.

Definition of qualifying capital. Implementation of the CA would require the development of a uniform, consolidated definition of qualifying capital that is appropriate for all institutions subject to the CA.

Question 28. *What should the Board consider in developing a definition of qualifying capital under the CA? What elements should be treated as qualifying capital under the CA?*

Question 29. *For purposes of the CA, should the Board categorize qualifying capital into multiple tiers? What criteria should the Board consider in determining tiers of qualifying capital for supervised institutions significantly engaged in insurance activities under the CA?*

Segmentation of exposures. Implementing the CA would require a framework for segmenting or disaggregating balance-sheet assets, balance-sheet insurance liabilities, and certain off-balance-sheet exposures. Appropriate segmentation would be important to ensure that similar risks face broadly similar capital requirements and that the capital regime produces an appropriate degree of risk sensitivity while minimizing the opportunities for regulatory arbitrage. This segmentation process would account for differences among insurance risks as well as between insurance risks and banking and other non-insurance, financial risks. While the initial version of the CA likely would have broad risk segments, the CA could evolve over time to become more risk sensitive. One option for implementing the CA for systemically important insurance companies would be to use the segmentation framework in the Board's proposed Consolidated Financial Statements for Insurance Systemically Important Financial Institutions.[19]

Question 30. *What risk segmentation should be used in the CA? What criteria should the Board consider in determining the risk segments? What criteria should the Board consider in determining how granular or risk sensitive the segmentation should be?*

Question 31. *What challenges does U.S. GAAP present as a basis for segmentation in the CA?*

Question 32. *What are the pros and cons of using the risk segmentation framework in the proposed Consolidated Financial Statements for Insurance Systemically Important Financial Institutions as the basis of risk segmentation for the CA?*

Exposure amounts. The CA would need to identify the exposure amounts of the various kinds of balance-sheet assets, balance-sheet insurance liabilities, and off-balance-sheet exposures of an institution. Although in many cases, the reported amount of a particular exposure may be appropriate for purposes of the CA, in other cases the financial information of an institution may require adjustments. For example, adjusting insurance liabilities may be necessary in order to include additional, relevant information, such as current assumptions, or to better match the valuation of related assets. Further, the CA would require the determination of the appropriate exposure amounts for derivatives and other off-balance-sheet items in order to accurately reflect the risk exposure in determining required capital.

[19] 81 FR 24097 (Apr. 25, 2016).

Question 33. *How should the CA reflect off-balance-sheet exposures?*

Question 34. *Under what circumstances should U.S. GAAP be used or adjusted to determine the exposure amount of insurance liabilities under the CA?*

Factors. The CA would involve a set of Board-determined factors to be applied to the exposure amounts of assets, insurance liabilities, and off-balance-sheet items in each risk segment. The factor for each risk segment would reflect the riskiness of the segment and the capital required to support that risk. Because of the different liability structures between insurance companies and banks, some of the applicable insurance risk factors may differ from the analogous risk factors that apply to banks.

Question 35. *What considerations should the Board apply in determining the various factors to be applied to the amounts in the risk segments in the CA?*

Question 36. *What challenges are there in determining risk factors for global risks?*

Minimum ratio. The CA would require the establishment of a minimum ratio of consolidated qualifying capital to consolidated factor-weighted exposures in the CA. In addition, one or more definitions of capital adequacy (*e.g.*, "well capitalized" or "adequately capitalized") would be needed for early remediation and other supervisory purposes.

Question 37. *What criteria should the Board consider in developing the minimum capital ratio under the CA and definitions of a "well-capitalized" or "adequately capitalized" insurance institution?*

C. Other Assessed Frameworks

In developing the two general approaches discussed here, the Board considered a number of other potential regulatory capital frameworks that did not appear to meet the Board's supervisory objectives for supervised institutions significantly engaged in insurance activities. For example, consideration was given to applying a risk-based capital rule that is based solely on the Board's existing capital requirements for banking organizations (Regulation Q) to supervised institutions significantly engaged in insurance activities. Such an approach would not recognize the unique risks, regulation, and balance sheet composition of insurance firms. Although bank-like capital requirements may be appropriate for exposures that a supervised institution significantly engaged in insurance activities holds in a non-insurance subsidiary, an approach based solely on the Board's Regulation Q would not capture significant insurance risks. The Board is not aware of any major country that imposes bank capital requirements on insurance firms.

The Board also reviewed an approach that entirely excluded insurance subsidiaries and applied capital requirements only to the non-insurance parts of the supervised firm. This approach would, by definition, not capture all the material risks of the organization. While section 171 of the Dodd-Frank Act, as amended, permits the Board to exclude state and foreign regulated insurance entities in establishing minimum consolidated leverage and risk-based capital requirements, the parent holding company should be a source of capital strength to the entire entity, including to the subsidiary insurance companies and IDIs. To do this effectively, a consolidated capital requirement must take into account the risks within the consolidated organization, including insurance risks.

A capital approach based on the European Solvency II framework was considered, but would not appear to be appropriate for systemically important insurance companies and insurance depository institution holding companies in the United States.[20] Use of a Solvency II-based capital framework would not adequately account for U.S. GAAP and may introduce excessive volatility due to discount rate assumptions. Moreover, use of a Solvency II-based approach would involve excessive reliance on internal models. Internal models make cross-firm comparisons difficult and can lack transparency to supervisors and market participants. Additionally, such an approach would not be executable in the short-to-medium term; the notable challenges of the Solvency II regime have resulted in significantly extended implementation periods in various European jurisdictions.

The Board also analyzed a potential regulatory capital framework for supervised institutions significantly engaged in insurance activities that is based on internal stress testing. This approach would rely on internal models, be highly novel and complex, would entail a large and lengthy construction project, and would require a substantial dedication of supervisory resources to superintend. The Board intends to continue exploration of internal stress testing as it builds its supervisory stress testing program for systemically important insurance companies and its broader supervision program for supervised institutions significantly engaged in insurance activities.

Question 38. *Should the Board reevaluate any of these approaches? What additional consideration, if any, should the Board give to any of the regulatory capital approaches discussed above?*

III. Conclusion

The Board is seeking information on all aspects of its approaches to insurance regulatory capital and invites comment on the appropriate consolidated capital requirements for systemically important insurance companies and insurance depository institution holding companies. In addition, the Board invites comment on all of the questions set forth in this ANPR, as well as other issues that commenters may wish to raise.

In connection with this ANPR, the Board will review all comments submitted and supplementary information provided, as well as information regarding insurance regulatory capital derived from the Board's regulatory and supervisory activities. Once the Board has completed its review, the Board anticipates that it will issue a notice of proposed rulemaking to establish a regulatory capital framework for supervised institutions significantly engaged in insurance activities.

By order of the Board of Governors of the Federal Reserve System, June 9, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–14004 Filed 6–13–16; 8:45 am]

BILLING CODE 6210–01–P

[20] *See* Council Directive 2009/138, On the Taking-Up and Pursuit of the Business of Insurance and Reinsurance (Solvency II), 2009 O.J. (L 335) 1 (EC).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–127923–15]

RIN 1545–BM97

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on the proposed regulations that provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes.

DATES: The public hearing is being held on Monday, June 27, 2016 at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Monday, June 20, 2016.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–127923–15), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–127923–15), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–2016–0010).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Theresa M. Melchiorre at (202) 317–6859; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–127923–15) that was published in the **Federal Register** on Friday, March 4, 2016 (81 FR 11486).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by June 20, 2016 must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Monday, June 20, 2016.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue NW., entrance, 1111 Constitution Avenue NW., Washington, DC 20224.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016–14010 Filed 6–13–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0224]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks Patriots Point, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Charleston, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 29, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0224 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *john.Z.Downing@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 10, 2016, The Patriots Point Maritime Museum notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 9:30 p.m. on July 4, 2016. The fireworks are to be launched from a barge along the bank of the Cooper River at Patriots Point in Charleston, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 8:45 p.m. to 9:45 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the barge located at Patriots Point on the Cooper River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 9:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T07–0224 to read as follows:

§ 165.T07–0224 Safety zone; Fourth of July fireworks Patriots Point, Charleston, SC.

(a) This rule establishes a safety zone on all Cooper River waters within a 500 yard radius of barge, from which fireworks will be launched.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 8:45 p.m. until 9:45 p.m.

Dated: May 31, 2016.

G.L. Tomasulo,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2016–13996 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA–HQ–OAR–2015–0782; FRL–9947–31–OAR]

RIN 2060–AS56

Rescission of Preconstruction Permits Issued Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to revise a limitation on the rescission of stationary source preconstruction permits that is contained in the federal New Source Review (NSR) regulations. This proposal would amend the EPA's federal Prevention of Significant Deterioration (PSD) regulations to remove a date restriction from the current permit rescission provision. Other than removing the date restriction, the proposed rule is not intended to alter the circumstances under which an NSR permit may be rescinded. This proposal would also add a corresponding permit rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country. This rule also proposes to correct an outdated cross-reference to another part of the regulations.

DATES: *Comments.* Comments must be received on or before July 14, 2016.

Public hearing. If anyone contacts us requesting a public hearing on or before June 20, 2016, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0782, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: For general information on this proposed rule, please contact Ms. Jessica Montanez, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–3407 or by email at *montanez.jessica@epa.gov*. To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0641 or by email at *long.pam@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

*A. How is this **Federal Register** document organized?*

The information presented in this document is organized as follows:

I. General Information
- A. How is this **Federal Register** document organized?
- B. Does this action apply to me?
- C. What should I consider as I prepare my comments for the EPA?
- D. How can I find information about a possible public hearing?
- E. Where can I obtain a copy of this document and other related information?

II. Overview of Action
III. Background
IV. Proposed Revisions
- A. Removal of Date Restriction
- B. Discretion of the Permitting Reviewing Authority
- C. Incorrect Cross Reference
- D. Rescission Authority for NA NSR Permits in Indian Country
- E. Rescission Authority for Other Air Permitting Programs
- F. Public Notice

V. Implementation
VI. Environmental Justice Considerations

VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
VIII. Statutory Authority

B. Does this action apply to me?

Entities potentially affected by this proposed rule include permit reviewing authorities responsible for the permitting of stationary sources of air pollution. This includes the EPA Regions, and both EPA-delegated air programs and EPA-approved air programs that are operated by state, local and tribal governments and that implement the federal NSR rules. Entities also potentially affected by this proposed rule include owners and operators of stationary sources that are subject to air pollution permitting under the Clean Air Act (CAA or Act).

C. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI. Do not submit this information to the EPA through *https://www.regulations.gov* or email. Clearly mark the specific information that you claim to be CBI. For CBI in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. Tips for preparing comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The proposed rule may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used to support your comment.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns wherever possible, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, by phone at (919) 541–0641 or by email at *long.pam@epa.gov.*

E. Where can I obtain a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/nsr/nsr-regulatory-actions.* The docket contains, among other things, a comparison file that reflects how the proposed regulatory revisions compare to the current rules.

II. Overview of Action

The EPA is proposing to remove a date restriction by revising the permit rescission provision contained in its federal PSD permitting regulations. 40 CFR 52.21(w). This current provision authorizes the owner or operator of a stationary source that holds a PSD permit based on rules in effect on or before July 30, 1987, to request a rescission of their permit or a part of their permit. 40 CFR 52.21(w)(2).

Through this rulemaking action, we are proposing to remove the July 30, 1987, date from the 40 CFR 52.21(w)(2) provision. Experience has shown that there can be circumstances where a permit based on rules in effect after July 30, 1987, may qualify for rescissions under the criteria in paragraph (w)(3) of the current regulations. In one recent instance, the EPA determined a need for rescission authority after the Supreme Court of the United States (Supreme Court) determined that PSD permits were not required for new sources or modifications to existing sources that only emit greenhouse gases (GHGs). However, because of the date restriction in the current rule, the EPA had to revise the regulation in order to enable permits to be rescinded, consistent with the Supreme Court's ruling. Thus, the EPA is proposing to remove the July 30, 1987, date restriction in order to eliminate the need for such actions in the future. We believe that removal of the date is justified to enable the rule to cover other cases where a rescission of a permit may be appropriate under the criteria in paragraph (w)(3) of the current permit rescission provision.

Nevertheless, the EPA still intends to limit the rescission of permits to circumstances where the requirement for a source to meet the conditions of a major NSR permit is no longer present. Thus, we are not proposing to revise the criteria under which an owner or operator may qualify for rescission of an NSR permit. However, we are proposing to clarify that a rescission of a permit is not automatic; approval of a request for a rescission is contingent on an applicant's adequate demonstration that the permit is no longer needed and the permit reviewing authority's concurrence with the demonstration. Thus, a permit reviewing authority retains the discretion to deny a request for a permit rescission if it determines that the eligibility criteria are not satisfied.

We are proposing to add a similar permit rescission provision under the major nonattainment NSR rules that apply in Indian country at 40 CFR part 49. This part of the federal NSR program currently does not contain a provision addressing the rescission of major nonattainment NSR permits in Indian country. This rulemaking action also proposes to correct a cross-reference in the current rule provision.

III. Background

The major NSR program contained in parts C and D of title I of the CAA is a preconstruction review and permitting program applicable to new major sources and major modifications at such sources. In areas meeting the National Ambient Air Quality Standards (NAAQS) ("attainment areas") or for which there is insufficient information to determine whether the NAAQS are

met ("unclassifiable areas"), the NSR requirements under part C of title I of the Act apply. We call this program the Prevention of Significant Deterioration program. In areas not meeting the NAAQS ("nonattainment areas"), the preconstruction permitting program is required under part D of the CAA. We call this program the Nonattainment NSR (NA NSR) program. Collectively, we also commonly refer to these two programs as the major NSR program. These rules are contained in 40 CFR 51.165, 51.166, 52.21 and 52.24 and 40 CFR part 51, appendices S and W.[1] The CAA also requires that State Implementation Plans (SIP) include measures to assure that achievement of the NAAQS is not impeded by construction of other sources that are not subject to the major NSR requirements. We call this program "minor NSR."

While the CAA establishes requirements for the permitting of construction of new major sources or modifications of such sources, it does not specify how long a permit is to remain in effect or whether there are circumstances under which an NSR permit may be invalidated or rescinded. *See, e.g.,* CAA section 165. The EPA has interpreted this silence to mean that an NSR permit should remain in effect for as long as the new or modified source continues to operate. However, the absence of a statutory provision on the continuing viability of and need for a permit does not suggest that the EPA lacks the authority and discretion to rescind a permit under some circumstances, such as when a final court ruling clarifies the meaning of some part of the CAA. Over the years, the EPA has used this authority and discretion to rescind permits under limited circumstances.

40 CFR 52.21(w) authorizes an owner or operator of a source to request, and the EPA Administrator[2] to grant, a rescission of a PSD permit if the owner or operator shows that the PSD regulations do not apply.

The original intent of the 40 CFR 52.21(w) provision was to create a means by which a limited category of sources that received a permit under the EPA's 1978 PSD regulations could be relieved of the requirements of their permits, after the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that portions of those regulations were inconsistent with the CAA. The sources in question were ones that would no longer be considered "major" under our 1980 amendments to the PSD regulations, which were promulgated in response to the D.C. Circuit Court ruling.[3] The original paragraph (w) only applied to permits issued under the regulations in effect between June 19, 1978 (the date the first PSD regulations were published in the **Federal Register**), and August 7, 1980 (the effective date of the PSD amendments that included the new paragraph (w)).

In 1987, the EPA revised 40 CFR 52.21(w) to change the effective date requirement to apply to permits that were issued based on rules in effect on or before July 30, 1987. *See* 52 FR 24672, 24689 (July 1, 1987). The EPA made this revision in concert with its amendments to the NAAQS for particulate matter (PM), which, among other things, transitioned the PM pollution indicator from total suspended particles to PM_{10}. This revision of 40 CFR 52.21(w) effectively enabled rescission authority to apply to sources and modifications that were no longer major using the new PM_{10} indicator. Thus, the July 30, 1987, date stipulation that remains in 40 CFR 52.21(w) is an artifact of the 1987 regulatory revisions to transition to the revised PM_{10} indicator.

Following the changes made in 1987, 40 CFR 52.21(w) remained unchanged until almost three decades later when the EPA revised 40 CFR 52.21(w), in response to a Supreme Court decision, to expressly allow rescission of permits granted for sources based solely on the emissions of GHGs.[4] *See* May 7, 2015; 80 FR 26183. This 2015 regulatory action did not revise or remove the July 30, 1987, date, but was a targeted effort to expeditiously authorize the rescission of PSD permits that were required solely based on GHG emissions.

However, in the preamble to that 2015 rule, the EPA signaled its intent to undertake a subsequent rulemaking action to apply the permit rescission provision to permits issued after July 30, 1987, and to eliminate the need to conduct targeted rulemakings in the future. 80 FR 26186.

The current regulations require that the Administrator provide adequate public notice of the final permit rescission determination. Thus, the provision does not require that the EPA provide advance notice of the permit rescission determination. However, we believe that public notice and comment procedures—similar to those used when proposing a draft permit—may be appropriate in certain circumstances. This could occur when a permit rescission determination is not straightforward (*e.g.,* possible differences in interpretation over the change in the law that is the basis for the rescission request) or when there is increased public interest in the facility requesting a permit rescission. In these cases, while prior notice of the permit rescission determination is not required, the permit reviewing authority has discretion to provide notice of the rescission and to solicit comment (*e.g.,* by way of a public announcement or public hearing) before finalizing a permit rescission determination. Having this additional public input could be very important if the rescission is controversial in nature. This is consistent with the approach the EPA has recommended recently in guidance on permit extensions.[5]

Furthermore, the EPA interprets 40 CFR 124.15 of its regulations to apply to a number of PSD permit actions, including permit rescissions.[6] Thus, a decision to rescind a PSD permit is a "final permit decision" under 40 CFR 124.15. As a result, under 40 CFR 124.19, a decision to rescind a permit under 40 CFR 52.21(w) is subject to review by the EPA's Environmental Appeals Board. After this appeal procedure is exhausted, a permit rescission determination may, under CAA 307(b)(1), be subject to judicial review in the United States Court of Appeals for the appropriate circuit.

IV. Proposed Revisions

These proposed revisions are intended to provide greater flexibility and clarity for improved

[1] In addition, the major NA NSR rules that apply in Indian country can be found at 40 CFR part 49.

[2] The rescission regulation at 40 CFR 52.21(w) is intended to be a delegable authority. The use of the term "Administrator" in our regulations is not intended to impede delegation. For example, for federally-issued permits, since the EPA Regional offices issue the permits in their jurisdictions, rescission authority is typically delegated—usually to either an EPA Regional Administrator or Division Director.

[3] August 7, 1980, 45 FR 52676.

[4] The Supreme Court determined that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source (or a modification thereof) required to obtain a PSD permit. *UARG* v. *EPA,* 134 S. Ct. 2427 (2014). In accordance with the Supreme Court decision, on April 10, 2015, the D.C. Circuit issued an amended judgment vacating portions of the particular provisions of the EPA's regulations implementing the EPA's PSD and Title V GHG Tailoring Rule. On August 19, 2015, the EPA amended its PSD regulations to remove from the Code of Federal Regulations portions of those regulations that the D.C. Circuit specifically identified as vacated.

[5] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, Guidance on Extension of Prevention of Significant Deterioration (PSD) Permits under 40 CFR 52.21(r)(2) (January 31, 2014). *https://www.epa.gov/sites/production/files/2015-07/documents/extend14.pdf.*

[6] 40 CFR 124.15(a) uses the term "terminate," which is synonymous with a rescission of a permit.

implementation of the permit rescission provision. The specific proposed changes are explained in this section, and we are requesting comment on all aspects of this proposal.

A. Removal of Date Restriction

In this action, the EPA proposes to remove the date restriction of July 30, 1987, from the current 40 CFR 52.21(w) provision. This approach is consistent with our recent rule to authorize rescission of specific types of permits issued after July 30, 1987, in response to a decision by the Supreme Court regarding GHGs. If the EPA finalizes this proposed revision, rescission authority would extend to PSD permits issued after this date when the applicant shows that the requirements of 40 CFR 52.21 "would not apply to the source or modification." In addition, the specific language in paragraphs (w)(2) and (w)(3) that the EPA added in 2015 to accommodate the rescission of certain types of GHG PSD permits would no longer be required, so we are concurrently proposing in this action to delete the GHG permit rescission language adopted in the 2015 rulemaking.

As explained in the "Background" section of this preamble, the creation of the original rescission provision was aimed at addressing a specific need with regard to responding to the D.C. Circuit Court decision in *Alabama Power.*[7] In 1987, the EPA recognized another circumstance in which rescission of permits may be justified—the change of the PM indicator to PM_{10}. In 2015, the EPA identified an additional need to extend the rescission authority beyond its original scope after the Supreme Court decision regarding GHGs. Thus, over the years, the EPA has periodically found a need to expand the rescission provision through a regulatory action beyond its original scope as new circumstances have arisen. These and other experiences since 1980 have shown that there is a periodic need to utilize PSD permit rescission authority. We would expect this pattern to continue in the event of additional court decisions that narrow the scope of sources required to obtain a PSD permit. Where a source obtained a PSD permit in reliance on the EPA regulations that a court subsequently determined to be unnecessary or inappropriate, the EPA would expect to conclude that 40 CFR 52.21 "would not apply to the source or modification." Furthermore, the EPA recognizes there could be circumstances not previously considered by the EPA that may lead a source to request a rescission of their permit and a permit reviewing authority to grant the request.

The EPA is not proposing to change the criteria under which an owner or operator may qualify for rescission of an NSR permit. Requests for permit rescission are very case-specific and require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be shown that the requirements of 40 CFR 52.21 "would not apply to the source or modification."

Thus, we are proposing to eliminate the date restriction so that the EPA—and other permitting authorities that implement 40 CFR 52.21(w)—may in the future consider, on a case-by-case basis, whether a source that requests a permit rescission is eligible for rescission of its permit. The regulatory change we are proposing is limited in nature, and the EPA continues to believe that rescission is appropriate only in limited circumstances. This is because the EPA views the role of the NSR program to authorize the construction and initial operation of a source or a modification and, assuming the source was constructed as originally permitted, there should be very few cases in which the original authorization should be rescinded.

B. Discretion of the Permitting Reviewing Authority

While we are proposing to retain the criteria under which a rescission is authorized, we are also proposing to clarify that the rescission of a permit requires an exercise of discretion by the permit reviewing authority. In this action, the EPA proposes to revise 40 CFR 51.21(w)(3) to make it clear that the provision does not create a mandatory duty on the Administrator to grant a rescission request.

The 1980 preamble speaks of the EPA needing "adequate information with which to make a sound decision" to rescind a permit. It also states that it "will have the expertise and objectivity necessary to check adequately whether the permittee has applied the intricate applicability rules correctly." August 7, 1980; 45 FR 52682. Thus, the responsible authority at the permitting agency has always had the authority to grant or deny a rescission request based on an analysis of the request for a permit rescission and a determination of whether it is appropriate to grant or deny the request to rescind the permit. The EPA believes that it is appropriate to view the existing 40 CFR 52.21(w)(3) provision as a whole, including the last phrase ". . . if the application shows that this section would not apply to the source or modification." We believe that the second phrase conditions the first phrase ("The Administrator shall grant an application for rescission") on the fact that an adequate demonstration must be made by the permit applicant.

Thus, the EPA is proposing to replace the word "shall" with the word "may" in this provision, without making any other revision to 40 CFR 52.21(w)(3). This revision is intended to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 "would not apply to the source or modification." The EPA does not believe this changes the meaning or intent of the existing provision, but rather clarifies the approvability of the request by the Administrator.

C. Incorrect Cross Reference

We are proposing to correct the first paragraph of (w), which has an incorrect cross reference. Paragraph (w)(1) currently references 40 CFR 52.21 paragraph (s), but 40 CFR 52.21(s) pertains to environmental impact statements and does not address the expiration of a permit.

We are therefore proposing to revise the reference in paragraph (w)(1) to refer to paragraph (r), which addresses permit expiration. 40 CFR 52.21(r)(2)

D. Rescission Authority for NA NSR Permits in Indian Country

This action also proposes to add a provision to 40 CFR 49.172 to provide rescission authority for major NA NSR permits in Indian country. The EPA proposes that the provision added to 40 CFR 49.172 would be similar to the provision at 40 CFR 52.21(w) and would reflect the public notice requirements included in that rule. The EPA believes it is appropriate to allow rescission of NA NSR permits in Indian country in limited, case-specific circumstances for the same reasons it is appropriate to allow rescission of PSD permits in narrow circumstances.

Creating a rescission provision in 40 CFR part 49 for major NA NSR permits in Indian country would ensure that all federal programs for major source permitting have rescission authority. PSD permits issued to sources in Indian country are federal permits and consequently subject to 40 CFR 52.21, so they would be subject to the same revisions to 40 CFR 52.21 that are being proposed in this action.

[7] *Alabama Power Company* v. *Costle,* 606 F.2d 1068 (D.C. Cir. 1979), modified, 636 F.2d 323 (D.C. Cir. 1979).

E. Rescission Authority for Other Air Permitting Programs

In the case of sources in the Outer Continental Shelf (OCS), the EPA's OCS air regulations at 40 CFR 55 establish the applicable requirements, which include federal air pollution preconstruction permit requirements. 40 CFR part 55 refers to rescinding a preconstruction permit issued to an OCS source and incorporates by reference 40 CFR 52.21. Thus, any regulatory revisions to 40 CFR 52.21(w) would automatically apply to applicable permit requirements incorporated in part 55. *See* 40 CFR 55.6(b)(5) and 55.13(d). As a result, the EPA does not see a need to revise the Part 55 permitting regulations.

While the EPA's regulations for SIP-approved programs in 40 CFR 51.165 and 51.166 do not include provisions for permit rescissions, we have previously stated that we would approve such provisions if states were to adopt them.[8] In addition, this rule is not intended to alter minor source construction permit requirements that may apply in the place of major NSR permit conditions that are no longer applicable to a source modification.

Consequently, we are proposing that the rules on rescinding preconstruction permits would only reside in the federal major NSR program rules at 40 CFR parts 49 and 52 (and, by extension, part 55 as noted previously). The EPA has previously explained that other permit reviewing authorities are free to adopt our rescission rule provisions or propose their own and request approval by the EPA.

F. Public Notice

We note that a forthcoming EPA rule has proposed to amend the second sentence of paragraph (w)(4) of 40 CFR 52.21 to remove the mandatory newspaper notice requirement and to require electronic noticing of rescission determinations. *See* December 29, 2015; 80 FR 81234. We are not taking comment on these separately proposed revisions to paragraph (w)(4) of 40 CFR 52.21 in this rule proposal, and we direct the reader to that separate rulemaking for further information with regard to the noticing of permit rescissions. In this action, the EPA is not proposing to revise 40 CFR 52.21(w)(4) in the permit rescission provision.

V. Implementation

Upon promulgating this action, the rule would become effective within 30 days for permit reviewing authorities that implement the federal program rules at 40 CFR parts 49 and 52. This includes the EPA Regions and other permit reviewing authorities that are delegated authority by the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement) and permit reviewing authorities that have their own PSD rules approved by the EPA in a SIP and the SIP incorporates by reference 40 CFR 52.21(w) and automatically updates when the federal rules are amended. Since this action is not amending 40 CFR part 51, there are no implementation requirements for permit reviewing authorities that implement the part 51 regulations through an approved SIP.

VI. Environmental Justice Considerations

We do not believe that these proposed revisions and additions to the rescission of federal major NSR permits would have any effect on environmental justice communities.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0003 for the PSD and NA NSR permit programs. We believe that the burden associated with rescinding federal NSR permits is already accounted for under the approved information collection requests.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities are not directly subject to the requirements of this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded federal mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Specifically, these proposed revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this

[8] *See* August 7, 1980; 45 FR 52686 and 52688.

action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment.

VIII. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: May 27, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—General Federal Implementation Plan Provisions

■ 2. Section 49.172 is amended by adding paragraph (f) to read as follows:

§ 49.172 Final permit issuance and administrative and judicial review.

* * * * *

(f) *Can my permit be rescinded?*

(1) Any permit issued under this section or a prior version of this section shall remain in effect until it is rescinded under this paragraph.

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(3) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(3) The reviewing authority may grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the reviewing authority rescinds a permit under this paragraph, the public shall be given adequate notice of the rescission determination in accordance with one or more of the following methods:

(i) The reviewing authority may mail or email a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(ii) The reviewing authority may post the notice on its Web site.

(iii) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a Tribal newspaper or newsletter.

(iv) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(v) The reviewing authority may employ other means of notification as appropriate.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 3. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—General Provisions

■ 4. Section 52.21 is amended by revising paragraphs (w)(1) through (3) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(w) * * *

(1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded under this paragraph.

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in § 52.21 paragraph (w)(3) may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.

* * * * *

[FR Doc. 2016–13303 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA–HQ–OAR–2016–0186; FRL–9947–56–OAR]

RIN 2060–AS96

Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to remove the affirmative defense provisions for emergencies found in the regulations for state and federal operating permit programs. These provisions establish an affirmative defense that sources can assert in civil enforcement cases when noncompliance with certain emission limitations in operating permits occurs because of qualifying "emergency" circumstances. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the enforcement structure of the Clean Air Act (CAA) and recent court decisions from the U.S. Court of Appeals for the D.C. Circuit. The removal of these provisions is consistent with other recent EPA actions involving affirmative defenses and would harmonize the enforcement and implementation of emission limitations across different CAA programs. The EPA is also taking comment on various implementation consequences relating to the proposed removal of the emergency affirmative defense provisions.

DATES:

Comments. Comments must be received on or before August 15, 2016.

Public Hearing: If anyone contacts the EPA requesting a public hearing on or before June 29, 2016, the EPA will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2016–0186, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For general information, please contact Mr. Matthew Spangler, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division (C504–05), Research Triangle Park, NC 27711; telephone number: (919) 541–0327; email address: *spangler.matthew@epa.gov.* To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division (C504–01), Research Triangle Park, NC 27711; telephone number (919) 541–0641; fax number (919) 541–5509; email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

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G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
VIII. Statutory Authority

B. Does this action apply to me?

Entities potentially affected by this proposed rulemaking include federal, state, local and tribal air pollution control agencies that administer title V operating permit programs [1] and owners and operators of emissions sources in all industry groups who hold or apply for title V operating permits.

C. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI

Do not submit CBI to the EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about a possible public hearing?

If anyone contacts the EPA requesting a public hearing on or before June 29, 2016, the EPA will hold a hearing. If requested, further details concerning a public hearing for this proposed rule will be published in a subsequent **Federal Register** document. For updates and additional information on a public hearing, please check the EPA's Web page at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

E. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at *https://www.epa.gov/title-v-operating-permits/current-regulations-and-regulatory-actions.*

II. Overview of Action

The EPA has promulgated permitting regulations for the operation of major and certain other sources of air pollutants under title V of the CAA. These regulations are codified in 40 CFR parts 70 and 71, which contain the requirements for state operating permit programs and the federal operating

[1] This preamble makes frequent use of the term "state," usually meaning the state air pollution control agency that serves as the permitting authority. The use of the term "state" also applies to local and tribal air pollution control agencies, where applicable.

permit program, respectively. These regulations currently contain identical provisions setting forth an affirmative defense to enforcement actions brought for noncompliance with technology-based emission limitations under specific "emergency" circumstances. *See* 40 CFR 70.6(g) and 71.6(g).

In this action, the EPA is proposing to remove the emergency affirmative defense provisions in 40 CFR 70.6(g) and 71.6(g) because they are inconsistent with the EPA's current interpretation of the CAA's enforcement structure and recent court decisions from the U.S. Court of Appeals for the D.C. Circuit. These provisions have never been required elements of state operating permit programs. The removal of these provisions is consistent with other recent EPA actions involving affirmative defenses and would help harmonize the enforcement and implementation of emission limitations across different CAA programs.

If the EPA takes final action to remove these provisions from 40 CFR 70.6(g), it may be necessary for any states that have adopted similar affirmative defense provisions into their part 70 operating permit programs to revise their program regulations to remove these provisions. In addition, the EPA expects that these states would coordinate revisions of individual operating permits that contain similar provisions.

III. Background

A. Regulatory History of 40 CFR 70.6(g) and 71.6(g)

In 1990, Congress amended the CAA and established, among other things, title V of the CAA, which contains a national operating permit program for certain stationary sources of air pollution. *See* CAA sections 501–503, Public Law 101–549 (1990) (codified at 42 U.S.C. 7661–7661b). Shortly thereafter, and pursuant to CAA section 502(b), the EPA promulgated regulations implementing title V of the CAA. The first set of regulations, finalized in 1992 and codified at 40 CFR part 70 (the part 70 regulations), governs state operating permit programs and provides for states to develop and submit to the EPA programs for issuing operating permits for major and certain other stationary sources of air pollution.[2] Pursuant to CAA section 502(d)(3), the EPA promulgated a second set of regulations in 1996, found at 40 CFR part 71 (the part 71 regulations), which outlines the federal operating permit program.[3] Both sets of regulations contain identical affirmative defense provisions, which are addressed by this action.

Title V of the CAA does not contain any provisions concerning an affirmative defense mechanism for emergencies. When the EPA first proposed its part 70 regulations in 1991, the agency did not include any such provisions.[4] However, the EPA received comments specifically requesting that the part 70 regulations make some provision for "emergencies" or "upsets" caused by the failure of emission control equipment. In promulgating the final part 70 regulations for state operating permit programs, the EPA included § 70.6(g), which contains an affirmative defense for "emergencies."[5] When the EPA promulgated its part 71 regulations in 1996, it adopted an identical provision in § 71.6(g), in order to maintain consistency between the state and federal operating permit programs.[6] The text of sections 70.6(g) and 71.6(g) has not changed since initially promulgated.

The title V emergency provisions establish an affirmative defense. A stationary source of air pollution can assert this affirmative defense in an enforcement case to avoid liability for noncompliance with technology-based emission limits contained in the source's title V permit. In order to use this affirmative defense and avoid liability, the source must demonstrate that any excess emissions occurred as the result of an "emergency," as defined in the regulations, and make a number of other demonstrations specified in the regulations. *See* 40 CFR 70.6(g) and 71.6(g). These title V affirmative defense provisions apply in addition to, and independently from, any emergency or upset provisions contained in other applicable CAA requirements.

Sections 70.6(g) and 70.4(b)(16) form the basis for similar affirmative defense provisions contained in state operating permit programs and for similar provisions contained in individual state-issued operating permits. Section 71.6(g) provides the authority to include this emergency provision in operating permits issued by the EPA or by states with delegated authority under part 71.

Such emergency affirmative defense provisions are not required program elements. States have never been obligated to include the § 70.6(g) affirmative defense provision in their part 70 operating permit programs; instead, the provision has always been discretionary.[7] Similarly, although the emergency affirmative defense provision is located within the "Permit Content" section of the part 70 and part 71 regulations, the EPA does not consider the provision to be a required permit term.[8] Thus, the EPA considers the emergency provision to be a discretionary element of both state permitting programs as well as individual operating permits.

B. Subsequent Legal and Regulatory History Supporting This Action

The EPA has considered the most appropriate ways to account for excess emissions during different modes of source operation, such as startup and shutdown, and emissions during emergencies, upsets, and malfunctions for more than 40 years. The EPA's policies regarding the emergency affirmative defense provisions in its part 70 and 71 regulations have been shaped by a number of factors, including the structure of the CAA, federal court decisions, experience with similar provisions in other EPA programs, and recommendations from stakeholders. This section summarizes some of the more relevant and recent legal, regulatory, and policy considerations informing the EPA's current policy on affirmative defense provisions, including the D.C. Circuit's opinion in *NRDC* v. *EPA* and the EPA's recent

[2] Operating Permit Program, Final Rule, 57 FR 32250 (July 21, 1992).

[3] Federal Operating Permits Program, Final Rule, 61 FR 34202 (July 1, 1996).

[4] Operating Permit Program, Proposed Rule, 56 FR 21712 (May 10, 1991).

[5] Operating Permit Program, Final Rule, 57 FR 32279. The EPA explained that the provision was intended to provide operational flexibility, and was modeled on a similar National Pollutant Discharge Elimination System (NPDES) permit provision in 40 CFR 122.41. *Id.*

[6] Federal Operating Permits Program, Final Rule, 61 FR 34219 (July 1, 1996).

[7] Operating Permits Program and Federal Operating Permits Program, Proposed Rule [Title V Supplemental Proposal], 60 FR 45530, 45558 (August 31, 1995) ("At the outset, EPA wants to make clear that the part 70 rule does *not* require that States adopt the emergency defense. A State may include such a defense in its part 70 program to the extent it finds appropriate, although it may not adopt an emergency defense less stringent than that set forth at section 70.6(g). . . . [T]he Act in sections 116 and 505(a) authorizes States to establish additional or more stringent air pollution control or permitting requirements. Consistent with that, States may decide to provide an emergency defense that is narrower in scope or more stringent in application than § 70.6(g) or no defense at all.").

[8] *See* State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, Final Action [SSM SIP Call], 80 FR 33839, 33924 (June 12, 2015) ("[A]s part of normal permitting process, the EPA encourages permitting authorities to consider the discretionary nature of the emergency provisions when determining whether to continue to include permit terms modeled on those provisions in operating permits that the permitting authorities are issuing in the first instance or renewing").

experience with affirmative defenses for startup, shutdown, and malfunction (SSM) events in State Implementation Plans (SIPs).

1. D.C. Circuit Opinion in *NRDC* v. *EPA*

In the 2014 *NRDC* v. *EPA*[9] case, the United States Court of Appeals for the D.C. Circuit vacated an affirmative defense provision applicable to malfunction events. In 2010, the EPA included an affirmative defense within its National Emission Standards for Hazardous Air Pollutants (NESHAP) for Portland cement facilities, promulgated under CAA section 112.[10] This provision created an affirmative defense that sources could assert in civil enforcement proceedings when violations of emission limitations occurred because of qualifying unavoidable malfunctions. The D.C. Circuit held that this affirmative defense provision exceeded the EPA's statutory authority and that only the courts have the authority to decide whether to assess penalties for violations in civil suits. As the court explained:

> By its terms, Section 304(a) clearly vests authority over private suits in the *courts*, not EPA. As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are "appropriate." By contrast, EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court. . . . [U]nder this statute, deciding whether penalties are "appropriate" in a given private civil suit is a job for the courts, not for EPA."[11]

The D.C. Circuit therefore concluded that the EPA lacked the authority to create an affirmative defense in private civil suits that would purport to alter the jurisdiction of the court to assess civil penalties for violations. Although this case was based on EPA regulations promulgated under CAA section 112, the court's holding was not based on section 112, but rather on sections 304(a) and 113(e)(1). Therefore, and as discussed further in Section IV of this document, the EPA interprets the decision to be relevant to all similar affirmative defense provisions, such as those found in part 70 and part 71, that may interfere with the authority of courts to assess penalties or to impose other remedies authorized in CAA section 113(b) in civil enforcement suits. This proposed rulemaking seeks to ensure that the EPA's part 70 and part 71 regulations are consistent with the enforcement structure of the CAA in accordance with the reasoning of the *NRDC* v. *EPA* decision.[12]

2. SSM SIP Call

The EPA has also reconsidered affirmative defense provisions similar to those involved in the *NRDC* v. *EPA* case in other recent regulatory actions. On June 15, 2015, the EPA issued a "SIP Call" (the SSM SIP Call) finding that certain SIP provisions in 36 states are substantially inadequate to meet CAA requirements.[13] Many of the deficient SIP provisions at issue in the SSM SIP call are affirmative defense type provisions, and some of them are analogous to the emergency affirmative defense in part 70 and part 71. Although the agency's SSM policy for SIP provisions is not directly at issue in this proposal, certain aspects of the SSM SIP Call are especially relevant and are discussed in this subsection.

After the EPA initially proposed the SSM SIP Call,[14] the D.C. Circuit issued its opinion in *NRDC* v. *EPA*. That decision, which concerned the legal basis for an affirmative defense provision in the EPA's own regulations, caused the EPA to reconsider the legal basis for any affirmative defense provisions contained in SIPs.[15] The EPA concluded that the logic of the court in *NRDC* v. *EPA* extends beyond CAA section 112 to affirmative defense provisions contained in SIPs. Therefore, the EPA clarified and revised its interpretation of CAA requirements with respect to affirmative defense provisions for SSM events. The agency explained that "the enforcement structure of the CAA, embodied in section 113 and section 304, precludes any affirmative defense provisions that would operate to limit a court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action. These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate."[16] The EPA explained that "[a]ffirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to determine liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e)."[17] The EPA's interpretation of the CAA's enforcement structure and the *NRDC* v. *EPA* decision, as set forth in the final SSM SIP Call, is relevant to the current rulemaking. Section IV of this document further discusses this interpretation in the context of the part 70 and part 71 emergency provisions.

Following this interpretation, the EPA directed states to remove specifically identified provisions containing affirmative defenses from their SIPs. Some of these SSM provisions were similar to the emergency provisions in the EPA's part 70 and part 71 regulations. In the final SSM SIP Call, the EPA indicated that provisions modeled after the §§ 70.6(g) and 71.6(g) emergency affirmative defense provisions—including provisions that were more narrowly defined—were no longer consistent with the EPA's interpretation of the CAA and could not be included in SIPs.[18] For example, the EPA found that an Arkansas SIP provision establishing an affirmative defense for emergencies, which may have been modeled after the EPA's title V regulations, was substantially inadequate to meet CAA requirements.[19] The EPA also discussed the potential conflict between the SSM policy applicable to SIP provisions and the part 70 and part 71 emergency provisions, but noted that it was not taking action to revise the title V

[9] 749 F.3d 1055 (D.C. Cir. 2014).

[10] National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants, 75 FR 54993 (September 9, 2010).

[11] *NRDC* v. *EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014).

[12] In 2008, the D.C. Circuit issued a decision in *Sierra Club* v. *Johnson*, 551 F.3d 1019, vacating the EPA's regulations that exempted sources under certain circumstances from emissions standards during periods of SSM. The EPA maintains that the part 70 and part 71 emergency affirmative defense provisions are just that—affirmative defenses to enforcement actions—not exemptions from otherwise applicable emissions limitations. Such affirmative defense provisions are called into question by *NRDC* v. *EPA*. However, to the extent that the title V emergency affirmative defense could be considered in some respects to function like an exemption from otherwise applicable emissions limitations, such an exemption would be incompatible with the CAA and *Sierra Club* v. *Johnson*. This is an alternative basis for proposing to remove the part 70 and part 71 emergency affirmative defense provisions, as discussed further in Section IV.C of this document.

[13] SSM SIP Call, 80 FR 33839 (June 12, 2015).

[14] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, Proposed Rule, 78 FR 12459 (February 22, 2013).

[15] *See* State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Supplemental Proposal To Address Affirmative Defense Provisions in States Included in the Petition for Rulemaking and in Additional States, Supplemental notice of proposed rulemaking [SSM SIP Call Supplemental Proposal], 79 FR 55919, 55929 (September 17, 2014).

[16] SSM SIP Call, 80 FR 33851 (June 12, 2015).

[17] *Id.* at 33852.

[18] *Id.* at 33924.

[19] *Id.* at 33967; *see also* SSM SIP Call Supplemental Proposal, 79 FR 55942 and 55943.

regulations in the SSM SIP Call rulemaking.[20] In the final SSM SIP Call, however, the EPA indicated that it was considering whether such changes may be necessary and how best to make such changes.

3. Related Actions in Other CAA Program Areas

Since 2014, the EPA has removed or omitted affirmative defense provisions in numerous regulations throughout other CAA program areas following the *NRDC* v. *EPA* case. Specifically, in newly issued and revised New Source Performance Standards (NSPS), emission guidelines for existing sources, and NESHAP regulations, the EPA has either omitted new affirmative defense provisions or removed existing affirmative defense provisions.[21] This proposed rulemaking for the part 70 and part 71 regulations is thus consistent with these related efforts in other CAA program areas and ensures that title V operating permits do not contain additional affirmative defenses that could interfere with the EPA's efforts to remove these impermissible provisions from specific underlying applicable requirements.

IV. Proposed Changes to Part 70 and Part 71 Regulations

A. Purpose of This Proposed Rulemaking

This proposed rulemaking is responsive to a number of concerns and related actions, including those discussed in Section III of this document. The EPA considers this proposed rulemaking important to ensure that the EPA's title V regulations are consistent with the enforcement structure envisioned by Congress in the 1990 CAA amendments. This action is intended to respond to the reasoning of the D.C. Circuit's recent opinion in *NRDC* v. *EPA*, which the EPA interprets to extend to the affirmative defense provisions in the part 70 and part 71 regulations. This proposed rule also follows from similar regulatory actions in other CAA program areas, including the recent SSM SIP Call and various NSPS and NESHAP regulations. The EPA considers the proposed removal of the emergency affirmative defense provisions from the title V regulations necessary to maintain a consistent interpretation of the CAA throughout different CAA programs, including section 110 SIPs, section 111 NSPS and existing source guidelines, and section 112 NESHAPs.

Finally, this proposed action follows from the EPA's stated intentions to revisit the emergency affirmative defense provisions promulgated in 1992 and seeks to provide clarity in response to stakeholder concerns.[22] The EPA initially sought to clarify the scope of the emergency provisions over the course of multiple actions in 1995 and 1996. However, the EPA ultimately indicated that it would reevaluate the part 70 and part 71 emergency affirmative defense provisions—including whether these provisions may need to be eliminated—in a subsequent rulemaking.[23] The EPA again discussed the title V emergency provisions in the SSM SIP Call, where the agency acknowledged the potential conflict between the SSM policy applicable to SIP provisions and the part 70 and part 71 emergency provisions, but indicated that it would potentially make changes to the title V affirmative defense provisions in a subsequent rulemaking.[24] As contemplated in the prior title V rulemakings and in the more recent SSM SIP Call, the EPA is now considering the appropriate changes to parts 70 and 71 and proposing to remove the title V emergency affirmative defenses provisions.

B. Proposed Action: Removal of 40 CFR 70.6(g) and 71.6(g)

The EPA is proposing to remove the emergency provisions located at 40 CFR 70.6(g) and 71.6(g). The agency has not identified any other viable option for reconciling these affirmative defense provisions with the enforcement structure of the CAA, in accordance with the reasoning of the *NRDC* v. *EPA* decision. The implications of this proposed removal on the federal operating permit program, state operating permit programs, and on individual sources subject to title V operating permits are discussed in Section V of this document.

C. Legal Justification for Proposed Action

This action is proposed pursuant to CAA sections 502(b) and 502(d)(3), 42 U.S.C. 7661a(b) & (d)(3), which direct the Administrator of the EPA to promulgate regulations establishing state operating permit programs and give the Administrator authority to establish a federal operating permit program.

The EPA proposes to remove the affirmative defense provisions from the part 70 and 71 regulations in order to ensure that the federal and state title V operating permit programs operate within the bounds established by

[20] SSM SIP Call, 80 FR 33924 (June 12, 2015).

[21] *See, e.g.*, National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Final Rule, 80 FR 44771 (July 27, 2015); National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule, 80 FR 72789 (November 20, 2015); Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Proposed Rule, 80 FR 3018, 3025 (January 21, 2015).

[22] In addition to comments received on prior regulatory actions, the EPA has received input from stakeholders as recent as 2006. The Clean Air Act Advisory Committee (CAAAC), chartered under the Federal Advisory Committee Act, was established to advise the EPA on issues related to the 1990 CAA Amendments. In 2006, a Task Force formed by the CAAAC issued its Final Report: Title V Implementation Experience. *See* Title V Task Force, *Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience* (April 2006), *available at http://www.epa.gov/sites/production/files/2014-10/documents/title5_taskforce_finalreport20060405.pdf*. Although the Task Force did not agree on how broadly the title V emergency affirmative defense should be applied, all eighteen members of the Task Force unanimously recommended the following: "Title V permits should be clear as to which limits are subject to the part 70 emergency defense (*e.g.*, under the current rule, technology based limits)." *Id.* at 144. By way of response, the proposed action to remove these provisions would essentially moot these concerns about clarity on the applicability of these provisions.

[23] *See* Federal Operating Permits Program, Proposed Rule, 60 FR 20804, 20816 (April 27, 1995) ("The EPA is reevaluating the provisions in parts 70 and 71 relating to the emergency defense in light of concerns identified in legal challenges to the part 70 rule. The EPA may propose revisions to the part 70 and part 71 sections providing for the emergency defense before EPA would include such defense in any part 71 permits."); Title V Supplemental Proposal, 60 FR 45560 ("The EPA is reluctant to retain a generally applicable emergency defense without completing further review of the appropriateness of such a defense for the different Federal technology based standards in light of the concerns with such a defense raised in the CWA cases."); Federal Operating Permits Program, Final Rule, 61 FR 34219 ("As a result of concerns identified in legal challenges to part 70, the Agency, in the August 1995 supplemental proposal, solicited comment on the need for, scope and terms of an emergency affirmative defense provision. The Agency is reviewing those comments, but has not yet made a decision on whether or not to modify or *remove* this additional affirmative defense provision from part 70." (emphasis added)).

[24] *See* SSM SIP Call, 80 FR 33924 ("Those regulations [40 CFR 70.6(g) and 71.6(g)], which are applicable to title V operating permits, may only be changed through appropriate rulemaking to revise parts 70 and 71. Further, any existing permits that contain such emergency provisions may only be changed through established permitting procedures. The EPA is considering whether to make changes to 40 CFR part 70 and 40 CFR part 71, and if so, how best to make those changes. In any such action, EPA would also intend to address the timing of any changes to existing title V operating permits. Until that time, as part of normal permitting process, the EPA encourages permitting authorities to consider the discretionary nature of the emergency provisions when determining whether to continue to include permit terms modeled on those provisions in operating permits that the permitting authorities are issuing in the first instance or renewing.").

Congress in the 1990 CAA Amendments. Regarding these boundaries, the D.C. Circuit's opinion in *NRDC* v. *EPA* is instructive as to the enforcement structure envisioned by Congress, as well as the role of affirmative defense provisions within the EPA's regulations implementing the CAA. As discussed in Section III.B.1 of this document, the court in *NRDC* v. *EPA* determined that an affirmative defense provision promulgated by the EPA for the Portland cement industry under CAA section 112 exceeded the agency's statutory authority. In doing so, the D.C. Circuit based its holding on CAA sections 304(a) and 113(e)(1).

CAA section 304(a) grants "any person" the right to "commence a civil action . . . against any person . . . who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of . . . an emission standard or limitation" under the CAA. 42 U.S.C. 7604(a). Section 304(a) also provides that "[t]he [federal] district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation . . . and to apply any appropriate civil penalties." *Id.* CAA section 113(e)(1) establishes a number of factors that courts must consider when determining the amount of any penalties assessed in civil actions under section 304(a). *See* 42 U.S.C. 7413(e)(1).

The D.C. Circuit indicated that these statutory provisions precluded the EPA from promulgating affirmative defense provisions that a source could use in civil enforcement suits. The court did not remand the regulation to the EPA for better explanation of the legal basis for an affirmative defense; the court instead vacated the affirmative defense and indicated that there could be no valid legal basis for such a provision because it contradicted fundamental requirements of the CAA concerning the authority of courts in judicial enforcement of CAA requirements. As the court explained:

> By its terms, Section 304(a) clearly vests authority over private suits in the *courts*, not EPA. As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are "appropriate." By contrast, EPA's ability to determine whether penalties should be assessed for Clean Air Act violations extends only to administrative penalties, not to civil penalties imposed by a court. . . . [U]nder this statute, deciding whether penalties are "appropriate" in a given private civil suit is a job for the courts, not for EPA."[25]

The court also noted that "EPA cannot rely on its gap-filling authority to supplement the Clean Air Act's provisions when Congress has not left the agency a gap to fill."[26]

The D.C. Circuit's holding in *NRDC* v. *EPA* is especially pertinent here.[27] Like the Portland cement NESHAP at issue in the *NRDC* v. *EPA* case, the provisions at issue in this proposal are also regulations promulgated by the EPA to implement programs under the CAA. The affirmative defense for malfunctions in the Portland cement NESHAP and the affirmative defense for emergencies in the EPA's part 70 and part 71 regulations are functionally similar provisions that operate in essentially identical ways to establish affirmative defenses in civil enforcement actions. Moreover, the EPA believes that the reasoning of the court's decision in *NRDC* v. *EPA* applies more broadly than to the specific facts of the case for several reasons. The EPA notes that the court's decision did not turn upon the specific provisions of CAA section 112. Although the court only evaluated the legal validity of an affirmative defense provision created by the EPA in conjunction with specific standards applicable to manufacturers of Portland cement, the court based its decision upon the provisions of sections 113 and 304 that pertain to enforcement of CAA requirements more broadly, including to emission limits in title V permits. Sections 113 and 304 pertain to administrative and judicial enforcement generally and are in no way limited to enforcement of emission limitations promulgated by the EPA under section 112. Thus, the EPA does not think that the mere fact that the court only addressed the legality of an affirmative defense provision in this particular context means that the court's interpretation of sections 113 and 304 does not also apply more broadly. To the contrary, the EPA sees no reason why the logic of the court concerning sections 113 and 304 would not apply to the title V emergency affirmative defense provisions, as well.

In light of the court's decision, the EPA now interprets the enforcement structure of the CAA, embodied in section 113 and section 304, to preclude affirmative defense provisions that would operate to limit a court's authority or discretion to determine the appropriate remedy in an enforcement action. CAA section 304(a) grants the federal district courts the jurisdiction to determine liability and to impose penalties in enforcement suits brought by citizens. Similarly, section 113(b) provides courts with explicit jurisdiction to determine liability and to impose remedies of various kinds, including injunctive relief, compliance orders, and monetary penalties, in judicial enforcement proceedings. These grants of jurisdiction come directly from Congress, and the EPA is not authorized to alter or eliminate this authority under the CAA or any other law. With respect to monetary penalties, CAA section 113(e) explicitly includes the factors that courts and the EPA are required to consider in the event of judicial or administrative enforcement for violations of CAA requirements, including title V permit provisions. Because Congress has already given federal courts the authority to determine what monetary penalties are appropriate in the event of judicial enforcement for a violation of a title V permit provision, neither the EPA nor states can alter or eliminate that authority by superimposing restrictions on the authority and discretion granted by Congress to the courts. Affirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to determine liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e). Therefore, these provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain, or what forms of remedy they purport to limit or eliminate. This is true for regulations promulgated under CAA sections 111 and 112, SIP provisions approved by the EPA, and regulations promulgated under title V of the CAA. Thus, just as the EPA revisited affirmative defenses in SIP provisions in light of the *NRDC* v. *EPA* opinion, the EPA is reevaluating its interpretation of the CAA relative to the emergency affirmative defense provisions contained in its part 70 and part 71 regulations, and is proposing to remove those provisions because they are not consistent with the CAA's enforcement structure.

Since the 2014 *NRDC* v. *EPA* decision, and in order to ensure consistency with the CAA's enforcement structure, the EPA has been omitting new affirmative defense provisions and removing existing

[25] *NRDC* v. *EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014).

[26] *Id.* at 1064.

[27] The EPA's interpretation of the *NRDC* v. *EPA* case as it affects the affirmative defense provisions in parts 70 and 71 is similar to the interpretation of the case as articulated in the SSM SIP Call. More information on the EPA's interpretation of the *NRDC* v. *EPA* ruling can be found in the Final SSM SIP Call and the August 2014 Supplemental Proposal. *See* SSM SIP Call, 80 FR 33851; SSM SIP Call Supplemental Proposal, 79 FR 55929.

affirmative defense provisions throughout many CAA program areas that establish emission limitations contained in title V permits. However, the title V emergency affirmative defense provisions apply regardless of whether there is an affirmative defense also found in the underlying applicable requirements. *See* 40 CFR 70.6(g)(5) and 71.6(g)(5). As a result, sources could seek to assert this affirmative defense in title V enforcement cases for noncompliance with emission limitations derived from applicable requirements that do *not* otherwise contain such an affirmative defense for emergencies. The continued existence of the title V emergency affirmative defense provisions thus contradicts and compromises the EPA's on-going efforts to ensure that underlying regulations are applied consistently with the CAA.

The EPA maintains that the part 70 and part 71 emergency affirmative defense provisions are affirmative defenses to enforcement actions and are not "exemptions" from otherwise applicable emissions limitations. However, as an alternative but additional justification, to the extent that the emergency affirmative defense provisions in part 70 and part 71 could be interpreted to establish an exemption or exclusion from emission limits (rather than merely an affirmative defense to penalties in the event of a violation), these provisions would still run contrary to the CAA's requirements and require removal. As previously noted,[28] under *Sierra Club* v. *Johnson*,[29] the CAA requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise. Therefore, even if characterized as an exemption or exclusion from otherwise applicable limits, the emergency affirmative defense provisions would, nonetheless, run afoul of the CAA and *Sierra Club* v. *Johnson*, and should, on that alternative basis, be removed.

V. Implementation

A. Implementing These Changes in Part 70 State Operating Permit Programs

This section discusses the actions that the EPA anticipates state, local, and tribal permitting authorities[30] would need to take (if this proposed rule is finalized in substantially the same form) in order to ensure that their operating permit programs are consistent with the proposed revisions to the EPA's part 70 regulations and the CAA's enforcement structure. The EPA welcomes comments on how best to address the implementation consequences of the proposed removal of 40 CFR 70.6(g).

1. Programs That Do Not Contain Emergency Affirmative Defense Provisions

As discussed in Section III.A of this document, the section 70.6(g) emergency provision has never been a required element of part 70 operating permit programs. For states that have not adopted the section 70.6(g) emergency provision, or any similar affirmative defense provision, into their part 70 operating permit programs, no further action would be required to comply with this rule as proposed. However, we expect that as a result of this rulemaking, it may be necessary for states that have adopted an affirmative defense in their part 70 programs to take the actions described in the following subsections.

2. Programs That Contain Emergency Affirmative Defense Provisions

The EPA's existing part 70 regulations provide for state program revisions if part 70 is revised and the EPA determines that such conforming changes are necessary. *See* 40 CFR 70.4(a) and 70.4(i). Therefore, as a result of this proposed regulatory action to remove 40 CFR 70.6(g) and 71.6(g), state operating permit programs that contain an emergency affirmative defense may have to take appropriate actions to remain consistent with the CAA and the EPA's part 70 regulations. As discussed in more detail in the following subsections, the EPA is requesting comment on whether revisions to certain approved state programs may be necessary if the EPA removes 40 CFR 70.6(g) and 71.6(g).

a. Scope of Program Revisions That May Be Necessary if the Rule Is Finalized as Proposed

Affirmative defense provisions included within a state's part 70 (title V) program regulations—including provisions that are narrower in scope or more stringent than 40 CFR 70.6(g)—will generally implicate the same concerns that prompted the EPA to propose removing 70.6(g) and 71.6(g) from the agency's regulations. The EPA expects that state programs containing provisions that mirror the exact language of 70.6(g) would need to be revised if this proposed rule is finalized, as would state programs that have provisions that do not exactly mirror the language of 40 CFR 70.6(g), but nonetheless provide for title V affirmative defenses.[31] In any case, the EPA invites comment on whether it may be necessary for states to revise programs containing any provisions that (1) purport to establish an affirmative defense to enforcement actions[32] and (2) are included within the state's part 70 (title V) program regulations. Anytime the phrases "affirmative defense" or "emergency affirmative defense" are used within this section, these phrases are intended to refer to all such provisions meeting these criteria. These criteria are intended to encompass provisions that initially would have been approved by the EPA as consistent with 40 CFR 70.6(g) and 70.4(b)(16). This action would not directly affect any affirmative defense provisions arising under other CAA applicable requirements, or state-only provisions outside of each state's approved part 70 operating permit programs.

The EPA has begun to compile a tentative list of affirmative defense provisions within state programs that may eventually need to be removed. The EPA is including this list in the docket for this proposed rulemaking (EPA–HQ–OAR–2016–0186) for informational purposes only; this list is not an official determination as to the adequacy or inadequacy of any program provisions. The EPA seeks comment on whether there are additional title V affirmative defense provisions in state regulations or statutes that we have not yet identified, and whether any such provisions would or would not remain appropriate as part of a state's approved title V program if this proposed rule is finalized.

b. Form of Program Revisions

Because the EPA believes that a large number of part 70 programs contain provisions resembling those that the agency proposes to eliminate, the EPA anticipates that it will be necessary for states to initiate conforming revisions to remove any affirmative defense provisions from their approved title V

[28] *See* footnote 12.

[29] 551 F.3d 1019 (D.C. Cir. 2008).

[30] As noted in footnote 1, the term "state" as used throughout this preamble refers to all state, local and tribal permitting authorities that administer approved part 70 programs.

[31] For example, affirmative defense provisions that refer to "upsets" or "malfunctions" rather than "emergencies" would still implicate the same concerns.

[32] Additionally, any state program provisions based off of 70.6(g) that purport to establish an "exemption" or "exclusion" to emission limitations (rather than, or in addition to, an affirmative defense for noncompliance) during emergencies, upsets, or malfunctions would also likely need to be removed. To the extent that an emergency defense is characterized as an exemption, this would run afoul of the CAA requirement that emission limitations must apply continuously and cannot contain exemptions. *See Sierra Club* v. *Johnson*, 551 F.3d 1019 (D.C. Cir. 2008); SSM SIP Call, 80 FR 33852.

operating permit programs if the EPA removes 40 CFR 70.6(g). The EPA seeks comment on this approach and on other possible approaches to ensure that state programs are consistent with the CAA and the EPA's part 70 regulations. However, the EPA does not anticipate that it would be appropriate for states to retain affirmative defense provisions within their approved part 70 programs. For example, if a state decided, in lieu of a program revision, to exercise its discretion to omit or remove affirmative defense provisions from all future title V operating permits, the state's approved part 70 program would still contain regulations inconsistent with the EPA's part 70 regulations and the CAA. Further, if an emergency provision remained in a state's approved program, a source could potentially attempt to invoke the provision as an affirmative defense during an enforcement proceeding, notwithstanding its absence from the source's individual title V permit. This result could undermine the enforcement of certain permit limitations and would be inconsistent with the enforcement structure of the CAA.

Although the EPA expects that most states would elect to remove the emergency affirmative defense provisions from their part 70 program regulations, states could nonetheless choose to retain such affirmative defense provisions within their permitting regulations as state-only requirements in certain circumstances. In that case, states would have to ensure and make clear to the EPA that any remaining affirmative defense provisions are only available for alleged noncompliance with permit requirements arising solely from state law. Ideally, this would involve an amendment to state regulations to explicitly clarify the limited applicability of any remaining affirmative defense provisions; such a clarifying amendment could also effectively serve as an appropriate revision to the state's part 70 program. The EPA solicits comment on whether and to what extent it would be appropriate for states to retain state-only affirmative defense provisions if this proposed rule is finalized.

Finally, states may also choose to remove any other provisions that reference 40 CFR 70.6(g) or similar state affirmative defense provisions in order to ensure clarity. These could include, but are not limited to, state regulations that incorporate by reference 40 CFR 70.6(g), as well as any associated definitions, recordkeeping, or reporting requirements relating to the affirmative defense provisions affected by this rulemaking. States may also wish to retain a portion of the emergency provisions, such as the definition of "emergency" or certain reporting requirements, for purposes of supporting other regulations that do not involve an affirmative defense. This could be appropriate as long as any remaining provisions could not be interpreted to provide an affirmative defense to federally applicable requirements.

c. Procedure, Timing and Content of Program Revisions

If this proposed rule is finalized, the EPA expects that it would be necessary for any states with approved part 70 operating permit programs that contain emergency affirmative defense provisions to remove any such provisions and submit program revisions to the EPA within 12 months after the final rule's effective date. For many programs, the EPA does not anticipate that additional state legislative authority will be required to enact these revisions. Therefore, the EPA believes that 12 months will be ample time for many states to make such a straightforward and narrow program revision. However, the EPA is considering whether it may be appropriate to provide individual states up to 24 months to submit program revisions if a state demonstrates that additional legislative authority is necessary to enact the program revisions.

If this proposed rule is finalized, the EPA expects that state program revisions submitted to the agency should include a redline version of the specific changes made to the state's part 70 regulations to remove any emergency affirmative defense provisions. States may, but need *not*, include as part of their program revision submittals any other unrelated revisions to state program regulations.[33] Each state should also include a brief statement of the legal authority that authorized this removal, which could take various forms depending on the specific circumstances of each state. Finally, to address how the program revisions would be implemented with respect to individual permits, each state should also include a schedule for the planned removal of these provisions from individual title V operating permits, as well as a description of the mechanism(s) that the state plans to use to remove these existing provisions.

Further discussion of how these program revisions should be implemented in individual permits is presented in Section V.A.3 of this document.

The EPA is specifically requesting comment on these program revision time frames and procedures from permitting authorities whose approved part 70 programs contain affirmative defense provisions. The EPA solicits additional comments from states with title V program provisions that may also be contained within SIPs as to any additional revisions that may be necessary if this rule is finalized.

3. Effect of This Rule on Current and Future State-Issued Operating Permits

The eventual finalization of this rule would not have an automatic impact on sources currently operating under a title V permit, and any minimal resource burden to revise permits would likely be spread over many years. After a state makes any necessary revisions to its title V program, the EPA expects that revisions to operating permits to remove emergency affirmative defense provisions would generally occur in the ordinary course of business as the state issues new permits or reviews and revises existing permits. The options presented in the following subsections would afford states with the maximum flexibility to implement these changes while ensuring predictability for sources operating under title V permits.

a. Form of Permit Changes

In order to implement program revisions that may be necessary if this rule is finalized as proposed, it may be necessary for states to remove title V emergency affirmative defense provisions that are currently included in any state-issued permits.[34] Alternatively, states may choose to allow sources to retain affirmative defense provisions in their permits as state-only provisions. Any such remaining affirmative defense provisions must be clearly labeled within each permit as not applicable for federal law purposes to ensure that they are not available in enforcement actions for noncompliance with any federally-

[33] The EPA intends that any narrow program revisions that may be necessary if this rule is finalized could be expeditiously processed, whether submitted alone or with other program revisions.

[34] It is possible that individual operating permits may contain other provisions establishing affirmative defenses that are derived from other applicable requirements. As previously noted, this proposed rulemaking will not have any effect on affirmative defense provisions promulgated under any CAA requirements other than 40 CFR 70.6(g) and 71.6(g). However, the source of such affirmative defense provisions should be clearly stated in each individual operating permit, to avoid confusion about the scope of such provisions.

enforceable emission limitations, as required by 40 CFR 70.6(b)(2).

b. Mechanisms and Timing of Permit Changes

The EPA anticipates that states would have the flexibility to remove emergency provisions from title V permits through a number of different existing mechanisms, either through changes to individual permits or perhaps to multiple permits through more streamlined processes. As previously noted, if the proposed action is finalized, any necessary program revision submittals should reflect the planned schedule and mechanism for these permit changes. The EPA expects that states will follow the guidelines discussed in this preamble, but will consider other plans for revising title V permits that would not cause undue delay.

First, states could require that permit applications address the removal of emergency provisions during the next periodic permit renewal, permit modification, or permit reopening, including those that occur as the result of other rulemakings. States using these mechanisms should ensure that these changes occur at the first possible occasion; in other words, the first situation in which the permitting authority must act on an individual permit after state program revisions are approved by the EPA. Moreover, because states have never been required by federal law to include these provisions in state-issued title V permits, the EPA also encourages states to exercise their discretion to cease including emergency affirmative defense provisions as early as practicable. In many cases, there will be no reason for states to wait for the EPA to take final action on this proposal to begin implementing this suggestion.[35]

Additionally, sources may apply for a permit modification from their permitting authority at any time. The EPA anticipates that the removal of an emergency affirmative defense would not trigger the significant modification procedures under 40 CFR 70.7(e)(4), and—depending on the regulations in each state's approved title V program—could be implemented using minor modification procedures. Finally, depending on the unique structure of each state's operating permit program, some states may also be able to remove these provisions from multiple existing permits in a single action, via mechanisms such as general permits or permits-by-rule. The EPA is requesting comment on how states could use existing permitting options to remove emergency affirmative defense provisions from title V permits in a more streamlined and expeditious manner.

Overall, the EPA believes that addressing the omission or removal of emergency affirmative defense provisions from permits according to the existing state program mechanisms described in this subsection affords states sufficient flexibility to implement these changes and provides certainty to facilities operating under title V permits. Under the approaches currently being considered, the EPA anticipates that the removal of affirmative defense provisions from permits should generally occur in the ordinary course of business and should require essentially no additional burden on states or sources. The timing for these changes may coincide with similar changes to operating permits based on revised SIP provisions following the SSM SIP Call or changes to other applicable requirements, and it may be convenient and efficient for states to make all necessary changes to title V permits at the same time.

B. Implementing These Changes in the Part 71 Federal Operating Permit Program

Although the title V operating permit program is typically implemented by state and local permitting authorities through EPA-approved part 70 programs, in certain circumstances the EPA has assumed direct permitting authority over sources through its part 71 program. The EPA administers the part 71 federal program in most areas of Indian country (however, one tribe—the Southern Ute Tribe—has an approved part 70 program, and another—the Navajo Nation—has been delegated part 71 implementation authority),[36] on the Outer Continental Shelf (where there is no state permitting authority), as well as for specific sources where the EPA has determined that a state has not adequately implemented its part 70 program or satisfied an EPA objection to a permit.

In some cases where the EPA administers its part 71 program, the EPA has included in its federally-issued operating permits the emergency affirmative defense provision found in 40 CFR 71.6(g). If 40 CFR 71.6(g) is removed, the federal (including delegated) program rules would no longer include regulatory authority for incorporating this emergency affirmative defense in permits. Therefore, in order to ensure that part 71 programs are implemented consistent with the proposed revisions to the part 71 regulations, the EPA or delegated permitting authority should remove emergency affirmative defense provisions that are currently included in title V permits at the next permit action following the effective date of the final rule. Because the EPA has always considered the emergency provisions to be discretionary permit terms, the EPA has omitted emergency affirmative defense provisions from part 71 permits that it has issued since the D.C. Circuit's 2014 *NRDC* v. *EPA* decision. The EPA plans to continue to exercise its discretion to not include emergency affirmative defense provisions in future EPA-issued operating permits.

C. Effect on Sources Potentially Subject to Enforcement Proceedings

The legal rights and obligations of individual sources potentially subject to enforcement proceedings would not be adversely affected by the removal of emergency affirmative defense provisions from their title V permits.[37] The absence of an affirmative defense provision in a source's title V permit does not mean that all exceedances of emission limitations in a title V permit will automatically be subject to enforcement or automatically be subject to imposition of particular remedies. Pursuant to the CAA, all parties with authority to bring an enforcement action to enforce title V permit provisions (*i.e.*, the state, the EPA, or any parties who qualify under the citizen suit provision of CAA section 304) have enforcement discretion that they may exercise as they deem appropriate in any given circumstances. For example, if the excess emissions caused by an emergency occurred despite proper operation of the facility, and despite the permittee taking all reasonable steps to minimize excess emissions, then these parties may decide that no enforcement action is warranted. In the event that any party decides that an enforcement action is warranted, then it has enforcement discretion with respect to what remedies to seek from the court for the violation (*e.g.*, injunctive relief,

[35] Of course, if currently-approved state program regulations require that this provision be included within individual title V operating permits, a state may not be able to exercise this discretion until program revisions are completed.

[36] The EPA has delegated a portion of its part 71 permitting authority to the Navajo Nation EPA (NNEPA) through a delegation agreement, such that NNEPA assumes the responsibility for specific aspects of program administration under the part 71 regulations, including the authority to issue part 71 operating permits to sources.

[37] The removal of these provisions from individual operating permits has similar implications to sources as the removal of the SSM provisions subject to the SSM SIP Call. *See* SSM SIP Call, 80 FR 33852.

compliance order, monetary penalties, or all of the above), as well as the type of injunctive relief and/or amount of monetary penalties sought.[38]

Further, courts have the discretion under section 113 to decline to impose penalties or injunctive relief in appropriate cases. In the event of an enforcement action for an exceedance of an emission limit in a title V permit, a source can elect to assert any common law or statutory defenses that it determines are supported, based upon the facts and circumstances surrounding the alleged violation. Under sections 304(a) and 113(b), courts have authority to impose injunctive relief, issue compliance orders, assess monetary penalties or fees and award any other appropriate relief. Under section 113(e), courts are required to consider the enumerated factors when assessing monetary penalties, including the source's compliance history, good faith efforts to comply the duration of the violation, and "such other factors as justice may require." If the exceedance of the emission limitation occurs due to an emergency, the source retains the ability to defend itself in an enforcement action and to oppose the imposition of particular remedies or to seek the reduction or elimination of monetary penalties, based on the specific facts and circumstances of the emergency event. Thus, elimination of an emergency affirmative defense provision that purported to take away the statutory jurisdiction of the court to exercise its authority to impose remedies does not disarm sources in potential enforcement actions. Sources would retain all of the equitable arguments they previously could have made; they must simply make such arguments to the reviewing court as envisioned by Congress in section 113(b) and section 113(e). Congress vested the courts with the authority to judge how best to weigh the evidence in an enforcement action and determine appropriate remedies.

The eventual removal of such impermissible emergency affirmative defense provisions from state operating permit programs and individual title V permits will likely be necessary to preserve the enforcement structure of the CAA, to preserve the authority of courts to adjudicate questions of liability and remedies in judicial enforcement actions, and to preserve the potential for enforcement by states, the EPA, and other parties under the citizen suit provision as an effective deterrent to violations. In turn, this deterrent encourages sources to be properly designed, maintained, and operated and, in the event of violation of permitted emission limitations, to take appropriate action to mitigate the impacts of the violation. In this way, as intended by the existing enforcement structure of the CAA, sources can mitigate the potential for enforcement actions against them and the remedies that courts may impose upon them in such enforcement actions, based upon the facts and circumstances of the event.

VI. Environmental Justice Considerations

The EPA believes the human health or environmental risk addressed by this proposed action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it would not adversely affect the level of protection provided to human health or the environment. This action simply proposes to remove emergency affirmative defense provisions from the EPA's operating permit program regulations. If the proposed rule is finalized, it may also be necessary for state, local and tribal permitting authorities to remove similar affirmative defense provisions from program regulations and from individual title V operating permits. None of these changes would alter the obligations of sources to comply with the emission limits and other standards contained within title V operating permits. However, this proposed rulemaking could encourage sources to comply with the terms of their operating permits at all times to the maximum extent practicable. This could potentially result in improved air quality for communities living near sources of air pollution as well as the broader population. Thus, this proposed rulemaking will not adversely affect the level of protection to human health or the environment for any populations.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0243 (for part 70 state operating permit programs) and 2060–0336 (for part 71 federal operating permit program). In this action, the EPA is proposing to remove certain provisions from the EPA's regulations, which if finalized could result in the removal of similar provisions from state, local, and tribal operating permit programs and individual permits. Consequently, states could eventually be required to submit program revisions to the EPA outlining any necessary changes to their regulations and their plans to remove provisions from individual permits. However, this proposed action will not involve any requests for information, recordkeeping or reporting requirements, or other requirements that would constitute an information collection under the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local, and tribal governments, and none of these governments would qualify as a small entity. Other types of small entities, including stationary sources of air pollution, are not directly subject to the requirements of this action.

D. Unfunded Mandates Reform Act (URMA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

[38] The EPA notes that only the state and the EPA have authority to seek criminal penalties for knowing and intentional violation of CAA requirements. The EPA has this explicit authority under section 113(c).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. One tribal government (the Southern Ute Indian Tribe) currently administers an approved part 70 operating permit program, and one tribal government (the Navajo Nation) currently administers a part 71 operating permit program pursuant to a delegation agreement with the EPA. These tribal governments may be required to take actions if this proposed rule is finalized, including program revisions (for part 70 programs) and eventual permit revisions, but these actions will not require substantial compliance costs. The EPA solicits comment from affected tribal governments on the implications of this proposed rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. The results of this evaluation are contained in Section VI of this document titled, "Environmental Justice Considerations."

VIII. Statutory Authority

The statutory authority for this proposed action is provided in CAA sections 502(b) and 502(d)(3), 42 U.S.C. 7661a(b) & (d)(3), which direct the Administrator of the EPA to promulgate regulations establishing state operating permit programs and give the Administrator the authority to establish a federal operating permit program. Additionally, the Administrator determines that this action is subject to the provisions of CAA section 307(d), which establish procedural requirements specific to rulemaking under the CAA. CAA section 307(d)(1)(V) provides that the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine." 42 U.S.C. 7607(d)(1)(V).

List of Subjects

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 3, 2016.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

§ 70.6 [Amended]

■ 2. In § 70.6, remove paragraph (g).

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

§ 71.6 [Amended]

■ 4. In § 71.6, remove paragraph (g).

[FR Doc. 2016–14104 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 81, No. 114

Tuesday, June 14, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc No. AMS–SC–16–0043; SC16–033–1]

Notice of Request for Renewal of a Recordkeeping Burden

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for renewal a recordkeeping burden for the information collection for the Export Fruit Acts covering exports of apples and grapes.

DATES: Comments on this notice are due by August 15, 2016 to be assured of consideration.

ADDITIONAL INFORMATION: Contact Andrew Hatch, Chief, Program Services Branch, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC, 20250–0237; Telephone (202) 720–6862 or Email: *andrew.hatch@ams.usda.gov.*

Small businesses may request information on complying with this notice by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

Comments: Comments should reference the document number and the date and page number of this issue of the **Federal Register**, and be mailed to the Docket Clerk, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938); or submitted through the Internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Export Fruit Regulations—Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35).

OMB Number: 0581–0143.

Expiration Date of Approval: August 31, 2016.

Type of Request: Request for Renewal of a Recordkeeping Burden.

Abstract: Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (Acts), which are found respectively at 7 CFR parts 33 and 35. Both Acts were designed to promote foreign trade in the export of apples, grapes and plums grown in the United States; to protect the reputation of the American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. The Acts have been in effect since 1933 (apples) and 1960 (grapes). Currently, plums are not regulated under the Export Grape and Plum Act.

The Secretary of Agriculture is authorized to oversee the implementation of the Acts and issue regulations regarding that activity. Regulations issued under the Acts cover exports of fresh apples and grapes grown in the United States and shipped to foreign destinations, with the exception of grapes shipped to Canada or Mexico and apples in bulk bins shipped to Canada. Certain limited quantity provisions may exempt some shipments from this information collection. Regulations issued under the Acts (7 CFR 33.11 for apples, and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each export shipment of fresh apples and grapes is in compliance with quality and shipping requirements effective under the Acts.

The information collection requirements in this request are essential to carry out the intent and administration of the Acts. The currently approved collection under OMB No. 0581–0143 authorizes the use of an Export Form Certificate. Federal or Federal-State Inspection Program (FSIP) inspectors use the Export Form Certificate (FV–207) to certify inspection of the shipment for exports bound for non-Canadian destinations. The completed FV–207 is issued to the shipper. The shipper provides the carrier with the completed certificate to verify compliance with the Acts. Under the current regulations issued under the Acts, the carrier is required to maintain the certificates for no less than three (3) years. The information collection requirements in this request impose only the minimum burden necessary to effectively administer the Acts. The information collection burden for this action is primarily in the form of recordkeeping; the certificates are not filed with USDA.

USDA intends to update the text of the FV–207 to expand its scope to include inspection certificates for export shipments bound for Canadian destinations and rename it FV–205. Shipper and carriers do not complete the FV–207; they are only required to maintain the completed FV–207 record. USDA proposes a decrease to the time required to complete this information collection from 15 minutes per response to 5 minutes per response to complete the related recordkeeping actions of the shipper delivering a copy of the certificate to the carrier and the carrier keeping the certificate on file for not less than 3 years.

In the last renewal of the collection in 2013, there were inaccurate calculations related to the burden. The last renewal of the collection in 2013 reported that 102 respondents (68 shippers and 15 carriers for exported apples, and 14 shippers and 5 carriers for exported grapes) used FV–207 for an estimated one response per respondent. This suggested that there were only 102 FV–207 certificates issued. However, USDA's Foreign Agricultural Service estimates that, for the five-year period 2011–2015, the average number of export apple and grape shipments requiring inspection per year was 42,326 for apples and 10,462 for grapes, for a total five-year average of 52,788 certificates per year that would need to be maintained. Current industry data indicates a decrease in the recordkeepers from 102 to 94, as there is a reduction in the estimated number

of export apple shippers (from 68 to 60) but no changes in the estimated number of export grape shippers (14), or carriers of export apples (15) and grapes (5). In this renewal of the collection in 2016, USDA will update the calculation to reflect an estimated 564 responses per recordkeeper for apples, which is approximately the 42,326 certificates divided by the 75 apple shippers and carriers, and an estimated 550 responses per recordkeeper for grapes, which is approximately the 10,462 certificates divided by the 19 grape shippers and carriers. USDA calculates the estimated total annual burden on respondents would change from the inaccurate 25 hours to the more accurate 4381 hours estimate.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to *average 0.083 hours per response.*

Respondents (Recordkeepers): Apple and grape export shippers and carriers.

Estimated Number of Recordkeepers: 94 (75 shippers and carriers of exported apples and 19 shippers and carriers of exported grapes).

Estimated Total Annual Responses: 52,788.

Estimated Number of Responses per Recordkeeper: 564 for apples and 550 for grapes.

Estimated Total Annual Burden on Recordkeepers: 4381 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. All comments received will be available for public inspection at the street address in the "Comment" section and can be viewed at: *www.regulations.gov.*

Dated: June 8, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–14007 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0037]

Notice of Request for Extension of Approval of an Information Collection; Importation of Live Swine, Pork and Pork Products, and Swine Semen From the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of live swine, pork and pork products, and swine semen from the European Union.

DATES: We will consider all comments that we receive on or before August 15, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0037.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0037* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the importation of live swine, pork and pork products, and swine semen from the European Union, contact Dr. Lynette Williams, Senior Staff Veterinarian, Animal Products, NIES, VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737–1236; (301) 851–3300. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Swine, Pork and Pork Products, and Swine Semen from the European Union.

OMB Control Number: 0579–0218.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States.

The regulations in title 9 of the Code of Federal Regulations (9 CFR), part 94, prohibit or restrict the importation of specified animals and animal products to prevent the introduction of diseases such as classical swine fever (CSF), rinderpest, foot-and-mouth disease, swine vesicular disease, and African swine fever. Among other things, part 94 lists the requirements for the importation of pork and pork products and live swine where these diseases exist. Section 94.31 lists the requirements for the importation of pork, pork products, and breeding swine from the European Union ("the APHIS-defined European CSF region"). Section 98.38 lists the requirements for the importation of swine semen from the APHIS-defined European CSF region.

These regulations require information collection activities, such as a certificate for pork and pork products, breeding swine, and swine semen; application for import or in-transit permit; and declaration of importation.

The activities above were previously approved by the Office of Management and Budget (OMB) under collections 0579–0218 and 0579–0265. In our last extension of approval, we announced that we were combining the two collections and retiring 0579–0265. When we combined the collections, we did not accurately adjust the estimated burden. In addition, we have increased the estimates of burden to reflect the increased consumer demand for pork and pork products and to account for the return of the declaration of importation to APHIS from U.S. Customs and Border Protection. We have adjusted the estimates of burden accordingly.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Foreign government animal health officials.

Estimated annual number of respondents: 21.

Estimated annual number of responses per respondent: 20,951.

Estimated annual number of responses: 439,976.

Estimated total annual burden on respondents: 440,374 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 8th day of June 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–14079 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request—Professional Standards Training Tracker Tool

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for assisting state agencies to record, track and manage the required training hours in four major areas (Nutrition, Operations, Administration, Communications and Marketing) to meet the requirements of the Healthy Hunger Free Kids Act (HHFKA) of 2010 Professional Standards Rule. The HHFKA (section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training will be required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of training courses, FNS is developing a web-based application tool with a SQL-server database which will be made available to local educational agencies and school food authorities through the FNS public Web site. While training requirements are mandatory, using the USDA Tracking Tool is voluntary. School nutrition professionals can use any method to track and manage their trainings. These resources will facilitate compliance with HHFKA requirements and will be provided at no cost to the state, district, or individuals.

DATES: Written comments must be received on or before August 15, 2016.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Kaushalya Heendeniya, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 630, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Kaushalya Heendeniya at 703–305–2549 or via email to *kaushalya.heendeniya1@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Kaushalya Heendeniya at 703–305–0037.

SUPPLEMENTARY INFORMATION:

Title: Professional Standards Training Tracker Tool.

Form Number: 0584—NEW.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: The Healthy Hunger Free Kids Act of 2010 (section 306) requires Professional Standards for state and local school district nutrition professionals. In addition to hiring standards, mandatory annual training will be required for all individuals involved in preparing school meals. To meet the training requirements and assist in keeping track of training and training courses, FNS is developing a web-based application tool with a SQL-server database which will be made available to local educational agencies and school food authorities through the FNS public Web site, with a login authentication. These resources will facilitate compliance with HHFKA requirements and will be provided at no cost to the state, district, or individuals. In addition, there will be a mobile friendly version of this Professional Standards Training Tracking Tool application to ensure easy usage and accessibility across mobile devices. The application will be compatible with all mobile operating systems (iOS, Android, and Windows).

The user will be able to create a user profile with the following information:

- School District/Address
- School Name/Address
- Individual Name—Contact Information/Email address
- Title of Individual or Role in school nutrition program

- Hiring Date

The user will be logging in the following information:

- Key Area
- Training Topic
- Learning Objective
- Training Title
- Training Hours/Minutes
- Date of Training
- Provider or Organization offering training, including state, local or national
- Level of Training by employee position (*e.g.* employee, manager, etc.)

The user will have the ability to enter multiple names for one specific training without having to repeatedly enter training information. Certificates of completion can be printed. The tool will also provide the user the ability to export and save results in multiple file formats, including PDF (.pdf), Excel and Word 2000 or higher (.docx). It will have a user-centered, simple, intuitive interface. Streamlined and intuitive navigation will be offered for easy access to all functionality.

Affected Public: Individual/Households and State, Local, and Tribal Government. Respondent groups include local educational agencies, school food authorities, and school nutrition professionals.

Estimated Number of Respondents: The total estimated number of respondents is 10,006. This includes 6 State agency personnel and 10,000 school nutrition professionals who voluntarily choose to utilize this tracking tool. All respondents will be offered a 60 minute training webinar.

Estimated Number of Responses per Respondent: Total estimated number of responses per respondent across the entire collection is six. The estimated number of responses per respondent for the tracking tool is five. The tracking tool users will be first required to create their user profile which will be saved for future use. It is estimated that the user will be updating and managing their records on a quarterly basis. The estimated number of responses per respondent for the training webinar is one.

Estimated Total Annual Responses: 60,036.

Estimated Time per Response: The estimated time per response across the entire collection is approximately 16 minutes (0.27 hours). For the training tracking tool, the estimated time of response varies from five to ten minutes depending on familiarity of the tool and the amount of reports created with an average estimated time of 7.5 minutes (0.125 hours) for all participants. The training webinar of 60 minutes (1 hour) will be available for all participants.

Estimated Total Annual Burden on Respondents: 16,259.75 hours (rounded to 16,260 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated # respondent	Responses annually per respondent	Total annual responses (col. b × c)	Estimated avg. # of hours per response	Estimated total hours (col. d × e)
Reporting Burden for State, Local, and Tribal Govt					
State agency Personnel	6	5	30	0.125	3.75
Training Webinar	6	1	6	1	6
Subtotal for State, Local, and Tribal Government	6	6	36	0.27	9.75
Reporting Burden for Individuals/Households					
School Nutrition Professionals	10,000	5	50,000	0.125	6,250
Training Webinar	10,000	1	10,000	1	10,000
Subtotal for Individuals/Households	10,000	6	60,000	0.27	16,250
Total Reporting Burden	10,006	.....	60,036	.....	16,259.75

Dated: June 2, 2016.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–14008 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Hoosier National Forest, Forest Service, USDA.

ACTION: Notice of proposed new fee site.

SUMMARY: The Hoosier National Forest is proposing to charge a fee at Saddle Lake Recreation Area Campground. This includes a $5 fee at Saddle Lake Campground per site per night year round. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, and market assessment. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements of the campground.

An analysis of the nearby state campground with similar amenities shows that the proposed fee is reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through December 31, 2016. New fees would begin approximately April 2017.

ADDRESSES: Michael Chaveas, Forest Supervisor, Hoosier National Forest, 811 Constitution Ave., Bedford, IN 47121.

FOR FURTHER INFORMATION CONTACT: Nancy Myers, Outdoor Recreation Planner, 812–547–9241. Information about the proposed fee can also be found on the Hoosier National Forest Web site: *http://www.fs.usda.gov/hoosier.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. People wanting reserve these cabins would need to do so through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777 when it becomes available.

Dated: June 8, 2016.

Michael Chaveas,

Forest Supervisor.

[FR Doc. 2016–13992 Filed 6–13–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest (NF) Resource Advisory Committee (RAC) will meet in Walker Minnesota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/chippewa.*

DATES: The meeting will be held on Thursday, July 14, 2016, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Walker Ranger District, Main Conference Room, 201 Minnesota Avenue East, Walker, Minnesota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chippewa NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Todd Tisler, RAC Coordinator, by phone at 218–335–8629 or via email at *ttisler@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introduce new RAC committee members,
2. Review RAC members' roles and responsibilities, and
3. Develop project priorities.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 27, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Todd Tisler, RAC Coordinator, Chippewa NF Supervisor's Office, 200 Ash Avenue Northwest, Cass Lake, Minnesota 56633; by email to *ttisler@fs.fed.us* or via facsimile to 218–335–8637.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 7, 2016.

Darla Lenz,

Forest Supervisor.

[FR Doc. 2016–13985 Filed 6–13–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Application Deadlines and Requirements for Section 313A Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes Loan Program for Fiscal Year (FY) 2016

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the application window, requirements and funding for up to $750 million of loan funds available for Fiscal Year (FY) 2016 under the Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes Program (the 313A Program) authorized under the Rural Electrification Act of 1936, as amended, and related terms. Under the 313A Program, the Federal Financing Bank (FFB) will make loans to the selected applicant(s) and RUS will guarantee the applicant(s)'s repayment of the loans to FFB. Selected applicants may use the proceeds of loan funds made available under the 313A Program to make loans to borrowers for electrification or telecommunications purposes, or to refinance bonds or notes previously issued by applicants for such purposes. The proceeds of the guaranteed bonds and notes are not to be used by applicants to directly or indirectly fund projects for the generation of electricity.

DATES: Completed applications must be received by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) on Friday, July 15.

ADDRESSES: Applicants are required to submit one original and two copies of their loan applications to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Management Analyst, 1400 Independence Avenue SW., STOP 1568, Room 0226–S, Washington, DC 20250–1568.

FOR FURTHER INFORMATION CONTACT: For further information contact Amy McWilliams, Management Analyst, 1400 Independence Avenue SW., STOP 1568, Room 0226–S, Washington, DC 20250–1568. Telephone: (202) 205–8663; email: *amy.mcwilliams@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes for Fiscal Year (FY) 2016.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850

Due Date for Applications: Applications must be received by RUS by 5:00 p.m. Eastern Daylight Time (EDT) on June 15, 2016.

Items in Supplementary Information

I. Funding Opportunity Description
II. Award Information
III. Eligibility Information
IV. Fiscal Year 2016 Application and Submission Information
V. Application Review Information
VI. Issuance of the Guarantee
VII. Guarantee Agreement
VIII. Reporting Requirements
IX. Award Administration Information
X. National Environmental Policy Act Certification
XI. Other Information and Requirements
XII. Agency Contacts: Web Site, Phone, Fax, Email, Contact Name
XIII. Non-Discrimination Statement: USDA Non-Discrimination Statement, How to

File a Complaint, Persons With Disabilities

I. Funding Opportunity Description

A. Purpose of the 313A Program

The purpose of the 313A Program is to make guaranteed loans to selected applicants (each referred to as "Guaranteed Lender" in this NOSA and in the Program Regulations) that are to be used (i) to make loans for electrification or telecommunications purposes eligible for assistance under the RE Act (defined herein) and regulations for the 313A Program located at 7 CFR part 1720 (also referred to as the "Program Regulations" in this NOSA), or (ii) to refinance bonds or notes previously issued by the Guaranteed Lender for such purposes. The proceeds of the guaranteed bonds and notes are not to be used by the Guaranteed Lender to directly or indirectly fund projects for the generation of electricity.

B. Statutory Authority

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1) (the RE Act) and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms

The definitions applicable to this NOSA are published at 7 CFR § 1720.3.

D. Application Awards

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR § 1720.7, and as provided in this NOSA.

II. Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2016.

Available Funds: $750 million.

Award Amounts: RUS anticipates making multiple approvals under this NOSA. The number and amount of awards under this NOSA will depend on the number of eligible applications and the amount of funds requested. Loans will only be made on an amortized basis.

Application Date: Applications must be received by RUS by no later than 5:00 p.m. EDT on June 15, 2016.

Award Date: Awards will be made on or before September 30, 2016.

Schedule of Loan Repayment: Amortization Method (level debt service).

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

2. *To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:*

a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding;

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee; and

c. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR § 1710.2(a) as (i) Any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) Any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936 (7 U.S.C. 901–950bb). For initial loans to a borrower made after June 18, 2008, the "rural" character of an area is determined at the time of the initial loan to furnish or improve service in the area.

IV. Fiscal Year 2016 Application and Submission Information

A. Applications

All applications must be prepared and submitted in accordance with this NOSA and 7 CFR § 1720.6 (Application Process). To ensure the proper preparation of applications, applicants should carefully read this NOSA and 7 CFR part 1720 (available online at *http://www.ecfr.gov/cgi-bin/text-idx?SID=9295e45c9a0f6a857d800fbec5dde2fb&mc=true&node=pt7.11.1720&rgn=div5*).

B. Content and Form of Submission

In addition to the required application specified in 7 CFR § 1720.6, all applicants must submit the following additional required documents and materials:

1. *Form AD–1047, Certification Regarding Debarment, Suspension and Other Responsibility Matters Primary Covered Transactions.* This form contains certain certifications relating to debarment and suspension, convictions, criminal charges, and the termination of public transactions (See 2 CFR part 417, and 7 CFR § 1710.123). This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms;*

2. *Restrictions on Lobbying.* Applicants must comply with the requirements with respect to restrictions on lobbying activities. (See 2 CFR part 418, and 7 CFR § 1710.125). This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

3. *Uniform Relocation Act assurance statement.* Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended. (See 7 CFR § 1710.124.) This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

4. *Federal debt delinquency requirements.* This report indicates whether or not the applicants are delinquent on any Federal debt (See 7 CFR § 1710.126 and 7 CFR § 1710.501(a)(13)). This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

5. *RUS Form 266, Compliance Assurance.* Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 45 CFR part 90. This form is available at *http://www.rd.usda.gov/publications/regulations-guidelines/electric-sample-documents;*

6. *Articles of incorporation and bylaws:* See 7 CFR § 1710.501(a)(14). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act;

7. *Form AD 3030, Representations Regarding Felony Conviction and Tax Delinquency Status for Corporation Applications.* Applicants are required to complete this form if they are a corporation. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms;* and

8. *Form AD 3031, Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.* Required as a condition to RUS making a loan commitment. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms.*

C. Supplemental Documents for Submission

1. *Cash flow projections and assumptions:* Each applicant must include five-year pro-forma cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR § 1720.6(4)).

2. *Pending litigation statement:* A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant.

V. Application Review Information

A. Application Evaluation

1. *Administrator Review.* Each application will be reviewed by the Administrator to determine whether it is eligible under 7 CFR § 1720.5, the information required under 7 CFR § 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Administrator can at any time reject an application that fails to meet these requirements.

a. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. *Decisions by the Administrator.* The Administrator will approve or deny applications in a timely manner as such applications are received; provided, however, that in order to facilitate competitive evaluation of applications, the Administrator may from time to time defer a decision until more than one application is pending. The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount less than that requested.

B. Independent Assessment

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under this section must be met by the applicant prior to the endorsement of a guarantee by the Administrator (See 7 CFR 1720.8).

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on a semi-annual basis, a guarantee fee equal to 15 basis points (0.15 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

VIII. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and pledged collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. Award Administration Information

Award Notices

RUS will send a commitment letter to an applicant once the loan is approved. Applicants must accept and commit to all terms and conditions of the loan which are requested by RUS and FFB as follows:

1. *Compliance conditions.* In addition to the standard conditions placed on the section 313A Program or conditions requested by the Agency to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Securities) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Securities that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles, (ii) cannot be comprised of more than 30% of bonds or notes from generation and transmission borrowers or (iii) cannot have more than 5% of notes and bonds be from any one particular borrower.

c. The Guaranteed Lender will be required to place a lien on the pledged collateral in favor of RUS (as secured party) at the time that the pledged collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days to reject and require the substitution of any Pledged Collateral that the Guaranteed Lender deposits as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. Applicants must certify to the RUS, the portion of their Eligible Loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans; and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. *Compliance with Federal Laws.* Applicants must comply with all applicable Federal laws and regulations.

a. This obligation is subject to the provisions contained in the Consolidated Appropriations Act, 2016, Public Law 114–113, Division A, Title VII, Sections 745 and 746, as amended and/or subsequently enacted for USDA agencies and offices regarding corporate felony convictions and corporate federal tax delinquencies.

b. The Chairman or the Board President authorized by your organization to execute the loan documents must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD–3031) to RUS by September 30, 2016; otherwise, the commitment will be void.

c. Additional conditions may be instituted for future obligations.

X. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for the RE Act purposes that are not obligated with specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR parts 1500–1508. However, for any new projects funded under the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

XI. Other Information and Requirements

Applications must contain all of the required elements of this NOSA and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal Laws and Regulations.

XII. Agency Contacts

A. Web site: http://www.rd.usda.gov/programs-services/all-programs/electric-programs.

B. Phone: 202–205–8663.

C. Fax: (202) 720–1401 or (202) 205–1264.

D. Email: amy.mcwilliams@wdc.usda.gov.

E. Main point of contact: Amy McWilliams, Management Analyst, 1400 Independence Avenue SW., STOP 1568, Room 0226–S, Washington, DC 20250–1568.

XIII. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027. This form is available at *http://www.ocio.usda.gov/policy-directives-records-forms/forms-management/approved-computer-generated-forms* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Authority: 7 U.S.C. 940c–1.

Dated: April 22, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–14009 Filed 6–13–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Rescission of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on certain preserved mushrooms from India for the period February 1, 2015, through January 31, 2016.

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Terre Keaton Stefanova, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2016, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain preserved mushrooms from India for the period of February 1, 2015, through January 31, 2016.[1]

On February 29, 2016, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from Monterey Mushrooms, Inc., a petitioner and domestic interested party in this proceeding, to conduct an administrative review of the sales of Agro Dutch Foods Limited (Agro Dutch Industries Limited) (Agro Dutch); Himalya International Ltd. (Himalya); Hindustan Lever Ltd. (formerly Ponds India, Ltd.) (Hindustan); Transchem, Ltd. (Transchem); and Weikfield Foods Pvt. Ltd. (Weikfield). The petitioner was the only party to request this administrative review.

On April 7, 2016, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch, Himalya, Hindustan, Transchem, and Weikfield.[2]

On May 13, 2016, the petitioner timely withdrew its request for a review of Agro Dutch, Himalya, Hindustan, Transchem, and Weikfield.[3]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 5712 (February 3, 2016).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016).

[3] *See* petitioner's letter, "17th Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms form India—Petitioner's Withdrawal of Requests for Review," dated May 13, 2016.

Continued

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner timely withdrew its review request for all companies before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order. Therefore, we are rescinding in its entirety the administrative review of the antidumping duty order on certain preserved mushrooms from India covering the period February 1, 2015, through January 31, 2016.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: June 8, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–14061 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review In Part; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China (PRC).[1] The period of review (POR) is May 1, 2014 through April 30, 2015. These preliminary results cover 175 companies for which an administrative review was initiated.[2] The Department selected the following companies as mandatory respondents: Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd. (collectively, Jangho) and Guang Ya Aluminium Industries Co., Ltd., Foshan Guangcheng Aluminium Co., Ltd., Kong Ah International Company Limited, and Guang Ya Aluminium Industries (Hong Kong) Ltd. (collectively, Guang Ya Group); Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminium (HK) Holding Limited, and Karlton Aluminum Company Ltd. (collectively, Zhongya); and Xinya Aluminum & Stainless Steel Product Co., Ltd. (Xinya) (collectively, Guang Ya Group/Zhongya/Xinya).[3] The Department preliminarily determines that Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to fully comply with the Department's requests for information, warranting the application of facts otherwise available with adverse inferences, pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended (the Act). We also preliminarily determine that two companies, Xin Wei Aluminum Company Limited (Xin Wei) and Permasteelisa Hong Kong Limited, had no shipments. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Deborah Scott, Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2657, (202) 482–6312 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the *Order*[4] is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[5]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff

[1] The Department initiated this review on July 1, 2015. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015) (*Initiation Notice*).

[2] *Id.*, 80 FR at 37590–37593.

[3] In prior segments of this proceeding, the Department found that Guang Ya Group, Zhongya, and Xinya were affiliated with each other and should be treated as a single entity. *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014) (*2010–2012 Final Results*); *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 78784 (December 31, 2014) (*2012–2013 Final Results*); and *Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 75060 (December 1, 2015) (*2013–2014 Final Results*).

[4] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) (*Order*).

[5] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2014–2015," dated concurrently with this notice (Preliminary Decision Memorandum) for a complete description of the scope of the *Order*.

Schedule of the United States (HTSUS): 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Tolling of Deadline of Preliminary Results of Review

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days.[6]

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), based on timely withdrawal of the requests for review, we are partially rescinding this administrative review with respect to 129 companies named in the *Initiation Notice*.[7] *See* Appendix II for a full list of these companies.[8]

Separate Rates

In the *Initiation Notice*, we informed parties of the opportunity to request a separate rate.[9] In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assigned a single weighted-average dumping margin. It is the Department's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to be considered for a separate rate in this review were required to timely file a separate-rate application or a separate-rate certification to demonstrate their eligibility for a separate rate. Separate-rate applications and separate-rate certifications were due to the Department within 30 calendar days of the publication of the *Initiation Notice*.

In this review, 21 companies for which a review was requested and which remain under review did not submit separate-rate information to rebut the presumption that they are subject to government control.[10] These companies are: Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongJi Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co. As further discussed in the Preliminary Decision Memorandum,[11] we preliminarily determine that these entities have not demonstrated that they operate free from government control and thus are not eligible for a separate rate.

Two additional companies that remain under review, Atlas Integrated Manufacturing Ltd. (Atlas) and Genimex Shanghai, Ltd. (Genimex), submitted separate-rate applications, but, as further discussed in the Preliminary Decision Memorandum, we preliminarily determine that these companies are not eligible for a separate rate.

In addition, nine companies still under review submitted separate-rate applications or separate-rate

[6] *See* Memorandum for the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas,'" dated January 27, 2016.

[7] *See Initiation Notice*, 80 FR at 37590–37593.

[8] *See also* the Preliminary Decision Memorandum for further details.

[9] *Id.*, 80 FR at 37589–37590.

[10] One company, Zhaoqing New Zhongya Aluminum Co., Ltd. (New Zhongya), was determined to have been succeeded by Guangdong Zhongya Aluminum Company Limited (Guangdong Zhongya) in a changed circumstances review. *See Aluminum Extrusions From the People's Republic of China: Final Results of Changed Circumstances Review*, 77 FR 54900 (September 6, 2012). Thus, despite the fact that a review was initiated of New Zhongya, it is not being included among these 21 companies because its successor in interest, Guangdong Zhongya, is part of the Guang Ya Group/Zhongya/Xinya single entity.

[11] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2014–2015," dated concurrently with this notice.

certifications and, where applicable, responses to supplemental questionnaires which provide sufficient information to preliminarily determine that they are entitled to a separate rate. These nine companies are: Allied Maker Limited; Birchwoods (Lin'an) Leisure Products Co., Ltd.; Changzhou Changzheng Evaporator Co., Ltd.; Dongguan Aoda Aluminum Co., Ltd.; JMA (HK) Company Limited; Kam Kiu Aluminium Products Sdn. Bhd.; Metaltek Group Co., Ltd.; Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.; and Tianjin Jinmao Import & Export Corp., Ltd. A full discussion of the basis for granting these companies a separate rate can be found in the Preliminary Decision Memorandum.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

The statute and the Department's regulations do not address the establishment of the rate applied to individual respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which we did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act notes a preference that we are not to calculate an all-others rate using rates for individually-examined respondents which are zero, *de minimis*, or based entirely on facts available. Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, the Department may use "any reasonable method" for assigning a rate to non-examined respondents.

In previous cases, the Department has determined that a reasonable method to use when the rates for respondents selected for individual examination are zero, *de minimis*, or based entirely on facts available is to assign non-examined respondents the average of the most recently-determined weighted-average dumping margins that are not zero, *de minimis*, or based entirely on facts available.[12] These rates may be from the investigation, a prior administrative review, or a new shipper review.

For these preliminary results, the rates we determined for the mandatory respondents were either zero, *de minimis*, or based entirely on facts available. Therefore, we preliminarily determine to apply a margin (that is not zero, *de minimis*, or based entirely on facts available) from the most recently-completed segment in this proceeding to the non-examined separate-rate companies. This determination is consistent with precedent[13] and the most reasonable method to determine the separate rate in the instant review. Pursuant to this method, we are preliminarily assigning the margin of 86.01 percent, the sole margin calculated in the immediately-preceding segment of this proceeding for the mandatory respondent and applied to the non-examined separate-rate respondents,[14] to the non-examined separate-rate respondents in the instant review.

Preliminary Determination of No Shipments

Two companies for which a review was requested and remain under review, Xin Wei and Permasteelisa Hong Kong Limited, timely submitted certifications indicating that they had no exports, sales, shipments, or entries of subject merchandise during the POR.[15] Consistent with our practice, the Department requested that CBP conduct a query on potential shipments made by Xin Wei and Permasteelisa Hong Kong Limited during the POR; CBP provided no evidence that contradicted either Xin Wei's or Permasteelisa Hong Kong Limited's claims of no shipments. Based on Xin Wei's and Permasteelisa Hong Kong Limited's no-shipment certifications and our analysis of the CBP information, we preliminarily determine that neither Xin Wei nor Permasteelisa Hong Kong Limited had shipments during the POR. However, consistent with our practice in NME cases, the Department is not rescinding this review, in part, but intends to complete the review with respect to Xin Wei and Permasteelisa Hong Kong Limited and issue appropriate instructions to CBP based on the final results of the review.[16]

Application of Adverse Facts Available

Pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act, the Department preliminarily finds that the use of facts otherwise available is warranted with respect to Jangho. On May 5, 2016, Jangho submitted a letter to the Department in which it announced its withdrawal from active participation as a mandatory respondent in the instant administrative review.[17] By withdrawing from participation in this proceeding, Jangho withheld necessary information requested by the Department and therefore significantly impeded the proceeding. Furthermore, some of the information Jangho did provide prior to its withdrawal from this proceeding was not in the form and manner requested, and Jangho's withdrawal precludes verification of the information it did provide.

The Department also preliminarily finds that the use of facts otherwise available is warranted with respect to Guang Ya Group/Zhongya/Xinya in accordance with sections 776(a)(2)(A) and (C) of the Act. On November 23, 2015, Zhongya submitted a letter to the Department stating that it would not be responding to the Department's questionnaires.[18] In addition, on November 25, 2015, Guang Ya Group submitted a letter informing the Department that it was withdrawing from participation in this review.[19] As a result, Guang Ya Group/Zhongya/

[12] *See Narrow Woven Ribbons With Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 22578 (April 18, 2016) and accompanying Issues and Decision Memorandum at Comment 1; *see also Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

[13] *Id.* This is also consistent with the Department's determination in prior segments of this proceeding. *See 2010–2012 Final Results*, 79 FR at 99 and *2012–2013 Final Results*, 79 FR at 78786. *See also Yangzhou Bestpak Gifts & Crafts Co., Ltd.* v. *United States*, 716 F.3d 1370, 1374 (Fed. Cir. 2013) (recognizing and affirmatively discussing the Department's normal methodology for calculating a separate rate).

[14] *See 2013–2014 Final Results*, 80 FR at 75063.

[15] *See* Letter from Xin Wei to the Department, "Aluminum Extrusions from the People's Republic of China: Certification of No Sales, Shipments, or Entries," dated July 22, 2015 and Letter from Permasteelisa Hong Kong Limited and Permasteelisa South China Factory, "Aluminum Extrusions From the People's Republic of China: Notice of No Sales," dated July 28, 2015. While the Department issued standard no-shipment port inquiries for Xin Wei and Permasteelisa Hong Kong Limited, we did not do so with regard to Permasteelisa South China Factory because Permasteelisa South China Factory was not granted separate rate status in a prior segment of this proceeding. *See, e.g., 2013–2014 Final Results*, 80 FR at 75063, footnote 30.

[16] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65695 (October 24, 2011).

[17] *See* Letter from Jangho to the Department, "2014–2015 Administrative Review of Aluminum Extrusions from the People's Republic of China," dated May 5, 2016.

[18] *See* Letter from Zhongya Aluminum Company Limited, Guangdong Zhongya Aluminium Company Limited, Zhongya Shaped Aluminum (HK) Holding Limited, and Karlton Aluminum Company Ltd. to the Department, "Aluminum Extrusions from China: Antidumping (AD) And Countervailing Duty (CVD) Questionnaires," dated November 23, 2015.

[19] *See* Letter from Guang Ya Group to the Department, dated November 25, 2015.

Xinya withheld information that was requested by the Department and thus significantly impeded the proceeding.

Further, pursuant to section 776(b) of the Act, the Department preliminarily determines that both Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to comply with the Department's requests for information, and, thus, an adverse inference is warranted.

Because the Department preliminarily determines that Jangho and Guang Ya Group/Zhongya/Xinya failed to cooperate by not acting to the best of their abilities to comply with requests for information, we have determined that they are not eligible for a separate rate.[20] Regarding Jangho, the Department preliminarily finds that the record contains numerous deficiencies because Jangho did not respond to a supplemental questionnaire issued by the Department; therefore, the record does not contain the information necessary to make a separate rate determination. Guang Ya Group/Zhongya/Xinya, on the other hand, failed to provide a response to the Department's antidumping questionnaire at all. As such, separate rates are not warranted for Jangho or Guang Ya Group/Zhonya/Xinya.

PRC-Wide Entity

As the Department preliminarily determines, based on AFA, that Jangho and Guang Ya Group/Zhongya/Xinya are not eligible for a separate rate, we determine that both companies are part of the PRC-wide entity.

In addition, 21 companies still subject to these preliminary results (listed above) are not eligible for separate-rate status because they did not submit separate-rate applications or certifications. Two additional companies still under review, Atlas and Genimex, submitted separate-rate applications that did not demonstrate eligibility for a separate rate. As a result, the Department preliminarily finds these 23 companies are also part of the PRC-wide entity.

The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[21] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate from the previous administrative review (*i.e.,* 33.28 percent) is not subject to change.[22]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, parties can obtain a complete version of the Preliminary Decision Memorandum on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Adjustments for Countervailable Subsidies

Because no mandatory respondent established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, for these preliminary results, the Department did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for the separate-rate recipients.

Pursuant to section 772(c)(1)(C) of the Act, the Department made an adjustment for countervailable export subsidies for the separate-rate recipients. Specifically, we adjusted the assigned separate rate by deducting the simple average of the countervailable export subsidies determined for the individually-examined respondents in the 2013 (*i.e.,* most recently completed) countervailing duty administrative review.[23]

For the PRC-wide entity, since the entity is not currently under review, its rate is not subject to change.[24]

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the 2014–2015 POR:

Exporter	Weighted-average dumping margin (percent)	Margin adjusted for liquidation and cash deposit purposes (percent)
Allied Maker Limited	86.01	85.94
Birchwoods (Lin'an) Leisure Products Co., Ltd.	86.01	85.94
Changzhou Changzheng Evaporator Co., Ltd.	86.01	85.94
Dongguan Aoda Aluminum Co., Ltd.	86.01	85.94
JMA (HK) Company Limited	86.01	85.94
Kam Kiu Aluminium Products Sdn Bhd[25]	86.01	85.94
Metaltek Group Co., Ltd.	86.01	85.94
Tianjin Jinmao Import & Export Corp., Ltd.	86.01	85.94

Additionally, the Department preliminarily determines that the following companies are part of the PRC-wide entity: Jangho (which includes Guangzhou Jangho Curtain Wall System Engineering Co., Ltd. and Jangho Curtain Wall Hong Kong Ltd.); Guang Ya Group/Zhongya/Xinya (which includes Guang Ya Aluminium Industries Co., Ltd.; Foshan Guangcheng Aluminium Co., Ltd.; Kong Ah International Company Limited; Guang Ya Aluminium Industries (Hong Kong) Ltd.; Guangdong Zhongya Aluminium Company Limited; Zhongya Shaped Aluminium (HK) Holding Limited; Karlton Aluminum Company Ltd.; and Xinya Aluminum & Stainless Steel Product Co., Ltd.); Atlas Integrated Manufacturing Ltd.; Belton (Asia) Development Ltd.; Classic & Contemporary Inc.; Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.; Dongguan Golden Tiger Hardware Industrial Co., Ltd.; Ever Extend Ent. Ltd.; Fenghua Metal Product Factory; FookShing Metal & Plastic Co. Ltd.; Foshan Golden Source Aluminum Products Co., Ltd.; Genimex Shanghai, Ltd.; Global Point Technology (Far East) Limited; Gold Mountain International Development Limited; Golden Dragon Precise Copper Tube Group, Inc.; Hebei Xusen Wire Mesh Products Co., Ltd.; Jackson Travel Products Co., Ltd.; New Zhongya Aluminum Factory; Shanghai Automobile Air-Conditioner Accessories Co., Ltd.; Southwest Aluminum (Group) Co., Ltd.; Suzhou NewHongji Precision Part Co., Ltd.; Union Aluminum (SIP) Co.; Whirlpool Canada L.P.; Whirlpool Microwave Products Development Ltd.; and Xin Wei Aluminum Co. The rate previously established for the PRC-wide entity in the previous administrative review is 33.28 percent.[26]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[27] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[28] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[29] Parties submitting briefs should do so pursuant to the Department's electronic filing requirements.

Any interested party may request a hearing within 30 days of publication of this notice.[30] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[31]

Unless extended, the Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[32] The Department intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate. Additionally, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.[33]

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). We will instruct CBP accordingly.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties, when imposed, will apply to all shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review, as adjusted for domestic and export subsidies (except, if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all PRC exporters of subject merchandise that have not been found

[20] *See* section 776(b) of the Act.

[21] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013) (*Conditional Review of NME Entity Notice*).

[22] *See 2013–2014 Final Results,* 80 FR at 75063.

[23] *See Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review; 2013,* 80 FR 77325 (December 14, 2015) and *Aluminum Extrusions From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2013,* 81 FR 15238 (March 22, 2016), as corrected in *Aluminum Extrusions from the People's Republic of China: Notice of Correction to Amended Final Results of Countervailing Duty Administrative Review; 2013,* 81 FR 31227 (May 18, 2016). *See also* Preliminary Decision Memorandum for the calculation of the countervailable export subsidies deducted from the assigned separate rate.

[24] *See Conditional Review of NME Entity Notice,* 78 FR at 65970. As the rate for the PRC-wide entity is not subject to change in the instant review, the adjusted margin we are applying to the PRC-wide entity in the instant review, 33.18 percent, is net of the countervailable domestic and export subsidies determined in the *2012–2013 Final Results. See 2012–2013 Final Results,* 79 FR at 78787; *see also 2013–2014 Final Results,* 80 FR at 75063, footnote 27.

[25] Although the Department initiated a review for both Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. and Kam Kiu Aluminium Products Sdn Bhd, it is apparent from the company's separate-rate application that Kam Kiu Aluminium Products Sdn Bhd is the exporter and Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. is a producer only; thus, Kam Kiu Aluminium Products Sdn Bhd is the appropriate party to grant the separate rate status.

[26] *See 2013–2014 Final Results,* 80 FR at 75063.

[27] *See* 19 CFR 351.309(c)(1)(ii).

[28] *See* 19 CFR 351.309(d)(1)–(2).

[29] *See* 19 CFR 351.309(c)(2) and (d)(2).

[30] *See* 19 CFR 351.310(c).

[31] *See* 19 CFR 351.310(d).

[32] *See* 19 CFR 351.212(b)(1).

[33] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity, which is 33.18 percent;[34] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing notice of these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Respondent Selection
4. Rescission of Administrative Review in Part
5. Scope of the Order
6. Affiliation and Collapsing
7. Preliminary Determination of No Shipments
8. Non-Market Economy Country
9. Separate Rates
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11. Preliminary Determination of Rate for Non-Examined Separate-Rate Recipients
12. The PRC-Wide Entity
13. Application of Facts Available and Use of Adverse Inference
14. Adjustments for Countervailable Subsidies
15. Conclusion

Appendix II—Companies for Which This Administrative Review Is Being Rescinded

1. Acro Import and Export Co.
2. Activa International Inc.
3. Alnan Aluminium Co., Ltd.
4. Aluminicaste Fundicion de Mexico
5. Bracalente Metal Products (Suzhou) Co., Ltd.
6. Changshu Changsheng Aluminium Products Co., Ltd.
7. Changzhou Tenglong Auto Parts Co., Ltd.
8. China Zhongwang Holdings, Ltd.
9. Chiping One Stop Industrial & Trade Co., Ltd.
10. Clear Sky Inc.
11. Cosco (J.M.) Aluminium Co., Ltd.
12. Dongguan Dazhan Metal Co., Ltd.
13. Dragonluxe Limited
14. Dynamic Technologies China Ltd.
15. Dynabright Int'l Group (HK) Limited
16. First Union Property Limited
17. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
18. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
19. Foshan Jinlan Aluminum Co., Ltd.
20. Foshan JMA Aluminum Company Limited
21. Foshan Sanshui Fenglu Aluminium Co., Ltd.
22. Foshan Shunde Aoneng Electrical Appliances Co., Ltd.
23. Foshan Yong Li Jian Aluminum Co., Ltd.
24. Fujian Sanchuan Aluminum Co., Ltd.
25. Global PMX Dongguan Co., Ltd.
26. Gran Cabrio Capital Pte. Ltd.
27. Gree Electric Appliances
28. GT88 Capital Pte. Ltd.
29. Guangdong Hao Mei Aluminium Co., Ltd.
30. Guangdong Jianmei Aluminum Profile Company Limited
31. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
32. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
33. Guangdong Weiye Aluminum Factory Co., Ltd.
34. Guangdong Whirlpool Electrical Appliances Co., Ltd.
35. Guangdong Xingfa Aluminium Co., Ltd.
36. Guangdong Xin Wei Aluminum Products Co., Ltd.
37. Guangdong Yonglijian Aluminum Co., Ltd.
38. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
39. Hangzhou Xingyi Metal Products Co., Ltd.
40. Hanwood Enterprises Limited
41. Hanyung Alcoba Co., Ltd.
42. Hanyung Alcobis Co., Ltd.
43. Hanyung Metal (Suzhou) Co., Ltd.
44. Hao Mei Aluminum Co., Ltd.
45. Hao Mei Aluminum International Co., Ltd.
46. Henan New Kelong Electrical Appliances Co., Ltd.
47. Hong Kong Gree Electric Appliances Sales Limited
48. Honsense Development Company
49. Hui Mei Gao Aluminum Foshan Co., Ltd.
50. IDEX Dinglee Technology (Tianjin) Co., Ltd.
51. IDEX Technology Suzhou Co., Ltd.
52. IDEX Health
53. Innovative Aluminium (Hong Kong) Limited
54. iSource Asia
55. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
56. Jiangsu Changfa Refrigeration Co., Ltd.
57. Jiangyin Trust International Inc.
58. Jiangyin Xinhong Doors and Windows Co., Ltd.
59. Jiaxing Jackson Travel Products Co., Ltd.
60. Jiaxing Taixin Metal Products Co., Ltd.
61. Jiuyan Co., Ltd.
62. Justhere Co., Ltd.
63. Kanal Precision Aluminum Product Co., Ltd.
64. Kromet International, Inc.
65. Kunshan Giant Light Metal Technology Co., Ltd.
66. Liaoning Zhongwang Group Co., Ltd.
67. Liaoyang Zhongwang Aluminum Profile Co., Ltd.
68. Longkou Donghai Trade Co., Ltd.
69. Metaltek Metal Industry Co., Ltd.
70. Midea Air Conditioning Equipment Co., Ltd.
71. Midea International Training Co., Ltd./Midea International Trading Co., Ltd.
72. Miland Luck Limited
73. Nanhai Textiles Import & Export Co., Ltd.
74. New Asia Aluminum & Stainless Steel Product Co., Ltd.
75. Nidec Sankyo (Zhejang) Corporation
76. Nidec Sankyo Singapore Pte. Ltd.
77. Ningbo Coaster International Co., Ltd.
78. Ningbo Hi Tech Reliable Manufacturing Company
79. Ningbo Ivy Daily Commodity Co., Ltd.
80. Ningbo Yili Import and Export Co., Ltd.
81. North China Aluminum Co., Ltd.
82. North Fenghua Aluminum Ltd.
83. Northern States Metals
84. PanAsia Aluminium (China) Limited
85. Pengcheng Aluminum Enterprise Inc.
86. Pingguo Aluminum Company Limited
87. Pingguo Asia Aluminum Co., Ltd.
88. Popular Plastics Co., Ltd.
89. Press Metal International Ltd.
90. Samuel, Son & Co., Ltd.
91. Sanchuan Aluminum Co., Ltd.
92. Shangdong Huasheng Pesticide Machinery Co.
93. Shangdong Nanshan Aluminum Co., Ltd.
94. Shanghai Canghai Aluminum Tube Packaging Co., Ltd.
95. Shanghai Dongsheng Metal
96. Shanghai Shen Hang Imp & Exp Co., Ltd.
97. Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.
98. Shenyang Yuanda Aluminium Industry Engineering Co., Ltd.
99. Shenzhen Hudson Technology Development Co.
100. Shenzhen Jiuyuan Co., Ltd.
101. Sihui Shi Guo Yao Aluminum Co., Ltd.
102. Sincere Profit Limited
103. Skyline Exhibit Systems (Shanghai) Co., Ltd.
104. Suzhou JRP Import & Export Co., Ltd.
105. TAI–AO Aluminium (Taishan) Co., Ltd.
106. Taizhou Lifeng Manufacturing Co., Ltd.
107. Taizhou United Imp. & Exp. Co., Ltd.
108. tenKsolar (Shanghai) Co., Ltd.
109. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
110. Tianjin Ruixin Electric Heat Transmission Technology, Ltd.
111. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
112. Tiazhou Lifeng Manufacturing Corporation/Taizhou Lifeng Manufacturing Corporation, Ltd.

[34] *See 2012–2013 Final Results*, 79 FR at 78787. This rate is adjusted for export and domestic subsidies, as appropriate.

113. Top-Wok Metal Co., Ltd.
114. Traffic Brick Network, LLC
115. Union Industry (Asia) Co., Ltd.
116. USA Worldwide Door Components (PINGHU) Co., Ltd.
117. Wenzhou Shengbo Decoration & Hardware
118. Whirlpool (Guangdong)
119. WTI Building Products, Ltd.
120. Zahoqing China Square Industry Limited/Zhaoqing China Square Industry Limited
121. Zhaoqing Asia Aluminum Factory Company Ltd.
122. Zhaoqing China Square Industrial Ltd.
123. Zhejiang Anji Xinxiang Aluminum Co., Ltd.
124. Zhejiang Yongkang Listar Aluminium Industry Co., Ltd.
125. Zhejiang Zhengte Group Co., Ltd.
126. Zhenjiang Xinlong Group Co., Ltd.
127. Zhongshan Daya Hardware Co., Ltd.
128. Zhongshan Gold Mountain Aluminium Factory Ltd.
129. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

[FR Doc. 2016–14046 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 8, 2016, the Department of Commerce ("Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC") covering the period May 1, 2014 through April 31, 2015.[1] This review covers one PRC exporter, Tianjin Magnesium International, Co., Ltd. ("TMI") and Tianjin Magnesium Metal, Co., Ltd. ("TMM") (collectively "TMI/TMM"). The Department gave interested parties an opportunity to comment on the *Preliminary Results*, but we received no comments. Hence, these final results are unchanged from the *Preliminary Results*, and we continue to find that TMI/TMM did not have reviewable entries during the period of review ("POR").

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Shanah Lee or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6386 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2016, the Department published the *Preliminary Results* of the instant review, preliminarily finding that TMI/TMM did not have any reviewable entries during the POR.[2] We invited interested parties to comment on the *Preliminary Results*.[3] We received no comments from interested parties.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended ("the Act").

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off–specification pure" magnesium).

"Off–specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Final Determination of No Shipments

As explained in the *Preliminary Results*, the Department found that TMI/TMM did not have reviewable entries during the POR.[4] Also in the *Preliminary Results*, the Department stated that consistent with its refinement to its assessment practice in non-market economy ("NME") cases, it is appropriate not to rescind the review in this circumstance but, rather, to complete the review with respect to TMI/TMM and to issue appropriate instructions to Customs and Border Protection ("CBP") based on the final results of the review.[5]

After issuing the *Preliminary Results*, the Department received no comments from interested parties, nor has it received any information that would cause it to revisit its preliminary results. Therefore, for these final results, the Department continues to find that TMI/TMM did not have any reviewable entries during the POR.

Assessment Rates

The Department determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the

[1] *See Pure Magnesium From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 6504 (February 8, 2016) ("*Preliminary Results*").

[2] *Id.*, at 6505–6506.

[3] *Id.*, at 6506.

[4] *Id.*, at 6505–6506.

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) ("*Assessment Practice Refinement*") and the "Assessment Rates" section, below.

final results of this review.[6] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Additionally, consistent with the Department's refinement to its assessment practice in NME cases, because the Department determined that TMI/TMM had no shipments of subject merchandise during the POR, any suspended entries that entered under TMI/TMM's antidumping duty case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent;[8] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14059 Filed 6–13–16; 8:45 am]

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[6] *See* 19 CFR 351.212(b).

[7] *See Assessment Practice Refinement*, 76 FR 65694.

[8] *See Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–864]

Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From India: Notice of Correction to Final Affirmative Determination; Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION: On June 2, 2016, the Department of Commerce (the Department) published the *Final Determination* on certain corrosion-resistant steel products from India.[1] In the *Final Determination* the Department inadvertently omitted its final analysis of critical circumstances. Pursuant to 19 CFR 351.206(c)(2)(i), the Department preliminarily determined that critical circumstances did not exist[2] and received no comments on this issue. Based on the examination of the shipping data placed on the record by the mandatory respondents after the *Preliminary Determination*,[3] we examined whether the increase in imports was massive by comparing shipments over the period of July 2014 through February 2015, with the period March 2015 through October 2015 for the mandatory respondents.[4] Because the *Preliminary Determination* was published November 6 (the beginning of November), we used data through October in determining critical circumstances for the mandatory respondents. For all other producers and exporters, our critical circumstances determination continues to be based on data through August, the latest month for which GTA data is on the record, and is thus unchanged from the *Preliminary Determination*. The Department continues to find that critical circumstances do not exist for the mandatory respondents, or for all other producers and exporters.

This correction to the *Final Determination* is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 8, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–14072 Filed 6–13–16; 8:45 am]

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[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Final Affirmative Determination*, 81 FR 35323 (June 2, 2016) *(Final Determination)*.

[2] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 58504 (November 5, 2015).

[3] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from India: Preliminary Affirmative Determination*, 80 FR 68854 (November 6, 2015) (*Preliminary Determination*).

[4] *See* the November 16, 2015, quantity and value shipment data for October 2015 from the mandatory respondents.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–952]

Narrow Woven Ribbon With Woven Selvedge From the People's Republic of China: Preliminary Results of Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 14, 2016.

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge ("woven ribbons") from the People's Republic of China ("PRC") for the period of review ("POR") September 1, 2014, through August 31, 2015. This review covers one PRC company Yama Ribbons Co., Ltd., ("Yama Ribbons").[1] The Department preliminarily finds that Yama Ribbons did not have reviewable transactions during the POR.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are narrow woven ribbons with woven selvedge. The merchandise subject to the order is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under HTSUS subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[2]

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended ("the Act"). For a full description of the methodology underlying our conclusions, *see* Preliminary Results Decision Memorandum. This memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Results Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. The signed Preliminary Results Decision Memorandum and the electronic versions of the Preliminary Results Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that Yama Ribbons did not have reviewable transactions during the POR.

Disclosure and Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically using ACCESS, within 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days after the due date for case briefs, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the argument not to exceed five pages, and a table of statutes, regulations, and cases cited, in accordance with 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties, who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. Electronically filed case briefs/written comments and hearing requests must be received successfully in their entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[3] Hearing requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those issues raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries covered by this review.[4] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Pursuant to the Department's practice in NME cases, if we continue to determine that Yama Ribbons had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the PRC-wide rate of 247.26 percent. For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(2)(C) of the Act: (1) For exports of merchandise made by Yama Ribbons of merchandise it did not produce, the cash deposit rate is the PRC-wide rate of 247.26 percent, as stated in the Order;[5] (2) for previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 69193 (November 09, 2015) ("*Initiation Notice*"). The Department determined in the underlying investigation that merchandise produced and exported by Yama Ribbons is excluded from the antidumping duty order. *See also Notice of Antidumping Duty Orders: Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders*, 75 FR 53632 (September 1, 2010), as amended in *Narrow Woven Ribbons With Woven Selvedge from Taiwan and the People's Republic of China: Amended Antidumping Duty Orders*, 75 FR 56982 (September 17, 2010) ("*Order*"). However, merchandise which Yama exports but did not produce remains subject to the antidumping duty order on narrow woven ribbons with woven selvedge.

[2] For a complete description of the scope of the order, please see "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China," from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance ("Preliminary Decision Memorandum"), dated concurrently with this notice.

[3] *See* 19 CFR 351.310(c).

[4] *See* 19 CFR 351.212(b)(1).

[5] *See Order* at 75 FR 53632.

proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate the cash deposit rate will be the PRC-wide rate of 247.26 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Results Decision Memorandum

Summary
Background
Scope of the Order
Discussion of the Methodology
Preliminary Determination of No Shipments
Recommendation

[FR Doc. 2016–14048 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 4, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC). The period of review (POR) is November 1, 2013, through October 31, 2014. For the final results, we continue to find that certain companies covered by this review made sales of subject merchandise at less than normal value.

DATES: *Effective Date:* June 14, 2016

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–3683, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2015, the Department published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.[1] We received case and rebuttal briefs with respect to the *Preliminary Results.* As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to a closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review moved to April 8, 2016.[2] Subsequently, we fully extended the time for completing the final results of this administrative review to June 7, 2016.[3] At the request of interested parties, we held a hearing on April 20, 2016. We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[4] The written description is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov.* The Issues and Decision Memorandum is also available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance Web site at *http://enforcement.trade.gov/frn/index.html.*

Final Determination of No Shipments

We preliminarily found that Danyang City Ou Di Ma Tools Co., Ltd., Danyang Tsunda Diamond Tools Co., Ltd., Hangzhou Kingburg Import & Export Co., Ltd., Qingdao Hyosung Diamond Tools Co., Ltd., Qingdao Shinhan Diamond Industrial Co., Ltd., and Shanghai Starcraft Tools Co., Ltd., which have been eligible for separate rates in previous segments of the proceeding and are subject to this review, did not have any reviewable entries of subject merchandise during the POR.[5] After the *Preliminary Results,*

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 75854 (December 4, 2015) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum for the Record from Acting Assistant Secretary Ron Lorenzen entitled "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'" dated January 27, 2016.

[3] *See* Memorandum to Associate Deputy Assistant Secretary Gary Taverman entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review" dated March 23, 2016, and Memorandum to Deputy Assistant Secretary Christian Marsh entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Full Extension of Deadline for Final Results of Antidumping Duty Administrative Review" dated May 18, 2016.

[4] *See* Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado entitled "Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China" dated June 7, 2016, (Issues and Decision Memorandum) and hereby adopted by this notice, at 4–5.

[5] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 3–4.

we received no comments or additional information with respect to these six companies. Therefore, for the final results, we continue to find that these six companies did not have any reviewable entries of subject merchandise during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Final Affiliation and Single Entity Determination

For the final results, we continue to find that Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Sawing Co., Ltd., are affiliated, pursuant to sections 771(33)(A) and (F) of the Act. Additionally, under 19 CFR 351.401(f)(1)–(2), we continue to find that these companies should be considered a single entity (collectively known as the Jiangsu Fengtai Single Entity).[6]

Changes Since the Preliminary Results

Based on our analysis of comments received, we made revisions that have changed the results for certain companies, including the valuation of certain factors of production and the PRC-wide rate. Additionally, we made calculation programming changes for the final results. For further details on the changes we made for these final results, *see* the company-specific analysis memoranda, the Issues and Decision Memorandum, and the final surrogate value memorandum, dated concurrently with this notice. Moreover, on May 11, 2016, in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 13–00168, the Court of International Trade affirmed a remand redetermination in which the Department determined it appropriate to reinstate the antidumping duty order on diamond sawblades from the PRC, in part, with respect to certain parts of the ATM Single Entity for which the Department previously had revoked the order, in part.[7] Accordingly, the Department reinstated the order on diamond sawblades from the PRC, in part, with respect to these companies.[8] As a result, all companies that the Department has found to constitute the ATM Single Entity are subject to this administrative review.[9]

Final Results of the Review

As a result of this administrative review, we determine that the following weighted-average dumping margins exist for the period November 1, 2013, through October 31, 2014:

Company	Margin (percent)
Bosun Tools Co., Ltd	29.76
Chengdu Huifeng Diamond Tools Co., Ltd	29.76
Danyang Huachang Diamond Tools Manufacturing Co., Ltd	29.76
Danyang NYCL Tools Manufacturing Co., Ltd	29.76
Danyang Weiwang Tools Manufacturing Co., Ltd	29.76
Guilin Tebon Superhard Material Co., Ltd	29.76
Hangzhou Deer King Industrial and Trading Co., Ltd	29.76
Hong Kong Hao Xin International Group Limited	29.76
Huzhou Gu's Import & Export Co., Ltd	29.76
Jiangsu Fengtai Single Entity [10]	61.48
Jiangsu Huachang Tools Manufacturing Co., Ltd	29.76
Jiangsu Inter-China Group Corporation [11]	29.76
Jiangsu Youhe Tool Manufacturer Co., Ltd	29.76
Orient Gain International Limited	29.76
Pantos Logistics (HK) Company Limited	29.76
Qingyuan Shangtai Diamond Tools Co., Ltd	29.76
Quanzhou Zhongzhi Diamond Tool Co., Ltd	29.76
Rizhao Hein Saw Co., Ltd	29.76
Saint-Gobain Abrasives (Shanghai) Co., Ltd	29.76
Shanghai Jingquan Industrial Trade Co., Ltd	29.76
Weihai Xiangguang Mechanical Industrial Co., Ltd	21.67
Wuhan Wanbang Laser Diamond Tools Co	29.76
Xiamen ZL Diamond Technology Co., Ltd	29.76
Zhejiang Wanli Tools Group Co., Ltd	29.76

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[12] For customers or importers of the Jiangsu Fengtai Single Entity and Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai) for which we do not have entered values, we calculated customer-/importer-specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated for the examined sales of subject merchandise to the total sales quantity of those same sales.[13] For a customer or importer of Weihai for which we received entered-value information, we have calculated a customer/importer-specific antidumping duty assessment rate based on customer-/importer-specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1).

For all non-selected respondents that received a separate rate, we will instruct CBP to apply an antidumping duty assessment rate of 29.76 percent [14] to all entries of subject merchandise that entered the United States during the POR. For all other companies, with the exception of the ATM Single Entity, we will instruct CBP to apply the antidumping duty assessment rate of the PRC-wide entity, 82.05 percent, to all entries of subject merchandise exported by these companies.[15]

[6] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 4–6 for more details.

[7] The ATM Single Entity is comprised of Advanced Technology & Materials Co., Ltd., AT&M International Trading Co., Ltd., Beijing Gang Yan Diamond Products Co., Cliff International Ltd., and HXF Saw Co., Ltd. Concerning partial revocation of the antidumping duty order on diamond sawblades from the PRC, *see Certain Frozen Warmwater Shrimp From the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China; Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958 (March 28, 2013); *Diamond Sawblades Manufacturer's Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 16–48 (CIT May 11, 2016).

[8] *See Diamond Sawblades And Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination Under Section 129 of the Uruguay Round Agreements Act and Reinstatement of Order, In Part,* 81 FR 36519 (June 7, 2016).

[9] *Id.* To the extent they do not demonstrate eligibility for a separate rate and no party has requested a review of the PRC-wide entity, there is no conditional review of the PRC-wide entity. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), and *Preliminary Results,* 80 FR at 75854.

[10] For the final results, we continue to treat Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Sawing Co., Ltd., as a single entity. *See Preliminary Results,* 80 FR at 75854–55, and accompanying Preliminary Decision Memorandum at 4–6 for details.

[11] *See Preliminary Results,* 80 FR at 75855 n.15 for the name variation of this company.

[12] *See* 19 CFR 351.212(b)(1).

[13] *Id.*

[14] *See* Issues and Decision Memorandum at 5–6.

[15] *See Initiation Notice,* 79 FR at 76957 ("All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below."). Companies that are subject to this administrative review that are considered to be part of the PRC-wide entity are Central Iron and Steel Research Institute Group, China Iron and Steel Research Institute Group, Danyang Aurui Hardware Products Co., Ltd., Danyang Dida Diamond Tools Manufacturing Co., Ltd., Electrolux Construction

For entries that were not reported in the U.S. sales databases submitted by an exporter individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, for the six companies that we determined had no reviewable entries of the subject merchandise in this review period, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in these final results of review for each exporter as listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 7, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

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[FR Doc. 2016–14047 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–DS–P

Products (Xiamen) Co., Ltd., Fujian Quanzhou Wanlong Stone Co., Ltd., Hebei Jikai Industrial Group Co., Ltd., Huachang Diamond Tools Manufacturing Co., Ltd., Hua Da Superabrasive Tools Technology Co., Ltd., Jiangsu Fengyu Tools Co., Ltd., Jiangyin Likn Industry Co., Ltd., Protech Diamond Tools, Pujiang Talent Diamond Tools Co., Ltd., Quanzhou Shuangyang Diamond Tools Co., Ltd., Shanghai Deda Industry & Trading Co., Ltd., Shanghai Robtol Tool Manufacturing Co., Ltd., Shijiazhuang Global New Century Tools Co., Ltd., Sichuan Huili Tools Co., Task Tools & Abrasives, Wanli Tools Group, Wuxi Lianhua Superhard Material Tools Co., Ltd., Zhejiang Tea Import & Export Co., Ltd., Zhejiang Wanda Import and Export Co., Zhejiang Wanda Tools Group Corp., and Zhejiang Wanli Super-hard Materials Co., Ltd. Additionally, the ATM Single Entity (*i.e.,* Advanced Technology & Materials Co., Ltd., AT&M International Trading Co., Ltd., Beijing Gang Yan Diamond Products Co., Cliff International Ltd., and HXF Saw Co., Ltd.) is part of the PRC-wide entity. *See* Issues and Decision Memorandum at 7 and 8 for more information concerning the ATM Single Entity as part of the PRC-wide entity and the effect of the Department's remand redetermination in *Diamond Sawblades Manufacturer's Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 16–48 (CIT May 11, 2016), which implicates entries of diamond sawblades from the PRC from the ATM Single Entity. A preliminary injunction issued by the Court of International Trade in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 13–00168, currently enjoins us from lifting suspension of liquidation for entries of subject merchandise produced and/or exported by the ATM Single Entity to the extent that such entries were made on or after March 22, 2013. *See* CBP Message Number 5238306 dated August 26, 2015, which is available at *http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/20287.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD776

Endangered Species; File No. 19281

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Dr. Isaac Wirgin, New York University School of Medicine, Department of Environmental Medicine, 57 Old Forge Road, Tuxedo, NY 10987, has been issued a permit to import and take early life stages of endangered, captive shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Rosa L. González, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On May 18, 2015, notice was published in the **Federal Register** (80 FR 28236) of a request for a permit to import and conduct research on shortnose sturgeon early life stages had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

In directed studies with endangered shortnose sturgeon early life stages, researchers will define the toxicities of varying concentrations of industrial contaminants, such as polychlorinated biphenyl (PCB) and Dioxin (2,3,7,8-TCDD). Shortnose sturgeon fertilized embryos are authorized to be imported by CITES I permit from the Acadian Sturgeon and Caviar, Inc., New Brunswick, Canada, to the NOAA Howard Marine Sciences Laboratory in Highlands, New Jersey, where the controlled research will take place. The laboratory tests will be conducted both singly and in combination with 10 temperature regimes and varying levels of dissolved oxygen, representing environmental stresses. Surviving progeny will be euthanized after tests are completed each year. In subsequent years of the five-year permit, the Permit Holder will evaluate the toxic effects and sensitivities of shortnose sturgeon to other contaminants.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 8, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–13969 Filed 6–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE122

Marine Mammal Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has considered public comments for revisions of the 2015 marine mammal stock assessment reports (SARs).

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/.*

A list of references cited in this notice is available at *www.regulations.gov* (search for docket NOAA–NMFS–2015–0108) or upon request.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov;* Marcia Muto, Alaska Fisheries Science Center, 206–526–4026, *Marcia.Muto@noaa.gov;* Peter Corkeron, Northeast Fisheries Science Center, 508–495–2191, *Peter.Corkeron@noaa.gov;* or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, *Jim.Carretta@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal (PBR) level, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

NMFS updated SARs for 2015, and the revised reports were made available for public review and comment for 90 days (80 FR 58705, September 20, 2015). NMFS received comments on the draft SARs and has revised the reports as necessary. This notice announces the availability of the final 2015 reports for the 108 stocks that are currently finalized. These reports are available on NMFS's Web site (see **ADDRESSES**).

Comments and Responses

NMFS received letters containing comments on the draft 2015 SARs from the Marine Mammal Commission (Commission); five non-governmental organizations (The Humane Society of the United States (HSUS), Center for Biological Diversity (CBD), Whale and Dolphin Conservation (WDC), Turtle Island Restoration Network (TIRN), and the Hawaii Longline Association (HLA)); and one individual. Responses to substantive comments are below; comments on actions not related to the SARs are not included below. Comments suggesting editorial or minor clarifying changes were incorporated in the reports, but they are not included in the summary of comments and responses. In some cases, NMFS's responses state that comments would be considered or incorporated in future revisions of the SARs rather than being incorporated into the final 2015 SARs.

Comments on National Issues

Comment 1: The SAR administrative process must be improved; it is confusing, inefficient, and produces final SARs that are not based upon the best available scientific information. Because of the inefficient process used to produce SARs, the draft SARs fail to rely upon the best available data (*i.e.,* the most current data that it is practicable to use), contrary to the MMPA. For example, the draft 2015 SAR only reports data collected through the year 2013, even though 2014 data are readily available. We appreciate that it is not practicable to incorporate into SARs the absolute most recently collected data; nevertheless, there is no credible justification to continue the present two-year delay in the use of information.

Response: The marine mammal SARs are based upon the best available scientific information, and NMFS strives to update the SARs with as timely data as possible. In order to develop annual mortality and serious injury estimates, we do our best to ensure all records are accurately accounted for in that year. In some cases, this is contingent on such things as bycatch analysis, data entry, and assessment of available data to make determinations of severity of injury, confirmation of species based on morphological and/or molecular samples collected, etc. Additionally, the SARs incorporate injury determinations that have been assessed pursuant to the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS Policy Directive PD 02–038 and NMFS Instruction 02–038–01) which requires several phases of review by the SRGs. Reporting on incomplete annual mortality and serious injury estimates could result in underestimating actual levels. The MMPA requires us to report mean annual mortality and serious injury estimates, and we try to ensure that we are accounting for all available data before we summarize those data. With respect to abundance, in some cases we provide census rather than abundance estimates and the accounting process to obtain the minimum number alive requires two years of sightings to get a stable count, after which the data are analyzed and entered into the SAR

in the third year. All animals are not seen every year; waiting two years assures that greater than 90% of the animals still alive will be included in the count. As a result of the review and revision process, data used for these determinations typically lag two years behind the year of the SAR.

Comment 2: Unlike mortality and serious injury estimates for small cetaceans, where extra time may be needed to obtain fishing effort and to expand observed takes to obtain fleet-wide estimates, for large cetaceans mortality estimates are direct minimum counts based on discovery of carcasses and any necropsies are generally completed promptly. There is no need to delay reporting by two years as has been common in the SARs.

Response: Large whale mortality reports, like all interactions, go through the review and publication process outlined in the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals. NMFS produces annual marine mammal serious injury and mortality reports, which involves a clear process for review and publication. The serious injury and mortality data contained in the SARs come from these reports once they have been fully vetted. Therefore, the mortality data reported in the SARs are subject to the same delay outlined in the response to Comment 1.

Comment 3: There are grossly outdated estimates of abundance for many stocks. The most recently proposed revision of NMFS's Guidelines for Assessing Marine Mammal Stocks (GAMMS) provided recommendations for addressing aging data by precautionarily reducing the Minimum Population Estimate (Nmin) annually (and consequently the PBR), until such time as new abundance data can be obtained. For stocks with outdated estimates this was often not done. NMFS's regional offices should follow the GAMMS in these cases and downwardly revise the PBRs for these stocks.

Response: NMFS recently finalized revisions to the GAMMS (available at *http://www.nmfs.noaa.gov/pr/sars/pdf/gamms2016.pdf*). Regarding outdated abundance estimates, we did not finalize the proposed approach recommended by the GAMMS workshop participants. Rather, we will be further analyzing this issue, as the challenge of outdated abundance estimates continues and the problems resulting from stocks with "undetermined" PBR persists. Should we contemplate changes to the guidelines regarding this topic in the future, we will solicit public review and comment in a separate action.

Comment 4: There is an unacceptably high percentage of stocks with "undetermined" or "unknown" PBR levels.

Response: NMFS acknowledges this. Currently, the GAMMS direct that for stocks with abundance data greater than eight years old, PBR be considered "undetermined." See response to Comment 3.

Comment 5: With regard to status as "strategic" or "non-strategic," it would seem prudent to declare stocks with unknown or undetermined PBRs as "strategic" unless there is clear and compelling evidence that there are no fishery interactions (*i.e.,* data exist that there are none as opposed to a lack of data). Such an approach would be consistent with the overall purposes of the MMPA.

Response: NMFS appreciates this recommendation. However, such designations must follow the statutory definition of "strategic": Human-caused mortality exceeds PBR; the best available science shows the stock is declining and likely to be listed as threatened under the ESA within the foreseeable future; or that is currently listed as threatened or endangered under the ESA or is designated as depleted (MMPA section 3).

Comment 6: The GAMMS recommend that peer-reviewed literature should be a primary source of information. In most regions there appears to be great reliance on gray literature (*e.g.,* NMFS Tech Memos) and on unpublished manuscripts (*e.g.,* results of studies stated to be "in prep") and even personal communications; this needs to be corrected. By not making such literature available for review by the public, the public cannot adequately comment on whether such literature constitutes the best available science.

Response: The SARs are to be based on the best available science. The use of unpublished reports and data within SARs is discouraged. NMFS strives to use peer-reviewed data as the basis for SARs. NMFS often relies on science that has been assessed through the NMFS Science Center's internal expert review process and/or has been subjected to other external expert review to ensure that information is not only high quality but is available for management decisions in a timely fashion. NMFS may rely on the SRGs to provide independent expert reviews of particular components of new science to be incorporated into the SARs to ensure that these components constitute the best available scientific information. Likewise, upon SRG review of these components and the draft SARs themselves, NMFS considers the SRG review of the draft SARs to constitute peer review and to meet the requirements of the OMB Peer Review Bulletin and the Information Quality Act. NMFS is undertaking an effort to remove references to unpublished manuscripts and personal communications from the SARs, and aims to fully implement this effort with the 2016 final SARs.

Comment 7: The Commission recommends that NMFS specify the criteria that it intends to use to assess the appropriateness of its estimates of carcass recovery and cryptic mortality rates, and that it include in its stock assessment survey and research plans the collection of those data that are needed to estimate total mortality for all stocks. The Commission suggests discussion of collaborative opportunities in conjunction with the joint SRG meeting in February 2016.

Response: We agree that there is a need to better understand and estimate undetected marine mammal mortalities and serious injuries, and a need to evaluate the use of correction factors for marine mammal mortality estimates. The issue of cryptic mortality was discussed at the February 2016 joint SRG Meeting. NMFS looks forward to working with the Commission and the SRGs on this issue.

Comments on Atlantic Regional Reports

Comment 8: In the North Atlantic right whale report, Table 1 documenting mortality appears to lack accounting for several mortalities. For example, a male calf that was killed in a vessel strike in Maine in July 2010 does not appear to have been included. Further, there was an abandoned calf in the Southeastern U.S. in March 2011, and, that same month right whale #1308 was killed by a ship strike, thereby orphaning her newborn calf. At the very least, this latter death of a documented right whale mother with calf should also assume the young, dependent calf died as well and its death added to the total for that year.

Response: The right whale calf killed in July 2010 is included in Table 1 as a vessel strike mortality and has since been identified as #3901. We do not include abandoned calves if the mother is not known to have been killed or injured by human impact. The abandonment could be the result of poor maternal care. The calf of right whale #1308 is included in the Table 1 as a serious injury due to vessel strike according to the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine

Mammals (Category L8 = dependent calf of a dead or seriously injured mother).

Comment 9: The Commission, HSUS, CBD, and WDC recommend that multiple mortalities and/or serious injuries to several North Atlantic right whales (including #1151, 1311, 2160, 2460, 2660, 3111, 3302, [3308], 3692, and 3945) should be included in Table 2 of the SAR.

Response: The following is a summary statement about each case. Cases were reviewed by NMFS Northeast Fisheries Science Center (NEFSC) staff and determinations made by NEFSC staff were later reviewed by experienced staff at all other Fisheries Science Centers, per the NMFS Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals. NMFS staff look for evidence of significant health decline post event. We do not currently have a method to address sublethal effects or more subtle/slow health decline. Therefore, none of the recommended cases were incorporated into Table 2 of the SAR.

- Whale #1151. This whale was seen free of gear and with a calf in the Bay of Fundy on 28 August 2009 and was resighted soon after with two wraps of line around her rostrum and body. All entangling gear was removed on 4 September 2009. Following disentanglement, she appeared to be swimming normally and, although she showed signs of compromise typical of females completing their calving and nursing cycle, NMFS determined the entanglement had not caused serious injury. However, she was still in a compromised condition in 2011 and had declined further when seen for the last time in June 2012. The Commission believes this case warrants a conservative redetermination that the 2009 entanglement did result in a serious injury.
- *Response:* NMFS reviewers considered any health changes post-disentanglement to be representative of normal inter-year fluctuations and comparable to the overall health of the population during the time frame in question.
- Whale #2460. This whale was last seen in May 2012 in compromised health and with severe entanglement-related scars and wounds on her peduncle, additional entanglement scars on her head, and lesions on her back but without attached gear. The Commission is concerned that the observed entanglement injuries significantly compromised her heath and potential survival, and believes that a conservative injury assessment would warrant listing the scars and wounds observed in 2012 as indicative of a serious injury.
- *Response:* The animal's injuries are showing evidence of healing; the health status of this whale is comparable to the overall health of the non-injured population during the time frame in question.
- The 2007 calf of #2460. This calf was euthanized in January 2009 when it stranded in North Carolina. The spine of this animal was grossly misaligned and this followed the documentation of deep entanglement marks on the calf at age 8 months. Researchers at the scene speculated that the spine deformity resulted from an entanglement. This animal's death should be prorated as a serious injury resulting from entanglement, much as the agency did for the serious injury in the table dated 7/18/2009.
- *Response:* The injury that led to the demise of this calf was acquired in 2007, so this event is counted as an entanglement mortality for that year, which does not fall within the time frame of this report (2009–2013).
- Calf of Whale #2660. The table notes that this whale was missing her dependent calf at the time of her 2011 sighting when seriously injured and in deplorable physical condition; why is the calf not also counted as a mortality?
- *Response:* This calf, now #4160, has been resighted in good health.
- Whale #3111. This whale is listed in the table as a pro-rated serious injury. Since the animal was last seen alive when badly entangled, it seems that this should be considered entirely fishery-related.
- *Response:* This whale has been resighted in much improved condition; he appears to be gear free, but this is not yet confirmed. This event is similar to #2029's entanglement. We will continue to prorate his injury as L10 (0.75) until he is either confirmed gear free or shows signs of significant health decline.
- Whale #3398. This whale was seen in July 2012 with extensive entanglement wounds on his peduncle and fluke insertion and additional scars on his mouth and left flipper, and possibly around his blowhole. Resightings suggest these wounds appear to have compromised his health for more than two years, raising the possibility of suffering from chronic effects from the 2012 entanglement. The Commission believes that the record justifies a conservative determination of serious injury for this individual.
- *Response:* NMFS reviewers determined that this comment pertains to whale #3308 (not #3398 as identified in the comment). NMFS agrees that the lesions have increased; however, the animal's injuries are healing and its skin condition is comparable to the overall population.
- Whale #3946. This whale was affected by two separate entanglement events. In December 2012 she was gear-free, but with severe entanglement wounds on her peduncle and flukes, and possible additional scars on her head. She was resighted later carrying lines from a new entanglement and showing signs that her condition had declined—she appeared thinner and had developed lesions on her body. When last seen in May 2014 she was confirmed to be free of gear. Given that these wounds appear to have compromised her health for more than two years, a serious injury determination would be an appropriate and conservative assessment for this individual.
- *Response:* The injuries are showing evidence of healing; the health status of this whale is comparable to the overall health of the non-injured population during the time frame in question.
- Whale #3692. This whale, accompanied by a calf, was observed in March 2013 off South Carolina with a fresh propeller injury on her right fluke. When she was last sighted in April 2014 her condition was poor; her fluke had fallen off, blisters and lesions had formed at several points on her body and head, and she appeared to be thin. Given the decline in her condition following the propeller wound, this case should be considered a serious injury.
- *Response:* The animal's injuries are showing evidence of healing. Its health status is comparable to the overall health of the non-injured population during the time frame in question.
- Whale #2160. This animal was seen gear-free in April 2013 with severe scars and a large open wound on his tail stock apparently from an entanglement. He also had rake marks, skin lesions, and poor skin color behind the blowhole, suggesting poor condition; he has not been resighted. Given the severe nature of his wounds and compromised condition, this case should be considered a serious injury.
- *Response:* This whale has since been resighted. The injuries are showing evidence of healing; the health status of this whale is comparable to the overall health of the non-injured population during the time frame in question.
- Whale #3302. This individual is not listed in the table, but has not been seen since the last sighting on November 11, 2011 when seriously entangled. This case should be at least a pro-rated serious injury. At what point, when no longer being sighted, will NMFS

consider it dead and pro-rate the death as fishery-related?

• *Response:* This whale is included in the table as a serious injury due to entanglement, which is given the same score as "dead." NMFS will not presume the whale is dead until its death is confirmed and the animal is removed from the population. The initial entanglement date is 4/22/11.

• Unk Whale. A right whale hit by a vessel on 12/7/2012 is pro-rated as an injury at 0.52. Please explain the basis for this very precise pro-ration.

• *Response:* The basis for the proration values is explained in the NMFS Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals (NMFS Instruction 02–038–01). The vessel strike event described fits two categories: L6b—a vessel less than 65 feet traveling at greater than 10 knots (prorated as 0.20 serious injury), and L11—confirmed laceration of unknown depth, includes observation of blood in water (prorated as 0.52 serious injury). When more than one criteria applies to an event, we apply the greater value.

• Whale #1311. This animal was found dead on 8/11/2013. Video taken at the time shows the whale floating with line entering its mouth and associated wrapping wounds around its head. It was last seen alive in April 2013 with no signs of entanglement.

• *Response:* The carcass of this whale was not necropsied; thus, it does not currently meet the criteria for determining human interaction mortalities. Without a necropsy, we could not determine if the cause of death was due to entanglement or possible vessel strike.

Comment 10: The Commission is concerned that the long-finned pilot whale SAR does not sufficiently explain the extent to which abundance may be underestimated. The Commission recommends that NMFS consider whether further analysis of past surveys could clarify: (1) The proportions of the long-finned pilot whale stock using waters near the Gulf Stream off the U.S. northeast coast and Canada, and (2) the extent to which the new population estimate is negatively biased and the new PBR is set too low.

Response: NMFS recognizes that the current abundance estimate is likely biased low. Therefore, we are conducting additional analyses to develop more appropriate abundance estimates for both long- and short-finned pilot whales.

Comment 11: The Status of Stock section of the short-finned pilot whale—Western North Atlantic Stock assessment report did not state that the average annual human-caused M/SI is below the PBR; this conclusion had been included in previous reports for this stock. There is no new statement in the 2015 SAR to describe current M/SI totals relative to PBR. The Commission recommends that the deleted sentence be replaced by one stating that the point estimate for average annual human-caused M/SI does not exceed the stock's PBR, but it is roughly equal to the PBR and clearly greater than 10 percent of the PBR. Given the possibility that fishery-related M/SI is above PBR, the Commission recommends further that the western North Atlantic short-finned pilot whale stock be categorized as "strategic."

Response: We have reinstated the sentence indicating the 2009–2013 mean annual human-caused M/SI does not exceed PBR, as this is still the case. While there is no "new" statement, the SAR continues to state: "Total U.S. fishery-related mortality and serious injury attributed to short-finned pilot whales exceeds 10% of the calculated PBR." Following the GAMMS, PBR calculations already include a precautionary approach that accounts for uncertainty, and we have compared the five-year mean annual M/SI to PBR. Designating stocks that fluctuate around PBR from year to year as strategic is a larger issue that we plan to raise with the Scientific Review Groups.

Comment 12: Most stocks of cetaceans in the Gulf of Mexico are either known or likely to have been adversely affected by the 2010 Deepwater Horizon (DWH) oil spill. Following the spill, data were collected on many of these stocks as part of the Natural Resource Damage Assessment (NRDA) process, but those data are not yet available to be used in stock assessments. The Commission recommends that NMFS make every effort to publish and release all survey and related data it has on Gulf of Mexico cetacean stocks as soon as the NRDA process is complete, and, where appropriate, conduct new surveys to enable assessments of the extent to which abundances of the Gulf of Mexico cetacean stocks have changed in recent years.

Response: The DWH litigation is recently completed; as NRDA data become available, we will continue to publish and incorporate these data into the SARs as appropriate.

Comment 13: In some cases (*e.g.*, Jacksonville estuarine stock, many of the Bay, Sound, and Estuary (BSE) stocks of bottlenose dolphins in the Gulf of Mexico) the most recent estimates of abundance are around 20 years old. Many of these same stocks with outdated abundance estimates have been recently subjected to unusual mortality events (UMEs). The lack of usable stock abundance data for so many of the bottlenose dolphin stocks is unacceptable and highly risk prone, and must be remedied on a priority basis for future SARs.

Response: NMFS acknowledges that the abundance estimates of many of the BSE stocks of bottlenose dolphins are outdated. NMFS will collect data in 2016 to update abundance estimates for Galveston Bay, Texas and Timbalier-Terrebonne Bays, Louisiana bottlenose dolphin stocks. As resources continue to be limited, NMFS has developed a Threat Assessment Priority Scoring System for prioritizing research on common bottlenose dolphin stocks (see Phillips and Rosel 2014).

Comment 14: Tracking stock status is often confounded by differences in survey area or methodology. For example, the best estimate for the Southern North Carolina Estuarine System stock of bottlenose dolphins declined from 1,614 in the 2012 SAR to 188 in the 2013 SAR, which was the result of using a 2006 mark-recapture survey in the 2013 SAR whereas the 2012 SAR used an aerial line-transect study. The abundance is now considered "unknown" because all of the surveys on which estimates were made are now more than eight years old. The agency must take a more careful look at its survey intervals and design to assure comparability in range, seasons, effort, methodology, and other factors that are compounding the ability to more precisely define population estimates and to provide trend data, as required by the MMPA.

Response: NMFS has standardized its survey methodology for large-scale aerial and ship surveys within the Atlantic, and following the 2016 ship surveys, we should be able to begin analyzing trends. Large-scale surveys within the Gulf of Mexico are also standardized, and with additional data collection, trend analysis should be possible. NMFS convened a workshop and prepared a technical memorandum to create a "standard" approach to photo-ID capture-mark-recapture techniques for estimating abundance of bay, sound, and estuary populations of bottlenose dolphins along the East Coast and Gulf of Mexico (Rosel *et al.* 2011). While progress is being made, at present resource constraints limit the NMFS Southeast Fisheries Science Center's (SEFSC) ability to analyze trends for the stocks for which there are data. Because the SEFSC marine mammal data collection program is generally supported through collaborations with other Federal agencies, research

priorities (including areas surveyed) are balanced between the data needs of NMFS and our external partners.

Comment 15: NMFS should prioritize observer coverage for fisheries that have self-reported takes but where observer coverage is either entirely lacking, occurring intermittently, or at such low levels that updated and reliable estimates of fishery-related mortality are not possible. Stock assessments cannot meaningfully report the statutorily required information on status and threats to marine mammals until and unless observer coverage is increased in fisheries with self-reported mortalities, evidence of strandings occurring at elevated rates that coincide with the greatest effort by the fishery, or where observer coverage has documented takes that may or may not have been incorporated in the SARs.

Response: NMFS' observer programs fulfill a wide range of requirements under MMPA, ESA, and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Observer programs serve a wide range of purposes under these three statutes, including, but not limited to:

• Providing information on commercial catches to inform fishery stock assessments and management (*e.g.*, setting of annual catch limits).

• Accounting for total catches in some fisheries, and discards in other fisheries, to support the monitoring of fishery-, vessel-, or sector-specific catches of managed species.

• Monitoring fishery-related mortality and serious injury of marine mammals.

• Monitoring incidental take limits of species that are listed under the ESA.

• Collecting biological samples (*e.g.*, otoliths, gonads, size data, genetic data for species identification purposes) to support stock assessment processes.

• Supporting innovative bycatch reduction and avoidance programs.

• Helping to promote the safety of human life at sea.

Each NMFS region administers an observer program to address programmatic mandates under the MMPA, ESA, and MSA. The data collected by these observer programs support the management and conservation of fisheries, protected resources, and marine ecosystems throughout the United States' exclusive economic zone. Given the wide array of needs and limited resources, NMFS prioritizes observer coverage based on a number of factors. MMPA section 118(d)(4) specifies that the highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the ESA; the second highest priority shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks; and the third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain. NMFS uses this guidance when allocating funding to observe fisheries with little or no current observer coverage. For example, in 2012 and 2013, NMFS observed the Southeast Alaska drift gillnet fishery, which had not been previously observed but was potentially interacting with ESA-listed humpback whales and a strategic stock of harbor porpoise (*i.e.*, the highest and second highest priorties for observer coverage noted in the MMPA).

Comment 16: In the North Atlantic right whale report's section on Population Size, the phrase "known to be alive" should be changed to "presumed to be alive," which is the wording used by the author of the 2011 Right Whale Report Cards from which this number was taken. At the end of this section, the sentence: "For example, the minimum number alive for 2002 was calculated to be 313 from a 15 June 2006 data set and revised to 325 using the 30 May 2007 data set" has been in this SAR since 2008 and seems stale.

Response: This number is not taken from the Report Card; the Nmin value for right whales reported within the SAR includes only animals known to be alive because they were either seen during the reference year or seen both before and after the reference year. (Hence, there is no presumption of life.) The count of animals known to be alive is updated every year. Animals not seen for three or more years may be added back if they are shown to be alive in a subsequent year. The example given regarding the 2006 versus 2007 data makes this point.

Comment 17: In the "Current and Maximum Net Productivity Rates" section of the North Atlantic right whale report, the information in the third paragraph is outdated regarding calving rates through 1992. More recent data on intervals are available from the right whale catalog, and are presented annually at right whale consortium meetings. For example, since the paper cited in the draft SAR for that information (Knowlton *et al.* 1994), there are data indicating the calving interval improved, but in more recent years has returned to lengthy or even increasing intervals. Later in the section the draft SAR cites the high proportion of juveniles in the population as of publications dated 1998 and 2001 (Hamilton *et al.* 1998, Best *et al.* 2001). While this may still be true, is there no more current information?

Response: This SAR has been amended to include the "production/Nmin," which is a better description of average productivity than calving interval. As a point of clarification, the draft SAR states on page 7: "An analysis of the age structure of this population suggests that it contains a smaller proportion of juvenile whales than expected (Hamilton *et al.* 1998; Best *et al.* 2001), which may reflect lowered recruitment and/or high juvenile mortality."

Comment 18: The North Atlantic right whale report's Background section acknowledges the large number of right whale carcasses documented but not necropsied to determine likely cause of death. We believe NMFS must undertake an effort through modelling to apportion mortalities among categories such as unknown, vessel strike, or entanglement based on historic proportions of deaths from necropsied animals. It should be possible to assign a proportional cause of death to the number of carcasses that were not retrieved/necropsied. Our records show that at least seven carcasses were not retrieved between 2009–2013.

Response: We agree that this work would be valuable. In the future we intend to use a statistically-based estimate of fishing mortality. It is more complex than assigning a simple proportion to discovered carcasses, and we will use mark recapture data to attribute causation to latent mortality as well as attribute mortality causes to discovered carcasses unable to receive a proper necropsy.

Comment 19: The North Atlantic right whale report's Fishery-Related Serious Injury and Mortality section cites Van der Hoop *et al.* (2012) as indicating that take reduction measures may not be working adequately to reduce mortality from entanglements and additional measures need to be taken. A more recent publication by NMFSs authors reaching the same conclusion (Pace et al. 2014) should also be included.

Response: The Pace *et al.* (2014) reference was added to the SAR.

Comment 20: In the Gulf of Maine humpback whale SAR, NMFS relies on maps and other information based almost solely on shipboards surveys. NMFS should reconsider this approach and, as it does with North Atlantic right whales, also rely on catalog data to glean information on distribution and similar vital characterizations of the

population. In addition, NMFS is relying on outdated information about stock structure and use of winter habitats in the Caribbean, as Stevick and colleagues (2015) have provided more recent insight from genetic and other data that indicate that more than one stock appears to be using the eastern Caribbean. NMFS also cites Barco *et al.* (2002) that suggests that the mid-Atlantic may represent a supplemental winter feeding area for humpback whales. There is photographic evidence of their increasing presence and winter use of the waters between New York and Delaware Bay in spring, summer, and fall, some of which shows site fidelity within and between seasons, with at least one quarter of the photographically identified animals in a database matched to the Gulf of Maine stock. This information should be considered in updating the SAR. The Virginia Marine Science Museum has also documented sightings and responded to stranded animals in significant numbers in the Chesapeake Bay region since this 2002 citation.

Response: The SAR's map is consistent with maps in other SARs in which the abundance estimate is derived from a line-transect survey (including both aerial and shipboard effort). The humpback whale SAR uses the best estimate available and has frequently used line-transect surveys in the past; the estimates derived from the 2008 and 2011 surveys are reported in the SAR.

The Gulf of Maine stock of humpback whales is somewhere on the order of 20% of a larger breeding population, and constitutes a cluster of feeding aggregations that shows some site fidelity to the Gulf of Maine. Although a single Gulf of Maine animal was killed in the Bequia indigenous hunt (within the eastern Caribbean), overwhelming evidence exists to show the Gulf of Maine stock uses the western Caribbean as a breeding ground along with four to five other feeding aggregations. The bulk of the animals within the eastern Caribbean show no site fidelity to the Gulf of Maine. The other facts cited within the comment are mostly anecdotal and have not been adjusted for search effort.

Comment 21: In the Gulf of Maine humpback whale SAR, NMFS omits new information that was recently considered in its global status review on humpback whales. The Population Size section does not provide data from MONAH (the international study titled "More North Atlantic Humpbacks") surveys, although these were cited in the recent NMFS global status review for the species (Bettridge *et al.* 2015). NMFS also omits consideration that the Robbins (2007) study also supports low reproductive rates in the species, not solely low calf survival. This should be included so as not to leave readers with the idea that the only data available are outside confidence intervals.

Response: The population of humpback whales surveyed through the MONAH study comprises more than the humpback whales that feed in the Gulf of Maine, therefore it is not appropriate to use the MONAH abundance estimate for the abundance estimate for the Gulf of Maine stock. We modified the SAR language with regard to confidence intervals and noted that Robbins (2007) found reproductive rates to be highly variable.

Comment 22: The Gulf of Maine humpback whale SAR's statement that the apparent calf survival rate is 0.664 as an "intermediate" value between two studies appears incorrect. In fact, it appears "low" as compared to other areas and not just "intermediate," as the recent status review itself stated that this value "is low compared to other areas and annually variable."

Response: As stated above (see response to Comment 20), the West Indies population unit has been proposed by NMFS as a DPS as a result of the ESA global status review of humpback whales. This proposed DPS is not directly relevant to the MMPA Gulf of Maine stock. Metapopulation segments commonly have (or are usually expected to have) different demographic patterns if those populations are not growing; thus it would be common for different segments to have differing mortality rates and subsequent productivity rates. Hence, we cannot presume that integrated population statistics reflect that of individual segments. We removed the word "intermediate."

Comment 23: The Gulf of Maine humpback whale SAR underestimates the level of mortality for this stock; more recent literature is available and should be used. Reference is made to the likelihood that undocumented entanglements are occurring. We note that Van der Hoop *et al.* (2013) found that between 1970–2009, cause of death was not undetermined for nearly 60 percent of humpback whale carcasses in the Northwest Atlantic due to decomposition, an inaccessible carcass, or where no necropsy data were provided to indicate cause of death. Similar results were found by Laist *et al.* (2014). Volgenau (1995) is cited for the source of entanglements through 1992. Johnson et al. (2005) found 40 percent of humpback whale entanglements were in trap/pot gear and 50 percent were in gillnet. While even these data are now a decade old, they at least reference gear types involved in humpback entanglements in U.S. waters, not just in Canada.

Response: It was an oversight that the Johnson et al. (2005) paper was not included in the draft SAR; it has been included in the final SAR. However, one should be skeptical of estimating gear-specific entanglement rates based on a very small sample size and when one would suspect different levels of detectability among gear types doing harm. In stock assessments for which there is not a statistical model for estimating fisheries interactions, NMFS has consistently maintained the policy that without unambiguous evidence that a stranding was due to human interaction, such strandings will not be attributed to a human cause.

Comment 24: In the Gulf of Maine humpback whale SAR, the following cases of dead or seriously injured humpbacks are missing and should be added to Table 2:

- Laist *et al.* (2014) note a dead humpback whale that was attributed to a vessel strike on 7/27/2009 inside the NY seasonal management area.
- *Response:* This carcass was battered against a jetty. A necropsy revealed broken bones, but the animal was so severely decomposed it could not be determined if the fractures were pre- or post-mortem.
- On 6/3/2011 a humpback whale on Jeffreys Ledge was disentangled but noted to be "quite thin and body posture was hunched," according to record notes on the NMFS and Center for Coastal Studies Large Whale Disentanglement Network Web site. This animal was noted to be the 2009 calf of the humpback whale known as "Lavalier" and has apparently not been seen since that incident.
- *Response:* This animal has been named "Flyball" and has been resighted in good health.
- On 3/11/2012, this same Web site noted that a humpback whale had become entangled in gillnet gear off Cape Hatteras, North Carolina and broke free with "some amount of top line and webbing anchored somewhere at the forward end of the whale." This should be considered for pro-rating as a serious injury.
- *Response:* This event was observed by a trained Northeast Fisheries Observer Program observer. The whale was released with a small section of netting draped over a fluke edge (which corresponds to large whale injury category L3 in the NMFS Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals, NMFS Instruction 02–038–01) that it was likely to shed.
- The Web site notes a humpback whale disentangled but apparently seriously injured on 4/12/2012. The site states "the overall condition of the whale (~30 feet long) seemed poor, indicating that it had been entangled significantly longer than the few days since first report. Line across the back had become ingrown and line around the flukes had left numerous scars, some of which were resolving while others were not. The whale was quite thin and, in aerial shots, the widest girth of the whale was at the skull. There were patches of whale lice scattered across its body." This appears to fit within the definition of a serious injury and should, at the very least, be pro-rated as such.
- *Response:* This humpback whale has an entanglement date of 4/7/2012; it was entangled for fewer than five days and the Center for Coastal Studies Web site also states that "the condition of the whale seems somewhat poor (thin with patches of whale lice) but it is not clear if this is part of a seasonal effect or related to its entanglement." This whale was entangled again on 4/13/2012 and again disentangled.
- On 1/6/2013, a humpback whale was noted off Virginia Beach with significant line wrapped around its flukes and it was not able to be disentangled. This should be considered a serious injury.
- *Response:* The entanglement configuration shifted, indicating it was not constricting. The final configuration is a non-constricting loop at the fluke insertion which meets our L3 criterion (NMFS Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals, NMFS Instruction 02–038–01) and is therefore considered a non-serious injury.

Comment 25: In the Gulf of Maine, humpback whale SAR information has been omitted from the Status of Stock section. This section cites the recent NMFS global status review, which included evaluation of the status of *this* stock. The status review states "There are insufficient data to reliably determine current population trends for humpback whales in the North Atlantic overall." Rather than acknowledging this in the draft SAR, NMFS retains the assertion that "[a]lthough recent estimates of abundance indicate a stable or growing humpback whale population, the stock *may be below OSP [Optimum Sustainable Population]* in the U.S. Atlantic EEZ" (emphasis added). Indeed, the status review found that the population trend was likely flat and the population had not met goals stipulated in its recovery plan for a sustained growth rate. Given the failure to achieve its recovery plan goals for minimum population and sustained growth rate, and the annual losses due to entanglement and vessel strikes that far exceed the stock's PBR, it seems clear that the stock *is* below OSP, rather than the NMFS assertion that they "may" be below OSP.

Response: This comment blurs statements about two proposed DPSs under the ESA (West Indies and Cape Verde Islands/Northwest Africa) with those about the Gulf of Maine MMPA stock, which is a small segment within one of these proposed DPSs. With regard to the phrase "may be below . . .," scientists nearly always include a caveat for uncertainty in any declaration. We cannot make a conclusive statement with respect to whether a stock is within the OSP range without having conducted an OSP analysis. A population at carrying capacity, when harvested above its current level of productivity (which is quite low for mammals) will show a decline (until productivity increases). A population at OSP will show an increase if harvested (killed) at per capita rates lower than productivity (until productivity declines due to resource scarcity). Theoretically, a population of humpback whales could be at OSP in perpetuity while human-caused mortality removed all the excess; thus, the trend in abundance would be flat, but it remains at OSP.

Comment 26: For the Western North Atlantic stock of long-finnned pilot whale, it is our understanding that a survey will be conducted in the summer of 2016 that may provide better data of abundance, given the discrepancy between the more recent survey and an outdated earlier survey—each of which covered a different extent of the range. Until that time, given margins of error, fishery-related mortality appears to be at or possibly over the PBR. We are hopeful that NMFS will resolve the discrepancies in methodology and/or areas surveyed to resolve widely discrepant estimates such as this one.

Response: NMFS agrees; the 2016 survey, as well as the abundance analyses underway on surveys through 2014, should provide improved abundance estimates for long-finned pilot whales within this area.

Comment 27: NMFS should include within the Western North Atlantic harbor and gray seal SARs a brief mention of high levels of animals observed entangled in fishing-related debris, largely from actively fished gear. The final SARs for both of these species should contain some language and analysis reflecting that a notable percentage of seals in the Gulf of Maine haulouts are seen entangled in fishery-related gear that may result in serious injury.

Response: The gray seal SAR currently contains the language, "analysis of bycatch rates from fisheries observer program records likely greatly under-represents sub-lethal fishery interactions. Photographic analysis of gray seals at haulout sites on Cape Cod, Massachusetts revealed 5–8% of seals exhibited signs of entanglement (Sette *et al.* 2009)." Both harbor and gray seal SARs now emphasize the fact that entanglement is an issue with both species, though we have found it less prevalent in harbor seals.

Comment 28: Regarding the Gulf of Mexico Bryde's whale, we are concerned about the level of ship strikes, which are estimated to be 0.2 per year, well above the PBR of 0.03. It also concerns us that two of the stranded animals are considered to be a part of the unusual mortality event (UME) resulting from the Deepwater Horizon oil spill, which has continued to affect bottlenose dolphins and may be having effects on this stock. Given the need to include the most recent information, NMFS should include a note that in April 2015, NMFS made a positive 90-day finding on a petition to list this population as "endangered" under the Endangered Species Act.

Response: To clarify, the April 2015 finding was that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. Accordingly, NMFS initiated a review of the status of this species to determine if the petitioned action is warranted. NMFS had added text to the SAR noting the positive 90-day finding on the petition (80 FR 18343, April 6, 2015) and our ongoing status review.

Comment 29: Mortality for the Gulf of Mexico eastern coastal stock of common bottlenose dolphins cannot be quantified because fisheries known to interact with the stock (including a wide variety of Category II and III fisheries) are not subject to observer coverage and/or the dataset from the observer program is out of sync with the five-year analytical time period used in this SAR. NMFS must either reconsider its observer coverage levels and placement in order to provide timely data for the SARs or it must re-prioritize analysis so that take data and mortality estimates can be incorporated in a timely manner.

Response: NMFS agrees that observer coverage and the resulting M/SI data collected through observer programs is essential to assessing marine mammal

stocks. Category II fisheries are subject to observer coverage pursuant to the requirements for Category I and II fisheries in 50 CFR 229.4. Given limited funding, NMFS cannot realistically observe all fisheries that may pose a risk to marine mammals. Anticipating this, the MMPA provides guidance for prioritizing observer coverage with the first priority being commercial fisheries that kill or seriously injure ESA-listed marine mammals, the second priority being strategic stocks, and the third priority being those stocks for which M/SI incidental to commercial fishing is uncertain. NMFS continues to work internally to prioritize funding for observing fisheries across the U.S. given multiple mandates and requirements.

In the 2015 SARs, NMFS provided marine mammal bycatch from the shrimp trawl fishery, which had not been estimated previously. The first bycatch estimate covered 2007–2011 because those were the data available at the time analysis began. The GAMMS suggest: "If mortality and serious injury estimates are available for more than one year, a decision will have to be made about how many years of data should be used to estimate annual mortality. There is an obvious trade-off between using the most relevant information (the most recent data) versus using more information (pooling across a number of years) to increase precision and reduce small-sample bias. It is not appropriate to state specific guidance directing which years of data should be used, because the case-specific choice depends upon the quality and quantity of data. Accordingly, mortality estimates could be averaged over as many years as necessary to achieve statistically unbiased estimation with a coefficient of variation (CV) of less than or equal to 0.3. Generally, estimates include the most recent five years for which data have been analyzed, as this accounts for inter-annual variability. However, information more than five years old can be used if it is the most appropriate information available in a particular case" (NMFS 2016). NMFS is currently evaluating the appropriate time interval to produce estimates for this fishery and will update the SARs accordingly.

Comment 30: Similar to the Eastern Gulf of Mexico stock, data on Northern Gulf of Mexico bottlenose dolphin takes in the shrimp trawl fishery were discarded due to a dyssynchrony in the analytical period with the five-year average in the SAR. Given the low level of observer coverage and the CV, it is possible that this stock is being taken at a level that is around 50 percent of PBR, which would make this fishery a Category I fishery and result in higher priority for observer coverage. We recommend that NMFS re-evaluate observer placement and assure that the level of coverage is sufficient to accurately document and assess fishery impacts.

Response: The information was not discarded and is still provided in the SAR (*i.e.*, the 2007–2011 mortality estimate of 21 for the commercial shrimp trawl fishery). Currently, there is only one shrimp trawl bycatch estimate and it is for 2007–2011. The estimate does not fit in the standard five-year time frame that is reported in this SAR (*i.e.*, 2009–2013). The 2007–2011 estimate was not included in the minimum total mean annual human-caused mortality and serious injury for the stock during 2009–2013 (0.4). Additionally, with so many unobserved fisheries (menhaden, crab traps, hook and line, gillnet), any mortality estimate is likely an underestimate. The PBR of the stock is 60 but the true fishery-related mortality and serious injury for 2009–2013 is not known. However, it is clearly stated in the SAR that the mortality estimate is, at a minimum, greater than 10% of the PBR. This is the only definitive statement NMFS can make given current information. NMFS agrees that it is possible that the fishery-related mortality and serious injury could be as much as 50% of PBR. However, given limited fishery observer resources, there are a number of factors that affect observer coverage prioritization. See response to Comment 29.

Comment 31: For the Northern North Carolina Estuarine stock of bottlenose dolphins, data and text regarding the mid-Atlantic coastal gillnet fishery in Table 2 of the draft SAR only go through 2011, although this SAR should have data at least through 2013. A footnote in Table 3 of the draft SAR states that "[m]ortality analyses that use observer data are updated every three years. The next update is scheduled for 2015 and will include mortality estimates for years 2012–2014." It is not clear why a mortality estimate is only provided every three years when it can be done annually for other stocks.

Response: The observed mortality data for the mid-Atlantic coastal gillnet fishery was updated through 2011 because it is only updated every three years for Atlantic coastal bottlenose dolphin stocks. The decision to update the gillnet mortality estimates every three years was reviewed by the Atlantic Scientific Research Group in 2008 after the NEFSC provided a presentation showing the challenges associated with estimating annual mortality with any degree of confidence under a scenario of continued decline in observed interactions. At that time, it was considered an appropriate timeframe for updating observed bycatch mortality for the Atlantic stocks given the very low frequency and inter-annual variability of observed takes (average is less than one observed take per year). Although several of the factors that led to this decision in 2008 still exist today (*i.e.*, mean observed takes less than one per year, status quo levels of observer coverage, and large number of strata due to complexity of stock identification), it became apparent during the 2013 Bottlenose Dolphin Take Reduction Team meeting that the Northern North Carolina Estuarine System stock mortality and serious injury estimate is likely exceeding its PBR. As a result, NMFS plans to re-evaluate the schedule and methods for updating future observed mortality rates and estimates for Atlantic stocks observed interacting with mid-Atlantic coastal gillnet fisheries.

Comments on Pacific Regional Reports

Comment 32: Very few Pacific stocks (only four stocks of cetaceans and two stocks) were updated in the draft 2015 SARs. NMFS states ". . . all others will be reprinted as they appear in the 2014 Pacific Region Stock Assessment Reports (Carretta *et al.* 2015)." If these stocks were reviewed and NMFS determined no update was warranted, NMFS should provide reviewers and other members of the public with information that NMFS has, in fact, complied with MMPA mandates for reviewing and/or revising stock assessments for strategic stocks and not simply neglected to review them.

Response: NMFS reviews all SARs annually for potential revision. New data on human-caused mortality and serious injury are published annually, even if they do not appear in revised SARs. Reports may not necessarily be revised every year for strategic stocks, unless new information will result in a status change for that stock or species.

Comment 33: NMFS's draft SARs largely address information only through 2013 and contain no updates of large baleen whale stocks within this iteration of the draft SARs. More recent data on increasing numbers of large whale mortalities from ship strikes and entanglements should be considered in the draft SARs. Additionally, when animals involved in these interactions cannot be identified to species, pro-rating to species seems warranted to better understand and quantify anthropogenic impacts on stocks that may be ESA-listed. We encourage NMFS to undertake this effort.

Response: NMFS is working on methods to prorate human-caused injury and mortality of unidentified whale cases to species along the U.S. west coast. These proration methods will be applied to respective SARs following peer review and publication.

Comment 34: While we understand that California sea lions are not considered a strategic stock, there has been elevated mortality in this species as part of an on-going UME. This UME was mentioned in the 2014 SAR (updated as of June 2015), although the pup counts are no more recent than 2011 and thus do not reflect possible impacts on productivity and population trends. Population data and updates on the impact of the UME must be included in the next iteration of SARs for 2016, since the ongoing UME and high levels of pup mortality constitute "significant new information" triggering the MMPA's requirement to conduct a stock assessment.

Response: NMFS did not revise the SAR for California sea lions in 2015. The 2014 SAR addressed the UME, but this did not result in a change in the stock's status under the MMPA.

Comment 35: Population data are provided for the Southern Resident stock of killer whales through 2014; NMFS should use more recent data in stock assessments for other species/stocks wherever possible.

Response: NMFS utilizes the most recent population data available at the time the draft reports are prepared. In the case of the draft 2015 Southern Resident killer whale report, population size data from 2014 is utilized, because it was available at the time the draft report was prepared. This is not the case for all stocks in all years, where direct enumeration of the stock's size is less straightforward.

Comment 36: Given the status of insular false killer whales, we strongly encourage NMFS to prioritize observers on fisheries such as the short line and kaka line fisheries in which there is either anecdotal report of evidence of injury consistent with fishery interaction as is mentioned in the SAR.

Response: Given resource and other constraints, NMFS does not currently have plans to observe state-managed fisheries in Hawaii, but will continue to work with the Hawaii Department of Land and Natural Resources as available resources allow to improve data collection in these fisheries.

Comment 37: The draft SAR discusses overlap in distribution of insular and pelagic stocks of false killer whales and takes within the overlap zone. We generally support the method of pro-rating takes to one or the other stock in the overlap zone, as we do the apportioning of observed takes of "blackfish" as either false killer whales or short-finned pilot whales.

Response: NMFS will continue to prorate takes of false killer whales among potentially affected stocks and takes of blackfish to species when stock or species-identity of the take is unknown.

Comment 38: The draft SAR indicates a decline in population of the Main Hawaiian Islands (MHI) Insular stock of false killer whales from 138 to 92 since the last report. However, the discussion in the section of the draft SAR still cites only literature from 2010 that documented apparent declines from 1989–2007, and provided the results of a Population Viability Analysis that calculated an average rate of decline of nine percent per year. This change in the abundance estimate for this stock since the last SAR estimate is a far greater decline than predicted. The final SAR should contain some discussion of this apparent decline or provide a stronger caveat for why this estimate may not be reliable.

Response: The apparent decline from 138 to 92 noted by the commenter is in the minimum abundance (Nmin), not the total population abundance. Nmin declined for MHI insular false killer whales in the 2015 SAR. Nmin for MHI insular false killer whales is determined based on the number of distinctive individuals seen between 2011 and 2014 and is not corrected for the level of effort or other factors that might have resulted in a lower total count for that period. Analysis of MHI insular false killer whale abundance and trend is ongoing and will be presented in a future SAR.

Comment 39: With regard to the pelagic stock of false killer whales, the PBR remains approximately the same as the prior SAR estimate; however, this draft SAR notes that 2014 takes subsequent to the time period covered in the SAR (2009–2013) were "the highest recorded since 2003" although overall bycatch estimates were not available as of the time the SAR was drafted. Even without inclusion of 2014's excessive mortality and serious injury, the takes for this stock are acknowledged to exceed the PBR for the period 2009–2013 although NMFS states that additional monitoring is required before concluding that the take reduction plan for the stock had failed to meet statutory mandates.

Response: NMFS has not yet completed mortality and serious injury estimates for 2014 and provides the information on observed takes only for context on our decision to retain the five-year look-back in the computation of M/SI for comparison to PBR. NMFS is evaluating the effectiveness of the False Killer Whale Take Reduction Plan (FKWTRP) in accordance with the monitoring strategy that was developed in consultation with the False Killer Whale Take Reduction Team.

Comment 40: The reports of M/SI for the California stock of northern fur seal (Table 1) have an apparent inconsistency that is unexplained. Table 1 in the prior SAR provided information on observed mortality for the years 2007–2011. The observed mortality and serious injury for 2011 is said to be 1. However, in Table 1 in the current draft SAR, the observed fishery-related mortality and serious injury listed for 2011 (providing data for 2009–2013), lists observed mortality for the year 2011 as 2. Revised text explaining the table states that "[t]wo of the fishery-related deaths (one in an unidentified fishing net in February 2009 and one in trawl gear in April 2011) were also assigned to the Eastern Pacific stock of northern fur seals." However, this does not make it clear why the 2009 mortality remained unchanged but the 2011 mortality increased.

Response: Data on human-caused M/SI is derived from many sources, including stranding networks, rehabilitation centers, independent researchers, and observer programs. Occasionally, additional human-caused mortality and serious injury records are incorporated into subsequent reports as databases are reviewed or cases are reassessed. In this case, the change regarding the serious injury record was made and reflected in the draft 2015 SAR but had no effect on the strategic status of the stock.

Comment 41: The assumed net productivity of the California/Oregon/Washington stock of sperm whales inappropriately ignores at least five peer-reviewed estimates of sperm whale growth rates, all of which fall in the range of 0.6% to 0.96% per year. Also, the conclusion that this stock is stable or increasing has no solid evidentiary support. The Moore and Barlow (2014) population estimate for the stock does not achieve the SAR's stated goal of improving the precision of population estimates. Estimates of fishery related mortality of the stock from derelict gear calculated from strandings appear to be ten to twenty times too low, once unobserved mortality and recovery rates are corrected for.

Response: NMFS did not revise the sperm whale SAR in 2015 and responded to similar comments on the

2014 sperm whale SAR in the **Federal Register** on August 20, 2015 (80 FR 50599; see response to Comment 21).

Comment 42: The Moore and Barlow (2014) analysis of the California/Oregon/Washington stock of sperm whales appears to lack the statistical power to detect trends in the population, which elevates risks to cetaceans.

Response: See response to Comment 41. NMFS will consider and address this comment when we next review this SAR in the future.

Comment 43: The HLA encourages NMFS to make additional improvements to the draft 2015 false killer whale SAR, by eliminating the five-year look-back period for the false killer whale SAR, and reporting only data generated after the FKWTRP regulations became effective. For example, the draft 2015 SAR should report M/SI values based on 2013 and 2014 data, and the data prior to 2013 should no longer be used because it is no longer part of the best available scientific information.

Response: The GAMMS (NMFS 2005) suggest that if there have been significant changes in fishery operations that are expected to affect take rates, such as the 2013 implementation of the FKWTRP, the guidelines recommend using only the years since regulations were implemented. However, recent studies (Carretta and Moore 2014) have demonstrated that estimates from a single year of data are biased when take events are rare, as with false killer whales in the Hawaii-based longline fisheries. Further, although the estimated M/SI of false killer whales within the U.S. Economic Exclusion Zone (EEZ) around Hawaii during 2013 (4.1) is below the PBR (9.3), this estimate is within the range of past, pre-take reduction plan (TRP) estimates, so there is not yet sufficient information to determine whether take rates in the fishery have decreased as a result of the TRP. Further take rates from 2014 are among the highest recorded, suggesting TRP measures may not be effective, and the change in fishery operation may not be significant enough to warrant abandoning the five-year averaging period. For these reasons, the strategic status for this stock has been evaluated relative to the most recent five years of estimated mortality and serious injury.

Comment 44: For a decade, NMFS has reported a M/SI rate for the deep-set fishery that far exceeds PBR for the Hawaii pelagic false killer whale stock ("Pelagic Stock"). However, the best available information suggests that the number of false killer whales in the Hawaii EEZ has not declined during the same time that the supposedly unsustainable M/SI rate was occurring. HLA disagrees with the M/SI levels reported in the draft SAR and with NMFS' conclusion that the vast majority of all fishery interactions with the Pelagic Stock cause injuries that "will likely result in mortality." If that were the case, then after a decade or more of allegedly unsustainable levels of take, there would be some evidence of a declining Pelagic Stock abundance. No such evidence exists. The draft SAR should expressly recognize this discrepancy, and NMFS should revisit the manner in which it determines M/SI for false killer whale interactions.

Response: This comment has been addressed previously (see 78 FR 19446, April 1, 2013, comments 45 and 51; 79 FR 49053, August 18, 2014, comment 26; and 80 FR 50599, August 20, 2015, comment 34). The comment and included footnote contend that the stock abundance has not declined (as opposed to prior year comments that indicated the stock was increasing) in over a decade and attributes this persistence of false killer whales despite high levels of fishery mortality to NMFS' improper assessment of the severity of injuries resulting from fisheries interactions, improper assessment of population abundance and trend, or both. Assessment of injury severity under the NMFS 2012 serious injury policy has been discussed in numerous previous comment responses and is based on the best available science on whether a cetacean is likely to survive a particular type of injury. Further study of false killer whales would certainly better inform the assigned outcomes; but, until better data becomes available, the standard established in the NMFS 2012 policy on distinguishing serious from non-serious injuries will stand.

Further, assessments of pelagic false killer whale population trend are inappropriate, as the entire stock range is unknown, but certainly extends beyond the Hawaii EEZ, such that the available abundance estimates do not reflect true population size. A robust assessment of population trend would require assessment of environmental variables that influence false killer whale distribution and the proportion of the population represented within the survey area during each survey period. Finally, many years of unsustainable take does not automatically lead to the conclusion that the population is declining. PBR was designed to provide a benchmark, in the face of uncertainty about marine mammal populations, below which human-caused mortalities would not reduce the population beyond its OSP size, which is defined as the abundance where there is "the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality." The benchmark does not consider whether a population is declining, as this is very hard to prove, particularly for population abundance estimates with low precision.

Comment 45: HLA incorporates by reference its more specific comments on the draft 2014 SAR related to the 2010 Hawaiian Islands Cetacean Ecosystem and Assessment Survey (HICEAS) and the assumptions made by NMFS based upon the data from that survey. In addition, HLA emphasizes its repeated requests that NMFS publicly disclose information regarding the acoustic data acquired in the 2010 HICEAS survey. Substantial acoustic data was acquired during that survey, but NMFS still has not provided any meaningful analysis of that data or, for example, any basic indication of how many false killer whale vocalizations have been identified in the acoustic data. The acoustic data from the 2010 HICEAS survey contains information directly relevant to false killer whale abundance, and it must be analyzed by NMFS and reported in the false killer whale SAR, which must be based on the best available scientific information.

Response: Analysis of the acoustic data is a labor intensive and time-consuming process, particularly as automated methods for detection, classification, and localization are still improving. There were many changes in array hardware during the survey, further complicating streamlined analyses of these data. Portions of the data have been analyzed to verify species identification, assess sub-group spatial arrangements, or other factors. A full-scale analyses of this dataset for abundance is likely not appropriate, though NMFS is further evaluating this in light of planning for upcoming HICEAS surveys.

Comment 46: The draft SAR assigns a recovery factor of 0.5 to the Pelagic Stock of false killer whales, which is the value typically assigned to depleted or threatened stocks, or stocks of unknown status, with a mortality estimate CV of 0.3 or less. However, the Pelagic Stock is not depleted or threatened, nor is its status unknown. Since NMFS began estimating Hawaii false killer whale abundance in 2000, as more data have been obtained, more whales have been observed and the population estimates have increased from 121 in 2000 (a recognized underestimate for all false killer whales in the EEZ) to 268 in 2005, 484 in 2007, 1,503 in 2013, and 1,540 at present. Similarly, the incidence of fishery interactions with the Pelagic Stock has not decreased, nor has the rate of false killer whale depredation of fishing lines decreased (if anything, it has increased). All of the available data contradict any hypothesis that false killer whales in the Hawaii EEZ are decreasing. This status should be accurately reflected with a recovery factor that is greater than 0.5 (*i.e.*, closer to 1.0 than to 0.5).

Response: This comment has been addressed previously (see 80 FR 50599, August 20, 2015, comment 36). Reanalysis of existing datsets to derive more precise estimates does not consititute an increase in population size. There are two EEZ-wide estimates of abundance and the current status of pelagic false killer whales is unknown. This population may be reduced given fishing pressures within and outside of the EEZ over several decades. The status of Hawaii pelagic false killer whales is considered unknown because there are no trend data available to evaluate whether the population is increasing, stable, or declining. The recovery factor for Hawaii pelagic false killer whales will remain 0.5, as indicated, for a stock with a CV for the mortality and serious injury rate estimate that is less than or equal to 0.30.

Comment 47: HLA appreciates that NMFS has now acknowledged that the range of the MHI insular false killer whale stock ("Insular Stock") should be modified, based upon the best available scientific information. Although the range reported in the draft 2015 SAR is still overbroad (*i.e.*, it encompasses areas where no Insular Stock animals have been observed), it is a much more accurate representation of the Insular Stock's range than has been reported in previous SARs.

Response: NMFS reassessed the stock range of all three stocks of false killer whales in Hawaii based on all data available. NMFS will consider future stock boundary revisions if new data become available that indicate the revised stock boundary should be reconsidered.

Comment 48: As with past draft SARs, the draft 2015 SAR attributes M/SI by the deep-set fishery to the Insular Stock. For at least the following two reasons, these attributions are inappropriate and contrary to the best available scientific information. First, there has never been a confirmed interaction between the deep-set fishery and an animal from the Insular Stock. Although there is anecdotal evidence of Insular Stock interactions with nearshore shortline fisheries and other small-scale fishing operations, none of these are documented or reliably reported and none implicate the Hawaii-based longline fisheries, which have been excluded from nearshore fishing grounds for many years.

Second, as NMFS recognizes in the draft 2015 SAR, the range for the Insular Stock is, appropriately, much smaller than was previously assumed by NMFS. When this new range is taken into account, along with the TRP-based year-round closure of the area to the north of the MHI, there is only a very, very small area in which longline fishing may overlap with the assumed range of the Insular Stock. No false killer whale interaction by the deep-set fishery has ever occurred in this area. It is therefore incorrect, and contrary to the best available information, to state that the deep-set fishery, as currently regulated, is "interacting with" the Insular Stock.

Response: The commenter is correct that using the new MHI insular false killer whale stock range and the longline exclusion area required under the FKWTRP, there is little overlap between the MHI insular stock and the longline fishery. However, there are still small areas of overlap and fishing effort in this area is non-zero. It is rare that the stock-identity of a hooked or entangled whale can be determined, and as such NMFS follows the GAMMS and apportions those takes of unknown stock to all stocks within the fishing area. NMFS has carried out this apportionment based on the distribution of fishing effort in areas of overlap between stocks and the fishery.

Comment 49: The substantial revision to the minimum population estimate for the Insular Stock is unexplained, and NMFS' assumption that the Insular Stock has declined is speculative.

Response: NMFS makes no assumption that MHI insular stock abundance has declined in the last year (see response to Comment 38). The minimum estimate reflects the number of individuals enumerated during the stated period and may reflect not only changes in actual population abundance, but also changes in encounter rates due to survey location or animal distribution.

Comment 50: The proration assumptions used in the draft 2015 SAR do not reflect the best available scientific information. The 2015 draft SAR, like previous SARs, continues to allocate additional false killer whale interactions to the fisheries in a manner that lacks a rational basis. HLA incorporates by reference its objections to NMFS's attributions for "blackfish" interactions and for interactions in which no injury determination has been made. In addition, NMFS's new method for allocating false killer whale interactions within the EEZ is not appropriate for interactions that occur with the shallow-set fishery, which has 100% observer coverage. All shallow-set fishery interactions should be attributed based only on the location of the interaction because those interactions are not extrapolated.

Response: False killer whale bycatch proration reflects the best available information on the species and injury status of cetaceans observed hooked or entangled in the longline fishery. First, NMFS prorates injuries with a status of "cannot be determined" (CBD) according to the ratio of known serious and non-serious injuries. To treat all CBD cases as non-serious would be a clear under-representation of total M/SI within the fishery. This proration is supported within the GAMMS, judged by NMFS, and supported by external peer-review, as the best approach for appropriately accounting for injuries whose injury status cannot be determined based on the information provided by the observer. Second, when a species code of "unidentified blackfish" has been assigned to an interaction by the NMFS Pacific Islands Regional Office Observer Program, the Program has determined that the species identity is either false killer whale or short-finned pilot whale. This species assignment is much more specific than "unidentified cetacean" (there are 52 cetacean species). Because the species identity is known within two possible candidates, NMFS has used all other interactions with those two species to develop a proration model for assigning these blackfish interactions to be false killer whales or short-finned pilot whales. All available interaction data inform the proration scheme. Cetacean interactions with a species identity of "unidentified cetacean" are not currently prorated to any specific species and are therefore not included in any assessment of mortality and serious injury.

NMFS appreciates that the explanation for the proration of shallow-set fishery interactions was not entirely clear within the draft SAR and has updated the language to be more explicit about the treatment of interactions within that fishery. Shallow-set fishery interactions have not been extrapolated or prorated among regions. Shallow-set fishery interactions are only prorated among stocks if the take occurred within an overlap zone.

Comments on Alaska Regional Reports

Comment 51: Among its comments on the draft 2014 SARs, the Commission

recommended that NMFS: (1) "provide an update on the status of the development of a statewide program for monitoring subsistence hunting and harvests," and (2) "[adjust] the language in the SARs . . . to reflect these efforts and address the concerns about [the] shortcoming[s]" with regard to reporting subsistence harvests. The Commission recognizes and appreciates the corresponding updates made by NMFS to the draft 2015 SARs for ringed, ribbon, and bearded seals, and encourages NMFS to continue to provide updated information wherever it is available, even if only for a limited number of villages or a subset of years. In addition, the Commission recommends that NMFS pursue the funding necessary for more comprehensive surveys of native harvests of marine mammals. The Commission is open to providing what support it can to NMFS' survey efforts and to helping address the lack of funding for such a program.

Response: NMFS recently conducted a protected species science program review of the Alaska Fisheries Science Center (AFSC). The review generated several recommendations. Recommendation 1.6 directs NMFS to pursue support for bycatch and harvest monitoring in particularly risky fisheries or regions. The AFSC response notes that monitoring harvest levels is currently unfunded, and while resources are limited the AFSC will work with the NMFS Alaska Regional Office to develop a joint list of priorities for understanding harvest levels so both entities can solicit additional resources and coordinate to achieve this objective. We welcome the opportunity to collaborate with other organizations, including the Commission, who might have funding to support this critical information need.

Comment 52: In the draft 2014 SAR for the North Pacific stock of right whales, NMFS has removed the following statement at the end of the PBR section: "Regardless of the PBR level, because this species is listed under the Endangered Species Act and no negligible impact determination has been made, no human-caused takes of this population are authorized; PBR for this stock is 0." Elsewhere the report states that the eastern stock of North Pacific right whales "is currently the most endangered stock of large whales in the world for which an abundance estimate is available." In addition, NMFS acknowledges that, given documented threats to North Atlantic right whales, North Pacific right whales are at risk of entanglement in fishing gear and ship strike, and that because of limited information on the population, and limited stranding program coverage in Alaska, these risks cannot be easily quantified. The calculated PBR of 0.05 for this stock suggests that the population could sustain one take in twenty years. However, only one-third of the population of approximately 30 individuals is female; therefore, the loss of just one female would have serious consequences for population recovery. Given the status of the population, the risks it faces, and the extreme uncertainty about the magnitude of those risks, the Commission recommends that NMFS replace the statement above with a statement that recognizes that the stock cannot sustain any losses and therefore PBR should be set at zero.

Response: Pursuant to section 117 of the MMPA, NMFS has included an estimate of the stock's PBR in the SAR. However, this calculated PBR is considered unreliable because the stock's population dynamics do not conform to underlying assumptions about the population growth model for marine mammals in the PBR equation. Therefore, we will add the following sentence to the end of the PBR section in the final 2015 North Pacific right whale SAR: "However, because the North Pacific right whale population is far below historical levels and considered to include less than 30 mature females, the calculated value for PBR is considered unreliable."

Comment 53: We disagree with the draft SARs change of PBR for the North Pacific right whale from 0 to 0.05, which would be the equivalent to one take every 20 years because there is no take from this population that will allow the stock to reach its OSP. The low abundance in and of itself may inhibit recovery. One example is that Pacific right whales rarely have epibiotic barnacles, possibly because the barnacles have declined at the same time as the whales; and, thus, the whales have now lost protection that barnacles offered from killer whale attacks. The low estimated minimum abundance (25.7) for this population dictates that there is no take level that will not negatively affect recovery; thus, PBR ought to be zero until the population increases to a point where the Allee effect is weak or non-existent. NMFS' reliance on a purely quantitative definition of PBR leads to illogical results because PBR will essentially never be calculated to be zero unless the minimum population estimate is zero. NMFS recognized as much in the 2014 SAR when it assigned a PBR of 0, irrespective of the result of the calculation, because the species is listed under the ESA, no negligible impact determination has been made, and no human-caused takes of this population were authorized. And NMFS's treatment of PBR for North Pacific right whales is entirely inconsistent with its approach for North Atlantic right whales, which were assigned a PBR of 0 when the minimum population estimate was 345 individuals, because of the significant threat of extinction facing the population.

Response: See response to Comment 52.

Comment 54: In general, the SARs' estimation of animals being killed or seriously injured in commercial fisheries is inadequate, and it is misleading to assume no serious injury of mortality occurs where a fishery has not been observed. The Alaska SRG noted that the federally-managed fisheries generally provide estimates of marine mammal takes but that state-managed nearshore fisheries, "especially those using gillnets, operate in areas used by large numbers of marine mammals and use gear types known to catch mammals, turtles, and seabirds worldwide." The SRG notes that more than half of the state-managed Category II fisheries that were to be observed through the Alaska Marine Mammal Observer Program have not been observed at all. It is vital that NMFS meet its obligations to provide updated information on fisheries interacting with the estimated level of mortality and serious injury to which stocks are subjected by commercial fisheries.

Response: NMFS acknowledges the need to provide updated estimations of marine mammal M/SI for fisheries that interact with marine mammals. While many federal fisheries in Alaska are regularly observed, with marine mammal M/SI data collected, the agency does not have sufficient resources to fully monitor all Alaska state-managed salmon gillnet fisheries. With the implementation of the 1994 amendments to the MMPA, the process for classifying commercial fisheries under the annual List of Fisheries was revised to take into account each marine mammal stock's PBR level relative to a fishery's M/SI from each marine mammal stock. NMFS has maintained in the two decades since then that observer data is the most reliable source of M/SI estimates. Although some anecdotal information on marine mammal M/SI does come from stranding and fishermen's self-reports, that information is not considered as comprehensive or statistically reliable as observer data.

With implementation of section 118 of the MMPA amendments in 1994, eight Alaska state-managed salmon gillnet fisheries were classified as Category II fisheries (per 50 CFR 229.2), despite a lack of observer data on incidental M/SI or in some cases even anecdotal take reports, to allow for future collection of statistically reliable M/SI data. This action was based on the understanding that gillnets are known to incidentally catch marine mammals in the rest of the United States and throughout the world. Of those eight fisheries, five fisheries have been observed, once each for a two-year period (although the Southeast Alaska salmon drift gillnet fishery has been observed in only a portion of its range to date). The remaining three unobserved fisheries from that original list of eight are the Bristol Bay salmon set and drift gillnet fisheries and the Alaska Peninsula salmon set gillnet fishery. Three other salmon gillnet fisheries were observed prior to 1994 and have not been observed again. NMFS acknowledges that this level of coverage since the 1994 MMPA amendments does not adequately meet the need for robust, timely M/SI estimates that the section 118 framework for fishery-marine mammal interactions requires. If a fishery has previously been observed, but is not currently observed, the estimates derived from available observer data are considered the best available until they can be updated. If a fishery has never been observed, the level of marine mammal M/SI is considered unknown. The agency does not assume that the level of M/SI is zero if a fishery is not observed. Where necessary, we will clarify this in the Alaska SARs.

As additional resources become available, NMFS will seek to provide more robust observer coverage of the state-managed Category II gillnet fisheries in Alaska, including gillnet fisheries that have never been observed, as well as to update existing M/SI estimates. However, NMFS is reviewing ways to assess the marine mammal M/SI in these fisheries in a more economical manner.

Comment 55: While we applaud the recent research into harbor porpoises in Southeast Alaska, it appears that too little data collection has occurred to prevent undetected population declines. We request with urgency that: (1) NMFS redefine the SE AK harbor porpoise stock into two stocks—one at Glacier Bay/Icy Strait and one near Wrangell and Zarembo Islands, and (2) require observer coverage in the salmon and Pacific herring fisheries, which may be contributing to the decline in the Wrangell and Zarembo stock. The draft SARs note that Dahlheim et al. (2015) suggest that these areas may represent different subpopulations and incidental takes from commercial fisheries are concerning. In this situation, the benefit of the doubt should go to conservation of the marine mammals. We note that Chairman Lowry of the SRG stated that harbor porpoise are at the top of the SRG's list of concerns. We hope that the final SARs can address this concern by identifying two separate stocks of harbor porpoise in Southeast Alaska.

Response: There are two key issues: Available data and process. Prior to developing the draft 2015 SAR for Southeast Alaska harbor porpoise, Alaska Fisheries Sceince Center (AFSC)'s Marine Mammal Laboratory (MML) staff discussed available information on Southeast Alaska harbor porpoise groups with experts on harbor porpoise on the west coast and in Alaska. The group of experts discussed multiple lines of evidence that might support at least two separate stocks, and they identified additional supporting studies, including genetics and satellite tagging, which would be useful in making this determination. NMFS is supporting such studies as resources are available. In the meantime, NMFS used information provided in Dahlheim et al. (2015) to calculate an Nmin and putative PBR level for the harbor porpoise group in the Wrangell and Zarembo Islands area of the inside waters of Southeast Alaska in the draft 2015 SARs and will be using information in Dahlheim et al. (2015) to calculate an Nmin and putative PBR level for the concentrations of harbor porpoise in the northern and southern regions of the inside waters of Southeast Alaska in the draft 2016 SARs. NMFS will evaluate whether these harbor porpoise groups should be considered "prospective stocks" in future SARs and will continue to review new information on harbor porpoise to assess whether formal designation of multiple stocks in Southeast Alaska is appropriate.

Identification of a new stock is considered a major change to a SAR and should be proposed in a draft SAR so it has the benefit of being reviewed by the SRG and the public. NMFS does not make a change like this in a final SAR but will consider making this change in a future draft SAR for this stock if the available data support such a change.

Further, Category II fisheries, including many of the Alaska state-managed gillnet fisheries, are already subject to observer coverage. See response to Comment 29 regarding prioritizing observer coverage and funding.

Comment 56: NMFS updated the assessment for humpback whale, Central North Pacific stock, based on an unpublished multi-strata model (Wade *et al.*, in review) that, to our knowledge, is not publicly available and thus cannot be commented upon effectively. Peer-reviewed literature should be a primary source of information for SARs.

Response: Since Wade *et al.* (in review) has not been published, we have removed the updated population estimates (based on this paper) from the final 2015 Central North Pacific and Western North Pacific humpback whale SARs.

Comment 57: NMFS has declared a large whale UME because of elevated strandings since May 2015. Through December 1, 2015, there have been 45 large whales stranded, at least eleven of which were fin whales (as of mid-August). The SARs should reflect updated information on the extent of the strandings in order to provide relevant context for the information reported in the SARs.

Response: We will add information about the Large Whale UME in the western Gulf of Alaska to the draft 2016 Northeast Pacific fin whale, Central North Pacific humpback whale, and Western North Pacific humpback whale SARs.

Comment 58: The SARs should incorporate known data about spatial and temporal overlap of bowhead whales and Alaska fisheries in order to approximate areas and times of highest risk of entanglements that may go unobserved or unreported. The draft SAR notes a couple of incidents of historical entanglements of bowhead whales in commercial fisheries in Alaska, but should be updated to acknowledge the spatial overlap of certain fisheries with this stock, per Citta *et al.* (2014).

Response: NMFS has updated the Fisheries Information section of the final 2015 Western Arctic bowhead whale SAR to incorporate a reference to Citta et al.'s (2014) findings on the stock's spatial and temporal overlap with commercial pot fisheries in the Bering Sea.

Comment 59: The discussion of habitat concerns for bowhead whale should be updated to recognize the work of Blackwell et al. (2015), which showed that bowhead whales exhibit different behavioral responses depending on noise thresholds when in proximity to seismic operations. Calling rates first increase when the initial airgun pulses are detected, then decrease rapidly when airgun sounds exceed a threshold.

Response: NMFS has updated the Habitat Concerns section of the final 2015 Western Arctic bowhead whale SAR with a reference to Blackwell et al.'s (2015) study.

Dated: June 9, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–14015 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; reopening of application window for Advisory Committee nominations.

SUMMARY: Through this Notice, the National Telecommunications and Information Administration (NTIA) is reopening an application window for nominations to the Commerce Spectrum Management Advisory Committee (CSMAC). On March 29, 2016, NTIA published a Notice seeking nominations to the CSMAC with a deadline of May 13, 2016. In reopening this application window, NTIA seeks to expand the pool of applicants and best ensure the composition of the committee reflects balanced points of view.

DATES: Applications must be postmarked or electronically transmitted to the address below on or before June 24, 2016.

ADDRESSES: Persons may submit applications to David J. Reed, Designated Federal Officer, by email to *dreed@ntia.doc.gov* or by U.S. mail or commercial delivery service to Office of Spectrum Management, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4600, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David J. Reed at (202) 482–5955 or *dreed@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: The CSMAC was established and chartered by the Department of Commerce under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and pursuant to Section 105(b) of the National Telecommunications and Information Administration Organization Act, as amended, 47 U.S.C. 904(b). The Department of Commerce re-chartered the CSMAC on March 3, 2015, for a two-year period. More information about the CSMAC may be found at *http://www.ntia.doc.gov/category/csmac.*

On March 29, 2016, NTIA published a Notice in the **Federal Register** seeking nominations for appointment to the CSMAC. *See* Commerce Spectrum Management Advisory Committee; Call for Applications, 81 FR 17446 (March 29, 2016), *available at http://www.ntia.doc.gov/files/ntia/publications/fr_csmac_applications_call_03292016.pdf.* The original application deadline was May 13, 2016.

Through this Notice, NTIA is reopening the application window for 10 days to expand the pool of applicants and best ensure the composition of the committee reflects balanced points of view (*e.g.,* past professional or academic accomplishments, industry sector representation, and educational background). All other requirements for appointment to the CSMAC appear in the **SUPPLEMENTARY INFORMATION** section of the March 29, 2016, Notice.

Dated: June 8, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–13971 Filed 6–13–16; 8:45 am]

BILLING CODE 3510–10–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0099, Process for a Swap Execution Facility or Designated Contract Market To Make a Swap Available To Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act ("PRA"), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. This notice solicits comments on the process for a designated contract market (DCM) or a swap execution facility (SEF) to make a swap available to trade and therefore subject to the trade execution requirement pursuant to the Commodity Exchange Act ("CEA"). This process imposes rule filing requirements on a DCM or a SEF that wishes to submit a swap as available to trade.

DATES: Comments must be submitted on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by "Renewal of Collection Pertaining to Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade" by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Roger Smith, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5344; email: *rsmith@cftc.gov,* and refer to OMB Control No. 3038–0099.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade (OMB Control No. 3038–0099). This is a request for extension of a currently approved information collection.

Abstract: The collection of information is needed to help determine which swaps should be subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act pursuant to Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. A SEF or DCM that submits a determination that a swap is available to trade must address at least one of several factors to demonstrate that the swap is suitable for trading pursuant to the trade execution requirement. The Commission uses the collection of information to facilitate the application of the trade execution requirement and the requirements associated with methods of execution under parts 37 and 38 of the Commission's regulations. With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: Sections 37.10 and 38.12 of the Commission's regulations result in information collection requirements within the meaning of the PRA. This regulation permits a SEF or DCM to submit a determination that a swap is available to trade to the Commission via filing procedures set forth in part 40 of the Commission's regulations. The Commission estimates the burden of reviewing the prescribed factors and data to make a determination for this collection to be 16 hours per response.

Respondents/Affected Entities: SEFs, DCMs.

Estimated number of respondents: 5.[2]

Estimated total annual burden on respondents: 80 hours.

Frequency of collection: On occasion.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 9, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–14029 Filed 6–13–16; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] The CFTC had estimated 50 respondents, *i.e.,* registered entities, that would file determinations with the CFTC. 78 FR 33618. The CFTC is revising this estimated number of respondents based on the number of determinations that have been filed since the effective date of the rule. In the fall of 2013, four SEFs and one DCM self-certified rules, pursuant to § 40.6 filing procedures, based upon each SEF's or DCM's respective determinations that certain credit default swaps ("CDS") and interest rate swap contracts ("IRS") were made available to trade.

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0030]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Generic Information Collection Plan for the Office of Intergovernmental Affairs Outreach Activities."

DATES: Written comments are encouraged and must be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OMB:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or fax to (202) 395–5806. Mailed or faxed comments to OMB should be to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. *Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link active on the day following publication of this notice). Select "Information Collection Review," under "Currently under review, use the dropdown menu "Select Agency" and select "Consumer Financial Protection Bureau" (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this email box.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Office of Intergovernmental Affairs Outreach Activities.

OMB Control Number: 3170–0041.

Type of Review: Extension without change of a currently approve collection.

Affected Public: State, local, or Tribal governments.

Estimated Number of Annual Respondents: 400.

Estimated Total Annual Burden Hours: 3,200.

Abstract: The Office of Intergovernmental Affairs (IGA) at the Bureau requests OMB's approval for an extension without change this generic information collection plan (GICP) in order to collect information from State, local, and tribal governments. These governments interact closely with

consumers and are critical partners in promoting transparency and competition in the consumer financial products marketplace, eliminating unfair and unlawfully discriminatory practices, and enforcing consumer financial laws. The outreach activities performed by IGA will collect low-burden, non-generalizable information through this GICP on trends in consumer financial markets, enforcement actions, regulatory and supervisory issues, and consumer needs at the State, local, and tribal levels. Most of this information will be in the form of government representatives providing impressions and overviews of their activities. Information will be collected on an occasional and voluntary basis from State, local, and tribal governments and from their respective trade associations.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on March 28, 2016 (81 FR 17146). Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 8, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14024 Filed 6–13–16; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No: CFPB–2016–0031]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, "Truth in Savings (Regulation DD) 12 CFR 1030."

DATES: Written comments are encouraged and must be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Truth in Savings (Regulation DD) 12 CFR 1030.

OMB Control Number: 3170–0004.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector (non-credit union depository institutions).

Estimated Number of Respondents: 129.

Estimated Total Annual Burden Hours: 573,008.

Abstract: Consumers rely on the disclosures required by The Truth in Savings Act (TISA) and Regulation DD to facilitate informed decision-making regarding deposit accounts offered at depository institutions. Without this information, consumers would be severely hindered in their ability to assess the true costs and terms of the deposit accounts offered. Federal agencies and private litigants use the records to ascertain whether accurate and complete disclosures of depository accounts have been provided to consumers. This information also provides the primary evidence of law violations in TISA enforcement actions brought by the Bureau. Without the Regulation DD recordkeeping requirement, the Bureau's ability to enforce TISA would be significantly impaired.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 7, 2016.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2016–14025 Filed 6–13–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2015–0019]

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff, G–1, Technology and Business Architecture Integration Directorate, Army Library Program, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Deputy Chief of Staff, G–1, Technology and Business Architecture Integration Directorate, Army Library Program announces a proposed public

information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 15, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Deputy Chief of Staff, G–1, Technology and Business Architecture Integration Directorate, ATTN: DAPE–TBL, 300 Army Pentagon, Washington, DC 20310–0300; or call Army Library Program at 703–695–5401.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Library Borrowers'/Users' Profile Files; General Library Information System Registration Form DA Form 7745; OMB Control Number: 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to identify individuals authorized to borrow library materials from Army libraries; to ensure that all Army library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements; to comply with the Children's Internet Protection Act and to provide authentication for borrowed electronic resources (for example, e-books, e-journals).

Affected Public: Individuals or Households and Federal Government.

Annual Burden Hours: 9,750.

Number of Respondents: 39,000.

Responses per Respondent: 1.

Annual Responses: 39,000.

Average Burden per Response: 15 minutes.

Frequency: One Time.

Respondents are Army Family members, Army retirees, DoD civilians, DoD Contractors and authorized DoD personnel who register at Army installation's Morale, Welfare and Recreation (MWR) libraries or other Army libraries in order to check out print, audio-visual, and/or electronic materials. Army MWR libraries collect name, address, phone number, DoD ID number, rank, date of birth, and email address in order to identify individuals authorized to borrow library materials, to ensure that all library property is returned, and the individual's account is cleared. As there are over 500,000 registered borrowers/users in the MWR General Library Information System (GLIS), several identifiers are needed to match the record with the person requesting service. During registration, library borrowers agree to be responsible for replacement or reimbursement for lost or damaged materials borrowed by themselves or authorized Family members using DA Form 7745. If the responsible party does not replace or reimburse the library, AR 735–17 authorizes the library to collect the cost of the item. For service members, the Defense Finance and Accounting Services (DFAS) requires at least the last four numbers of the social security number to collect the debt. Other Army libraries collect less types of personal information for the borrower/user profile such as no SSN or no DoD ID.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13979 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2013–OS–0059]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 15, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on

any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Assistant Secretary of Defense (Program Support), ATTN: Donna Livingston, 3500 Defense Pentagon, Room 3C152, Washington, DC 30301–3500, or call at 703 692–3032.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualification to Possess Firearms or Ammunition; OMB Control Number 0704–0461.

Needs and Uses: The information collection requirement is necessary to obtain written acknowledgement by the contract company and its individual Private Security Contractor (PSC) personnel, after investigation of background of PSC personnel by the contractor, verifying that such personnel are not prohibited under U.S. law (18 U.S.C. 922) to possess firearms or ammunition.

Affected Public: Business or other for profit.

Annual Burden Hours: 2,344.

Number of Respondents: 125.

Responses per Respondent: 75.

Annual Responses: 9,375.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents are contract companies and their respective individual Private Security Contractor personnel who must verify that they are not prohibited under U.S. law from possessing firearms. A signed statement is included as part of the arming authorization packet. If the validation is not included in the arming authorization package, individuals reviewing the package and approving the arming authorization cannot be readily assured of the qualifications of the individual requesting arming authorization. Establishing that contractors providing armed security are qualified is essential to insure capable force protection is provided to meet national security imperatives.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13970 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0073]

Proposed Collection; Comment Request

AGENCY: Office of the General Counsel, Standards of Conduct Office, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the General Counsel, Standards of Conduct Office, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 15, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the General Counsel, ATTN: Standards of Conduct Office (Mr. Green), 1600 Defense Pentagon, Suite 3E783, Washington, DC 20301–1600.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Post Government Employment Advice Opinion Request; DD Form 2945; OMB Control Number 0704–0467.

Needs and Uses: The information collection requirement is necessary to obtain minimal information on which to base an opinion about post Government employment of select former and departing DoD employees seeking to work for Defense Contractors within two years after leaving DoD. The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to render an advisory opinion to the employee requesting the opinion. *The National Defense Authorization of Act for Fiscal Year 2008,* Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expect to receive compensation from a DoD Contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

Affected Public: Individuals or households.

Annual Burden Hours: 250.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, section 847, requires that select DoD officials and former DoD officials who, within two years after leaving DoD, expects to receive compensation from a DoD contractor, shall, before accepting such compensation, request a written opinion regarding the applicability of post-employment restrictions to activities that the official or former official may undertake on behalf of a contractor.

The departing or former DoD employee uses the form to organize and provide employment-related information to an ethics official who will use the information to provide an opinion to the employee on the applicability of post-Government employment restrictions. The information requested is employment-related and identifying information about the person requesting the opinion.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13958 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0128]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Science, Mathematics and Research for Transformation (SMART) Program Documents; DD Forms X716, X717, X718, X719, X720, X721, X723, X724, X725, X728, X729, and X731; OMB Control Number 0704–0466.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 4,300.

Responses per Respondent: 8.5.

Annual Responses: 5,875.

Average Burden per Response: 25.5 hours.

Annual Burden Hours: 30,200.

Needs and Uses: The information collection requirement is a statutory and functional necessity to administer the SMART scholarship program. The SMART Program requires a competitive application process. All awardees must be U.S. citizens at the time of application, 18 years or older as of 1 August, 2015, able to participate in summer internships at DoD laboratories, willing to accept post-graduation employment with the DoD, be a current college student in good standing with a minimum GPA of 3.0 on a 4.0 scale (as calculated by the SMART application), pursuing an undergraduate or graduate degree in one of the 19 program funded disciplines, and eligible to obtain and maintain a secret level clearance.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–13951 Filed 6–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

Notice of Additional Public Meeting—Draft Environmental Impact Statement for the Lower Yellowstone Intake Diversion Dam Fish Passage Project, Dawson County, Montana

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In response to public request, a third public meeting is scheduled for the Draft Environmental Impact Statement for the Lower Yellowstone Intake Diversion Dam Fish Passage Project. The notice of availability and two public meetings published in the **Federal Register** on June 3, 2016 (81 FR 35754). This third public meeting will be held on Thursday, June 30, 2016, from 5:30 p.m. to 9:00 p.m., at the Lincoln Center, 415 N. 30th Street in Billings, MT. The meeting will begin with an open house at 5:30 p.m., followed by a formal presentation at 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Vanosdall, U.S. Army Corps of Engineers, 1616 Capitol Ave, Omaha, NE 68102, or *tiffany.k.vanosdall@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–13883 Filed 6–13–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Notice of Public Meeting To Inform the Human Reliability Program

AGENCY: Office of Environment, Health, Safety and Security, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy, Office of Corporate Security Strategy, Analysis and Special Operations, will conduct an Open Meeting June 28–30, 2016, to discuss best practices and recommendations for program improvement that will potentially assist in the revision to 10 CFR part 712 Human Reliability Program.

The agenda items to be considered include:

—Reliability Criteria and Monitoring
—Designation of HRP positions and methodology
—Administration and Appeals
—Best Practices for Program Implementation

DATES: The meeting will take place June 28–30, 2016, from 8:30 a.m. to 4:00 p.m. The meeting will consist of several working groups, and all groups will meet together from 1:00 p.m. to 4:00 p.m. on June 30.

Requests to attend the public meeting must be received no later than June 21, 2016. If a request to attend the public meeting is not received by June 21, 2016, attendance at the public meeting will not be permitted. Written comments may still be provided no later than July 8, 2016." Please note that due

to security considerations, two valid, government issued photo identifications must be presented to gain entrance. It is recommended that attendees arrive no later than 30 minutes ahead of the scheduled meeting for the security screening process.

ADDRESSES: The New Hope Center, 602 Scarboro Rd, Oak Ridge, TN 37830 Requests to attend the public meeting should be provided to The Department of Energy, Office of Corporate Security Strategy, Analysis and Special Operations, *ITPMO@hq.doe.gov*. SUBJECT LINE: HRP REQUEST TO ATTEND PUBLIC MEETING.

Written comments should be mailed to The Human Reliability Program, AU 1.2, 1000 Independence Ave. SW., 20585. Electronic submission is preferred, and comments can be sent to *ITPMO@hq.doe.gov* SUBJECT LINE: HRP COMMENTS.

FOR FURTHER INFORMATION CONTACT: Requests for further information should be sent to *ITPMO@hq.doe.gov* with subject line "HRP" or Regina Griego Cano at (202) 586–7079. Members of the public will be permitted to speak at the conclusion of the public meeting as time allows. If you wish to speak at the public meeting, you must provide a copy of your written remarks no later than June 23, 2016, to *ITPMO@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: 10 CFR part 712 establishes the policies and procedures for a Human Reliability Program (HRP) in the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA). The HRP is a security and safety reliability program designed to ensure that individuals who occupy positions affording access to certain materials, nuclear explosive devices, facilities, and programs meet the highest standards of reliability and physical and mental suitability. DOE is providing an opportunity for public input into the HRP and DOE regulations implementing the HRP at 10 CFR part 712.

Issued in Washington, DC, on June 7, 2016.

Regina Griego Cano,

Program Manager, Human Reliability Program (Policy), Office of Corporate Security Strategy, Analysis and Special Operations, Office of Environment, Health, Safety and Security, Department of Energy.

[FR Doc. 2016–14019 Filed 6–13–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–130–000.
Applicants: Nevada Power Company, Sierra Pacific Power Company, South Point Energy Center, LLC.
Description: Joint Application of Nevada Power Company, et al. for Approval Under Section 203 of the Federal Power Act.
Filed Date: 6/7/16.
Accession Number: 20160607–5230.
Comments Due: 5 p.m. ET 6/28/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–113–000.
Applicants: Mariah del Norte LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Mariah del Norte LLC.
Filed Date: 6/7/16.
Accession Number: 20160607–5236.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: EG16–114–000.
Applicants: Kingman Wind Energy I, LLC.
Description: Notification of Self-Certification of Exempt Wholesale Generator Status of Kingman Wind Energy I, LLC.
Filed Date: 6/8/16.
Accession Number: 20160608–5104.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: EG16–115–000.
Applicants: Kingman Wind Energy II, LLC.
Description: Notification of Self-Certification of Exempt Wholesale Generator Status of Kingman Wind Energy II, LLC.
Filed Date: 6/8/16.
Accession Number: 20160608–5106.
Comments Due: 5 p.m. ET 6/29/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–425–002.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO compliance effective date notification re: Scarcity Pricing to be effective 6/21/2016.
Filed Date: 6/7/16.
Accession Number: 20160607–5199.
Comments Due: 5 p.m. ET 6/28/16.
Docket Numbers: ER16–1509–001.
Applicants: New Wave Energy Corp.
Description: Tariff Amendment: Amended Market Based Rate Tariff of New Wave Energy Corporation to be effective 6/27/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5039.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: ER16–1894–000.
Applicants: Southern California Edison Company.
Description: Tariff Cancellation: Notices of Cancellation LGIA Alta Wind Alta Q153 & Alta Q97 Projects to be effective 8/8/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5075.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: ER16–1895–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: First Revised Service Agreement No. 3876; Queue Position Y1–069/AA1–056 to be effective 5/10/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5131.
Comments Due: 5 p.m. ET 6/29/16.
Docket Numbers: ER16–1896–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Section 205(d) Rate Filing: 2016–06–08_SA 2922 Ameren Illinois-IMEA Mascoutah CA (Hillgard) to be effective 5/9/2016.
Filed Date: 6/8/16.
Accession Number: 20160608–5147.
Comments Due: 5 p.m. ET 6/29/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–36–000.
Applicants: Indianapolis Power & Light Company.
Description: Application of Indianapolis Power & Light Company under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Short-Term Debt Instruments.
Filed Date: 6/7/16.
Accession Number: 20160607–5228.
Comments Due: 5 p.m. ET 6/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13980 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–1–000]

Tektronix, Inc.; Notice of Filing

Take notice that, on May 20, 2016, Tektronix, Inc. (Tektronix) filed a Petition for Review of Denial of Adjustment Request, pursuant to section 504(b) of the Department of Energy Organization Act, 42 U.S.C. 7194(b), and section 385.1004 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 385.1004. Tektronix's petition requests review of the April 20, 2016 Decision and Order issued in Case Number EXC–16–007 by the Department of Energy's Office of Hearings and Appeals. In addition, Tektronix is concurrently requesting a hearing in accordance with section 385.1006 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 29, 2016.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13974 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–7–000]

Commission Information Collection Activities (FERC Form 6–Q); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC Form 6–Q (Quarterly Financial Report of Oil Pipeline Companies) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** (81 FR 19166, 4/4/2016) requesting public comments. The Commission received no comments on the FERC Form 6–Q and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by July 14, 2016.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0206, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov*. Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC16–7–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp*. For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC Form 6–Q, Quarterly Financial Report of Oil Pipeline Companies.[1]

OMB Control No.: 1902–0206.

Type of Request: Three-year extension of the FERC Form 6–Q information collection requirements with no changes to the current reporting requirements.

Abstract: Under the Interstate Commerce Act (ICA),[2] the Commission is authorized and empowered to make investigations and to collect and record data to the extent FERC may consider to be necessary or useful for the purpose of carrying out the provisions of the ICA. FERC must ensure just and reasonable rates for transportation of crude oil and petroleum products by pipelines in interstate commerce.

The Commission uses the information collected by FERC Form 6–Q to carry out its responsibilities in implementing the statutory provisions of the ICA to include the authority to prescribe rules and regulations concerning accounts, records, and memoranda, as necessary or appropriate. Financial accounting and reporting provides necessary

[1] The renewal request in this IC docket is for the current FERC Form 6–Q, with no change to the reporting requirements. The FERC Form 6–Q is also part of the Forms Refresh effort (started in Docket No. AD15–11), which is a separate activity.

[2] 49 U.S.C. part 1, section 20, 54 Stat. 916.

information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform System of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period, service, or line of business.

The Commission uses data from the FERC Form 6–Q to assist in:

1. Implementation of its financial audits and programs,
2. continuous review of the financial condition of regulated companies,
3. assessment of energy markets,
4. rate proceedings and economic analyses, and
5. research for use in litigation.

Financial information reported on the quarterly FERC Form 6–Q provides FERC, as well as customers, investors and others, an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It also provides timely disclosures of the impacts that new accounting standards, or changes in existing standards, have on jurisdictional entities, as well as the economic effects of significant transactions, events, and circumstances. The reporting of this information by jurisdictional entities assists the Commission in its analysis of profitability, efficiency, risk, and in its overall monitoring.

Type of Respondents: Oil pipelines.

Estimate of Annual Burden:[3] The Commission estimates the annual public reporting burden for the information collection as:

FERC FORM 6–Q: QUARTERLY FINANCIAL REPORT OF OIL COMPANIES

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[4] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
175	3	525	150 $10,800	78,750 $5,670,000	$32,400

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13975 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] The estimates for cost per response are derived using the 2015 FERC average salary plus benefits of $149,489/year (or $72.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2816–048]

North Hartland, LLC—New Hampshire, North Hartland, LLC—Vermont; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 25, 2016, North Hartland, LLC—New Hampshire (transferor) and North Hartland, LLC—Vermont (transferee) filed an application for the transfer of license of the North Hartland Project No. 2816. The project is located at the existing U.S. Army Corps of Engineers' North Hartland Dam on the Ottauquechee River in Windsor County, Vermont.

The applicants seek Commission approval to transfer the license for the North Hartland Project from the transferor to the transferee. This transfer of license reflects an internal corporate reorganization. The transferor will be merged into newly created transferee.

Applicants Contact: Mr. Andrew Locke, Messalonskee Stream Hydro, LLC, c/o Essex Hydro Assets, 55 Union Street, 4th Floor, Boston, MA 02108, Phone: 617–367–0032, Email: *alocke@essexhydro.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2816–048.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13972 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 16, 2016, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **NOTE**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1028TH—MEETING, REGULAR MEETING

[June 16, 2016, 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD16–1–000	Agency Administrative Matters.
A–2	AD16–7–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E–1	RM16–1–000	Reactive Power Requirements for Non-Synchronous Generation.
E–2	RM15–24–000	Settlement Intervals and Shortage Pricing in Markets Operated by Regional Transmission Organizations and Independent System Operators.
E–3	RM16–15–000	Regulations Implementing FAST Act Section 61003–Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information.
E–4	RM15–25–000	Availability of Certain North American Electric Reliability Corporation Databases to the Commission.
E–5	EL16–61–000	Midcontinent Independent System Operator, Inc.
E–6	EL16–48–000	NextEra Energy Power Marketing, LLC and Northeast Energy Associates, a Limited Partnership v. ISO New England Inc.
E–7	RM01–8–000	Filing Requirements for Electric Utility Service Agreements.
	RM10–12–000	Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.
	RM12–3–000	Revisions to Electric Quarterly Report Filing Process.
	ER02–2001–000	Electric Quarterly Reports.
E–8	EL16–55–000	Interconnect Solar Development LLC.
	QF11–204–002.	
	QF11–205–002.	
E–9	ER16–1443–000	NRG Power Midwest, LP.
	EL16–72–000.	
E–10	OA16–1–000	Arizona Public Service Company.
E–11	OMITTED.	
E–12	ER12–2302–004	Midwest Independent Transmission System Operator, Inc.
E–13	ER16–644–000	Entergy Arkansas, Inc.
E–14	ER16–1041–000	ISO New England Inc.
E–15	ER15–2239–002	NextEra Energy Transmission West, LLC.
E–16	EL16–39–000	Tri-State Generation and Transmission Association, Inc.
E–17	EL14–94–001	PJM Interconnection, L.L.C.
	ER16–1291–000	
	(Not Consolidated).	
E–18	OMITTED.	
E–19	ER16–209–001	Southwest Power Pool, Inc.
E–20	ER15–623–006	PJM Interconnection, L.L.C.
	ER15–623–007.	
	ER15–623–008.	
	EL15–29–004.	
	EL15–80–001	Advanced Energy Management Alliance Coalition v. PJM Interconnection, L.L.C.
	GAS	
G–1	RP12–479–001	ANR Storage Company.
	HYDRO	
H–1	P–12486–008	Twin Lakes Canal Company.
H–2	P–2082–027	PacifiCorp.
H–3	P–8722–018	David O. Harde.
H–4	P–2146–195	Alabama Power Company.

1028TH—MEETING, REGULAR MEETING—Continued

[June 16, 2016, 10:00 a.m.]

Item No.	Docket No.	Company
	CERTIFICATES	
C–1	CP15–552–000	Northern Natural Gas Company.
C–2	CP16–70–000	Impulsora Pipeline, LLC.
C–3	CP15–29–001	Transcontinental Gas Pipe Line Company, LLC.
	CP15–482–001	Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.
C–4	CP14–509–003 RP16–212–001.	Paiute Pipeline Company.

Dated: June 9, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

A free webcast of this event is available through *www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar.

The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016–14145 Filed 6–10–16; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket No.
Golden Fields Solar I, LLC	EG16–62–000
Live Oak Solar, LLC	EG16–63–000
White Pine Solar, LLC	EG16–64–000
White Oak Solar, LLC	EG16–65–000
Brady Wind, LLC	EG16–66–000
Brady Wind II, LLC	EG16–67–000
Alta Windpower Development, LLC.	EG16–68–000
Roswell Solar, LLC	EG16–69–000
Chaves Country Solar, LLC	EG16–70–000
Hidalog Wind Farm LLC	EG16–71–000
Jericho Rise Wind Farm LLC	EG16–72–000
Ninnescah Wind Energy, LLC.	EG16–74–000
Antelope Big Sky Ranch LLC	EG16–75–000
Copper Mountain Solar 4, LLC.	EG16–76–000
MS Solar 3, LLC	EG16–77–000
MS Solar 2, LLC	EG16–78–000

Take notice that during the month of May 2016, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: June 8, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13981 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–65–000]

Northampton Generating Company, L.P.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 3, 2016, the Commission issued an order in Docket No. EL16–65–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of Northampton Generating Company, L.P.'s reactive power rates. *Northampton Generating Co.,* 155 FERC 61,242 (2016).

The refund effective date in Docket No. EL16–65–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13960 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2576–168]

FirstLight Hydro Generating Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2576–168.

c. *Date Filed:* March 4, 2016.

d. *Applicant:* FirstLight Hydro Generating Company.

e. *Name of Project:* Housatonic River Hydroelectric Project.

f. *Location:* The Shepaug Development (Lake Lillinonah) in Litchfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Howard Person, Plant Manager, 143 West Street, Suite E, New Milford, CT 06776, (860) 350–3617.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests: July 8, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2576–168.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* FirstLight Hydro Generating Company proposes to permit the expansion of West Cove Marina from the existing 25 boat slips to a total of 136 boat slips distributed across 8 docks, as well as construction of a new gasoline dock to replace the existing gasoline dock. Although the majority of the site has been previously developed, minor earthwork would be performed to install the 8 concrete pads for connecting the docks to shore.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13977 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5073–095]

Benton Falls Associates, New York LP; Benton Falls Associates, Maine LP; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On May 25, 2016, Benton Falls Associates, New York LP (transferor) and Benton Falls Associates, Maine LP (transferee) filed an application for the transfer of license of the Benton Falls Project No. 5073. The project is located on the Sebasticook River in Kennebec County, Maine.

The applicants seek Commission approval to transfer the license for the Benton Falls Project from the transferor to the transferee. This transfer of license reflects an internal corporate reorganization. The transferor will be merged into newly created transferee.

Applicants Contact: Mr. Andrew Locke, Messalonskee Stream Hydro, LLC, c/o Essex Hydro Assets, 55 Union Street, 4th Floor, Boston, MA 02108, Phone: 617–367–0032, Email: *alocke@essexhydro.com*.

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov*.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–5073–095.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13973 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2474–051]

Erie Boulevard Hydropower, L.P.; Notice of Application for Amendment of License Modifying Flashboard System and Flow Discharge Location under Article 405, and Soliciting Comments, Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 2474–051.

c. *Date Filed:* May 18, 2016.

d. *Applicant:* Erie Boulevard Hydropower, L.P. (licensee).

e. *Name of Project:* Oswego River Project.

f. *Location:* The Oswego River Project is located on the Oswego River near the towns of Fulton, Minetto, and Oswego, in Oswego County, New York. The project consists of 3 developments, Fulton, Minetto, and Varick in upstream to downstream order.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Danial Daoust, Erie Boulevard, L.P., Brookfield Renewable Energy Group, 33 West First St., Fulton, NY 13069, 315–596–6131.

i. *FERC Contact:* Mr. Mark Pawlowski 202–502–6052, *mark.pawlowski@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* June 23, 2016.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2474–051) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee requests approval to reverse the direction of the stepped flashboard system at the Oswego River Project's Varick development and install a trip flashboard section on the eastern side of the dam adjacent to Leto Island. The licensee maintains the stepped flashboard system so that the tallest 36-inch flashboard section is located on the eastern side of the dam adjacent to Leto Island while stepping down in height to the shortest 10-inch flashboard section located on the western side of the dam adjacent to the existing sluice gate and state head gates. The licensee proposes to reverse the direction of the stepped flashboard by moving the tallest flashboard section to the western side of the dam adjacent to the existing sluice gate and state head gates and stepping down in height in an easterly direction toward Leto Island.

Under article 405, the licensee is required to maintain seasonal bypassed reach minimum flows ranging from 200 cubic feet per second (cfs) between June 1 and September 15 to 800 cfs during the springtime walleye spawning season. The remainder of the year the licensee is required to maintain a 400 cfs minimum flow. The proposed trip flashboard would be installed on the dam adjacent to Leto Island and be designed to discharge a minimum flow of 200 cfs at the lowest allowable impoundment elevation at the Varick development. The first 200 cfs of the minimum flow requirements of article 405 would continue to be discharged through the existing sluice gate.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS"; "PROTESTS", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 8, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–13976 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1871–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: Amended LGIA RE Astoria LLC, RE Astoria 2 LLC—Revised Added Facilities Rate to be effective 4/11/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5120.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1872–000.
Applicants: Marshall Solar, LLC.
Description: Baseline eTariff Filing: Marshall Solar, LLC Application for Market-Based Rates to be effective 8/2/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5124.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1873–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: GIA & Distribution Service Agreement Desert Water Agency Whitewater Project to be effective 6/1/2016.

Filed Date: 6/3/16.
Accession Number: 20160603–5135.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1874–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: Revisions to Financial Statements Reporting Requirements under the FAP to be effective 8/5/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5150.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1875–000.
Applicants: Hydro Renewable Energy Inc.
Description: Baseline eTariff Filing: Hydro Renewables MBR Tariff Filing to be effective 8/2/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5154.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1876–000.
Applicants: PacifiCorp.
Description: Section 205(d) Rate Filing: Lower Valley Energy ? Ancillary Services Agreement to be effective 8/3/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5167.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1877–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: FERC Electric Tariff Volume 5 Revision to be effective 8/3/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5204.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: ER16–1878–000.
Applicants: Ringer Hill Wind, LLC.
Description: Baseline eTariff Filing: Ringer Hill Wind, LLC FERC Electric Tariff, Original Baseline to be effective 9/16/2016.
Filed Date: 6/3/16.
Accession Number: 20160603–5221.
Comments Due: 5 p.m. ET 6/24/16.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD16–7–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Six NERC Glossary Definitions and Request for Shortened Response Period and Expedited Action.
Filed Date: 6/3/16.
Accession Number: 20160602–5480.
Comments Due: 5 p.m. ET 6/17/16.

Docket Numbers: RD16–7–000.
Applicants: North American Electric Reliability Corporation.
Description: Errata to the Petition of the North American Electric Reliability Corporation for Approval of Six NERC Glossary Definitions and Request for Shortened Response Period and Expedited Action.
Filed Date: 6/3/16.
Accession Number: 20160603–5203.
Comments Due: 5 p.m. ET 6/17/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 3, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–13959 Filed 6–13–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0341; FRL–9947–17–OAR]

Notice of Availability of the Environmental Protection Agency's Two Updated Chapters in the EPA Air Pollution Control Cost Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability (NOA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that two chapters of the EPA Air Pollution Control Cost Manual (Control Cost Manual) have been finalized and are available to the public. These chapters, titled "Chapter 1—Selective Non-Catalytic Reduction" and "Chapter 2—Selective Catalytic Reduction" are components of "Section 4—Nitrogen Oxide Controls" and incorporate comments received on draft versions made available in a Notice of Data Availability (NODA) published on June 12, 2015. A response to comment (RTC) document summarizing comments and agency responses is available for each chapter. In addition, cost calculation information is provided electronically for each chapter enabling estimation of costs for installing and operating NOx control measures. The final chapters, RTC and cost calculation documents are available at *https://www3.epa.gov/ttn/ecas/cost_manual.html.* In addition, all public comments received by the agency are available in the docket for this Notice of Availability (EPA–HQ–OAR–2015–0341).

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions on the EPA Air Pollution Control Cost Manual update, contact Larry Sorrels, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, C439–02, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541–5041; fax number: (919) 541–0839; email address: *sorrels.larry@epa.gov.*

Information Available From This Notice

The EPA Air Pollution Control Cost Manual provides guidance for the development of accurate and consistent costs for air pollution control devices. The Control Cost Manual focuses on point source and stationary area source air pollution controls for volatile organic compounds, particulate matter, oxides of nitrogen (NO_X), and certain acid gases (primarily sulfur dioxide and hydrochloric acid). The EPA is currently updating the Control Cost Manual. This update will be the Seventh Edition and is required under the authority of the 2014 Consolidated Appropriations Act.

The Control Cost Manual contains individual chapters on control

measures, including data and equations to aid users in estimating capital costs for installation and annual costs for operation and maintenance of these measures. The Control Cost Manual is used by the EPA for estimating the impacts of rulemakings, and serves as a basis for sources to estimate costs of controls that are Best Available Control Technology under the New Source Review Permitting Program and Best Available Retrofit Technology under the Regional Haze Program and for other programs.

The two Control Cost Manual chapters that have been revised include "Chapter 1—Selective Non-Catalytic Reduction" and "Chapter 2—Selective Catalytic Reduction." These two chapters are the first two chapters to be released for the Seventh Edition of the Control Cost Manual and replace the Selective Non-Catalytic Reduction and Selective Catalytic Reduction chapters in the current Control Cost Manual Sixth Edition. A response to comment (RTC) document summarizing comments and agency responses is available for each chapter. In addition, cost calculation information is provided electronically for each chapter enabling estimation of costs for installing and operating NOx control measures. The final chapters, RTC and cost calculation documents are available at *https://www3.epa.gov/ttn/ecas/cost_manual.html*. In addition, all public comments received by the agency are available in the docket for this Notice of Availability (EPA–HQ–OAR–2015–0341).

The Control Cost Manual was last updated in 2003. The development of the Control Cost Manual Seventh Edition is in response to the Consolidated Appropriations Act of 2014, which requested that the EPA begin development of a seventh edition of the Control Cost Manual.

Dated: June 8, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–14042 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0265; FRL–9947–64–OAR]

EPA's Review of the Waste Isolation Pilot Plant's Biennial Environmental Compliance Report for the Period 2012 to 2014

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has completed its review of the Department of Energy's (DOE) most recent Biennial Environmental Compliance Report (BECR) for the Waste Isolation Pilot Project (WIPP), covering the period April 1, 2012 through March 31, 2014. Section 9(a)(2) of the WIPP Land Withdrawal Act requires the DOE to submit documentation to the EPA of the WIPP's continued compliance with designated federal laws pertaining to public health and safety or the environment. The Secretary of Energy was notified that the EPA had completed its review via a letter from EPA Administrator Gina McCarthy dated June 3, 2016.

FOR FURTHER INFORMATION CONTACT: Nick Stone, WIPP Project Officer, Mail Code 6PD–O, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202. Nick Stone may be reached by telephone at (214) 665–7226.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0265; FRL–9947–64–OAR. Docket materials are publicly available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.regulations.gov*.

II. Background

The EPA conducted this review under the authority of Section 9 of the WIPP Land Withdrawal Act (WIPP LWA, Pub. L. Nos. 102–579 and 104–201). Section 9(a)(1) of the WIPP LWA requires that, as of the date of the enactment of the WIPP LWA, the DOE shall comply with respect to the WIPP with (1) regulations for the management and storage of radioactive waste (40 CFR part 191, subpart A); (2) the Clean Air Act; (3) the Solid Waste Disposal Act; (4) the Safe Drinking Water Act; (5) the Toxic Substances Control Act; (6) the Comprehensive Environmental Response, Compensation, and Liability Act; and (7) all other applicable Federal laws pertaining to public health and safety or the environment. Section 9(a)(2) of the WIPP LWA requires the DOE biennially to submit to the EPA documentation of continued compliance with the laws, regulations, and permit requirements set forth in Section 9(a)(1).

As outlined in the EPA's letter to the Secretary of Energy, the Agency has been able to conclude its review of the WIPP BECR for the reporting period, April 1, 2012 through March 31, 2014 based on receipt of all cumulative documentation from DOE and the Settlement Agreement between the State of New Mexico and the Department. EPA will consider the DOE's compliance with the Settlement Agreement as part of its review of the Department's compliance for the next reporting period, from April 1, 2014 to March 31, 2016, and subsequent reporting periods as appropriate. The Agency will continue its oversight of the WIPP and continue to work cooperatively with the DOE, the State of New Mexico and the public to ensure that the WIPP is protective of human health and the environment. All relevant information related to this review—including this notice and the letter to the Secretary of Energy—are available online via the WIPP news Web site (*https://www.epa.gov/radiation/wipp-news*) and the aforementioned docket on regulations.gov (EPA–HQ–OAR–2016–0265).

This determination is not in any way related to, or a part of, the EPA's certification and recertification decisions regarding whether the WIPP complies with the Agency's disposal regulations for transuranic radioactive waste at 40 CFR part 191.

Dated: June 3, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–14095 Filed 6–13–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0814; FRL–9946–13]

Pesticides; Draft Guidance for Pesticide Registrants on the Determination of Minor Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled "Determination of Minor Use under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 2(ll)." PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This draft PR Notice would update section 5 of PR Notice 97–2 and provide guidance to the registrant as to how the EPA determines a "minor use." EPA seeks to identify and encourage the registration of pesticides for minor uses to protect communities from harmful pests. This draft PR Notice revises the method used by EPA for evaluating "sufficient economic incentive" under FIFRA. The draft PR Notice explains how qualitative information may be used to inform the quantitative analysis, interpret the results, and clarifies that the most recent United States Department of Agriculture (USDA) Census of Agriculture is the appropriate source for data on acreage in the United States to establish a minor use under the acreage definition in FIFRA 2(ll)(1).

DATES: Comments must be received on or before August 15, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0814, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Derek Berwald, Biological and Economic Analysis Division, MC 7503P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8115; email address: *berwald.derek@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are responsible for the initial or continuing registration of pesticides. Entities that register pesticides with EPA's Office of Pesticide Programs typically fall under the North American Industry Classification System (NAICS) Code 325300—Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing. This action may also be of interest to persons using pesticides on sites that may be considered "minor" including persons engaged in crop and livestock production, and persons engaged in pest control in residential, commercial, and municipal areas including control of public health pests, and to the public in general. Since many entities may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html*.

C. How can I get copies of this document and other related information?

A copy of the draft PR Notice is available in the docket under docket identification (ID) number EPA–HQ–OPP–2015–0814.

II. What guidance does this PR notice provide?

FIFRA defines a minor use of a pesticide as either (1) a use on a crop grown on 300,000 acres or less in the United States or (2) a use that lacks sufficient economic incentive to seek or maintain a registration but has private or social value. This draft PR Notice provides guidance to the registrant concerning the method used to determine if a use site is a "minor use" as defined by FIFRA 2(ll). In particular, the draft PR Notice describes the method for determining if the use "does not provide sufficient economic incentive." To date, EPA's interpretation of *economic* minor use in section 2(ll)(2) has been shaped by guidance provided in PR Notice 97–2. However, the approach outlined in PR Notice 97–2 ignores critical factors that influence the incentives for registration.

This draft PR Notice describes the revised approach to evaluate "sufficient economic incentive" which addresses these factors. It explicitly considers (1) the difference in time between incurring costs of generating data for registration and obtaining revenue from product sales, (2) the multiple years over which revenue is generated, and (3) the costs of producing and distributing the product. The draft PR Notice provides suggestions about the data that can be used to conduct the analysis. Finally, the draft PR Notice explains how qualitative information may be used to inform the quantitative analysis and interpret the results. It also clarifies that the most recent USDA Census of Agriculture is the appropriate source for data on acreage in the United States to establish a minor use under the acreage definition in FIFRA section 2(ll)(1).

Registrants will typically seek to demonstrate a site is a minor use in the context of requesting an extension of the

exclusive use period for data submitted in support of a registration under FIFRA section 3(c)(1)(F)(ii) or a new exclusive use period for data submitted to support a registration under FIFRA section 3(c)(1)(F)(vi). These clauses are intended to provide incentives to registrants to obtain registrations for uses that might otherwise go unfulfilled because they offer low returns because of low demand.

The information collection activities associated with the activities described in this PR Notice are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. The corresponding Information Collection Request (ICR) document for the Application for New and Amended Pesticide Registration has been assigned EPA ICR number 0277.16 and is approved OMB control number 2070–0060.

III. Do PR Notices contain binding requirements?

The PR Notice about the determination of a minor use is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 31, 2016.

Jack E. Housenger,

Director, Office of Pesticide Programs.

[FR Doc. 2016–14037 Filed 6–13–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, June 16, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes for May 19, 2016

Draft Advisory Opinion 2016–05: Huckabee for President, Inc.

Proposed Statement of Policy Regarding the Public Disclosure of Closed Enforcement Files

Other Rulemaking

REG 2016–02: Draft Interim Final Rules and Explanation and Justification: Civil Money Penalty Inflation Adjustments

Proposed Revisions to Forms 3, 3P, 3X, 6 and Instructions

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–14077 Filed 6–10–16; 11:15 am]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–16–16AQM; Docket No. CDC–2016–0052]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Presidential Youth Fitness Program (PYFP) Evaluation. The Evaluation will be conducted in approximately 11 middle schools implementing the PYFP and 11 match comparison schools and will focus on both process and outcome measures.

DATES: Written comments must be received on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0052 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Presidential Youth Fitness Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

It is well documented that obesity and a lack of physical activity (PA) among children and adolescents are current public health problems in the United States. Because school-aged children spend more than half of their waking hours in school and engage in 20%–30% of their total PA at school, schools are ideal settings for reaching a diverse cross-section of children with interventions to increase PA, including those children experiencing health disparities. This is particularly important in middle school, where research shows lower levels of physical activity when compared with younger students.

Evidence shows that multicomponent school-based physical education (PE) programs are effective at improving children's health and academic outcomes. Along with these improvements, school-based PE should provide fitness assessments, development of personal fitness plans, and improved cognitive understanding about the importance of PA and a healthy lifestyle. The Presidential Youth Fitness Program (PYFP) incorporates each of these factors. To replace normative-referenced fitness measures (*i.e.*, the President's Challenge Youth Fitness Test), the PYFP has adopted a criterion-based assessment, using the FitnessGram® fitness measurement system, which compares each student's measurements to a set of standards for fitness and health. Each student can determine where he or she falls in relation to the standard and establish a goal for reaching or exceeding it. The PYFP also adds fitness education to PE, provides professional development for PE teachers, and includes a recognition system for students who achieve Healthy Fitness Zone standards.

In 2013, the Presidential Youth Fitness Program began its first round of funding to elementary, middle and high school PE teachers who applied to the program. A second round of funding began in 2014 and a third in 2015. Each participating school receives support to implement the PYFP for three years. The resources provided to PE teachers include: Professional development training, awards for student recognition of fitness achievements, access to a professional learning community and access to FitnessGram® fitness assessment software. For the schools selected to receive PYFP support, the requirements include: (1) Information Technology (IT) manager and PE teacher participation in the FitnessGram® software training, (2) PE teacher participation in PYFP professional development training, (3) conducting FitnessGram® assessments according to the training, (4) recognizing student achievement in fitness and physical activity, (5) confirming continued participation in the program at the end of Years 1 and 2, and (6) participating in evaluation activities. The PYFP is designed to supplement the traditional PE course and support physical education (PE) teachers in laying the foundation for students to lead an active life.

CDC plans to conduct the first rigorous evaluation of the PYFP. The evaluation will assess the impact of the program on student, PE teacher and school level outcomes (outcome evaluation) as well as barriers and facilitators to program implementation (process evaluation). Evaluation activities will take place in 11 schools implementing the PYFP and 11 match comparison schools, contributing a total of 82 sixth grade PE classes. Information collection will be conducted in 6 PYFP and 6 match comparison schools in Spring 2017 and 5 PYFP and 5 match comparison schools in Fall 2017. The PYFP schools recruited to participate in the PYFP Evaluation will be identified from a list of schools receiving Round 2 or Round 3 PYFP funding and meeting the following inclusion criteria: (1) Middle school with a sixth grade, (2) sixth grade enrollment of 150 or higher, (3) 50% or more of students receiving free or reduced lunch, and (4) documented completion of PYFP professional development training. Comparison schools will be matched based on criteria 1–3 above as well as location to ensure similar PE policies and standards. The process and outcome evaluation will involve data collection activities with four respondent groups: (1) Students, (2) PE teachers, (3) parents, and (4) school administrators.

The specific aims of the outcome evaluation are to examine how the PYFP impacts student fitness and physical activity, particularly how the program impacts student: (1) Fitness knowledge and health knowledge, (2) attitudes toward physical activity, (3) motivation to be physically active, (4) physical activity levels, and (5) fitness. Surveys to be conducted at all schools include the: (1) Paper-based PYFP Student Survey, (2) online PYFP PE Teacher Survey, and (3) online PYFP School Administrator Survey. There are minor differences in the survey instruments depending on whether the school is a PYFP participant or a non-PYFP school. The outcome evaluation will also determine the changes made as a result of the PYFP such as changes at the school level (*e.g.*, improved PE and physical activity policies and practices, increased parent awareness of school PE and physical activity) and changes in PE teaching practices (*e.g.*, integration of fitness education, increased use of fitness assessment tools and improved practices for fitness testing).

The outcome evaluation will include fitness assessments with approximately 2,460 students as part of the standard PE program (1,230 PYFP sixth grade students and 1,230 non-PYFP sixth grade students). Fitness assessments will be conducted at both the beginning and end of the semester using FitnessGram®'s pacer and body composition assessments. Finally, a subset of 6 PYFP and 6 match comparison schools will assess students' physical activity levels by collecting student accelerometry data. Accelerometry will be conducted in a subset of 25 PYFP and 25 non-PYFP classes to capture data from approximately 500 students (250 students from PYFP schools and 250 students from match comparison schools). Accelerometry data collection will involve wearing the device for a week at the beginning and a week at the end of semester and noting hours of wear time and class schedule.

Information collection for the process evaluation will be conducted only in the 11 PYFP schools. The aims of the process evaluation are to describe how PYFP resources were used by teachers and schools, the strategies used by

teachers and schools to integrate fitness education and student recognition of fitness achievement into the schools, and barriers and facilitators relevant to PYFP implementation. All PYFP schools will complete cost and time use worksheets. In addition, focus groups with PE teachers, students, and parents will be conducted in a subset of 6 PYFP schools. Focus groups will take place on school grounds during or outside of the school day, depending on availability of a given respondent group.

The information collected for the PYFP evaluation will allow the CDC and partners to assess the impact of the PYFP compared with a traditional PE curriculum and gather information critical for program improvement.

OMB approval is requested for two years. Participation in the PYFP Evaluation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Numner of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
6th grade students in PYFP Schools.	FitnessGram® Data Collection Form	615	2	15/60	308
	Accelerometry Log	125	2	30/60	125
	Student Survey (PYFP Schools)	615	1	15/60	154
	Student Focus Group Moderator Guide	30	1	1	30
PE teachers in PYFP Schools.	PE Teacher Survey (PYFP Schools)	22	1	25/60	9
	PE Teacher Focus Group Moderator Guide	12	1	1	12
	PYFP Time Use Worksheet	6	1	30/60	3
School administrators in PYFP Schools.	School Administrator Survey (PYFP Schools)	6	1	20/60	2
	PYFP Cost Worksheet	6	1	1	6
Parents of 6th graders enroled in PE at PYFP Schools.	Parent Focus Group Moderator Guide	30	1	1	30
6th grade students in non-PYFP Schools.	FitnessGram® Data Collection Form	615	2	15/60	308
	Accelerometry Log	125	2	30/60	125
	Student Survey (non-PYFP Schools)	615	1	15/60	154
PE teachers in non-PYFP Schools.	PE Teacher Survey (non-PYFP Schools)	22	1	20/60	8
School Administrators in non-PYFP Schools.	School Administrator Survey (non-PYFP Schools).	6	1	20/60	2
Total					1,276

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–14016 Filed 6–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Councils or Committees; Delegation of Authority

Notice is hereby given that pursuant to section 222 of the Public Health Service Act [42 U.S.C. 217a], as amended, I have delegated to the Director, Centers for Disease Control and Prevention (CDC), authority to appoint temporary members to the National Institute for Occupational Safety and Health's Safety and Occupational Health Study Section (SOHSS).

These authorities shall be exercised under the Department's existing delegation of authority and policy on regulations. This authority must also be exercised in accordance with the Department's established policies, procedures, guidelines and regulations and with all other pertinent issuances.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, CDC, or other CDC officials which involve the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: June 7, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–13995 Filed 6–13–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–16–16AOW; Docket No. CDC–2016–0050]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the CDC I-Catalyst program. The I-Catalyst program is intended to help CDC employees get their ideas out of the starting blocks and down the track through a discovery, ideation, and prototyping process. The expected result is that CDC staff will be empowered to implement innovative strategies and solutions that create value for a set of beneficiaries.

DATES: Written comments must be received on or before August 15, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0050 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

CDC I-Catalyst Program—New—Office of the Associate Director for Science, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC Office of Technology and Innovation (OTI) within Office of the Associate Director for Science (OADS) fosters innovative science and promotes the testing and implementation of innovative ideas that improve CDC's ability to have public health impact. To arm CDC staff with an expanded skill-set and tools to evaluate and translate their insights and ideas into solutions, CDC developed an experiential innovation curriculum called I-Catalyst. The program was created with the belief that innovation should be customer driven, be based on user research, and is something people at all levels of an organization can engage in.

The goal of the I-Catalyst program is to help CDC employees test and explore their ideas through a discovery, ideation, and prototyping process. I-Catalyst offers a process for defining problems and developing strategies to solutions that will help improve the quality and efficiency of innovation efforts and, as a result, overall performance. Through the I-Catalyst Program, teams work to define and articulate their problem space to find effective solutions. Participating teams will go through a hypothesis-testing, scientific method of discovery to gather important insights and identify issues associated with their projects. Teams are forced "out of the classroom" to conduct interviews, study customer/stakeholder needs, collect feedback, and find partnership opportunities. It is expected that participants will leave the program with the ability to evaluate and translate their insights into solutions.

The I-Catalyst program provides CDC staff with real-world, hands-on entrepreneurship training. Through I-Catalyst CDC staff make hypothesis about how the world works, and then test them by getting out of the building and talking to customers and/or stakeholders. Only conversations with potential customers/stakeholders can provide the facts from which hypotheses are proven or disproven about whether a solution (whether a product, process, etc.) creates value for the intended beneficiaries. Participants have to go out into the world and learn by doing. The process will engage customers/stakeholders in a process that will identify what they most value and need and what their top barriers and pain points are, and source solutions that will have high levels of efficacy and user acceptability.

I-Catalyst combines in-class lectures with out-of-class learning and interactions with various customers/stakeholders. This curriculum requires full participation from the entire team. The program guides teams and individuals through a series of workshops that helps participants articulate a problem, create evidence-based plan for assessment, and conduct unstructured interviews with customers/stakeholders. Ongoing technical assistance and support from a cadre of experts is provided to teams as they define the problem, map their operational model, and identify and interact with customers/stakeholders. Each team member must commit to in-depth preparation, attendance at the lectures and workshops, and at least 15 additional hours per week for customer discovery.

Teams will be spending a significant amount of time in between each of the lectures outside the class talking to customers. Each week teams will conduct a minimum of five customer interviews with individuals who represent different segments of customers/stakeholders whom they expect will gain value through their solution or will benefit from value streams that are being produced by their solution (in terms of social and/or environmental impact). The types of customers or stakeholders teams'

interview will be specific to the proposed solution and context. For example, teams may interview government employees if the solution is intended to improve how government employees do their work. On the other hand, teams may interview individuals who work industry and businesses if the teams determines that they are the intended beneficiaries.

Using a generic information collection plan, this data collection covers qualitative information to be obtained through on-site, unstructured interviews with individuals who represent the customers or stakeholders CDC teams are attempting to serve or benefit. CDC anticipates conducting I-Catalyst with three cohorts of teams over the next two years. With each I-Catalyst cohort teams will interview their customers/stakeholders for an average of 30 minutes. Each team will interview approximately 50 respondents. With 8–10 teams participating in each of the three I-Catalyst training cohorts, approximately 1,500 respondents will be interviewed. Of these, approximately 40% of individuals will be internal CDC/ATSDR staff and 60% will be external partners, stakeholders, or customers. Data to be collected includes information regarding what they most value and need and their top barriers and pain points.

CDC expects that teams participating in the I-Catalyst will be empowered to implement innovative strategies and solutions that create value for a set of beneficiaries. The ultimate goal of the I-Catalyst program is to give CDC staff skills to successfully transfer knowledge into value-based solutions that benefit society and broaden the agency's impact.

Participation in the I-Catalyst interviews is completely voluntary. A three-year approval is requested. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Cohort 1:					
External Partners, Stakeholders, or Customers.	Forms will not be used	500	1	1	500
Cohort 2:					
External Partners, Stakeholders, or Customers.	Forms will not be used	500	1	1	500
Cohort 3:					
External Partners, Stakeholders, or Customers.	Forms will not be used	500	1	1	500
Total					1,500

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–13982 Filed 6–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERICES

Administration for Children and Families

Proposed Information Collection Activity: Comment Request

Proposed Projects

Title: National Study of Title IV–E Child Welfare Waiver Demonstrations.

OMB No.: New Collection.

Description: The National Study of the Title IV–E Child Welfare Waiver Demonstrations is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services and involves the conduct of a cross-site study of jurisdictions (referred to as waiver jurisdictions) approved to operate demonstrations authorized by section 1130 of the Social Security Act, as amended by the Child and Family Services Improvement and Innovation Act, Public Law 112–34. The demonstrations involve waivers of certain provisions of the foster care program authorized by title IV–E of the Social Security Act. Child welfare agencies in waiver jurisdictions are operating demonstrations to implement a variety of programs and interventions that serve children and families in an effort to improve their safety, permanency, and well-being. Each waiver jurisdiction is required to conduct a third-party evaluation of its demonstration.

The National Study will examine the extent to which safety, permanency, and well-being outcomes have improved for children and families; the characteristics of waiver jurisdictions where improvements in outcomes have occurred; expenditure patterns and the types of activities for which waiver jurisdictions have increased funding; and the extent to which waiver jurisdictions have experienced practice and systems-level changes. The National Study uses a mixed-method approach to examine 25 waiver jurisdictions (including 23 states, the District of Columbia and one tribal government) with Terms and Conditions approved in Federal Fiscal years 2012, 2013, and 2014. Proposed data collection methods are two topically-focused telephone surveys: (a) A telephone survey of waiver jurisdiction representatives and evaluators who are focused on measuring well-being, and (b) a second telephone survey of waiver jurisdiction representatives and evaluators that is focused on understanding practice and systems-level changes within child welfare service systems. Also proposed is a Web-based survey of waiver jurisdiction representatives and evaluators that will look more broadly at the implementation of waiver demonstrations and corresponding changes in child welfare policy, practice, and financing. Data collected through these instruments will be used by the Children's Bureau to gain an understanding of the jurisdictions' collective experience with implementing their demonstrations.

Respondents: The respondents to the Web-based survey will be a purposive sample of an estimated 250 waiver jurisdiction representatives and evaluators drawn from the 25 waiver jurisdictions with waiver demonstration projects (Arkansas, Arizona, Colorado, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Port Gamble S'Klallam Tribe, Rhode Island, Tennessee, Texas, Utah, Washington, Washington DC, West Virginia, Wisconsin). The Web-based survey will be administered once during the National Study. The respondents to the Well-Being telephone survey will be a purposive sample of 60 respondents identified from up to 12 waiver jurisdictions who are involved with the assessment of child and family well-being in their waiver jurisdictions. The Well-Being telephone survey will be administered once during the National Study. The respondents to the Practice and Systems-Level Change telephone survey will be a purposive sample of 60 respondents identified from up to 12 waiver jurisdictions who are knowledgeable about practice, policy, and organizational changes in their respective waiver jurisdictions. The Practice and Systems-Level Change telephone survey will be administered once during the National Study.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Web-Based Survey	250	1	0.33	82.5
Telephone Survey: Well-Being	60	1	1	60
Telephone Survey: Practice and Systems-Level Change	60	1	1	60
Estimated Total Annual Burden Hours				202.5

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collected described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C St. SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information (c) the quality, utility and clarity of the information to be collected, and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–13999 Filed 6–13–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Arthritis Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

DATES: The meeting will be held on July 12, 2016, from 7:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *AAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss biologics license application 761024, for ABP 501, a proposed biosimilar to AbbVie Inc.'s HUMIRA (adalimumab), submitted by Amgen, Inc. The proposed indications (uses) for this product are: (1) Reducing signs and symptoms, inducing major clinical response, inhibiting the progression of structural damage, and improving physical function in adult patients with moderately to severely active rheumatoid arthritis (alone or in combination with methotrexate or other non-biologic disease-modifying anti-rheumatic drugs (DMARDs)); (2) reducing signs and symptoms of moderately to severely active polyarticular juvenile idiopathic arthritis in patients 4 years of age and older (alone or in combination with methotrexate); (3) reducing signs and symptoms, inhibiting the progression of structural damage, and improving physical function in adult patients with active psoriatic arthritis (alone or in combination with non-biologic DMARDs); (4) reducing signs and

symptoms in adult patients with active ankylosing spondylitis; (5) reducing signs and symptoms and inducing and maintaining clinical remission in adult patients with moderately to severely active Crohn's disease who have had an inadequate response to conventional therapy (ABP 501 would be indicated for reducing signs and symptoms and inducing clinical remission in these patients if they have also lost response to or are intolerant to infliximab); (6) inducing and sustaining clinical remission in adult patients with moderately to severely active ulcerative colitis who have had an inadequate response to immunosuppressants such as corticosteroids, azathioprine or 6-mercaptopurine (6–MP) (the effectiveness of ABP–501 would not be established in patients who have lost response to or were intolerant to TNF blockers); and (7) treatment of adult patients with moderate to severe chronic plaque psoriasis who are candidates for systemic therapy or phototherapy, and when other systemic therapies are medically less appropriate (only to be administered to patients who will be closely monitored and have regular follow-up visits with a physician).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 27, 2016. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 17, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 20, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Moon Hee Choi at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 9, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–14017 Filed 6–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1273]

Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment." This draft guidance provides recommendations to industry for designing a nonclinical development program to support approval of drugs to treat osteoporosis. This guidance also discusses the nonclinical development of biopharmaceuticals (*e.g.*, recombinant proteins and monoclonal antibodies).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 15, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1273 for "Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment; Draft Guidance for Industry." Received comments will be placed in the docket and, except for those submitted as "Confidential

Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Gemma Kuijpers, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5374, Silver Spring, MD 20993–0002, 301–796–1243.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Osteoporosis: Nonclinical Evaluation of Drugs Intended for Treatment." This draft guidance provides recommendations to industry for designing a nonclinical development program to support approval of drugs to treat osteoporosis. In addition to the pharmacology and toxicology studies required to support development of a new drug or biologic, long-term nonclinical studies to evaluate effects on bone quality in adequate animal models and including bone-specific pharmacologic and toxicologic endpoints are needed.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on nonclinical evaluation of drugs intended for the treatment of osteoporosis. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 8, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–13988 Filed 6–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health IT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces updated dates for meetings of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). These meetings are open to the public.

Name of Committee: Health IT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the Health IT Policy Committee.

2016 Meeting Dates and Times

- May 17, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008
- June 8, 2016, from 9:30 a.m. to 12:00 p.m./Eastern Time
  - This will be a virtual meeting
- June 23, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202
- July 27, 2016 from 10:00 a.m. to 1:00 p.m./Eastern Time (replacing the formerly announced July 13 and August 7 meetings)
  - This will be a virtual meeting

For meeting locations, web conference information, and the most up-to-date information, please visit the calendar on the ONC Web site, *http://www.healthit.gov/FACAS/calendar.*

Contact Person: Michelle Consolazio, email: *michelle.consolazio@hhs.gov.* Please email Michelle Consolazio for the most current information about meetings. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups/task forces

and updates from ONC and other federal agencies. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://www.healthit.gov/facas/health-it-standards-committee.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Written submissions may be made to the contact person prior to the meeting date. Oral comments from the public will be scheduled prior to the lunch break and at the conclusion of each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Michelle Consolazio at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: June 2, 2016.

Michelle Consolazio,

FACA Program Director, Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2016–13997 Filed 6–13–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health IT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces updated dates for meetings of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). These meeting will be open to the public.

Name of Committee: Health IT Policy Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

2016 Meeting Dates and Times

- May 17, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008
- June 8, 2016, from 10:00 a.m. to 1:00 p.m./Eastern Time (replacing the June 7, 2016 meeting)
  - This will be a virtual meeting
- June 23, 2016, from 9:00 a.m. to 3:00 p.m./Eastern Time
  - This will be an in-person meeting at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202
- July 27, 2016 from 9:30 a.m. to 1:00 p.m./Eastern Time (replacing the formerly announced July 12 and August 9 meetings)
  - This will be a virtual meeting

For meeting locations, web conference information, and the most up-to-date information, please visit the calendar on the ONC Web site, *http://www.healthit.gov/FACAS/calendar*

Contact Person: Michelle Consolazio, email: *michelle.consolazio@hhs.gov.* Please email Michelle Consolazio for the most current information about meetings. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups/task forces and updates from ONC and other federal agencies. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://www.healthit.gov/FACAS/health-it-policy-committee.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Written submissions may be made to the contact person prior to the meeting date. Oral comments from the public will be scheduled prior to the lunch break and at the conclusion of each meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing wireless access or access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Michelle Consolazio at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: June 1, 2016.

Michelle Consolazio,

FACA Program Director, Office of Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2016–13998 Filed 6–13–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Urban Indian Health Programs; Urban Indian Education and Research Organization Cooperative Agreement Program Announcement Type: New and Competing Continuation Funding Announcement Number: HHS–2016–IHS–UIHP3–0001; Catalog of Federal Domestic Assistance Number: 93.193

Key Dates

Application Deadline Date: August 18, 2016.

Review Date: August 22, 2016–August 26, 2016.

Earliest Anticipated Start Date: September 15, 2016.

Proof of Non-Profit Status Due Date: August 18, 2016.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for the Urban Indian Organization Education and Research Cooperative Agreement Program. This program is authorized under the Snyder Act, 25 U.S.C. 13, and Section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a). This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.193.

Background

The Office of Urban Indian Health Programs (OUIHP) oversees the implementation of the Indian Health Care Improvement Act (IHCIA) provisions for making health services more accessible to urban Indians. Pursuant to those authorities, the IHS enters into contracts and grants with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers. Those services may include (1) alcohol and substance abuse prevention, treatment, rehabilitation and education; (2) mental health needs and assessments; (3) health promotion and disease prevention services; and (4) immunization services. The cooperative agreement provides services and advocacy for urban Indian organizations (UIOs) that include the following four core activities: (1) Public policy; (2) research and data; (3) training and technical assistance; (4) education, public relations and marketing.

Purpose

The purpose of this IHS cooperative agreement is to fund a national urban Indian organization to act as an education and research partner for OUIHP and urban Indian organizations funded under the IHCIA.

Pre-Conference Grant Requirements

The awardee is required to comply with the "HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications," dated December 16, 2013 ("Policy"), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *http://www.hhs.gov/grants/contracts/contract-policies-regulations/conference-spending/.*

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audiovisual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Shannon Beyale at (301) 945–3657 or email her at *Shannon.Beyale@ihs.gov.*

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2016 is approximately $800,000. Individual award amounts are anticipated to be between $500,000 and $800,000. The amount of funding available for competing and continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One award will be issued under this program announcement.

Project Period

The project period is for three years and will run consecutively from September 15, 2016 to September 14, 2019.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

In addition to the usual monitoring and technical assistance provided under the cooperative agreement, the IHS/OUIHP responsibilities shall include:

(1) Assurance of the availability of the services of experienced staff to participate in the planning and development of all phases of this cooperative agreement;

(2) Working closely with the IHS Public Affairs Office regarding dissemination of publications completed under the cooperative agreement and cooperating on the referral of inquiries and request for technical assistance, publications and other information;

(3) Participation in, including the planning of, any meetings conducted as part of project activities;

(4) Assistance in establishing Federal interagency and state contacts necessary for the successful completion of tasks and activities identified in the approved scope of work;

(5) Identification of other awardees and organizations with whom the awardee will be asked to develop cooperative and collaborative relationships; and

(6) Assisting the awardee to establish, review and update priorities for activities conducted under the auspices of the cooperative agreement.

(7) Assisting the awardee to determine which issues will be addressed during the project period, the sequence in which they will be addressed, what approaches and strategies will be used to address them, and how relevant information will be transmitted to specified target audiences and used to enhance project activities and advance the program.

B. Grantee Cooperative Agreement Award Activities

Requirements and obligations of the cooperative agreement recipient shall include:

(1) Work collaboratively with the urban Indian organizations funded under the IHCIA;

(2) Respond in a flexible manner to collaborating on occasional short-term projects, in addition to long-term and on-going efforts;

(3) Work closely with the Federal project officer when hiring new key project staff and planning/implementing new activities;

(4) Consult with the Federal project officer before scheduling any meetings, including project advisory/steering committee meetings, that pertain to the scope of work and at which the project officer's attendance would be appropriate;

(5) Provide the Federal project officer with the opportunity to review, provide advisory input, and approve at the program level, any publications, audiovisuals and other materials produced, as well as meetings/conferences planned under the auspices of this cooperative agreement (such review should start as part of concept development and include review of drafts and final products);

(6) Provide the Federal project officer with an electronic copy of, or electronic access to, each product developed under the auspices of this project;

(7) Participate in the implementation of awardee performance measures, including the collection of information and administrative data as designated by the OUIHP;

(8) Ensure that all products developed or produced, either partially or in full, under the auspices of this cooperative agreement are fully accessible and available for free to members of the public;

(9) Identify IHS/OUIHP as a funding sponsor on written products and during meetings and conferences relevant to cooperative agreement activities;

(10) Acknowledge IHS/OUIHP has uncontested access to any and all data generated under this cooperative agreement, and agree to provide royalty-free, nonexclusive, and irrevocable license for the government to reproduce, publish, or otherwise use any products derived from activities conducted under this cooperative agreement; and

(11) Comply with relevant Office of Management and Budget (OMB) circular provisions regarding lobbying, any applicable lobbying restrictions provided under other law and any applicable restriction on the use of appropriated funds for lobbying activities.

III. Eligibility Information

1. Eligibility

The applicant must demonstrate a national non-profit organization with demonstrated experience working with IHCIA Title V-funded urban Indian health programs. The applicant must provide proof of non-profit status, *e.g.*, 501(c)(3).

Competition is open to a national urban Indian organization that has demonstrated experience working with IHCIA Title V-funded urban Indian health programs.

Current OUIHP grantees are eligible to apply for this new and competing continuation funding under this announcement and must demonstrate that they have complied with previous terms and conditions of the OUIHP grant in order to receive funding under this announcement.

NOTE: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the "Estimated Funds Available" section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.*, FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/*.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single-spaced and not exceed five pages).
- Project Narrative (must be single-spaced and not exceed 50 pages).
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Letter of Support from Organization's Board of Directors.
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG–Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Copy of current approved Organizational Chart.
- Documentation of current OMB audit, as required by 45 CFR part 75, subpart F, or other required financial audit.

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 50 pages and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½" x 11" paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this cooperative agreement award. If the narrative exceeds the page limit, only the first 50 pages will be reviewed. The 50-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report.

Part A: Program Information (35 Pages)

Section 1: Needs

This section should help reviewers understand the UIOs that will be served by the proposed project.

Summarize the overall need for assistance: (1) The target population and its unmet health needs; and (2) socio-cultural determinants of health and health disparities impacting the urban Indian population or communities served and unmet. Demographic data should be used and cited whenever possible to support the information provided.

For each Project Area, in addition to the specific components below, address: (1) Relevant barriers that the project hopes to overcome; (2) the administrative infrastructure to provide the four program requirements: Public policy, research and data, structured training and technical assistance for UIOs and education, public relations and marketing of UIOs; and (3) the previous planning activities the applicant has completed and if the applicant has identified or will establish best-practices or evidence-based practices relative to these services.

Core Activities

1. Public Policy

i. Summarize the public policy opportunities and challenges of UIOs in the implementation of the various laws including, but not limited to, the following:

1. Public Law 111–148, The Patient Protection and Affordable Care Act of March 21, 2010; House of Representatives 4872, the Health Care and Education Reconciliation Act of March 23, 2010; and

2. The Indian Health Care Improvement Reauthorization and Extension Act of 2009 (IHCIA).

ii. Describe the need for education on the IHS Policy on Conferring with Urban Indian Organizations (IHCIA, 25 U.S.C. 1660d).

2. Research and Data

i. Describe the need to collect and analyze health disparities data, morbidity and mortality data, and urban Indian health services costs data in order to reduce urban Indian health disparities and identify, improve, evaluate, and document UIOs through practice-based and evidence-based best practices.

3. Structured Training and Technical Assistance for UIOs

Describe the need for training and technical assistance to support:

i. UIO Leaders.

ii. UIO Board of Directors: Executive roles and responsibilities.

iii. UIO Staff: *i.e.*, clinical staff, administration, business office, health information technology (IT), behavioral health.

Further describe the need for training and technical assistance to support urban Indian organization administration in the following areas:

i. Enhance Revenue and Third Party Billing;

ii. Implement the Payment Systems Reform;

iii. Meet Government Performance and Results Act (GPRA)/Government Performance and Results Modernization Act (GPRAMA) Performance Measure Targets;

iv. International Classification of Diseases (ICD)–10 Planning and Implementation of Medicare Access and CHIP Reauthorization Act (MACRA);

v. Electronic Health Records/Meaningful Use; and

vi. Incentives and Penalties.

4. Education, Public Relations and Marketing of UIOs

i. Summarize the need to market the urban Indian organizations through development of national, regional and local marketing strategies and campaigns.

ii. Describe the need for enhanced communication among local private and non-profit health care entities.

iii. Summarize the need to enhance communication, interaction and coordination on policy and health care reform activities by initiating and maintaining partnerships and collaborative relationships with other urban Indian organizations, national Indian organizations, key state and local health entities, and education and public safety networks.

Part B: Program Planning and Evaluation (10 Pages)

Section 1: Program Plans—Project Goals and Objectives, Methodology, Work Plan, Resolution of Challenges, and Impact

Goals and Objectives

Applicant should:

1. State the goals for the proposed project. For project goals, which should be national in scope, describe the desired short and long-term outcomes in cooperation with the IHS.

2. Provide at least five goals for each of the four core activities. These goals are broad statements that establish the overall direction for, and focus of, a project. They serve as the foundation for developing project objectives.

Applicant should provide at least one specific, achievable, measurable, time-framed outcome objective for each proposed project goal. Outcome objectives are specific statements of positive change to be effected in order to achieve the goals of the project. That is, outcome objectives are measurable steps, or stepping stones, for reaching goals. They form the basis for monitoring progress toward achieving project goals and setting targets for accountability. Collectively, the proposed outcome objectives should frame the set of national outcomes that the applicant wants to achieve in meeting project goals.

Methodology

Propose methods that will be used to meet each of the previously-described program requirements and expectations

in this funding opportunity announcement. As appropriate, include development of effective tools and strategies for ongoing staff training, outreach, collaborations, clear communication, and information sharing/dissemination with efforts to involve urban Indian organization staff and patients, Tribal, Federal, state, and local entities.

1. Describe proposed approaches and activities for achieving project goals and objectives, as outlined in Part A. Program Information Needs. In particular, applicants should demonstrate that the proposed methodological approaches are national in scope and contribute to increased capacity within the urban Indian health system.

2. Describe the specific activities necessary to carry out each methodological approach. Applicants should take into consideration the logic, technical soundness, feasibility, creativity and innovativeness, potential utility, and national applicability of the activities it proposes.

3. The description of the project methodology should cover budget period September 1, 2016 through August 31, 2017.

4. Develop a systematic diagram that links anticipated outcomes with the project's activities/processes and theoretical assumptions. It should include the following basic components: Goal, resources/inputs, activities, outputs, outcomes, impacts, and timelines. The system diagram should be included as part of the application appendix.

5. Evidence should be provided that the approaches and activities can reasonably be expected to be effective.

Work Plan

1. Develop and include a Work Plan that describes the sequence of specific activities and steps that will be used to carry out each proposed methodological approach. Explicitly describe who will conduct each activity, as well as when, where, and how each activity will be carried out.

2. A detailed time line of proposed project activities should be developed by the applicant, and attached as an appendix. The time line should link activities to project objectives and should cover the three years of the project period.

3. Describe an efficient and effective plan for managing the project, including its personnel and resources.

4. Describe an effective plan for monitoring and tracking project activities.

Resolution of Challenges

Discuss challenges, including both opportunities and barriers that are likely to be encountered in designing and implementing the activities described in the Description of Methodology and Work Plan sections, as well as approaches that will be used to address such challenges.

Impact

This section of the Project Narrative discusses the proposed project's national impact, how the applicant plans to engage UIO, and how project activities will yield benefits for UIO.

1. Explain how the proposed project's products and results will have a national scope and applicability.

2. Provide an inclusive description of the target audiences as well as proposed strategies for reaching these audiences.

3. Describe how and to what extent the proposed project activities will directly improve leadership within the urban Indian health organizations being targeted, and contribute to improved health status among urban Indians. The applicant should include a description of how it intends to mobilize its audiences to learn from and actually use the materials, products and resources it has developed to address the four program requirements identified in Part A.—Program Information Needs.

Section 2: Program Evaluation

Evaluation and self-assessment have vital importance for quality improvement and assessing the value-added contribution of urban Indian education and research investments. Consequently, cooperative agreement projects are expected to incorporate a carefully designed and well-planned evaluation protocol capable of demonstrating and documenting measurable progress toward reaching the project's stated goals through achievement of the project's measurable objectives. The evaluation protocol should be based on a clear rationale relating the identified needs of the target population with project goals, award activities, and the evaluation measures. Whenever possible, the measurements of progress toward goals should focus on outcomes and results over which the project has some degree of influence, rather than on intermediate measures such as process or outputs.

Instructions

1. Provide a well-conceived and logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors. The evaluation plan should focus primarily on outcomes over which the project has influence and that have the capacity to produce meaningful data on an annual basis.

2. Develop at least two (2) performance measures by which it will track its progress over time. A performance measure is a quantifiable indicator of progress and achievement that includes outcome, output, input, efficiency, and explanatory indicators. It can measure such domains as productivity, effectiveness, quality and timeliness (Government Accounting Standards Board, *http://www.seagov.org/aboutpmg/performance_measurement.shtml*).

Part C: Program Report (5 Pages)

Section 1: Describe major accomplishments over the last 12 months.

Please identify and describe significant program achievements for each of the four core activities. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 12 months.

Please identify and summarize recent major activities of the work done during the project period for each of the four core activities.

B. *Budget Narrative:* This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The budget narrative should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact *Grants.gov* Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov*. Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov*. Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the OUIHP will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform*, or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an

additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 50 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 70 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (35 Points)

1. The target population and its unmet health needs are described and documented;

2. Socio-cultural determinants of health and health disparities impacting the urban Indian population or communities served are identified and described;

3. Demographic data is used and cited to support the information provided;

4. Relevant barriers that the project hopes to overcome are discussed;

5. Describe how the applicant determined it has the administrative infrastructure to provide the four program requirements: Public policy, research and data, structured training and technical assistance for UIOs, and education, public relations and marketing of UIOs; and

6. Explain previous planning activities the applicant has completed and if the applicant has identified or established best-practices or evidence-based practices relative to each of the four program requirements.

Public Policy

A. Applicant summarized the public policy opportunities and challenges of UIOs of the various laws including: Public Law 111–148, The Patient Protection and Affordable Care Act of March 21, 2010; House of Representatives 4872, the Health Care and Education Reconciliation Act of March 23, 2010; and the Indian Health Care Improvement Reauthorization and Extension Act of 2009.

B. Applicant summarized the need for education on the IHS policy on conferring with UIOs.

Research and Data

Applicant described the need to collect and analyze health disparities data, morbidity and mortality data, and urban Indian health services costs data in order to reduce urban Indian health disparities and identify, improve, evaluate, and document UIOs through practice-based and Evidence-based best practices.

Structured Training and Technical Assistance for UIOs

Applicant described the need for training and technical assistance to support:

A. UIO Leaders;

B. UIO Board of Directors: Executive roles and responsibilities; and

C. UIO Staff: *i.e.,* clinical staff, administration, business office, health IT, behavioral health.

Applicant further described the need for training and technical assistance to support urban Indian organization administration in the following areas:

A. Enhance Revenue and Third Party Billing;

B. Implement the Payment Systems Reform;

C. Meet GPRA/GPRAMA Performance Measure Targets;

D. ICD–10 Planning and Implementation of MACRA;

E. Electronic Health Records/ Meaningful Use; and

F. Incentives and Penalties.

Education, Public Relations and Marketing of UIOs

A. Applicant summarized the need to market the UIOs through development of national, regional and local marketing strategies and campaigns.

B. Applicant described the need for enhanced communication among local private and non-profit health care entities.

C. Applicant summarized the need to enhance communication, interaction and coordination on policy and health care reform activities by initiating and maintaining partnerships and collaborative relationships with other UIOs, national Indian organizations, key state and local health entities, and education and public safety networks.

B. Project Objective(s), Work Plan and Approach (25 Points)

Program Plans—Project Goals and Objectives, Methodology, Work Plan, Resolution of Challenges, and Impact

Goals and Objectives

Applicant stated the goals for each program requirement. Project goals were national in scope and described the desired short and long-term outcomes in cooperation with the IHS. At least five goals for each of the four core activities were provided.

Applicant provided at least one specific, achievable, measurable, time-framed outcome objective for each proposed project goal. The proposed outcome objectives framed the set of national outcomes the applicant wanted to achieve in meeting project goals.

Methodology

Applicant described methods that will be used to meet each of the three project areas requirements and expectations in this funding opportunity announcement. Applicant also addressed development of effective tools and strategies for ongoing staff training, outreach, collaborations, clear communication, and information sharing/dissemination with efforts to involve urban Indian organization staff and patients, Tribal, Federal, state and local entities.

A. Applicant described proposed approaches and activities for achieving project goals and objectives, as outlined in Part A. Program Information Needs. Applicant demonstrated that the proposed methodological approaches were national in scope and contributes to increased capacity within the urban Indian health system.

B. Applicant described the specific activities necessary to carry out each methodological approach. Applicants took into consideration the logic, technical soundness, feasibility, creativity and innovativeness, potential utility, and national applicability of the activities it proposed.

C. The description of the project methodology covered September 1, 2016 through August 31, 2017.

D. Applicant developed a systematic diagram that linked anticipated outcomes with the project's activities/ processes and theoretical assumptions. It included the following basic

components: Goal, resources/inputs, activities, outputs, outcomes, impacts and timelines. The system diagram was included as part of the application appendix.

E. Applicant provided evidence that the approaches and activities can reasonably be expected to be effective.

Work Plan

A. A work plan was included that described the sequence of specific activities and steps that will be used to carry out each proposed methodological approach. The applicant explicitly described who will conduct each activity, as well as when, where, and how each activity will be carried out.

B. A detailed time line of proposed project activities was developed and included in the appendix. The time line linked activities to project objectives and covered the three years of the project period.

C. The applicant described an efficient and effective plan for managing the project, including its personnel and resources.

D. The applicant described an effective plan for monitoring and tracking project activities.

Resolution of Challenges

The applicant discussed challenges, including both opportunities and barriers, that are likely to be encountered in designing and implementing the activities described in the Description of Methodology and Work Plan sections, as well as approaches that will be used to address such challenges.

Impact

A. The applicant explained how the proposed project's products and results will have a national scope and applicability.

B. The applicant provided an inclusive description of its national target audiences as well as proposed strategies for reaching these audiences.

C. The applicant described how and to what extent the proposed project activities will directly improve leadership with the urban Indian health organizations being targeted, and contribute to improved health status among urban Indians. The applicant included a description of how it intends to mobilize its audiences to learn from and actually use the materials, products and resources it has developed to address the four program requirements identified in A.—Program Information needs.

C. Program Evaluation (15 Points)

1. The applicant provided a well-conceived and logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors. The evaluation plan focused primarily on outcomes over which the project has influence and that have the capacity to produce meaningful data on an annual basis.

2. The applicant developed at least two (2) performance measures by which it will track its progress over time. The performance measures are quantifiable indicators of progress and achievement that includes outcome, output, input, efficiency, and explanatory indicators. The performance measures can be measured by domains including productivity, effectiveness, quality and timeliness.

D. Organizational Capabilities, Key Personnel and Qualifications (10 Points)

The applicant identified its credibility including how long and why the organization exists, accomplishments and impact, size and characteristics of its constituency, its funding sources and their positive comments on the organization's work, and results of internal and external evaluations of the programs. Included a listing of the current board of directors (the listing of board members includes their status as an urban Indian, professions, education degrees, and board appointment terms.)

Discussed the organization's administrative capacity including:

A. OMB circular administrative requirements for non-profit organizations;

B. Fiscal; and

C. Human resources policies and procedures and audit reporting.

Key Personnel and Qualifications

A. Identified current staff and new staff education, experience, skills, and knowledge; materials published; and previous work of a similar nature.

B. Described data collection strategy to collect, analyze and track data to measure process and impact/outcomes with UIOs, Tribes, national Indian organizations and States and explain how the data will be used to inform program development and service delivery.

E. Categorical Budget and Budget Justification (15 Points)

The applicant was specific and provided an itemized categorical budget and a clear succinct budget narrative justification to support the scope of work described in the project narrative. Did not exceed five pages.

Multi-Year Project Requirements

Projects requiring a second and third year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Additional Documents Can Be Uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the

Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 70, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved", but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes*. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at *http://www.dpm.psc.gov*. It is recommended that the applicant also send a copy of the FFR (SF–425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, and Section 119 of the Continuing Appropriations Act, 2014; *Office of Management and Budget Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for "Conference X", must be reported in final detailed actual costs *within 15 days of the completion of the conference*. Cost categories to address should be: *(1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audiovisual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.*

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/*.

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of Federal Financial Assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/*.

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html*. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html*. Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53*.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf*, and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery,or gratuity violations potentially affecting the award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mailstop: 09E70, Rockville, Maryland 20857, (Include "Mandatory Grant Disclosures" in subject line), Phone: (301) 443–5204, Fax: (301) 594–0899, Email: *Robert.Tarwater@ihs.gov*.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201, URL: *http://oig.hhs.gov/fraud/reportfraud/index.asp*, (Include "Mandatory Grant Disclosures" in subject line) Fax: (202) 205–0604, (Include "Mandatory Grant Disclosures" in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies

described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Sherriann Moore, Acting Director, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65C, Rockville, MD 20857, Phone: (301) 443–1044, Fax: (301) 443–4794, Email: *Sherriann.Moore@ihs.gov*, Or Shannon Beyale, Health Information Specialist, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65C, Rockville, MD 20857, Phone: (301) 945–3657, Fax: (301) 443–4794, Email: *Shannon.Beyale@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Senior Grant Management Specialist, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–5204, Fax: (301) 594–0899, Email: *Donald.Gooding@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: May 7, 2016.

Elizabeth Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–14043 Filed 6–13–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Subcommittee.

Date: June 16–17, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grande Chicago Riverfront, 71 East Wacker Drive, Chicago, IL 60601.

Contact Person: William Benzing, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Subcommittee.

Date: June 20–21, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Elizabeth Webber, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, 301–496–1917, *webbere@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 8, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–13931 Filed 6–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0445]

Limited Purpose Cooperative Research and Development Agreement—UAS Research With the University of Massachusetts Amherst

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a cooperative research and development agreement (CRADA) with several companies to evaluate small unmanned aircraft systems (SUAS) and their airborne sensors, to determine their potential for use in a maritime environment by a first responder and DHS operational components. The Coast Guard will conduct flight testing and evaluation of SUAS under a wide variety of simulated but realistic and relevant real-world maritime operational scenarios, such as law enforcement, search and rescue, and maritime environmental response. While the Coast Guard is currently considering partnering with the University of Massachusetts Amherst, it solicits public comment on the possible participation of other parties in the proposed CRADA, and the nature of that participation. The Coast Guard also invites other potential non-Federal participants, who have the interest and capability to bring similar contributions to this type of research, to consider submitting proposals for consideration in similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov*, or reach the Docket Management Facility, on or before July 14, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before July 14, 2016.

ADDRESSES: Submit comments using one of the listed methods, and see **SUPPLEMENTARY INFORMATION** for more information on public comments.

- *Online*—*http://www.regulations.gov* following Web site instructions.
- *Fax*—202–493–2251.

- *Mail* or *hand deliver*—Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Hours for hand delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact Dr. Andrew Niccolai, Project Official, Aviation Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2670, email *Andrew.M.Niccolai@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826, toll free 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on this notice. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Comments should be marked with docket number USCG–2016–0445 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ × 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following the Web site's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under **ADDRESSES**) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with other types of agreements such as procurement contracts, grants, and cooperative agreements.

Under the proposed CRADA, the Coast Guard's Research and Development Center (R&DC) will collaborate with one or more non-Federal participants. Together, the R&DC and the non-Federal participants will evaluate SUAS and their airborne sensors to determine their potential for use in a maritime environment by a first responder and DHS operational components.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) The R&D Center will define the objectives of the evaluation to be conducted during this CRADA in a series of Assessment Plans that will guide the execution of simulated but realistic and relevant real-world maritime operational scenarios that will determine the sUAS' ability to contribute to USCGC's mission effectiveness in the areas of: (A) Counter GPS Jamming/Spoofing for sUAS; (B) Sense & Avoid Systems for UAS; (C) UAS Traffic Monitoring Systems; and (D) NUSTAR standards for airworthiness certifications;

(2) Provide the SUAS test range, test range support, facilities, and all approvals required for a 5 day demonstration under the CRADA;

(3) Conduct the privacy threshold analysis required for the demonstration;

(4) Conduct the privacy impact assessment required for the demonstration;

(5) Coordinate any required spectrum approval for the SUAS;

(6) Coordinate and receive any required interim flight clearance for the demonstration;

(7) Provide any required airspace coordination and de-confliction for the demonstration test plan;

(8) Collect and analyze demonstration test plan data; and

(9) Develop a demonstration final report documenting the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Provide the faculty, students, and professional researchers with the required competencies, skill sets, and laboratory facilities to collaborate on these topic areas;

(2) Provide technically mature, flight proven sUAS, their fully-integrated sensors, and sUAS operators. Those operators shall operate the sUAS;

(3) Supply access to wind tunnels, engineering/manufacturing laboratories, and modeling and simulation software to meet evaluation objectives in determining sUAS mission effectiveness; and

(4) Provide personnel to collect data, analyze the data, and then compile the results in a series of collaborative reports.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering the University of Massachusetts Amherst for participation in this CRADA, because the University of Massachusetts Amherst has demonstrated the ability to operate

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

SUAS in a maritime environment. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology demonstration effort. The goal of this CRADA is to identify and investigate the potential of the SUAS and their airborne sensors to determine their potential use in a maritime environment by the first responder and the DHS operational components. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S.

This notice is issued under the authority of 5 U.S.C. 552(a) and 15 U.S.C. 3710(a).

Dated: June 2, 2016.

Dennis C. Evans,

CAPT, USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2016–14073 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0446]

Cooperative Research and Development Agreement: Diesel Outboard Engine Development

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Cox Powertrain (Cox) to evaluate and test the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with diesel outboard engine technology. A test schedule has been proposed in which Cox will provide and install two of their diesel outboard engines onto a selected Coast Guard boat platform; the Coast Guard Research and Development Center (R&D Center) will outfit the platform with the necessary instrumentation to monitor power, speed, and fuel consumption; and a Coast Guard field unit will operate the boat for performance testing over a six-month period to collect information on reliability, maintenance requirements, and availability data. While the Coast Guard is currently considering partnering with Cox, the agency is soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants to propose similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov*, or reach the Docket Management Facility, on or before July 14, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before July 14, 2016.

ADDRESSES: Submit comments online at *http://www.regulations.gov* following Web site instructions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LT Keely Higbie, Project Official, Surface Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2815, email *Keely.J.Higbie@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2016–0446 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will collect information/data for performance, reliability, maintenance requirements, and other data on diesel outboard engines. After an initial performance test, the Coast Guard plans to operate to test and evaluate the designated platform outfitted with the diesel outboard engine technology for a period of six months.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Work with non-Federal participant to develop the test plan to be executed under the CRADA;

(2) Provide the test platform, test platform support, facilities, and seek all required approvals for testing under the CRADA;

(3) Prepare the test platform for diesel outboard engine install and operations;

(4) Provide fuel and test platform operators for the performance and reliability, maintenance, and availability testing;

(5) Collect and analyze data in accordance with the CRADA test plan; and

(6) Work with non-Federal participant to develop a Final Report, which will document the methodologies, findings, conclusions, and recommendations of this CRADA work.

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Work with R&D Center to develop the test plan to be executed under the CRADA;

(2) Provide the technical data package for all equipments, including dimensions, weight, power requirements, and other technical considerations for the additional components to be utilized under this CRADA;

(3) Provide for shipment, delivery, and install of diesel outboard engines required for testing under this CRADA;

(4) Provide technical oversight, technical engine, and operator training on the engines provided for testing under this CRADA; and

(5) Provide/pay for travel and other associated personnel costs and other required expenses.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Cox for participation in this CRADA. This consideration is based on the fact that Cox has demonstrated its technical ability as the developer and manufacturer of diesel outboard engines. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology assessment effort. The goal for the Coast Guard of this CRADA is to better understand the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with diesel outboard engines. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S. This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: June 2, 2016.

Dennis C. Evans,

Commanding Officer, CAPT, USCG, U.S. Coast Guard Research and Development Center.

[FR Doc. 2016–14074 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0444]

Cooperative Research and Development Agreement: Laser Eye Protection

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Metamaterials Technologies USA Inc. to evaluate and test the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with LEP technology. The Coast Guard Research and Development Center (RDC) will obtain materials from Metamaterials Technologies USA Inc. to test the performance, reliability, suitability, and effectiveness of their product as laser protective eyewear. While the Coast Guard is currently considering partnering with Metamaterials Technologies USA Inc., the agency is soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants to propose similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov*, or reach the Docket Management Facility, on or before June 24, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before June 24, 2016.

ADDRESSES: Submit comments online at *http://www.regulations.gov* following Web site instructions.

Information for more information on public comments.

- *Online*—*http://www.regulations.gov* following Web site instructions.
- *Fax*—202–493–2251.
- *Mail or hand deliver*—Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Hours for hand delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays (telephone 202–366–9329).

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LT Dillon Sapp, Project Official, Aviation Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2893, email *dillon.r.sapp@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2016–0444 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will collect information/data for performance, reliability, maintenance requirements, and other data on LEP.

We anticipate that the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Work with non-Federal participant to develop the test plan to be executed under the CRADA;

(2) Provide the test platform, test platform support, facilities, and seek all required approvals for testing under the CRADA;

(3) Prepare the test platform for laser testing;

(4) Provide laboratory equipment and personnel to complete the testing phases;

(5) Collect and analyze data in accordance with the CRADA test plan; and

(6) Work with non-Federal participant to develop a Final Report, which will document the methodologies, findings, conclusions, and recommendations of this CRADA work.

We anticipate that the non-Federal participants' contributions under the proposed CRADA will include the following:

(1) Work with R&D Center to develop the test plan to be executed under the CRADA;

(2) Provide the technical data package for all equipments, including dimensions, weight, power requirements, and other technical considerations for the additional components to be utilized under this CRADA;

(3) Provide for shipment and delivery required for testing under this CRADA;

(4) Provide technical oversight, technical equipment, and materials provided for testing under this CRADA; and

(5) Provide/pay for travel and other associated personnel costs and other required expenses for the Non-federal participant's personnel.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Metamaterials Technologies USA Inc. for participation in this CRADA. This consideration is based on the fact that Metamaterials Technologies USA Inc. has demonstrated its technical ability as the developer and manufacturer of laser protective materials. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology assessment effort. The goal for the Coast Guard of this CRADA is to better understand the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with laser protective technology. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S. This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: June 2, 2016.

Dennis C. Evans,

USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2016–14038 Filed 6–13–16; 8:45 am]

BILLING CODE 9110–04–P

[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0105]

Agency Information Collection Activities: Application To Use the Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension and revision of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application to Use the Automated Commercial Environment (ACE). CBP is proposing that this information collection be extended with a change to the burden hours resulting from the addition of a new application for brokers, importers, sureties, attorneys and other parties to establish an ACE Portal account to file protests. There are no proposed changes to the existing ACE Portal application for imported merchandise. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Application to Use the Automated Commercial Environment (ACE).

OMB Number: 1651–0105.

Abstract: As of July 23, 2016, the Automated Commercial Environment (ACE) will be the sole CBP-authorized electronic data interchange (EDI) system for processing electronic entry and entry summary filings of certain entry types. Pursuant to Executive Order 13659, a deadline of December 31, 2016, was established for participating Federal agencies to have capabilities, agreements, and other requirements in place to utilize the International Trade Data System (ITDS) and supporting systems, such as ACE, as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export. *See* 79 FR 10655 (February 25, 2014). ACE supports government agencies and the trade community with border-related missions with respect to moving goods across the border efficiently and securely. Once ACE is fully implemented, all related CBP trade functions and the trade community will be supported from a single common user interface.

In order to establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN) or social security number, and if applicable, a statement certifying their capability to connect to the internet. This information is submitted through the ACE Secure Data Portal which is accessible at: *http://www.cbp.gov/trade/automated.*

CBP is proposing to add the capability of electronically filing protests to ACE. A protest is a procedure whereby a private party may administratively challenge a CBP decision regarding imported merchandise and certain other CBP decisions. Trade members wishing to establish a protest filer account will need to submit the following data elements:

1. Organization Information
   a. Protest Filer Number (EIN, SSN, or CBP Assigned Number)
   b. Organization Name
   c. Organization Type
   d. End of Fiscal Year (month and day)
   e. Mailing Address
2. ACE Account Owner Information
   a. Name
   b. Date of Birth
   c. Email Address
   d. Telephone Number
   e. Fax Number (optional)
   f. Account Owner address if different from Company Address
3. Filing Notification Point of Contact
   a. Name
   b. Email address

Current Actions: CBP is proposing that this information collection be extended with a change to the burden hours resulting from the addition of a new application for protest filers to establish an ACE Portal account. There are no proposed changes to the existing ACE Portal application, or changes to the burden hours, for other ACE accounts.

Type of Review: Extension (with change).

Affected Public: Businesses.

Application to ACE (Import)

Estimated Number of Respondents: 21,100.

Estimated Number of Total Annual Responses: 21,100.

Estimated Time per Response: .33 hours.

Estimated Total Annual Burden Hours: 6,963.

Application to ACE (Export)

Estimated Number of Respondents: 9,000.

Estimated Number of Total Annual Responses: 9,000.

Estimated Time per Response: .066 hours.

Estimated Total Annual Burden Hours: 594.

Application to ACE (Protest)

Estimated Number of Respondents: 3,750.

Estimated Number of Total Annual Responses: 3,750.

Estimated Time per Response: .066 hours.

Estimated Total Annual Burden Hours: 248.

Dated: June 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14003 Filed 6–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0014]

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration for Free Entry of Unaccompanied Articles (Form 3299). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal**

Register (81 FR 9870) on February 26, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651–0014.

Form Number: Form 3299.

Abstract: 19 U.S.C. 1498 provides that when personal and household effects enter the United States but do not accompany the owner or importer on his/her arrival in the country, a declaration is made on CBP Form 3299, Declaration for Free Entry of Unaccompanied Articles. The information on this form is needed to support a claim for duty-free entry for these effects. This form is provided for by 19 CFR 148.6, 148.52, 148.53 and 148.77. CBP Form 3299 is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%203299.pdf.*

Current Actions: This submission is being made to extend the expiration date with no changes to the burden hours or to CBP Form 3299.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 112,500.

Dated: June 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14001 Filed 6–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0023]

Agency Information Collection Activities: Request for Information

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Request for Information (CBP Form 28). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (81 FR 18866) on April 1, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Request for Information.

OMB Number: 1651–0023.

Form Number: CBP Form 28.

Abstract: Under 19 U.S.C. 1500 and 1401a, Customs and Border Protection (CBP) is responsible for appraising imported merchandise by ascertaining its value; classifying the merchandise under the tariff schedule; and assessing a rate and amount of duty to be paid. On occasions when the invoice or other documentation does not provide sufficient information for appraisement or classification, CBP may request additional information through the use of CBP Form 28, *Request for Information.* This form is sent by CBP personnel to importers, or their agents, requesting additional information. CBP Form 28 is provided for by 19 CFR 151.11. A copy of this form and instructions are available at *http://forms.cbp.gov/pdf/CBP_Form_28.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 60,000.

Dated: June 9, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–14002 Filed 6–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5933–N–01]

Notice of Neighborhood Stabilization Program; Changes to Closeout Requirements Related to Program Income

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice describes changes to closeout requirements applied to and additional regulations waived for grantees receiving grants under the three rounds of funding under the Neighborhood Stabilization Program who are also grantees under the Community Development Block Grant (CDBG) program.

DATES: *Effective Date:* June 14, 2016.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7286, Washington, DC 20410; telephone number 202–708–3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Neighborhood Stabilization Program (NSP) was established by Division B, Title III of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008), for the purpose of stabilizing communities that have suffered from foreclosures and abandonment. As established by HERA, NSP provided grants to all states and selected local governments on a formula basis. The American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5, approved February 17, 2009) authorized additional NSP grants to be awarded to states, local governments, nonprofits and a consortium of nonprofit entities, but on a competitive basis. The Recovery Act also authorized funding for national and local technical assistance providers to support NSP grantees. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd- Frank Act) (Pub. L. 111–203, approved July 21, 2010) authorized a third round of Neighborhood Stabilization grants to all states and select local governments on a formula basis.

The purpose of the funds awarded under the three rounds of NSP is to target the stabilization of neighborhoods negatively affected by properties that have been foreclosed upon and abandoned. The notice, Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, published October 19, 2010 (75 FR 64322) ("Unified NSP Notice"), provides further background for these programs, the program principles, and the objectives and outcomes of the NSP program. The Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture (Closeout Notice), published November 27, 2012 (77 FR 70799), amended the Unified Notice by adding grant closeout and related provisions. In addition, the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009, 74 FR 21377 (May 7, 2009), as amended by subsequent notices ("NSP2 NOFA"), includes requirements specific to the competitive round of funding under the Recovery Act.

II. This Notice

The primary purpose of this notice is to revise requirements set forth in the amended Unified NSP Notice and the Closeout Notice to revise the treatment of program income for all three rounds of NSP by allowing NSP program income received by a CDBG recipient to be transferred by the recipient from the NSP program to the CDBG program. After the transfer is carried out, any transferred program income will be subject to the CDBG program income regulations. Following publication of this notice, HUD will update the issued NSP closeout instructions (Notice CPD 14–02) to conform the instructions for consideration of program income during and after closeout of NSP grants.

The Closeout Notice generally required that with the exception of de minimis amounts received after grant closeout, program income generated by NSP-assisted activities must continue to be used for NSP uses. In attempting to implement this requirement, HUD has become aware that it is, in many instances, administratively unworkable for NSP grantees and difficult for HUD to oversee effectively. For NSP grantees that are generating a substantial amount of program income, the requirement to use this program income prior to drawing additional funds from the grant's line of credit is also impeding their ability to completely expend their NSP grant funds. Further, some grantees no longer have an adequate pool of NSP-eligible foreclosed or abandoned properties in their target areas although they do have other needs that CDBG funding could be used to address. On HUD's part, with dwindling administrative resources remaining from those provided for the NSP program, the inability to achieve the criteria for grant closeout for these grantees creates a looming oversight issue.

Several NSP grantees have asked that HUD reconsider the NSP program income requirements and allow the same flexibility for the NSP program income as is currently allowed for the CDBG Disaster Recovery (CDBG–DR) grants under Public Law 113–2. These requirements allow a grantee to transfer CDBG–DR program income received prior to grant closeout to the recipient's CDBG program. HUD agrees that this solution addresses the issues identified above and so this notice will provide the same flexibility to any NSP grantee that is also a CDBG grantee (entitlement or state) with an open formula entitlement grant or a unit of general local government (UGLG) recipient of a CDBG grant from a state. HUD will not allow transfer of NSP program income to the CDBG program if the transfer will result in the NSP grantee failing to meet the statutory NSP 25 percent set-aside requirement for low-income housing. To prevent such a failure, the grantee must obtain HUD approval by notifying HUD in writing prior to a transfer of program income from NSP to CDBG to permit HUD's review of compliance with the NSP 25 percent requirement. HUD will notify the grantee of any possible issues. Based on the data available, HUD anticipates that issues of this sort will be uncommon.

Since this notice applies to grantees receiving grants under any of the three rounds of NSP funding, the terms NSP1, NSP2 or NSP3 are used to describe each of the three funding rounds. When referring to the grants, grantees, assisted activities, and implementation rules under HERA, this notice will use the term "NSP1." When referring to the grants, grantees, assisted activities, and implementation rules under the

Recovery Act, this notice will use the term "NSP2." When referring to the grants, grantees, assisted activities, and implementation rules under the Dodd-Frank Act, this notice will use the term "NSP3." Collectively, the grants, grantees, assisted activities, and implementation rules under these three rounds of funding are referred to as NSP. NSP is a component of the CDBG program, authorized under the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301 *et seq.*).

III. Authority To Provide Alternative Requirements and Grant Regulatory Waivers

HERA appropriated $3.92 billion for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the funds are to be treated as CDBG funds. HERA, the Recovery Act, and the Dodd-Frank Act authorize the Secretary of HUD to specify alternative requirements to any provision under Title I of the HCD Act except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Any alternative requirements must be in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting for NSP1 or facilitating the NSP2 or NSP3 use of grant funds. The CDBG requirements will apply to NSP funds except where this or other published notices supersede or amend such requirements.

This Notice amends an existing alternative requirement by allowing an NSP grantee that is also a CDBG formula grantee or a State CDBG UGLG grant recipient to transfer NSP program income to the CDBG program rather than limiting the use of such program income to NSP purposes before, at, and after grant closeout. Except as described in this notice and previous notices governing NSP, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570, subpart I, for states or, for CDBG entitlement communities, including those at 24 CFR part 570, subparts A, C, D, J, K, and O, as appropriate, apply to the use of these funds. The State of Hawaii was allocated funds and will be subject to part 570, subpart I, as modified by this notice.

IV. Alternative Requirements and Regulatory Waivers

1. Section N of the Unified NSP Notice and section N of Appendix I of the NSP2 NOFA is amended to add a new subparagraph 4, as follows:

"4. An NSP grantee may transfer NSP program income at any time before, at the time of, or after closeout to its annual CDBG program, or, if it is an UGLG that is also a State CDBG grant recipient, to its State CDBG program. In addition, a State grantee may transfer NSP program income before or at closeout to any annual CDBG-funded activities carried out by a UGLG or Indian tribe within the State. Program income generated by an NSP-assisted activity and received by a CDBG grantee, or received and retained by a CDBG subgrantee, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. Transferred NSP program income will become CDBG program income upon receipt in the Integrated Disbursement and Information System (IDIS). Prior to carrying out a transfer, the grantee must notify HUD in writing of the amount of program income on hand to be transferred, the grant number and activity number associated with the NSP activity that generated the program income, and the name of the CDBG program grantee (or subgrantee, if appropriate) to which the funds will transfer. On receipt of a notification, HUD will review NSP grant information reported in the Disaster Recovery Grant Reporting System (DRGR) for the applicable grant to ensure the grantee is in compliance with the requirement at paragraph E.2.e of the Unified Notice, 75 FR 64331, for NSP1 and NSP3 grantees, and Appendix I of the NSP2 NOFA for NSP2 grantees, and only approve the transfer if use of NSP funds remaining after the transfer will comply with this requirement. After HUD approval, if NSP program income funds have already been receipted in DRGR, the grantee must first revise the DRGR submission to subtract the amounts receipted there prior to receipting any transferred amounts in IDIS. Subsequent to transfer, all transferred program income must be treated (documented, receipted in IDIS, used, and reported on) in accordance with CDBG program requirements. Any NSP program income that is not receipted in IDIS will retain its NSP characteristics and requirements in accordance with published notices governing NSP."

2. Section Y(c)(3)(i) of the Unified NSP Notice is amended to read as follows:

"Any NSP program income on deposit in financial institutions at the time the closeout agreement is signed and any NSP program income currently held by subrecipients or consortium members, together with the amounts of any NSP program income that have been transferred to the CDBG program of the grantee or a specified UGLG recipient prior to execution of the closeout agreement."

3. Under the "Background" subheading in section Z of the Unified NSP Notice, the *Program Income* paragraphs are amended to read as follows:

"*Program Income.* NSP program income received before, at the time of, or after closeout may be transferred to an annual CDBG program as provided in section N and transferred funds will become CDBG program income upon receipt in IDIS (such receipt in IDIS will be subsequent to edits to remove receipt of the funds in DRGR, if such receipt was already entered). Upon transfer, CDBG program income will be subject to all CDBG statutory and regulatory requirements for program income.

"Any NSP program income not transferred to CDBG shall, subject to the de minimis exception provided for in section Y, continue to be used in accordance with NSP requirements. The un-transferred funds will retain NSP characteristics and be subject to NSP requirements so the additional flexibility created by the legislation for the creation of financing mechanisms, development of new housing, operation of land banks, and service of families up to 120 percent of Area Median Income (AMI), will remain in place. However, HUD notes that continued acquisition of new land bank property after closeout with NSP program income could undermine the urgency of finding uses for the properties already acquired. Grantees will be required to allocate 25 percent of NSP program income to housing for families with less than 50 percent of AMI when the amount of annual program income received by a grantee is sufficient to make application of this requirement reasonable. After grant closeout, former NSP grantees that are CDBG entitlements or State governments will report at least annually as provided for by HUD, initially in DRGR and later in an enhanced IDIS, on the receipt and use of NSP program income, and the disposition of land-banked properties. These grantees must also include NSP program income in the annual CDBG Action Plan or substantial amendment in accordance with CDBG requirements. All former NSP grantees, including nonprofits and nonentitlement units of general local government receiving funds directly from HUD, must report at least annually in a form acceptable to the Secretary regarding enforcement of any NSP continuing affordability restrictions. Reporting will continue over the course of the minimum period of affordability set forth in HOME program standards at 24 CFR 92.252 (e) and 92.254(a)(4).

"Finally, most program income will be received by CDBG entitlement cities and counties, and by states, which have systems and procedures to manage NSP revenues, which are treated in most respects like CDBG revenues. However, non-profit consortium members in NSP2 grant consortia that receive revenues generated by NSP projects will not have access to the state and municipal CDBG tracking systems. Further, the CDBG regulation and Office of Management and Budget (OMB) circular implemented at 24 CFR 84.24(e) or 2 CFR 200.307(f), as applicable, do not require that non-profit grantees continue to treat revenues generated from use of NSP funds and received after grant closeout as federal funds unless HUD regulations or the terms and conditions of the award provide otherwise. Thus, for NSP2 grantees that are not direct formula CDBG grantees (non-profits and non-entitlement local governments, including those that are part of a consortium), HUD is requiring that revenues generated by projects funded before closeout but received within 5 years after grant closeout must be used for NSP-eligible activities and meet NSP benefit requirements, but no other federal requirements would apply. With the exception of income earned from the sale of NSP-assisted real property or loans, any income earned by such post-closeout use of funds would not be governed by any NSP requirements and would be miscellaneous revenues, although HUD encourages such grantees to apply NSP principles to subsequent uses of the funds."

4. The paragraphs in section Z under the "Requirements" subheading are amended to read as follows:

"Requirements

"1. *Program Income.* Gross revenues received by NSP grantees after closeout will be governed by the following requirements:

"a.i. After notifying HUD in writing and receiving prior written approval, the grantee may receipt the amounts to IDIS (after first revising any DRGR entries related to the funds) and add them to the grantee's CDBG program income receipts and all relevant CDBG program income requirements shall then apply. HUD will approve a transfer unless the transfer would result in non-compliance with the requirement at 75 FR 64331, paragraph E.2.e based on the use of the NSP funds that would remain after transfer.

"a.ii. If the amounts are not receipted in IDIS, annual amounts of program income in excess of $25,000 shall be used in accordance with all NSP requirements for eligible NSP properties, uses, and activities, including new construction, financing mechanisms, and management and disposition of land bank property.

"b. If annual NSP program income does not exceed $25,000, the funds shall be used for general administrative costs related to ensuring continued affordability of NSP units or added to the grantee's CDBG program income receipts and the CDBG requirements at 24 CFR 570.500(a)(4) shall apply, which may exclude such amounts from the definition of program income.

"c. NSP program income may provide benefit to individuals and families with incomes up to 120 percent of AMI as permitted in NSP under section II.E;

"d. If a grantee's annual NSP program income exceeds $250,000 (after any transfer of program income to CDBG), 25 percent of the program income shall be used to house individuals or families below 50 percent of AMI; in instances in which a grantee's annual NSP program income does not exceed $250,000, the requirements of paragraph II.E.2.e do not apply.

"e. NSP2 grantees that are not CDBG entitlement communities or States must use post-closeout revenues generated from NSP-assisted activities funded before closeout for NSP purposes. If the grantee does not have another ongoing grant received directly from HUD at the time of closeout, then in accordance with 24 CFR 570.504(b)(5), income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by NSP or CDBG rules, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the HCD Act. The provisions of 24 CFR 570.504(b)(5) are waived to limit its application to income received within 5 years of grant closeout. Any income received 5 years after grant closeout, as well as program income from funds outlaid after the date of the closeout agreement may be used without restriction. Such grantees are encouraged to use such funds in accordance with the principles above.

"f. States may continue to act directly to implement NSP activities post-closeout.

"g. HUD will provide direction to grantees by the date of closeout on procedures for reporting and tracking NSP program income revenues. Tracking will continue in DRGR until IDIS enhancements to allow NSP property registry and program income tracking are developed and released."

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for grants made under NSP are as follows: 14.218; 14.225; and 14.228.

Paperwork Reduction Act

HUD has approval from OMB for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1–800–877–8339.

Dated: May 16, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2016–14062 Filed 6–13–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX.16.CG00.GDQ03.00]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Yukon-Kuskokwim Delta Berry Outlook.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments are considered, we must receive them on or before August 15, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–NEW, Yukon-Kuskokwim Delta Berry Outlook' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Nicole Herman-Mercer, Social Scientist, at (303) 236–5031 or *nhmercer@usgs.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Yukon-Kuskokwim (YK) Delta Berry Outlook is a data and observer driven ecological monitoring and modeling framework that forecasts changes in berry habitat and abundance with climate and environmental change. In order to create a monitoring protocol and modeling framework we will solicit local knowledge of berry distribution and abundance from members of Yukon-Kuskokwim communities. Participants from the communities will take part in a survey that asks yes or no questions about the timing, abundance, and distribution of three types of berries that are important in their communities. Personally Identifiable Information (PII) will be limited to four elements: Names, phone numbers, emails, and the name of the village they reside in. This PII will be collected in order to communicate project results and solicit feedback on the project itself for evaluation purposes. Statistical analysis will be performed on the survey responses in order to ascertain if a consensus exists among participants within villages and among villages. The survey results will be one source of information used to create a model forecasting changes in Tribal food sources.

The USGS mission is to serve the Nation by providing reliable scientific information to describe and understand the Earth. This project will collect information from individuals to better understand the abundance, distribution, and variability of berry resources in the Yukon-Kuskokwim Delta region of Alaska. The people of the YK delta rely on wild berries for a substantial part of their diet and hold information about the long term distribution and abundance of berries that is useful for understanding current and future changes to berry habitat due to climate change impacts that will effect both human and wildlife populations of the Yukon Delta region and the Yukon Delta National Wildlife Refuge.

II. Data

OMB Control Number: 1028—NEW.

Title: Yukon-Kuskokwim Delta Berry Outlook.

Type of Request: New information collection.

Affected Public: Individuals; Tribal members that reside in the villages of Chevak, Hooper Bay, Kotlik, and Emmonak, Alaska.

Respondent's Obligation: None, participation is voluntary.

Frequency of Collection: One-time.

Estimated Annual Number of Respondents: Forty.

Estimated Total Number of Annual Responses: Forty.

Estimated Time per Response: One hour.

Estimated Annual Burden Hours: Forty hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Kenna Butler,

Acting Branch Chief, National Research Program—Central Branch.

[FR Doc. 2016–14033 Filed 6–13–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900 253G]

Proclaiming Certain Lands as Reservation for the Bay Mills Indian Community

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 2.00 acres, more or less, an addition to the reservation of the Bay Mills Indian Community of Michigan on March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), for the land described below. The land was proclaimed to be part of the Bay Mills Indian Reservation of the Bay Mills Indian Community of Michigan, County of Chippewa and State of Michigan.

Bay Mills Indian Reservation

Legal description containing 2.00 acres, more or less.

A parcel of land located in the Northwest ¼ of the Northeast ¼ of Section 19, Township 47 North, Range 3 West, Bay Mills Township, Chippewa County, Michigan, more particularly described as commencing at the North ¼ Corner of said Section 19; thence S87°32′28″ E. along the North line of said Section 19 a distance of 200.00 feet to the POINT OF BEGINNING; thence continuing S87°32′28″ E. along said North line a distance of 255.10 feet; thence S02°27′32″ W. a distance of 341.51 feet; thence N87°32′28″ W. a distance of 255.10 feet; thence N02°27′32″ E. a distance of 341.51 feet to the POINT OF BEGINNING; containing 2.00 acres, more or less.

The above-described lands contain a total of 2.00 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads, and pipelines or any other valid easements of rights-of-way or reservations of record.

Dated: May 23, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–14028 Filed 6–13–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FWS–HQ–FAC–2016–N074; FF09F42300–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal.

SUMMARY: Following consultation with the General Services Administration, the Secretary of the Interior has renewed the Sport Fishing and Boating Partnership Council (Council) charter for 2 years. A Federal advisory committee, the Council will foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States.

FOR FURTHER INFORMATION CONTACT: Brian Bohnsack, Council Coordinator, by telephone at 703–358–2435, or by email at *brian_bohnsack@fws.gov*.

SUPPLEMENTARY INFORMATION: The Council will advise the Secretary of the Interior on aquatic conservation endeavors that foster partnerships to benefit recreational fishery resources and recreational boating, and that encourage partnerships among industry, the public, and government. The Council will conduct its operations in accordance with the provisions of the FACA (5 U.S.C. Appendix). It will report to the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service. The Council will function solely as an advisory body.

Certification: I hereby certify that the Sport Fishing and Boating Partnership Council is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and Executive Order 12962 of June 7, 1995 (60 FR 30769; June 9, 1995), as amended by Executive Order 13474 of September 26, 2008 (73 FR 57229; October 1, 2008).

Dated: May 24, 2016.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2016–13986 Filed 6–13–16; 8:45 am]

BILLING CODE 4310–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21094; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Office of the State Archaeologist Bioarchaeology Program, previously listed as the Office of the State Archaeologist Burials Program, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Office of the State Archaeologist Bioarchaeology Program. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Office of the State Archaeologist Bioarchaeology Program at the address in this notice by July 14, 2016.

ADDRESSES: Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Office of the State Archaeologist Bioarchaeology Program, Iowa City, IA. The human remains were removed from the Blood Run National Historic Landmark, Lyon County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Office of the State Archaeologist Bioarchaeology Program professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Indians of Oklahoma; the Ponca Tribe of Nebraska; and the Winnebago Tribe of Nebraska.

History and Description of the Remains

In 1980, human remains representing, at minimum, two individuals were removed from the Blood Run National Historic Landmark, site number 13LO2, in Lyon County, IA. Several small skeletal elements were collected from the surface of the mounds during an archeological survey. These human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program. The human remains were identified as one juvenile and one adult, both of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from the Blood Run National Historic Landmark, site number 13LO2, in Lyon County, IA. The human remains were part of the

Amy Harvey collection. Amy Harvey collected Oneota materials while doing doctoral research at the University of Wisconsin-Madison in the early 1960s, and retained the materials when she began teaching at Stephens College in Columbia, Missouri, in 1965. The human remains were transferred to the Office of the State Archaeologist Bioarchaeology Program in 2010. The human remains were identified as one subadult, approximately two years old, and one adult. Sex could not be determined. No known individuals were identified. No associated funerary objects are present.

The Blood Run National Historic Landmark (site 13LO2) is a large Oneota tradition village site located in Iowa and South Dakota, straddling the Big Sioux River southeast of Sioux Falls, SD. Archeological evidence, including radiocarbon dates and trade artifacts, suggests that the site was most intensively occupied from A.D. 1500–1700. Tribal histories, supported by French historical maps and documents, strongly suggest that the Omaha (possibly including the Ponca at this time), Iowa, and Oto tribes were present in the area at that time and were the probable residents of the site. The Ho-Chunk and Winnebago are also ethnohistorically linked to these tribes. Based on this contextual information, it has been determined that there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska.

Determinations Made by the Office of the State Archaeologist Bioarchaeology Program

Officials of the Office of the State Archaeologist Bioarchaeology Program have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 South Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.edu*, by July 14, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska, may proceed.

The Office of the State Archaeologist Bioarchaeology Program is responsible for notifying the Ho-Chunk Nation of Wisconsin; the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Otoe-Missouria Tribe of Indians, Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; and the Winnebago Tribe of Nebraska, that this notice has been published.

Dated: May 16, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–14014 Filed 6–13–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–538 (Final)]

Certain Corrosion-Resistant Steel Products From Taiwan; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On June 2, 2016, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation concerning certain corrosion-resistant steel products from Taiwan (81 FR 35299). Accordingly, the countervailing duty investigation concerning certain corrosion-resistant steel products from Taiwan (Investigation No. 701–TA–538 (Final) is terminated.

DATES: Effective Date: June 2, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: June 8, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–13978 Filed 6–13–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1005]

Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 10, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ajinomoto Co., Inc. of Japan and Ajinomoto Heartland Inc. of Chicago, Illinois. A letter supplementing the complaint was filed on May 20, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for

importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of certain claims of U.S. Patent No. 7,666,655 ("the '655 patent") and U.S. Patent No. 6,180,373 ("the '373 patent"). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 8, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of one or more of claims 4, 7, 8, and 20 of the '655 patent and claim 10 of the '373 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Ajinomoto Co., Inc., 15–1, Kyobashi 1-chome, Chuo-Ku, Tokyo, 104–8315, Japan

Ajinomoto Heartland Inc., 8430 W. Bryn Mawr Avenue, Suite 650, Chicago, IL 60631–3421

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

CJ CheilJedang Corp., CJ CheilJedang Center, 330, Dongho-ro, Jung-Gu, Seoul, Republic of Korea

CJ America, Inc., 3500 Lacey Road, Suite 230, Downers Grove, Illinois 60515–5423

PT CheilJedang Indonesia, Menara Jamsostek, 21st Floor, JL. Jend. Gatot Subroto Kav.38, Jakarta 12710, Indonesia

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge. The Office of Unfair Import Investigations will not be participating as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 9, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–14011 Filed 6–13–16; 8:45 am]

BILLING CODE 7020–02–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 16–01]

Establishment of MCC Advisory Council and Call for Nominations

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C.—App., MCC intends to establish the MCC Advisory Council ("Advisory Council"), and is hereby soliciting representative nominations. The Council shall serve MCC in a solely advisory capacity and provide insight regarding innovations in infrastructure, technology and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The Advisory Council will provide a platform for systematic engagement with the private sector and contribute to MCC's mission—to reduce poverty through sustainable, economic growth. MCC will use the advice, information and recommendations provided by the Advisory Council to inform compact development and broaden and deepen public and private sector partnerships for more impact and leverage. The MCC Vice President of Compact Operations affirms that the creation of the Advisory Council is necessary and in the public interest.

The Advisory Council is seeking members representing a diverse group of private sector organizations with expertise in infrastructure, business and finance, and technology, particularly in the countries and regions where MCC operates. Additional information about MCC and its portfolio can be found at *www.mcc.gov*.

DATES: Nominations for Advisory Council members must be received on or before 5 p.m. EDT on July 8, 2016. Further information about the nomination process is included below. MCC plans to host the first MCC Advisory Council meeting in the fall of 2016. Starting in 2017, the Council will

meet up to four times a year in Washington, DC or via video/teleconferencing.

FOR FURTHER INFORMATION CONTACT: All nomination materials or requests for additional information should be emailed to MCC's Advisory Council Management Officer, Beth Roberts at *MCCAdvisoryCouncil@mcc.gov* or mailed to Millennium Challenge Corporation, Attn: Beth Roberts, 1099 14th St. NW., Suite 700, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Advisory Council shall consist of not more than twenty-five (25) individuals who are recognized thought leaders, business leaders and experts representing U.S. companies, the business community, advocacy organizations, non-governmental organizations, non-profit organizations, foundations, and industry sectors including infrastructure, information and communications technology, industry/manufacturing and finance, as well as sustainable development/environment. Qualified individuals may self-nominate or be nominated by any individual or organization. To be considered for the Advisory Council, nominators should submit the following information:

- Name, title, organization and relevant contact information (including phone and email address) of the individual under consideration;
- A letter, on organization letterhead, containing a brief description why the nominee should be considered for membership;
- Short biography of nominee including professional and academic credentials; Please do not send company, trade association, or organization brochures or any other information. Materials submitted should total two pages or less. Should more information be needed, MCC staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources.

All members of the Advisory Council will be independent of the agency, representing the views and interests of their respective industry or area of expertise, and not as Special Government employees. All members shall serve without compensation.

Nominees selected for appointment to the Advisory Council will be notified by return email and receive a letter of appointment. A selection team comprised of representatives from several MCC departments will review the nomination packages. The selection team will make recommendations regarding membership to the Vice President for Compact Operations based on criteria including:

(1) Professional or academic expertise, experience, and knowledge; (2) stakeholder representation; (3) availability and willingness to serve; and (4) skills working collaboratively on committees and advisory panels. Based upon the selection team's recommendations, the Vice President for Compact Operations will select representatives. In the selection of members for the Advisory Council, MCC will seek to ensure a balanced representation and consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the Advisory Council.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation.

Dated: June 8, 2016.

Sarah E. Fandell,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

[FR Doc. 2016–14075 Filed 6–13–16; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a reinstatement of a previously approved collection, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before August 15, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0059.

Title: Supervisory Committee Audits and Verifications, 12 CFR part 715.

Abstract: Title 12 CFR part 715 prescribes the responsibilities of the supervisory committee to obtain an audit of the credit union and verification of member accounts as outlined in Section 115 of the Federal Credit Union Act (Act), 12 U.S.C. 1761d. A supervisory committee audit is required at least once every calendar year covering the period since the last audit and to conduct a verification of members' accounts not less frequently than once every two years. The Act specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles which apply to certain audits, and the accounting principles which must be followed in reports filed with the NCUA Board.

The information is used by both the credit union and the NCUA to ensure through audit testing that the credit union's assets, liabilities, equity, income, and expenses exist, are properly valued, controlled and meet ownership, disclosure and classification requirements of sound financial reporting.

A written report on the audit must be made to the board of directors and, if requested, NCUA. Working papers must be maintained and made available to NCUA. Independence requirements must be met; standards governing verifications and the methods used to verify member's passbooks and accounts are set forth. Section 741.202 makes these requirements applicable to federally insured state-chartered credit unions.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 6,025.

Estimated No. of Responses per Respondent: 3.42.

Estimated Annual Responses: 20,600.

Estimated Burden Hours per Response: 1.88.

Estimated Total Annual Burden Hours: 38,693.

Adjustments in the number of credit unions reflect a decrease from the previous submission and recordkeeping requirements associated with the membership verification, previously omitted, are now included in this request.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 8, 2016.

Dated: June 8, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13949 Filed 6–13–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 14, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0133.

Type of Review: Reinstatement with change of a previously approved collection.

Title: Investment and Deposit Activities, 12 CFR part 703.

Abstract: The National Credit Union Administration (NCUA) Federal Credit Union Act, 12 U.S.C. 1757(7), 1757(8), 1757(15), lists securities, deposits, and other obligations in which a Federal Credit Union (FCU) may invest. The regulations related to these areas are contained in part 703 and section 721.3 of the NCUA regulations and set forth requirements related to maintaining an adequate investment program.

The information collected is used to limit and monitor the level of risk that exists within a credit union, the actions taken by the credit union to mitigate such risk, and help prevent losses to federal credit unions and the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 211,935.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 8, 2016.

Dated: June 8, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–13948 Filed 6–13–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2015–0273]

Information Collection: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The agency regulation authorizes the NRC to collect information about applicants and recipients who are either applying for, or receiving Federal Financial Assistance (FFA) from the Commission.

DATES: Submit comments by July 14, 2016.

ADDRESSES: Submit comments directly to the OMB reviewer at: Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0209), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–7315, email: *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0273 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0273. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0273 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ADAMS ML16145A294. The supporting statement and NRC Form 781, "SBCR Compliance Review," and NRC Form 782 "Complaint Form," are available in ADAMS under Accession numbers ML16145A343, ML16145A302, and ML16145A305.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

NRC's Office of Small Business and Civil Rights (SBCR) collects information from applicants in accordance with Federal mandates requiring compliance reviews be conducted prior to an agency issuing a grant award. The information is collected and analyzed to determine, if there are any "concerns" regarding discrimination violations. Following the issuance of a grant award, information is collected from recipients as part of the legislatively mandated post-award compliance process, to ensure compliance with Equal Opportunity (EO) and fair practice laws during the period of FFA. During the post-award period, recipients are required to submit an annual EO performance report no later than December 31st of each calendar year. Additionally, the regulations require SBCR to investigate Title 9 complaints alleging discrimination filed against recipients receiving FFA from the Commission. This document is the second of two **Federal Register** notices (second notice) required by the Paperwork Reduction Act ("PRA"). In December 2015, the NRC published a related **Federal Register** notice. The Commission did not receive any public comments. This "second notice" requests public comment, and OMB's review and approval of, the proposed collection of information discussed in this notice.

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review, entitled, "10 CFR part 5, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 18, 2015, (80 FR 79102).

1. *The title of the information collection:* "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance."

2. *OMB approval number:* 3150–0209.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC 781, "SBCR Compliance Review" and NRC 782, "Complaint Form".

5. *How often the collection is required or requested:* 10 CFR part 5 follows provisions covered in 10 CFR part 4, section 4.331 Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to respond:* Recipients of FFA provided by the NRC (including educational institutions, other nonprofit organizations receiving FFA, and Agreement States).

7. *The estimated number of annual responses:* 800.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 3,600.

10. *Abstract:* The proposed collection of information is necessary to ensure nondiscrimination and compliance with Federal civil rights regulations in NRC's FFA programs and activities.

Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the NRC; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Dated at Rockville, Maryland, this 10th day of June 2016.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2016–14040 Filed 6–13–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–274; NRC–2015–0284]

United States Department of the Interior, United States Geological Survey TRIGA Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering renewal of Facility Operating License No. R–113, held by the United States Geological Survey (USGS or the licensee), for the continued operation of its USGS Training, Research, Isotope Production, General Atomics (TRIGA) research reactor (GSTR or the reactor). The NRC is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the renewal of the license.

DATES: The EA and FONSI are available as of June 14, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0284 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0284. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Geoffrey A. Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering renewal of Facility Operating License No. R–113, held by the USGS, which would authorize continued operation of its reactor, located in the Denver Federal Center, Lakewood, Colorado. Therefore, as required by section 51.21 of title 10 of the *Code of Federal Regulations* (10 CFR), "Criteria for and identification of licensing and regulatory actions requiring environmental assessments," the NRC performed an EA. Based on the results of the EA that follows, the NRC has determined not to prepare an environmental impact statement for the renewed license, and is issuing a FONSI.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action would renew Facility Operating License No. R–113 for an additional 20 years from the date of issuance of the renewal license. The proposed action is in accordance with the licensee's application dated January 5, 2009, as supplemented by letters dated November 24, 2010; February 11, March 28, May 12, June 29, July 27, August 30, September 26, October 31, and November 30, 2011; January 3, January 27 (two letters), March 28, April 27, May 18, May 31, June 29, July 31, August 30, and November 16, 2012; February 8, May 17, and October 31, 2013; November 3, and November 24, 2014; September 8, 2015; and January 22, and April 1, 2016, (the renewal application). In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the GSTR to routinely provide teaching, research, and services to numerous institutions for a period of 20 years.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation (SE) of the proposed action to issue a renewed Facility Operating License No. R–113 to allow continued operation of the GSTR for a period of 20 years and concludes there is reasonable assurance that the GSTR will continue to operate safely for the additional period of time. The details of the NRC staff's SE will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the EA of the proposed action.

The GSTR is located within the Nuclear Science Building, Building 15, located on the Denver Federal Center, northwest of downtown Lakewood, Colorado, approximately 4 miles (6.4 kilometers) south of Interstate 70 and 10 miles (16 kilometers) west of downtown Denver, Colorado. The initial construction of Building 15 was completed in 1966 and the initial operating license was issued in February 1969. There are no permanent residences on the Denver Federal Center property, and the nearest residence is 2,100 feet (640 meters) from the GSTR.

The GSTR is a pool-type, light-water cooled, graphite-reflected research reactor licensed to operate at a maximum steady-state power level of 1.0 megawatt thermal power (MW) and has the capability to pulse to a peak power of approximately 1,600 MW. The fuel is located at the bottom of the inner aluminum tank with a diameter of approximately 7.5 feet (2.3 meters) and a depth of 25 feet (7.6 meters). The reactor is fueled with uranium-zirconium hydride TRIGA fuel elements with a uranium-235 enrichment of less than 20 percent. A detailed description of the reactor can be found in the GSTR Safety Analysis Report (SAR). There have been no major modifications to the GSTR or the Facility Operating License since issuing the operating license in February 1966.

A. Radiological Impacts

Environmental Effects of Reactor Operations

Gaseous radioactive effluents are discharged by the ventilation exhaust located on the roof of the building, at a volumetric flow rate of approximately 1000 cubic feet per minute (cfm) (28.3 cubic meters per minute). The reactor bay is maintained at a negative pressure relative to the outside environment, which helps ensure that any release pathways are through the ventilation exhaust that provides an elevated release point for dispersion of the effluent. This release pathway is monitored by GSTR staff. The only significant nuclide found in the gaseous effluent stream is Argon-41. The licensee has a current technical specification (TS) which limits the release of Argon-41 to an average annual concentration of 4.8E–6 microcuries/milliliter (μCi/ml). Argon-41 is released from the GSTR through a roof stack at an elevation of 21 feet (6.4 meters) above grade as specified in the GSTR TSs. The concentration of Argon-41 will be reduced by dispersion and dilution before it reaches the unrestricted area. The purpose of the TS is to help ensure that doses from Argon-41 released from the facility are within NRC regulatory requirements. Assuming continuous operation of the GSTR in order to continuously produce and release Argon-41 at the TS limit of 4.8E–6 μCi/ml, and a volumetric flow rate of 1,000 cfm from the exhaust stack, the total release of Argon-41 to the environment would be approximately 71.44 curies in a year.

The licensee performed calculations, assuming a continuous release of Argon-41 at the TS limit (4.8E–6 μCi/ml), and determined that the potential radiation dose to a member of the public, who could be continuously exposed for an entire year at the nearest publicly-available location, 1,558 feet (475 meters) from the GSTR, was approximately 0.3 millirem (mrem) (0.003 milliSieverts (mSv)) per year. The licensee also performed calculations for various locations within the Denver Federal Center, using occupancy factors to account for the duration that persons could be exposed. The maximum exposure was at the Building 15 south door. Using a conservative occupancy factor of 5 percent (1.75 hours per work day or 437 hours per year) to account for the time that an individual may be at

the door, the maximum radiation exposure was 6.75 mrem (0.0675 mSv). Using an occupancy factor of 22.8 percent (40 hours per week for 50 weeks per year), the licensee calculated that the annual dose to a person at the entrance to the nearest building (Building 21—161 feet (49 meters) away) was 2.37 mrem (0.024mSv).

A review of the licensee's annual reports for the previous 5 years of operation shows that the maximum annual release of Argon-41 for the five year time period was approximately 13 curies in 2013. Using reactor operation as provided in the 2013 annual report, which was 1,118 hours, the approximate average concentration released from the roof stack during reactor operation was calculated to be 6.8E–12 curies per milliliter (Ci/ml), which is well below the limit of 1.0E-8 Ci/ml as specified in 10 CFR part 20, appendix B for air effluent releases.

The licensee also considered the radiological effect of Nitrogen-16, which is produced from neutron activation of Oxygen-16 in the reactor pool coolant water. Nitrogen-16 decays with a very short half-life of 7 seconds, and given that the GSTR has a nitrogen diffuser, which provides a delay in the time it takes for the Nitrogen-16 to transit from the reactor core to the pool surface, most of the Nitrogen-16 has been removed through decay prior to reaching the pool surface. Other radioactive gaseous effluents released were reported to the NRC in the licensees' annual reports and were approximately 5 percent or less of the air effluent concentration limits set by 10 CFR part 20, appendix B. The NRC staff reviewed the radiological dose calculations provided by the licensee, the assumptions used, and the results of several years effluent releases from the licensee's annual reports, as well as toured the facility, and finds that the results of the licensee's dose estimates to be reasonable.

Since the potential radiation dose resulting from the effluent release from the normal operation of the GSTR to a person in the unrestricted area outside the Denver Federal Center, is less than 1 mrem (0.01 mSv), and to the maximum exposed person on the Denver Federal Center is less than 7 mrem (0.07 mSv), the licensee demonstrates compliance with the dose limit of 100 mrem (1 mSv) set by 10 CFR 20.1301. Additionally, this potential radiation dose also demonstrates compliance with the air emissions dose constraint of 10 mrem (0.1 mSv) specified in 10 CFR 20.1101(d).

The licensee does not routinely dispose of liquid radioactive wastes. Normal operations of the GSTR do not generate liquid radioactive waste, and the licensee's policy is not to dispose of any liquid radioactive waste directly to the environment or to the sanitary sewer. The occasional liquid radioactive waste generated at the GSTR includes irradiated samples, liquid standards, decontamination waste water, and reactor tank pool water. Primary coolant water is purified by a mixed-bed demineralizer which maintains the conductivity levels low in order to minimize the corrosion potential of the reactor components. Radioactive liquid generated during the resin exchange process or minor amounts collected in the reactor tank or from other uses are evaporated and disposed of as solid radioactive waste. A review of the GSTR annual reports submitted to the NRC for the past 5 years, through 2014, indicated that the licensee reported no routine releases of liquid radioactive waste.

The licensee's health physics staff oversees the handling of solid low-level radioactive waste generated at the GSTR. The bulk of the waste consists of ion exchange resin, irradiated samples, lab-ware, and anti-contamination clothing. The resins used in the demineralizer are replaced every 2 to 3 years, and any radioactive material captured in the resins are disposed with the resins as solid radioactive waste. The resin is aggregated for disposal as solid radioactive waste, until a quantity sufficient for disposal can be collected, which allows significant radioactive decay to further reduce the amount of solid radioactive waste.

The licensee disposes of the waste by transferring it to a low-level waste broker in accordance with all applicable regulations for transportation of radioactive materials.

To comply with the Nuclear Waste Policy Act of 1982, the USGS has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the GSTR and that DOE is obligated to take the fuel from the site for final disposition.

As described in Chapter 11 of the GSTR SAR, personnel exposures are well within the limits set by 10 CFR 20.1201, "Occupational dose limits for adults," and are as low as is reasonably achievable. The licensee health physics staff monitors personnel exposures, which are documented in the licensee's annual reports, and which are consistently less than 10 percent of the occupational limit of 5,000 mrem (50 mSv) per year. The TSs require a continuous air monitor and an area radiation monitor to be operable during reactor operation, in order to provide an indication of any change in the radiation levels. The NRC staff reviewed the operating experience from the GSTR, which is documented in both the licensee's annual reports and the NRC staff's inspection reports, and found that radiation exposures to personnel working in the GSTR from both direct and airborne radiation during normal operation, were within the limits of 10 CFR 20.1201. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to record and track the radiological impact of GSTR operation on the surrounding unrestricted area. The program consists of quarterly exposure measurements at six locations. Biennially, soil and water samples are taken around the facility and analyzed for contamination. The licensee health physics staff administers the program and maintains the appropriate records. The NRC staff review of the environmental survey program indicated that radiation exposures at the monitoring locations did not significantly change, and no correlation appeared to exist between total annual reactor operations and annual exposures measured at the monitoring locations. Based on the NRC staff's review of the past 5 years of data, the NRC staff concludes that operation of the GSTR does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect radiation levels in the environment are expected as a result of the proposed action. Therefore, the NRC staff concludes that the proposed action would not have a significant radiological impact.

Environmental Effects of Accidents

Accident scenarios are provided in the guidance in NUREG–1537, "Guidance for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors," issued February 1996, and the results of the licensee's analysis was provided in Chapter 13 of the GSTR SAR. Typically, the most significant radiological fission product release accident considered at a research reactor is the maximum hypothetical accident (MHA) which for this reactor design is the rupture of one highly irradiated fuel element and the instantaneous release of the contained noble gases and halogen fission products into the air. The dose calculations conservatively assume no radioactive decay of the fission products prior to release. The licensee conservatively calculated doses to facility personnel and the maximum

potential doses to members of the public at various locations around the GSTR. The NRC staff performed independent calculations to verify that the licensee's calculated doses represented conservative estimates for the MHA. The details of these calculations are provided in the NRC staff's SE report that will be issued with the renewed license. The occupational radiation doses resulting from this postulated accident would be well below the 10 CFR 20.1201 limit of 5,000 mrem (50 mSv). The maximum calculated radiation doses for members of the public resulting from this postulated accident would be well below the 10 CFR 20.1301 limit of 100 mrem (1 mSv).

The licensee has not requested changes to the facility design or operating conditions as part of the license renewal. No changes are being made in the types or quantities of effluents that may be released offsite. The licensee has systems in place for controlling the release of radiological effluents and implements a radiation protection program to monitor personnel exposures and calculates releases of radioactive effluents. As discussed in the NRC staff's SE., the systems and radiation protection program are appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, license renewal should not result in an increase in routine occupational or public radiation exposure. As discussed in detail in the NRC staff's SE., the proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal would not change the environmental impact of facility operations. The NRC staff evaluated information contained in the licensee's application, as supplemented, and data reported to the NRC by the licensee for the last 5e years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff found that releases of radioactive material and personnel exposures were all well within applicable regulatory limits. Based on this evaluation, the NRC staff concluded that continued operation of the reactor for an additional 20 years should not have a significant environmental impact.

B. Non-Radiological Impacts

The GSTR core is cooled by natural convection of demineralized light-water in the primary cooling system consisting of the reactor tank and heat removal system. Cooling of the reactor core occurs by natural convection of coolant through the core, with the heated coolant rising out of the core and into the bulk pool water. The heat removal system transfers heat to the secondary system by pumping primary coolant through the tube-side of a 1000 kilowatt rated shell and tube heat exchanger. The secondary system circulates water through the shell-side of the heat exchanger and a forced-air cooling tower. Forced air is directed perpendicular to the water flow in the cooling tower to cool the water. During operation, the secondary system is maintained at a higher pressure than the primary system to minimize the likelihood of primary system contamination entering the secondary system, and ultimately the environment in the unlikely event of a heat exchanger failure. Secondary coolant make-up water to the cooling tower is provided by city water and is automatically added as needed by a float-type control valve. The addition of secondary coolant make-up water is based on the evaporative loss through the cooling tower, and, thus, is minimal with respect to the total capacity of city water. Release of thermal effluents from the GSTR cooling tower will not have a significant effect on the environment. No chemicals are used in the treatment of the primary or secondary coolant. No highly hazardous chemicals, toxins or reactives are present at the facility. No strong acids or bases are used or stored by the licensee. The facility does use small amounts (typically less than 50 milliliter) of chemicals for experiments, but these chemicals are of low toxicity, reactivity and corrosivity characteristics, and are transferred as licensed byproduct material as part of the experiment to the user. As such, the licensee generally maintains less than 1 gallon (3.8 liters) of any chemical at the facility.

Given that the proposed action does not involve any changes in the design or operation of the reactor, and the heat load is dissipated to the environment by evaporative loss through a forced-air cooling tower, the NRC staff concludes that the proposed action will not have a significant impact on the local water supply.

National Environmental Policy Act Considerations

The NRC has responsibilities that are derived from the National Environmental Policy Act and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898—Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

1. Endangered Species Act

The NRC staff conducted a search of Federally-listed species and critical habitats that have the potential to occur in the vicinity of the GSTR facility using the U.S. Fish and Wildlife Service (FWS) Environmental Conservation Online System Information for Planning and Conservation (IPaC) system. The IPaC system report identified 10 Federally endangered or threatened species that may occur or could potentially be affected by the proposed action (ADAMS Accession No. ML16120A471). However, none of these species are likely to occur near the GSTR facility because the facility is located within the Denver Federal Center, a U.S. General Services Administration-operated property that houses office buildings, warehouses, laboratories, and special use space. The area was developed for Federal government operations in the 1940s and has remained in use since that time. Because the area enclosed by the Denver Federal Center was developed for government buildings, it does not provide suitable habitat for any Federally-listed species. Further, the IPaC report determined that no critical habitat is within the vicinity of the GSTR facility. Accordingly, the NRC concludes that the proposed license renewal of the GSTR facility would have no effect on Federally-listed species or critical habitats. Federal agencies are not required to consult with the FWS if they determine that an action will not have an effect on listed species or critical habitat (ADAMS Accession No. ML16120A505). Thus, the Endangered Species Act (ESA) does not require consultation for the proposed GSTR facility license renewal, and the NRC considers its obligations under ESA Section 7 to be fulfilled for the proposed action.

2. Coastal Zone Management Act

The GSTR is not located within any managed coastal zones, nor would GSTR effluents and emissions impact any managed costal zones. Therefore, the NRC does not have obligations under CZMA for this proposed action.

3. National Historic Preservation Act

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. As stated in the Act, historic properties are any prehistoric or historic district, site, building, structure, or object included

in, or eligible for inclusion in the National Register of Historic Places (NRHP). The NRHP lists eleven historical sites in the Lakewood, Colorado area. None of the sites are closer than 0.5 miles (0.8 kilometers) to the GSTR. Given the distance between the GSTR facility and these historical properties, continued operation of GSTR within the Nuclear Science Building would not impact any historical sites. The State Historic Preservation Office (SHPO) was contacted and the SHPO determined that license renewal would have no adverse effect on historic properties in the vicinity of the GSTR. Based on this information, the NRC finds that the potential impacts of license renewal would have no adverse effect on historic properties located in the vicinity of Building 15 of the Denver Federal Center and the GSTR.

4. Fish and Wildlife Coordination Act

With regard to the GSTR, the licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage. Therefore, this action has no significant impact related to the FWCA.

5. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the GSTR. Such effects may include human health, biological, cultural, economic, or social impacts.

Minority Populations in the Vicinity of the GSTR—According to the 2010 Census, about 34 percent of the total population (approximately 930,000 individuals) residing within a 10-mile radius of the GSTR identified themselves as a minority. The largest minority population were people of Hispanic, Latino, or Spanish origin of any race (approximately 241,000 persons or 26 percent), followed by Black or African American (approximately 271,000 or 3 percent). According to the U.S. Census Bureau's 2010 census data, about 20 percent of the Jefferson County population identified themselves as minorities, with persons of Hispanic, Latino, or Spanish origin of any race comprising the largest minority (14.3 percent), followed by Asian (2.6 percent). According to the U.S. Census Bureau's 2014 American Community Survey 1-Year Estimates, the minority population of Jefferson County, as a percent of the total population, had increased to about 21.3 percent.

Low-income Populations in the Vicinity of the GSTR—According to the U.S. Census Bureau's 2009–2013 American Community Survey 5-Year Estimates, approximately 140,000 individuals (15.1 percent) residing within a 10-mile radius of the GSTR, were identified as living below the Federal poverty threshold. The 2013 Federal poverty threshold was $28,834 for a family of four.

According to the U.S. Census Bureau's 2014 American Community Survey 1-Year Estimates, median household income for Colorado was $61,303, while 8.0 percent of families and 12.0 percent of the state population were found to be living below the Federal poverty threshold. Jefferson County had a higher median household income average ($70,714) and lower percentages of families (4.5 percent) and individuals (8.1 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed relicensing would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the GSTR.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC considered denying the proposed action (*i.e.*, the "no-action" alternative). If the NRC denied the request for license renewal, reactor operations would cease and decommissioning would be required. The NRC notes that, even with a renewed license, the GSTR will eventually be decommissioned, at which time the environmental effects of decommissioning would occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan which would require a separate environmental review under 10 CFR 51.21. Cessation of facility operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute a small fraction of the applicable regulatory limits. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the GSTR.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 10 to Facility Operating License No. R–113 for the GSTR, dated June 16, 2005, which extended the license expiration date from October 10, 2007, to February 24, 2009, by removing the construction time, from the issuance date of Construction Permit No. CPRR–102 on October 10, 1967, to the issuance of Operating License No. R–113 on February 24, 1969.

Agencies and Persons Consulted

In accordance with the agency's stated policy, on May 25, 2016, the staff consulted with the Colorado State Liaison Officer regarding the environmental impact of the proposed action. The consultation involved a telephone voice message with an explanation of the environmental review, and an electronic mail message with a copy of the details of this environmental assessment, and the NRC staff's findings. On May 27, 2016, the State Liaison Officer responded, via electronic mail, that they understood the NRC staff review, and had no comments regarding the proposed action (ADAMS Accession No. ML16153A207).

The NRC staff provided information about the proposed activity to the Colorado State Historic Preservation Officer for review in a letter dated January 26, 2011 (ADAMS Accession No. ML110310614). The staff requested a review concerning the historical assessment of the proposed action. On February 16, 2011, the Colorado Historic Preservation Office responded by letter (ADAMS Accession No. ML110600304) and concurred with the conclusions that no historical properties were affected by the proposed action.

The NRC staff provided information about the proposed activity to the City of Lakewood, Department of Planning and Public Works for review in a letter dated September 9, 2011 (ADAMS

Accession No. ML112560231). The staff requested a review concerning the historical assessment of the proposed action. On November 16, 2011, the Manager, Planning Development Assistance responded by electronic mail (ADAMS Accession No. ML113210158) and concurred with the conclusions that no historical properties were affected by the proposed action.

III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of the EA included in Section II above and incorporated by reference in this finding, the NRC finds that there are no significant environmental impacts from the proposed action, and the proposed action will not have a significant effect on the quality of the human environment. The NRC staff has determined that a FONSI is appropriate, and decided not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The following table identifies the environmental and other documents cited in this document and related to the NRC's FONSI. These documents are available for public inspection online through ADAMS at *http://www.nrc.gov/reading-rm/adams.html* or in person at the NRC's PDR as described previously.

Document	ADAMS Accession No.
United States Geological Survey—Safety Analysis Report, Technical Specifications, and Environmental Report to Support License Renewal (redacted version), January 5, 2009.	ML092120136
U.S. Geological Survey TRIGA Reactor Response to the RAI Concerning R 113 License Renewal, November 24, 2010	ML103340090
Letter dated 01/26/11; Subject: Request for a Section 106 Review Under the National Historic Preservation Act for the U.S. Geological Survey TRIGA Reactor in Lakewood, Colorado, January 26, 2011.	ML110310614
Colorado Historical Society, Letter dated 2/16/11, RE: Request for a Section 106 Review under NHPA for USGS TRIGA Reactor, Lakewood, CO, February 16, 2011.	ML110600304
Letter dated 09/09/11; Subject: Request for a Section 106 Review Under the National Historic Preservation Act for the U.S. Geological Survey TRIGA Reactor in Lakewood, Colorado; from T. Jackson, NRC, to W. Clayton, City of Lakewood, CO, September 9, 2011.	ML112560231
City of Lakewood E-mail dated 11/16/11, Subject: Section 106 Review of USGS TRIGA Reactor in Lakewood, November 16, 2011.	ML113210158
Response to Letter of February 1, 2011 Concerning R–113 License Renewal, February 11, 2011	ML110480046
Response to Questions 23.1, 23.2, and 23.3 of the Referenced RAI, March 28, 2011	ML110950059
U.S. Geological Survey—Response to Questions 22.1, 22,2, 25.1, 25.2, 25.3, 25.4, and 25.6 of the Referenced RAI, May 12, 2011.	ML11138A027
U.S. Geological Survey, Response to Request for Additional Information for Questions 17.1 and 17.2, June 29, 2011	ML11181A305
Response to Question 2 of the Referenced RAI, July 27, 2011	ML11214A091
Response to Question 1 of the Referenced RAI, August 30, 2011	ML112500522
Response to Request for Additional Information to Question 20, September 26, 2011	ML11277A013
U.S. Geological Survey TRIGA Reactor (GSTR) Response to Question 6 of the Referenced RAI, October 31, 2011	ML11314A106
U.S. Geological Survey—Redacted—Licensee Response to NRC Request for Additional Information Questions 7 and 8, License Renewal, November 30, 2011.	ML113460014
U.S. Geological Survey—Redacted—Licensee Response to NRC Request for Additional Information Question 15.3, January 3, 2012.	ML120240003
U.S. Geological Survey TRIGA Reactor—Response to Question 15.2 of the Request for Additional Information dated September 29, 1010, January 27, 2012.	ML12068A138
U.S. Geological Survey TRIGA Reactor (GSTR)—Response to Question 18 of a Request for Additional Information dated September 29, 2010, January 27, 2012.	ML12039A173
U.S. Geological Survey TRIGA Reactor, Response to Request for Additional Information to Question 14, March 28, 2012	ML12100A097
U.S. Geological Survey TRIGA Reactor (GSTR)—Response to Question 16 of the Referenced RAI, April 27, 2012	ML12128A429
U.S. Geological Survey, Responses to Questions 26 and 27 of the Referenced RAI, May 18, 2012	ML12151A407
U.S. Geological Survey—Response to Request for Additional Information (RAI) Question 14, May 31, 2012	ML12160A064
U.S. Geological Survey TRIGA Reactor (GSTR)—Response to Question 3 of the Referenced RAI, June 29, 2012	ML12200A055
U.S. Geological Survey TRIGA Reactor Response to Question 21 of the Referenced RAI dated September 29, 2010, July 31, 2012.	ML12220A525
Responses to Questions 9, 10, 11, 12, 15.1, 23.4, 24, and 25.5; Along with a Corrected Copy of the Proposed Technical Specifications (Chapter 14) of the SAR, August 30, 2012.	ML12251A231
U.S. Geological Survey—Redacted—Response to NRC Request for Additional Information dated October 2, 2012, November 16, 2012.	ML12334A001
U.S. Geological Survey—Redacted—Responses to NRC Request for Additional Information dated October 2, 2012 and Telephone Conference dated December 20, 2012, February 8, 2013.	ML13052A179
Redacted USGS RAI Clarification Information Needed to Support the USGS License Renewal SAR (ME1593), May 17, 2013	ML13162A662
Follow-up Safety Analysis Responses from letter dated July 15, 2013, October 31, 2013	ML13311A047
Submission of Revised Technical Specifications, Chapter 14, November 3, 2014	ML14325A646
Redacted Version—U.S. Geological Survey TRIGA Reactor Request for Additional Information Responses to RAI Questions 15.3 and 28, November 24, 2014.	ML14338A196
Revision of Proposed Technical Specifications, September 8, 2015	ML15261A042
U.S. Geological Survey, Responses to RAI Questions 1a, 1b, and 1c, January 22, 2016	ML16042A575
U.S. Geological Survey RAI letter Redacted, April 1, 2016	ML16110A008
U.S. Fish and Wildlife Service, UGSG Training, Research, Isotope Production, General Atomics Research Reactor License Renewal, IPaC Trust Resources Report, April 29, 2016.	ML16120A471
U.S. Fish and Wildlife Service, Endangered Species Consultations Frequently Asked Questions, July 15, 2013	ML16120A505
Colorado State Liaison Officer E-mail, RE: Review of the draft Environmental Assessment Supporting License Renewal of the USGS Research Reactor, May 27, 2016.	ML16153A207

Dated at Rockville, Maryland, this 6th day of June 2016.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–14078 Filed 6–13–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–193; Order No. 3359]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Plus 1C negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 15, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On June 7, 2016, the Postal Service filed notice that it has entered into an additional Global Plus 1C negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 7, 2016 (Notice).

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–193 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 15, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–193 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 15, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–13944 Filed 6–13–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–192; Order No. 3358]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 15, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On June 7, 2016, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 3 (GEPS 3) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket No. CP2016–192 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 15, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2016–192 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Cassie D'Souza is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 15, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–13943 Filed 6–13–16; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, June 7, 2016 (Notice).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32142; 812–14598]

ETF Managers Group LLC, et al.; Notice of Application

June 8, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: ETF Managers Group LLC and Factor Advisors, LLC (each an "Initial Adviser" and together, the "Initial Advisers"), Delaware limited liability companies registered as investment advisers under the Investment Advisers Act of 1940, FactorShares Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and ALPS Distributors, Inc. (the "Distributor"), a Colorado corporation and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

DATES: *Filing Dates:* The application was filed on January 8, 2016 and amended on March 30, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 5, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: Initial Advisers and the Trust, 35 Beechwood Road, Summit, New Jersey 07901; and Distributor, 1290 Broadway, Suite 1100, Denver, Colorado 80203.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551–7345, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Positions"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Positions that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage

[1] Applicants request that the order apply to future series of the Trust or of other open-end management investment companies that currently exist or that may be created in the future (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Advisers or an entity controlling, controlled by, or under common control with the Initial Advisers (each, an "Adviser") and (b) comply with the terms and conditions of the application.

opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Positions and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

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[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78015; File Nos. SR–NYSE–2016–18; SR–NYSEMKT–2016–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price If the Exchanges Are Unable To Conduct a Closing Transaction

June 8, 2016.

I. Introduction

On March 2, 2016, New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") (each an "Exchange," and together the "Exchanges") each filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend, respectively, NYSE Rule 123C and NYSE MKT Rule 123C—Equities (both hereinafter "Rule 123C") to provide for how each Exchange will determine an Official Closing Price if it is unable to conduct a closing transaction. The proposed rule changes were published for comment in the **Federal Register** on March 11, 2016.[3] The Commission received one comment letter in response to the NYSE proposal.[4]

On April 21, 2016, the Commission extended the time period within which to approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes, to June 9, 2016.[5] On May 26, 2016, NYSE submitted a response to the comment letter,[6] and each Exchange filed an Amendment No. 1 to its proposal.[7] The Commission is publishing this notice to solicit comments on the Amendments No. 1 from interested persons, and is approving the proposed rule changes, each as modified by its respective Amendment No. 1, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77305 (March 7, 2016), 81 FR 12977 (SR–NYSE–2016–18) ("NYSE Notice"); Securities Exchange Act Release No. 77306 (March 7, 2016), 81 FR 12986 (SR–NYSEMKT–2016–31) ("MKT Notice"). The proposals are substantially similar and the Commission is hereby noticing the Amendments No. 1 and granting accelerated approval jointly.

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated April 5, 2016 (submitted to File No. SR–NYSE–2016–18) ("SIFMA Letter"). The Commission notes that this comment letter was also submitted in response to a similar filing by the Nasdaq Stock Market LLC. *See* Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007 (March 11, 2016) (SR–NASDAQ–2016–035).

[5] *See* Securities Exchange Act Release Nos. 77677, 81 FR 24907 (April 27, 2016) (SR–NYSE–2016–18); 77676, 81 FR 24907 (April 27, 2016) (SR–NYSEMKT–2016–31).

II. Description of the Proposed Rule Changes

Each Exchange proposes to amend its rules to specify closing contingency procedures for determining an Official Closing Price for its listed securities if it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue. Specifically, each Exchange proposes to amend its Rule 123C to provide for how it would determine an Official Closing Price if it is impaired.[8]

For each Exchange, under its current rules, the "Official Closing Price" of a security it lists is the price established in a closing transaction of one round lot or more.[9] If there is no closing transaction in a security, or if a closing transaction is less than one round lot, the Official Closing Price will be the most-recent last-sale-eligible trade in that security on the Exchange on that trading day.[10] Currently, if an Exchange is unable to conduct a closing transaction in a security due to a systems or technical issue, the Official Closing Price will be the last consolidated last-sale-eligible trade for that security during regular trading hours on that trading day, and if there were no such consolidated last-sale eligible trades, the Official Closing Price will be the prior day's Official Closing Price.[11]

Each Exchange proposes to amend its Rule 123C(1)(e)(ii) to provide for a proposed new contingency plan for how it would determine an Official Closing Price if it is unable to conduct a closing transaction in a security due to a systems or technical issue.[12] Each Exchange proposes that, if it determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities due to a systems or technical issue, it would designate an alternate exchange for those securities. The affected Exchange would publicly announce the exchange designated as the alternate exchange via Trader Update.[13] In these circumstances, the Official Closing Price of each affected security on an Exchange would be determined based on the following hierarchy:

- The Official Closing Price would be the official closing price for that security under the rules of the designated alternate exchange.[14] For example, if NYSE Arca is the designated alternate exchange, the Official Closing Price would be based on NYSE Arca Equities Rule 1.1(ggP), which defines how NYSE Arca establishes an official closing price.[15] If Nasdaq were designated as the alternate exchange, the Official Closing Price would be the official closing price established in Nasdaq Rule 4754.
- If the designated alternate exchange does not have an official closing price in a security, the Official Closing Price would be the volume-weighted average price ("VWAP") of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed.[16] The VWAP would include any closing transactions on an exchange and would take into account any trade breaks or corrections up to the time the VWAP is processed.
- If the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in that security, the Official Closing Price would be the last consolidated last-sale-eligible trade during regular trading hours on that trading day.[17]
- If the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale-eligible trades in a security on a trading day in that security, the Official Closing Price would be the prior day's Official Closing Price.[18]
- If an Official Closing Price for a security cannot be determined as provided above, and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for that security.[19]

In addition, each Exchange has proposed Rule 123C(1)(e)(iii) to describe how it would determine the Official Closing Price for a security if it determines after 3:00 p.m. Eastern Time that it is unable to conduct a closing transaction in one or more securities

[6] *See* Letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated May 26, 2016 ("NYSE Response Letter").

[7] In its Amendment No. 1, each Exchange amended its proposed rule text to (1) add proposed Rule 123C(1)(e)(iv), which provides that, if the Exchange determines the Official Closing Price under Rule 123C(1)(e)(ii) or (e)(iii), the Exchange will publicly announce the manner by which it will determine its Official Closing Price and the designated alternate exchange, if applicable, and will cancel all open interest designated for the Exchange close; and (2) amend Rule 123C(1)(e)(i) to specify how the Exchange will determine the Official Closing Price for a security that has transferred its listing to the Exchange or is a new listing and does not have any last-sale eligible trades on the Exchange on its first day of trading on the Exchange. The Exchanges' respective Amendments No. 1 are available at: *https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2016/NYSE-2016-18,%20Pt.%20Am.%201.pdf* and *https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/rule-filings/filings/2016/NYSEMKT-2016-31,%20Pt.%20Am.%201.pdf*.

[8] According to the Exchanges, this proposal was developed in consultation with one another, their affiliated exchange, NYSE Arca, Inc. ("NYSE Arca"), and the NASDAQ Stock Market LLC ("Nasdaq"), and took into consideration feedback from discussions with industry participants. *See* NYSE Notice, *supra* note 3, at 12976; NYSE MKT Notice, *supra* note 3, at 12986. The Commission notes that the Nasdaq Stock Market LLC has also filed a similar proposed rule change with the Commission. *See* Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007 (March 11, 2016) (SR–NASDAQ–2016–035).

[9] *See* Rule 123C(1)(e)(i). *See also* Securities Exchange Act Release Nos. 76598 (Dec. 9, 2015), 80 FR 77688 (Dec. 15, 2015) (SR–NYSE–2015–62); 76601 (Dec. 9, 2015), 80 FR 77680 (Dec. 15, 2015) (SR–NYSEMKT–2015–98).

[10] *See* Rule 123C(1)(e)(i).

[11] *See* Rule 123C(1)(e)(i).

[12] Each Exchange states that, if it determines that it is impaired before 3:00 p.m. and the Official Closing Price for an Exchange-listed security is determined pursuant to proposed Rule 123C(1)(e)(ii), the SIP would publish the Official Closing Price for that security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to current Rule 123C(1)(e)(i). *See* NYSE Notice, *supra* note 3, at 12979; NYSE MKT Notice, *supra* note 3, at 12987–88. Accordingly, if the Official Closing Price of a security is determined pursuant to proposed Rule 123C(1)(e)(ii), the Exchanges note that recipients of SIP data would not have to make any changes to their systems. *See* NYSE Notice, *supra* note 3, at 12979; NYSE MKT Notice, *supra* note 3, at 12987–88.

[13] *See* NYSE Notice, *supra* note 3, at 12978; NYSE MKT Notice, *supra* note 3, at 12987. The Exchanges represent that they expect to designate an affiliated exchange as the alternate exchange and would designate Nasdaq only if the affiliated exchanges were also impacted by the systems or technical issue. *See* NYSE Notice, *supra* note 3, at 12978 n.6; NYSE MKT Notice, *supra* note 3, at 12987 n.6. In its respective Amendment No. 1, each Exchange specified that this determination would be publicly announced and that, in the event of such a determination, all open interest designated for the Exchange close would be deemed canceled. *See* Amendments No. 1.

[14] *See* Proposed Rule 123C(1)(e)(ii)(A).

[15] According to the Exchanges, NYSE Arca will be filing a rule proposal to amend its Rule 1.1(ggP)(1) to provide that the manner by which NYSE Arca determines the Official Closing Price for securities listed on NYSE Arca would also be applicable to any securities for which NYSE Arca conducts a closing auction, including securities that trade on an unlisted-trading-privileges basis. *See* NYSE Notice, *supra* note 3, at 12978 n.7; NYSE MKT Notice, *supra* note 3, at 12987 n.7.

[16] *See* proposed Rule 123C(1)(e)(ii)(B).

[17] *See* proposed Rule 123C(1)(e)(ii)(C).

[18] *See* proposed Rule 123C(1)(e)(ii)(D).

[19] *See* proposed Rule 123C(1)(e)(ii)(E).

due to a systems or technical issue.[20] According to each Exchange, if an announcement were made after 3:00 p.m. Eastern Time that the Exchange was impaired and unable to conduct a closing transaction, market participants would not have sufficient time to re-direct closing-only orders to an alternate venue.[21] Therefore, each Exchange proposes that the process for determining an Official Closing Price for a security under these circumstances would not contemplate a closing transaction on a designated alternate exchange. Accordingly, in such a scenario, each Exchange proposes to use the following hierarchy for determining the Official Closing Price for a security:

- The Official Closing Price would be the VWAP of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed, including any closing transactions on an exchange.[22] The VWAP would take into account any trade breaks or corrections up to the time the VWAP is processed.
- If there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the Official Closing Price would be the last consolidated last-sale-eligible trade during regular trading hours on that trading day.[23]
- If there were no consolidated last-sale-eligible trades in the security on a trading day, the Official Closing Price would be the prior day's Official Closing Price.[24]
- If an Official Closing Price for a security cannot be determined as provided above and there is no prior day's Official Closing Price, the Exchange would not publish an Official Closing Price for that security.[25]

The Exchanges propose to implement the closing contingency procedures for determining an Official Closing Price no later than 120 days after approval, on a date to be announced via Trader Update.[26]

III. Summary of Comments

As noted above, the Commission received one comment letter on the NYSE proposal and a response letter from NYSE.[27] The commenter generally supports the proposal but suggests certain modifications to the proposal.[28] The Commission notes that, while this comment letter was submitted in response only to the NYSE proposal, the Exchanges' proposals are substantively similar and the comments raised are equally relevant to both.

First, the commenter suggests that NYSE's rules should specify that any designation of an alternate exchange would be *publicly announced* at or before 3:00 p.m. and that the announcement would be made through the SIP feed in addition to any other forms of communication.[29] According to the commenter, if a determination is made at 3:00 p.m., then the time between 3:00 p.m. and when member firms actually receive notice of the designation would cut into the time needed to re-direct closing interest to the designated alternate exchange.[30] NYSE agreed with the commenter's suggestion that it should publicly announce the designation of an alternate exchange.[31] As a result, each Exchange amended its proposal to specify that any designation of an alternate exchange will be publicly announced at or before 3:00 p.m.[32]

Second, the commenter suggests that, if NYSE determines not to carry out its own closing transaction, it should expressly assume responsibility for the cancellation of all closing interest that NYSE has already received.[33] According to the commenter, this would allow market participants to treat their closing interest as canceled even if they have not received an official notification of the cancellation.[34] The commenter also suggests that NYSE's rules should state that the official closing transaction will be canceled once NYSE determines that it is unable to conduct its own closing transaction, so as to avoid uncertainty regarding whether NYSE might change course if it determines before 4:00 p.m. that it can, in fact, conduct its own closing transaction.[35] NYSE agreed with the commenter's suggestion that it provide members with certainty that their open interest will not be executed if NYSE determines to employ the closing contingency procedures. As a result, each Exchange has amended its proposal to expressly state that it would cancel all open interest designated for the Exchange close if it determines to employ the closing contingency procedures.[36] The Commission also notes that, under the proposals, once an Exchange publicly announces that it will employ the closing contingency procedures, it will not revert to its ordinary closing procedures, and the Official Closing Price would be determined according to the hierarchies discussed above.[37]

Third, the commenter suggests that, when using the VWAP methodology, NYSE not include any other exchange's closing transaction in the calculation.[38] According to the commenter, a five-minute VWAP methodology should result in a price that is largely tradable and achievable.[39] However, according to the commenter, if a VWAP used as the official closing price included auction prints from other exchanges' closing transactions, the ability to trade and achieve the official closing price process would be reduced.[40] The Exchanges have not amended the proposals to exclude closing transactions from the VWAP calculation, but have stated that they would consider whether to do so at a later date.[41]

IV. Discussion and Commission Findings

After careful review of the proposals, as modified by the respective Amendments No. 1, and of the comment letter, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule changes are consistent with section 6(b)(5) of the Act,[43] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule changes would provide transparency regarding how the Exchanges would determine the Official Closing Price in Exchange-listed securities when the Exchanges are unable to conduct a closing transaction due to a systems or technical issue. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, and the price of derivatives that are based on the security. As the Exchanges note, the proposed closing contingency procedures would provide a pre-determined, consistent solution that would result in the SIP disseminating an official closing price for securities on behalf of the listing Exchange within a reasonable time frame relative to the normal closing time; would minimize the need for industry participants to modify their processing of data from the SIP; and would provide advance notification of the initiation of a closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.[44] The Commission believes that each Exchange's proposal is reasonably designed to achieve these important goals and to prevent any issues that may result if the Exchange were unable to provide a closing price for its listed securities due to a systems or technical issue. For these reasons, the Commission finds that the proposed rule change is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether each Exchange's respective Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Numbers SR–NYSE–2016–18 and SR–NYSEMKT–2016–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSE–2016–18 and SR–NYSEMKT–2016–31. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–NYSE–2016–18 and SR–NYSEMKT–2016–31 and should be submitted on or before July 5, 2016.

VI. Accelerated Approval of Proposed Rule Changes, as Modified by Their Respective Amendments No. 1

The Commission finds good cause to approve the proposed rule changes, as modified by their respective Amendments No. 1, prior to the 30th day after the date of publication of the notices of each Amendment No. 1 in the **Federal Register**. As noted above, in its respective Amendment No. 1, each Exchange amended the proposed rule text to add Rule 123C(1)(e)(iv), which provides that if the Exchange determines the Official Closing Price under Rule 123C(1)(e)(ii) or (e)(iii), the Exchange will publicly announce the manner by which it will determine the Official Closing Price and the designated alternate exchange, if applicable, and will cancel all open interest designated for the Exchange close. As noted above, the Exchanges made these amendments in response to comments received on the NYSE proposal.

In addition, in its respective Amendment No. 1, each Exchange amended its Rule 123C(1)(e)(i) to specify how it will determine the Official Closing Price for a security that has transferred its listing to the Exchange or that is a new listing and does not have any last-sale-eligible trades on the Exchange on its first day of trading on the Exchange. Specifically, for a security that has transferred its listing to the Exchange and does not have any last-sale-eligible trades on the Exchange on its first trading day, the Official Closing Price would be the prior day's closing price disseminated by the

[20] Each Exchange states that, similar to how the Official Closing Price would be published under proposed Rule 123C(1)(e)(ii), if it determines that it is impaired after 3:00 p.m. and the Official Closing Price for a security is determined pursuant to proposed Rule 123C(1)(e)(iii), the SIP would publish the Official Closing Price for that security no differently than how the SIP publishes the Official Closing Price for an Exchange-listed security pursuant to current Rule 123C(1)(e)(i). *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. Accordingly, if the Official Closing Price is determined pursuant to proposed Rule 123C(1)(e)(iii), the Exchanges note that recipients of SIP data would not have to make any changes to their systems. *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. In its Amendment No. 1, each Exchange has specified that this determination would be publicly announced and that, in the event of such determination, all open interest designated for the Exchange close would be deemed canceled. *See* Amendment No. 1.

[21] *See* NYSE Notice, *supra* note 3, at 12979; NYSE MKT Notice, *supra* note 3, at 12988.

[22] *See* proposed Rule 123C(1)(e)(iii)(A).

[23] *See* proposed Rule 123C(1)(e)(iii)(B).

[24] *See* proposed Rule 123C(1)(e)(iii)(C).

[25] *See* proposed Rule 123C(1)(e)(iii)(D).

[26] *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. Each Exchange further notes that, under the proposed rule change, for purposes of NYSE Rule 440B(b) and NYSE MKT Rule 440B(b)—Equities, the Official Closing Price would continue to be determined based on Rule 123C and that, if the Exchange is impaired, the Official Closing Price as defined in proposed Rules 123C(1)(e)(ii) and (iii) would be used for purposes of determining whether a Short Sale Price Test is triggered in a security the next trading day. *See* NYSE Notice, *supra* note 3, at 12980; NYSE MKT Notice, *supra* note 3, at 12988. Each Exchange also proposes to specify in Rule 123C(1)(e)(i) that, for a security that has transferred its listing to the Exchange and does not have any last-sale-eligible trades on the Exchange on its first trading day, the Official Closing Price would be the prior day's closing price disseminated by the primary listing market that previously listed such security. *See* Amendments No. 1. In addition, for a new listing that does not have any last-sale eligible trades on an Exchange on its first trading day, the Official Closing Price would be based on a derived last sale associated with the price of that security before it begins trading. *See id.*

[27] *See* SIFMA Letter, *supra* note 4; NYSE Response Letter, *supra* note 6.

[28] *See* SIFMA Letter, *supra* note 4, at 1. The commenter also encourages NYSE and Nasdaq to continue to work with industry participants on this issue and to refine the backup mechanism as a next step. *See id.* at 3.

[29] *See id.* at 2–3.

[30] *See id.*

[31] The public announcement of an alternate exchange designation, however, would not be disseminated through the SIP feed.

[32] *See* NYSE Response Letter, *supra* note 6, at 1. *See also* Amendments No. 1.

[33] *See* SIFMA Letter, *supra* note 4, at 3. The commenter also asserts that, if NYSE executes the closing interest despite canceling the closing transaction, NYSE should be responsible under its own rules for any resulting losses to the member firms. *See id.* The Exchanges have not revised their proposals to assume this liability.

[34] *See* SIFMA Letter, *supra* note 4, at 3.

[35] *See id.*

[36] *See* NYSE Response Letter, *supra* note 6, at 2. *See also* Amendments No. 1.

[37] *See supra* notes 14–25 and accompanying text.

[38] *See* SIFMA Letter, *supra* note 4, at 3.

[39] *See id.*

[40] *See id.*

[41] *See* NYSE Response Letter, *supra* note 6, at 2.

[42] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* NYSE Notice, *supra* note 3, at 12978, 12980; NYSE MKT Notice, *supra* note 3, at 12986, 12988–89.

primary listing market that previously listed that security.[45] For a new listing that does not have any last-sale eligible trades on the Exchange on its first trading day, the Official Closing Price would be based on a derived last sale associated with the price of such security before it begins trading.[46] Each Exchange states that its Amendment No. 1 is intended to provide increased transparency in the Exchange's rules as to how the Exchange would determine the Official Closing Price for such new or transferred listings.[47]

Because each Amendment No. 1 responded to the comments received on the original proposal, and provided additional transparency to the operation of the closing contingency procedures for transferred and newly listed securities, the Commission finds good cause for approving the proposed rule changes, as modified by the respective Amendments No. 1, on an accelerated basis, pursuant to section 19(b)(2) of the Act.[48]

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[49] that the proposed rule changes (SR–NYSE–2016–18 and SR–NYSEMKT–2016–31), as modified by their respective Amendments No. 1, be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Robert W. Errett,

Deputy Secretary.

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[45] *See* Amendments No. 1.

[46] *See id.*

[47] *See id.*

[48] 15 U.S.C. 78s(b)(2).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 16, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and Settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters;

Opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Brent J. Fields,

Secretary.

[FR Doc. 2016–14080 Filed 6–10–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78023; File No. SR–MIAX–2016–14]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Exchange Rule 519C, Mass Cancellation of Trading Interest

June 8, 2016.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt Exchange Rule 519C, Mass Cancellation of Trading Interest.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 519C, Mass Cancellation of Trading Interest, to codify the Exchange's current practice of cancelling quotes and/or orders upon the receipt of a verbal or an electronic request from a Member.[3]

Proposed Rule 519C would codify the current process by which Members may call or send an electronic message to the Exchange's designated staff and to direct them to cancel all quotations and/or orders they have in the System.[4] All of the directing Member's quotations then in the System will be cancelled; a Member may submit a request to cancel all or any subset of its orders in the System.

Currently, Exchange Members may cancel all quotations and/or open orders in the System electronically or, in the alternative, may request Exchange staff to do so verbally by phone or via electronic message. The proposed rule would codify the current process of

[3] The term "Member" means an individual or organization approved to exercise trading rights associated with a Trading Permit. Members are deemed "members" under the Act. *See* Exchange Rule 100.

[4] The term "System" means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

requesting cancellations verbally or via electronic message. Specifically, proposed Rule 519C states that a Member may cancel all of its quotations and/or orders in the System by requesting the Exchange staff to effect such cancellations. The form of such a request includes but is not limited to email or a phone call from authorized individuals. The cancellation of quotes and orders as described herein does not disconnect Members from the Exchange's System.

The purpose of the proposed rule change is to codify this current practice in the Exchange's rules. The Exchange has a number of other rules covering related risk management processes available to Members[5] and it believes that this clarification will enhance transparency in the Exchange's rules.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule codifies existing risk protections that are currently available to Members and provides that the Exchange may take action on their behalf. The proposed rule protects investors and the public interest by clarifying, in the Exchange's rules, the risk protection tools and other mechanisms and processes available on the Exchange. The Exchange notes that similar rules are currently operative on other exchanges.[8]

The Exchange notes that the proposed rule change will not relieve Exchange Market Makers of their continuous quoting obligations under Exchange Rule 604 and under Reg NMS Rule 602.[9] Specifically, any interest that is executable against a Member's quotes and orders that is received by the Exchange prior to the time the cancellation is received by the System will automatically execute at the price up to the Member's size. Market Makers that request a mass cancellation of their trading interest will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet their continuous quoting obligation each trading day. Cancel messages entered into the System by Exchange staff are accepted upon receipt by the System, and will be processed in that order such that cancel messages and other interest already accepted into the System will be processed prior to the receipt by the System of the mass cancel message.

The codification of the existing process of requesting the removal of quotes and orders is intended to remove impediments to and perfect the mechanisms of a free and open market by adding precision and ease of reference to the Exchange's rules, thus promoting transparency and clarity for Exchange Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change will not impose any burden on intra-market competition because every Member of the Exchange has the opportunity to benefit from the procedure described in the proposed rule. The proposed rule is meant to provide all Members with the same protection in the event the Member is experiencing an issue that would require the Member to withdraw its quotes and/or orders from the market in order to ensure a fair and orderly market on the Exchange.

The Exchange believes the proposed rule change will not impose any burden on inter-market competition because the process of cancellation of quotations and orders on the Exchange is substantially similar to processes currently operative on other exchanges.[10]

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[5] *See, e.g.,* Exchange Rules 519, MIAX Order Monitor, and 612, Aggregate Risk Manager (ARM).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* BATS BZX Exchange, Inc. ("BZX") Rule 22.11, NASDAQ Options Market ("NOM") Rules, Chapter VII, Section 11, and NASDAQ BX, Inc. ("BX") Rules, Chapter VII, Section 11.

[9] 17 CFR 242.602.

[10] *See supra* note 8.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2016–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–14. This file

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–14, and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13966 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78012; File No. SR–C2–2016–007]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 8, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of Penny Pilot Program through December 31, 2016. The text of the proposed rule change is provided below. (additions are in *italics;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.4. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum quoting increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of this Rule within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [July 1, 2015 and January 1, 2016]*July 1, 2016.* The Penny Pilot shall expire on [June 30, 2016]*December 31, 2016.* Also, for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, may be $0.01 for all option series quoting less than $3 (including LEAPS), and $0.05 for all option series quoting at $3 or higher (including LEAPS).

(4) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the "Pilot Program") is scheduled to expire on June 30, 2016. C2 proposes to extend the Pilot Program until December 31, 2016. C2 believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, C2 proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program ("replacement class"). Any replacement class would be

determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following July 1, 2016. C2 will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program. The Exchange notes that it intends to utilize the same parameters to prospective replacement classes as was originally approved.

C2 is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following July 1, 2016 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2015 through May 31, 2016.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2016–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–007 and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13961 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78014; File No. SR–NASDAQ–2016–035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Secondary Contingency Procedures for the Exchange's Closing Cross

June 8, 2016.

I. Introduction

On March 2, 2016, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish Secondary Contingency Procedures for its Closing Cross. The proposed rule change was published for comment in the **Federal Register** on March 11, 2016.[3] The Commission received one comment letter on the proposed rule change.[4] On April 21, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 6, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange states that it currently has three systems that are designed to ensure the orderly execution and dissemination of the Nasdaq Official Closing Price: (1) The Nasdaq Closing Cross; (2) the Auxiliary Procedures; and (3) the Primary Contingency Procedures.[7] The Exchange now proposes to add Rule 4754(b)(8) to establish Secondary Contingency Procedures, and to amend Rule 4754(b)(7) to provide additional details regarding the operation of the Primary and Secondary Contingency Procedures.[8]

Under the proposal, if a disruption occurs that prevents the execution of the Nasdaq Closing Cross, Nasdaq would use either the Primary Contingency Procedures or the Secondary Contingency Procedures to determine the Nasdaq Official Closing Price, which would be published by the SIP.[9] The determination to use the Primary or Secondary Contingency Procedures would be made by the President of Nasdaq or any Senior Executive designated by the President.[10] Nasdaq would publicly announce at the earliest possible time the initiation of the Primary or Secondary Contingency Procedures via system status alerts, Equity Trader Alerts, and email notification directories.[11] If Nasdaq publicly announces that it will employ its Secondary Contingency Procedures, it would cancel all open interest designated for the Nasdaq close residing in Nasdaq's systems in order to give members the opportunity to route their orders to alternative execution venues.[12]

Under the proposal, if Nasdaq publicly announces at or before 3:00 p.m. that it will employ the Secondary Contingency Procedures for one or more securities, it would designate an alternate exchange for those securities,[13] and the Nasdaq Official Closing Price for each security would be determined based on the following hierarchy:

- The Nasdaq Official Closing Price would be the official closing price established for the security under the rules of the designated alternate exchange.[14]
- If there is no official closing price in the security on the designated alternate exchange, the Nasdaq Official Closing Price would be the volume-weighted average price ("VWAP") of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours as calculated by the SIP, including any closing transactions on an exchange and any trade breaks or corrections up to the time the VWAP is processed.[15]
- If there were no consolidated last-sale-eligible trades in the last five minutes of trading during regular trading hours, the Nasdaq Official Closing Price would be the last consolidated last-sale-eligible trade for the security during regular trading hours on that trading day.[16]
- If there were no consolidated last-sale-eligible trades during regular trading hours on that trading day, the Nasdaq Official Closing Price would be the prior day's Nasdaq Official Closing Price.[17]

If a security's Nasdaq Official Closing Price cannot be determined based on this hierarchy, Nasdaq would not publish an Official Closing Price for the security.[18]

Under the proposal, if Nasdaq publicly announces after 3:00 p.m. that it will employ the Secondary Contingency Procedures for one or more securities, it would not designate an alternate exchange. Rather, the Nasdaq Official Closing Price of each security would be determined based on the following hierarchy:

- The Nasdaq Official Closing Price would be the VWAP of the consolidated last-sale-eligible prices of the last five minutes of trading during regular trading hours as calculated by the SIP, including any closing transactions on an exchange and any trade breaks or corrections up to the time the VWAP is processed.[19]
- If there were no consolidated last-sale-eligible trades in the last five minutes of trading during regular trading hours, the Nasdaq Official Closing Price would be the last consolidated last-sale-eligible trade for the security during regular trading hours on that trading day.[20]
- If there were no consolidated last-sale-eligible trades during regular trading hours on that trading day, the Nasdaq Official Closing Price would be the prior day's Nasdaq Official Closing Price.[21]

If a security's Nasdaq Official Closing Price cannot be determined based on this hierarchy, Nasdaq would not publish an Official Closing Price for the security.[22]

As with the Primary Contingency Procedures, if Nasdaq employs the Secondary Contingency Procedures, after hours trading would begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered Nasdaq to operate the Secondary Contingency Procedures.[23]

The Exchange states that the Operating Committees for the Nasdaq UTP Plan and the Consolidated Quote/Consolidate Tape Plan have already voted to modify the SIPs to support this proposal.[24] According to the Exchange, the Nasdaq SIP has announced plans to implement a new platform in the fourth quarter of 2016, and Nasdaq intends to implement the proposed rule change within 120 days of the date of implementation of that new SIP platform.[25] The Exchange states that a delay of 120 days will permit market participants to test and launch the new SIP platform, and then to separately test and launch the new backup closing functionality.[26]

III. Summary of Comments

As noted above, the Commission received one comment letter on the proposed rule change.[27] The commenter generally supports the proposal but suggests certain modifications to the proposal.[28]

First, the commenter suggests that the Exchange's rules should specify that any designation of an alternate exchange would be *publicly announced* at or before 3:00 p.m. and that the announcement would be made through the SIP feed in addition to any other forms of communication.[29] According to the commenter, if a determination is made at 3:00 p.m., then the time between 3:00 p.m. and when member firms actually receive notice of the designation would cut into the time needed to re-direct closing interest to the designated alternate exchange.[30] The Exchange agreed with the commenter's suggestion that it should publicly announce any determination to invoke the Secondary Contingency Procedures.[31] As a result, the Exchange amended its proposal to specify that any determination to invoke the Secondary Contingency Procedures will be publicly announced, and that an announcement to designate an alternate exchange would be made at or before 3:00 p.m.[32]

Second, the commenter suggests that if the Exchange determines not to carry out its own closing transaction, it should expressly assume responsibility for the cancellation of all closing interest that the Exchange has already received.[33] According to the commenter, this would allow market participants to treat their closing interest as canceled even if they have not received an official notification of the cancellation.[34] The commenter also suggests that the Exchange's rule should state that the official closing transaction will be canceled once the Exchange determines that it is unable to conduct its own closing transaction, so as to avoid uncertainty regarding whether the exchange might change course if it determines before 4:00 p.m. that it can, in fact, conduct its own closing transaction.[35] The Exchange agreed with the commenter's suggestion that it provide members with certainty that their open interest will not be executed if the Exchange invokes the Secondary Contingency Procedures. As a result, the Exchange amended its proposal to expressly state that it would cancel all open interest designated for the Nasdaq close if it determines to employ the Secondary Contingency Procedures.[36] The Commission also notes that, under the proposal, once Nasdaq publicly announces that it will employ the Secondary Contingency Procedures, it will not revert to its ordinary closing procedures, and the Nasdaq Official Closing Price would be determined according to the hierarchies discussed above.[37]

Third, the commenter suggests that, when using the VWAP methodology, the Exchange not include any other exchange's closing transaction in the calculation.[38] According to the commenter, a five-minute VWAP methodology should result in a price that is largely tradable and achievable.[39] However, according to the commenter, if a VWAP used as the official closing price included auction prints from other exchanges' closing transactions, the ability to trade and achieve the official closing price process would be reduced.[40] The Exchange disagreed with this comment. As the Exchange noted, the VWAP calculation should include the maximum liquidity available.[41] Accordingly, the Exchange has not amended the proposal to exclude closing transactions from the VWAP calculation.

IV. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment No. 1, and the comment letter, the Commission

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77309 (March 7, 2016), 81 FR 13007.

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated April 5, 2016 ("SIFMA Letter"). The Commission notes that this comment letter was also submitted in response to a similar filing by New York Stock Exchange LLC ("NYSE"). *See* Securities Exchange Act Release No. 77305 (March 7, 2016), 81 FR 12977 (March 11, 2016) (SR–NYSE–2016–18).

[5] *See* Securities Exchange Act Release No. 77678, 81 FR 24909 (April 27, 2016).

[6] In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Amended Rule 4754(b)(7) to specify the situations in which the Exchange would employ the proposed Secondary Contingency Procedures; (2) amended Rule 4754(b)(7)(A) to specify that the Exchange will publicly announce its determination to employ its Primary or Secondary Contingency Procedures and that such announcement will be made at or before 3:00 p.m. if the Exchange determines to designate an alternate exchange under proposed Rule 4754(b)(8)(A); (3) amended proposed Rule 4754(b)(8)(A)(ii) and (B)(i) to state that the VWAP (as defined below) calculation would take into account any trade breaks or corrections up to the time the VWAP is processed; (4) amended proposed Rule 4754(b)(8)(A) and (B) to provide that the Exchange would not publish an Official Closing Price if the Official Closing Price cannot be determined under proposed Rule 4754(b)(8)(A)(i)–(iv) or (B)(i)–(iii); (5) added proposed Rule 4754(b)(8)(C) to provide that under the Secondary Contingency Procedures, the Exchange will cancel all open interest designated for the Nasdaq close; (6) specified an implementation date for the proposal; (7) responded to the SIFMA Letter; and (8) made non-substantive clarifying and corrective changes to its proposed rule text. Amendment No. 1 is available at: *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2016/SR-NASDAQ-2016-035_Amendment_1.pdf.*

[7] *See* Nasdaq Rule 4754. *See also* Amendment No. 1 at 4.

[8] The Commission notes that NYSE and NYSE MKT LLC ("NYSE MKT") have also filed similar proposed rule changes with the Commission. *See* Securities Exchange Act Release Nos. 77305 (March 7, 2016), 81 FR 12977 (March 11, 2016) (SR–NYSE–2016–18); 77306 (March 7, 2016), 81 FR 12986 (March 11, 2016) (SR–NYSEMKT–2016–31).

[9] *See* proposed Rule 4754(b)(7) and (8). *See also* Amendment No. 1 at 4–6.

[10] The Exchange proposes to specify that it will employ the Primary Contingency Procedures if at all possible, and will employ the Secondary Contingency Procedures only if it determines that both the standard closing procedures and the Primary Contingency Procedures are unavailable. *See* proposed Rule 4754(b)(7). *See also* Amendment No. 1 at 4–5, 30.

[11] The proposal would clarify the interaction between the Primary Contingency Procedures and the proposed Secondary Contingency Procedures, but it would not change the operation of the Primary Contingency Procedures.

[12] *See* proposed Rule 4754(b)(8)(C). *See also* Amendment No. 1 at 9, 32.

[13] The Exchange proposes to designate NYSE Arca as its official back-up exchange because, according to the Exchange, NYSE Arca and Nasdaq membership substantially overlaps and NYSE Arca already operates a closing cross that it can use to execute a closing cross in Nasdaq-listed securities. *See* Amendment No. 1 at 5–6. The Exchange states that Nasdaq members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca in the event Nasdaq is unable to execute a closing cross. *See id.*

[14] *See* proposed Rule 4754(b)(8)(A)(i).

[15] *See* proposed Rule 4754(b)(8)(A)(ii).

[16] *See* proposed Rule 4754(b)(8)(A)(iii).

[17] *See* proposed Rule 4754(b)(8)(A)(iv).

[18] *See* proposed Rule 4754(b)(8)(A)(v). *See also* Amendment No. 1 at 8, 32.

[19] *See* proposed Rule 4754(b)(8)(B)(i).

[20] *See* proposed Rule 4754(b)(8)(B)(ii).

[21] *See* proposed Rule 4754(b)(8)(B)(iii)

[22] *See* proposed Rule 4754(b)(8)(B)(iv). *See also* Amendment No. 1 at 9, 32.

[23] *See* proposed Rule 4754(b)(8)(D).

[24] *See* Amendment No. 1 at 6.

[25] *See id.* at 9.

[26] *See id.*

[27] *See* SIFMA Letter, *supra* note 4.

[28] *See id.* at 1. The commenter also encourages NYSE and Nasdaq to continue to work with industry participants on this issue and to refine the backup mechanism as a next step. *See id.* at 3.

[29] *See id.* at 2–3.

[30] *See id.*

[31] The public announcement of an alternate exchange designation, however, would not be disseminated through the SIP feed.

[32] *See* proposed Rule 4754(b)(8)(A) and (B). *See also* Amendment No. 1 at 5, 13, 31–32.

[33] *See* SIFMA Letter, *supra* note 4, at 3. The commenter also asserts that, if the Exchange executes the closing interest despite canceling the closing transaction, the Exchange should be responsible under its own rules for any resulting losses to the member firms. *See id.* The Exchange has not revised its proposal to assume this liability.

[34] *See* SIFMA Letter, *supra* note 4, at 3.

[35] *See id.*

[36] *See* proposed Rule 4754(b)(8)(C). *See also* Amendment No. 1 at 9, 14, 32.

[37] *See supra* notes 14–22 and accompanying text.

[38] *See* SIFMA Letter, *supra* note 4, at 3.

[39] *See id.*

[40] *See id.*

[41] *See* Amendment No. 1 at 14.

finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[43] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change would provide transparency regarding how the Exchange would determine the Nasdaq Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, and the price of derivatives that are based on the security. As the Exchange notes, the proposed Secondary Contingency Procedures would provide a pre-determined, consistent solution that would result in the SIP disseminating an official closing price for listed securities on behalf of the Exchange within a reasonable time frame relative to the normal closing time; would minimize the need for industry participants to modify their processing of data from the SIP; and would provide advance notification of the initiation of a closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.[44] The Commission believes that the Exchange's proposal is reasonably designed to achieve these important goals and to prevent any issues that may result if the Exchange were unable to provide a closing price for its listed securities due to a systems or technical issue. For these reasons, the Commission finds that the proposed rule change is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–035 and should be submitted on or before July 5, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. As noted above, in Amendment No. 1, the Exchange specified the situations in which it would employ the proposed Secondary Contingency Procedures.[45] The Commission believes that this change would provide market participants with transparency regarding the Exchange's process for determining whether to employ its Primary or Secondary Contingency Procedures. In Amendment No. 1, the Exchange also specified that it will publicly announce its determination to use its Primary or Secondary Contingency Procedures; that such announcement will be made at or before 3:00 p.m. if the Exchange determines to designate an alternate exchange under proposed Rule 4754(b)(8)(A); and that under the Secondary Contingency Procedures, the Exchange would cancel all open interest designated for the Nasdaq close.[46] As noted above, the Exchange made these amendments in response to comments received on the proposal. In addition, in Amendment No.1, the Exchange stated that the VWAP calculation would take into account any trade breaks or corrections up to the time the VWAP is processed, and that it would not publish an Official Closing Price if the Official Closing Price cannot be determined under the proposed process.[47] The Commission notes that these changes would harmonize Nasdaq's proposal with NYSE's and NYSE MKT's proposals. Finally, in Amendment No. 1, the Exchange specified an implementation date for the proposal, responded to the SIFMA Letter, and made non-substantive clarifying and corrective changes to its proposed rule text.[48]

Because Amendment No. 1 provided additional transparency to the operation of the Secondary Contingency Procedures, harmonized Nasdaq's proposal to NYSE's and NYSE MKT's proposals, and responded to the comments received on the original proposal, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to section 19(b)(2) of the Act.[49]

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[50] that the proposed rule change (SR–NASDAQ–2016–035), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Robert W. Errett,

Deputy Secretary.

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[42] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

[44] *See* Amendment No. 1 at 10–11.

[45] *See* proposed Rule 4754(b)(7). *See also* Amendment No. 1 at 4–5, 30.

[46] *See* proposed Rule 4754(b)(8). *See also* Amendment No. 1 at 5, 9, 13–14, 31–32.

[47] *See* proposed Rule 4754(b)(8)(A)(ii) and (v); proposed Rule 4754(b)(8)(B)(i) and (iv). *See also* Amendment No. 1 at 7–8, 31–32.

[48] *See* Amendment No. 1 at 9, 13–14, 30–33.

[49] 15 U.S.C. 78s(b)(2).

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78013; File No. SR–CBOE–2016–048]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Penny Pilot Program

June 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of Penny Pilot Program through December 31, 2016. The text of the proposed rule change is provided below. (additions are in *italics;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

The Board of Directors may establish minimum increments for options traded on the Exchange. When the Board of Directors determines to change the minimum increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission. Until such time as the Board of Directors makes a change to the minimum increments, the following minimum increments shall apply to options traded on the Exchange:

(1) No change.

(2) No change.

(3) The decimal increments for bids and offers for all series of the option classes participating in the Penny Pilot Program are: $0.01 for all option series quoted below $3 (including LEAPS), and $0.05 for all option series $3 and above (including LEAPS). For QQQQs, IWM, and SPY, the minimum increment is $0.01 for all option series. The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively-traded, multiply-listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day following [July 1, 2015 and January 1, 2016]*July 1, 2016.* The Penny Pilot shall expire on [June 30, 2016]*December 31, 2016.*

(4) No change.

. . . *Interpretations and Policies:*

.01–.04 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the "Pilot Program") is scheduled to expire on June 30, 2016. CBOE proposes to extend the Pilot Program until December 31, 2016. CBOE believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot Program, CBOE proposes that it may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program ("replacement class"). Any replacement class would be determined based on national average daily volume in the preceding six months,[5] and would be added on the second trading day following July 1, 2016. CBOE will employ the same parameters to prospective replacement classes as approved and applicable in determining the existing classes in the Pilot Program, including excluding high-priced underlying securities.[6] CBOE will announce to its Trading Permit Holders by circular any replacement classes in the Pilot Program.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis. Thus, a replacement class to be added on the second trading day following July 1, 2016 would be identified based on The Option Clearing Corporation's trading volume data from December 1, 2015 through May 31, 2016.

[6] *See* Securities Exchange Act Release No. 60864 (October 22, 2009), 74 FR 55876 (October 29, 2009) (SR–CBOE–2009–76).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder. Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–048 and should be submitted on or before July 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78016; File No. SR–NYSEArca–2015–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 6 to a Proposed Rule Change To Amend NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares

June 8, 2016.

I. Introduction

On November 6, 2015, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 8.600 by, among other things, adopting generic listing standards for

Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 27, 2015.[3] On January 4, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4]

On November 23, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. On February 21, 2016, the Exchange withdrew Amendment No. 1 to the proposed rule change and filed Amendment No. 2 to the proposed rule change, which replaced the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on February 1, 2016.[5] On February 11, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change as modified by Amendment No. 2 in its entirety.

On February 12, 2016, the Exchange filed Amendment No. 4 to the proposed rule change, which superseded the proposed rule change as modified by Amendment No. 3. On February 22, 2016, the Commission published notice of filing of Amendment No. 4. and instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No 4.[7] In the Order Instituting Proceedings, the Commission solicited comment on specified matters related to the proposal.[8]

On May 20, 2016, the Commission designated a longer period for Commission action on the proposed rule change.[9] On June 3, 2016, the Exchange filed Amendment No. 5 to the proposed rule change, which superseded Amendment No 4 to the proposed rule change. The Commission has received one comment on the proposed rule change.[10]

Pursuant to Section 19(b)(1) of the Act[11] and Rule 19b–4 thereunder,[12] notice is hereby given that, on June 6, 2016, the Exchange filed Amendment No. 6 to the proposed rule change, which supersedes the originally filed proposed rule change, as modified by Amendment No. 5, in its entirety.[13] The proposed rule change, as modified by Amendment No. 6, is as described in Items II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 6, from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item V below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[3] *See* Securities Exchange Act Release No. 76486 (Nov. 20, 2015), 80 FR 74169 ("Notice").

[4] *See* Securities Exchange Act Release No. 76819, 81 FR 987 (Jan. 8, 2016). The Commission designated February 25, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See id.*

[5] *See* Securities Exchange Act Release No. 76974 (Jan. 26, 2016), 81 FR 5149.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 77203, 81 FR 9900 (Feb. 26, 2016) ("Order Instituting Proceedings"). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." *See id.*, 81 FR at 9908.

[8] *See id.* at 9909.

[9] *See* Securities Exchange Act Release No. 77872, 81 FR 33570 (May 26, 2016) (designating July 22, 2016 as the date by which the Commission must either approve or disapprove the proposed rule change).

[10] *See* Letter from Rob Ivanoff to the Commission dated Nov. 22, 2015 (commenting that the format of the Exchange's proposed rule change was unclear and difficult to read, and suggesting a new format that would be easier to understand). This comment is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-1.htm.*

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 240.19b–4.

[13] The Commission notes that each of the Exhibits 4 to the Exchange's amendments depict the changes to the proposed rule text. The amendments, including the Exhibits 4, are available at the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-10/nysearca2015110.shtml.*

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. Under the Exchange's current rules, a proposed rule change must be filed with the Securities and Exchange Commission ("SEC" or "Commission") for the listing and trading of each new series of Managed Fund Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 8.600 that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.[14]

Background

Rule 8.600 sets forth certain rules related to the listing and trading of Managed Fund Shares.[15] Under Rule 8.600(c)(1), the term "Managed Fund Share" means a security that:

(a) Represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser (hereafter "Adviser") consistent with the Investment Company's investment objectives and policies;

(b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a

[14] The Exchange has previously filed a proposed rule change to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. *See* Securities Exchange Act Release No. 74433 (March 4, 2015), 80 FR 12690 (March 10, 2015) (SR–NYSEArca–2015–02). On June 3, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. *See* Securities Exchange Act Release No. 75115 (June 5, 2015), 80 FR 33309 (June 11, 2015). On October 13, 2015, the Exchange withdrew the proposed rule change. *See* Securities Exchange Act Release No. 76186 (October 19, 2015), 80 FR 64461 (October 23, 2015). This Amendment No. 6 to SR–NYSEArca–2015–110 replaces SR–NYSEArca–2015–110 as originally filed and Amendments No. 2, 3, 4 and 5 thereto, and supersedes such filings in their entirety. The Exchange has withdrawn Amendment No. 1 to SR–NYSEArca–2015–110.

[15] *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving NYSE Arca Equities Rule 8.600 and listing and trading of shares of certain issues of Managed Fund Shares) (the "Approval Order"). The Approval Order approved the rules permitting the listing and trading of Managed Fund Shares, trading hours and halts, listing fees applicable to Managed Fund Shares, and the listing and trading of several individual series of Managed Fund Shares.

value equal to the next determined net asset value; and

(c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Effectively, Managed Fund Shares are securities issued by an actively-managed open-end Investment Company (*i.e.*, an actively-managed exchange-traded fund ("ETF")). Because Managed Fund Shares are actively-managed, they do not seek to replicate the performance of a specified passive index of securities. Instead, they generally use an active investment strategy to seek to meet their investment objectives. In contrast, an open-end Investment Company that issues Investment Company Units ("Units"), listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof. All Managed Fund Shares listed and/or traded pursuant to Rule 8.600 (including pursuant to unlisted trading privileges) are subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[16]

In addition, Rule 8.600(d) currently provides for the criteria that Managed Fund Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Fund Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Managed Fund Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Commentary .01 to Rule 8.600 specifies that the Exchange will file separate proposals under Section 19(b) of the Act (hereafter, a "proposed rule change") before listing and trading of shares of an issue of Managed Fund Shares.

Proposed Changes to Rule 8.600

The Exchange would amend Commentary .01 to Rule 8.600 to specify that the Exchange may approve Managed Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b–4(e) under the Act, which pertains to derivative securities products ("SEC Rule 19b–4(e)").[17] SEC Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[18] if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which "passive" ETFs are listed under NYSE Arca Equities Rule 5.2(j)(3).

The Exchange would also specify within Commentary .01 to Rule 8.600 that components of Managed Fund Shares listed pursuant to SEC Rule 19b–4(e) must satisfy on an initial and continued basis certain specific criteria, which the Exchange would include within Commentary .01, as described in greater detail below. As proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares with components that do not satisfy the additional criteria described below or components other than those specified below. For example, if the components of a Managed Fund Share exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading such Managed Fund Share. Similarly, if the components of a Managed Fund Share included a security or asset that is not specified below, the Exchange would file a separate proposed rule change.

The Exchange would also add to the criteria of Rule 8.600(c) to provide that the Web site for each series of Managed Fund Shares shall disclose certain information regarding the Disclosed Portfolio, to the extent applicable. The required information includes the following, to the extent applicable: ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio.[19]

In addition, the Exchange would amend Rule 8.600(d) to specify that all Managed Fund Shares must have a stated investment objective, which must be adhered to under normal market conditions.[20]

Finally, the Exchange would also amend the continued listing requirement in Rule 8.600(d)(2)(A) by changing the requirement that a Portfolio Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that a Portfolio Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).

Proposed Managed Fund Share Portfolio Standards

The Exchange is proposing standards that would pertain to Managed Fund Shares to qualify for listing and trading pursuant to SEC Rule 19b–4(e). These standards would be grouped according to security or asset type. The Exchange notes that the standards proposed for a Managed Fund Share portfolio that holds U.S. Component Stocks, Non-U.S. Component Stocks, Derivative Securities Products and Index-Linked Securities are based in large part on the existing equity security standards applicable to Units in Commentary .01 to Rule 5.2(j)(3). The standards proposed for a Managed Fund Share portfolio that holds fixed income securities are based in large part on the existing fixed income security standards applicable to Units in Commentary .02 to Rule 5.2(j)(3). Many of the standards proposed for other types of holdings in

[16] *See* Approval Order, *supra* note 15, at 19547.

[17] 17 CFR 240.19b–4(e). As provided under SEC Rule 19b–4(e), the term "new derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

[18] 17 CFR 240.19b–4(c)(1). As provided under SEC Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

[19] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding. *See, e.g.* Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (the "PIMCO Total Return Use of Derivatives Approval"), at 44227.

[20] The Exchange would also add a new defined term under Rule 8.600(c)(5) to specify that the term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.*, systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

a Managed Fund Share portfolio are based on previous proposed rule changes for specific series of Managed Fund Shares.[21]

Proposed Commentary .01(a) would describe the standards for a Managed Fund Share portfolio that holds equity securities, which are defined to be U.S. Component Stocks,[22] Non-U.S. Component Stocks,[23] Derivative Securities Products,[24] and Index-Linked Securities[25] listed on a national securities exchange. For Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of the portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities. In addition, proposed Commentary .01(a) would provide that, to the extent that a portfolio includes convertible securities, the equity security into which such security is converted would be required to meet the criteria of Commentary .01(a) after converting.

As proposed in Commentary .01(a)(1) to Rule 8.600, the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(1) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum market value of at least $75 million;[26]

(2) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;[27]

(3) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 65% of the equity weight of the portfolio;[28]

(4) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;[29]

(5) Except as provided in proposed Commentary .01(a), equity securities in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS;[30]

(6) American Depositary Receipts ("ADRs") may be exchange-traded or non-exchange-traded. However no more than 10% of the equity weight of the portfolio shall consist of non-exchange-traded ADRs.[31]

As proposed in Commentary .01(a)(2) to Rule 8.600, the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(1) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;[32]

(2) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;[33]

[21] *See* the PIMCO Total Return Use of Derivatives Approval. *See also*, Securities Exchange Act Release Nos. 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (the "PIMCO Total Return Approval"); 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR–NYSEArca–2013–08) (the "SPDR Blackstone/GSO Senior Loan Approval"); 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca–2012–139) (the "First Trust Preferred Securities and Income Approval"); 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR–NYSEArca–2013–33) (the "International Bear Approval"); 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR–NYSEArca–2010–04) (the "WisdomTree Real Return Approval"); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR–NYSEArca–2012–25) (the "WisdomTree Brazil Bond Approval"). Certain standards proposed herein for Managed Fund Shares are also based on previous proposed rule changes for specific series of Units for which Commission approval for listing was required due to the Units not satisfying certain standards of Commentary .01 and .02 to NYSE Arca Equities Rule 5.2(j)(3). *See, e.g.*, Securities Exchange Act Release No. 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR–NYSEArca–2012–108) (the "NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval").

[22] For the purposes of Commentary .01 and this proposal, the term "U.S. Component Stocks" would have the same meaning as described in NYSE Arca Equities Rule 5.2(j)(3).

[23] For the purposes of Commentary .01 and this proposal, the term "Non-U.S. Component Stocks" would have the same meaning as described in NYSE Arca Equities Rule 5.2(j)(3).

[24] For the purposes of Commentary .01 and this proposal, the term "Derivative Securities Products" would mean Investment Company Units and securities described in Section 2 of Rule 8.

[25] Index-Linked Securities are securities that qualify for Exchange listing and trading under NYSE Arca Equities Rule 5.2(j)(6). The securities described in Rule 5.2(j)(3), Rule 5.2(j)(6) and Section 2 of Rule 8, as referenced above, would include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

[26] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(1) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Index-Linked Securities.

[27] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(2) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Index-Linked Securities.

[28] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(3) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, and the addition of the reference to Index-Linked Securities.

[29] This proposed text is identical to the corresponding text of Commentary .01(a)(A)(4) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, the addition of the reference to Index-Linked Securities, and the reference to the 100% limit applying to the "equity portion" of the portfolio.

[30] 17 CFR 240.600. This proposed text is identical to the corresponding text of Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), except for the addition of "equity" to make clear that the standard applies to "equity securities", the exclusion of unsponsored ADRs, and the omission of the reference to "index," which is not applicable.

[31] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include not more than 10% of net assets in unsponsored ADRs (which are not exchange-listed). *See, e.g.*, Securities Exchange Act Release No. 71067 (December 12, 20113[sic]), 78 FR 76669 (December 18, 2013) (order approving listing and trading of shares of the SPDR MFS Systematic Core Equity ETF, SPDR MFS Systematic Growth Equity ETF, and SPDR MFS Systematic Value Equity ETF under NYSE Arca Equities Rule 8.600).

[32] The proposed text is identical to the corresponding representation from the "SSgA Global Managed Volatility Release", as defined in footnote 28, below. The proposed text is also identical to the corresponding text of Commentary .01(a)(B)(1) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, and that each Non-U.S. Component Stock must have a minimum market value of at least $100 million instead of the 90% required under Commentary .01(a)(B)(1) to NYSE Arca Equities Rule 5.2(j)(3).

[33] The proposed text is identical to the corresponding representation from the SSgA Global Managed Volatility Release, as defined in footnote 28, below. This proposed text also is identical to the corresponding text of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable.

(3) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; [34]

(4) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; [35] and

(5) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.[36]

The Exchange notes that it is not proposing to require that any of the equity portion of the equity portfolio composed of Non-U.S. Component Stocks be listed on markets that are either a member of the Intermarket Surveillance Group ("ISG") or a market with which the Exchange has a comprehensive surveillance sharing agreement ("CSSA").[37] However, as further detailed below, the regulatory staff of the Exchange, or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including U.S. securities exchanges on which the components are traded. The Exchange notes that the generic listing standards for Units based on foreign indexes in NYSE Arca Equities Rule 5.2(j)(3) do not include specific ISG or CSSA requirements.[38] In addition, the Commission has approved listing and trading on the Exchange of shares of an issue of Managed Fund Shares under NYSE Arca Equities Rule 8.600 where non-U.S. equity securities in such issue's portfolio meet specified criteria and where there is no requirement that such non-U.S. equity securities are traded in markets that are members of ISG or with which the Exchange has in place a CSSA.[39]

Proposed Commentary .01(b) would describe the standards for a Managed Fund Share portfolio that holds fixed income securities, which are debt securities [40] that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. In addition, to the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted would be required to meet the criteria of Commentary .01(b) after converting.

The components of the fixed income portion of a portfolio must meet the following criteria initially and on a continuing basis:

(1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more; [41]

(2) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) must not in the aggregate account for more than 65% of the fixed income weight of the portfolio; [42]

(3) An underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers; provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in proposed Commentary .01(a).[43]

(4) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; [44] (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and

(5) Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than

[34] This proposed text is identical to the corresponding text of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index", which is not applicable.

[35] This proposed text is similar to the corresponding text of Commentary .01(a)(B)(4) to NYSE Arca Equities Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, the addition of the reference to Index-Linked Securities, the reference to the equity portion of the portfolio including Non-U.S. Component Stocks, and the reference to the 100% limitation applying to the "equity weight" of the portfolio, which is included because the proposed standards in Commentary .01 to Rule 8.600 permit the inclusion of non-equity securities, whereas Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) applies only to equity securities.

[36] This proposed text is similar to Commentary .01(a)(B)(5) to NYSE Arca Equities Rule 5.2(j)(3) as it relates to Non-U.S. Component Stocks.

[37] ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. *See www.isgportal.org.* A list of ISG members is available at *www.isgportal.org.*

[38] Under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), Units with components that include Non-U.S. Component Stocks can hold a portfolio that is entirely composed of Non-U.S. Component Stocks that are listed on markets that are neither members of ISG, nor with which the Exchange has in place a CSSA.

[39] *See* Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR–NYSEArca–2014–100) (order approving listing and trading on the Exchange of shares of the SPDR SSgA Global Managed Volatility ETF under NYSE Arca Equities Rule 8.600) ("SSgA Global Managed Volatility Release").

[40] Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities.

[41] This text of proposed Commentary .01(b)(1) to Rule 8.600 is based on the corresponding text of Commentary .02(a)(2) to Rule 5.2(j)(3) .

[42] This proposed text is identical to the corresponding text of Commentary .02(a)(4) to Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable.

[43] This proposed text is similar to the corresponding text of Commentary .02(a)(5) to Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable, the exclusion of the text "consisting entirely of exempted securities" and the provision that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in proposed Commentary .01(a).

[44] With respect to subparagraphs (b) and (c) above, the special purpose vehicle ("SPV") that issues the fixed income security (*e.g.*, an asset-backed or mortgage-backed security) would itself be required to satisfy the $700 million and $1 billion criteria, respectively, and not the entity that controls, owns or is affiliated with the SPV.

20% of the weight of the fixed income portion of the portfolio.[45]

Proposed Commentary .01(c) would describe the standards for a Managed Fund Share portfolio that holds cash and cash equivalents.[46] Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months. There would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments would include the following: [47]

(1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;

(2) certificates of deposit issued against funds deposited in a bank or savings and loan association;

(3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;

(4) repurchase agreements and reverse repurchase agreements;

(5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;

(6) commercial paper, which are short-term unsecured promissory notes; and

(7) money market funds.

Proposed Commentary .01(d) would describe the standards for a Managed Fund Share portfolio that holds listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (*e.g.*, stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.[48] There would be no limitation to the percentage of the portfolio invested in such holdings, subject to the following requirements:

(1) In the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement (For purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.); and

(2) the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

Proposed Commentary .01(e) would describe the standards for a Managed Fund Share portfolio that holds over the counter ("OTC") derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (*e.g.*, stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing.[49] Proposed Commentary .01(e) would provide that, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

Proposed Commentary .01(f) would provide that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or fixed income securities, the aggregate gross notional value of such exposures shall meet the criteria set forth in Commentary .01(a) and .01(b) to Rule 8.600 (including gross notional exposures), respectively. The Exchange notes that, for purposes of this proposal, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

The following examples illustrate how certain of the proposed generic criteria of Rule 8.600 would be applied:

1. An actively managed ETF holds non-agency MBS that represent 15% of the weight of the fixed income portion of the portfolio. The fixed income portion of the portfolio meets all the requirements of Commentary .01(b). The ETF also holds an OTC swap on a non-agency MBS Index that represents 10% of the fixed income weight of the portfolio calculated on a notional value basis. Separately, the OTC swap and fixed income portion of the portfolio would meet the requirements of the Rule 8.600, Commentary .01. However, when the 15% weight in non-agency MBS and the 10% weight in the non-agency MBS Index OTC swap are combined, as required by proposed Commentary .01(f) to Rule 8.600, the 25% total weight would exceed the 20% limit for non-agency GSE and privately-issued mortgage-related securities in Commentary .01(b)(5). The portfolio, therefore, would not meet the proposed generic criteria of Rule 8.600.

2. An actively managed ETF holds a portfolio of non-U.S. equity securities, S&P 500 Index and gold futures. S&P 500 Index futures and the gold futures held by the fund are listed on an ISG member exchange. The equity portion of the portfolio consists of developed and emerging markets equity securities with a current aggregate market value of $15 million and all components meet the requirements under Commentary .01(a)(2). The gold futures contract trading unit size is 100 troy ounces and an ounce of gold is currently worth $1200. The fund holds 500 gold futures contracts with a notional value of $60 million (500 * 100 * $1200). One S&P 500 contract represents 250 units of the S&P 500 Index and the S&P 500 Index is trading at $2,000. The portfolio holds 50 contracts, so the notional value of the S&P 500 Index futures position is $25 million (50 * 250 * $2000). The S&P 500 Index futures meet the requirement under Commentary .01(f), that is, the S&P 500 Index meets the criteria in Commentary .01(a). The weights of the components are as follows: Equity securities represent 15% of the portfolio, gold futures represent 60% of

[45] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include up to 20% of net assets in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities. See, *e.g.*, Securities Exchange Act Release No. 75566 (July 30, 2015), 80 FR 46612 (August 5, 2015) (SR–NYSEArca–2015–42) (order approving listing and trading of shares of Newfleet Multi-Sector Unconstrained Bond ETF under NYSE Arca Equities Rule 8.600).

[46] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include cash and cash equivalents. *See, e.g.*, SPDR Blackstone/GSO Senior Loan Approval, *supra* note 21, at 19768–69 and First Trust Preferred Securities and Income Approval, *supra* note 21, at 76150.

[47] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly specified short-term instruments with respect to their inclusion in Managed Fund Share holdings. *See, e.g.*, First Trust Preferred Securities and Income Approval, *supra* note 21, at 76150–51.

[48] Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include listed derivatives. *See, e.g.*, WisdomTree Real Return Approval, *supra* note 21, at 13617 and WisdomTree Brazil Bond Approval, *supra* note 21, at 32163.

[49] A proposed rule change for series of Units previously listed and traded on the Exchange pursuant to Rule 5.2(j)(3) similarly included the ability for such Units' holdings to include OTC derivatives, specifically OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS and therefore do not satisfy the requirements of Commentary .01(a)(A) to Rule 5.2(j)(3). *See, e.g.*, NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval, *supra* note 21, at 23602.

the portfolio and S&P 500 Index futures represent 25% of the portfolio. The gold futures represent 60% of the portfolio and exceeds the 30% concentration limitation on any single underlying reference asset as outlined in proposed Commentary .01(d)(2). The portfolio, therefore, would not meet the proposed generic criteria of Rule 8.600.

3. An actively managed ETF holds a portfolio of equity securities and call option contracts on company XYZ. The equity portion of [sic] portfolio meets the requirements under Commentary .01(a). Company XYZ represents 20% of the weight of the equity portion of the portfolio. The equity portion of the fund has a market value of $100 million and the market value of the fund's holdings in company XYZ has a market value of $20 million. The fund also holds 10,000 call option contracts on company XYZ which has a current market price of $50 a share and, therefore, a notional value of $50 million (50 * 100 * 10,000) (that is, the $50 market price per share times the multiplier of 100 times 10,000 contracts). The option contracts are traded on an ISG member exchange. The total exposure to company XYZ is therefore $70 million and represents 46.7% ($70 million/$150 million=46.7%) of the portfolio. This fund would not meet the requirements of Rule 8.600 because the exposure to XYZ at 46.7% exceeds the 30% concentration limitation of proposed Commentary .01(d)(2).

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Fund Shares. Additionally, the Exchange believes that the proposed portfolio standards for listing and trading Managed Fund Shares, many of which track existing Exchange rules relating to Units, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares.[50] These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that:[51]

(1) The Managed Fund Shares will continue to conform to the initial and continued listing criteria under Rule 8.600;

(2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares;

(3) prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Equity Trading Permit ("ETP") Holders in a Bulletin of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under NYSE Arca Equities Rule 9.2(a), the risks involved in trading the Managed Fund Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated, information regarding the Portfolio Indicative Value and the Disclosed Portfolio, prospectus delivery requirements, and other trading information. In addition, the Bulletin will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the applicable registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4 p.m. ET each trading day; and

(4) the issuer of a series of Managed Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under NYSE Arca Equities Rule 5.3.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[52] in general, and furthers the objectives of Section 6(b)(5) of the Act,[53] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. Specifically, after more than six years under the current process, whereby the Exchange is required to file a proposed rule change with the Commission for the listing and trading of each new series of Managed Fund Shares, the Exchange believes that it is appropriate to codify certain rules within Rule 8.600 that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Fund Shares that have investment portfolios that are similar to investment portfolios for Units, which have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission. In this regard, the Exchange notes that the standards proposed for Managed Fund Share portfolios that include U.S. Component Stocks, Non-U.S. Component Stocks, Derivative Securities Products, and Index-Linked Securities are based in large part on the existing equity security standards applicable to Units in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) and that the standards proposed for Managed Fund Share portfolios that include fixed income securities are based in large part on the existing fixed income standards applicable to Units in Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3). Additionally, many of the standards proposed for other types of holdings of series of Managed Fund Shares are based on previous proposed rule changes for specific series of Managed Fund Shares.[54]

With respect to the proposed addition to the criteria of Rule 8.600(c) to provide that the Web site for each series of Managed Fund Shares shall disclose certain information regarding the Disclosed Portfolio, to the extent applicable, the Exchange notes that proposed rule changes approved by the Commission for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as

[50] *See* Approval Order, *supra* note 15 at 19548.

[51] The Exchange made similar representations in the Approval Order. *See id.* at 19549.

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] *See supra*, note 21.

applicable to the type of holding.[55] With respect to the proposed definition of the term "normal market conditions" in proposed Rule 8.600(c)(5), such definition is similar to the definition of normal market conditions approved by the Commission for other issues of Managed Fund Shares.[56] In addition, proposed Rule 8.600(d)(1)(C), would specify that a series of Managed Fund Shares would be required to adhere to its stated investment objective during normal market conditions.

With respect to the proposed amendment to the continued listing requirement in Rule 8.600(d)(2)(A) to require dissemination of a Portfolio Indicative Value at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34), such requirement conforms to the requirement applicable to the dissemination of the Intraday Indicative Value for Units in Commentary .01(c) and Commentary .02 (c) to NYSE Arca Equities Rule 5.2(j)(3). In addition, such dissemination is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[57]

With respect to the proposed requirement in Commentary .01(a) that no more than 25% of the equity weight of the portfolio shall consist of leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities, such requirement would assure that only a relatively small proportion of a fund's investments could consist of such leveraged and/or inverse securities. In addition, such limitation would apply to both U.S. Component Stocks and Non-U.S. Component Stocks comprising the equity portion of a portfolio. With respect to the proposed provision in Commentary .01(a) that, to the extent a portfolio includes a convertible security, the equity security into which such security is converted must meet the criteria in Commentary .01(a) after converting, such requirement would assure that the equity securities into which a convertible security could be converted meet the liquidity and other criteria in Commentary .01 applicable to such equity securities. With respect to the proposed exclusion of Derivatives Securities Products and Index-Linked Securities from the requirements of proposed Commentary .01(a) of Rule 8.600, the Exchange believes it is appropriate to exclude Index-Linked Securities as well as Derivative Securities Products from certain component stock eligibility criteria for Managed Fund Shares in so far as Derivative Securities Products and Index-Linked Securities are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such securities are listed. Derivative Securities Products and Index-Linked Securities that are components of a fund's portfolio would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act[58] or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act[59] or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b–4(e) under the Act.[60] The Exchange also notes that Derivative Securities Products and Index-Linked Securities are derivatively priced, and, therefore, the Exchange believes that it would not be necessary to apply the proposed generic quantitative criteria (*e.g.*, market capitalization, trading volume, or portfolio component weighting) applicable to equity securities other than Derivative Securities Products or Index-Linked Securities (*e.g.*, common stocks) to such products.[61]

With respect to the proposed criteria applicable to U.S. Component Stocks, the Exchange notes that such criteria are similar to those in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) relating to criteria applicable to an index or portfolio of U.S. Component Stocks. In addition, Non-U.S. Component Stocks also will be required to meet criteria similar to certain generic listing standards in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) relating to criteria applicable to an index or portfolio of U.S. Component Stocks and Non-U.S. Component Stocks underlying a series of Units to be listed and traded on the Exchange pursuant to Rule 19b–4(e) under the Act.

With respect to the proposed requirement in Commentary .01(a)(1)(F) that ADRs in a portfolio may be exchange-traded or non-exchange-traded and that no more than 10% of the equity weight of the portfolio shall consist of non-exchange-traded ADRs, the Exchange notes that such requirement will ensure that unsponsored ADRs, which are traded OTC and which generally have less market transparency than sponsored ADRs, as well as any sponsored ADRs traded OTC, could account for only a small percentage of the equity weight of a portfolio. Further, the requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[62]

With respect to the proposed provision in Commentary .01(b) that, to the extent a portfolio includes convertible securities, the fixed income security into which such security is converted must meet the criteria in paragraph (b) of Commentary .01 after converting, such requirement would assure that the fixed income securities into which a convertible security could be converted meet the liquidity and other criteria in Commentary .01(b) applicable to fixed income securities.

As proposed, pursuant to Commentary .01(b)(3) to Rule 8.600, an underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers, but there would be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities, as described in Commentary .01(a). The Exchange notes that, when evaluated in conjunction with proposed Commentary .01(b)(2), the proposed rule is consistent with Commentary .02(a)(4) and (5) of NYSE Arca Equities Rule 5.2(j)(3) in that it provides for a maximum weighting of a fixed income security in the fixed income portion of the portfolio of a fund that is comparable to the existing rules applicable to Investment Company Units based on fixed income indexes.

With respect to the proposed requirement in Commentary .01(b)(5) that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio, the Exchange notes that

[55] *See supra*, note 19.

[56] *See, e.g.*, Securities Exchange Act Release No. 74338 (February 20, 2015), 80 FR 10556 (February 26, 2015) (SR–NYSEArca–2014–143) (order approving listing and trading of shares of the SPDR Doubletree Total Return Tactical ETF under NYSE Arca Equities Rule 8.600).

[57] *See, e.g.*, Approval Order, *supra* note 15; International Bear Approval, *supra* note 21.

[58] 15 U.S.C. 78s(b)(2).

[59] 15 U.S.C. 78s(b)(3)(A).

[60] 17 CFR 240.19b–4(e).

[61] *See* Securities Exchange Act Release Nos. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (SR–NYSEArca–2008–29) (notice of filing of proposed rule change to amend eligibility criteria for components of an index underlying Investment Company Units); 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (order approving proposed rule change to amend eligibility criteria for components of an index underlying Investment Company Units).

[62] *See* note 31, *supra*.

such requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[63]

With respect to the proposed amendment to Commentary .01(c) relating to cash and cash equivalents, while there is no limitation on the amount of cash and cash equivalents that can make up the portfolio, such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility. Further, the requirement is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.[64]

With respect to proposed Commentary .01(d)(1) to Rule 8.600 relating to listed derivatives, the Exchange believes that it is appropriate that there be no limit to the percentage of a portfolio invested in such holdings, provided that, in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps would consist of futures, options, and swaps for which the Exchange may obtain information via ISG from other members or affiliates or for which the principal market is a market with which the Exchange has a CSSA. Such a requirement would facilitate information sharing among market participants trading shares of a series of Managed Fund Shares as well as futures and options that such series may hold. In addition, listed swaps would be centrally cleared, reducing counterparty risk and thereby furthering investor protection.[65] With respect to proposed Commentary .01(d)(2) to Rule 8.600, requiring percentage caps on the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets or based on any single underlying reference asset, the Exchange believes such requirements will help ensure that listed derivatives utilized by a fund are adequately diversified and not unduly concentrated.

With respect to proposed Commentary .01(e) to Rule 8.600 relating to OTC derivatives, the Exchange believes that the limitation to 20% of a fund's assets would assure that the preponderance of fund investments would not be in derivatives that are not listed and centrally cleared. The Exchange believes that such a limitation is sufficient to mitigate the risks associated with price manipulation because a 20% cap on OTC derivatives will ensure that any series of Managed Fund Shares will be sufficiently broad-based in scope to minimize potential manipulation associated with OTC derivatives and because the remaining 80% of the portfolio will consist of instruments subject to numerous restrictions designed to prevent manipulation, including equity securities (which, as proposed, would be subject to market cap, trading volume, and diversity requirements, among others), fixed income securities (which, as proposed, would be subject to principal amount outstanding, diversity, and issuer requirements, among others), cash and cash equivalents (which, as proposed, would be limited to short-term, highly liquid, and high credit quality instruments), and/or listed derivatives (which would be subject to the limitations in proposed Commentary .01(d)).

The Exchange notes that a fund's investments in derivative instruments would be subject to limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage an investment company can obtain. A fund's investments would be consistent with its investment objective and would not be used to enhance leverage. To limit the potential risk associated with a fund's use of derivatives, a fund will segregate or "earmark" assets determined to be liquid by a fund in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments.

With respect to proposed Commentary .01(f) to Rule 8.600 relating to a fund's use of listed or OTC derivatives to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the Exchange notes that the aggregate gross notional value of such exposure would be required to meet the numerical and other criteria set forth in proposed Commentary .01(a) and .01(b) to Rule 8.600 (including gross notional exposures), respectively.

Quotation and other market information relating to listed futures and options is available from the exchanges listing such instruments as well as from market data vendors. With respect to centrally-cleared swaps[66] and non-centrally-cleared swaps regulated by the CFTC,[67] the Dodd-Frank Act mandates that swap information be reported to swap data repositories ("SDRs").[68] SDRs provide a central facility for swap data reporting and recordkeeping and are required to comply with data standards set by the CFTC, including real-time public reporting of swap transaction data to a derivatives clearing organization or SEF.[69] SDRs require real-time reporting of all OTC and centrally cleared derivatives, including public reporting of the swap price and size. The parties responsible for reporting swaps information are CFTC-registered swap dealers ("RSDs"), major swap participants, and swap execution facilities ("SEFs"). If swap counterparties do not fall into the above categories, then one of the parties to the swap must report the trade to the SDR. Cleared swaps regulated by the CFTC must be executed on a Designated Contract Market ("DCM") or SEF. Such cleared swaps have the same reporting requirements as futures, including end-of-day price, volume, and open interest. CFTC swaps reporting requirements require public dissemination of, among other items, product ID (if available); asset class; underlying reference asset, reference issuer, or reference index; termination date; date and time of execution; price, including currency; notional amounts, including currency; whether direct or indirect counterparties include an RSD; whether cleared or un-cleared; and platform ID of where the contract was executed (if applicable).

With respect to security-based swaps regulated by the Commission, the Commission has adopted Regulation SBSR under the Act implementing requirements for regulatory reporting and public dissemination of security-based swap transactions set forth in Title VII of the Dodd-Frank Act. Regulation SBSR provides for the reporting of security-based swap

[63] *See* note 45, *supra*.

[64] *See* note 46, *supra*.

[65] The Commission has noted that "[c]entral clearing mitigates counterparty risk among dealers and other institutions by shifting that risk from individual counterparties to [central counterparties ("CCPs")], thereby protecting CCPs from each other's potential failures." *See* Securities Exchange Act Release No. 67286 (June 28, 2012) (File No. S7–44–10) (Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies).

[66] There are currently five categories of swaps eligible for central clearing: Interest rate swaps; credit default swaps; foreign exchange swaps; equity swaps; and commodity swaps. The following entities provide central clearing for OTC derivatives: ICE Clear Credit (US); ICE Clear (EU); CME Group; LCH.Clearnet; and Eurex.

[67] Pursuant to the Dodd-Frank Act, OTC and centrally-cleared swaps are regulated by the CFTC with the exception of security-based swaps, which are regulated by the Commission.

[68] The following entities are provisionally registered with the CFTC as SDRs: BSDR LLC., Chicago Mercantile Exchange, Inc., DTCC Data Repository, and ICE Trade Vault.

[69] Approximately eighteen entities are currently registered with the CFTC as SEFs.

information to registered security-based swap data repositories ("Registered SDRs") or the Commission, and the public dissemination of security-based swap transaction, volume, and pricing information by Registered SDRs.[70]

Price information relating to forwards and OTC options will be available from major market data vendors.

A fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of a fund's broad-based securities market index (as defined in Form N–1A).[71] In addition, the Exchange notes that, under proposed Commentary .01(a) to Rule 8.600, for Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of a fund's portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities.

The proposed rule change is also designed to protect investors and the public interest because Managed Fund Shares listed and traded pursuant to Rule 8.600, including pursuant to the proposed new portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[72]

The proposed rule change is also designed to protect investors and the public interest as well as to promote just and equitable principles of trade in that any Non-U.S. Component Stocks will each meet the following criteria initially and on a continuing basis: (1) Have a minimum market value of at least $100 million; (2) have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; and (4) each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting. The Exchange believes that such quantitative criteria are sufficient to mitigate any concerns that may arise on the basis of a series of Managed Fund Shares potentially holding 100% of its assets in Non-U.S. Component Stocks that are neither listed on members of ISG nor exchanges with which the Exchange has in place a CSSA because, as stated above, such criteria are either the same or more stringent than the portfolio requirements for Units that hold Non-U.S. Component Stocks and there are no such requirements related to such securities being listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA. Further, the Exchange has not encountered and is not aware of any instances of manipulation or other negative impact in any series of Units that has occurred by virtue of the Units holding such Non-U.S. Component Stocks. As such, the Exchange believes that there should be no difference in the portfolio requirements for Managed Fund Shares and Units as it relates to holding Non-U.S. Component Stocks that are not listed on an exchange that is a member of ISG or with which the Exchange has in place a CSSA.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Fund Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Managed Fund Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b–4(e) under the Act by allowing Managed Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares that do not satisfy the additional criteria described above.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[73] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Fund Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Fund Shares more competitive by applying uniform listing standards with respect to Managed Fund Shares.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

IV. Date of Effectiveness of the Proposed Rule Change, as Modified by Amendment No. 6, and Timing for Commission Action

Section 19(b)(2) of the Act[74] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. On May 20, 2016, the Commission published notice of its determination that it was appropriate to

[70] *See* Securities Exchange Act Release No. 74244 (February 11, 2015), 80 FR 14564 (March 19, 2015) (Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information).

[71] *See, e.g.*, Securities Exchange Act Release No. 74842 (April 29, 2015), 86 FR 25723 (May 5, 2015) (SR–NYSEArca–2014–89) (order approving listing and trading of shares of eight PIMCO exchange-traded funds).

[72] *See* Approval Order, *supra* note 15, at 19547.

[73] 15 U.S.C. 78f(b)(8).

[74] 15 U.S.C. 78s(b)(2).

designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it would have sufficient time to consider the proposed rule change and, pursuant to Section 19(b)(2) of the Act,[75] designated July 22, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change.[76]

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 6 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2015–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–110 and should be submitted on or before June 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–13965 Filed 6–13–16; 8:45 am]

BILLING CODE 8011–01–P

[75] 15 U.S.C. 78s(b)(2).

[76] *See supra* note 9 and accompanying text.

[77] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Louis Cupp, New Markets Policy Analyst, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, 202–619–0511 *louis.cupp@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Forms 1405 and 1405A are used by Small Business Administration (SBA) examiners as part of their examination of licensed small business investment companies (SBICs). This information is collected from SBIC'S Stockholders and partners and provides independent third party confirmation of an SBIC's representations concerning its owners. The information helps SBA to evaluate the SBIC'S with applicable laws and regulations concerning capital requirements.

Solicitation of Public Comments: SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: "Stockholders' Confirmation (Corporation); Ownership Confirmation (Partnership)".

Description of Respondents: Licensed small business investment companies (SBICs).

Form Number's: 1405, 1405A.

Annual Responses: 600.

Annual Burden: 600.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–14012 Filed 6–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, Director of Licensing and Program Standards, Office of Investment and Innovation, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Director, Licensing and Program Standards, 202–205–7559 *carol.fendler@sba.gov*

Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: SBA Forms 2181, 2182 and 2183 provide SBA with the necessary information to make decisions regarding the approval or denial of an applicant for a small business investment company (SBIC) license. SBA uses this information to assess an applicant's ability to successfully operate an SBIC within the scope of the Small Business Investment Act of 1958, as amended.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: "SBIC Management Questionnaire & License Application; Exhibits to SBIC License Application/Management Assessment Questionnaire".

Description of Respondents: SBIC License Applicants.

Form Number's: 2181, 2182, 2183.

Annual Responses: 425.

Annual Burden: 7,167.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–14018 Filed 6–13–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14736 and #14737]

Virginia Disaster #VA–00062

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of VIRGINIA dated 06/07/2016.

Incident: Severe Storms and Tornadoes.

Incident Period: 02/24/2016.

Effective Date: 06/07/2016.

Physical Loan Application Deadline Date: 08/08/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/07/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Appomattox, Essex.

Contiguous Counties:

Virginia: Amherst, Buckingham, Campbell, Caroline, Charlotte, King and Queen, King George, Middlesex, Nelson, Prince Edward, Richmond, Westmoreland.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14736 C and for economic injury is 14737 0.

The Commonwealth which received an EIDL Declaration # is Virginia.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 7, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–14021 Filed 6–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14740 and #14741]

Texas Disaster #TX–00473

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4269–DR), dated 06/03/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 through 04/24/2016.

Effective Date: 06/03/2016.

Physical Loan Application Deadline Date: 08/02/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/03/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Austin, Bastrop, Bosque, Callahan, Colorado, Coryell, Fayette, Grimes, Harris, Milam, Montgomery, San Jacinto, Waller, Washington, Wharton.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 147406 and for economic injury is 147416.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–14026 Filed 6–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before August 15, 2016.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Melissa Atwood, Director, Denver Finance Center, Small Business Administration, 721 19th Street, 3rd Floor, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT:

Melissa Atwood, Director, Denver Finance Center 303–844–8538 *melissa.atwood@sba.gov*

Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: Government wide requirements in the annual appropriations act, as well as OMB Circular A 123 Appendix B, require agencies to conduct an alternative credit worthiness assessment of new travel applications when the credit score inquiry results in no score. This information is to gather data to make the alternative credit assessment.

Solicitation of Public Comments: SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: "Alternative Creditworthiness Assessment"

Description of Respondents: Personnel that assist in the process of loan applications.

Form Number: 2294.

Annual Responses: 12.

Annual Burden: 2 hrs.

Curtis Rich,

Management Analyst.

[FR Doc. 2016–14013 Filed 6–13–16; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14738 and #14739]

Mississippi Disaster #MS–00086

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 06/07/2016.

Incident: Torrential Rains and Flash Flooding.

Incident Period: 04/28/2016 through 05/02/2016.

Effective Date: 06/07/2016.

Physical Loan Application Deadline Date: 08/08/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 03/07/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Harrison.

Contiguous Counties:

Mississippi: Hancock, Jackson, Pearl River, Stone.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.250
Homeowners Without Credit Available Elsewhere	1.625
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14738 6 and for economic injury is 14739 0.

The State which received an EIDL Declaration # is Mississippi

(Catalog of Federal Domestic Assistance Number 59008)

Dated: June 7, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–14023 Filed 6–13–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–29]

Petition for Exemption; Summary of Petition Received; Raytheon Space and Airborne Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 5, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–0863 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso W. Pendergrass II (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 8, 2016.

Dale Bouffiou,

Deputy Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0863.

Petitioner: Raytheon Space and Airborne Systems (RSAS).

Section(s) of 14 CFR Affected: § 91.529(b).

Description of Relief Sought: RSAS is requesting an exemption to permit the combined hours attained as a pilot and flight engineer in the B727 to be used to satisfy the 50 hours every six months to retain flight engineer currency. All dual qualified pilots and flight engineers will continue to receive an annual pilot proficiency check as required under 14 CFR 61.58 as well as an annual flight engineer proficiency check as required under 14 CFR 91.529.

[FR Doc. 2016–13957 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Land Use Change and Release of Grant Assurance Restrictions at the Sacramento International Airport (SMF), Sacramento, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of a non-aeronautical land-use change.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a land-use change for approximately 31.1 acres of airport property at Sacramento International Airport (SMF), Sacramento. The land use change will allow airport land to be released from the aeronautical use provisions of the Grant Assurances that require it to serve an airport purposes since the land is not needed for aeronautical uses. The reuse of the land for solar energy generating arrays represents a compatible land use that will not interfere with the airport or its operations. The solar generated electricity will benefit the airport by producing a market return on the land while reducing electrical costs. Cost savings will equal or exceed the fair market rental value of the land occupied by the solar farms. These benefits will serve the interest of civil aviation and contribute to the self-sustainability of the airport.

DATES: Comments must be received on or before July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Mr. James W. Lomen, Manager, Federal Aviation Administration, San Francisco Airports District Office, Federal Register Comment, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Glen Rickelton, Airport Manager, Sacramento International Airport, 6900 Airport Boulevard, Sacramento, CA 95837.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The County of Sacramento, California requested a modification to the conditions in the Grant Assurances to permit the non-aeronautical use of approximately 31.1 acres of land at Sacramento International Airport for two separate solar array sites to produce solar generated electricity for the airport. One solar array site will occupy approximately 16.3 acres of unimproved land located in the north portion of the airfield, west of Taxiway D. Site two is approximately 14.8 acres of an unused parking area between Aviation Drive and Taxiway D in the south portion of the airfield. Reuse of the land for the solar arrays will not impede future development of the airport, as there is sufficient land for airport development. The lease rate is based on the appraised market value. In lieu of direct rental payments, the airport will be subject to a reduced electrical rate that will produce cost savings that equal or exceed the appraised market value of the land. The use of the property for the solar arrays represents a compatible use. Construction and operations of the solar arrays will not interfere with airport operations. The solar arrays will reduce airport operational costs, which will enhance the self-sustainability of the airport and, thereby, serve the interest of civil aviation.

Issued in Brisbane, California, on June 7, 2016.

James W. Lomen,

Manager, San Francisco Airports District Office, Western-Pacific Region.

[FR Doc. 2016–14069 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0028; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain model year (MY) 2016 Volkswagen Beetle Convertible passenger cars do not fully comply with paragraph S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* Volkswagen filed a report dated February 23, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

DATES: The closing date for comments on the petition is July 14, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown at the heading of this notice.

DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Volkswagen submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 325 MY 2016 Volkswagen Beetle Convertible passenger cars that were manufactured between June 18, 2015, and November 9, 2015.

III. Noncompliance: Volkswagen stated that the subject vehicles have a Tire Placard Label that is misprinted with an incorrect tire size as compared to the tires the vehicle was equipped with and therefore does not fully conform to paragraph S4.3(d) of FMVSS No. 110.

IV. Rule Text: Paragraph S4.3(d) of FMVSS No. 110 requires, in pertinent part:

S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) through (l), on a placard permanently affixed to the driver's side B-pillar . . .

(d) Tire size designation, indicated by the headings "size" or "original tire size" or "original size," and "spare tire" or "spare," for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement "see above" may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word "none" must replace the tire size designation;

V. Summary of Volkswagen's Petition: Volkswagen described the subject noncompliance and stated its belief that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) Volkswagen stated that the condition described (tire placard with an incorrect label size on it) would not adversely affect the tire and loading capability of the vehicle.

(2) Volkswagen stated that the loading and combined weight information was printed correctly on both versions of the Tire Placard Label.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–14000 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Port Performance Freight Statistics Working Group

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation (USDOT).

ACTION: Port Performance Freight Statistics Working Group: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Port Performance Freight Statistics Working Group (hereafter, "Working Group"). The Working Group will provide advice and recommendations to the Bureau of Transportation Statistics (BTS) Director pursuant to Section 6018 of the *Fixing America's Surface Transportation (FAST) Act* (Pub. L. 114–94; 129 Stat. 1312) on matters related to port performance measures, including: (a) Specifications and data measurements to be used in the Port Performance Freight Statistics Program established under subsection 6018(a); and (b) a process for the Department to collect timely and consistent data, including identifying safeguards to protect proprietary information described in subsection 6018(b)(2). The Working Group will operate in accordance with the provisions of the *Federal Advisory Committee Act (FACA)* and the rules and regulations issued in implementation of that Act.

DATES: The meeting will be held on July 15, 2016, from 10:30 a.m. to 4:30 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be at U.S. Department of Transportation; 1200 New Jersey Avenue SE., Washington, DC 20590. Any person requiring accessibility accommodations should contact Matthew Chambers at (202) 366–1270 or via email at: *portstatistics@dot.gov.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, Attn: Port Performance Freight Statistics Working Group, 1200 New Jersey Avenue SE., Room #E32–342, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background: The Port Performance Freight Statistics Working Group has been created in accordance with Section 6018 of the *Fixing America's Surface Transportation* (FAST) Act (Pub. L. 114–94; Dec. 4, 2015; 129 Stat. 1312). The Working Group supports development of the newly-established BTS Port Performance Freight Statistics Program. The goal of the program is "to provide nationally consistent measures of performance" of the nation's largest ports, and to report annually to Congress on port capacity and throughput.

The Working Group is established in the FAST Act to provide recommendations to the BTS Director on matters related to port performance measures; to identify a standard for port data; to specify standards for consistent port performance measures; to recommend statistics for measuring port capacity and throughput; and to develop a process to collect timely and consistent data. The FAST Act also identifies the membership of the Working Group, and sets a due date for recommendations to the BTS Director of December 4, 2016.

Agenda: This will be the Working Group's first meeting and will include a nonpublic administrative work session, including briefings on their responsibilities as Special Government Employees before the public session. The public session, starting at 10:30 a.m., will include U.S. Department of Transportation staff providing an overview of FAST ACT and an update of the Department's progress implementing its Port Performance Freight Statistics Program and related provisions. The Working Group will commence development of a list of tasks and subtask necessary for it to:

(a) Identify a generally accepted industry standard for port data collection and reporting.

(b) Specify standards for collecting data and reporting nationally consistent port performance measures.

(c) Make recommendations for statistics measuring on U.S. port capacity and throughput.

(d) Develop a process for the U.S. Department of Transportation (hereafter, "Department") to collect timely and consistent data, including identifying safeguards to protect proprietary information.

The final meeting agenda will be posted on the BTS Web site at *www.bts.gov/port_performance* in advance of the meeting.

Public Participation: The meeting will be open to the public on a first-come, first served basis, especially because space is limited. Members of the public who wish to attend in-person are asked to send RSVPs, including name and affiliation to *portstatistics@dot.gov* by July 11, 2016 in order to request a seat and to facilitate entry. Any person requiring accessibility accommodation, such as sign language interpretation, should contact Matthew Chambers at (202) 366–1270 or via email at: *portstatistics@dot.gov* five (5) business days before the meeting.

Written Comments: Persons who wish to submit written comments for consideration by the Working Group must send them via email to *portstatistics@dot.gov* or mail to Matthew Chambers, Designated Federal Officer, Port Performance Freight Statistics Working Group, 1200 New Jersey Avenue SE., Room #E32–342, Washington, DC 20590, which must be received on or before July 11, 2016.

Issued in Washington, DC, on June 8, 2016.

Patricia S. Hu,

Director, Bureau of Transportation Statistics.

[FR Doc. 2016–13991 Filed 6–13–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 15, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or at *Elaine.H.Christophe@irs.gov.* Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information. Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

1. *Title:* Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66 and Notice 2010–46.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments. Notice 2010–46 modifies Notice 97–66, by providing necessary information to ensure taxpayers are not subject to excessive tax pursuant to IRC section 871(l). The information will allow a withholding agent to make a substitute dividend payment to certain counterparties in a series of securities lending transactions without withholding and depositing additional excessive tax.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 383,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 62,750.

2. *Title:* Volunteer Return Preparation Critical Intake Sheet—NR.

OMB Number: 1545–2075.

Form Number: 13614–NR.

Abstract: This form will be used at the nonresident alien VITA sites by volunteers to gather information—relevant to tax preparation—from taxpayer's.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 565,039.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Reporting Burden Hours: 141,260.

3. *Title:* Minimum Tax—Tax Benefit Rule.

OMB Number: 1545–1093.

Regulation Project Number: IA–56–87 and IA–53–87 (TD 8416).

Abstract: Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits or refund of minimum tax paid on such preferences.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40.

4. *Title:* Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

OMB Number: 1545–1693.

Form Number: Forms 8871 and 8453–X.

Abstract: Public Law 106–230 as amended by Public Law 107–276, amended Internal Revenue Code section 527(i) to require certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, Board of Directors, and related entities within the meaning of section 168(h)(4)). Forms 8871 and 8453–X are used to report this information to the IRS.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 5,500.

Estimated Time per Respondent: 7 hrs., 2 min.

Estimated Total Annual Reporting Burden Hours: 35,195.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Approved: June 6, 2016.

Elaine Christophe,

IRS Tax Analyst.

[FR Doc. 2016–14108 Filed 6–13–16; 8:45 am]

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Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 23

Indian Child Welfare Act Proceedings; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 23

[K00103 12/13 A3A10; 134D0102DR–DS5A300000–DR.5A311.IA000113]

RIN 1076–AF25

Indian Child Welfare Act Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule adds a new subpart to the Department of the Interior's (Department) regulations implementing the Indian Child Welfare Act (ICWA), to improve ICWA implementation. The final rule addresses requirements for State courts in ensuring implementation of ICWA in Indian child-welfare proceedings and requirements for States to maintain records under ICWA.

DATES: This rule is effective on December 12, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS 3642, Washington, DC 20240, (202) 273–4680; *elizabeth.appel@bia.gov*.

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Note: This preamble uses the prefix "FR §" to denote regulatory sections in this final rule, and "PR §" to denote regulatory sections in the proposed rule published March 20, 2015 at 80 FR 14,480.

I. Executive Summary

A. Introduction

This final rule promotes the uniform application of Federal law designed to protect Indian children, their parents, and Indian Tribes. In conjunction with this final rule, the Solicitor is issuing an M Opinion addressing the implementation of the Indian Child Welfare Act by legislative rule. *See* M–37037. Congress enacted the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 *et seq.*, in 1978 to address an "Indian child welfare crisis [ ] of massive proportions": an estimated 25 to 35 percent of all Indian children had been separated from their families and placed in adoptive homes, foster care, or institutions. H.R. Rep. No. 95–1386, at 9 (1978), *reprinted in* 1978 U.S.C.C.A.N. 7530, 7531. Although the crisis flowed from multiple causes, Congress found that nontribal public and private agencies had played a significant role, and that State agencies and courts had often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(4)–(5). To address this failure, ICWA establishes minimum Federal standards for the removal of Indian children from their families and the placement of these children in foster or adoptive homes, and confirms Tribal jurisdiction over child-custody proceedings involving Indian children. 25 U.S.C. 1902.

Since its passage in 1978, ICWA has provided important rights and protections for Indian families, and has helped stem the widespread removal of Indian children from their families and Tribes. State legislatures, courts, and agencies have sought to interpret and implement this Federal law, and many States should be applauded for their affirmative efforts and support of the policies animating ICWA.

However, the Department has found that implementation and interpretation of the Act has been inconsistent across States and sometimes can vary greatly even within a State. This has led to significant variation in applying ICWA's statutory terms and protections. This variation means that an Indian child and her parents in one State can receive different rights and protections under Federal law than an Indian child and her parents in another State. This disparate application of ICWA based on where the Indian child resides creates significant gaps in ICWA protections and is contrary to the uniform minimum Federal standards intended by Congress.

The need for consistent minimum Federal standards to protect Indian children, families, and Tribes still exists today. The special relationship between the United States and the Indian Tribes and their members upon which Congress based the statute continues in full force, as does the United States' direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian Tribe. 25 U.S.C. 1901, 1901(2). Native American children, however, are still disproportionately more likely to be removed from their homes and communities than other children. *See, e.g.*, Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, *Ending Violence So Children Can Thrive* 87 (Nov. 2014); National Council of Juvenile and Family Court Judges, *Disproportionality Rates for Children of Color in Foster Care, Fiscal Year 2013* (June 2015). In addition, some State court interpretations of ICWA have essentially voided Federal protections for groups of Indian children to whom ICWA clearly applies. And commenters provided numerous anecdotal accounts where Indian children were unnecessarily removed from their families and placed in non-Indian settings; where the rights of Indian children, their parents, or their Tribes were not protected; or where significant delays occurred in Indian child-custody proceedings due to disputes or uncertainty about the interpretation of the Federal law.

B. Overview of Final Rule

The final rule updates definitions and notice provisions in the existing rule and adds a new subpart I to 25 CFR part 23 to address ICWA implementation by State courts. It promotes nationwide uniformity and provides clarity to the minimum Federal standards established by the statute. In many instances, the standards in this final rule reflect State interpretations and best practices, as reflected in State court decisions, State laws implementing ICWA, or State guidance documents. The rule provisions also reflect comments from organizations and individuals that serve children and families (including, in particular, Indian children) and have substantial expertise in child-welfare practices.

The final rule promotes compliance with ICWA from the earliest stages of a child-welfare proceeding. Early compliance promotes the maintenance of Indian families, and the reunification of Indian children with their families whenever possible, and reduces the need for disruption in placements. Timely notification of an Indian child's Tribe also ensures that Tribal government agencies have meaningful opportunities to provide assistance and resources to the child and family. And early implementation of ICWA's requirements conserves judicial resources by reducing the need for delays, duplication, and appeals.

In particular, the final rule addresses the following issues:

- *Applicability.* The final rule clarifies when ICWA applies, while making clear that there is no exception to applicability based on certain factors used by a minority of courts in defining and applying the so-called "existing Indian family," or EIF, exception.
- *Initial Inquiry.* The final rule clarifies the steps involved in conducting a thorough inquiry at the beginning of child-custody proceedings as to whether the child is an "Indian child" subject to the Act.
- *Emergency proceedings.* Recognizing that emergency removal and placements are sometimes required to protect an Indian child's safety and welfare, the final rule clarifies the distinction between the requirements for emergency proceedings and other child-custody proceedings involving Indian children and includes provisions that help to ensure that emergency removal and placements are as short as possible, and that, when necessary, proceedings subject to the full suite of ICWA protections are promptly initiated.
- *Notice.* The final rule describes uniform requirements for prompt notice to parents and Tribes in involuntary proceedings to facilitate compliance with statutory requirements.
- *Transfer.* The final rule clarifies the requirement that a State court determine whether the State or Tribe has jurisdiction and, where jurisdiction is concurrent, establishes standards to guide the determination whether good cause exists to deny transfer (including factors that cannot properly be considered) and addresses transfer of proceedings to Tribal court.
- *Qualified expert witnesses.* The final rule provides interpretation of the term "qualified expert witness."
- *Placement preferences.* The final rule clarifies when and what placement preferences apply in foster care, pre-adoptive, and adoptive placements, provides presumptive standards for what may constitute good cause to depart from the placement preferences, and prohibits courts from considering

certain factors as the basis for departure from placement preferences.

• *Voluntary proceedings.* The final rule clarifies certain aspects of ICWA's applicability to voluntary proceedings, including addressing the need to determine whether a child is an "Indian child" in voluntary proceedings and specifying the requirements for obtaining consent.

• *Information, recordkeeping, and other rights.* The final rule addresses the rights of adult adoptees to information and sets out what records States and the Secretary must maintain.

The Department carefully considered the comments on the proposed rule and made changes responsive to those comments. The reasons for the changes are described in the section-by-section analysis below. In particular, while the proposed rule would have been directed to both State courts and agencies, the Department has focused the final rule on the standards to be applied in State-court proceedings. Most ICWA provisions address what standards State courts must apply before they take actions such as exercising jurisdiction over an Indian child, ordering the removal of an Indian child from her parent, or ordering the placement of the Indian child in an adoptive home. The final rule follows ICWA in this regard. Further, State courts are familiar with applying Federal law to the cases before them. Several ICWA provisions do apply, either directly or indirectly, to State and private agencies, *see, e.g.,* 25 U.S.C. 1915(c); *id.* 1922; *see also id.* 1912(a). Nothing in this rule alters these obligations. And agencies need to be alert to the standards identified in the final rule, since these will determine what a court will require with respect to issues like notice to parents and Tribes (FR § 23.111), emergency proceedings (FR § 23.113), active efforts (FR § 23.120), and placement preferences (FR § 23.129–132).

The Department is cognizant that child-custody matters address some of the most fundamental elements of human life—children, familial ties, identity, and community. They often involve circumstances unique to the parties before the court and may require difficult and sometimes heart-wrenching decisions. The Department is also fully aware of the paramount importance of Indian children to their immediate and extended families, their communities, and their Tribes. In the final rule, the Department carefully balanced the need for more uniformity in the application of Federal law with the legitimate need for State courts to exercise discretion over how to apply the law to each case, while keeping in mind that Congress enacted ICWA in part to address a concern that State courts were exercising their discretion inappropriately, to the detriment of Indian children, parents, and Tribes. In some cases, the Department determined that particular standards or practices are better suited to guidelines; the Department anticipates issuing updated guidelines prior to the effective date of this rule (180 days from issuance). These considerations are discussed further in the section-by-section analysis below.

II. Background

A. Background Regarding Passage of ICWA

Congress enacted ICWA in 1978 to address the policies and practices that resulted in the "wholesale separation of Indian children from their families." *See* H.R. Rep. No. 95–1386, at 9. After several years of investigation, Congress had found that an alarmingly high percentage of Indian families [were] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies. 25 U.S.C. 1901(4). The congressional investigation, which resulted in hundreds of pages of legislative testimony compiled over the course of four years of hearings, deliberation, and debate, revealed "the wholesale separation of Indian children from their families." [1] H.R. Rep. No. 95–1386, at 9. The empirical and anecdotal evidence showed that Indian children were separated from their families at significantly higher rates than non-Indian children. In some States, between 25 and 35 percent of Indian children were living in foster care, adoptive care, or institutions. *Id.* Indian children removed from their homes were most often placed in non-Indian foster care and adoptive homes. AIPRC Report at 78–87. These separations contributed to a number of problems, including the erosion of a generation of Indians from Tribal communities, loss of Indian traditions and culture, and long-term emotional effects on Indian children caused by loss of their Indian identity. *See* 1974 Senate Hearing at 1–2, 45–51 (statements of Sen. James Abourezk, Chairman, Subcomm. on Indian Affairs and Dr. Joseph Westermeyer, Dep't of Psychiatry, University of Minn.).

Congress found that removal of children and unnecessary termination of parental rights were utilized to separate Indian children from their Indian communities. The four leading factors contributing to the high rates of Indian child removal were a lack of culturally competent State child-welfare standards for assessing the fitness of Indian families; systematic due-process violations against both Indian children and their parents during child-custody procedures; economic incentives favoring removal of Indian children from their families and communities; and social conditions in Indian country. H.R. Rep. No. 95–1386, at 10–12.

Congress also found that many of these problems arose from State actions, *i.e.,* that the States, exercising their recognized jurisdiction over Indian child-custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(5). The standards used by State and private child-welfare agencies to assess Indian parental fitness promoted unrealistic non-Indian socioeconomic norms and failed to account for legitimate cultural differences in Indian families. Time and again, "social workers, ignorant of Indian cultural values and social norms, ma[d]e decisions that [we]re wholly inappropriate in the context of Indian family life and so they frequently discover[ed] neglect or abandonment where none exist[ed]." H.R. Rep. No. 95–1386, at 10. For example, Indian parents might leave their children in the care of extended-family members, sometimes for long periods of time. Social workers untutored in the ways of Indian family life assumed leaving children in the care of anyone outside the nuclear family amounted to neglect and grounds for terminating parental rights. Yet, the House Report noted, this is an accepted practice for certain Tribes. *Id.*

[1] *See Problems that American Indian Families Face in Raising Their Children and How These Problems Are Affected by Federal Action or Inaction: Hearing Before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs,* 93rd Cong. (1974) (hereinafter, "1974 Senate Hearing"); Task Force Four: Federal, State, and Tribal Jurisdiction, American Indian Policy Review Commission Task Force Four, *Report on Federal, State, and Tribal Jurisdiction* (1976) (hereinafter "AIPRC Report"); 123 Cong. Rec. 21042–44 (June 27, 1977); *To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the S. Select Comm. on Indian Affairs,* 95th Cong. (1977) (hereinafter "1977 Senate Hearing"); S. Rep. No. 95–597 (1977); 123 Cong. Rec. 37223–26 (Nov. 4, 1977); *To Establish Standards for the Placement of Indian Children in Foster or Adoptive Homes, To Prevent the Breakup of Indian Families, and for Other Purposes: Hearing on S. 1214 Before the Subcomm. On Indian Affairs and Public Lands of the H. Comm. on Interior and Insular Affairs,* 95th Cong. 29 (1978) (hereinafter, "1978 House Hearing"); H.R. Rep. No. 95–1386 (1978); 124 Cong. Rec. H38101–12 (1978).

Non-Indian socioeconomic values that State agencies and judges applied in the child-welfare context similarly were found to not account for the difference in family structure and child-rearing practice in Indian communities. *Id.* Layered together with cultural bias, the result, the House Report concluded, was unequal and incongruent application of child-welfare standards for Indian families. *Id.* For example, parental alcohol abuse was one of the most frequently advanced reasons for removing Indian children from their parents; however, in areas where Indians and non-Indians had similar rates of problem drinking, alcohol abuse was rarely used as grounds to remove children from non-Indian parents. *Id.*

Congress heard testimony that removing Indian children from their families had become a regular, encouraged practice. Congress came to understand that "agencies established to place children have an incentive to find children to place." *Id.* at 11. Indian leaders alleged that federally subsidized foster care homes encouraged non-Indians to take in Indian children to supplement their incomes with foster care payments, and that some non-Indian families sought to foster Indian children to gain access to the child's Federal trust account. *See id.; See also* 1974 Senate Hearing at 118. While economic incentives encouraged the removal of Indian children, the economic conditions in Indian country prevented Tribes from providing their own foster-care facilities and certified adoptive parents. Poverty and substandard housing were prolific on reservations, and obtaining State foster-care licenses required a standard of living that was often out of reach in Indian communities. Otherwise loving and supportive Indian families were accordingly prevented from becoming foster parents, which promoted the placement of Indian children in non-Indian homes away from their Tribes. *See* H.R. Rep. No. 95–1386, at 11.

In addition, State procedures for removing Indian children from their natural homes commonly violated due process. Social workers sometimes obtained "voluntary" parental-rights waivers to gain access to Indian children using coercive and deceitful measures. 1974 Senate Hearing at 95. Sometimes Indian parents with little education, reading comprehension, and understanding of English signed "voluntary" waivers without knowing what rights they were forfeiting. H.R. Rep. No. 95–1386, at 11. Moreover, State courts failed to protect the rights of Indian children and Indian parents. For example, in involuntary removal proceedings, the Indian parents and children rarely were represented by counsel and sometimes received little if any notice of the proceeding, and termination of parental rights was seldom supported by expert testimony. 1974 Senate Hearing at 67–68; H.R. Rep. No. 95–1386, at 11. Rather than helping Indian parents correct parenting issues, or acknowledging that the alleged problems were the result of cultural and socioeconomic differences, social workers claimed removal was in the child's best interest. 1974 Senate Hearing at 62.

Congress understood that these issues significantly impacted children who lived off of reservations, not just on-reservation children. Congress was concerned with the effect of the removal of Indian children "whose families live in urban areas or with rural nonrecognized tribes," noting that there were approximately 35,000 such children in foster care, adoptive homes, or institutions. 124 Cong. Rec. H38102; 123 Cong. Rec. H21043. In the Final Report of the American Indian Policy Review Commission, which was included as part of the Senate Report on ICWA, the Commission recommended legislation addressing the fact that, because "[m]any Indian families move back and forth from a reservation dwelling to border communities or even to distant communities, depending on employment and educational opportunities," problems could arise when Tribal and State courts offered competing child-custody determinations, and that legislation therefore had to address situations where "an Indian child is not domiciled on a reservation and [is] subject to the jurisdiction of non-Indian authorities." S. Rep. No. 95–597, at 51–52 (1977).

Congress further recognized that the "wholesale removal of [Tribal] children by nontribal government and private agencies constitutes a serious threat to [Tribes'] existence as on-going, self-governing communities," and that the "future and integrity of Indian tribes and Indian families are in danger because of this crisis." 124 Cong. Rec. H38103. As one Tribal representative testified before Congress, "[t]he ultimate preservation and continuation of [Tribal] cultures depends on our children and their proper growth and development." *See* 1977 Senate Hearing at 169. Commenters on the proposed legislation also noted that, because "[p]robably in no area is it more important that tribal sovereignty be respected than in an area as socially and culturally determinative as family relationships," the "chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their people." *Id.* at 157. Thus, in addition to protecting individual Indian children and families, Congress was also concerned about preserving the integrity of Tribes as self-governing, sovereign entities and ensuring that Tribes could survive both culturally and politically. *See* 124 Cong. Rec. H38,102.

B. Overview of ICWA's Provisions

In light of the information presented about State child-custody practices for Indian children, Congress passed ICWA to "protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society." H.R. Rep. No. 95–1386, at 23. Congress further declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. 25 U.S.C. 1902. And although Congress described "the failure of State officials, agencies, and procedures to take into account the special problems and circumstances of Indian families and the legitimate interest of the Indian tribe in preserving and protecting the Indian family as the wellspring of its own future," H.R. Rep. No. 95–1386, at 19, the legislature carefully considered the traditional role of the States in the arena of child welfare outside Indian reservations, and crafted a statute that would balance the interests of the United States, the individual States, Indian Tribes, and Indians, noting:

> While the committee does not feel that it is necessary or desirable to oust the States of their traditional jurisdiction over Indian children falling within their geographic limits, it does feel the need to establish minimum Federal standards and procedural safeguards in State Indian child-custody proceedings designed to protect the rights of the child as an Indian, the Indian family and the Indian tribe.

H.R. Rep. No. 95–1386, at 19.

ICWA therefore applies to "child-custody proceedings," defined as foster-care placements, terminations of parental rights, and pre-adoptive and adoptive placements, involving an "Indian child," defined as any unmarried person who is under age eighteen and either is: (a) A member of an Indian tribe; or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. 25 U.S.C. 1903. In such proceedings, Congress accorded Tribes

"numerous prerogatives . . . through the ICWA's substantive provisions . . . as a means of protecting not only the interests of individual Indian children and their families, but also of the tribes themselves." *Miss. Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30, 49 (1989). In addition, ICWA provides important procedural and substantive standards to be followed in State-administered proceedings concerning possible removal of an Indian child from her family. *See, e.g.*, 25 U.S.C. 1912(d) (requiring provision of "active efforts" to prevent the breakup of the Indian family); *id.* 1912(e)–(f) (requiring specified burdens of proof and expert testimony regarding potential damage to child resulting from continued custody by parent, before foster-care placement or termination of parental rights may be ordered).

The "most important substantive requirement imposed on state courts" by ICWA is the placement preference for any adoptive placement of an Indian child. *Holyfield*, 490 U.S. at 36–37. In any adoptive placement of an Indian child under State law, ICWA requires that a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family (regardless of whether they are Tribal citizens); (2) other members of the Indian child's Tribe; or (3) other Indian families. 25 U.S.C. 1915(a). ICWA requires similar placement preferences for pre-adoptive placement and foster-care placement. 25 U.S.C. 1915(a)–(b). These preferences reflect "Federal policy that, where possible, an Indian child should remain in the Indian community." *Holyfield*, 490 U.S. at 36–37 (internal citations omitted).

C. Need for These Regulations

Although the Department initially hoped that binding regulations would not be "necessary to carry out the Act," *see* 44 FR 67,584 (Nov. 23, 1979), a third of a century of experience has confirmed the need for more uniformity in the interpretation and application of this important Federal law.

Need for Uniform Federal Standard. For decades, various State courts and agencies have interpreted the Act in different, and sometimes conflicting, ways. This has resulted in different standards being applied to ICWA adjudications across the United States, contrary to Congress's intent. *See Holyfield*, 490 U.S. at 43–46; *see also* 25 U.S.C. 1902; H.R. Rep. No. 95–1386, at 19; *see generally* Casey Family Programs, *Indian Child Welfare Act: Measuring Compliance* (2015), *www.casey.org/media/measuring-compliance-icwa.pdf*. Perhaps the most noted example is the "existing Indian family," or EIF, exception, under which some State courts first determine the "Indian-ness" of the child and family before applying the Act. As a result, children who meet the statutory definition of "Indian child" and their parents are denied the protections that Congress established by Federal law. This exception to the application of ICWA was created by some State courts, and has no basis in ICWA's text or purpose. Currently, the Department has identified State-court cases applying this exception in a few states while other State courts have rejected the exception. *See, e.g., Thompson* v. *Fairfax Cty. Dep't of Family Servs.*, 747 SE.2d 838, 847–48 (Va. Ct. App. 2013) (collecting cases); *In re Alexandria P.*, 176 Cal. Rptr. 3d 468, 484–85 (Cal. Ct. App. 2014) (noting split across California jurisdictions). The question whether an Indian child, her parents, and her Tribe will receive the Federal protections to which they are entitled must be uniform across the Nation, as Congress mandated.

This type of conflicting State-level statutory interpretation can lead to arbitrary outcomes, and can threaten the rights that the statute was intended to protect. For example, in *Holyfield*, the Court concluded that the term "domicile" in ICWA must have a uniform Federal meaning, because otherwise parties or agencies could avoid ICWA's application "merely by transporting [the child] across state lines." 490 U.S. at 46. State courts also differ as to what constitutes "good cause" for departing from ICWA's child placement preferences, weighing a variety of different factors when making the determination. *See, e.g., In re A.J.S.*, 204 P.3d 543, 551 (Kan. 2009); *In re Adoption of F.H.*, 851 P.2d 1361, 1363–64 (Alaska 1993); *In re Adoption of M.*, 832 P.2d 518, 522 (Wash. 1992). States are also inconsistent as to how to demonstrate sufficient "active efforts" to keep a family intact. *See State ex rel. C.D.* v. *State*, 200 P.3d 194, 205 (Utah Ct. App. 2008) (noting State-by-State disagreement over what qualifies as "active efforts"). In other instances, State courts have simply ignored ICWA requirements outright. *Oglala Sioux Tribe & Rosebud Sioux Tribe* v. *Van Hunnik*, 100 F. Supp. 3d 749, 754 (D.S.D. 2015) (finding that the State had "developed and implemented policies and procedures for the removal of Indian children from their parents' custody in violation of the mandates of the Indian Child Welfare Act"). The result of these inconsistencies is that many of the problems Congress intended to address by enacting ICWA persist today.

The Department's current nonbinding guidelines are insufficient to fully implement Congress's goal of nationwide protections for Indian children, parents, and Tribes. *See* 44 FR at 67,584–95. While State courts will sometimes defer to the guidelines in ICWA cases (*see In re Jack C.*, 122 Cal. Rptr. 3d 6, 13–14 (Cal. Ct. App. 2011); *In the Interest of Tavian B.*, 874 N.W.2d 456, 460 (Neb. 2016)), State courts frequently characterize the guidelines as lacking the force of law and conclude that they may depart from the guidelines as they see fit. *See, e.g.,Gila River Indian Cmty.* v. *Dep't of Child Safety*, 363 P.3d 148, 153 (Ariz. Ct. App. 2015).

These State-specific determinations about the meaning of key terms in the Federal law will continue absent a legislative rule, with potentially devastating consequences for the children, families, and Tribes that ICWA was designed to protect. Consider a child who is a Tribal citizen and who lives with his mother, who is also a Tribal citizen. The mother and child live far from their Tribe's reservation because of her work, and they are not able to regularly participate in their Tribe's social, cultural, or political events. If the State social-services agency seeks to remove the child from the mother and initiates a child-custody proceeding, the application of ICWA to that proceeding—which clearly involves an "Indian child"—will depend on whether that State court has accepted the existing Indian family exception. Likewise, even if the court agrees that ICWA applies, the actions taken to provide remedial and rehabilitative programs to the family will be uncertain because there is no uniform interpretation of what constitutes "active efforts" under ICWA. This type of variation was not intended by Congress and actively undermines the purposes of the Act.

Need for Protections for Tribal Citizens Living Outside Indian Country. The need for more uniform application of ICWA in State courts is reinforced by the fact that approximately 78% of Native Americans live outside of Indian country,[2] where judges may be less familiar with ICWA requirements generally, or where a Tribe may be less likely to find out about custody adjudications involving their citizens. Some commenters have pointed to the large number of Tribal citizens living off-reservation as proof that off-reservation Indians have made a conscious choice to distance themselves from their Tribe and its culture, and that ICWA's protections are unnecessary. They have accordingly questioned the need for a legislative rule, based on the assumption that off-reservation Indians do not want the Federal protections that accompany their status as Indians.

These comments misapprehend the reasons for high off-reservation Indian populations and the nature of Tribal citizenship generally, and do not diminish the need for the final rule. First, the fact that many Indians live off-reservation is, in part, a result of past, now-repudiated Federal policies encouraging Indian assimilation with non-Indians and, in some cases, terminating Tribes outright. For example, Congress passed the Indian General Allotment Act, 24 Stat. 388, codified at 25 U.S.C. 331 (1887) (repealed), which authorized the United States to allot and sell Tribal lands to non-Indians and take them out of trust status. The purpose of the Act was to "encourage individual land ownership and, hopefully, eventual assimilation into the larger society," *Bugenig* v. *Hoopa Valley Tribe*, 266 F.3d 1201, 1205 (9th Cir. 2001), and to "promot[e] interaction between the races and . . . encourage[e] Indians to adopt white ways," *Mattz* v. *Arnett*, 412 U.S. 481, 496 (1973). Many Indian lands subsequently passed out of Tribal control, which often led to Tribal citizens dispersing from their reservations.

Likewise, during the so-called "termination era" of the 1950s, Congress passed a series of acts severing its trust relationship with more than 100 Tribes. Terminated Tribes lost not only their land base but also myriad Federal services previously arising from the trust relationship, including education, health care, housing, and emergency welfare. *See Sioux Tribe of Indians* v. *United States*, 7 Cl. Ct. 468, 478 n.8 (Cl. Ct. 1985) (describing the termination policy). Lacking these basic services, which often did not otherwise exist in rural Tribal communities, many Indians were forced to move to urban areas. And in 1956, the Relocation Act was passed with funds to support the voluntary relocation of any young adult Indian willing to move from on or near a reservation to a selected urban center. Act of Aug. 3, 1956, Public Law 84–959, 70 Stat. 986. Thus, today's off-reservation population is not a new phenomenon; ICWA itself was enacted with Congress's awareness that many Indians live off-reservation. *See* 1978 House Hearings at 103; H.R. Rep. No. 95–1386, at 15. The fact that an Indian does not live on a reservation is not evidence of disassociation with his or her Tribe. In fact, citizens of many Tribes do not have the option to live on reservation land, as over 40 percent of Tribes have no reservation land.

Second, the comments ignore the fact that, regardless of geographic location of a Tribal citizen, Tribal citizenship (aka Tribal membership) is voluntary and typically requires an affirmative act by the enrollee or her parent. Tribal laws generally include provisions requiring the parent or legal guardian of a minor to apply for Tribal citizenship on behalf of the child. *See, e.g.*, Jamestown S'Klallam Tribe Tribal Code § 4.02.04(A)—Applications for Enrollment. Tribes also often require an affirmative act by the individual seeking to become a Tribal citizen, such as the filing of an application. *See, e.g.*, White Mountain Apache Enrollment Code, Sec. 1–401—Application Form: Filing. As ICWA is limited to children who are either enrolled in a Tribe or are eligible for enrollment and have a parent who is an enrolled member, that status inherently demonstrates an ongoing Tribal affiliation even among off-reservation Indians.

Rather than simply moving off-reservation, those enrolled Tribal citizens who do want to renounce their affiliation with a Tribe may voluntarily relinquish their citizenship. Tribal governing documents often include provisions allowing adult citizens to relinquish Tribal citizenship, sometimes also requiring a notarized or witnessed written statement. *See, e.g.*, Jamestown S'Klallam Tribe Tribal Code § 4.04.01(C)—Loss of Tribal Citizenship; White Mountain Apache Enrollment Code Sec. 1–702—Relinquishment. These procedures, and not an individual's geographic location, are the proper determinant of whether an individual retains an ongoing political affiliation with a Tribe (both generally and for the purposes of the ICWA placement preferences).

Commenters who raised this point also argued that a legislative rule would continue to apply Tribal placement preferences to individuals who have low Indian blood quantum. Several noted that the Indian child in *Adoptive Couple* v. *Baby Girl*, 133 S. Ct. 2552 (2013), purportedly was 3/256 Cherokee by blood, and questioned why ICWA should apply to such individuals, particularly when they live off-reservation. This argument mistakes and over-simplifies the nature of Indian status. Tribes have a wide variety of citizenship-eligibility requirements. For example, the Jamestown S'Klallam Tribe requires the applicant to produce "documentary evidence such as a notarized paternity affidavit showing the name of a parent through whom eligibility for citizenship is claimed." Jamestown S'Klallam Tribe Tribal Code § 4.02.04(C)—Applications for Enrollment. Other Tribes include blood-quantum requirements. For example, the White Mountain Apache Tribe requires the applicant to be at least one fourth (1/4) degree White Mountain Apache blood. *See* White Mountain Apache Constitution, Article II, sec. 1—Membership. Federal courts have repeatedly recognized that determining citizenship (membership) requirements is a sovereign Tribal function. *See, e.g., Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 72 n.32 (1978) ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."); *Montgomery* v. *Flandreau Santee Sioux Tribe*, 905 F. Supp. 740, 746 (D.S.D. 1995) ("Giving deference to the Tribe's right as a sovereign to determine its own membership, the Court holds that it lacks subject matter jurisdiction to determine whether any plaintiffs were wrongfully denied enrollment in the Tribe."); *In re Adoption of C.D.K.*, 629 F. Supp. 2d 1258, 1262 (D. Utah 2009) (holding that "the Indian tribes' 'inherent power to determine tribal membership' entitles determinations of membership by Indian tribes to great deference"). The act of fulfilling Tribal citizenship requirements is all that is necessary to demonstrate Tribal affiliation, and thus qualify as an "Indian" or "Indian child" under ICWA.

These types of objections, which are based on fundamental misunderstandings of Indian law, history, and social and cultural life, actually demonstrate the need for a legislative rule. Too often, State courts are swayed by these types of arguments and use the leeway afforded by the lack of regulations to craft ad hoc "exceptions" to ICWA. A legislative rule is necessary to support ICWA's underlying purpose and to address those areas where a lack of binding guidance has resulted in inconsistent implementation and noncompliance with the statute.

Continued Need for ICWA Protections. ICWA's requirements remain vitally important today. Although ICWA has helped to prevent the wholesale separation of Tribal

[2] *See* United States Census Bureau, Fact for Features: American Indian and Alaska Native Heritage Month: November 2012 (Oct. 25, 2012), *https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb12-ff22.html* (summary files for 2015 are not yet available).

children from their families in many regions of the United States, Indian families continue to be broken up by the removal of their children by non-Tribal public and private agencies. Nationwide, based on 2013 data, Native American children are represented in State foster care at a rate 2.5 times their presence in the general population. *See* National Council of Juvenile and Family Court Judges, *Disproportionality Rates for Children of Color in Foster Care* tbl. 1 (June 2015). This disparity has *increased* since 2000. *Id.* (showing disproportionality rate of 1.5 in 2000). In some States, including numerous States with significant Indian populations, Native American children are represented in State foster-care systems at rates as high as 14.8 times their presence in the general population of that State. *Id.* While this disproportionate overrepresentation of Native American children in the foster-care system likely has multiple causes, it nonetheless supports the need for this rule.

Through numerous statutory provisions, ICWA helps ensure that State courts incorporate Indian social and cultural standards into decision-making that affects Indian children. For example, section 1915 requires foster-care and adoptive placement preference be given to members of the child's extended family. This requirement comports with findings that Tribal citizens tend to value extended family more than the Euro-American model, often having several generations of family and aunts and uncles participating in primary child-rearing activities. *See, e.g.,* John G. Red Horse, *Family Preservation: Concepts in American Indian Communities* (Casey Family Programs and National Indian Child Welfare Assoc. Dec. 2000). Likewise, from the adoptee's perspective, extended-family-member involvement and strong connection to Tribe shape reunification. Ashley L. Landers et al., *Finding Their Way Home: The Reunification of First Nations Adoptees,* 10 First Peoples Child & Family Review no. 2 (2015).

D. The Department's Implementation of ICWA

As required by ICWA, the Department issued regulations in 1979 to establish procedures through which a Tribe may reassume jurisdiction over Indian child-custody proceedings, 44 FR 45092 (Jul. 24, 1979) (codified at 25 CFR part 23), as well as procedures for notice of involuntary Indian child-custody proceedings, payment for appointed counsel in State courts, and procedures for the Department to provide grants to Tribes and Indian organizations for Indian child and family programs. 44 FR 45096 (Jul. 24, 1979) (codified at 25 CFR part 23). In January 1994, the Department revised its ICWA regulations to convert the competitive-grant process for Tribes to a noncompetitive funding mechanism, while continuing the competitive award system for Indian organizations. *See* 59 FR 2248 (Jan. 13, 1994).

In 1979, the Department published recommended guidelines for Indian child-custody proceedings in State courts. 44 FR 24000 (Apr. 23, 1979) (proposed guidelines); 44 FR 32,294 (Jun. 5, 1979) (seeking public comment); 44 FR 67584 (final guidelines). Several commenters remarked then that the Department had the authority to issue regulations and should do so. The Department declined to issue regulations and instead revised its recommended guidelines and published them in final form in November 1979. 44 FR 67584.

More recently, the Department determined that it may be appropriate and necessary to promulgate additional and updated rules interpreting ICWA and providing uniform standards for State courts to follow in applying the Federal law. In 2014, the Department invited public comments to determine whether to update its guidelines to address inconsistencies in State-level ICWA implementation that had arisen since 1979 and, if so, what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian Tribes, State-court representatives (*e.g.,* the National Council of Juvenile and Family Court Judges (NCJFCJ) and the National Center for State Courts' Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations. The Department considered these comments and subsequently published updated Guidelines (2015 Guidelines) in February 2015. *See* 80 FR 10146 (Feb. 25, 2015).

Many commenters on the 2015 Guidelines requested not only that the Department update its ICWA guidelines but that the Department also issue binding regulations addressing the requirements and standards that ICWA provides for State-court child-custody proceedings. Commenters noted the role that regulations could provide in promoting uniform application of ICWA across the country, along with many of the other reasons discussed above why ICWA regulations are needed. Recognizing that need, the Department began a notice-and-comment process to promulgate formal ICWA regulations. The Department issued a proposed rule on March 20, 2015 that would "incorporate many of the changes made to the recently revised guidelines into regulations, establishing the Department's interpretation of ICWA as a binding interpretation to ensure consistency in implementation of ICWA across all States." 80 FR 14480, 14481 (Mar. 20, 2015).

As part of its process collecting input on the proposed regulations, Interior held five public hearings and five Tribal-consultation sessions across the country, as well as one public hearing and one Tribal consultation by teleconference. Public hearings and Tribal consultations were held on April 22, 2015, in Portland Oregon; April 23, 2015, in Rapid City, South Dakota; May 5, 2015, in Albuquerque, New Mexico; May 7, 2015, in Prior Lake, Minnesota; May 11 and 12, 2015, by teleconference; and May 14, 2015, in Tulsa, Oklahoma. All sessions were transcribed. In addition to oral comments, the Department received over 2,100 written comments.

After the public-comment period closed on May 19, 2015, the Department reviewed comments received and, where appropriate, made changes to the proposed rule in response. This final rule reflects the input of all comments received during the public-comment period and Tribal consultation. The comments on the proposed rule and the contents of the final rule are discussed in detail below in Section IV.

In crafting this final rule, the Department is drawing from its expertise in Indian affairs generally, and from its extensive experience in administering Indian child-welfare programs specifically. BIA's Office of Indian Services, through its Division of Human Services, collects information from Tribes on their ICWA activities for the Indian Child Welfare Quarterly and Annual Report, ensures that ICWA processes and resources are in place to facilitate implementation of ICWA, administers the notice process under section 1912 of the Act, publishes a nationwide contact list of Tribally designated ICWA agents for service of notice, administers ICWA grants, and maintains a central file of adoption records under ICWA. In addition, BIA provides technical assistance to State social workers and courts on ICWA and Indian child welfare in general, including but not limited to assisting in locating expert witnesses and identifying language interpreters. Currently, BIA employs a team of child protection social workers who provide this assistance on an as-needed basis as part of their daily duties. BIA also employs an ICWA Policy Social Worker, who is both an attorney and a social worker, and who serves as the central BIA expert and liaison on ICWA matters.

The Department is a significant Federal funding source for Indian child-welfare programs run by Tribes. Social-services funding is used to support Tribal and Department-operated Child Protection and Child Welfare Services (CPS/CW) on or near reservations and designated service areas. Tribal and Department caseworkers are the first responders for child and family services on reservations in Indian country. CPS/CW work is labor-intensive, as it requires social-service workers to frequently engage families through face-to-face contacts, assess the safety of children, monitor case progress, and ensure that essential services and support are provided to the child and her family. This experience is critical toward understanding the areas where ICWA is or is not working at the State level, as well as the necessary standards to address ongoing problems.

Congress also tasked the Department with affirmatively monitoring State compliance with ICWA by accessing State records of placement of Indian children, including documentation of State efforts to fulfill ICWA placement preferences. *See* 25 U.S.C. 1915(e). State courts are further responsible for providing the Department with a final decree or adoptive order for any Indian child within 30 days after entering such a judgment, together with any information necessary to show the Indian child's name, birthdate, and Tribal affiliation, the names and addresses of the biological and adoptive parents, and the identity of any agency having relevant information relating to the adoptive parent. *See* 25 CFR 23.71. The Department's experience administering these programs has informed development of this rule.

The Department has also consulted extensively with the Children's Bureau of the Administration for Children and Families, Department of Health and Human Services, and the Department of Justice in the formulation of this final rule. The Children's Bureau partners with Federal, State, and Tribal agencies to improve the overall health and well-being of children and families, and has significant expertise in child abuse and neglect. The Children's Bureau also administers capacity-building centers for States, Tribes, and courts. The Department of Justice has significant expertise in court practice, Indian law, and court decisions addressing ICWA. This close coordination with the Children's Bureau and the Department of Justice has helped produce a final rule that reflects the expertise of all three agencies.

Finally, in issuing this final rule, the Department has considered the trust obligation of the United States to Indian Tribes, which Congress expressly referenced in ICWA. 25 U.S.C. 1901(3). The Department has also kept in mind the canon of construction, applied by Federal courts, that Federal statutes should be liberally construed in favor of Indians, with ambiguous provisions interpreted for their benefit. *See, e.g., Montana* v. *Blackfeet Tribe of Indians,* 471 U.S. 759, 766 (1985); *Doe* v. *Mann,* 415 F.3d 1038, 1047 (9th Cir. 2005).

III. Authority for Regulations

The Department's primary authority for this rule is 25 U.S.C. 1952. Section 1952 states that, within one hundred and eighty days after November 8, 1979, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. This expansive language evinces clear congressional intent that the Secretary (or in this case, her delegee, the Assistant Secretary-Indian Affairs, who oversees the Bureau of Indian Affairs) will issue rules to implement ICWA.

As discussed above, the Department issued several rules implementing ICWA in 1979. These included regulations to establish procedures by which an Indian Tribe may reassume jurisdiction over Indian child-custody proceedings as authorized by § 1918 of ICWA, *see* 44 FR 45092 (codified at 25 CFR part 13); regulations addressing topics such as notice in involuntary child-custody proceedings, payment for appointed counsel, grants to Indian Tribes and Indian organizations for Indian child and family programs, and recordkeeping and information availability, *see* 44 FR 45096 (codified at 25 CFR part 23); and interpretive guidelines for State courts to apply in Indian child-custody proceedings. *See* 44 FR 67584. Some of these rules and regulations have been amended since their original issuance. *See, e.g.,* 59 FR 2248 (Jan. 13, 1994).

Having carefully considered public comments on the issue and having reflected on statements the Department made in 1979, all of which are discussed further below, the Department determines that the rulemaking grant in § 1952 encompasses jurisdiction to issue rules at this time that set binding standards for Indian child-custody proceedings in State courts. ICWA provides a broad and general grant of rulemaking authority that authorizes the Department to issue rules and regulations as may be necessary to implement ICWA. Similar grants of rulemaking authority have been held to presumptively authorize agencies to issue rules and regulations addressing matters covered by the statute unless there is clear congressional intent to withhold authority in a particular area. *See, e.g., AT&T Corp.* v. *Iowa Utils. Bd.,* 525 U.S. 366, 378 (1999); *Am. Hospital Ass'n* v. *Nat'l Labor Relations Bd.,* 499 U.S. 606, 609–10 (1991) (general grant of rulemaking authority "was unquestionably sufficient to authorize the rule at issue in this case unless limited by some other provision in the Act"); *Mourning* v. *Family Publ'ns Serv., Inc.,* 411 U.S. 356, 369 (1973) ("[w]here the empowering provision of a statute states simply that the agency may 'make . . . such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation'"); *see also City of Arlington* v. *FCC,* 133 S. Ct. 1863, 1874 (2013) (finding not "a single case in which a general conferral of rulemaking or adjudicative authority has been held insufficient to support *Chevron* deference for an exercise of that authority within the agency's substantive field"); *Qwest Communic'ns Int'l Inc.* v. *FCC,* 229 F.3d 1172, 1179 (D.C. Cir. 2000) ("[t]he grant of authority relied upon by a federal agency in promulgating regulations need not be specific; it is only necessary 'that the reviewing court reasonably be able to conclude that the grant of authority contemplates the regulations issued'") (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 308 (1979)). As discussed elsewhere in this preamble, the Department finds that this regulation is "necessary to carry out the provisions" of ICWA, 25 U.S.C. 1952, and thus falls squarely within the statutory grant of rulemaking authority.

ICWA's legislative history is consistent with the understanding that the statute's grant of rulemaking authority is broad and inclusive. The original versions of the House and Senate bills that led to the enactment of ICWA, as well as the version of the bill that passed the Senate, included the general grant of rulemaking authority

but also included specific, additional procedural requirements. *See* S. 1214, 95th Cong., 1st Sess., Section 205; *see also* S. Rep. No. 95–597 (Nov. 3, 1977). In particular, the bills required that within six months, the Secretary must consult with Tribes and Indian organizations "in the consideration and formulation of rules and regulations to implement the provisions of this Act"; within seven months, present the proposed rules to congressional committees; within eight months, publish proposed rules for notice and comment; and within ten months, promulgate final rules and regulations to implement the provisions of the Act. *See* S. 1214, sec. 205(b)(1). The bills authorized the Secretary to revise the rules and regulations, but required that they be presented to the congressional committees first. *Id.* 205(c). These requirements were considered during hearings held on February 9 and March 9, 1978, before the House of Representatives Committee on Interior and Insular Affairs. *See* 1978 House Hearings at 47.

During debate of the bill on the House floor, the bill sponsor, Representative Udall, offered an amendment to change the rulemaking grant to its current text. Representative Udall explained that this amendment was designed to remove the burdens of submitting regulations to congressional committees, but did not indicate that the scope of the grant of rulemaking authority was to change in any way. *See* 124 Cong. Rec. H38,107 (1978). ICWA thus does not impose procedural requirements on rulemaking that exceed those required by the Administrative Procedure Act. Moreover, the Department views it as unlikely that Congress would have introduced and considered bills throughout the 95th Congress that would have imposed burdensome procedural requirements on the agency if Congress did not intend that § 1952 would provide the Department with a broad grant of rulemaking authority.

A. Statements Made in the 1979 Guidelines

The Department has reconsidered and no longer agrees with statements it made in 1979 suggesting that it lacks the authority to issue binding regulations. At that time, although it undertook a notice-and-comment process, the Department made clear that the final issued guidelines addressing State-court Indian-child-custody proceedings were not intended to have binding effect. *See* 44 FR 67584. The Department cited a number of reasons for issuing nonbinding guidelines, a course of action that was opposed by numerous commenters.[3] *Id.* As described above, the Department concludes today that this binding regulation is within the jurisdiction of the agency, was encompassed by the statutory grant of rulemaking authority, and is necessary to implement the Act.

While the Department stated in 1979 that binding regulations were "not necessary to carry out the Act," 37 years of real-world ICWA application have thoroughly disproven that conclusion and underscored the need for this regulation. *See* discussion *supra* at Section II.C. The intervening years have shown both that State-court application of the statute has been inconsistent and contradictory across, and sometimes within, jurisdictions. This, in turn, has impeded the statutory intent of providing minimum Federal standards that would protect Indian children, families, and Tribes, and has allowed problems identified in the 1970s to remain in the present day. The lack of clarity and uniformity regarding the meaning of key ICWA provisions also creates confusion, delays, and appeals in individual cases involving Indian children.

For these reasons, the Department's decision to issue binding regulations finds strong support in the Supreme Court's carefully reasoned decision in *Mississippi Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30 (1989). There, the Supreme Court addressed whether a State court had jurisdiction over a child-custody proceeding involving two Indian children. As the sole disputed issue in the case was whether the children were "domiciled" on a reservation for ICWA purposes, the Court confronted the initial question whether Congress intended the definition of "domicile" to be a matter of State law. The Court noted that "the meaning of a federal statute is necessarily a federal question in the sense that its construction remains subject to this Court's supervision." *Id.* at 43. The Court further noted the rule of statutory construction that "Congress when it enacts a statute is not making the application of the federal act dependent on state law." *Id.* The Court explained that one reason for this rule "is that federal statutes are generally intended to have uniform nationwide application" and another reason for the rule is "the danger that the federal program would be impaired if state law were to control." *Id.* at 43–44.

The Court then discussed its prior holding in *NLRB* v. *Hearst Publications Inc.*, 322 U.S. 111 (1944), where it rejected an argument that the term "employee" in the Wagner Act should be defined by State law. It quoted that decision's finding that "[t]he Wagner Act is . . . intended to solve a national problem on a national scale." 490 U.S. at 44. The Court concluded that what it said of the Wagner Act "applies equally well to the ICWA." *Id.* In explaining the reasons for this conclusion, the Court noted, *inter alia*, that "Congress was concerned with the rights of Indian families and Indian communities vis-à-vis state authorities" and "that Congress perceived the States and their courts as partly responsible for the problem it intended to correct." *Id.* at 45. "Under these circumstances, it is most improbable that Congress would have intended to leave the scope of the statute's key jurisdictional provision subject to definition by state courts as a matter of state law." *Id.* The *Holyfield* Court also recognized that Congress intended the implementation of ICWA to have nationwide consistency, so "Congress could hardly have intended the lack of nationwide uniformity that would result from state-law definitions of domicile." *Id.*

In 1979, the Department had neither the benefit of the *Holyfield* Court's carefully reasoned decision nor the opportunity to observe how a lack of uniformity in the interpretation of ICWA by State courts could undermine the statute's underlying purposes. In practice, the meaning of various provisions of the Act has been subject to differing interpretation by each of the 50 States, and within the States, by various courts. What was intended to be a uniform Federal minimum standard now varies in its application based on the State or even the judicial district. *See* discussion *supra* at Section II.C. The Department thus has come to recognize that, as the Supreme Court stated in *Holyfield*, "a statute under which different rules apply from time to time to the same child, simply as a result of his or her transport from one State to another, cannot be what Congress had in mind." *Id.* at 46.

Many commenters cited, or made comments that repeated, specific statements made by the Department in 1979 in arguing that the Department should or should not issue a binding regulation. These statements, and the reasons why the Department is now departing from them, are discussed further below in the responses to comments.

B. Comments Agreeing That Interior May Issue a Binding Regulation

Some commenters, including a group of law professors and the Tribal Law and Policy Institute, asserted that the Department has sufficient authority to issue binding regulations and that the legal basis for regulatory action is strong. These commenters pointed to 25 U.S.C. 1952 authorizing the Department to promulgate such rules and regulations as may be necessary to carry out the provisions of the Act and 25 U.S.C. 2 and 9, which provide Interior with general authority to prescribe regulations to carry into effect any provision of any Act of Congress relating to Indian affairs. These commenters further pointed to the fact that Congress's intent was to establish "minimum Federal standards" to be applied in State child-custody proceedings, and noted that in the last few decades, there have been divergent interpretations of ICWA provisions by State courts and uneven implementation by State agencies that undermine this purpose. Congress passed ICWA to address State-court and -agency application of child-welfare laws to provide a minimum Federal floor for such proceedings. These commenters asserted that regulations to enforce the minimum standards and address inconsistencies in implementation are well within the authority that Congress delegated to the Department.

Other commenters stated that deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), would apply to the regulations because the regulations are within the grant of authority from Congress and directly address areas that are enforced inconsistently by the States in derogation of congressional intent. A commenter pointed out that there is no case in which a general conferral of rulemaking authority has been held insufficient to support *Chevron* deference for an exercise of that authority within the agency's substantive field.

Some commenters noted that under established case law, the Department's statements in 1979 concerning its authority to issue a binding regulation do not preclude it from issuing this binding regulation. Commenters further stated that issuance of the regulation is fully consistent with the Tenth Amendment, discounted the Federalism concerns potentially implicated by the regulation, and dismissed any suggestion that the regulation is unconstitutional. Some of these commenters stated that domestic family law is no longer the exclusive purview of States, if it ever was. Many commenters urged the Department to include in this preamble a thorough discussion of its authority to issue this binding regulation, including the citations to case law, in an effort to ensure that State courts will adhere to the regulations.

The Department agrees with these comments for the detailed reasons set forth in this preamble.

C. Comments Disagreeing That the Department Has Authority To Issue a Binding Regulation

Other commenters asserted that the Department does not have the authority to promulgate regulations. These commenters generally stated that ICWA provides the Department with authority for rulemaking only with respect to limited matters, such as with respect to grants to Tribes. The reasons cited in support of these comments are discussed separately below.

1. Agency Expertise

Comment: Some commenters stated that the BIA does not have expertise with respect to the child-welfare matters addressed by ICWA. These commenters pointed to a number of Supreme Court cases that establish domestic-relations law as being within the realm of State law.

Response: The Department respectfully disagrees with these commenters. ICWA addresses Indian affairs, is premised on Congress's plenary Indian-affairs power and trust responsibility, and seeks to prevent unwarranted State intrusion into Tribal affairs and sovereignty and to protect the integrity of Indian families. *See* 25 U.S.C. 1901, 1902. An express purpose of the statute was to provide safeguards against State officials who may not understand Tribal cultural or social standards. 25 U.S.C. 1901.

These are all areas squarely within the mandate and expertise of the BIA. The BIA is the Federal agency charged with the management of all Indian affairs and of all matters arising out of Indian relations, 25 U.S.C. 2, and may proscribe such regulations as [it] may think fit for carrying into effect the various provisions of any act relating to Indian affairs. 25 U.S.C. 9. The BIA's special expertise regarding Indian affairs, including Indian cultural values and social norms related to child-rearing, as well as Indian family and child service programs, make it logical for Congress to have entrusted the Department with rulemaking authority for the statute.[4] *Cf. Runs After* v. *United States*, 766 F.2d 347, 352 (9th Cir. 1985) ("It cannot be denied that the BIA has special expertise and extensive experience in dealing with Indian affairs."); *Golden Hill Paugussett Tribe of Indians* v. *Weicker*, 39 F.3d 51, 60 (2d Cir. 1994).

Further, BIA has extensive and longstanding experience in Indian child-welfare matters. Congress statutorily charged BIA with providing child-welfare services to all federally recognized Tribes. BIA social services and law enforcement are often the first responders in matters involving families and children. *See, e.g.*, 25 CFR part 20.

[3] *See, e.g.*, Letter from Bob Aitken, Director, Social Services, The Minnesota Chippewa Tribe to David Etheridge (May 23, 1979) (on file with the Department of the Interior) ("I feel strongly the Bureau of Indian Affairs should not be putting any of the act in 'guideline' form. The 'recommended guidelines for state courts' should be in rule or regulation form for state courts to follow. It appears the state courts will have a choice on whether or not to follow the Act. In my opinion, the Act *does* delegate to the Interior Department the authority to mandate such procedures."); Letter from Henry Sockheson, Chairman, Steering Committee of the National Association of Indian Legal Services, to David Etheridge (May 17, 1979) (on file with the Department of the Interior) ("Fearful of a constitutional challenge by states, a possibility soundly discredited and rejected by the lawmakers, the Secretary has adopted a position which flies in the face of clear Congressional intent to the contrary, *i.e.*, that he, even as a steward of Congressional purpose, cannot mandate procedures for state or tribal courts, the very meat & potatoes of the whole of Title I of the Act. In the place of these badly needed regulations, therefore, was substituted a Notice of 'Recommended Guidelines for State Courts-Indian Child-custody proceedings', which will have the practical effect of regulations without the protections afforded to the public under the Administrative Procedures Act. . . . It is apparent that the delicate relationships sought to be preserved by the Act justified and required regulatory action with regard to state court procedures by the Bureau and cannot be subjected to the whim of what surely Congress believed were recalcitrant state courts now functioning under questionable 'guidelines.' "); Letter from Alexander Lewis, Sr., Governor, Gila River Indian Community, to David Etheridge (May 21, 1979) (on file with the Department of the Interior) ("[A]bsent regulations [and] without force and effect, the guidelines are useless and the aims of the Act will be made more difficult to achieve. . . . By virtue of the Supremacy Clause of the United States Constitution, and this Act of Congress—the Indian Child Welfare Act, the Secretary of the Interior does have authority to promulgate regulations regarding the transfer of jurisdiction of Indian child proceedings from State to Tribal Court. I urge that you reconsider this action and promulgate regulations instead of guidelines, so that the provisions of the Act will not be emasculated."); Letter from Frank Stede, Vice-Chief, Mississippi Band of Choctaw Indians, to David Etheridge (May 22, 1979) (on file with the Department of the Interior) ("[T]he notices should have been issued [as] regulations contrary to what the Interior Department presents as an [argument] for not issuing the guide lines as notices, the Congress clearly gave the Secretary authority to mandate procedures for State or Tribal court by passing legislation which deals with State and Tribal [i]ssue[s] in such an extensive fashion, clearly Congress would not have [g]one to such details if it had intended that compliance to [be] voluntary.").

[4] Indeed, the BIA has a long-established hiring preference for qualified Indian individuals, which was designed "to increase the participation of tribal Indians in BIA operations" and "make the BIA more responsive to the needs of its constituent groups." *Morton* v. *Mancari*, 417 U.S. 535, 543–44, 554 (1974). The BIA is thus particularly well-suited to set standards that ensure consideration of Tribal cultural and social practices, and protect the integrity of Tribes.

These regulations fall squarely under the Department's broad responsibilities for Indian affairs. Finally, BIA has consulted extensively with the Children's Bureau of the Administration for Children and Families, Department of Health and Human Services, in formulating this final rule. The Children's Bureau partners with Federal, State, Tribal, and local governments to improve the overall health and well-being of children and families, and has significant expertise in child abuse and neglect. The Children's Bureau also administers capacity building centers for States, Tribes, and courts. BIA also consulted with the Department of Justice, which has significant expertise in court practice, Indian law, and court decisions addressing ICWA. Close coordination with these agencies has helped produce a final rule that reflects the substantial expertise of the Federal government in this area.

2. Chevron Deference

Comment: Commenters also asserted that courts will not grant these regulations deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984), because, they assert, *Chevron* deference applies only to interpretations of statutes that the agency administers and the Department has no statutory authority over child welfare. Commenters also asserted that no deference is warranted because of the statements the Department made in 1979 concerning the scope of its rulemaking authority. These commenters also assert that the regulations represent an interpretation of ICWA that is not within the range of reasonable interpretations, and that the Department's interpretation of certain provisions would render ICWA unconstitutional.

Response: The authority of the Department to issue this rule has been addressed above, and the rule is entitled to *Chevron* deference by Federal and State courts. As discussed in more detail in this preamble, the provisions of the final rule represent reasonable interpretations of the statute and do not raise constitutional concerns. Moreover, under any circumstances, the Department's interpretation of a statutory provision in this rule cannot render the *statute* unconstitutional.

3. Primary Responsibility for Interpreting the Act

Comment: Some commenters cited, or made statements that mirrored, the Department's statement in 1979 that "primary responsibility" for interpreting portions of ICWA that do not expressly delegate responsibility to the Department "rests with the courts that decide Indian child custody cases." In support of this statement, these commenters noted that the Department cited ICWA's legislative history, which states that the term "good cause," was "designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child."

Response: As noted above, the language in § 1952 authorizing the Department to "promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter" provides authority for this rulemaking. Accordingly, contrary to the Department's suggestion in 1979, the Department has authority to interpret the portions of ICWA addressed in this rule.

As discussed above, the Department's conclusion is in accord with ICWA's legislative history and the carefully reasoned decision in *Holyfield,* where the Supreme Court noted that the meaning of key ICWA terms and requirements necessarily raises Federal questions and that conflicting interpretations of the statute can lead to arbitrary outcomes that threaten the rights that ICWA was intended to protect. In 1979, the Department gave excessive weight to a single statement in the legislative history indicating that the term "good cause" was designed to provide State courts with flexibility when making certain determinations. 44 FR at 67584. That single statement was not addressing the reach of the Department's rulemaking authority. S. Rep. No. 95–597, at 17. Moreover, to the extent that the Department then believed that providing *any* regulatory guidance on the meaning of terms such as "good cause" improperly intrudes on a State court's flexibility to address particular factual scenarios, that interpretation was incorrect. The Department's standards relating to "good cause" in the final rule continue to leave State courts with flexibility, consistent with the legislative history. And other statements in the legislative history, which were not referenced by the Department in 1979, suggest Congress desired Federal agencies to be more involved in State removals of Indian children. *See, e.g.,* 1974 Senate Hearing at 463–65.

The Department also finds that the congressional purpose in passing ICWA supports its decision to issue this rule. Congress found that the States, exercising their recognized jurisdiction over Indian child-custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. *See* 25 U.S.C. 1901(5); *see also* H.R. Rep. No. 95–1386, at 10–12 (identifying as two of the leading factors contributing to the high rates of Indian-child removal the lack of culturally competent State child-welfare standards for assessing the fitness of Indian families and systematic due-process violations against both Indian children and their parents during child-custody proceedings).

In *Holyfield,* the Supreme Court reviewed Congress's findings, which demonstrate that Congress "perceived the States and their courts as partly responsible for the problem it intended to correct." 490 U.S. at 45. The Court concluded that "[u]nder these circumstances it is most improbable that Congress would have intended to leave the scope of the statute's key jurisdictional provision subject to definition by state courts as a matter of state law." *Id.* The Department similarly concludes here that "[u]nder these circumstances," it is improbable that Congress intended the broad grant of rulemaking authority in § 1952 to authorize the Department to issue binding rules that interpret only those portions of ICWA that expressly delegate responsibility to the Department.

4. Tenth Amendment and Federalism

Comment: Some commenters asserted that the proposed rule violates the Tenth Amendment of the U.S. Constitution because it commandeers State courts, or for unspecified reasons. Commenters also cited, or made statements that repeated, Federalism concerns that the Department briefly referenced in 1979. These commenters pointed out that the Department stated in 1979 that it would have been extraordinary for Congress to authorize the Department to exercise supervisory authority over State or Tribal courts, or to legislate for them with respect to Indian child-custody matters, in the absence of an express congressional declaration to that effect. *See* 44 FR 67584. The Department also stated that nothing in ICWA's legislative history indicated that Congress intended to delegate such extraordinary authority. *Id.* Several commenters stated that the rule violates Federalism principles because it tells State-court judges what they may and may not consider, and exactly how to interpret a Federal law.

Response: The Department has reflected on these comments and has reconsidered the statements it made in 1979. While ICWA does not "oust the States of their traditional jurisdiction over Indian children falling within their geographical limits," H.R. Rep. No. 95–1386, at 19, Congress enacted ICWA to curtail State authority in certain respects. At the heart of ICWA are provisions that address the respective jurisdiction of Tribal and State courts. Other important provisions of ICWA require State courts to apply minimum Federal standards and procedural safeguards in child-custody proceedings for Indian children. This rule serves to clarify ICWA's requirements, with the goal of promoting uniform application of the statute across States.

While a few commenters asserted that this rule violates the Tenth Amendment, the Supreme Court repeatedly has reaffirmed the "power of Congress to pass laws enforceable in state courts." *New York* v. *United States,* 505 U.S. 144, 178 (1992); *Testa* v. *Katt,* 330 U.S. 386, 394 (1947); *F.E.R.C.* v. *Mississippi,* 456 U.S. 742, 760–61 (1982). The Court also has explained that "[i]f a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States." *New York,* 505 U.S. at 156. Here, Congress enacted ICWA primarily pursuant to the Indian Commerce Clause, which provides Congress with plenary power over Indian affairs. 25 U.S.C. 1901(1). In clarifying ICWA's requirements, the Department is exercising the authority that Congress delegated to it. Having considered the nature of this rule, the comments received, and the relevant case law, the Department concludes that this rule does not violate the Tenth Amendment for the same reasons that ICWA does not violate the Tenth Amendment.

The Department also has reflected on the Federalism concerns it noted in 1979. The Department does not view this rule as an "extraordinary" exercise of authority involving an assertion of "supervisory control" over State courts. While the Department's promulgation of this rule may override what some courts believed to be the best interpretation of ambiguous provisions of ICWA or how these courts filled gaps in ICWA's requirements, the Supreme Court has reasoned that such a scenario is not equivalent to making "judicial decisions subject to reversal by executives." *Nat'l Cable & Telecomm. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 983 (2005). Rather, the Department's rule clarifies a limited set of substantive standards and related procedural safeguards that courts will apply to the particular cases before them.[5] For these reasons, and because Congress unambiguously provided the Department authority to issue this rule, the Department does not view Federalism concerns as counseling against the issuance of this rule.[6]

5. Federalism Executive Order

Comment: A few commenters additionally stated that the rule has Federalism implications because it has substantial direct effects on States, on the relationship between the national government and States, and on the distribution of power and responsibilities among the various levels of government. A commenter stated that the Department violates the Federalism executive order because the rule preempts State law, and the Department did not provide "all affected State and local officials" notice and opportunity to comment on that preemption as required.

Response: The Department stated in the proposed rule that "[u]nder the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The Department thus "determined that this rule complies with the fundamental Federalism principles and policymaking criteria established in EO 13132." The Department reaffirms these determinations, and respectfully disagrees with commenters who stated or suggested that these determinations are incorrect.

ICWA balances the Federal interest in protecting the integrity of Indian families and the sovereign authority of Indian Tribes with the States' sovereign interest in child-welfare matters. Congress carefully crafted ICWA's jurisdictional scheme so as to recognize the authority of each of these sovereigns. In crafting this scheme, Congress recognized a need to curtail certain State authority and enacted ICWA to address Indian child welfare through a statutory framework intended to apply uniformly across States. Since 1978, States have been required to comply with ICWA, and this regulation serves to interpret and fill gaps in the Federal minimum standards and procedural safeguards set forth in the statute. Many of the standards included in this rule are already being followed by a number of States.

In the notice of the proposed rule, the Department specifically solicited comments on the proposed rule from State officials, including suggestions for how the rule could be made more flexible for State implementation. 80 FR 14883. The Department carefully considered and addressed in this rulemaking all comments received concerning this regulation, some of which were submitted by State judges and other State officials.

6. Change in Position From Statements Made in 1979

Comment: Several commenters expressed concern that the Department's issuance of a binding regulation would be inconsistent with, or impermissible in light of, statements the Department made in 1979 regarding its authority to promulgate binding regulations. These commenters asserted that the Department's issuance of a binding regulation would conflict with established case law and that the binding regulation would "sweep aside 37 years of state appellate court decisions regarding rights of children and families."

Response: The Department has described its reasons for departing from the statements it made in 1979. Under well-established case law, the Department's prior statements pose no bar to this regulation. The Department also notes that the final rule does not disregard State appellate-court decisions. To the contrary, the Department carefully considered State appellate-court decisions, State legislation, and State guidance documents in promulgating the final rule. Many State standards and practices are reflected in the final rule. And on many issues, the Department's review of disparate State standards reinforced the Department's view that more uniformity in the interpretation of ICWA is needed.

7. Timeliness

Comment: Some commenters who argued the regulations are unauthorized focused on the fact that ICWA imposed a deadline of November 8, 1978 for the Department to promulgate regulations; these commenters state that the

[5] The Supreme Court has explained that "[v]alid regulations establish legal norms. Courts can give them proper effect even while applying the law to newfound facts, just as any court conducting a trial in the first instance must conform its rulings to controlling statutes, rules, and judicial precedents." *United States* v. *Haggar Apparel Co.,* 526 U.S. 380, 391 (1999). Of course, the construction of ICWA by State courts will "remain[ ] subject to [the Supreme] Court's supervision." *Holyfield,* 490 U.S. at 43.

[6] In evaluating these concerns, the Department also notes that Congress provides a substantial amount of Federal funding to States for child-welfare programs, *see, e.g.,* Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235); Emilie Stoltzfus, Child Welfare: An Overview of Federal Programs and Their Current Funding (Congressional Research Service 2015), and that other Federal statutes address State family law. *See, e.g.,* 42 U.S.C. 652.

authority for promulgating regulations expired after that date.

Response: ICWA states that "within" 180 days after November 8, 1978, the Department shall promulgate such rules and regulations as may be necessary to carry out ICWA. *See* 25 U.S.C. 1952. Regulations may be issued after the passage of a statutory deadline, however, so long as the statute, as is the case with ICWA, does not spell out explicit consequences for late action. *See, e.g., Barnhart* v. *Peabody Coal Co.,* 537 U.S. 149, 159 (2003); *Brock* v. *Pierce Cty.,* 476 U.S. 253, 262 (1986).

IV. Discussion of Rule and Comments

A. Public Comment and Tribal Consultation Process

1. Fairness in Proposing the Rule

Comment: Commenters asserted that the 2015 Guidelines and the proposed regulations were drafted without any outreach or request for comment from adoption agencies, attorneys, or other adoption professionals. One commenter stated that all the comments that were incorporated into the proposed regulations were only from the position of Indian Tribes, and did not reflect any input from State Attorney Generals, State child-welfare agencies, or others.

Other commenters stated their appreciation for the Department's diligence in seeking input from the public. Commenters stated that the experts on Indian child-welfare matters are Tribes, because they work in the field on a daily basis and have no special interest in determining the best interest of Tribal children beyond wanting the children to succeed and be connected to their culture and community. A number of States commented favorably on the proposed rule, and provided helpful comments to improve the final rule.

Response: The Department disagrees with the assertion that the 2015 Guidelines or proposed rule were developed without public input. As part of the preparation of the updated guidelines, the Department invited comments from federally recognized Indian Tribes, State-court representatives, and organizations concerned with Tribal children, child welfare, and adoption. *See* 80 FR at 10146–67. Those comments, the recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, developments in ICWA jurisprudence, and the expertise of the Department and other Federal agencies were all considered in updating the guidelines as well as the drafting of the proposed rule. Since issuing the proposed rule, the Department has engaged in a robust public comment process, as discussed above and as evidenced by the large number of written comments received by BIA on this rulemaking.

2. Locations of Meetings/Consultations

Comment: Several commenters opposed the locations where the Department held the public hearings on the proposed rule during the public comment process. The commenters noted that all the hearings were held west of the Mississippi River, and none were held in any of the most populous States. Some commenters requested additional hearings in various locations.

Response: The Department chose locations for public hearings based on general areas where there are likely to be larger populations of Indian children and thus more ICWA proceedings. The Department also hosted a national teleconference to accommodate other interested persons who were unable to attend an in-person session including, but not limited to, anyone who may reside far from where the in-person sessions were held. A total of 215 persons participated by teleconference. In addition, Tribal consultation sessions and public hearings were held in Oklahoma, Alaska, and several other locations. More than 2,100 written comments were received.

B. Definitions

1. "Active Efforts"

ICWA requires the use of "active efforts" to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. 25 U.S.C. 1912(d). ICWA does not define "active efforts." The Department finds, however, that Congress intended this requirement to provide vital protections to Indian children and their families by requiring that support be provided to keep them together, whenever possible. In particular, Congress recognized that many Indian children were removed from their homes because of poverty, joblessness, substandard housing, and related circumstances. Congress also recognized that Indian parents sometimes suffered from "cultural disorientation, a [] sense of powerlessness, [and] loss of self-esteem," and that these forces "arise, in large measure from our national attitudes as reflected in long-established Federal policy and from arbitrary acts of Government." H.R. Rep. No. 95–1386, at 12. But, Congress concluded, "agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation." *Id.* The "active efforts" requirement is one of the primary tools provided in ICWA to address this failure, and should thus be interpreted in a way that requires substantial and meaningful actions by agencies to reunite Indian children with their families. The "active efforts" requirement is designed primarily to ensure that services are provided that would permit the Indian child to remain or be reunited with her parents, whenever possible. This is viewed by some child-welfare organizations as part of the "gold standard" of what services should be provided in child-welfare proceedings.

The Department finds that there are compelling reasons for setting a nationwide definition for this critical statutory term. Although there is substantial agreement, among those State courts that have considered the issue, that active efforts requires more than simply formulating a case plan for the parent of an Indian child, there is still variation among the States as to what level of efforts is required. This means that the standard for what constitutes "active efforts" can vary substantially among States, even for similarly situated Indian children and their parents. The final rule will reduce this variation, thus promoting nationwide consistency in the implementation of this Federal right.

The final rule defines "active efforts" and provides examples of what may constitute active efforts in a particular case. The final rule retains the language from the proposed rule that active efforts means actions intended primarily to maintain and reunite an Indian child with his or her family. The final rule clarifies that, where an agency is involved in the child-custody proceeding, active efforts involve assisting the parent through the steps of a case plan, including accessing needed services and resources. This is consistent with congressional intent—by its plain and ordinary meaning, "active" cannot be merely "passive."

The final rule indicates that, to the extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions of the Indian child's Tribe, and in partnership with the child, parents, extended family, and Tribe. This is consistent with congressional direction in ICWA to conduct Indian child-welfare proceedings in a way that reflects the cultural and social standards prevailing in Indian communities and families. There is also evidence that services that are adapted to the client's cultural backgrounds are better. *See, e.g.,* Mental Health: Culture, Race, and Ethnicity: A Supplement to Mental Health: A Report of the Surgeon General (2001); Substance Abuse and Mental Health Services Administration, A Treatment Improvement Protocol: Improving Cultural Competence (2015); Smith, T.B. *et al., (2011), Culture,* J. Clin. Psychol. 67, 166–175 (meta-analysis finding the most effective psychotherapy treatments tended to be those with greater numbers of cultural adaptations); Benish, S.G. *et al.,* (2011), *Culturally Adapted Psychotherapy and the Legitimacy of Myth: A Direct-Comparison Meta-Analysis,* 58 J. of Counseling Psychol. No. 3, 279–289 (meta-analysis finding that culturally adapted psychotherapy is more effective than unadapted psychotherapy).

Unlike the proposed rule, the final rule does not define "active efforts" in comparison to "reasonable efforts." After considering public comments on this issue, the Department concluded that referencing "reasonable efforts" would not promote clarity or consistency, as the term "reasonable efforts" is not in ICWA and arises from different laws (*e.g.,* the Adoption Assistance and Child Welfare Act of 1980, as modified by the Adoption and Safe Families Act (ASFA), *see* 42 U.S.C. 670, *et seq.,* as well as State laws). Such reference is unnecessary because the definition in the final rule focuses on what actions are necessary to constitute active efforts.

The Department recognizes that what constitutes sufficient "active efforts" will vary from case-to-case, and the definition in the final rule retains State court discretion to consider the facts and circumstances of the particular case before it.

Comment: Several commenters stated their support for the definition and examples of active efforts. Several commenters, including States and State-court judges, noted the term "active efforts" is in need of clarification. Commenters noted that, while agencies are required to provide active efforts, there has not been a clear understanding of the level and types of services required and the term is interpreted differently from State to State and even county to county. One commenter noted that it receives numerous questions about active efforts each year and published a guide on this topic but that a nationwide regulation would further clarify the requirements. Several commenters supported the language stating that active efforts are above and beyond the reasonable efforts standard for non-ICWA cases. One commenter stated that California courts have construed active efforts as "essentially equivalent to reasonable efforts to provide or offer reunification services to a non-ICWA case." Some of these commenters requested even stronger language distinguishing the two. Other commenters opposed defining active efforts in relation to reasonable efforts. Commenters stated that BIA has no authority to determine how reasonable efforts and active efforts would compare and that comparing them raises equal protection concerns. One commenter stated that the term does not need a definition.

Response: The proposed rule defined "active efforts" in a manner that compared it to "reasonable efforts" because many understand active efforts and reasonable efforts as relative to each other, where active efforts is higher on the continuum of efforts required and reasonable efforts is lower on that continuum. *See, e.g., In re Nicole B.,* 927 A.2d 1194, 1206–07 (Md. Ct. Spec. App. 2007). However, as commenters pointed out, the terms are used in separate laws and are subject to separate analyses. The term "reasonable efforts" is not used in ICWA; rather, it is used in the Adoption Assistance and Child Welfare Act of 1980, as modified by the Adoption and Safe Families Act (ASFA). *See* 42 U.S.C. 670, *et seq.* ASFA establishes "reasonable efforts" as a State responsibility in order to be eligible for Federal foster-care placement funding. Some State laws also utilize a "reasonable efforts" standard.

ICWA, however, requires "active efforts" prior to foster-care placement of or termination of parental rights to an Indian child, regardless of whether the agency is receiving Federal funding. Having considered the concerns of commenters with the use of the term "reasonable efforts" as a point of comparison, the Department has decided to delete reference to "reasonable efforts" from the definition of "active efforts" in the final rule. Such reference is unnecessary because the definition now focuses on the actions necessary to constitute active efforts, as affirmative, active, thorough, and timely efforts. Instead, the final rule provides additional examples and clarifications as to what constitutes active efforts.

Comment: A commenter pointed out that the "active efforts" requirement in the Act applies only to the "Indian family" and not to the Tribal community.

Response: The final rule deletes reference to "Tribal community" in the definition.

Comment: A commenter noted that the legislative history of the "active efforts" provision demonstrates that Congress intended to require States to affirmatively provide Indian families with substantive services and not merely make the services available.

Response: The Department agrees and the final rule's definition of "active efforts" reflects this.

Comment: A few commenters suggested adding appointment of legal counsel for both parents and children as a requirement for active efforts.

Response: Appointment of legal counsel does not clearly fall within the scope of remedial services and rehabilitative programs designed to prevent the breakup of the Indian family for which active efforts is required. 25 U.S.C. 1912(d). Further, 25 U.S.C. 1912(b) separately provides for appointment of counsel for the parent or Indian custodian in any case in which the court determines indigency.

Comment: Many commenters supported the proposed examples of "active efforts" in the definition, one saying they will be "extremely helpful" for determining whether services comply with the higher standard. The Oregon Juvenile Court Improvement Program noted that many of the examples reinforce Oregon's document "Active Efforts Principles and Expectations." A few commenters suggested clarifying that the list is not exhaustive. Some suggested requiring a minimum number of the items on the list to be met to reach the "active efforts" threshold, while others requested clarifying that not all the items are required to be met to reach the threshold. A few commenters suggested shortening and simplifying the list. Others suggested including in each item a requirement to work with the Tribe. Several commented on the specifics of each example of "active efforts" listed in the definition. Some suggested adding new examples.

Response: The final rule simplifies the list somewhat by combining similar examples and clarifies that the list is not an exhaustive list of examples. The minimum actions required to meet the "active efforts" threshold will depend on unique circumstances of the case. The final rule also states, consistent with the BIA 1979 and 2015 Guidelines, that whenever possible, active efforts should be provided in partnership with the Indian child's Tribe, and should be provided in a manner consistent with the prevailing cultural and social conditions and way of life of the Indian child's Tribe. This practice is consistent with Congress' intent in ICWA that State child-custody proceedings better incorporate and consider Tribal values and culture. Further, as discussed above, culturally adapted treatment strategies have been shown to be more effective.

Comment: A commenter stated that the definition of "active efforts" reveals an assumption that the child has had a connection with the Tribal community, by using the terms "maintain" and "reunite." The commenter states that this assumption is imbedded in the Act, which suggests that a relationship with the Tribal community was already in existence, and so the Act should not apply to children raised outside their Tribal communities prior to removal; otherwise, the Act would force the child to assume a new cultural identity on the basis of ancestry alone.

Response: The Act and the regulations require "active efforts" to prevent the breakup of the Indian child's family. Neither the text of the statute nor its legislative history suggests that this requirement is limited to circumstances where a State court determines that the Indian child has a sufficient pre-existing connection to a Tribal community. Indeed, Congress applied the "active efforts" requirement to Indian children residing outside of a reservation, and it can be presumed that Congress understood that for reasons of distance and age, some of these children may not have yet developed extensive connections to their Tribal community. Congress also found that State agencies and courts "have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." 25 U.S.C. 1901(5). In light of this, the Department finds that it would not comport with congressional intent to require State courts to assess an Indian child's connection with her Tribal community.

Nothing in the Act or these regulations forces the child to assume a new cultural identity or assume a relationship with a Tribe or Tribal community that was not pre-existing. ICWA applies only to Indian children who have a political relationship (either through their citizenship, or through the citizenship of a parent and their own eligibility for citizenship) with a federally recognized Indian Tribe.

2. "Agency"

The final rule defines "agency" as an organization that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in, the administrative and social work necessary for foster, preadoptive, or adoptive placements. The definition includes non-profit, for-profit, or governmental organizations. This comports with the statute's broad language imposing requirements on "any party" seeking placement of a child or termination of parental rights. *See, e.g.* 25 U.S.C. 1912 (a), (d).

Comment: A few commenters stated that the definition should clarify that "agencies" are covered by the regulations even if they are not licensed by the State. One commenter stated that the definition should also include attorneys and others who participate in private placements, so that they will also be subjected to requirements for ICWA compliance.

Response: The final rule updates the definition of "agency" to mean organizations including those who may assist in the administrative or social work aspects of seeking placement. An "agency" may also be assisting in the legal aspects of seeking placement, but the definition does not include attorneys or law firms, standing alone, because as used in the final rule, "agencies" are presumed to have some capacity to provide social services. Attorneys and others involved in court proceedings are addressed separately in various provisions in the final rule.

3. "Child-Custody Proceeding"

See "Applicability" section below.

4. "Continued Custody" and "Custody"

The final rule makes two changes from the proposed rule to the definition of "continued custody," in response to comments. First, it clarifies that physical and/or legal custody may be defined by applicable Tribal law or custom, or by State law. This comports with ICWA's recognition that custody may be defined by any of these sources. *See, e.g.,* 25 U.S.C. 1903(6). Second, it clarifies that an Indian custodian may have continued custody, because the statute recognizes that Indian custodians may have legal or physical custody of an Indian child and are entitled to ICWA's statutory protections. The definition of "custody" did not substantively change from the proposed rule.

Comment: A few commenters suggested adding "Indian custodian" in addition to "parent" in the definition of "continued custody."

Response: The final rule makes this change, as discussed above.

Comment: Several commenters supported the "continued custody" definition as clarifying that parents who may never have had physical custody are nevertheless covered by ICWA if they had legal custody. A few commenters suggested clarifications in light of the Supreme Court's decision in *Adoptive Couple* v. *Baby Girl,* 133 S. Ct. 2552 (2013), that the father in that case did not have legal or physical custody. One commenter requested that the final rule add that the father has "continued custody," even without physical or legal custody, unless he abandoned the child prior to birth.

Response: The final rule retains the definition of "continued custody" as proposed, which includes custody the parent or Indian custodian "has or had at any point in the past." It clarifies that the parent or custodian may have physical and/or legal custody under any applicable Tribal law or Tribal custom or State law. The definition is consistent with *Adoptive Couple* v. *Baby Girl,* which determined under the facts of that case that the father never had custody. The Department finds that this definition is also most consistent with ICWA, which in other contexts defines legal custody as well as parental rights in reference to Tribal and State law. *See* 25 U.S.C. 1903(6), (9).

Comment: A few commenters stated that the definition should require a "preexisting state" of custody prior to the child-custody proceeding, or require custody for a certain period of time.

Response: The final rule does not add the requested requirement for a "preexisting state" of custody because there are situations in which a parent could be considered to have had custody but lost it for some period of time prior to the child-custody proceeding, or may have had, at the time of the commencement of the proceeding, custody for only a brief period of time. There is no evidence that Congress intended temporary disruptions (*e.g.,* surrender of child to another caregiver for a period) not to be included in "continued custody." The Department believes that including this requirement could permit evasion of ICWA's protections, since it could create incentives to disrupt a parent's custodial rights prior to initiating a child-custody proceeding.

Comment: Some commenters requested that the definition emphasize the narrow holding of the Supreme Court in *Adoptive Couple* v. *Baby Girl* as not applying to a parent that "at least had at some point in the past" custody of the child.

Response: The proposed and final rule already defined "continued custody" to include custody a parent "had at any point in the past," which is substantively the same as the language used by the Supreme Court in *Adoptive Couple* v. *Baby Girl.*

Comment: Several commenters suggested adding provisions to "continued custody" allowing putative fathers to assert custodial rights.

Response: Neither the statute nor the final rule directly addresses the ability of putative fathers to assert custodial rights; in the final rule, custodial rights may be established under Tribal law or custom or State law.

Comment: Several commenters supported the proposed definition of "custody" as including Tribal law or Tribal custom. One commenter requested adding that "continued custody," like "custody," is based on Tribal law or Tribal custom. Another commenter suggested adding that State law may only be used in the absence of applicable Tribal law or Tribal custom.

Response: The final rule adds "under any applicable Tribal law or Tribal custom or State law" to the definition of "continued custody" to better parallel the definition of "custody." The final rule does not establish an order of preference among Tribal law, Tribal custom, and State law because the final rule provides that custody may be established under any one of the three sources.

5. "Domicile"

The final rule provides a more complete description of how to determine domicile for an adult, to better comport with Federal common law. The rule's definition is consistent with the definition of domicile provided by Black's Law Dictionary, a standard legal reference resource. The final rule also changes the definition of domicile for an Indian child whose parents are not married to be the domicile of the Indian child's custodial parent, in keeping with legal authority on this point.

Comment: With regard to the first part of the definition of "domicile," addressing the domicile of "parents or any person over the age of 18," a commenter suggested replacing "any person over the age of 18" with "Indian custodian."

Response: The final rule replaces "any person over the age of 18" with "Indian custodian" as suggested in this comment because the context in which the term "domicile" is used includes only parents or Indian custodians (children are addressed in another part of the definition).

Comment: One commenter suggested that domicile should be defined by Tribal law or custom of the Indian child's Tribe, and that a Federal definition should apply only in the absence of such law or custom.

Response: The U.S. Supreme Court found that Congress intended a uniform Federal law of domicile for ICWA. *See Miss. Band of Choctaw Indians* v. *Holyfield,* 490 U.S. 30, 44–47 (1989).

Comment: Several commenters stated that the reliance on physical presence in the definition of domicile is too narrow. Some recommended changing the definition to the common-law definition of domicile. These commenters noted that the common-law definition would better consider persons who may leave the reservation temporarily (*e.g.,* to obtain education, pursue work, or enter the military) and that the court in *Holyfield* stated that "domicile" is not necessarily synonymous with "residence." One commenter suggested changing "physical presence" to "was physically present" to account for this difference. A commenter stated that a person's intent to return should be the main focus.

Response: The final rule adopts the commenters' suggestions by revising the definition of "domicile" to better reflect the common-law definition, which acknowledges that a person may reside in one place but be domiciled in another.

Comment: With regard to the second part of the definition, addressing the domicile of the child, several commenters stated that, in the case of an Indian child whose parents are not married to each other, the domicile is not necessarily that of the Indian child's mother. These commenters pointed out that the father or a guardian may have custody of the child, and some noted that some Tribes are patriarchal and this definition would conflict with those Tribes' cultural traditions. Some stated that the domicile of the child in this case should instead be the domicile of the custodial parent with whom the child lives most often and if the child lives with neither parent, then the domicile should be that of the mother or the Indian child's Tribe. Others stated the domicile should be that of the custodial parent (or primary custodial parent), Indian custodian, or legal guardian.

Response: The Supreme Court stated that a child born out of wedlock generally takes the domicile of his or her mother. *Holyfield,* 490 U.S. at 43–48. This rests on an underlying assumption that the mother is the child's custodial parent. This may generally be true at the time of the birth of the child. The general rule, however, is that a minor has the same domicile as the parent with whom he lives. *See, e.g.* Restatement (Second) of Conflict of Laws 22 (Am. Law. Inst. 1971). As one State court recognized, where the father is the custodial parent, the child's domicile is not that of the mother but rather follows that of the custodial parent. *Tubridy* v. *Iron Bear (In re S.S.),* 657 NE.2d 935, 942 (Ill. 1995). Thus, the final rule accepts the suggestion that the child's domicile should be the custodial parent's domicile when the parents are unwed.

6. "Emergency Proceeding"

The statute treats emergency proceedings differently from other child-custody proceedings. *See* 25 U.S.C. 1922. In response to comments that reflected a lack of clarity on this point, the final rule adds a definition of "emergency proceedings." "Emergency proceedings" are defined as court actions involving emergency removals and emergency placements. These proceedings are distinct from other types of "child-custody proceedings" under the statute. While States use different terminology (*e.g.,* preliminary protective hearing, shelter hearing) for emergency hearings, the regulatory definition of emergency proceedings is intended to cover such proceedings as may necessary to prevent imminent physical damage or harm to the child. *See* "Emergency Proceedings" section below for more information and responses to comments.

7. "Extended Family Member"

This definition has not changed from the proposed rule, and tracks the statutory definition.

Comment: A few commenters suggested expanding the definition of "extended family member" to include various other individuals (*e.g.,* great-grandparents, great-aunts, and great-uncles).

Response: The definition of "extended family member" in the proposed rule and final rule matches the statutory definition. Additional categories of individuals may be included in the meaning of the term if the law or custom of the Indian child's Tribe includes them. "Extended family member" is not limited to Tribal citizens or Native individuals.

8. "Hearing"

See "Applicability" section below.

9. "Imminent Physical Damage or Harm"

The final rule does not provide a definition of "imminent physical damage or harm." The Department has determined that statutory phrase is clear and understandable as written, such that no further elaboration is necessary.

The Department has concluded that the definition it included in the proposed rule, "present or impending risk of serious bodily injury or death," is too constrained and does not capture circumstances that Congress would have considered as presenting "imminent physical damage or harm." Commenters noted that situations of sexual abuse,

domestic violence, or child labor exploitation could arguably be excluded by the proposed definition. The Department did not, however, intend that such situations would fall outside the scope of "imminent physical damage or harm." Since the statutory phrase reflects endangerment of the child's health, safety, and welfare, not just bodily injury or death, the Department has decided not to use the proposed definition.

The "imminent physical damage or harm" standard applies only to emergency proceedings, which are not subject to the same procedural and substantive protections as other types of child-custody proceedings, as discussed in Section IV.H below. In using this standard, Congress established a high bar for emergency proceedings that occur without the full suite of protections in ICWA. There are circumstances in which it may be appropriate to provide services to the parent or initiate a child-custody proceeding with the attendant ICWA protections (*e.g.*, those in 25 U.S.C. 1912 and elsewhere in the statute), but removal or placement on an emergency basis is not appropriate. Thus, section 1922 and these rules require that any emergency proceeding must terminate immediately when the emergency proceeding is not necessary to prevent imminent physical damage or harm to the child. This standard is substantially similar to the emergency removal provisions of many states. See, *e.g.*, W. Va. Code 49–4–6–2 (2015); N.Y. Fam. Ct. Act 1024 (McKinney 2009); Idaho Code 16–1608 (2016); Texas Fam. Code 262.104 (West 2015); N.J. Stat. Ann. 9:6–8.29 (West. 2012); Va. Code Ann. 16.1–251 (2015), Cal. Welf. & Inst. Code 305 (West).

Comment: Many commenters opposed the proposed definition of "imminent physical harm or damage" because they asserted:

- States should be able to define imminent harm in accordance with their State protection laws;
- The proposed definition is too narrow in omitting neglect and emotional or mental (psychological) harm and would preclude emergency measures to protect a child from these types of harms;
- By requiring "serious" bodily injury, the proposed definition would exclude physical harm such as domestic violence that does not rise to a major injury and exclude threatened physical harm (*e.g.*, present or impending sexual abuse, child labor exploitation, or misdemeanor assaults);
- The proposed definition would result in equal protection violations denying Indian children the same level of protections as non-Indian children because research shows that exposure to domestic violence produces significant and long-lasting harm to the child psychologically, even when the child does not himself experience physical injury; and
- The proposed definition would exclude some State and Federal crimes that would normally justify protection of the child.

Several other commenters supported the proposed definition of "imminent physical harm or damage," to the extent it would apply to emergency situations. These commenters asserted:

- A narrow threshold for emergency removal is necessary because, in some jurisdictions, little more than being an Indian child on a reservation apparently constitutes "imminent physical damage or harm," and the proposed definition would require a closer examination of whether the emergency removal was necessary;
- Not including minor physical harm or emotional harm is appropriate for emergency removal because a child experiencing those types of harm could be removed following the commencement of a child-custody proceeding rather than by emergency removal; and
- The proposed definition is in line with State laws that keep a child in his or her home unless the child is in need of immediate protection due to an imminent safety threat.

Even among commenters that supported the proposed definition, many had suggested changes, such as:

- Clarifying that situations like sexual abuse would be grounds for emergency removal;
- Including "serious emotional damage" only if the child displays specific symptoms such as severe anxiety, depression or withdrawal;
- Clarifying "imminent" rather than the degree of harm; and
- Clarifying that imminent physical harm or damage is not present when the implementation of a safety plan or intervention would otherwise protect the child while allowing them to remain in the home.

Response: The final rule does not use the proposed definition of "imminent physical damage or harm" because the Department has concluded that the statutory phrase encapsulates a broader set of harms than was reflected in the proposed definition. The Department agrees with commenters that the phrase focuses on the child's health, safety, and welfare, and would include, for example, situations of sexual abuse, domestic violence, or child labor exploitation.

The Department also agrees with commenters who emphasized that the section 1922 language focuses on the imminence of the harm, because the immediacy of the threat is what allows the State to temporarily suspend the initiation of a full "child-custody proceeding" subject to ICWA. Where harm is not imminent, issues that might at some point in the future affect the Indian child's welfare may be addressed either without removal, or with a removal on a non-emergency basis (complying with the Act's section 1912 requirements). We also agree with commenters that being an Indian child on a reservation does not justify emergency removal; Congress used the standard of "imminent physical damage or harm" to guard against emergency removals where there is no imminent physical damage or harm.

Comment: A few commenters stated that the only place "imminent physical damage or harm to a child" appears in ICWA is at section 1922, which addresses emergency removal only of children domiciled on a reservation, so it should not apply to State removal of children who are not domiciled on a reservation.

Response: The final rule is based on the premise that the emergency removal or placement of an Indian child may be conducted under State law in order to keep the child safe. *See* FR § 23.113. 25 U.S.C. 1922 requires, however, that any emergency proceeding terminate immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. Both the legislative history and the decisions of multiple courts support the conclusion that this provision applies to emergency proceedings involving Indian children who are both domiciled off of the reservation and domiciled on the reservation, but temporarily off of the reservation. *See* H. Rep. No. 95–1386, at 25; *see also Oglala Sioux Tribe* v. *Hunnik*, No. 13–5020, 2016 WL 697117 (D.S.D. Feb. 19, 2016); *In re T.S.*, 315 P.3d 1030 (Okla. Civ. App. 2013); *In re H.T.*, 343 P.3d 159, 167 n.3 (Mont. 2015); *Cheyenne River Sioux Tribe* v. *Davis*, 822 N.W.2d 62, 65 (S.D. 2012); *State ex rel. Children, Youth & Families Dep't* v. *Marlene C. (In re Esther V.)*, 248 P.3d 863, 873 (N.M. 2011). Unless section 1922 is read to apply to children on and off of the reservation, ICWA could be read to prohibit the emergency removal of such Indian child in order to prevent imminent physical harm. *See e.g.*, H. Rep. 95–1386 (section 1922 is intended to "permit" such removal "notwithstanding the provisions of this title").

10. "Indian Child"

The final rule retains the definition used in the statute with the addition of the terms "citizen" and "citizenship" because these terms are synonymous with "member" and "membership" in the context of Tribal government.

Comment: A commenter noted that the regulations sometimes refer to the Indian child being "a member or eligible for membership" without specifying that if the child is not a member, then the child's parent must be a member and the child must be eligible for membership.

Response: The statute specifies that if the child is not a Tribal member, then the child must be a biological child of a member and be eligible for membership, in order for the child to be an "Indian child." 25 U.S.C. 1903(4). The final rule addresses this oversight by clarifying in each instance that the biological parent must be a member in addition to the child being eligible for membership.

Comment: One commenter queried whether it is constitutional to include "eligible" children in the definition, since these children are not yet Tribal members.

Response: The final rule reflects the statutory definition of "Indian child," which is based on the child's political ties to a federally recognized Indian Tribe, either by virtue of the child's own citizenship in the Tribe, or through a biological parent's citizenship and the child's eligibility for citizenship. Congress recognized that there may not have been an opportunity for an infant or minor child to be enrolled in a Tribe prior to the child-custody proceeding, but nonetheless found that Congress had the power to act for those children's protection given the political tie to the Tribe through parental citizenship and the child's own eligibility. *See, e.g.*, H.R. Rep. No. 95–1386, at 17. This is consistent with other contexts in which the citizenship of a parent is relevant to the child's political affiliation to that sovereign. *See, e.g.*, 8 U.S.C. 1401 (providing for U.S. citizenship for persons born outside of the United States when one or both parents are citizens and certain other conditions are met); *id.* 1431 (child born outside the United States automatically becomes a citizen when at least one parent of the child is a citizen of the United States and certain other conditions are met).

Comment: One commenter stated that if the child grows up on the reservation and participates in Tribal rituals and community, that child is an Indian child regardless of whether the child is allowed to be a member.

Response: The statute defines "Indian child" based on a political connection with the Tribe rather than residence or participation in Tribal rituals and community. The regulation reflects the statutory definition.

Comment: Several commenters requested clarification that the child needs to be under age 18 only at the commencement of the initial child-custody proceeding for ICWA to apply for the duration of the case.

Response: ICWA defines an "Indian child" as a person under the age of 18. Other Federal law allows for States receiving Federal funding to extend foster care to persons up to age 21. *See* 42 U.S.C. 675(8)(B)(iii). And, the majority of States have statutes that explicitly allow child-welfare agencies to continue providing foster care to young people after they turn 18. *See* Keely A. Magyar, *Betwixt and Between But Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 Temple L. Rev. 557 (2006) (summarizing State laws). Where State and/or Federal law provides for a child-custody proceeding to extend beyond an Indian child's 18th birthday, ICWA would not stop applying to the proceeding simply because of the child's age. This is to ensure that a set of laws apply consistently throughout a proceeding, and also to discourage strategic behavior or delays in ICWA compliance in circumstances where a child's 18th birthday is near. Thus, the final rule interprets the statutory definition to mean that the person need be under the age of 18 only at the commencement of the proceeding for ICWA to apply. The final rule adds clarification to the applicability section that ICWA will not cease to apply simply because the child turns 18. *See* FR § 23.103(d).

11. "Indian Child's Tribe"

The final rule retains the definition used in the statute.

Comment: One commenter stated that the definition of "Indian child's Tribe" is too restrictive and could eliminate opportunities for multiple Tribes to be involved in a case because a child could have equal contacts with multiple Tribes for which they are eligible for membership, and each should have the opportunity to ensure the connection is maintained.

Response: The statute contemplates that one Tribe will be designated as the "Indian child's Tribe," *see* 25 U.S.C. 1903(5), and the regulation reflects this.

12. "Indian Custodian"

The definition in the final rule largely tracks the statutory definition. It clarifies that whether an individual has legal custody may be determined by looking to either the relevant Tribe's law or custom, or to State law.

Comment: A few commenters stated their support of the definition of "Indian custodian" and particularly the consideration of Tribal law or custom because there are informal Indian caretakers who may raise Indian children without a court order.

Response: Like the statute, the final rule includes a definition of "Indian custodian" that allows for consideration of Tribal law or custom.

13. "Parent"

The final rule retains the definition used in the statute.

Comment: A few commenters supported the definition of "parent" and recommended no change. Several commented on the definition's approach to unwed fathers and suggested unwed biological fathers should be included. One commenter suggested adding that "parent" includes persons whose paternity has been established by order of a Tribal court, to ensure Tribal court orders acknowledging or establishing paternity are given full faith and credit by State courts. A few commenters suggested adding that paternity may be acknowledged or established "in accordance with Tribal law, Tribal custom, or State law in the absence of Tribal law or Tribal custom."

Response: The rule's definition of "parent" mirrors that of ICWA.

ICWA requires States to give full faith and credit to the public acts, records, and judicial proceedings of any Tribe applicable to Indian child-custody proceedings to the same extent that such entities give full faith and credit to any other entity. 25 U.S.C. 1911(d). This includes Tribal acknowledgement or establishment of paternity.

Comment: A few commenters recommended adding a Federal standard for what constitutes an acknowledgment or establishment of paternity, in accordance with Justice Sotomayor's dissent in *Adoptive Couple* v. *Baby Girl* and to address a split in State courts. These commenters recommended language requiring an unwed father to "take reasonable steps to establish or acknowledge paternity" and recommended listing examples of such steps to include acknowledging paternity in the action at issue and establishing paternity through DNA testing. Another commenter requested clarification on when the father must

acknowledge or establish paternity, because timing impacts due process and permanency for the child.

Response: The final rule mirrors the statutory definition and does not provide a Federal standard for acknowledgment or establishment of paternity. The Supreme Court and subsequent case law has already articulated a constitutional standard regarding the rights of unwed fathers, *see Stanley* v. *Illinois*, 405 U.S. 645 (1972); *Bruce L.* v. *W.E.*, 247 P.3d 966, 978–979 (Alaska 2011) (collecting cases)—that an unwed father who "manifests an interest in developing a relationship with [his] child cannot constitutionally be denied parental status based solely on the failure to comply with the technical requirements for establishing paternity." *Bruce L.*, 247 P.3d at 978–79. Many State courts have held that, for ICWA purposes, an unwed father must make reasonable efforts to establish paternity, but need not strictly comply with State laws. *Id.* At this time, the Department does not see a need to establish an ICWA-specific Federal definition for this term.

Comment: One commenter suggested accounting for situations where extended family and non-relatives are exercising both physical and legal custody of the child, by adding that an Indian child may have several parents simultaneously if Tribal law so provides.

Response: The definition of "parent" includes adoptions under Tribal law or custom.

Comment: One commenter suggested deleting the word "lawfully" from the definition of "parent" to avoid disputes over what constitutes a lawful adoption.

Response: The final rule retains the word "lawfully" because it is used in the statute. *See* 25 U.S.C. 1903.

14. "Reservation"

The definition in the final rule tracks the statutory definition.

Comment: Two commenters stated that "reservation" should be expanded to include traditional Tribal territories in Alaska because there is only one reservation in Alaska.

Response: The regulatory definition is similar to the statutory definition, and includes land that is held in trust but not officially proclaimed a "reservation."

15. "Status Offenses"

This definition was not changed from the proposed rule.

Comments: Some commenters supported the definition of "status offenses." Commenters also asked that the final rule clarify that status offenses are included in the definition of child-custody proceedings, pursuant to 25 U.S.C. 1903(1).

Response: See the "Applicability" discussion below. The final rule definition of "child-custody proceeding" is updated to make clear that its scope includes proceedings where a child is placed in foster care or another out-of-home placement as a result of a status offense. This reflects the statutory definition of "child-custody proceeding," which is best read to include placements based on status offenses, while explicitly excluding placement[s] based upon an act which, if committed by an adult, would be deemed a crime. *See* 25 U.S.C. 1903(1).

16. "Tribal Court"

The final rule retains the definition used in the statute.

Comment: A few commenters suggested changing the definition of "Tribal court" to explicitly recognize that the Tribal governing body, such as the Tribal council, may sit as a court and have jurisdiction over child-custody proceedings. Commenters also suggested that the term "Tribal court" should reflect that a Tribe may have other mechanisms for making child-custody decisions.

Response: The definition of "Tribal court" in both the statute and the final rule addresses these comments because the definition includes any other administrative body of a tribe vested with authority over child-custody proceedings. *See* 25 U.S.C. 1903(12); 25 CFR 23.2.

17. "Upon Demand"

The term "upon demand" is important for determining whether a placement is a "foster-care placement" (because the parent cannot have the child returned upon demand) under § 23.2, and therefore subject to requirements for involuntary proceedings for foster-care placement. The rule also specifies that other placements where the parent or Indian custodian can regain custody of the child upon demand are not subject to ICWA. FR § 23.103(b)(4). The final rule clarifies that "upon demand" means that custody can be regained by a verbal request, and "without any formalities or contingencies." Examples of formalities or contingencies are formal court proceedings, the signing of agreements, and the repayment of the child's expenses.

Comment: A commenter stated that the example "repaying the child's expenses" should be deleted from the definition of "upon demand" because it could unnecessarily limit interpretation of what is considered a contingency. A few other commenters suggested adding more examples for what "upon demand" means, to include "being placed into custody" because the return of the child upon demand is not a reality when the end result is that the agency may remove the child. Some commenters suggested "upon demand" should mean without having to resort to legal proceedings or make a filing in court.

Response: The final rule eliminated the use of examples, and now refers broadly generally to "formalities or contingencies."

18. "Voluntary Placement," "Voluntary Proceeding," and "Involuntary Proceeding"

Comment: A few commenters requested clarifying the difference between a "voluntary placement" and a "voluntary proceeding."

Response: The final rule distinguishes the terms by eliminating the definition for "voluntary placement" and including only a definition of "voluntary proceeding." For clarity, the rule also includes a definition of "involuntary proceeding." The term "voluntary placement" is now used only in FR § 23.103(b), addressing what the rule does not apply to. The rule does not apply to voluntary placements when the parent or Indian custodian can regain custody of the child upon verbal demand without any formalities or contingencies.

Comment: A few commenters suggested changing the definition of "voluntary placement" from a placement that "either parent" has chosen to instead be a placement that "both known biological parents" have chosen. One commenter suggested addressing the situation where one parent refuses consent, by adding "if either parent refuses to consent to the placement, the placement shall not be considered voluntary."

Response: The proposed rule allowed for "either parent" to choose the placement to address situations where only one parent is known or reachable. The final rule adds "both parents" to allow for situations where both parents are known and reachable. The final rule does not add that "if either parent refuses to consent to the placement, the placement shall not be considered voluntary" because in some cases, efforts to find the other parent may be unsuccessful. If a parent refuses to consent to the foster-care, preadoptive, or adoptive placement or termination of parental rights, the proceeding would meet the definition of an "involuntary proceeding." Nothing in the statute indicates that the consent of one parent eliminates the rights and protections provided by ICWA to a non-consenting parent.

Comment: A few commenters requested clarification that a placement made only upon the threat of losing custody is not "voluntary," stating that they are aware of instances in which a State agency threatens parents with removal of their children if they do not "voluntarily" place the child elsewhere and then argue that these are "voluntary placements" under ICWA.

Response: The final definition of "voluntary proceeding" specifies that placements where the parent agrees to the placement only under threat of losing custody is not "voluntary," by adding the phrase "without a threat of removal by a State agency." The final rule also specifies that a voluntary proceeding must be of the parent's or Indian custodian's free will. This revision is intended to clarify that a proceeding in which the parent agrees to an out-of-home placement of the child under threat that the child will otherwise be removed is not "voluntary."

Comment: A commenter suggested replacing "voluntary placement" with "voluntary foster-care placement or termination of parental rights" (excluding adoptive placements) to track the language in 25 U.S.C. 1913.

Response: The final rule now defines the term "voluntary proceeding," which includes foster-care, preadoptive, and adoptive placements and termination of parental rights.

Comment: A commenter suggested changing "chosen for" to "consented to" because it could be erroneously interpreted as providing that the parents' choice can override the placement provisions in 25 U.S.C. 1915, which apply in all adoption proceedings (voluntary and involuntary).

Response: This suggestion was adopted. The distinguishing factor for a "voluntary proceeding" is the parent(s) or Indian custodian's consent, not whether they personally "chose" the placement for their child.

19. Suggested New Definitions

a. "Best Interests"

Comment: Several commenters requested that a definition of "best interests of the Indian child" be added because State courts have used a general "best interest of the child" determination to avoid application of ICWA. These commenters point out that ICWA provides a framework to ensure the long-term (for the Indian child's entire life) best interests of an Indian child, rather than just a short-term view of what the best interests of an Indian child may be in that child-custody situation. Some recommended a variation on the definition of "best interest" found in Wisconsin's Indian Child Welfare Act. Another commenter suggested defining best interest "in accordance with the child's indigenous culture, traditions and customs."

Response: It is unnecessary to define the term "best interests" because it does not appear in the final rule.

Comment: Many commenters, without specifically defining what "best interests" means, argued that various provisions of the proposed rule would act to prohibit a judge from protecting the "best interests" of the child.

Response: The Department disagrees with these comments, as ICWA was specifically designed to protect the best interests of Indian children. 25 U.S.C. 1902. In order to achieve that general goal, Congress established specific minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. *Id.* Congress implemented the general goal of protecting the best interests of children through specific provisions that are designed to protect children and their relationship with their parents, extended family, and Tribe.

One of the most important ways that ICWA protects the best interests of Indian children is by ensuring that, if possible, children remain with their parents and that, if they are separated, support for reunification is provided. This is consistent with the guiding principle established by most States for determining the best interests of the child. *See* U.S. Dept' of Health and Human Servs., Children's Bureau, Child Welfare Information Gateway, *Determining the Best Interests of the Child* (2013) at 2 (identifying the "importance of family integrity and preference for avoiding removal of the child from his/her home" as by far the most frequently stated guiding principle). Should a child need to be removed from her family, however, ICWA's placement preferences continue to protect her best interests by favoring placements within her extended family and Tribal community. Other ICWA provisions also serve to protect a child's best interests by, for example, ensuring that a child's parents have sufficient notice about her child-custody proceeding and an ability to fully participate in the proceeding (25 U.S.C. 1912(a),(b),(c)) and helping an adoptee access information about her Tribal connections (25 U.S.C. 1917).

Congress, however, also recognized that talismanic reliance on the "best interests" standard would not actually serve Indian children's best interests, as that "legal principle is vague, at best." H.R. Rep. No. 95–1386, at 19. Congress understood, as did the Supreme Court, that "judges [] may find it difficult, in utilizing vague standards like 'the best interests of the child', to avoid decisions resting on subjective values." *Id.* (citing *Smith* v. *Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 835 n.36 (1977)). These subjective values are exactly what Congress passed ICWA to address, as demonstrated by the legislative history discussed above.

Instead of a vague standard, Congress provided specific procedural and substantive protections through pre-established, objective rules that avoid decisions being made based on the subjective values that Congress was worried about. By providing courts with objective rules that operate above the emotions of individual cases, Congress was facilitating better State-court practice on these issues and the protection of Indian children, families, and Tribes. *See* National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 14 (2000).

While ICWA and this rule provide objective standards, however, judges may appropriately consider the particular circumstances of individual children and protect the best interests of those children as envisioned by Congress.

b. Other Suggested Definitions

Several commenters suggested adding new definitions, including the following.

Comment: "Abandon"—One commenter suggested adding a definition for abandon to address the Supreme Court's determination that ICWA does not apply to "a parent [who] has abandoned a child prior to birth and the child has never been in the Indian parent's legal or physical custody." *See Adoptive Couple* v. *Baby Girl*, 133 S. Ct. at 2563. This commenter notes that "abandon" is a term of art that varies greatly from State to State.

Response: The final rule does not define the term "abandon" because it is not used in the Act or final regulations.

Comment: "Guardianship"—A few commenters suggested adding a definition for "guardianship if resulting from placement involving an agency or private adoption attorney." These commenters believe such a definition is necessary because agencies have instructed families to obtain

guardianship of children to avoid notice to Tribes and allow time to pass in which to bond with the children prior to giving notice to the Tribe or filing a petition to adopt, in order to avoid ICWA's placement preferences.

Response: The final rule does not add a definition for "guardianship" because the term "guardianship" is not used in the final rule. The statute defines "foster-care placement" as including any action removing an Indian child from its parent or Indian custody for temporary placement in the . . . home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand. 25 U.S.C. 1903(1). Where a guardianship meets these criteria, it is subject to applicable ICWA requirements for child-custody proceedings. The discussion on applicability, below, addresses guardianships in voluntary proceedings.

Comment: "ICWA-Compliant Placement"—A few commenters recommended adding a definition of an "ICWA-compliant placement" to mean only those placements in accordance with the placement preferences in section 1915. One commenter suggested excluding all placements that are outside the identified placement preferences, regardless of whether there has been a good cause finding to deviate from the placement preferences.

Response: The final rule does not add this term because it is not used in the regulation, and because the Department believes that it could introduce confusion. The statute provides for certain placement preferences "in the absence of good cause to the contrary." 25 U.S.C. 1915(a), (b). If a State court properly found good cause to not place an Indian child with a preferred placement, the placement complies with ICWA.

Comment: "Indian home"—A few commenters requested a definition for "Indian home" stating that States in the past have identified non-Indian foster families to be "Indian homes" by virtue of the Indian child being placed there.

Response: The final rule includes a definition of "Indian foster home," a term used in 25 U.S.C. 1915(b) and FR § 23.131. The statute already defines the term "Indian" as a person who is a member of a federally recognized Indian Tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. *See* 25 U.S.C. 1903(3). The new definition simply clarifies that an "Indian foster home" is one in which one or more of the foster parents is an Indian.

Comment: "Indian family"—A few commenters requested a definition of "Indian family" as including at least one parent meeting the definition of "Indian" for reasons similar to those forming the basis for the request for a definition of "Indian home." One commenter stated that it witnessed a State agency take the position that a non-Indian foster family was an Indian family due to a vague connection to a Tribe.

Response: The Department declines to add a definition of this term because it finds that the meaning of the term in the statute and regulations is adequately clear. The term "Indian family" is found in 25 U.S.C. 1915(a), which includes "other Indian families" in the placement preferences. The term "Indian" is defined by statute, *see* 25 U.S.C. 1903(3), and the term "Indian family" in this context thus refers to a family with one or more individuals that meet this definition. The term "Indian family" is also found in 25 U.S.C. 1912(d) (requiring active efforts designed to prevent the breakup of the Indian family), and it is clear from context that this means the Indian child's family. *See also* the discussion of the existing Indian family exception in the Applicability section.

Comment: "Indian"—One commenter stated that the term "Indian" is offensive and should instead be "indigenous peoples" or "First Nations."

Response: The term "Indian" is used in the statute; therefore, the regulation also uses this term.

Comment: "Party"—A few commenters suggested adding a definition of "party" for the purposes of section 1912 to include any party seeking foster-care placement or termination of parental rights because often these placements are made by individuals or attorneys rather than agencies. A few other commenters suggested adding a definition of "party" to exclude "de facto parents," because these are generally foster parents who do not have legal status on par with a parent or Indian custodian.

Response: State courts and Tribal courts define the parties to a proceeding; therefore, the final rule does not add a definition for this term. The Department notes, however, that the statute and regulation define the term "parent" as meaning any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law and custom. *See* 25 U.S.C. 1903(9); 25 CFR 23.2. Thus, a "de facto parent" that does not otherwise qualify under this definition would not be entitled to the rights a "parent" is provided under ICWA.

Comment: "State courts"—One commenter suggested adding a definition of "State courts" to include all officers of the court, to clarify that all legal professionals must comply with ICWA.

Response: The final rule does not add a definition for "State courts" because the term is adequately clear.

Comment: "Indian organization"—A commenter suggested moving the definition for "Indian organization" to § 23.2 (from § 23.102).

Response: The definition of "Indian organization" in § 23.102 applies only to subpart I of part 23 because a different meaning of the term "Indian organization" related to eligibility of grants applies to other subparts of part 23. For this reason, the final rule defines the term at § 23.102 with a definition that applies only to subpart I.

Comment: "Tribal Representative"—Several commenters requested that the final rule add a definition of "Tribal representative" or "Tribal designee" to remove restrictions on Tribes participating in ICWA proceedings via non-attorney representatives. These commenters asserted that the final rule must require States to allow non-attorney representatives because Tribes may not have the resources to send a licensed attorney to appear in every proceeding in multiple courts and may only be able to send social workers or court-appointed special advocates, and the rights and interests of the Tribe to participate in ICWA proceedings outweigh the rights and interests of a State with regard to requiring licensure by all who appear before the court. Commenters also stated that the new definition should clarify that even if the Tribal representative is an attorney, the State may not require licensure in the jurisdiction where the child-custody proceeding is located. A commenter stated that appearing *pro hac vice* is often not a viable alternative because of the cost, number of appearances, requirements for local co-counsel, and ultimately the discretion of the State to deny the application to appear *pro hac vice*.

Response: The Department declines to adopt the comments' suggestion at this time. The suggested definition and requirements for State courts were not included in the proposed rule, and the Department believes that it is advisable to obtain the views of State courts and other interested stakeholders before such provisions are included in a final rule.

The Department recognizes that it may be difficult for many Tribes to participate in State court proceedings, particularly where those actions take place outside of the Tribe's State. Section 23.133 encourages State courts to permit alternative means of participation in Indian child-custody proceedings in order to minimize burdens on Tribes and other parties. The Department agrees with the practice adopted by the State courts that permit Tribal representatives to present before the court in ICWA proceedings regardless of whether they are attorneys or attorneys licensed in that State. *See e.g., J.P.H.* v. *Fla. Dep't of Children & Families,* 39 So.3d 560 (Fla. Dist. Ct. App. 2010) (per curiam); *State* v. *Jennifer M. (In re Elias L.),* 767 N.W.2d 98, 104 (Neb. 2009); *In re N.N.E.,* 752 N.W.2d 1, 12 (Iowa 2008); *State ex rel. Juvenile Dep't of Lane Cty.* v. *Shuey,* 850 P.2d 378 (Or. Ct. App. 1993).

C. Applicability

The final rule clarifies the terms "child-custody proceeding" and "hearing." Both of those terms were used at various points in the draft rule, but only "child-custody proceeding" was defined in the proposed rule. The comments demonstrated confusion regarding the use of those terms. Thus, in order to be clearer about the distinctions made in certain provisions of the rule between "child-custody proceedings" and "hearings," the final rule includes definitions for those terms.

The final rule adds a definition of "hearing" that reflects the common understanding of the term as used in a legal context. As defined in the final rule, a hearing is a single judicial session held for the purpose of deciding issues of fact or of law. That definition is consistent with the definition in Black's Law Dictionary, a standard legal reference resource. In order to demonstrate the distinction between a hearing and a child-custody proceeding, the definition of "child-custody proceeding" explains that there may be multiple hearings involved in a single child-custody proceeding.

Consistent with the proposed rule, the final rule defines a "child-custody proceeding" to be an activity that may culminate in foster-care placement, a preadoptive placement, an adoptive placement, or a termination of parental rights. The final rule uses the phrase "may culminate in one of the following outcomes," rather than the less precise phrase "involves," used in the draft rule, in order to make clear that ICWA requirements would apply to an action that may result in one of the placement outcomes, even if it ultimately does not. For example, ICWA would apply to an action where a court was considering a foster-care placement of a child, but ultimately decided to return the child to his parents. Thus, even though the action did not result in a foster-care placement, it may have culminated in such a placement and, therefore, should be considered a "child-custody proceeding" under the statute.

The final rule deletes as unnecessary the use of the word "proceeding" as part of the definition of child-custody proceeding. It also explicitly excludes emergency proceedings from the scope of a child-custody proceeding, as emergency proceedings are addressed separately in the statute and in the rule. The definition further makes clear that a child-custody proceeding that may culminate in one outcome (*e.g.,* a foster-care placement) would be a separate child-custody proceeding from one that may culminate in a different outcome (*e.g.,* a termination of parental rights), even though the same child may be involved in both proceedings.

The final rule definition of "child-custody proceeding" is also updated to make clear that its scope includes proceedings involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child. This reflects the statutory definition of "child-custody proceeding," which is best read to include placements based on status offenses, while explicitly excluding placement[s] based upon an act which, if committed by an adult, would be deemed a crime. *See* 25 U.S.C. 1903(1).

As discussed in more depth below, the final rule also removes from the regulatory text an explicit mention by name of the so-called "existing Indian family" (EIF) exception: A judicially created exception to ICWA's applicability that has since been rejected by the court that created it. Although the reference to the EIF exception by name was removed, the final rule makes clear that the inquiry into whether ICWA applies to a case turns solely on whether the child is an "Indian child" under the statutory definition. The rule, consistent with the Act, thus focuses exclusively on a child's political membership with a Tribe, rather than any particular cultural affiliation.

The commenters who asserted that various ICWA provisions are inapplicable to some children who have "assimilated into mainstream American culture" are wrong under a plain reading of the statute. In order to make this clear, the final rule prohibits consideration of listed factors because they are not relevant to the inquiry of whether the statute applies. The inclusion of this prohibition prevents application of any EIF exception, which both "frustrates" ICWA's purpose to "curtail state authorities from making child custody determinations based on misconceptions of Indian family life," *In re A.J.S.,* 204 P.3d at 551 (citation omitted), and encroaches on the power of Tribes to define their own rules of membership.

1. "Child-Custody Proceeding" and "Hearing" Definitions

—"Any proceeding or Action"

Comment: A few commenters requested clarification of "any proceeding or action." A few commenters suggested clarifying that a proceeding or action may include an *ex parte* placement, a court-ordered placement or "any court hearing, proceeding, or action by an agency or court." One commenter stated that "proceeding" should include any authorized use of State power that may result in a parent losing custody of the child and "action" to be the manner in which such power is employed in discrete instances of conduct (*e.g.,* an emergency removal would be an action). Similarly, another commenter requested clarification that ICWA applies to any situation in which the State has taken action involving an Indian child and there is a possibility that neither parent will have custody.

Response: See the discussion above regarding the definition of "child-custody proceeding" and "hearing." Further, whereas the draft rule stated that a child-custody proceeding "means and includes any proceeding or action that involves" certain outcomes, the final rule uses only the word "action." In addition to the word "proceeding" being duplicative, the use of the term "action" is also more consistent with the statute, as the statute uses that term several times in its definition of "child-custody proceeding." *See* 25 U.S.C. 1903(1).

—Guardianships

Comment: Several commenters suggested clarifying whether ICWA applies to guardianships and conservators. A few commenters noted there have been various State interpretations of this issue. Several commenters stated that the rule should explicitly apply to private guardianships in which someone assumes the role of caretaker without State or Tribal intervention, so that the action of placing the child would still be subject to ICWA.

Response: The statute defines "child-custody proceeding" to include removal of an Indian child for temporary placement in . . . the home of a

guardian or conservator. 25 U.S.C. 1903(1)(i). The fact that an agency places the child in the home of a guardian or conservator rather than in a foster home or institution does not affect applicability of the Act, as such placement would be a "child-custody proceeding."

If a parent entrusts someone with the care of the child without State or Tribal involvement, that arrangement would not prohibit the parent from having the child returned upon demand, and therefore would not meet the definition of a "child-custody proceeding."

—Custody Disputes Between Family Members

Comment: Several commenters stated that the rule should include intra-family disputes as a "child-custody proceeding" because a minority of State courts have excluded disputes where the petitioner is a family member. Another commenter stated intra-family disputes should not be included as a "child-custody proceeding" and that the rule should clarify that ICWA is not about resolving grandparent custody battles.

Response: The statute and final rule exclude custody disputes between parents (*see* next response), but can apply to other types of intra-family disputes, assuming that such disputes otherwise meet the statutory and regulatory definitions. ICWA can apply to other types of intra-family disputes because the statute makes only two exceptions, neither of which are for intra-family disputes other than parental custody disputes. 25 U.S.C. 1903(1) (ICWA does not apply to the custody provisions of a divorce decree or to delinquency proceedings). While at least one court held that ICWA excludes intra-family disputes (*see In re Bertelson*, 617 P.2d 121, 125–26 (Mont. 1980)), several subsequent court decisions have ruled to the contrary. *See, e.g., Starr* v. *George*, 175 P.3d 50 (Alaska 2008); *In re Custody of A.K.H.*, 502 N.W.2d 790, 794 (Minn. Ct. App. 1993); *In re Q.G.M.*, 808 P.2d 684, 687–88 (Okla. 1991); *In re S.B.R.*, 719 P.2d 154, 156 (Wash. Ct. App. 1986); *A.B.M.* v. *M.H.*, 651 P.2d 1170, 1173 (Alaska 1982). BIA has concluded that, if the intra-family dispute meets the definition of a "child-custody proceeding," the provisions of this rule would apply. There is no general exception from ICWA for actions by grandparents or other family members.

—Divorce Proceedings

Comment: A few commenters stated that many custody cases do not occur within the context of a divorce proceeding because in many cases the parents are not married. These commenters requested clarification that ICWA does not apply to custody cases between parents, regardless of whether the custody case is within the context of a divorce proceeding.

Response: The Act does not include placement with a parent as an "Indian child-custody proceeding" because "foster-care placement" does not include placement with a parent. 25 U.S.C. 1903(1)(i). While the Act specifically exempts from ICWA's applicability awards of custody to one of the parents "in divorce proceedings," the exemption necessarily includes awards of custody to one of the parents in other types of proceedings as well. *See, e.g., John* v. *Baker*, 982 P.2d 738, 746–47 (Alaska 1999). For this reason, the final rule clarifies that ICWA does not apply to an award of custody to one of the parents, in a divorce proceeding or otherwise.

If, however, the proceeding is one that meets the definition of a "child-custody proceeding," in that the Indian child has been removed from his or her parent and any party seeks to place the Indian child in a temporary placement other than the alternate parent, then provisions of ICWA and this rule would apply. *See e.g., In re Jennifer A.*, 103 Cal. App. 4th 692, 700 (Cal. 2002) (finding that ICWA requirements applied because the "issue of possible foster-care placement was squarely before the juvenile court," even though the child was eventually placed with the noncustodial father). In addition, if a proceeding seeks to terminate the parental rights of one parent, that proceeding squarely falls within ICWA's definition of "child-custody proceeding." *See* 25 U.S.C. 1903(1).

—Adoptions Without Termination of Parental Rights, Including Tribal Customary Adoptions

Comment: A commenter noted that while the definition of "child-custody proceeding" is consistent with the definition of preadoptive placement in § 1903(1), there are situations in which preadoptive placements may occur without termination of parental rights under Tribal law or State law. This commenter suggested adding that "child-custody proceeding" does not preclude preadoptive placements after it has been determined that the child cannot or should not be returned to the home of his or her parents or Indian custodian, but where termination of parental rights is not a prerequisite to the finalization of the adoption under State or Tribal law. Likewise, a few commenters requested expanding "adoptive placement" to include Tribal customary adoptions in which there is no termination of parental rights, when such adoptions are conducted as part of a State-court proceeding.

Response: BIA does not believe that the definition of a "child-custody proceeding" needs to be adjusted to address these comments. Adoptions that do not involve termination of parental rights are included within the definition of "child-custody proceeding" as either a "foster-care placement" or an "adoptive placement," because these terms, as defined, do not require termination of parental rights. *See* 25 U.S.C. 1903.

—Withdrawal of Consent as "Upon Demand"

Comment: A few commenters suggested that the "foster-care placement" portion of the definition of "child-custody proceeding," which states that foster-care placement is when the parent or Indian custodian "cannot have the child returned upon demand" conflicts with section 1913 of the Act, which provides that the parent can withdraw consent to a foster-care placement. These commenters suggest adding the following language to the definition after "cannot have the child returned upon demand:" "(except as provided in § 103(b) [25 U.S.C. 1913(b)] of the Act)." *See In re Adoption of K.L.R.F.*, 515 A.2d 33 (Pa. Super. Ct. 1986).

Response: The term "foster-care placement" as used in the Act includes only foster care where the parent cannot have the child returned "upon demand." The final rule clarifies the definition of "upon demand" to mean simply a verbal demand without any formalities or contingencies. A parent's withdrawal of consent to a foster-care placement under section 1913 of the Act is also a situation where the parent cannot have the child returned "upon demand" because the withdrawal of consent must be more formal than a mere verbal request. FR § 23.127. Truly voluntary placements not covered by ICWA are those in which the parent can have the child returned upon a mere verbal request, without any express or implied formalities or contingencies.

2. Juvenile Delinquency Cases

Comment: Several commenters requested clarification on the interplay between PR § 23.102(a) and (e) as to whether "juvenile delinquency proceedings" are covered by ICWA, noting that § 1903(1) of the statute states that ICWA does not apply to placements based on an act that would be deemed a crime if committed by an adult. These commenters requested clarification that ICWA would apply to placements based on "status offenses" (an act that would not be deemed a crime if committed by an adult, such as truancy or incorrigibility). The proposed rule provided that "juvenile delinquency proceedings" involving status offenses are not covered by the Act, but one commenter pointed out that in New York, juvenile delinquency proceedings, by definition, exclude status offenses because the term refers only to proceedings for youth who committed an act that would constitute a crime if committed by an adult. Another commenter noted that the California Supreme Court has ruled that placements in delinquency proceedings are presumptively exempt from ICWA, but noted that an Indian child may be placed in a foster home rather than a detention center as a result of delinquency proceedings.

Response: The final rule deletes the term "juvenile delinquency proceedings" and instead clarifies in FR § 23.103(a) that ICWA applies to proceedings involving acts that are status offenses (as defined in the rule to be acts that would not be a crime if committed by an adult) and in FR § 23.103(b) that ICWA does not apply to proceedings involving criminal acts that are not status offenses. While ICWA does not apply to proceedings involving non-status offense crimes, States may nevertheless determine that it is appropriate to notify the Tribe in these instances and provide other protections to the parents and child.

Comment: A commenter stated that the final rule should clarify the Tribe has jurisdiction in cases in which the placement is based on a status offense, even in PL–280 States.

Response: If the placement is based upon a status offense, ICWA provisions apply, regardless of whether the State is a PL–280 State.

Comment: Several commenters recommended adding that ICWA applies to "any placement of an Indian child in foster care as a result of a juvenile delinquency proceeding" or to proceedings that "have the potential to result in" (rather than "result in") the need for foster care, preadoptive or adoptive placement or the termination of parental rights. Some commenters suggested additional factors for ICWA applicability to juvenile delinquency proceedings.

Response: The final rule continues to state that ICWA applies to any status offense proceeding that results in a placement of the Indian child because of the status offense. *See* FR § 23.103(a). The final rule does not incorporate the commenters' suggestion for ICWA applicability where the proceeding has the "potential to result in" the need for foster care because this language is overly broad, in that nearly all status offense proceedings initially have a potential to result in foster care. The final rule's language makes clear that if a child is placed in foster care or another out-of-home placement as a result of a status offense, that proceeding is an ICWA proceeding and ICWA's standards (*e.g.*, notice, timing, intervention) apply.

Comment: One commenter requested clarification as to whether foster care is intended to include facilities operated primarily for the detention of children who are determined to be delinquent.

Response: A placement, including juvenile detention, resulting from status offense proceedings meets the statutory definition of "foster-care placement" and such placement is therefore subject to ICWA.

3. Existing Indian Family Exception

Comment: A large number of commenters expressed their strong support of the proposed provision stating that there is no "existing Indian family exception" to ICWA. Many stated that this judicially created exception has denied ICWA protections to Indian children. These commenters stated that the clarification is a confirmation of the Supreme Court's decision in *Adoptive Couple* v. *Baby Girl*, and mirrors the "overwhelming trend in State legislatures and courtrooms." A few commenters stated that the clarification is necessary for consistency because a small number of States are continuing to apply the exception, and parties continue to argue in favor of its application. These commenters note that the exception inappropriately invites scrutiny into Indian culture and identity and allows a court to substitute its judgment for a Tribe's determination of a child's membership. A few commenters noted that the court that created the exception (Kansas Supreme Court) in 1982 has since rejected it. Commenters also pointed out that Congress identified "Indian child" as the threshold for ICWA applicability and that the definition does not invite State court investigation into a child's blood quantum, the extent to which the parent or child is involved with the Tribal cultural or other activities, or stereotypical ideas of "Indian-ness."

Other commenters opposed the rejection of the EIF exception. A few stated that the Department lacks the authority to override the interpretations of those remaining State courts that still apply the EIF exception. These commenters stated that the EIF exception addresses whether ICWA may be constitutionally applied to children who are classified as "Indian" solely because of their heritage, when they have no social, cultural, or political connection to a Tribe. One commenter stated that ICWA assumes the parent maintains social and cultural ties with the Tribe, and points to various locations within the Act referring to prevailing standards of Indian communities, values of Indian culture, and contacts with the Tribe. Another commenter stated that the EIF exception is consistent with ICWA because Congress was not concerned with children whose families were fully assimilated, lived far from Indian country, and maintained little contact with the Tribe. This commenter stated that ICWA cannot treat a child from a reservation the same as a child that never lived near a reservation and that has not been exposed to any Tribal culture. Another commenter argued that the EIF exception must be available for families and children that choose not to live on a reservation.

Response: Congress clearly defined when ICWA would apply to a State court child-custody proceeding—when the child-custody proceeding involves an "Indian child" as defined by statute. *See, e.g.*, 25 U.S.C. 1903(1), 1903(4), 1911, 1912, 1915. "Indian child" is defined based on the child's political affiliation with a federally recognized Indian Tribe. *See* 25 U.S.C. 1901 (defining "Indian child" as a Tribal member or child of a Tribal member who is eligible in a Tribe). The statute includes no provision for a court to determine the applicability of ICWA based on an Indian child's or parent's social, cultural, or geographic ties to the Tribe. To the contrary, Congress expressly recognized that State courts and agencies often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(5). It would be illogical to read into the statute a requirement that State courts conduct the very inquiry that Congress determined they were often ill-equipped to make. *In re A.J.S.*, 204 P.3d at 551 (citation omitted). Reliance on the EIF both "frustrates" ICWA's purpose to "curtail state authorities from making child custody determinations based on misconceptions of Indian family life," *id.* (citation omitted), and encroaches on the power of Tribes to define their own rules of membership.

As noted by a commenter, the court that first created the EIF exception has

since rescinded it. *In re S.M.H.,* 103 P.3d 976 (Kan. Ct. App. 2005). Only a handful of courts continue to recognize the exception (including only one of six appellate districts in California, Alabama, Indiana, Kentucky, Louisiana, Nevada, Missouri, Tennessee).[7] In contrast, a swelling chorus of other States have affirmatively rejected the EIF exception (including Alaska, Arizona, Colorado, Idaho, Illinois, Iowa, Michigan, Montana, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Virginia and Utah).[8]

Those courts that have rejected the EIF exception are correct. As explained above, ICWA applies to any child-custody proceeding involving an Indian child. And where Congress intended a categorical exemption, it provided one expressly. Congress thus excepted from the definition of a "child-custody proceeding" "an award, in a divorce proceeding, of custody to one of the parents" and also a "placement" resulting from a juvenile delinquency proceeding. 25 U.S.C. 1903(1). It provided no such exception for cases that, in a State court's view, do not involve an "existing Indian family." In addition, the Supreme Court did not adopt the EIF exception, even though some parties urged the Court to adopt it in the *Adoptive Couple* case. *See Adoptive Couple* v. *Baby Girl,* 133 S. Ct. at 2552.

Congress did not intend to limit ICWA's applicability to those Tribal citizens actively involved in Indian culture. Contrary to the commenters' assertions, Congress was concerned with children whose families lived far from Indian country, and might only maintain sporadic contact with the Tribe. For example, Congress expressly distinguished between children domiciled on-reservation and off-reservation for the purposes of jurisdiction, and applied the vast majority of ICWA provisions to off-reservation Indian children. For these reasons, the final rule continues to clarify that there is no EIF exception to the application of ICWA.

The final rule no longer uses the nomenclature of the exception, and instead focuses on the substance, rather than the label, of the exception. Thus, the final rule imposes a mandatory prohibition on consideration of certain listed factors, because they are not relevant to the inquiry of whether the statute applies. If a child-custody proceeding concerns a child who meets the statutory definition of "Indian child," then the court may not determine that ICWA does not apply to the case based on factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her Indian parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

One of the factors that the rule prohibits a court from considering in determining whether ICWA will apply to a proceeding is "the Indian child's blood quantum." FR § 23.103(c). That factor is intended to make clear that, in a case involving a child who meets the statutory definition of an Indian child, a court may not then go on to determine that ICWA should not apply to that proceeding because the child has a certain blood quantum. That factor is, however, not intended to prohibit a court from examining a child's blood quantum for the limited purpose of determining whether the child meets the statutory definition of "Indian child," if a Tribe does not respond to requests for verification of a child's citizenship or eligibility for citizenship. In that limited circumstance, a State court may review whether the child is eligible under a Tribe's citizenship criteria. Likewise, in that limited instance, and if the Tribe's criteria necessitates examining blood quantum to determine citizenship or eligibility, then the State court may consider blood quantum for the purpose of making a determination as to whether the child is eligible for citizenship and therefore an "Indian child" under the statute. If the Tribe responds to requests for verification of the child's citizenship or eligibility for citizenship, the court must accept the Tribe's verification and may not substitute its own determination regarding a child's citizenship in a Tribe, a child's eligibility for citizenship in a Tribe, or a parent's citizenship in a Tribe.

4. Other Applicability Provisions

Comment: Several commenters recommended adding that ICWA applies to any domestic-violence proceeding in which the Court restricts a parent's access to the Indian child.

Response: The final rule does not add the suggested language because a restriction of parental access to the child under these circumstances may not meet the definition of a "child-custody proceeding" under the Act.

Comment: One commenter suggested clarifying that "foster care" includes any placement that may use Title IV–E funding, since there are various definitions of foster care.

Response: The final rule's definition of "foster-care placement" mirrors that of the ICWA and generally includes placements that use Title IV–E funding where parental rights have not been terminated.

Comment: One commenter requested clarification here, in addition to in the definition of "Indian child," that once ICWA applies, it applies throughout the duration of the case, regardless of whether the child turns 18.

Response: The final rule adds clarification to the applicability section that ICWA will not cease to apply simply because the child turns 18. *See* FR § 23.103(d).

Comment: One commenter questioned the provision stating that ICWA does not apply to Tribal court proceedings.

Response: Tribes may have their own laws similar to ICWA, but the Federal ICWA provides standards applicable only to State-court proceedings (except for provisions regarding transfer of jurisdiction to Tribal court or Tribal intervention).

D. Inquiry and Verification

The applicability of ICWA to a child-custody proceeding turns on the threshold question of whether the child in the case is an Indian child. It is, therefore, critically important that there be an inquiry into that threshold issue as soon as possible. If this inquiry is not timely, a child-custody proceeding may not comply with ICWA and thus may deny IWCA protections to Indian children and their families. The failure to timely determine if ICWA applies also can generate unnecessary delays, as the court and the parties may need to redo certain processes or findings under the correct standard. This is inefficient for courts and parties, and can create delays and instability in placements for the Indian child.

The final rule, therefore, requires courts to inquire into whether a child is an Indian child at the commencement of a proceeding. The court is to ask each participant in the proceeding, including attorneys, whether they know or have reason to know that the child is an Indian child. Such participants could also include the State agency, parents, the custodian, relatives or trial witnesses, depending on who is involved in the case. Further, recognizing that facts change during the course of a child-custody proceeding, courts are to instruct the participants to inform the court if they subsequently learn information that provides reason to know the child is an Indian child. Thus, if the State subsequently discovers that the child is an Indian child, for example, or if a parent enrolls the child in an Indian Tribe, they will need to inform the court so that the proceeding can move forward in compliance with the requirements of ICWA.

ICWA's notice provisions are triggered if a court "has reason to know" that a child is an Indian child. 25 U.S.C. 1912(a). The final rule, therefore, uses the statutory language "reason to know," rather than "reason to believe," as was used in the proposed rule. This is to be more consistent with the statutory text and to be clear that the rule does not set a different standard for triggering notice than what is provided for in ICWA. The final rule does, however, provide specific guidance regarding what constitutes "reason to know" that a child is an Indian child. The court would have reason to know that a child was an Indian child if, for example, it was informed that the child lives on a reservation or has been a ward of a Tribal court.

If the court has reason to know that a child is an Indian child, then the court is to treat the child as an Indian child unless and until it determines that the child is not an Indian child. This requirement ensures that ICWA's requirements are followed from the early stages of a case. It is also intended to avoid the delays and duplication that would result if a court moved forward with a child-custody proceeding (where there is reason to know the child is an Indian child) without applying ICWA, only to get late confirmation that a child is, in fact, an Indian child. For example, it makes sense to place a child that the court has reason to know is an Indian child in a placement that complies with ICWA's placement preferences from the start of a proceeding, rather than having to consider a change a placement later in the proceeding once the court confirms that the child actually is an Indian child. Notably, the early application of ICWA's requirements—which are designed to keep children, when possible, with their parents, family, or Tribal community—should benefit children regardless of whether it turns out that they are Indian children.

The determination of whether a child is an Indian child turns on Tribal citizenship or eligibility for citizenship. The final rule recognizes that these determinations are ones that Tribes make in their sovereign capacity and requires courts to defer to those determinations. The best source for a court to use to conclude that a child or parent is a citizen of a Tribe (or that a child is eligible for citizenship) is a contemporaneous communication from the Tribe documenting the determination. Thus, if the court has reason to know that a child is a member of a Tribe, it should confirm that due diligence was used to identify and work with the Tribe to verify whether the child is a citizen (or a biological parent is a citizen and the child is eligible for citizenship).

The final rule does, however, allow a court to rely on facts or documentation indicating a Tribal determination such as Tribal enrollment documentation. This provision was added to the final rule in response to comments noting that sometimes Tribes are slow to respond to inquiries seeking verification of Tribal citizenship. It also reflects the fact that it may be unnecessary to obtain verification from a Tribe, if sufficient documentation is already available to demonstrate that the Tribe has concluded that a parent or child is a citizen of the Tribe or the child is eligible for citizenship.

The proposed rule included a suggested requirement that State agencies provide courts with genograms and other specifically-listed information in order to inform the court about whether a child is an Indian child. The final rule does not include that suggestion, as the Department has determined that suggestions on how agencies may conduct inquiries are more appropriate for guidance than regulation.

The final rule also includes provisions that are designed to assist courts and others in contacting Tribes to obtain verification of citizenship or eligibility of citizenship. In addition, BIA is available to assist in contacting Tribes and is taking steps to facilitate the ease of contact. For example, BIA has compiled a list of designated Tribal ICWA officials and is working to make that list more user-friendly.

1. How To Contact a Tribe

Comment: One commenter stated that the information in PR § 23.104 (now located in FR § 23.105) on how to contact a Tribe is helpful to assist in compliance. Several Tribal commenters recounted their experiences in having notices sent to various addresses other than the designated Tribal agent address listed in the **Federal Register**. A few commenters requested that BIA do more to keep the list of designated ICWA agents up-to-date.

A State commenter requested revisions to clarify that BIA publishes the "official" list of contacts in the **Federal Register**, and to require BIA to make the list available on its Web site with updates provided by Tribes between official **Federal Register** publications. A few commenters requested making the list easier to use, by including historical Tribal affiliations to facilitate notification of the correct Tribe or by grouping by Tribal heritage (*e.g.,* Chumash, Pomo) in addition to their specific band.

Response: In conjunction with this final rule, BIA is working to make its list of designated ICWA officials more user-friendly and maintaining an updated list on its Web site.

Comment: One commenter suggested that States be required to maintain a list of the ICWA contacts for Tribes in their State.

Response: The Department encourages States to maintain a list of designated ICWA officials of Tribes in their States, but the final rule does not require that they do so.

Comment: One commenter stated that the court should call Tribes for court hearings.

Response: The final rule does not require this.

Comment: One commenter recommended changing the rule to read you "should" seek BIA assistance in contacting the Tribe if you do not have accurate contact information or the Tribe fails to respond, rather than "may," to avoid providing too much leeway.

Response: The final rule adopts this suggestion and changes the language to "should." *See* FR § 23.105(c).

2. Inquiry

Comment: Many commenters stated that the provisions requiring early identification of Indian children will be particularly helpful. These commenters stated that children and families are too often denied ICWA protections because a court or agency did not ask whether the child was Indian. These commenters stated that a failure to ask whether a

[7] *See, e.g., In re Alexandria Y.,* 53 Cal. Rptr. 2d 679 (Cal. Ct. App. 1996) (4th Dist.); *Rye* v. *Weasel,* 934 S.W.2d 257 (Ky. 1996); *Hampton* v. *J.A.L.,* 27–869 (La. App. 2 Cir. 7/6/95); 658 So. 2d 331; *C.E.H.* v. *L.M.W.,* 837 S.W.2d 947 (Mo. Ct. App. 1992); *In re Morgan,* No. 02A01–9608–CH–00206, 1997 WL 716880 (Tenn. Ct. App. Nov. 19, 1997); *S.A.* v. *E.J.P.,* 571 So. 2d 1187 (Ala. Civ. App. 1990); *In re Adoption of T.R.M.,* 525 N.E.2d 298, 303 (Ind. 1988); *In re N.J.,* 221 P.3d 1255 (Nev. 2009).

[8] *See, e.g., In re Alexandria P.,* 176 Cal. Rptr. 3d 468, 484–86 (Cal. Ct. App. 2014); *J.W.* v. *R.J.,* 951 P.2d 1206 (Alaska 1998); *Michael J., Jr.* v. *Michael J., Sr.,* 7 P.3d 960 (Ariz. Ct. App. 2000); *In re N.B.,* No. 06CA1325 (Colo. Ct. App. Sept. 6, 2007); *In re Baby Boy Doe,* 849 P.2d 925 (Idaho 1993); *In re S.S.,* 657 N.E.2d 935 (Ill. 1995); *In re R.E.K.F.,* 698 N.W.2d 147 (Iowa 2005); *In re Elliott,* 554 N.W.2d 32 (Mich. Ct. App. 1996); *In re Riffle,* 922 P.2d 510 (Mont. 1996); *In re Child of Indian Heritage,* 543 A.2d 925 (N.J. 1988); *In re Baby Boy C.,* 805 N.Y.S.2d 313 (N.Y. App. Div. 2005); *In re A.D.L.,* 612 S.E.2d 639 (N.C. Ct. App. 2005); *In re A.B.,* 663 N.W.2d 625 (N.D. 2003); *In re Baby Boy L.,* 103 P.3d 1099 (Okla. 2004); *Quinn* v. *Walters,* 881 P.2d 795 (Or. Ct. App. 1994); *In re Baade,* 462 N.W.2d 485 (S.D. 1990); *In re W.D.H., III,* 43 S.W.3d 30 (Tex. App. 2001); *In re D.A.C.,* 933 P.2d 993 (Utah Ct. App. 1997); *Thompson* v. *Fairfax County Dep't of Family Servs.,* 747 S.E.2d 838 (Va. Ct. App. 2013).

child is an Indian child risks the Indian children not being identified at all, creates a risk of insufficient efforts to reunify the family, delay, or repetition in court proceedings, and increases the risk of placement instability. They noted that early identification is a best practice that will promote placement stability for children.

Commenters also supported the requirement that the courts ask every party, on the record, whether there is reason to believe the child is an Indian child. Commenters relayed their experiences with child-welfare agencies inadvertently failing to apply ICWA. A commenter noted that there is a tendency for those who are geographically proximate to Tribal lands to make greater efforts to comply with ICWA despite the fact that 78 percent of Native Americans do not live on Tribal lands. The National Council of Juvenile and Family Court Judges noted that they have long recommended this practice to judges because failing to make the necessary inquiries and notify the necessary parties, etc., can result in the case having to start over from the beginning. Commenters noted the importance of this provision because all the rights and responsibilities of ICWA flow from the determination as to whether ICWA applies.

One commenter opposed the requirement to ask if every child is subject to ICWA as a "callous and unwarranted intrusion." One commenter opposed asking whether the child is an "Indian child" in the context of adoption because it would make adoption problematic by allowing the Tribe to declare the child an "Indian child."

Response: The Department agrees with the comments that stress the importance of early inquiry into the applicability of ICWA. As discussed above, the rule requires such early inquiry. The final rule retains the requirement for State courts to ask in every proceeding whether the child is an "Indian child" because this inquiry is necessary to determine if ICWA applies. The inquiry is a limited, non-burdensome imposition on State courts that is designed to ensure that they abide by Federal law and appropriately address key questions that go to jurisdictional, procedural, and substantive requirements under ICWA. ICWA applies to children that meet the definition of an "Indian child" and imposes obligations on a court when it knows or has reason to know that a child is an Indian child. In order for a court to determine whether it has reason to know that a child is an Indian child, the court needs to inquire into the issue. Asking if every child is subject to ICWA ensures that ICWA is implemented early on where applicable and thereby avoids the problems and inefficiencies generated by late identification that ICWA is applicable to a particular case.

Comment: Several commenters stated that PR § 23.103(c) and § 23.107, which require agencies and courts to ask whether the child "is or could be an Indian child" or whether there is "reason to believe that the child is an Indian child" are overly broad and apply when the child *could become* an Indian child. These commenters stated that determining whether ICWA applies and requiring notices to Tribes is expensive, time consuming, and causes undue delay, especially when a parent has only a vague notion of a distant Tribal ancestor, and when the Tribe does not require the parent to be a citizen for the child to be eligible for citizenship. Another commenter stated that the rule should impose a greater burden on State agencies to determine whether a child is eligible for Tribal citizenship. Other commenters noted the discrepancy between the phrases "reason to believe" and the statutory phrase "reason to know."

Response: The inquiry into whether a child is an "Indian child" under ICWA is focused on only two circumstances: (1) Whether the child is a citizen of a Tribe; or (2) whether the child's parent is a citizen of the Tribe and the child is also eligible for citizenship. For clarity, the terminology "could be an Indian child" is deleted from the final rule and the final rule changes the language in § 23.107(a) to reflect the statutory language as to whether there is knowledge or a "reason to know" the child is an "Indian child." As discussed above, the final rule also provides clear guidance regarding when a court has "reason to know" the child is an "Indian child."

Comment: Several commenters discussed the terminology in PR § 23.107 regarding inquiry into whether the child "is an Indian child" or there is "reason to believe" the child is an Indian child. A few commenters suggested changing the requirement to ask whether the child "is an Indian child" to a requirement to ask whether the child "may be an Indian child." Alternatively, one commenter stated that the agency or court should be required to ask if the child "is an Indian child," not if they have a "reason to believe" the child is Indian—because the child may be Indian even if there is no apparent "reason to believe."

Response: As stated in the previous response, the final rule changes the § 23.107(a) language to reflect the statutory language as to whether there is knowledge or a "reason to know" the child is an "Indian child."

Comment: A few commenters stated that the regulations should be clear about whom, at a minimum, agencies should ask about the child's ancestry (*e.g.,* parents, custodians, other relatives that have a close relationship with the child), what should be asked (any potential Indian heritage that could indicate citizenship or eligibility) and when the questions should be asked (at a minimum, the onset of each new proceeding). Likewise, commenters asserted that State courts need specificity as to what will satisfy the investigation requirements.

A few commenters stated their support for requiring certification on the record of whether the child is an Indian child, to hold those responsible for the inquiry accountable. A commenter stated support of genograms and ancestry charts as supporting social work practice and skills. The National Council of Juvenile and Family Court Judges stated that the ICWA checklists it provides to judges and others also recommend family charts or genograms be created to facilitate Tribal citizenship identification as a best practice. A few commenters suggested making it mandatory for State courts to require agencies to provide the information, while others opposed the requirement as putting an undue burden on courts and agencies because the cost and time to investigate and prepare a history where there is no firm evidence of Indian heritage will waste scarce resources.

Several commenters opposed requiring genograms or ancestry charts as a burden on courts, agencies, and biological parents for voluntary adoptions. Commenters stated that parents rarely have more than basic information even about their own parents and said that requiring such information will discourage adoption. A few commenters stated that the rule imposes unfunded mandates by requiring States to create genealogies for all children. A State agency commented that the rule will create significant additional workload for it, State attorneys and courts without providing increased funding, all while facing record-high numbers of reports, investigations and children in out-of-home placement. Other commenters stated that the logistics and standards imposed on State courts are unworkable, labor-intensive, and extremely costly. Commenters also offered additional suggestions for information courts may wish to consider requiring agencies to provide in support of certification regarding whether there is information suggesting the child is an Indian child.

Response: The final rule directly addresses courts only, as discussed above. It requires the court to ask all participants in the case whether there is reason to know the child is an Indian child on the record. It does not, however, require the agency to provide genograms or other information that was listed in the proposed rule, as the Department has determined that suggestions on how agencies may conduct inquiries are more appropriate for guidance than regulation.

Comment: A few commenters suggested requiring the inquiry to be made, not only at each child-custody proceeding, but also "at subsequent hearings" because children may become enrolled during this time.

Response: The final rule does not require an inquiry at each hearing. Instead, it requires that the State court should instruct parties to inform it if they later discover information that provides reason to know the child is an Indian child. *See* FR § 23.107(a). This instruction reflects that ICWA requirements apply throughout a child-custody proceeding, if a child is an Indian child. Thus, the instruction insures that if parties find out that there is reason to know the child is an Indian child, the court will be informed and can then conduct the requisite inquiry and provide the appropriate ICWA protections. And, if a new child-custody proceeding is initiated for the same child, the court should again inquire into whether there is reason to know that the child is an Indian child.

Comment: A few commenters suggested a requirement to proactively discover whether there is a "reason to believe" the child is an "Indian child" because parties could do nothing to discover and then truthfully certify they have no reason to believe.

Response: The final rule retains the provision at § 23.107 requiring State courts to ask participants in the proceeding if they know or have reason to know that the child is an "Indian child." States or courts may choose to require additional investigation into whether there is a reason to know the child is an Indian child, and may choose to explain the importance of answering questions regarding whether the child is an Indian child.

Comment: A few commenters stated that the term "active efforts" in PR § 23.107(b) should be replaced with "actively sought" or "due diligence" to avoid confusion with use of the phrase "active efforts" in the statute.

Response: The final rule replaces the term "active efforts" with "due diligence" in the context of identifying the Tribes of which the child may be a citizen because "due diligence" is a common term in child-welfare cases with which practitioners are already familiar. *See* FR § 23.107(b); *see e.g.,* 42 U.S.C. 671(a)(29) (specifying funding requirement that within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to the following relatives: All adult grandparents, all parents of a sibling of the child, where such parent has legal custody of such sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents)).

Comment: A few commenters supported PR § 23.107(b) requiring certification on the record regarding whether the child is an Indian child and recommended adding a requirement that the certification include information documenting diligent search efforts or "good faith effort" to obtain information and all findings of the search. These commenters also recommended providing copies of the certifications and documents to the Tribe.

Response: The rule requires that, if the court has reason to know the child is an Indian child but does not have sufficient evidence to determine that the child is or is not an "Indian child," the court must confirm that the agency or other party worked with Tribes to verify the child's citizenship; the court will necessarily require some evidence in the record to make that confirmation. *See* FR § 23.107(b).

Comment: A few commenters stated that the requirement in PR § 23.107(b) to work with "all Tribes" in which the child may be a citizen is overly burdensome.

Response: The final rule requires State courts to confirm that the agency used due diligence to work with all Tribes for which there is reason to know the child may be a citizen. The requirement does not mean an agency must work with all federally recognized Tribes because the reason to know will indicate a certain Tribe or group of Tribes with which the child may have political affiliations. It is necessary to work with all of the Tribes of which there is reason to know the child may be a citizen to identify the "Indian child's Tribe" as defined in the statute and comply with statutory requirements for notice and jurisdiction.

Comment: One commenter stated that the provision in PR § 23.107(c)(4), stating that there is a reason to know the child is an Indian child if the child or parents are domiciled in a predominantly Indian community, confuses Tribal enrollment with race.

Response: The final rule no longer uses the standard "predominantly Indian community," as that phrase was overbroad. Instead, the regulation states that a court has reason to know that a child is an Indian child if the court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native Village. The regulation does not presume that the child is an Indian child if that provision is triggered; rather, such domicile or residence is a factor that requires further investigation because it gives the court "reason to know" that the child is an Indian child.

If a child or the child's parents reside on a Tribe's reservation, it is reasonable to contact that Tribe to find out if the child is a citizen (or the child's parent is a citizen and the child is eligible). In addition to reservations, the provision highlights Alaska Native Villages because Alaska is home to approximately half the federally recognized Indian Tribes, but there is only a single reservation. Thus it is similarly reasonable to contact the Tribe associated with the Alaska Native Village where the child or her parents reside.

Comment: A commenter suggested adding a new § 23.107(c)(6) to state "[t]he child is or has been a ward of a Tribal court" and a new § 23.107(c)(7) to state "[e]ither parent or child possesses a Tribal membership card or certificate of Indian blood."

Response: The final rule includes an identification card indicating citizenship in an Indian Tribe. *See* FR § 23.107(c)(5)–(6).

Comment: A commenter stated that it may be duplicative to require the court to ask whether a child is an Indian child if it is already stated on record.

Response: The inquiry may be appropriate even if it has already been established that the child is an "Indian child" to ensure that all Tribes through which the child meets the definition of "Indian child" have been identified.

3. Treating Child as an "Indian Child" Pending Verification

Comment: Several commenters stated their support for treating a child as an Indian child pending verification under PR § 23.103(d), noting that it is a best practice to allow time for notice to the Tribe and verification from the Tribe, keeps Indian children with their families and Tribes, and helps avoid

multiple placements. California Indian Legal Services noted that this approach is consistent with California law. A few commenters stated that ICWA has been viewed as the "gold standard of child-welfare practice" so there is no harm in temporarily applying ICWA standards to a child who may be Indian, even if it is ultimately determined that he or she is not. Commenters stated that this provision will help prevent the unpredictability that results where ICWA is not applied at the outset and it is determined later that ICWA applies.

Several commenters opposed the provision requiring treatment of a child as if ICWA applies. Some stated that it will result in overbroad application in violation of children's constitutional rights because, without confirmation of the political affiliation, it treats children as Indian children solely due to racial identification. A commenter noted that this requirement places a large burden on State agencies to provide active efforts for all possibly Indian children when Tribes may take months to respond to a request for verification. Another commenter stated that the provision removes any discretion from the court and eliminates its role as fact-finder because "any reason" is too broad and presumes the court is not capable of determining if the evidence is sufficient to show the child is an Indian child. One commenter suggested it will be difficult to explain to the child that he or she is being treated as an Indian child, especially when it is later discovered the child was not an Indian child.

Response: The final rule moves this provision to FR § 23.107(b) and clarifies that the trigger for treating the child as an "Indian child" is the reason to know that the child is an Indian child. This is not based on the race of the child, but rather indications that the child and her parent(s) may have a political affiliation with a Tribe. As discussed above, this requirement ensures that ICWA's requirements are followed from the early stages of a case and that harmful delays and duplication resulting from the potential late application of ICWA are avoided. If, based on feedback from the relevant Tribe(s) or other information, it turns out that the child is not an "Indian child," then the State may proceed under its usual standards.

Comment: A few commenters suggested adding an end point to when the child should no longer be treated as an Indian child, to add clarity. A few commenters noted that Tribes often fail to respond to repeated inquiries as to whether children are Tribal citizens. One of these commenters stated that the rule should require Tribes to respond and another stated that imposing obligations on the Tribe would expand beyond the statute. A few commenters added that at some point, if the Tribe fails to respond, the court must be free to determine the child is not an Indian child.

Response: The rule requires that, if there is reason to know the child is an Indian child, the court is to treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child." The end point would be the court's determination that the child is not an Indian child. State courts have discretion as to when and how to make this determination. If a Tribe fails to respond to multiple repeated requests for verification regarding whether a child is in fact a citizen (or a biological parent is a citizen and the child is eligible for citizenship), and the agency has repeatedly sought the assistance of BIA in contacting the Tribe, a court may make a determination regarding whether the child is an Indian child for purposes of the child-custody proceeding based on the information it has available. If new evidence later arises, the court will need to consider it and if he or she is an Indian child, ICWA applies. The Department encourages prompt responses by Tribes, and encourages courts and agencies to include enough information in the requests for verification to allow the Tribes to readily determine whether the child is a Tribal citizen (or whether the parent is a Tribal citizen and the child is eligible for citizenship).

Comment: One commenter stated that this provision requires proving a negative and that if a Tribe fails to respond to notice, continuing to treat the child as an Indian child overrules the Tribe's power to determine its own citizenship.

Response: As noted above, if a Tribe repeatedly fails to respond, a court may make a determination regarding whether the child is an Indian child based on the information it has available. Treating the child as an Indian child in the interim does not overrule the Tribe's power to determine its citizenship. The determination of whether a child is an Indian child is made only for purposes of the particular child-custody proceeding. In addition, the Tribe remains free to respond in the affirmative or negative as to whether the child is a citizen (and as to whether the parent is a citizen and the child is eligible for citizenship).

Comment: A commenter notes that under ICWA, the burden of proof is on the party asserting ICWA to provide evidence that the child is Indian.

Response: Under the statute, ICWA requirements apply when the court and agency know or have a reason to know the child involved in the Indian child-custody proceeding is an Indian child. The applicability of ICWA can affect a State court's jurisdiction as well as the applicable law. Even if a party fails to assert that ICWA may apply, the court has a duty to inquire as to ICWA's applicability to the proceeding.

4. Verification From the Tribe

Comment: Several commenters stated that requiring States to "obtain verification" in PR § 23.107(a) is unfair because it holds the States responsible even if the Tribe fails to respond. Several commenters stated that written verification from the Tribe should not be required and the parties should be free to produce, under rules of evidence, whatever verification is available to allow the judge to determine whether the evidence suffices. One commenter stated that the requirement is unfair to Tribes because it places the obligation on the Tribe to verify, and the Tribe may lack the resources to respond to all requests for verification. A few provided alternate suggestions including requiring States to "solicit verification" or "seek verification." Another commenter suggested adding that written notice to a Tribe is not sufficient to meet the requirements, unless the notice results in verification.

Response: The final rule requires the State court to ensure the agency worked with the Tribe(s) to obtain verification, but does not require that "the agency must obtain verification," as required by the proposed rule. *See* FR § 23.107(b). It is expected that the agency would work with the Tribe(s) that the court has reason to know is/are the Indian child's Tribe to obtain verification regarding whether the child is a citizen (or a biological parent is a citizen and the child is eligible for citizenship). The Department encourages agencies to contact Tribes informally, in addition to providing written notice, to seek such verification. While written verification from the Tribe(s) is an appropriate method for such verification, other methods may be appropriate, so the final rule does not specify that the verification needs to be in writing.

Comment: A commenter stated that appearance by the Tribe's representative at a hearing should constitute verification.

Response: A Tribal representative's testimony at a hearing regarding whether the child is a citizen (or a biological parent is a citizen and the child is eligible for citizenship) is an appropriate method of verification by the Tribe.

Comment: A commenter suggested that § 23.107(a) should require that agencies provide certain information in the request for verification to allow Tribes to make a determination, including at least: (1) The name of the child, child's birthdate and birth place; (2) the names of the parents, their birthdates and birthplaces; and (3) the names of the child's grandparents, their birthdates and birthplaces, to the extent known or readily discoverable.

Response: The request for verification is a meaningful request only if it provides sufficient information to the Tribe to make the determination as to whether the child is a citizen (or the parent is a citizen and the child is eligible for citizenship). Providing as much information as possible facilitates earlier identification of an Indian child and helps prevents disruptions. FR § 23.111(d) includes categories of information that must be provided in the notice to a Tribe in involuntary foster-care placement or termination of parental rights proceedings. Such information may be helpful to provide for other types of proceedings to assist in verification of whether the child an Indian child.

Comment: A commenter stated that § 23.107 should be revised to state that it is never appropriate for a State court to determine the child is not Indian, if there is any reason to believe the child is Indian, without providing notice to the Tribe.

Response: The Department agrees. ICWA establishes that notice to the Tribe is required for involuntary child-custody proceedings when the court has reason to know that an Indian child is involved. *See* 25 U.S.C. 1912(a). This provision avoids a determination that a child for whom there is "reason to know" was an Indian child is not an "Indian child" without notice to the Tribe.

5. Tribe Makes the Determination as to Whether a Child is a Citizen of the Tribe

Comment: A few commenters opposed the provision at PR § 23.108 stating that the Tribe makes the determination as to whether the child is a citizen, pointing out that courts have held that the parent has the burden to prove the child is an Indian child and that if the parent fails to prove that, then the court is free to determine the child is not an Indian child.

Several commenters stated their support of the provision that the Tribe makes the determination as to citizenship. These commenters stated that the provision recognizes Tribes' exclusive authority, as sovereign governments, to determine their political membership. One commenter noted that the State has no authority to determine whether ICWA applies based on items such as whether a Tribal citizen votes or participates in Tribal activities or has a certain blood quantum, and that only the Tribe may decide who is a citizen. A commenter stated that the emphasis should be that if a Tribe determines a child is a citizen, that determination is conclusive and binding on the State and any other entity or person.

A few commenters stated that while they support the provision, there should be a mechanism for the State court to determine the child is an Indian child if the Tribe fails to respond. One commenter suggested adding at the end of PR § 23.108(d) "provided that if the Tribe does not respond following a good faith effort to obtain verification, the court must still treat the child as an Indian child if it otherwise has reason to believe that the child may be an Indian child." Likewise, a commenter requested a reference to PR § 23.108 be added to PR § 23.107 so it would read "unless and until it is determined pursuant to PR § 23.108 that the child is not a member. . ." to make clear only the Tribe makes the determination.

Response: Tribes, as sovereign governments, have the exclusive authority to determine their political membership and their eligibility requirements. A Tribe is, therefore, the authoritative and best source of information regarding who is a citizen of that Tribe and who is eligible for citizenship of that Tribe. Thus, the rule defers to Tribes in making such determinations and makes clear that a court may not substitute its own determination for that of a Tribe regarding a child's citizenship or eligibility for citizenship in a Tribe.

While a Tribe is the authoritative and best source regarding Tribal citizenship information, the court must determine whether the child is an Indian child for purposes of the child-custody proceeding. That determination is intended to be based on the information provided by the Tribe, but may need to be based on other information if, for example, the Tribe(s) fail(s) to respond. For example, the final rule clarifies that a Tribal determination of citizenship or eligibility for citizenship may be reflected in a preexisting document issued by a Tribe, such as Tribal enrollment documentation.

Comment: A few commenters stated that allowing Tribes the sole authority to determine membership is unfair to those who willfully left behind Indian country. They stated that families, rather than Tribes, should have the final say on membership.

Response: Because ICWA only applies when the child is a member or when the child's parent is a member, the individual does, in fact, have the final say on membership, as Tribal membership can be renounced. *See, e.g., Means* v. *Navajo Nation,* 432 F.3d 924, 934 n. 68 (9th Cir. 2005) ("The authorities suggest that members of Indian tribes can renounce their membership."); *Thompson* v. *County of Franklin,* 180 F.R.D. 216, 225 (N.D.N.Y. 1998) (giving effect to individual's unequivocal renunciation of Tribal membership); *see, e.g.,* Fort Peck Comprehensive Code of Justice Title 4, Enrollment, sec. 217A(b) (1989) ("Any adult member of the Assiniboine and/or Sioux Tribes may apply for relinquishment of their respective tribal enrollment, at any time.").

Comment: A commenter stated that PR § 23.108 is too narrow because it fails to account for Tribes that make membership determinations based on biological grandparent membership.

Response: The final rule does not affect how Tribes determine citizenship, whether based on biological grandparent citizenship or otherwise. For the purposes of ICWA applicability, if a child is eligible for Tribal citizenship based on a grandparent's citizenship, that is not the end of the inquiry. The statute still requires that the child must either himself or herself be a citizen, or that child's parent must be a citizen, in order for the child to be an "Indian child."

Comment: One commenter requested clarification that BIA will no longer make any membership decisions in lieu of a Tribe.

Response: The rule does not provide for BIA to make determinations as to Tribal citizenship or eligibility for Tribal citizenships except as otherwise provided by Federal or Tribal Law. BIA can help route the notice to the right place. The existing regulation at § 23.11(b) and the final regulation at FR § 23.111(e) state that, if the identity or location of the parents, Indian custodians or Tribe cannot be determined, notice must be sent to the BIA regional office. This mirrors the statutory requirement. *See* 25 U.S.C. 1912. To ensure response at the regional level, the final rule requires that notice be sent to the Regional Director and deletes the provision at § 23.11(a) requiring a copy of each notice be sent to Secretary.

Comment: A few commenters suggested strengthening this section by changing "may" to "shall" to confirm

that only the Tribe may define its membership.

Response: The final rule adopts the substance of this suggestion by deleting "may" and instead providing that the Tribe "determines."

Comment: One commenter requested clarification that a child may be a member in a Tribe without necessarily being enrolled.

Response: Tribes determine their citizenship; neither the statute nor the rule address how a Tribe determines who its citizens are (by enrollment, or otherwise).

Comment: A commenter requested adding language stating that a Tribe that previously made a determination as to Tribal membership may revisit and/or correct that decision.

Response: The Tribe determines citizenship and may provide new evidence as to Tribal citizenship to the court.

Comment: One commenter stated there should be a presumed Tribe the same way there is a presumed parent because it often takes a Tribe years to recognize a child as eligible for enrollment.

Response: The rule does not include a provision establishing a presumed Tribe. ICWA establishes that a child is an "Indian child" if the child is enrolled, or if the parent is enrolled and the child is eligible for enrollment.

E. Jurisdiction: Requirement To Dismiss Action

With limited exceptions, ICWA provides for Tribal jurisdiction "exclusive as to any State" over child-custody proceedings involving an Indian child who resides or is domiciled within the reservation of such Tribe. 25 U.S.C. 1911(a). ICWA also provides for exclusive Tribal jurisdiction over an Indian child who is a ward of a Tribal court, notwithstanding the residence or domicile of the child. *Id.*

A court's subject-matter jurisdiction is essential to the exercise of judicial power, is not a subject of judicial discretion, and cannot be waived. *See, e.g., Arbaugh* v. *Y&H Corp.,* 546 U.S. 500 (2006). Thus, the final rule identifies the determinations that a State court must make to assess its jurisdiction. If the State court does not have jurisdiction, either because the Indian child is domiciled on a reservation, where the Tribe exercises exclusive jurisdiction over child-custody proceedings, or because the Indian child is a ward of a Tribal court, the final rule instructs the State court to notify the Tribal court of the pending dismissal, dismiss the State-court proceedings, and send all relevant information to the Tribal court. State and Tribal courts and State and Tribal child-welfare agencies are encouraged to work cooperatively to ensure that this process proceeds expeditiously and that the welfare of the Indian child is protected.

Comment: A commenter stated that the court should be required to "immediately" dismiss a proceeding under PR § 23.110 as soon as it determines it lacks jurisdiction. A few commenters requested additions to ensure that the State diligently contacts the Tribe and transfers the case in a timely manner.

Response: The final rule does not include a requirement to dismiss a case within a certain time frame because the timing may depend upon coordination with the Tribal court. *See* FR § 23.110. The final rule does add a requirement that the State must "expeditiously" notify the Tribe of a pending dismissal. The State court may also need to reach out to the Tribal court or Tribal child-welfare agency to determine whether jurisdiction over child-custody proceedings for that Tribe is otherwise vested in the State by existing Federal law. *See* 25 U.S.C. 1911(a).

Comment: A few commenters suggested revising PR § 23.110(b) to specify that the documentation the agency must submit includes "all agency documentation as well as reporter information" because a Tribal court to which a case is transferred is at a disadvantage without reporter information on key witnesses and other details.

Response: The final rule requires the court to transmit all information in its possession regarding the Indian child-custody proceeding to the Tribal court. Such information would include all the information within the court's possession regarding the Indian child-custody proceeding; the final rule adds examples for clarity. The final rule also changes "all available information" to "all information" regarding the proceeding. *See* FR § 23.110. In order to best protect the welfare of the child, State agencies may wish to share information that is not contained in the State court's records but that would assist the Tribe in understanding and meeting the Indian child's needs.

Comment: A few commenters suggested an amendment to clarify that the mandatory dismissal provisions do not apply if the State and Tribe have an agreement regarding jurisdiction because, in some cases, Tribes choose to refrain from asserting jurisdiction.

Response: The final rule adds a reference to § 1919 of the Act, which allows for Tribal-State agreements governing jurisdiction.

Comment: A commenter stated that PR § 23.110(b) would apparently preclude the State from providing safety investigative services it currently provides when a child is domiciled on reservation but located off reservation.

Response: The final rule addresses dismissals of State-court child-custody proceedings based on lack of jurisdiction. It does not affect State authority to provide safety investigative services when a child is domiciled on reservation but located off reservation.

Comment: A commenter suggested adding to PR § 23.110(c) that the State court must contact the Tribal court not only when the child has lived on a reservation, but also if the State court has reason to believe the child may be a ward of Tribal court.

Response: The final rule clarifies that the Tribe has jurisdiction, notwithstanding the Indian child's residence or domicile off reservation, if the child is a ward of the Tribal court. *See* FR § 23.110(b). The State court may need to contact the Tribal court to confirm the child's status as a ward of that court. In addition, the final rule identifies the child's status as a ward of a Tribal court as one of the "reasons to know" that the child is an Indian child, FR § 23.107(c)(5), a status which may trigger certain notice requirements. *See* FR § 23.111.

Comment: A few commenters suggested allowing an exemption for dismissal in emergency cases. These commenters stated that this exemption is necessary to ensure the safety of the child, so the State does not dismiss proceedings until the Tribe has asserted jurisdiction.

Response: FR § 23.110 includes the introductory provision "subject to § 23.113 (emergency proceedings)" to ensure that the child is not subjected to imminent physical damage or harm.

Comment: One commenter noted that if PR § 23.110(c) continues to require the State court to contact the Tribal court, then BIA should maintain a comprehensive list of Tribal courts and their contact information.

Response: If the State court does not have contact information for the Tribal court, the Tribe's designated ICWA agent may provide that information. The BIA publishes, on an annual basis, a list of contacts designated by each Tribe for receipt of ICWA notices in the **Federal Register** and makes the list available at *www.bia.gov.*

Comment: A commenter suggested BIA compile a list of which reservations are subject to a Tribe's exclusive jurisdiction for child-welfare proceedings and make this information readily available to States, to allow them to determine whether the Tribe exercises exclusive jurisdiction over a particular reservation.

Response: Each Tribe's ICWA designated contact will have information on whether the Tribe exercises exclusive jurisdiction.

F. Notice

The notice provisions included in section 1912(a) are one of ICWA's core procedural requirements in involuntary child-custody proceedings for protecting the rights of children, parents, Indian custodians, and Tribes. Prompt notice is necessary to ensure that parents, Indian custodians, and Tribes have the opportunity to participate in the proceeding. Without notice of the proceeding, they will not be able to exercise other rights guaranteed by ICWA, such as the right to intervene in or seek transfer of the proceedings. In addition, notice may facilitate early actions that will minimize disruptions for the children and families through, for example, enabling placement of Indian children in preferred placement homes as early as possible. It will also allow for prompt provision of Tribal resources and early transfer to Tribal courts.

In order for the recipients of a notice to be able to exercise their rights in a timely manner, the notice needs to provide sufficient information about the child, the proceeding, and the recipient's rights in the proceeding. The final rule, therefore, specifies the information to be contained in the notice. Some of the information that is required to be provided, such as identifying and Tribal enrollment information, is necessary so that that Tribes can determine whether the child is a member of the Tribe or eligible for membership. Other information, such as a copy of the petition initiating the child-custody proceeding and a description of the potential legal consequences of the proceeding, is necessary to provide the recipient with sufficient information about the proceeding to understand the background and issues that may be addressed in the proceeding and the consequences that may flow from the proceeding. Finally, other information, such as descriptions of the intervention rights and timelines, is necessary to inform the recipient of the rights that are available to the recipient.

The final rule deletes the provision PR § 23.135(a)(3) requiring notice of a change in placement. The Department, however, recommends that information about such changes regularly be provided. The statute provides rights to parents, Indian custodians and Tribes (*e.g.,* right to intervene) and a change in circumstances resulting from a change in placement may prompt an individual or Tribe to invoke those rights, even though they did not do so before.

ICWA also provides for minimum notice periods that are designed to allow notice recipients time to evaluate the notice and prepare to participate in the proceeding. The final rule, therefore, reiterates the minimum time limits required by the Act. In many instances, however, more time may be available under State-court procedures or because of the circumstances of the particular case. The final rule, therefore, makes clear that additional time may be available.

1. Notice, Generally

Comment: Several commenters stated their support of the provision at PR § 23.111(a) clarifying what information must be included in notices and to whom notices must be sent. Several commenters noted that too often, appropriate parties are not notified of a child-custody proceeding in a timely manner. Several commenters noted the importance of rigorous notice requirements in involuntary proceedings as necessary to: Facilitate parents', Indian custodians', and Tribes' participation and make available Tribal resources; facilitate placement of Indian children in preferred placement homes as early as possible and minimize the possibility that children will face a disruption in the future; and allow Tribes the opportunity to fully participate in proceedings affecting their citizens, advocate for their citizens, and transfer to Tribal courts without delay. One commenter noted that Tribes have rights to transfer and intervene that they can exercise only if they have notice of a proceeding. One commenter stated that the costs of not providing notice are great, in terms of costs to rectify removal and costs to the child in terms of trauma and loss of language and culture.

Response: The Department agrees with these comments, and has crafted the final rule to ensure complete and accurate notices of involuntary proceedings are provided in a timely manner.

Comment: A few commenters also supported the requirement in PR § 23.111(g) for a translated version of the notice or having the notice read and explained in a language understandable to the parents. These commenters stated that many Alaska Natives have limited English proficiency and that parents are often not informed in plain language of the process or their rights under ICWA. A commenter suggested this section change "should" to "shall" to require the court/agency to contact the Tribe or BIA for assistance in locating a translator or interpreter.

Response: The final rule continues to allow for a translator or interpreter, by including the requirement to provide language-access services, as governed by Title VI of the Civil Rights Act and other Federal laws. *See also* 25 CFR 23.82 (assistance in identifying language interpreters).

Comment: A few commenters opposed notice requirements in the emergency context. The Washington Department of Social and Human Services, Children's Administration, and California Department of Social Services opposed notice requirements for emergency proceedings, noting that the timelines associated with notice are unreasonable in this context. In California, for example, if the child has been removed, the detention hearing must be held by the next judicial day after the petition is filed. Requiring ICWA notice, and having to wait 10 days after the receipt of the notice, would make compliance with the detention timeframe impossible.

Response: The commenters point out a potential issue with timing of emergency removals and the section 1912(a) requirements for notice. The final rule addresses this by requiring formal notice and applicable timelines to only those placements covered by section 1912(a) of the Act and do not apply to emergency proceedings. The rule indicates, however, that the petition for emergency removal or emergency placement should include statements of any efforts made to contact the Indian child's parents or Indian custodians and Tribe. *See* FR § 23.113(c)(3), (c)(8). As discussed below, section 1922 of the Act applies in limited circumstances, for short periods of time, to ensure that ICWA's procedural and substantive provisions do not prohibit a State from removing a child under State law on an emergency basis "to prevent imminent physical damage or harm to the child." In such situations, notice should be provided as soon as possible.

Comment: A commenter noted that an issue that constantly causes delay is the Tribe failing to timely respond to notice because often there are processes that have to take place within the Tribe that prevent timely response, causing emotional and financial difficulty for all parties.

Response: Any processes that are internal to a Tribe and may delay a Tribe's response to notice are beyond the scope of this rule. In addition, the

final rule may ameliorate that problem by identifying information to be provided in the notice that may allow Tribes to more readily determine the child's status.

Comment: Several commenters had additional suggestions for improving the notice requirements. For example, one commenter suggested a consistent process and format to inform Tribes of ICWA cases. Several commenters suggested adding a deadline to provide notice, such as within 15 days of when a child is removed from the home. These commenters also suggested adding a requirement for the State to prove the Tribe received notice, noting that in Alaska the mail is not always reliable.

Response: The Department is considering whether to provide a sample notice as part of updated guidelines and also encourages States to implement a consistent process and format to inform Tribes of ICWA cases. With regard to a deadline to provide notice, the rule does not establish such a deadline because the rule provision incorporates those deadlines specified by statute. *See* FR § 23.112; 25 U.S.C. 1912(a).

Comment: A few commenters suggested the rule should require States to contact Tribes by phone and email, in addition to mail, and clarify when contact less formal than registered mail is acceptable.

Response: The statute and the final rule require notice by registered or certified mail, return receipt requested. (*See* section IV.F.2 of this preamble for response to comments on registered and certified mail.) The Department encourages States to act proactively in contacting Tribes by phone, email, and through other means, in addition to sending registered or certified mail.

Comment: A commenter suggested that the rule should require notice to the putative father, if a putative father other than the alleged father becomes known, to protect the putative father's rights.

Response: The statute and regulations require notice to the parents; a "parent" includes unwed fathers that have established or acknowledged paternity. If, at any point, it is discovered that someone is a "parent," as that term is defined in the regulations, that parent is entitled to notice.

Comment: A commenter suggested incorporating Colorado's requirement for notice to be sent to the designated Tribal agent (listed in the **Federal Register**) or the highest Tribal official, or if neither can be determined, then to the highest Tribal court judge with a copy to the Tribe's social services department.

Response: The rule specifically addresses how to contact a Tribe at FR § 23.105, and clarifies that BIA publishes a list of Tribally designated ICWA agents who may receive notice.

Comment: A few commenters requested that BIA forward all notices it receives to the Tribe, to provide checks and balances to ensure the Tribe receives notice and because some States provide notice to BIA without contacting the Tribe.

Response: The party seeking placement is responsible for providing the Tribe with notice under the statute. *See* 25 U.S.C. 1912(a). BIA assists when there is difficulty identifying or locating a Tribe; however, it is the responsibility of the party seeking placement to send notice directly to the appropriate Tribe(s).

Comment: A few commenters suggested revising PR § 23.111(d) to provide that the court/agency must check the **Federal Register** contact information for the child's Tribe and send the notice to BIA only if unable to identify the Tribe.

Response: The final rule's directions for how to contact a Tribe includes checking the **Federal Register** contact information. *See* FR § 23.105.

Comment: A commenter stated that the number of notices required is excessive. Another commenter stated that it is unclear whether PR § 23.111(a) requires notice only once at the initiation of the proceeding, or whether it is required for each hearing within a proceeding. A few commenters suggested requiring registered mail only for the first notice because notice for each subsequent hearing or action and all the data elements is onerous and unnecessary if the Tribe is already noticed and involved in the proceedings. Similarly, another commenter suggested that there be an exception to notice requirements if the Tribe has actual notice of the hearing, so the State does not have to unnecessarily spend additional resources.

Response: Notice of an involuntary proceeding for foster-care placement or termination of parental rights is required by section 1912 of the Act. *See* FR § 23.111(a). Each proceeding may involve more than one court hearing, but only one notice meeting the registered (or certified) mail requirements of section 1912(a) is required for each proceeding (regardless of the number of court hearings within the proceeding). *See* Section IV.C.1 ("Child-custody proceeding" Definition) of this preamble. Consistent with the statute, the final rule requires that notice be given for a termination-of-parental-rights proceeding, even if notice has previously been given for the child's foster-care proceeding. If a Tribe intervenes or otherwise participates in a proceeding, the Tribe should receive notice of hearings in the same manner as other parties.

Comment: A commenter requested clarification that any time an agency opens an investigation or the court orders the family to engage in services to keep the child in home as part of a diversion, differential, alternative response, or other program, that agencies and courts should follow the verification and notice provisions.

Response: The statute applies to Indian child-custody proceedings. The final rule does not address in-home services that do not meet the Act's definition for "child-custody proceeding."

2. Certified Mail v. Registered Mail

Comment: A few commenters supported requiring notice in PR § 23.111 by registered mail with return receipt requested. One commenter stated that this requirement is important because it establishes proof of notice. A few suggested this requirement replace the requirement for certified mail in § 23.11(a).

Several commenters opposed the requirement for registered mail with return receipt. These commenters noted issues with registered mail with return receipt requested that undermine ICWA compliance: Specifically, that registered mail with return receipt requested is approximately three times more costly, and that registered mail is less reliable as timely notification. One commenter noted that, in 1994, BIA considered requiring registered mail with return receipt requested but ultimately rejected it because it determined it undermined the purpose of ICWA notice. A few commenters also stated that registered mail requires the individual to pick up the mail from the postal service whereas certified mail is in-person delivery with a sign-off; and that registered mail can result in delays because only the person whose name exactly matches the addressee can pick up the mail, and if the person is not present the mail is sent back to the sender.

Response: The final rule requires either registered mail with return receipt requested or certified mail with return receipt requested. Both types of mail provide evidence of delivery with the return receipt. *See* FR § 23.111. As the commenters detail, there is no clear benefit of requiring registered mail over certified mail, because there is no practical difference between the two that impacts any of the interests that ICWA protects. Registered mail offers the added feature of a chain of custody while in transit, but this chain of custody is not necessary to effectuate notice under ICWA and adds delay. In terms of cost and timeliness, certified mail provides benefits over registered mail in that certified mail is less expensive and enables notice more quickly.

Comment: Several commenters opposed the provision stating that personal service may not substitute for registered mail return receipt requested. These commenters stated that personal service is the best guarantee of receipt. Several also stated that actual notice should be a substitute for registered mail.

Response: If State law requires actual notice or personal service, that may be a higher standard for protection of the rights of the parent or Indian custodian of an Indian child than is provided for in ICWA. In that case, meeting that higher standard would be required. *See* 25 U.S.C. 1921.

Comment: One commenter suggested requiring that the postal receipt be filed with the court, to ensure that service is completed before any hearings are held.

Response: Maintaining documentation of notice is important; as courts have emphasized, the "filing of proof of service in the trial court's file would be the most efficient way of meeting [the] burden of proof" in proving notice. *See In re E.S.*, 964 P.2d 404, 411 (Wash. Ct. App. 1998). The rule requires the court to ensure this documentation is in the record. *See* FR § 23.111(a)(2).

3. Contents of Notice

Comment: Several commenters stated that the notice must contain the names and birthdates of the child's parents for the notice to be useful for the Tribe to determine whether the child is a member or if the parent is a member and the child is eligible for membership. A commenter stated that notices seldom include the father's name but it is necessary to determine if the child is a member. A few of these stated that the rule should also require including the names and birthdates and birthplaces of the child's grandparents to the extent known or readily discoverable. Another commenter suggested the rule require including maiden names or prior names or aliases. Several of these commenters noted that the more information that is provided to Tribes, the more easily the responding Tribes can verify membership or eligibility for membership.

Response: The final rule includes the requirement for the parents' names (including any known maiden or former names or aliases), birthplaces, and birthdates and as much information as is known regarding the child's other direct lineal ancestors. *See* FR § 23.111(d)(2). This information was required under the current § 23.11(d)(3), which the new rule is replacing.

Comment: A few commenters stated that the rule should provide consequences if the notice fails to include the necessary information, such as invalidating State actions or providing a basis for dismissal.

Response: The rule recognizes the importance of providing meaningful notice to meet the goals of the statute. The statute provides that certain parties may seek to invalidate actions based on ICWA violations, including notice violations. *See* 25 U.S.C. 1914; FR § 23.137. In addition, State courts may also make additional determinations imposing consequences for failure to provide meaningful notice.

Comment: One commenter stated that it is problematic for § 23.111 to require a copy of the petition be provided with the notice because it contains confidential information about the children and parents and the notice may be sent to Tribes that ultimately have no affiliation.

Response: The final rule continues to require a copy of the petition, as the petition contains important information about the proceeding and the child and parties involved. This requirement was required under the former rule at 25 CFR 23.11(d)(4), which this rule is replacing. While it is true that a petition may contain confidential information, providing a copy of the petition with notice to Tribes is a government-to-government exchange of information necessary for the government agencies' performance of duties. Tribes are often treated like Federal agencies for the purposes of exchange of confidential information in performance of governmental duties. *See, e.g.,* Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3205 (2012); Family Rights and Education Protection Act, 20 U.S.C. 1232(g) (2012). The substance of the petition is necessary to provide sufficient information to allow the parents, Indian custodian and Tribes to effectively participate in the hearing.

Comment: A few commenters supported PR § 23.111(c)'s requirement for the notice to contain a statement that counsel will be appointed to represent an indigent parent or Indian custodian, but opposed the qualification "where authorized by State law." These commenters stated that the statute does not include the qualification "where authorized by State law."

Response: The statute provides indigent parents/Indian custodians the right to counsel. *See* 25 U.S.C. 1912(b). The final rule restates this right, and deletes the provision "where authorized by State law" because the statute establishes that the right exists even if State law does not provide for such court-appointed counsel. *See* FR § 23.111(d).

Comment: One commenter stated that where a State appoints counsel because the parents or Indian custodians cannot afford one, at PR § 23.111(c)(4)(iv), that the counsel must represent the party for the entirety of the case to ensure parents' rights are addressed consistently throughout the case rather than appointing different representatives at each stage.

Response: While it is a recommended practice to appoint the same counsel for the entirety of the case (throughout all proceedings), the final rule does not require a single counsel for the duration of a case.

4. Notice of Change in Status

Comment: A State agency commented that requiring notice of a change in placement, as under PR § 23.135, will create additional workload because the notice has to include information about the right to petition for return of the child, which contemplates that the notice must be in writing. This commenter stated that the section should be amended to allow for notice by whatever means is customary to the Tribe that is actively participating and to recognize that confidential information cannot be shared.

Response: The final rule deletes the provision PR § 23.135(a)(3) requiring notice of a change in placement. The Department, however, recommends that information about such changes regularly be provided. The statute provides rights to parents, Indian custodians and Tribes (*e.g.,* right to intervene) and a change in circumstances resulting from a change in placement may prompt an individual or Tribe to invoke those rights, even though they did not do so before.

Comment: A commenter opposed the requirement in PR § 23.135 to provide notice to biological parents whenever the child's adoption is vacated or set aside or the adoptive parents voluntarily consent to termination of parental rights. According to the commenter, this provision violates confidentiality because, at that point, the biological parent has no right to notification about the child.

Response: The final rule continues to use "biological parent" with regard to notice that a final decree of adoption of

an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child because the statute provides the biological parent or prior Indian custodian certain rights if the adoption decree is vacated or set aside. *See* 25 U.S.C. 1916(a); FR § 23.139.

Comment: A Tribal commenter requested adding a requirement for the State to notify the Tribe if the child is placed in an approved adoptive placement or with a placement that intends to adopt the child.

Response: The statute requires notice of involuntary proceedings for foster-care placement or termination of parental rights. *See* 25 U.S.C. 1912(a). There is no statutory authority to require notice if a foster family forms an intention to adopt that Indian child or is generally designated an "approved adoptive placement" in addition to being a foster placement. It is a best practice for the State agency to inform the Tribe if a child's permanency plan or a concurrent plan changes, such as from foster care to adoption.

Comment: A commenter requested deletion of the provision at PR § 23.135(c) allowing a parent or Indian custodian to waive the right to notice of a change in an adopted child's status because parents may sign without a full understanding of the legal right they are waiving, especially if the waiver is presented with other documents. Another commenter supported the provision but suggested adding safeguards because a waiver by vulnerable parents with issues that have given rise to an involuntary proceeding is particularly suspect, and parents or Indian custodians in other cases may have been pressured to waive notice. This commenter suggested that any waiver should be explicitly confirmed before the judge with the consequences explained as part of the section 1913 process, as well as the parent's right to withdraw the waiver and how that can be done. Commenters also stated the court should be required to maintain this information in a database and inform waiving parents that they can obtain that information at any time, notwithstanding the waiver, merely by contacting the court through a clearly defined and simple process that does not require legal counsel.

Response: The statute does not specify that parents or Indian custodians may waive their right to notice if an adoption fails, but there is no prohibition on parents or Indian custodians waiving the right to future notice. Given that parents and Indian custodians may choose to waive their right to notice of failed adoptions, the rule addresses this circumstance to provide safeguards on any such waiver and ensure the right to revoke the waiver. The final rule adds several of the suggested safeguards to ensure ICWA's intent is met. The final rule does not add a requirement for the court to maintain information on the waiver in its database, but does provide that the waiver may be revoked at any time by filing a notice of revocation. *See* FR § 23.139.

Comment: A few commenters stated that the provision in PR § 23.135(c) allowing notice to be waived should not apply to foster-care placement changes where parental rights have not been terminated.

Response: FR § 23.139 limits waiver of notice to two situations: where adoption of an Indian child is vacated or set aside and where the adoptive parents voluntarily terminate their parental rights. In those cases, the biological parent or prior Indian custodian may waive notice of these actions. Neither of those two situations involves foster-care placements.

Comment: A commenter suggested PR § 23.135(c) should clarify that only "completed proceedings" will not be affected by a revocation of a waiver of right to notice.

Response: The final rule specifies that a waiver of right to notice will not affect completed proceedings. *See* FR § 23.139(c). This clarifies that notice of proceedings that are in progress when the waiver is executed and filed may be affected.

5. Notice to More Than One Tribe

Comment: A commenter stated that PR § 23.109(b) should be mandatory, such that if there is only one Tribe in which the child is a member or eligible for membership, that Tribe must be designated as the child's Tribe.

Response: The final rule includes this suggested change. *See* FR § 23.109(a).

Comment: A commenter stated that PR § 23.109(d), allowing one Tribe to authorize another to represent it, should require that the authorization be documented by filing the authorization in court to establish that the Tribe was properly notified.

Response: Nothing in the statute either allows or prohibits one Tribe from authorizing another to represent it. The final rule therefore deletes the provision.

Comment: Several commenters stated that all Tribes should be encouraged to participate in Indian custody proceedings where the child is a member of, or eligible for membership in, more than one Tribe. These Tribes point out that the child and family will benefit from the involvement of all the Tribes and will provide more Tribal resources to increase the likelihood of preferred placement.

Response: The statute establishes one Tribe as the "Indian child's Tribe." *See* 25 U.S.C. 1903(5). As a best practice, other Tribes that are interested in the proceeding may coordinate with the Tribe designated as the "Indian child's Tribe" or with State agencies to ensure involvement and provide Tribal resources to increase the likelihood of a preferred placement.

Comment: A few commented on who makes the determination as to the designation of the Tribe. Several commenters opposed having the State select the Tribe with which the child has more significant contacts. Others recommended clarifying that the court, rather than the agency, makes the determination as to which Tribe should be designated as the child's Tribe.

Response: The statute establishes that the Indian child's Tribe is the Tribe with which the Indian child has more significant contacts. *See* 25 U.S.C. 1903(5). The final rule clarifies that the court must first provide the opportunity for the Tribes to make that determination, but that if the Tribes are unable to agree, the State court must designate, for the purposes of ICWA, which is the child's Tribe for this limited purpose. *See* FR § 23.109(c). In situations where the Tribes are unable to agree, it is a best practice to notify the Tribes and conduct a hearing regarding designation of the Indian child's Tribe.

Comment: A few commenters stated that the preference of the parents should be determinative, rather than the court's determination.

Response: The Act provides that the child's Tribe is the Tribe with which the Indian child has the more significant contacts. *See* 25 U.S.C. 1903(5). The rule provides that the State court may consider the parent's preferences for which Tribe should be designated the Indian child's Tribe as a factor in determining with which Tribe the child is more significant contacts. *See* FR § 23.109(c).

Comment: Several commented on the factors for determining with which Tribe the child has more significant contacts and suggested the list at PR § 23.109(c)(1) should be combined with the list at PR § 23.109(c)(2)(ii). Another commenter suggested adding examples of "more significant contacts" for determining which Tribe is the child's Tribe, to include "relative or extended family contacts, kinship contacts, trips home for cultural events, funerals, or similar events."

Response: The final rule combines the two proposed lists to establish one list of factors indicative of significant contacts because the court is making the same determination on "more significant contacts" in both provisions of the proposed rule. The proposed lists varied slightly from each other, so the final list reconciles them in two ways: first, by including the preferences of parents, rather than both parents and extended family members who may become placements, because that would require speculation about prospective placements that is not directly relevant to the question of which Tribe the child has more significant contacts; and second, by deleting "availability of placements" as a factor, for the reason discussed below. *See* FR § 23.109(c).

Comment: A few commented on inclusion of the availability of placements in the list of factors. One stated that inclusion of this factor is wise as long as courts do not question the suitability of placements. Another stated that it should not be included as a factor because it has nothing to do with the contact the child has had with the Tribe.

Response: The final rule deletes this factor because it is not relevant to the question of with which Tribe the child has more significant contacts.

Comment: One commenter opposed the requirement to notify "all Tribes" that a determination of the child's Tribe has been made because it would require another round of notices to Tribes that already determined the child is not theirs and another Tribe would be involved.

Response: The final rule does not include the proposed requirement to notify all Tribes of a determination of the child's Tribe.

6. Notice for Each Proceeding

Comment: A commenter stated that the notice should list the date, time, and location of the hearing, the issue to be heard, and the consequences of any requested ruling.

Response: The final rule lists required information in the notice, including the date, time, and location of the hearing if the hearing has been scheduled at the time notice is sent. The final rule requires the notice to include contact information for the court to ensure the recipient may contact the court for information on any hearings and requires the notice to state the potential legal consequences of the proceeding. *See* § 23.111(d)(6)(vii)–(viii).

Comment: A commenter requested clarification that PR § 23.111(h) does not allow parties to waive timely notice.

Response: The statute provides that no placement shall occur if the requirements for notice, including the timing of the notice, are not met. *See* 25 U.S.C. 1912(a). These statutory provisions are implemented at FR § 23.112(a).

7. Notice in Interstate Placements

Comment: A few commenters stated their support of PR § 23.111(i), which requires both the originating and receiving States to provide notice if a child is transferred interstate. Some of these commenters referred to the facts underlying the *Adoptive Couple* v. *Baby Girl* case and asserted that this provision would help prevent a similar situation.

A few commenters opposed this provision. Most of these commenters suggested the sending State should be responsible for providing notice because the receiving State would not be aware of the placement and have no court case or opportunity to provide notice. Another stated that notice should be required only in the State where the court proceeding is pending. One stated that this requirement will result in duplicative notices and cause potential confusion. A few commenters stated that this requirement would strain already overburdened resources.

Response: The final rule deletes this provision, as this subject is not directly addressed in the statute. However, BIA encourages such notification as a recommended practice.

8. Notice in Voluntary Proceedings

Comments regarding notice in voluntary proceedings are addressed in Section IV.L.2 of this preamble, below.

G. Active Efforts

ICWA requires that any party seeking to effect a foster-care placement of, or termination of parental rights to, an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. 25 U.S.C. 1912(d). This is one of the key provisions in ICWA designed to address Congress' finding that the removal of many Indian children was unwarranted. 25 U.S.C. 1901(4). The active-efforts requirement helps protect against these unwarranted removals by ensuring that parents who are or may readily become fit parents are provided with services necessary to retain or regain custody of their child.

The active-efforts requirement embodies the best practice for all child-welfare proceedings, not just those involving an Indian child. Natural parents possess a "fundamental liberty interest" in the care, custody, and management of their child, and this interest "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky* v. *Kramer*, 455 U.S. 745, 753 (1982). And until a parent has been proven to be unfit, the child shares with the parent "a vital interest in preventing erroneous termination of their natural relationship." *Id.* at 760. For proceedings involving an Indian child, the active-efforts requirement helps protect these interests.

The Department finds compelling the views of child-welfare specialists who opine that "the cornerstone of an effective child-welfare system is the presumption that children are best served by supporting and encouraging their relationship with fit birth parents who are interested in raising them and are able to do so safely." *See, e.g.*, Comments of Casey Family Programs, et al., at 1 (comments submitted on behalf of a group of national organizations, associations, and professors); *see also* Brief of Casey Family Programs, et al., *Adoptive Couple* v. *Baby Girl*, at 7. These specialists note that "[a]mong the most important components of a sound child-welfare system is the requirement for agencies and others responsible for children's well-being to be vigilant in striving to keep children in their families; to remove them only when necessary to protect them from serious harm; and to work diligently to assist families with overcoming obstacles to children's safe return promptly." Comments of Casey Family Programs, et al., at 3; *see also* National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* 5 (2000). Congress has recognized this principle in other contexts as well. *See* 42 U.S.C. 671 (requiring State plan for foster care and adoption assistance to provide that reasonable efforts will be made to prevent or eliminate the need for removal of the child from his home and to make it possible for the child to return to his home.)

The active-efforts requirement in ICWA reflects Congress' recognition of the particular history of the treatment of Indian children and families, and the need to establish a Federal standard for efforts to maintain Indian families. After extensive hearings in the 1970s, Congress recognized that the social conditions, including poverty, facing many Tribes and Indian people—some brought about or exacerbated by Federal policies—were often cited as a reason for the removal of children by State and

private agencies. H.R. Rep. No. 95–1386, at 12. Congress found that "agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation." *Id.* ICWA's active-efforts requirement is one critical tool to ensure that State actors identify these "means to reduce the incidence of neglect or separation," and provide necessary services to parents of Indian children.

Congress also found that "our national attitudes as reflected in long-established Federal policy and from arbitrary acts of Government" had helped produce "cultural disorientation, a [ ] sense of powerlessness, [ ]loss of self-esteem" that affected the ability of some Indian parents to effectively care for their children. *Id.* The active-efforts requirement is designed to address this problem where possible, by requiring appropriate services be provided to parents to help them attain the necessary parenting skills or fitness.

Congress also found that States cited alcohol abuse as a frequent justification for removing Indian children from their parents, but failed to accurately assess whether the parent's alcohol use caused actual physical or emotional harm. *Id.* at 10. Congress found that different standards for alcohol use were applied in Indian versus non-Indian homes. *Id.* The active-efforts requirement helps ensure that alcohol, drug, or other rehabilitative services are provided to an Indian child's parent where appropriate, to avoid unnecessary removals or termination of parental rights.

Congress was also clear that it did not feel existing State laws were adequately protective. The House Report accompanying ICWA stated that "[t]he committee is advised that most State laws require public or private agencies involved in child placements to resort to remedial measures prior to initiating placement or termination proceedings, but that these services are rarely provided. This subsection imposes a Federal requirement in that regard with respect to Indian children and families." H.R. Rep. No. 95–1386, at 22.

The Department recognizes that both laws and child-welfare practices in many States may have changed since the passage of ICWA. However, ICWA's active-efforts requirement continues to provide a critical protection against the removal of an Indian child from a fit and loving parent.

The final rule removes PR 23.106 to better reflect 25 U.S.C. 1912(d)'s focus on State court actions and predicate findings.

1. Applicability of Active Efforts

Comment: A few commenters pointed out that the Act requires "active efforts" only to provide remedial services and rehabilitative programs (*see* 25 U.S.C. 1912), while the proposed rule would require active efforts to prevent removal (PR § 23.106), to work with Tribes to verify Tribal membership (PR § 23.107(b)(2)), to assist parents in obtaining the return of their children following emergency removal (PR § 23.113(f)(9)), to avoid removal (PR § 23.120(a)), and to find placements (PR § 23.131(c)(4)).

Response: To avoid confusion, the final rule uses the term "active efforts" only in conjunction with the requirements in 25 U.S.C. 1912. The final rule deletes the provisions at PR § 23.106 to better reflect 25 U.S.C. 1912(d)'s focus on State-court actions. In FR § 23.107, the final rule changes the terminology with regard to working with Tribes to verify citizenship, to now require "diligence" in working with Tribes to verify a child's Tribal citizenship. The Department agrees with the commenter that this is not clearly within section 1912(d). The term "active efforts" has also been removed from what was PR 23.131(c)(4) (regarding placement preferences) to avoid confusion; FR § 23.132(c)(5) now requires that a "diligent search" be conducted to find suitable placements meeting the preference criteria before a court may find good cause to deviate from the statutory preferences.

Comment: A commenter suggested addressing whether there is an exception to requiring active efforts when there is "shocking" or "heinous" physical or sexual abuse or when active efforts were previously provided to the family and the same conditions exist.

Response: The "active efforts" requirement is a vital part of ICWA's statutory scheme, and the statute does not contain any exceptions. The final rule's definition of "active efforts," however, specifies that what constitutes sufficient active efforts may be based on the facts and circumstances of a particular case. This may include, for example, consideration of whether circumstances exist that other Federal laws have recognized as excusing the mandatory requirement for reasonable efforts to preserve and reunify families. *See e.g.,* 42 U.S.C. 671(a)(15)(D) (reasonable efforts not required where a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances, or committed murder or other specified felonies). Of course, even in the case where one parent has severely abused a child, the court should consider whether active efforts could permit reunification of the Indian child with a non-abusive parent.

a. Active Efforts To Verify Child's Tribe

Comment: Two commenters supported the proposed requirement at PR § 23.107(b)(2) for active efforts to determine a child's Tribal membership, as one stated that State workers frequently rely on whether the child "does or does not look Indian." Several commenters suggested using a term other than "active efforts" because Congress's use of the term applied only to providing remedial services and rehabilitative programs. One commenter suggested instead using "due diligence" or "continuing efforts."

Response: As mentioned above, the final rule uses the term "diligent" rather than "active efforts" for verification of Tribal citizenship. *See* FR § 23.107(b)(1).

b. Active Efforts To Avoid Breakup in Emergency Proceedings

Comment: One commenter stated that the requirement for active efforts to begin immediately, even in an emergency, is supported by Oklahoma case law.

Response: The Act does not explicitly apply the active-efforts requirement to emergency proceedings. For this reason, the final rule does not require active efforts prior to an emergency removal or emergency placement.

However, the statute requires a showing of active efforts prior to a foster-care placement. *See* 25 U.S.C. 1912(d). In many cases, this means that active efforts must commence at the earliest stages of a proceeding.

c. Active Efforts To Avoid the Need To Remove the Child

Comment: A few commenters supported the provisions in PR § 23.120 clarifying the requirement for active efforts to avoid the need to remove the Indian child. A few commenters opposed requiring State authorities to demonstrate that active efforts were provided as a precondition for commencing a proceeding because it could subject Indian children to continued harm. A commenter stated that there may be situations where a child is removed for emergency safety reasons (*e.g.,* placed in police protective custody or hospital hold) and the agency may not have the opportunity to make any efforts to prevent removal.

Response: Nothing in the final rule prevents the removal of a child to prevent imminent physical damage or harm. These removals are addressed by the emergency proceeding provisions of the statute and final rule, as well as State law. The statute requires, however, that active efforts must be demonstrated prior to a foster-care placement or termination of parental rights. *See* 25 U.S.C. 1912(d). The ultimate goal is to prevent the long-term breakup of the Indian child's family.

Comment: A few commenters stated that the active-efforts requirement is inapplicable if there is no existing Indian family to break up, citing *Adoptive Couple* v. *Baby Girl.* Another commenter suggested addressing the holding in *Adoptive Couple* v. *Baby Girl* by adding "except in the case of a private adoption where the father abandoned the child (having knowledge of the pregnancy) and never had previous legal or physical custody."

Response: As stated earlier in this preamble, there is not an "existing Indian family" exception to ICWA. Under the facts of *Adoptive Couple* v. *Baby Girl,* the Court held that the requirements in 25 U.S.C. 1912(d) did not apply to a parent that abandoned the child prior to birth and never had legal or physical custody of the child. *See Adoptive Couple,* 133 S. Ct. at 2562–63.

Comment: A few commenters stated that PR § 23.120(a) implies that active efforts are required only to the point a proceeding commences, and requested clarification that the requirement continues during the entirety of the proceeding.

Response: The final rule revises this provision to clarify that the court will review whether active efforts have been made, and that those efforts were unsuccessful, whenever a foster-care placement or termination of parental rights occurs. The court should not rely on past findings regarding the sufficiency of active efforts, but rather should routinely ask as part of a foster-care or termination-of-parental-rights proceeding whether circumstances have changed and whether additional active efforts have been or should be provided.

Comment: A commenter suggested clarifying in PR § 23.120(a) that the active-efforts requirements apply to parents of an Indian child, not simply to Indian parents.

Response: ICWA applies when an Indian child is the subject of a child-custody proceeding, and the active-efforts requirement of 25 U.S.C. 1912(d) applies to the foster-care placement or termination of parental rights to an Indian child. The child's family is an "Indian family" because the child meets the definition of an "Indian child." As such, active efforts are required to prevent the breakup of the Indian child's family, regardless of whether individual members of the family are themselves Indian.

Comment: A commenter stated that the requirement in PR § 23.120(b) to use the available resources of the extended family, the child's Indian Tribe, Indian social service agencies and individual Indian caregivers should not be mandatory. This commenter stated that practically, it may not be possible to use the available resources listed.

Response: The final rule removes this provision from § 23.120(b) because the concept is already included in the definition of "active efforts," which provides that these resources should be used "to the maximum extent possible" (as the proposed rule did at PR § 23.120(b)). *See* FR § 23.2.

d. Active Efforts To Establish Paternity

Comment: Several commenters suggested adding efforts to establish paternity as an example of active efforts. These commenters asserted that when the father is a Tribal citizen, such acknowledgment or establishment is critical to determining whether the Act applies and is necessary to prevent the breakup of the Indian family.

Response: The rule does not require active efforts to establish paternity because the statute uses the term "active efforts" only with regard to providing remedial services and rehabilitative programs to prevent the breakup of the Indian family. *See* 25 U.S.C. 1912(d).

e. Active Efforts To Apply for Tribal Membership

Comment: Two commenters suggested including efforts to apply for Tribal membership for the child as an example of active efforts because the child may obtain Tribal benefits and enrollment may be more difficult if family reunification ultimately fails.

Response: The rule does not include a requirement to conduct active efforts to apply for Tribal citizenship for the child. The Act requires active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family. This does not clearly encompass active efforts to obtain Tribal citizenship for the child. In any particular case, however, it may be appropriate to seek Tribal citizenship for the child, as this may make more services and programs available to the child. Securing Tribal citizenship may also have long-term benefits for an Indian child, including access to programs, services, benefits, cultural connections, and political rights in the Tribe. It may be appropriate, for example, to seek Tribal citizenship where it is apparent that the child or its biological parent would become enrolled in the Tribe during the course of the proceedings, thereby aiding in ICWA's efficient administration.

f. Active Efforts To Identify Preferred Placements

Comment: A few commenters suggested requiring active efforts to identify families that meet the placement preferences. One noted that California law requires this.

Response: The rule does not require active efforts to identify preferred placements because the statute uses the term "active efforts" only with regard to providing remedial services and rehabilitative programs to prevent the breakup of the Indian family. *See* 25 U.S.C. 1912(d). It is, however, a recommended practice and the Department encourages other States to follow California's leadership in this regard. As discussed further below at Section IV.M.5, the final rule permits a finding of "good cause" to depart from the placement preferences based on the unavailability of a suitable placement only where the court finds that a "diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located." FR § 23.132(c)(5).

2. Timing of Active Efforts

a. Active Efforts Begin Immediately and During Investigation

Comment: Several commenters expressed their support of the proposed provision at PR § 23.106(a) stating that the requirement for active efforts begins the moment the possibility arises that a child may need to be removed, and as soon as an investigation is opened. A commenter stated that this requirement will help prevent removals and promptly reunify children if placements are needed. Another commenter stated that early, concentrated efforts on the part of professionals to achieve family preservation and permanency are part of what has led to declining foster care populations. A commenter suggested further defining when active efforts are required, because some counties defer the requirement until after detention and jurisdictional hearings, rather than when removal first occurs. Another commenter suggested clarifying that active efforts must be initiated at the "crucial moment of considered intent to remove the child from the family." Another suggested that active efforts are required at the moment of the agency's first contact with the family.

A few commenters stated that BIA exceeds its authority in requiring an agency to conduct active efforts while investigating Indian status, because it is

not yet clear whether the Act applies. Another commenter suggested narrowing the trigger point for active efforts to be when at least two of the four types of placements described in the Act are planned. One of these commenters stated that the requirement to engage in active efforts immediately will unduly increase the burden on State agencies by requiring active efforts in the vast majority of referrals, and that this requirement is inconsistent with ICWA and case law.

Response: The final rule deletes the proposed provision, PR § 23.106, directed at agencies providing active efforts because 25 U.S.C. 1912(d) is directed at what State courts must find prior to making certain determinations in Indian child-custody proceedings. Nevertheless, the statute and final rule provide that the State court must conclude that active efforts were provided and were unsuccessful prior to ordering an involuntary foster-care placement or termination of parental rights. *See* 25 U.S.C. 1912(d); FR § 23.120. Thus, if a detention, jurisdiction, or disposition hearing in an involuntary child-custody proceeding includes a judicial determination that the Indian child must be placed in or remain in foster care, the court must first be satisfied that the active-efforts requirement has been met. In order to satisfy this requirement, active efforts should be provided at the earliest point possible.

Comment: A commenter suggested clarifying that active efforts should continue even after the return of a child to parental custody, if necessary to prevent the future breakup of the Indian family.

Response: If a child is returned to parental custody and there is no pending child-custody proceeding, then ICWA no longer applies. If a child-custody proceeding is ongoing, even after return of the child, then active efforts would be required before there may be a subsequent foster-care placement or termination of parental rights.

Comment: A few commenters suggested adding that active efforts are required in voluntary service agreements and differential/alternative response programs to prevent removal.

Response: Voluntary service agreements and differential/alternative response programs may help prevent removal of an Indian child; however, these are not "child-custody proceedings" within the scope of the Act.

b. Time Limits for Active Efforts

Comment: Several commenters recommended stating that there are no time limits on active efforts. A few commenters requested adding a timeline for active efforts; one of these suggested the timeline should establish that active efforts terminate at termination of parental rights and adoption.

Response: The final rule does not provide any time limits on active efforts. A State court must make a finding that active efforts were provided in order to make a foster-care placement or order termination of parental rights to an Indian child, so the active-efforts requirement must be satisfied as of each of those determinations. The requirement to conduct active efforts necessarily ends at termination of parental rights because, at that point, there is no service or program that would prevent the breakup of the Indian family.

3. Documentation of Active Efforts

Comment: Several commenters supported the proposed requirement that State courts document that the agency used active efforts. Several also requested clarifying that documentation of active efforts must be made part of the court record.

Response: The final rule continues to provide that documentation of active efforts must be part of the court record. *See* FR § 23.120(b). The active-efforts requirement is a key protection provided by ICWA, and it is important that compliance with the requirement is documented in the court record. 25 U.S.C. 1914 permits an Indian child, parent, Indian custodian, or Tribe to petition a court of competent jurisdiction to invalidate a foster-care placement or termination of parental rights upon a showing that the action violated section 1912 of the statute. The parties to the proceeding also have appeal rights under State law. In order to effectively exercise these rights, there must be a record of the basis for the court's decision with regard to active efforts and other ICWA requirements.

Comment: Some commenters suggested adding a requirement that agencies' documentation of the active efforts be provided to the Tribe and all parties involved as well.

Response: The final rule requires that active efforts be documented in detail in the record, which the parties to the case should have access to. *See* FR §§ 23.120(b), 23.134.

Comment: Commenters also suggested requiring the court to address active efforts at each hearing.

Response: The final rule reflects that the court must conclude that active efforts were made prior to ordering foster-care placement or termination of parental rights, but does not require such a finding at each hearing. *See* FR § 23.120. It is recommended practice for a court to inquire about active efforts at every court hearing and actively monitor the agency's progress towards complying with the active efforts requirement. This will help avoid unnecessary delays in achieving reunification with the parent, or other permanency for the child.

4. Other Suggested Edits for Active Efforts

Comment: A few commenters suggested adding a requirement that State courts consult with Tribes about appropriate active efforts and actual performance of active efforts.

Response: The definition of "active efforts" includes working in partnership with the Indian child's Tribe to the maximum extent possible. *See* FR § 23.2.

Comment: A commenter recommended establishing that the standard of proof to make a finding of "active efforts" is the same standard of proof for the underlying proceeding (*e.g.*, clear and convincing evidence for foster-care proceedings and beyond a reasonable doubt for termination-of-parental-rights proceedings).

Response: The Department declines to establish a uniform standard of proof on this issue in the final rule, but will continue to evaluate this issue for consideration in any future rulemakings.

H. Emergency Proceedings

The provisions concerning jurisdiction over Indian child-custody proceedings are "[a]t the heart of the ICWA," with the statute providing that Tribes have exclusive jurisdiction over some child-custody proceedings and presumptive jurisdiction over others. *Holyfield*, 490 U.S. at 36. Recognizing, however, that a Tribe may not always be able to take swift action to exercise its jurisdiction, Congress authorized States to take temporary emergency action. Specifically, section 1922 of ICWA was designed to "permit, under applicable State law, the emergency removal of an Indian child from his parent or Indian custodian or emergency placement of such child in order to prevent imminent physical harm to the child notwithstanding the provisions of" ICWA. H.R. Rep. No. 95–1386, at 25; 25 U.S.C. 1922.

Congress, however, imposed strict limitations on this emergency authority, requiring that the emergency proceeding terminates as soon as it is no longer required. ICWA requires that State officials "insure" that Indian children are returned home (or transferred to their Tribe's jurisdiction) as soon as the threat of imminent physical damage or harm has ended, or that State officials "expeditiously" initiate a child-custody proceeding subject to all ICWA protections. 25 U.S.C. 1922. Thus the rule emphasizes that an emergency proceeding pursuant to section 1922 needs to be as short as possible and includes provisions that are designed to achieve that result.

In addition to requiring that any emergency proceeding be as short as possible, the rule places a presumptive outer bound on the length of such emergency proceeding. The final rule provides that an emergency proceeding for an Indian child should not be continued for more than 30 days unless the court makes specific findings. These provisions are included because, unless there is some kind of time limit on the length of an emergency proceeding, the safeguards of the Act could be evaded by use of long-term emergency proceedings. An unbounded use of section 1922's emergency proceeding authority would thwart Congress's intent—reflected in section 1922's immediate termination provisions—to strictly constrain State emergency authority to the minimum time necessary to prevent imminent physical damage or harm to the Indian child.

The Department believes, based on its review of comments and its own understanding of emergency proceedings, that a presumptive 30-day limit on the use of the emergency proceeding authority in section 1922 is appropriate. Even if a safe return of the child to her parent or custodian is not possible in that time frame, it is unlikely that a court should need longer than 30 days to either transfer jurisdiction of the child's case to her Tribe or to require the initiation of a child-custody proceeding, with the attendant ICWA protections. A court should be able to accomplish one of those tasks within 30 days.

Should the court need the emergency proceeding of an Indian child to last longer than 30 days, however, it may extend the emergency proceeding if it makes specific findings. *See* FR § 23.113(e). The final rule tailors those findings more closely to the statutory requirements of section 1922 than did the draft rule. A court may extend an emergency proceeding only if it makes the following determinations: (1) The child still faces imminent physical damage or harm if returned to the parent or Indian custodian, (2) the court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe, and (3) it has not been possible to initiate an ICWA child-custody proceeding. *Id.* Allowing a court to extend an emergency proceeding if it makes those findings provides appropriate flexibility for a court that finds itself facing what the Department expects should be unusual circumstances.

A number of commenters expressed concerns regarding the requirement that the emergency removal or placement must terminate when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. These comments assume that the statutory mandate requiring the termination of the emergency proceeding means that the actual placement of the child must change. That is not necessarily the case. If an Indian child can be safely returned to a parent, the statute requires this (as do many State laws). In this circumstance, the State agency may still initiate a child-custody proceeding, if circumstances warrant. But, if the child cannot be safely returned to the parents or custodian, the child must either be transferred to the jurisdiction of the appropriate Indian Tribe, or the State must initiate a child-custody proceeding. Under this scenario, the child may end up staying in the same placement, but such placement will not be under the emergency proceeding provisions authorized by section 1922. Instead, that placement would need to be pursuant to Tribal law (if the child is transferred to the jurisdiction of the Tribe) or comply with the relevant ICWA statutory and rule provisions for a child-custody proceeding (if the State retains jurisdiction).

1. Standard of Evidence for Emergency Proceedings

See also comments and responses above regarding the definition of "imminent physical damage or harm."

Comment: Several commenters opposed the proposed regulation's standard that emergency removal is necessary to prevent "imminent physical damage or harm" and a few commenters suggested alternative standards for when emergency removal is appropriate (*e.g.*, the best interests of the child or "substantial and immediate danger or threat of such danger.")

Response: The Act addresses emergency proceedings at section 1922, establishing that requirements of the Act may not be construed to interfere with any emergency proceeding under State law to prevent "imminent physical damage or harm" to the Indian child. The regulations incorporate this statutory standard for emergency proceedings at FR § 23.113. There is no statutory authority for establishing a different standard.

Comment: One commenter suggested defining the term "emergency" or better specifying what "imminent physical damage and harm" is, to better clarify whether, for example, a child may be removed, under an emergency removal, from a parent who fails to get the child to school.

Response: The final rule relies on the statutory phrase "imminent physical damage or harm" and does not provide a further definition, as discussed above. The statutory phrase, however, is clear and the commenter's example of failure to get the child to school, standing alone, would not qualify as "imminent physical damage or harm" justifying an emergency proceeding (and attendant delay of compliance with ICWA section 1912).

Comment: A few commenters noted that each State may have a different or broader basis for emergency removal.

Response: As discussed above, the Department believes that section 1922's use of "imminent physical damage or harm" is in accord with the emergency-removal provisions of most States' laws. The Department recognizes, however, that a State may have a different or broader basis for immediate removals and placements. Regardless of how the State defines emergency removals and the triggers for emergency removals, ICWA requires that an emergency proceeding terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

States must comply with ICWA's limitations on such removals and placements. Upon removing an Indian child, the State must either determine that there is a risk of "imminent physical damage or harm" to the child and follow the requirements for an emergency proceeding, or it must immediately terminate the emergency proceeding and initiate a child-custody proceeding and, if appropriate, return the child to her parent(s) or Tribe.

Comment: Several commenters also asserted that, to the extent ICWA's basis for emergency removal is narrower for Indian children, the rule places them at a greater risk of injury or death than non-Indian children.

Response: ICWA's standard of "imminent physical damage or harm" is focused on the health, safety, and welfare of the child, such that Indian children will not be placed at a greater risk than non-Indian children. As discussed above, the ICWA standard is similar to that of many States.

Comment: A few commented on the provision allowing continuation of emergency custody beyond 30 days in "extraordinary circumstances." One commenter stated that the circumstances need to be better defined to prevent the exception from swallowing the rule.

Response: The final rule implements the statutory mandate that an emergency proceeding involve only the temporary suspensions of full ICWA compliance, and that the agency must initiate a child-custody proceeding that complies with all the notice, timing, hearing, and other requirements of ICWA as soon as possible, if the child is not returned to his Tribe. The final rule deletes the provision in the proposal allowing for "extraordinary circumstances" to justify continued emergency proceedings because the Act is clear that the emergency proceeding must terminate immediately when no longer necessary to prevent imminent physical damage or harm to the child. There is a continuing obligation to determine whether the imminent physical damage or harm is no longer present. As discussed above, the final rule includes a presumptive 30-day limit on an emergency proceeding, but allows a court in very limited circumstances to extend that period by making certain findings. *See* FR § 23.113(d).

Comment: Several commenters pointed out that some State agencies, as a practice, continue emergency placements for indeterminate times without ICWA compliance, and that the emergency placements ultimately became long-term placements.

Response: The final rule addresses this issue by implementing the statutory intention for emergency proceedings to be of limited duration. *See* FR § 23.113.

Comment: One commenter suggested changing the language "removal or placement" with "emergency removal or emergency placement" to clarify that this section applies only in the emergency removal context.

Response: The final rule adds this clarification. *See* FR § 23.113.

2. Placement Preferences in Emergency Proceedings

Comment: A few commenters suggested the rule should explicitly state that placement preferences apply to emergency placements as a type of foster-care placement "whenever practical and appropriate" or "whenever possible." One commenter stated that they have often seen situations where an agency removes an Indian child as an emergency removal when there was no emergency or the emergency subsided, places the child in a non-Indian home, and then takes months to even notify the family of the custody. This commenter stated that placing the child directly into the home of a preferred placement allows for an unbroken connection to the Tribe and family.

Response: The Act does not explicitly require that emergency placements comply with the placement preferences, so the rule does not include this suggestion. As a recommended practice, however, States should make emergency placements of Indian children in accordance with the placement preferences whenever possible and as soon as possible. This will help prevent subsequent disruptions if the child needs to be moved to a preferred placement once a child-custody proceeding is initiated.

3. 30-Day Limit on Temporary Custody

Comment: Several commenters supported the provision at FR § 23.113(f) prohibiting continuation of emergency removal or placement beyond 30 days without the initiation of a full ICWA-compliant child-custody proceeding, to clarify that emergency proceedings must terminate as soon as they are no longer necessary to prevent imminent physical damage or harm to the child. The National Council of Juvenile and Family Court Judges stated that this provision, and shortening the time period for temporary custody without a hearing from 90 to 30 days, align with key principles of avoiding unnecessary separation of children and families and are best practices.

A few commenters opposed making the 30-day provision a mandate. One commenter stated that agencies may avoid emergency removals or remove children earlier than appropriate to avoid the detailed steps to necessary satisfy this section, resulting in Indian children being less protected from harm.

A few commenters stated that a shorter time should be included in the rule. One commenter noted that, often, returning a child to a parent within 72 hours will not result in imminent physical damage or harm. Another commenter suggested that State law should govern the timing of the initial evidentiary hearing, provided it is no longer than 72 hours after removal (and then that the removal may not last beyond 30 days without a section 1912(e)-compliant foster care hearing). Commenters noted that allowing for longer periods of removal will make return to parental custody increasingly more difficult due to a combination of agency practice and consequential trauma to the parents from separation. One commenter also suggested adding a 45-day presumptive deadline by which an adjudicatory hearing must be held, to ensure the parent receives a hearing within a meaningful time.

Response: The basis for the presumptive 30-day outer limit for an emergency proceeding is discussed above. The rule's emergency proceedings provisions are designed to ensure that such removals/placements be as short as possible and that the Indian children be returned home (or transferred to their Tribe's jurisdiction) as soon as the threat of imminent physical damage or harm has ended, or that State officials "expeditiously" initiate a child-custody proceeding subject to all ICWA protections.

The concerns that the 30-day limit is too short are addressed through adjusting the rule's language regarding the circumstances under which the time period may be extended, as discussed above. *See* FR § 23.113(d). Notably, in light of the comments received, these changes include deleting the requirement for obtaining a qualified expert witness by that time.

The rule does not specify that a hearing should be held within 72 hours of removal. While providing a hearing within 1–3 days of removal may be required to comply with State law or to provide the parents or custodian with constitutionally required due process, the provision of such a hearing is not an ICWA-specific requirement, so it is not required by the rule.

Comment: Two commenters stated there are difficulties in obtaining qualified expert witness testimony in a timely fashion and that the timeframe would be increasingly difficult if the Tribe were out of State, the Tribe were unable or unwilling to provide an expert, or the exact Tribe is unknown. Another commenter noted that Tribes have up to 30 days to respond to notice, making it nearly impossible to secure expert witness testimony in that time. A commenter also stated that New Mexico allows for adjudication of an abuse/neglect petition to occur within 60 days but the proposed rule's requirements for clear and convincing evidence at an earlier stage (emergency stage) would cause more than one full evidentiary hearing on whether the parent's custody is likely to result in imminent physical damage or harm.

Response: The final rule deletes from the emergency proceeding requirements certain requirements that apply to child-custody proceedings (*e.g.,* requirement for a qualified expert witness and clear and convincing evidence) because section 1922 of ICWA does not impose such requirements on emergency proceedings and, as the commenters noted, compliance with these requirements may not be practically possible.

4. Emergency Proceedings—Timing of Notice and Requirements for Evidence

Comment: Several commenters opposed the proposed rule's requirements for notice and time limits to apply to emergency hearings (known in various States as 72-hour hearings, detention hearings, shelter care hearings, and other terms). These commenters stated that it is not possible to comply with the time limits (*e.g.,* waiting until 10 days after each parent, the Indian custodian, and Tribe have received notice before beginning the proceeding) and comply with State law requiring a hearing shortly following emergency removal. A State commenter stated that once a child is removed on an emergency basis, a petition must be filed within 48 hours, and the petition is the commencement of the proceeding, then a hearing must be held the next judicial day to determine if it is a dependency action, then a jurisdiction hearing is held within 21 days, at which time the petition is confirmed. The proposed rule's statement that a proceeding may not begin means the petition may not be filed (again, resulting in either a delayed return to parents or no initial removal to the detriment of the child). Commenters suggested adding to the end of PR § 23.111(h) and at the beginning of PR § 23.112 exceptions for emergency removals and emergency placements.

Response: The final rule does not require that the section 1912(a) notice provisions and waiting periods for notices apply to emergency proceedings. These requirements are not imposed by section 1922. The final rule does, however, indicate that agencies should report to the court on their efforts to contact the parents, custodian, and Tribe for emergency proceedings. FR § 23.113(c).

Comment: Several commenters stated that, where it is impossible to notify the Tribe and give adequate time to intervene or transfer, the decision should not be binding on the party that did not receive notice.

Response: To the extent the commenters are concerned that emergency placements may become permanent placements, the final rule confirms that emergency proceedings must terminate as soon as the emergency ends and, at that point, either the child must be returned to the parent, custodian, or Tribe or the State must initiate a child-custody proceeding following ICWA's requirements, including notice requirements. *See* FR §§ 23.110, 23.113.

Comment: A State commenter stated that it is unclear what is meant by "substantive proceedings, rulings or decisions on the merits" and how it relates to emergency removals (shelter care hearings). Another State commenter requested clarification that "on the merits" means this section does not apply to emergency removals.

Response: The final rule deletes the phrase "substantive proceedings, rulings, or decisions on the merits" from what was PR § 23.111(h) and clarifies that the section 1912(a) notice provisions and waiting periods for notices do not apply to emergency proceedings.

5. Mandatory Dismissal of Emergency Proceedings

Comment: A few commenters stated that PR § 23.110 and PR § 23.113 conflict in that PR § 23.110 says that a State court must dismiss the proceeding if it determines it lacks jurisdiction, and PR § 23.113 says States must transfer the proceeding. A commenter stated that the wording of PR § 23.110(a) creates a safety issue because it implies that transferring to Tribal court is not an option and would result in cases being dismissed where children were at imminent risk of harm.

Response: The mandatory dismissal provisions in § 23.110 apply "subject to" § 23.113 (emergency proceedings). Section 1922 of the Act allows removal and placement under State law to prevent imminent physical damage or harm to the child. *See* FR § 23.110.

6. Emergency Proceedings Subsection-by-Subsection

Comment: With regard to PR § 23.113(a)(1), a commenter stated that because the terms "proper" and "continues to be necessary" are subjective and open to culturally biased interpretation, the investigation should include input from a qualified expert witness, Tribal representatives, and members of the child's extended family not connected with the emergency who have a relationship with the child.

Response: The final rule uses the term "necessary" because that is the term the statute uses. *See* 25 U.S.C. 1922. *See* FR § 23.113(b)(1).

Comment: With regard to PR § 23.113(a)(2), a few commenters suggested "promptly hold a hearing" needs a more definitive timeframe. One of these commenters suggested replacing "promptly hold a hearing" with "promptly, but in no case beyond 72 hours, hold a hearing."

Response: The final rule continues to use the term "promptly," recognizing that different States may have different timeframes for being able to hold such a hearing. *See* FR § 23.113(b)(2).

Comment: A commenter suggested clarifying in PR § 23.113(a)(2) and (a)(3) that if the agency determines the emergency has ended, it should promptly return the child without the need for a hearing. A hearing should be required only when a court order entered in connection with the emergency removal must be vacated or dismissed.

Response: State procedures determine whether a hearing is required.

Comment: A commenter asked whether the notice requirements in PR § 23.113(b)(5), to "take all practical steps to notify" are intended to be so radically different from the notice requirements for foster care, which requires 10 days advance notice. A few commenters suggested more definition of "practical steps" is needed. One of these commenters suggested adding notice via personal service, email, telephone, registered mail, and fax. A few commenters suggested that notice by registered mail should be required in addition to taking all practical steps to notify the parents or Indian custodian and Tribe.

Response: Notice by registered or certified mail is not required by ICWA for emergency proceedings because section 1922 does not require such notice and because of the short timeframe in which emergency proceedings are conducted to secure the safety of the child (although there may be relevant State or due process requirements). In order to protect the parents', Indian custodians', and Tribes' rights in these situations, however, it is a recommended practice for the agency to take all practical steps to contact them. This likely includes contact by telephone or in person and may include email or other written forms of contact.

Comment: A commenter suggested specifying that notice of an emergency removal and emergency placement must fully inform the parents and the Tribe promptly of the timing of the emergency hearing and basis for the removal, including copies of the petition, affidavit and any evidence in support of the emergency removal, the parents and Indian custodian be advised of the full scope of their rights at the hearing, including the right to be present, to contest the allegations, to testify, and to call witnesses and introduce evidence, cross-examine adverse witnesses, and to have counsel appointed.

Response: These requirements are not specified by section 1922 and so are not

included in the rule (although there may be relevant State and due process requirements). Any emergency proceeding pursuant to section 1922, however, is required to be as short as possible, after which the child is to be returned to the parent, custodian, or Tribe or a child-custody proceeding with all the attendant ICWA protections is to be initiated.

Comment: A few commenters pointed out that PR § 23.113(c) is missing.

Response: The final rule addresses this omission.

Comment: One commenter noted that the requirements in PR § 23.113(d)(7) and (d)(9) (requiring the affidavit to include the circumstances leading to the emergency removal and active efforts taken) and PR § 23.113(f) (requiring custody to continue beyond 30 days only if certain circumstances exist) mirror requirements of the Oklahoma ICWA and are the "gold standard" resulting in faster identification of Indian children, streamlined Tribal involvement, faster placements in preferred homes, and less time out of home.

A commenter stated concern that a failure to include any of the required elements in the affidavit may result in denial of the petition, even if the child is in imminent danger.

One commenter stated that the information required by PR § 23.113(d) to be included in the affidavit is already included in the State's dependency petitions, and requested adding that such information is required only if the petition does not already include the information.

Response: The final rule states that either the petition or accompanying documents (which may include an affidavit) should include a statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child (which was listed in proposed 23.113(d)(10)). *See* FR § 23.113(d). This information is appropriate under ICWA section 1922. The final rule separately lists additional information (which was listed in PR §§ 23.113(c)(1)–(10)), that should be included in the petition or accompanying documents. Inclusion of these items is a recommended practice and, as a commenter noted, the "gold standard" for ICWA implementation.

Comment: A commenter suggested incorporating some of the requirements of the Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) section 209 regarding determination of a child's residence or domicile, where the child has been living for the past 5 years, and prior court proceedings.

Response: This rule addresses implementation of ICWA and does not address implementation of UCCJEA, so it does not include such requirements.

Comment: A commenter suggested adding a requirement in PR § 23.113(d)(3) that the petition include efforts to locate extended family members.

Response: The final rule does not add the requested requirement because it is not required by the statute; however, it is a recommended practice to make efforts to locate extended family members as soon as possible.

Comment: A commenter suggested amending PR § 23.113(d)(3) to require the petition to include a statement that if the domicile or residence of the parents or Indian custodian is unknown, that a detailed description of the efforts to identify them, including notice to the Tribal social services agency, submission of an affidavit of service by publication, and other avenues such as the Tribal enrollment office or posting on the Tribal bulletin board or newsletter, for parents who are hard to locate.

Response: The final rule states that the petition or accompanying documents should include a description of the steps taken to locate and contact the child's parents, custodians and Tribe about any emergency proceeding, but does not specify the detail suggested by the commenter.

Comment: A commenter expressed concern that requiring a factual determination on the need for continued removal at every hearing may result in fewer protections for parents because a full evidentiary hearing for the emergency hearings would give States cause to extend the deadline for the first hearing. For this reason, the commenter suggested deleting PR § 23.113(e).

Response: Because of the statutory requirement to "insure" that emergency proceedings terminate "immediately" when the emergency has ended, the State court (and agency) have a continuing obligation under section 1922 to evaluate whether the emergency situation has ended. The court therefore needs to revisit that issue at each opportunity. The Department does not agree that this will result in fewer protections for parents because an assessment of the need for continued removal will occur at each hearing, meaning the parent has the opportunity for return of the child at each hearing.

Comment: A few commenters suggested rewording PR § 23.113(g) to provide that the placement must terminate as soon as the Tribal court issues an order for the placement to terminate, instead of when the Tribe exercises jurisdiction. The commenters stated that this would better allow the Tribe the opportunity to decide whether the placement should continue.

Response: A State court may terminate an emergency proceeding by transferring the child to the jurisdiction of the appropriate Indian Tribe. *See* 25 U.S.C. 1922; FR § 23.113(b)(4)(ii). The child may stay in a particular placement if the Tribe chooses to keep that placement upon exercising jurisdiction.

Comment: A commenter suggested the placement terminate as soon as the emergency no longer exists or a solid safety plan is in place, in which case dismissal may be appropriate at an early stage.

Response: A safety plan may be a solution to mitigate the situation that gave rise to the need for emergency removal and placement and allow the State to terminate the emergency proceeding. If the State court finds that the implementation of a safety plan means that emergency removal or placement is no longer necessary to prevent imminent physical damage or harm, the child should be returned to the parent or custodian. The State may still choose to initiate a child-custody proceeding, or may transfer the case to the jurisdiction of the Tribe.

Comment: A commenter stated that requiring termination of the emergency removal as soon as the imminent physical damage or harm no longer exists is unworkable in Montana because Montana requires parents to work on treatment plan tasks and make progress before the State will return the children. The commenter stated that the proposed rule provision subverts that Montana process and allows for unlimited challenge to the State's out-of-home placement.

Response: Under the statute, the emergency removal and placement must end when no longer necessary to prevent imminent physical damage or harm to the child. If the court finds that the parent must make progress on specified case plan items in order to prevent imminent physical damage or harm to the child, that is permissible under ICWA. The State agency may also promptly initiate a child-custody proceeding with all the attendant ICWA protections.

Comment: A few State commenters stated that requiring an agency to expeditiously "initiate a child-custody proceeding subject to the provisions of ICWA" as one of the options following termination of emergency removal is confusing because the emergency removal petition is considered an initiation of a child-custody proceeding. Other commenters stated that the ICWA proceeding should be initiated at the same time as the emergency proceeding, because emergency proceedings are generally only subject to State law.

Response: The statute treats emergency proceedings, at section 1922, differently from other child-custody proceedings. The final rule clarifies "emergency proceedings" to be emergency removals and emergency placements, which are proceedings distinct from "child-custody proceedings" under the statute. While States use different terminology (*e.g.,* preliminary protective hearing, shelter hearing) for emergency hearings, the regulatory definition of emergency proceedings is intended to cover such proceedings as may be necessary to prevent imminent physical damage or harm to the child. The emergency proceedings should be as short as possible and may end with the initiation of a child-custody proceeding subject to the provisions of ICWA (*e.g.,* the notice required by § 23.111, time limits required by § 23.112).

Comment: One commenter stated that the provision at PR § 23.113(h) requiring a child to be returned to a parent within one business day may not be possible in parts of Alaska in which villages can be weathered out for days.

Response: The statute provides that emergency removal and placement must end when no longer necessary to prevent imminent physical damage and harm. We understand that it may not be possible to return a child within one business day.

7. Emergency Proceedings—Miscellaneous

Comment: A few commenters suggested replacing the term "emergency physical custody" with "emergency placement" for consistency.

Response: The final rule incorporates this suggestion.

I. Improper Removal

FR § 23.114 implements section 1920 of the statute. It requires that, where a court determines that a child has been improperly removed from custody of the parent or Indian custodian or has been improperly retained in the custody of a petitioner in a child-custody proceeding, the court should return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger. 25 U.S.C. 1920.

Comment: A commenter stated that PR § 23.114(b) should refer to the standard in ICWA section 1920 ("substantial and immediate danger or threat of danger") specific to improper removals rather than the standard in 25 U.S.C. 1922 ("imminent physical damage or harm") specific to emergency removals. A commenter requested adding "Indian" before "custodian."

Response: The final rule incorporates these suggested changes to more closely reflect the statutory language. *See* FR § 23.114(b).

Comment: A few State commenters stated that the proposed rule's provisions on improper removal exceed ICWA and are beyond BIA's authority. One stated there is no standard for when a person can request a stay and demand an additional hearing to determine if removal was improper, and the other stated that requiring an immediate stay creates a substantive requirement that may unreasonably preclude the State protective services from securing an order of protection from the court.

Response: The final rule replaces the requirement for the State court to stay the proceedings with a requirement that the State court expeditiously make the determination as to whether the removal was improper. *See* FR § 23.114(a).

Comment: A commenter suggested rewording this section to require the court to terminate the proceeding and return the child if any party asserts improper removal or the court has reason to believe the removal was improper due to expert testimony not having been presented at the time of removal.

Response: The final rule does not incorporate this suggestion because the statute does not require expert testimony at the time of removal.

J. Transfer to Tribal Court

25 U.S.C. 1911(b) provides for the transfer of any State court proceeding for the foster-care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's Tribe. This provision recognizes that Indian Tribes maintain concurrent jurisdiction over child-welfare matters involving Tribal children, even off of the reservation. In enacting ICWA, Congress recognized that child-custody matters involving Tribal children are "essential tribal relation[s]," *see Williams* v. *Lee,* 358 U.S. 217 (1959), that fall squarely within a Tribe's right to govern itself. H.R. Rep. No. 95–1386, at 14–15. Congress also recognized that State courts were often not well-informed about Indian culture, and may not correctly assess the standards of child abuse and neglect in this context. *Id.* at 11. Tribal-court jurisdiction remedies this problem.

Tribal courts are also well-equipped to handle child-welfare proceedings, including those involving non-member parents. Congress has repeatedly sought to strengthen Tribal courts, and has recognized that Tribal justice systems are an essential part of Tribal governments. 25 U.S.C. 3601(5), 3651(5); *see also* S. Rep. No. 103–88, at 8 (1993) (noting that 25 U.S.C. 3601(6) "emphasize[s] that tribal courts are permanent institutions charged with resolving the rights and interests of both Indian and non-Indian individuals"); Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. 450, 450a (providing funding and assistance for Tribal government institutions, including courts); Indian Tribal Justice Act of 1993, 25 U.S.C. 3601 *et seq.* (establishing the Office of Tribal Justice Support within the Bureau of Indian Affairs and authorizing up to $50 million annually to assist Tribal courts).

The final rule reflects 25 U.S.C. 1911(b)'s requirement that a child-custody proceeding be transferred to Tribal court upon petition of either parent or the Indian custodian or the Indian child's Tribe, except in three circumstances: (1) where either parent objects; (2) where the Tribal court declines the transfer; or (3) where there is good cause to the contrary. The first two exceptions are fairly straightforward. The third exception is not defined in the statute, and in the Department's experience, has in the past been used to deny transfer for reasons that frustrate the purposes of ICWA. The legislative history indicates that this provision is intended to permit a State court to apply a modified doctrine of *forum non conveniens,* in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the Tribe are fully protected. *See* H.R. Rep. No. 95–1386, at 21. The Department finds that this indicates that Congress intended for the transfer requirement and its exceptions to permit State courts to exercise case-by-case discretion regarding the "good cause" finding, but that this discretion should be limited and animated by the Federal policy to protect the rights of the Indian child, parents, and Tribe, which can often best be accomplished in Tribal court. Exceptions cannot be construed in a manner that would swallow the rule.

Accordingly, the final rule does not mandate or instruct State courts as to how they must conduct the good-cause analysis. Rather, the final rule provides certain procedural protections, and also

identifies a limited number of considerations that should not be part of the good-cause analysis because there is evidence Congress did not wish them to be considered, or they have been shown to frustrate the application of 25 U.S.C. 1911(b) and the purposes of ICWA, or would otherwise work a fundamental unfairness. FR § 23.118. Specifically:

- The final rule prohibits a finding of good cause based on the advanced stage of the proceeding, if the parent, Indian custodian, or Indian child's Tribe did not receive notice of the proceeding until an advanced stage. This protects the rights of the parents and Tribe to seek transfer where ICWA's notice provisions were not complied with, and thus will help to promote compliance with these provisions. It also ensures that parties are not unfairly advantaged or disadvantaged by noncompliance with the statute.
- The final rule prohibits a finding of good cause based on whether there have been prior proceedings involving the child for which no petition to transfer was filed. ICWA clearly distinguishes between foster-care and termination-of-parental-rights proceedings, and these proceedings have significantly different implications for the Indian child's parents and Tribe. There may be compelling reasons to not seek transfer for a foster-care proceeding, but those reasons may not be present for a termination-of-parental-rights proceeding.
- The final rule prohibits a finding of good cause based on predictions of whether the transfer could result in a change in the placement of the child; this has been altered slightly from the proposed rule, which could be read to assume that a State court could know or predict which placement a Tribal court might consider or ultimately order. As an initial matter, these predictions are often incorrect. Like State courts, Tribal courts and agencies seek to protect the welfare of the Indian child, and would consider whether the current placement best meets that goal. Further, the transfer inquiry should not focus on predictions or speculation regarding how the other tribunal might rule regarding placement or any other matter. ICWA recognizes that Tribal courts are presumptively well-positioned to adjudicate child-custody matters involving Tribal children. Tribal courts will evaluate each case on an individualized basis to determine whether a change in placement is in the interests of the child, and if so, how to effect the change in placement with the minimum disruption to the child.
- The final rule prohibits a finding of good cause based on the Indian child's perceived cultural connections with the Tribe or reservation. Congress enacted ICWA in express recognition of the fact that State courts and agencies were generally ill-equipped to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. 25 U.S.C. 1901(5). It would be inconsistent with congressional intent to permit State courts to evaluate the sufficiency of an Indian child's cultural connections with a Tribe or reservation in evaluating a motion to transfer.
- The final rule prohibits consideration of any perceived inadequacy of judicial systems. This is consistent with ICWA's strong recognition of the competency of Tribal fora to address child-custody matters involving Tribal children. It is also consistent with section 1911(d)'s requirement that States afford full faith and credit to public acts, records, and judicial proceedings of Tribes to the same extent as any other entity.
- The final rule prohibits consideration of the perceived socioeconomic conditions within a Tribe or reservation. In enacting ICWA, Congress found that misplaced concerns about low incomes, substandard housing, and similar factors on reservations resulted in the unwarranted removal of Indian children from their families and Tribes. *E.g.,* H.R. Rep. at 12. Congress also found that States "have often failed to recognize the essential Tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families." *See* 25 U.S.C. 1901(5). These factors can introduce bias into decision-making and should not come into play in considering whether transfer is appropriate.

State courts retain the ability to determine "good cause" based on the specific facts of a particular case, so long as they do not base their good cause finding on one or more of these prohibited considerations.

1. Petitions for Transfer of Proceeding

Comment: Several commenters stated that the proposed rule's provisions on transfer exceed statutory authority by allowing a transfer to Tribal court in any child-custody proceeding, whereas ICWA section 1911(b) explicitly addresses transfer only for foster-care placement and termination-of-parental-rights proceedings. Another commenter claimed there is authority to extend the transfer provisions to preadoptive and adoptive proceedings because such proceedings may occur as part of termination-of-parental-rights proceedings, transfer may be appropriate to provide a higher standard of protection of the rights of the parent or Indian custodian under ICWA section 1921, and ICWA section 1919 allows States and Tribes to enter into agreements to transfer jurisdiction of any child-custody proceeding on a case-by-case basis. Another commenter asserted that ICWA section 1911 applies to both involuntary and voluntary proceedings, and that, in any case, the biological parent can veto a transfer so that he or she is not forced into a forum foreign to him or her.

Response: Like the statute, the final rule addresses transfer of foster-care-placement and termination-of-parental-rights proceedings. *See* FR § 23.115; 25 U.S.C. 1911(b). And, like the statute, the final rule's provisions addressing transfer apply to both involuntary and voluntary foster-care and termination-of-parental-rights proceedings. This includes termination-of-parental-rights proceedings that may be handled concurrently with adoption proceedings. Parties may request transfer of preadoptive and adoptive placement proceedings, but the standards for addressing such motions are not dictated by ICWA or these regulations. Tribes possess inherent jurisdiction over domestic relations, including the welfare of child citizens of the Tribe, even beyond that authority confirmed in ICWA. *See, e.g., Holyfield,* 490 U.S. at 42 (1989) ("Tribal jurisdiction over Indian child-custody proceedings is not a novelty of the ICWA."); *Fisher* v. *Dist. Court,* 424 U.S. 382, 389 (1976) (pre-ICWA case recognizing that a Tribal court had exclusive jurisdiction over an adoption proceeding involving Tribal members residing on the reservation). Thus, it may be appropriate to transfer preadoptive and adoptive proceedings involving children residing outside of a reservation to Tribal jurisdiction in particular circumstances.

Comment: Several commenters supported the provision at PR § 23.115 allowing for motions to transfer to be made orally, stating that oral motions are already allowed by court rules and that by explicitly allowing for oral motions in the rule removes a hurdle to making a motion, particularly for parties not represented by counsel.

Response: The final rule retains the provision allowing for the petition to transfer to be made orally because nothing in the Act indicates that a written document would be required. FR § 23.115(a). For the purposes of this rule, an oral petition would be considered "filed" when made on the record.

Comment: One commenter requested specific language to clarify that parents may request transfer to a Tribal court even if the parents live off reservation.

Response: Nothing in the statute or rule limits the right to request transfer to parents who live on reservation. As confirmed by ICWA, Tribes retain authority over the welfare of Tribal children, even when they reside outside of a reservation.

Comment: A few commenters stated their support of the provision providing that transfer can be requested at any stage. A few commenters opposed this provision, stating that a time limit should be imposed. Commenters had various suggestions for time limits to impose on requests for transfer, ranging from, for example, within 30 days of notification to the parents, Indian custodians, and Tribe, to within 6 months of such notification. One commenter suggested a time limit that would allow transfer until the order for foster-care placement or termination of parent rights has been entered. Commenters in support of imposing time limits on transfer stated that:

- Congress implied there is a time limit because, while ICWA section 1911 addresses both transfer and intervention, it allows only for intervention "at any point in a proceeding;"
- ICWA does not allow for transfer after termination of parental rights, so time limits should prevent transfer of an appeal of a foster-care order or termination-of-parental-rights order;
- When jurisdiction is transferred to a Tribe, the Tribe often changes the child's placement. If a child was in the previous placement for a long time and has developed attachments to that placement, this can disrupt those attachments;
- The Supreme Court warned in *Adoptive Couple* v. *Baby Girl* that parties should not be able to play the "ICWA trump card at the eleventh hour;"
- Allowing transfer at any time rewards "deadbeat" parents who request transfer after a child has been in a placement for an extended period of time, causing extreme trauma for the child for no reason.

Response: The final rule does not establish a deadline or time limit for requesting transfer. It provides that the right to request a transfer is available at any stage in each proceeding. This adheres most closely to the statute, which does not establish any time limits for seeking transfer. Further, the statute indicates Congress's understanding that Tribes would have presumptive jurisdiction over Indian children domiciled outside of a reservation. *See* 25 U.S.C. 1911(b) (the State court shall transfer such proceeding to the jurisdiction of the Tribe unless certain conditions are present); *Holyfield,* 490 U.S. at 49. Establishing time limits for seeking transfer would be contrary to this intent.

The Department's conclusion is also consistent with the general approach that courts take to deciding transfer motions. For example, motions to change venue pursuant to 28 U.S.C. 1404 (the modern version of forum non conveniens where the alternative forum is within the territory of the United States) may be granted at any time during the pendency of the case. *See, e.g., Chrysler Credit Corp.* v. *Country Chrysler, Inc.,* 928 F.2d 1509, 1516 (10th Cir. 1991); *see also* H.R. Rep. No. 95–1386, at 21 (describing ICWA's transfer provision as a "modified doctrine of *forum non conveniens*"). The mere passage of time is not alone a sufficient reason to deny a motion to transfer pursuant to 28 U.S.C. 1404; nor is it for 25 U.S.C. 1911(b).

The Department is cognizant that child-custody matters involve children, for whom there may be special considerations related to the passage of time and the need to minimize disruptions of placements. As discussed elsewhere, the Department disagrees that transfer to Tribal jurisdiction will necessarily entail unwarranted disruption of an Indian child's placement in any particular case. Tribes seek to protect the welfare of the children in their jurisdiction, which may mean in any particular case that a current placement will be temporarily or permanently maintained. Under any circumstances, the Department finds that the strong Federal policy in support of Tribal jurisdiction over Tribal children weighs strongly in favor of no time limits for motions to transfer.

There are also compelling practical reasons for the Department's decision. Although a commenter expressed concern about parents strategically waiting to seek transfer to Tribal court, evidence suggests that opponents of transfer can also behave strategically to thwart transfer. *See, e.g. In the Interest of Tavian B.,* 874 N.W.2d 456, 460 (Neb. 2016) (noting that State dismissed its motion to terminate parental rights to avoid transfer, leaving an Indian child suspended in uncertainty).

And, the Department is aware of child-custody proceedings in which the Tribe intervenes, but does not immediately move to transfer the case because maintaining State-court jurisdiction appears to hold out the most promise for reunification of the family. This may be for any number of reasons, including geographic considerations, or because the State is able to provide specialized services to the parents or child that the Tribe cannot. *See, e.g., In re Interest of Zylena R.,* 825 N.W.2d 173, 183 (Neb. 2013) (discussing that "a Tribe may have no reason to seek transfer of a foster placement proceeding" but "once the goal becomes termination of parental rights, a Tribe has a strong cultural interest in seeking transfer of that proceeding to tribal court."). A parent may defer moving to transfer a case for similar reasons. The Tribe or parent rationally decides that seeking transfer of a foster-care proceeding would not support the goal of reunification of the Indian child with her parent(s). But once the State abandons this goal, and seeks to terminate parental rights, the Tribe's or parent's calculus might reasonably change. If time limits were imposed for moving to transfer, Tribes might be forced to seek transfer early in a foster-care proceeding, even if that outcome does not facilitate reunification. The Department believes that this would undermine the goals and intent of ICWA, and not produce the best outcomes for Indian children.

For these reasons, the final rule provides that a request for transfer may be made at any stage within each proceeding. *See* FR § 23.115(b). A request for transfer may be denied for "good cause," however, which is discussed elsewhere.

Comment: Several commenters stated that the provision at PR § 23.115(b) providing the right to transfer with "each proceeding" is unclear as to whether it means each child-custody proceeding or each hearing. One commenter supported just stating "any stage of the proceeding" as in PR § 23.115(c) instead.

Response: The final rule clarifies in the definitions that, as relevant here, a "proceeding" is a foster-care-placement or termination-of-parental-rights proceeding, and that each proceeding may include several "hearings," which are judicial sessions to determine issues of fact or of law. *See* FR § 23.2. The final rule permits a party to request transfer at any stage in each proceeding. *See, e.g., In re Interest of Zylena R.,* 825 N.W.2d at 182–84.

Comment: One commenter suggested deleting PR § 23.115(b) and (c) as superfluous.

Response: The final rule deletes proposed paragraph (b) because paragraph (a) already captures that the right to transfer arises with each

proceeding, and moves proposed paragraph (c) to final paragraph (b). The final paragraph (b) is necessary to emphasize that the request to transfer may be made at any stage. *See* FR § 23.115.

Comment: A commenter suggested revising PR § 23.115(a) to refer to "jurisdiction of the Tribe" rather than "Tribal court" because in some cases the Tribe may not have a Tribal court.

Response: The final rule incorporates this suggested revision because it more closely matches the statute. *See* FR § 23.115.

Comment: A commenter requested adding the guardian ad litem and child (at a minimum age) to those who may request transfer to Tribal court.

Response: The statute allows petition for transfer by the Indian child's parent, Indian custodian or Tribe only. The statute does not expressly provide for the child to request transfer. *See* 25 U.S.C. 1911(b). State courts, however, may permit motions to transfer from a guardian ad litem and child.

2. Criteria for Ruling on Transfer

Comment: One commenter noted the provision at PR § 23.116 appeared in the 1979 guidelines and is necessary where courts may otherwise deny transfer based on the judge's belief that transfer is not in the child's best interests. A few commenters suggested adding that Tribal jurisdiction is presumed in all ICWA cases because Tribes have concurrent and presumptive jurisdiction when an Indian child is domiciled outside of a reservation. A few commenters suggested stating that the best interests of the Indian child presumptively favor granting the petition for transfer to improve ICWA compliance.

Response: The final rule, like the proposed rule, states that State courts must grant a petition to transfer unless one or more of three criteria are met. This comports with the statute, which states that a State court "shall transfer" unless these specified conditions are present. The final rule does not add the suggested additions because they are not necessary to implement ICWA's transfer provision, which already requires transfer except in specified circumstances.

Comment: A few commenters suggested clarifying that a parent's objection to transfer must be in writing and the consequences of the objection must be explained to the parent, to ensure an informed decision.

Response: The final rule does not impose the suggested limitations on parental objections; however, State courts must document the objection. *See* FR § 23.117(a).

Comment: A few commenters suggested clarifying that a parent whose parental rights have been terminated may not object.

Response: If a parent's parental rights have been terminated and this determination is final, they would no longer be considered a "parent" with a right under these rules to object.

Comment: One Tribal commenter stated that the regulations fail to respond to the ambiguity in section 1911(b), which requires transfer "absent objection by either parent" but has been incorrectly interpreted to require transfer "provided that a parent does not object." This commenter provided several reasons for why ICWA's language does not require a court to deny transfer if a parent objects and stated that the rule should clarify that the court still has the discretion to transfer even if a parent objects.

Response: The final rule mirrors the statute in requiring transfer in the absence of a parent's objection. The House Report states "Either parent is given the right to veto such transfer." H.R. Rep. No. 95–1386, at 21.

Comment: A commenter suggested that the guardian ad litem (where both parents are unfit or unable to consider the welfare of the child) or child himself should have the ability to object to transfer. Another commenter stated that if the child is permitted to object, there should be a minimum age requirement.

Response: The statute specifically addresses objection by "either parent" only; however, nothing prohibits the State court from considering the objection of the guardian ad litem or child himself in determining whether there is good cause to deny transfer, pursuant to the criteria identified in FR § 23.118.

3. Good Cause To Deny Transfer

Comment: Several commenters opposed the proposed rule's approach of defining what factors courts may not consider in determining good cause to deny transfer (*see* PR § 23.117), saying it substitutes BIA's judgment for the courts' judgment, and denies courts the ability to consider every relevant aspect of an individual child's case. One commenter stated that it limits the "good cause" analysis to nothing more than a convenient forum analysis, and that it is beyond BIA's authority to limit the analysis in this way. Another commenter noted that the proposed rule could be interpreted to require a court to transfer to Tribal court every case involving young Indian children where parental rights were terminated.

Several commenters stated that limiting the discretion of State courts to deny transfer of a case to the Tribe was particularly helpful, and clarifies that Tribes have "presumptive jurisdiction" in child-welfare cases. Many commenters recounted their experiences with State courts inappropriately finding "good cause" to deny transfer based on the State court believing the Tribe will make a decision different from the one it would make, because of reliance on bonding with the foster parents, bias against Tribes and Tribal courts, or other reasons, and asked that the rule help prevent denials on this basis in the future. One commenter noted that State courts sometimes employ a "best interests of the child" analysis in determining whether to transfer jurisdiction, but stated that the question of whether to transfer is a jurisdictional one that should not implicate the best interests of the child, because ICWA recognizes that Tribal courts are fully competent to determine a child's best interests. A few commenters stated their support of the proposed rule's statement that the socioeconomic status of any placement relative to another should not be considered as a basis for good cause to deny transfer because such reasoning has been used in the past.

Response: The limits imposed by the final rule are consistent with the statutory language and congressional intent in enacting ICWA. Congress directed that State courts "shall transfer" proceedings to the jurisdiction of the Tribe unless specified conditions were met. This indicates that Congress intended transfer to be the general rule, not the exception. Congress also intended ICWA, and the transfer provision in particular, to protect the "rights of the child as an Indian" as well as the rights of the Indian parents or custodian and the Tribe. H.R. Rep. No. 95–1386, at 21. If the "good cause" provision is interpreted broadly, or in ways that could permit decision-making that assumes the inferiority of the Tribal forum, congressional intent would be undermined. In keeping with congressional intent, the Department has imposed certain limits on what the court may consider in determining "good cause" to promote consistency in application of the Act and effectuate the Act's purposes. These limits focus on those factors that there is evidence Congress did not wish to be considered, or that have been shown to frustrate the application of 25 U.S.C. 1911(b). State courts retain discretion to determine "good cause," so long as they do not base their good cause finding on one or more of these prohibited considerations.

Comment: A few commenters noted that the 1979 Guidelines identified what State courts could consider in determining whether good cause exists, whereas the regulations now identified what a State court may not consider, leaving open the question of what would qualify as good cause. Several commenters stated that the rule could be strengthened by providing a list of examples of what good cause to deny transfer may resemble. Commenters disagreed on whether the list of examples should be non-exhaustive (to allow for situations not contemplated in the examples) or exhaustive. A few commenters suggested that not stating what may constitute good cause may expand courts' ability to create good cause.

Response: The regulations take the approach of listing what courts must not consider, for the reasons listed above. *See* FR § 23.118. ICWA's legislative history indicates the good cause provision was intended to permit a State court to apply a modified (*i.e.,* limited, narrow) version of the *forum non conveniens* analysis. H.R. Rep. No. 95–1386, at 21. The Department believes that it is most consistent with congressional intent, and will best serve the purposes of ICWA, if State courts retain limited discretion to determine what constitutes good cause to deny transfer. Reliance on the factors identified in the rule, however, would be inconsistent with the purposes of ICWA, and thus is not permitted.

Comment: Several commenters opposed removing "advanced stage" as a "good cause" basis to deny transfer. Among the reasons commenters stated for this opposition were the following:

- The rule radically departs from the prior guidelines, which explicitly allowed consideration of whether the proceeding was at an advanced stage;
- State courts should be able to consider whether the proceeding is at an advanced stage for good policy reasons—to prevent forum shopping (*i.e.,* waiting until the ruling becomes clear and then, if it is unfavorable, seeking transfer) and to prevent harm to the child (from disruption in placement and delay in permanency);
- Timeliness is a proven weapon against disruption caused by negligence or obstructionist tactics;
- Not allowing consideration of whether the case is at an advanced stage violates the Indian child's right to permanency;
- The rule is inconsistent with ASFA-mandated permanency deadlines, which have been the basis of policy established by appellate courts in dozens of states to interpret "good cause" under advanced stage principles;
- State courts have overwhelmingly agreed good cause may exist if the proceeding is at an advanced stage, but merely disagreed regarding what is "advanced stage," so the rule will increase litigation and delays in case resolution;
- It was not Congress's intent to authorize late transfers and congressional intent has not changed;
- Congress could have expressly allowed transfer at any point in the proceeding in section 1911(b), as it did for intervention in section 1911(c), but it did not;
- Late transfers are more disruptive than late interventions, because a transfer may require retrying the entire case whereas problems resulting from a late intervention are primarily those of the intervener;
- If courts are precluded from considering the "advanced stage" they should at least be able to consider as good cause any "unjustifiable delay" in requesting transfer; otherwise, the rule incentivizes delay until the outcome in the original proceeding becomes clear.

Several commenters supported restricting State courts from considering whether a case is at an "advanced stage" as a "good cause" basis to deny transfer. Among the reasons stated for this support were the following:

- ICWA does not specify any time limits on transferring to Tribal court;
- The 1979 Guidelines' provision allowing consideration of the "advanced stage of the proceedings" as good cause to deny transfer caused confusion among courts and resulted in disparate interpretations because there is no consistent understanding of "advanced stage" across the States (*e.g.,* one court held just over 2 months into a proceeding was "advanced stage");
- Each of the four ICWA-defined proceedings should be reviewed anew, so that a petition to transfer filed late in a foster-care proceeding would be considered early for an adoptive placement and State proceedings do not perfectly map to the ICWA-defined proceedings;
- There are a myriad of reasons a Tribe may wait to transfer a case to their own jurisdiction, including allowing sufficient time to do the work necessary to determine whether to transfer, or waiting until the termination of parental rights stage because the Tribe works with the State or monitors the case before that time to promote family reunification.

One commenter shared a story of a State court denying transfer on the basis that the case was at an advanced stage, even though the Tribe did not learn about the case until that stage.

Response: While the 1979 guidelines explicitly allowed consideration of whether the case was at an advanced stage as good cause to deny transfer, the final rule prohibits reliance on the advanced stage of the proceeding in circumstances where the Indian parent, custodian, or Tribe did not receive notice until the proceeding was at an advanced stage. The Department is including this requirement to address circumstances in which denying transfer is unfair, and undermines ICWA's goals. Specifically, as pointed out by a commenter, there have been situations where a parent, Indian custodian, or the child's Tribe did not receive timely notice, and then seeks to transfer the proceeding shortly after receiving notice, but the State court denies the petition to transfer based on the case being at an "advanced stage." The final rule ensures that parents, custodians, and Tribes who were disadvantaged by noncompliance with ICWA's notice provisions may still have a meaningful opportunity to seek transfer. This provision should also serve as an incentive for States to provide the required notice promptly. *See* FR § 23.117(c).

While ICWA does not establish a time limit on the opportunity to transfer or expressly allow for transfer at any point in the proceeding, it does expressly allow for intervention at any point in the proceeding. One of the rights of an intervenor is to seek transfer of the proceeding. To effectuate rights to notice in section 1912(a) and rights to intervene in section 1911(c), State courts should allow a request for transfer within a reasonable time after intervention.

The final rule also clarifies that "advanced stage" refers to the proceeding, rather than the case as a whole. Each individual proceeding will culminate in an order, so "advanced stage" is a measurement of the stage within each proceeding. This allows Tribes to wait until the termination-of-parental-rights proceeding to request a transfer to Tribal court, because the parents, Indian custodian, and Tribe must receive notice of each proceeding. The Department recognizes that it is often at the termination-of-parental-rights stage that factors that may have dissuaded a Tribe from taking an active role in the case (such as the State's efforts to reunite a child with her nearby parent) change in ways that may warrant reconsidering transfer of the case. *See, e.g., Zylena R.,* 825 N.W.2d at 183 (Neb. 2013).

Comment: A State commenter stated that litigation over whether a State court may consider, in its good cause determination, whether the proceeding is at an "advanced stage" is causing delays, which are, in turn, delaying permanency for children and putting the State in a position of not being able to meet required permanency timelines.

Response: The final rule aims to reduce litigation over determinations as to whether a proceeding is at an "advanced stage" by establishing clearer standards for when this factor may not be considered. Expeditious transfer does not delay permanency for a child.

Comment: A few commenters opposed not including the child's contacts with the reservation as a basis for good cause to deny transfer, noting that the 1979 Guidelines included this factor and that transferring a child's case to a court with which the child has no connection does not serve the child well. Another commenter supported removing this provision noting that young children would not have evidence of involvement with a Tribe at that age anyway.

Response: As noted above, the final rule establishes that the court must not consider a child's cultural connections with the Tribe or reservation in determining whether there is good cause to deny transfer. State courts are ill-equipped to make this assessment, and young children are unlikely to have had the opportunity to develop such connections.

Comment: Several commenters opposed restricting State courts from considering whether there will be a change in placement, for the following reasons:

- Restricting courts from considering whether there will be a change in placement effectively restricts the court from considering the impact on the child of the transfer;
- Legally, it is impossible to separate jurisdiction and custody, because once jurisdiction is transferred to a Tribe, only the Tribe has jurisdiction over the child's custody;
- Transferring jurisdiction to a Tribe but retaining the child's placement raises legal and practical questions about whether the court has jurisdiction over caregivers, to monitor the care provided to the child, and to determine if the child is subject to new abuse or neglect;
- Many courts have held that the child's best interests may be considered in determining whether good cause to deny transfer exists;
- Not allowing the court to consider whether a transfer would result in a placement change violates the child's equal protection rights and is detrimental to the child;
- Best practices in child-welfare proceedings direct that children should have minimal changes in placement.

Response: The final rule provides that the State court must not consider, in its decision as to whether there is good cause to deny transfer to the Tribal court, whether the Tribal court could change the child's placement. This is an inappropriate consideration because it would presume a decision that the Tribal court has not yet made. *See* FR § 23.118(c)(3). A transfer to Tribal court does not automatically mean a change in placement; the Tribal court will consider each case on and individualized basis and determine what is best for that child. Some commenters erroneously assume that Tribal courts and social services agencies do not follow "best practices in child-welfare proceedings" regarding changes in a child's placement.

The Department also declines to accept the comments recommending that State courts be permitted to consider whether transfer could result in change of placement because the Department has concluded it is not appropriate to grant or deny transfer based on predictions of how a particular Tribal court might rule in the case. *See e.g., Piper Aircraft Co.* v. *Reyno,* 454 U.S. 235,261 (1981) (holding that the "Court of Appeals erred in holding that the possibility of an unfavorable change in law bars dismissal on the ground of *forum non conveniens*").

For similar reasons, the Department does not find the equal protection concerns raised by commenters compelling. The transfer decision should focus on which jurisdiction is best-positioned to make decisions in the child's custody proceeding. ICWA—and the Department's experience—establishes that Tribal courts are presumptively well-positioned to address the welfare of Tribal children. State courts retain limited discretion under the statute but the choice between two court systems does not raise equal protection concerns. *See, e.g. United States* v. *Antelope,* 430 U.S. 641 (1977).

Finally, the Department does not find these concerns compelling because even if a child-custody proceeding remains in State court, the State court must still follow ICWA's placement preferences (or find good cause to deviate from them). If there is an extended family or Tribal placement that the parties believe that the Tribal court is likely to consider and perhaps choose, the State court must consider that placement as well.

Comment: One commenter suggested prohibiting consideration of whether transfer "could" result in a change in placement, rather than "would" result because it can be the mere "fear" by a State-court judge of the potential change that leads to denial of transfer.

Response: The final rule incorporates this suggestion because the State court will not know whether, once the proceeding is transferred, the Tribal court would decide to change the placement.

Comment: A commenter noted that the issue in deciding whether there is good cause to deny transfer is not what is best for the child, but who should be making decisions about what is best for the child. This commenter notes that a presumption by State courts that the Tribe cannot or will not act in a child's best interest was one of the reasons ICWA was initially passed.

Response: The Department agrees that ruling on a transfer motion should not involve predicting how Tribal courts may rule in a particular case.

Comment: Several commenters stated their concern that the proposed rule removes from State-court judges the ability to consider the child's best interests in determining whether a case should be transferred. One commenter stated that this is an unwarranted expansion of Tribal authority over children not domiciled in reservations and has the potential to cause grave harm to children.

In contrast, several other commenters suggested the rule should explicitly prohibit State courts from applying the traditional "best interests of the child" analysis in determining whether there is good cause to deny transfer to the Tribe because: (1) This prohibition was included in the Guidelines; (2) ICWA establishes the placement preferences as being in the child's best interest; and (3) leaving best interests to be argued undermines ICWA's goal to overcome bias and determinations based on lack of knowledge of Tribes and Indian children. A few commenters stated that a best interests inquiry is inconsistent with the presumption of Tribal jurisdiction and recognition of Tribal courts as fully competent to protect an Indian child's welfare. Others stated that the regulations establish that transfer is presumptively in the child's best interests.

A commenter suggested inserting a "best interests" analysis that includes consideration of the child's strong interest in having a connection to the child's Tribe, learning the child's culture, being part of the Tribal community, and developing a positive Indian identity. This commenter also requested adding language from the 1979 Guidelines stating that certain facts may indicate transfer is not in the best interests of the child (*e.g.,* if the child is part of a sibling group with non-Indian children).

Response: The final rule does not include a "best interests" consideration, but does provide other guidance. *See Zylena R.,* 825 N.W.2d at 183 (Neb. 2013) (best interests of child should not be a factor in determining whether there is good cause to deny a transfer motion); *In re A.B.,* 663 N.W.2d 625, 634 (N.D. 2003) (same, collecting cases). In general, the transfer determination should focus on what jurisdiction is best positioned to hear the case. The BIA guidelines also provide additional guidance regarding what factors are appropriate to consider in analyzing whether there is good cause to deny transfer.

Comment: A few commenters suggested the rule should establish a "clear and convincing" standard of evidence for a showing of good cause to deny transfer. The commenters stated that this standard would be appropriate to protect the Tribe's presumptive jurisdiction and promote consistency by preventing State courts from adopting a lesser standard. A few commenters stated that there should be no burden of proof specified for good cause to deny transfer.

Response: The statute does not establish the standard of evidence for the determination of whether there is good cause to transfer a proceeding to Tribal court. There is, however, a strong trend in State courts to apply a clear and convincing standard of evidence. *See, e.g., In re M.E.M.,* 635 P.2d 1313, 1317 (Mont. 1981); *In re Armell,* 550 N.E.2d 1060, 1064 (Ill. App. Ct. 1990); *In re S.W.,* 41 P.3d 1003, 1013 (Okla. Civ. App. 2002); *In re T.I.,* 707 N.W.2d 826, 833–34 (S.D. 2005); *Thompson* v. *Dep't. of Family Servs,* 747 S.E.2d 838 (2013); *People in Interest of J.L.P.,* 870 P.2d 1252 (Colo. 1994); *Matter of Adoption of T.R.M.,* 525 N.E.2d 298 (Ind. 1988); *In re A.P.,* 961 P.2d 706 (1998). The Department declines to establish a Federal standard of proof at this time, but notes the strong State court approach to this issue is compelling. States are already applying this standard and the Department will consider this issue for future action.

Comment: A few commenters suggested that the rule should allow only States, and not foster or putative adoptive parents, to advance a claim that there is good cause to deny transfer.

Response: Neither the statute nor the rule limit who may advance a claim that there is good cause to deny transfer. State laws or rules of practice may limit the rights of certain individuals to raise such an objection.

Comment: A few commenters suggested additional factors that a State court should not be permitted to consider, including the distance between the State court and any Tribal or BIA social service or judicial systems.

Response: The final rule does not add the suggested factor to the list of items a State court may not consider in determining good cause to deny transfer. If a State court considers distance to the Tribal court, it must also weigh any available accommodations that may address the potential hardships caused by the distance.

Comment: A commenter noted that some of PR § 23.117 reflects what is in current California law, particularly that a court may not consider the socioeconomic conditions and perceived inadequacy of Tribal systems, but asserts that PR § 23.117(c) and (d) would unduly restrict the State judge's discretion by not allowing the judge to consider exceptional circumstances relating to the Indian child's welfare.

Response: The regulation's limitations on what may be considered in the "good cause" determination do not limit State judges from considering some exceptional circumstance as the basis of good cause. However, the "good cause" determination whether to deny transfer to Tribal court should address which court will adjudicate the child-custody proceeding, not the anticipated outcome of that proceeding.

4. What Happens When Petition for Transfer Is Made

Comment: A few commenters noted that ICWA does not require the Tribe to affirmatively accept jurisdiction before transfer. One of these commenters suggested revising PR § 23.118(a) to mirror the statutory provision at section 1911(b) stating that the State court "shall transfer . . . subject to declination by the tribal court."

Response: The rule requires prompt notification to the Tribal court of the transfer petition, and permits a court to request a response regarding whether the Tribal court wishes to decline the transfer. FR § 23.116. As a practical matter, the State and Tribal courts must communicate regarding whether the Tribal court will accept jurisdiction in order to facilitate a smooth transfer and protect the Indian child and minimize disruption of services to the family. *See* FR § 23.119

Comment: A few commenters opposed the proposed provision allowing the Tribe 20 days to decide to accept transfer, noting that ICWA does not mandate a timeframe for Tribal response and that Tribal court scheduling may occur less frequently.

Response: The final rule deletes the proposed provision allowing the Tribe 20 days to decide to accept transfer, and instead specifies that the State court may request a timely response form the Tribe. The Tribe has a statutory right to decline (or accept) jurisdiction, without a statutorily mandated timeline. The Department, however, believes that Tribal courts will respond in a timely manner, recognizing the need for expediently addressing child-welfare issues.

Comment: A few commenters stated that the rule should require the State child-welfare agency to provide a copy of the agency file and additional listed information to the Tribe at no charge because such documentation is essential to appropriate care decisions and are often not provided to Tribes upon transfer. Another commenter stated that the rule should require the records to be sent to the Tribe at the time the Tribe is requested to make a decision to accept or decline a transfer, so it can make an informed decision.

Response: The final rule combines the provisions in the proposed rule regarding transmission of information from the State court to the Tribal court upon transfer, and provides that the State court should expeditiously provide to the Tribal court all records regarding the proceeding. *See* FR § 23.119. In addition, State agencies should share records with Tribal agencies as they would other governmental jurisdictions, presumably at no charge, under the ICWA provision requiring mutual full faith and credit be given to each jurisdiction's records. *See* 25 U.S.C. 1911(d).

Comment: A commenter stated that the rule should instruct the State court to follow procedures for transfer as dictated by the Tribe.

Response: Once the State court determines that it must transfer to Tribal court, the State court and Tribal court should communicate to agree to procedures for the transfer to ensure that the transfer of the proceeding minimizes disruptions to the child and to services provided to the family.

Comment: One Tribal commenter stated that the rule should require the State court to send notice of request to transfer to the designated ICWA office rather than the Tribal court because there may be multiple Tribal courts.

Response: As discussed above, if the State court does not have contact information for the Tribal court, it should contact the Tribe's ICWA officer.

K. Adjudication

1. Access to Reports and Records

ICWA and these rules require that access to certain records be provided to certain parties. For example, ICWA provides that each party to an ICWA foster-care-placement or termination-of-parental-rights proceeding has the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. 25 U.S.C. 1912(c); FR § 23.134. In order to comport with due process requirements, the final rule also extends this right to parties to emergency proceedings. FR § 23.134. Tribes that are parties to such proceedings are entitled to receipt of the documents upon which a decision may be based. In addition, the notice provisions of FR § 23.111(d) require that Tribes be provided the document by which the child-custody proceeding was initiated (as well as other information), and FR § 23.141 requires that States make available to an Indian child's Tribe the placement records for that child's child-welfare proceedings.

Comment: A few commenters suggested clarifying that the child's Tribe has the right to timely receipt of documents filed with the court or upon which a decision may be based. One stated that such access is necessary for the Tribe to determine whether to intervene. Two Tribes stated that States refuse them access to information on the basis of confidentiality.

Response: States cannot refuse to provide an Indian child's Tribe with access to information about that child's proceedings. ICWA expressly provides for Tribal access to certain records, and makes no exception for confidentiality concerns (which presumably are present in all child-custody proceedings). Tribes are sovereign entities that have concurrent jurisdiction over child-custody proceedings, and they should have the ability to review documents relevant to those proceedings. Further, the Indian Child Protection and Family Violence Protection Act addresses this concern, providing that State agencies that investigate and treat incidents of child abuse should provide information and records to Tribal agencies that need to know the information in performance of their duties to the same extent they would provide the information and records to Federal agencies. 25 U.S.C. 3205. Therefore, confidentiality generally is not a valid basis to withhold information and records to the Indian child's Tribe. The rule does not incorporate this provision because it is not unique to ICWA implementation.

Comment: One commenter stated the rule should clarify that Tribes have a right to both discovery and disclosure of every document, and should not be required to pay for photocopying of documents that other parties receive.

Response: State agencies must share records with Tribal agencies that are parties to child-custody cases as they would other parties and governmental entities. The rule does not, however, address payment of such charges, as the issue is not addressed in the statute.

Comment: One commenter requested the rule require States to allow Tribes at least three business days to review records.

Response: The statute does not require States to provide Tribes with a certain time period for reviewing records, but all parties should be provided sufficient time to review the records to allow for meaningful participation in the proceeding.

Comment: One commenter opposed PR § 23.119(b) (the court's decisions must be based only upon documents in the record), because it suggests that agreed orders entered into between the parties could not be off the record or ex parte, despite local practice and State statutory authority, and could overload State courts by requiring all cases to be heard on the record.

Response: ICWA requires clear and convincing evidence for foster-care placements and evidence beyond a reasonable doubt for termination of parental rights, each of which would necessarily require documentation in the record. This does not foreclose agreed orders, but the court must still make the statutorily required findings.

2. Standard of Evidence for Foster-Care Placement and Termination

a. Standard of Evidence for Foster-Care Placement

Comment: Several commenters supported PR § 23.121(a), establishing the standard of evidence applicable to foster-care placement. A few commenters suggested strengthening PR § 23.121(a) and (b) by changing "may not" to "must not" or "shall not" to make it more clearly mandatory. One commenter stated that while "may not" is the phrase used by the statute, it does not depart from the intent of ICWA to use "shall not."

Response: The final rule changes "may not" to "must not" as requested to clarify that the standard of evidence is mandatory.

Comment: Several commenters pointed out that PR § 23.121(a), establishing that the court may not order foster-care placement unless continued custody is likely to result in serious physical damage or harm to the child uses the phrase "serious physical damage or harm to the child" while the statute, at section 1912(e), uses "serious emotional or physical damage to the child." Commenters opposed the omission of "emotional" as beyond the authority granted by the statute. Some assumed this was an inadvertent omission, while others interpreted this as meaning that foster care may not be ordered even where parents are inflicting serious emotional harm on the Indian child.

Response: The proposed rule mistakenly omitted the term "emotional" in PR § 23.121(a) and instead used the term "harm." The final rule more closely tracks the statutory language, using the phrase "serious emotional or physical damage to the child." *See* FR § 23.121(a).

b. Standard of Evidence for Termination

One commenter suggested changing "continued custody of the child by the parent or Indian custodian" in PR § 23.121(b) to "custody of the child by either parent or Indian custodian."

Response: The final rule retains the proposed language stating "continued custody of the child by the parent or Indian custodian" because this is the statutory language. *See* 25 U.S.C. 1912(f), FR § 23.121(b).

c. Causal Relationship

Comment: One commenter noted that PR § 23.121(c) requires a showing of a relationship between particular conditions but it does not say in the second item how these conditions relate. The commenter suggested clarifying in both (c) and (d), that the actions are directly putting the children in danger. A commenter noted that the word "between" is confusing in PR § 23.121(c).

Response: The final rule addresses the commenters' concerns by revising the language to clarify that there must be a causal relationship between the particular conditions in the home and the risk of serious emotional or physical damage to the child. *See* FR § 23.121(c).

Comment: A commenter stated that the requirement for a causal relationship should apply to both clear and convincing evidence for foster-care placement and beyond a reasonable doubt for termination of parental rights because the statute establishes these evidentiary standards in mirroring provisions.

Response: The final rule requires the causal relationship for both clear and convincing evidence for foster-care placement and beyond a reasonable doubt for termination of parental rights. *See* FR § 23.121(c).

Comment: A few commenters suggested that "particular conditions in the home" should be "particular conditions in the home listed in the petition" because the petition should include all the allegations.

Response: The final rule does not add that the conditions must be listed in the petition because evidentiary requirements that are not unique to ICWA govern what allegations must be included in the petition. *See* FR § 23.121(c).

Comment: A commenter suggested replacing "conditions in the home" with "facts" to prevent exclusion of facts such as a parent's propensity to abuse the child, as opposed to the living conditions.

Response: The final rule retains the phrase "conditions in the home" because this phrase generally indicates all conditions of the child's home life rather than just the physical location. This phrase was also used in the 1979 Guidelines. *See* FR § 23.121(c).

d. Single Factor

Comment: Several commenters expressed concern regarding PR § 23.121(d), which states that one of the listed factors may not, of itself, meet the burden of evidence. A few stated that the proposed rule presumes States routinely remove children solely on the basis of poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior, when in fact they do not. One commenter expressed concern that PR § 23.121(d) is dangerous, because one could argue that where both parents are abusing and producing drugs, the evidence shows only the existence of inadequate housing and substance abuse, which cannot meet the burden of evidence. Another commenter noted that substance abuse is a significant contributing factor to child abuse and neglect, and asserted that excluding substance abuse from evidence fails to protect the child. Another commenter stated that Congress never suggested alcohol or substance abuse that harms Indian children was not a sufficient reason for removing Indian children. A commenter stated that not allowing a judge to consider substance abuse or nonconforming social behavior takes away the court's power to protect Indian children.

Response: The final rule does not prohibit State courts from considering the factors. Instead, the final rule prohibits relying on any one of these factors, absent the causal connection identified in FR § 23.121(c), as the sole basis for determining that clear and convincing evidence or evidence beyond a reasonable doubt support a conclusion that continued custody is likely to result in serious emotional or physical damage to the child. *See* FR § 23.121(d). The intention behind this provision is to address the types of situations identified in the statute's legislative history where States remove Indian children at higher rates than they remove non-Indian children based on subjective assessments of these factors. To address the commenters' concerns that this provision may prevent State courts from protecting Indian children, the final rule addresses this comment by stating that a court may not consider any one of these factors unless there is a causal relationship between the factor and the damage to the child. In other words, if one of these factors is causing the likelihood of serious emotional or physical harm to the Indian child, the court may rely on the factor.

Comment: One commenter suggested defining or giving examples of "nonconforming social behavior" in the provision stating that evidence of nonconforming behavior by itself is not evidence that continued custody is likely to result in serious emotional or physical damage to the child.

Response: The final rule does not define the term, but the Department notes that "nonconforming social behavior" includes behaviors that do not comply with society's norms, such as dressing in a manner that others perceive as strange, an unusual or disruptive manner of speech, or discomfort in or avoidance of social situations. *See* FR § 23.121(d).

Comment: A commenter stated that the list of factors in PR § 23.121(d) should not be sufficient for evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child, in addition to not being sufficient for clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

Response: The final rule adds "beyond a reasonable doubt" as requested. *See* FR § 23.121(d).

3. Qualified Expert Witness

The Act requires the testimony of qualified expert witnesses for foster-care placement and for adoptive placements. 25 U.S.C. 1912(e), (f). The final rule provides the Department's interpretation of this requirement. *See* FR § 23.122.

The legislative history of the qualified expert witness provisions emphasizes that the qualified expert witness should have particular expertise. Congress noted that "[t]he phrase 'qualified expert witnesses' is meant to apply to expertise beyond the normal social worker qualifications." H.R Rep. No. 95–1386, at 22. In addition, a prior version of the legislation called for testimony by "qualified professional witnesses" or a "qualified physician." *See* S. Rep. No. 95–597, at 21.

The final rule requires that the qualified expert witness must be qualified to testify regarding whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. FR § 23.122(a). This requirement flows from the language of the statute requiring a determination, supported by evidence . . ., including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. 1912(e), (f).

In addition, the qualified expert witness should have specific knowledge of the prevailing social and cultural standards of the Indian child's Tribe. FR § 23.122(a). In passing ICWA, Congress wanted to make sure that Indian child-welfare determinations are not based on "a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family." *Holyfield,* 490 U.S. at 36 (citing H.R. Rep. No. 95–1386, at 24). Congress recognized that States have failed to recognize the essential Tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. *See* 25 U.S.C. 1901(5). Accordingly, expert testimony presented to State courts should reflect and be informed by those cultural and social standards. This ensures that relevant cultural information is provided to the court and that the expert testimony is contextualized within the Tribe's social and cultural standards. Thus, the Department believes that the question of whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child is one that should be examined in the context of the prevailing cultural and social standards of the Indian child's Tribe.

The final rule does not, however, strictly limit who may serve as a qualified expert witness to only those individuals who have particular Tribal social and cultural knowledge. FR § 23.122(a). The Department recognizes that there may be certain circumstances where a qualified expert witness need not have specific knowledge of the

prevailing social and cultural standards of the Indian child's Tribe in order to meet the statutory standard. For example, a leading expert on issues regarding sexual abuse of children may not need to know about specific Tribal social and cultural standards in order to testify as a qualified expert witness regarding whether return of a child to a parent who has a history of sexually abusing the child is likely to result in serious emotional or physical damage to the child. Thus, while a qualified expert witness should normally be required to have knowledge of Tribal social and cultural standards, that may not be necessary if such knowledge is plainly irrelevant to the particular circumstances at issue in the proceeding. A more stringent standard may, of course, be set by State law.

Comment: Several commenters supported the proposed rule's requirement in PR § 23.122 for the qualified expert witness to have knowledge of the prevailing social and cultural standards and childrearing practices within the child's Tribe and prioritizing use of experts who are members of the child's Tribe and recognized by the Tribal community as knowledgeable in Tribal customs. A few commenters stated that this ensures cultural information is provided to the court and avoids increasing use of non-Indian professionals without experience or knowledge in Indian families. A few commenters noted that expert witness testimony has been provided by those without any knowledge of Indian family customs or based on information gleaned from the Tribe's Web site; these commenters supported the proposed rule for addressing this issue. A commenter supported the definition of qualified expert witness in PR § 23.122 as consistent with the way the term has been defined in various State statutes implementing ICWA, in various Tribal-State agreements, and in accordance with ICWA's intent.

Several other commenters stated that the proposed provisions addressing who may serve as a qualified expert witness are beyond the Department's authority. Other commenters stated that the Department is within its purview to define who may be considered as a qualified expert witness in ICWA cases because the statute requires qualified expert witnesses but does not define the term.

Several commenters objected to PR § 23.122, stating that it commandeers State courts by telling them who may serve as expert witnesses and that, instead, State-court judges should determine what expert testimony is credible and reliable based on rules of evidence. A few other commenters stated that the rule conflicts with established rules of evidence because questions of bias and prejudice go to the weight, not the admissibility, of evidence. These commenters note that concerns as to bias and prejudice can be addressed through impeachment in cross-examination.

Response: The Act is ambiguous regarding who is a "qualified expert witnesses." Thus, as discussed above, the final rule provides the Department's interpretation of this requirement. *See* FR § 23.122. Providing State courts with this regulatory language will promote uniformity of the application of ICWA.

As discussed above, the Department emphasizes that qualified expert witnesses must have particular relevant expertise and should have knowledge of the prevailing social and cultural standards of the Indian child's Tribe. These are not issues of bias or prejudice; rather, they are issues of the knowledge that the expert should have in order to offer her testimony. The final rule still provides State courts with discretion to determine what qualifications are necessary in any particular case.

Comment: A few commenters noted that ICWA does not require the qualified expert witness have specific knowledge of the Tribe's culture or customs. A commenter stated that Congress said the phrase was meant to apply to expertise beyond "normal social worker qualifications" but did not impose additional requirements for knowledge of the Tribe's culture and customs. This commenter also noted that numerous courts have ruled that, if cultural bias is not implicated in the testimony or proceeding, then the expert witness is not required to have experience with or knowledge of the Indian culture. A few commenters pointed to case law holding that specialized knowledge of Indian culture is not necessary for a person to be qualified as an expert in an ICWA case, and State law controls who is recognized as an expert.

A few commenters pointed out the purpose of the requirement for qualified expert witness testimony and stated that Congress intended to prevent removal of Indian children due to cultural misunderstandings, poverty, or different standards of living. Another stated that Congress was trying to address social workers improperly basing findings of neglect and abandonment on factors such as the care of Indian children by extended family members, Indian parents' permissive discipline, and unequal considerations of alcohol abuse.

Response: As discussed above, the final rule states that a qualified expert witness should have an understanding of the child's Tribe's cultural and social standards. However, the final rule still provides State courts with discretion to determine what qualifications are necessary in any particular case. State law may also provide standards for qualified expert witnesses that are more protective of the rights of the Indian child and parents.

Comment: One commenter noted that the requirement for specific knowledge of the Tribe applies even if the child has never been involved in the Tribe's customs or culture. A commenter asserted it would be unfair to a child that has no connection to the Tribe's customs or culture to require a Tribal expert witness. One commenter stated that it does not take an expert with specific knowledge of Indian culture to provide helpful information to the court, so long as the expert has substantial education and experience and testifies on matters not implicating cultural bias. This commenter stated that the requirement for an expert with special knowledge of Indian life is unreasonable when an agency seeks action on any ground not pertaining to the child's heritage. A few commenters pointed to case law holding that when cultural bias is not clearly implicated, the qualified expert witness need not have specialized knowledge of Indian culture.

Response: As discussed above, the final rule states that a qualified expert witness should have an understanding of the child's Tribe's cultural and social standards. The child's involvement with Tribal customs and culture is not relevant to an inquiry that focuses on the ability of the parent to maintain custody of their child.

There may be limited circumstances where this knowledge is plainly irrelevant to the question whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and the final rule allows for this. The Department disagrees, however, with the commenters' suggestion that State courts or agencies are well-positioned to assess when cultural biases or lack of knowledge is, or is not, implicated. ICWA was enacted in recognition of the fact that the opposite is generally true. Indeed, as other commenters have pointed out, some theories, such as certain bonding and attachment theories, presented by experts in foster-care, termination-of-parental-rights, and adoption proceedings are based on Western or Euro-American cultural norms and may have little application outside that context. *See, e.g.,* Comments of Casey Family Programs, at pp 13–17.

Comment: Several commenters opposed restricting expert testimony since it could prevent courts from receiving relevant information. Commenters also stated that limitations on expert evidence would cause harm and prevent positive outcomes for many children. A commenter noted that the proposed rule's requirements improperly allow the Tribe to dictate who the State can call as an expert witness in their own case-in-chief. This commenter stated that the Tribe as a party may call their own witnesses and cross-examine the State's expert and should have the responsibility to present evidence. A few commenters noted that the regulations do not limit the number of expert witnesses at a hearing but ensures the court has all the information it needs to make culturally informed decisions. These commenters state that the proposed rule requires the State to find someone who agrees with the foster-care placement or termination of parental rights after reviewing the case from the perspective of the child's culture and community, to ensure that the cultural norms of the child's Tribe are considered. Other commenters stated that the proposed rule restricts testimony from psychological experts in trauma, attachment, developmental psychology, etc., unless they also have knowledge of the specific Tribe's customs. Several commenters requested clarification that these requirements do not preclude State courts from hearing testimony from other expert witnesses in addition to the expert on the Tribe's culture and customs as they pertain to childrearing. A few commenters noted that a primary policy underlying ICWA was to protect the best interest of Indian children, but the proposed rule provides no qualification for experts who can speak to the best interests of the child. These commenters state that any such expert should be given priority regardless of whether the expert is from a Tribe.

Response: The rule does not restrict expert testimony. The court may accept expert testimony from any number of witnesses, including from multiple qualified expert witnesses. The statute requires, however, that the proposed foster-care placement or termination of parental rights be supported by the testimony of qualified expert witnesses.

Comment: Several commenters noted the difficulty in obtaining expert witnesses with specific knowledge of the Tribe's culture and customs who are willing to testify. One noted that, in California, due to the historical relocation policies, finding an expert can be a challenge. These commenters were concerned that the difficulties in securing qualified expert witnesses could delay permanency decisions. Suggested solutions to this issue included:

- Allowing regional experts (particularly in Alaska, where it may not be possible to find experts in each unique village or Tribe that can be available at hundreds of hearings held each year);
- Providing guidance for finding witnesses from out-of-State Tribes;
- Applying expert witness requirements only when the child is domiciled on or residing on the reservation because otherwise it is difficult to locate an impartial qualified expert witness with specific knowledge of the Tribe's culture and customs;
- Requiring Tribes to respond to requests to provide an expert, or to relieve the agency of the obligation to identify a Tribal expert if the Tribe fails to respond;
- Requiring BIA provide a list of qualified expert witnesses.

Response: The Department encourages States to work with Tribes to obtain a qualified expert witness. In some instances, it may be appropriate to accept an expert with knowledge of the customs and standards of closely related Tribes. Parties may also contact the BIA for assistance. *See* 25 CFR 23.81.

Comment: A commenter noted that the evidentiary issue before the court is whether the child is at risk of serious emotional or physical damage, and that the new definition does not require the expert witness to have any knowledge, education, or qualification on that issue. This commenter noted that knowledge of the Tribe's culture and customs can inform an expert's opinion but that is secondary to the expert's ability to address the main issue.

Response: The final rule states that the testimony of at least one qualified expert witness must address the issue of whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Comment: A few commenters supported the preference list of qualified expert witnesses. A few commenters suggested redrafting PR § 23.122(b) to clarify that the presumption is in descending order, to read "The [qualified expert witness] shall be determined in the following order of preference." One commenter stated that the preference order is important because in some counties, the State worker is accepted as an expert witness to circumvent the Tribe's opinion, if it is known that the Tribe has an opposing opinion.

A few commenters opposed listing a member of the child's Tribe recognized as knowledgeable in Tribal customs or childrearing as the first preference because choosing a layperson over a professional would be choosing that Tribe's cultural opinion over an educated person who can provide evidence-based testimony.

A few commenters opposed the priority given to professionals with substantial experience and education in his or her specialty being below the priority of Tribal members of the child's or another Tribe, and laypersons with knowledge of the Tribe's cultural and childrearing practices. These commenters stated that the priorities essentially eliminate the input of licensed child-welfare experts, and could jeopardize the safety and wellbeing of the children.

One commenter stated that the fourth preference should be removed because a non-Native anthropologist will likely not understand the culture and traditions of Tribes. This commenter recommends instead adding language similar to three, saying that a layperson who is recognized by the child's Tribe in having substantial experience.

A commenter opposed ranking at all because the trier of fact should determine what weight to give to testimony, and by ranking, it implies the higher ranked expert would be more reliable or credible.

Response: The final rule does not include a preference list of qualified expert witnesses. Instead it requires that the qualified expert witnesses be able to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and that the qualified expert witnesses should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. The final rule also allows a Tribe to designate a person as being qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.

Comment: A few commenters expressed concern that a witness in the proposed order of preference would be biased, because a member of the Tribe would not oppose the Tribe's position.

Response: The final rule does not require that the qualified expert witness be a citizen of the Tribe. The witness should be able to demonstrate knowledge of the prevailing social and cultural standards of the Indian child's Tribe or be designated by a Tribe as

having such knowledge. *See* FR § 23.122(a), (b).

Comment: One commenter suggested considering Native elders knowledgeable about ICWA and the family's heritage, etc., as qualified expert witnesses.

Response: Any potential qualified expert witness, including Native elders, would need to meet the requirements of FR § 23.122 to testify on whether continued custody is likely to result in serious emotional or physical damage to the child. The court may allow experts to testify for other purposes as well.

Comment: Several commenters suggested further improving the regulation by providing that the Tribe will designate and authorize the expert witness. Several other commenters requested clarification that, while the Tribe may assist in locating an expert, it is under no obligation to do and that the Tribe's failure to do so does not absolve the State of its obligation. A few other commenters requested requiring the State to seek assistance from the Tribe or the BIA agency if the Tribe is unable to be contacted. Another commenter noted that the Tribe is often the State's opposing party, so it shouldn't be required to seek assistance from the Tribe.

Response: The final rule provides that the court or any party may request the assistance of the Indian child's Tribe or the BIA agency serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses. This is not required.

Comment: Several commenters requested a new provision prohibiting the qualified expert witness from being employed by the State agency due to a concern about the potential that the State worker may have a bias, and noting that the original intent of the requirement for a qualified expert witness was to combat such bias. Others requested the prohibition be extended to private agencies and Federal agencies. These commenters stated that it is a conflict of interest, or at least the appearance of impropriety, for the agency seeking placement to claim to be an expert in whether the child should be placed.

Response: The final rule adds a provision prohibiting the social worker that is regularly assigned to the child from serving as the qualified expert witness, to help to address concerns regarding bias or conflicts. In addition, this provision reflects the congressional direction that "[t]he phrase 'qualified expert witnesses' is meant to apply to expertise beyond the normal social worker qualifications." H.R. Rep. No. 95–1386, at 22.

Comment: One commenter noted that because the standard of evidence for foster-care placement and termination of parental rights hinges on harm to the child, the qualified expert should be someone familiar with the child, not just the Tribe. A commenter suggested requiring the qualified expert witness to make contact with the parents and make an effort to view interactions between the parents and child, and attempt to meet with extended family members involved in the child's life. Otherwise, the expert will rely on one-sided State reports.

Response: The commenter's suggestions are recommended practices.

L. Voluntary Proceedings

Certain ICWA requirements apply to voluntary proceedings. The statute defines "child-custody proceeding" broadly to include foster-care, preadoptive, and adoptive placements, without regard to whether those placements are made with or without the consent of the parent(s). 25 U.S.C. 1903(1). Similarly, termination-of-parental-rights proceedings fall within the statutory definition whether or not the termination is voluntary or involuntary. *Id.*

The statute does not condition Tribal court jurisdiction over Indian child-custody proceedings on whether that proceeding is voluntary or involuntary. Rather, exclusive Tribal jurisdiction is recognized over any child-custody proceeding involving an Indian child who resides or is domiciled within the reservation of the Tribe under 25 U.S.C. 1911(a). *See also generally Holyfield.* Transfer and intervention rights apply in any State court proceeding for the foster-care placement of, or termination of parental rights to, an Indian child. 25 U.S.C. 1911(b), (c). Similarly, section 1915 of the statute provides placement preferences that apply in any adoptive placement of an Indian child under State law, without specifying whether that adoption is the result of a voluntary or involuntary termination of parental rights. And, section 1913 of the statute specifically addresses voluntary proceedings, and provides a number of significant protections to parents.

The Department is cognizant that voluntary proceedings require consideration of the interests of the Indian child's biological parents to direct the care, custody, and control of their child. *See, e.g., Troxel* v. *Granville,* 530 U.S. 57, 65 (2000). The rights of the child, including the rights of the child as an Indian, must also be considered. State and Tribal governments also have a sovereign interest in protecting the welfare of the child. And Congress has articulated a clear Federal interest in protecting Indian children and the survival of Tribes. State law varies in how these various interests are considered and protected.

ICWA balances these important and sometimes competing considerations. It recognizes that Tribes have exclusive jurisdiction over child-custody proceedings involving children domiciled on the reservation, and the right to seek transfer or intervene in foster-care or termination-of-parental rights proceedings involving off-reservation children. The final rule retains this balance, and makes clear that ICWA's placement preferences apply to voluntary placements, but also permits departure from those preferences based on various factors, including the request of one or both parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference. FR § 23.132(c). This balances the importance of the placement preferences with the rights of the parent.

For clarity, the final rule indicates in FR § 23.104 which provisions apply to voluntary proceedings. The final rule also provides specific standards for voluntary proceedings. In particular:

- Section 23.124(a) and (b) provide the minimum requirements for State courts to determine whether the child is an "Indian child" as defined by statute. If there is reason to believe that the child is an "Indian child," but this cannot be confirmed based on the evidence before the State court, it must ensure that the party seeking placement sought verification of the Indian child's status with the Tribes of which the child might be a citizen. The determination of whether the child is an "Indian child" is a threshold inquiry; it affects the jurisdiction of the State court and what law applies to the matter before it. *See, e.g., In re A.G.,* 109 P.3d 756, 758 (Mont. 2005) (whether child is an "Indian child" is a "threshold inquiry" and must be definitively resolved before termination of parental rights). Section (a) mirrors the provision in the proposed rule; section (b) was added to clarify the obligation to confirm a child's status as an "Indian child."
- FR § 23.124(c) clarifies that the regulatory provisions addressing the application of the placement preferences apply with equal force to voluntary proceedings.
- The final rule does not include a provision requiring agencies and State courts to provide notice to the Indian Tribe of voluntary proceedings. As a practical matter, notice to the Tribe may be required in order to comply with other provisions of the statute or regulation (*see, e.g.,* FR § 23.124(b)). In the Department's view, it is a best practice to provide such notice.
- FR § 23.125 details how consent must be obtained in a voluntary proceeding, and is designed to ensure that the procedural protections provided by ICWA are implemented in each case. The final rule makes some wording changes from the proposed rule, but is substantively similar.
- FR § 23.126 describes what information a consent document should contain. The final rule makes some wording changes from the proposed rule, but is substantively similar.
- FR § 23.127 describes how withdrawal of consent to a foster-care placement is achieved. It clarifies that the parent or Indian custodian may withdraw consent to foster-care placement at any time; requires the filing of an instrument under oath, and if consent is properly withdrawn, requires the immediate return of the child to the parent or custodian.
- FR § 23.128 addresses withdrawal of consent to termination of parental rights or adoption. The final rule includes termination of parental rights, to better match the statutory provision. *See* 25 U.S.C. 1913(c). The final rule, like the proposed rule, requires that a withdrawal of consent be filed in court or made by testifying in court, and that after withdrawal of consent is filed, the child must be returned to the parent or Indian custodian.

1. Applicability of ICWA to Voluntary Proceedings—In General

Comment: Several commenters noted and supported the applicability of ICWA to voluntary placements. A commenter stated that the proceedings identified in PR § 23.103(f) (voluntary proceedings in which the parent or Indian custodian may regain custody upon demand) are those that operate outside of the court and child-welfare systems, and that these are distinct from those described in PR § 23.103(g) (in which a parent consents to foster care or termination of parental rights).

Response: Certain provisions of the final rule are applicable to voluntary placements. To clarify which placements are outside of ICWA, the final rule defines "upon demand" to mean verbal demand without any required formalities or contingencies. Section 1913 of the statute (implemented by FR § 23.103(g)) requires formalities for consent and withdrawal of consent of a foster-care placement.

Comment: Several commenters supported PR § 23.103(g) stating that private adoption placements made voluntarily by parents are covered by ICWA. Among the reasons stated in support of this provision were:

- Private adoption placements contribute to the wholesale separation of Indian children from their families, culture and Tribes;
- Indian children are routinely adopted into non-Indian homes through private adoptions because adoption agencies control which homes the birth parents choose from;
- There are hundreds or thousands of Indian homes that would like to adopt Indian children;
- ICWA as a whole does not only pertain to involuntary proceedings.

One Tribe recounted a situation where the Tribe intervened in a voluntary adoption and the Tribal member changed her mind and placed the child with a placement that preserved the child's ties to family, culture, and community.

Response: The final rule clarifies which provisions are applicable to voluntary proceedings. *See e.g.,* FR § 23.104. It balances the interests of biological parents with the Federal policy promoting retention of Indian children within their extended family and Tribal community whenever possible.

Comment: A few commenters stated that the proposed rule treats the child as property of the Tribe, inviting Tribal interference with the parent's right to make decisions.

Response: The rule in no way treats the child as property of the Tribe. Tribes, like other governments, have a sovereign interest in the welfare of their citizens, and in particular, their children. The final rule balances this interest with a parent's interest in directing the care, custody, and control of their child.

2. Applicability of Notice Requirements to Voluntary Proceedings

Comment: Many commenters stated support for the provision of the proposed rule related to notice to Tribes in voluntary proceedings. These commenters noted that Tribes are *parens patriae* for their member children and that, when Tribes do not receive notice in voluntary proceedings they are effectively denied rights and protections granted by ICWA. Specifically, a Tribe must receive prior notice of a voluntary proceeding in order to avail itself of the following statutory rights and protections:

- The opportunity to verify a child is a member, and therefore subject to ICWA;
- The exercise of exclusive Tribal jurisdiction over Indian children who reside or are domiciled within the reservation or who are wards of Tribal court (25 U.S.C. 1911(a));
- The exercise of concurrent jurisdiction over Indian children by transferring the proceeding to Tribal court (25 U.S.C. 1911(b));
- Intervention in voluntary foster-care placement and termination-of-parental-rights proceedings (25 U.S.C. 1911(c));
- The opportunity to provide an interpreter to a parent or Indian custodian (25 U.S.C. 1913(a));
- Monitoring and compliance (filing a petition to invalidate proceedings) (25 U.S.C. 1914);
- Assistance in identifying placements and providing information on "prevailing social and cultural standards" in the Indian community (25 U.S.C. 1915(d));
- Facilitation of documentation of efforts to comply with the order of preference (25 U.S.C. 1915(e)).

A few commenters asserted that the proposed requirement for notice in voluntary proceedings addresses an ambiguity in the statute: The provision at section 1913 addressing consent for voluntary termination does not address how the provision interacts with other provisions of the Act. A few commenters stated that the proposal addresses Congress's concern about both State and private agency adoptions. These commenters assert that birth parents' rights are balanced against the government's interest in the child's safety.

One commenter noted that while the statute explicitly requires notice in involuntary proceedings, it does not preclude notice in voluntary proceedings. Other stated reasons for support of requiring notice in voluntary proceedings were:

- Voluntary adoptions are often used to skirt around ICWA;
- Including the Tribe in voluntary placements will help find suitable placements and lead to placement stability;
- Requiring notice in voluntary proceedings is consistent with several State laws, including California SB 678 and the Oklahoma Indian Child Welfare Act, and Tribal-State agreements, and that nationalization of the requirement ensures equal treatment on the issue across jurisdictions;
- Requiring notice allows the Tribe the opportunity to assist the mother with any situations leading her to feel that she cannot raise her child.

A few commenters suggested adding that the notice to Tribes of voluntary

proceedings is to permit the Tribe to determine whether the child involved is an Indian child.

Several other commenters opposed the proposed requirement for notice in voluntary proceedings, stating that it is contrary to the plain language of the statute because the notice provisions at section 1912 apply only to involuntary proceedings and the provisions specific to voluntary proceedings at section 1913 make no mention of notice. These commenters also pointed to case law concluding there is no Tribal right to notice in voluntary proceedings and past congressional attempts to amend ICWA to require this notice as proof that the Act currently does not require such notice.

Several commenters stated that requiring notice in voluntary proceedings violates an individual's rights to privacy and due process, and will result in children not being adopted because the birth parents will be forced into a choice of doing what they believe is best for the child or preserving their constitutionally protected privacy and anonymity. One commenter stated her belief that the birth parent's desire should be paramount. One commenter pointed to the Supreme Court's decision in *Whalen* v. *Roe,* 429 U.S. 589 (1977), as protecting parents' right to privacy.

A few commenters stated that the regulations should suggest, rather than mandate, notice in voluntary proceedings because the Act does not require notice but such notice may be advisable to protect the Tribe's right to intervene.

Response: The final rule has been changed from the proposed rule, and does not require in all cases that notice be provided to Tribes of voluntary proceedings. The final rule does require that the court make a determination of whether the child is an "Indian child," because this is essential in order to assess the State court's jurisdiction and what law applies. An inquiry with one or more Tribes may be necessary in some cases to confirm a child's status as an "Indian child." The final rule does not preclude State requirements for notice in voluntary proceedings in other circumstances. The Department recommends that Tribes be provided notice in voluntary proceedings.

Comment: Many commenters opposed the provisions at PR § 23.107(d) stating that a request for anonymity in voluntary proceedings does not relieve the obligation to obtain verification from the Tribe and provide notice. These commenters stated that requiring notice to Tribes in voluntary cases is contrary to the plain language of the statute, because the statute states the court or agency "shall give weight" to the parent's desire for anonymity and nothing in the statute requires notice to Tribes in voluntary proceedings. These commenters also stated that requiring verification and notice in voluntary proceedings even where the parent has expressed a desire for anonymity violates constitutional privacy rights and the non-discrimination provisions of the Multi-Ethnic Placement Act. A few commenters argued that it is good public policy to allow for anonymity without notice to the Tribe and others because removing the option for a "quiet adoption" will make other options, such as abortion or taking advantage of "safe haven" laws to anonymously abandon a child more desirable.

A few commenters supported this provision and requested adding that a request for anonymity does not relieve the obligation to comply with any other provision of ICWA as well. These commenters stated that Tribes can work within their Tribal systems to keep the information confidential and that these regulations are consistent with the approach taken in some States. One commenter stated that, without this provision, adoption attorneys and agencies that seek to place Indian children with non-Indian families need only tell the parents to request anonymity to enable placement without complying with ICWA. One commenter stated that the link between notice to the Tribe and harm to the parents is attenuated and that the alleged constitutional right to privacy would be an expansion of Supreme Court jurisprudence.

A few commenters specifically addressed PR § 23.107(d)'s requirement that the agency or court keep documents confidential and under seal. A State commenter requested explanation for how it could be possible to keep the documents confidential and under seal while still seeking verification and notice. A few other commenters requested a revision to state that the requirement to keep documents confidential and under seal may not allow the court to deny access to the documents by a Tribe or any party that needs them to fully present their position in the child-custody proceeding. One commenter noted that, just as no parent in a child-custody proceeding has an anonymity interest that supersedes a State's sovereign interest in protecting children, neither does a parent have an anonymity interest that supersedes a Tribe's sovereign interest in protecting children.

Response: As discussed above, the final rule requires notice to Tribes when necessary to determine a child's status as an "Indian child." Tribes, like other governments, are equipped to keep such inquiries confidential, and the final rule requires this of Tribes. While this inquiry to the Tribe may require the State to share confidential information, this sharing is a government-to-government exchange of information necessary for the government agencies' performance of duties. Tribes are often treated like Federal agencies for the purposes of exchange of confidential information in performance of governmental duties. *See, e.g.,* Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3205; Family Rights and Education Protection Act, 20 U.S.C. 1232(g). The final rule balances the rights of the parents to confidentiality with the need to determine the Indian status of the child.

Comment: Several commenters noted that State "safe haven" laws, such as the law in Wisconsin and Minnesota, that allow parents to anonymously relinquish children, undermine ICWA and suggested addressing this issue in the regulations. Some commenters asserted that the Federal ICWA preempts State "safe haven" laws. Others suggested adding a requirement for representatives of safe haven facilities to ask the parents to provide information regarding Tribal affiliation and then inform any agency or court involved.

Response: The operation of State "safe haven" laws is beyond the scope of this rulemaking. Child-custody proceedings involving children relinquished under these laws must still comply with applicable requirements under ICWA and these regulations.

Comment: A few commenters requested clarification that Health Insurance Portability and Accountability Act of 1996 (HIPAA) only applies to medical information and does not apply to information on Tribal affiliation.

Response: These comments are beyond the scope of this rulemaking.

Comment: A few commenters stated that notice is necessary to address situations where the mother places a child voluntarily for adoption, but the proceeding is involuntary to the father.

Response: In situations where a mother voluntarily places an Indian child for adoption, but the proceeding is involuntary to the father, then the involuntary proceedings requirements under section 1912 of the Act apply (*e.g.,* notice, active efforts, evidence beyond a reasonable doubt including the testimony of qualified expert witnesses).

Comment: A few commenters stated that the proposed language applying ICWA to voluntary placements may create barriers when parents agree to out-of-home placements to allow them to engage in informal supervision services that provide intensive support to families to prevent court intervention.

Response: If a parent agrees to out-of-home placement but may not regain custody of the child upon verbal request, the out-of-home placement is a child-custody proceeding, FR § 23.2, and ICWA requirements (for voluntary or involuntary proceedings, as the case may be) are applicable. ICWA establishes minimum Federal standards that require court involvement at certain points.

3. Applicability of Placement Preferences to Voluntary Proceedings

Comment: A few commenters stated their support of the proposed provision clarifying that placement preferences apply to voluntary proceedings. A commenter suggested revisions to clarify that the placement preferences apply to both involuntary and voluntary proceedings because otherwise, parents who proceed through attorneys rather than an "agency" may interpret the provision to apply only to involuntary proceedings.

Many commenters opposed this provision. Commenters in opposition to this provision state that the Tribe's rights should not "trump" the rights of the birth parents to choose what they believe to be the best adoptive placements for their children and what placement they as the parents believe is in the best interests of the child. Commenters stated that the proposed rule takes away parents' ability to make placement plans for their children. Several commenters asserted that birth parents may choose to perjure themselves to withhold information on Tribal membership, terminate a pregnancy, or may feel forced to parent the child themselves in an undesirable environment because they will not be able to choose the adoptive family, or may ultimately have the child taken away involuntarily. Some stated that this rule will prevent adoptive families from being open to adopting Indian children due to the fear that the Tribe could override the birth parents' choice and take the child away.

Response: The plain language of section 1915(a) of the Act requires that the placement preferences be applied "in any adoptive placement," which includes both voluntary and involuntary adoptive placements, in the absence of good cause to the contrary. The regulation likewise requires that the preferences be applied in both voluntary and involuntary placements, but notes that a basis for good cause to deviate from the placement preferences may be the request of one or both of the parents, if they attest that they have reviewed the placement options that comply with the order of preference. The regulation therefore permits parents to choose a placement for their child that does not comply with the preferences. *See* FR § 23.132(c).

Comment: A few commenters stated that they intentionally chose to disassociate from the Tribe and therefore find it "offensive" that a Tribe could claim their child as a member. One commenter stated that Tribal members who choose not to live on a reservation should not be subject to their Tribal governments making choices for their children, such as where to place their infants for adoption.

Response: Parents who choose to dissociate from the Tribe by not enrolling or by disenrolling (and by not enrolling their child in the Tribe) are not subject to ICWA because the child will not qualify as an "Indian child." If, however, the child is an "Indian child," the Tribe has a legitimate and federally recognized interest in the welfare of that child and the maintenance of ties to the Tribe. The final rule balances this interest with the interests of parents in directing the care, custody, and control of their child.

Comment: A few commenters stated that looking at what is in the best interest of the child should come before everything else and nobody other than the parents should be able to determine what best interest means to them. These commenters stated that culture should be a consideration but the Tribe should not be able to interfere if the family chooses a non-preferred adoptive placement. Commenters also stated that birth mothers of Indian children should have the same rights as all other birth mothers under the Constitution to choose who will raise the child. A few commenters cited Supreme Court cases addressing constitutional rights with respect to family autonomy. *See, e.g., Troxel,* 530 U.S. at 66; *Santosky, supra.* A commenter cited to an Iowa Supreme Court decision stating that ICWA does not curtail a parent's right to choose the family she feels is best suited to raise her child. *In re the interest of N.N. E.,* 752 N.W.2d 1, 9 (Iowa 2008).

Response: While the placement preferences apply to voluntary placements, the final rule allows birth parents to choose families outside the preferences if they attest that they have reviewed the placement options that comply with the order of preference. *See* FR § 23.132(c)(1). This balances the interest of the parent with the other interests protected by ICWA.

Comment: One commenter raised that, in step-parent adoptions, an Indian family should not come before an Indian mother who wants her husband to adopt her Indian child.

Response: Adoptive placement with a step-parent would meet the placement preferences of the Act, because the first placement preference is a member of the child's extended family and step-parents are included in the definition of "extended family member." *See* 25 U.S.C. 1903(2); 1915(a); FR §§ 23.2, 23.130(a)(1).

Comment: A few commenters opposed requiring a diligent search for placements in a voluntary adoption context because it conflicts with the parent's freedom to choose who will raise their children. One commenter stated that, by the time a parent goes to an adoption agency, the parent has already explored potentially placing within the family or community and has ruled it out.

Response: The final rule does not include the provision that the commenters identified.

Comment: One commenter stated that applying the placement preferences to voluntary adoptions will result in Indian children having a more difficult time being adopted if there are no available families within the placement preferences.

Response: The placement preferences for adoptions cover a wide range of individuals, including extended family, other citizens of the Indian child's Tribe, and other Tribal citizen families. Nevertheless, good cause may be found to deviate from the placement preferences based on the parent's request for placement with another family or lack of available placements that meet the preferences, among other reasons. *See* FR § 23.131.

4. Applicability of Other ICWA Provisions to Voluntary Proceedings

Comment: Several commenters stated there is no Tribal right to intervene in voluntary proceedings because section 1911(c) provides the right only in State court proceeding for the foster-care placement of, or termination of parental rights to, Indian child. Other commenters stated that there is a compelling governmental interest of Tribes that supports intervention of right, to protect its sovereign interest in Tribal children, and the welfare of Indian children is the same whether the proceeding is voluntary or involuntary.

Response: The commenters are correct that section 1911(c) refers to "termination of parental rights" but not "adoptive placement"; however, nothing in the Act restricts the phrase "termination of parental rights" to involuntary proceedings. By its plain language, the statute permits Tribal intervention in a voluntary termination-of-parental-rights proceeding.

Comment: One commenter stated that active efforts are required in voluntary proceedings, and another stated they are not.

Response: The statutory provision requiring active efforts appears in the section of the Act that primarily addresses involuntary proceedings. *See* 25 U.S.C. 1912(d). The regulation therefore does not require a showing of active efforts to prevent the breakup of the Indian family in voluntary proceedings.

Comment: One commenter requested clarification as to whether the rule is saying the right in section 1912(b) to appointment of counsel in involuntary proceedings is also available in voluntary proceedings (because PR § 23.111(c)(4)(iv) and (v) and PR § 23.111(f) require the notice to include statements regarding the right to counsel).

Response: The statutory provision requiring the right to court-appointed counsel appears in the section of the Act that primarily addresses involuntary proceedings. *See* 25 U.S.C. 1912(b).

5. Applicability to Placements Where Return is "Upon Demand"

A few commenters requested deletion or clarification of PR § 23.103(f) because of the risk that it will improperly exclude certain adoptive placements from ICWA. One commenter suggested as an alternative "voluntary placements made without involvement of an agency or State court where the parent can regain custody of the child upon demand are not covered by ICWA." One commenter stated that if the State is involved, there is always the threat of involuntary removal if the parent does not "agree" to the placement, and that these placements should be subject to ICWA. This commenter suggested adding that every placement in which the State has a say should be treated as an ICWA placement.

Response: As mentioned above, the final rule defines "upon demand" to mean verbal demand without any required formalities or contingencies and adds to the definition of "voluntary placement" that the placement be without a threat of removal by a State agency. *See* FR § 23.2.

6. Consent in Voluntary Proceedings

Comment: A commenter suggested beginning PR § 23.124(a) with "any voluntary consent to" rather than "a voluntary termination."

Response: The final rule makes this editorial change for consistency. *See* FR § 23.125(a).

Comment: A commenter noted that PR § 23.124 is important because agencies and attorneys have used voluntary consent to essentially "trick" parents and extended family into permanently surrendering their custodial rights. The commenter notes that safeguards, including that the consent be recorded before a judge, are essential to protecting rights and eliminating the possibility of dispute over intent, preventing litigation, and avoiding emotional trauma. Another commenter stated that the rule should instead allow for consent to be entered before a notary public to save time and money.

Response: The regulation's requirement that consent be recorded before a judge repeats the statutory requirement. *See* 25 U.S.C. 1913(a), FR § 23.125.

Comment: One commenter suggested clarifying that the court of competent jurisdiction may not be the same court where the child-custody proceeding takes place.

Response: Neither the statute nor the regulations limit the location of the court of competent jurisdiction.

Comment: A commenter suggested the "timing limitations" and "point at which such consent is irrevocable" include cross-references to distinguish consent to foster-care placements (to which no time limitations apply) in PR § 23.126 and adoptions (to which there are time limitations—may be withdrawn at any time prior to the entry of the final decree of termination or adoption) in PR § 23.127.

Response: The final rule clarifies the applicable timeframes in FR §§ 23.127, 23.128.

Comment: A few commenters suggested adding a requirement that the court explain on the record the consequences of consent, right to withdraw consent, and procedure for withdrawing consent, and at what point the right to withdraw ends.

Response: FR § 23.125(b) & (c) requires this explanation on the record.

Comment: A commenter requested clarification that the right to withdraw consent cannot be waived.

Response: The right to withdraw consent is a statutory right. Congress did not include a procedure for waiving the right.

Comment: Several commenters stated it would be unclear what consent procedures to follow in a voluntary proceeding if a child is treated as an Indian child, and then the Tribe later determines the child is not eligible for membership. Under those circumstances, the court would have told the parent they have the right to withdraw consent at any time prior to termination of parental rights; whereas, the right to revoke consent under State law may be more limited.

Response: In the situation described by the commenter, if the State court determines that the child is not an Indian child, the State court would need to determine whether to allow the withdrawal under State law.

Comment: A commenter suggested adding that the written consent must be by both the mother and father. Another commenter suggested adding that a known biological parent must have the opportunity to consent or object where the other parent has voluntarily consented.

Response: An individual parent's consent is valid only as to himself or herself.

Comment: A commenter recommended revising "need not be made in open court" to clarify that the consent still must be recorded before a judge, but need not be recorded in a session open to the public.

Response: FR § 23.125(d) clarifies that the consent must be recorded before a judge, though it need not be recorded in a session open to the public.

Comment: A commenter stated that the provision that "a consent given prior to or within 10 days after the birth is not valid" infringes on a parent's right to arrange for adoption.

Response: The final rule retains this provision because it is statutory. *See* 25 U.S.C. 1913(a).

Comment: A commenter suggested allowing incarcerated parents that cannot leave prison to attend court for this purpose to consent without attending court to avoid undue delays in permanency for children.

Response: The final rule encourages the use of alternative methods of participation such as participation by telephone, videoconferencing or other methods. *See* FR § 23.133.

7. Consent Document Contents

Comment: Commenters suggested requiring additional information in the consent document (PR § 23.125), such as the name and address of the non-custodial parent, parents' Tribal enrollment numbers, the name and address of prospective adoptive or preadoptive parents, and details regarding the right and timeframes for withdrawing consent.

Other commenters stated that the extent of information proposed is inappropriate, and suggested deleting:

- The address of the consenting parent because the information would already be in other files and could cause confidentiality concerns; and
- Identification and addresses of foster parents because of confidentiality.

Response: The final rule establishes that the written consent must include the name and birthdate of the Indian child, the name of the Indian child's Tribe, identifying Tribal enrollment number, if known, and the name of the consenting parent. It must also clearly set out any conditions to the consent. *See* FR § 23.126. A State may choose to include additional information.

Comment: A few commenters suggested adding a provision stating that any consent not executed as described is not binding.

Response: The final rule requires that any conditions be set out in the written consent, because section 1913(a) requires the consent to be in writing in order to be valid. *See* FR § 23.126(a).

8. Withdrawal of Consent

Comment: A few commenters suggested adding when consent to a termination of parental rights or adoption or consent to a foster-care placement may be withdrawn.

Response: The final rule addresses the deadline for withdrawing consent to the termination of parental rights and adoption, and adds that consent to a foster-care placement may be withdrawn "at any time." *See* FR § 23.127, § 23.128.

Comment: A commenter requested clarification that the parent withdrawing the consent does not need to be the person who files the withdrawal in court because many parents may not have legal representation and may lack the sophistication to file papers with the court and the parent may not be informed as to which court the consent was filed in. This commenter stated that the parent should be allowed to file the withdrawal with current custodians, their attorney, or the agency that took the consent, or as a last resort with BIA.

Response: The final rule sets as a default standard that the parent or Indian custodian must file a written withdrawal of consent with the court, or testify before the court, but that State law may provide additional methods for withdrawing consent. *See* FR § 23.127, § 23.128. This is not intended to be an overly formalistic requirement. Parents involved in pending foster-care placement or termination-of-parental-rights proceedings can be reasonably expected to know that there are court proceedings concerning their child, and the final rule balances the need for a clear indication that the parent wants to withdraw consent with the parent's interest in easily withdrawing consent.

Comment: A few commenters opposed the requirements for withdrawal of consent to be filed. A commenter stated that ICWA's intent was to make it as easy as possible to withdraw consent in furtherance of having Indian children raised by their families, so they should be able to do so in any way where the intent to withdraw is clear. Another commenter stated that State law may permit revocation without filing an instrument in court, and that the requirement for filing may delay return of the child.

Response: The final rule continues to require a filing of the withdrawal with the court, but adds testimony before the court as an option to fulfill this requirement, because the formality roughly equal to that required for the original consent is appropriate and it is important that the court and other parties know when the parent seeks to withdraw consent. The final rule sets this standard as a default, but States may have additional methods for withdrawing consent that are more protective of a parent's rights that would then apply.

Comment: One commenter stated that the return of the child in PR § 23.126(b) should not be immediate but should be "as soon as practicable" as stated in PR § 23.127(b), because there are circumstances where immediate return is not practical. Another commenter noted that section 1913 of the Act does not specify when the child must be returned.

Response: The final rule accepts the suggested edit for return of a child "as soon as practicable" if a parent withdraws consent to foster-care placement, but the Department notes that in most cases the return should be nearly immediate because foster-care placement is necessarily intended to be temporary. The final rule retains the requirement for return of the child "as soon as practicable" when the parent withdraws consent to a termination or adoption. *See* FR §§ 23.127, 23.128.

Comment: A few commenters opposed the provision stating that consent to termination of parental rights or adoption may be withdrawn any time prior to the entry of the final decree of termination or final decree of adoption, "whichever is later;" rather than the statutory language, "as the case may be." These commenters state that courts have uniformly interpreted section 1913(c) to cut off the right to withdraw consent upon entry of the final order terminating parental rights, even if an adoption decree has not been entered.

Other commenters supported the language "whichever is later." One noted that a child has no legal parents after termination but before the final decree of adoption, so if the purpose of adoption is to provide the child with parents, then the biological parents or Indian custodian should be allowed to resume parental responsibilities up to the point of a finalized adoption. Another stated that this phrase addresses confusion caused by the statutory phrase "as the case may be" to construe the original intent of the provision that would establish a nationwide standard that does not limit a parent's right to end a possible adoption and secure return of the child.

Response: As a commenter noted, the statute uses the phrase "as the case may be" rather than specifying whichever is later. *See* 25 U.S.C. 1913(c). To better address the meaning of "as the case may be," the final rule treats each proceeding separately, so that a parent may withdraw consent to a termination of parental rights any time before the final decree for that termination of parental rights is entered, and a parent may withdraw consent to an adoption any time before the final decree of adoption is entered.

Comment: A commenter stated that PR § 23.127(b) places the burden on the court to notify the placement of the withdrawal of consent, but in some cases the court may not know the contact information for the placement (*e.g.,* where consent was filed in a different court than the one with current jurisdiction and placement was arranged by private parties).

Response: The final rule (like the proposed rule) requires the court to contact the party by or through whom any preadoptive or adoptive placement has been arranged. In most cases this will be the agency, whether public or private. The agency is expected to have the contact information for the placement.

Comment: A commenter suggested using the word "court" instead of "clerk of the court" which may be too specific.

Response: The final rule uses "court" instead of "clerk of the court." *See* FR § 23.128(d).

Comment: A commenter suggested adding a requirement that the court notify the consenting parent or Indian custodian of the entry of a final decree of adoption within 15 days so that they know there is no longer a right to withdraw the consent. This commenter

also suggested requiring the court to notify the consenting parent every 120 days following the consent, to keep them informed as to the progress of adoptive placement in case an adoption never occurs.

Response: The final rule does not incorporate these requirements, as the statute does not require such notice.

9. Confidentiality and Anonymity in Voluntary Proceedings

Comment: Many commenters opposed the proposed rule on the basis that it would violate the parents' right to privacy, confidentiality, and anonymity in choosing a placement. Among the problematic provisions these commenters pointed to were:

- PR § 23.123(a) requiring an inquiry be made into whether the child is an Indian child in voluntary proceedings, because this will result in the parents losing their privacy and confidentiality, particularly in small Tribal communities; and
- The requirement to inform members of the Indian child's extended family, in order to identify a placement.

These commenters noted that the 1979 guidelines stated that the Act gives confidentiality a "much higher priority" in voluntary proceedings, and that the Act directs State courts to respect parental requests for confidentiality in voluntary proceedings.

Response: The final rule requires, for the reasons already stated, that the State court determine whether the child is an "Indian child" which may, in some instances, require contacting the Tribe. The final rule does not mandate contacting extended family members to identify potential placements. The final rule also includes several protections to ensure confidentiality. Among these are the following:

- With regard to inquiry and verification, the final rule provides that, where a consenting parent requests anonymity, both the State court and Tribe must keep relevant documents and information confidential. *See* FR § 23.107(d).
- With regard to a parent or Indian custodian's consent to a placement or termination of parental rights, the final rule provides that, where confidentiality is requested or indicated, the parent or Indian custodian does not need to execute the consent in a session of court open to the public, as long as he or she executes the consent before a judge. *See* FR § 23.125(d).

M. Dispositions

In ICWA, Congress expressed a strong Federal policy in favor of keeping Indian children with their families and Tribes whenever possible. Section 1915, which lays out the placement preferences, constitutes the "most important substantive requirement [that ICWA] imposed on state courts." *Holyfield,* 490 U.S. at 36. It establishes a series of preferred placements for foster care, preadoptive, and adoptive placements. It also allows the Indian child's Tribe to establish a different order of preference. The party urging that the ICWA preferences not be followed bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from such a placement. 25 U.S.C. 1915(a), (b); FR § 23.132(b).

Congress established preferred placements in ICWA that it believed would help protect the needs and long-term welfare of Indian children and families, while providing the flexibility to ensure that the particular circumstances faced by individual Indian children can be addressed by courts. In §§ 23.129–23.132, the final rules provide guidance to States to ensure nationwide uniformity of the application of these placement preferences as well as the standards for finding good cause to deviate from them.

The preferences in ICWA and the final rule codify the best practice in child welfare of favoring extended family placements, including placement within a child's broader kinship community. If a child is removed from her parents, the first choice in child-welfare practice for an alternative placement—for all children, not just Indian children—is the child's extended family. *See* National Council of Juvenile and Family Court Judges, Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases 10–11 (2000) ("An appropriate relative who is willing to provide care is almost always a preferable caretaker to a non-relative."); Child Welfare League of America, Standard of Excellence for Adoption Services 1.10 (2000) (2000) ("Adoption Standards") ("The first option considered for children whose parents cannot care for them should be placement with extended family members . . ."); Child Welfare League of America, Standard of Excellence for Kinship Care Services 1.4 (2000) ("Kinship Care Standards") ("Kinship care . . . should be the first option considered . . ."); Elaine Farmer & Sue Moyers, Kinship Care: Fostering Effective Family and Friends Placements (2008).

Placing children with their extended family benefits children. *See* Adoption Standards 8.24, 4.23 (kinship care "maximizes a child's connection to his or her family"); Tiffany Conway & Rutledge Hutson, *Is Kinship Care Good for Kids?,* Center for Law and Social Policy 2 (Mar. 3, 2007) ("[T]he research tells us that many children who cannot live with their parents benefit from living with grandparents and other family members.") (emphasis omitted). This is true for children who are placed in foster care as well as those who are adopted. *See* Kinship Care Standards, at 5 (noting beneficial outcomes of kinship care for foster care including children being less likely to experience multiple placements and more likely to be successfully reunified with their parents); Adoption Standards § 4.23; Marc A. Winokur, et al., *Matched Comparison of Children in Kinship Care and Foster Care on Child Welfare Outcomes,* 89 Families in Soc'y: J. Contemp. Soc. Sciences 338, 344–45 (2008) (reporting better outcomes for children in kinship care on several metrics). Congress recognized that this general child-welfare preference for placement with family is even more important for Indian families, as one of the driving concerns leading to the passage of ICWA "was the failure of non-Indian child welfare workers to understand the role of the extended family in Indian society." *Holyfield,* 490 U.S. at 35 n.4.

Even if biological relatives are not available for placements, there are benefits to children from placements within their community, which Congress recognized by establishing placement preferences for Tribal members. 25 U.S.C. 1915(a), (b). Again, this is not just a principle of child-welfare practice for Indian children, but for all children. *See* Kinship Care Standards §§ 1.1, 2.8. But it has special force and effect for Indian children, since, as Congress recognized, there are harms to individual children and parents caused by disconnection with their Tribal communities and culture, and also harms to Tribes caused by the loss of their children.

Recognizing the benefits of placements with family and within communities, Congress has repeated its emphasis on such placements in subsequent statutes in the years since it passed ICWA. For example, in order to obtain Federal matching funds, a State must consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards, and must exercise "due diligence" to identify, locate, and notify relatives when children enter the foster care system. 42 U.S.C. 671(a)(19), (29); see also *Miller* v. *Youakim,* 440 U.S. 125, 142 n.21 (1979) (noting "Congress' determination that homes of parents and relatives provide the most suitable environment for children"). Congress has also required states receiving Federal funds to prioritize placement in close proximity to the parents' home, recognizing the importance of placement within the community. 42 U.S.C. 675(5)(A).

Congress, through ICWA's placement preferences, and the Department, through this regulation, continue to treat the physical, mental, and emotional needs of the Indian child as paramount. *See, e.g.,* FR § 23.132(c), (d). These physical, mental, and emotional needs include retaining contact, where possible, with the Indian child's extended family, community, and Tribe. If there are circumstances in which an individual child's extraordinary physical, mental, and emotional needs could not be met through a preferred placement, then good cause may exist to deviate from those preferences. *See* FR § 23.132(c)(4).

The Department received many comments regarding what may constitute "good cause" to deviate from the placement preferences and whether the final rule should set out such factors. By providing clear guidance on what constitutes "good cause" to deviate from the placement preferences, the final rule gives effect to the fact that Congress intended good cause to be a limited exception, rather than a broad category that could swallow the rule. The Department also recognizes that the question of what constitutes good cause is a frequently litigated area of ICWA, and this litigation can result in harmful delays in achieving permanency for children. For these reasons, the Department has determined that it is important to provide some parameters on what may be considered "good cause" in order to give effect to ICWA's placement preferences.

The final rule, therefore, lays out five factors upon which courts may base a determination of good cause to deviate from the placement preferences. These factors are discussed in more detail below in the response to comments, but include the request of the parents, the request of the child, sibling attachment, the extraordinary physical, mental, or emotional needs of the child, and the unavailability of a suitable preferred placement. FR § 23.132(c). It also makes clear that a court may not depart from the preferences based on the socioeconomic status of any placement relative to another placement or based on the ordinary bonding or attachment that results from time spent in a non-preferred placement that was made in violation of ICWA. FR § 23.132(d), (e).

The final rule also recognizes that there may be extraordinary circumstances where there is good cause to deviate from the placement preferences based on some reason outside of the five specifically-listed factors. Thus, the final rule says that good cause "should" be based on one of the five factors, but leaves open the possibility that a court may determine, given the particular facts of an individual case, that there is good cause to deviate from the placement preferences because of some other reason. While the rule provides this flexibility, courts should only avail themselves of it in extraordinary circumstances, as Congress intended the good cause exception to be narrow and limited in scope.

As requested by commenters, the rules governing placement preferences recognize the importance of maintaining biological sibling connections. The placement preferences allow biological siblings to remain together, even if only one is an "Indian child" under the Act, because FR § 23.131(a) provides that the child must be placed in the least restrictive setting that most approximates a family, allows his or her special needs to be met, and is in reasonable proximity to his or her home, extended family, and/or siblings. The sibling placement preference does not mean ICWA applies to a sibling who is not an "Indian child" but rather makes clear that good cause can appropriately be found to depart from ICWA's placement preferences where doing so allows the "Indian child" to remain with his or her sibling. Because keeping biological siblings together contributes toward a setting that approximates a family, the final rule explicitly adds "sibling attachment" as a consideration in choosing a setting that most approximates a family. *See* FR § 23.131(a)(1). If for some reason it is not possible to place the siblings together, then FR § 23.131(a)(3) mandates that the Indian child should be placed, if possible, in a setting that is within a reasonable proximity to the sibling. In addition, if the sibling is age 18 or older, that sibling would qualify as a preferred placement, as extended family.

A number of commenters praised or questioned the provisions at PR § 23.128(b) requiring, in certain circumstances, a search to identify placement options that would satisfy the placement preferences. The final rule has been modified to include a requirement that, in order to determine that there is good cause to deviate from the placement preferences based on unavailability of a suitable placement, the court must determine that a diligent search was conducted to find placements meeting the preference criteria. *See* FR § 23.132(c)(5). This provision is required because the Department understands ICWA to require proactive efforts to comply with the placement preferences and requires more than a simple back-end ranking of potential placements. It is also consistent with the Federal policy for all children—not just Indian children—that States are to exercise "due diligence" to identify, locate, and notify relatives when children enter the foster care system. 42 U.S.C. 671(a)(19), (29).

ICWA requires that there be efforts to identify and assist preferred placements. Section 1915(a) directs that, in any adoptive placement of an Indian child under State law, a preference "shall" be given to the Indian child's family and Tribe. 25 U.S.C. 1915(a) (1)–(2). This language creates an obligation on State agencies and courts to implement the policy outlined in the statute. "Giv[ing]" a "preference" means more than mere prioritization—it connotes the active bestowal of advantages on some over others. *See* Black's Law Dictionary 1369 (10th ed. 2014) (defining "preference" as the "quality, state, or condition of treating some persons or things more advantageously than others" and the "favoring of one person or thing over another"). Thus, section 1915(a) requires affirmative steps to give preferred placements certain advantages and a full opportunity to participate in the child-custody determination.

This conclusion is supported by other provisions of section 1915, which work in concert with section 1915(a) to require that State agencies and courts make efforts to identify and assist extended family and Tribal members with preferred placements. Section 1915(e) requires that, for each placement, the State must maintain records evidencing the *efforts to comply* with the order of preference specified in section 1915. 25 U.S.C. 1915(e). To allow oversight of such efforts, Congress further required that those records be made available at any time upon the request of the Secretary or the Indian child's tribe. *Id.* Thus, reading Sections 1915(a) and 1915(e) together, it is clear that Congress demanded documentable "efforts to comply" with the ICWA placement preferences.

Courts have recognized that State efforts to identify and assist preferred placements are critical to the success of the statutory placement preferences. *See Native Village of Tununak* v. *State,*

Dep't of Health and Soc. Servs. (Tununak II), 334 P.3d 165, 177–78 (Alaska 2014) (noting that before a court in which an adoption proceeding is pending can even "entertain[] argument that there is good cause to deviate from section 1915(a)'s preferred placements, it must searchingly inquire about the existence of, and [the State's] efforts to comply with achieving, suitable section 1915(a) preferred placements"); *In re T.S.W.,* 276 P.3d 133, 142–44 (Kan. 2012) (rejecting a lower court's determination that there was good cause to deviate from the placement preferences based, in part, on the adoption agency's failure to make adequate efforts to identify potential preferred placements); *In re D.W.,* 795 N.W.2d 39, 44–45 (S.D. 2011) (carefully examining the sufficiency of the steps that the State took to find a suitable preferred placement); *In re Jullian B.,* 82 Cal. App. 4th 1337, 1347 (Cal. Ct. App. 2000) (emphasizing that ICWA requires the State to "search diligently for a placement which falls within the preferences of the act"); *Pit River Tribe* v. *Superior Court,* No. C067900, 2011 WL 4062512, at *10, *12 (Cal. Ct. App. Sept. 14, 2011).

Finally, the final rule provides that a court may not consider, as the sole basis for departing from the preferences, ordinary bonding or attachment that flows from time spent in a non-preferred placement that was made in violation of ICWA. In response to commenters' concerns, the final rule adjusts the proposed provision stating that "ordinary bonding" is not within the scope of extraordinary physical, mental, or emotional needs. PR § 23.131(c)(3). The proposed provision may have inappropriately limited court discretion in certain limited circumstances.

1. When Placement Preferences Apply

Comment: Several commenters supported proposed PR § 23.128, emphasizing the need to follow the Act's placement preferences, and noted that it addresses one of the biggest problems in the Act's implementation—the failure to place Indian children in the homes of extended family and Tribal members. One commenter pointed to the repeated failure in one State to investigate preferred placements and the practice of relying on bonding with non-preferred placements as good cause to depart from the placement preferences. Another commenter asserted that States are not pursuing placement preferences even when the Tribe identifies a family that meets the requirements. Several commenters provided reasons for why the placement preferences are so important, including to minimize trauma by placing the child somewhere within their realm of comfort and to promote the best interests of the child by keeping the child with her family or within her Tribal community and culture.

Several opposed PR § 23.128, saying it gives higher priority to the Tribe than to the family, and prevents the court from weighing relative interests. These commenters stated that placement preferences should be secondary to the individual child's needs and welfare.

Response: The Act requires that States apply a preference for the listed placement categories. 25 U.S.C. 1915. As discussed above, Congress established preferred placements in ICWA that it believed would help protect Indian children's needs and welfare, while providing the flexibility to ensure that particular circumstances faced by individual Indian children can be addressed by courts. In enacting ICWA, Congress also recognized that State and private agencies and State courts sometimes apply their own biases in assessing what placement best meets the individual Indian child's needs and long-term welfare. The final rule reflects the statutory mandate.

Comment: A few Tribal commenters suggested the rule allow for such different orders as established by Tribal law or Tribal-State agreements.

Response: FR § 23.129(a), FR § 23.130(b), and FR § 23.131(c) reflect the statutory requirement that a Tribe may establish a different order of preference by resolution. *See* 25 U.S.C. 1915(c). The Department recognizes that an order of preference established as part of a Tribal-State agreement would constitute an order of preference established by "resolution," 25 U.S.C. 1915(c), particularly as the statute specifically authorizes Tribal-State agreements respecting care and custody of Indian children. 25 U.S.C. 1919.

Comment: A commenter stated that PR § 23.128(a) omits language from section 1915(c) of the Act that the Tribe's order of preference should be followed only "so long as the placement is the least restrictive setting appropriate to the particular needs of the child." According to this commenter, that omitted language is what makes clear that the best interest of the child must be considered and provides a basis for not following the placement preference order.

Response: FR § 23.131 adds the statutory language providing that the placement must be the least restrictive setting that most approximates a family, taking into consideration sibling attachment, allows the Indian child's special needs, if any, to be met, and is in reasonable proximity to his or her home, extended family, and/or siblings. The Department disagrees, however, that this language provides a basis for not following the preference order in the ordinary case.

Comment: A commenter opposed the language in PR § 23.128(a) stating that the placement preferences always apply without a cross-reference to the good cause provision. Likewise, a few commenters stated that PR § 23.129 and § 23.130 should both use the phrase "in the absence of good cause to the contrary" as qualifying language because Congress intended State courts to consider the unique circumstances affecting individual children and the statute includes the language "in the absence of good cause to the contrary" in each paragraph (section 1915(a) and (b)).

Response: The provision establishing that good cause must exist to depart from the placement preferences is located at FR § 23.129(c). Specific provisions regarding good cause are set out in FR § 23.132; it is not necessary to repeat "in the absence of good cause to the contrary" in FR §§ 23.130 or 23.131.

Comment: Several commenters supported requiring a diligent search for placements within ICWA's placement preferences (extended family, Tribal families, and other Indian families) and noted this is a best practice that is in the child's best interest. A commenter stated that the requirement for a diligent search is critically important because ICWA's requirements have been ignored and almost half the children continue to be placed in non-preferred placements. A few commenters suggested further emphasizing the need for States to identify preferred placements by working with Tribes to proactively recruit preferred placement homes.

A few commenters opposed requiring a diligent search, saying it is not required by ICWA and that Congress intended to rely on State family law to establish requirements for placement option searches.

Response: As discussed above, a diligent search is necessarily implied by the Act to comply with the placement preferences. The regulations make this requirement explicit in situations where a party seeks good cause to deviate from the placement preferences based on unavailability. *See* FR § 23.132(c)(5). Furthermore, State agencies generally search for a child's extended family as a matter of practice.

Comment: A commenter stated that the diligent search for foster placements including homes licensed, approved, or specified by the child's Tribe conflicts with the Act's requirement that the child be placed within a reasonable proximity to his or her home (as well as other requirements associated with Federal funding).

Response: While the specific portion of PR § 23.128(b) that the commenter is addressing is not included in the final rule, FR § 23.131(a) reflects the Act's requirements for the child to be placed in the least restrictive setting that most approximates a family and in which the child's special needs, if any, may be met, and within reasonable proximity to the child's home. *See* 25 U.S.C. 1915(b), (c).

Comment: A commenter asked whether the showing as to the diligent search for placements has to be made at every hearing, or whether the rule is creating a requirement that a specific placement proceeding happen in each ICWA case that does not comply with the first placement preference. This State commenter also expressed concern regarding State resources this would require.

Response: The rule does not require a showing at every hearing that a diligent search for placements has been made or that a specific hearing be held to show why the first placement preference was not attainable. The rule requires that, if the agency relies on unavailability of placement preferences as good cause for deviating from the placement preferences, it must be able to demonstrate to the court on the record that it conducted a diligent search. *See* FR § 23.132(c)(5). This showing would occur at the hearing in which the court determines whether a placement or change in placement is appropriate.

Comment: Several commenters requested that the rule address the Alaska Supreme Court's limitation in *Native Village of Tununak* v. *Alaska* to define what a preferred placement family needs to do to demonstrate a willingness to adopt a particular child (*e.g.,* the individual, agency, or Tribe informs the court orally during a proceeding or in writing of willingness to adopt). Several other commenters stated that the rule ignores the Supreme Court's ruling that the preferences are inapplicable where no eligible placement has formally sought to adopt the child.

Response: As discussed above, ICWA requires that there be efforts to identify and assist preferred placements. As a recommended practice, the State agency should provide the preferred placements with at least enough information about the proceeding so they can avail themselves of the preference. Alaska itself has taken corrective action to address the ruling in *Tununak* by modifying its standards to facilitate more means by which to demonstrate willingness to adopt a particular child. We encourage other States to follow Alaska's lead in this regard.

Comment: A few commenters stated that it is impractical to notify each of the homes listed in PR § 23.128(b)(4) (institutions for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs). A commenter also pointed out that, practically, there are no accessible lists of every Indian foster home in the State or whether they would want such notification which could amount to hundreds of letters each year.

Response: The specific portion of the provision of proposed rule § 23.128(b) that commenters are addressing is not included in the final rule. As discussed above, however, the rule does include a requirement that, in order to determine that there is good cause to deviate from the placement preferences based on unavailability of a suitable placement, the court must determine on the record that a diligent search was conducted to find suitable placements meeting the preference criteria. *See* FR § 23.132(c)(5). A diligent search will almost always require some contact with those preferred placements that also meet the requirements for a least restrictive setting within a reasonable proximity, taking into account the child's special needs. It may also involve contacting particular institutions for children approved or operated by Indian Tribes if other preferred placements are not available.

Comment: A few commenters had suggested edits to PR § 23.128(b). For example, a State commenter requested clarifications in PR § 23.128(b) as to "placement proceeding" and "explanation of the actions that must be taken to propose an alternative placement and to whom those are provided in the proceedings."

Response: The final rule deletes this provision.

Comment: A commenter suggested changing the last preference to include Indian foster homes "authorized" by the Tribe rather than "licensed" by the Tribe.

Response: The rule includes "licensed" because that is the term the Act uses. *See* 25 U.S.C. 1915(b).

Comment: A commenter requested clarification of whether the agency must show why the higher preferences cannot be complied with instead of a lower preference.

Response: The final rule clarifies what the court will examine in determining whether the placement preferences were met or good cause exists to deviate from the placement preferences. *See* FR § 23.132. The agency must document its search for placement preferences and an explanation as to why each higher priority placement preference could not be met. *See* section 1915(e) (requiring that the State maintain documentation "evidencing the efforts to comply with the order of preference specified in this section"); FR § 23.141.

Comment: One commenter stated that the mandate that placement must always follow the placement preferences is not practical because there are 17 States with no federally recognized Tribes, meaning the child would face a move to a location that would make reunification more difficult.

Response: The fact that a no federally recognized Tribe is located within a State does not mean that there are no family members or members of Tribes residing or domiciled in that State.

Comment: Some commenters requested that the placement preferences allow siblings to remain together even if only one child is an "Indian child" as defined by ICWA. One commenter noted that one State regularly finds that a placement with a minor sibling qualifies as a placement with extended family for purposes of the placement preferences.

Response: As discussed above, the rules governing placement preferences recognize and address the importance of maintaining biological sibling connections.

Comment: One commenter stated that the provision at PR § 23.128(c) stating that the request for anonymity does not relieve the obligation to comply with placement preferences is extremely important because many attorneys in voluntary proceedings advise their clients to request anonymity to avoid the placement preferences.

Response: The final rule includes a provision, discussed above, requiring the court to give weight to the request for anonymity in applying the preferences. *See* FR § 23.129(b).

Comment: A few commenters suggested the rule clarify the ability of State-court judges to issue placement orders under ICWA. These commenters stated that such a provision is necessary because some State codes prohibit a State judge from ordering placement, instead leaving the responsibility to the State social workers.

Response: While it may be the practice in some jurisdictions for judges to defer to State agencies, the statute contemplates court review of placements of Indian children. It requires, for example, court review of

whether active efforts were made (section 1912(d)) and an "order" for foster-care placement (section 1912(e)) and termination of parental rights (section 1912(f)). Further, the statute establishes a standard of evidence for foster-care-placement orders and termination-of-parental-rights orders (section 1912(e)-(f)), necessarily requiring court involvement.

Comment: A few commenters suggested adding a cross-reference in PR § 23.128(d) to the section delineating the good-cause criteria.

Response: The final rule adds the requested clarification. *See* FR § 23.129(c).

Comment: One commenter requested additional clarification on the requirements in PR § 23.128(e) for maintenance of records.

Response: The final rule moves the requirement regarding maintenance of records from PR § 23.128(e) to FR § 23.141. *See* comments on PR § 23.137, below.

2. What Placement Preferences Apply, Generally

Comment: Several commenters expressed their strong support of the placement preferences as assuring that the child's best interests are met by giving the child the opportunity to be placed with relatives. One commenter noted that traditional Indian spirituality, culture, and history cannot be fully taught by a non-Indian family. Commenters stated that studies reflect that placement of children within the ICWA preferences are more stable by half than placements that do not fall within ICWA's preferences.

A few commenters opposed the placement preferences. One stated that Federal law already seeks to place children within the same family and community. Another stated that the preferences are not a mandate, and that there are not enough Indian foster homes so in some cases children have to be placed in non-Indian homes.

One commenter stated that the rule should make the placement preferences discretionary because it may not always be possible to adhere to the placement preferences, and the rule must allow for flexibility to place a child where his or her physical and emotional needs are best met.

Response: As discussed above, Congress established preferred placements in ICWA that it believed would help protect Indian children's needs and welfare. The statute provides the flexibility to ensure that special circumstances faced by individual Indian children can be addressed by courts. The final rule reflects the child's best interests and the order of the preferred placements. The criteria applicable to foster-care placements allow for placements in which the child's special needs, if any, may be met.

Comment: A few commenters stated that the guidelines contradict the Multiethnic Placement Act (MEPA) to prevent discrimination based on race, color and/or national origin when making placements, and that some Indian children do not have an apparent existing connection to their traditional culture and are thus "mainstream."

Response: These comments are based on the misunderstanding that ICWA is a race-based statute. Congress established certain placement preferences based on, and in furtherance of, the political affiliation of Indian children and their parents with Tribes, and the government-to-government relationship between the United States and Tribes. Recognizing that the applicability of ICWA is based on political affiliation rather than race, Congress made clear that MEPA should not be construed to impact the application of ICWA. 42 U.S.C. 674(d)(4), 1996b(3) (each stating this subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978).

Comment: One commenter suggested adding language to clarify that the preferences are in descending order of preference. A commenter stated that States should not be allowed to skip steps in the preferences.

Response: FR §§ 23.130(a) and 23.131(b) state that the preferences are in descending order, reflecting that each placement should be considered (without being skipped) in that order; the preferences are in the order of most preferred to least preferred.

Comment: Several commenters suggested adding a provision to allow the court to consider the Tribe's recommended placement for an Indian child, to take into consideration Tribal custom, law, and practice when determining the welfare of Indian children, as authorized by section 1915(c), which states that the Tribe may establish a different order of preference.

Response: Congress established a method for the Tribe to express its preferences in section 1915(c). FR §§ 23.129(a), 23.130(b), and 23.131(c) are included in the final rule in recognition of that statutory requirement. State courts may also wish to consider a Tribe's recommended placement for a particular child.

Comment: A few commenters stated that the placement preferences should better protect the rights of biological fathers. One suggested including biological fathers in the list of placement preferences.

Response: The final rule's placement preferences reflect the statute. If the biological father meets the criteria for the placement preferences (for example, as a member of the Indian child's Tribe), he may avail himself of the placement preferences. In addition, the Act establishes that unwed fathers who have not acknowledged or established paternity are not considered "parents" under the Act; however, by acknowledging or establishing paternity, the father may become a "parent" under the Act, and avail himself of ICWA's protections.

Comment: A few commenters stated that the placement preferences should extend beyond the nuclear family to include extended family (aunts, uncles, grandparents) because ICWA was designed to keep Indians rooted to their Tribes and culture if the nuclear family breaks down.

Response: Members of the child's extended family are the first-listed preferred placement. *See* 25 U.S.C. 1915(a), (b); FR § 23.130(a)(1); § 23.131(b)(1).

3. Placement Preferences in Adoptive Settings

Comment: One commenter suggested adding licensed adoptive homes to the list of placement preferences in PR § 23.129 and PR § 23.130.

Response: The rule does not specify licensed adoptive homes in the list of placement preferences because the statute does not specify these homes, and this change would not comport with the intent of Congress to place Indian children, where possible, with extended family or Tribal members.

Comment: A State commenter requested clarification in PR § 23.129(b) of the phrase "where appropriate" and whether the child or parent's preference supersedes the placement preferences. A few commenters stated that the rule should use the word "shall" or "must" to require the court to consider the preference of the Indian child or parent, in accordance with section 1915. A few other commenters supported use of "should" in this provision, stating that otherwise the Indian child's or parent's preference would trump the placement preferences.

Response: The final rule reflects the language of the statute. This language does not require a court to follow a child or parent's preference, but rather requires that it be "considered" "where appropriate."

4. Placement Preferences in Foster or Preadoptive Proceedings

Comment: Several commenters expressed concern that unavailability of preferred placements will result in longer periods of instability for the child or delays in permanency for the child. A few commenters requested that timelines be imposed on finding preferred placements. For example, one commenter stated that once a Tribe is notified, it should have a certain timeframe to provide a permanent home for the child or an exception to ICWA should be made for the well-being of the child, otherwise the rule denies permanency for the child in the name of cultural preservation.

Response: The Department has not identified any authority in the statute for imposing timelines to find a placement; therefore, the rule does not do so. The unavailability of a suitable preferred placement is one of the bases for good cause to depart from the placement preferences, so long as a diligent search for a preferred placement was conducted. FR § 23.132(c)(5). Thus, so long as a prompt and diligent search is made for a preferred placement, these rules should not delay permanency.

Comment: A commenter suggested that a needs assessment by a qualified expert witness should be required in PR § 23.130(a)(2) where it references a child's needs.

Response: The statute explicitly refers to "special needs" but does not qualify it as requiring the input of a qualified expert witness, as the statute does in other places. Therefore, the rule does not impose this requirement.

5. Good Cause To Depart From Placement Preferences

Comment: A few commenters said the proposed rule requires a hearing on whether good cause exists and opposed the requirement for an agency to wait for a court to act in order to depart from the placement preferences. One commenter stated that this requirement is contrary to ICWA because while ICWA states that the court must determine there is good cause to deny transfer, it does not require the court to determine whether good cause to depart from placement preferences exists. A State commenter asserted that there will be significant workload increases for agencies if there must be an evidentiary hearing even when there is no objection from the Tribe or parents. This commenter also stated that requiring the judge to determine good cause in the absence of the parties' disagreement puts the court in the role of case administrator rather than arbiter.

Response: Where the requirements of 25 U.S.C. 1912(d)–(e) have been met, a court evidentiary hearing may not be required to effect a placement that departs for good cause from the placement preferences, if such a hearing is not required under State law. *See* section 1915(c). Regardless of the level of court involvement in the placement, however, FR § 23.132(a) requires that the basis for an assertion of good cause must be stated in the record or in writing and the statute requires a record of the placement be maintained. Section 1915(e), FR § 23.141.

Where a Tribe or other party objects, however, the final rule establishes the parameters for a court's review of whether there is good cause to deviate from the placement preferences and requires the basis for that determination to be on the record. *See* FR § 23.129(c). While the agency may place a child prior to or without any determination by the court, the agency does so knowing that the court reviews the placement to ensure compliance with the statute.

Comment: A few commenters supported the requirement in PR § 23.128(b) for "clear and convincing evidence" that the placement preferences were met, and in PR § 23.131(b) for "clear and convincing evidence" of good cause to depart from the placement preferences. Some of these commenters point out that the court in *Tununak II* overturned the initial application of only a "preponderance of the evidence" standard. One commenter stated that elevating the standard of proof to "clear and convincing evidence" is an important means of strengthening the statutory preferences, but recommended making it permissive because ICWA intended State courts to retain flexibility. *See* S. Rep. No. 95–597. A few other commenters opposed specifying "clear and convincing evidence" as exceeding the Department's authority.

Response: The final rule states that the party seeking departure from the placement preferences should prove there is good cause to deviate from the preferences by "clear and convincing evidence." FR § 23.132(b). While this burden of proof standard is not articulated in section 1915 of the statute, courts that have grappled with the issue have almost universally concluded that application of the clear and convincing evidence standard is required as it is most consistent with Congress's intent in ICWA to maintain Indian families and Tribes intact. *See In re MKT,* 4368 P.3d 771 ¶ 47 (Okla. 2016); *Gila River Indian Cmty.* v. *Dep't. of Child Safety,* 363 P.3d 148, 152–53 (Ariz. Ct. App. 2015); *In re Alexandria P.* 176 Cal.Rptr.3d 468, 490 (Cal. Ct. App. 2014); *Native Vill. of Tununak* v. *Alaska,* 303 P.3d 431, 448, 453 (Alaska 2013) *vacated in part on other grounds by* 334 P.3d 165 (Alaska 2014); *People ex rel. S. Dakota Dep't of Soc. Servs.,* 795 N.W.2d 39, 44, ¶ 24 (S.D. 2011); *In re Adoption of Baby Girl B.,* 67 P.3d 359, 374, ¶ 78 (Okla. Civ. App. 2003); *In re Custody of S.E.G.,* 507 N.W.2d 872, 878 (Minn. Ct. App. 1993); *but see Dep't of Human Servs.* v. *Three Affiliated Tribes of Fort Berthold Reservation,* 238 P.3d 40, 50 n. 17 (Or. Ct. App. 2010) (addressing the issue in a footnote in response to a "passing" argument).

While the final rule advises that the application of the clear and convincing standard "should" be followed, it does not categorically require that outcome. However, the Department finds that the logic and understanding of ICWA reflected in those court decisions is convincing and should be followed. Widespread application of this standard will promote uniformity of the application of ICWA. It will also prevent delays in permanency that would otherwise result from protracted litigation over what the correct burden of proof should be. So, while the Department declines to establish a uniform standard of proof on this issue in the final rule, it will continue to evaluate this issue for consideration in any future rulemakings.

a. Support and Opposition for Limitations on Good Cause

Comment: Many commenters supported emphasizing the need to follow the placement preferences and limiting agencies' and courts' ability to deviate from the placement preferences based on subjective and sometimes biased factors. Commenters reasoned:

- One of ICWA's primary purposes is to keep Indian children connected to their families, Tribal communities and culture, and yet, currently more than 50% of Native American children adopted are placed into non-Native homes;
- Defining "good cause" is within DOI's authority under ICWA;
- Defining "good cause" will provide clarity to on-the-ground social workers and others because the phrase "good cause" has been interpreted differently among States;
- The provision explaining that the length of time a child is in a non-compliant placement is irrelevant is consistent with best practices in child welfare;
- Restrictions on good cause are necessary to ensure courts do not disregard ICWA's placement preferences

based on a non-Indian assessment of what is "best" for the child, such as through a generalized "best interest" analysis;

• Use of "good cause" to deviate from placement preferences has become so liberal that it has essentially swallowed ICWA's mandate; and

• Without the rule, "good cause" leaves so much discretion to State courts that the Tribe rarely prevails in moving a child to a preferred placement after initial placement elsewhere.

Many other commenters opposed the rule's definition of "good cause." Among the reasons stated for this opposition were:

• The rule's basis for "good cause" is so narrow that it leaves courts with no flexibility, contrary to congressional intent;

• The rule is not a reasonable interpretation and will not receive deference because it predetermines good cause even though the legislative history explicitly states that the term "good cause" was intended to give State courts flexibility;

• The rule excludes "best interest" factors as a basis for good cause even though placements directly implicate a child's best interests;

• The rule could require placement in a home that every party to the proceeding, including the Tribe, believes is contrary to the best interests of the child; and

• The rule violates Indian children's rights to due process by limiting the factors and probative evidence a State court can consider as compared to non-Indian children.

One commenter expressed concern that courts may interpret the word "must" as requiring them to automatically find good cause when any of the listed circumstances exist.

Response: As discussed above, Congress established preferred placements in ICWA that it believed would help protect the long-term health and welfare of Indian children, parents, families, and Tribes. ICWA must be interpreted as providing meaningful limits on the discretion of agencies and courts to remove Indian children from their families and Tribes, since this is the very problem that ICWA was intended to address. Accordingly, the final rule identifies specific factors that should provide the basis for a finding of good cause to deviate from the placement preferences. These factors accommodate many of the concerns raised by commenters, and include the request of a parent, the child, sibling attachments, the extraordinary physical, mental, or emotional needs of a child, and the unavailability of suitable preferred placements. The final rule retains discretion for courts and agencies to consider any unique needs of a particular Indian child in making this determination.

b. Request of Parents as Good Cause

Comment: A commenter stated their support of PR § 23.131(c)(1), requiring both parents to request the deviation in order for it to qualify as good cause, because it will lessen instances where the rights of the child's mother are deemed more important than those of the father. A few commenters opposed requiring both parents to request because there are instances in which one parent is unavailable, cannot be found, is mentally disabled, or has been proven unfit. One stated that there may be instances where both parents do not agree, but the court should still be encouraged to consider each parent's request. A commenter also pointed to case law holding that a single parent's request can constitute good cause. According to this commenter, if a noncustodial parent may not invoke section 1912 to thwart an adoption, under *Adoptive Couple*, then a noncustodial parent has no right to be heard on placement preferences. A commenter stated that the ordinary meaning of section 1915(c) is that the preference of the parent—meaning one or both parents—be considered in applying or departing from the placement preferences, where appropriate.

Response: The final rule changes the requirement for both parents to make the request to "one or both parents," in recognition that in some situations, both parents may not be available to make the request. This is also consistent with the statutory mandate that, where appropriate, the preference of the Indian child or parent [(singular)] shall be considered. 25 U.S.C. 1915(c). If the parents both take positions on the placement, but those positions are different, the court should consider both parents' positions.

Comment: A few commenters suggested the court should also consider the preference of the child's guardian ad litem in making the placement.

Response: The rule does not add that a guardian ad litem's request should be considered as good cause because Congress expressly allowed for consideration of the preference of the Indian child or parent, and did not include the guardian ad litem. *See* 25 U.S.C. 1915(c).

Comment: A few commenters opposed the provision allowing consideration of the request of parents in determining good cause because, they stated, parents are often pressured to accept placement and this provision encourages coercion. Another commenter stated that there is no rationale for acceding to a parental request for placement in the context of an involuntary removal of a child. Likewise, a few commenters stated that the parent's preference does not automatically show good cause to deviate and should only be a consideration. One commenter stated that parents who decided not to raise their child should not have unilateral authority to determine the child's placements and whether the child will have continued contact with relatives and the Tribe. One commenter supported including the parent's request as good cause, and asserted that a birthparent's preference should be considered unless otherwise proven not to be in the child's best interest.

Response: The statute explicitly provides that, where appropriate, preference of the parent must be considered. *See* 25 U.S.C. 1915(c). The regulation therefore provides that the request of the parent or parents should be a consideration in determining whether good cause exists. *See* FR § 23.132(c)(1). The request of the parent is not determinative, however. The final rule includes a provision requiring that the parent or parents attest that they have reviewed the placement options that comply with the order of preference are intended to help address concerns about coercion. *See* FR § 23.132(c)(1).

Comment: One commenter requested clarifying that the parent must attest that they have reviewed the actual families that meet the placement preferences, not just the categories. The commenter stated that if the parents still object after reviewing the preferences, the agency or court should first be required to explore other available preferred families before concluding there is good cause.

Response: The rule uses the term "placement options" to refer to the actual placements, rather than just the categories. *See* FR § 23.132(c)(1). A court or agency may consider in determining whether good cause exists whether a diligent search was conducted for placements meeting the placement preferences.

Comment: One commenter stated that the non-Indian foster parent should not be considered the de facto parent for the purposes of this provision.

Response: The definition of "parent" does not include foster-care providers. *See* FR § 23.2.

c. Request of the Child as Good Cause

Comment: One commenter opposed allowing consideration of the request of the child in determining "good cause" at PR § 23.131(c)(2) because children can be groomed to request a certain placement and it is subjective when a child is able to understand the issue.

Response: The statute explicitly provides that, where appropriate, preference of the Indian child must be considered. *See* 25 U.S.C. 1915(c). The rule adds that the child must be of "sufficient age and capacity to understand the decision that is being made" but leaves to the fact-finder to make the determination as to age and capacity. *See* FR § 23.132(c)(2). The rule also leaves to the fact-finder any consideration of whether it appears the child was coached to express a certain preference.

Comment: One commenter agreed with not restricting this provision to children age 12 or older, but recommended language that the consent be completely voluntary and that there be a determination that the child can understand the decision being made, to protect against the child being pressured. Two other commenters stated that the rule should set a baseline age because otherwise there will be starkly different treatments of Indian children (*e.g.*, reporting that South Carolina has found a 3-year-old competent to testify whereas in Oklahoma a 12-year old is presumed competent to state a preference).

Response: Each Indian child and their circumstances differ to a degree that it is not be appropriate to establish a threshold age for a child to express a preference. The rule leaves it to the fact finder to determine whether the child is of "sufficient age and capacity" to be able to understand the decision that is being made.

Comment: Several commenters suggested that the rule should provide that Tribal approval of the non-preferred placement constitutes good cause because the rule should defer to a Tribe's determination that a non-preferred placement is in the child's best interests.

Response: The statute provides that the preference of the parent or child should be considered and allows the Tribe to express its preference by establishing a different order of preference by resolution. 25 U.S.C. 1915(c). In addition, the statute and the rule make clear that a foster home specified by the Indian child's Tribe is a preferred placement. FR § 23.131(b)(2).

d. Ordinary Bonding and Attachment

Comment: Many commented on ordinary bonding and attachment. A high-level summary of these comments is provided here. Many commenters strongly supported PR § 23.131(c)(3), stating that "ordinary bonding or attachment" does not qualify as the extraordinary physical or emotional needs that may be a basis for good cause to deviate from the placement preferences. Some who supported the provision cited agencies' deliberate failure to identify preferred placements as reasons for a child being initially placed with a non-preferred placement. Among the reasons cited for support of this provision were:

• Ordinary bonding is not relevant to good cause to deviate from placement preferences because ordinary bonding shows that the child is healthy and can bond again.

• The proposed provision is limited in that it still allows for consideration of extraordinary bonding as good cause.

• Many Western bonding and attachment theories are not as relevant to Indian children because they are based on non-indigenous beliefs and psychological theories about connection with one or two individual parents.

• Allowing normal emotional bonding to be considered good cause would negate ICWA's presumption that the statutory placement preferences are in the Indian child's best interest.

• The proposed provision is needed to address the tactic of placing Indian children in non-preferred placements, delaying notification to the child's Tribe and family, then arguing good cause to deviate from the placement preferences based on the child's bonding with the caregivers (in other words, the proposed provision is necessary to remove incentives to place children in non-preferred placement families and removes rewards for non-compliance).

• The proposed provision is necessary to encourage diligent searches to identify preferred placements.

• The proposed provision supports the intent of ICWA to return a child to biological family even where there is a psychological parenting relationship between the placement family and child, and that Congress arrived at this approach after debate and ample testimony, including significant testimony from mental health practitioners.

• The proposed provision recognizes that the long-term best interests protected by ICWA outweigh short-term impacts of breaking an ordinary bond.

• Comparing emotional ties between the foster family and child to those with a biological family undermines the objective of reunification and preservation of families.

• Opposing arguments are unfounded.

Some interpreted the rule as establishing that ordinary bonding or attachment resulting from a non-preferred placement must not be the "sole basis" for a court refusing to return a child to his or her family and supported this interpretation.

Many commenters strongly opposed PR § 23.131(c)(3)'s exclusion of "ordinary bonding or attachment" as a basis for good cause to deviate from the placement preferences. According to these commenters, the main reason for initial non-preferred placements is unavailability of homes meeting the placement preferences, and that despite the best efforts of caseworkers to find preferred placements, it becomes necessary to put Indian children in non-preferred placements. Other cited reasons were that preferred placements were too far away or the Tribe delays finding a preferred placement. Among the reasons stated for opposition to the provision were:

• Ordinary bonding is relevant to whether there is good cause to deviate from the placement preferences because breaking ordinary bonds harms the child.

• The importance of bonding to children's well-being has been established by documented research.

• Indian children do not bond differently from other children.

• The proposed provision limits court discretion.

• The proposed provision violates children's constitutional rights, giving them less protection than other children to a stable, permanent placement that allows the caretaker to make a full emotional commitment to the child.

• The proposed provision violates precedent of a majority of State courts that have held they may consider the Indian child's attachment to, or bond with, current caregivers and the amount of time the child has been with caregivers.

• The proposed provision will increase resistance to ICWA.

• The proposed provision encourages breaking of ordinary bonds.

• The proposed provision will not address historical trauma.

• The proposed provision places Tribal interests above the child's interests.

Some commenters neither fully supported nor fully opposed the provision prohibiting consideration of ordinary bonding as good cause. A few agreed that a prolonged placement

arising out of a violation of ICWA should not constitute good cause, but expressed concern that the provision could preclude a court's consideration of the likelihood of severe emotional trauma to a child from a change in placement under any circumstance, placing an unnecessary constraint on State courts and disserving Indian children. One commenter stated that bonding should not be considered, whether ordinary or extraordinary. Some commenters suggested alternative approaches to the provision prohibiting consideration of ordinary bonding as good cause.

Response: The final rule provides that a court may not consider, as the sole basis for departing from the preferences, ordinary bonding or attachment that flows from time spent in a non-preferred placement that was made in violation of ICWA. In response to commenters' concerns, the final rule adjusts the proposed provision regarding "ordinary bonding" as not being within the scope of extraordinary physical, mental, or emotional needs. PR § 23.131(c)(3). The proposed provision may have inappropriately limited court discretion in certain circumstances. This is particularly the case, given the apparent ambiguity regarding the proposed provision's reference to "placement[s] that do[ ] not comply with ICWA." *Id.*

The Department recognizes that the concepts of bonding and attachment can have serious limitations in court determinations. *See e.g.,* Comments of Casey Family Programs, et al., at 6 n.9 (citing literature including David E. Arrendondo & Leonard P. Edwards, Attachment, Bonding, and Reciprocal Connectedness, 2 J. Ctr. for Fam. Child. & Cts. 109, 110–111 (2000) (discussing the ways that bonding and attachment theory "may mislead courts")). The Department also recognizes that, as the Supreme Court has cautioned, courts should not " 'reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing (and protracted) litigation,' " *Holyfield,* 490 U.S. at 54 (citation omitted), by treating relationships established by temporary, non-ICWA-compliant placements as good cause to depart from ICWA's mandates.

The final rule, therefore, adjusts the "ordinary bonding" provision, stating that ordinary bonding and attachment that flows from length of time in a non-preferred placement due to a violation of ICWA should not be the sole basis for departing from the placement preferences. This provision addresses concerns that parties may benefit from failing to identify that ICWA applies, conduct the required notifications, or identify preferred placements. While it can be difficult for children to shift from one custody arrangement to another, one way to limit any disruption is to mandate careful adherence to procedures that minimize errors in temporary or initial custodial placements. It can also be beneficial to facilitate connections between an Indian child and potential preferred placements. For example, if a child is in a non-preferred placement due to geographic considerations and to promote reunification with the parent, the agency or court should promote connections and bonding with extended family or other preferred placements who may live further away. In this way, the child has the opportunity to develop additional bonds with these preferred placements that will ease any transitions.

The comments reflected some confusion regarding what constitutes a "placement that does not comply with ICWA." For clarity, the final rule instead references a "violation" of ICWA to emphasize that there needs to be a failure to comply with specific statutory or regulatory mandates. The determination of whether there was a violation of ICWA will be fact specific and tied to the requirements of the statute and this rule. For example, failure to provide the required notice to the Indian child's Tribe for a year, despite the Tribe having been clearly identified at the start of the proceeding, would be a violation of ICWA. By comparison, placing a child in a non-preferred placement would not be a violation of ICWA if the State agency and court followed the statute and applicable rules in making the placement, including by properly determining that there was good cause to deviate from the placement preferences.

Comment: A few commenters stated that the rule eradicates courts' ability to find "good cause" to deviate from the placement preferences by requiring that only qualified expert witnesses can demonstrate good cause based on "extraordinary bonding."

Response: The final rule does not require testimony from a qualified expert witness to establish a good cause determination based on the extraordinary physical, mental, or emotional needs of the child. *See* FR § 23.132(c).

e. Unavailability of Placement as Good Cause

Comment: One commenter supported PR § 23.131(c)(4) except for the reference to "applicable agency" because the placement preferences apply even when no agency is involved.

Response: The final rule deletes reference to "applicable agency" in this section.

Comment: A few commenters suggested clarifying that a "diligent search" for a preferred placement must be conducted, rather than requiring "active efforts" because "active efforts" is a term of art with specific statutory application.

Response: The final rule clarifies that a diligent search must be conducted, rather than using the phrase "active efforts," because the statute uses the phrase "active efforts" in a different context. *See* FR § 23.132(c)(5).

Comment: A commenter objected to the language in PR § 23.131(c)(4) stating that a placement is not "unavailable" (as a basis for good cause to depart from the placement preferences) if the placement conforms to the prevailing social and cultural standards of the Indian community. The commenter stated that this language is not in ICWA and may lead to argument that good cause does not exist even where the placement does not pass a background check, potentially violating ASFA, which disqualifies people convicted of certain crimes from serving as a placement. This commenter asserted that inability to pass ASFA or State background check requirements is per se good cause.

Response: ICWA requires that the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community. *See* 25 U.S.C. 1915(d). Nothing in the rule eliminates other requirements under State or Federal law for determining the safety of a placement.

f. Other Suggestions Regarding Good Cause To Depart From Placement Preferences

Comment: One commenter stated that the rule should provide that "good cause" to deviate from the placement preferences exists if serious emotional or physical damage to the child is likely to result, to follow the line of reasoning in section 1912(e) that uses that standard for continued custody.

Response: The final rule provides that the extraordinary physical, mental, or emotional needs of the child may be the basis for a good cause determination. *See* FR § 23.132(c)(4). In addition, the final rule provides that the unavailability of a suitable placement may be the basis for a good cause determination. *See* FR § 23.132(c)(5). Both of these provisions would allow a court to address the commenter's concern about preventing serious emotional or physical damage to a child. In addition, the final rule retains discretion for State courts to consider other factors when necessary.

6. Placement Preferences Presumed To Be in the Child's Best Interest

Many commented on the intersection of a "best interests analysis" with ICWA's placement preferences. A high-level summary of these comments is provided here. Several commenters stated that a "best interest of the child" analysis is not appropriate for Indian children, for the following reasons.

- ICWA compliance already presumptively furthers best interests of the child and represents best practices in child welfare generally.
- There is a movement in literature to replace the "best interest" consideration altogether in favor of the least detrimental among available alternatives for the child, to focus on causing no harm to the child, rather than an implication that courts or agencies are well-positioned to determine what is "best."
- ICWA was passed to overcome the bias, often subconscious, and lack of knowledge about Tribes and Indian children, and leaving "best interests" to be argued by individuals opposing ICWA's preferences evades ICWA's purposes. The "best interests" analysis is inherently open to bias.
- The "best interests of the child" analysis permits courts and agencies to ignore the placement preferences at will.
- The "best interests of the child" analysis is necessarily broader and richer for Indian children because it includes connection to Tribal community, identity, language and cultural affiliation.
- The "best interests" analysis is not appropriate in any determination of "good cause" because "good cause" and "best interest" appear in different parts of the statute, meaning Congress carefully and expressly "cabined" each concept, and as such should be treated separately.

Several commenters suggested adding language drawn from the Michigan Indian Family Preservation Act on how to determine a child's best interests.

Other commenters asked the Department to keep the focus on the best interests of the children and opposed having no independent consideration of the best interests of the Indian child for the following reasons:

- The presumption that ICWA compliance is in the child's best interest is not always true.
- The "best interests of the child" analysis is of paramount importance.
- The "best interests of the child" analysis is compatible with ICWA and should be explicitly allowed because ICWA was not enacted to ignore the physical and emotional needs of children and that every child should have all factors considered for the best possible outcome because not doing so would be treating them as possessions.
- The "best interests of the child" analysis is not different for Indian children.
- Case law establishes that the child's best interests must be considered and establishes that the child's best interests should be considered in "good cause" determinations.
- Not considering the child's best interest violates the constitutional rights of the children and parents.

Response: As discussed above, ICWA and this rule provide objective mandates that are designed to promote the welfare and short- and long-term interests of Indian children. Congress enacted ICWA to protect the best interests of Indian children. However, the regulations also provide flexibility for courts to appropriately consider the particular circumstances of the individual children and to protect those children. For example, courts do not need to follow ICWA's placement preferences if there is "good cause" to deviate from those preferences. The "good cause" determination should not, however, simply devolve into a free-ranging "best interests" determination. Congress was skeptical of using "vague standards like 'the best interests of the child,' " H.R. Rep. No. 95–1386 at 19, and intended good cause to be a limited exception, rather than a broad category that could swallow the rule.

N. Post-Trial Rights and Recordkeeping

The final rule describes requirements and standards for vacating an adoption based on consent having been obtained by fraud or duress. It also provides clarification regarding the application of 25 U.S.C. 1914, and the rights to information about adoptee's Tribal affiliations, while removing certain obligations the proposed rule imposed on agencies. The final rule provides procedures for how notice of a change in an adopted Indian child's status is to be provided, including provisions for waiver of this right to notice. The final rule also contains provisions regarding the transmittal of certain adoption records to the BIA, and the maintenance of State records.

1. Petition To Vacate Adoption

Comment: Several commenters opposed PR § 23.132(a) allowing a final decree of adoption to be set aside if the proceeding failed to comply with ICWA. These commenters pointed out that section 1913(d) of the Act only allows a collateral attack on an adoption decree if consent to the adoption was obtained through fraud or duress, not if the proceeding failed to comply with ICWA, while section 1914 allows for invalidation only of a foster-care placement or termination of parental rights if the proceeding failed to comply with ICWA.

Response: The final rule deletes "the proceeding failed to comply with ICWA" as a basis for vacating an adoption decree because FR § 23.136 implements section 1913(d) of the Act, which is limited to invalidation based on the parent's consent having been obtained through fraud or duress.

Comment: A commenter pointed out that PR § 23.133(a) refers generally to ICWA being violated, but the statute and PR § 23.133(b) both refer specifically to violations of Sections 1911, 1912, or 1913.

Response: The final rule specifies the appropriate sections of ICWA in FR § 23.137(a).

Comment: Several commenters stated that the two-year statute of limitations should not apply to section 1914 actions to invalidate foster-care placements and termination of parental rights. Some commenters asserted that State statutes of limitations should apply; others stated that State statutes of limitations should not apply because it would cause uncertainty and inconsistency. One commenter suggested adding a statute of limitation of 90 days. A few commenters suggested establishing a statute of limitations that allows minors three to five years after they turn age 18 to sue for violations of their rights under ICWA.

Response: The final rule clarifies that the two-year statute of limitations does not apply to actions to invalidate foster-care placements and terminations of parental rights, by clarifying that FR § 23.136 applies only to invalidation of adoptions based on parental consent having been obtained through fraud or duress. If a State's statute of limitations exceeds two years, then the State statute of limitations may apply; the two-year statute of limitations is a minimum timeframe. *See* 25 U.S.C. 1913. The statute does not establish a statute of limitations for invalidation of foster-care placements and termination of parental rights under section 1914, and the

Department declines to establish one at this time.

Comment: A few commenters noted that PR § 23.133 fails to provide the requirement in section 1916(a) that the best interests of the child be considered before determining whether to return the child if the court invalidates an adoption decree or adoptive couples voluntarily terminate their parental rights.

Response: Section 1916(a) addresses a narrow set of circumstances: When an adoption fails because the court invalidates the adoption decree or the adoptive couples voluntarily terminate their parental rights. The statute provides that, under this narrow set of circumstances, the best interests of the child must be considered in determining whether to return the child to biological parent or prior Indian custodian. The regulation does not address this narrow set of circumstances. FR § 23.136(b) requires notice to the parent or Indian custodian of the right to petition for return of the child, but the final rule does not set out the standard for determining whether to return the child to the parent's or Indian custodian's custody. FR § 23.136(c) implements section 1913(d) of the Act, which provides that the court "shall" return the child to the parent if it finds the parent's consent was obtained through fraud or duress.

2. Who Can Make a Petition To Invalidate an Action

Comment: A few commenters requested changing "the court must determine whether it is appropriate to invalidate the action" to "the court must invalidate the action" in PR § 23.133. These commenters stated that the plain language of section 1914 does not allow for court discretion. These commenters further asked how the court would determine appropriateness and under what standard of review.

Response: 25 U.S.C. 1914 does not require the court to invalidate an action, but allows certain parties to petition for invalidation. For this reason, the final rule states that the court must determine whether it is appropriate to invalidate the action under the standard of review applicable under State law. *See* FR § 23.137.

Comment: A few commenters supported PR § 23.133(c) as clarifying that the Indian child, parents, or Tribe may seek to invalidate an action to uphold the political status and rights of each child. One commenter stated that PR § 23.133(c) is important in that it clarifies that certain provisions of ICWA cannot be waived because any party may challenge based on violations of another party's rights. A few other commenters stated that the rule purports to convey standing to those who do not have a personal stake in the controversy. These commenters claim there is no evidence Congress intended to grant the Department authority to rewrite constitutional standing requirements and the fundamental principle of American jurisprudence that someone seeking relief must have standing.

Response: The final rule does not dictate that a court must find that the listed parties have constitutional standing; rather, it recognizes the categories of those who may petition. The statutory scheme allows one party to assert violations of ICWA requirements that may have impacted other parties rights (*e.g.,* a parent can assert a violation of the requirement for a Tribe to receive notice under section 1912(a)). There is no basis in the statute for the regulation to limit the parties' opportunities for redress for violations of ICWA. Through section 1914, ICWA makes clear that a violation of Sections 1911, 1912, or 1913 necessarily impacts the Indian child, Indian parent or custodian, and the Indian child's Tribe such that each is afforded a right to petition for invalidation of an action taken in violation of any of these provisions. The provision also makes clear that one party cannot waive another party's right to seek to invalidate such an action. Additionally, parties may have other appeal rights under State or other Federal law in addition to the rights established in ICWA.

Comment: A commenter requested deleting from PR § 23.133(a)(2) "from whose custody such child was removed" because it would prevent a noncustodial biological parent from petitioning to invalidate the action.

Response: The final rule continues to include the qualifying phrase "from whose custody such child was removed" because the statute includes this phrase, authorizing parents or Indian custodians "from whose custody such child was removed" the right to petition to invalidate an action. 25 U.S.C. 1914; FR § 23.137(a)(2).

Comment: A commenter requested adding a guardian ad litem to the list of persons in PR § 23.133(a) who may petition to invalidate an action. A commenter requested adding that the child must be a minimum age to petition to invalidate an action.

Response: The final rule does not add a guardian ad litem to the list of persons who may petition to invalidate an action because the statute does not list this category of persons. Nor does the final rule add a minimum age for a child to be able to petition to invalidate an action because the statute does not provide a minimum age. The statute allows an Indian child to petition, which necessarily means that someone with authority to act for the child may petition on the child's behalf. *See* 25 U.S.C. 1914.

Comment: One commenter suggested adding "or was" to read "an Indian child who is or was the subject of any action" to account for actions that occurred in the past.

Response: The final rule adds the requested clarification because it can be inferred from the statute that the action for foster-care placement or termination of parental rights need not be in process at the time the child petitions to invalidate the action. *See* FR § 23.136(a)(1).

Comment: A State commenter requested clarification of whether the "court of competent jurisdiction" may be a Tribal court, district court, or different court from where the original proceedings occurred.

Response: The court of competent jurisdiction may be a different court from the court where the original proceedings occurred.

Comment: A State commenter requested clarification of whether the ability to challenge the proceeding applies to the proceeding at issue or a subsequent proceeding and stated that, as written, it appears the adoption proceeding could be undone due to failures to follow ICWA in the underlying termination case. This commenter requested clarification that only the proceeding currently before the court may be invalidated.

Response: The ability to petition to invalidate an action does not necessarily affect only the action that is currently before the court. For example, an action to invalidate a termination of parental rights may affect an adoption proceeding. *See, e.g., In re the Adoption of C.B.M.,* 992 N.E.2d 687 (Ind. 2013) (where termination of parental rights has been overturned on appeal, "letting the adoption stand would be an overreach of State power into family integrity"); *State ex rel. T.W.* v. *Ohmer,* 133 S.W.3d 41, 43 (Mo. 2004) (ordering lower court to set aside adoption decree where parent has appealed termination decision).

3. Rights of Adult Adoptees

Comment: A few commenters supported outlining post-trial rights to protect adopted Indian children, Tribes, parents, and family members. A few commenters opposed PR § 23.134(b) and (c) as undermining the established practice in some jurisdictions of opening adoption-related records for Indian adoptees when they would otherwise be closed. These commenters expressed concern that PR § 23.134(b) and (c) could be interpreted to allow States to keep records sealed.

Response: The final rule addresses section 1917 of the Act at FR § 23.138 and addresses section 1951 at FR § 23.140. The rule clarifies that it is addressing certain specific rights of adult adoptees to information on Tribal affiliation, in accordance with the statute, rather than all rights of adult adoptees. States may provide additional rights. At FR § 23.71(b), the final rule replaces the proposed text with language restating the Secretary's duty under section 1951(b) of the Act.

Comment: A commenter suggested edits to PR § 23.134(b) and (c) to clarify that it is the court that must seek the assistance of BIA and communicate directly with the Tribe's enrollment office. A few commenters opposed PR § 23.134 to the extent it shifts responsibility to the States, particularly with regard to requiring agencies to communicate directly with Tribal enrollment offices. A few commenters stated that PR § 23.134(c) should include other offices designated by the Tribe, rather than just the Tribal enrollment office.

Response: The final rule deletes the provisions referenced by the commenters.

Comment: One commenter stated that the rule should require disclosure of information to allow adult adoptees to reunite with their siblings.

Response: The final rule does not add the requested requirement because it is beyond the scope of the statute; however, some States have registries that allow individuals to obtain information on siblings for purposes of reunification.

Comment: A few commenters stated that the final adoption decree should require adoptive parents to maintain ties to the Tribe for the benefit of the child or include Tribal affiliation in the adoption papers.

Response: The final rule does not include this requirement. The statute and the regulations, however, provide a range of provisions, including Sections 1917 and 1951, which are focused on promoting the relationship between the adoptee and the Tribe.

Comment: A few commenters noted that the Act provides for BIA to assist adult adoptees in securing information to establish their rights as Tribal citizens, and suggested the rule add a provision to this effect.

Response: The final rule includes a provision at FR § 23.71(b) that incorporates the statute's requirements for BIA assistance to adult adoptees.

4. Data Collection

Comment: A few commenters suggested minimizing non-preferred placements by saying the placement must be documented throughout the case.

Response: FR §§ 23.129(c) and 23.132(c) require that the court's good cause determination be on the record. FR § 23.141 also requires that the record of placement include information justifying the placement determination. This regulatory requirement ensures the statutory provision allowing the Department and Tribe to review State placement records for compliance with the placement preferences is fulfilled. *See* 25 U.S.C. 1915(e).

Comment: A State commenter requested clarification that the agency that places the child must maintain the records.

Response: FR § 23.141 clarifies that the State must maintain the records, but allows a State court or agency to fulfill that role.

Comment: A few commenters opposed PR § 23.136 to the extent it duplicates obligations already assigned to BIA under the current regulation at § 23.71.

Response: The commenters are correct that PR § 23.134 and PR § 23.136 duplicated the content in 25 CFR 23.71 to a large extent. The final rule addresses these comments by keeping those provisions that address BIA responsibilities in FR § 23.71, and moving those provisions that address State responsibilities to FR § 23.140. FR § 23.71 keeps provisions in former § 23.71(b) governing BIA, with minor modifications for readability and to replace the reference to the BIA "chief Tribal enrollment officer" with a general reference to BIA. Other provisions at former § 23.71(a) are contained in FR § 23.140.

Comment: Several commenters supported the proposed data-collection requirements as necessary to determine compliance with the Act. Some stated concern that the information is not currently being maintained and suggested BIA conduct mandatory compliance checks on each State to determine record maintenance and availability.

Response: The regulation is intended to strengthen the effectiveness of States' implementation of this important provision.

Comment: One commenter noted that the first sentence of PR § 23.136(a) uses the term "child" rather than "Indian child."

Response: The final rule specifies "Indian child." *See* FR § 23.140(a).

Comment: A few commenters suggested adding that the documentation be sent to the child's Tribe, in addition to BIA.

Response: The statute, at section 1951(a), requires only that the State provide the Secretary with this information.

Comment: A few commenters opposed PR § 23.137, stating that the requirements for a single repository in each State and the seven-day timeframe are beyond the requirements of § 1915(e) and would be an administrative and fiscal burden on States. A commenter stated that the cost to courts in relocating the approximate 1,123 files throughout 58 counties to a single location would be significant and disruptive. Some claimed it would be an unfunded mandate. A few requested clarifications on how the records must be maintained in a single location. A commenter suggested a timeframe of 30 days would be more appropriate.

Response: The final rule deletes the requirement for storing records of placement in a single repository, but retains a timeframe. The statute provides that the State must make the record available at any time upon the request of the Secretary or the Indian child's Tribe. *See* 25 U.S.C. 1915(e). A timeframe is appropriate to ensure that the record is available upon request "at any time," but the final rule ensures States have the flexibility to determine the best way to maintain their records to ensure that they can comply with the timeframe. In response to comments about the reasonableness of the timeframe, the final rule extends the timeframe to 14 days, which will generally allow two full working weeks to provide the record. *See* FR § 23.141.

Comment: A commenter requested clarification of whether copies or the original files must be maintained and provided.

Response: The regulation does not clarify whether the files must be originals or may be copies because as long as the copies are true copies of the originals, there is no need to specify.

Comment: A commenter requested clarification as to whether only court records are within the regulation's scope or if the regulation covers State agencies or private adoption agencies.

Response: FR § 23.141 directly addresses only court records because the court records must include all evidence justifying the placement determination. *See* 25 U.S.C. 1915, FR

§ 23.132. States may require that additional records be maintained.

Comment: One commenter suggested requiring States to submit annual reports assessing compliance with the regulations. Other commenters suggested BIA work closely with the U.S. Department of Health and Human Services to encourage broader data collection in AFCARS reporting and enforcement. A Tribal commenter stated that there are currently no reliable data sources for information on Indian children in State care and, without accurate numbers, it is difficult to ascertain with any precision the needs of Indian children in any State.

Response: The final rule does not requiring annual reporting. The Department is working closely with the Department of Health and Human Services on data collection regarding ICWA. *See* AFCARS Proposed Rule at 81 FR 20283 (April 7, 2016).

Comment: A commenter suggested the rule should address the records filed with the Secretary, including who may access them, the procedure for gaining access, and the timeframe for the Secretary to respond to requests for access.

Response: BIA has maintained a central repository of adoption decrees and responds to requests for access. The final rule, at FR § 23.71(b), incorporates section 1951(b) of the Act, to clarify that someone can request the records from the Secretary.

Comment: A commenter suggested adding a mechanism for securing the information required by PR § 23.136(a) when a State court fails to comply, for example, by requiring them to provide the information to the Secretary.

Response: FR § 23.140(a) implements section 1951(a) of the Act which establishes a State court responsibility to provide information to the Secretary. This provision was formerly located at 25 CFR 23.71(a).

Comment: A commenter suggested that the "good cause" basis stated on the record should be reported in the State database and reported to Tribes and adoptees.

Response: The regulation requires that the State record the basis for "good cause" to deviate from the preferred placements (*see* FR § 23.129(c)); this information and evidence must be included in the court record.

Comment: A commenter suggested that PR § 23.136 clarify that an affidavit requesting anonymity does not preclude disclosure of identifying information to the Tribe for the purpose of approving an application for Tribal membership, which the Tribe undertakes in its sovereign capacity. The commenter also suggested the rule clarify that all non-identifying information will still be disclosed, including for example, the name and Tribal affiliation of the Tribe and the identity of the court or agency with relevant information. The commenter also suggests the adoptive parents' identities may be disclosed.

Response: FR § 23.71(a) implements section 1951(a) of the Act, providing a role for the Secretary to provide information as may be necessary for the enrollment of an Indian child in the Tribe.

Comment: A commenter suggested that one parent's affidavit for anonymity should not extend anonymity to the other parent.

Response: An affidavit of one parent would not extend anonymity to the other parent.

Comment: A commenter suggested an affidavit requesting anonymity should not preclude disclosure of the adoptive parents' identities.

Response: The Act only addresses an affidavit of anonymity for the biological parent or parents. *See* 25 U.S.C. 1951(a).

Comment: A commenter suggested PR § 23.136 should provide for notification of foster and adoptive parents of their right and the right of their adoptive child upon reaching age 18 to apply for the adoption records held by the Secretary.

Response: Neither the statute nor the final rule require the Secretary to proactively reach out to adoptive and foster parents and adopted children regarding their records; rather, the Act at section 1917 and the final rule provide that the State court provides such information upon application.

Comment: The commenter suggested that, when there is an affidavit for anonymity, the Secretary notify the biological parent of the request and allow them the opportunity to withdraw anonymity if desired.

Response: The parent may have the right to withdraw or rescind an affidavit for anonymity under State law; the parent should contact the State court or agency for directions.

Comment: A commenter suggested adding a section to authorize release of records maintained by the Secretary to any Indian child, parent or Indian custodian, or child's Tribe upon a showing that the records are needed as evidence in an action to invalidate a placement in violation of Sections 1911, 1912, 1913 or 1915.

Response: Section 1951 of the Act provides that the Secretary may release such information as may be necessary for the enrollment of an Indian child . . . or for determining any rights or benefits associated with that membership. To the extent a party seeks evidence in an action to invalidate a placement in violation of Sections 1911, 1912, 1913, or 1915, the party would be able to seek that information from the State and through discovery.

O. Effective Date and Severability

The final rule includes a new section, FR § 23.143, that provides that the provisions of this rule will not affect a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to 180 after the publication date of the rule, but will apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child. This is drawn from the language of 25 U.S.C. 1923.

This provision ensures that ongoing proceedings are not disrupted or delayed by the issuance of this rule and that there is an orderly phasing in of the effect of the rule. *See* H.R. Rep. No. 95–1386, at 25. Standards affecting pending proceedings should not be changed in midstream. This could create confusion, duplication, and delays in proceedings. And, by providing 180 days from the date of issuance for the rule to be fully effective, all parties affected—States courts, State agencies, Tribes, private agencies, and others—have ample time to adjust their practices, forms, and guidance as necessary.

FR § 23.144 states the Department's intent that if some portion of this rule is held to be invalid by a court of competent jurisdiction, the other portions of the rule should remain in effect. The Department has considered whether the provisions of the rule can stand alone, and has determined that they can. For example, the agency has considered whether particular provisions that are intended to be followed in both voluntary and involuntary proceedings should remain valid if a court finds the provision invalid as applied to one type of proceeding, and has concluded that they should. The Department has also considered whether the particular requirements of the rule (*e.g.*, requirements for notice, active efforts, consent, transfer, placement preferences) may each function independently if other requirements were determined to be invalid. The Department has determined that they can.

Comment: One commenter stated that the ICWA regulations should be retroactive to include all Indian children currently involved in ICWA cases.

Response: As discussed above, the final rule includes a provision that mirrors 25 U.S.C. 1923, providing none of the provisions of this rule will affect a proceeding which was initiated or completed prior to 180 days from the date of issuance.

P. Miscellaneous

1. Purpose of Subpart

Comment: A few commenters supported PR § 23.101 and especially supported reiterating that the Indian canons of construction are to be used when interpreting ICWA. A few commenters suggested explaining in PR § 23.101, for the general public, that ICWA is not a race-based preference, but is a political decision because of the government-to-government relationship between Tribes and the Federal Government.

Response: The Department agrees that statutes are to be liberally construed to the benefit of Indians but determined it was not necessary to reiterate that canon here. Further, ICWA is based on an individual's political affiliation with a Tribe.

Comment: A few commenters suggested strengthening the provision stating that ICWA establishes minimum Federal standards. These commenters suggested adding reference to the national policy is that these standards define the best interests of Indian children.

Response: The statement that ICWA establishes minimum Federal standards is sufficient. Congress enacted ICWA to protect the best interests of Indian children.

2. Interaction With State Laws

Comment: A few commenters stated that PR § 23.105, providing that if applicable State law provides a higher standard of protection, then the State court must apply that standard, should specify that if the State imposes sanctions, that constitutes a higher standard of protection.

Response: It is unclear what the commenters mean by "sanctions." ICWA provides that, where State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under [ICWA], the State or Federal court shall apply the State or Federal standard. 25 U.S.C. 1921. The final rule is designed to reflect that requirement.

Comment: One commenter stated that the regulation should emphasize that ICWA's provisions in Sections 1911 through 1917 and Sections 1920 through 1922 are mandatory standards that supplant State law. Other commenters requested clarification that minimum Federal standards do not supplant State laws and regulations and Tribal-State agreements applying standards beyond the minimum Federal standards, and that State law and Tribal-State agreements may expand upon or clarify ICWA consistent with the statute. A commenter recommended stating that the minimum Federal Standards preempt State laws that directly conflict with the Federal standards and do not provide heightened protections.

Response: Congress established minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture. 25 U.S.C. 1902. Congress's clear intent in ICWA is to displace State laws and procedures that are less protective. *See, e.g., In re Adoption of M.T.S.*, 489 NW. 2d 285, 288 (Minn. Ct. App. 1992) (ICWA preempted Minnesota State law because State law did not provide higher standard of protection to the rights of the parent or Indian custodian of Indian child). By establishing "minimum" standards for removal and placement of Indian children, Congress made clear that it was not preempting the entire field of child-custody or adoption law as to Indian children, including all State laws that provide greater protection to such children than those established by ICWA. *See e.g.*, H.R. Rep. No. 95–1386, at 19. ICWA specifically provides that, where State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under ICWA, the State or Federal court shall apply the State or Federal standard." 25 U.S.C. 1921.

Comment: A commenter suggested deleting "in which ICWA applies" from PR § 23.105(a) because ICWA is applicable to all child-custody proceedings, so this phrase is redundant and adds confusion.

Response: The final rule deletes the phrase "and are applicable in all child-custody proceedings . . ." because FR § 23.103 addresses applicability.

Comment: A few commenters stated that the new regulations conflict with various judicial decisions and asked whether the regulations will supersede existing case law.

Response: The regulations are intended to provide a binding, consistent, nationwide interpretation of the minimum requirements of ICWA. If State law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under ICWA, as interpreted by this rule, State law will still apply. *See* 25 U.S.C. 1921.

3. Time Limits and Extensions

Comment: One commenter stated that ICWA section 1912(a) allows "up to 20 days" whereas PR § 23.111(c)(4)(v) adds a burden of stating a specific number of days, and the regulation should mirror the Act because it is difficult to obtain continuances.

Response: FR § 23.111(c)(4)(v) deletes the requirement to specify a number of days and now reflects the statutory language allowing "up to 20 days." Other provisions also now reflect that the extension may be "up to an additional 20 days."

Comment: One commenter suggested imposing timeframes on States for providing notice to Tribes.

Response: To promote the statute's intent, FR § 23.111(a) adds that the State must "promptly" provide notice to Tribes.

Comment: A commenter suggested splitting PR § 23.111(h), regarding time periods, into two subsections, one to address involuntary placements and one to address termination of parental responsibilities, and adding that findings and orders at involuntary placement proceedings are not binding on parties who did not receive notice but should have, and that courts will make diligent efforts to ensure timely notice.

Response: The statute and regulation provide a mechanism for addressing instances where parties who did not receive notice but should have can seek to invalidate the action, by filing a petition under section 1914 of the Act. *See* FR § 23.137.

Comment: A few commenters suggested that timeframes longer than those set out in PR § 23.112 are appropriate in Alaska, where a majority of villages are remote and subject to extreme weather conditions.

Response: The timeframes in FR § 23.112 are established by statute in section 1912(a). The minimum timeframes are to ensure that the parents or Indian custodians, and Indian child's Tribe have sufficient advance notice and time to prepare for a proceeding. State courts have discretion to allow for more time.

Comment: A few commenters expressed their support for PR § 23.112's timeframes as key accountability mechanisms. One commenter stated that additional extensions of time should not be allowed in PR § 23.112(a) unless it is for

good reason (*e.g.*, deployment in the military). Another suggested a good reason would be to allow for a child's participation.

Response: The final rule does not impose restrictions on additional extensions because the Act does not provide any parameters for additional extensions, thereby leaving such additional extensions to the discretion of State courts.

Comment: One commenter requested clarification in PR § 23.112(b) as to how many times a party may ask for an additional 20 days to prepare, and whether this is for each "proceeding" or each "hearing."

Response: The parent, Indian custodian, and Indian child's Tribe are entitled to one extension of up to 20 days for each proceeding. As discussed above, any extension beyond the initial extension up to 20 days is subject to the judge's discretion.

4. Participation by Alternative Methods (Telephone, Videoconferencing, etc.)

Comment: A few commenters suggested that the provision located throughout the proposed rule allowing for participation by alternative methods be moved into a separate section, applicable to all stages, instead of repeating the provision throughout the rule.

Response: The final rule consolidates provisions on alternative methods of participation into one section at FR § 23.133.

Comment: Many commenters supported the provisions throughout the regulations for the court to allow alternative methods of participation in State proceedings. Commenters noted that Tribes have citizens living in many States and allowing participation by phone or video allows Tribes and all stakeholders to participate when they are unable to travel or appear, whether due to financial constraints, distance, or otherwise. Several commenters suggested the rule require the court to allow alternative methods of participation, rather than making it discretionary, because the burden on States to allow such participation is low and the rights protected by allowing alternative methods of participation are important. One suggested the court must allow it if it has the capability.

Response: The final rule retains the word "should" rather than making the provision mandatory.

Comment: One State commenter stated that alternative methods of participation should not be available for testimony because the witness must be in person for the court to make credibility determinations. This commenter also noted that the proceedings are closed, confidential proceedings and the court would be unable to monitor who was present if alternative methods were allowed.

Response: Several courts allow judges to determine credibility by phone or video, including in criminal proceedings. The Department notes that requesting statements under oath, even by teleconference, as to who is present may provide sufficient safeguards to maintain control over who is present on the teleconference for the purposes of confidentiality.

Comment: One commenter suggested adding Skype as an example of an alternative method.

Response: A service such as Skype would be included in "other methods."

Comment: A few commenters requested adding parents, Indian custodians, presumed parents, Indian children, and qualified expert witnesses to the list of those who may participate by alternative methods.

Response: The final rule allows for participation by alternative methods generally, without specifying who may so participate.

Comment: A few commenters stated that the rule should specify that the State may not charge fees for participation by alternative methods, and noted that some courts are requiring fees of as much as $85 per hearing and continuing the hearing until the fees are paid. The commenters state that such fees are prohibitive for Tribes and families.

Response: This is not addressed in the proposed or final rule. However, in March 2016, the Department of Justice issued a Dear Colleague letter to State and local courts regarding their legal obligations (under the U.S. Constitution and/or other Federal Laws) with respect to the enforcement of fines and fees. States should review the letter as they consider the appropriateness of fees in this context.

5. *Adoptive Couple* v. *Baby Girl* and *Tununak II*

Comment: Many commented on how the rule should be interpreted in light of the Supreme Court's decision in *Adoptive Couple* v. *Baby Girl*. Some commenters stated that the regulations should explicitly address the *Adoptive Couple* holding in various ways. For example, several requested the rule clarify that the decision should not be applied outside of the private adoption context and to provide guidance on how it should be implemented to better serve Native children, families, and Tribes. A few commenters stated that, without such guidance, courts will use the ruling to evade ICWA. A few commenters stated that the rule should clarify that the *Adoptive Couple* ruling should not be applied as broadly as the Alaska Supreme Court applied it in *Tununak II*, in which the Alaska Supreme Court stated that the grandmother must have filed a formal adoption petition to enjoy the placement preference in an involuntary proceeding. Several commenters stated that the proposed rule is contrary to the Supreme Court's ruling in *Adoptive Couple*.

Response: Adoptive Couple addresses a specific individual factual scenario. The regulations do not explicitly address the *Adoptive Couple* holding because the regulation governs implementation of ICWA generally.

Comment: A few commenters suggested addressing the holding in *Tununak II*, to provide that in an involuntary proceeding, ICWA's placement preferences apply without regard to whether a preferred individual has come forward, sought to adopt, or filed a formal adoption petition. Commenters noted that, otherwise, the holding in *Tununak II* makes it harder for preferred parties to adopt by imposing procedural burdens. Another commenter stated the rule should expressly provide that preferred parties need not have sought to adopt the child in order to be eligible as a placement, because ICWA does not require formal attempts to adopt.

Response: The Department recommends that States provide clear guidance to preferred placements on how to assert their rights under ICWA and that States should work to eliminate obstacles to preferred placements doing so. For example, the State of Alaska issued an emergency regulation following the ruling in *Tununak* to consider certain actions a proxy for a formal petition for adoption. *See* Alaska Admin. Code tit. 7 § 54.600 (2015).

6. Enforcement

Comment: Multiple commenters asked how the regulations will be enforced or requested including an enforcement mechanism. Some suggested various enforcement mechanisms, such as imposing civil or criminal penalties or sanctions for agency and court noncompliance or tying compliance to State or Federal funding. Commenters stated that such penalties would better promote compliance with ICWA and the final rule. One commenter noted their experience in hearing excuses for noncompliance because there are no consequences for failure to comply with ICWA and, therefore, little incentive to comply. Commenters had several additional suggestions for improving monitoring and compliance with ICWA.

Response: The final rule clarifies the right of particular parties to seek to invalidate a foster-care placement or termination of parental rights based on certain violations of ICWA. FR § 23.137. The final rule does not expressly address other enforcement mechanisms that may be available to the Federal government or other parties.

7. Unrecognized Tribes

Comment: A few commenters noted that some Indian Tribes are not federally recognized and that the rules leave those Tribes in danger of losing their children by addressing only children of federally recognized Indian Tribes. These commenters assert that the rule should apply to children of non-federally recognized Tribes, including but not limited to State-recognized Tribes.

Response: The statute defines "Indian Tribe" as federally recognized Tribes; therefore, the regulations address children who are members of federally recognized Tribes, or who are eligible for membership in a federally recognized Indian Tribe and whose parent is a member of a federally recognized Indian Tribe. *See* 25 U.S.C. 1903(8).

8. Foster Homes

Comment: Several commenters had suggestions for increasing the availability of Indian foster homes, including comments that the rule should:

- Require States to work with Tribes and families to break down obstacles to make it easier and faster to license Indian foster homes and to facilitate funding of those homes;
- Require acceptance of Tribal licensure of foster homes;
- Exclude individuals who are preferred placements from requirements necessary to become a foster home because they create barriers for Indian families;
- Require each State social services agency to publish its criteria to become a licensed foster home;
- Require each State social services agency to maintain a centralized registry containing all rejected foster-home applications for periodic review by Federal officials;
- Eliminate State requirements that contradict traditional practices and cause problems for Indian foster homes, such as the requirement for each child to have a separate bedroom.

Response: ICWA establishes Indian foster homes as preferred placements, but does not elaborate on how to increase the availability of such placements. The Department nevertheless encourages States and Tribes to collaborate to increase the availability of Indian foster homes. Organizations such as the National Resource Center for Diligent Recruitment at AdoptUSKids provide tools and resources for recruiting Indian homes. *See, e.g.*, National Resource Center for Diligent Recruitment, *For Tribes: Tool and Resources* (last visited Apr. 27, 2016), *http://www.nrcdr.org/for-tribes/tools-and-resources.*

9. Other Miscellaneous

Comment: A commenter suggested adding "local" to PR § 23.104(c), so it states that assistance may be sought "from the BIA local, Regional Office and/or Central Office."

Response: The final rule makes this addition for clarification at FR § 23.105(c).

Comment: A few commenters expressed concern that biological parents use ICWA as a tool to disrupt the child's placement. One commenter stated that if a child has been in a home for six months or more, they should not be forced to leave unless abuse is a factor.

Response: ICWA is designed to prevent the breakup of the Indian family and thereby focuses on maintaining the biological parents (or Indian custodian) with the Indian child, rather than the bond between the foster parents and the Indian child. Biological parents may avail themselves of their rights under ICWA and reunification with the biological parents or a change in placement may be appropriate even after many months or years, depending on the circumstances (as is true for non-Indian children as well).

Comment: One commenter suggested clarifying how immediate termination-of-parental-rights proceedings in cases involving shocking and heinous abuse or previous terminations as to other children should be handled to comply with ICWA.

Response: ICWA does not allow for "immediate termination of parental rights" because it requires certain timeframes for notice of the proceedings. *See* 25 U.S.C. 1912(a). Emergency removal and emergency placement may be appropriate for immediate action if the requirements of section 1922 of the Act are met, and the child may be placed in foster care pending the termination-of-parental-rights proceeding if the requirements of section 1912(e) of the Act are met.

Comment: A few commenters stated that Indian people should be removed from the State index for crimes if the crime was committed over five years ago, because States are refusing to place children with Indian relatives who are in the index.

Response: ICWA does not address restrictions on placements due to past criminal convictions.

Comment: A few commenters suggested the rule should provide for legal representation of Indian children through a guardian ad litem or equivalent to ensure the child's viewpoint is considered.

Response: ICWA addresses legal representation of Indian children in section 1912(b).

Comment: Several commenters stated that attorneys should be appointed to represent parents and extended family members as a matter of indigenous rights.

Response: ICWA states that the parent or Indian custodian has the right to court-appointed counsel in an ICWA proceeding. *See* 25 U.S.C. 1912(b).

Comment: A commenter stated that the regulations impermissibly attempt to shift Federal responsibility to the State courts and agencies.

Response: ICWA establishes minimum standards to be applied in State child-custody proceedings. The final rule is consistent with ICWA, and elaborates on these minimum standards. It does not shift Federal responsibilities to State courts and agencies.

Comment: Several commenters suggested making all provisions of the rule mandatory, rather than using the word "should."

Response: The final rule generally uses mandatory language, as it represents binding interpretations of Federal law. In a few instances, the Department did not use mandatory language, such as to indicate the best means of compliance with another statutory or regulatory requirement.

Comment: A commenter stated that the regulations should encourage States, in coordination with Tribes, to advance ICWA implementation beyond what is required by the regulations, to ensure that the "minimum Federal standards" do not become the maximum standards. One commenter suggested including standard forms to help guide States in which ICWA is less frequently used, to help familiarize States with ICWA and save time. The commenter suggested reviewing the forms at *www.nd.gov/dhs/Triballiaison/forms.*

Response: The Department underscores that these regulations are indeed minimum standards. The Department encourages States and Tribes to collaborate to advance ICWA implementation and suggests looking to

some of the tools developed by States to aid in implementation of ICWA. For example:

• New York has published a State guide to ICWA (*see A Guide to Compliance with the Indian Child Welfare Act* published by the New York Office of Children and Family Services at *http://ocfs.ny.gov/main/publications/pub4757guidecompliance.pdf*);

• Washington has established a State evaluation of ICWA implementation, which it performs in partnership with Tribes (*see 2009 Washington State Indian Child Welfare Case Review* at *https://www.dshs.wa.gov/sites/default/files/SESA/oip/documents/Region%202%20ICW%20CR%20report.pdf*).

• Michigan has established a "bench card" as a tool for judges implementing ICWA and the State counterpart law (*see 2014 Michigan Indian Family Preservation Act (MIFPA) Bench Card* (last visited Apr. 27, 2016), *http://courts.mi.gov/Administration/SCAO/OfficesPrograms/CWS/CWSToolkit/Documents/BC_ICWA_MIFPA.pdf*)

• Several States have established State-Tribal forums to discuss child-welfare policy and practice issues (*see* Montana, North Dakota, Oklahoma, Oregon, Utah, and Washington).

• Several States have established State-Tribal court improvement forums where court system representatives meet regularly to improve cooperation between their jurisdictions (*see* California, Michigan, New Mexico, New York, and Wisconsin).

In addition, several non-governmental entities offer tools for ICWA implementation, such as the National Council of Juvenile and Family Court Justices, National Indian Child Welfare Association, and Native American Rights Fund.

Comment: A few commenters stated their concerns over comments provided by adoption lawyers, stating that they are primarily concerned with making money from private adoptions of Indian children. These commenters noted that the private adoption industry profits in the billions of dollars annually and require fees for adopting Indian infants. A few other commenters stated their concern that Tribes are seeking more power through the regulations.

Response: The Department has considered the substance of each comment and without presuming the commenters' motivations.

Comment: A commenter suggested using "or" rather than "and/or" throughout the regulation.

Response: The final rule continues to use the term "and/or" in several places for clarity.

Comment: A commenter suggested Tribes and birth parents enter into "Contract After Adoption" agreements whereby non-Indian adoptive parents agree to register the child with the Tribe, stating that these agreements have been productive and protective of rights. Another commenter suggested requiring adoptive parents to enter a cultural outreach program as defined by the Tribe, to ensure continued connection that strengthens the culture.

Response: This is beyond the scope of this rule.

Comment: A commenter stated that State child-welfare agencies should include input from Tribes in their plans for implementing ICWA. Likewise, a commenter stated that States and Tribes should join forces to look at early intervention, prevention, and rehabilitative services to avoid ICWA situations, and work together for the good and welfare of our children.

Response: This is beyond the scope of this rule. The Department encourages States to collaborate with Tribes on implementation of ICWA.

Comment: A commenter suggested BIA ask Tribes whether State courts and agencies complied with ICWA because if BIA relies only on agency documentation, it will not receive the whole picture. This commenter provided an example of one State that claimed compliance but the Tribes in the State disagree.

Response: This is beyond the scope of this rule.

Comment: A commenter stated that guardian ad litems should have significant understanding of indigenous cultures and traditions so they can better interface with the children.

Response: State law governs the standards and procedures for appointing guardian ad litem. The Department encourages appointment of guardian ad litem with significant understanding of the Indian child's culture.

Comment: A commenter asserted that one of the greatest challenges State courts face is reconciling the ICWA provisions with other Federal statutes governing child-welfare matters, such as Title IV–E of the Social Security Act and suggests BIA and HHS work together to ensure there is no conflict.

Response: Interior and the Department of Health and Human Services are committed to working together to ensure harmonious implementation of the various Federal statutory requirements.

Comment: Many commenters noted the dire need for additional funding to Tribes, preferred placements, and others to better support ICWA implementation. A few commenters stated that there should be enforcement to ensure any ICWA funding provided to Tribes is used for that purpose.

Response: While the final rule cannot affect funding levels, the Department notes the importance of funding in implementation.

Comment: Many commenters noted the dire need for ICWA training and suggested requiring State social workers, attorneys, and judges to undergo training on ICWA. One commenter stated that education regarding legal, social, historical, and ethical components of ICWA would strengthen compliance. Other commenters suggested requiring non-Indian adoptive families to take certified training on the history of Native Americans and issues concerning Tribes today.

Response: ICWA does not establish requirements for training, but the Department notes the importance of training in implementation.

V. Summary of Final Rule and Changes From Proposed Rule to Final Rule

The following table summarizes changes made from the proposed rule to the final rule.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.2 Definitions	23.2 Definitions	Added definitions for emergency proceeding, hearing, Indian foster home, involuntary proceeding, proceeding, and voluntary proceeding. Revised definitions of active efforts, child-custody proceeding, continued custody, domicile, Indian child, Indian child's Tribe, Indian custodian, and upon demand. Deleted definitions of imminent physical damage or harm and voluntary placement.	Added definitions for active efforts, continued custody, custody, domicile, emergency proceeding, hearing, Indian foster home, involuntary proceeding, proceeding, status offenses, upon demand, and voluntary proceeding. Revised definitions of child-custody proceeding, extended family member, Indian child, Indian child's Tribe, Indian custodian, parent, reservation, Secretary, and Tribal court.
23.11 Notice	23.11 Notice	Revises current (a) to delete requirement to send a copy of the notice to BIA Central Office. Clarifies that notice must include the information specified in 23.111. Clarifies that certain BIA duties remain. Replaces "certified mail" with "registered or certified mail." Specifies where notice should be sent.	Restates current 23.11, but deletes the requirement to send a copy of the notice that goes to the BIA Regional Director to the BIA Central Office, and replaces "certified mail" with "registered or certified mail." Updates information on where notice should be sent. Moves provisions from § 23.11(b), (d), (e) to FR § 23.111.
N/A	23.71 Recordkeeping and information availability.	Deletes provisions of current § 23.71(a) because duplicative of § 23.140. Moves current § 23.71(b) to (a) as part of non-material changes to restructure the section Revises 23.71(b) to more closely match section 1951(b) of the Act. Deletes reference to BIA Tribal enrollment officer because position no longer exists.	Revises current 23.71 to more closely match section 1951(b) of the Act.
23.101 What is the purpose of this subpart?	23.101 What is the purpose of this subpart?	Deletes sentence on when the regulations apply because FR § 23.103 addresses when ICWA applies.	New section. Establishes the purpose of the new subpart.
23.102 What terms do I need to know?	23.102 What terms do I need to know?	Revises definition of "agency"	New section. Defines "agency" and "Indian organization" for the purposes of this subpart only.
23.103 When does ICWA apply?	23.103 When does ICWA apply?	Clarifies what types of proceedings ICWA does and does not apply to. Revises text addressing "existing Indian family" exception. Moves provisions regarding the requirement to ask whether ICWA applies to FR § 23.107. Moves provision requiring treatment of a child as an Indian child pending verification to § 23.107. Clarifies that if ICWA applies at the commencement of a proceeding, it continues to apply even if the child reaches age 18.	New section. Delineates when ICWA's requirements may apply and do not apply. Establishes that there is no exception to the application of ICWA based on certain factors. Establishes that ICWA continues to apply even if the child reaches the age of 18.
N/A	23.104 What provisions of this subpart apply to each type of child-custody proceeding?	Adds a chart to clarify which type of proceeding each rule provision applies to.	New section. Delineates what type of proceeding the sections of the subpart apply to.
23.104 How do I contact a Tribe under the regulations in this subpart?	23.105 How do I contact a Tribe under the regulations in this subpart?	No significant changes	New section. Establishes how to contact a Tribe to provide notice or obtain information or verification.
23.105 How does this subpart interact with State laws?	23.106 How does this subpart interact with State and Federal laws?	Deletes provision regarding ICWA applicability because applicability is addressed in 23.103.	New section. Specifies that the regulations provide minimum Federal standards, and that more protective State or Federal laws apply.
23.106 When does the requirement for active efforts begin?	N/A	Deletes section	N/A.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.107 What actions must an agency and State court undertake to determine whether a child is an Indian child?	23.107 How should a State court determine if there is a reason to know the child is an Indian child?	Limits provision to standards applicable in State-court proceedings. Clarifies that inquiry is required in emergency, involuntary, and voluntary proceedings. Clarifies that if there is "reason to know" the child is an Indian child, this triggers certain obligations. Deletes list of information that the court may require the agency to provide. Replaces "active efforts" to identify Tribes with "due diligence" to identify Tribes. Moves provision requiring treatment of the child as an Indian child from proposed 23.103(d). Adds to the list of factors providing "reason to know" the child is an "Indian child" that the child is or has been a ward of Tribal court and that either parent or child possesses a Tribal identification card, but removes residency on an Indian reservation or in a predominantly Indian community. Adds that, where anonymity is requested in voluntary proceedings, the Tribe must keep the information confidential.	New section. Establishes that State courts must ask as a threshold question at the start of a proceeding whether there is reason to know the child is an Indian child. Establishes that, if there is reason to know the child is an Indian child, the State court must confirm the agency used due diligence to identify and work with Tribes to obtain verification, and must treat the child as an Indian child unless and until it is determined otherwise. Establishes what factors indicate a "reason to know." Establishes that a court and Tribe must keep documents confidential if a consenting parent requested anonymity in a voluntary proceeding.
23.108 Who makes the determination as to whether a child is a member of a Tribe?	23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?	Adds that a Tribal determination of membership or eligibility may be reflected in facts of evidence, such as Tribal enrollment documentation.	New section. Establishes that only the Tribe may make determinations as to Tribal membership or eligibility, and that such determinations may be reflected in documentation issued by the Tribe.
23.109 What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one Tribe?	23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?	Deletes provision requiring notification by agencies. Clarifies process and considerations where more than one Tribe is involved. Deletes requirement for notifying all other Tribes that a particular Tribe was designated as the child's Tribe. Deletes statement that a Tribe can designate another Tribe to act as its representative.	New section. Incorporates statutory provisions for establishing the child's Tribe. Establishes that deference must be given to Tribe in which the child is already a member unless otherwise agreed to by the Tribes. Establishes that, where the child is a member in more than one Tribe or eligible for membership in more than one Tribe, the court must provide opportunity for the Tribes to determine which should be designated as the child's Tribe. Establishes what the State court should consider in determining which has "more significant contacts" if Tribes are unable to reach an agreement.
23.110 When must a State court dismiss an action?	23.110 When must a State court dismiss an action?	Adds that the provision is subject to agreements between States and Tribes pursuant to 25 U.S.C. 1919. Requires the Tribe be expeditiously notified of the pending dismissal and sent information regarding the child-custody proceeding.	New section. Establishes that a State court must determine its jurisdiction and when a State court must dismiss an action Requires State court to ensure the Tribal court is expeditiously notified and sent information on the proceeding.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?	23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?	Limited to standards to be applied in State-court proceedings. Clarifies that provision applies to involuntary foster-care-placement and termination-of-parental-rights proceedings. Adds "certified mail" as an option ..... Incorporates additional information from current 23.11 (e.g., maiden names, requirement to keep confidential information in the notice). Deletes provision stating that counsel is appointed only if authorized by State law. Deletes provision requiring a specific amount of additional time to be included in the request. Clarifies language-access requirements. Removes provision addressing Interstate Compact on Placement of Children. Moves provision regarding no rulings occurring until the waiting period has elapsed to 23.112(a).	New section. Establishes required contents of the notice. Allows notice to be sent by certified or registered mail, as long as return receipt is requested. Incorporates provisions of current 23.11. Incorporates statutory provision requiring court to inform a parent or Indian custodian who appears in court without an attorney of certain rights. Requires a State court to provide language-access services as required by Federal law.
23.112 What time limits and extensions apply?	23.112 What time limits and extensions apply?	Reorganizes section. States that no proceeding can be held until at least 10 days after the required notice is provided. Clarifies that extensions may be "up to" an additional 20 days. Moves provision regarding alternative methods of participation to 23.133. Clarifies that additional extensions of time may be granted.	New section. Incorporates statutory prohibition on foster care or termination-of-parental-rights proceedings being held until certain timelines are passed.
23.113 What is the process for the emergency removal of an Indian child?	23.113 What are the standards for emergency proceedings involving an Indian child?	Adds that emergency removal/placement must terminate immediately when no longer necessary to prevent imminent physical damage or harm. Clarifies what standards state court should apply in emergency proceedings involving an Indian child. Changes standard from whether emergency removal/placement is "proper" to whether it is "necessary to prevent imminent physical damage or harm to the child." Removes certain requirements on the agency Clarifies that agency may terminate the emergency removal/placement. Requires additional statements in the petition or accompanying documents. Replaces provision requiring a hearing if emergency removal/placement is continued for more than 30 days with a requirement for a court determination that restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm, and the court cannot transfer jurisdiction to the Tribe, and that it is not possible to initiate a child-custody proceeding defined in § 23.2. Moves provision regarding alternative methods of participation to § 23.133.	New section. Incorporates statutory limitations on State emergency removals and emergency placements. Establishes what a petition, or accompanying documents, for emergency removal or emergency placement should include. Requires State court to determine at each hearing whether the emergency removal or emergency placement is no longer necessary. Establishes a 30-day deadline by which emergency removal and emergency placement should end unless the court determines that restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm, and the court cannot transfer jurisdiction to the Tribe, and that it is not possible to initiate a child-custody proceeding defined in § 23.2.
23.114 What are the procedures for determining improper removal?	23.114 What are the requirements for determining improper removal?	Changes "reason to believe" to "reason to know" of an improper removal. Changes "immediately stay the proceeding until a determination can be made on the question of improper removal" to "expeditiously determine whether there was im-	New section. Establishes that the State court must expeditiously determine whether there was an improper removal or retention under certain circumstances. Requires the child to be returned immediately to parents if there has been an improper

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.115 How are petitions for transfer of proceeding made?	23.115 How are petitions for transfer of a proceeding made?	Adds that a request for transfer may be made at any stage of each proceeding. Clarifies that provision applies to foster-care and termination-of-parental-rights proceedings.	New section. Establishes how petitions for transfer may be made.
23.116 What are the criteria and procedures for ruling on transfer petitions?	23.117 What are the criteria for ruling on transfer petitions?	Changes "case" to "child-custody proceeding". Clarifies that a court must make a determination when transfer is not appropriate. Moves provision for court to provide records related to the proceeding to Tribal court to § 23.119.	New section. Establishes that a State court must transfer a proceeding unless one or more of the listed criteria are met.
23.117 How is a determination of "good cause" not to transfer made?	23.118 How is a determination of "good cause" to deny transfer made?	Clarifies that the court "must not" consider certain factors, rather than "may not". Combines the two separate lists of factors that must not be considered into one list. Clarifies when court must not consider whether the proceeding is at an advanced stage. Adds that the court must not consider whether there have been prior proceedings involving the child for which no petition to transfer was filed. Changes the factor on whether the transfer "would" result in a change in placement to whether the transfer "could" affect placement. Changes the factor on the Indian child's "contacts" to Indian child's "cultural connections". Eliminates language regarding burden of proof. Requires the basis for denying transfer to be stated on the record or in a written opinion.	New section. Prohibits State court from considering certain factors in determining whether good cause to deny transfer exists. Requires the basis for denying transfer to be stated on the record or in a written opinion.
23.118 What happens when a petition for transfer is made?	23.116 What happens when a petition for transfer is made? 23.119 What happens after a petition for transfer is granted?	Splits the proposed section into two sections. Deletes provision stating the notice should specify how long the Tribal court has to make its decision and requiring at least 20 days for Tribal court to decide. Adds that the State court "may request a timely response" regarding whether the Tribe wishes to decline the transfer. Changes "promptly provide the Tribal court with all court records" to "expeditiously provide the Tribal court with all records related to the proceeding." Adds language regarding coordination between State and Tribal courts.	New section. Establishes that the State court must ensure the Tribal court is promptly notified in writing of a transfer petition. New section. Establishes that State court should expeditiously provide the Tribal court with all records related to the proceeding if the Tribal court accepts transfer, and should coordinate the transfer with the Tribal court.
23.119 Who has access to reports or records?	23.134 Who has access to reports or records during a proceeding?	Deletes provision stating that decisions of the court must be based only upon what is in the record.	New section. Establishes rights of parties to examine records of proceedings.
23.120 What steps must a party take to petition a State court for certain actions involving an Indian child?	23.120 How does the State court ensure that active efforts have been made?	Deletes provision directly imposing requirements on any party petitioning for foster care or termination of parental rights; instead requires the court to conclude that active efforts have been made.	New section. Requires State court to conclude that active efforts to avoid the need to remove the Indian child from his or her parents or Indian custodian were made prior to ordering an involuntary foster-care placement or termination-of-parental-rights. Requires documentation of active efforts.
23.121 What are the applicable standards of evidence?	23.121 What are the applicable standards of evidence?	Clarifies that court "must not issue an order" absent the appropriate standard of evidence, rather than "may not issue an order." Changes standard from "seriously physical damage or harm" to "serious emotional or physical damage." Clarifies that a causal relationship is required for finding both clear and convincing evidence and evidence beyond a reasonable doubt. States that none of the listed factors may be the sole evidence without a causal relationship for both clear and convincing evidence and evidence beyond a reasonable doubt.	New section. Establishes standards of evidence in foster-care placement proceedings and termination-of-parental-rights proceedings. Requires the existence of a causal relationship between the particular conditions in the home and risk of serious emotional or physical damage to the child. Establishes that, without the causal relationship, certain factors may not be the sole factor for meeting the standard of evidence.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.122 Who may serve as a qualified expert witness?	23.122 Who may serve as a qualified expert witness?	Clarifies that expert witness must be able to testify regarding whether the Indian child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage, and should also have specific knowledge of the prevailing social and cultural standards of the Indian child's Tribe. Changes text from "specific knowledge of the child's Indian Tribe's culture and customs" to "knowledge of the prevailing social and cultural standards of the Indian child's Tribe." Eliminates the list of persons presumed to meet the requirements to two categories, and states instead that a person may be designated by the Indian child's Tribe has having knowledge of the prevailing social and cultural standards of that Tribe.	New section. Establishes that a qualified expert witness should have knowledge of the prevailing social and cultural standards of the Indian child's Tribe.
N/A	23.123	Reserved for numbering purposes	Reserved for numbering purposes.
23.123 What actions must an agency and State court undertake in voluntary proceedings?	23.124 What actions must a State court undertake in voluntary proceedings?	Deletes requirements directed at agencies Clarifies that courts must ensure the party seeking placement has taken all reasonable steps to verify the child's status.. Adds that State courts must ensure that the placement complies 23.129–23.132.	New section. Requires State courts to ask whether the child is an "Indian child" in voluntary proceedings. Where there is reason to know that the child is an Indian child, requires State courts to ensure the party seeking placement has taken all reasonable steps to verify the child's status. Requires State courts to ensure that the placement complies 23.129–23.132.
23.124 How is consent obtained?	23.125 How is consent obtained?	Clarifies that the consent must be made before a judge, not necessarily in court. Clarifies what the court must explain to the parent/Indian custodian prior to accepting consent, and separates out the limitations applicable to each type of proceeding. Clarifies that the court's explanation must be on the record and in English (unless English is not the primary language of the parent/Indian custodian). Clarifies that consent need not be executed in open court but still must be made before a court of competent jurisdiction.	New section. Requires consent to voluntary termination of parental rights, foster-care placement, or adoption to be in writing and recorded before a court of competent jurisdiction. Requires court to explain the consequences of the consent in detail and certify that terms and consequences were explained in English or the language of the parent or Indian custodian.
23.125 What information should the consent document contain?	23.126 What information must the consent document contain?	Clarifies that the consent document must contain the identifying Tribal enrollment number "where known" rather than "if any." Adds that the parent or Indian custodian's identifying information must be included, rather than definitively requiring their addresses.	New section. Establishes required contents of consent document.
23.126 How is withdrawal of consent achieved in a voluntary foster-care placement?	23.127 How is withdrawal of consent to a foster-care placement achieved?	Clarifies that a parent or Indian custodian may withdraw consent to foster-care placement at any time. Removes requirement for the withdrawal to be filed in the same court where the consent document was executed. Adds that State law may provide additional methods of withdrawing. Clarifies that the court must ensure the child is returned as soon as practicable.	New section. Establishes when and how consent of foster-care placement may be withdrawn. Establishes that the child must be returned to the parent or Indian custodian as soon as practicable.
23.127 How is withdrawal of consent to a voluntary adoption achieved?	23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?	Separates out provisions for withdrawing consent to a termination of parental rights from provisions for withdrawing consent to an adoption. Adds that withdrawal may be accomplished by testimony before the court. Adds that State law may provide additional methods of withdrawing. Changes "clerk of the court" to "the court."	New section. Establishes when and how consent to a termination of parental rights and an adoption may be withdrawn. Establishes that the child must be returned to the parent or Indian custodian as soon as practicable.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.128 When do the placement preferences apply?	23.129 When do the placement preferences apply?	Deletes provisions directed at agencies ..... Clarifies that the Tribe's placement preferences may apply. Clarifies that the court must consider requests for anonymity in voluntary proceedings. Moves provisions regarding documentation to 23.137 and 23.138.	New section. Establishes when placement preferences apply. Establishes that where a parent requests anonymity in a voluntary proceeding, the court must give weight to this request. Establishes that the placement preferences must be followed unless a determination is made on the record that good cause exists not to apply those preferences.
23.129 What placement preferences apply in adoptive placements?	23.130 What placement preferences apply in adoptive placements?	Clarifies that the Tribe's placement preferences may apply. Clarifies that the court "must" consider, where appropriate, the preferences of the Indian child or parent.	New section. Lists the placement preferences in adoptive placements. Establishes that the Tribe may establish a different order of preference by resolution.
23.130 What placement preferences apply in foster care or preadoptive placements?	23.131 What placement preferences apply in foster-care or preadoptive placements?	Clarifies that preferences apply to changes in placements. Adds that sibling attachment as a consideration in whether the placement approximates a family. Clarifies that the Tribe's placement preferences may apply. Deletes the provision "whether on or off the reservation" as superfluous. Clarifies that the Tribe's placement preferences established by order or resolution apply, so long as the placement is the least restricted setting appropriate to the particular needs of the child. Requires the court to consider the preference of the Indian child or parent.	New section. Lists the placement preferences in foster- care and preadoptive placements. Establishes that the Tribe may establish a different order of preference by resolution. Requires the court to consider the preference of the Indian child or parent.
23.131 How is a determination for "good cause" to depart from the placement preferences made?	23.132 How is a determination for "good cause" to depart from the placement preferences made?	Clarifies that the court must ensure reasons for good cause are on the record and available to the parties. Clarifies that a determination of good cause must be justified on the record or in writing. Changes the requirement for the court to base good cause on the listed considerations to a statement that the court "should" base good cause on the listed considerations. Clarifies that the request of one or both parents may be a consideration for good cause. Adds the presence of a sibling attachment as a consideration for good cause. Adds "mental" needs of the child ..... Deletes the provision stating that extraordinary needs does not include ordinary bonding and attachment. Deletes requirement for qualified expert witness. Changes unavailability of placements to unavailability of "suitable" placements, and clarifies that a placement may not be considered "unavailable" if it conforms to prevailing social and cultural standards of the Indian community. Changes requirement for active efforts to find placements to a "diligent search" to find placements.. Adds that the court may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.	New section. Requires the court to ensure the reasons for good cause are on the record and available to parties. Establishes that the standard for proving good cause is clear and convincing evidence. Requires the good cause determination to be in writing. Establishes considerations that the good cause determination should be based on. Prohibits court from departing from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.
N/A	23.133 Should courts allow participation by alternative methods?	New section, incorporating provisions previously at PR §§23.112, 23.113, and 23.115.	New section. Establishes that courts should allow, where they possess the capability, alternative methods of participation in proceedings.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
23.132 What is the procedure for petitioning to vacate an adoption?	23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?	Clarifies that this provision addresses vacating an adoption (deletes "termination of parental rights"). Deletes provision allowing an adoption decree to be vacated based on the proceeding failing to comply with ICWA.	New section. Establishes the procedure for vacating an adoption based on consent having been obtained through fraud or duress.
23.133 Who can make a petition to invalidate an action?	23.137 Who can make a petition to invalidate an action for certain ICWA violations?	Clarifies which sections of ICWA violations of may justify a petition to invalidate an action. Clarifies that an Indian child that was, in the past, the subject of an action for foster care or termination of parental rights may petition. Moves provision regarding alternative methods of participation to §23.133.	New section. Establishes who can make a petition to invalidate an action based on a violation of certain statutory provisions.
23.134 What are the rights of adult adoptees?	23.138 What are the rights to information about adoptees' Tribal affiliations?	Narrows section to apply only to rights to information about adult adoptees' Tribal affiliations. Deletes provision regarding BIA helping adoptee obtain information because an updated version of this provision is at §23.71. Deletes provision about closed adoptions ..... Deletes provision about Tribes identifying a Tribal designee to assist adult adoptees.	New section. Establishes how adult adoptees may receive information on Tribal affiliations.
23.135 When must notice of a change in child's status be given?	23.139 Must notice be given of a change in an adopted Indian child's status?	Clarifies that notice is required for Indian children who have been adopted. Deletes provision regarding change in placement. Adds that the notice must include the current name and any former names of the Indian child, and must include sufficient information to allow the recipient to participate in any scheduled hearings. Adds provisions requiring the court to explain the consequences of a waiver of the right to notice and certify that the explanation was provided. Adds that a waiver need not be made in a session of court open to the public but must be before a court. Clarifies that a revocation of the right to receive notice does not affect completed proceedings.	New section. Requires notice to be given to the child's biological parents or prior Indian custodians and Tribe of certain actions affecting an Indian child that has been adopted. Establishes the required content for the notice. Establishes provisions allowing the parent or Indian custodian to waive notice.
23.136 What information must States furnish to the Bureau of Indian Affairs?	23.140 What information must State courts furnish to the Bureau of Indian Affairs?	Clarifies applicability to voluntary and involuntary adoptions. Adds time period from 23.71 to provide that State court must provide a copy of the adoptive decree or order within 30 days. Adds requirement from 23.71 that the child's birthdate must be included in the information State courts provide to BIA. Incorporates provisions from 23.71(a) regarding marking information "confidential" and regarding State agencies assuming reporting responsibilities.	Incorporates some of §23.71(a) regarding State requirement to provide a copy of the adoptive placement decree or order to BIA within 30 days, along with certain information.
23.137 How must the State maintain records?	23.141 What records must the State maintain?	Deletes requirement for State to establish a single location to maintain records. Increases the time in which the State must make the record available to the Tribe or Secretary from 7 days to 14 days. Adds requirement for the record to include document on efforts to comply with the placement preferences and the court order authorizing departure, if the placement departs from the placement preferences. Clarifies that records may be maintained by a State court or State agency.	New section. Requires States to maintain records of all placements made under the Act. Establishes a minimum of what each record must include.
23.138 How does the Paperwork Reduction Act affect this subpart?	23.139 How does the Paperwork Reduction Act affect this subpart.	Adds the OMB Control number	New section. Addresses information collection requirements in the subpart.

Proposed rule	Final rule	Summary of changes from proposed rule to final rule	Summary of final rule (as compared to rule in effect before this final rule)
NA	23.143 How does this subpart apply to pending proceedings?		New section. States that the provisions of the rule will not affect a child-custody proceeding initiated prior to 180 days after publication date of the rule.
NA	23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?		New section. States that if any portion of the rule is determined to be invalid by a court, the other portions of the rule remains in effect.

VI. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department has developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The rule directly affects courts that hear Indian child welfare proceedings, and indirectly affects public child welfare agencies and private placement agencies. All of these categories of affected entities likely include entities that qualify as small entities, so the Department has estimated that rule affects approximately 7,625 small entities in these categories. Therefore, the Department has determined that this rule will have an impact on a substantial number of small entities. However, the Department has determined that the impact on entities affected by the rule will not be significant because of the total economic impact of this rule's requirements on any given entity is likely to be limited to an order of magnitude that is minimal in comparison to the entity's annual operating budget. The Department's detailed review of the potential economic effects resulting from new regulatory requirements is available upon request.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an annual effect on the economy of $100 million or more. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. As noted above, the rule's requirements on any given entity is a minimal order of magnitude compared to an entity's annual operating budget. In cases where that is not true, the entity (such as a private adoption agency) may choose to pass their costs on to parties seeking placement and, on an individual level, the incremental increase in costs is minimal. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule affects only placement of domestic children who qualify as an "Indian child" under the Act. The Department has reviewed the potential increase in costs resulting from new regulatory requirements, and this analysis is available upon request.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." A takings implication assessment is therefore not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient Federalism implications to warrant preparation of a Federalism summary impact statement. The Department carefully reviewed comments regarding potential Federalism implications and determined that this rule complies with the fundamental Federalism principles and policymaking criteria established in EO 13132. Congress determined that the issue of Indian child welfare is sufficiently national in scope and significance to justify a statute that applies uniformly across States. This rule invokes the United States' special relationship with Indian Tribes and children by establishing a regulatory baseline for implementation to further the goals of ICWA. Such goals include protecting the best interests of Indian children and promoting the stability and security of Indian Tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes that reflect the unique values of Indian culture. States are required to comply with ICWA even in the absence of this rule, and that requirement has existed since ICWA's passage in 1978.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule meets the criteria of section 3(a) requiring all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation and meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian Tribes that will result from this rule. This rule will affect Tribes by promoting implementation of a Federal statute intended to promote the stability and security of Indian Tribes and families. These regulations are the outcome of recommendations made by Tribes during several listening sessions on the ICWA guidelines. The Department hosted several formal Tribal consultation sessions on the proposed rule, including on April 20, 2015, in Portland, Oregon; April 23, 2015, in Rapid City, South Dakota; May 5, 2015, in Albuquerque, New Mexico; May 7, 2015, in Prior Lake, Minnesota; May 11, 2015, by teleconference; and May 14, 2015, in Tulsa, Oklahoma. Many federally recognized Indian Tribes submitted written comments and nearly all, if not all, uniformly supported the regulations, though some had suggestions for improvements. The Department considered each Tribe's comments and their suggested improvements and has addressed them, where possible, in the final rule.

I. Paperwork Reduction Act

This rule contains information collection requirements and a submission to OMB under the Paperwork Reduction Act (PRA) is required. The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. OMB has approved the information collection for this rule and has assigned a control number:

OMB Control Number: 1076–0186.

Title: Indian Child Welfare Act (ICWA) Proceedings in State Court.

Brief Description of Collection: This collection addresses the reporting, third-party disclosure, and recordkeeping requirements of ICWA, which requires State courts and agencies and private businesses to provide notice to or contact Tribes and parents/custodians of any child custody proceeding that may involve an "Indian child," and requires State courts and agencies to document certain actions and maintain certain records regarding the removal and placement of an "Indian child."

Type of Review: Existing collection in use without OMB control number.

Respondents: State and Tribal governments, businesses, and individuals.

Number of Respondents: 6,906 on average (each year).

Number of Responses: 98,069 on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: Ranges from 15 minutes to 12 hours.

Estimated Total Annual Hour Burden: 301,811 hours.

Estimated Total Annual Non-Hour Cost: $309,630.

Section	Respondent	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.107	State court and/or agency.	Obtain information on whether child is "Indian child".	50	260	13,000	12	156,000
23.108, 23.109	Tribe	Respond to State regarding Tribal membership.	567	23	13,041	1	13,041
23.110	State court	Notify Tribal court of dismissal and provide records.	50	5	250	0.25	63
23.11, 23.111	State court and/or agency.	Notify Tribe, parents, Indian custodian of child custody proceeding.	50	273	13,650	6	81,900
23.11, 23.111	Private placement agency.	Notify Tribe, parents, Indian custodian of child custody proceeding.	1,289	2	2,578	6	15,468
23.113	State agency or State court.	Document basis for emergency removal/placement.	50	260	13,000	0.5	6,500
23.116, 23.119	State court	Notify Tribal court of transfer request, and provide records.	50	5	250	0.25	63
23.120	Agency	Document "active efforts"	50	167	8,350	0.5	4,175
23.125, 23.126	Parent/Indian custodian.	Consent to termination or adoption (with required contents).	5,000	1	5,000	0.5	2,500
23.127, 23.128	State court	Notify placement of withdrawal of consent.	50	2	100	0.25	25
23.136	State court	Notify of petition to vacate	50	5	250	0.25	63
23.138	State court	Inform adult adoptee of Tribal affiliation upon request.	50	20	1,000	0.5	500
23.139	State court	Notify of change in status quo of adopted child.	50	4	200	0.25	63
23.140	State court	Provide copy of final adoption decree/order.	50	47	2,350	0.25	588
23.141	State court	Maintain records of each placement (including required documents).	50	167	8,350	0.5	4,175
23.141	State court or agency.	Provide placement records to Tribe or Secretary upon request within 14 days.	50	167	8,350	1.5	12,525

Section	Respondent	Information collection	Annual number of respondents	Frequency of responses	Annual number of responses	Completion time per response	Total annual burden hours
23.141	State court or State agency.	Notify where records maintained	50	167	8,350	0.5	4,175
			.....	.....	98,069	.....	301,811

The annual cost burden to respondents associated with providing notice by certified mail is $6.74 and the cost of a return receipt green card is $2.80. For each Indian child-custody proceeding, at least two notices must be sent—one to the parent and one to the Tribe, totaling $19.08. At an annual estimated 13,000 child welfare proceedings that may involve an "Indian child," where approximately 650 of these include an interstate transfer (13,650), this totals: $260,442. In addition, there are approximately 2,578 voluntary proceedings for which parties may choose to provide notice, at a cost of $49,118. Together, the total cost burden is $309,630.

Comment was taken on this information collection in the proposed rule, as part of the public notice and comment period proposed rule, in compliance with OMB regulations. One commenter, the California Health and Human Services Agency, Department of Social Services (CHHS) submitted comments specifically in response to the request for comments on the information collection burden.

• *Comment on Proposed § 23.111:* The proposed rule states that notice must be by registered mail, whereas the current 23.11(a) allows for notice by certified mail. To require registered mail will increase costs that undermine noticing under ICWA. *Response:* The statute specifies "registered mail with return receipt requested." 25 U.S.C. 1912(a). In response to these comments, the Department examined whether certified mail with return receipt requested is allowable under the statute, and determined that it is because certified mail with return receipt requested better meets the goals of prompt, documented notice. The final rule allows for certified mail.

• *Comment on Proposed § 23.104, providing information on how to contact a Tribe:* The rule should clarify BIA's obligation in gathering the information for the list of Tribe's designated agents and contact information because the current list is outdated, inefficient, and inconsistently maintained. The list is hampered by publication in the **Federal Register** and BIA should be required to publish updates on the Web. The list also no longer maintains the historical affiliations, which was helpful. *Response:* BIA is now publishing the list using historical affiliations, as requested, and making the list available on its Web site, where it can be updated more frequently. The rule does not address this because these are procedures internal to the BIA.

• *Comment on Proposed § 23.111(i), requiring notice by both States where child is transferred interstate:* Requiring both the originating State court and receiving State court to provide notice is duplicative and burdensome because notice should only be required in the State where the actual court proceeding is pending. Another commenter stated that the provision appears to apply to transfers between Tribes and States, where notice is unnecessary. *Response:* The final rule deletes this provision.

• *Comment on Proposed § 23.134, requiring BIA to disclose information to adult adoptees:* This section appears to be creating duplicative work of the BIA and States, because both sections require each to provide adult adoptees information for Tribal enrollment. *Response:* The Act imposes this responsibility on both BIA and the State. Section 1951(b) of the Act imposes the responsibility on BIA, which is in § 23.71(b) of the final rule. Section 1917 of the Act imposes the responsibility on States, which is addressed at § 23.134 of the final rule.

• *Comment on Proposed § 23.137, requiring the State to establish a single location for placement records:* This requirement would be an unfunded mandate with undue burden and would require relocating 1,145 files to a different location and require changes to existing recordkeeping systems. Another State agency commented that there is a significant fiscal and annual burden due to the staffing, costs for copying, packaging and transferring physical files to a different location. *Response:* The final rule deletes the provision requiring States to establish a single, central repository. The associated information collection request has also been deleted.

• *Comment on Proposed § 23.137, requiring providing records to the Department or Tribe upon request:* The 15-minute burden estimate allocated to this task is too low. The time to copy, package and mail the documents will be no less than one hour, but more realistically two hours. *Response:* The final rule updates the burden estimates to reflect 1.5 hours.

If you have comments on this information collection, please submit them to Elizabeth K. Appel, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1849 C Street NW., MS–3071, Washington, DC 20240, or by email to *elizabeth.appel@bia.gov.*

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, and procedural nature. *See,* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 23 in Title 25 of the Code of Federal Regulations as follows:

PART 23—INDIAN CHILD WELFARE ACT

■ 1. The authority citation for part 23 continues to read as follows: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

■ 2. In § 23.2:

■ a. Add a definition for "active efforts" in alphabetical order;

■ b. Revise the definition of "child-custody proceeding";

■ c. Add definitions for "continued custody", "custody", and "domicile" in alphabetical order;

■ d. Add a definition for "emergency proceeding" in alphabetical order;

■ e. Revise the definition of "extended family member";

■ f. Add a definition for "hearing" in alphabetical order;

■ g. Revise the definitions of "Indian child", "Indian child's Tribe", and "Indian custodian";

■ h. Add a definition for "Indian foster home" in alphabetical order;

■ i. Add a definition of "involuntary proceeding" in alphabetical order;

■ j. Revise the definition of "parent";

■ k. Revise the definitions of "reservation" and "Secretary";

■ l. Add a definition for "status offenses" in alphabetical order;

■ m. Revise the definition of "Tribal court"; and

■ n. Add definitions for "upon demand", and "voluntary proceeding" in alphabetical order.

The additions and revisions read as follows:

§ 23.2 Definitions.

* * * * *

Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

* * * * *

Child-custody proceeding. (1) "Child-custody proceeding" means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(i) *Foster-care placement,* which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) *Termination of parental rights,* which is any action resulting in the termination of the parent-child relationship;

(iii) *Preadoptive placement,* which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(iv) *Adoptive placement,* which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a child-custody proceeding.

* * * * *

Continued custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law, that a parent or Indian custodian already has or had at any point in the past. The biological mother of a child has had custody of a child.

Custody means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law.

Domicile means:

(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.

Emergency proceeding means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

Extended family member is defined by the law or custom of the Indian child's Tribe or, in the absence of such law or custom, is a person who has reached age 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

* * * * *

Hearing means a judicial session held for the purpose of deciding issues of fact, of law, or both.

* * * * *

Indian child means any unmarried person who is under age 18 and either:

(1) Is a member or citizen of an Indian Tribe; or

(2) Is eligible for membership or citizenship in an Indian Tribe and is the

biological child of a member/citizen of an Indian Tribe.

Indian child's Tribe means:

(1) The Indian Tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in § 23.109.

Indian custodian means any Indian who has legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law.

Indian foster home means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3).

Involuntary proceeding means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement under threat of removal of the child by a State court or agency.

* * * * *

Parent or *parents* means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under Tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C 1151 and any lands, not covered under that section, title to which is held by the United States in trust for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority.

* * * * *

Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor (*e.g.*, truancy, incorrigibility).

* * * * *

Tribal court means a court with jurisdiction over child-custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian Tribe, or any other administrative body of a Tribe vested with authority over child-custody proceedings.

* * * * *

Upon demand means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

* * * * *

Voluntary proceeding means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

■ 3. Revise § 23.11 to read as follows:

§ 23.11 Notice.

(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention. Notice must include the requisite information identified in § 23.111, consistent with the confidentiality requirement in § 23.111(d)(6)(ix). Copies of these notices must be sent to the appropriate Regional Director listed in paragraphs (b)(1) through (12) of this section by registered or certified mail with return receipt requested or by personal delivery and must include the information required by § 23.111.

(b)(1) For child-custody proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or any territory or possession of the United States, notices must be sent to the following address: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214.

(2) For child-custody proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices must be sent to the following address: Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401–2241.

(3) For child-custody proceedings in Nebraska, North Dakota, or South Dakota, notices must be sent to the following address: Aberdeen Regional Director, Bureau of Indian Affairs, 115 Fourth Avenue SE., Aberdeen, South Dakota 57401.

(4) For child-custody proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), or the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods or Woodward, notices must be sent to the following address: Anadarko Regional Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6) of this section.

(5) For child-custody proceedings in Wyoming or Montana (except for notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana), notices must be sent to the following address: Billings Regional Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(6) For child-custody proceedings in the Texas counties of El Paso and Hudspeth or in Colorado or New Mexico (exclusive of notices to the Navajo Nation from the New Mexico counties listed in paragraph (b)(9) of this section), notices must be sent to the following address: Albuquerque Regional Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Nation must be sent to the Navajo Regional Director at the address listed in paragraph (b)(9) of this section.

(7) For child-custody proceedings in Alaska (except for notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska), notices must be sent to the following address: Juneau Regional Director, Bureau of Indian Affairs, 709 West 9th Street, Juneau, Alaska 99802–1219. Notices to the Metlakatla Indian Community, Annette Island Reserve, Alaska, must be sent to the Portland Regional Director at the address listed in paragraph (b)(11) of this section.

(8) For child-custody proceedings in Arkansas, Missouri, or the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Stephens, Tulsa, Wagoner, or Washington, notices must be sent to the following address: Muskogee Regional Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For child-custody proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi Tribe of Arizona and the San Juan Southern Paiute Tribe of Arizona) or Navajo (except for notices to the Hopi Tribe of Arizona); the New Mexico counties of McKinley (except for notices to the Zuni Tribe of the Zuni Reservation), San Juan, or Socorro; or the Utah county of San Juan, notices must be sent to the following address: Navajo Regional Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Southern Paiute Tribes of Arizona must be sent to the Phoenix Regional Director at the address listed in paragraph (b)(10) of this section. Notices to the Zuni Tribe of the Zuni Reservation must be sent to the Albuquerque Regional Director at the address listed in paragraph (b)(6 of this section).

(10) For child-custody proceedings in Arizona (exclusive of notices to the Navajo Nation from those counties listed in paragraph (b)(9) of this section), Nevada, or Utah (exclusive of San Juan County), notices must be sent to the following address: Phoenix Regional Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For child-custody proceedings in Idaho, Oregon, or Washington, notices must be sent to the following address: Portland Regional Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish and Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, must also be sent to the Portland Regional Director.

(12) For child-custody proceedings in California or Hawaii, notices must be sent to the following address: Sacramento Regional Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(c) Upon receipt of the notice, the Secretary will make reasonable documented efforts to locate and notify the child's Tribe and the child's parent or Indian custodian. The Secretary will have 15 days, after receipt of the notice, to notify the child's Tribe and parents or Indian custodians and to send a copy of the notice to the court. If within the 15-day period the Secretary is unable to verify that the child meets the criteria of an Indian child as defined in § 23.2, or is unable to locate the parents or Indian custodians, the Secretary will so inform the court and state how much more time, if any, will be needed to complete the verification or the search. The Secretary will complete all research efforts, even if those efforts cannot be completed before the child-custody proceeding begins.

(d) Upon request from a party to an Indian child-custody proceeding, the Secretary will make a reasonable attempt to identify and locate the child's Tribe, parents, or Indian custodians to assist the party seeking the information.

■ 4. Revise § 23.71 to read as follows:

§ 23.71 Recordkeeping and information availability.

(a) The Division of Human Services, Bureau of Indian Affairs (BIA), is authorized to receive all information and to maintain a central file on all State Indian adoptions. This file is confidential and only designated persons may have access to it.

(b) Upon the request of an adopted Indian who has reached age 18, the adoptive or foster parents of an Indian child, or an Indian Tribe, BIA will disclose such information as may be necessary for purposes of Tribal enrollment or determining any rights or benefits associated with Tribal membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, BIA must certify to the Indian child's Tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment under the criteria established by such Tribe.

(c) BIA will ensure that the confidentiality of this information is maintained and that the information is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

■ 5. Add subpart I to read as follows:

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

Sec.
23.101 What is the purpose of this subpart?
23.102 What terms do I need to know?
23.103 When does ICWA apply?
23.104 What provisions of this subpart apply to each type of child-custody proceeding?
23.105 How do I contact a Tribe under the regulations in this subpart?
23.106 How does this subpart interact with State and Federal laws?

Pretrial Requirements

23.107 How should a State court determine if there is reason to know the child is an Indian child?
23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?
23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?
23.110 When must a State court dismiss an action?
23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?
23.112 What time limits and extensions apply?
23.113 What are the standards for emergency proceedings involving an Indian child?
23.114 What are the requirements for determining improper removal?

Petitions To Transfer to Tribal Court

23.115 How are petitions for transfer of a proceeding made?
23.116 What happens after a petition for transfer is made?
23.117 What are the criteria for ruling on transfer petitions?
23.118 How is a determination of "good cause" to deny transfer made?
23.119 What happens after a petition for transfer is granted?

Adjudication of Involuntary Proceedings

23.120 How does the State court ensure that active efforts have been made?
23.121 What are the applicable standards of evidence?
23.122 Who may serve as a qualified expert witness?
23.123 [Reserved]

Voluntary Proceedings

23.124 What actions must a State court undertake in voluntary proceedings?
23.125 How is consent obtained?
23.126 What information must a consent document contain?
23.127 How is withdrawal of consent to a foster-care placement achieved?

23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

Dispositions

23.129 When do the placement preferences apply?
23.130 What placement preferences apply in adoptive placements?
23.131 What placement preferences apply in foster-care or preadoptive placements?
23.132 How is a determination of "good cause" to depart from the placement preferences made?

Access

23.133 Should courts allow participation by alternative methods?
23.134 Who has access to reports and records during a proceeding?
23.135 [Reserved]

Post-Trial Rights & Responsibilities

23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?
23.137 Who can petition to invalidate an action for certain ICWA violations?
23.138 What are the rights to information about adoptees' Tribal affiliations?
23.139 Must notice be given of a change in an adopted Indian child's status?

Recordkeeping

23.140 What information must States furnish to the Bureau of Indian Affairs?
23.141 What records must the State maintain?
23.142 How does the Paperwork Reduction Act affect this subpart?

Effective Date

23.143 How does this subpart apply to pending proceedings?

Severability

23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

Subpart I—Indian Child Welfare Act Proceedings

General Provisions

§ 23.101 What is the purpose of this subpart?

The regulations in this subpart clarify the minimum Federal standards governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act's express language, Congress's intent in enacting the statute, and to promote the stability and security of Indian tribes and families.

§ 23.102 What terms do I need to know?

The following terms and their definitions apply to this subpart. All other terms have the meanings assigned in § 23.2.

Agency means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a Tribe, or a majority of whose members are Indians.

§ 23.103 When does ICWA apply?

(a) ICWA includes requirements that apply whenever an Indian child is the subject of:

(1) A child-custody proceeding, including:

(i) An involuntary proceeding;

(ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand; and

(iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster-care, preadoptive, or adoptive placement, or termination of parental rights.

(2) An emergency proceeding.

(b) ICWA does not apply to:

(1) A Tribal court proceeding;

(2) A proceeding regarding a criminal act that is not a status offense;

(3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or

(4) A voluntary placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand.

(c) If a proceeding listed in paragraph (a) of this section concerns a child who meets the statutory definition of "Indian child," then ICWA will apply to that proceeding. In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

(d) If ICWA applies at the commencement of a proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.

§ 23.104 What provisions of this subpart apply to each type of child-custody proceeding?

The following table lists what sections of this subpart apply to each type of child-custody proceeding identified in § 23.103(a):

Section	Type of proceeding
23.101–23.106 (General Provisions)	Emergency, Involuntary, Voluntary.
Pretrial Requirements:	
23.107 (How should a State court determine if there is reason to know the child is an Indian child?).	Emergency, Involuntary, Voluntary.
23.108 (Who makes the determination as to whether a child is a member whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?).	Emergency, Involuntary, Voluntary.
23.109 (How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?).	Emergency, Involuntary, Voluntary.
23.110 (When must a State court dismiss an action?)	Involuntary, Voluntary.
23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?).	Involuntary (foster-care placement and termination of parental rights).
23.112 (What time limits and extensions apply?)	Involuntary (foster-care placement and termination of parental rights).
23.113 (What are the standards for emergency proceedings involving an Indian child?)	Emergency.
23.114 (What are the requirements for determining improper removal?)	Involuntary.
Petitions to Transfer to Tribal Court:	
23.115 (How are petitions for transfer of a proceeding made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).

Section	Type of proceeding
23.116 (What happens after a petition for transfer is made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.117 (What are the criteria for ruling on transfer petitions?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.118 (How is a determination of "good cause" to deny transfer made?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
23.119 (What happens after a petition for transfer is granted?)	Involuntary, Voluntary (foster-care placement and termination of parental rights).
Adjudication of Involuntary Proceedings:	
23.120 (How does the State court ensure that active efforts have been made?)	Involuntary (foster-care placement and termination of parental rights).
23.121 (What are the applicable standards of evidence?)	Involuntary (foster-care placement and termination of parental rights).
23.122 (Who may serve as a qualified expert witness?)	Involuntary (foster-care placement and termination of parental rights).
23.123 Reserved	N/A.
Voluntary Proceedings:	
23.124 (What actions must a State court undertake in voluntary proceedings?)	Voluntary.
23.125 (How is consent obtained?)	Voluntary.
23.126 (What information must a consent document contain?)	Voluntary.
23.127 (How is withdrawal of consent to a foster-care placement achieved?)	Voluntary.
23.128 (How is withdrawal of consent to a termination of parental rights or adoption achieved?)	Voluntary.
Dispositions:	
23.129 (When do the placement preferences apply?)	Involuntary, Voluntary.
23.130 (What placement preferences apply in adoptive placements?)	Involuntary, Voluntary.
23.131 (What placement preferences apply in foster-care or preadoptive placements?)	Involuntary, Voluntary.
23.132 (How is a determination of "good cause" to depart from the placement preferences made?).	Involuntary, Voluntary.
Access:	
23.133 (Should courts allow participation by alternative methods?)	Emergency, Involuntary.
23.134 (Who has access to reports and records during a proceeding?)	Emergency, Involuntary.
23.135 Reserved.	N/A.
Post-Trial Rights & Responsibilities:	
23.136 (What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?).	Involuntary (if consent given under threat of removal), voluntary.
23.137 (Who can petition to invalidate an action for certain ICWA violations?)	Emergency (to extent it involved a specified violation), involuntary, voluntary.
23.138 (What are the rights to information about adoptees' Tribal affiliations?)	Emergency, Involuntary, Voluntary.
23.139 (Must notice be given of a change in an adopted Indian child's status?)	Involuntary, Voluntary.
Recordkeeping:	
23.140 (What information must States furnish to the Bureau of Indian Affairs?)	Involuntary, Voluntary.
23.141 (What records must the State maintain?)	Involuntary, Voluntary.
23.142 (How does the Paperwork Reduction Act affect this subpart?)	Emergency, Involuntary, Voluntary.
Effective Date:	
23.143 (How does this subpart apply to pending proceedings?)	Emergency, Involuntary, Voluntary.
Severability:	
23.144 (What happens if some portion of part is held to be invalid by a court of competent jurisdiction?).	Emergency, Involuntary, Voluntary.

Note: For purposes of this table, status-offense child-custody proceedings are included as a type of involuntary proceeding.

§ 23.105 How do I contact a Tribe under the regulations in this subpart?

To contact a Tribe to provide notice or obtain information or verification under the regulations in this subpart, you should direct the notice or inquiry as follows:

(a) Many Tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of Tribes' designated Tribal agents for service of ICWA notice in the **Federal Register** each year and makes the list available on its Web site at *www.bia.gov*.

(b) For a Tribe without a designated Tribal agent for service of ICWA notice, contact the Tribe to be directed to the appropriate office or individual.

(c) If you do not have accurate contact information for a Tribe, or the Tribe contacted fails to respond to written inquiries, you should seek assistance in contacting the Indian Tribe from the BIA local or regional office or the BIA's Central Office in Washington, DC (see *www.bia.gov*).

§ 23.106 How does this subpart interact with State and Federal laws?

(a) The regulations in this subpart provide minimum Federal standards to ensure compliance with ICWA.

(b) Under section 1921 of ICWA, where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires the State or Federal court to apply the higher State or Federal standard.

Pretrial Requirements

§ 23.107 How should a State court determine if there is reason to know the child is an Indian child?

(a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.

(b) If there is reason to know the child is an Indian child, but the court does

not have sufficient evidence to determine that the child is or is not an "Indian child," the court must:

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and

(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.

(c) A court, upon conducting the inquiry required in paragraph (a) of this section, has reason to know that a child involved in an emergency or child-custody proceeding is an Indian child if:

(1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;

(2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;

(4) The court is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village;

(5) The court is informed that the child is or has been a ward of a Tribal court; or

(6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

(d) In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." A Tribe receiving information related to this inquiry must keep documents and information confidential.

§ 23.108 Who makes the determination as to whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member of a Tribe?

(a) The Indian Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) determines whether the child is a member of the Tribe, or whether the child is eligible for membership in the Tribe and a biological parent of the child is a member of the Tribe, except as otherwise provided by Federal or Tribal law.

(b) The determination by a Tribe of whether a child is a member, whether a child is eligible for membership, or whether a biological parent is a member, is solely within the jurisdiction and authority of the Tribe, except as otherwise provided by Federal or Tribal law. The State court may not substitute its own determination regarding a child's membership in a Tribe, a child's eligibility for membership in a Tribe, or a parent's membership in a Tribe.

(c) The State court may rely on facts or documentation indicating a Tribal determination of membership or eligibility for membership in making a judicial determination as to whether the child is an "Indian child." An example of documentation indicating membership is a document issued by the Tribe, such as Tribal enrollment documentation.

§ 23.109 How should a State court determine an Indian child's Tribe when the child may be a member or eligible for membership in more than one Tribe?

(a) If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.

(b) If the Indian child meets the definition of "Indian child" through more than one Tribe, deference should be given to the Tribe in which the Indian child is already a member, unless otherwise agreed to by the Tribes.

(c) If an Indian child meets the definition of "Indian child" through more than one Tribe because the child is a member in more than one Tribe or the child is not a member of but is eligible for membership in more than one Tribe, the court must provide the opportunity in any involuntary child-custody proceeding for the Tribes to determine which should be designated as the Indian child's Tribe.

(1) If the Tribes are able to reach an agreement, the agreed-upon Tribe should be designated as the Indian child's Tribe.

(2) If the Tribes are unable to reach an agreement, the State court designates, for the purposes of ICWA, the Indian Tribe with which the Indian child has the more significant contacts as the Indian child's Tribe, taking into consideration:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each Tribe;

(iii) Tribal membership of the child's custodial parent or Indian custodian; and

(iv) Interest asserted by each Tribe in the child-custody proceeding;

(v) Whether there has been a previous adjudication with respect to the child by a court of one of the Tribes; and

(vi) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.

(3) A determination of the Indian child's Tribe for purposes of ICWA and the regulations in this subpart do not constitute a determination for any other purpose.

§ 23.110 When must a State court dismiss an action?

Subject to 25 U.S.C. 1919 (Agreements between States and Indian Tribes) and § 23.113 (emergency proceedings), the following limitations on a State court's jurisdiction apply:

(a) The court in any voluntary or involuntary child-custody proceeding involving an Indian child must determine the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings, the State court must expeditiously notify the Tribal court of the pending dismissal based on the Tribe's exclusive jurisdiction, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

(b) If the child is a ward of a Tribal court, the State court must expeditiously notify the Tribal court of the pending dismissal, dismiss the State-court child-custody proceeding, and ensure that the Tribal court is sent all information regarding the Indian child-custody proceeding, including, but not limited to, the pleadings and any court record.

§ 23.111 What are the notice requirements for a child-custody proceeding involving an Indian child?

(a) When a court knows or has reason to know that the subject of an involuntary foster-care-placement or termination-of-parental-rights proceeding is an Indian child, the court must ensure that:

(1) The party seeking placement promptly sends notice of each such child-custody proceeding (including, but not limited to, any foster-care placement or any termination of parental or custodial rights) in accordance with this section; and

(2) An original or a copy of each notice sent under this section is filed with the court together with any return receipts or other proof of service.

(b) Notice must be sent to:

(1) Each Tribe where the child may be a member (or eligible for membership if a biological parent is a member) (*see* § 23.105 for information on how to contact a Tribe);

(2) The child's parents; and

(3) If applicable, the child's Indian custodian.

(c) Notice must be sent by registered or certified mail with return receipt requested. Notice may also be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(d) Notice must be in clear and understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and Tribal enrollment numbers if known;

(3) If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;

(4) The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);

(5) A copy of the petition, complaint, or other document by which the child-custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;

(6) Statements setting out:

(i) The name of the petitioner and the name and address of petitioner's attorney;

(ii) The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.

(iii) The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.

(iv) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.

(v) The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.

(vi) The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of-parental-rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

(viii) The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.

(ix) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

(e) If the identity or location of the child's parents, the child's Indian custodian, or the Tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to know the child is an Indian child, notice of the child-custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see *www.bia.gov*). To establish Tribal identity, as much information as is known regarding the child's direct lineal ancestors should be provided. The Bureau of Indian Affairs will not make a determination of Tribal membership but may, in some instances, be able to identify Tribes to contact.

(f) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court must provide language access services as required by Title VI of the Civil Rights Act and other Federal laws. To secure such translation or interpretation support, a court may contact or direct a party to contact the Indian child's Tribe or the local BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

(g) If a parent or Indian custodian of an Indian child appears in court without an attorney, the court must inform him or her of his or her rights, including any applicable right to appointed counsel, right to request that the child-custody proceeding be transferred to Tribal court, right to object to such transfer, right to request additional time to prepare for the child-custody proceeding as provided in § 23.112, and right (if the parent or Indian custodian is not already a party) to intervene in the child-custody proceedings.

§ 23.112 What time limits and extensions apply?

(a) No foster-care-placement or termination-of-parental-rights proceeding may be held until at least 10 days after receipt of the notice by the parent (or Indian custodian) and by the Tribe (or the Secretary). The parent, Indian custodian, and Tribe each have a right, upon request, to be granted up to 20 additional days from the date upon which notice was received to prepare for participation in the proceeding.

(b) Except as provided in 25 U.S.C. 1922 and § 23.113, no child-custody proceeding for foster-care placement or termination of parental rights may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's Tribe are entitled have expired, as follows:

(1) 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(2) 10 days after the Indian child's Tribe (or the Secretary if the Indian child's Tribe is unknown to the party seeking placement) has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111;

(3) Up to 30 days after the parent or Indian custodian has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the parent or Indian custodian has requested up to 20 additional days to prepare for the child-custody proceeding as provided in 25 U.S.C. 1912(a) and § 23.111; and

(4) Up to 30 days after the Indian child's Tribe has received notice of that particular child-custody proceeding in accordance with 25 U.S.C. 1912(a) and § 23.111, if the Indian child's Tribe has requested up to 20 additional days to prepare for the child-custody proceeding.

(c) Additional time beyond the minimum required by 25 U.S.C. 1912 and § 23.111 may also be available under State law or pursuant to extensions granted by the court.

§ 23.113 What are the standards for emergency proceedings involving an Indian child?

(a) Any emergency removal or placement of an Indian child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(b) The State court must:

(1) Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;

(2) Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended; and

(3) At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(4) Immediately terminate (or ensure that the agency immediately terminates) the emergency proceeding once the court or agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

(c) An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;

(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or

(3) Restoring the child to the parent or Indian custodian.

(d) A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

(1) The name, age, and last known address of the Indian child;

(2) The name and address of the child's parents and Indian custodians, if any;

(3) The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;

(4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director (see *www.bia.gov*);

(5) The residence and the domicile of the Indian child;

(6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;

(7) The Tribal affiliation of the child and of the parents or Indian custodians;

(8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

(9) If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and

(10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(e) An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

(1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;

(2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and

(3) It has not been possible to initiate a "child-custody proceeding" as defined in § 23.2.

§ 23.114 What are the requirements for determining improper removal?

(a) If, in the course of any child-custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, or that the Indian child has been improperly retained (such as after a visit or other temporary relinquishment of custody), the court must expeditiously determine whether there was improper removal or retention.

(b) If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to his or her parent or Indian custodian, unless returning the child to his parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

Petitions To Transfer to Tribal Court

§ 23.115 How are petitions for transfer of a proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's Tribe may request, at any time, orally on the record or in writing, that the State court transfer a foster-care or termination-of-parental-rights proceeding to the jurisdiction of the child's Tribe.

(b) The right to request a transfer is available at any stage in each foster-care or termination-of-parental-rights proceeding.

§ 23.116 What happens after a petition for transfer is made?

Upon receipt of a transfer petition, the State court must ensure that the Tribal court is promptly notified in writing of the transfer petition. This notification may request a timely response regarding whether the Tribal court wishes to decline the transfer.

§ 23.117 What are the criteria for ruling on transfer petitions?

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or Tribe, the State court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

(a) Either parent objects to such transfer;

(b) The Tribal court declines the transfer; or

(c) Good cause exists for denying the transfer.

§ 23.118 How is a determination of "good cause" to deny transfer made?

(a) If the State court believes, or any party asserts, that good cause to deny transfer exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing on the record and to the parties to the child-custody proceeding.

(b) Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court must not consider:

(1) Whether the foster-care or termination-of-parental-rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or Tribe did not receive notice of the child-custody proceeding until an advanced stage;

(2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;

(3) Whether transfer could affect the placement of the child;

(4) The Indian child's cultural connections with the Tribe or its reservation; or

(5) Socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

(d) The basis for any State-court decision to deny transfer should be stated orally on the record or in a written order.

§ 23.119 What happens after a petition for transfer is granted?

(a) If the Tribal court accepts the transfer, the State court should expeditiously provide the Tribal court with all records related to the proceeding, including, but not limited to, the pleadings and any court record.

(b) The State court should work with the Tribal court to ensure that the transfer of the custody of the Indian child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

Adjudication of Involuntary Proceedings

§ 23.120 How does the State court ensure that active efforts have been made?

(a) Prior to ordering an involuntary foster-care placement or termination of parental rights, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

(b) Active efforts must be documented in detail in the record.

§ 23.121 What are the applicable standards of evidence?

(a) The court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) For a foster-care placement or termination of parental rights, the evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

(d) Without a causal relationship identified in paragraph (c) of this section, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.

§ 23.122 Who may serve as a qualified expert witness?

(a) A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. A person may be designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe.

(b) The court or any party may request the assistance of the Indian child's Tribe or the BIA office serving the Indian child's Tribe in locating persons qualified to serve as expert witnesses.

(c) The social worker regularly assigned to the Indian child may not serve as a qualified expert witness in child-custody proceedings concerning the child.

§ 23.123 [Reserved]

Voluntary Proceedings

§ 23.124 What actions must a State court undertake in voluntary proceedings?

(a) The State court must require the participants in a voluntary proceeding to state on the record whether the child is an Indian child, or whether there is reason to believe the child is an Indian child, as provided in § 23.107.

(b) If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status. This may include contacting the Tribe of which it is believed the child is a member (or eligible for membership and of which the biological parent is a member) to verify the child's status. As described in § 23.107, where a consenting parent requests anonymity, a Tribe receiving such information must keep relevant documents and information confidential.

(c) State courts must ensure that the placement for the Indian child complies with §§ 23.129–23.132.

§ 23.125 How is consent obtained?

(a) A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain to the parent or Indian custodian:

(1) The terms and consequences of the consent in detail; and

(2) The following limitations, applicable to the type of child-custody proceeding for which consent is given, on withdrawal of consent:

(i) For consent to foster-care placement, the parent or Indian custodian may withdraw consent for any reason, at any time, and have the child returned; or

(ii) For consent to termination of parental rights, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of termination and have the child returned; or

(iii) For consent to an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, and have the child returned.

(c) The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian, if English is not the primary language) and were fully understood by the parent or Indian custodian.

(d) Where confidentiality is requested or indicated, execution of consent need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(e) A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

§ 23.126 What information must a consent document contain?

(a) If there are any conditions to the consent, the written consent must clearly set out the conditions.

(b) A written consent to foster-care placement should contain, in addition to the information specified in paragraph (a) of this section, the name

and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

§ 23.127 How is withdrawal of consent to a foster-care placement achieved?

(a) The parent or Indian custodian may withdraw consent to voluntary foster-care placement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the court must ensure that the Indian child is returned to that parent or Indian custodian as soon as practicable.

§ 23.128 How is withdrawal of consent to a termination of parental rights or adoption achieved?

(a) A parent may withdraw consent to voluntary termination of parental rights at any time prior to the entry of a final decree of termination.

(b) A parent or Indian custodian may withdraw consent to voluntary adoption at any time prior to the entry of a final decree of adoption.

(c) To withdraw consent prior to the entry of a final decree of adoption, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Additional methods of withdrawing consent may be available under State law.

(d) The court in which the withdrawal of consent is filed must promptly notify the person or entity who arranged any voluntary preadoptive or adoptive placement of such filing, and the Indian child must be returned to the parent or Indian custodian as soon as practicable.

Dispositions

§ 23.129 When do the placement preferences apply?

(a) In any preadoptive, adoptive, or foster-care placement of an Indian child, the placement preferences specified in § 23.130 and § 23.131 apply.

(b) Where a consenting parent requests anonymity in a voluntary proceeding, the court must give weight to the request in applying the preferences.

(c) The placement preferences must be applied in any foster-care, preadoptive, or adoptive placement unless there is a determination on the record that good cause under § 23.132 exists to not apply those placement preferences.

§ 23.130 What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (b) of this section, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) Other members of the Indian child's Tribe; or

(3) Other Indian families.

(b) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply.

(c) The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent.

§ 23.131 What placement preferences apply in foster-care or preadoptive placements?

(a) In any foster-care or preadoptive placement of an Indian child under State law, including changes in foster-care or preadoptive placements, the child must be placed in the least-restrictive setting that:

(1) Most approximates a family, taking into consideration sibling attachment;

(2) Allows the Indian child's special needs (if any) to be met; and

(3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.

(b) In any foster-care or preadoptive placement of an Indian child under State law, where the Indian child's Tribe has not established a different order of preference under paragraph (c) of this section, preference must be given, in descending order as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;

(3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(c) If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in paragraph (a) of this section.

(d) The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.

§ 23.132 How is a determination of "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court.

(b) The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences.

(c) A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:

(1) The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

(2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;

(3) The presence of a sibling attachment that can be maintained only through a particular placement;

(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;

(5) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.

(e) A placement may not depart from the preferences based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

Access

§ 23.133 Should courts allow participation by alternative methods?

If it possesses the capability, the court should allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

§ 23.134 Who has access to reports and records during a proceeding?

Each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.

§ 23.135 [Reserved]

Post-Trial Rights & Responsibilities

§ 23.136 What are the requirements for vacating an adoption based on consent having been obtained through fraud or duress?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, the State court may invalidate the voluntary adoption upon finding that the parent's consent was obtained by fraud or duress.

(b) Upon the parent's filing of a petition to vacate the final decree of adoption of the parent's Indian child, the court must give notice to all parties to the adoption proceedings and the Indian child's Tribe and must hold a hearing on the petition.

(c) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the final decree of adoption, order the consent revoked, and order that the child be returned to the parent.

§ 23.137 Who can petition to invalidate an action for certain ICWA violations?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster-care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated:

(1) An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's Tribe.

(b) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.

(c) To petition for invalidation, there is no requirement that the petitioner's rights under ICWA were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 1912, or 1913 during the course of the child-custody proceeding.

§ 23.138 What are the rights to information about adoptees' Tribal affiliations?

Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.

§ 23.139 Must notice be given of a change in an adopted Indian child's status?

(a) If an Indian child has been adopted, the court must notify, by registered or certified mail with return receipt requested, the child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:

(1) A final decree of adoption of the Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.

(b) The notice must state the current name, and any former name, of the Indian child, inform the recipient of the right to petition for return of custody of the child, and provide sufficient information to allow the recipient to participate in any scheduled hearings.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice and filing the waiver with the court.

(1) Prior to accepting the waiver, the court must explain the consequences of the waiver and explain how the waiver may be revoked.

(2) The court must certify that the terms and consequences of the waiver and how the waiver may be revoked were explained in detail in English (or the language of the parent or Indian custodian, if English is not the primary language), and were fully understood by the parent or Indian custodian.

(3) Where confidentiality is requested or indicated, execution of the waiver need not be made in a session of court open to the public but still must be made before a court of competent jurisdiction in compliance with this section.

(4) The biological parent or Indian custodian may revoke the waiver at any time by filing with the court a written notice of revocation.

(5) A revocation of the right to receive notice does not affect any child-custody proceeding that was completed before the filing of the notice of revocation.

Recordkeeping

§ 23.140 What information must States furnish to the Bureau of Indian Affairs?

(a) Any State court entering a final adoption decree or order in any voluntary or involuntary Indian-child adoptive placement must furnish a copy of the decree or order within 30 days to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information, in an envelope marked "Confidential":

(1) Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

(b) If a State agency has been designated as the repository for all State-court adoption information and is fulfilling the duties described in paragraph (a) of this section, the State courts in that State need not fulfill those same duties.

§ 23.141 What records must the State maintain?

(a) The State must maintain a record of every voluntary or involuntary foster-care, preadoptive, and adoptive

placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.

(b) The record must contain, at a minimum, the petition or complaint, all substantive orders entered in the child-custody proceeding, the complete record of the placement determination (including, but not limited to, the findings in the court record and the social worker's statement), and, if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

(c) A State agency or agencies may be designated to be the repository for this information. The State court or agency should notify the BIA whether these records are maintained within the court system or by a State agency.

§ 23.142 How does the Paperwork Reduction Act affect this subpart?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0186. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW., Washington, DC 20240.

Effective Date

§ 23.143 How does this subpart apply to pending proceedings?

None of the provisions of this subpart affects a proceeding under State law for foster-care placement, termination of parental rights, preadoptive placement, or adoptive placement that was initiated prior to December 12, 2016, but the provisions of this subpart apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Severability

§ 23.144 What happens if some portion of this part is held to be invalid by a court of competent jurisdiction?

If any portion of this part is determined to be invalid by a court of competent jurisdiction, the other portions of the part remain in effect. For example, the Department has considered separately whether the provisions of this part apply to involuntary and voluntary proceedings; thus, if a particular provision is held to be invalid as to one type of proceeding, it is the Department's intent that it remains valid as to the other type of proceeding.

Dated: June 6, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–13686 Filed 6–13–16; 8:45 am]

BILLING CODE 4310–02–P

FEDERAL REGISTER

Vol. 81 Tuesday,

No. 114 June 14, 2016

Part III

The President

Notice of June 10, 2016—Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons to Undermine Belarus's Democratic Processes or Institutions

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Presidential Documents

Title 3—

The President

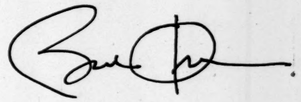
Notice of June 10, 2016

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons to Undermine Belarus's Democratic Processes or Institutions

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections, to commit human rights abuses related to political repression, including detentions and disappearances, and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
June 10, 2016.

[FR Doc. 2016–14224
Filed 6–13–16; 11:15 am]
Billing code 3295–F6–P

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